

APPENDIX B - SELECTED SENTENCING STATUTES

Appendix B sets forth the principal statutory provisions governing sentencing, the Sentencing Commission, and the drafting of sentencing guidelines as extracted from the following sources:

- 18 U.S.C. chapter 227 ("Sentences");
- 18 U.S.C. chapter 229 ("Postsentence Administration");
- 28 U.S.C. chapter 58 ("United States Sentencing Commission"); and
- The Anti-Drug Abuse Act of 1988 and the Major Fraud Act of 1988 — Selected Provisions.

The legal authority for the United States Sentencing Commission ("Commission") and the related authority and procedures for sentencing in federal courts have their legislative foundation in the Sentencing Reform Act of 1984 (Chapter II of the Comprehensive Crime Control Act of 1984, Public Law 98-473, October 12, 1984).

The Sentencing Reform Act subsequently was amended by Public Law 99-22 (April 15, 1985); Public Law 99-217, the "Sentencing Reform Amendments Act of 1985" (December 26, 1985); Public Law 99-363, the "Sentencing Guideline Adjustment Act of 1986" (July 11, 1986); Public Law 99-570, the "Anti-Drug Abuse Act of 1986" (October 27, 1986); Public Law 99-646, the "Criminal Law and Procedure Technical Amendments of 1986" (November 10, 1986); Public Law 100-182, the "Sentencing Act of 1987" (December 7, 1987); Public Law 100-185, the "Criminal Fine Improvements Act of 1987" (December 11, 1987); and Public Law 100-690, the "Anti-Drug Abuse Act of 1988" (November 18, 1988).

These statutory provisions are presented in this appendix solely for the purpose of providing a reference to federal sentencing law as it currently stands. For the sake of brevity, certain miscellaneous provisions are omitted. The Commission makes no representations concerning the accuracy of these provisions and recommends that authoritative sources be consulted where legal reliance is necessary.

Title 18

CRIMES AND CRIMINAL PROCEDURE

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CHAPTER 227¹—SENTENCES

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SUBCHAPTER A—GENERAL PROVISIONS

Section

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SUBCHAPTER A—GENERAL PROVISIONS

§ 3551. Authorized sentences

(a) **In general.**—Except as otherwise specifically provided, a defendant who has been found guilty of an offense described in any Federal statute, other than an Act of Congress applicable exclusively in the District of Columbia or the Uniform Code of Military Justice, shall be sentenced in accordance with the provisions of this chapter so as to achieve the purposes set forth in subparagraphs (A) through (D) of section 3553(a)(2) to the extent that they are applicable in light of all the circumstances of the case.

(b) **Individuals.**—An individual found guilty of an offense shall be sentenced, in accordance with the provisions of section 3553, to—

- (1) a term of probation as authorized by subchapter B;
- (2) a fine as authorized by subchapter C; or
- (3) a term of imprisonment as authorized by subchapter D.

A sentence to pay a fine may be imposed in addition to any other sentence. A sanction authorized by section 3554, 3555, or 3556 may be imposed in addition to the sentence required by this subsection.

(c) **Organizations.**—An organization found guilty of an offense shall be sentenced, in accordance with the provisions of section 3553, to—

- (1) a term of probation as authorized by subchapter B; or
- (2) a fine as authorized by subchapter C.

A sentence to pay a fine may be imposed in addition to a sentence to probation. A sanction authorized by section 3554, 3555, or 3556 may be imposed in addition to the sentence required by this subsection.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1988.)

¹Another chapter 227 "SENTENCE, JUDGMENT, AND EXECUTION" (§§ 3561 to 3580) was repealed, effective Nov. 1, 1987.

EDITORIAL NOTES

Effective Date and Savings Provisions of Sentencing Reform Act of 1984 (Pub.L. 98-473, Title II, c. II, §§ 211 to 239); Terms of Members of U.S. Sentencing Commission and U.S. Parole Commission; Parole Release Dates; Membership of National Institute of Corrections, Advisory Corrections Council, and U.S. Sentencing Commission. Section 235 of Pub.L. 98-473, Title II, c. II, Oct. 12, 1984, 98 Stat. 2031, as amended by Pub.L. 99-217, §§ 2, 4, Dec. 26, 1985, 99 Stat. 1728; Pub.L. 99-646, § 35, Nov. 10, 1986, 100 Stat. 3599; Pub.L. 100-182, § 2, Dec. 7, 1987, 101 Stat. 1266, provided:

"(a)(1) This chapter [chapter II, §§ 211-239, of Title II of Pub.L. 98-473] shall take effect on the first day of the first calendar month beginning 36 months after the date of enactment [Oct. 12, 1984] and shall apply only to offenses committed after the taking effect of this chapter, except that—

"(A) the repeal of chapter 402 of title 18, United States Code, shall take effect on the date of enactment;

"(B)(i) chapter 58 of title 28, United States Code, shall take effect on the date of enactment of this Act or October 1, 1983, whichever occurs later, and the United States Sentencing Commission shall submit the initial sentencing guidelines promulgated under section 994(a)(1) of title 28 to the Congress within 30 months of the effective date of such chapter 58; and

"(ii) the sentencing guidelines promulgated pursuant to section 994(a)(1) shall not go into effect until—

"(I) the United States Sentencing Commission has submitted the initial set of sentencing guidelines to the Congress pursuant to subparagraph (B)(i), along with a report stating the reasons for the Commission's recommendations;

"(II) the General Accounting Office has undertaken a study of the guidelines, and their potential impact in comparison with the operation of the existing sentencing and parole release system, and has, within one hundred and fifty days of submission of the guidelines, reported to the Congress the results of its study; and

"(III) the day after the Congress has had six months after the date described in subclause (I) in which to examine the guidelines and consider the reports; and

"(IV) section 212(a)(2) [enacting chapter 227, 'Sentences', comprised of sections 3551 to 3559, 3561 to 3566, 3571 to 3574, and 3581 to 3586; and chapter 229, 'Postsentence administration', comprised of sections 3601 to 3607, 3611 to 3615, and 3621 to 3625 of this title; and repealing former chapter 227, 'Sentence, judgment, and execution', comprised of sections 3561 to 3580; former chapter 229, 'Fines, penalties, and forfeitures', comprised of sections 3611 to 3620; and former chapter 231, 'Probation', comprised of sections 3651 to 3656 of this title] takes effect, in the case of the initial sentencing guidelines so promulgated.

"(2) For the purposes of section 992(a) of title 28, the terms of the first members of the United States Sentencing Commission shall not begin to run until the sentencing guidelines go into effect pursuant to paragraph (1)(B)(ii).

"(b)(1) The following provisions of law in effect on the day before the effective date of this Act shall remain in effect for five years after the effective date as to an individual who committed an offense or an act of juvenile delinquency before the effective date and as to a term of imprisonment during the period described in subsection (a)(1)(B):

"(A) Chapter 311 of title 18, United States Code.

"(B) Chapter 309 of title 18, United States Code.

"(C) Sections 4251 through 4255 of title 18, United States Code.

"(D) Sections 5041 and 5042 of title 18, United States Code.

"(E) Sections 5017 through 5020 of title 18, United States Code, as to a sentence imposed before the date of enactment.

"(F) The maximum term of imprisonment in effect on the effective date for an offense committed before the effective date.

"(G) Any other law relating to a violation of a condition of release or to arrest authority with regard to a person who violates a condition of release.

"(2) Notwithstanding the provisions of section 4202 of title 18, United States Code, as in effect on the day before the effective date of this Act, the term of office of a Commissioner who is in office on the effective date is extended to the end of the five-year period after the effective date of this Act.

"(3) The United States Parole Commission shall set a release date, for an individual who will be in its jurisdiction the day before the expiration of five years after the effective date of this Act, pursuant to section

4206 of title 18, United States Code. A release date set pursuant to this paragraph shall be set early enough to permit consideration of an appeal of the release date, in accordance with Parole Commission procedures, before the expiration of five years following the effective date of this Act.

"(4) Notwithstanding the other provisions of this subsection, all laws in effect on the day before the effective date of this Act pertaining to an individual who is—

"(A) released pursuant to a provision listed in paragraph (1); and

"(B)(i) subject to supervision on the day before the expiration of the five-year period following the effective date of this Act; or

"(ii) released on a date set pursuant to paragraph (3); "including laws pertaining to terms and conditions of release, revocation of release, provision of counsel, and payment of transportation costs, shall remain in effect as to the individual until the expiration of his sentence, except that the district court shall determine, in accord with the Federal Rules of Criminal Procedure, whether release should be revoked or the conditions of release amended for violation of a condition of release.

"(5) Notwithstanding the provisions of section 991 of title 28, United States Code, and sections 4351 and 5002 of title 18, United States Code, the Chairman of the United States Parole Commission or his designee shall be a member of the National Institute of Corrections, and the Chairman of the United States Parole Commission shall be a member of the Advisory Corrections Council and a nonvoting member of the United States Sentencing Commission, ex officio, until the expiration of the five-year period following the effective date of this Act. Notwithstanding the provisions of section 4351 of title 18, during the five-year period the National Institute of Corrections shall have seventeen members, including seven ex officio members. Notwithstanding the provisions of section 991 of title 28, during the five-year period the United States Sentencing Commission shall consist of nine members, including two ex officio, nonvoting members."

Sentencing Considerations Prior to Enactment of Guidelines. Section 239 of Pub.L. 98-473, Title II, c. II, Oct. 12, 1984, 98 Stat. 2039, provided:

"Since, due to an impending crisis in prison over-crowding, available Federal prison space must be treated as a scarce resource in the sentencing of criminal defendants;

"Since, sentencing decisions should be designed to ensure that prison resources are, first and foremost, reserved for those violent and serious criminal offenders who pose the most dangerous threat to society;

"Since, in cases of nonviolent and nonserious offenders, the interests of society as a whole as well as individual victims of crime can continue to be served through the imposition of alternative sentences, such as restitution and community service;

"Since, in the two years preceding the enactment of sentencing guidelines, Federal sentencing practice should ensure that scarce prison resources are available to house violent and serious criminal offenders by the increased use of restitution, community service, and other alternative sentences in cases of nonviolent and nonserious offenders: Now, therefore, be it

"Declared, That it is the sense of the Senate that in the two years preceding the enactment of the sentencing guidelines, Federal judges, in determining the particular sentence to be imposed, consider—

"(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

"(2) the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant has not been convicted of a crime of violence or otherwise serious offense; and

"(3) the general appropriateness of imposing a sentence of imprisonment in cases in which the defendant has been convicted of a crime of violence or otherwise serious offense."

§ 3552. Presentence reports

(a) Presentence investigation and report by probation officer.—A United States probation officer shall make a presentence investigation of a defendant that is required pursuant to the provisions of Rule 32(c) of the Federal Rules of Criminal Procedure, and shall, before the imposition of sentence, report the results of the investigation to the court.

(b) Presentence study and report by bureau of prisons.—If the court, before or after its receipt of a report specified in subsection (a) or (c), desires more information than is otherwise available to it as a basis for determining the sentence to be imposed on a defendant found guilty of a misdemeanor or felony, it may order a study of the defendant. The study shall be conducted in the local community by qualified consultants unless the sentencing judge finds that there is a compelling reason for the study to be done by the Bureau of Prisons or there are no adequate professional resources available in the local community to perform the study. The period of the study shall be no more than sixty days. The order shall specify the additional

information that the court needs before determining the sentence to be imposed. Such an order shall be treated for administrative purposes as a provisional sentence of imprisonment for the maximum term authorized by section 3581(b) for the offense committed. The study shall inquire into such matters as are specified by the court and any other matters that the Bureau of Prisons or the professional consultants believe are pertinent to the factors set forth in section 3553(a). The period of the study may, in the discretion of the court, be extended for an additional period of not more than sixty days. By the expiration of the period of the study, or by the expiration of any extension granted by the court, the United States marshal shall, if the defendant is in custody, return the defendant to the court for final sentencing. The Bureau of Prisons or the professional consultants shall provide the court with a written report of the pertinent results of the study and make to the court whatever recommendations the Bureau or the consultants believe will be helpful to a proper resolution of the case. The report shall include recommendations of the Bureau or the consultants concerning the guidelines and policy statements, promulgated by the Sentencing Commission pursuant to 28 U.S.C. 994(a), that they believe are applicable to the defendant's case. After receiving the report and the recommendations, the court shall proceed finally to sentence the defendant in accordance with the sentencing alternatives and procedures available under this chapter.

(c) Presentence examination and report by psychiatric or psychological examiners.—If the court, before or after its receipt of a report specified in subsection (a) or (b) desires more information than is otherwise available to it as a basis for determining the mental condition of the defendant, the court may order the same psychiatric or psychological examination and report thereon as may be ordered under section 4244(b) of this title.

(d) Disclosure of presentence reports.—The court shall assure that a report filed pursuant to this section is disclosed to the defendant, the counsel for the defendant, and the attorney for the Government at least ten days prior to the date set for sentencing, unless this minimum period is waived by the defendant.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1988, and amended Pub.L. 99-646, § 7(a), Nov. 10, 1986, 100 Stat. 3593.)

EDITORIAL NOTES

Effective Date of 1986 Amendment. Section 7(b) of Pub.L. 99-646 provided that: "The amendments made by this section [amending this section] shall take effect on the date of the taking effect of section 3552 of title 18, United States Code [this section]."

Effective Date. Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

§ 3553. Imposition of a sentence

(a) Factors to be considered in imposing a sentence.—The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed—
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant; and
 - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established for the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines that are issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1) and that are in effect on the date the defendant is sentenced;

- (5) any pertinent policy statement issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2) that is in effect on the date the defendant is sentenced;
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense.

(b) Application of guidelines in imposing a sentence.—The court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described. In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission.

(c) Statement of reasons for imposing a sentence.—The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence, and, if the sentence—

- (1) is of the kind, and within the range, described in subsection (a)(4), and that range exceeds 24 months, the reason for imposing a sentence at a particular point within the range; or
- (2) is not of the kind, or is outside the range, described in subsection (a)(4), the specific reason for the imposition of a sentence different from that described.

If the court does not order restitution, or orders only partial restitution, the court shall include in the statement the reason therefor. The court shall provide a transcription or other appropriate public record of the court's statement of reasons to the Probation System, and, if the sentence includes a term of imprisonment, to the Bureau of Prisons.

(d) Presentence procedure for an order of notice.—Prior to imposing an order of notice pursuant to section 3555, the court shall give notice to the defendant and the Government that it is considering imposing such an order. Upon motion of the defendant or the Government, or on its own motion, the court shall—

- (1) permit the defendant and the Government to submit affidavits and written memoranda addressing matters relevant to the imposition of such an order;
- (2) afford counsel an opportunity in open court to address orally the appropriateness of the imposition of such an order; and
- (3) include in its statement of reasons pursuant to subsection (c) specific reasons underlying its determinations regarding the nature of such an order.

Upon motion of the defendant or the Government, or on its own motion, the court may in its discretion employ any additional procedures that it concludes will not unduly complicate or prolong the sentencing process.

(e) Limited authority to impose a sentence below a statutory minimum.—Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as minimum sentence so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1989, and amended Pub.L. 99-570, Title I, § 1007(b), Oct. 27, 1986, 100 Stat. 3707-7; Pub.L. 99-646, §§ 8(a), 9(a), 80(a), 81(a), Nov. 10, 1986, 100 Stat. 3593, 3619; Pub.L. 100-182, §§ 3, 16(a), (17), Dec. 7, 1987, 101 Stat. 1266, 1269, 1270; Pub.L. 100-690, Title VII, § 7102, Nov. 18, 1988, 102 Stat. 4416.)

EDITORIAL NOTES

Effective Date of 1987 Amendment. Amendment by Pub.L. 100-182 applicable with respect to offenses committed after enactment of Pub.L. 100-182, which was approved Dec. 7, 1987, see section 26 of Pub.L. 100-182, set out as a note under section 3006A of this title.

Effective Date of 1986 Amendment. Section 8(c) of Pub.L. 99-646 provided that: "The amendments made by this section [amending subsec. (a) of this section and section 3663 of this title] shall take effect on the date of the taking effect of section 3553 of title 18, United States Code [this section]."

Section 9(b) of Pub.L. 99-646 provided that: "The amendments made by this section [subsec. (b) of this section] shall take effect on the date of the taking effect of section 3553 of title 18, United States Code [this section]."

Section 80(b) of Pub.L. 99-646 provided that: "The amendments made by this section [amending subsec. (d) of this section] shall take effect on the date of the taking effect of section 212(a)(2) of the Sentencing Reform Act of 1984 [see Effective Date note below]."

Section 81(b) of Pub.L. 99-646 provided that: "—The amendments made by this section [amending subsec. (a) of this section] shall take effect on the date of the taking effect of section 212(a)(2) of the Sentencing Reform Act of 1984 [see Effective Date note below]."

Section 1007(b) of Pub.L. 99-570 provided that: "(b) The amendment made by this section [enacting subsec. (d) of this section] shall take effect on the date of the taking effect of section 3553 of title 18, United States Code [this section]."

Effective Date. Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

Authority to Lower Sentences Below Statutory Minimum for Old Offenses. Section 24 of Pub.L. 100-182 provided that: "Notwithstanding section 235 of the Comprehensive Crime Control Act of 1984 [section 235 of Pub.L. 98-473, set out as a note under section 3551 of this title]—

"(1) section 3553(e) of title 18, United States Code [subsec. (e) of this section];

"(2) rule 35(b) of the Federal Rules of Criminal Procedure as amended by section 215(b) of such Act; and

"(3) rule 35(b) as in effect before the taking effect of the initial set of guidelines promulgated by the United States Sentencing Commission pursuant to chapter 58 of title 28, United States Code [sections 991 et seq. of Title 28, Judiciary and Judicial Procedure], shall apply in the case of an offense committed before the taking effect of such guidelines."

§ 3554. Order of criminal forfeiture

The court, in imposing a sentence on a defendant who has been found guilty of an offense described in section 1962 of this title or in title II or III of the Comprehensive Drug Abuse Prevention and Control Act of 1970 shall order, in addition to the sentence that is imposed pursuant to the provisions of section 3551, that the defendant forfeit property to the United States in accordance with the provisions of section 1963 of this title or section 413 of the Comprehensive Drug Abuse and Control Act of 1970.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1990.)

EDITORIAL NOTES

References in Text. Title II or III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, referred to in text, are Titles II and III of Pub.L. 91-513, Oct. 27, 1970, 84 Stat. 1242, which are principally classified to subchapters I and II of chapter 13 of Title 21, Food and Drugs.

Section 413 of such Act, referred to in text, is section 413 of Pub.L. 91-513, added Pub.L. 98-473, Title II, c. III, part B, § 303, Oct. 12, 1984, 98 Stat. 2044, which is classified to section 853 of Title 21.

Effective Date. Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

§ 3555. Order of notice to victims

The court, in imposing a sentence on a defendant who has been found guilty of an offense involving fraud or other intentionally deceptive practices, may order, in addition to the sentence that is imposed pursuant to the provisions of section 3551, that the defendant give reasonable notice and explanation of the conviction, in such form as the court may approve, to the victims of the offense. The notice may be ordered to be given by mail, by advertising in designated areas or through designated media, or by other appropriate means. In determining whether to require the defendant to give such notice, the court shall consider the factors set forth in section 3553(a) to the extent that they are applicable and shall consider the cost involved in giving the notice as it relates to the loss caused by the offense, and shall not require the defendant to bear the costs of notice in excess of \$20,000.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1991.)

EDITORIAL NOTES

Effective Date. Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

§ 3556. Order of restitution

The court, in imposing a sentence on a defendant who has been found guilty of an offense may order restitution in accordance with sections 3663 and 3664.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1991, and amended Pub.L. 99-646, § 20(b), Nov. 10, 1986, 100 Stat. 3596.)

EDITORIAL NOTES

Effective Date of 1986 Amendment. Section 20(c) of Pub.L. 99-646 provided that: "The amendments made by this section [amending this section and section 3663 of this title] shall take effect on the date of the taking effect of section 212(a)(2) of the Sentencing Reform Act of 1984 [see Effective Date note below]."

Effective Date. Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

§ 3557. Review of a sentence

The review of a sentence imposed pursuant to section 3551 is governed by the provisions of section 3742.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1991.)

EDITORIAL NOTES

Effective Date. Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

§ 3558. Implementation of a sentence

The implementation of a sentence imposed pursuant to section 3551 is governed by the provisions of chapter 229.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1991.)

EDITORIAL NOTES

Effective Date. Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

§ 3559. Sentencing classification of offenses

(a) **Classification.**—An offense that is not specifically classified by a letter grade in the section defining it, is classified if the maximum term of imprisonment authorized is—

- (1) life imprisonment, or if the maximum penalty is death, as a Class A felony;
- (2) twenty-five years or more, as a Class B felony;
- (3) less than twenty-five years but ten or more years, as a Class C felony;
- (4) less than ten years but five or more years, as a Class D felony;
- (5) less than five years but more than one year, as a Class E felony;
- (6) one year or less but more than six months, as a Class A misdemeanor;
- (7) six months or less but more than thirty days, as a Class B misdemeanor;
- (8) thirty days or less but more than five days, as a Class C misdemeanor; or
- (9) five days or less, or if no imprisonment is authorized, as an infraction.

(b) **Effect of classification.**—An offense classified under subsection (a) carries all the incidents assigned to the applicable letter designation, except that the maximum term of imprisonment is the term authorized by the law describing the offense.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1991, and amended Pub.L. 100-185, § 5, Dec. 11, 1987, 101 Stat. 1279; Pub.L. 100-690, Title VII, § 7041, Nov. 18, 1988, 102 Stat. 4399.)

EDITORIAL NOTES

Effective Date. Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

SUBCHAPTER B—PROBATION

Section

- 3561. Sentence of probation.
- 3562. Imposition of a sentence of probation.
- 3563. Conditions of probation.
- 3564. Running of a term of probation.
- 3565. Revocation of probation.
- 3566. Implementation of a sentence of probation.

SUBCHAPTER B—PROBATION

§ 3561. Sentence of probation

(a) **In general.**—A defendant who has been found guilty of an offense may be sentenced to a term of probation unless—

- (1) the offense is a Class A or Class B felony and the defendant is an individual;
- (2) the offense is an offense for which probation has been expressly precluded; or
- (3) the defendant is sentenced at the same time to a term of imprisonment for the same or a different offense.

(b) **Authorized terms.**—The authorized terms of probation are—

- (1) for a felony, not less than one nor more than five years;
- (2) for a misdemeanor, not more than five years; and
- (3) for an infraction, not more than one year.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1992, and amended Pub.L. 99-646, § 10(a), Nov. 10, 1986, 100 Stat. 3593; Pub.L. 100-182, § 7, Dec. 7, 1987, 101 Stat. 1267.)

EDITORIAL NOTES

Effective Date of 1987 Amendment. Amendment by Pub.L. 100-182 applicable with respect to offenses committed after enactment of Pub.L. 100-182, which was approved Dec. 7, 1987, see section 26 of Pub.L. 100-182, set out as a note under section 3006A of this title.

Effective Date of 1986 Amendment. Section 10(b) of Pub.L. 99-646 provided that: "The amendment made by this section [amending subsec. (a) of this section] shall take effect on the date of the taking effect of such section 3561(a) [subsec. (a) of this section]."

Effective Date. Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

§ 3562. Imposition of a sentence of probation

(a) **Factors to be considered in imposing a term of probation.**—The court, in determining whether to impose a term of probation, and, if a term of probation is to be imposed, in determining the length of the term and the conditions of probation, shall consider the factors set forth in section 3553(a) to the extent that they are applicable.

(b) **Effect of finality of judgment.**—Notwithstanding the fact that a sentence of probation can subsequently be—

- (1) modified or revoked pursuant to the provisions of section 3564 or 3565;
- (2) corrected pursuant to the provisions of rule 35 and section 3742; or
- (3) appealed and modified, if outside the guideline range, pursuant to the provisions of section 3742;

a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1992.)

EDITORIAL NOTES

Effective Date. Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

§ 3563. Conditions of probation

(a) Mandatory conditions.—The court shall provide, as an explicit condition of a sentence of probation—

- (1) for a felony, a misdemeanor, or an infraction, that the defendant not commit another Federal, State or local crime during the term of probation;
- (2) for a felony, that the defendant also abide by at least one condition set forth in subsection (b)(2), (b)(3), or (b)(13), unless the court finds on the record that extraordinary circumstances exist that would make such a condition plainly unreasonable, in which event the court shall impose one or more of the other conditions set forth under subsection (b); and
- (3) for a felony, a misdemeanor, or an infraction, that the defendant not possess illegal controlled substances.

If the court has imposed and ordered execution of a fine and placed the defendant on probation, payment of the fine or adherence to the court-established installment schedule shall be a condition of the probation.

(b) Discretionary conditions.—The court may provide, as further conditions of a sentence of probation, to the extent that such conditions are reasonably related to the factors set forth in section 3553(a)(1) and (a)(2) and to the extent that such conditions involve only such deprivations of liberty or property as are reasonably necessary for the purposes indicated in section 3553(a)(2), that the defendant—

- (1) support his dependents and meet other family responsibilities;
- (2) pay a fine imposed pursuant to the provisions of subchapter C;
- (3) make restitution to a victim of the offense pursuant to the provisions of sections 3663 and 3664 (but not subject to the limitations of 3663(a));
- (4) give to the victims of the offense the notice ordered pursuant to the provisions of section 3555;
- (5) work conscientiously at suitable employment or pursue conscientiously a course of study or vocational training that will equip him for suitable employment;
- (6) refrain, in the case of an individual, from engaging in a specified occupation, business, or profession bearing a reasonably direct relationship to the conduct constituting the offense, or engage in such a specified occupation, business, or profession only to a stated degree or under stated circumstances;
- (7) refrain from frequenting specified kinds of places or from associating unnecessarily with specified persons;
- (8) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), without a prescription by a licensed medical practitioner;
- (9) refrain from possessing a firearm, destructive device, or other dangerous weapon;
- (10) undergo available medical, psychiatric, or psychological treatment, including treatment for drug or alcohol dependency, as specified by the court, and remain in a specified institution if required for that purpose;
- (11) remain in the custody of the Bureau of Prisons during nights, weekends, or other intervals of time, totaling no more than the lesser of one year or the term of imprisonment authorized for the offense, during the first year of the term of probation;
- (12) reside at, or participate in the program of, a community corrections facility (including a facility maintained or under contract to the Bureau of Prisons) for all or part of the term of probation;
- (13) work in community service as directed by the court;
- (14) reside in a specified place or area, or refrain from residing in a specified place or area;
- (15) remain within the jurisdiction of the court, unless granted permission to leave by the court or a probation officer;
- (16) report to a probation officer as directed by the court or the probation officer;
- (17) permit a probation officer to visit him at his home or elsewhere as specified by the court;
- (18) answer inquiries by a probation officer and notify the probation officer promptly of any change in address or employment;
- (19) notify the probation officer promptly if arrested or questioned by a law enforcement officer;
- (20) remain at his place of residence during nonworking hours and, if the court finds it appropriate, that compliance with this condition be monitored by telephonic or electronic signaling devices, except that a condition under this paragraph may be imposed only as an alternative to incarceration; or

(21) satisfy such other conditions as the court may impose.

(c) Modifications of conditions.—The court may modify, reduce, or enlarge the conditions of a sentence of probation at any time prior to the expiration or termination of the term of probation, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation and the provisions applicable to the initial setting of the conditions of probation.

(d) Written statement of conditions.—The court shall direct that the probation officer provide the defendant with a written statement that sets forth all the conditions to which the sentence is subject, and that is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1993, and amended Pub.L. 99-646, §§ 11(a), 12(a), Nov. 10, 1986, 100 Stat. 3594; Pub.L. 100-182, §§ 10, 18, Dec. 7, 1987, 101 Stat. 1267, 1270; Pub.L. 100-690, Title VII, §§ 7086, 7110, 7303(a)(1), 7305(a), Nov. 18, 1988, 102 Stat. 4408, 4419, 4464, 4465.)

EDITORIAL NOTES

Effective Date of 1988 Amendment. Section 7303(d) of Pub.L. 100-690 provided that: "The amendments made by this section [amending this section and sections 3565, 3583, 4209, and 4214 of this title] shall apply with respect to persons whose probation, supervised release, or parole begins after December 31, 1988."

Effective Date of 1987 Amendment. Amendment by Pub.L. 100-182 applicable with respect to offenses committed after enactment of Pub.L. 100-182, which was approved Dec. 7, 1987, see section 26 of Pub.L. 100-182, set out as a note under section 3006A of this title.

Effective Date of 1986 Amendment. Section 11(b) of Pub.L. 99-646 provided that: "The amendment made by this section [amending subsec. (b)(11) of this section] shall take effect on the date of the taking effect of such section 3563(b)(11) [subsec. (b)(11) of this section]."

Section 12(c)(1) of Pub.L. 99-646 provided that: "The amendments made by subsection (a) [amending subsec. (c) of this section] shall take effect on the date of the taking effect of such section 3563(c) [subsec. (c) of this section]."

Effective Date. Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

§ 3564. Running of a term of probation

(a) Commencement.—A term of probation commences on the day that the sentence of probation is imposed, unless otherwise ordered by the court.

(b) Concurrence with other sentences.—Multiple terms of probation, whether imposed at the same time or at different times, run concurrently with each other. A term of probation runs concurrently with any Federal, State, or local term of probation, supervised release, or parole for another offense to which the defendant is subject or becomes subject during the term of probation. A term of probation does not run while the defendant is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than thirty consecutive days.

(c) Early termination.—The court, after considering the factors set forth in section 3553(a) to the extent that they are applicable, may, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, terminate a term of probation previously ordered and discharge the defendant at any time in the case of a misdemeanor or an infraction or at any time after the expiration of one year of probation in the case of a felony, if it is satisfied that such action is warranted by the conduct of the defendant and the interest of justice.

(d) Extension.—The court may, after a hearing, extend a term of probation, if less than the maximum

authorized term was previously imposed, at any time prior to the expiration or termination of the term of probation, pursuant to the provisions applicable to the initial setting of the term of probation.

(e) Subject to revocation.—A sentence of probation remains conditional and subject to revocation until its expiration or termination.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1994, and amended Pub.L. 99-646, § 13(a), Nov. 10, 1986, 100 Stat. 3594; Pub.L. 100-182, § 11, Dec. 7, 1987, 101 Stat. 1268.)

EDITORIAL NOTES

Effective Date of 1987 Amendment. Amendment by Pub.L. 100-182 applicable with respect to offenses committed after enactment of Pub.L. 100-182, which was approved Dec. 7, 1987, see section 26 of Pub.L. 100-182, set out as a note under section 3006A of this title.

Effective Date of 1986 Amendment. Section 13(b) of Pub.L. 99-646 provided that: "The amendments made by this section [amending subsec. (b) of this section] shall take effect on the date of the taking effect of such section 3564 [this section]."

Effective Date. Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

§ 3565. Revocation of probation

(a) Continuation or revocation.—If the defendant violates a condition of probation at any time prior to the expiration or termination of the term of probation, the court may, after a hearing pursuant to Rule 32.1 of the Federal Rules of Criminal Procedure, and after considering the factors set forth in section 3553(a) to the extent that they are applicable—

- (1) continue him on probation, with or without extending the term of¹ modifying or enlarging the conditions; or
- (2) revoke the sentence of probation and impose any other sentence that was available under subchapter A at the time of the initial sentencing.

Notwithstanding any other provision of this section, if a defendant is found by the court to be in possession of a controlled substance, thereby violating the condition imposed by section 3563(a)(3), the court shall revoke the sentence of probation and sentence the defendant to not less than one-third of the original sentence.

(b) Mandatory revocation for possession of a firearm.—If the defendant is in actual possession of a firearm, as that term is defined in section 921 of this title, at any time prior to the expiration or termination of the term of probation, the court shall, after a hearing pursuant to Rule 32.1 of the Federal Rules of Criminal Procedure, revoke the sentence of probation and impose any other sentence that was available under subchapter A at the time of the initial sentencing.

(c) Delayed revocation.—The power of the court to revoke a sentence of probation for violation of a condition of probation, and to impose another sentence, extends beyond the expiration of the term of probation for any period reasonably necessary for the adjudication of matters arising before its expiration if, prior to its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1995, amended Pub.L. 100-690, Title VI, § 6214, Title VII, § 7303(a)(2), Nov. 18, 1988, 102 Stat. 4361, 4464.)

¹So in original. Probably should be "or".

EDITORIAL NOTES

References in Text. The Federal Rules of Criminal Procedure, referred to in subsec. (b), are set out in the front of this volume.

Effective Date of 1988 Amendment. Amendment by section 7303(a)(2) of Pub.L. 100-690 applicable with respect to persons whose probation, supervised release, or parole begins after Dec. 31, 1988, see section 7303(d) of Pub.L. 100-690, set out as a note under section 3563 of this title.

Effective Date. Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

§ 3566. Implementation of a sentence of probation

The implementation of a sentence of probation is governed by the provisions of subchapter A of chapter 229.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1995.)

EDITORIAL NOTES

Effective Date. Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

SUBCHAPTER C—FINES

Section

3571. Sentence of fine.

3572. Imposition of a sentence of fine.¹

3573. Petition of the Government for modification or revision.¹

3574. Implementation of a sentence of fine.

SUBCHAPTER C—FINES

§ 3571. Sentence of fine

(a) **In general.**—A defendant who has been found guilty of an offense may be sentenced to pay a fine.

(b) **Fines for individuals.**—Except as provided in subsection (e) of this section, an individual who has been found guilty of an offense may be fined not more than the greatest of—

- (1) the amount specified in the law setting forth the offense;
- (2) the applicable amount under subsection (d) of this section;
- (3) for a felony, not more than \$250,000;
- (4) for a misdemeanor resulting in death, not more than \$250,000;
- (5) for a Class A misdemeanor that does not result in death, not more than \$100,000;
- (6) for a Class B or C misdemeanor that does not result in death, not more than \$5,000; or
- (7) for an infraction, not more than \$5,000.

(c) **Fines for organizations.**—Except as provided in subsection (e) of this section, an organization that has been found guilty of an offense may be fined not more than the greatest of—

- (1) the amount specified in the law setting forth the offense;
- (2) the applicable amount under subsection (d) of this section;
- (3) for a felony, not more than \$500,000;

¹So in original. Does not conform to section catchline.

- (4) for a misdemeanor resulting in death, not more than \$500,000;
- (5) for a Class A misdemeanor that does not result in death, not more than \$200,000;
- (6) for a Class B or C misdemeanor that does not result in death, not more than \$10,000; and
- (7) for an infraction, not more than \$10,000.

(d) Alternative fine based on gain or loss.—If any person derives pecuniary gain from the offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss, unless imposition of a fine under this subsection would unduly complicate or prolong the sentencing process.

(e) Special rule for lower fine specified in substantive provision.—If a law setting forth an offense specifies no fine or a fine that is lower than the fine otherwise applicable under this section and such law, by specific reference, exempts the offense from the applicability of the fine otherwise applicable under this section, the defendant may not be fined more than the amount specified in the law setting forth the offense.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1995, and amended Pub.L. 100-185, § 6, Dec. 11, 1987, 101 Stat. 1280.)

EDITORIAL NOTES

Effective Date. Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

§ 3572. Imposition of a sentence of fine and related matters

(a) Factors to be considered.—In determining whether to impose a fine, and the amount, time for payment, and method of payment of a fine, the court shall consider, in addition to the factors set forth in section 3553(a)—

- (1) the defendant's income, earning capacity, and financial resources;
- (2) the burden that the fine will impose upon the defendant, any person who is financially dependent on the defendant, or any other person (including a government) that would be responsible for the welfare of any person financially dependent on the defendant, relative to the burden that alternative punishments would impose;
- (3) any pecuniary loss inflicted upon others as a result of the offense;
- (4) whether restitution is ordered or made and the amount of such restitution;
- (5) the need to deprive the defendant of illegally obtained gains from the offense;
- (6) whether the defendant can pass on to consumers or other persons the expense of the fine; and
- (7) if the defendant is an organization, the size of the organization and any measure taken by the organization to discipline any officer, director, employee, or agent of the organization responsible for the offense and to prevent a recurrence of such an offense.

(b) Fine not to impair ability to make restitution.—If, as a result of a conviction, the defendant has the obligation to make restitution to a victim of the offense, the court shall impose a fine or other monetary penalty only to the extent that such fine or penalty will not impair the ability of the defendant to make restitution.

(c) Effect of finality of judgment.—Notwithstanding the fact that a sentence to pay a fine can subsequently be—

- (1) modified or remitted under section 3573;
- (2) corrected under rule 35 and section 3742; or
- (3) appealed and modified under section 3742;

a judgment that includes such a sentence is a final judgment for all other purposes.

(d) Time, method of payment, and related items.—A person sentenced to pay a fine or other monetary penalty shall make such payment immediately, unless, in the interest of justice, the court provides for

payment on a date certain or in installments. If the court provides for payment in installments, the installments shall be in equal monthly payments over the period provided by the court, unless the court establishes another schedule. If the judgment permits other than immediate payment, the period provided for shall not exceed five years, excluding any period served by the defendant as imprisonment for the offense.

(e) Alternative sentence precluded.—At the time a defendant is sentenced to pay a fine, the court may not impose an alternative sentence to be carried out if the fine is not paid.

(f) Responsibility for payment of monetary obligation relating to organization.—If a sentence includes a fine, special assessment, or other monetary obligation (including interest) with respect to an organization, each individual authorized to make disbursements for the organization has a duty to pay the obligation from assets of the organization. If such an obligation is imposed on a director, officer, shareholder, employee, or agent of an organization, payments may not be made, directly or indirectly, from assets of the organization, unless the court finds that such payment is expressly permissible under applicable State law.

(g) Security for stayed fine.—If a sentence imposing a fine is stayed, the court shall, absent exceptional circumstances (as determined by the court)—

- (1) require the defendant to deposit, in the registry of the district court, any amount of the fine that is due;
- (2) require the defendant to provide a bond or other security to ensure payment of the fine; or
- (3) restrain the defendant from transferring or dissipating assets.

(h) Delinquency.—A fine is delinquent if a payment is more than 30 days late.

(i) Default.—A fine is in default if a payment is delinquent for more than 90 days. When a fine is in default, the entire amount of the fine is due within 30 days after notification of the default, notwithstanding any installment schedule.

[(j) Redesignated (i)]

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1995, and amended Pub.L. 100-185, § 7, Dec. 11, 1987, 101 Stat. 1280.)

EDITORIAL NOTES

Effective Date. Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

§ 3573. Petition of the Government for modification or remission

Upon petition of the Government showing that reasonable efforts to collect a fine or assessment are not likely to be effective, the court may, in the interest of justice—

- (1) remit all or part of the unpaid portion of the fine or special assessment, including interest and penalties;
- (2) defer payment of the fine or special assessment to a date certain or pursuant to an installment schedule; or
- (3) extend a date certain or an installment schedule previously ordered.

A petition under this subsection shall be filed in the court in which sentence was originally imposed, unless the court transfers jurisdiction to another court. This section shall apply to all fines and assessments irrespective of the date of imposition.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1997, and amended Pub.L. 100-185, § 8(a), Dec. 11, 1987, 101 Stat. 1282; Pub.L. 100-690, Title VII, § 7082(a), Nov. 18, 1988, 102 Stat. 4407.)

EDITORIAL NOTES

Effective Date. Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

§ 3574. Implementation of a sentence of fine

The implementation of a sentence to pay a fine is governed by the provisions of subchapter B of chapter 229.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1997.)

EDITORIAL NOTES

Effective Date. Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

SUBCHAPTER D—IMPRISONMENT

Section

- 3581. Sentence of imprisonment.
- 3582. Imposition of a sentence of imprisonment.
- 3583. Inclusion of a term of supervised release after imprisonment.
- 3584. Multiple sentences of imprisonment.
- 3585. Calculation of a term of imprisonment.
- 3586. Implementation of a sentence of imprisonment.

SUBCHAPTER D—IMPRISONMENT

§ 3581. Sentence of imprisonment

(a) **In general.**—A defendant who has been found guilty of an offense may be sentenced to a term of imprisonment.

(b) **Authorized terms.**—The authorized terms of imprisonment are—

- (1) for a Class A felony, the duration of the defendant's life or any period of time;
- (2) for a Class B felony, not more than twenty-five years;
- (3) for a Class C felony, not more than twelve years;
- (4) for a Class D felony, not more than six years;
- (5) for a Class E felony, not more than three years;
- (6) for a Class A misdemeanor, not more than one year;
- (7) for a Class B misdemeanor, not more than six months;
- (8) for a Class C misdemeanor, not more than thirty days; and
- (9) for an infraction, not more than five days.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1998.)

EDITORIAL NOTES

Effective Date. Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

§ 3582. Imposition of a sentence of imprisonment

(a) **Factors to be considered in imposing a term of imprisonment.**—The court, in determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term, shall consider the factors set forth in section 3553(a) to the extent that they are applicable, recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation. In determining whether to make a recommendation concerning the type of prison facility appropriate for the defendant, the court shall consider any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2).

(b) **Effect of finality of judgment.**—Notwithstanding the fact that a sentence to imprisonment can subsequently be—

(1) modified pursuant to the provisions of subsection (c);

(2) corrected pursuant to the provisions of rule 35 and section 3742; or

(3) appealed and modified, if outside the guideline range, pursuant to the provisions of section 3742; a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes.

(c) **Modification of an imposed term of imprisonment.**—The court may not modify a term of imprisonment once it has been imposed except that—

(1) in any case—

(A) the court, upon motion of the Director of the Bureau of Prisons, may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that extraordinary and compelling reasons warrant such a reduction and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission; and

(B) the court may modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure; and

(2) in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

(d) **Inclusion of an order to limit criminal association of organized crime and drug offenders.**—The court, in imposing a sentence to a term of imprisonment upon a defendant convicted of a felony set forth in chapter 95 (racketeering) or 96 (racketeer influenced and corrupt organizations) of this title or in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 et seq.), or at any time thereafter upon motion by the Director of the Bureau of Prisons or a United States attorney, may include as a part of the sentence an order that requires that the defendant not associate or communicate with a specified person, other than his attorney, upon a showing of probable cause to believe that association or communication with such person is for the purpose of enabling the defendant to control, manage, direct, finance, or otherwise participate in an illegal enterprise.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1998, amended Pub.L. 100-690, Title VII, § 7107, Nov. 18, 1988, 102 Stat. 4418.)

EDITORIAL NOTES

Effective Date. Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

§ 3583. Inclusion of a term of supervised release after imprisonment

(a) **In general.**—The court, in imposing a sentence to a term of imprisonment for a felony or a misdemeanor, may include as a part of the sentence a requirement that the defendant be placed on a term of

supervised release after imprisonment, except that the court shall include as a part of the sentence a requirement that the defendant be placed on a term of supervised release if such a term is required by statute.

(b) Authorized terms of supervised release.—Except as otherwise provided, the authorized terms of supervised release are—

- (1) for a Class A or Class B felony, not more than five years;
- (2) for a Class C or Class D felony, not more than three years; and
- (3) for a Class E felony, or for a misdemeanor (other than a petty offense), not more than one year.

(c) Factors to be considered in including a term of supervised release.—The court, in determining whether to include a term of supervised release, and, if a term of supervised release is to be included, in determining the length of the term and the conditions of supervised release, shall consider the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), and (a)(6).

(d) Conditions of supervised release.—The court shall order, as an explicit condition of supervised release, that the defendant not commit another Federal, State, or local crime during the term of supervision and that the defendant not possess illegal controlled substances. The court may order, as a further condition of supervised release, to the extent that such condition—

- (1) is reasonably related to the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), and (a)(2)(D);
- (2) involves no greater deprivation of liberty than is reasonably necessary for the purposes set forth in section 3553(a)(2)(B), (a)(2)(C),¹ and (a)(2)(D); and
- (3) is consistent with any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a);

any condition set forth as a discretionary condition of probation in section 3563(b)(1) through (b)(10) and (b)(12) through (b)(20), and any other condition it considers to be appropriate. If an alien defendant is subject to deportation, the court may provide, as a condition of supervised release, that he be deported and remain outside the United States, and may order that he be delivered to a duly authorized immigration official for such deportation.

(e) Modification of conditions or revocation.—The court may, after considering the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), and (a)(6)—

- (1) terminate a term of supervised release and discharge the person released at any time after the expiration of one year of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the person released and the interest of justice;
 - (2) extend a term of supervised release if less than the maximum authorized term was previously imposed, and may modify, reduce, or enlarge the conditions of supervised release, at any time prior to the expiration or termination of the term of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation and the provisions applicable to the initial setting of the terms and conditions of post-release supervision; or
 - (3) revoke a term of supervised release, and require the person to serve in prison all or part of the term of supervised release without credit for time previously served on postrelease supervision, if it finds by a preponderance of the evidence that the person violated a condition of supervised release, pursuant to the provisions of the Federal Rules of Criminal Procedure that are applicable to probation revocation and to the provisions of applicable policy statements issued by the Sentencing Commission, except that a person whose term is revoked under this paragraph may not be required to serve more than 3 years in prison if the offense for which the person was convicted was a Class B felony, or more than 2 years in prison if the offense was a Class C or D felony.
- (5)¹ order the person to remain at his place of residence during nonworking hours and, if the court so directs, to have compliance monitored by telephone or electronic signaling devices, except that an order under this paragraph may be imposed only as an alternative to incarceration.

¹So in original. See Codification note below.

¹So in original. See Codification note below.

(f) Written statement of conditions.—The court shall direct that the probation officer provide the defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, and that is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

(g) Possession of controlled substances.—If the defendant is found by the court to be in the possession of a controlled substance, the court shall terminate the term of supervised release and require the defendant to serve in prison not less than one-third of the term of supervised release.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1999, and amended Pub.L. 99-570, Title I, § 1006(a), Oct. 27, 1986, 100 Stat. 3207-6, 3207-7; Pub.L. 99-646, § 14(a), Nov. 10, 1986, 100 Stat. 3594; Pub.L. 100-182, §§ 8, 9, 12, 25, Dec. 7, 1987, 101 Stat. 1267, 1268, 1272; Pub.L. 100-690, Title VII, §§ 7108, 7303(b), 7305(b), Nov. 18, 1988, 102 Stat. 4418, 4419, 4464-4466.)

EDITORIAL NOTES

Codification. Amendment by section 7108(a)(2) of Pub.L. 100-690 to subsec. (d)(2), which directed that "(a)(2)(C)," be inserted after "(a)(2)(B)," was executed by inserting "(a)(2)(C)," after "(a)(2)(B)" since no comma appears after "(a)(2)(B)".

Amendment by section 7305(b)(2) of Pub.L. 100-690 to subsec. (e) which struck out "or" at the end of par. (3), struck out the period at the end of par. (4) and inserted "; or", and added par. (5) could not be completely executed in view of prior amendment to such provision by section 7108(b) of Pub.L. 100-690 which redesignated former par. (4) as (3) thereby resulting in no par. (4) to be amended.

Amendment by section 14(a)(1) of Pub.L. 99-646 to subsec. (e) catchline duplicates amendment to such subsection catchline made by Pub.L. 99-570, § 1006(a)(3)(A).

Effective Date of 1988 Amendment. Amendment by section 7303(b) of Pub.L. 100-690 applicable with respect to persons whose probation, supervised release, or parole begins after Dec. 31, 1988, see section 7303(d) of Pub.L. 100-690, set out as a note under section 3563 of this title.

"Particular Matter" Defined. Pub.L. 100-446, Title III, § 319, Sept. 27, 1988, 102 Stat. 1826, provided that: "Notwithstanding any other provision of law, hereafter for the purposes of section 208 of title 18, United States Code [this section], 'particular matter', as applied to employees of the Department of the Interior and the Indian Health Service, shall mean 'particular matter involving specific parties'."

Similar provisions were contained in the following prior Appropriations Acts:

Pub.L. 100-202, § 101(g) [Title III, § 318], Dec. 22, 1987, 101 Stat. 1329-255.

Effective Date of 1987 Amendment. Amendment by Pub.L. 100-182 applicable with respect to offenses committed after enactment of Pub.L. 100-182, which was approved Dec. 7, 1987, see section 26 of Pub.L. 100-182, set out as a note under section 3006A of this title.

Effective Date of 1986 Amendment. Section 14(b) of Pub.L. 99-646 provided that: "The amendments made by this section [amending subsec. (e) of this section] shall take effect on the date of the taking effect of section 3583 of title 18, United States Code [this section]."

Section 1006(a)(4) of Pub.L. 99-570 provided that: "The amendments made by this subsection [amending this section] shall take effect on the date of the taking effect of section 3583 of title 18, United States Code [this section]."

Effective Date. Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

§ 3584. Multiple sentences of imprisonment

(a) **Imposition of concurrent or consecutive terms.**—If multiple terms of imprisonment are imposed on a defendant at the same time, or if a term of imprisonment is imposed on a defendant who is already subject to an undischarged term of imprisonment, the terms may run concurrently or consecutively, except that the terms may not run consecutively for an attempt and for another offense that was the sole objective of the attempt. Multiple terms of imprisonment imposed at the same time run concurrently unless the court orders or the statute mandates that the terms are to run consecutively. Multiple terms of imprisonment imposed at different times run consecutively unless the court orders that the terms are to run concurrently.

(b) **Factors to be considered in imposing concurrent or consecutive terms.**—The court, in determining whether the terms imposed are to be ordered to run concurrently or consecutively, shall consider, as to each offense for which a term of imprisonment is being imposed, the factors set forth in section 3553(a).

(c) **Treatment of multiple sentence as an aggregate.**—Multiple terms of imprisonment ordered to run consecutively or concurrently shall be treated for administrative purposes as a single, aggregate term of imprisonment.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2000.)

EDITORIAL NOTES

Effective Date. Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

§ 3585. Calculation of a term of imprisonment

(a) **Commencement of sentence.**—A sentence to a term of imprisonment commences on the date the defendant is received in custody awaiting transportation to, or arrives voluntarily to commence service of sentence at, the official detention facility at which the sentence is to be served.

(b) **Credit for prior custody.**—A defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences—

(1) as a result of the offense for which the sentence was imposed; or

(2) as a result of any other charge for which the defendant was arrested after the commission of the offense for which the sentence was imposed;

that has not been credited against another sentence.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2001.)

EDITORIAL NOTES

Effective Date. Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

§ 3586. Implementation of a sentence of imprisonment

The implementation of a sentence of imprisonment is governed by the provisions of subchapter C of chapter 229 and, if the sentence includes a term of supervised release, by the provisions of subchapter A of chapter 229.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2001.)

EDITORIAL NOTES

Effective Date. Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

CHAPTER 229¹—POSTSENTENCE ADMINISTRATION

SUBCHAPTER C—IMPRISONMENT

Section

- 3621. Imprisonment of a convicted person.
- 3622. Temporary release of a prisoner.
- 3623. Transfer of a prisoner to State authority.
- 3624. Release of a prisoner.
- 3625. Inapplicability of the Administrative Procedure Act.

SUBCHAPTER C—IMPRISONMENT

§ 3621. Imprisonment of a convicted person

(a) **Commitment to custody of Bureau of Prisons.**—A person who has been sentenced to a term of imprisonment pursuant to the provisions of subchapter D of chapter 227 shall be committed to the custody of the Bureau of Prisons until the expiration of the term imposed, or until earlier released for satisfactory behavior pursuant to the provisions of section 3624.

(b) **Place of imprisonment.**—The Bureau of Prisons shall designate the place of the prisoner's imprisonment. The Bureau may designate any available penal or correctional facility that meets minimum standards of health and habitability established by the Bureau, whether maintained by the Federal Government or otherwise and whether within or without the judicial district in which the person was convicted, that the Bureau determines to be appropriate and suitable, considering—

- (1) the resources of the facility contemplated;
- (2) the nature and circumstances of the offense;
- (3) the history and characteristics of the prisoner;
- (4) any statement by the court that imposed the sentence—

(A) concerning the purposes for which the sentence to imprisonment was determined to be warranted; or

(B) recommending a type of penal or correctional facility as appropriate; and

- (5) any pertinent policy statement issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28.

The Bureau may at any time, having regard for the same matters, direct the transfer of a prisoner from one penal or correctional facility to another.

(c) **Delivery of order of commitment.**—When a prisoner, pursuant to a court order, is placed in the custody of a person in charge of a penal or correctional facility, a copy of the order shall be delivered to such person as evidence of this authority to hold the prisoner, and the original order, with the return endorsed thereon, shall be returned to the court that issued it.

(d) **Delivery of prisoner for court appearances.**—The United States marshal shall, without charge, bring a prisoner into court or return him to a prison facility on order of a court of the United States or on written request of an attorney for the Government.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2007.)

¹Another chapter 229 "FINES, PENALTIES, AND FORFEITURES" (§§ 3611 to 3624) was repealed, effective Nov. 1, 1987.

EDITORIAL NOTES

Effective Date. Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

§ 3622. Temporary release of a prisoner

The Bureau of Prisons may release a prisoner from the place of his imprisonment for a limited period if such release appears to be consistent with the purpose for which the sentence was imposed and any pertinent policy statement issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2), if such release otherwise appears to be consistent with the public interest and if there is reasonable cause to believe that a prisoner will honor the trust to be imposed in him, by authorizing him, under prescribed conditions, to—

(a) visit a designated place for a period not to exceed thirty days, and then return to the same or another facility, for the purpose of—

- (1) visiting a relative who is dying;
- (2) attending a funeral of a relative;
- (3) obtaining medical treatment not otherwise available;
- (4) contacting a prospective employer;
- (5) establishing or reestablishing family or community ties; or
- (6) engaging in any other significant activity consistent with the public interest;

(b) participate in a training or educational program in the community while continuing in official detention at the prison facility; or

(c) work at paid employment in the community while continuing in official detention at the penal or correctional facility if—

- (1) the rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the community; and
- (2) the prisoner agrees to pay to the Bureau such costs incident to official detention as the Bureau finds appropriate and reasonable under all the circumstances, such costs to be collected by the Bureau and deposited in the Treasury to the credit of the appropriation available for such costs at the time such collections are made.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2007.)

EDITORIAL NOTES

Effective Date. Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

§ 3623. Transfer of a prisoner to State authority

The Director of the Bureau of Prisons shall order that a prisoner who has been charged in an indictment or information with, or convicted of, a State felony, be transferred to an official detention facility within such State prior to his release from a Federal prison facility if—

- (1) the transfer has been requested by the Governor or other executive authority of the State;
- (2) the State has presented to the Director a certified copy of the indictment, information, or judgment of conviction; and
- (3) the Director finds that the transfer would be in the public interest.

If more than one request is presented with respect to a prisoner, the Director shall determine which request should receive preference. The expenses of such transfer shall be borne by the State requesting the

transfer.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2008.)

EDITORIAL NOTES

Effective Date. Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

§ 3624. Release of a prisoner

(a) **Date of release.**—A prisoner shall be released by the Bureau of Prisons on the date of the expiration of his term of imprisonment, less any time credited toward the service of his sentence as provided in subsection (b). If the date for a prisoner's release falls on a Saturday, a Sunday, or a legal holiday at the place of confinement, the prisoner may be released by the Bureau on the last preceding weekday.

(b) **Credit toward service of sentence for satisfactory behavior.**—A prisoner who is serving a term of imprisonment of more than one year, other than a term of imprisonment for the duration of his life, shall receive credit toward the service of his sentence, beyond the time served, of fifty-four days at the end of each year of his term of imprisonment, beginning at the end of the first year of the term, unless the Bureau of Prisons determines that, during that year, he has not satisfactorily complied with such institutional disciplinary regulations as have been approved by the Attorney General and issued to the prisoner. If the Bureau determines that, during that year, the prisoner has not satisfactorily complied with such institutional regulations, he shall receive no such credit toward service of his sentence or shall receive such lesser credit as the Bureau determines to be appropriate. The Bureau's determination shall be made within fifteen days after the end of each year of the sentence. Such credit toward service of sentence vests at the time that it is received. Credit that has vested may not later be withdrawn, and credit that has not been earned may not later be granted. Credit for the last year or portion of a year of the term of imprisonment shall be prorated and credited within the last six weeks of the sentence.

(c) **Pre-release custody.**—The Bureau of Prisons shall, to the extent practicable, assure that a prisoner serving a term of imprisonment spends a reasonable part, not to exceed six months, of the last 10 per centum of the term to be served under conditions that will afford the prisoner a reasonable opportunity to adjust to and prepare for his re-entry into the community. The United States Probation System shall, to the extent practicable, offer assistance to a prisoner during such pre-release custody.

(d) **Allotment of clothing, funds, and transportation.**—Upon the release of a prisoner on the expiration of his term of imprisonment, the Bureau of Prisons shall furnish him with—

- (1) suitable clothing;
- (2) an amount of money, not more than \$500, determined by the Director to be consistent with the needs of the offender and the public interest, unless the Director determines that the financial position of the offender is such that no sum should be furnished; and
- (3) transportation to the place of his conviction, to his bona fide residence within the United States, or to such other place within the United States as may be authorized by the Director.

(e) **Supervision after release.**—A prisoner whose sentence includes a term of supervised release after imprisonment shall be released by the Bureau of Prisons to the supervision of a probation officer who shall, during the term imposed, supervise the person released to the degree warranted by the conditions specified by the sentencing court. The term of supervised release commences on the day the person is released from imprisonment and runs concurrently with any Federal, State, or local term of probation or supervised release or parole for another offense to which the person is subject or becomes subject during the term of supervised release. A term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days. No prisoner shall be released on supervision unless such prisoner agrees to adhere to an installment schedule, not to exceed two years except in special circumstances, to pay for any fine imposed for the offense committed by such prisoner.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2008, and amended Pub.L. 99-646, §§ 16(a), 17(a), Nov. 10, 1986, 100 Stat. 3595.)

EDITORIAL NOTES

Effective Date of 1986 Amendment. Section 16(b) of Pub.L. 99-646 provided that: "The amendment made by this section [amending subsec. (b) of this section] shall take effect on the date of the taking effect of such section 3624 [this section]."

Section 17(a) of Pub.L. 99-646 provided that: "The amendment made by this section [amending subsec. (e) of this section] shall take effect on the date of the taking effect of such section 3624 [this section]."

Effective Date. Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

§ 3625. Inapplicability of the Administrative Procedure Act

The provisions of sections 554 and 555 and 701 through 706 of title 5, United States Code, do not apply to the making of any determination, decision, or order under this subchapter.

(Added Pub.L. 98-473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2010.)

EDITORIAL NOTES

Effective Date. Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

CHAPTER 235—APPEAL

§ 3742. Review of a sentence

(a) Appeal by a defendant.—A defendant may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence—

- (1) was imposed in violation of law;
- (2) was imposed as a result of an incorrect application of the sentencing guidelines; or
- (3) is greater than the sentence specified in the applicable guideline range to the extent that the sentence includes a greater fine or term of imprisonment, probation, or supervised release than the maximum established in the guideline range, or includes a more limiting condition of probation or supervised release under section 3563(b)(6) or (b)(11) than the maximum established in the guideline range; or
- (4) was imposed for an offense for which there is no sentencing guideline and is plainly unreasonable.

(b) Appeal by the Government.—The Government, with the personal approval of the Attorney General or Solicitor General, may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence—

- (1) was imposed in violation of law;
- (2) was imposed as a result of an incorrect application of the sentencing guidelines;
- (3) is less than the sentence specified in the applicable guideline range to the extent that the sentence includes a lesser fine or term of imprisonment, probation, or supervised release than the minimum established in the guideline range, or includes a less limiting condition of probation or supervised release under section 3563(b)(6) or (b)(11) than the minimum established in the guideline range; or
- (4) was imposed for an offense for which there is no sentencing guideline and is plainly unreasonable.

(c) **Plea agreements.**—In the case of a plea agreement that includes a specific sentence under rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure—

(1) a defendant may not file a notice of appeal under paragraph (3) or (4) of subsection (a) unless the sentence imposed is greater than the sentence set forth in such agreement; and

(2) the Government may not file a notice of appeal under paragraph (3) or (4) of subsection (b) unless the sentence imposed is less than the sentence set forth in such agreement.

(d) **Record on review.**—If a notice of appeal is filed in the district court pursuant to subsection (a) or (b), the clerk shall certify to the court of appeals—

(1) that portion of the record in the case that is designated as pertinent by either of the parties;

(2) the presentence report; and

(3) the information submitted during the sentencing proceeding.

(e) **Consideration.**—Upon review of the record, the court of appeals shall determine whether the sentence—

(1) was imposed in violation of law;

(2) was imposed as a result of an incorrect application of the sentencing guidelines;

(3) is outside of the applicable guideline range, and is unreasonable, having regard for—

(A) the factors to be considered in imposing a sentence, as set forth in chapter 227 of this title; and
(B) the reasons for the imposition of the particular sentence, as stated by the district court pursuant to the provisions of section 3553(c); or

(4) was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable.

The court of appeals shall give due regard to the opportunity of the district court to judge the credibility of the witnesses, and shall accept the findings of fact of the district court unless they are clearly erroneous and shall give due deference to the district court's application of the guidelines to the facts.

(f) **Decision and disposition.**—If the court of appeals determines that the sentence—

(1) was imposed in violation of law or imposed as a result of an incorrect application of the sentencing guidelines, the court shall remand the case for further sentencing proceedings with such instructions as the court considers appropriate;

(2) is outside the applicable guideline range and is unreasonable or was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable, it shall state specific reasons for its conclusions and—

(A) if it determines that the sentence is too high and the appeal has been filed under subsection (a), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate;

(B) if it determines that the sentence is too low and the appeal has been filed under subsection (b), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate;

(3) is not described in paragraph (1) or (2), it shall affirm the sentence.

(g) **Application to a sentence by a magistrate.**—An appeal of an otherwise final sentence imposed by a United States magistrate may be taken to a judge of the district court, and this section shall apply as though the appeal were to a court of appeals from a sentence imposed by a district court.

(h) **Guideline not expressed as a range.**—For the purpose of this section, the term "guideline range" includes a guideline range having the same upper and lower limits.

(Added Pub.L. 98-473, Title II, § 213(a), Oct. 12, 1984, 98 Stat. 2011, and amended Pub.L. 99-646, § 73(a), Nov. 10, 1986, 100 Stat. 3617; Pub.L. 100-182, §§ 4-6, Dec. 7, 1987, 101 Stat. 1266, 1267; Pub.L. 100-690, Title VII, § 7103(a), Nov. 18, 1988, 102 Stat. 4416, 4417.)

EDITORIAL NOTES

References in Text. The Federal Rules of Criminal Procedure, referred to in subsec. (c), are set out in the front of this volume.

Effective Date of 1987 Amendment. Amendment by Pub.L. 100-182 applicable with respect to offenses

committed after enactment of Pub.L. 100-182, which was approved Dec. 7, 1987, see section 26 of Pub.L. 100-182, set out as a note under section 3006A of this title.

Effective Date. Section effective on the first day of first calendar month beginning thirty six months after Oct. 12, 1984, applicable only to offenses committed after taking effect of sections 211 to 239 of Pub.L. 98-473, and except as otherwise provided for therein, see section 235 of Pub.L. 98-473, as amended, set out as a note under section 3551 of this title.

CHAPTER 58—UNITED STATES SENTENCING COMMISSION

Section

- 991. United States Sentencing Commission; establishment and purposes.
- 992. Terms of office; compensation.
- 993. Powers and duties of Chairman.
- 994. Duties of the Commission.
- 995. Powers of the Commission.
- 996. Director and staff.
- 997. Annual report.
- 998. Definitions.

§ 991. United States Sentencing Commission; establishment and purposes

(a) There is established as an independent commission in the judicial branch of the United States a United States Sentencing Commission which shall consist of seven voting members and one nonvoting member. The President, after consultation with representatives of judges, prosecuting attorneys, defense attorneys, law enforcement officials, senior citizens, victims of crime, and others interested in the criminal justice process, shall appoint the voting members of the Commission, by and with the advice and consent of the Senate, one of whom shall be appointed, by and with the advice and consent of the Senate, as the Chairman. At least three of the members shall be Federal judges selected after considering a list of six judges recommended to the President by the Judicial Conference of the United States. Not more than four of the members of the Commission shall be members of the same political party. The Attorney General, or his designee, shall be an ex officio, nonvoting member of the Commission. The Chairman and members of the Commission shall be subject to removal from the Commission by the President only for neglect of duty or malfeasance in office or for other good cause shown.

(b) The purposes of the United States Sentencing Commission are to—

(1) establish sentencing policies and practices for the Federal criminal justice system that—

(A) assure the meeting of the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code;

(B) provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices; and

(C) reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process; and

(2) develop means of measuring the degree to which the sentencing, penal, and correctional practices are effective in meeting the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

(Added Pub.L. 98-473, Title II, § 217(a), Oct. 12, 1984, 98 Stat. 2017, and amended Pub.L. 99-22, § 1(1), Apr. 15, 1985, 99 Stat. 46.)

§ 992. Terms of office; compensation

(a) The voting members of the United States Sentencing Commission shall be appointed for six-year terms, except that the initial terms of the first members of the Commission shall be staggered so that—

- (1) two members, including the Chairman, serve terms of six years;
- (2) three members serve terms of four years; and
- (3) two members serve terms of two years.

(b) No voting member may serve more than two full terms. A voting member appointed to fill a vacancy that occurs before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.

(c) The Chairman of the Commission shall hold a full-time position and shall be compensated during the term of office at the annual rate at which judges of the United States courts of appeals are compensated. The voting members of the Commission, other than the Chairman, shall hold full-time positions until the end of the first six years after the sentencing guidelines go into effect pursuant to section 235(a)(1)(B)(ii) of the Sentencing Reform Act of 1984, and shall be compensated at the annual rate at which judges of the United States courts of appeals are compensated. Thereafter, the voting members of the commission, other than the Chairman, shall hold part-time positions and shall be paid at the daily rate at which judges of the United States courts of appeals are compensated. A Federal judge may serve as a member of the Commission without resigning his appointment as a Federal judge.

(d) Sections 44(c) and 134(b) of this title (relating to the residence of judges) do not apply to any judge holding a full-time position on the Commission under subsection (c) of this section.

(Added Pub.L. 98-473, Title II, § 217(a), Oct. 12, 1984, 98 Stat. 2018, and amended Pub.L. 99-646, §§ 4, 6(a), Nov. 10, 1986, 100 Stat. 3592.)

EDITORIAL NOTES

References in Text. Section 235(a)(1)(B)(ii) of the Sentencing Reform Act of 1984, referred to in subsec. (c) is set out as a note under section 3551 of Title 18, Crimes and Criminal Procedure.

§ 993. Powers and duties of Chairman

The Chairman shall—

(a) call and preside at meetings of the Commission, which shall be held for at least two weeks in each quarter after the members of the Commission hold part-time positions; and

(b) direct—

- (1) the preparation of requests for appropriations for the Commission; and
- (2) the use of funds made available to the Commission.

(Added Pub.L. 98-473, Title II, § 217(a), Oct. 12, 1984, 98 Stat. 2019, and amended Pub.L. 99-22, § 1(2), Apr. 15, 1985, 99 Stat. 46; Pub.L. 99-646, § 5, Nov. 10, 1986, 100 Stat. 3592.)

§ 994. Duties of the Commission

(a) The Commission, by affirmative vote of at least four members of the Commission, and pursuant to its rules and regulations and consistent with all pertinent provisions of this title and title 18, United States Code, shall promulgate and distribute to all courts of the United States and to the United States Probation System—

(1) guidelines, as described in this section, for use of a sentencing court in determining the sentence to be imposed in a criminal case, including—

(A) a determination whether to impose a sentence to probation, a fine, or a term of imprisonment;

(B) a determination as to the appropriate amount of a fine or the appropriate length of a term of probation or a term of imprisonment;

(C) a determination whether a sentence to a term of imprisonment should include a requirement that the defendant be placed on a term of supervised release after imprisonment, and, if so, the

appropriate length of such a term;

(D) a determination whether multiple sentences to terms of imprisonment should be ordered to run concurrently or consecutively; and

(E) a determination under paragraphs (6) and (11) of section 3563(b) of title 18;

(2) general policy statements regarding application of the guidelines or any other aspect of sentencing or sentence implementation that in the view of the Commission would further the purposes set forth in section 3553(a)(2) of title 18, United States Code, including the appropriate use of—

(A) the sanctions set forth in sections 3554, 3555, and 3556 of title 18;

(B) the conditions of probation and supervised release set forth in sections 3563(b) and 3583(d) of title 18;

(C) the sentence modification provisions set forth in sections 3563(c), 3564, 3573, and 3582(c) of title 18;

(D) the fine imposition provisions set forth in section 3572 of title 18;

(E) the authority granted under rule 11(e)(2) of the Federal Rules of Criminal Procedure to accept or reject a plea agreement entered into pursuant to rule 11(e)(1); and

(F) the temporary release provisions set forth in section 3622 of title 18, and the prerelease custody provisions set forth in section 3624(c) of title 18; and

(3) guidelines or general policy statements regarding the appropriate use of the provisions for revocation of probation set forth in section 3565 of title 18, and the provisions for modification of the term or conditions of supervised release and revocation of supervised release set forth in section 3583(e) of title 18.

(b)(1) The Commission, in the guidelines promulgated pursuant to subsection (a)(1), shall, for each category of offense involving each category of defendant, establish a sentencing range that is consistent with all pertinent provisions of title 18, United States Code.

(2) If a sentence specified by the guidelines includes a term of imprisonment, the maximum of the range established for such a term shall not exceed the minimum of that range by more than the greater of 25 percent or 6 months, except that, if the minimum term of the range is 30 years or more, the maximum may be life imprisonment.

(c) The Commission, in establishing categories of offenses for use in the guidelines and policy statements governing the imposition of sentences of probation, a fine, or imprisonment, governing the imposition of other authorized sanctions, governing the size of a fine or the length of a term of probation, imprisonment, or supervised release, and governing the conditions of probation, supervised release, or imprisonment, shall consider whether the following matters, among others, have any relevance to the nature, extent, place of service, or other incidents¹ of an appropriate sentence, and shall take them into account only to the extent that they do have relevance—

(1) the grade of the offense;

(2) the circumstances under which the offense was committed which mitigate or aggravate the seriousness of the offense;

(3) the nature and degree of the harm caused by the offense, including whether it involved property, irreplaceable property, a person, a number of persons, or a breach of public trust;

(4) the community view of the gravity of the offense;

(5) the public concern generated by the offense;

(6) the deterrent effect a particular sentence may have on the commission of the offense by others; and

(7) the current incidence of the offense in the community and in the Nation as a whole.

(d) The Commission in establishing categories of defendants for use in the guidelines and policy statements governing the imposition of sentences of probation, a fine, or imprisonment, governing the imposition of other authorized sanctions, governing the size of a fine or the length of a term of probation, imprisonment, or supervised release, and governing the conditions of probation, supervised release, or imprisonment, shall consider whether the following matters, among others with respect to a defendant, have any relevance to the nature, extent, place of service, or other incidents¹ of an appropriate sentence, and shall

¹So in original. Probably should be "incidence".

¹So in original. Probably should be "incidence".

take them into account only to the extent that they do have relevance—

- (1) age;
- (2) education;
- (3) vocational skills;
- (4) mental and emotional condition to the extent that such condition mitigates the defendant's culpability or to the extent that such condition is otherwise plainly relevant;
- (5) physical condition, including drug dependence;
- (6) previous employment record;
- (7) family ties and responsibilities;
- (8) community ties;
- (9) role in the offense;
- (10) criminal history; and
- (11) degree of dependence upon criminal activity for a livelihood.

The Commission shall assure that the guidelines and policy statements are entirely neutral as to the race, sex, national origin, creed, and socioeconomic status of offenders.

(e) The Commission shall assure that the guidelines and policy statements, in recommending a term of imprisonment or length of a term of imprisonment, reflect the general inappropriateness of considering the education, vocational skills, employment record, family ties and responsibilities, and community ties of the defendant.

(f) The Commission, in promulgating guidelines pursuant to subsection (a)(1), shall promote the purposes set forth in section 991(b)(1), with particular attention to the requirements of subsection 991(b)(1)(B) for providing certainty and fairness in sentencing and reducing unwarranted sentence disparities.

(g) The Commission, in promulgating guidelines pursuant to subsection (a)(1) to meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code, shall take into account the nature and capacity of the penal, correctional, and other facilities and services available, and shall make recommendations concerning any change or expansion in the nature or capacity of such facilities and services that might become necessary as a result of the guidelines promulgated pursuant to the provisions of this chapter. The sentencing guidelines prescribed under this chapter shall be formulated to minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons, as determined by the Commission.

(h) The Commission shall assure that the guidelines specify a sentence to a term of imprisonment at or near the maximum term authorized for categories of defendants in which the defendant is eighteen years old or older and—

- (1) has been convicted of a felony that is—
 - (A) a crime of violence; or
 - (B) an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), sections 1002(a), 1005, and 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, and 959), and section 1 of the Act of September 15, 1980 (21 U.S.C. 955a); and
- (2) has previously been convicted of two or more prior felonies, each of which is—
 - (A) a crime of violence; or
 - (B) an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), sections 1002(a), 1005, and 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, and 959), and section 1 of the Act of September 15, 1980 (21 U.S.C. 955a).

(i) The Commission shall assure that the guidelines specify a sentence to a substantial term of imprisonment for categories of defendants in which the defendant—

- (1) has a history of two or more prior Federal, State, or local felony convictions for offenses committed on different occasions;
- (2) committed the offense as part of a pattern of criminal conduct from which he derived a substantial portion of his income;
- (3) committed the offense in furtherance of a conspiracy with three or more persons engaging in a pattern of racketeering activity in which the defendant participated in a managerial or supervisory capacity;
- (4) committed a crime of violence that constitutes a felony while on release pending trial, sentence, or appeal from a Federal, State, or local felony for which he was ultimately convicted; or

(5) committed a felony that is set forth in section 401 or 1010 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 841 and 960), and that involved trafficking in a substantial quantity of a controlled substance.

(j) The Commission shall insure that the guidelines reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense, and the general appropriateness of imposing a term of imprisonment on a person convicted of a crime of violence that results in serious bodily injury.

(k) The Commission shall insure that the guidelines reflect the inappropriateness of imposing a sentence to a term of imprisonment for the purpose of rehabilitating the defendant or providing the defendant with needed educational or vocational training, medical care, or other correctional treatment.

(l) The Commission shall insure that the guidelines promulgated pursuant to subsection (a)(1) reflect—

(1) the appropriateness of imposing an incremental penalty for each offense in a case in which a defendant is convicted of—

(A) multiple offenses committed in the same course of conduct that result in the exercise of ancillary jurisdiction over one or more of the offenses; and

(B) multiple offenses committed at different times, including those cases in which the subsequent offense is a violation of section 3146 (penalty for failure to appear) or is committed while the person is released pursuant to the provisions of section 3147 (penalty for an offense committed while on release) of title 18; and

(2) the general inappropriateness of imposing consecutive terms of imprisonment for an offense of conspiring to commit an offense or soliciting commission of an offense and for an offense that was the sole object of the conspiracy or solicitation.

(m) The Commission shall insure that the guidelines reflect the fact that, in many cases, current sentences do not accurately reflect the seriousness of the offense. This will require that, as a starting point in its development of the initial sets of guidelines for particular categories of cases, the Commission ascertain the average sentences imposed in such categories of cases prior to the creation of the Commission, and in cases involving sentences to terms of imprisonment, the length of such terms actually served. The Commission shall not be bound by such average sentences, and shall independently develop a sentencing range that is consistent with the purposes of sentencing described in section 3553(a)(2) of Title 18, United States Code.

(n) The Commission shall assure that the guidelines reflect the general appropriateness of imposing a lower sentence than would otherwise be imposed, including a sentence that is lower than that established by statute as a minimum sentence, to take into account a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense.

(o) The Commission periodically shall review and revise, in consideration of comments and data coming to its attention, the guidelines promulgated pursuant to the provisions of this section. In fulfilling its duties and in exercising its powers, the Commission shall consult with authorities on, and individual and institutional representatives of, various aspects of the Federal criminal justice system. The United States Probation System, the Bureau of Prisons, the Judicial Conference of the United States, the Criminal Division of the United States Department of Justice, and a representative of the Federal Public Defenders shall submit to the Commission any observations, comments, or questions pertinent to the work of the Commission whenever they believe such communication would be useful, and shall, at least annually, submit to the Commission a written report commenting on the operation of the Commission's guidelines, suggesting changes in the guidelines that appear to be warranted, and otherwise assessing the Commission's work.

(p) The Commission, at or after the beginning of a regular session of Congress, but not later than the first day of May, may promulgate under subsection (a) of this section and submit to Congress amendments to the guidelines and modifications to previously submitted amendments that have not taken effect, including modifications to the effective dates of such amendments. Such an amendment or modification shall be accompanied by a statement of the reasons therefor and shall take effect on a date specified by the Commission, which shall be no earlier than 180 days after being so submitted and no later than the first day of November of the calendar year in which the amendment or modification is submitted, except to the extent that the effective date is revised or the amendment is otherwise modified or disapproved by Act of Congress.

(q) The Commission and the Bureau of Prisons shall submit to Congress an analysis and recommendations concerning maximum utilization of resources to deal effectively with the Federal prison population. Such report shall be based upon consideration of a variety of alternatives, including—

- (1) modernization of existing facilities;
- (2) inmate classification and periodic review of such classification for use in placing inmates in the least restrictive facility necessary to ensure adequate security; and
- (3) use of existing Federal facilities, such as those currently within military jurisdiction.

(r) The Commission, not later than two years after the initial set of sentencing guidelines promulgated under subsection (a) goes into effect, and thereafter whenever it finds it advisable, shall recommend to the Congress that it raise or lower the grades, or otherwise modify the maximum penalties, of those offenses for which such an adjustment appears appropriate.

(s) The Commission shall give due consideration to any petition filed by a defendant requesting modification of the guidelines utilized in the sentencing of such defendant, on the basis of changed circumstances unrelated to the defendant, including changes in—

- (1) the community view of the gravity of the offense;
- (2) the public concern generated by the offense; and
- (3) the deterrent effect particular sentences may have on the commission of the offense by others.

(t) The Commission, in promulgating general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A) of title 18, shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples. Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.

(u) If the Commission reduces the term of imprisonment recommended in the guidelines applicable to a particular offense or category of offenses, it shall specify in what circumstances and by what amount the sentences of prisoners serving terms of imprisonment for the offense may be reduced.

(v) The Commission shall ensure that the general policy statements promulgated pursuant to subsection (a)(2) include a policy limiting consecutive terms of imprisonment for an offense involving a violation of a general prohibition and for an offense involving a violation of a specific prohibition encompassed within the general prohibition.

(w) The appropriate judge or officer shall submit to the Commission in connection with each sentence imposed (other than a sentence imposed for a petty offense, as defined in title 18, for which there is no applicable sentencing guidelines) a written report of the sentence, the offense for which it is imposed, the age, race, and sex of the offender, information regarding factors made relevant by the guidelines, and such other information as the Commission finds appropriate. The Commission shall submit to Congress at least annually an analysis of these reports and any recommendations for legislation that the Commission concludes is warranted by that analysis.

(x) The provisions of section 553 of title 5, relating to publication in the Federal Register and public hearing procedure, shall apply to the promulgation of guidelines pursuant to this section.

(Added Pub.L. 98-473, Title II, § 217(a), Oct. 12, 1984, 98 Stat. 2019, and amended Pub.L. 99-217, § 3, Dec. 26, 1985, 99 Stat. 1728; Pub.L. 99-363, § 2, July 11, 1986, 100 Stat. 770; Pub.L. 99-570, Title I, §§ 1006(b), 1008, Oct. 27, 1986, 100 Stat. 3214; Pub.L. 99-646, §§ 6(b), 56, Nov. 10, 1986, 100 Stat. 3592, 3611; Pub.L. 100-182, §§ 16(b), 23, Dec. 7, 1987, 101 Stat. 1269, 1271; Pub.L. 100-690, Title VII, §§ 7083, 7103(b), 7109, Nov. 18, 1988, 102 Stat. 4408, 4418, 4419).

EDITORIAL NOTES

References in Text. The Federal Rules of Criminal Procedure, referred to in subsec. (a)(2)(E), are set out in Title 18, Crimes and Criminal Procedure.

Section 1 of the Act of September 15, 1980 (21 U.S.C. 955a), referred to in subsec. (h)(1)(B), (2)(B), was classified to section 955a of Title 21, Food and Drugs, prior to the general amendment of Act September 15, 1980, by Pub.L. 99-570, Title III, § 3202, Oct. 27, 1986, 100 Stat. 3207-95, and Pub.L. 99-640, § 17, Nov.

10, 1986, 100 Stat. 3552, which restated the provisions of former section 1 of Act September 15, 1980, in the new section 3 of Act September 15, 1980, which is classified to section 1903 of Title 46, Appendix, Shipping. For complete classification of this Act to the Code, see section 1901 of Title 46, Appendix, and Tables volume.

Codification. Amendment by Pub.L. 99-646 to subsec. (t) of this section has been executed to subsec. (u) as the probable intent of Congress in view of redesignation of subsec. (t) as (u) by Pub.L. 99-570.

Penalties For Importation of Controlled Substances by Aircraft and Other Vessels; Promulgation of Sentencing Guidelines. Section 6453 of Pub.L. 100-690 provided that:

"(a) **In general.**—Pursuant to its authority under section 994(p) of title 28, United States Code [subsec. (p) of this section], and section 21 of the Sentencing Act of 1987 [section 21 of Pub.L. 100-182, set out as a note under this section], the United States Sentencing Commission shall promulgate guidelines, or shall amend existing guidelines, to provide that a defendant convicted of violating section 1010(a) of the Controlled Substances Import and Export Act (21 U.S.C. 960(a)) [section 960(a) of Title 21, Food and Drugs] under circumstances in which—

"(1) an aircraft other than a regularly scheduled commercial air carrier was used to import the controlled substance; or

"(2) the defendant acted as a pilot, copilot, captain, navigator, flight officer, or any other operation officer aboard any craft of vessel carrying a controlled substance. shall be assigned an offense level under chapter 2 of the sentencing guidelines that is—

"(A) two levels greater than the level that would have been assigned had the offense not been committed under circumstances set forth in (A) or (B) above; and

"(B) in no event less than level 26.

"(b) **Effect of amendment.**—If the sentencing guidelines are amended after the effective date of this section [probably means date of enactment of this section, Nov. 18, 1988], the Sentencing Commission shall implement the instruction set forth in subsection (a) so as to achieve a comparable result."

Enhanced Penalties For Offenses Involving Children; Promulgation of Sentencing Guidelines. Section 6454 of Pub.L. 100-690 provided that:

"(a) **In general.**—Pursuant to its authority under section 994(p) of title 28, United States Code [subsec. (p) of this section], and section 21 of the Sentencing Act of 1987 [section 21 of Pub.L. 100-182, set out as a note under this section], the United States Sentencing Commission shall promulgate guidelines, or shall amend existing guidelines, to provide that a defendant convicted of violating sections 405, 405A, or 405B of the Controlled Substances Act (21 U.S.C. 845, 845a or 845b) [sections 845, 845a, and 845b of Title 21, Food and Drugs] involving a person under 18 years of age shall be assigned an offense level under chapter 2 of the sentencing guidelines that is—

"(1) two levels greater than the level that would have been assigned for the underlying controlled substance offense; and

"(2) in no event less than level 26.

"(b) **Effects of amendment.**—If the sentencing guidelines are amended after the effective date of this section [probably means date of enactment of this section, Nov. 18, 1988], the Sentencing Commission shall implement the instruction set forth in subsection (a) so as to achieve a comparable result.

"(c) **Multiple enhancements.**—The guidelines referred to in subsection (a), as promulgated or amended under such subsection, shall provide that an offense that could be subject to multiple enhancements pursuant to such subsection is subject to not more than one such enhancement."

Drug Offenses Within Federal Prisons; Promulgation of Sentencing Guidelines. Section 6468(c) and (d) of Pub.L. 100-690 provided that:

"(c) Pursuant to its authority under section 994(p) of title 28, United States Code [subsec. (p) of this section], and section 21 of the Sentencing Act of 1987 [section 21 of Pub.L. 100-182, set out as a note under this section], the United States Sentencing Commission shall promulgate guidelines, or shall amend existing

guidelines, to provide that a defendant convicted of violating section 1791(a)(1) of title 18, United States Code [section 1791(a)(1) of Title 18, Crimes and Criminal Procedure], and punishable under section 1791(b)(1) of that title [section 1791(b)(1) of Title 18] as so redesignated, shall be assigned an offense level under chapter 2 of the sentencing guidelines that is—

"(1) two levels greater than the level that would have been assigned had the offense not been committed in prison; and

"(2) in no event less than level 26.

"(d) If the sentencing guidelines are amended after the effective date of this section [probably means the date of enactment of this section, Nov. 18, 1988], the Sentencing Commission shall implement the instruction set forth in subsection (c) so as to achieve a comparable result."

Common Carrier Operation Under Influence of Alcohol or Drugs; Promulgation of Sentencing Guidelines. Section 6482(c) of Pub.L. 100-690 provided that:

"(1) Pursuant to its authority under section 994(p) of title 28, United States Code [subsec. (p) of this section], and section 21 of the Sentencing Act of 1987 [section 21 of Pub.L. 100-182, set out as a note under this section], the United States Sentencing Commission shall promulgate guidelines, or shall amend existing guidelines, to provide that—

"(A) a defendant convicted of violating section 342 of title 18, United States Code [section 342 of Title 18, Crimes and Criminal Procedure], under circumstances in which death results, shall be assigned an offense level under chapter 2 of the sentencing guidelines that is not less than level 26; and

"(B) a defendant convicted of violating section 342 of title 18, United States Code, under circumstances in which serious bodily injury results, shall be assigned an offense level under chapter 2 of the sentencing guidelines that is not less than level 21.

"(2) If the sentencing guidelines are amended after the effective date of this section [probably means date of enactment of this section, Nov. 18, 1988], the Sentencing Commission shall implement the instruction set forth in paragraph (1) so as to achieve a comparable result."

Emergency Guidelines Promulgation Authority. Section 21 of Pub.L. 100-182 provided that:

"(a) **In general.**—In the case of—

"(1) an invalidated sentencing guideline;

"(2) the creation of a new offense or amendment of an existing offense; or

"(3) any other reason relating to the application of a previously established sentencing guideline, and determined by the United States Sentencing Commission to be urgent and compelling;

the Commission, by affirmative vote of at least four members of the Commission, and pursuant to its rules and regulations and consistent with all pertinent provisions of title 28 and title 18, United States Code, shall promulgate and distribute to all courts of the United States and to the United States Probation System a temporary guideline or amendment to an existing guideline, to remain in effect until and during the pendency of the next report to Congress under section 994(p) of title 28, United States Code [subsec. (p) of this section].

"(b) **Expiration of authority.**—The authority of the Commission under paragraphs (1) and (2) of subsection (a) shall expire on November 1, 1989. The authority of the Commission to promulgate and distribute guidelines under paragraph (3) of subsection (a) shall expire on May 1, 1988."

Study of Sentencing Guidelines. Section 236 of Pub.L. 98-473 provided that:

"(a)(1) Four years after the sentencing guidelines promulgated pursuant to section 994(a)(1) [subsec. (a)(1) of this section], and the provisions of sections 3581, 3583, and 3624 of title 18, United States Code, go into effect, the General Accounting Office shall undertake a study of the guidelines in order to determine their impact and compare the guidelines system with the operation of the previous sentencing and parole release system, and, within six months of the undertaking of such study, report to the Congress the results of its study.

"(2) Within one month of the start of the study required under subsection (a), the United States Sentencing Commission shall submit a report to the General Accounting Office, all appropriate courts, the Department of Justice, and the Congress detailing the operation of the sentencing guideline system and discussing any problems with the system or reforms needed. The report shall include an evaluation of the

impact of the sentencing guidelines on prosecutorial discretion, plea bargaining, disparities in sentencing, and the use of incarceration, and shall be issued by affirmative vote of a majority of the voting members of the Commission.

"(b) The Congress shall review the study submitted pursuant to subsection (a) in order to determine—
"(1) whether the sentencing guideline system has been effective;
"(2) whether any changes should be made in the sentencing guideline system; and
"(3) whether the parole system should be reinstated in some form and the life of the Parole Commission extended."

§ 995. Powers of the Commission

(a) The Commission, by vote of a majority of the members present and voting, shall have the power to—

- (1) establish general policies and promulgate such rules and regulations for the Commission as are necessary to carry out the purposes of this chapter;
- (2) appoint and fix the salary and duties of the Staff Director of the Sentencing Commission, who shall serve at the discretion of the Commission and who shall be compensated at a rate not to exceed the highest rate now or hereafter prescribed for Level 6 of the Senior Executive Service Schedule (5 U.S.C. 5382);
- (3) deny, revise, or ratify any request for regular, supplemental, or deficiency appropriations prior to any submission of such request to the Office of Management and Budget by the Chairman;
- (4) procure for the Commission temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code;
- (5) utilize, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, local, and private agencies and instrumentalities with or without reimbursement therefor;
- (6) without regard to 31 U.S.C. 3324, enter into and perform such contracts, leases, cooperative agreements, and other transactions as may be necessary in the conduct of the functions of the Commission, with any public agency, or with any person, firm, association, corporation, educational institution, or nonprofit organization;
- (7) accept and employ, in carrying out the provisions of this title, voluntary and uncompensated services, notwithstanding the provisions of 31 U.S.C. 1342, however, individuals providing such services shall not be considered Federal employees except for purposes of chapter 81 of title 5, United States Code, with respect to job-incurred disability and title 28, United States Code, with respect to tort claims;
- (8) request such information, data, and reports from any Federal agency or judicial officer as the Commission may from time to time require and as may be produced consistent with other law;
- (9) monitor the performance of probation officers with regard to sentencing recommendations, including application of the Sentencing Commission guidelines and policy statements;
- (10) issue instructions to probation officers concerning the application of Commission guidelines and policy statements;
- (11) arrange with the head of any other Federal agency for the performance by such agency of any function of the Commission, with or without reimbursement;
- (12) establish a research and development program within the Commission for the purpose of—
 - (A) serving as a clearinghouse and information center for the collection, preparation, and dissemination of information on Federal sentencing practices; and
 - (B) assisting and serving in a consulting capacity to Federal courts, departments, and agencies in the development, maintenance, and coordination of sound sentencing practices;
- (13) collect systematically the data obtained from studies, research, and the empirical experience of public and private agencies concerning the sentencing process;
- (14) publish data concerning the sentencing process;
- (15) collect systematically and disseminate information concerning sentences actually imposed, and the relationship of such sentences to the factors set forth in section 3553(a) of title 18, United States Code;
- (16) collect systematically and disseminate information regarding effectiveness of sentences imposed;
- (17) devise and conduct, in various geographical locations, seminars and workshops providing continuing studies for persons engaged in the sentencing field;
- (18) devise and conduct periodic training programs of instruction in sentencing techniques for judicial and probation personnel and other persons connected with the sentencing process;
- (19) study the feasibility of developing guidelines for the disposition of juvenile delinquents;

(20) make recommendations to Congress concerning modification or enactment of statutes relating to sentencing, penal, and correctional matters that the Commission finds to be necessary and advisable to carry out an effective, humane and rational sentencing policy;

(21) hold hearings and call witnesses that might assist the Commission in the exercise of its powers or duties;

(22) perform such other functions as are required to permit Federal courts to meet their responsibilities under section 3553(a) of title 18, United States Code, and to permit others involved in the Federal criminal justice system to meet their related responsibilities; and

(23) retain private attorneys to provide legal advice to the Commission in the conduct of its work, or to appear for or represent the Commission in any case in which the Commission is authorized by law to represent itself, or in which the Commission is representing itself with the consent of the Department of Justice; and the Commission may in its discretion pay reasonable attorney's fees to private attorneys employed by it out of its appropriated funds. When serving as officers or employees of the United States, such private attorneys shall be considered special government employees as defined in section 202(a) of title 18; and

(24) grant incentive awards to its employees pursuant to chapter 45 of title 5, United States Code.

(b) The Commission shall have such other powers and duties and shall perform such other functions as may be necessary to carry out the purposes of this chapter, and may delegate to any member or designated person such powers as may be appropriate other than the power to establish general policy statements and guidelines pursuant to section 994(a)(1) and (2), the issuance of general policies and promulgation of rules and regulations pursuant to subsection (a)(1) of this section, and the decisions as to the factors to be considered in establishment of categories of offenses and offenders pursuant to section 994(b). The Commission shall, with respect to its activities under subsections (a)(9), (a)(10), (a)(11), (a)(12), (a)(13), (a)(14), (a)(15), (a)(16), (a)(17), and (a)(18), to the extent practicable, utilize existing resources of the Administrative Office of the United States Courts and the Federal Judicial Center for the purpose of avoiding unnecessary duplication.

(c) Upon the request of the Commission, each Federal agency is authorized and directed to make its services, equipment, personnel, facilities, and information available to the greatest practicable extent to the Commission in the execution of its functions.

(d) A simple majority of the membership then serving shall constitute a quorum for the conduct of business. Other than for the promulgation of guidelines and policy statements pursuant to section 994, the Commission may exercise its powers and fulfill its duties by the vote of a simple majority of the members present.

(e) Except as otherwise provided by law, the Commission shall maintain and make available for public inspection a record of the final vote of each member on any action taken by it.

(Added Pub.L. 98-473, Title II, § 217(a), Oct. 12, 1984, 98 Stat. 2024, and amended Pub.L. 100-690, Title VII, §§ 7104, 7105, 7106(b), Nov. 18, 1988, 102 Stat. 4418.)

EDITORIAL NOTES

References in Text. The provisions of title 28, United States Code, with respect to tort claims, referred to in subsec. (a)(7), are classified generally to section 1346(b) and chapter 171 (section 2671 et seq.) of this title.

§ 996. Director and staff

(a) The Staff Director shall supervise the activities of persons employed by the Commission and perform other duties assigned to him by the Commission.

(b) The Staff Director shall, subject to the approval of the Commission, appoint such officers and employees as are necessary in the execution of the functions of the Commission. The officers and employees of the Commission shall be exempt from the provisions of part III of title 5, United States Code, except the following chapters: 45 (Incentive Awards), 81 (Compensation for Work Injuries), 83 (Retirement), 85 (Unemployment Compensation), 87 (Life Insurance), 89 (Health Insurance), and 91 (Conflicts of Interest).

(Added Pub.L. 98-473, Title II, § 217(a), Oct. 12, 1984, 98 Stat. 2026, and amended Pub.L. 100-690, Title VII, § 7106(c), Nov. 18, 1988, 102 Stat. 4418.)

§ 997. Annual report

The Commission shall report annually to the Judicial Conference of the United States, the Congress, and the President of the United States on the activities of the Commission.

(Added Pub.L. 98-473, Title II, § 217(a), Oct. 12, 1984, 98 Stat. 2026.)

§ 998. Definitions

As used in this chapter—

- (a) "Commission" means the United States Sentencing Commission;
- (b) "Commissioner" means a member of the United States Sentencing Commission;
- (c) "guidelines" means the guidelines promulgated by the Commission pursuant to section 994(a) of this title; and
- (d) "rules and regulations" means rules and regulations promulgated by the Commission pursuant to section 995 of this title.

(Added Pub.L. 98-473, Title II, § 217(a), Oct. 12, 1984, 98 Stat. 2026.)

MISCELLANEOUS PROVISIONS OF ANTI-DRUG ABUSE ACT OF 1988 AND MAJOR FRAUD ACT OF 1988

ANTI-DRUG ABUSE ACT OF 1988

(Pub.L. 100-690)

TITLE VI—ANTI-DRUG ABUSE AMENDMENTS ACT OF 1988

Subtitle N—Sundry Criminal Provisions

Sec. 6453. Penalties For Importation by Aircraft and Other Vessels.

(a) **In General.**—Pursuant to its authority under section 994(p) of title 28, United States Code, and section 21 of the Sentencing Act of 1987, the United States Sentencing Commission shall promulgate guidelines, or shall amend existing guidelines, to provide that a defendant convicted of violating section 1010(a) of the Controlled Substances Import and Export Act (21 U.S.C. 960(a)) under circumstances in which—

(1) an aircraft other than a regularly scheduled commercial air carrier was used to import the controlled substance; or

(2) the defendant acted as a pilot, copilot, captain, navigator, flight officer, or any other operation officer aboard any craft or vessel carrying a controlled substance, shall be assigned an offense level under chapter 2 of the sentencing guidelines that is—

(A) two levels greater than the level that would have been assigned had the offense not been committed under circumstances set forth in (A) or (B) above; and

(B) in no event less than level 26.

(b) **Effect of Amendment.**—If the sentencing guidelines are amended after the effective date of this section, the Sentencing Commission shall implement the instruction set forth in subsection (a) so as to achieve a comparable result.

Sec. 6454. Enhanced Penalties For Offenses Involving Children.

(a) **In General.**—Pursuant to its authority under section 994(p) of title 28, United States Code, and section 21 of the Sentencing Act of 1987, the United States Sentencing Commission shall promulgate guidelines, or shall amend existing guidelines, to provide that a defendant convicted of violating sections 405, 405A, or 405B of the Controlled Substances Act (21 U.S.C. 845, 845a or 845b) involving a person under 18 years of age shall be assigned an offense level under chapter 2 of the sentencing guidelines that is—

- (1) two levels greater than the level that would have been assigned for the underlying controlled substance offense; and
- (2) in no event less than level 26.

(b) **Effects of Amendment.**—If the sentencing guidelines are amended after the effective date of this section, the Sentencing Commission shall implement the instruction set forth in subsection (a) so as to achieve a comparable result.

(c) **Multiple Enhancements.**—The guidelines referred to in subsection (a), as promulgated or amended under such subsection, shall provide that an offense that could be subject to multiple enhancements pursuant to such subsection is subject to not more than one such enhancement.

Sec. 6468. Drug Offenses Within Federal Prisons.

(a) **Twenty Year Maximum Penalty.**—Section 1791(b) of title 18, United States Code, is amended—

- (1) by redesignating paragraphs (1) through (4) as (2) through (5), respectively;
- (2) by inserting before paragraph (2), as so redesignated, the following new paragraph (1):
"(1) imprisonment for not more than 20 years, or both, if the object is specified in subsection (d)(1)(C) of this section"; and
- (3) in paragraph (3), as so redesignated, by striking "or (c)(1)(C)".

(b) **Consecutive Sentences.**—Section 1791 of title 18, United States Code, is further amended—

- (1) by redesignating subsection (c) as subsection (d); and
- (2) by inserting after subsection (b) the following new subsection (c):
"(c) Any punishment imposed under subsection (b) for a violation of this section by an inmate of a prison shall be consecutive to the sentence being served by such inmate at the time the inmate commits such violation."

(c) Pursuant to its authority under section 994(p) of title 28, United States Code, and section 21 of the Sentencing Act of 1987, the United States Sentencing Commission shall promulgate guidelines, or shall amend existing guidelines, to provide that a defendant convicted of violating section 1791(a)(1) of title 18, United States Code, and punishable under section 1791(b)(1) of that title as so redesignated, shall be assigned an offense level under chapter 2 of the sentencing guidelines that is—

- (1) two levels greater than the level that would have been assigned had the offense not been committed in prison; and
- (2) in no event less than level 26.

(d) If the sentencing guidelines are amended after the effective date of this section, the Sentencing Commission shall implement the instruction set forth in subsection (c) so as to achieve a comparable result.

Sec. 6482. Common Carrier Operation Under The Influence of Alcohol or Drugs.

(a) **Locomotives.**—Section 341 of title 18, United States Code, is amended by adding after "means a" the following: "locomotive, a".

(b) **Maximum Penalty.**—Section 342 of title 18, United States Code, is amended by striking "five" and inserting "fifteen".

(c) **Sentencing Guidelines.**—(1) Pursuant to its authority under section 994(p) of title 28, United States Code, and section 21 of the Sentencing Act of 1987, the United States Sentencing Commission shall

promulgate guidelines, or shall amend existing guidelines, to provide that—

(A) a defendant convicted of violating section 342 of title 18, United States Code, under circumstances in which death results, shall be assigned an offense level under chapter 2 of the sentencing guidelines that is not less than level 26; and

(B) a defendant convicted of violating section 342 of title 18, United States Code, under circumstances in which serious bodily injury results, shall be assigned an offense level under chapter 2 of the sentencing guidelines that is not less than level 21.

(2) If the sentencing guidelines are amended after the effective date of this section, the Sentencing Commission shall implement the instruction set forth in paragraph (1) so as to achieve a comparable result.

MAJOR FRAUD ACT OF 1988

(Pub.L. 100-700, 102 Stat. 4632)

Sec. 2. Chapter 47 Amendment.

(b) Sentencing Guidelines.—Pursuant to its authority under section 994(p) of title 28, United States Code and section 21 of the Sentencing Act of 1987, the United States Sentencing Commission shall promulgate guidelines, or shall amend existing guidelines, to provide for appropriate penalty enhancements, where conscious or reckless risk of serious personal injury resulting from the fraud has occurred. The Commission shall consider the appropriateness of assigning to such a defendant an offense level under Chapter Two of the sentencing guidelines that is at least two levels greater than the level that would have been assigned had conscious or reckless risk of serious personal injury not resulted from the fraud.

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