

2016  
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Seminar

## Basic Guideline Application: Tips to Remember

- Begin by looking at Appendix A to find the guideline that applies to the offense of conviction. If the offense of conviction is not listed in Appendix A, use §§2X5.1 for a felony or §2X5.2 for a misdemeanor conviction.
- The sentencing judge resolves disputed issues (§6A1.3)
- Standard of proof: preponderance (§6A1.3)
- Burden of persuasion: falls on party seeking the adjustment
- At sentencing, rules of evidence do not apply (Fed. R. Evid. 1101(d)(3))
- However, evidence must have sufficient indicia of reliability to support probable accuracy (§6A1.3(a))
- List of Departure Provisions are located at end of Guidelines Manual (p. 589)
- Lists all provisions in Manual indicating specific departure grounds

### Examples of Common Departure Provisions

- §5K1.1 – Substantial Assistance
- §5K3.1 – Early Disposition Programs (“Fast Track”)
- §4A1.3 – Inadequacy of Criminal History Category
- §2B1.1, App. Note 20 – Offense level overstates/understates seriousness of offense

### What is the difference between a departure and a variance?

- A “**departure**” is typically a change from the final sentencing range computed by examining the provisions of the Guidelines themselves. It is frequently triggered by a prosecution request to reward cooperation . . . or by other factors that take the case “outside the heartland” contemplated by the Sentencing Commission when it drafted the Guidelines for a typical offense.
- A “**variance**,” by contrast, occurs when a judge imposes a sentence above or below the otherwise properly calculated final sentencing range based on application of the other statutory factors in 18 U.S.C. § 3553(a)
- Notice is required for a departure, *Burns v. U.S.*, 501 U.S. 129 (1991) Fed. R. Crim. P. 32(h)  
Can be satisfied if the ground is identified in the presentence report or in prehearing submissions
- Notice is NOT required for a variance  
*Irizarry v. U.S.*, 553 U.S. 708 (2008)



# Basic Guideline Application: Tips to Remember

Sentencing Options	
Zone A	<ul style="list-style-type: none"> <li>Sentence of Imprisonment OR</li> <li>Probation</li> </ul>
Zone B	<ul style="list-style-type: none"> <li>Sentence of Imprisonment OR</li> <li>Sentence of Imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home confinement (one month imprisonment minimum) OR</li> <li>Sentence of probation that includes a condition or combination of conditions that substitute intermittent confinement, community confinement or home detention sufficient to satisfy the minimum term of imprisonment specified in the guideline range</li> </ul>
Zone C	<ul style="list-style-type: none"> <li>Sentence of Imprisonment OR</li> <li>Sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention (at least one-half of minimum must be satisfied by imprisonment)</li> </ul>
Zone D	<ul style="list-style-type: none"> <li>Sentence of Imprisonment</li> </ul>

Terms of Supervised Release (TSR)		
Class of Offense 18 U.S.C. §3559(a)	Authorized Term of Supervised Release 18 U.S.C. §3583(b)	USSG Authorized Term of Supervised Release USSG §5D1.2
A or B Felony	Not more than 5 years	2-5 years
C or D Felony	Not more than 3 years	1-3 years
E Felony or Class A Misdemeanor	Not more than 1 year	1 year
Class B or C Misdemeanor	Not Authorized	Not Authorized
USSG §5D1.2(b) – provides that the TSR shall not be less than any statutory required term of TSR		

Terms of Probation		
Class of Offense 18 U.S.C. §3559(a)	Authorized Term of Probation 18 U.S.C. §3561(c)	USSG Authorized Term of Probation USSG §§5B1.1 and 5B1.2
A or B Felony	Not Authorized	Not Authorized
C, D, or E Felony	1-5 years	1-5 years if the offense level is 6 or greater, but not more than 3 years in any other case
Misdemeanor	Not more than 5 years	

Fine Table			Classification of Offense 18 U.S.C. §3559	
Offense Level	A Minimum	B Maximum		
3 and below	\$200	\$9,500	Class A Felony	Life Imprisonment or Death
4-5	\$500	\$9,500	Class B Felony	25 years or more
6-7	\$1,000	\$9,500	Class C Felony	Less than 25 years but 10 or more years
8-9	\$2,000	\$20,000	Class D Felony	Less than 10 years but 5 or more years
10-11	\$4,000	\$40,000	Class E Felony	Less than 5 years but more than 1 year
12-13	\$5,500	\$55,000	Class A Misdemeanor	1 year or less but more than 6 months
14-15	\$7,500	\$75,000	Class B Misdemeanor	6 months or less but more than 30 days
16-17	\$10,000	\$95,000		
18-19	\$10,000	\$100,000		
20-22	\$15,000	\$150,000		
23-25	\$20,000	\$200,000		
26-28	\$25,000	\$250,000		
29-31	\$30,000	\$300,000		
32-34	\$35,000	\$350,000		
35-37	\$40,000	\$400,000		
38 and above	\$50,000	\$500,000		
USSG § 5E1.2(c)(4)(A): Provided, that the maximum fine stated above does not apply if the statutory fine is greater than \$250,000.				

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The United States Sentencing Commission, an independent agency in the judicial branch of the federal government, was organized in 1985 to develop a national sentencing policy for the federal courts. The resulting sentencing guidelines provide structure for the courts' sentencing discretion to help ensure that similar offenders who commit similar offenses receive similar sentences.