

D.C. Voluntary Sentencing Guidelines Training

Calculating a Defendant's Prior Criminal History Score

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This PowerPoint presentation is designed for educational and training purposes only. It is not a complete summary of all D.C. Voluntary Sentencing Guidelines (the Guidelines) rules and is not a supplement to the Guidelines Manual. It should not be referenced, used, introduced, or quoted in any proceeding. Practitioners should read the Guidelines Manual to familiarize themselves with the Guidelines. This PowerPoint should not be reproduced without the expressed permission of the D.C. Sentencing and Criminal Code Revision Commission.

Please Note

- This PowerPoint provides a basic introduction of how the D.C. Voluntary Guidelines Operate. Because it is an overview, it does not contain all Guidelines rules or cover every situation. In fact, many specific rules are not included. If you are reviewing or preparing a specific case, you should consult the Guidelines Manual and/or contact the Sentencing Commission with specific questions.

Guidelines Application

How to find a defendant's Guidelines sentencing range/options

- **Step 1: Calculate the defendant's Criminal History Score**
- Step 2: Find the Offense Severity Group for the instant felony
- Step 3: Determine if an enhancement or special rule applies
- Step 4: Determine the applicable Guidelines range

This PowerPoint focuses on Step 1:

Determining a defendant's prior criminal history score

- Outline
 - What prior behavior is scored/not scored
 - How does a defendant accumulate criminal history points
 - The lapsing and revival of convictions
 - Special circumstances
 - Scoring prior out-of-District convictions
 - Challenging a criminal history score
 - Help calculating a criminal history score

Calculating a Defendant's Criminal History Score

What prior offenses are scored?

- A prior conviction or adjudication that has already been sentenced
 - Conduct not part of the instant event
 - Sentences that were entered before the day of sentencing in the instant case
 - The order in which the prior offenses occurred is not controlling
- Each prior conviction is scored based upon the Offense Severity Group for that offense
- Prior arrests or cases dismissed before a conviction/juvenile adjudication are not score

Special Case Dispositions

- Not Scored
 - Cases dismissed before a sentence is imposed
 - Nolle
 - Voluntary or Involuntary Dismissal
 - Diversion
 - Deferred sentencing
 - Probation before judgment
 - Stet docket or juvenile consent decrees
- Scored
 - Pleas of nolo contendere
 - Cases where sentencing was deferred (such as those listed above) but the defendant was ultimately sentenced
 - Youth Rehabilitation Act (YRA) cases, even if successfully completed and expunged

How do you accumulate Criminal History points?

	NOT LAPSED	
	Adult Conviction	Juvenile Adjudication
Master Groups 1 – 5	3	1 ½
Master Groups 6 – 7 Drug Group 1	2	1
Master Groups 8 – 9 Drug Groups 2 – 3	1	½
Drug Group 4	¾	½
Misdemeanors (90+ days)	¼	0

Prior Adult Convictions Use the Master or Drug Grid

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

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

		Criminal History Score				
Ranking Group Most common offenses		0 to ½ A	¾ to 1¼ B	2 to 3¼ C	4 to 5¼ D	6 + E
2 Points*	Group 1 Distribution w/a (any drug) PWID w/a (any drug)	30-72	36-78	42-84	48-90	54+
	Group 2 Distribution or PWID (Schedule I or II narcotic/ abusive drugs)	12-30	16-36	20-42	24-48	28+
1 Point*	Group 3 Distribution or PWID (except Schedule I or II narcotic or abusive drugs) Attempt Distribution or Attempt PWID (Schedule I or II narcotic/ abusive drugs) Possession of Liquid PCP	6-18	10-24	14-30	18-36	22+
	Group 4 Attempt Distribution or Attempt PWID (except Schedule I or II narcotic or abusive drugs) Attempt Possession of Liquid PCP	3-12	5-16	7-20	9-24	11+

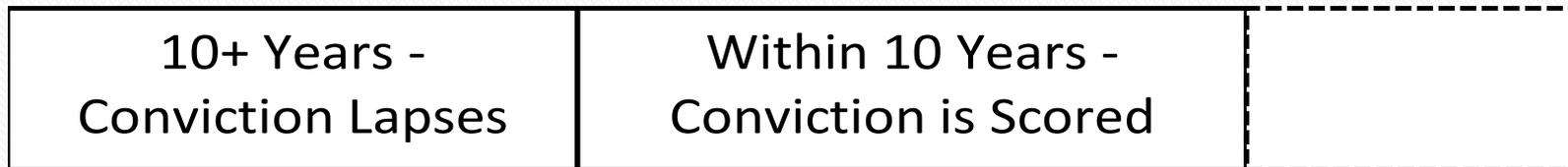
*Criminal History Points for prior convictions in these groups.
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If the offense does not appear on the Master or Drug Grid, Appendix C (alphabetically) and C-I (by code section) display the offense severity group for the offense.

Offense	D.C. Official 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	1	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 1 st firearm M10 2 nd firearm M5 2 nd other	V	10,000
Aggravated Assault	22-404.01(b)	M 6	10	2	8	3		V	10,000
Aggravated Assault -- Attempt	22-404.01(c)	M 8	5	2	3	3		V	5,000
Aggravating Circumstances	24-403.01(b-2)		LWOR	5	LWOR	5			
Animal Fighting, Engaging in	22-1015(a)	M 9	5	2	3	3			25,000
Armor Piercing Ammunition	7-2507.06(3)	M 7	10	2	8	3	M 1		10,000
Arson	22-301	M 6	10	2	8	3	not < 1	V	0
Arson -- Own property w/ intent to defraud	22-302	M 6	15	2	13	3		V	0
Assault with a Dangerous Weapon (ADW)	22-402	M 6	10	2	8	3		V	0
Assault on Police Officer (APO) w/a*	22-405(c) 22-4502	M 5	30	5	30	5	M5 1 st firearm M10 2 nd firearm other	V	10,000
Assault on Police Officer (APO)	22-405(c)	M 7	10	2	8	3		V	10,000
Assault on Police Officer (APO) w/ deadly weapon -- 2 nd + offense or prior felony	24-403.01(f)(1)						not < 1		

What prior convictions are scored?

- Convictions are scored if any portion of the sentence (including any type of supervision) falls within the ten-year window before the **commission** of the instant offense or if a new offense happens after the instant offense and the new offense is sentenced prior to the day of sentencing for the instant offense.
- If the prior conviction is outside of the ten-year window it lapses and is not scored.

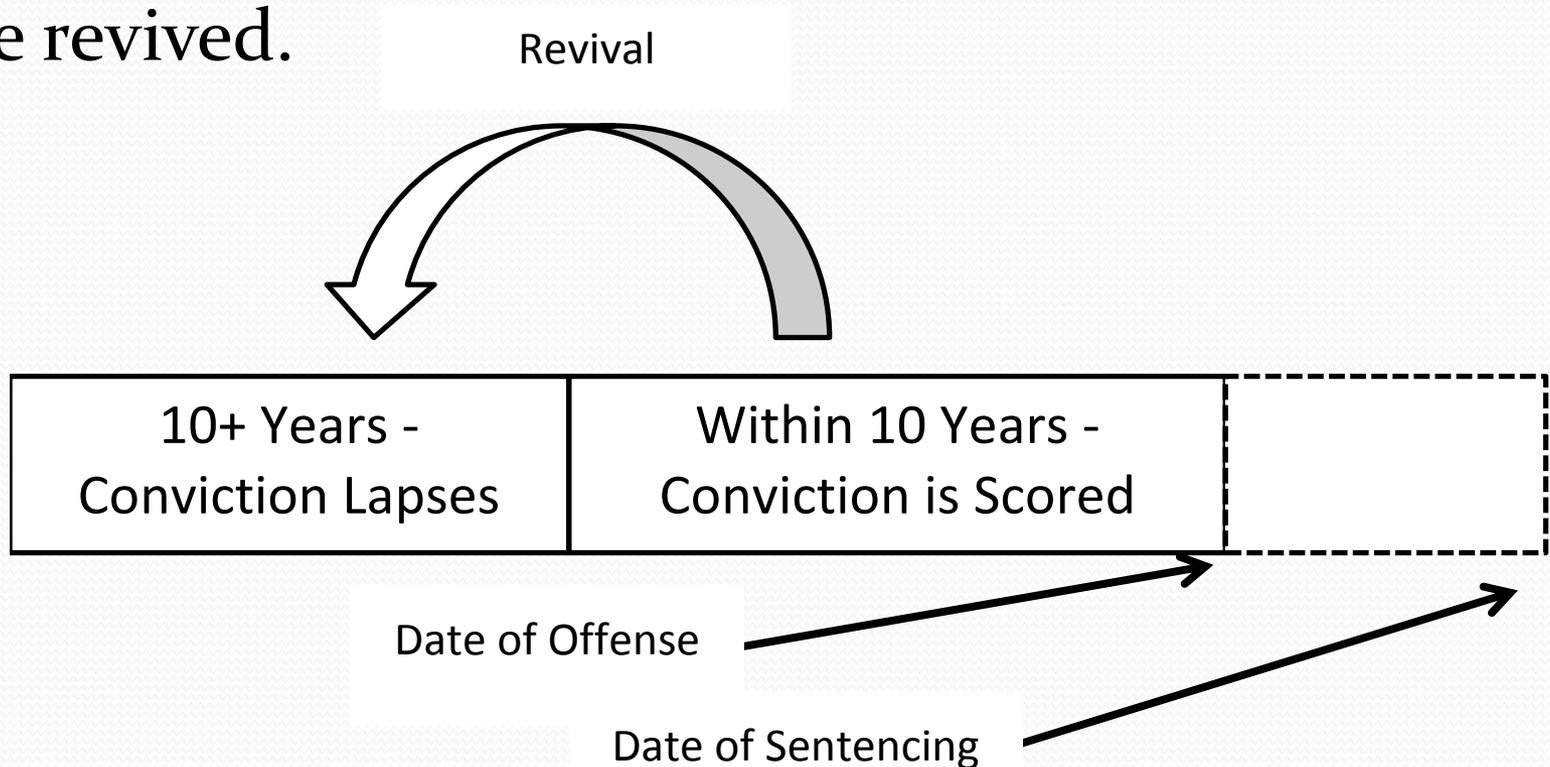


Date of Offense

Date of Sentencing

Revival

- 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.



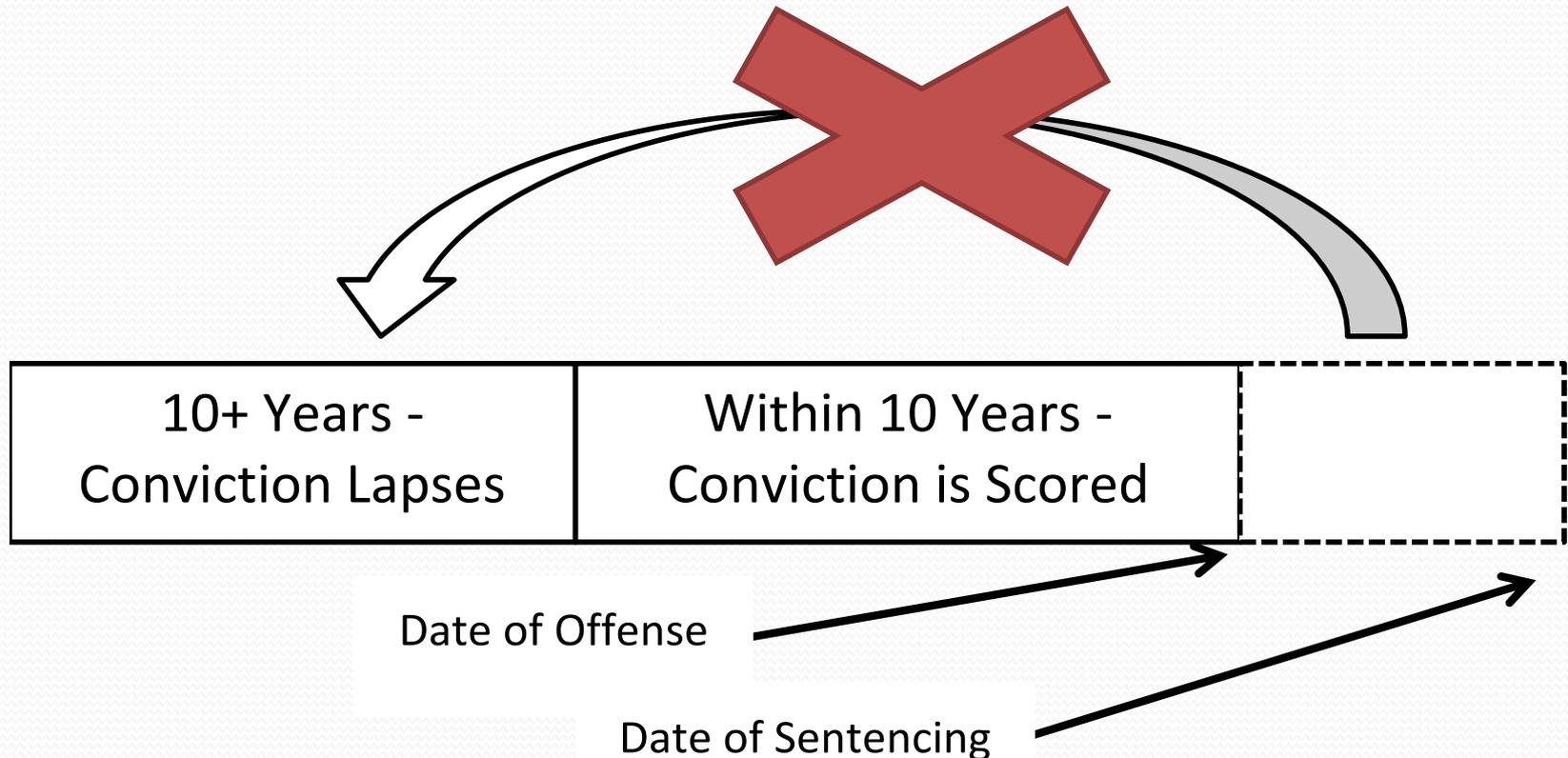
Scoring Revived Felonies

Points for revived felonies:

- If the offense fell in Master Groups one through five, it remains a three point offense
- If the offense fell in Master Groups six through seven or Drug Group one, it becomes a one point offense
- If the offense fell in Master Groups eight or nine, or Drug Groups two or three, it becomes a half point offense
- If the offense fell in Drug Group four, it becomes a quarter point offense

New Offenses/Convictions

- A conviction for an offense occurring after the instant offense is scored, however it cannot revive other felonies if it was committed *after* the offense at issue. The ten-year window applies only to offenses that occurred *before* the offense at issue.



Misdemeanors

- Worth .25 points
- Cannot total more than 1 point
 - A change from the old guidelines
- Misdemeanors with a maximum punishment less than 90 days are not scored (90 days is scored)
- Includes OAG/Traffic offenses
- Cannot be revived
- Cannot revive lapsed convictions
- Juvenile misdemeanor offenses are never scored

Juvenile Adjudications

- Only felonies are scored (no misdemeanors)
- Lapse after 5 years
- Time calculated from the day of adjudication (sentencing) unless committed to a secure facility
- Cannot be revived
 - Therefore, 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.
- Federal Crimes in Charged Superior Court via DC Code 16-2301

Scoring Prior Juvenile Adjudications

Points for prior juvenile offenses:

- If the offense fell in Master Groups one through five, it becomes a one and a half (1.5) point offense
- If the offense fell in Master Groups six through seven or Drug Group one, it becomes a one point offense
- If the offense fell in Master Groups eight or nine, or Drug Groups two through 4, it becomes a half point offense

Multiple Offenses in a Single Event

- Only the most serious offense arising out of a single event is scored.
 - offenses are part of a single event if they were committed at the same time and place **or** have the same nucleus of facts.
 - Remember –offenses are charged in multiple jurisdictions can be part of the same event
 - This is often a factual determination that the PSI writer will initially make. If challenged, the Court will make the final decision as to whether events are part of the same event.

Special circumstances - Accessory after the fact convictions

Use the following chart to score prior accessory after the fact convictions

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

Special Circumstances – Prior offenses with enhancements

- Enhancements do not effect how a prior offense is scored

How to score prior out-of-District convictions

1. Look at the elements of the out-of-District statute.
2. Based upon the elements of the out-of-District offense, choose the current D.C. offense that most closely matches the out-of-District offense.
3. Score the out-of-District offense for criminal history purposes just as the most closely matched D.C. offense would be scored.
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.
5. Do not look to the underlying conduct of the prior offense; instead compare the elements of the D.C. and out-of-District offenses.
7. **Presiding Judge makes the ultimate decision.**

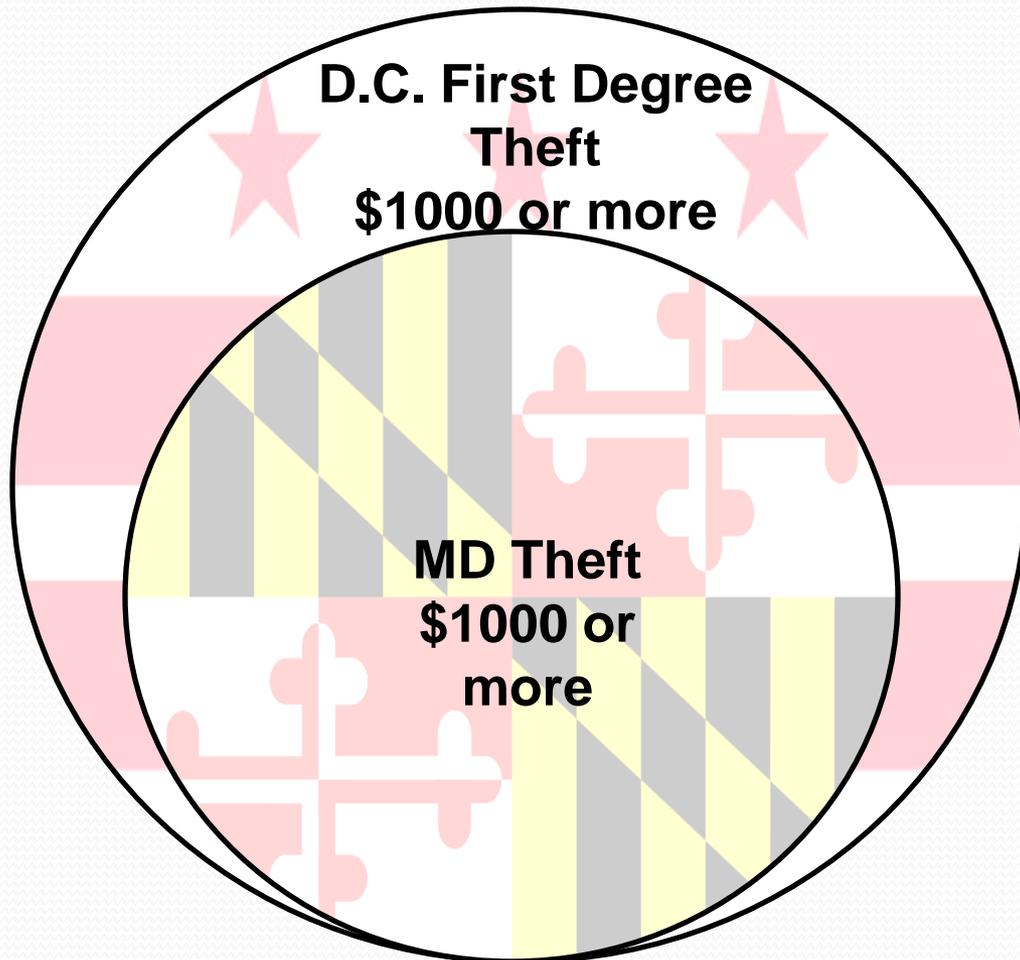
Multiple Closely Matching Offenses

- In cases where the out-of-District offense matches multiple D.C. offenses, score the offense with the least severe criminal history score.
- The PSI should note that the offense could match multiple D.C. offenses and that the least severe offense was scored.
- The PSI should also note all of the possible partially matching offenses. However, parties are encouraged to conduct their own analysis of out-of-District statutes.

Examples of out-of-District scorings

MD Theft

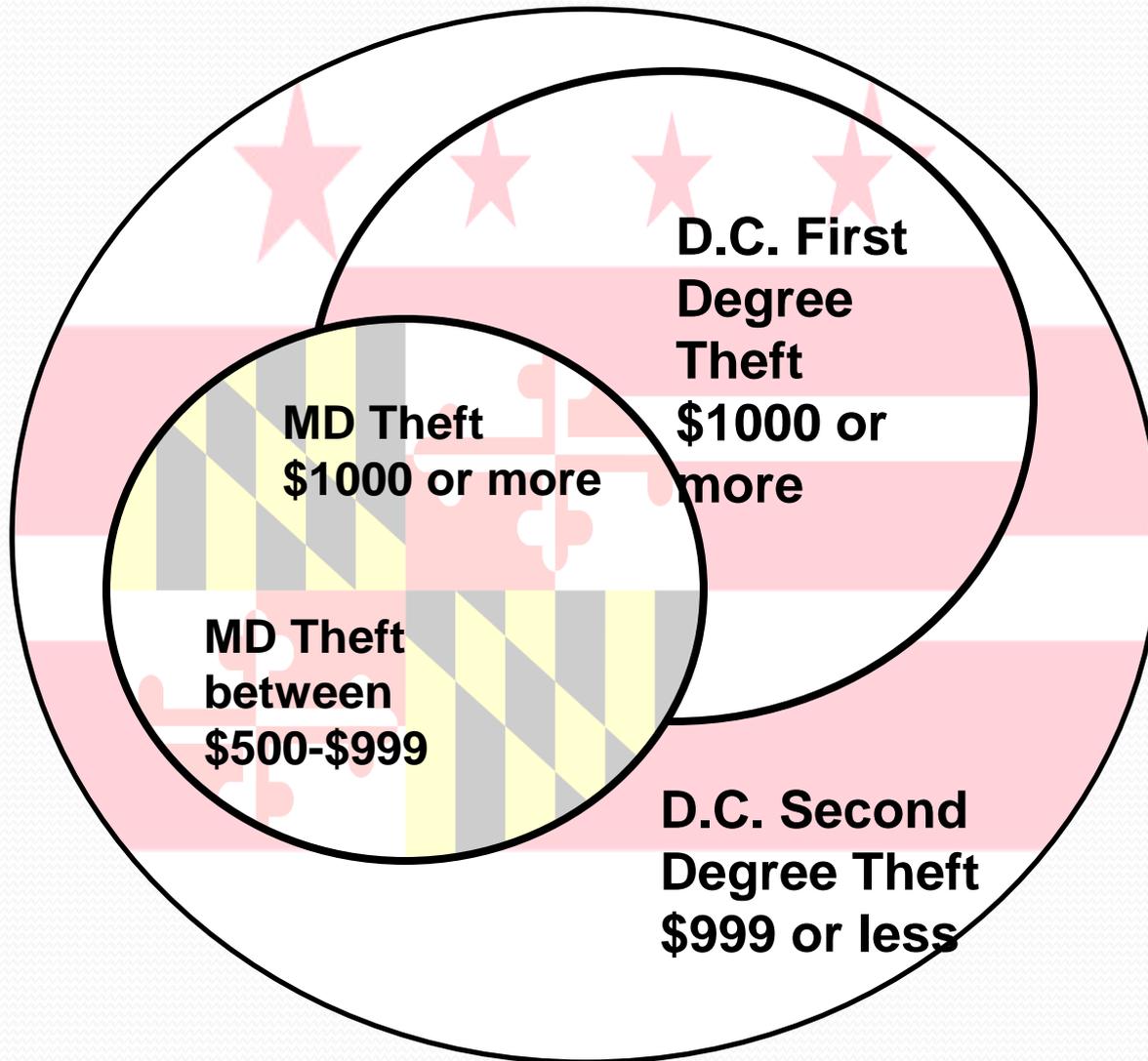
Conviction Post October 1, 2009



- Maryland's felony theft statute was revised October 1, 2009
- The amendment raised the value of property taken to \$1000
- Maryland's felony theft statute now closely matches the D.C. first degree theft statute because both require the taking of \$1000 or more worth of property

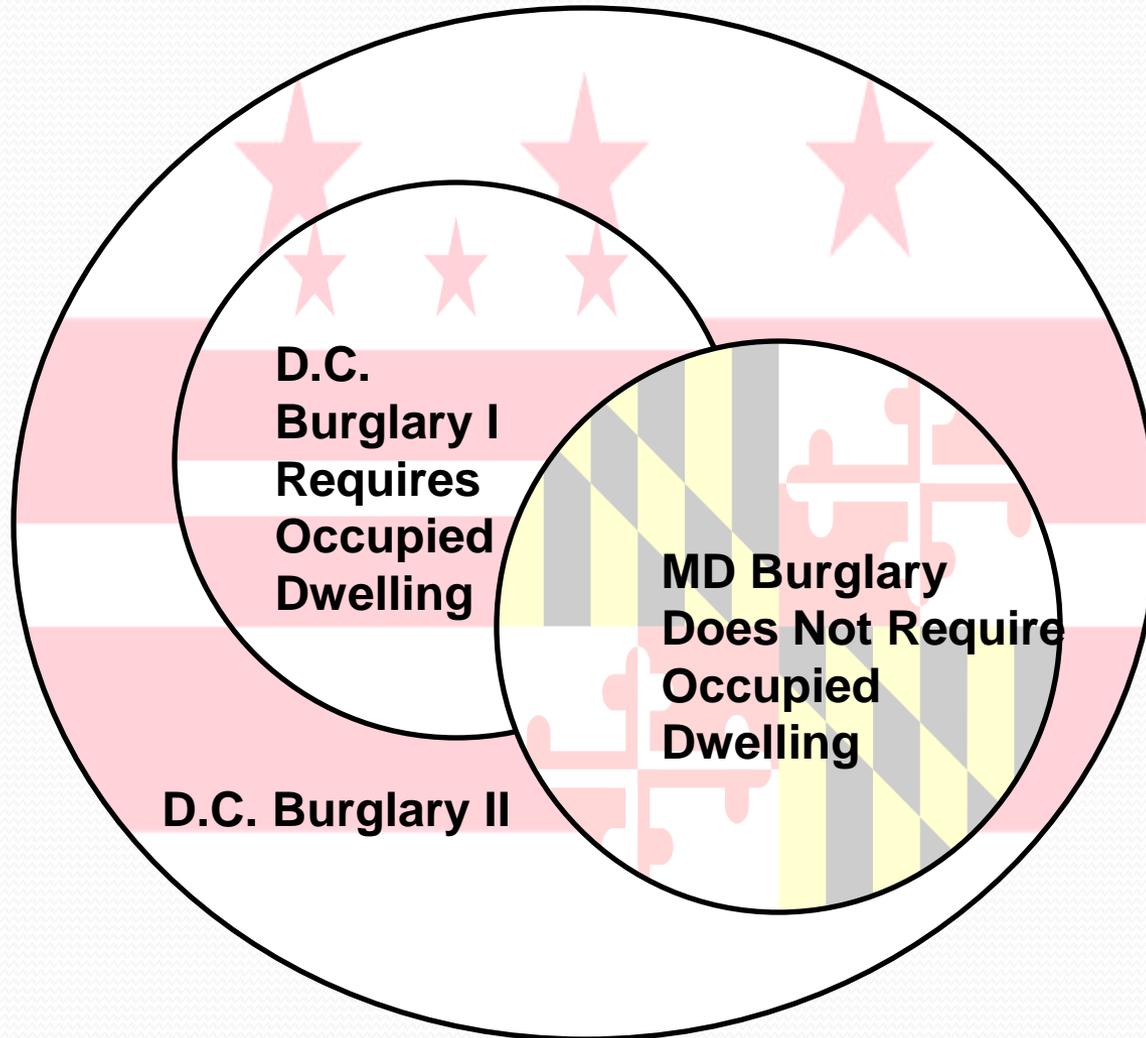
MD Theft

Convictions before October 1, 2009



- Prior to 10/1/09, Maryland's felony theft statute had a \$500 threshold. Therefore, MD felony theft could match either theft I or theft II in D.C. because based on the statutory elements of the offense, the amount could be between \$500 and \$999 or \$1000 or more.
- CSOSA should initially score the offense as theft II in D.C. because Rule 2.2.6 says "select the least severe D.C. statute."

Out-of-District Offenses Matching Multiple D.C. Offenses



Non-Comparable Out-of-District Offenses

- If an out-of-District offense does not match a D.C. offense, it should be scored:
 - as a one point felony if it is defined as a felony by the other jurisdiction
 - as a ¼ point misdemeanor if it is defined as a misdemeanor by the other jurisdiction
 - not scored if the maximum punishment, as set forth by the out-of-District jurisdiction, is less than 90 days incarceration
- A note should be added to the PSI indicating that the offense does not match a D.C. Offense.
- If an out-of-District offense is a partial match to D.C. offense and partially non-comparable, score as least severe conversion

Challenging a out-of-District criminal history score

- 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.
- 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.

Questions?

- Please feel free to contact the Commission with additional questions or for assistance with specific cases.
- Contacting the Commission
 - sccrc@dc.gov 202-727-8822
- Guidelines Questions
 - Linden Fry – 202-727-7934, linden.fry@dc.gov
- Additional Resources available at <http://scdc.dc.gov>