



## District of Columbia Sentencing & Criminal Code Revision Commission

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Hon. Frederick H. Weisberg  
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Executive Director

October 15, 2012

### **\*\*SENTENCING GUIDELINES ALERT\*\***

This Sentencing Guidelines Alert concerns a change to the scoring of the Offenses Committed During Release (OCDR) enhancement, D.C. Code § 23-1328(a)(1).<sup>1</sup> Additionally, three enhancements have been added to Appendix H. These changes were unanimously approved by the Commission on September 18, 2012, and apply to all pleas or verdicts entered on or after November 1, 2012.

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

Please note, the Sentencing and Criminal Code Revision Commission has recently relocated its office within One Judiciary Square. Our new address is 441 Fourth Street, NW, Suite 430 South, Washington, D.C. 20001.

Sincerely,

Barbara Tombs-Souvey, Executive Director

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<sup>1</sup> D.C. Code § 23-1328 states that:

“(a) Any person convicted of an offense committed while released pursuant to section 23-1321 shall be subject to the following penalties in addition to any other applicable penalties:

(1) A term of imprisonment of not less than one year and not more than five years if convicted of committing a felony while so released; and (2) A term of imprisonment of not less than ninety days and not more than 180 days if convicted of committing a misdemeanor while so released.

(b) The giving of a warning to the person when released of the penalties imposed by this section shall not be a prerequisite to the application of this section.

(c) Any term of imprisonment imposed pursuant to this section shall be consecutive to any other sentence of imprisonment.”

Prior Rule Governing Offenses Committed During Release - Felony

The Guidelines Manual currently lists OCDR (felony) as a Special Enhancement in Appendix H, Section III. Specifically, it states that the applicable sentencing range is increased by “not <1 year, up to 5 years.”

New Rule Governing Offenses Committed During Release - Felony

Offenses Committed During Release (felony), D.C. Code § 23-1328(a)(1), is a sentencing enhancement. However, for initial sentencing purposes only, the Commission has classified it as a Master Group 9 offense in Appendices C and C-I. The new listing includes a footnote 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.” Because OCDR (felony) is an enhancement, it is not considered a separate offense when calculating a defendant’s prior criminal history score.

Appendices C and C-I now include the following entry:

| Offense   | D.C. Official Code | 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) |
|---|--------------------|------------------------|-----------------------------------|---------------------|---|----------------------------|-----------------|-------------------|----------------|
| Offenses Committed During Release (felony) <sup>1</sup> | 23-1328(a)(1)      | M9 <sup>2</sup>        | 5                                 |                     |   |                            | Not < 1         |                   |                |

<sup>1</sup> 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.

<sup>2</sup> 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 has also been modified to reflect this change. OCDR was removed from Section III and placed in the newly added Section IV, titled “Offenses Committed During Release.” The new section reads as follows:

IV. Offenses Committed During Release - Felony

Offenses Committed During Release (felony)      Scored 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, ranked in Master Group 9 with a minimum sentence of 1 year and a maximum sentence of 5 years. 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.

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

Finally, a footnote has been added to Chapter 4 indicating that the general rule on enhancements “does not apply to the Offenses Committed During Release enhancement (D.C. Code § 23-1328). See Appendix H, Section IV for an explanation of how OCDR should be scored.”

#### Enhancements Added to Appendix H

##### Section I

1. Identity Theft -- 1<sup>o</sup> against senior citizen - (D.C. Code §§ 22-3227.02, 22-3227.03(c))  
Add:  
“D.C. Code § 22-3227.03(c)” to section H-I, Status of the Victim: Senior Citizen Victim, following D.C. Code § 22-3601.

##### Section II

1. Firearm, Presence in a Motor Vehicle Containing: Prior Gun Conviction or Felony  
Add:  
Firearm, Presence in a Motor Vehicle Containing: Prior Gun Conviction or Felony (D.C. Code § 22-2511(c)(2))  
No prior gun conviction or felony - 5 years  
Prior gun conviction or felony - 10 years  
Ratio 2:1 = 2 x the upper number

2. UUV - Two or more UUV or Theft -- 1<sup>o</sup> convictions

Add:

UUV - Two or more UUV or Theft -- 1<sup>o</sup> convictions - (D.C. Code §§ 22-3215(d)(3))

Less than 2 prior UUV or Theft -- 1<sup>o</sup> convictions: 10 years

2 prior UUV or Theft -- 1<sup>o</sup> convictions: 15 years

Ratio 1.5:1 = 1 ½ x the upper number”