



## 2023 AMENDMENTS IN BRIEF

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

### Amendment #820

## Acceptance of Responsibility

The amendment defines the term “preparing for trial,” which appears in §3E1.1(b) and Application Note 6 to §3E1.1. The amendment defines “preparing for trial” as “substantive preparations taken to present the government’s case against the defendant to a jury (or judge, in the case of a bench trial) at trial.”

The amendment also deletes hortatory language that the Commission previously added to Application Note 6 providing that the “government should not withhold such a motion based on interests not identified in §3E1.1, such as whether the defendant agrees to waive his or her right to appeal.”



### THE ISSUE

## Variations Among Jurisdictions

This amendment responds to circuit conflicts over whether a reduction under subsection (b) of §3E1.1 (Acceptance of Responsibility), which requires a motion from the government, may be withheld or denied if a defendant moves to suppress evidence or raises sentencing challenges. Justices Sotomayor and Gorsuch observed in 2021 that this conflict is both longstanding and has a potentially significant impact on defendants.

Three circuits have permitted the government to withhold a §3E1.1(b) motion based on a suppression motion, while five circuits have held that a reduction may not be denied based on a suppression motion. Similarly, the First, Third, Seventh, and Eighth Circuits have held that the government may withhold a §3E1.1(b)

motion based on sentencing challenges, while the Second and Fifth Circuits have held that it may not. These conflicts have resulted in variation in §3E1.1(b) motion practice across—and even within—judicial districts. In some jurisdictions, defendants receive the additional reduction as a matter of course, even if they assert pre-trial or post-conviction challenges. In others, the §3E1.1(b) motion has been withheld based on motions to suppress, sentencing challenges, or other grounds. Because the sentencing impact of losing one additional level under §3E1.1(b) can be significant, the practice in the latter districts has had a chilling effect, deterring defendants from pursuing certain evidentiary and sentencing challenges.



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[www.ussc.gov](http://www.ussc.gov)  
[pubaffairs@ussc.gov](mailto:pubaffairs@ussc.gov)  
202-502-4597

