



District of Columbia Sentencing & Criminal Code Revision Commission

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Hon. Frederick H. Weisberg,
Chairman

Barbara S. Tombs
Executive Director

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****SENTENCING GUIDELINES ALERT****

The Commission is pleased to introduce its first **Sentencing Guidelines Alert**. These notifications will be sent out periodically to inform practitioners and our criminal justice partners of any significant modifications to the Guidelines or important updates on the Commission's work.

This current Sentencing Guidelines Alert concerns a new rule regarding the scoring of out-of-District convictions where the defendant was under the age of 18 at the time of the offense. This new policy was unanimously approved by the Commission on June 21, 2011. The Guidelines currently do not address how these prior offenses should be scored in the offender's criminal history. However, in the District, they might be the equivalent of either an adult conviction or a juvenile adjudication. In addition, the Commission ranked the offenses of Sexual Abuse of a Secondary Education Student in the first and second degree. These new rankings are listed below as well.

As with any modification to the Guidelines, practitioner feedback is always welcome. Please feel free to forward any questions or comments to the Commission at sccrc@dc.gov or (202) 727-8822.

Sincerely,

Barbara Tombs-Souvey, Executive Director

Current Rules Governing Out-of-District Offenses

Section 2.2.6 in the D.C. Voluntary Sentencing Guidelines Manual outlines the specific procedure for scoring out-of-District convictions and adjudications in the criminal history score. Out-of-District convictions and adjudications generally are scored like the D.C. offense that it most closely matches based on its name and elements. If more than one D.C. statute matches, then the least severe offense is used. If there is no comparable D.C. statute that closely matches the out-of-District crime, then the Guidelines assign criminal history points based on whether the offense was a felony, misdemeanor or juvenile

adjudication in the other jurisdiction. In the Guidelines, juvenile adjudications have a lower criminal history point value than adult convictions.

The Guidelines do not provide specific guidance on scoring out-of-District offenses where the comparable D.C. offense has been identified but the defendant was under 18 years of age at the time of the offense. In some cases, such a defendant would be considered to be an adult in D.C. and in some cases, s/he would be considered to be a juvenile.

New Policy for Scoring Out-of-District Adult Convictions for Offenders Under the Age of 18

The new policy takes into account the District's statutory provisions and charging practices for prosecuting persons under 18 as adults.¹

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:

- *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.*
- *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.²*
- *However, any 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.*

¹ In the District, offenders 16 and 17 years of age who commit certain offenses (murder, first degree sexual abuse, burglary in the first degree, armed robbery or assault with intent to commit any of these offenses) may be prosecuted as an adult. Upon motion and hearing, offenders 15 to 17 years of age can be transferred from the Family Division to the Criminal Division for prosecution as an adult under specified circumstances. See D.C. Code § 16-2301, et. seq.

² This might be 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.

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 weapon used in the armed robbery, s/he 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.

This new rule was designed to complement the current standards for scoring out-of-District offenses and reflect the specific guiding principles of the District’s sentencing policies pertaining to juvenile offenders.

Ranking of New Offenses

The following new offenses were ranked by the Commission:

First Degree Sexual Abuse of a Secondary Education Student (§ 22-3009.03) 10 year maximum imprisonment \$100,000 maximum fine	Master Group 7
Attempted First Degree Sexual Abuse of a Secondary Education Student (§§ 22-009.03, 22-3018) 5 year maximum imprisonment \$50,000 maximum fine	Master Group 8
Second Degree Sexual Abuse of a Secondary Education Student (§ 22-3009.04) 5 year maximum imprisonment \$50,000 maximum fine	Master Group 8
Attempted Second Degree Sexual Abuse of a Secondary Education Student (§§ 22-3009.04, 22-3018) 2 ½ year maximum imprisonment \$25,000 maximum fine	Master Group 9