PART I

SELECTED SENTENCING STATUTES

This part of Appendix B sets forth the principal statutory provisions governing sentencing, the Sentencing Commission, and the drafting of sentencing guidelines, **as of May 1, 2026**, as follows:

Title 18. First, it sets forth relevant provisions of title 18, United States Code (Crimes and Criminal Procedure), as extracted from the following chapters of title 18:

- Chapter 227 (Sentences);
- Chapter 229 (Postsentence Administration);
- Chapter 232 (Miscellaneous Sentencing Provisions); and
- Chapter 235 (Appeal).

Title 28. Second, it sets forth relevant provisions of title 28, United States Code (Judiciary and Judicial Procedure), as extracted from the following chapter of title 28:

- Chapter 58 (United States Sentencing Commission).

Public Laws Governing the Commission and the Drafting of Sentencing Guidelines. Third, it sets forth other relevant provisions of freestanding public laws governing the Commission and the drafting of sentencing guidelines (*e.g.*, congressional directives). These provisions ordinarily appear in the United States Code in the notes following 28 U.S.C. § 994. This appendix sets them forth separately and in fuller detail for ease of reference.

The legal authority for the 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, Pub. L. 98–473, October 12, 1984).

These statutory provisions are presented in this appendix solely for the purpose of providing a reference to federal sentencing law as it stands as of **May 1, 2026**. 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 227–SENTENCES

SUBCHAPTER A–GENERAL PROVISIONS

Section

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§ 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, including sections 13 and 1153 of this title, 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, and amended Pub.L. 101–647, Title XVI, § 1602, Nov. 29, 1990, 104 Stat. 4843.)

EDITORIAL NOTES

References in Text. Acts of Congress applicable exclusively in the District of Columbia, referred to in subsec. (a), are classified generally to the District of Columbia Code.

The Uniform Code of Military Justice, referred to in subsec. (a), is classified generally to chapter 47 (§ 801 et seq.) of Title 10, Armed Forces.

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; Pub.L. 104–232, § 4, Oct. 2, 1996, 110 Stat. 3056, 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)** Repealed. Pub.L. 104–232, § 4, Oct. 2, 1996, 110 Stat. 3056.]

(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."

[Pub.L. 119–75, Div. I, § 5011, Feb. 3, 2026, 140 Stat. 630, provided that: "Any expiration date established by section 235(b) of the Sentencing Reform Act of 1984 (18 U.S.C. 3551 note; Public Law 98–473), as such section relates to chapter 311 of title 18, United States Code, and the United States Parole Commission, shall not apply during the period beginning on October 1, 2025, and ending on January 30, 2031."]

[Pub.L. 119–37, Div. A, § 123, Nov. 12, 2025, 139 Stat. 501, provided that: "Any expiration date established by section 235(b) of the Sentencing Reform Act of 1984 (18 U.S.C. 3551 note; Public Law 98–473; 98 Stat. 2032), as such section relates to chapter 311 of title 18, United States Code, and the United States Parole Commission, shall not apply from October 1, 2025, through the date specified in section 106(3) of this Act [Jan. 30, 2026]."]

[Pub.L. 119–4, Div. A, Title I, § 1115, Mar. 15, 2025, 139 Stat. 15, provided that: "During the period covered by this Act [see section 1106 of div. A of Pub. L. 119–4, 139 Stat. 12, which is not classified to the Code], section 235(b) of the Sentencing Reform Act of 1984 (18 U.S.C. 3551 note; Public Law 98–473; 98 Stat. 2032), as such section relates to chapter 311 of title 18, United States Code, and the United States Parole Commission, shall be applied by substituting '37' for '36' each place it appears."]

[Pub.L. 118–83, Div. A, § 121, Sept. 26, 2024, 138 Stat. 1528, provided that: "During the period covered by this Act [see section 106 of div. A of Pub. L. 118–83, 138 Stat. 1526, which is not classified to the Code], section 235(b) of the Sentencing Reform Act of 1984 (18 U.S.C. 3551 note; Public Law 98–473; 98 Stat. 2032), as such section relates to chapter 311 of title 18, United States Code, and the United States Parole Commission, shall be applied by substituting '37' for '36' each place it appears."]

[Pub.L. 118–42, div. G, title III, § 302(b), Mar. 9, 2024, 138 Stat. 451, provided that: "For purposes of section 235(b) of the Sentencing Reform Act of 1984 (18 U.S.C. 3551 note; Public Law 98–473; 98 Stat. 2032), as such section relates to chapter 311 of title 18, United States Code, and the United States Parole Commission, each reference in such section to '36 years and 129 days' or '36-year and 129-day period' shall be deemed a reference to '36 years and 335 days' or '36-year and 335-day period', respectively."]

[Pub.L. 118–15, Div. A, § 123, Sept. 30, 2023, 137 Stat. 78, as amended by Pub.L. 118–22, Div. A, § 101(5), Nov. 17, 2023, 137 Stat. 113; Pub.L. 118–35, Div. A, § 101(3), Jan. 19, 2024, 138 Stat. 3, provided that: "For purposes of section 235(b) of the Sentencing Reform Act of 1984 (18 U.S.C. 3551 note; Public Law 98–473; 98 Stat. 2032), as such section relates to chapter 311 of title 18, United States Code, and the United States Parole Commission, each reference in such section to '36 years' or '36-year period' shall be deemed a reference to '36 years and 129 days' or '36-year and 129-day period', respectively.]

[Pub.L. 117–328, Div. O, Title VIII, § 801(d), Dec. 29, 2022, 136 Stat. 5232, provided that: "Section 103 of division B of the Further Continuing Appropriations and Extensions Act, 2023 [Pub.L. 117–229, enacting provisions set out as notes above and under section 1 of this title] shall have no force or effect."]

[Pub.L. 117–328, Div. O, Title VIII, § 801(b), (c), Dec. 29, 2022, 136 Stat. 5232, provided that:

"(b) Amendment of Sentencing Reform Act of 1984.–For purposes of section 235(b) of the Sentencing Reform Act of 1984 (18 U.S.C. 3551 note; Public Law 98–473; 98 Stat. 2032) [set out as a note under this section], as such section relates to chapter 311 of title 18, United States Code, and the United States Parole Commission, each reference in such section to '35 years and 46 days' or '35-year and 46-day period' shall be deemed a reference to '36 years' or '36-year period', respectively.

"(c) Effective date.—Subsection (b) shall take effect as though enacted as part of the Further Continuing Appropriations and Extensions Act, 2023 [Pub.L. 117–229]."]

[Pub.L. 117–264, Div. B, Title I, § 103(d), Dec. 23, 2022, 136 Stat. 4168, provided that: "Section 103 of division B of the Further Continuing Appropriations and Extensions Act, 2023 [Pub.L. 117–229, enacting provisions set out as notes below and under section 1 of this title] shall have no force or effect."]

[Pub.L. 117–264, Div. B, Title I, § 103(b), (c), Dec. 23, 2022, 136 Stat. 4168, provided that:

"(b) Amendment of Sentencing Reform Act of 1984.—For purposes of section 235(b) of the Sentencing Reform Act of 1984 (18 U.S.C. 3551 note; Public Law 98–473; 98 Stat. 2032), as such section relates to chapter 311 of title 18, United States Code, and the United States Parole Commission, each reference in such section to '35 years and 46 days' or '35-year and 46-day period' shall be applied as if it were a reference to '35 years and 60 days' or '35-year and 60-day period', respectively.

"(c) Effective Date.—Subsection (b) shall take effect as though enacted as part of the Further Continuing Appropriations and Extensions Act, 2023 [Pub.L. 117–229]."]

[Pub.L. 117–229, Div. B, Title I, § 103(b), Dec. 16, 2022, 136 Stat. 2309, which provided that references in section 235(b) of Pub.L. 98–473 to "35 years" or "35-year period" would be deemed references to "35 years and 53 days" or "35-year and 53-day period", respectively, was rendered ineffective by Pub.L. 117–264, Div. B, Title I, § 103(d), Dec. 23, 2022, 136 Stat. 4168, set out above.]

[Pub.L. 117–180, Div. C, Title I, § 103(b), Sept. 30, 2022, 136 Stat. 2133, provided that: "For purposes of section 235(b) of the Sentencing Reform Act of 1984 (18 U.S.C. 3551 note; Public Law 98–473; 98 Stat. 2032), as such section relates to chapter 311 of title 18, United States Code, and the United States Parole Commission, each reference in such section to '35 years' or '35-year period' shall be deemed a reference to '35 years and 46 days' or '35-year and 46-day period', respectively."]

[Pub.L. 116–159, Div. D, Title II, § 4202, Oct. 1, 2020, 134 Stat. 741, provided that: "For purposes of section 235(b) of the Sentencing Reform Act of 1984 (18 U.S.C. 3551 note; Public Law 98–473; 98 Stat. 2032), as such section relates to chapter 311 of title 18, United States Code, and the United States Parole Commission, each reference in such section to '33 years' or '33-year period' shall be deemed a reference to '35 years' or '35-year period', respectively."]

[Pub.L. 115–274, § 2, Oct. 31, 2018, 132 Stat. 4160, provided that: "For purposes of section 235(b) of the Sentencing Reform Act of 1984 (18 U.S.C. 3551 note; Public Law 98–473; 98 Stat. 2032), as such section relates to chapter 311 of title 18, United States Code, and the United States Parole Commission, each reference in such section to '31 years' or '31-year period' shall be deemed a reference to '33 years' or '33-year period', respectively."]

[Pub.L. 113–47, § 2, Oct. 31, 2013, 127 Stat. 572, provided that: "For purposes of section 235(b) of the Sentencing Reform Act of 1984 (18 U.S.C. 3551 note; Public Law 98–473; 98 Stat. 2032), as such section relates to chapter 311 of title 18, United States Code, and the United States Parole Commission, each reference in such section to '26 years' or '26-year period' shall be deemed a reference to '31 years' or '31-year period', respectively."]

[Pub.L. 112–44, § 2, Oct. 21, 2011, 125 Stat. 532, provided that: "For purposes of section 235(b) of the Sentencing Reform Act of 1984 (18 U.S.C. 3551 note; Public Law 98–473; 98 Stat. 2032), as such section relates to chapter 311 of title 18, United States Code, and the United States Parole Commission, each reference in such section to '24 years' or '24-year period' shall be deemed a reference to '26 years' or '26-year period', respectively."]

[Pub.L. 110–312, § 2, Aug. 12, 2008, 122 Stat. 3013, provided that: "For purposes of section 235(b) of the Sentencing Reform Act of 1984 (18 U.S.C. 3551 note; Public Law 98–473; 98 Stat. 2032) [set out in an Effective and Applicability Provisions note under this section], as such section relates to chapter 311 of title 18, United States Code [18 U.S.C.A. § 4201 et seq.], and the United States Parole Commission, each reference in such section to '21 years' or '21-year period' shall be deemed a reference to '24 years' or '24-year period', respectively."]

[Pub.L. 109–76, § 2, Sept. 29, 2005, 119 Stat. 2035, provided that: "For purposes of section 235(b) of the Sentencing Reform Act of 1984 (98 Stat. 2032) [Pub.L. 98–473, Title II, § 235, Oct. 12, 1984, 98 Stat. 2032, as amended, set out as a note under this section] as such section relates to chapter 311 of title 18, United States Code, [18 U.S.C.A. § 4201 et seq.] and the United States Parole Commission, each reference in such section to 'eighteen years' or 'eighteen-year period' shall be deemed a reference to '21 years' or '21-year period', respectively."]

[Pub.L. 107–273, Div. C, Title I, § 11017(a), Nov. 2, 2002, 116 Stat. 1824, provided that: "For purposes of section 235(b) of the Sentencing Reform Act of 1984 (98 Stat. 2032) [section 235(b) of Pub.L. 98–473, set out as a note under this section], as such section relates to chapter 311 of title 18, United States Code [18 U.S.C.A. § 4201 et seq. (repealed)], and the Parole Commission, each reference in such section to 'fifteen years' or 'fifteen-year period' shall be deemed to be a reference to 'eighteen years' or 'eighteen-year period', respectively." See also section 11017(b) and (c) of Pub.L. 107–273, set out as a note under 18 U.S.C.A. § 4202]

[Pub.L. 104–232, § 3(b)(2), Oct. 2, 1996, 110 Stat. 3056, provided that: "Effective on the date the plan [alternative plan by Attorney General for transfer of United States Parole Commission's functions to another entity within Department of Justice pursuant to section 3 of Pub.L. 104–232, set out as a note under section 4201 of this title] takes effect, paragraphs (3) and (4) of section 235(b) of the Sentencing Reform Act of 1984 [Pub.L. 98–473, set out above] (98 Stat. 2032) are repealed."]

[Pub.L. 104–232, § 2(a), Oct. 2, 1996, 110 Stat. 3055, provided that: "For purposes of section 235(b) of the Sentencing Reform Act of 1984 (98 Stat. 2032) [section 235(b) of Pub.L. 98–473, set out as a note under this section], as it related to chapter 311 of title 18, United States Code [section 4201 et seq. of this title], and the Parole Commission, each reference in such section to 'ten years' or 'ten-year period' shall be deemed to be a reference to 'fifteen years' or 'fifteen-year period', respectively."]

[Pub.L. 101–650, Title III, § 316, Dec. 1, 1990, 104 Stat. 5115, provided that: "For the purposes of section 235(b) of Public Law 98–473 [set out as a note under this section] as it relates to chapter 311 of title 18, United States Code [section 4201 et seq. of this title], and the United States Parole Commission, each reference in such section to 'five years' or a 'five-year period' shall be deemed a reference to 'ten years' or a 'ten-year period', respectively."]

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. The court shall provide a copy of the presentence report to the attorney for the Government to use in collecting an assessment, criminal fine, forfeiture or restitution imposed.

(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; Pub.L. 101–647, Title XXXVI, § 3625, Nov. 29, 1990, 104 Stat. 4965).

EDITORIAL NOTES

Use of Certain Technology to Facilitate Criminal Conduct. Pub.L. 104–294, Title V, § 501, Oct. 11, 1996, 110 Stat. 3497, provided that:

"**(a) Information.**—The Administrative Office of the United States courts shall establish policies and procedures for the inclusion in all presentence reports of information that specifically identifies and describes any use of encryption or scrambling technology that would be relevant to an enhancement under section 3C1.1 (dealing with Obstructing or Impeding the Administration of Justice) of the Sentencing Guidelines [set out in this title] or to offense conduct under the Sentencing Guidelines.

(b) Compiling and report.—The United States Sentencing Commission shall—

(1) compile and analyze any information contained in documentation described in subsection (a) relating to the use of encryption or scrambling technology to facilitate or conceal criminal conduct; and

(2) based on the information compiled and analyzed under paragraph (1), annually report to the Congress on the nature and extent of the use of encryption or scrambling technology to facilitate or conceal criminal conduct."

§ 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—

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement—

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), 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.—(1) In general.—Except as provided in paragraph (2), 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.

(2) Child crimes and sexual offenses.—

(A) Sentencing.—In sentencing a defendant convicted of an offense under section 1201 involving a minor victim, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless—

(i) the court finds that there exists an aggravating 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 greater than that described;

(ii) the court finds that there exists a mitigating circumstance of a kind or to a degree, that—

(I) has been affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines or policy statements issued under section 994(a) of title 28, taking account of any amendments to such sentencing guidelines or policy statements by Congress;

(II) has not been taken into consideration by the Sentencing Commission in formulating the guidelines; and

(III) should result in a sentence different from that described; or

(iii) the court finds, on motion of the Government, that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense and that this assistance established a 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 lower than 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, together with any amendments thereto by act of Congress. 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, together with any amendments to such guidelines or policy statements by act of Congress.

(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, which reasons must also be stated with specificity in a statement of reasons form issued under section 994(w)(1)(B) of title 28, except to the extent that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32. In the event that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32 the court shall state that such statement were so received and that it relied upon the content of such statements.

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, together with the order of judgement and commitment, to the Probation System and to the

Sentencing Commission,,[1] 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 a 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.

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

(1) the defendant does not have—

(A) more than 4 criminal history points, excluding any criminal history points resulting from a 1-point offense, as determined under the sentencing guidelines;

(B) a prior 3-point offense, as determined under the sentencing guidelines; and

(C) a prior 2-point violent offense, as determined under the sentencing guidelines;

(2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;

(3) the offense did not result in death or serious bodily injury to any person;

(4) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in section 408 of the Controlled Substances Act; and

(5) not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination by the court that the defendant has complied with this requirement.

Information disclosed by a defendant under this subsection may not be used to enhance the

[1] So in original. The second comma probably should not appear.

sentence of the defendant unless the information relates to a violent offense.

(g) Definition of violent offense.—As used in this section, the term "violent offense" means a crime of violence, as defined in section 16, that is punishable by imprisonment.

(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; Pub.L. 103–322, Title VIII, § 80001(a), Title XXVIII, § 280001, Sept. 13, 1994, 108 Stat. 1985, 2095; Pub.L. 104–294, Title VI, § 601(b)(5), (6), (h), Oct. 11, 1996, 110 Stat. 3499, 3500; Pub.L. 107–273, Div. B, Title IV, § 4002(a)(8), Nov. 2, 2002, 116 Stat. 1807; Pub.L. 107–273, Div. B, Title IV, § 4002(a)(8), Nov. 2, 2002, 116 Stat. 1807; Pub.L. 108–21, Title IV, § 401(a), (c), (j)(5), Apr. 30, 2003, 117 Stat. 667, 669, 673; Pub.L. 111–174, § 4, May 27, 2010, 124 Stat. 1216; Pub.L. 115–391, Title IV, § 402(a), Dec. 21, 2018, 132 Stat. 5221.)

EDITORIAL NOTES

References in Text. The Federal Rules of Criminal Procedure, referred to in subsec. (c)(2), are set out in the Appendix to this title.

Section 408 of the Controlled Substances Act, referred to in subsec. (f)(4), is classified to section 848 of Title 21, Food and Drugs.

Unconstitutionality of Subsection (b). Mandatory aspect of subsection (b) of this section held unconstitutional by *United States v. Booker*, 543 U.S. 220, 125 S. Ct. 738 (2005).

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. The Comprehensive Drug Abuse Prevention and Control Act of 1970, referred to in text, is Pub.L. 91–513, Oct. 27, 1970, 84 Stat. 1236, as amended. Title II of this Act, known as the Controlled Substances Act, is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. Title III of this Act, known as the Controlled Substances Import and Export Act, is classified principally to subchapter II (§ 951 et seq.) of chapter 13 of Title 21. Section 413 of this Act is classified to section 853 of Title 21. For complete classification of this Act to the Code, see Short Title note set out under sections 801 and 951 of Title 21 and Tables.

§ 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.)

§ 3556. Order of restitution

The court, in imposing a sentence on a defendant who has been found guilty of an offense shall order restitution in accordance with section 3663A, and may order restitution in accordance with section 3663. The procedures under section 3664 shall apply to all orders of restitution under this section.

(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; Pub.L. 104–132, Title II, § 202, Apr. 24, 1996, 110 Stat. 1227.)

§ 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.)

§ 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.)

§ 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.—Except as provided in subsection (c), 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.

(c) Imprisonment of certain violent felons.—

(1) Mandatory life imprisonment.— Notwithstanding any other provision of law, a person who is convicted in a court of the United States of a serious violent felony shall be sentenced to life imprisonment if—

(A) the person has been convicted (and those convictions have become final) on separate prior occasions in a court of the United States or of a State of—

(i) 2 or more serious violent felonies; or

(ii) one or more serious violent felonies and one or more serious drug offenses; and

(B) each serious violent felony or serious drug offense used as a basis for sentencing under this subsection, other than the first, was committed after the defendant's conviction of the preceding serious violent felony or serious drug offense.

(2) Definitions.—For purposes of this subsection—

(A) the term "assault with the intent to commit rape" means an offense that has as its elements engaging in physical contact with another person or using or brandishing a weapon against another person with intent to commit aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242);

(B) the term "arson" means an offense that has as its elements maliciously damaging or destroying any building, inhabited structure, vehicle, vessel, or real property by means of fire or an explosive;

(C) the term "extortion" means an offense that has as its elements the extraction of anything of value from another person by threatening or placing that person in fear of injury to any person or kidnapping of any person;

(D) the term "firearms use" means an offense that has as its elements those described in section 924(c) or 929(a), if the firearm was brandished, discharged, or otherwise used as a weapon and the crime of violence or drug trafficking crime during and relation[1] to which the firearm was used was subject to prosecution in a court of the United States or a court of a State, or both;

(E) the term "kidnapping" means an offense that has as its elements the abduction, restraining, confining, or carrying away of another person by force or threat of force;

(F) the term "serious violent felony" means—

(i) a Federal or State offense, by whatever designation and wherever committed, consisting of murder (as described in section 1111); manslaughter other than involuntary manslaughter (as described in section 1112); assault with intent to commit murder (as described in section 113(a)); assault with intent to commit rape; aggravated sexual abuse and sexual abuse (as described in sections 2241 and 2242); abusive sexual contact (as described in sections 2244 (a)(1) and (a)(2)); kidnapping; aircraft piracy (as described in section 46502 of Title 49); robbery (as described in section 2111, 2113, or 2118); carjacking (as described in section 2119); extortion; arson; firearms use; firearms possession (as described in section 924(c)); or attempt, conspiracy, or solicitation to commit any of the above offenses; and

(ii) any other offense punishable by a maximum term of imprisonment of 10 years or more that has as an element the use, attempted use, or threatened use of physical force against the person of another or that, by its nature, involves a substantial risk that physical force against the person of another may be used in the course of committing the offense;

(G) the term "State" means a State of the United States, the District of Columbia, and a commonwealth, territory, or possession of the United States; and

(H) the term "serious drug offense" means—

(i) an offense that is punishable under section 401(b)(1)(A) or 408 of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A), 848) or section 1010(b)(1)(A) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)(A)); or

(ii) an offense under State law that, had the offense been prosecuted in a court of the United States, would have been punishable under section

[1] So in original. Probably should be "in relation".

401(b)(1)(A) or 408 of the Controlled Substances Act (21 U.S.C. 841(b)(1)(A), 848) or section 1010(b)(1)(A) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)(1)(A)).

(3) Nonqualifying felonies.—

(A) Robbery in certain cases.—Robbery, an attempt, conspiracy, or solicitation to commit robbery; or an offense described in paragraph (2)(F)(ii) shall not serve as a basis for sentencing under this subsection if the defendant establishes by clear and convincing evidence that—

(i) no firearm or other dangerous weapon was used in the offense and no threat of use of a firearm or other dangerous weapon was involved in the offense; and

(ii) the offense did not result in death or serious bodily injury (as defined in section 1365) to any person.

(B) Arson in certain cases.—Arson shall not serve as a basis for sentencing under this subsection if the defendant establishes by clear and convincing evidence that—

(i) the offense posed no threat to human life; and

(ii) the defendant reasonably believed the offense posed no threat to human life.

(4) Information filed by United States Attorney.—The provisions of section 411(a) of the Controlled Substances Act (21 U.S.C. 851(a)) shall apply to the imposition of sentence under this subsection.

(5) Rule of construction.—This subsection shall not be construed to preclude imposition of the death penalty.

(6) Special provision for Indian country.—No person subject to the criminal jurisdiction of an Indian tribal government shall be subject to this subsection for any offense for which Federal jurisdiction is solely predicated on Indian country (as defined in section 1151) and which occurs within the boundaries of such Indian country unless the governing body of the tribe has elected that this subsection have effect over land and persons subject to the criminal jurisdiction of the tribe.

(7) Resentencing upon overturning of prior conviction.—If the conviction for a serous violent felony or serious drug offense that was a basis for sentencing under this subsection is found, pursuant to any appropriate State or Federal procedure, to be unconstitutional or is vitiated on the explicit basis of innocence, or if the convicted person is pardoned on the explicit basis of innocence, the person serving a sentence imposed under this subsection shall be resentenced to any sentence that was available at the time of the original sentencing.

(d) Death or imprisonment for crimes against children.—

(1) In general.—Subject to paragraph (2) and notwithstanding any other provision of law, a person who is convicted of a federal offense that is a serious violent felony (as defined in subsection (c)) or a violation of section 2422, 2423, or 2251 shall, unless the sentence of death is imposed, be sentenced to imprisonment for life, if—

(A) the victim of the offense has not attained the age of 14 years;

(B) the victim dies as a result of the offense; and

(C) the defendant, in the course of the offense, engages in conduct described in section 3591(a)(2).

(2) Exception.—With respect to a person convicted of a federal offense described in paragraph (1), the court may impose any lesser sentence that is authorized by law to take into account any substantial assistance provided by the defendant in the investigation or prosecution of another person who has committed an offense, in accordance with the federal sentencing guidelines and the policy statements of the federal sentencing commission pursuant to section 994(p) of title 28, or for other good cause.

(e) Mandatory life imprisonment for repeated sex offenses against children.—

(1) In general.—A person who is convicted of a Federal sex offense in which a minor is the victim shall be sentenced to life imprisonment if the person has a prior sex conviction in which a minor was the victim, unless the sentence of death is imposed.

(2) Definitions.—For the purposes of this subsection—

(A) the term "Federal sex offense" means an offense under section 1591 (relating to sex trafficking of children), 2241 (relating to aggravated sexual abuse), 2242 (relating to sexual abuse), 2244(a)(1) (relating to abusive sexual contact), 2245 (relating to sexual abuse resulting in death), 2251 (relating to sexual exploitation of children), 2251A (relating to selling or buying of children), 2422(b) (relating to coercion and enticement of a minor into prostitution), or 2423(a) (relating to transportation of minors);

(B) the term "State or Military sex offense" means an offense under State law or the Uniform Code of Military Justice that is punishable by more than one year in prison and consists of conduct that would be a Federal sex offense if, to the extent or in the manner specified in the applicable provision of this title—

(i) the offense involved interstate or foreign commerce, or the use of the mails; or

(ii) the conduct occurred in any commonwealth, territory, or possession of the United States, within the special maritime and territorial jurisdiction of the United States, in a Federal prison, on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country (as defined in section 1151);

(C) the term "prior sex conviction" means a conviction for which the sentence was imposed before the conduct occurred constituting the subsequent Federal sex offense, and which was for a Federal sex offense or a State or Military sex offense;

(D) the term "minor" means an individual who has not attained the age of 17 years; and

(E) the term "state" has the meaning given that term in subsection (c)(2).

(3) Nonqualifying felonies.—An offense described in section 2422(b) or 2423(a) shall not serve as a basis for sentencing under this subsection if the defendant establishes by clear and convincing evidence that—

(A) the sexual act or activity was consensual and not for the purpose of commercial or pecuniary gain;

(B) the sexual act or activity would not be punishable by more than one year in prison under the law of the State in which it occurred; or

(C) no sexual act or activity occurred.

(f) Mandatory Minimum Terms of Imprisonment for Violent Crimes Against Children.—A person who is convicted of a Federal offense that is a crime of violence against the person of an individual who has not attained the age of 18 years shall, unless a greater mandatory minimum sentence of imprisonment is otherwise provided by law and regardless of any maximum term of imprisonment otherwise provided for the offense—

(1) if the crime of violence is murder, be imprisoned for life or for any term of years not less than 30, except that such person shall be punished by death or life imprisonment if the circumstances satisfy any of subparagraphs (A) through (D) of section 3591(a)(2) of this title;

(2) if the crime of violence is kidnapping (as defined in section 1201) or maiming (as defined in section 114), be imprisoned for life or any term of years not less than 25; and

(3) if the crime of violence results in serious bodily injury (as defined in section 1365), or if a dangerous weapon was used during and in relation to the crime of violence, be imprisoned for life or for any term of years not less than 10.

(g)(1) If a defendant who is convicted of a felony offense (other than offense of which an element is the false registration of a domain name) knowingly falsely registered a domain name and knowingly used that domain name in the course of that offense, the maximum imprisonment otherwise provided by law for that offense shall be doubled or increased by 7 years, whichever is less.

(2) As used in this section—

(A) the term "falsely registers" means registers in a manner that prevents the effective identification of or contact with the person who registers; and

(B) the term "domain name" has the meaning given that term is section 45 of the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes" approved July 5, 1946 (commonly referred to as the "Trademark Act of 1946") (15 U.S.C. 1127).

(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); Pub.L. 103–322, Title VII § 70001, Sept. 13, 1994, 108 Stat. 1982; Pub.L. 105–314, Title V, § 501, Oct. 30, 1998, 112 Stat. 2980; Pub.L. 105–386, § 1(b), Nov. 13, 1998, 112 Stat. 3470; Pub.L. 108–21, Title I, § 106(a), Apr. 30, 2003, 117 Stat. 654; Pub.L. 108–482, Title II, § 204(a), Dec. 23, 2004, 118 Stat. 3917; Pub.L. 109–248, Title II, §§ 202, 206(c), July 27, 2006, 120 Stat. 612, 614; Pub. L. 118–159, Div. A, Title V, § 569(6), Dec. 23, 2024, 138 Stat. 1906.)

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.

§ 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 that is not a petty offense.

(b) Domestic violence offenders.—A defendant who has been convicted for the first time of a domestic violence crime shall be sentenced to a term of probation if not sentenced to a term of imprisonment. The term "domestic violence crime" means a crime of violence for which the defendant may be prosecuted in a court of the United States in which the victim or intended victim is the spouse, former spouse, intimate partner, former intimate partner, child, or former child of the defendant, or any other relative of the defendant.

(c) 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; Pub.L. 103–322, Title XXVIII, § 280004, Title XXXII, § 320921(a), Sept. 13, 1994, 108 Stat. 2096, 2130; Pub.L. 104–294, Title VI, § 604(c)(1), Oct. 11, 1996, 110 Stat. 3509.)

§ 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 of the Federal Rules of Criminal Procedure 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, and amended Pub.L. 101–647, Title XXXV, § 3583, Nov. 29, 1990, 104 Stat. 4930.)

References in Text. The Federal Rules of Criminal Procedure, referred to in subsec. (b)(2), are set out in the Appendix to 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) or (b)(12), unless the court has imposed a fine under this chapter, or 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);

(3) for a felony, a misdemeanor, or an infraction, that the defendant not unlawfully possess a controlled substance;

(4) for a domestic violence crime as defined in section 3561(b) by a defendant convicted of such an offense for the first time that the defendant attend a public, private, or private non-profit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is readily available within a 50-mile radius of the legal residence of the defendant; and

(5) for a felony, a misdemeanor, or an infraction, that the defendant refrain from any unlawful use of a controlled substance and submit to one drug test within 15 days of release on probation and at least 2 periodic drug tests thereafter (as determined by the court) for use of a controlled substance, but the condition stated in this paragraph may be ameliorated or suspended by the court for any individual defendant if the defendant's presentence report or other reliable sentencing information indicates a low risk of future substance abuse by the defendant;

(6) that the defendant—

(A) make restitution in accordance with sections 2248, 2259, 2264, 2327, 3663, 3663A, and 3664; and

(B) pay the assessment imposed in accordance with section 3013; and

(7) that the defendant will notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines, or special assessments;

(8) for a person required to register under the Sex Offender Registration and Notification Act, that the person comply with the requirements of that Act; and

(9) that the defendant cooperate in the collection of a DNA sample from the defendant if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000.

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) make restitution to a victim of the offense under section 3556 (but not subject to the limitation of section 3663(a) or 3663A(c)(1)(A));

(3) give to the victims of the offense the notice ordered pursuant to the provisions of section 3555;

(4) work conscientiously at suitable employment or pursue conscientiously a course of study or vocational training that will equip him for suitable employment;

(5) 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;

(6) refrain from frequenting specified kinds of places or from associating unnecessarily with specified persons;

(7) 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;

(8) refrain from possessing a firearm, destructive device, or other dangerous weapon;

(9) 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;

(10) 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 or supervised release;

(11) 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;

(12) work in community service as directed by the court;

(13) reside in a specified place or area, or refrain from residing in a specified place or area;

(14) remain within the jurisdiction of the court, unless granted permission to leave by the court or a probation officer;

(15) report to a probation officer as directed by the court or the probation officer;

(16) permit a probation officer to visit him at his home or elsewhere as specified by the court;

(17) answer inquiries by a probation officer and notify the probation officer promptly of any change in address or employment;

(18) notify the probation officer promptly if arrested or questioned by a law enforcement officer;

(19) 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;

(20) comply with the terms of any court order or order of an administrative process pursuant to the law of a State, the District of Columbia, or any other possession or territory of the United States, requiring payments by the defendant for the support and maintenance of a child or of a child and the parent with whom the child is living;

(21) be ordered deported by a United States district court, or United States magistrate judge, pursuant to a stipulation entered

into by the defendant and the United States under section 238(d)(5) of the Immigration and Nationality Act, except that, in the absence of a stipulation, the United States district court or a United States magistrate judge, may order deportation as a condition of probation, if, after notice and hearing pursuant to such section, the Attorney General demonstrates by clear and convincing evidence that the alien is deportable;

(22) satisfy such other conditions as the court may impose or;[1]

(23) if required to register under the Sex Offender Registration and Notification Act, submit his person, and any property, house, residence, vehicle, papers, computer, other electronic communication or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of probation or unlawful conduct by the person, and by any probation officer in the lawful discharge of the officer's supervision functions.

(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.

(e) Results of Drug Testing.—The results of a drug test administered in accordance with subsection (a)(5) shall be subject to confirmation only if the results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A defendant who tests positive may be detained pending verification of a positive drug test result. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 3565(b), when considering any action against a defendant who fails a drug test administered in accordance with subsection (a)(5).

(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; Pub.L. 101–647, Title XXXV, § 3584, Nov. 29, 1990, 104 Stat. 4430; Pub.L. 102–521, § 3, Oct. 25, 1992, 106 Stat. 3404; Pub.L. 103–322, Title II, § 20414(b), Title XXVIII, § 280002, Title XXXII, § 320921(b), Sept. 13, 1994, 108 Stat. 1830, 2096, 2130; Pub.L. 104–132, Title II, § 203, Apr. 24, 1996, 110 Stat. 1227; Pub.L. 104–208, Div. C, Title III, §§ 308(g)(10)(E), 374(b), Sept 30, 1996, 110 Stat. 3009–625, 3009–647; Pub.L. 104–294, Title VI, § 601(k), Oct. 11, 1996, 110 Stat. 3501; Pub.L. 105–119, Title I, § 115(a)(8)(B), Nov. 26, 1997, 111 Stat. 2465; Pub.L. 106–546, § 7 (a), Dec. 19, 2000, 114 Stat. 2734; Pub.L. 107–273, Div. B, Title IV, § 4002(c)(1), (e)(12), Nov. 2, 2002, 116 Stat. 1802, 1811; Pub.L. 109–248, Title I, § 141(d), Title II, § 210(a), July 27, 2006, 120 Stat. 603, 615; Pub.L. 110–406, § 14(a), (c), Oct. 13, 2008, 122 Stat. 4294.)

References in Text. The Sex Offender Registration and Notification Act, referred to in subsecs. (a)(8) and (b)(23), is Title I of Pub.L. 109–248, July 27, 2006, 120 Stat. 590, which was classified principally to subchapter I (§ 16901 et seq.) of chapter 151 of Title 42, The Public Health and Welfare, prior to editorial reclassification as chapter 209 (§ 20901 et seq.) of Title 34, Crime Control and Law

[1] So in original. Probably should be "; or".

Enforcement. For complete classification of this Act to the Code, see Short Title of 2006 Act note set out under section 10101 of Title 34 and Tables.

Section 3 of the DNA Analysis Backlog Elimination Act of 2000, referred to in subsec. (a)(9), is section 3 of Pub.L. 106–546, which is classified to section 40702 of Title 34, Crime Control and Law Enforcement.

Section 238(d)(5) of the Immigration and Nationality Act, referred to in subsec. (b)(21), is classified to section 1228(d)(5) of Title 8, Aliens and Nationality.

The Federal Rules of Criminal Procedure, referred to in subsec. (c), are set out in the Appendix to 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.)

References in Text. The Federal Rules of Criminal Procedure, referred to in subsec. (c), are set out in the Appendix to 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 or modifying or enlarging the conditions; or

(2) revoke the sentence of probation and resentence the defendant under subchapter A.

(b) Mandatory revocation for possession of controlled substance or firearm or refusal to comply with drug testing.—If the defendant—

(1) possesses a controlled substance in violation of the condition set forth in section 3563(a)(3);

(2) possesses a firearm, as such term is defined in section 921 of this title, in violation

of Federal law, or otherwise violates a condition of probation prohibiting the defendant from possessing a firearm;

(3) refuses to comply with drug testing, thereby violating the condition imposed by section 3563(a)(4); or

(4) as a part of drug testing, tests positive for illegal controlled substances more than 3 times over the course of 1 year;

the court shall revoke the sentence of probation and resentence the defendant under subchapter A to a sentence that includes a term of imprisonment.

(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; Pub.L. 101–647, Title XXXV, § 3585, Nov. 29, 1990, 104 Stat. 4930; Pub.L. 103–322, Title XI § 110506, Sept. 13, 1994, 108 Stat. 2017; Pub.L. 107–273, Div. B, Title II, § 2103(a), Nov. 2, 2002, 116 Stat. 1793.)

References in Text. The Federal Rules of Criminal Procedure, referred to in subsec. (a), are set out in the Appendix to this title.

Section 3563(a)(4), referred to in subsec. (b)(3), probably means the par. (4) of section 3563(a) added by section 20414(b)(3) of Pub.L. 103–322, which was renumbered par. (5) by Pub.L. 104–132, Title II, § 203(1)(C), Apr. 24, 1996, 110 Stat. 1227.

§ 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.)

SUBCHAPTER C – FINES

Section

3571. Sentence of fine.
3572. Imposition of a sentence of fine and related matters.
3573. Petition of the Government for modification or remission.
3574. Implementation of a sentence of fine.

§ 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;

(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.)

§ 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) the expected costs to the government of any imprisonment, supervised release, or probation component of the sentence;

(7) whether the defendant can pass on to consumers or other persons the expense of the fine; and

(8) 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, other than the United States, 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 of the Federal Rules of Criminal Procedure 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.—**(1)** A person sentenced to pay a fine or other monetary penalty, including restitution, 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.

(2) If the judgment, or, in the case of a restitution order, the order, permits other than immediate payment, the length of time over which scheduled payments will be made shall be set by the court, but shall be the shortest time in which full payment can reasonably be made.

(3) A judgment for a fine which permits payments in installments shall include a requirement that the defendant will notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay the fine. Upon receipt of such notice the court may, on its own motion or the motion of any party, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.

(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, restitution 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 or payment of restitution is delinquent if a payment is more than 30 days late.

(i) Default.—A fine or payment of restitution is in default if a payment is delinquent for more than 90 days. Notwithstanding any installment schedule, when a fine or payment of restitution is in default, the entire amount of the fine or restitution is due within 30 days after notification of the default, subject to the provisions of section 3613A.

(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; Pub.L. 101–647, Title XXXV, § 3587, Nov. 29, 1990, 104 Stat. 4930; Pub.L. 103–322, Title II, § 20403(a), Sept. 13, 1994, 108 Stat. 1825; Pub.L. 104–132, Title II, § 207(b), Apr. 24, 1996, 110 Stat. 1236.)

References in Text. The Federal Rules of Criminal Procedure, referred to in subsec. (c)(2), are set out in the Appendix to 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.)

§ 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.)

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.

§ 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.)

§ 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 of the Federal Rules of Criminal Procedure 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, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden

of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—

(i) extraordinary and compelling reasons warrant such a reduction; or

(ii) the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g);

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) Notification Requirements.—

(1) Terminal illness defined.—In this subsection, the term "terminal illness" means a disease or condition with an end-of-life trajectory.

(2) Notification.—The Bureau of Prisons shall, subject to any applicable confidentiality requirements—

(A) in the case of a defendant diagnosed with a terminal illness—

(i) not later than 72 hours after the diagnosis notify the defendant's attorney, partner, and family members of the defendant's condition and inform the defendant's attorney, partner, and family members that they may prepare and submit on the defendant's behalf a request for a sentence reduction pursuant to subsection (c)(1)(A);

(ii) not later than 7 days after the date of the diagnosis, provide the defendant's partner and family members (including extended family) with an opportunity to visit the defendant in person;

(iii) upon request from the defendant or his attorney, partner, or a family member, ensure that Bureau of Prisons employees assist the defendant in the preparation, drafting, and submission of a request for a sentence reduction pursuant to subsection (c)(1)(A); and

(iv) not later than 14 days of receipt of a request for a sentence reduction submitted on the defendant's behalf by the defendant or the defendant's attorney, partner, or family member, process the request;

(B) in the case of a defendant who is physically or mentally unable to submit a request for a sentence reduction pursuant to subsection (c)(1)(A) —

(i) inform the defendant's attorney, partner, and family members that they may prepare and submit on the defendant's behalf a request for a sentence reduction pursuant to subsection (c)(1)(A);

(ii) accept and process a request for sentence reduction that has been prepared and submitted on the defendant's behalf by the defendant's attorney, partner, or family member under clause (i); and

(iii) upon request from the defendant or his attorney, partner, or family member, ensure that Bureau of Prisons employees assist the defendant in the preparation, drafting, and submission of a request for a sentence reduction pursuant to subsection (c)(1)(A); and

(C) ensure that all Bureau of Prisons facilities regularly and visibly post, including in prisoner handbooks, staff training materials, and facility law libraries and medical and hospice facilities, and make available to prisoners upon demand, notice of—

(i) a defendant's ability to request a sentence reduction pursuant to subsection (c)(1)(A);

(ii) the procedures and timelines for initiating and resolving requests described in clause (i); and

(iii) the right to appeal a denial of a request described in clause (i) after all administrative rights to appeal within the Bureau of Prisons have been exhausted.

(3) Annual report.—Not later than 1 year after December 21, 2018, and once every year thereafter, the Director of the Bureau of Prisons shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on requests for sentence reductions pursuant to subsection (c)(1)(A), which shall include a description of, for the previous year—

(A) the number of prisoners granted and denied sentence reductions, categorized by the criteria relied on as the grounds for a reduction in sentence;

(B) the number of requests initiated by or on behalf of prisoners, categorized by the criteria relied on as the grounds for a reduction in sentence;

(C) the number of requests that Bureau of Prisons employees assisted prisoners in drafting, preparing, or submitting, categorized by the criteria relied on as the grounds for a reduction in sentence, and the final decision made in each request;

(D) the number of requests that attorneys, partners, or family members submitted on a defendant's behalf, categorized by the criteria relied on as the grounds for a reduction in sentence, and the final decision made in each request;

(E) the number of requests approved by the Director of the Bureau of Prisons, categorized by the criteria relied on as the grounds for a reduction in sentence;

(F) the number of requests denied by the Director of the Bureau of Prisons and the reasons given for each denial, categorized by the criteria relied on as the grounds for a reduction in sentence;

(G) for each request, the time elapsed between the date the request was received by the warden and the final decision, categorized by the criteria relied on as the grounds for a reduction in sentence;

(H) for each request, the number of prisoners who died while their request was pending and, for each, the amount of time that had elapsed between the date the request was received by the Bureau of Prisons, categorized by the criteria relied on as the grounds for a reduction in sentence;

(I) the number of Bureau of Prisons notifications to attorneys, partners, and family members of their right to visit a terminally ill defendant as required under paragraph (2)(A)(ii) and, for each, whether a visit occurred and how much time elapsed between the notification and the visit;

(J) the number of visits to terminally ill prisoners that were denied by the Bureau of Prisons due to security or other concerns, and the reasons given for each denial; and

(K) the number of motions filed by defendants with the court after all administrative rights to appeal a denial of a sentence reduction had been exhausted, the outcome of each motion, and the time that had elapsed between the date the request was first received by the Bureau of Prisons and the date the defendant filed the motion with the court.

(e) 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; Pub.L. 101–647, Title XXXV, § 3588, Nov. 29, 1990, 104 Stat. 4930; Pub.L. 103–322, Title VII, § 70002, Sept. 13, 1994, 108 Stat. 1984; Pub.L. 104–294, Title VI, § 604(b)(3), Oct. 11, 1996, 110 Stat. 3506; Pub.L. 107–273, Div. B, Title III, § 3006, Nov. 2, 2002, 116 Stat. 1806; Pub.L. 115–391, Title VI, § 603(b), Dec. 21, 2018, 132 Stat. 5239.)

References in Text. The Federal Rules of Criminal Procedure, referred to in subsec. (b)(2), are set out in the Appendix to this title.

The Comprehensive Drug Abuse Prevention and Control Act of 1970, referred to in subsec. (e), is Pub.L. 91–513, Oct. 27, 1970, 84 Stat. 1236, as amended, which is classified principally to chapter 13 (§ 801 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

§ 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 or if the defendant has been convicted for the first time of a domestic violence crime as defined in section 3561(b).

(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), (a)(6), and (a)(7).

(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, that the defendant make restitution in accordance with sections 3663 and 3663A, or any other statute authorizing a sentence of restitution, and that the defendant not unlawfully possess a controlled substance. The court shall order as an explicit condition of supervised release for a defendant convicted for the first time of a domestic violence crime as defined in section 3561(b) that the defendant attend a public, private, or private nonprofit offender rehabilitation program that has been approved by the court, in consultation with a State Coalition Against Domestic Violence or other appropriate experts, if an approved program is readily available within a 50-mile radius of the legal residence of the defendant. The court shall order, as an explicit condition of supervised release for a person required to register

under the Sex Offender Registration and Notification Act, that the person comply with the requirements of that Act. The court shall order, as an explicit condition of supervised release, that the defendant cooperate in the collection of a DNA sample from the defendant, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000. The court shall also order, as an explicit condition of supervised release, that the defendant refrain from any unlawful use of a controlled substance and submit to a drug test within 15 days of release on supervised release and at least 2 periodic drug tests thereafter (as determined by the court) for use of a controlled substance. The condition stated in the preceding sentence may be ameliorated or suspended by the court as provided in section 3563(a)(4). The results of a drug test administered in accordance with the preceding subsection shall be subject to confirmation only if the results are positive, the defendant is subject to possible imprisonment for such failure, and either the defendant denies the accuracy of such test or there is some other reason to question the results of the test. A drug test confirmation shall be a urine drug test confirmed using gas chromatography/mass spectrometry techniques or such test as the Director of the Administrative Office of the United States Courts after consultation with the Secretary of Health and Human Services may determine to be of equivalent accuracy. The court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 3583(g) when considering any action against a defendant who fails a drug test. 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), 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) and any other condition it considers to be appropriate, provided, however that a condition set forth in subsection 3563(b)(10) shall be imposed only for a violation of a condition of supervised release in accordance with section 3583(e)(2) and only when facilities are available. 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. The court may order, as an explicit condition of supervised release for a person who is a felon and required to register under the Sex Offender Registration and Notification Act, that the person submit his person, and any property, house, residence, vehicle, papers, computer, other electronic communications or data storage devices or media, and effects to search at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning a violation of a condition of supervised release or unlawful conduct by the person, and by any probation officer in the lawful discharge of the officer's supervision functions.

(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), (a)(6), and (a)(7)—

(1) terminate a term of supervised release and discharge the defendant released[1] 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

[1] So in original. Probably "defendant released" should be "defendant".

satisfied that such action is warranted by the conduct of the defendant released[1] 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;

(3) revoke a term of supervised release, and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on postrelease supervision, if the court, pursuant to the Federal Rules of Criminal Procedure applicable to revocation of probation or supervised release, finds by a preponderance of the evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this paragraph may not be required to serve on any such revocation more than 5 years in prison if the offense that resulted in the term of supervised release is a class A felony, more than 3 years in prison if such offense is a class B felony, more than 2 years in prison if such offense is a class C or D felony, or more than one year in any other case; or

(4) order the defendant 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.

(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) Mandatory revocation for possession of controlled substance or firearm or for refusal to comply with drug testing.—If the defendant—

(1) possesses a controlled substance in violation of the condition set forth in subsection (d);

(2) possesses a firearm, as such term is defined in section 921 of this title, in violation of Federal law, or otherwise violates a condition of supervised release prohibiting the defendant from possessing a firearm;

(3) refuses to comply with drug testing imposed as a condition of supervised release; or

(4) as a part of drug testing, tests positive for illegal controlled substances more than 3 times over the course of 1 year;

the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment not to exceed the maximum term of imprisonment authorized under subsection (e)(3).

(h) Supervised release following revocation.—When a term of supervise release is revoked and the defendant is required to serve a term of imprisonment, the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release.

(i) Delayed revocation.—The power of the court to revoke a term of supervised release for violation for a condition of supervised release, and to order the defendant to serve a term of imprisonment and, subject to the limitations in subsection (h), a further term of supervised release, extends beyond the expiration of the term of supervised release for any period reasonably necessary for the adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.

(j) Supervised Release Terms for Terrorism Predicates.—Notwithstanding subsection (b), the authorized term of supervised release for any offense listed in section 2332b(g)(5)(B), is any term of years or life.

(k) Notwithstanding subsection (b), the authorized term of supervised release for any offense under section 1201 involving a minor victim, and for any offense under section 1591, 1594(c), 2241, 2242, 2243, 2244, 2245, 2250, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, 2423, or 2425, is any term of years not less than 5, or life. If a defendant required to register under the Sex Offender Registration and Notification Act commits any criminal offense under chapter 109A, 110, or 117, or section 1201 or 1591, for which imprisonment for a term longer than 1 year can be imposed, the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment under subsection (e)(3) without regard to the exception contained therein. Such term shall be not less than 5 years.

(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; Pub.L. 101–647, Title XXXV, § 3589, Nov. 29, 1990, 104 Stat. 4930; Pub.L. 103–322, Title II, § 20414(c), Title XI, § 110505, Title XXXII, § 320921(c), Sept. 13, 1994, 108 Stat. 1831, 2016, 2130; Pub.L. 105–119, Title I, § 115(a)(8)(B), Nov. 26, 1997, 111 Stat. 2465; Pub.L. 106–546, § 7(b), Dec. 19, 2000, 114 Stat. 2734; Pub.L. 107–56, Title VIII, § 812, Oct. 26, 2001, 115 Stat. 382; Pub.L. 107–273, Div. B, Title II, § 2103(b), Title III, § 3007, Nov. 2, 2002, 116 Stat. 1793, 1806; Pub.L. 108–21, Title I, § 101, Apr. 30, 2003, 117 Stat. 651; Pub.L. 109–164, Title II, § 209(d), formerly Pub.L. 114–22, Title I, § 114(d), May 29, 2015, 129 Stat. 242, renumbered § 209(d) of Pub.L. 109–164 by Pub.L. 117–347, Title I, § 106(b)(1), Jan. 5, 2023, 136 Stat. 6204; Pub.L. 109–177, Title II, § 212, Mar. 9, 2006, 120 Stat. 230; Pub.L. 109–248, Title I, § 141(e), Title II, § 201(b), July 27, 2006, 120 Stat. 603, 615; Pub.L. 110–406, § 14(b), Oct. 13, 2008, 122 Stat. 4294; Pub.L. 114–22, Title I, § 114(d), May 29, 2015, 129 Stat. 242; Pub.L. 114–324, § 2(a), Dec. 16, 2016, 130 Stat. 1948.)

EDITORIAL NOTES

References in Text. The Sex Offender Registration and Notification Act, referred to in subsecs. (d) and (k), is Title I of Pub.L. 109–248, July 27, 2006, 120 Stat. 590, which was classified principally to subchapter I (§ 16901 et seq.) of chapter 151 of Title 42, The Public Health and Welfare, prior to editorial reclassification as chapter 209 (§ 20901 et seq.) of Title 34, Crime Control and Law Enforcement. For complete classification of this Act to the Code, see Short Title of 2006 Act note set out under section 10101 of Title 34 and Tables.

Section 3 of the DNA Analysis Backlog Elimination Act of 2000, referred to in subsec. (d), is section 3 of Pub.L. 106–546, which is classified to section 40702 of Title 34, Crime Control and Law Enforcement.

Section 3563(a)(4), referred to in subsec. (d), probably means the par. (4) of section 3563(a) added by section 20414(b)(3) of Pub.L. 103–322, which was renumbered par. (5) by Pub.L. 104–132, title II, § 203(1)(C), Apr. 24, 1996, 110 Stat. 1227.

The Federal Rules of Criminal Procedure, referred to in subsec. (e)(1), (2), (3), are set out in the Appendix to this title.

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 appeared 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) 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).

§ 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.)

§ 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.)

§ 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.)

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CHAPTER 229–POSTSENTENCE ADMINISTRATION

* * *

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, and shall, subject to bed availability, the prisoner's security designation, the prisoner's programmatic needs, the prisoner's mental and medical health needs, any request made by the prisoner related to faith-

based needs, recommendations of the sentencing court, and other security concerns of the Bureau of Prisons, place the prisoner in a facility as close as practicable to the prisoner's primary residence, and to the extent practicable, in a facility within 500 driving miles of that residence. The Bureau shall, subject to consideration of the factors described in the preceding sentence and the prisoner's preference for staying at his or her current facility or being transferred, transfer prisoners to facilities that are closer to the prisoner's primary residence even if the prisoner is already in a facility within 500 driving miles of that residence. 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.

In designating the place of imprisonment or making transfers under this subsection, there shall be no favoritism given to prisoners of high social or economic status. 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. The Bureau shall make available appropriate substance abuse treatment for each prisoner the Bureau determines has a treatable condition of substance addiction or abuse. Any order, recommendation, or request by a sentencing court that a convicted person serve a term of imprisonment in a community corrections facility shall have no binding effect on the authority of the Bureau under this section to determine or change the place of imprisonment of that person. Notwithstanding any other provision of law, a designation of a place of imprisonment under this subsection is not reviewable by any court.

(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.

(e) Substance abuse treatment.—

(1) Phase-in.—In order to carry out the requirement of the last sentence of subsection (b) of this section, that every prisoner with a substance abuse problem have the opportunity to participate in appropriate substance abuse treatment, the Bureau of Prisons shall, subject to the availability of appropriations, provide residential substance abuse treatment (and make arrangements for appropriate aftercare)—

(A) for not less than 50 percent of eligible prisoners by the end of fiscal year 1995, with priority for such treatment accorded based on an eligible prisoner's proximity to release date;

(B) for not less than 75 percent of eligible prisoners by the end of fiscal year 1996, with priority for such treatment accorded based on an eligible prisoner's proximity to release date; and

(C) for all eligible prisoners by the end of fiscal year 1997 and thereafter, with priority for such treatment accorded based on

an eligible prisoner's proximity to release date.

(2) Incentive for prisoners' successful completion of treatment program.—

(A) Generally.—Any prisoner who, in the judgment of the Director of the Bureau of Prisons, has successfully completed a program of residential substance abuse treatment provided under paragraph (1) of this subsection, shall remain in the custody of the Bureau under such conditions as the Bureau deems appropriate. If the conditions of confinement are different from those the prisoner would have experienced absent the successful completion of the treatment, the Bureau shall periodically test the prisoner for substance abuse and discontinue such conditions on determining that substance abuse has recurred.

(B) Period of custody.—The period a prisoner convicted of a nonviolent offense remains in custody after successfully completing a treatment program may be reduced by the Bureau of Prisons, but such reduction may not be more than one year from the term the prisoner must otherwise serve.

(3) Report.—The Bureau of Prisons shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives on January 1, 1995, and on January 1 of each year thereafter, a report. Such report shall contain—

(A) a detailed quantitative and qualitative description of each substance abuse treatment program, residential or not, operated by the Bureau;

(B) a full explanation of how eligibility for such programs is determined, with complete information on what proportion of prisoners with substance abuse problems are eligible; and

(C) a complete statement of to what extent the Bureau has achieved compliance with the requirements of this title.

(4) Authorization of Appropriations.—There are authorized to carry out this subsection such sums as may be necessary for each of fiscal years 2007 through 2011.

(5) Definitions.—As used in this subsection—

(A) the term "residential substance abuse treatment" means a course of individual and group activities and treatment, lasting at least 6 months, in residential treatment facilities set apart from the general prison population (which may include the use of pharmocotherapies,[1] where appropriate, that may extend beyond the 6-month period);

(B) the term "eligible prisoner" means a prisoner who is—

(i) determined by the Bureau of Prisons to have a substance abuse problem; and

(ii) willing to participate in a residential substance abuse treatment program; and

(C) the term "aftercare" means placement, case management and monitoring of the participants in a community-based substance abuse treatment program when the participant leaves the custody of the Bureau of Prisons.

(6) Coordination of Federal assistance.—The Bureau of Prisons shall consult with the Department of Health and Human Services concerning substance abuse treatment and related services and the incorporation of applicable components existing comprehensive approaches including relapse prevention and aftercare services.

(7) Eligibility of primary caretaker parents and pregnant women.—The Director of the Bureau of Prisons may not prohibit an eligible prisoner who is a primary caretaker parent (as defined in section 4051) or pregnant from participating in a program of residential substance abuse treatment provided under paragraph (1) on the basis of a

[1] So in original. Probably should be "pharmacotherapies,".

failure by the eligible prisoner, before being committed to the custody of the Bureau of Prisons, to disclose to any official of the Bureau of Prisons that the prisoner had a substance abuse problem on or before the date on which the eligible prisoner was committed to the custody of the Bureau of Prisons.

(f) Sex Offender Management.—

(1) In General.—The Bureau of Prisons shall make available appropriate treatment to sex offenders who are in need of and suitable for treatment, as follows:

(A) Sex Offender Management Programs.—The Bureau of Prisons shall establish non-residential sex offender management programs to provide appropriate treatment, monitoring, and supervision of sex offenders and to provide aftercare during pre-release custody.

(B) Residential Sex Offender Treatment Programs.—The Bureau of Prisons shall establish residential sex offender treatment programs to provide treatment to sex offenders who volunteer for such programs and are deemed by the Bureau of Prisons to be in need of and suitable for residential treatment.

(2) Regions.—At least 1 sex offender management program under paragraph (1)(A), and at least one residential sex offender treatment program under paragraph (1)(B), shall be established in each region within the Bureau of Prisons.

(3) Authorization of Appropriations.—There are authorized to be appropriated to the Bureau of Prisons for each fiscal year such sums as may be necessary to carry out this subsection.

(g) Partnerships to expand access to reentry programs proven to reduce recidivism.—

(1) Definition.—The term "demonstrated to reduce recidivism" means that the Director of Bureau of Prisons has determined that appropriate research has been conducted and has validated the effectiveness of the type of program on recidivism.

(2) Eligibility for recidivism reduction partnership.—A faith-based or community-based nonprofit organization that provides mentoring or other programs that have been demonstrated to reduce recidivism is eligible to enter into a recidivism reduction partnership with a prison or community-based facility operated by the Bureau of Prisons.

(3) Recidivism reduction partnerships.—The Director of the Bureau of Prisons shall develop policies to require wardens of prisons and community-based facilities to enter into recidivism reduction partnerships with faith-based and community-based nonprofit organizations that are willing to provide, on a volunteer basis, programs described in paragraph (2).

(4) Reporting requirement.—The Director of the Bureau of Prisons shall submit to Congress an annual report on the last day of each fiscal year that—

(A) details, for each prison and community-based facility for the fiscal year just ended—

(i) the number of recidivism reduction partnerships under this section that were in effect;

(ii) the number of volunteers that provided recidivism reduction programming; and

(iii) the number of recidivism reduction programming hours provided; and

(B) explains any disparities between facilities in the numbers reported under subparagraph (A).

(h) Implementation of risk and needs assessment system.—

(1) In general.—Not later than 180 days after the Attorney General completes and releases the risk and needs assessment system (referred to in this subsection as the "System") developed under subchapter D, the Director of the Bureau of Prisons shall, in accordance with that subchapter—

(A) implement and complete the initial intake risk and needs assessment for each prisoner (including for each prisoner who was a prisoner prior to the effective date of

this subsection), regardless of the prisoner's length of imposed term of imprisonment, and begin to assign prisoners to appropriate evidence-based recidivism reduction programs based on that determination;

(B) begin to expand the effective evidence-based recidivism reduction programs and productive activities it offers and add any new evidence-based recidivism reduction programs and productive activities necessary to effectively implement the System; and

(C) begin to implement the other risk and needs assessment tools necessary to effectively implement the System over time, while prisoners are participating in and completing the effective evidence-based recidivism reduction programs and productive activities.

(2) Phase-in.—In order to carry out paragraph (1), so that every prisoner has the opportunity to participate in and complete the type and amount of evidence-based recidivism reduction programs or productive activities they need, and be reassessed for recidivism risk as necessary to effectively implement the System, the Bureau of Prisons shall—

(A) provide such evidence-based recidivism reduction programs and productive activities for all prisoners before the date that is 2 years after the date on which the Bureau of Prisons completes a risk and needs assessment for each prisoner under paragraph (1)(A); and

(B) develop and validate the risk and needs assessment tool to be used in the reassessments of risk of recidivism, while prisoners are participating in and completing evidence-based recidivism reduction programs and productive activities.

(3) Priority during phase-in.—During the 2-year period described in paragraph (2)(A), the priority for such programs and activities shall be accorded based on a prisoner's proximity to release date.

(4) Preliminary expansion of evidence-based recidivism reduction programs and authority to use incentives.—Beginning on the date of enactment of this subsection, the Bureau of Prisons may begin to expand any evidence-based recidivism reduction programs and productive activities that exist at a prison as of such date, and may offer to prisoners who successfully participate in such programs and activities the incentives and rewards described in subchapter D.

(5) Recidivism reduction partnerships.—In order to expand evidence-based recidivism reduction programs and productive activities, the Attorney General shall develop policies for the warden of each prison of the Bureau of Prisons to enter into partnerships, subject to the availability of appropriations, with any of the following:

(A) Nonprofit and other private organizations, including faith-based, art, and community-based organizations that will deliver recidivism reduction programming on a paid or volunteer basis.

(B) Institutions of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) that will deliver instruction on a paid or volunteer basis.

(C) Private entities that will—

(i) deliver vocational training and certifications;

(ii) provide equipment to facilitate vocational training or employment opportunities for prisoners;

(iii) employ prisoners; or

(iv) assist prisoners in prerelease custody or supervised release in finding employment.

(D) Industry-sponsored organizations that will deliver workforce development and training, on a paid or volunteer basis.

(6) Requirement to provide programs to all prisoners; priority.—The Director of the Bureau of Prisons shall provide all prisoners with the opportunity to actively participate in evidence-based recidivism reduction programs or productive activities, according

to their specific criminogenic needs, throughout their entire term of incarceration. Priority for participation in recidivism reduction programs shall be given to medium-risk and high-risk prisoners, with access to productive activities given to minimum-risk and low-risk prisoners.

(7) Definitions.—The terms in this subsection have the meaning given those terms in section 3635.

(i) Continued access to medical care.—

(1) In general.—In order to ensure a minimum standard of health and habitability, the Bureau of Prisons should ensure that each prisoner in a community confinement facility has access to necessary medical care, mental health care, and medicine through partnerships with local health service providers and transition planning.

(2) Definition.—In this subsection, the term "community confinement" has the meaning given that term in the application notes under section 5F1.1 of the Federal Sentencing Guidelines Manual, as in effect on the date of the enactment of the Second Chance Act of 2007.

(Added Pub.L. 98–473, Title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2007, and amended Pub.L. 101–647, Title XXIX, § 2903, Nov. 29, 1990, 104 Stat. 4913; Pub.L. 103–322, Title II, § 20401, Title III § 32001, Sept. 13, 1994,108 Stat. 1824, 1896; Pub.L. 109–162, Title XI, § 1146, Jan. 5, 2006, 119 Stat. 3112; Pub.L. 109–248, Title VI, § 622, July 7, 2006, 120 Stat. 634; Pub.L. 110–199, Title II, §§ 231(f), 251(b), 252, Apr. 9, 2008, 122 Stat. 687, 693; Pub.L. 115–391, Title I, § 102(a), Title V, § 504(f)(1), Title VI, § 601, Dec. 21, 2018, 132 Stat. 5208, 5234, 5237; Pub.L. 117–103, Div. W, Title X, § 1001(c), Mar. 15, 2022, 136 Stat. 914.)

EDITORIAL NOTES

References in Text. The effective date of this subsection, referred to in subsec. (h)(1)(A), probably means the date of enactment of Pub.L. 115–391, which added subsec. (h) of this section and was approved Dec. 21, 2018.

The date of enactment of this subsection, referred to in subsec. (h)(4), is the date of enactment of Pub.L. 115–391, which was approved Dec. 21, 2018.

The date of the enactment of the Second Chance Act of 2007, referred to in subsec. (i)(2), is the date of enactment of Pub.L. 110–199, which was approved Apr. 9, 2008.

§ 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.)

§ 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.)

§ 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 the prisoner's term of imprisonment, less any time credited toward the service of the prisoner's 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.—(1) Subject to paragraph (2), a prisoner who is serving a term of imprisonment of more than 1 year[1] other than a term of imprisonment for the duration of the prisoner's life, may receive credit toward the service of the prisoner's sentence of up to 54 days for each year of the prisoner's sentence imposed by the court, subject to determination by the Bureau of Prisons that, during that year, the prisoner has displayed exemplary compliance with institutional disciplinary regulations. Subject to paragraph (2), if the Bureau determines that, during that year, the prisoner has not satisfactorily complied with such institutional regulations, the prisoner shall receive no such credit toward service of the prisoner's sentence or shall receive such lesser credit as the Bureau determines to be appropriate. In awarding credit under this section, the Bureau shall consider whether the prisoner, during the relevant period, has earned, or is making satisfactory progress toward earning, a high school diploma or an equivalent degree. Credit that has not been earned may not later be granted. Subject to paragraph (2), credit for the last year of a term of imprisonment shall be credited on the first day of the last year of the term of imprisonment.

(2) Notwithstanding any other law, credit awarded under this subsection after the date of enactment of the Prison Litigation Reform Act shall vest on the date the prisoner is released from custody.

(3) The Attorney General shall ensure that the Bureau of Prisons has in effect an optional General Educational Development program for inmates who have not earned a high school diploma or its equivalent.

(4) Exemptions to the General Educational Development requirement may be made as deemed appropriate by the Director of the Federal Bureau of Prisons.

(c) Pre-release custody.—(1) In general.—The Director of the Bureau of Prisons shall, to the extent practicable, ensure that a prisoner serving a term of imprisonment spends

[1] So in original. Probably should be followed by a comma.

a portion of the final months of that term (not to exceed 12 months), under conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare for the reentry of that prisoner into the community. Such conditions may include a community correctional facility.

(2) Home confinement authority.—The authority under this subsection may be used to place a prisoner in home confinement for the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months. The Bureau of Prisons shall, to the extent practicable, place prisoners with lower risk levels and lower needs on home confinement for the maximum amount of time permitted under this paragraph.

(3) Assistance.—The United States Probation System shall, to the extent practicable, offer assistance to a prisoner during prerelease custody under this subsection.

(4) No limitations.—Nothing in this subsection shall be construed to limit or restrict the authority of the Director of the Bureau of Prisons under section 3621.

(5) Reporting.—Not later than 1 year after the date of the enactment of the Second Chance Act of 2007 (and every year thereafter), the Director of the Bureau of Prisons shall transmit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report describing the Bureau's utilization of community corrections facilities. Each report under this paragraph shall set forth the number and percentage of Federal prisoners placed in community corrections facilities during the preceding year, the average length of such placements, trends in such utilization, the reasons some prisoners are not placed in community corrections facilities, and number of prisoners not being placed in community corrections facilities for each reason set forth, and any other information that may be useful to the committees in determining if the Bureau is utilizing community corrections facilities in an effective manner.

(6) Issuance of regulations.—The Director of the Bureau of Prisons shall issue regulations pursuant to this subsection not later than 90 days after the date of the enactment of the Second Chance Reauthorization Act of 2018, which shall ensure that placement in a community correctional facility by the Bureau of Prisons is—

(A) conducted in a manner consistent with section 3621(b) of this title;

(B) determined on an individual basis; and

(C) of sufficient duration to provide the greatest likelihood of successful reintegration into the community.

(d) Allotment of clothing, funds, and transportation.—Upon the release of a prisoner on the expiration of the prisoner's term of imprisonment, the Bureau of Prisons shall furnish the prisoner 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 the prisoner's conviction, to the prisoner's 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. Upon the release of a prisoner by the Bu-

reau of Prisons to supervised release, the Bureau of Prisons shall notify such prisoner, verbally and in writing, of the requirement that the prisoner adhere to an installment schedule, not to exceed 2 years except in special circumstances, to pay for any fine imposed for the offense committed by such prisoner, and of the consequences of failure to pay such fines under sections 3611 through 3614 of this title.

(f) Mandatory functional literacy requirement.—

(1) The Attorney General shall direct the Bureau of Prisons to have in effect a mandatory functional literacy program for all mentally capable inmates who are not functionally literate in each Federal correctional institution within 6 months from the date of the enactment of this Act.

(2) Each mandatory functional literacy program shall include a requirement that each inmate participate in such program for a mandatory period sufficient to provide the inmate with an adequate opportunity to achieve functional literacy, and appropriate incentives which lead to successful completion of such programs shall be developed and implemented.

(3) As used in this section, the term "functional literacy" means—

(A) an eighth grade equivalence in reading and mathematics on a nationally recognized standardized test;

(B) functional competency or literacy on a nationally recognized criterion-referenced test; or

(C) a combination of subparagraphs (A) and (B).

(4) Non-English speaking inmates shall be required to participate in an English-As-A-Second-Language program until they function at the equivalence of the eighth grade on a nationally recognized educational achievement test.

(5) The Chief Executive Officer of each institution shall have authority to grant waivers for good cause as determined and documented on an individual basis.

[**(6) Repealed.** Pub.L. 104–66, Title I, § 1091(c), Dec. 21, 1995, 109 Stat. 722.]

(g) Prerelease custody or supervised release for risk and needs assessment system participants.—

(1) Eligible prisoners.—This subsection applies in the case of a prisoner (as such term is defined in section 3635) who—

(A) has earned time credits under the risk and needs assessment system developed under subchapter D (referred to in this subsection as the "System") in an amount that is equal to the remainder of the prisoner's imposed term of imprisonment;

(B) has shown through the periodic risk reassessments a demonstrated recidivism risk reduction or has maintained a minimum or low recidivism risk, during the prisoner's term of imprisonment;

(C) has had the remainder of the prisoner's imposed term of imprisonment computed under applicable law; and

(D)(i) in the case of a prisoner being placed in prerelease custody, the prisoner—

(I) has been determined under the System to be a minimum or low risk to recidivate pursuant to the last 2 reassessments of the prisoner; or

(II) has had a petition to be transferred to prerelease custody or supervised release approved by the warden of the prison, after the warden's determination that—

(aa) the prisoner would not be a danger to society if transferred to prerelease custody or supervised release;

(bb) the prisoner has made a good faith effort to lower their recidivism risk through participation in recidivism reduction programs or productive activities; and

(cc) the prisoner is unlikely to recidivate; or

(ii) in the case of a prisoner being placed in supervised release, the prisoner has been determined under the System to be a minimum or low risk to recidivate

pursuant to the last reassessment of the prisoner.

(2) Types of prerelease custody.—A prisoner shall be placed in prerelease custody as follows:

(A) Home confinement.—

(i) In general.—A prisoner placed in prerelease custody pursuant to this subsection who is placed in home confinement shall—

(I) be subject to 24-hour electronic monitoring that enables the prompt identification of the prisoner, location, and time, in the case of any violation of subclause (II);

(II) remain in the prisoner's residence, except that the prisoner may leave the prisoner's home in order to, subject to the approval of the Director of the Bureau of Prisons—

(aa) perform a job or job-related activities, including an apprenticeship, or participate in job-seeking activities;

(bb) participate in evidence-based recidivism reduction programming or productive activities assigned by the System, or similar activities;

(cc) perform community service;

(dd) participate in crime victim restoration activities;

(ee) receive medical treatment;

(ff) attend religious activities; or

(gg) participate in other family-related activities that facilitate the prisoner's successful reentry such as a family funeral, a family wedding, or to visit a family member who is seriously ill; and

(III) comply with such other conditions as the Director determines appropriate.

(ii) Alternate means of monitoring.—If the electronic monitoring of a prisoner described in clause (i)(I) is infeasible for technical or religious reasons, the Director of the Bureau of Prisons may use alternative means of monitoring a prisoner placed in home confinement that the Director determines are as effective or more effective than the electronic monitoring described in clause (i)(I).

(iii) Modifications.—The Director of the Bureau of Prisons may modify the conditions described in clause (i) if the Director determines that a compelling reason exists to do so, and that the prisoner has demonstrated exemplary compliance with such conditions.

(iv) Duration.—Except as provided in paragraph (4), a prisoner who is placed in home confinement shall remain in home confinement until the prisoner has served not less than 85 percent of the prisoner's imposed term of imprisonment.

(B) Residential reentry center.—A prisoner placed in prerelease custody pursuant to this subsection who is placed at a residential reentry center shall be subject to such conditions as the Director of the Bureau of Prisons determines appropriate.

(3) Supervised release.—If the sentencing court included as a part of the prisoner's sentence a requirement that the prisoner be placed on a term of supervised release after imprisonment pursuant to section 3583, the Director of the Bureau of Prisons may transfer the prisoner to begin any such term of supervised release at an earlier date, not to exceed 12 months, based on the application of time credits under section 3632.

(4) Determination of conditions.—In determining appropriate conditions for prisoners placed in prerelease custody pursuant to this subsection, the Director of the Bureau of Prisons shall, to the extent practicable, provide that increasingly less restrictive conditions shall be imposed on prisoners who demonstrate continued compliance with the conditions of such prerelease custody, so as to

most effectively prepare such prisoners for reentry.

(5) Violations of conditions.—If a prisoner violates a condition of the prisoner's prerelease custody, the Director of the Bureau of Prisons may impose such additional conditions on the prisoner's prerelease custody as the Director of the Bureau of Prisons determines appropriate, or revoke the prisoner's prerelease custody and require the prisoner to serve the remainder of the term of imprisonment to which the prisoner was sentenced, or any portion thereof, in prison. If the violation is nontechnical in nature, the Director of the Bureau of Prisons shall revoke the prisoner's prerelease custody.

(6) Issuance of guidelines.—The Attorney General, in consultation with the Assistant Director for the Office of Probation and Pretrial Services, shall issue guidelines for use by the Bureau of Prisons in determining—

(A) the appropriate type of prerelease custody or supervised release and level of supervision for a prisoner placed on prerelease custody pursuant to this subsection; and

(B) consequences for a violation of a condition of such prerelease custody by such a prisoner, including a return to prison and a reassessment of evidence-based recidivism risk level under the System.

(7) Agreements with united states probation and pretrial services.—The Director of the Bureau of Prisons shall, to the greatest extent practicable, enter into agreements with United States Probation and Pretrial Services to supervise prisoners placed in home confinement under this subsection. Such agreements shall—

(A) authorize United States Probation and Pretrial Services to exercise the authority granted to the Director pursuant to paragraphs (3) and (4); and

(B) take into account the resource requirements of United States Probation and Pretrial Services as a result of the transfer of Bureau of Prisons prisoners to prerelease custody or supervised release.

(8) Assistance.—United States Probation and Pretrial Services shall, to the greatest extent practicable, offer assistance to any prisoner not under its supervision during prerelease custody under this subsection.

(9) Mentoring, reentry, and spiritual services.—Any prerelease custody into which a prisoner is placed under this subsection may not include a condition prohibiting the prisoner from receiving mentoring, reentry, or spiritual services from a person who provided such services to the prisoner while the prisoner was incarcerated, except that the warden of the facility at which the prisoner was incarcerated may waive the requirement under this paragraph if the warden finds that the provision of such services would pose a significant security risk to the prisoner, persons who provide such services, or any other person. The warden shall provide written notice of any such waiver to the person providing such services and to the prisoner.

(10) Time limits inapplicable.—The time limits under subsections (b) and (c) shall not apply to prerelease custody under this subsection.

(11) Prerelease custody capacity.—The Director of the Bureau of Prisons shall ensure there is sufficient prerelease custody capacity to accommodate all eligible prisoners.

(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; Pub.L. 101–647, Title XXIX, §§ 2902(a), 2904, Nov. 29, 1990, 104 Stat. 4913; Pub.L. 103–322, Title II, §§ 20405, 20412, Sept. 13, 1994, 108 Stat. 1825, 1828; Pub.L. 104–66, Title I, § 1091(c), Dec. 21, 1995, 109 Stat. 722; Pub.L. 104–134, Title I, § 101[(a)] [Title VIII § 809(c)], Apr. 26, 1996, 110 Stat. 1321–76, renumbered Title I, Pub.L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327; Pub.L. 110–177, Title V, § 505, Jan. 7, 2008, 121 Stat. 2542; Pub.L. 110–199, Title II, § 251(a), Apr. 9, 2008, 122 Stat. 692; Pub.L. 115–391, Title I, § 102(b)(1), Title V, § 504(c), Title VI, § 602, Dec. 21, 2018, 132 Stat. 5210, 5233, 5238.)

EDITORIAL NOTES

References in Text. The date of enactment of the Prison Litigation Reform Act, referred to in subsec. (b)(2), probably means the date of enactment of the Prison Litigation Reform Act of 1995, section 101[(a)] [title VIII] of Pub.L. 104–134, which was approved Apr. 26, 1996.

The date of the enactment of the Second Chance Act of 2007, referred to in subsec. (c)(5), is the date of enactment of Pub.L. 110–199, which was approved Apr. 9, 2008.

The date of the enactment of the Second Chance Reauthorization Act of 2018, referred to in subsec. (c)(6), is the date of enactment of title V of Pub.L. 115–391, which was approved Dec. 21, 2018.

The date of the enactment of this Act, referred to in subsec. (f)(1), probably means the date of enactment of Pub.L. 101–647, which enacted subsec. (f) and was approved Nov. 29, 1990.

* * *

CHAPTER 232–MISCELLANEOUS SENTENCING PROVISIONS

* * *

§ 3661. Use of information for sentencing

No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence.

(Added Pub.L. 91–452, Title X, § 1001(a), Oct. 15, 1970, 84 Stat. 951, § 3577, and renumbered Pub.L.98–473, Title II, § 212(a)(1), Oct. 12, 1984, 98 Stat. 1987.)

* * *

§ 3663. Order of restitution

(a)(1)(A) The court, when sentencing a defendant convicted of an offense under this title, section 401, 408(a), 409, 416, 420, or 422(a) of the Controlled Substances Act (21 U.S.C. 841, 848(a), 849, 856, 861, 863) (but in no case shall a participant in an offense under such sections be considered a victim of such offense under this section), or section 5124, 46312, 46502, or 46504 of title 49, other than an offense described in section 3663A(c), may order, in addition to or, in the case of a misdemeanor, in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of such offense, or if the victim is deceased, to the victim's estate. The court may also order, if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offense.

(B)(i) The court, in determining whether to order restitution under this section, shall consider—

(I) the amount of the loss sustained by each victim as a result of the offense; and

(II) the financial resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate.

(ii) To the extent that the court determines that the complication and prolongation of the sentencing process resulting from the fashioning of an order of restitution under this section outweighs the need to provide restitution to any victims, the court may decline to make such an order.

(2) For the purposes of this section, the term "victim" means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern. In the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, may assume the victim's rights under this section, but in no event shall the defendant be named as such representative or guardian.

(3) The court may also order restitution in any criminal case to the extent agreed to by the parties in a plea agreement.

(b) The order may require that such defendant—

(1) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense—

(A) return the property to the owner of the property or someone designated by the owner; or

(B) if return of the property under subparagraph (A) is impossible, impractical, or inadequate, pay an amount equal to the greater of—

(i) the value of the property on the date of the damage, loss, or destruction, or

(ii) the value of the property on the date of sentencing,

less the value (as of the date the property is returned) of any part of the property that is returned;

(2) in the case of an offense resulting in bodily injury to a victim including an offense under chapter 109A or chapter 110—

(A) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

(C) reimburse the victim for income lost by such victim as a result of such offense;

(3) in the case of an offense resulting in bodily injury also results in the death of a victim, pay an amount equal to the cost of necessary funeral and related services;

(4) in any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense;

(5) in any case, if the victim (or if the victim is deceased, the victim's estate) consents, make restitution in services in lieu of money, or make restitution to a person or organization designated by the victim or the estate; and

(6) in the case of an offense under sections 1028(a)(7) or 1028A(a) of this title, pay an amount equal to the value of the time reasonably spent by the victim in an attempt to remediate the intended or actual harm incurred by the victim from the offense.

(c)(1) Notwithstanding any other provision of law (but subject to the provisions of subsections (a)(1)(B) (i)(II) and (ii),[1] when sentencing a defendant convicted of an offense described in section 401, 408(a), 409, 416, 420, or 422(a) of the Controlled Substances Act (21 U.S.C. 841, 848(a), 849, 856, 861, 863), in which there is no identifiable victim, the court may order that the defendant make restitution in accordance with this subsection.

(2)(A) An order of restitution under this subsection shall be based on the amount of public harm caused by the offense, as determined by the court in accordance with guidelines promulgated by the United States Sentencing Commission.

(B) In no case shall the amount of restitution ordered under this subsection exceed the amount of the fine which may be ordered for the offense charged in the case.

(3) Restitution under this subsection shall be distributed as follows:

(A) 65 percent of the total amount of restitution shall be paid to the State entity designated to administer crime victim assistance in the State in which the crime occurred.

(B) 35 percent of the total amount of restitution shall be paid to the State entity designated to receive Federal substance abuse block grant funds.

(4) The court shall not make an award under this subsection if it appears likely that such award would interfere with a forfeiture under

[1] So in original. Probably should be "(ii)),".

chapter 46 or chapter 96 of this title or under the Controlled Substances Act (21 U.S.C. 801 et seq.).

(5) Notwithstanding section 3612(c) or any other provision of law, a penalty assessment under section 3013 or a fine under subchapter C of chapter 227 shall take precedence over an order of restitution under this subsection.

(6) Requests for community restitution under this subsection may be considered in all plea agreements negotiated by the United States.

(7)(A) The United States Sentencing Commission shall promulgate guidelines to assist courts in determining the amount of restitution that may be ordered under this subsection.

(B) No restitution shall be ordered under this subsection until such time as the Sentencing Commission promulgates guidelines pursuant to this paragraph.

(d) An order of restitution made pursuant to this section shall be issued and enforced in accordance with section 3664.

(Added Pub.L. 97–291, § 5(a), Oct. 12, 1982, 96 Stat. 1253, § 3579 renumbered and amended Pub.L. 98–473, Title II, § 212(a)(1), (3), Oct. 12, 1984, 98 Stat. 1987, 2010; Pub.L. 98–596, § 9, Oct. 30, 1984, 98 Stat. 3138; Nov. 10, 1986, Pub.L. 99–646, §§ 8(b), 20(a), 77(a), 78(a), 79(a), 100 Stat. 3593, 3596, 3618, 3619; Pub.L. 100–182, § 13, Dec. 7, 1987, 101 Stat. 1268; Pub.L. 100–185, § 12, Dec. 11, 1987, 101 Stat. 1285; Pub.L. 100–690, Title VII, § 7042, Nov. 18, 1988, 102 Stat. 4399; Pub.L. 101–647, Title XXV, § 2509, Title XXXV, § 3595, Nov. 29, 1990, 104 Stat. 4863, 4931; Pub.L. 103–272, § 5(e)(12), July 5, 1994, 108 Stat. 1374; Pub.L. 103–322, Title IV, §§ 40504, 40505, Sept. 13, 1994, 108 Stat. 1947; Pub.L. 104–132, Title II, § 205(a), Apr. 24, 1996, 110 Stat. 1229; Pub.L. 104–294, Title VI, §§ 601(r)(1)(2), 605(l), Oct. 11, 1996, 110 Stat. 3502, 3510; Pub.L. 106–310, Div. B, Title XXXVI, § 3613(c), Oct. 17, 2000, 114 Stat. 1230; Pub.L. 109–59, Title VII, § 7128(b), Aug. 10, 2005, 109 Stat. 1910; Sept. 26, 2008, Pub.L. 110–326, Title II, § 202, 122 Stat. 3561.)

EDITORIAL NOTES

References in Text. The Controlled Substances Act, referred to in subsec. (c)(4), is title II of Pub.L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

§ 3663A. Mandatory restitution to victims of certain crimes

(a)(1) Notwithstanding any other provision of law, when sentencing a defendant convicted of an offense described in subsection (c), the court shall order, in addition to, or in the case of a misdemeanor, in addition to or in lieu of, any other penalty authorized by law, that the defendant make restitution to the victim of the offense or, if the victim is deceased, to the victim's estate.

(2) For the purposes of this section, the term "victim" means a person directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered including, in the case of an offense that involves as an element a scheme, conspiracy, or pattern of criminal activity, any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern. In the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, may assume the victim's rights under this section, but in no event shall the defendant be named as such representative or guardian.

(3) The court shall also order, if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offense.

(4) Clarification.—In ordering restitution under this section, a court shall order the defendant to make restitution to a person who has assumed the victim's rights under paragraph (2) to reimburse that person's necessary and reasonable—

(A) lost income, child care, transportation, and other expenses incurred during and directly related to participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense;

(B) lost income, transportation, and other expenses incurred that are directly related to transporting the victim for necessary medical and related professional services and devices

relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment; and

(C) lost income, transportation, and other expenses incurred that are directly related to transporting the victim to receive necessary physical and occupational therapy and rehabilitation.

(b) The order of restitution shall require that such defendant—

(1) in the case of an offense resulting in damage to or loss or destruction of property of a victim of the offense—

(A) return the property to the owner of the property or someone designated by the owner; or

(B) if return of the property under subparagraph (A) is impossible, impracticable, or inadequate, pay an amount equal to—

(i) the greater of—

(I) the value of the property on the date of the damage, loss, or destruction; or

(II) the value of the property on the date of sentencing, less

(ii) the value (as of the date the property is returned) of any part of the property that is returned;

(2) in the case of an offense resulting in bodily injury to a victim—

(A) pay an amount equal to the cost of necessary medical and related professional services and devices relating to physical, psychiatric, and psychological care, including nonmedical care and treatment rendered in accordance with a method of healing recognized by the law of the place of treatment;

(B) pay an amount equal to the cost of necessary physical and occupational therapy and rehabilitation; and

(C) reimburse the victim for income lost by such victim as a result of such offense;

(3) in the case of an offense resulting in bodily injury that results in the death of the victim, pay an amount equal to the cost of necessary funeral and related services; and

(4) in any case, reimburse the victim for lost income and necessary child care, transportation, and other expenses incurred during participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense.

(c)(1) This section shall apply in all sentencing proceedings for convictions of, or plea agreements relating to charges for, any offense—

(A) that is—

(i) a crime of violence, as defined in section 16;

(ii) an offense against property under this title, or under section 416(a) of the Controlled Substance Act (21 U.S.C. 856(a)), including any offense committed by fraud or deceit;

(iii) an offense described in section 3 of the Rodchenkov Anti-Doping Act of 2019;

(iv) an offense described in section 1365 (relating to tampering with consumer products); or

(v) an offense under section 670 (relating to theft of medical products); and

(B) in which an identifiable victim or victims has suffered a physical injury or pecuniary loss.

(2) In the case of a plea agreement that does not result in a conviction for an offense described in paragraph (1), this section shall apply only if the plea specifically states that an offense listed under such paragraph gave rise to the plea agreement.

(3) This section shall not apply in the case of an offense described in paragraph (1)(A)(ii) or (iii) if the court finds, from facts on the record, that—

(A) the number of identifiable victims is so large as to make restitution impracticable; or

(B) determining complex issues of fact related to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process.

(d) An order of restitution under this section shall be issued and enforced in accordance with section 3664.

(Added Pub.L. 104–132, Title II, § 204(a), Apr. 24, 1996, 110 Stat. 1227; amended Pub.L. 106–310, Div. B, Title XXXVI, § 3613(d), Oct. 17, 2000, 114 Stat. 1230; Pub.L. 112–186, § 6, Oct. 5, 2012, 126 Stat. 1430; Pub.L. 116–206, § 5, Dec. 4, 2020, 134 Stat. 1000; Pub.L. 118–77, § 2, July 30, 2024, 138 Stat. 1510.)

EDITORIAL NOTES

References in Text. Section 3 of the Rodchenkov Anti-Doping Act of 2019, referred to in subsec. (c)(1)(A)(iii), is classified to section 2402 of Title 21, Food and Drugs.

§ 3664. Procedure for issuance and enforcement of order of restitution

(a) For orders of restitution under this title, the court shall order the probation officer to obtain and include in its presentence report, or in a separate report, as the court may direct, information sufficient for the court to exercise its discretion in fashioning a restitution order. The report shall include, to the extent practicable, a complete accounting of the losses to each victim, any restitution owed pursuant to a plea agreement, and information relating to the economic circumstances of each defendant. If the number or identity of victims cannot be reasonably ascertained, or other circumstances exist that make this requirement clearly impracticable, the probation officer shall so inform the court.

(b) The court shall disclose to both the defendant and the attorney for the Government all portions of the presentence or other report pertaining to the matters described in subsection (a) of this section.

(c) The provisions of this chapter, chapter 227, and Rule 32(c) of the Federal Rules of Criminal Procedure shall be the only rules applicable to proceedings under this section.

(d)(1) Upon the request of the probation officer, but not later than 60 days prior to the date initially set for sentencing, the attorney for the Government, after consulting, to the extent practicable, with all identified victims, shall promptly provide the probation officer with a listing of the amounts subject to restitution.

(2) The probation officer shall, prior to submitting the presentence report under subsection (a), to the extent practicable—

(A) provide notice to all identified victims of—

(i) the offense or offenses of which the defendant was convicted;

(ii) the amounts subject to restitution submitted to the probation officer;

(iii) the opportunity of the victim to submit information to the probation officer concerning the amount of the victim's losses;

(iv) the scheduled date, time, and place of the sentencing hearing;

(v) the availability of a lien in favor of the victim pursuant to subsection (m)(1)(B); and

(vi) the opportunity of the victim to file with the probation officer a separate affidavit relating to the amount of the victim's losses subject to restitution; and

(B) provide the victim with an affidavit form to submit pursuant to subparagraph (A)(vi).

(3) Each defendant shall prepare and file with the probation officer an affidavit fully describing the financial resources of the defendant, including a complete listing of all assets owned or controlled by the defendant as of the date on which the defendant was arrested, the financial needs and earning ability of the defendant and the defendant's dependents, and such other information that the court requires relating to such other factors as the court deems appropriate.

(4) After reviewing the report of the probation officer, the court may require additional documentation or hear testimony. The privacy of any records filed, or testimony heard, pursuant to this section shall be maintained to the greatest extent possible, and such records may be filed or testimony heard in camera.

(5) If the victim's losses are not ascertainable by the date that is 10 days prior to sentencing, the attorney for the Government or the probation officer shall so inform the court, and the

court shall set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing. If the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses in which to petition the court for an amended restitution order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief.

(6) The court may refer any issue arising in connection with a proposed order of restitution to a magistrate judge or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.

(e) Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant's dependents, shall be on the defendant. The burden of demonstrating such other matters as the court deems appropriate shall be upon the party designated by the court as justice requires.

(f)(1)(A) In each order of restitution, the court shall order restitution to each victim in the full amount of each victim's losses as determined by the court and without consideration of the economic circumstances of the defendant.

(B) In no case shall the fact that a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source be considered in determining the amount of restitution.

(2) Upon determination of the amount of restitution owed to each victim, the court shall, pursuant to section 3572, specify in the restitution order the manner in which, and the schedule according to which, the restitution is to be paid, in consideration of—

(A) the financial resources and other assets of the defendant, including whether any of these assets are jointly controlled;

(B) projected earnings and other income of the defendant; and

(C) any financial obligations of the defendant; including obligations to dependents.

(3)(A) A restitution order may direct the defendant to make a single, lump-sum payment, partial payments at specified intervals, in-kind payments, or a combination of payments at specified intervals and in-kind payments.

(B) A restitution order may direct the defendant to make nominal periodic payments if the court finds from facts on the record that the economic circumstances of the defendant do not allow the payment of any amount of a restitution order, and do not allow for the payment of the full amount of a restitution order in the foreseeable future under any reasonable schedule of payments.

(4) An in-kind payment described in paragraph (3) may be in the form of—

(A) return of property;

(B) replacement of property; or

(C) if the victim agrees, services rendered to the victim or a person or organization other than the victim.

(g)(1) No victim shall be required to participate in any phase of a restitution order.

(2) A victim may at any time assign the victim's interest in restitution payments to the Crime Victims Fund in the Treasury without in any way impairing the obligation of the defendant to make such payments.

(h) If the court finds that more than 1 defendant has contributed to the loss of a victim, the court may make each defendant liable for payment of the full amount of restitution or may apportion liability among the defendants to reflect the level of contribution to the victim's loss and economic circumstances of each defendant.

(i) If the court finds that more than 1 victim has sustained a loss requiring restitution by a defendant, the court may provide for a different payment schedule for each victim based on the type and amount of each victim's loss and accounting for the economic circumstances of each victim. In any case in which the United States is a victim, the court shall ensure that all other victims receive full restitution before the United States receives any restitution.

(j)(1) If a victim has received compensation from insurance or any other source with respect

to a loss, the court shall order that restitution be paid to the person who provided or is obligated to provide the compensation, but the restitution order shall provide that all restitution of victims required by the order be paid to the victims before any restitution is paid to such a provider of compensation.

(2) Any amount paid to a victim under an order of restitution shall be reduced by any amount later recovered as compensatory damages for the same loss by the victim in—

(A) any Federal civil proceeding; and

(B) any State civil proceeding, to the extent provided by the law of the State.

(k) A restitution order shall provide that the defendant shall notify the court and the Attorney General of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution. The court may also accept notification of a material change in the defendant's economic circumstances from the United States or from the victim. The Attorney General shall certify to the court that the victim or victims owed restitution by the defendant have been notified of the change in circumstances. Upon receipt of the notification, the court may, on its own motion, or the motion of any party, including the victim, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.

(l) A conviction of a defendant for an offense involving the act giving rise to an order of restitution shall estop the defendant from denying the essential allegations of that offense in any subsequent Federal civil proceeding or State civil proceeding, to the extent consistent with State law, brought by the victim.

(m)(1)(A)(i) An order of restitution may be enforced by the United States in the manner provided for in subchapter C of chapter 227 and subchapter B of chapter 229 of this title; or

(ii) by all other available and reasonable means.

(B) At the request of a victim named in a restitution order, the clerk of the court shall issue an abstract of judgment certifying that a judgment has been entered in favor of such victim in the amount specified in the restitution order. Upon registering, recording, docketing, or indexing such abstract in accordance with the rules and requirements relating to judgments of the court of the State where the district court is located, the abstract of judgment shall be a lien on the property of the defendant located in such State in the same manner and to the same extent and under the same conditions as a judgment of a court of general jurisdiction in that State.

(2) An order of in-kind restitution in the form of services shall be enforced by the probation officer.

(n) If a person obligated to provide restitution, or pay a fine, receives substantial resources from any source, including inheritance, settlement, or other judgment, during a period of incarceration, such person shall be required to apply the value of such resources to any restitution or fine still owed.

(o) A sentence that imposes an order of restitution is a final judgment notwithstanding the fact that—

(1) such a sentence can subsequently be—

(A) corrected under Rule 35 of the Federal Rules of Criminal Procedure and section 3742 of chapter 235 of this title;

(B) appealed and modified under section 3742;

(C) amended under subsection (d)(5); or

(D) adjusted under section 3664(k), 3572, or 3613A; or

(2) the defendant may be resentenced under section 3565 or 3614.

(p) Nothing in this section or sections 2248, 2259, 2264, 2327, 3663, and 3663A and arising out of the application of such sections, shall be construed to create a cause of action not otherwise authorized in favor of any person against the United States or any officer or employee of the United States.

(Added Pub.L. 97–291, § 5(a), Oct. 12, 1982, 96 Stat. 1255, § 3580, renumbered Pub.L. 98–473, Title II, § 212(a)(1), Oct. 12, 1984; 98 Stat. 1987; Pub.L. 101–647, Title XXXV, § 3596, Nov. 29, 1990, 104 Stat. 4931; Pub.L. 104–132, Title II, § 206(a), Apr. 24, 1996, 110 Stat. 1232; Pub.L. 107–273, Div. B, Title IV, § 4002(e)(1), Nov. 2, 2002, 116 Stat. 1810.)

EDITORIAL NOTES

References in Text. The Federal Rules of Criminal Procedure, referred to in subsecs. (c) and (o)(1)(A), are set out in the Appendix to 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 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.

The Government may not further prosecute such appeal without the personal approval of the Attorney General, the Solicitor General, or a deputy solicitor general designated by the Solicitor General.

(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 the applicable guideline range, and

(A) the district court failed to provide the written statement of reasons required by section 3553(c);

(B) the sentence departs from the applicable guideline range based on a factor that—

(i) does not advance the objectives set forth in section 3553(a)(2); or

(ii) is not authorized under section 3553(b); or

(iii) is not justified by the facts of the case; or

(C) the sentence departs to an unreasonable degree from the applicable guidelines range, having regard for the factors to be considered in imposing a sentence, as set forth in section 3553(a) of this title and 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, except with respect to determinations under subsection (3)(A) or (3)(B), shall give due deference to the district court's application of the guidelines to the facts. With respect to determinations under subsection (3)(A) or (3)(B), the court of appeals shall review de novo the district court's application of the guidelines to the facts.

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

(1) the sentence 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) the sentence is outside the applicable guideline range and the district court failed to provide the required statement of reasons in the order of judgment and commitment, or the departure is based on an impermissible factor, or is to an unreasonable degree, or the sentence 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, subject to subsection (g);

(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, subject to subsection (g);

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

(g) Sentencing upon remand.—A district court to which a case is remanded pursuant to subsection (f)(1) or (f)(2) shall resentence a defendant in accordance with section 3553 and with such instructions as may have been given by the court of appeals, except that—

(1) In determining the range referred to in subsection 3553(a)(4), the court shall apply the guidelines issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, and that were in effect on the date of the previous sentencing of the defendant prior to the appeal, together with any amendments thereto by any act of Congress that was in effect on such date; and

(2) The court shall not impose a sentence outside the applicable guidelines range except upon a ground that—

(A) was specifically and affirmatively included in the written statement of reasons required by section 3553(c) in connection with the previous sentencing of the defendant prior to the appeal; and

(B) was held by the court of appeals, in remanding the case, to be a permissible ground of departure.

(h) 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 (except for the requirement of approval by the Attorney General or the Solicitor General in the case of a Government appeal) as though the appeal were to a court of appeals from a sentence imposed by a district court.

(i) 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.

(j) Definitions.—For purposes of this section—

(1) a factor is a "permissible" ground of departure if it—

(A) advances the objectives set forth in section 3553(a)(2); and

(B) is authorized under section 3553(b); and

(C) is justified by the facts of the case; and

(2) a factor is an "impermissible" ground of departure if it is not a permissible factor within the meaning of subsection (j)(1).

(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; Pub.L. 101–647, Title XXXV, §§ 3501, 3503, Nov. 29, 1990, 104 Stat. 4921; Pub.L. 103–322, Title XXXIII, § 330002(k), Sept. 13, 1994, 108 Stat. 2140; Pub.L. 108–21, Title IV, § 401(d)–(f), Apr. 30, 2003, 117 Stat. 670, 671.)

EDITORIAL NOTES

References in Text. Section 3563(b)(6) or (b)(11), referred to in subsecs. (a)(3) and (b)(3), was renumbered section 3563(b)(5) or (b)(10) by Pub.L. 104–132, title II, § 203(2)(B), Apr. 24, 1996, 110 Stat. 1227.

The Federal Rules of Criminal Procedure, referred to in subsec. (c), are set out in the Appendix of this title.

Constitutionality. For information regarding constitutionality of certain provisions of this section, as added and amended by section 401(d)(2), (e) of Pub.L. 108–21, see Congressional Research Service, The Constitution of the United States of America: Analysis and Interpretation, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

Change of Name. Words "Magistrate Judge" and "United States magistrate judge" substituted for "Magistrate" and "United States magistrate," respectively, in subsec. (g) pursuant to section 321 of Pub.L. 101–650, set out as a note under section 631 of Title 28, Judiciary and Judicial Procedure.

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TITLE 28
JUDICIARY AND JUDICIAL PROCEDURE

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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 Chair.
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 Chair and three of whom shall be designated by the President as Vice Chairs. At least 3 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, and of the three Vice Chairs, no more than two shall be members of the same political party. The Attorney General, or the Attorney General's designee, shall be an ex officio, nonvoting member of the Commission. The Chair, Vice Chairs, 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; Pub.L. 103–322, Title XXVIII, § 280005(a), (c)(1), (2), Sept. 13, 1994, 108 Stat. 2096, 2097; Pub.L. 104–294, Title VI, § 604(b)(11), Oct. 11, 1996, 110 Stat. 3507; Pub.L. 108–21, Title IV, § 401(n)(1), Apr. 30, 2003, 117 Stat. 676; Pub.L. 110–406, § 16, Oct. 13, 2008, 122 Stat. 4295.)

§ 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 Chair, serve terms of six years;

(2) three members serve terms of four years; and

(3) two members serve terms of two years.

(b)(1) Subject to paragraph (2)—

(A) no voting member of the Commission may serve more than two full terms; and

(B) a voting member appointed to fill a vacancy that occurs before the expiration of the term for which a predecessor was appointed shall be appointed only for the remainder of such term.

(2) A voting member of the Commission whose term has expired may continue to serve until the earlier of—

(A) the date on which a successor has taken office; or

(B) the date on which the Congress adjourns sine die to end the session of Congress that commences after the date on which the member's term expired.

(c) The Chair and Vice Chairs of the Commission shall hold full-time positions and shall be compensated during their terms 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 Chair and Vice Chair, 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 Chair and Vice Chairs,,[1] 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 the judge's 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; Pub.L. 102–349, § 1, Aug. 26, 1992, 106 Stat. 933; Pub.L. 103–322, Tittle XXVIII, § 280005(b), (c)(1), (3), Sept. 13, 1994, 108 Stat. 2096, 2097.)

EDITORIAL NOTES

References in Text. Section 235(a)(1)(B)(ii) of the Sentencing Reform Act of 1984, referred to in subsec. (c), is section 235(a)(1)(B)(ii) of Pub.L. 98–473, which is set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

Commencement of Terms of First Members of Commission. For provisions directing that, for purposes of subsec. (a) of this section, 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 section 235(a)(1)(B)(ii) of Pub.L. 98–473, see section 235(a)(2) of Pub.L. 98–473, both of which are set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

§ 993. Powers and duties of Chair

The Chair 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,

[1] So in original.

1985, 99 Stat. 46; Pub.L. 99–646, § 5, Nov. 10, 1986, 100 Stat. 3592; Pub.L. 103–322, Title XXVIII, § 280005(c)(1), Sept. 13, 1994, 108 Stat. 2097.)

§ 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 any Federal statute 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 incidents 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 incidents[1] of an appropriate sentence, and shall 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 impris-

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

onment 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 chapter 705 of title 46; 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 chapter 705 of title 46.

(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 the defendant derived a substantial portion of the defendant's 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)(1) The Chief Judge of each district court shall ensure that, within 30 days following entry of judgment in every criminal case, the sentencing court submits to the Commission, in a format approved and required by the Commission, a written report of the sentence, the offense for which it is imposed, the age, race, sex of the offender, and information regarding factors made relevant by the guidelines. The report shall also include—

(A) the judgment and commitment order;

(B) the written statement of reasons for the sentence imposed (which shall include the reason for any departure from the otherwise applicable guideline range and which shall be stated on the written statement of reasons form issued by the Judicial Conference and approved by the United States Sentencing Commission);

(C) any plea agreement;

(D) the indictment or other charging document;

(E) the presentence report; and

(F) any other information as the Commission finds appropriate.

The information referred to in subparagraphs (A) through (F) shall be submitted by the sentencing court in a format approved and required by the Commission.

(2) The Commission shall, upon request, make available to the House and Senate Committees on the Judiciary, the written reports and all underlying records accompanying those reports described in this section, as well as other records received from courts.

(3) The Commission shall submit to Congress at least annually an analysis of these documents, any recommendations for legislation that the Commission concludes is warranted by that analysis, and an accounting of those districts that the Commission believes have not submitted the appropriate information and documents required by this section.

(4) The Commission shall make available to the Attorney General, upon request, such data files as the Commission itself may assemble or maintain in electronic form as a result of the information submitted under paragraph (1). Such data files shall be made available in electronic form and shall include all data fields requested, including the identity of the sentencing judge.

(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.

(y) The Commission, in promulgating guidelines pursuant to subsection (a)(1), may include, as a component of a fine, the expected costs to the Government of any imprisonment, supervised release, or probation sentence that is ordered.

(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; Pub.L. 103–322, Title II § 20403(b) Title XXVII, § 280005(c)(4), Title XXXIII, § 330003(f)(1), Sept. 13, 1994, 108 Stat. 1825, 2097, 2141; Pub.L. 108–21, Title IV, § 401(h), (k), Apr. 30, 2003, 117 Stat. 672, 674; Pub.L. 109–177, Title VII, § 735, March 9, 2006, 120 Stat. 192, 271; Pub.L. 109–304, § 17(f)(1), Oct. 6, 2006, 120 Stat. 1708.)

EDITORIAL NOTES

References in Text. Paragraphs (6) and (11) of section 3563(b) of title 18, referred to in subsec. (a)(1)(E), were renumbered paragraphs (5) and (10), respectively, of section 3563(b) by Pub.L. 104–132, title II, § 203(2)(B), Apr. 24, 1996, 110 Stat. 1227.

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

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.

Emergency Guidelines Promulgation Authority. Pub.L. 100–182, § 21, Dec. 7, 1987, 101 Stat. 1271, provided that:

"**Sec. 21. Emergency Guidelines Promulgation Authority.**

(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.

(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."

Submission to Congress of Initial Sentencing Guidelines. Provisions directing that the United States Sentencing Commission submit to Congress within 30 months of Oct. 12, 1984, the initial sentencing guidelines promulgated pursuant to subsec. (a)(1) of this section, see section 235(a)(1)(B)(i) of Pub.L. 98–473, as amended, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

Effective Date of Sentencing Guidelines. Sentencing guidelines promulgated pursuant to this section effective when U.S. Sentencing Commission has submitted the initial set of sentencing guidelines to Congress, the General Accounting Office has studied and reported to Congress on the guidelines, Congress has examined the guidelines, and section 212(a)(2) of Pub.L. 98–473 takes effect [Nov. 1, 1987], see section 235(a)(1)(B)(ii) of Pub.L. 98–473, as amended, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

Studies of Impact and Operation of Sentencing Guideline System; Reporting Requirements. Pub.L. 98–473, title II, § 236, Oct. 12, 1984, 98 Stat. 2033, provided that four years after the sentencing guidelines promulgated pursuant to section 994(a)(1) of this title and sections 3581, 3583, and 3624 of title 18 went into effect, the General Accounting Office was to undertake a study of the guidelines 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 such undertaking, report the results to Congress; provided that, within one month of the start of the study, the United States Sentencing Commission was to submit a report detailing the operation of the sentencing guideline system and discussing any problems with the system or reforms needed; and provided that Congress was to review the study.

§ 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 Chair;

(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;

(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.

[**(f)** The Commission may—

(1) use available funds to enter into contracts for the acquisition of severable services for a period that begins in 1 fiscal year and ends in the next fiscal year, to the same extent as executive agencies may enter into such contracts under the authority of section 303L of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253l);

(2) enter into multi-year contracts for the acquisition of property or services to the same extent as executive agencies may enter into such contracts under the authority of section 304B of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254c); and

(3) make advance, partial, progress, or other payments under contracts for property or services to the same extent as executive agencies may make such payments under the authority of section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255).]

(Added Pub.L. 98–473, Title II, § 217(a), Oct. 12, 1984, 98 Stat. 2024; amended Pub.L. 100–690, Title VII, §§ 7104, 7105, 7106(b), Nov. 18, 1988, 102 Stat. 4418; Pub.L. 101–650, Title III, § 325(b)(5), Dec. 1, 1990, 104 Stat. 5121; Pub.L. 103–322, Title XXVIII, § 280005(c)(1), Sept. 13, 1994, 108 Stat. 2097; Pub.L. 110–177, Title V, § 501(a), Jan. 7, 2008, 121 Stat. 2541.)

EDITORIAL NOTES

Termination Date of 2008 Amendment. Pub.L. 110–177, Title V, § 501(b), Jan. 7, 2008, 121 Stat. 2542, provided that: "The amendment made by subsection (a) [enacting subsec. (f) of this section] shall cease to have force and effect on September 30, 2010."

§ 996. Director and staff

(a) The Staff Director shall supervise the activities of persons employed by the Commission and perform other duties assigned to the Staff Director 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 except the following: chapters 45 (Incentive Awards), 63 (Leave), 81 (Compensation for Work Injuries), 83 (Retirement), 84 (Federal Employees' Retirement System), 85 (Unemployment Compensation), 87 (Life Insurance), and 89 (Health Insurance), and subchapter VI of chapter 55 (Payment for accumulated and accrued leave).

(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; Pub.L. 101–650, Title III, § 325(b)(6), Dec. 1, 1990, 104 Stat. 5121; Pub.L. 103–322, Title XXVIII, § 280005(c)(5), Sept. 13, 1994, 108 Stat. 2097; Pub.L. 106–518, Title III, § 302(a), Nov. 13, 2000, 114 Stat. 2416; Pub.L. 117–328, Div. E, Title III, § 308, Dec. 29, 2022, 136 Stat. 4672.)

EDITORIAL NOTES

Savings Provision. Pub.L. 106–518, § 302(b), Nov. 13, 2000, 114 Stat. 2417, provided that: "Any leave that an individual accrued or accumulated (or that otherwise became available to such individual) under the leave system of the United States Sentencing Commission and that remains unused as of the date of the enactment of this Act [Nov. 13, 2000] shall, on and after such date, be treated as leave accrued or accumulated (or that otherwise became available to such individual) under chapter 63 of title 5, United States Code."

§ 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.)

EDITORIAL NOTES

Termination of Reporting Requirements. For termination, effective May 15, 2000, of provisions in this section relating to requirement to report annually to Congress, see section 3003 of Pub.L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 13 of House Document No. 103–7.

§ 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.)

* * *

PROVISIONS OF PUBLIC LAWS GOVERNING THE COMMISSION AND THE DRAFTING OF SENTENCING GUIDELINES
(classified at 28 U.S.C. § 994 notes)

* * *

ANTI-DRUG ABUSE ACT OF 1988 (PUB. L. 100–690)

IMPORTATION OF CONTROLLED SUBSTANCES BY AIRCRAFT AND OTHER VESSELS. Pub.L. 100–690, Title VI, § 6453, Nov. 18, 1988, 102 Stat. 4371, provided:

"**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 [28 U.S.C. 994 note], 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 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."

CONTROLLED SUBSTANCE OFFENSES INVOLVING CHILDREN. Pub.L. 100–690, Title VI, § 6454, Nov. 18, 1988, 102 Stat. 4372, provided:

"**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 [28 U.S.C. 994 note], 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) [redesignated as sections 418, 419, and 420, respectively (21 U.S.C. §§ 859, 860, and 861) by section 1002 of Pub.L. 101–647] 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."

CONTRABAND IN PRISON. Pub.L. 100–690, Title VI, § 6468(c), (d), Nov. 18, 1988, 102 Stat. 4376, provided:

"**(c)** Pursuant to its authority under section 994(p) of title 28, United States Code, and section 21 of the Sentencing Act of 1987 [28 U.S.C. 994 note], 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 [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. Pub.L. 100–690, Title VI, § 6482(c), Nov. 18, 1988, 102 Stat. 4382, provided:

"**(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 [28 U.S.C. 994 note], 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 [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."

* * *

MAJOR FRAUD ACT OF 1988 (PUB. L. 100–700)

PERSONAL INJURY RESULTING FROM FRAUD. Pub.L. 100–700, Chapter 47, § 2(b), Nov. 19, 1988, 102 Stat. 4632, provided:

"**(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 [28 U.S.C. 994 note], 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."

* * *

FINANCIAL INSTITUTIONS REFORM, RECOVERY, AND ENFORCEMENT ACT OF 1989 (PUB. L. 101–73)

CRIMES THAT JEOPARDIZE FEDERALLY INSURED FINANCIAL INSTITUTIONS. Pub.L. 101–73, Title IX, § 961(m), Aug. 9, 1989, 103 Stat. 501, provided:

"**(m) Sentencing Guidelines.—**Pursuant to section 994 of title 28, United States Code, and section 21 of the Sentencing Act of 1987 [28 U.S.C. 994 note], the United States Sentencing Commission shall promulgate guidelines, or amend existing guidelines, to provide for a substantial period of incarceration for a violation of, or a conspiracy to violate, section 215, 656, 657, 1005, 1006, 1007, 1014, 1341, 1343, or 1344 of title 18, United States Code, that substantially jeopardizes the safety and soundness of a federally insured financial institution."

* * *

CRIME CONTROL ACT OF 1990 (PUB. L. 101–647)

SEXUAL CRIMES AGAINST CHILDREN. Pub.L. 101–647, Title III, § 321, Nov. 29, 1990, 104 Stat. 4817, provided:

"**Sec. 321. Sentencing Commission Guidelines.**

The United States Sentencing Commission shall amend existing guidelines for sentences involving sexual crimes against children, including offenses contained in chapter 109A of title 18, so that more substantial penalties may be imposed if the Commission determines current penalties are inadequate."

KIDNAPPING, ABDUCTION, OR UNLAWFUL RESTRAINT. Pub.L. 101–647, Title IV, § 401, Nov. 29, 1990, 104 Stat. 4819, amended 18 U.S.C. § 1201 by adding the following new subsection:

"(g) Special Rule for Certain Offenses Involving Children.—

(1) To Whom Applicable.—If—

(A) the victim of an offense under this section has not attained the age of eighteen years; and

(B) the offender—

(i) has attained such age; and

(ii) is not—

(I) a parent;

(II) a grandparent;

(III) a brother;

(IV) a sister;

(V) an aunt;

(VI) an uncle; or

(VII) an individual having legal custody of the victim;

the sentence under this section for such offense shall be subject to paragraph (2) of this subsection.

(2) Guidelines.—The United States Sentencing Commission is directed to amended the existing guidelines for the offense of 'kidnapping, abduction, or unlawful restraint,' by including the following additional specific offense characteristics: If the victim was intentionally maltreated (i.e., denied either food or medical care) to a life-threatening degree, increase by 4 levels; if the victim was sexually exploited (i.e., abused, used involuntarily for pornographic purposes) increase by 3 levels; if the victim was placed in the care or custody of another person who does not have a legal right to such care or custody of the child either in exchange for money or other consideration, increase by 3 levels; if the defendant allowed the child to be subjected to any of the conduct specified in this section by another person, then increase by 2 levels."

REPORT ON MANDATORY MINIMUM SENTENCING PROVISIONS. Pub.L. 101–647, Title XVII, § 1703, Nov. 29, 1990, 104 Stat. 4845, provided:

"**Sec. 1703. Report on Mandatory Minimum Sentencing Provisions.**

(a) Report.—Not less than six months after the date of enactment of this Act, the United States Sentencing Commission shall transmit to the respective Judiciary Committees of the Senate and House of Representatives a report on mandatory minimum sentencing provisions in Federal law.

(b) Components of Report.—The report mandated by subsection (a) shall include:

(1) a compilation of all mandatory minimum sentencing provisions in Federal law;

(2) an assessment of the effect of mandatory minimum sentencing provisions on the goal of eliminating unwarranted sentencing disparity;

(3) a projection of the impact of mandatory minimum sentencing provisions on the Federal prison population;

(4) an assessment of the compatibility of mandatory minimum sentencing provisions and the sentencing guidelines system established by the Sentencing Reform Act of 1984;

(5) a description of the interaction between mandatory minimum sentencing provisions and plea agreements;

(6) a detailed empirical research study of the effect of mandatory minimum penalties in the Federal system;

(7) a discussion of mechanisms other than mandatory minimum sentencing laws by which Congress can express itself with respect to sentencing policy, such as:

(A) specific statutory instructions to the Sentencing Commission;

(B) general statutory instructions to the Sentencing Commission;

(C) increasing or decreasing the maximum sentence authorized for particular crimes;

(D) Sense of Congress resolutions; and

(8) any other information that the Commission would contribute to a thorough assessment of mandatory minimum sentencing provisions.

(c) Amendment of Report.—The Commission may amend or update the report mandated by subsection (a) at any time after its transmittal."

OFFENSES AFFECTING FINANCIAL INSTITUTIONS. Pub.L. 101–647, Title XXV, § 2507, Nov. 29, 1990, 104 Stat. 4862, provided:

"**Sec. 2507. Increased Penalties in Major Bank Crime Cases.**

(a) Increased Penalties.—Pursuant to section 994 of title 28, United States Code, and section 21 of the Sentencing Act of 1987 [28 U.S.C. 994 note], the United States Sentencing Commission shall promulgate guidelines, or amend existing guidelines, to provide that a defendant convicted of violating, or conspiring to violate, section 215, 656, 657, 1005, 1006, 1007, 1014, 1032, or 1344 of title 18, United States Code, or section 1341 or 1343 affecting a financial institution (as defined in section 20 of title 18, United States Code) shall be assigned not less than offense level 24 under chapter 2 of the sentencing guidelines if the defendant derives more than $1,000,000 in gross receipts from the offense.

(b) Amendments to Sentencing Guidelines.—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."

SMOKABLE CRYSTAL METHAMPHETAMINE. Pub.L. 101–647, Title XXVII, § 2701, Nov. 29, 1990, 104 Stat. 4912, provided:

"**Sec. 2701. Sentencing Commission Guidelines.**

"The United States Sentencing Commission is instructed to amend the existing guidelines for offenses involving smokable crystal methamphetamine under section 401(b) of the Controlled Substances Act (21 U.S.C. 841(b)) so that convictions for offenses involving smokable crystal methamphetamine will be assigned an offense level under the guidelines which is two levels above that which would have been assigned to the same offense involving other forms of methamphetamine."

* * *

TREASURY, POSTAL SERVICE AND GENERAL GOVERNMENT APPROPRIATIONS ACT, 1992 (PUB. L. 102–141)

SEXUAL ABUSE AND EXPLOITATION OF MINORS; CHILD PORNOGRAPHY; OBSCENITY. Pub.L. 102–141, Title VI, § 632, Oct. 28, 1991, 105 Stat. 876, provided:

"**Sec. 632. (1)** Pursuant to its authority under section 994 of title 28, United States Code, the Sentencing Commission shall promulgate guidelines, or amend existing or proposed guidelines as follows:

(A) Guideline 2G2.2 to provide a base offense level of not less than 15 and to provide at least a 5 level increase for offenders who have engaged in a pattern of activity involving the sexual abuse or exploitation of a minor.

(B) Guideline 2G2.4 to provide that such guideline shall apply only to offense conduct that involves the simple possession of materials proscribed by chapter 110 of title 18, United States Code and guideline 2G2.2 to provide that such guideline shall apply to offense conduct that involves receipt or trafficking (including, but not limited to transportation, distribution, or shipping).

(C) Guideline 2G2.4 to provide a base offense level of not less than 13, and to provide at least a 2 level increase for possessing 10 or more books, magazines, periodicals, films, video tapes or other items containing a visual depiction involving the sexual exploitation of a minor.

(D) Section 2G3.1 to provide a base offense level of not less than 10.

(2)(A) Notwithstanding any other provision of law, the Sentencing Commission shall promulgate the amendments mandated in subsection (1) by November 1, 1991, or within 30 days after enactment [probably means date of enactment of Pub.L. 102–141, which was approved Oct. 28, 1991], whichever is later. The amendments to the guidelines promulgated under subsection (1) shall take effect November 1, 1991, or 30 days after enactment, and shall supersede any amendment to the contrary contained in the amendments to the sentencing guidelines submitted to the Congress by the Sentencing Commission on or about May 1, 1991.

(B) The provisions of section 944(x) of title 28, United States Code, shall not apply to the promulgation or amendment of guidelines under this section."

* * *

VIOLENT CRIME CONTROL AND LAW ENFORCEMENT ACT OF 1994 (PUB. L. 103–322)

SEXUAL OFFENSES BY REPEAT OFFENDERS. Pub.L. 103–322, Title IV, § 40111(b), Sept. 13, 1994, 108 Stat. 1903, provided:

"**(b) Amendment of Sentencing Guidelines.—**The Sentencing Commission shall implement the amendment made by subsection (a) [of this section (pertaining to repeat sexual offenders)] by promulgating amendments, if appropriate, in the sentencing guidelines applicable to chapter 109A [of title 18] offenses."

SEXUAL ABUSE; AGGRAVATED SEXUAL ABUSE. Pub.L. 103–322, Title IV, § 40112, Sept. 13, 1994, 108 Stat. 1903, provided:

"**Sec. 40112. Federal Penalties.**

(a) Amendment of Sentencing Guidelines.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall review and amend, where necessary, its sentencing guidelines on aggravated sexual abuse under section 2241 of title 18, United States Code, or sexual abuse under section 2242 of title 18 United States Code, as follows:

(1) The Commission shall review and promulgate amendments to the guidelines, if appropriate, to enhance penalties if more than 1 offender is involved in the offense.

(2) The Commission shall review and promulgate amendments to the guidelines, if appropriate, to reduce unwarranted disparities between the sentences for sex offenders who are known to the victim and sentences for sex offenders who are not known to the victim.

(3) The Commission shall review and promulgate amendments to the guidelines to enhance penalties, if appropriate, to render

Federal penalties on Federal territory commensurate with penalties for similar offenses in the States.

(4) The Commission shall review and promulgate amendments to the guidelines, if appropriate, to account for the general problem of recidivism in cases of sex offenses, the severity of the offense, and its devastating effects on survivors.

(b) Report.—Not later than 180 days after the date of enactment of this Act, the United States Sentencing Commission shall review and submit to Congress a report containing an analysis of Federal rape sentencing, accompanied by comment from independent experts in the field, describing—

(1) comparative Federal sentences for cases in which the rape victim is known to the defendant and cases in which the rape victim is not known to the defendant;

(2) comparative Federal sentences for cases on Federal territory and sentences in surrounding States; and

(3) an analysis of the effect of rape sentences on populations residing primarily on Federal territory relative to the impact of other Federal offenses in which the existence of Federal jurisdiction depends upon the offense's being committed on Federal territory."

INTENTIONAL TRANSMISSION OF HIV. Pub.L. 103–322, Title IV, § 40503(c), Sept. 13, 1994, 108 Stat. 1947, provided:

"**(c) Penalties for Intentional Transmission of HIV.—**Not later than 6 months after the date of enactment of this Act, the United States Sentencing Commission shall conduct a study and prepare and submit to the committees on the Judiciary of the Senate and the House of Representatives a report concerning recommendations for the revision of sentencing guidelines that relate to offenses in which an HIV infected individual engages in sexual activity if the individual knows that he or she is infected with HIV and intends, through such sexual activity, to expose another to HIV."

LIMITATION ON APPLICABILITY OF MANDATORY MINIMUM PENALTIES IN CERTAIN CASES; SENTENCING COMMISSION AUTHORITY. Pub.L. 103–322, Title VIII, § 80001, Sept. 13, 1994, 108 Stat. 1986, provided:

"**(a) [enacted 18 U.S.C. § 3553(f) (Limitation on applicability of statutory minimums in certain cases)]**

(b) Sentencing Commission Authority.—

(1) In general.—(A) The United States Sentencing Commission (referred to in this subsection as the 'Commission'), under section 994(a)(1) and (p) of title 28—

(i) shall promulgate guidelines, or amendments to guidelines, to carry out the purposes of this section and the amendment made by this section; and

(ii) may promulgate policy statements, or amendments to policy statements, to assist in the application of this section and that amendment.

(B) In the case of a defendant for whom the statutorily required minimum sentence is 5 years, such guidelines and amendments to guidelines issued under subparagraph (A) shall call for a guideline range in which the lowest term of imprisonment is at least 24 months.

(2) Procedures.—If the Commission determines that it is necessary to do so in order that the amendments made under paragraph (1) may take effect on the effective date of the amendment made by subsection (a), the Commission may promulgate the amendments made under paragraph (1) in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987, as though the authority under that section had not expired."

DRUG DEALING IN "DRUG-FREE" ZONES. Pub.L. 103–322, Title IX, § 90102, Sept. 13, 1994, 108 Stat. 1987, provided:

"**Sec. 90102. Increased Penalties for Drug-Dealing in 'Drug-Free' Zones.**

"Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall amend its sentencing guidelines to provide an appropriate enhancement for a defendant convicted of violating section 419 of the Controlled Substances Act (21 U.S.C. 860)."

ILLEGAL DRUG USE IN FEDERAL PRISONS; SMUGGLING DRUGS INTO FEDERAL PRISONS. Pub.L. 103–322, Title IX, § 90103, Sept. 13, 1994, 108 Stat. 1987, provided:

"**Sec. 90103. Enhanced Penalties for Illegal Drug Use in Federal Prisons and for Smuggling Drugs into Federal Prisons.**

(a) Declaration of Policy.—It is the policy of the Federal Government that the use or distribution of illegal drugs in the Nation's Federal prisons will not be tolerated and that such crimes shall be prosecuted to the fullest extent of the law.

(b) Sentencing Guidelines.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall amend its sentencing guidelines to appropriately enhance the penalty for a person convicted of an offense—

(1) under section 404 of the Controlled Substances Act involving simple possession of a controlled substance within a Federal prison or other Federal detention facility; or

(2) under section 401(b) of the Controlled Substances Act involving the smuggling of a controlled substance into a Federal prison or other Federal detention facility or the distribution or intended distribution of a controlled substance within a Federal prison or other Federal detention facility.

(c) No Probation.—Notwithstanding any other law, the court shall not sentence a person convicted of an offense described in subsection (b) to probation."

USE OF A SEMIAUTOMATIC FIREARM DURING A CRIME OF VIOLENCE OR A DRUG TRAFFICKING CRIME. Pub.L. 103–322, Title XI, § 110501, Sept. 13, 1994, 108 Stat. 2015, provided:

"**Sec. 110501. Enhanced Penalty for Use of a Semiautomatic Firearm During a Crime of Violence or a Drug Trafficking Crime.**

(a) Amendment to Sentencing Guidelines.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall amend its sentencing guidelines to provide an appropriate enhancement of the punishment for a crime of violence (as defined in section 924(c)(3) of title 18, United States Code) or a drug trafficking crime (as defined in section 924(c)(2) of title 18, United States Code) if a semiautomatic firearm is involved.

(b) Semiautomatic Firearm.—In subsection (a), 'semiautomatic firearm' means any repeating firearm that utilizes a portion of the energy of a firing cartridge to extract the fired cartridge case and chamber the next round and that requires a separate pull of the trigger to fire each cartridge."

SECOND OFFENSE OF USING AN EXPLOSIVE TO COMMIT A FELONY. Pub.L. 103–322, Title XI, § 110502, Sept. 13, 1994, 108 Stat. 2015, provided:

"**Sec. 110502. Enhanced Penalty for Second Offense of Using an Explosive to Commit a Felony.**

Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall promulgate amendments to the sentencing guidelines to appropriately enhance penalties in a case in which a defendant convicted under section 844(h) of title 18, United States Code, has previously been convicted under that section."

USING A FIREARM IN COUNTERFEITING OR FORGERY. Pub.L. 103–322, Title XI, § 110512, Sept. 13, 1994, 108 Stat. 2019, provided:

"**Sec. 110512. Using a Firearm in the Commission of Counterfeiting or Forgery.**

Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall amend its sentencing guidelines to provide an appropriate enhancement of the punishment for a defendant convicted of a felony under chapter 25 of title 18, United States Code, if the defendant used or carried a firearm (as defined in section 921(a)(3) of title 18, United States Code) during and in relation to the felony."

FIREARMS POSSESSION BY VIOLENT FELONS AND SERIOUS DRUG OFFENDERS. Pub.L. 103–322, Title XI, § 110513, Sept. 13, 1994, 108 Stat. 2019, provided:

"**Sec. 110513. Enhanced Penalties for Firearms Possession by Violent Felons and Serious Drug Offenders.**

Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall amend its sentencing guidelines to—

(1) appropriately enhance penalties in cases in which a defendant convicted under section 922(g) of title 18, United States Code, has 1 prior conviction by any court referred to in section 922(g)(1) of title 18 for a violent felony (as defined in section 924(e)(2)(B) of that title) or a serious drug offense (as defined in section 924(e)(2)(A) of that title); and

(2) appropriately enhance penalties in cases in which such a defendant has 2 prior convictions for a violent felony (as so defined) or a serious drug offense (as so defined)."

PROMOTING INTERNATIONAL TERRORISM. Pub.L. 103–322, Title XII, § 120004, Sept. 13, 1994, 108 Stat. 2022, provided:

"**Sec. 120004. Sentencing Guidelines Increase for Terrorist Crimes.**

The United States Sentencing Commission is directed to amend its sentencing guidelines to provide an appropriate enhancement for any felony, whether committed within or outside the United States, that involves or is intended to promote international terrorism, unless such involvement or intent is itself an element of the crime."

INVOLVING A MINOR IN THE COMMISSION OF THE OFFENSE. Pub.L. 103–322, Title XIV, § 140008, Sept. 13, 1994, 108 Stat. 2033, provided:

"**Sec. 140008. Solicitation of Minor to Commit Crime.**

(a) Directive to Sentencing Commission.—(1) The United States Sentencing Commission shall promulgate guidelines or amend existing guidelines to provide that a defendant 21 years of age or older who has been convicted of an offense shall receive an appropriate sentence enhancement if the defendant involved a minor in the commission of the offense.

(2) The Commission shall provide that the guidelines enhancement promulgated pursuant to paragraph (1) shall apply for any offense in relation to which the defendant has solicited, procured, recruited, counseled, encouraged, trained, directed, commanded, intimidated, or otherwise used or attempted to use any person less than 18 years of age with the intent that the minor would commit a Federal offense.

(b) Relevant Considerations.—In implementing the directive in subsection (a), the Sentencing Commission shall consider—

(1) the severity of the crime that the defendant intended the minor to commit;

(2) the number of minors that the defendant used or attempted to use in relation to the offense;

(3) the fact that involving a minor in a crime of violence is frequently of even greater seriousness than involving a minor in a drug trafficking offense, for which the guidelines already provide a two-level enhancement; and

(4) the possible relevance of the proximity in age between the offender and the minor(s) involved in the offense."

DRUG FREE TRUCK STOPS AND SAFETY REST AREAS. Pub.L. 103–322, Title XVIII, § 180201(c), Sept. 13, 1994, 108 Stat. 2047, provided:

"**(c) Sentencing Guidelines.**—Pursuant to its authority under section 994 of title 28, United States Code, and section 21 of the Sentencing Act of 1987 (28 U.S.C. 994 note), the United States Sentencing Commission shall promulgate guidelines, or shall amend existing guidelines, to provide an appropriate enhancement of punishment for a defendant convicted of violating section 409 of the Controlled Substances Act [21 U.S.C. § 849], as added by subsection (b) [of this section]."

CRIMES OF VIOLENCE AGAINST ELDERLY VICTIMS. Pub.L. 103–322, Title XXIV, § 240002, Sept. 13, 1994, 108 Stat. 2081, provided:

"**Sec. 240002. Crimes Against the Elderly.**

(a) In General.—Pursuant to its authority under the Sentencing Reform Act of 1984 and section 21 of the Sentencing Act of 1987 (including its authority to amend the sentencing guidelines and policy statements) and its authority to make such amendments on an emergency basis, the United States Sentencing Commission shall ensure that the applicable guideline range for a defendant convicted of a crime of violence against an elderly victim is sufficiently stringent to deter such a crime, to protect the public from additional crimes of such a defendant, and to adequately reflect the heinous nature of such an offense.

(b) Criteria.—In carrying out subsection (a), the United States Sentencing Commission shall ensure that—

(1) the guidelines provide for increasingly severe punishment for a defendant commensurate with the degree of physical harm caused to the elderly victim;

(2) the guidelines take appropriate account of the vulnerability of the victim; and

(3) the guidelines provide enhanced punishment for a defendant convicted of a crime of violence against an elderly victim who has previously been convicted of a crime of violence against an elderly victim, regardless of whether the conviction occurred in Federal or State court.

(c) Definitions.—In this section—

(1) 'crime of violence' means an offense under section 113, 114, 1111, 1112, 1113, 1117, 2241, 2242, or 2244 of title 18, United States Code.

(2) 'elderly victim' means a victim who is 65 years of age or older at the time of an offense."

FRAUD AGAINST OLDER VICTIMS. Pub.L. 103–322, Title XXV, § 250003, Sept. 13, 1994, 108 Stat. 2085, provided:

"**Sec. 250003. Increased Penalties for Fraud Against Older Victims.**

(a) Review.—The United States Sentencing Commission shall review and, if necessary, amend the sentencing guidelines to ensure that victim related adjustments for fraud offenses against older victims over the age of 55 are adequate.

(b) Report.—Not later than 180 days after the date of enactment of this Act, the Sentencing Commission shall report to Congress the result of its review under subsection (a)."

HATE CRIMES. Pub.L. 103–322, Title XXVIII, § 280003, Sept. 13, 1994, 108 Stat. 2096, as amended by Pub.L. 111–84, Div. E, § 4703(a), Oct. 28, 2009, 123 Stat. 2836, provided:

"**Sec. 280003. Direction to United States Sentencing Commission Regarding Sentencing Enhancements for Hate Crimes.**

(a) Definition.—In this section, 'hate crime' means a crime in which the defendant intentionally selects a victim, or in the case of a property crime, the property that is the object of the crime, because of the actual or perceived race, color, religion, national origin, ethnicity, gender, gender identity, disability, or sexual orientation of any person.

(b) Sentencing Enhancement.—Pursuant to section 994 of title 28, United States Code, the United States Sentencing Commission shall promulgate guidelines or amend existing guidelines to provide sentencing enhancements of not less than 3 offense levels for offenses that the

finder of fact at trial determines beyond a reasonable doubt are hate crimes. In carrying out this section, the United States Sentencing Commission shall ensure that there is reasonable consistency with other guidelines, avoid duplicative punishments for substantially the same offense, and take into account any mitigating circumstances that might justify exceptions."

REPORT ON COCAINE PENALTIES. Pub.L. 103–322, Title XXVIII, § 280006, Sept. 13, 1994, 108 Stat. 2097, provided:

"**Sec. 280006. Cocaine Penalty Study.**

Not later than December 31, 1994, the United States Sentencing Commission shall submit a report to Congress on issues relating to sentences applicable to offenses involving the possession or distribution of all forms of cocaine. The report shall address the differences in penalty levels that apply to different forms of cocaine and include any recommendations that the Commission may have for retention or modification of such differences in penalty levels."

* * *

ACT TO DISAPPROVE OF AMENDMENTS TO THE FEDERAL SENTENCING GUIDELINES RELATING TO LOWERING OF CRACK SENTENCES AND SENTENCES FOR MONEY LAUNDERING AND TRANSACTIONS IN PROPERTY DERIVED FROM UNLAWFUL ACTIVITY (PUB. L. 104–38)

DISAPPROVAL OF AMENDMENTS; RECOMMENDATIONS ON COCAINE OFFENSES; STUDY AND COMMENTS ON MONEY LAUNDERING. Pub.L. 104–38, §§ 1–2, Oct. 30, 1995, 109 Stat. 334, provided:

"**Section 1. Disapproval of Amendments Relating to Lowering of Crack Sentences and Sentences for Money Laundering and Transactions in Property Derived from Unlawful Activity.**

In accordance with section 994(p) of title 28, United States Code, amendments numbered 5 and 18 of the "Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary", submitted by the United States Sentencing Commission to Congress on May 1, 1995, are hereby disapproved and shall not take effect.

"**Sec. 2. Reduction of Sentencing Disparity.**

(a) Recommendations.—

(1) In general.—The United States Sentencing Commission shall submit to Congress recommendations (and an explanation therefor), regarding changes to the statutes and sentencing guidelines governing sentences for unlawful manufacturing, importing, exporting, and trafficking of cocaine, and like offenses, including unlawful possession, possession with intent to commit any of the forgoing offenses, and attempt and conspiracy to commit any of the forgoing offenses. The recommendations shall reflect the following considerations—

(A) the sentence imposed for trafficking in a quantity of crack cocaine should generally exceed the sentence imposed for trafficking in a like quantity of powder cocaine;

(B) high-level wholesale cocaine traffickers, organizers, and leaders of criminal activities should generally receive longer sentences than low-level retail cocaine traffickers and those who played a minor or minimal role in such criminal activity;

(C) if the Government establishes that a defendant who traffics in powder cocaine has knowledge that such cocaine will be converted into crack cocaine prior to its distribution to individual users, the defendant should be treated at sentencing as though the defendant had trafficked in crack cocaine; and

(D) an enhanced sentence should generally be imposed on a defendant who, in the course of an offense described in this subsection—

(i) murders or causes serious bodily injury to an individual;

(ii) uses a dangerous weapon;

(iii) uses or possesses a firearm;

(iv) involves a juvenile or a woman who the defendant knows or should know to be pregnant;

(v) engages in a continuing criminal enterprise or commits other criminal offenses in order to facilitate his drug trafficking activities;

(vi) knows, or should know, that he is involving an unusually vulnerable person;

(vii) restrains a victim;

(viii) traffics in cocaine within 500 feet of a school;

(ix) obstructs justice;

(x) has a significant prior criminal record; or

(xi) is an organizer or leader of drug trafficking activities involving five or more persons.

(2) Ratio.—The recommendations described in the preceding subsection shall propose revision of the drug quantity ratio of crack cocaine to powder cocaine under the relevant statutes and guidelines in a manner consistent with the ratios set for other drugs and consistent with the objectives set forth in section 3553(a) of title 28 United States Code.

(b) Study.—No later than May 1, 1996, the Department of Justice shall submit to the Judiciary Committees of the Senate and House of Representatives a report on the charging and plea practices of Federal prosecutors with respect to the offense of money laundering. Such study shall include an account of the steps taken or to be taken by the Justice Department to ensure consistency and appropriateness in the use of the money laundering statute. The Sentencing Commission shall submit to the Judiciary Committees comments on the study prepared by the Department of Justice."

* * *

SEX CRIMES AGAINST CHILDREN PREVENTION ACT OF 1995 (PUB. L. 104–71)

SEXUAL EXPLOITATION OF CHILDREN; CHILD PORNOGRAPHY. Pub.L. 104–71, § 2, Dec. 23, 1995, 109 Stat. 774, provided:

"**Sec. 2. Increased Penalties for Certain Conduct Involving the Sexual Exploitation of Children.**

The United States Sentencing Commission shall amend the sentencing guidelines to—

(1) increase the base offense level for an offense under section 2251 of title 18, United States Code, by at least 2 levels; and

(2) increase the base offense level for an offense under section 2252 of title 18, United States Code, by at least 2 levels."

USE OF COMPUTERS IN SEXUAL EXPLOITATION OF CHILDREN. Pub.L. 104–71, § 3, Dec. 23, 1995, 109 Stat. 774, provided:

"**Sec. 3. Increased Penalties for Use of Computers in Sexual Exploitation of Children.**

The United States Sentencing Commission shall amend the sentencing guidelines to increase the base offense level by at least 2 levels for an offense committed under section 2251(c)(1)(A) or 2252(a) of title 18, United States Code, if a computer was used to transmit the notice or advertisement to the intended recipient or to transport or ship the visual depiction."

TRANSPORTATION OF MINORS WITH INTENT TO ENGAGE IN CRIMINAL SEXUAL ACTIVITY. Pub.L. 104–71, § 4, Dec. 23, 1995, 109 Stat. 774, provided:

"**Sec. 4. Increased Penalties for Transportation of Children With Intent to Engage in Criminal Sexual Activity.**

The United States Sentencing Commission shall amend the sentencing guidelines to increase the base offense level for an offense under section 2423(a) of title 18, United States Code, by at least 3 levels."

REPORT ON CHILD PORNOGRAPHY AND OTHER SEX OFFENSES AGAINST CHILDREN. Pub.L. 104–71, § 6, Dec. 23, 1995, 109 Stat. 774, provided:

"**Sec. 6. Report by the United States Sentencing Commission.**

Not later than 180 days after the date of the enactment of this Act, the United States Sentencing Commission shall submit a report to Congress concerning offenses involving child pornography and other sex offenses against children. The Commission shall include in the report—

(1) an analysis of the sentences imposed for offenses under sections 2251, 2252, and 2423 of title 18, United States Code, and recommendations regarding any modifications to the sentencing guidelines that may be appropriate with respect to those offenses;

(2) an analysis of the sentences imposed for offenses under sections 2241, 2242, and 2243, and 2244 of title 18, United States Code, in cases in which the victim was under the age of 18 years, and recommendations regarding any modifications to the sentencing guidelines that may be appropriate with respect to those offenses;

(3) an analysis of the type of substantial assistance that courts have recognized as warranting a downward departure from the sentencing guidelines relating to offenses under section 2251 or 2252 of title 18, United States Code;

(4) a survey of the recidivism rate for offenders convicted of committing sex crimes against children, an analysis of the impact on recidivism of sexual abuse treatment provided during or after incarceration or both, and an analysis of whether increased penalties would reduce recidivism for those crimes; and

(5) such other recommendations with respect to the offenses described in this section as the Commission deems appropriate."

* * *

ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996 or MANDATORY VICTIMS RESTITUTION ACT OF 1996 (PUB. L. 104–132)

COMMUNITY RESTITUTION. Pub.L. 104–132, Title II, § 205(a)(3), Apr. 24, 1996, 110 Stat. 1230, amended 18 U.S.C. § 3663 by adding new subsection (c)(7), which provided:

"**(7)(A)** The United States Sentencing Commission shall promulgate guidelines to assist courts in determining the amount of restitution that may be ordered under this subsection [subsection (c) of 18 U.S.C. § 3663, pertaining to community restitution].

(B) No restitution shall be ordered under this subsection until such time as the Sentencing Commission promulgates guidelines pursuant to this paragraph."

MANDATORY VICTIMS RESTITUTION. Pub.L. 104–132, § 208, April 24, 1996, 110 Stat. 1240, provided:

"**Sec. 208. Instruction to Sentencing Commission.**

Pursuant to section 994 of title 28, United States Code, the United States Sentencing Commission shall promulgate guidelines or amend existing guidelines to reflect this subtitle ['Mandatory Victims Restitution Act of 1996'] and the amendments made by this subtitle."

INTERNATIONAL TERRORISM. Pub.L. 104–132, § 730, April 24, 1996, 110 Stat. 1303, provided:

"**Sec. 730. Directions to Sentencing Commission.**

The United States Sentencing Commission shall forthwith, in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987, as though the authority under that section had not expired, amend the sentencing

guidelines so that the chapter 3 adjustment relating to international terrorism only applies to Federal crimes of terrorism, as defined in section 2332b(g) of title 18, United States Code."

FRAUD AND DAMAGE INVOLVING PROTECTED COMPUTERS (SECTION 1030 OFFENSES). Pub.L. 104–132, § 805, April 24, 1996, 110 Stat. 1305, provided:

"**Sec. 805. Deterrent Against Terrorist Activity Damaging a Federal Interest Computer.**

(a) Review.—Not later than 60 calendar days after the dates of enactment of this Act, the United States Sentencing Commission shall review the deterrent effect of existing guideline levels as they apply to paragraphs (4) and (5) of section 1030(a) of title 18, United States Code.

(b) Report.—The United States Sentencing Commission shall prepare and transmit a report to the Congress on the findings under the study conducted under subsection (a).

(c) Amendment of Sentencing Guidelines.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend the sentencing guidelines to ensure any individual convicted of a violation of paragraph (4) or (5) of section 1030(a) of title 18, United States Code, is imprisoned for not less than 6 months."

INTERNATIONAL COUNTERFEITING (SECTION 470 OFFENSES). Pub.L. 104–132, § 807(h), April 24, 1996, 110 Stat. 1310, provided:

"**(h) Enhanced Penalties for International Counterfeiting of United States Currency.**—Pursuant to the authority of the United States Sentencing Commission under section 994 of title 28, United States Code, the Commission shall amend the sentencing guidelines prescribed by the Commission to provide an appropriate enhancement of the punishment for a defendant convicted under section 470 of title 18 of such Code."

* * *

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1997 (PUB. L. 104–201)

NUCLEAR, BIOLOGICAL, AND CHEMICAL WEAPONS MATERIALS. Pub.L. 104–201, Title XIV, § 1423, Sept. 23, 1996, 110 Stat 2725 [which is classified both to 28 U.S.C. § 994 note and to 50 U.S.C. § 2332] provided:

"**Sec. 1423. Sense of Congress Concerning Criminal Penalties.**

(a) Sense of Congress Concerning Inadequacy of Sentencing Guidelines.—It is the sense of Congress that the sentencing guidelines prescribed by the United States Sentencing Commission for the offenses of importation, attempted importation, exportation, and attempted exportation of nuclear, biological, and chemical weapons materials constitute inadequate punishment for such offenses.

(b) Urging of Revision to Guidelines.—Congress urges the United States Sentencing Commission to revise the relevant sentencing guidelines to provide for increased penalties for offenses relating to importation, attempted importation, exportation, and attempted exportation of nuclear, biological, or chemical weapons or related materials or technologies under the following provisions of law:

(1) Section 11 of the Export Administration Act of 1979 (50 U.S.C.App. 2410).

(2) Sections 38 and 40 of the Arms Export Control Act (22 U.S.C. 2778 and 2780).

(3) The International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

(4) Section 309(c) of the Nuclear Non-Proliferation Act of 1978 (22 U.S.C. 2156a(c))."

* * *

OMNIBUS CONSOLIDATED APPROPRIATIONS ACT, 1997
or
ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT OF 1996
(PUB. L. 104–208)

ALIEN SMUGGLING. Pub.L. 104–208, Div. C, Title II, § 203(e), Sept. 30, 1996, 110 Stat. 3009–566, provided:

"**(e) Sentencing Guidelines.—**

(1) In general.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall promulgate sentencing guidelines or amend existing sentencing guidelines for offenders convicted of offenses related to smuggling, transporting, harboring, or inducing aliens in violation of section 274(a)(1)(A) or (2) of the Immigration and Nationality Act (8 U.S.C. 1324(a)(1)(A), (2)(B)) in accordance with this subsection.

(2) Requirements.—In carrying out this subsection, the Commission shall, with respect to the offenses described in paragraph (1)—

(A) increase the base offense level for such offenses at least 3 offense levels above the applicable level in effect on the date of the enactment of this Act;

(B) review the sentencing enhancement for the number of aliens involved (U.S.S.G. 2L1.1(b)(2)), and increase the sentencing enhancement by at least 50 percent above the applicable enhancement in effect on the date of the enactment of this Act;

(C) impose an appropriate sentencing enhancement upon an offender with 1 prior felony conviction arising out of a separate and prior prosecution for an offense that involved the same or similar underlying conduct as the current offense, to be applied in addition to any sentencing enhancement that would otherwise apply pursuant to the calculation of the defendant's criminal history category;

(D) impose an additional appropriate sentencing enhancement upon an offender with 2 or more prior felony convictions arising out of separate and prior prosecutions for offenses that involved the same or similar underling conduct as the current offense, to be applied in addition to any sentencing enhancement that would otherwise apply pursuant to the calculation of the defendant's criminal history category;

(E) impose an appropriate sentencing enhancement on a defendant who, in the course of committing an offense described in this subsection—

(i) murders or otherwise causes death, bodily injury, or serious bodily injury to an individual;

(ii) uses or brandishes a firearm or other dangerous weapon; or

(iii) engages in conduct that consciously or recklessly places another in serious danger of death or serious bodily injury;

(F) consider whether a downward adjustment is appropriate if the offense is a first offense and involves the smuggling only of the alien's spouse or child; and

(G) consider whether any other aggravating or mitigating circumstances warrant upward or downward sentencing adjustments.

(3) Emergency Authority to Sentencing Commission.—The Commission shall promulgate the guidelines or amendments provided for under this subsection as soon as practicable in accordance with the procedure set forth in section 21(a) of the Sentencing Act of 1987, as though the authority under that Act had not expired."

FRAUD IN CONNECTION WITH IDENTIFICATION, NATURALIZATION, AND IMMIGRATION DOCUMENTS. Pub.L. 104–208, Div. C, Title II, § 211(b), Sept. 30, 1996, 110 Stat. 3009–569, provided:

"(b) Changes to the Sentencing Levels.—

(1) In general.—Pursuant to the Commission's authority under section 994(p) of title 28, United States Code, the United States

Sentencing Commission shall promulgate sentencing guidelines or amend existing sentencing guidelines for offenders convicted of violating, or conspiring to violate, sections 1028(b)(1), 1425 through 1427, 1541 through 1544, and 1546(a) of title 18, United States Code, in accordance with this subsection.

(2) Requirements.—In carrying out this subsection, the Commission shall, with respect to the offenses referred to in paragraph (1)—

(A) increase the base offense level for such offenses at least 2 offense levels above the level in effect on the date of the enactment of this Act;

(B) review the sentencing enhancement for number of documents or passports involved (U.S.S.G. 2L2.1(b)(2)), and increase the upward adjustment by at least 50 percent above the applicable enhancement in effect on the date of the enactment of this Act;

(C) impose an appropriate sentencing enhancement upon an offender with 1 prior felony conviction arising out of a separate and prior prosecution for an offense that involved the same or similar underlying conduct as the current offense, to be applied in addition to any sentencing enhancement that would otherwise apply pursuant to the calculation of the defendant's criminal history category;

(D) impose an additional appropriate sentencing enhancement upon an offender with 2 or more prior felony convictions arising out of separate and prior prosecutions for offenses that involved the same or similar underlying conduct as the current offense, to be applied in addition to any sentencing enhancement that would otherwise apply pursuant to the calculation of the defendant's criminal history category; and

(E) consider whether any other aggravating or mitigating circumstances warrant upward or downward sentencing adjustments.

(3) Emergency Authority to Sentencing Commission.—The Commission shall promulgate the guidelines or amendments provided for under this subsection as soon as practicable in accordance with the procedure set forth in section 21(a) of the Sentencing Act of 1987, as though the authority under that Act had not expired."

PEONAGE, INVOLUNTARY SERVITUDE, AND SLAVE TRADE OFFENSES. Pub.L. 104–208, Div. C, Title II, § 218(b), (c), Sept. 30, 1996, 110 Stat. 3009–573, provided:

"**(b) Review of Sentencing Guidelines.**—The United States Sentencing Commission shall ascertain whether there exists an unwarranted disparity—

(1) between the sentences for peonage, involuntary servitude, and slave trade offenses, and the sentences for kidnapping offenses in effect on the date of the enactment of this Act; and

(2) between the sentences for peonage, involuntary servitude, and slave trade offenses, and the sentences for alien smuggling offenses in effect on the date of the enactment of this Act and after the amendment made by subsection (a).

(c) Amendment of Sentencing Guidelines.—

(1) In general.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall review its guidelines on sentencing for peonage, involuntary servitude, and slave trade offenses under sections 1581 through 1588 of title 18, United States Code, and shall amend such guidelines as necessary to—

(A) reduce or eliminate any unwarranted disparity found under subsection (b) that exists between the sentences for peonage, involuntary servitude, and slave trade offenses, and the sentences for kidnapping offenses and alien smuggling offenses;

(B) ensure that the applicable guidelines for defendants convicted of peonage,

involuntary servitude, and slave trade offenses are sufficiently stringent to deter such offenses and adequately reflect the heinous nature of such offenses; and

(C) ensure that the guidelines reflect the general appropriateness of enhanced sentences for defendants whose peonage, involuntary servitude, or slave trade offenses involve—

(i) a large number of victims;

(ii) the use or threatened use of a dangerous weapon; or

(iii) a prolonged period of peonage or involuntary servitude.

(2) Emergency Authority to Sentencing Commission.—The Commission shall promulgate the guidelines or amendments provided for under this subsection as soon as practicable in accordance with the procedure set forth in section 21(a) of the Sentencing Act of 1987, as though the authority under that Act had not expired."

CONSPIRING WITH OR ASSISTING AN ALIEN TO COMMIT AN OFFENSE UNDER THE CONTROLLED SUBSTANCES IMPORT AND EXPORT ACT. Pub.L. 104–208, Div. C, Title III, § 333, Sept. 30, 1996, 110 Stat. 3009–634, provided:

"**Sec. 333. Penalties for Conspiring with or Assisting an Alien to Commit an Offense Under the Controlled Substances Import and Export Act.**

(a) Review of Guidelines.—Not later than 6 months after the date of the enactment of this Act, the United States Sentencing Commission shall conduct a review of the guidelines applicable to an offender who conspires with, or aids or abets, a person who is not a citizen or national of the United States in committing any offense under section 1010 of the Controlled Substance Import and Export Act (21 U.S.C. 960).

(b) Revision of Guidelines.—Following such review, pursuant to section 994(p) of title 28, United States Code, the Commission shall promulgate sentencing guidelines or amend existing sentencing guidelines to ensure an appropriately stringent sentence for such offenders."

FAILURE TO DEPART, ILLEGAL REENTRY, AND PASSPORT AND VISA FRAUD. Pub.L. 104–208, Div. C, Title III, § 334, Sept. 30, 1996, 110 Stat. 3009–635, provided:

"**Sec. 334. Enhanced Penalties for Failure to Depart, Illegal Reentry, and Passport and Visa Fraud.**

(a) Failing to Depart.—The United States Sentencing Commission shall promptly promulgate, pursuant to section 994 of title 28, United States Code, amendments to the sentencing guidelines to make appropriate increases in the base offense level for offenses under section 242(e) and 276(b) of the Immigration and Nationality Act (8 U.S.C. 1252(e) and 1326(b)) to reflect the amendments made by section 130001 of the Violent Crime Control and Law Enforcement Act of 1994.

(b) Passport and Visa Offenses.—The United States Sentencing Commission shall promptly promulgate, pursuant to section 994 of title 28, United States Code, amendments to the sentencing guidelines to make appropriate increases in the base offense level for offenses under chapter 75 of title 18, United States Code, to reflect the amendments made by section 130009 of the Violent Crime Control and Law Enforcement Act of 1994."

* * *

COMPREHENSIVE METHAMPHETAMINE CONTROL ACT OF 1996 (PUB. L. 104–237)

METHAMPHETAMINE MANUFACTURING. Pub.L. 104–237, Title II, § 203(b), Oct. 3, 1996, 110 Stat. 3102, provided:

"**(b) Sentencing Commission.—**The United States Sentencing Commission shall amend the sentencing guidelines to ensure that the manufacture of methamphetamine in violation of section 403(d)(2) of the Controlled Substances Act [21 U.S.C. § 843(d)(2)], as added by

subsection (a), is treated as a significant violation."

METHAMPHETAMINE OFFENSES. Pub.L. 104–237, Title II, § 301, Oct. 3, 1996, 110 Stat. 3105, provided:

"**Sec. 301. Penalty Increases for Trafficking in Methamphetamine.**

(a) Directive to the United States Sentencing Commission.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend its guidelines and its policy statements to provide for increased penalties for unlawful manufacturing, importing, exporting, and trafficking of methamphetamine, and other similar offenses, including unlawful possession with intent to commit any of those offenses, and attempt and conspiracy to commit any of those offenses. The Commission shall submit to Congress explanations therefor and any additional policy recommendations for combating methamphetamine offenses.

(b) In General.—In carrying out this section, the Commission shall ensure that the sentencing guidelines and policy statements for offenders convicted of offenses described in subsection (a) and any recommendations submitted under such subsection reflect the heinous nature of such offenses, the need for aggressive law enforcement action to fight such offenses, and the extreme dangers associated with unlawful activity involving methamphetamine, including—

(1) the rapidly growing incidence of methamphetamine abuse and the threat to public safety such abuse poses;

(2) the high risk of methamphetamine addiction;

(3) the increased risk of violence associated with methamphetamine trafficking and abuse; and

(4) the recent increase in the illegal importation of methamphetamine and precursor chemicals."

LIST I CHEMICAL OFFENSES. Pub.L. 104–237, Title II, § 302(c), Oct. 3, 1996, 110 Stat. 3105, provided:

"**(c) Sentencing Guidelines.—**

(1) In General.—The United States Sentencing Commission shall, in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987, as though the authority of that section had not expired, amend the sentencing guidelines to increase by at least two levels the offense level for offenses involving list I chemicals under—

(A) section 401(d)(1) and (2) of the Controlled Substances Act (21 U.S.C. 841(d)(1) and (2)); and

(B) section 1010(d)(1) and (3) of the Controlled Substance Import and Export Act (21 U.S.C. 960(d)(1) and (3)).

(2) Requirement.—In carrying out this subsection, the Commission shall ensure that the offense levels for offenses referred to in paragraph (1) are calculated proportionally on the basis of the quantity of controlled substance that reasonably could have been manufactured in a clandestine setting using the quantity of the list I chemical possessed, distributed, imported, or exported."

DANGEROUS HANDLING OF CONTROLLED SUBSTANCES. Pub.L. 104–237, Title III, § 303, Oct. 3, 1996, 110 Stat. 3106, provided:

"**Sec. 303. Enhanced Penalty for Dangerous Handling of Controlled Substances; Amendment of Sentencing Guidelines.**

(a) In General.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall determine whether the Sentencing Guidelines adequately punish the offenses described in subsection (b) and, if not, promulgate guidelines or amend existing guidelines to provide an appropriate enhancement of the punishment for a defendant convicted of such an offense.

(b) Offense.—The offense referred to in subsection (a) is a violation of section 401(d), 401(g)(1), 403(a)(6), or 403(a)(7) of the Controlled Substances Act (21 U.S.C. 841(d), 841(g)(1), 843(a)(6), and 843(a)(7)), in cases in

which in the commission of the offense the defendant violated—

(1) subsection (d) or (e) of section 3008 of the Solid Waste Disposal Act (relating to handling hazardous waste in a manner inconsistent with Federal or applicable State law);

(2) section 103(b) of the Comprehensive Environmental Response, Compensation and Liability Act (relating to failure to notify as to the release of a reportable quantity of a hazardous substance into the environment);

(3) section 301(a), 307(d), 309(c)(2), 309(c)(3), 311(b)(3), or 311(b)(5) of the Federal Water Pollution Control Act (relating to the unlawful discharge of pollutants or hazardous substances, the operation of a source in violation of a pretreatment standard, and the failure to notify as to the release of a reportable quantity of a hazardous substance into the water); or

(4) section 5124 of title 49, United States Code (relating to violations of laws and regulations enforced by the Department of Transportation with respect to the transportation of hazardous material)."

* * *

ECONOMIC ESPIONAGE ACT OF 1996 (PUB. L. 104–294)

ANNUAL REPORT ON USE OF CERTAIN TECHNOLOGY TO FACILITATE CRIMINAL CONDUCT. Pub.L. 104–294, Title V, § 501, Oct. 11, 1996, 110 Stat. 3497 [also classified to 18 U.S.C. § 3552 note], provided:

"**Sec. 501. Use of Certain Technology to Facilitate Criminal Conduct.**

(a) Information.—The Administrative Office of the United States courts shall establish policies and procedures for the inclusion in all presentence reports of information that specifically identifies and describes any use of encryption or scrambling technology that would be relevant to an enhancement under section 3C1.1 (dealing with Obstructing or Impeding the Administration of Justice) of the Sentencing Guidelines or to offense conduct under the Sentencing Guidelines.

(b) Compiling and Report.—The United States Sentencing Commission shall—

(1) compile and analyze any information contained in documentation described in subsection (a) relating to the use of encryption or scrambling technology to facilitate or conceal criminal conduct; and

(2) based on the information compiled and analyzed under paragraph (1), annually report to the Congress on the nature and extent of the use of encryption or scrambling technology to facilitate or conceal criminal conduct."

* * *

DRUG-INDUCED RAPE PREVENTION AND PUNISHMENT ACT OF 1996 (PUB. L. 104–305)

FLUNITRAZEPAM OFFENSES. Pub.L. 104–305, § 2(b)(3), Oct. 13, 1996, 110 Stat. 3808, provided:

"**(3) Sentencing guidelines.—**

(A) Amendment of sentencing guidelines.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend, as appropriate, the sentencing guidelines for offenses involving flunitrazepam.

(B) Summary.—The United States Sentencing Commission shall submit to the Congress—

(i) a summary of its review under subparagraph (A); and

(ii) an explanation for any amendment to the sentencing guidelines made under subparagraph (A).

(C) Serious nature of offenses.—In carrying out this paragraph, the United States Sentencing Commission shall ensure that the sentencing guidelines for offenses involving flunitrazepam reflect the serious nature of such offenses."

* * *

VETERANS' CEMETERY PROTECTION ACT OF 1997 (PUB. L. 105–101)

NATIONAL CEMETERY PROPERTY OFFENSES. Pub.L. 105–101, § 2, November 19, 1997, 111 Stat. 2202, provided:

"**Sec. 2. Sentencing for Offenses Against Property at National Cemeteries.**

(a) In General.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines to provide a sentencing enhancement of not less than 2 levels for any offense against the property of a national cemetery.

(b) Commission Duties.—In carrying out subsection (a), the Sentencing Commission shall ensure that the sentences, guidelines, and policy statements for offenders convicted of an offense described in that subsection are—

(1) appropriately severe; and

(2) reasonably consistent with other relevant directives and with other Federal sentencing guidelines."

* * *

NO ELECTRONIC THEFT (NET) ACT (PUB. L. 105–147)

INTELLECTUAL PROPERTY OFFENSES. Pub.L. 105–147, § 2(g), Dec. 16, 1997, 111 Stat. 2678, provided:

"**(g) Directive to Sentencing Commission.—(1)** Under the authority of the Sentencing Reform Act of 1984 (Public Law 98–473; 98 Stat.1987) and section 21 of the Sentencing Act of 1987 (Public Law 100–182; 101 Stat. 1271; 18 U.S.C. 994 note) (including the authority to amend the sentencing guidelines and policy statements), the United States Sentencing Commission shall ensure that the applicable guideline range for a defendant convicted of a crime against intellectual property (including offenses set forth at section 506(a) of title 17, United States Code, and sections 2319, 2319A, and 2320 of title 18, United States Code) is sufficiently stringent to deter such a crime and to adequately reflect the additional considerations set forth in paragraph (2) of this subsection.

(2) In implementing paragraph (1), the Sentencing Commission shall ensure that the guidelines provide for consideration of the retail value and quantity of the items with respect to which the crime against intellectual property was committed."

* * *

WIRELESS TELEPHONE PROTECTION ACT (PUB. L. 105–172)

WIRELESS TELEPHONE CLONING. Pub.L. 105–172, § 2(e), Apr. 24, 1998, 112 Stat. 55, provided:

"**(e) Amendment of Federal Sentencing Guidelines for Wireless Telephone Cloning.—**

(1) In general.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines and the policy statements of the Commission, if appropriate, to provide an appropriate penalty for offenses involving the cloning of wireless telephones (including offenses involving an attempt or conspiracy to clone a wireless telephone).

(2) Factors for consideration.—In carrying out this subsection, the Commission shall consider, with respect to the offenses described in paragraph (1)—

(A) the range of conduct covered by the offenses;

(B) the existing sentences for the offenses;

(C) the extent to which the value of the loss caused by the offenses (as defined in the Federal sentencing guidelines) is an adequate measure for establishing penalties under the Federal sentencing guidelines;

(D) the extent to which sentencing enhancements within the Federal sentencing guidelines and the court's authority to sentence above the applicable guideline range are adequate to ensure punishment at or near the maximum penalty for the most egregious conduct covered by the offenses;

(E) the extent to which the Federal sentencing guideline sentences for the offenses have been constrained by statutory maximum penalties;

(F) the extent to which Federal sentencing guidelines for the offenses adequately achieve the purposes of sentencing set forth in section 3553(a)(2) of title 18, United States Code;

(G) the relationship of Federal sentencing guidelines for the offenses to the Federal sentencing guidelines for other offenses of comparable seriousness; and

(H) any other factor that the Commission considers to be appropriate."

* * *

TELEMARKETING FRAUD PROTECTION ACT OF 1998 (PUB. L. 105–184)

TELEMARKETING FRAUD (SECTION 2326 OFFENSES). Pub.L. 105–184, § 6, June 23, 1998, 112 Stat. 520, provided:

"**Sec. 6. Amendment of Federal Sentencing Guidelines.**

(a) Definition of Telemarketing.—In this section, the term "telemarketing" has the meaning given that term in section 2326 of title 18, United States Code.

(b) Directive to Sentencing Commission.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall—

(1) promulgate Federal sentencing guidelines or amend existing sentencing guidelines (and policy statements, if appropriate) to provide for substantially increased penalties for persons convicted of offenses described in section 2326 of title 18, United States Code, as amended by this Act, in connection with the conduct of telemarketing; and

(2) submit to Congress an explanation of each action taken under paragraph (1) and any additional policy recommendations for combating the offenses described in that paragraph.

(c) Requirements.—In carrying out this section, the Commission shall—

(1) ensure that the guidelines and policy statements promulgated or amended pursuant to subsection (b)(1) and any recommendations submitted thereunder reflect the serious nature of the offenses;

(2) provide an additional appropriate sentencing enhancement, if the offense involved sophisticated means, including but not limited to sophisticated concealment efforts, such as perpetrating the offense from outside the United States;

(3) provide an additional appropriate sentencing enhancement for cases in which a large number of vulnerable victims, including but not limited to victims described in section 2326(2) of title 18, United States Code, are affected by a fraudulent scheme or schemes;

(4) ensure that guidelines and policy statements promulgated or amended pursuant to subsection (b)(1) are reasonably consistent with other relevant statutory directives to the Commission and with other guidelines;

(5) account for any aggravating or mitigating circumstances that might justify upward or downward departures;

(6) ensure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code; and

(7) take any other action the Commission considers necessary to carry out this section.

(d) Emergency Authority.—The Commission shall promulgate the guidelines or amendments provided for under this subsection as soon as practicable, and in any event not later than 120 days after the date of the enactment of the Telemarketing Fraud Prevention Act of 1998, in accordance with the procedures set forth in section 21(a) of the Sentencing Reform Act of 1987, as though the authority under that authority had not expired, except that the Commission shall submit to Congress the emergency guidelines or amendments promulgated under this section, and shall set an effective date for those guidelines or amendments not earlier than 30 days after their submission to Congress."

* * *

PROTECTION OF CHILDREN FROM SEXUAL PREDATORS ACT OF 1998 (PUB. L. 105–314)

SEXUAL OFFENSES AGAINST CHILDREN AND REPEAT SEXUAL OFFENDERS. Pub.L. 105–314, Title V, Oct. 30, 1998, 112 Stat. 2980 provided:

"TITLE V—INCREASED PENALTIES FOR OFFENSES AGAINST CHILDREN AND FOR REPEAT OFFENDERS

"**Sec. 501. Death or Life in Prison for Certain Offenses Whose Victims Are Children.**

[omitted]

"**Sec. 502. Sentencing Enhancement for Chapter 117 Offenses.**

(a) In General.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal Sentencing Guidelines to provide a sentencing enhancement for offenses under chapter 117 [18 U.S.C.A. § 2421 et seq.] of title 18, United States Code.

(b) Instruction to Commission.—In carrying out subsection (a), the United States Sentencing Commission shall ensure that the sentences, guidelines, and policy statements for offenders convicted of offenses described in subsection (a) are appropriately severe and reasonably consistent with other relevant directives and with other Federal Sentencing Guidelines.

"**Sec. 503. Increased Penalties for Use of a Computer in the Sexual Abuse or Exploitation of a Child.**

Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall—

(1) review the Federal Sentencing Guidelines for—

(A) aggravated sexual abuse under section 2241 of title 18, United States Code;

(B) sexual abuse under section 2242 of title 18, United States Code;

(C) sexual abuse of a minor or ward under section 2243 of title 18, United States Code; and

(D) coercion and enticement of a minor under section 2422(b) of title 18, United States Code, contacting a minor under section 2422(c) of title 18, United States Code, and transportation of minors and travel under section 2423 of title 18, United States Code; and

(2) upon completion of the review under paragraph (1), promulgate amendments to the Federal Sentencing Guidelines to provide appropriate enhancement if the defendant used a computer with the intent to persuade, induce, entice, coerce, or facilitate the transport of a child of an age specified in the applicable provision of law referred to in paragraph (1) to engage in any prohibited sexual activity.

"**Sec. 504. Increased Penalties for Knowing Misrepresentation in the Sexual Abuse or Exploitation of a Child.**

Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall—

(1) review the Federal Sentencing Guidelines on aggravated sexual abuse under section 2241 of title 18, United States Code, sexual abuse under section 2242 of title 18, United States Code, sexual abuse of a minor or ward under section 2243 of title 18, United States Code, coercion and enticement of a minor under section 2422(b) of title 18, United States Code, contacting a minor under section 2422(c) of title 18, United States Code, and transportation of minors and travel under section 2423 of title 18, United States Code; and

(2) upon completion of the review under paragraph (1), promulgate amendments to the Federal Sentencing Guidelines to provide appropriate enhancement if the defendant knowingly misrepresented the actual identity of the defendant with the intent to persuade, induce, entice, coerce, or facilitate the transport of a child of an age specified in the applicable provision of law referred to in paragraph (1) to engage in a prohibited sexual activity.

"**Sec. 505. Increased Penalties for Pattern of Activity of Sexual Exploitation of Children.**

Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall—

(1) review the Federal Sentencing Guidelines on aggravated sexual abuse under section 2241 of title 18, United States Code, sexual abuse under section 2242 of title 18, United States Code, sexual abuse of a minor or ward under section 2243 of title 18, United States Code, coercion and enticement of a minor under section 2422(b) of title 18, United States Code, contacting a minor under section 2422(c) of title 18, United States Code, and transportation of minors and travel under section 2423 of title 18, United States Code; and

(2) upon completion of the review under paragraph (1), promulgate amendments to the Federal Sentencing Guidelines to increase penalties applicable to the offenses referred to in paragraph (1) in any case in which the defendant engaged in a pattern of activity involving the sexual abuse or exploitation of a minor.

"**Sec. 506. Clarification of Definition of Distribution of Pornography.**

Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall—

(1) review the Federal Sentencing Guidelines relating to the distribution of pornography covered under chapter 110 of title 18, United States Code [18 U.S.C.A. § 2251 et seq.], relating to the sexual exploitation and other abuse of children; and

(2) upon completion of the review under paragraph (1), promulgate such amendments to the Federal Sentencing Guidelines as are necessary to clarify that the term 'distribution of pornography' applies to the distribution of pornography—

(A) for monetary remuneration; or

(B) for a nonpecuniary interest.

"**Sec. 507. Directive to the United States Sentencing Commission.**

In carrying out this title, the United States Sentencing Commission shall—

(1) with respect to any action relating to the Federal Sentencing Guidelines subject to this title, ensure reasonable consistency with other guidelines of the Federal Sentencing Guidelines; and

(2) with respect to an offense subject to the Federal Sentencing Guidelines, avoid duplicative punishment under the Federal Sentencing Guidelines for substantially the same offense."

* * *

IDENTITY THEFT AND ASSUMPTION DETERRENCE ACT OF 1998 (PUB. L. 105–318)

IDENTITY THEFT AND DOCUMENT FRAUD (SECTION 1028 OFFENSES). Pub.L. 105–318, § 4, Oct. 30, 1998, 112 Stat. 3009, provided:

"**Sec. 4. Amendment of Federal Sentencing Guidelines for Offenses Under Section 1028.**

(a) In general.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines and the policy statements of the Commission, as appropriate, to provide an appropriate penalty for each offense under section 1028 of title 18, United States Code, as amended by this Act.

(b) Factors for consideration.—In carrying out subsection (a), the United States Sentencing Commission shall consider, with respect to each offense described in subsection (a)—

(1) the extent to which the number of victims (as defined in section 3663A(a) of title 18, United States Code) involved in the offense, including harm to reputation, inconvenience, and other difficulties resulting from the offense, is an adequate measure for establishing penalties under the Federal sentencing guidelines;

(2) the number of means of identification, identification documents, or false identification documents (as those terms are defined in section 1028(d) of title 18, United States Code, as amended by this Act) involved in the offense, is an adequate measure for establishing penalties under the Federal sentencing guidelines;

(3) the extent to which the value of the loss to any individual caused by the offense is an adequate measure for establishing penalties under the Federal sentencing guidelines;

(4) the range of conduct covered by the offense;

(5) the extent to which sentencing enhancements within the Federal sentencing guidelines and the court's authority to sentence above the applicable guideline range are adequate to ensure punishment at or near the maximum penalty for the most egregious conduct covered by the offense;

(6) the extent to which Federal sentencing guidelines sentences for the offense have been constrained by statutory maximum penalties;

(7) the extent to which Federal sentencing guidelines for the offense adequately achieve the purposes of sentencing set forth in section 3553(a)(2) of title 18, United States Code; and

(8) any other factor that the United States Sentencing Commission considers to be appropriate."

* * *

DIGITAL THEFT DETERRENCE AND COPYRIGHT DAMAGES IMPROVEMENT ACT OF 1999 (PUB. L. 106–160)

INTELLECTUAL PROPERTY OFFENSES. Pub.L. 106–160, § 3, Dec. 9, 1999, 113 Stat. 1774, provided:

"**Sec. 3. Sentencing Commission Guidelines.**

Within 120 days after the date of the enactment of this Act [Dec. 9, 1999], or within 120 days after the first date on which there is a sufficient number of voting members of the Sentencing Commission to constitute a quorum, whichever is later, the Commission shall promulgate emergency guideline amendments to implement section 2(g) of the No Electronic Theft (NET) Act (29 U.S.C. 994 note[1]) in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987 [28 U.S.C. 994 note], as though the authority under that Act had not expired."

* * *

[1] So in original. Probably should be 28 U.S.C. note.

CHILDREN'S HEALTH ACT OF 2000
or
METHAMPHETAMINE ANTI-PROLIFERATION ACT OF 2000
(PUB. L. 106–310)

AMPHETAMINE OFFENSES. Pub.L. 106–310, Div. B, Title XXXVI, § 3611, Oct. 17, 2000, 114 Stat. 1228, provided:

"**Sec. 3611. Enhanced Punishment of Amphetamine Laboratory Operators.**

(a) Amendment to Federal Sentencing Guidelines.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend the Federal sentencing guidelines in accordance with this section with respect to any offense relating to the manufacture, importation, exportation, or trafficking in amphetamine (including an attempt or conspiracy to do any of the foregoing) in violation of—

(1) the Controlled Substances Act (21 U.S.C. 801 et seq.);

(2) the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.); or

(3) the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.).

(b) General Requirement.—In carrying out this section, the United States Sentencing Commission shall, with respect to each offense described in subsection (a) relating to amphetamine—

(1) review and amend its guidelines to provide for increased penalties such that those penalties are comparable to the base offense level for methamphetamine; and

(2) take any other action the Commission considers necessary to carry out this subsection.

(c) Additional requirements.—In carrying out this section, the United States Sentencing Commission shall ensure that the sentencing guidelines for offenders convicted of offenses described in subsection (a) reflect the heinous nature of such offenses, the need for aggressive law enforcement action to fight such offenses, and the extreme dangers associated with unlawful activity involving amphetamines, including—

(1) the rapidly growing incidence of amphetamine abuse and the threat to public safety that such abuse poses;

(2) the high risk of amphetamine addiction;

(3) the increased risk of violence associated with amphetamine trafficking and abuse; and

(4) the recent increase in the illegal importation of amphetamine and precursor chemicals.

(d) Emergency Authority to Sentencing Commission.—The United States Sentencing Commission shall promulgate amendments pursuant to this section as soon as practicable after the date of the enactment of this Act in accordance with the procedure set forth in section 21(a) of the Sentencing Act of 1987 (Public Law 100–182), as though the authority under that Act had not expired."

MANUFACTURE OF AMPHETAMINE OR METHAMPHETAMINE. Pub.L. 106–310, Div. B, Title XXXVI, § 3612, Oct. 12, 2000, 114 Stat. 1228, provided:

"**Sec. 3612. Enhanced Punishment of Amphetamine or Methamphetamine Laboratory Operators.**

(a) Federal Sentencing Guidelines.—

(1) In General.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend the Federal sentencing guidelines in accordance with paragraph (2) with respect to any offense relating to the manufacture, attempt to manufacture, or conspiracy to manufacture amphetamine or methamphetamine in violation of—

(A) the Controlled Substances Act (21 U.S.C. 801 et seq.);

(B) the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.); or

(C) the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.).

(2) Requirements.—In carrying out this paragraph, the United States Sentencing Commission shall—

(A) if the offense created a substantial risk of harm to human life (other than a life described in subparagraph (B)) or the environment, increase the base offense level for the offense—

(i) by not less than 3 offense levels above the applicable level in effect on the date of the enactment of this Act; or

(ii) if the resulting base offense level after an increase under clause (i) would be less than level 27, to not less than level 27; or

(B) if the offense created a substantial risk of harm to the life of a minor or incompetent, increase the base offense level for the offense—

(i) by not less than 6 offense levels above the applicable level in effect on the date of the enactment of this Act; or

(ii) if the resulting base offense level after an increase under clause (i) would be less than level 30, to not less than level 30.

(3) Emergency authority to Sentencing Commission.—The United States Sentencing Commission shall promulgate amendments pursuant to this subsection as soon as practicable after the date of the enactment of this Act in accordance with the procedure set forth in section 21(a) of the Sentencing Act of 1987 (Public Law 100–182), as though the authority under that Act had not expired.

(b) Effective date.—The amendments made pursuant to this section shall apply with respect to any offense occurring on or after the date that is 60 days after the date of the enactment of this Act."

TRAFFICKING IN LIST I CHEMICALS. Pub.L. 106–310, Div. B, Title XXXVI, § 3651, Oct. 17, 2000, 1143 Stat. 1238, provided:

"**Sec. 3651. Enhanced Punishment for Trafficking in List I Chemicals.**

(a) Amendments to Federal Sentencing Guidelines.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend the Federal sentencing guidelines in accordance with this section with respect to any violation of paragraph (1) or (2) of section 401(d) of the Controlled Substances Act (21 U.S.C. 841(d)) involving a list I chemical and any violation of paragraph (1) or (3) of section 1010(d) of the Controlled Substance Import and Export Act (21 U.S.C. 960(d)) involving a list I chemical.

(b) Ephedrine, Phenylpropanolamine, and Pseudoephedrine.—

(1) In general.—In carrying this section, the United States Sentencing Commission shall, with respect to each offense described in subsection (a) involving ephedrine, phenylpropanolamine, or pseudoephedrine (including their salts, optical isomers, and salts of optical isomers), review and amend its guidelines to provide for increased penalties such that those penalties corresponded to the quantity of controlled substance that could reasonably have been manufactured using the quantity of ephedrine, phenylpropanolamine, or pseudoephedrine possessed or distributed.

(2) Conversion ratios.—For the purposes of the amendments made by this subsection, the quantity of controlled substance that could reasonably have been manufactured shall be determined by using a table of manufacturing conversion ratios for ephedrine, phenylpropanolamine, and pseudoephedrine, which table shall be established by the Sentencing Commission based on scientific, law enforcement, and other data the Sentencing Commission considers appropriate.

(c) Other List I Chemicals.—In carrying this section, the United States Sentencing Commission shall, with respect to each offense described in subsection (a) involving any list I chemical other than ephedrine, phenylpropanolamine, or pseudoephedrine, review and amend its guidelines to provide for increased penalties such that those penalties reflect the dangerous nature of such offenses, the need for aggressive law enforcement action to fight such offenses,

and the extreme dangers associated with unlawful activity involving methamphetamine and amphetamine, including—

(1) the rapidly growing incidence of controlled substance manufacturing;

(2) the extreme danger inherent in manufacturing controlled substances;

(3) the threat to public safety posed by manufacturing controlled substances; and

(4) the recent increase in the importation, possession, and distribution of list I chemicals for the purpose of manufacturing controlled substances.

(d) Emergency Authority to Sentencing Commission.—The United States Sentencing Commission shall promulgate amendments pursuant to this section as soon as practicable after the date of the enactment of this Act in accordance with the procedure set forth in section 21(a) of the Sentencing Act of 1987 (Public Law 100–182), as though the authority under that Act had not expired."

ECSTASY OFFENSES. Pub.L. 106–310, Div. B, Title XXXVI, § 3661, 3663, 3664, Oct. 17, 2000, 114 Stat. 1242, provided:

"**Subtitle C—Ecstasy Anti-Proliferation Act of 2000**

"**Sec. 3661. Short title.**

This subtitle may be cited as the 'Ecstasy Anti-Proliferation Act of 2000'.

"**Sec. 3662. Findings.**

[omitted]

"**Sec. 3663. Enhanced Punishment of Ecstasy Traffickers.**

(a) Amendment to Federal Sentencing Guidelines.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission (referred to in this section as the 'Commission') shall amend the Federal sentencing guidelines regarding any offense relating to the manufacture, importation, or exportation of, or trafficking in—

(1) 3,4-methylenedioxy methamphetamine;

(2) 3,4-methylenedioxy amphetamine;

(3) 3,4-methylenedioxy-N-ethylamphetamine;

(4) paramethoxymethamphetamine (PMA); or

(5) any other controlled substance, as determined by the Commission in consultation with the Attorney General, that is marketed as Ecstasy and that has either a chemical structure substantially similar to that of 3,4-methylenedioxy methamphetamine or an effect on the central nervous system substantially similar to or greater than that of 3,4-methylenedioxy methamphetamine, including an attempt or conspiracy to commit an offense described in paragraph (1), (2), (3), (4), or (5) in violation of the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or the Maritime Drug Law Enforcement Act (46 U.S.C. 1901 et seq.).

(b) General Requirements.—In carrying out this section, the Commission shall, with respect to each offense described in subsection (a)—

(1) review and amend the Federal sentencing guidelines to provide for increased penalties such that those penalties reflect the seriousness of these offenses and the need to deter them; and

(2) take any other action the Commission considers to be necessary to carry out this section.

(c) Additional Requirements.—In carrying out this section, the Commission shall ensure that the Federal sentencing guidelines for offenders convicted of offenses described in subsection (a) reflect—

(1) the need for aggressive law enforcement action with respect to offenses involving the controlled substances described in subsection (a); and

(2) the dangers associated with unlawful activity involving such substances, including—

(A) the rapidly growing incidence of abuse of the controlled substances described in subsection (a) and the threat to public safety that such abuse poses;

(B) the recent increase in the illegal importation of the controlled substances described in subsection (a);

(C) the young age at which children are beginning to use the controlled substances described in subsection (a);

(D) the fact that the controlled substances described in subsection (a) are frequently marketed to youth;

(E) the large number of doses per gram of the controlled substances described in subsection (a); and

(F) any other factor that the Commission determines to be appropriate.

(d) Sense of the Congress.—It is the sense of the Congress that—

(1) the base offense levels for Ecstasy are too low, particularly for high-level traffickers, and should be increased, such that they are comparable to penalties for other drugs of abuse; and

(2) based on the fact that importation of Ecstasy has surged in the past few years, the traffickers are targeting the Nation's youth, and the use of Ecstasy among youth in the United States is increasing even as other drug use among this population appears to be leveling off, the base offense levels for importing and trafficking the controlled substances described in subsection (a) should be increased.

(e) Report.—Not later than 60 days after the amendments pursuant to this section have been promulgated, the Commission shall—

(1) prepare a report describing the factors and information considered by the Commission in promulgating amendments pursuant to this section; and

(2) submit the report to—

(A) the Committee on the Judiciary, the Committee on Health, Education, Labor, and Pensions, and the Committee on Appropriations of the Senate; and

(B) the Committee on the Judiciary, the Committee on Commerce, and the Committee on Appropriations of the House of Representatives.

"**Sec. 3664. Emergency Authority to United States Sentencing Commission.**

The United States Sentencing Commission shall promulgate amendments under this subtitle as soon as practicable after the date of the enactment of this Act [Oct. 17, 2000] in accordance with the procedure set forth in section 21(a) of the Sentencing Act of 1987 (Public Law 100–182) [28 U.S.C. 994 note], as though the authority under that Act had not expired."

* * *

VICTIMS OF TRAFFICKING AND VIOLENCE PROTECTION ACT OF 2000 (PUB. L. 106–386)

PEONAGE, INVOLUNTARY SERVITUDE, SLAVE TRADE OFFENSES, AND OTHER HUMAN TRAFFICKING OFFENSES. Pub.L. 106–386, Div. A, § 112(b), Oct. 28, 2000, 114 Stat. 1489, provided:

"**(b) Amendment to the Sentencing Guidelines.—**

(1) Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, if appropriate, amend the sentencing guidelines and policy statements applicable to persons convicted of offenses involving the trafficking of persons including component or related crimes of peonage, involuntary servitude, slave trade offenses, and possession, transfer or sale of false immigration documents in furtherance of trafficking, and the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act.

(2) In carrying out this subsection, the Sentencing Commission shall—

(A) take all appropriate measures to ensure that these sentencing guidelines

and policy statements applicable to the offenses described in paragraph (1) of this subsection are sufficiently stringent to deter and adequately reflect the heinous nature of such offenses;

(B) consider conforming the sentencing guidelines applicable to offenses involving trafficking in persons to the guidelines applicable to peonage, involuntary servitude, and slave trade offenses; and

(C) consider providing sentencing enhancements for those convicted of the offenses described in paragraph (1) of this subsection that—

(i) involve a large number of victims;

(ii) involve a pattern of continued and flagrant violations;

(iii) involve the use or threatened use of a dangerous weapon; or

(iv) result in the death or bodily injury of any person.

(3) The Commission may promulgate the guidelines or amendments under this subsection in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987, as though the authority under that Act had not expired.".

INTERSTATE STALKING (SECTION 2261A OFFENSES). Pub.L. 106–386, Div. B, Title I, § 1107(b), Oct. 28, 2000, 114 Stat. 1498, provided:

"**(b) Interstate Stalking.—**

(1) In general.—[amended 18 U.S.C. § 2261A (Stalking); omitted]

(2) Amendment of federal sentencing guidelines.—

(A) In general.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall amend the Federal Sentencing Guidelines to reflect the amendment made by this subsection.

(B) Factors for consideration.—In carrying out subparagraph (A), the Commission shall consider—

(i) whether the Federal Sentencing Guidelines relating to stalking offenses should be modified in light of the amendment made by this subsection; and

(ii) whether any changes the Commission may make to the Federal Sentencing Guidelines pursuant to clause (i) should also be made with respect to offenses under chapter 110A of title 18, United States Code."

* * *

COLLEGE SCHOLARSHIP FRAUD PREVENTION ACT OF 2000 (PUB. L. 106–420)

HIGHER EDUCATION FINANCIAL ASSISTANCE FRAUD. Pub.L. 106–420, § 3, Nov. 1, 2000, 114 Stat. 1868, provided:

"**Sec. 3. Sentencing Enhancement for Higher Education Financial Assistance Fraud.**

Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend the Federal sentencing guidelines in order to provide for enhanced penalties for any offense involving fraud or misrepresentation in connection with the obtaining or providing of, or the furnishing of information to a consumer on, any scholarship, grant, loan, tuition, discount, award, or other financial assistance for purposes of financing an education at an institution of higher education, such that those penalties are comparable to the base offense level for misrepresentation that the defendant was acting on behalf of a charitable, educational, religious, or political organization, or a government agency."

* * *

UNITING AND STRENGTHENING AMERICA BY PROVIDING APPROPRIATE TOOLS REQUIRED TO INTERCEPT AND OBSTRUCT TERRORISM ACT OF 2001 or USA PATRIOT ACT (PUB. L. 107–56)

COMPUTER FRAUD AND ABUSE (SECTION 1030 OFFENSES). Pub.L. 107–56, Title VIII, § 814(f), Oct. 26, 2001, 115 Stat. 384, provided:

"**(f) Amendment of Sentencing Guidelines Relating to Certain Computer Fraud and Abuse.—**Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall amend the Federal sentencing guidelines to ensure that any individual convicted of a violation of section 1030 of title 18, United States Code, can be subjected to appropriate penalties, without regard to any mandatory minimum term of imprisonment."

* * *

BIPARTISAN CAMPAIGN REFORM ACT OF 2002 (PUB. L. 107–155)

ELECTION LAW VIOLATIONS. Pub.L. 107–155, § 314, Mar. 27, 2002, 116 Stat. 107, provided:

"**Sec. 314. Sentencing Guidelines.**

(a) In General.—The United States Sentencing Commission shall—

(1) promulgate a guideline, or amend an existing guideline under section 994 of title 28, United States Code, in accordance with paragraph (2), for penalties for violations of the Federal Election Campaign Act of 1971 and related election laws; and

(2) submit to Congress an explanation of any guidelines promulgated under paragraph (1) and any legislative or administrative recommendations regarding enforcement of the Federal Election Campaign Act of 1971 and related election laws.

(b) Considerations.—The Commission shall provide guidelines under subsection (a) taking into account the following considerations:

(1) Ensure that the sentencing guidelines and policy statements reflect the serious nature of such violations and the need for aggressive and appropriate law enforcement action to prevent such violations.

(2) Provide a sentencing enhancement for any person convicted of such violation if such violation involves—

(A) a contribution, donation, or expenditure from a foreign source;

(B) a large number of illegal transactions;

(C) a large aggregate amount of illegal contributions, donations, or expenditures;

(D) the receipt or disbursement of governmental funds; and

(E) an intent to achieve a benefit from the Federal Government.

(3) Assure reasonable consistency with other relevant directives and guidelines of the Commission.

(4) Account for aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements.

(5) Assure the guidelines adequately meet the purposes of sentencing under section 3553(a)(2) of title 18, United States Code.

(c) Effective Date; Emergency Authority to Promulgate Guidelines.—

(1) Effective date.—Notwithstanding section 402, the United States Sentencing Commission shall promulgate guidelines under this section not later than the later of—

(A) 90 days after the effective date of this Act; or

(B) 90 days after the date on which at least a majority of the members of the Commission are appointed and holding office.

(2) Emergency authority to promulgate guidelines.—The Commission shall promulgate guidelines under this section in accordance with the procedures set forth in section 21(a) of the Sentencing Reform Act of 1987, as though the authority under such Act has not expired."

* * *

SARBANES–OXLEY ACT OF 2002 (PUB. L. 107–204)

OBSTRUCTION OF JUSTICE; FRAUD; ORGANIZATIONAL GUIDELINES. Pub.L. 107–204, Title VIII, § 805, July 30, 2002, 116 Stat. 802, provided:

"**Sec. 805. Review of Federal Sentencing Guidelines for Obstruction of Justice and Extensive Criminal Fraud.**

(a) Enhancement of Fraud and Obstruction of Justice Sentences.—Pursuant to section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and amend, as appropriate, the Federal Sentencing Guidelines and related policy statements to ensure that—

(1) the base offense level and existing enhancements contained in United States Sentencing Guideline 2J1.2 relating to obstruction of justice are sufficient to deter and punish that activity;

(2) the enhancements and specific offense characteristics relating to obstruction of justice are adequate in cases where—

(A) the destruction, alteration, or fabrication of evidence involves—

(i) a large amount of evidence, a large number of participants, or is otherwise extensive;

(**ii)** the selection of evidence that is particularly probative or essential to the investigation; or

(iii) more than minimal planning; or

(B) the offense involved abuse of a special skill or a position of trust;

(3) the guideline offense levels and enhancements for violations of section 1519 or 1520 of title 18, United States Code, as added by this title, are sufficient to deter and punish that activity;

(4) a specific offense characteristic enhancing sentencing is provided under United States Sentencing Guideline 2B1.1 (as in effect on the date of enactment of this Act) for a fraud offense that endangers the solvency or financial security of a substantial number of victims; and

(5) the guidelines that apply to organizations in United States Sentencing Guidelines, chapter 8, are sufficient to deter and punish organizational criminal misconduct.

(b) Emergency Authority and Deadline for Commission Action.—The United States Sentencing Commission is requested to promulgate the guidelines or amendments provided for under this section as soon as practicable, and in any event not later than 180 days after the date of enactment of this Act, in accordance with the procedures set forth in section 219(a) of the Sentencing Reform Act of 1987, as though the authority under that Act had not expired.".

FRAUD AND CERTAIN OTHER WHITE-COLLAR OFFENSES. Pub.L. 107–204, Title IX, § 905, July 30, 2002, 116 Stat. 805, provided:

"**Sec. 905. Amendment to Sentencing Guidelines Relating to Certain White-Collar Offenses.**

(a) Directive to the United States Sentencing Commission.—Pursuant to its authority under section 994(p) of title 18, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and related policy statements to implement the provisions of this Act.

(b) Requirements.—In carrying out this section, the Sentencing Commission shall—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses and the penalties set forth in this Act, the growing incidence of serious

fraud offenses which are identified above, and the need to modify the sentencing guidelines and policy statements to deter, prevent, and punish such offenses;

(2) consider the extent to which the guidelines and policy statements adequately address whether the guideline offense levels and enhancements for violations of the sections amended by this Act are sufficient to deter and punish such offenses, and specifically, are adequate in view of the statutory increases in penalties contained in this Act;

(3) assure reasonable consistency with other relevant directives and sentencing guidelines;

(4) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(5) make any necessary conforming changes to the sentencing guidelines; and

(6) assure that the guidelines adequately meet the purposes of sentencing, as set forth in section 3553(a)(2) of title 18, United States Code.

(c) Emergency Authority and Deadline for Commission Action.—The United States Sentencing Commission is requested to promulgate the guidelines or amendments provided for under this section as soon as practicable, and in any event not later than 180 days after the date of enactment of this Act, in accordance with the procedures set forth in section 219(a) of the Sentencing Reform Act of 1987, as though the authority under that Act had not expired.".

SECURITIES, PENSION, AND ACCOUNTING FRAUD; ENHANCEMENT FOR OFFICERS AND DIRECTORS OF PUBLICLY TRADED CORPORATIONS. Pub.L. 107–204, Title XI, § 1104, July 30, 2002, 116 Stat. 808, provided:

"**Sec. 1104. Amendment to the Federal Sentencing Guidelines.**

(a) Request for Immediate Consideration by the United States Sentencing Commission.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission is requested to—

(1) promptly review the sentencing guidelines applicable to securities and accounting fraud and related offenses;

(2) expeditiously consider the promulgation of new sentencing guidelines or amendments to existing sentencing guidelines to provide an enhancement for officers or directors of publicly traded corporations who commit fraud and related offenses; and

(3) submit to Congress an explanation of actions taken by the Sentencing Commission pursuant to paragraph (2) and any additional policy recommendations the Sentencing Commission may have for combating offenses described in paragraph (1).

(b) Considerations in Review.—In carrying out this section, the Sentencing Commission is requested to—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of securities, pension, and accounting fraud and the need for aggressive and appropriate law enforcement action to prevent such offenses;

(2) assure reasonable consistency with other relevant directives and with other guidelines;

(3) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements;

(4) ensure that guideline offense levels and enhancements for an obstruction of justice offense are adequate in cases where documents or other physical evidence are actually destroyed or fabricated;

(5) ensure that the guideline offense levels and enhancements under United States Sentencing Guideline 2B1.1 (as in effect on the date of enactment of this Act) are sufficient for a fraud offense when the number of victims adversely involved is significantly greater than 50;

(6) make any necessary conforming changes to the sentencing guidelines; and

(7) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553 (a)(2) of title 18, United States Code.

(c) Emergency Authority and Deadline for Commission Action.—The United States Sentencing Commission is requested to promulgate the guidelines or amendments provided for under this section as soon as practicable, and in any event not later than the 180 days after the date of enactment of this Act, in accordance with the procedures sent forth in section 21(a) of the Sentencing Reform Act of 1987, as though the authority under that Act had not expired."

* * *

21ST CENTURY DEPARTMENT OF JUSTICE APPROPRIATIONS AUTHORIZATION ACT (PUB. L. 107–273)

ASSAULTS, THREATS, AND OTHER OFFENSES AGAINST FEDERAL JUDGES AND OTHER CERTAIN FEDERAL OFFICERS AND EMPLOYEES. Pub.L. 107–273, Div. C, Title I, § 11008(a), (e), Nov. 2, 2002, 116 Stat. 1819, provided:

"**(a) Short Title.—This section may be cited as the 'Federal Judiciary Protection Act of 2002'.**

(b)–(d) [omitted]

(e) Amendment of the Sentencing Guidelines for Assaults and Threats Against Federal Judges and Certain Other Federal Officials and Employees.—

(1) In General.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines and the policy statements of the commission, if appropriate, to provide an appropriate sentencing enhancement for offenses involving influencing, assaulting, resisting, impeding, retaliating against, or threatening a Federal judge, magistrate judge, or any other official described in section 111 or 115 of title 18, United States Code.

(2) Factors for Consideration.—In carrying out this section, the United States Sentencing Commission shall consider, with respect to each offense described in paragraph (1)—

(A) any expression of congressional intent regarding the appropriate penalties for the offense;

(B) the range of conduct covered by the offense;

(C) the existing sentences for the offense;

(D) the extent to which sentencing enhancements within the Federal sentencing guidelines and the authority of the court to impose a sentence in excess of the applicable guideline range are adequate to ensure punishment at or near the maximum penalty for the most egregious conduct covered by the offense;

(E) the extent to which the Federal sentencing guideline sentences for the offense have been constrained by statutory maximum penalties;

(F) the extent to which the Federal sentencing guidelines for the offense adequately achieve the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code;

(G) the relationship of the Federal sentencing guidelines for the offense to the Federal sentencing guidelines for other offenses of comparable seriousness; and

(H) any other factors that the Commission considers to be appropriate.".

CRIMES OF VIOLENCE AND DRUG TRAFFICKING CRIMES IN WHICH THE DEFENDANT USED BODY ARMOR. Pub.L. 107–273, Div. C, Title I, § 11009(a), (d), Nov. 2, 2002, 116 Stat. 1819, provided:

"**(a) Short Title**.—This section may be cited as the 'James Guelff and Chris McCurley Body Armor Act of 2002'.

(b)–(c) [omitted]

(d) Amendment of Sentencing Guidelines with Respect to Body Armor.—

(1) In General.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines and the policy statements of the Commission, as appropriate, to provide an appropriate sentencing enhancement for any crime of violence (as defined in section 16 of title 18, United States Code) or drug trafficking crime (as defined in section 924(c) of title 18, United States Code) (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) in which the defendant used body armor.

(2) Sense of Congress.—It is the sense of Congress that any sentencing enhancement under this subsection should be at least 2 levels.".

* * *

HOMELAND SECURITY ACT OF 2002 or CYBER SECURITY ENHANCEMENT ACT OF 2002 (PUB. L. 107–296)

COMPUTER CRIMES (SECTION 1030 OFFENSES). Pub.L. 107–296, Title XXII, § 2207(b), formerly Title II, § 225(b), (c), Nov. 25, 2002, 116 Stat. 2156, provided:

"**(b) Amendment of Sentencing Guidelines Relating to Certain Computer Crimes.—**

(1) Directive to the United States Sentencing Commission.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this subsection, the United States Sentencing Commission shall review and, if appropriate, amend its guidelines and its policy statements applicable to persons convicted of an offense under section 1030 of title 18, United States Code.

(2) Requirements.—In carrying out this subsection, the Sentencing Commission shall—

(A) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses described in paragraph (1), the growing incidence of such offenses, and the need for an effective deterrent and appropriate punishment to prevent such offenses;

(B) consider the following factors and the extent to which the guidelines may or may not account for them—

(i) the potential and actual loss resulting from the offense;

(ii) the level of sophistication and planning involved in the offense;

(iii) whether the offense was committed for purposes of commercial advantage or private financial benefit;

(iv) whether the defendant acted with malicious intent to cause harm in committing the offense;

(v) the extent to which the offense violated the privacy rights of individuals harmed;

(vi) whether the offense involved a computer used by the government in furtherance of national defense, national security, or the administration of justice;

(vii) whether the violation was intended to or had the effect of significantly interfering with or disrupting a critical infrastructure; and

(viii) whether the violation was intended to or had the effect of creating a threat to public health or safety, or injury to any person;

(C) assure reasonable consistency with other relevant directives and with other sentencing guidelines;

(D) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(E) make any necessary conforming changes to the sentencing guidelines; and

(F) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

(c) Study and Report on Computer Crimes.—Not later than May 1, 2003, the United States Sentencing Commission shall submit a brief report to Congress that explains any actions taken by the Sentencing Commission in response to this section and includes any recommendations the Commission may have regarding statutory penalties for offenses under section 1030 of title 18, United States Code."

* * *

PROSECUTORIAL REMEDIES AND OTHER TOOLS TO END THE EXPLOITATION OF CHILDREN TODAY ACT OF 2003 or THE PROTECT ACT (PUB. L. 108–21)

KIDNAPPING OFFENSES. Pub.L. 108–21, Title I, § 104(a), Apr. 30, 2003, 117 Stat. 653, provided:

"**Sec. 104. Stronger Penalties Against Kidnapping.**

(a) Sentencing Guidelines.—Notwithstanding any other provision of law regarding the amendment of Sentencing Guidelines, the United States Sentencing Commission is directed to amend the Sentencing Guidelines, to take effect on the date that is 30 days after the date of the enactment of this Act—

(1) so that the base offense level for kidnapping in section 2A4.1(a) is increased from level 24 to level 32;

(2) so as to delete section 2A4.1(b)(4)(C); and

(3) so that the increase provided by section 2A4.1(b)(5) is 6 levels instead of 3.

(b) [omitted]".

CHILD CRIMES AND SEX OFFENSES; DOWNWARD DEPARTURES; ACCEPTANCE OF RESPONSIBILITY. Pub.L. 108–21, Title IV, § 401, Apr. 30, 2003, 117 Stat. 668, provided:

"**Sec. 401. Sentencing Reform.**

(a) [omitted]

(b) Conforming Amendments to Guidelines Manual.—The Federal Sentencing Guidelines are amended—

(1) in section 5K2.0—

(A) by striking 'Under' and inserting the following:

'(a) DOWNWARD DEPARTURES IN CRIMINAL CASES OTHER THAN CHILD CRIMES AND SEXUAL OFFENSES—Under'; and

(B) by adding at the end the following:

'(b) DOWNWARD DEPARTURES IN CHILD CRIMES AND SEXUAL OFFENSES—Under 18 U.S.C. Sec. 3553(b)(2), the sentencing court may impose a sentence below the range established by the applicable guidelines only if the court finds that there exists a mitigating circumstance of a kind, or to a degree, that—

(1) has been affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines or policy statements issued under section 994(a) of title 28, United States Code, taking account of any amendments to such sentencing guidelines or policy statements by act of Congress;

(2) has not adequately been taken into consideration by the Sentencing Commission in formulating the guidelines; and

(3) should result in a sentence different from that described.

'The grounds enumerated in this Part K of chapter 5 are the sole grounds that have been affirmatively and specifically identified as a permissible ground of downward departure in these sentencing guidelines and policy statements. Thus, notwithstanding any other reference to authority to depart downward elsewhere in this Sentencing Manual, a ground of downward departure has not been affirmatively and specifically identified as a permissible ground of downward departure

within the meaning of section 3553(b)(2) unless it is expressly enumerated in this Part K as a ground upon which a downward departure may be granted.'.

(2) At the end of part K of chapter 5, add the following:

'Sec. 5K2.22 Specific Offender Characteristics as Grounds for Downward Departure in child crimes and sexual offenses (Policy Statement)

'In sentencing a defendant convicted of an offense under section 1201 involving a minor victim, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117 of title 18, United States Code, age may be a reason to impose a sentence below the applicable guideline range only if and to the extent permitted by Sec. 5H1.1.

'An extraordinary physical impairment may be a reason to impose a sentence below the applicable guideline range only if and to the extent permitted by Sec. 5H1.4. Drug, alcohol, or gambling dependence or abuse is not a reason for imposing a sentence below the guidelines.'

(3) Section 5K2.20 is amended by striking 'A' and inserting 'Except where a defendant is convicted of an offense under section 1201 involving a minor victim, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117 of title 18, United States Code, a'.

(4) Section 5H1.6 is amended by inserting after the first sentence the following: 'In sentencing a defendant convicted of an offense under section 1201 involving a minor victim, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117 of title 18, United States Code, family ties and responsibilities and community ties are not relevant in determining whether a sentence should be below the applicable guideline range.'.

(5) Section 5K2.13 is amended by—

(A) striking 'or' before '(3)'; and

(B) replacing 'public' with 'public; or (4) the defendant has been convicted of an offense under chapter 71, 109A, 110, or 117 of title 18, United States Code.'

(c)–(f) [omitted]

(g) Reform of Guidelines Governing Acceptance of Responsibility.—Subject to subsection (j), the Guidelines Manual promulgated by the Sentencing Commission pursuant to section 994(a) of title 28, United States Code, is amended—

(1) in section 3E1.1(b)—

(A) by inserting 'upon motion of the government stating that' immediately before 'the defendant has assisted authorities'; and

(B) by striking 'taking one or more' and all that follows through and including 'additional level' and insert 'timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently, decrease the offense level by 1 additional level';

(2) in the Application Notes to the Commentary to section 3E1.1, by amending Application Note 6—

(A) by striking 'one or both of'; and

(B) by adding the following new sentence at the end: 'Because the Government is in the best position to determine whether the defendant has assisted authorities in a manner that avoids preparing for trial, an adjustment under subsection (b) may only be granted upon a formal motion by the Government at the time of sentencing.'; and

(3) in the Background to section 3E1.1, by striking 'one or more of'.".

(h) [omitted]

(i) Sentencing Guidelines Amendments.—(1) Subject to subsection (j), the Guidelines Manual promulgated by the Sentencing Commission pursuant to section 994(a) of title 28, United States Code, is amended as follows:

(A) Application Note 4(b)(i) to section 4B1.5 is amended to read as follows:

'(i) IN GENERAL—For purposes of subsection (b), the defendant engaged in a pattern of activity involving prohibited

sexual conduct if on at least two separate occasions, the defendant engaged in prohibited sexual conduct with a minor.'.

(B) Section 2G2.4(b) is amended by adding at the end the following:

'(4) If the offense involved material that portrays sadistic or masochistic conduct or other depictions of violence, increase by 4 levels.

'(5) If the offense involved—

'(A) at least 10 images, but fewer than 150, increase by 2 levels;

'(B) at least 150 images, but fewer than 300, increase by 3 levels;

'(C) at least 300 images, but fewer than 600, increase by 4 levels; and

'(D) 600 or more images, increase by 5 levels.'.

(C) Section 2G2.2(b) is amended by adding at the end the following:

'(6) If the offense involved—

'(A) at least 10 images, but fewer than 150, increase by 2 levels;

'(B) at least 150 images, but fewer than 300, increase by 3 levels;

'(C) at least 300 images, but fewer than 600, increase by 4 levels; and

'(D) 600 or more images, increase by 5 levels.'.

(2) The Sentencing Commission shall amend the Sentencing Guidelines to ensure that the Guidelines adequately reflect the seriousness of the offenses under sections 2243(b), 2244(a)(4), and 2244(b) of title 18, United States Code.

(j) Conforming Amendments.—

(1) Upon enactment of this Act, the Sentencing Commission shall forthwith distribute to all courts of the United States and to the United States Probation System the amendments made by subsections (b), (g), and (i) of this section to the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission. These amendments shall take effect upon the date of enactment of this Act, in accordance with paragraph (5).

(2) On or before May 1, 2005, the Sentencing Commission shall not promulgate any amendment to the sentencing guidelines, policy statements, or official commentary of the Sentencing Commission that is inconsistent with any amendment made by subsection (b) or that adds any new grounds of downward departure to Part K of chapter 5.

(3) With respect to cases covered by the amendments made by subsection (i) of this section, the Sentencing Commission may make further amendments to the sentencing guidelines, policy statements, or official commentary of the Sentencing Commission, except that the Commission shall not promulgate any amendments that, with respect to such cases, would result in sentencing ranges that are lower than those that would have applied under such subsection.

(4) At no time may the Commission promulgate any amendment that would alter or repeal the amendments made by subsection (g) of this section.

(k)–(l) [omitted]

(m) Reform of Existing Permissible Grounds of Downward Departures.—Not later than 180 days after the enactment of this Act, the United States Sentencing Commission shall—

(1) review the grounds of downward departure that are authorized by the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission; and

(2) promulgate, pursuant to section 994 of title 28, United States Code—

(A) appropriate amendments to the sentencing guidelines, policy statements, and official commentary to ensure that the incidence of downward departures are substantially reduced;

(B) a policy statement authorizing a downward departure of not more than 4 levels if the Government files a motion for such departure pursuant to an early disposition program authorized by the Attorney General and the United States Attorney; and

(C) any other conforming amendments to the sentencing guidelines, policy state-

ments, and official commentary of the Sentencing Commission necessitated by this Act, including a revision of paragraph 4(b) of part A of chapter 1 and a revision of section 5K2.0.".

OBSCENE VISUAL REPRESENTATIONS OF SEXUAL ABUSE OF CHILDREN. (SECTION 1466A OFFENSES). Pub.L. 108–21, Title V, § 504(c), Apr. 30, 2003, 117 Stat. 682, provided:

"**(c) Sentencing Guidelines.—**

(1) Category.—Except as provided in paragraph (2), the applicable category of offense to be used in determining the sentencing range referred to in section 3553(a)(4) of title 18, United States Code, with respect to any person convicted under section 1466A of such title, shall be the category of offenses described in section 2G2.2 of the Sentencing Guidelines.

(2) Ranges.—The Sentencing Commission may promulgate guidelines specifically governing offenses under section 1466A of title 18, United States Code, if such guidelines do not result in sentencing ranges that are lower than those that would have applied under paragraph (1).".

TRANSPORTATION TO ENGAGE IN SEXUAL ACT WITH A MINOR (SECTION 2423 OFFENSES). Pub.L. 108–21, Title V, § 512, Apr. 30, 2003, 117 Stat. 685, provided:

"**Sec. 512. Sentencing Enhancements for Interstate Travel to Engage in Sexual Act with a Juvenile.**

Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and policy statements to ensure that guideline penalties are adequate in cases that involve interstate travel with the intent to engage in a sexual act with a juvenile in violation of section 2423 of title 18, United States Code, to deter and punish such conduct."

DISTRIBUTING MATERIAL CONSTITUTING OR CONTAINING CHILD PORNOGRAPHY (SECTION 2252A OFFENSES). Pub L. 108–21, Title V, § 513(c), Apr. 30, 2003, 117 Stat. 685, provided:

"**(c) Sentencing Guidelines.—**Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the Federal Sentencing Guidelines and policy statements to ensure that the guidelines are adequate to deter and punish conduct that involves a violation of paragraph (3)(B) or (6) of section 2252A(a) of title 18, United States Code, as created by this Act. With respect to the guidelines for section 2252A(a)(3)(B), the Commission shall consider the relative culpability of promoting, presenting, describing, or distributing material in violation of that section as compared with solicitation of such material.".

GHB (GAMMA HYDROXYBUTYRIC ACID) OFFENSES. Pub.L. 108–21, Title VI, § 608(e), Apr. 30, 2003, 117 Stat. 691, provided:

"**(e) Sentencing Commission Guidelines.—**The United States Sentencing Commission shall—

(1) review the Federal sentencing guidelines with respect to offenses involving gamma hydroxybutyric acid (GHB);

(2) consider amending the Federal sentencing guidelines to provide for increased penalties such that those penalties reflect the seriousness of offenses involving GHB and the need to deter them; and

(3) take any other action the Commission considers necessary to carry out this section."

* * *

CONTROLLING THE ASSAULT OF NON-SOLICITED PORNOGRAPHY AND MARKETING ACT OF 2003 or CAN-SPAM ACT OF 2003 (PUB. L. 108–187)

ELECTRONIC MAIL FRAUD (SECTION 1037 OFFENSES). Pub.L. 108–187, § 4(b), Dec. 16, 2003, 117 Stat. 2705, provided:

"**(b) United States Sentencing Commission.—**

(1) Directive.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the sentencing guidelines and policy statements to provide appropriate penalties for violations of section 1037 of title 18, United States Code, as added by this section, and other offenses that may be facilitated by the sending of large quantities of unsolicited electronic mail.

(2) Requirements.—In carrying out this subsection, the Sentencing Commission shall consider providing sentencing enhancements for—

(A) those convicted under section 1037 of title 18, United States Code, who—

(i) obtained electronic mail addresses through improper means, including—

(I) harvesting electronic mail addresses of the users of a website, proprietary service, or other online public forum operated by another person, without the authorization of such person; and

(II) randomly generating electronic mail addresses by computer; or

(ii) knew that the commercial electronic mail messages involved in the offense contained or advertised an Internet domain for which the registrant of the domain had provided false registration information; and

(B) those convicted of other offenses, including offenses involving fraud, identity theft, obscenity, child pornography, and the sexual exploitation of children, if such offenses involved the sending of large quantities of electronic mail."

* * *

IDENTITY THEFT PENALTY ENHANCEMENT ACT (PUB. L. 108–275)

IDENTITY THEFT OFFENSES INVOLVING AN ABUSE OF POSITION. Pub.L. 108–275, § 5, July 15, 2004, 118 Stat. 833, provided:

"**Sec. 5. Directive to the United States Sentencing Commission.**

(a) In General.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and amend its guidelines and its policy statements to ensure that the guideline offense levels and enhancements appropriately punish identity theft offenses involving an abuse of position.

(b) Requirements.—In carrying out this section, the United States Sentencing Commission shall do the following:

(1) Amend U.S.S.G. section 3B1.3 (Abuse of Position of Trust of Use of Special Skill) to apply to and punish offenses in which the defendant exceeds or abuses the authority of his or her position in order to obtain unlawfully or use without authority any means of identification, as defined section 1028(d)(4) of title 18, United States Code.

(2) Ensure reasonable consistency with other relevant directives, other sentencing guidelines, and statutory provisions.

(3) Make any necessary and conforming changes to the sentencing guidelines.

(4) Ensure that the guidelines adequately meet the purposes of sentencing set forth in section 3553(a)(2) of title 18, United States Code."

* * *

ANABOLIC STEROID CONTROL ACT OF 2004
(PUB. L. 108–358)

ANABOLIC STEROID OFFENSES. Pub.L. 108–358, § 3, Oct. 22, 2004, 118 Stat. 1664, provided:

"**Sec. 3. Sentencing Commission Guidelines.**

The United States Sentencing Commission shall—

(1) review the Federal sentencing guidelines with respect to offenses involving anabolic steroids;

(2) consider amending the Federal sentencing guidelines to provide for increased penalties with respect to offenses involving anabolic steroids in a manner that reflects the seriousness of such offenses and the need to deter anabolic steroid trafficking and use; and

(3) take such other action that the Commission considers necessary to carry out this section."

* * *

INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004
or
STOP TERRORIST AND MILITARY HOAXES ACT OF 2004
(PUB. L. 108–458)

OFFENSES INVOLVING INTERNATIONAL OR DOMESTIC TERRORISM. Pub.L. 108–458, Title VI, § 6703(b), Dec. 17, 2004, 118 Stat. 3766, provided:

"**(b) Sentencing Guidelines.**—Not later than 30 days of the enactment of this section, the United States Sentencing Commission shall amend the Sentencing Guidelines to provide for an increased offense level for an offense under sections 1001(a) and 1505 of title 18, United States Code, if the offense involves international or domestic terrorism, as defined in section 2331 of such title."

* * *

INTELLECTUAL PROPERTY PROTECTION AND COURTS AMENDMENTS ACT OF 2004
or
FRAUDULENT ONLINE IDENTITY SANCTIONS ACT
(PUB. L. 108–482)

FELONY OFFENSES COMMITTED ONLINE INVOLVING FALSE DOMAIN NAMES. Pub.L. 108–482, Title II, § 204(b), Dec. 23, 2004, 118 Stat. 3917, provided:

"**(b) United States Sentencing Commission.—**

(1) Directive.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and amend the sentencing guidelines and policy statements to ensure that the applicable guideline range for a defendant convicted of any felony offense carried out online that may be facilitated through the use of a domain name registered with materially false contact information is sufficiently stringent to deter commission of such acts.

(2) Requirements.—In carrying out this subsection, the Sentencing Commission shall provide sentencing enhancements for anyone convicted of any felony offense furthered through knowingly providing or knowingly causing to be provided materially false contact information to a domain name registrar, domain name registry, or other domain name registration authority in registering, maintaining, or renewing a domain name used in connection with the violation.

(3) Definition.—For purposes of this subsection, the term 'domain name' has the meaning given that term in section 45 of the

Act entitled 'An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes', approved July 5, 1946 (commonly referred to as the 'Trademark Act of 1946'; 15 U.S.C. 1127)."

* * *

FAMILY ENTERTAINMENT AND COPYRIGHT ACT OF 2005 or ARTISTS' RIGHTS AND THEFT PREVENTION ACT OF 2005 (ART ACT) (PUB. L. 109–9)

INTELLECTUAL PROPERTY OFFENSES. Pub.L. 109–9, Title I, § 105, Apr. 27, 2005, 119 Stat. 218, provided:

"**Sec. 105. Federal Sentencing Guidelines.**

(a) Review and Amendment.—Not later than 180 days after the date of enactment of this Act, the United States Sentencing Commission, pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, shall review and, if appropriate, amend the Federal sentencing guidelines and policy statements applicable to persons convicted of intellectual property rights crimes, including any offense under—

(1) section 506, 1201, or 1202 of title 17, United States Code; or

(2) section 2318, 2319, 2319A, 2319B, or 2320 of title 18, United States Code.

(b) Authorization.—The United States Sentencing Commission may amend the Federal sentencing guidelines in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note) as though the authority under that section had not expired.

(c) Responsibilities of United States Sentencing Commission.—In carrying out this section, the United States Sentencing Commission shall—

(1) take all appropriate measures to ensure that the Federal sentencing guidelines and policy statements described in subsection (a) are sufficiently stringent to deter, and adequately reflect the nature of, intellectual property rights crimes;

(2) determine whether to provide a sentencing enhancement for those convicted of the offenses described in subsection (a), if the conduct involves the display, performance, publication, reproduction, or distribution of a copyrighted work before it has been authorized by the copyright owner, whether in the media format used by the infringing party or in any other media format;

(3) determine whether the scope of "uploading" set forth in application note 3 of section 2B5.3 of the Federal sentencing guidelines is adequate to address the loss attributable to people who, without authorization, broadly distribute copyrighted works over the Internet; and

(4) determine whether the sentencing guidelines and policy statements applicable to the offenses described in subsection (a) adequately reflect any harm to victims from copyright infringement if law enforcement authorities cannot determine how many times copyrighted material has been reproduced or distributed."

* * *

UNITED STATES PAROLE COMMISSION EXTENSION AND SENTENCING COMMISSION AUTHORITY ACT OF 2005 (PUB. L. 109–76)

EMERGENCY AMENDMENT AUTHORITY PERTAINING TO THE INTELLIGENCE REFORM AND TERRORISM PREVENTION ACT OF 2004 AND THE ANABOLIC STEROID CONTROL ACT OF 2004. Pub.L. 109–76, § 3, Sept. 29, 2005, 119 Stat. 2035, provided:

"**Sec. 3. Provision of Emergency Amendment Authority for Sentencing Commission.**

In accordance with the procedure set forth in section 21(a) of the Sentencing Act of 1987 (Public Law 100–182), as though the authority under that Act had not expired, the United States Sentencing Commission shall—

(1) not later than 60 days after the date of the enactment of this Act, amend the Federal sentencing guidelines, commentary, and policy statements to implement section 6703 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458); and

(2) not later than 180 days after the date of the enactment of this Act, amend the Federal sentencing guidelines, commentary, and policy statements to implement section 3 of the Anabolic Steroid Control Act of 2004 (Public Law 108–358)."

* * *

VIOLENCE AGAINST WOMEN AND DEPARTMENT OF JUSTICE REAUTHORIZATION ACT OF 2005 (PUB. L. 109–162)

PUBLIC EMPLOYEE UNIFORMS (SECTION 716 OFFENSES). Pub.L. 109–162, § 1191(c), Jan. 5, 2006, 119 Stat. 2960, provided:

"**(c) Direction to Sentencing Commission.—**The United States Sentencing Commission is directed to make appropriate amendments to sentencing guidelines, policy statements, and official commentary to assure that the sentence imposed on a defendant who is convicted of a Federal offense while wearing or displaying insignia and uniform received in violation of section 716 of title 18, United States Code, reflects the gravity of this aggravating factor."

* * *

USA PATRIOT IMPROVEMENT AND REAUTHORIZATION ACT OF 2005 (PUB. L. 109–177)

THEFT OF INTERSTATE OR FOREIGN SHIPMENTS OR VESSELS (SECTION 659 OR 2311 OFFENSES). Pub.L. 109–177, § 307(c), March 9, 2006, 120 Stat. 192, provided:

"**(c) Review of Sentencing Guidelines.—** Pursuant to section 994 of title 28, United States Code, the United States Sentencing Commission shall review the Federal Sentencing Guidelines to determine whether sentencing enhancement is appropriate for any offense under section 659 or 2311 of title 18, United States Code, as amended by this title."

* * *

STOP COUNTERFEITING IN MANUFACTURED GOODS ACT (PUB. L. 109–181)

TRAFFICKING IN COUNTERFEIT LABELS, GOODS, OR SERVICES (SECTION 2318 OR 2320 OFFENSES). Pub.L. 109–181, § 1(c), March 16, 2006, 120 Stat. 285, provided:

"**(c) Sentencing Guidelines.—**

(1) Review and Amendment.—Not later than 180 days after the date of enactment of this Act, the United States Sentencing Commission, pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this subsection, shall review and, if appropriate, amend the Federal sentencing guidelines and policy statements applicable to persons convicted of any offense under section 2318 or 2320 of title 18, United States Code.

(2) Authorization.—The United States Sentencing Commission may amend the Federal sentencing guidelines in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note) as though the authority under that section had not expired.

(3) Responsibilities of United States Sentencing Commission.—In carrying out this subsection, the United States Sentencing Commission shall determine whether the definition of 'infringement amount' set forth in application note 2 of section 2B5.3 of the Federal sentencing guidelines is adequate to address situations in which the defendant has been convicted of one of the offenses listed in paragraph (1) and the item in which the defendant trafficked was not an infringing item but rather was intended to facilitate infringement, such as an anti-circumvention device, or the item in which the defendant trafficked was infringing and also was intended to facilitate infringement in another good or service, such as a counterfeit label, documentation, or packaging, taking into account cases such as U.S. v. Sung, 87 F.3d 194 (7th Cir. 1996)."

* * *

ADAM WALSH CHILD PROTECTION AND SAFETY ACT OF 2006 or SEX OFFENDER REGISTRATION AND NOTIFICATION ACT (PUB. L. 109–248)

SEX OFFENDER REGISTRATION (SECTION 2250 OFFENSES). Pub.L. 109–248, § 141(b), July 27, 2006, 120 Stat. 587, provided:

"**Sec. 141. Amendments to Title 18, United States Code, Relating to Sex Offender Registration.**

(a) [omitted; enacted 18 U.S.C. § 2250 (Failure to register)]

(b) Directive to the United States Sentencing Commission.—In promulgating guidelines for use of a sentencing court in determining the sentence to be imposed for the offense specified in subsection (a), the United States Sentencing Commission shall consider the following matters, in addition to the matters specified in section 994 of title 28, United States Code:

(1) Whether the person committed another sex offense in connection with, or during, the period for which the person failed to register.

(2) Whether the person committed an offense against a minor in connection with, or during, the period for which the person failed to register.

(3) Whether the person voluntarily attempted to correct the failure to register.

(4) The seriousness of the offense which gave rise to the requirement to register, including whether such offense is a tier I, tier II, or tier III offense, as those terms are defined in section 111.

(5) Whether the person has been convicted or adjudicated delinquent for any offense other than the offense which gave rise to the requirement to register."

* * *

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2007 (PUB. L. 109–295)

OFFENSES INVOLVING BORDER TUNNELS AND SUBTERRANEAN PASSAGES (SECTION 554 OFFENSES). Pub.L. 109–295, § 551(d), Oct. 4, 2006, 120 Stat. 1390, provided:

"**(d) Directive to the United States Sentencing Commission.—**

(1) In general.—Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this subsection, the United States Sentencing Commission shall promulgate or amend sentencing guidelines to provide for increased penalties for persons convicted of offenses described in section 554 of title 18, United States Code, as added by subsection (a).

(2) Requirements.—In carrying out this subsection, the United States Sentencing Commission shall—

(A) ensure that the sentencing guidelines, policy statements, and official commentary reflect the serious nature of the

offenses described in section 554 of title 18, United States Code, and the need for aggressive and appropriate law enforcement action to prevent such offenses;

(B) provide adequate base offense levels for offenses under such section;

(C) account for any aggravating or mitigating circumstances that might justify exceptions, including—

(i) the use of a tunnel or passage described in subsection (a) of such section to facilitate other felonies; and

(ii) the circumstances for which the sentencing guidelines currently provide applicable sentencing enhancements;

(D) ensure reasonable consistency with other relevant directives, other sentencing guidelines, and statutes;

(E) make any necessary and conforming changes to the sentencing guidelines and policy statements; and

(F) ensure that the sentencing guidelines adequately meet the purposes of sentencing set forth in section 3553(a)(2) of title 18, United States Code."

* * *

TELEPHONE RECORDS AND PRIVACY PROTECTION ACT OF 2006 (PUB. L. 109–476)

FRAUD IN OBTAINING CONFIDENTIAL PHONE RECORDS INFORMATION (SECTION 1039 OFFENSES). Pub.L. 109–476, § 4, Jan. 12, 2007, 120 Stat. 3571, provided:

"**Sec. 4. Sentencing Guidelines.**

(a) Review and Amendment.—Not later than 180 days after the date of enactment of this Act, the United States Sentencing Commission, pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, shall review and, if appropriate, amend the Federal sentencing guidelines and policy statements applicable to persons convicted of any offense under section 1039 of title 18, United States Code.

(b) Authorization.—The United States Sentencing Commission may amend the Federal sentencing guidelines in accordance with the procedures set forth in section 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note) as though the authority under that section had not expired."

* * *

COURT SECURITY IMPROVEMENT ACT OF 2007 (PUB. L. 110–177)

THREATS OVER THE INTERNET AGAINST FEDERAL OFFICIALS (SECTION 115 OFFENSES). Pub.L. 110–177, § 209, Jan. 7, 2008, 121 Stat. 2538, provided:

"**Sec. 209. Direction to the Sentencing Commission.**

The United States Sentencing Commission is directed to review the Sentencing Guidelines as they apply to threats punishable under section 115 of title 18, United States Code, that occur over the Internet, and determine whether and by how much that circumstance should aggravate the punishment pursuant to section 994 of title 28, United States Code. In conducting the study, the Commission shall take into consideration the number of such threats made, the intended number of recipients of such threats, and whether the initial senders of such threats were acting in an individual capacity or as part of a larger group."

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EMERGENCY AND DISASTER ASSISTANCE FRAUD PENALTY ENHANCEMENT ACT OF 2007 (PUB. L. 110–179)

DISASTER ASSISTANCE FRAUD. Pub.L. 110–179, § 5, Jan. 7, 2008, 121 Stat. 2557, provided:

"**Sec. 5. Directive to Sentencing Commission.**

(a) In General.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission forthwith shall—

(1) promulgate sentencing guidelines or amend existing sentencing guidelines to provide for increased penalties for persons convicted of fraud or theft offenses in connection with a major disaster declaration under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) or an emergency declaration under section 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5191); and

(2) submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives an explanation of actions taken by the Commission pursuant to paragraph (1) and any additional policy recommendations the Commission may have for combating offenses described in that paragraph.

(b) Requirements.—In carrying out this section, the Sentencing Commission shall—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses described in subsection (a) and the need for aggressive and appropriate law enforcement action to prevent such offenses;

(2) assure reasonable consistency with other relevant directives and with other guidelines;

(3) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements;

(4) make any necessary conforming changes to the sentencing guidelines; and

(5) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

(c) Emergency Authority and Deadline for Commission Action.—The Commission shall promulgate the guidelines or amendments provided for under this section as soon as practicable, and in any event not later than the 30 days after the date of enactment of this Act, in accordance with the procedures set forth in section 21(a) of the Sentencing Reform Act of 1987, as though the authority under that Act had not expired."

* * *

FORMER VICE PRESIDENT PROTECTION ACT OF 2008 or IDENTITY THEFT ENFORCEMENT AND RESTITUTION ACT OF 2008 (PUB. L. 110–326)

COMPUTER CRIME; THEFT OR MISUSE OF PERSONALLY IDENTIFIABLE DATA (SECTION 1028, 1028A, 1030, 2511, AND 2701 OFFENSES). Pub.L. 110–326, Title II, § 209, Sept. 26, 2008, 122 Stat. 3564, provided:

"**Sec. 209. Directive to United States Sentencing Commission.**

(a) Directive.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review its guidelines and policy statements applicable to persons convicted of offenses under sections 1028, 1028A, 1030, 2511, and 2701 of title 18, United States Code, and any other relevant provisions of law, in order to reflect the intent of Congress that such penalties be increased in comparison to those currently provided by such guidelines and policy statements.

(b) Requirements.—In determining its guidelines and policy statements on the appropriate sentence for the crimes enumerated in subsection (a), the United States Sentencing Commission shall consider the extent to which the guidelines and policy statements may or may not account for the following factors in order to create an effective deterrent to computer

crime and the theft or misuse of personally identifiable data:

(1) The level of sophistication and planning involved in such offense.

(2) Whether such offense was committed for purpose of commercial advantage or private financial benefit.

(3) The potential and actual loss resulting from the offense including—

(A) the value of information obtained from a protected computer, regardless of whether the owner was deprived of use of the information; and

(B) where the information obtained constitutes a trade secret or other proprietary information, the cost the victim incurred developing or compiling the information.

(4) Whether the defendant acted with intent to cause either physical or property harm in committing the offense.

(5) The extent to which the offense violated the privacy rights of individuals.

(6) The effect of the offense upon the operations of an agency of the United States Government, or of a State or local government.

(7) Whether the offense involved a computer used by the United States Government, a State, or a local government in furtherance of national defense, national security, or the administration of justice.

(8) Whether the offense was intended to, or had the effect of, significantly interfering with or disrupting a critical infrastructure.

(9) Whether the offense was intended to, or had the effect of, creating a threat to public health or safety, causing injury to any person, or causing death.

(10) Whether the defendant purposefully involved a juvenile in the commission of the offense.

(11) Whether the defendant's intent to cause damage or intent to obtain personal information should be disaggregated and considered separately from the other factors set forth in USSG 2B1.1(b)(14).

(12) Whether the term "victim" as used in USSG 2B1.1, should include individuals whose privacy was violated as a result of the offense in addition to individuals who suffered monetary harm as a result of the offense.

(13) Whether the defendant disclosed personal information obtained during the commission of the offense.

(c) Additional Requirements.—In carrying out this section, the United States Sentencing Commission shall—

(1) assure reasonable consistency with other relevant directives and with other sentencing guidelines;

(2) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(3) make any conforming changes to the sentencing guidelines; and

(4) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code."

* * *

LET OUR VETERANS REST IN PEACE ACT OF 2008 (PUB. L. 110–384)

VETERANS' GRAVE MARKERS. Pub.L. 110–384, § 3, Oct. 10, 2008, 122 Stat. 4094, provided:

"**Sec. 3. Direction to the Sentencing Commission.**

(a) In General.—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and, if appropriate, amend the Federal sentencing guidelines and policy statements to ensure the guidelines and policy statements provide adequate sentencing enhancements for any offense involving the desecration, theft, or trafficking in, a grave marker, headstone, monument, or other object, intended to permanently mark a veteran's grave.

(b) Commission Duties.—In carrying out this section, the Sentencing Commission shall—

(1) ensure that the sentences, guidelines, and policy statements relating to offenders convicted of these offenses are appropriately severe and reasonably consistent with other relevant directives and other Federal sentencing guidelines and policy statements;

(2) make any necessary conforming changes to the Federal sentencing guidelines; and

(3) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code."

* * *

DRUG TRAFFICKING VESSEL INTERDICTION ACT OF 2008 (PUB. L. 110–407)

SUBMERSIBLE VESSELS (SECTION 2285 OFFENSES). Pub.L. 110–407, Title I, § 103, Oct. 13, 2008, 122 Stat. 4298, provided:

"**Sec. 103. Sentencing Guidelines.**

(a) In General.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall promulgate sentencing guidelines (including policy statements) or amend existing sentencing guidelines (including policy statements) to provide adequate penalties for persons convicted of knowingly operating by any means or embarking in any submersible vessel or semi-submersible vessel in violation of section 2285 of title 18, United States Code.

(b) Requirements.—In carrying out this section, the United States Sentencing Commission shall—

(1) ensure that the sentencing guidelines and policy statements reflect the serious nature of the offense described in section 2285 of title 18, United States Code, and the need for deterrence to prevent such offenses;

(2) account for any aggravating or mitigating circumstances that might justify exceptions, including—

(A) the use of a submersible vessel or semi-submersible vessel described in section 2285 of title 18, United States Code, to facilitate other felonies;

(B) the repeated use of a submersible vessel or semi-submersible vessel described in section 2285 of title 18, United States Code, to facilitate other felonies, including whether such use is part of an ongoing criminal organization or enterprise;

(C) whether the use of such a vessel involves a pattern of continued and flagrant violations of section 2285 of title 18, United States Code;

(D) whether the persons operating or embarking in a submersible vessel or semi-submersible vessel willfully caused, attempted to cause, or permitted the destruction or damage of such vessel or failed to heave to when directed by law enforcement officers; and

(E) circumstances for which the sentencing guidelines (and policy statements) provide sentencing enhancements;

(3) ensure reasonable consistency with other relevant directives, other sentencing guidelines and policy statements, and statutory provisions;

(4) make any necessary and conforming changes to the sentencing guidelines and policy statements; and

(5) ensure that the sentencing guidelines and policy statements adequately meet the purposes of sentencing set forth in section 3553(a)(2) of title 18, United States Code."

* * *

RYAN HAIGHT ONLINE PHARMACY CONSUMER PROTECTION ACT OF 2008 (PUB. L. 110–425)

DELIVERY OF CONTROLLED SUBSTANCES BY MEANS OF THE INTERNET. Pub.L. 110–425, § 3(k)(2), Oct. 15, 2008, 122 Stat. 4833, provided:

"**(2) Sentencing guidelines.**—The United States Sentencing Commission, in determining whether to amend, or establish new, guidelines or policy statements, to conform the Federal sentencing guidelines and policy statements to this Act and the amendments made by this Act, should not construe any change in the maximum penalty for a violation involving a controlled substance in a particular schedule as being the sole reason to amend, or establish a new, guideline or policy statement."

* * *

WILLIAM WILBERFORCE TRAFFICKING VICTIMS PROTECTION REAUTHORIZATION ACT OF 2008 (PUB. L. 110–457)

ALIEN HARBORING. Pub.L. 110–457, Title II, § 222(g), Dec. 23, 2008, 122 Stat. 5071, provided:

"**(g) Amendment to Sentencing Guidelines.**—Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and, if appropriate, amend the sentencing guidelines and policy statements applicable to persons convicted of alien harboring to ensure conformity with the sentencing guidelines applicable to persons convicted of promoting a commercial sex act if—

(1) the harboring was committed in furtherance of prostitution; and

(2) the defendant to be sentenced is an organizer, leader, manager, or supervisor of the criminal activity."

* * *

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2010 or MATTHEW SHEPARD AND JAMES BYRD, JR. HATE CRIMES PREVENTION ACT (PUB. L. 111–84)

REPORT ON MANDATORY MINIMUM SENTENCING PROVISIONS. Pub.L. 111–84, Div. E, § 4713, Oct. 28, 2009, 123 Stat. 2843, provided:

"**Sec. 4713. Report on Mandatory Minimum Sentencing Provisions.**

(a) Report.—Not later than 1 year after the date of enactment of this Act, the United States Sentencing Commission shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on mandatory minimum sentencing provisions under Federal law.

(b) Contents of Report.—The report submitted under subsection (a) shall include—

(1) a compilation of all mandatory minimum sentencing provisions under Federal law;

(2) an assessment of the effect of mandatory minimum sentencing provisions under Federal law on the goal of eliminating unwarranted sentencing disparity and other goals of sentencing;

(3) an assessment of the impact of mandatory minimum sentencing provisions on the Federal prison population;

(4) an assessment of the compatibility of mandatory minimum sentencing provisions under Federal law and the sentencing guidelines system established under the Sentencing Reform Act of 1984 (Public Law 98–473; 98 Stat. 1987) and the sentencing guidelines system in place after Booker v. United States, 543 U.S. 220 (2005);

(5) a description of the interaction between mandatory minimum sentencing provisions under Federal law and plea agreements;

(6) a detailed empirical research study of the effect of mandatory minimum penalties under Federal law;

(7) a discussion of mechanisms other than mandatory minimum sentencing laws by which Congress can take action with respect to sentencing policy; and

(8) any other information that the Commission determines would contribute to a thorough assessment of mandatory minimum sentencing provisions under Federal law."

* * *

PATIENT PROTECTION AND AFFORDABLE CARE ACT (PUB. L. 111–148)

FEDERAL HEALTH CARE OFFENSES. Pub.L. 111–148, § 10606(a), Mar. 23, 2010, 124 Stat. 1006, provided:

"(a) Fraud Sentencing Guidelines.—

(1) Definition.—In this subsection, the term 'Federal health care offense' has the meaning given that term in section 24 of title 18, United States Code, as amended by this Act.

(2) Review and amendments.—Pursuant to the authority under section 994 of title 28, United States Code, and in accordance with this subsection, the United States Sentencing Commission shall—

(A) review the Federal Sentencing Guidelines and policy statements applicable to persons convicted of Federal health care offenses;

(B) amend the Federal Sentencing Guidelines and policy statements applicable to persons convicted of Federal health care offenses involving Government health care programs to provide that the aggregate dollar amount of fraudulent bills submitted to the Government health care program shall constitute prima facie evidence of the amount of the intended loss by the defendant; and

(C) amend the Federal Sentencing Guidelines to provide—

(i) a 2-level increase in the offense level for any defendant convicted of a Federal health care offense relating to a Government health care program which involves a loss of not less than $1,000,000 and less than $7,000,000;

(ii) a 3-level increase in the offense level for any defendant convicted of a Federal health care offense relating to a Government health care program which involves a loss of not less than $7,000,000 and less than $20,000,000;

(iii) a 4-level increase in the offense level for any defendant convicted of a Federal health care offense relating to a Government health care program which involves a loss of not less than $20,000,000; and

(iv) if appropriate, otherwise amend the Federal Sentencing Guidelines and policy statements applicable to persons convicted of Federal health care offenses involving Government health care programs.

(3) Requirements.—In carrying this subsection, the United States Sentencing Commission shall—

(A) ensure that the Federal Sentencing Guidelines and policy statements—

(i) reflect the serious harms associated with health care fraud and the need for aggressive and appropriate law enforcement action to prevent such fraud; and

(ii) provide increased penalties for persons convicted of health care fraud offenses in appropriate circumstances;

(B) consult with individuals or groups representing health care fraud victims, law enforcement officials, the health care industry, and the Federal judiciary as part of the review described in paragraph (2);

(C) ensure reasonable consistency with other relevant directives and with other guidelines under the Federal Sentencing Guidelines;

(D) account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the Federal Sentencing Guidelines,

as in effect on the date of enactment of this Act, provide sentencing enhancements;

(E) make any necessary conforming changes to the Federal Sentencing Guidelines; and

(F) ensure that the Federal Sentencing Guidelines adequately meet the purposes of sentencing."

* * *

DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT (PUB. L. 111–203)

OFFENSES RELATING TO SECURITIES FRAUD, FINANCIAL INSTITUTION FRAUD, OR FEDERALLY RELATED MORTGAGE LOAN FRAUD. Pub.L. 111–203, § 1079A(a), July 21, 2010, 124 Stat. 2077–78, provided:

"(a) Sentencing Guidelines.—

(1) Securities fraud.—

(A) Directive.—Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this paragraph, the United States Sentencing Commission shall review and, if appropriate, amend the Federal Sentencing Guidelines and policy statements applicable to persons convicted of offenses relating to securities fraud or any other similar provision of law, in order to reflect the intent of Congress that penalties for the offenses under the guidelines and policy statements appropriately account for the potential and actual harm to the public and the financial markets from the offenses.

(B) Requirements.—In making any amendments to the Federal Sentencing Guidelines and policy statements under subparagraph (A), the United States Sentencing Commission shall—

(i) ensure that the guidelines and policy statements, particularly section 2B1.1(b)(14) and section 2B1.1(b)(17) (and any successors thereto), reflect—

(I) the serious nature of the offenses described in subparagraph (A);

(II) the need for an effective deterrent and appropriate punishment to prevent the offenses; and

(III) the effectiveness of incarceration in furthering the objectives described in subclauses (I) and (II);

(ii) consider the extent to which the guidelines appropriately account for the potential and actual harm to the public and the financial markets resulting from the offenses;

(iii) ensure reasonable consistency with other relevant directives and guidelines and Federal statutes;

(iv) make any necessary conforming changes to guidelines; and

(v) ensure that the guidelines adequately meet the purposes of sentencing, as set forth in section 3553(a)(2) of title 18, United States Code.

(2) Financial institution fraud.—

(A) Directive.—Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this paragraph, the United States Sentencing Commission shall review and, if appropriate, amend the Federal Sentencing Guidelines and policy statements applicable to persons convicted of fraud offenses relating to financial institutions or federally related mortgage loans and any other similar provisions of law, to reflect the intent of Congress that the penalties for the offenses under the guidelines and policy statements ensure appropriate terms of imprisonment for offenders involved in substantial bank frauds or other frauds relating to financial institutions.

(B) Requirements.—In making any amendments to the Federal Sentencing Guidelines and policy statements under subparagraph (A), the United States Sentencing Commission shall—

(i) ensure that the guidelines and policy statements reflect—

(I) the serious nature of the offenses described in subparagraph (A);

(II) the need for an effective deterrent and appropriate punishment to prevent the offenses; and

(III) the effectiveness of incarceration in furthering the objectives described in subclauses (I) and (II);

(ii) consider the extent to which the guidelines appropriately account for the potential and actual harm to the public and the financial markets resulting from the offenses;

(iii) ensure reasonable consistency with other relevant directives and guidelines and Federal statutes;

(iv) make any necessary conforming changes to guidelines; and

(v) ensure that the guidelines adequately meet the purposes of sentencing, as set forth in section 3553(a)(2) of title 18, United States Code."

* * *

FAIR SENTENCING ACT OF 2010 (PUB. L. 111–220)

ENHANCEMENTS FOR ACTS OF VIOLENCE DURING DRUG TRAFFICKING OFFENSE; INCREASED EMPHASIS ON DEFENDANT'S ROLE AND CERTAIN AGGRAVATING AND MITIGATING FACTORS; EMERGENCY AUTHORITY; REPORT TO CONGRESS. Pub.L. 111–220, §§ 5 to 8, 10, Aug. 3, 2010, 124 Stat. 2373, provided:

"Sec. 5. Enhancements for Acts of Violence During the Course of a Drug Trafficking Offense.

Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines to ensure that the guidelines provide an additional penalty increase of at least 2 offense levels if the defendant used violence, made a credible threat to use violence, or directed the use of violence during a drug trafficking offense.

"Sec. 6. Increased Emphasis on Defendant's Role and Certain Aggravating Factors.

Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines to ensure an additional increase of at least 2 offense levels if—

(1) the defendant bribed, or attempted to bribe, a Federal, State, or local law enforcement official in connection with a drug trafficking offense;

(2) the defendant maintained an establishment for the manufacture or distribution of a controlled substance, as generally described in section 416 of the Controlled Substances Act (21 U.S.C. 856); or

(3)(A) the defendant is an organizer, leader, manager, or supervisor of drug trafficking activity subject to an aggravating role enhancement under the guidelines; and

(B) the offense involved 1 or more of the following super-aggravating factors:

(i) The defendant—

(I) used another person to purchase, sell, transport, or store controlled substances;

(II) used impulse, fear, friendship, affection, or some combination thereof to involve such person in the offense; and

(III) such person had a minimum knowledge of the illegal enterprise and was to receive little or no compensation from the illegal transaction.

(ii) The defendant—

(I) knowingly distributed a controlled substance to a person under the age of 18 years, a person over the age of 64 years, or a pregnant individual;

(II) knowingly involved a person under the age of 18 years, a person over the age of 64 years, or a pregnant individual in drug trafficking;

(III) knowingly distributed a controlled substance to an individual who

was unusually vulnerable due to physical or mental condition, or who was particularly susceptible to criminal conduct; or

(IV) knowingly involved an individual who was unusually vulnerable due to physical or mental condition, or who was particularly susceptible to criminal conduct, in the offense.

(iii) The defendant was involved in the importation into the United States of a controlled substance.

(iv) The defendant engaged in witness intimidation, tampered with or destroyed evidence, or otherwise obstructed justice in connection with the investigation or prosecution of the offense.

(v) The defendant committed the drug trafficking offense as part of a pattern of criminal conduct engaged in as a livelihood.

"**Sec. 7. Increased Emphasis on Defendant's Role and Certain Mitigating Factors.**

Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and amend the Federal sentencing guidelines and policy statements to ensure that—

(1) if the defendant is subject to a minimal role adjustment under the guidelines, the base offense level for the defendant based solely on drug quantity shall not exceed level 32; and

(2) there is an additional reduction of 2 offense levels if the defendant—

(A) otherwise qualifies for a minimal role adjustment under the guidelines and had a minimum knowledge of the illegal enterprise;

(B) was to receive no monetary compensation from the illegal transaction; and

(C) was motivated by an intimate or familial relationship or by threats or fear when the defendant was otherwise unlikely to commit such an offense.

"**Sec. 8. Emergency Authority for United States Sentencing Commission.**

The United States Sentencing Commission shall—

(1) promulgate the guidelines, policy statements, or amendments provided for in this Act as soon as practicable, and in any event not later than 90 days after the date of enactment of this Act, in accordance with the procedure set forth in section 21(a) of the Sentencing Act of 1987 (28 U.S.C. 994 note), as though the authority under that Act had not expired; and

(2) pursuant to the emergency authority provided under paragraph (1), make such conforming amendments to the Federal sentencing guidelines as the Commission determines necessary to achieve consistency with other guideline provisions and applicable law.

"**Sec. 9. Report [by Comptroller General] on Effectiveness of Drug Courts.**

[omitted]

"Sec. 10. United States Sentencing Commission Report on Impact of Changes to Federal Cocaine Sentencing Law.

Not later than 5 years after the date of enactment of this Act, the United States Sentencing Commission, pursuant to the authority under sections 994 and 995 of title 28, United States Code, and the responsibility of the United States Sentencing Commission to advise Congress on sentencing policy under section 995(a)(20) of title 28, United States Code, shall study and submit to Congress a report regarding the impact of the changes in Federal sentencing law under this Act and the amendments made by this Act."

* * *

SECURE AND RESPONSIBLE DRUG DISPOSAL ACT (PUB. L. 111–273)

DRUG OFFENSES RESULTING FROM AUTHORIZATION TO RECEIVE SCHEDULED SUBSTANCES FROM ULTIMATE USERS OR LONG-TERM CARE FACILITIES. Pub.L. 111–273, § 4, Oct. 12, 2010, 124 Stat. 2860, provided:

"Sec. 4. Directive to the United States Sentencing Commission.

Pursuant to its authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall review and, if appropriate, amend the Federal sentencing guidelines and policy statements to ensure that the guidelines and policy statements provide an appropriate penalty increase of up to 2 offense levels above the sentence otherwise applicable in Part D of the Guidelines Manual if a person is convicted of a drug offense resulting from the authorization of that person to receive scheduled substances from an ultimate user or long-term care facility as set forth in the amendments made by section 3 [adding subsection (g) to 21 U.S.C. § 822 and paragraph (3) to 21 U.S.C. § 828(b)]."

* * *

FOOD AND DRUG ADMINISTRATION SAFETY AND INNOVATION ACT (PUB. L. 112–144)

COUNTERFEIT DRUG TRAFFICKING. Pub.L. 112–144, Title VII, § 717(b), July 9, 2012, 126 Stat. 1076, provided:

"(b) Sentencing Commission Directive.—

(1) Directive to Sentencing Commission.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this subsection, the United States Sentencing Commission shall review and amend, if appropriate, its guidelines and its policy statements applicable to persons convicted of an offense described in section 2320(a)(4) of title 18, United States Code, as amended by subsection (a), in order to reflect the intent of Congress that such penalties be increased in comparison to those currently provided by the guidelines and policy statements.

(2) Requirements.—In carrying out this subsection, the Commission shall—

(A) ensure that the sentencing guidelines and policy statements reflect the intent of Congress that the guidelines and policy statements reflect the serious nature of the offenses described in paragraph (1) and the need for an effective deterrent and appropriate punishment to prevent such offenses;

(B) consider the extent to which the guidelines may or may not appropriately account for the potential and actual harm to the public resulting from the offense;

(C) assure reasonable consistency with other relevant directives and with other sentencing guidelines;

(D) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(E) make any necessary conforming changes to the sentencing guidelines; and

(F) assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code."

* * *

STRENGTHENING AND FOCUSING ENFORCEMENT TO DETER ORGANIZED STEALING AND ENHANCE SAFETY ACT OF 2012 or SAFE DOSES ACT (PUB. L. 112–186)

THEFT OF PRE-RETAIL MEDICAL PRODUCTS. Pub.L. 112–186, § 7, Oct. 5, 2012, 126 Stat. 1430, provided:

"Sec. 7. Directive to United States Sentencing Commission.

(a) In General.—Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, if appropriate, amend the Federal sentencing guidelines and policy statements applicable to persons convicted of offenses under section 670 of title 18, United States Code, as added by this Act, section 2118 of title 18, United States Code, or any another section of title 18, United States Code, amended by this Act, to reflect the intent of Congress that penalties for such offenses be sufficient to deter and punish such offenses, and appropriately account for the actual harm to the public from these offenses.

(b) Requirements.—In carrying out this section, the United States Sentencing Commission shall—

(1) consider the extent to which the Federal sentencing guidelines and policy statements appropriately reflect—

(A) the serious nature of such offenses;

(B) the incidence of such offenses; and

(C) the need for an effective deterrent and appropriate punishment to prevent such offenses;

(2) consider establishing a minimum offense level under the Federal sentencing guidelines and policy statements for offenses covered by this Act;

(3) account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(4) ensure reasonable consistency with other relevant directives, Federal sentencing guidelines and policy statements;

(5) make any necessary conforming changes to the Federal sentencing guidelines and policy statements; and

(6) ensure that the Federal sentencing guidelines and policy statements adequately meet the purposes of sentencing set forth in section 3553(a)(2) of title 18, United States Code."

* * *

CHILD PROTECTION ACT OF 2012 (PUB. L. 112–206)

PROTECTION OF CHILD WITNESSES. Pub.L. 112–206, § 3(b), Dec. 7, 2012, 126 Stat. 1492, provided:

"(b) Sentencing Guidelines.—Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, if appropriate, amend the Federal sentencing guidelines and policy statements to ensure—

(1) that the guidelines provide an additional penalty increase above the sentence otherwise applicable in Part J of Chapter 2 of the Guidelines Manual if the defendant was convicted of a violation of section 1591 of title 18, United States Code, or chapters 109A, 109B, 110, or 117 of title 18, United States Code; and

(2) if the offense described in paragraph (1) involved causing or threatening to cause physical injury to a person under 18 years of age, in order to obstruct the administration of justice, an additional penalty increase above the sentence otherwise applicable in Part J of Chapter 2 of the Guidelines Manual."

* * *

FOREIGN AND ECONOMIC ESPIONAGE PENALTY ENHANCEMENT ACT OF 2012 (PUB. L. 112–269)

TRADE SECRETS AND ECONOMIC ESPIONAGE. Pub.L. 112–269, § 3, Jan. 14, 2013, 126 Stat. 2442, provided:

"Sec. 3. Review by the United States Sentencing Commission.

(a) In General.—Pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission

shall review and, if appropriate, amend the Federal sentencing guidelines and policy statements applicable to persons convicted of offenses relating to the transmission or attempted transmission of a stolen trade secret outside of the United States or economic espionage, in order to reflect the intent of Congress that penalties for such offenses under the Federal sentencing guidelines and policy statements appropriately, reflect the seriousness of these offenses, account for the potential and actual harm caused by these offenses, and provide adequate deterrence against such offenses.

(b) Requirements.—In carrying out this section, the United States Sentencing Commission shall—

(1) consider the extent to which the Federal sentencing guidelines and policy statements appropriately account for the simple misappropriation of a trade secret, including the sufficiency of the existing enhancement for these offenses to address the seriousness of this conduct;

(2) consider whether additional enhancements in the Federal sentencing guidelines and policy statements are appropriate to account for—

(A) the transmission or attempted transmission of a stolen trade secret outside of the United States; and

(B) the transmission or attempted transmission of a stolen trade secret outside of the United States that is committed or attempted to be committed for the benefit of a foreign government, foreign instrumentality, or foreign agent;

(3) ensure the Federal sentencing guidelines and policy statements reflect the seriousness of these offenses and the need to deter such conduct;

(4) ensure reasonable consistency with other relevant directives, Federal sentencing guidelines and policy statements, and related Federal statutes;

(5) make any necessary conforming changes to the Federal sentencing guidelines and policy statements; and

(6) ensure that the Federal sentencing guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

(c) Consultation.—In carrying out the review required under this section, the Commission shall consult with individuals or groups representing law enforcement, owners of trade secrets, victims of economic espionage offenses, the United States Department of Justice, the United States Department of Homeland Security, the United States Department of State and the Office of the United States Trade Representative.

(d) Review.—Not later than 180 days after the date of enactment of this Act, the Commission shall complete its consideration and review under this section."

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BIPARTISAN SAFER COMMUNITIES ACT (PUB. L. 117–159)

FIREARMS. Pub.L. 117–159, Div. A, Title II, § 12004(a)(5), June 25, 2022, 136 Stat. 1328, provided:

"(5) Directive to Sentencing Commission.—Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this subsection, the United States Sentencing Commission shall review and amend its guidelines and policy statements to ensure that persons convicted of an offense under section 932 or 933 of title 18, United States Code, and other offenses applicable to the straw purchases and trafficking of firearms are subject to increased penalties in comparison to those currently provided by the guidelines and policy statements for such straw purchasing and trafficking of firearms offenses. In its review, the Commission shall consider, in particular, an appropriate amendment to reflect the intent of Congress that straw purchasers without significant criminal histories receive sentences that are sufficient to deter participation in such activities and reflect the defendant's role and culpability, and any coercion, domestic violence survivor history, or other mitigating factors. The

Commission shall also review and amend its guidelines and policy statements to reflect the intent of Congress that a person convicted of an offense under section 932 or 933 of title 18, United States Code, who is affiliated with a gang, cartel, organized crime ring, or other such enterprise should be subject to higher penalties than an otherwise unaffiliated individual."

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SAFER SKIES ACT (PUB. L. 119–60)

USE OF UNMANNED AIRCRAFT. Pub.L. 119–60, Div. H, Title LXXXVI, § 8605(e), Dec. 18, 2025, 139 Stat. 1944, provided:

"**(e) Directive to United States Sentencing Commission: Enhanced Sentencing Range for Use of Unmanned Aircraft.—**

(1) In General.—To carry out the purposes of this section, during the Sentencing Commission's amendment cycle in progress at the time this Act is enacted, the Commission shall, under section 994 of title 28, United States Code,—

(A) promulgate guidelines, or amendments to guidelines, that substantially increase the sentencing range for all offenses involving the use of an unmanned aircraft; and

(B) as necessary, promulgate policy statements, or amendments to policy statements to assist in the application of this section.

(2) Enhanced Penalties.—In any case in which the enhanced penalties of subsection (c) apply, the guidelines and amendments issued under paragraph (1) shall call for an increase of at least 6 levels in the base offense level and in all other cases, the base offense level shall be increased by at least 4 levels."

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CONSOLIDATED APPROPRIATIONS ACT, 2026 (PUB. L. 119–75)

EMERGENCY AUTHORITY FOR SENTENCING COMMISSION. Pub.L. 119–75, Div. I, § 5017, Feb. 3, 2026, 140 Stat. 631, provided:

"**(a) In General.—**The United States Sentencing Commission (in this section, referred to as the 'Commission') shall promulgate the guidelines or amendments provided for under section 8605(e) of the SAFER SKIES Act (title LXXXVI of Public Law 119–60) as soon as possible after the date of enactment of such Act, and in any event not later than December 31, 2026, notwithstanding the deadline under section 994(p) of title 28, United States Code.

(b) Effective Date.—The amendments to the guidelines promulgated under subsection (a) shall take effect 180 days after the date of promulgation by the Commission, except to the extent that the effective date is revised or the amendment is otherwise modified or disapproved by an Act of Congress, and shall supersede any amendment to the contrary contained in the amendments to the sentencing guidelines submitted to Congress by the Commission on or about May 1, 2026.

(c) Rule of Construction.—The requirements of this section shall supersede the timeline set forth in section 8605(e)(1) of the SAFER SKIES Act (title LXXXVI of Public Law 119–60)."

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