



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 #819

Firearms

The amendment responds to the [Bipartisan Safer Communities Act](#), which [directs the Commission](#) to increase certain firearms penalties (e.g., straw purchases, trafficking in firearms, organized crime affiliation).

The amendment adds [§2K2.1](#) references to Appendix A (Statutory Index) for the [new offenses](#) established by the Act and sets the [§2K2.1](#) base offense level to account for these new offenses. The amendment expands the specific offense characteristic at (b)(5) to [increase penalties](#) for [illegally transferring a firearm](#), and creates an additional [2-level increase](#) at (b)(8) for trafficking in connection with knowingly participating in a [criminal organization](#).

The amendment adds a [4-level increase](#) at (b)(4) for certain offenses involving “[ghost guns](#)” (privately made guns not marked with a serial number).

Finally, the amendment creates a [2-level decrease](#) at (b)(9) targeting the [less culpable](#) straw purchasers with no more than one [criminal history](#) point.

THE ISSUE

Congressional Directive

Following the Uvalde, Texas shooting, Congress passed the Bipartisan Safer Communities Act, Pub. L. No. 117-159, which included a directive to the Commission to:

- increase penalties for defendants convicted under 18 U.S.C. § 932, 18 U.S.C. § 933, or “other offenses applicable to the straw purchases and trafficking of firearms;”
- increase penalties for defendants convicted under 18 U.S.C. § 932 or § 933 who are affiliated with organized crime; and,
- consider an amendment accounting for straw purchasers with mitigating circumstances.

Separately, the Commission shared concerns with the Department of Justice about “ghost guns”—particularly the increased frequency with which they are used in a crime and the difficulty in tracing these firearms.

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Amendment.



TIMELINE



Bipartisan Safer Communities Act
2021



Comprehensive Firearms Report
2022



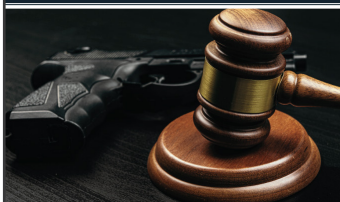
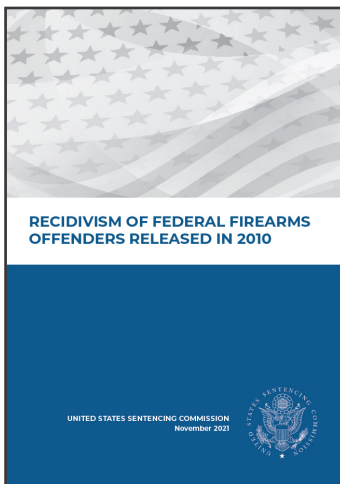
Regained Quorum
2022



2023 Amendment

“ Directive to sentencing commission.—Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this subsection, the United States Sentencing Commission shall review and amend its guidelines and policy statements to ensure that persons convicted of an offense under section 932 or 933 of title 18, United States Code, and other offenses applicable to the straw purchases and trafficking of firearms are subject to increased penalties in comparison to those currently provided by the guidelines and policy statements for such straw purchasing and trafficking of firearms offenses. In its review, the Commission shall consider, in particular, an appropriate amendment to reflect the intent of Congress that straw purchasers without significant criminal histories receive sentences that are sufficient to deter participation in such activities and reflect the defendant’s role and culpability, and any coercion, domestic violence survivor history, or other mitigating factors. The Commission shall also review and amend its guidelines and policy statements to reflect the intent of Congress that a person convicted of an offense under section 932 or 933 of title 18, United States Code, who is affiliated with a gang, cartel, organized crime ring, or other such enterprise should be subject to higher penalties than an otherwise unaffiliated individual.

RELATED REPORTS



PUBLIC COMMENT

Executive Branch

“As you know, during the pandemic, the country has seen a rise in homicides, aggravated assaults, and firearms offenses more generally, and the Attorney General and I have instituted a number of initiatives to address violent crime. The BSCA is an element of the solution, and a full review of the sentencing guidelines for firearms offenses and the reform of Section 2K2.1 are necessary.”

– Lisa Monaco, Deputy Attorney General, U.S. Department of Justice

Legislative Branch

“Taken as a whole, this directive reflects our deep concern about the severity and danger of gun trafficking while also acknowledging that mitigating factors should inform each sentencing decision.”

– U.S. Senators Cory A. Booker, Christopher S. Murphy

Stakeholder Community

“The Act’s focus on straw purchasing and gun trafficking reflects what data has long shown: the diversion of guns into illegal markets is what enables gun violence. Indeed, straw purchasing is the most common channel for guns entering the trafficking pipeline, and corrupt gun retailers account for a higher volume of guns diverted into the illegal market than any other single trafficking channel.”

– Working Group of the Peter Zimroth Center on the Administration of Criminal Law, NYU

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