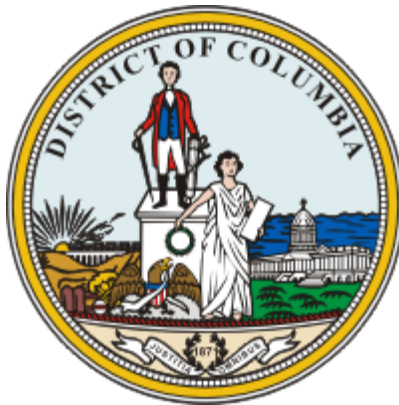




DISTRICT OF COLUMBIA SENTENCING AND CRIMINAL  
CODE REVISION COMMISSION  
FY 2009 ANNUAL REPORT



APRIL 2010

DISTRICT OF COLUMBIA SENTENCING AND CRIMINAL CODE REVISION COMMISSION  
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*Mission Statement*

*The mission of the District of Columbia Sentencing and Criminal Code Revision Commission is to implement, monitor, and support the District's voluntary sentencing guidelines, to promote fair and consistent sentencing policies, to increase public understanding of sentencing policies and practices, and to evaluate the effectiveness of the guidelines system in order to recommend changes based on actual sentencing and corrections practice and research.*



District of Columbia  
Sentencing and Criminal  
Code Revision Commission

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April 30, 2010

The Honorable Vincent C. Gray  
Chairman, Council of the District of Columbia  
1350 Pennsylvania Avenue  
Washington, DC 20004

Dear Chairman Gray:

*Non-voting members:  
Maria Amato, Esq.  
Alfred Durham  
Thomas R. Kane, Ph.D.  
Hon. Phil Mendelson  
Stephen J. Husk*

Pursuant to the District of Columbia Sentencing and Criminal Code Revision Commission Amendment Act of 2007, I am pleased to submit the 2010 Annual Report of the District of Columbia Sentencing and Criminal Code Revision Commission. This year's report covers the period January 1, 2009, through December 31, 2009, and contains an analysis of the felony sentences imposed under the sentencing guidelines. The report also contains a summary of the first comprehensive revision to the Voluntary Sentencing Guidelines Manual since the implementation of the guidelines in 2004, as well as a summary of the Commission's progress to date on criminal code revision.

Unlike previous annual reports, we have not included in this report an analysis of judicial compliance with the sentencing guidelines. Compliance remains high and the guidelines continue to be widely accepted among the judiciary and criminal justice practitioners. 2009 marks the five year anniversary since the implementation of the voluntary sentencing guidelines as a pilot project. Thus, the Commission now has sufficient data and experience to conduct a more detailed analysis of judicial compliance, which will be presented in a separate report later this year.

Respectfully submitted,

Frederick H. Weisberg, Chairman

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The Sentencing and Criminal Code Revision Commission would like to acknowledge the contributions to this report of the District of Columbia Superior Court and the Court Services and Offender Supervision Agency through their cooperative data sharing efforts.

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## **Executive Summary**

The District of Columbia Sentencing and Criminal Code Revision Commission's 2009 Annual Report is organized into six chapters. Chapter One provides an overview of the Commission including a brief history, statutory mandate, and membership of the Commission. In addition, there is a discussion of the District of Columbia Sentencing Guideline System (SGS) web application which was designed to enable electronic transfer of sentencing data from the Superior court for analysis and guideline compliance monitoring. The second chapter outlines the data source and limitations for the analysis of felony sentences contained in this report.

Chapter Three examines the types of sentences imposed, as well as, as the demographics of offenders by sentence type. In calendar year 2009, 3,410 felony cases were sentenced in the District of Columbia. Approximately half (48.4%) of those case resulted in the imposition of a prison sentence. Probation sentences accounted for 34.3% of all sentences, with short-split sentences representing 17.3% of sentences. Chapter Three also includes an analysis of sentence imposed by offense categories broken down as follows: sex, violent, weapons, drug, property, and other offenses.

Compliance with the Sentencing Guidelines is discussed in Chapter Four. A description of the structure of the Master and Drug sentencing grids is presented. In addition, the definition of compliance and how guideline compliance is measured is explained. Since the implementation of the voluntary sentencing guidelines, compliance rates have been approximately 90% each year. Because the Commission has only recently acquired a new data source with which to measure compliance, this report does not include a discussion of the 2009 guideline compliance

results. The Commission has decided to issue a separate more detailed Compliance Report later this year that will present an analysis of compliance and departure rates over the past five years.

The Commission's progress and accomplishments to date regarding the Criminal Code Revision Project are discussed in Chapter Five. The chapter outlines various approaches to undertaking the criminal code revision from implementation of the Model Penal Code to completing discrete parts of the overall project and the projected resources required.

The final chapter of the report, Chapter Six contains the 2008-2010 amendments to the sentencing guidelines and describes the first comprehensive revisions to the Sentencing Guideline Manual since 2004, which is being issued simultaneously with this report and will be available online at the Commission's website.



## CHAPTER ONE

### COMMISSION OVERVIEW

#### **History of the District of Columbia Sentencing and Criminal Code Revision Commission**

In 1997, the United States Congress enacted the National Capital Revitalization and Self-Government Improvement Act of 1997 (the “Revitalization Act”), which laid the groundwork for sweeping changes in the District of Columbia’s criminal justice system. This legislation created the Truth in Sentencing Commission (“TIS Commission”) and directed that Commission to formulate recommendations regarding the sentences for felonies committed in the District of Columbia on or after August 5, 2000. The Revitalization Act stipulated that sentences for enumerated felonies (listed in subsection 11212(h)) must meet the truth-in-sentencing standards of the Violent Crime Control and Law Enforcement Act of 1994, requiring offenders convicted of these offenses to serve not less than eighty-five percent of a determinate prison term. The Revitalization Act also eliminated parole for offenders convicted of the enumerated violent felonies. As to all felonies, the TIS Commission’s recommendations were to ensure that (1) the sentence would reflect the seriousness of the offense and the criminal history of the offender as well as provide for just punishment and deterrence and necessary educational and vocational training, medical care and other correctional treatment for offenders; (2) good time credit is calculated pursuant to 3624 of Title 18 of the United States Code; and (3) an “adequate period of supervision” follow release from imprisonment.

The TIS Commission submitted legislative recommendations to the Council of the District of Columbia, mindful to only address the issues required by the Revitalization Act, and left the development of more specific legislation related to the District’s sentencing policies to the Council’s authority. These recommendations were enacted into law by the Council as the Truth

in Sentencing Amendment Act of 1998. In a supplemental report, the TIS Commission identified additional sentencing issues for the Council's consideration and also recommended the creation of a District of Columbia sentencing commission to assist the Council with its work in this area. In response, the Council enacted the Advisory Commission on Sentencing Establishment Act of 1998, establishing the Advisory Commission on Sentencing. The Council directed the Advisory Commission to make recommendations consistent with the goals of the Revitalization Act, as well as to advise on the use of intermediate sanctions in appropriate cases, to conduct an annual review of sentencing data, policies and practices, and to suggest any other factors appropriate to enhance the fairness and effectiveness of criminal sentencing policies and practices in the District of Columbia.

The Advisory Commission on Sentencing conducted extensive research on criminal sentencing in the District, and in 2000, presented its report to the Council recommending important changes. This included a shift from indeterminate to determinate sentencing for all felony offenses and the abolition of parole, substituting a period of supervised release following incarceration. The Commission's 2000 report also recommended that the District consider adopting a structured sentencing system as a way to promote fairness under the new determinate system. The Council adopted these recommendations in the Sentencing Reform Act of 2000, directing the Commission to research whether some form of structured sentencing would serve the needs of the District's criminal justice system and, if so, to recommend the type of structured sentencing system that would work best.

In 2003, the Commission recommended the adoption of voluntary sentencing guidelines for the District of Columbia. This recommendation was made, in part, to address variability in

sentencing practices and to reduce unwanted disparity in the sentencing of similarly situated offenders convicted of similar crimes. The Commission recommended voluntary rather than presumptive or mandatory guidelines for several reasons. First, it was predicted that voluntary guidelines would be effective in achieving a high degree of compliance while avoiding time-consuming and expensive litigation. Second, a voluntary system would be less rigid than a presumptive or mandatory one, preserving judges' discretion to impose fair sentences in individual cases. Finally, a voluntary system would allow the Commission to adjust the guidelines in response to any unforeseen future sentencing issues. In 2004, the Council recognized the voluntary guidelines and directed the Commission to assist the Superior Court in implementing them as a pilot program. The Council also established the Commission as a permanent agency, renaming it the District of Columbia Sentencing Commission.

As the Commission continued to monitor the implementation of the sentencing guidelines, the Council turned its attention to the District of Columbia Criminal Code. The Council expressed concern about confusing and outdated language in the code and overlapping provisions among the factors that may be affecting fairness in sentencing practices. After research and input from the public, in 2006, the Council directed the Commission to examine the criminal code and make comprehensive recommendations that provide for a uniform and coherent body of law. The resulting Advisory Commission on Sentencing Act of 2006, also expanded the membership of the Commission and again changed its name to the District of Columbia Sentencing and Criminal Code Revision Commission. Pursuant to its mandate, the Commission will, among other things, examine the District's criminal statutes to ensure clear and consistent language, organize existing statutes in a logical order, address proportionality of fines and penalties,

propose a classification system for misdemeanor statutes and propose amendments necessary to facilitate the equitable administration of the criminal laws in the District of Columbia.

Throughout its tenure, the Commission has worked to improve criminal justice policies in the District of Columbia. Many important reforms have been accomplished since inception, including the development of the District's current sentencing structure, which has consistently yielded high compliance rates and operated to provide effective and fair criminal sentencing practices. The Commission looks forward to continuing its collaboration with the Council, the Judiciary and criminal justice agencies to ensure that the District of Columbia's public safety and justice needs are met.

## **Current Legislative Mandate**

The Commission currently has two primary responsibilities: monitoring the voluntary sentencing guidelines and developing recommendations for criminal code revision. The former involves collecting data from the Superior Court and the Court Services and Offender Supervision Agency (CSOSA) in order to assess compliance with the guidelines, identify problem areas, and monitor trends in sentencing. This includes monitoring sentencing practices in general and providing reports to the Council and the Mayor on the state of sentencing practices for the District of Columbia. It also requires analysis of each new crime or sentencing provision enacted by the Council and incorporating it into the guideline structure. At the same time, the Commission is proceeding with its directive to examine the criminal code in order to provide comprehensive recommendations on revisions. The results of this analysis will correct inconsistencies, achieve further proportionality in imprisonment terms and fines and create clarity and coherence in criminal statutes.

In summary, the Commission is directed to:

- Review and analyze pertinent sentencing data;
- Review sentencing data, policies, and practices in the District of Columbia annually;
- Submit an annual report to the Council summarizing the Commission's activities and including further recommendations as appropriate;
- Review and research sentencing policies and practices locally and nationally and make recommendations to the Council that increase the fairness and effectiveness of sentences in the District of Columbia;
- Make such other recommendations designed to enhance the fairness and effectiveness of criminal sentencing policies and practices in the District of Columbia;

- Analyze the District of Columbia's current criminal code and administration of existing criminal laws, and;
- Propose reforms in the criminal code to create a uniform and coherent body of criminal law in the District of Columbia

The Commission continues to fulfill its responsibilities under this mandate in its efforts to promote fair and sound sentencing practices in the District of Columbia.

## **Commission Membership**

The Commission is made up of fifteen voting members and five non-voting members. Its membership includes representation from various criminal justice agencies, the judiciary, academic institutions, practicing attorneys and the public.<sup>1</sup> The varied membership guarantees for a variety of perspectives when developing changes in sentencing policy to recommend to the Council.

By statute, the voting members of the Commission are:

- Three judges of the Superior Court of the District of Columbia, appointed by the Chief Judge of the Superior Court;
- The United States Attorney for the District of Columbia or his or her designee;
- The Director of the D.C. Public Defender Service or his or her designee;
- The Attorney General for the District of Columbia or his or her designee;
- The Director of the Court Services and Offender Supervision Agency for the District of Columbia or his or her designee;
- Two members of the District of Columbia Bar, one who specializes in the private practice of criminal defense in the District of Columbia, and one who does not specialize in the practice of criminal law, appointed by the Chief Judge of the Superior Court in consultation with the President of the District of Columbia Bar;
- A professional from an established organization devoted to research and analysis of sentencing issues and policies, appointed by the Chief Judge of the Superior Court of the District of Columbia;
- Two citizens of the District of Columbia who are not attorneys, one of whom is nominated by the Mayor subject to confirmation by the Council, and the other who is appointed by the Council; and

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<sup>1</sup> The legislation governing the D.C. Sentencing and Criminal Code Revision Commission can be found at D.C. Code § 3-101, et seq.

- Three professionals from established organizations, to include institutions of higher education, devoted to the research and analysis of criminal justice issues, appointed by the Council.

The non-voting members of the Commission are:

- The Director of the District of Columbia Department of Corrections or his or her designee;
- The Chief of the Metropolitan Police Department or his or her designee;
- The Director of the United States Bureau of Prisons or his or her designee;
- The Chairperson of the United States Parole Commission or his or her designee; and
- The chairperson of the Council committee that has oversight of the Commission within its purview.



## **DC Sentencing Guideline System Web Application**

Early in its existence, the Commission recognized that its ability to collect and analyze pertinent sentencing data would be enhanced by an automated process designed to meet the Commission's specific needs. To that end, the Commission contracted with Cross Current Corporation in 2005 to develop a Sentencing Guideline System (DC SGS). DC SGS is designed as a web-based application for use by the Commission in calculating the recommended guideline sentence, capturing information on sentences imposed and electronically reporting this information to the Commission. DC SGS is an independent, internet technology-based system. Access to the web-based application has been provided through the secure DC JUSTIS network.

In addition to the web application, a web service-based component has been developed to provide information flow from the DC Superior Court's Courtview System to the DC SGS environment via the JUSTIS Database. Sentencing data flows from the Superior Court's Courtview System to the DC SGS environment via the JUSTIS database when one of the following occurs: (1) a guilty plea or guilty verdict is entered or (2) a sentence is entered. This process has been successfully tested with the SGS application and web service has been installed on test servers located at Cross Current Corporation.

Following the successful testing at Cross Current, the SGS application, SGS database and web service were deployed to the production servers in the District of Columbia. The JUSTIS Agency database triggers were modified to reflect the new network location of the DC SGS web service. Over the past year, the application was also expanded to enable the Commission to perform specific updates, including the addition of new offenses or new judges, which would minimize ongoing software maintenance costs for the agency.

The initial interface was designed to handle newly opened cases within the Superior Court's Courtview System. In 2006, when the Superior Court switched to the Integrated Justice Information System (IJIS), it became necessary for the Commission to make modifications to the DC SGS to ensure compatibility between the two data systems. From 2006, through 2009, while modifications to the DC SGS application were being completed, the Commission was not yet able to access sentencing data directly from the Court.

The Commission determined in 2007, that existing historical offense and sentencing information housed in the IJIS would add to the sentencing monitoring and research capabilities of the Commission. As a result of that determination, a new provision was added to the JUSTIS database to enable a one-time transfer of all relevant felony cases with a specific date range available in IJIS via the Courtview System. Sample historical data was transferred in February, 2010. On March 11, and 12, 2010, a complete historic data transfer from the Superior Court's Courtview system was completed, providing felony sentencing data from January 2006, to March 2010. Currently the data is being examined for accuracy and validity. Once any data quality issues are identified and corrected, a daily feed of sentencing information will be implemented to provide the Commission with real time, electronically transferred sentencing data. This long awaited capacity will enable the Commission to respond quickly and accurately to requests for sentencing trends and analysis from the Court, Council and other interested consumer groups.

Currently the Commission is working with Court Services and Offender Supervision Agency (CSOSA) and Pre-Trial Services to develop a means of electronically transferring criminal history information to be merged with the Court's sentencing data and enable the calculation of

guideline sentences, sentencing trends and other data analyses. Once this task is accomplished, the Commission will have both the ability and the data necessary to analyze and study in depth the effectiveness of the sentencing guidelines and the impact of current sentencing policy in the District of Columbia.

## **CHAPTER TWO**

### **DATA SOURCE FOR ANALYSIS**

The analysis presented in this report is based on data received through the District of Columbia Superior Court's integrated court management system known as Courtview by which court data maintained in the Integrated Justice Information System (IJIS) can be viewed and queried. The data include information on all felony sentences imposed between January 1, 2009, and December 31, 2009, regardless of when the conviction may have occurred. Thus, it is possible that cases in which a conviction occurred prior to January 1, 2009, but a sentence was not imposed until after January 1, 2009, are included in the data.

The data query produced 4,712 felony counts for calendar year 2009. Of the total number of felony counts, 75.2% indicated a sentence imposed for a single count of conviction in a particular case. Cases with sentences imposed on two counts comprised 13.5% of all felony counts; cases with sentences imposed on three counts accounted for 4.1% of all felony counts; and 7.2% of all felony counts were from cases with sentences imposed on four or more counts.

The data analysis in this report was performed on the most serious count or offense of conviction within a single case. When a case contained more than one count of conviction, the most serious offense was selected based on the following criteria: (1) the count with the longest prison sentence (however, if only probation sentences were imposed, the count receiving the longest suspended sentence was selected as the most serious count); (2) if two or more counts received identical sentences, the count with the higher offense severity ranking was selected; (3) if two or more counts received identical sentences and also had the same severity ranking, the count containing the offense that was designated the "lead" charge was selected.

Thus, the unit of analysis is a case represented by the most serious count. It is possible for an individual offender to be sentenced more than once on separate cases during calendar year 2009, which would result in that individual being counted twice in the data used for this report. However, those instances are few in number and do not impact the validity of the analysis.

Given the definition of a case described above, the 4,712 felony counts resulted in a total of 3,410 cases sentenced between January 1, 2009, and December 31, 2009. It should be noted that specific parts of the analysis presented in this report were conducted on less than the 3,140 cases identified. This is most commonly due to missing data for variables such as race, gender, etc. When a data item was missing for a specific analysis, the type and number of cases with the missing data are noted in the size of the “N” and a footnote indicating such is included with the graphic or chart. Finally, when offense categories were selected for analysis relating to gender or race, the selection was based on the following criteria: for male and black offenders, offense categories containing 20 or more cases sentenced and for female and white offenders, offense categories containing 10 or more cases sentenced. The findings from an analysis by offense categories that contained less than the number of cases identified above would be too inconclusive to be interpreted given the limited number of cases.

## CHAPTER THREE

### SENTENCES IMPOSED DURING 2009

This chapter presents an analysis of the types of felony sentences imposed in the District of Columbia during calendar year 2009. In addition, this chapter presents findings on offender demographics by the type of sentence imposed. The data presented includes an aggregate overview of all felony sentences imposed, followed by an individual analysis of the type of sentence imposed: prison, short-split and probation.

#### Highlights

- In 2009, 3,410 felony cases were sentenced. Prison sentences represented almost half (48.4% or 1,650 cases) of the felony sentences imposed. Probation accounted for 34.3% (1,168 cases) of all sentences and short-splits were approximately 17.3% (592 cases) of all sentences.
- Males represented 87.5% of all offenders sentenced, with females accounting for 12.5%. However, for offenders sentenced to prison, males accounted for 91.9% of the offender population and females only 8.1%. Conversely, 19.6% of probation sentences were imposed on females and 80.4% on males.
- Black offenders represented 96.2% of the sentenced population and accounted for over 95% of all prison sentences imposed.
- Offenders sentenced to probation were somewhat older (median age of 32) than offenders that were sentenced to prison (median age of 30) or short splits (median age of 29).
- Drug offenses accounted for nearly half of sentenced cases: 44.6%.

- Females were sentenced to probation at a higher rate than males in each of the six major offense categories.
- The overall median length of sentence imposed was 18 months while the median term of probation was 12 months.
- A total of \$48,280 in fines was imposed in felony cases in 2009. The offense category with the highest average fine amount per case was weapons offenses with a \$410.94 per case average.

### **Felony Sentences**

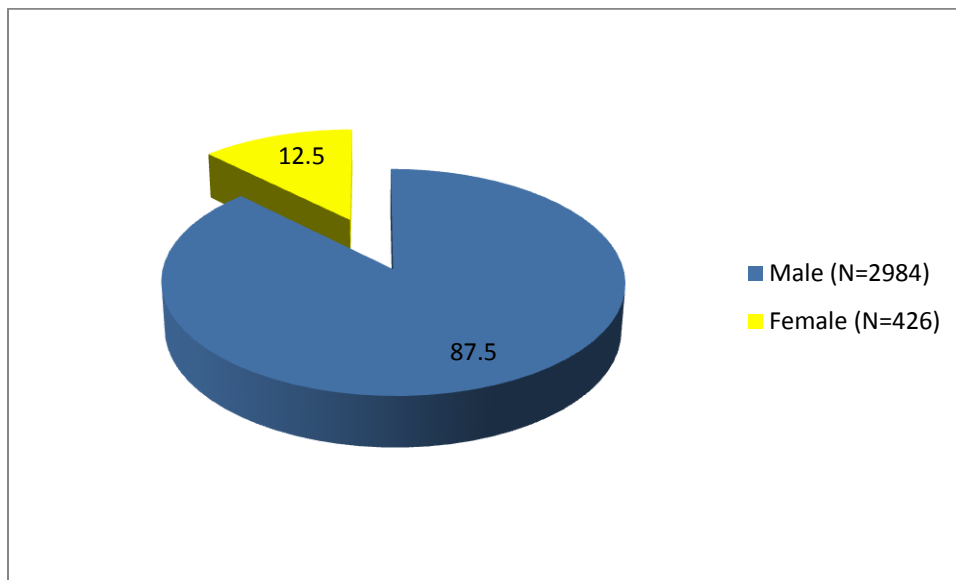
This section provides an overview of the 3,410 felony cases sentenced and examines offender demographics and type of offense in relation to those sentences. The demographic variables used in this analysis included age, gender and race. The type of offense is represented by six major offense categories, listed here with the most common crimes in each offense category:

- 1) Sex offenses, which include all degrees of sex abuse and of child sex abuse;
- 2) Violent offenses, which include armed and unarmed first degree murder, second degree murder, armed and unarmed robbery, assault with a deadly weapon, and aggravated assault;
- 3) Weapon offenses, which are comprised predominantly of carrying a pistol without a license, felon in possession of a firearm, and possession of a firearm during a crime of violence;
- 4) Drug offenses, which are distribution or possession with intent to distribute a controlled substance and attempted distribution or attempted possession with intent to distribute a controlled substance;
- 5) Property offenses, which include arson, first degree burglary, second degree burglary, first degree theft, receiving stolen property, and unauthorized use of a vehicle; and

6) Other offenses, which consist largely of escape, fleeing law enforcement, obstruction of justice, and Bail Reform Act violations.

In 2009, male offenders accounted for 87.5% of felony sentences imposed (Figure 1), very similar to national sentencing rates. Males accounted for over 90% of the sentences for sex offenses, violent offenses, weapon offenses, and property offenses (Table 1). Female offenders represented 12.5% of the total sentences imposed during 2009 (Figure 1), but were overrepresented in drug offenses sentenced (17.0% of sentences for drug offenses were female) and slightly overrepresented in “other” offenses sentenced (13.0% of the sentences for “other” offenses were female) (Table 1).

**Figure 1: Distribution of Sentences by Gender of Offenders, 2009 (N=3,410)**

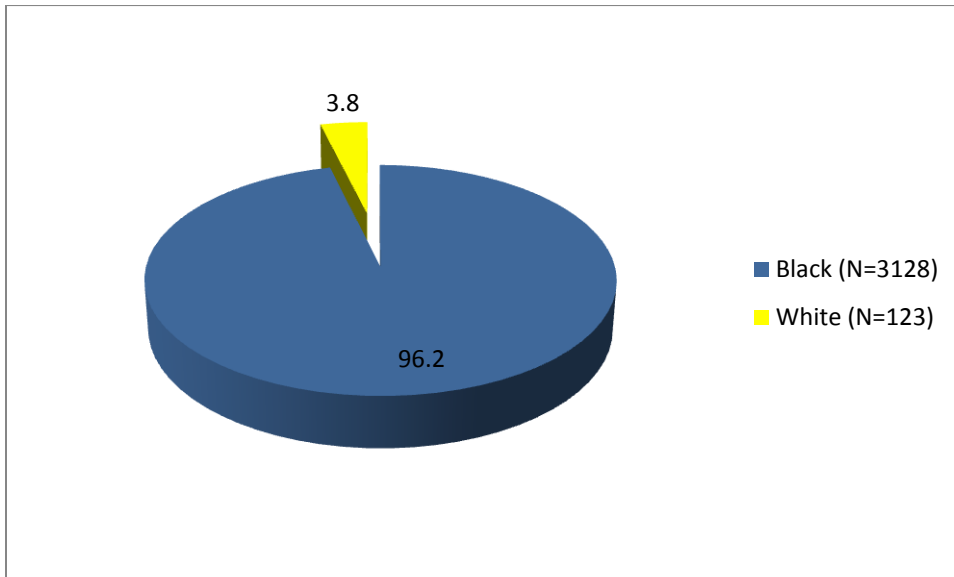


Black offenders accounted for 96.2% of all sentences in 2009, while 3.8% of sentences were attributed to white offenders (Figure 2). Black offenders were proportionally



represented in most offense categories, except for drug offenses, where they were slightly overrepresented (98.6%), and sex offenses, where they were significantly underrepresented (84.2%). In contrast, white offenders were significantly overrepresented for sex offenses (15.8%). There were 159 cases for which the race of the offender was listed as “unknown” or missing a code altogether. These cases were excluded from the analysis.

**Figure 2: Distribution of Sentences by Race of Offenders, 2009 (N=3,251)<sup>2</sup>**



Age is defined as the age of the offender at the time of committing an offense. The median age of offenders sentenced in 2009 was 31, with the oldest offender being 84 years old. The specific age group ranging from 25 to 30 years represented 21.5%, the highest percentage of offenders sentenced in 2009 (Figure 3). However, age groups 21 to 24, 31 to 40, and 41 to 50 were very

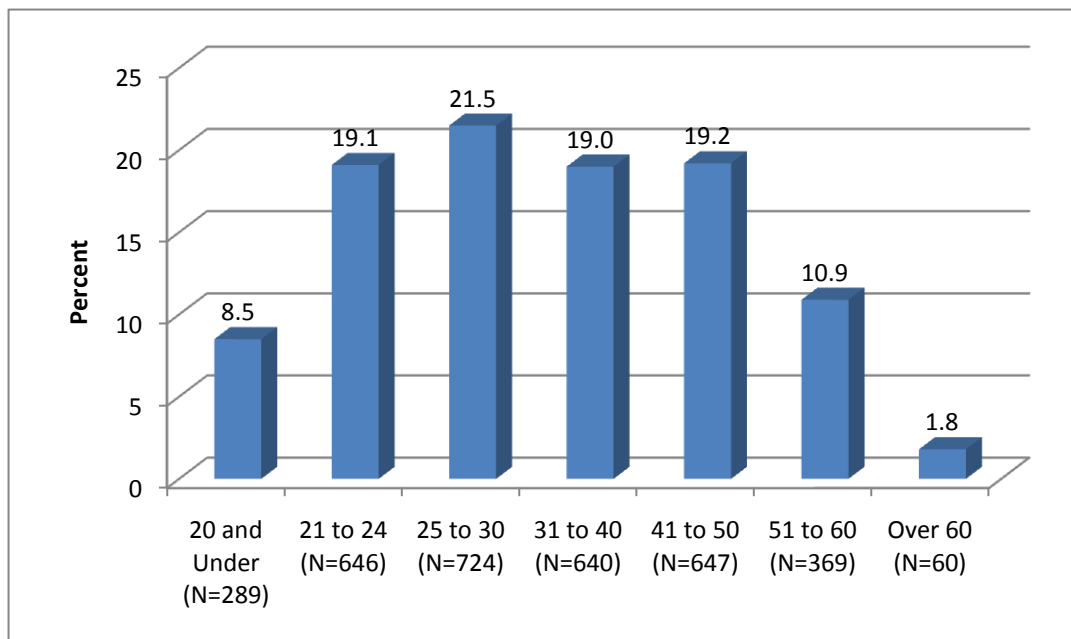
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<sup>2</sup> There were 159 cases that were missing the race of the offender during 2009. These cases were excluded from the analysis.

close to the percentages of offenders sentenced at 19.1%, 19%, and 19.2% respectively. Offenders over 60, not surprisingly, represented only 1.8% of the total sentences imposed.

In examining the age of the offender in relation to the major offense categories, of the 1,522 cases for which a drug offense was sentenced, the median age was 27 years of age, indicating a younger offender than the overall median age of 31. Weapon offenses followed suit with 26 years of age being the median age for the 331 sentences imposed. The median age of offenders sentenced for the 57 sex offenses was 38 years of age, which represented a much older offender than the overall median age.

**Figure 3: Distribution of Sentences by Age of Offenders, 2009 (N=3,375)<sup>3</sup>**



Presented in Table 1 is a listing of all 3,410 cases sentenced during 2009, by major offense category, gender, race and median age. This table provides an overview of the types and

<sup>3</sup> 35 cases were missing the age or date of birth of the offender during 2009. These cases were excluded from the analysis.

frequency of offenses sentenced in the District of Columbia, as well as a snapshot of the offender characteristics.

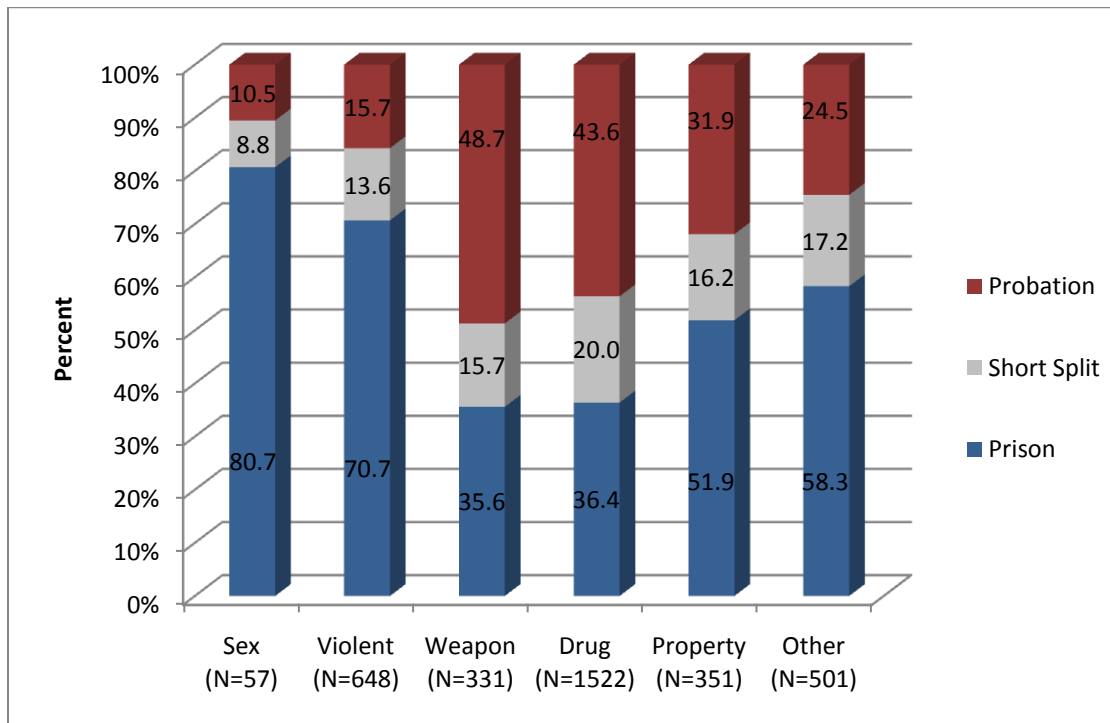
**Table 1: Offense Type by Offender Characteristics, 2009 (N=3,410)**

Offense	Number of Cases	Gender (%)		Race (%)		Median Age
		Male	Female	Black	White	
Sex Offenses	57	100.0	0.0	84.2	15.8	38.0
Violent Offenses	648	90.1	9.9	95.1	4.9	30.0
Weapons Offenses	331	97.6	2.4	96.1	3.9	26.0
Drug Offenses	1522	83.0	17.0	98.6	1.4	27.0
Property Offenses	351	91.5	8.5	94.0	6.0	34.0
Other Offenses	501	87.0	13.0	94.8	5.2	33.0

Percentages are added across the rows to total 100% for both gender and race.

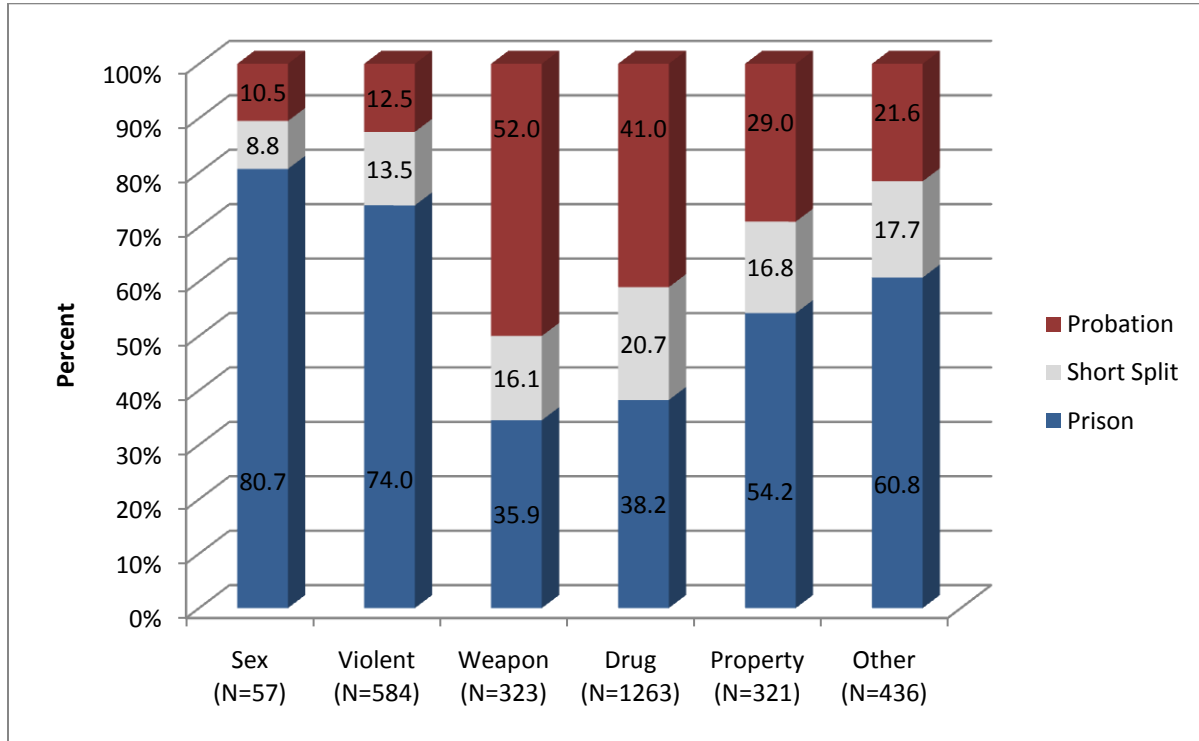
The next section examines the six major offense categories sentenced during the year by type of sentence imposed, including prison, short-split and probation (Figure 4). Weapon offenses (48.7%) and drug offenses (43.6%) represented the largest categories sentenced to probation. By contrast, prison terms were imposed most frequently for sex offenses (80.7%) and violent offenses (70.7%).

**Figure 4: Type of Sentences Imposed for Major Offense Categories, 2009 (N=3,410)**

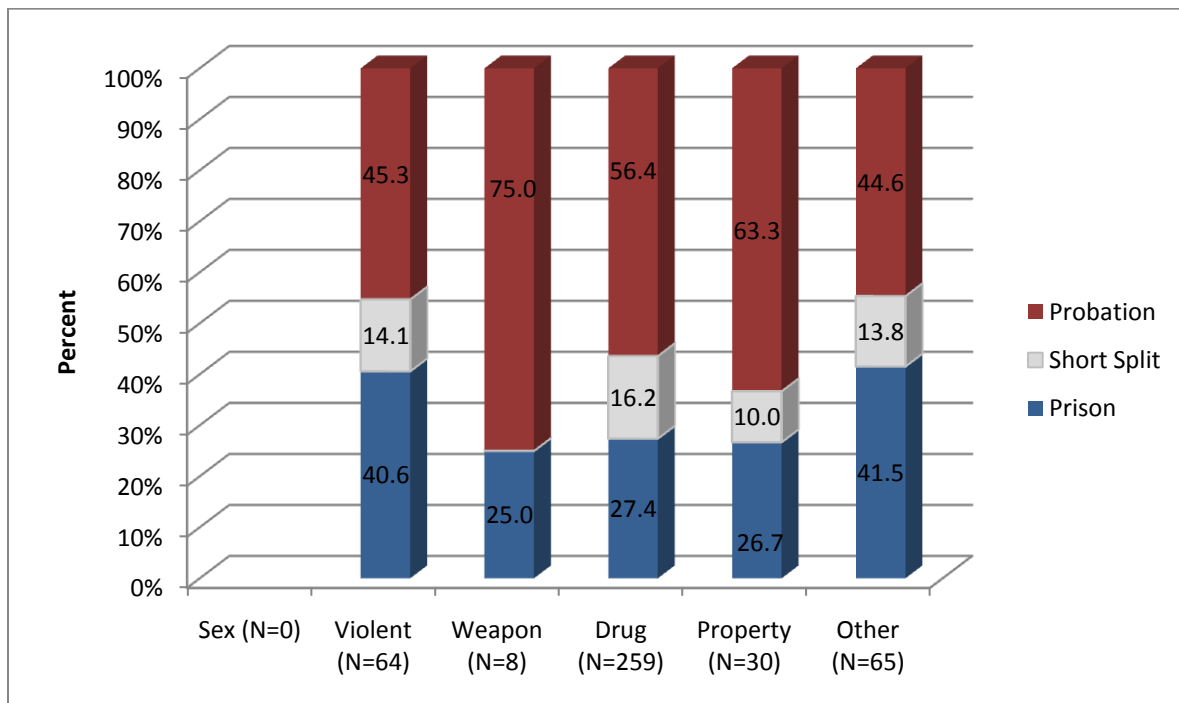


When the offense categories are examined by gender, the types of sentences remain the same for male offenders but change significantly for females. Female offenders were sentenced to probation at a higher rate than male offenders within all offense categories, most notably for property offenses (63.3%) and drug offenses (56.4%) (Figures 5 and 6).

**Figure 5: Type of Sentences Imposed for Males by Major Offense Category, 2009 (N= 2,984)**



**Figure 6: Type of Sentences Imposed for Females by Major Offense Category, 2009 (N= 426)**



## **Types of Sentences Imposed**

The Commission's Sentencing Guidelines rules recognize three types of sentencing dispositions: prison sentences, short split sentences, and probation sentences.<sup>4</sup> In a short split sentence, the judge imposes a sentence within the applicable prison range, suspends execution of all but **six months or less** of the 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 the applicable prison range, suspends **all** of the prison sentence, and places the offender on probation immediately.

In 2009, prison sentences accounted for approximately half (48.4% or 1,650 cases) of the felony sentences imposed. Short split sentences represented 17.3% (502 cases) of the sentences imposed, and probation comprised 34.3% (1,168 cases) of all sentences.

### Prison Sentences

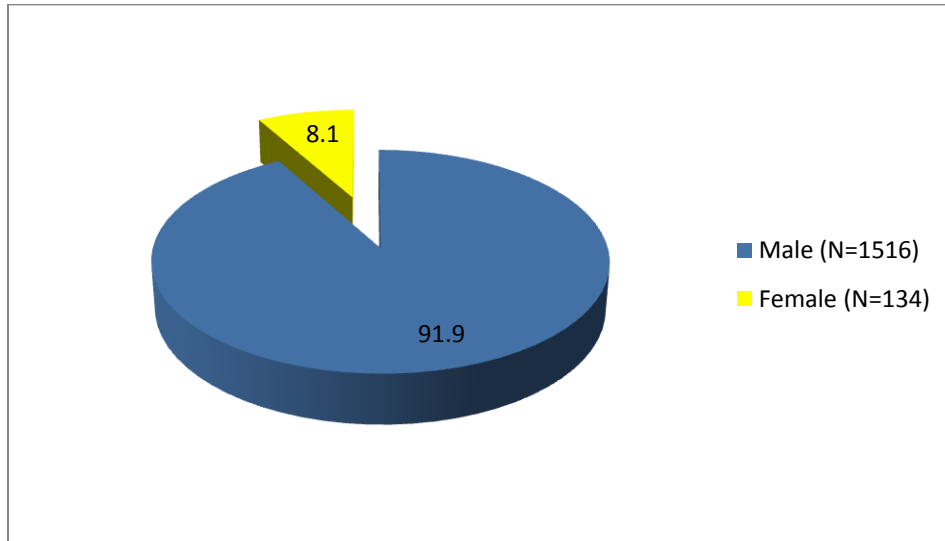
In 2009, 1,650 offenders were sentenced to prison, representing 48.4% of the sentences imposed. Figures 7, 8, and 9 present a summary of offenses and the characteristics of offenders sentenced to prison.

In a slight deviation from the overall sentencing percentages, male offenders accounted for almost 92% of prison sentences imposed, with females receiving just over 8% of the prison sentences compared to the percentages by gender of overall sentences imposed at 87.5% and 12.5% respectively (Figure 7).

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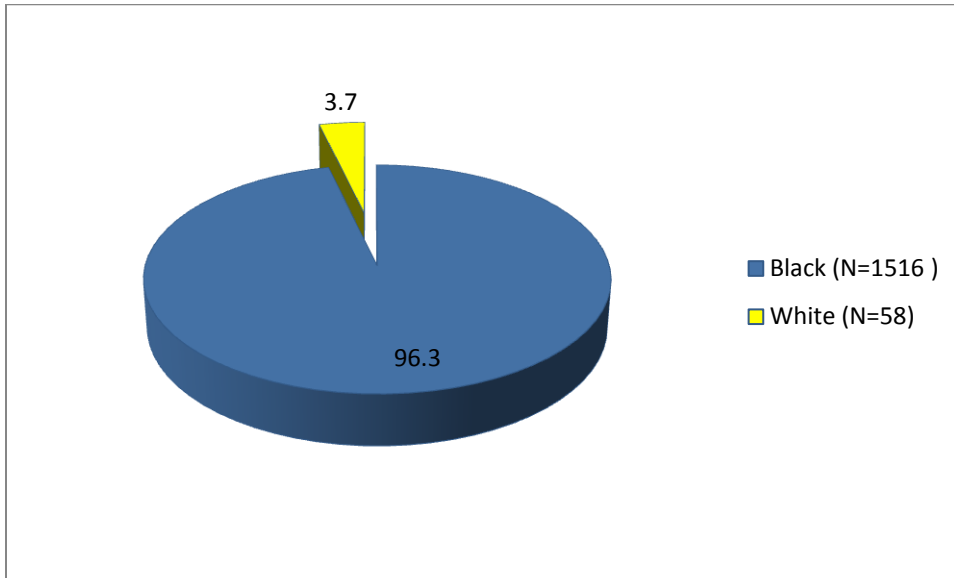
<sup>4</sup> So called "long split sentences" are also authorized, but they are aggregated here as prison sentences because the amount of time an offender must serve on a long split sentence must be at least equal to the shortest prison term authorized in the applicable guidelines box.

**Figure 7: Prison Sentences by Gender of Offenders, 2009 (N=1,650)**



An examination of prison sentences by race proved to be nearly identical to the rates for all sentences imposed during 2009, with blacks receiving 96.3 % of the total prison sentences imposed compared to blacks receiving 96.2 % of all sentences imposed. In comparison, whites received 3.7% of prison sentences compared with 3.8% of all sentences imposed (Figure 8).

**Figure 8: Prison Sentences by Race of Offenders, 2009 (N=1,574)<sup>5</sup>**



The median age for an offender sentenced to prison was 30 years compared with 31 years for all sentences imposed. The largest percentage of prison-bound offenders falls into the 25 to 30 years age group, accounting for 23.9 %, followed very closely by the 21 to 24 years age group at 20.2% (Figure 9). These data indicate that just over 44% of the offenders sentenced to prison were between the ages of 21 and 30 (Figure 9). For the offense categories consisting of weapon and drug offenses, the median ages were 25 and 26 years of age, respectively, younger than the overall median age of 30 years (Table 2).

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<sup>5</sup> There were 76 cases that were missing the race of the offender during 2009. These cases were excluded from the analysis.



**Figure 9: Prison Sentences by Age of Offenders, 2009 (N=1,633)<sup>6</sup>**

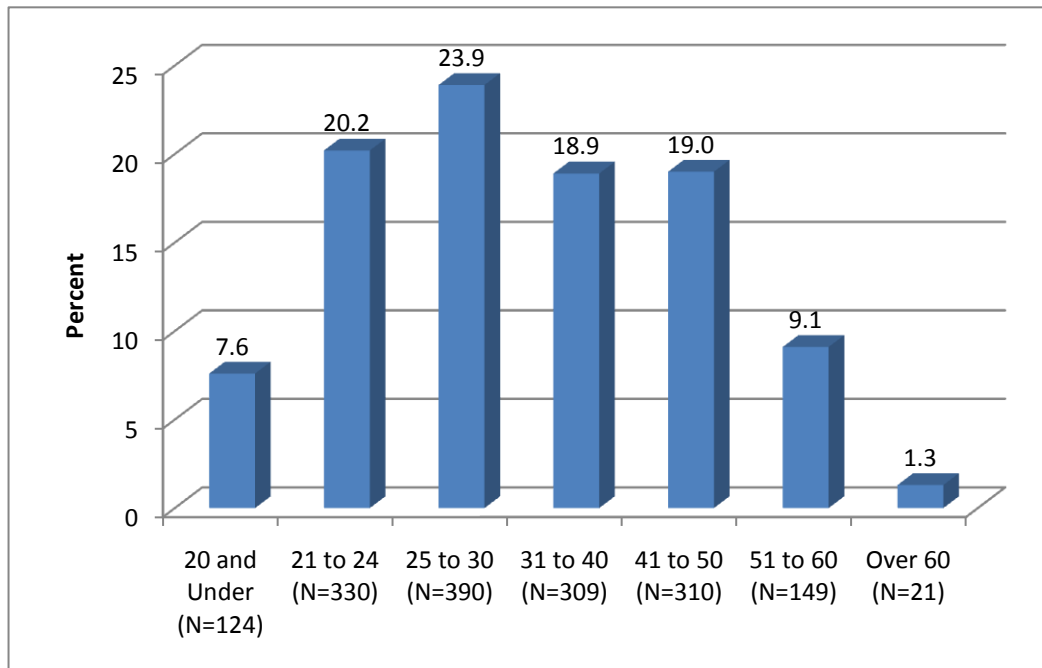


Table 2 presents a summary of cases sentenced to prison by offense type, offender characteristics and length of sentence imposed.

**Table 2: Offender Characteristics by Type of Offense for Prison Sentences (N=1,650)**

Offense	Number of Cases	Gender (%)		Race (%)		Median Age	Median Sentence in months	Mean Sentence in months
		Male	Female	Black	White			
Sex Offenses	46	100.0	0.0	89.1	10.9	38.0	81.0	92.3
Violent Offenses	458	94.3	5.7	95.4	4.6	30.0	36.0	79.2
Weapons Offenses	118	98.3	1.7	96.6	3.4	25.0	12.0	20.7
Drug Offenses	554	87.2	12.8	98.2	1.8	26.0	16.0	17.5

<sup>6</sup> There were 17 cases among prison sentences that were missing the age and date of birth of the offender during 2009. These cases were excluded from the analysis.

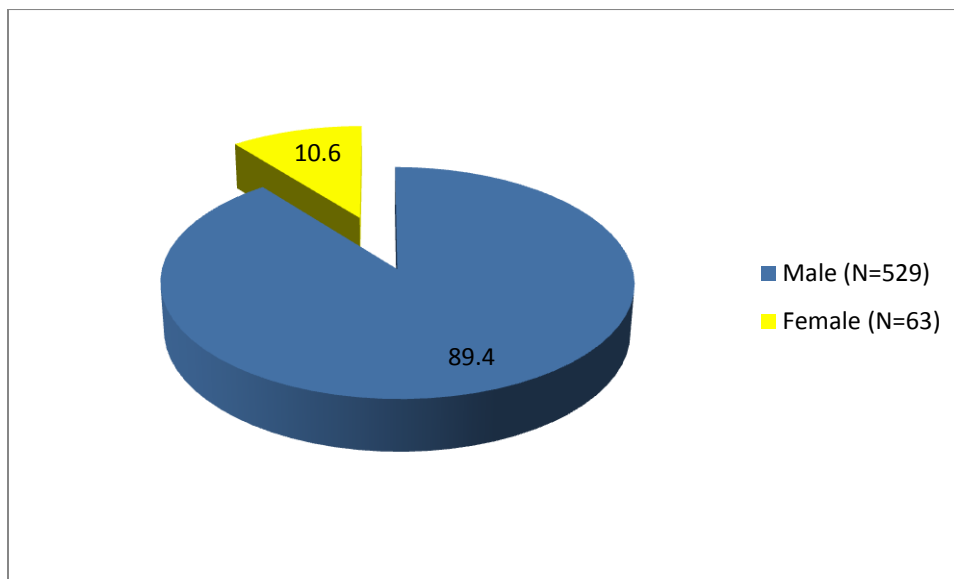
Property Offenses	182	95.6	4.4	96.7	3.3	33.0	14.0	19.0
Other Offenses	292	90.8	9.2	95.9	4.1	32.0	12.0	16.0

Percentages are added across the rows to total 100% for both gender and race.

### Short Split Sentences

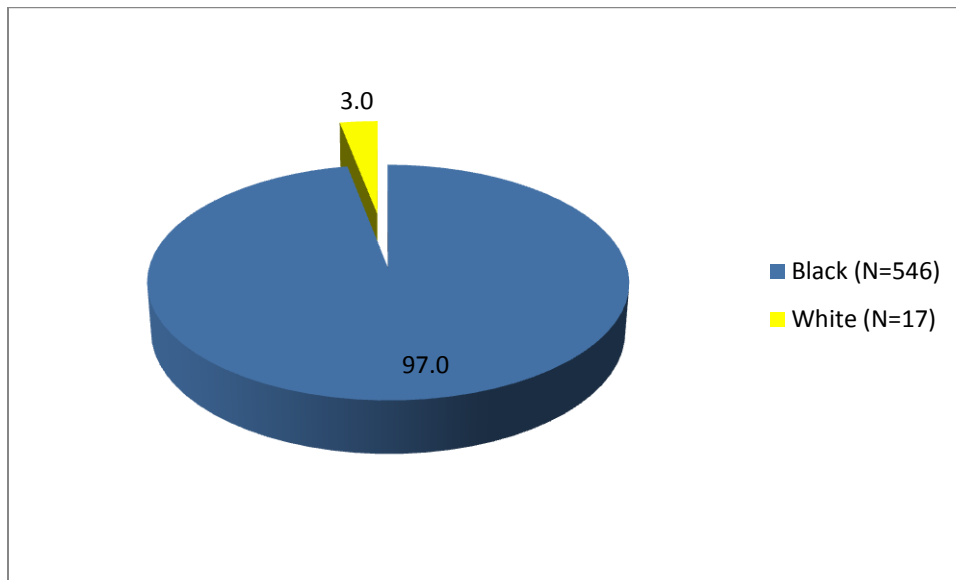
In 2009, a total of 592 cases received short split sentences. Males represented 89.4% of all short split sentences, compared to their share (91.9%) of prison sentences and their representation in the overall sentenced population (87.5%)(Figure 10). Female offenders received over 10% of short split sentences for violent offenses, drug offenses, and crimes in the “other” category, compared to their representation in the overall sentenced population (12.5%)(Table 3). Although the total number of female offenders sentenced for property offenses is relatively small, the percentage of females who received a short split sentence for property offenses was less than the percentage of males receiving short splits for property offenses (Figures 5 and 6). In comparison, females received a significantly higher percentage of probation sentences for property offenses than males.

**Figure 10: Short Split Sentences by Gender of Offenders, 2009 (N=592)**



Black offenders received 97% of all short-split sentences, which is consistent with the percentage of blacks receiving prison sentences (96.3%) and their percentage in the overall sentenced population (96.2%)(Figure 11). Additionally, they accounted for at least 90% of the short split sentences imposed for all offense categories, with the exception of property offenses.<sup>7</sup> The distribution of short split sentences for white offenders was 3.0%, slightly lower than the 3.7% for prison sentences.

**Figure 11: Short Split Sentences by Race of Offenders, 2009 (N=563)<sup>8</sup>**



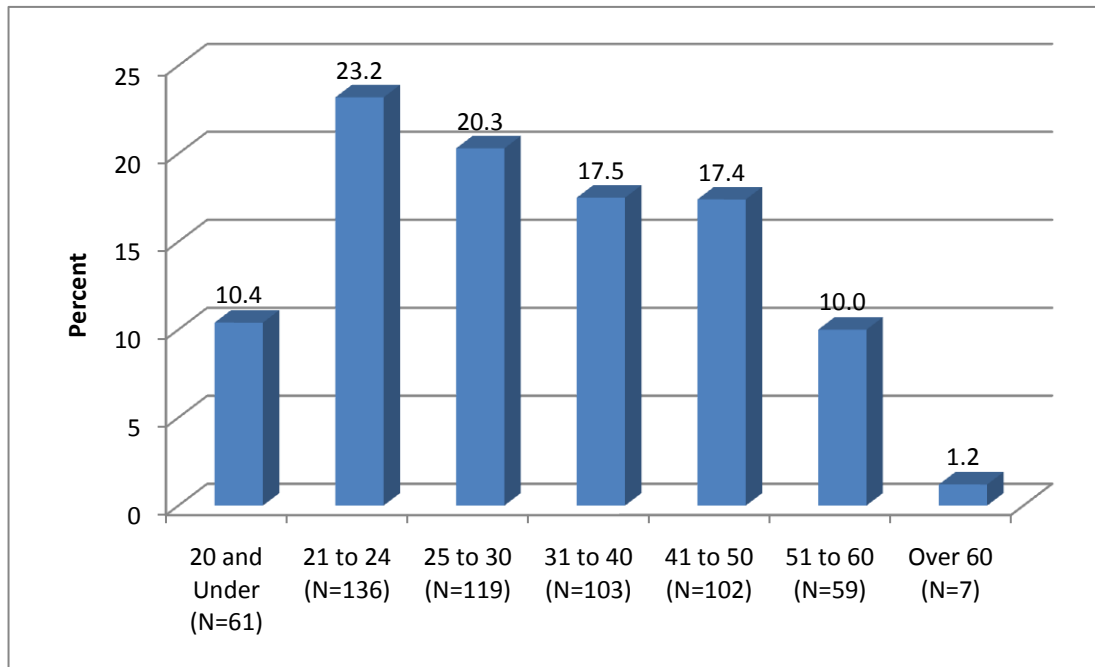
The data indicate that offenders sentenced to short split sentences were slightly younger with a median age of 29 when compared to offenders sentenced to prison that had a median age of 30. In contrast, the median age for offenders offenses was 34 years. The age group ranging from 21 to 24 years at the time of the offense represented the highest percentage (23.2%) of all offenders

<sup>7</sup> Black offenders represented 80% of the short split sentences for sex offenses but there were only five sex offenses 2009 for which short split sentences were imposed.

<sup>8</sup> There were 29 cases among short split sentences that were missing the race of the offender during 2009. These cases were excluded from the analysis.

receiving short split sentences in 2009 (Figure 12). receiving short split sentences for drug offenses was 26 years of age, whereas the median age of offenders receiving such a sentence for property

**Figure 12: Short Split Sentences by Age of Offenders, 2009 (N=587)<sup>9</sup>**



Listed below on Table 3 is an overview of short split sentences imposed including offense type, frequency, gender, race, and age.

<sup>9</sup> There were 5 cases among short split sentences that were missing the age and date of birth of the offender during 2009. These cases were excluded from the analysis.

**Table 3: Offender Characteristics by Type of Offense for Short Split Sentences, 2009 (N=592)**

Offense	Number of Cases	Gender (%)		Race (%)		Median Age
		Male	Female	Black	White	
Sex Offenses	5	100.0	0.0	80.0	20.0	35.0
Violent Offenses	88	89.8	10.2	95.5	4.5	28.0
Weapons Offenses	52	100.0	0.0	100.0	100.0	26.0
Drug Offenses	304	86.2	13.8	99.3	.7	26.0
Property Offenses	57	94.7	5.3	89.5	10.5	34.0
Other Offenses	86	89.5	10.5	95.3	4.7	33.0

Percentages are added across the rows to total 100% for both gender and race.

As described previously, short split sentences include a period of incarceration not to exceed six months followed by a period of probation. Table 4 contains a summary of both the mean and median for the period of incarceration and probation by offense type. The median short split sentence in months was 6 months for all six offenses categories. The average short split sentences were also six months except for drug offenses (5.3 months) and crimes in the “other” offense category (5.8 months).

**Table 4: Offense Type by Median and Mean Prison and Probation Terms for Short Split Sentences, 2009 (N=592)**

Offense	Number of Cases	Median Sentence in months	Mean Sentence in months	Median Probation Term in months	Mean Probation Term in months
Sex Offenses	5	6.0	6.0	36.0	34.8
Violent Offenses	88	6.0	6.0	24.0	21.3

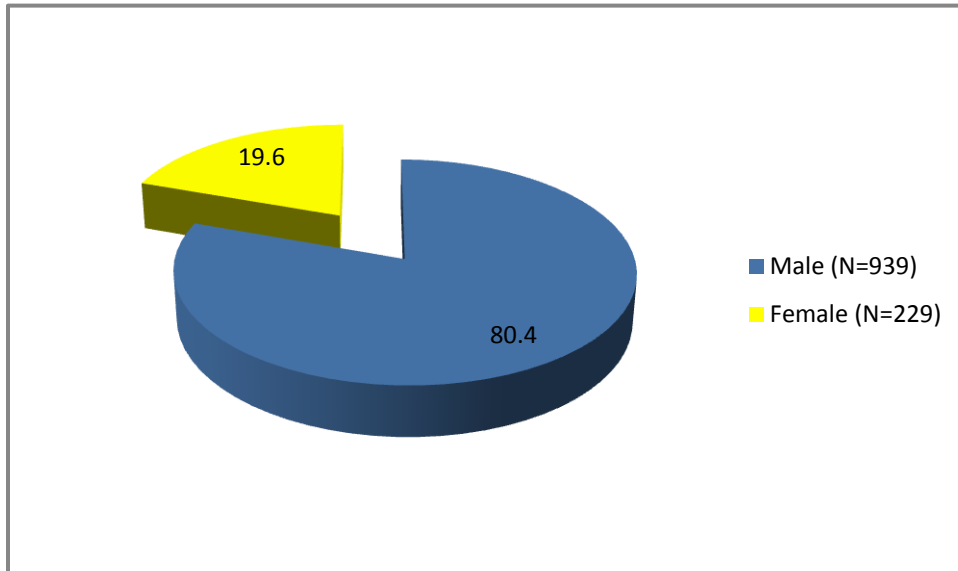
Weapons Offenses	52	6.0	6.0	18.0	18.1
Drug Offenses	304	6.0	5.3	18.0	16.5
Property Offenses	57	6.0	6.0	18.0	19.8
Other Offenses	86	6.0	5.8	12.0	15.7

### Probation Sentences

This section analyzes the 1,168 cases receiving probation sentences representing a little over a third of the felony cases sentenced in 2009. The analysis did not include probation terms that were imposed as a part of a short split sentence. In the District of Columbia, probation sentences can be imposed for up to 60 months. The 2009 data indicates that the overall median probation term was 12 months, with an average term of 16.5 months.

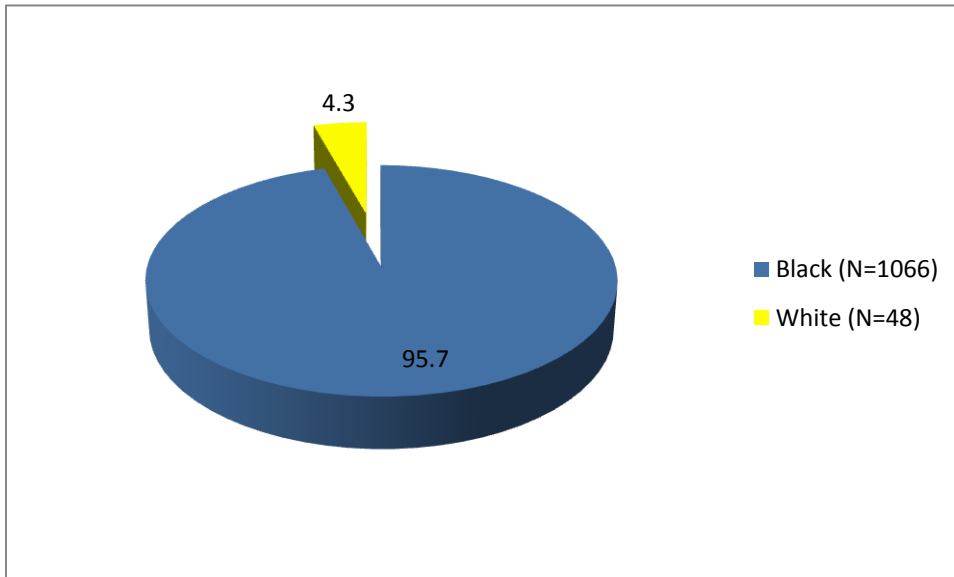
When the data is examined by gender, Figure 13 shows that female offenders received 19.6% of probation sentences imposed, a much higher percentage than female offenders sentenced either to prison (8.1%) or short split sentences (10.6%) and higher than the representation in the overall sentenced population (12.5%). Females accounted for 28.4% of probation sentences for violent offenses, 22.0% of the drug probation sentences, as well as 23.6% of probation sentences for “other” offenses. Males represented 96.3% of the probation sentences for weapons offenses, which was higher than their 87.5% share of the sentenced population, but there were only eight females sentenced for weapons offenses.

**Figure 13: Probation Sentences by Gender of Offenders, 2009 (N=1,168)**



Analysis by race reveals that black offenders accounted for 95.7% of the probation sentences (Figure 14), with white offenders representing 4.3%, roughly corresponding to their respective representation in the sentenced population (96.2% and 3.8%). Black offenders accounted for over 93% of all offenders sentenced to probation for drug offenses, violent offenses, and weapon offenses. In comparison, white offenders represented approximately 8% of probation sentences for property offenses and crimes in the “other” offense category (Table 5).

**Figure 14: Probation Sentences by Race of Offenders, 2009 (N=1,114)<sup>10</sup>**



When probation sentences are examined by age, the data indicate that offenders sentenced to probation were relatively older than offenders who were sentenced to prison or short splits. The median age of offenders sentenced to probation in 2009 was 32, compared with the median age of 30 for prison and 29 for short split sentences. The largest percentage of offenders sentenced to probation fall into the age group of 41 to 50 years of age at the time of offense, accounting for 20.4% of the total number of the 1,168 probation cases (Figure 15). In each of the six offense categories, offenders sentenced to probation were older than offenders receiving prison and short split sentences for the same offenses. For example, offenders receiving probation sentences for drug offenses had a median age of 29 compared to 26 years of age for offenders sentenced to both prison and short split sentences, respectively.

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<sup>10</sup> There were 54 cases among probation sentences that were missing the race of the offender during 2009. These cases were excluded from the analysis.



**Figure 15: Probation Sentences by Age of Offenders, 2009 (N=1,155)<sup>11</sup>**

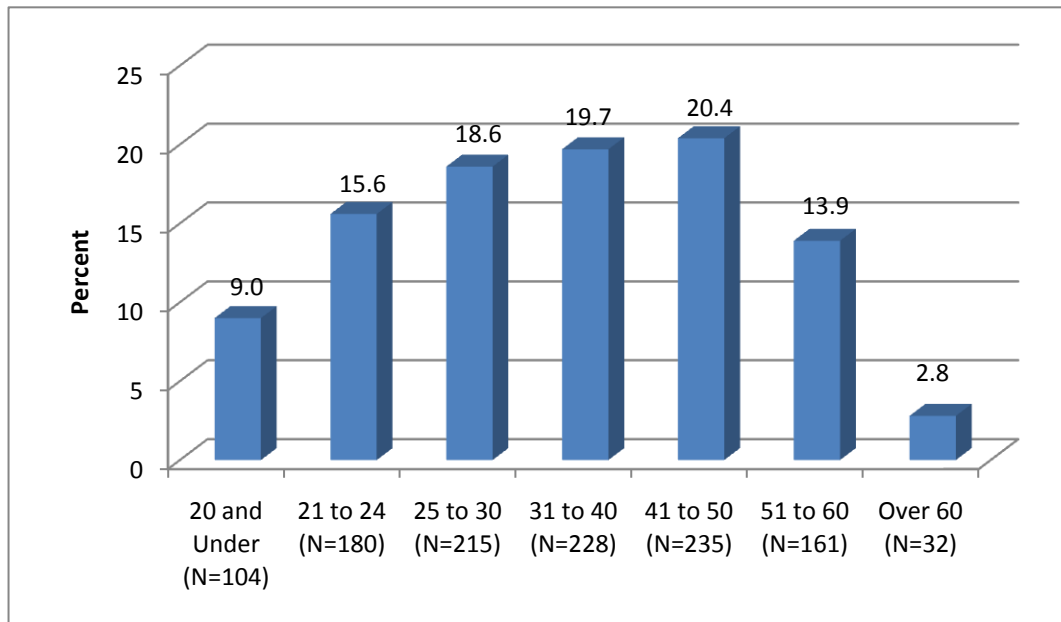


Table 5 illustrates the distribution by offense type of the gender and race of offenders sentenced to probation.

**Table 5: Offender Characteristics and Median/Mean Probation Sentences by Type of Offense, 2009 (N=1,168)**

Offense	Number of Cases	Gender (%)		Race (%)		Median Age	Median Probation Term in months	Mean Probation Term in months
		Male	Female	Black	White			
Sex Offenses	6	100.0	0.0	50.0	50.0	39.0	48.0	44.0
Violent Offenses	102	71.6	28.4	93.1	6.9	30.0	18.0	20.8
Weapons Offenses	161	96.3	3.7	94.4	5.6	27.0	12.0	15.2
Drug Offenses	664	78.0	22.0	98.5	1.5	29.0	12.0	15.2
Property Offenses	112	83.0	17.0	92.0	8.0	36.0	15.5	18.5
Other Offenses	123	76.4	23.6	91.9	8.1	37.0	12.0	18.9

Percentages are added across the rows to total 100% for both gender and race.

<sup>11</sup> There were 13 cases among probation sentences that were missing the age and date of birth of the offender during 2009. These cases were excluded from the analysis.

## Fines

The data utilized for this report contained information on fines imposed during 2009, including, the frequency and amount of fine imposed for individual cases sentenced. This final section of the chapter will provide an overview of sentences where a fine was imposed. A total of \$48,280 in fines was imposed by D.C. Superior Court for 159 felony cases in 2009. Fines were imposed in 72 drug sentences, totaling, \$17,150 in fines, representing an average of \$238.19 per case. However, the largest single fine for a drug offense was \$4,900. If that fine is removed, since it represents an outlier, the average fine imposed for a drug offense decreases to \$172.53 per drug case. Weapon offenses (all 32 cases were sentenced for carrying a pistol without a license) had the highest average fine per case of \$410.94. The total amount of fines imposed for this offense was \$13,150. In examining fines imposed by gender, male offenders received fines totaling \$42,750 or \$298.95 per case average. Females received fines totaling \$5,530 or a \$345.63 average per case in 2009, which was slightly higher than the average per case fine for males. Listed in Tables 6, 7, and 8 is a summary of fines imposed in 2009.

**Table 6: Total and Average Fines Imposed by Type of Offense (N=159)**

<b>Offense</b>	<b>Number of Cases</b>	<b>Total Fines (\$)</b>	<b>Average Fine (\$)</b>
Sex Offenses	2	3250.00	1625.00
Weapon Offenses	32	13150.00	410.94
Other Offenses	23	6700.00	291.30
Violent Offenses	11	3180.00	289.09
Property Offenses	19	4850.00	255.26
Drug Offenses	72	17150.00	238.19
All Offenses	159	48280.00	303.65

**Table 7: Total and Average Fines Imposed by Type of Offense for Males (N=143)**

<b>Offense</b>	<b>Number of Cases</b>	<b>Total Fines (\$)</b>	<b>Average Fine (\$)</b>
Sex Offenses	2	3250.00	1625.00
Weapon Offenses	32	13150.00	410.94
Other Offenses	22	5700.00	259.09
Drug Offenses	62	15050.00	242.74
Property Offenses	16	3600.00	225.00
Violent Offenses	9	2000.00	222.22
All Offenses	143	42750.00	298.95

**Table 8: Total and Average Fines Imposed by Type of Offense for Females (N=16)**

<b>Offense</b>	<b>Number of Cases</b>	<b>Total Fines (\$)</b>	<b>Average Fine (\$)</b>
Other Offenses	1	1000.00	1000.00
Violent Offenses	2	1180.00	590.00
Property Offenses	3	1250.00	416.67
Drug Offenses	10	2100.00	210.00
Sex Offenses	0	0.00	0.00
Weapon Offenses	0	0.00	0.00
All Offenses	16	5530.00	345.625

## **CHAPTER FOUR**

### **COMPLIANCE WITH THE SENTENCING GUIDELINES**

This chapter of the Report will provide an overview of how compliance with the voluntary Sentencing Guidelines is defined and how it is measured. In addition, historical compliance rates and data issues will be discussed.

#### **Sentencing Guidelines Structure**

The Commission developed two felony sentencing grids, the Master Grid and Drug Grid, which focus on two of the primary considerations at sentencing: the offense of conviction and criminal history of the offender. The offense of conviction is located on the vertical axis and represented by the offense severity level, which ranges from one to nine on the Master Grid and one to three on the Drug Grid. The criminal history of the offender is presented on the horizontal axis and defined by five criminal history categories. At the intersection of these two axes on the grids, is a box containing the sentencing options and prison ranges for that particular combination of the crime of conviction and criminal history of the offender. The Master Grid contains 45 boxes and the Drug Grid has 15 boxes. In certain boxes, a prison sentence is the only option consistent with the guidelines. In other boxes, either a prison sentence or a short-split sentence -- defined as a sentence in which the defendant serves a sentence of six months or less and is then released to a period of probation -- is permissible. In the remaining boxes, a prison sentence, a short-split sentence, and probation are all options permitted by the guidelines. Generally, as the seriousness of the offense and the criminal history of the offender increase, the length of the prison sentence increases and the alternatives to incarceration decrease.

Statutory enhancements are accommodated by raising the upper limit of the prison range within the box without changing other options. There is also provision in the guidelines for departures to accommodate the “extraordinary” cases, where a sentence within the box would not serve the interests of justice. The guidelines contain a non-exclusive list of aggravating and mitigating factors, which permit sentencing above or below the prison range in a given box or the imposition of probation or a short split sentence in a prison only box. In order to utilize an aggravating or mitigating factor, the judge must find it to be substantial and compelling on the facts of the particular case. The aggravating or mitigating factor cannot be a factor that is included in the elements of the offense itself or is typically present in cases resulting in a conviction for that specific offense. The judge is required to state on the record the aggravating or mitigating factor relied upon to sentence outside the box. Lastly, a judge may opt not to follow the guidelines in a case, but when that occurs, the judge is expected to explain the reasons to the Commission.

### **Definition of Compliance**

The sentencing guidelines contain fairly broad prison ranges and a number of options that preserve judges’ discretion to consider factors other than the crime of conviction and criminal history, thus ensuring that fair and appropriate sentences are imposed. When designing the sentencing guidelines, the Commission anticipated fairly high compliance rates. For a sentence to be compliant, the sentence must be consistent with the applicable guideline in all respects. Sentences are considered compliant if they are: (1) a sentence within the appropriate box; (2) a sentence within the appropriate box as expanded by a statutory enhancement; (3) a sentence outside the box where there is a stated aggravating or mitigating reason or another substantial

and compelling reason of like gravity; and (4) a sentence agreed to and accepted under Superior Court Criminal Rule 11 (e) (1) (C).<sup>12</sup> A sentence that conforms to the guidelines is considered a “guideline compliant” sentence, whereas, a sentence that does conform to the guidelines is considered a “guideline non-compliant” sentence.

### **Historic Compliance**

Although the Guidelines are voluntary, the Commission has continued to carefully monitor and report on judicial compliance with the Sentencing Guidelines in its annual reports. Since the implementation of the Guidelines as a pilot project in 2004, the data analyzed has shown an exceptionally high rate of judicial compliance. Overall compliance with the Sentencing Guidelines has been reported at close to 90% since 2006, with a compliance rate of 90.1% in 2006, 89.5% in 2007, and 89.8% in 2008. The high compliance rates are an indication of the acceptance and use of the sentencing guidelines among the judiciary and criminal justice practitioners. The voluntary guideline sentence recommendation is being followed in the vast majority of sentences, while also allowing for the discretion to impose sentences outside the recommended sentence when justice would be better served.

### **Compliance Data Issues**

The Commission’s previous annual reports analyzed data that was collected by hand from Sentencing Guidelines forms. These forms are completed by the Court Services and Offender Supervision Agency (CSOSA) after a judge orders a presentence investigation report (PSI), which includes the offender’s criminal history information and the recommended guideline

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<sup>12</sup> Under Rule 11(e) (1) (C) the parties can agree on a guilty plea with a specific sentence or sentence range and if the judge accepts the plea, the judge is also bound by the parties’ agreement.

sentence. At the time the PSI and the Sentencing Guidelines form are delivered to the judge, CSOSA transmits the Sentencing Guideline form to the Commission. The Commission then retains the Sentencing Guidelines form until the actual sentence becomes available in the Superior Court's database, Courtview, at which time the sentence imposed as well as the recommended guideline sentence is entered into the Commission's database. When the sentence appears to be non-compliant and the judge has not provided a reason for departure, the Commission attempts to contact the sentencing judge to inquire as to the reason for the non-compliant sentence. Finally, the information that is collected on the Sentencing Guidelines form is entered and merged into a database that contains all Sentencing Guidelines forms compiled by the Commission since the implementation of the guidelines.

This data collection method was intended to serve as a temporary measure while the Commission developed the Sentencing Guideline System (SGS) web application that would enable electronic transfer of sentencing data from the Superior Court and offender criminal history information from CSOSA. Given the numerous technical delays in development and implementation of the SGS web application, the Commission has been forced to rely on data collected from the Sentencing Guidelines forms since 2006. As can be expected, with the numerous steps required to collect this data and the manual coding process, there is a high potential for data validity problems and under-counting the number of felony sentences imposed within a given year if every Sentencing Guideline form is not forwarded to the Commission. Although the data has been used by the Commission to provide a snapshot or overview of felony sentencing within the District, it has limitations in both accuracy and completeness in measuring judicial compliance with the sentencing guidelines.

As discussed earlier in this report, with the recent historical sentencing data transfer from the Superior Court completed through the SGS web application and collaboration with CSOSA to obtain the necessary criminal history information, the Commission will have complete and accurate data to conduct a detailed analysis of guideline compliance. The Commission has elected not to include an analysis of compliance with the sentencing guidelines in this report but rather to release a separate and more detailed Guideline Compliance Report later this year. It has been five years since the implementation of the Sentencing Guidelines as a pilot project, which provides the Commission with an adequate amount of data and time to address all the various compliance issues that arise with the Sentencing Guidelines, including compliance rates, reasons for departures and departure trends.



## CHAPTER FIVE

### D.C. CRIMINAL CODE REVISION PROJECT

Beyond the Commission's responsibility to monitor the Sentencing Guidelines, its mission is to promote fair and consistent sentencing policies as well as increase public understanding of sentencing policies and practice. To this end, the Commission has been tasked with preparing comprehensive recommendations to the Council of the District of Columbia and the Mayor on criminal code reform. Embarking on this important process is challenging and requires a significant investment of time and resources. However, the results of the Commission's efforts will assist the Council in providing clarity and consistency in criminal laws and will serve the public safety needs of the District of Columbia.

#### **History and Background**

As of 1974, the District of Columbia Code had not seen a major revision since its adoption at the turn of the twentieth century. In 1974, Congress established the District of Columbia Law Revision Commission to evaluate, reorganize and revise the code.<sup>13</sup> The Law Revision Commission submitted to Congress criminal code revisions in 1978, which recommended elimination of certain penalty inequities and simplification of complex areas of the Code.<sup>14</sup> While there have been periodic revisions of major sections of the Criminal Code in the intervening years, such as the Theft and White Collar Crimes Act of 1982 and the Anti-Sexual Abuse Act of 1994, it does not appear that the Law Revision Commission's recommendations were ever enacted into law. Moreover, this group does not appear to have been active for many years.

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<sup>13</sup> H.R. 12,832, 93d Cong., 2d Sess. (1974); *see also* H.R. REP. NO. 924, 93d Cong., 2d Sess. (1974); S. REP. NO. 1076, 93d Cong., 2d Sess. (1974)

<sup>14</sup> HOUSE COMMITTEE ON THE DISTRICT OF COLUMBIA, 95<sup>TH</sup> CONG., 2D SESS., NEW BASIC CRIMINAL CODE FOR THE DISTRICT OF COLUMBIA (Comm. Print 1978) (District of Columbia Law Revision Commission Recommendation).

In 2006, the Committee on the Judiciary of the District of Columbia Council became interested in revisiting a complete reexamination of D.C.'s criminal statutes to address disorganization and redundancies within the code, which, from the Council's perspective, "impede the fair and equitable administration of the law."<sup>15</sup> The Council expressed concern about parts of the criminal code that contained confusing or outdated language and some penalties that seemed to be out of proportion to the crimes to which they were attached. The Council recognized a need to address these inconsistencies, overlapping provisions and the outdated language while ensuring proportionality for comparable crimes. What resulted was legislation (1) amending the Commission's mandate to include criminal code revision in addition to its work with sentencing policy, and also (2) modifying its membership to reflect additional perspectives that would enhance the code revision effort. The Council acknowledged that revising the criminal code would be a lengthy, complex process, but the completed project would create recommendations that provide for a uniform and coherent body of criminal law.<sup>16</sup>

In furtherance of its new duties, the Commission studied the recent code reform efforts in other jurisdictions and developed a workplan identifying approaches that have been utilized elsewhere. The Commission considered several options for proceeding with this project that would be compatible with its timeline for completion. A description of these options, including the resources needed for and specific challenges of each, are set forth in this section.

### **Legislative Mandate**

The Commission's legislative mandate with regards to criminal code revision is as follows:

Beginning January 1, 2007, the Commission shall also have as its purpose the preparation of comprehensive recommendations to the Council and the Mayor that:

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<sup>15</sup> Report on Bill 16-172, The Advisory Commission on Sentencing Act of 2006.

<sup>16</sup> Advisory Commission on Sentencing Amendment Act of 2006, Law 16-126, Act 16-344

- (1) Revise the language of criminal statutes to be clear and consistent;
- (2) In consultation with the Codification Counsel in the Office of the General Counsel for the Council of the District of Columbia, organize existing criminal statutes in a logical order;
- (3) Assess whether criminal penalties (including fines) for felonies are proportionate to the seriousness of the offense, and, as necessary, revise the penalties so they are proportionate;
- (4) Propose a rational system for classifying misdemeanor criminal statutes, determine appropriate levels of penalties for such classes; and classify misdemeanor criminal statutes in the appropriate classes;
- (5) Identify any crimes defined in common law that should be codified, and propose recommended language for codification, as appropriate;
- (6) Identify criminal statutes that have been held to be unconstitutional;
- (7) Propose such other amendments as the Commission believes are necessary; and
- (8) Enable the adoption of Title 22 as an enacted title of the District of Columbia Official Code.

The Commission shall submit its recommendations for criminal code revisions in the form of reports. Each report shall be accompanied by draft legislation or other specific steps for implementing the recommendations for criminal code revisions. D.C. Code § 3-101.01 (a), (c).

Last summer, the “Omnibus Public Safety and Justice Amendment Act of 2009” changed the Commission’s deadline for code reform from September 30, 2010, to September 30, 2012. D.C. Code § 3-101 (b).

### **Accomplishments to Date**

Despite coping with limitations in personnel and resources that have impaired the Commission’s criminal code revision efforts, significant progress has been made on the project. In March 2009, the Commission was able to hire an experienced criminal law attorney, Kenneth Cowgill, to lead the project on a part-time basis. In addition, in March, 2010, the Commission filled the staff

attorney position that became vacant the previous summer. Having secured consistent staffing, a crucial factor in the productive pursuit of code revision, the Commission will continue to move forward with its project goals. The progress to date includes the following:

- The Commission obtained, among other things, materials describing and work product from the code reform efforts in several states, including Arizona and Illinois, and had the benefit of presentations from personnel who led those efforts. Previous criminal code reform efforts in the District and at the federal level were also studied, and materials pertaining to them assembled. This research made clear that the allocation of resources for this project will directly impact what the Commission is able to do.
- In April, 2010, the Commission submitted an application for grant funding under the American Recovery and Reinvestment Act. The grant sought funding for four new attorney positions and for extending the position of Mr. Cowgill. That was and still is the estimate of the approximate staffing level needed in order for the Commission to make comprehensive code reform recommendations in a reasonable time-frame. Unfortunately, the grant was not awarded. The Commission plans to explore new opportunities to secure additional funding for this project.
- During the Summer of 2009, the Commission recruited three interns to work on the beginning stages of the project. They reviewed the entire D.C. Code, recording information about every criminal section of the code, with a view toward assembling information to be stored in a database for future use in its criminal code revision efforts.

- The Commission built a customized database to house the D.C. Code information collected by the summer interns. Once it is populated with that information, the database will enable Commission staff to analyze the D.C. Code in support of any criminal code revision approach that may be adopted.
- Mr. Cowgill prepared for the Commission a detailed memorandum outlining several potential options for revising the D.C. Code and identifying the resources needed under each approach. The decision on which option to pursue will largely be based on budget and subsequent personnel allocations throughout the duration of the project. The memorandum explaining each approach is discussed below.
- As a first step, the Commission has already begun addressing the proportionality of felony fines (item three of our legislative mandate).

### **Approaches to Criminal Code Revision**

In creating the current project, the Council of the District of Columbia recognized the magnitude of a complete revision to the criminal code. This concern is not misplaced, as other jurisdictions have also grappled with the enormity of such an undertaking. Leaders of code revision in Illinois and Arizona described for the Commission the lengthy and difficult process of analyzing their criminal statutes and developing the legislation to transform the proposed revisions into law. Efforts in Arizona were staffed by several attorneys and took four years for recommendations to reach the legislature, where they were then debated for another two years. Revision efforts in Illinois were also staffed by five full-time attorneys and a revolving set of law student interns and lasted for over five years. Portions of

the Illinois commission's work were enacted into law last year and additional recommendations are still under consideration in the state legislature.

The most common approach in national code revision efforts is to incorporate aspects of the Model Penal Code into the code that is being revised. The Model Penal Code (MPC) was developed by the American Law Institute<sup>17</sup> and its function is to create a standardized version of penal laws for legislatures to consider in adopting criminal statutes. The Commission's proposals make reference to two features of the MPC: the "General Part" and "Crimes." The "General Part" describes the principles that govern its criminal offenses (the "Crimes" part of the MPC). It is a detailed codification of, among other things, rules of liability including accessory liability, excuse and justification, defenses, inchoate crimes and, importantly, mental states. The use of the MPC for the purposes of this project would mean analyzing our current D.C. criminal statutes alongside the MPC and making recommendations that are both consistent with the MPC as well as the public safety and justice concerns of the District of Columbia.

While some thirty-four states have adopted the MPC, none has ever adopted it in its entirety. All have done some measure of adjusting various provisions and of omitting or substituting others. Thus, the Commission could, for example, propose that it adopt the MPC for certain offenses yet still elect not to adopt the MPC for others in favor of retaining current D.C. Code provisions. One virtue of integrating the MPC is that this model has been tested, in some cases for several decades. However, adopting the MPC would be a major change for many in the judiciary and bar, including many on the Commission. As with any major change, there will be concerns

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<sup>17</sup> The American Law Institute (ALI) "is the leading independent organization in the United States producing scholarly work to clarify, modernize, and otherwise improve the law. The Institute (made up of 4000 lawyers, judges, and law professors of the highest qualifications) drafts, discusses, revises, and publishes Restatements of the Law, model statutes, and principles of law that are enormously influential in the courts and legislatures, as well as in legal scholarship and education." See [www.ali.org](http://www.ali.org).

about unintended consequences. If the Commission pursued this approach, the District of Columbia would, in a manner of speaking, revise decades of familiar case law, based as it is on our common-law system. Largely because of the unknowns and because of the gravity of making revisions in this area, the Commission's analysis is expected to be a lengthy and deliberative process.

It is clear that any approach pursued will involve a significant commitment. On par with previous legislative efforts of this kind, progress will be incremental and at each stage will require appropriate staffing. Once recommendations are submitted to the Council, significant work on the Commission's part will remain, in both drafting legislation and providing necessary information to the Council during the subsequent legislative process. Additionally, once revisions have been approved and codified, educating the judiciary, criminal law practitioners and the general public will be a crucial part of completing the project. It is certain that the Commission's ability to meet its legislative mandate within the current time frame established by the Council will depend entirely on the resources available to be devoted to the code revision project.

### **Proposals for Achieving Criminal Code Reform in the District of Columbia**

After careful study, discussion of reform efforts in other jurisdictions and preliminary assessment of the universe of statutes subject to revision, the Commission has identified several potential plans of action. Each of these proposals outlined below, describes a potential approach to completing a discrete part of the overall project and includes a discussion of the resources necessary for its success.

## Proposal One: Penalty Proportionality<sup>18</sup>

Penalty proportionality refers to the process of making the penalties for a crime—both imprisonment terms and fines—in balance or “proportionate” to the seriousness of the offense associated with it. Proportionality in sentencing is an important part of ensuring that crimes and punishments are clearly and fairly set forth in a unified system of criminal laws. It is congruent with the axiom that the punishment should fit the crime.

There are a variety of ways that jurisdictions can address proportionality in its sentencing practices. For example, in developing sentencing guidelines for the District of Columbia, the Commission sought to incorporate principles of proportionality in how sentences are imposed across both offenders and offenses. Yet another approach to ensuring proportionality is to examine the actual laws describing and fixing penalties for criminal offenses. The Commission’s criminal code revision responsibilities address this latter concern.

To make recommendations on penalty proportionality, the Commission would undertake a multi-step process. First, the Commission would address the proportionality of fines to imprisonment terms for both misdemeanors and felonies. The result of this analysis would yield a report on the existing structure of fines and imprisonment terms, recommend a uniform approach to achieving proportionality, and identify every provision that would be changed if the recommendations were adopted.

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<sup>18</sup> The offenses addressed in this proposal are located in Titles 22 and 48 of the D.C. Code. This involves a large but manageable universe of offenses. There are scores of other offenses, mostly misdemeanors and most of them rarely prosecuted, scattered throughout the code in other Titles. These are a lower priority and will be addressed, resources permitting, only at the end of the project.



Second, the Commission would address the proportionality of imprisonment terms. Due to the complexity of the issues involved, this examination is apt to be much more involved than the previous analysis of fines. Using the Sentencing Guidelines as a guide,<sup>19</sup> a report on this review would cover the existing imprisonment provisions, highlighting those that are not proportional to the current rankings in the Guidelines. This report would also discuss such issues as statutory minima and recommend possible adjustments to statutes that lack proportionality. A similar analysis and report would be prepared with respect to the imprisonment terms for misdemeanors, which are currently not covered by the Guidelines.

After both of these examinations are completed, the final step is to conduct a global analysis of any proposed changes to ensure that all of the adjustments are uniform. Thus, any fines that were recommended for adjustment will conform to the imprisonment terms that were also recommended for adjustment. The completion of this proposal would offer consistency and clarity to the criminal code which is an essential part of this project's goals.

The work related to this proposal can be done with current staffing and is currently underway.

#### Proposal Two: Model Penal Code

Adopting the Model Penal Code (MPC) or some variation of it is the most complex and labor intensive approach to criminal code reform. But this proposal directly addresses the Commission's mandate to "Revise the language of criminal statutes to be clear and consistent."

The results of this proposal would be global and substantive changes in the text of the criminal

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<sup>19</sup> Historical judicial treatment of felony offenses – the imprisonment terms actually inflicted – is indicated by their ranking in the Guidelines. This is not to say that the Council or the Commission should embrace the Guidelines' ranking of crimes as a 'correct' gauge for proportionality of imprisonment terms. It is only to say that they might do so, and that, at minimum, it is a good starting place for the Commission's work.

code and how it is organized. Because this represents an enormous undertaking, there are several ways the Commission could complete this task, each with distinct resource requirements.

### *The MPC General Part*

As discussed above, the General Part of the MPC is made up of various principles that govern all of the offenses identified in its Crimes section. This approach to applying the MPC would mean dividing the General Part into manageable segments (e.g. liability, justification, defenses) and analyzing the provisions of each segment. Each provision would be evaluated on how, if at all, its adoption would alter the state of D.C. law, substantive and procedural, as it currently exists. It is difficult to estimate the pace of this process but provisions touching upon the whole of the criminal law should induce the Commission to proceed cautiously and deliberately.

The Commission estimates that this option could be done with current staffing *plus* two additional full-time attorneys, at least one of whom must be very experienced. With the current attorney-advisor and the new staff attorney, this would total 3.75 attorneys (1.75 with significant experience).<sup>20</sup>

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<sup>20</sup> For purposes of estimating the Commission's legal staffing needs, we count Mr. Cowgill's attorney-advisor position as  $\frac{3}{4}$  of an attorney.

It is important to emphasize that, when noted, securing an additional *experienced* attorney is critical. This work involves very complex and detailed analysis that if not done well would be a disservice to the Commission and would delay the entire project. Some of the reports required for the Commission would be very extensive and should only be done by or under the closest supervision of a seasoned local practitioner. It would be very difficult to complete this proposal with just the current attorney-advisor without the assistance of another attorney with ample experience. An additional experienced attorney would also provide project continuity in the event that there is a significant staffing change mid-project.

### *The MPC General Part and MPC Crimes Part Sequentially*

Implementing this proposal would take the criminal code analysis a step further. The first phase would begin with the approach described above for the MPC General Part. The second phase, addressing the MPC Crimes, would then involve dividing the substantive criminal provisions into segments, presumably following the organization of the MPC. The Commission would then evaluate and report on each individual criminal provision and, as in the General Part analysis, explain how, if at all, its adoption would alter the state of D.C. law, substantive and procedural, as it currently exists. The criminal code provisions encountered in this second phase are numerous and the Commission's work would need to be assisted by the experience of seasoned local attorneys.

To begin the MPC General Part would require current staffing levels plus two additional attorneys, one with significant experience. With the current attorney-advisor and the new staff attorney, this would total 3.75 attorneys. When work begins on the MPC Crimes provisions, perhaps a year after the MPC General Part work starts, *another two full-time attorneys would be needed*. That would put the staffing level at 5.75 attorneys. With 5.75 attorneys working on the project, the work flow would be such that *an additional support staff person would be required*.

### *The MPC General Part and MPC Crimes Part Simultaneously*

An ambitious approach to incorporating the MPC into the extant criminal code would involve the same process described in the previous section, except that both parts of the MPC would be undertaken simultaneously. This proposal would require the same staffing as working on the two parts of the MPC sequentially, but the project would progress more quickly; the Commission should complete the General Part slightly faster and embark on the Crimes section sooner. This

approach increases the likelihood that the Commission would reach its goal by the current statutory deadline. The same full staffing complement as the above proposal is required—5.75 attorneys (1.75 with significant experience) and an additional support staff person, all of whom would have to be hired relatively quickly.

Certainly the effort and resources necessary for proceeding with any of these approaches to a Model Penal Code adoption are substantial. However, completion of this part of the project would accomplish a comprehensive and expertly researched examination of the criminal laws in the District of Columbia. It would also fulfill the Council's expectations of eliminating inconsistencies and outdated or confusing content from the criminal code.

#### Proposal Three: Code Clean-Up

Under this approach, revising the criminal code would entail cleaning up the current code by eliminating anachronisms, and by imparting uniformity, consistency and organization as mandated in the Commission's code reform goals. This proposal is arguably less substantive than the preceding approaches but no less important. Changes would be largely cosmetic; non-cosmetic changes would be made advisedly and with a view to making only necessary corrections to some aspect of the law. Because of the reduced scope of work, unintended consequences should be a less substantial concern.

To pursue this proposal, the Commission would first settle on a uniform standard for the criminal provisions, including, for example, whether to have mental states in each statute. Once the approach is decided, the Commission would organize the target statutes into groups, apply its agreed-upon structure, and then revise each discrete statute. The Commission would report on the statute revisions, probably one group at a time, explaining how, if at all, their adoption would

alter the current state of D.C. law, substantive and procedural. Because the adjustments would be largely superficial, the substantive changes would be far fewer under this proposal than under any other approach discussed.

This option could be completed with current staffing—1.75 attorneys, .75 with significant experience—and the project could potentially be completed in two years by the 2012 deadline. While this approach would not involve the same level of complexity as integrating the MPC, this proposal would provide the Council with a complete updating of the code and recommendations for making it a more accessible body of law.

As noted, the Commission has already begun its penalty proportionality examination and, depending on resources available, this will be followed by either a Model Penal Code analysis or Code Clean-Up. The approaches identified also present the possibility for proceeding with Code Clean-Up in addition to a partial MPC analysis.

### **The Future of the Criminal Code Revision Project for the District of Columbia**

The specific approach that the Commission will adopt depends heavily on the resources available for it to fulfill its mandate. Of course, the Commission is entirely dependent on the Council for its funding. The Commission has created an informed foundation upon which to build its recommendations and is committed to moving forward with this project subject to adequate resources.

Although some of the Commission's statutory tasks are not specifically outlined above, most or all would be addressed as the project progresses, most likely near the end of the process. The estimates on staffing and deliverables could also be revisited regularly as the project progresses

and the Commission gains experience dealing with the revision process. Any need to alter the staffing or the overall timeline would be reported to the Council periodically.

As illustrated in this overview, achieving criminal code reform is a monumental project and important strides have already been made to develop meaningful recommendations for revision in this jurisdiction. The Commission is dedicated to conducting a quality, detailed review of the criminal statutes in the District of Columbia and providing the Council and Mayor with a finished product that, if enacted into law, would be a comprehensive, well-reasoned and meticulously constructed revision of the criminal code.

## CHAPTER SIX

### 2008-2010 AMENDMENTS TO THE SENTENCING GUIDELINES AND TO THE SENTENCING GUIDELINES MANUAL

The District of Columbia Sentencing and Criminal Code Revision Amendment Act of 2007 requires the Commission to include in its annual report any substantive changes made to the guidelines during the preceding year, including changes in the offense severity rankings, the recommended sentencing options or prison ranges, or rules for scoring criminal history. If legislation during the year created new offenses or changed the penalties for existing offenses, the report must explain how the changes were incorporated into the guidelines.

The 2010 Sentencing Guidelines Manual has undergone a significant revision, completed just this month.<sup>21</sup> Since the creation of the guidelines in 2004, the manual has undergone only incremental changes each year to reflect new legislation and emerging issues resulting from the developing application of the guidelines. The current revision was an opportunity to reflect on sentencing guidelines practices following the operation of the guidelines over the last six years. The goal of the revision was not only to update the manual but also to make it more user-friendly and informative to the agencies and practitioners who refer to it on a regular basis. The changes also resolve the questions that have arisen in applying the guidelines and reflect efforts to ensure that it is accessible to anyone in search of specific information on the sentencing guidelines.

Readers will find the revised manual to have numerous changes in language, formatting and organization but very few substantive changes (substantive amendments are reflected below). Therefore, despite the new look of the manual, most of the content remains unchanged. As

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<sup>21</sup> The Sentencing Guidelines Manual is available on our website at <http://scdc.dc.gov>.

always, the Commission welcomes input from judges, practitioners, agencies and the public on ways to improve this resource.

In addition, the Commission is available to provide training on the guidelines to any who may desire or need it. The manual is designed to be reader-friendly, but it still contains some complexity and with such numerous revisions, it may be necessary to provide a more comprehensive overview of these amendments as well as a refresher on general guidelines application. Also, the Commission staff has extensive experience applying the guidelines provisions in a wide variety of circumstances. We welcome the opportunity to share these experiences with interested parties.

The following substantive amendments to the sentencing guidelines become effective as of May 3, 2010. They are grouped here in two categories. First are substantive General Amendments to the Guidelines Manual, most of which relate to Chapter Two of the Manual setting forth rules for criminal history scoring and ranking of offenses. This is then followed by New Rankings of Offenses.

### **General Amendments to the Guidelines Manual**

1. The Manual did not contain any recommended citation form. We have added one at the beginning of the manual as follows:

Full Citation Form:

District of Columbia Sentencing and Criminal Code Revision Commission, Voluntary Sentencing Guidelines Manual.

Abbreviated Citation Form:

DCVSG §2.2.6 ¶5.a.



2. In Chapter 2, a new section 2.1.1, “Offense Severity Group for and Scoring of Unranked and Amended Statutes” is added. No substantive change is intended. The amendment serves two purposes. First, it states more clearly the rules for scoring a prior conviction under a statute that has changed since the conviction occurred. Second, it supplies a default rule for ranking offenses that the Commission has not yet ranked. This second purpose is entirely new. It would apply when, for example, a case goes to sentencing for an offense under a new statute before the Commission has had an opportunity to rank it.

The text of the new provision follows, with examples supplied:

If an offense does not appear in Appendix C, or if the penalty for the conduct of conviction has been changed since the Commission last ranked it, the court should use the following rules to establish the offense’s severity group number and/or to score a prior conviction. The burden is on the party seeking the benefit of this Section to establish that it applies.

1. For an offense that does appear in Appendix C:
  - a. if the penalty for the conduct of conviction has been increased, use the group number for the pre-amendment statute;
  - b. if the penalty for the conduct of conviction has been decreased, use the table in Paragraph 2 of this Section, unless doing so places the offense in a lower group, in which case use the group number for the pre-amendment statute;
  - c. if the conduct of conviction is a misdemeanor under the amended statute, score the conviction as a misdemeanor.
2. For an offense that does not appear in Appendix C, unless and until the Commission ranks it, use this table:

If the maximum penalty is:	then use:	
	Master Group	Drug Group
Less than 5 years	9	3
Five years or more, but less than 10	8	3
10 years or more, but less than 15	7	2
15 years or more, but less than 20	6	2
20 years or more, but less than 30	5	1
30 years or more, but less than 40	4	1

40 years or more, but less than life	3	1
Life, but not life without release	2	1
Life without release	1	1

Example 1: On November 23, 2009, the defendant pled guilty to violating a new statute not yet ranked by the Commission. The defendant had a prior out-of-state conviction under a statute that was comparable to the new statute. Notwithstanding Section 1.4, the Offense Severity Group for the instant offense is dictated by Paragraph 2 of this Section, as is the scoring of the out-of-state conviction (see Section 2.2.6).

Example 2: A defendant has a prior D.C. conviction of Theft I in 2008. In August 2009, D.C.'s Theft statute was amended, changing the cutoff between Theft II and Theft I from \$250 to \$1,000. If the defendant can show that the conduct of conviction in the Theft I case involved property of value between \$250 and \$1,000, Paragraph 1 (c) would apply and the conviction would be scored as a misdemeanor.

- Section 2.2.1, "What is a Prior Conviction or Adjudication?" was amended to exclude from the definition a conviction arising out of the same event as the one for which the defendant is being sentenced. Under the current manual, a person would have a prior conviction if one count of an indictment led to conviction at his first trial and another led to conviction at a second trial after a mistrial on that count (as might happen if the jury could not decide). A corresponding change in the definition of "Event" was also made in Section 7.10. The amendments also clarify that verdicts of not guilty by reason of insanity are not convictions and, thus, are not scored. The amended language of this section follows:

A prior conviction or adjudication is any adult conviction or juvenile adjudication, for conduct not part of the instant event, for which judgment (an adult sentence or a juvenile disposition) was entered before the day of sentencing in the instant case. The order in which the offenses occurred is not controlling.

Sentences or dispositions that are entered on the same day as the sentencing in the case at issue or that arise out of the same event are not prior convictions/adjudications. Therefore, they are not counted in computing the prior criminal history score or for purposes of reviving other convictions. See Section 7.10 for definition of "event."

Cases that are dismissed before a sentence is imposed are not scored. This includes cases that are disposed of by diversion, deferred sentencing, probation before judgment, the stet

docket, or juvenile consent decrees. If the defendant (or juvenile) is not successful in one of these programs and the case proceeds to sentencing, it is then scored. In addition, convictions based on pleas of nolo contendere are scored. However, a plea or verdict of not guilty by reason of insanity is not a conviction and is not scored.

4. Section 2.2.2, “Scoring Prior Convictions/Adjudications” was amended extensively, but the changes are not, in fact, substantive. The current manual has, in separate locations, rules for scoring prior convictions, prior adjudications, and for lapsing and reviving<sup>22</sup>. The Commission thought it would helpful to bring most of those rules into a single location and amended the manual to accomplish that. No substantive changes are intended. The section now reads as follows:

The first step toward scoring an offender’s criminal history is identifying all prior criminal convictions and juvenile adjudications. Convictions and adjudications are scored based upon their type and age. The criminal history score for convictions and adjudications is based upon the Offense Severity Group for that offense (e.g., a prior conviction for ADW is in Master Group 6, just as it is when the instant offense is ADW). Column 3 of Appendices C and C-I provide the Offense Severity Group for all felonies prosecuted under the D.C. Code. See Section 2.1.1 if the statute in question is not ranked or has been amended since the offense was committed.

Out-of-state and federal convictions and adjudications should be matched as closely as possible to D.C. Code offenses by following the rules in section 2.2.6.

Score prior convictions and adjudications as indicated in the following table:

PRIOR CONVICTIONS AND ADJUDICATIONS OTHER THAN ACCESSORY			
	NOT LAPSED		LAPSED AND REVIVED
	Adult Conviction	Juvenile Adjudication	Adult Felony Conviction
Master Groups 1 – 5	3	1 ½	3
Master Groups 6 – 7 Drug Group 1	2	1	1

<sup>22</sup> Lapsing rules provide that prior convictions or adjudications do not count if they are of a certain age. Reviving rules provide exceptions so that lapsed convictions or adjudications do count, although they may count less than they otherwise would.

Master Groups 8 – 9 Drug Groups 2 - 3	1	½	½
Misdemeanors	¼	0	N/A
<b>PRIOR ACCESSORY AFTER THE FACT CONVICTIONS AND ADJUDICATIONS</b>			
	<b>NOT LAPSED</b>		<b>LAPSED AND REVIVED</b>
	<b>Adult Conviction</b>	<b>Juvenile Adjudication</b>	<b>Adult Felony Conviction</b>
Master Groups 1 – 3	3	1 ½	3
Master Groups 4 - 5	2	1	1
Master Groups 6 – 9 Drug Groups 1 - 3	1	½	½
Misdemeanors	¼	0	N/A
Notes: 1. See Section 2.2.12 for scoring Contempt convictions. 2. A lapsed conviction counts only if it was a felony and only if revived. Lapsed misdemeanor convictions and juvenile adjudications cannot be revived and therefore do not count. See Section 2.2.3 for rules on lapsing of convictions and reviving of felonies. See Section 2.2.4 for rules on lapsing of juvenile adjudications. 3. Prior misdemeanor convictions are capped at 1 ½ points. That is, only six count toward the criminal history score. 4. Juvenile adjudications are capped at 1 ½ points, unless there is more than one adjudication for an offense that counts as 1 ½ points. In that event, each such adjudication is counted and all other adjudications are not counted. 5. While a conviction or adjudication may not count in the criminal history score because it has lapsed or because a cap has been reached, a court may still consider same in choosing the appropriate sentence in the applicable guideline box.			

5. Section 2.2.3, “Which Prior Convictions Count?” is amended to make clear that an out of state conviction is a felony, and so capable of reviving other felonies and of being revived, only if it is comparable to a felony here. We thus added the following language to Section 2.2.3:

For purposes of reviving other felony convictions and for purposes of being revived, an out-of-state conviction is deemed a felony if, using the rules in Section 2.2.6, the offense is comparable to a D.C. felony.

6. Section 2.2.6, ¶ 5 was amended to modify the exception articulated in subsection (d). It now reads:

If the conduct of conviction was once a crime here but has been de-criminalized, Section 2.2.9 applies and the conviction is not scored.

7. Section 2.2.9 and its caption were amended to include convictions under the Federal Youth Corrections Act and convictions where a pardon was granted. The section was also amended to make clearer that a conviction under a statute that was repealed so as to de-criminalize the conduct in question does not count, whereas a conviction under a statute that was repealed and replaced does count. As amended, the section now reads:

*2.2.9 Youth Act Convictions, Convictions Reversed on Appeal, Pardons, and Convictions under Statutes Later Held to be Unconstitutional or Repealed*

Youth Rehabilitation Act and Federal Youth Corrections Act sentences are counted like any other conviction, whether the conviction has been set aside or not.

A conviction/adjudication that was reversed on appeal is not counted. A conviction for which the defendant was pardoned is not counted.

A conviction/adjudication under a statute which later has been held to be unconstitutional is not counted. A conviction/adjudication under a statute that was repealed so that the conduct was de-criminalized is not counted. If the statute was repealed and replaced, see Section 2.2.7.

8. Section 2.3 was deleted. Section 2.2.14 is now Section 2.3.
9. In Chapter 3, Section 3.1 was revised to make clear that neither the defendant's nor the victim's race, gender, etc., are germane to sentencing in any case. This section now reads:

**3.1 What May Not Be Considered**

Neither a defendant's nor a victim's race, gender, marital status, ethnic origin, religious affiliation, or sexual orientation may be considered in sentencing a defendant.

10. Section 3.3 was deleted. Sections 3.4 through 3.9 were renumbered accordingly.
11. Sections 3.7 and 3.8 on "Mandatory Minimums" and "Statutory Minimums" have been

merged and reworded. The purpose was to make clearer what was meant by the distinction between the two sorts of minimums. Mandatory minimums are ones that cannot be suspended, while statutory minimums are ones that can be suspended. Definitional provisions have been revised in a like fashion. No change of substance is intended. The amendments also update the list of mandatory minimums and clarify the application of the Youth Rehabilitation Act on these offenses. The revised and merged section now reads:

### **3.6 Mandatory Minimums and Statutory Minimums**

In this Manual we refer to mandatory minimum and statutory minimum terms of imprisonment. A mandatory minimum term is a term that must be imposed and cannot be suspended. A statutory minimum term, by contrast, is one that must be imposed but can be suspended.

These minimums are the one exception to the amount of discretion the court has in imposing a guideline compliant sentence within a box. The guidelines do not change these minimums. An imposed sentence cannot be lower than the minimum even if lower sentences are otherwise available in the appropriate box.

Offenses with a mandatory minimum sentence, ones that cannot be suspended for a person sentenced as an adult, are all of the following:

First-Degree Murder of a Police Officer	LWOR
First-Degree Murder	30 years
Armed Carjacking	15 years
Carjacking	7 years
<i>Crimes of Violence and Dangerous Crimes while Armed with a Firearm -- 1st offense</i>	5 years
Crimes of Violence and Dangerous Crimes while Armed with a Firearm -- 2nd and subsequent offense	10 years
Crimes of Violence and Dangerous Crimes while Armed -- 2nd offense	5 years
<i>Possession of a Firearm During a Crime of Violence/Dangerous Crime</i>	5 years
Unlawful Possession of a Firearm by a Person with a Conviction of a Crime of Violence	3 years
Unlawful Possession of a Pistol by a Person with a Conviction > 1yr	1 year
Theft I or II if two or more theft convictions	1 year
Armor Piercing Ammunition	1 year

A youth offender sentenced under the Youth Rehabilitation Act (D.C.Code § 24-901 *et seq.*) for one of the offenses *shown here in italics* need not be sentenced to a mandatory minimum term. See Green v. United States, 974 A.2d 248, 262 n. 43 (D.C. 2009).<sup>23</sup>

In Appendices C and C-I, these are indicated in the “Minimum” column by the letter M before the number of years.

Some offenses have a minimum that is not a mandatory minimum. For these offenses, the court must impose at least the statutory minimum, but the sentence that is imposed may be suspended, in whole or in part in a shaded box. For these offenses, to impose a compliant sentence the judge must impose at least the statutory minimum sentence, but may be able to suspend all or part of it depending on the applicable sentencing box and where the statutory minimum fits within that box, if at all.

All but two of the statutory minimums are either below or within the prison range in the lowest possible box for that offense and criminal history score, so that these statutory minimums do not conflict with guideline prison ranges. The same options are available for these offenses as for any other in the same Offense Severity Group (prison only, long splits, short splits, or probation). However, two statutory minimums are much higher than the guideline ranges in Columns A through D: 84 months for Enticing a Child after a conviction for a crime of violence (22 D.C. Official Code §§ 22-3010; 24-403.01 (e)) (Master Group 8) and 60 months for Maintaining a Place to Manufacture, Distribute or Store Narcotic or Abusive Drugs (48 D.C. Official Code § 904.03a) (Drug Group 2). For these offenses, the judge should impose the statutory minimum and then should suspend at least the portion of the sentence that exceeds the higher number in the prison range. The judge has the option to suspend more, but, absent a departure or enhancement, should not do less to result in a guideline compliant sentence.

A complete list of offenses with statutory minimums can be found in Appendix I. In Appendices C and C-I, offenses with a statutory minimum are indicated in the “Minimum” column by “not <” before the number of years.

12. The definition for “Event” in Section 7.10 was amended to conform to the amendment of Section 2.2.1 described above:

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<sup>23</sup> The mandatory minima for Theft and Unlawful Possession of a Firearm were parts of the Omnibus Public Safety and Justice Emergency Amendment Act of 2009. In substantially identical terms, the Act provided that a person sentenced to one of those mandatory minima “shall not be released from prison or granted probation or suspension of sentence prior to serving the mandatory-minimum.” The Act did not expressly refer to the YRA. The Commission expresses no view on whether a youth offender sentenced under the YRA for one of these offenses must be sentenced to a mandatory minimum term.





- Prostitution, Soliciting or Engaging in 3+ offense (§22-2701)      Master Group 9  
Two-year maximum, \$4,000 fine
- Stalking (§22-404(b))      Master Group 9  
Five-year maximum, \$10,000 fine
- Theft I: if two or more Theft convictions (§22-3212(c))      Master Group 8  
Ten-year maximum, mandatory minimum one year, \$5,000 fine
- Theft II: if two or more Theft convictions (§22-3212(c))      Master Group 9  
Ten-year maximum, mandatory minimum one year, \$5,000 fine
- Unlawful Possession of a Firearm: prior conviction > 1year      Master Group 6  
and COV ≠ Conspiracy (§22-4503(a)(1))  
Fifteen-year maximum, mandatory minimum three years
- Unlawful Possession of a Firearm: prior conviction > 1year      Master Group 7  
(§22-4503 (a)(1))  
Ten-year maximum, mandatory minimum one year
- Unlawful Possession of a Firearm: by other persons      Master Group 8  
(§22-4503(a)(2)-(a)(6))  
Ten-year maximum, not less than two years, \$15,000 fine
- Unauthorized Use of a Motor Vehicle (UUV): during or to      Master Group 7  
facilitate a COV (§22-3212(d)(2))  
Ten-year maximum, \$10,000 fine

# MASTER GRID

June 14, 2004

		Criminal History Score				
Ranking Group Most Common Offenses		0 to ½ A	¾ to 1¾ B	2 to 3¾ C	4 to 5¾ D	6 + E
3 Points*	<b>Group 1</b> 1st degree murder w/armed 1st degree murder	360 - 720	360 - 720	360 - 720	360 - 720	360 +
	<b>Group 2</b> 2nd degree murder w/armed 2nd degree murder 1st degree sex abuse 1st degree sex abuse w/armed	144 - 288	156 - 300	168 - 312	180 - 324	192 +
	<b>Group 3</b> Voluntary manslaughter w/armed 1st degree child sex abuse Carjacking while armed Assault with intent to kill w/armed Armed burglary I	90 - 180	102 - 192	114 - 204	126 - 216	138 +
	<b>Group 4</b> Aggravated assault w/armed Voluntary manslaughter	48 - 120	60 - 132	72 - 144	84 - 156	96 +
	<b>Group 5</b> Possession of firearm /CV Armed robbery Burglary I Obstruction of justice Assault with intent to kill	36 - 84	48 - 96	60 - 108	72 - 120	84 +
	<b>Group 6</b> ADW Robbery Aggravated assault 2nd degree child sex abuse Assault with intent to rob	18 - 60	24 - 66	30 - 72	36 - 78	42 +
2 Points*	<b>Group 7</b> Burglary II 3rd degree sex abuse Negligent homicide Assault w/I to commit mayhem Attempt 2nd degree sex abuse	12 - 36	18 - 42	24 - 48	30 - 54	36 +
	<b>Group 8</b> CPWOL UUV Attempt robbery Attempt burglary 1st degree theft	6 - 24	10 - 28	14 - 32	18 - 36	22 +
1 Point*	<b>Group 9</b> Escape/prison breach BRA Receiving stolen property Uttering Forgery RSP	1 - 12	3 - 16	5 - 20	7 - 24	9 +
*Criminal History Points for prior convictions in these groups.						
White/unshaded boxes – prison only.						
Dark shaded boxes – prison or short split permissible.						
Light shaded boxes – prison, short split, or probation permissible.						

# DRUG GRID

June 14, 2004

		Criminal History Score				
	Ranking Group Most common offenses	0 to ½ <b>A</b>	¾ to 1¾ <b>B</b>	2 to 3¾ <b>C</b>	4 to 5¾ <b>D</b>	6 + <b>E</b>
2 Points*	<b>Group 1</b> Distribution w/a PWID w/a	30-72	36-78	41-84	48-90	54+
1 Point*	<b>Group 2</b> Distribution PWID	12-30	16-36	20-42	24-48	28+
	<b>Group 3</b> Attempt Distribution Attempt PWID	6-18	10-24	14-30	18-36	22+
*Criminal History Points for prior convictions in these groups.						
White/unshaded boxes – prison only.						
Dark shaded boxes – prison or short split permissible.						
Light shaded boxes—prison, short split, or probation permissible.						