



**D.C. Criminal Code Reform Commission**  
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**Advisory Group Memorandum No. 10**

**To:** Code Revision Advisory Group (Advisory Group)  
**From:** Criminal Code Reform Commission (CCRC)  
**Date:** June 7, 2017  
**Re:** First Draft of Report No. 6, Penalty Enhancements

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This Memorandum supplements the First Draft of Report No. 6, Recommendations for Chapter 8 of the Revised Criminal Code—Penalty Enhancements. The memorandum starts with some general qualifying points on the intent and meaning of the recommendations (Part I, below). It then address particular aspects of the four draft RCC sections (Part II, below) and summary statistics concerning Revised Criminal Code (RCC) §§ 22A-805 - 22A-808 (Part III, below). In addition, it provides a brief review of other non-general penalty enhancements in the D.C. Code and an explanation for how the CCRC plans to address penalty enhancements specific to crimes of violence and specific offenses (Part IV, below).

This memorandum also includes four appendices. Appendix A provides a copy of relevant District criminal statutes and Appendix B provides a copy of relevant Redbook instructions. Separately attached, Appendix C is a PDF that includes a copy of the CCRC’s March 7, 2016 data request to the Sentencing Commission concerning penalty enhancements, its April 27, 2016 response letter, and the spreadsheet from the Sentencing Commission providing relevant data. Also separately attached, Appendix D is a copy of the spreadsheet from the Sentencing Commission that has been edited by the CCRC to include columns tallying instances where enhancements were applied.

**I. GENERAL NOTES ON §§ 22A-805 - 22A-808.**

First, please recall that, per Section 22A-204,<sup>1</sup> specific offenses may always deviate from the general provisions if they specifically state as much. Deviations from the penalty enhancements in §§ 22A-805 - 22A-808 are possible as much as deviations from other general provisions. For example, a particular non-crime of violence felony offense could be revised to include a penalty enhancement for a first time repeat offender, in deviation from the felony repeat offender enhancement provided in §22A-806(b). Recommendations about such offense-specific changes that concern otherwise-applicable general penalty enhancements have not been developed at this time; the possibility of such changes will be evaluated on an offense-by-offense

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<sup>1</sup> RCC § 22A-104 *Applicability Of The General Part* (First Draft) (“Unless otherwise provided by law, provisions in subtitle I of Title 22A apply to all other provisions of Title 22A.”).

basis moving forward.<sup>2</sup> However, there will be considerable value to the Code's consistency and proportionality in maintaining a single, graduated set of penalty enhancements rather than a profusion of offense-specific enhancements. As the Advisory Group proceeds to review specific offenses, please bear in mind that, barring explicit language in the revision of specific offenses, the expected penalty enhancement options are provided in RCC §§ 22A-805 - 22A-808. Going forward, please inform CCRC of any perceived inadequacy of penalty enhancements as applied to specific offenses.

Second, please note that the operation of all penalty enhancements in the First Draft of Report #6 is subject to forthcoming general provisions in RCC §22A-70X concerning liability for conduct constituting multiple offenses and penalty proportionality. Reference to this forthcoming provision is made in a bracketed section of draft RCC §22A-805(d) and that statute's commentary, as well as the commentary to RCC §22A-808. It is expected that the forthcoming RCC § 22A-70X will provide guidance on how to handle convictions when a defendant is found guilty under multiple offenses or multiple penalty enhancements concerning the same act or course of conduct. The precise content of this provision is yet to be determined and will require considerable care in drafting. A draft report with recommendations on liability for conduct constituting multiple offenses is planned for completion in September 2017.

The purpose of the forthcoming RCC §22A-70X, and its relevance to RCC §§ 22A-805 - 22A-808, is to reduce unnecessary overlap between offenses or penalty enhancements, and to ensure penalties are proportionate.<sup>3</sup> In the case of penalty enhancements, overlap could occur when a general penalty enhancement in RCC §§ 22A-805 - 22A-808 overlaps substantially with: A) an "aggravating circumstance" in an offense;<sup>4</sup> B) an element of an offense;<sup>5</sup> or C) an offense-specific penalty enhancement.<sup>6</sup> RCC §22A-805(a) bars application of a general penalty

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<sup>2</sup> Note that, with respect to the requirements under *Apprendi*, there is no practical difference between organizing and labeling a circumstance or result that increases the penalty for an offense as A) an offense-specific "aggravating circumstance" (e.g. committing a murder "because of the victim's race" per D.C. Code § 22-2104.01); B) a more severe "gradation" of the base offense (e.g. committing a theft of something worth \$1,000 or more per D.C. Code § 22-3212); and C) an offense-specific penalty enhancement (e.g. committing unauthorized use of a vehicle "during the course of or to facilitate a crime of violence" per D.C. Code § 22-3215). The selection between these alternatives is chiefly a matter of clarity and consistency in code drafting, not substance. As recommendations are developed on the liability distinctions for specific offenses, the issue of whether or how to codify such circumstances and results will be addressed for those specific offenses.

<sup>3</sup> These are two of the CCRC's statutorily-specified responsibilities. See D.C. Code § 3-152(a)(4) & (a)(6).

<sup>4</sup> Compare, e.g., D.C. Code § 22-3701 ("Bias-related crime" means a designated act that demonstrates an accused's prejudice based on the actual or perceived race, color, religion, national origin, sex, age, marital status[.]) with D.C. Code § 22-2104.01 ("The murder was committed because of the victim's race, color, religion, national origin, sexual orientation, or gender identity or expression [.]").

<sup>5</sup> Compare, e.g., D.C. Code § 23-1328 (Penalties for offenses committed during release) with D.C. Code § 23-1329 (Penalties for violation of conditions of release).

<sup>6</sup> Compare, e.g., D.C. Code § 22-1804a(a)(1) ("If a person is convicted in the District of Columbia of a felony, having previously been convicted of 2 prior felonies not committed on the same occasion, the court may, in lieu of any sentence authorized, impose such greater term of imprisonment as it deems necessary, up to, and including, 30 years.") with D.C. Code § 22-3212 ("A person convicted of theft in the first or second degree who has 2 or more prior convictions for theft, not committed on the same occasion, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 15 years and for a mandatory-minimum term of not less than one year, or both. A person sentenced under this subsection shall not be released from prison, granted probation, or granted suspension of sentence, prior to serving the mandatory-minimum.").

enhancement to an offense containing equivalent elements to the penalty enhancement in one of its gradations, reducing unnecessary overlap to a degree. However, this provision will not account for all possible overlap. For example, the application of multiple penalty enhancements (sometimes called “stacking”) to a given offense may lead to disproportionate penalties in some cases, but may be acceptable in other situations.<sup>7</sup>

Advisory group members are asked to please notify the CCRC as soon as possible about concerns over overlap or penalty disproportionality arising from the applicability of penalty enhancements, but bear in mind that such issues will be reviewed again at later dates—when RCC §22A-70X provisions have been drafted, and again when final penalties are assigned to offenses and penalty enhancements in 2018.

Third, the number of penalty enhancement gradations in the First Draft of Report #6 may be reduced during the final phase of the CCRC’s work in 2018, if necessary. At that time, the CCRC will draft recommendations for penalties to offenses and enhancements in the RCC. It then may become clear that a different number of penalty enhancement gradations is more appropriate. For example, if the misdemeanor and felony pretrial release penalty enhancements described in RCC §§ 22A-808(a) & (b) both increase the penalty for the instant offense by one class (i.e. approximately 50%), then it may be simpler to re-draft RCC §§ 22A-808(a) & (b) into one, merged subsection. On the other hand, if the misdemeanor and felony pretrial release penalty enhancements increase the penalty for the instant offense in different ways,<sup>8</sup> then the CCRC believes misdemeanor and felony versions should remain separate and distinct, as now drafted. In sum, the gradations for the penalty enhancement in the First Draft of Report #6 are the maximum number of liability distinctions that the CCRC recommends. If, during the final phase of the CCRC’s work it turns out that the penalties for gradations are identical, the penalty enhancements may be redrafted to merge gradations with identical penalties.

Fourth, RCC §§ 22A-806 and 22A-808 refer to the term “crime of violence,” which is defined in a yet to-be-drafted RCC §22A-[XXX]. While the revised definition for a crime of violence is expected to be similar to that in current D.C. Code § 23-1331(4),<sup>9</sup> changes are

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<sup>7</sup> Note that the District’s Voluntary Sentencing Guidelines (VSGs) bar the stacking of most, but not all penalty enhancements. D.C. Sentencing Commission 2016 Voluntary Sentencing Guidelines Manual, Ch.4, pg. 29 (June 2016) (“The court should apply only one of two or more enhancements. In such a case, the court may, but need not, select the enhancement that raises the top of the range the most.”). Insofar as the VSGs treat the current offenses committed during release penalty enhancement and crime of violence while-armed penalty enhancements as offenses (and such while-armed offenses account for over 80% of all general penalty enhancements actually applied to convictions), the VSGs’ statement that only one penalty enhancement can be applied to an offense may be misleading if compared to District law. In reality, the VSGs allow some stacking of penalty enhancements, and statistics show a small but significant degree of such stacking occurring in recent felony convictions. See Appendix D for more details.

<sup>8</sup> E.g., creating a mandatory minimum for the instant misdemeanor’s penalty of 90 days and creating a mandatory minimum for the instant felony’s penalty of 1 year.

<sup>9</sup> D.C. Code § 23-1331(4) states: “The term “crime of violence” means aggravated assault; act of terrorism; arson; assault on a police officer (felony); assault with a dangerous weapon; assault with intent to kill, commit first degree sexual abuse, commit second degree sexual abuse, or commit child sexual abuse; assault with significant bodily injury; assault with intent to commit any other offense; burglary; carjacking; armed carjacking; child sexual abuse; cruelty to children in the first degree; extortion or blackmail accompanied by threats of violence; gang recruitment, participation, or retention by the use or threatened use of force, coercion, or intimidation; kidnapping; malicious disfigurement; manslaughter; manufacture or possession of a weapon of mass destruction; mayhem; murder;

anticipated. These changes will improve the consistency of the definition, improve proportionality, and account for other new grading.

Fifth, and lastly, it should be noted that RCC §§ 22A-805 - 22A-808 pertain only to offenses in the RCC. If Title 22A were enacted, conforming amendments would be needed to the corresponding general penalty enhancements in Title 22.

## **II. ADDITIONAL NOTES ON §§ 22A-805 - 22A-808.**

### **RCC §22A-805      LIMITATIONS ON PENALTY ENHANCEMENTS**

RCC § 22A-805(c) currently states a person is not subject to “additional punishment” for a penalty enhancement unless the standard of proof is met. However, as noted in the Commentary, *Alleyne v. United States* makes clear that the notice and standard of proof requirements in *Apprendi* also extend to facts that establish mandatory minimum penalties at sentencing.<sup>10</sup> If mandatory minima are imposed as the penalty for any of the penalty enhancements in RCC §§ 22A-806 - 22A-808, RCC § 22A-805(c), this section would be amended to say “additional punishment or a mandatory minimum term of imprisonment”.

### **RCC §22A-806      REPEAT OFFENDER PENALTY ENHANCEMENTS**

The wording of RCC §22A-806(a) is somewhat asymmetric. The prior convictions for the misdemeanor repeat offender penalty enhancement can be of any variety (misdemeanor or felony), whereas the priors for the felony repeat offender penalty enhancement can be only felonies (including crimes of violence).

Additionally, the Commentary to RCC §22A-806 makes multiple references to the ALI’s project on Sentencing. On May 24, 2017, the ALI gave final approval to that project’s recommendations, though much of the language that will modify the Model Penal Code with respect to Sentencing had already been approved. On request, the CCRC would be happy to share the ALI’s research and recommendations regarding sentencing and the possible connection between racial disparities in criminal justice and the use of prior convictions in sentencing.

The CCRC will continue to examine the research regarding racially disparate effects of statutory repeat offender penalty enhancements and will update its draft recommendations as warranted. The CCRC would particularly welcome Advisory Group comments on what changes to RCC §22A-806 should be made to reflect the ALI’s findings and research on the effects of statutory repeat offender penalty enhancements.

### **RCC §22A-807      HATE CRIME PENALTY ENHANCEMENT**

RCC § 22A-807 overlaps significantly with current D.C. Code § 22-3312.02, entitled “Defacing or burning cross or religious symbol; display of certain emblems” and placed along

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robbery; sexual abuse in the first, second, or third degrees; use, dissemination, or detonation of a weapon of mass destruction; or an attempt, solicitation, or conspiracy to commit any of the foregoing offenses.”

<sup>10</sup> 133 S. Ct. 2151, 2155 (2013).

with the District's graffiti statute.<sup>11</sup> When the CCRC revises that offense, it may be necessary to further adjust the hate crime penalty enhancement to reduce unnecessary overlap.

Also, it should be noted that the list of protected characteristics that may be the basis of the animus in RCC § 22A-807 is similar to, but significantly longer than, the characteristics that may be the basis of the animus for aggravation of murder and other offenses.<sup>12</sup>

#### RCC §22A-808      PRETRIAL RELEASE PENALTY ENHANCEMENTS

The District's Voluntary Sentencing Guidelines (VSGs) treat the Offenses Committed During Release (OCDR) penalty enhancement in D.C. Code § 23-1328 as if it were a separate offense, notwithstanding clear case law to the contrary.<sup>13</sup> One consequence is that the VSGs also exempt OCDR from the nominal<sup>14</sup> cap on only one enhancement being applied to an offense.

### **III. SUMMARY STATISTICS ON RECENT APPLICATION OF PENALTY ENHANCEMENTS**

The CCRC has limited, but significant data on the use of penalty enhancements in recent felony convictions. Specifically, the CCRC received data from the Sentencing Commission on

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<sup>11</sup> D.C. Code § 22-3312.02 (“(a) It shall be unlawful for any person to burn, desecrate, mar, deface, or damage a religious or secular symbol on any private premises or property in the District of Columbia primarily used for religious, educational, residential, memorial, charitable, or cemetery purposes, or for assembly by persons of a particular race, color, creed, religion, or any other category listed in § 2-1401.01, or on any public property in the District of Columbia; or to place or to display in any of these locations a sign, mark, symbol, emblem, or other physical impression including, but not limited to, a Nazi swastika, a noose, or any manner of exhibit which includes a burning cross, real or simulated, where it is probable that a reasonable person would perceive that the intent is: (1) To deprive any person or class of persons of equal protection of the law or of equal privileges and immunities under the law, or for the purpose of preventing or hindering the constituted authorities of the United States or the District of Columbia from giving or securing to all persons within the District of Columbia equal protection of the law; (2) To injure, intimidate, or interfere with any person because of his or her exercise of any right secured by federal or District of Columbia laws, or to intimidate any person or any class of persons from exercising any right secured by federal or District of Columbia laws; (3) To threaten another person whereby the threat is a serious expression of an intent to inflict harm; or (4) To cause another person to fear for his or her personal safety, or where it is probable that reasonable persons will be put in fear for their personal safety by the defendant's actions, with reckless disregard for that probability.”)

<sup>12</sup> See, e.g., D.C. Code § 24-403.01(b-2)(2) (“Aggravating circumstances for first degree murder are set forth in § 22-2104.01. Aggravating circumstances for first degree sexual abuse and first degree child sexual abuse are set forth in § 22-3020. In addition, for all offenses, aggravating circumstances include: (A) The offense was committed because of the victim's race, color, religion, national origin, sexual orientation, or gender identity or expression (as defined in § 2-1401.02(12A));”); D.C. Code § 22-2104.01(b) (“In determining the sentence, a finding shall be made whether, beyond a reasonable doubt, any of the following aggravating circumstances exist:... (7) The murder was committed because of the victim's race, color, religion, national origin, sexual orientation, or gender identity or expression (as defined in § 2-1401.02(12A));”).

<sup>13</sup> 2016 Sentencing Guidelines Manual at H-3 (“Note: While the Court of Appeals has determined that Offenses Committed During Release (OCDR) should be treated as a sentencing enhancement, 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 OCDR (felony) enhancement as a separate offense with a minimum sentence of 1 year and a maximum sentence of 5 years and rank it in Master Group 9. 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. A sentence imposed for OCDR must run consecutive to the underlying offense.”) (internal citations omitted).

<sup>14</sup> See footnote 7, above.

April 27, 2016 on felony convictions sentenced between January 1, 2010 and December 31, 2015. These data identify particular penalty enhancements that were applied to felony convictions, as well as the greatest sentence for various enhanced and unenhanced offenses during the covered period. Recent attempts to obtain additional data concerning the charging of penalty enhancements, misdemeanor convictions subject to penalty enhancements, and other relevant information from the Sentencing Commission have been unsuccessful.<sup>15</sup>

According to the Sentencing Commission's letter attached to the data provided in April 27, 2016, the information includes "enhancements entered digitally by the court, and received via the IJIS 12.1 data feed" but may not account for all "enhancements that may have been entered only as PDF documents displayed in JUSTIS." Based on the letter, it appears that, when possible, the Sentencing Commission staff tried to review the JUSTIS system's relevant PDF information, however the procedure may still have left some penalty enhancements uncounted. No other information was provided as to the reliability or accuracy of the source data or analysis used by the Sentencing Commission.

Copies of the CCRC's initial March 7, 2016 data request, the Sentencing Commission's April 27, 2016 response letter, and the original spreadsheet from the Sentencing Commission providing data are attached as Appendix C to this report. Attached as Appendix D is a copy of the spreadsheet from the Sentencing Commission that the CCRC has edited to include columns tallying instances where enhancements were applied. The CCRC's edits to Appendix D did not change the information provided by the Sentencing Commission.<sup>16</sup> The CCRC's edits only expanded the information provided by the Sentencing Commission.<sup>17</sup>

The Sentencing Commission's March 28, 2017 data sharing policy states that dissemination of statistical information regarding sentencing that is provided by the Commission should be accompanied the following statement: "**\*Disclaimer:** The sentencing data provided is a statistical representation of information related to the D.C. Voluntary Sentencing Guidelines. Further interpretation of the data by the Criminal Code Reform Commission does not reflect the opinions or advisement of the D.C. Sentencing Commission, or its members." This disclaimer applies to this memo and its Appendices C and D. A cover sheet with this disclaimer is included for Appendices C and D.

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<sup>15</sup> In October 2016 the CCRC requested from the Sentencing Commission additional data concerning enhancements charged (not just applied at convictions) for felonies and misdemeanors from 2010-2016. The CCRC request was issued pursuant to its statutory authority in D.C. Code §3-152(f) directing District agencies, to the extent permitted by law, to furnish the CCRC with requested information. On January 31, 2017, the Sentencing Commission provided its response to the CCRC request, providing some of the requested information concerning felonies, but denying the request as to all misdemeanor information, all non-conviction felony information, and other information. Also, the felony sentencing information that was received did not identify enhancements by statutory section, preventing any analysis of enhancements by type for 2016. The Sentencing Commission provided no specific reason for denial of the requested information, but stated that its response was consistent with a Memorandum of Understanding (MOU) that the Sentencing Commission had with the D.C. Superior Court. As the Sentencing Commission's provision of certain felony data on January 31, 2017 did not aid in analysis of penalty enhancements, that information was not used for preparation of the First Draft of Report #6.

<sup>16</sup> To be precise, the information in the Appendix D spreadsheet that is in the area at the intersection of columns B-Q and rows 2-2368 is identical to the information provided by the Sentencing Commission.

<sup>17</sup> To be precise, the information in the Appendix D spreadsheet that is in columns R-AH, as well as the information in rows 1 and 2369-2371 is new information provided by the CCRC.

The CCRC's analysis shows that the three current D.C. Code penalty enhancements corresponding to RCC §§ 22A-806 - 22A-808 have rarely been applied to felony sentences in recent years, and even more rarely have had the effect of elevating the penalty above its regular statutory limit. For example, over the six year period covered by the analysis, there were just 6 convictions subject to the general repeat offender enhancement provisions, 12 under the bias-motivated crime enhancement, and 135 under the offenses committed during release enhancement—out of approximately 19,778 felony convictions 2010-2015.<sup>18</sup> Moreover, the application of these three penalty enhancements only elevated the penalty above the otherwise-authorized (unenanced) statutory maximum in only about five instances.<sup>19</sup>

Summary details follow on how the District has applied the current D.C. Code penalty enhancements revised in RCC §§ 22A-806 - 22A-808, as well as some penalty enhancements only applicable to crimes of violence (see next section of this memorandum for more details):

#### 22-1804(A)(1)<sup>20</sup> Penalty For a Felony After at Least Two Felony Convictions

*Number of felony convictions with the enhancement 2010-2015:* 5 (avg. <1 / year)

*Number of times enhanced sentence exceeded unenhanced statutory max (# countable from provided data):* 2 (Assault Deadly Weapon convictions)

*Convictions with the enhancement :*<sup>21</sup> (By type: 2 firearm possession; 3 assaults)

- (1) 22DC4503A2 Unlawful possession firearm prior conviction (1-10Y by statute); 1 conviction given 5Y
- (1) 22DC4504A1 CPWL (5Y by statute) 1 conviction given 18M
- (2) 22DC402 ADW (10Y by statute); 2 convictions given 216M-240M
- (1) 22DC401 AWI 1st Sex (15Y by statute); 1 conviction given 84M [but conviction also enhanced by 22DC3020A2 aggravator authorizing LWOP, possible data error?]

#### 22-1804a<sup>22</sup> Penalty For a Felony After at Least Two Felony Convictions

*Number of felony convictions with the enhancement 2010-2015:* 1 (avg. <1 / year)

*Number of times enhanced sentence exceeded unenhanced statutory max (# countable from provided data):* 1 (By type: Assault Deadly Weapon conviction)

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<sup>18</sup> D.C. Sentencing Commission, 2016 Annual Report, at 20, *available at* <https://scdc.dc.gov/sites/default/files/dc/sites/scdc/publication/attachments/Final%202016%20Annual%20Report%20%204-24-17.pdf>.

<sup>19</sup> Because the information provided by the Sentencing Commission only provides the highest and lowest sentence for offenses by enhancement type, at times it is impossible to determine the precise number of convictions where the enhancement resulted in a sentence above what the otherwise-authorized statutory maximum would be. CCRC staff tallied the one maximum sentence that clearly was reflected in the data, but it is unknown if some additional sentence(s) may have been above the maximum.

<sup>20</sup> It is unclear from the Sentencing Commission data whether the reference is to D.C. Code 22-1804 or 22-1804a, the two sections containing general repeat offender penalty provisions.

<sup>21</sup> Sentences are imprisonment unless otherwise noted, Y=years, M=months.

<sup>22</sup> It is unclear from the Sentencing Commission data whether the reference is to D.C. Code 22-1804 or 22-1804a, the two sections containing general repeat offender penalty provisions.

*Convictions with enhancement:*<sup>23</sup> (assault)

- (1) 22DC402 ADW (10Y by statute); 1 convictions given 348M

#### 22-3701 Bias-Related (Hate) Crimes

*Number of felony convictions with the enhancement 2010-2015:* 12 (avg. 2 / year)

*Number of times enhanced sentence exceeded unenhanced statutory max:* 0

*Convictions with enhancement:*<sup>24</sup> (By type: 1 murder, 13 assault)

- (1) 22DC2101 Murder 1 armed (30Y-60Y+30Y by statute); 1 conviction given 35Y
- (4) 22DC404A2 Felony Assault (3Y by statute); 1 conviction given 0 short split [error?], 3 given 6-24M
- (3) 22DC402 ADW (10Y by statute); 3 convictions given ranging 24M-56M
- (2) 22DC401 AWIK (15Y by statute); 2 convictions given 90M and 96M
- (2) 22DC404.01A1 Agg assault (10Y by statute); 2 convictions given 12M and 48M

#### 23-1328 Offenses Committed While On Pretrial Release

*Number of felony convictions with the enhancement 2010-2015:* 135 (avg. >22 / year)

*Number of times enhanced sentence exceeded unenhanced statutory max (# countable from provided data):* 2<sup>25</sup>

*Convictions with enhancement:*<sup>26</sup> numerous (not tallied). However the two times an unenhanced statutory maximum was exceeded was for OCDR as applied to Second Degree Theft (once) and Aggravated Assault While Armed (once).

#### 22-3601 Senior Citizen Victim

*Number of felony convictions with the enhancement 2010-2015:* 64 (avg. >10/year)

*Number of times enhanced sentence exceeded unenhanced statutory max:* 0

*Convictions with enhancement:*<sup>27</sup> (By type: 11 theft, 8 fraud & identity theft; 19 robbery, 2 carjacking, 10 burglary, 14 assault)

- (11) 22DC3211,3212A Theft (10Y by statute); 4 convictions given 18-48M given; 1 conviction at 3 month short split; 6 convictions at 60M probation
- (2) 22DC2802 Robbery Attempt (3Y by statute) 1 conviction 24M, 1 conviction 3M short split

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<sup>23</sup> Sentences are imprisonment unless otherwise noted, Y=years, M=months.

<sup>24</sup> Sentences are imprisonment unless otherwise noted, Y=years, M=months.

<sup>25</sup> The dataset containing this information only shows the number of instances of offenses and enhancements, and the highest and lowest sentence. There is one more possible instance of OCDR elevating the sentence above the unenhanced statutory maximum.

<sup>26</sup> Sentences are imprisonment unless otherwise noted, Y=years, M=months.

<sup>27</sup> Sentences are imprisonment unless otherwise noted, Y=years, M=months.

- (4) 22DC2801 Robbery Armed (15Y+30Y by statute); 4 convictions ranging 48-126M
- (13) 22DC2801 Robbery (15Y by statute) 13 convictions ranging from 18M to 180M
- (1) 22DC406 Mayhem armed (10Y+30Y by statute); 1 conviction given 72M
- (1) 22DC3221A 1st Fraud (10Y by statute); 1 conviction given 12M
- (7) 22DC3227.01 1st Identity theft (10Y by statute); 1 conviction given 20M prison, 6 convictions given 60M probation
- (1) 22DC2803B1 Armed Carjacking (15Y-40Y by statute); 1 conviction given 15Y
- (1) 22DC2803A1 Carjacking (7Y – 21Y by statute); 1 conviction given 7Y
- (1) 22DC801B 2nd Burglary (15Y by statute); 1 conviction given 6M
- (4) 22DC801A 1st Burglary Attempt (5Y by statute); 4 convictions given 36M-55M
- (5) 22DC801 1st Burglary (30Y by statute); 1 conviction given 55M, 4 convictions ranging from 114-192M
- (1) 22DC404A2 Felony Assault (3Y by statute); 1 conviction given 24M
- (1) 22DC402 ADW Armed (10Y+30Y by statute); 1 conviction given 48M
- (7) 22DC402 ADW (10Y by statute); 7 convictions given 18M-66M
- (1) 22DC401 AWI Robbery (15Y by statute); 1 conviction given 60M
- (2) 22DC404.01A1 Agg. assault while armed (10Y + 30Y by statute); 2 convictions given 72M and 114M
- (1) 22DC404.01A1 Agg assault (10Y by statute) 1 conviction given 60M

#### D.C. Code 22-3611 Minor Victim

*Number of felony convictions with the enhancement 2010-2015: 22 (avg. <4 / year)*

*Number of times enhanced sentence exceeded unenhanced statutory max (# countable from provided data): 2 (felony assault convictions)*

*Convictions with enhancement:<sup>28</sup> (By type: 2 threats; 4 robbery; 1 sex; 2 kidnapping; 2 burglary; 9 assault; 1 arson)*

- (2) 22DC1810 Threats (20Y by statute); 2 convictions given 42M and 48M
- (2) 22DC2801 Attempt Robbery (3Y by statute); 2 convictions given 18M and 24M
- (2) 22DC2801 Robbery (15Y by statute); 2 convictions given 60M and 60M
- (1) 22DC2705 Pandering statute (20Y by statute); 1 conviction given 84M
- (2) 22DC2001 Kidnapping armed (60Y by statute); 2 convictions given 120M and 168M
- (2) 22DC801 1st Burglary (30Y by statute); 2 convictions given 114M and 114M
- (2) 22DC404A2 Felony Assault (3Y by statute); 2 convictions given 42M and 48M
- (7) 22DC402 ADW (10Y by statute); 6 convictions given ranging 18M-66M, 1 conviction short split given 0M
- (1) 22DC301 Arson (10Y by statute); 1 conviction given 60M
- (1) 22DC404.01A1 Agg. assault (10Y by statute); 1 conviction given 40M

#### **IV. OTHER PENALTY ENHANCEMENTS**

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<sup>28</sup> Sentences are imprisonment unless otherwise noted, Y=years, M=months.

In the context of revising penalty enhancements, Advisory Group members should be aware that the D.C. Code has many additional penalty enhancement provisions not addressed in the First Draft of Report #6. Most of these penalty enhancements—sometimes labeled “aggravating circumstances”—are unique to specific offenses.<sup>29</sup> However, as depicted in the table below, there are six penalty enhancements that, while not generally applicable, apply to a group of offenses—predicate crimes of violence or similar offenses.

<b>Predicate Offenses</b>	<b>22-4502 Crime of Violence or Dangerous Crime While Armed Enhancemen t</b>	<b>22-3611 Minor Victim Enhance ment</b>	<b>22- 3601 Senior Citizen Victim Enhanc ement</b>	<b>22- 3602 Citizen Patrol Victim Enhanc ement</b>	<b>22-3751 Taxicab Driver Victim Enhance ment</b>	<b>22-3751.01 Transit Operators and Metrorail Station Manager Victim Enhancement</b>
abduction			X			
aggravated assault	X	X	X	X	X	X
act of terrorism	X	X				
arson	X	X	X			
assault on a police officer (felony)	X	X				
assault with a dangerous weapon	X	X	X		X	X
assault with a deadly weapon				X		
assault with intent to commit forcible rape						
assault with intent to kill, commit first degree sexual abuse, commit second degree sexual abuse, or commit child sexual abuse	X	X				
assault with intent to kill, commit first degree sexual abuse, or commit second degree sexual abuse			X			
assault with significant bodily injury	X	X				
assault with intent to commit any other offense	X	X	X			
burglary	X	X	X	X		
carjacking	X	X	X		X	X
armed carjacking	X	X	X			
child sexual abuse	X	X				
cruelty to children in the first degree	X	X				
distribution of or possession with intent to distribute a controlled substance	X					
extortion or blackmail accompanied by threats of violence	X	X	X	X		
financial exploitation of vulnerable adult or elderly person			X			
forcible rape				X		
fraud in the first degree			X			

<sup>29</sup> D.C. Code §22-1837 Human Trafficking Victim Held or Provided Services for >180 Days; D.C. Code §§ 22-2104, 2104.01 or 24-403.01(b-2) Murder Aggravating Circumstances; D.C. Code § 24-403.01(b-2) Second Degree Murder Aggravating Circumstances; D.C. Code § 24-403.01(b-2) Armed Carjacking; D.C. Code §§ 22-3020, 24-403.01(b-2) First Degree Sex Offenses; D.C. Code §§ 22-3020 Other Sex Offenses; D.C. Code §§ 22-3102, 3103 Sex Performance Using Minors Prior Offenses; D.C. Code §§ 22-3133, 3134 Stalking Prior Offenses; D.C. Code § 3215(d)(3)(B) UUV or Theft Prior Convictions; D.C. Code §§ 22-3225.03, -3224.04(b) Insurance Fraud Prior Offenses; D.C. Code §22-4502.01 Gun Free Zones; D.C. Code §22-45-4(a) Carrying a Pistol Repeat Offender; D.C. Code §22-4515a Molotov Cocktails Prior Offenses; D.C. Code §48-904.06 Distribution to Minors; D.C. Code §48-904.07 Enlisting Minors to Distribute Drugs Prior Offenses; and D.C. Code §48-904.07a Drug-free Zone (applies to both distribution and possession with intent to distribute).

fraud in the second degree			X			
gang recruitment, participation, or retention by the use or threatened use of force, coercion, or intimidation	X	X				
identity theft			X			
kidnapping	X	X	X	X	X	X
malicious disfigurement	X	X	X			
manslaughter	X	X	X		X	X
manufacture or possession of a weapon of mass destruction	X	X				
mayhem	X	X	X	X		
mayhem or maliciously disfiguring					X	X
misdemeanor sexual abuse					X	X
murder	X	X	X	X	X	X
robbery	X	X	X	X	X	X
sexual abuse in the first, second, or third degrees	X	X	X		X	X
Sexual abuse in the fourth degree					X	X
Simple assault				X		
taking or attempting to take property from another by force or threat of force				X		
theft			X			
threats to do bodily harm					X	X
use, dissemination, or detonation of a weapon of mass destruction	X	X				
voluntary manslaughter				X		
attempt, solicitation, or conspiracy to commit any of the foregoing offenses	X	X				
attempt or conspiracy to commit any of the above offenses			X		X	X
conspiracy to commit any of the above offenses as defined by an Act of Congress or law of the District of Columbia if the offense is punishable by imprisonment for more than 1 year				X		

The CCRC does not recommend codification in the General Part of the RCC of any of these six penalty enhancements (nor is it recommending expansion and inclusion in the General Part of any of the offense-specific penalty enhancements listed in footnote 32, above). As these six penalty enhancements primarily concern offenses against persons, a decision on whether or how to codify these penalty enhancements is not ripe at this time. Insofar as many penalty enhancements effectively establish aggravated gradations of their predicate offenses, a decision about whether or how to repeat those enhancements in the RCC is best done when assessing the gradations and penalties of the predicate offenses. The CCRC plans to develop recommendations regarding the above six crime of violence-type penalty enhancements along with, or prior to, recommendations for offenses against persons offenses (although, insofar as these matters touch upon penalties, they will also be a subject of review with other penalty recommendations in Phase IV). The CCRC will address the applicability of offense-specific penalty enhancements when those specific offenses are revised.

Prior to issuing offenses against persons, however, the CCRC will develop recommendations regarding property offenses and drug offenses, which are predicates, to a

limited extent, for four of the above six penalty enhancements. (See yellow-highlighted offenses in the table above; the Senior Citizen enhancement in particular applies to a significant number of property offenses.) Accordingly, the CCRC's recommendations for property and drug offenses may incorporate a gradation that is equivalent to one or more of the six relevant penalty enhancements, or, if not, the memorandum accompanying those recommendations will explain if a penalty enhancement is recommended. Advisory Group members should not assume the applicability of a future enhancement to a property or drug offense if it is not addressed in a report providing the CCRC recommendations on property or drug offenses. If continuation or discontinuation of a penalty enhancement is important to your position on the revised property or drug offenses, please note as much in your written comments to the agency.

## **APPENDIX A: RELEVANT DISTRICT CRIMINAL STATUTES**

### **§ 22-1804. Second conviction.**

(a) If any person: (1) is convicted of a criminal offense (other than a non-moving traffic offense) under a law applicable exclusively to the District of Columbia; and (2) was previously convicted of a criminal offense under any law of the United States or of a state or territory of the United States which offense, at the time of the conviction referred to in clause (1) of this subsection, is the same as, constitutes, or necessarily includes, the offense referred to in that clause, such person may be sentenced to pay a fine in an amount not more than one and one-half times the maximum fine prescribed for the conviction referred to in clause (1) of this subsection and sentenced to imprisonment for a term not more than one and one-half times the maximum term of imprisonment prescribed for that conviction. If such person was previously convicted more than once of an offense described in clause (2) of this subsection, such person may be sentenced to pay a fine in an amount not more than 3 times the maximum fine prescribed for the conviction referred to in clause (1) of this subsection and sentenced to imprisonment for a term not more than 3 times the maximum term of imprisonment prescribed for that conviction. No conviction with respect to which a person has been pardoned on the ground of innocence shall be taken into account in applying this section.

(b) This section shall not apply in the event of conflict with any other provision of law which provides an increased penalty for a specific offense by reason of a prior conviction of the same or any other offense.

### **§ 22-1804a. Penalty for felony after at least 2 prior felony convictions.**

(a)(1) If a person is convicted in the District of Columbia of a felony, having previously been convicted of 2 prior felonies not committed on the same occasion, the court may, in lieu of any sentence authorized, impose such greater term of imprisonment as it deems necessary, up to, and including, 30 years.

(2) If a person is convicted in the District of Columbia of a crime of violence as defined by § 22-4501, having previously been convicted of 2 prior crimes of violence not committed on the same occasion, the court, in lieu of the term of imprisonment authorized, shall impose a term of imprisonment of not less than 15 years and may impose such greater term of imprisonment as it deems necessary up to, and including, life without possibility of release.

(3) For purposes of imprisonment following revocation of release authorized by § 24-403.01, the third or subsequent felony committed by a person who had previously been convicted of 2 prior felonies not committed on the same occasion and the third or subsequent crime of violence committed by a person who had previously been convicted of 2 prior crimes of violence not committed on the same occasion are Class A felonies.

(b) For the purposes of this section:

(1) A person shall be considered as having been convicted of a felony if the person was convicted of a felony by a court of the District of Columbia, any state, or the United States or its territories; and

(2) A person shall be considered as having been convicted of a crime of violence if the person was convicted of a crime of violence as defined by § 22-4501, by a court of the District of Columbia, any state, or the United States or its territories.

(c)(1) A person shall be considered as having been convicted of 2 felonies if the person has been convicted of a felony twice before on separate occasions by courts of the District of Columbia, any state, or the United States or its territories.

(2) A person shall be considered as having been convicted of 2 crimes of violence if the person has twice before on separate occasions been convicted of a crime of violence as defined by § 22-4501, by courts of the District of Columbia, any states, or the United States or its territories.

(d) No conviction or plea of guilty with respect to which a person has been pardoned shall be taken into account in applying this section.

(e) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

**§ 22-3312.02. Defacing or burning cross or religious symbol; display of certain emblems.**

(a) It shall be unlawful for any person to burn, desecrate, mar, deface, or damage a religious or secular symbol on any private premises or property in the District of Columbia primarily used for religious, educational, residential, memorial, charitable, or cemetery purposes, or for assembly by persons of a particular race, color, creed, religion, or any other category listed in § 2-1401.01, or on any public property in the District of Columbia; or to place or to display in any of these locations a sign, mark, symbol, emblem, or other physical impression including, but not limited to, a Nazi swastika, a noose, or any manner of exhibit which includes a burning cross, real or simulated, where it is probable that a reasonable person would perceive that the intent is:

(1) To deprive any person or class of persons of equal protection of the law or of equal privileges and immunities under the law, or for the purpose of preventing or hindering the constituted authorities of the United States or the District of Columbia from giving or securing to all persons within the District of Columbia equal protection of the law;

(2) To injure, intimidate, or interfere with any person because of his or her exercise of any right secured by federal or District of Columbia laws, or to intimidate any person or any class of persons from exercising any right secured by federal or District of Columbia laws;

(3) To threaten another person whereby the threat is a serious expression of an intent to inflict harm; or

(4) To cause another person to fear for his or her personal safety, or where it is probable that reasonable persons will be put in fear for their personal safety by the defendant's actions, with reckless disregard for that probability.

(b) Repealed.

(c) Nothing in this section shall be deemed to amend or repeal any provision of the District of Columbia Fire Prevention Code (7 DCRR).

**§ 22-3701. Definitions.**

For the purposes of this chapter, the term:

(1) "Bias-related crime" means a designated act that demonstrates an accused's prejudice based on the actual or perceived race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibility, homelessness, physical disability, matriculation, or political affiliation of a victim of the subject designated act.

(2) "Designated act" means a criminal act, including arson, assault, burglary, injury to property, kidnapping, manslaughter, murder, rape, robbery, theft, or unlawful entry, and attempting, aiding, abetting, advising, inciting, conniving, or conspiring to commit arson, assault, burglary, injury to property, kidnapping, manslaughter, murder, rape, robbery, theft, or unlawful entry.

(3) "Gender identity or expression" shall have the same meaning as provided in § 2-1401.02(12A).

(4) "Homelessness" means:

(A) The status or circumstance of an individual who lacks a fixed, regular, and adequate nighttime residence; or

(B) The status or circumstance of an individual who has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including welfare motels, hotels, congregate shelters, and transitional housing for the mentally ill;

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

**§ 22-3703. Bias-related crime.**

A person charged with and found guilty of a bias-related crime shall be fined not more than 1 1/2 times the maximum fine authorized for the designated act and imprisoned for not more than 1 1/2 times the maximum term authorized for the designated act.

**§ 23-111. Proceedings to establish previous convictions.**

(a)(1) No person who stands convicted of an offense under the laws of the District of Columbia shall be sentenced to increased punishment by reason of one or more previous convictions, unless prior to trial or before entry of a plea of guilty, the United States attorney or the Corporation Counsel, as the case may be, files an information with the clerk of the court, and serves a copy of such information on the person or counsel for the person, stating in writing the previous convictions to be relied upon. Upon a showing by the Government that facts regarding previous convictions could not with due diligence be obtained prior to trial or before entry of a plea of guilty, the court may postpone the trial or the taking of the plea of guilty for a reasonable period for the purpose of obtaining such facts. Clerical mistakes in the information may be amended at any time prior to the pronouncement of sentence.

(2) An information may not be filed under this section if the increased punishment which may be imposed is imprisonment for a term in excess of three years, unless the person either waived or was afforded prosecution by indictment for the offense for which such increased punishment may be imposed.

(b) If the prosecutor files an information under this section, the court shall, after conviction but before pronouncement of sentence, inquire of the person with respect to whom the information was filed whether he affirms or denies that he has been previously convicted as alleged in the information, and shall inform him that any challenge to a previous conviction which is not made before sentence is imposed may not thereafter be raised to attack the sentence.

(c)(1) If the person denies any allegation of the information of previous conviction, or claims that any conviction alleged is invalid, he shall file a written response to the information. A copy of the response shall be served upon the prosecutor. The court shall hold a hearing to determine any issues raised by the response which would except the person from increased punishment. The failure of the Government to include in the information the complete criminal record of the person or any facts in addition to the convictions to be relied upon shall not constitute grounds for invalidating the notice given in the information required by subsection (a)(1). The hearing shall be before the court without a jury and either party may introduce evidence. Except as otherwise provided in paragraph (2) of this subsection, the prosecuting authority shall have the

burden of proof beyond a reasonable doubt on any issue of fact. At the request of either party, the court shall enter findings of fact and conclusions of law.

(2) A person claiming that a conviction alleged in the information was obtained in violation of the Constitution of the United States shall set forth his claim, and the factual basis therefor, with particularity in his response to the information. The person shall have the burden of proof by a preponderance of the evidence on any issue of fact raised by the response. Any challenge to a previous conviction, not raised by response to the information before an increased sentence is imposed in reliance thereon, shall be waived unless good cause be shown for failure to make a timely challenge.

(d)(1) If the person files no response to the information, or if the court determines, after hearing, that the person is subject to increased punishment by reason of previous convictions, the court shall proceed to impose sentence upon him as provided by law.

(2) If the court determines that the person has not been convicted as alleged in the information, that a conviction alleged in the information is invalid, or that the person is otherwise not subject to an increased sentence as a matter of law, the court shall, at the request of the prosecutor, postpone sentence to allow an appeal from that determination. If no such request is made, the court shall impose sentence as provided by law. The person may appeal from an order postponing sentence as if sentence had been pronounced and a final judgment of conviction entered.

#### **§ 23-1328. Penalties for offenses committed during release.**

(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.

(d) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

#### **§ 23-1329. Penalties for violation of conditions of release.**

(a) A person who has been conditionally released pursuant to section 23-1321 and who has violated a condition of release shall be subject to revocation of release, an order of detention, including an order of temporary detention pursuant to subsections (d-1) and (e) of this section, and prosecution for contempt of court.

(a-1) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(b)(1) Proceedings for revocation of release and temporary placement in custody may be initiated at the request of the Pretrial Services Agency, on motion of the prosecutor, or on the court's own motion. A warrant for the arrest of a person charged with violating a condition of release may be issued by a judicial officer and if such person is outside the District of Columbia he shall be

brought before a judicial officer in the district where he is arrested and shall then be transferred to the District of Columbia for proceedings in accordance with this section. No order of revocation and detention shall be entered unless, after a hearing, the judicial officer:

(A) Finds that there is:

- (i) Probable cause to believe that the person has committed a federal, state, or local crime while on release; or
- (ii) Clear and convincing evidence that the person has violated any other condition of his release; and

(B) Finds that:

(i) Based on the factors set out in § 23-1322(e), there is no condition or combination of conditions of release which will reasonably assure that the person will not flee or pose a danger to any other person or the community; or

(ii) The person is unlikely to abide by a condition or conditions of release.

(2) If there is probable cause to believe that while on release, the person committed a dangerous or violent crime, as defined by § 23-1331, or a substantially similar offense under the laws of any other jurisdiction, a rebuttable presumption arises that no condition or combination of conditions will assure the safety of any other person or the community.

(3) The provisions of § 23-1322(d) and (h) shall apply to this subsection.

(c) Contempt sanctions may be imposed if, upon a hearing and in accordance with principles applicable to proceedings for criminal contempt, it is established that such person has intentionally violated a condition of his release. Such contempt proceedings shall be expedited and heard by the court without a jury. Any person found guilty of criminal contempt for violation of a condition of release shall be imprisoned for not more than six months, or fined not more than the amount set forth in [§ 22-3571.01], or both. A judicial officer or a prosecutor may initiate a proceeding for contempt under this section.

(d) Any warrant issued by a judge of the Superior Court for violation of release conditions or for contempt of court, for failure to appear as required, or pursuant to § 23-1322(d)(7), may be executed at any place within the jurisdiction of the United States. Such warrants shall be executed by a United States marshal or by any other officer authorized by law.

(d-1)(1) A person who has been conditionally released and who violates a condition of that release by violating a stay-away order or an order to wear a detection device, may be ordered by the court, in addition to or in lieu of the penalties prescribed in subsections (a) through (d) of this section, to temporary placement in custody for a maximum of 72 hours, when, in the opinion of the court, such action is necessary to ensure compliance with the conditions of release.

(2) Paragraph (1) of this subsection shall apply only to a person who has been charged with an offense enumerated in § 23-1331(3) or (4); provided, that it shall not include offenses under § 23-1331(3)(B) or (C).

(e) A person who has been conditionally released and who violates a condition of that release by using a controlled substance or by failing to comply with the prescribed treatment for use of a controlled substance, may be ordered by the court, in addition to or in lieu of the penalties and procedures prescribed in subsections (a) through (d) of this section, to temporary placement in custody, when, in the opinion of the court, such action is necessary for treatment or to assure compliance with conditions of release. A person shall not be subject to an order of temporary detention under this subsection, unless before any such violation and order, the person has agreed in writing to the imposition of such an order as a sanction for the person's violation of a condition of release.

(f)(1) Within 180 days of the effective date of this act, the Department of Corrections, in consultation with the Federal Bureau of Prisons, the Court Services and Offender Supervision Agency, and the Pretrial Services Agency, shall promulgate regulations, in accordance with [Chapter 5 of Title 2], to establish standards of conduct and discipline for persons released pursuant to § 23-1321(c)(1)(B)(xi). Such regulations shall set forth sanctions for different kinds of violations, up to and including revocation of release and detention.

(2) If a person who has been released pursuant to § 23-1321(c)(1)(B)(xi) violates a standard of conduct for which the sanction is revocation of release, the Department of Corrections may take the person into its custody or, if necessary, apply for a warrant for the person's arrest.

(3) The Department of Corrections shall immediately notify the Superior Court of the District of Columbia (“the Court”) of the detention of the person and request an order for the person to be brought before the Court without unnecessary delay. An affidavit stating the basis for the person's remand to the jail shall be filed forthwith with the Court.

(4) If, based on the affidavit described in paragraph (3) of this subsection, the Court finds probable cause to believe that the person violated a standard of conduct for which a sanction is revocation of release, it shall schedule a hearing for revocation of release under subsection (b) of this section and shall detain the person pending completion of the hearing.

(5) If, based on the affidavit described in paragraph (3) of this subsection, the Court does not find probable cause to believe that the person violated a standard of conduct for which the sanction is revocation of release, it shall order the release of the person with the original or modified conditions of release.

## **APPENDIX B: RELEVANT REDBOOK INSTRUCTIONS**

Criminal Jury Instructions for the District of Columbia, No. 8.100 Aggravating Circumstances (5th ed. 2016). (From Comment: “*It is unclear whether release papers (D.C. Code § 23-1328 (2001)) fall within the exception for prior convictions in Almendarez-Torres or instead are governed by the rule of Apprendi. The Committee has, therefore, prepared the following instruction for release papers, in the event it is determined that that issue should be submitted to the jury. This instruction should not be given if the defendant waives his right not to have his release status decided by the jury. For committing a felony while on release (D.C. Official Code § 23-1328 (2001)): [That at the time the defendant committed the offense of [named offense], he had been released in Case No. [ ^ ] .]*”).

Criminal Jury Instructions for the District of Columbia, No. 8.104 Bias Related Crime (5th ed. 2016).

**APPENDIX C: SENTENCING COMMISSION STATISTICS ON DISTRICT PENALTY ENHANCEMENTS**

**[PDF of Spreadsheet Attached Separately]**

**APPENDIX D: EDITED SENTENCING COMMISSION STATISTICS ON DISTRICT PENALTY ENHANCEMENTS**

**[PDF of Spreadsheet Attached Separately]**