## SENTENCING TABLE
(in months of imprisonment)

<table>
<thead>
<tr>
<th>Offense Level</th>
<th>I (0 or 1)</th>
<th>II (2 or 3)</th>
<th>III (4, 5, 6)</th>
<th>IV (7, 8, 9)</th>
<th>V (10, 11, 12)</th>
<th>VI (13 or more)</th>
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History and Purpose of Statement of Reasons Form
PROTECT Act of 2003
Data Collection

• Within 30 days of judgment, court must submit a written report of the sentence and relevant factors to USSC

• Report includes J&C, statement of reasons (SOR), plea agreement, indictment, PSR, other information requested by the Commission
PATRIOT Act of 2006
Sentencing *Post-Booker*
United States v. Booker
543 U.S. 220 (2005)

1. Substantive opinion (Stevens): *mandatory* guidelines trigger the 6th Amendment

2. Remedial opinion (Breyer): the federal sentencing guidelines become *advisory*, avoiding the 6th Amendment
**Booker’s Remedy**

- Struck 18 USC §§ 3553(b)(1) and 3742(e) of the Sentencing Reform Act of 1984 (SRA)

- Judges must “consult” the guidelines, but adherence is no longer mandatory

- Sentences are now reviewed for “reasonableness”
§ 3553(a)(1) - (7)

- Factors that must be considered by the district court in imposing a sentence

- Factors that guide appellate courts in determining “reasonableness”
3-Step Approach to Federal Sentencing Under *Booker*

1. Apply the sentencing guidelines to establish the guideline sentencing range

2. Determine if a *departure* is consistent with the guidelines

3. Determine if a “*variance*” (a sentence outside the advisory guideline system) is warranted under the authority of § 3553(a)
3-Step Approach to Sentencing Post-Booker

- Outlined in SOR approved by Judicial Conference Executive Committee and the Sentencing Commission
- Outlined in the Judicial Conference Rules Committee proposed amendment to Rule 11(b)(1)(M) (advising the defendant)
- Proposal adopted by Judges Bench Book Committee of the Federal Judicial Center
- Most circuits utilizing this approach
Documents Required to Be Submitted to the Sentencing Commission

28 U.S.C. § 994(w)

- Judgment and commitment order (J&C)
- Statement of reasons (SOR)
- Plea agreement
- Indictment (or other charging instrument)
- Presentence report (PSR)
Review of the Statement of Reasons Form
Statement of Reasons

• § 994(w) requires that the written SOR be made on the form issued by the Judicial Conference and approved by the Sentencing Commission

• A.O. 245B, Rev. 06/05 is the required SOR form
Statement of Reasons Form Versus Transcript

• SOR form
  – Succinct summary of the reasons the court articulated at sentencing
  – Primary source of information for the Sentencing Commission in coding the court’s reasons

• The Commission does not want transcripts
STATEMENT OF REASONS (Not for Public Disclosure)

I COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT

A □ The court adopts the presentence investigation report without change.

B □ The court adopts the presentence investigation report with the following changes.

   1 □ Chapter Two of the U.S.S.G. Manual determinations by court (including changes to base offense level, or specific offense characteristics):

   2 □ Chapter Three of the U.S.S.G. Manual determinations by court (including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple counts, or acceptance of responsibility):

   3 □ Chapter Four of the U.S.S.G. Manual determinations by court (including changes to criminal history category or scores, career offender, or criminal livelihood determinations):

   4 □ Additional Comments or Findings (including comments or factual findings concerning certain information in the presentence report that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions):

C □ The record establishes no need for a presentence investigation report pursuant to Fed.R.Crim.P. 32.

II COURT FINDING ON MANDATORY MINIMUM SENTENCE (Check all that apply.)

A □ No count of conviction carries a mandatory minimum sentence.

B □ Mandatory minimum sentence imposed.

C □ One or more counts of conviction alleged in the indictment carry a mandatory minimum term of imprisonment, but the sentence imposed is below a mandatory minimum term because the court has determined that the mandatory minimum does not apply based on

   □ findings of fact in this case
   □ substantial assistance (18 U.S.C. § 3553(e))
   □ the statutory safety valve (18 U.S.C. § 3553(g))

III COURT DETERMINATION OF ADVISORY GUIDELINE RANGE (BEFORE DEPARTURES):

Total Offense Level: ____________________________
Criminal History Category: ____________________________
Imprisonment Range: _______ to _______ months
Supervised Release Range: _______ to _______ years
Fine Range: $ _______ to $ _______
□ Fine waived or below the guideline range because of inability to pay.
STATEMENT OF REASONS

(Not for Public Disclosure)

IV ADVISORY GUIDELINE SENTENCING DETERMINATION (Check only one.)

A ☐ The sentence is within an advisory guideline range that is not greater than 24 months, and the court finds no reason to depart.

B ☐ The sentence is within an advisory guideline range that is greater than 24 months, and the specific sentence is imposed for these reasons. (Use page 4 if necessary.)

C ☐ The court departs from the advisory guideline range for reasons authorized by the sentencing guidelines manual. (Also complete Section V.)

D ☐ The court imposed a sentence outside the advisory sentencing guideline system. (Also complete Section VI.)

V DEPARTURES AUTHORIZED BY THE ADVISORY SENTENCING GUIDELINES (If applicable.)

A The sentence imposed departs (Check only one):
☐ above the advisory guideline range
☐ below the advisory guideline range

B Departure based on (Check all that apply):

1 Plea Agreement (Check all that apply and check reason(s) below):
☐ SK1.1 plea agreement based on the defendant’s substantial assistance
☐ SK1.1 plea agreement based on Early Disposition or “Fast-track” Program
☐ breathing plea agreement for departure accepted by the court
☐ plea agreement for departure, which the court finds to be reasonable
☐ plea agreement that states that the government will not oppose a defense departure motion.

2 Motion Not Addressed in a Plea Agreement (Check all that apply and check reason(s) below):
☐ SK1.1 government motion based on the defendant’s substantial assistance
☐ SK3.1 government motion based on Early Disposition or “Fast-track” program
☐ government motion for departure
☐ defense motion for departure to which the government did not object
☐ defense motion for departure to which the government objected

3 Other
☐ Other than a plea agreement or motion by the parties for departure (Check reason(s) below):

C Reason(s) for Departure (Check all that apply other than SK1.1 or SK3.1.)

☐ 4A1.3 Criminal History Inadequacy
☐ 5K1.1 Lesser Harm
☐ 5K1.1 Age
☐ 5K1.2 Coercion and Duress
☐ 5K1.3 Mental and Emotional Condition
☐ 5K1.3 Diminished Capacity
☐ 5K1.4 Physical Condition
☐ 5K1.4 Public Welfare
☐ 5K1.5 Property Damage or Less
☐ 5K1.6 Voluntary Disclosure of Offense
☐ 5K2.0 Aggravating or Mitigating Circumstances
☐ 5K2.11 High-Capacity, Semiautomatic Weapon
☐ 5K2.11 Lesser Harm
☐ 5K2.2 Dismissed and Uncharged Conduct
☐ 5K2.12 Coercion and Duress
☐ 5K2.13 Dismissed and Uncharged Conduct
☐ 5K2.14 Public Welfare
☐ 5K2.15 Good Works
☐ 5K2.16 Violent Street Gang
☐ 5K2.17 Other guideline basis (e.g., 2B1.1 commentary)

D Explain the facts justifying the departure. (Use page 4 if necessary.)
STATEMENT OF REASONS
(Not for Public Disclosure)

VI \hspace{1em} \textbf{COURT DETERMINATION FOR SENTENCE OUTSIDE THE ADVISORY GUIDELINE SYSTEM}

(\textit{Check all that apply.})

A \hspace{1em} \textbf{The sentence imposed is} (Check only one.):
\begin{itemize}
    \item \hspace{1em} below the advisory guideline range
    \item \hspace{1em} above the advisory guideline range
\end{itemize}

B \hspace{1em} \textbf{Sentence imposed pursuant to} (Check all that apply.):
\begin{enumerate}
    \item \hspace{1em} \textbf{Plea Agreement} (Check all that apply and check reason(s) below.):
        \begin{itemize}
            \item \hspace{1em} binding plea agreement for a sentence outside the advisory guideline system accepted by the court
            \item \hspace{1em} plea agreement for a sentence outside the advisory guideline system which the court finds to be reasonable
            \item \hspace{1em} plea agreement that states that the government will not oppose a defense motion to the court to sentence outside the advisory guideline system
        \end{itemize}
    \item \hspace{1em} \textbf{Motion Not Addressed in a Plea Agreement} (Check all that apply and check reason(s) below.):
        \begin{itemize}
            \item \hspace{1em} defense motion for a sentence outside the advisory guideline system to which the government did not object
            \item \hspace{1em} defense motion for a sentence outside the advisory guideline system to which the government objected
        \end{itemize}
    \item \hspace{1em} \textbf{Other}:
        \begin{itemize}
            \item \hspace{1em} Other than a plea agreement or motion by the parties for a sentence outside the advisory guideline system (Check reason(s) below):
        \end{itemize}

C \hspace{1em} \textbf{Reason(s) for Sentence Outside the Advisory Guideline System} (Check all that apply.)
\begin{itemize}
    \item \hspace{1em} the nature and circumstances of the offense and the history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(1)
    \item \hspace{1em} to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense (18 U.S.C. § 3553(a)(2)(A))
    \item \hspace{1em} to afford adequate deterrence to criminal conduct (18 U.S.C. § 3553(a)(2)(B))
    \item \hspace{1em} to protect the public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C))
    \item \hspace{1em} to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner (18 U.S.C. § 3553(a)(2)(D))
    \item \hspace{1em} to avoid unwarranted sentencing disparities among defendants (18 U.S.C. § 3553(a)(6))
    \item \hspace{1em} to provide restitution to any victims of the offense (18 U.S.C. § 3553(a)(7))
\end{itemize}

D \hspace{1em} \textbf{Explain the facts justifying a sentence outside the advisory guideline system.} (Use page 4 if necessary.)
STATEMENT OF REASONS

(Not for Public Disclosure)

VII COURT DETERMINATIONS OF RESTITUTION

A ☐ Restitution Not Applicable.

B ☐ Total Amount of Restitution: __________________

C ☐ Restitution not ordered (Check only one):  
   1 ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(5)(A).
   2 ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victims’ losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(5)(B).
   3 ☐ For other offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweigh the need to provide restitution to any victims under 18 U.S.C. § 3663A(1)(B)(ii).
   4 ☐ Restitution is not ordered for other reasons. (Explain.)

D ☐ Partial restitution is ordered for these reasons (18 U.S.C. § 3553(c)):

VIII ADDITIONAL FACTS JUSTIFYING THE SENTENCE IN THIS CASE (If applicable.)

Sections I, II, III, IV, and VII of the Statement of Reasons form must be completed in all felony cases.

Defendant’s Soc. Sec. No.: ___________________________ Date of Imposition of Judgment ___________________________

Defendant’s Date of Birth: ___________________________ Signature of Judge ___________________________

Defendant’s Residence Address: ___________________________ Name of Judge ___________________________

Defendant’s Mailing Address: ___________________________ Title of Judge ___________________________

Date Signed ___________________________
Section I

I COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT

A □ The court adopts the presentence investigation report without change.

B □ The court adopts the presentence investigation report with the following changes.
   (Check all that apply and specify court determination, findings, or comments, referencing paragraph numbers in the presentence report, if applicable.)
   (Use page 4 if necessary.)
   
   1 □ Chapter Two of the U.S.S.G. Manual determinations by court (including changes to base offense level, or specific offense characteristics):

   2 □ Chapter Three of the U.S.S.G. Manual determinations by court (including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple counts, or acceptance of responsibility):

   3 □ Chapter Four of the U.S.S.G. Manual determinations by court (including changes to criminal history category or scores, career offender, or criminal livelihood determinations):

   4 □ Additional Comments or Findings (including comments or factual findings concerning certain information in the presentence report that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions):

C □ The record establishes no need for a presentence investigation report pursuant to Fed.R.Crim.P. 32.
Section I : Court Findings

• Describe any differences between court findings and the PSR

• Specify court determinations, findings, or comments and reference the paragraph number in the PSR

• If PSR is waived, be sure to check box C
II COURT FINDING ON MANDATORY MINIMUM SENTENCE (Check all that apply.)

A  □  No count of conviction carries a mandatory minimum sentence.

B  □  Mandatory minimum sentence imposed.

C  □  One or more counts of conviction alleged in the indictment carry a mandatory minimum term of imprisonment, but the sentence imposed is below a mandatory minimum term because the court has determined that the mandatory minimum does not apply based on

□  findings of fact in this case

□  substantial assistance (18 U.S.C. § 3553(e))

□  the statutory safety valve (18 U.S.C. § 3553(f))
Section II-B: Mandatory Minimum

• Check the box “Mandatory minimum sentence imposed” if the sentence length is the mandatory minimum or greater

• Example: If there is a mandatory minimum of 60 months and the court imposes a 97 month sentence, section II B would be checked
Section III

III  COURT DETERMINATION OF ADVISORY GUIDELINE RANGE (BEFORE DEPARTURES):

Total Offense Level: ____________________________
Criminal History Category: ____________________________
Imprisonment Range: ______ to ______ months
Supervised Release Range: ______ to ______ years
Fine Range: $ ________ to $ ________
☐ Fine waived or below the guideline range because of inability to pay.
Section III:
Court Determination of Advisory Guideline Range
(Before Departures and Variances)

• Enter the final offense level (OL), criminal history category (CHC), and corresponding guideline range as determined by the court BEFORE departure or variance
Example

- OL 30 & CHC I (97-121 months)
- Court decided to depart by 4 levels and sentenced the defendant as if OL 26 (63-78 months).
- Section III should reflect the actual OL 30, CHC I, and range of 97-121.
  - The details of the departure would be reflected under section V
IV ADVISORY GUIDELINE SENTENCING DETERMINATION (Check only one.)

A  □  The sentence is within an advisory guideline range that is not greater than 24 months, and the court finds no reason to depart.

B  □  The sentence is within an advisory guideline range that is greater than 24 months, and the specific sentence is imposed for these reasons.

(Use page 4 if necessary.)

C  □  The court departs from the advisory guideline range for reasons authorized by the sentencing guidelines manual.

(Also complete Section V.)

D  □  The court imposed a sentence outside the advisory sentencing guideline system. (Also complete Section VI.)
If the court sentenced within the guideline range, go to section VII (page 4)
Section V

DEPARTURES AUTHORIZED BY THE ADVISORY SENTENCING GUIDELINES (If applicable.)

A The sentence imposed departs (Check only one.):
   
   □ below the advisory guideline range
   □ above the advisory guideline range

B Departure based on (Check all that apply.):

   1 Plea Agreement (Check all that apply and check reason(s) below.):
      
      □ 5K1.1 plea agreement based on the defendant’s substantial assistance
      □ 5K3.1 plea agreement based on Early Disposition or “Fast-track” Program
      □ binding plea agreement for departure accepted by the court
      □ plea agreement for departure, which the court finds to be reasonable
      □ plea agreement that states that the government will not oppose a defense departure motion.

   2 Motion Not Addressed in a Plea Agreement (Check all that apply and check reason(s) below.):
      
      □ 5K1.1 government motion based on the defendant’s substantial assistance
      □ 5K3.1 government motion based on Early Disposition or “Fast-track” program
      □ government motion for departure
      □ defense motion for departure to which the government did not object
      □ defense motion for departure to which the government objected

   3 Other
      
      □ Other than a plea agreement or motion by the parties for departure (Check reason(s) below):
1. Plea agreement

2. Motion not addressed in plea agreement

3. Judicial initiative
C  Reason(s) for Departure (Check all that apply other than 5K1.1 or 5K3.1.)

- 4A1.3  Criminal History Inadequacy
- 5H1.1  Age
- 5H1.2  Education and Vocational Skills
- 5H1.3  Mental and Emotional Condition
- 5H1.4  Physical Condition
- 5H1.5  Employment Record
- 5H1.6  Family Ties and Responsibilities
- 5H1.11  Military Record, Charitable Service, Good Works
- 5K2.0  Aggravating or Mitigating Circumstances
- 5K2.1  Death
- 5K2.2  Physical Injury
- 5K2.3  Extreme Psychological Injury
- 5K2.4  Abduction or Unlawful Restraint
- 5K2.5  Property Damage or Loss
- 5K2.6  Weapon or Dangerous Weapon
- 5K2.7  Disruption of Government Function
- 5K2.8  Extreme Conduct
- 5K2.9  Criminal Purpose
- 5K2.10  Victim’s Conduct
- 5K2.11  Lesser Harm
- 5K2.12  Coercion and Duress
- 5K2.13  Diminished Capacity
- 5K2.14  Public Welfare
- 5K2.16  Voluntary Disclosure of Offense
- 5K2.17  High-Capacity, Semiautomatic Weapon
- 5K2.18  Violent Street Gang
- 5K2.20  Aberrant Behavior
- 5K2.21  Dismissed and Uncharged Conduct
- 5K2.22  Age or Health of Sex Offenders
- 5K2.23  Discharged Terms of Imprisonment
- Other guideline basis (e.g., 2B1.1 commentary)

D  Explain the facts justifying the departure. (Use page 4 if necessary.)
Section V: Departures

Subsection C

• Check all factors that apply
Subsection C

• If “other” is checked, cite the specific guideline and commentary used as the basis
  – Example: in a fraud offense, if the offense level determined substantially overstates the seriousness of the offense, a downward departure may be warranted (§2B1.1, AN 19(C))
Section V: Departures

Subsection D

• Give a concise statement of facts that support the reason given at subsection C
VI COURT DETERMINATION FOR SENTENCE OUTSIDE THE ADVISORY GUIDELINE SYSTEM
(Check all that apply.)

A  The sentence imposed is (Check only one.):
   □ below the advisory guideline range
   □ above the advisory guideline range

B  Sentence imposed pursuant to (Check all that apply.):

1  Plea Agreement (Check all that apply and check reason(s) below.):
   □ binding plea agreement for a sentence outside the advisory guideline system accepted by the court
   □ plea agreement for a sentence outside the advisory guideline system, which the court finds to be reasonable
   □ plea agreement that states that the government will not oppose a defense motion to the court to sentence outside the advisory guideline system

2  Motion Not Addressed in a Plea Agreement (Check all that apply and check reason(s) below.):
   □ government motion for a sentence outside of the advisory guideline system
   □ defense motion for a sentence outside of the advisory guideline system to which the government did not object
   □ defense motion for a sentence outside of the advisory guideline system to which the government objected

3  Other
   □ Other than a plea agreement or motion by the parties for a sentence outside of the advisory guideline system (Check reason(s) below):
C  Reason(s) for Sentence Outside the Advisory Guideline System (Check all that apply.)

☐ the nature and circumstances of the offense and the history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(1)

☐ to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense (18 U.S.C. § 3553(a)(2)(A))

☐ to afford adequate deterrence to criminal conduct (18 U.S.C. § 3553(a)(2)(B))

☐ to protect the public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C))

☐ to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner (18 U.S.C. § 3553(a)(2)(D))

☐ to avoid unwarranted sentencing disparities among defendants (18 U.S.C. § 3553(a)(6))

☐ to provide restitution to any victims of the offense (18 U.S.C. § 3553(a)(7))

D  Explain the facts justifying a sentence outside the advisory guideline system. (Use page 4 if necessary.)
Section VI: Sentence Outside the Guideline System (“Variance”)

Subsection C

• Check all the specific § 3553(a) factor(s) relied upon for the variance
  – Example: Check only the first box under VI C if the basis for the variance was § 3553(a)(1) (nature and circumstances of the offense and history and characteristics of the defendant)
Section VI: Sentence Outside the Guideline System (“Variance”)

Subsection D

• Give the specific aspect of the § 3553(a) factor(s) that was checked in subsection C

• Give a concise statement of facts that support the reason(s) given at subsection C
VII COURT DETERMINATIONS OF RESTITUTION

A ☐ Restitution Not Applicable.

B Total Amount of Restitution: ______________________

C Restitution not ordered (Check only one.):

1 ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).

2 ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).

3 ☐ For other offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweigh the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(1)(B)(ii).

4 ☐ Restitution is not ordered for other reasons. (Explain.)

D ☐ Partial restitution is ordered under 18 U.S.C. § 3553(c) for these reasons:
Section VIII

VIII ADDITIONAL FACTS JUSTIFYING THE SENTENCE IN THIS CASE (If applicable.)
Help Regarding the Completion of the SOR Form

• A.O. pamphlet on the AO 245B, Rev. 06/05
  – Available on the J-Net at:
    http://jnet.ao.dcn/img/assets/5039/SORbookletJune05.pdf

• USSC HelpLine: 202-502-4545
• USSC Website:  www.usssc.gov