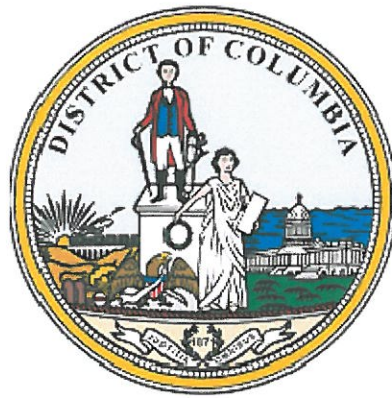




A Comparison of Felony Sentences for Drug Offenses in the District of Columbia in 1999 and 2009



2010 Issues Paper Number 2

DISTRICT OF COLUMBIA SENTENCING AND CRIMINAL CODE REVISION
COMMISSION

441 FOURTH STREET, NW, SUITE 830 SOUTH

WASHINGTON, DC 20001

PHONE: (202) 727-8822 FACSIMILE: (202) 727-7929

WEBSITE: <http://sentencing.dc.gov>

This paper compares felony drug sentences imposed in the District of Columbia in the years 1999 and 2009. Drug offenses have a significant impact on the criminal justice system, treatment resources, and society as a whole. Nationwide, drug offenses accounted for over 32% of all federal felony convictions in 2009.ⁱ The impact of these crimes is even more pronounced within the District of Columbia, where drug offenses represented 39% of all felony sentences imposed in 2009. The goal of this paper is to provide a clear illustration of how felony drug sentences changed over a ten year period that was bifurcated by the implementation of the District's Voluntary Sentencing Guidelines in 2004. The analysis is based on data collected from Sentencing Guidelines Forms, D.C. Superior Court, and D.C. Pretrial Services Agency to compare felony drug sentencing practices preceding and following the implementation of the guidelines.

Drug offenses in the District of Columbia are defined by the Uniform Controlled Substances Act (UCSA), D.C. Code § 48-901.02, et seq.ⁱⁱ The UCSA divides controlled substances into five graded "schedules." The most dangerous controlled substances are contained in Schedule I, with incrementally less serious offenses in Schedules II through V.ⁱⁱⁱ The UCSA designates the distribution of or possession with intent to distribute (PWID) most controlled substances as a felony offense; the penalty for distribution of a controlled substance is the same as the penalty for PWID. The possession of a controlled substance, with the exception of Liquid PCP—without intent to distribute—is designated a misdemeanor.^{iv} The UCSA stipulates that attempts and conspiracies to violate its provisions be punished in the same manner as completed offenses.

Sections 22-4501 and 22-4502 of the D.C. Code establish enhanced penalties for persons who distribute controlled substances or possess them with the intent to distribute while armed with a firearm or imitation firearm. Additionally, the Drug Free Zone enhancement provision, D.C. Code § 48-904.07a, which was added in March 1995, declares that all areas within a 1,000 foot radius of various identified facilities, such as schools and playgrounds, be drug free zones.^v Any individual convicted of distribution or PWID

ⁱ 2009 United States Sentencing Commission Annual Report

ⁱⁱ There was only one major change in the UCSA between 1999 and 2009: in 2001 distribution/PWID marijuana became a felony if the amount of marijuana was more than a half pound or if it was not the offender's first marijuana offense.

ⁱⁱⁱ Schedule I includes: Opiates; opium derivatives, including heroin; hallucinogens; central nervous system depressants and stimulants

Schedule II includes: Opium and certain opiates including morphine and hashish; amphetamines; cocaine (both "crack" and powder); PCP

Schedule III includes: Barbiturates; muscle-growth drugs; marijuana

Schedule IV includes: Benzodiazepenes including valium; barbiturates

Schedule V includes miscellaneous other drugs

Each schedule includes a list of drugs and chemical compounds. The prohibited acts and penalties are then structured around the types of drugs listed in the schedules. For example, Schedule I drugs will be penalized a certain way but Schedule IV drugs may be penalized a different way.

^{iv} Possession of Liquid PCP was designated a felony offense in 2010 under D.C. Code § 48-904.01(d)(2).

^v Drug Free Zones are all areas within 1,000 feet of an appropriately identified public or private day care center, elementary school, vocational school, secondary school, junior college, college, or university, or any public swimming pool, playground, video arcade, youth center, or public library, or in and around public housing.

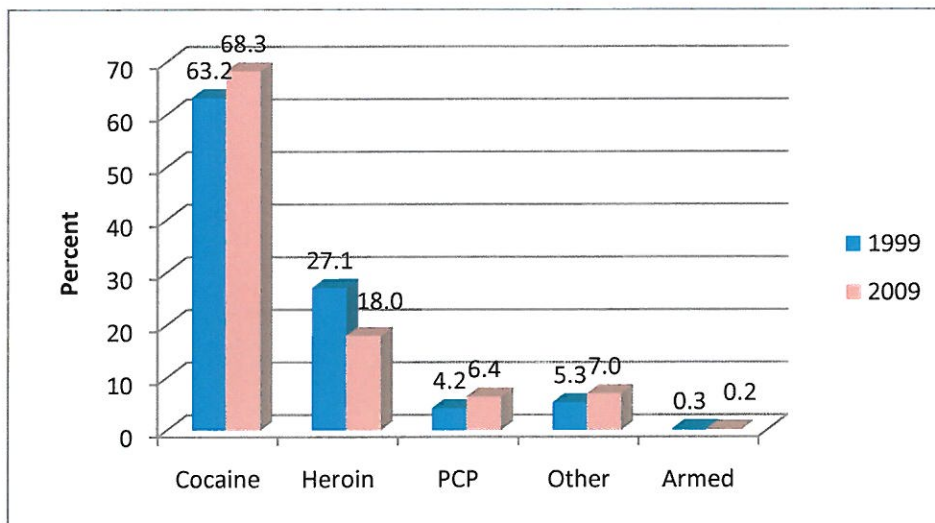
in one of the identified facilities is liable to face as much as twice the amount of an otherwise available fine and term of imprisonment.

DRUG OFFENSES: NOW AND THEN

In 1999, 4,421 felony offenses were sentenced, compared to 4,599 in 2009. The percent of felony sentences involving drugs climbed from 35.2% (1,556 sentences) to 39.1% (1,798 sentences) across the two years studied. The number of Drug Free Zone enhancement sentences decreased from 38 sentences in 1999 to 18 in 2009. This decline may be the result of a combination of changes in drug legislation, offender behavior, law enforcement efforts, and charging and plea bargaining practices.

Figure 1 depicts a slight increase in the percentage of all drug sentences imposed for cocaine offenses from 1999 (63.2%) to 2009 (68.3%), and a 9.1 point (23.2%) decrease in the number of sentences imposed for heroin offenses. Sentences for PCP increased by 82.5% for the two years examined, which is quite notable even though PCP represents a smaller percentage overall. The data did not permit comparisons of the “Other” drugs over the two time periods, as it is unclear if the drugs classified within this category were consistent across time.^{vi}

Figure 1: Type of Drug, 1999 (N=1,556) and 2009 (N=1,798)



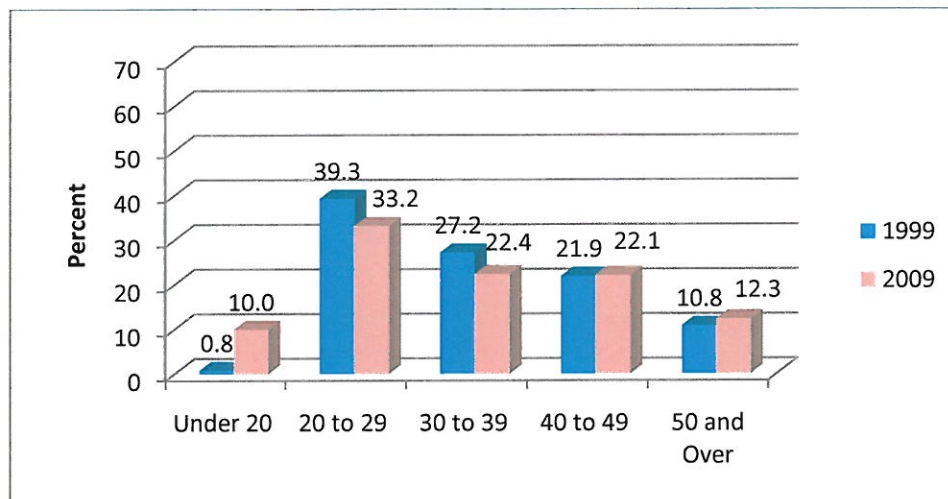
^{vi} While many of the “Other” drugs in 1999 were not specified within the data, in 2009, the category included marijuana, methadone, OxyContin, and ecstasy.

DRUG OFFENDERS: NOW AND THEN

The median age of drug offenders decreased between 1999 and 2009, from 33.0 years to 31.6. Figure 2 illustrates a dramatic increase in the percentage of adult offenders under the age of 20 in 2009,^{vii} and decreases in the percentage of offenders between the ages of 20 and 39.

In both 1999 and 2009, most offenders were black, male, and lived in the District, although these proportions experienced some small changes over time. In 2009, a greater percentage of the sentenced drug offenders (99.1%) were black compared to 1999 (95.5%); a greater percentage were male (88.6%) compared to 1999 (85.8%); and the percentage who were D.C. residents decreased from 1999 (88.4%) to 2009 (85.1%).

Figure 2: Age of Drug Offenders (In Years), 1999 (N=1,556) and 2009 (N=1,798)



DRUG SENTENCES IMPOSED: NOW AND THEN

The District of Columbia's Voluntary Sentencing Guidelines were implemented in 2004. The Guidelines are comprised of two grids: a Drug Grid specifically for drug felonies and a Master Grid for all other felony offenses. Offense severity and criminal history create the axes of the grids, and are used to inform the type of sentence and sentence length recommendations. As the two years of interest to this paper straddle the implementation date of the guidelines, this section will offer a comparison of felony drug sentences before and after the Drug Grid was employed.

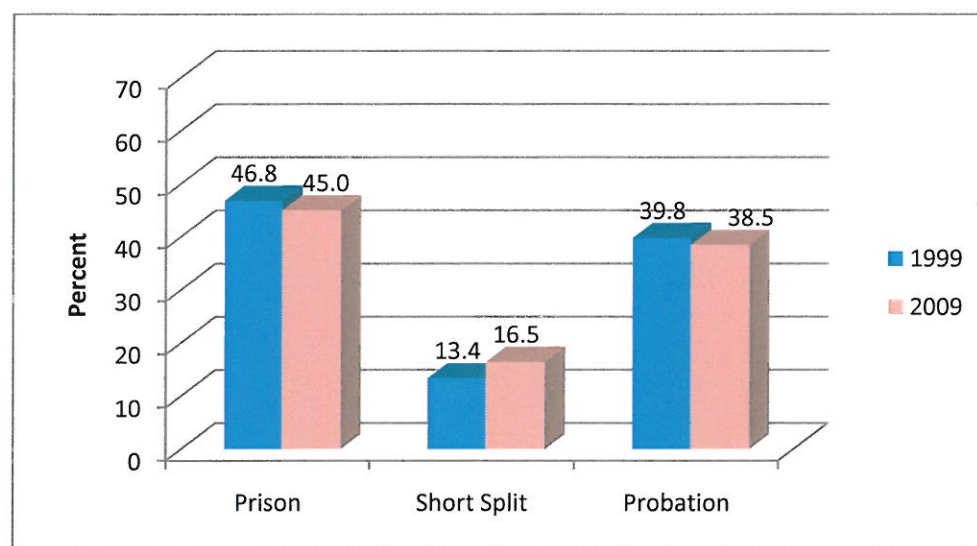
The Sentencing Guidelines recognize three types of sentencing dispositions: prison sentences, short split sentences, and probation sentences. A short split sentence is one in which the judge suspends execution of all but **six months or less** of the initially imposed prison sentence and imposes a period of probation to follow the offender's release from prison. In a probation sentence, the judge imposes a sentence within

^{vii} The "Under 20" age category contains offenders who were 18 and 19 years old.

the applicable prison range, suspends **the entire** prison sentence, and places the offender on probation immediately.

Although minimal changes in prison and probation sentences were observed (see Figure 3), short split sentences^{viii} increased from 1999 (13.4%) to 2009 (16.5%). This change could be the result of an increase in the percentage of sentences that were imposed on offenders who were serving probation terms from previous convictions. In 1999, 8.1% of drug offenders who received short split sentences were on probation at the time of their current drug offense, whereas in 2009, these circumstances applied to 14.4% of drug offenders.

Figure 3: Types of Sentences Imposed on Drug Offenses, 1999 (N=1,556) and 2009 (N=1,798)



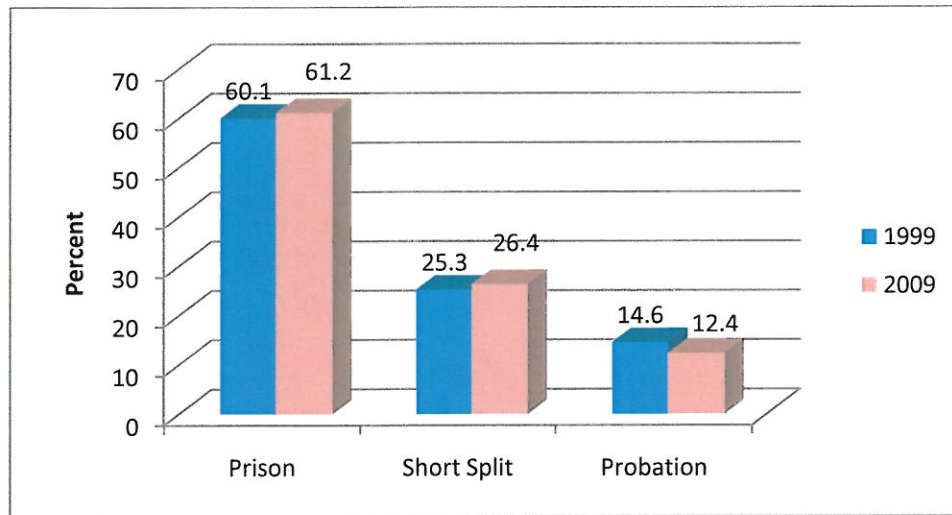
Unlike the median prison term imposed on drug offenses, which was 6 months in both 1999 and 2009, the mean sentence length decreased from 12.9 to 9.4 months.^{ix} This shift towards the median indicates that the occurrence of unusually long prison terms imposed on drug offenses decreased over time. Further examination of the data supports this finding—in 1999, 1.9% of sentences imposed on drug offenses were 30 months or longer, while these sentences made up only 1.3% of drug sentences in 2009. The longest prison term imposed on drug offenses in 1999 was 72 months, whereas by 2009 the longest term had decreased to 60 months.

One legal factor used to inform sentencing is criminal justice supervision status at the time of arrest. Offenders who are under criminal justice supervision include those released on bail, pretrial detention, halfway house stay, probation, and supervised release. Figure 4 (on Page 5) illustrates the sentences that

^{ix}The median is often the preferred measure of a statistical average because the mean is sensitive to extreme values. In the case of the sentence length, the mean sentence is longer than the median sentence due to the skewing of some outlying longer sentences.

were imposed on individuals who were under criminal justice supervision at the time of their arrest. The sentences imposed on these offenders were quite consistent across time: in both 1999 and 2009 prison was the most common sentence, while probation was the least. Additionally, the proportion of these offenders who were incarcerated—either in the form of prison or short splits—is dramatically higher than the average for all offenders, while the proportion sentenced to probation is far lower (see Figure 3).

Figure 4: Types of Sentence Imposed on Offenders on Criminal Justice Supervision at Time of Arrest, 1999 (N=926) and 2009 (N=1,137)



A second legal factor used to inform sentencing is criminal history. The median number of prior felony convictions^x for drug offenders in both 1999 and 2009 was 1.0^{xi}, while the mean number of prior convictions was slightly higher in 2009 (1.3) than in 1999 (1.1). It should be noted that although drug offenders may have limited prior felony convictions, a vast number had criminal histories that included multiple misdemeanor convictions.

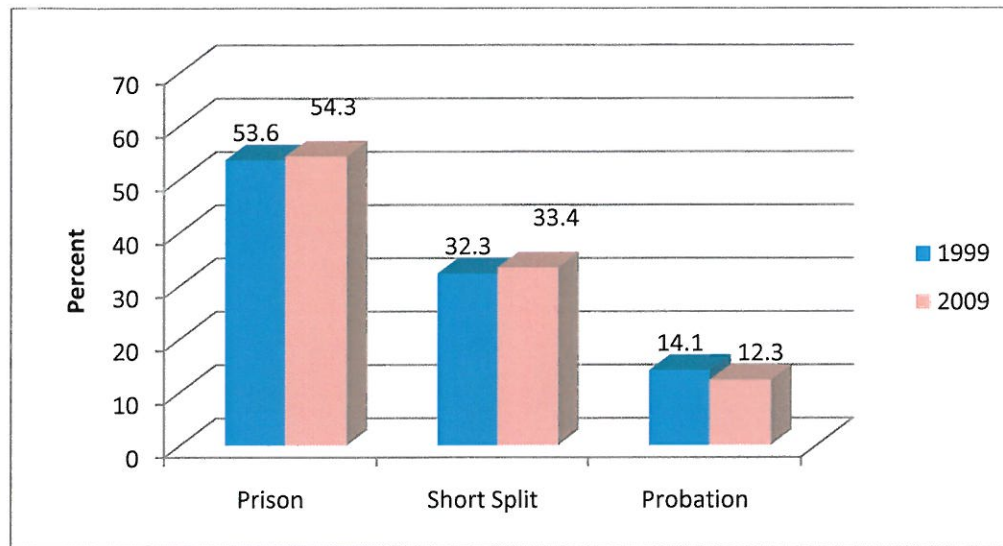
Figure 5 (on Page 6) depicts the type of sentence imposed on drug offenders with prior felony convictions. The figure reveals that drug offenders with one or more prior felony convictions were consistently more likely to receive prison terms than either short splits or probation in both 1999 and 2009.^{xii} Similar to those offenders under criminal justice supervision at the time of arrest, those with one or more prior convictions received sentences of incarceration at a rate higher than average.

^x Prior felony convictions for 1999 was obtained from the Pretrial Services Agency's automated database containing all prior convictions in Superior Court for persons who are charged with felonies in the District of Columbia. This information was merged with Superior Court data.

^{xi} Prior felony convictions for 1999 was obtained from the Pretrial Services Agency's automated database containing all prior convictions in Superior Court for persons who are charged with felonies in the District of Columbia. This information was merged with Superior Court data.

^{xii} There was little difference in the type of sentence imposed on offenders with one prior felony conviction and offenders with two or more prior felony convictions. For example, in 2009, 51.6% of those with one prior conviction received a prison term

Figure 5: Types of Sentence Imposed on Offenders with One or More Prior Felony Convictions, 1999 (N=1,301) and 2009 (N= 1,534)



COMPLIANCE WITH GUIDELINES IN 2009

As the Voluntary Sentencing Guidelines were instituted in 2004, compliance rates could only be calculated for 2009. Guidelines compliance can be dispositional or durational, or both. Dispositional non-compliance occurs when a judge imposes a type of sentence that is not among the options permitted in a particular box. When the prison term imposed is above the guideline range and is not the result of a statutory enhancement or a departure, it is considered an upward durational non-compliant sentence. A downward durational non-compliant sentence is a prison term imposed that is below the applicable guideline range and the sentence is not the result of a specific statutory provision or departure.

Of the 1,798 drug felony sentences sentenced in 2009, judges complied with the Guidelines 90.1% of the time (1,620 sentences) and went outside the Guidelines only 8.9% of the time (189 sentences). This represented the highest compliance rate across six major offense categories: violent, weapon, drug, property, sex, and all other offenses. Figure 6 (on Page 7) shows that the majority (69.9%) of non-compliant sentences for drug offenses were downward durational sentences.

compared to 55.3% of offenders with two or more prior convictions. On the other hand, 32.8% of offenders with no prior conviction received a prison term.

Figure 6: Percentage of Types of Non-Compliance, 2009 (N=178)

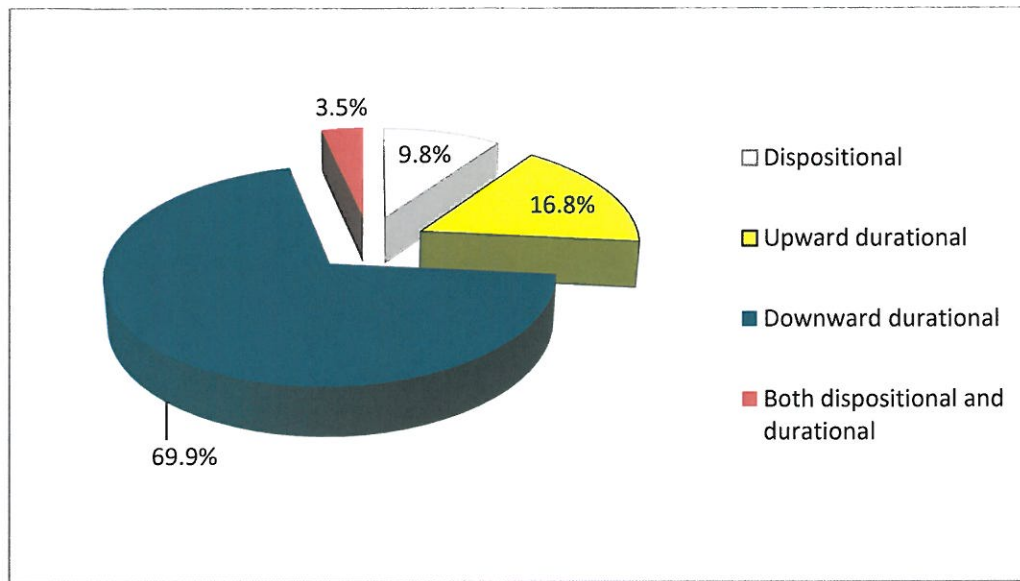
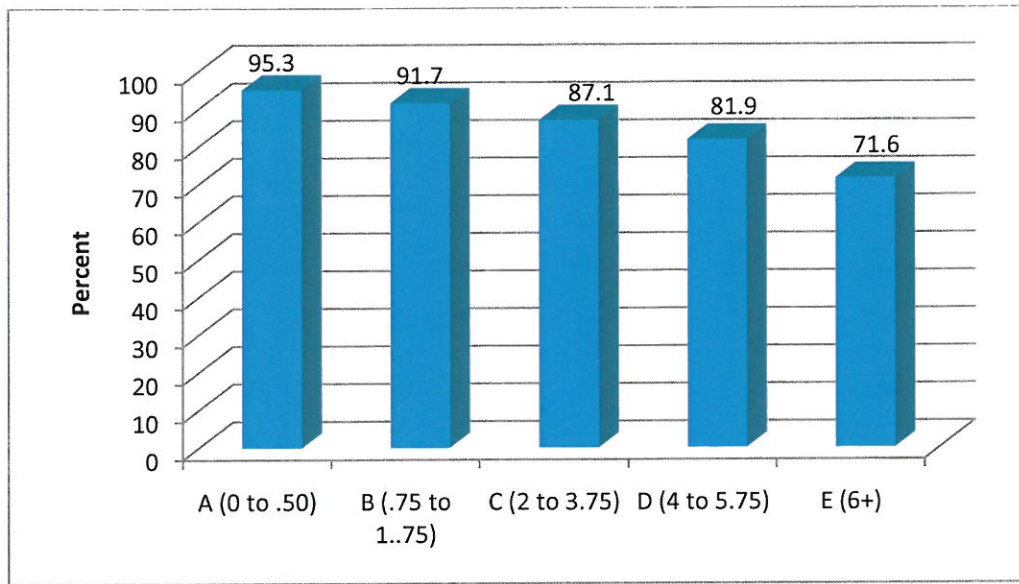


Figure 7 (on Page 8) illustrates that the compliance rates decreased as the criminal history score of the offender increased. Further investigation revealed that of the non-compliant sentences in Criminal History Categories D and E, 75.5% and 72.9% were downward durational, respectively.^{xiii} Additionally, 53.3% of the downward durational sentences in Criminal History Categories D and E were imposed on offenders who were 40 years of age or older. This age group is often comprised of offenders with significant long term substance abuse issues for which the court may find that a lengthy incarceration in prison otherwise called for by the applicable guideline is not the most appropriate sentence.

^{xiii} An offender's criminal history score is calculated by adding all of the points accumulated from prior adult convictions, and prior juvenile adjudications. Points are weighted based on the seriousness of the offense, as ranked by the Sentencing Guidelines. The total score then places the offender in one of five categories along the horizontal axis of the Guidelines grid, ranging from Category A, representing offenders with no or minimal criminal history, to Category E representing those with six or more criminal history points. The categories are: A (0 to .50 points); B (.75 to 1.75); C (2 to 3.75); D (4 to 5.75); E (6+).

Figure 7: Compliance Rates for Drug Offenses by Criminal History Category (N=1,798)



SUMMARY

The findings of this paper reveal that sentences imposed on felony drug offenses remained relatively unchanged across ten years. While there were minimal changes in prison and probation sentences for drug offenders between 1999 and 2009, the ten year span saw a growth in the percentage of short split sentences imposed. This increase could be due in part to the higher percentage of offenders already on probation at the time of their current drug offense in 2009. The average prison term imposed on felony drug offenses decreased from 12.9 months in 1999 to 9.4 months in 2009.

Overall judicial compliance was high for sentences imposed on drug felonies in 2009 at over 90%. When judges did sentence outside of the Guidelines' recommendations, the majority of the sentences were downward durational in nature.

The decreased frequency of longer sentences imposed on drug offenders suggests that the Voluntary Sentencing Guidelines may have been successful in "reining in" unusually long prison terms. A closer look at the 8.9% of non-compliant sentences reveals that judges employed individualized discretion when imposing shorter sentences for "atypical" drug offenses such as those involving older drug offenders who have had multiple interactions with the criminal justice system due to their long term substance abuse problems.

The analysis also identified some shifts in the characteristics of drug offenses and offenders. There was an increase in the proportion of cocaine and PCP related sentences and a decrease in heroin sentences. The age of drug offenders experienced significant changes during the ten year period, the most notable being a large increase in the proportion of offenders 18 and 19 years of age in 2009.

Contact Information:

District of Columbia Sentencing and Criminal Code Revision Commission

441 4th Street, N.W.

830 South

Washington, District of Columbia 20001

Office: 202-727-8822

Fax: 202-727-7929

Email: Barbara.Tombs@dc.gov

Website: <http://sentencing.dc.gov>