

# **SUPPLEMENT III - FREQUENTLY ASKED QUESTIONS<sup>1</sup>**

## **1. How should a presentence report writer determine whether prior convictions are part of the same event?**

Example: If a defendant has multiple prior convictions with the same offense date, different docket numbers, and a previous presentence report provided two different scores – how should the current presentence report writer determine whether these offenses were part of the same event, especially where the defendant is now claiming that the offense were committed at the same time and only one should be scored? The determination of whether two prior convictions are part of the same event is factual. Therefore, the initial decision is CSOSA’s to make based on a review of all the information available. Once CSOSA provides a determination, the attorneys can present their arguments to the court. For more information on this subject, see Question 2 below.

## **2. What should a presentence report writer do if they cannot determine whether multiple prior convictions arose out of a single event or multiple events?**

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 they 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, the report writer should apply the rules as if the multiple prior convictions arose out of a single event (only the most serious offense is scored, and note in the presentence report that they 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 they consulted on this question.

## **3. 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.

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<sup>1</sup> Supplement III has received minor formatting changes and citation updates to align with the 2025 Manual, but otherwise remains substantively unchanged from the 2023 Manual.

**4. How is an out-of-District offense for Possession of Implements of Crime or Possession of a Prohibited Weapon scored 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 5.1, 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.

**5. Can you provide a summary of what counts in Criminal History scoring?**

The following should be counted in calculating a defendant’s Criminal History score:

- Adult felony convictions that have not lapsed (see Sections 3.3 and 4.1.1).
- Adult felony convictions that have lapsed and have been revived by a prior felony (see Sections 3.3 and 4.1.2).
- Adult misdemeanor convictions that have not lapsed, where the sentence was 90 days or more (see Sections 3.3, 3.3.2, and 4.3.1).
- Juvenile adjudications that have not lapsed (see Sections 3.3, 3.3.3, and 4.3.2).

**6. Are lapsed juvenile adjudications counted in the Criminal History score?**

Lapsed juvenile adjudications are never revived, and are therefore not counted.

**7. Are lapsed misdemeanor convictions counted in the Criminal History score?**

Lapsed misdemeanor convictions are never revived, and are therefore not counted. A new misdemeanor cannot revive a prior felony.

**8. 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 crimes 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 other reliable evidence. The normal lapsing rules apply.

## **9. How are sentences based solely on revocation proceedings scored?**

A sentence based solely on the revocation of a defendant’s supervision (e.g., revocation of probation, parole, or supervised release) in a prior case is not scored as a new conviction. Only the underlying conviction may be scored.

## **10. 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 on or after June 14, 2004. While the Guidelines were designed primarily for the determinate sentencing 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 a 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.

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. The court should locate the box on the Grid in which the offense/defendant 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 Court should 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 apply, a sentence for First-Degree Burglary while Armed in Box 3A could be as low as 90 to 270 months or as high as 180 months to life. Prison or compliant long split sentences are the only options. Similarly, a sentence for a second carrying a pistol 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 carrying a pistol is an enhancement that doubles the top of the box. This means that the minimum term of an

indeterminate sentence could theoretically go as high as 64 months. However, the maximum statutory sentence for a second carrying a pistol conviction is 120 months and the minimum sentence cannot be more than 1/3 of the maximum. Thus, the maximum indeterminate sentence a person can receive for a second carrying a pistol is 40-120 months, even though box 8C would otherwise permit a longer indeterminate sentence for a second carrying a pistol conviction.

## **11. Do the Guidelines apply to sentences under the Youth Rehabilitation Act?**

The Sentencing Guidelines apply to felony convictions under the Youth Rehabilitation Act, D.C. Code § 24-901, et seq., just as they would any other felony conviction. Similar to other factors, at sentencing the Court may consider the Youth Rehabilitation Act when determining an appropriate sentence within the applicable box.

Prior convictions under the Youth Rehabilitation Act are counted like any other conviction without regard to whether the conviction has been set aside.

## **12. What is the Offense Severity Group for Distribution of or PWID Synthetic Marijuana or Synthetic Cannabinoid?**

The term “Synthetic Marijuana” or “Synthetic Cannabinoid” alone does not provide enough information to determine the offense’s Drug Group. Distribution of or PWID Synthetic Marijuana/Cannabinoid is ranked according to the drug schedule and classification of the underlying substance(s).

If the underlying substance(s) is classified as a Narcotic or Abusive Drug and is a Schedule I or II controlled substance, then a Distribution or PWID conviction falls into Drug Group 2. Similarly, an attempted Distribution or PWID conviction for the same substance falls into Drug Group 3 (as a general rule, a conviction for attempt or conspiracy to commit a D2 offense always falls into D3).

If the underlying substance(s) is not classified as a Narcotic or Abusive Drug and/or is not a Schedule I or II controlled substance, then a Distribution or PWID conviction falls into Drug Group 3. Similarly, an attempted Distribution or PWID conviction for the same substance falls into Drug Group 4 (as a general rule, a conviction for attempt or conspiracy to commit a D3 offense always falls into D4).

An indictment for Distribution of or PWID Synthetic Marijuana/Cannabinoid should specify if the substance is a Narcotic or Abusive Drug and the applicable drug schedule. Another way to determine the applicable Drug Group is to find the maximum statutory penalty for the offense. If the maximum statutory penalty is 30 years’ incarceration, the offense falls in D2. If the maximum statutory penalty for the offense is less than 30 years incarceration, the offense falls in D3.