

**OFFICE OF THE FEDERAL DEFENDER
EASTERN DISTRICT OF CALIFORNIA**

SENTENCING

SENTENCING FACTORS:

Sentencing in federal court is the responsibility of the judge. The following purposes of sentencing must be considered by the federal judge:

1. the nature and circumstances of the offense and the history and characteristics of the defendant;
2. the need for the sentence imposed to (a) reflect the seriousness of the offense, promote respect for the law and provide just punishment for the offense (b) afford adequate deterrence to criminal conduct (c) 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 federal sentencing guideline range, which are an advisory set of rules for all federal sentences;
5. the guideline policy statements;
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.

The law requires the court to impose a sentence sufficient, but not greater than necessary, to comply with these seven purposes of sentencing.

THE U.S. SENTENCING GUIDELINES:

If you plead guilty or are found guilty after a trial, you will be sentenced about 10-11 weeks later. On January 12, 2005, the Supreme

Court ruled that the federal sentencing guidelines are no longer mandatory. Instead, they are advisory. The sentencing judge is required to consider the guidelines, but is not bound by them.

The Guidelines work by giving scores to two different parts of your case: (1) your criminal record, and (2) the particular offense for which you will be sentenced. First, the Guidelines rate your criminal history by giving "points" to each of your prior convictions. The total number of "points" will put you in a "Criminal History Category," ranging from I to VI. Figuring out your Criminal History Category can be very complicated. Your attorney will discuss this with you in detail.

Second, the Guidelines rate your offense. The Guidelines give a particular score, called an "Offense Level," to every federal offense. The scores range from 1 (for very minor offenses) to 43 (for very serious offenses). This number may then be "adjusted" according to the particular characteristics of your case. Adjustments can raise or lower the Offense Level. For example, if you plead guilty you will usually get points off your Offense Level. Your attorney will explain any adjustments which could affect your sentence.

The Guidelines Sentencing Table is a chart that shows the sentencing range for all possible combinations of Criminal History Category and Offense Level. Based on your Criminal History Category and Offense Level, the Table will give a sentencing "range." This is the number of months that you could spend in prison. The "low end" of the range is the minimum that the judge should give you, and the "high end" is the maximum time you should receive. For example, if your "range" is 121-135, this means that you face anywhere from 121 to 135 months in prison. Your attorney can show you the Table and explain how it works.

Figuring out the Guidelines can be the most difficult and important part of a case. Your attorney will spend time reviewing your Guidelines with you. You will know your likely Guidelines range before you enter your guilty plea or go to trial. The judge will also consider other sentencing factors in imposing sentence.

Departures: "Departures" from the required sentencing ranges are allowed in some situations. The judge can depart upward, giving you a sentence higher than your Guidelines range, or downward, giving you a sentence lower than your Guidelines range. Departures are fairly rare. Ask your lawyer if there are any grounds for a downward departure in your case.

THE PROBATION OFFICE AND THE

PRESENTENCE REPORT: The U.S. Probation Office helps the judge figure out what sentence you should receive. After a guilty plea or verdict, a Probation Officer will want to interview you. The Probation Officer works for the court, and is not your advocate like your lawyer is. If you are interviewed, your attorney will go with you.

If you are interviewed, do not lie to the Probation Officer. It is a crime to do so, and may lead to a worse sentence. You can refuse to answer any question, but whatever you do say must be the truth.

After the interview, the Probation Officer will write a Presentence Report for the judge. The "PSR" discusses your federal case, your background, family, criminal history, education, career, mental and physical health, and other information. Probation may interview family members or employers, and may check the information you provide about yourself. The Probation Officer may also talk to the prosecutor and case agent. **Probation also figures out your Guidelines scores and sentencing range, and recommends to the judge what specific sentence you should receive. The final decision on sentencing is up to the judge.**

The Probation Officer will send a draft copy of the PSR to your lawyer, before the judge sees it. You will get to review the draft PSR, and tell your lawyer if there are any factual mistakes. Your lawyer will look for legal mistakes. Then your lawyer may write a letter to Probation about any changes that should be made. Probation then issues the final PSR, which goes to you, the prosecutor, and the judge.

THE SENTENCING HEARING: About 10-11 weeks after your guilty plea or verdict, you will go back to court for sentencing. Three different people will tell the judge how they think you should be sentenced: your lawyer, the Probation Officer, and the prosecutor. Sometimes these people agree about the sentence, and sometimes they do not. Your lawyer may have filed a motion before the hearing, arguing for a particular sentence. The judge will announce the final decision at the sentencing hearing. Even if you have a plea agreement, the sentence may not be what you and the prosecutor agreed on. Usually, however, the judges do follow our plea agreements.

At the hearing, the judge will ask whether you have read your PSR and discussed it with your lawyer. The judge will then ask your lawyer and the prosecutor if they wish to say anything about your sentence. The judge will ask you if you wish to say anything. It is your absolute right to speak if you want to, but you do not have to. You can say anything about yourself or your case, but discuss it first with your attorney in advance. After listening to everyone, the judge will impose your sentence.

If you are sentenced to prison, your attorney can ask the judge to recommend that you serve your time in a certain part of the country, at a particular prison, or in a special program like drug rehabilitation. The judge's recommendation does not guarantee that you will go where you want. That will be up to the Bureau of Prisons.

WHAT NEXT? After sentencing, you will be taken back to jail if you were detained. If you were out of custody, you may be taken into custody in the courtroom, or you may be given a surrender date. The judge will sign a

document called a Judgment, which then must make its way through the federal court system to the Federal Bureau of Prisons ("BOP"). The BOP reviews your PSR, any criminal history, gang affiliation, medical issues, and/or recommendations from the judge, and then decides where you should serve your time. It may take a month or even more before you are finally transported to federal prison or given a prison to report to.

normally has the right to conduct warrantless searches, random drug tests, etc. Your lawyer will explain the details of supervised release to you as your case proceeds.

RELATED MATTERS:

Credit: There is no federal parole. You will serve your entire sentence, minus 15% good time credit. The 15% credit is not automatic, but is applied if you have no disciplinary problems. **There is no good time credit for sentences of one year or less.** You will also receive credit for time served, as long as you were not also serving another sentence (like a state sentence) while your case was pending.

Boot Camp: Boot camp has been eliminated.

Release: Most (but not all) federal prisons send inmates to a halfway house for the last few months of their sentence. The halfway house is to help you adjust back into the community. It has curfews, rules, drug tests, etc. You are not guaranteed to go to a halfway house before your prison term is up. If you are not a U.S. citizen, or do not have a resident alien card, you will not go to a halfway house. If you have pending charges, you may not be able to go to a halfway house. There is no halfway house in Sacramento, however, at the present time. Therefore, if you go to a halfway house, it will be in another community such as the Bay Area or Fresno. If you are subject to deportation, that will happen after you complete your federal sentence.

Supervised Release: Most federal inmates are placed on supervised release after their prison term is over. See the Handout called "Violations of Probation or Supervised Release." Your supervised release begins the day you are released from federal prison, or a halfway house. Supervised release is like being on probation or parole, only *after* your entire prison sentence is served. A federal Probation Officer will supervise you, and