



2023 AMENDMENTS IN BRIEF

In April 2023, the U.S. Sentencing Commission promulgated amendments to the federal sentencing guidelines. For a more detailed discussion of the policy determinations made by the Commission, please refer to the *Reason for Amendment* in the “Reader-Friendly” and Official Text (link in QR code).

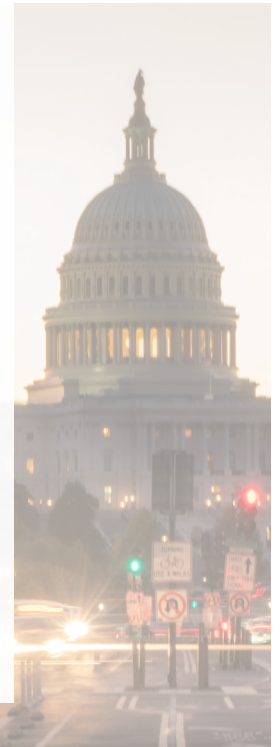
Amendment #817

Safety Valve Provision

The amendment implements the provision of the First Step Act **expanding the applicability of the safety valve provision by amending §5C1.2** and its corresponding commentary to **reflect the broader class of defendants who are eligible for safety valve relief under the Act.**

The amendment also **revises §5C1.2(b)** to account for the **expanded class of defendants who qualify for safety valve relief.** Section 5C1.2(b) implemented Congress’s directive requiring that the guideline minimum be at least 24 months for defendants whose statutorily required minimum sentence was at least five years by providing a minimum offense level of 17 for such offenders.

Additionally, the amendment makes conforming changes to §4A1.3, which references the **number of criminal history points permitted under §5C1.2(a)(1).**



THE ISSUE

The Guideline Safety Valve Provisions

The First Step Act broadened the existing safety valve at 18 U.S.C. § 3553(f), increasing the number of offenders eligible for relief from mandatory minimum penalties. At the time that it enacted the safety valve, Congress directed the Commission to promulgate or amend guidelines and policy statements to “carry out the purposes of [section 3553(f)].” Congress also directed that, “[i]n the case of a defendant for whom the statutorily required minimum sentence is 5 years, such guidelines and amendments to guidelines . . . shall call for a guideline range in which the lowest term of imprisonment is at least 24 months.”

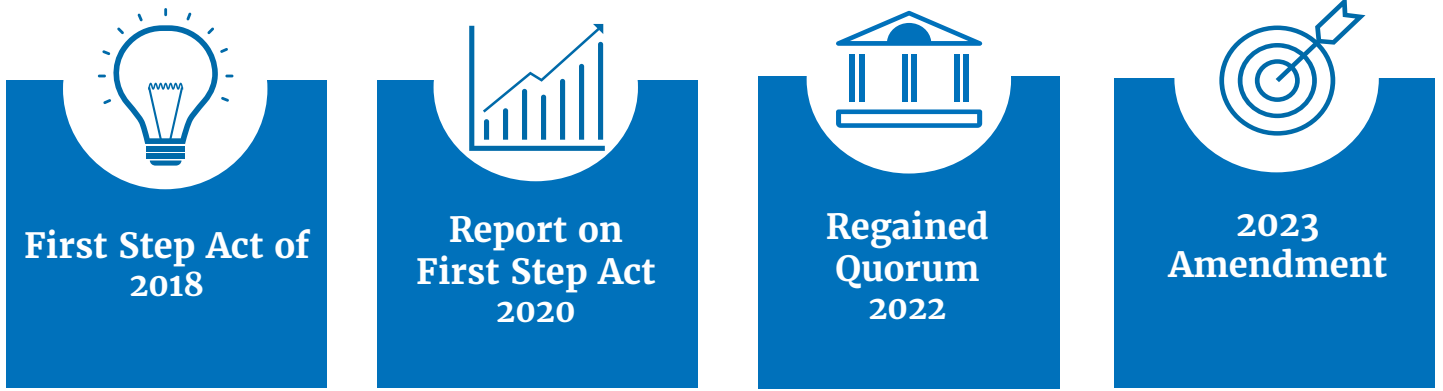


Scan or click QR code
for full Reason for Amendment.

First Step Act’s Changes to Statutory Safety Valve

As originally enacted, the statutory safety valve applied only to offenses under 21 U.S.C. §§ 841, 844, 846, 960, and 963, and to defendants who, among other things, had not more than one criminal history point, as determined under the guidelines. The First Step Act amended section 3553(f)(1) to expand eligibility for the safety valve in two ways. First, the Act extended applicability of the safety valve to maritime cases (adding 46 U.S.C. §§ 70503 and 70506). Second, the act broadened the criminal history eligibility criteria to include defendants who do not have: (1) “more than 4 criminal history points, excluding any criminal history points resulting from a 1-point offense, as determined under the sentencing guidelines”; (2) a “prior 3-point offense, as determined under the sentencing guidelines”; and (3) a “prior 2-point violent offense, as determined under the sentencing guidelines.”

TIMELINE



Post-First Step Act Statutory Safety Valve

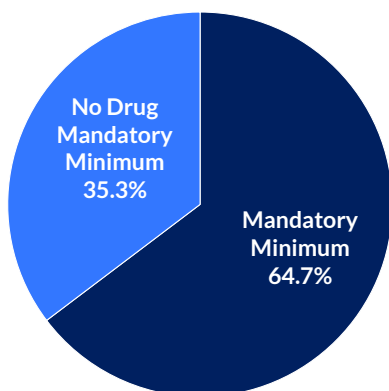
(f) LIMITATION ON APPLICABILITY OF STATUTORY MINIMUMS IN CERTAIN CASES. — Notwithstanding any other provision of law, in the case of an offense under section 401, 404, or 406 of the Controlled Substances Act (21 U.S.C. 841, 844, 846), section 1010 or 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 960, 963), **or section 70503 or 70506 of title 46**, the court shall impose a sentence pursuant to guidelines promulgated by the United States Sentencing Commission under section 994 of title 28 without regard to any statutory minimum sentence, if the court finds at sentencing, after the Government has been afforded the opportunity to make a recommendation, that—

(1) the defendant does not have—

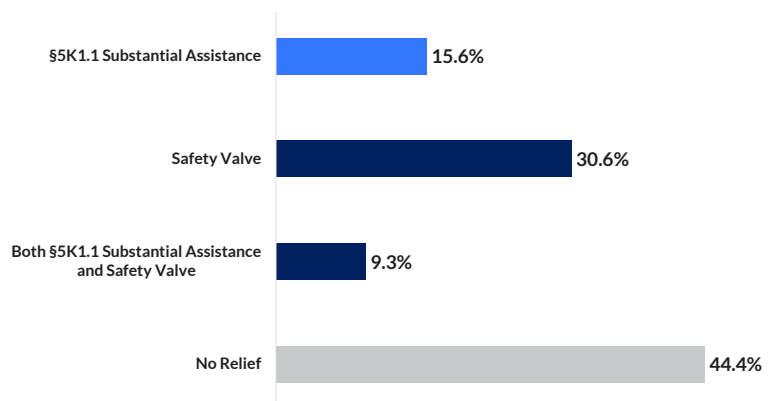
- (A) more than 4 criminal history points, excluding any criminal history points resulting from a 1-point offense, as determined under the sentencing guidelines;**
- (B) a prior 3-point offense, as determined under the sentencing guidelines; and**
- (C) a prior 2-point violent offense, as determined under the sentencing guidelines;**

FACTS & FIGURES

Mandatory Minimum Penalties in Drug Trafficking Cases, FY22



Relief From Mandatory Minimum Penalties in Drug Trafficking Cases, FY22



CIRCUIT CONFLICT

The operation of the word “and” connecting subsections (A) through (C) in section 3553(f)(1)’s expanded criminal history provision is the subject of an evolving circuit conflict that the Supreme Court will resolve in the fall term.

