



Commission Update

Sentencing Guideline Training Series for the Middle District of Pennsylvania

March 30, 2023

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Senior Attorney

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Office of Education and Sentencing Practice

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Learning Objectives

By the end of today's session, your active engagement will enable you to:

Identify recent national, circuit, and district sentencing trends;

Utilize Commission resources;

Describe recent Commission updates; and

Evaluate recent Supreme Court and Third Circuit opinions.

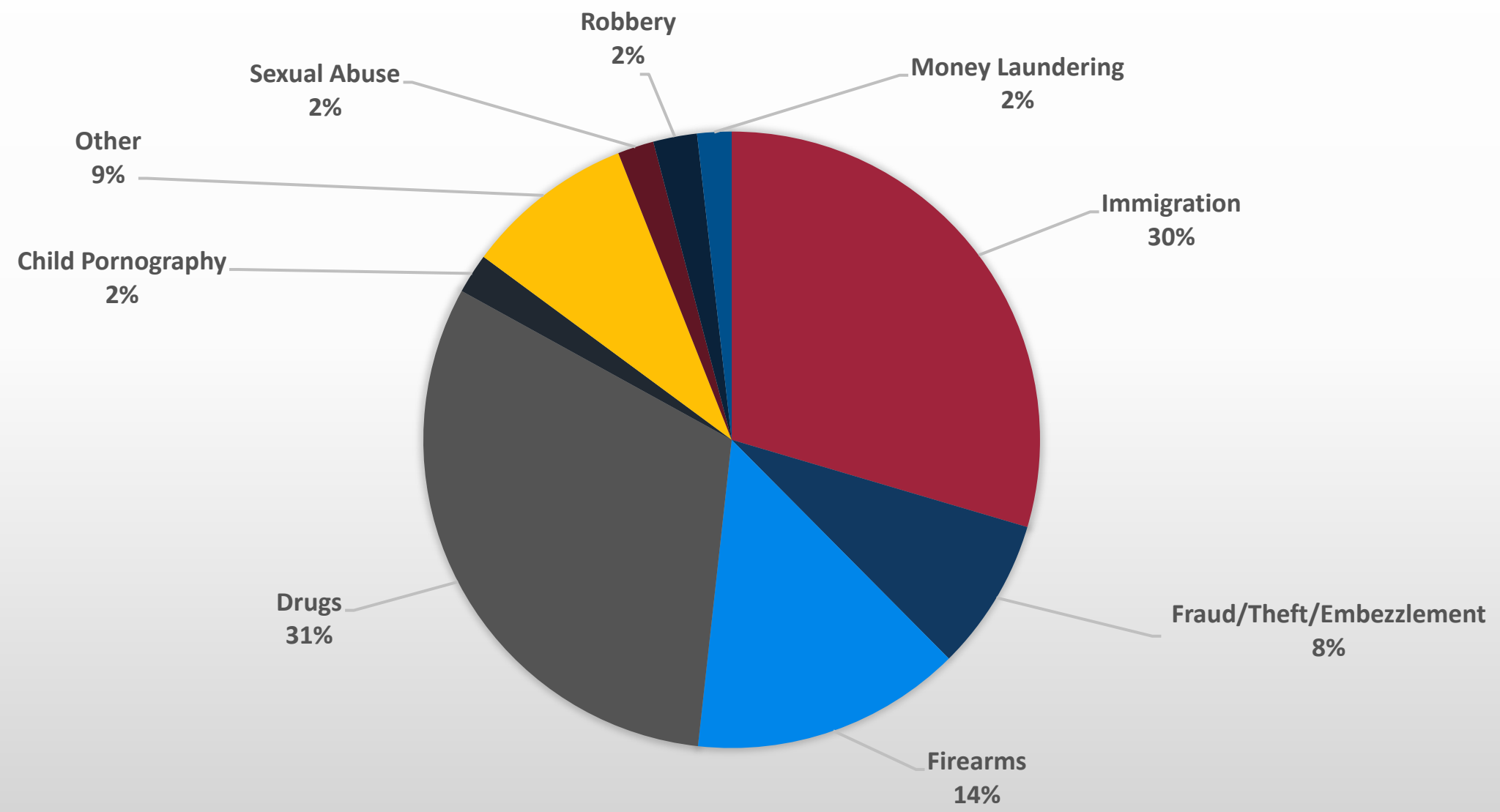




National, Circuit, and District Data

Primary Offense Types

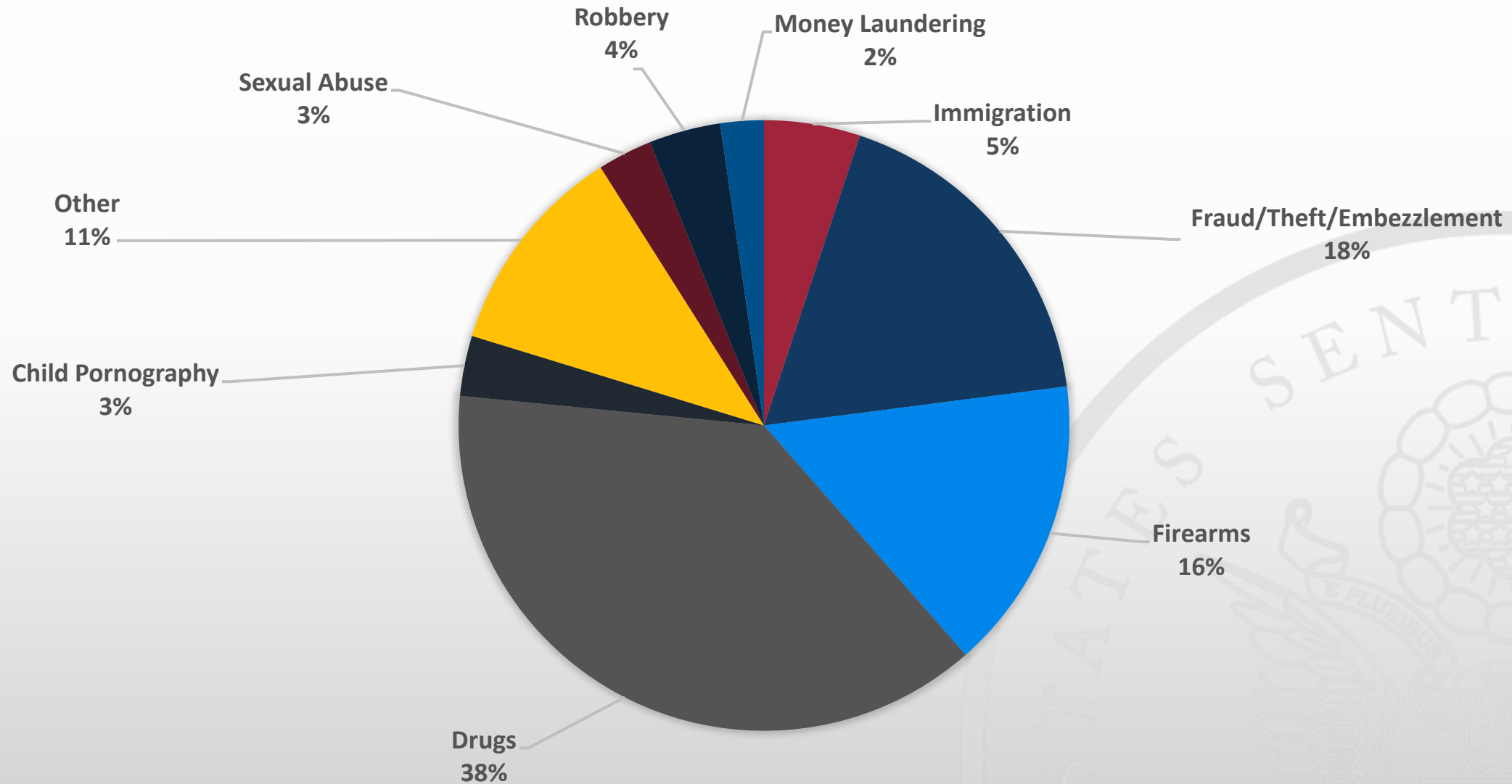
National - FY2021



SOURCE: 2021 Datafile, USSCFY21; 57,287 Cases

Primary Offense Types

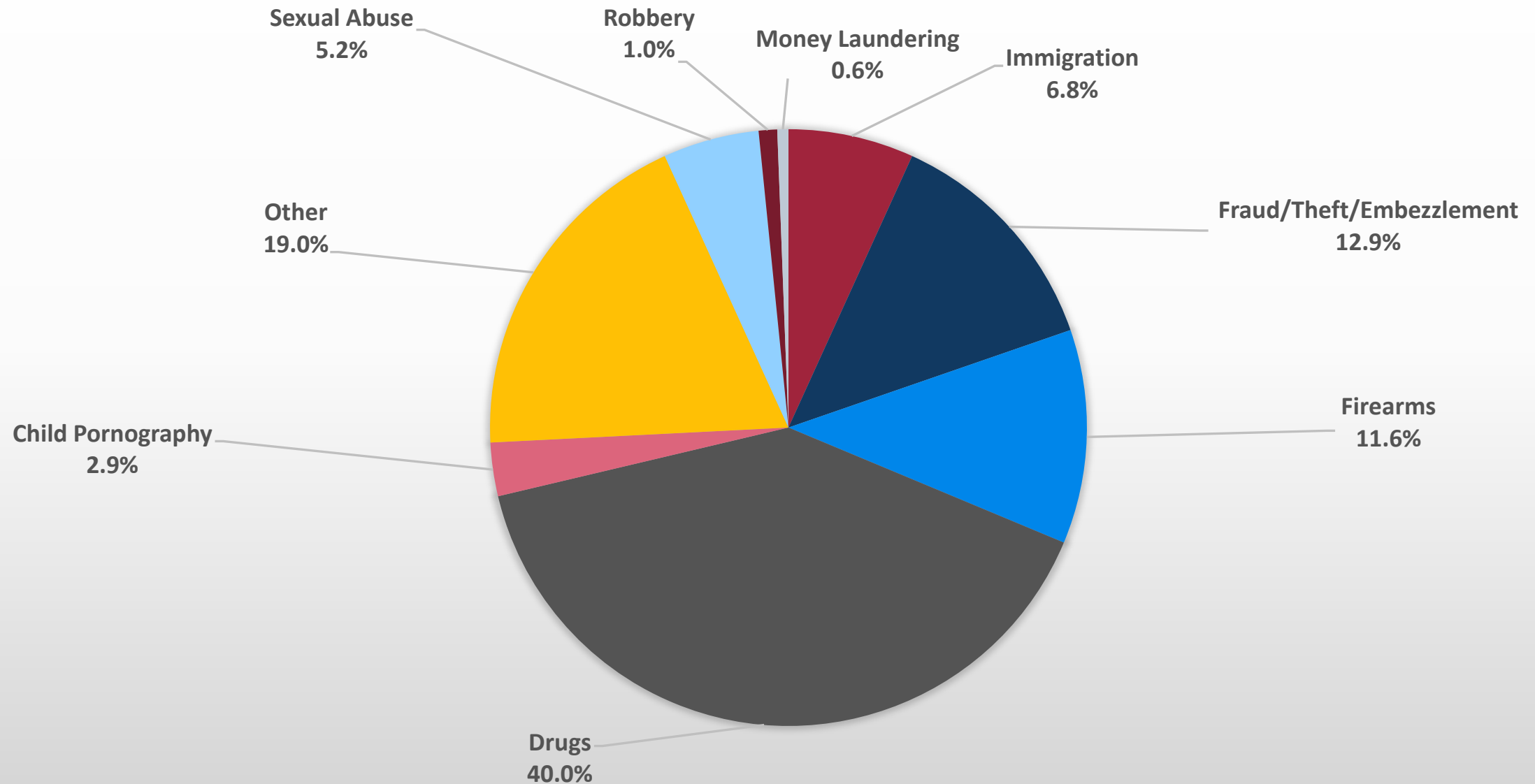
Third Circuit - FY2021



SOURCE: 2021 Datafile, USSCFY21; 1,900 Cases

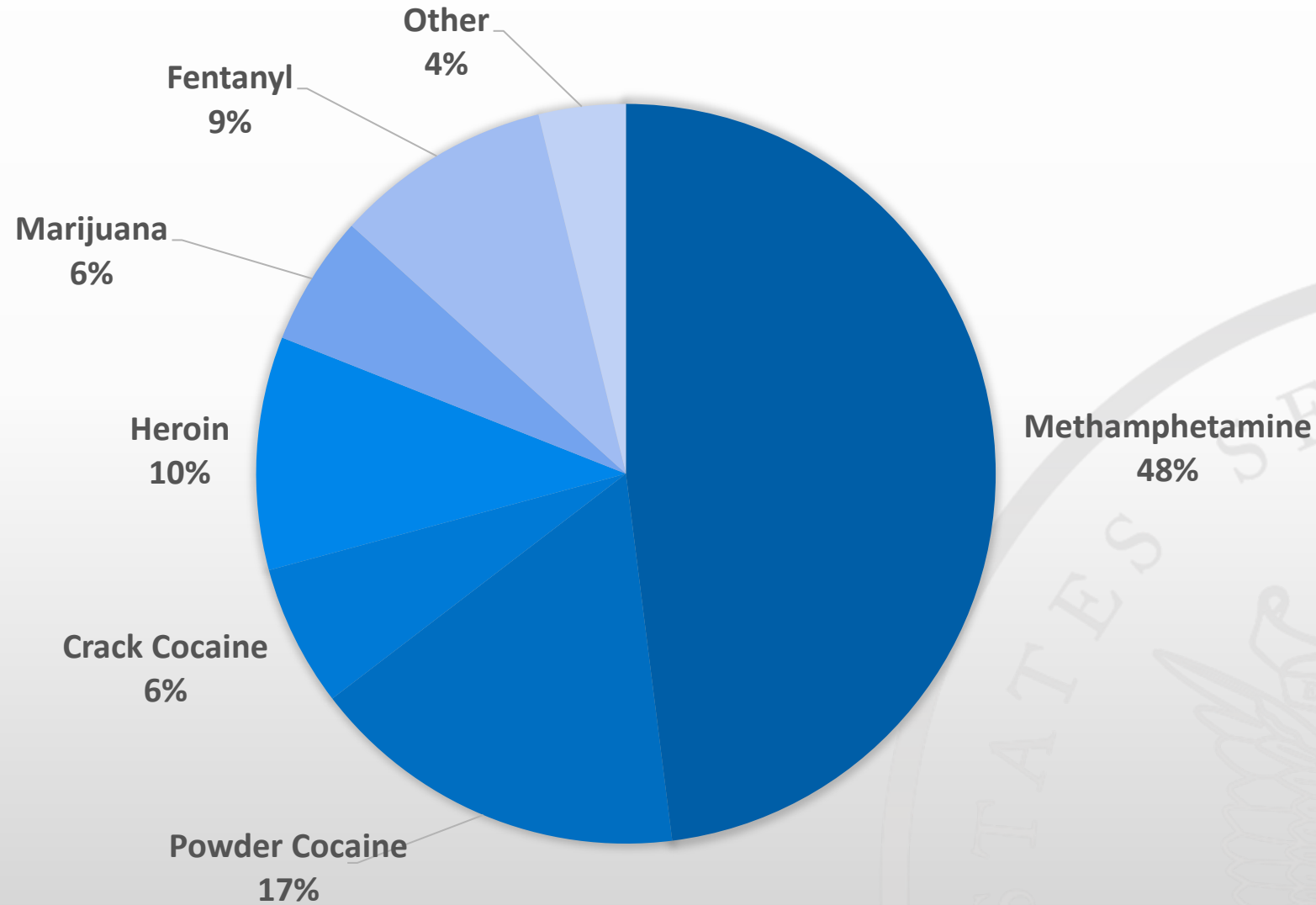
Primary Offense Types

Middle District of Pennsylvania - FY2021



Primary Drug Types

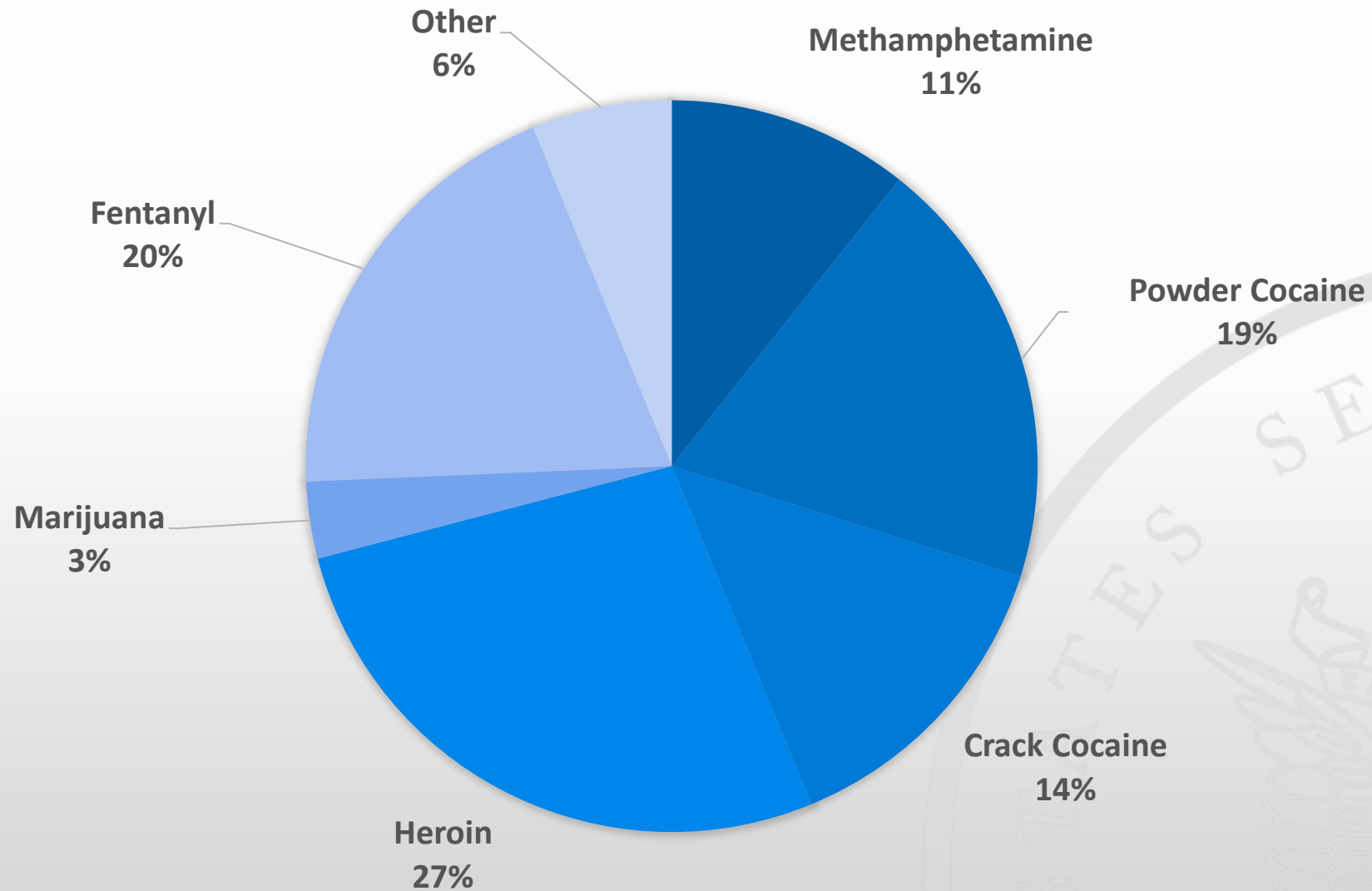
National - FY2021



SOURCE: 2021 Datafile, USSCFY21; 17,692 Cases

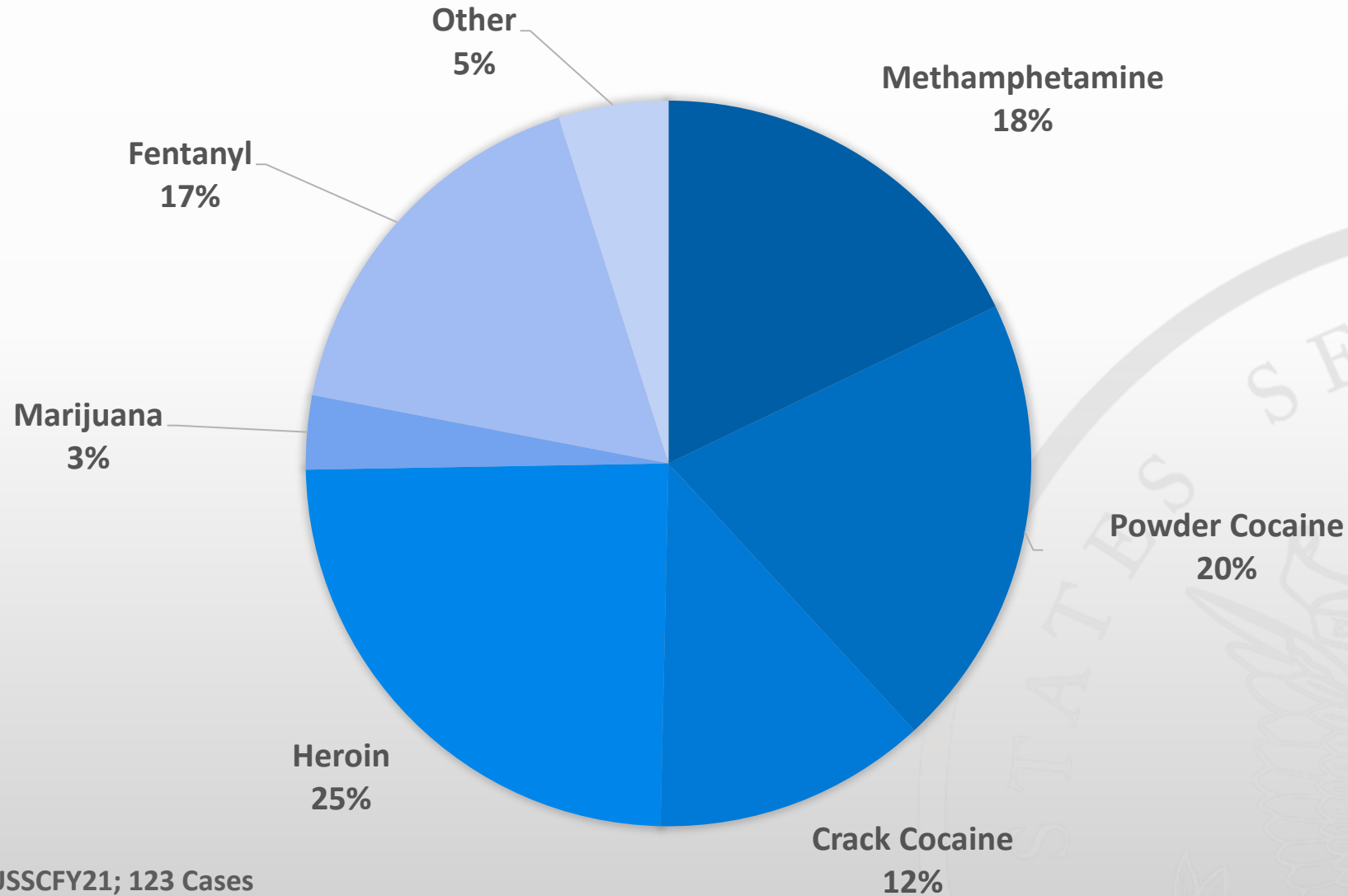
Primary Drug Types

Third Circuit - FY2021



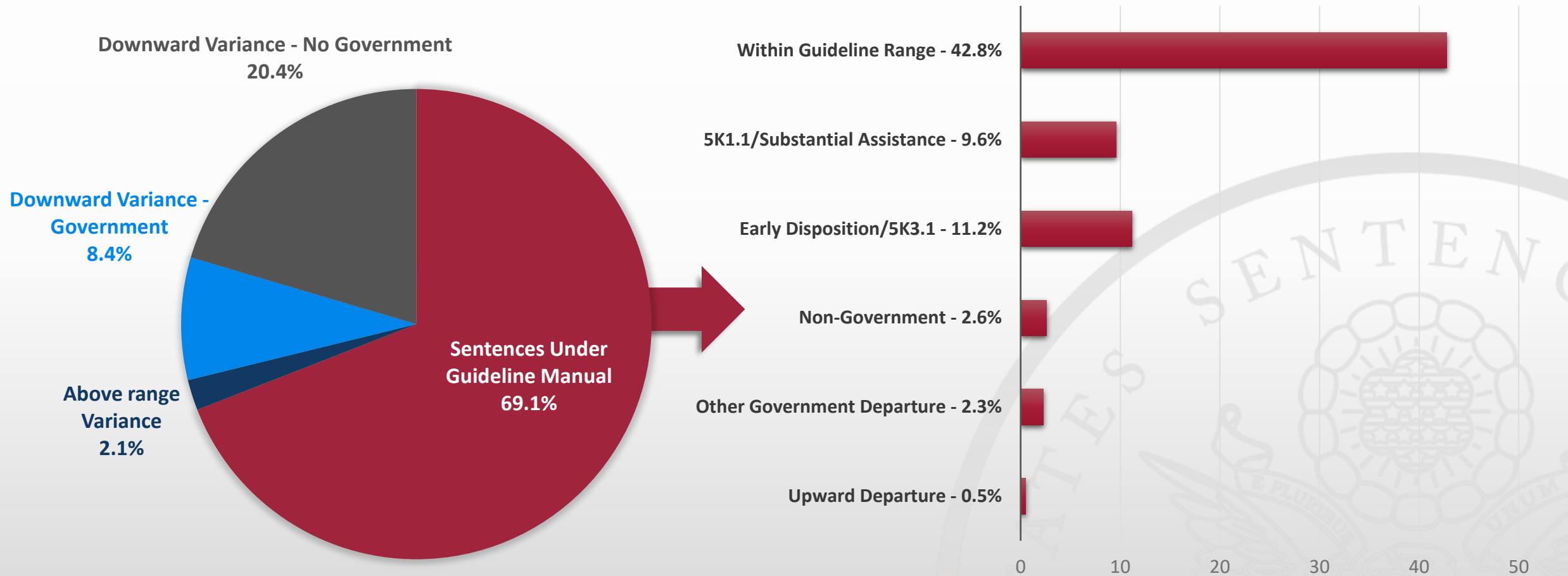
Primary Drug Types

Middle District of Pennsylvania - FY2021



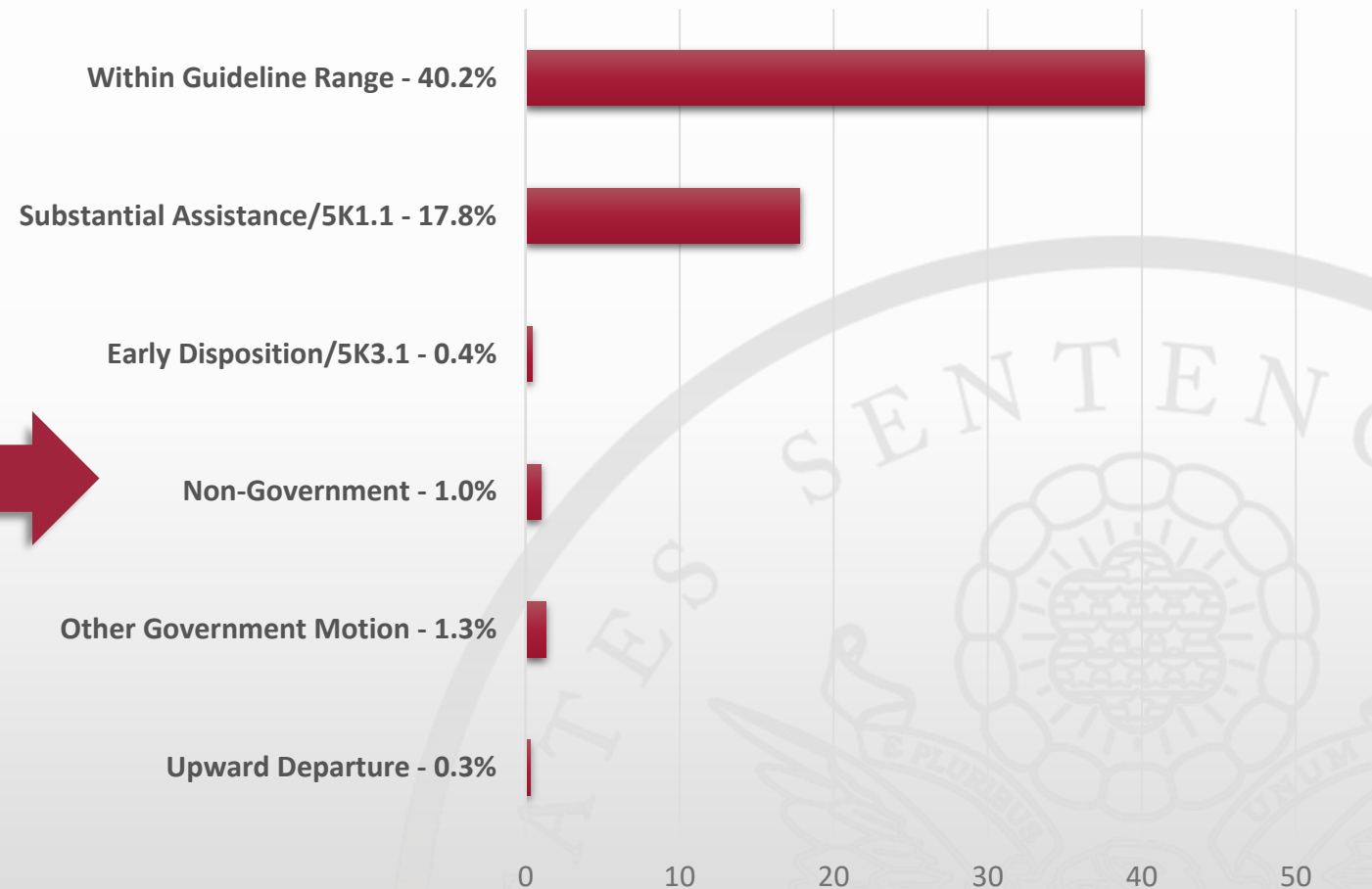
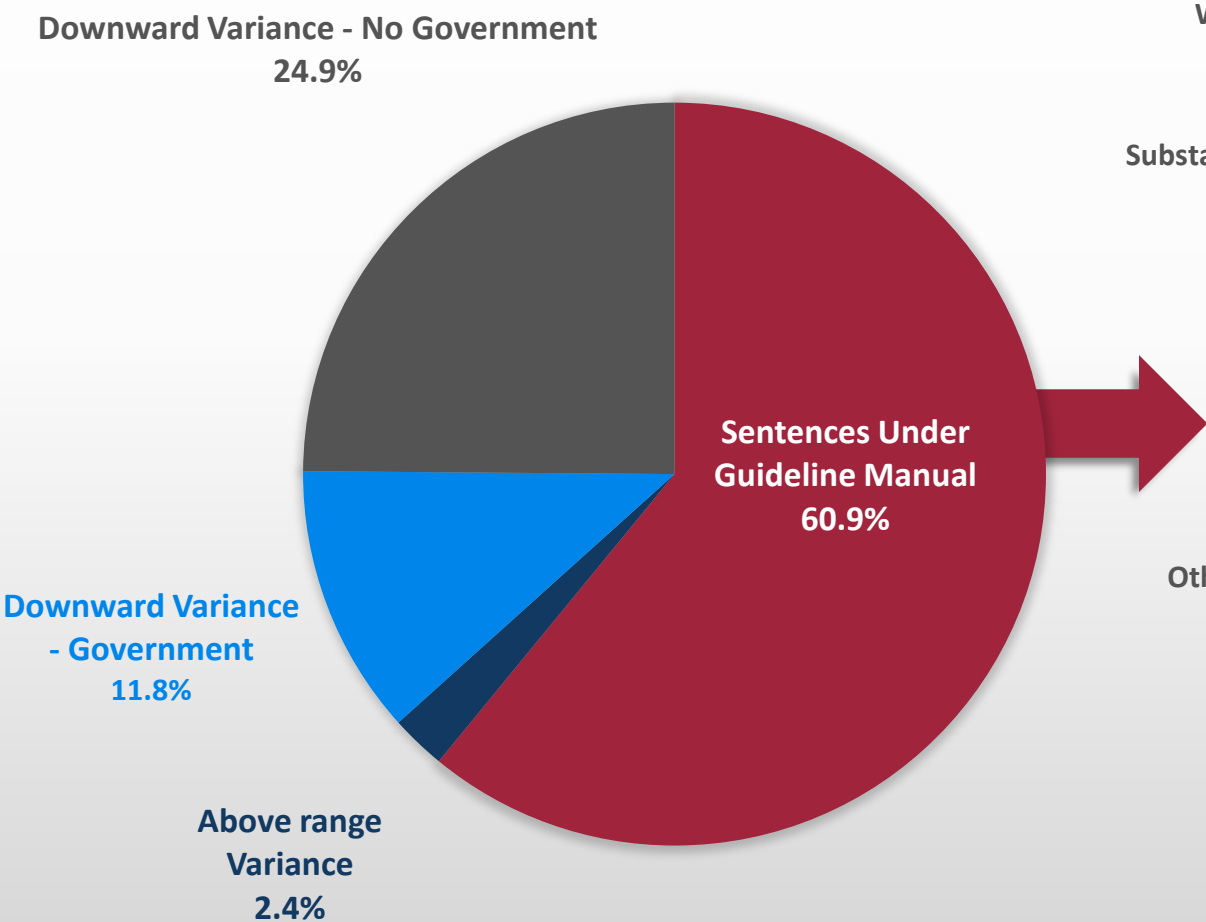
Position of Sentences in Relation to Guideline Range

National - FY2021



Position of Sentences in Relation to Guideline Range

Third Circuit - FY2021

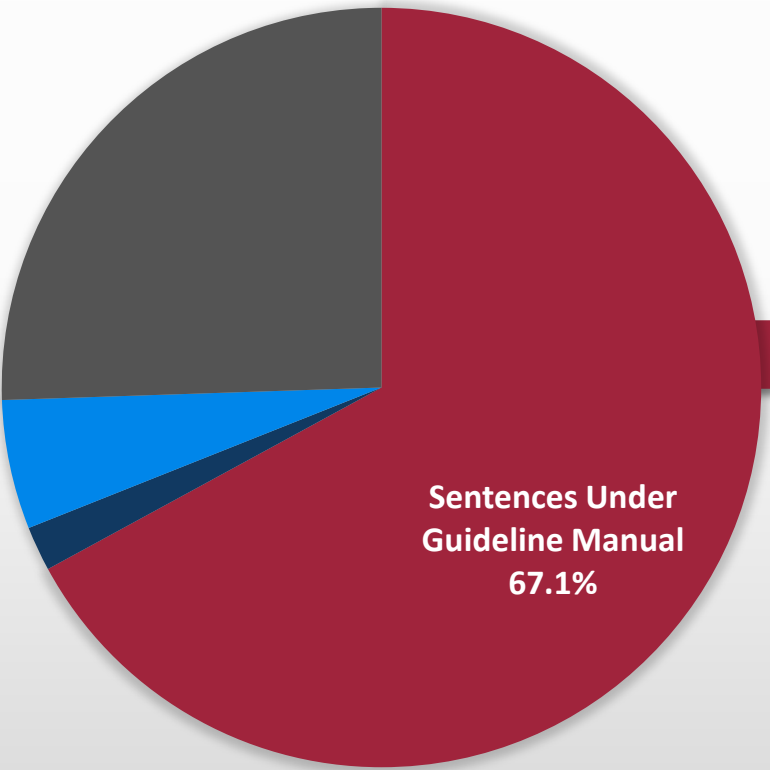


Position of Sentences in Relation to Guideline Range

Middle District of Pennsylvania - FY2021

Downward Variance - No Government
25.5%

Downward
Variance -
Government
5.5%
Above range
Variance
1.9%



Within Guideline Range - 40.6%

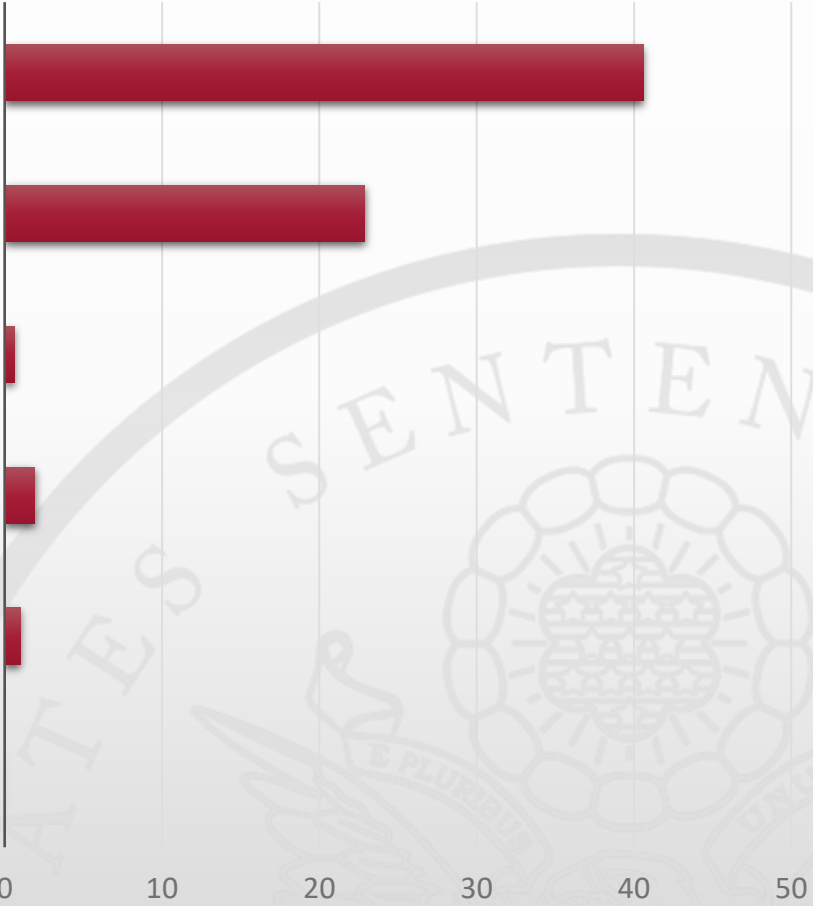
5K1.1/Substantial Assistance - 22.9%

Early Disposition/5K3.1 - 0.6%

Non-Government - 1.9%

Other Government Departure - 1.0%

Upward Departure - 0%

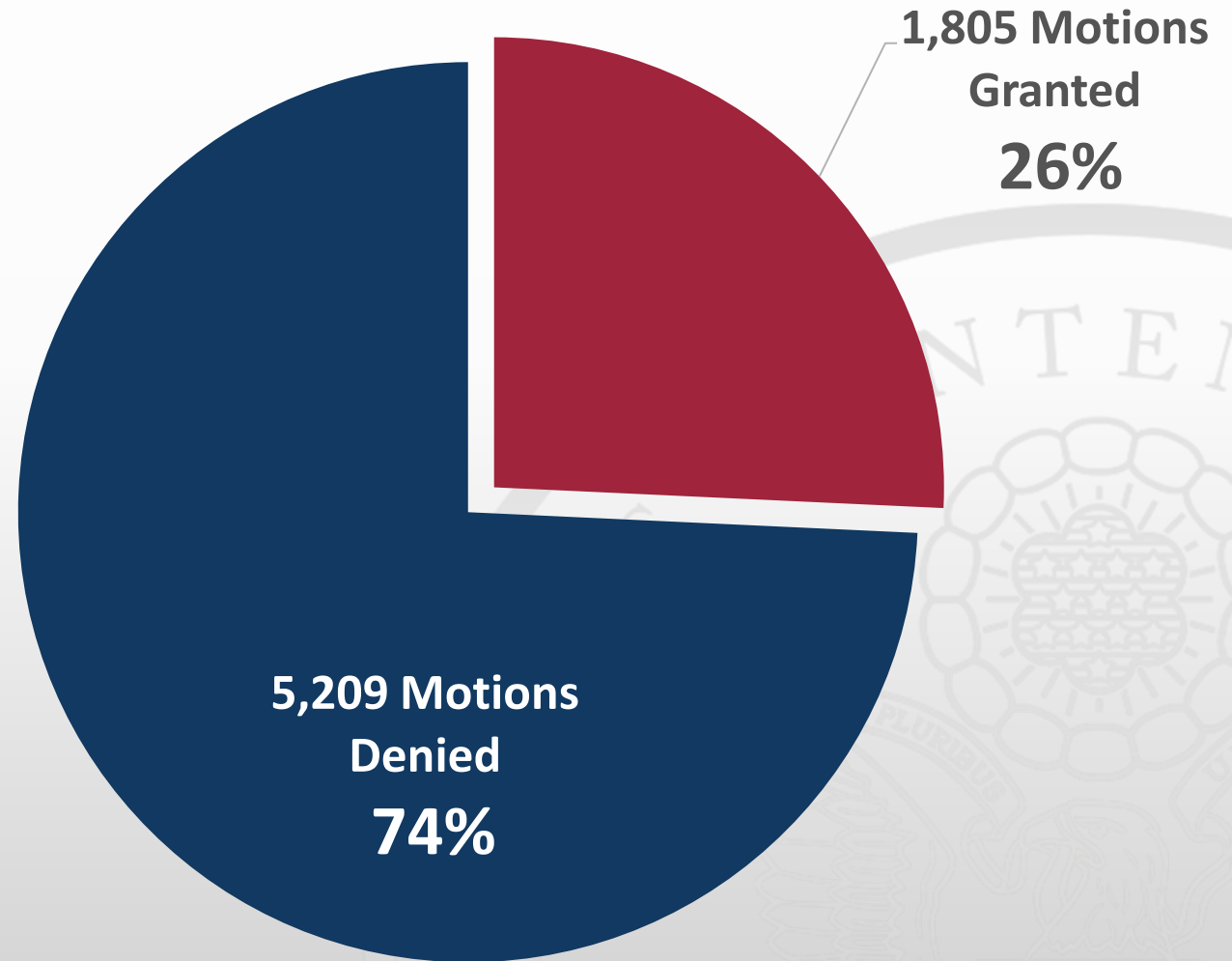


Compassionate Release Motions

National Data

7,014

total motions filed between
October 1, 2019 and
March 31, 2022

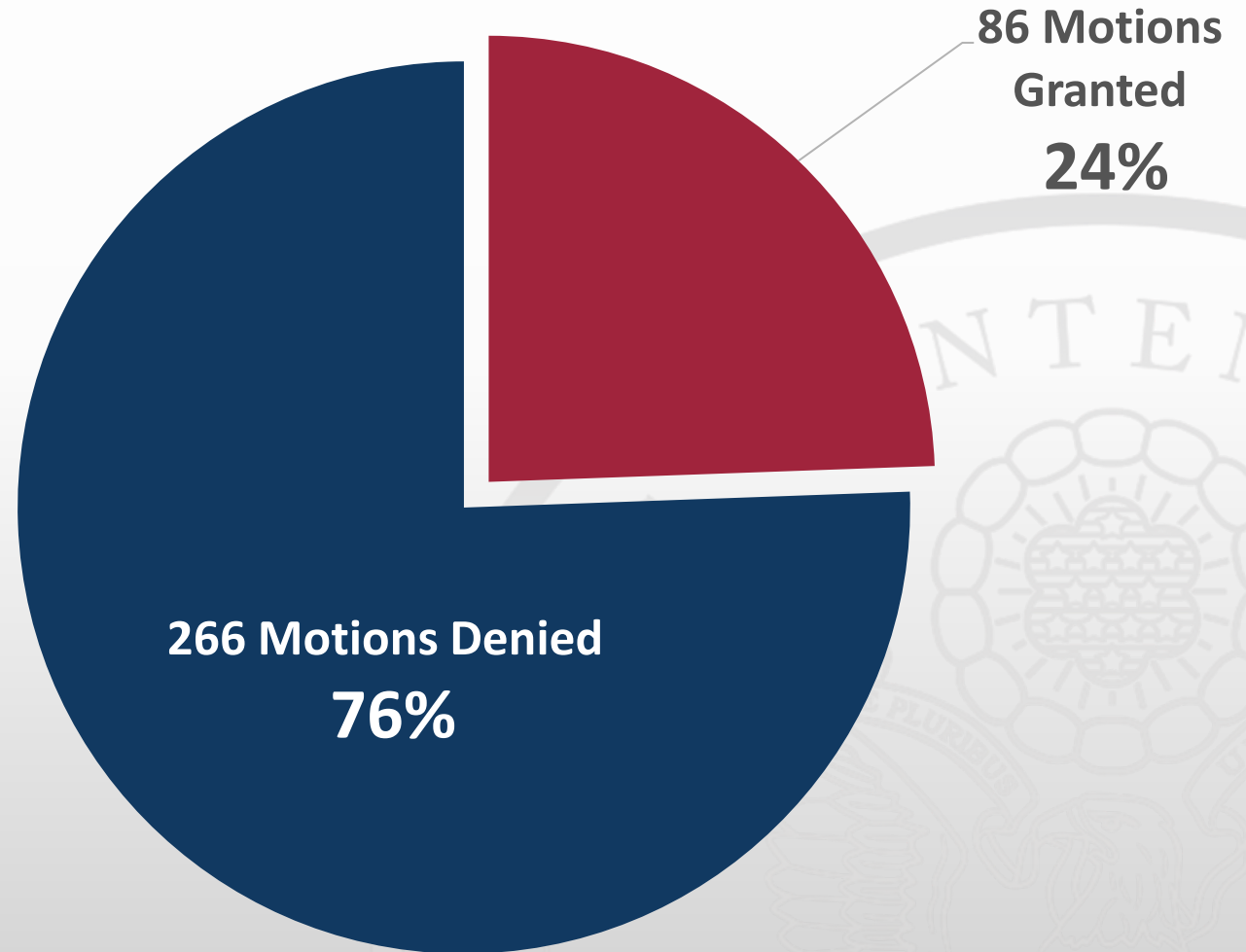


Compassionate Release Motions

Third Circuit

352

total motions filed between
October 1, 2019 and
March 31, 2022

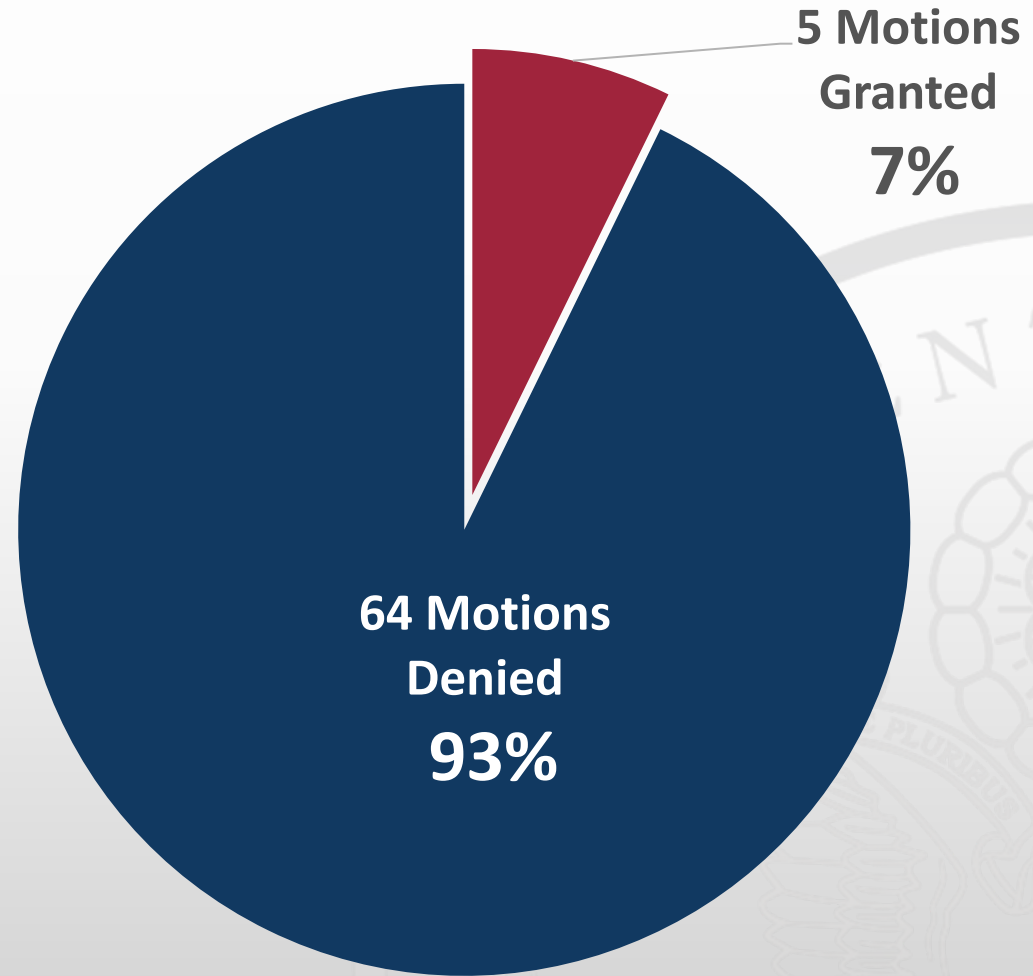


Compassionate Release Motions

Middle District of Pennsylvania

76

total motions filed between
October 1, 2019 and
March 31, 2022





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Section

-- Select Section --

Add +

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What is your Question? *

(maximum 1000 characters)

Enter the number in the
picture to Submit Question

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- > The Commission promulgates guidelines that judges consult when sentencing federal offenders. When the guidelines are amended, a subsequent *Guidelines Manual* is published.
- > In this section, you will find the Commission's comprehensive archive of yearly amendments and *Guidelines Manuals* dating back to 1987.



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Historical Note: Effective November 1, 1987. Amended effective November 1, 1991 (amendment 414); November 1, 1993 (amendment 500).

§3B1.2. Mitigating Role

Based on the defendant's role in the offense, decrease the offense level as follows:

- (a) If the defendant was a minimal participant in any criminal activity, decrease by **4** levels. 
- (b) If the defendant was a minor participant in any criminal activity, decrease by **2** levels. 

In cases falling between (a) and (b), decrease by **3** levels.

Commentary

Application Notes:

1. Definition.—For purposes of this guideline, "participant" has the meaning given that term in Application Note 1 of §3B1.1 (Aggravating Role).
2. Requirement of Multiple Participants.—This guideline is not applicable unless more than one participant was involved in the offense. See the Introductory Commentary to this Part (Role in the Offense). Accordingly, an adjustment under this guideline may not apply to a defendant who is the only defendant convicted of an offense unless that offense involved other participants in addition to the defendant and the defendant otherwise qualifies for such an adjustment.
3. Applicability of Adjustment.—
 - (A) Substantially Less Culpable than Average Participant.—This section provides a range of adjustments for a defendant who plays a part in committing the offense that makes him substantially less culpable than the average participant in the criminal activity.

Historical Note:

Effective November 1, 1987.

 Amended effective November 1, 1992 ([Amendment 456](#)); November 1, 2001 ([Amendment 635](#)); November 1, 2011 ([Amendment 749](#)); November 1, 2011 ([Amendment 755](#)); November 1, 2014 ([Amendment 782](#)); November 1, 2015 ([Amendment 794](#)).





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794

AMENDMENT 794

Reason for Amendment: This amendment is a result of the Commission's study of §3B1.2 (Mitigating Role). The Commission conducted a review of cases involving low-level offenders, analyzed case law, and considered public comment and testimony. Overall, the study found that mitigating role is applied inconsistently and more sparingly than the Commission intended. In drug cases, the Commission's study confirmed that mitigating role is applied inconsistently to drug defendants who performed similar low-level functions (and that rates of application vary widely from district to district). For example, application of mitigating role varies along the southwest border, with a low of 14.3 percent of couriers and mules receiving the mitigating role adjustment in one district compared to a high of 97.2 percent in another. Moreover, among drug defendants who do receive mitigating role, there are differences from district to district in application rates of the 2-, 3-, and 4-level adjustments. In economic crime cases, the study found that the adjustment was often applied in a limited fashion. For example, the study found that courts often deny mitigating role to otherwise eligible defendants if the defendant was considered "integral" to the successful commission of the offense.



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(b) Specific Offense Characteristics

(1) If a dangerous weapon (including a firearm) was possessed, increase by **2** levels.

(2) If the defendant used violence, made a credible threat to use violence, or directed the use of violence, increase by **2** levels.

(3) If the defendant unlawfully imported or exported a controlled substance under circumstances in which (A) an aircraft other than a regularly scheduled commercial air carrier was used to import or export the controlled substance, (B) a submersible vessel or semi-submersible vessel as described in 18 U.S.C. § 2285 was used, or (C) the defendant acted as a pilot, copilot, captain, navigator, flight officer, or any other operation officer aboard any craft or vessel carrying a controlled substance, increase by **2** levels. If the resulting offense level is less than level **26**, increase to level **26**.

Historical Note:

Effective November 1, 2010
([Amendment 748](#)). Amended
effective November 1, 2011
([Amendment 750](#)).



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748

AMENDMENT 748

Amendment 748 to the Guidelines is amended by adding the following:

Reason for Amendment: This amendment implements the emergency directive in section 8 of the Fair Sentencing Act of 2010, Pub. L. 111-220 (the "Act"). The Act reduced the statutory penalties for cocaine base ("crack cocaine") offenses, eliminated the statutory mandatory minimum sentence for simple possession of crack cocaine, and contained directives requiring the Commission to review and amend the guidelines to account for specified aggravating and mitigating circumstances in certain drug cases. The emergency amendment authority provided in section 8 of the Act required the Commission to promulgate the guidelines, policy statements, or amendments provided for in the Act, and to make such conforming changes to the guidelines as the Commission determines necessary to achieve consistency with other guideline provisions and applicable law, not later than 90 days after the date of enactment of the Act.

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Drug Conversion Calculator

Use the Drug Conversion Calculator to convert the quantity of up to three controlled substances at the same time to its converted drug weight. Results will also display the offense level that corresponds to this converted drug weight in the Drug Quantity Table at §2D1.1(c). For certain controlled substances, the Drug Conversion Tables at §2D1.1 set minimum base offense levels in the Drug Quantity Table. Similarly, the converted drug weights assigned in the Drug Conversion Tables for certain controlled substances are “capped” at specified amounts. The resulting calculations in the Drug Conversion Calculator already consider such minimum base offense levels and “caps.”

SUBSTANCE 1

Select Substance



Enter Weight

SUBSTANCE 2

Select Substance



Enter Weight

SUBSTANCE 3

Select Substance



Enter Weight

Submit

Educational Resources



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- > In this section, you will find resources to assist you in understanding and applying the federal sentencing guidelines.

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Decision Tree

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PRODUCT TYPE

TRAINING TOPIC

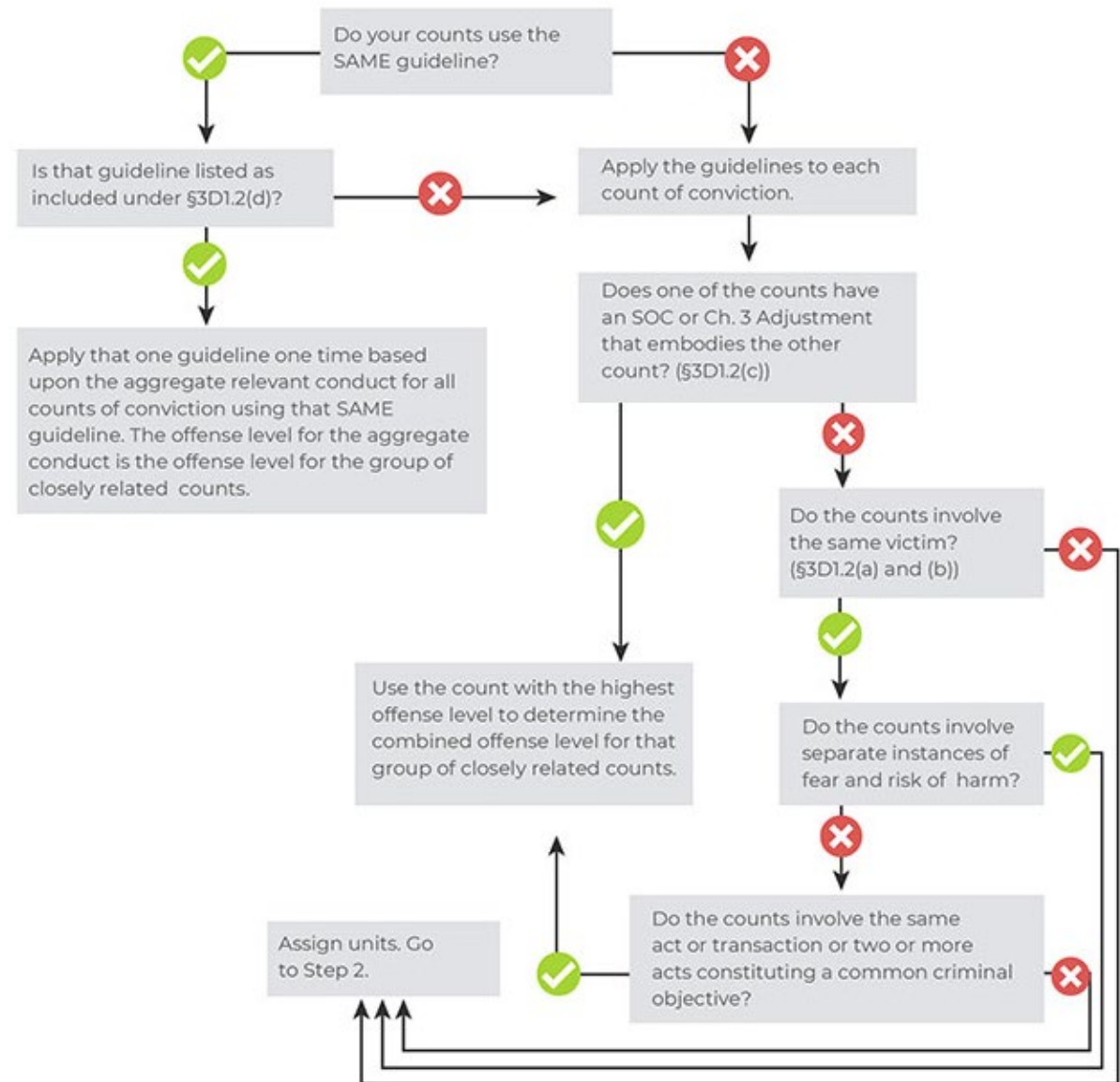
- ☐ Case Law
- ☐ Categorical Approach
- ☐ Concurrent/Consecutive Sentences (§5G1.3)
- ☐ Criminal History
- ☒ Multiple Counts/Grouping
- ☐ Organizational Guidelines

Multiple Counts – Quick Reference Materials

DECISION TREE

AUGUST 2020

Grouping of Multiple Counts If you've ever encountered a federal case with more than one count of conviction, you need...





Primers

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- ☐ About Us
- ☐ Alien Smuggling
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- ☐ Copyright/Trademark
- ☐ Corporate Crime
- ☐ Crimes of Violence
- ☐ Criminal History
- ☐ Departures/Variances

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PRIMER

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Sexual Abuse and Failure to Register Offenses

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Primer



Immigration Offenses



Prepared by the
Office of the General Counsel

3. *Motive and Cultural Assimilation*

Courts generally have held that the defendant's motive for illegal reentry is not a basis for a downward departure.²⁴⁹ Courts have recognized, however, that the defendant's

²⁴² See, e.g., 28 C.F.R. § 345.35 (providing that inmates subject to an order of deportation, exclusion, or removal are ineligible to participate the Federal Prison Inmate Work programs); U.S. DEP'T OF JUST., FED. BUREAU OF PRISONS, PROGRAM STATEMENT P5325.07: RELEASE PREPARATION PROGRAM 4 (2007) (inmates with deportable alien status not eligible to participate);); U.S. DEP'T OF JUST., FED. BUREAU OF PRISONS, PROGRAM STATEMENT P5330.11: PSYCHOLOGY TREATMENT PROGRAMS Ch. 2, at 9 (2009) (deportable inmate is unqualified for Residential Drug Abuse Treatment Program).

²⁴³ See, e.g., *United States v. Vasquez*, 279 F.3d 77, 80–81 (1st Cir. 2002); *United States v. Martinez-Carillo*, 250 F.3d 1101, 1106–07 (7th Cir. 2001).

²⁴⁴ See *United States v. Bautista*, 258 F.3d 602, 607 (7th Cir. 2001) (separation from family, without more, is not sufficiently extraordinary to warrant a downward departure).

²⁴⁵ See, e.g., *United States v. Jauregui*, 314 F.3d 961, 963–64 (8th Cir. 2003); *United States v. Galvez-Falconi*, 174 F.3d 255, 260 (2d Cir. 1999); *United States v. Rodriguez-Lopez*, 198 F.3d 773, 777 (9th Cir. 1999); *United States v. Mignott*, 184 F.3d 1288, 1291 (11th Cir. 1999) (per curiam); *United States v. Marin-Castaneda*, 134 F.3d 551, 555 (3d Cir. 1998); *United States v. Clase-Espinal*, 115 F.3d 1054, 1059 (1st Cir. 1997).

²⁴⁶ See *United States v. Gomez-Sotelo*, 18 F. App'x 690, 692 (10th Cir. 2001); *Marin-Castaneda*, 134 F.3d at 555.

²⁴⁷ *Marin-Castaneda*, 134 F.3d at 555.

²⁴⁸ See *Galvez-Falconi*, 174 F.3d at 260; *Jauregui*, 314 F.3d at 963 n.3; *Rodriguez-Lopez*, 198 F.3d at 778.

²⁴⁹ See, e.g., *United States v. Saucedo-Patino*, 358 F.3d 790, 794–95 (11th Cir. 2004); see also *United States v. Dyck*, 334 F.3d 736, 741–42 (8th Cir. 2003) (purported lack of criminal intent in reentering the country is not basis for downward departure).



INTERACTIVE

Case Law Update

JANUARY - JUNE 2022

Case Law Update provides brief summaries of select Supreme Court and appellate court decisions that involve the guidelines and other aspects of federal sentencing. Each quarterly release is replaced with a cumulative update. Cases appear in descending chronological order within a circuit. The Commission publishes this document to assist in understanding and applying the sentencing guidelines. The information does not necessarily represent the official position of the Commission and it should not be considered definitive or comprehensive.

This document was produced

EXPLORE BY TOPIC:

(Click to view by topic)

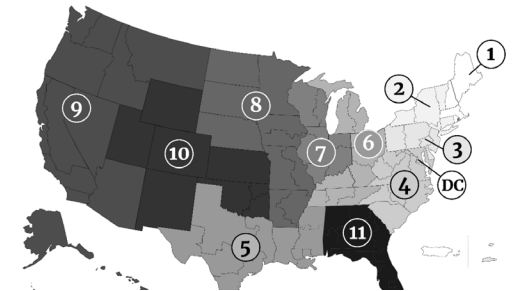
- U.S. Supreme Court
- Career Offender
- Categorical Approach
- Chapter Three Adjustments
- Compassionate Release
- Criminal History
- Drug Offenses
- Economic Crimes
- Firearms
- First Step Act of 2018
- Relevant Conduct
- Restitution
- Sentencing Procedure
- Sex Offenses
- Supervised Release
- General Application Issues

Select the Supreme Court Icon

Click the icon to view U.S. Supreme Court decisions:



Click the icons to browse a list of cases by circuit (or view index):



U.S. Supreme Court

Concepcion v. United States, No. 20-1650, 2022 WL 2295029 (June 27, 2022)

United States v. Taylor, 142 S. Ct. 2015 (2022)

Wooden v. United States, 142 S. Ct. 1063 (2022)

When a district court adjudicates a motion pursuant to section 404 of the First Step Act of 2018, the district court “may consider other intervening changes of law (such as changes to the [s]entencing [g]uidelines) or changes of fact (such as behavior in prison)” in determining whether and to what extent to reduce an eligible defendant’s sentence. However, the district court need not accept such arguments.

Attempted Hobbs Act robbery is not a “crime of violence” under the “elements” clause of 18 U.S.C. § 924(c)(3)(A) because taking a substantial step towards Hobbs Act robbery does not categorically require the use, attempted use, or threatened use of physical force.

Offenses that arise from a single criminal episode do not occur on different “occasions,” given the term’s ordinary meaning, and thus count as only one prior conviction for purposes of 18 U.S.C. § 924(e) (commonly referred to as the “Armed Career Criminal Act” or the “ACCA”). Whether offenses occurred on different occasions depends on multiple factors, including timing, location, and the character and relationship of the offenses.

Research Reports

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**REPORT TO THE CONGRESS:
CAREER OFFENDER SENTENCING ENHANCEMENTS**

Interactive Data Analyzer (IDA)



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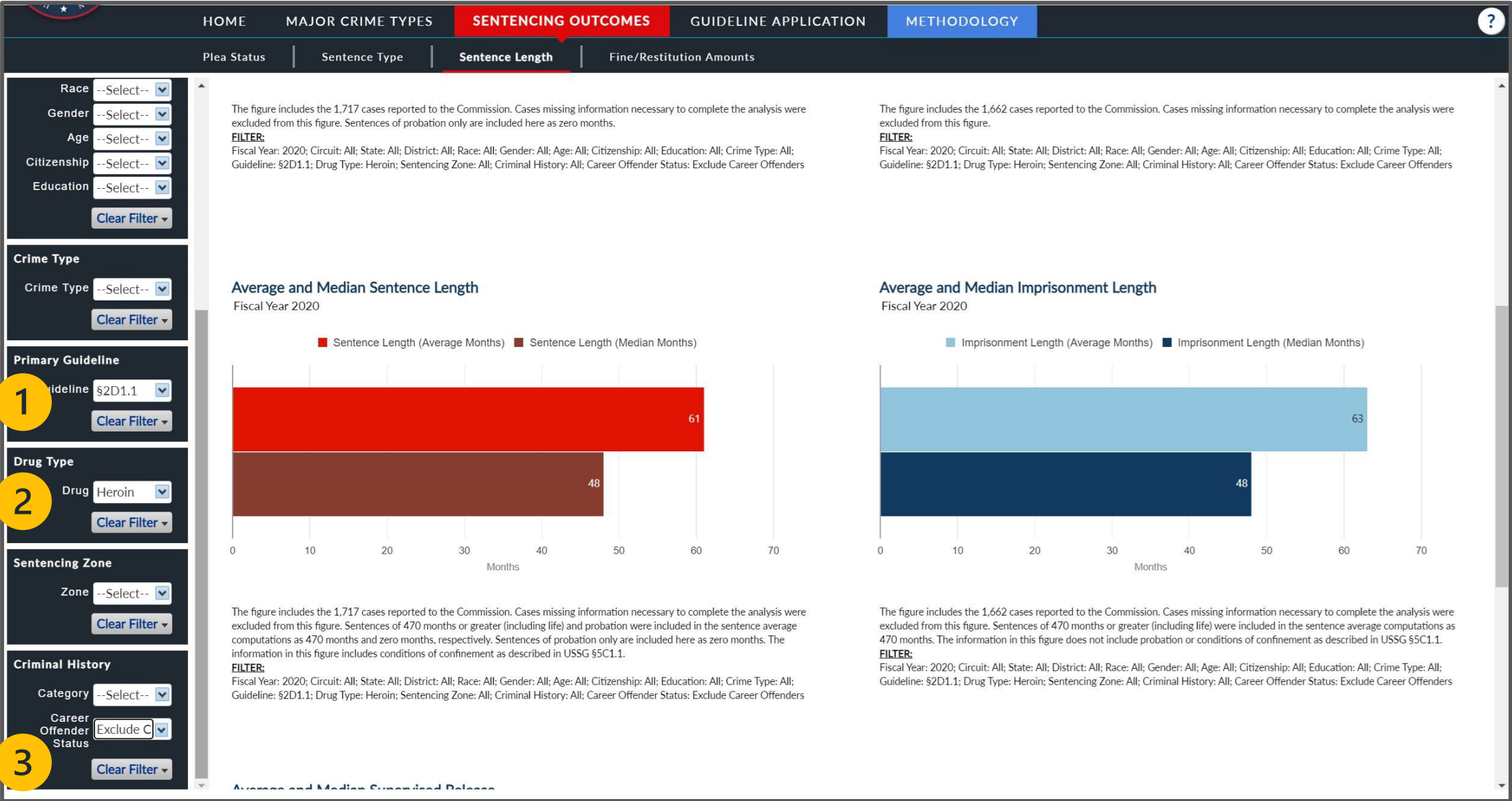
RESEARCH & DATA MISSION

- > The Commission collects, analyzes, and disseminates a broad array of information on federal crime and sentencing practices.
- > In this section, you will find a comprehensive collection of research and data reports published on sentencing issues and other areas of federal crime.

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Interactive Data Analyzer (IDA)





Commission Update

Commissioners



Judge Carlton Reeves
Chair



Claire McCusker Murray
Vice Chair



Laura Mate
Vice Chair



Judge Luis Felipe Restrepo
Vice Chair



Judge Claria Horn Boom



John Gleeson



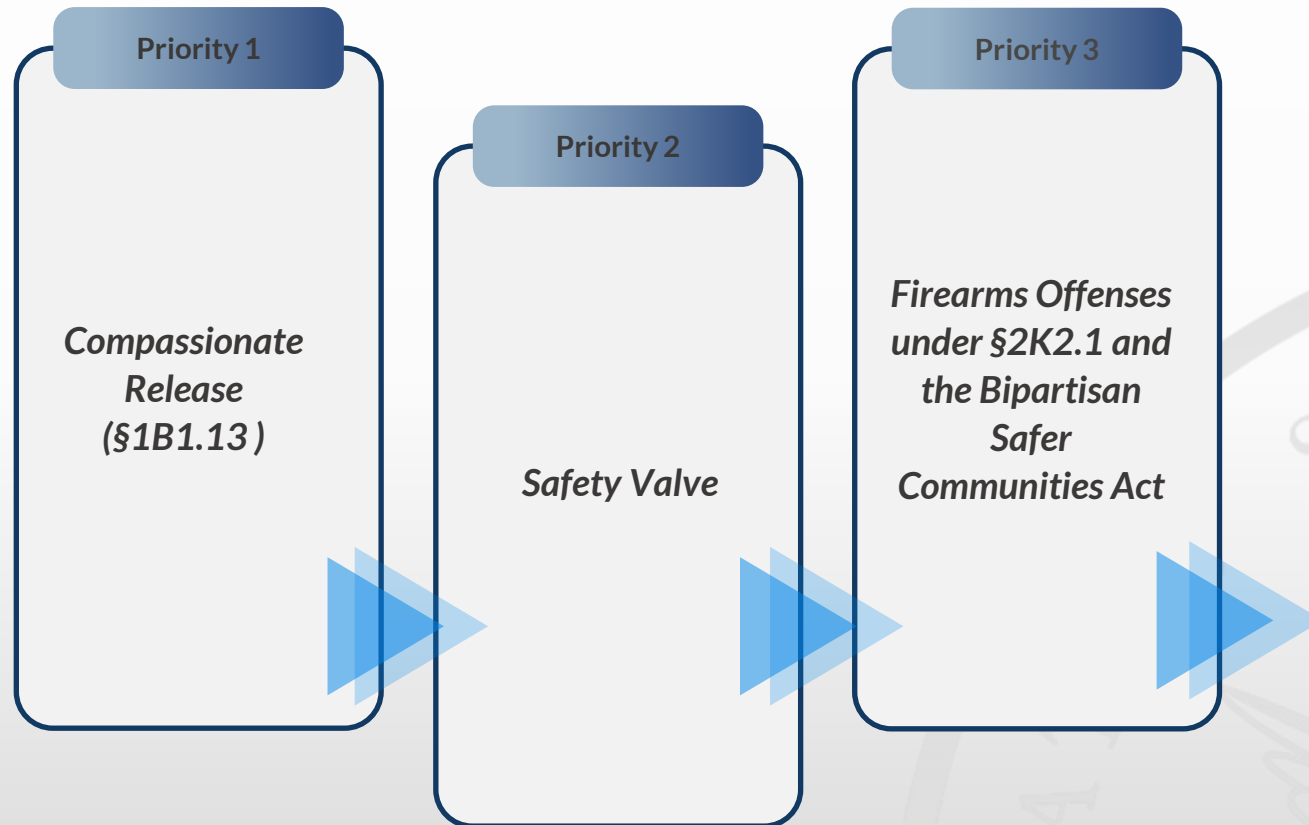
Candice Wong

Amendment Cycle



2023 Priorities

Top 3



United States v. Andrews

12 F.4th 255 (3d Cir. 2021)

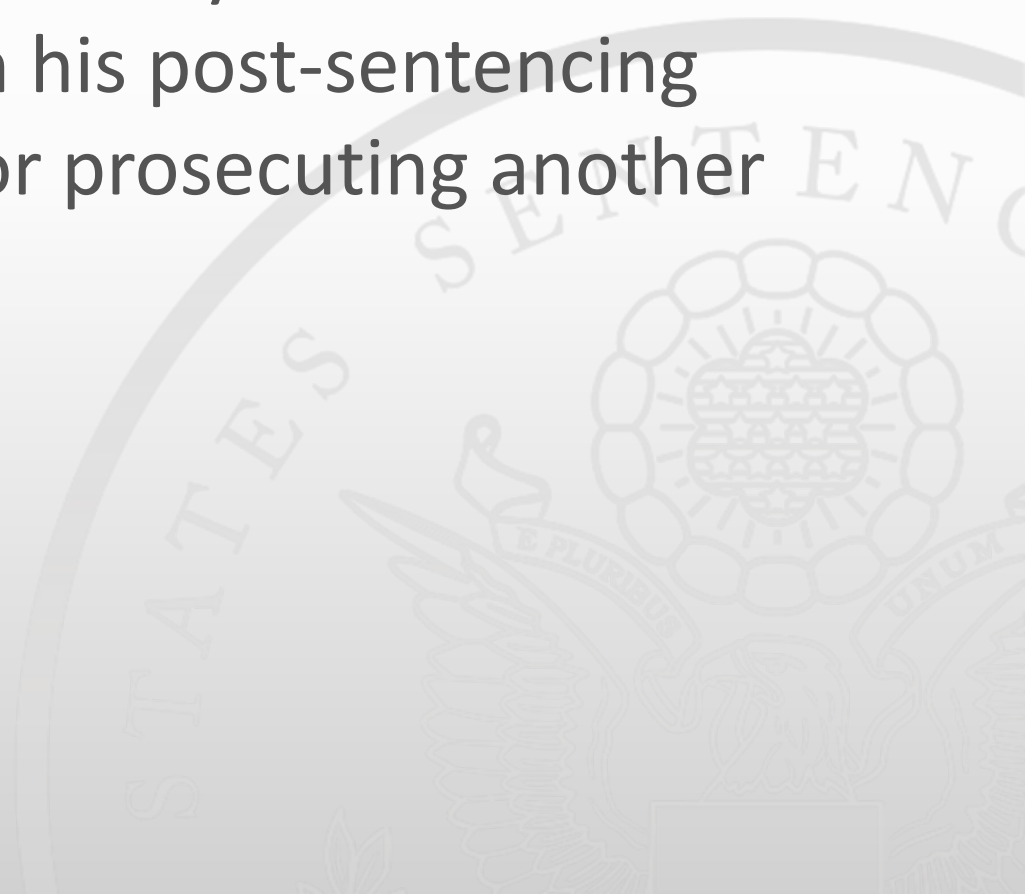
Section 1B1.13 does not apply to defendant-filed motions for compassionate release.

Courts may **NOT** consider nonretroactive statutory changes in making their individualized determination of whether extraordinary and compelling reasons warrant relief.

United States v. Claude

16 F.4th 422 (3d Cir. 2021)

Absent government motion, a defendant may **NOT** obtain compassionate release based **solely** on his post-sentencing substantial assistance in investigating or prosecuting another person.



Safety Valve

USSG §5C1.2

USSG §2D1.1(b)(18)
USSG §2D1.11(b)(6)

Not more than one criminal
history point

18 U.S.C. § 3553(f)
Safety Valve

First Step Act

Expanded Criminal History
Requirements

Defendant does not have:
more than 4 criminal history points*
& **a prior 3-point offense**
a prior 2-point violent offense

*excluding any criminal history points resulting from a 1-point offense

Safety Valve Circuit Split

Disjunctive (And = Or)

United States v. Palomares, 52 F.4th 640 (5th Cir. 2022)

United States v. Haynes, 55 F.4th 1075 (6th Cir. 2022)

United States v. Pace, 48 F.4th 741 (7th Cir. 2022)

United States v. Pulsifer, 39 F.4th 1018 (8th Cir. 2022)

Conjunctive (And = And)

United States v. Jones, 60 F.4th 230 (4th Cir. 2023)

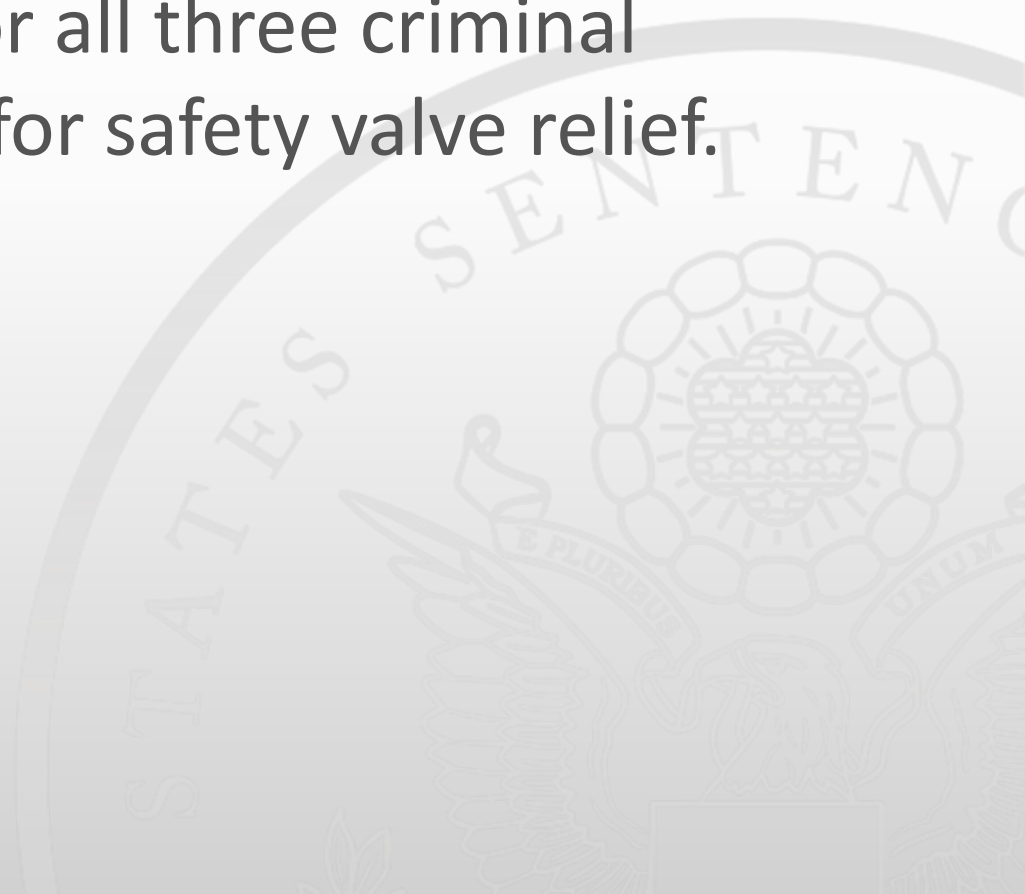
United States v. Lopez, 998 F.3d 431 (9th Cir. 2021)

United States v. Garcon, 54 F.4th 1274 (11th Cir. 2022)

Pulsifer v. United States

No. 22-340, 2023 WL 2227657 (U.S. Feb. 27, 2023)

The Court granted the petition for writ of certiorari to review whether a defendant must have one or all three criminal history characteristics to be ineligible for safety valve relief.



Priority 3: Bipartisan Safer Communities Act



Stop Illegal Trafficking in Firearms Act

Effective June 25, 2022

Increased Penalties

Created Two New
Offenses

Revised Definitions

Stop Illegal Trafficking in Firearms Act

Effective June 25, 2022

Increased Penalties

18 U.S.C. § 922(d)
Sale or Disposal to
a Prohibited
Person

18 U.S.C. § 924(h)
Transferring a
Firearm to
Commit a Felony

U.S.C. § 922(g)
Possession by
Prohibited Person

18 U.S.C. § 924(k)
Smuggling a
Firearm to
Commit a Felony

Maximum term of imprisonment increased to 15 years

Stop Illegal Trafficking in Firearms Act

Effective June 25, 2022

Created Two New Offenses

18 U.S.C. § 932

Straw Purchasing of Firearms

Statutory maximum is 15 years

*Increases to 25 years if reasonable cause to believe firearm will be used to commit a felony, federal crime of terrorism, or drug trafficking crime

18 U.S.C. § 933

Trafficking in Firearms

Statutory maximum is 15 years

Bipartisan Safer Communities Act

Effective June 25, 2022

Revised Definitions

**18 U.S.C. §
921(a)(33)(A)**
Misdemeanor
Crime of Domestic
Violence

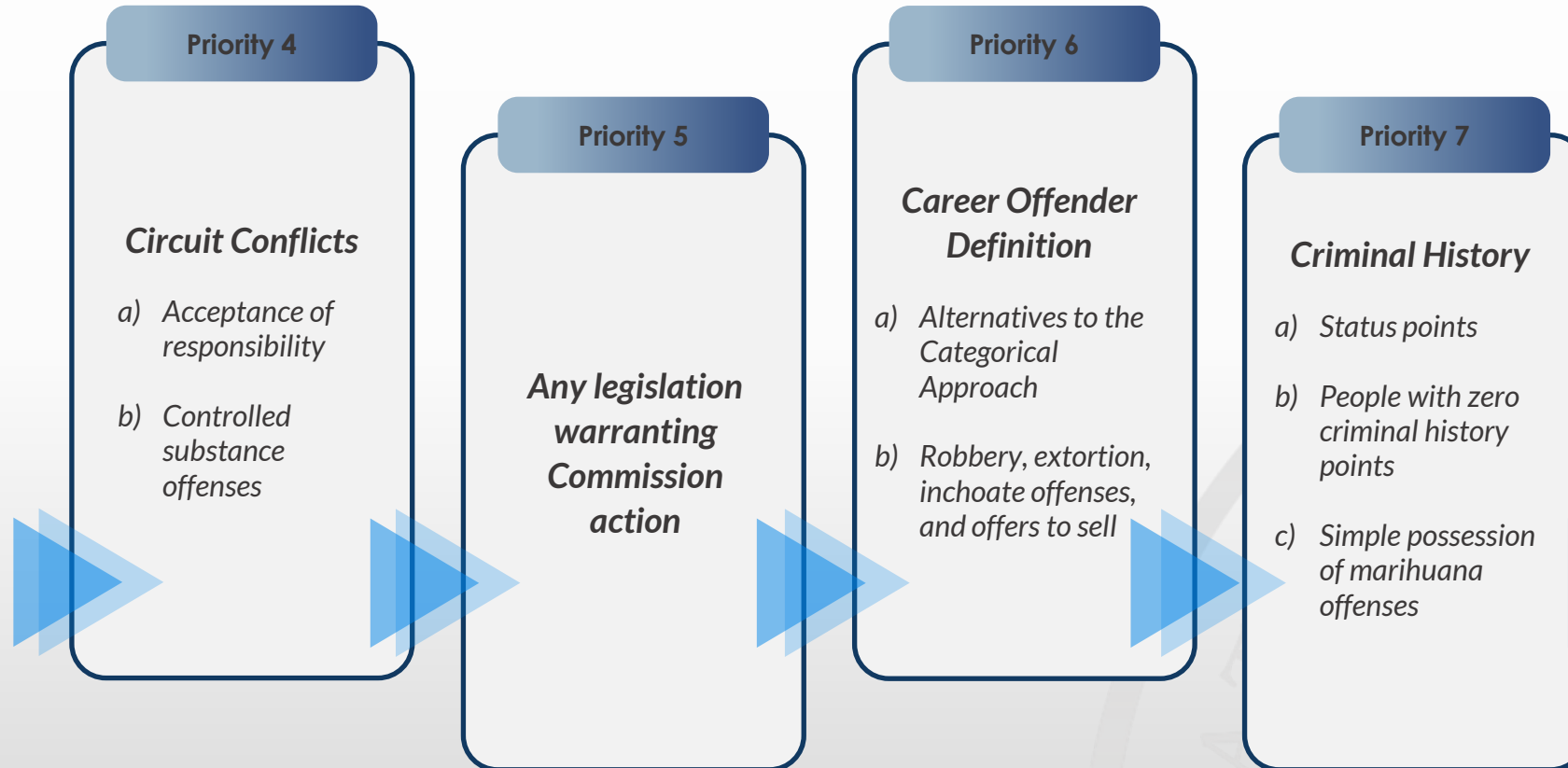
18 U.S.C. § 922(d)
Sale or Disposal to
a Prohibited
Person

18 U.S.C. § 924(h)
Transferring a
Firearm to
Commit a Felony

18 U.S.C. § 924(k)
Smuggling a
Firearm to
Commit a Felony

2023 Priorities

4-7



United States v. Adair

38 F.4th 341 (3d Cir. 2022)

The government properly withheld motion where defendant “caused [the government] to have to prepare for a two-day sentencing hearing.”



United States v. Drennon

516 F.3d 160 (3d Cir. 2008)

The government properly withheld motion based on a suppression hearing involving “the large majority of the work to prepare for trial.”



United States v. Lewis

58 F.4th 764 (3d Cir. 2023)

A “controlled substance” within the §4B1.2(b) definition of “controlled substance offense” is one regulated by either federal or state law.



United States v. Scott

14 F.4th 190 (3d Cir. 2021)

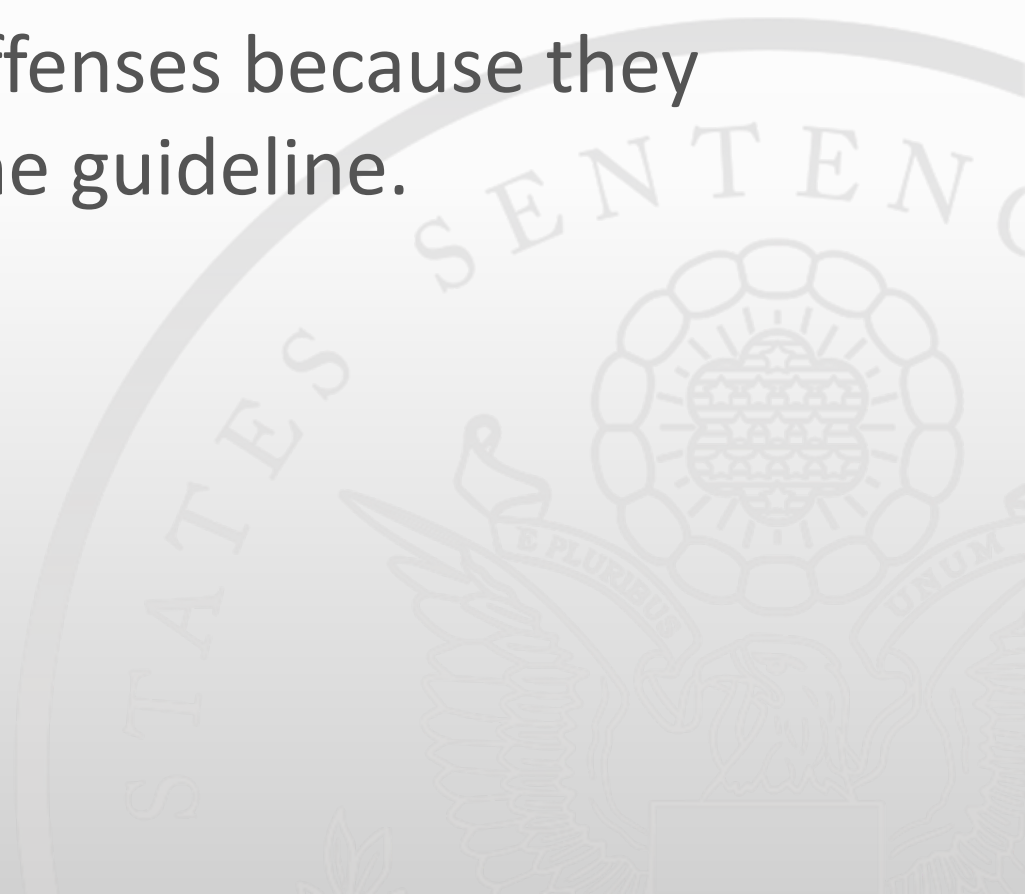
Hobbs Act robbery sweeps more broadly than the career offender guideline and therefore does not qualify as a crime of violence.



United States v. Nasir

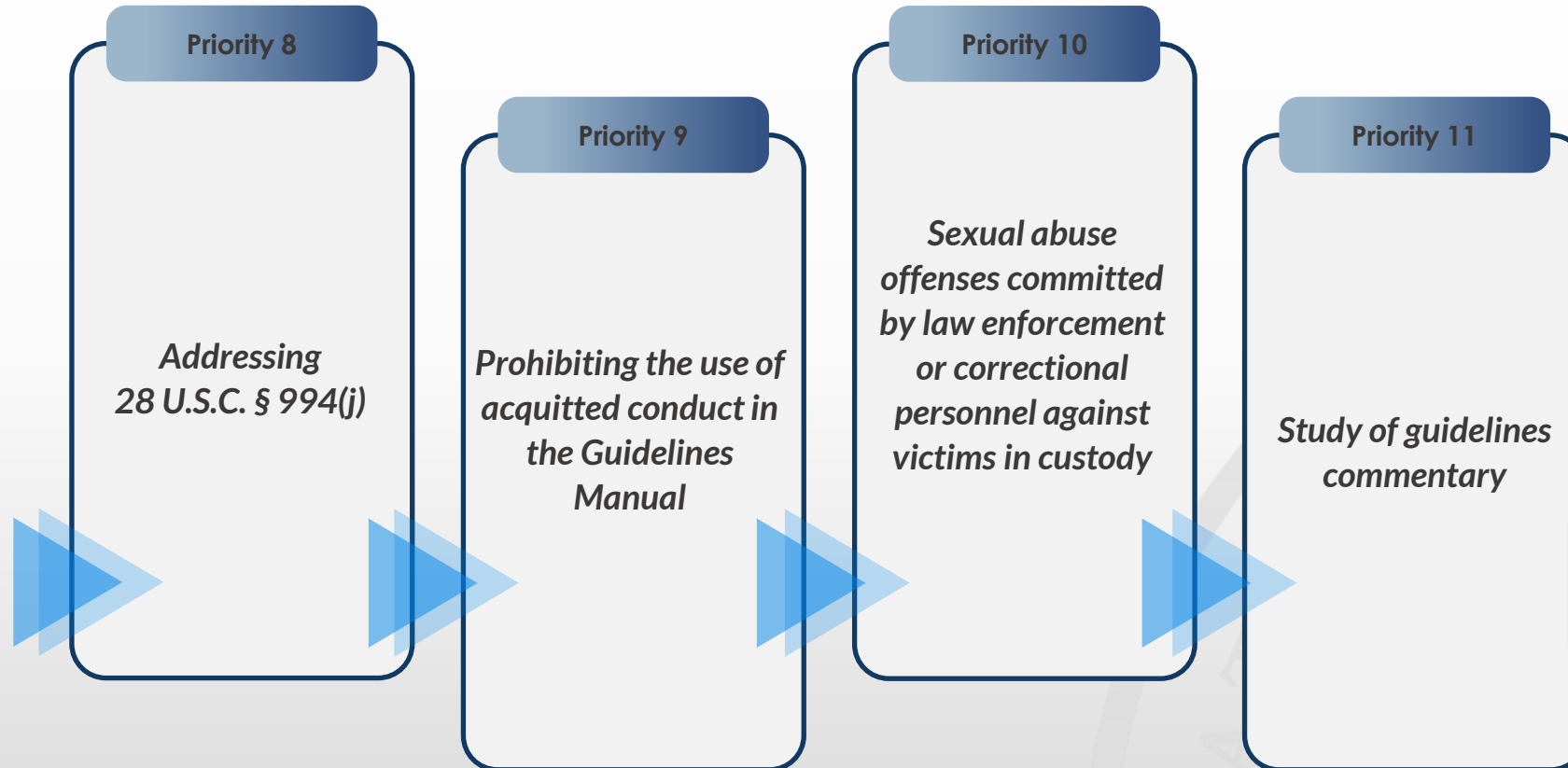
982 F. 3d 144 (3d Cir. 2020)

The definition of “controlled substance offense” under §4B1.2(b) does not include inchoate offenses because they are listed only in the commentary of the guideline.



2023 Priorities

8-11



Other Commentary Invalidated

Section 2B1.1, App. Note 3 (Intended Loss)

- *United States v. Banks*, 55 F.4th 246 (3d Cir. 2022)

Section 2K2.1, App. Note 1 (Crime of Violence)

- *United States v. Abreu*, 32 F.4th 271 (3d Cir. 2022)

Section 3B1.1, App. Note 4 (Organizer / Leader)

- *United States v. Adair*, 38 F.4th 341 (3d Cir. 2022)

United States v. Perez

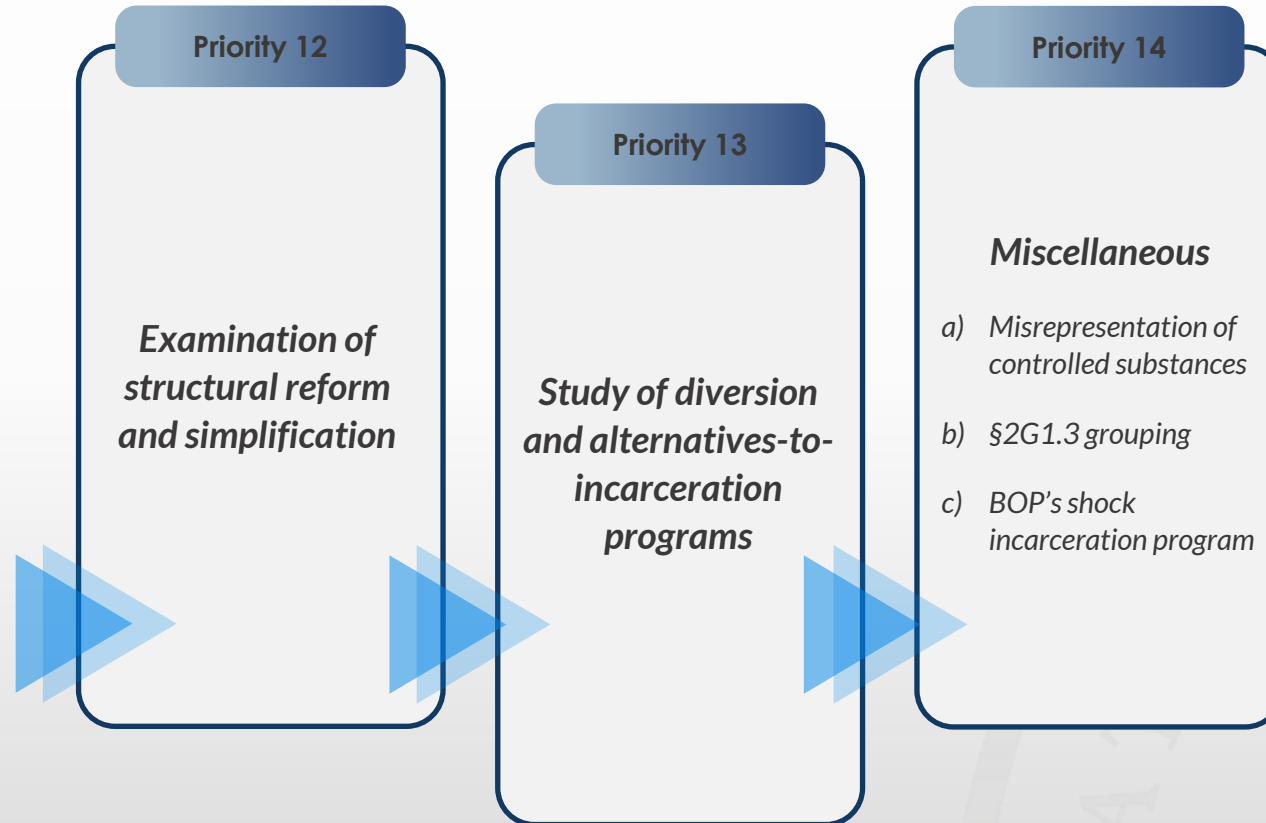
5 F.4th 390 (3d Cir. 2021)

Note 14(B) is entitled to *Auer* deference as a reasonable interpretation of an ambiguous Guideline.

Note 14(B) creates a rebuttable presumption that the enhancement should apply for a drug-trafficking offense when a firearm is found in close proximity to drugs or related items.

2023 Priorities

12-14



Amendment Cycle

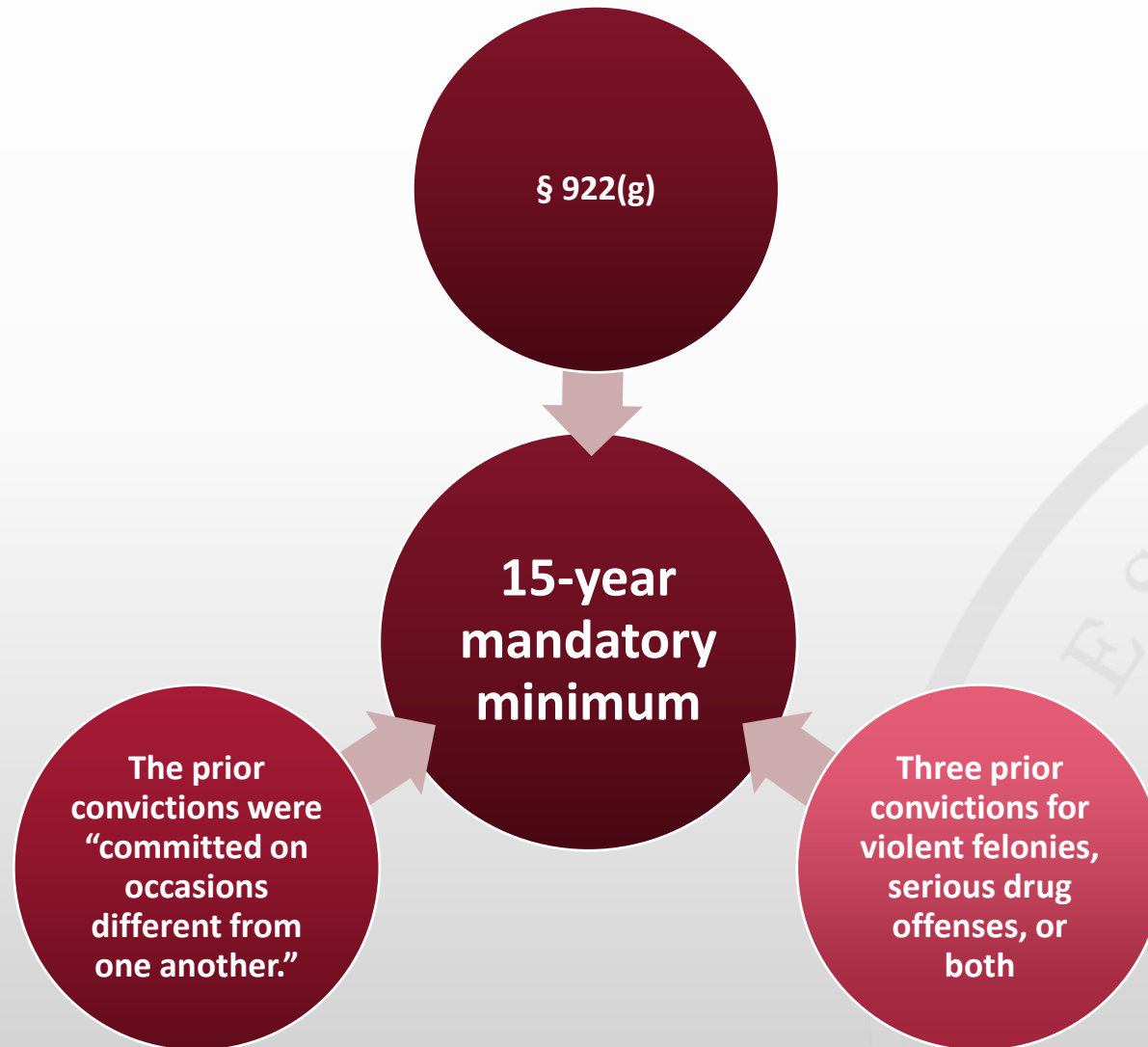




Additional Case Law Update

Armed Career Criminal Act

18 U.S.C. § 924(e)



Wooden v. United States

142 S. Ct. 1063 (2022)



Question Presented:

Do Mr. Wooden's ten burglaries count as a single violent felony or ten violent felonies?

Wooden v. United States

142 S. Ct. 1063 (2022)

Offenses arising from a single criminal episode do not occur on different occasions.



3 Factors to Examine



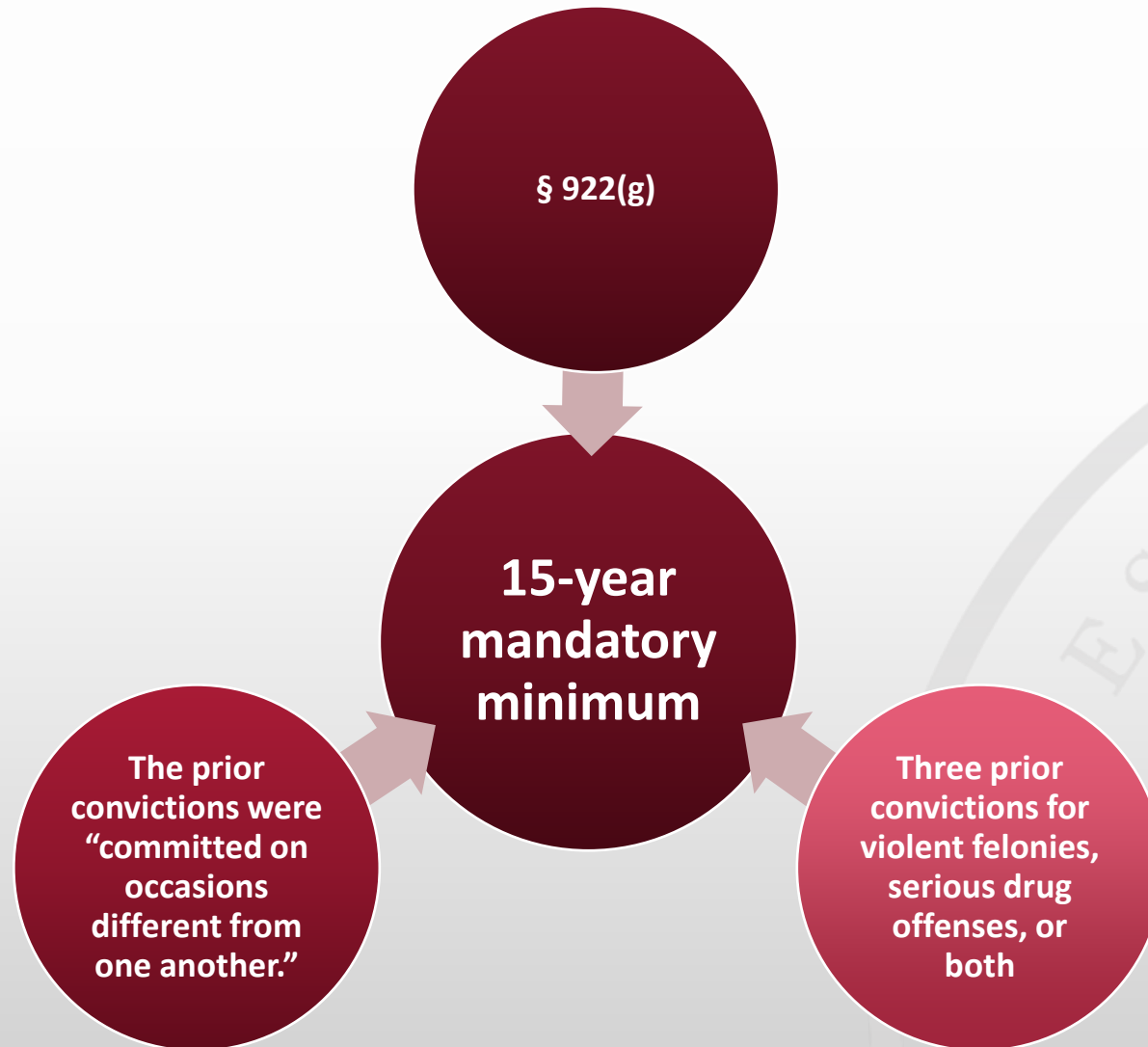
Wooden: Additional Implications



If the ACCA's occasions clause turns on facts different from the offense elements, does *Apprendi* require the issue be resolved by a jury?

Armed Career Criminal Act

18 U.S.C. § 924(e)



What Is a Violent Felony?

18 U.S.C. § 924(e)(2)(B)

The term “**violent felony**” means any crime punishable by imprisonment for a term exceeding one year . . .

Force Clause

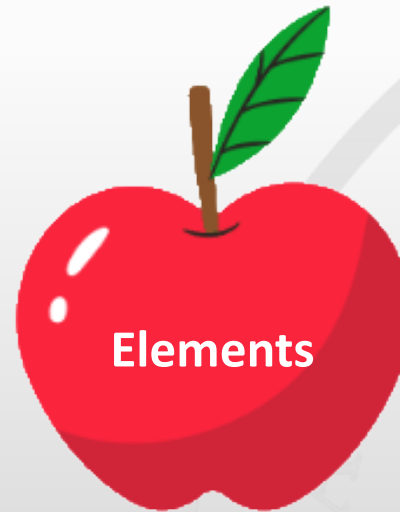
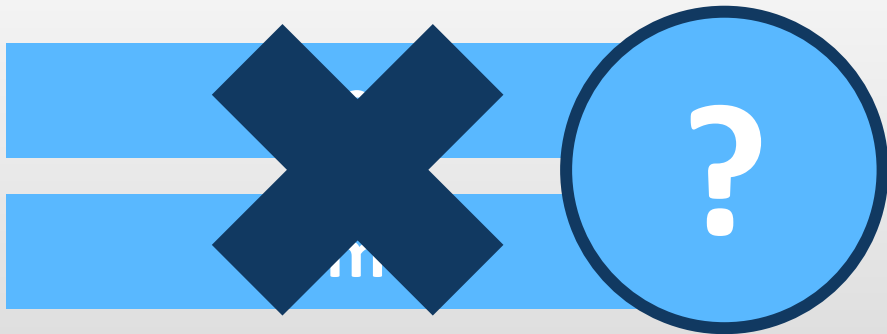
has as an element the use, attempted use, or threatened use of physical force against the person of another

Enumerated Clause

is burglary, arson, or extortion, involves use of explosives

What is the Categorical Approach?

A method for determining whether an offense meets a given definition, such as “violent” or “serious drug offense.”



What Is a Violent Felony?

18 U.S.C. § 924(e)(2)(B)

The term “**violent felony**” means any crime punishable by imprisonment for a term exceeding one year . . .

Force Clause

has as an element the use, attempted use, or threatened use of physical force against the person of another

Enumerated Clause

is burglary, arson, or extortion, involves use of explosives

What Mental State Is Required?



Intentional/Knowing



Negligence / None



Recklessness



United States v. Borden

141 S. Ct. 1817 (2021)



Question Presented:

Does the force clause encompass crimes with a *mens rea* of recklessness?

United States v. Borden

141 S. Ct. 1817 (2021)

An offense is not a violent felony under the ACCA's force clause if it requires a mental state of recklessness.



Borden and Other Force Clauses

§ 16(a)

§ 924(c)

§4B1.2(a)(1)

Recklessness+

“Extreme recklessness” offenses counts under § 924(c).

United States v. Manley, 52 F.4th 143 (4th Cir. 2022)

“Extreme indifference to human life” offenses count under § 3559.

United States v. Harrison, 54 F.4th 884 (6th Cir. 2022)

“Depraved heart” offenses count under § 924(c).

United States v. Begay, 33 F.4th 1081 (9th Cir. 2022)

Implied-malice murder” offenses count under § 924(c).

Alvarado-Linares v. United States, 44 F.4th 1334 (11th Cir. 2022)

18 U.S.C. § 924(c)

Carry, use, or possess a firearm in relation to a “crime of violence” or a “drug trafficking crime” with mandatory minimums depending on:

1. Whether firearm was:

used, carried, or possessed (5 years)	brandished (7 years)	discharged (10 years)
--	-------------------------	--------------------------

AND

2. Type of firearm:

short-barreled rifle, short-barreled shotgun, semiautomatic assault weapon (10 years)	machine gun, destructive device, or equipped with silencer or muffler (30 years)
---	--

What is a Crime of Violence?

18 U.S.C. § 924(c)(3)

The term “**crime of violence**” means any offense that is a felony and—

Force Clause

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

Residual Clause

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.

United States v. Stoney

62 F.4th 108 (3d Cir. 2023)

A completed Hobbs Act robbery is crime of violence under § 924(c).



United States v. Taylor

142 S. Ct. 2015 (2022)



Question Presented:

Is attempted Hobbs Act robbery a crime of violence under § 924(c)?

United States v. Taylor

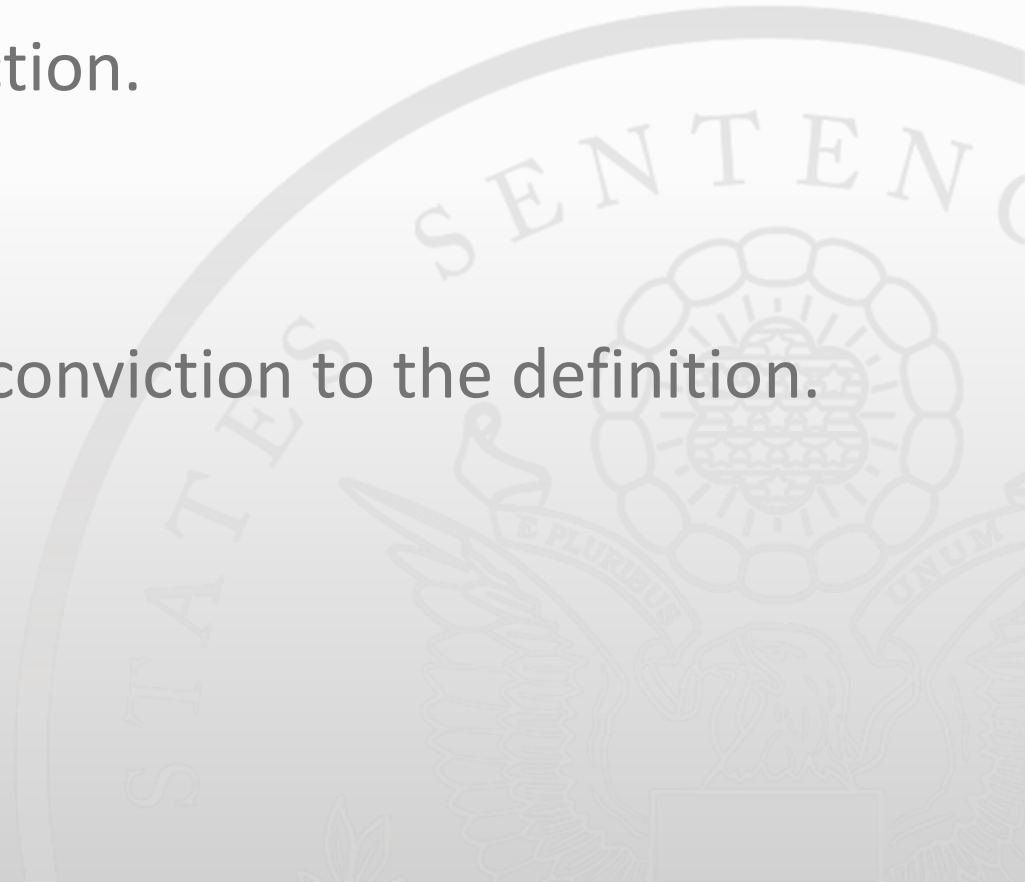
142 S. Ct. 2015 (2022)

Attempted Hobbs Act robbery is **NOT** a crime of violence.



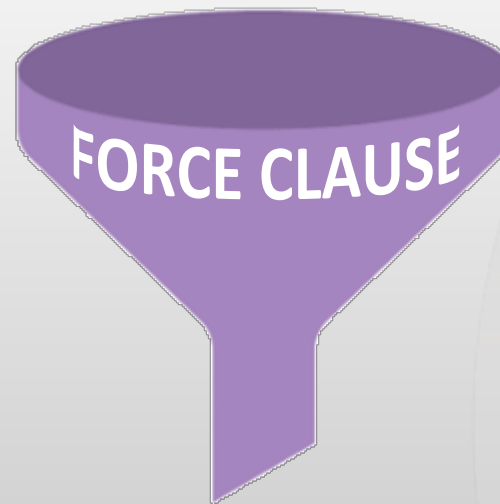
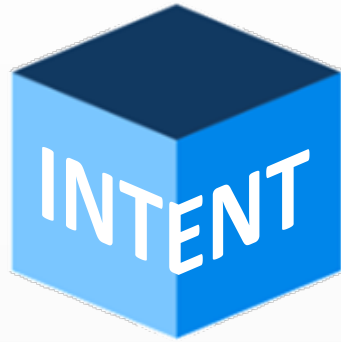
Categorical Approach: Four-Step Process

1. **Determine** the statute of conviction.
2. **List** the elements of the statute of conviction.
3. **Identify** the definition at issue.
4. **Compare** the elements in the statute of conviction to the definition.

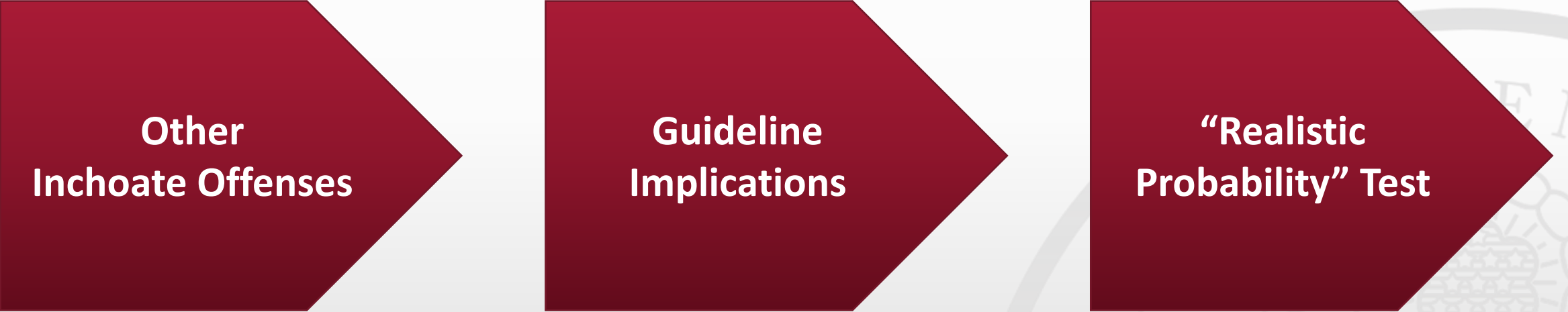


United States v. Taylor

142 S. Ct. 2015 (2022)



Possible Effects of *Taylor*



Other
Inchoate Offenses

Guideline
Implications

“Realistic
Probability” Test

United States v. Henderson

2023 WL 2671019 (3d Cir. Mar. 29, 2023)

“Preston cannot stand in light of the Supreme Court’s refusal to include the elements of completed Hobbs Act robbery, which involves violence, in determining whether the inchoate offense on its own qualifies as a crime of violence.”



United States v. Dawson

32 F.4th 254 (3d Cir. 2022)

Pennsylvania drug trafficking, in violation of 35 Pa. Cons. Stat. § 780-113(a)(30), is a controlled substance offense under §4B1.2(b) because “distribution” includes attempted delivery.



First Step Act

Section 404(b) Motions

1

Eligibility

2

Discretion

Terry v. United States

141 S. Ct. 1858 (2021)



Question Presented:

Do pre-August 3, 2010, crack offenders sentenced under 21 U.S.C. § 841(b)(1)(C) have a “covered offense” under Section 404 of the First Step Act?

Terry v. United States

141 S. Ct. 1858 (2021)

A crack offender is eligible for a sentence reduction under the First Step Act only if convicted of a crack offense that triggered a mandatory minimum sentence.

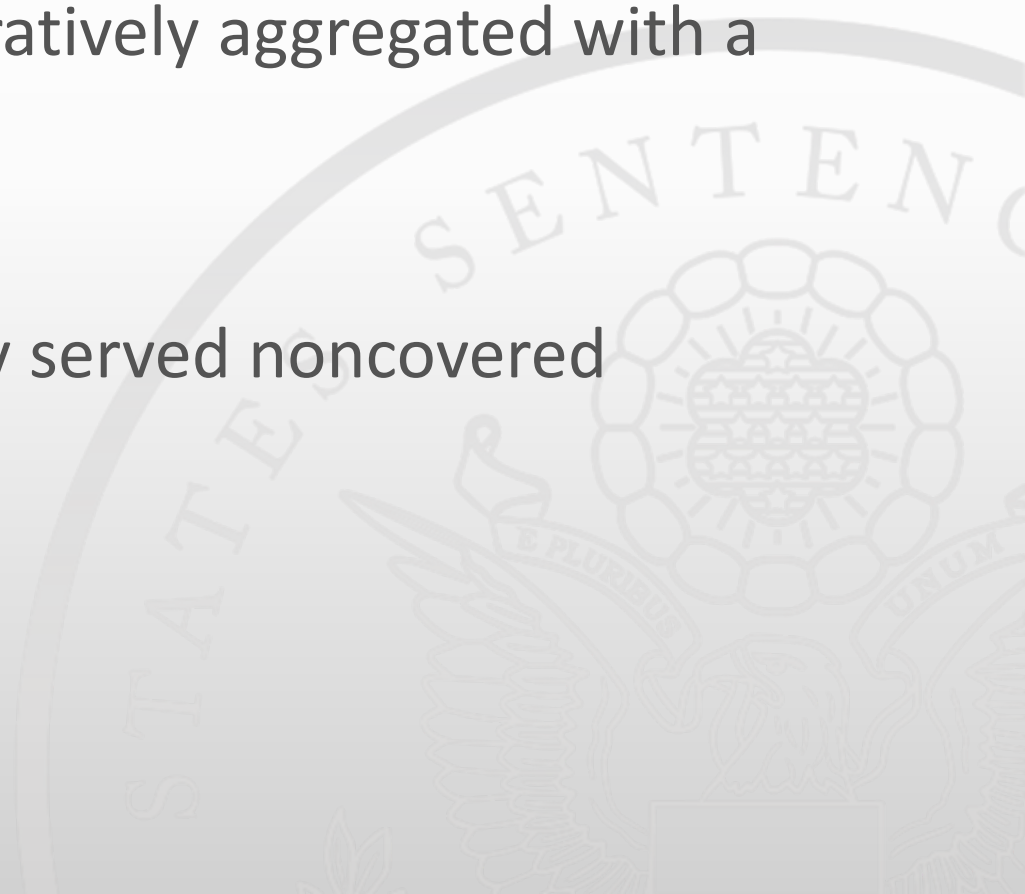


United States v. Brow

62 F.4th 114 (3d Cir. 2023)

A court may not reduce a sentence on a noncovered offense even when the noncovered offense was administratively aggregated with a covered offense.

A court may not reduce a sentence on a fully served noncovered offense.



Concepcion v. United States

142 S. Ct. 2389 (2022)



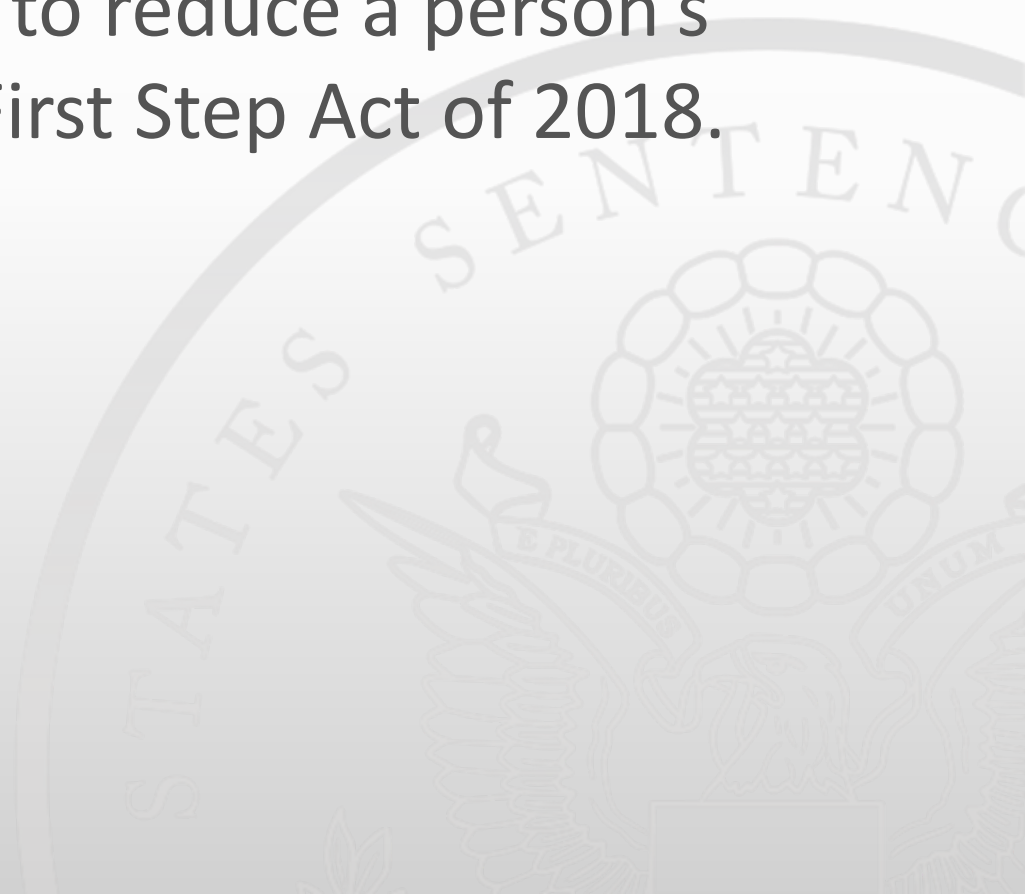
Question Presented:

Is the court required, permitted, or forbidden to consider the fact that Concepcion would no longer be a career offender if he were sentenced today?

Concepcion v. United States

142 S. Ct. 2389 (2022)

A court may consider intervening legal and factual developments when deciding whether to reduce a person's sentence under Section 404(b) of the First Step Act of 2018.



Concepcion v. United States

142 S. Ct. 2389 (2022)

1

Recalculate guidelines with **only** FSA changes

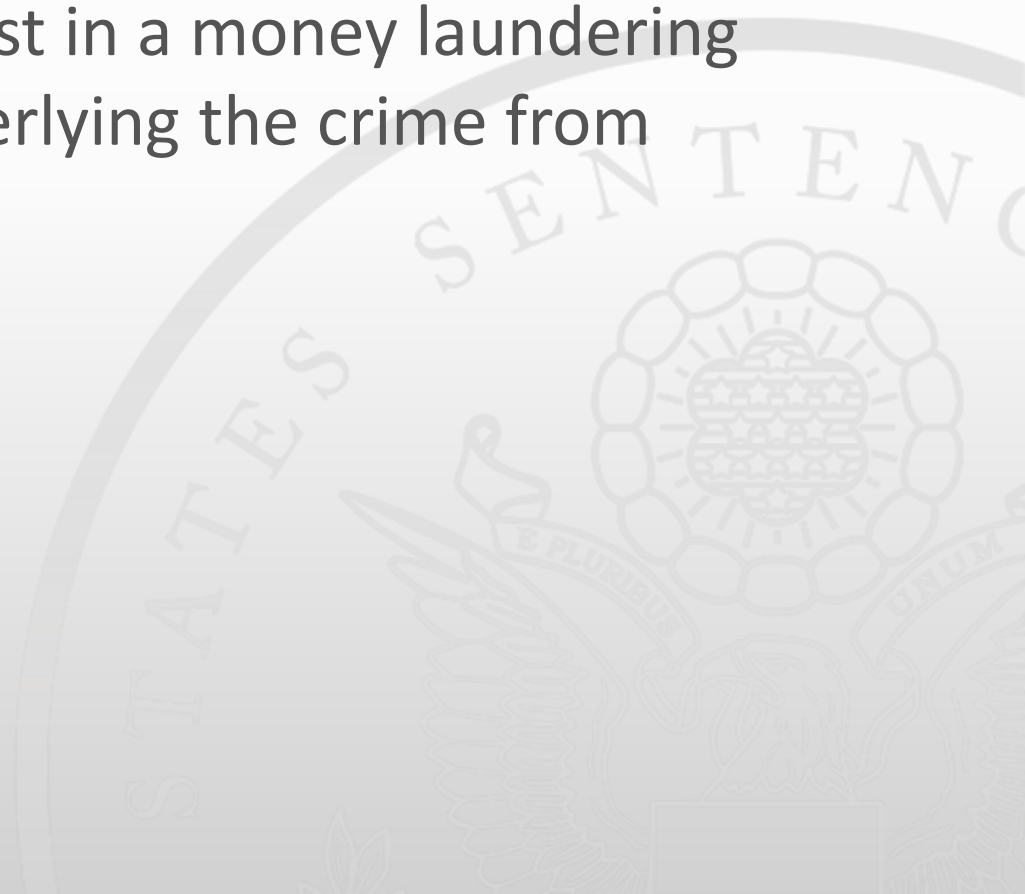
2

Consider non-retroactive changes, including the guidelines, as a matter of discretion.

United States v. Capps

977 F.3d 250 (3d Cir. 2020)

The court committed plain error when it applied a two-level enhancement under §3B1.3 for abuse of trust in a money laundering case based on the defendant's conduct underlying the crime from which the funds were laundered.



United States v. Aguirre-Miron

988 F.3d 683 (3d Cir. 2021)

It was plain error not to group the defendant's three child pornography production counts with his receipt and possession of child pornography counts.

The counts grouped under §3D1.2(c) because the defendant received a pattern enhancement under §2G2.2(b)(5) on his receipt and possession counts “based on the conduct embodied in his production counts.”

United States v. Brasby

61 F.4th 127 (3d Cir. 2023)

New Jersey second-degree aggravated assault is a crime of violence under the guidelines.



Learning Outcomes

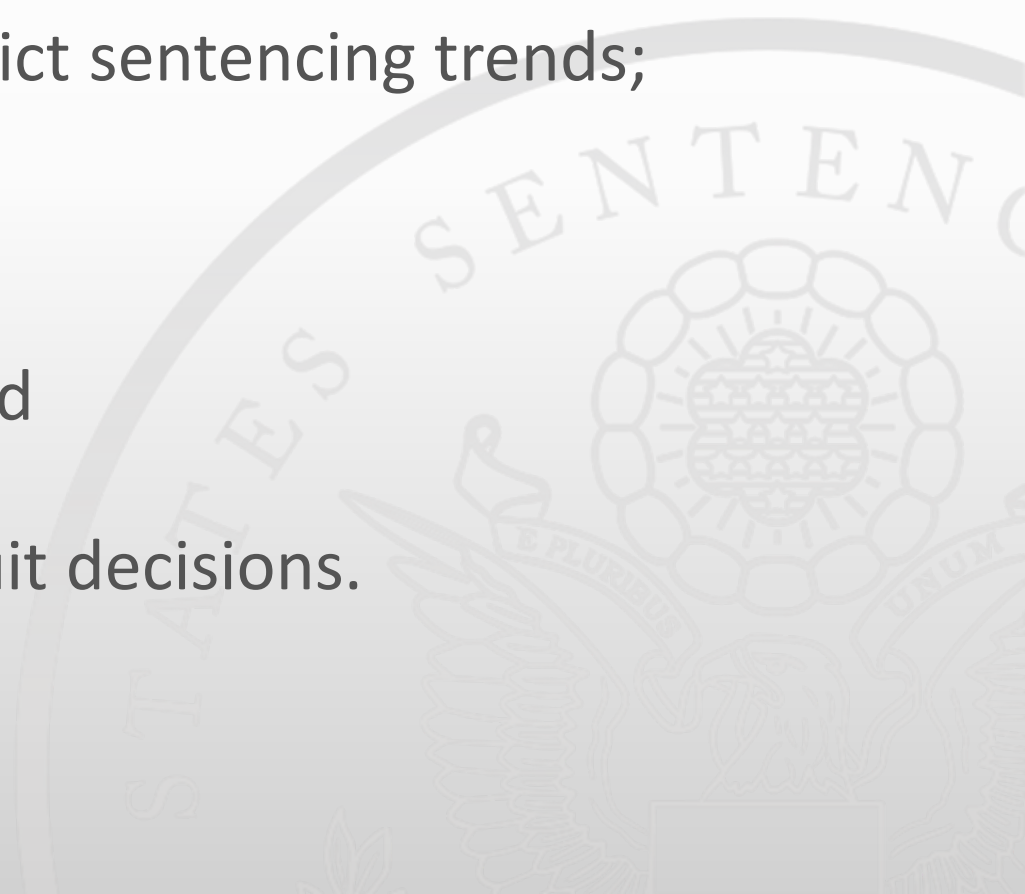
You should now be able to:

Identify recent national, circuit, and district sentencing trends;

Utilize Commission Resources;

Describe recent Commission updates; and

Evaluate recent Supreme Court and Circuit decisions.



Questions or Comments



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