

District of Columbia Voluntary Sentencing Guidelines

Issue Paper: Guidelines Compliant Sentences in D.C.

July 2020

I. District of Columbia Voluntary Sentencing Guidelines

The District of Columbia (“the District”) Voluntary Sentencing Guidelines (“the Guidelines”) were developed by the D.C. Sentencing Commission (“the Commission”) to promote certainty, consistency, and adequacy of punishment when sentencing felony offenses. Superior Court of the District of Columbia (“Superior Court”) judges utilize the Guidelines when making a sentencing decision: the Guidelines determine the recommended sentence type and length for each felony offense to be sentenced. The recommended sentence is based on a defendant’s criminal history and the severity of the offense for which they are convicted. When judges follow the Guidelines and impose the recommended sentence (both type and length), that sentence is deemed “Guidelines Compliant”. It should be noted that the District’s Guidelines are voluntary, thus judges are not required to follow them.

There are other ways in which a sentence can be considered “Guidelines Compliant”. For example, a judge may impose a sentence that is *above* the sentencing range recommended by the Guidelines, but the sentence may still be considered compliant with the Guidelines. This paper identifies, describes, and provides examples for the four types of Guidelines compliant sentences. The paper concludes with a brief analysis that highlights sentencing trends for Guidelines compliant sentences.

In order to determine the recommended sentence, judges will reference one of two Grids: the Drug Grid or the Master Grid.¹ The Drug Grid is used to determine the recommended sentence for felony drug offenses, while the Master Grid is used for all non-drug felony offenses. Both Grids provide a list of offenses on the left side (vertical axis) of the Grid. All felony offenses are ranked into one of nine offense severity groups (“OSG”), with the most serious offenses at the top. Across the top of the Grid (horizontal axis) the five criminal history (“CH”) categories are presented.

The intersection of a defendant’s CH category and the OSG of their offense of conviction identifies the Guidelines recommended sentence. The color of the box indicates the recommended sentence type(s); the numbers in each box represent the recommended range of sentence length, in months. The more serious the offense of conviction and the higher the CH category, the more severe the Guidelines recommended sentence will be.

II. Guidelines Compliance Categories

A. Overview

There are four ways (“categories”) in which a sentence may be deemed compliant with the Guidelines:

1. *Compliant in the Box*: A sentence that falls strictly within the recommended sentence type and range of a given Grid box.
2. *Compliant outside the Box*: A sentence that is not within the recommended type and range but is compliant with the Guidelines due to other sentencing factors, such as a sentence that runs concurrently with a compliant greater or equal sentence.
3. *Rule 11(c)(1)(C) Plea*: A sentence resulting from an 11(c)(1)(C) guilty plea that would otherwise have been categorized as compliant outside the box or non-compliant. An 11(c)(1)(C) plea permits the defendant, the government, and the judge to agree upon a specific sentence or sentencing range as appropriate for a case and binds the court to the agreed-upon sentence once the plea agreement is accepted. Sentences resulting from this type of plea but without a CH score are also included in this category.
4. *Compliant departure*: An otherwise non-compliant sentence for which the sentencing judge provided a Guidelines enumerated reason for departing from the Guidelines. The Guidelines include a list of aggravating and mitigating departure factors that extend judicial discretion in exceptional circumstances.

¹ See Appendix or <https://scdc.dc.gov/page/sentencing-guideline-grid-charts> for the Master and Drug Grids.

The following sections describe each of the four compliance categories identified above using hypothetical examples. In addition, information related to sentencing trends is also provided.

B. Compliant in the Box Sentences

Compliant in the box sentences are those that fall strictly within the recommended sentence type and range of a given Grid box.

Take, for instance, a hypothetical case where a defendant was convicted of Carrying a Pistol without a License (“CPWL”). This offense is ranked in OSG M8 in the Master Grid. The defendant had two prior misdemeanor convictions, each of which is scored 0.25 points. With a total CH score of 0.5, the defendant is placed in CH category A. The Guidelines Grid box therefore is M8:A.

In this hypothetical case, the judge sentences the defendant to six months incarceration, suspends the execution of the sentence as to all, and imposes one year of probation. This sentence is a compliant in the box sentence because (a) the sentence imposed (six months) is within the sentence range recommended in this box (six months to 24 months), and (b) probation is among the recommended sentence types in this box.

In another hypothetical case, a defendant with a CH score of one (i.e. CH category B) is sentenced for Possession of a Firearm during a Crime of Violence (“PFCOV”) to 60 months of incarceration. Because PFCOV is in OSG M5, the Guidelines Grid box for this sentence is M5:B. The recommended sentence range for this Grid box is 48 to 96 months. The sentence is compliant in the box: (a) the sentence imposed (60 months) is within the sentence range recommended in this box, and (b) prison is the recommended sentence type in this box.

Compliant in the box sentences were the most frequent type of sentence imposed between 2015 and 2019. Compliant in the box sentences represented 89% of all sentences imposed, and 93% of all compliant sentences.

C. Compliant outside the Box Sentences

Compliant outside the Box sentences are those that are not within the recommended type and range but are compliant with the Guidelines due to other sentencing factors.

Imagine that a defendant was convicted of Unlawful Possession of a Firearm, Prior Felony Conviction (“FIP”), an OSG M8 offense. The defendant’s prior felony conviction was scored at two points, placing him/her in CH category C. The appropriate Grid box is M8:C. The Guidelines sentence recommendation in this box is 14 to 32 months. The judge sentenced the defendant to the mandatory minimum term applicable for this offense: 12 months of incarceration. As the total sentence length imposed (12 months) is outside the recommended range (14-32 months), this sentence appears to be non-compliant.

However, in this same case, the defendant was also sentenced for Robbery (OSG M6) to 24 months of incarceration; this sentence is compliant in the box. The judge imposed the sentences for Robbery and FIP to run concurrently (at the same time). Because the sentence for Robbery (24 months) was a compliant sentence that was *of equal or greater length* compared to the FIP sentence of 12 months, and the sentences are to run concurrently, the FIP sentence is deemed compliant outside the box.

Between 2015 and 2019, one percent of sentences imposed were compliant outside the box. The total number of compliant outside the box sentences has remained under 50, year-to-year.

D. Compliant Rule 11(c)(1)(C) Plea Sentences

Sentences that would otherwise have been categorized as non-compliant are deemed compliant if they were disposed through an 11(c)(1)(C) guilty plea. An 11(c)(1)(C) plea permits the defendant, the government, and the judge to agree that a specific sentence or sentencing range is appropriate and binds the judge to the agreed-upon sentence once the plea agreement is accepted by all three parties. Sentences resulting from an 11(c)(1)(C) plea are always deemed Guidelines compliant. Sentences where a CH score is not available, but result from an 11(c)(1)(C) guilty plea, are also considered compliant with the Guidelines.

For example, a defendant is sentenced for Second Degree Burglary, in Grid box M7:D, to 60 months of incarceration. The Guidelines recommended sentence in this Grid box is 30 to 54 months. Though the sentence is above the Guidelines

recommended sentence, because the sentence was a result of a Rule 11(c)(1)(C) Plea (where both parties and the judge agreed to the sentence), the sentence is deemed a compliant Rule 11(c)(1)(C) Plea sentence, and is therefore considered to be Guidelines compliant.

Overall, three percent of sentences imposed between 2015 and 2019 were compliant as a result of a Rule 11(c)(1)(C) plea.

E. Compliant Departure Sentences

Compliant departure sentences are sentences that would otherwise be considered non-compliant except for the fact that sentencing judge utilized one of the enumerated Guidelines departure factors when imposing a sentence.

Consider a defendant who was convicted of Second Degree Burglary with a CH score of 2. The appropriate Grid box is M7:C. The Guidelines recommended sentence in this box is 24 to 48 months of incarceration. However, the judge imposed a prison sentence of eight months. This would have been considered a non-compliant sentence.

However the judge indicated at sentencing that he/she was departing from the Guidelines because “the defendant has provided substantial assistance to law enforcement in the detection or prosecution of other offenders, and a departure for this reason does not demean the seriousness of the defendant’s crime or create an unacceptable risk to the safety of the community.” This is one of the specific Guideline departure factors available to the judges to consider when sentencing an atypical or extraordinary case where an in-the-box sentence would not serve justice. Given that the judge cited this specific departure factor, the eight-month prison sentence is deemed a compliant departure.

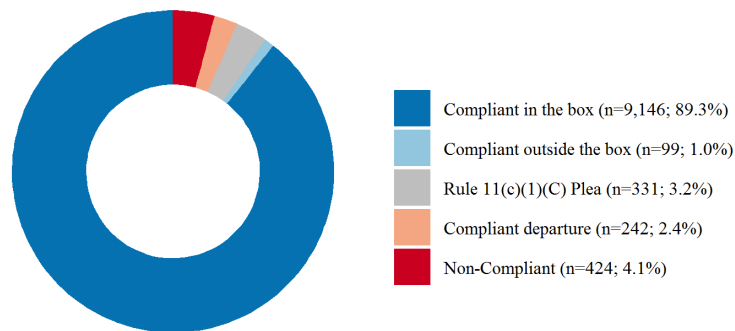
Judges may cite an aggravating factor when departing above the Guidelines, or a mitigating departure when departing below the Guidelines. A list of all 21 departure factors can be found in the Commission’s Guidelines Manual.²

Between 2015 and 2019, three percent of compliant sentences imposed were departures.

III. Data Trends

Figure 1 below shows the rates of compliance for each of the above categories, along with the rate of non-compliance.³ As previously mentioned, compliant in the box sentences represented for 89% of all and 93% of compliant sentences imposed between 2015 and 2019.

Figure 1: Compliance Rates, Count Level (2015-2019, N=10,242)



Compliance Category		Number of Sentences	Percent of All Sentences (N=10,242)	Percent of Compliant Sentences (N=9,818)
Compliant	Compliant in the box	9,146	89.3%	93.2%
	Compliant outside the box	99	1.0%	1.0%
	Rule 11(c)(1)(C) Plea	331	3.2%	3.4%
	Compliant departure	242	2.4%	2.5%
Non-Compliant		424	4.1%	-

² See <https://scdc.dc.gov/page/sentencing-guidelines-manual-sccrc>.

³ Source: D.C. Sentencing Commission 2019 Snapshot data file. Data includes felony sentences imposed between 2015 and 2019, is received from the Superior Court, and is current as of January 02, 2020. Non-Guideline and indeterminate sentences, sentences resulting from a probation revocation or remand, and cases for which the Commission did not receive a CH score (except for 11(c)(1)(C) pleas) are excluded from the data.

The Commission's data appeared to indicate that no substantial differences exist between Guidelines' compliance categories:

1. Yearly, the vast majority of sentences imposed have been compliant in the box.
2. Violent and Weapon offenses represented the majority of sentences in each of the compliance categories.
3. The most frequently observed CH category for:
 - Compliant in the box sentences was A;
 - Both Rule 11(c)(1)(C) Plea and compliant departure sentences was C; and
 - Compliant outside the box and CH category was B.

IV. Conclusion

The Guidelines were designed for the sentencing a typical felony offense utilizing the principles of certainty, consistency, and adequacy of punishment while allowing for judicial discretion. However, the Guidelines recognize that, under certain circumstances, judges may not be able to impose a compliant in the box sentence. For such cases, the Guidelines provides judges with the option to impose a compliant outside the box, Rule 11(c)(1)(C) Plea, or compliant departure sentence.

Consistently from year to year, approximately 90% of sentences imposed have been compliant in the box, while the rate of sentences that were deemed compliant otherwise has remained under 10%. This high rate of compliant in the box sentences is indicative (a) of the Guidelines' continued suitability for the consistent and adequate sentencing of typical felony offenses, (b) of judges' strong acceptance of and adherence to the Guidelines, and (c) of the effectiveness of the recommended sentencing ranges, providing judges with an appropriate amount of discretion.

Appendix: Master and Drug Grids

Master Grid

Severity Group (OSG) Most Common Offenses		Criminal History Score / Group				
		0 to ½ A	¾ to 1¼ B	2 to 3¼ C	4 to 5¼ D	6 + E
3 Points*	Group 1 1st degree murder w/armed 1st degree murder	360-720	360-720	360-720	360-720	360 +
	Group 2 2nd degree murder w/armed 2nd degree murder 1st degree sex abuse 1st degree sex abuse w/armed	144-288	156-300	168-312	180-324	192 +
	Group 3 Voluntary manslaughter w/armed 1st degree child sex abuse Carjacking while armed Assault with intent to kill w/armed Armed burglary I	90-180	102-192	114-204	126-216	138 +
	Group 4 Aggravated assault w/armed Voluntary manslaughter	48-120	60-132	72-144	84-156	96 +
	Group 5 PFCOV Armed robbery Burglary I Obstruction of justice Assault with intent to kill	36-84	48-96	60-108	72-120	84 +
2 Points*	Group 6 ADW Robbery Aggravated assault 2nd degree child sex abuse Assault with intent to rob	18-60	24-66	30-72	36-78	42 +
	Group 7 Burglary II 3rd degree sex abuse FIP-COV Negligent homicide Attempt 2nd degree sex abuse	12-36	18-42	24-48	30-54	36 +
1 Point*	Group 8 CPWL UUV Attempt robbery/burglary FIP 1st degree theft Assault w/significant bodily injury	6-24	10-28	14-32	18-36	22 +
	Group 9 Escape/prison breach BRA Receiving stolen property Forgery/uttering Fraud	1-12	3-16	5-20	7-24	9 +

*Criminal History Points for prior convictions in these groups.
 White/unshaded boxes – prison or compliant long split only.
 Green shaded boxes – prison, compliant long split, or short split permissible.
 Yellow shaded boxes – prison, compliant long split, short split, or probation permissible.

Drug Grid

Severity Group (OSG) Most common offenses		Criminal History Score / Group				
		0 to ½ A	¾ to 1¼ B	2 to 3¼ C	4 to 5¼ 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+
	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+
	Group 4 Attempt distribution or attempt PWID (except schedule I or II narcotic or abusive drugs) Attempt possession of liquid PCP	3-12	5-16	7-20	9-24	11+

*Criminal History Points for prior convictions in these groups.
 White/unshaded boxes – prison or compliant long split only.
 Green shaded boxes – prison, compliant long split, or short split permissible.
 Yellow shaded boxes – prison, compliant long split, short split, or probation permissible.