

District of Columbia Voluntary Sentencing Guidelines

Issue Paper: Statutory Enhancements and the D.C. Voluntary Sentencing Guidelines

April 5, 2021

I. District of Columbia Voluntary Sentencing Guidelines

The District of Columbia (“the District”) Voluntary Sentencing guidelines (“the Guidelines”) were developed by the D.C. Sentencing Commission (“the Commission”) to promote certainty, consistency, and adequacy of punishment when sentencing felony offenses. Superior Court of the District of Columbia (“Superior Court”) judges utilize the Guidelines when making a sentencing decision: the Guidelines determine the recommended sentence type and length for each felony offense to be sentenced. The recommended sentence is based on a defendant’s criminal history and the severity of the offense for which they are convicted. When judges follow the Guidelines and impose the recommended sentence (both type and length), that sentence is deemed “Guidelines Compliant”. The District’s Guidelines are voluntary; thus, judges are not required to follow them.

To determine the recommended sentence, judges will reference one of two Grids: the Drug Grid or the Master (non-drug) Grid.¹ These Grids provide a list of offenses on the left side (vertical axis) of the Grid, ranking them into one of nine offense severity groups (“OSG”), with the most serious offenses at the top. Across the top of the Grid (horizontal axis) the five criminal history (“CH”) categories are presented. The intersection (“Grid Box”) of a defendant’s CH category and the OSG of their offense of conviction is used as the proxy to measure the seriousness of the offense, the dangerousness of the defendant, the need to protect the safety of the community from the defendant, and the defendant’s potential for rehabilitation. The Grid Box identifies the Guidelines recommended sentence: The color of the box indicates the recommended sentence type(s); the numbers in each box represent the recommended range of sentence length, in months. The more serious the offense of conviction and the higher the CH category, the more severe the Guidelines recommended sentence will be.

The recommended range of sentence length in each Grid Box is not static: usually, the upper number of the Grid Box is adjusted when a statutory enhancement applies. When calculating a defendant’s CH score, most enhancements are not scored. With the goal of increasing awareness among residents of the impact of such enhancements on the District’s sentencing practices, this paper will examine statutory enhancements used in the District and how they are applied under D.C. Voluntary Sentencing Guidelines.

II. Statutory Enhancements

Being in a drug-free zone or having been convicted of a prior offense are not criminal acts per se. However, their presence during a criminal act may result in a more serious offense that could potentially receive a harsher punishment. The presence of several similar factors that can increase the severity of a criminal offense include the presence of a firearm (“While Armed” offenses), bias against a protected class (resulting in hate crimes), the specific location of the crime (e.g. in a school zone), to name a few. Under these circumstances, the District’s Criminal Code elevates the severity of the criminal act by increasing the maximum sentence that a judge can legally impose against a defendant upon conviction (“statutory maximum”). In other words, a statutory enhancement is a legal means by which the maximum statutory sentence for a criminal act is increased due to the presence of specific factors.

The statutory maximum for an individual convicted of Robbery is 180 months of incarceration. However, if the victim of the robbery was under 18 years of age, the statutory maximum for the offense is increased by 1.5 times, from 180 to 270 months, due to the enhanced penalty for committing a crime of violence against minors. If, instead, the defendant had a weapon during the robbery, the statutory maximum becomes 360 months. Finally, if the defendant was previously convicted of two or more violent felony offenses, the statutory maximum increases from 180 months to life without the possibility of release.

The examples above illustrate the various types of enhancements in terms of how they can increase the statutory maximum. The Guidelines incorporate enhancements in varying ways, which is summarized in the following table:

¹ See Appendix A or <https://sdc.dc.gov/page/sentencing-guideline-grid-charts> for the Master and Drug Grids.

Type of Enhancement:	Statute Uses:	Guidelines Uses:
1. Enhancements with Multipliers	Multiplier	Multiplier
2. Offense-Specific Enhancements	Specific Number	Multiplier
3. Enhancements with a Defined Statutory Maximum	Specific Number	Specific Number
4. While Armed Enhancements	Specific Number	Adjusted Offense
5. Enhancement for Offenses Committed During Release	Specific Number	New Offense

The various types of enhancements are explained in more detail below:

1. Enhancements with Multipliers:

- These enhancements increase the statutory maximum using a multiplier. The enhanced penalty mentioned above for committing a crime of violence against minors is one example, in which the statutory maximum is increased by 1.5 times.
- The Guidelines account for such enhancements by applying this multiplier to the upper number of the Grid Box. To illustrate, Robbery is an OSG M6 offense. The Guidelines recommended sentence length for a defendant convicted of this offense having no prior criminal history is 18 to 60 months (Grid Box M6:CH-A). However, if the victim of the robbery was a minor, the upper number of the recommended sentence increases from 60 to 90 months.

2. Offense-Specific Enhancements:

- These enhancements increase the statutory maximum for specific offenses using a specific number, rather than a multiplier. For instance, the statutory maximum for Felony Stalking is 60 months. If the defendant was previously convicted for stalking two or more times, the statutory maximum is increased to 120 months.
- The Guidelines account for such enhancements by using the original statute as a reference to calculate a multiplier. This calculated multiplier is then applied to the upper number of the Grid Box. In the above example, the repeat offender enhancement effectively doubled the statutory maximum for Stalking (from 60 to 120 months). Stalking is ranked by the Guidelines in OSG M9. The Guidelines recommended upper number of the box for a defendant being sentenced for this offense in Grid Box M9:CH-C would be increased from 5-20 months to 5-40 months under this enhancement. Note that the defendant's prior convictions for stalking may also contribute to their CH score.

3. Enhancements with a Defined Statutory Maximum:

- These enhancements set the statutory maximum using a specific number but are not offense specific. For instance, the statutory maximum for any felony offense in which the defendant was previously convicted of two or more felonies is set at 360 months.
- Because there is no base statute to use as a reference and to calculate the enhancement from, the Guidelines change the upper number of the Grid Box. To illustrate, since the above three-strikes enhancement increases the statutory maximum of any felony to 360 months, the Guidelines recommended sentence for a Robbery conviction in Grid Box M6:CH-C would be adjusted from 30-72 months to 30-360 months if this enhancement was applied.

4. While Armed Enhancements:

- Similar to the category above, While Armed enhancements set the statutory maximum. The statutory maximum of felony offenses committed while armed is increased to either 360 months or life without the possibility of release, depending on the underlying offense and the defendant's criminal history.
- The Guidelines do not adjust the upper number of the Grid Box for sentences for which a While Armed enhancement was applied. Instead, While Armed offenses are treated as if they were separate offenses in a higher OSG. For example, Robbery is an offense in OSG M6. In turn, Robbery While Armed is an OSG M5 offense. Consequently, when the enhancement applies, the Guidelines recommended sentence for a

defendant being sentenced for this offense in CH group A would be 36 to 84 months (prison only), rather than 18 to 60 months (short split permissible).

- Generally, when calculating a defendant's CH score, statutory enhancements to a prior conviction do not increase the score assigned to those prior convictions. The While Armed enhancements are the only ones that contribute to a defendant's CH score calculation: a prior conviction of Robbery (OSG M6) is assigned two points, compared to three points for a prior conviction of Robbery While Armed (OSG M5).

5. Enhancement for Offenses Committed During Release ("OCDR"):

- Felony OCDR defines a statutory maximum of 60 months for defendants who committed a felony offense while on release.
- Although Felony OCDR is a statutory enhancement, the Guidelines treats it as if it were a separate offense, ranking it in OSG M9. However, OCDR is not scored in calculating a defendant's criminal history score.

III. Trends in Statutory Enhancements²

According to the data that the Commission received from the Superior Court, between 2015 and 2020, a total of 8,581 cases were sentenced involving 11,089 felony counts against 7,612 defendants. The data indicated that:

- Enhancements were applied in 11% of felony cases sentenced. However, of prison sentences imposed, nearly one in five (19%) involved an enhancement.
- Of the various types of enhancements, While Armed and OCDR were the most common ones, constituting 60% and 21% of the cases where an enhancement was applied, respectively. It was uncommon to have both enhancements applied in the same case.
 - Prison was the most common sentence type for 96% of sentences with a While Armed enhancement, compared to those without. For a given offense, the sentence length imposed was two to three times higher when a While Armed enhancement was applied. For example, the average sentence for Robbery was 31 months (n=768 counts sentenced), compared to 66 months for Armed Robbery (n=263 counts sentenced).
- Enhancements with multipliers, offense-specific enhancements, and enhancements with a specific statutory maximum were infrequent. For example, the enhanced penalty for Carrying a Pistol or a Dangerous Weapon without a License, second offense or after felony, which was the third most common enhancement, accounted for only one percent of the cases. Others, such as senior citizen victim or bias related crimes, accounted for 15 cases or less, each.
- How a case was disposed appeared to be an important factor in statutory enhancements. Except for Rule 11(c)(1)(C) pleas, only seven percent of cases disposed of through plea agreements involved enhancements, compared to 34% of cases disposed through jury trials. Twenty eight percent of cases resulting in Rule 11(c)(1)(C) pleas included statutory enhancements.
- Though enhancements expand the range of recommended sentences by increasing the upper number of the Grid Box, Guidelines compliance rates remained at or above 96% regardless of whether an enhancement was applied. Enhanced sentences appeared to be more common among compliant sentences, with 12% of compliant sentences involving some type of enhancement, compared to six percent of non-compliant sentences.
- Both Black and white defendants appeared to receive enhanced sentences at the same rate of five percent. The number of defendants in other race categories was not sufficient for comparisons.

² Source: D.C. Sentencing Commission 2020 Snapshot data file. Data included felony sentences that were imposed initially between 2015 and 2020 and received from the Superior Court, current as of January 4, 2021. Non-Guideline and indeterminate sentences and sentences resulting from a probation revocation or remand are excluded from the data. Information pertaining to enhancement papers filed by the prosecution may not always be available to the Commission in the electronic data received from the Superior Court.

- Age was a factor only among Black male defendants: Younger Black male defendants received enhanced sentences at a higher rate than older Black male defendants. Thirteen percent of Black male defendants in the 18-21 age group received enhanced sentences. This rate steadily decreased to nine percent for those in the 41-50 age group and three percent for those in the 61-70 age group. In this group, While Armed enhancements were more common among younger defendants. For instance, sixty two percent of Black male defendants in the 18-21 age group received such enhancements, compared to 39% in the 41-50 age group. Enhancements for OCDR and Offense-Specific Enhancements (such as Carrying a Pistol or a Dangerous Weapon without a License, second offense or after felony) were more frequently applied than While Armed enhancements among older Black male defendants.

IV. Conclusion

Though factors included in statutory enhancements may not be criminal acts by themselves, the application of enhancements to a defendant's sentence length may be substantial. Under the Guidelines, if a statutory enhancement is applied at sentencing, the Grid Box range is expanded by increasing the top number by a certain percentage or an amount that is the result of the specific enhancement statute. If multiple enhancements apply, except for OCDR and While Armed offenses, the Guidelines adjusts the Grid Box using the enhancement that increases the top number of the Grid Box the most.

Data indicated that, though relatively uncommon, statutory enhancements impacted incarceration rates in the District. One in five prison sentences included an enhancement and resulted in longer sentence lengths. Among Black males, younger defendants received enhanced sentences more frequently, which was an effect that did not appear among other groups. Most enhanced sentences involved the While Armed enhancements. Enhancements with multipliers, offense-specific enhancements, and enhancements with a specific statutory maximum were infrequent. Jury trials and Rule 11(c)(1)(C) pleas resulted in enhanced sentences more frequently, compared to other plea agreements. Guidelines compliance rates remained high regardless of whether a sentence was enhanced.

Appendix A: Master and Drug Grids

Master Grid

Drug Grid

	Severity Group (OSG) Most Common Offenses	Criminal History Score / Group				
		0 to ½ A	¾ to 1¼ 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 +
	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 PFCOV 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 FIP-COV Negligent homicide Attempt 2nd degree sex abuse	12-36	18-42	24-48	30-54	36 +
1 Point*	Group 8 CPWL UIUV Attempt robbery/burglary FIP 1st degree theft Assault w/significant bodily injury	6-24	10-28	14-32	18-36	22 +
	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 or compliant long split only.						
Green shaded boxes – prison, compliant long split, or short split permissible.						
Yellow shaded boxes – prison, compliant long split, short split, or probation permissible.						

	Severity Group (OSG) Most common offenses	Criminal History Score / Group				
		0 to ½ A	¾ to 1¼ 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+
	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.						
White/unshaded boxes – prison or compliant long split only.						
Green shaded boxes – prison, compliant long split, or short split permissible.						
Yellow shaded boxes – prison, compliant long split, short split, or probation permissible.						

Appendix B: Grid Box Adjustments that Originate from Statutory Enhancements

<i>Adjustment to the Grid Box</i>	<i>Statutory Enhancement</i>	<i>D.C. Code</i>
<i>1 ½ times the upper number</i>	Bias related crime	§ 22-3703
	Citizen patrol victim	§ 22-3602
	Crimes of violence against minors	§ 22-3611
	Mass transit operator victim	§ 22-3751.01
	Senior citizen victim	§ 22-3601
	Senior citizen identity theft	§ 22-3601
	Taxicab driver victim	§ 22-3751
	Human Trafficking Victim held or provided services for > 180 days	§ 22-1837(a)(2)
	One prior like offense	§ 22-1804(a)
	Sex offenses not in the first degree, aggravating circumstances	§ 22-3020
<i>2 times the upper number</i>	Drug offense in Drug-free zone	§ 48-904.07a(b)
	Drugs to minors	§ 48-904.06
	Weapon offense in a Gun-free zone	§ 22-4502.01
	One or more drug offenses	§ 48-904.08
	Carrying a pistol second offense or after felony	§ 22-4504(a)(2)
	Enlisting minors to distribute drugs second offense	§ 48-904.07
	Insurance fraud in the second degree second offense	§ 22-3225.04(b)(2)
	Sexual performance using minors second offense	§ 22-3103(2)
	Felony Stalking after two or more qualifying convictions	§ 22-3134(c)
<i>3 times the upper number</i>	Molotov cocktails second offense	§ 22-4515a
	UUV after two or more UUV or Theft I convictions	§ 22-3215(d)(3)
	Two or more prior like offenses	§ 22-1804(a)
<i>6 times the upper number</i>	Molotov cocktails third offense	§ 22-4515a
<i>Upper number = 30 years</i>	Two or more prior felonies	§ 22-1804a(a)(1)
<i>Upper number = 40 years</i>	Armed carjacking, aggravating circumstances	§ 24-403.01(b-2)
<i>Upper number = Life without release</i>	Two or more prior violent felonies	§ 22-1804a(a)(2)
	Murder I, aggravating circumstances	§ 22-2104, 24-403.01(b-2)
	Murder II, aggravating circumstances	§ 24-403.01(b-2)
	First Degree Sex offenses, aggravating circumstances	§ 22-3020, 24-403.01(b-2)