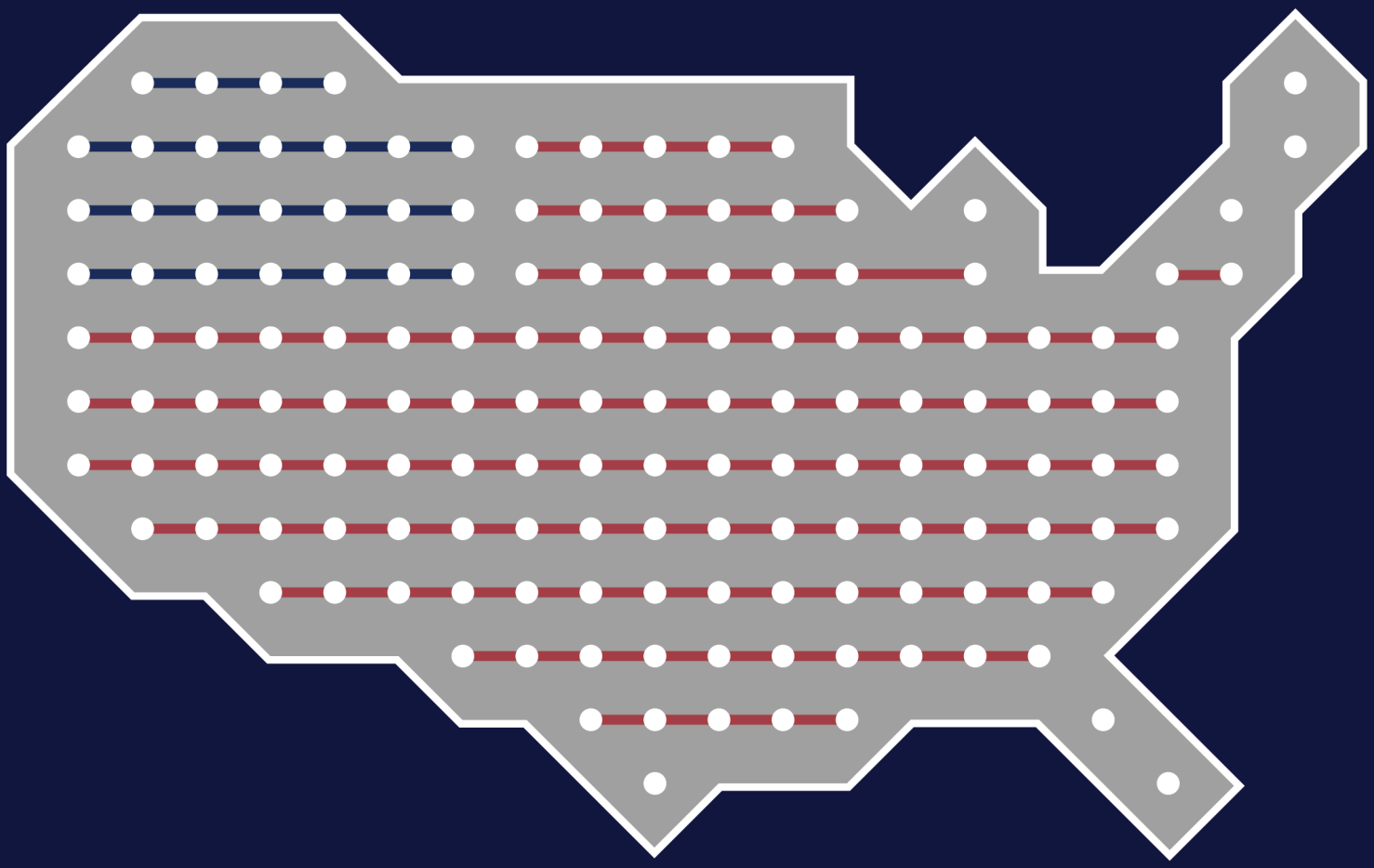
Federal Sentencing: The Basics



United States Sentencing Commission
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U.S. Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, DC 20002
www.ussc.gov

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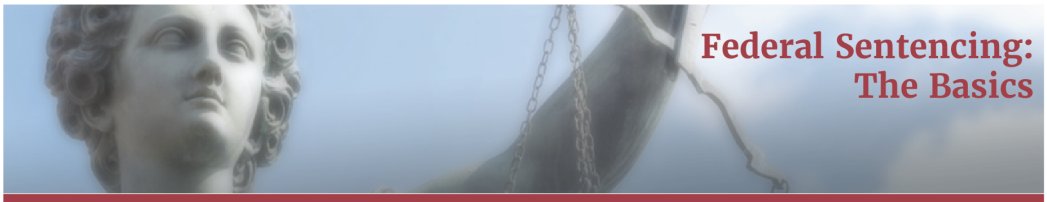

The Commission offers a companion eLearning series providing an overview of the federal sentencing system in four parts. After completing the series, you will be familiar with the basic functions of the Commission, the sentencing process and influencing factors, as well as how the sentencing guidelines are applied.

To review the course, visit:
https://www.ussc.gov/education/training-resources/federal-sentencing-basics

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INTRODUCTION

This paper provides an overview of the federal sentencing system. For historical context, it first briefly discusses the evolution of federal sentencing over the past four decades, including the passage of the landmark Sentencing Reform Act of 1984 (SRA),[1] in which Congress established a new federal sentencing system based primarily on sentencing guidelines, as well as key Supreme Court decisions concerning the guidelines. It then describes the nature of federal sentences today and the process by which such sentences are imposed, including a 2025 amendment simplifying the sentencing guidelines. Next, it addresses another 2025 amendment to the guidelines regarding the revocation of individuals' terms of probation and supervised release. The final sections of this paper address appellate review of sentences; an introduction of the general process whereby the United States Sentencing Commission ("the Commission") amends the guidelines; and an overview of the Commission's collection and analysis of sentencing data.

EVOLUTION OF FEDERAL SENTENCING SINCE THE 1980s

Before the federal sentencing guidelines went into effect on November 1, 1987, federal judges imposed "indeterminate" sentences pursuant to broad discretion within wide statutory ranges of punishment. Thereafter, the United States Parole Commission would decide when it was appropriate to release individuals from prison on parole.[2] The Supreme Court has recognized that "the broad discretion of sentencing courts and parole [officials] had led to significant sentencing disparities among similarly situated offenders."[3] In response to concern regarding sentencing disparities and a desire to promote transparency and proportionality in sentencing, Congress abolished the Parole Commission and created the United States Sentencing Commission, a bipartisan expert agency located in the judicial branch.[4] The Commission is composed of up to seven voting members who are nominated by the President and confirmed by the Senate. No more than four Commissioners can be from the same political party, and at least three Commissioners must be federal judges.[5]

The SRA directs the Commission to establish sentencing policies and practices in two primary ways: (1) by promulgating (and regularly amending) the federal sentencing guidelines; and (2) by issuing reports to Congress that recommend changes in federal legislation related to sentencing.[6] The SRA also directs the Commission to establish a data collection and research program for the purpose of serving as "a clearinghouse and information center" concerning sentencing-related issues and to establish a training branch to provide education about federal sentencing practices to federal judges, prosecutors, defense counsel, and probation officers.[7]

Congress specifically directed the Commission to create guidelines that increased existing penalties for "many" types of cases, such as "serious" white-collar offenses and violent offenses.[8] Before the initial set of guidelines was promulgated, Congress also enacted statutes creating mandatory minimum penalties for several commonly prosecuted drug-trafficking and firearms offenses[9] and prohibited probation for certain individuals.[10]

The SRA fundamentally changed the landscape and process of federal sentencing.[11] The SRA set forth in 18 U.S.C. § 3553(a) seven factors that a sentencing court must consider,[12] two of which are the guidelines and the policy statements promulgated by the Commission; the remaining five reflect factors that the Commission itself considers in promulgating the guidelines and policy statements.[13] The Supreme Court has stated that "the sentencing statutes envision both the sentencing judge and the Commission as carrying out the same basic § 3553(a) objectives, the one, at retail, the other at wholesale."[14]

Seven Factors to be Considered at Sentencing

the nature and circumstances of the offense and the history and characteristics of the defendant;

the need for the sentence imposed to reflect the four primary purposes of sentencing, *i.e.*, retribution, deterrence, incapacitation, and rehabilitation;

the kinds of sentences available (*e.g.*, whether probation is prohibited or a mandatory minimum term of imprisonment is required by statute);

the sentencing range established through application of the sentencing guidelines and the types of sentences available under the guidelines;

any relevant "policy statements" promulgated by the Commission;

the need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct; and

the need to provide restitution to any victims of the offense.

The SRA specifically directed the Commission to draft guidelines that narrow the degree of discretion afforded to sentencing judges by: (1) creating a "detailed set of sentencing guidelines" addressing "all important variations that commonly may be expected in criminal cases, that reliably breaks cases into their relevant components and assures consistent and fair results";[15] (2) prohibiting or limiting consideration of several personal characteristics of defendants for sentencing purposes;[16] and (3) limiting the breadth of the individual sentencing ranges within the guidelines' sentencing table such that "the maximum of the range . . . shall not exceed the minimum of that range by more than the greater of 25 percent or 6 months."[17] These limitations were created for the primary purpose of providing "certainty and fairness in meeting the purposes of sentencing, [while] avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct . . . ."[18]

In 1987, the original Commission responded to Congress's directives in the SRA with the first *Guidelines Manual* containing a detailed set of guidelines and policy statements including a sentencing table with much narrower sentencing ranges than the larger statutory sentencing ranges governing federal crimes.[19] Courts were required to sentence defendants within the applicable guideline range unless either the Commission had created a permissible basis for a "departure" from the range or there existed "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" outside of the applicable range.[20]

In 2000, the Supreme Court decided *Apprendi v. New Jersey*[21] which had a significant impact on the statutory and guideline framework governing federal sentencing. In *Apprendi*, a precursor to the Court's 2005 decision in *United States v. Booker*[22] discussed below, the Court held that: "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt" or admitted by the defendant in his plea of guilty.[23] Thus, facts such as the quantity of drugs in a drug-trafficking case or the defendant's use of a dangerous weapon during a robbery—which can raise the statutory

maximum punishment[24]—must be charged in an indictment and proved to a jury beyond a reasonable doubt (or admitted by the defendant in pleading guilty) in order to raise the statutory maximum penalty. The Court has extended its holding in *Apprendi* to facts that trigger a mandatory minimum sentence of imprisonment[25] and facts that raise a statutory maximum fine.[26] Therefore, any fact (except a defendant's prior conviction) that raises the statutory minimum or maximum penalty otherwise applicable must be proved to a jury beyond a reasonable doubt unless the defendant admits to that fact during his or her guilty plea.

In 2005, in *United States v. Booker*,[27] the Supreme Court declared that the existing guideline system violated the Constitution by permitting judges to find facts that raised the guideline range by a preponderance of the evidence (as opposed to juries making such findings beyond a reasonable doubt). The *Booker* Court remedied the constitutional defect by striking the portion of 18 U.S.C. § 3553 that made the guidelines "mandatory," making the guideline system "effectively advisory."[28] The Court has further explained that the guideline range—which reflects the defendant's criminal conduct and the defendant's criminal history—should continue to be "the starting point and the initial benchmark" in sentencing proceedings.[29] However, the practical effect of *Booker* was to add a third step in the sentencing process: whether consideration of the factors in 18 U.S.C. § 3553(a) warranted a sentence outside of the applicable guideline range imposed as a "variance."[30] These statutory factors permit a sentencing court to consider the "widest possible breadth of information" about a defendant ensuring the court is in "possession of the fullest information possible concerning the defendant's life and characteristics" in determining a sentence that is sufficient but not greater than necessary.[31]

In the wake of *Booker* and subsequent cases, the *Guidelines Manual* provided a three-step process for determining the sentence to be imposed—which was reflected in the three main subdivisions of §1B1.1 (Application Instructions) (subsections (a) through (c))—as follows: (1) the court calculates the applicable guideline range and determines the sentencing requirements and options related to probation, imprisonment, supervision conditions, fines, and restitution; (2) the court considers

The Guidelines App is a web-based application that provides easy access to the full content of the *Guidelines Manual* and its appendices. Use the Guidelines App to find the applicable sentencing guideline or convert multiple drug types and weights to a single offense level.

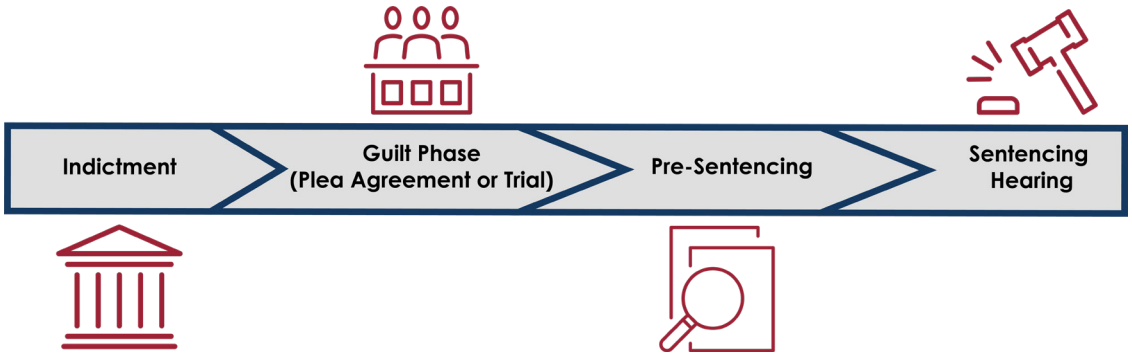
To use the Guidelines App, visit:
https://www.guidelines.ussc.gov

policy statements and guideline commentary relating to departures and specific personal characteristics that might warrant consideration in imposing the sentence; and (3) the court considers the applicable factors in 18 U.S.C. § 3553(a) in deciding what sentence to impose (whether within the applicable guideline range, or as a departure, variance, or both).[32]

In the years since *Booker*, the frequency of departures has steadily declined with courts relying to a greater extent on variances in a manner consistent with the statutory requirements in section 3553(a). The shift away from departures deepened following the Supreme Court's decision in *Irizarry v. United States*,[33] in which the Court held that the "reasonable notice" requirement in Rule 32(h) of the Federal Rules of Criminal Procedure does not apply to variances.

In 2025, to better align the guidelines to practices under current sentencing law and to acknowledge the growing shift away from the use of departures, the Commission amended the *Guideline Manual* in multiple ways.[34] The Commission amended the application instructions provided in §1B1.1 to reflect the simplification of the three-step process into two steps. At Step One, courts are to calculate the guideline range and determine the sentencing requirements and options under the *Guidelines Manual*.[35] At Step Two, courts are to consider the section 3553(a) factors.[36] Section 1B1.1(b) expressly lists the section 3553(a) factors the court must consider. Other conforming changes were made throughout the *Manual* to reflect the removal of departures.[37] The amendment also seeks to better address the distinction between the statutory limitations on the Commission's ability to consider certain offense characteristics and individual circumstances in recommending a term (or the length of a term) of imprisonment, and the requirement that the court consider a broad range of individual and offense characteristics in determining an appropriate sentence pursuant to 18 U.S.C. § 3553(a).

OVERVIEW OF THE FEDERAL SENTENCING PROCESS



The federal sentencing process typically begins well before the formal imposition of a sentence. It involves the preparation of the Presentence Report (PSR), which includes a proposed application of the sentencing guidelines. At the sentencing hearing, the court must resolve any objections to the PSR, correctly calculate the guidelines, and determine the appropriate sentence in accordance with 18 U.S.C. § 3553.

Guilty Pleas and Plea Bargains

For the overwhelming majority of federal defendants, the sentencing process begins well before the formal sentencing phase of the case. In recent years, approximately 97 percent of federal defendants convicted of a felony or Class A misdemeanor offense are adjudicated guilty based on a guilty plea rather than on a verdict at a trial.[38] As a result, in a typical case involving a guilty plea, some, but not all, of the facts relevant to sentencing are established at the guilty plea hearing. Although a "factual basis" for the specific offense or offenses to which the defendant pleads guilty is provided to the court,[39] a recitation of the relevant sentencing facts is also contained in a subsequent PSR, as discussed in more detail below.

At the plea hearing, the court must advise the defendant of not only the statutory range of punishment but also "the court's obligation to calculate the applicable sentencing guideline range and to consider that range . . . and other sentencing factors under 18 U.S.C. § 3553(a)."[40] Many defendants who plead guilty do so as the result of a plea agreement with the prosecution, and some plea agreements contain the parties' agreement about the application of the sentencing guidelines in a defendant's case.[41] Though the judge in a federal criminal case "must not participate in [plea bargain] discussions" between the parties, Federal Rules of Criminal Procedure require that the "parties must disclose the plea agreement in open court when the plea is offered . . . ."[42] The court must decide whether to accept or reject the proposed plea agreement, including whether to be bound by any plea agreement pursuant to Rule 11(c)(1)(C) that specifies a particular sentence. To the extent that a plea agreement contains stipulations relevant to sentencing, such stipulations must "set forth the relevant facts and circumstances of the actual offense conduct."[43] The Commission "recommends that the court defer acceptance of the plea agreement until the court has reviewed the presentence report," which typically is prepared after the guilty plea hearing and which often will provide a fulsome recitation of the facts relevant to the sentencing guidelines calculation and the other section 3553(a) factors.[44]

Presentence Interview

After a defendant is convicted, whether by way of a guilty plea or a verdict at trial, a federal probation officer typically conducts a presentence interview of the defendant. At the presentence interview, the probation officer may ask questions about a wide variety of matters concerning the defendant's offense or offenses of conviction and related uncharged criminal conduct, criminal history, personal history, financial circumstances, and numerous other issues potentially related to the court's sentencing decision. Counsel for the defendant must be given notice of and the opportunity to attend the presentence interview.[45] A defendant may invoke his or her constitutional right to remain silent during the interview,[46] although failure to provide truthful information

about the offense or offenses of conviction may result in denial of credit for "acceptance of responsibility"[47] at sentencing, as discussed in more detail below.

Presentence Report and Objections

After conducting the presentence interview and an independent investigation of the offense and the defendant's background, the probation officer prepares a PSR.[48] The PSR contains not only information about the offense and the individual to be sentenced but also the statutory range of punishment and a calculation of the relevant sentencing guidelines (with a corresponding guideline sentencing range), as well as any bases that may exist for imposing a sentence outside of the applicable range.[49] The defense and prosecution must be provided a copy of the PSR at least 35 days before sentencing and must submit any objections (factual or legal in nature) within 14 days of the sentencing hearing and otherwise may respond to the PSR (typically in the form of a sentencing memorandum).[50] Together with a PSR, a probation officer may also submit to the court a confidential sentencing recommendation.[51]

Sentencing Hearing

Federal sentencing hearings are adversarial proceedings governed by Rule 32 of the Federal Rules of Criminal Procedure and Chapter Six of the *Guidelines Manual*. A district court must allow the defendant and counsel for both parties—and, in appropriate cases, victims[52]—to provide input before a sentence is imposed.[53] A sentencing court may allow the parties to call witnesses and present evidence about disputed facts or other matters (*e.g.*, mitigating or aggravating factors).[54]

Neither the Federal Rules of Evidence[55] nor constitutional provisions related to evidentiary matters (*e.g.*, the Confrontation Clause of the Sixth Amendment) apply at sentencing.[56] Therefore, the broad scope of the information courts may consider at sentencing includes hearsay and other types of information that would not be admissible during a trial.[57] However, information considered by a court at sentencing must

have "sufficient indicia of reliability to support its probable accuracy."[58] Under Federal Rule of Criminal Procedure 32, the court "must—for any disputed portion of the presentence report or other controverted matter—rule on the dispute or determine that a ruling is unnecessary either because the matter will not affect sentencing, or because the court will not consider the matter in sentencing."[59] In resolving factual disputes, the court ordinarily applies the preponderance of the evidence standard.[60]

After the court orally pronounces a sentence, the court must complete two documents—the "Judgment in a Criminal Case" and the "Statement of Reasons" (SOR) (both of which are contained in AO Form 245B)—that memorialize what the judge orally pronounced in court. The judgment specifies the sentence (the term of probation or imprisonment, any term of supervised release following imprisonment and the conditions thereof, and any financial penalties). The judgment is entered into the record as a publicly accessible document. The SOR, which in the vast majority of districts, is a sealed part of the record and thus is not publicly accessible, provides information about whether the court's sentence was within or outside of the applicable guideline range and also provides the specific reasons for a sentence imposed outside of that range (including whether the defendant provided substantial assistance to the prosecution in the investigation or prosecution of another person).[61]

At the conclusion of the sentencing hearing, the court must advise the defendant of his right to appeal, including the right to proceed in forma pauperis on appeal and the right to appointed appellate counsel in the event the defendant is indigent.[62] Within 30 days of the entry of the written judgment in the record, the court must submit copies of the judgment and SOR, along with the PSR, the charging document, and any plea agreement, to the U.S. Sentencing Commission (in furtherance of the Commission's data collection and analysis duties).[63]

THE NATURE OF A FEDERAL SENTENCE

The next section discusses federal sentences—with respect to the governing statutory and guidelines' frameworks—in felony and Class A misdemeanor cases.[64]

Types of Sentences Available by Statute

Probation or Prison

There are a variety of components of a federal sentence, one or more of which apply in every case. The primary component—some form of deprivation of liberty, either probation or incarceration—is imposed in over 99 percent of cases.[65] Where probation is authorized, the maximum term allowable is five years and, in the case of a felony offense, a minimum one-year term is required.[66] Various conditions of probation may be imposed, including certain "mandatory" conditions (*e.g.*, a defendant may not illegally possess a controlled substance) and "discretionary" conditions that are "reasonably related" to the nature of the offense, the defendant's history and characteristics, or the relevant purposes of punishment.[67]

Most federal penal statutes do not require a term of imprisonment and, instead, authorize a term of either probation or imprisonment. There are two exceptions: (1) penal statutes carrying a mandatory minimum term of imprisonment[68] (unless one of two exceptions applies—a "substantial assistance" departure or application of the "safety valve"—discussed below); and (2) penal statutes that do not require imposition of a particular term of imprisonment but expressly prohibit probation.[69] Federal penal statutes that provide for potential terms of imprisonment are classified according to the maximum term available—ranging from Class A felonies (with a maximum punishment of life imprisonment) to Class E felonies (with a maximum of five years of imprisonment or less but more than one year), and Class A misdemeanors (with a maximum

of one year of imprisonment) to Class C misdemeanors (with a maximum of 30 days of imprisonment).[70]

Though the Sentencing Reform Act of 1984 abolished parole and established a determinate sentencing scheme, individuals may earn "good-time credit," which can reduce an individual's term of imprisonment by up to 54 days for each year the individual has engaged in appropriate behavior in federal prison.[71] In order to be eligible for such credit, an individual must receive a prison sentence in excess of 12 months.[72] The First Step Act of 2018 provides that individuals may earn additional earned-time credits based on participation in specified rehabilitation programs.[73]

The Bureau of Prisons also may allow certain classes of individuals (other than deportable aliens) to serve the final portion of their sentences—up to 12 months—in a residential reentry center and/or in home detention (with a maximum period of six of the 12 months, or ten percent of the individual's sentence, whichever is less, in home detention).[74] Eligible non-violent individuals with substance abuse histories also may have their prison sentences reduced by up to one year (depending on the length of their sentences) if they successfully complete a 500-hour residential drug abuse program.[75] Finally, a sentencing court may reduce a previously imposed term of imprisonment upon a motion demonstrating a prisoner's advanced age, terminal illness, family circumstances, or other "extraordinary and compelling" circumstances.[76]

Mandatory Minimum Sentences

Almost one-quarter of all federal cases in fiscal year 2024 carried a mandatory minimum prison sentence.[77] Such offenses include drug-trafficking crimes, certain child pornography and sex offenses, firearms offenses, and fraud offenses.[78] In creating sentencing guidelines applicable to such offenses, the Commission accounted for congressionally mandated minimum penalties in formulating corresponding sentencing guideline ranges.[79]

There are two ways that a sentencing court can impose a sentence below an otherwise applicable statutory mandatory minimum: (1) if

The Commission has published numerous research reports on Mandatory Minimums.

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the prosecution files a motion[80] based on the defendant's "substantial assistance" to the prosecution in the investigation or prosecution of another person, pursuant to 18 U.S.C. § 3553(e); and (2) in certain drug-trafficking cases, if the defendant qualifies for the statutory "safety valve" contained in 18 U.S.C. § 3553(f). Substantial assistance relief is applicable to all types of federal offenses carrying a mandatory minimum penalty, whereas the statutory safety valve provision applies only to mandatory minimum penalties imposed consequent to certain types of drug-trafficking offenses.

If a defendant qualifies for the statutory safety valve, the court may sentence the defendant "without regard to any statutory minimum sentence."[81] Section 3553(f) contains the five criteria governing whether a defendant qualifies for the safety valve.[82] In the First Step Act, Congress increased the pool of eligible individuals by expanding the criteria to include defendants with up to "four criminal history points, excluding any points resulting from a 1-point offense" are eligible.[83]

In addition to the statutory safety valve, the guidelines contain a related but separate safety valve provision, which requires a court to reduce an eligible drug-trafficking defendant's guideline offense level by two levels if the individual satisfies the criteria in the guideline safety valve provision.[84] Unlike the statutory safety valve, the guideline safety valve provision applies even if a defendant has not been convicted of one of the drug-trafficking offenses in section 3553(f) that carries a mandatory minimum.[85]

Financial Penalties and Fines

Federal law provides for three primary types of financial penalties—fines, restitution, and special assessments—which can be imposed in addition to imprisonment or probation.[86] In cases in which a statute does not require imprisonment, a fine may be imposed as a stand-alone sentence.[87] Unless a particular penal statute provides for a specific maximum fine, the maximum amount depends on the class of felony or misdemeanor in the count(s) of conviction.[88] Restitution in a

criminal case refers to compensatory damages for a victim's losses.[89] A special assessment is a standard fee assessed for each count of conviction (*e.g.*, $100 per felony count and $50 per Class A misdemeanor count).[90] In certain cases, criminal restitution, where applicable, is mandatory, as is the special assessment.[91] Upon motion of the prosecution, however, the court may remit a fine or special assessment.[92]

In addition to addressing whether a court should impose a sentence of probation or imprisonment, the *Guidelines Manual* also provides that "[t]he court shall impose a fine in all cases, except where the defendant establishes that he is unable to pay and is not likely to become able to pay any fine."[93] The fine guideline also contains a table containing fine ranges that correspond to the final guidelines offense level applicable to a defendant.[94] Under the guidelines, a fine-only sentence is authorized only for a defendant whose sentencing range is zero to six months.[95] However, the guidelines recommend that, "[i]f . . . the fine is not paid in full at the time of sentencing, . . . the court sentence the defendant to a term of probation, with payment of the fine as a condition of probation."[96]

Supervised Release

The SRA established "supervised release" as a tool a court could use to impose post-release supervision on a defendant sentenced to a term of imprisonment.[97] The primary goal of supervised release is to "ease the defendant's transition into the community after the service of a long prison term for a particularly serious offense, or to provide rehabilitation to a defendant who has spent a fairly short period in prison . . . but still needs supervision and training programs after release."[98] Supervised release also functions as an important tool to promote public safety.[99] With certain statutory exceptions, which require terms of supervised release,[100] courts have "the freedom to provide . . . supervision for those, and only those, who need[] it" upon release from prison.[101] The guidelines applicable to the imposition, conditions, and revocations of supervised release terms are discussed in detail below.[102]

BASIC GUIDELINE APPLICATION

Application Instructions

Section 1B1.1 sets forth instructions for using the eight chapters of the *Guidelines Manual*. For sentencings of individual (as opposed to organizational) defendants for their offenses of conviction, only Chapters One through Six apply. For revocations of individuals' terms of probation or supervised release, Chapter Seven applies. For the sentencing of organizational defendants, Chapter Eight applies. A summary of the two-step guideline application process, for individual defendants sentenced for their offenses of conviction, is as follows:

The first step is calculation of the guideline range and determination of sentencing requirements and options under the *Guidelines Manual*.[103]

- Determine which Chapter Two offense guideline applies by consulting Appendix A of the *Guidelines Manual*. After the proper Chapter Two guideline is identified, calculate the "offense level" from that guideline through consideration of the applicable "Base Offense Level" (BOL) combined with any "Specific Offense Characteristics" (SOCs) (which are aggravating and mitigating factors related to a particular offense type). Chapter One's provisions concerning "relevant conduct" are usually used to determine the BOL and any SOCs.[104]
- Determine whether there are any additional "adjustments" to the offense level based on the provisions in Chapter Three, which addresses general aggravating and mitigating factors that are common across offense types. Relevant conduct also must be considered in determining whether any Chapter Three adjustments apply. Chapter Three also has provisions for adjusting a defendant's offense level based on multiple counts of conviction in certain types of cases. Finally, Chapter Three contains adjustments for acceptance of responsibility and early disposition programs.[105]

- Calculate the defendant's "criminal history points" according to Chapter Four's provisions. Based on the criminal history score, the defendant is placed in the appropriate "Criminal History Category" (CHC).[106]
- Identify the sentencing guideline range in Chapter Five's Sentencing Table by locating the cell in the table that is at the intersection of the defendant's offense level and CHC. (The Sentencing Table is set forth as Attachment A, *infra*). Chapter Five's provisions also address what types of sentences a court may impose (*e.g.*, probation or imprisonment), according to the location of the defendant's applicable sentencing range in one of the four Zones (A–D) of the Sentencing Table.[107] Apply appropriate provisions of Chapter Five, Part K (Assistance to Authorities).[108]

The second step of the sentencing process is for the court to consider all of the applicable factors in 18 U.S.C. § 3553(a) and impose a sentence.[109] A court must impose a sentence that is "sufficient, but not greater than necessary" to accomplish the goals of sentencing.[110]

The SRA requires a court to use the version of the *Guidelines Manual* in effect on the date of sentencing.[111] One exception to the rule is that the Ex Post Facto Clause of the Constitution prevents retroactive application of amended guidelines that increased the applicable sentencing range after the offense was completed.[112] In such a case, the version of the guidelines in effect on the date of the offense must be used.[113] The determination of whether the earlier version of the *Manual* carries a lower penalty range is made under the "one-book rule:" comparing the guideline range for the version of the *Manual* in effect at sentencing with the version of the *Manual* in effect on the last date of the offense of conviction, applying each *Manual* in its entirety rather than applying portions of different versions of the *Manual*.[114]

Relevant Conduct in the Guideline System

Relevant conduct is a defendant's actual conduct—and not simply the conduct required for conviction of the elements of an offense—that is considered to calculate his or her sentencing guideline range.[115] "The Commission ultimately settled on a system that blends the constraints of the offense of conviction with the reality of the defendant's actual offense conduct in order to gauge the seriousness of that conduct for sentencing purposes."[116] Relevant conduct specifically encompasses a defendant's "real offense conduct" (and certain types of conduct of co-conspirators, whether or not charged as such) before, during, and after the commission of the offense or offenses of conviction. For most types of federal offenses, relevant conduct also includes other offenses committed as part of the "same course of conduct or common scheme or plan."[117]

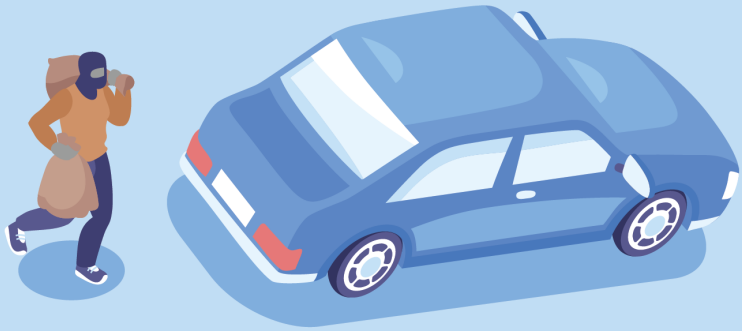
Such relevant conduct need not have been formally charged or proved beyond a reasonable doubt at a trial (or admitted by a defendant in a guilty plea), so long as the sentencing judge finds the relevant conduct by a preponderance of the evidence using information that has sufficient indicia of reliability.[118] In 2024, the Commission amended §1B1.3 to exclude acquitted conduct from the scope of relevant conduct used in calculating a sentence range under the federal guidelines.[119] Otherwise, relevant conduct is considered in the application of various factors in the *Guidelines Manual*—such as whether a defendant used a dangerous weapon during a bank robbery;[120] calculating the amount of loss in the fraud guideline;[121] the drug quantity in the drug-trafficking guideline;[122] and whether a felon who unlawfully possessed a firearm or used the firearm in connection with another felony offense.[123]

Applying the Guidelines: An Example

What follows is an illustration of the application of the *Guidelines Manual* to a short hypothetical case involving a defendant convicted of a single count of bank robbery in violation of 18 U.S.C. § 2113(a), which carries a statutory maximum of 20 years of imprisonment but does not carry any mandatory minimum penalty.

Hypothetical Bank Robbery

The defendant entered a federally-insured bank and approached a teller while brandishing a realistic-looking toy gun. He demanded all the money that the tellers had and handed over a bag in which to place the money. A teller gave the defendant $25,000. No one was injured during the robbery, nor did the defendant physically restrain anyone or force anyone to move to a different location within or outside the bank.



After the teller gave the defendant the bag of money, the defendant ran out of the bank and got into a car being driven by another person, who drove away from the bank at a normal rate of speed.

Shortly thereafter, based on an eyewitness's description of the getaway car, police officers stopped the car without a chase and arrested the defendant and the getaway driver. Both individuals confessed to their roles in the bank robbery. The police officers recovered the $25,000 and returned it to the bank. The co-defendant, the defendant's nephew, was determined to be a 16-year old juvenile and was not prosecuted in federal court.

A federal grand jury indicted the defendant for a single count of bank robbery. At the time of the robbery, the defendant had two prior state convictions for offenses committed as an adult: (1) a conviction for felony assault, for which he had received a six-month jail sentence 11 years before the robbery; and (2) a felony conviction for distributing a small amount of cocaine to an undercover officer one year before the robbery, for which he had received a five-year term of probation. The defendant pled guilty to the charge without the benefit of a plea agreement with the prosecution.

Determine the Applicable Chapter Two Guideline

The first step in applying the guidelines is to identify the applicable Chapter Two guideline, which is done by looking at Appendix A of the *Guidelines Manual* and determining from the statute of conviction which guideline applies. In this case, for a bank robbery conviction under 18 U.S.C. § 2113(a), the applicable guideline is §2B3.1 (robbery), which is set forth as Attachment B to this paper.

Calculate the Chapter Two Offense Level

Turning to §2B3.1, the next step is to determine the appropriate BOL. Some guidelines contain multiple BOLs, although §2B3.1 contains a single BOL of 20. Next, determine whether any SOCs apply, including consulting any pertinent commentary in the application notes following the guideline,[124] which may offer interpretive aids regarding the SOCs. Based on the facts in this hypothetical case, the following three SOCs in §2B3.1 apply:

§2B3.1(b)(1): +2 because money was taken from a "financial institution";

§2B3.1(b)(2): +3 because the defendant brandished a "dangerous weapon"; and

§2B3.1(b)(7)(B): +1 because the "loss" exceeded $20,000 but was less than $95,000.

The determination that a toy gun qualifies as a "dangerous weapon" is made by reference to the commentary following §2B3.1, which states that the definition of "dangerous weapon" includes "an object" that "closely resembles an instrument capable of inflicting death or serious bodily injury."[125] Note that, although the indictment in this case did not charge the defendant with using a dangerous weapon during the robbery (which, if it had, would have raised the statutory maximum to 25 years under 18 U.S.C. § 2113(d)), the sentencing court must apply the SOC if the court finds by a preponderance of the evidence that the defendant in fact brandished a toy gun during the robbery.[126] Although the $25,000 was returned to the bank, it still qualifies as "loss" for purpose of the guideline because the guideline's commentary states that, "'[l]oss means the value of the property taken, damaged, or destroyed."[127] Assuming no other SOCs apply, the defendant's total Chapter Two offense level would be 26 (20 + 2 + 3 + 1).

Calculate the Offense Level after Chapter Three Adjustments

The next step in the guideline application process is to determine whether any adjustments in Chapter Three of the *Guidelines Manual* apply.

Because the defendant had recruited and directed an accomplice (the getaway driver) before the robbery, the defendant receives a 2-level upward adjustment pursuant to §3B1.1(c) (Aggravating Role)[128]— bringing his offense level to 28.

Because the defendant used a minor as the getaway driver, two additional levels are added pursuant to §3B1.4 (Using a Minor to Commit a Crime),[129] which brings the defendant's offense level to 30.

If the defendant has "accepted responsibility" for the offense by pleading guilty in a timely manner and admitting the conduct constituting the offense of conviction, his offense level is reduced by either 2 or 3 levels under §3E1.1 (Acceptance of Responsibility). The third level of reduction requires a motion from the prosecution pursuant to §3E1.1(b). Assuming he receives a 3-level downward adjustment, the defendant's final offense level would be 27.

Note that, just as with the application of Chapter Two SOCs, a sentencing court determines whether Chapter Three adjustments apply based not only on the conduct for which a defendant was convicted but also on any relevant conduct proved by a preponderance of the evidence.

Determine the Criminal History Category

After determining the hypothetical robbery defendant's offense level, the next step is to calculate the defendant's criminal history points, which in turn determine his CHC, by applying the criminal history rules in Chapter Four of the *Guidelines Manual*. As a general rule, criminal history points are based on the length of a sentence imposed for a prior conviction in a local, state, or federal court[130] and whether the defendant committed the instant federal offense while still serving a sentence in another case (*e.g.*, the defendant was on probation or parole).[131] There are certain exceptions to these general rules, though. Some prior offenses fall outside of Chapter Four's time limits,[132]

several types of minor offenses are excluded from consideration,[133] and prior convictions for juvenile offenses may be counted only if they occurred within five years of the defendant's commission of the instant federal offense.[134]

Based on the defendant's two prior convictions, his criminal history calculations would be as follows.

He would receive no criminal points for his assault conviction because it falls outside Chapter Four's time limits (as he received a six-month sentence over ten years before committing the bank robbery).[135]

Because his prior drug-trafficking conviction falls well within the time limits, it would receive one point based on the length of sentence imposed (*i.e.*, less than 60 days) and an additional two points based on the fact that the defendant was on supervision (*i.e.*, probation) at the time of the bank robbery offense.[136]

Three criminal history points would place the defendant in CHC II on the Sentencing Table.

Determine the Guideline Sentencing Range from the Sentencing Table

Based on an offense level of 27 and a CHC of II, the applicable guideline sentencing range is 78–97 months, as reflected in the guidelines' Sentencing Table, which is included as Attachment A to this paper. Note that the guideline sentencing range is well within the broader statutory range of punishment of 0–240 months (0–20 years) under the statute of conviction, 18 U.S.C. § 2113(a). In some other cases, a defendant's guideline range is constrained by either a statutory mandatory minimum penalty (raising the "floor") or a statutory maximum penalty (lowering the "ceiling").[137] Because the robbery defendant's range falls in Zone D of the Sentencing Table, the only type of sentence provided under the guidelines is a term of imprisonment as opposed to any alternative to imprisonment.[138]

Other Guideline Application Issues

Chapter Four "Overrides"

For a small percentage of defendants, the application of their guideline range is not determined solely by the offense levels established in Chapters Two and Three and their criminal history categories established in Chapter Four, Part A. Instead, it is determined by application of four special "override" provisions in Chapter Four, Part B, and one special provision in the Chapter Three Adjustments. Chapter Four, Part B has four such provisions: Career Offender (§4B1.1); Criminal Livelihood (§4B1.3); Armed Career Criminal (§4B1.4); and Repeat and Dangerous Sex Offender Against Minors (§4B1.5). Sections 4B1.1, 4B1.4, and 4B1.5, which can impact both the offense level and the CHC, are aimed at serious recidivist defendants whose instant convictions are for violence or drug-trafficking, firearms, or sex offenses against minors. The resulting guideline range generally call for lengthy terms of imprisonment for such individuals. Section 4B1.3 applies to a defendant whose instant offense was part of a pattern of criminal conduct engaged in as the defendant's livelihood and ensures a minimum offense level if not achieved by application of Chapters Two and Three. The sole Chapter Three override is the terrorism adjustment (§3A1.4), which impacts both the offense level and the criminal history category. If a defendant's guideline range resulting from one of the override provisions is higher than the range otherwise applicable, the override range applies.

Government-Sponsored Below Range Sentences

While departure provisions were removed from the *Guidelines Manual* in 2025, the current manual preserves two of the most common grounds for downward adjustments—occurring in nearly one-fifth of all federal cases[139]—for which the government must file a motion:

> (1) the defendant provided the prosecution with "substantial assistance in the investigation or prosecution of another person" (§5K1.1);[140] and

(2) the defendant participated in an "Early Disposition" (or "fast-track") program, authorized by the Attorney General and the district's United States Attorney (§3F1.1).[141]

Supervised Release under the Guidelines

In 2025, the Commission amended the guidelines applicable to imposition of supervised release terms.[142] The amendment emphasized the importance of judges making individualized decisions about supervised release at all relevant stages—including imposition, modification or extension, and revocation.[143] Second, it underscored the authority of courts, in consultation with the probation officer, to reassess supervised release decisions after a defendant's release from imprisonment, including decisions about the length and conditions of supervision.[144] Third, it reiterated the rehabilitative purposes of supervised release by dividing the provisions addressing violations of probation and violations of supervised release into separate parts of Chapter Seven and providing courts with greater discretion to respond to a violation of a condition of supervised release, including where appropriate, through alternatives to revocation and imprisonment.[145] Revocation of terms of supervised release (and probation), consequent to violations of the conditions of supervision, is addressed in the next section.

A term of supervised release is required under the guidelines only when mandated by statute.[146] In any other case, "the court should order a term of supervised release when warranted by an individualized assessment of the need for supervision."[147] With respect to non-citizen defendants, the Commission recommends that courts not impose a term of supervised release for such defendants if they likely will be deported after serving their terms of imprisonment, unless required by statute.[148] The guideline instructs that "the court should state in open court the reasons for imposing or not imposing a term of supervised release," consistent with 18 U.S.C. § 3553(c).[149] The guidelines instruct the court to conduct an individualized assessment to determine the length of the term, which shall be not less than any statutorily required minimum term, listing the maximum terms of supervised release by offense class, and noting that some statutes may provide for a different term.[150]

The appropriate length of the term of supervised release is left to the discretion of the court.[151]

Like terms of probation, terms of supervised release have both mandatory and discretionary conditions of supervision.[152] The guideline sets forth mandatory and discretionary conditions of supervised release. Discretionary conditions currently are further subdivided into "standard," "special," and additional conditions to be imposed when warranted by an individual assessment.[153] Finally, the guidelines address the court's statutory authorities with respect to modification, early termination, and extension of supervised release, and encourage modifying supervised release terms whenever changed individual circumstances so warrant.[154] When determining whether to impose supervised release, set its length and conditions, modify those conditions, and to extend, revoke, or terminate the term, courts examine a set of factors similar, but not identical, to those considered when imposing a sentence.[155]

Violations of the Conditions of Probation and Supervised Release

In Chapter Seven of the *Guidelines Manual*, the Commission promulgated policy statements addressing a district court's decision of whether to revoke or modify a defendant's term of probation or supervised release upon a finding of a violation of one or more conditions of supervision. As amended in 2025,[156] Chapter Seven treats violations of probation and supervised release differently in order to reflect that probation serves all the goals of sentencing, including punishment, while supervised release primarily "fulfills rehabilitative ends, distinct from those served by incarceration."[157] To highlight the primarily rehabilitative purposes of supervised release, new introductory language encourages courts to consider graduated responses to non-compliant behavior before revoking supervised release.[158]

Chapter Seven, Part B classifies violations of the conditions of probation (as grade "A," "B," or "C" violations), recommends when courts should revoke the term of probation,[159] and recommends terms of imprisonment for the different grades of violations, in the event a court revokes.[160] The Probation Revocation Table used in revocation cases—

set forth in §7B1.4—is based on the seriousness of the violation (*i.e.*, the grade) and the individual's original CHC (as determined at the original sentencing hearing).[161] At a revocation hearing, a court is governed by the preponderance of the evidence standard and may find that an individual committed a new law violation as a basis for revocation even if the individual was not convicted of the new offense.[162]

Chapter Seven, Part C provides similar guidance with respect to supervised release violations.[163] In deciding whether to revoke and, if so, whether to impose a sentence of imprisonment as recommended by Chapter Seven's policy statements, a court must consider not only those policy statements encouraging an individualized assessment and graduated response to non-compliant behavior, but also the factors in 18 U.S.C. § 3553(a), to the extent that they are applicable.[164] Section 7C1.5 sets forth the Supervised Release Revocation Table.

In cases where individuals have allegedly violated the conditions of their supervision, district courts are governed by statutory provisions[165] that, at times, operate in a different manner than Chapter Seven's policy statements. In particular, those statutory provisions may require revocation in certain cases that Chapter Seven does not, such as when an individual possessed a controlled substance or refused to take a court-ordered drug test.[166] For violations of supervised release, the statutory maximum term of imprisonment upon revocation depends on the classification of the underlying offense of conviction at the original sentencing proceeding.[167] For violations of probation, the maximum term of imprisonment upon revocation is the statutory maximum of the underlying offense of conviction at the original sentencing hearing.[168]

On appeal, a district court's sentence imposed upon revocation is reviewed with at least as much deference as exists in appellate review of a court's imposition of an original sentence.[169] A district court abuses its discretion by not considering Chapter Seven's policy statements in a revocation proceeding, yet a court need not follow the policy statements' recommendations regarding revocation or sentence length.[170]

APPELLATE REVIEW OF SENTENCES

Before the Sentencing Reform Act of 1984, there was virtually no appellate review of federal sentences.[171] Along with creating the sentencing guideline system, the SRA provided for significant appellate review of guideline sentences.[172] After *Booker*, a federal appellate court reviews a sentence for "reasonableness" using an abuse of discretion standard.[173] Such reasonableness review encompasses two types of review—"procedural" reasonableness review and "substantive" reasonableness review.[174]

As a part of its review for "procedural" reasonableness, if the appellant properly preserved the issue for appeal, an appellate court engages in de novo review of pure legal questions concerning guideline application and reviews the district court's underlying findings of fact for "clear error."[175] In order for a sentence to be deemed procedurally reasonable, the district court should have properly calculated the applicable guideline range and addressed all of the parties' "nonfrivolous reasons" about why a sentence should have been imposed outside the range.[176] Even if a defendant did not properly preserve a guidelines application issue for appeal, federal appellate courts ordinarily must deem a guideline miscalculation as reversible "plain error" if the district court sentenced the defendant based on an incorrectly calculated guideline range.[177]

Regarding "substantive" reasonableness, the Supreme Court has permitted (but not required) federal circuit courts to apply a rebuttable "presumption of reasonableness" in reviewing a district court's decision to impose a sentence within the applicable guidelines range.[178] "[T]he presumption reflects the fact that, by the time an appeals court is considering a within-Guidelines sentence on review, both the sentencing judge and the Sentencing Commission will have reached the same conclusion as to the proper sentence in the particular case."[179] Such a presumption of reasonableness is applicable only to a federal appellate court's review of a district court's sentence; it may not be applied by a district court in determining whether to impose a within-range sentence.[180] Furthermore, the fact that a district court imposed a sentence outside of the applicable guideline range does not trigger a presumption of unreasonableness on appeal,[181] though "a district court's decision to vary from the advisory Guidelines may attract greatest respect when" it is based on the particular facts of a case.[182]

GUIDELINE AMENDMENT PROCESS

In enacting the SRA, Congress envisioned that the Commission would regularly amend the guidelines to reflect various changes in circumstances.[183] Since the guidelines went into effect in 1987, the Commission has promulgated more than 800 amendments to the *Guidelines Manual*.[184]

The Amendment Cycle

The guideline "amendment cycle" begins in the late spring of each year. The Commission normally begins the cycle by issuing a list of policy "priorities"—published in the *Federal Register* and also made available on the Commission's website (https://www.ussc.gov)—and invites public comment on those priorities. Thereafter, the Commission publishes "proposed amendments" for consideration and solicits public comment.[185] The Commission then holds a public hearing on proposed amendments and hears from various expert witnesses, including representatives of stakeholder groups. Thereafter, typically in April, the Commission votes on whether to adopt any of the proposed amendments.

By statute, no later than May 1st, the Commission must submit the amendments it has voted to promulgate along with "reasons for amendment" (contained in Appendix C to the *Guidelines Manual*) to Congress, which has 180 days to decide whether to modify or disapprove them. If Congress does not pass legislation (signed by the President) modifying or disapproving amendments by November 1st, the amendments become effective on that date. On rare occasions, Congress authorizes the Commission to promulgate "emergency amendments" which can be passed on an expedited basis outside of the regular amendment cycle.[186]

Retroactivity of Amendments

If an amendment to the guidelines potentially lowers the sentencing range, the Commission must decide whether to apply the amendment retroactively to individuals already serving sentences of imprisonment.[187] If the Commission votes for retroactivity of such an amendment, eligible individuals can apply to their original sentencing courts for the benefit of such retroactive amendment.[188] Courts are afforded discretion in deciding whether to grant the individuals' petitions seeking to benefit from a retroactive amendment, but, if they choose to exercise that discretion, must reduce the individual's sentence within the limits imposed by §1B1.10. The Supreme Court has held that, when a court elects to reduce an individual's sentence based on a retroactive guideline amendment, the court may not engage in a full resentencing under 18 U.S.C. § 3553(a) and, instead, must impose a new sentence that modifies the original sentence in a manner consistent with the retroactive amendment.[189]

The Commission's Collection and Analysis of Sentencing Data

The SRA requires the Commission to establish a research program for the purpose of "serving as a clearinghouse and information center for the collection, preparation, and dissemination of information on Federal sentencing practices" and also to "collect systematically and disseminate information concerning [federal] sentences actually imposed."[190] The Commission, through its Office of Research and Data, has carried out these duties in a variety of ways, including by publishing annual *Sourcebooks of Federal Sentencing Statistics* and several other publications concerning federal sentencing.[191] In 2024, approximately 62,000 individuals were sentenced for felonies and Class A (non-petty) misdemeanor offenses.[192] The Commission's data analysis results from its collection of sentencing documents in virtually all federal cases in which a sentence was imposed after a judge applied the *Guidelines Manual*.[193] Commission staff analyze such documentation and create an annual data file of numerous data-points about guidelines use and individual and offense characteristics, from which the Commission may engage in empirical research about individual and offense characteristics, as well as federal sentencing practices.[194]

The Interactive Data Analyzer (IDA) is an online tool that can be used to explore, filter, customize, and visualize federal sentencing data for research, policymaking, and sentencing purposes.

To use IDA, visit:
https://www.ida.ussc.gov

CONCLUSION

The Commission serves as an information resource for Congress, the executive branch, the courts, criminal justice practitioners, the academic community, and the public. In addition to this paper, the Commission provides seminars, workshops, training programs, and other online resources on guideline application and other federal sentencing issues. Educational materials—including eLearning modules organized by topic, primers, worksheets, decision trees, explanatory videos, podcasts, toolkits, and case law updates—are available online at the Commission's website https://www.ussc.gov/education.

Various resources for members of the federal judicial branch, federal sentencing practitioners, and members of the public are available on the Commission's website. In addition, the Commission operates a public "HelpLine" for questions concerning federal sentencing during regular business hours at 202-502-4245.

To review these resources, visit:
https://www.ussc.gov

ENDNOTES

1 Pub. L. No. 98–473, 98 Stat. 1987.

2 Mistretta v. United States, 488 U.S. 361, 363–66 (1989) (describing the federal sentencing system before the SRA).

3 Peugh v. United States, 569 U.S. 530, 535 (2013); *see also* S. Rep. No. 98-225, at 38 (1983), reprinted in 1984 U.S.C.C.A.N. 3182, 3222. The Senate Judiciary Committee's report [hereinafter Senate Report] is the primary legislative history of the SRA. *See Mistretta,* 488 U.S. at 366 ("Helpful in our consideration and analysis of the [SRA] is the Senate Report on the 1984 legislation, S.Rep. No.98-225.").

4 *See* Dorsey v. United States, 567 U.S. 260, 265 (2012) (The SRA "sought to increase transparency, uniformity, and proportionality in sentencing."); *see also Mistretta*, 488 U.S. at 379 ("Developing proportionate penalties for hundreds of different crimes by a virtually limitless array of offenders is precisely the sort of intricate, labor-intensive task for which delegation to an expert body is especially appropriate.").

5 *See* 28 U.S.C. § 991(a). Biographies of the current Commissioners are available at https://www.ussc.gov/commissioners. A list of past Commissioners is available at https://www.ussc.gov/about/who-we-are/commisioners/former-commissioner-information.

6 *See generally* 28 U.S.C. § 994.

7 *See id.* §§ 994, 995(a)(12)–(20). The Commission's staff of attorneys, social scientists, and other professionals with expertise in criminal justice and sentencing reflects these various statutory functions and includes the Offices of General Counsel (OGC), Research and Data (ORD), Education and Sentencing Practice (OESP), and Legislative and Public Affairs (OLPA).

8 *Id.* § 994(m); *see also* Senate Report, *supra* note 3, at 76–79, 116, 177–78.

9 The Anti-Drug Abuse Act of 1986, which created mandatory minimum prison sentences for many drug-trafficking offenses, *see* 21 U.S.C. § 841(b), went into effect for offenses committed on or after October 27, 1986. Pub. L. No. 99–570, 100 Stat. 3207. The Armed Career Criminal Act, *see* 18 U.S.C. § 924(e), which created a 15-year mandatory minimum prison sentence for certain recidivist felons who possess firearms, was enacted along with the Sentencing Reform Act on October 12, 1984. Pub. L. No. 98–473, 98 Stat. 2185 (1984). Section 924(c) of title 18, which created

mandatory minimum penalties ranging from five to 30 years for individuals who use firearms during drug-trafficking offenses or crimes of violence, went into effect in 1984 (for violent offenses) and 1986 (for drug-trafficking offenses). Sentencing Reform Act § 1005; Firearms Owners' Protection Act of 1986, Pub. L. No. 99–308, § 104, 100 Stat. 449, 456.

10 *See* 18 U.S.C. § 3561(a)(1) (enacted as part of the SRA) (prohibiting probation for individuals convicted of Class A and B felonies); *see also* United States v. Daiagi, 892 F.2d 31, 32–33 (4th Cir. 1989) (district court has authority to impose a sentence of probation where a defendant convicted of Class A or Class B felony has rendered substantial assistance to government).

11 Mistretta v. United States, 488 U.S. 361, 367–69 (1989).

12 18 U.S.C. § 3553(a)(1)–(7).

13 *See* 28 U.S.C. § 991(b)(1)(A) (requiring the Commission to consider the § 3553(a) factors in promulgating guidelines and policy statements).

14 *See* Rita v. United States, 551 U.S. 338, 348 (2007).

15 Senate Report, *supra* note 3, at 168; *see also id.* at 169 (directing that the guidelines should "reflect every important factor relevant to sentencing").

16 *See* 28 U.S.C. § 994(d) ("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."); *Id.* § 994(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.").

17 *Id.* § 994(b)(2) (commonly referred to as the "25 percent rule").

18 *Id.* § 991(b)(1)(B); *see also id.* § 994(f).

19 For a thorough history of the initial Commission, see Brent E. Newton & Dawinder S. Sidhu, *The History of the Original United States Sentencing Commission,1985–1987*, 45 Hofstra L. Rev. 1167 (2017).

20 18 U.S.C. § 3553(b)(1); *see also* Mistretta v. United States, 488 U.S. 361, 367 (1989) (noting that the SRA "ma[de] the Sentencing Commission's guidelines binding

on the courts").

21 530 U.S. 466 (2000).

22 543 U.S. 220 (2005); *see also* Blakely v. Washington, 542 U.S. 296 (2004).

23 *Apprendi*, 530 U.S. at 490. A defendant's prior conviction may be found by a sentencing judge by a preponderance of the evidence as a basis to enhance the defendant's statutory maximum. *See* Almendarez-Torres v. United States, 523 U.S. 224 (1998).

24 *See* 18 U.S.C. § 2113(a), (d) (25-year maximum term of imprisonment for a bank robbery with a "dangerous weapon or device" compared to 20-year maximum for bank robbery without a dangerous weapon or device); 21 U.S.C. § 841(b)(1)(A)–(D) (increased drug quantities can raise statutory maximum from five years to life without parole depending on the drug type).

25 Alleyne v. United States, 570 U.S. 99 (2013).

26 Southern Union Co. v. United States, 567 U.S. 343 (2012).

27 543 U.S. 220 (2005) .

28 *Id.* at 245–46.

29 Gall v. United States, 552 U.S. 38, 49 & 50 n.6 (2007) ("The fact that § 3553(a) explicitly directs sentencing courts to consider the Guidelines supports the premise that district courts must begin their analysis with the Guidelines and remain cognizant of them throughout the sentencing process."); *see also* Peugh v. United States, 569 U.S. 530, 544 (2013) (noting that the post-*Booker* federal sentencing system adopted procedural measures that make the "[g]uidelines the lodestone of sentencing"); Rita v. United States, 551 U.S. 338, 347–48 (2007).

30 U.S. Sent'g Comm'n, Guidelines Manual §1B1.1, comment. (backg'd.) (Nov. 2025) [hereinafter USSG]. The 18 U.S.C. § 3553(a) factors include: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed to meet the purposes of sentencing listed in 18 U.S.C. § 3553(a)(2); (3) the kinds of sentence available; (4) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (5) the need to provide restitution to any victims of the offense. 18 U.S.C. § 3553(a).

31 *See* Pepper v. United States, 562 U.S. 476, 488 (2011); *see also* Concepcion v. United States, 597 U.S. 481, 493 (2022).

32 U.S. Sent'g Comm'n, Guidelines Manual §1B1.1 (Nov. 2024).

33 553 U.S. 708 (2008).

34 USSG App. C, amend. 836 (effective Nov. 1, 2025).

35 *See* USSG §1B1.1(a).

36 *See* USSG §1B1.1(b).

37 Two congressionally authorized departure provisions—§5K1.1 (Substantial Assistance to Authorities) and §5K3.1 (Early Disposition Programs)—are retained in the amended *Guidelines Manual*. *See infra* p.22 and nn. 139–41.

38 *See*, *e.g.*, U.S. Sent'g Comm'n, 2024 Sourcebook of Federal Sentencing Statistics 30 tbl. 11 (2025) [hereinafter 2024 Sourcebook] (noting that 97.2% of individuals who were sentenced under the guidelines pleaded guilty). Commission materials cited herein are available on the Commission's website at www.ussc.gov.

39 Fed. R. Crim. P. 11(b)(3) (requiring a "factual basis" for the guilty plea).

40 Fed. R. Crim. P. 11(b)(1)(M).

41 Rule 11(c)(1) describes the two primary types of plea agreements related to the sentencing guidelines, whereby the prosecution agrees either –

(B) [to] recommend, or . . . not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request does not bind the court); or

(C) that a specific sentence or sentencing range is the appropriate disposition of the case, or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request binds the court once the court accepts the plea agreement).

Fed. R. Crim. P. 11(c)(1)(B), (C). A third type of plea agreement exists under Rule 11(c)(1)(A)—the prosecution's agreement to dismiss or not bring certain charges and, instead, allow a defendant to plead guilty to other charges. Such a plea agreement does not directly concern the sentencing guidelines, although in some cases a guilty plea to a charge with a lesser statutory maximum can reduce a defendant's sentencing exposure by reducing the statutory maximum term of imprisonment below what would otherwise be the applicable sentencing range under the guidelines.

See USSG §5G1.1(a)(1) ("Where the statutorily authorized maximum sentence is less than the minimum of the applicable guideline range, the statutorily authorized maximum sentence shall be the guideline sentence."); *see also* USSG §6B1.2(a) ("In the case of a plea agreement that includes the dismissal of any charges or an agreement not to pursue potential charges (Rule 11(c)(1)(A)), the court may accept the agreement if the court determines, for reasons stated on the record, that the remaining charges adequately reflect the seriousness of the actual offense behavior and that accepting the agreement will not undermine the statutory purposes of sentencing or the sentencing guidelines.").

42 FED. R. CRIM. P. 11(c)(1)–(4).

43 USSG §6B1.4(a); *see also* USSG §6B1.4, comment. ("This provision requires that when a plea agreement includes a stipulation of fact, the stipulation must fully and accurately disclose all factors relevant to the determination of sentence."). A defendant may waive the right to appeal as part of a voluntary plea agreement, which is generally enforceable on appeal if invoked by the government.

44 USSG §6B1.1, comment.

45 *See* FED. R. CRIM. P. 32(c)(2).

46 *See* Mitchell v. United States, 526 U.S. 314, 326–27 (1999) (defendant maintains the Fifth Amendment privilege against self-incrimination not only during the guilt-innocence phase of trial but also during the sentencing phase).

47 USSG §3E1.1, comment. (n.1(A)) (A defendant need only "truthfully admit[] the conduct comprising the offense(s) of conviction" and need not admit relevant conduct beyond the offense(s) of conviction. However, a defendant should not receive credit for acceptance of responsibility if he or she "falsely denies or frivolously contests" any relevant conduct for which the defendant is accountable, though "the fact that a defendant's challenge [to relevant conduct] is unsuccessful does not necessarily establish that it was either a false denial or frivolous.").

48 *See* FED. R. CRIM. P. 32(c)(1)(A) ("The probation officer must . . . submit a report to the court before it imposes sentence . . . ."); *see generally* Guide to Judiciary Policy, Vol. 8, Pt. D (Probation and Pretrial Services) (commonly called "Monograph 107").

49 *See* FED. R. CRIM. P. 32(d).

50 *See* FED. R. CRIM. P. 32(e), (f). The PSR is a confidential document that may not be disclosed to the public and must be filed under seal. *See*, *e.g.*, United States v. Smith, 992 F. Supp. 743, 750 (D.N.J. 1998).

51 FED. R. CRIM. P. 32(e)(3). Information in the PSR may also be relied upon by the Federal Bureau of Prisons to determine an individual's "classification as an inmate . . . , choosing an appropriate treatment program, [and] deciding eligibility for various programs." U.S. Dep't of Just. v. Julian, 486 U.S. 1, 5 (1988). Additionally, the PSR is later used to inform the conditions and methods of supervision of an individual on probation or supervised release.

52 *See* 18 U.S.C. § 3771(a)(4) (providing crime victims with the "right to be reasonably heard at any public proceeding in the district court involving . . . sentencing").

53 *See* FED. R. CRIM. P. 32(i).

54 *Id.* Prior to implementation of Amendment 836, under the three-step sentencing paradigm, notice to the parties of "departure" from the applicable guideline range was required. *See* Irizarry v. United States, 553 U.S. 708 (2008); Burns v. United States, 501 U.S. 129 (1991).

55 FED. R. EVID. 1101(d)(3).

56 *See* Williams v. New York, 337 U.S. 241 (1949).

57 18 U.S.C. § 3661 ("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."); *see also* Pepper v. United States, 562 U.S. 476, 480 (2011).

58 USSG §6A1.3(a).

59 FED. R. CRIM. P. 32(i)(3)(B).

60 USSG §6A1.3, comment.; *see also* McMillan v. Pennsylvania, 477 U.S. 79, 91–92 (1986) (holding that due process does not require sentencing factors to be proven by more than a preponderance of the evidence), *overruled on other grounds by* United States v. Haymond, 588 U.S. 634 (2019).

61 *See* 18 U.S.C. § 3553(c)(2); 28 U.S.C. § 994(w)(1).

62 *See* FED. R. CRIM. P. 32(j), 44(a); *see also* Douglas v. California, 372 U.S. 353 (1963) (counsel must be provided for an indigent defendant in a first appeal as of right in criminal proceedings).

63 28 U.S.C. § 994(w)(1).

64 *See* USSG §1B1.9 (The guidelines do not apply to petty misdemeanor offenses, *i.e.*, offenses carrying a statutory maximum term of incarceration of six months or less). Petty misdemeanor cases are typically handled by federal magistrate judges pursuant to 28 U.S.C. § 636(a)(4).

65 *See* 2024 SOURCEBOOK, *supra* note 38, at 35 fig. 6 (noting that probation or imprisonment was imposed in 99.6% of cases in fiscal year 2024).

66 18 U.S.C. § 3561(c) (providing that, for a felony offense, not less than one nor more than five years of probation may be imposed; for a misdemeanor, not more than five years of probation may be imposed).

67 *See id.* § 3563(a), (b).

68 *See*, *e.g.*, *id.* § 924(c) (setting forth mandatory minimum statutory penalties for using a firearm in the course of a drug-trafficking offense or crime of violence); 21 U.S.C. § 841(b)(1) (setting forth mandatory minimum statutory penalties for drug-trafficking involving certain types and quantities of drugs).

69 *See*, *e.g.*, 18 U.S.C. § 3561(a)(1) (prohibiting probation for individuals convicted of Class A and B felonies); *see also id.* § 3559(a)(1)–(2) (defining Class A and B felonies as offenses that are punishable by a maximum of life imprisonment (for Class A) or by 25 years or more of imprisonment (for Class B)). Offenses such as bank fraud and armed bank robbery are Class B felonies. *See id.* §§ 1344, 2113(d).

70 *See id.* § 3559(a).

71 *See id.* § 3624(b)(1).

72 *Id.* For that reason, it is not uncommon for courts to impose a prison sentence of 12 months and one day (which, with good-time credit, will result in an actual term served of a little more than ten months).

73 Pub. L. No. 115–391, § 102(a), 132 Stat. 5194, 5208 (amending 18 U.S.C. § 3621 to add subsection (h)). The First Step Act also amended section 3624 to clarify that individuals can earn up to 54 days of good-time credit for each year of sentence imposed including during the first year of imprisonment. First Step Act § 102(b).

74 *See* 18 U.S.C. § 3624(c). The First Step Act also amended 34 U.S.C. § 60541(g) to continue and expand the Family Reunification Pilot Program, which allows certain elderly and terminally ill individuals to serve portions of their sentence in home detention until their term expires. First Step Act § 603(a).

75 *See* 18 U.S.C. § 3621(e)(2); 28 C.F.R. § 550.55; *see also* Lopez v. Davis, 531 U.S. 230 (2001).

76 *See* 18 U.S.C. § 3582(c)(1)(A); 28 U.S.C. § 994(t); USSG §1B1.13. This mode of sentence reduction is referred to as "compassionate release." The First Step Act amended section 3582(c)(1)(A) to increase the use of this provision. First Step Act § 603(b).

77 U.S. Sent'g Comm'n, Quick Facts: Mandatory Minimum Penalties (2025) (24.3% in FY2024).

78 *Id.*

79 *See*, *e.g.*, U.S. Sent'g Comm'n, 2011 Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System 53 (2011) ("[T]he Commission has incorporated mandatory minimum penalties into the guidelines since their inception, and has continued to incorporate new mandatory minimum penalties as enacted by Congress." (citing 28 U.S.C. § 994(a), (b))).

80 *See* Melendez v. United States, 518 U.S. 120 (1996) (requiring prosecutor to specifically move for a downward departure under § 3553(e) in order for a court to have authority to impose a sentence below the statutory mandatory minimum penalty).

81 18 U.S.C. § 3553(f).

82 Those five criteria are:

(1) the defendant does not have more than four criminal history points, excluding any criminal history points resulting from a 1-point 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. *Id.*

83 Pub. L. No. 115–391, § 402, 132 Stat. 5194, 5221 (2018) (amending 18 U.S.C. § 3553(f)). The First Step Act also extended application of the safety valve to maritime cases under 46 U.S.C. §§ 70503, 70506. *Id.*

84 *See* USSG §2D1.1(b)(18).

85 USSG §2D1.1, comment. (n.21). The guidelines safety valve criteria, set forth in §5C1.2, were amended in 2023 to conform to the First Step Act's statutory criteria. USSG App. C, amend. 817 (effective Nov. 1, 2023).

86 *See* 18 U.S.C. §§ 3572 (fines), 3663–3663A (restitution), 3013 (special assessment).

87 United States v. Elliot, 971 F.2d 620, 622 (10th Cir. 1992).

88 *See* 18 U.S.C. § 3571(b) (generally providing that, for felonies, the maximum fine amount is $250,000, and for Class A misdemeanors, the maximum fine amount is $100,000); *but cf.*, 21 U.S.C. § 841(b)(1)(A) (providing for a maximum fine of $10,000,000 for a defendant convicted of certain drug-trafficking offenses).

89 *See*, *e.g.*, United States v. Amato, 540 F.3d 153, 156 (2d Cir. 2008) (in contrast, restitution in a civil case seeks to disgorge a defendant's unjust enrichment).

90 A special assessment goes into a crime victim compensation fund. *See* United States v. Munoz-Flores, 495 U.S. 385, 398 (1990).

91 *See* 18 U.S.C. §§ 3663A (providing for mandatory restitution in some types of cases), 3013 (providing for mandatory special assessments).

92 *Id.* § 3573.

93 USSG §5E1.2(a).

94 *See* USSG §5E1.2(c).

95 USSG §5C1.1, comment. (n.2).

96 USSG §5E1.2, comment. (n.1).

97 *See* 18 U.S.C. § 3583.

98 Senate Report, *supra* note 3, at 124.

99 *See* 18 U.S.C. §§ 3583(c), 3553(a)(2)(C).

100 Some penal statutes specify that terms of supervised release are mandatory and also specify the minimum length of such terms. *See*, *e.g.*, 21 U.S.C. § 841(b)(1)(A) (mandating a minimum five-year term of supervised release for certain drug-trafficking offenses).

101 Johnson v. United States, 529 U.S. 694, 709 (2000). In cases where supervised release is not mandatory, the relevant statutes set forth maximum terms only. *See* 18 U.S.C. § 3583(b) (setting forth authorized terms of supervised release for federal offenses according to the class of the offense).

102 *See infra* notes 142–64 and accompanying text.

103 USSG §1B1.1(a).

104 USSG §1B1.1(a)(1), (2).

105 USSG §1B1.1(a)(3)–(5).

106 USSG §1B1.1(a)(6).

107 *See* USSG §§5B1.1, 5C1.1 (defendants in Zones A and B may receive a probationary sentence or a sentence of incarceration, in the court's discretion; defendants in Zone C may receive a "split" sentence of incarceration followed by community confinement or a sentence of incarceration only at the court's discretion; and defendants in Zone D may only receive a sentence of imprisonment absent a downward departure or variance from that zone).

108 USSG §1B1.1(a)(7)–(9).

109 *See* USSG §1B1.1(b).

110 18 U.S.C. § 3553(a). This provision in the SRA is referred to as the "parsimony" clause. *See* United States v. Narváez-Soto, 773 F.3d 282, 289 (1st Cir. 2014).

111 18 U.S.C. § 3553(a)(4)(A)(ii).

112 *See* Peugh v. United States, 569 U.S. 530 (2013).

113 USSG §1B1.11(b)(1).

114 USSG §1B1.11(b)(2).

115 *See* USSG §1B1.3.

116 William W. Wilkins, Jr. & John R. Steer, *Relevant Conduct: The Cornerstone of the Federal Sentencing Guidelines*, 41 S.C. L. Rev. 495, 497 (1990); *see also id.* at 502 ("The parameters of . . . 'Relevant Conduct' . . . are potentially much broader than the minimum necessary to satisfy the elements of the convicted offense."); *see generally* U.S. Sent'g Comm'n, Guidelines Manual Ch.1, Pt.A.4(a) (Nov. 2024) (Real Offense vs. Charge Offense Sentencing). The authors were the Chair and General Counsel of the Commission at the time.

117 *See* USSG §1B1.3(a)(2). The formal definition of "relevant conduct" includes:

(1)(A) all acts and omissions committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused by the defendant; and

(B) in the case of a jointly undertaken criminal activity (a criminal plan, scheme, endeavor, or enterprise undertaken by the defendant in concert with others, whether or not charged as a conspiracy), [all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity] that occurred during the commission of the offense of conviction, in preparation for that offense, or in the course of attempting to avoid detection or responsibility for that offense;

(2) solely with respect to offenses of a character for which §3D1.2(d) would require grouping of multiple counts, all acts and omissions described in subdivisions (1)(A) and (1)(B) above that were part of the same course of conduct or common scheme or plan as the offense of conviction; [and]

(3) all harm that resulted from the acts and omissions specified in subsections (a)(1) and (a)(2) above, and all harm that was the object of such acts and omissions . . . .

USSG §1B1.3(a).

118 *See* USSG §6A1.3, comment.

119 USSG App. C, amend. 826 (effective Nov. 1, 2024). The amendment added §1B1.3(c), which provides that "[r]elevant conduct does not include conduct for which the defendant was criminally charged and acquitted in federal court unless such conduct also establishes, in whole or in part, the instant offense of conviction." *Id.* The commentary to §6A1.3 further notes that "nothing in the *Guidelines Manual* abrogates a court's authority under 18 U.S.C. § 3661." USSG §6A1.3, comment.; *see supra* note 57 and accompanying text.

120 *See* USSG §2B3.1(b)(2).

121 *See* USSG §2B1.1(b)(1).

122 *See* USSG §2D1.1(a)(5) (and the corresponding Drug Quantity Table).

123 *See* USSG §2K2.1(b)(6).

124 The commentary is generally "authoritative." *See* Stinson v. United States, 508 U.S. 36, 42 (1993).

125 USSG §2B3.1, comment. (n.2) (referencing Application Note 1(E) of §1B1.1).

126 *See* USSG §1B1.3(a) (relevant conduct provision).

127 USSG §2B3.1, comment. (n.3).

128 Section 3B1.1 provides for a 2-level enhancement "[i]f the defendant was an organizer, leader, manager, or supervisor in any criminal activity" involving less than five participants. USSG §3B1.1(c).

129 Section 3B1.4 provides for a 2-level enhancement "[i]f the defendant used or attempted to use a person less than eighteen years of age to commit the offense or assist in avoiding detection of, or apprehension for, the offense . . . ." USSG §3B1.4.

130 *See* USSG §4A1.1(a)–(c) (providing for three criminal history points for each prior conviction receiving a sentence of incarceration exceeding 13 months, two points for each prior conviction receiving a sentence of incarceration of at least 60 days but no more than 13 months, and one point for any other prior conviction). Note that, although prior local, state, and federal convictions (including some military convictions) can count, tribal convictions and foreign convictions are categorically excluded. *See* USSG §4A1.2(g)–(i).

131 *See* USSG §4A1.1(e).

132 *See* USSG §4A1.2(e) (providing that any prior conviction for which a sentence of more than 13 months was imposed receives criminal history points only if it was imposed or if the defendant was released from imprisonment "within fifteen years of the defendant's commencement of the instant offense," and any prior conviction for which any other sentence was imposed receives criminal history points only if it was imposed "within ten years of the defendant's commencement of the instant offense").

133 *See* USSG §4A1.2(c) (list of excluded offenses).

134 *See* USSG §4A1.2(d)(2).

135 *See* USSG §4A1.2(e).

136 *See* USSG §4A1.1(c), (e).

137 *See* USSG §5G1.1. For instance, assuming a bank robbery defendant had a guideline range (before consideration of the 20-year (240-month) statutory maximum) of 210–262 months, the defendant's guideline range would be 210–240 months under §5G1.1(c)(1).

138 *See* USSG §5C1.1(f).

139 *See*, *e.g.*, 2024 Sourcebook, *supra* note 38, at 58 tbl. 29 (totaling 17.0% of cases—9.9% substantial assistance departures and 7.1% fast-track departures).

140 USSG §5K1.1. There are two varieties of "substantial assistance" motions filed by the prosecution—the first seeks a sentence below the applicable guideline range, and the second seeks a sentence below a statutory mandatory minimum sentence. *Compare* USSG §5K1.1, *with* 18 U.S.C. § 3553(e). Substantial assistance motions permitting a sentencing court to impose a sentence below a statutory mandatory minimum penalty are discussed previously in the publication. *See supra* note 80 and accompanying text.

141 The 2025 Amendment moved the Early Disposition Programs policy statement from §5K3.1 to §3F1.1. *See* USSG App. C, amend. 836 (effective Nov. 1, 2025) (Reason for Amendment).

142 USSG App. C, amend. 835 (effective Nov. 1, 2025).

143 *Id.* (adding Introductory Commentary to Part D of Chapter Five).

144 *Id.* (revising §§5D1.1–5D1.4 to provide greater judicial discretion in determining whether any term of supervised release is warranted "by an

individualized assessment of the need for supervision," the length and conditions of such term, and instructing that "the court should state in open court the reasons for imposing or not imposing a term of supervised release," consistent with 18 U.S.C. § 3553(c)).

145 *Id.* (revising provisions of Chapter Seven to highlight the primarily rehabilitative purposes of supervised release).

146 *See* USSG §5D1.1.

147 USSG App. C, amend. 835 (effective Nov. 1, 2025). "Individualized assessment" is defined by reference to the 18 U.S.C. § 3553(a) factors that courts must consider under 18 U.S.C. § 3583(c). USSG §5D1.1, comment. (n.1). The Commentary to §5D1.1 continues to instruct courts to consider the defendant's criminal history, substance abuse history, and history of domestic violence in determining whether to impose a term of supervised release. USSG §5D1.1, comment. (nn.2–4).

148 *See* USSG §5D1.1(c). As the Commission noted in the commentary to this guideline: "Unless such a defendant legally returns to the United States, supervised release is unnecessary. If such a defendant illegally returns to the United States, the need to afford adequate deterrence and protect the public ordinarily is adequately served by a new prosecution" for illegal reentry by previously deported alien under 8 U.S.C. § 1326. USSG §5D1.1, comment. (n.9).

149 USSG §5D1.1(d).

150 *See* USSG §5D1.2(a) (providing for at least two years but "not more than five years for a defendant convicted of a Class A or B felony"; at least one year but "not more than three years for a defendant convicted of a Class C or D felony"; and "[n]ot more than one year for a defendant convicted of a Class E felony or a Class A misdemeanor"); USSG §5D1.2, comment. (nn.2–3).

151 Application Note 1 provides that the factors considered for purposes of determining the length of the term are the same as the factors considered in determining whether to impose a term and—consistent with 18 U.S.C. §§ 3583(c) and 3553(a)—instructs that the court should ensure the term "is sufficient, but not greater than necessary, to address the purposes of imposing supervised release on the defendant." USSG §5D1.2, comment. (n.1).

152 *See* 18 U.S.C. § 3583(d).

153 USSG §5D1.3.

154 USSG §5D1.4.

155 *Compare* 18 U.S.C. § 3553(a), *with id.* § 3583(c)–(e).

156 *See* USSG App. C, amend. 835 (effective Nov. 1, 2025); *see also supra* note 145 and accompanying text.

157 United States v. Johnson, 529 U.S. 53, 59 (2000).

158 *See* USSG Ch.7, Pt.C, intro. comment.

159 Chapter Seven recommends revocation for Grade A and B violations as well as for repeated Grade C violations where an individual had not been revoked after a court's finding of the initial Grade C violation. *See* USSG §7B1.3; USSG §7B1.3, comment. (n.1).

160 *See* USSG §§7B1.1, 7B1.2, 7B1.4. Grade A violations include new felony drug-trafficking offenses or crimes of violence committed by individuals on supervision, as well as any other new felony offense punishable by more than 20 years of imprisonment. Grade B violations include all other felony offenses committed on supervision. Grade C violations include misdemeanor offenses committed on probation and "technical" violations (such as failure to report to the supervising probation officer as directed by the court or willful failure to pay a fine). USSG §7B1.1.

161 *See* USSG §7B1.4.

162 *See* USSG §7B1.1, comment. (n.1.).

163 *See* USSG §§7C1.1, 7C1.2.

164 USSG §§7C1.3, 7C1.4. In a supervised release revocation proceeding, the court should consider all of the factors except section 3553(a)(2)(A) (which requires courts at original sentencing hearings to consider imposing a sentence in order to "reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense"). *See* 18 U.S.C. § 3583(e).

165 *See* 18 U.S.C. §§ 3565 (probation revocation), 3583(e), (g) (supervised release revocation).

166 18 U.S.C. §§ 3565(b), 3583(g). There is a limited exception to the requirement that a court incarcerate an individual for possessing drugs: if a failed drug test constitutes the sole evidence of drug possession, and if the court finds that an

individual would benefit from an "appropriate substance abuse treatment program," the court may substitute drug abuse treatment for imprisonment. 18 U.S.C. §§ 3563(e), 3583(d).

167 *See* 18 U.S.C. § 3583(e)(3) (for a Class A felony, the maximum term of imprisonment is five years upon revocation; for a Class B felony, the maximum is three years upon revocation; for a Class C or D felony, the maximum is two years upon revocation; and for a Class E felony, or for a misdemeanor (other than a petty offense), the maximum is one year upon revocation).

168 18 U.S.C. § 3565(a)(2).

169 The Courts of Appeals vary in their characterizations of the applicable standard of review in revocation cases. Some apply the *Booker* "reasonableness" standard of review while others will reverse only if a district court was "plainly unreasonable" in revoking. *See* United States v. Flagg, 481 F.3d 946, 949 (7th Cir. 2007) (discussing the approaches of different circuits).

170 *See*, *e.g.*, United States v. Silva, 443 F.3d 795, 799 (11th Cir. 2006) (per curiam).

171 *See* Dorszynski v. United States, 418 U.S. 424, 431 (1974) (in the pre-SRA era, stating "the general proposition that once it is determined that a sentence is within the limitations set forth in the statute under which it is imposed, appellate review is at an end").

172 18 U.S.C. § 3742(a), (b); *see also* Mistretta v. United States, 488 U.S. 361, 368 (1989) ("[The SRA] permits a defendant to appeal a sentence that is above the defined [guideline] range, and it permits the Government to appeal a sentence that is below that range. It also permits either side to appeal an incorrect application of the guideline.").

173 United States v. Booker, 543 U.S. 220, 261–62 (2005); *see also* Gall v. United States, 552 U.S. 38, 51 (2007).

174 *Gall*, 552 U.S. at 51.

175 *See*, *e.g.*, United States v. Kristl, 437 F.3d 1050, 1054 (10th Cir. 2006) (per curiam).

176 Rita v. United States, 551 U.S. 338, 357 (2007).

177 *See* Rosales-Mireles v. United States, 585 U.S. 129 (2018) (holding miscalculation of guideline range that was determined to be plain error and to affect defendant's substantial rights would, in the ordinary case, seriously affect the

fairness, integrity, or public reputation of judicial proceedings, and thus would call for the Court of Appeals to exercise its discretion to vacate defendant's sentence); Molina-Martinez v. United States, 578 U.S. 189 (2016) (holding that, when a defendant is sentenced under an incorrect guideline range, whether or not the defendant's ultimate sentence falls within the correct range, the error itself can, and most often will, be sufficient to show a reasonable probability of a different outcome absent the error).

178 *Rita*, 551 U.S. at 355–56. Seven out of the 12 circuits (the Fourth, Fifth, Sixth, Seventh, Eighth, Tenth, and D.C. Circuits) employ such a presumption of reasonableness, while five (the First, Second, Third, Ninth, and Eleventh) do not. *See* United States v. Carty, 520 F.3d 984, 993–94 & nn.9 & 10 (9th Cir. 2008) (en banc) (collecting cases).

179 *Rita*, 551 U.S. at 347.

180 Nelson v. United States, 555 U.S. 350, 352 (2009) (per curiam).

181 *Rita*, 551 U.S. at 354–55.

182 Kimbrough v. United States, 552 U.S. 85, 109 (2007).

183 *See* 28 U.S.C. § 994 (o), (p), (x); *see also Rita*, 551 U.S. at 350 ("The statutes and the Guidelines themselves fore*See* continuous evolution helped by the sentencing courts and courts of appeals in that process.").

184 The amendments are contained in Appendix C to the Guidelines Manual. *See* USSG App. C.

185 Although the Commission refers to such amendments as "proposed," they should not be considered as finalized amendments being proposed to Congress for their consideration pursuant to 28 U.S.C. § 994(p). Rather, they are proposed for public consideration only, so as to inform the Commission's decision of whether to adopt such possible amendments.

186 *See generally* U.S. Sent'g Comm'n, Rules of Practice and Procedure, pt. IV, V at 5 (2016).

187 28 U.S.C. § 994(u); *see also* Rules of Practice, *supra* note 186, r. 4.1A, at 6.

188 *See* 18 U.S.C. § 3582(c)(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) . . . 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."); USSG §1B1.10 (setting forth the procedure for considering an offender's petition for resentencing under a retroactive guideline amendment); USSG §1B1.10(d) (listing the retroactive amendments).

189 Dillon v. United States, 560 U.S. 817, 831 (2010).

190 28 U.S.C. § 995(a)(12), (13).

191 *See* U.S. Sent'g Comm'n, *Research* (Sept. 2025), https://www.ussc.gov/research.

192 *See* 2024 Sourcebook, *supra* note 38, at 9 tbl. 1.

193 *See* 28 U.S.C. § 994(w).

194 *See*, *e.g.*, Christine Kitchens, U.S. Sent'g Comm'n, Research Notes: Commission Collection of Individual Sentencing Data (2025).

Attachment A

SENTENCING TABLE
(in months of imprisonment)

	Offense Level	Criminal History Category (Criminal History Points) I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
Zone A	1	0–6	0–6	0–6	0–6	0–6	0–6
	2	0–6	0–6	0–6	0–6	0–6	1–7
	3	0–6	0–6	0–6	0–6	2–8	3–9
	4	0–6	0–6	0–6	2–8	4–10	6–12
	5	0–6	0–6	1–7	4–10	6–12	9–15
	6	0–6	1–7	2–8	6–12	9–15	12–18
	7	0–6	2–8	4–10	8–14	12–18	15–21
	8	0–6	4–10	6–12	10–16	15–21	18–24
Zone B	9	4–10	6–12	8–14	12–18	18–24	21–27
	10	6–12	8–14	10–16	15–21	21–27	24–30
	11	8–14	10–16	12–18	18–24	24–30	27–33
Zone C	12	10–16	12–18	15–21	21–27	27–33	30–37
	13	12–18	15–21	18–24	24–30	30–37	33–41
Zone D	14	15–21	18–24	21–27	27–33	33–41	37–46
	15	18–24	21–27	24–30	30–37	37–46	41–51
	16	21–27	24–30	27–33	33–41	41–51	46–57
	17	24–30	27–33	30–37	37–46	46–57	51–63
	18	27–33	30–37	33–41	41–51	51–63	57–71
	19	30–37	33–41	37–46	46–57	57–71	63–78
	20	33–41	37–46	41–51	51–63	63–78	70–87
	21	37–46	41–51	46–57	57–71	70–87	77–96
	22	41–51	46–57	51–63	63–78	77–96	84–105
	23	46–57	51–63	57–71	70–87	84–105	92–115
	24	51–63	57–71	63–78	77–96	92–115	100–125
	25	57–71	63–78	70–87	84–105	100–125	110–137
	26	63–78	70–87	78–97	92–115	110–137	120–150
	27	70–87	78–97	87–108	100–125	120–150	130–162
	28	78–97	87–108	97–121	110–137	130–162	140–175
	29	87–108	97–121	108–135	121–151	140–175	151–188
	30	97–121	108–135	121–151	135–168	151–188	168–210
	31	108–135	121–151	135–168	151–188	168–210	188–235
	32	121–151	135–168	151–188	168–210	188–235	210–262
	33	135–168	151–188	168–210	188–235	210–262	235–293
	34	151–188	168–210	188–235	210–262	235–293	262–327
	35	168–210	188–235	210–262	235–293	262–327	292–365
	36	188–235	210–262	235–293	262–327	292–365	324–405
	37	210–262	235–293	262–327	292–365	324–405	360–life
	38	235–293	262–327	292–365	324–405	360–life	360–life
	39	262–327	292–365	324–405	360–life	360–life	360–life
	40	292–365	324–405	360–life	360–life	360–life	360–life
	41	324–405	360–life	360–life	360–life	360–life	360–life
	42	360–life	360–life	360–life	360–life	360–life	360–life
	43	life	life	life	life	life	life

Attachment B

§2B3.1. Robbery

(a) Base Offense Level: **20**

(b) Specific Offense Characteristics

(1) If the property of a financial institution or post office was taken, or if the taking of such property was an object of the offense, increase by **2** levels.

(2) (A) If a firearm was discharged, increase by **7** levels; (B) if a firearm was otherwise used, increase by **6** levels; (C) if a firearm was brandished or possessed, increase by **5** levels; (D) if a dangerous weapon was otherwise used, increase by **4** levels; (E) if a dangerous weapon was brandished or possessed, increase by **3** levels; or (F) if a threat of death was made, increase by **2** levels.

(3) If any victim sustained bodily injury, increase the offense level according to the seriousness of the injury:

	Degree of Bodily Injury	Increase in Level
(A)	Bodily Injury	add **2**
(B)	Serious Bodily Injury	add **4**
(C)	Permanent or Life-Threatening Bodily Injury	add **6**
(D)	If the degree of injury is between that specified in subdivisions (A) and (B),	add **3** levels; or
(E)	If the degree of injury is between that specified in subdivisions (B) and (C),	add **5** levels.

Provided, however, that the cumulative adjustments from (2) and (3) shall not exceed **11** levels.

(4) (A) If any person was abducted to facilitate commission of the offense or to facilitate escape, increase by **4** levels; or (B) if any person was physically restrained to facilitate commission of the offense or to facilitate escape, increase by **2** levels.

(5) If the offense involved carjacking, increase by **2** levels.

(6) If a firearm, destructive device, or controlled substance was taken, or if the taking of such item was an object of the offense, increase by **1** level.

§2B3.1

(7) If the loss exceeded $20,000, increase the offense level as follows:

Loss (Apply the Greatest)	Increase in Level
(A) $20,000 or less	no increase
(B) More than $20,000	add **1**
(C) More than $95,000	add **2**
(D) More than $500,000	add **3**
(E) More than $1,500,000	add **4**
(F) More than $3,000,000	add **5**
(G) More than $5,000,000	add **6**
(H) More than $9,500,000	add **7**.

(c) Cross Reference

(1) If a victim was killed under circumstances that would constitute murder under 18 U.S.C. § 1111 had such killing taken place within the territorial or maritime jurisdiction of the United States, apply §2A1.1 (First Degree Murder).

Commentary

Statutory Provisions: 18 U.S.C. §§ 1951, 2113, 2114, 2118(a), 2119. For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. "***Firearm***," "***destructive device***," "***dangerous weapon***," "***otherwise used***," "***brandished***," "***bodily injury***," "***serious bodily injury***," "***permanent or life-threatening bodily injury***," "***abducted***," and "***physically restrained***" are defined in the Commentary to §1B1.1 (Application Instructions).

   "***Carjacking***" means the taking or attempted taking of a motor vehicle from the person or presence of another by force and violence or by intimidation.

2. Consistent with Application Note 1(E)(ii) of §1B1.1 (Application Instructions), an object shall be considered to be a dangerous weapon for purposes of subsection (b)(2)(E) if (A) the object closely resembles an instrument capable of inflicting death or serious bodily injury; or (B) the defendant used the object in a manner that created the impression that the object was an instrument capable of inflicting death or serious bodily injury (*e.g.*, a defendant wrapped a hand in a towel during a bank robbery to create the appearance of a gun).

3. "***Loss***" means the value of the property taken, damaged, or destroyed.

4. The combined adjustments for weapon involvement and injury are limited to a maximum enhancement of 11 levels.

5. If the defendant intended to murder the victim, an upward departure may be warranted; *see* §2A2.1 (Assault with Intent to Commit Murder; Attempted Murder).

6. "A threat of death," as used in subsection (b)(2)(F), may be in the form of an oral or written statement, act, gesture, or combination thereof. Accordingly, the defendant does not have to state expressly his intent to kill the victim in order for the enhancement to apply. For example, an oral or written demand using words such as "Give me the money or I will kill you", "Give me the money or I will pull the pin on the grenade I have in my pocket", "Give me the money or I will shoot you", "Give me your money or else (where the defendant draws his hand across his throat in a slashing motion)", or "Give me the money or you are dead" would constitute a threat of death. The court should consider that the intent of this provision is to provide an increased offense level for cases in which the offender(s) engaged in conduct that would instill in a reasonable person, who is a victim of the offense, a fear of death.

Background: Possession or use of a weapon, physical injury, and unlawful restraint sometimes occur during a robbery. The guideline provides for a range of enhancements where these factors are present.

Although in pre-guidelines practice the amount of money taken in robbery cases affected sentence length, its importance was small compared to that of the other harm involved. Moreover, because of the relatively high base offense level for robbery, an increase of 1 or 2 levels brings about a considerable increase in sentence length in absolute terms. Accordingly, the gradations for property loss increase more slowly than for simple property offenses.

The guideline provides an enhancement for robberies where a victim was forced to accompany the defendant to another location, or was physically restrained by being tied, bound, or locked up.

Historical Note	Effective November 1, 1987. Amended effective June 15, 1988 (amendments 14 and 15); November 1, 1989 (amendments 110 and 111); November 1, 1990 (amendments 314, 315, and 361); November 1, 1991 (amendment 365); November 1, 1993 (amendment 483); November 1, 1997 (amendments 545 and 552); November 1, 2000 (amendment 601); November 1, 2001 (amendment 617); November 1, 2010 (amendment 746); November 1, 2015 (amendment 791); November 1, 2018 (amendment 805).

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THURGOOD MARSHALL FEDERAL JUDICIARY BUILDING
ONE COLUMBUS CIRCLE N.E.
SUITE 2-500, SOUTH LOBBY
WASHINGTON, DC 20002-8002

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