

# An Overview of the **FEDERAL SENTENCING GUIDELINES, 2 LEVEL REDUCTION**



## How the Sentencing Guidelines Work **2023**

**T**he 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 crime 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 fraud (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 fraud 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 fraud 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 brandished during the robbery, there is to be a 5-level increase, bringing the level to 25; if a firearm was 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 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 reduction, 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 2-level reduction and whose offense levels are greater than 15, may, upon motion of the government, be granted an additional 1-level reduction 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. Criminal History Category I is the least serious category and includes many first-time offenders. Criminal History Category VI is the most serious category and includes offenders with serious 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.

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

## Sentences Outside of the Guideline Range

After the guideline range is determined, if an atypical 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.

In January 2005, the U.S. Supreme Court decided *United States v. Booker*, 543 U.S. 220 (2005). The *Booker* decision addressed the question left unresolved by the Court's decision in *Blakely v. Washington*, 542 U.S. 296 (2004): whether the Sixth Amendment right to jury trial applies to the federal sentencing guidelines. In its substantive *Booker* opinion, the Court held that the Sixth Amendment applies to the sentencing guidelines. In its remedial *Booker* opinion, the Court severed and excised two statutory provisions, 18 U.S.C. § 3553(b)(1), which made the federal guidelines mandatory, and 18 U.S.C. § 3742(e), an appeals provision.

Under the approach set forth by the Court, "district courts, while not bound to apply the Guidelines, must consult those Guidelines and take them into account when sentencing," subject to review by the courts of appeal for "unreasonableness." The subsequent Supreme Court decision in *Rita v. United States*, 551 U.S. 338 (2007), held that courts of appeal may apply a presumption of reasonableness when reviewing a sentence imposed within the guideline sentencing range.

The Supreme Court continued to stress the importance of the federal sentencing guidelines in its most recent sentencing-related cases. See *Gall v. United States*, 128 S. Ct. 586 (2007) ("As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and initial benchmark" at sentencing); *Kimbrough v. United States*, 128 S. Ct. 558 (2007) (After *Booker*, "[a] district judge must include the Guidelines range in the array of factors warranting consideration").

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**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.