

D.C. Voluntary Sentencing Guidelines Training

Basic Guidelines Introduction

Posted October 21, 2013

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.

Outline

- Sentencing Guidelines Overview
- Application of Guidelines
 - Calculating Criminal History Scores
 - Finding the in-the-box sentencing range/options
- Additional Information and Contacting the 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.

What are the D.C. Sentencing Guidelines?

- The D.C. Voluntary Sentencing Guidelines provide sentencing options and a sentencing range for every felony sentence imposed in the Superior Court of the District of Columbia
- Purpose
 - The D.C. Sentencing Guidelines Promote Certainty, Consistency, and Adequacy of Punishment
- Two primary factors influence a defendant's proposed sentence:
 - The defendant's prior Criminal History Score
 - Seriousness of the underlying offense
- Sentencing Guidelines in D.C.
 - Apply to pleas and verdicts in felony cases entered after June 14, 2004

Guidelines Application

How to find a defendant's Sentencing Range

- Step 1: Calculate the defendant's Criminal History Score based upon the number, type, and age of his or her prior convictions
- Step 2: Find the Offense Severity Group for the instant felony offense
- Step 3: Determine if an enhancement or special rule applies
- Step 4: Determine the applicable Guidelines range

Based on his or her criminal history score, every defendant falls into one of five Criminal History Score categories (A-E highlighted in blue).

		Criminal History Score				
	Ranking Group Most Common Offenses	0 to ½ A	¾ to 1½ B	2 to 3½ C	4 to 5½ 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 +
	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 +
2 Points*	Group 7 Burglary II 3rd degree sex abuse Negligent homicide Assault w/I to commit mayhem Attempt 2nd degree sex abuse	12 - 36	18 - 42	24 - 48	30 - 54	36 +
	Group 8 CPWOL UUV Attempt robbery Attempt burglary 1st degree theft	6 - 24	10 - 28	14 - 32	18 - 36	22 +
1 Point *	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.

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 calculate 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

adult conviction is worth, use the master or drug Grid

		Criminal History Score				
	Ranking Group Most Common Offenses	0 to ½ A	¾ to 1 B	2 to ¾ C	4 to 5½ 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 +
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*Criminal History Points for prior convictions in these groups.

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		Criminal History Score				
	Ranking Group Most common offenses	0 to ½ A	¾ to 1½ B	2 to 3½ C	4 to 5½ 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+
1 Point*	Group 2 Distribution or PWID (Schedule I or II narcotic/ abusive drugs)	12-30	16-36	20-42	24-48	28+
	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+
¾ Point*	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.

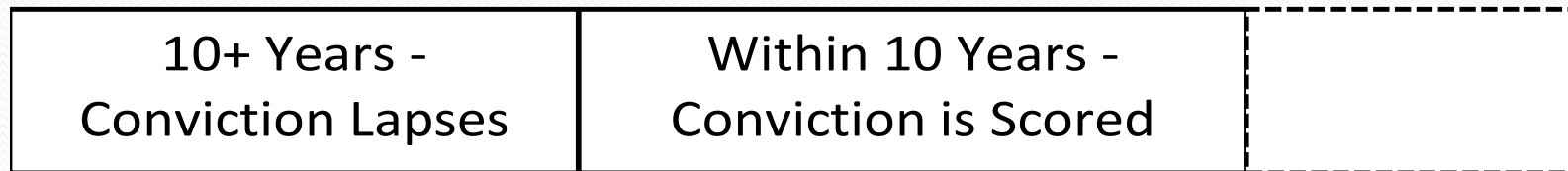
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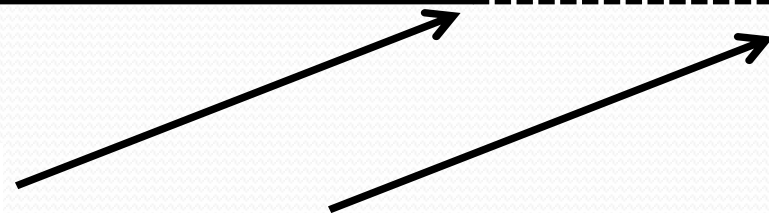
Which Prior Convictions Count?

- 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.
- If the conviction is for conduct occurring after the instant offense but the case has already been sentenced, it is scored.
- If the prior conviction is outside of the ten-year window prior to the instant offense, the prior offense lapses and is not scored.



Date of Offense

Date of Sentencing



Finding the Offense Severity Group

Almost all felonies are ranked by the Commission and placed into Offense Severity Groups (similar to the 43 federal offense levels)

- 9 Groups on Master Grid ($M_1 - M_9$)
(Appendix A - left)
- 4 Groups on Drug Grid ($D_1 - D_4$)
(Appendix B - next slide)

		Criminal History Score				
3 Points*	Ranking Group Most Common Offenses	0 to ½ A	¾ to 1½ B	2 to 3½ C	4 to 5½ D	6 + E
	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 +
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	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
Group 7 Burglary II 3rd degree sex abuse Negligent homicide Assault w/ 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 +
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*Criminal History Points for prior convictions in these groups.

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Finding the Offense Severity Group

The most common felony offenses are located in Appendix A (Master Grid) and Appendix B (Drug Grid)

Felony offenses not listed in Appendix A or Appendix B are still ranked into one of the nine groups on the Master Grid or four groups on the Drug Grid. You can find their ranking in Appendix C and C-1.

		Criminal History Score				
	Ranking Group Most common offenses	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+
1 Point*	Group 2 Distribution or PWID (Schedule I or II narcotic/ abusive drugs)	12-30	16-36	20-42	24-48	28+
	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+
¾ Point*	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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Almost All Felonies Are Ranked in Appendix C (alphabetically) and C-I (by code section)

Offense	D.C. Official Code (2011)	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 M5 2 nd 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		

¹ See §§ 2.1 and 2.2.2 for the severity level and scoring of accessory convictions.

Scoring Unranked Offenses

For an offense that does not appear in Appendix C, unless and until the Commission ranks it, use this table:

If the maximum penalty is:

then use:

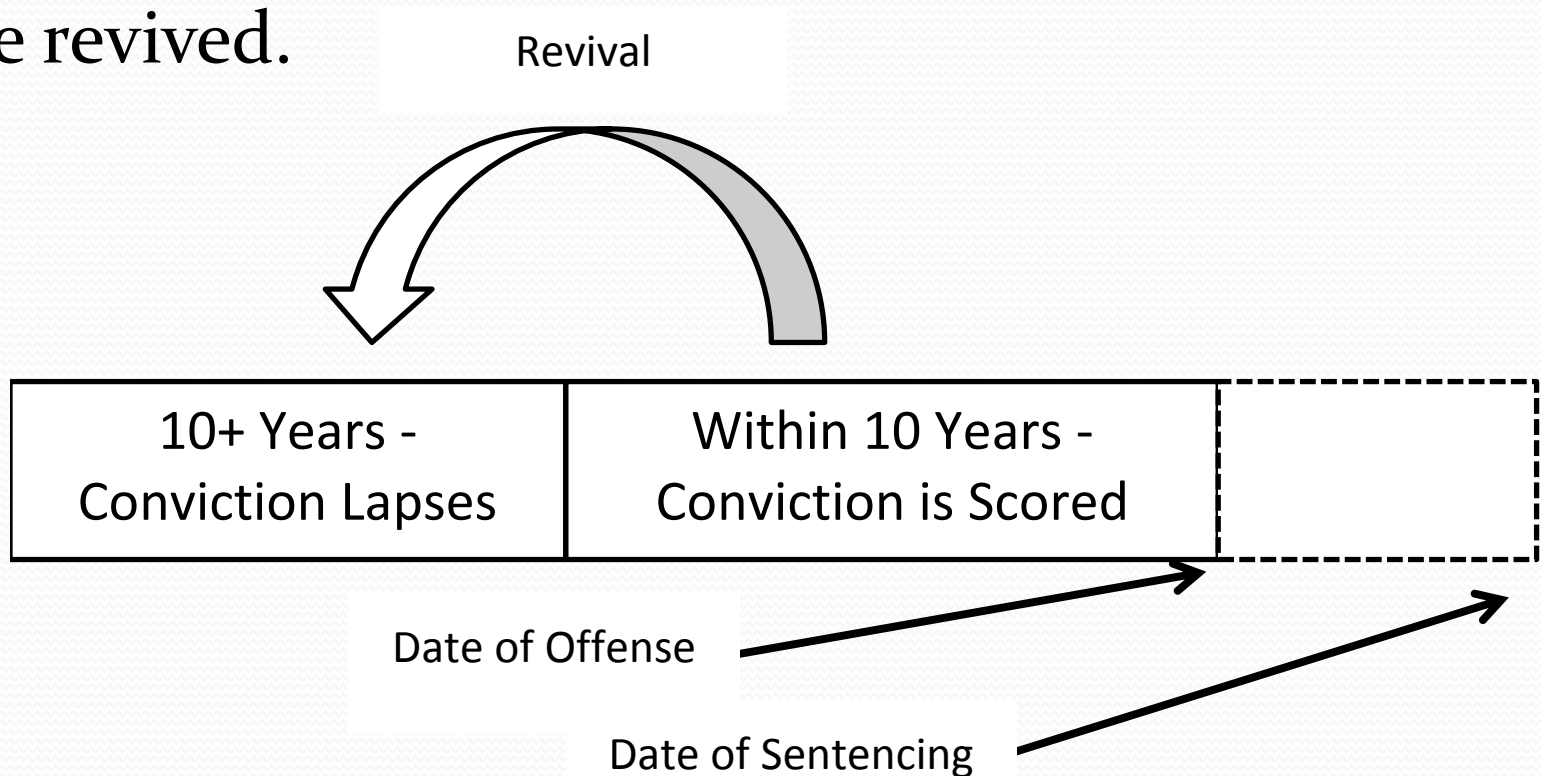
	Master Offense	Drug Offense
Less than 5 years	9	3
Five years or more, but less than 10	8	3
10 years or more, but less than 15	7	2
15 years or more, but less than 20	6	2
20 years or more, but less than 30	5	1
30 years or more, but less than 40	4	1
40 years or more, but less than life	3	1
Life, but not life without release	2	1
Life without release	1	1

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 misdemeanors are not scored

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

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

Juvenile Adjudications

- The Guidelines are not applicable to instant juvenile adjudications
- Only felonies are scored
- Lapse after 5 years
 - Time calculated from the day of adjudication (sentencing) unless committed to a secure facility (this is different from adult offenses)
- Never revived once lapsed
 - 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.
- Juvenile adjudications are capped at 1 ½ points, unless there is more than one adjudication for an offense that counts as 1 ½ points. In that event, each such adjudication is counted and all other adjudications are not counted.

Sentence Calculation

For each count . . .

1. Find the right box
2. Adjusting the box
3. Sentencing inside the box
4. Sentencing outside the box
5. Consecutive and concurrent sentencing

Sentence Types

- Three types of sentences
 - Prison – the defendant must serve at least the bottom of the applicable sentencing range in prison
 - Long Split - the defendant serves more than 6 months in prison with the remainder of the sentence suspended
 - Note: in a prison only or short split eligible box, a long split sentence is compliant if the time served in prison is equal or greater to the bottom of the Guidelines range and the total sentence is less or equal to the top of the range. A long split sentence can be imposed in any box.
 - Short Split – the defendant serves up to 6 months in prison with the reminder of the sentence suspended
 - Probation – the defendant's entire sentence is suspended
- Eligibility determined by the box (similar to zones)
- Prison is always an option

- Compliant as long as time served is greater than the lower number and less than upper number
- Probation may only be given as part of a long split wherein the defendant is sentenced to serve at least the bottom of the sentencing range in prison and the total sentence is less than or equal to the top of the Guidelines range.
- Example of a compliant long split sentence – in Master Grid Box 3 B: 192 months, ESS all but 102 months. This is compliant because the defendant serves at least the bottom of the range and the total sentence is equal to the top of the range.
- Example of a non-compliant long split sentence – in Master Grid Box 3 B: the Court may impose a sentence of 192 months, ESS all but 40 months. This is non-compliant because the defendant is not sentenced to serve at least the bottom of the sentencing range (102 months)

		Criminal History Score				
	Ranking Group Most Common Offenses Group 1 1st degree murder w/armed 1st degree murder Group 2 2nd degree murder w/armed 2nd degree murder 1st degree sex abuse 1st degree sex abuse w/armed Group 3 Voluntary manslaughter w/armed 1st degree child sex abuse Carjacking while armed Assault with intent to kill w/armed Armed burglary I Group 4 Aggravated assault w/armed Voluntary manslaughter Group 5 Possession of firearm /CV Armed robbery Burglary I Obstruction of justice Assault with intent to kill	0 to ½ A	¾ to 1¼ B	2 to 3¼ C	4 to 5½ D	6 + E
3 Points*		360 - 720	360 - 720	360 - 720	360 - 720	360 +
		144 - 288	156 - 300	168 - 312	180 - 324	192 +
		90 - 180	102 - 192	114 - 204	126 - 216	138 +
		48 - 120	60 - 132	72 - 144	84 - 156	96 +
		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 Group 7 Burglary II 3rd degree sex abuse Negligent homicide Assault w/I to commit mayhem Attempt 2nd degree sex abuse	18 - 60	24 - 66	30 - 72	36 - 78	42 +
		12 - 36	18 - 42	24 - 48	30 - 54	36 +
1 Point*	Group 8 CPWOL UUV Attempt robbery Attempt burglary 1st degree theft Group 9 Escape/prison breach BRA Receiving stolen property Uttering Forgery Fraud	6 - 24	10 - 28	14 - 32	18 - 36	22 +
		1 - 12	3 - 16	5 - 20	7 - 24	9 +

*Criminal History Points for prior convictions in these groups.

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- All prison only sentences, as discussed on the previous slide are compliant.
- Short split sentences are also compliant.
- To impose a short split, the court must impose a prison sentence that falls within the prison range in that box, suspend execution of all but six months or less of that sentence -- but not all of it -- and impose up to five years probation.
- Example of a compliant short split sentence – in Master Grid Box 7 B: 18 months, ESS all but five months. This is compliant because the defendant is sentenced to at least the bottom of the sentencing range and the time to serve is greater than zero but six months or less.

		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 +
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Prison, Short Split, and Probation Eligible

- Any sentence imposed within the Guidelines range is compliant regardless of the type of sentence (prison, split, or probation only).

		Criminal History Score				
	Ranking Group Most Common Offenses	0 to ½ A	¾ to 1½ B	2 to 3½ C	4 to 5½ D	6 + E
3 Points*	Group 1 1st degree murder w/armed 1st degree murder	360 - 720	360 - 720	360 - 720	360 - 720	360 +
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Enhancements

- If a statutory enhancement provision applies, the **top** of the guideline range is increased by the same percentage or amount as the statutory multiplier or cap. Use the following procedure:
 1. Determine the maximum penalty for underlying offense;
 2. Determine the increased penalty with the enhancement;
 3. Determine the percentage increase;
 4. Apply that percentage increase to the top of the applicable Guidelines range.
- Enhancements do not change the sentencing options available to the court.
- The bottom of the Guidelines range does not change.
- Enhancements do not change the range for defendants in column E (6+).
- Offenses committed during release is treated as a separate offense ranked in Master Group 9.

Departures

- Sentencing Commission Now Breaks Departures into Three Categories
 - Compliant Departures
 - A sentence that falls outside of the Guidelines range but where the court cites a valid aggravating or mitigating factor.
 - 11 Aggravating Factors
 - 10 Mitigating Factors
 - Rule 11(e)(1)(c) Pleas (always compliant)
 - Non-Compliant Departures

Not Using the Guidelines/ Non-Compliant Sentences

- The Guidelines are 100% voluntary.
- There are no sanctions for failing to follow the Guidelines.
- Any lawful sentence is not appealable whether or not it complies with the Guidelines.
- A judge retains total discretion to impose any otherwise lawful sentence.

Consecutive and Concurrent Sentences

- Under the Guidelines, the following sentence must be served consecutively:
 - Multiple crimes of violence: multiple victims in multiple events; multiple victims in one event, and one victim in multiple events for offenses sentenced on the same day.
 - A sentence imposed for a new offense(s) committed while the defendant was already under sentence must run consecutively to any sentence imposed as a result of revocation of probation, parole, or supervised release, or to the sentence being served at the time the new offense was committed.
 - Offenses for which a consecutive sentence is required by statute.
- The following sentences must be served concurrently:
 - Non-violent crimes: multiple offenses in a single event, such as passing several bad checks.
 - Offenses for which a concurrent sentence is required by statute
- In all other cases, the Court has discretion whether the sentence should run consecutively or concurrently.

Questions?

- Please feel free to contact the Commission with additional questions, feedback, to set up a training or for assistance in 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>