An Evaluation of Compliant Departure Trends from 2013 – 2021

2022 Issue Paper Number 1

Mission Statement

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

District of Columbia Voluntary Sentencing Guidelines

2022 Issue Paper #1: An Evaluation of Compliant Departure Trends from 2013 – 2021

I.   Introduction

In 2021, the overwhelming majority (98.5%) of felony sentences were compliant with the District of Columbia ("the District") Voluntary Sentencing Guidelines ("the Guidelines"). The high rate of judicial compliance with the Guidelines reflects the consistent application and strong acceptance of the Guidelines by Superior Court of the District of Columbia ("Superior Court") judges. The compliance rate has also been stable over the past decade. Since 2012, the Guidelines have achieved an annual overall compliance rate of 91.7% or higher.

The D.C. Sentencing Commission ("the Commission") measures judicial compliance with the Guidelines two ways: 1) inside-the-box compliance and 2) overall compliance. Inside-the-box compliance refers to a sentence imposed by the Court which falls within the Guidelines recommended sentencing range and sentencing options as set forth in the Guidelines' Master or Drug Grid. Any sentence outside the recommended sentencing range or sentencing options is classified as an outside-the-box sentence. However, an outside-the-box sentence can still be determined to be compliant if it meets one of the Guidelines exceptions.[1] The 98.5% compliance rate cited above reflects the overall compliance rate in 2021; the in-the-box compliance rate in 2021 was 91.4%.[2]

This paper reviews Compliant Departures, a type of compliant outside-the-box sentence, that have been imposed between 2013 and 2021. The review includes an analysis of compliant departures above the recommended sentencing range (aggravating departures) and below the recommended sentencing range (mitigating departures). When imposing a compliant departure sentence, the judge indicates why they chose to deviate from the recommended Guidelines sentencing range and/or options. Therefore, the findings of this paper may provide insight into the factors Superior Court judges consider as they tailor sentences to fit defendants and their offenses.

II. Compliant Departure Sentences

While the Guidelines in-the-box sentencing ranges allow a sentencing judge to tailor each sentence to the specific facts of the case, the behavior of the defendant, and/or the defendant's history, they do not always account for case-specific circumstances; no sentencing system can adequately account for all situations. To accommodate for atypical cases, the Guidelines contain a non-exhaustive list of departure principles comprised of eleven aggravating and eleven mitigating factors that allow judges to use their discretion to sentence outside of the applicable Grid box while still imposing a Guidelines-compliant sentence.[3] The Commission classifies sentences imposed under this non-exhaustive list as "compliant departures." A compliant departure is an otherwise non-compliant sentence for which the sentencing judge provided a Guidelines enumerated reason for departing from the Guidelines.

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[1] The exceptions are:
1. The sentencing judge utilized an applicable departure factor (called a compliant departure);
2. The sentence followed from an accepted Superior Court Criminal Rule 11(c)(1)(C) plea agreement;
3. The sentence was based on a statutory enhancement (e.g. a hate crime);
4. A statute required a sentence outside of the Guidelines recommended sentence range/option; or
5. The sentence ran concurrent with an equal or greater compliant in-the-box sentence.

[2] This information can be found in the 2021 Sentencing Commission Annual Report.

[3] This list is provided in Appendices B and C of the Manual.

For example, a defendant is convicted of Carrying a Pistol Without a License ("CPWL") and has four prior criminal history score points. Their offense of conviction and prior criminal history score would place them in Guidelines Master Grid Box 8D.

|	Criminal History Score				
	0 to ½ A	¾ to 1¾ B	2 to 3¾ C	4 to 5¾ D	6 + E
Group 8 Carrying a pistol (CPWL) UUV Attempt robbery/burglary FIP[32] 1st degree theft Assault w/significant bodily injury	6 - 24	10 - 28	14 - 32	18 - 36	

Master Grid Box 8D has a recommended sentencing range of 18 to 36 months and a recommended sentence type of prison or compliant long split only (indicated by the white shading). Therefore, a compliant in-the-box sentence must be between 18 and 36 months and be a prison or long split sentence. A sentence outside the recommended sentence range or type would not comply with the Guidelines unless the judge utilizes a departure factor or one of the other exceptions,[4] in which case it would be a compliant outside-the-box sentence. Between 2013 and 2021, Compliant Departures represented 2.3% (n=402) of all felony counts sentenced in the District.

III. Overall Departure Trends

Between 2013 and 2021, 11,330 defendants were sentenced for felony offenses in the District of Columbia Superior Court, in 12,985 cases that consisted of 17,208 individual counts. Out of the total number of defendants sentenced for felony offenses during this time frame, 316 defendants (3%) were given a compliant departure sentence. A total of 318 felony cases, comprised of 402 counts, received compliant departures, representing 2% of all cases and 2% of all counts sentenced. Figure 1 below shows the percentage of counts that received compliant departures out of the total number of felony counts sentenced each year. Compliant departures ranged from 1 to 4% of the sentenced counts in a given year, but consistently made up approximately 1 to 2% of all felony counts sentenced. The greatest percentage of compliant departures was observed in 2014. It is important to acknowledge that the small sample size of compliant departures limits the generalization of any conclusions drawn within this paper.

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[4] See footnote 1.

Figure 1: Counts Receiving Compliant Departures (2013 – 2021)[5]
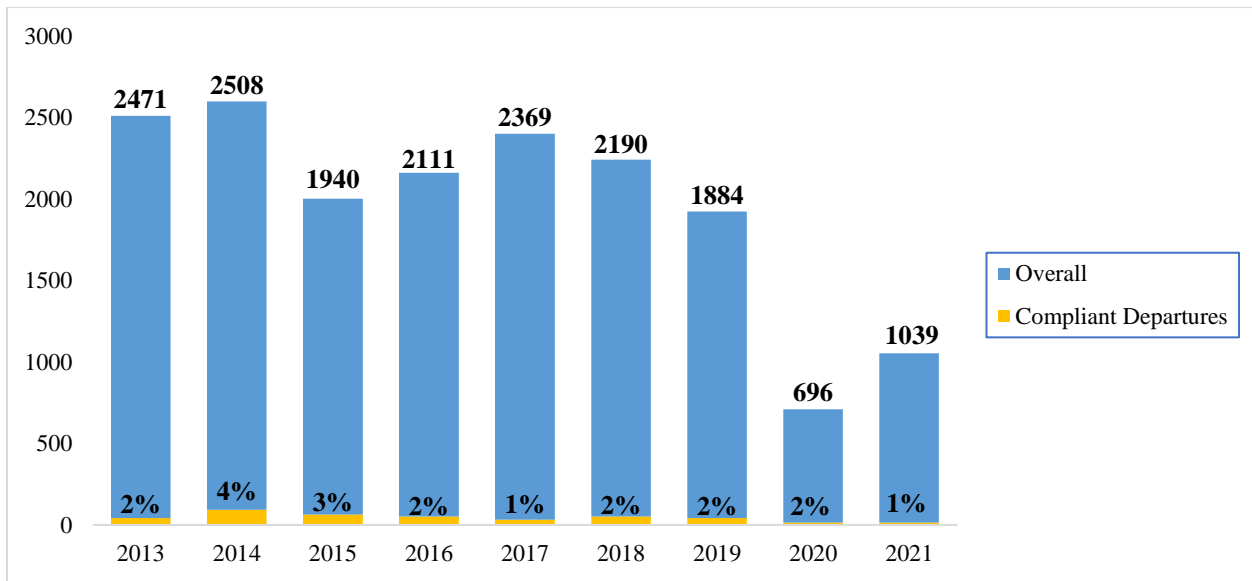
Between 2013 and 2021, Superior Court judges utilized a mitigating departure factor to impose below-the-box sentences in 355 counts. During the same period, judges used an aggravating departure factor to impose above-the-box sentences in 47 counts. Figure 2 below shows a high-level analysis of the number of departure factors utilized each year, broken down by departure type. In 2014, the Commission observed the greatest total number of compliant departures, as well as the greatest number of mitigating factors. Comparatively, the greatest number of aggravating factors was observed in 2013, making up approximately 30% of the total number of aggravating factors between 2013 and 2021. During 2020 and 2021, very few departure factors were utilized by the Court, representing only 7% of the total number of compliant departures from 2013 to 2021. This may be due to the impact of the COVID-19 pandemic on Court operations and the related general reduction in counts sentenced as well as the greater percentage of convictions following from plea agreement.

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[5] Percentages in all charts are rounded to the nearest whole number.

Figure 2: Compliant Departures, Count Level (2013 – 2021)
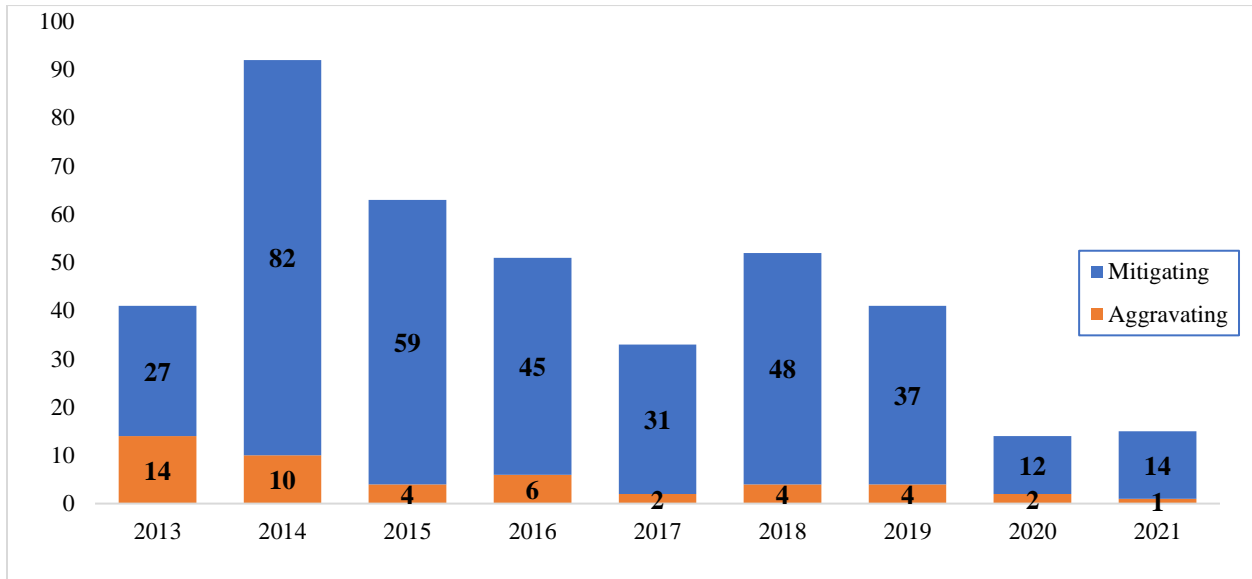
The majority (88%) of compliant departures were mitigating, with M10 being the most frequently cited departure factor (37%). Since its inception in June of 2021, the new M11 mitigating departure factor has been used three times, representing 20% of all compliant departures in 2021.[6] Figure 3 below shows a breakdown of the types of compliant departure factors cited from 2013 to 2021. During the period analyzed, 10 out of 11 possible mitigating factors were cited and 7 out of 11 possible aggravating factors were cited.[7] Mitigating factors 7 and 10 represented three-quarters of all the mitigating factors cited during this timeframe, and aggravating factor 11 made up over half of all aggravating factors cited.

Figure 3: Departure Type Analysis for Compliant Departure Sentences, Count Level (2013 – 2021)

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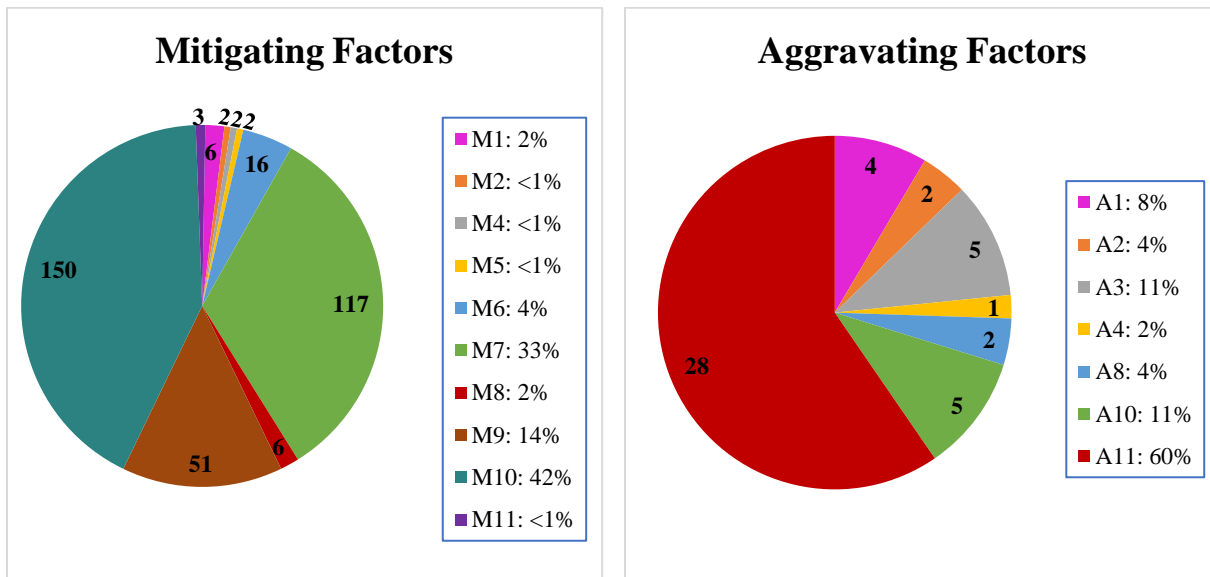
[6] Mitigating Departure Factor M11 was created in response to the impact the Covid-19 pandemic has had on sentencing in the District. It was implemented on June 25, 2021 to account for delays faced by D.C. Superior Court in connection with the invocation of D.C. Code §11-947. Please note that there won't be a lot of data on this factor based on the time frame of this analysis.

[7] Mitigating Factor M3 and Aggravating Factors A5, A6, A7, and A9 were never used during this timeframe.

IV. Individual Trends in Compliant Departure Sentences

This section analyzes offender characteristics, specifically age, gender, race, and prior criminal history. Of the 316 defendants who received compliant departures from 2013 to 2021, 34 received an aggravating departure and 282 received a mitigating departure. Each table compares defendants that received compliant departures to the total number of defendants who were sentenced for a felony offense. The pie charts provide a deeper analysis of the subset of defendants receiving compliant departures, comparing those that were cited a mitigating departure and those that were cited an aggravating departure. Percentages in the charts can be used to compare a specific compliant departure (mitigating or aggravating) to the overall sentenced defendants. It is important to remember that the sample size (n) of the defendants who received compliant departures is much smaller than the overall population sentenced, which limits generalizations of any conclusions.

For the offender analysis, several defendant groups were omitted from the sample. First, defendants under the age of 18 were excluded from the age analysis. Second, all counts with missing values for race or gender were removed. Third, the analysis filtered the count level data to individual level by identifying defendants who were sentenced for multiple counts to ensure they were not being counted more than once. The only exception to this is for the age analysis; if an individual was sentenced for multiple counts receiving a departure at different ages, that individual was double counted to include the different ages.

A. Age at Offense Analysis[8]

Table 1 compares the age at offense groups of defendants who received compliant departures to the overall number of defendants who were sentenced for felony offenses from 2013 to 2021. The 'age at offense' distributions are consistent among defendants who received compliant departures and the overall number of defendants who were sentenced. Defendants who were 21-to-29 years old at the time of the offense made up the largest percentage of defendants who received compliant departures as well as the largest percentage of the overall number of defendants sentenced. Similarly, defendants who were 60 years or older at the time of the offense represented the smallest percentage of defendants who received compliant departures and the smallest percentage of the overall number of defendants sentenced.[9]

Table 1: Age at Offense Groups, Individual Level (2013 – 2021)

| Age at Offense	Compliant Departures	Overall
18-20	15% (n=45)	16.5% (n=1,759)
21-29	38.5% (n=116)	38.2% (n=4,077)
30-39	21.9% (n=66)	21.5% (n=2,301)
40-49	9.3% (n=28)	12.3% (n=1,316)
50-59	11.6% (n=35)	9.1% (n=972)
60+	3.7% (n=11)	2.4% (n=255)
Total Individuals	*301*	*10,680*

Age distributions were similar when comparing both departure types. The ages of defendants who received mitigating factors ranged from 18 to 73, with an average age of 32 and a median age of 28. Of the defendants who received an aggravating factor, ages ranged from 18 to 64, with an average age of 32 and a median age of 29. Figure 4 is an expansion of the Compliant Departures column in Table 1, providing a more in-depth analysis of age at offense groups based on departure type. Consistent with overall sentencing data, defendants aged 21 to 29 at the time of the offense were the greatest population to receive either type of

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[8] The age of each offender refers to his or her age at the time the offense was committed. In infrequent cases where an offense date is not provided, the arrest date is used instead.

[9] In the overall statistics, age was calculated for offenders in 10,680 of the 12,985 cases. For those receiving compliant departures, age was calculated for offenders in 301 of the 318 cases. Those under the age of 18 were excluded from the analysis.

compliant departure. However, defendants in that age range represented a greater percentage of defendants who received aggravating departure factors compared to defendants who received mitigating departure factors. Defendants who were 60 years or older at the time of offense accounted for the smallest percentage of defendants who received mitigating departure factors. Defendants aged 18 to 20, 50 to 59, and 60 years or older equally received the lowest number of aggravating departures.

Figure 4: Age at Offense Analysis of Compliant Departure Sentences, Individual Level (2013 – 2021)
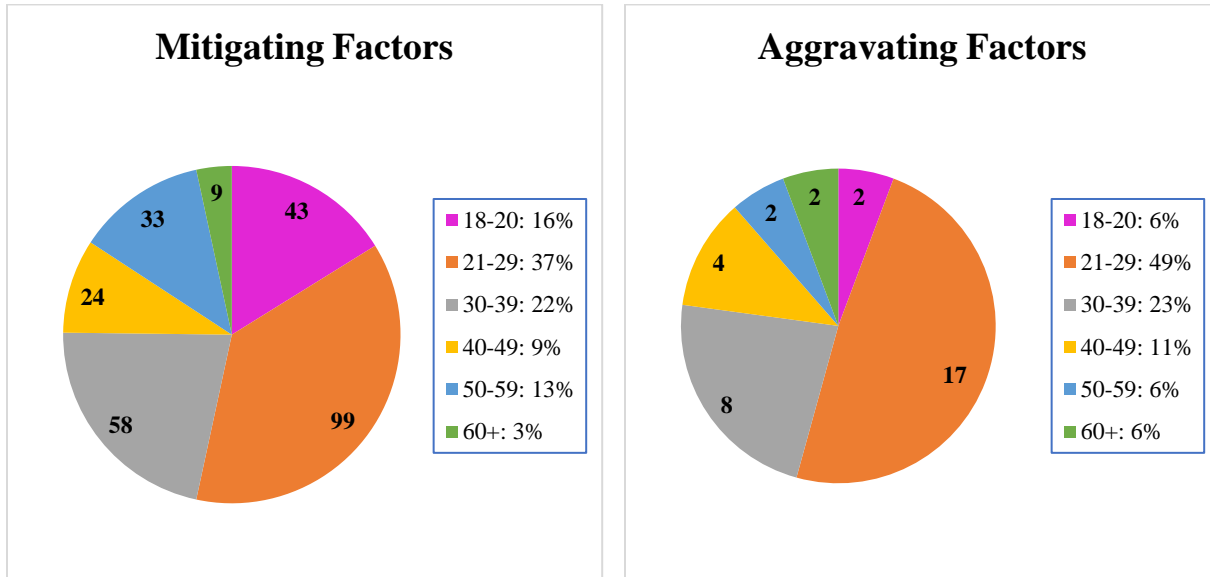
B. Gender Analysis[10]

Table 2 compares defendants who received compliant departures to the total number of defendants sentenced for felony offenses from 2013 to 2021, based on reported gender. Males made up the majority of defendants sentenced during this time frame and received the majority of compliant departure sentences.[11]

Table 2: Gender, Individual Level (2013 – 2021)

Gender	Compliant Departures	Overall
Male	93.7% (n=295)	91.7% (n=10,332)
Female	6.3% (n=20)	8.3% (n=937)
Total Individuals	*315*	*11,269*

Figure 5 is an expansion of the Compliant Departures column in Table 2, providing a more in-depth analysis of gender based on departure type. Males received the majority of mitigating and aggravating departure factors. A small proportion of females received mitigating departure factors, but none received an aggravating departure factor during the analyzed time frame.

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[10] The Commission's data on offender gender is a limited binary categorization (i.e. only male or female). Gender information is obtained from Superior Court records.

[11] In the overall statistics, gender was reported for 11,269 out of the 11,330 defendants sentenced. For those that received compliant departures, gender was reported for 315 out of the 316 defendants.

Figure 5: Gender Analysis of Compliant Departure Sentences, Individual Level (2013 – 2021)
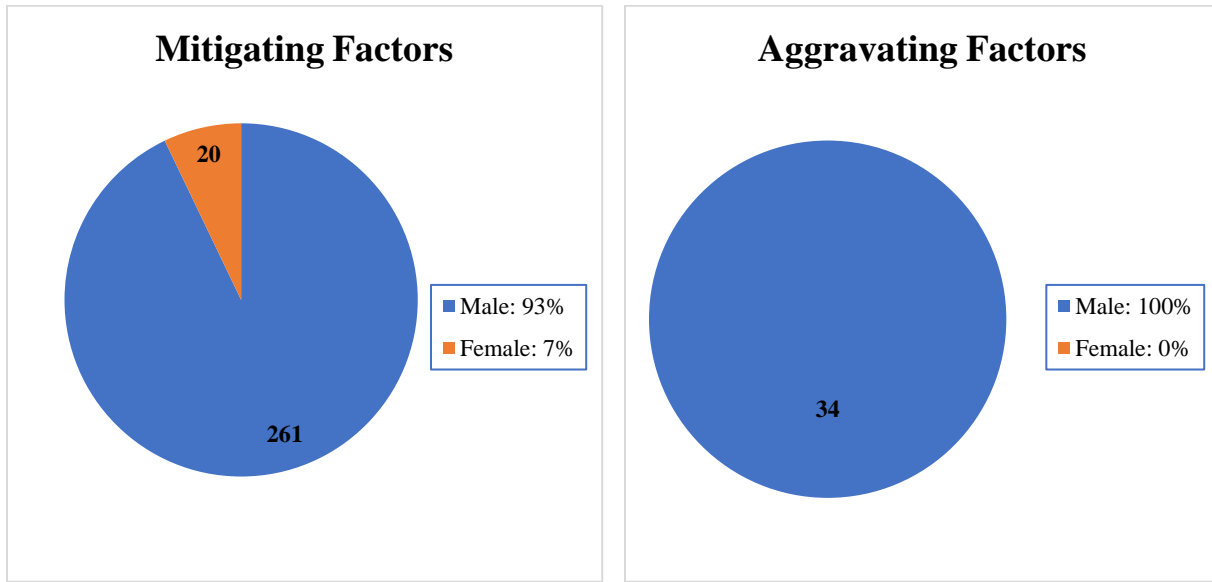
C. Race Analysis[12]

Table 3 compares the race of defendants who received compliant departures compared to the overall number of defendants sentenced for felony offenses. Based on the data available to the Commission, race is broken down into three categories: Black, White, and "Other."[13] The racial breakdown of defendants who received compliant departures is consistent with the overall trend. However, a smaller percentage of White defendants received compliant departures compared to the overall sentenced population and a greater percentage of Black defendants received a compliant departure.[14]

Table 3: Race, Individual Level (2013 – 2021)

| Gender	Compliant Departures	Overall
Black	97.3% (n=292)	95.3% (n=10,341)
White	2.7% (n=8)	4.1% (n=448)
Other	0% (n=0)	0.6% (n=60)
Total Individuals	*300*	*10,849*

Figure 6 is an expansion of the Compliant Departures column in Table 3, providing a more in-depth analysis of race based on departure type. Consistent with the overall number of defendants sentenced (as presented in Table 3 above), the majority of defendants for both types of compliant departures were Black. The distributions are identical for both types of compliant departures, with 3% of defendants being White and 97% being Black.

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[12] Race category data used by the Commission does not capture ethnicity, thus Black offenders of Hispanic origin or White offenders of Hispanic origin are not separately presented.

[13] The "Other" race category includes those that are American Indian, Asian, Islander, Hispanic, or listed as Other.

[14] In the overall statistics, race was reported for 10,849 out of the 11,330 defendants sentenced. For those that received compliant departures, race was reported for 300 out of the 316 defendants.

Figure 6: Race Analysis of Compliant Departure Sentences, Individual Level (2013 – 2021)
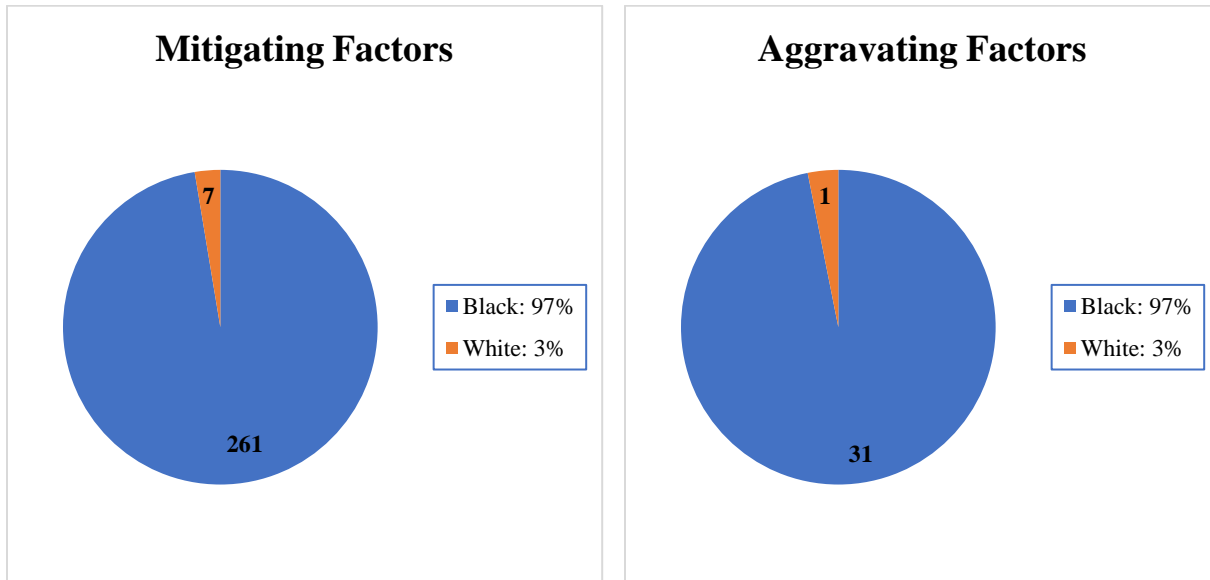
D. Criminal History Analysis

In Table 4, the criminal history score of defendants who received compliant departures are compared to the total number of defendants sentenced for a felony offense. The criminal history score breakdowns show greater disproportionality compared to the other demographic features analyzed. Defendants with a criminal history score of 2 to 3.75 (column C) represented the greatest percentage of defendants who received a compliant departure. In contrast, criminal history column A (0 to 0.5 criminal history score) was the most prevalent criminal history score range for the overall population of defendants sentenced.[15]

**Table 4: Criminal History Score, Individual Level (2013 – 2021)**

CH Score	Compliant Departures	Overall
A (0 to 0.5)	22.8% (n=72)	40% (n=4,360)
B (0.75 to 1.75)	21.2% (n=67)	24% (n=2613)
C (2 to 3.75)	32.3% (n=102)	23% (n=2,502)
D (4 to 5.75)	14.5% (n=46)	8.8% (n=957)
E (6+)	9.2% (n=29)	4.2% (n=459)
Total Individuals	*316*	*10,891*

Figure 7 is an expansion of the Compliant Departures column in Table 4, providing a more in-depth analysis of criminal history score based on departure type. Table 4 showed that 9.2% of defendants who received a compliant departure had a criminal history score of 6 or higher (column E). Of that percentage, 100% of defendants with a criminal history score in column E received mitigating departures.[16] The greatest percentage of defendants who received a mitigating departure had a criminal history score of 2 to 3.75 (column C). In comparison, defendants with criminal history scores in columns A (0 to 0.5) and B (0.75 to 1.75) equally represented the greatest percentages of defendants who received an aggravating departure, accounting for 70%.

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[15] In the overall statistics, CH was reported for 10,891 out of the 11,330 defendants sentenced. For those that received compliant departures, CH was reported for all 316 of the defendants.

[16] This is due to the structure of the Guidelines, wherein defendants in column E cannot receive an aggravating departure because the top of the Guidelines range equals the statutory maximum punishment.

Figure 7: Criminal History Score Analysis of Compliant Departure Sentences, Individual Level (2013 – 2021)
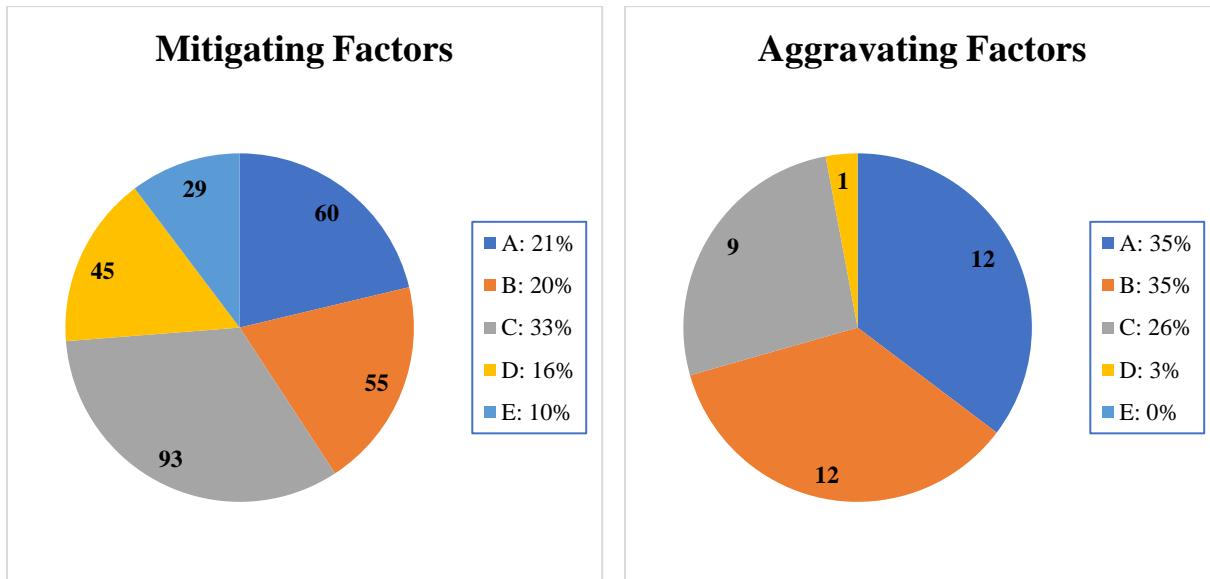
V. Offense Trends in Compliant Departure Sentences

This section examines offense characteristics, specifically disposition type, offense type, and offense severity. The disposition type analysis was conducted on the case level and the offense type and offense severity analyses were done on the count level.

A. Disposition Type Analysis

Table 5 shows a comparison of compliant departure cases and overall felony cases, broken down by disposition type. Consistent with the overall statistics for disposition type during this time frame, most compliant departure sentences were the result of a plea agreement. A greater percentage of cases that received compliant departures were disposed via a jury trial compared to the overall statistics.[17]
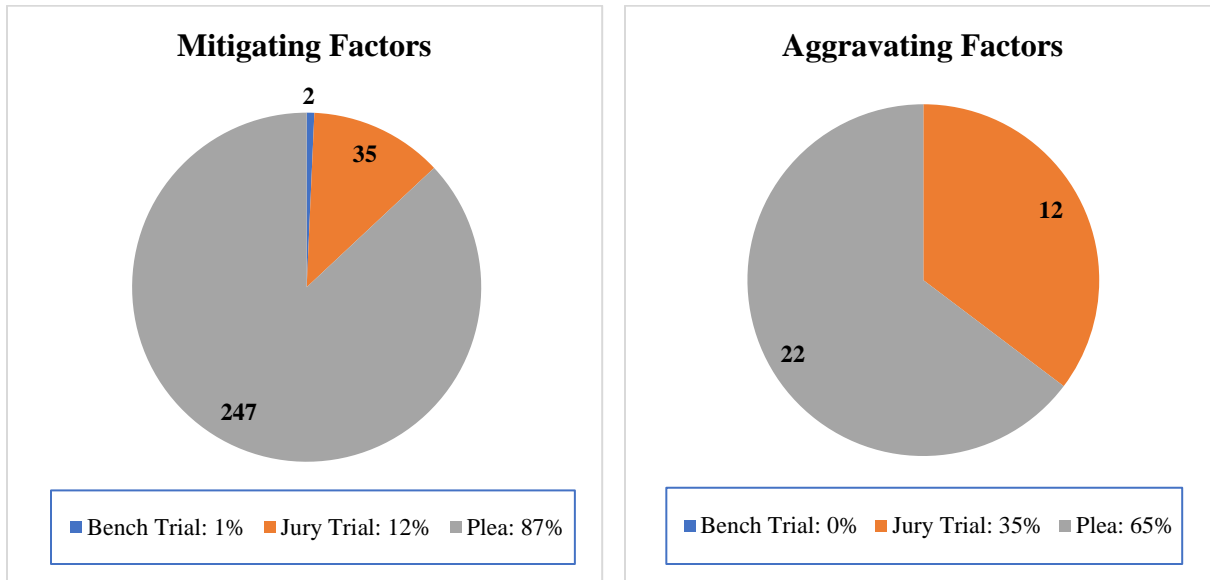
Table 5: Disposition Type, Case Level (2013 – 2021)

Disposition Type	Compliant Departures	Overall
Bench Trial	0.6% (n=2)	0.6% (n=85)
Jury Trial	14.8% (n=47)	6.6% (n=851)
Plea	84.6% (n=269)	92.8% (n=12,048)
Total Cases	*318*	*12,984*

Figure 8 is an expansion of the Compliant Departures column in Table 5, providing a more in-depth analysis of disposition types based on departure type. There was a total of 284 cases that received a mitigating departure and 34 cases that received an aggravating departure. The majority of both mitigating and aggravating factors were sentenced through plea agreements. A very small percentage of cases that received a mitigating factor were the result of a bench trial, whereas none of the cases that received aggravating factors were the result of a bench trial.

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[17] The analysis for the overall column is based on 12,984 out of 12,985 cases. One case did not contain a disposition type.

Figure 8: Disposition Type Analysis of Compliant Departure Sentences, Case Level (2013 – 2021)

Mitigating Factors
2
35
247
Bench Trial: 1%   Jury Trial: 12%   Plea: 87%

Aggravating Factors
12
22
Bench Trial: 0%   Jury Trial: 35%   Plea: 65%

B. Offense Type Analysis

Table 6 compares the offense types of the counts that received compliant departures to the overall number of counts sentenced. Violent offenses were the most common offense type in both categories. However, Violent offenses made up a greater proportion of counts that received compliant departures compared to the overall number of felony counts sentenced. Sex offenses made up the same percentage of overall counts sentenced and counts that received compliant departures. Robbery[18] (18%) and the Unlawful Possession of a Firearm (16%) were the two most frequently sentenced compliant departure offenses. These two offenses combined represented 34% of all compliant departures sentenced.

Table 6: Offense Type, Count Level (2013 – 2021)

Offense Type	Compliant Departures	Overall
Drug	12.2% (n=49)	18.2% (n=3,137)
Murder	7.7% (n=31)	3.3% (n=565)
Other	8.2% (n=33)	9.1% (n=1,567)
Property	12.7% (n=51)	12.5% (n=2,143)
Sex	3% (n=12)	3% (n=510)
Violent	35.8% (n=144)	30.9% (n=5,322)
Weapon	20.4% (n=82)	23% (n=3,964)
Total Counts	*402*	*17,208*

Figure 9 is an expansion of the Compliant Departures column in Table 6, providing a more in-depth analysis of offense types based on departure type. There was a total of 355 counts that received a mitigating factor and 47 counts that received an aggravating factor. Violent counts represented the greatest proportion of both departure types. Sex offenses represented a greater percentage of counts that received an aggravating departure factor compared to counts that received a mitigating departure factor. Comparatively, Drug offenses represented a greater percentage of counts that received a mitigating factor.

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[18] This percentage includes unarmed, armed, and attempted robbery counts. There were 37 unarmed robbery counts, 25 armed robbery counts, and 11 attempted robbery counts that received a compliant departure.

Figure 9: Offense Type Analysis of Compliant Departure Sentences, Count Level (2013 – 2021)
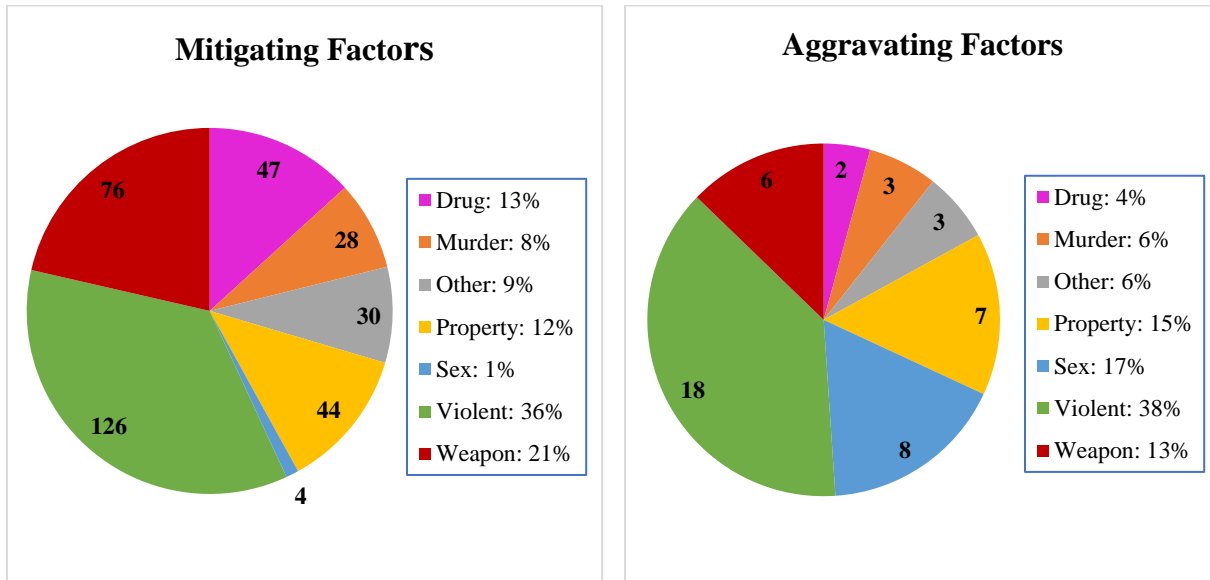
C. Offense Severity Group Analysis

Tables 7a and 7b compare the Offense Severity Groups ("OSGs") of counts that received compliant departures to the total felony counts sentenced. Table 7a examines OSGs in the Drug Grid and Table 7b examines OSGs in the Master Grid.[19]

Overall, there were 3,137 counts sentenced using the Drug Grid and of those, 49 counts received compliant departures. Most of the overall counts and counts that received compliant departures were in OSGs D2 and D3. None of the counts that received compliant departures were in OSGs D1 and D4, and only a small percentage of the overall Drug counts sentenced were in those severity groups. Over half of Drug offenses that received compliant departures were in OSG D2, compared to only about a third of the overall number of Drug offenses. Most of the overall Drug counts were in OSG D3.

There were 14,071 counts that were sentenced using the Master Grid and of those, 353 received compliant departures. OSGs M5, M6, M7, and M8 each represented about 21% of the counts that received compliant departures. Combined, these four OSGs represented approximately 85% of the counts that received compliant departures; in comparison, M8 alone made up about 45% of the overall number of Master Grid offenses sentenced.

Table 7a: Counts Sentenced by Offense Severity Group, Drug Grid (2013 – 2021)

OSG	Compliant Departures	Overall
D1	0% (n=0)	1% (n=33)
D2	55.1% (n=27)	33.2% (n=1,040)
D3	44.9% (n=22)	54.6% (n=1,714)
D4	0% (n=0)	11.2% (n=350)
Total Counts	*49*	*3,137*

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[19] The ranking chart for most common offenses can be found in Appendix D.

Table 7b: Counts Sentenced by Offense Severity Group, Master Grid (2013 – 2021)

OSG	Compliant Departures	Overall
M1	0% (n=0)	0.8% (n=113)
M2	5.9% (n=21)	2% (n=283)
M3	2.3% (n=8)	2.6% (n=359)
M4	3.4% (n=12)	1.7% (n=244)
M5	21.8% (n=77)	10.9% (n=1,538)
M6	20.4% (n=72)	16.2% (n=2,277)
M7	21% (n=74)	10.9% (n=1,541)
M8	21.5% (n=76)	44.8% (n=6,300)
M9	3.7% (n=13)	10.1% (n=1,416)
Total Counts	*353*	*14,071*

Figure 10a is an expansion of the Compliant Departures column in Table 7a, and Figure 10b is an expansion of the Compliant Departures column in Table 7b, providing a more in-depth analysis of Offense Severity Groups in the Master and Drug Grid based on departure type. As seen in Figure 9, Drug offenses made up 13% of counts that received mitigating factors and 4% of counts that received aggravating factors. The OSGs for these drug offenses are distributed similarly for both departure factors, with D2 and D3 each accounting for about half of the drug offenses. The greatest proportion of counts that received a mitigating departure factor were in OSG M5, whereas the greatest proportion of counts that received an aggravating departure factor were in OSG M6. The smallest percentage of non-drug counts for both departure types were in OSG M3. There were no counts in OSGs M1, D1, or D4 for either departure type.

Figure 10a: Drug Offense Severity Group Analysis of Compliant Departure Sentences, Count Level (2013 – 2021)
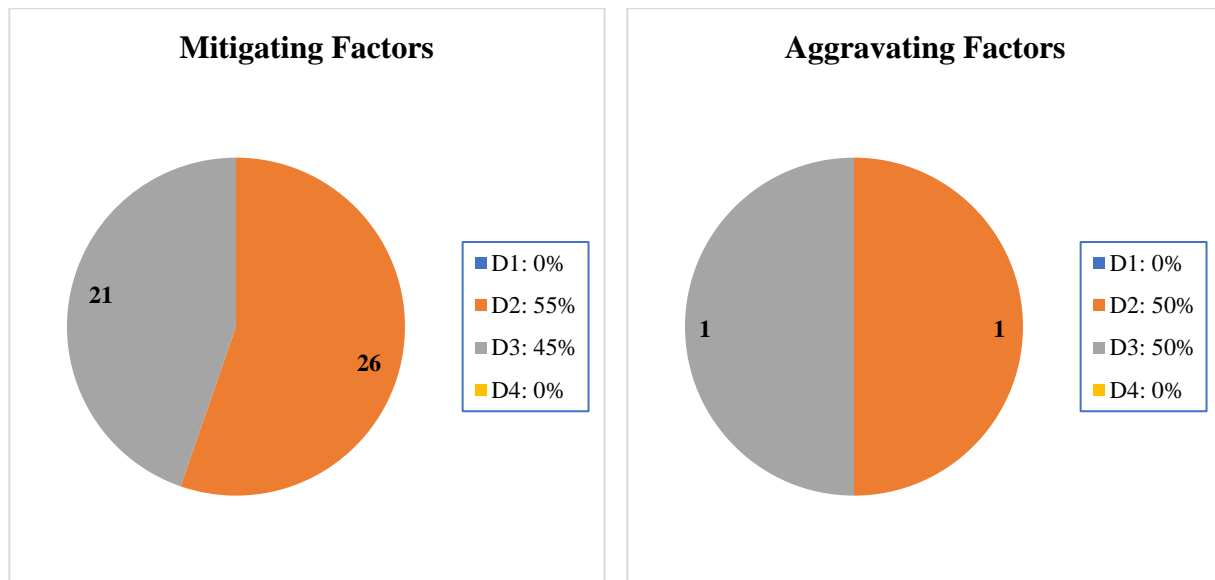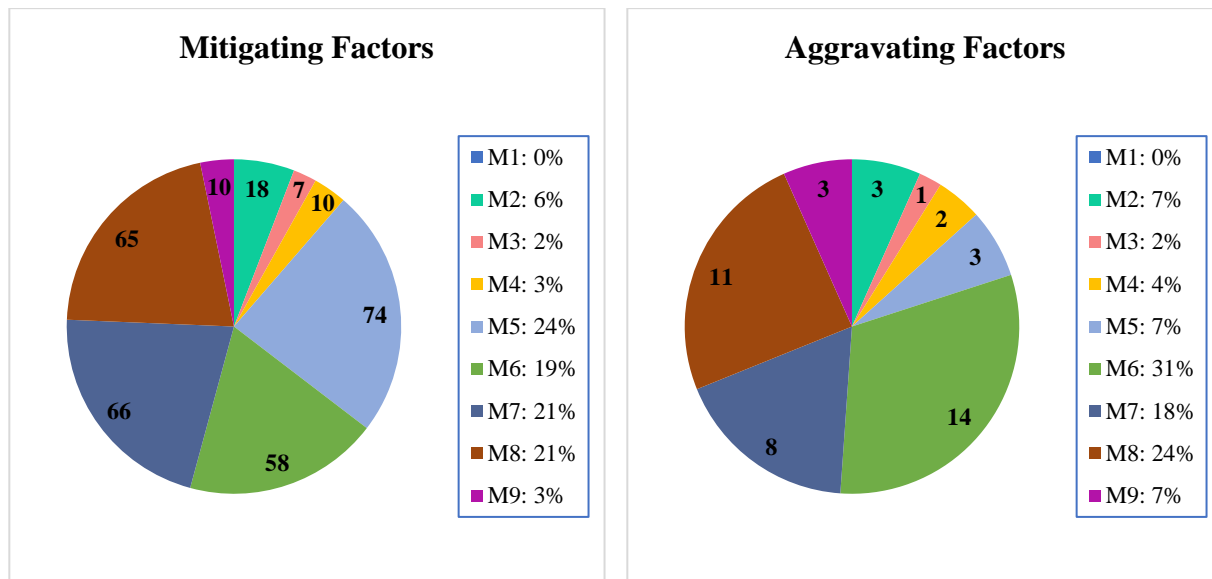
Figure 10b: Master Offense Severity Group Analysis of Compliant Departure Sentences, Count Level (2013 – 2021)

VI. Discussion and Conclusion

This issue paper provides insight into the combined influence of multiple defendant and offense characteristics on sentencing outcomes under the D.C. Guidelines system. By comparing the overall population of felony defendants and offenses to the subset of those that received compliant departures, conclusions can be drawn regarding the level of similarity in sentence trends between the two populations. Analyses further examined the population of defendants and offenses that received compliant departures, comparing sentences that were upward (aggravating) or downward (mitigating) from the Guideline recommendations.

The data suggests that compliant departures are most common among young Black males. This is consistent with the overall defendant characteristics. However, the proportion of Black and Male defendants who received compliant departures were slightly greater than what was observed in the overall data. There was a 2 percentage-point difference in the number of females that received compliant departures (6.3%) compared to the overall population (8.3%). Of the small percentage of females who received compliant departures, none received an aggravating departure. It was found that defendants with the highest criminal history scores (column E) made up a much greater proportion of those who received compliant departures compared to the overall population of defendants sentenced.

Offense category trends for compliant departures were comparable to the overall statistics of felony offenses sentenced during the 2013 to 2021 timeframe. Violent offenses were found to be the most common offense type for both compliant departures and all felony offenses sentenced. There were no offenses in the most severe Master (M1) and Drug (D1) categories that were given compliant departures. Similarly, only a small percentage of the overall felony offenses fell within those categories. The majority of counts for both categories were in Master Offense Severity Groups 5 through 8. Counts that received compliant departures were evenly distributed among these severity groups, whereas most of the overall felony counts

were ranked as M8. In addition, pleas were the most prevalent disposition type for cases that received compliant departures which was consistent with the overall felony cases sentenced.[20]

Finally, analyses were conducted on the offense category for sentences that received compliant departures. Violent and Murder offenses accounted for almost the same percentage of mitigating and aggravating departure factors, indicating that they were just as frequently sentenced above the recommendations as they were sentenced below. Sex offenses made up a greater percentage of aggravating departure factors, whereas Drug offenses made up a greater percentage of mitigating departure factors. Lastly, offense severity did not appear to impact compliant departures. The greatest difference between mitigating and aggravating factors were offenses ranked in Offense Severity Groups M5 and M6.

The findings reported in this Issue Paper provide valuable insight into the sentencing trends for compliant departures, and how they compare to overall sentencing trends. It is important to restate that compliant departures represent a very small proportion, only 2.3%, of all counts sentenced in the 2013-2021 timeframe. The small sample size limits the generalization of any conclusions drawn from the present research. However, the discrepancies observed when comparing trends for criminal history and offense severity are noteworthy and may warrant further research in order to better understand the observed disparities.

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[20] Most Superior Court felony agreements contain a clause that prohibits the parties from requesting a sentence outside of the Guidelines recommended sentence. Following plea agreements with this clause, judges may still use compliant departures, however the parties are prohibited from asking for a departure.

Appendix A - Master and Drug Grids (August 2022)

Master Grid

	Ranking Group / Most Common Offenses	Criminal History Score				
		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 PFCOV 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 UPF-PCOV Negligent homicide Attempt 2nd degree sex abuse	12 - 36	18 - 42	24 - 48	30 - 54	36 +
1 Point*	**Group 8** Carrying a pistol w/o License (CPWL) UUV Attempt robbery/burglary UPF[32] 1st degree theft Assault w/significant bodily injury	6 - 24	10 - 28	14 - 32	18 - 36	22 +
	Group 9 Escape/prison breach BRA Receiving stolen property Forgery/uttering Fraud	1 - 12	3 - 16	5 - 20	7 - 24	9 +

*Criminal History Points for prior convictions in these groups.

White/unshaded boxes – prison or compliant long split only.

Dark shaded boxes – prison, compliant long split, or short split permissible.

Light shaded boxes – prison, compliant long split, short split, or probation permissible.

Drug Grid

	Ranking Group / Most common offenses	Criminal History Score				
		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 or compliant long split only.

Dark shaded boxes – prison, compliant long split, or short split permissible.

Light shaded boxes – prison, compliant long split, short split, or probation permissible.

Appendix B - 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. 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 their 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 Guidelines sentence so lenient in relation to the seriousness of the offense and the history of the defendant that imposition of the Guidelines 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 Guidelines 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.

Appendix C - Mitigating Departures

(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 Guidelines sentence calls for incarceration 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 Guidelines sentence that is so excessive in relation to the seriousness of the offense and history of the defendant that imposition of the Guidelines 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 Guidelines 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.

(11)   There is a substantial and compelling basis, as articulated by the sentencing judge, to reduce the defendant's applicable guideline sentence due to the invocation of D.C. Code § 11-947 or the circumstances that warranted the invocation of D.C. Code § 11-947.

Note: The entry of a guilty plea is **not** a mitigating factor and should not be used to go outside of the box but it may be used to determine what sentence to impose within the box

Appendix D - Ranking Chart (Most Common Offenses)

	Most Common Offenses by Master Group	
1	Murder 1° w/a Murder 1 °	Murder of a law enforcement officer 1°
2	Murder 2° w/a Murder 2° Sexual abuse 1°	Child sexual abuse 1° w/a Sexual abuse 1°w/a
3	AWIK w/a Burglary 1° w/a Carjacking w/a	Child sexual abuse 1° Kidnapping w/a Voluntary manslaughter w/a
4	Aggravated assault w/a	Voluntary manslaughter
5	Armed robbery Current APO w/a (30-year statutory maximum) AWI commit any offense w/a AWI commit robbery w/a AWIK Burglary 1° Carjacking Involuntary Manslaughter w/a Involuntary Manslaughter Kidnapping Malicious disfigurement w/a Mayhem w/a Obstruction of justice PFCOV	Child sexual abuse 2° w/a Sexual abuse 2° w/a Sexual abuse 2° AWI commit 1° child sexual abuse w/a AWI commit 2° child sexual abuse w/a AWI commit 1° sexual abuse w/a AWI commit 2° sexual abuse w/a Child sexual abuse, attempt 1° w/a Child sexual abuse, attempt 2° w/a Sexual abuse, attempt 1° w/a Sexual abuse, attempt 2° w/a
6	Aggravated assault Arson Former APO with a dangerous weapon* ADW AWI commit robbery Attempt robbery w/a Burglary 2° w/a Cruelty to children 1° Malicious disfigurement	Mayhem Robbery AWI commit 1° child sexual abuse AWI commit 2° child sexual abuse AWI commit 1° sexual abuse AWI commit 2° sexual abuse Child sexual abuse, attempt 1° Child sexual abuse 2° Sexual abuse, attempt 1°
7	AWI commit mayhem Current APO (10-year statutory maximum) Burglary 2° Negligent homicide Felon in possession of firearm (prior COV not conspiracy)†	Sexual abuse, attempt 2° Sexual abuse of a patient 1° Sexual abuse of a ward 1° Sexual abuse 3° UUV (during or to facilitate a crime of violence)
8	AWI commit any offense Aggravated assault, attempt Assault with Significant Injury Burglary, attempt CPWL/CDW Cruelty to children 2° DP (f) Extortion UPF (felon in possession of a firearm) Introducing contraband into penal institution: Class A Materials Kidnapping, attempt Perjury Robbery, attempt	Theft 1° Threats Trafficking in stolen property UUV Child sexual abuse, attempt 2° Enticing a child Sexual abuse of a patient, attempt 1° Sexual abuse of a ward, attempt 1° Sexual abuse, attempt 3° Sexual abuse 4° Sexual abuse of a patient 2° Sexual abuse of a ward 2° Unlawful possession of a firearm
9	Bad check Bail reform act (BRA) Blackmail Credit card fraud Escape False personation of a police officer Forgery Fraud 1° Fraud 2° Impersonating a public official	Introducing contraband into penal institution: Class B Materials PPW -- second + offense RSP Breaking and Entering (vending machine) Uttering Enticing a child. attempt Sexual abuse 4°, attempt Sexual abuse of a patient 2°, attempt Sexual abuse of a ward 2°, attempt Theft 2 °, if two or more Theft convictions

Most Common Offenses by Drug Group		
1	Distribution w/a (any drug)	PWID w/a (any drug)
2	Distribution and PWID of Schedule I and II narcotic/abusive drugs (Heroin, Cocaine, PCP, Methamphetamine)	Enlisting minors Maintaining place for drugs
3	Distribution and PWID of marijuana or any drug in Schedule III or IV, or a non-narcotic or non-abusive drug in Schedule I or II Possession of Liquid PCP Drug Paraphernalia – Distributing to a minor	Attempt Distribution and Attempt PWID of Schedule I and II narcotic/abusive drugs (Heroin, Cocaine, PCP, Methamphetamine) Drugs – fraud
4	Attempt Distribution and Attempt PWID of marijuana or any drug in Schedule III or IV, or a non-narcotic or non-abusive drug in Schedule I or II	Attempt Possession of Liquid PCP