DISTRICT OF COLUMBIA SENTENCING COMMISSION

AN EVALUATION

OF THE

D.C. VOLUNTARY SENTENCING GUIDELINES

March - 2017

Acknowledgements

District of Columbia Sentencing Commission

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March 24, 2017

The Honorable Phil Mendelson, Chairman
Council of the District of Columbia
John A. Wilson Building, Suite 504
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Chairman Mendelson:

I am pleased to submit the District of Columbia Sentencing Commission's first multi-year Evaluation of the District of Columbia Voluntary Sentencing Guidelines. The Sentencing Guidelines were first piloted by the Commission in 2004, and they were formally adopted by the Council in 2006. After more than ten years of experience under the Guidelines, together with the development and implementation of a comprehensive and reliable data system, the Commission decided that the time had come to take an in depth look at how the Guidelines are operating and to identify any areas where there may be room for improvement.

As the Evaluation Report demonstrates, the Guidelines are operating in practice exactly as they were intended. Although the Guidelines are voluntary, the rate of compliance has been consistently over 90% for each year of the period covered by the evaluation from 2010 - 2015. That means that more than 90% of all felony sentences imposed conformed to the Guidelines recommendation as to both the type of sentence (e.g. prison or probation) and the length of any prison term imposed. As a result, because of the design of the Guidelines, offenders with extensive criminal records and those who have committed serious and violent crimes are predominately going to prison, while judges are frequently using non-incarcerative sentences, including short split sentences and suspended prison terms with probation, for lower level offenders, who are viewed as good candidates for rehabilitation.

The Evaluation Report also shows that the Guidelines have made sentencing more consistent, reducing unwarranted disparity and increasing the certainty and adequacy of punishment, while at the same time making the sentencing process more transparent for persons charged with crime, crime victims, and the general public. The data analyzed in the Report show a sharp decrease in the number of felony drug sentences imposed from 2010 - 2015 and a corresponding increase in sentences for violent crimes such as robbery and attempted robbery and for weapon offenses. This trend has little to do with the Sentencing Guidelines, and

appears instead to reflect a shift in law enforcement priorities away from low level drug offenses to focus more on weapons and violent crimes.

The final chapter of the Report contains recommendations for the Sentencing Commission to consider for further research and analysis. These data-driven recommendations, flowing directly from the Evaluation findings, will likely set the priorities of the Commission in the months ahead, as the Commission continues to examine ways in which the Guidelines, and sentencing in general, might be improved to produce even greater certainty, consistency, and adequacy of punishment.

The Sentencing Commission hopes you will find the Evaluation Report informative and welcomes any questions or other feedback you may have.

Respectfully Submitted,
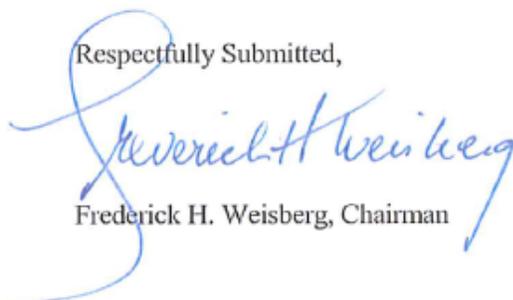
Frederick H. Weisberg, Chairman

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Table of Abbreviations and Acronyms

Term	Definition
ADW	Assault with a Dangerous Weapon
APO	Assault on a Police Officer
AWIK	Assault with Intent to Kill
BOP	United States Bureau of Prisons
BRA	Bail Reform Act
CDW	Carrying a Dangerous Weapon
CH category	Criminal History Category
CH score	Criminal History Score
CPWL	Carrying a Pistol without a License
CSOSA	Court Services and Offender Supervision Agency
DYRS	Department of Youth Rehabilitation Services
GRID	Guidelines Reporting Information Data System
GSS	GRID Score System
IJIS	Interagency Justice Information System
JUSTIS	Justice Information System
MPD	Metropolitan Police Department
OSG	Offense Severity Group
PFDCV	Possession of a Firearm During a Crime of Violence
PPW	Possession of a Prohibited Weapon
PSA	Pretrial Services Agency
PWID	Possession with Intent to Distribute a Controlled Substance
Guidelines	The District of Columbia Voluntary Sentencing Guidelines
Commission	The District of Columbia Sentencing Commission
Court	Superior Court of the District of Columbia
TIS	Truth In Sentencing
USPC	United State Parole Commission
UUV	Unauthorized Use of a Vehicle
YRA	Youth Rehabilitation Act

Table of Definitions

Term	Definition
Adequacy of Punishment in Sentencing	Adequacy of punishment in sentencing means that the sentencing range and options recommended by the Guidelines provide adequate punishment of the individual sentenced. Upward or downward departures should only be expected where there are substantial or compelling reasons to depart from the recommended Guidelines sentencing range and options.
Aggravating Departure	A sentence imposed that is longer than the sentence recommended under the Guidelines based on an aggravating factor recognized by the Guidelines.
Case	Cases represent a single offense or a collection of offenses that have been charged together. Data at the case level contain only one entry per case, regardless of the number of counts convicted within that case. Counts within a case can stem from one event or multiple events.
Case Disposition	Indicates the manner in which a conviction was reached. This includes cases disposed of by jury trial, bench trial, or guilty plea.
Certainty in Sentencing	Certainty in sentencing means that individuals who commit offenses in a prison only box under the Guidelines will receive a prison sentence within the recommended sentencing range. Any exception to a prison sentence would be made using judicial discretion, and may be due to special circumstances or a substantial and compelling reason for a departure from the recommended sentence type or range.
Compliant Departure	A dispositional or durational departure from the recommended sentence that is accompanied by a departure reason provided by the sentencing judge.

Consistency in Sentencing	Consistency in sentencing means individuals with similar criminal histories who commit similar offenses will receive similar sentences. This definition suggests that when controlling for criminal history and the severity of the offense committed, individuals should receive similar sentence types and similar sentence lengths. In a limited percentage of cases, variation in sentencing is permitted by the Guidelines and the sentence imposed is still considered compliant. Some variation in sentences is expected given the different types of offenses within a specific grid box, individual sentencing judges, and offender characteristics.
Count	A count represents an individual offense. Cases can contain multiple counts. When an individual is convicted, he or she may be convicted of a single count or multiple counts within a single case.
Criminal History Category	A categorization of Criminal History scores (CH scores) based on the number of eligible prior convictions. The CH categories are represented along the horizontal axis of the Master and Drug Grids.
Criminal History Score	A score assigned to an offender based on the offender's eligible prior convictions. The score is calculated by applying the Guideline rules to prior convictions.
Departure Reason	Twenty-one predetermined mitigating or aggravating factors related to the offense, the offender, the victim, or other elements that may be cited by the Court when an otherwise non-compliant sentence is imposed.[1]
Determinate Sentencing Structure	A determinate sentence is one that requires the individual to serve a specific term of incarceration imposed or suspended by the court. Every offense committed in the District on or after August 5, 2000, received a determinate sentence.
Dispositional Departure	A dispositional departure indicates a count that receives a sentence type that is different than the sentence type(s) recommended by the Guidelines.

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[1] The list of aggravating and mitigating factors can be found in the D.C. Voluntary Sentencing Guidelines Manual §§ 5.2.2 and 5.2.3.

Durational Departure	A durational departure indicates a count that receives a sentence length that is outside of the sentencing range recommended by the Guidelines.
Guidelines Sentencing Structure	The Guidelines were initially implemented as a pilot project in 2004 and permanently adopted in 2006. Under the Guidelines the term of incarceration imposed is determinate, with a set term of incarceration imposed by the sentencing judge. The Guidelines provide a recommended type and length of sentence for each combination of the offender's criminal history and the offense of conviction.
Indeterminate Sentencing	An indeterminate sentence is one in which a judge imposes a term of incarceration as a range, such as six to 18 months. The amount of time an individual ultimately served in prison was determined by the paroling authority, not the sentencing judge. Offenses committed in the District before August 5, 2000, received an indeterminate sentence.
Individual	Throughout the report, the term "individual" is used to represent a single individual who has been convicted in at least one felony case in the District.
Long Split Sentence	A long split sentence is one in which the Court imposes a sentence within the applicable prison range, suspends execution of all but a term of months that also falls within the applicable prison range, and places the defendant on probation for a period up to five years following completion of the initial prison term.
Mandatory Minimum Sentence	A mandatory minimum term is a prison term that, pursuant to statute, must be imposed and cannot be suspended. There are nine offenses that are subject to mandatory minimum sentences, and three mandatory minimum sentences that apply to armed crime of violence under certain circumstances.[2]
Mitigating Departure	A sentence imposed that is less severe than the sentence type or length recommended under the Guidelines based on a mitigating factor recognized by the Guidelines.

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[2] See page 26, footnote 39, for a listing of offenses subject to a mandatory minimum sentence.

Non-compliant Departure	A dispositional or durational departure from the recommended sentence that is not accompanied by a judicial departure reason.
Offense Severity Group	All felony offenses are categorized into 13 offense categories represented on the vertical axis of the Master and Drug Grids. These categories decrease in severity from M1 to M9 on the Master Grid, and from D1 to D4 on the Drug Grid.
Pre-Guidelines Determinate Sentencing Structure	Offenses committed on or after August 5, 2000, but before the Guidelines were implemented as a pilot project in 2004, were sentenced under the pre-Guidelines determinate sentencing structure.
Pre-Guidelines Indeterminate Sentencing Structure	Offenses committed in the District before August 5, 2000, were sentenced under the pre-Guideline indeterminate sentencing structure.
Prison Sentence	A prison sentence includes the imposition of Life, Incarceration, or a Long Split sentence followed by a term of supervised release. The term of supervised release is suspended for a Long Split sentence and a term of probation is imposed.
Probation Sentence	A probation sentence is one in which the Court imposes a prison sentence within the recommended Guidelines range, suspends the execution of all of the prison sentence, and imposes a period of probation for up to 5 years.
Short Split Sentence	A short split sentence is one in which the Court imposes a sentence within the applicable prison range, suspends execution of all but six months or less (but not all) of it, and places the defendant on probation for up to five years following the completion of the initial prison term.
Supervised Release	A term of supervision set by statute following release from incarceration. Violations of Supervised Release are adjudicated by the USPC, not the sentencing judge, and may result in the imposition of additional "backup" time as set by statute.

Overview of the Guidelines Evaluation Study

The District of Columbia (the District) implemented the Voluntary Sentencing Guidelines (the Guidelines) in 2006 with the goal of ensuring certainty, consistency, and adequacy of punishment in felony sentences imposed. The DC Sentencing Commission (the Commission) has completed an evaluation to determine the impact the Sentencing Guidelines have had on felony sentencing practices in the District. Sentencing trends before and after the implementation of the Guidelines were examined to identify the effect of the Guidelines on both the type and length of sentences imposed. In addition, the Commission analyzed how sentences have changed over the ten years since the implementation of the Guidelines.

The pre-Guidelines sentences analyzed included both pre-Guidelines indeterminate and pre-Guidelines determinate sentences imposed from 1999 through 2002, while Guideline sentences analyzed were imposed from 2010 through 2015 under a determinate sentencing structure.[3] The comparison between the pre-Guidelines and Guidelines sentencing trends involved the study of two aspects of sentencing: the type of sentence imposed and the length of sentence imposed. The Commission also compared the demographics of individuals sentenced and types of offenses sentenced between the pre-Guidelines and Guidelines sentencing structures, in order to identify what factors other than the sentencing structure may have affected the sentences imposed.

The Evaluation Study revealed that the demographics of individuals sentenced have generally not changed since the implementation of the Guidelines. Under both the pre-Guidelines and Guidelines sentencing structures, the majority of individuals sentenced were black males between the ages of 18 and 40.

The mixture of offenses sentenced has changed between the pre-Guidelines and Guidelines sentencing structures. Drug offenses were the most frequent offense type sentenced prior to the implementation of the Guidelines; however, the number of sentences for Drug offenses has precipitously declined in recent years. Conversely, the number of sentences for Violent offenses has increased. The decrease in the number of Drug offenses and increase in Violent offenses under the Guidelines may be partially explained by changes in law enforcement priorities and strategies over time, as resources were shifted from drug enforcement to Violent offenses, such as robbery.

Overall, the likelihood of receiving a prison sentence did not change under the Guidelines. The likelihood of receiving a prison sentence did increase following the shift from indeterminate to determinate sentencing in 2000, prior to the implementation of the Guidelines. Prison sentence lengths decreased under the Guidelines compared to pre-Guidelines sentences. The effect of an individual's criminal history on sentencing outcomes increased with the implementation of the Guidelines. Increases in criminal history have a more substantial impact on both the likelihood of receiving a prison sentence and the length of prison sentences imposed under the Guidelines than under pre-Guidelines sentencing.

The Study also found that, under the Guidelines, individuals with similar Criminal History scores (CH scores) received similar sentences when sentenced for the same offense. While this

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[3] A more detailed explanation of the time period for this study is presented on pages 8 and 9.

consistency remains on the Drug Grid when examining offense severity groups (OSGs), it diminishes on the Master Grid because there are often multiple offense types within a given OSG. For example, a single OSG may contain Sex, Violent, and Property offenses, which can result in different sentences within the recommended range even for offenders with similar criminal history.

An examination of sentences that fell outside of the type or length of sentence recommended by the Guidelines revealed that the Guidelines are meeting the goal of adequacy of punishment in sentencing. There is a high level of judicial compliance with the Guidelines recommendations for sentence type and length. It also appears that judges make use of multiple sentencing options (e.g. prison, short split, probation) when they are available.

Key Findings

- o The Sentencing Guidelines have influenced sentencing in the way they were intended, with the likelihood of receiving a prison sentence increasing as an individual's criminal history and the severity of the offense increase (Page 22).

- o There has been consistency and certainty in the *length* of sentences imposed for prison sentences on the Drug Grid (Page 29).

- o With the exception of OSG D1, the majority of counts sentenced in each grid box on the Drug Grid are in the Lower 25% of the recommended sentencing range (Page 30).

- o Less than 1% of sentenced counts received non-prison sentences in Severity Groups M1 through M4 (Page 22).

- o There has been consistency and certainty in the *types* of sentence imposed on the Master Grid (Page 22).

- o Based on the small percentage of judicial departures, the Guidelines appear to be achieving adequacy of punishment. Nearly 93% of counts received a sentence that complied with the type and length of sentence recommended under the Guidelines (Pages 27, 30).

- o Prison is imposed in 97.8% of prison-only, 82.8% of short split, and 54.8% of probation boxes on the Master Grid (Page 22).

  - There were no boxes on the Master Grid where more than 50% of counts received probation (Page 22).

- o The average prison sentence for second degree sexual abuse while armed increased by eight months after the offense was re-ranked from M5 to M4 (Page 26).

- o Some OSGs with Sex offenses tend to lack consistency in prison sentence length when compared to other offenses within the same OSG (Page 25).

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o More than 50% of prison sentences for possession of a firearm during a crime of violence, felon in possession, felony second degree theft, carjacking, and armed carjacking are sentenced within 10% of the mandated minimum sentence (Page 27).

o Forty percent of Assault with Intent to Kill (AWIK) counts resulted in sentences below the Guidelines recommended minimum sentence. However thirty-nine of the forty counts sentenced below the Guidelines recommended minimum involved a Rule 11(c)(1)(C) plea (Page 28). A Rule 11(c)(1)(C) plea agreement is a plea agreement in which the attorneys for the government and defendant enter a plea that includes a specific sentence or sentence range, and the judge, by accepting the plea, agrees to be bound by the parties' agreement.

o The demographics of individuals sentenced generally have not changed since the implementation of the Guidelines; the distribution of race, gender, and age groups of those sentenced was very similar over the time period studied (Page 13).

o The distribution of offenses sentenced has changed since the implementation of the Guidelines. The proportion of offenses in the Drug and Other categories has decreased, while the proportion of offenses in the Violent and Weapon categories has increased. However, this is not seen as an impact of the Guidelines, but instead represents changes in the types of offenses committed and law enforcement strategies regarding certain crimes (Page 13).

o There was minimal change in the likelihood of receiving a prison sentence between pre-Guidelines and Guidelines sentencing. However, the likelihood of receiving a prison sentence did increase following the change from an indeterminate to a determinate sentencing structure before the Guidelines were implemented (Page 15).

o Prison sentences under the Guidelines were 18% shorter than pre-Guidelines determinate prison sentences (Page 15).

o Under the Guidelines, criminal history has had a greater effect on the type and length of sentence imposed than under pre-Guidelines sentencing. Prior to the implementation of the Guidelines, an individual's likelihood of receiving a prison sentence increased by 20% for each increase in their Criminal History category (CH category). Under the Guidelines the likelihood of receiving a prison sentence increased by 40% for each CH category increase (Page 17).

o CPWL was the only offense for which the likelihood of receiving a prison sentence decreased under the Guidelines. CPWL offenses also resulted in prison sentences 27% shorter under the Guidelines than under the pre-Guidelines determinate sentencing structure (Page 17).

- o Escape and Bail Reform Act (BRA)[4] were the only offenses that were more likely to receive a prison sentence under the Guidelines than under the pre-Guidelines indeterminate and determinate sentencing structure (Page 17).

  - Escape and BRA offenses receive prison sentences that are much shorter than the average sentence lengths for other offenses in M9 (Page 23).[5]

- o Whether a conviction was reached through a trial or a guilty plea had a substantial effect on the sentence imposed, but this effect did not change following the implementation of the Guidelines. Cases disposed of by trial were 16% more likely to result in a prison sentence than cases disposed of by guilty pleas for the same offense under both pre-Guidelines and Guidelines sentencing (Page 18).

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[4] Individuals are charged with BRA when they fail to appear in court as required.
[5] See Master Grid and Drug Grid in Appendices D and E.

Chapter 1: Purpose of the Guidelines Evaluation Study

I. Purpose

In 2014, the D.C. Sentencing Commission (the Commission) initiated a comprehensive evaluation of the Voluntary Sentencing Guidelines (the Guidelines) to determine their impact on sentencing trends in the District of Columbia (the District). This evaluation reflects the Commission's first thorough assessment of the Guidelines since their inception as a pilot program in 2004. The primary purpose of the evaluation is to determine whether the Guidelines are achieving their mandated goal of ensuring certainty, consistency, and adequacy of punishment in sentencing. This evaluation examines sentencing trends before and after the implementation of the Guidelines, and assesses the impact of recent modifications to the Guidelines.

This report presents the results of the evaluation, and is organized into four chapters. The first chapter provides some historical background of the Commission and the Guidelines, and presents an overview of the current study. Chapter one also outlines how sentencing has evolved in the District, including the history of the development and implementation of determinate sentencing. Most importantly, this chapter describes the determinate sentencing structure on which the Guidelines were based.

The second chapter describes the methodology used in this study, as well as defining key aspects of the study, such as the sentencing structures and sentencing goals to be analyzed. This chapter identifies the primary variables used in the evaluation and provides an overview of the comparison of these variables. The chapter also outlines some limitations in the data that impacted the analysis.

The third chapter presents the study's findings. The first part of Chapter Three identifies differences in sentencing patterns before and after the implementation of the Guidelines. The second part of the chapter discusses the evaluation of sentencing under the Guidelines, focusing on whether the Guidelines are achieving their statutory goals. Additionally, the chapter highlights and summarizes all of the key findings from the evaluation study.

The fourth and final chapter presents data-driven recommendations to help inform sentencing policy. The recommendations chapter also includes topics for future research. The recommendations outlined in Chapter Four are reflective of the evaluation findings, and are intended to promote the Commission's goal of improving sentencing in the District of Columbia.

II. Background[6]

Prior to 2000, the District functioned under an indeterminate sentencing structure in which each prison sentence was imposed as a range rather than a fixed sentence length. For example, a judge would impose a sentence of six to 18 months rather than a set 12 months. In the National Capital Revitalization and Self-Government Improvement Act of 1997 (the Revitalization Act),

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[6] A more extensive description of the Commission's history can be found in the Commission's 2015 Annual Report, available at http://scdc.dc.gov/page/published-scdc-annual-reports.

Congress mandated that the District change from indeterminate to determinate sentencing for the most serious felony offenses. The Revitalization Act also established the Truth-in-Sentencing Commission (the TIS Commission) as an independent agency of the District of Columbia government tasked with developing recommendations for the Council of the District of Columbia (the Council) in the form of amendments to the District's sentencing laws for felony offenses. The TIS Commission issued its formal recommendations to the Council on February 1, 1998, which provided for a determinate sentencing structure, with good time credits limited to 15% of the total sentence and a period of Supervised Release to follow every term of imprisonment for the most serious felony offense.[7]

In addition to its formal recommendations, the TIS Commission also submitted a Comments and Suggestions Report to the Council, which identified outstanding issues for the Council's consideration. One of these supplemental recommendations was to create an entity to advise and assist the Council in the development of sentencing policy. The Council subsequently established the D.C. Advisory Commission on Sentencing.

The D.C. Advisory Commission on Sentencing, which would later become the D.C. Sentencing Commission (the Commission), was created in 1998. Following a national review of determinate sentencing structures, the Commission submitted a report to the Council identifying sentencing trends in the District from 1993 through 1998.[8] Further, in April 2000, the Commission recommended that the Council consider a number of policy changes that included: (1) a conversion from indeterminate to determinate sentencing for all felony offenses, (2) the elimination of parole, and (3) the imposition of Supervised Release following incarceration.[9] The 2000 report also suggested that the District consider adopting a structured sentencing scheme to promote fairness under the new determinate sentencing structure.

The Council adopted these recommendations in the Truth in Sentencing Amendment Act of 2000.[10] The legislation gave the Commission the additional responsibility of surveying sentencing systems throughout the country and recommending the type of sentencing structure that would best serve the needs of the District's criminal justice system. The Act also tasked the Commission with reporting on the implementation of the new determinate sentencing structure in the District, which went into effect on August 5, 2000.

In 2004, the Commission developed the Guidelines as a voluntary pilot program to standardize determinate sentencing in the District, which resulted in the Advisory Sentencing Commission Structured Sentencing System Pilot Program Amendment Act of 2004. The pilot Guidelines project became permanent in 2006, and continues to serve as the voluntary sentencing structure for felony sentences imposed within the District of Columbia.

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[7] The formal recommendations of the TIS Commission were ultimately adopted by the Council as the Truth in Sentencing Amendment Act of 1998, D.C. Code § 24-403.01.

[8] The *Criminal Sentencing Practices in the District of Columbia 1993-1998* report was submitted to the Council in 1999.

[9] The *Sentence Recommendations to the Council of the District of Columbia* report was submitted to the Council in 2000.

[10] See D.C. Code § 24-403.01 (2000).

1997	• National Capital Revitalization and Self-Government Improvement Act • Formation of the Truth in Sentencing Commission
1998	• DC Advisory Commission on Sentencing is created
1999	• Report to Council: Criminal Sentencing Practices in the District of Columbia 1993-1998
2000	• Report to Council: Sentence Recommendations to the Council of the District of Columbia • Sentencing Reform Amendment Act
2003	• Advisory Commission recommends adoption of voluntary sentencing guidelines
2004	• The District launches the Voluntary Sentencing Guidelines as a pilot project
2006	• Voluntary Sentencing Guidelines become permanent

The Commission has monitored and tracked sentencing patterns under the Guidelines since 2006. The introduction of the Guidelines Reporting and Information Data system (GRID system) in 2013 enabled the Commission to comprehensively examine felony sentencing patterns and evaluate how the Guidelines have impacted sentencing over time. With the implementation of the GRID system, the Commission can accurately identify current trends in sentencing, and inform recommendations related to Guidelines policy.

Ten years after implementation, the Commission determined that it was an appropriate time to examine how the Guidelines have influenced sentencing trends and policy. The results of this impact evaluation will assist the Commission with data-driven decision making about Guidelines policy, Grid structure, and also identify the extent to which the Guidelines are meeting their statutory goals.

Chapter 2: Methodology

I. Comparison of Pre-Guidelines and Guidelines Sentencing Trends

The first part of the Evaluation Study examines the effect of the Guidelines on the types and lengths of felony sentences imposed since their implementation. These analyses include a comparison of sentencing data from before and after the development of the Guidelines to determine how the Guidelines have impacted sentencing in the District.

The comparison of pre-Guidelines and Guidelines sentencing involves analyzing data from three distinct sentencing structures: pre-Guidelines indeterminate, pre-Guidelines determinate, and Guidelines. A separate dataset was developed for each of these three sentencing structures. Convictions for offenses committed before August 5, 2000, received indeterminate sentences.[11] An indeterminate sentence is one in which a judge imposes a sentencing range, such as six to 18 months. Individuals receiving indeterminate sentences were required to serve the minimum prison before being eligible for parole, and could not serve longer than the maximum term imposed. The time beyond the minimum term that an individual served in prison was determined by the paroling authority, not the sentencing judge. The pre-Guidelines indeterminate dataset contains offenses sentenced in the years 1999 through 2002.[12]

Sentences imposed for offenses committed on or after August 5, 2000, but before the Guidelines were implemented as a pilot project in 2004, were sentenced under the pre-Guidelines determinate sentencing structure. A determinate sentence is one that requires the individual to serve a specific number of months.[13] Unlike indeterminate sentences, the time the individual serves in prison is determined by the sentencing judge. The pre-Guidelines determinate dataset contains offenses sentenced in the years 2000 through 2002.

The third sentencing structure in this study is the Guidelines sentencing structure. Sentences imposed under the Guidelines are also determinate, with a specific number of months to be served imposed by the sentencing judge. The Guidelines dataset contains offenses sentenced in the years 2010 through 2015. Due to data validity and reliability issues during the transition period from the pre-Guidelines determinate sentencing structure to sentencing under the Guidelines, only data from 2010 to 2015 is included in this dataset. All three datasets contain case level data,[14] with sentencing information based on the most severe offense for each case.[15]

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[11] Indeterminate sentences were imposed for offenses committed before Aug. 5, 2000, regardless of whether the sentencing occurred before or after that date.

[12] The pre-Guidelines datasets were provided by the Court to the Commission during the initial development of the Guidelines. The datasets also contain criminal history information provided by the Pretrial Services Agency (PSA), including the number of prior felonies and a proxy Criminal History score (CH score). The data are limited to the years 1999 through 2002 because these years were captured in a uniform format that coincided with an accompanying data dictionary. Data from the years 2003 through 2009 were incomplete or could not be verified by the Commission. For more information on these data, see Appendix A.

[13] Although not captured as part of the sentencing information in the data, individuals who received prison sentences under any of the three sentencing structures could earn good time credits that could reduce the length of their prison stay.

[14] Case-level data was used because the pre-Guidelines datasets were available only at the case level.

Table 1: Sentencing Periods

Sentencing Period	Sentencing Structure	Term of Incarceration	Applicable Timeframe	Parole Eligibility
Pre-Guidelines	Indeterminate	Incarceration range (e.g., 6-18 months)	Offenses committed before August 5, 2000, and sentenced in the years 1999 through 2002	Parole eligible
	Determinate	Fixed term of incarceration (e.g., 12 months)	Offenses committed on or after August 5 2000, and sentenced in the years 2000 through 2002	Parole no longer applicable
Guidelines	Determinate	Fixed term of incarceration (e.g., 12 months)	Offense committed on or after June 2004, and sentenced in the years 2010 through 2015	Parole no longer applicable

Two primary analyses were conducted for this part of the study. The first considered whether the types of sentences imposed have changed since the implementation of the Guidelines. For the purposes of this study, this meant determining whether the likelihood of receiving a prison sentence for the same offense was different under pre-Guidelines sentencing than under the Guidelines.[16] The second analysis considered whether the lengths of prison sentences imposed were different under the Guidelines than under pre-Guidelines sentencing. Only the pre-Guidelines determinate sentencing dataset was used for the analysis of lengths of prison sentences.

Beyond the sentencing structure, the analysis looked at a number of factors related to the cases and the individuals sentenced. This included the demographic characteristics of the sentenced population and traits related to how the case was disposed.

The comparisons between pre-Guidelines and Guidelines sentencing were complicated by a difference in structures between the pre-Guidelines and Guidelines datasets. There were numerous challenges related to missing data in the pre-Guidelines datasets, which resulted in the exclusion of 981 cases, or 5.5% of the data. Many of the cases with missing data were omitted because key variables such as sentence length, sentence type, or offense of conviction were not available.[17]

There were two other significant challenges in comparing the pre-Guidelines and Guidelines data. The first challenge was in comparing Criminal History scores (CH score) across sentencing

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[15] The Commission has six criteria for determining the most severe offense in each case. These criteria include the offense severity group, the sentence length, and other offense characteristics. For further information see Appendix A.

[16] The Commission considers long split sentences as prison sentences. A long split sentence is one in which the Court imposes a sentence within the applicable prison range, suspends execution of all but a term of months that also falls within the applicable prison range, and places the defendant on probation for a period up to five years following completion of the initial prison term. Probation and short split sentences were considered non-prison sentences. A short split sentence is one in which the Court imposes a sentence within the applicable prison range, suspends execution of all but six months or less (but not all) of it, and places the defendant on probation for up to five years.

[17] For further discussion of missing data and how it was addressed, see Appendix A.

structures. While the Commission developed the current calculation for CH scores under the Guidelines, a different computation was used to calculate the CH scores reported in the pre-Guidelines datasets. Because the Commission was unable to determine the CH score calculation for pre-Guidelines data, a new Criminal History proxy was developed that categorized each individual's criminal history under both the pre-Guidelines and Guidelines sentencing structures as low, medium, or high. This proxy allowed for a comparison of pre-Guidelines and Guidelines criminal histories despite the data limitations.[18] It should be noted that proxies are not perfect and may affect comparison of pre and post Guideline data at the margins because CH has a finite impact under the Guidelines, but not under pre-Guidelines.

The second challenge in comparing the pre-Guidelines and Guidelines datasets was determining how long individuals sentenced under the pre-Guidelines indeterminate sentencing structure actually served in prison, which complicated any length of sentence comparisons. Since individuals sentenced under pre-Guidelines indeterminate sentencing received a sentence range rather than a specific number of months to serve, determining the length of stay in prison could not be based solely on the sentence imposed. Several methods of estimating the length of stay were explored, including a review of a sample of indeterminate cases granted parole from data provided by the United States Parole Commission (USPC). However, there was substantial variation in the portion of sentence served, making comparisons between pre-Guidelines indeterminate and Guidelines sentences unreliable. Given the challenges in determining actual pre-Guidelines indeterminate lengths of stay, indeterminate sentences were not included in analyses of sentence lengths. Analysis was limited to comparison of Guidelines sentence length with pre-Guidelines determinate sentence length.[19]

II.   Sentencing Under the Guidelines

The second part of the Evaluation Study assesses the impact of the Guidelines on sentencing by examining sentencing trends from 2010 through 2015.[20] The analyses evaluate the extent to which the Guidelines' statutory goals of consistency, certainty, and adequacy of punishment in sentencing outcomes are being achieved under the current sentencing structure. The analyses also include an assessment of other factors that have influenced sentencing during the study period. This part of the Evaluation Study examines the extent to which individuals with similar criminal histories committing a similar offense receive similar sentence types and lengths.

Although the Sentencing Guidelines are mandated by statute to achieve the goals of consistency, certainty, and adequacy of punishment in sentencing outcomes, there may not be a consensus about what the specific terminology means or how these goals should be measured. For the purposes of this evaluation, the following informal definitions for each goal were applied:

- o **Consistency in sentencing outcomes** means that individuals with similar criminal histories who commit similar offenses will receive similar sentences. This definition suggests that when controlling for criminal history and the severity of the offense committed, individuals should receive similar sentence types and similar sentence

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[18] For further discussion of how the criminal history proxies were developed, see Appendix A.

[19] For further discussion of the challenges faced in determining the indeterminate lengths of stay, see Appendix A.

[20] Only data from 2010 through 2015 was used due to data validity and reliability issues previously described.

lengths. In a limited percentage of cases, variation in sentencing is permitted by the Guidelines and the sentence imposed is still considered compliant. Some variation in sentences imposed under the Guidelines is expected given the different types of offenses within a specific grid box, discretion of individual sentencing judges, and specific offender characteristics.

- o **Certainty in sentencing outcomes** means that individuals who commit offenses in a prison only box under the Guidelines will receive a prison sentence within the recommended sentencing range. Any exception to a prison sentence would be the result of judicial discretion, and may be due to special circumstances or a substantial and compelling reason for a departure from the recommended sentence type or range.

- o **Adequacy of punishment in sentencing outcomes** means that the sentences recommended by the Guidelines provide adequate punishment of the individual sentenced for the offense of conviction, and upward or downward departures should generally be expected only where there are substantial or compelling reasons to depart from the recommended Guidelines sentence.

Using the Commission's GRID system to create a Guidelines dataset, these analyses included all felony sentences imposed by the D.C. Superior Court (the Court) from January 1, 2010 through December 31, 2015. While the comparison of pre-Guidelines and Guidelines data examines felony sentences at the case level, this evaluation of the impact of the Guidelines examines individual counts. The Guidelines dataset includes the calculated Criminal History score (CH score) for each individual sentenced,[21] demographic information, the offense of conviction, and the sentencing information for each count. Examining sentences at the count level allows for a more comprehensive assessment of sentencing trends based on the sentence type and length imposed for each felony offense. Identifying the sentencing trends for felony offenses was necessary to determine whether the statutory goals for the Guidelines are currently being achieved.

The sentencing data from 2010 through 2015 is fairly complete with the exception of 269 counts (2%) that are missing CH scores.[22] Sentences without a CH score cannot be included in analyses of sentence type and length trends because they cannot be located on the Master or Drug Grids.

The analysis also excludes probation revocation sentences imposed between 2010 and 2015, which account for 14.2% of counts sentenced during the period. The probation revocation sentences were excluded as they did not represent the first sentence in a case, and were deemed to be outside of the focus of the Evaluation Study. This part of the Evaluation Study examined only initial sentences for felony counts sentenced under the Sentencing Guidelines.

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[21] The Voluntary Sentencing Guidelines Manual provides a detailed description of which prior convictions are counted towards the individual's CH score, and how they are scored. The Guidelines Manual is available at: http://scdc.dc.gov/page/sentencing-guidelines-manual-sccrc.

[22] Missing CH scores are typically a result of the Court not ordering a presentence report. CSOSA does not calculate a CH score absent a request from the Court.

The Commission identified the key factors influencing the type and length of each sentence imposed in order to determine the appropriate analyses to perform. The first factor influencing sentencing is Offense Severity, which groups felony sentences into 13 offense severity groups (OSGs). These groups are comprised of M1 to M9 on the Master Grid, and D1 to D4 on the Drug Grid. The second primary factor is an individual's CH score, which is designated in Criminal History categories A through E on both Grids. Both Offense Severity and Criminal History were examined to determine how, and to what extent, each influenced the sentence type and sentence length imposed by offense and offense category.[23]

The Commission also examined the influence of additional secondary factors that may have influenced sentencing trends. One secondary factor was the age of the individual at the time of the offense. Guidelines policy changes were also examined to determine how they affected sentencing during the period.[24] Another factor analyzed was the effect of disposition by jury trial, bench trial, or a plea agreement. The final secondary factor analyzed the impact of was mandatory minimum sentence statutes.

The Commission also analyzed the frequency and the likelihood of receiving a sentence that was a dispositional or durational departure from the Guidelines recommended sentence. Each analysis accounted for other contributory factors such as sentencing enhancements.

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[23] Further description of the methodology for this section can be found in Appendix B.
[24] The four policy changes include: (1) restructuring the Drug Grid, (2) ranking third degree sexual abuse while armed, (3) re-ranking second degree sexual abuse while armed, and (4) ranking assault with intent to inflict significant bodily injury while armed.

Chapter Three: Findings

I.   Comparison of pre-Guidelines and Guidelines Sentencing

The purpose of the first part of the Evaluation Study is to examine how the types and lengths of sentences imposed have changed since the implementation of the Guidelines. Prior to the Guidelines, there were two different sentencing structures: indeterminate and determinate. The following section provides an overview of the differences in the types of individuals and offenses sentenced and differences in sentencing patterns between the pre-Guidelines (1999-2002) and Guidelines (2010-2015) sentencing structures.

A. Differences in demographics and types of offenses sentenced

The demographics of individuals sentenced were very similar before and after the implementation of the Guidelines. Approximately 90% of those sentenced were males, and around 90% were black under all three sentencing structures. The distribution of ages of those sentenced was also very similar, 20-30 year olds made up more than 40% of all individuals sentenced under the three sentencing structures.

The types of offenses sentenced changed between the sentencing periods. For analysis purposes, the Commission categorizes offenses into seven offense categories.[25] Drug offenses were the most frequent offenses sentenced in the pre-Guidelines datasets (Figures 2 and 3). Drug offenses also represented the most frequently sentenced offense category in the Guidelines data, accounting for 31% of all sentences imposed (Figure 4). However, the number of Drug counts per year has decreased significantly in recent years. In the pre-Guidelines data, sentences for Drug offenses increased steadily (Figure 1). Between 2010 and 2015, the number of drug sentences has decreased in four of the six years, reaching a low of 251 Drug sentences in 2015. The decline in Drug sentences is largely attributed to changes in law enforcement priorities and strategies, as well as changes in societal views regarding drug use.

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[25] The offense categories include Drug, Homicide, Other, Property, Sex, Violent, and Weapon. For a complete list of the offenses contained in each of the seven offense categories, see Appendix C.

**Figure 1: Drug Offense Sentences Per Year
Pre-Guidelines (1999-2002) and Guidelines Sentencing (2010-2015)**
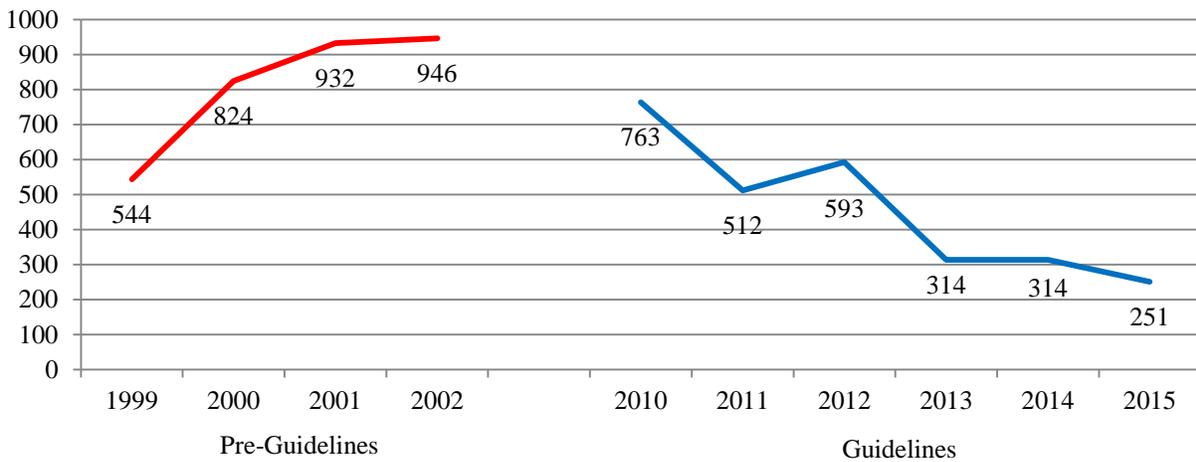
The Other category also showed a decrease in the percent of cases sentenced between the pre-Guidelines sentencing structures (23%) and the Guidelines (9%). This decline is primarily attributed to decreases in the number of escape and BRA offenses sentenced. These two offenses alone account for 85% of sentences imposed in the Other category.

The proportion of Homicide, Property, and Sex category offenses remained steady between the pre-Guidelines and Guidelines sentencing periods, while sentences for offenses in the Violent and Weapon categories increased under the Guidelines (Figures 2-4). The increase in Violent offenses may be partially explained by changes in law enforcement strategy, as resources were shifted from drug enforcement to robberies and other offenses that were increasingly affecting community safety.

**Figure 2: Offense Categories,
Pre-Guidelines Indeterminate
Sentencing (1999-2002)**
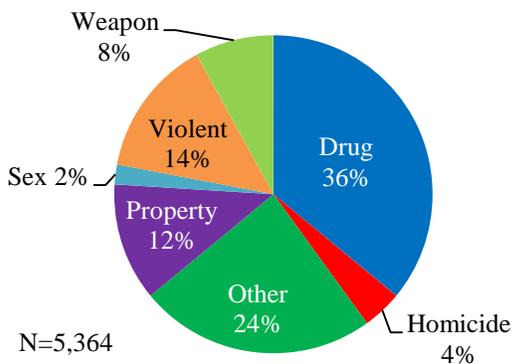
**Figure 3: Offense Categories,
Pre-Guidelines Determinate
Sentencing (2000-2002)**

14
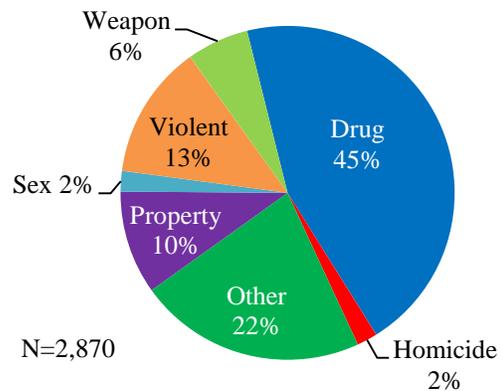
Figure 4: Offense Categories,
Guidelines Sentencing (2010-2015)

Weapon 14%

Drug 31%

Homicide 4%

Other 9%

Violent 28%

N=8,783

Property 11%

Sex 3%
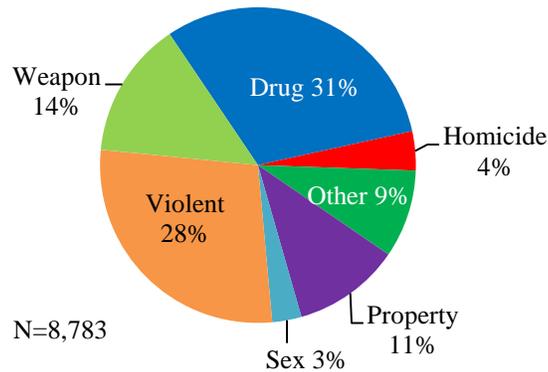
B. Differences in Sentencing Patterns

1. Sentence Type

When comparing sentencing trends between the pre-Guidelines and Guidelines sentencing structures, two major findings appear. First, the likelihood of receiving a prison sentence changed very little following the implementation of the Guidelines, but changed markedly between the pre-Guidelines indeterminate and determinate sentencing structures. Second, the lengths of prison sentences were shorter under the Guidelines than under pre-Guidelines sentencing.

The first major finding indicates that there was minimal change in the likelihood of receiving a prison sentence following the implementation of the Guidelines. However, analysis of the pre-Guidelines periods revealed that the likelihood of receiving a prison sentence increased with the change from an

> **Finding #1:** There was minimal change in the likelihood of receiving a prison sentence between pre-Guidelines and Guidelines sentencing.

indeterminate to a determinate sentencing structure in 2000, prior to the development of the Guidelines. This finding signifies that the change in sentencing structure had a greater impact on the likelihood of receiving a prison sentence than did the implementation of the Guidelines.

Individuals sentenced under the pre-Guidelines *determinate* sentencing structure were 10% more likely to receive a prison sentence than those sentenced under the pre-Guidelines *indeterminate* sentencing structure. It was not clear from the data, what may have driven this increase under the determinate sentencing structure. There was no apparent difference in the likelihood of receiving a prison sentence between the pre-Guidelines *determinate* and Guidelines sentencing structures.

Change in Likelihood of Receiving a Prison Sentence

+10%   **+0%**

Pre-Guidelines Indeterminate ⟩⟩ *Pre-Guidelines Determinate* ⟩⟩ *Guidelines*

2. Sentence Length

The second major finding revealed that prison sentence lengths for most offenses were shorter under the Guidelines than under the pre-Guidelines *determinate* sentencing structure. This comparison of

Finding #2: Prison sentences were 18% shorter under the Guidelines than under pre-Guidelines sentencing.

sentence lengths only included pre-Guidelines *determinate* sentences, as the length of incarceration under the pre-Guidelines *indeterminate* sentencing structure could not be calculated.[26] Prison sentences were shorter under the Guidelines in five of the seven offense categories, with the Property and Sex categories the only exceptions (Figure 5).[27] From the data analyzed, it is not apparent what contributed to this decrease in sentence lengths under the Guidelines.

Overall, prison sentences for Violent offenses decreased by 31%, or 18 months for the average case sentenced. This decrease was due in part to a shift in the types of violent offenses sentenced under the Guidelines, with an increase in the number of sentences imposed for attempted violent offenses versus completed violent offenses, specifically attempted robbery and attempted ADW. In addition, there was a decrease in the number of while armed offenses sentence under the Guidelines when compared to pre-Guideline *determinate* sentences. With this mixture of fewer armed violent offenses and more attempted violent offenses, the decrease in length of sentence was to be expected.

In the Drug category, only attempted distribution of cocaine and heroin offenses received shorter sentences under the Guidelines than under the pre-Guidelines sentencing structure. Attempted distribution offenses resulted in sentences 12% (cocaine) and 36% (heroin) shorter under the Guidelines than under the pre-Guidelines sentencing structure. This is equivalent to a reduction of six months for an average attempted distribution sentence for cocaine or heroin. Sentences for completed distribution and PWID offenses and for attempted PWID offenses were no shorter under the Guidelines than under the pre-Guidelines sentencing structure.

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[26] For further discussion of the challenges in comparing pre-Guidelines lengths of stay under indeterminate sentencing, see Chapter 2.

[27] Although it appeared that sentence lengths in the Homicide category decreased under the Guidelines, there were not enough Homicide cases sentenced in the pre-Guidelines dataset to be considered a reliable finding.

Figure 5: Difference in Sentence Length by Offense Category, Pre-Guidelines Determinate and Guidelines Sentences
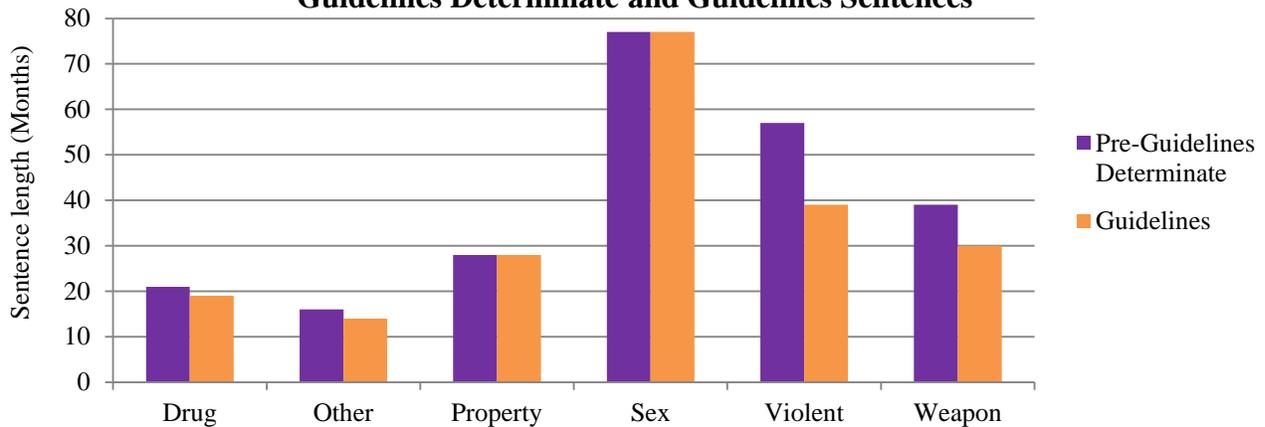
3. Exceptions – CPWL, Escape, and BRA

There were three offenses that did not follow the general trends found in the comparison of pre-Guidelines and Guidelines sentencing: CPWL, escape, and BRA. For CPWL offenses, sentences changed under the Guidelines in terms of both the likelihood of receiving a prison sentence and the lengths of prison sentences imposed. CPWL offenses were 18% less likely to result in a prison sentence under the Guidelines than under the pre-Guidelines determinate

> **Finding #3**: Carrying a pistol without a license (CPWL) was the only offense for which a prison sentence was less likely under the Guidelines than under the pre-Guidelines determinate sentencing structure.

sentencing structure. This was the only offense for which the likelihood of receiving a prison sentence was lower under the Guidelines than under the pre-Guidelines *determinate* sentencing structure. CPWL offenses also resulted in prison sentences 27% shorter under the Guidelines than under pre-Guidelines determinate sentencing.

It is important to note that there have been several recent court challenges to the District's gun laws, which have resulted in subsequent statutory changes. The most notable of these cases was *District of Columbia v. Heller*,[28] wherein the Court ruled that District residents have the right to possess firearms in their homes for lawful purposes and that the District's total ban on carrying ready-to-use handguns was unconstitutional. Litigation following *Heller* is ongoing. These decisions appear to have had an appreciable impact on how CPWL offenses are enforced, charged and/or sentenced in the District.

Escape and BRA are the other two exceptions to the general trends revealed by the comparison of pre-Guidelines and Guidelines sentencing. While there was no overall difference in the likelihood of receiving a prison sentence between the pre-Guidelines determinate and Guidelines sentencing structures, there was a 12% increased likelihood of receiving a prison sentence for escape and a 17% increased likelihood for BRA offenses under the Guidelines. There do not

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[28] 554 U.S. 570 (2008).

appear to have been any specific policy changes affecting how escape and BRA offenses are charged or sentenced since the implementation of the Guidelines, so it is unclear what may be contributing to this change in sentencing patterns.

4. Criminal History

There were two factors that had significant impacts on sentencing patterns aside from the sentencing structures. The first of these is the criminal history of the individual sentenced. Prior to the implementation of the Guidelines, judges received varying types and amounts of information regarding an individual's

> **Finding #4:** The effect of criminal history on the severity of the sentence imposed increased under the Guidelines.

prior convictions. Judges also received little guidance regarding what impact an individual's prior criminal history should have on sentencing. The Guidelines formalized the impact of criminal history by designating the number of points assigned to each eligible prior conviction. This design provided a uniform way to incorporate criminal history into sentencing and applied the principle that sentence severity should increase as an individual's criminal history increases.

The Guidelines define exactly how prior offenses should be used to calculate an individual's criminal history. As a result, the observable impact of criminal history on the sentence imposed increased. Prior to the implementation of the Guidelines an individual's likelihood of receiving a prison sentence increased by 20% for each increase in their criminal history category.[29] Under the Guidelines that effect doubled, with the likelihood of receiving a prison sentence increasing by 40% for each increase in their criminal history category (Figure 6).

Figure 6: Likelihood of Prison Sentence by Criminal History

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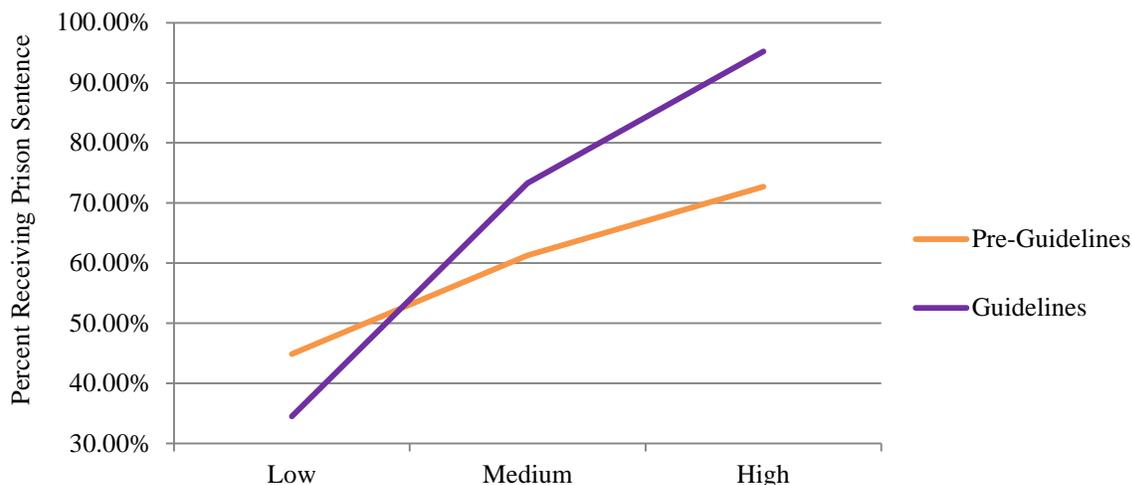
[29] For the purposes of comparing pre-Guidelines and Guidelines sentences, Criminal History was condensed into three categories rather than five. This categorization was necessary in order to compare the pre-Guidelines count of prior felony convictions with the Guidelines CH score. The condensed CH scores may have a limited impact the effect CH has on receiving a prison sentence reported. For further discussion of how these categories were created, see Chapter 2

Similarly, the impact of criminal history on sentence length under the Guidelines is more pronounced when compared to pre-Guidelines sentencing. Under pre-Guidelines *determinate* sentencing, an individual's sentence length increased by 21% for each increase in their criminal history category. Under the Guidelines, an individual's sentence length increased by 34% for each increase in their criminal history category. These differences between pre-Guidelines and Guidelines sentencing illustrate that the incorporation of criminal history into the Guidelines has directly affected sentencing outcomes.

5. Disposition Type

The second factor, which did not appear to impact sentencing outcomes when comparing sentencing structures, was whether a conviction was the result of a trial or a guilty plea. Under both pre-Guidelines and Guidelines sentencing, most cases were disposed of through guilty pleas. Only 10% of cases in the District were disposed of through trial, and those cases tended to involve more serious offenses.

Finding #5: Cases decided by trial were 16% more likely to result in a prison sentence than cases involving guilty pleas. For cases that resulted in a prison sentence, those decided by trial received sentences 20% longer than those decided by plea.

For individuals convicted of the same offense, those who pleaded guilty were 16% less likely to receive a prison sentence than those who went to trial. Similarly, individuals who pleaded guilty received prison sentences 20% shorter than those who went to trial. This effect did not differ between the pre-Guidelines and Guidelines sentencing structures.

II.   Sentencing Under the Guidelines

This section of the Evaluation Study examines sentencing trends under the Guidelines, and includes only counts sentenced from 2010 through 2015, due to data quality issues prior to 2010. It reviews the degree to which the Sentencing Guidelines are achieving the goals of consistency, certainty, and adequacy of punishment.

A. Guidelines Sentencing Trends

While there were a number of changes in sentencing trends between the pre-Guidelines and Guidelines periods, there have also been a number of changes within the Guidelines period. These changes are related to the number and type of cases sentenced as well as demographics for the individuals sentenced during this period.

The first major change in sentencing patterns from 2010 through 2015 is a 35% decline in the number of felony cases sentenced (Figure 7). This trend was accompanied by a 37% decrease in the number of counts sentenced, most of which occurred between 2012 and 2015. There was also a 32% decline in the number of individuals sentenced during this period. This is, in part, due to a shift in the types of offenses that were sentenced from 2010 to 2015.

Figure 7: Number of Counts, Cases, & Offenders Sentenced 2010 - 2015
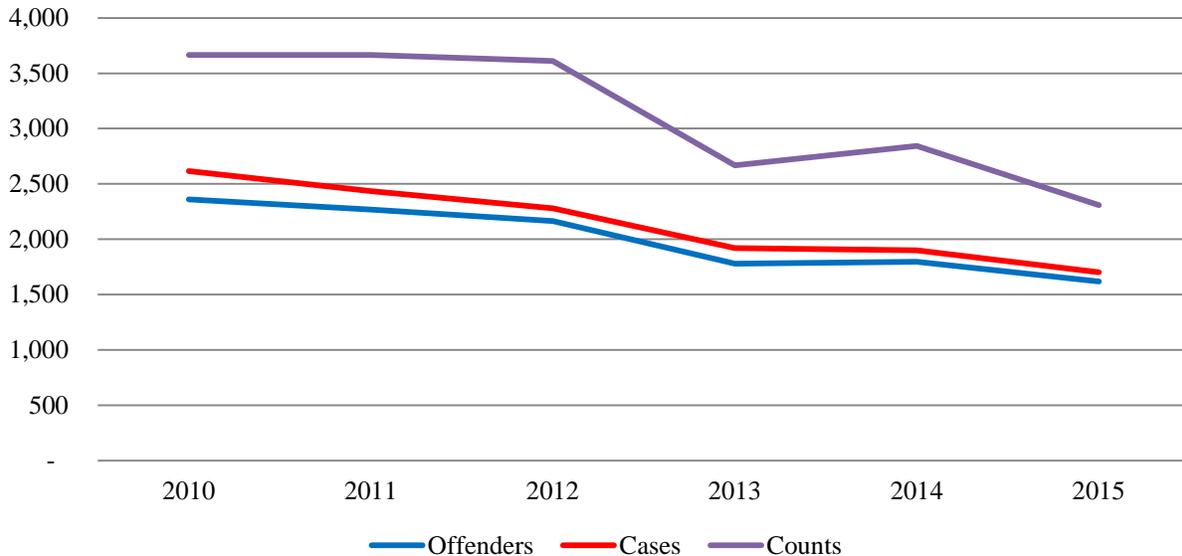
Drug offenses account for much of the decline in cases sentenced during this period (Figure 8). The number of Drug counts decreased by a total of 76% between 2010 and 2015. This decline in the number of Drug counts sentenced is likely related to changes in law enforcement strategies regarding Drug offenses and a corresponding shift of resources to other crimes, as well as changes in the public's perception of how to best address illegal drug use and distribution. All other categories of offenses rose during this period as a percentage of the overall case load or remained relatively constant (Figure 8).

Figure 8: Offense Type by Sentence Year
Case Level
N=12,851
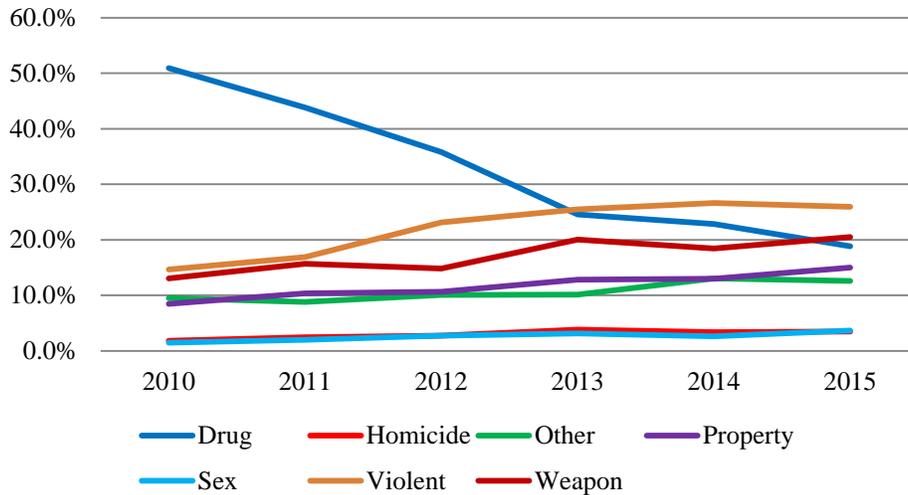
The number of females sentenced each year declined by 45.0% from 2010 through 2015. In 2010, females accounted for 14.8% (208) of individuals sentenced, but by 2015 they represented only 7.8% (110) of all individuals sentenced. This decline was related to the number of females sentenced for Drug offenses declining by 86.7% from 2010 through 2013, and plateauing from 2013 through 2015. Research by the Vera Institute of Justice suggests that this finding is in line with female incarceration trends in other large jurisdictions. The researchers note that while the proportion of females incarcerated is rapidly growing in mid-size and small jurisdictions, there is a decline in the proportion of females incarcerated in larger jurisdictions.[30]

Age may also be associated with some of the changes in sentencing patterns from 2010 through 2015.[31] Although the number of people in almost all age groups has declined during the period, the number of sentenced individuals under 22 years of age has remained stable. Individuals under 22 account for 27.6% of people sentenced during this period. Carrying a pistol without a license and attempted robbery were the two most frequent offenses sentenced for individuals younger than 22.

Individuals age 41 to 50 accounted for 20.9% of those sentenced in 2010, but declined to only 9.5% in 2015. This decline is directly related to the decrease in the number of Drug offenses sentenced from 2010 through 2015. In 2010, Drug offenses were the most frequent type of offenses sentenced for this age group, with 58.6% of individuals age 41 to 50 sentenced for a Drug offense. The percentage of individual sentenced for Drug offenses in this age group declined to 23.6% by 2015.

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[30] Vera Institute of Justice (2016). Overlooked: Women and jails in an era of reform. New York: Swavola, Riley, & Subramanian.
[31] See Figure 17 in Appendix B.

The changes in the demographic composition of individuals sentenced before and after the implementation of the Guidelines may or may not directly influence sentencing outcomes in individual cases, but studying and understanding them allowed the Commission to better qualify the results related to the sentencing patterns under the Guidelines. These factors also provided context for the statistical evaluation of the sentencing outcomes on the Master and Drug Grids. The reduction in the number of Drug offenses was indicative of a policy change in the District's approach to addressing and handling Drug offenses, as are the sentencing outcomes for these offenses.

B. Master Grid

Prison is the most frequent sentence type imposed on the Master Grid, representing 78.5% of all counts sentenced, while short split (10.4%) and probation (11.1%) sentences account for a much smaller percent of counts.[32] The percentage of counts that receive a prison sentence is, as expected, higher in prison-only (97.8%) and short split (82.8%) permissible grid boxes than for probation permissible (54.8%) boxes.[33] On the Master Grid, there are no probation permissible grid boxes that have more than 50% of counts sentenced to straight probation.

> **Finding #6:** On average, prison is imposed in 97.8% of prison-only, 82.8% of short split, and 54.8% of boxes on the Master Grid.

As the OSGs increase in severity, the likelihood of receiving a prison sentence increases as well. Counts sentenced in M1 and M2 had zero probability of receiving a probation or short split sentence, while only three counts resulted in non-prison sentences in M3 and M4. Offense severity groups M5 was the first offense severity group with more than 1% of counts receiving a non-prison sentence.[34] The small variation in sentence types imposed in OSGs M3, M4 and M5 was due to the structure of the Master Grid. Each of the grid boxes represented within these specific OSGs are prison-only boxes, meaning that non-prison sentences are the result of sentences outside of the Guidelines recommended sentence type.

> **Finding #7:** OSG M5 is the first offense severity group where more than 1% of sentenced counts receive a non-prison sentence.

While M6 and M7 were slightly more likely to receive a non-prison sentence, OSGs M8 and M9 were the only OSGs where the percentage of counts that resulted in a prison sentence was less than 75%. This finding was related, in part, to the number of boxes containing multiple sentencing options. However, it was also due to a large number of non-prison sentences imposed in grid boxes M8A and M9A. Counts sentenced in M8A had approximately the same likelihood of receiving a probation sentence as a prison sentence. The variation in sentencing was accounted for by CPWL and attempted robbery, which are the two most frequent offenses in the severity group, with both receiving probation sentences for at least half of the counts sentenced.

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[32] See Table 5a in Appendix B for a detailed description of sentences imposed on the Master Grid.

[33] On both the Master and Drug Grids, prison is a sentencing option in all boxes, including probation eligible boxes.

[34] Master Group 6 is the first Ranking Group with at least one grid box allowing for a non-prison sentence. See Master Grid in Appendix D.

Counts sentenced in M9A were equally likely to receive a prison sentence as a non-prison sentence with the exception of escape and BRA convictions. These two offenses are more likely to receive prison sentences than other M9A offenses due, in part, to the nature of those offenses. As the CH category increases, the likelihood of all M9 offenses receiving a prison sentence increases, including escape and BRA, but the sentences for these two offenses are shorter on average than those imposed for other offenses (Figure 9).

Fig. 9: Average Sentence Length for OSG M9 Offenses
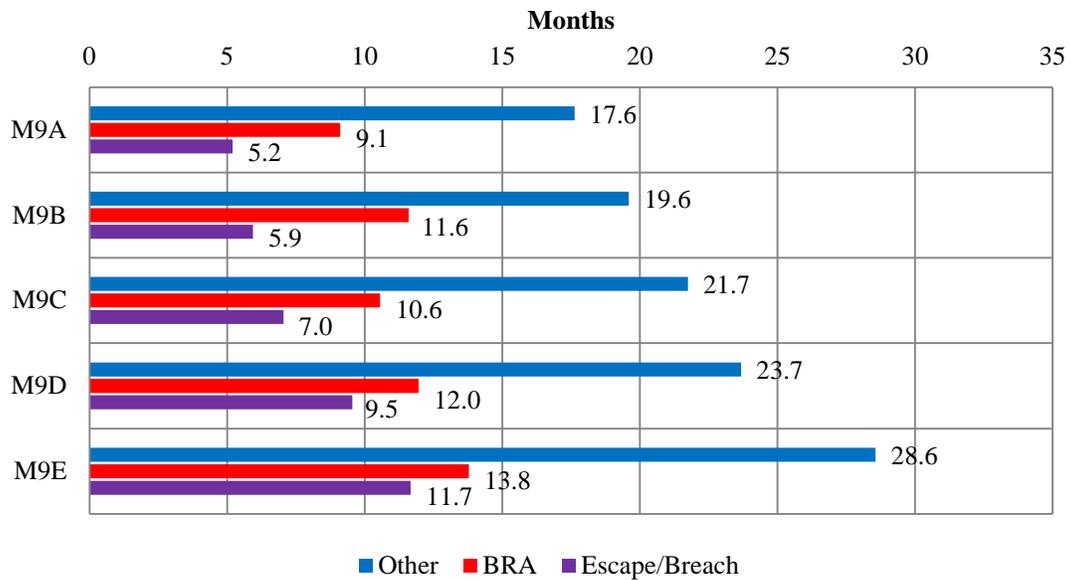
Because the recommended sentencing ranges are relatively broad for counts receiving prison sentences, the Commission also examined the distribution of sentences within each grid box. This allowed the Commission to identify whether the sentences tended to cluster in one part of the recommended sentencing range. Counts receiving prison sentences on the Master Grid tend to be tightly clustered around the mean sentence length for most offenses. Tightly clustered sentences indicate that individuals sentenced for the same offense, who have similar CH scores, are receiving similar prison sentence lengths. There appears to be consistency in sentence length when examining individual offenses.

As an individual's CH category increases on the Master Grid the average length of sentence consistently increases; however, this trend fluctuates across OSGs (Figure 10).[35] This fluctuation may be due, in part, to the different types of offenses within each grid box in a given OSG.

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[35] See Tables 6a & 6b in Appendix B for the average sentence length and range of prison sentences imposed on the Master Grid.

Figure 10: Average Percent Difference in Prison Sentence Length as CH Category Increases
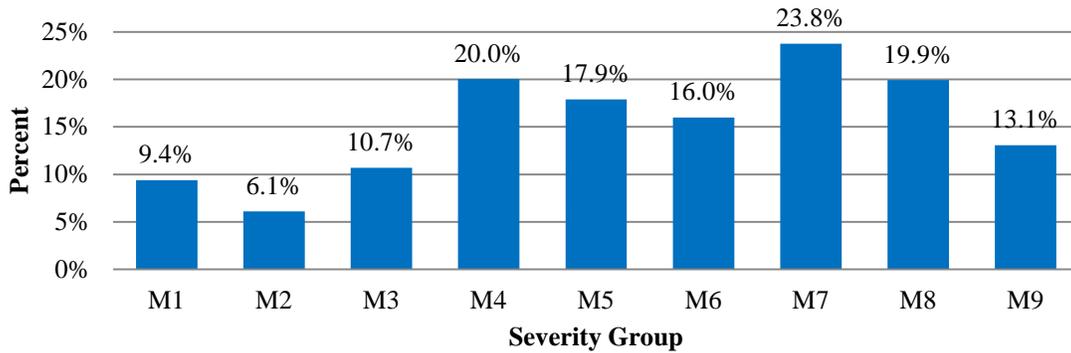
While the sentence length for Master Grid offenses increased as expected given offense severity and criminal history, the average sentence for each grid box varied. Thirty out of the 36 grid boxes in CH Groups A through D (83.3%) on the Master Grid have a mean sentence within the middle 50% of the Guidelines recommended range (Table 2). Five grid boxes had means in the lower 25% of the recommended range, while one grid box had sentences that were in the upper 25% of the recommended range.

Table 2: Mean Sentence Length by Grid Box, Master Grid

While there does not appear to be significant variation in the sentence length when examining data by offense type, variation does appear when examining the data across offenses within each grid box. Of the 45 grid boxes on the Master Grid, only 15 contain prison sentence lengths that were tightly clustered around the mean sentence imposed. This suggests that the offenses in these boxes have similar sentence lengths.

Nineteen (42.2%) of the 45 boxes on the Master Grid were clustered slightly above or below the mean sentence. The few counts that pull the center of the distribution away from the mean are typically counts with enhancements or judicial departures. However, eleven (24.4%) of the grid boxes on the Master Grid contain prison sentence lengths that cluster in two distinct groups rather than one. This appears to be related in part to the ranking of Sex offenses, and suggests

that Sex offenses may be sentenced differently than other offenses within the same offense severity group.

The average prison sentence length for a Sex offense in M2 is shorter than the average sentence for a second degree murder offense in the same OSG, except for grid box M2C (Figure 11).[36] Because of the disparity between the average sentence lengths for second degree murder and for Sex offenses in M2, the sentences in OSG M2 may appear to lack uniformity, although there is greater uniformity within the sentence for each offense when analyzed separately.

**Figure 11: Average Sentence Length for
Offenses in OSG M2
Count level**
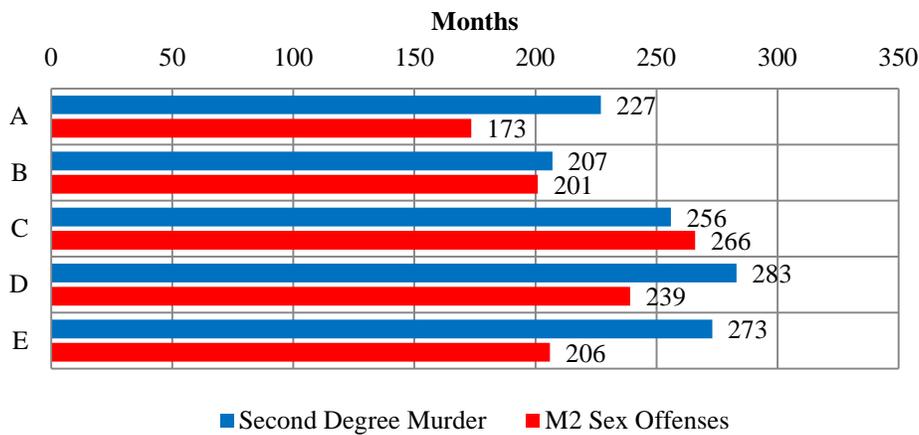
By contrast, prison sentences imposed for Sex offenses across grid boxes in M6 tended to be longer than sentences for other offenses in the same offense severity group.[37] Sex offenses were 11.3 months (M6E) to 26.1 months (M6C) longer than the average sentence for any other type of offense in M6 (Figure 12).[38] Here, too, sentences in Box M6 may seem to lack uniformity, but greater uniformity was found when analyzing sentences for individual offenses.

> **Finding #8:** The lengths of prison sentences for Sex offenses differ significantly when compared to other offenses in the same offense severity group.

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[36] Master Group Two contains the following offenses: second degree murder, second degree murder while armed, first degree sex abuse, first degree sex abuse while armed, and first degree child sex abuse while armed.

[37] Master Group Six contains the following offenses: second degree child sex abuse, assault with a dangerous weapon, aggravated assault, robbery, and assault with intent to commit robbery.

[38] Figure 18 and 19 in Appendix B provides the average sentence length for offenses in OSGs M2 and M6 at the case level.

**Figure 12: Average Sentence Length for
Sex Offenses in OSG M6**

Months

	Property	Sex	Violent	Weapon
M6A	29	44	30	30
M6B	42	66	38	37
M6C	49	75	45	49
M6D	46	73	50	49
M6E	51	83	58	71

■ Property   ■ Sex   ■ Violent   ■ Weapon
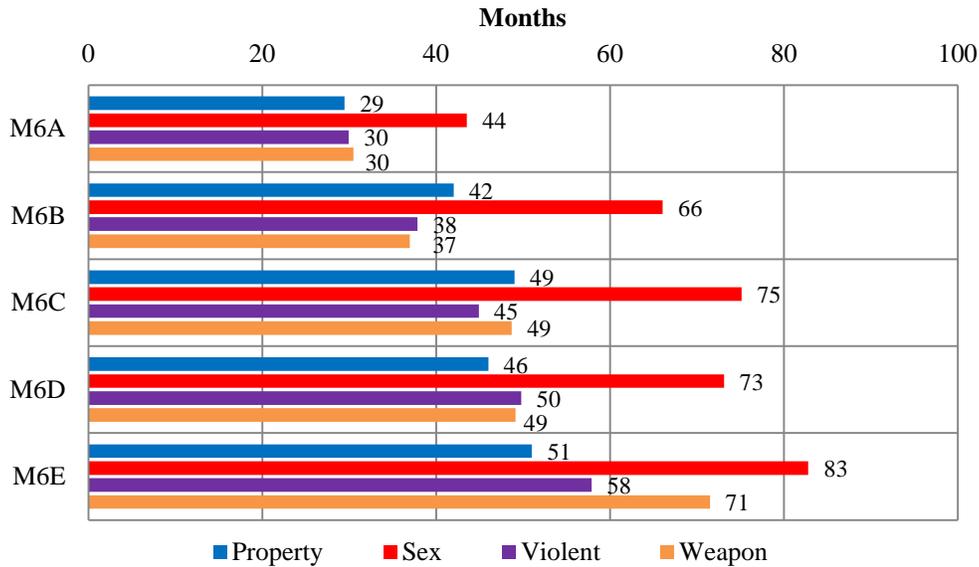
In 2013, the Commission ranked the new crime of third degree sexual abuse while armed, and re-ranked second degree sexual abuse while armed. The re-ranking of second degree sexual abuse while armed from M5 to M4 resulted in an eight month increase in the average prison sentence imposed, from 24 to 32 months. However, the number of counts with sentences for second degree sexual abuse while armed (13 counts) is too small to determine statistical significance.

> **Finding #9:** The average prison sentence for second degree sexual abuse while armed increased by eight months after the offense was re-ranked from M5 to M4.

Mandatory Minimum Sentences

Another factor that may influence sentencing outcomes on the Master Grid is the mandatory minimum sentences that limit judicial discretion for some offenses. A mandatory minimum term is a term that, pursuant to statute, must be imposed and cannot be suspended. There are nine offenses that are subject to mandatory minimum sentences, and three mandatory minimum sentences that apply to armed crimes of violence under certain circumstances.[39] The analysis looked at how mandatory minimum sentences affected sentencing under the Guidelines. Lengths of prison sentences were examined for offenses with mandatory minimum sentences to

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[39] Mandatory minimum offenses include: first degree murder of a police officer, first degree murder, armed carjacking, carjacking, possession of a firearm during a crime of violence/dangerous crime, unlawful possession of a firearm by a person with a conviction of a crime of violence, unlawful possession of a firearm by a person with a conviction greater than 1 year, first and second degree theft if two or more prior theft convictions, armor piercing ammunition, crimes of violence and dangerous crimes while armed with a firearm – 1st offense, crimes of violence and dangerous crimes while armed with a firearm – 2nd and subsequent offense, crimes of violence and dangerous crimes while armed – 2nd offense, and unlawful use of a vehicle after two prior convictions of similar offenses.

determine what impact, if any, mandatory minimum sentences have on felony sentencing patterns.

Of the 12 mandatory minimum sentencing provisions, only 10 offenses were sentenced from 2010 through 2015.[40] More than 50% of the sentences imposed for the following offenses were within 10% of the lowest sentence allowed by law: possession of a firearm during a crime of violence, unlawful possession of a firearm by a person with a

> **Finding #10:** More than 50% of prison sentences for possession of a firearm during a crime of violence, felon in possession, felony second degree theft, carjacking, and armed carjacking are sentenced within 10% of the mandated minimum sentence.

conviction of a crime of violence, unlawful possession of a firearm by a person with a conviction greater than one year, felony second degree theft, carjacking, and armed carjacking. The remaining offenses subject to a mandated minimum sentence were more likely to be sentenced to at least 10% longer than the mandated minimum sentence length.

For some offenses, the mandated minimum sentence is within the sentencing range the Guidelines would otherwise recommend for that offense, or very close to it. Other mandatory minimum offenses received sentences that were significantly longer than the required mandatory minimum sentence (for example, crimes of violence while armed with a gun – 5 year mandatory minimum). In the former category, where the judge imposed the mandatory minimum sentence, it is difficult to analyze whether the sentence would have been shorter or how much shorter, if the mandatory sentence did not apply. In the latter category, it is hard to determine whether there were additional factors besides the mandatory minimum statute that influenced the length of prison sentence imposed. However, it is fair to assume that the judge considered the offense more serious, requiring a sentence longer than the mandatory minimum, which in most cases was also the sentence called for by the Guidelines. In other words, in those cases – crimes of violence while armed with a gun, for example – the sentenced imposed is driven more by the seriousness of the crime than by the mandatory minimum sentence.

Departures from the Guidelines

While the Commission found a few factors that had the potential to influence sentencing outcomes, almost all sentences imposed were compliant with the type and length of sentence recommended under the Guidelines. Departures from the recommended sentence type or sentence length, including Rule 11(c)(1)(C) plea agreements, which account for 7.1% of counts sentenced from 2010 to 2015.[41]

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[40] There were no sentences for counts of first degree murder of a Police Officer and armor piercing ammunition from 2010 through 2015.
[41] A Rule 11(c)(1)(C) plea agreement is a plea agreement in which the attorneys for the government and defendant enter a plea that includes a specific sentence or sentence range, and the judge, by accepting the plea, agrees to be bound by the parties' agreement. Rule 11(c)(1)(C) sentences are considered compliant with the Guidelines based upon the agreement between the two parties and the court.

While durational and dispositional departures from the Guidelines represented a small portion of counts, many did not have a cited departure reason. A departure reason was cited for only 26.9% of all sentences outside of the Guidelines recommended range and options, which meant that no data was available to indicate why nearly 73% of the counts receiving dispositional or duration departures were sentenced differently from counts receiving the recommended guideline sentence.

Dispositional departures were very rare, accounting for only 1.6% (167) of the 10,155 counts sentenced on the Master Grid. Dispositional departures were imposed in only 2.2% of prison only boxes, with 1.1% receiving probation and 1.1% receiving a short split. Nearly 4.1% of counts in short split permissible boxes on the Master Grid received probation sentences. Figure 13 illustrates the percentage of sentence types imposed for prison-only, short split, and probation Master Grid boxes. This finding suggests that not only are sentences compliant with Guidelines recommended sentence type, but also that sentencing judges utilize the options available to them in boxes with multiple sentencing options.

Figure 13: Sentence Type Imposed by Box Type
Master Grid
N=10,155 counts
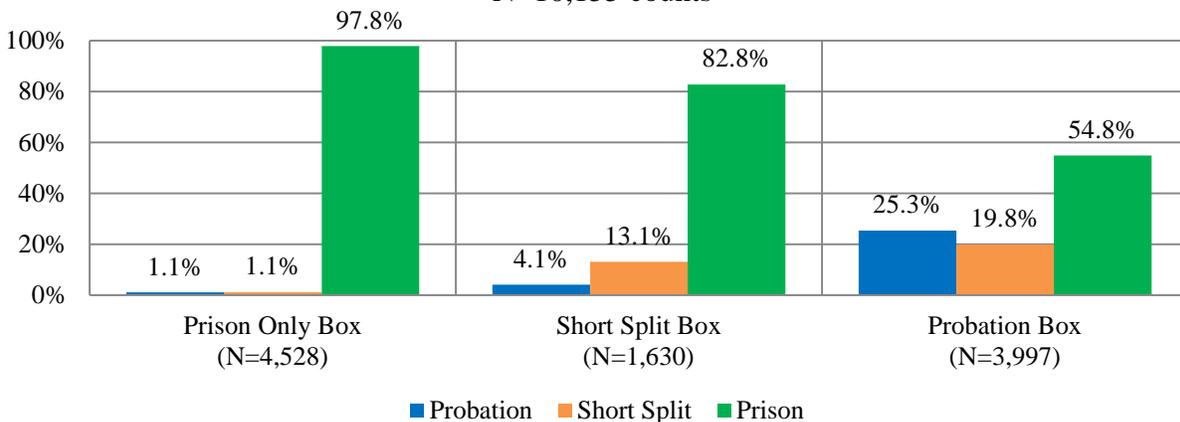
With respect to durational departures of prison sentences, the majority (87.7%) of the counts on the Master Grid received sentences that were within the recommended sentence range. The remaining 12.2% of sentences on the Master Grid were durational departures which were comprised of 8.1% of counts receiving sentences below the recommended range and 4.1% that were above the recommended range. However, 22.6% of the counts that departed below the recommended range were the result of a Rule 11(c)(1)(C) plea agreement, which are considered compliant with the Guidelines.

Assault with Intent to Kill

While examining counts that departed from the Guidelines, the Commission found one anomaly. Forty five percent of assault with intent to kill (AWIK) counts received sentences that were below the recommended Guidelines sentencing range (Figure 14). When controlling for sentencing enhancements and extreme outliers, there were no other offenses for which more than 20% of counts received departures. Almost all (97.5%) of the AWIK counts that received sentences below the recommended range were the result of cases involving Rule 11(c)(1)(C) plea agreements, indicating that binding pleas have a dramatic impact on sentences for this offense.

**Figure 14: Sentence Range Quartile for
Assault With Intent to Kill**

N=89 counts
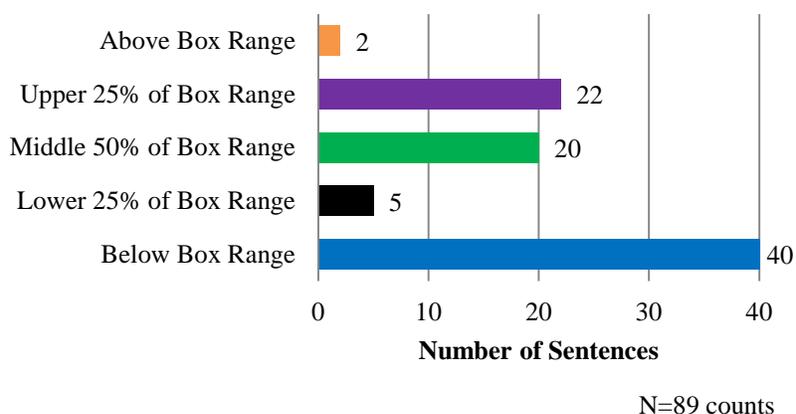
The Master Grid appears to be functioning as intended, with the majority of counts receiving sentences that align with the Guidelines recommended sentence type and length. There are no grid boxes where a departure is more likely to occur than a Guidelines compliant sentence, which suggests that judges feel that the sentencing options allowable under the Guidelines are adequate.

C. Drug Grid

While most counts sentenced on the Master Grid received prison sentences, the Drug Grid provides for more flexibility in sentencing because of the greater proportion of grid boxes allowing for multiple sentencing options. Prison sentences were imposed for slightly less than half of the counts (47.8%) on the Drug Grid, while 31.8% of the counts received probation sentences.[42] There was variation in sentence type based on the OSG and CH score. Armed Drug offenses in D1 were comparatively rare, but sentenced to prison 17.8% more often than offenses in any other severity group on the Drug Grid. The Armed Drug offenses in D1 received prison sentences at least 70% of the time across CH categories, while Drug offenses in D2 were equally likely to receive a prison sentence as a non-prison sentence. As the OSG declined in severity to D3 and D4, Drug offenses were more likely to receive a non-prison sentence than a prison sentence, especially in CH categories A and B.[43]

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[42] Table 6c in Appendix B displays the average sentence length and range for prison sentences imposed on the Drug Grid.

[43] Table 5b in appendix B provides a detailed breakdown of sentences imposed on the Drug Grid.

The lengths of prison sentences on the Drug Grid were similar when sentenced within the same grid box. In 15 out of the 18 grid boxes in which counts were sentenced on the Drug Grid, the lengths of prison sentences are tightly clustered around the mean sentence length.[44]

> **Finding #12:** Prison sentence lengths are close to the average sentence length in 15 out of 18 of Drug Grid boxes in which sentences were imposed.

The length of prison sentences for Drug Grid offenses increased as offense severity and criminal history increase, but the location of the mean sentence varied between the lower 25% of the recommended range and the middle 50%. Nearly 38.8% (seven) grid boxes on the Drug Grid had distributions that were centered within the middle 50% of the Guidelines recommended range, while 44.4% (eight) of had mean sentences in the lower 25% of the recommended range (Table 3). This finding is the effect of CH, which does not seem to have the same impact on sentences for repeat drug offenders as it does for other types of repeat offenders.

Table 3: Mean Sentence Length by Grid Box, Drug Grid

	A	B	C	D	E
D1	Middle 50%	Middle 50%	Lower 25%	No Counts Sentenced	No Range
D2	Middle 50%	Lower 25%	Lower 25%	Lower 25%	No Range
D3	Middle 50%	Lower 25%	Lower 25%	Lower 25%	No Range
D4	Middle 50%	Middle 50%	Middle 50%	Lower 25%	No Range

Legend:
Yellow	Lower 25%
Green	Middle 50%
White	No Counts Sentenced
Black	No Range

Not surprisingly, unarmed Drug offenses were less likely to be sentenced to prison than unarmed non-Drug offenses. At the aggregate level, they were more likely to receive sentences that clustered close to the minimum recommended sentence length. However, armed Drug offenses and offenses sentenced to prison in CH Category A were more likely to have a mean sentence in the middle of the recommended sentencing range. Notably Grid box D1A was the only box on the Drug Grid with counts sentenced in the upper 25% of the recommended sentencing range, underscoring how serious and different armed drug offenses are from unarmed Drug offenses.

> **Finding #13:** With the exception of OSG D1, the majority of counts sentenced in each grid box on the Drug Grid are in the Lower 25% of the recommended sentencing range.

The Drug Grid also demonstrated a high rate of compliance with the Guidelines. On the Drug Grid, out of 3,242 counts sentenced, 95 counts received a dispositional departure from the recommended Guidelines sentence type. Sentences with dispositional departures were imposed for 11.9% of counts in prison only boxes (Figure 15). In short split permissible boxes on the Drug Grid 9.8% of counts received probation sentences.

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[44] Drug related counts are sentenced in 18 out of 20 boxes on the Drug Grid. In offense severity group D1, there are no counts sentenced in Criminal History groups D or E.

Figure 15: Sentence Type Imposed by Box Type
Drug Grid
N=3,242 counts
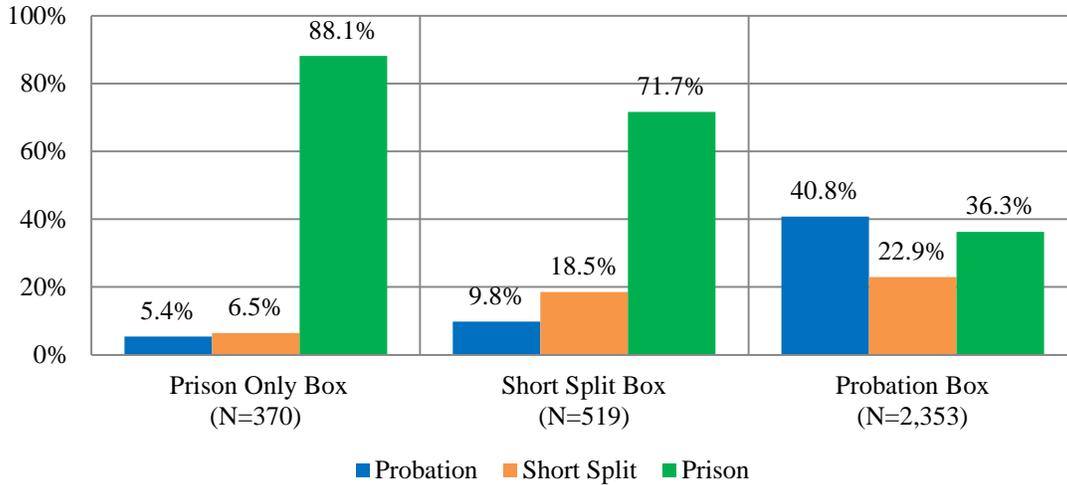
Durational departures from the recommended sentence also occurred very infrequently on the Drug Grid. Of the 3,242 counts sentenced on the Drug Grid, 88.0% received sentences that were within the recommended range. Approximately 11.1% of offenses on the Drug Grid received sentences below the recommended range, and 1.0% received sentences above the recommended sentencing range. This suggests that the multiple sentencing options available on the Drug Grid are fully utilized, and the sentencing range is generally considered sufficient.

In 2011 the Commission restructured the Drug Grid to add OSG D4 to accommodate a new felony offense, possession of PCP in liquid form. In doing so it also reorganized the ranking of Drug offenses throughout the Grid.[45] As part of the restructuring, the Commission ranked possession of liquid PCP and attempted possession of liquid PCP, both of which were formerly misdemeanor offenses. The restructuring also helped align the Guidelines with actual sentencing practices demonstrated by sentencing data prior to the modification.

> **Finding #14:** The 2011 modification of the Drug Grid included the ranking of completed and attempted possession of liquid PCP and made the Guidelines more reflective of current sentencing practices.

There is minimal difference when examining overall prison sentence lengths before and after the restructuring of the Drug Grid, with only two statistically significant findings. The first is that the restructuring of the Drug Grid resulted in a 13% decline in the length of prison sentences imposed for individuals between the ages of 22 and 30 sentenced for drug offenses. This age group represented 30.3% of individuals sentenced for Drug offenses. However, despite the decline in the length of prison sentences, there was no change in the likelihood of this age group being sentenced to prison versus receiving a short split or probation sentence.

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[45] More information about the restructuring of the Drug Grid can be found in the Commission's 2011 Annual Report, available at: http://scdc.dc.gov/page/published-scdc-annual-reports.

The second statistically significant finding coinciding with the restructuring of the Drug Grid was the relationship between the length of prison sentences and the manner in which the case is disposed. The average prison sentence length for Drug offenses declined by 19% for cases disposed of by jury trial after the restructuring of the Drug Grid, and there was no significant difference in lengths of prison sentences for pleas or bench trials.

The majority of sentences on the Drug Grid comply with the type and length of sentence recommended by the Guidelines. The larger number of grid boxes with multiple sentencing options provides for more flexibility in sentencing, which also results in greater variation in the types of sentences imposed. The large decline in the number of Drug cases sentenced indicates that there may have been a shift in criminal justice and social approaches to addressing Drug offenses over the time period studied.

D. Achieving the Statutory Goals

The Guidelines were developed to help the District achieve consistency, certainty, and adequacy of punishment in sentencing outcomes, as defined in the methodology section. Overall, the Guidelines appear to be working as they were designed to work, ensuring that offenders with similar CH scores receive similar sentences for the same offense and ensuring that severity in sentencing increases as offense severity and criminal history increases. The findings highlight areas in which the Guidelines are achieving their mandated goals, but also identify areas for further research.

As expected, sentences for counts on the Master and Drug Grids were more likely to receive prison sentences in prison-only grid boxes suggesting that there was greater consistency and certainty in the types of sentences imposed for these boxes than in grid boxes with multiple sentencing options. Consistency and certainty of sentence length is less apparent on the Master Grid than the Drug Grid, which is attributable to the greater variety of offense types on the Master Grid.

Certainly the Guidelines have improved transparency and predictability in sentencing. With such a high rate of compliance, victims, offenders, and the general public, can generally anticipate likely sentencing outcomes and readily identify those cases in which the judge felt a departure was justified. The Guidelines were established to ensure adequacy of punishment while preserving enough discretion to impose a just sentence consistent with the circumstances of each individual case. To the extent judges, prosecutors, and defense attorneys utilize the Guidelines in the sentencing of felony cases, those goals are achieved.

Chapter 4: Recommendations for Further Research and Analysis by the Commission

The Commission undertook this data driven evaluation study to gauge the effectiveness of the Sentencing Guidelines. The key findings described in Chapter Three identify areas where the Guidelines are achieving their intended goals, and also highlight where further research may be warranted to improve the overall effectiveness of the Guidelines. This chapter includes 1) data driven recommendations for further study by the Commission that were developed based on the findings identified in the Evaluation Study, 2) recommendations about sentencing policy and the formalization of some key concepts included in the Commission's mission and goals, and 3) recommendations related to issues which may impact sentencing practices, but which may also be beyond the Commission's purview and more appropriately addressed by the Council.

1. Seek Input From Judges, Prosecutors, and Defense Attorneys Regarding Their Use and Perception of the Guidelines

Apart from departure data, the Commission receives limited feedback from the Court regarding whether a sentence recommended by the Guidelines is viewed as adequate, or whether judges, prosecutors, and defense attorneys believe the Guidelines are working well. As the Commission examines how the Guidelines have functioned since their implementation, it may be the appropriate time to seek input from these individuals, who are the primary users of the Guidelines. Surveys and focus groups could help the Commission understand what factors judges, prosecutors, and defense attorneys consider when determining what they believe is an appropriate sentence under the Guidelines, as well as their attitudes toward different aspects of the Guidelines rules.

2. Revisit the Overall Purpose of Sentencing in the District of Columbia

Monitoring the application of the Guidelines and sentencing trends allows the Commission to assess how successful the Guidelines are in achieving the goals of consistency, certainty, and adequacy of punishment in sentencing outcomes. To reliably measure whether these goals are being achieved over time, a formal definition of the purposes of sentencing may need to be discussed.

Sentencing policy can serve a number of different purposes. It can be used as retribution for crimes committed; it can support public safety by removing dangerous individuals from the community; it can serve to rehabilitate individuals; it can serve as a deterrent for future criminal activity; or it can serve other identified goals. Each of these goals carries with it a different set of assumptions. Each assumption has the potential to affect sentencing policies such as presumptive sentences and the appropriate use of criminal history.

To ensure consistency in examining the Guidelines and sentencing patterns, the Commission may need to identify and discuss the Council's intended goal(s) of sentencing in the District.[46]

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[46] The goals of sentencing set forth in the enabling legislation include certainty, consistency, and adequacy of punishment. See D.C. Code § 3-101(b)(1) (2016).

Identifying the Council's intent for sentencing may help guide the Commission in developing and modifying policies regarding the appropriate types and lengths of sentences recommended under the Guidelines and measure the achievement of the statutory goals in a consistent manner.

3. **Examine the Role of Criminal History in Determining the Recommended Guidelines Sentence**

Criminal History under the Guidelines is one of the two primary factors that determine the recommended sentence for a given individual, and has a distinct impact on sentencing in the District. As an individual's CH score increases, the likelihood of receiving a prison sentence increases, and a prison sentence is more likely to be longer. However, the impact that CH Scores have on the sentence imposed appears to vary between the Drug and Master Grid. In addition, the manner in which CH scores are calculated and applied can vary depending on the purpose of sentencing. The Committee recommends that the Commission discuss the use and calculation of CH scores within the Guidelines and how these rules support the purpose and goals of sentencing in the District. The discussion should include a review of how a defendant's CH score is calculated; the impact of reviving otherwise lapsed convictions on the individual's CH score; and the inclusion of juvenile adjudications as part of the CH score.

The manner in which a CH score is calculated also has the potential for "double counting" in certain situations. For example, an individual with no prior felony convictions who is found to have illegally possessed a pistol may be charged with CPWL. However, an identical individual with a prior felony conviction may be charged with felon in possession of a firearm. The prior felony may have a double impact on the individual's recommended Guidelines sentence by moving the offense up one severity level on the Grid (e.g., an M8 CPWL to an M7 felon in possession) and to the right at least one CH category. This is also true of second offense provisions where the OSG is increased such as carrying a dangerous weapon, contributing to the delinquency of a minor, counterfeiting, possession of a prohibited weapon, and second degree theft. Such enhancements also increase the high end of the defendant's grid box range. The Commission should consider the potential double punishment and how it affects the goals of sentencing in the District.

The Commission may consider undertaking a study assessing the validity and reliability of the Guidelines' current method of calculating criminal history. In many jurisdictions, there is a limited timeframe in which prior offenses are used to calculate a defendant's prior criminal history score, with the importance of prior convictions on current sentencing diminishing or lapsing over time. The District is one of the few jurisdictions in which all prior adult felony convictions have the possibility of being revived, which can significantly influence the sentence imposed.

4. **Consider Modifications to Guidelines Sentencing Ranges**

The Commission may consider narrowing the sentence ranges in each grid box or in selected boxes. Given the wide sentence ranges within a grid boxes, the distribution of sentences appears to vary by grid box. Yet, the full width of the sentencing ranges available in a grid box is rarely used.

When examining where prison sentences fall within the recommended range, the largest percentage of counts for both Grids are sentenced in the lower 25% of the recommended range, with 39.6% of Master Grid counts and 50.8% of Drug Grid counts receiving a prison sentence in this range. This is followed by the middle 50% of the recommended range, which accounts for 30.9% of Master Grid sentences and 28.7% of Drug Grid sentences. Only 15.5% of Master Grid sentences and 6.6% of Drug Grid sentences are imposed in the upper 25% of the sentence range. Given that a large portion of the recommended range is underutilized in many of the grid boxes, the Commission may reconsider whether such wide sentencing ranges are necessary.

5. Re-Evaluate the Placement of Short Split and Probation Boxes

The Commission might consider examining the placement of short split and probation boxes on the sentencing grids. The Evaluation Study revealed that at least 19 of the 65 Grid boxes contain downward dispositional departures. When examining the counts sentenced in the prison-only boxes bordering short split boxes, non-prison sentences account for 3.8% of these sentences on the Master Grid and 13.4% of sentences on the Drug Grid. In addition, 4.1% of Master Grid counts and 9.8% of Drug Grid counts received probation sentences in short split boxes.

The number of dispositional departures from the recommended sentence suggests that the placement of short split boxes and probation boxes could be reexamined. The Commission may want to consider shifting the placement of short split boxes and expanding the number of probation boxes. In some borderline cases, this would make the Guidelines more reflective of current sentencing practices, and reduce the need for dispositional departures.

6. Consider Adding Presumptive Non-Prison Grid Boxes

Currently a prison sentence is the only presumptive sentence available on both the Master and Drug Grids, and the presumption of prison only applies to prison-only boxes. While prison sentences are allowable in every grid box on the Master and Drug Grids, the placement of short split and probation permissible boxes allows for some flexibility in the type of sentence imposed. The Commission may want to consider whether it would be appropriate to designate presumptive non-prison sentences in specific boxes on either or both Grids, especially in some of the less serious offense severity groups.

7. Reassess the Ranking of Specific Offenses on the Master Grid

The analysis of non-drug felony offenses indicates that the lengths of prison sentences for some OSGs differ significantly when examining offenses. In OSG M2, Sex offenses tend to receive shorter sentences than second degree murder offenses, while in M6 the Sex offenses tend to receive longer sentences than other offenses within the group. The current placement of offenses within these OSGs reduces the level of consistency and certainty in sentencing when examining all counts within the OSG. A Commission level discussion about whether these offenses are appropriately ranked may be warranted.

One option to consider in addressing the differences in sentence lengths between Sex offenses and other offenses within the same OSG is to consider developing a separate Sex Offense Grid, similar to the current Drug Grid. North Carolina, Minnesota, and Oregon have created separate Sex Offense Grids as a result of the difficulty encountered in ranking sex offenses in the same grid with other felony offenses.

A second approach to consider in addressing the consistency in offense sentences within certain OSGs would involve the re-ranking of offenses on the current Master Grid. The sentencing pattern for some offenses may not fit well within the current ranking structure. Re-ranking offenses that contribute to OSG inconsistencies could help reduce the differences in prison sentence length within OSGs.

8. Examine the Placement of Escape and BRA on the Master Grid

The Commission should consider re-examining how escape and BRA offenses are sentenced, given that these two offenses tend to receive different lengths of sentences compared to other offenses sentenced in OSG M9 such as forgery, felony fraud, receiving stolen property, and uttering. At the aggregate level, escape and BRA counts are not less likely to receive a prison sentence than any other offense in OSG M9, although prison sentences for escape and BRA tend to be 50% shorter than prison sentences for other offenses in M9.

While imposing a sentence that includes at least some incarceration time for escape and BRA may be expected, these offenses do not fit neatly in an offense severity group with other offenses that receive longer sentences. The Commission may want to examine whether removing escape and BRA from the Master Grid and developing a special sentencing rule to address these two specific offenses is appropriate. Another options for consideration includes creating a new offense severity group for these two offenses.

9. Examine the Impact, If Any, of How a Case is Disposed (Plea, Jury Trial, or Bench Trial) on the Type and Length of Sentence Imposed

One of the Commission's responsibilities is to monitor sentencing patterns and trends in the District. Recent academic research has shown that cases disposed of through a guilty plea receive less severe sentences than those disposed of by trial. The Commission may want to consider further analyzing the impact case disposition has on the type and length of sentences imposed under the Guidelines. Further examination of the impact case disposition has on sentencing trends would provide a more comprehensive understanding of all of the factors influencing the mandated goals of the Guidelines.

10. Conduct Further Research Regarding the Use of Mandatory Minimums in Sentencing

The analysis of offenses with mandatory minimum sentences reveals that prison sentence lengths for these offenses are either very close to, or much longer than, the mandated minimum sentence. In five of the 10 offenses with a mandatory minimum, at least half of the sentences imposed had a sentence length within 10% of the mandated minimum sentence length. There were an

additional five offenses with mandatory minimum statutes that had at least 50% of counts with prison sentence lengths well above 10% of the mandatory minimum. This may be an appropriate time to further assess how current mandatory minimum statutes impact sentencing trends under the Guidelines. Although the mandatory minimums cannot be changed by the Commission, the Commission should be better informed about their effect on sentencing.

11. Request Additional Data

In order to undertake the research outlined above, the Commission will require access to additional data. For future research projects involving the impact of CH scores and other factors influencing sentencing, the Commission would need to the ability to track cases through the various stages of the criminal justice process. The data required to undertake this level of research includes:

- o **Release data from the Bureau of Prisons –** Obtaining Bureau of Prisons release data would allow the Commission to identify and analyze individuals' actual sentence lengths and the typical amount of time between periods of incarceration for repeat offenders.

- o **Presentence reports from Court Services and Offender Supervision Agency (CSOSA) –** Presentence reports from CSOSA would allow the Commission to examine whether individuals have a pattern of offending, or whether they are sentenced for a variety of offenses. This additional Criminal History information could provide more detailed information on how CH scores should be calculated and/or used.

- o **Drug Court data** – Obtaining Drug Court data would allow the Commission to determine what impact, if any, diversions to the Drug Court have on sentencing trends and outcomes. Because the Commission does not currently have access to information from the Drug Court, access to this data could provide some insight into the changes in sentencing trends that have occurred under the Guidelines. Information from the Drug Court could be juxtaposed with sentencing data for Drug offenses to provide a more complete picture of the reduction in Drug sentences. A specific analysis of Drug Court cases would also inform any decision to include "successful completion of Drug Court" among the recognized reasons to depart from what would otherwise be the recommended Guidelines sentence.

Appendix A: Pre-Guidelines and Guidelines Sentencing Trends Comparison

The first part of the Evaluation Study examines the impact of the Guidelines on the types and lengths of felony sentences imposed. These analyses include a comparison of sentencing data from before and after the implementation of the Guidelines to determine how the Guidelines have impacted sentencing trends in the District.

I.   Data Sources

For this portion of the study, two pre-Guidelines datasets and a Guidelines dataset were analyzed to identify sentencing practices and trends before and after the implementation of the Guidelines. The pre-Guidelines datasets were provided by the Court to the Commission during the initial development of the Guidelines. These data include the type and length of sentence imposed, demographic data, and offense specific data. The datasets also contain criminal history information provided by the PSA, including the number of prior felonies and a proxy CH score.

The pre-Guidelines indeterminate and pre-Guidelines determinate datasets include sentences imposed from 1999 through 2002. The range of years is limited due to a number of data reliability issues. The data files for the years 1999 through 2002 were consistent in format and coincided with a data dictionary and other material identified in Commission files. The Commission excluded the data for the years 1998, 2003, and 2004 because the data files were in formats that were inconsistent with the 1999 through 2002 data.

The Guidelines dataset contains determinate sentences imposed under the Guidelines from 2010 through 2015.[47] Due to data validity and reliability issues during the transition period from the pre-Guidelines determinate sentencing to sentencing under the Guidelines, only data from 2010 to 2015 is included in this dataset. This dataset contains case level data used to make comparisons with historic sentencing trends.

The Guidelines dataset was obtained using the Commission's GRID system. GRID contains sentencing data that is transferred through JUSTIS from the Court via the IJIS 12.1 data feed. The IJIS 12.1 data feed provides information about each offender, case, and count sentenced, and includes offender demographic information, case related information, and sentencing information.

The Guidelines dataset also includes the CH score of the individual sentenced. The CH score is calculated by the Court Services and Offender Supervision Agency (CSOSA) prior to sentencing in most felony cases. The CH scores are captured using GSS, a component of the GRID system. Through GSS, CSOSA provides the Commission with the CH score for every individual sentenced with a CH score requested.

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[47] The Guidelines were initially implemented as a pilot program between 2004 and 2006.

II. Missing Data

The pre-Guidelines datasets presented a number of challenges, due to missing data or data values that were not fully defined. A total of 981 cases, or 5.5% of the data, were omitted from analyses. The following cases were omitted because they were missing data for necessary variables:

- o 167 pre-Guidelines cases for which the offense listed was either "attempted crime not listed" or "accessory after the fact" without the underlying offense identified
- o 508 pre-Guidelines cases that did not contain a sentence length
- o 32 pre-Guidelines cases for which the sentence type was listed as "Other," and for which the sentence type could not be determined in JUSTIS
- o 7 Guidelines cases for which the sentence type was "indeterminate"
- o 89 pre-Guidelines cases missing the disposition type
- o 178 cases missing the age of the individual sentenced

There were a number of cases with missing data that were not omitted but retained by creating new categories. There were 616 cases missing the individuals' race, and 204 cases missing the individuals' gender. It was determined that these categories contained too many missing observations to exclude missing case data entirely. Therefore, categories labeled "Unknown" were created for cases missing race and gender information. These Unknown categories are included in the analyses, but their results are not discussed as part of this study because there is no meaningful way to interpret them.

There were also 281 cases for which the disposition type was overwritten because the case was sentenced under the YRA. Individuals under the age of 22 at the time of their conviction can be sentenced under the YRA. If an individual sentenced under the YRA completes the sentence without reoffending or otherwise violating the terms imposed, the conviction may be "set aside."[48]

Although the disposition variable was labeled as YRA for some cases, YRA is not a disposition type. YRA cases are still decided by guilty plea, bench trial, or jury trial. If an individual sentenced under the YRA has their record set aside, the Court overwrites the actual disposition type with the YRA designation, preventing the Commission from analyzing the actual disposition. Because the YRA category contains individuals whose actual disposition type is either a guilty plea or a trial, treating YRA as a separate disposition category would not be accurate. Therefore the results of the YRA category are not discussed as part of this study, although the YRA category is included in the analyses.

III. Analyses

Case-level data elements from the pre-Guidelines and Guidelines data were used to compare sentencing patterns before and after the implementation of the Guidelines. All felony sentences

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[48] When a conviction is "set aside" it is removed from public record, though it is not entirely expunged; law enforcement and other criminal justice agencies can still see the conviction in an individual's record. See D.C. Code § 24-901 et sec.

imposed between Jan. 1, 1999, and Dec. 31, 2002, and between Jan. 1, 2010, and Dec. 31, 2015, were included in the analyses comparing pre-Guidelines and Guidelines sentencing trends.

A. Determining most severe offense

Case-level data is based on the most severe offense in each case.[49] The Commission has six criteria for determining the most severe offense. These criteria, in order, are:

1. Whether a life sentence was imposed.
2. The Severity Group of the offense, in the following order: M1, M2, M3, M4, M5, D1, M6, M7, D2, M8, M9, D3, D4.
3. The length of the sentence.
4. The offense category, in the following order: Murder, Sex, Violent, Weapon, Property, Drug, Other.
5. Whether the offense of conviction was a while-armed offense.
6. The number of the counts, as ordered by the Court.

B. Dependent and Independent Variables

The two dependent variables used in this part of the Evaluation Study are Sentence Type and Sentence Length. Sentence Type is a binary variable[50] indicating whether each case received a prison or non-prison sentence. For the purposes of this analysis, prison and long split sentences are considered prison sentences. Probation and short split sentences are considered non-prison sentences. Sentence Length is a continuous[51] variable indicating the length of sentence, in months, imposed for each case.

The primary independent variable in these analyses is Sentence Structure, a categorical variable[52] indicating the sentencing structure under which each case was sentenced (pre-Guidelines indeterminate, pre-Guidelines determinate, or Guidelines). The other independent variables included in the analyses include:

o Criminal History: a categorical variable that groups CH scores into three categories – low, medium, or high – derived from the prior convictions of the individual sentenced.
o Race: a categorical variable indicating the race of the individual sentenced. Includes the categories Black, Other, Unknown, and White.
o Gender: a categorical variable indicating the gender of the individual sentenced, which includes Female, Male, and Unknown.

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[49] Due to a lack of documentation, it is unclear how the most severe offense was determined in the pre-Guidelines datasets.

[50] A binary variable is a variable that can only take one of two values; in this study the two possible values are prison and non-prison.

[51] A continuous variable is a variable that can take any value in a given range. In this study the range of sentence lengths is zero to 780 months.

[52] Categorical variables are variables that can take one of a limited number of values, assigning each case to a particular category or group.

- o Age: a continuous variable representing the age of the individual sentenced.[53]
- o Disposition: a binary variable indicating whether the case was disposed of through a guilty plea or a trial.[54]
- o Single or Multiple Felony: A binary variable indicating whether the case involved a single felony conviction or multiple felony convictions.
- o Offense Category: A categorical variable indicating the category of the offense of conviction. Offense categories include Drug, Homicide, Other, Property, Sex, Violent, and Weapon.[55]
- o Offense Severity Group: A categorical variable indicating the offense severity group for the offense of conviction. The Guidelines Offense Severity Groups include Master Grid groups M1 through M9, and Drug Grid groups D1 through D4.[56]

C. Comparison of Sentence Type Imposed

To examine the impact of the Guidelines on sentencing in the District, the analysis focuses on whether there are changes in the likelihood of receiving a prison sentence versus a non-prison sentence between the pre-Guidelines and Guidelines sentencing structures. Given that the dependent variable, Sentence Type, is binary, a binomial statistical analysis was used for analysis purposes. This type of analysis indicates whether there are reliable differences in the likelihood of receiving prison sentences between the different sentencing structures. All results for the binomial models are reported as marginal effects. The effect reported is the estimated increase or decrease in the likelihood of the average case resulting in a prison sentence given a one-unit change in the independent variable, holding all other independent variables at their means.

D. Comparison of Sentence Length Imposed

The second part of the comparison between the pre-Guidelines and Guidelines sentencing structures examines whether prison sentence lengths have changed since the implementation of the Guidelines. Analyses concerning the lengths of sentences imposed only include cases that resulted in a prison sentence. The dependent variable for this analysis is the length of sentence in months, which was log-transformed. Log transformations allow the coefficient to be interpreted as the average percent difference in the length of sentence imposed between two sentencing structures, rather than the difference in the average number of months imposed. This approach is more appropriate when comparing offense types with varying average sentence lengths.[57]

Because the dependent variable, Sentence Length, is continuous, it required the use of a linear statistical model. Ordinary Least Squares regression could not be used because the data did not

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[53] For the two pre-Guidelines datasets, age was reported at the time of sentencing. For the Guidelines dataset, age was reported at the time of the offense.

[54] For the purposes of the pre-Guidelines and Guidelines sentencing trends comparison, the term "trial" includes both jury trials and bench trials.

[55] For a list of offenses contained within each offense category, see the Commission's 2015 Annual Report at: http://scdc.dc.gov/node/1159107.

[56] Pre-Guidelines sentences were placed in an assumed severity group based on where they would have appeared if sentenced under the Guidelines.

[57] See Ulmer and Bradley, 2006: "Variation in Trial Penalties Among Serious Violent Offenses." Criminology 44(3).

meet the required assumptions that 1) observations (sentences) are not correlated over time, and 2) that the data is normally distributed. Robust regression was used because it provides an alternative model that relaxes these assumptions and allows for linear regression without requiring other potentially problematic strategies.[58]

IV. Key Data Caveats

A. Comparing Criminal History

Criminal history is one of the key aspects a judge uses to determine the type and length of sentence imposed. The Commission believed it was important to include CH scores in comparisons between pre-Guidelines and Guidelines data. However, the criminal history estimations in the pre-Guidelines and Guidelines dataset are in different formats, complicating these comparisons. For each case, the pre-Guidelines datasets include a proxy CH score, as well as the individual's number of prior felony convictions in the District. The Guidelines dataset contains the CH sore, which is calculated using all eligible prior felony and misdemeanor sentences convicted in both the District and in other jurisdictions.

Although the pre-Guidelines proxy CH score appeared to be in the same form as the current CH score, its use was problematic for two reasons. First, the manner in which CH scores are calculated has changed since the early 2000s, when the pre-Guidelines data was collected and those scores were calculated. Second, based on data quality checks conducted using the JUSTIS system; it became apparent that there were a number of inaccuracies in the proxy CH score. One third of the cases had a different number of prior felony case convictions in the JUSTIS system than reflected in the proxy CH score in the dataset. Only two-thirds of the cases verified were accurate.

Because of these inconsistencies and inaccuracies, the decision was made to use prior felony conviction counts for comparing criminal histories. This measure also had shortcomings. The prior felony count included only District felony convictions, not misdemeanors or out-of-District convictions. There were also inaccuracies when compared to JUSTIS data, but those inaccuracies were present in a much lower percentage of cases than in the proxy CH score option. The challenges identified in this measure were determined to be less significant than those in the proxy CH score.

In order to compare the number of prior pre-Guidelines felonies with the Guidelines CH score, a system was developed that classified criminal histories into low, medium, and high categories. The low criminal history category (CH category) contains individuals sentenced under pre-Guidelines sentencing who had not been convicted of a prior felony offense, and individuals sentenced under the Guidelines in CH category A (0 to ½ points). The medium category contains individuals sentenced under pre-Guidelines sentencing who had between one and three prior felony convictions, and individuals sentenced under the Guidelines in CH categories B, C, and D (¾ to 5¾ points). The high category includes individuals sentenced under pre-Guidelines

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[58] See Faraway, Julian J. *Linear models with R*. CRC Press, 2014.

sentencing with more than three prior felony convictions, and individuals sentenced under the Guidelines in CH category E (6 or more points).

Criminal History Categorization

Pre-Guidelines prior felony count	Guidelines CH category		New CH category
0	A	(0-½ points)	Low
1-3	B-D	(¾-5¾ points)	Medium
4+	E	(6+ points)	High

B. Estimating Indeterminate Sentence Length

Individuals sentenced under the pre-Guidelines indeterminate sentencing structure received a sentence range rather than a specific number of months to serve. Because the actual length of time served was not known at the time of sentencing, determining the length of stay in prison for those individuals sentenced under the pre-Guidelines indeterminate sentencing structure was also challenging.

In an attempt to determine the lengths of stay under the pre-Guidelines indeterminate sentencing structure, the Commission requested and received a dataset from the USPC. The dataset was comprised of a sample of cases that received parole hearings between October 1, 2000 and September 30, 2002, and which were subsequently granted parole. The offenses contained in the dataset were committed between 1975 and 2002, with over 85% of the offenses committed in the 1990s. Excluded from the dataset were cases containing multiple consecutive sentences; cases for which an individual was serving a parole violator term on a sentence from which they had previously been released; cases in which the individual died while in custody; and cases that resulted in non-prison sentences.

Commission staff analyzed the USPC dataset in an attempt to determine the lengths of stay under indeterminate sentencing. Analyses were conducted at the aggregate level and for nine particular offenses.[59] Due to the limited number of cases included in the dataset, analysis at the offense category level, severity group level, or by individual offenses was not possible. Despite these efforts, no reliable estimate of the average time served under indeterminate sentencing could be determined. The portion of time served varied substantially both among offenses and among individuals sentenced for each offense. At the aggregate level, more than one-third of the individuals served in the lower quartile of their sentence range, while almost half served in the middle two quartiles of their sentence range. For the offenses analyzed, the average portion of sentence served ranged from 44% longer than the minimum sentence for armed robbery to 121% longer than the minimum for Unauthorized Use of a Vehicle.

Given the variability in these findings, selecting any particular estimate of time served, such as the sentence minimum or the mean of the sentence range, and applying it to all pre-Guidelines indeterminate data would misrepresent the time served for a large number of individuals. Given

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[59] The nine offenses analyzed were armed robbery, assault with a dangerous weapon, attempted distribution of cocaine, attempted possession with intent to distribute (PWID) cocaine, carrying a pistol without a license (CPWL), distribution of cocaine, PWID cocaine, robbery, and unauthorized use of a vehicle (UUV).

the lack of data, there was not enough information on which to make an informed, defensible decision about pre-Guidelines indeterminate lengths of stay. Therefore, analysis of indeterminate sentence length was not included in this study.

V. Sentencing Structure Comparison Results[60]

Table 4: Pre-Guidelines and Guidelines Comparison Coefficient Table[61]

	Sentence Type Model[62]			Sentence Length Model[63]		
	Coefficient	standard error	p-value	Coefficient	standard error	p-value
Indeterminate Sentencing	-0.090**	0.028	0.001	--	--	--
Determinate Sentencing	0.027	0.015	0.081	0.204***	0.015	0.000
Criminal History	0.281**	0.009	0.002	0.315***	0.011	0.000
Race: Other	-0.085*	0.034	0.013	-0.089*	0.041	0.030
Race: Unknown	-0.028	0.028	0.315	-0.032	0.027	0.233
Race: White	-0.029	0.023	0.208	-0.060	0.032	0.63
Gender: Male	0.165***	0.033	0.000	0.178***	0.024	0.000
Gender: Unknown	0.123	0.068	0.068	0.229***	0.053	0.000
Age	-0.003**	0.001	0.004	-0.004***	0.001	0.000
Disposition: Trial	0.155*	0.074	0.037	0.182***	0.020	0.000
Disposition: YRA	-0.485***	0.091	0.000	-0.376***	0.082	0.000
Single Felony case	-0.019	0.011	0.087	-0.107***	0.013	0.000
Significance codes: '***' $p < .001$; '**' $p < .01$; '*' $p < .05$						

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[60] Separate analyses were run for each sentencing structure, offense category, severity group, and for 20 offenses. Coefficient tables for these analyses are available upon request.

[61] Models displayed controlled for the offense of conviction. Coefficients for each offense are not displayed, but are available upon request.

[62] All Coefficients displayed are marginal effects.

[63] Because the dependent value was logged, all sentence length coefficients reported must be exponentiated for proper interpretation.

Appendix B: Guidelines Sentencing Trends

The second part of the Evaluation Study analyzes sentencing trends under the Guidelines from 2010 through 2015. This part of the Evaluation Study examines the extent to which individuals with similar criminal histories committing a similar offense receive similar types of sentences. This analysis also explores whether there is similarity in the length of prison sentence imposed for individuals convicted of similar offenses with similar criminal histories.

I. Data Source

All felony sentences imposed from January 1, 2010 through December 31, 2015 were downloaded from the agency's GRID system to create a Guidelines Evaluation dataset. Part One of the Evaluation Study used the Guidelines dataset to examine case level sentencing data, while Part Two used the same Guidelines dataset to evaluate count level sentencing trends. The Part Two Guidelines dataset includes criminal history,[64] demographic information, the offense of conviction, and the sentencing information for each count. Using count level sentencing data allows for a more comprehensive assessment of the trends based on the sentence type and length imposed for any felony offense. Identifying the sentencing trends for felony offenses was necessary to measure consistency, certainty, and adequacy of punishment in sentencing outcomes under the Guidelines in order to determine whether the statutory goals for the Guidelines are currently being achieved.

II. Dependent and Independent Variables

- o Sentence Type: Indicates the type of sentence imposed, meaning prison, short split, or probation.
- o Sentence Length: Represents the length of the prison sentence imposed, stated in months.[65]
- o Criminal History categories (CH categories): A through E based on the number of eligible prior convictions. The CH categories are represented along the horizontal axis of the Master and Drug Grids.
- o Offense Severity Group (OSG): Thirteen offense categories represented on the vertical axis of the Master and Drug Grids. These categories decrease in severity from M1 to M9 on the Master Grid, and D1 to D4 on the Drug Grid.
- o Mandated Minimum Sentence: Twelve mandatory minimum variables were included as binary measures indicating whether a count was associated with an offense that had a mandated minimum sentence.
- o Policy Change: Four policy change variables were included as binary variables representing whether a sentence was imposed before or after a particular change in sentencing policy.[66]

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[64] The Voluntary Sentencing Guidelines Manual provides a detailed description of which prior convictions are counted towards the individual's CH score, and how they are scored. The Guidelines Manual is available at: http://scdc.dc.gov/page/sentencing-guidelines-manual-sccrc.

[65] For the purpose of this analysis, long split sentences are treated as prison sentences, with the length of sentence determined by the number of months the individual must serve before released to probation.

- Case Disposition: A categorical variable that groups sentences by the manner in which the case was disposed (e.g. jury trial, bench trial, guilty plea).
- Age Group: A variable that categorizes the individual's age at the time of the offense into an age range.
- Departure: A categorical variable that represents whether a sentence is within the recommended sentence type and length under the Guidelines.

A. Consistency of Sentencing

Determining consistency in sentencing involves observing the effect that the criminal history and offense severity, both independent variables, have on the dependent variables sentence type and prison sentence length. This includes determining the percentage of prison, short split, and probation sentences imposed for each offense given the OSG and the individual's CH score. Descriptive statistics are used to identify the percentage of each sentence type imposed in a given grid box, demonstrating a level of consistency in sentence type.

A second method of measuring consistency is to examine whether prison sentence lengths are clustered around the mean rather than randomly distributed throughout a given grid box range. When analyzing sentence length, consistency is measured in two steps. First is determining the range of prison sentence lengths (the distribution) observed for each box on the Master and Drug Grid. Second is identifying whether the observed distribution is centered on the mean or average sentence rather than being either skewed or asymmetrical. These two steps indicate how comparable sentence lengths are for individuals with similar CH scores, convicted of similar offenses.

Analysis of variance, which demonstrates the statistical differences among group means, is used to examine the impact of recent Guidelines policy changes on the average prison sentence length imposed for specific offenses. The analysis of variance compares the length of the average prison sentence for a given offense or offense category, before and after the implementation of each of the identified policy changes.

B. Examining Certainty in sentencing outcomes

The second statutory goal of the Sentencing Guidelines is certainty in sentencing outcomes. For the purpose of the Evaluation Study, certainty in sentencing outcomes is defined as being able to accurately estimate the type and length of sentence an individual is likely to receive given his/her criminal history and the offense of conviction. Unlike consistency, which examines the frequency with which a sentence type or length is imposed; certainty examines the likelihood of receiving a certain sentence type or length.

Since sentence type is a categorical variable, an ordinal logistic regression analysis is required to determine the likelihood of a prison, short split, or probation sentence being imposed given an individual's CH category and the OSG for the offense. Sentence length is measured on a

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[66] The four policy changes include: 1. restructuring the Drug Grid, 2. ranking third degree sexual abuse while armed, 3. re-ranking second degree sexual abuse while armed, and 4. ranking assault with intent to do significant bodily injury while armed.

numerical scale, which allows for the use of a multiple regression analysis to measure the significance of differing sentence lengths. The multiple regression analysis can also account for other contributory factors related to sentence length, such as sentencing enhancements and disposition type. Both of these types of regression will provide an estimation of the likelihood that a prison sentence will be imposed, and whether there are reliable differences in sentence length given the defendant's CH category and the OSG.

The impact of mandatory minimum statutes on prison sentence lengths is examined to assess the extent to which offenses subject to mandatory minimum sentencing statutes are sentenced above the mandated minimum sentence for a given offense. The purpose of this analysis is to determine if, and how, mandatory minimum sentences influence the length of prison sentences imposed. Descriptive statistics are used to determine the proportion of offenses that receive a prison sentence length that is close to the mandated minimum. A regression analysis is used to determine the impact of criminal history on the likelihood of receiving a sentence close to, or much longer than, the mandated minimum sentences.

C. Examining Adequacy of punishment in sentencing outcomes

The third statutory goal of the Guidelines is adequacy of punishment in sentencing outcomes. For the purposes of this Evaluation Study, measuring perceptions of adequacy of punishment in sentencing is achieved by examining judicial departures from the Guidelines. The first step in determining whether the Guidelines meet the goal of adequacy of punishment involved examining the likelihood of receiving a sentence imposed other than the recommended sentence type, or a sentence above or below the recommended range. The second step involved identifying how frequently departure reasons are cited, and which departure reason is most often cited.

Two types of regression analyses are used to examine how often departures from the recommended Guidelines occur. First, an ordinal regression analysis is performed to examine the extent to which departures from the recommended sentence type take place under the Guidelines. Next, a multiple regression analysis is performed to examine the lengths of sentences imposed below or above the recommended range for each grid box. Each analysis accounted for other contributory factors such as sentencing enhancements as well as mandatory or statutory minimums.

III. Findings

Figure 16: Offense Type by Sentence Year
Count Level

	2010	2011	2012	2013	2014	2015
Drug	29.4%	24.4%	18.9%	9.5%	9.9%	7.8%
Homicide	13.1%	13.4%	21.6%	17.2%	18.3%	16.4%
Other	17.7%	14.7%	15.4%	16.0%	21.2%	15.0%
Property	15.0%	17.7%	16.1%	16.1%	16.2%	18.9%
Sex	12.1%	13.8%	18.5%	18.0%	16.3%	21.4%
Violent	14.6%	15.1%	18.1%	16.0%	19.9%	16.3%
Weapon	17.8%	17.5%	18.4%	15.3%	17.5%	13.5%
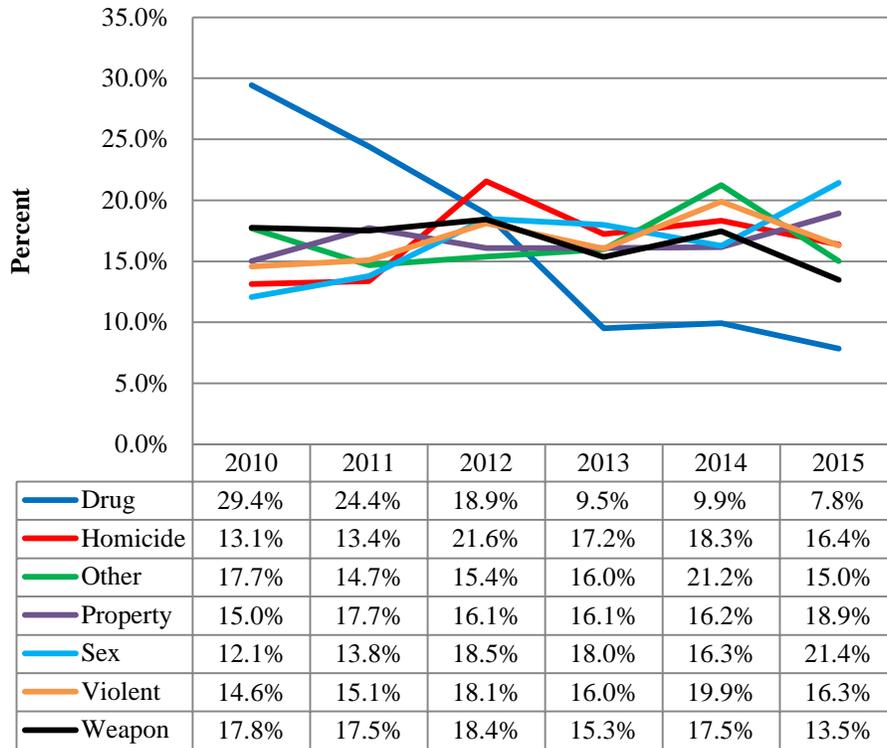
Figure 17: Age by Sentence Year Evaluation Data 2010 - 2015

	2010	2011	2012	2013	2014	2015
Unknown	64	47	61	11	5	1
15 - 17	55	52	45	51	50	39
18-21	500	548	563	549	564	535
22-30	686	679	676	582	560	538
31-40	470	467	413	346	341	287
41-50	547	417	331	233	217	162
51-60	248	204	167	119	137	120
61-70	40	24	22	24	23	16
71+	6	0	2	4	2	3
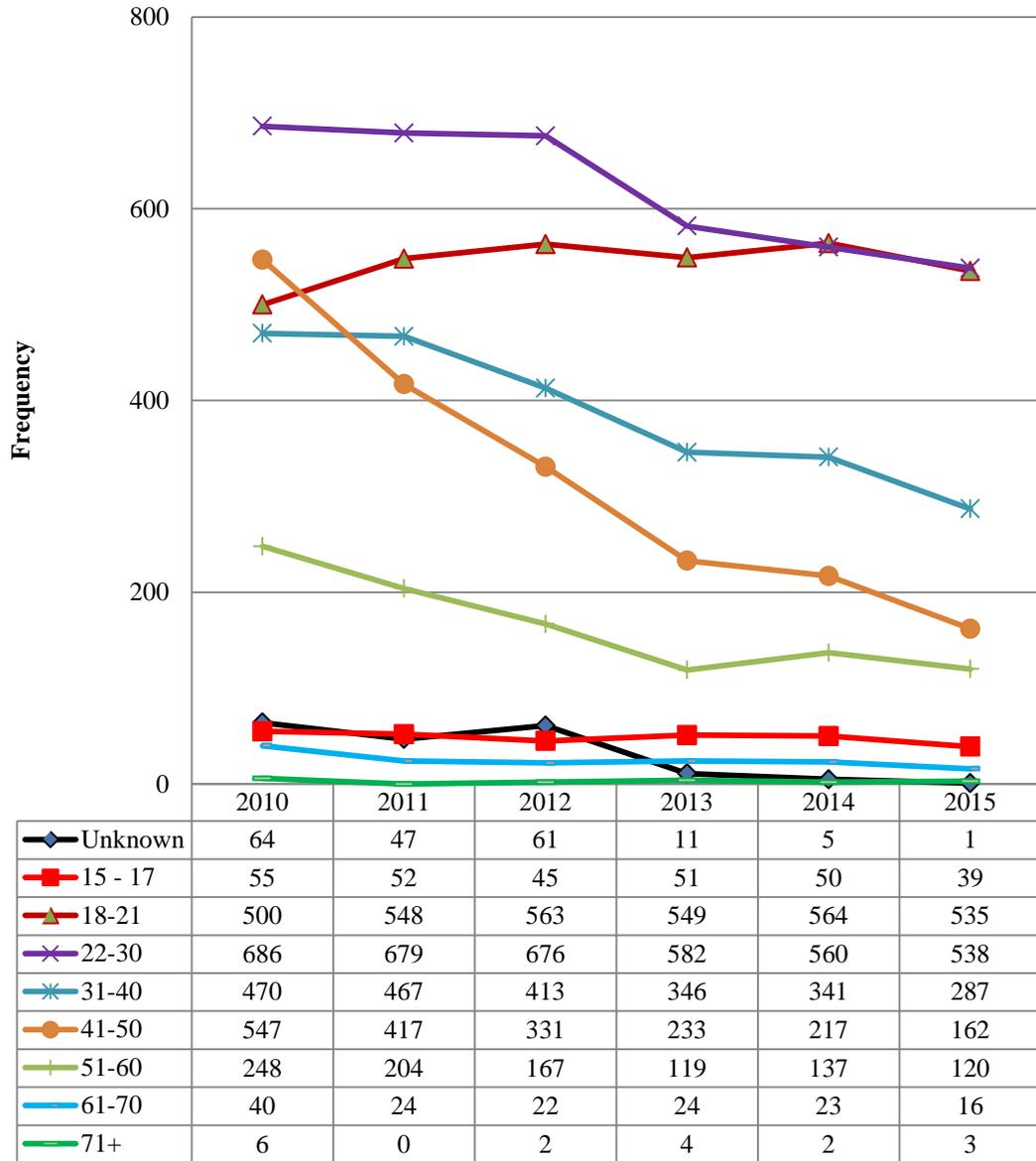
Figure 18: Average Sentence Length for Offenses in OSG M2
Case Level

Months

	Second Degree Murder	Sex Offenses
A	213	176
B	213	256
C	251	221
D	198	237
E	245	234

■ Second Degree Murder   ■ Sex Offenses
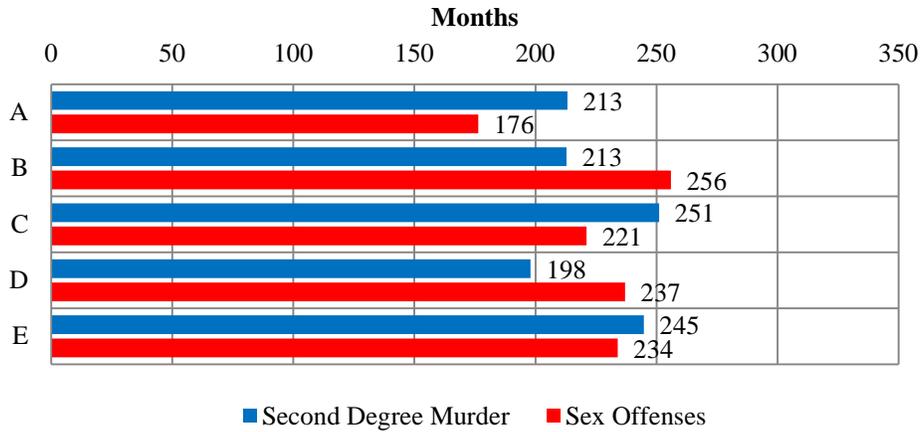
Figure 19: Average Sentence Length for Offenses in OSG M6
Case Level

Months

	Property	Sex	Violent	Weapon
A	26.0	39.6	27.0952	25.3556
B		66.6	32.0538	33.5098
C	56.0	62.8	44.6640	38.7206
D	44.0	73.1	48.3778	43.2667
E		93.0	58.2778	55.1429

■ Property   ■ Sex   ■ Violent   ■ Weapon

OSG	Sentence Type	CH Group				
		A	B	C	D	E
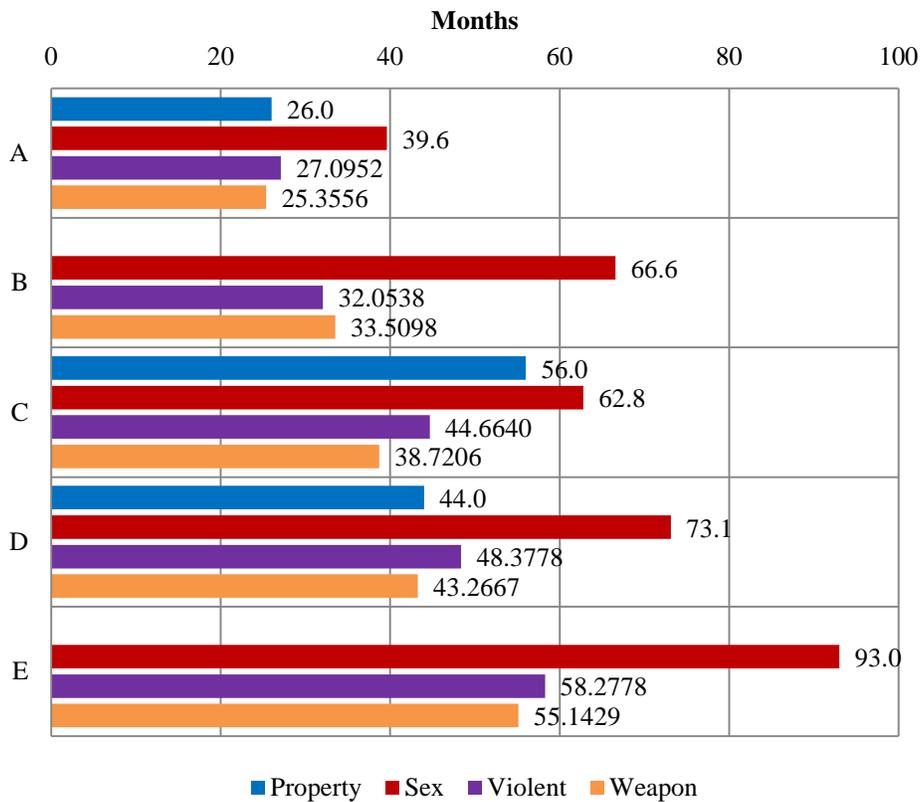
Table 5a: Sentence Type by Offense Severity Group
N = 10,155
Master Grid

OSG	Sentence Type	A	B	C	D	E
M1	Probation	0.0%	0.0%	0.0%	0.0%	0.0%
	Short Split	0.0%	0.0%	0.0%	0.0%	0.0%
	Prison	100.0%	100.0%	100.0%	100.0%	100.0%
	Median	420	420	420	510	456
	Middle 50%	360-480	360-480	360-540	444-675	390
	N	42	21	26	12	12
M2	Probation	0.0%	0.0%	0.0%	0.0%	0.0%
	Short Split	0.0%	0.0%	0.0%	0.0%	0.0%
	Prison	100.0%	100.0%	100.0%	100.0%	100.0%
	Median	204	240	270	240	249
	Middle 50%	168-243	156-285	216-300	240-297	192-333
	N	114	25	48	16	12
M3	Probation	0.0%	0.0%	0.0%	0.0%	0.0%
	Short Split	0.6%	1.5%	0.0%	0.0%	0.0%
	Prison	99.4%	98.5%	100.0%	100.0%	100.0%
	Median	120	144	168	168	180
	Middle 50%	96-156	102-192	120-204	132-216	147-225
	N	179	68	91	25	25
M4	Probation	0.0%	0.0%	0.0%	0.0%	0.0%
	Short Split	1.0%	0.0%	0.0%	0.0%	0.0%
	Prison	99.0%	100.0%	100.0%	100.0%	100.0%
	Median	84	108	86	120	144
	Middle 50%	60-108	90-132	72-120	100-132	96-156
	N	98	35	36	22	15
M5	Probation	2.9%	2.4%	0.9%	0.8%	0.0%
	Short Split	1.8%	0.8%	0.3%	0.0%	0.0%
	Prison	95.3%	96.8%	98.8%	99.2%	100.0%
	Median	60	60	66	72	84
	Middle 50%	48-72	60-84	60-96	72-120	84-120
	N	663	377	324	125	117
M6	Probation	6.1%	0.9%	0.4%	1.0%	1.6%
	Short Split	19.5%	1.8%	1.6%	0.0%	0.0%
	Prison	74.5%	97.3%	98.1%	99.0%	98.4%
	Median	30	36	40	48	50
	Middle 50%	18-45	24-48	32-60	63-60	42-72
	N	658	329	257	98	126
M7	Probation	8.7%	1.3%	0.0%	0.0%	0.9%
	Short Split	10.7%	2.5%	0.6%	0.0%	0.9%
	Prison	80.6%	96.2%	99.4%	100.0%	98.2%
	Median	18	24	28	36	40
	Middle 50%	12-24	18-30	24-36	30-38	36-48
	N	253	316	337	143	111
M8	Probation	38.1%	9.8%	3.4%	1.7%	1.2%
	Short Split	23.7%	17.8%	12.8%	4.2%	1.2%
	Prison	38.2%	72.3%	83.8%	94.2%	97.6%
	Median	12	16	20	20	24
	Middle 50%	10-24	12-24	14-24	18-24	22-36
	N	1910	835	537	240	252
M9	Probation	29.4%	6.8%	7.8%	4.2%	0.9%
	Short Split	19.6%	15.8%	11.1%	7.6%	6.5%
	Prison	51.0%	77.4%	81.1%	88.2%	92.5%
	Median	12	10	12	12	12
	Middle 50%	6-12	5-12	6-16.5	7-14.5	9-18
	N	490	265	244	119	107

	Prison-Only box
	Short split permissible box
	Probation permissible box

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OSG	Sentence Type	CH Group				
		A	B	C	D	E
D1	Probation	5.0%	0.0%	0.0%	--	--
	Short Split	25.0%	11.1%	28.6%	--	--
	Prison	70.0%	88.9%	71.4%	--	--
	Median	60	60	48	--	--
	Middle 50%	54-63	60-69.5	36-57	--	--
	N	20	9	7	0	0
D2	Probation	44.6%	15.8%	9.5%	6.5%	1.9%
	Short Split	31.0%	27.0%	18.8%	5.8%	6.5%
	Prison	24.4%	57.1%	71.7%	87.7%	91.7%
	Median	18	20	20	24	28
	Middle 50%	12-24	16-24	20-27.5	24-36	24-36
	N	406	259	336	154	108
D3	Probation	64.3%	31.5%	19.4%	11.5%	7.9%
	Short Split	19.2%	24.5%	17.4%	17.0%	5.9%
	Prison	16.5%	44.1%	63.2%	71.5%	86.1%
	Median	10	12	14	18	22
	Middle 50%	8-12	10-15	14-18	18-24	18-24
	N	647	413	391	165	101
D4	Probation	69.6%	53.6%	27.8%	40.0%	0.0%
	Short Split	22.8%	23.2%	20.4%	6.7%	44.4%
	Prison	7.6%	23.2%	51.9%	53.3%	55.6%
	Median	6	7	10	9	14
	Middle 50%	6-8	5.5-11	7-12	9-12	11-22
	N	92	56	54	15	9

Table 5b: Sentence Type by Offense Severity Group
N = N = 3,242

Drug Grid

	Prison-Only box
	Short split permissible box
	Probation permissible box

Table 6a: Sentence Type by Offense Severity Group
Master Grid
N = 10,155

OSG	Grid Box	Sentence Type	N	Min.	Max.	Mean	Median	Std. Dev.	Below Box	Lower 25% of Box	Middle 50% of Box	Upper 25% of Box	Above Box
M1	M1A	Prison	42	360	630	425.6	420	67.0		28	13	1	
	M1B	Prison	21	360	720	447.6	420	111.1		15	4	2	
	M1C	Prison	26	360	720	461.7	420	100.8		14	11	1	
	M1D	Prison	12	420	780	551.0	510	134.0		3	6	1	2
	M1E	Prison	12	360	840	497.0	456	150.1		12			
M2	M2A	Prison	135	60	660	212.8	204	83.4	15	24	61	19	16
	M2B	Prison	33	102	480	253.6	264	75.7	3	4	9	12	5
	M2C	Prison	19	156	312	268.1	294	51.1	1	1	6	11	
	M2D	Prison	16	180	360	261.4	240	46.9		1	10	4	1
	M2E	Prison	12	156	384	260.5	249	81.6	2	10			
M3	M3A	Prison	219	12	240	129.1	120	41.5	20	68	74	41	16
		Short Split	2	0	0	0.0	0	0.0					
	M3B	Prison	95	60	216	153.6	156	41.1	7	29	19	18	22
	M3C	Prison	22	6	204	167.3	180	51.9	3	2	7	10	
	M3D	Prison	35	126	360	184.3	171	57.3		10	14	7	4
	M3E	Prison	15	120	300	178.0	180	52.1	3	12			
M4	M4A	Prison	75	9	180	85.2	84	32.9	4	19	29	19	4
		Short Split	1	5	5	5.0	5	--					
	M4B	Prison	45	36	132	91.3	96	24.5	3	11	22	9	
	M4C	Prison	48	18	216	108.1	108	38.1	5	14	12	14	3
	M4D	Prison	27	60	156	113.7	115	23.4	2	7	13	5	
	M4E	Prison	10	72	240	157.8	147	49.0	1	9			
M5	M5A	Prison	490	12	180	57.8	60	22.9	57	73	221	132	7
		Short Split	11	0	6	2.9	3	2.8					
		Probation	18	12	60	33.3	24	17.2					
	M5B	Prison	367	12	240	65.3	60	21.4	30	51	197	82	7
		Short Split	2	0	0	0.0	0	0.0					
		Probation	7	24	60	39.4	36	11.4					
	M5C	Prison	460	4	348	76.0	72	28.0	34	193	113	108	12
		Short Split	3	0	0	0.0	0	0.0					
		Probation	6	24	60	42.0	36	14.7					
	M5D	Prison	148	40	360	90.5	78	36.3	24	57	28	31	8
		Probation	1	0	0	0.0	0	--					
	M5E	Prison	93	37	408	120.9	90	64.7	9	84			
M6	M6A	Prison	358	7	180	32.7	24	19.8	50	137	104	57	10
		Short Split	122	0	6	3.8	5	2.5					
		Probation	36	12	60	24.6	24	9.9					
	M6B	Prison	342	1	204	37.1	31	18.8	25	154	106	48	9
		Short Split	6	0	6	4.0	4.5	2.3					
		Probation	6	12	36	20.0	18	9.0					
	M6C	Prison	362	1	348	49.3	42	29.5	26	154	115	49	18
		Short Split	10	0	6	2.0	0.5	2.8					
		Probation	2	36	60	48.0	48	17.0					
	M6D	Prison	134	10	120	50.8	48	18.1	10	50	49	19	6
		Probation	1	24	24	24.0	24	--					
	M6E	Prison	87	15	240	64.9	51	37.6	8	79			
		Probation	2	12	36	24.0	24	17.0					

OSG	Grid Box	Sentence Type	N	Min.	Max.	Mean	Median	Std. Dev.	Below Box	Lower 25% of Box	Middle 50% of Box	Upper 25% of Box	Above Box
						Table 6b: Sentence Type by Offense Severity Group **Master Grid** N = 10,155							
M7	M7A	Prison	117	6	84	21.6	14	14.2	3	58	30	16	10
		Short Split	20	0	6	3.2	4	2.7					
		Probation	19	12	60	23.4	24	11.4					
	M7B	Prison	274	6	72	23.0	18	11.5	65	89	80	27	13
		Short Split	14	0	6	3.8	5	2.7					
		Probation	4	24	24	24.0	24	0.0					
	M7C	Prison	452	1	120	29.8	24	13.0	56	190	156	34	16
		Short Split	3	0	6	2.7	2	3.1					
		Probation	3	36	60	44.0	36	13.9					
	M7D	Prison	160	1	300	37.4	36	25.0	26	51	55	13	15
	M7E	Prison	92	12	300	52.1	42	38.0	8	84			
		Short Split	1	0	0	0.0	0	--					
		Probation	1	36	36	36.0	36	--					
M8	M8A	Prison	513	1	168	14.9	12	10.9	6	173	188	128	18
		Short Split	378	0	6	2.4	2	2.4					
		Probation	662	0	144	18.7	18	11.6					
	M8B	Prison	610	1	60	16.4	14	8.0	19	313	139	122	17
		Short Split	181	0	6	3.0	3	2.5					
		Probation	132	12	60	18.6	18	8.7					
	M8C	Prison	661	1	168	21.4	20	11.0	57	263	194	122	25
		Short Split	111	0	6	3.7	4	2.4					
		Probation	34	10	60	20.6	18	11.4					
	M8D	Prison	291	5	60	23.4	21	8.5	23	134	83	42	9
		Short Split	10	0	6	1.6	0.5	2.4					
		Probation	6	2	60	30.3	24	24.4					
	M8E	Prison	181	6	216	33.4	24	30.9	13	168			
		Short Split	3	0	6	2.0	0	3.5					
		Probation	1	36	36	36.0	36	--					
M9	M9A	Prison	153	1	180	17.4	12	22.0	0	15	42	65	31
		Short Split	77	0	6	1.6	0	2.3					
		Probation	133	6	60	33.7	24	21.4					
	M9B	Prison	221	1	96	11.8	9	14.4	6	82	85	28	20
		Short Split	49	0	6	2.2	2	2.2					
		Probation	23	1	60	19.1	12	13.6					
	M9C	Prison	279	1	144	15.5	12	18.3	9	88	113	31	38
		Short Split	39	0	6	2.6	2	2.5					
		Probation	25	1	60	23.1	18	14.4					
	M9D	Prison	121	1	300	15.9	12	27.9	7	41	54	12	7
		Short Split	11	0	6	2.3	1	2.7					
		Probation	6	6	24	15.0	12	7.3					
	M9E	Prison	83	1	300	23.2	12	37.4	2	81			
		Short Split	5	0	6	2.0	1	2.5					

OSG	Grid Box	Sentence Type	N	Min.	Max.	Mean	Median	Std. Dev.	Below Box	Lower 25% of Box	Middle 50% of Box	Upper 25% of Box	Above Box
						Table 6c: Sentence Type by Offense Severity Group **Drug Grid** N = 3,242							
D1	D1A	Prison	14	12	72	55.3	60	17.3	1	2	8	3	
		Short Split	5	0	6	2.6	1	3.1					
		Probation	1	24	24	24.0	24	--					
	D1B	Prison	8	36	72	60.3	60	11.1	0	1	5	2	
		Short Split	1	0	0	0.0	0	--					
	D1C	Prison	5	30	60	46.8	48	11.5	1	2	2		
		Short Split	2	4	4	4.0	4	0.0					
D2	D2A	Prison	99	2	60	18.9	18	9.5	13	33	37	8	8
		Short Split	126	0	6	2.8	3	2.6					
		Probation	181	6	72	18.3	18	8.7					
	D2B	Prison	148	7	48	21.0	20	7.7	17	78	40	6	7
		Short Split	70	0	6	3.8	5.5	2.5					
		Probation	41	0	216	23.5	18	32.5					
	D2C	Prison	241	2	68	23.3	20	8.7	40	135	57	3	6
		Short Split	63	0	6	4.5	6	2.3					
		Probation	32	6	60	19.2	14.5	11.2					
	D2D	Prison	135	9	74	28.8	24	10.4	16	64	38	14	3
		Short Split	9	0	6	4.0	6	2.6					
		Probation	10	0	24	14.4	15	9.0					
	D2E	Prison	99	1	60	29.3	28	9.6	27	72			
		Short Split	7	0	6	4.3	6	2.4					
		Probation	2	12	12	12.0	12	0.0					
D3	D3A	Prison	107	1	24	10.8	10	4.3	4	25	62	11	5
		Short Split	124	0	6	1.9	1	2.1					
		Probation	416	0	216	16.4	12	11.6					
	D3B	Prison	182	1	36	13.1	12	5.0	17	83	70	10	2
		Short Split	101	0	6	2.9	3	2.5					
		Probation	130	6	60	18.0	18	8.2					
	D3C	Prison	247	3	30	16.0	14	4.8	35	125	79	8	0
		Short Split	68	0	6	3.8	4.5	2.5					
		Probation	76	6	60	19.4	18	10.6					
	D3D	Prison	118	2	38	19.5	18	5.7	15	71	30	1	1
		Short Split	28	0	6	4.2	6	2.2					
		Probation	19	12	36	17.2	15	6.6					
	D3E	Prison	87	6	84	23.1	22	9.6	25	62			
		Short Split	6	0	6	4.0	5.5	2.8					
		Probation	8	12	24	15.8	12	5.5					
D4	D4A	Prison	7	3	18	7.9	6	4.8	0	1	5	0	1
		Short Split	21	0	6	1.7	1	2.2					
		Probation	64	6	24	14.7	12	4.6					
	D4B	Prison	13	3	24	9.4	7	5.6	1	6	4	1	1
		Short Split	13	0	6	3.0	3	2.2					
		Probation	30	9	24	15.5	12	4.8					
	D4C	Prison	28	7	28	10.9	10	5.1	0	19	5	2	2
		Short Split	11	0	6	2.7	2	2.4					
		Probation	15	12	36	19.5	18	6.7					
	D4D	Prison	8	9	13	10.3	9	1.8	0	7	1		
		Short Split	1	6	6	6.0	6	--					

Table 7: Sentence Length			
Sentence Length	Coefficient	Standard Error	p-value
CH Categories in D1	-0.919	2.553	0.722
CH Categories in D2	1.715	0.164	0.000
CH Categories in D3	1.832	0.097	0.000
CH Categories in D4	1.179	0.266	0.000
CH Categories in M1	13.676	3.985	0.001
CH Categories in M2	10.766	2.357	0.000
CH Categories in M3	7.695	1.110	0.000
CH Categories in M4	8.350	1.193	0.000
CH Categories in M5	6.648	0.304	0.000
CH Categories in M6	4.052	0.269	0.000
CH Categories in M7	2.927	0.165	0.000
CH Categories in M8	1.699	0.080	0.000
CH Categories in M9	0'		
Significance codes: '***' p < .001; '**' p < .01; '*' p < .05			

The reference group for this analysis was M9.

Table 8: Likelihood of Receiving a Prison Sentence vs. a Non-Prison Sentence			
Sentence Type	Estimate	Standard Error	p-value
CH Categories in D1	0.846	0.410	0.039
CH Categories in D2	-0.766	0.089	0.000
CH Categories in D3	-1.394	0.082	0.000
CH Categories in D4	-2.022	0.151	0.000
CH Categories in M1	9.007	0.594	0.000
CH Categories in M2	2.967	0.384	0.000
CH Categories in M3	5.289	0.607	0.000
CH Categories in M4	4.448	0.717	0.000
CH Categories in M5	2.859	0.155	0.000
CH Categories in M6	1.449	0.105	0.000
CH Categories in M7	1.812	0.144	0.000
CH Categories in M8	-0.247	0.074	0.001
CH Categories in M9	0'		
Significance codes: '***' p < .001; '**' p < .01; '*' p < .05			

The reference group for this analysis was M9.

Appendix C: Offense Categorization

The Commission categorizes all felony offenses into seven offense categories. The offenses contained in each category are listed below.

Drug:

Includes the distribution or PWID of a schedule I, II, III, or IV narcotic, possession of liquid PCP, distribution to minors, any felony drug offense committed while armed, and any attempt to commit one of these offenses.

Homicide:

Includes first degree murder, first degree murder while armed, second degree murder, second degree murder while armed, felony murder, felony murder while armed, involuntary manslaughter, murder of a law enforcement officer, soliciting murder, voluntary manslaughter, voluntary manslaughter while armed, and accessory after the fact – first degree murder.

Other:

Includes any other felony, arson, Bail Reform Act – felony, blackmail, bribery, conspiracy, contempt – felony, contributing to the delinquency of a minor by a person with a prior conviction, credit card fraud – felony, criminal street gang affiliation, felony or violent misdemeanor, cruelty to animals, cruelty to children first degree, cruelty to children second degree, escape from the Department of Youth Rehabilitation Services (DYRS), escape (from officer), extortion, felony stalking, flee law enforcement officer, fraud first degree $1,000 or more, fraud second degree $1,000 or more, identity theft first degree, insurance fraud second degree, intimidating, impeding, interfering, retaliating against a government official or employee of D.C., maintaining a crack house, maintaining a place for storage and distribution of narcotic and abusive drugs, manufacture or possession of a weapon of mass destruction, negligent homicide – felony, obstructing justice (harassment – reporting, witness or officer, due administration, harassment – arrest, harassment – institution of prosecution, injury/property damage – giving information, injury/property damage – official duty, witness or officer – cause absence), obtain controlled substance by fraud, offense committed during release, perjury, prison breach, prisoner escape, stalking – felony, tampering with physical evidence, and unlawful possession of contraband into penal institution.

Property:

Includes armed first degree burglary, armed second degree burglary, burglary, first degree burglary, second degree burglary, destruction of property over $200, deceptive labeling – felony, destruction of property $1,000 or more, destruction of property over $200, forgery, grand larceny, receiving stolen property - $1,000 or more, trafficking

stolen property, uttering, vandalizing, damaging, destroying, or taking property of a government official, making, drawing, or uttering check with the intention to defraud, theft first degree, theft second degree – felony, unauthorized use of a vehicle (UUV), UUV crime of violence, and UUV prior conviction.

Sex:

Includes arranging for sexual contact with a real or fictitious child, enticing a child – felony, first degree sex abuse, first degree child sex abuse, first degree sex abuse – force, first degree sex abuse – threatening, first degree sex abuse of a minor, first degree sex abuse of a patient/client, first degree sex abuse of a ward, keeping disorderly house (bawdy), operating a house of prostitution, pandering, pandering a minor, procuring, prostitution, second degree sex abuse, second degree child sex abuse, second degree sex abuse – incompetent, second degree sex abuse of a minor, second degree sex abuse – threats, second degree sex abuse of a patient/client, sex abuse of a secondary education student, third degree sex abuse, third degree sex abuse – force, fourth degree sex abuse - intoxicant, and fourth degree sex abuse – other.

Violent:

Includes aggravated assault while armed, aggravated assault, attempted aggravated assault, aggravated assault knowingly – grave risk, assault with a dangerous weapon (ADW), ADW – gun, assault on a police officer (APO) while armed, APO, APO with deadly weapon, assault with intent to kill (AWIK) while armed, AWIK, assault with intent to rob while armed, assault with intent to rob, assault with intent to commit first or second degree sex or child sex abuse while armed, assault with intent to commit first or second degree sex or child sex abuse, assault with intent to commit any other felony while armed, assault with intent to commit any other felony, assault with intent to commit any other offense, assault with intent to commit mayhem while armed, assault with intent to commit mayhem, assault with significant bodily injury, mayhem, threat to kidnap or injure a person, robbery, robbery while armed, robbery attempt while armed, robbery attempt, armed carjacking, unarmed carjacking, kidnapping, attempted kidnapping, and armed kidnapping.

Weapon:

Includes carrying a pistol without a license (CPWL), carrying a dangerous weapon (CDW), firearm, presence in a motor vehicle containing firearm (prior gun conviction or felony), unlawful possession of a firearm by a person with a prior conviction, unlawful possession by others, possession of a firearm during a crime of violence or dangerous offense (PFDCV), Possession of a prohibited weapon (PPW), and unlawful possession of a firearm (prior crime of violence, interfamily offense, order to relinquish, or prior conviction (felon in possession).

Appendix D

Table 9: 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 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 Unlawful Poss. of a Firearm (prior fel.)	**12 - 36**	**18 - 42**	**24 - 48**	**30 - 54**	**36 +**
1 Point*	**Group 8** Carrying a Pistol (formerly CPWL) UUV Attempt robbery Attempt burglary 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 long split only.

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

Light shaded/yellow boxes – prison, split, or probation permissible.

Appendix E

Table 10: 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+
1 Point*	**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+
3/4 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 long split only.

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

Light shaded/yellow boxes–prison, split, or probation permissible.