The District of Columbia Sentencing and Criminal Code Revision Commission

Voluntary Sentencing Guidelines Manual
June 30, 2014

District of Columbia
Sentencing and Criminal
Code Revision Commission

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June 12, 2014

To All Recipients of the 2014 Voluntary Sentencing Guidelines Manual:

As Executive Director of the District of Columbia Sentencing and Criminal Code Revision Commission, I am pleased on behalf of the Commission to provide the 2014 edition of the Voluntary Sentencing Guidelines Manual for the District of Columbia, which replaces the 2013 Manual. The 2014 Voluntary Sentencing Guidelines Manual should be used for **all pleas or verdicts entered on or after June 30, 2014**. An electronic version of the 2014 Voluntary Sentencing Guidelines Manual is available at http://sentencing.dc.gov.

The Commission continues to encourage questions from criminal justice professionals concerning the interpretation and application of the Voluntary Sentencing Guidelines. If you have a Guidelines inquiry, particularly with regard to any of the most recent changes, please contact the Commission at (202) 727-8822. Although the information provided is not binding on the court or parties in a case, the Commission may be able to assist practitioners with interpreting the Voluntary Sentencing Guidelines. Moreover, the issues raised by the inquiries may be used to improve future editions of the manual. In addition, the Commission publishes Guidelines resources on its website and is available to provide training on the Guidelines to any who may desire or need it. The Commission staff has extensive experience applying the Guidelines provisions in a variety of circumstances and welcomes the opportunity to share those experiences with interested parties.

Sincerely,

Barbara Tombs-Souvey
Executive Director

SENTENCING GUIDELINES AT A GLANCE

1. To determine the Offense Severity Group, find the offense of conviction on the Chart of Felony Offenses. Offenses are listed in alphabetical order by common name (Appendix C) or by statutory citation (Appendix C-I). The third column of either chart provides the Offense Severity Group for that offense. You can also use the Offense Ranking Chart (Appendix D), which groups offenses by severity level. *See* § 2.1.

2. Calculate the offender's criminal history score, using the formulas in § 2.2.

3. Using the Drug Grid (Appendix B) for drug offenses and the Master Grid (Appendix A) for everything else, find the row for the Offense Severity Group on the vertical axis and the column for the criminal history score on the horizontal axis. The box at the intersection of the Offense Severity Group and the criminal history score displays the sentencing options for this conviction.

4. Every box contains a prison sentence range. White boxes indicate that a prison sentence is the only option. Dark gray boxes indicate that either prison or a short split sentence (ESS all but six months or less, but not all of it) may be imposed. Light gray boxes indicate that prison, a short split sentence or straight probation (ESS all) may be imposed.
   a. If the judge wants to impose a sentence of probation (light gray boxes only), the judge should impose a term of incarceration in the appropriate range and the period of supervised release for that offense, suspend execution of all of it (ESS all), and impose any amount of probation up to the five-year maximum with the same terms and conditions that are currently available. *See* § 3.3.
   b. If the judge wants to impose a short split sentence (the light gray or dark gray boxes), the judge should impose a term of incarceration in the appropriate range plus the period of supervised release for that offense, suspend execution of all but six months or less of the prison term, but not all of it (ESS all but . . .), suspend execution of the period of supervised release, and impose any amount of probation up to the five-year maximum with the same terms and conditions that are currently available. *See* § 3.4 and Appendix G.
   c. If the judge wants to impose a prison sentence (all boxes), the prison sentence must be within the range set forth in the box, unless one of the departure principles applies. For example, in Box 2B of the Drug Grid, a prison sentence should be no lower than 16 months nor higher than 36 months. *See* §§ 3.5, 7.7. A long split, where both the time imposed and the time to be served initially (e.g., in Box 2B of the Drug Grid, 36 months ESS all but 16 months), are both within the prison range, is considered a prison only sentence.

5. Several factors may alter the options or take the conviction out of the box entirely:
   a. A sentence cannot be lower than the mandatory minimum. *See* § 3.6.
   b. Aggravating and mitigating circumstances may be used in unusual cases if the court determines there is a substantial and compelling reason to depart from the grid range. *See* § 5.2.
   c. If enhancement papers have been filed and/or statutory enhancements proven, the higher number in the prison range is raised by the statutory multiplier or amount. *See* Chapter 4.
   d. Rule 11(e)(1)(C) pleas control the sentence regardless of the otherwise applicable Guidelines range. *See* § 5.1.

6. If there are multiple convictions sentenced on one day:
   a. Calculate the sentence for each conviction; and
   b. Apply the concurrent/consecutive rules. *See* Chapter 6.

RECOMMENDED CITATION FORM

Full Citation Form:

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

Abbreviated Citation Form:

DCVSG § 2.2.6 ¶5.a.

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Chapter 1. OVERVIEW

1.1 Statement of Purpose and Principles

In 1998 the District of Columbia Sentencing and Criminal Code Revision Commission ("the Commission") was charged with developing a comprehensive structured sentencing system for the District or explaining why no such system was needed. After examining the system then in effect, the Commission concluded that the District could benefit from a comprehensive structured sentencing system. Thereafter, the Commission embarked upon the difficult task of creating workable sentencing Guidelines for felonies.

Following the lead of other jurisdictions and an earlier effort in the District, the Commission developed two grids -- one for drug cases and one for all other cases -- to plot two of the dominant factors in sentencing: the offense of conviction (on the vertical axis) and the criminal history of the offender (on the horizontal axis). At the intersection of these two factors on the grids, each box contains the sentencing options and prison ranges for that particular combination of the crime of conviction and criminal history of the offender. In general, as the seriousness of the offense and the criminal history of the offender increase, the length of the prison sentences increase and the alternatives to incarceration decrease.

The options and ranges in each box are based on historical data from the Superior Court for the eight years preceding the promulgation of the Guidelines, with some adjustment for consistency and symmetry. *See* Appendices A, B, E and F. In developing the grids, the Commission attempted to move sentences toward the historical center, without shifting that center either up or down.

The Commission also established standards for departing from the recommended prison ranges in extraordinary cases, rules for imposing concurrent or consecutive sentences, and adjustments and exceptions to sentencing "in the box." Together, the grids, standards, rules, adjustments and exceptions form the Voluntary Sentencing Guidelines for the District of Columbia.

Although the Guidelines are voluntary, there has been a high degree of compliance since the Guidelines were implemented in June 2004. Nevertheless, judges are free to impose any lawful sentence they choose. Sentences under the Guidelines, just like sentences before the Guidelines, are <u>not</u> appealable except when they are unlawful.[1] Judges are expected to acknowledge that they have followed the Guidelines, to provide the departure principle(s) upon which they relied to sentence "outside the box," or to state why they did not use the Guidelines. *See* D.C. Superior Court Administrative Order 04-11. The Commission's annual report to the D.C. Council includes the rate of compliance with the Guidelines, the number and extent of departures, and the reasons for them.[2]

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[1]"The Sentencing Guidelines shall not create any legally enforceable rights in any party nor shall they diminish any rights that currently exist." D.C. Code § 3-105(c). An otherwise lawful sentence may not be appealed on the theory that the court misapplied the Guidelines. *Speaks v. United States*, 959 A.2d 712, 717-20 (D.C. 2008); *White v. United States*, 958 A.2d 259, 265-66 (D.C. 2008).

[2]Throughout these instructions, we use the words such as "must" and "are required to." These should be read to mean that if a judge wants to impose a Guidelines compliant sentence, he or she "must" or "is required to," etc." If a judge elects not to use the Guidelines such exhortations would have no meaning.

In the end, the Guidelines are intended to facilitate uniform application of this statutory mandate:

a. For any felony committed on or after August 5, 2000, the court shall impose a sentence that:

    1. Reflects the seriousness of the offense and the criminal history of the offender;
    2. Provides for just punishment and affords adequate deterrence to potential criminal conduct of the offender and others; and
    3. Provides the offender with needed educational or vocational training, medical care, and other correctional treatment.

D.C. Code §24-403.01(a).

For further information on the development of the Guidelines, refer to the Commission's 2003 Report, which can be found at http://sentencing.dc.gov.

1.2 Key Features of the Sentencing Guidelines

The key features of the Sentencing Guidelines are:

1.2.1 *Voluntary Guidelines*

The Guidelines are voluntary. This means that judges are not required to follow them. It also means that a lawful sentence cannot be appealed whether or not the judge complies with the Guidelines or the procedures recommended in these instructions.[3]

1.2.2 *Two Grids: The Master Grid and the Drug Grid*

Each grid contains groups of offenses, ranked by level of severity, along the vertical axis, Master Groups 1-9 on the Master Grid and Drug Groups 1-4 on the Drug Grid. Each grid contains five groups of criminal history scores, along the horizontal axis, listed as Columns A-E. *See* § 7.5, Appendices A and B.

1.2.3 *Ranking of Offenses*

The Commission ranks all felonies in the D.C. Code in groups by level of severity. There are nine Master Groups of offenses on the Master Grid (from First Degree Murder While Armed in Master Group 1 to Receiving Stolen Property in Master Group 9) and four Drug Groups on the Drug Grid (from Distribution While Armed in Drug Group 1 to Attempt Distribution of Marijuana in Drug Group 4). *See* Appendices C, C-I, and D.

The Offense Severity Group is based on the offense of conviction, *see* § 7.22, and not upon the underlying conduct. There is no discretion to decide in which group to place the offense of conviction. The Commission has attempted to assign every felony in the D.C. Code to an

[3] *See* footnote 1.

Offense Severity Group. If you encounter a D.C. Code felony that has not been assigned to an Offense Severity Group, please inform the Commission and it will rank it appropriately.

1.2.4 *Criminal History Scores*

There are a series of rules for computing a criminal history score that depend primarily on (1) the number and severity of prior convictions and adjudications and (2) the length of time between the imposition or the expiration of the defendant's last sentence and the commission of the instant offense.

1.2.5 *Sentencing Options*

All boxes have a prison option. The numbers within the box indicate the range within which the prison sentence must fall, unless a departure principle applies. *See* Chapter 5 and Section 7.7.

Some boxes (white or unshaded) permit only a prison sentence, unless a departure principle applies. *See* Chapter 5.

Some boxes (dark gray) permit a short split sentence. To impose a short split, the court must impose a prison sentence that falls within the prison range in that box, suspend execution of all but six months or less of that sentence -- but not all of it -- and impose up to five years probation. A straight prison sentence also is permissible in these boxes. *See* § 3.4.

Some boxes (light gray) permit a probation sentence. To impose probation, the court must impose a prison sentence that falls within the prison range in that box, suspend execution of all of it [ESS all] and impose up to five years probation. A short split, described in the previous paragraph, or a straight prison sentence also is permissible in these boxes. *See* § 3.3.

1.2.6 *Statutory Enhancements*

The system accommodates statutory enhancements by raising the higher number in the box by the same percentage or ratio as the statutory maximum is increased. *See* Chapter 4.

1.2.7 *Departure Principles*

There are non-exclusive lists of aggravating and mitigating factors that permit the court to sentence outside of the box. If the court finds one of the enumerated factors or another substantial and compelling reason, comparable in gravity to the enumerated factors, the court is not bound by the grid options and ranges. There are no limitations on the sentence the court can impose if it finds a substantial and compelling reason to depart.[4] Any legal sentence may be imposed. *See* Chapter 5.

[4] The only exceptions to this rule are Aggravating Factor #10 and Mitigating Factor #11, which allow the judge to depart if the application of the rules for consecutive or concurrent sentencing result in a sentence that is too lenient or too harsh respectively. The limitations are explained in Chapter 5.

1.2.8 *Rules for Consecutive and Concurrent Sentences*

There are rules for imposing consecutive or concurrent sentences in some cases. Judicial discretion applies in other cases. *See* Chapter 6. *See also* § 5.2.4.

1.2.9 *Exceptions*

a. Rule 11(e)(1)(C) pleas control the sentence or sentencing range regardless of the otherwise applicable grid options or prison range.
b. The Guidelines do not change statutory or mandatory minimums and the court has no discretion to sentence below the mandatory minimum. *See* § 3.6.

1.3 Effective Date

The Sentencing Guidelines apply to all felony convictions where verdicts and pleas are entered on and after June 14, 2004.

1.4 Use of Sentencing Guidelines Manual in Effect on the Date of Plea or Verdict

The sentencing court shall use the Sentencing Guidelines Manual in effect on the date of plea or verdict, unless both parties agree to use the version in effect at the time of sentencing.

1.5 The Commission's Role in Monitoring and Refining the Guidelines

The Commission will continue to monitor the use of the Guidelines, collecting data and making revisions as needed. The Commission will also make changes to this Manual to clarify the Guidelines or to create new policy rules where necessary. *See* Appendix J, which lists the most recent amendments.

The Commission strongly encourages questions from criminal justice practitioners concerning the application of the Guidelines. If you have a Guidelines application inquiry, please contact us at (202) 727-8822. The Commission provides information to assist in understanding and applying the Sentencing Guidelines. The information provided is not binding on the court or parties in any case. However, the issues raised by the inquiry may be used to inform subsequent revisions of this Manual.

Chapter 2: FINDING THE RIGHT BOX

The starting point for determining a Guidelines -compliant sentence for each conviction is:

a. the Offense Severity Group of the offense of conviction; and
b. the criminal history score of the offender.

The place where these two factors intersect on either the Master Grid or the Drug Grid is the box that contains the sentencing options for that particular combination of offense and offender. We will discuss these elements of sentencing first and then talk about the options within a box, adjusting the box, sentencing outside of the box, and how the boxes fit together in multiple count cases.

2.1 Offense Severity Group

The offense(s) of conviction will be determined by the plea agreement or the verdict. Once the offense(s) of conviction is/are set, the parties and the court need only refer to Appendix C or C-I. Appendix C is a chart that has all of the felonies that may be prosecuted in the District of Columbia arranged in alphabetical order by common name. Appendix C-I is a chart similar to the Appendix C chart, however, the felonies are arranged by D.C. Code cite. Column 3 of each chart provides the Offense Severity Group for each offense. Alternatively, Appendix D is a chart that has the most common felonies that are prosecuted in the District of Columbia arranged by Offense Severity Group.

The Offense Severity Group determines into which row a conviction falls for sentencing purposes. For example, Aggravated Assault, which is found on page 1 of Appendix C, is in Offense Severity Group 6 on the Master Grid ("Master Group 6"). Distribution of Cocaine, found on page 9 of Appendix C, is in Offense Severity Group 2 on the Drug Grid ("Drug Group 2").

There should be no question about the group in which an offense is ranked. However, the Commission is aware that some offenses can be committed in vastly different ways. Obstruction of Justice is one; Robbery is another. Over the course of time, the Commission may move offenses into different groups to accommodate these differences. In the meantime, judges and practitioners should not, except in circumstances that are controlled by a departure principle (*see* Chapter 5), use a group different from the one in which the offense of conviction falls. If a judge or practitioner finds that an offense or a common method of committing an offense should be ranked differently, it would be most helpful if he or she would pass that observation on to the Commission.

The Offense Severity Groups on the Master Grid are arranged in order from the most serious offenses in Master Group 1 (e.g., First Degree Murder) to the least serious offenses in Master Group 9 (e.g., Receiving Stolen Property) and on the Drug Grid from Drug Group 1 (Distribution/PWID of a Controlled Substance While Armed) to Drug Group 4 (e.g., Attempted Distribution/PWID of Marijuana).

Note: For a conviction of Accessory After the Fact, use the box applicable to the underlying offense and multiply the top and bottom numbers by ½. To determine whether the defendant is

eligible for probation or a short split sentence, go to the group immediately below that for the underlying offense and then to the appropriate column given the defendant's criminal history.

Note: The offense of conviction and not the real offense conduct controls the Offense Severity Group, although real offense conduct can be considered in determining where a person should be sentenced within the prison range and in assessing whether a departure should apply. For example, if the defendant committed an armed Robbery with a knife but was found guilty of or pled guilty to unarmed Robbery, he would be in Master Group 6 and not in Master Group 5. Nevertheless, the judge could take the knife into account in considering where in Master Group 6 to sentence the defendant.

2.2 Criminal History Score

A defendant's criminal history determines into which column a conviction falls for sentencing purposes. There are five columns along the horizontal axis, starting with zero to one-half (0 - ½) criminal history points through six-plus (6+) criminal history points.

Scoring a defendant's criminal history depends on the following factors:

a. prior convictions/adjudications, *see* § 2.2.1;
b. whether the prior conviction/adjudication was a felony or misdemeanor, *see* §§ 2.2.2, 2.2.3, 2.2.4;
c. the Offense Severity Group of the prior felony convictions or adjudications, *see* § 2.2.2;[5]
d. the number of events encompassed in a single case, *see* § 2.2.5;
e. whether the prior offense was a criminal conviction or a juvenile adjudication, *see* §§ 2.2.2, 2.2.3, 2.2.4;
f. the date on which a sentence or disposition was entered or the date on which a sentence was completed relative to the commission of the crime in the instant case, *see* §§ 2.2.2, 2.2.3, 7.2.

Note: The defendant may not use the sentencing process in one case to collaterally attack his conviction or sentence in another case. For example, if a defendant's prior conviction is scored for criminal history purposes to determine a "Guidelines sentence," the defendant may not challenge the validity (as opposed to the existence) of that conviction based on grounds that might otherwise support a collateral attack on the prior conviction.

2.2.1 *What is a Prior Conviction or Adjudication?*

A prior conviction or adjudication is any adult conviction or juvenile adjudication, for conduct not part of the instant event, for which judgment (an adult sentence or a juvenile disposition) was entered <u>before</u> the day of <u>sentencing</u> in the instant case. The order in which the offenses occurred is not controlling.[6]

[5]Out-of-District convictions must be matched to D.C. Code offenses to determine their Offense Severity Group. *See* § 2.2.6.

[6]This includes convictions/adjudications where the unlawful conduct occurred after the instant offense but where a judgment was entered before the day of sentencing in this instant case. *See* § 2.2.3.

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

Cases that are dismissed before a judgment of guilt or a sentence is imposed are not scored.[7] This includes cases that are disposed of by diversion, deferred sentencing, probation before judgment, post-and-forfeit, the stet docket, or juvenile consent decrees. If the defendant (or juvenile) is not successful in one of these programs and the case proceeds to sentencing, it is then scored. In addition, convictions based on pleas of nolo contendere are scored. However, a plea or verdict of not guilty by reason of insanity is not a conviction and is not scored.

2.2.2 *Scoring Prior Convictions/Adjudications*

The first step toward scoring an offender's criminal history is identifying all prior criminal convictions and juvenile adjudications. Convictions and adjudications are scored based upon their type and age. The criminal history score for convictions and adjudications is based upon the Offense Severity Group for that offense (*e.g.*, a prior conviction for ADW is in Master Group 6, just as it is when the instant offense is ADW). Column 3 of Appendices C and C-I provides the Offense Severity Group for all felonies prosecuted under the D.C. Code. *See* Section 2.2.8 if the statute in question is not ranked or has been amended since the offense was committed.

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

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

[7]Examples are the entry of probation before judgment (PBJ) or entry into a deferred sentencing agreement (DSA).

PRIOR CONVICTIONS AND ADJUDICATIONS OTHER THAN ACCESSORY			
	NOT LAPSED		LAPSED AND REVIVED
	Adult Conviction	Juvenile Adjudication	Adult Felony Conviction
Master Groups 1 – 5	3	1 ½	3
Master Groups 6 – 7 Drug Group 1	2	1	1
Master Groups 8 – 9 Drug Groups 2 – 3	1	½	½
Drug Group 4	¾	½	¼
Misdemeanors (90+ days)	¼	0	N/A
PRIOR ACCESSORY AFTER THE FACT CONVICTIONS AND ADJUDICATIONS			
	NOT LAPSED		LAPSED AND REVIVED
	Adult Conviction	Juvenile Adjudication	Adult Felony Conviction
Master Groups 1 – 3	3	1 ½	3
Master Groups 4 – 5	2	1	1
Master Groups 6 – 9 Drug Groups 1 – 3	1	½	½
Drug Group 4	¾	½	¼
Misdemeanors (90+ days)	¼	0	N/A

Notes:
1. *See* Section 2.2.11 for scoring Contempt convictions.
2. A lapsed conviction counts only if it was a felony and only if revived. Lapsed misdemeanor convictions and juvenile adjudications cannot be revived and therefore do not count. *See* Section 2.2.3 for rules on lapsing of convictions and reviving of felonies. *See* Section 2.2.4 for rules on lapsing of juvenile adjudications.
3. A prior misdemeanor conviction is scored according to the maximum penalty for the offense of conviction: ¼ point if 90 days or more.[8] Offenses with a maximum penalty of less than 90 days are not scored. Prior misdemeanor convictions are capped at 1 point. That is, only four count towards the criminal history score.
4. Juvenile adjudications are capped at 1 ½ points, unless there is more than one adjudication for an offense that counts as 1 ½ points. In that event, each such adjudication is counted and all other adjudications are not counted.
5. While a conviction or adjudication may not count in the criminal history score because it has lapsed or because a cap has been reached, a court may still consider unscored convictions and adjudications in choosing the appropriate sentence in the applicable Guidelines box.

[8] An offense with a maximum penalty of three months is greater than or equal to 90 days and, thus, is scored.

2.2.3 *Which Prior Adult Convictions Count?*

A prior conviction counts for scoring purposes if any portion of its sentence falls within the time between the commission of the instant offense and the day before sentencing or within the ten-year window before the commission of the instant offense.[9] In other words, if the amount of time between the completion of the sentence[10] for the prior conviction and the commission of the instant offense is 10 years or less, then the prior conviction counts for scoring purposes. For example, if the instant offense was committed on February 9, 2004, then a prior conviction for which parole was completed on February 10, 1994 (within the 10-year window) would count for criminal history scoring purposes.

A prior conviction lapses, and is generally not scored, if its entire sentence is beyond the ten-year window. In other words, if the amount of time between the completion of the sentence for the prior conviction and the commission of the instant offense is more than 10 years, then the prior conviction lapses. For example, if the instant offense was committed on February 9, 2004, then a prior conviction for which probation was completed on February 8, 1994 (beyond the 10-year window) would be lapsed and would not count for criminal history scoring purposes.

Lapsed felony convictions, however, can be revived, and therefore scored. If a prior felony conviction or any part of its sentence (including incarceration, probation, parole or supervised release) occurred within the ten-year window preceding the commission of the instant offense, then all lapsed felony convictions are revived. Refer to the table in Section 2.2.2 for scoring of lapsed felony convictions. A conviction not scored under Section 2.2.9, however, cannot be used to revive another felony conviction.

Lapsed misdemeanor convictions cannot be revived and are never scored.

Thus, if the defendant was sentenced or was serving a sentence (either in jail or prison or on probation, parole, or supervised release) for a felony at any time during the ten years before the commission of the instant offense, then all prior felony convictions are scored. If, however, all previous sentences were completed more than ten years before the date of the commission of the instant offense, none of the prior convictions is scored.

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

As stated above, a prior conviction or adjudication is any conviction or adjudication, for conduct not part of the instant event, for which judgment (an adult conviction or juvenile disposition) was entered before the day of sentencing in the instant case. This means that such convictions or dispositions for acts committed after the commission of the instant offense but before sentencing of the instant offense are scored as long as judgment (an adult conviction or juvenile disposition)

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[9]If the instant offense took place over several dates, calculate the ten-year window based on the date the criminal activity began.

[10]The Guidelines deem a sentence as complete at the end of a term of incarceration, probation, and/or supervision. If, at the end of all periods of incarceration, probation, and/or supervision pertaining to a conviction, unpaid fines, fees, and/or restitution remain, the defendant's sentence is considered completed for the purposes of calculating the ten-year window.

was entered prior to the day of sentencing in the instant case. The order in which the offenses were committed is irrelevant for scoring purposes. However, such a conviction cannot revive other felonies if the conviction was for a crime that was committed after the instant offense because the ten-year window applies only to offenses that occurred before the instant offense. A prior felony conviction can revive an earlier felony conviction only if the more recent conviction or any part of its sentence (including incarceration, probation, parole or supervised release) occurred within the ten-year window before the commission of the instant offense. *See* Section 7.30.

Prior convictions for misdemeanors lapse at the same rate as felonies (ten years) but misdemeanors can neither revive other convictions nor be revived. Thus, if the only offense in the ten-year window is a misdemeanor, it does not revive earlier felony offenses. If a sentence for a misdemeanor was completed more than ten years before the commission of the instant offense, it is not counted, regardless of the number of felony convictions within the ten-year window.

Note: While lapsed convictions are not counted or scored for criminal history purposes, the court may still consider them when determining where a defendant should be sentenced within the applicable box. There is no bar to prosecutors using a lapsed conviction as the basis to indict or file papers for a statutory enhancement.

Example

Defendant committed an aggravated assault on 8/15/2003 and an armed carjacking on February 9, 2004. He was sentenced in the armed carjacking case first, on 7/23/2004, and in the aggravated assault case second, on 8/29/2004. The armed carjacking would be a prior conviction (Master Group 3) for determining the defendant's criminal history score when he was later sentenced in the aggravated assault case since the sentence was entered before the day of sentencing in the aggravated assault case. However, the armed carjacking cannot be used to revive an earlier robbery conviction for which the sentence was completed on 8/1/1993, more than ten years before the commission of the aggravated assault, because the conviction for armed carjacking did not occur in the 10-year-window prior to the commission of the aggravated assault. If the order of sentencing was reversed, the aggravated assault cannot be used to revive the earlier robbery conviction because the conviction for aggravated assault did not occur in the 10-year window prior to the commission of the armed Carjacking. *See* § 9.12, Example 12, for a different result.

2.2.4 *Which Prior Juvenile Adjudications Count?*

Juvenile adjudications for offenses in Master Groups 6 - 9 and all Drug Groups count if the amount of time between the date of initial disposition or date of release from New Beginnings or its functional equivalent, *see* § 7.21, whichever is latest, and the commission of the instant offense is five years or less. Juvenile adjudications for offenses in Master Groups 1 - 5 count if the amount of time between the date of initial disposition, the date of release from New Beginnings or its functional equivalent, or the date of release from a locked residential facility, whichever is latest, and the commission of the instant offense is five years or less.[11] If the

[11] Note: D.C. juvenile records that state "commitment to DYRS" or similar language do not indicate placement at New Beginnings. "Commitment to DYRS" refers to the legal custody DYRS has over the juvenile but does not indicate the physical location of the juvenile during that custody. The five-year window is determined based on the physical location of the juvenile during his/her commitment. If a juvenile is committed to DYRS, the presentence

defendant, as a juvenile, was placed in the locked unit of a multi-level facility then the defendant's entire stay at that facility is treated as if the defendant were in the locked unit unless the defendant can establish that he or she was transferred from the locked unit to a less secure unit and remained there until released from that facility.

Prior adjudications lapse, that is, they are not counted or scored, if they are beyond the five-year window. *See* § 7.12. A juvenile adjudication that has lapsed can never be revived. If a defendant in any Group was either sentenced to or released from New Beginnings or its functional equivalent or, in Master Groups 1 - 5, released from a locked residential facility more

Example 1

Take a juvenile with the following series of placements on a single adjudication:

(a) at initial disposition, placed on probation;
(b) probation revoked; committed to DYRS and sent to a group home;
(c) released to aftercare to reside with his/her family.

The initial disposition date at which he or she was placed on probation would control the calculation of the five year window. If the instant offense was committed more than five years after the date the defendant was placed on probation, this adjudication would lapse for scoring purposes.

Example 2

Take a juvenile with the following series of placements on a single adjudication:

(a) at initial disposition, committed to DYRS and sent to New Beginnings;
(b) transferred to a group home; and
(c) released to aftercare to reside with his/her family.

The date of his or her release from New Beginnings would control the calculation of the five year window. If the instant offense was committed more than five years after the date of defendant's release from New Beginnings, this adjudication would lapse for scoring purposes.

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report writer, in completing the PSI, should contact DYRS to determine whether the juvenile has ever been placed at New Beginnings or a locked residential facility. If the juvenile has never been placed at such a facility, the presentence report writer should note that fact and report the initial disposition date. However, if the juvenile has been placed at such a facility, the presentence report writer should ascertain from DYRS and note in the PSI if the juvenile currently resides in such a facility - and note whether such facility is New Beginnings or a locked residential facility - or, if the juvenile is no longer at such a facility, the date that the juvenile last left such a facility and note whether the facility was New Beginnings or a locked residential facility. If the presentence report writer cannot ascertain the physical location of the juvenile while committed to DYRS, the presentence report writer should note that fact in a footnote in the PSI.

Example 3

Take a juvenile with the following series of placements on a single adjudication:

(a) at initial disposition, placed on probation;
(b) probation revoked; committed to DYRS and sent to a group home;
(c) aftercare revoked; sent to a staff secure residential facility;
(d) transferred to a locked residential facility;
(e) transferred to New Beginnings;
(f) transferred to a group home; and
(g) released to aftercare to reside with his/her family.

The date of his or her release from New Beginnings would control the calculation of the five year window. If the instant offense was committed more than five years after the date of defendant's release from New Beginnings, this adjudication would lapse for scoring purposes.

than five years before the commission of the instant offense, it is not counted, regardless of the number of adjudications or convictions within the five-year window.

Note: While a juvenile adjudication that has lapsed is not counted or scored for criminal history purposes, the court may still consider it when determining where a defendant should be sentenced within the applicable box.

Note: If a defendant was 26 years of age or older at the time of the instant offense, none of the defendant's juvenile adjudications are scored. Since all orders of the Family Court with respect to a juvenile terminate when the juvenile reaches 21 years of age, D.C. Code § 16-2322(f), there is no possibility of a disposition or release in the five-year window after a person's 26th birthday.

2.2.5 *Scoring Multiple Offenses in a Single Event*

Only the most serious conviction arising out of a single event is scored. *See* § 7.10. This means, for example, that Robbery and CPWL convictions arising out of the Armed Robbery of one victim in a single event, *see* § 8.1, would be scored at two points, since only the more serious offense, the Robbery (Master Group 6), would be counted and not the less serious offense, CPWL (Master Group 8). However, a Robbery and a CPWL arising out of multiple events - even if they are both charged in a single case - would be scored at three points, two for the Robbery and one for the CPWL.

2.2.6 *Scoring Out-of-District Convictions/Adjudications*

a. General Rules

Convictions and adjudications for out-of-District offenses (including federal offenses) are scored like the closest comparable D.C. Code offenses. To determine the closest comparable D.C. Official Code offense:

1. Look at the name of the offense in the out-of-District statute.

2. Examine the elements of the offense in the out-of-District statute.

3. Based only on the name and statutory elements of the out-of-District offense, not on the underlying conduct, choose the current D.C. offense that most closely matches the out-of-District offense. Score the out-of-District offense for criminal history purposes just as the most closely matched D.C. offense would be scored (for example, an out-of-District offense that most closely matches ADW is scored as 2 points, just as is a prior D.C. ADW conviction).

4. If there is more than one possible D.C. statute that "closely match" the out-of-District offense, select the least severe D.C. statute, whether that statute is a misdemeanor or a lesser felony. In some cases, the least severe D.C. statute might be a felony even if the out-of-District offense is a misdemeanor. What is most important is how D.C. classifies the statute. Importantly, do not look to the underlying conduct of the prior offense to select the offense that most closely matches; instead compare the elements of the D.C. and out-of-District offenses.

    A. If there is more than one possible D.C. statute that "closely matches" the out-of-District offense, CSOSA should always identify all of the matching offenses in a footnote and indicate that the least severe offense was scored.

5. If no comparable D.C. statute can be found based on the above rules, then the following default rules apply:

    A. Apply 1 point for all convictions that are classified as felonies by the other jurisdiction;

    B. Apply ¼ point for all convictions that are classified as misdemeanors by the other jurisdiction and have a maximum punishment of 90 days or more of incarceration;

    C. Do not score convictions that are classified as misdemeanors by the other jurisdiction and have a maximum punishment of less than 90 days of incarceration;

    D. Apply ½ point for all juvenile adjudications for offenses the other jurisdiction classifies as felonies if committed by an adult;

E. Do not score juvenile adjudications for offenses the other jurisdiction classifies as misdemeanors if committed by an adult;

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

Note: The same lapse rules apply to out-of-District convictions as to D.C. convictions. Thus, a revived out-of-District felony should be scored as ½ point under these default rules, and misdemeanor convictions and juvenile adjudications would not be scored at all.

6. If a party contends that the criminal history score for the out-of-District conviction misrepresents the severity of the offense, then the party may seek a criminal history correction. This procedure applies only to out-of-District convictions. If the court concludes by a preponderance of evidence that the underlying conduct for the out-of-District conviction most closely matches a more or less severe D.C. offense, then the court must apply the same number of criminal history points applicable to the more or less severe D.C. offense. In making this determination, the burden of proof is on the party challenging the initial determination to establish that the conduct for the out-of-District conviction more closely matches a more or less severe D.C. offense. The court should apply the new score only if it determines that the conduct of conviction, as opposed to the alleged conduct or conduct relating to other offenses, more closely matches the more or less severe D.C. offense.

Example 1: Defendant has an out-of-District conviction for Grand Larceny. In that state's statute, Grand Larceny requires a theft of $200.00 or more. The District's First Degree Theft statute requires that the value of the property taken be $1,000.00 or more, whereas Second Degree Theft requires the value be less than $1,000.00. In this example, there is a possibility that a conviction for grand larceny in the other state involved less than $1,000.00 (it could be between $200.00 and $1,000.00). The most comparable D.C. statute would thus be Second Degree Theft. At sentencing, however, the prosecution is permitted to present evidence that the out-of-District conviction was actually based on conduct involving property valued at $1,000.00 or more. If the Court finds that the government has proved this by a preponderance of the evidence, then the most comparable offense is First Degree Theft and the Court should adjust the score accordingly and should advise CSOSA and the Commission.

Note: While the parties may not normally bargain over the criminal history score, the parties may agree that the court should apply a particular number of points as the appropriate score for an out-of-District conviction. This would help create certainty at the time of a plea and would reduce the need for resources to litigate the appropriate criminal history score when it is contested. If agreed upon by the parties, CSOSA and the court should accept this score when calculating criminal history. This exception to the general rule prohibiting bargaining over criminal history score applies only to out-of-District convictions and is the ONLY EXCEPTION to the general prohibition.

Note: In rare cases, the sentence the court imposed may assist in determining the applicable statute of conviction in the foreign jurisdiction. For example, in North Carolina, "breaking and entering" includes both a misdemeanor (simple breaking or entering) and a felony (intent to commit any felony or larceny). If the criminal history record indicates a prior conviction for "Breaking or Entering" in

North Carolina, and the defendant received a five-year sentence for that conviction, the prior conviction must be a felony since the maximum penalty for the misdemeanor is 120 days for persons with an extensive criminal history.

Note: Ascertaining which D.C. offense most closely resembles an out-of-District offense may not be necessary if the number of criminal history points assigned to it would be the same regardless of whether it comes closer to one offense or another, or where the total number of criminal history points would not change the column in which the defendant is placed.

Note: Ascertaining the exact number of criminal history points is not necessary if a defendant has six or more points (e.g., two prior violent felonies; three prior mid-level felonies; six prior low-level felonies or a combination of these and misdemeanors that add up to six or more points).

We strongly urge practitioners and judges to contact the Commission at (202) 727-8822 for assistance regarding comparability of specific offenses.

b. Special Rules for Out-of-District Offenses Committed before a defendant's 18th birthday

If the defendant's out-of-District conviction was for an offense that was committed when he or she was under 18 years of age, the following procedures govern whether the conviction should be scored as an adult conviction or a juvenile adjudication in the criminal history score:

1. A prior conviction where the defendant was less than 15 years of age at the time the offense was committed is scored as a juvenile adjudication.

2. Except as set forth in (3), a prior conviction where the defendant was 15 years of age or older at the time the offense was committed is scored as a juvenile adjudication unless the court finds by a preponderance of the evidence that a judicial hearing was conducted in the out-of-District jurisdiction determining that the case would be transferred to or retained in adult court.[12]

3. A prior conviction comparable to murder, first degree sexual abuse, robbery while armed (firearm), or assault with intent to commit any of these offenses where the defendant was 16 years of age or older at the time the offense was committed is scored as an adult conviction.

Note: Under the last provision, a prior out-of-District conviction for armed robbery or robbery with a weapon is scored as an adult conviction unless the defendant can show by a preponderance of the evidence that the weapon associated with the conviction was not a firearm,

[12] This includes, but is not limited to, a hearing to transfer the juvenile to adult court or a "reverse transfer" hearing to determine if the juvenile, initially charged in adult court, should be "transferred back" to juvenile court. *See e.g.*, D.C. Code § 16-2307. The burden would be on the government to show by a preponderance of the evidence that a transfer or reverse transfer hearing had occurred in the other jurisdiction and the case was transferred from juvenile court to adult court or kept in adult court.

in which case the armed robbery should be scored as a juvenile adjudication. In other words, there is a rebuttable presumption that the weapon involved was a firearm unless proven otherwise.

If the pre-sentence report writer cannot confirm the type of weapon used in the armed robbery, he or she should post an asterisk or otherwise highlight the scoring for this offense and note "presumed firearm otherwise unknown" in the pre-sentence report to alert the parties of this rebuttable presumption.

2.2.7 *Scoring Convictions/Adjudications for Offenses That Have Been Repealed and Replaced*

Convictions and adjudications for offenses that have been repealed and replaced are scored in the same group as the closest comparable offenses in the current code. For example, rape and forcible sodomy, which were repealed in 1994, were replaced by first-degree sexual abuse. Rape would be ranked in Master Group 3 and rape while armed would be ranked in Master Group 2.

2.2.8 *Offense Severity Group and Scoring of Unranked and Amended Statutes*

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

a. For an offense that does appear in Appendix C:

    1. if the penalty for the conduct of conviction has been increased, use the group number for the pre-amendment statute;

    2. if the penalty for the conduct of conviction has been decreased, use the table in paragraph b of this section, unless doing so places the offense in a more severe group, in which case use the group number for the pre-amendment statute;

    3. if the conduct of conviction is a misdemeanor under the amended statute, score the conviction as a misdemeanor.

b. For an offense that does not appear in Appendix C, unless and until the Commission ranks it, use this table:

If the maximum penalty is greater than one year and:	Master Group	Drug Group
Less than 5 years	9	3
Five years or more, but less than 10	8	3
10 years or more, but less than 15	7	2
15 years or more, but less than 20	6	2
20 years or more, but less than 30	5	1
30 years or more, but less than 40	4	1
40 years or more, but less than life	3	1
Life, but not life without release	2	1
Life without release	1	1

c. Use the rules set forth above when scoring a conviction for a D.C. offense, or an out-of-District offense comparable to one, under a statute that has been amended so as to change the offense severity level for the conduct of conviction.

1. Convictions for an offense that was classified as a misdemeanor when the prior offense was committed but was subsequently reclassified as a felony should be scored as a misdemeanor.[13]

2. Convictions for an offense that was classified as a felony when the prior offense was committed, but subsequently was reclassified as a misdemeanor should be scored as a misdemeanor.

3. Convictions for an offense that had a maximum penalty of less than 90 days of incarceration when the prior offense was committed, but subsequently had the maximum penalty increased to 90 days or more of incarceration, should not be scored.

4. Convictions for an offense that had a maximum penalty of 90 days or more of incarceration when the prior offense was committed, but subsequently had the maximum penalty decreased to less than 90 days of incarceration, should not be scored.

5. Out-of-District offenses are compared to the closest matching D.C. offense currently in place, regardless of when the out-of-District offense occurred.

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

Example 2: A defendant has a prior D.C. conviction of Theft I in 2008. In August 2009, D.C.'s Theft statute was amended, changing the cutoff between Theft II and Theft I from $250.00 to $1,000.00. If the defendant can show that the conduct of conviction in the Theft I case involved property of value between $250.00 and $1,000.00, Paragraph (a)(3) would apply and the conviction would be scored as a misdemeanor.

Example 3: Distribution of marijuana was a misdemeanor until June 8, 2001, when it was reclassified as a felony in some circumstances. Any distribution of marijuana conviction for an offense committed before June 8, 2001, therefore, should be scored as a misdemeanor.[14]

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[13]This only applies to offenses committed before the amended statute went into effect.

[14]Distribution of marijuana was a misdemeanor under all circumstances before June 8, 2001, when it was reclassified as a felony unless the defendant has not been previously convicted of distributing or possessing with intent to distribute any controlled substances and the amount of marijuana was ½ pound or less. D.C. Code § 48-904.01(a)(2)(B). Carrying a Pistol was a misdemeanor before August 20, 1994, unless the person had previously been convicted of Carrying a Pistol or of any felony. Since then, it has also been a felony to carry a pistol outside a person's home or place of business or on land possessed by the person. D.C. Code § 22-4504(a)(1). An attempt to commit a crime of violence was a misdemeanor before August 20, 1994, when it was reclassified as a 5-year felony.

Example 4: Assault on a Police Officer was a felony in the District until July 19, 2006, when part of it was reclassified as a misdemeanor. If an out-of-District conviction matches up to what is now the District's misdemeanor APO statute (for example, the out-of-District conviction is for the offense of Simple Assault on a Police Officer or Resisting Arrest where the out-of-District statutory elements do not require any weapon nor any injury to the officer), then the out-of-District conviction should be scored as a misdemeanor, regardless of when it was committed. Similarly, if the out-of-District conviction matches up to what is now the District's felony APO statute, then the conviction should be scored as a felony.

2.2.9 *Youth Act Convictions, Sealed or Expunged Convictions, Imposition of Sentence Suspended Convictions, Convictions Reversed on Appeal, Pardons, and Convictions under Statutes Later Held to be Unconstitutional or Repealed*

Youth Rehabilitation Act and Federal Youth Corrections Act sentences are counted like any other conviction, without regard to whether the conviction has been set aside or not.

D.C. sealed or expunged convictions are counted like any other conviction.

D.C. sealed or expunged adjudications are counted like any other adjudication.

However, convictions or adjudications sealed or expunged on the grounds of actual innocence, whether in D.C. or in a foreign jurisdiction, shall not be counted, nor shall convictions or adjudications sealed or expunged in foreign jurisdictions if the effect of such sealing or expungement is that the conviction or adjudication cannot be used or counted against the defendant in that jurisdiction at sentencing for a new offense. The defendant shall bear the burden of showing, by a preponderance of the evidence, that the foreign sealing or expungement exists and has such an effect.

Imposition of Sentence Suspended convictions are counted.

A conviction/adjudication that was reversed on appeal is <u>not</u> counted.

A conviction for which the defendant was pardoned is <u>not</u> counted.

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

Convictions that are not counted under this section also cannot be used to revive other felony convictions.

2.2.10 *Military and Foreign Convictions*

Convictions for military offenses are scored if imposed by a general or special court martial. Convictions imposed by a summary court martial or Article 15 proceeding are not scored.

D.C. Code § 22-1803. Attempted robbery, however, has been classified as a 3-year felony since the Code was enacted in 1901. D.C. Code § 22-2802.

Federal convictions from the U.S. territories are scored. Any other conviction from a U.S. territory is presumptively scored, unless it is shown that the territory's criminal justice system does not provide procedural protections comparable to those afforded under the U.S. Constitution. For instance, research of the Commission shows that non-federal convictions from the U.S. Virgin Islands, Puerto Rico, American Samoa, and Guam should be scored like state convictions, while non-federal convictions from the Northern Mariana Islands should be scored as misdemeanors unless the sentence imposed was more than five years.

Convictions from a foreign jurisdiction are not scored.

2.2.11 *Scoring Contempt Convictions*

Convictions for violations of conditions of release (D.C. Code § 23-1329) are misdemeanors and scored as ¼ point. All other contempt convictions, including those pursuant to D.C. Code §11-944, are also scored as ¼ point, unless the sentence actually imposed was longer than one year.[15] In that case, the contempt conviction would be a felony and scored as 1 point, if not lapsed; if lapsed and revived, it would be scored as ½ point. Therefore, it could revive other felonies or be revived.

2.2.12 *Defendant's Relationship to Criminal Justice System*

The defendant's status in the criminal justice system (i.e., incarcerated, or on pre-trial release, probation, parole, or supervised release) at the time the defendant committed the offense is <u>not</u> counted in the criminal history score, although this status may be considered by the judge in choosing the appropriate sentence from the applicable box. Moreover, the sentence in the new case must be imposed consecutively to any sentence that the defendant was serving at the time the defendant committed the offense. *See* Chapter 6.

2.3 Calculating the Overall Score

Using the principles set forth above, determine the number of points for the most serious offense arising out of a single event. Add the points for all such offenses together.[16] This will yield the criminal history score that will dictate into which column the defendant falls:

0 - ½	points	Column A
¾ - 1 ¾	points	Column B
2 - 3 ¾	points	Column C
4 - 5 ¾	points	Column D
6+	points	Column E

The box at the intersection of criminal history point column and Offense Severity Group row contains the sentencing options for that conviction.

[15] Note, the sentence imposed includes the term of incarceration and any time suspended. However, it does not include the supervised release period or term of probation.

[16] In most cases, the same criminal history score will apply to all of the convictions in a given case. However, if a case involves offenses committed on different dates, there may be instances where there are more than 10 years between the completion of an earlier sentence and the commission of one offense and less than 10 years between the completion of the earlier sentence and the commission of another offense. This would yield two different criminal history scores. See § 9.12.

2.4 Challenging the Criminal History Score

Sentencing hearings should be scheduled so that the presentence report is completed and provided to both parties at least two weeks prior to the hearing to give the parties the opportunity to assess the accuracy of the Guidelines calculation.

If a party intends to challenge the accuracy of the criminal history score, that party should immediately notify the opposing party and CSOSA providing information on why the challenging party believes a particular conviction or date is incorrect. *See* § 5.2.5, Departure Procedures.

If a party knows that it will challenge the criminal history score and that it will submit evidence or information, not introduced at trial or a pretrial hearing, that the other party might want to contest, the moving party should notify the opposing party and the judge as early as possible so that sentencing will not have to be continued.

Chapter 3: SENTENCING WITHIN THE BOX

There are 45 boxes on the Master Grid and 20 boxes on the Drug Grid.[17] As explained below, in white/unshaded boxes, a prison sentence (including a long split sentence) is the only option. In dark gray/dark shaded boxes, either a prison sentence (including a long split sentence) or a short split sentence is an option. In the remaining, light gray/light shaded boxes, a prison sentence (including a long split sentence), a short split sentence, or probation is an option. The boxes are clearly marked:

White/unshaded	Prison only (including a long split sentence)
Dark gray/dark shaded/green	Prison (including a long split sentence) or a short split sentence
Light gray/light shaded/yellow	Prison (including a long split sentence), a short split sentence, or probation

3.1 What May Not Be Considered

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

3.2 What May Be Considered

In determining an appropriate sentence within the box, the court may take into consideration any appropriate factor other than those listed above.

Any information that the court could have taken into consideration before the introduction of the voluntary Guidelines, may be taken into consideration in determining where a person should be sentenced within the box. The only bases for sentencing outside the box are found in the departure principles. *See* §§ 5.2 (Departures), 7.7 (Departure Definition).

3.3 Probation (ESS All)

Probation is a compliant sentence only in the light gray boxes. To impose a compliant sentence of probation, the court must impose a prison sentence that falls within the prison range in the appropriate light gray box, suspend execution of all of it (ESS all) and impose up to 5 years probation.[18]

Two principles that the Commission adopted are to some extent in conflict in cells where probation is a permissible sentence: the principle that the Guidelines should try to eliminate the top and bottom 25 percent of sentences (except where a departure principle applies), and the

[17] For information on how the Commission decided on the parameters of the boxes, see the 2008 Manual.

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

principle that probation should be a permissible sentence in any cell where 25 percent or more of the sentences were to probation historically. The Commission recognizes that a portion of historic sentences to probation – like a portion of the most severe sentences imposed historically – were outliers, that is, they were outside the norm given the offense and the criminal history of the defendant. However, unlike exceptionally harsh sentences, which were more easily identified when compared against other sentences, exceptionally lenient sentences were statistically indistinguishable from sentences where probation was indeed appropriate. For this reason, while the Commission was able to exclude from its recommended sentence ranges anomalously "high" sentences, it was not able to impose a comparable bright-line limitation on anomalously "low" probation sentences in every cell. It is therefore incumbent on individual judges to consider the historical percentage of probationary sentences in a given cell when determining whether probation is appropriate in a given case. *See* Appendices E and F. In making this determination, judges should be guided by the principle that it was the intent of the Commission to eliminate both the top 25 percent and the bottom 25 percent of sentences. It is accordingly the intention and the expectation of the Commission that, just as the Guidelines should eliminate a portion of anomalously harsh sentences, so too should the Guidelines eliminate a portion of anomalously lenient sentences.

Note: When imposing a probationary sentence, the court should (a) impose a prison term in the appropriate range and the supervised release term, (b) suspend execution of all of the prison term, (c) suspend all of the supervised release term, and (d) place the defendant on probation for a period not to exceed five years. *See* Appendix G.

Note: The Guidelines make no recommendation as to the length or terms and conditions of probation. Any period of probation up to the statutory maximum of 5 years is compliant and the judge may impose any terms or conditions available prior to the Guidelines. *See* D.C. Code § 16-710(b).

3.4 Short Split Sentences (ESS All but Six Months or Less)

A short split sentence is a compliant sentence in the shaded (dark gray and light gray) boxes. To impose a short split, the court must impose a prison sentence that falls within the prison range in the appropriate dark gray or light gray box, suspend execution of all but six months or less -- but not all -- of that sentence, and impose up to 5 years probation.[19] If the judge suspends all of the prison term, that would be considered to be probation and not a short split and it would not be compliant in a dark gray box. *See* § 3.3, *supra*.

Note: When imposing a short split sentence, the court should (a) impose a prison term in the appropriate range and the supervised release term, (b) suspend execution of all but six months or less of the prison term, but not all of it, (c) suspend all of the supervised release term, and (d) place the defendant on probation for a period not to exceed five years. *See* Appendix G.

[19] The Sentencing Reform Act of 2000 allowed certain terms of incarceration or types of custody to be imposed as a condition of probation. Weekend sentences or sentences to a halfway house for felony convictions may be ordered only as a condition of probation. The U.S. Bureau of Prisons cannot carry out such intermediate sanctions and, therefore, they may only be imposed as a condition of probation. *See* D.C. Code §16-710(b-1).

Note: If the court suspends imposition of a sentence (ISS), that is considered to be probation and not a split sentence. ISS sentences are not compliant in the white or dark gray boxes, unless a departure principle applies.

Note: If the court suspends execution of all of the prison term, that is considered to be probation and not a split sentence. "ESS all" sentences are not compliant in the white or dark gray boxes, unless a departure principle applies.

3.5 Prison (Prison and Long Split Sentences)

Prison is a compliant sentence in all of the boxes on both grids. Each box has two numbers. The lower number represents the fewest number of months for a compliant prison sentence; the upper number represents the greatest number of months for a compliant prison sentence.

The court may impose any prison sentence within the range specified in the box where the offense of conviction and criminal history score of the offender intersect. For example, a person convicted of Armed Robbery who has previously been convicted of Attempted Robbery in the ten-year window and, therefore, has one criminal history point would be in Box 5B. In Box 5B, the prison range is between 48 months and 96 months. The defense can argue that a sentence in the lower part of the range is appropriate and the prosecution can argue that a sentence in the higher part of the range is merited. Unless a principle applies that would expand the box or take the case "out of the box," the court must sentence within the established range to be in compliance with the Guidelines.

The court may also impose a "long-split" sentence, that is, a sentence where the amount of time to be served after a portion of the entire prison term is suspended, still falls within the range for prison sentences in that box. *See* § 7.17. Thus, both the sentence imposed and the portion to be served initially would fall within the prison range in that box.

Note: When imposing a long split sentence, the court should (a) impose a prison term in the appropriate range and the supervised release term, (b) suspend execution of only a portion of the prison term so that the unsuspended portion is still in the appropriate range, (c) suspend <u>all</u> of the supervised release term, and (d) place the defendant on probation for a period not to exceed five years. *See* Appendix G.

Note: The cells in column 6 of the grids do not have upper numbers for the prison ranges but rather plus signs. A defendant with a criminal history score that places him or her in column 6 can be sentenced to any period or incarceration up to the statutory maximum (less, of course, the amount reserved for backup time for non-Class A felonies).

3.6 Mandatory Minimums and Statutory Minimums

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

These minimums are the one exception to the amount of discretion the court has in imposing a Guidelines compliant sentence within a box. The Guidelines do not change these minimums.

An imposed sentence cannot be lower than the minimum even if lower sentences are otherwise available in the appropriate box.

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

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

A youth offender sentenced under the Youth Rehabilitation Act (D.C. Code § 24-901 *et seq.*) for one of the offenses *shown here in italics* need not be sentenced to a mandatory minimum term. *See Green v. United States*, 974 A.2d 248, 262 n. 43 (D.C. 2009).[20]

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

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

All but two of the statutory minimums are either below or within the prison range in the lowest possible box for that offense and criminal history score, so that these statutory minimums do not conflict with Guidelines prison ranges. The same options are available for these offenses as for

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

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

In Appendices C and C-I, offenses with a statutory minimum are indicated in the "Minimum" column by "not <" before the number of years.

Example 1

The statutory minimum for First-Degree Burglary is 60 months. The Guidelines prison range for a person convicted of First-Degree Burglary with zero criminal history points in Box 5A is 36 to 84 months. It is a prison only box. The judge must impose the statutory minimum of 60 months (and could impose a Guidelines compliant sentence of up to 84 months). However, since the defendant is a first offender, the judge might decide to suspend execution of 24 months of the prison sentence (60 months ESS all but 36 months) and place the defendant on probation for five years. A long split sentence such as this is compliant with the Guidelines and with the statute.

Example 2

The statutory minimum for Second-Degree Burglary is 24 months. The Guidelines prison range for a person convicted of Second-Degree Burglary with zero criminal history points in Box 7A is 12 to 36 months. Box 7A is a light gray box. It is a prison, short split, or probation permissible box. A sentence of 12 months would be a Guidelines compliant sentence, but would not be a legal sentence. The judge must impose the statutory minimum of 24 months (and could impose a Guidelines compliant sentence of up to 36 months). If the judge believes that a shorter prison sentence or no prison sentence is appropriate, he or she has the following Guidelines compliant options: (1) impose a sentence of 24 months and suspend execution of all but 12 months (a long split); (2) impose a sentence of 24 months and suspend execution of all but 6 months or less (a short split); (3) impose a sentence of 24 months and suspend execution of all of it (probation). For each of these options, the judge could then place the defendant on probation for up to five years.

3.7 Statutory Maximums

Some offenses have a statutory maximum less back-up time that is less than the maximum sentence in the applicable sentence box. For these offenses, the judge cannot impose a sentence greater than the statutory maximum less back-up time.

Example

The statutory maximum for Attempted Robbery is 3 years (36 months). D.C. Code § 22-2802. The amount reserved for incarceration following revocation of release (back-up time) for this offense is one year. D.C. Code § 24-403.1(b)(7). Thus, the maximum sentence that can be imposed, absent an enhancement, is 24 months. Attempted Robbery is in Group 8. The higher number in the prison range in boxes 8B, 8C, and 8D is greater than 24 months. Therefore, the maximum sentence that can be imposed in each of these boxes for attempted Robbery is 24 months and not 28, 32, or 36 months respectively.

3.8 Revocation Sentences

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

If the court initially suspended part or all of a defendant's prison sentence (execution of sentence suspended - ESS) and subsequently revokes probation, the court can impose the original prison sentence or any lesser sentence permitted inside the original guideline box. If the sentence imposed, including any credit for time served, is less than the bottom of the original Guideline range, it would not be compliant with the Guidelines.[21] For an ISS sentence, the court can impose any sentence permitted inside the original guideline box.

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

a. In a light gray (yellow) box, the court must impose a prison sentence within the range in the box and can suspend all of it and place the defendant on a term of probation (ESS all -- probation).

b. In a light gray (yellow) or dark gray (green) box, the court must impose a prison sentence within the range in the box and can suspend all but 6 months or less of it, followed by a term of probation (ESS some -- short split).

[21] Although not directly related to the Guidelines, if the court imposes a lesser sentence than it imposed originally and intends the defendant to receive credit for time served, the Judgment and Commitment Order must explicitly state the judge's intention. See example 2. To remain compliant, the combination of time served and the new sentence cannot be less than the minimum term of incarceration in that box.

c. In any box, the court must impose a sentence within the prison range in the box and can suspend a portion of it so that the time to be served initially is not less than the lower number in the box, followed by a term of probation (ESS some -- long split).

d. In a light gray (yellow) box, the court may suspend imposition of sentence (ISS).

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

Example 1: At sentencing, the appropriate box for the defendant was 8B (10-28 months prison; split sentence or probation). The court imposed a sentence of 18 months imprisonment to be followed by three years of supervised release, suspended execution of the entire sentence and imposed a three-year term of probation. One year later, the court found the defendant had violated a condition of his probation and subsequently revoked probation.[22] Following revocation, the court can order the defendant to serve the original sentence. Alternatively, the court may sentence the defendant to less than the original 18 months incarceration, but cannot impose a compliant sentence of less than ten months incarceration.

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

[22]The Guidelines do not address how the court should classify probation violations or whether the court should revoke probation under any specific circumstance.

Chapter 4: ADJUSTING THE BOX

There are statutory provisions that do not change the options in a box, but expand the prison range that is available in the box. These include enhancements based on the status of the victim (e.g., senior citizen victims and bias-related offenses), repeat offenders, third strike laws, statutory aggravating factors for murder and sex offenses, drug- and gun-free zones, selling drugs to minors and committing a felony while on release. *See* Appendix H.

If an enhancement provision applies, the **top** of the Guidelines range is increased by the same percentage or amount as the statutory multiplier or cap.[23] For example, if the statute states that the punishment may be 1 ½ times the maximum otherwise authorized for the offense, then the top of the Guidelines prison range is increased by 1 ½. However, if the statute increases the maximum term of imprisonment from 5 to 10 years, for example, the **top** of the prison range is doubled.[24] See Appendix H for a list of multiplier and cap enhancements. Note that the bottom of the range does not change, only the top.

The court should apply only one of two or more enhancements. In such a case, the court may, but need not, select the enhancement that raises the top of the range the most.

Note: When deciding where within the expanded box to sentence the defendant, the court may consider that enhancements based on prior convictions (i.e., "repeat papers") may be based on the same convictions that have determined the criminal history score.[25] Thus, the same conviction that contributes to moving the defendant to the right on the sentencing grid, exposing the defendant to a higher sentencing range, may also increase the top of the range through the operation of the enhancement rule. In determining where within the expanded box to sentence the defendant in such a situation, the court may consider the dual effect of the prior record.

Note: For a conviction for Accessory After the Fact, use the box applicable to the underlying offense and multiply the top and bottom numbers by ½. To determine whether the defendant is eligible for probation or a short split sentence, go to the group immediately below that for the underlying offense and then to the appropriate column given the defendant's criminal history.

Example

A defendant with no criminal history who is convicted of Accessory After the Fact to a Robbery faces a prison range of 9 to 30 months (one-half of 18 to 60 months, the Guidelines range in Box 6A for Robbery). For the purposes of determining his or her eligibility for probation or a short split sentence, the same defendant will be placed in Box 7A (one box below Box 6A for Robbery). This is a light shaded box and, therefore, probation or a short split sentence is permissible for this defendant.

[23]The general rule governing enhancements does **not** apply to the Offenses Committed During Release ("OCDR") enhancement (D.C. Code § 23-1328). See Appendix H, § IV for an explanation of how OCDR should be scored.
[24]Several "special enhancements" do not follow this protocol. *See* Appendix H, Part III.
[25]In some cases, repeat papers will be filed based on convictions that do not contribute to the criminal history score. For example, if a prior conviction has lapsed according to the Guidelines rules, see Chapter 2, then the prior conviction will not be counted toward the defendant's criminal history score but that conviction may still be the basis for the filing of repeat papers. Similarly, if the defendant has six criminal history points, additional convictions will not be counted toward the defendant's criminal history score, but may form the basis of repeat papers.

Chapter 5: SENTENCING OUTSIDE OF THE BOX

There are three ways to sentence outside of the otherwise applicable box:

(1) Rule 11(e)(1)(C);
(2) A departure principle; or
(3) A decision by a judge not to use the sentencing Guidelines.

5.1 Superior Court Rule of Criminal Procedure 11(e)(1)(C)

A Rule 11(e)(1)(C) plea agreement that is accepted by the court controls the applicable sentence. This means that if the parties and the court agree to a particular sentence or sentencing range, it need not fall "within the box."

5.2 Departures

5.2.1 *Departure Principles*

One of the bedrock principles underlying the development of the Guidelines was that like offenses/offenders should be sentenced alike and different offenses/offenders should be sentenced differently. The grid was designed with typical conduct for the offenses in mind and the ranges are quite broad, preserving the judge's discretion to take into account factors other than the offense of conviction and the criminal history of the offender in a Guidelines compliant sentence. The Commission, therefore, anticipates that most offenders will be sentenced "within the box." However, there are extraordinary cases where such a sentence would not serve the ends of justice. Consequently, the Commission developed a non-exclusive list of aggravating and mitigating factors to permit sentencing outside of the grid options or ranges. If the judge finds one of the enumerated factors to be substantial and compelling, the judge is not bound by the grid options and ranges. Similarly, the judge may use the "catchall" departure (Aggravating Factor #11; Mitigating Factor #10) if the judge finds another substantial and compelling reason, comparable in gravity to the enumerated factors, that aggravates/mitigates substantially the seriousness of the offense or the defendant's culpability. Under such circumstances, the judge is not bound by the grid options and ranges. Any legal sentence may be imposed.

The judge must state on the record the aggravating or mitigating factor upon which he or she relies in sentencing outside of the box. If the judge applies the catchall Aggravating Factor #11 or Mitigating Factor #10, then the judge must state on the record what substantial and compelling basis he or she found that was comparable in gravity to the enumerated aggravating and mitigating factors. In those cases where the judge has found both aggravating and mitigating factors, the balance should weigh more heavily on one side or the other before a departure is granted.

5.2.2 *Aggravating Factors*

(1) There was deliberate cruelty to a victim or there was gratuitous violence inflicted upon a victim in a manner substantially beyond that normally associated with this offense.

(2) A victim was particularly vulnerable due to age or reduced physical or mental capacity, which was known or should have been known to the defendant, unless that vulnerability constituted an element of the offense of conviction.

(3) A victim sustained a "devastating injury." Devastating injury is defined as a physical or mental injury that results in one or more of the following:

- (a) Permanent and substantial impairment of the person's employment opportunity and/or lifestyle;
- (b) Permanent, gross disfigurement; or
- (c) Medical confinement and/or immobilization for a period of more than three months.

(4) The crime committed or attempted was substantially premeditated, as evidenced by a high degree of planning or sophistication or planning over an extended period of time.

(5) The defendant committed for hire or hired another to commit any one of the following offenses: Murder; Manslaughter; First-Degree Sexual Abuse; Kidnapping; Mayhem/Malicious Disfigurement; Aggravated Assault; Assault with intent to commit any of the foregoing; Assault with intent to kill; Assault with a Deadly Weapon; or Arson.

(6) The offense was part of an enterprise significantly related to organized crime or high-level drug trafficking. This aggravating factor does not apply in cases charging only distribution or possession with intent to distribute a controlled substance where the defendant's only connection to organized crime or high-level drug trafficking is street-level drug trafficking.

(7) The defendant threatened, bribed, attempted to bribe, induced, or attempted to induce a victim, a member of the victim's family, or a potential witness, or any other person to withhold truthful testimony or provide false testimony, or otherwise attempted to obstruct justice, unless the defendant is separately convicted of an offense that arises out of the same conduct.

(8) The offense is a violation of Chapter 32 of Title 22 of the D.C. Code, which involves an intended or actual monetary loss substantially greater than what would normally be associated with the offense or any one or more of the following:

- (a) The offense(s) involved multiple victims or multiple incidents per victim;
- (b) The defendant has been involved in other conduct similar to the current offense(s) as evidenced by the findings of criminal, civil or administrative law proceedings or the imposition of professional sanctions; and/or
- (c) The defendant used his or her position of confidence or fiduciary responsibility to facilitate the commission of the offense(s).

(9) The offender, in attempting to gain or while holding public office by appointment or election, betrayed the public trust by his or her unlawful conduct.

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

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

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

5.2.3 *Mitigating Factors*

(1) A victim was an aggressor, initiator, willing participant in, or provoker of the incident to such a degree that the defendant's culpability is substantially less than that typically associated with the offense.
(2) Before detection in a crime other than a crime of violence, the defendant compensated or made a good faith effort to compensate the victim(s) for any damage or injury sustained.
(3) The defendant participated under duress, coercion, threat or compulsion insufficient to constitute a complete defense, but which significantly reduces the defendant's culpability.
(4) The offense was principally accomplished by another, and the defendant manifested extreme caution or sincere concern for the safety and well-being of a victim.
(5) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.
(6) The defendant's capacity to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law was impaired significantly, though not sufficiently to constitute a complete defense. Voluntary use of alcohol or other drugs should not be considered in relation to this mitigating factor.
(7) The defendant has provided substantial assistance to law enforcement in the detection or prosecution of other offenders, and departure for this reason does not demean the seriousness of the defendant's crime or create an unacceptable risk to the safety of the community.
(8) The Guidelines sentence calls for incarceration but, after consultation with corrections authorities, the court determines that the defendant, by reason of obvious and substantial mental or physical impairment or infirmity, cannot be adequately protected or treated in any available prison facility.
(9) The consecutive/concurrent sentencing policy results in a Guidelines sentence that is so excessive in relation to the seriousness of the offense and history of the defendant that imposition of the Guidelines sentence would result in manifest injustice. A departure based solely on this factor shall not result in a sentence that is less than the sentence that would result if all Guidelines sentences were concurrent.
(10) There is any other substantial and compelling basis, as articulated by the sentencing judge, comparable in gravity to those listed in 1 to 9 above, which does not amount to a defense but which substantially mitigates the seriousness of the offense or the defendant's culpability.

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

5.2.4 *Limits on the Kind and Duration of a Sentence if there is a Substantial and Compelling Reason to Depart*

Except as provided below, if the judge finds a substantial and compelling basis to sentence outside of the box, there are no constraints (other than statutory limits) on the exercise of the

judge's discretion. Any legal sentence may be imposed. Judges should consider the purposes of these Guidelines and should incorporate into their sentences, to the extent possible, the principle of proportionality, reserving the maximum sentence for the worst offenses and offenders and the minimum sentence for the least serious offenses and least culpable offenders, and departing from the grid options and ranges only to the extent necessary to account for the aggravating or mitigating factor that necessitated the departure.

There are two exceptions to the principle that a sentence of any legal length may be imposed if the judge finds a substantial and compelling reason to depart from the otherwise applicable box: Aggravating Factor #10 and Mitigating Factor #9. If the judge decides that the application of the concurrent rules in a case would result in a sentence that is too lenient, the judge may depart on the basis of Aggravating Factor #10. The sentence resulting from a departure based solely on Aggravating Factor #10 cannot be higher than the sentence the judge could impose if s/he ran all of the sentences consecutively. Similarly, if the judge decides that the application of the consecutive rules in a case would result in a sentence that is too harsh, the judge may depart on the basis of Mitigating Factor #9. The sentence resulting from a departure based solely on Mitigating Factor #9 cannot be lower than the sentence the judge could impose if s/he ran all of the sentences concurrently.

5.2.5 *Departure Procedures*

While judges are free to develop their own sentencing procedures, the Guidelines system requires a high level of coordination between the parties, the court and CSOSA. The Commission recommends procedures and practices to give all parties sufficient notice to prepare for the sentencing hearing. These practices are not designed to encourage mini-trials, but rather to avoid blind-siding one party or the other at the time of sentencing and to avoid the necessity for a continuance for matters that could have been disposed of easily with some notice.

The Commission encourages judges and the parties to follow these procedures (or those adopted by the judge to the extent they differ). However, failure to follow such procedures should not bar either party from arguing a departure. Constitutional demands of due process and effective assistance of counsel require that the parties be allowed to argue all potentially applicable factors at the sentencing hearing. On balance, continuing the sentencing hearing is a better use of resources than litigating post-conviction claims on the issue.

Sentencing hearings should be scheduled so that the pre-sentence report is completed and provided to both parties at least two weeks prior to the hearing to give the parties the opportunity to determine whether they will seek a departure.

If a party intends to rely on a departure principle at sentencing, that party should provide notice in writing to the other party and the court at least one week prior to sentencing. The notice should include a statement of reasons why the sentencing range is inappropriate, the evidence or information to be relied upon, and the substantial and compelling reason that necessitates or justifies the departure.

If a party knows that it will seek a departure and that it will submit evidence or information, not introduced at trial or a pretrial hearing, that the other party might want to contest, the moving party should notify the other party and the court as early as possible so that sentencing will not have to be continued. The Commission anticipates that sentencing will proceed in the future

much like it has in the past and that it would be the rare case where witnesses would be sworn or evidence taken in open court during the sentencing hearing.

If the judge, *sua sponte*, intends to consider a departure principle not raised by the parties, the judge should provide notice in writing to the parties at least one week prior to sentencing. The notice should set forth the basis on which the judge will consider such a sentence.

The sentencing data form provides a place to enter the aggravating or mitigating factor(s) the judge relied upon in sentencing outside of the box. If the judge uses one of the "catchall" provisions, he or she must state the basis upon which he or she relied and why it is a substantial and compelling reason of comparable gravity with the enumerated factors.

Note: A judge's failure to follow the procedures set forth above or to follow his or her own procedures is not a basis for appeal.[26]

5.3 Not Using the Guidelines

The Guidelines are voluntary. The Commission compiles statistical data regarding cases in which judges do not follow the Guidelines, but does not identify judges by name. There are no sanctions for failing to follow the Guidelines and any lawful sentence is not appealable whether or not it complies with the Guidelines.[27] As a consequence, a judge retains total discretion to impose any lawful sentence. Because of the principles and procedures used in developing the Guidelines, the Commission hopes and expects that judges will find a sentence that fits both the offense and the offender in the grid options and ranges or will apply a departure principle when there are substantial and compelling reasons to do so.

The sentencing data form will provide a place for the judge to indicate that he or she is not using the Guidelines and to explain his or her reasoning for this decision. It is critically important for judges to inform the Commission why he or she believes the Guidelines are not suitable for a particular combination of an offense and offender.

[26] *See* footnote 1.
[27] *See* footnote 1.

Chapter 6: CONSECUTIVE AND CONCURRENT SENTENCES

The court should first determine the sentence for each conviction in a verdict or plea. The following are the rules for imposing these sentences concurrently or consecutively.

6.1 Consecutive Sentences

The following sentences must be imposed consecutively:

> For multiple crimes of violence: multiple victims in multiple events; multiple victims in one event; and one victim in multiple events for offenses sentenced on the same day.[28] *See* § 7.4.
>
> One imposed for a new offense(s) committed while the defendant was under sentence must run consecutively to any sentence imposed as a result of revocation of probation, parole, or supervised release, or to the sentence being served at the time the new offense was committed.[29]
>
> Offenses for which a consecutive sentence is required by statute.

Note: Only one crime of violence per victim per event needs to be sentenced consecutively to the others. Everything else can be either consecutive or concurrent. *See* § 9.16.

Example

On February 9, 2009, the defendant held up a cab at gunpoint and robbed the driver and the passenger. Several days later the defendant held up the same cab at gunpoint and robbed the driver and a different passenger. He was convicted of four counts of armed robbery and four counts of possession of a firearm during a crime of violence (PFCOV). This example has multiple victims (the cabdriver and passengers) in multiple events (two armed robberies), and one victim (the cabdriver) in multiple events (two armed robberies). Armed robbery and PFCOV are both in Group 5. Assuming defendant had no prior record, he will be sentenced in Box 5A, a prison only box with a range of 36 to 84 months. Each of these offenses, however, carries a mandatory minimum of 60 months. The sentences for each of the four armed robberies must be consecutive since one victim was robbed twice and there are two other victims. The two PFCOV's in each event should be sentenced concurrently since they will eventually merge. The PFCOV's for the first and second events can be sentenced either consecutively or concurrently to each other and to the armed robberies. Thus, the minimum sentence for these offenses is 240 months (four AR's times the mandatory minimum of 60 months); the maximum sentence for these offenses is 504 months (four AR's plus 2 PFCOV's times the maximum of 84 months). If the judge believes that the minimum sentence is so harsh that it is manifestly unjust, he or she may apply Mitigating Factor #9. Under such circumstances, the sentence cannot be lower than 60 months.

[28] The word "event" is defined in § 7.10, *infra*.

[29] A defendant who commits an offense while on post-conviction escape status or furlough is considered to be under sentence at that time.

6.2 Concurrent Sentences

The following sentences must be imposed concurrently:

For **non-violent crimes**: multiple offenses in a single event, such as passing several bad checks.

Offenses for which a concurrent sentence is required by statute.

6.3 Judicial Discretion

The court has discretion to sentence everything else either consecutively or concurrently.

Note: The departure principles permit deviating from these consecutive and concurrent sentencing rules if adhering to them would result in a manifest injustice. *See* §§ 5.2.2(10) and 5.2.3(9).

Example

The defendant sold heroin and cocaine to an undercover narcotics officer as part of a "buy – bust" operation. The defendant was not apprehended at the time of the transaction and a warrant was issued for her arrest. The defendant was arrested three days later. A search of the defendant's person at the time of her arrest uncovered liquid PCP. The defendant was convicted of distribution of heroin, distribution of cocaine, and possession of liquid PCP. The sentences imposed for distribution of heroin and distribution of cocaine should run concurrently because they are non-violent crimes that arose from the same event. The court has the discretion to impose a sentence for possession of liquid PCP that runs either concurrently or consecutively to the sentences imposed for the distribution of heroin and distribution of cocaine convictions because they are not part of the same event.

Chapter 7: GLOSSARY

7.1 **Box** -- A box is the place on the Master and Drug Grids where the criminal history score of the offender and the group of the offense of conviction intersect. There are 45 boxes on the Master Grid and 20 boxes on the Drug Grid, which indicate the sentencing options for each combination of offense and criminal history. Boxes are identified by using the number of the offense of conviction group (1 - 9) and the letter of the criminal history column (A - E). Thus, Box 9A is in the lower left hand corner of the Master Grid and contains the lowest possible sentencing options. Box 1E is in the upper right hand corner of the Master Grid and contains the highest possible sentencing options.

7.2 **Completion of the Sentence** -- A criminal sentence is completed when a person is sentenced, is released from jail or prison, or finishes probation, parole, or supervised release, whichever is latest. A juvenile adjudication is completed when the disposition is entered or when the person is released from New Beginnings or its functional equivalent, *see* § 7.19, or, in Master Groups 1 - 5, from a locked residential facility or the locked section of a residential facility, whichever is latest.

7.3 **Compliant Sentence** -- A sentence is compliant if it is one of the options permitted in the appropriate box. For example, in Box 9A, which is light gray, probation, a short split sentence, or a prison sentence between 1 and 12 months would all be compliant. In Box 1E, which is white, the only compliant sentence would be a prison sentence of not less than the mandatory minimum of 360 months (30 years) nor more than the statutory maximum of 720 months (60 years). A sentence also is compliant if it is within the prison range that is expanded by a statutory enhancement. A sentence also is compliant if it is imposed under Rule 11(e)(1)(C). A sentence also is compliant if the judge departs from the options in the box by applying one of the enumerated aggravating or mitigating factors, including applying the catchall of another substantial and compelling basis comparable in gravity to the other enumerated mitigating and aggravating factors. Any sentence that is not a compliant sentence is deemed a "non-compliant" sentence.

A judge is not required to explain why s/he imposed a compliant sentence. If the judge departs (applies an aggravating or mitigating factor), however, the judge must indicate which factor(s) was found and if the catchall aggravating or mitigating factor is used, the judge must further indicate what the substantial and compelling basis of comparable gravity was. To summarize, the following sentences are compliant:

(a) a sentence in the appropriate box (including the mandatory minimum, if applicable);
(b) a sentence in the appropriate box as expanded by a statutory enhancement;
(c) a sentenced outside of the box where there is a substantial and compelling reason contained in one of the enumerated aggravating or mitigating factors or one of like gravity; and
(d) a sentence or sentencing range agreed to and accepted under Rule 11(e)(1)(c).

7.4 **Crime of Violence** -- The term "crime of violence" under the Guidelines is used to determine consecutive and concurrent sentencing (*see* Chapter 6). This definition is identical to the crime of violence definition provided in D.C. Code § 23-1331(4).

7.5 **Criminal History Score** -- The criminal history score is the total number of points a defendant accumulates for his/her prior convictions and prior adjudications, calculated according to the Guidelines' rules for scoring. *See* § 2.2. The criminal history scores range from zero to six or more points and determine where to place the defendant in the five columns, lettered A through E, on the horizontal axis of the grid. The columns contain the following number of points:

A 0 to ½;
B ¾ to 1 ¾;
C 2 to 3 ¾;
D 4 to 5 ¾; and
E 6+ points.

7.6 **Dark Gray or Dark Shaded Boxes** -- These are boxes on the Master Grid and the Drug Grid where a short split sentence is a permissible option. A prison sentence within the indicated range would also be compliant. Any other option, including probation, would not be compliant, absent a departure. There are four dark gray boxes on the Master Grid and four dark gray boxes on the Drug Grid.

7.7 **Departure** -- A departure, as enumerated in Chapter 5, permits a sentence outside of the appropriate grid box. A departure applied in accordance with Chapter 5 is a compliant sentence. A departure can be based on one or more of the aggravating or mitigating factors. For example, a probation sentence or a short split in a prison-only box would be a departure if the judge based the sentence on one or more mitigating factors. A prison sentence longer than the higher number in the prison range for a particular box would be a departure if the judge based the longer sentence on one or more aggravating factors. A departure is a compliant sentence. To assist the Commission in data collection and analysis of the efficacy of the Guidelines, the judge must indicate upon which mitigating or aggravating factor s/he relied to depart. If the judge uses the catchall (Aggravating Factor #11; Mitigating Factor #10), then the judge must more specifically state what factor s/he found that was substantial and compelling and of equal gravity to the enumerated aggravating and mitigating factors.

7.8 **Drug Grid** -- The Drug Grid is a chart that contains the sentencing options for all drug offenses. There are 20 boxes on the Drug Grid, arranged in four rows on the vertical axis and five columns on the horizontal axis. The boxes range from Box 4A, the least serious offense and the lowest criminal history score, to 1E, the most serious offense and the highest criminal history score.

7.9 **Enhancements or Statutory Enhancements** -- An enhancement or statutory enhancement is a statutory mechanism for increasing the maximum sentence if certain factors -- such as recidivism, the vulnerability of the victim, etc. -- are present. The Guidelines permit the upper number of the prison range in each box to be increased by the same proportion or ratio as the maximum sentence can be increased. *See* Appendix H, Statutory Enhancements.

7.10 **Event** -- For purposes of determining which offenses count for criminal history scoring or for reviving other convictions, see Chapter 2, and which offenses must be sentenced consecutively/concurrently, see Chapter 6, offenses are part of a single event if they were committed at the same time and place or have the same nucleus of facts. Offenses are part of multiple events if they were committed at different times and places or have a different nucleus of facts. When an offense(s) crosses jurisdictional lines (e.g. from Maryland into the District), it may result in multiple cases. However, this should not change the analysis regarding whether the offense(s) constitutes a single or multiple events.

Examples

One event: Defendant robs a convenience store at gunpoint. As he is leaving, but still inside the store, he engages in a gun battle with a police officer who has the store under surveillance.

Two events: Defendant robs a convenience store at gunpoint. He speeds away from the scene and is stopped for a traffic violation. He shoots at the police officer.

7.11 **Felony Offense** -- A felony offense is any offense specified by the applicable code as a felony or, if undefined, an offense that is punishable by a term of imprisonment that exceeds one year.

7.12 **Five-Year Window** -- The five-year window is the five years preceding the commission of the instant offense. If, during this period of time, a person had a juvenile disposition, or was released from New Beginnings or its functional equivalent, or for a Master Group 1 - 5 offense, was released from a locked residential facility or the locked section of a residential facility, that adjudication is counted toward the criminal history score (with a cap of 1½ points unless there are multiple offenses in Master Groups 1 - 5).

7.13 **Guidelines** -- The Guidelines are the combination of grids, standards, rules, adjustments and exceptions that provide guidance to the court in imposing a sentence that meets the objective of sentencing like defendants/offenses alike and different defendants/offenses differently.

7.14 **Instant Case** -- The instant case is the case being sentenced.

7.15 **Lapsed Conviction/Adjudication** -- A lapsed conviction/adjudication is one that is not scored for criminal history because it is too old under the applicable rules. See § 2.2.3 for adult lapse period; § 2.2.4 for juvenile lapse period. See also § 2.2.3 for rules on reviving convictions.

7.16 **Light Gray or Light Shaded Boxes** -- These are the boxes on the Master Grid and the Drug Grid where probation, a short split sentence, and a prison sentence are all permissible and compliant options. There are five light gray boxes on the Master Grid and ten light gray boxes on the Drug Grid.

7.17 **Long Split Sentence** -- A long split sentence is one where the court imposes a sentence within the applicable prison range, suspends execution of all but a term that also falls within the applicable prison range, and places the defendant on probation for a period up to five years. Because both the sentence imposed and the term to be served initially fall within the applicable prison range, this is a compliant sentence. Because each box on the Master Grid and the Drug Grid has a prison range recommendation, a long split is a compliant sentence in any box. If either the number of months that the court imposes or the number of months to be served immediately does not fall within the applicable prison range for that box, such a sentence would not be compliant unless some other principle applies. *See, e.g.*, § 7.7, Departure; § 7.9, Enhancement or Statutory Enhancement § 7.26, Short split Sentences.

7.18 **Mandatory Minimum** -- A mandatory minimum is a minimum sentence prescribed by statute. It is a term of imprisonment that must be imposed and cannot be suspended except for certain offenses where the judge elects to sentence under the Youth Rehabilitation Act. *See* Section 3.6.

7.19 **Master Grid** -- The Master Grid is a chart that contains the sentencing options for all offenses except drug offenses, which are on the Drug Grid. There are 45 boxes on the Master Grid, arranged in nine rows on the vertical axis and five columns on the horizontal axis. The boxes range from Box 9A, the least serious offense and the lowest criminal history score to 1E, the most serious offense and the highest criminal history score. Prison sentences increase and sentencing options decrease as one moves from the bottom to the top and from left to right on the chart.

7.20 **Misdemeanor Offense** -- A misdemeanor offense is any offense that is not a felony offense.

7.21 **New Beginnings or its Functional Equivalent** -- New Beginnings Youth Development Center is the current locked facility for juvenile offenders located in Laurel, Maryland. Its functional equivalent would be facilities such as the former Oak Hill facility, the detention facility on Mt. Olivet Road, and similar juvenile detention facilities in other jurisdictions such as Cheltenham or the Hickey School in Maryland, Beaumont in Virginia, or Spofford in New York.

7.22 **Offense of Conviction** -- The offense of conviction is that offense (charge) for which the defendant was convicted and is facing sentencing. The offense of conviction, not real offense conduct, controls a defendant's placement in an Offense Severity Group. This means that if the indictment charged the defendant with Armed Robbery but the defendant was convicted of Robbery, either at trial or by way of guilty plea, the offense of conviction is Robbery in Master Group 6, not Armed Robbery in Master Group 5, even if strong evidence exists that the defendant actually committed the robbery while armed. While the offense of conviction controls where on the vertical axis (containing the Offense Severity Groups) this charge falls, the court may consider real offense conduct in accordance with Constitutional principles and general sentencing case law when deciding where within a box to sentence the defendant.

7.23 Offense Severity Group -- All felonies have been placed in a group with offenses of like seriousness as measured by the Commission's understanding of typical offenses and historical sentencing data. These groups are arranged along the vertical axis from Master Group 1 (First-Degree Murder) to Master Group 9 (Receiving Stolen Property, etc.) on the Master Grid and from Drug Group 1 (Distribution of a Controlled Substance while Armed) to Drug Group 4 (Attempt Distribution of Marijuana and certain other drugs) on the Drug Grid.

7.24 Out-of-District Offense -- Any state or local criminal offense outside of the District of Columbia, any federal offense or, subject to the special rules in § 2.2.10, any military or territorial offense.

7.25 Prior Conviction, Prior Adjudication -- For purposes of computing criminal history score, a prior conviction or prior juvenile adjudication is any conviction or juvenile adjudication for which a sentence or disposition was imposed on a day prior to the day of sentencing in the instant case, regardless of the order in which the offenses were committed. Sentences or dispositions imposed on the same day as the sentence in the instant case are not prior convictions or adjudications for criminal history scoring purposes.

7.26 Real Offense Conduct -- Real offense conduct is what the defendant actually did. A defendant's placement in an Offense Severity Group is based on the offense of conviction rather than real offense conduct. Real offense conduct can be taken into consideration in determining where within the appropriate box an offender should be sentenced, and in determining whether there is a departure principle that would take him/her out of the box.

7.27 Revived Conviction -- A revived conviction is a felony conviction for which the sentence was completed more than ten years before the commission of the instant offense that would not be counted toward the criminal history score but for the existence of a sentence for another felony in the ten-year window. *See* § 2.2.3. Revived convictions for Master Groups 6 - 9 and all Drug Groups are scored differently than convictions within the ten-year window. *See* § 2.2.2. Juvenile adjudications and misdemeanors are never revived themselves and cannot revive earlier felonies or adjudications.

7.28 Short Split Sentence -- A sentence where 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 up to five years. Absent a departure, it can be used only in the shaded boxes. If the judge suspends execution of all but some period longer than six months, this is a split sentence, but not a short split sentence, and, unless it is a long split sentence, would not be Guidelines compliant. *See* § 7.17, Long Split Sentence.

7.29 Statutory Minimum -- A statutory minimum is a minimum sentence prescribed by statute that is not a mandatory minimum. It is a minimum term of imprisonment that must be imposed but, in contrast to a mandatory minimum, it can be suspended.

7.30 Ten-Year Window -- The ten-year window is the ten years preceding the commission of the instant offense. If, during this period of time, a person was sentenced, released from jail or prison, or finished probation, parole, or supervised release, that conviction is said to be "within the 10-year window" and is counted toward the criminal history score.

Prior felony convictions that are within the 10-year window can revive lapsed felony convictions.

7.31 **Voluntary Guidelines** -- The Guidelines are voluntary. This means that judges have discretion to impose any lawful sentence. There are no sanctions for failing to follow the Guidelines, though the court is required to explain why it imposed a noncompliant sentence. Lawful sentences cannot be appealed regardless of whether they comply with the Guidelines.[30]

7.32 **White or Unshaded Boxes** -- These are the boxes on the Master Grid and the Drug Grid where prison is the only permissible and compliant option, absent a mitigating factor. Altogether, there are 35 white boxes on the Master Grid and six white boxes on the Drug Grid.

[30] *See* footnote 1.

Chapter 8: FREQUENTLY ASKED QUESTIONS

8.1 What should a presentence report writer do if he or she cannot determine whether multiple prior convictions arose out of a single event or multiple events (*See* § 2.2.5)?

It is sometimes difficult to ascertain whether offenses that were sentenced on the same day arose out of a single or multiple events. The pre-sentence report writer will make this determination based on available documentation. The report writer should indicate in the report the source of the information upon which s/he relied to make this determination. If the pre-sentence report writer cannot make this determination, either because there is no supporting documentation or because the available documentation was not clear on the question of single or multiple events, the report writer should apply the rules as if the multiple prior convictions arose out of a single event, score only the most serious offense, *and* note in the presentence report that s/he has done so because s/he did not have sufficient information to determine whether there was more than one event. Upon request by the prosecution, the defense, or the court, the presentence report writer should either provide a copy of, or make available for copying, the supporting documentation s/he consulted on this question.

8.2 How should a presentence report writer score an out-of-District statute that closely matches multiple D.C. Code offenses?

If there is more than one possible D.C. statute that "closely matches" the out-of-District offense, the presentence report writer should always identify all of the matching offenses in a footnote and indicate that the least severe offense was scored.

8.3 How do you score an out-of-District offense for Possession of Implements of Crime or Possession of a Prohibited Weapon when the defendant has a prior felony conviction that, if charged here, would raise the offense from a misdemeanor to a felony?

Following the basic elements test articulated in Rule 2.2.6(4), PIC (D.C. Code § 22-2501) and PPW (D.C. Code § 22-4514) should be scored as misdemeanors unless the statute in the other jurisdiction, like ours, makes the offense a felony if the person previously has been convicted of that offense or of a felony.

8.4 Do the Guidelines apply to indeterminate sentences? If yes, how does it work?

Yes and no. The Guidelines apply to *all* pleas and verdicts entered into on or after June 14, 2004. While the Guidelines were designed primarily for the new determinate system, a small number of pleas or verdicts entered after June 14, 2004, are cases in which an indeterminate sentence must be imposed because the offense was committed before August 5, 2000. (The District of Columbia changed from an indeterminate to a determinate system of sentencing on August 5, 2000. *See* D.C. Code § 24-403.01 (sentencing, supervised release, and good time credit for felonies committed on or after August 5, 2000) (Formerly § 24-203.1)).

If the plea or verdict was entered on or after June 14, 2004, the Guidelines apply regardless of when the offense was committed – i.e., whether the offense was committed before or after August 5, 2000. Conversely, if the plea or verdict was entered before June 14, 2004, the Guidelines do not apply even if the offense was committed after August 5, 2000. In such

cases, the sentencing judge may nonetheless take the Guideline recommendations into consideration.

Questions have arisen regarding how to apply the Guidelines to offenses that were committed before August 5, 2000, where the plea or verdict was entered after June 14, 2004. An example of such a case might be a defendant who was convicted in 1999, the conviction was overturned on appeal, and the defendant was convicted again by plea or verdict on or after June 14, 2004. Another example would be a defendant who committed an offense in 1997, but whose case was not disposed of by plea or verdict before June 14, 2004. In both of these examples, the Guidelines would apply.

To apply the Guidelines to an offense that was committed before August 5, 2000, the court should follow the same procedures as it would for an offense that occurred on or after August 5, 2000, to determine the appropriate box and whether any enhancements or departure principles apply. In designing the Guidelines, the sentencing ranges were determined in part by reference to the **minimum** term of a hypothetical indeterminate sentence, where the minimum was one-third of the maximum term. Therefore, if a sentence for theft in the old system was 2-6 years, the Commission used 2 years to determine what the sentencing range should be in Master Group 8; or if a sentence for aggravated assault while armed in the old system was 8 to 24 years, the Commission used 8 years to determine what the sentencing range should be in Master Group 4.

In applying the Guidelines to an indeterminate sentence, the judge should locate the box on the grid in which the offense/offender falls, and then use any sentence within the prescribed range to set the **minimum** term of the indeterminate sentence. To set the maximum term, the judge would then multiply the minimum term by three (or more). *See* D.C. Code § 24-403 ("the court imposing such sentence shall sentence the person for a maximum period not exceeding the maximum fixed by law, and for a minimum period not exceeding one-third of the maximum sentence imposed"). Assuming no enhancements or departure principles, a sentence for First-Degree Burglary while Armed in Box 3A could be as low as 90 to 270 months or as high 180 months to life. Prison is the only option. Similarly, a sentence for a second CPWL conviction in Box 8C could be as low as 14 to 42 months or as high as 40 to 120 months. The reason for the latter sentence is that a second conviction for CPWL is an enhancement that doubles the top of the box. This means that the minimum number of an indeterminate sentence could theoretically go as high as 64 months. However, the maximum statutory sentence for a second CPWL conviction is 120 months and the minimum sentence cannot be more than 1/3 of the maximum. So the maximum indeterminate sentence a person can receive for a second CPWL is 40-120 months, even though box 8C would otherwise permit a longer indeterminate sentence for a second conviction of CPWL. A short split sentence would be permissible for a second CPWL conviction in Box 8C as long as the minimum term of the imposed sentence (before the split) was between 14 and 40 months and the maximum term of the imposed sentence was at least three times the minimum.

8.5 When calculating criminal history, how do you score prior D.C. Superior Court convictions for "any other felony" or "attempted crime not listed"?

D.C. Superior Court convictions for "any other felony," an imprecise term sometimes found in computerized court records, should be scored as one point, unless the judgment and commitment order or other reliable evidence shows that the conviction was for a two or three point offense. The burden is on the government to produce such evidence. The normal lapsing rules apply.

D.C. Superior Court convictions for “attempted crime not listed” should be scored as a misdemeanor unless the sentence imposed is greater than a year or the judgment and commitment order, or other reliable evidence, shows that the conviction was for an attempt offense that constitutes a felony, in which case it would be scored as “any other felony.” The burden is on the government to produce such evidence. The normal lapsing rules apply.

Chapter 9: EXAMPLES

9.1 Example 1 -- Prison Only

Defendant was found guilty of Burglary II (Master Group 7) for an offense committed on 02/09/2004.

Prior convictions (or Criminal history)	*Date of Sentence*	*Scored?*	*Points*
Assault With Intent to Kill (DC):	04/15/1997	Yes	3 points
PWID w/ armed (DC):	05/20/2002	Yes	2 points
PWID Cocaine (DC):	09/05/2003	Yes	1 point
			6 points

Explanation of Scoring

The assault with intent to kill conviction (Master Group 5) is 3 points. The PWID w/armed (Drug Group 1) is a 2 point offense and the PWID Cocaine is 1 point. All of them were sentenced less than 10 years before the commission of the instant offense. Thus, they all count. This offender's criminal history score is 6, which puts the defendant in column E.

Sentence

Defendant's current offense and criminal history put him in Box 7E. Box 7E is a prison-only box; in other words, the Guidelines recommend that the in/out decision be "in" (prison). The Guidelines grid calls for a prison sentence of 36+ months. Thus, any sentence of 36 months or more would be a compliant sentence.[31]

A sentence of less than 36 months, a short split sentence, or a probation sentence would not be a compliant sentence unless the judge finds a departure principle. Without a departure principle, a sentence of less than 36 months is a noncompliant sentence and the judge should explain why he or she is not following the Guidelines in this case.

9.2 Example 2 -- Probation Permissible

Defendant pled guilty to Carrying a Pistol Without a License (Master Group 8), for an offense committed on 02/09/2004.

Prior convictions	*Date of Sentence*	*Scored?*	*Points*
PWID Heroin (DC):	01/21/1996	Yes	1 point

[31] In order to keep these examples as simple as possible, we have not incorporated the supervised release portion of the sentence. The Guidelines do not change the statutory requirements for supervised release. If the court imposes a term of imprisonment greater than a year, the court must impose the term of supervised release fixed by the statute: 3 or 5 years depending on the maximum sentence for the offense. If the court imposes a prison term of one year or less, the court must choose the supervised release term, which may be up to 3 or 5 years depending on the maximum sentence for the offense. *See* D.C. Code §24-403.01(b).

Explanation of Scoring

PWID Heroin (Drug Group 2) is a 1 point offense, which puts the defendant in Column B.

Sentence

The defendant's current offense and criminal history put him in box 8B, in which probation, a short split sentence or a prison sentence are permissible. The judge may impose a prison sentence anywhere in the range of 10 to 28 months, suspend imposition of all of it (and the accompanying 3 years of supervised release) and place the defendant on probation for any period up to 5 years, the maximum allowed by statute. The judge may also sentence the defendant to a prison sentence between 10 and 28 months, suspend execution of all but six months or less to be followed by a period of probation up to 5 years. Or the judge can sentence the defendant to a prison sentence between 10 and 28 months. All of these options would be compliant.

A prison sentence of less than 10 months or greater than 28 months or a split other than a short split or a long split would not be a compliant sentence unless there is (a) a statutory enhancement or (b) a departure principle. Without an enhancement or a departure principle, a prison-only sentence of less than ten months or more than 28 months is a noncompliant sentence and the judge should explain why he or she is not following the Guidelines in this case.

9.3 Example 3 -- Short Split Sentence Permissible

Defendant was found guilty of Possession with Intent to Distribute (marijuana) while armed (Drug Group 1), for an offense committed on 02/09/2004.

Prior convictions	*Date of Sentence*	*Scored?*	*Points*
PWID Marijuana (misdemeanor)(DC):	06/07/2002	Yes	¼
PWID Cocaine (DC):	04/05/2003	Yes	1
			1¼

Explanation of scoring

This offender's criminal history score is 1¼. The PWID marijuana conviction is a misdemeanor and is worth ¼ points. The PWID Cocaine conviction (Drug Group 2) is 1 point. The defendant is thus in column B.

Sentence

The defendant's current offense and criminal history put him in Drug Box 1B, which is a short split permissible box. The judge may impose a short split sentence. For a short split sentence to be compliant, the judge must impose an incarceration sentence that is within the prison range (36 – 78 months for Drug Box 1B) and suspend execution of all but six months or less. If, however, the judge decides to impose a straight incarceration sentence, the Guidelines grid calls for a prison sentence of 36 to 78 months. Thus, any sentence to incarceration between 36 and 78 months (including a long split) would be a compliant sentence, as would a short split sentence.
A prison-only sentence greater than 78 months would not be compliant unless there is (a) a statutory enhancement or (b) a departure principle. Similarly, a prison-only sentence of less than 36 months or a probation sentence would not be compliant unless there is a departure principle.

Without a departure principle, probation only or a prison-only sentence of less than 36 months or more than 78 months or a split other than a short split or a long split is a noncompliant sentence and the judge should explain why he or she is not following the Guidelines in this case.

9.4 Example 4 -- Criminal History Issues: Adult Lapse and Misdemeanor Caps

Defendant pled guilty to a Assault with a Dangerous Weapon (Master Group 6), for an offense committed on 02/09/2004.

Prior Convictions	*Date of Sentence*	*Max. Sentence*	*Scored?*	*Points*
UUV:	08/17/1980, sentence ended 10/20/1984	5 Years	No	
Burglary II:	05/03/1990, sentence ended 01/26/1992	5 Years	No	
Possession of heroin:	07/06/1992	180 Days	No	
Possession of marijuana:	06/16/1999	180 Days	Yes	¼
Simple Assault:	04/29/2000	180 Days	Yes	¼
Failure to Register Dangerous Dog (§§ 8-1904)	09/09/2001	90 Days	Yes	¼
2nd Degree Theft:	01/12/2001	180 Days	Yes	¼
Shoplifting:	08/10/2002	90 Days	Yes	¼
Disclosure of Juvenile Info (§16-2336)	10/30/2002	90 Days	Yes	¼
Possession of marijuana:	12/17/2002	180 Days	Yes	¼
Possession of Drug Paraphernalia	12/01/2008	30 Days	No	0
Failure to Appear for Jury Duty (§11-1907 (b))	01/06/2009	7 Days	No	0
Total Points				1*

Explanation of Scoring

The first three convictions are beyond the 10-year window, and have lapsed. They cannot be revived by the later convictions, because all of those are misdemeanors. Hence, the first three convictions do not count towards the criminal history score.

There are nine non-lapsed misdemeanor convictions. Misdemeanors with a maximum penalty of 90 days or more are scored as ¼ point. Misdemeanors with a maximum penalty of less than 90 days are not scored. Thus, the eighth and ninth misdemeanor convictions in this example for offenses punishable by only 30 days or 7 days, are not scored. Note that the maximum imprisonment term for a misdemeanor dictates its scoring, not how it is codified. Thus, Failure to Register a Dangerous Dog (in Title 8) and Shoplifting (in Title 22) are scored alike.

*Scoring of misdemeanors is subject to a cap: only four are scored for a total of 1 point. In this case, there are seven ¼ point convictions but only four of these convictions will count. The total score therefore is (4 x ¼) or 1 point.

Sentence

The defendant's current offense and criminal history put him in Master Box 6B, which is a prison-only box. The prison range is between 24 and 66 months. A compliant sentence would be a prison sentence of no less than 24 months and no greater than 66 months. The lapsed criminal convictions did not count towards criminal history but the judge may consider them when deciding where within the prison range to sentence the defendant. The lapsed convictions are not an aggravating factor that would allow a departure from the prison range, but may raise the top of the box if enhancement papers have been filed.

A prison sentence of less than 24 months probation, or a short split, or a prison sentence of more than 66 months would not be compliant unless the judge finds a departure principle. Without a departure, a sentence of less than 24 months or more than 66 months is a noncompliant sentence and the judge should explain why he or she is not following the Guidelines in this case.

9.5 Example 5 -- Criminal History Issues: Adult Revival and Out-of-District Convictions

Defendant was found guilty of Distribution of Heroin (Drug Group 2), for an offense committed on 02/09/2004.

Prior Convictions	*Date of Sentence*	*Scored?*	*Points*
Receiving Stolen Property (felony):	11/22/1975	Yes	½
Possession of Heroin:	02/05/1982	No	0
PWID Cocaine (DC):	08/17/1983; sentence ended 9/17/1986	Yes	½
Attempted Murder (PA):	04/15/1997	Yes	3
			4 pts

Explanation of Scoring

The Receiving Stolen Property, Possession of Heroin and PWID Cocaine conviction are beyond the 10-year window and so have lapsed. The lapsed possession of heroin conviction is a misdemeanor and can never be revived. The non-lapsed felony conviction in 1997, however, revives the lapsed felony convictions. The revived Receiving Stolen Property conviction and the revived PWID cocaine conviction are ½ points each. The attempted murder conviction in Pennsylvania most closely matches DC's assault with intent to kill; therefore, it would be a Master Group 5 offense worth 3 criminal history points. The final criminal history score is 4 points, putting this defendant in column D.

Sentence

The defendant's current offense and criminal history put him in Drug Box 2D, which is a short split permissible box. Thus the judge may impose either a short split or a prison sentence (including a long split). In either case, the judge must impose a prison sentence that is within the prison range (24 – 48 months for Drug Box 2D). For a short split sentence, the court may then suspend execution of all but six months or less. Thus, any sentence to incarceration between 24 and 48 months would be a compliant sentence, as would a short split sentence.

A prison sentence of less than 24 months or more than 48 months (including a long split), or a prison sentence between 24 and 48 months ESS all and placing the defendant on probation would not be compliant unless the judge finds (a) a statutory enhancement, or (b) a departure principle. Without an enhancement or departure principle, a prison sentence of less than 24 months or more than 48 months or probation is a noncompliant sentence and the judge should explain why he or she is not following the Guidelines in this case.

9.6 Example 6 -- Criminal History Issues: Juvenile Adjudications

The defendant pled guilty to Aggravated Assault (Master Group 6), offense committed on 02/09/2014.

Prior Adjudication	*Date of Sentence*	*Scored?*	*Points*
2nd Degree Sex Abuse (juv.)(DC):	01/02/2006	No	
released from Oak Hill,	02/03/2008	No	0 points
Unregistered Firearm (juv)(DC):	05/06/2009	No	0 points
Armed Robbery (juv)(DC):	09/08/2009	Yes	
released from New Beginnings	03/04/2011	Yes	1 ½ points
PWID Cocaine (juv)(DC):	04/05/2011	Yes	½ point
Carjacking (juv)(DC):	07/08/2011	Yes	
released from New Beginnings	11/30/2013	Yes	1 ½ points
			3 ½ points
	but cap of 1½ except for Master Groups 1-5		3 pts

Explanation of Scoring

The 2nd degree sex abuse adjudication was over 5 years ago. This adjudication has lapsed and cannot be revived. Unregistered firearm is a misdemeanor offense and juvenile misdemeanors are not counted towards criminal history regardless of when they were committed. The armed robbery adjudication is 1½ points, PWID cocaine is ½ points and carjacking is 1½ points. Juvenile adjudication criminal history points normally cap at 1½points, except that the armed robbery and the carjacking offenses are both Master Group 5 offenses and therefore not subject to the juvenile cap. The PWID cocaine offense is subject to the cap. Thus, the criminal history for this defendant is 3 points, 1½ each from the armed robbery and the carjacking, but, practically speaking, no points from the PWID cocaine because of the cap. Three points puts the defendant in column C.

Sentence

The defendant's current offense and criminal history put him in Master Box 6C, which is a prison-only box. The prison sentence is 30 to 72 months.

A prison sentence of less than 30 months or more than 72 months, a short split sentence, or probation would not be compliant unless the judge finds (a) a statutory enhancement, or (b) a departure principle. Without an enhancement or departure principle, a prison sentence of less

than 30 months or more than 72 months or probation is a noncompliant sentence and the judge should explain why he or she is not following the Guidelines in this case.

9.7 Example 7 -- Mitigating Factor

Defendant was found guilty of Armed Robbery (Master Group 5), for an offense committed on 02/09/2014.

Prior Convictions	*Date of Sentence*	*Scored?*	*Points*
Armed Robbery (DC):	09/03/2010	Yes	3 points

Explanation of Scoring

This offender's criminal history score is 3 for the prior armed robbery conviction. Three points puts the defendant in column C.

Sentence

The defendant's current offense and criminal history put him in Master Box 5C, which is a prison-only box. The Guidelines grid calls for 60 to 108 months. Thus, any prison sentence between 60 and 108 months would be a compliant sentence. However, this defendant substantially assisted law enforcement in the apprehension of other offenders who, along with the defendant, were involved in a series of home invasions. As a result, the judge can sentence below the lower number of months in the sentencing range (60 months) by stating that he or she found a substantial and compelling mitigating factor (in this case, Mitigating Factor #7, providing substantial assistance to law enforcement) to depart downward. If the judge applies a Guidelines mitigating factor, this downward departure is a compliant sentence. The Guidelines make no recommendation as to how far downward the judge should depart, but encourage judges to take into account proportionality to other defendants and other offenses in determining how far below the minimum sentence they should go.

9.8 Example 8 -- Aggravating Factor

Defendant pled guilty to Aggravated Assault (Master Group 6), for an offense committed on 02/09/2014, victim was a disabled person.

Prior Convictions	*Date of Sentence*	*Scored?*	*Points*
Simple Assault (DC):	04/02/2010	Yes	¼ point
Simple Assault (DC):	09/10/2011	Yes	¼ point
PWID Cocaine (DC):	12/03/2012	Yes	1 point
			1 ½ points

Explanation of scoring

This offender's criminal history score is 1½. The only felony conviction is PWID Cocaine, which is a 1 point offense. The remaining two offenses are misdemeanors, which count for ¼

points each. All of them are in the 10-year window. A score of 1½ puts the defendant in Criminal History column B.

Sentence

The defendant's current offense and criminal history put him in Master Box 6B, which is a prison-only box with a sentencing prison range of 24 to 66 months. Thus, any prison sentence between 24 and 66 months would be a compliant sentence. However, the judge found Aggravating Factor #2, that the defendant assaulted a victim who was "…particularly vulnerable due to age or reduced physical or mental capacity." As a result, the judge can sentence above the higher number of months in the sentencing range (66 months) by stating that he or she found a substantial and compelling aggravating factor to depart upward. If the judge applies a Guidelines aggravating factor, this upward departure is a compliant sentence. The Guidelines make no recommendation as to how far upward the judge should depart but encourage judges to take into account proportionality to other defendants and other offenses in determining how far above the maximum sentence they should go.

9.9 Example 9 -- Enhancements

Defendant was found guilty of Distribution of Cocaine in a Drug Free Zone for an offense committed on 02/09/14.

Prior Convictions	*Date of Sentence*	*Scored?*	*Points*
Distribution of Cocaine	08/24/1999		
Sentence finished	01/09/2004	No	0 points

Explanation of Scoring

The sentence for defendant's only prior conviction was completed more than ten years before the commission of the instant offense. Therefore, for scoring purposes, it is not counted and the defendant has zero criminal history points.

Sentence

Defendant's current offense and criminal history score put him in Drug Box 2A, in which the court may impose a prison-only sentence (including a long split), a short split sentence, or straight probation. The prison range in Drug Box 2A is 12 to 30 months. In this case, there are two factors that can raise the upper number. First, the current offense is distribution of cocaine in a drug free zone. Under D.C. Code § 48-904.07a(b), the maximum sentence for this offense is twice that for simple distribution of cocaine. Therefore, the upper number in the prison range is raised to 60 months (2 x 30 months = 60 months). Second, if enhancement papers were filed in this case under D.C. Code § 48-904.08, the maximum sentence for a second drug offense is twice that of the first. The 8/24/89 conviction for distribution of cocaine that was not counted for scoring purposes can nonetheless be used for enhancement purposes. Therefore, the upper number in the prison range is raised to 60 months (2 x 30 months = 60 months). In this case, a prison sentence of 12 to 60 months, a short split sentence, or straight probation would be compliant.

Note: The fact that there are two enhancements in this example does not mean that the upper number is raised twice. In situations where one enhancement is greater than the other, the court would have the option of applying the higher of the two.

9.10 Example 10 -- Concurrent sentences

Defendant was found guilty of two offenses: Unauthorized Use of a Vehicle (Master Group 8) and Possession of a Prohibited Weapon (Master Group 9). Both offenses were committed on 02/09/2004.

Prior Convictions	*Date of Sentence*	*Scored?*	*Points*
Bail Reform Act (felony)	06/17/1998	Yes	1 points

Explanation of scoring

Defendant has one prior conviction for a 1-point offense. A score of 1 point puts the defendant in Criminal History column B.

Sentence

The defendant's current offenses and criminal history put him in Master Box 9B and Box 8B. These light gray boxes indicate that probation is a permissible sentence, as is a short split or a straight prison sentence. First, the judge should make the in/out decision. If the judge decides not to impose a term of probation but to sentence the defendant to a term of incarceration, the prison range for the PPW is 3 to 16 months and for the UUV is 10 to 28 months. The judge should impose a sentence for EACH offense that is within the prison range for that offense. Because these are nonviolent crimes, multiple offenses, one transaction (a search of the car incident to the arrest for the UUV found a prohibited weapon), the Guidelines rule is that these sentences should be run concurrently. Unless the judge finds that the resulting sentence would be too lenient (Aggravating Factor #10), these sentences must be imposed concurrently. It also would be a compliant sentence to give a term of probation for each offense or a short split sentence.

9.11 Example 11 -- Consecutive sentences

Defendant pled guilty to two counts of Armed Robbery (Master Group 5), for separate offenses that were committed on 02/09/04.

Prior Convictions

No prior convictions. This offender's criminal history score is zero, which puts the defendant in criminal history column A.

Sentence

The defendant's current offenses and criminal history put him in Master Box 5A, which is a prison-only box. The prison range is 36 to 84 months. The judge should impose a sentence for EACH offense that is within the prison range for that offense. The defendant was convicted of

two crimes of violence, multiple victims, multiple transactions (wielding a knife, the defendant had robbed one pedestrian and then a few minutes later robbed another pedestrian.) The Guidelines rules call for consecutive sentences in such cases. Unless the judge finds that the resulting sentence would be too harsh (excessive) (Mitigating Factor #9), these sentences must be imposed consecutively.

9.12 Example 12 -- Criminal History counts for one offense, not for another

Defendant was found guilty of one count of Armed Robbery (Master Group 5), for an offense committed on 02/09/04, and one count of First-Degree Burglary while armed [BI w/a] (Master Group 3) for an offense that was committed on 3/17/03. Sentencing on the same day.

Prior convictions

		Armed Robbery 2/9/2004		Burglary I while armed 3/17/2003	
	Date of Sentence	*Scored/Points*		*Scored*	*Points*
Armed robbery	08/23/1974	No	0	Yes	3 points
Attempted robbery	04/07/1979	No	0	Yes	½ points
Robbery	11/23/1984	No	0	Yes	
sentence ended	07/29/1993	No	0	Yes	2 points
			0 points		5 ½ points

Explanation of scoring

The sentences in all of the defendant's prior cases were completed beyond the 10-year window in the armed robbery case. In other words, they were completed more than ten years before he committed the armed robbery on 02/09/04. Therefore, none of them count in calculating the defendant's criminal history score for that offense. However, the sentence for the 11/23/84 robbery was not completed until 07/29/93, within the 10-year window or less than ten years prior to the commission of the 03/17/03 BI w/a. It is therefore counted fully at 2 points (Master Group 6). The same case revives the older felony convictions, but one of them counts for half, ½ point for the attempted robbery (Master Group 8) and the other counts fully, 3 points for the Armed Robbery (Master Group 5).

This offender's criminal history score is 5 ½ points for the BI w/a while armed, which puts the defendant in criminal history column D. The defendant's criminal history score is zero points for the armed robbery, which puts the defendant in criminal history column A.

Sentence

The defendant's current offenses and criminal history put him in Master Box 5A for the armed robbery and Master Box 3D for the first-degree burglary while armed. Both of these boxes are prison-only boxes. The prison range for Box 5A is between 36 and 84 months. The prison range for box 3D is between 126 and 216 months. Because these are crimes of violence that were committed on separate occasions, they must be sentenced consecutively. Thus, the minimum possible aggregate sentence would be 162 months (36+126) and the maximum possible aggregate sentence would be 300 months (84+216).

A prison sentence of less than 162 months (13½ years) or more than 300 months (25 years), a short split sentence, or probation would not be compliant unless the judge finds (a) a statutory enhancement, or (b) a departure principle. Without an enhancement or departure principle, a prison sentence of less than 162 months or more than 300 months or probation is a noncompliant sentence and the judge should explain why he or she is not following the Guidelines in this case.

If enhancement papers had been filed in this case, the offenses that did not count for the criminal history score in the armed robbery case could, nonetheless, count as two prior crimes of violence that would subject the defendant to a maximum sentence of life without release under D.C. Code § 22-1804a(a)(2). Under these circumstances, any aggregate sentence between 162 months and LWOR would be compliant.

9.13 Example 13 -- Order of sentencing

A co-defendant of the offender in Example 12 was found guilty of one count of Armed Robbery (Master Group 5), for an offense committed on 02/09/04, and one count of First-Degree Burglary while armed [BI w/a] (Master Group 3) for an offense that was committed on 3/17/03. Sentencing in the Armed Robbery case was the day before sentencing in the BI w/a case.

Prior convictions

AR – no prior convictions
BI w/a – the AR is a prior conviction, 3 points

Explanation of scoring

At the time the AR was sentenced, the defendant had no prior convictions. The BI w/a was still pending sentencing even though the BI w/a was committed before the AR was. Because the AR was sentenced before (on a different day) the BI w/a, it is a prior conviction for the BI w/a and counts for 3 points.

The defendant's criminal history score is zero points for the armed robbery, which puts him/her in criminal history column A. This defendant's criminal history score is 3 points for the first-degree burglary while armed, which puts him/her in criminal history column C.

Sentence

The defendant's current offenses and criminal histories put him in Master Box 5A for the armed robbery and Master Box 3C for the first-degree burglary while armed. Both of these boxes are prison-only boxes. The prison range for Box 5A is between 36 and 84 months. The prison range for box 3C is between 114 and 204 months. The rule requiring consecutive sentences applies only to offenses sentenced on the same day. *See* § 6.1. These cases were sentenced on different days. Similarly, the rule requiring consecutive sentences applies to offenses that were <u>committed</u> while the defendant was under sentence in another case. *Id.* Therefore, in sentencing the BI w/a, the court has discretion to determine whether it should run consecutively to or concurrent with the armed robbery.

9.14 Example 14 -- Rule 11(e)(1)(C) plea

Defendant pled guilty to ADW (Master Group 6) for an offense committed on 02/09/2004.

Prior convictions (or Criminal history)

None.

Explanation of scoring

N/A.

Sentence

The government and the defendant agreed to a Rule 11(e)(1)(C) plea. They agreed that if the defendant pled guilty to ADW, the sentence would be 24 months, ESS all, and 3 years probation. The parties also agreed that the defendant would spend the first six months in a halfway house as a condition of probation. *See* D.C. Code § 16-710(b-1). The defendant's case falls in box 6A (dark gray), which permits a short split sentence. However, if a short split sentence instead of a probation sentence were imposed, the initial period of incarceration of six months or less would be controlled by the Bureau of Prisons, which cannot send a person to a halfway house at the beginning of a sentence. By agreeing to six months in a halfway house as a condition of probation, the parties could ensure that the defendant would be sent to a halfway house in the District of Columbia so that he or she could maintain his or her employment. Box 6A does not permit an entirely suspended sentence with probation (absent a departure based on a mitigating factor). However, if the court accepts the Rule 11 (e)(1)(C) plea, the court may (in fact, must) impose the agreed-upon sentence of 24 months, ESS all, three years probation with the first six months in a halfway house. This is a compliant sentence. The judge need explain only that the sentence was imposed pursuant to a Rule 11 (e)(1)(C) plea. The judge, of course, does not have to accept an 11(e)(1)(C) plea agreement.

9.15 Example 15 -- Long Split

Defendant pled guilty to ADW (Master Group 6) for an offense committed on 02/09/2004.

Prior convictions	*Date of Sentence*	*Scored?*	*Points*
Possession (heroin) (DC):	03/08/1998	Yes	¼ point
Possession drug paraphernalia (DC):	06/11/2000	Yes	¼ point
Possession (cocaine) (DC):	01/10/2001	Yes	¼ point
Uttering (DC)	09/20/2002	Yes	1 point
			1¾ points

Explanation of scoring

The possession charges are all misdemeanors and are counted ¼ points each. The Uttering (Master Group 9) is 1 point.

Sentence

The defendant's current offense and criminal history put him in Master Box 6B. Box 6B is a prison-only box. For any number of reasons, the judge might find that a split sentence is appropriate in the instant case, perhaps "to have more time hanging over the defendant's head" than if the judge imposed a straight prison sentence followed by supervised release. The judge could impose a "long split." In a long split, both the sentence the judge imposes and the time to be served initially must fall within the prison range in the appropriate box. The prison range for Box 6B is 24 to 66 months. Thus, the judge could impose a sentence of 60 months and 3 years of supervised release and suspend all but 24 months of the prison term and the period of supervised release and place the defendant on probation for five years. Because both prison terms fall within the range, it is a compliant sentence, even in a prison-only box.

Note: It would not be permissible for the judge to impose a sentence of 60 months and suspend execution of all but 12 months since, in a long split, both sides have to be in the box and 12 months is below the prison range in Box 6B. It would also not be permissible for the judge to impose a sentence of 72 months and suspend execution of all but 24 months since 72 months is above the prison range in Box 6B

Note: Because prison is an option in every box on both grids, a "long split" is also a compliant option in every box as well, as long as the sentence imposed and the time to be served initially (the time left unsuspended) fall within the box's prison range.

9.16 Example 16 -- Multiple counts; merger; mandatory minimums

Defendant was found guilty of armed robbery (operable firearm) (Master Group 5); 2 counts of APO with a dangerous weapon (Master Group 6), two counts of ADW (Master Group 6), 3 counts of PFCOV (Master Group 5), and CPWL (Master Group 8) in a case where he robbed a store clerk at gunpoint and shot at two plain clothes police officers who spotted the defendant identified themselves, and ordered him to stop.

Prior convictions	*Date of Sentence*	*Scored?*	*Points*
Distribution (cocaine) (DC):	07/23/2001	Yes	1 point

Explanation of scoring

Distribution of cocaine is a Drug Grid 2 offense which carries 1 point. This would put defendant in column B.

Sentence

Both Master Box 5B and Master Box 6B are prison only boxes. Master Box 8B is a prison, short split, or probation permissible box. There are three victims (store clerk and two police officers) regardless of whether this is considered to be one event or two events (armed robbery as one; shooting of police as two). Armed robbery, APO w/ dangerous weapon, and ADW are violent crimes. Therefore, one of these offenses for each victim must be sentenced consecutively to one offense for each of the others. Master Box 8B is a prison, short split, or probation permissible box. Armed robbery (operable firearm), APO while armed, and PFCOV are in Master Box 5B

which has a prison range of 48 to 96 months. However, all these offenses have a mandatory minimum of 60 months. CPWL is not a crime of violence.

The Court of Appeals instructs that a sentence should be given for each offense even though ultimately some of the above offenses will likely merge: ADW into APO w/ dangerous weapon and at least the two of the three counts of PFCOV for the shooting of the police officers. The possible sentencing options are as follows:

Armed robbery (operable pistol)	60 -- 96 months	MM
APO w/ dangerous weapon (officer 1)	60 -- 96 months	MM
ADW (officer 1)	24 -- 66 months	
APO w/ dangerous weapon (officer 2)	60 -- 96 months	MM
ADW (officer 2)	24 -- 66 months	
3 counts PFCOV (one for each of the above)	60 -- 96 months	MM
CPWL	6 -- 24 months	(or probation or short split)

Applying the consecutive/concurrent rules, the lowest possible aggregate sentence that could be given in this case is:

(1)(a)	Victim 1: Armed robbery (operable pistol)	60 months
(1)(b)	Victim 2: APO while armed for first officer concurrent with ADW and ADW (which will merge)	60 months
(1)(c)	Victim 3: APO while armed for second officer concurrent with ADW (which will merge)	60 months
		_____
(2)	(1)(a), (b), and (c) consecutive to each other	180 months
(3)	PFCOV for APO while armed of second officer (60 months) concurrent with PFCOV for APO w/ dangerous weapon of first officer (60 months) which will merge, concurrent with PFCOV for AR (60 months), which will not merge if different events, and concurrent with (2)	--
(4)	CPWL (6 months) concurrent with (2)	--

Applying the consecutive/concurrent rules, the highest possible aggregate sentence that could be given in this case is:

(1)	Armed robbery	96 months
(2)	APO w/ dangerous weapon merges w/ADW	96 months
(3)	APO w/ dangerous weapon merges with ADW	96 months
(4)	PFCOV for armed robbery	96 months
(5)	PFCOV for APO while armed of second officer (96 months) concurrent with PFCOV for APO w/ dangerous weapon of first officer ((96 months) which will merge	96 months
6)	CPWL	28 months
(7)	(1) through (6) consecutive to each other	508 months

9.17 Example 17 -- Indeterminate Sentences for Pleas and Verdicts entered after June 14, 2004

Defendant's 1999 convictions were reversed on appeal. In a retrial, he was found guilty on August 3, 2004, of one count of armed robbery (operable pistol) and one count of PFCOV.

Prior convictions	*Date of Sentence*	*Scored?*	*Points*
Distribution of heroin	04/23/1995	Yes	1 point
First degree theft	11/08/1997	Yes	1 point

Explanation of scoring

Distribution of heroin is a Drug Group 2 offense that carries one point. First degree theft is a Master Group 8 offense that carries 1 point.

Sentence

With two criminal history points, both of defendant's convictions fall into Master Box 5C. Master Box 5C is a prison only box. The PFCOV conviction can be sentenced either consecutively or concurrently to the armed robbery. There is a mandatory minimum of 60 months for each of the offenses. The prison range in box 5C is 60 to 108 months.

Because this is an "old law" case, the court must impose an indeterminate prison sentence in which the minimum is no greater than one-third of the maximum. The Commission used the minimum sentences imposed in the old system (as the amount a person was required to serve) to construct the Guideline prison ranges. For an indeterminate sentence to be Guidelines compliant, the minimum prison term must fall with the box and the maximum should be computed by multiplying by 3 or more (not to exceed the statutory maximum).

The lowest possible aggregate sentence that the court could impose in this case is 60 to 180 months (5 to 15 years), by imposing 60-180 months for each offense and running them concurrently. Sixty months is both the mandatory minimum and the minimum prison sentence in Box 5C. The maximum is calculated by multiplying 60 months by 3, so the sentence will be 60 to 180 months, with a mandatory minimum of 60 months.

The highest possible aggregate sentence that the court could impose in this case is 168 months to 504 months (14 to 42 years). The maximum Guideline sentence for the armed robbery is 108 to 324 months (9 to 27 years). The maximum statutory sentence for PFCOV is 60 to 180 months (5 to 15 years). Sentencing them consecutively would yield an aggregate maximum sentence of 168 to 504 months (14 to 42 years). It does not matter that Box 5C would permit a sentence of 108 to 324 for the PFCOV since the offense is statutorily capped at 60 to 180 months (5 to 15 years).

Note: The Guidelines apply only to pleas and verdicts entered on or after June 14, 2004. If a defendant is sentenced or resentenced after this date for a crime committed before August 5, 2000, and the plea or verdict was entered *before* June 14, 2004, the Guidelines do not apply. The court may, however, take them into consideration.

Appendix A -- MASTER GRID

June 2014

		Criminal History Score				
	Ranking Group Most Common Offenses	0 to ½ **A**	¾ to 1¾ **B**	2 to 3¾ **C**	4 to 5¾ **D**	6 + **E**
3 Points*	**Group 1** 1st degree murder w/armed 1st degree murder	**360 - 720**	**360 - 720**	**360 - 720**	**360 - 720**	**360 +**
3 Points*	**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 +**
3 Points*	**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 +**
3 Points*	**Group 4** Aggravated assault w/armed Voluntary manslaughter	**48 - 120**	**60 - 132**	**72 - 144**	**84 - 156**	**96 +**
3 Points*	**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 +**
2 Points*	**Group 7** Burglary II 3rd degree sex abuse Negligent homicide Assault w/I to commit mayhem Attempt 2nd degree sex abuse Unlawful poss. of a firearm (prior fel.)[32]	**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 +**
1 Point*	**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 only.

Dark shaded boxes – prison or short split permissible.

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

[32] *See* footnote 44

Appendix B -- DRUG GRID

June 2014†

		Criminal History Score				
	Ranking Group Most common offenses	0 to ½ **A**	¾ to 1¾ **B**	2 to 3¾ **C**	4 to 5¾ **D**	6 + **E**
2 Points*	**Group 1** Distribution w/a (any drug) PWID w/a (any drug)	**30-72**	**36-78**	**42-84**	**48-90**	**54+**
1 Point*	**Group 2** Distribution or PWID (schedule I or II narcotic/ abusive drugs)	**12-30**	**16-36**	**20-42**	**24-48**	**28+**
	Group 3 Distribution or PWID (except schedule I or II narcotic or abusive drugs) Attempt distribution or attempt PWID (schedule I or II narcotic/ abusive drugs) Possession of Liquid PCP	**6-18**	**10-24**	**14-30**	**18-36**	**22+**
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 only.

Dark shaded boxes – prison or short split permissible.

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

† The previous version of the Drug Grid can be found in Appendix J under the 2011 Amendments to the Guidelines.

APPENDIX C

SENTENCING CHART FOR FELONIES COMMITTED ON OR AFTER 5:00 p.m., AUGUST 11, 2000 ARRANGED IN ALPHABETICAL ORDER

Use this Appendix to find the offense severity group, the maximum prison sentence and amount of supervised release the judge may/must impose initially under the Sentencing Reform Amendment Act of 2000. In some cases, the maximum sentence will depend on factors set forth in the statute. Please refer to the statute. Appendix C-I contains the same information in Code Section number order. The offense severity is blank for enhanced versions of offenses. Those have the same offense severity score as the unenhanced offense. *See* Chapter 4 (Adjusting the Box).

ABBREVIATIONS:

"*"	means that an offense is a Class A felony. A person convicted of such an offense may be imprisoned not more than 5 years upon revocation of supervised release. *See* D.C. Code 24-403.01 (b)(7)(A).
"e"	means that the offense is subject to a statutory enhancement specific to the offense that raises the top of the Guidelines range. *See* Chapter 4 and Appendix H.
"M"	in the minimum column means mandatory minimum, a minimum that generally cannot be suspended. *See* Section 3.6.
"or SOR"	in the Supervised Release column means that the offense is necessarily a registration offense under D.C. Code § 22-4001[33] and that the judge may impose a greater term of supervised release up to the maximum period of sex offender registration to which the defendant is subject (ten years or life). *See* D.C. Code §§ 22-4001 (6), (8), 24-403.01 (b)(4).
"not < X"	in the minimum column means that if the judge imposes a sentence of imprisonment, he or she cannot impose a sentence of less than X. The judge may impose a sentence of X (or more) and MAY suspend execution of part or all of it.
"(30/40/60)"	that appears under "LWOR" [life without release] for several offenses and under "40" for carjacking means that the judge cannot impose a sentence in excess of the number in parentheses unless the jury finds an aggravating circumstance beyond a reasonable doubt.
"same term/fine"	means the same term or fine as the underlying or predicate offense.
"x the term/fine"	means the preceding number times the term or fine for the underlying offense.
"V" or "D"	in the Violent/Dangerous column means a crime of violence pursuant to D.C. Code § 23-1331(4) or a dangerous crime pursuant to D.C. Code § 22-4501(2).
"w/a"	means an offense subject to D.C. Code § 22-4502 imposing additional penalties for committing a crime of violence while armed. *See Hager v. United States*, 791 A.2d 911 (D.C. 2002).

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[33]Other offenses are registration offenses if the victim was a minor or if they involve a sexual act or sexual contact without consent or with a minor, or assaulting or threatening another with intent to commit a sexual act or sexual contact, or causing the death of another before, during or after such an act. *See* D.C. Code § 22-4001 (8) (C) - (F). Those do not have "or SOR" in the Supervised Release column.

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Accessory After the Fact	22-1806	[34]	½ the term						½ the fine
Aiding & Abetting	22-1805		Same as principal						Same as principal
Aggravated Assault w/a*	22-404.01(b) 22-4502	M 4	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Aggravated Assault	22-404.01(b)	M 6	10	2	8	3		V	25,000
Aggravated Assault -- Attempt	22-404.01(c)	M 8	5	2	3	3		V	12,500
Aggravating Circumstances	24-403.01(b-2)		LWOR	5	LWOR	5			125,000
Animal Fighting, Engaging in	22-1015(a)	M 9	5	2	3	3			12,500
Armor Piercing Ammunition	7-2507.06(3)	M 7	10	2	8	3	M 1		25,000
Arson	22-301	M 6	10	2	8	3	not < 1	V	25,000
Arson -- Own property w/ intent to defraud	22-302	M 6	15	2	13	3		V	37,500
Assault with a Dangerous Weapon (ADW)	22-402	M 6	10	2	8	3		V	25,000
Assault on Police Officer (APO) w/a*	22-405(c) 22-4502	M 5	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Assault on Police Officer (APO)	22-405(c)	M 7	10	2	8	3		V	25,000

[34] *See* §§ 2.1 and 2.2.2 for the severity level and scoring of accessory convictions.

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Assault on Police Officer (APO) w/ deadly weapon -- 2nd+ offense or prior felony	22-405(c) 24-403.01(f)(1)	M 7e	10	2	8	3	not < 1	V	25,000
Assault with Intent to Kill or Poison w/a*	22-401 22-4502	M 3	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Assault with Intent to Kill or Poison	22-401	M 5	15	2	13	3	not < 2	V	37,500
Assault with Intent to Rob w/a*	22-401 22-4502	M 5	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Assault with Intent to Rob	22-401	M 6	15	2	13	3	not < 2	V	37,500
Assault with Intent to 1º or 2º Sexual Abuse or Child Sex Abuse w/a*	22-401 22-4502	M 5	30	5	30	5 or SOR	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Assault with Intent to 1º or 2º Sexual Abuse or Child Sex Abuse	22-401 24-403.01(e)	M 6	15	2	13	3 or SOR	not < 2	V	37,500
Assault with Intent to Commit any other Felony w/a*	22-403 22-4502	M 5	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Assault with Intent to Commit any other Felony	22-403	M 8	5	2	3	3		V	12,500
Assault with Intent to Commit Mayhem w/a*	22-402 22-4502	M 5	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Assault with Intent to Commit Mayhem	22-402	M 7	10	2	8	3		V	25,000

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Assault with Significant Injury	22-404(a)(2)	M 8	3	1	2	3		V	12,500
Assault with Significant Injury w/a*	22-404(a)(2) 22-4502	M 6	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Attempt Crime of Violence w/a* (Unless otherwise specified)	22-1803	[35]	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Attempt Crime of Violence unarmed (Unless otherwise specified)	22-1803	M 8	5	2	3	3		V	12,500
Bad Checks $1000+	22-1510	M 9	3	1	2	3	not < 1		12,500
Bail Reform Act (BRA) violation	23-1327(a)(1)	M 9	5	2	3	3	not < 1		12,500
Bias-Related Crime	22-3703		1½ x the term						1 ½ x the fine
Bigamy	22-501	M 8	7	2	5	3	not < 2		25,000
Blackmail with threats of violence w/a*	22-3252 22-4502	M 8	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Blackmail	22-3252	M 9	5	2	3	3		V[36]	12,500
Breaking and Entering -- Vending Machines	22-601	M 9	3	1	2	3			12,500
Bribery -- Public Servant	22-712	M 8	10	2	8	3			25,000 or 2x the value
Bribery -- Witness	22-713	M 8	5	2	3	3			12,500

[35]Same group as unarmed completed offense.
[36]D.C. Code § 23-1331 (4) provides that a crime of violence includes “extortion or blackmail accompanied by threats of violence.”

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Burglary I w/a*	22-801(a) 22-4502	M 3	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Burglary I	22-801(a)	M 5	30	3	27	5	not < 5	V	75,000
Burglary II w/a*	22-801(b) 22-4502	M 6	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Burglary II	22-801(b)	M 7	15	2	13	3	not < 2	V	37,500
Carjacking w/a*	22-2803(b) 22-4502 24-403.01(b-2)	M 3	40 (30)	5	40 (30)	5	M15	V	125,000 (75,000)
Carjacking	22-2803(a)	M 5	21	2	19	3	M7	V	75,000
Carrying a Pistol – Felony (formerly CPWL) Carrying Dangerous Weapon – Felony (CDW) 1st offense	22-4504(a)	M 8	5	2	3	3			12,500
Carrying a Pistol – Felony (formerly CPWL) Carrying Dangerous Weapon – Felony (CDW) 2nd+ offense or after felony conviction	22-4504(a)	M 8[e]	10	2	8	3			25,000
Child Prostitution – Abducting/Enticing	22-2704	M 5	20	2	18	3 or SOR	not < 2		50,000
Child Prostitution -- Harboring	22-2704	M 5	20	2	18	3 or SOR	not < 2		50,000
Child Sex Abuse -- Aggravated 1º*	22-3008 22-3020 24-403.01(b-2)	M 3[e]	LWOR	5	LWOR	5 or SOR	not < 7 if prior COV	V	125,000
Child Sex Abuse -- 1º w/a*	22-3008 22-4502 24-403.01(b-2)	M 2	LWOR (30)	5	LWOR (30)	5 or SOR	M5 1st firearm M10 2nd firearm M5 2nd other	V	125,000 (75,000)

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Child Sex Abuse* -- 1º	22-3008 24-403.01(e) 24-403.01(b-2)	M 3	LWOR (30)	5	LWOR (30)	5 or SOR	not < 7 if prior COV	V	125,000 (75,000)
Child Sex Abuse -- Attempt 1º w/a*	22-3008 22-3018 22-4502	M 5	30	5	30	5 or SOR	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Child Sex Abuse -- Attempt 1º	22-3008 22-3018	M 6	15	2	13	3 or SOR		V	37,500
Child Sex Abuse, Assault with Intent to Commit -- 1º or 2º	22-401 24-403.01(e)	M 6	15	2	13	3 or SOR	not < 2	V	37,500
Child Sex Abuse -- 2º w/a*	22-3009 22-4502	M 5	30	5	30	5 or SOR	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Child Sex Abuse -- 2º	22-3009 24-403.01(e)	M 6	10	2	8	3 or SOR	not < 7 if prior COV	V	25,000
Child Sex Abuse -- Attempt 2º w/a*	22-3009 22-3018 22-4502	M 5	30	5	30	5 or SOR	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Child Sex Abuse -- Attempt 2º	22-3009 22-3018	M 8	5	2	3	3 or SOR		V	12,500
Child Sex Abuse -- Enticing	22-3010(a), (b) 24-403.01(e)	M 8	5	2	3	3 or SOR	not < 7 if prior COV		12,500
Child Sex Abuse -- Enticing -- Attempt	22-3010 22-3018	M 9	2½	1	1½	3 or SOR			12,500
Child Sex Abuse -- Arranging for Sexual Contact	22-3010.02	M 8	5	2	3	3 or SOR			12,500
Child Sex Abuse -- Arranging for Sexual Contact -- Attempt	22-3010.02 22-3018	M 9	2½	1	1½	3 or SOR			12,500

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Citizen Patrol Victim	22-3602		1 ½ x the term						1½ x the fine
Conspiracy in general	22-1805a (a)(1)	M 9	5	2	3	3			12,500
Conspiracy in general If underlying offense < 5 years	22-1805a (a)(1)	M 9	Same term	1	x minus 1	3			Same fine
Conspiracy to Commit Murder or an Armed COV	22-1805a (a)(2)	M 5[37]	15	2	13	3		V	Not > 37,500 nor maximum for underlying off
Conspiracy to Commit COV	22-1805a (a)(2)	M 7[38]	15[39]	2	x minus 2	3		V	Not > 37,500 nor maximum for underlying off
Contempt for violating conditions of release, if felony	11-944	M 9	Life	5	Life	5			
Contempt, if any other felony	11-944	[40]							
Contraband -- Introducing into prison and possession by inmate: Class A material	22-2603	M 8	10	2	8	3			25,000
Contraband -- Introducing into prison and possession by inmate: Class B material	22-2603	M 9	2	1	1	3			12,500
Contributing to the Delinquency of a Minor: 2nd+ offense	22-811(b)(2)	M 9	3	1	2	3			12,500
Contributing to the Delinquency of a Minor: Commission of felony, serious bodily injury	22-811(b)(3), (4)	M 8	5	2	3	3			12,500
Contributing to the Delinquency of a Minor: Death	22-811(b)(5)	M 6	10	2	8	3			25,000

[37] If underlying offense is in M 6 or M 7, the conspiracy is in the same offense severity group.
[38] If underlying offense is in M 8 or M 9, the conspiracy is in the same offense severity group.
[39] The maximum statutory penalty may not exceed 15 years or the maximum penalty prescribed for the underlying offense, whichever is lower.
[40] Proportionate, not a guidelines offense. *See* §2.2.11 (Scoring Contempt Convictions).

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Corrupt Influence	22-704	M 9	5	2	3	3	not < 6 months		12,500
Corrupt Influence -- Athletics	22-1713 (a)	M 9	5	2	3	3	not < 1		12,500
Counterfeiting -- 3+ offense or value > 10,000 or 1,000 items	22-902(b)(3)	M 9	10	2	8	3			25,000 (not < 3x the value)
Counterfeiting -- 2nd offense or value 1,000 to 10,000 or 100 - 1,000 items	22-902(b)(2)	M 9	3	1	2	3			12,500 (not < 3x the value)
Credit Card Fraud -- $1,000+	22-3223(d)(1)	M 9	10	2	8	3			25,000
Crime of Violence Against Minors	22-3611		1½ x the term						1 ½ x the fine
Criminal Abuse or Neglect of a Vulnerable Adult -- Death	22-936(c)	M 5	20	2	18	3			50,000
Criminal Abuse or Neglect of a Vulnerable Adult -- Permanent bodily harm	22-936(c)	M 6	20	2	18	3			50,000
Criminal Abuse or Neglect of a Vulnerable Adult -- Serious bodily injury/severe mental distress	22-936(b)	M 7	10	2	8	3			25,000
Cruelty to Animals	22-1001(d)	M 9	5	2	3	3			12,500
Cruelty to Children -- 1º w/a*	22-1101(a), (c)(1) 22-4502	M 5	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Cruelty to Children -- 1º	22-1101(a), (c)(1)	M 6	15	2	13	3		V	37,500
Cruelty to Children -- 2º	22-1101 1(b), (c)(2)	M 8	10	2	8	3			25,000
Deceptive Labeling	22-3214.01(d)(2)	M 9	5	2	3	3			12,500
Destruction of Property (DP) -- $1,000+	22-303	M 8	10	2	8	3			25,000

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Destruction of Property (DP) -- explosives	22-3305	M 8	10	2	8	3	not < 2		25,000
Drugs -- Distribution, or PWID w/a* (any drug)	48-904.01(a), (b) 22-4502	D 1	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	D	75,000
Drugs -- Distribution, or PWID: I, II Narcotic and abusive drugs (heroin, cocaine, PCP, methamphetamine, etc.)	48-904.01(a)(2)(A), (b)	D 2	30	3	27	5		D	75,000
Drugs -- Distribution, or PWID: I, II, III Non-narcotic and non-abusive drugs (including marijuana -- 2nd offense or > ½ pound)	48-904.01(a)(2)(B), (b)	D 3	5	2	3	3		D	12,500
Drugs -- Distribution, or PWID: IV	48-904.01(a)(2)(C), (b)	D 3	3	1	2	3		D	12,500
Drugs -- Possession of Liquid PCP	48-904.01(d)(2)	D 3	3	1	2	3			12,500
Drugs -- Attempt or Conspiracy of a while armed offense in Drug Group 1	48-904.09	D 2	same term as completed offense						same fine
Drugs -- Attempt or Conspiracy of an offense in Drug Group 2	48-904.09	D 3	same term as completed offense						same fine
Drugs -- Attempt or Conspiracy of an offense in Drug Group 3	48-904.09	D 4	same term as completed offense						same fine

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Drugs -- Distribution to Minors	48-904.06		2 x the term						same fine
Drugs -- Enlisting Minors -- 1st offense	48-904.07(b)(1)[41]		10	2	8	3			25,000
Drugs -- Enlisting Minors -- 2nd + offense	48-904.07(b)(2)[34]		20	2	18	3			50,000
Drugs -- Fraud	48-904.03	D 3	4	1	3	3			12,500
Drug-Free Zones	48-904.07a		2 x the term						2x the fine
Drugs -- Maintaining place for	48-904.03a	D 2	25	3	22	3	not < 5		75,000
Drugs -- 2nd+ offense	48-904.08		2 x the term						2 x the fine
Drug Paraphernalia, 2nd + offense	48-1103(e)(4)	M 9	2	1	1	3			12,500
Drug Paraphernalia -- Distributing to a Minor	48-1103(c)	D 3	8	2	6	3			25,000
Escape, and Attempt Escape	22-2601	M 9	5	2	3	3			12,500
Extortion with threats of violence w/a*	22-3251 22-4502	M 8	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V[42]	75,000
Extortion	22-3251	M 8	10	2	8	3		V[43]	25,000
False personation	22-1403	M 9	5	2	3	3	not < 1		12,500

[41]D.C. Code § 48-904.07 provides that a person who, for profit or benefit, enlists a minor to sell or distribute drugs in violation of D.C. Code § 48-904.01 (a), "shall be punished in the same manner as if that person directly sold or distributed the controlled substance" and that the penalties indicated here are "additional."
[42]D.C. Code § 23-1331 (4) provides that a crime of violence includes "extortion or blackmail accompanied by threats of violence."
[43]D.C. Code § 23-1331 (4) provides that a crime of violence includes "extortion or blackmail accompanied by threats of violence."

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
False Statement (Money Transmissions)	26-1023(b)	M 9	3	1	2	3			12,500
False Swearing	22-2404	M 9	3	1	2	3			12,500
Felony Assault	22-404(a)(2)	M 8	3	1	2	3		V	12,500
Felony Assault w/a*	22-404(a)(2) 22-4502	M 6	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Firearm, Unlawful Possession of by a person with a prior conviction > 1 yr	22-4503(a)(1)	M 7[44]	10	2	8	3	M1		25,000
Firearm, Unlawful Possession of by a person with a prior conviction > 1 yr and COV other than Conspiracy	22-4503(a)(1)	M 6	15	2	13	3	M3		37,500
Firearm, Unlawful Possession of by others	22-4503(a)(2) – (a)(6)	M 8	10	2	8	3	not < 2		25,000
Fleeing Law Enforcement	50-2201.05b (b)(2)	M 8	5	2	3	3			12,500
Forgery and Uttering: Legal tender	22-3241 22-3242(a)	M 9	10	2	8	3			25,000
Forgery and Uttering: Token	22-3241 22-3242(b)	M 9	5	2	3	3			12,500
Forgery and Uttering: Other	22-3241 22-3242(c)	M 9	3	1	2	3			12,500
Fraud -- 1º -- $1,000+	22-3221(a) 22-3222(a)(1)	M 9	10	2	8	3			25,000/ 3x the value

[44]Defendants convicted of Firearm, Unlawful Possession of by a person with a prior conviction > 1 year with a criminal history score of .75 to 1.75 fall into Master Grid box 7:B with a sentencing range of 18 to 42 months incarceration, prison or short split permissible. However, because of the mandatory minimum 12-month sentence, a short split sentence is not permissible under the Guidelines. The court must sentence the defendant to at least 18 months to impose a Guidelines compliant sentence. If the court determines that a split sentence of 12 months incarceration or more, but less than 18 months, is appropriate, it may sentence the defendant accordingly, but this would constitute a departure from the Guidelines. The court should note the reason for the departure on the docket.

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Fraud -- 2º -- $1,000+	22-3221(b) 22-3222(b)(1)	M 9	3	1	2	3			12,500/3x the value
Gaming	22-1704	M 9	5	2	3	3			12,500
Gang Recruitment w/a*	22-951(c) 22-4502	M 5	30	5	30	5		V	75,000
Gang Recruitment, Retaliation or Participation	22-951(c)	M 7	10	2	8	3		V	25,000
Gang Participation	22-951(b)	M 8	5	2	3	3			12,500
Government Officials, Intimidating, Impeding, Interfering, Retaliating	22-851(b)	M 8	5	2	3	3			12,500
Government Officials/Family, Stalking, Threatening, Assaulting, Kidnapping, Injuring or Vandalizing, Damaging, Destroying or Taking Property of	22-851(c), (d)	M 9	3	1	2	3			12,500
Grave Robbing	22-3303	M 9	3	1	2	3	not < 1		12,500
Gun-Free Zone	22-4502.01		2 x the term						2x the fine
Human Trafficking -- Forced Labor	22-1832 22-1837	M 5	20	2	18	3			50,000
Human Trafficking -- Forced Labor -- Attempt	22-1832 22-1837	M 7	10	2	8	3			25,000
Human Trafficking -- Labor or Commercial Sex Acts	22-1833 22-1837	M 5	20	2	18	3			50,000
Human Trafficking -- Labor or Commercial Sex Acts -- Attempt	22-1833 22-1837	M 7	10	2	8	3			25,000
Human Trafficking -- Sex Trafficking of Children	22-1834 22-1837	M 5	20	2	18	3			50,000

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Human Trafficking -- Sex Trafficking of Children -- Attempt	22-1834 22-1837	M 7	10	2	8	3			25,000
Human Trafficking -- Documents	22-1835 22-1837	M 8	5	2	3	3			12,500
Human Trafficking -- Documents -- Attempt	22-1835 22-1837	M 9	2½	1	1½	3			12,500
Human Trafficking -- Benefitting Financially	22-1836 22-1837		Same as principal						Same as principal
Human Trafficking -- Benefitting Financially -- Attempt	22-1836 22-1837		Same as principal attempt						Same as principal attempt
Human Trafficking -- Victim held/services provided >180 days	22-1837		1 ½ x the term						1 ½ x the fine
Identity Theft -- 1º	22-3227.02 22-3227.03(a)	M 8	10	2	8	3			25,000 or 3x the financial injury
Identity Theft -- 1º against senior citizen	22-3227.02 22-3227.03(c)	M 8[e]	15	2	13	3			37,500 or 4.5x the financial injury
Illegal Dumping (commercial)	8-902(b)(2)	M 9	5	2	3	3			12,500
Illegal Lottery	22-1701	M 9	3	1	2	3			12,500
Impersonating a Public Official	22-1404	M 9	3	1	2	3	not < 1		12,500
Incest	22-1901	M 7	12	2	10	3			37,500
Inciting Riot w/injury	22-1322(d)	M 7	10	2	8	3			25,000

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Insurance Fraud -- 1º -- $1,000+	22-3225.02 22-3225.04(a)	M 9	15	2	13	3			37,500
Insurance Fraud -- 2º -- $1,000+ 1st offense	22-3225.03 22-3225.04(b)(1)	M 9	5	2	3	3			12,500
Insurance Fraud -- 2º -- $1,000+ 2nd offense	22-3225.03 22-3225.04(b) (2)	M 8[e]	10	2	8	3			25,000
Kidnapping w/a*	22-2001 22-4502	M 3	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Kidnapping*	22-2001	M 5	30	5	30	5		V	75,000
Malicious Disfigurement w/a*	22-406 22-4502	M 5	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Malicious Disfigurement	22-406	M 6	10	2	8	3		V	25,000
Manslaughter -- Voluntary -- w/a*	22-2105 22-4502	M 3	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	250,000
Manslaughter -- Voluntary	22-2105	M 4	30	3	27	5		V	250,000
Manslaughter -- Involuntary -- w/a*	22-2105 22-4502	M 5	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	250,000
Manslaughter -- Involuntary	22-2105	M 5	30	3	27	5		V	250,000
Mayhem w/a*	22-406 22-4502	M 5	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Mayhem	22-406	M 6	10	2	8	3		V	25,000

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Molotov Cocktails -- 1st offense	22-4515a	M 9	5	2	3	3	not < 1		12,500
Molotov Cocktails -- 2nd offense	22-4515a	M 9e	15	2	13	3	not < 3		37,500
Molotov Cocktails -- 3rd* offense*	22-4515a	M 9e	30	5	30	5	not < 5		75,000
Money Transmission Without a License	26-1023(c)	M 9	5	2	3	3			12,500
Aggravated Murder I*	22-2104 22-2104.01 24-403.01(b-2)	M 1e	LWOR	5	LWOR	5		V	250,000
Murder I w/a*	22-2101 22-2104 22-4502	M 1	LWOR (60)	5	LWOR	5	M30	V	250,000
Murder I*	22-2101 22-2104 24-403.01(b-2)	M 1	LWOR (60)	5	LWOR	5	M30	V	250,000
Murder I -- Obstruction of Railway*	22-2102 22-2104 24-403.01(b-2)	M 1	LWOR (60)	5	LWOR	5	M30	V	250,000
Murder II w/a*	22-2103 22-2104 22-4502	M 2	Life (40)	5	Life	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	250,000
Murder II*	22-2103 22-2104 24-403.01(b-2)	M 2	Life (40)	5	Life	5		V	250,000
Murder of P.O.*	22-2106	M 1	LWOR		LWOR		M-LWOR	V	250,000
Negligent Homicide (Vehicular)	50-2203.01	M 7	5	2	3	3			250,000
Obscenity -- 2nd+ offense	22-2201(e)	M 9	3	1	2	3	not < 6 months		1,000 - 12,500

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Obstructing Justice*	22-722	M 5	30	5	30	5	not < 3		75,000
Obstructing Railways	22-3319	M 9	10	2	8	3			25,000
Obstructing Service of a Drug Search Warrant	48-921.02(n)	M 9	2	1	1	3			12,500
Offenses Committed During Release (felony)[45]	23-1328(a)(1)	M 9[46]	5				Not < 1		12,500
Offenses not covered by D.C. Code	22-1807	M 9	5	2	3	3			12,500
Possession of Drug Paraphernalia (PDP) w/ Intent -- 2nd+ offense	48-1103(b)	M 9	2	1	1	3			12,500
Perjury	22-2402	M 8	10	2	8	3			25,000
Perjury, Subornation of	22-2403	M 8	10	2	8	3			25,000
Possession of a Firearm During a Crime of Violence or Dangerous Crime (PFDCVDC)	22-4504(b)	M 5	15	2	13	3	M5		37,500
Possession of Implements of Crime -- 2nd+ offense or after felony	22-2501 24-403.01(f)(3)	M 9	5	2	3	3	not < 1		12,500
Possession of Prohibited Weapon (PPW) -- 2nd+ offense or after felony	22-4514	M 9	10	2	8	3			25,000
Possession of Unregistered Weapon -- 2nd offense	7-2502.01 7-2507.06 (2)(A)	M 9	5	2	3	3			12,500
Prostitution, Engaging In or Soliciting -- 3+ offense	22-2701	M 9	2	1	1	3			12,500
Prostitution -- Inducing or Compelling	22-2705(c)(1)	M 9	5	2	3	3			12,500

[45]OCDR (felony) is an enhancement, not a separate offense. However, it operates similarly to a separate offense. Therefore, the Guidelines treat it as if it were a separate offense when determining a defendant's applicable sentencing range in the instant case for which it was charged.
[46]OCDR (felony) is classified as a M9 offense only when it is a charge in the instant case. Because it is technically an enhancement, not a distinct separate offense, it should not be scored as part of a defendant's prior criminal history score.

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Prostitution -- Inducing or Compelling a Minor	22-2705(c)(2)	M 5	20	2	18	3 or SOR			50,000
Prostitution -- Against Will	22-2706(b)(1)	M 6	15	2	13	3			37,500
Prostitution -- Against Will a Minor	22-2706(b)(2)	M 5	20	2	18	3 or SOR			50,000
Prostitution -- Procuring (pandering)	22-2707(b)(1)	M 9	5	2	3	3			12,500
Prostitution -- Procuring (pandering) a Minor	22-2707(b)(2)	M 5	20	2	18	3 or SOR			50,000
Prostitution, Causing Spouse to Live In	22-2708	M 8	10	2	8	3	not < 1		25,000
Prostitution -- Detaining in Disorderly House for Debt	22-2709	M 9	5	2	3	3	not < 1		12,500
Prostitution, Procuring for House of	22-2710	M 9	5	2	3	3			12,500
Prostitution, Procuring for 3rd Persons	22-2711	M 9	5	2	3	3			12,500
Prostitution, Operating House of	22-2712	M 9	5	2	3	3			12,500
Prostitution -- Keeping Bawdy or Disorderly House	22-2722	M 9	5	2	3	3			12,500
Receiving Stolen Property (RSP) -- $1,000+	22-3232(c)(1)	M 9	7	2	5	3			25,000
Repeats -- 1 prior	22-1804		1½ x the term						1½ x the fine
Repeats -- 2+ priors	22-1804		3 x the term						3 x the fine
Robbery -- w/a*	22-2801 22-4502	M 5	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Robbery	22-2801	M 6	15	2	13	3	not < 2	V	37,500

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Robbery -- Attempt w/a*	22-2802 22-4502	M 6	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Robbery -- Attempt	22-2802	M 8	3	1	2	3		V	12,500
Sell, Transport, Distribute a Firearm, Destructive Device or Ammunition to Persons Under 18	7-2507.06 (1)	M 7	10	2	8	3			25,000
Senior Citizen Victim	22-3601		1½ x the term						1 ½ x the fine
Sex Abuse -- Aggravated 1º*	22-3002 22-3020	M 2[e]	LWOR	5	LWOR	5 or SOR		V	125,000
Sex Abuse -- 1º w/a*	22-3002 22-4502	M 2	LWOR (30)	5	LWOR (30)	5 or SOR	M5 1st firearm M10 2nd firearm M5 2nd other	V	125,000 (75,000)
Sex Abuse -- 1º*	22-3002 24-403.01(e)	M 2	LWOR (30)	5	LWOR (30)	5 or SOR	not < 7 if prior COV	V	125,000 (75,000)
Sex Abuse -- Attempt 1º w/a*	22-3002 22-3018 22-4502	M 5	30	5	30	5 or SOR	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Sex Abuse -- Attempt 1º	22-3002 22-3018	M 6	15	2	13	3 or SOR		V	37,500
Sex Abuse -- Aggravated other than 1º	22-3020		1½ x the term						1½ x the fine
Sex Abuse -- 2º w/a*	22-3003 22-4502	M 4	30	5	30	5 or SOR	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Sex Abuse -- 2º	22-3003 24-403.01(e)	M 5	20	2	18	3 or SOR	not < 7 if prior COV	V	50,000
Sex Abuse -- Attempt 2º w/a*	22-3003 22-3018 22-4502	M 5	30	5	30	5 or SOR	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Sex Abuse -- Attempt 2º	22-3003 22-3018	M 7	10	2	8	3 or SOR		V	25,000
Sex Abuse -- 3º w/a*	22-3004 22-4502	M5	30	5	30	5 or SOR	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Sex Abuse -- 3º	22-3004	M 7	10	2	8	3 or SOR		V	25,000
Sex Abuse -- Attempt 3º	22-3004 22-3018	M 8	5	2	3	3 or SOR		V	12,500
Sex Abuse -- 4º	22-3005	M 8	5	2	3	3 or SOR			12,500
Sex Abuse -- Attempt 4º	22-3005 22-3018	M 9	2½	1	1½	3 or SOR			12,500
Sex Abuse of a Minor -- 1º	22-3009.01	M 6	15	2	13	3 or SOR			37,500
Sex Abuse of a Minor -- Attempt 1º	22-3009.01 22-3018	M 7	7½	2	5½	3 or SOR			25,000
Sex Abuse of a Minor -- 2º	22-3009.02	M 7	7½	2	5½	3 or SOR			25,000
Sex Abuse of a Minor -- Attempt 2º	22-3009.02 22-3018	M 9	3¾	1	2¾	3 or SOR			12,500
Sex Abuse of a Minor -- Enticing	22-3010(a), (b) 24-403.01(e)	M 8	5	2	3	3 or SOR	not < 7 if prior COV		12,500
Sex Abuse of a Minor -- Enticing -- Attempt	22-3010 22-3018	M 9	2½	1	1½	3 or SOR			12,500

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Sex Abuse of a Student -- 1º	22-3009.03	M 7	10	2	8	3 or SOR			25,000
Sex Abuse of a Student -- Attempt 1º	22-3009.03 22-3018	M 8	5	2	3	3 or SOR			12,500
Sex Abuse of a Student -- 2º	22-3009.04	M 8	5	2	3	3 or SOR			12,500
Sex Abuse of a Student -- Attempt 2º	22-3009.04 22-3018	M 9	2½	1	1½	3 or SOR			12,500
Sex Abuse -- Patient 1º	22-3015	M 7	10	2	8	3 or SOR			25,000
Sex Abuse -- Patient -- Attempt 1º	22-3015 22-3018	M 8	5	2	3	3 or SOR			12,500
Sex Abuse -- Patient -- 2º	22-3016	M 8	5	2	3	3 or SOR			12,500
Sex Abuse -- Patient -- Attempt 2º	22-3016 22-3018	M 9	2½	1	1½	3 or SOR			12,500
Sex Abuse -- Ward -- 1º	22-3013	M 7	10	2	8	3 or SOR			25,000
Sex Abuse -- Ward -- Attempt 1º	22-3013 22-3018	M 8	5	2	3	3 or SOR			12,500
Sex Abuse -- Ward -- 2º	22-3014	M 8	5	2	3	3 or SOR			12,500
Sex Abuse -- Ward -- Attempt 2º	22-3014 22-3018	M 9	2½	1	1½	3 or SOR			12,500
Sex Offender -- Failure to Register -- 2nd offense	22-4015(a)	M 9	5	2	3	3			12,500
Sex Performance w/ Minors -- 1st offense	22-3102 22-3103(1)	M 8	10	2	8	3 or SOR			25,000
Sex Performance w/ Minors -- 2nd + offense	22-3102 22-3103(2)	M 8[e]	20	2	18	3 or SOR			50,000

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Solicitation of Murder	22-2107(a)	M 4	20	2	18	3			50,000
Solicitation of Other Crime of Violence	22-2107(b)	M 6	10	2	8	3			25,000
Stalking - Felony	22-3133 22-3134(b)	M 9	5	2	3	3			12,500
Stalking - Felony: if two or more qualifying convictions	22-3133 22-3134(c)	M 9[e]	10	2	8	3			25,000
Tampering with Physical Evidence	22-723	M 9	3	1	2	3			12,500
Tampering with a VIN -- $1,000+	22-3233(b)(2)	M 9	5	2	3	3			12,500
Taxicab Driver, Offenses Against	22-3751		1½ x the term						1 ½ the fine
Telephone Solicitation Fraud -- $20,000+	22-3226.06(a) 22-3226.10	M 9	4	1	3	3			12,500
Telephone Solicitation Fraud -- > $5,000 to < 20,000	22-3226.06(a) 22-3226.10	M 9	3	1	3	3			12,500
Terrorism - Weapon of Mass Destruction, Manufacture/Poss.	22-3154 (a)	M3	life	5	life	5		V	125,000
Terrorism - Weapon of Mass Destruction, Manufacture/ Poss. -- Attempt/Conspire	22-3154 (b)	M5	30	3	27	5		V	75,000
Terrorism - Weapon of Mass Destruction, Use, Disseminate, or Detonate	22-3155 (a)	M2	life	5	life	5		V	125,000
Terrorism - Weapon of Mass Destruction, Use, Disseminate, or Detonate -- Attempt/Conspire	22-3155 (b)	M3	30	3	27	5		V	75,000
Terrorism – Murder I*	22-3153 (a)	M1	LWOR	5	LWOR	5	LWOR	V	250,000

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Terrorism – Murder I w/a*	22-3153 (a) 22-4502	M1	LWOR	5	LWOR	5	LWOR	V	250,000
Terrorism – Murder I -- Attempt/Conspire	22-3153 (j)	M4	30	3	27	5		V	75,000
Terrorism – Murder I w/a -- Attempt/Conspire*	22-3153 (j) 22-4502	M3	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Terrorism – Murder I – LEO*	22-3153 (b)	M1	LWOR	5	LWOR	5	LWOR	V	250,000
Terrorism – Murder I w/a – LEO*	22-3153 (b) 22-4502	M1	LWOR	5	LWOR	5	LWOR	V	250,000
Terrorism – Murder I – LEO -- Attempt/Conspire	22-3153 (j)	M3	30	3	27	5		V	75,000
Terrorism – Murder I w/a – LEO -- Attempt/Conspire*	22-3153 (j) 22-4502	M2	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Terrorism – Murder II*	22-3153 (c)	M2	Life	5	Life	5		V	250,000
Terrorism – Murder II w/a*	22-3153 (c) 22-4502	M2	Life	5	Life	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	250,000
Terrorism – Manslaughter	22-3153 (d)	M4	Life	5	Life	5		V	250,000
Terrorism – Manslaughter w/a*	22-3153 (d) 22-4502	M3	Life	5	Life	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	250,000
Terrorism – Kidnapping*	22-3153(e)	M4	Life	5	Life	5		V	125,000

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Terrorism – Kidnapping w/a*	22-3153(e) 22-4502	M3	Life	5	Life	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	125,000
Terrorism – Kidnapping -- Attempt/Conspire	22-3153(j)	M5	30	3	27	5		V	75,000
Terrorism – Kidnapping w/a -- Attempt/Conspire*	22-3153(j) 22-4502	M4	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Terrorism – AWIK	22-3153(f)	M4	30	3	27	5		V	75,000
Terrorism – AWIK w/a*	22-3153(f) 22-4502	M3	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Terrorism – Mayhem/Malicious Disfig.	22-3153(g)	M5	20	2	18	3		V	50,000
Terrorism – Mayhem/Malicious Disfig. w/a*	22-3153(g) 22-4502	M4	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Terrorism – Mayhem/Malicious Disfig. Attempt/Conspire	22-3153(l)	M6	15	2	13	3		V	37,500
Terrorism – Mayhem/Malicious Disfig. w/a* Attempt/Conspire*	22-3153(l) 22-4502	M5	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Terrorism – Arson	22-3153(h)	M5	20	2	18	3		V	50,000
Terrorism – Arson w/a*	22-3153(h) 22-4502	M4	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Terrorism – Arson -- Attempt/Conspire	22-3153(l)	M6	15	2	13	3		V	37,500
Terrorism – Arson w/a -- Attempt/Conspire*	22-3153(l) 22-4502	M5	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Terrorism – Destruction of Prop.	22-3153(i)	M5	20	2	18	3		V	50,000
Terrorism – Destruction of Prop. w/a*	22-3153(i) 22-4502	M4	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Terrorism – Destruction of Prop. -- Attempt/Conspire	22-3153(l)	M6	15	2	13	3		V	37,500
Terrorism – Destruction of Prop. w/a -- Attempt/Conspire*	22-3153(l) 22-4502	M5	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Terrorism – Material Support	22-3153(m)	M5	20	2	18	3		V	50,000
Terrorism – Material Support w/a*	22-3153(m) 22-4502	M4	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Terrorism – Soliciting	22-3153(n)	M6	20	2	18	3		V	50,000
Terrorism – Soliciting w/a*	22-3153(n) 22-4502	M5	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Theft -- 1º	22-3211 22-3212 (a)	M 8	10	2	8	3			25,000
Theft -- 1º if two or more theft convictions	22-3211 22-3212 (c)	M 8	10	2	8	3	M1		25,000
Theft -- 2º if two or more theft convictions	22-3211 22-3212 (c)	M 9	10	2	8	3	M1		25,000
Threats -- Felony	22-1810	M 8	20	2	18	3			50,000
Three Strikes for Felonies*	22-1804a (a)(1)		30	5	30	5			75,000
Three Strikes for Violent Felonies*	22-1804a (a)(2)		LWOR	5	LWOR	5	not < 15		125,000

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Trafficking in Stolen Property	22-3231	M 8	10	2	8	3			25,000
Unlawful Possession of a Firearm: prior convictions > 1 yr and COV other than Conspiracy	22-4503(a)(1)	M 6	15	2	13	3	M3		37,500
Unlawful Possession of a Firearm: prior conviction > 1 yr	22-4503(a)(1)	M 7[47]	10	2	8	3	M1		25,000
Unlawful Possession of a Firearm: others	22-4503(a)(2) – (a)(6)	M 8	10	2	8	3	not < 2		25,000
Unauthorized Use of a Motor Vehicle (UUV) -- Private	22-3215(d)(1)	M 8	5	2	3	3			12,500
Unauthorized Use of a Motor Vehicle (UUV) -- Private Two or more UUV or Theft 1º convictions	22-3215(d)(3)	M 8[e]	15	2	13	3	not < 2½		5,000 – 37,500
Unauthorized Use of a Motor Vehicle (UUV) -- Private During or to facilitate COV	22-3215(d)(2)	M 7	10	2	8	3			25,000
Unauthorized Use of a Motor Vehicle (UUV) -- Private During or to facilitate COV w/ serious bodily injury	22-3215(d)(2)	M 7	10	2	8	3	not < 5		25,000
Unauthorized Use of a Motor Vehicle (UUV) -- Rental	22-3215(d)(4)	M 8	3	1	2	3			12,500
Voyeurism	22-3531(f)(2)	M 8	5	2	3	3			12,500
Water Pollution -- Malicious	22-3318	M 9	3	1	2	3	not < 1		500 - 12,500

[47]Defendants convicted of Firearm, Unlawful Possession of by a person with a prior conviction > 1 year with a criminal history score of .75 to 1.75 fall into Master Grid box 7:B with a sentencing range of 18 to 42 months incarceration, prison or short split permissible. However, because the mandatory minimum 12-month sentence, a short split sentence is not permissible under the Guidelines. The court must sentence the defendant to at least 18 months to impose a Guidelines compliant sentence. If the court determines that a split sentence of 12 months incarceration or more, but less than 18 months, is appropriate, it may sentence the defendant accordingly, but this would constitute a departure from the Guidelines. The court should note the reason for the departure on the docket.

APPENDIX C-I

SENTENCING CHART FOR FELONIES COMMITTED ON OR AFTER 5:00 p.m., AUGUST 11, 2000 ARRANGED IN ORDER BY D.C. CODE CITATION (2001)

Use this Appendix to find the offense severity group, the maximum prison sentence and amount of supervised release the judge may/must impose initially under the Sentencing Reform Amendment Act of 2000. In some cases, the maximum sentence will depend on factors set forth in the statute. Please refer to the statute. Appendix C contains the same information in alphabetical order by common name. The offense severity is blank for enhanced versions of offenses. Those have the same offense severity score as the unenhanced offense. *See* Chapter 4 (Adjusting the Box).

ABBREVIATIONS:

"*"	means that an offense is a Class A felony. A person convicted of such an offense may be imprisoned not more than 5 years upon revocation of supervised release. *See* D.C. Code 24-403.01 (b)(7)(A).
"e"	means that the offense is subject to a statutory enhancement specific to the offense that raises the top of the Guidelines range. *See* Chapter 4 and Appendix H.
"M"	in the minimum column means mandatory minimum, a minimum that generally cannot be suspended. *See* Section 3.6.
"or SOR"	in the Supervised Release column means that the offense is necessarily a registration offense under D.C. Code § 22-4001[48] and that the judge may impose a greater term of supervised release up to the maximum period of sex offender registration to which the defendant is subject (ten years or life). *See* D.C. Code §§ 22-4001 (6), (8), 24-403.01 (b)(4).
"not < X"	in the minimum column means that if the judge imposes a sentence of imprisonment, he or she cannot impose a sentence of less than X. The judge may impose a sentence of X (or more) and MAY suspend execution of part or all of it.
"(30/40/60)"	that appears under "LWOR" [life without release] for several offenses and under "40" for carjacking means that the judge cannot impose a sentence in excess of the number in parentheses unless the jury finds an aggravating circumstance beyond a reasonable doubt.
"same term/fine"	means the same term or fine as the underlying or predicate offense.
"x the term/fine"	means the preceding number times the term or fine for the underlying offense.
"V" or "D"	in the Violent/Dangerous column means a crime of violence pursuant to D.C. Code 23-1331(4) or a dangerous crime pursuant to D.C. Code § 22-4501(2).
"w/a"	means an offense subject to D.C. Code § 22-4502 imposing additional penalties for committing a crime of violence while armed. *See Hager v. United States*, 791 A.2d 911 (D.C. 2002).

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[48]Other offenses are registration offenses if the victim was a minor or if they involve a sexual act or sexual contact without consent or with a minor, or assaulting or threatening another with intent to commit a sexual act or sexual contact, or causing the death of another before, during or after such an act. *See* D.C. Code § 22-4001 (8) (C) - (F). Those do not have "or SOR" in the Supervised Release column.

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Possession of Unregistered Weapon -- 2nd offense	7-2502.01 7-2507.06 (2)(A)	M 9	5	2	3	3			12,500
Sell, Transport, Distribute a Firearm, Destructive Device or Ammunition to Persons Under 18	7-2507.06(1)	M 7	10	2	8	3			25,000
Armor Piercing Ammunition	7-2507.06(3)	M 7	10	2	8	3	M 1		25,000
Illegal Dumping (commercial)	8-902(b)(2)	M 9	5	2	3	3			12,500
Contempt for violating conditions of release, if felony	11-944	M 9	Life	5	Life	5			
Contempt, if any other felony	11-944	[49]							
Arson	22-301	M 6	10	2	8	3	not < 1	V	25,000
Arson -- Own property w/ intent to defraud	22-302	M 6	15	2	13	3		V	37,500
Destruction of Property (DP) -- $1,000+	22-303	M 8	10	2	8	3			25,000
Assault with Intent to Kill or Poison w/a*	22-401 22-4502	M3	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Assault with Intent to Rob w/a*	22-401 22-4502	M5	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Assault with Intent to 1º or 2 º Sexual Abuse or Child Sex Abuse w/a*	22-401 22-4502	M5	30	5	30	5 or SOR	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Assault with Intent to Kill or Poison	22-401	M 5	15	2	13	3	not < 2	V	37,500

[49]Proportionate, not a Guidelines offense. *See* §2.2.11 (Scoring Contempt Convictions).

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Assault with Intent to Rob	22-401	M 6	15	2	13	3	not < 2	V	37,500
Assault with Intent to 1º or 2 º Sexual Abuse or Child Sex Abuse	22-401 24-403.01(e)	M6	15	2	13	3 or SOR	not < 2	V	37,500
Child Sex Abuse, Assault with Intent to Commit -- 1º or 2º	22-401 24-403.01(e)	M 6	15	2	13	3 or SOR	not < 2	V	37,500
Assault with a Dangerous Weapon (ADW)	22-402	M 6	10	2	8	3		V	25,000
Assault with Intent to Commit Mayhem w/a*	22-402 22-4502	M 5	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Assault with Intent to Commit Mayhem	22-402	M 7	10	2	8	3		V	25,000
Assault with Intent to Commit any other Felony w/a*	22-403 22-4502	M 5	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Assault with Intent to Commit any other Felony	22-403	M 8	5	2	3	3		V	12,500
Assault with Significant Injury (Felony Assault)	22-404(a)(2)	M 8	3	1	2	3		V	12,500
Assault with Significant Injury w/a* (Felony Assault)	22-404(a)(2) 22-4502	M 6	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Aggravated Assault w/a*	22-404.01(b) 22-4502	M 4	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Aggravated Assault	22-404.01(b)	M 6	10	2	8	3		V	25,000
Aggravated Assault -- Attempt	22-404.01(c)	M 8	5	2	3	3		V	12,500

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Assault on Police Officer (APO) w/a*	22-405(c) 22-4502	M 5	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Assault on Police Officer (APO)	22-405(c)	M 7	10	2	8	3		V	25,000
Assault on Police Officer (APO) w/ deadly weapon -- 2nd+ offense or prior felony	22-405(c) 24-403.01(f)(1)	M 7[e]	10	2	8	3	not < 1	V	25,000
Malicious Disfigurement w/a*	22-406 22-4502	M 5	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Malicious Disfigurement	22-406	M 6	10	2	8	3		V	25,000
Mayhem w/a*	22-406 22-4502	M 5	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Mayhem	22-406	M 6	10	2	8	3		V	25,000
Bigamy	22-501	M 8	7	2	5	3	not < 2		$25,000
Breaking and Entering -- Vending Machines	22-601	M 9	3	1	2	3			12,500
Corrupt Influence	22-704	M 9	5	2	3	3	not < 6 months		12,500
Bribery -- Public Servant	22-712	M 8	10	2	8	3			25,000 or 2x the value
Bribery -- Witness	22-713	M 8	5	2	3	3			12,500
Obstructing Justice*	22-722	M 5	30	5	30	5	not < 3		75,000
Tampering with Physical Evidence	22-723	M 9	3	1	2	3			12,500

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Burglary I w/a*	22-801(a) 22-4502	M 3	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Burglary I	22-801(a)	M 5	30	3	27	5	not < 5	V	75,000
Burglary II w/a*	22-801(b) 22-4502	M 6	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Burglary II	22-801(b)	M 7	15	2	13	3	not < 2	V	37,500
Contributing to the Delinquency of a Minor: Death	22-811(b)(5)	M 6	10	2	8	3			25,000
Contributing to the Delinquency of a Minor: Commission of felony, serious bodily injury	22-811(b)(3) , (4)	M 8	5	2	3	3			12,500
Contributing to the Delinquency of a Minor: 2nd+ offense	22-811(b)(2)	M 9	3	1	2	3			12,500
Government Officials, Intimidating, Impeding, Interfering, Retaliating	22-851(b)	M 8	5	2	3	3			12,500
Government Officials/Family, Stalking, Threatening, Assaulting, Kidnapping, Injuring or Vandalizing, Damaging, Destroying or Taking Property of	22-851(c) , (d)	M 9	3	1	2	3			12,500
Counterfeiting -- 3+ offense or value > 10,000 or 1,000 items	22-902(b)(3)	M 9	10	2	8	3			25,000 (not < 3x the value)
Counterfeiting -- 2nd offense or value 1,000 to 10,000 or 100 - 1,000 items	22-902(b)(2)	M 9	3	1	2	3			12,500 (not < 3x the value)
Criminal Abuse or Neglect of a Vulnerable Adult -- Death	22-936(c)	M 5	20	2	18	3			50,000
Criminal Abuse or Neglect of a Vulnerable Adult -- Permanent bodily harm	22-936(c)	M 6	20	2	18	3			50,000

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Criminal Abuse or Neglect of a Vulnerable Adult -- Serious bodily injury/severe mental distress	22-936(b)	M 7	10	2	8	3			25,000
Gang Recruitment w/a*	22-951(c) 22-4502	M 5	30	5	30	5		V	75,000
Gang Recruitment, Retaliation or Participation	22-951(c)	M 7	10	2	8	3		V	25,000
Gang Participation	22-951(b)	M 8	5	2	3	3			12,500
Cruelty to Animals	22-1001(d)	M 9	5	2	3	3			12,500
Animal Fighting, Engaging in	22-1015(a)	M 9	5	2	3	3			12,500
Cruelty to Children -- 1º w/a*	22-1101(a), (c)(1) 22-4502	M 5	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Cruelty to Children -- 1º	22-1101(a) , (c)(1)	M 6	15	2	13	3		V	37,500
Cruelty to Children -- 2º	22-1101(b), (c)(2)	M 8	10	2	8	3			25,000
Inciting Riot w/injury	22-1322(d)	M 7	10	2	8	3			25,000
False personation	22-1403	M 9	5	2	3	3	not < 1		12,500
Impersonating a Public Official	22-1404	M 9	3	1	2	3	not < 1		12,500
Bad Checks $1000+	22-1510	M 9	3	1	2	3	not < 1		12,500
Illegal Lottery	22-1701	M 9	3	1	2	3			12,500
Gaming	22-1704	M 9	5	2	3	3			12,500

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Corrupt Influence -- Athletics	22-1713(a)	M 9	5	2	3	3	not < 1		12,500
Attempt Crime of Violence w/a* (Unless otherwise specified)	22-1803	[50]	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Attempt Crime of Violence unarmed (Unless otherwise specified)	22-1803	M 8	5	2	3	3		V	12,500
Repeats --1 prior	22-1804		1½ x the term						1½ x the fine
Repeats -- 2+ priors	22-1804		3 x the term						3 x the fine
Three Strikes for Felonies*	22-1804a (a)(1)		30	5	30	5			75,000
Three Strikes for Violent Felonies*	22-1804a (a)(2)		LWOR	5	LWOR	5	not < 15		125,000
Aiding & Abetting	22-1805		Same as principal						Same as principal
Conspiracy in general	22-1805a (a)(1)	M 9	5	2	3	3			12,500
Conspiracy in general If underlying offense < 5 years	22-1805a (a)(1)	M 9	Same term	1	x minus 1	3			Same fine
Conspiracy to Commit Murder or an Armed COV	22-1805a (a)(2)	M 5[51]	15	2	13	3		V	Not > 37,500 nor maximum for underlying off

[50] Same group as unarmed completed offense.
[51] If underlying offense is in M 6 or M 7, the conspiracy is in the same offense severity group.

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Conspiracy to Commit COV	22-1805a (a)(2)	M 7[52]	15[53]	2	x minus 2	3		V	Not > 37,500 nor maximum for underlying off
Accessory After the Fact	22-1806	[54]	½ the term						½ the fine
Offenses not covered by D.C. Code	22-1807	M 9	5	2	3	3			12,500
Threats -- Felony	22-1810	M 8	20	2	18	3			50,000
Human Trafficking -- Forced Labor	22-1832 22-1837	M 5	20	2	18	3			50,000
Human Trafficking -- Forced Labor -- Attempt	22-1832 22-1837	M 7	10	2	8	3			25,000
Human Trafficking -- Labor or Commercial Sex Acts	22-1833 22-1837	M 5	20	2	18	3			50,000
Human Trafficking -- Labor or Commercial Sex Acts -- Attempt	22-1833 22-1837	M 7	10	2	8	3			25,000
Human Trafficking -- Sex Trafficking of Children	22-1834 22-1837	M 5	20	2	18	3			50,000
Human Trafficking -- Sex Trafficking of Children -- Attempt	22-1834 22-1837	M 7	10	2	8	3			25,000
Human Trafficking -- Documents	22-1835 22-1837	M 8	5	2	3	3			12,500
Human Trafficking -- Documents -- Attempt	22-1835 22-1837	M 9	2½	1	1½	3			12,500

[52] If underlying offense is in M 8 or M 9, the conspiracy is in the same offense severity group.
[53] The maximum statutory penalty may not exceed 15 years or the maximum penalty prescribed for the underlying offense, whichever is lower.
[54] *See* §§ 2.1 and 2.2.2 for the severity level and scoring of accessory convictions.

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Human Trafficking -- Benefitting Financially	22-1836 22-1837		Same as principal						Same as principal
Human Trafficking -- Benefitting Financially -- Attempt	22-1836 22-1837		Same as principal attempt						Same as principal attempt
Human Trafficking -- Victim held/services provided >180 days	22-1837		1½ x the term						1 ½ x the fine
Incest	22-1901	M 7	12	2	10	3			37,500
Kidnapping w/a*	22-2001 22-4502	M 3	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Kidnapping*	22-2001	M 5	30	5	30	5		V	75,000
Murder I w/a*	22-2101 22-2104 22-4502	M 1	LWOR (60)	5	LWOR	5	M30	V	250,000
Murder I*	22-2101 22-2104 24-403.01 (b-2)	M 1	LWOR (60)	5	LWOR	5	M30	V	250,000
Murder I -- Obstruction of Railway*	22-2102 22-2104 24-403.01 (b-2)	M 1	LWOR (60)	5	LWOR	5	M30	V	250,000
Murder II w/a*	22-2103 22-2104 22-4502	M 2	Life (40)	5	Life	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	250,000

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Murder II*	22-2103 22-2104 24-403.01 (b-2)	M 2	Life (40)	5	Life	5		V	250,000
Aggravated Murder I*	22-2104 22-2104.01 24-403.01 (b-2)	M 1[e]	LWOR	5	LWOR	5		V	250,000
Solicitation of Murder	22-2107(a)	M 4	20	2	18	3			50,000
Solicitation of Other Crime of Violence	22-2107(b)	M 6	10	2	8	3			25,000
Manslaughter -- Voluntary -- w/a*	22-2105 22-4502	M 3	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	250,000
Manslaughter -- Voluntary	22-2105	M 4	30	3	27	5		V	250,000
Manslaughter -- Involuntary -- w/a*	22-2105 22-4502	M 5	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	250,000
Manslaughter -- Involuntary	22-2105	M 5	30	3	27	5		V	250,000
Murder of P.O.*	22-2106	M 1	LWOR		LWOR		M-LWOR	V	250,000
Obscenity -- 2nd+ offense	22-2201(e)	M 9	3	1	2	3	not < 6 months		1,000 - 12,500
Perjury	22-2402	M 8	10	2	8	3			25,000
Perjury, Subornation of	22-2403	M 8	10	2	8	3			25,000
False Swearing	22-2404	M 9	3	1	2	3			12,500
Possession of Implements of Crime -- 2nd+ offense or after felony	22-2501 24-403.01(f)(3)	M 9	5	2	3	3	not < 1		12,500
Escape, and Attempt Escape	22-2601	M 9	5	2	3	3			12,500

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Contraband -- Introducing into prison and possession by inmate: Class A material	22-2603	M 8	10	2	8	3			25,000
Contraband -- Introducing into prison and possession by inmate: Class B material	22-2603	M 9	2	1	1	3			12,500
Prostitution, Engaging In or Soliciting -- 3+ offense	22-2701	M 9	2	1	1	3			12,500
Child Prostitution – Abducting/Enticing	22-2704	M 5	20	2	18	3 or SOR	not < 2		50,000
Child Prostitution -- Harboring	22-2704	M 5	20	2	18	3 or SOR	not < 2		50,000
Prostitution -- Inducing or Compelling	22-2705(c)(1)	M 9	5	2	3	3			12,500
Prostitution -- Inducing or Compelling a Minor	22-2705(c)(2)	M 5	20	2	18	3 or SOR			50,000
Prostitution -- Against Will	22-2706(b)(1)	M 6	15	2	13	3			37,500
Prostitution -- Against Will a Minor	22-2706(b)(2)	M 5	20	2	18	3 or SOR			50,000
Prostitution -- Procuring	22-2707(b)(1)	M 9	5	2	3	3			12,500
Prostitution -- Procuring a Minor	22-2707(b)(2)	M 5	20	2	18	3 or SOR			50,000
Prostitution, Causing Spouse to Live in	22-2708	M 8	10	2	8	3	not < 1		25,000
Prostitution -- Detaining in Disorderly House for Debt	22-2709	M 9	5	2	3	3	not < 1		12,500
Prostitution, Procuring for House of	22-2710	M 9	5	2	3	3			12,500
Prostitution, Procuring for 3rd Persons	22-2711	M 9	5	2	3	3			12,500
Prostitution, Operating House of	22-2712	M 9	5	2	3	3			12,500
Prostitution -- Keeping Bawdy or Disorderly House	22-2722	M 9	5	2	3	3			12,500

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Robbery -- w/a*	22-2801 22-4502	M 5	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Robbery	22-2801	M 6	15	2	13	3	not < 2	V	37,500
Robbery -- Attempt w/a*	22-2802 22-4502	M 6	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Robbery -- Attempt	22-2802	M 8	3	1	2	3		V	12,500
Carjacking w/a*	22-2803(b) 22-4502 24-403.01(b-2)	M 3	40 (30)	5	40 (30)	5	M15	V	125,000 (75,000)
Carjacking	22-2803(a)	M 5	21	2	19	3	M7	V	75,000
Sex Abuse -- Aggravated 1º*	22-3002 22-3020	M 2[e]	LWOR	5	LWOR	5 or SOR		V	125,000
Sex Abuse -- 1º w/a*	22-3002 22-4502	M 2	LWOR (30)	5	LWOR (30)	5 or SOR	M5 1st firearm M10 2nd firearm M5 2nd other	V	125,000 (75,000)
Sex Abuse -- 1º*	22-3002 24-403.01(e)	M 2	LWOR (30)	5	LWOR (30)	5 or SOR	not < 7 if prior COV	V	125,000 (75,000)
Sex Abuse -- Attempt 1º w/a	22-3002 22-3018 22-4502	M 5	30	5	30	5 or SOR	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Sex Abuse -- Attempt 1º	22-3002 22-3018	M 6	15	2	13	3 or SOR		V	37,500

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Sex Abuse -- 2º w/a*	22-3003 22-4502	M 4	30	5	30	5 or SOR	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Sex Abuse -- 2º	22-3003 24-403.01(e)	M 5	20	2	18	3 or SOR	not < 7 if prior COV	V	50,000
Sex Abuse -- Attempt 2º w/a*	22-3003 22-3018 22-4502	M 5	30	5	30	5 or SOR	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Sex Abuse -- Attempt 2º	22-3003 22-3018	M 7	10	2	8	3 or SOR		V	25,000
Sex Abuse -- 3º w/a*	22-3004 22-4502	M5	30	5	30	5 or SOR	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Sex Abuse -- 3º	22-3004	M 7	10	2	8	3 or SOR		V	25,000
Sex Abuse -- Attempt 3º	22-3004 22-3018	M 8	5	2	3	3 or SOR		V	12,500
Sex Abuse -- 4º	22-3005	M 8	5	2	3	3 or SOR			12,500
Sex Abuse -- Attempt 4º	22-3005 22-3018	M 9	2½	1	1½	3 or SOR			12,500
Child Sex Abuse -- Aggravated 1º*	22-3008 22-3020 24-403.01(b-2)	M 3e	LWOR	5	LWOR	5 or SOR		V	125,000
Child Sex Abuse -- 1º w/a*	22-3008 22-4502 24-403.01(b-2)	M 2	LWOR (30)	5	LWOR (30)	5 or SOR	M5 1st firearm M10 2nd firearm M5 2nd other	V	125,000 (75,000)
Child Sex Abuse* -- 1º	22-3008 24-403.01(e) 24-403.01(b-2)	M 3	LWOR (30)	5	LWOR (30)	5 or SOR	not < 7 if prior COV	V	125,000 (75,000)

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Child Sex Abuse -- Attempt 1º w/a*	22-3008 22-3018 22-4502	M 5	30	5	30	5 or SOR	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Child Sex Abuse -- Attempt 1º	22-3008 22-3018	M 6	15	2	13	3 or SOR		V	37,500
Child Sex Abuse -- 2º w/a*	22-3009 22-4502	M 5	30	5	30	5 or SOR	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Child Sex Abuse -- 2º	22-3009 24-403.01(e)	M 6	10	2	8	3 or SOR	not < 7 if prior COV	V	25,000
Child Sex Abuse -- Attempt 2º w/a*	22-3009 22-3018 22-4502	M 5	30	5	30	5 or SOR	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Child Sex Abuse -- Attempt 2º	22-3009 22-3018	M 8	5	2	3	3 or SOR		V	12,500
Sex Abuse of a Minor -- 1º	22-3009.01	M 6	15	2	13	3 or SOR			37,500
Sex Abuse of a Minor -- Attempt 1º	22-3009.01 22-3018	M 7	7½	2	5½	3 or SOR			25,000
Sex Abuse of a Minor -- 2º	22-3009.02	M 7	7½	2	5½	3 or SOR			25,000
Sex Abuse of a Minor -- Attempt 2º	22-3009.02 22-3018	M 9	3¾	1	2¾	3 or SOR			12,500
Sex Abuse of a Student -- 1º	22-3009.03	M 7	10	2	8	3 or SOR			25,000
Sex Abuse of a Student -- Attempt 1º	22-3009.03 22-3018	M 8	5	2	3	3 or SOR			12,500

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Sex Abuse of a Student -- 2º	22-3009.04	M 8	5	2	3	3 or SOR			12,500
Sex Abuse of a Student -- Attempt 2º	22-3009.04 22-3018	M 9	2½	1	1½	3 or SOR			12,500
Child Sex Abuse -- Enticing	22-3010(a) , (b) 24-403.01(e)	M 8	5	2	3	3 or SOR	not < 7 if prior COV		12,500
Child Sex Abuse -- Enticing -- Attempt	22-3010 22-3018	M 9	2½	1	1½	3 or SOR			12,500
Child Sex Abuse -- Arranging for Sexual Contact	22-3010.02	M 8	5	2	3	3 or SOR			12,500
Child Sex Abuse -- Arranging for Sexual Contact -- Attempt	22-3010.02 22-3018	M 9	2½	1	1½	3 or SOR			12,500
Sex Abuse -- Ward -- 1º	22-3013	M 7	10	2	8	3 or SOR			25,000
Sex Abuse -- Ward -- Attempt 1º	22-3013 22-3018	M 8	5	2	3	3 or SOR			12,500
Sex Abuse -- Ward -- 2º	22-3014	M 8	5	2	3	3 or SOR			12,500
Sex Abuse -- Ward -- Attempt 2º	22-3014 22-3018	M 9	2½	1	1½	3 or SOR			12,500
Sex Abuse -- Patient 1º	22-3015	M 7	10	2	8	3 or SOR			25,000
Sex Abuse -- Patient -- Attempt 1º	22-3015 22-3018	M 8	5	2	3	3 or SOR			12,500
Sex Abuse -- Patient -- 2º	22-3016	M 8	5	2	3	3 or SOR			12,500
Sex Abuse -- Patient -- Attempt 2º	22-3016 22-3018	M 9	2½	1	1½	3 or SOR			12,500
Sex Abuse -- Aggravated other than 1º	22-3020		1½ x the term						1½ x the fine

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Sex Performance w/ Minors -- 1st offense	22-3102 22-3103(1)	M 8	10	2	8	3 or SOR			25,000
Sex Performance w/ Minors -- 2nd + offense	22-3102 22-3103 (2)	M 8e	20	2	18	3 or SOR			50,000
Stalking - Felony	22-3133 22-3134 (b)	M 9	5	2	3	3			12,500
Stalking - Felony: if two or more qualifying convictions	22-3133 22-3134 (c)	M 9e	10	2	8	3			25,000
Terrorism – Murder I*	22-3153 (a)	M1	LWOR	5	LWOR	5	LWOR	V	250,000
Terrorism – Murder I w/a*	22-3153 (a) 22-4502	M1	LWOR	5	LWOR	5	LWOR	V	250,000
Terrorism – Murder I – LEO*	22-3153 (b)	M1	LWOR	5	LWOR	5	LWOR	V	250,000
Terrorism – Murder I w/a – LEO*	22-3153 (b) 22-4502	M1	LWOR	5	LWOR	5	LWOR	V	250,000
Terrorism – Murder II*	22-3153 (c)	M2	Life	5	Life	5		V	250,000
Terrorism – Murder II w/a*	22-3153 (c) 22-4502	M2	Life	5	Life	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	250,000
Terrorism – Manslaughter	22-3153 (d)	M4	Life	5	Life	5		V	250,000
Terrorism – Manslaughter w/a*	22-3153 (d) 22-4502	M3	Life	5	Life	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	250,000
Terrorism – Kidnapping*	22-3153(e)	M4	Life	5	Life	5		V	125,000
Terrorism – Kidnapping w/a*	22-3153(e) 22-4502	M3	Life	5	Life	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	125,000

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Terrorism – AWIK	22-3153(f)	M4	30	3	27	5		V	75,000
Terrorism – AWIK w/a*	22-3153(f) 22-4502	M3	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Terrorism – Mayhem/Malicious Disfig.	22-3153(g)	M5	20	2	18	3		V	50,000
Terrorism – Mayhem/Malicious Disfig. w/a*	22-3153(g) 22-4502	M4	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Terrorism – Arson	22-3153(h)	M5	20	2	18	3		V	50,000
Terrorism – Arson w/a*	22-3153(h) 22-4502	M4	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Terrorism – Destruction of Prop.	22-3153(i)	M5	20	2	18	3		V	50,000
Terrorism – Destruction of Prop. w/a*	22-3153(i) 22-4502	M4	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Terrorism – Murder I -- Attempt/Conspire	22-3153 (j)	M4	30	3	27	5		V	75,000
Terrorism – Murder I w/a -- Attempt/Conspire*	22-3153 (j) 22-4502	M3	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Terrorism – Murder I – LEO -- Attempt/Conspire	22-3153 (j)	M3	30	3	27	5		V	75,000
Terrorism – Murder I w/a – LEO -- Attempt/Conspire*	22-3153 (j) 22-4502	M2	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Terrorism – Kidnapping -- Attempt/Conspire	22-3153(j)	M5	30	3	27	5		V	75,000

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Terrorism – Kidnapping w/a -- Attempt/Conspire*	22-3153(j) 22-4502	M4	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Terrorism – Mayhem/Malicious Disfig. Attempt/Conspire	22-3153(l)	M6	15	2	13	3		V	37,500
Terrorism – Mayhem/Malicious Disfig. w/a* Attempt/Conspire*	22-3153(l) 22-4502	M5	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Terrorism – Arson -- Attempt/Conspire	22-3153(l)	M6	15	2	13	3		V	37,500
Terrorism – Arson w/a -- Attempt/Conspire*	22-3153(l) 22-4502	M5	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Terrorism – Destruction of Prop. -- Attempt/Conspire	22-3153(l)	M6	15	2	13	3		V	37,500
Terrorism – Destruction of Prop. w/a -- Attempt/Conspire*	22-3153(l) 22-4502	M5	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Terrorism – Material Support	22-3153(m)	M5	20	2	18	3		V	50,000
Terrorism – Material Support w/a*	22-3153(m) 22-4502	M4	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Terrorism – Soliciting	22-3153(n)	M6	20	2	18	3		V	50,000
Terrorism – Soliciting w/a*	22-3153(n) 22-4502	M5	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V	75,000
Terrorism - Weapon of Mass Destruction, Manufacture/Poss.	22-3154 (a)	M3	life	5	life	5		V	125,000

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Terrorism - Weapon of Mass Destruction, Manufacture/ Poss. -- Attempt/Conspire	22-3154 (b)	M5	30	3	27	5		V	75,000
Terrorism - Weapon of Mass Destruction, Use, Disseminate, or Detonate	22-3155 (a)	M2	life	5	life	5		V	125,000
Terrorism - Weapon of Mass Destruction, Use, Disseminate, or Detonate -- Attempt/Conspire	22-3155 (b)	M3	30	3	27	5		V	75,000
Theft -- 1º	22-3211 22-3212 (a)	M 8	10	2	8	3			25,000
Theft -- 1º if two or more theft convictions	22-3211 22-3212 (c)	M 8	10	2	8	3	M1		25,000
Theft -- 2º if two or more theft convictions	22-3211 22-3212 (c)	M 9	10	2	8	3	M1		25,000
Deceptive Labeling	22-3214.01(d)(2)	M 9	5	2	3	3			12,500
Unauthorized Use of a Motor Vehicle (UUV) -- Rental	22-3215(d)(4)	M 8	3	1	2	3			12,500
Unauthorized Use of a Motor Vehicle (UUV) -- Private Two or more UUV or Theft 1º convictions	22-3215 (d)(3)	M 8[e]	15	2	13	3	not < 2 ½		5,000 – 37,500
Unauthorized Use of a Motor Vehicle (UUV) -- Private During or to facilitate COV	22-3215 (d)(2)	M 7	10	2	8	3			25,000
Unauthorized Use of a Motor Vehicle (UUV) -- Private During or to facilitate COV w/ serious bodily injury	22-3215 (d)(2)	M 7	10	2	8	3	not < 5		25,000
Unauthorized Use of a Motor Vehicle (UUV) -- Private	22-3215(d)(1)	M 8	5	2	3	3			12,500
Fraud -- 1º -- $1,000+	22-3221(a) 22-3222(a)(1)	M 9	10	2	8	3			25,000/ 3x the value
Fraud -- 2º -- $1,000+	22-3221(b) 22-3222(b)(1)	M 9	3	1	2	3			12,500/3x the value

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Credit Card Fraud -- $1,000+	22-3223(d)(1)	M 9	10	2	8	3			25,000
Insurance Fraud -- 1º -- $1,000+	22-3225.02 22-3225.04(a)	M 9	15	2	13	3			37,500
Insurance Fraud -- 2º -- $1,000+ 1st offense	22-3225.03 22-3225.04(b)(1)	M 9	5	2	3	3			12,500
Insurance Fraud -- 2º -- $1,000+ 2nd offense	22-3225.03 22-3225.04(b)(2)	M 9[e]	10	2	8	3			25,000
Telephone Solicitation Fraud -- $20,000+	22-3226.06(a) 22-3226.10	M 9	4	1	3	3			12,500
Telephone Solicitation Fraud -- > $5,000 to < 20,000	22-3226.06(a) 22-3226.10	M 9	3	1	3	3			12,500
Identity Theft -- 1º	22-3227.02 22-3227.03(a)	M 8	10	2	8	3			25,000 or 3x the financial injury
Identity Theft -- 1º against senior citizen	22-3227.02 22-3227.03(c)	M 8[e]	15	2	13	3			37,500 or 4.5x the financial injury
Trafficking in Stolen Property	22-3231	M 8	10	2	8	3			25,000
Receiving Stolen Property (RSP) -- $1,000+	22-3232(c)(1)	M 9	7	2	5	3			25,000
Tampering with a VIN -- $1,000+	22-3233(b)(2)	M 9	5	2	3	3			12,500
Forgery and Uttering: Legal tender	22-3241 22-3242 (a)	M 9	10	2	8	3			25,000
Forgery and Uttering: Token	22-3241 22-3242(b)	M 9	5	2	3	3			12,500
Forgery and Uttering: Other	22-3241 22-3242(c)	M 9	3	1	2	3			12,500

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Extortion with threats of violence w/a*	22-3251 22-4502	M 8	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V[55]	75,000
Extortion	22-3251	M 8	10	2	8	3		V[56]	25,000
Blackmail with threats of violence -- w/a*	22-3252 22-4502	M 8	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	V[57]	75,000
Blackmail	22-3252	M 9	5	2	3	3		V[58]	12,500
Grave Robbing	22-3303	M 9	3	1	2	3	not < 1		12,500
Destruction of Property (DP) -- explosives	22-3305	M 8	10	2	8	3	not < 2		25,000
Water Pollution -- Malicious	22-3318	M 9	3	1	2	3	not < 1		500 – 12,500
Obstructing Railways	22-3319	M 9	10	2	8	3			25,000
Voyeurism	22-3531(f)(2)	M 8	5	2	3	3			12,500
Senior Citizen Victim	22-3601		1½ x the term						1 ½ x the fine
Citizen Patrol Victim	22-3602		1½ x the term						1½ x the fine
Crime of Violence Against Minors	22-3611		1½ x the term						1 ½ x the fine

[55] D.C. Code § 23-1331 (4) provides that a crime of violence includes “extortion or blackmail accompanied by threats of violence.”
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Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Bias-Related Crime	22-3703		1½ x the term						1 ½ x the fine
Taxicab Driver, Offenses Against	22-3751		1 ½ x the term						1 ½ the fine
Sex Offender -- Failure to Register -- 2nd offense	22-4015(a)	M 9	5	2	3	3			12,500
Gun-Free Zone	22-4502.01		2 x the term						2x the fine
Firearm, Unlawful Possession of by a person with a prior conviction > 1 yr	22-4503(a)(1)	M 7[59]	10	2	8	3	M1		25,000
Firearm, Unlawful Possession of by a person with a prior conviction > 1 yr and COV other than Conspiracy	22-4503(a)(1)	M 6	15	2	13	3	M3		37,500
Unlawful Possession of a Firearm: prior convictions > 1 yr and COV other than Conspiracy	22-4503(a)(1)	M 6	15	2	13	3	M3		37,500
Unlawful Possession of a Firearm: prior conviction > 1 yr	22-4503(a)(1)	M 7[60]	10	2	8	3	M1		25,000
Firearm, Unlawful Possession of by others	22-4503(a)(2) – (a)(6)	M 8	10	2	8	3	not < 2		25,000
Unlawful Possession of a Firearm: others	22-4503(a)(2) – (a)(6)	M 8	10	2	8	3	not < 2		25,000

[59]Defendants convicted of Firearm, Unlawful Possession of by a person with a prior conviction > 1 year with a criminal history score of .75 to 1.75 fall into Master Grid box 7:B with a sentencing range of 18 to 42 months incarceration, prison or short split permissible. However, because the mandatory minimum 12-month sentence, a short split sentence is not permissible under the Guidelines. The court must sentence the defendant to at least 18 months to impose a Guidelines compliant sentence. If the court determines that a split sentence of 12 months incarceration or more, but less than 18 months, is appropriate, it may sentence the defendant accordingly, but this would constitute a departure from the Guidelines. The court should note the reason for the departure on the docket.

[60]Defendants convicted of Firearm, Unlawful Possession of by a person with a prior conviction > 1 year with a criminal history score of .75 to 1.75 fall into Master Grid box 7:B with a sentencing range of 18 to 42 months incarceration, prison or short split permissible. However, because the mandatory minimum 12-month sentence, a short split sentence is not permissible under the Guidelines. The court must sentence the defendant to at least 18 months to impose a Guidelines compliant sentence. If the court determines that a split sentence of 12 months incarceration or more, but less than 18 months, is appropriate, it may sentence the defendant accordingly, but this would constitute a departure from the Guidelines. The court should note the reason for the departure on the docket.

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Carrying a Pistol – Felony (formerly CPWL) Carrying Dangerous Weapon – Felony (CDW) 1st offense	22-4504(a)	M 8	5	2	3	3			12,500
Carrying a Pistol – Felony (formerly CPWL) Carrying Dangerous Weapon – Felony (CDW) 2nd+ offense or after felony conviction	22-4504(a)	M 8[e]	10	2	8	3			25,000
Possession of a Firearm During a Crime of Violence or Dangerous Crime (PFDCVDC)	22-4504(b)	M 5	15	2	13	3	M5		37,500
Possession of Prohibited Weapon (PPW) -- 2nd+ offense or after felony	22-4514	M 9	10	2	8	3			25,000
Molotov Cocktails -- 1st offense	22-4515a	M 9	5	2	3	3	not < 1		12,500
Molotov Cocktails -- 2nd offense	22-4515a	M 9[e]	15	2	13	3	not < 3		37,500
Molotov Cocktails -- 3rd* offense*	22-4515a	M 9[e]	30	5	30	5	not < 5		75,000
Bail Reform Act (BRA) violation	23-1327(a)(1)	M 9	5	2	3	3	not < 1		12,500
Offenses Committed During Release (felony)[61]	23-1328(a)(1)	M 9[62]	5				not < 1		12,500
Assault on Police Officer (APO) w/ deadly weapon -- 2nd+ offense or prior felony	24-403.01(f)(1)	M 7[e]	10	2	8	3	not < 1	V	25,000
Aggravating Circumstances	24-403.01(b2)		LWOR	5	LWOR	5			125,000
False Statement (Money Transmissions)	26-1023(b)	M 9	3	1	2	3			12,500
Money Transmission Without a License	26-1023(c)	M 9	5	2	3	3			12,500

[61]OCDR (felony) is an enhancement, not a separate offense. However, it operates similarly to a separate offense. Therefore, the Guidelines treat it as if it were a separate offense when determining a defendant's applicable sentencing range in the instant case for which it was charged.
[62]OCDR (felony) is classified as a M9 offense only when it is a charge in the instant case. Because it is technically an enhancement, not a distinct separate offense, it should not be scored as part of a defendant's prior criminal history score.

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Drugs -- Distribution, or PWID: I, II Narcotics and abusive drugs (heroin, cocaine, PCP, methamphetamine, etc.)	48-904.01(a) (2)(A) , (b)	D 2	30	3	27	5		D	75,000
Drugs -- Distribution, or PWID: I, II, III Non-narcotic and non-abusive drugs (including marijuana -- 2nd offense or > ½ pound)	48-904.01(a) (2)(B) , (b)	D 3	5	2	3	3		D	12,500
Drugs -- Distribution, or PWID: IV	48-904.01(a) (2)(C) , (b)	D 3	3	1	2	3		D	12,500
Drugs -- Distribution, or PWID w/a* (any drug)	48-904.01(a) , (b) 22-4502	D 1	30	5	30	5	M5 1st firearm M10 2nd firearm M5 2nd other	D	75,000
Drugs -- Possession of Liquid PCP	48-904.01(d)(2)	D 3	3	1	2	3			12,500
Drugs -- Fraud	48-904.03	D 3	4	1	3	3			12,500
Drugs -- Maintaining place for	48-904.03a	D 2	25	3	22	3	not < 5		75,000
Drugs -- Distribution to Minors	48-904.06		2 x the term						same fine
Drugs -- Enlisting Minors -- 1st offense	48-904.07(b)(1)[63]		10	2	8	3			25,000
Drugs -- Enlisting Minors -- 2nd + offense	48-904.07(b)(2)[44]		20	2	18	3			50,000
Drug-Free Zones	48-904.07a		2 x the term						2x the fine
Drugs -- 2nd+ offense	48-904.08		2 x the term						2 x the fine

[63]D.C. Code § 48-904.07 provides that a person who, for profit or benefit, enlists a minor to sell or distribute drugs in violation of D.C. Code § 48-904.01 (a), "shall be punished in the same manner as if that person directly sold or distributed the controlled substance" and that the penalties indicated here are "additional."

Offense	D.C. Code (2001)	Offense Severity Group	Maximum Statutory Penalty (Years)	Backup Time (Years)	Maximum prison term that can be imposed (Years)	Supervised Release (Years)	Minimum (Years)	Violent/Dangerous	Fine (Dollars)
Drugs -- Attempt or Conspiracy of a while armed offense in Drug Group 1	48-904.09	D 2	same term as comple ted offense						same fine
Drugs -- Attempt or Conspiracy of an offense in Drug Group 2	48-904.09	D 3	same term as comple ted offense						same fine
Drugs -- Attempt or Conspiracy of an offense in Drug Group 3	48-904.09	D 4	same term as comple ted offense						same fine
Obstructing Service of a Drug Search Warrant	48-921.02(n)	M 9	2	1	1	3			12,500
Drug Paraphernalia	48-1103(e)(4)	M 9	2	1	1	3			12,500
Drug Paraphernalia -- Distributing to a Minor	48-1103 (c)	D 3	8	2	6	3			25,000
Possession of Drug Paraphernalia (PDP) w/ Intent -- 2nd+ offense	48-1103(b)	M 9	2	1	1	3			12,500
Fleeing Law Enforcement	50-2201.05b (b)(2)	M 8	5	2	3	3			12,500
Negligent Homicide (Vehicular)	50-2203.01	M 7	5	2	3	3			250,000

Appendix D – RANKING CHART (Most Common Offenses)

Revised June 2012

Most Common Offenses by Master Group		
1	Murder 1º w/a Murder 1	Murder of a law enforcement officer 1º
2	Murder 2º w/a Murder 2º Sexual abuse 1º	Child sexual abuse 1º w/a Sexual abuse 1ºw/a
3	AWIK w/a Burglary 1º w/a Carjacking w/a	Child sexual abuse 1º Kidnapping w/a Voluntary manslaughter w/a
4	Aggravated assault w/a	Voluntary manslaughter
5	Armed robbery Current APO w/a (30-year statutory maximum)[64] AWI commit any offense w/a AWI commit robbery w/a AWIK Burglary 1º Carjacking Involuntary Manslaughter w/a Involuntary Manslaughter Kidnapping Malicious disfigurement w/a Mayhem w/a Obstruction of justice PFCOV	Child sexual abuse 2º w/a Sexual abuse 2º w/a Sexual abuse 2º AWI commit 1º child sexual abuse w/a AWI commit 2º child sexual abuse w/a AWI commit 1º sexual abuse w/a AWI commit 2º sexual abuse w/a Child sexual abuse, attempt 1º w/a Child sexual abuse, attempt 2º w/a Sexual abuse, attempt 1º w/a Sexual abuse, attempt 2º w/a
6	Aggravated assault Arson Former APO with a dangerous weapon* ADW AWI commit robbery Attempt robbery w/a Burglary 2º w/a Cruelty to children 1º Felon in possession of firearm (prior COV not conspiracy)† Malicious disfigurement	Mayhem Robbery AWI commit 1º child sexual abuse AWI commit 2º child sexual abuse AWI commit 1º sexual abuse AWI commit 2º sexual abuse Child sexual abuse, attempt 1º Child sexual abuse 2º Sexual abuse, attempt 1º
7	AWI commit mayhem Current APO (10-year statutory maximum)* Burglary 2º Felon in possession of firearm[65] Incest Negligent homicide	Sexual abuse, attempt 2º Sexual abuse of a patient 1º Sexual abuse of a ward 1º Sexual abuse 3º UUV (during or to facilitate a crime of violence)
8	Former APO* AWI commit any offense Aggravated assault, attempt Assault with Significant Injury Bribery Burglary, attempt CPWL/CDW Cruelty to children 2º DP (f) Extortion Introducing contraband into penal institution: Class A Materials Kidnapping, attempt Perjury Robbery, attempt	Theft 1º Threats Trafficking in stolen property UUV Child sexual abuse, attempt 2º Enticing a child Sexual abuse of a patient, attempt 1º Sexual abuse of a ward, attempt 1º Sexual abuse, attempt 3º Sexual abuse 4º Sexual abuse of a patient 2º Sexual abuse of a ward 2º Unlawful possession of a firearm

[64]The current law replaced the former law on July 19, 2006.

[65]Felon in possession of a firearm, formerly a misdemeanor, became a felony on July 19, 2006.

9	Bad check Bail reform act (BRA) Blackmail Credit card fraud Escape Escape, attempt False personation of a police officer Forgery Fraud 1º Fraud 2º Impersonating a public official	Introducing contraband into penal institution: Class B Materials PPW -- second + offense RSP Breaking and Entering (vending machine) Uttering Enticing a child. attempt Sexual abuse 4º, attempt Sexual abuse of a patient 2º, attempt Sexual abuse of a ward 2º, attempt Theft 2 º, if two or more Theft convictions

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

Appendix E - HISTORICAL DATA FOR MASTER GRID

1/1/1996-6/30/2003

	Criminal History Score				
Ranking group Most common offenses	A	B	C	D	E
Group 1	0.00%	0.00%	0.00%	0.00%	0.00%
	0.00%	2.60%	0.00%	0.00%	0.00%
1st degree murder w/armed	360mo.	360mo.	360mo.	360mo.	
1st degree murder	360-360mo.	360-360mo.	360-360mo.	360-360mo.	
	N=172	N=38	N=24	N=5	N=0
Group 2	0.00%	0.00%	0.00%	0.00%	0.00%
2nd degree murder w/ armed	1.10%	0.00%	0.00%	0.00%	0.00%
2nd degree murder	180mo.	180mo.	180mo.	210mo.	150mo.
1st degree sex abuse w/ armed	144-240mo.	180-240mo.	180-234mo.	117-240mo.	120-180mo.
1st degree sex abuse	N=178	N=31	N=17	N=4	N=2
Group 3	2.10%	0.00%	0.00%	0.00%	0.00%
	3.40%	0.00%	7.10%	0.00%	0.00%
Voluntary manslaughter w/ armed	120mo.	108mo.	180mo.	180mo.	120mo.
1st degree child sex abuse	84-180mo.	72-180mo.	162-180mo.	72-240mo.	120-120mo.
Carjacking while armed	N=146	N=19	N=14	N=3	N=1
Group 4	8.00%	2.40%	0.00%	0.00%	0.00%
	4.80%	0.00%	5.90%	0.00%	0.00%
Aggravated assault w/ armed	84mo.	60mo.	102mo.	60mo.	20mo.
Voluntary manslaughter	51-120mo.	36-108mo.	52-120mo.	60-60mo.	20-20mo.
	N=125	N=42	N=17	N=1	N=1
Group 5	3.10%	5.20%	1.20%	4.50%	0.00%
	5.00%	1.70%	0.00%	0.00%	0.00%
Possession of firearm /CV	60mo.	60mo.	60mo.	60mo.	60mo.
Armed robbery	60-60mo.	60-60mo.	60-72mo.	60-60mo.	48-72mo.
Burglary I	N=519	N=172	N=85	N=22	N=9
Group 6	23.00%	14.10%	10.50%	7.70%	0.00%
ADW	9.10%	7.20%	3.90%	5.10%	0.00%
Robbery	30mo.	30mo.	36mo.	33mo.	36mo.
Aggravated assault	18-40mo.	20-40mo.	24-40mo.	20-36mo.	21-48mo.
2nd degree child sex abuse	N=900	N=249	N=153	N=39	N=5
Group 7	31.00%	25.30%	16.70%	20.80%	0.00%
Burglary II	5.40%	5.10%	2.40%	4.20%	16.70%
3rd degree sex abuse	20mo.	24mo.	24mo.	33mo.	24mo.
Negligent homicide	12-27mo.	13-36mo.	21-36mo.	24-51mo.	9-48mo.
	N=129	N=99	N=84	N=24	N=6
Group 8	44.50%	25.90%	21.80%	22.90%	18.20%
CPWOL	12.50%	9.10%	8.80%	7.10%	9.10%
UUV	12mo.	12mo.	12mo.	12mo.	12mo.
Attempt robbery	8-20mo.	9-18mo.	10-20mo.	10-20mo.	8-13mo.
	N=1847	N=584	N=308	N=70	N=22
Group 9	37.90%	29.90%	24.80%	20.40%	29.00%
Escape/prison breach	6.90%	4.90%	5.20%	6.50%	3.20%
BRA	4mo.	4mo.	4mo.	4mo.	6mo.
Receiving stolen property	3-9mo.	3-9mo.	3-9mo.	4-11mo.	3-12mo.
	N=1720	N=1184	N=650	N=93	N=31

Note: Shaded cells have < 10 cases. Altogether, N equals 10,242 cases. See table content key on next page.

Appendix F - HISTORICAL DATA FOR DRUG GRID

1/1/1996-6/30/2003

	Criminal History Score				
Ranking group Most common offenses	**A**	**B**	**C**	**D**	**E**
Group 1 Distribution w/a PWID w/a	50.00% 10.00% 60mo. 33-87mo. N=10		0.00% 33.30% 48mo. 36-60mo. N=3	N=0	N=0
Group 2 Distribution PWID	52.00% 8.80% 15mo. 10-24mo. N=1713	39.10% 6.50% 18mo. 12-36mo. N=713	24.70% 8.40% 24mo. 12-36mo. N=275	24.20% 6.10% 24mo. 16-30mo. N=33	0.00% 0.00% 20mo. 4-36mo. N=3
Group 3 Attempt Distribution Attempt PWID Obtain Narcotics by Fraud	62.20% 8.70% 12mo. 8-18mo. N=1791	48.10% 4.80% 14mo. 12-24mo. N=728	34.40% 5.30% 15mo. 12-24mo. N=262	41.40% 3.40% 12mo. 12-24mo. N=29	20.00% 0.00% 30mo. 9-48mo. N=5

Note: Shaded cells have fewer than 10 cases. Altogether, N equals 5565 cases.

Table Content
1. Percent probation
2. Percent Split < 181 days
3. Median minimum sentence (old and new law)
4. 25th-75th percentile (middle 50% of Sentence)
5. Number of cases

Appendix G -- INSTRUCTIONS ON SPLITS
Problems regarding the implementation of determinate sentences in the District of Columbia
June 15, 2002

Dear Judges, Assistant United States Attorneys and members of the Defense Bar:

It has come to our attention that there is still some confusion with respect to the "new" determinate sentencing system. We write this memo to help clarify a few aspects of the system that seem to be the most confounding.

Calculating maximum prison time for non-Class A felonies

In the new determinate sentencing system ["new system"], there are two classes of felonies: Class A felonies and everything else. With the exception of armed carjacking, all of the Class A felonies carried a maximum penalty of life in the old indeterminate sentencing system ["old system"].[66] All other felonies carried a maximum penalty of a term of years in the old system.

The distinction between Class A felonies and all other felonies determines, among other things, the maximum sentence the court can impose. For Class A felonies, the court can impose any sentence up to the statutory maximum sentence. For all other felonies, the court must deduct from the statutory maximum sentence the additional prison time that could be imposed (by the U.S. Parole Commission) if supervised release were to be revoked ["back up time"]. Keep in mind that back up time is not the same as the term of supervised release.

The total amount of time a person could serve in prison following revocation of supervised release is set out in column two of the following chart:

If the statutory maximum for the offense is	**Then the maximum amount of imprisonment following revocation of supervised release ["back up time"] is**
Life or the offense is specifically designated as a "Class A" felony	5 years
25 years or more, but less than life	3 years
5 years or more, but less than 25 years	2 years
Less than 5 years	1 year

In order to figure out the maximum prison sentence the court can impose, one should first determine what the statutory maximum for the offense is and then, for non-Class A felonies, deduct the amount of back up time from the statutory maximum. The balance is the maximum prison sentence the court can impose.

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[66]Class A felonies are: first and second degree murder, first degree sexual abuse, first degree child sexual abuse, kidnapping, armed carjacking, obstruction of justice, armed crimes of violence as defined in D.C. Code § 22-4501(f)(2001), the third conviction for a felony, and the third conviction for a violent felony.

Thus, for example, aggravated assault has a statutory maximum penalty of 10 years. The backup time for aggravated assault is 2 years because the statutory maximum is more than 5 years but less than 25 years. Therefore, the maximum amount of prison time that the court can impose on the defendant on the day of sentencing is 8 years (the 10-year statutory maximum minus 2 years of back up time). The worst case scenario for this defendant (from his or her point of view) is that the court imposes the maximum prison sentence of 8 years and then the defendant violates his/her subsequent supervised release and gets revoked by the United States Parole Commission for the entire 2 years. Even in this worst-case scenario, the defendant cannot be legally imprisoned even one day more than the 10-year statutory maximum, which was the intent behind requiring the subtraction of the backup time.

Remember that subtracting the backup time from the statutory maximum to arrive at the maximum prison sentence that can be imposed is required for all felonies except Class A felonies. Subtracting the backup time from the statutory maximum is the only way to arrive at the correct maximum prison sentence and the calculation is mandatory. A sentence greater than the statutory maximum minus the backup times is not a legal sentence. Thus, for example, assault on a police officer has a 5-year statutory maximum. The maximum prison sentence is therefore 3 years (the 5 year statutory maximum minus the 2 year back up time). The court cannot legally impose a prison sentence of 4 years or 5 years, even if the court suspends the sentence and places the defendant on probation.

For Class A felonies, the backup time is <u>not</u> subtracted from the statutory maximum. For example, aggravated assault while armed is a Class A felony and its statutory maximum penalty is now 30 years. While the backup term is 5 years, this term is <u>not</u> subtracted from the statutory maximum to arrive at the maximum prison sentence the court can impose. The maximum prison sentence the court can impose is the statutory maximum; thus, the judge can impose a sentence of up to 30 years.

The court may not impose a prison term greater than the statutory maximum for Class A felonies or the statutory maximum *minus* back-up time for all other felonies. The court is always free to impose less prison time, keeping in mind any applicable mandatory minimums. Once the court imposes its sentence, the defendant will serve at least 85% of it according to "truth-in-sentencing" principles. The defendant can earn good time to reduce his or her sentence, but s/he cannot reduce the sentence by more than 15%. As in the old system, the United States Bureau of Prisons, and not the court, administers the award of good time credits.

Finally, the amount of back up time for any given offense is set by D.C. Code § 24.403.1(b)(7). It is <u>not</u> a part of the sentence imposed by the judge. If the U.S. Parole Commission revokes supervised release, it can impose all or part of the backup time. If the Parole Commission imposes only part of the backup time, the balance is still available if the Parole Commission places the defendant on supervised release again in that case and it is again revoked.

Split sentences

Split sentences continue to pose problems in the new regime. A split sentence must have these elements: an imposed prison sentence, an imposed period of supervised release, suspension of some, but not all, of the prison time, suspension of all of the supervised release term and a period of probation, not to exceed 5 years, to follow release from the unsuspended portion of the prison time.

To impose a legal split sentence, the court should impose the prison sentence it wants the defendant to serve if probation is later revoked and impose the amount of supervised release that it must impose with that prison sentence. Then the court should suspend the amount of prison time it wants to suspend and suspend all the supervised release time. The court should then set an appropriate term of probation. The court must impose a term of supervised release because the law says that every felony sentence must be followed by an adequate period of supervised release. The court must suspend the imposed term of supervised release when it is imposing a split sentence because the felony sentence will not be completely served and the supervised release will not begin unless and until probation is revoked and the defendant serves the unsuspended portion of the original prison sentence (or some lesser sentence, if the judge chooses to reduce it upon revocation).[67] If the supervised release were not suspended, it would run concurrently with the probation and the court and the United States Parole Commission would both have jurisdiction in the same case at the same time. If the defendant violated, for example by testing positive for drugs, then anomalous results could occur with the judge deciding not to revoke probation but to order the defendant into an inpatient treatment program and the United States Parole Commission deciding to revoke supervised release and to send the defendant to prison.

An example of a legal split sentence in an aggravated assault case is "6 years in prison to be followed by 3 years supervised release, suspend all but 2 years in prison to be followed by 4 years probation." In this example, the defendant will serve 2 years in prison and then be released to do 4 years of probation. If the defendant is successful on probation, then the defendant will never serve the remainder of the prison sentence (the 4 years s/he did not serve of the 6 year imposed sentence) and s/he will never serve the term of supervised release. If the defendant is unsuccessful and the court revokes probation, then the defendant will serve the remainder of the prison sentence (or less, if the court chooses) and, once s/he is released from prison, the defendant will serve the 3-year term of supervised release.

When calculating a split sentence, the initial prison sentence that the court imposes cannot be greater than the maximum prison sentence allowed for the offense. Splitting a sentence does not change the rules for how the maximum prison sentence must be calculated for non-Class A felonies. In the earlier example, we noted that a sentence of 4 years on a conviction of APO is illegal. It is similarly illegal to impose a sentence of 4 years, followed by a 3-year term of

[67]Some believe that the court can, when splitting a sentence, suspend imposition of supervised release and impose the term of supervised release if and when probation is revoked. The majority view is that the term of supervised release must be imposed when the initial sentence is imposed, but that it must be suspended when all or part of the prison sentence is suspended and the defendant is placed on probation

supervised release, suspend all but 1 year, followed by probation for 2 years. In this example, the defendant would initially serve only one year, but if the probation were later revoked, s/he could serve the remainder of the 4-year prison term imposed and then be subject to 2 years of back up time if s/he violates the conditions of his/her 3-year term of supervised release. This means that defendant could be required to serve 6 years in prison -- which is more than the 5-year statutory maximum. As discussed above, a defendant cannot be made to serve more time in prison than the statutory maximum penalty for that offense.

Minimum sentences (robbery)

Robbery is probably the most common offense for which there is a statutory minimum but there are others, including first and second degree burglary (5 years and 2 years, respectively) and second degree murder (20 years). See attached chart. Using robbery as an example, according to D.C. Official Code § 22-2801, the penalty for robbery is "not less than 2 years nor more than 15-years." This language does not create a mandatory minimum, and probation is a possibility on a robbery conviction. However, if the court imposes a prison sentence, then the court must impose a sentence between 2 years (the statutory minimum) and 13 years (15 year statutory maximum minus 2 years back up time). If the judge wants to impose a prison sentence but does not want the defendant to serve 2 years, there are at least two options. The court could impose a split sentence: impose a sentence of 2 years to be followed by a 3-year term supervised release, suspend all but the amount of prison time the court wants the defendant to serve and impose a period of probation. If the court wants the defendant to serve 1 year or less, then the court can either suspend imposition of sentence (ISS) or impose a sentence and suspend execution of all of it (ESS), place the defendant on probation for any period up to 5 years, and require the defendant, as a condition of probation, to spend up to one year in custody, either at the D.C. Jail or at a halfway house. D.C. Code § 16-710(b-1)(2001, 2002 interim update service). These options are available for any offense that has a minimum that is not a mandatory minimum.

Special Problems of Multiplication and Division

The statutory maximums for some felonies are tied to statutory maximums for other felonies, which can create some complications. The period of supervised release, the backup time, and the prison sentence that can be imposed are tied to the statutory maximum sentence for the offense of conviction and not to a percentage of time for the underlying offense. For example, a person convicted of accessory after the fact faces a maximum sentence up to one-half the maximum imprisonment to which the principal is subject. If the underlying offense is aggravated assault, the defendant would face a 5-year statutory maximum because 5 years is half of the 10-year statutory maximum for aggravated assault. However, even though the maximum prison time the court can impose for aggravated assault is 8 years (10 year statutory maximum minus 2 year back up time), the most prison time the court can impose on the defendant convicted of accessory after the fact (aggravated assault) is not 4 years, but 3 years (5 year statutory maximum minus 2 years of back up time). The period of supervised release is not 1 ½ years but 3 years (since the sentence for accessory after the fact, like the sentence for aggravated assault, is less than 25 years).

Offenses that enhance a sentence based on a percentage of another offense are calculated similarly. For example, a person convicted of a crime in a case in which repeat papers have been

filed pursuant to § 22-1804 faces a maximum sentence of 1 ½ times the underlying offense penalty for a second conviction and 3 times the underlying offense penalty for a third or subsequent conviction. A defendant convicted a second time for aggravated assault with repeat papers is facing a 15-year statutory maximum (10-year statutory maximum times 1 ½) and, for a third or subsequent conviction, the defendant is facing a 30-year statutory maximum (10 years times 3). Again, even though the maximum prison time the court can impose for aggravated assault is 8 years, the most prison time the court can impose for a third conviction of aggravated assault with repeat papers is not 24 years, but 27 years (30 year statutory maximum minus 3 year back up time). Since the maximum prison sentence is greater than 25 years, the period of supervised release is not 4 ½ years, but 5 years.

We trust that this review of rules and principles will be helpful to everyone as we all struggle through implementation of the new system.

Appendix H -- STATUTORY ENHANCEMENTS

If an enhancement provision applies, the **top** of the Guidelines range is increased by the same percentage or amount as the statutory multiplier or cap. For example, if the statute states that the punishment may be 1 ½ times the maximum otherwise authorized for the offense, then the top of the Guidelines prison range is increased by 1 ½. However, if the statute increases the maximum term of imprisonment from 5 to 10 years, for example, the **top** of the prison range is doubled. Note that the bottom of the range does not change, only the top. *See* Chapter 4.

I. Enhancements With Multipliers

Status of Victim

Bias Related Crime	1 ½ x the upper number	D.C. Code § 22-3703
Citizen Patrol Victim	1 ½ x the upper number	D.C. Code § 22-3602
Crimes of Violence Against Minors	1 ½ x the upper number	D.C. Code § 22-3611
Mass Transit Operator	1 ½ x the upper number	D.C. Code § 22-3751.01
Senior Citizen Victim	1 ½ x the upper number	D.C. Code § 22-3601
Senior Citizen Identity Theft	1 ½ x the upper number	D.C. Code § 22-3227.03(c)
Taxicab Drivers	1 ½ x the upper number	D.C. Code § 22-3751

Note: These enhancements are limited to enumerated crimes which are not consistent from section to section.

Drugs and Guns

Drug-free zone	2 x the upper number	D.C. Code § 48-904.07a (b)
Drugs to minors	2 x the upper number	D.C. Code § 48-904.06
Gun-free zones	2 x the upper number	D.C. Code § 22-4502.01

Human Trafficking

Victim Held or Provided Services for >180 Days	1 ½ x the upper number	D.C. Code § 22-1837

Repeat Offender Provisions

1 or more drug offenses	2 x the upper number	D.C. Code § 48-904.08
1 prior like offense	1 ½ x the upper number	D.C. Code § 22-1804 (a)
2 or more prior like offenses	3 x the upper number[68]	D.C. Code § 22-1804 (a)
2 or more prior felonies	Up to 30 years[69]	D.C. Code § 22-1804a (a)(1)
2 or more prior violent felonies	Up to life w/o release[70]	D.C. Code § 22-1804a (a)(2)

II. Enhancements Without Multipliers

(1) Carrying a Pistol - Felony (D.C. Code § 4504(a))

First offense: 5 years
Second offense or after felony: 10 years
Ratio 2:1 = 2x the upper number

(2) Enlisting minors to distribute drugs (D.C. Code § 48-904.07)

First offense: 10 years
Second offense: 20 years
Ratio 2:1 = 2 x the upper number

(3) Insurance fraud (D.C. Code §§ 22-3225.03, -3225.04 (b))

First offense: 5 years
Second offense: 10 years
Ratio 2:1 = 2 x the upper number

(4) Molotov cocktails (D.C. Code § 22-4515a)

First offense: 5 years
Second offense: 15 years
Third offense: 30 years
Ratios: 3:1 = 3 x the upper number and 6:1 = 6 x the upper number

(5) Sex performance using minors (D.C. Code §§ 22-3102, 3103)

First offense: 10 years
Second offense: 20 years

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[68] If this enhancement applies, multiply the **top** of the Guidelines range by 3, subject to the statutory maximum of 30 years. If multiplying the upper number by 3 yields a number greater than 30 years, then the **top** of the Guidelines range becomes 30 years.
[69] This enhancement does not contain a multiplier, however the **top** of the Guidelines range is increased to 30 years.
[70] This enhancement does not contain a multiplier, however the **top** of the Guidelines range is increased to life without release.

Ratio 2:1 = 2 x the upper number

(6) Stalking-Felony (D.C. Code § D.C. Code §§ 22-3133, 3134)

First felony: 5 years
After two or more qualifying convictions: 10 years
Ratio: 2:1 = 2 x the upper number

(7) UUV - Two or more UUV or Theft - 1° convictions - (D.C. Code §§ 22-3215(d)(3))

Less than 2 prior UUV or Theft - 1° convictions: 10 years
2 prior UUV or Theft - 1° convictions: 15 years
Ratio 1.5:1 = 1 ½ x the upper number

III. Special Enhancements

Crimes of violence -- aggravating circumstances

Murder I	Up to life w/o release	D.C. Code § 22-2104, 2104.01; or D.C. Code § 24-403.01 (b-2)
Murder II	Up to life w/o release	D.C. Code § 24-403.01 (b-2)
1º Sex Offenses	Up to life w/o release[71]	D.C. Code § 22-3020 or D.C. Code § 24-403.01 (b-2)
Other sex offenses	1 ½ x the upper number	D.C. Code § 22-3020
Armed carjacking	Up to 40 years	D.C. Code § 24.403.01 (b-2)

IV. Offenses Committed During Release - Felony

Offenses Committed During Release (felony)	Score as a M9 offense	D.C. Code § 23-1328(a)(1)

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

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

[71] If this enhancement applies, expand the box to the statutory maximum.

Appendix I – [INTENTIONALLY LEFT BLANK**]**

APPENDIX J - AMENDMENTS TO THE PRACTICE MANUAL
(All prior versions of the Guidelines Manual are available on the Commission's webpage www.sentencing.dc.gov)

2005 AMENDMENTS

The following amendments to the 2004 practice manual are effective on June 14, 2005:

1. Amendment: A new Section 1.4, entitled "Use of Sentencing Guidelines Manual in effect on the Date of Sentencing," is added. This new section states: "The sentencing court shall use the Sentencing Guidelines Manual in effect on the date that the defendant is sentenced. The 2005 Manual is effective on June 14, 2005. The amendments to the 2004 Manual, which are included in the 2005 Manual, are listed in Appendix J."

2. Amendment: Section 1.5.1. (now §1.6.1) is amended by inserting the following after the second sentence: "The Commission will also make changes to the Practice Manual to clarify the sentencing guidelines or to create new policy rules where necessary. Appendix J, which lists new amendments in the June 14, 2005 Practice Manual."

3. Amendment: Section 1.5.1. (now §1.6.1) is amended by deleting the third sentence and inserting the following: "The Commission strongly encourages questions from criminal justice practitioners concerning the applicable sentencing range or options for individual cases under the Sentencing Guidelines. If you have a Guidelines application inquiry, please contact us at (202) 727-8822. The Commission provides information to assist in understanding and applying the Sentencing Guidelines. The information provided is not binding on the court or parties in any case. However, the issues raised by the inquiry may be used to inform subsequent revisions of the Practice Manual."

4. Amendment: Section 2.1 is amended by adding the following sentence after the third sentence: "Appendix C-I is a chart that has all of the felonies that may be prosecuted in the District of Columbia arranged by D.C. Official Code (2001) cite."

5. Amendment: Section 2.1 is amended by adding the following after the fourth paragraph: "Note: For accessory after the fact convictions, the top and bottom of the applicable guideline range for the underlying offense is reduced by one half. *See* Appendix C and C-I."

6. Amendment: Section 2.2.2. is amended by deleting the first sentence in the second paragraph and replacing it with: "Out-of-state and federal convictions and adjudications should be matched as closely as possible to D.C. Official Code offenses by following the rules in section 2.2.6."

7. Amendment: Section 2.2.2 is amended by inserting the following before the "Note" regarding YRA sentences:

> Note: When scoring prior convictions for accessory after the fact, score as follows when the underlying offense falls into the following boxes:
>
> groups 1-3: 3 points
> groups 4-5: 2 points
> groups 6-9: 1 point

8. Amendment: Section 2.2.3 is amended by deleting the second sentence of the third paragraph and replacing it with: "If any prior felony conviction or any part of its sentence (including incarceration, probation, parole or supervised release) occurred within the ten-year window, then all lapsed felony convictions are revived."

9. Amendment: Section 2.2.3 is amended by deleting the last sentence of the fifth paragraph, which currently states "Only felony convictions within the 10-year window can revive earlier felony convictions." In lieu of this sentence, the following sentence is inserted: "A prior felony conviction can

revive an earlier felony conviction only if the more recent conviction or any part of its sentence (including incarceration, probation, parole or supervised release) occurred within the 10-year window. *See* Section 7.27."

10. Amendment: Section 2.2.6 is amended by deleting the entire section and replacing it with:

Convictions and adjudications for federal and out-of-state offenses are scored like the closest comparable D.C. Official Code offenses. To determine the closest comparable D.C. Official Code offense:

1. Look at the name of the offense;

2. Examine the statutory elements of the offense;

3. Choose the DC offense that most closely matches the out-of-state offense. Score the out-of-state offense for criminal history purposes just as the most closely matched DC offense would be scored (for example, an out-of-state offense that most closely matches ADW is scored as 2 points, just as is a prior DC ADW conviction).

4. If there are more than one possible DC statutes that "closely match" the out-of-state offense, select the least severe DC statute, whether that statute is a misdemeanor or a lesser felony. (In some cases, the least severe DC statute might actually be a felony even if the out-of-state offense is a misdemeanor. What is most important is how DC classifies the statute.) Importantly, do not look to the underlying conduct of the prior offense to select the offense that most closely matches; instead compare the elements of the DC and out-of-state offenses.

5. If no comparable DC statute can be found based on the above rules, then the following default rules apply:

   a. Apply one point for all convictions that are classified as felonies by the other jurisdiction;

   b. Apply ½ point for all juvenile adjudications that are classified as felonies by the other jurisdiction;

   c. Apply ¼ point for all convictions that are classified as misdemeanors by the other jurisdiction.

   d. Exception: If defense counsel can demonstrate to the sentencing Court that the conduct criminalized by the other jurisdiction is not currently classified as criminal conduct in DC, then the Court may delete or remove any criminal history points applied by CSOSA for such an offense.

   Note: The same lapse rules apply to out-of state convictions as to D.C. convictions. Thus, a revived out-of-state felony should be scored as ½ point under these default rules, and misdemeanor convictions and juvenile adjudications would not be scored at all

6. If the government determines that the criminal history score for the out-of-state conviction under-represents the severity of the offense, then the government may seek a criminal history departure. This departure principle applies <u>only</u> to out-of-state convictions. If the Court concludes by a preponderance of evidence that the underlying conduct for the out-of state conviction most closely matches a more severe DC offense, then the Court may adjust the criminal history score by applying the same number of criminal history points applicable to the more severe DC offense. In making this determination, the burden of proof is on the government to establish that the conduct for the out-of state conviction more closely matches a more severe DC offense. The

Court should apply this departure principle only if it determines that the conduct of conviction, as opposed to alleged conduct or conduct relating to other offenses, more closely matches the more severe DC offense.

While the parties may not normally bargain over the criminal history score, the parties may agree that the Court should apply a higher and specific value of points as the appropriate score for an out-of state conviction. This would help create certainty at the time of a plea and would reduce resources necessary to litigate the appropriate criminal history score when it is contested. If agreed upon by the parties, CSOSA and the Court should accept this score when calculating criminal history. This exception to the general rule prohibiting bargaining over criminal history score applies only to out-of-state convictions and is the ONLY EXCEPTION to the general prohibition.

Note: In rare cases, the sentence the court imposed may assist us in determining the applicable statute of conviction–in the foreign jurisdiction. For example, in North Carolina, "breaking and entering" includes both a misdemeanor (simple breaking or entering) and a felony (intent to commit any felony or larceny). If a defendant has a prior conviction for "breaking or entering" in North Carolina, and received a 5-year sentence for that conviction, the prior conviction must be a felony since the maximum penalty for the misdemeanor is 120 days for persons with an extensive criminal history.

Note: Figuring out exactly which D.C. offense most closely resembles an out-of-state offense may not be necessary if the number of criminal history points assigned to it would be the same regardless of whether it comes closer to one offense or another.

Note: Figuring out the exact number of criminal history points is not necessary where a defendant has six or more points (e.g., two prior violent felonies; three prior mid-level felonies; six prior low-level felonies or a combination of these and misdemeanors that add up to six or more points).

The Commission has developed a preliminary list of common Maryland offenses that are comparable to D.C. offenses. This list is available at www.sentencing.dc.gov. In the coming months, the Commission will work on comparing additional Maryland, Virginia and Federal offenses to D.C. offenses. It will then work on comparability for common offenses in other jurisdictions. In the meantime, the Commission strongly urges practitioners and judges to call for assistance regarding comparability of specific offenses. Such a call is likely to be more efficient than trying to decide comparability at the time of sentencing in a given case.

11. Amendment: A new Section 2.2.8 is inserted, which is entitled "Scoring Convictions/Adjudications for Offenses Where Sentencing Severity has Changed Since the Commission of the Prior Offense." This new section states:

Convictions and adjudications for offenses that were classified as misdemeanors when the prior offense occurred but were subsequently reclassified as felonies should be scored as misdemeanors. For example, distribution of marijuana was a misdemeanor until June 8, 2001, when it was reclassified as a felony in some circumstances. Any distribution of marijuana conviction for an offense committed before June 8, 2001, therefore, should be scored as a misdemeanor.

Following this section, a footnote is inserted that states:

Distribution of marijuana was a misdemeanor under all circumstances before June 8, 2001, when it was reclassified as a felony unless the defendant has not been previously convicted of distributing or possessing with intent to distribute any controlled substances and the amount of marijuana was ½ pound or less. D.C. Official Code § 48-904.01(a)(2)((B). Carrying a pistol without a license was a misdemeanor before August 20, 1994, unless the person had previously been convicted of CPWL or of any felony. Since then, it has also been a felony to carry a pistol outside a person's home or place of business or on land possessed by the person. D.C. Official Code § 22-4504. An attempt to commit a crime of violence was a misdemeanor before August 20, 1994, when it was reclassified as a 5-year felony. D.C. Official Code § 22-1803. Attempt

robbery, however, has been classified as a 3-year felony since the Code was enacted in 1901. D.C. Official Code § 22-2802.

12. Amendment: A new Section 2.2.10, entitled "Military and Foreign Convictions," is inserted. This new section states: "Convictions resulting from military offenses are scored if imposed by a general or special court martial. Convictions imposed by a summary court martial or Article 15 proceeding are not scored. Convictions resulting from a foreign conviction are not scored."

13. Amendment: A new Section 2.2.11 is inserted, which is entitled "Convictions for Traffic Offenses." This new section states: "Convictions for traffic offenses are not scored. However, convictions for Negligent (Vehicular) Homicide, D.C. Official Code § 50-2203.01, and Fleeing Law Enforcement, D.C. Official Code 50-2201.05, are criminal offenses and are scored. *See* Appendix C and C-I."

14. Amendment: Page 4-1 is amended by inserting the following prior to the last paragraph: "The court should apply only one of two or more enhancements. In such a case, the court may, but need not, select the enhancement that raises the top of the range by the greatest percentage.

15. Amendment: Page 4-1 is amended by inserting the following after the last paragraph: "A conviction for accessory after the fact reduces by one-half both the top and the bottom of the prison range available in the box applicable to the underlying offense."

16. Amendment: Page C-3 is amended by adding Attempt Crime of Violence While Armed. The offense severity group for this offense is "Same group as unarmed completed offense."

17. Amendment: Page C-3 is amended by changing the offense severity group for assault with intent to commit any other felony from Master Group 6 to Master Group 8.

18. Amendment: Page C-3 is amended by adding Assault with Intent to Commit Mayhem as Master Group 7.

19. Amendment: Page C-4 is amended by dividing Burglary while armed into first degree burglary while armed (Master Group 3) and second degree burglary while armed (Master Group 6).

20. Amendment: Page C-6 is amended by adding Cruelty to Animals as Master Group 9.

21. Amendment: Page C-8 is amended by adding Fleeing Law Enforcement as Master Group 8.

22. Amendment: Page C-9 is amended by adding Illegal Dumping as Master Group 9.

23. Amendment: Page C-9 is amended by adding Identity Theft as Master Group 8.

24. Amendment: Page C-12 is amended by adding Possession of Unregistered Firearm, Second Offense as Master Group 9.

25. Amendment: Page C-17 is amended by inserting Taxicab Driver enhancement.

2006 AMENDMENTS

The following amendments to the 2005 practice manual are effective on November 1, 2006:

1. Section 1.4:

Section 1.4 is amended to state:

> The sentencing court shall use the Sentencing Guidelines Manual in effect on the date of plea or verdict, unless both parties otherwise agree to use the version in effect at the time of sentencing.

The 2006 Manual is effective on November 1, 2006. The amendments to the 2005 Manual, which are included in the 2006 Manual, are listed in Appendix J.

2. Section 2.2.1:

The following replaces the first two sentences of Section 2.2.1:

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

The following is added to the end of Section 2.2.1:

> Cases that are dismissed before a sentence is imposed are not scored. This includes cases that are disposed of by diversion, deferred sentencing, probation before judgment, the stet docket, or juvenile consent decrees. If the defendant (or juvenile) is not successful in one of these programs and the case proceeds to sentencing, it is then scored.

3. Section 2.2.8:

The following is added to the end of section 2.2.8:

> Convictions and adjudications for an offense that was classified as a felony when the prior offense was committed, but subsequently was reclassified as a misdemeanor should also be scored as a misdemeanor. For example, assault on a police officer was a felony in the District until July 19th, 2006, when part of it was reclassified as a misdemeanor. If an out-of-state conviction matches up to what is now the District's misdemeanor APO statute (for example, the out-of-state conviction is for the offense of simple resisting arrest where the out-of-state statutory elements do not require any weapon nor any injury to the officer), then the out-of-state conviction should be scored as a misdemeanor, regardless of when it was committed. On the other hand, if the out-of-state conviction matches up to what is now the District's felony APO statute, then the conviction should be scored as a felony.

4. Section 3.4:

The following sentence is added to the end of footnote 12:

> Thus, in a Youth Act case, a sentence of ISS with probation complies with the Guidelines in any box in which a suspended prison term [ESS] with probation would be a compliant adult sentence.

5. Section 6.1:

The following sentence replaces the first sentence of Section 6.1:

> The following sentence must be imposed consecutively: For crimes of violence: multiple victims in multiple events; multiple victims in one event, and one victim in multiple events for offenses sentenced on the same day.

6. Section 7.10:

Section 7.10 is amended to state:

> For purposes of determining which offenses count for criminal history scoring purposes, *see* § 2.2.5, and which offenses must be sentenced consecutively/concurrently, *see* Chapter 6, the phrase "a single event" means offenses that were committed at the same time and place or have the same

nucleus of facts. The phrase "multiple events" means offenses that were committed at different times and places or have a different nucleus of facts.

7. Chapter 8:

The following "frequently asked questions" are added to Chapter 8:

1. What should a presentence report writer do if he or she cannot determine whether multiple prior convictions arose out of a single event or multiple events (*See* § 2.2.5)?

It is sometimes difficult to ascertain whether offenses that were sentenced on the same day arose out of a single or multiple events. The pre-sentence report writer will make this determination based on the criminal history supporting documentation. The report writer should indicate in the report the source of the information upon which s/he relied to make this determination. If the pre-sentence report writer cannot make this determination, either because no supporting documentation was available or because the available documentation was unclear on the question of single or multiple events, the report writer should apply the rules as if the multiple prior convictions arose out of a single event, score only the most serious offense, *and* note in the presentence report that s/he has done so because s/he did not have sufficient information to determine whether there was more than one event. Upon request by the prosecution, the defense, or the court, the presentence report writer should either provide a copy of, or make available for copying, the supporting documentation s/he consulted on this question.

2. How do you score an out-of-state offense for possession of implements of crime or possession of a prohibited weapon when the defendant has a prior felony conviction that, if charged here, would raise the offense from a misdemeanor to a felony?

Following the basic elements test articulated in Rule 2.2.6(4), PIC (D.C. Code § 22-2501) and PPW (D.C. Code § 22-3515) should be scored as misdemeanors unless the statute in the other jurisdiction, like ours, makes the offense a felony if the person previously has been convicted of that offense or of a felony.

3. Do the Guidelines apply to indeterminate sentences? If yes, how does it work?

Yes and no. The Guidelines apply to *all* pleas and verdicts entered into on or after June 14, 2004. While the Guidelines were designed primarily for the new determinate system, a small number of pleas or verdicts entered after June 14, 2004, are cases in which an indeterminate sentence must be imposed because the offense was committed before August 5, 2000. (The District of Columbia changed from an indeterminate to a determinate system of sentencing on August 5, 2000. *See* § 24-403.01. Sentencing, supervised release, and good time credit for felonies committed on or after August 5, 2000 [Formerly § 24-203.1]).

If the plea or verdict was entered on or after June 14, 2004, the Guidelines apply regardless of when the offense was committed – i.e., whether the offense was committed before or after August 5, 2000. Conversely, if the plea or verdict was entered before June 14, 2004, the Guidelines do not apply even if the offense was committed after August 5, 2000. In such cases, the sentencing judge may nonetheless take the Guideline recommendations into consideration.

Questions have arisen regarding how to apply the Guidelines to offenses that were committed before August 5, 2000, where the plea or verdict was entered after June 14, 2004. An example of such a case might be a defendant who was convicted in 1999, the conviction was overturned on appeal, and the defendant was convicted again by plea or verdict on or after June 14, 2004. Another example would be a defendant who committed an offense in 1997, but whose case was not disposed of by plea or verdict before June 14, 2004. In both of these examples, the Guidelines would apply.

To apply the Guidelines to an offense that was committed before August 5, 2000, the court should follow the same procedures as it would for an offense that occurred on or after August 5, 2000, to determine the appropriate box and whether any enhancements or departure principles apply. In designing the Guidelines, the sentencing ranges were determined in part by reference to the minimum term of a hypothetical indeterminate sentence, where the minimum was one-third of the maximum term. Therefore, if a sentence for theft in the old system was 2-6 years, the Commission used 2 years to determine what the sentencing range should be in Group 8; or if a sentence for aggravated assault while armed in the old system was 8 to 24 years, the Commission used 8 years to determine what the sentencing range should be in Group 4.

In applying the Guidelines to an indeterminate sentence, the judge should locate the box on the grid in which the offense/offender falls, and then use any sentence within the prescribed range to set the minimum term of the indeterminate sentence. To set the maximum term, the judge would then multiply the minimum term by three (or more). *See* D.C. Code § 24-403 ("the court imposing such sentence shall sentence the person for a maximum period not exceeding the maximum fixed by law, and for a minimum period not exceeding one-third of the maximum sentence imposed"). Assuming no enhancements or departure principles, a sentence for first degree burglary while armed in Box 3A could be as low as 90 to 270 months or as high 180 months to life. Prison is the only option. Similarly, a sentence for a second CPWL conviction in Box 8C could be as low as 14 to 42 months or as high as 40 to 120 months. The reason for the latter sentence is that a second conviction for CPWL is an enhancement that doubles the top of the box. This means that the minimum number of an indeterminate sentence could theoretically go as high as 64 months. However, the maximum statutory sentence for a second CPWL conviction is 120 months and the minimum sentence cannot be more than 1/3 of the maximum. So the maximum indeterminate sentence a person can receive for a second CPWL is 40-120 months, even though box 8C would otherwise permit a longer indeterminate sentence for a second conviction of CPWL. A short split sentence would be permissible for a second CPWL conviction in Box 8C as long as the minimum term of the imposed sentence (before the split) was between 14 and 40 months and the maximum term of the imposed sentence was at least three times the minimum.

8. Appendix C and C-I

The offense of enhanced assault, D.C. Official Code §22-404(a)(2) is added to Appendix C and C-I as a Master Group 8 offense.

The offense of false statements in money transmission, D.C. Official Code §26-1023(b) is added to Appendix C and C-I as a Master Group 9 offense.

Accessory after the fact for capital crimes is deleted from Appendix C and C-I.

2007 AMENDMENTS

The following substantive amendments to the 2006 practice manual are effective on November 1, 2007:

1. On page 1-2, after the third sentence of the third paragraph, a new Footnote 2 is added, which states:

   The District of Columbia Sentencing and Criminal Code Revision Act of 2007 provides: "The sentencing guidelines shall not create any legally enforceable rights in any party nor shall they diminish any rights that currently exist." The District of Columbia Court of Appeals has not decided whether an otherwise lawful sentence may be appealed when a judge, intending to sentence under the guidelines, misinterprets the guideline rules or miscalculates the applicable sentence.

2. The following sentence is added to the end of Section 2.2.1, "What is a prior conviction or adjudication": "Convictions based on pleas of nolo contendere also are scored."

3. The following example is added after the first paragraph of number six of Section 2.2.6, "Scoring Out-of-state Convictions/Adjudications":

   Example: Defendant has an out-of-state conviction for grand larceny. In that state's statute, grand larceny requires a theft of $200.00 or more. The District's First Degree Theft statute requires that the value of the property taken be $250.00 or more, whereas Second Degree Theft requires the value be less than $250.00. In this example, there is a possibility that a conviction for grand larceny in the other state involved less than $250.00 (it could be between $200.00 and $250.00). The most comparable D.C. statute for the presentence report would thus be Second Degree Theft. At sentencing, however, the prosecution is permitted to present evidence that the out-of-state conviction was based on conduct involving property valued at $250 or more. If the Court finds that the government has proved this by a preponderance of the evidence, then the most comparable offense is First Degree Theft and the Court should adjust the score accordingly and should advise CSOSA and the Commission.

4. Section 2.2.10, Military and Foreign Convictions, second paragraph, is amended to state:

   Federal convictions from the U.S. territories are scored. Other convictions from the U.S. territories are presumptively scored, unless it is shown their criminal justice systems do not provide procedural protections comparable to those afforded under the U.S Constitution. For instance, preliminary research of the Commission shows that non-federal convictions from the U.S. Virgin Islands, Puerto Rico, and Guam should be scored like state convictions, while non-federal convictions from the Northern Mariana Islands should be scored as misdemeanors unless the sentence imposed was more than five years.

5. A new section 2.2.12, "Scoring Contempt Convictions," is added, which states:

   Convictions for violations of conditions of release (D.C. Code §23-1329) are misdemeanors and scored as 1/4 point. All other contempt convictions, including those pursuant to D.C. Code §11-944, also are scored as 1/4 point, unless the presentence report writer or the prosecutor can verify to the Court that the sentence actually imposed was longer than one year, in which case the contempt conviction would be a felony and should be scored as one point. Of course, the normal lapsing rules apply.

6. Chapter Four, "Adjusting the Box," second paragraph, is amended to state:

   If enhancement papers have been filed or if a statutory enhancement has been proved to the fact finder, the top of the guideline range is increased by the same percentage or amount as the statutory multiplier or cap. For example, if the statute states that the punishment may be 1 ½ times the maximum otherwise authorized for the offense, then the top of the guideline range is increased by 1 ½. However, if the statute increases the maximum term of imprisonment from 5 to 10 years, for example, the top of the prison range is doubled. See Appendix H for a list of multiplier and cap enhancements. Note that the bottom of the range does not change, only the top.

7. Chapter Four, "Adjusting the Box," last paragraph, is amended to state:

   Note: A conviction for accessory after the fact reduces by one-half both the top and the bottom of the prison range available in the box applicable to the underlying offense. To determine whether a suspended sentence with probation

or a short split sentence is compliant, drop to the box immediately below the box in which the defendant falls for determining the prison range. For example, a defendant with no criminal history convicted of Accessory After the Fact to a Robbery (unarmed) has a guideline prison range of 9 to 30 months (one-half of Robbery in Box 6A), but that defendant may receive a suspended sentence with probation because his or her eligibility for probation is determined by reference to Box 7A, which is light shaded and therefore probation-eligible.

In Chapter 8, a new section 8.4 is added, which states:

> When calculating criminal history, how do you score prior D.C. Superior Court convictions for "any other felony"?
>
> D.C. Superior Court convictions for "any other felony," an imprecise term sometimes found in computerized court records, should be scored as 1 point, unless the judgment and commitment order or other reliable evidence shows that the conviction was for a 2- or 3-point offense. The burden is on the government to produce such evidence. The normal lapsing rules apply.

8. The following offenses and severity rankings are added to Appendix C and C-I:

• Armor Piercing Ammunition (§7-2507.06(3))	Master Group 7
• Assault on a Police Officer	
o Ten-year maximum (§22-405(c))	Master Group 7
o Thirty-year maximum (§23-1331(4))	Master Group 5
• Assault with significant injuries (§22-404(a)(2))	Master Group 8
• Criminal Abuse or Neglect of a Vulnerable Adult	
o Ten-year maximum (§22-936(b))	Master Group 7
o Twenty-year maximum (§22-936(c))	
▪ If permanent bodily harm results	Master Group 6
▪ If death results	Master Group 5
• Contributing to the Delinquency of a Minor	
o Three-year maximum (§22-811(b)(2))	Master Group 9
o Five-year maximum (§22-811(b)(3), (4))	Master Group 8
o Ten-year maximum (§22-811 (b)(5))	Master Group 6
• Drug Paraphernalia (§48-1103(e)(4))	Master Group 9
• Felon in Possession of a Firearm (§22-4503(b))	Master Group 7
• Gang Recruitment, Retaliation or Participation	
o Five-year maximum (§22-951(b)(2))	Master Group 8
o Ten-year maximum (§22-951(c)(2))	Master Group 7
• Prostitution Offenses (§§22-2701.01, 22-2705, 22-2706, 22-2707, 22-2722)	
o Twenty-year statutory maximum	Master Group 5
o Fifteen-year statutory maximum	Master Group 6
o Five-year statutory maximum	Master Group 9
• Sex Crimes (§§22-3009.01, 22-3009.02, 22-3010)	
o Enticing (Five-year statutory maximum)	Master Group 8
o First degree sexual abuse of a minor (Fifteen-year statutory maximum)	Master Group 6
o Attempt first degree sexual abuse of a minor (7 1/2-year maximum)	Master Group 7
o Second degree sexual abuse of a minor (7 1/2 -year statutory maximum)	Master Group 7
o Attempted second degree sexual abuse of a minor (3 ¾ -year maximum)	Master Group 9

- Solicitation for Murder or Other Crime of Violence
    - 20-year maximum (§22-2107(a)) — Master Group 4
    - 10-year maximum (§22-2107(b)) — Master Group 6
- Tampering with a VIN (§22-3233(b)(2)) — Master Group 9
- Threatening Government Officials
    - Five-year maximum (§22-851(b)) — Master Group 8
    - Three-year maximum (§22-851(c), (d)) — Master Group 9
- Voyeurism §22-3531(f)(2)) — Master Group 8

9. In Appendix H, the following enhancements are added:

CPWL – 2d offense

First offense	5 years
Second offense	10 years
Ratio 2:1 = 2x	

Enlisting minors to distribute drugs – 2d offense

First offense	10 years
Second offense	20 years
Ratio 2:1 = 2x	

Insurance fraud

First offense	5 years
Second offense	10 years
Ratio 2:1 = 2x	

Molotov cocktails

First offense	5 years
Second offense	15 years
Third offense	30 years
Ratios: 3:1 = 3x and 6:1 = 6x	

Sex performance using minors – 2d offense

First offense	10 years
Second offense	20 years
Ratio 2:1 = 2x	

Stalking

Second offense	1 ½ years
Third offense	3 years
Ratio 2:1 = 2x	

Three strikes for any felony

30 years *or* 3x upper bound of guideline with a cap of 30 years
Three strikes for violent felonies
LWOR

First degree murder, second degree murder, first degree sexual abuse, first degree child sexual abuse

LWOR

2008 AMENDMENTS

The following substantive amendments to the 2007 practice manual are effective on November 1, 2008:

1. On page 2-10, Section 2.2.9 currently states in part: "A conviction that has been set aside under the Youth Rehabilitation Act <u>is</u> counted." This sentence is deleted and replaced with: "Youth Rehabilitation Act sentences are counted like any other convictions, whether they have been set aside or not."

2. On page 3-2, Section 3.3, the following is added after the first sentence of the second paragraph: "(*See* exception for Youth Rehabilitation Act Sentences in Footnote 16)."

3. On page 8-3, the following new section is added:

8.5 Do the D.C. Sentencing Guidelines apply to probation revocation proceedings?

Some jurisdictions have specific guidelines for probation revocations in addition to the sentencing guidelines that apply to criminal offenses. These probation revocation guidelines provide guidance on how to classify probation violations, whether to revoke probation, and the type and severity of the sentence to impose upon revocation. The District of Columbia Sentencing Guidelines, however, do not have additional guidelines governing probation revocations. Section 3.4 describes how a probation sentence is imposed at the initial sentencing hearing to be compliant with the Sentencing Guidelines. The Court has four options:

e. In a light gray box, the court must impose a prison sentence within the range in the box and can suspend all of it. (ESS all -- probation)
f. In a light gray or dark gray box, the court must impose a prison sentence within the range in the box and can suspend all but 6 months or less of it. (ESS some or all -- short split)
g. In any box, the court must impose a sentence within the prison range in the box and can suspend a portion of it, so that the time to be served initially is not less than the lower number in the box. (ESS some -- long split)
h. In a light gray box, for Youth Rehabilitation Act sentences only, the Court may suspend imposition of sentence (ISS)

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

Example: Assume the appropriate box is Box 8B (10-28 months prison; split sentence or probation). The court imposes a prison sentence of 20 months, and suspends execution of all of it (ESS all), and imposes 3 years of probation. If the offender violates the conditions of probation, the court may revoke probation and sentence the defendant to the initial term of 20 months in prison. The court may also sentence the defendant to less than the original 20 months, but cannot impose a compliant sentence of less than 10 months. But there are no further guidelines on how to classify probation violations, whether to revoke probation, and the type and severity of the sentence.

4. In Appendix C (page C-6) and C-I (page CI-2), for contempt, the following is added to the third and fourth columns:

Contempt for violating conditions of release, if felony	Master 9
Contempt for any other felony offense	Proportionate, not a guidelines offense (*see* §2.2.12 for prior convictions)

5. In Appendix C (page C-18) and C-I (page CI-16), for Accessory After the Fact, fourth column, the following is inserted: "*see* Section 2.2.2. for scoring prior convictions for accessory after the fact."

6. In Appendix D, the following changes are made:
   Assault with significant injury is added to Group 8
   APO (30 year statutory maximum) is added to Group 5
   APO (10 year statutory maximum) is added to Group 7
   APO is deleted from Group 8
   APO with a dangerous weapon is deleted from Group 6
   Felon in possession of a firearm is added to Group 7

2010 AMENDMENTS

The amendments to the 2008 Practice Manual are effective on May 3, 2010. Because the stylistic and substantive revisions are so numerous, we will not describe every change in this Appendix. Certain important revisions are synopsized below. Users who are interested in examining the precise changes made or who would like to review an earlier version of this document may find prior Manuals on the Commission's website.

The most significant changes to the 2008 Manual are the following:

- A new Section 2.1.1 provides:
    - detailed rules for scoring prior convictions under statutes that have been amended, and
    - a default rule for ranking offenses that have not yet been ranked by the Commission.
- Section 2.2.1 is revised so that a prior conviction or adjudication does not include one arising out of conduct that is part of the instant event. The definition of event in Chapter 7 is changed accordingly.
- Sections 2.2.2 and 2.2.3 are revised so as to bring into two tables instructions for scoring convictions and adjudications, including ones that are lapsed and revived. One of these tables is for Accessory cases only.
- Section 2.2.3 is revised by adding this sentence: "For purposes of reviving other felony convictions and for purposes of being revived, an out-of-state conviction is deemed a felony if, using the rules in Section 2.2.6, the offense is comparable to a D.C. felony."
- Section 3.1 is revised to make clear that neither the defendant's nor the victim's race, gender, *etc*., are germane to sentencing in any case.
- Section 3.6 is revised with an updated list offenses with mandatory minimum terms and to clarify that the Youth Rehabilitation Act applies to at least two of them.
- Sections 3.7 and 3.8 have been merged and the definitions of mandatory minimum and statutory minimum modified to make them clearer.
- Appendix H has been updated and reorganized.
- Appendix I has been eliminated.

2011 AMENDMENTS

The following substantive amendments to the 2010 manual are effective on June 15, 2011:

<u>Chapter 2</u>
In section 2.2.2, the table is amended to reflect a modified rule for scoring prior misdemeanor convictions. This modified rule scores misdemeanors according to the maximum penalty of the offense of conviction. Where the maximum penalty is 90 days or more, it is scored ¼ point, as is now the case for any misdemeanor. Where the maximum penalty is less than 90 days, it is <u>not</u> scored. Only four misdemeanors for a total of 1 point are counted towards the criminal history score.

Thus, Section 2.2.11 excepting traffic offenses from criminal history scoring is repealed and deleted. Sections 2.2.12 and 2.2.13 are renumbered accordingly.

PRIOR CONVICTIONS AND ADJUDICATIONS OTHER THAN ACCESSORY			
	NOT LAPSED		LAPSED AND REVIVED
	Adult Conviction	Juvenile Adjudication	Adult Felony Conviction
Master Groups 1 – 5	3	1 ½	3
Master Groups 6 – 7 Drug Group 1	2	1	1
Master Groups 8 – 9 Drug Groups 2 – 3	1	½	½
Drug Group 4	¾	½	¼
Misdemeanors (90+ days)	¼	0	N/A
PRIOR ACCESSORY AFTER THE FACT CONVICTIONS AND ADJUDICATIONS			
	NOT LAPSED		LAPSED AND REVIVED
	Adult Conviction	Juvenile Adjudication	Adult Felony Conviction
Master Groups 1 – 3	3	1 ½	3
Master Groups 4 – 5	2	1	1
Master Groups 6 – 9 Drug Groups 1 – 3	1	½	½
Drug Group 4	¾	½	¼
Misdemeanors (90+ days)	¼	0	N/A

Notes:
1. See Section 2.2.11 for scoring Contempt convictions.
2. A lapsed conviction counts only if it was a felony and only if revived. Lapsed misdemeanor convictions and juvenile adjudications cannot be revived and therefore do not count. See Section 2.2.3 for rules on lapsing of convictions and reviving of felonies. See Section 2.2.4 for rules on lapsing of juvenile adjudications.
3. A prior misdemeanor conviction is scored according to the maximum penalty for the offense of conviction: ¼ point if 90 days or more. Offenses with a maximum penalty of less than 90 days are not scored. Prior misdemeanor convictions are capped at 1 point. That is, only four count towards the criminal history score.
4. Juvenile adjudications are capped at 1 ½ points, unless there is more than one adjudication for an offense that counts as 1 ½ points. In that event, each such adjudication is counted and all other adjudications are not counted.
5. While a conviction or adjudication may not count in the criminal history score because it has lapsed or because a cap has been reached, a court may still consider unscored convictions and adjudications in choosing the appropriate sentence in the applicable guideline box.

In section 2.2.9, the following sentence is added: "Convictions that are not scored under this section also cannot be used to revive other felony convictions." A reference is added to section 2.2.3, where the third paragraph is amended to add the sentence, "A conviction not scored under Section 2.2.9, however, cannot be used to revive another felony conviction."

Chapter 4
The first paragraph is modified to include the enhancement of Committing a Felony While on Release.

Chapter 7
In section 7.4, the definition of Crime of Violence is amended to add the sentence, "The term "crime of violence" under the guidelines is used to determine consecutive and concurrent sentencing (see Chapter 6). This definition differs from that stated in D.C. Code § 23-1331(4)."

In Section 7.25, the definition for Revived Conviction was corrected to make clear that all revived drug group offenses are scored differently with applicable cross-references added.

Chapter 9
In section 9.1, footnote 19 is modified to state: "If the court imposes a term of imprisonment greater than a year, the court must impose the term of supervised release fixed by the statute: 3 or 5 years depending on the maximum

sentence for the offense. If the court imposes a prison term of one year or less, the court must choose the supervised release term, which may be up to 3 or 5 years depending on the maximum sentence for the offense."

In section 9.4, the example is modified to incorporate the amended rule articulated in section 2.2.2.

Appendix A
"RSP" is removed from the list of common offenses in Master Group 9 and replaced by "Fraud."

Appendix B
The Drug Grid has been amended to add an additional group, Drug Group 4, and reorganize drug offenses throughout the grid. Distribution of and PWID Schedule I and II non-narcotic and non-abusive drugs (including marijuana), Schedule III and Schedule IV drugs are moved from Drug Group 2 to Drug Group 3. Attempts to do these offenses and Attempted Possession of Liquid PCP are moved from Drug Group 3 to Drug Group 4. The sentencing options in Drug Group 2, Box C change from a light shaded, probation permissible box to a dark shaded, short split permissible box and the sentencing options in Drug Group 2, Box D change from a dark shaded, short split permissible box to a white, prison only box.

The sentencing range in Drug Group 1, Box C is corrected to state "42-84."

The previous Drug Grid appeared as follows:

Appendix B -- DRUG GRID
June 14, 2004

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

Appendix C and Appendix C-I
The legend has been amended to add the entry, "'V' or 'D' in the Violent/Dangerous column means a crime of violence pursuant to D.C. Code §§ 22-4501(1) or a dangerous crime pursuant to D.C. Code § 22-4501(2)" and "'w/a' means an offense subject to D.C. Code § 22-4502 imposing additional penalties for committing a crime of violence while armed. *See* Hager v. United States, 791 A.2d 911 (D.C. 2002).

The following footnote has been removed: "The Sentencing Reform Act did not go into effect until 4:59 p.m., August 11, 2000 although by its terms it was to go into effect at 12:01 a.m., August 5, 2000. If the defendant does not assert an ex post fact challenge to being sentenced under the new law this chart may be used for any offense that occurred on or after August 5, 2000."

The entry for Cruelty to Children in the first degree adds a "V" in the Violent/Dangerous column.

The entries for Fraud (1° and 2°), Credit Card Fraud, Destruction of Property, Receiving Stolen Property, Insurance Fraud (1° and 2°) and Tampering with VIN are revised to reflect a misdemeanor/felony threshold of "$1,000+."

The entry for Committing a Felony While on Release is corrected to remove the offense severity ranking and designate it an enhancement.

The following offenses and severity rankings were added:

• Detaining an individual in disorderly house for debt there contracted (§ 22-2709)	Master Group 9
• Procuring for house of prostitution (§ 22-2710)	Master Group 9
• Procuring for 3rd persons (§ 22-2711)	Master Group 9
• Operating house of prostitution (§ 22-2712)	Master Group 9
• Keeping bawdy or disorderly houses (§ 22-2722)	Master Group 9
• Engaging in Animal Fighting (§ 22-1001(d))	Master Group 9
• Telephone Solicitation Fraud (§ 22-3226.06 (a); § 22-3226.10)	Master Group 9
• Obstructing Service of a Drug Search Warrant (§ 48.921.02 (n))	Master Group 9
• Selling, Transferring, Distributing Firearm, Destructive Device or Ammunition to Persons Under 18 (§ 7-2507.06 (1))	Master Group 7
• Introducing Contraband into a Prison and Possession by an Inmate: Class A Materials (§ 22-2603)	Master Group 8
• Unauthorized Use of a Motor Vehicle During or to Facilitate a COV with Serious Bodily Injury (22-3212(d)(2))	Master Group 7
• Conspiracy to Commit Murder or Armed COV (§ 22-1805a (a)(2))	Master Group 5[72]
• Conspiracy to Commit COV if underlying offense is ≥ 15 years (not otherwise specified) (§ 22-1805a (a)(2))	Master Group 7
• Conspiracy to Commit COV if underlying offense is < 15 years (§ 22-1805a (a)(2))	Master Group 7[73]
• Assault with a Intent to Commit Mayhem While Armed (§ 22-402, 22-4502)	Master Group 5
• Assault with Intent to Commit Any Other Felony While Armed (§§ 22-403, 22-4502)	Master Group 5
• Cruelty to Children 1° While Armed (§§ 22-1101(a), 22-4502)	Master Group 5
• Human Trafficking—Forced Labor (§ 22-1832)	Master Group 5
• Attempt Human Trafficking—Forced Labor (§§ 22-1832, 22-1837)	Master Group 7
• Human Trafficking—Labor or Commercial Sex Acts (§ 22-1833)	Master Group 5
• Attempt Human Trafficking—Labor or Commercial Sex Acts (§§ 22-1833-22-1837)	Master Group 7
• Human Tracking—Sex Trafficking of Children (§ 22-1834)	Master Group 5
• Attempt Human Trafficking—Sex Trafficking of Children (§§ 22-1834, 22-1837)	Master Group 7
• Human Trafficking—Documents (§§ 22-1835)	Master Group 8
• Attempt Human Trafficking—Documents (§§ 22-1835, 22-1837)	Master Group 9
• Human Trafficking—Benefitting financially (§§ 22-1836, 22-1837)	Same as principal
• Attempt Human Trafficking—Benefitting Financially (§§ 22-1836, 22-1837)	Same as principal attempt
• Human Trafficking—Enhancement (§§ 22-1837)	1 ½ x the term

[72] If underlying offense is in M 6 or M 7, the conspiracy is in the same offense severity group.
[73] If underlying offense is in M 8 or M 9, the conspiracy is in the same offense severity group.

- Possession of Liquid PCP Drug Group 3

The following offense was removed:

- Armed Crimes of Violence (not otherwise specified)

Appendix D

This appendix was been updated and revised.

Appendix H

The Repeat Offender Provisions for 22-1804(a) have been modified to state, "1 prior like offense" and "2 or more prior like offenses."

Committing a Felony While on Release is added to the list of Other Enhancements.

2012 AMENDMENTS

The following substantive amendments to the Guidelines were effective on July 14, 2011; however, the changes were not reflected in the 2011 manual:

The following subsection has been added to 2.2.6:

b. Special Rules for Out-of-District Offenses Committed before a defendant's 18th birthday

If the defendant's out-of-District conviction was for an offense that was committed when he or she was under 18 years of age, the following procedures govern whether the conviction should be scored as an adult conviction or a juvenile adjudication in the criminal history score:

1. A prior conviction where the defendant was less than 15 years of age at the time the offense was committed is scored as a juvenile adjudication.
2. Except as set forth in (3), a prior conviction where the defendant was 15 years of age or older at the time the offense was committed is scored as a juvenile adjudication unless the court finds by a preponderance of the evidence that a judicial hearing was conducted in the out-of-District jurisdiction determining that the case would be transferred to or retained in adult court.[74]
3. A prior conviction comparable to murder, first degree sexual abuse, robbery while armed (firearm), or assault with intent to commit any of these offenses where the defendant was 16 years of age or older at the time the offense was committed is scored as an adult conviction.

Note: Under the last provision, a prior out-of-District conviction for armed robbery or robbery with a weapon is scored as an adult conviction unless the defendant can show by a preponderance of the evidence that the weapon associated with the conviction was not a firearm, in which case the armed robbery should be scored as a juvenile adjudication. In other words, there is a rebuttable presumption that the weapon involved was a firearm unless proven otherwise.

If the pre-sentence report writer cannot confirm the type of weapon used in the armed robbery, he or she should post an asterisk or otherwise highlight the scoring for this offense and note "presumed firearm otherwise unknown" in the pre-sentence report to alert the parties of this rebuttable presumption.

[74] This includes, but is not limited to, a hearing to transfer the juvenile to adult court or a "reverse transfer" hearing to determine if the juvenile, initially charged in adult court, should be "transferred back" to juvenile court. *See* e.g., D.C. Code § 16-2307. The burden would be on the government to show by a preponderance of the evidence that a transfer or reverse transfer hearing had occurred in the other jurisdiction and the case was transferred from juvenile court to adult court or kept in adult court.

The following offenses and severity rankings were added:

- First Degree Sexual Abuse of a Secondary Student (§ 22-3009.03) — Master Group 7
- Attempted First Degree Sexual Abuse of a Secondary Student (§§ 22-009.03, 22-3018) — Master Group 8
- Second Degree Sexual Abuse of a Secondary Student (§ 22-3009.04) — Master Group 8
- Attempted Second Degree Sexual Abuse of a Secondary Student (§§ 22-3009.04, 22-3018) — Master Group 9

The following substantive amendments to the 2011 manual are effective on June 18, 2012. Because the stylistic and substantive revisions are numerous, we do not describe every change in this Appendix. Certain important revisions are synopsized below. Users who are interested in examining the precise changes made or who would like to review an earlier version of this document may find prior Manuals on the Commission's website.

Chapter 2

Section 2.1.1 is merged into § 2.2.8 for improved clarity and to avoid repetition.

In § 2.2.1, a footnote is added stating that:
This includes convictions/adjudications where the unlawful conduct occurred after the instant offense but where a judgment was entered before the day of sentencing in this instant case. *See* § 2.2.3.
In § 2.2.1, Post-and-forfeit is added to the list of case dispositions that do not count as convictions.

In § 2.2.2, note 3, a footnote is added stating that:
An offense with a maximum penalty of three months is greater than or equal to 90 days and, thus, is scored.

The initial § sentence of 2.2.3 now states:
A prior conviction counts for scoring purposes if any portion of its sentence falls within the time between the commission of the instant offense and the day before sentencing or within the ten-year window before the commission of the instant offense.

The last paragraph on page 9 of § 2.2.3 now reads:
This means that such convictions or dispositions for acts committed after the commission of the instant offense but before sentencing of the instant offense are scored as long as judgment (an adult conviction or juvenile disposition) was entered prior to the day of sentencing in the instant case. The order in which the offenses were committed is irrelevant for scoring purposes. However, such a conviction cannot revive other felonies if the conviction was for a crime that was committed after the instant offense because the ten-year window applies only to offenses that occurred before the instant offense. A prior felony conviction can revive an earlier felony conviction only if the more recent conviction or any part of its sentence (including incarceration, probation, parole or supervised release) occurred within the ten-year window before the commission of the instant offense. *See* § 7.28.

The title of § 2.2.4 is changed to Which Prior Juvenile Adjudications Count?

In § 2.2.4 and throughout the Manual, references to Oak Hill are replaced with references to New Beginnings.

The title of § 2.2.5 is changed to Which Prior Adult Convictions Count?

The title of § 2.2.6 is changed to Scoring Out-of-District Convictions/Adjudications

In § 2.2.6 and throughout the Manual, the term Out-of-State is replaced with Out-of-District

In § 2.2.6(a)(5)(C), the rule governing non-comparable out-of-District misdemeanor offenses has been modified to prevent the scoring of misdemeanors where penalty is less than 90 days. The rule now reads:

Apply ¼ point for all convictions that are classified as misdemeanors and are punishable by 90 days or more incarceration by the other jurisdiction.

Chapter 3

In § 3.3, footnote 14 now states:
The court may suspend imposition of a sentence (ISS) and impose whatever terms it deems best as long as it does not place the defendant on supervised probation. D.C. Code § 16-710 does not authorize supervised probation following suspension of imposition of sentence. *See Schwasta v. United States*, 392 A.2d 1071, 1077 (D.C. 1978) (D.C. Official Code § 16-710 "permits the trial court to grant probation only after it has imposed a sentence and suspended its execution"). The Youth Rehabilitation Act does. DC. Code § 24-903(a)(1) (the court "may suspend the imposition or execution of sentence and place the youth offender on probation"). Thus, in a Youth Act case, a sentence of ISS with supervised probation complies with the Guidelines in any box in which a suspended prison term [ESS] with probation would be a compliant sentence.

Section 3.8 is added to specify that the Guidelines apply to felony sentences following revocation of probation or a suspended sentence. Section 3.8 states:

Revocation Sentences

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

If the court initially suspended some or all of the defendant's prison sentence (execution of sentence suspended - ESS) and subsequently revokes probation, the court can impose the original prison sentence or any lesser sentence permitted inside the original guideline box. The sentence imposed, including any credit for time served, cannot be less than the bottom of the original guideline range.[75] For an ISS sentence, the court can impose any sentence permitted inside the original guideline box.

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

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

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

Example 1: At sentencing, the appropriate box for the defendant was 8B (10-28 months prison; split sentence or probation). The court imposed a sentence of 18 months imprisonment to be followed by three years of supervised release, suspended execution of the entire sentence and imposed a three-year term of probation. One year later, the court found the defendant had violated a condition of his probation and subsequently revoked

[75] Although not directly related to the Guidelines, if the court imposes a lesser sentence than it imposed originally and intends the defendant to receive credit for time served, the Judgment and Commitment Order must explicitly state the judge's intention. *See* example 2. To remain compliant, the combination of time served and the new sentence cannot be less than the minimum term of incarceration in that box.

probation.[76] Following revocation, the court can order the defendant to serve the original sentence. Alternatively, the court may sentence the defendant to less than the original 18 months incarceration, but cannot impose a compliant sentence of less than ten months incarceration.

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

Chapter 4

A footnote has been added to clarify that:
Several "Special Enhancements" do not follow this protocol. *See* Appendix H, Part III.

Chapter 7

The numbering throughout chapter 7 is now sequential. "Reserved" subsections have been removed.

The following additional definitions have been created or modified:

7.3 Compliant Sentence: The following sentence has been added to the end of the first paragraph: "Any sentence that is not a compliant sentence is deemed a "non-compliant" sentence."

7.7 Departure: The definition of "Departure Principle" has been changed to "Departure." The definition now reads: "A departure, as enumerated in Chapter 5, permits a sentence outside of the appropriate grid box. A departure applied in accordance with Chapter 5 is a compliant sentence. A departure can be based on one or more of the aggravating or mitigating factors. . . ."

7.10 Event: The following sentences were added to the end of the definition of "event": "When an offense(s) crosses jurisdictional lines (e.g. from Maryland into the District), it may result in multiple cases. However, this should not change the analysis regarding whether the offense(s) constitutes a single or multiple events."

7.19 New Beginnings or its Functional Equivalent: The definition of New Beginnings replaces the definition of Oak Hill. The definition replaces references to the former Cedar Knoll or Receiving Home facilities with a reference to the former Oak Hill facility.

7.22 Out-of-District Offense: The following definition has been added: "Out-of-District Offense -- any state or local criminal offense outside of the District of Columbia, any federal offense or, subject to the special rules in § 2.2.10, any military or territorial offense."

[76] The Guidelines do not address how the court should classify probation violations or whether the court should revoke probation under any specific circumstance.

Appendix A

Forgery and Uttering have been combined into "*Forgery/Uttering.*"
"*Assault w/Significant Bodily Injury*" has been added to the most common offenses listed in Master Group 8.
"*Unlawful Poss. of a Firearm (prior fel.)*" has been added to the most common offenses listed in Master Group 7.

Appendix C/C-I

The following offenses and severity rankings were added:

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

"Stalking" has been changed to "Stalking-Felony" to eliminate any confusion with misdemeanor Stalking.

"Evidence Tampering" has been changed to "Tampering with Physical Evidence" to mirror the language of the statute.

"Three Strikes for Violent Felonies" has been added to Appendix C-I (previously, it was only in Appendix C).

The abbreviation "^{e}" has been added to Appendix C and C-I for offenses subject to a specific statutory enhancement. The abbreviation "^{e}" "means that the offense is subject to a statutory enhancement specific to the offense that raises the top of the guideline range. *See* Chapter 4 and Appendix H."

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

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

Appendix H

The Human Trafficking enhancement has been added to H-I (Enhancements with Multipliers)

The three strikes entries from H-II (numbers 7 & 8) have been removed (they were already listed in H-3). The following footnote has been added to H-3: if this enhancement applies, multiply the upper number in the box by 3, subject to the statutory maximum of 30 years. If multiplying the upper number by 3 yields a number greater than 30 years, then the top of the Guidelines box becomes 30 years. Repeat Offender Provisions in section H-III are combines with the Repeat Offender Provision in section H-1.

Part III is now titled "Special Enhancements"

Added a footnote for 1st degree sexual abuse in Part III stating: if this enhancement applies, expand the box to the statutory maximum.

2013 AMENDMENTS

The following substantive amendments to the Guidelines were effective on November 1, 2012 ; however, the changes were not reflected in the 2012 manual:

Chapter Four

A footnote was added stating that "the general rule governing enhancements does **not** apply to the Offenses Committed During Release ("OCDR") enhancement (D.C. Code § 23-1328). *See* Appendix H, § IV for an explanation of how OCDR should be scored."

Appendix C/C-I

The felony Offenses Committed During Release enhancement (formerly called "Release, Convicted of committing a felony while on") was added as a Master Group 9 offense, with two footnotes indicating that "OCDR (felony) is an enhancement, not a separate offense. However, it operates similarly to a separate offense. Therefore, the Guidelines treat it as if it were a separate offense when determining a defendant's applicable sentencing range in the instant case for which it was charged" and "OCDR (felony) is classified as a M9 offense only when it is a charge in the instant case. Because it is technically an enhancement, not a distinct separate offense, it should not be scored as part of a defendant's prior criminal history score."

Appendix H

Section IV was added to cover the Offenses Committed During Release – Felony enhancement. The new sections states

Offenses Committed During Release (felony)	Score as a M9 offense	D.C. Code § 23-1328(a)(1)

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

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

The following substantive amendments to the 2012 manual were effective on June 17, 2013. Because the stylistic and substantive revisions are numerous, we do not describe every change in this Appendix. Certain important revisions are synopsized below. Users who are interested in examining the precise changes made or who would like to review an earlier version of this document may find prior Manuals on the Commission's website.

Chapter Two

- A footnote has been added to Section 2.2.3 to clarify when a sentence ends for the purpose of calculating a defendant's ten-year window when unpaid fines, fees, and/or restitution remains. The footnote states that

"[t]he Guidelines deem a sentence as complete at the end of a term of incarceration, probation, and/or supervision. If, at the end of all periods of incarceration, probation, and/or supervision pertaining to a conviction, unpaid fines, fees, and/or restitution remain, the defendant's sentence is considered completed for the purposes of calculating the ten-year window."

- A footnote has been added to Section 2.2.4 to specify that

> D.C. juvenile records that state 'commitment to DYRS' or similar language do not indicate placement at New Beginnings. 'Commitment to DYRS' refers to the legal custody DYRS has over the juvenile but does not indicate the physical location of the juvenile during that custody. The 5-year window is determined based on the physical location of the juvenile during his/her commitment. If a juvenile is committed to DYRS, the presentence report writer, in completing the PSI, should contact DYRS to determine whether the juvenile has ever been placed at New Beginnings or a locked residential facility. If the juvenile has never been placed at such a facility DYRS should note that fact and report the disposition date. However, if the juvenile has been placed at such a facility, the presentence report writer should ascertain from DYRS and note in the PSI if the juvenile currently resides in such a facility – and note whether such facility is New Beginnings or a locked residential facility - or, if the juvenile is no longer at such a facility, the date that the juvenile last left such a facility and note whether the facility was New Beginnings or a locked residential facility. If the presentence report writer cannot ascertain the physical location of the juvenile while committed to DYRS, the presentence report writer should note that fact in a footnote in the PSI.

- Section 2.2.6(a)(4)(A) has been added to direct CSOSA that "[i]f there is more than one possible D.C. statute that 'closely matches' the out-of-District offense, CSOSA should always identify all of the matching offenses in a footnote and indicate that the least severe offense was scored."

- Subsection 2.2.6(a)(6) has been modified to allow any party to challenge an out-of-District scoring. The updated subsection also removes any reference to the procedure being a departure from the Guidelines. The subsection now reads:

> If a party contends that the criminal history score for the out-of-District conviction misrepresents the severity of the offense, then the party may seek a criminal history correction. This procedure applies only to out-of-District convictions. If the court concludes by a preponderance of evidence that the underlying conduct for the out-of-District conviction most closely matches a more or less severe D.C. offense, then the Court must apply the same number of criminal history points applicable to the more or less severe D.C. offense. In making this determination, the burden of proof is on the party challenging the initial determination to establish that the conduct for the out-of-District conviction more closely matches a more or less severe D.C. offense. The court should apply the new score only if it determines that the conduct of conviction, as opposed to the alleged conduct or conduct relating to other offenses, more closely matches the more or less severe D.C. offense.

- Section 2.2.11 now notes that "the sentence imposed includes the term of incarceration and any time suspended. However, it does not include the Supervised Release period or term of probation."

Chapter Three

The term "Youth Act" has been removed from Section 3.4, note 2, to clarify that ISS sentences can be imposed in all cases where the defendant is in a probation eligible box.

Chapter Eight

Similar to Section 2.2.6(a)(4)(A), a FAQ has to specify how CSOSA presentence report writers should note out-of-District offenses that could match multiple D.C. offenses. The FAQ states:

> **How should a presentence report writer score an out-of-District offense that closely matches multiple D.C. Code offenses (See § 2.2.6(b))?**
> If an out-of-District offense closely matches more than one D.C. Code offense, the offense should be scored as the least severe matching offense. The presentence report writer should insert a footnote in the presentence report indicating that the out-of-District offense closely matched multiple D.C. Code offenses and was scored as the least severe offense in accordance with DCVGS § 2.2.6(b). The footnote should list all of the matching offenses.

Appendix C/C-I

A footnote has been added to Unlawful Possession of by a person with a prior conviction > 1 year to note that:

> Defendants convicted of Firearm, Unlawful Possession of by a person with a prior conviction > 1 year with a criminal history score of .75 to 1.75 fall into Master Grid box 7:B with a sentencing range of 18 to 42 months incarceration, prison or short split permissible. However, because of the mandatory minimum 12-month sentence, a short split sentence is not permissible under the Guidelines. The court must sentence the defendant to at least 18 months to impose a Guidelines compliant sentence. If the court determines that a split sentence of 12 months incarceration or more, but less than 18 months, is appropriate, it may sentence accordingly, but this would constitute a departure from the Guidelines. The court should note the reason for the departure on the docket.

Appendix H

The following statutory enhancements have been added to Appendix H:

- Identity Theft - Add 1º Against Senior Citizen enhancement (D.C. Code § 22-3227.03(c)) to the Senior Citizen Victim enhancement in subsection I.
- Firearm, Presence in a Motor Vehicle Containing - Add Prior Gun Conviction or Felony enhancement (D.C. Code § 22-2511(c)(2)) to the list of enhancements without multipliers in subsection II.
- Unauthorized Use of a Vehicle ("UUV") - Two or more UUV or Theft - Add 1° convictions enhancement (D.C. Code § 22-3215(d)(3)) to the list of enhancements without multipliers in subsection II.

2014 AMENDMENTS

The following substantive amendments to the Guidelines were effective on August 1, 2013; however, the changes were not reflected in the 2013 manual:

Appendix C/C-I

The following offense and severity ranking was added:

- Third Degree Sex Abuse While Armed
  (§§ 22-3004, 22-4502) Master Group 5

The following offense and severity ranking was modified:

- Second Degree Sex Abuse While Armed Master Group 4
  (§§ 22-3003, 22-4502) (previously was ranked in Master Group 5)

The following substantive amendments to the Guidelines were effective on January 1, 2014; however, the changes were not reflected in the 2013 manual:

The following offense and severity rankings were added:

- Weapon of Mass Destruction, Manufacture or Possession
  (§ 22-3154(a)) Master Group 3
- Weapon of Mass Destruction, Manufacture or Possession – Attempt or Conspiracy
  (§ 22-3154(b)) Master Group 5
- Weapon of Mass Destruction, Use, Dissemination, or Detonation
  (§ 22-3155(a)) Master Group 2
- Weapon of Mass Destruction, Use, Dissemination, or Detonation – Attempt or Conspiracy
  (§ 22-3155(b)) Master Group 3
- Murder in the First Degree as Part of an Act of Terrorism
  (§ 22-3153(a)) Master Group 1
- Murder in the First Degree as Part of an Act of Terrorism While Armed
  (§§ 22-3153(a), 22-4502) Master Group 1
- Murder in the First Degree as Part of an Act of Terrorism – Attempt or Conspiracy
  (§ 22-3153(j)) Master Group 4
- Murder in the First Degree as Part of an Act of Terrorism While Armed – Attempt or Conspiracy
  (§§ 22-3153(j), 22-4502) Master Group 3
- Murder in the First Degree of a Law Enforce. Officer as Part of an Act of Terrorism,
  (§ 22-3153(b)) Master Group 1
- Murder in the First Degree of a Law Enforce. Officer as Part of an Act of Terrorism While Armed
  (§§ 22-3153 (b), 22-4502) Master Group 1
- Murder in the First Degree of a Law Enforce. Officer as Part of an Act of Terrorism – Attempt or Conspiracy (§ 22-3153(j)) Master Group 3
- Murder in the First Degree of a Law Enforce Officer as Part of an Act of Terrorism While Armed – Attempt or Conspiracy (§§ 22-3153(j), 22-4502) Master Group 2
- Murder in the Second Degree as Part of an Act of Terrorism
  (§ 22-3153(c)) Master Group 2
- Murder in the Second Degree as Part of an Act of Terrorism While Armed
  (§§ 22-3153(c), 22-4502) Master Group 2
- Manslaughter as Part of an Act of Terrorism
  (§ 22-3153(d)) Master Group 4
- Manslaughter as Part of an Act of Terrorism While Armed
  (§§ 22-3153(d), 22-4502) Master Group 3
- Kidnapping as Part of an Act of Terrorism
  (§ 22-3153(e)) Master Group 4
- Kidnapping as Part of an Act of Terrorism While Armed

(§§ 22-3153(e), 22-4502) Master Group 3

- Kidnapping as Part of an Act of Terrorism – Attempt or Conspiracy to Commit
  (§ 22-3153(j)) Master Group 5
- Kidnapping as Part of an Act of Terrorism While Armed – Attempt or Conspiracy
  (§§ 22-3153(j), 22-4502) Master Group 4
- Assault with Intent to Kill as Part of an Act of Terrorism
  (§ 22-3153(f)) Master Group 4
- Assault with Intent to Kill as Part of an Act of Terrorism While Armed
  (§§ 22-3153(f), 22-4502) Master Group 3
- Mayhem/Malicious Disfigurement as Part of an Act of Terrorism
  (§ 22-3153(g)) Master Group 5
- Mayhem/Malicious Disfigurement as Part of an Act of Terrorism While Armed
  (§§ 22-3153(g), 22-4502) Master Group 4
- Mayhem/Malicious Disfigurement as Part of an Act of Terrorism – Attempt or Conspiracy
  (§ 22-3153(l)) Master Group 6
- Mayhem/Malicious Disfigurement as Part of an Act of Terrorism While Armed – Attempt or Conspiracy
  (§§ 22-3153(l), 22-4502) Master Group 5
- Arson as Part of an Act of Terrorism
  (§ 22-3153(h)) Master Group 5
- Arson as Part of an Act of Terrorism While Armed
  (§§ 22-3153(h), 22-4502) Master Group 4
- Arson as Part of an Act of Terrorism – Attempt or Conspiracy to Commit
  (§ 22-3153(l)) Master Group 6
- Arson as Part of an Act of Terrorism While Armed – Attempt or Conspiracy
  (§§ 22-3153(l), 22-4502) Master Group 5
- Destruction of Property (>$500,000) as Part of an Act of Terrorism
  (§ 22-3153(i)) Master Group 5
- Destruction of Property (>$500,000) as Part of an Act of Terrorism While Armed
  (§§ 22-3153(i), 22-4502) Master Group 4
- Destruction of Property (>$500,000) as Part of an Act of Terrorism – Attempt or Conspiracy
  (§ 22-3153(l)) Master Group 6
- Destruction of Property (>$500,000) as Part of an Act of Terrorism While Armed – Attempt or Conspiracy
  (§§ 22-3153(l), 22-4502) Master Group 5
- Providing Material Support or Resources for an Act of Terrorism
  (§ 22-3153(m)) Master Group 5
- Providing Material Support or Resources for an Act of Terrorism While Armed
  (§§ 22-3153(i), 22-4502) Master Group 4
- Soliciting Material Support or Resources for an Act of Terrorism
  (§ 22-3153(n)) Master Group 6
- Soliciting Material Support or Resources for an Act of Terrorism While Armed
  (§§ 22-3153(n), 22-4502) Master Group 5

The following substantive amendment to the Guidelines was effective on May 1, 2014; however, the change was not reflected in the 2013 manual:

The following offense and severity ranking was added:

- Assault With Significant Bodily Injury While Armed
  (§§ 22-404(a)(2), 22-4502) Master Group 6

The following substantive amendments to the 2013 manual were effective on June 30, 2014. Because the stylistic and substantive revisions are numerous, we do not describe every change in this Appendix. Certain important revisions are synopsized below. Users who are interested in examining the precise changes made or who would like to review an earlier version of this document may find prior Manuals on the Commission's website.

Chapter Two

Section 2.2.1, paragraph two. The section was clarified by adding that "cases that are dismissed *before a judgment of guilt* or a sentence is imposed are not scored." Additionally, a new footnote was added to provide two examples of unscored dispositions.

Section 2.2.3, paragraph one. Footnote eight was added to address how an offense taking place over a period of time should be handled; it now states that "if the instant offense took place over several dates, calculate the ten-year window based on the date the criminal activity began."

Section 2.2.4, paragraph one. Practitioners and judges expressed confusion regarding how to calculate a juvenile's five-year window when the juvenile was sentenced to supervision, supervision was subsequently revoked, and then a new sentence was imposed that did not include time in a locked facility. The section was modified to specify that the five-year window runs from "the date of *initial* disposition." A second example was also added to clarify the distinction. Two additional examples were added to assist practitioners with the application of this rule.

Section 2.2.6(a)(5).

The subsection was re-ordered to group language pertaining to juvenile adjudications together and to improve overall clarity.

A new subsection has been added to explicitly state that CSOSA should "not score convictions that are classified as misdemeanors by the other jurisdiction and have a maximum punishment of less than 90 days of incarceration."

The rules for scoring out-of-District juvenile adjudications with no comparable D.C. statute were clarified as follows:

G. Apply ½ point for all juvenile adjudications for offenses the other jurisdiction classifies as felonies if committed by an adult;
H. Do not score juvenile adjudications for offenses the other jurisdiction classifies as misdemeanors if committed by an adult;

Section 2.2.8(c). In keeping with the overall intent of section 2.2.8, two new subsections were added that state:

6. Convictions for an offense that had a maximum penalty of less than 90 days of incarceration when the prior offense was committed, but subsequently had the maximum penalty increased to 90 days or more of incarceration, should not be scored.
7. Convictions for an offense that had a maximum penalty of 90 days or more of incarceration when the prior offense was committed, but subsequently had the maximum penalty decreased to less than 90 days of incarceration, should not be scored.

Section 2.2.9. Sealed, expunged, and ISS sentences were added to this section to specify that they are counted when calculating a defendant's criminal history score. Specifically, the section now states that:

Youth Rehabilitation Act and Federal Youth Corrections Act sentences are counted like any other conviction, without regard to whether the conviction has been set aside or not.

D.C. sealed or expunged convictions are counted like any other conviction.

D.C. sealed or expunged adjudications are counted like any other adjudication.

However, convictions or adjudications sealed or expunged on the grounds of actual innocence, whether in D.C. or in a foreign jurisdiction, shall not be counted, nor shall convictions or adjudications sealed or

expunged in foreign jurisdictions if the effect of such sealing or expungement is that the conviction or adjudication cannot be used or counted against the defendant in that jurisdiction at sentencing for a new offense. The defendant shall bear the burden of showing, by a preponderance of the evidence, that the foreign sealing or expungement exists and has such an effect.

Imposition of Sentence Suspended convictions are counted.

Chapter Six

Section 6.3. An example was added to the end of Chapter 6 to help clarify when non-violent offenses should run concurrent to each other:

Chapter Seven

Section 7.4. The definition of "crime of violence" under the Guidelines was changed so that it matches D.C. Code § 23-1331(4).

Section 7.10(1) A definition of what "felony offense" means when it is used throughout the Guidelines Manual was added. The definition reads: "A felony offense is any offense specified by the applicable code as a felony or, if undefined, an offense that is punishable by a term of imprisonment that exceeds one year."

Section 7.18(1). A definition of what "misdemeanor offense" means when it is used throughout the Guidelines Manual was added. The definition reads: "A misdemeanor offense is any offense that is not a felony offense."

Chapter Eight:

Section 8.5. The FAQ section was modified to address how a conviction record stating "attempted crime not listed" should be scored. The new language states:

D.C. Superior Court convictions for "attempted crime not listed" should be scored as a misdemeanor unless the sentence imposed is greater than a year or the judgment and commitment order, or other reliable evidence, shows that the conviction was for an attempt offense that constitutes a felony, in which case it would be scored as "any other felony." The burden is on the government to produce such evidence. The normal lapsing rules apply.

Appendix C/C-I

All fines were recalculated in accordance with the Fine Proportionality Act, D.C. Code § 22-3571.01.

All references to the offense of Firearm, Presence in a Motor Vehicle were deleted because the Court of Appeals ruled that the offense was unconstitutional.

Appendix H

Section II(3). All references to the offense of Firearm, Presence in a Motor Vehicle were deleted because the Court of Appeals ruled that the offense was unconstitutional.