

UNITED STATES SENTENCING COMMISSION

# An Overview

of the



## FEDERAL SENTENCING GUIDELINES

**(Disclaimer:** *The characterizations of the sentencing guidelines in this overview are presented in simplified form and are not to be used for guideline interpretation, application, or authority; the characterizations do not necessarily represent the official position of the Commission.*)

### ***How the Sentencing Guidelines Work***

The sentencing guidelines take into account both the seriousness of the offense and the offender's criminal history.

#### **OFFENSE SERIOUSNESS**

The sentencing guidelines provide 43 levels of offense seriousness—the more serious the crime, the higher the offense level.

#### **BASE OFFENSE LEVEL**

Each type of crime is assigned a base offense level, which is the starting point for determining the seriousness of a particular offense. More serious types of crimes have higher base offense levels (for example, a trespass has a base offense level of 4, while kidnapping has a base offense level of 32).

#### **SPECIFIC OFFENSE CHARACTERISTICS**

In addition to base offense levels, each offense type typically carries with it a number of specific offense characteristics. These are factors that vary from offense to offense, but that can increase or decrease the base offense level and, ultimately, the sentence an offender receives. Some examples:

- One of the specific base offense characteristics for theft (which has a base offense level of 7 if the statutory maximum is 20 years or more) increases the offense level based on the amount of loss involved in the offense. If a theft involved a \$6,000 loss, there is to be a 2-level increase to the base offense level, bringing the level up to 9. If a theft involved a \$50,000 loss, there is to be a 6-level increase, bringing the total to 13.
- One of the specific offense characteristics for robbery (which has a base offense level of 20) involves the use of a firearm. If a firearm was displayed during the robbery, there is to be a 5-level increase, bringing the level to 25; if a firearm was actually discharged during the robbery, there is to be a 7-level increase, bringing the level to 27.

## **ADJUSTMENTS**

Adjustments are factors that can apply to any offense. Like specific offense characteristics, they increase or decrease the offense level. Categories of adjustments include: victim-related adjustments, the offender's role in the offense, and obstruction of justice. Examples of adjustments are as follows:

- If the offender was a minimal participant in the offense, the offense level is decreased by 4 levels.
- If the offender knew that the victim was unusually vulnerable due to age or physical or mental condition, the offense level is increased by 2 levels.
- If the offender obstructed justice, the offense level is increased by 2 levels.

### ***Multiple Count Adjustments***

When there are multiple counts of conviction, the sentencing guidelines provide instructions on how to achieve a "combined offense level." These rules provide incremental punishment for significant additional criminal conduct. The most serious offense is used as a starting point. The other counts determine whether to and how much to increase the offense level.

### ***Acceptance of Responsibility Adjustments***

The final step in determining an offender's offense level involves the offender's acceptance of responsibility. The judge may decrease the offense level by two levels if, in the judge's opinion, the offender accepted responsibility for his offense. In deciding whether to grant this deduction, judges can consider such factors as:

- whether the offender truthfully admitted his or her role in the crime,
- whether the offender made restitution before there was a guilty verdict, and
- whether the offender pled guilty.

Offenders who qualify for the two-level deduction and whose offense levels are greater than 15, may upon motion of the government, be granted an additional one-level deduction if, in a timely manner, they declare their intention to plead guilty.

## **CRIMINAL HISTORY**

The guidelines assign each offender to one of six criminal history categories based upon the extent of an offender's past misconduct and how recently these crimes took place. Criminal History Category I is assigned to the least serious criminal record and includes many first-time offenders. Criminal History Category VI is the most serious category and includes offenders with lengthy criminal records.

## **DETERMINING THE GUIDELINE RANGE**

The final offense level is determined by taking the base offense level and then adding or subtracting from it any specific offense characteristics and adjustments that apply. The point at which the final offense level and the criminal history category intersect on the Commission's sentencing table determines the defendant's sentencing guideline range.

In the following excerpt from the sentencing table, an offender with a Criminal History Category of I and a final offense level of 20 would have a guideline range of 33 to 41 months.

**SENTENCING TABLE** *(excerpt)*  
(in months of imprisonment)

| Offense Level | Criminal History Category |       |       |       |       |       |
|---------------|---------------------------|-------|-------|-------|-------|-------|
|               | I                         | II    | III   | IV    | V     | VI    |
|               | ...                       | ...   | ...   | ...   | ...   | ...   |
| <b>19</b>     | 30-37                     | 33-41 | 37-46 | 46-57 | 57-71 | 63-78 |
| <b>20</b>     | 33-41                     | 37-46 | 41-51 | 51-63 | 63-78 | 70-87 |
| <b>21</b>     | 37-46                     | 41-51 | 46-57 | 57-71 | 70-87 | 77-96 |
|               | ...                       | ...   | ...   | ...   | ...   | ...   |

**DEPARTURES**

Statute provides that “the court shall impose a sentence of the kind, and within the range...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.” 18 U.S.C. § 3553(b). After the guideline range is determined, if such an aggravating or mitigating circumstance exists, the court may “depart” from the guideline range. That is, the judge may sentence the offender above or below the range. When departing, the judge must state in writing the reason for the departure.

If the sentence is an upward departure, the offender may appeal the sentence; if it is a downward departure, the government may appeal. One special kind of departure is the “substantial assistance” departure. This downward departure may be granted if the offender has provided substantial assistance in the investigation or prosecution of another offender. A motion to depart for substantial assistance must be made by the prosecution, but the judge decides whether to grant it and, if so, to what extent. The court, upon motion of the government, may depart downward not more than four levels pursuant to an authorized early disposition program.

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