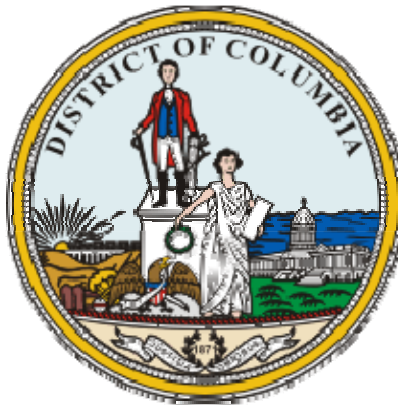




DISTRICT OF COLUMBIA SENTENCING AND CRIMINAL CODE REVISION COMMISSION

2012 ANNUAL REPORT



APRIL 26, 2013

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, to evaluate the effectiveness of the guidelines system in order to recommend changes based on actual sentencing and corrections practice and research, to analyze the District of Columbia's current criminal code and administration of existing criminal laws, and to propose reforms in the criminal code to create a uniform and coherent body of criminal law in the District of Columbia.

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EXECUTIVE SUMMARY

In 2012, the District of Columbia Sentencing and Criminal Code Revision Commission undertook a number of activities to expand its access to data and to improve the quality of that data, enabling the agency to better monitor and analyze sentencing trends in the District. In addition, several substantive changes were made to the D.C. Voluntary Sentencing Guidelines (“Guidelines”) to ensure that they continue to promote fair and consistent sentencing practices. Furthermore, 2012 was a transitional year for the Criminal Code Revision Project. The infusion of new resources enabled the Commission to hire a project director and staff to develop a plan that will guide a comprehensive revision of the District’s Criminal Code.

Data Collection Practices

In 2012, the Commission made two major changes to the manner in which data is collected. In collaboration with Court Services and Offender Supervision Agency (“CSOSA”), an electronic criminal history form was developed and implemented. This form enables CSOSA officers to directly input criminal history information and automatically calculate an offender’s criminal history score (“CH score”). This change reduces both data entry and mathematical errors previously encountered in determining an offender’s CH score. The Commission also developed a process by which missing CH scores were identified and researched. As a result, the Commission was able to confirm a defendant’s CH score in 99% of all felony counts sentenced in 2012.

During 2012, the Commission also improved its procedure for measuring judicial compliance with the Guidelines. A multi-level evaluation process was designed to examine non-compliant sentences; this evaluation included both a review of the Superior Court of the District of Columbia (“Superior Court”) court docket and an analysis of the sentence imposed to identify enhancements or any special sentencing provisions. This evaluation process enabled the Commission to identify sentences that initially appeared non-compliant but were actually compliant sentences. By utilizing this process, the 2012 judicial compliance rate increased to 98%.

Key Data Findings

In 2012, there were 2,260 felony cases and 3,384 felony counts sentenced, representing a decrease of 595 felony cases and 575 felony counts compared to 2011. Of the 2,260 felony cases, 1,821 were single count cases and 439 were multiple count cases. Ninety percent of all cases were disposed of through guilty pleas, which is consistent with previous years.

There were a total of 2,154 offenders sentenced last year, with 101 offenders sentenced in more than one case. Of the total number of offenders sentenced, 92.8% were Black, 89.9% were males, and 84.1% were Black males. The largest percentage of offenders (37.4%) was between 18 and 24 years old, with 31 representing the average age of offenders. Thirty six offenders between the ages of 15 and 17 were sentenced as adults, with 68% of those offenders receiving a prison sentence. Males were sentenced to prison more frequently for violent offenses, whereas females were sentenced more frequently to probation for drug offenses.

Prison was the most common sentence imposed, followed by probation, and then split sentences. A prison sentence was imposed in 50% of all cases and 62% of all counts. Prison sentences were imposed more frequently for non-drug offenses, while the rate of probation was highest for drug offenses. There was a slight decline in the overall incarceration rate, four percent by case and two percent by count when compared to 2011; this decrease is partially attributed to the 68% increase in attempted robbery cases, for which 47% of the cases received a term of probation as a result of the lower Offense Severity Group (“OSG”) ranking and the limited criminal history of the offenders. In addition, changes to the structure of the Drug Grid enacted in 2011 may explain the increase in probation sentences for lower level drug offenses.

Although drug offenses represented the highest percentage (32.5%) of all cases sentenced in 2012, this is a decline of eight percent from the previous year. Approximately 25% of all drug offenses involved cocaine, followed by phencyclidine (“PCP”), and heroin. Marijuana and “other” drugs accounted for the smallest percentage of drug cases. Prison sentences were imposed most frequently for drug cases involving heroin, and probation sentences were imposed most frequently for marijuana.

Guidelines Compliance

While judicial compliance with the Guidelines has consistently exceeded 85% since its inception, this year the overall compliance rate reached 98.8%, representing a historic high. Similar to the overall compliance rate, the percentage of in-the-box sentences, those sentences falling within the appropriate Guidelines sentencing type and range, increased from 95% in 2011 to 96% in 2012. These findings indicate that Superior Court judges are consistently applying the Guidelines and imposing felony sentences within the recommended Guidelines range. The increase in compliance rate is due to a combination of factors including: (1) the length of time the Guidelines have been in place; (2) modifications to the Guidelines to ensure that the recommended sentence is appropriate; and (3) improved data collection and validation practices.

Weapons offenses showed the highest rate (98%) of in-the-box compliance, while sex offenses had the lowest rate at 90.1%. With the exception of sex offenses, all offense groups demonstrated an in-the-box compliance rate of over 95%.

In 2012, there were 57 compliant departures reported, representing 1.7% of all sentences imposed. Drug offenses were more likely to receive a compliant departure, representing 38.7% of the total number of compliant departures. The increase in compliant departures for drug offenses was partially due to the structural changes to the Drug Grid that were implemented by the Commission in 2011. Non-compliant departure sentences were very limited, accounting for only 40 counts in 2012; violent offenses represented the highest number of non-compliant departures.

Guidelines Modifications

The Commission reviews and modifies the Guidelines on a continual basis in order to ensure the recommended Guidelines sentence is fair, just, and maintains public safety. During the past year, the Commission enacted four substantive policy changes: (1) a modification of the rule governing non-comparable out-of-District misdemeanor offenses to prevent the scoring of misdemeanors where the penalty was less than 90 days; (2) to conform to a recent Superior Court decision, the Guidelines now recognize the ability of a judge to suspend the imposition of sentence in non-Youth Rehabilitation Act cases, so long as the defendant is eligible for a probationary sentence; (3) an amendment to the Guidelines to clarify that if the Guidelines were applied to the defendant's initial sentence, they apply to a defendant following the revocation of his or her probation; and (4) adjust the way the Guidelines treat the Offenses Committed During Release ("OCDR") enhancement.

Criminal Code Revision Project

In 2007, the Council directed the Commission to undertake a comprehensive revision of the D.C. Criminal Code with the twin goals of ensuring consistency and clarity in the District's criminal laws and making their application more fair and efficient. To date, the project has submitted a limited set of code revisions, including the Fine Proportionality Act of 2011, which was enacted on January 23, 2013.

Since the project began, it has been significantly understaffed, and during the last fiscal year, the part-time project director retired. Thus, 2012 was a reorganizational year for the project. The Council provided funding for a full-time project director and for the four legal staff positions necessary to undertake a project of this complexity. All project related positions were filled by January 2013. Currently, the project director is developing a comprehensive Project Plan which will define the scope of the project, its deliverables and the project's timeline. The Project Plan will define and guide the work of the Code Revision Project during the coming year.

CHAPTER ONE

COMMISSION PROFILE

I. History of the D.C. Sentencing and Criminal Code Revision Commission

The Sentencing Commission was established in response to the National Capital Revitalization and Self-Government Improvement Act of 1997 (“Revitalization Act”). The Revitalization Act made several significant changes in felony sentencing in the District of Columbia: abolishing the D.C. Parole Board and eliminating parole for most violent felonies, mandating determinate sentences, and limiting good time credit not to exceed 15% of the sentence imposed. It was left to the Council of the District of Columbia (“Council”) to decide whether those changes should be applied to all felony offenses. The Council established the Commission to make recommendations on that issue and on other changes that would be necessary to conform the District’s sentencing practices to the requirements of the Revitalization Act. *See* Advisory Commission on Sentencing Establishment Act of 1998, D.C. Code §§ 3-101 *et seq.* (1998). The Council directed the Commission to make recommendations consistent with the goals of the Revitalization Act, including the use of intermediate sanctions in appropriate cases, to conduct an annual review of sentencing data, policies and practices, and to suggest any other appropriate factors to enhance the fairness and effectiveness of criminal sentencing policies and practices in the District of Columbia.

A. The Sentencing Reform Amendment Act of 2000 and the Development of Sentencing Guidelines in the District of Columbia (1998-2004)

The Commission began its work by conducting extensive research on sentencing practices in the District. This research resulted in the 1999 publication of *Criminal Sentencing Practices in the District of Columbia 1993-1998* and the publication of *Sentence Recommendations to the Council of the District of Columbia*. This act eliminated parole for all felony offenses and provided for determinate sentencing and a period of supervised release to follow every prison sentence. The Council adopted these recommendations as part of the Sentencing Reform Amendment Act of 2000, D.C. Code § 24-403.01 (2000). This legislation also gave the Commission the additional responsibilities of surveying structured sentencing systems throughout the country and recommending the type of structured system that would best serve the needs of the District’s criminal justice system. The Council also directed the Advisory Commission to report to the Council on the change from an indeterminate sentencing system to a determinate sentencing system in the District.

In its 2003 Report, the Commission recommended the adoption of a comprehensive structured sentencing system, including the adoption of voluntary sentencing guidelines for use in the

District of Columbia. This report contained the basic architecture of the proposed guideline system. The following year, the Council enacted the Advisory Commission on Sentencing Structured Sentencing System Pilot Program Amendment Act of 2004, D.C. Code § 3-105 (2004), directing the Commission to assist the Superior Court of the District of Columbia (“Superior Court”) with the implementation of Guidelines as a pilot program. This legislation also made the Advisory Commission a permanent agency, renaming it the District of Columbia Sentencing Commission (“Commission”).

The Commission published the first Voluntary Sentencing Guidelines Manual in 2004. Superior Court judges began imposing sentences under the Voluntary Sentencing Guidelines for all felony pleas and verdicts on and after June 14, 2004.

B. Revision to the Criminal Code and Continued Monitoring of Voluntary Sentencing Guidelines (2004-present)

In 2006, the Council expanded the role of the Commission to include a comprehensive revision of the District of Columbia Criminal Code. The Council expressed concern about confusing, outdated language, and overlapping provisions in the Criminal Code. The Council directed the Commission to examine the Criminal Code and to make recommendations to provide for a uniform and coherent body of law. *See* Advisory Commission on Sentencing Act of 2006, D.C. Code § 3-101.1 (2007). The resulting Advisory Commission on Sentencing Act of 2006 further provided for an expansion of the Commission’s duties. The Act directed the Commission to 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, and to propose a classification system for misdemeanor statutes, as well as any amendments necessary to facilitate the equitable administration of the criminal laws in the District of Columbia. The Act also renamed the Commission the District of Columbia Sentencing and Criminal Code Revision Commission to reflect its new dual mandate.

The Commission continues to fulfill its mandate to promote fair and consistent sentencing policies. Since its inception, many important reforms have been accomplished, including the development of the District’s current sentencing structure, which has consistently yielded high compliance rates and allowed the Commission to make recommendations based on actual sentencing data. The Commission looks forward to continuing its collaboration with the Council, the Mayor, the judiciary, and criminal justice agencies to ensure that the District’s sentencing practices continue to promote public safety and justice.

II. Legislative Mandate

The Commission currently has three primary statutory responsibilities: (1) to monitor the Voluntary Sentencing Guidelines (“Guidelines”); (2) to review and analyze pertinent sentencing data; and (3) to develop recommendations for criminal code revision. These responsibilities include 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. The Commission is also responsible for incorporating into the Guidelines structure each new crime or sentencing provision enacted by the Council. Finally, the Commission is proceeding with its mandate to examine the Criminal Code and formulate recommendations that will correct inconsistencies, achieve further proportionality in imprisonment terms and fines, and create clarity and coherence throughout criminal statutes.

III. Commission Membership

The Commission is made up of twenty members: fifteen voting members and five non-voting members. Its membership includes representation from various criminal justice agencies, the judiciary, academic and research institutions, practicing attorneys, and the public.¹ This diverse membership guarantees a variety of perspectives when developing sentencing and criminal law policy recommendations for 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 Public Defender Service for the District of Columbia 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;

¹ The legislation governing the D.C. Sentencing and Criminal Code Revision Commission can be found at D.C. Code §§ 3-101 (2012), *et seq.*

- Two citizens of the District of Columbia, one of whom is nominated by the Mayor subject to confirmation by the Council, and the other who is appointed by the Council; and
- 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.

In 2012, the three new voting members, Molly M. Gill, Esq. (citizen member), Renata Cooper, Esq. (designee of the United States Attorney for the District of Columbia), and Paul Butler, Esq. (professional from an established organization) were appointed to the Commission to replace Jennifer Seltzer-Stitt, Patricia Riley, Esq., and Adele Harrell, Ph.D., respectively. The Commission sincerely thanks Ms. Seltzer-Stitt, Ms. Riley, and Ms. Harrell for their commitment and contributions. Additionally, in October 2012, the Council reappointed Donald Braman, Esq. and Ronald Gainer, Esq. to the Commission.

In early 2013, The Honorable Tommy Wells was sworn in as Chairman of the D.C. Council Committee on the Judiciary and Public Safety. Chairman Wells' Committee has oversight of the Commission, and the Commission welcomes him as a non-voting member.

IV. Commission Meetings and Activities

The Commission meets throughout the year to discuss sentencing data, to make modifications to the Guidelines, to rank any new offenses enacted by the Council, to evaluate developments in sentencing policy in the District, and to discuss modification to the Criminal Code. Meetings are open to the public, and interested parties are encouraged to attend. Meeting dates are published in advance in the D.C. Register and on the Commission's website.

In 2012, the full Commission met on the following dates:

January	17, 2012	June	12, 2012
February	21, 2012	September	18, 2012
March	27, 2012	November	13, 2012
May	15, 2012		

The minutes of the full Commission’s public meetings are available online at the Commission’s website, located at <http://sentencing.dc.gov>. Meetings are generally held on the third Tuesday of each month and convene at One Judiciary Square, 441 4th Street, NW, Washington, D.C. 20001.²

Over the past year, the Commission made changes to the Guidelines, clarified that the Guidelines apply to post-probation revocation sentences, modified the rules governing the scoring of Offenses Committed During Release, and simplified the criminal history scoring rules. The Commission also ranked offenses, approved revisions to the Guidelines Manual, and continued to adjust an automated Sentencing Guidelines Form (“SGF”). In addition, in 2012 the Commission planned and approved the construction and implementation of a new data system. Utilizing enhanced resources appropriated by the Council, the Commission hired a project director and professional staff for the Criminal Code Revision Project.³ During the year, the Commission published the 2011 Annual Report, the 2012 Guidelines Manual, as well as two Issues Papers.

V. Committee Activities

In addition to the meetings of the full Commission, several working committees meet on a regular basis to formulate recommendations on specific sentencing and Criminal Code policy issues. These committees offer proposals and suggestions for action by the full Commission. The following represents an overview of the Commission’s committee structure.

Criminal Code Revision Committee

In conjunction with the project director and project staff, the Committee is currently evaluating and drafting revisions to the D.C. Criminal Code to present to the full Commission.

Last year was a transformative year for the Criminal Code Revision Project and the Revision Committee. At the end of 2011, the Commission’s part-time project director retired, and the Commission promoted the project’s sole full-time staff member to another position. The

² Scheduled meeting dates, times, and places are subject to change without notice; however, the Commission makes every effort to notify the public of any changes in the schedule via its website.

³ For details on the Criminal Code Reform Project, see Chapter Six.

Revision Committee seized this transitional period as an opportunity to reevaluate the direction of the project. The Committee agreed that the current staffing level was insufficient to accomplish the Commission's code reform mandate. Based upon the recommendations of Committee members, the Commission informed the Council that it would need more resources to complete its code reform mandate. The Council responded by significantly increasing the project's FY 2013 funding to allow for a full-time project director and four full-time staff members.

In the spring of 2012, the Commission staff and the Criminal Code Revision Committee began an exhaustive search and interview process for a well-qualified full-time project director. The Commission recruited applicants nationwide and many outstanding candidates applied. Following initial screening and interviews with Commission staff, the Revision Committee convened and interviewed seven potential directors. This search ended when the Commission hired its new project director, Richard Schmechel, Esq., in late October. By the end of January 2013, the Commission fully staffed the Criminal Code Revision Project.

The new project director and the Committee immediately began developing a project plan and moving the project forward. The staff will initially analyze and define common criminal mental states for use throughout the code and then focus on revising the most commonly charged felony offenses. Throughout 2013, the Committee will meet at least twice-monthly.

Research Committee

This committee was created in 2011 to undertake more complex, sentencing research projects related to the Commission's objectives. The work of this Committee provides important information on sentencing practices under the Guidelines and forms the basis for future policy recommendations made by the Commission. The Committee's first major project is a five-year evaluation of the Guidelines to examine the whether the goals of sentencing guidelines—to achieve consistency, certainty, and proportionality in criminal sentencing—have been reached. This evaluation is scheduled to begin in late 2014 and will analyze numerous sentencing-related practices and issues, including consecutive and concurrent sentencing patterns; type of sentence imposed; total sentence imposed, demographic factors; and count versus case sentencing distinctions.

Ranking Committee

This committee submits to the Commission proposals on new or modified criminal offense rankings. The Committee also evaluates potential policy changes that may affect the Guidelines, as well as other sentencing issues that should be brought before the Commission for

consideration. The Ranking Committee oversees the annual changes to the D.C. Voluntary Sentencing Guidelines Manual.

Public Outreach Committee

This committee seeks to educate the public, to serve as a resource to the community, and to collect information that will inform the Commission's efforts to evaluate sentencing policy in the District of Columbia. Recently, the Committee initiated extensive changes to the Commission's website, designed to improve public access to the Commission's resources.

VI. Commission Staff Activities

A. Staffing Developments

In the early years of its existence, the Commission consisted of an executive director, a research analyst, a data manager, a staff attorney, and a staff assistant. In 2012, the Council allocated additional funding to hire five full-time staff members to undertake the work of the Criminal Code Revision Project. These positions include a Project Director, two Attorney Advisors, and two Staff Counsels for Criminal Code Reform. The Commission filled all five new staff positions in January 2013.

B. Relocation

As a result of the increase in size of the Commission staff, the agency moved to a larger, newly renovated office in October 2012. The new office space, located in suite 430 South of One Judiciary Square, provides enough space to accommodate the new staff and allow for the hosting of full Commission meetings. Through extensive planning, budget management, and collaboration with other D.C. government agencies, the Commission was able to accomplish the renovation and office relocation without requiring additional funding.

C. Supporting the Application of the Guidelines

One of the roles of the Commission is to support the application and use of the Guidelines. The Commission accomplishes this through four primary approaches: training and education sessions; print and electronic publications; the Commission's website; and by responding to inquiries.

Guidelines Training and Education Sessions

The Commission conducts Sentencing Guidelines training sessions for any interested parties. The subject area and scope of each training session varies depending on the audience. For

members of the public or individuals interested in learning general information about the Guidelines, Commission staff offers a basic introduction and overview of the Guidelines and sentencing in the District of Columbia. For legal practitioners, the Commission provides in-depth trainings that provide a review of the Guidelines rules, the calculation of a defendant's criminal history score, practical application issues, and any recent changes to the Guidelines. Judiciary training sessions focus on issues that may present themselves to the court, how judges can depart from the Guidelines, the proper documentation of Guidelines usage, and scenario-based training exercises. The Commission also offers individually tailored trainings for our stakeholders and other criminal justice agencies, which focus on their specific requirements and needs.

In 2012, Commission staff provided in-person Guidelines training to over 140 individuals, including training sessions for the D.C. Trial Lawyers Association, Superior Court judges, CSOSA officers, Superior Court law clerks, and new Commission staff. The Commission offered these trainings in an effort to promote the accurate application of the Guidelines. Anyone interested in arranging a one-on-one or group training session should contact the Commission.

Printed Publications

The Commission released four official publications in 2012: the 2011 Annual Report; the 2012 Guidelines Manual; and two Issue Papers. Each of the publications was part of the Commission's ongoing effort to promote a comprehensive understanding of sentencing trends and practices in the District of Columbia and to encourage the accurate application of the Guidelines. Sentencing Commission publications are made available on the Commission's website and mailed to our stakeholders.⁴

In compliance with its statutory duty under D.C. Code § 3-104(d), the Commission published the 2011 Annual Report in April 2012. The 2011 Annual Report contained a detailed overview of the Commission's recent work, a review of felony sentences imposed in Superior Court during 2011, and an analysis of judicial compliance with the Guidelines. The report focused on the Commission's improved data collection and error checking methods, the substantive changes to

⁴ The Commission's distribution list includes, but is not limited to, all Commissioners, all Councilmembers, all District of Columbia Court of Appeals and Superior Court Judges (active and senior), the Mayor, the Deputy Mayor for Public Safety and Justice, the United States Attorney's Office, the Office of the Attorney General, the Public Defender Service for the District of Columbia, CSOSA, the Metropolitan Police Department, the Metropolitan Police Department Chief's Citizen's Advisory Council, the Criminal Justice Coordinating Council, the D.C. Pretrial Services Agency, the D.C. Department of Corrections, the U.S. Parole Commission, the D.C. Office of Victim Services, the D.C. Office on Ex-Offender Affairs, the D.C. Department of Youth Rehabilitation Services, the D.C. Justice Grants Administration, Advisory Neighborhood Commissioners, and various community, legal, and victim advocacy organizations.

the Sentencing Guidelines in 2011, and an in-depth review of felony sentencing data based on offense type and defendant demographics.

In May 2012, the Commission published its annual revisions to the Guidelines Manual, which went into effect on June 18, 2012. The 2012 changes to the Guidelines Manual are outlined in Chapter II of this report. Hard copies of the 2012 Manual were distributed to all District of Columbia Court of Appeals Judges, Superior Court Judges, Councilmembers, and the Mayor. Commission staff distributed an electronic PDF version of the Manual to practitioners and stakeholder agencies via e-mail. The Commission also posted the Manual on the Commission's website for downloading.

The Commission published its first 2012 Issues Paper in July, focusing on the importance of tracking and evaluating departures from the Sentencing Guidelines. The Commission analyzed departures from the Guidelines and discussed why they are a valuable tool for maintaining uniform sentencing practices. Specifically, by closely monitoring sentences that fall outside of the in-the-box sentencing range, the Commission is better able to understand when and why judges depart from the Guidelines. This information can offer invaluable insight into sentencing trends and areas of the Guidelines that may need to be revised or modified.

The second Issues Paper, published in October 2012, analyzed whether offense type and offender demographics affect the length of probation imposed. Although the Guidelines recommend when probation may be an appropriate sentence, they do not recommend which probation-eligible offenders should receive probation or the length of the probation term the court should impose. In the absence of such rules, the paper examined whether probation sentences and the length of probationary terms followed similar trends as those seen with prison sentences. As expected, the research found that offenders convicted of less severe felony offenses were more likely to receive probationary sentences. Similar to prison sentences, when sentences were examined based on the underlying offense severity level, "the average term of probation as well as the average length of a prison sentence increased with the increase in severity levels." However, the Commission found that "there was no consistency when examining the [length of the] term of probation with respect to criminal history scores."

The Website

As part of an ongoing effort to increase public access to current information on the Commission and the Guidelines, the Commission publishes a wealth of materials and Guidelines resources on its website located at <http://sentencing.dc.gov>.

The website resources include:

- Sentencing Commission news, including the date of the next Commission meeting;
- Sentencing Guidelines updates and alerts, where the Commission notes any recent changes to the Guidelines;
- An electronic copy of the current Guidelines Manual, as well as all prior versions of the Manual;
- The schedule of all upcoming Commission meetings;
- Minutes from prior Commission meetings;
- A direct link to send questions to the Executive Director;
- Information on how to contact the Commission, request a training session, or receive assistance applying the Guidelines;
- A frequently asked questions (FAQ) section providing detailed answers to common Guidelines questions;
- A glossary of Guidelines and sentencing terminology;
- A chronological history of the Guidelines and the Commission; and
- A list of Commission members.

Members of the public or practitioners unfamiliar with the Guidelines can quickly gain a basic understanding of the history, purpose, and scope of the Guidelines through the FAQ and history of the Guidelines sections. At the same time, resources such as Guidelines Alerts, manuals, and meeting minutes allow practitioners to find the most detailed and current information on the Guidelines, along with a complete historic index of Guidelines Manuals.

In 2012, Commission staff continued to focus on adding features and current information to the website. This work has shown dividends, with a marked increase in web traffic over the last year. In FY 2010, the Sentencing Commission received 854 website visits; in FY 2011, visits increased to 1,100. In FY 2012, staff focused on adding resources and educational materials to the website, as well as publishing the most up-to-date information on the Commission's meetings and job postings. As a result, website visits increased more than fourfold to 4,494.⁵ Staff has also utilized the website as a method of disseminating published materials such as the Sentencing Guidelines Manual, the Annual Report, and Issues Papers. This has allowed the Commission to reduce printing costs while simultaneously allowing for wider distribution of the Commission's work.

Continual website updates aim to increase the web presence of the Commission and to offer easier access to helpful resources on sentencing and the Guidelines. The enhanced historical information and reference material is of use to both the seasoned practitioner and any member of

⁵ Part of the dramatic increase in web traffic was due to the five job openings that the Commission recruited for in 2012. As a result, staff expects web traffic to decrease in FY 2013.

the public with no prior experience on sentencing matters. Anyone interested in learning more about the Commission or the Guidelines is encouraged to visit our website, utilize the resources available, and learn how to contact the Commission.

Responding to Inquiries

Commission staff is available on a daily basis to address questions, issues, or concerns about the application of the Guidelines. Guidelines support is available to judges, Superior Court personnel, government and defense attorneys, CSOSA, the criminal justice community, and members of the public. The Commission responds to a wide variety of questions and inquiries. For example, Commission staff addresses basic questions about the purpose of the Guidelines or sentencing in the District, as well as other inquiries requiring more in-depth information, such as conviction and sentencing data. The majority of inquiries are questions from CSOSA pre-sentence report investigators, criminal attorneys, and court personnel, requesting advice or direction in applying the Guidelines in a specific case, the calculation of a defendant's criminal history score, or the scoring of a specific out-of-District conviction. Guidelines support is available by e-mailing or calling the Commission and via a direct link on our website.

In FY 2012, Commission staff responded to 491 inquiries, over 90% of which were related to the scoring of a defendant's prior criminal history or a defendant's applicable sentencing range. However, the Commission received more than twenty inquiries from the general public. Excluding data inquiries, which may involve extensive information gathering and analysis, all but nine of the inquiries were responded to within one business day.

It is important to note that Commission staff only provides Guidelines advice and guidance; they do not make official determinations regarding the application of the Guidelines in specific cases. Only the sentencing judge assigned to a specific case can make official Guidelines determinations. For example, if a practitioner would like know how a defendant's prior out-of-District conviction would factor into his or her prior criminal history score, a Commission staff member will review the applicable Guidelines rule with the practitioner and inform them how the offense has historically been scored. However, Commission staff will never determine that an offense will be scored in a particular manner because the ultimate decision is left to the sentencing judge. Similarly, when inquiries relate to offenses that are not ranked or issues that are not addressed in the Manual, Commission staff may provide general information, but the ultimate resolution of the issues or ranking of an unranked offense will be made by the Commission, not the staff.

D. Sentencing Review and Analysis

As presented in later chapters of this report, reviewing and analyzing Guidelines usage and sentencing trends in the District of Columbia is one of the primary functions of the Commission. In FY 2012, Commission staff once again focused on improving our data collection and analysis procedures to ensure that we are able to report accurate, timely, and useful sentencing data analysis. To that end, Commission staff spent over 1,500 hours retrieving, cleaning, reviewing, and analyzing sentencing data.

E. Gathering CSOSA Criminal History Information

Due in large part to the efforts of our CSOSA partners, Commission staff has been able to make major strides in ensuring that every criminal history score calculation made by CSOSA is received by the Commission. As a result, there has been significant improvement in the quality and availability of criminal history data. In 2011, the Commission received criminal history score calculations in 92% of all felony cases; in 2012, it increased to over 98%. In a majority of the remaining cases, the Court did not request a pre-sentence report or a CH score calculation from CSOSA. The Commission is very grateful to CSOSA and their staff for the commitment they have made to improving criminal history data.

F. Data Requests

In addition to the research and analysis conducted for the Commission's annual report and research papers, the Commission also responds to data requests from other government agencies, organizations, and individuals. The Commission makes every effort to provide the information requested in a timely and accurate manner. In FY 2012, Commission staff spent more than 160 hours researching and responding to data requests from other government agencies. Some of the requests received by the Commission included:

- Providing raw data and analysis on general criminal justice and sentencing trends;
- Making a presentation on convictions and sentences for weapons and armed offenses during 2011;
- Reporting on defendants convicted of robbery and robbery-related offenses; and
- Providing an analysis and review of general sentencing patterns in 2010.

G. Development of a New Data System

The Commission currently receives sentencing and criminal justice data through a data analysis system developed in 2005 called the Sentencing Guidelines Application System ("SGS"). The SGS receives filtered sentencing data from the Superior Court through the Criminal Justice

Coordinating Council's ("CJCC") Justice Integrated Information System ("JUSTIS") system. In 2011, the Superior Court announced that it would change the technical manner in which it disseminates information to the Commission and other agencies in 2012. Instead of providing filtered information to the Commission via the CJCC JUSTIS system, the Court would provide unfiltered data to CJCC, which would in turn distribute it to recipient agencies, including the Commission, via a new system, called IJIS 12.1.

Upon notification of the Superior Court's intention to implement a new data sharing process, the Commission determined that its current data system would not be technically compatible with the Superior Court's new system. To ensure the uninterrupted transfer of sentencing data from the Superior Court, in early 2012, the Commission assessed the most effective and cost efficient manner in which to achieve the necessary technical compatibility. The Commission explored three primary options: modify the current system, buy a commercial off-the-shelf ("COTS") system and modify as needed, or develop a new data system. The results of the analysis indicated that developing a new data system was the most cost effective way to meet both the current and future data transfer needs of the Commission. Developing a new system will enable the Commission to access additional data not available through its current data system, to automate Guidelines compliance calculations, and to utilize predictive modeling in the data analysis process.

The Commission, with the assistance of an experienced project manager, developed a Request for Proposal ("RFP") to solicit qualified vendors. The RFP was published and advertised by the Office of Chief Procurement Officer (OCP) on September 26, 2012. The Commission received multiple proposals, each of which was evaluated by a technical evaluation panel. Following the evaluation process, the contract was awarded to Blue Print Consulting on December 21, 2012, with a project start date of January 10, 2013. Under the project schedule, the new data system should be complete and operational by mid-December 2013.

CHAPTER TWO

VOLUNTARY SENTENCING GUIDELINES

The Commission is required to include in its annual report any substantive changes that were made to the Guidelines the preceding year, including changes in the offense severity rankings, the recommended sentencing options or prison ranges, or the 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.

In 2012, the Commission enacted policy changes that altered the substance of the Guidelines, as well as technical changes that modified the Guidelines Manual. While limited in scope, these changes were consistent with the major changes to the Guidelines' grid structure enacted in 2011.

I. Policy Changes to the Sentencing Guidelines

A. Changes to the Out-of-District Scoring Rules

The Commission modified the rule governing non-comparable out-of-District misdemeanor offenses to prevent the scoring of misdemeanors where the penalty is less than 90 days. This change made the out-of-District scoring rule consistent with the other 2011 Guidelines modification, specifying that D.C. offenses with a penalty of less than 90 days are not scored.

Under the previous language, there was some confusion regarding the scoring of non-comparable misdemeanors with punishments of less than 90 days in prison. The prior language resulted in the scoring of misdemeanors, particularly those related to minor traffic violations, which might not otherwise be scored if the District had a statute comparable to the out-of-District offense.

B. Changes in How the Guidelines View Imposition of Sentence Suspended ("ISS") Sentences

In light of a recent Superior Court ruling that the court may suspend imposition of sentence and order unsupervised probation in non-Youth Rehabilitation Act ("YRA") cases, the Commission added language noting that "the court may suspend imposition of sentence and impose whatever terms it deems best as long as one of those terms is not supervised probation." Previously, the Manual stated that ISS sentences were only available in YRA cases; however, the Commission modified the language to specify that ISS sentences are available in most cases. Despite this change, in accordance with D.C. Code § 16-710, supervised probation may only be imposed following an ISS sentence in YRA cases.

C. Applying the Guidelines to Sentences Following Probation Revocation

Until 2012, there was confusion among practitioners and judges regarding whether the Guidelines were applicable to sentences imposed following the revocation of a defendant's probation, as the Guidelines Manual language was ambiguous on this point. The Commission provided clarification by adding Rule 3.8, which states that "if the Voluntary Sentencing Guidelines applied to the defendant's sentence initially, they also apply to the defendant's sentence following revocation of his/her probation or suspended sentence. However, the Guidelines do not address and, therefore, offer no guidance to the court on whether or not to revoke a defendant's probation following an alleged probation violation."

D. Changes to how the Guidelines treats the Offenses Committed During Release Enhancement

Prior to November 2012, the Guidelines Manual listed OCDR (felony) as a Special Enhancement in Appendix H, Section III. That classification increased the applicable sentencing range for the underlying offense to "not <1 year, up to 5 years." Although listed with other enhancements, OCDR is different in two respects: first, it does not have a common multiplier, and it can be combined with one other enhancement.⁶ Second, OCDR is often prosecuted and sentenced as if it were a distinct offense.

To make the operation of OCDR clearer for the court and practitioners to apply, the Commission classified it as a separate offense in Master Group 9 "for initial sentencing purposes only." The new classification includes a footnote indicating that "OCDR (felony) is an enhancement, not a separate offense. However, it operates similarly to a separate offense. Therefore, the Guidelines treat it as if it were a separate offense when determining a defendant's applicable sentencing range in the instant case for which it was charged." Because OCDR (felony) is an enhancement, it is not considered a separate offense when calculating a defendant's criminal history score. This change also reduced the maximum Guidelines compliant sentencing range for OCDR from 60 months to a progressive upper limit based on the defendant's CH score.

II. Changes to the Guidelines Manual

The following discussion of the Commission's 2012 modifications to the Guidelines Manual is grouped into two categories. Category A lists the substantive amendments to the Guidelines and the Guidelines Manual for 2012; Category B lists offenses ranked by the Commission in 2012.

⁶ Chapter four of the Guidelines Manual specifies that only one enhancement may be applied to each count sentenced.

A. Substantive Amendments to the Voluntary Sentencing Guidelines and Guidelines Manual

The Commission's substantive changes to the Guidelines Manual in 2012 are discussed below. Most of the following substantive amendments to the Guidelines were incorporated into the 2012 Guidelines Manual, which the Commission published in May 2012. However, the Commission also published one Sentencing Guidelines Alert in October 2012, which addressed how certain sentencing enhancements, including OCDR are treated under Guidelines Rules. All references contained in this chapter are to the Guidelines Manual.

Chapter 2

1. In section 2.2.6(a)(5)(C), the rule governing non-comparable out-of-District misdemeanor offenses has been modified to prevent the scoring of misdemeanors where the penalty is less than 90 days. This change brings the rule in line with section 2.2.2, so that it now reads: "apply ¼ point for all convictions that are classified as misdemeanors and are punishable by 90 days or more incarceration by the other jurisdiction."

Chapter 3

1. Section 3.3, footnote 14 now states:

The court may suspend imposition of a sentence (ISS) and impose whatever terms it deems best as long as it does not place the defendant on supervised probation. D.C. Code § 16-710 does not authorize supervised probation following suspension of imposition of sentence. See *Schwasta v. United States*, 392 A.2d 1071, 1077 (D.C. 1978) (D.C. Official Code § 16-710 "permits the trial court to grant probation only after it has imposed a sentence and suspended its execution"). The Youth Rehabilitation Act does. DC. Code § 24-903(a)(1) (the court "may suspend the imposition or execution of sentence and place the youth offender on probation"). Thus, in a Youth Act case, a sentence of ISS with supervised probation complies with the Guidelines in any box in which a suspended prison term [ESS] with probation would be a compliant sentence.

2. Section 3.8 has been added to the Guidelines Manual. It states that:

If the Voluntary Sentencing Guidelines applied to the defendant's sentence initially, they also apply to the defendant's sentence following revocation of his/her probation or suspended sentence. However, the Guidelines do not address and, therefore, offer no guidance to the court on whether or not to revoke a defendant's probation following an alleged probation violation.

If the court initially suspended some or all of the defendant's prison sentence (execution of sentence suspended - ESS) and subsequently revokes probation, the court can impose the original prison sentence or any lesser sentence permitted inside the original guideline box. The sentence imposed, including any credit for time served, cannot be less than the bottom of the original guideline range. For an ISS sentence, the court can impose any sentence permitted inside the original guideline box.

Section 3.4 describes how a probationary sentence is imposed at the initial sentencing hearing to be compliant with the Sentencing Guidelines. The court has four options:

- a. In a light gray (yellow) box, the court must impose a prison sentence within the range in the box and can suspend all of it (ESS all - probation).
- b. In a light gray (yellow) or dark gray (green) box, the court must impose a prison sentence within the range in the box and can suspend all but 6 months or less of it (ESS some - short split).
- c. In any box, the court must impose a sentence within the prison range in the box and can suspend a portion of it so that the time to be served initially is not less than the lower number in the box (ESS some - long split).
- d. In a light gray (yellow) box, the court may suspend imposition of sentence (ISS).

In all four cases, the judge can place the defendant on probation for up to five years. If the court later revokes probation, for an ESS sentence, it can impose the original prison sentence or any lesser sentence permitted in that box; for an ISS sentence, it can impose any sentence that is permitted in that box. To be compliant with the Guidelines, the court may not impose a prison sentence that is less than the bottom of the applicable range.

Example 1: At sentencing, the appropriate box for the defendant was 8B (10-28 months prison; split sentence or probation). The court imposed a sentence of 18 months imprisonment to be followed by three years of supervised release, suspended execution of the entire sentence and imposed a three-year term of probation. One year later, the court found the defendant had violated a condition of his probation and subsequently revoked probation. Following revocation, the court can order the defendant to serve the original sentence. Alternatively, the court may sentence the defendant to less than the original 18 months in prison, but cannot impose a compliant sentence of less than ten months in prison.

Example 2: At sentencing, the appropriate box for the defendant was 8B (10-28 months prison; split sentence, or probation). The court imposed a sentence of 18 months imprisonment to be followed by three years of supervised release, suspended execution of all but three months imprisonment, to be followed by two years of probation. After three months imprisonment, the defendant was released and began probation. One year later, the court found the defendant had violated a condition of his probation and revoked the probation. The court can order the defendant to serve the remainder of the imposed sentence, meaning the defendant would go back to prison for 15 months (18 months imposed minus three months already served). The defendant's effective sentence of 18 months (three months served initially plus 15 months served after revocation) is within the 10-28 month applicable range and is compliant. The court can resentence the defendant and impose a lower sentence; however the 'new' sentence must also be compliant with the guidelines. A 'new' sentence of ten months with credit for time served would mean the defendant would go back to prison for seven months. The effective ten-month sentence is still within the applicable range and is compliant. If the judge imposed a 'new' sentence of ten months and was silent as to credit for time served, the defendant would go back to prison for ten months. The effective 13-month sentence (ten months imposed at resentencing plus three months served initially) is within the applicable guideline range and is compliant. If the judge imposed a 'new' sentence of seven months with credit for time served, the defendant would go back to prison for four months (seven months imposed at resentencing minus three months already served). The seven-month effective sentence is below the applicable range and is therefore not compliant.

Chapter 4

1. Chapter 4 now states that "several 'Special Enhancements' do not follow [the standard enhancement] protocol."
2. A footnote has been added to Chapter 4 indicating that the general rule on enhancements "does not apply to the Offenses Committed During Release enhancement (D.C. Code § 23-1328). See Appendix H, Section IV for an explanation of how OCDR should be scored."

Chapter 7

The Commission created or modified the following definitions:

- 7.3 Compliant Sentence
The following sentence has been added to the end of the first paragraph: “Any sentence that is not a compliant sentence is deemed a ‘non-compliant’ sentence.”
- 7.7 Departure
The definition of “Departure Principle” has been changed to “Departure.” The definition now reads: “A departure, as enumerated in Chapter 5, permits a sentence outside of the appropriate grid box. A departure applied in accordance with Chapter 5 is a compliant sentence. A departure can be based on one or more of the aggravating or mitigating factors. . . .”
- 7.10 Event
The following sentences were added to the end of the definition of “event”:
“When an offense(s) crosses jurisdictional lines (e.g. from Maryland into the District), it may result in multiple cases. However, this should not change the analysis regarding whether the offense(s) constitutes a single or multiple events.”
- 7.19 New Beginnings or its Functional Equivalent
The definition of New Beginnings replaces the definition of Oak Hill. The definition replaces references to the former Cedar Knoll or Receiving Home facilities with a reference to the former Oak Hill facility.
- 7.22 Out-of-District Offense
The following definition has been added: “Out-of-District Offense - any state or local criminal offense outside of the District of Columbia, any federal offense or, subject to the special rules in § 2.2.10, any military or territorial offense.”

Chapter 9

1. In section 9.1, footnote 19 was modified to state: “If the court imposes a term of imprisonment greater than a year, the court must impose the term of supervised release fixed by the statute: 3 or 5 years depending on the maximum sentence for the offense. If the court imposes a prison term of one year or less, the court must designate the supervised release term, which may be up to 3 or 5 years depending on the maximum sentence for the offense.”
2. In section 9.4, the example is modified to incorporate the amended rule articulated in section 2.2.2.

Appendix A

1. Forgery and Uttering have been combined into “Forgery/Uttering.”
2. “Assault w/Significant Bodily Injury” has been added to the most common offenses listed in Master Group 8.
3. “Unlawful Poss. of a Firearm (prior felony)” has been added to the most common offenses listed in Master Group 7.

Appendix C and Appendix C-I

1. The abbreviation “^e” has been added to the legend of Appendix C and C-I. It applies to “offenses subject to a specific statutory enhancement. The abbreviation “^e” “means that the offense is subject to a statutory enhancement specific to the offense that raises the top of the guideline range. See Chapter 4 and Appendix H.”

Previously, offenses automatically subject to an enhancement were listed in Appendix C and C-I; however they were not assigned an Offense Severity Group. Using the new abbreviation, the following offenses are now assigned an Offense Severity Group:

- APO w/ deadly weapon - 2nd+ offense or prior felony - M 7^e
- Child Sex Abuse - 1^o Aggravated - M 3^e
- CPWL/CDW - 2nd+ offense or after felony conviction - M 8^e
- Firearm - in a Motor Vehicle Containing: Prior gun convict. or felony - M 8^e
- Identity Theft - 1^o against senior citizen - M 8^e
- Insurance Fraud - 2^o - \$1,000+2nd offense - M 9^e
- Molotov Cocktails - 2nd offense - M 9^e
- Molotov Cocktails - 3rd offense - M 9^e
- Aggravated Murder, 1^o - M 1^e
- Sex Abuse, 1^o Aggravated - M 2^e
- Sex Performance w/ Minors - 2nd + offense - M 8^e
- Stalking-Felony - if two or more qualifying convictions - M 9^e
- Unauthorized Use of a Motor Vehicle (UUV) - Private -Two or more UUV or Theft 1^o convictions - M 8^e

- Appendices C and C-I now include the following entry to account for the handling of OCDR:

Offense	D.C. Official Code	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (years)	Supervised Release (years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Offenses Committed During Release (felony) ¹	23-1328(a)(1)	M9 ²	5				Not < 1		

¹ OCDR (felony) is an enhancement, not a separate offense. However, it operates similarly to a separate offense. Therefore, the Guidelines treat it as if it were a separate offense when determining a defendant's applicable sentencing range in the instant case for which it was charged.

² OCDR (felony) is classified as a M9 offense only when it is a charge in the instant case. Because it is technically an enhancement, not a distinct separate offense, it should not be scored as part of a defendant's prior criminal history score.

Appendix H

- The Human Trafficking enhancement was added to H-I (Enhancements with Multipliers).
- The first degree Identity Theft Against a Senior Citizen enhancement was added to H-I.
- The Firearm, Presence in a Motor Vehicle Containing: Prior Gun Conviction or Felony enhancement was added to section H-II.
- The Unauthorized Use of a Vehicle - Two or more UUV or Theft -- First Degree Convictions enhancement was added to section H-II.
- The three strikes enhancements listed in section H-II, numbers 7 & 8, were removed because they were already appropriately listed in section H-III.
- Section H-III is now titled "Special Enhancements."
- A footnote was added to section H-III indicating that "if this enhancement applies, multiply the upper number in the box by 3, subject to the statutory maximum of 30 years. If multiplying the upper number by 3 yields a number greater than 30 years, then the top of the Guidelines box becomes 30 years.

Repeat Offender Provisions in section H-III are combined with the Repeat Offender Provision in section H-I.”

8. A footnote was added to the first-degree sexual abuse enhancement list in H-III stating that “if this enhancement applies, expand the box to the statutory maximum.”
9. Section IV has been added to Appendix H specifically to address the OCDR enhancement. The new section now contains the following entry:

Offenses Committed During Release (felony)	Scored as a M9 offense	D.C. Code § 23- 1328(a)(1)
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Note: While the Court of Appeals has determined that Offenses Committed During Release (OCDR) should be treated as a sentencing enhancement, *Tansimore v. United States*, 355 A.2d 799, 803 (D.C. 1973), it operates more like a separate offense and not like other enhancements covered by Chapter 4 and Appendix H of the Guidelines Manual. Unlike those enhancements, which operate to increase the top of the underlying Guidelines range, the Guidelines treat the enhancement as a separate offense, ranked in Master Group 9 with a minimum sentence of 1 year and a maximum sentence of 5 years. Additionally, unlike other enhancements, OCDR (felony) is exempt from the Guidelines rule that only one enhancement may apply to a count. OCDR (felony) may be applied in conjunction with one other applicable enhancement.

Note: The Guidelines do not cover Offenses Committed During Release (misdemeanor).

B. Offenses Ranked in 2012

- Arranging for a Sexual Contact with a Real or Fictitious Child
(§ 22-3010.02) Master Group 8
- Attempted Arranging for a Sexual Contact with a Real or Fictitious Child
(§§ 22-3010.02, 22-3018) Master Group 9

CHAPTER THREE

OVERVIEW OF DATA SOURCES AND COLLECTION PRACTICES

The Commission utilizes data from three sources to analyze sentencing trends and determine judicial compliance with the Guidelines: the Superior Court; CSOSA; and judges. The Superior Court provides the Commission with all offense, conviction, and sentencing related data. CSOSA is the Commission's source for offender criminal history information. The Commission sends departure letters to individual judges in order to receive additional or corrected information on felony cases identified by the Commission as non-compliant under the Guidelines.

For every felony case, The Commission merges data from the Superior Court and CSOSA using case numbers and police department identification numbers ("PDID"). The integrated data are then entered into the Commission's database and used for a variety of sentencing analyses. Departure letters are issued only when a specific felony case is identified as non-compliant. Outlined below is a short summary of these three data sources and collection practices.

I. Sentencing Data

In 2005, the Commission contracted with Cross Current Corporation to develop the Sentencing Guidelines Application System ("SGS") to streamline and automate the process through which the Commission receives sentencing data from Superior Court. The SGS is an independent, internet technology-based system that enables the Commission to capture information on every sentence imposed, as well as other sentencing-related data. The SGS also calculates the recommended guideline sentence. Access to the application is provided through the secure DC JUSTIS network, a data-sharing network operated by CJCC and used by the Commission and other criminal justice partner agencies.

In addition to the web application, the SGS has a web-based component that extracts information from Superior Court's Courtview system for use in the SGS environment via the JUSTIS database. The two triggers in the JUSTIS database that direct data to the SGS web service are: (1) a plea or verdict is entered, and (2) a sentence is imposed. This feature of the SGS provides a daily electronic transfer of sentencing data from the court to the Commission that is both timely and comprehensive. On a daily basis, the Commission reviews and verifies felony cases transferred from the court using official court documents as a measure of data quality control.

The initial SGS interface with JUSTIS was limited to new felony sentences imposed since the implementation of the interface in 2010. However, the Commission determined that historical conviction and sentencing information would enhance the SGS functionality and allow for more comprehensive research capabilities. To address these additional data needs, the Commission

created a trigger in JUSTIS to allow for a one-time transfer of all relevant felony cases sentenced by the D.C. Superior Court from January 16, 2006 to May 15, 2010. The new trigger transferred all historical felony sentencing information from the specified date, providing sufficient data to analyze various sentencing trends under the District's Voluntary Sentencing Guidelines.

The historic data transfer, combined with the daily transfer of sentencing data from the court, has enabled the Commission to develop a comprehensive sentencing database, from which it is possible to conduct sentencing related research and Guidelines compliance analysis.

II. Criminal History Data

Criminal history is one of the two primary factors used to determine the recommended Guidelines sentencing range for a case. CSOSA, at the request of the sentencing judge, prepares a Pre-Sentence Investigation report. As part of this process, CSOSA completes the Sentencing Guideline Form, which calculates a defendant's prior criminal history, including convictions within and outside of the District of Columbia. Prior felony and most misdemeanor convictions, as well as recent juvenile adjudications, are included in each defendant's CH score. The completed Sentencing Guideline Forms ("SGF") are forwarded to the Commission and are merged with the data from the Superior Court using PDID and case number to create integrated sentencing records in the agency database.

In late 2011, the Commission and CSOSA transitioned to a more efficient system of collecting and sharing criminal history data.⁷ Previously, the SGF used by CSOSA officers was a Microsoft Word document, which was emailed to the Commission for manual input into the Commission's database. This form was replaced with a new electronic SGF. The SGF is embedded with automated data quality programs that address many of the deficiencies of the prior word document form, such as rejecting an offense date that is prior to an offender's date of birth.

The new SGF was created using Microsoft InfoPath, software that is specifically designed for the creation of intelligent forms and efficient data collection. The InfoPath SGF incorporates an automated process to calculate, validate and correct certain data fields, which enhances the quality of the data. The SGF form was a significant improvement over the previous form. The validation and correction functionality of the form ensures that critical data points are entered in a consistent and uniform manner. The new form automatically performs the mathematical calculations necessary to determine an offender's criminal history score, eliminating common mathematical errors found in the current process.

⁷ Determining judicial compliance with the Sentencing Guidelines involves a comparison of the actual sentence imposed with the sentence recommended under the Guidelines. A sentence is compliant if it falls within the Guidelines' recommended sentence type and range. The Guidelines recommendations are based on the offense severity and the offender's criminal history.

The InfoPath form has also streamlined the Commission's utilization of the criminal history data. The data from the SGF form is automatically extracted and converted into an Excel spreadsheet and directly imported into the Commission's database. There is no need to manually enter data that was required with the previous form.

Although the SGF represents a more streamlined and efficient method of obtaining criminal history information, it is viewed as an interim solution. The Commission's ultimate goal is to collaborate with CSOSA to implement a fully automated electronic transfer of criminal history data from CSOSA to the Commission, thus eliminating the need for the Sentencing Guideline Form. The Commission and CSOSA are currently in discussions to identify the most appropriate method to achieve this goal.

III. Compliance Data

When a sentence imposed follows the Sentencing Guidelines' recommended sentence, the Commission deems it compliant. The Sentencing Guidelines grid (the Master Grid and the Drug Grid) is the first measure used in determining Guidelines compliance. The grids use the severity level of offense and the criminal history of the defendant to determine the recommended type of sentence as well as the recommended length of sentence. If a sentence is determined non-compliant using the Sentencing Guidelines grid, the sentence is flagged for further analysis. The Commission has established a five-step process to determine if a sentence is compliant after an initial designation of non-compliance:

Step One - Determine if the non-compliant count runs concurrently with any other counts.

If the counts are sentenced concurrently, determine if the concurrent sentences are compliant with the Guidelines and if the sentence imposed represents the longest sentence among all the concurrent counts.⁸ The Commission makes this distinction because the longest sentence imposed for concurrent counts determines the actual length of the sentence. Shorter concurrent counts are considered compliant when the longest count in that case is compliant. The Guidelines sentence remains non-compliant, if the longest count is non-compliant based on above rules, then the process moves to step two.

Step Two - Determine if the sentence imposed is the result of a departure from the Guidelines, an enhancement or due to the defendant receiving credit for time served.

⁸ The Guidelines forbid concurrent sentences in certain situations, such as multiple crimes of violence. *See* DCVSG § 6.1.

If the sentencing judge has selected an enumerated departure reason, the sentence is determined a compliant-departure sentence instead of a non-compliant sentence. If there is an enhancement, the applicable Guideline range expands upward and the Commission reassesses the sentence imposed to determine compliance. If the sentence incorporates credit for time served, the Commission will add the time credited and reassesses the sentence. If a departure principle is not cited, there is no applicable enhancement, and credit for time served does result in a compliant sentence, then process moves to step three.

Step Three - Determine if the sentence imposed is the result of one of the following: a Rule 11(e)(1)(C) plea bargain, a sentence resulting from a revocation of probation, or a plea or verdict prior to the implementation of the Guidelines on June 14, 2004.

If a sentence is the result of a Rule 11(e)(1)(C) plea, it is automatically marked as compliant. When the Guidelines were developed, the Commission made a policy decision to classify all Rule 11(e)(1)(C) sentences as compliant, because once the judge accepts the agreement, the judge must impose the sentence agreed to by the parties and is no longer subject to the Guideline recommendations. If the plea or verdict occurred before June 14, 2004, the sentence is marked compliant because the Guidelines are not applicable. Finally, if the sentence is a result of a probation revocation prior to 2012, the sentence is excluded in the compliance data.⁹ If none of the above conditions applies, then the process proceeds to step four.

Step Four - Verify the sentencing information with Superior Court.

Information is rechecked to verify that the non-compliant sentence was evaluated properly and that the information used for the evaluation is accurate. Official documents and information viewed through JUSTIS helps to verify the accuracy of the sentencing data, including offense of conviction and length of sentence imposed. If the sentenced imposed still remains non-compliant after information is re-verified, step five is triggered.

Step 5 - The Judge is contacted by letter to verify the sentence is non-compliant.

If a sentence still appears non-complaint after completing steps one through four, the Commission contacts the sentencing judge by letter, requesting verification confirming that the judge intended to impose a non-compliant sentence.

⁹ Beginning in 2012, probation revocations are reviewed under the Guidelines in the same manner as any felony sentence imposed.

IV. Database Changes

As briefly discussed in Chapter One, in FY 2013, the Commission began development of a new data system to ensure continued data transfer capabilities with the Superior Court, which serves as the source of all sentencing-related data. The Court is changing the technical manner in which it shares data with recipient criminal justice agencies, and the Commission's current data system is not designed to accept the data in this new format. Under the Court's new IJIS 12.1 outbound data system, an increased number of data elements will be available through the District's JUSTIS system to recipient agencies.

The Commission has contracted with Blue Print Consulting to develop and implement a new data system that will enhance the agency's research and analysis capabilities, as well as reduce the time the agency spends on manual data cleaning and organizational activities. Additionally, the new data system will allow for data modeling to simulate the impact of changes in sentencing policy, as well as automated compliance computation. The development of the data system began January 10, 2013. Through a series of intermittent releases, the new system is scheduled to replicate and replace the work of the legacy system in June 2013 and be fully functional by the end of 2013.

V. Summary

The Commission has improved its data processing and data retrieval processes over the past year and will continue to identify and implement processes and procedures designed to improve access to sentencing data and the overall quality of the data used for analysis of sentencing practices in the District. Ensuring the validity and reliability of the data will enable the Commission to monitor the application of the Guidelines more effectively and identify specific areas for potential modification or revision. The new database being developed will improve the Commission's efficiency and enable more in-depth analysis of the District's sentencing practices.

CHAPTER FOUR

SENTENCING DATA AND ANALYSIS

This chapter includes an analysis of felony sentences imposed in the District of Columbia during calendar year 2012. The analysis examines sentencing patterns by sentence type, offense type, and offender characteristics to provide an overview of both the types and frequency of sentences imposed under the Guidelines. Findings from 2011 and 2012 are also compared to identify potential sentencing trends and changes in sentencing practices.

The data used in the analysis include felony convictions sentenced by the Superior Court from January 1, 2012 to December 31, 2012, irrespective of the date of plea or verdict. Data from the 2011 calendar year is also included for comparison purposes.

When analyzing sentencing patterns, it is important to examine sentences imposed at both the case and count level. Because a defendant may be sentenced on multiple counts in a single case, the number of counts exceeds the number of cases. Count level analysis provides an overview of criminal activity resulting in convictions and the sentences arising from a single offense. When a case-level analysis is undertaken, it is based on the count within the case receiving the longest sentence.

I. Sentencing Structure

Sentences imposed under the Sentencing Guidelines are based on two grids: Master Grid for non-drug offenses and Drug Grid for drug offenses.¹⁰ These grids have two dimensions: the Criminal History Score (“CH score”) of the offender and the severity of the offense for which a sentence is imposed. There are five classifications of CH scores (A to E)¹¹ on the horizontal axis of the grids in which an offender may be classified. In order to determine severity of offense, the grid classifies offenses into nine Offense Severity Groups (“OSGs”) represented on the vertical axis of the Master Grid, which decrease in severity from M1 to M9, and four OSGs from D1 to D4 on the Drug Grid. All felonies are ranked into OSGs according to the level of seriousness associated with the respective offense. The intersection of an offender’s CH score on the horizontal axis and OSG on the vertical axis determines the recommended sentencing option: prison only, split,¹² or probation, and identifies the range of months for prison sentences.

¹⁰ See Appendices A and B for the Master Grid and the Drug Grid.

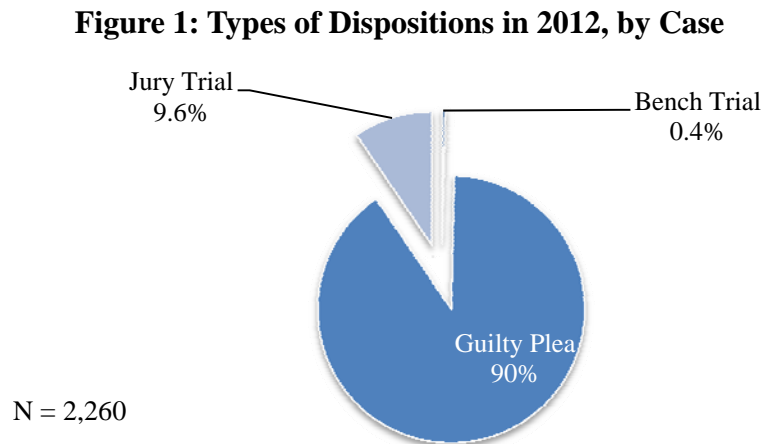
¹¹ The classifications of CH scores are as follows: A— 0 to 1/2, B— ¾ to 1¾, C— 2 to 3¾, D— 4 to 5¾, and E— 6+.

¹² A short-split sentence is a prison sentence in which the court suspends execution of all but six months or less -- but not all -- of that sentence, and imposes up to five years’ probation to follow the portion of the prison term to be served. A long split sentence is one where the court imposes a prison sentence and suspends execution of some of the sentence but requires the defendant serve longer than six months in prison and then places the defendant on

II. Sentences Imposed in 2012

In 2012, the Commission recorded 2,260 felony cases sentenced, resulting in 3,384 felony counts sentenced. Of the 2,260 felony cases, there were 439 multiple count cases and 1,821 single count cases. The total number of cases and counts sentenced in 2012 decreased by 595 cases and 575 counts from the previous year.¹³

Figure 1 shows the percentage of cases resolved by guilty plea, jury trial, and bench trial.



As in previous years, the vast majority of all felony cases (90%) were disposed of through guilty pleas. Of the remaining cases, 9.6% of all convictions resulted from jury trials, and 0.4% resulted from bench trials.

A. Sentence Type

Under the Guidelines, there are three types of felony sentences that can be imposed: prison, split,¹⁴ and probation. Figures 2a and 2b show that prison (50.2% by case and 62.2% by count) was the most frequent sentence type, followed by probation (28.8% by case and 21.5% by count) and then split sentences (21% by case and 16.3% by count). Among split sentences, by both case and count, 77% were short splits and 23% were long splits.

probation for a period of up to five years. A long split sentence is compliant under the Guidelines in every box if the prison term to be served is at least as long as the minimum prison term in that box.

¹³ In addition to a general decline in the total number of sentences imposed in 2012, the Commission's improved data quality also impacted the numbers. As the Commission's data verification process has become increasingly efficient over time, the Commission was able to identify more misdemeanors that were initially marked as felonies. This partially explains the decrease in felony counts and cases reported to the Commission in 2012.

¹⁴ For purposes of this report, short and long split sentences are both categorized as split sentences.

Figure 2a: Sentence Type by Case

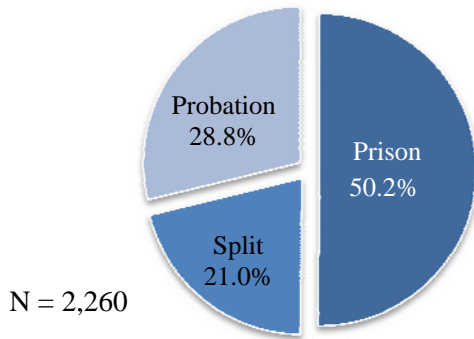
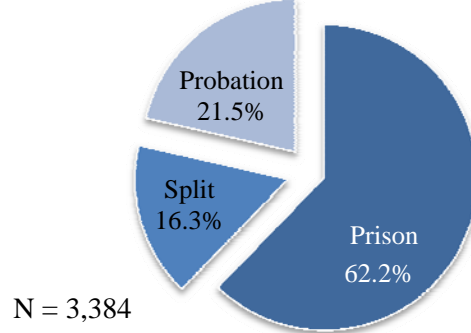


Figure 2b: Sentence Type by Count



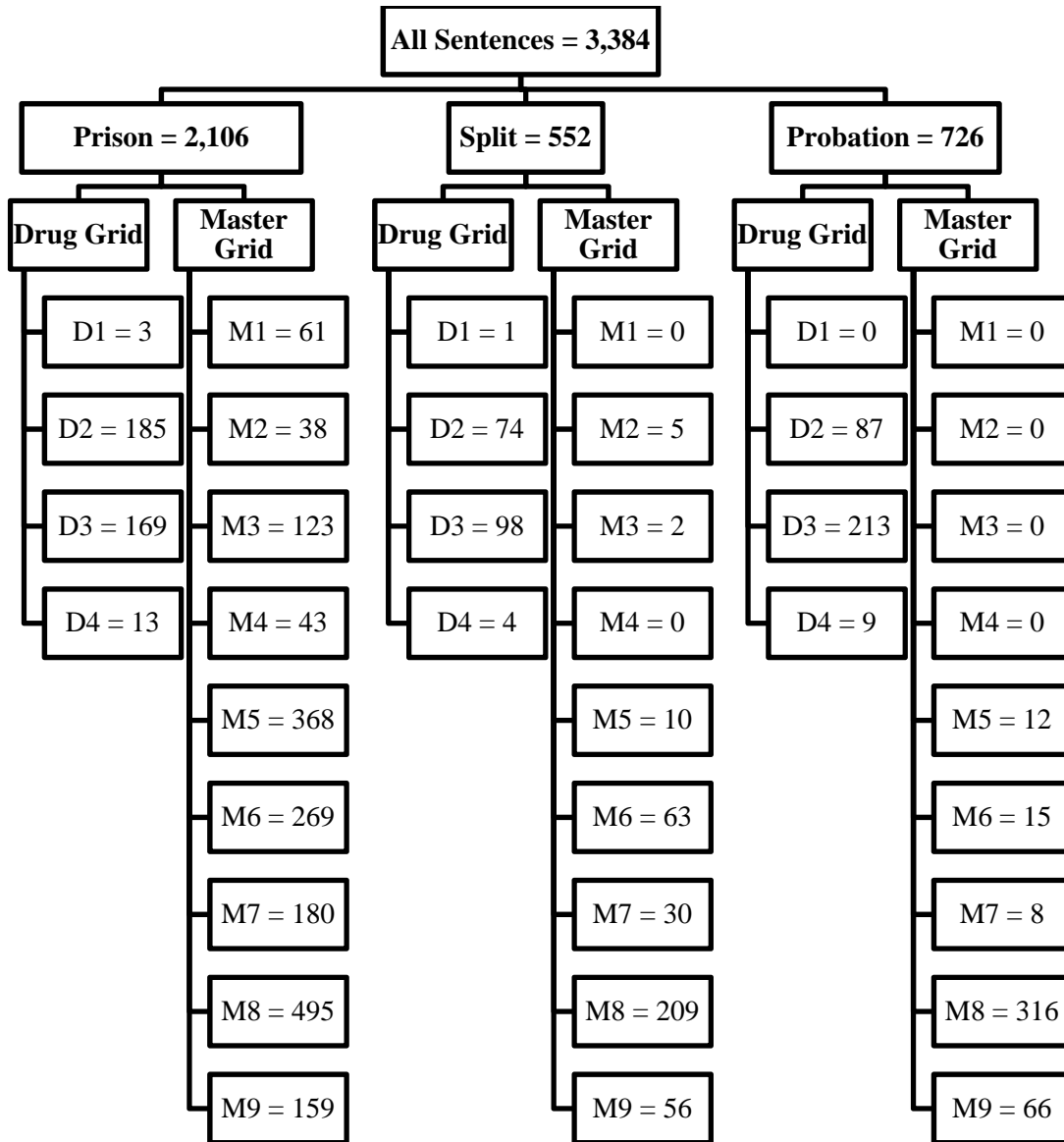
The high rate of prison sentences is consistent with the structure of the Guidelines, which allow for a prison sentence to be imposed for any felony conviction.¹⁵ Short split or probation sentences can only be imposed in certain grid boxes. The latter two sentence types are generally reserved as options for relatively less severe offenses and for offenders with limited criminal history. Furthermore, some serious and violent offenses are also subject to mandatory minimum sentencing provisions that require a specific prison term.

¹⁵ See p.53, Chapter Five, for a detailed explanation of the structure of the Guidelines.

B. Drug and Non-Drug Offenses

Figure 3 shows the distribution of sentences imposed by count for each OSG on the Master Grid and the Drug Grid.

Figure 3: Sentence Type by Offense Severity Groups



In 2012, the highest number of felony sentences imposed was in OSG M8 and D3, accounting for 43.8% of the total number of sentences by count. Group M8 alone represented the highest percentage of all sentences for the year (26.5%), and it also accounted for the broadest distribution of sentences across all three sentence types.

Similar to previous years, the most prevalent sentence type in 2012 was prison. However compared to 2011, the overall rate of prison sentences for felony offenses fell by approximately four percentage points by case and two percentage points by count. This decline may result from a change in the types of convictions sentenced this year. In 2012, there was an increase in the percentage of attempted robbery convictions in M8 and possession with intent to distribute or distribution of a controlled substance (“PWID+Dist”) in D3 and D4. Since these are probation eligible offenses, there was a corresponding decrease in prison sentences and an increase in probation sentences imposed.

Sentences imposed for attempted robberies increased by approximately 50 percentage points by case and 68 percentage points by count in 2012 when compared to 2011. Approximately 47% of attempted robberies, by case and by count, were sentenced to a term of probation. There was a total decrease in the number of all drug offenses in 2012, but the percentage of PWID+Dist offenses in D3 and D4 increased by approximately 13 percentage points. The percentage increase in low level robbery and drug offenses increased the percentage of probation and split sentences in 2012, and decreased the percentage of prison sentences from the previous year.¹⁶ Offenders sentenced for PWID+Dist in D3 and D4 and attempted robberies in M8 also had relatively low CH scores (1.8 and 1.2, respectively), which made it more likely they would receive a probation sentence.

There were also structural changes to the Drug Grid that went into effect as of June 15, 2011. A new Drug Group (D4) was added to the Drug Grid, which included the least severe drug offenses. These offenses involved attempted drug offenses found in D3. All grid boxes in this severity group are designated as either short split eligible or probation eligible. Depending on the severity of offense, determined by statutory maximum prison sentences, drug offenses for non-schedule I and II drugs were moved from D2 to D3. These changes to the Drug Grid also appear to have contributed to the change in sentencing patterns for drug offenses.¹⁷

C. Classification of Offense Categories

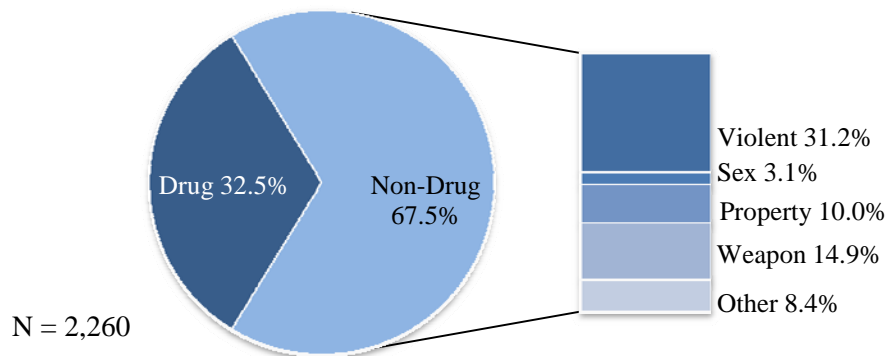
Similar to the structure of the Guidelines, all felony offenses reported to the Commission are classified into drug and non-drug offense categories. The non-drug offenses are further subdivided into five offense categories for more detailed analysis of the offenses. Listed below are the offense categories and the most common offenses within each category:

¹⁶ OSGs decrease in severity from M1 to M9 for non-drug offenses, and from D1 to D4 for drug offenses.

¹⁷ See p. 62 in Chapter Five “Structural Changes to the Guidelines” for further analysis on these changes. Although the changes in the Drug Grid were made in mid-2011, the full impact of the changes was not felt until later in that year and throughout 2012.

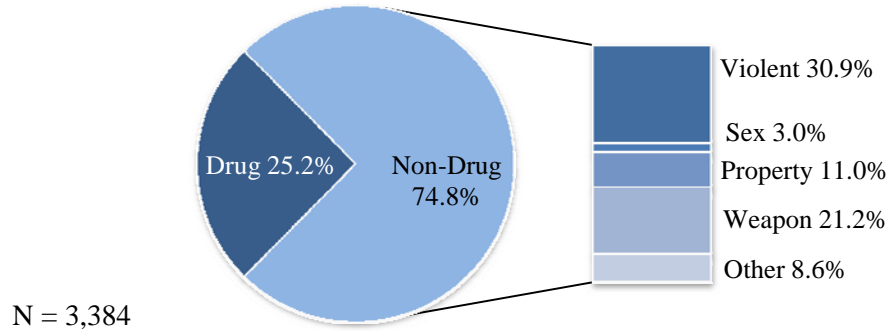
- Drug offenses: distribution or possession with intent to distribute a controlled substance; attempted distribution or attempted possession with intent to distribute a controlled substance; and drug offenses while armed.
- Non-Drug offenses:
 - Violent offenses: first and second degree murder, second degree murder, armed and unarmed robbery, assault with a deadly weapon, aggravated assault, carjacking and kidnapping;
 - Sex offenses: all degrees of sex abuse, child sex abuse, and prostitution-related crimes;
 - Property offenses: arson, first degree burglary, second degree burglary, first degree theft, felony receiving stolen property, unauthorized use of a vehicle, fraud, and forgery;
 - Weapon offenses: carrying a pistol without a license, unlawful possession of a firearm (felon in possession of a firearm), and possession of a firearm during a crime of violence (“PFDCV”)¹⁸; and
 - Other offenses: escape, fleeing law enforcement, obstruction of justice, and bail reform act (“BRA”) violations.

Figure 4a: Offense Type, By Case



¹⁸ A PFDCV conviction has a 60-month mandatory minimum prison sentence. Because the Guidelines take mandatory minimums into account, sentences imposed for PFDCV increase the compliance rate as well as the incarceration rate for Weapons offenses. Among all sentences imposed by count for Weapons offenses, 30% were for PFDCV.

Figure 4b: Offense Type, By Count



As shown in Figure 4a, drug offenses accounted for the largest offense category by case. However, Figure 4b shows that by count, violent offenses exceeded drug offenses. Non-drug cases are more likely to be multiple count cases and contain a higher number of counts than found in multiple count drug cases. Sex offenses were the least common offense type by case and count, accounting for only about 3% of all felony offenses.

Although drug cases were again the largest percentage of all cases sentenced in 2012, when compared to the preceding year, drug offenses decreased by approximately eight percentage points by both case and count. By comparison, there was a corresponding increase in the percentage of violent offenses in 2012 (31.2% by case and 30.9% by count) when compared to 2011 (22.8% by case and 25.2% by count). This is in part accounted for by the increase in the percentage of sentences imposed for robbery offenses.¹⁹ Robbery offenses, as a percentage of all sentences imposed in 2012, increased from 9.8% in 2011 to 16.9% in 2012 by case and 9.3% in 2011 to 13.4% in 2012 by count.²⁰ As stated previously,²¹ attempted robberies account for a large percentage of this increase. This corresponds to the District-wide increase in arrests²² for robbery, which showed a year-to-year increase of approximately 30% by March 2012.²³

¹⁹ Robberies include four distinct offenses: armed robbery, attempted armed robbery, robbery, and attempted robbery.

²⁰ See “Robbery Offenses” under “Top Five Offenses” in Section IV, p.47 for a more detailed analysis.

²¹ See “Drug and Non-Drug Offenses,” p.33.

²² All arrests for robbery might not be sentenced for the same crime, as offenders might plead down to another crime for which they are sentenced. Like other offenses, arrests for robbery do not directly correlate to convictions for robbery. This explains the difference in figures.

²³ Clarence Williams, *D.C. Police Scramble to Counter Rising Number of Robberies*, WASH. POST, Mar. 19, 2012. The article relied on data from Metropolitan Police Department’s (MPD) D.C. Crime Mapping application. The application was down while preparing this report.

D. Type of Sentence Imposed for Drug and Non-Drug Offenses

1. Prison Sentences

The data presented in Figures 5a and 5b show that prison sentences were imposed more frequently for non-drug offenses (74.2% by case and 82.4% by count) than for drug offenses (25.8% by case and 17.6% by count). This finding is consistent with the pattern in 2011.

Figure 5a: Drug and Non-Drug Prison Sentences, by Case

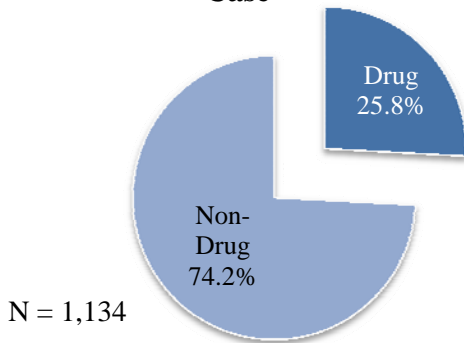
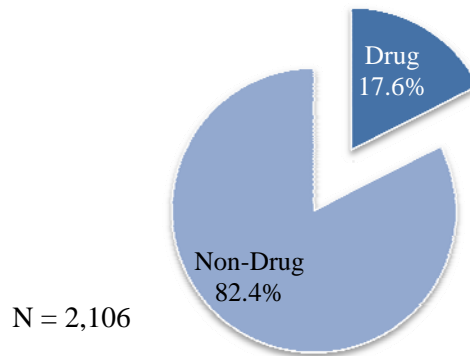


Figure 5b: Drug and Non-Drug Prison Sentences, by Count



Defendants sentenced for non-drug offenses, particularly violent offenses, were sentenced to prison more frequently than those sentenced for drug offenses. The rate of prison sentences for violent offenses was 57.8% by case and 70.3% by count, while the rate for drug offenses was 40% by case and 45% by count. Since the average CH score of violent (1.5) and drug (2.0) offenders was roughly comparable, the difference in sentences imposed for violent and drug offenses can be explained by the offense severity group. The high rate of prison sentences for non-drug offenses is not surprising given that violent offenses are generally located in OSGs that designate a prison sentence under the Guidelines, as opposed to drug offenses, for which 50% of the grid boxes are probation eligible. When compared to 2011, there was an overall decrease in the percentage of prison sentences imposed for a drug offense. As stated earlier, this decrease might partially be due to the increase in drug offenses in D3 and D4, for which a probation sentence was more likely to be imposed.²⁴

²⁴ See “Drug and Non-Drug Offenses”, p. 33.

2. Split Sentences

The percentage of split sentences imposed for drug and non-drug offenses was comparable by both case and count. This can be seen in Figures 6a to 6d.

Figure 6a: Percentage of Split Sentences Among Drug Cases

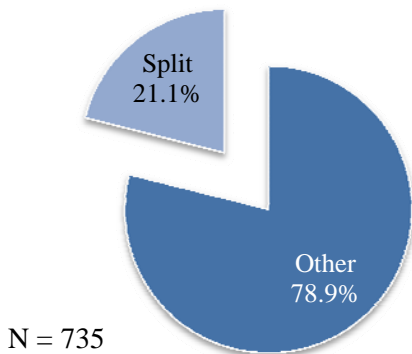


Figure 6b: Percentage of Split Sentences Among Non-Drug Cases

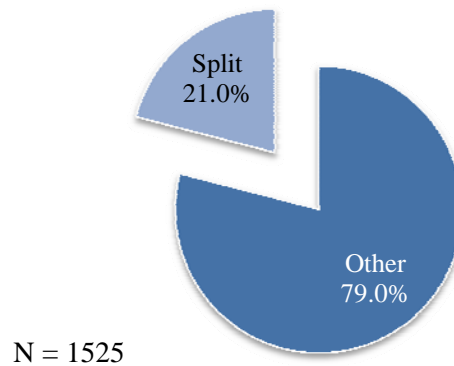


Figure 6c: Percentage of Split Sentences Among Drug Counts

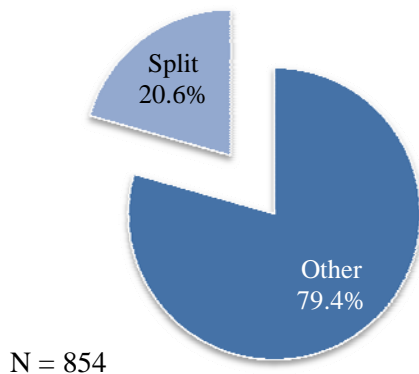
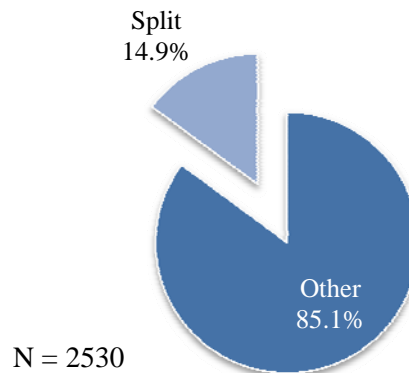


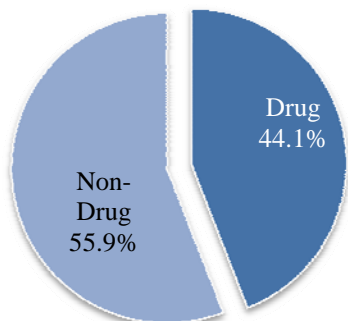
Figure 6d: Percentage of Split Sentences Among Non-Drug Counts



By case, 21% of sentences imposed for drug and non-drug offenses were split sentences. By count, split sentences were more common among drug offenses (20.6%) than for non-drug offenses (14.9%).

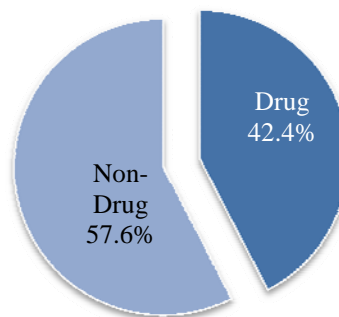
3. Probation Sentences

Figure 7a: Drug and Non-Drug Probation Sentences, by Case



N = 651

Figure 7b: Drug and Non-Drug Probation Sentences, by Count



N = 726

Probation sentences exhibit a distinctly different pattern from prison or split sentences. Figures 7a and 7b reveal that the difference between the percentage of drug and non-drug probation rates was considerably smaller than prison or split sentences. Drug offenders were also more likely to be sentenced to probation than any other sentence type. Similarly, when drug and non-drug offenses are divided into individual offense categories – drug, violent, sex, property, weapon, and other – the probation rate for drug offenses vastly exceeded that of any other single non-drug offense category. Since the structure of the Drug Grid allows for the imposition of a term of probation in more grid boxes than the Master Grid,²⁵ a higher percentage of drug offenses receive a term of probation.

However, similar to prison and split sentences, probation was imposed more often in all non-drug offenses than all drug offenses. This finding is in contrast to 2011, when probation was imposed more often for all drug offenses than all non-drug offenses. Like other comparisons to the previous year, the finding may be linked to the District-wide increase in non-drug offenses, particularly attempted robbery, which received a term of probation.²⁶ The probation rate for attempted robberies, which formed the majority of all robbery offenses, increased from 25.4% in 2011 to 46.8% in 2012 by count and 26.9% in 2011 to 48.6% in 2012 by case.

E. Type of Sentence Imposed across Offense Categories

Figures 8a and 8b examine the type of sentence imposed for the different offense categories by case and count, respectively.

²⁵ Ten out of 20 grid boxes in the Drug Grid are probation eligible, as opposed to only six out of 45 grid boxes in the Master Grid.

²⁶ See “Drug and Non-Drug Offenses,” p.34 for a more detailed discussion regarding the increase in attempted robberies.

Figure 8a: Sentence Type Imposed on Offense Categories, by Case

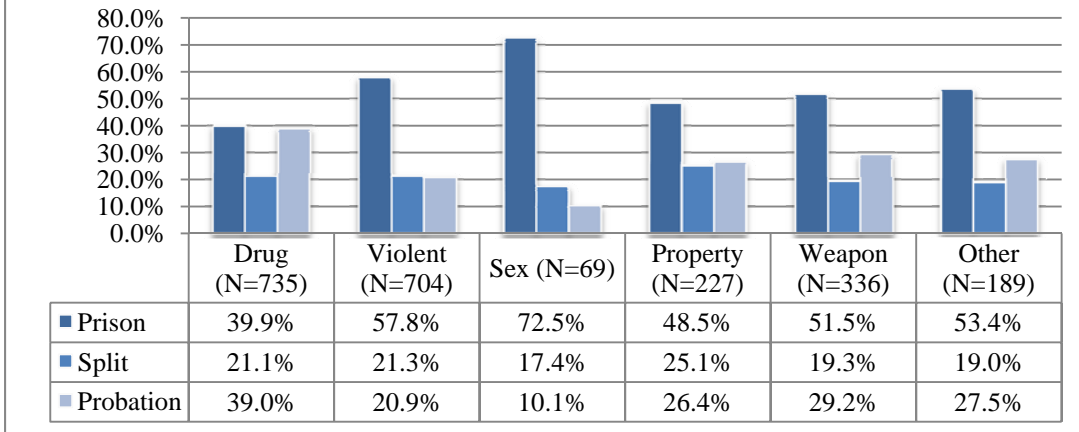
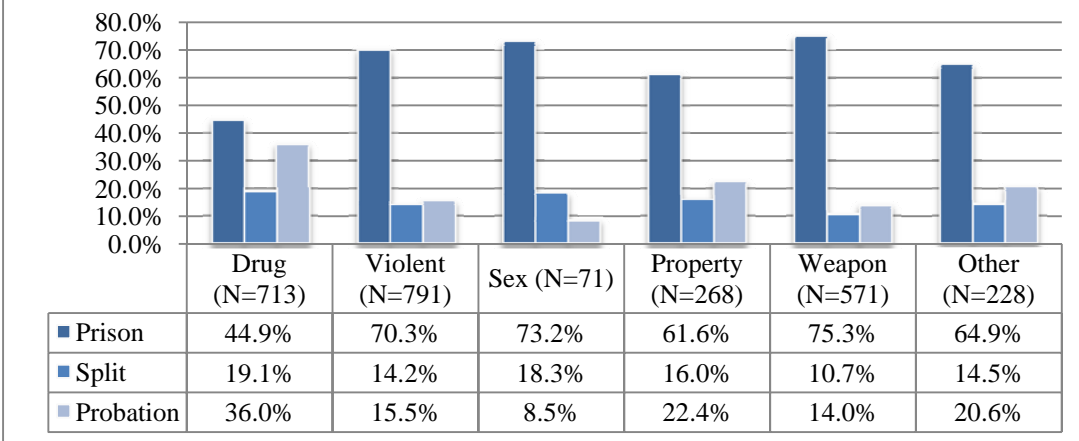


Figure 8b: Sentence Type Imposed on Offense Categories, by Count



Prison was the most frequently imposed sentence type across all offense categories. As indicated earlier, the high rate of prison sentences is partially attributable to the fact that the Guidelines allow for the imposition of a prison sentence in all grid boxes. Another factor that affects sentencing is the CH score of offenders. The average CH score of offenders sentenced to prison (2.6) was much higher than that of offenders sentenced to a term of probation (0.7). The rate of split sentences imposed for each offense category ranged from 10% to 25%, suggesting that the likelihood of a split sentence being imposed for all offense types did not vary as much as other sentence types, when holding criminal history constant. When considering probation sentences, offenders sentenced for violent and sex offenses by case had the lowest probability of receiving a probation sentence, while drug offenders had the highest probability. When comparing the average CH score of offenders by offense category, the average CH score for all offense categories ranged between 1.5 and 2.0. The narrow range of average CH scores for all offense categories suggests that the difference in sentencing for different offenses is primarily a function

of the offense severity. Given that violent and sex offenses are generally ranked higher on the Master Grid, these offenses are more likely to receive a prison sentence and the least likely to be sentenced to a term of probation.

When examining individual offense categories, there were notable changes in sentencing patterns compared to 2011. The rate of prison sentences imposed for violent offenses decreased by 14.4 percentage points by case and 10 percentage points by count while the probation rate increased by 10.5 percentage points by case and eight percentage points by count. This finding reflects the impact of the increase in attempted robberies (M8) which increased by approximately 50 percentage points by case 68 percentage points by count in 2012. Approximately 47% of attempted robberies, by case and count, were sentenced to a term of probation. The lower OSGs, in which attempted robberies are ranked, in combination with the low average CH scores of offenders sentenced for attempted robberies, contribute to the imposition of a probation sentence for attempted robberies.

The decrease in the percentage of sentences imposed for assault with a dangerous weapon (ADW) is another factor that may have contributed to the decrease in the rate of prison sentences among violent offenses. ADW is a M6 offense for which four of the five grid boxes are prison only boxes, with only one box recommending a short split sentence. The percentage of sentences imposed for ADW decreased by approximately 30 percentage points by both case and count from 2011 to 2012. Since ADW is ranked relatively high on the Master Grid, the decrease in the percentage of sentences for the offense is likely to have contributed to the overall decrease in the rate of prison sentences imposed for violent offenses as well.

F. Type of Sentence Imposed across Drug Types

Table 1 below shows the distribution of prison, split, and probation sentences imposed on the various drug types identified.

Sentence Type	Cocaine		Heroin		Marijuana		PCP ²⁷		Other	
	Case (N=435)	Count (N=497)	Case (N=74)	Count (N=88)	Case (N=37)	Count (N=51)	Case (N=154)	Count (N=177)	Case (N=35)	Count (N=41)
Prison	42.5%	44.5%	56.8%	60.2%	16.2%	29.4%	28.6%	34.5%	45.7%	48.8%
Split	19.1%	19.3%	13.5%	12.5%	29.7%	23.5%	27.9%	27.1%	22.9%	22.0%
Probation	38.4%	36.2%	29.7%	27.3%	54.1%	47.1%	43.5%	38.4%	31.4%	29.3%
Total	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

²⁷ PCP stands for phencyclidine. It includes all PCP offenses. Since PWID+Dist PCP and possession of liquid PCP offenses fall in different OSGs, PCP offenses under the Guidelines have a wide range of sentencing options.

In 2012, as in 2011, drug offenders were sentenced most frequently for cocaine²⁸ offenses. Approximately 25% of all drug offenses, by count and case, involved cocaine. The average CH score for cocaine offenders was consistent with that of the overall drug offender population (2.0) and an average age of 37 years. Cocaine offenses are ranked higher and treated as a more serious offense under the Guidelines than Schedule III, IV, or V drug offenses, thus cocaine offenders are more likely to receive a prison sentence than offenders convicted of marijuana offenses.

Among all drug types, heroin offenders had the highest rate of prison sentences (56.8% by case and 60.2% by count). Like cocaine, heroin is also a Schedule I narcotic. The higher rate of prison sentences is partially a function of the heroin defendants' higher average CH score (3.0) as compared to the average CH score of all drug offenders (2.0). Since an offender's CH score has a direct impact on the recommended sentence under the Guidelines, heroin offenders are frequently sentenced to prison. Heroin offenders also tend to be older, with an average age of 45 years compared to 37 years for cocaine offenders. The addictive nature of heroin paired with the long criminal histories and the high average age of offenders suggest that it is unlikely this population will mature out of their heroin use.

Conversely, marijuana offenses evidenced the highest rate of probation. Unlike cocaine and heroin, marijuana is a Schedule III drug. More than 45% of all offenders sentenced for marijuana, cases and counts, received a term of probation. A majority (88.2%) of marijuana offenders were sentenced in D3, where three out of the five grid boxes are probation eligible. This offender group had an average age of 33 years, a median of 31 years, and a mode of 30 years, which reflects a lower age than offenders sentenced for cocaine or heroin. They also had a limited CH score of 1.8.

Similar to marijuana, the rate of probation for PCP offenses also exceeded the rate of prison sentences for PCP offenses. This can be attributed to the fact that the majority (70.1%) of PCP offenses in 2012 involved the possession of liquid PCP or attempted possession of liquid PCP. Although PCP is a schedule II narcotic/abusive drug,²⁹ convictions for possession of liquid PCP are treated differently from PWID+Dist PCP convictions and ranked on a lower OSG under the Guidelines. Possession of liquid PCP is the only drug possession offense classified as a felony in the District. Possession of any other drug in the District is classified as a misdemeanor offense, and thus not sentenced under the Guidelines. Possession of liquid PCP is ranked in OSG D3 and attempted Possession of Liquid PCP is ranked in D4. Of the ten grid boxes available on D3 and D4, seven are probation eligible and two are short split eligible, with only one box reflecting a prison only sentence. Like marijuana convictions, given the structure of the Drug Grid, among

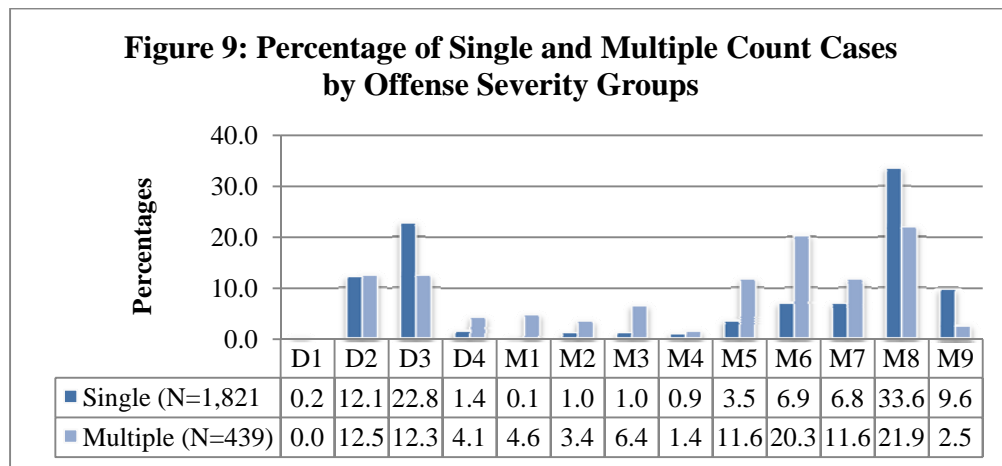
²⁸ Cocaine offenses also include crack cocaine offenses, which form a significant portion of cocaine offenses reported.

²⁹ Under the Guidelines, convictions for PWID+Dist of a Schedule I or II Abusive/Dangerous Drug are treated more severely than other unarmed felony drug convictions.

offenders sentenced for possession or attempted possession of liquid PCP, probation was the most common sentence type.

G. Comparison of Single and Multiple Count Cases

Of the 2,260 cases sentenced in 2012, 1,821 were single count cases and 439 were multiple count cases. As shown in Figure 9, offenses from OSGs D3 and M8 (offense severity levels representing less serious offenses) accounted for 56% of all single count cases. The primary offense types sentenced in these OSGs include PWID+Dist (D3) and attempted robbery (M8). Drug offenses were the primary offense type for single count cases (39%), with most of these representing a guilty plea to one count of a drug felony. Of all single count drug cases, 93.7% were the result of guilty pleas. The data suggest that single count cases frequently involve sentences for less violent and serious offenses.



As the figure above presents, multiple count cases generally involved offenses of greater severity that were ranked higher on both the Master Grid and the Drug Grid. This may contribute to the high rate of prison sentences among multiple count cases (75%) as compared to single count cases (45%). Weapons offenses (34%) dominated multiple count cases. Multiple count weapons offenses most frequently included Carrying a Pistol (CP) (33%) or Possession of a Firearm during a Crime of Violence (PFDCV) (20%). The three most common offenses with which a multiple count weapons offense was paired included: (1) other weapons offenses such as CP, UPF, or PFDCV; (2) PWID+Dist; and (3) assault, respectively.

III. 2012 Felony Sentencing Demographics: Gender, Race, and Age of Offenders

In 2012, 2,154 offenders were sentenced for 2,260 felony cases within the District. Of that total, 101 offenders were sentenced in more than one felony case during the calendar year.³⁰

Listed in Table 2 is a summary of offender demographics by offense categories, which provides an overview of gender, race and age distributions.

Table 2: Offender Demographics by Offense Categories

Offense Type	No. of Cases	Gender		Race			Mean Age
		Female (N=218) (%)	Male (N=1904) (%)	Black (N=1992) (%)	White (N=16) (%)	Other (N=94) (%)	
Drug	735	43.1	31.9	33.8	23.5	20.2	36.74
Non-Drug	1,525	56.9	68.1	66.2	76.5	79.8	28.49
Total	2,260	100	100	100	100	100	31.21
Non-Drug Offenses		N = 124	N = 1296	N=1318	N=52	N=75	N=1445
Violent	704	46.8	47.7	48.0	38.5	41.3	27.01
Sex	69	3.2	4.7	3.8	13.5	12.0	33.58
Property	227	25.8	13.6	14.1	23.1	22.7	29.63
Weapon	336	6.5	23.9	23.4	9.6	14.7	28.33
Other	189	17.7	10.1	10.7	15.3	9.3	31.62
Total	1,525	100.0	100.0	100.0	100.0	100.0	28.49
Drug		N=94	N=608	N=674	N=16	N=19	N=709
PWID+Dist	478	45.7	69.1	65.7	78.9	56.3	34.69
While Armed	4	0	0.7	0.6	0.0	0.0	22.75
Attempt	253	54.3	30.2	33.7	21.1	43.7	41.00
Total	735	100.0	100.0	100.0	100.0	100.0	36.74

A. Gender and Race of Offenders

Consistent with previous years' findings, males formed the vast majority of all offenders sentenced for felony offenses in 2012 (89.7%).³¹ Black offenders constituted 92.4% of the offender population, Whites (3.2%) and the "Other"³² category made up 4.4%, which is also consistent with the prior year's findings.³³

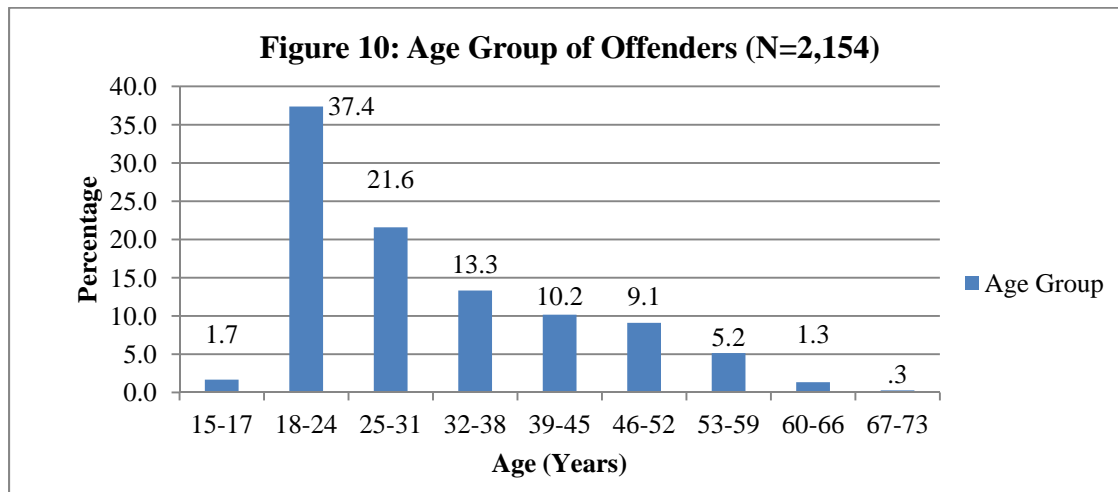
³⁰ Individual offenders are identified by the Metropolitan Police Department Identification number (PDID) for the purpose of this analysis.

³¹ There were 32 offenders whose gender information was missing.

³² The "Other" category includes Asians and Hispanics.

³³ There were three offenders whose race information were missing and not included in this analysis.

B. Age of Offenders³⁴



The highest percentage of offenders fell in the 18 to 24 age group, with only six offenders older than 67 years of age. There were 36 offenders (1.8%) between the ages of 15 and 17³⁵ who were sentenced as adults. The average age of all offenders was 31 years, the median 28 years, and the mode 18 years. These findings are consistent with the age distribution reported in 2011.

C. Offender Demographics by Type of Sentence Imposed

1. Gender of Offenders

Similar to previous years, males represented approximately 90% of all offenders sentenced in 2012. Males accounted for 93.9% of all offenders who were sentenced to prison and 80.6% of those sentenced to probation. Females accounted for only 4.6% of offenders sentenced to prison, but 17.5% of those who received probation.

³⁴ The age of each offender refers to their age at the time the offense was committed.

³⁵ There were no 15 year olds sentenced as adults in 2012.

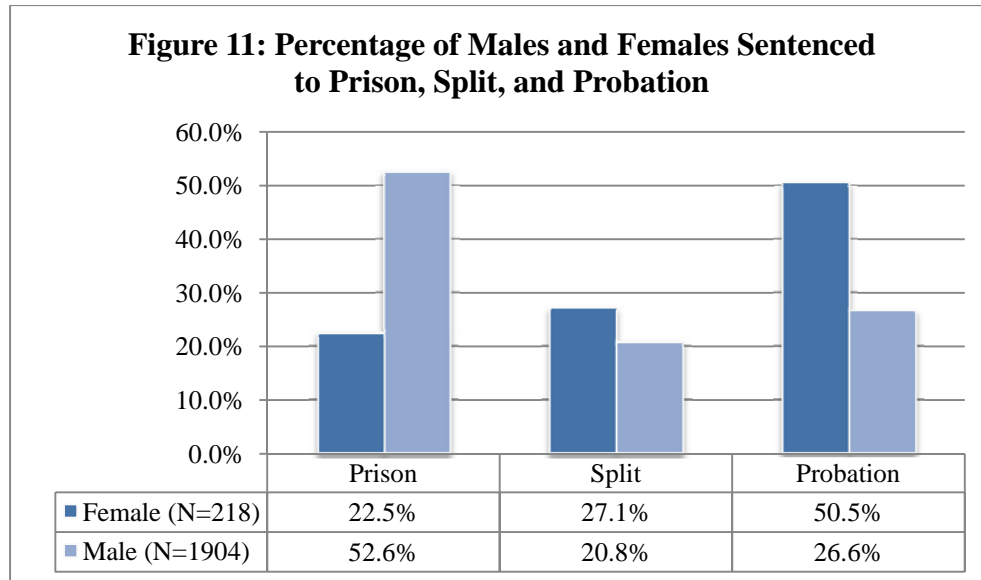


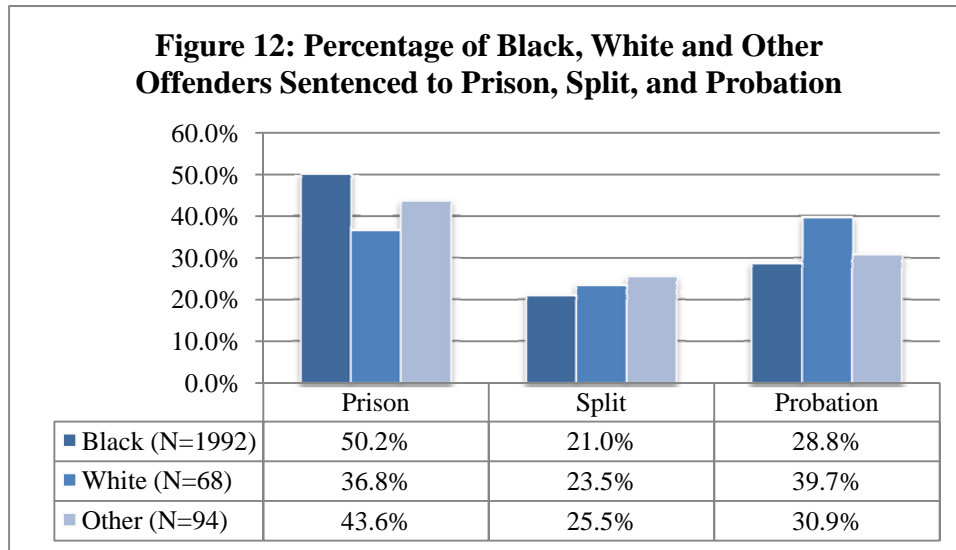
Figure 11 displays the types of sentences imposed by gender. The rate of prison sentences imposed was highest among males (52.6%), while females demonstrated the highest rate of probation at 50.5%. When examining split sentences, the difference between the percentage of males and females receiving a split sentence was only 6.3 percentage points. The average CH score for males (1.8) was also higher than that for females (1.0). These findings indicate that males were more likely to receive a prison sentence; females were more likely to receive a term of probation; while both were almost equally likely to receive a split sentence, if offense severity is held constant.

The differing rates of probation and prison among females and males are partially attributable to the nature of offenses for which they are sentenced. Females were more likely to be sentenced for drug offenses, whereas males were more likely to be sentenced for a non-drug offense. A term of probation was imposed for more than 40% of offenders sentenced for drug offenses in 2012. By contrast, a prison sentence was imposed for approximately 60% of non-drug offenses. Females also had a low average CH score (0.9) compared to males (1.8), contributing to the higher probation rate among females.

The 2012 rate of prison sentences among females (22.5%), reported in Figure 11, declined from 34.4% in 2011. Since females are sentenced more often for a drug offense, the decline in the rate of prison sentences among females may be due to the increase in the percentage of sentences imposed for drug offenses in lower OSGs (D3 and D4), which are eligible for probation under the Guidelines. The percentage of D3 and D4 offenses, as a percentage of all drug offenses, increased by three percentage points since 2011. Female offenders comprised 15% of all offenders in OSGs D3 and D4, but only 10% of offenders in OSGs D1 and D2. Correspondingly, there was a three percentage point decrease in sentences imposed for offenses in more severe drug groups (D1 and D2).

2. Race of Offenders

Similar to 2011, Black offenders formed the vast majority of the total population sentenced in the District in 2012, more than 90% of all offenders sentenced.



The data, presented in Figure 12 above, indicate that for Black and “Other” race categories, prison was the most frequent type of sentence imposed, followed by probation, then by split sentences. The rate of probation exceeded the rate of prison sentences for White offenders by 2.9 percentage points. The rate of prison sentences was highest among Black offenders (50.2%), while the rate of probation was highest among White offenders (39.7%). Offenders of all races were almost equally likely to receive a split sentence.

When compared to 2011, the rate of prison sentences among White offenders decreased substantially, by approximately 14 percentage points in 2012. The higher rate of prison sentences among White offenders in 2011 may be because felony assault was the leading offense for which White offenders were sentenced in 2011.³⁶ The percentage of White offenders sentenced for an assault offense decreased from 23.3 percent of all assault offenses in 2011 to 16.2 percent in 2012. Assault offenses rank anywhere between M3 to M8 on the Master Grid, depending on the specific type of assault. All boxes except three are prison only boxes in these OSGs, which makes prison sentences a more frequent sentence for offenders sentenced for assault. In 2012, however, felony theft (15.8%) was the prime offense for which White offenders were sentenced. Theft is ranked lower on the sentencing grid, either as a M8 or M9 offense, for which probation is an available sentence in five grid boxes. The mean (1.1) and median (0.3) CH score for White offenders was lower than that for Black offenders (1.8 mean

³⁶ 23.3% of White offenders were sentenced for an assault offense in 2011.

and 2.1 median), which also increases the likelihood that Black offenders will be sentenced to prison more frequently than White offenders.

When comparing across both race and gender, Black males and White males sentenced in 2012 were most likely to be sentenced for a violent offense (32.2% White males and 32.3% Black males). Analyzing offense groups within each racial cohort, White males were more likely to be sentenced for sex, property, and “other” offenses than black males by approximately seven percentage points. Black males, on the contrary, were more likely to be sentenced for a drug or weapons offense than White males by approximately eight percentage points. Black males also had a higher average CH score (2.0) than White males (1.1), which partially contributes to the higher rate of prison sentences among Black males (53.3%) as opposed to White males (39%). As there were only eight White female offenders sentenced to prison compared to 198 Black female offenders in 2012, it makes comparison between White female offenders and Black female offenders statistically unreliable.

3. Age of Offenders

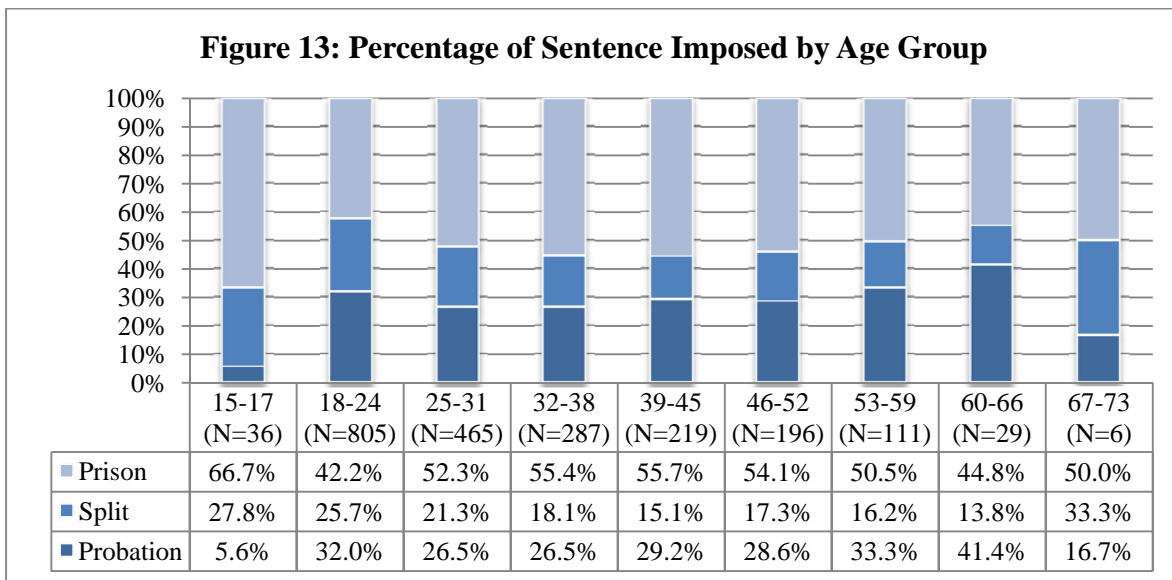


Figure 13 shows the types of sentences imposed on individual age groups. The largest number of offenders sentenced in the District were between 18 to 24 years old. Prison was the predominant sentence type among offenders of all age groups, followed by probation. Of all adult offenders, the rate of prison sentences was highest among offenders aged 15-17 followed by 39-45. Offenders aged 15-17 are sentenced as adults mainly for serious crimes, which increases their likelihood of being sentenced to prison. Offenders from 18 to 24 years had a

higher probability of receiving a split or probation sentence.³⁷ Middle-aged offenders with longer criminal histories were more likely to be sentenced to prison, while younger offenders with limited criminal histories had a higher probability of being sentenced to probation. This finding was consistent when examining the types of sentences imposed by drug and non-drug offenders, as well. However, the probation rate for drug offenders remained virtually constant for all age groups, ranging within 35% to 45%. This suggests that all drug offenders were almost equally likely to receive a probation sentence regardless of their age.

Offenders less than 18 years of age represent juveniles who were sentenced as adults. In 2012, there were 36 offenders in this age group, accounting for 37 cases and 66 counts. This age group was primarily sentenced for violent offenses (86%), mainly robbery (50%), with no offenders in this age group sentenced for either a sex or drug offense. Given the serious and violent nature of offenses committed by the 15 to 17 age group, the rate of prison sentences for this age group was high at 66.7%, compared to the overall rate of prison sentences imposed (49.5%).

Table 3 below shows the average ages by offense categories of the three sentence types imposed:

	Violent	Sex	Property	Drug	Weapon	Other	Total
Prison (N=1,066)	28	33	33	37	31	32	32
Split (N=459)	25	32	26	35	26	31	29
Probation (N=629)	25	40	27	37	25	32	31

According to the data presented in Table 3, the average age of violent offenders was lower than that of offenders in any other offense category. Conversely, drug offenders had the highest average age. Violent offenders tended to be younger, while drug offenders were older.

IV. Top Five Grouped Offenses³⁸

The top five grouped offenses sentenced during 2012 account for more than 70% of all felony sentences imposed. They are:

- Possession with intent to distribute a controlled substance and distribution of a controlled substance (PWID+Dist) offenses

³⁷ This is excluding offenders aged 60-73 years since their total number in the sentenced population is too small to analyze.

³⁸ See Appendix C for a list of all grouped offenses.

- Robbery offenses
- Weapons offenses
- Attempted drug offenses
- Assault offenses

Although the top five offense categories did not change from 2011, the ranking by frequency of these offenses did change. Provided below is a summary of offense and offender-related information for each specific grouped offenses in order of their frequency by case.

A. Possession with intent to distribute a controlled substance or distribution of a controlled substance (PWID+Dist)

As in the 2011 data, PWID+Dist was the most common grouped offense in 2012, accounting for 478 cases (21.2%) and 582 counts (17.2%). In approximately 60% of these sentences, cocaine was the primary drug involved in the offense. All PWID+Dist felonies fall in D2 (Schedule I or II narcotic/abusive drug) or D3 (all other types of drugs). PWID+Dist while armed offenses were excluded from this group. These specific severity levels allow for the imposition of all three sentence types – prison, split or probation – depending on the CH scores.

As was true of all offense groups, a large proportion of PWID+Dist offenders were sentenced to prison (38.9% by case and 43.6% by count) for an average of 19 months. The rate of probation was also equally high at 37.4% by case and 33.5% by count. The average CH score of PWID+Dist offenders sentenced to prison (3.2) was substantially higher than those sentenced to a term of probation (1.0). Split sentences were the least common, with only 23% of felony sentences for PWID+Dist resulting in split sentences. The sentencing pattern for this offense was consistent with that of 2011.

There were 461 offenders sentenced for this offense group. Similar to the overall offender population in 2012, 95% of the offenders were Black, 90% were males and 85.7% were Black males. Offenders aged 25 to 31 years accounted for 25.3% of all offenders sentenced for PWID+Dist. The average age of PWID+Dist offenders was much higher at 34 years, while the median was 31 years and the mode was 26 years. The lower median and mode age compared to the mean is due to six offenders in the age group 67 to 73, which skewed the data, thus increasing the mean. These demographics remained virtually unchanged from the previous year.

B. Robbery Offenses

Robbery offenses, particularly attempted robberies, increased significantly in 2012. They constituted 17% of all felony cases sentenced in 2012, as opposed to only 9.8% in 2011, indicating an increase of 7.2 percentage points. This increase was, to a large extent, the result of

an increase in the percentage of attempted unarmed robberies, which accounted for 51.3% of all robbery offenses sentenced in 2012, as opposed to only 35.2% in 2011. Sentences for the more serious armed or attempted armed robbery accounted for only 41.4% of all robbery cases sentenced in 2012, as opposed to 60.3% in 2011. Although robbery offenses can fall in M5 (armed robbery), M6 (unarmed robbery and attempted armed robbery) or M8 (attempted unarmed robbery), 51.3% of all robbery cases sentenced in 2012 fell in M8. The data indicate that although there was a notable increase in the percentage of robbery offenses over the past year, the majority were sentenced in a lower offense severity group compared to previous years.

Offenders were sentenced to prison in more than 45% of all robbery cases and 50% of all robbery counts. Split sentences were imposed infrequently, in only approximately 24% of robbery cases. However, since the percentage of attempted robberies increased significantly, the rate of probation rose to 30.2% by case and 26% by count in 2012, from 15.8% by case and 13% by count in 2011. Another factor contributing to the increase in the probation rate for robbery is the limited CH score of offenders sentenced for this offense. The average CH score of offenders sentenced for both attempted robbery (1.2) and robbery in general (1.3) was very low. The average age of offenders for both types of robberies was also the same, 25 years. Most (79%) of robbery cases were single count cases, and 70% of these single count cases were attempted robbery cases. The demographics of this population were consistent with the overall offender population of the District in 2012. The majority of the 367 offenders convicted for robbery were Black (96.4%) males (91.2%) from the age group 18-24 (66.3%) with an average age of 25 years and a median age of 21 years.

C. Weapons Offenses

In 2012, offenders were sentenced for 336 cases and 719 counts of a weapons offense. Carrying a Pistol (CP), Unlawful possession of a Firearm (UPF), or Possession of a Firearm During a Crime of Violence or Dangerous Crime (PFDCV) constituted approximately 90% of felony weapons cases and 85% of felony weapons counts.

Weapons offenses are ranked in five different OSGs, M5 to M9, with the highest percentage falling in OSG M8 by case (55.1%) and count (46.9%), with CP accounting for more than 75% of all M8 weapons offenses. Given the wide range of OSGs in which weapons offenses are ranked, sentencing options for weapons offenses under the Guidelines include all three sentence types - prison, split, and probation. However, prison was the most frequent type of sentence imposed. Although the mean CH score for weapons offenders was relatively low at 1.6 and a median of 1, the mandatory sentencing provisions for PFDCV and repeat weapon offenders result in the imposition of prison sentences more frequently for weapons offenses than for robberies or PWID+Dist. Weapons offenses also formed the majority of multiple count cases. Of the 439 multiple count cases, 34% represented cases in which a weapons offense was the

most severe count. Usually a weapons offense would not be the most severe offense except where the other offenses are misdemeanors or where PFDCV received a higher sentence (mandatory 60 months) than the crime of violence.

There were a total of 325 offenders sentenced for weapons offenses. Of this total, 95% were Black, 95.4% were males, and 90.8% were Black males. Similar to 2011, women were least likely to be sentenced for a weapons offense, with only eight females sentenced for this offense in the current year. Offenders aged 18 to 24 were sentenced most frequently for this offense, while the mean age was 28 years, the median 25 years and the mode 18 years.

D. Attempted Drug Offenses

Attempted drug offenses accounted for 253 cases and 268 counts in 2012. As with PWID+Dist, cocaine was the primary drug type, constituting 59.3% of all counts and cases of this offense. Although cocaine remains the most common drug type in 2012, the percentage of cocaine offenses for which a sentence was imposed in 2012 represents a slight decrease from 67.9% of cases and 65.7% of counts in 2011.

This grouped offense category falls within OSG D3 or D4, for which all grid boxes, except one box (D3 with a CH score 6 and above), are designated as probation or short split eligible. The structure of the grid also explains the relatively high rate of probation (42% by case and count) among attempted drug offenses, as the majority of grid boxes for this grouped offense allow for probation. The relatively low CH score of offenders convicted for this offense is another factor contributing to the high probation rate in this group. The mean CH score was 2.2 with a median of 2 and a mode of 0. Since there are numerous probation eligible grid boxes for this offense, the rate of prison sentences was only 41%, which is 14 percentage points lower than the rate of prison sentences for non-drug offenses (55%). Split sentences were only imposed in 15% of cases and counts involving an attempted drug offense. The distribution of sentence types imposed for this offense remained consistent with the previous year.

Overall, there were 238 offenders sentenced for attempted drug offenses. Unlike other offenses, females formed a higher percentage (21.4%) of offenders in this category. Black offenders again formed the majority (95.4%). Of all females sentenced for this offense, 92.2% were Black. Offenders sentenced for this offense tend to be older than the overall offender population. Most attempted drug offenders (21.8%) fell in the age group 46 to 52 years, while the mean age was 41 years. This is indicative of the chronic nature of substance abuse issues experienced by many drug offenders in the District and nationwide.

E. Assault

The percentage of assault offenses in 2012 remained virtually the same as that in 2011. Assault, as a grouped offense, included the largest number of offenses, accounting for 9.7% (220) of all cases sentenced in 2012 and 12% (412) of all counts. Since felony assault cases can involve a wide range of criminal behavior, assault offenses fall anywhere between OSGs M3 and M8 on the Master Grid. Assault with a dangerous weapon (ADW), a M6 offense, and assault with significant injuries, a M8 offense, represented 47.3% of all sentences imposed for an assault offense. There was a significant decrease in the percentage of ADW offenses from 2011 to 2012. Sentences imposed for ADW decreased by approximately 30 percentage points since the previous year.

In spite of the six OSGs in which this offense group is ranked, 24 of the 30 boxes in the six OSGs are prison only boxes. Thus, the rate of prison sentences imposed for this offense was high when compared to other top five grouped offenses. The rate of prison sentences imposed for all other top five grouped offenses was less than 52% whereas that for assault was 62.3% by case and 77.2% by count. Corresponding to the Guidelines, probation was imposed only in 13.6% of all cases and 8.5% of all counts.

There were 215 offenders sentenced for this grouped offense. Similar to previous years, as well as the overall offender demographics, only a minor percentage of females (11.6%) and White (5.1%) offenders were sentenced for this grouped offense. However, there was a further decrease in White offenders sentenced for assault. The percentage of White offenders in this group decreased from 23.3% in 2011 to 16.2% in 2012. This percentage decrease is partially accounted for by an increase in White offenders sentenced for felony theft.

When examining the age group of offenders sentenced for assault, the most common age group was 18 to 24, while the average age was 31 years; the median age was 28 years; and the mode 23 years. Similar to PWID+Dist, the high average age of assault offenders can be explained by the four offenders aged 58 to 63 years, which skewed the data increasing the average age. The young age of offenders in this group, paired with their low CH scores (mean of 1.6, a median of 1 and a mode of 0) highlights the challenges the criminal justice system faces in dealing with youth violence.

V. Conclusion

During 2012, the D.C. Superior Court imposed sentences for 2,260 felony cases that included 3,384 felony counts. Similar to previous years, more than 90% of all cases were disposed of through guilty pleas, while jury and bench trials accounted for approximately 10% of all convictions, with the majority resulting from jury trials. When examining individual offense

categories of drug, violent, sex, property, weapon, and other, drug and violent offenses were the two most common offense types by both case and count. Prison remains the dominant sentence type, with the rate of prison sentences imposed for non-drug offenses higher than the rate of prison sentences imposed for drug offenses. Conversely, the rate of probation was highest among drug offenses and lowest for violent and sex offenses. The majority of probation sentences imposed involved single count cases, which generally involved lower ranked offenses than multiple count cases. These sentencing patterns in the District in 2012 were similar with that of 2011 and previous years overall.

The offender demographics in 2012 also repeated the pattern of prior years. Of a total of 2,154 offenders sentenced, 92.8% were Black, 89.9% were males, and 84.1% were Black males. Offenders aged 18 to 24 years formed the largest percentage of all offenders sentenced. Prison sentences accounted for the majority of sentences imposed among males, whereas probation was widespread among females. This is partly because females were sentenced more often for drug offenses, whereas males were sentenced for violent offenses. Offenders of all races were most likely to be sentenced to prison.

However, when examining the data in further detail, there were some variations in sentencing patterns from that of 2011. Although prison sentences were imposed more frequently than other types of sentences, there was a slight decrease in the rate of prison sentences imposed in 2012 as compared to 2011 (by four percentage points by case and two percentage points by count). The decrease in the rate of prison sentences imposed is partially attributable to the increase in the percentage of attempted robberies and lower severity drug offenses. Since these offenses are ranked lower on the Master Grid and the Drug Grid, they are more likely to be sentenced to a term of probation. When comparing the demographics of 2011 and 2012, the rate of prison sentences for White offenders decreased while the rate of probation increased since 2011. This could be because in 2012 White offenders were sentenced more often for theft, which is ranked in a lower OSG than assault, which was the primary offense among White offenders in 2011.

These sentencing patterns closely follow the structure set forth in the Sentencing Guidelines, which promote consistency and fairness in sentencing. A prison sentence is reserved for violent and serious criminal behavior and chronic offenders, whereas probation or split sentences are imposed for less serious criminal behavior and offenders with minimal prior criminal history. Prison sentences protect public safety and incapacitates chronic offenders, while a term of probation aims at rehabilitating the offender to reduce future offenses, while holding the offender accountable.

CHAPTER FIVE

COMPLIANCE WITH THE DISTRICT OF COLUMBIA VOLUNTARY SENTENCING GUIDELINES

As part of its mandate, the Commission continually monitors and analyzes judicial compliance with the Guidelines. Monitoring judicial compliance serves as a measure to review sentencing practices in the Court, and it enables the Commission to study whether the Guidelines are effective in promoting fair and consistent sentencing. Monitoring compliance can also reveal patterns, which may suggest the need to revise or modify the Guidelines in certain areas.

In general, compliance with the Sentencing Guidelines in the District of Columbia remains very high, consistently near or above 90%.³⁹ Last year, more than 98% of all felony counts sentenced were compliant with the Guidelines.

I. How the Commission Defines Compliance With the Sentencing Guidelines

The Commission evaluates compliance with the Sentencing Guidelines by determining if the actual sentence imposed by the court falls within the sentencing options and sentencing range recommended by the Guidelines. Two primary factors determine the Guidelines compliant sentencing options and range for each defendant: the OSG and the defendant's prior CH score.

The OSG for each District of Columbia felony offense is set forth in the Guidelines Manual and does not change on a case-by-case basis. The Guidelines place every non-drug felony offense into one of nine OSGs (M1 to M9) based on its predetermined severity level (the more serious an offense, the lower the severity group number). Similarly, the Guidelines place every felony drug offense into one of four OSGs (D1 to D4), again from the most serious to the least serious.

Prior to sentencing, CSOSA calculates a defendant's CH score by researching each defendant's complete criminal history.⁴⁰ CSOSA then calculates a numerical CH score for each defendant through the application of a series of Guidelines rules. The score primarily accounts for the type, number, and severity of the defendant's prior convictions, as well as the length of time between the expiration of the offender's prior sentence and the commission of the instant offense. Once the CH score is calculated, the Guidelines place the score into one of five categories, A through E, with A representing the lowest criminal score category and E representing the highest.

³⁹ In 2009, the Commission reported that 88% of felony sentences were Guidelines compliant; in 2010 and 2011, this percentage rose to 96% and 97%, respectively.

⁴⁰ On rare occasions, such as when the court sentences the defendant immediately after a plea or verdict, CSOSA does not have the opportunity to produce a complete criminal history for a defendant.

Combining the OSG and the defendant's CH score on a grid reveals the defendant's Guidelines compliant sentencing range for each felony conviction. For non-drug felony offenses, the nine OSGs are displayed on the vertical axis of the Master Grid.⁴¹ The five CH score categories are located on the horizontal axis of the grid. Felony drug offenses are laid out on the Drug Grid in the same manner. The intersection of a defendant's OSG and CH score category on either the Master Grid or the Drug Grid identifies a grid box containing the defendant's Guidelines compliant sentencing range.

In addition to revealing the compliant sentencing range, each box on the Master Grid and the Drug Grid is shaded in one of three ways. The box shading determines what type of sentence a judge may impose under the Guidelines.

- | | | | |
|-----|------------------------|---|-----------------------------------|
| (1) | White/Unshaded (white) | - | Prison Only |
| (2) | Dark Shaded (green) | - | Prison or Short-Split |
| (3) | Light Shaded (yellow) | - | Prison, Short-Split, or Probation |

Of the 45 total boxes on the Master Grid, 35 are white/unshaded, "prison only" boxes,⁴² four are dark shaded, short-split permissible boxes,⁴³ and six are light shaded, probation eligible boxes.⁴⁴ On the Drug Grid, six of the 20 boxes are white/unshaded, prison only boxes, four are dark shaded, short-split permissible boxes, and ten are light shaded, probation eligible boxes. The ranges within each box can be expanded by certain statutory sentencing enhancements. These enhancement provisions are based on such factors as the victim's status (e.g. senior citizen, bias-related), where the crime occurred (e.g. drug-free zone), whether or not the defendant is a repeat offender, or other aggravating factors.⁴⁵

II. Departures from the Guidelines

The Guidelines were designed to promote consistency in sentencing among similar offenders convicted of similar crimes. However, there will always be unusual or exceptional cases that cannot be accounted for by the structure of a broad set of sentencing principles such as the

⁴¹ See Appendices A and B for a diagram of the Mater Grid and the Drug Grid.

⁴² To impose a compliant prison only sentence, the court must impose a prison sentence that falls within the applicable Guidelines range. The court may suspend part of the defendant's sentence; however, the actual prison term must still fall within the appropriate Guidelines range.

⁴³ To impose a compliant short-split sentence, the court must impose a prison sentence that falls within the applicable Guidelines range and suspend execution of all but six months or less—but not all— of that sentence, and impose a term of probation.

⁴⁴ To impose a compliant probation sentence, the court must impose a prison sentence that falls within the applicable Guidelines range, suspend execution of the entire sentence, and impose a term of probation.

⁴⁵ Statutory minimum and mandatory minimum sentencing provisions do not change a defendant's applicable sentencing range under the Guidelines. However, they may limit the court's discretion to impose a Guidelines compliant sentence within a particular box. An imposed sentence cannot be lower than the mandatory minimum even if lower sentences are otherwise available in the appropriate box.

District’s Guidelines. In order to address atypical cases or defendants, the Guidelines include a provision for judges to sentence outside the recommended sentencing options. These situations are referred to as “departures.” Departures are classified as either aggravated or mitigated depending on whether they allow for an increase or decrease in the Guideline range. There are 11 aggravating departure principles that may be used when the sentence imposed by the judge is more severe than the sentence recommended by the Guidelines and ten mitigating departure principles that maybe applied when the sentence imposed by the judge is less severe than the Guideline recommended sentence. When one of the 21 departure⁴⁶ principles is cited by a judge as a reason for imposing the departure, the sentence is considered a “compliant departure.” The Guidelines are voluntary; therefore a judge can impose any legal sentence, whether or not compliant with the Guidelines, and not cite any mitigating or aggravating factor. The Commission characterizes these as “non-compliant departure” sentences.

Thus, the Commission assigns all sentences to one of the following four categories:

- **In-the-Box Sentences**— the sentence falls within the appropriate sentence type (prison only, short-split, or probation) and sentence range given a defendant’s conviction and CH score. This includes instances where the box has been expanded due to an enhancement.
- **Rule 11(e)(1)(C) Sentences**— the defendant’s CH score was not requested from CSOSA or the sentence does not fall within the appropriate sentence type or sentence range given a defendant’s conviction and CH score, however, the defendant pled guilty under Criminal Rule 11(e)(1)(C).⁴⁷
- **Compliant Departures**— the sentence does not fall within the appropriate sentence type or sentence range given a defendant’s conviction and CH score; however, the judge cited a valid aggravating or mitigating departure principle.
- **Non-Compliant Departures**— the sentence does not fall within the appropriate sentence type or sentence range given a defendant’s conviction and CH score, and the judge does not cite a valid aggravating or mitigating departure principle.

These four categories enable the Commission to examine instances when a judge’s sentence falls within the recommended range, follows a departure principle, or when the judge chooses to not follow the Guidelines.

III. Data Reporting

As discussed earlier, measuring judicial compliance with the Guidelines begins by identifying the appropriate sentencing range and options for every felony conviction in a case and comparing that to

⁴⁶ See Appendix D for a full list of departure principles under the Guidelines.

⁴⁷ Under Rule 11(e)(1)(C) the parties can agree on a guilty plea with a specific sentence or sentence range. If the judge accepts the plea, the judge is also bound by the parties’ agreement. It should be noted that Rule 11(e)(1)(C) cases that resulted in an in-the-box sentence were classified as a compliant in-the-box sentence.

the actual sentence imposed. CSOSA and the Court produce the data used by the Commission in analyzing compliance.

In 2012, as in previous years, the Commission continued to refine its data collection and validation processes with the goal of improving the quality of compliance data reported. Through the use of a detailed evaluation process, the Commission was able to decrease the number of cases initially reported as non-compliant and decreased the number of departure letters sent to the courts by 30% in 2012. With this, the Commission was able to contact the sentencing judge regarding every case that appeared to be non-compliant and confirm the compliance status.

Historically, the Commission validated sentencing data by mailing judges departure letters for every sentence that appeared non-compliant. These letters provided the sentencing judge the opportunity to identify inaccuracies in the data, such as an incorrectly recorded sentence, a modified CH score, or an unreported compliant departure. By undertaking a comprehensive review of the court data for cases that initially appear to be non-compliant, the Commission was able to reduce the number of departure letters sent to judges from approximately 300 in 2010 and 100 in 2011 to approximately 70 in 2012. While the Commission continues to utilize departure letters, they are now reserved for non-compliant sentences—cases where a defendant’s CH score is modified by the judge on the day of sentencing—or cases that turned out to be a compliant departure but were incorrectly recorded in the first instance.

Data quality and completeness is an area of ongoing improvement for the Commission. Missing CH scores or incomplete sentencing information impacts the agency’s ability to determine and analyze Guideline compliance, as well as evaluate sentencing policy.

In 2012, the Commission received complete sentencing data (consisting of a CH score, a conviction charge, and a sentence) in 99% of all felony counts sentenced, which represents an increase from the 91% reported in 2011.⁴⁸ The increase in counts with complete data is due to the collaborative efforts of our criminal justice partners, CSOSA and the Superior Court, in reaching this goal. The Commission sincerely thanks those agencies for their continual assistance in this area.

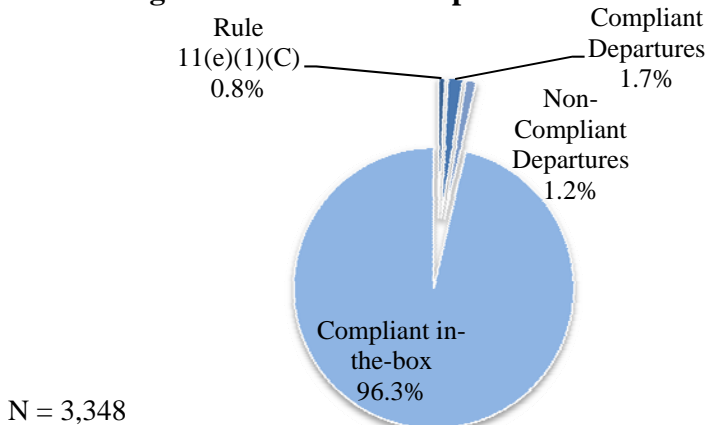
IV. Compliance Analysis

This section examines the sentences imposed in 2012 based on the four compliance categories: compliant in-the-box sentences, compliant departures, Rule 11(e)(1)(C) departures, and non-compliant departures. Figure 14 shows the types and percentages of compliance in 2012. The compliance rate of felony sentences imposed in the District in 2012 was extremely high at 98.8%. Compliant in-the-box sentences represented 96.3% of all felony sentences in 2012; 1.7%

⁴⁸ For the purposes of analyzing compliance, the Commission has removed counts sentenced following probation revocation. Further, all compliance data was subject to additional validation and verified through an in-depth review of the court docket.

were compliant departures; 0.8% were Rule 11(e)(1)(C) pleas; and 1.2% were non-compliant departures. Presented below is an analysis of the various types of compliant and non-compliant sentences under the Guidelines.

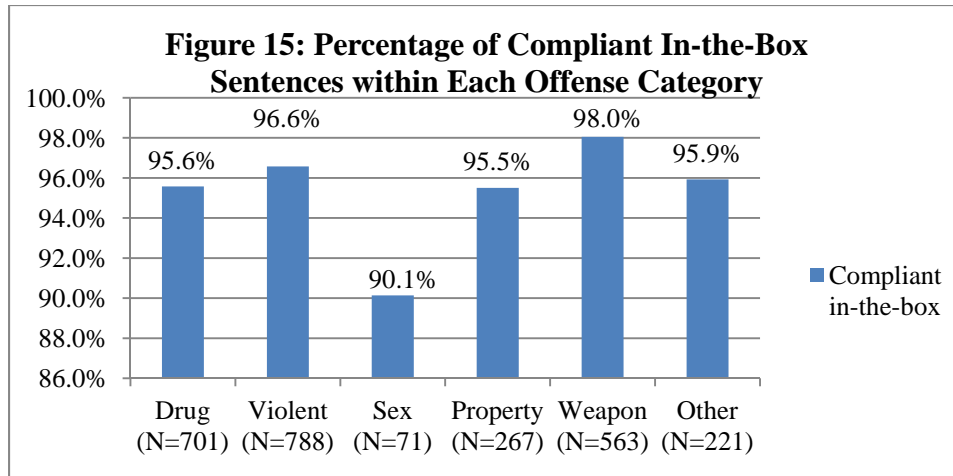
Figure 14: Judicial Compliance Rate



A. Compliant In-the-Box Sentences

In 2012, 96.3% of all counts sentenced resulted in a compliant in-the-box sentence, meaning that a prison sentence was within the recommended range or the sentence type was one of the recommended options. The data presented in Figure 15 below show that more than 95% of all sentences imposed for each offense category—drug, violent, property, weapon and other—were compliant in-the-box, with the exception of sex offenses. Sex offenses, with a 90.1% in-the-box compliance rate, were the only offense group that fell below the overall in-the-box compliance rate of 96.3%. Sex offenses cover a wide range of criminal behavior, which could account for this slight variation. In addition, there are often specific victim impact issues present in sex offense cases that can directly impact the sentencing process. However, the total number of sentences imposed for a sex offense was also very low in comparison to other offense types, so a few non-compliant sentences can greatly affect the overall percentage of compliant-in-the-box sentences.

Weapons offenses showed the highest rate of compliant in-the-box sentences. Since weapons offenses can significantly impact public safety, the high compliance rate of sentences imposed on weapons offenses indicates the effectiveness of the mandatory minimums and the Guidelines in addressing the serious nature of these offenses. The high overall compliant in-the-box rates reflect that Superior Court judges are consistently imposing the appropriate in-the-box sentences recommended by the Guidelines.



B. Compliant Departures

Compliant departures accounted for 1.7% of all sentences imposed (45 cases consisting of 57 counts). Although these departures formed a minor part of the whole, they offer insight into the reasons judges choose to depart from the Guidelines.

The following departure reasons were cited by judges in 2012:

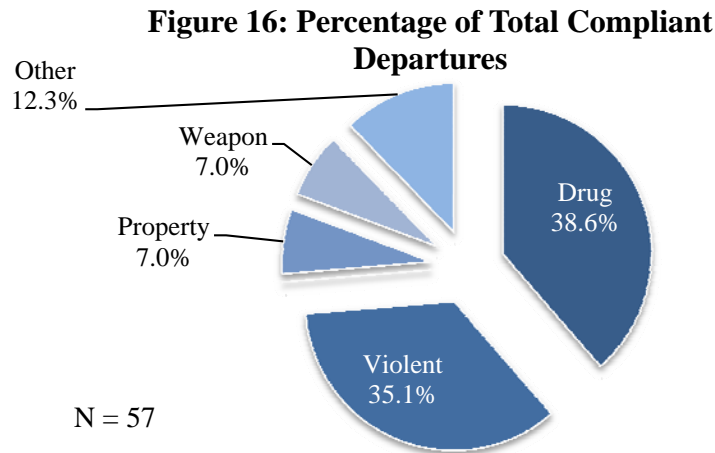
- A1—There was deliberate cruelty to a victim;
- A3—A victim sustained a “devastating injury”;
- A7—The defendant threatened or bribed a victim or witness;
- A11—Any other substantial and compelling basis, as articulated by the sentencing judge;
- M6—The defendant could not appreciate the wrongfulness of this or her conduct;
- M7—The defendant has provided substantial assistance to law enforcement;
- M9—The consecutive/concurrent sentencing policy resulting in the recommended Guidelines sentence is not reflective of the seriousness of the offense; and
- M10—Any other substantial and compelling basis, similar to those articulated in the Guidelines, to depart downward.

Table 4 displays a detailed breakdown of the departure reasons by severity groups.

Table 4: Departure Reasons by Severity Group

Severity Group	Departure Reasons (N=57)									Total
	A1	A3	A7	A11	M6	M7	M8	M9	M10	
D2	0	0	0	0	1	2	1	0	8	12
D3	0	0	0	0	3	1	0	1	6	11
M2	0	0	0	0	0	5	0	0	0	5
M3	0	0	0	0	0	1	0	0	0	1
M4	0	1	0	0	0	0	0	0	0	1
M5	0	0	0	0	0	8	0	0	2	10
M6	1	0	0	1	0	3	0	0	3	8
M7	0	0	1	0	0	0	0	0	3	4
M8	0	0	0	1	0	0	0	0	3	4
M9	0	0	0	0	1	0	0	0	0	1
Total	1	1	1	2	5	20	1	1	24	57

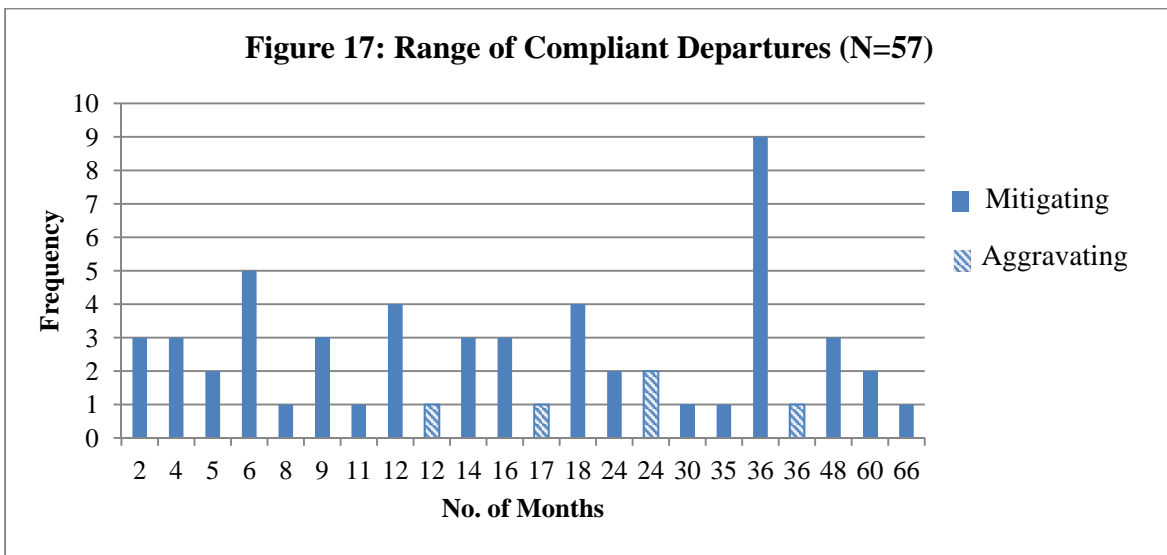
There were only five aggravating (or upward) departures in 2012, while the remaining (52) sentences were mitigating (or downward) departures where the judges chose to impose a less severe sentence than the recommended Guideline sentence. Similar to 2011, drug and violent offenses formed the greater proportion of compliant departures. This can be seen in Figure 16 below. There were no compliant departures for any sex offense.



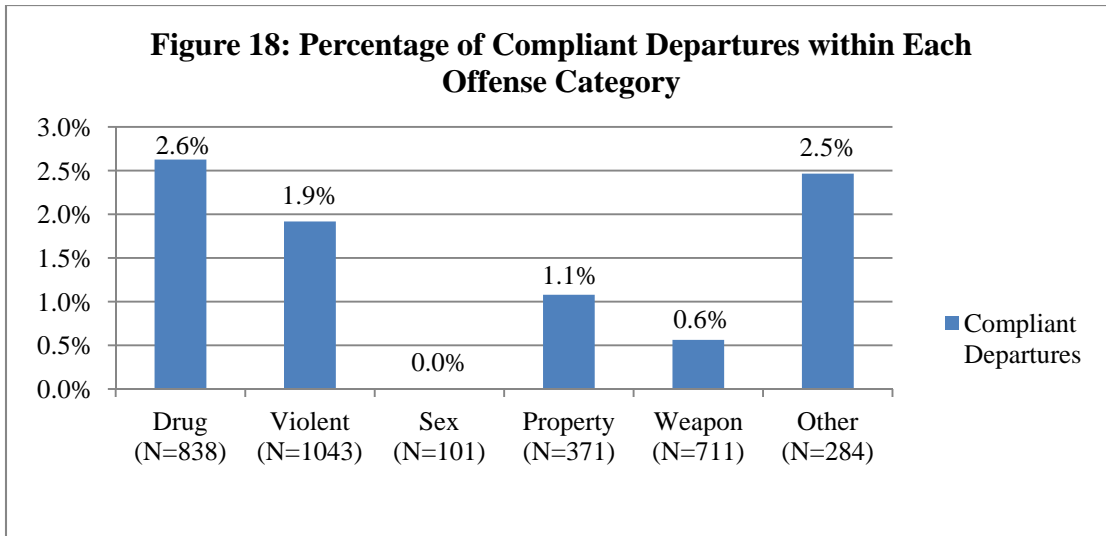
Of the five aggravating departures, the A1 departure was imposed for attempted robbery (M8); the A7 departure was imposed for unlawful possession of a firearm (UPF) (M7); and the two A11 departures were imposed for first degree theft (M8) and ADW (M5).

Mitigating departures represented the vast majority (92.8%) of all compliant departures. The M10 “catch all” departure was cited for 24 counts. The relatively high frequency of this non-descript mitigating departure factor is an area the Commission intends to study further. Of all M10 departures, 54% were for drug offenses. M7 was another departure principle cited frequently by the judges in 20 counts. M7 departure principles were applied for murder, assault, robbery, burglary, drug, and other offenses.

Unlike 2011, in 2012 aggravating departures did not deviate widely from their respective in-the-box sentencing recommendations. In 2011, the aggravating departures averaged 117 months above the in-the-box range, while in 2012 the average was only 23 months. However, since the total number of aggravating departures in both years was very low (three in 2011 and five in 2012), it is difficult to reach any significant conclusion regarding the differences in the length of aggravating departures imposed between 2011 and 2012. The average number of months by which mitigating departures departed from the in-the box range in 2011 and 2012 was more comparable. In 2011, the downward departures averaged 14 months below the in-the-box range, while in 2012 the average was 21 months.



As seen in Figure 18, drug offenses were most likely to result in a compliant departure. Only mitigating departure principles were applied to drug offenses in 2012. As most drug offenses do not involve acts of violence but rather are linked to an offender’s substance abuse problems, downward departures are imposed more often for drug offenses. Frequently, for example, a defendant’s successful completion of Drug Court results in a sentence to probation, even if the defendant’s CH score puts him in a box for which probation is not a Guidelines option.



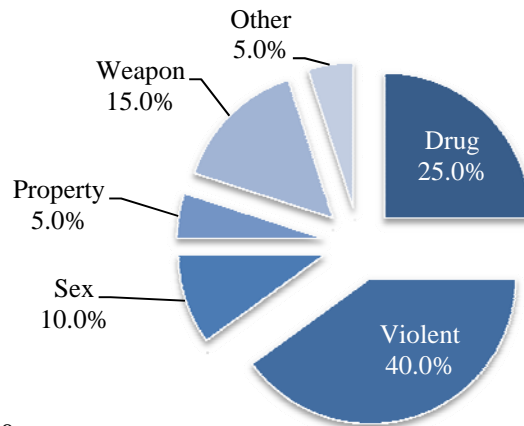
C. Rule 11(e)(1)(C) Departures

In 2012, judges imposed sentences outside of the recommended Guidelines range in 14 cases and 26 counts following Rule 11(e)(1)(C) plea bargains. Seven of these cases were for sex offenses and five were for violent offenses. The Guidelines consider all Rule 11(e)(1)(C) guilty pleas as compliant because the parties agree to, and the judge approves, a specific sentencing at the time the plea is accepted.

D. Non-Compliant Departures

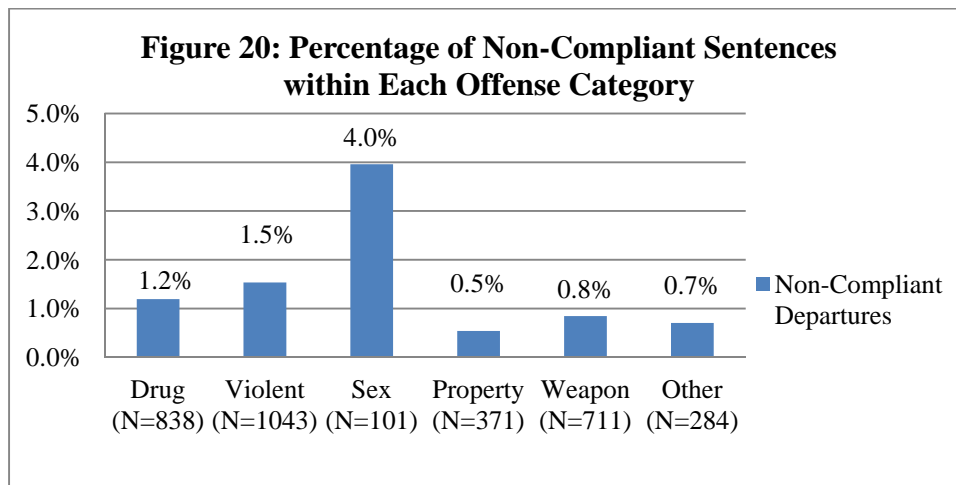
A sentence is considered a non-compliant departure when the judge imposes an out-of-the-box sentence without citing a departure principle. In 2012, there were 40 counts and 24 cases which were the result of non-compliant departures. According to data presented in Figure 19, violent offenses formed the greatest proportion of all non-compliant sentences, followed by drug offenses. This is a change from 2011, when drug offenses represented 42.5% of non-compliant departures.

Figure 19: Non-Compliant Departures



N = 40

When examining non-compliant departures within each offense category (Figure 20 below), sex offenses had the highest rate (4%) of non-compliant departures. As sex offenses are rarer than other offense types (only 101 counts in 2012 as compared to more than 280 counts of other offenses types), 4% of non-compliant cases of sex offenses only constitute four counts. Although sex offenses indicate the highest rate of non-compliance, the limited total number of sex offenses makes it difficult to draw any valid conclusions. The percentage of non-compliant departures among all other offense types, including drug, violent, property, weapons, and other offenses, was much lower, ranging between 0.7% and 1.5%.



V. Structural Changes to the Guidelines Implemented in 2011

The Commission’s mandate requires it to revise the Guidelines from time to time in the interest of achieving certainty, consistency, and adequacy of punishment. In support of its mandate, the Commission revised the Drug Grid for pleas and verdicts entered on or after June 15, 2011, to establish a more rational and proportional sentencing structure for drug offenses. From the

Guidelines' inception in 2004 until 2011, the Drug Grid had three OSGs. The 2011 revision created a fourth OSG and redistributed a limited number of offenses throughout the Drug Grid.

The impetus for this change was the Council's 2010 reclassification of Possession of Liquid PCP as a felony, with a maximum prison sentence of three years. Possession of Liquid PCP is currently the only drug possession offense classified as a felony in the District; all other types of drug possession offenses are classified as misdemeanors. Liquid PCP is treated differently from other possession offenses because the presence of PCP in liquid form maybe indicative of distribution rather than individual use. When attempting to incorporate this crime into the Drug Grid, the Commission noted disproportionality in the way certain drug offenses had been previously ranked.

Prior to 2011, the Drug Grid categorized all Controlled Substance Distribution and PWID offenses in D2, without reference to the nature of the drug or the maximum penalty associated with the offense.⁴⁹ The revisions to the Drug Grid reallocated some of these crimes (and their attempts) to disaggregate the wide range of statutory penalties previously included in D2.

Offenses with a statutory maximum prison term of 30 years remained in D2, while offenses with a three or five year statutory maximum prison term were moved to D3 along with attempts to commit D2 offenses; D4 was created solely for attempts of D3 offenses. Thus, the revised Drug Grid retained the use of the higher Drug Group for the most serious felony drug offenses (Distribution and PWID of Schedule I and II narcotic/abusive controlled substances). However, the Commission shifted lesser drug felonies within the Drug Grid to reflect the statutory structure of the District's drug laws.

The revisions also modified the shading in two of the Drug Grid boxes, thereby modifying the sentencing options available for those boxes. Box D2C (D2 offenses with criminal history category C) changed from a light shaded, probation permissible box to a dark shaded, short-split permissible box. Box D2D (Drug Group 2 offenses with criminal history category D) changed from a dark shaded, short-split permissible box to a white, prison only box.

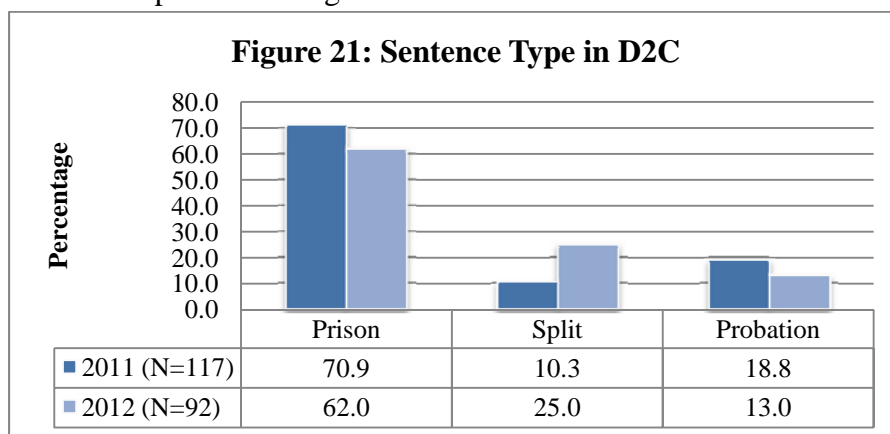
⁴⁹ As explained in Chapter Four, the most common felony drug crimes in the District are Distribution and PWID. These crimes have four separate penalties depending on the type of drug involved: 30 years for Schedule I and II narcotic and abusive drugs (e.g., cocaine, heroin, PCP, and methamphetamines); 5 years for Schedule I and II non-narcotic and non-abusive drugs, as well as for Schedule III drugs (e.g. marijuana > .5 lbs. or second plus offense); 3 years for Schedule IV drugs; and 1 year for Schedule V drugs. As a practical matter, most felony drug convictions in the District are for offenses subject to a 30 year maximum. Drug offenses with 3 and 5 year maximum penalties were, and still are, uncommon. Furthermore, when the Guidelines were developed, sentencing data showed few of sentences approaching the 30 year maximum; rather, the sentences actually imposed seldom exceeded five years. Nevertheless, the original drug group rankings did not distinguish between offenses punishable by 3 years and ones punishable by 30 years. This resulted in an unusual disproportionality in the Drug Grid relative to the maximum statutory penalty for ranked offenses.

The following sections track the changes in sentencing as a result of the revisions made to the Guidelines. They focus on the three main changes:

- Changes in grid box D2C—which changed from a prison, short split, or probation permissible box to a prison or short split only permissible box;
- Changes in grid box D2D—which changed from a prison or short split permissible box to a prison only box; and
- Addition of severity group D4.

A. Changes in Grid box D2C⁵⁰

Prior to the restructuring of the drug grid, Grid box D2C, which was eligible for prison, short split or probation, now only allows for prison or short split sentences. Figure 21 below compares the types of sentences imposed in this grid box in 2011 and 2012.

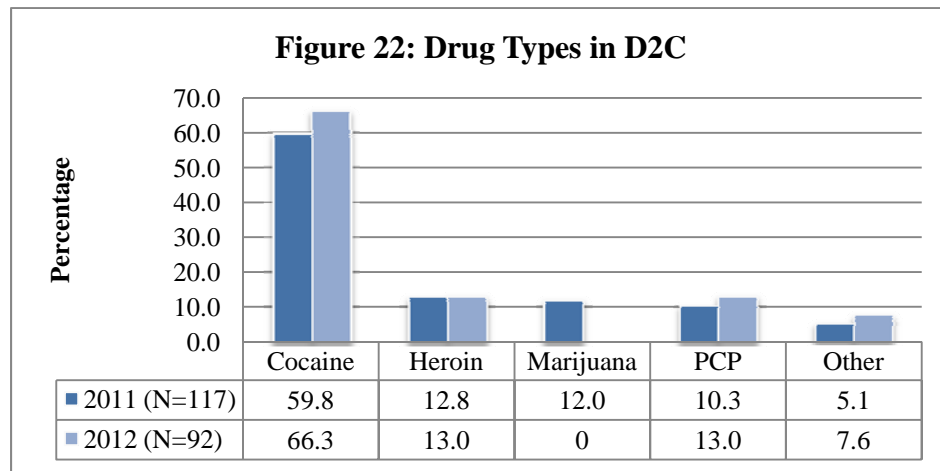


In 2012, the first full year after the grid modification, there were significant changes in the percentages of all three sentence types imposed in D2C. The rate of prison and probation sentences decreased by 8.9 percentage points and 5.8 percentage points respectively, while the frequency of split sentences imposed increased by 14.7 percentage points. This reflects the structural changes in the Guidelines, as the recommended sentence for D2C changed from prison, short split or probation to only prison or short split. There were 12 probation sentences in the D2C grid box, of which four were compliant departures and eight were compliant in-the-box sentences. Although probation is not a recommended sentencing option in this grid box, the eight probation sentences were compliant in-the-box because the defendants received credit for time served⁵¹ before the sentence date; in effect therefore, the sentences were akin to short split sentences rather than outright probation with all prison time suspended.

⁵⁰ Box D2C refers to a grid box in the Drug Grid that represents offenses that fall in Drug Group 2 and offenders with a CH score between 2 to 3.75.

⁵¹ The Commission does not receive data on credit for time served.

There were slight changes in percentages of sentence imposed in D2C by drug type as well. This can be seen in Figure 22.



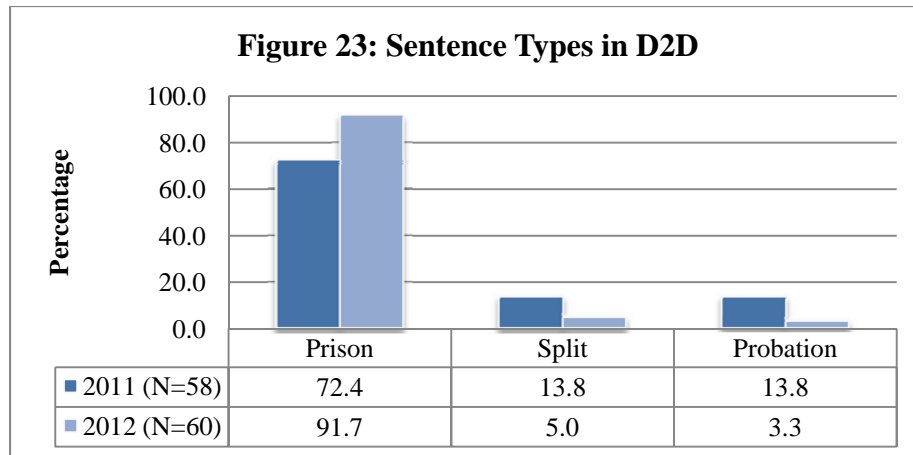
In 2011 and 2012, cocaine remained the most common drug type in D2C. The offender demographics of cocaine offenders in this group resembled that of the overall drug offender population. Of the 61 cocaine offenders in D2C, 93.5% of cocaine offenders were Black and 91.3% were males. The highest percentage in D2C (34.8%) fell in the age group 25 to 31 years with a mean age of 34 years.

However, the percentage of cocaine and PCP offenses increased by approximately six percentage points and three percentage points respectively. Since all of the offenses that remained in box D2C were PWID+Dist of a schedule I or II narcotic or dangerous drugs, and other drug types were removed, the percentage of cocaine and PCP cases increased. All offenses involving marijuana are now in OSG D3 or D4; thus, there are no marijuana offenses in grid box D2C in 2012.

Even with the changes in drug types covered in box D2C, the compliance rate for this box remained virtually unchanged. Approximately 90% of all sentences in this grid box were compliant in-the-box, three percent were non-compliant and seven percent were compliant departures. The compliance rate indicates that changes to the grid were widely accepted by the court and criminal justice practitioners, given that departure rates did not vary significantly after the change was implemented.

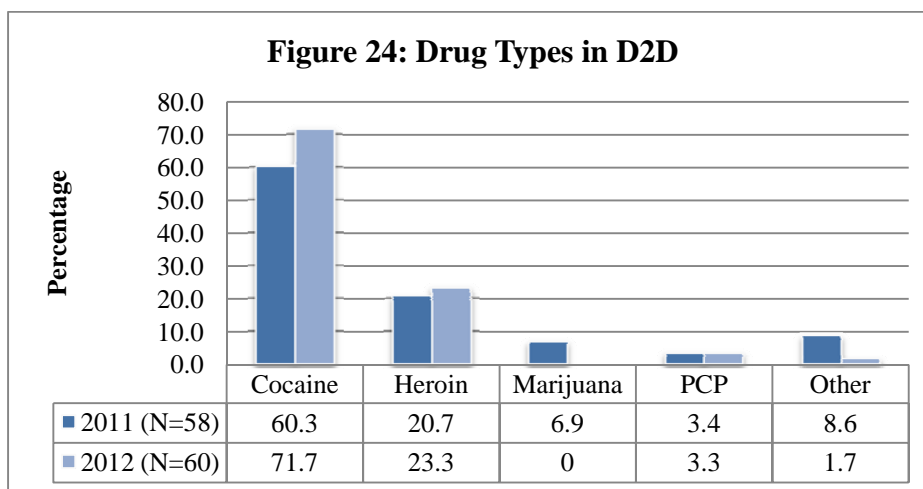
B. Changes in Grid box D2D⁵²

Figure 23 presents a comparison between the types of sentences imposed in grid box D2D in the years 2011 and 2012.



Consistent with the 2011 revisions to the Guidelines Drug Grid, grid box D2D became a prison only box. As expected, there was a notable increase in the rate of prison sentences imposed and a decrease in the rate of probation and split sentences. There were two probation sentences and three split sentences. The probation sentences and one split sentence were compliant departures, and the remaining two split sentences were classified as non-compliant sentences.

The distribution of types of drugs in D2D also changed slightly. This is demonstrated in Figure 24.



⁵² Box D2D refers to a grid box in the Drug Grid that represents offenses that fall in Drug Group 2 and offenders with a CH score between 4 to 5.75.

The percentage of cocaine and heroin offenses in box D2D increased slightly in 2012, with the highest percentage increase in cocaine offenses. The proportion of PCP and other drugs decreased in this grid box. No marijuana offenses were sentenced in this grid box since the changes to the Drug Grid placed marijuana felonies in OSGs D3 and D4 only. Similar to grid box D2C and the overall drug sentences imposed, cocaine was the most common drug type in D2D as well. Of the 45 offenders in this group, 27 were sentenced for a cocaine offense. All cocaine offenders in D2D were Black, and 85.2% were males. The highest percentage of D2D (26%) fell in age group 32 to 38 years, with a mean age of 39 years. The high average age and average CH score (4.5) of cocaine offenders in this grid box suggests chronic cocaine use by this offender population.

There were shifts in compliance rates as well. The percentage of compliant in-the-box sentences in this grid box increased from 84.5% in 2011 to 90% in 2012. The percentage of non-compliant departures decreased by approximately 10 percentage points, from seven counts in 2011 to only two counts in 2012. This could be because the new changes to the Guidelines took the severity of the drug types into consideration when determining appropriate sentence types under the Guidelines. Initially, all PWID+Dist charges fell in D2, whereas now only PWID+Dist charges for schedule I or II narcotic/abusive drugs fall in D2. This change in sentencing recommendation based on drug type might have led to a higher compliance rate in grid box D2D.

C. Offense Severity Group D4

The addition of D4 to the Drug Grid in June 2011 was in response to possession of liquid PCP being reclassified as a felony in 2010. In addition, attempts of drug offenses ranked in Drug Group 3 were moved to OSG D4. The number of counts sentenced for D4 offenses in 2012 more than doubled to 26 counts compared to 2011, when there were only nine counts of D4 offenses. This is to be expected since the new OSG D4 was effective for only half of 2011.⁵³

The number of sentences imposed for D4 offenses remains low and forms only a small percentage of all drug offenses. There were 26 single count cases of D4 offenses in 2012. Prison sentences were imposed in 13 cases, probation in nine cases and split sentences in four cases for attempted drug possession offenses. Attempted possession of liquid PCP and attempted PWID+Dist marijuana were the only two drug types that were sentenced in this OSG, with PCP offenses accounting for 73.1% of all D4 offenses. The high percentage of PCP offenses in this drug group is expected given that this drug group was added after possession of liquid PCP was first classified as a felony.

All sentences imposed in D4 were compliant in-the-box sentences. The high compliance rate indicates that the Superior Court judges closely followed the changes implemented in the

⁵³ The addition of D4 became effective on June 15, 2011.

Guidelines in 2011. Although prison sentences were the most common sentence type in this drug group, the average sentence imposed for prison sentences was very low (8.5 months). This reflects the changes made to the Guidelines, as this drug group only consisted of low severity offenses and were thus not sentenced as severely as other drug offenses.

The offender demographics of this population did not differ vastly from that of the overall drug offender population. Approximately 95% of offenders sentenced for a D4 offense were Black, as were the overall drug offender populations. However, D4 offenders consisted of a higher proportion (91.7%) of males as compared to the overall drug offenders (85.8%). Offenders from age group 25 to 38 formed 58.3% of all offenders in this drug group, with an average age of 36 years. The CH score of these offenders was also relatively low, with a mean of 2.0, median of 1.5, and a mode of 0.

VI. Conclusion

Since their inception, judicial compliance with the Guidelines has consistently hovered around 90% every year and currently is at an historic high. In 2010, the judicial compliance rate was 96%; in 2011, it increased to 97%, and in 2012 compliance reached over 98%. Similar to the overall judicial compliance rate, the percentage of in-the-box sentences increased from 95% in 2011 to 96% in 2012. These data illustrate that Superior Court judges are consistently applying the Guidelines and imposing felony sentences within the recommended in-the-box sentencing range.

There are several possible factors contributing to the increasing rate of judicial compliance. First, as the Guidelines approach their tenth anniversary in 2014, judges have continued to be more comfortable with and accustomed to using the Guidelines. Second, the yearly changes and updates to the Guidelines rules have made in-the-box sentences more appropriate for the offenses committed. Finally, the ongoing improvements in the Commission's data tracking and validation methods over the past three years have enabled the Commission to be more accurate in classifying sentences that initially appear to be non-compliant but are in fact compliant after examined more closely.

Similar to 2011 data trends, in 2012, drug counts were the most common offense type to receive a compliant departure (38.6% of all compliant departures). However, unlike 2011, the same was not true for non-compliant departures. Violent offenses (40.0% of all non-compliant departures) represented the most common non-compliant departures. The reason for the shift in non-compliant departures may be due to the 2011 changes in the Drug Grid, as the Commission adjusted the Drug Grid to reflect the offense severity of drug offenses based upon the maximum statutory penalty. These adjustments may have limited the need for judges to impose non-complaint sentences in felony drug cases.

Further analysis of the changes to the 2011 Drug Grid indicates that judges generally accepted these changes and imposed compliant in-the-box sentences under the new grid structure. As expected, box D2C, which was changed from prison, short split, and probation eligible box to a prison only or short split box, saw a decrease in the rate of both prison and probation sentences, while short split sentences increased. All of the sentences reported for this offense category were compliant with the Guidelines. Similarly, in box D3C, which changed from a prison or short split eligible box to a prison only box, only three percent of the sentences were determined to be non-compliant. While compliance with the Guidelines has increased since the changes to the Drug Grid, the Commission will continue to monitor and evaluate the effects of the Drug Grid revisions on the Guidelines to determine whether further adjustments are appropriate or necessary.

CHAPTER SIX

CRIMINAL CODE REVISION PROJECT

In addition to the Commission's mandate to develop, implement, and monitor the Voluntary Sentencing Guidelines, the Council of the District of Columbia has directed the Commission to review the entirety of the District of Columbia Criminal Code and, based on that review, develop comprehensive revisions to the District's criminal laws. This is a challenging process and requires a significant investment of time and resources. However, the Commission's recommendations will add clarity and consistency to the District's criminal laws and make their application more fair and efficient.

I. History and Background

In 1974, the District of Columbia made its first attempt at comprehensive revision of the D.C. Code since the turn of the twentieth century. As part of that process, in 1978, the District of Columbia Law Revision Commission drafted criminal code revisions that recommended the elimination of certain penalty inequities and simplified complex areas of the Code.⁵⁴ However, with the exception of a few sections that were subsequently revived, such as the Theft and White Collar Crimes Act of 1982 and the Anti-Sexual Abuse Act of 1994, the majority of the Law Revision Commission's recommendations were not enacted into law.

Recently the Committee on the Judiciary of the District of Columbia Council again considered a complete reexamination of the District's criminal statutes, to remove ambiguity, disorganization, and redundancies within the Code. Specifically, the Council found that:

. . . [t]he existence of overlapping provisions and confusing or outdated language, penalties that are disproportional to the crime or disparate from penalties of similar crimes, and other inconsistencies impede the fair and equitable administration of the law.⁵⁵

To address these problems the Council amended the Commission's mandate to include criminal code revision in 2006. To effectuate the Council's mandate, the Commission created the Criminal Code Revision Committee ("Committee") and appointed six Commission members to serve on the Committee.⁵⁶

⁵⁴ D.C.LAWREV. COMM., 95TH CONG., PROP. D.C.BASIC CRIM.CODE AND COMMENTARY, 25-922 (Comm. Print 1978).

⁵⁵ DC COUNCIL, COMM. ON THE JUDICIARY, COMM. REP. 16-172, at 1-2 (2006).

⁵⁶ Mr. Ronald Gainer, a retired attorney formerly employed by the United States Department of Justice, serves as the chairman of the Committee. Chairman Gainer is an established expert in the area of criminal law reform and has written extensively on the topic. The remaining committee members include Professor Donald Braman, an

II. Legislative Mandate

The Commission's specific legislative mandate for criminal code revision is the preparation of comprehensive recommendations to the Council and the Mayor that:

- (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.⁵⁷

Although the original deadline for the project was September 30, 2010, that legislative mandate has been extended, with a current deadline of September 30, 2016.⁵⁸

Associate Professor of Law at the George Washington University School of Law; Mr. David Rosenthal, Senior Assistant Attorney General for the Public Safety Division of the Office of the Attorney General for the District of Columbia; Ms. Laura Hankins, Special Counsel for the Public Defender Service of the District of Columbia; and Ms. Renata Kendrick Cooper, Special Counsel to the United States Attorney for the District of Columbia (Policy and Legislation).

⁵⁷ D.C. CODE § 3-101.01- (A), (C).

⁵⁸ "Sentencing and Criminal Code Revision Modification Clarification Act of 2012," sections 3031-3032 of D.C. Act 19-385, the Fiscal Year 2013 Budget Support Act of 2012 (the projected law date for D.C. Act 19-385 is September 21, 2012).

III. Accomplishments in 2012

The Fine Proportionality Act, recommended to the Council by the Commission on January 11, 2011, was advanced as the Criminal Fine Proportionality Act of 2011. This Act represents the Commission's first proposed revision to the D.C. criminal code. The legislation addresses the disproportionality between the severity of an offense and the designated fine amount. The Act standardizes fines for crimes by correlating the designated fine amount with the maximum term of imprisonment, ensuring a system of proportionality for fines within the District. The Criminal Fine Proportionality Act of 2011 was approved by the Council and transmitted for Congressional review on February 27, 2013. To provide a definitive applicability date for the new fine structure, the Criminal Fine Proportionality Emergency Amendment Act of 2013 was approved by the Council and provides a start date of June 1, 2013.

During the first part of 2012, the Commission worked with the Council to ensure that funding was available to adequately staff the Criminal Code Revision Project. Given the project's scope and complexity, it was clear that the current staffing level of a part-time project director and one paralegal was not sufficient. Included in the agency's FY 2013 approved budget was funding for a full time project director and four full time legal staff assigned to the Criminal Code Revision Project.

A. Project Staffing

Since its inception, the project has suffered from significant staffing shortages. As the Council's Committee on the Judiciary has previously noted, "similar undertakings in other jurisdictions have required far greater resources and staff than has been afforded the SCCRC."⁵⁹ In March of 2009, the Commission hired a part-time project director to begin the initial code reform work. In 2011, a full-time paralegal was added to the project to assist the project director with code reform efforts. However, in late 2011 the project's part-time project director retired and the paralegal assigned to the project was promoted into another position within the agency. Unfortunately, these changes resulted in the project being completely unstaffed at the beginning of 2012.

With the additional resources approved by the Council, the Commission began to rebuild the project's staff in the latter half of 2012. The project director position was reclassified as a full-time position and an aggressive search was initiated to identify qualified and experienced candidates. The search proved to be very challenging and interviews took place over a seven-month period until the Commission was able to hire an exceptionally well-qualified attorney to direct the project in October 2012. Once the new project director was in place, efforts then were

⁵⁹ DC COUNCIL COMM. ON THE JUDICIARY, COMM. REP. 19-214 at 3 (2012).

focused on filling the legal positions designated for the project. By the end of December 2012, two attorney advisor and two staff counsel positions had been filled, fully staffing the project.

B. Project Planning & Procedures

In November 2012, the new project director and the Commission's Committee on Criminal Code Revision began planning and establishing new procedures for the project. Guiding the Committee's considerations were not only the project's expanded staff resources, but corresponding clarity about the project's scope and goals.

Among the planning and procedural decisions made by the Committee in 2012 were the following:

- The Committee will meet twice monthly in 2013 to review and discuss code revision research, recommended revisions, and adopt draft language;
- The first code sections to be examined will focus on mental state requirements, including the drafting general definitions of mental states that may be applied to many specific offenses;
- Background research for each code section under consideration by the Committee will include: (1) relevant legislative history; (2) relevant case law; and (3) any relevant comparison to other sections of the District's Code, the codes of other states, and/or the Model Penal Code;
- As draft language for each code section is adopted by the Committee, a record will be kept of all issues on which consensus cannot be reached. Draft language that does not receive consensus support will be bracketed. In addition, a Committee commentary will be developed simultaneously with draft code revision language, which records individual member concerns, points of clarification, and relevant authorities that are followed or distinguished; and
- The Committee has endorsed a new organizational scheme that would provide, at the beginning of the criminal code, general provisions that state definitions and principles of liability that apply to all specific offenses.

The Committee will present quarterly written progress reports to the full Commission. All proposed code revisions and an accompanying commentary approved by the Committee will go before the full Commission for review and action in fulfillment of its obligation under D.C. Code § 3-101.01 (c).

IV. Next Steps

With the Criminal Code Revision Project fully staffed, the agency is well-positioned to provide the Committee with the research and support necessary to undertake the complex and difficult task of comprehensive criminal for code revision.⁶⁰ In early 2013, a detailed project management plan that includes milestones, deliverables and a timeline for the project duration was developed and presented to the full Commission for review and approval. The project management plan will serve as a roadmap to ensure that the Commission's recommendations for revision of the D.C. Criminal Code yields a clear, consistent and concise code that will improve efficiency in the administration of our criminal laws and increase public safety for the District.

⁶⁰ In 2013, the project expects to further expand its staff capacity by recruiting local law students to complete certain research needs. No further staff hiring is expected, except as necessary to respond to attrition.

Appendix A

MASTER GRID

		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*	Group 1 1st degree murder w/armed 1st degree murder	360 - 720	360 - 720	360 - 720	360 - 720	360 +
	Group 2 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 +
	Group 3 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 +
	Group 4 Aggravated assault w/armed Voluntary manslaughter	48 - 120	60 - 132	72 - 144	84 - 156	96 +
	Group 5 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 +
2 Points*	Group 6 ADW Robbery Aggravated assault 2nd degree child sex abuse Assault with intent to rob	18 - 60	24 - 66	30 - 72	36 - 78	42 +
	Group 7 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 +
1 Point *	Group 8 CPWOL UUV Attempt robbery Attempt burglary 1st degree theft	6 - 24	10 - 28	14 - 32	18 - 36	22 +
	Group 9 Escape/prison breach BRA Receiving stolen property Uttering Forgery Fraud	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.						

Appendix B

DRUG GRID

		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
2 Points*	Group 1 Distribution w/a (any drug) PWID w/a (any drug)	30-72	36-78	42-84	48-90	54+
1 Point*	Group 2 Distribution or PWID (Schedule I or II narcotic/ abusive drugs)	12-30	16-36	20-42	24-48	28+
	Group 3 Distribution or PWID (except Schedule I or II narcotic or abusive drugs) Attempt Distribution or Attempt PWID (Schedule I or II narcotic/ abusive drugs) Possession of Liquid PCP	6-18	10-24	14-30	18-36	22+
¾ Point*	Group 4 Attempt Distribution or Attempt PWID (except Schedule I or II narcotic or abusive drugs) Attempt Possession of Liquid PCP	3-12	5-16	7-20	9-24	11+
*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.						

Appendix C

The top five grouped offenses are comprised of the following crimes:

1. Drugs, PWID+Dist:

- i) Drugs -- Distribution or PWID: Schedule I, II Narcotic and abusive drugs (heroin, cocaine, PCP, methamphetamine, etc.)
- ii) Drugs -- Distribution or PWID: Schedule I, II, III Non-narcotic and non-abusive drugs (including marijuana -- 2nd offense or > ½ pound)
- iii) Drugs -- Distribution or PWID: Schedule IV
- iv) Drugs -- Possession of Liquid PCP
- v) Drugs -- Distribution to Minors

2. Drugs, Attempted Offenses:

- i) Drugs -- Attempt or Conspiracy of an offense in Drug Group 1
- ii) Drugs -- Attempt or Conspiracy of an offense in Drug Group 2
- iii) Drugs -- Attempt or Conspiracy of an offense in Drug Group 3

3. Weapons:

- i) Carrying Pistol Without License (CPWL)
Carrying Dangerous Weapon (CDW)
- ii) Carrying Pistol Without License (CPWL)
Carrying Dangerous Weapon (CDW)
2nd+ offense or after felony conviction
- iii) Firearm, Presence in a Motor Vehicle Containing: Prior gun conviction or felony
- iv) Firearm, Presence in a Motor Vehicle Containing
- v) Firearm, Unlawful Possession of by a person with a prior conviction > 1 yr
- vi) Firearm, Unlawful Possession of by a person with a prior conviction > 1 yr and COV other than Conspiracy
- vii) Firearm, Unlawful Possession of by others

4. Assault:

- i) Aggravated Assault while armed
- ii) Aggravated Assault
- iii) Aggravated Assault -- Attempt
- iv) Aggravating Circumstance
- v) Assault with a Dangerous Weapon (ADW)
- vi) Assault on Police Officer (APO) while armed
- vii) Assault on Police Officer (APO)
- viii) Assault on Police Officer (APO) w/ deadly weapon -- 2nd+ offense or prior felony

- ix) Assault with Intent to Kill or Poison while armed
- x) Assault with Intent to Kill or Poison
- xi) Assault with Intent to Rob while armed
- xii) Assault with Intent to Rob
- xiii) Assault with Intent to 1° or 2° Sexual Abuse or Child Sex Abuse while armed
- xiv) Assault with Intent to 1° or 2° Sexual Abuse or Child Sex Abuse
- xv) Assault with Intent to Commit any other Felony while armed
- xvi) Assault with Intent to Commit any other Felony
- xvii) Assault with Intent to Commit Mayhem while armed
- xviii) Assault with Intent to Commit Mayhem
- xix) Assault with Significant Injury

5. Robbery:

- i) Robbery -- while armed
- ii) Robbery
- iii) Robbery -- Attempt while armed
- iv) Robbery -- Attempt

Appendix D

Aggravating Factors

- (1) There was deliberate cruelty to a victim or there was gratuitous violence inflicted upon a victim in a manner substantially beyond that normally associated with this offense.
- (2) A victim was particularly vulnerable due to age or reduced physical or mental capacity, which was known or should have been known to the defendant, unless that vulnerability constituted an element of the offense of conviction.
- (3) A victim sustained a “devastating injury.” Devastating injury is defined as a physical or mental injury that results in one or more of the following:
 - (a) Permanent and substantial impairment of the person’s employment opportunity and/or lifestyle;
 - (b) Permanent, gross disfigurement; or
 - (c) Medical confinement and/or immobilization for a period of more than three months.
- (4) The crime committed or attempted was substantially premeditated, as evidenced by a high degree of planning or sophistication or planning over an extended period of time.
- (5) The defendant committed for hire or hired another to commit any one of the following offenses: Murder; Manslaughter; First-Degree Sexual Abuse; Kidnapping; Mayhem/Malicious Disfigurement; Aggravated Assault; Assault with intent to commit any of the foregoing; Assault with intent to kill; Assault with a Deadly Weapon; or Arson.
- (6) The offense was part of an enterprise significantly related to organized crime or high-level drug trafficking. This aggravating factor does not apply in cases charging only distribution or possession with intent to distribute a controlled substance where the defendant’s only connection to organized crime or high-level drug trafficking is street- level drug trafficking.
- (7) The defendant threatened, bribed, attempted to bribe, induced, or attempted to induce a victim, a member of the victim’s family, or a potential witness, or any other person to withhold truthful testimony or provide false testimony, or otherwise attempted to obstruct justice, unless the defendant is separately convicted of an offense that arises out of the same conduct.
- (8) The offense is a violation of Chapter 32 of Title 22 of the D.C. Official Code, which involves an intended or actual monetary loss substantially greater than what would normally be associated with the offense or any one or more of the following:
 - (a) The offense(s) involved multiple victims or multiple incidents per victim;
 - (b) The defendant has been involved in other conduct similar to the current offense(s) as evidenced by the findings of criminal, civil or administrative law proceedings or the imposition of professional sanctions; and/or
 - (c) The defendant used his or her position of confidence or fiduciary responsibility to facilitate the commission of the offense(s).
- (9) The offender, in attempting to gain or while holding public office by appointment or election, betrayed the public trust by his or her unlawful conduct.

(10) The consecutive/concurrent sentencing policy results in a guideline sentence so lenient in relation to the seriousness of the offense and the history of the defendant that imposition of the guideline sentence would result in manifest injustice. A departure based solely on this factor shall not result in a sentence that exceeds the sentence that would result if all guideline sentences were consecutive.

(11) There is any other substantial and compelling basis, as articulated by the sentencing judge, comparable in gravity to those listed in 1 to 10 above, which aggravates substantially the seriousness of the offense or the defendant's culpability.

Note: Going to trial is not an aggravating factor and should not be used to go outside of the box.

Mitigating Factors

(1) A victim was an aggressor, initiator, willing participant in, or provoker of the incident to such a degree that the defendant's culpability is substantially less than that typically associated with the offense.

(2) Before detection in a crime other than a crime of violence, the defendant compensated or made a good faith effort to compensate the victim(s) for any damage or injury sustained.

(3) The defendant participated under duress, coercion, threat or compulsion insufficient to constitute a complete defense, but which significantly reduces the defendant's culpability.

(4) The offense was principally accomplished by another, and the defendant manifested extreme caution or sincere concern for the safety and well-being of a victim.

(5) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(6) The defendant's capacity to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law was impaired significantly, though not sufficiently to constitute a complete defense. Voluntary use of alcohol or other drugs should not be considered in relation to this mitigating factor.

(7) The defendant has provided substantial assistance to law enforcement in the detection or prosecution of other offenders, and departure for this reason does not demean the seriousness of the defendant's crime or create an unacceptable risk to the safety of the community.

(8) The guideline sentence calls for a prison sentence but, after consultation with corrections authorities, the court determines that the defendant, by reason of obvious and substantial mental or physical impairment or infirmity, cannot be adequately protected or treated in any available prison facility.

(9) The consecutive/concurrent sentencing policy results in a guideline sentence that is so excessive in relation to the seriousness of the offense and history of the defendant that imposition of the guideline sentence would result in manifest injustice. A departure based solely on this factor shall not result in a sentence that is less than the sentence that would result if all guideline sentences were concurrent.

(10) There is any other substantial and compelling basis, as articulated by the sentencing judge, comparable in gravity to those listed in 1 to 9 above, which does not amount to a defense but which substantially mitigates the seriousness of the offense or the defendant's culpability.