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**UNPUBLISHED**

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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**No. 22-6301**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MARC PIERRE HALL, a/k/a Marc Valeriano, a/k/a Fella,

Defendant - Appellant.

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Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Frank D. Whitney, District Judge. (3:95-cr-00005-FDW-1)

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Submitted: March 4, 2024 Decided: March 8, 2024

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Before NIEMEYER, KING, and GREGORY, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Marc Pierre Hall, Appellant Pro Se. Amy Elizabeth Ray, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Asheville, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

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PER CURIAM:

Marc Pierre Hall appeals the district court's order granting in part his motion for a sentence reduction under § 404(b) of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, 5222, and his motions for compassionate release under 18 U.S.C. § 3582(c)(1)(A). Limiting our review of the record to the issues raised in Hall's informal brief, *see* 4th Cir. R. 34(b); *Jackson v. Lightsey*, 775 F.3d 170, 177 (4th Cir. 2014), and finding no reversible error, we affirm the district court's judgment, *United States v. Hall*, No. 3:95-cr-00005-FDW-1 (W.D.N.C. Feb. 28, 2022). We deny as moot Hall's motion for reconsideration of our order placing his appeal in abeyance. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*



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FILED: March 8, 2024

UNITED STATES COURT OF APPEALS
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No. 22-6301
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UNITED STATES OF AMERICA

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J U D G M E N T

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In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ NWAMAKA ANOWI, CLERK

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FILED: March 28, 2024

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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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No. 22-6301
(3:95-cr-00005-FDW-1)

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UNITED STATES OF AMERICA

Plaintiff - Appellee

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MARC PIERRE HALL, a/k/a Marc Valeriano, a/k/a Fella

Defendant - Appellant

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ORDER

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Upon consideration of appellant's motion to file supplemental pleadings, the court denies the motion.

For the Court--By Direction

/s/ Nwamaka Anowi, Clerk

Appendix - B

**UNITED STATES OF AMERICA, vs. MARC PIERRE HALL, Defendant.**
**UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA, CHARLOTTE DIVISION**
**2022 U.S. Dist. LEXIS 34835**
**DOCKET NO. 3:95-cr-00005-FDW**
**February 28, 2022, Decided**
**February 28, 2022, Filed**

**Editorial Information: Prior History**

United States v. **Hall**, 2007 U.S. Dist. LEXIS 73781 (W.D.N.C., Oct. 1, 2007)

**Counsel** **{2022 U.S. Dist. LEXIS 1}**For USA, Plaintiff: Amy E. Ray, LEAD ATTORNEY, Office of the U.S. Attorney--WDNC, Asheville, NC; Caryn Deborah Finley, LEAD ATTORNEY, US Attorney's Office, WDNC, Charlotte, NC.

**Judges:** Frank D. Whitney, United States District Judge.

**Opinion**

**Opinion by:** Frank D. Whitney

**Opinion**

ORDER

THIS MATTER is before the Court on several motions filed by Defendant, who appears pro se, asking this Court to reduce his sentence pursuant to section 404 of the First Step Act of 2018, Pub. L. 115-135 (2018), and for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(a), as well as related motions seeking a hearing and for consideration of supplemental evidence in support of his motions. (Doc. Nos. 1048, 1049, 1053, 1071, 1076, 1081). In accordance with district practice,1 the United States Probation Office prepared a Supplemental Presentence Report pursuant to the First Step Act of 2018 (hereafter, "Supplemental First Step Act PSR"). (Doc. No. 1018). The Government responded in opposition to a reduction in Defendant's sentence (Doc. No. 1065), and as directed by the Court, (Doc. No. 1089), supplemented its response (Doc. No. 1091). Defendant also supplemented his previous pleadings (Doc. Nos. 1090, 1095), and filed several motions regarding his response time to do so (Doc. Nos. 1092, 1094). Defendant also seeks courtesy copies**{2022 U.S. Dist. LEXIS 2}** of several documents from the docket, (Doc. No. 1096), and Rule 11 sanctions against the Government attorneys in this matter (Doc. No. 1097). The Court addresses the various motions below.

**I. Background**

On December 15, 1995, a jury convicted Defendant of conspiracy to possess with intent to distribute crack and powder cocaine within 1,000 feet of a playground and school in violation of 21 U.S.C. §§ 846, 860 ("Count 1"); two counts of carrying a firearm or destructive device during and in relation to a drug-trafficking offense in violation of 18 U.S.C. § 924(c)(1) ("Counts 10 and 11"); and maliciously damaging and destroying a building and real property used in and affective interstate commerce in violation of 18 U.S.C. § 844(i) ("Count 12"). (Doc. No. 345). The Government filed a notice under





Appendix - C

Section 851 indicating it intended to seek an enhanced penalty based on Defendant's prior convictions for felony drug offenses.

At the sentencing hearing on April 23, 1996, the court found Defendant's: 1) total offense level to be 43; 2) criminal history category to be III; and 3) guideline range to be life imprisonment for the drug conspiracy offense in Count 1 based on 21 U.S.C. § 851 enhancing the statutory minimum sentence, five years consecutive for the first Section 924(c) offense in Count 10,**{2022 U.S. Dist. LEXIS 3}** life imprisonment consecutive for the second Section 924(c) offense in Count 11, and not more than forty years concurrent for the destruction of property offense in Count 12. (See Doc. No. 970; Doc. No. 971, p. 69; Transcript of Sentencing Hearing, April 23, 1996). The Court imposed a sentence of life imprisonment on Count 1; a term of 480 months imprisonment on Count 12, to be served concurrently; a term of 60 months imprisonment on Count 10 to be served consecutive to the terms imposed on Counts 1 and 12, and a term of life imprisonment on Count 11 to be served consecutive to the terms imposed on Counts 1, 10, and 12 . (Doc. No. 971, pp. 72-73). The Court also imposed a term of supervised release for ten years for Count 1, three years on Count 10, and five years on Counts 11 and 12, all to run concurrently. (Id. at p. 73). Defendant appealed his convictions and sentence, both of which were affirmed by the Fourth Circuit. United States v. Hall, 129 F.3d 1261, 1997 WL 712885 (4th Cir. 1997); cert. denied 524 U.S. 932, 118 S. Ct. 2331, 141 L. Ed. 2d 704 (1998). Defendant has also filed multiple motions pursuant to 28 U.S.C. § 2255 challenging his sentence, and the denial of those motions has been affirmed or dismissed on appeal. See United States v. Hall, No. 3:95-CR-5-FDW-1, 2021 U.S. Dist. LEXIS 170668, 2021 WL 4129619, at *1 (W.D.N.C. Sept. 9, 2021) (collecting cases), aff'd as modified, No. 21-7350, 2021 U.S. App. LEXIS 34677, 2021 WL 5445974 (4th Cir. Nov. 22, 2021).

The Court subsequently**{2022 U.S. Dist. LEXIS 4}** denied Defendant's motions for sentence reduction made pursuant to Amendments 706, 750, and 782 of the United States Sentencing Guidelines, finding there was no change in the Guideline calculation for Defendant. (Doc. Nos. 828, 921, 962). Accordingly, Defendant's original sentence remains in place, of which he has served *approximately* 325 months as of the date of this Order, and he does not have a projected release date because he is serving multiple life sentences. (Doc. Nos. 920, p. 4; 1018, pp. 3, 6).

**II. Sentence Reduction Pursuant to Section 404 of the First Step Act**

Defendant seeks relief pursuant to Section 404 of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, which made the Fair Sentencing Act of 2010, Pub. L. No. 111-220, retroactive. The Fair Sentencing Act described itself as intended "[t]o restore fairness to Federal cocaine sentencing." Id., 124 Stat. at 2372. In Section 2, labeled "Cocaine Sentencing Disparity Reduction," the Fair Sentencing Act increased the quantities applicable to cocaine base to 280 grams for the ten-year mandatory minimum and to 28 grams for the five-year mandatory minimum. Id. § 2, 124 Stat. at 2372 (codified at 21 U.S.C. § 841(b)(1)). In Section 3, the Fair Sentencing Act eliminated the mandatory minimum sentence for "simple possession" of cocaine base. Fair Sentencing Act § 3, 124 Stat. at 2372 (codified at 21 U.S.C. § 844(a)).

With its enactment in 2018, Section 404 of the First Step Act gives retroactive effect to the changes**{2022 U.S. Dist. LEXIS 5}** made by Sections 2 and 3 of the Fair Sentencing Act of 2010 and allows the court that imposed a sentence for a covered offense to exercise its discretion to impose a reduced sentence as if Section 2 or 3 of the Fair Sentencing Act of 2010 were in effect at the time the covered offense was committed. Id. The Fourth Circuit has explained the impact:

> [B]efore the Fair Sentencing Act, crack cocaine trafficking offenses fell into three brackets: (1) offenses involving 50 or more grams, which were punished by 10 years to life in prison, see 21 U.S.C. § 841(b)(1)(A)(iii) (2006); (2) offenses involving between 5 and 50 grams, which were





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punished by 5 to 40 years in prison, see 21 U.S.C. § 841(b)(1)(B)(iii) (2006); and (3) offenses involving less than 5 grams (or an unspecified amount), which were punished by 0 to 20 years in prison, see 21 U.S.C. § 841(b)(1)(C) (2006). The Fair Sentencing Act's amendments to Subsections 841(b)(1)(A)(iii) and (B)(iii) shifted all three brackets upward, so that now (1) offenses involving 280 or more grams are punished by 10 years to life in prison, see 21 U.S.C. § 841(b)(1)(A)(iii) (2018); (2) offenses involving between 28 and 280 grams are punished by 5 to 40 years in prison, see 21 U.S.C. § 841(b)(1)(B)(iii) (2018); and (3) offenses involving less than 28 grams (or an unspecified amount) are punished by 0 to 20 years in prison, see**{2022 U.S. Dist. LEXIS 6}** 21 U.S.C. § 841(b)(1)(C) (2018).United States v. Woodson, 962 F.3d 812, 815 (4th Cir. 2020).

**A. Standard of Review**

This court must first determine whether Defendant's sentence satisfies the explicit criteria to *qualify* for reduction under the First Step Act, and, if so, then the court is given discretion to *impose* a reduced sentence as if the Fair Sentencing Act were in effect at the time the covered offense was committed. The Fourth Circuit has explained:

> [A] district court presented with a First Step Act motion to reduce a sentence must first determine whether the sentence qualifies for reduction - i.e., whether it is eligible for consideration on the merits. This eligibility determination is not a function of discretion but simply of applying the explicit criteria set forth in the First Step Act. *First*, the sentence sought to be reduced must be for a "covered offense" - that is, "a violation of a Federal criminal statute the statutory penalties for which were modified by section 2 or 3 of the Fair Sentencing Act of 2010, and that was committed before August 3, 2010." First Step Act, § 404(a), 132 Stat. at 5222 (citation omitted). We have concluded that a "covered offense" includes violations under 21 U.S.C. §§ 841(b)(1)(A)(iii), (b)(1)(B)(iii), and (b)(1)(C). *Second*, the motion for a reduction must be addressed to the court that imposed the subject sentence.**{2022 U.S. Dist. LEXIS 7}** First Step Act, § 404(b), 132 Stat. at 5222; cf. 28 U.S.C. § 2255(a) (requiring that § 2255 motions challenging sentences be made to "the court which imposed the sentence"). And *third*, the sentence must not have been "previously imposed or previously reduced" under the Fair Sentencing Act and must not have been the subject of a motion made after enactment of the First Step Act that was denied "after a complete review of the motion on the merits." First Step Act, § 404(c), 132 Stat. at 5222.
>
> Upon determining that a sentence qualifies for review on the merits, the court is then given discretion to impose a reduced sentence as if the Fair Sentencing Act were in effect at the time the covered offense was committed. First Step Act, § 404(b), 132 Stat. at 5222. The stated policy governing the exercise of this discretion is to bring a sentence that is qualified for reduction in line with a sentence that the court would have imposed under the Fair Sentencing Act had it been in effect. [See Fact Sheet, Senate Comm. on the Judiciary, The First Step Act of 2018 (S. 3649) - as Introduced (Nov. 15, 2018)].
>
> To determine the sentence that the court would have imposed under the Fair Sentencing Act, the court must engage in a brief analysis that involves the recalculation of the Sentencing Guidelines in**{2022 U.S. Dist. LEXIS 8}** light of intervening case law and a brief reconsideration of the factors set forth in 18 U.S.C. § 3553(a). And in considering the § 3553(a) factors, the court can take into account a defendant's conduct after his initial sentencing.United States v. Lancaster, 997 F.3d 171, 174-75 (4th Cir. 2021) (internal case citations and quotations omitted; emphasis in original); see also Collington, 995 F.3d at 355.

The Fourth Circuit requires that the imposition of a reduced sentence be procedurally and





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substantively reasonable, which means that in exercising its discretion, the district court must "consider a defendant's arguments, give individual consideration to the defendant's characteristics in light of the § 3553(a) factors, determine-following the Fair Sentencing Act-whether a given sentence remains appropriate in light of those factors, and adequately explain that decision." Collington, 995 F.3d at 360 (citations omitted). Notwithstanding the procedural and substantive reasonableness requirements in this Circuit, the Court is not required to engage in a complete resentencing of Defendant:

> Engaging in this analysis nonetheless leaves the court with much discretion, and the analysis is not intended to constitute a plenary resentencing. Moreover, the analysis is not intended to be a complete or new relitigation of Guidelines issues or the § 3553(a) factors.**{2022 U.S. Dist. LEXIS 9}** Rather, the scope of the analysis is defined by the gaps left from the original sentencing to enable the court to determine what sentence it would have imposed under the Fair Sentencing Act in light of intervening circumstances. If, after conducting the analysis, the court determines that the sentence would not be reduced, then no relief under the First Step Act is indicated.Lancaster, 997 F.3d at 175 (case citations omitted); see also Collington, 995 F.3d at 358 ("Ultimately, the First Step Act contemplates a robust resentencing analysis, albeit not a plenary resentencing hearing."); but see Lancaster, 997 F.3d at 178 (Wilkinson, J., concurring) ("[O]ur circuit, notwithstanding the protestations, has come very close to requiring a plenary resentencing at a more than ten-year remove from the most relevant evidence."). Bearing these principles in mind, the Court turns to Defendant's arguments.

**B. First Step Act**

Defendant asks this Court to reduce his sentence to time served with no supervised release and, in doing so, to conduct a "full resentencing hearing' on all counts." (Doc. Nos. 1048, 1049). As to Defendant's request for a hearing, the Fourth Circuit has recognized a defendant need not be present when considering his motions for sentence reduction pursuant**{2022 U.S. Dist. LEXIS 10}** to the First Step Act. United States v. Collington, 995 F.3d 347, 360 (4th Cir. 2021) (noting "procedural reasonableness in this context [of a First Step Act motion under Section 404(b)] would not require the district court to hold a resentencing hearing") see also Fed. R. Crim. P. 43(b) ("A defendant need not be present under any of the following circumstances: . . . (4) Sentence Correction. The proceeding involves the correction or reduction of sentence under Rule 35 or 18 U.S.C. § 3582(c)."); Dillon v. United States, 560 U.S. 817, 825-828, 130 S. Ct. 2683, 177 L. Ed. 2d 271 (2010); United States v. Barraza, No. 3:07-CR-00079-FDW, 2021 U.S. Dist. LEXIS 197786, 2021 WL 4810338, at *1 (W.D.N.C. Oct. 14, 2021) ("Dillon and the express terms of Rule 43(b)'s reference to '18 U.S.C. § 3582(c)' in its entirety and without limitation to subsection necessarily means a defendant is not required to be present for sentence reduction proceedings conducted pursuant to § 3582(c)(1)(A), § 3582(c)(1)(B), or § 3582(c)(2)."). Accordingly, no hearing is required, and that motion is denied.

Here, Defendant's 1995 conviction for conspiracy to possess with intent to distribute cocaine base qualifies for a sentence reduction under the First Step Act. See First Step Act § 404(a), 132 Stat. at 5222; see also Lancaster, 997 F.3d at 174 (4th Cir. 2021) ("We have concluded that a "covered offense" includes violations under 21 U.S.C. §§ 841(b)(1)(A)(iii), (b)(1)(B)(iii), and (b)(1)(C)." (Citations omitted)). None of Defendant's other convictions from 1995 qualify as "covered offenses."

Having determined Defendant qualifies for a reduction, the Court turns to the merits of Defendant's motion seeking**{2022 U.S. Dist. LEXIS 11}** reduction to time served and no supervised release. In conducting this analysis, the Court has reviewed the record, the parties' arguments, the new advisory guideline range, and all relevant factors under 18 U.S.C. § 3553(a). See, e.g., Chavez-Meza v. United States, 138 S. Ct. 1959, 1966-68, 201 L. Ed. 2d 359 (2018); Lancaster, 997 F.3d at 176;





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Collington, 995 F.3d at 360; Chambers. 956 F.3d at 671-75; United States v. May, 783 F. App'x 309, 310 (4th Cir. 2019) (per curiam) (unpublished).

Defendant's recalculated guidelines range results in a new advisory guideline range of 360 months to 720 months with 12 years of supervised release.2 (See Doc. No. 1018, pp. 2-3). In this case, Defendant's indictment did not charge a drug quantity. (Doc. No. 3). Under the First Step Act, "A defendant cannot be resentenced under a statute carrying a mandatory minimum sentence when he or she was not indicted for any particular drug quantity and the jury was never required to make a finding that would support the application of a mandatory minimum." Jones v. United States, 431 F.Supp.3d 740, 751 (E.D. Va. 2020). In such situations, defendants must be resentenced for an unspecified drug quantity pursuant to § 841(b)(1)(C), which carries no minimum and a maximum sentencing range of 20 years. Id.; see also Collington, 995 F.3d at 356 (holding that a district court abuses its discretion if it lets stand a sentence that exceeds the statutory maximum established by the Fair Sentencing Act). Defendant's § 851 enhancement would elevate the statutory**{2022 U.S. Dist. LEXIS 12}** maximum for his drug conviction to 30 years. 21 U.S.C. § 841(b)(1)(C). And, since Defendant was also convicted of violating 21 U.S.C. § 860, his statutory penalty for the drug offense is twice the maximum punishment authorized by Section 851(b), including twice the term of supervised release, thus resulting in a statutory maximum of 720 months imprisonment and 12 months of supervised release.

The Government concedes this Court is required to reduce Defendant's drug-trafficking sentence to a term no greater than 720 months in prison for his drug-trafficking offenses and argues no further reduction is warranted in light consideration of the applicable § 3553(a) factors. In considering the relevant 18 U.S.C. § 3553(a) factors,3 the Court can consider Defendant's sentence-modification arguments and post-sentencing mitigation evidence provided in support of the instant motion. See, e.g., Chavez-Meza v. United States, __ U.S. __, 138 S. Ct. 1959, 201 L. Ed. 2d 359 (2018) (explaining obligations of district judge in addressing sentence-modification motion under 18 U.S.C. § 3582(c)(2)); United States v. Martin, 916 F.3d 389 (4th Cir. 2019) (applying Chavez-Meza and explaining obligation of district judge to consider post-sentencing mitigation evidence and provide rationale in addressing § 3582(c)(2) sentence-modification motion).

Looking to the nature and circumstances of the offense, the Court notes the original sentencing judge's characterization**{2022 U.S. Dist. LEXIS 13}** of Defendant's conviction when imposing the original sentence. There, the sentencing judge stated:

> Mr. Hall, the crimes for which you have been convicted are extremely serious. They are among the most serious that I have seen in a long time. Your activity in connection with the pursuit to those crimes is particularly egregious. The record shows beyond any serious question that you were responsible in large measure for the distribution of very substantial amounts of drugs, and for much violence in association with that, and for involving many young people in pursuant of your greed.(Doc. No. 971, p. 72). The record, including the sentencing transcript and the Fourth Circuit's summation of the trial evidence, supports this conclusion regarding the serious nature of Defendant's offenses. See Hall, 129 F.3d 1261, 1997 WL 712885 *1 (summarizing evidence at trial regarding Defendant's participation in home invasions using firearms, firebombing, engagement of juveniles for criminal conduct, and conversations with others whereby Defendant agreed to be a hitman for assaults on others). The offense conduct also includes Defendant's participation in dealing drugs within 1000 feet of a school or playground, and Defendant's criminal**{2022 U.S. Dist. LEXIS 14}** history indicates he had a previous conviction for a drug transaction near a school in New Haven, Connecticut. (Doc. No. 970). In addition, the offenses for which he is currently incarcerated occurred while Defendant was on probation. (Id.)





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The record also reflects Defendant, who is approximately 58 years old, has accumulated 77 disciplinary citations while in the Bureau of Prisons, several of which include citations for threatening bodily harm, possessing a weapon, and assault. Defendant asserts these incidents have lessened in recent years and contends his mental health conditions negate the import of these disciplinary citations. Notwithstanding the mitigating impact of his mental health and improved behavior, Defendant's conduct while incarcerated is indicative of the need for adequate deterrence and to protect the public.

While the Court commends Defendant for his successful participation in dozens of programs while in prison, the completion of these programs is not remarkable given the length of time Defendant has been incarcerated. See United States v. High, 997 F.3d 181, 190 (4th Cir. 2021) (recognizing "While these are certainly positive factors, they are much more similar to the various educational courses Chavez-Meza had taken{**2022 U.S. Dist. LEXIS 15**} in prison than to the exceptional post-sentencing conduct of the defendants in Martin and McDonald." (citing Chavez-Meza, 138 S. Ct. at 1967; Martin, 916 F.3d at 396; United States v. McDonald, 986 F.3d 402, 412 (4th Cir. 2021)).

The Court finds that the balancing of § 3553(a) factors, when considered for this Defendant under this record and including his positive post-sentencing rehabilitation, counsel that a sentence reduction to a new imposed sentence of 720 months for Count 1 is appropriate. In so ruling, the Court leaves intact the ten years of supervised release as originally imposed for that Count.

**III. Compassionate Release Pursuant to 18 U.S.C. § 3582(c)(1)(a)**

Defendant has filed multiple motions seeking compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A). Following enactment of the First Step Act, "§ 3582(c) permits incarcerated persons to file motions for compassionate release directly with the district court so long as they first exhaust their administrative remedies." United States v. Kibble, 992 F.3d 326, 330 (4th Cir. 2021) (per curiam). If an inmate has exhausted his or her administrative remedies, the court-in its discretion-may grant an inmate's motion for compassionate release if the court: 1) finds extraordinary and compelling reasons warrant a sentence reduction, and 2) considers the relevant 18 U.S.C. § 3553(a) sentencing factors. 18 U.S.C. § 3582(c)(1)(A); see also Kibble, 992 F.3d at 330-31, 331 n.3 (per curiam) ("In stark contrast to the portion of the statute that requires a sentence{**2022 U.S. Dist. LEXIS 16**} reduction to be 'consistent with applicable policy statements,' § 3582(c)(1) merely requires district courts to 'consider[ ]' the relevant § 3553(a) factors. We understand this language as providing district courts with procedural guardrails for exercising their discretion, not creating a substantive prerequisite to compassionate release.").

Here, the parties do not seem to dispute whether the administrative exhaustion requirement is satisfied. The Court thus turns its analysis to whether extraordinary and compelling reasons exist to reduce Defendant's sentence and consideration of the relevant § 3553(a) factors.

Defendant presents several arguments to support his compassionate release motions, and the Court addresses two in detail: (1) the combined impact of Defendant's health conditions and the COVID-19 virus, and (2) the changes in law for the life sentence imposed for his "stacked" Section 924(c) offenses. The Court addresses these in turn.

After reviewing the record, the Court concludes that Defendant's reliance on the combined impact of his health conditions and the impact of the COVID-19 virus fail to demonstrate extraordinary and compelling circumstances to warrant a reduction. See Kibble, 992 F.3d at 333-34 (Gregory, C.J., concurring) (recognizing{**2022 U.S. Dist. LEXIS 17**} requirement of "fact-intensive inquiry" that considers "circumstances that, collectively, qualif[y] as extraordinary and compelling" (citations omitted)). The Court acknowledges the seriousness of Defendant's asserted medical conditions, but





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these conditions-several of which are chronic-do not rise to the level of "extraordinary or compelling" under this record, particularly where Defendant's health records indicate that he has been receiving regular medical care and medications for his underlying health conditions. Defendant has not presented evidence that he is experiencing a serious deterioration in his physical or mental health because of his age.

Defendant argues that his imprisonment during the COVID-19 pandemic-something not anticipated by the sentencing court-increased his prison sentence's punitive effect, making it a "death sentence," and constitutes extraordinary and compelling circumstances that warrant a sentence reduction. As my fellow colleague from the Middle District of North Carolina has explained:

> While circumstances that "undoubtedly increase a prison sentence's punitive effect" may constitute extraordinary and compelling circumstances in some individual cases, United States v. Kibble, 992 F.3d 326, 336 (4th Cir. 2021) (Gregory,**{2022 U.S. Dist. LEXIS 18}** J., concurring), if every defendant who experiences hardship during their incarceration is entitled to a finding of extraordinary and compelling circumstances, compassionate release would become the "exception that swallows the general rule of finality." United States v. Hancock, No. 1:06-CR-206-2, 2021 U.S. Dist. LEXIS 41526, 2021 WL 848708, at *5 (M.D.N.C. Mar. 5, 2021). This is particularly true of inmates confined in congregate living situations during the COVID-19 pandemic.United States v. Chavis, No. 1:18-CR-481-3, 2021 U.S. Dist. LEXIS 124143, 2021 WL 2784653, at *3 (M.D.N.C. July 2, 2021). Moreover, the "hardships" that Defendant claims to have experienced in prison during the COVID-19 pandemic are not particular to Defendant. "Many inmates, as well as non-incarcerated individuals, have been infected with the COVID-19 virus and survived (or feared being infected with the virus), lost close relatives or friends due to the pandemic, and endured isolation, limits on movement, and other restrictive protocols during the pandemic." United States v. Hood, No. 5:18-CR-5-KDB, 2021 U.S. Dist. LEXIS 147401, 2021 WL 3476142, at *1 (W.D.N.C. Aug. 6, 2021) (collecting cases). Thus, Defendant's incarceration during the pandemic does not constitute an "extraordinary and compelling" circumstance warranting early release. The Court also concludes Defendant has failed to carry his burden to sufficiently establish that**{2022 U.S. Dist. LEXIS 19}** the *combined* impact of Defendant's underlying health conditions, the threat of the COVID-19 pandemic, and the conditions of his confinement within the Bureau of Prisons' system where he is receiving adequate medical care for his conditions warrants a sentence reduction under § 3582(c)(1)(A)(i).4

Next, Defendant argues that the life sentence imposed for his second Section 924(c) offense is an extraordinary or compelling circumstance justifying his compassionate release. Section 403(a) of the First Step Act of 2018 amended 18 U.S.C. § 924(c) to remove the possibility that a defendant will receive "stacked" § 924(c) sentences by requiring that the 25-year mandatory minimum that applies for a second or successive § 924(c) conviction applies only "when a prior § 924(c) conviction arises from a separate case and already has become final." First Step Act of 2018 § 403(a), Pub. L. No. 115-391, 132 Stat. 5194, 5222. This amendment, however, did not apply retroactively to sentences imposed before December 21, 2018, the effective date of the First Step Act. Id. § 403(b). Therefore, Defendant was not entitled to seek a reduction of his sentence under this provision.

In McCoy, however, the Fourth Circuit recognized that district courts may "consider changes in sentencing law as part of the 'extraordinary and compelling reasons' inquiry." 981 F.3d at 287-88**{2022 U.S. Dist. LEXIS 20}**. Specifically, in McCoy, the Fourth Circuit affirmed the district courts' findings that "the severity of a § 924(c) sentence, combined with the enormous disparity between that sentence and the sentence a defendant would receive today, can constitute an 'extraordinary and compelling' reason for relief under § 3582(c)(1)(A)." Id. at 285. "Nothing in McCoy, however, requires the court to reduce a defendant's sentence once the defendant shows that new





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statutory or case law would have benefitted the defendant, if such law had existed at the time of the defendant's sentencing." United States v. Spencer, 521 F. Supp. 3d 606, 610 (E.D. Va.), aff'd, 853 F. App'x 833 (4th Cir. 2021). Rather, the Court cautioned that the determination of whether a sentence reduction should be based on a "full consideration of the Defendant's individual circumstances," including the length of time already served, any rehabilitative efforts made while incarcerated, the defendant's prior criminal history, and the defendant's age at the time of the offense. McCoy, 981 F.3d at 286.

Here, the Court originally imposed sentences of life imprisonment plus five years for Defendant's "stacked" § 924(c) convictions. If sentenced today on the offenses as charged, Defendant would likely receive a much lighter, though still very lengthy, sentence. He would receive at least five years imprisonment for his first § 924(c) conviction (Count 10) and a consecutive sentence of at least 30 years in prison for his § 924(c) offense involving a destructive device (Count 11). Combined with the 720-month term for Defendant's drug-trafficking offense, Defendant's firearm convictions would result in an aggregate sentence of 1,140 months, or 95 years, in prison-still a very lengthy sentence. Considering the severity of the Defendant's stacked § 924(c) sentences, combined with the disparity between that sentence and the sentence he would likely receive today, the Court concludes that the Defendant has established an "extraordinary and compelling" reason for a sentenced reduction.

Defendant's multiple pending motions and filings with this Court assert other alleged "extraordinary and compelling" reasons to further reduce his sentence. The Court recognizes it is "empowered . . . to**{2022 U.S. Dist. LEXIS 21}** consider *any* extraordinary and compelling reason for release" and the Court has done so by considering all reasons Defendant has raised in his various motions. McCoy, 981 F.3d at 284 (4th Cir. 2020) (quotation omitted; emphasis in original). Other than the extraordinary and compelling reasons noted herein, the Court rejects his remaining arguments, including those regarding alleged "errors" in calculating his sentence and the application of the rule of lenity. In so ruling, the Court DENIES Defendant's request to have additional briefing "for the parties to include Count (12) in their briefing." (Doc. No. 1092).

Because the Court finds Defendant has sufficiently met his burden of establishing an "extraordinary and compelling circumstance" for a sentence reduction on his stacked Section 924(c) offenses, the Court considers whether a reduction in the sentence imposed for Counts 10 and 11 is warranted under this record and in consideration of the applicable § 3553(a) factors. High, 997 F.3d at 186 ("[I]f a court finds that a defendant has demonstrated extraordinary and compelling reasons, it is still not required to grant the defendant's motion for a sentence reduction. Rather, it must 'consider[]' the § 3553(a) sentencing factors 'to the extent that they are applicable' in**{2022 U.S. Dist. LEXIS 22}** deciding whether to exercise its discretion to reduce the defendant's term of imprisonment. 18 U.S.C. § 3582(c)(1)(A).").

In reconsidering all § 3553(a) sentencing factors applicable here, the Court incorporates its prior analysis of the § 3553(a) in the section above addressing Defendant's motions pursuant to the First Step Act. Additionally, and as noted above, there is a considerable disparity between the sentence Defendant received for his § 924(c) convictions in 1996 and what he would likely receive for those offenses today. Thus, granting Defendant compassionate release would not create any unwarranted sentencing disparities.

In addition, as McCoy instructs, the Court considers that Defendant has served appropriately 325 months of his sentence, he has made some rehabilitative efforts while incarcerated (although, as stated above, these are not remarkable given the length of time Defendant has been in the BOP system), and Defendant's age of thirty-one years old at the time of the offense. 981 F.3d at 286. For all these reasons, the Court concludes that the relevant § 3553(a) factors and the McCoy





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considerations weigh in favor of granting a reduction of the Defendant's term of imprisonment for the two § 924(c) offenses (Counts 10 and 11) to an aggregate total of{**2022 U.S. Dist. LEXIS 23**} 420 months to run consecutively to Defendant's sentence for the drug-trafficking offense (Count 1).

III. Conclusion

For the reasons above, IT IS THEREFORE ORDERED that the Court GRANTS in part and DENIES in part Defendant's Motions for Relief Under the First Step Act and for Compassionate Release. (Doc. Nos. 1048, 1053, 1071). Defendant's sentence is reduced to an aggregate term of imprisonment of 1,140 months and ten years of supervised release.

IT IS FURTHER ORDERED that Defendant's related motions (Doc. Nos. 1049, 1076, 1081) are DENIED AS MOOT.

IT IS FURTHER ORDERED that Defendant's motions to file supplemental responses (Doc. No. 1092, 1094) and Motion to Receive a Courtesy Copy certain docket filings (Doc. No. 1096) are DENIED.

IT IS FURTHER ORDERED that Defendant's Motion for Sanctions (Doc. No. 1097) is DENIED.

IT IS SO ORDERED.

Signed: February 28, 2022

/s/ Frank D. Whitney

Frank D. Whitney

United States District Judge

**Footnotes**

1

The Court notes that Defendant previously filed a motion seeking a reduction in sentence pursuant to the First Step Act, (Doc. No. 1004), and, as a result of that filing, the Probation Office prepared and filed the Supplemental First Step Act PSR (Doc. No. 1018). Defendant subsequently withdrew his original First Step Act motion, (Doc. No. 1023). In light of Defendant's refiling of motions seeking a reduction pursuant to the First Step Act and based on the arguments contained therein, the Supplemental First Step Act PSR is relevant and applicable to the motions at bar.

2

This is based on a total offense level of 40 and criminal history category III, and it also takes into consideration the fact the statutory maximum, as explained herein, is less than the maximum guidelines range of 360 months to life. See U.S.S.G. § 5G1.1.

3

In considering whether a reduced sentence is warranted given the applicable § 3553(a) factors, the Court considers "the nature and circumstances of the offense;" "the history and characteristics of the defendant;" "the need to avoid unwarranted sentence disparities;" and the need for the sentence to "provide just punishment," "afford adequate deterrence," "protect the public," and "provide the defendant with . . . training, medical care, or other correctional treatment in the most effective manner." 18 U.S.C. § 3553(a).

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See e.g., Kibble, 992 F.3d at 333-34 (Gregory, C.J., concurring) ("Here, Mr. Kibble identified three circumstances that, collectively, qualified as extraordinary and compelling: (1) the uncontrolled spread of COVID-19 at FCI Elkton, (2) his tricuspid atresia, and (3) his non-alcohol related cirrhosis of the liver. The district court agreed and so found. At the time of Mr. Kibble's motion, nearly 25% of Elkton's population had contracted COVID-19; nine inmates had died as a result. The ACLU of Ohio and the Ohio Justice & Policy Center had named FCI Elkton as a defendant in a class action suit challenging the facility's conditions of confinement during the pandemic. And, at the time of Mr. Kibble's motion, Elkton was subject to a preliminary injunction aimed at correcting the facility's mismanagement. See Wilson v. Williams, 455 F. Supp. 3d 467, (N.D. Ohio 2020), vacated by Wilson v. Williams, 961 F.3d 829, 833 (6th Cir. 2020). This combination of factors rightly gave rise to the extraordinary and compelling circumstances animating this case."). In contrast, Defendant here has failed to provide a sufficient combination of factors, supported by the record, to support a finding of extraordinary and compelling reasons.





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HAZOB 540*23 * SENTENCE MONITORING * 04-22-2024
PAGE 001 * COMPUTATION DATA * 09:24:52
AS OF 04-22-2024

REGNO..: 11691-058 NAME: HALL, MARC PIERRE

FBI NO.....: 85526X3 DATE OF BIRTH: 06-03-1964 AGE: 59
ARS1.....: HAZ/A-DES
UNIT.....: 5 GP QUARTERS.....: E01-116L
DETAINERS.....: NO NOTIFICATIONS: NO

FSA ELIGIBILITY STATUS IS: INELIGIBLE

THE FOLLOWING SENTENCE DATA IS FOR THE INMATE'S CURRENT COMMITMENT.

HOME DETENTION ELIGIBILITY DATE....: 06-08-2076

THE INMATE IS PROJECTED FOR RELEASE: 12-08-2076 VIA GCT REL

----------CURRENT JUDGMENT/WARRANT NO: 010 ----------

COURT OF JURISDICTION.....: NORTH CAROLINA, WESTERN DISTRICT
DOCKET NUMBER.....: 3:95CR00005-001
JUDGE.....: PAYNE
DATE SENTENCED/PROBATION IMPOSED: 04-23-1996
DATE COMMITTED.....: 06-18-1996
HOW COMMITTED.....: US DISTRICT COURT COMMITMENT
PROBATION IMPOSED.....: NO

| | FELONY ASSESS | MISDMNR ASSESS | FINES | COSTS |
|---|---|---|---|---|
| NON-COMMITTED.: | $150.00 | $00.00 | $00.00 | $00.00 |

RESTITUTION...: PROPERTY: NO SERVICES: NO AMOUNT: $00.00

----------CURRENT OBLIGATION NO: 010 ----------
OFFENSE CODE....: 123 18:844 EXPLOSIVES PROP DESTR FSA INELIGIBLE
OFF/CHG: 18 USC:844(I)-DAMAGE OF REAL PROPERTY AFFECTING INTERSTATE COMMERCE (CT.12)

SENTENCE PROCEDURE.....: 3559 SRA SENTENCE
SENTENCE IMPOSED/TIME TO SERVE.: 480 MONTHS
TERM OF SUPERVISION.....: 5 YEARS
RELATIONSHIP OF THIS OBLIGATION
TO OTHERS FOR THE OFFENDER....: CC 020 OBLIG
DATE OF OFFENSE.....: 07-15-1994

G0002 MORE PAGES TO FOLLOW . . .

Appendix - D

REGNO..: 11691-058 NAME: HALL, MARC PIERRE

----------CURRENT OBLIGATION NO: 020 ----------
OFFENSE CODE....: 130 18:924(C) FIREARMS LAWS FSA INELIGIBLE
OFF/CHG: 18 USC:924(C)(1)-POSSESS FIREARM, DESTRUCTIVE DEVICE IN
RELATION TO DRUG TRAFFICKING CRIME (CT.10,11)

SENTENCE PROCEDURE.....: 3559 SRA SENTENCE
SENTENCE IMPOSED/TIME TO SERVE.: LIFE
TERM OF SUPERVISION.....: 5 YEARS
NEW SENTENCE IMPOSED.....: 35 YEARS
BASIS FOR CHANGE.....: 1ST STEP ACT CRK COCN
RELATIONSHIP OF THIS OBLIGATION
TO OTHERS FOR THE OFFENDER....: CC TO 010 OBLIG
DATE OF OFFENSE.....: 07-15-1994

REMARKS.....: TOTAL SENTENCE FOR THIS OBLIGATION EQUALS LIFE + 60 MOS CS

----------CURRENT COMPUTATION NO: 010 ----------

COMPUTATION 010 WAS LAST UPDATED ON 12-12-2023 AT DSC AUTOMATICALLY
COMPUTATION CERTIFIED ON 03-09-2022 BY DESIG/SENTENCE COMPUTATION CTR

THE FOLLOWING JUDGMENTS, WARRANTS AND OBLIGATIONS ARE INCLUDED IN
CURRENT COMPUTATION 010: 010 010, 010 020

DATE COMPUTATION BEGAN.....: 04-23-1996
AGGREGATED SENTENCE PROCEDURE...: AGGREGATE GROUP 800
TOTAL TERM IN EFFECT.....: 35 YEARS
TOTAL TERM IN EFFECT CONVERTED..: 35 YEARS
AGGREGATED TERM OF SUPERVISION..: 5 YEARS
EARLIEST DATE OF OFFENSE.....: 07-15-1994

| JAIL CREDIT..... | FROM DATE | THRU DATE |
|---|---|---|
| | 01-24-1995 | 04-22-1996 |

G0002 MORE PAGES TO FOLLOW . . .

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REGNO..: 11691-058 NAME: HALL, MARC PIERRE

TOTAL PRIOR CREDIT TIME.....: 455
TOTAL INOPERATIVE TIME.....: 0
TOTAL GCT EARNED AND PROJECTED..: 1552
TOTAL GCT EARNED.....: 1228
STATUTORY RELEASE DATE PROJECTED: 10-23-2025
ELDERLY OFFENDER TWO THIRDS DATE: 05-25-2018
EXPIRATION FULL TERM DATE.....: 01-22-2030
TIME SERVED.....: 29 YEARS 2 MONTHS 30 DAYS
PERCENTAGE OF FULL TERM SERVED..: 83.5
PERCENT OF STATUTORY TERM SERVED: 95.1

PROJECTED SATISFACTION DATE.....: 10-23-2025
PROJECTED SATISFACTION METHOD...: GCT REL

REMARKS.....: RE-COMP TO SEPARATE SRA/VCCLA DUE TO DISCIPLINE ACTION
ALSO, SEPARATE 924(C) CAUSING 020 OBLIGATION.
TOTAL SENTENCE FOR COMP 010 IS LIFE + 60 MOS CS TO COMP 020
3-9-22 RCVD REDUCTION FRM LIFE TO 95YRS(010COMP=35Y & 020COMP=
60Y FOR TOTAL OF 95YRS),IF SRD IS CHANGED ON 010COMP THE DCB
ON 020COMP NEEDS TO MATCH SRD ON THE 010COMP C/DCC.
12-12-23 SPLIT JUDGMENTS-010 & 020 COMPS PREVIOUSLY SHARED SJW
C/ASJ.

G0002 MORE PAGES TO FOLLOW . . .

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HAZOB 540*23 * SENTENCE MONITORING * 04-22-2024
PAGE 004 * COMPUTATION DATA * 09:24:52
AS OF 04-22-2024

REGNO..: 11691-058 NAME: HALL, MARC PIERRE

FBI NO.....: 85526X3 DATE OF BIRTH: 06-03-1964 AGE: 59
ARS1.....: HAZ/A-DES
UNIT.....: 5 GP QUARTERS.....: E01-116L
DETAINERS.....: NO NOTIFICATIONS: NO

FSA ELIGIBILITY STATUS IS: INELIGIBLE

THE FOLLOWING SENTENCE DATA IS FOR THE INMATE'S CURRENT COMMITMENT.

HOME DETENTION ELIGIBILITY DATE....: 06-08-2076

THE INMATE IS PROJECTED FOR RELEASE: 12-08-2076 VIA GCT REL

----------CURRENT JUDGMENT/WARRANT NO: 020 ----------

COURT OF JURISDICTION.....: NORTH CAROLINA, WESTERN DISTRICT
DOCKET NUMBER.....: 3:95CR00005-001
JUDGE.....: PAYNE
DATE SENTENCED/PROBATION IMPOSED: 04-23-1996
DATE COMMITTED.....: 06-18-1996
HOW COMMITTED.....: US DISTRICT COURT COMMITMENT
PROBATION IMPOSED.....: NO

| | FELONY ASSESS | MISDMNR ASSESS | FINES | COSTS |
|---|---|---|---|---|
| NON-COMMITTED.: | $50.00 | $00.00 | $00.00 | $00.00 |

RESTITUTION...: PROPERTY: NO SERVICES: NO AMOUNT: $00.00

----------CURRENT OBLIGATION NO: 010 ----------
OFFENSE CODE....: 391 21:846 SEC 841-851 ATTEMPT
OFF/CHG: 18 USC:846-CONSP.TO VIOLATE NARCOTICE LAWS (CT.1)

SENTENCE PROCEDURE.....: 3559 VCCLEA NON-VIOLENT SENTENCE
SENTENCE IMPOSED/TIME TO SERVE.: LIFE
TERM OF SUPERVISION.....: 10 YEARS
NEW SENTENCE IMPOSED.....: 720 MONTHS
BASIS FOR CHANGE.....: 1ST STEP ACT CRK COCN
RELATIONSHIP OF THIS OBLIGATION
TO OTHERS FOR THE OFFENDER....: CS 010 COMP
DATE OF OFFENSE.....: 01-04-1995

G0002 MORE PAGES TO FOLLOW . . .

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HAZOB 540*23 * SENTENCE MONITORING * 04-22-2024
PAGE 005 OF 005 * COMPUTATION DATA * 09:24:52
AS OF 04-22-2024

REGNO..: 11691-058 NAME: HALL, MARC PIERRE

----------CURRENT COMPUTATION NO: 020 ----------

COMPUTATION 020 WAS LAST UPDATED ON 12-12-2023 AT DSC AUTOMATICALLY
COMPUTATION CERTIFIED ON 12-12-2023 BY DESIG/SENTENCE COMPUTATION CTR

THE FOLLOWING JUDGMENTS, WARRANTS AND OBLIGATIONS ARE INCLUDED IN
CURRENT COMPUTATION 020: 020 010

DATE COMPUTATION TO BEGIN.....: 10-23-2025
TOTAL TERM IN EFFECT.....: 720 MONTHS
TOTAL TERM IN EFFECT CONVERTED..: 60 YEARS
EARLIEST DATE OF OFFENSE.....: 01-04-1995

TOTAL PRIOR CREDIT TIME.....: 0
TOTAL INOPERATIVE TIME.....: 0
TOTAL GCT EARNED AND PROJECTED..: 3240
TOTAL GCT EARNED.....: 0
STATUTORY RELEASE DATE PROJECTED: 12-08-2076
ELDERLY OFFENDER TWO THIRDS DATE: 10-23-2065
EXPIRATION FULL TERM DATE.....: 10-22-2085

PROJECTED SATISFACTION DATE.....: 12-08-2076
PROJECTED SATISFACTION METHOD...: GCT REL

SEPARATE SRA/VCCLA DUE TO DISCIPLINE ACTION
3-9-22 RCVD REDUCTION FRM LIFE TO 95YRS(010COMP=35Y & 020COMP=
60Y FOR TOTAL OF 95YRS),UNABLE TO ENTER DGCT PRIOR TO START
DATE ON SGC SCREEN,IF SRD CHNGS ON 010COMP,DCB ON 020COMP NEED
TO MATCH SRD ON 010COMP C/DCC.
12-12-23 SPLIT JUDGMENTS-010 & 020 COMPS PREVIOUSLY SHARED SJW
C/ASJ

G0000 TRANSACTION SUCCESSFULLY COMPLETED

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## § 3632. Development of risk and needs assessment system

**(a) In general.** Not later than 210 days after the date of enactment of this subchapter [enacted Dec. 21, 2018], the Attorney General, in consultation with the Independent Review Committee authorized by the First Step Act of 2018, shall develop and release publicly on the Department of Justice website a risk and needs assessment system (referred to in this subchapter [18 USCS §§ 3631 et seq.] as the "System"), which shall be used to—

**(1)** determine the recidivism risk of each prisoner as part of the intake process, and classify each prisoner as having minimum, low, medium, or high risk for recidivism;

**(2)** assess and determine, to the extent practicable, the risk of violent or serious misconduct of each prisoner;

**(3)** determine the type and amount of evidence-based recidivism reduction programming that is appropriate for each prisoner and assign each prisoner to such programming accordingly, and based on the prisoner's specific criminogenic needs, and in accordance with subsection (b);

**(4)** reassess the recidivism risk of each prisoner periodically, based on factors including indicators of progress, and of regression, that are dynamic and that can reasonably be expected to change while in prison;

**(5)** reassign the prisoner to appropriate evidence-based recidivism reduction programs or productive activities based on the revised determination to ensure that—

**(A)** all prisoners at each risk level have a meaningful opportunity to reduce their classification during the period of incarceration;

**(B)** to address the specific criminogenic needs of the prisoner; and

**(C)** all prisoners are able to successfully participate in such programs;

**(6)** determine when to provide incentives and rewards for successful participation in evidence-based recidivism reduction programs or productive activities in accordance with subsection (e);

**(7)** determine when a prisoner is ready to transfer into prerelease custody or supervised release in accordance with section 3624 [18 USCS § 3624]; and

**(8)** determine the appropriate use of audio technology for program course materials with





Appendix E

an understanding of dyslexia. In carrying out this subsection, the Attorney General may use existing risk and needs assessment tools, as appropriate.

**(b) Assignment of evidence-based recidivism reduction programs.** The System shall provide guidance on the type, amount, and intensity of evidence-based recidivism reduction programming and productive activities that shall be assigned for each prisoner, including—

**(1)** programs in which the Bureau of Prisons shall assign the prisoner to participate, according to the prisoner's specific criminogenic needs; and

**(2)** information on the best ways that the Bureau of Prisons can tailor the programs to the specific criminogenic needs of each prisoner so as to most effectively lower each prisoner's risk of recidivism.

**(c) Housing and assignment decisions.** The System shall provide guidance on program grouping and housing assignment determinations and, after accounting for the safety of each prisoner and other individuals at the prison, provide that prisoners with a similar risk level be grouped together in housing and assignment decisions to the extent practicable.

**(d) Evidence-based recidivism reduction program incentives and productive activities rewards.** The System shall provide incentives and rewards for prisoners to participate in and complete evidence-based recidivism reduction programs as follows:

**(1)** Phone and visitation privileges. A prisoner who is successfully participating in an evidence-based recidivism reduction program shall receive—

**(A)** phone privileges, or, if available, video conferencing privileges, for up to 30 minutes per day, and up to 510 minutes per month; and

**(B)** additional time for visitation at the prison, as determined by the warden of the prison.

**(2)** Transfer to institution closer to release residence. A prisoner who is successfully participating in an evidence-based recidivism reduction program shall be considered by the Bureau of Prisons for placement in a facility closer to the prisoner's release residence upon request from the prisoner and subject to—

**(A)** bed availability at the transfer facility;

**(B)** the prisoner's security designation; and

**(C)** the recommendation from the warden of the prison at which the prisoner is





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incarcerated at the time of making the request.

**(3)** Additional policies. The Director of the Bureau of Prisons shall develop additional policies to provide appropriate incentives for successful participation and completion of evidence-based recidivism reduction programming. The incentives shall include not less than 2 of the following:

**(A)** Increased commissary spending limits and product offerings.

**(B)** Extended opportunities to access the email system.

**(C)** Consideration of transfer to preferred housing units (including transfer to different prison facilities).

**(D)** Other incentives solicited from prisoners and determined appropriate by the Director.

**(4)** Time credits.

**(A)** In general. A prisoner, except for an ineligible prisoner under subparagraph (D), who successfully completes evidence-based recidivism reduction programming or productive activities, shall earn time credits as follows:

**(i)** A prisoner shall earn 10 days of time credits for every 30 days of successful participation in evidence-based recidivism reduction programming or productive activities.

**(ii)** A prisoner determined by the Bureau of Prisons to be at a minimum or low risk for recidivating, who, over 2 consecutive assessments, has not increased their risk of recidivism, shall earn an additional 5 days of time credits for every 30 days of successful participation in evidence-based recidivism reduction programming or productive activities.

**(B)** Availability. A prisoner may not earn time credits under this paragraph for an evidence-based recidivism reduction program that the prisoner successfully completed—

**(i)** prior to the date of enactment of this subchapter [enacted Dec. 21, 2018]; or

**(ii)** during official detention prior to the date that the prisoner's sentence commences under section 3585(a) [18 USCS § 3585(a)].

**(C)** Application of time credits toward prerelease custody or supervised release. Time credits earned under this paragraph by prisoners who successfully participate in recidivism





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reduction programs or productive activities shall be applied toward time in prerelease custody or supervised release. The Director of the Bureau of Prisons shall transfer eligible prisoners, as determined under section 3624(g) [18 USCS § 3624(g)], into prerelease custody or supervised release.

**(D)** Ineligible prisoners. A prisoner is ineligible to receive time credits under this paragraph if the prisoner is serving a sentence for a conviction under any of the following provisions of law:

**(i)** Section 32 [18 USCS § 32], relating to destruction of aircraft or aircraft facilities.

**(ii)** Section 33 [18 USCS § 33], relating to destruction of motor vehicles or motor vehicle facilities.

**(iii)** Section 36 [18 USCS § 36], relating to drive-by shootings.

**(iv)** Section 81 [18 USCS § 81], relating to arson within special maritime and territorial jurisdiction.

**(v)** Section 111(b) [18 USCS § 111(b)], relating to assaulting, resisting, or impeding certain officers or employees using a deadly or dangerous weapon or inflicting bodily injury.

**(vi)** Paragraph (1), (7), or (8) of section 113(a) [18 USCS § 113(a)], relating to assault with intent to commit murder, assault resulting in substantial bodily injury to a spouse or intimate partner, a dating partner, or an individual who has not attained the age of 16 years, or assault of a spouse, intimate partner, or dating partner by strangling, suffocating, or attempting to strangle or suffocate.

**(vii)** Section 115 [18 USCS § 115], relating to influencing, impeding, or retaliating against a Federal official by injuring a family member, except for a threat made in violation of that section.

**(viii)** Section 116 [18 USCS § 116], relating to female genital mutilation.

**(ix)** Section 117 [18 USCS § 117], relating to domestic assault by a habitual offender.

**(x)** Any section of chapter 10 [18 USCS §§ 175 et seq.], relating to biological weapons.





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**(xi)** Any section of chapter 11B [18 USCS §§ 229 et seq.], relating to chemical weapons.

**(xii)** Section 351 [18 USCS § 351], relating to Congressional, Cabinet, and Supreme Court assassination, kidnapping, and assault.

**(xiii)** Section 521 [18 USCS § 521], relating to criminal street gangs.

**(xiv)** Section 751 [18 USCS § 751], relating to prisoners in custody of an institution or officer.

**(xv)** Section 793 [18 USCS § 793 ], relating to gathering, transmitting, or losing defense information.

**(xvi)** Section 794 [18 USCS § 794], relating to gathering or delivering defense information to aid a foreign government.

**(xvii)** Any section of chapter 39 [18 USCS § 831 et seq.], relating to explosives and other dangerous articles, except for section 836 [18 USCS § 836] (relating to the transportation of fireworks into a State prohibiting sale or use).

**(xviii)** Section 842(p) [18 USCS § 842(p)], relating to distribution of information relating to explosives, destructive devices, and weapons of mass destruction, but only if the conviction involved a weapon of mass destruction (as defined in section 2332a(c) [18 USCS § 2332a(c)]).

**(xix)** Subsection (f)(3), (h), or (i) of section 844 [18 USCS § 844], relating to the use of fire or an explosive.

**(xx)** Section 871 [18 USCS § 871], relating to threats against the President and successors to the Presidency.

**(xxi)** Section 879 [18 USCS § 879], relating to threats against former Presidents and certain other persons.

**(xxii)** Section 924(c) [18 USCS § 924(c)], relating to unlawful possession or use of a firearm during and in relation to any crime of violence or drug trafficking crime.

**(xxiii)** Section 1030(a)(1) [18 USCS § 1030(a)(1)], relating to fraud and related activity in connection with computers.

**(xxiv)** Section 1091 [18 USCS § 1091], relating to genocide.





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**(xxv)** Any section of chapter 51 [18 USCS §§ 1111 et seq.], relating to homicide, except for section 1112 [18 USCS § 1112] (relating to manslaughter), 1113 [18 USCS § 1113] (relating to attempt to commit murder or manslaughter, but only if the conviction was for an attempt to commit manslaughter), 1115 [18 USCS § 1115] (relating to misconduct or neglect of ship officers), or 1122 [18 USCS § 1122] (relating to protection against the human immunodeficiency virus).

**(xxvi)** Any section of chapter 55 [18 USCS §§ 1201 et seq.], relating to kidnapping.

**(xxvii)** Any offense under chapter 77 [18 USCS §§ 1581 et seq.], relating to peonage, slavery, and trafficking in persons, except for sections 1593 through 1596 [18 USCS §§ 1593-1596].

**(xxviii)** Section 1751 [18 USCS § 1751], relating to Presidential and Presidential staff assassination, kidnapping, and assault.

**(xxix)** Section 1791 [18 USCS § 1791], relating to providing or possessing contraband in prison.

**(xxx)** Section 1792 [18 USCS § 1792], relating to mutiny and riots.

**(xxxi)** Section 1841(a)(2)(C) [18 USCS § 1841(a)(2)(C)], relating to intentionally killing or attempting to kill an unborn child.

**(xxxii)** Section 1992 [18 USCS § 1992], relating to terrorist attacks and other violence against railroad carriers and against mass transportation systems on land, on water, or through the air.

**(xxxiii)** Section 2113(e) [18 USCS § 2113(e)], relating to bank robbery resulting in death.

**(xxxiv)** Section 2118(c) [18 USCS § 2118(c)], relating to robberies and burglaries involving controlled substances resulting in assault, putting in jeopardy the life of any person by the use of a dangerous weapon or device, or death.

**(xxxv)** Section 2119 [18 USCS § 2119], relating to taking a motor vehicle (commonly referred to as "carjacking").

**(xxxvi)** Any section of chapter 105 [18 USCS §§ 2151 et seq.], relating to sabotage, except for section 2152 [18 USCS § 2152].





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year, if the offender has a previous conviction, for which the offender served a term of imprisonment of more than 1 year, for a Federal or State offense, by whatever designation and wherever committed, consisting of murder (as described in section 1111), voluntary manslaughter (as described in section 1112 [18 USCS § 1112]), assault with intent to commit murder (as described in section 113(a) [18 USCS § 113(a)]), aggravated sexual abuse and sexual abuse (as described in sections 2241 and 2242 [18 USCS §§ 2241, 2242]), abusive sexual contact (as described in sections 2244(a)(1) and (a)(2) [18 USCS § 2244(a)(1), (2)]), kidnapping (as described in chapter 55 [18 USCS §§ 1201 et seq.]), carjacking (as described in section 2119 [18 USCS § 2119]), arson (as described in section 844(f)(3), (h), or (i) [18 USCS § 844(f)(3), (h), or (i)]), or terrorism (as described in chapter 113B [18 USCS §§ 2331 et seq.]).

**(lii)** Section 57(b) of the Atomic Energy Act of 1954 (42 U.S.C. 2077(b)), relating to the engagement or participation in the development or production of special nuclear material.

**(liii)** Section 92 of the Atomic Energy Act of 1954 (42 U.S.C. 2122), relating to prohibitions governing atomic weapons.

**(liv)** Section 101 of the Atomic Energy Act of 1954 (42 U.S.C. 2131), relating to the atomic energy license requirement.

**(lv)** Section 224 or 225 of the Atomic Energy Act of 1954 (42 U.S.C. 2274, 2275), relating to the communication or receipt of restricted data.

**(lvi)** Section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), relating to the sabotage of nuclear facilities or fuel.

**(lvii)** Section 60123(b) of title 49, relating to damaging or destroying a pipeline facility, but only if the conduct which led to the conviction involved a substantial risk of death or serious bodily injury.

**(lviii)** Section 401(a) of the Controlled Substances Act (21 U.S.C. 841), relating to manufacturing or distributing a controlled substance in the case of a conviction for an offense described in subparagraph (A), (B), or (C) of subsection (b)(1) of that section for which death or serious bodily injury resulted from the use of such substance.

**(lix)** Section 276(a) of the Immigration and Nationality Act (8 U.S.C. 1326), relating to the reentry of a removed alien, but only if the alien is described in paragraph (1) or (2) of subsection (b) of that section.

**(lx)** Section 277 of the Immigration and Nationality Act (8 U.S.C. 1327),





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relating to aiding or assisting certain aliens to enter the United States.

**(lxi)** Section 278 of the Immigration and Nationality Act (8 U.S.C. 1328), relating to the importation of an alien into the United States for an immoral purpose.

**(lxii)** Any section of the Export Administration Act of 1979 (50 U.S.C. 4611 et seq.)[.]

**(lxiii)** Section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705).

**(lxiv)** Section 601 of the National Security Act of 1947 (50 U.S.C. 3121), relating to the protection of identities of certain United States undercover intelligence officers, agents, informants, and sources.

**(lxv)** Subparagraph (A)(i) or (B)(i) of section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) or paragraph (1)(A) or (2)(A) of section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)), relating to manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, dispense, or knowingly importing or exporting, a mixture or substance containing a detectable amount of heroin if the sentencing court finds that the offender was an organizer, leader, manager, or supervisor of others in the offense, as determined under the guidelines promulgated by the United States Sentencing Commission.

**(lxvi)** Subparagraph (A)(vi) or (B)(vi) of section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) or paragraph (1)(F) or (2)(F) of section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)), relating to manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense, a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide, or any analogue thereof.

**(lxvii)** Subparagraph (A)(viii) or (B)(viii) of section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) or paragraph (1)(H) or (2)(H) of section 1010(b) the Controlled Substances Import and Export Act (21 U.S.C. 960(b)), relating to manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense, or knowingly importing or exporting, a mixture of substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers, if the sentencing court finds that the offender was an organizer, leader, manager, or supervisor of others in the offense, as determined under the guidelines promulgated by the United States Sentencing Commission.

**(lxviii)** Subparagraph (A) or (B) of section 401(b)(1) of the Controlled





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Substances Act (21 U.S.C. 841(b)(1)) or paragraph (1) or (2) of section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)), relating to manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense, a controlled substance, or knowingly importing or exporting a controlled substance, if the sentencing court finds that—

**(I)** the offense involved a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide, or any analogue thereof; and

**(II)** the offender was an organizer, leader, manager, or supervisor of others in the offense, as determined under the guidelines promulgated by the United States Sentencing Commission.

**(E)** Deportable prisoners ineligible to apply time credits.

**(i)** In general. A prisoner is ineligible to apply time credits under subparagraph (C) if the prisoner is the subject of a final order of removal under any provision of the immigration laws (as such term is defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17))).

**(ii)** Proceedings. The Attorney General, in consultation with the Secretary of Homeland Security, shall ensure that any alien described in section 212 or 237 of the Immigration and Nationality Act (8 U.S.C. 1182, 1227) who seeks to earn time credits are subject to proceedings described in section 238(a) of that Act (8 U.S.C. 1228(a)) at a date as early as practicable during the prisoner's incarceration.

**(5)** Risk reassessments and level adjustment. A prisoner who successfully participates in evidence-based recidivism reduction programming or productive activities shall receive periodic risk reassessments not less often than annually, and a prisoner determined to be at a medium or high risk of recidivating and who has less than 5 years until his or her projected release date shall receive more frequent risk reassessments. If the reassessment shows that the prisoner's risk of recidivating or specific needs have changed, the Bureau of Prisons shall update the determination of the prisoner's risk of recidivating or information regarding the prisoner's specific needs and reassign the prisoner to appropriate evidence-based recidivism reduction programming or productive activities based on such changes.

**(6)** Relation to other incentive programs. The incentives described in this subsection shall be in addition to any other rewards or incentives for which a prisoner may be eligible.

**(e) Penalties.** The Director of the Bureau of Prisons shall develop guidelines for the





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reduction of rewards and incentives earned under subsection (d) for prisoners who violate prison rules or evidence-based recidivism reduction program or productive activity rules, which shall provide—

**(1)** general levels of violations and resulting reductions;

**(2)** that any reduction that includes the loss of time credits shall require written notice to the prisoner, shall be limited to time credits that a prisoner earned as of the date of the prisoner's rule violation, and shall not include any future time credits that the prisoner may earn; and

**(3)** for a procedure to restore time credits that a prisoner lost as a result of a rule violation, based on the prisoner's individual progress after the date of the rule violation.

**(f) Bureau of Prisons training.** The Attorney General shall develop and implement training programs for Bureau of Prisons officers and employees responsible for administering the System, which shall include—

**(1)** initial training to educate officers and employees on how to use the System in an appropriate and consistent manner, as well as the reasons for using the System;

**(2)** continuing education;

**(3)** periodic training updates; and

**(4)** a requirement that such officers and employees demonstrate competence in administering the System, including interrater reliability, on a biannual basis.

**(g) Quality assurance.** In order to ensure that the Bureau of Prisons is using the System in an appropriate and consistent manner, the Attorney General shall monitor and assess the use of the System, which shall include conducting annual audits of the Bureau of Prisons regarding the use of the System.

**(h) Dyslexia screening.**

**(1)** Screening. The Attorney General shall incorporate a dyslexia screening program into the System, including by screening for dyslexia during—

**(A)** the intake process; and

**(B)** each periodic risk reassessment of a prisoner.

**(2)** Treatment. The Attorney General shall incorporate programs designed to treat dyslexia into the evidence-based recidivism reduction programs or productive activities required to be





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implemented under this section. The Attorney General may also incorporate programs designed to treat other learning disabilities.

**HISTORY:**
Added Dec. 21, 2018, P. L. 115-391, Title I, § 101(a), 132 Stat. 5196.

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

**References in text:**

The "First Step Act of 2018", referred to in this section, is Act Dec. 21, 2018, P.L. 115-391. For full classification of such Act, consult USCS Tables volumes.

**Explanatory notes:**

A bracketed period has been inserted in subsec. (d)(4)(D)(lxii).

## § 3633. Evidence-based recidivism reduction program and recommendations

**(a) In general.** Prior to releasing the System, in consultation with the Independent Review Committee authorized by the First Step Act of 2018, the Attorney General shall—

**(1)** review the effectiveness of evidence-based recidivism reduction programs that exist as of the date of enactment of this subchapter [enacted Dec. 21, 2018] in prisons operated by the Bureau of Prisons;

**(2)** review available information regarding the effectiveness of evidence-based recidivism reduction programs and productive activities that exist in State-operated prisons throughout the United States;

**(3)** identify the most effective evidence-based recidivism reduction programs;

**(4)** review the policies for entering into evidence-based recidivism reduction partnerships described in section 3621(h)(5); and

**(5)** direct the Bureau of Prisons regarding—

**(A)** evidence-based recidivism reduction programs;





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**(B)** the ability for faith-based organizations to function as a provider of educational evidence-based programs outside of the religious classes and services provided through the Chaplaincy; and

**(C)** the addition of any new effective evidence-based recidivism reduction programs that the Attorney General finds.

**(b) Review and recommendations regarding dyslexia mitigation.** In carrying out subsection (a), the Attorney General shall consider the prevalence and mitigation of dyslexia in prisons, including by—

**(1)** reviewing statistics on the prevalence of dyslexia, and the effectiveness of any programs implemented to mitigate the effects of dyslexia, in prisons operated by the Bureau of Prisons and State-operated prisons throughout the United States; and

**(2)** incorporating the findings of the Attorney General under paragraph (1) of this subsection into any directives given to the Bureau of Prisons under paragraph (5) of subsection (a).

**HISTORY:**
Added Dec. 21, 2018, P. L. 115-391, Title I, § 101(a), 132 Stat. 5204.

**HISTORY; ANCILLARY LAWS AND DIRECTIVES**

**References in text:**

The "First Step Act of 2018", referred to in this section, is Act Dec. 21, 2018, P.L. 115-391. For full classification of such Act, consult USCS Tables volumes.





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## § 550.55 Eligibility for early release.

**(a)** Eligibility. Inmates may be eligible for early release by a period not to exceed twelve months if they:

**(1)** Were sentenced to a term of imprisonment under either:

**(i)** 18 U.S.C. Chapter 227, Subchapter D for a nonviolent offense; or

**(ii)** D.C. Code § 24-403.01 for a nonviolent offense, meaning an offense other than those included within the definition of "crime of violence" in D.C. Code § 23-1331(4); and

**(2)** Successfully complete a RDAP, as described in § 550.53, during their current commitment.

**(b)** Inmates not eligible for early release. As an exercise of the Director's discretion, the following categories of inmates are not eligible for early release:

**(1)** Immigration and Customs Enforcement detainees;

**(2)** Pretrial inmates;

**(3)** Contractual boarders (for example, State or military inmates);

**(4)** Inmates who have a prior felony or misdemeanor conviction within the ten years prior to the date of sentencing for their current commitment for:

**(i)** Homicide (including deaths caused by recklessness, but not including deaths caused by negligence or justifiable homicide);

**(ii)** Forcible rape;

**(iii)** Robbery;

**(iv)** Aggravated assault;

**(v)** Arson;

**(vi)** Kidnaping; or

**(vii)** An offense that by its nature or conduct involves sexual abuse offenses committed upon minors;

**(5)** Inmates who have a current felony conviction for:





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**(i)** An offense that has as an element, the actual, attempted, or threatened use of physical force against the person or property of another;

**(ii)** An offense that involved the carrying, possession, or use of a firearm or other dangerous weapon or explosives (including any explosive material or explosive device);

**(iii)** An offense that, by its nature or conduct, presents a serious potential risk of physical force against the person or property of another; or

**(iv)** An offense that, by its nature or conduct, involves sexual abuse offenses committed upon minors;

**(6)** Inmates who have been convicted of an attempt, conspiracy, or solicitation to commit an underlying offense listed in paragraph (b)(4) and/or (b)(5) of this section; or

**(7)** Inmates who previously received an early release under 18 U.S.C. 3621(e).

**(c) Early release time-frame.**

**(1)** Inmates so approved may receive early release up to twelve months prior to the expiration of the term of incarceration, except as provided in paragraphs (c)(2) and (3) of this section.

**(2)** Under the Director's discretion allowed by 18 U.S.C. 3621(e), we may limit the time-frame of early release based upon the length of sentence imposed by the Court.

**(3)** If inmates cannot fulfill their community-based treatment obligations by the presumptive release date, we may adjust provisional release dates by the least amount of time necessary to allow inmates to fulfill their treatment obligations.

**HISTORY:** [59 FR 53344, Oct. 21, 1994; redesignated at 60 FR 27694, May 25, 1995, as confirmed at 65 FR 80745, 80749, Dec. 22, 2000; 74 FR 1892, 1897, Jan. 14, 2009; 81 FR 24484, 24490, Apr. 26, 2016]

**[EFFECTIVE DATE NOTE:**

74 FR 1892, 1897, Jan. 14, 2009, revised Subpart F, effective Mar. 16, 2009; 81 FR 24484, 24490, Apr. 26, 2016, revised paragraph (b)(4) introductory text and paragraph (b)(6), effective May 26, 2016.]





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## Amendment 5 Criminal actions—Provisions concerning—Due process of law and just compensation clauses.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.



Appendix F

## § 844. Penalties

**(a)** Any person who—

**(1)** violates any of subsections (a) through (i) or (l) through (o) of section 842 [18 USCS § 842] shall be fined under this title, imprisoned for not more than 10 years, or both; and

**(2)** violates subsection (p)(2) of section 842 [18 USCS § 842], shall be fined under this title, imprisoned not more than 20 years, or both.

**(b)** Any person who violates any other provision of section 842 of this chapter [18 USCS § 842] shall be fined under this title or imprisoned not more than one year, or both.

**(c) (1)** Any explosive materials involved or used or intended to be used in any violation of the provisions of this chapter or any other rule or regulation promulgated thereunder or any violation of any criminal law of the United States shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1954 [Internal Revenue Code of 1986] relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code [26 USCS § 5845(a)], shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter [18 USCS §§ 841 et seq.].

**(2)** Notwithstanding paragraph (1), in the case of the seizure of any explosive materials for any offense for which the materials would be subject to forfeiture in which it would be impracticable or unsafe to remove the materials to a place of storage or would be unsafe to store them, the seizing officer may destroy the explosive materials forthwith. Any destruction under this paragraph shall be in the presence of at least 1 credible witness. The seizing officer shall make a report of the seizure and take samples as the Attorney General may by regulation prescribe.

**(3)** Within 60 days after any destruction made pursuant to paragraph (2), the owner of (including any person having an interest in) the property so destroyed may make application to the Attorney General for reimbursement of the value of the property. If the claimant establishes to the satisfaction of the Attorney General that—

**(A)** the property has not been used or involved in a violation of law; or

**(B)** any unlawful involvement or use of the property was without the claimant's knowledge, consent, or willful blindness,





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the Attorney General shall make an allowance to the claimant not exceeding the value of the property destroyed.

**(d)** Whoever transports or receives, or attempts to transport or receive, in interstate or foreign commerce any explosive with the knowledge or intent that it will be used to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property, shall be imprisoned for not more than ten years, or fined under this title, or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not more than twenty years or fined under this title, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment.

**(e)** Whoever, through the use of the mail, telephone, telegraph, or other instrument of interstate or foreign commerce, or in or affecting interstate or foreign commerce, willfully makes any threat, or maliciously conveys false information knowing the same to be false, concerning an attempt or alleged attempt being made, or to be made, to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property by means of fire or an explosive shall be imprisoned for not more than 10 years or fined under this title, or both.

**(f) (1)** Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other personal or real property in whole or in part owned or possessed by, or leased to, the United States, or any department or agency thereof, or any institution or organization receiving Federal financial assistance, shall be imprisoned for not less than 5 years and not more than 20 years, fined under this title, or both.

**(2)** Whoever engages in conduct prohibited by this subsection, and as a result of such conduct, directly or proximately causes personal injury or creates a substantial risk of injury to any person, including any public safety officer performing duties, shall be imprisoned for not less than 7 years and not more than 40 years, fined under this title, or both.

**(3)** Whoever engages in conduct prohibited by this subsection, and as a result of such conduct directly or proximately causes the death of any person, including any public safety officer performing duties, shall be subject to the death penalty, or imprisoned for not less than 20 years or for life, fined under this title, or both.





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(g) (1) Except as provided in paragraph (2), whoever possesses an explosive in an airport that is subject to the regulatory authority of the Federal Aviation Administration, or in any building in whole or in part owned, possessed, or used by, or leased to, the United States or any department or agency thereof, except with the written consent of the agency, department, or other person responsible for the management of such building or airport, shall be imprisoned for not more than five years, or fined under this title, or both.

(2) The provisions of this subsection shall not be applicable to—

(A) the possession of ammunition (as that term is defined in regulations issued pursuant to this chapter [18 USCS §§ 841 et seq.]) in an airport that is subject to the regulatory authority of the Federal Aviation Administration if such ammunition is either in checked baggage or in a closed container; or

(B) the possession of an explosive in an airport if the packaging and transportation of such explosive is exempt from, or subject to and in accordance with, regulations of the Pipeline and Hazardous Materials Safety Administration for the handling of hazardous materials pursuant to chapter 51 of title 49 [49 USCS §§ 5101 et seq.].

(h) Whoever—

(1) uses fire or an explosive to commit any felony which may be prosecuted in a court of the United States, or

(2) carries an explosive during the commission of any felony which may be prosecuted in a court of the United States,

including a felony which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device shall, in addition to the punishment provided for such felony, be sentenced to imprisonment for 10 years. In the case of a second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for 20 years. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the felony in which the explosive was used or carried.

(i) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce shall be imprisoned





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for not less than 5 years and not more than 20 years, fined under this title, or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not less than 7 years and not more than 40 years, fined under this title, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall also be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment.

**(j)** For the purposes of subsections (d), (e), (f), (g), (h), and (i) of this section and section 842(p) [18 USCS § 842(p)], the term "explosive" means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuzes (other than electric circuit breakers), detonators, and other detonating agents, smokeless powders, other explosive or incendiary devices within the meaning of paragraph (5) of section 232 of this title [18 USCS § 232], and any chemical compounds, mechanical mixture, or device that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, mixture, or device or any part thereof may cause an explosion.

**(k)** A person who steals any explosives materials which are moving as, or are a part of, or which have moved in, interstate or foreign commerce shall be imprisoned for not more than 10 years, fined under this title, or both.

**(l)** A person who steals any explosive material from a licensed importer, licensed manufacturer, or licensed dealer, or from any permittee shall be fined under this title, imprisoned not more than 10 years, or both.

**(m)** A person who conspires to commit an offense under subsection (h) shall be imprisoned for any term of years not exceeding 20, fined under this title, or both.

**(n)** Except as otherwise provided in this section, a person who conspires to commit any offense defined in this chapter [18 USCS §§ 841 et seq.] shall be subject to the same penalties (other than the penalty of death) as the penalties prescribed for the offense the commission of which was the object of the conspiracy.

**(o)** Whoever knowingly transfers any explosive materials, knowing or having reasonable cause to believe that such explosive materials will be used to commit a crime of violence (as defined in section 924(c)(3) [18 USCS § 924(c)(3)]) or drug trafficking crime (as defined in section 924(c)(2) [18 USCS § 924(c)(2)]) shall be subject to the same penalties as may be imposed under subsection (h) for a first conviction for the use or carrying of an explosive material.

**(p) Theft reporting requirement.**





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**(1)** In general. A holder of a license or permit who knows that explosive materials have been stolen from that licensee or permittee, shall report the theft to the Secretary [Attorney General] not later than 24 hours after the discovery of the theft.

**(2)** Penalty. A holder of a license or permit who does not report a theft in accordance with paragraph (1), shall be fined not more than $10,000, imprisoned not more than 5 years, or both.

**HISTORY:**

Added Oct. 15, 1970, P. L. 91-452, Title XI, § 1102(a), 84 Stat. 956; Oct. 12, 1982, P. L. 97-298, § 2, 96 Stat. 1391; Oct. 12, 1984, P. L. 98-473, Title II, Ch X, Part M, § 1014, 98 Stat. 2143; Nov. 18, 1988, P. L. 100-690, Title VI, Subtitle N, § 6474(a), (b), 102 Stat. 4379; Nov. 29, 1990, P. L. 101-647, Title XXXV, § 3522, 104 Stat. 4924; July 5, 1994, P. L. 103-272, § 5(e)(7), 108 Stat. 1374; Sept. 13, 1994, P. L. 103-322, Title VI, § 60003(a)(3), Title XI, Subtitle E, §§ 110504(b), 110509, 110515(b), 110518(b), Title XXXII, Subtitle A, § 320106, Subtitle I, § 320917(a), Title XXXIII, § 330016(1)(H), (K), (L), (N), 108 Stat. 1969, 2016, 2018, 2020, 2111, 2129, 2147, 2148; April 24, 1996, P. L. 104-132, Title VI, § 604, Title VII, Subtitle A, §§ 701, 706, 708(a), (c)(3), Subtitle B, § 724, 110 Stat. 1289, 1291, 1295, 1296, 1297, 1300; Oct. 11, 1996, P. L. 104-294, Title VI, § 603(a), 110 Stat. 3503; Aug. 17, 1999, P. L. 106-54, § 2(b), 113 Stat. 399; Nov. 25, 2002, P. L. 107-296, Title XI, Subtitle B, § 1112(e)(3), Subtitle C, §§ 1125, 1127, 116 Stat. 2276, 2285; Nov. 30, 2004, P. L. 108-426, § 2(c)(6), 118 Stat. 2424.

## § 924. Penalties [Caution: See prospective amendment notes below.]

**(a) (1)** Except as otherwise provided in this subsection, subsection (b), (c), (f), or (p) of this section, or in section 929 [18 USCS § 929], whoever—

**(A)** knowingly makes any false statement or representation with respect to the information required by this chapter [18 USCS §§ 921 et seq.] to be kept in the records of a person licensed under this chapter [18 USCS §§ 921 et seq.] or in applying for any license or exemption or relief from disability under the provisions of this chapter [18 USCS §§ 921 et seq.];

**(B)** knowingly violates subsection (a)(4), (f), (k), or (q) of section 922 [18 USCS § 922];

**(C)** knowingly imports or brings into the United States or any possession thereof any firearm or ammunition in violation of section 922(l) [18 USCS § 922(1)]; or

**(D)** willfully violates any other provision of this chapter [18 USCS §§ 921 et seq.],

shall be fined under this title, imprisoned not more than five years, or both.

**(2)** Whoever knowingly violates subsection (a)(6), (h), (i), (j), or (o) of section 922 [18 USCS § 922] shall be fined as provided in this title, imprisoned not more than 10 years, or both.

**(3)** Any licensed dealer, licensed importer, licensed manufacturer, or licensed collector who knowingly—

**(A)** makes any false statement or representation with respect to the information required by the provisions of this chapter [18 USCS §§ 921 et seq.] to be kept in the records of a person licensed under this chapter [18 USCS §§ 921 et seq.], or

**(B)** violates subsection (m) of section 922 [18 USCS § 922],

shall be fined under this title, imprisoned not more than one year, or both.

**(4)** Whoever violates section 922(q) [18 USCS § 922(q)] shall be fined under this title, imprisoned for not more than 5 years, or both. Notwithstanding any other provision of law, the term of imprisonment imposed under this paragraph shall not run concurrently with any other term of imprisonment imposed under any other provision of law. Except for the authorization of a term of imprisonment of not more than 5 years made in this paragraph, for the purpose of any





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other law a violation of section 922(q) [18 USCS § 922(q)] shall be deemed to be a misdemeanor.

**(5)** Whoever knowingly violates subsection (s) or (t) of section 922 [18 USCS § 922] shall be fined not more than $1,000, imprisoned for not more than 1 year, or both.

**(6) (A) (i)** A juvenile who violates section 922(x) [18 USCS § 922(x)] shall be fined under this title, imprisoned not more than 1 year, or both, except that a juvenile described in clause (ii) shall be sentenced to probation on appropriate conditions and shall not be incarcerated unless the juvenile fails to comply with a condition of probation.

**(ii)** A juvenile is described in this clause if—

**(I)** the offense of which the juvenile is charged is possession of a handgun or ammunition in violation of section 922(x)(2); and

**(II)** the juvenile has not been convicted in any court of an offense (including an offense under section 922(x) [18 USCS § 922(x)] or a similar State law, but not including any other offense consisting of conduct that if engaged in by an adult would not constitute an offense) or adjudicated as a juvenile delinquent for conduct that if engaged in by an adult would constitute an offense.

**(B)** A person other than a juvenile who knowingly violates section 922(x) [18 USCS § 922(x)]—

**(i)** shall be fined under this title, imprisoned not more than 1 year, or both; and

**(ii)** if the person sold, delivered, or otherwise transferred a handgun or ammunition to a juvenile knowing or having reasonable cause to know that the juvenile intended to carry or otherwise possess or discharge or otherwise use the handgun or ammunition in the commission of a crime of violence, shall be fined under this title, imprisoned not more than 10 years, or both.

**(7)** Whoever knowingly violates section 931 [18 USCS § 931] shall be fined under this title, imprisoned not more than 3 years, or both.

**(8)** Whoever knowingly violates subsection (d) or (g) of section 922 [18 USCS § 922] shall be fined under this title, imprisoned for not more than 15 years, or both.





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**(b)** Whoever, with intent to commit therewith an offense punishable by imprisonment for a term exceeding one year, or with knowledge or reasonable cause to believe that an offense punishable by imprisonment for a term exceeding one year is to be committed therewith, ships, transports, or receives a firearm or any ammunition in interstate or foreign commerce shall be fined under this title, or imprisoned not more than ten years, or both.

**(c) (1) (A)** Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—

**(i)** be sentenced to a term of imprisonment of not less than 5 years;

**(ii)** if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

**(iii)** if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

**(B)** If the firearm possessed by a person convicted of a violation of this subsection—

**(i)** is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, the person shall be sentenced to a term of imprisonment of not less than 10 years; or

**(ii)** is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be sentenced to a term of imprisonment of not less than 30 years.

**(C)** In the case of a violation of this subsection that occurs after a prior conviction under this subsection has become final, the person shall—

**(i)** be sentenced to a term of imprisonment of not less than 25 years; and





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**(ii)** if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life.

**(D)** Notwithstanding any other provision of law—

**(i)** a court shall not place on probation any person convicted of a violation of this subsection; and

**(ii)** no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed.

**(2)** For purposes of this subsection, the term "drug trafficking crime" means any felony punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46 [46 USCS §§ 70501 et seq.].

**(3)** For purposes of this subsection the term "crime of violence" means an offense that is a felony and—

**(A)** has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

**(B)** that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

**(4)** For purposes of this subsection, the term "brandish" means, with respect to a firearm, to display all or part of the firearm, or otherwise make the presence of the firearm known to another person, in order to intimidate that person, regardless of whether the firearm is directly visible to that person.

**(5)** Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction under this section—

**(A)** be sentenced to a term of imprisonment of not less than 15 years; and

**(B)** if death results from the use of such ammunition—

**(i)** if the killing is murder (as defined in section 1111 [18 USCS § 1111]), be punished by death or sentenced to a term of imprisonment for any term of years or for life; and

**(ii)** if the killing is manslaughter (as defined in section 1112 [18 USCS § 1112]), be punished as provided in section 1112 [18 USCS § 1112].

**(d) (1)** Any firearm or ammunition involved in or used in any knowing violation of subsection (a)(4), (a)(6), (f), (g), (h), (i), (j), or (k) of section 922 [18 USCS § 922], or knowing importation or bringing into the United States or any possession thereof any firearm or ammunition in violation of section 922(l) [18 USCS § 922(1)], or knowing violation of section 924, 932, or 933 [18 USCS § 924, 932, or 933], or willful violation of any other provision of this chapter [18 USCS §§ 921 et seq.] or any rule or regulation promulgated thereunder, or any violation of any other criminal law of the United States, or any firearm or ammunition intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1954 [Internal Revenue Code of 1986] [26 USCS §§ 1 et seq.] relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code [26 USCS § 5845(a)], shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter [18 USCS §§ 921 et seq.]: *Provided,* That upon acquittal of the owner or possessor, or dismissal of the charges against him other than upon motion of the Government prior to trial, or lapse of or court termination of the restraining order to which he is subject, the seized or relinquished firearms or ammunition shall be returned forthwith to the owner or possessor or to a person delegated by the owner or possessor unless the return of the firearms or ammunition would place the owner or possessor or his delegate in violation of law. Any action or proceeding for the forfeiture of firearms or ammunition shall be commenced within one hundred and twenty days of such seizure.

**(2) (A)** In any action or proceeding for the return of firearms or ammunition seized under the provisions of this chapter [18 USCS §§ 921 et seq.], the court shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

**(B)** In any other action or proceeding under the provisions of this chapter [18





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USCS §§ 921 et seq.], the court, when it finds that such action was without foundation, or was initiated vexatiously, frivolously, or in bad faith, shall allow the prevailing party, other than the United States, a reasonable attorney's fee, and the United States shall be liable therefor.

**(C)** Only those firearms or quantities of ammunition particularly named and individually identified as involved in or used in any violation of the provisions of this chapter [18 USCS §§ 921 et seq.] or any rule or regulation issued thereunder, or any other criminal law of the United States or as intended to be used in any offense referred to in paragraph (3) of this subsection, where such intent is demonstrated by clear and convincing evidence, shall be subject to seizure, forfeiture, and disposition.

**(D)** The United States shall be liable for attorneys' fees under this paragraph only to the extent provided in advance by appropriation Acts.

**(3)** The offenses referred to in paragraphs (1) and (2)(C) of this subsection are—

**(A)** any crime of violence, as that term is defined in section 924(c)(3) of this title [18 USCS § 924(c)(3)] [subsec. (c)(3) of this section];

**(B)** any offense punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.) or the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.);

**(C)** any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title [18 USCS § 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3)] where the firearm or ammunition intended to be used in any such offense is involved in a pattern of activities which includes a violation of any offense described in section 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3) of this title [18 USCS § 922(a)(1), 922(a)(3), 922(a)(5), or 922(b)(3)];

**(D)** any offense described in section 922(d) of this title [18 USCS § 922(d)] where the firearm or ammunition is intended to be used in such offense by the transferor of such firearm or ammunition;

**(E)** any offense described in section 922(i), 922(j), 922(l), 922(n), or 924(b) of this title [18 USCS § 922(i), 922(j), 922(l), 922(n), or 924(b)];

**(F)** any offense which may be prosecuted in a court of the United States which involves the exportation of firearms or ammunition; and

**(G)** any offense under section 932 or 933 [18 USCS § 932 or 933].

**(e) (1)** In the case of a person who violates section 922(g) of this title [18 USCS § 922(g)]





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and has three previous convictions by any court referred to in section 922(g)(1) of this title [18 USCS § 922(g)(1)] for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g) [18 USCS § 922(g)].

**(2)** As used in this subsection—

**(A)** the term "serious drug offense" means—

**(i)** an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46 [46 USCS §§ 70501 et seq.], for which a maximum term of imprisonment of ten years or more is prescribed by law; or

**(ii)** an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law;

**(B)** the term "violent felony" means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that—

**(i)** has as an element the use, attempted use, or threatened use of physical force against the person of another; or

**(ii)** is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; and

**(C)** the term "conviction" includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.

**(f)** In the case of a person who knowingly violates section 922(p) [18 USCS § 922(p)], such person shall be fined under this title, or imprisoned not more than 5 years, or both.

**(g)** Whoever, with the intent to engage in conduct which—

**(1)** constitutes an offense listed in section 1961(1) [18 USCS § 1961(1)],





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(2) is punishable under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46 [46 USCS §§ 70501 et seq.],

(3) violates any State law relating to any controlled substance (as defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6))), or

(4) constitutes a crime of violence (as defined in subsection (c)(3)),

travels from any State or foreign country into any other State and acquires, transfers, or attempts to acquire or transfer, a firearm in such other State in furtherance of such purpose, shall be imprisoned not more than 10 years, fined in accordance with this title, or both.

(h) Whoever knowingly receives or transfers a firearm or ammunition, or attempts or conspires to do so, knowing or having reasonable cause to believe that such firearm or ammunition will be used to commit a felony, a Federal crime of terrorism, or a drug trafficking crime (as such terms are defined in section 932(a) [18 USCS § 932(a)]), or a crime under the Arms Export Control Act (22 U.S.C. 2751 et seq.), the Export Control Reform Act of 2018 (50 U.S.C. 4801 et seq.), the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), or the Foreign Narcotics Kingpin Designation Act (21 U.S.C. 1901 et seq.), shall be fined under this title [18 USCS §§ 1 et seq.], imprisoned for not more than 15 years, or both.

(i) (1) A person who knowingly violates section 922(u) [18 USCS § 922(u)] shall be fined under this title, imprisoned not more than 10 years, or both.

(2) Nothing contained in this subsection shall be construed as indicating an intent on the part of Congress to occupy the field in which provisions of this subsection operate to the exclusion of State laws on the same subject matter, nor shall any provision of this subsection be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this subsection.

(j) A person who, in the course of a violation of subsection (c), causes the death of a person through the use of a firearm, shall—

(1) if the killing is a murder (as defined in section 1111 [18 USCS § 1111]), be punished by death or by imprisonment for any term of years or for life; and

(2) if the killing is manslaughter (as defined in section 1112 [18 USCS § 1112]), be punished as provided in that section.





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**(k) (1)** A person who smuggles or knowingly brings into the United States a firearm or ammunition, or attempts or conspires to do so, with intent to engage in or to promote conduct that—

**(A)** is punishable under the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46 [46 USCS §§ 70501 et seq.]; or

**(B)** constitutes a felony, a Federal crime of terrorism, or a drug trafficking crime (as such terms are defined in section 932(a) [18 USCS § 932(a)]),

shall be fined under this title, imprisoned for not more than 15 years, or both.

**(2)** A person who smuggles or knowingly takes out of the United States a firearm or ammunition, or attempts or conspires to do so, with intent to engage in or to promote conduct that—

**(A)** would be punishable under the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46 [46 USCS §§ 70501 et seq.], if the conduct had occurred within the United States; or

**(B)** would constitute a felony or a Federal crime of terrorism (as such terms are defined in section 932(a) [18 USCS § 932(a)]) for which the person may be prosecuted in a court of the United States, if the conduct had occurred within the United States,

shall be fined under this title, imprisoned for not more than 15 years, or both.

**(l)** A person who steals any firearm which is moving as, or is a part of, or which has moved in, interstate or foreign commerce shall be imprisoned for not more than 10 years, fined under this title, or both.

**(m)** A person who steals any firearm from a licensed importer, licensed manufacturer, licensed dealer, or licensed collector shall be fined under this title, imprisoned not more than 10 years, or both.

**(n)** A person who, with the intent to engage in conduct that constitutes a violation of section 922(a)(1)(A) [18 USCS § 922(a)(1)(A)], travels from any State or foreign country into any other State and acquires, or attempts to acquire, a firearm in such other State in furtherance of such purpose shall be imprisoned for not more than 10 years.

**(o)** A person who conspires to commit an offense under subsection (c) shall be imprisoned for





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not more than 20 years, fined under this title, or both; and if the firearm is a machinegun or destructive device, or is equipped with a firearm silencer or muffler, shall be imprisoned for any term of years or life.

**(p) Penalties relating to secure gun storage or safety device.**

**(1)** In general.

**(A)** Suspension or revocation of license; civil penalties. With respect to each violation of section 922(z)(1) [18 USCS § 922(z)(1)] by a licensed manufacturer, licensed importer, or licensed dealer, the Secretary may, after notice and opportunity for hearing—

**(i)** suspend for not more than 6 months, or revoke, the license issued to the licensee under this chapter [18 USCS §§ 921 et seq.] that was used to conduct the firearms transfer; or

**(ii)** subject the licensee to a civil penalty in an amount equal to not more than $2,500.

**(B)** Review. An action of the Secretary under this paragraph may be reviewed only as provided under section 923(f) [18 USCS § 923(f)].

**(2)** Administrative remedies. The suspension or revocation of a license or the imposition of a civil penalty under paragraph (1) shall not preclude any administrative remedy that is otherwise available to the Secretary.

**HISTORY:**

Added June 19, 1968, P. L. 90-351, Title IV, § 902, 82 Stat. 233; Oct. 22, 1968, P. L. 90-618, Title I, § 102, 82 Stat. 1223; Jan. 2, 1971, P. L. 91-644, Title II, § 13, 84 Stat. 1890); Oct. 12, 1984, P. L. 98-473, Title II, Ch II, § 223(a), Ch X, Part D, § 1005, 98 Stat. 2038, 2138; May 19, 1986, P. L. 99-308, § 104(a), 100 Stat. 456; Oct. 27, 1986, P. L. 99-570, Title I, Subtitle I, § 1402, 100 Stat. 3207-39; Nov. 11, 1988, P. L. 100-649, § 2(b), 102 Stat. 3817; Nov. 18, 1988, P. L. 100-690, Title VI, Subtitle G, § 6211, Subtitle N, §§ 6451, 6460, 6462, Title VII, Subtitle B, §§ 7056, 7060(a), 102 Stat. 4361, 4371, 4373, 4374, 4402, 4403; Nov. 29, 1990, P. L. 101-647, Title XI § 1101, Title XVII, § 1702(b)(3), Title XXII, §§ 2203(d), 2204(c), Title XXXV, §§ 3526-3529, 104 Stat. 4829, 4845, 4857, 4924; Nov. 30, 1993, P. L. 103-159, Title I, § 102(c), Title III, § 302(d), 107 Stat. 1541, 1545; Sept. 13, 1994, P. L. 103-322, Title VI, § 60013, Title XI, Subtitle A, §§ 110102(c), 110103(c), Subtitle B, § 110201(b), Subtitle D, § 110401(e), Subtitle E, §§ 110503, 110504(a), 110507, 110510, 110515(a), 110517, 110518, Title XXXIII, §§ 330002(h), 330003(f)(2), 330011(i), (j), 330016(1)(H), (K), (L), 108 Stat. 1973, 1998, 1999, 2011, 2015, 2016, 2018–2020, 2140, 2141, 2145, 2147; Oct. 11, 1996, P. L.





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104-294, Title VI, § 603(m)(1), (n), (o), (p)(1), (q)–(s), 110 Stat. 3505; Nov. 13, 1998, P. L. 105-386, § 1(a), 112 Stat. 3469; Nov. 2, 2002, P. L. 107-273, Div B, Title IV, § 4002(d)(1)(E), Div C, Title I, Subtitle A, § 11009(e)(3), 116 Stat. 1809, 1821; Dec. 9, 2003, P. L. 108-174, § 1(2), (3), 117 Stat. 2481; Oct. 26, 2005, P. L. 109-92, §§ 5(c)(2), 6(b), 119 Stat. 2100, 2102; Oct. 6, 2006, P. L. 109-304, § 17(d)(3), 120 Stat. 1707; Dec. 21, 2018, P. L. 115-391, Title IV, § 403(a), 132 Stat. 5221, 5222; June 25, 2022, P.L. 117-159, Div A, Title II, § 12004(c)–(f), 136 Stat. 1329, 1330.





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## § 3584. Multiple sentences of imprisonment

**(a) Imposition of concurrent or consecutive terms.** If multiple terms of imprisonment are imposed on a defendant at the same time, or if a term of imprisonment is imposed on a defendant who is already subject to an undischarged term of imprisonment, the terms may run concurrently or consecutively, except that the terms may not run consecutively for an attempt and for another offense that was the sole objective of the attempt. Multiple terms of imprisonment imposed at the same time run concurrently unless the court orders or the statute mandates that the terms are to run consecutively. Multiple terms of imprisonment imposed at different times run consecutively unless the court orders that the terms are to run concurrently.

**(b) Factors to be considered in imposing concurrent or consecutive terms.** The court, in determining whether the terms imposed are to be ordered to run concurrently or consecutively, shall consider, as to each offense for which a term of imprisonment is being imposed, the factors set forth in section 3553(a) [18 USCS § 3553(a)].

**(c) Treatment of multiple sentence as an aggregate.** Multiple terms of imprisonment ordered to run consecutively or concurrently shall be treated for administrative purposes as a single, aggregate term of imprisonment.

**HISTORY:**
Added Oct. 12, 1984, P. L. 98-473, Title II, Ch II, § 212(a)(2), 98 Stat. 2000.

Appendix I

Act Dec. 21, 2018, P. L. 115-391, § 1(a), 132 Stat. 5194, provides: "This Act may be cited as the '**First Step Act** of 2018'.". For full classification of such Act, consult USCS Tables volumes.

Appendix J

## § 841. Prohibited acts A

**(a) Unlawful acts.** Except as authorized by this title, it shall be unlawful for any person knowingly or intentionally—

**(1)** to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

**(2)** to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance.

**(b) Penalties.** Except as otherwise provided in section 409, 418, 419, or 420 [21 USCS § 849, 859, 860, or 861], any person who violates subsection (a) of this section shall be sentenced as follows:

**(1) (A)** In the case of a violation of subsection (a) of this section involving—

**(i)** 1 kilogram or more of a mixture or substance containing a detectable amount of heroin;

**(ii)** 5 kilograms or more of a mixture or substance containing a detectable amount of—

**(I)** coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

**(II)** cocaine, its salts, optical and geometric isomers, and salts of isomers;

**(III)** ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

**(IV)** any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

**(iii)** 280 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

**(iv)** 100 grams or more of phencyclidine (PCP) or 1 kilogram or more of a





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mixture or substance containing a detectable amount of phencyclidine (PCP);

**(v)** 10 grams or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

**(vi)** 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N- [1-(2-phenylethyl)-4-piperidinyl] propanamide or 100 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

**(vii)** 1000 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 1,000 or more marihuana plants regardless of weight; or

**(viii)** 50 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 500 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 10 years or more than life and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $10,000,000 if the defendant is an individual or $50,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment of not less than 15 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $20,000,000 if the defendant is an individual or $75,000,000 if the defendant is other than an individual, or both. If any person commits a violation of this subparagraph or of section 409, 418, 419, or 420 [21 USCS § 849, 859, 860, or 861] after 2 or more prior convictions for a serious drug felony or serious violent felony have become final, such person shall be sentenced to a term of imprisonment of not less than 25 years and fined in accordance with the preceding sentence. Notwithstanding section 3583 of title 18, any sentence under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 5 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 10 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.





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**(B)** In the case of a violation of subsection (a) of this section involving—

**(i)** 100 grams or more of a mixture or substance containing a detectable amount of heroin;

**(ii)** 500 grams or more of a mixture or substance containing a detectable amount of—

**(I)** coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

**(II)** cocaine, its salts, optical and geometric isomers, and salts of isomers;

**(III)** ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

**(IV)** any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subclauses (I) through (III);

**(iii)** 28 grams or more of a mixture or substance described in clause (ii) which contains cocaine base;

**(iv)** 10 grams or more of phencyclidine (PCP) or 100 grams or more of a mixture or substance containing a detectable amount of phencyclidine (PCP);

**(v)** 1 gram or more of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

**(vi)** 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N- [1-(2-phenylethyl)-4-piperidinyl] propanamide or 10 grams or more of a mixture or substance containing a detectable amount of any analogue of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide;

**(vii)** 100 kilograms or more of a mixture or substance containing a detectable amount of marihuana, or 100 or more marihuana plants regardless of weight; or

**(viii)** 5 grams or more of methamphetamine, its salts, isomers, and salts of its isomers or 50 grams or more of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers;

such person shall be sentenced to a term of imprisonment which may not be less than 5 years





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and not more than 40 years and if death or serious bodily injury results from the use of such substance shall be not less than 20 years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $5,000,000 if the defendant is an individual or $25,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a serious drug felony or serious violent felony has become final, such person shall be sentenced to a term of imprisonment which may not be less than 10 years and not more than life imprisonment and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $8,000,000 if the defendant is an individual or $50,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposed under this subparagraph shall, in the absence of such a prior conviction, include a term of supervised release of at least 4 years in addition to such term of imprisonment and shall, if there was such a prior conviction, include a term of supervised release of at least 8 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person sentenced under this subparagraph. No person sentenced under this subparagraph shall be eligible for parole during the term of imprisonment imposed therein.

**(C)** In the case of a controlled substance in schedule I or II, gamma hydroxybutyric acid (including when scheduled as an approved drug product for purposes of section 3(a)(1)(B) of the Hillory J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 1999 [21 USCS § 812 note]), or 1 gram of flunitrazepam, except as provided in subparagraphs (A), (B), and (D), such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not less than twenty years or more than life, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 30 years and if death or serious bodily injury results from the use of such substance shall be sentenced to life imprisonment, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $2,000,000 if the defendant is an individual or $10,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 6 years in addition to such term of imprisonment. Notwithstanding any other provision of law, the court shall not place on probation or suspend the





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sentence of any person sentenced under the provisions of this subparagraph which provide for a mandatory term of imprisonment if death or serious bodily injury results, nor shall a person so sentenced be eligible for parole during the term of such a sentence.

**(D)** In the case of less than 50 kilograms of marihuana, except in the case of 50 or more marihuana plants regardless of weight, 10 kilograms of hashish, or one kilogram of hashish oil, such person shall, except as provided in paragraphs (4) and (5) of this subsection, be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual, or both. Notwithstanding section 3583 of title 18, any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 4 years in addition to such term of imprisonment.

**(E) (i)** Except as provided in subparagraphs (C) and (D), in the case of any controlled substance in schedule III, such person shall be sentenced to a term of imprisonment of not more than 10 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not more than 15 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $500,000 if the defendant is an individual or $2,500,000 if the defendant is other than an individual, or both.

**(ii)** If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 20 years and if death or serious bodily injury results from the use of such substance shall be sentenced to a term of imprisonment of not more than 30 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $1,000,000 if the defendant is an individual or $5,000,000 if the defendant is other than an individual, or both.

**(iii)** Any sentence imposing a term of imprisonment under this subparagraph shall, in the absence of such a prior conviction, impose a term of supervised release





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of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a term of supervised release of at least 4 years in addition to such term of imprisonment.

**(2)** In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 5 years, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $250,000 if the defendant is an individual or $1,000,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $500,000 if the defendant is an individual or $2,000,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a term of supervised release of at least one year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment.

**(3)** In the case of a controlled substance in schedule V, such person shall be sentenced to a term of imprisonment of not more than one year, a fine not to exceed the greater of that authorized in accordance with the provisions of title 18, United States Code, or $100,000 if the defendant is an individual or $250,000 if the defendant is other than an individual, or both. If any person commits such a violation after a prior conviction for a felony drug offense has become final, such person shall be sentenced to a term of imprisonment of not more than 4 years, a fine not to exceed the greater of twice that authorized in accordance with the provisions of title 18, United States Code, or $200,000 if the defendant is an individual or $500,000 if the defendant is other than an individual, or both. Any sentence imposing a term of imprisonment under this paragraph may, if there was a prior conviction, impose a term of supervised release of not more than 1 year, in addition to such term of imprisonment.

**(4)** Notwithstanding paragraph (1)(D) of this subsection, any person who violates subsection (a) of this section by distributing a small amount of marihuana for no remuneration shall be treated as provided in section 404 [21 USCS § 844] and section 3607 of title 18, United States Code.

**(5)** Any person who violates subsection (a) of this section by cultivating or manufacturing a controlled substance on Federal property shall be imprisoned as provided in this subsection and shall be fined any amount not to exceed—

**(A)** the amount authorized in accordance with this section;





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**(B)** the amount authorized in accordance with the provisions of title 18, United States Code;

**(C)** $500,000 if the defendant is an individual; or

**(D)** $1,000,000 if the defendant is other than an individual; or both.

**(6)** Any person who violates subsection (a), or attempts to do so, and knowingly or intentionally uses a poison, chemical, or other hazardous substance on Federal land, and, by such use—

**(A)** creates a serious hazard to humans, wildlife, or domestic animals,

**(B)** degrades or harms the environment or natural resources, or

**(C)** pollutes an aquifer, spring, stream, river, or body of water,

shall be fined in accordance with title 18, United States Code, or imprisoned not more than five years, or both.

**(7)** Penalties for distribution.

**(A)** In general. Whoever, with intent to commit a crime of violence, as defined in section 16 of title 18, United States Code (including rape), against an individual, violates subsection (a) by distributing a controlled substance or controlled substance analogue to that individual without that individual's knowledge, shall be imprisoned not more than 20 years and fined in accordance with title 18, United States Code.

**(B)** Definition. For purposes of this paragraph, the term "without that individual's knowledge" means that the individual is unaware that a substance with the ability to alter that individual's ability to appraise conduct or to decline participation in or communicate unwillingness to participate in conduct is administered to the individual.

**(c) Offenses involving listed chemicals.** Any person who knowingly or intentionally—

**(1)** possesses a listed chemical with intent to manufacture a controlled substance except as authorized by this title;

**(2)** possesses or distributes a listed chemical knowing, or having reasonable cause to believe, that the listed chemical will be used to manufacture a controlled substance except as authorized by this title; or

**(3)** with the intent of causing the evasion of the recordkeeping or reporting requirements





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of section 310 [21 USCS § 830], or the regulations issued under that section, receives or distributes a reportable amount of any listed chemical in units small enough so that the making of records or filing of reports under that section is not required;

shall be fined in accordance with title 18, United States Code, or imprisoned not more than 20 years in the case of a violation of paragraph (1) or (2) involving a list I chemical or not more than 10 years in the case of a violation of this subsection other than a violation of paragraph (1) or (2) involving a list I chemical, or both.

**(d) Boobytraps on Federal property; penalties; "boobytrap" defined.**

**(1)** Any person who assembles, maintains, places, or causes to be placed a boobytrap on Federal property where a controlled substance is being manufactured, distributed, or dispensed shall be sentenced to a term of imprisonment for not more than 10 years or fined under title 18, United States Code, or both.

**(2)** If any person commits such a violation after 1 or more prior convictions for an offense punishable under this subsection, such person shall be sentenced to a term of imprisonment of not more than 20 years or fined under title 18, United States Code, or both.

**(3)** For the purposes of this subsection, the term "boobytrap" means any concealed or camouflaged device designed to cause bodily injury when triggered by any action of any unsuspecting person making contact with the device. Such term includes guns, ammunition, or explosive devices attached to trip wires or other triggering mechanisms, sharpened stakes, and lines or wires with hooks attached.

**(e) Ten-year injunction as additional penalty.** In addition to any other applicable penalty, any person convicted of a felony violation of this section relating to the receipt, distribution, manufacture, exportation, or importation of a listed chemical may be enjoined from engaging in any transaction involving a listed chemical for not more than ten years.

**(f) Wrongful distribution or possession of listed chemicals.**

**(1)** Whoever knowingly distributes a listed chemical in violation of this title (other than in violation of a recordkeeping or reporting requirement of section 310 [21 USCS § 830]) shall, except to the extent that paragraph (12), (13), or (14) of section 402(a) [21 USCS § 842(a)] applies, be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

**(2)** Whoever possesses any listed chemical, with knowledge that the recordkeeping or reporting requirements of section 310 [21 USCS § 830] have not been adhered to, if, after such knowledge is acquired, such person does not take immediate steps to remedy the violation shall be





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fined under title 18, United States Code, or imprisoned not more than one year, or both.

**(g) Internet sales of date rape drugs.**

**(1)** Whoever knowingly uses the Internet to distribute a date rape drug to any person, knowing or with reasonable cause to believe that—

**(A)** the drug would be used in the commission of criminal sexual conduct; or

**(B)** the person is not an authorized purchaser;

shall be fined under this title or imprisoned not more than 20 years, or both.

**(2)** As used in this subsection:

**(A)** The term "date rape drug" means—

**(i)** gamma hydroxybutyric acid (GHB) or any controlled substance analogue of GHB, including gamma butyrolactone (GBL) or 1,4-butanediol;

**(ii)** ketamine;

**(iii)** flunitrazepam; or

**(iv)** any substance which the Attorney General designates, pursuant to the rulemaking procedures prescribed by section 553 of title 5, United States Code [5 USCS § 553], to be used in committing rape or sexual assault.

The Attorney General is authorized to remove any substance from the list of date rape drugs pursuant to the same rulemaking authority.

**(B)** The term "authorized purchaser" means any of the following persons, provided such person has acquired the controlled substance in accordance with this Act:

**(i)** A person with a valid prescription that is issued for a legitimate medical purpose in the usual course of professional practice that is based upon a qualifying medical relationship by a practitioner registered by the Attorney General. A "qualifying medical relationship" means a medical relationship that exists when the practitioner has conducted at least 1 medical evaluation with the authorized purchaser in the physical presence of the practitioner, without regard to whether portions of the evaluation are conducted by other heath [health] professionals. The preceding sentence shall not be construed to imply that 1 medical evaluation demonstrates that a prescription has been issued for a legitimate medical purpose within the usual course of professional practice.





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**(ii)** Any practitioner or other registrant who is otherwise authorized by their registration to dispense, procure, purchase, manufacture, transfer, distribute, import, or export the substance under this Act.

**(iii)** A person or entity providing documentation that establishes the name, address, and business of the person or entity and which provides a legitimate purpose for using any "date rape drug" for which a prescription is not required.

**(3)** The Attorney General is authorized to promulgate regulations for record-keeping and reporting by persons handling 1,4-butanediol in order to implement and enforce the provisions of this section. Any record or report required by such regulations shall be considered a record or report required under this Act.

**(h) Offenses involving dispensing of controlled substances by means of the Internet.**

**(1)** In general. It shall be unlawful for any person to knowingly or intentionally—

**(A)** deliver, distribute, or dispense a controlled substance by means of the Internet, except as authorized by this title; or

**(B)** aid or abet (as such terms are used in section 2 of title 18, United States Code) any activity described in subparagraph (A) that is not authorized by this title.

**(2)** Examples. Examples of activities that violate paragraph (1) include, but are not limited to, knowingly or intentionally—

**(A)** delivering, distributing, or dispensing a controlled substance by means of the Internet by an online pharmacy that is not validly registered with a modification authorizing such activity as required by section 303(g) [21 USCS § 823(g)] (unless exempt from such registration);

**(B)** writing a prescription for a controlled substance for the purpose of delivery, distribution, or dispensation by means of the Internet in violation of section 309(e) [21 USCS § 829(e)];

**(C)** serving as an agent, intermediary, or other entity that causes the Internet to be used to bring together a buyer and seller to engage in the dispensing of a controlled substance in a manner not authorized by sections [section] 303(g) or 309(e) [21 USCS § 823(g) or 829(e)];

**(D)** offering to fill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire; and

**(E)** making a material false, fictitious, or fraudulent statement or representation in





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a notification or declaration under subsection (d) or (e), respectively, of section 311 [21 USCS § 831].

**(3)** Inapplicability.

**(A)** This subsection does not apply to—

**(i)** the delivery, distribution, or dispensation of controlled substances by nonpractitioners to the extent authorized by their registration under this title;

**(ii)** the placement on the Internet of material that merely advocates the use of a controlled substance or includes pricing information without attempting to propose or facilitate an actual transaction involving a controlled substance; or

**(iii)** except as provided in subparagraph (B), any activity that is limited to—

**(I)** the provision of a telecommunications service, or of an Internet access service or Internet information location tool (as those terms are defined in section 231 of the Communications Act of 1934 [47 USCS § 231]); or

**(II)** the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication, without selection or alteration of the content of the communication, except that deletion of a particular communication or material made by another person in a manner consistent with section 230(c) of the Communications Act of 1934 [47 USCS § 230(c)] shall not constitute such selection or alteration of the content of the communication.

**(B)** The exceptions under subclauses (I) and (II) of subparagraph (A)(iii) shall not apply to a person acting in concert with a person who violates paragraph (1).

**(4)** Knowing or intentional violation. Any person who knowingly or intentionally violates this subsection shall be sentenced in accordance with subsection (b).

**HISTORY:**

Oct. 27, 1970, P. L. 91-513, Title II, Part D, § 401, 84 Stat. 1260; Nov. 10, 1978, P. L. 95-633, Title II, § 201, 92 Stat. 3774; Sept. 26, 1980, P. L. 96-359, § 8(c), 94 Stat. 1194; Oct. 12, 1984, P. L. 98-473, Title II, Ch II, § 224(a)(2), Ch V, Subch, Part A, Subpart, §§ 502, 503(b)(1)(2), 98 Stat. 2030, 2068, 2070; Oct. 27, 1986, P. L. 99-570, Title I, Subtitle A, §§ 1002, 1003(a), 1004(a) Subtitle C, § 1103, Title XV, § 15005, 100 Stat. 3207-2, 3207-5, 3207-6, 3207-11, 3207-192; Nov. 18, 1988, P. L. 100-690, Title VI, Subtitle A, § 6055, Subtitle H, §§ 6254(h), 6265(h), Subtitle N, §§ 6452(a), 6470(g), (h), 6479, 102 Stat. 4318, 4366, 4367, 4371, 4378,





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4379, 4381; Nov. 29, 1990, P. L. 101-647, Title X, § 1002(e), Title XII, § 1202, Title XXXV, § 3599K, 104 Stat. 4828, 4830, 4932; Sept. 13, 1994, P. L. 103-322, Title IX, Subtitle A, § 90105(a), (c), Title XVIII, Subtitle B, 180201(b)(2)(A), 108 Stat. 1987, 1988, 2047; Oct. 3, 1996, P. L. 104-237, Title II, § 206(a), Title III, § 302(a), 110 Stat. 3103, 3105; Oct. 13, 1996, P. L. 104-305, § 2(a), (b)(1), 110 Stat. 3807; Oct. 21, 1998, P. L. 105-277, Div E, § 2(a), 112 Stat. 2681-759; Feb. 18, 2000, P. L. 106-172, §§ 3(b)(1), 5(b), 9, 114 Stat. 9, 10, 13; Nov. 2, 2002, P. L. 107-273, Div B, Title III, § 3005(a), Title IV, § 4002(d)(2)(A), 116 Stat. 1805, 1809; March 9, 2006, P. L. 109-177, Title VII, Subtitle A, § 711(f)(1)(B), Subtitle C, § 732, 120 Stat. 262, 270; July 27, 2006, P. L. 109-248, Title II, § 201, 120 Stat. 611; Oct. 15, 2008, P. L. 110-425, § 3(e), (f), 122 Stat. 4828; Aug. 3, 2010, P. L. 111-220, §§ 2(a), 4(a), 124 Stat. 2372; Dec. 21, 2018, P.L. 115-391, Title IV, § 401(a)(2), 132 Stat. 5220; Dec. 2, 2022, P.L. 117-215, Title I, § 103(b)(1)(G), 136 Stat. 2263.





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# § 860. Distribution or manufacturing in or near schools and colleges

**(a) Penalty.** Any person who violates section 401(a)(1) or section 416 [21 USCS § 841(a)(1) or 856] by distributing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within one thousand feet of, the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or a playground, or housing facility owned by a public housing authority, or within 100 feet of a public or private youth center, public swimming pool, or video arcade facility, is (except as provided in subsection (b)) subject to (1) twice the maximum punishment authorized by section 401(b) [21 USCS § 841(b)], and (2) at least twice any term of supervised release authorized by section 401(b) [21 USCS § 841(b)] for a first offense. A fine up to twice that authorized by section 401(b) [21 USCS § 841(b)] may be imposed in addition to any term of imprisonment authorized by this subsection. Except to the extent a greater minimum sentence is otherwise provided by section 401(b) [21 USCS § 841(b)], a person shall be sentenced under this subsection to a term of imprisonment of not less than one year. The mandatory minimum sentencing provisions of this paragraph shall not apply to offenses involving 5 grams or less of marihuana.

**(b) Second offenders.** Any person who violates section 401(a)(1) or section 416 [21 USCS § 841(a)(1) or 856] by distributing, possessing with intent to distribute, or manufacturing a controlled substance in or on, or within one thousand feet of, the real property comprising a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or a playground, or housing facility owned by a public housing authority, or within 100 feet of a public or private youth center, public swimming pool, or video arcade facility, after a prior conviction under subsection (a) has become final is punishable (1) by the greater of (A) a term of imprisonment of not less than three years and not more than life imprisonment or (B) three times the maximum punishment authorized by section 401(b) [21 USCS § 841(b)] for a first offense and (2) at least three times any term of supervised release authorized by section 401(b) of this title [21 USCS § 841(b)] for a first offense. A fine up to three times that authorized by section 401(b) [21 USCS § 841(b)] may be imposed in addition to any term of imprisonment authorized by this subsection. Except to the extent a greater minimum sentence is otherwise provided by section 401(b) [21 USCS § 841(b)], a person shall be sentenced under this subsection to a term of imprisonment of not less than three years. Penalties for third and subsequent convictions shall be governed by section 401(b)(1)(A) [21 USCS § 841(b)(1)(A)].

**(c) Employing children to distribute drugs near schools or playgrounds.** Notwithstanding any other law, any person at least 21 years of age who knowingly and





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intentionally—

**(1)** employs, hires, uses, persuades, induces, entices, or coerces a person under 18 years of age to violate this section; or

**(2)** employs, hires, uses, persuades, induces, entices, or coerces a person under 18 years of age to assist in avoiding detection or apprehension for any offense under this section by any Federal, State, or local law enforcement official,

is punishable by a term of imprisonment, a fine, or both, up to triple those authorized by section 401 [21 USCS § 841].

**(d) Suspension of sentence; probation; parole.** In the case of any mandatory minimum sentence imposed under subsection (b) [this section], imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under this section shall not be eligible for parole until the individual has served the mandatory minimum term of imprisonment as provided by this section.

**(e) Definitions.** For the purposes of this section—

**(1)** The term "playground" means any outdoor facility (including any parking lot appurtenant thereto) intended for recreation, open to the public, and with any portion thereof containing three or more separate apparatus intended for the recreation of children including, but not limited to, sliding boards, swingsets, and teeterboards.

**(2)** The term "youth center" means any recreational facility and/or gymnasium (including any parking lot appurtenant thereto), intended primarily for use by persons under 18 years of age, which regularly provides athletic, civic, or cultural activities.

**(3)** The term "video arcade facility" means any facility, legally accessible to persons under 18 years of age, intended primarily for the use of pinball and video machines for amusement containing a minimum of ten pinball and/or video machines.

**(4)** The term "swimming pool" includes any parking lot appurtenant thereto.

**HISTORY:**

Oct. 27, 1970, P. L. 91-513, Title II, Part D, § 419 [405A], as added Oct. 12, 1984, P. L. 98-473, Title II, Ch V, Part A, § 503(a), 98 Stat. 2070; Oct. 27, 1986, P. L. 99-570, Title I, Subtitle A, § 1004(a) Subtitle C, §§ 1104, 1105(c), Subtitle P, § 1841(b), Subtitle Q, § 1866(b), (c), 100 Stat. 3207-6, 3207-11, 3207-52, 3207-55; Nov. 10, 1986, P. L. 99-646, § 28, 100 Stat. 3598; Nov. 18, 1988, P. L. 100-690, Title VI, Subtitle N, §§ 6452(b)(1), 6457, 6458, 102 Stat. 4371, 4373; Nov. 29, 1990, P. L. 101-647, Title X, §§ 1002(b), 1003(b), Title XII, § 1214, Title XV, § 1502, Title





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XXXV, § 3599L, 104 Stat. 4827, 4829, 4833, 4836, 4932; Sept. 13, 1994, P. L. 103-322, Title XIV, § 140006, Title XXXII, Subtitle A, § 320107, Title XXXIII, § 330009(a), 108 Stat. 2032, 2111, 2143.





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# § 851. Proceedings to establish previous convictions

**(a) Information filed by United States Attorney.**

**(1)** No person who stands convicted of an offense under this part [21 USCS §§ 841 et seq.] shall be sentenced to increased punishment by reason of one or more prior convictions, unless before trial, or before entry of a plea of guilty, the United States attorney files an information with the court (and serves a copy of such information on the person or counsel for the person) stating in writing the previous convictions to be relied upon. Upon a showing by the United States attorney that facts regarding prior convictions could not with due diligence be obtained prior to trial or before entry of a plea of guilty, the court may postpone the trial or the taking of the plea of guilty for a reasonable period for the purpose of obtaining such facts. Clerical mistakes in the information may be amended at any time prior to the pronouncement of sentence.

**(2)** An information may not be filed under this section if the increased punishment which may be imposed is imprisonment for a term in excess of three years unless the person either waived or was afforded prosecution by indictment for the offense for which such increased punishment may be imposed.

**(b) Affirmation or denial of previous conviction.** If the United States attorney files an information under this section, the court shall after conviction but before pronouncement of sentence inquire of the person with respect to whom the information was filed whether he affirms or denies that he has been previously convicted as alleged in the information, and shall inform him that any challenge to a prior conviction which is not made before sentence is imposed may not thereafter be raised to attack the sentence.

**(c) Denial; written response; hearing.**

**(1)** If the person denies any allegation of the information of prior conviction, or claims that any conviction alleged is invalid, he shall file a written response to the information. A copy of the response shall be served upon the United States attorney. The court shall hold a hearing to determine any issues raised by the response which would except the person from increased punishment. The failure of the United States attorney to include in the information the complete criminal record of the person or any facts in addition to the convictions to be relied upon shall not constitute grounds for invalidating the notice given in the information required by subsection (a)(1). The hearing shall be before the court without a jury and either party may introduce evidence. Except as otherwise provided in paragraph (2) of this subsection, the United States attorney shall have the burden of proof beyond a reasonable doubt on any issue of fact. At the





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request of either party, the court shall enter findings of fact and conclusions of law.

(2) A person claiming that a conviction alleged in the information was obtained in violation of the Constitution of the United States shall set forth his claim, and the factual basis therefor, with particularity in his response to the information. The person shall have the burden of proof by a preponderance of the evidence on any issue of fact raised by the response. Any challenge to a prior conviction, not raised by response to the information before an increased sentence is imposed in reliance thereon, shall be waived unless good cause be shown for failure to make a timely challenge.

**(d) Imposition of sentence.**

(1) If the person files no response to the information, or if the court determines, after hearing, that the person is subject to increased punishment by reason of prior convictions, the court shall proceed to impose sentence upon him as provided by this part [21 USCS §§ 841 et seq.].

(2) If the court determines that the person has not been convicted as alleged in the information, that a conviction alleged in the information is invalid, or that the person is otherwise not subject to an increased sentence as a matter of law, the court shall, at the request of the United States attorney, postpone sentence to allow an appeal from that determination. If no such request is made, the court shall impose sentence as provided by this part [21 USCS §§ 841 et seq.]. The person may appeal from an order postponing sentence as if sentence had been pronounced and a final judgment of conviction entered.

**(e) Statute of limitations.** No person who stands convicted of an offense under this part [21 USCS §§ 841 et seq.] may challenge the validity of any prior conviction alleged under this section which occurred more than five years before the date of the information alleging such prior conviction.

**HISTORY:**
Oct. 27, 1970, P. L. 91-513, Title II, Part D, § 411, 84 Stat. 1269.





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**Effective Date: The effective date of this amendment is November 1, 2023.**

**821.**

**Part A (Status Points under § 4A1.1)**

The Commentary to § 2P1.1 captioned "Application Notes" is amended in Note 5 by striking "§ 4A1.1(d)" and inserting "§ 4A1.1(e)".

Section 4A1.1 is amended—

"(d) Add 2 points if the defendant committed the instant offense while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status.";

by redesignating subsection (e) as subsection (d);

and by inserting at the end the following new subsection (e):

"(e) Add 1 point if the defendant (1) receives 7 or more points under subsections (a) through (d), and (2) committed the instant offense while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status.".

The Commentary to § 4A1.1 captioned "Application Notes" is amended—

by striking Note 4 as follows:

"4. § 4A1.1(d). Two points are added if the defendant committed any part of the instant offense (i.e., any relevant conduct) while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status. Failure to report for service of a sentence of imprisonment is to be treated as an escape from such sentence. See § 4A1.2(n). For the purposes of this subsection, a 'criminal justice sentence' means a sentence countable under § 4A1.2 (Definitions and Instructions for Computing Criminal History) having a custodial or supervisory component, although active supervision is not required for this subsection to apply. For example, a term of unsupervised probation would be included; but a sentence to pay a fine, by itself, would not be included. A defendant who commits the instant offense while a violation warrant from a prior sentence is outstanding (e.g., a probation, parole, or supervised release violation warrant) shall be deemed to be under a criminal justice sentence for





Appendix L

the purposes of this provision if that sentence is otherwise countable, even if that sentence would have expired absent such warrant. See § 4A1.2(m).";

by redesignating Note 5 as Note 4;

n Note 4 (as so redesignated) by striking "§ 4A1.1(e)" each place such term appears and inserting "§ 4A1.1(d)";

and by inserting at the end the following new note 5:

"5. § 4A1.1(e). One point is added if the defendant (1) receives 7 or more points under § 4A1.1(a) through (d), and (2) committed any part of the instant offense (i.e., any relevant conduct) while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status. Failure to report for service of a sentence of imprisonment is to be treated as an escape from such sentence. See § 4A1.2(n). For the purposes of this subsection, a 'criminal justice sentence' means a sentence countable under § 4A1.2 (Definitions and Instructions for Computing Criminal History) having a custodial or supervisory component, although active supervision is not required for this subsection to apply. For example, a term of unsupervised probation would be included; but a sentence to pay a fine, by itself, would not be included. A defendant who commits the instant offense while a violation warrant from a prior sentence is outstanding (e.g., a probation, parole, or supervised release violation warrant) shall be deemed to be under a criminal justice sentence for the purposes of this provision if that sentence is otherwise countable, even if that sentence would have expired absent such warrant. See § 4A1.2(m).".

The Commentary to § 4A1.1 captioned "Background" is amended in the last paragraph by striking "Section 4A1.1(d) adds two points if the defendant was under a criminal justice sentence during any part of the instant offense" and inserting "Section 4A1.1(e) adds one point if the defendant receives 7 or more points under § 4A1.1(a) through (d) and was under a criminal justice sentence during any part of the instant offense".

Section 4A1.2 is amended—

in subsection (a)(2) by striking "§ 4A1.1(e)" and inserting "§ 4A1.1(d)";

in subsection (m) by striking "§ 4A1.1(d)" and inserting "§ 4A1.1(e)";

in subsection (n) by striking "§ 4A1.1(d)" and inserting "§ 4A1.1(e)";

and in subsection (p) by striking "§ 4A1.1(e)" and inserting "§ 4A1.1(d)".

**Part B (Zero-Point Offenders)**

**Subpart 1 (Adjustment for Certain Zero-Point Offenders)**

Chapter Four is amended by inserting at the end the following new Part C:

"PART C – ADJUSTMENT FOR CERTAIN ZERO-POINT OFFENDERS

§ 4C1.1. Adjustment for Certain Zero-Point Offenders

(a) Adjustment. If the defendant meets all of the following criteria:

(1) the defendant did not receive any criminal history points from Chapter Four, Part A;

(2) the defendant did not receive an adjustment under § 3A1.4 (Terrorism);

(3) the defendant did not use violence or credible threats of violence in connection with the offense;

(4) the offense did not result in death or serious bodily injury;

(5) the instant offense of conviction is not a sex offense;

(6) the defendant did not personally cause substantial financial hardship;

(7) the defendant did not possess, receive, purchase, transport, transfer, sell, or otherwise dispose of a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;

(8) the instant offense of conviction is not covered by § 2H1.1 (Offenses Involving Individual Rights);

(9) the defendant did not receive an adjustment under § 3A1.1 (Hate Crime Motivation or Vulnerable Victim) or § 3A1.5 (Serious Human Rights Offense); and

(10) the defendant did not receive an adjustment under § 3B1.1 (Aggravating Role) and was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. § 848;

decrease the offense level determined under Chapters Two and Three by 2 levels.

(b) Definitions and Additional Considerations.

(1) 'Dangerous weapon,' 'firearm,' 'offense,' and 'serious bodily injury' have the meaning given those terms in the Commentary to § 1B1.1 (Application Instructions).

(2) 'Sex offense' means (A) an offense, perpetrated against a minor, under (i) chapter 109A of

title 18, United States Code; (ii) chapter 110 of title 18, not including a recordkeeping offense; (iii) chapter 117 of title 18, not including transmitting information about a minor or filing a factual statement about an alien individual; or (iv) 18 U.S.C. § 1591; or (B) an attempt or a conspiracy to commit any offense described in subparagraphs (A)(i) through (iv) of this definition.

(3) In determining whether the defendant's acts or omissions resulted in 'substantial financial hardship' to a victim, the court shall consider, among other things, the non-exhaustive list of factors provided in Application Note 4(F) of the Commentary to § 2B1.1 (Theft, Property Destruction, and Fraud).

*Commentary*

*Application Notes:*

1. Application of Subsection (a)(6). The application of subsection (a)(6) is to be determined independently of the application of subsection (b)(2) of § 2B1.1 (Theft, Property Destruction, and Fraud).

2. Upward Departure. An upward departure may be warranted if an adjustment under this guideline substantially underrepresents the seriousness of the defendant's criminal history. For example, an upward departure may be warranted if the defendant has a prior conviction or other comparable judicial disposition for an offense that involved violence or credible threats of violence.".

**Subpart 2 (Implementation of 28 U.S.C. § 994(j))**

The Commentary to § 5C1.1 captioned "Application Notes" is amended—

by inserting at the beginning of Note 1 the following new heading: "Application of Subsection (a).";

by inserting at the beginning of Note 2 the following new heading: "Application of Subsection (b).";

by inserting at the beginning of Note 3 the following new heading: "Application of Subsection (c).";

by striking Note 4 as follows:

"If the defendant is a nonviolent first offender and the applicable guideline range is in Zone A or B of the Sentencing Table, the court should consider imposing a sentence other than a sentence of imprisonment, in accordance with subsection (b) or (c)(3). See 28 U.S.C. § 994(j). For purposes of this application note, a 'nonviolent first offender' is a defendant who has no prior

convictions or other comparable judicial dispositions of any kind and who did not use violence or credible threats of violence or possess a firearm or other dangerous weapon in connection with the offense of conviction. The phrase 'comparable judicial dispositions of any kind' includes diversionary or deferred dispositions resulting from a finding or admission of guilt or a plea of nolo contendere and juvenile adjudications.";

by redesignating Notes 5 through 10 as Notes 4 through 9, respectively;

by inserting at the beginning of Note 4 (as so redesignated) the following new heading: "Application of Subsection (d).";

by inserting at the beginning of Note 5 (as so redesignated) the following new heading: "Application of Subsection (e).";

by inserting at the beginning of Note 6 (as so redesignated) the following new heading: "Departures Based on Specific Treatment Purpose.";

by inserting at the beginning of Note 7 (as so redesignated) the following new heading: "Use of Substitutes for Imprisonment.";

by inserting at the beginning of Note 8 (as so redesignated) the following new heading: "Residential Treatment Program.";

by inserting at the beginning of Note 9 (as so redesignated) the following new heading: "Application of Subsection (f).";

and by inserting at the end the following new Note 10:

"10. Zero-Point Offenders.

(A) Zero-Point Offenders in Zones A and B of the Sentencing Table. If the defendant received an adjustment under § 4C1.1 (Adjustment for Certain Zero-Point Offenders) and the defendant's applicable guideline range is in Zone A or B of the Sentencing Table, a sentence other than a sentence of imprisonment, in accordance with subsection (b) or (c)(3), is generally appropriate. See 28 U.S.C. § 994(j).

(B) Departure for Cases Where the Applicable Guideline Range Overstates the Gravity of the Offense. A departure, including a departure to a sentence other than a sentence of imprisonment, may be appropriate if the defendant received an adjustment under § 4C1.1 (Adjustment for Certain Zero-Point Offenders) and the defendant's applicable guideline range overstates the gravity of the offense because the offense of conviction is not a crime of violence or an otherwise serious offense. See 28 U.S.C. § 994(j).".

**Subpart 3 (Additional Changes)**

Chapter One, Part A is amended in Subpart 1(4)(d) (Probation and Split Sentences)—

by adding an asterisk after "community confinement or home detention.";

by adding a second asterisk after "through departures.*";

and by striking the following Note:

"*Note: Although the Commission had not addressed 'single acts of aberrant behavior' at the time the Introduction to the Guidelines Manual originally was written, it subsequently addressed the issue in Amendment 603, effective November 1, 2000. (See **USSG** App. C, amendment 603.)",

and inserting the following Notes:

"*Note: The Commission expanded Zones B and C of the Sentencing Table in 2010 to provide a greater range of sentencing options to courts with respect to certain offenders. (See **USSG** App. C, amendment 738.) In 2018, the Commission added a new application note to the Commentary to § 5C1.1 (Imposition of a Term of Imprisonment), stating that if a defendant is a 'nonviolent first offender and the applicable guideline range is in Zone A or B of the Sentencing Table, the court should consider imposing a sentence other than a sentence of imprisonment.' (See **USSG** App. C, amendment 801.) In 2023, the Commission added a new Chapter Four guideline, at § 4C1.1 (Adjustment for Certain Zero-Point Offenders), providing a decrease of 2 levels from the offense level determined under Chapters Two and Three for 'zero-point' offenders who meet certain criteria. In addition, the Commission further amended the Commentary to § 5C1.1 to address the alternatives to incarceration available to 'zero-point' offenders by revising the application note in § 5C1.1 that addressed 'nonviolent first offenders' to focus on 'zero-point' offenders. (See **USSG** App. C, **amendment 821**.)

**Note: Although the Commission had not addressed 'single acts of aberrant behavior' at the time the Introduction to the Guidelines Manual originally was written, it subsequently addressed the issue in Amendment 603, effective November 1, 2000. (See **USSG** App. C, amendment 603.)".

Section 4A1.3(b)(2)(A) is amended by striking "A departure" and inserting "Unless otherwise specified, a departure".

The Commentary to § 4A1.3 captioned "Application Notes" is amended in Note 3 by striking "due to the fact that the lower limit of the guideline range for Criminal History Category I is set

for a first offender with the lowest risk of recidivism" and inserting "unless otherwise specified".

**Part C (Impact of Simple Possession of Marihuana Offenses)**

The Commentary to § 4A1.3 captioned "Application Notes", as amended by Part B, Subpart 3 of this amendment, is further amended in Note 3 by striking the following:

"Downward Departures. A downward departure from the defendant's criminal history category may be warranted if, for example, the defendant had two minor misdemeanor convictions close to ten years prior to the instant offense and no other evidence of prior criminal behavior in the intervening period. A departure below the lower limit of the applicable guideline range for Criminal History Category I is prohibited under subsection (b)(2)(A), unless otherwise specified.",

and inserting the following:

"Downward Departures.

(A) Examples. A downward departure from the defendant's criminal history category may be warranted based on any of the following circumstances:

(i) The defendant had two minor misdemeanor convictions close to ten years prior to the instant offense and no other evidence of prior criminal behavior in the intervening period.

(ii) The defendant received criminal history points from a sentence for possession of marihuana for personal use, without an intent to sell or distribute it to another person.

(B) Downward Departures from Criminal History Category I. A departure below the lower limit of the applicable guideline range for Criminal History Category I is prohibited under subsection (b)(2)(A), unless otherwise specified.".

**REASON FOR AMENDMENT:** This amendment is the result of several Commission studies regarding the nature of the criminal history of federal offenders, including analyses of the number and types of prior convictions included as criminal history and the ability of the criminal history rules to predict an offender's likelihood of rearrest. While these studies continue to recognize the close association between an offender's criminal history calculation under the guidelines and the likelihood of future recidivism, the amendment makes targeted changes to reduce the impact of providing additional criminal history points for offenders under a criminal justice sentence (commonly known as "status points"), to reduce recommended guideline ranges for offenders with zero criminal history points under the guidelines ("zero-point offenders"), and to recognize the changing legal landscape as it pertains to simple possession of marihuana offenses. These targeted amendments balance the Commission's mission of implementing

data-driven sentencing policies with its duty to craft penalties that reflect the statutory purposes of sentencing.

*Part A – Status Points*

Part A of the amendment addresses "status points" for offenders, namely the additional criminal history points given to offenders for the fact of having committed the instant offense while under a criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status. The amendment redesignates current subsection (d) of § 4A1.1, which addresses "status points," as subsection (e) and redesignates current subsection (e), which addresses multiple crimes of violence treated as a single sentence, as subsection (d). This redesignation is made for ease of application.

Under the previous "status points" provision, two criminal history points were added under § 4A1.1(d) if the defendant committed the instant offense "while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status." The amendment limits the overall criminal history impact of "status points" in two ways. First, as revised, the "status points" provision under redesignated subsection (e) applies only to offenders with more serious criminal histories under the guidelines by requiring that an offender have seven or more criminal history points under subsections (a) through (d) in addition to having been under a criminal justice sentence at the time of the instant offense.

Offenders with six or fewer criminal history points under subsections (a) through (d) will no longer receive "status points." Second, the amendment also reduces from two points to one point the "status points" assessed for offenders to whom the revised provision applies. Part A of the amendment also makes conforming changes to the Commentary to § 4A1.1, § 2P1.1 (Escape, Instigating or Assisting Escape), and § 4A1.2 (Definitions and Instructions for Computing Criminal History).

As part of its study of criminal history, the Commission found that "status points" are relatively common in cases with at least one criminal history point, having been applied in 37.5 percent of cases with criminal history points over the last five fiscal years. Of the offenders who received "status points," 61.5 percent had a higher Criminal History Category as a result of the addition of the "status points." The Commission also recently published a series of research reports regarding the recidivism rates of federal offenders. *See, e.g.*, U.S. SENT'G COMM'N, RECIDIVISM OF FEDERAL OFFENDERS RELEASED IN 2010 (2021), available at https://www.ussc.gov/research/research-reports/recidivism-federal-offenders-released-2010. These reports again concluded that an offender's criminal history calculation under the guidelines is strongly associated with the likelihood of future recidivism by the defendant. In a related publication, the Commission also found, however, that status points add little to the overall

predictive value associated with the criminal history score. *See* U.S. SENT'G COMM'N, REVISITING STATUS POINTS (2022), available at https://www.ussc.gov/research/research-reports/revisiting-status-points.

The Commission's action to limit the impact of "status points" builds upon its tradition of datadriven evolution of the guidelines. As described in the Introduction to Chapter Four, the original Commission envisioned status points as "consistent with the extant empirical research assessing correlates of recidivism and patterns of career criminal behavior" and therefore envisioned "status points" as being reflective of, among other sentencing goals, the increased likelihood of future recidivism. See **USSG** Ch.4, Pt.A, intro. comment. The original Commission also explained, however, that it would "review additional data insofar as they become available in the future." The Commission's recent research suggests that "status points" improve the predictive value of the criminal history score less than the original Commission may have expected, suggesting that the treatment of "status points" under Chapter Four should be refined.

Accordingly, the Commission determined that it was appropriate to address several concerns regarding the scope and impact of status points. In taking these steps, the Commission observed that the operation of the *Guidelines Manual* separately accounts for consecutive punishment imposed upon revocations of supervised release, a likely occurrence if an offender was under a criminal justice sentence during the commission of another offense. The Commission further recognized that it is also possible that an offender's criminal history score would be independently increased as the result of additional time imposed as the result of a revocation of probation or supervised release for the offense that also results in the addition of status points.

At the same time, by retaining "status points" for those offenders in higher criminal history categories, the Commission continues to recognize that "status points," like the other criminal history provisions in Chapter Four, reflect and serve multiple purposes of sentencing, including the offender's perceived lack of respect for the law, as reflected both in the offender's overall criminal history and the fact that the offender has reoffended while under a criminal justice sentence ordered by a court. *See*18 U.S.C. § 3553(a)(2)(A)–(C).

The Commission concluded that accounting for status on a more limited basis continues to serve the broader purposes of sentencing while also addressing other concerns raised regarding the impact of status points.

*Part B – Zero-Point Offenders*

Part B of the amendment includes three subparts making changes pertaining to offenders who did not receive any criminal history points from Chapter Four, Part A. Subpart 1 provides for an adjustment for certain offenders with zero criminal history points. Subpart 2 revises § 5C1.1

(Imposition of a Term of Imprisonment) to implement the congressional directive at 28 U.S.C. § 994(j). Finally, Subpart 3 makes other conforming changes.

*Subpart 1 – Adjustment for Certain Zero-Point Offenders*

Subpart 1 of Part B of the amendment creates a new Chapter Four guideline at § 4C1.1 (Adjustment for Certain Zero-Point Offenders). New § 4C1.1 provides a decrease of two levels from the offense level determined under Chapters Two and Three for offenders who did not receive any criminal history points under Chapter Four, Part A and whose instant offense did not involve specified aggravating factors. In establishing new § 4C1.1, the Commission was informed by its studies of recidivism among federal offenders, as well as other extensive data analyses of offenders with no criminal history points, and public comment. The Sentencing Table in Chapter Five, Part A is divided into six criminal history categories, from I (lowest) to VI (highest). Criminal History Category I includes offenders with zero criminal history points and those with one criminal history point. Recidivism data analyzed by the Commission shows, however, that offenders with zero criminal history points have considerably lower recidivism rates than other offenders, including offenders with one criminal history point. *See* U.S. SENT'G COMM'N, RECIDIVISM OF FEDERAL OFFENDERS RELEASED IN 2010 (2021), available at https://www.ussc.gov/research/research-reports/recidivism-federal-offenders-released-2010. Among other findings, the report concluded that "zero-point offenders" were less likely to be rearrested than "one point" offenders (26.8% compared to 42.3%), the largest variation of any comparison of offenders within the same Criminal History Category.

In promulgating this change, the Commission also considered the rates of departures and variances in cases involving offenders with no criminal history points. The Commission has long viewed the rates and extents of departures and variances from the applicable guideline ranges as a feedback mechanism from the courts that a particular area of the guidelines may warrant further review and possible amendment. In fiscal year 2021, 39.2 percent of offenders with zero criminal history points received a sentence within the guidelines range; by comparison, 47.4 percent of offenders with one criminal history point were sentenced within the guideline range. The Commission determined that the departure and variance rates for zero-point offenders, coupled with its recidivism data, warranted action

The amendment applies to offenders with no criminal history points, including (1) offenders with no prior convictions; (2) offenders who have prior convictions that are not counted because those convictions were not within the time limits set forth in subsection (d) and (e) of § 4A1.2 (Definitions and Instructions for Computing Criminal History); and (3) offenders who have prior convictions that are not used in computing the criminal history category for reasons other than their "staleness" (*e.g.*, sentences resulting from foreign or tribal court convictions, minor misdemeanor convictions, or infractions). In adopting this definition of "zero-point offenders," the

Commission opted to hew to the long-standing and carefully crafted criminal history rules set forth in Chapter Four, regarding which prior convictions count for criminal history purposes and which do not. The Commission also observed that attempts to exclude offenders with certain prior convictions could lead to increased complexity and litigation and require the additional practical step of investigating prior unscorable offenses for which records may not be readily available.

While determining that a reduction is appropriate for some offenders with zero criminal history points, the Commission also identified circumstances in which zero-point offenders are appropriately excluded from eligibility in light of the seriousness of the instant offense of conviction or the existence of aggravating factors in the instant offense (*e.g.*, where the offender used violence or credible threats of violence in connection with the offense or where the instant offense of conviction was a "sex offense"). The exclusionary criteria identified by the Commission were again informed by extensive data analyses and public comment. The Commission was also informed by existing legislation, including the congressionally established criteria for the statutory safety valve at 18 U.S.C. § 3553(f) and the recent firearms legislation set forth in the Bipartisan Safer Communities Act.

*Subpart 2 – Implementation of 28 U.S.C. § 994(j)*

Subpart 2 of Part B of the amendment revises the Commentary to § 5C1.1 (Imposition of a Term of Imprisonment) that addresses "nonviolent first offenders." New Application Note 10(A) provides that if the defendant received an adjustment under new § 4C1.1 and the defendant's applicable guideline range is in Zone A or B of the Sentencing Table, a sentence other than a sentence of imprisonment, in accordance with subsection (b) or (c)(3), is generally appropriate. New Application Note 10(B) adds a corresponding departure provision providing that a departure, including a departure to a sentence other than a sentence of imprisonment, may be appropriate if the offender received an adjustment under new § 4C1.1 and the applicable guideline range overstates the gravity of the offense because the offense of conviction is not a crime of violence or an otherwise serious offense.

The changes to the Commentary to § 5C1.1 respond to Congress's directive to the Commission at 28 U.S.C. § 994(j), directing the Commission to ensure that the guidelines reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense. The Commission determined that the revised commentary serves Congress's intent in promulgating section 994(j) while providing appropriate limitations and guidance through reliance on the criteria set forth in new § 4C1.1 and the specific statutory language set forth in section 994(j).

*Subpart 3 – Additional Changes*

Subpart 3 of Part B of the amendment makes a corresponding change to subsection (b)(2)(A) of § 4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement)) to provide that a departure below the lower limit of the applicable guideline range for Criminal History Category I is prohibited, "unless otherwise specified." The amendment also revises an explanatory note in Chapter One, Part A, Subpart 1(4)(d) (Probation and Split Sentences) to detail amendments to the Guidelines Manual related to the implementation of 28 U.S.C. § 994(j), first offenders, and "zero-point offenders."

*Part C – Impact of Simple Possession of Marihuana Offenses*

Part C of the amendment revises the Commentary to § 4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement)) to include sentences resulting from possession of marihuana offenses as an example of when a downward departure from the defendant's criminal history may be warranted. Specifically, Part C provides that a downward departure may be warranted if the defendant received criminal history points from a sentence for possession of marihuana for personal use, without an intent to sell or distribute it to another person. Most commenters, including the Department of Justice, supported this change. See Letter from Jonathan J. Wroblewski, Dir., Crim. Div., U.S. Dep't of Just., to Hon. Carlton W. Reeves, Chair, U.S. Sent'g Comm'n (Feb. 27, 2023), in U.S. SENT'G COMM'N, 2022–2023 AMENDMENT CYCLE PROPOSED AMENDMENTS/PUBLIC COMMENT (2023); see also U.S. SENT'G COMM'N, 2022–2023 AMENDMENT CYCLE PROPOSED AMENDMENTS/PUBLIC COMMENT (2023) (providing numerous public comment supporting the amendment).

The Commission also relied upon its recently published report on the impact of simple possession of marihuana offenses on sentencing. *See* U.S. SENT'G COMM'N, WEIGHING THE IMPACT OF SIMPLE POSSESSION OF MARIJUANA: TRENDS AND SENTENCING IN THE FEDERAL SYSTEM (2023), available at https://www.ussc.gov/research/research-reports/weighing-impact-simple-possession-marijuana. In that study, the Commission found that 4,405 federal offenders (8.0%) received criminal history points under the federal sentencing guidelines for prior marihuana possession sentences in fiscal year 2021. Most such prior sentences were for state court convictions resulting in less than 60 days in prison or non-custodial sentences. The Commission also found informative that ten percent (10.2%) of these 4,405 offenders had no other criminal history points, and that for 40 percent (40.1%) of the 4,405 offenders (1,765), the criminal history points for prior marihuana possession sentences resulted in a higher Criminal History Category.

## § 3553. Imposition of a sentence

**(a) Factors to be considered in imposing a sentence.** The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

**(1)** the nature and circumstances of the offense and the history and characteristics of the defendant;

**(2)** the need for the sentence imposed—

**(A)** to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

**(B)** to afford adequate deterrence to criminal conduct;

**(C)** to protect the public from further crimes of the defendant; and

**(D)** to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

**(3)** the kinds of sentences available;

**(4)** the kinds of sentence and the sentencing range established for—

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

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

**(ii)** that, except as provided in section 3742(g) [18 USCS § 3742(g)], are in effect on the date the defendant is sentenced; or

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





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yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

**(5)** any pertinent policy statement—

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

**(B)** that, except as provided in section 3742(g) [18 USCS § 3742(g)], is in effect on the date the defendant is sentenced.[;]

**(6)** the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

**(7)** the need to provide restitution to any victims of the offense.

**(b) Application of guidelines in imposing a sentence.**

**(1)** In general **[Caution: In United States v. Booker (2005) 543 US 220, 160 L Ed 2d 621, 125 S Ct 738, the Supreme Court held that 18 USCS § 3553(b)(1), which makes the Federal Sentencing Guidelines mandatory, is incompatible with the requirements of the Sixth Amendment and therefore must be severed and excised from the Sentencing Reform Act of 1984.]** . Except as provided in paragraph (2), the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described. In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission.

**(2)** Child crimes and sexual offenses.

**[(A)]** Sentencing. In sentencing a defendant convicted of an offense under section 1201 [18 USCS § 1201] involving a minor victim, an offense under section 1591 [18 USCS §





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1591], or an offense under chapter 71, 109A, 110, or 117 [18 USCS §§ 1460 et seq., 2241 et seq., 2251 et seq., or 2421 et seq.], the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless—

**(i)** the court finds that there exists an aggravating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence greater than that described;

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

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

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

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

**(iii)** the court finds, on motion of the Government, that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense and that this assistance established a mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence lower than that described.

In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission, together with any amendments thereto by act of Congress. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission, together with any amendments to such guidelines or policy statements by act of Congress.

**(c) Statement of reasons for imposing a sentence.** The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence, and, if the sentence—





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**(1)** is of the kind, and within the range, described in subsection (a)(4), and that range exceeds 24 months, the reason for imposing a sentence at a particular point within the range; or

**(2)** is not of the kind, or is outside the range, described in subsection (a)(4), the specific reason for the imposition of a sentence different from that described, which reasons must also be stated with specificity in a statement of reasons form issued under section 994(w)(1)(B) of title 28 [28 USCS § 994(w)(1)(B)], except to the extent that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32. In the event that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32 the court shall state that such statements were so received and that it relied upon the content of such statements.

If the court does not order restitution, or orders only partial restitution, the court shall include in the statement the reason therefor. The court shall provide a transcription or other appropriate public record of the court's statement of reasons, together with the order of judgment and commitment, to the Probation System and to the Sentencing Commission,[,] and, if the sentence includes a term of imprisonment, to the Bureau of Prisons.

**(d) Presentence procedure for an order of notice.** Prior to imposing an order of notice pursuant to section 3555 [18 USCS § 3555], the court shall give notice to the defendant and the Government that it is considering imposing such an order. Upon motion of the defendant or the Government, or on its own motion, the court shall—

**(1)** permit the defendant and the Government to submit affidavits and written memoranda addressing matters relevant to the imposition of such an order;

**(2)** afford counsel an opportunity in open court to address orally the appropriateness of the imposition of such an order; and

**(3)** include in its statement of reasons pursuant to subsection (c) specific reasons underlying its determinations regarding the nature of such an order.

Upon motion of the defendant or the Government, or on its own motion, the court may in its discretion employ any additional procedures that it concludes will not unduly complicate or prolong the sentencing process.

**(e) Limited authority to impose a sentence below a statutory minimum.** Upon motion of the Government, the court shall have the authority to impose a sentence below a level established by statute as a minimum sentence so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense. Such sentence shall

be imposed in accordance with the guidelines and policy statements issued by the Sentencing Commission pursuant to section 994 of title 28, United States Code.

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

**(1)** the defendant does not have—

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

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

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

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

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

**(4)** the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in section 408 of the Controlled Substances Act [21 USCS § 848]; and

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

Information disclosed by a defendant under this subsection may not be used to enhance the sentence of the defendant unless the information relates to a violent offense.

**(g) Definition of violent offense.** As used in this section, the term "violent offense" means a crime of violence, as defined in section 16 [18 USCS § 16], that is punishable by imprisonment.

**HISTORY:**

Added Oct. 12, 1984, P. L. 98-473, Title II, Ch II, § 212(a)(2), 98 Stat. 1989; Oct. 27, 1986, P. L. 99-570, Title I, Subtitle A, § 1007(a), 100 Stat. 3207-7; Nov. 10, 1986, P. L. 99-646, §§ 8(a), 9(a), 80(a), 81(a), 100 Stat. 3593, 3619; Dec. 7, 1987, P. L. 100-182, §§ 3, 16(a), 17, 101 Stat. 1266, 1269, 1270; Nov. 18, 1988, P. L. 100-690, Title VII, Subtitle C, § 7102, 102 Stat. 4416; Sept. 13, 1994, P. L. 103-322, Title VIII, § 80001(a), Title XXVIII, § 280001, 108 Stat. 1985, 2095; Oct. 11, 1996, P. L. 104-294, Title VI, § 601(b)(5), (6), (h), 110 Stat. 3499, 3500; Nov. 2, 2002, P. L. 107-273, Div B, Title IV, § 4002(a)(8), 116 Stat. 1807; April 30, 2003, P. L. 108-21, Title IV, § 401(a), (c), (j)(5), 117 Stat. 667, 669, 673; May 27, 2010, P. L. 111-174, § 4, 124 Stat. 1216; Dec. 21, 2018, P.L. 115-391, Title IV, § 402(a), 132 Stat. 5221.





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