



# First Step Act



# Introduction

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# First Step Act Sentencing Provisions

- Reduces certain enhanced mandatory minimum penalties for some drug offenders (Section 401)
- Broadens the safety valve at 18 U.S.C. § 3553(f) (Section 402)
- Clarifies stacking at 18 U.S.C. § 924(c) (Section 403)
- Applies the Fair Sentencing Act retroactively (Section 404)

# Commission Resources on the First Step Act

- *ESP INSIDER EXPRESS Special Edition*

- Located at [ussc.gov](https://ussc.gov)



- Sentence and Prison Impact Estimates

- Located at [ussc.gov](https://ussc.gov)



- HelpLine: **(202) 502-4545**

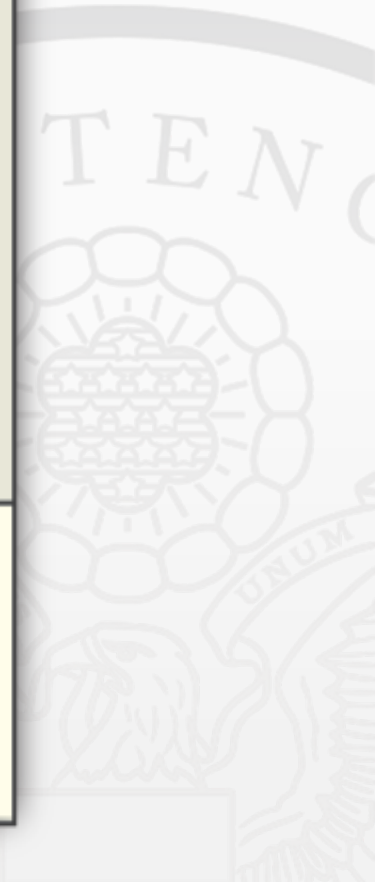
# Key Points for § 851 Changes

- Mandatory minimums reduced
- New criteria for enhanced penalties
  - Predicate offenses have changed
  - New time-served requirement



# Enhanced Penalties

Statutory Provision	Statutory Penalty	Enhanced Penalty BEFORE First Step Act	Enhanced Penalty AFTER First Step Act
21 U.S.C. § 841(b)(1)(A)	10-year Mandatory Minimum	<p><b>20-year</b> Mandatory Minimum (after one prior conviction for a <b>felony drug offense</b>)</p> <p><b>Life</b> (after two or more prior convictions for a <b>felony drug offense</b>)</p>	<p><b>15-year</b> Mandatory Minimum (after one prior conviction for a <b>serious drug felony or serious violent felony</b>)</p> <p><b>25-year</b> Mandatory Minimum (after two or more prior convictions for a <b>serious drug felony or serious violent felony</b>)</p>
21 U.S.C. § 841(b)(1)(B)	5-year Mandatory Minimum	<b>10-year</b> Mandatory Minimum (after one prior conviction for a <b>felony drug offense</b> )	<b>10-year</b> Mandatory Minimum (after one prior conviction for a <b>serious drug felony or serious violent felony</b> )



**Table D-12****APPLICATION OF RECIDIVIST PENALTIES IN DRUG TRAFFICKING CASES<sup>1</sup>**  
**Fiscal Year 2018**

<b>DRUG TYPE</b>	<b>ENHANCEMENT FILED</b>	<b>ENHANCEMENT WITHDRAWN</b>		<b>ENHANCEMENT NOT WITHDRAWN</b>	
	N	N	%	N	%
<b>TOTAL</b>	<b>1,261</b>	<b>254</b>	<b>20.1</b>	<b>1,007</b>	<b>79.9</b>
<b>Powder Cocaine</b>	<b>206</b>	33	16.0	173	84.0
<b>Crack Cocaine</b>	<b>203</b>	49	24.1	154	75.9
<b>Heroin</b>	<b>184</b>	23	12.5	161	87.5
<b>Marijuana</b>	<b>69</b>	11	15.9	58	84.1
<b>Methamphetamine</b>	<b>537</b>	134	25.0	403	75.0
<b>Other</b>	<b>62</b>	4	6.5	58	93.5

# Predicate Offenses Have Changed

- Serious Drug Felony
- Serious Violent Felony
- Time-Served Requirement





# Serious Drug Felony

- Statutory maximum of at least ten years
- Time served exceeded 12 months
- Released within 15 years of commencement of the instant offense



# Serious Violent Felony

- Three-part definition
  - Stat max of 10 years or more required for some
- Statutory maximum of at least ten years
- Time served exceeded 12 months



# Safety Valve Changes

- Applies to maritime drug trafficking statute (boat cases)
- Open to those with more criminal history than just one point
- Can't use information from debrief to "enhance the sentence"

# Safety Valve Effective Date

- Applies to a “conviction entered” on or after December 21, 2018
- Different approaches on pipeline cases
- Consult Rules of Criminal Procedure



# Safety Valve Eligibility Under the First Step Act



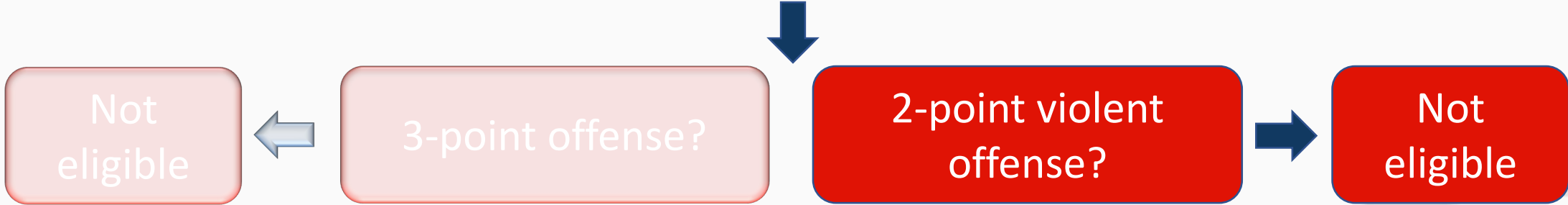
3-point offense?



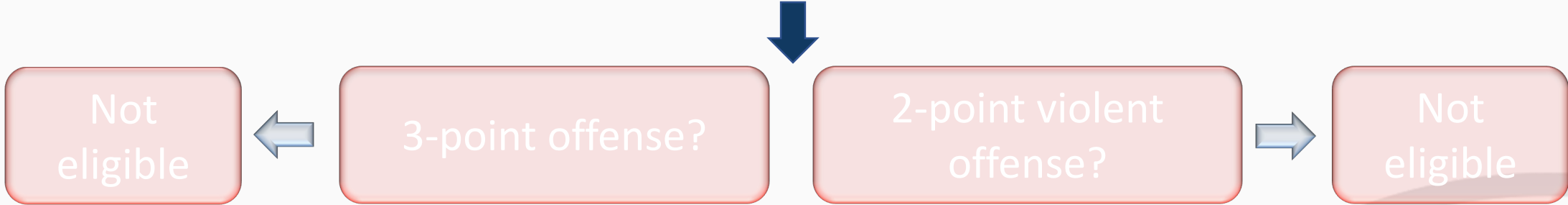
Not eligible



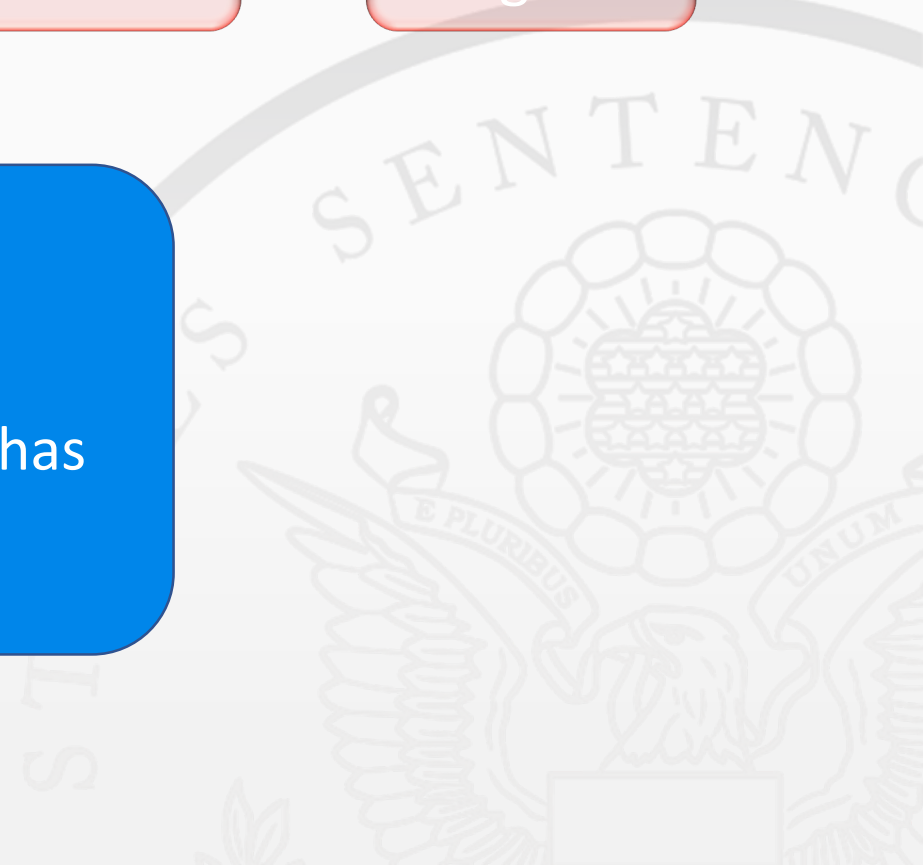
# Safety Valve Eligibility Under the First Step Act



# Safety Valve Eligibility Under the First Step Act



Exclude 1-point offense  
Then determine if the defendant has 4 points or less



## Safety Valve Eligibility Under the Guidelines



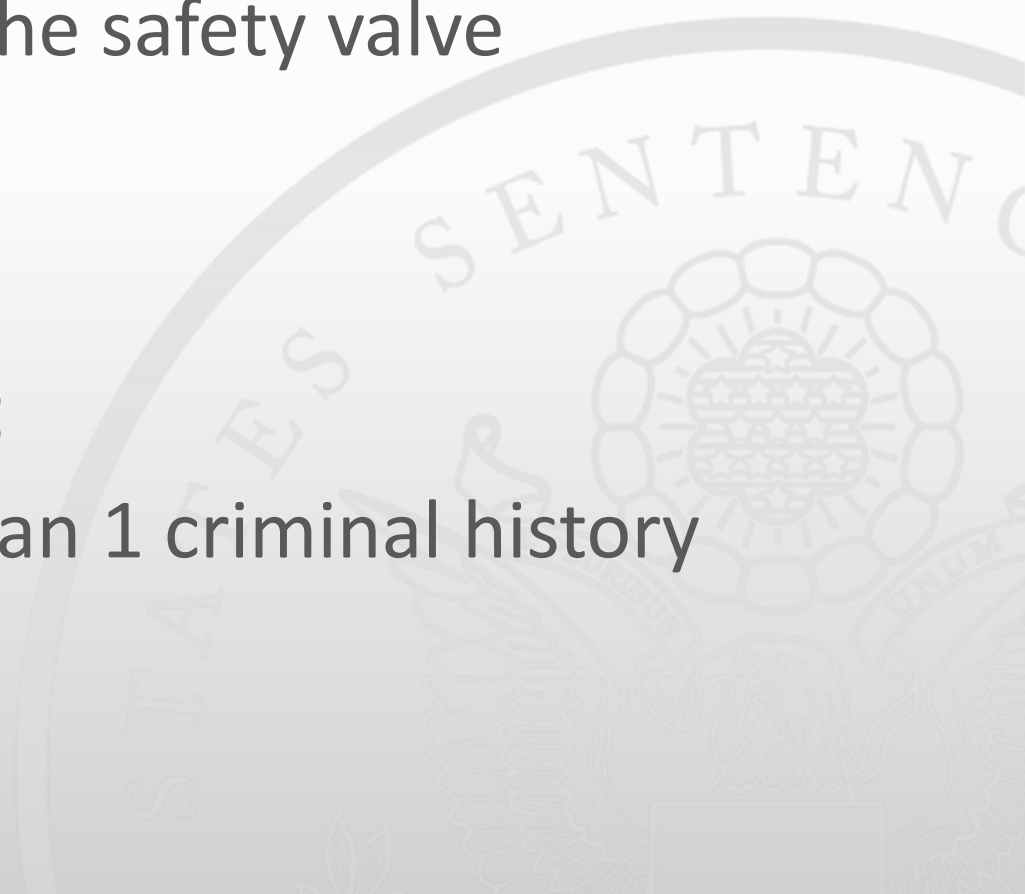
Two or more criminal history points  
=  
not eligible





# Two-Level Safety Valve Decrease

- Drug Guideline at §2D1.1:
  - If defendant meets the criteria in the safety valve guideline, decrease by 2 levels.
- Safety Valve Guideline at § 5C1.2:
  - “defendant does not have more than 1 criminal history point...”



# 18 U.S.C. § 924(c) Stacking Provisions

<b>§ 924(c) Possession Counts</b>	<b><u>Before</u> First Step Act</b>	<b><u>After</u> First Step Act</b>
1 Count	Mandatory minimum of 5 Years	Mandatory minimum of 5 Years
2 Counts in same indictment	Mandatory minimum of $5 + 25 = 30$ years	Mandatory minimum of $5 + 5 = 10$ years
3 Counts in same indictment	Mandatory minimum of $5 + 25 + 25 = 55$ years	Mandatory minimum of $5 + 5 + 5 = 15$ years

<b>BEFORE</b>	<b>The Fair Sentencing Act</b>	<b>AFTER</b>
5 g 50 g	<b>21 U.S.C. § 841</b> 5-yr min - 40-yr max 10-yr min - life max	28 g 280 g
5 g 50 g	<b>21 U.S.C. § 960</b> 5-yr min - 40-yr max 10-yr min - life max	28 g 280 g

# Other First Step Act Provisions

- Compassionate Release
- Risk and Needs Assessments
- Good Conduct Time
- Inmate Programming and Release Planning



# Questions or Comments?



[www.ussc.gov](http://www.ussc.gov)

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