

Section 6B1.2 is amended in subsection (b) by striking “[Rule 11(e)(1)(B)]” and inserting “[Rule 11(c)(1)(B)]”; and by striking subdivision (2) and inserting the following:

“(2)(A) the recommended sentence departs from the applicable guideline range for justifiable reasons; and (B) those reasons are specifically set forth in writing in the statement of reasons or judgment and commitment order.”.

Section 6B1.2 is amended in subsection (c) by striking “[Rule 11(e)(1)(C)]” and inserting “[Rule 11(c)(1)(C)]”; and by striking subdivision (2) and inserting the following:

“(2)(A) the agreed sentence departs from the applicable guideline range for justifiable reasons; and (B) those reasons are specifically set forth in writing in the statement of reasons or judgment and commitment order.”.

The Commentary to 6B1.2 is amended in the second paragraph by striking “. See generally Chapter 1, Part A, Subpart 4(b)(Departures).” and inserting “and those reasons are specifically set forth in writing in the statement of reasons or the judgment and commitment order. As set forth in subsection (d) of 5K2.0 (Grounds for Departure), however, the court may not depart below the applicable guideline range merely because of the defendant’s decision to plead guilty to the offense or to enter a plea agreement with respect to the offense.”.

The heading of Chapter One is amended to read as follow:

Chapter One—Authority and General Application Principles”.

Chapter One, Part A, is amended to read as follows:

Part A—Authority

1A1.1. Authority

The guidelines, policy statements, and commentary set forth in this Guidelines Manual, including amendments thereto, are promulgated by the United States Sentencing Commission pursuant to: (1) Section 994(a) of title 28, United States Code; and (2) with respect to guidelines, policy statements, and commentary promulgated or amended pursuant to specific congressional directive, pursuant to the authority contained in that directive in addition to the authority under section 994(a) of title 28, United States Code.

Commentary

Application Note:

1. Historical Review of Original Introduction.—Part A of Chapter One

originally was an introduction to the Guidelines Manual that explained a number of policy decisions made by the Commission when it promulgated the initial set of guidelines. This introduction was amended occasionally between 1987 and 2003. In 2003, as part of the Commission’s implementation of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003 (the ‘PROTECT Act’, Pub. L. 108–21), the original introduction was transferred to the Historical Note at the end of this guideline. The Commission encourages the review of this material for context and historical purposes.

Background: The Sentencing Reform Act of 1984 changed the course of federal sentencing. Among other things, the Act created the United States Sentencing Commission as an independent agency in the Judicial Branch, and directed it to develop guidelines and policy statements for sentencing courts to use when sentencing offenders convicted of federal crimes. Moreover, it empowered the Commission with ongoing responsibilities to monitor the guidelines, submit to Congress appropriate modifications of the guidelines and recommended changes in criminal statutes, and establish education and research programs. The mandate rested on Congressional awareness that sentencing was a dynamic field that requires continuing review by an expert body to revise sentencing policies, in light of application experience, as new criminal statutes are enacted, and as more is learned about what motivates and controls criminal behavior.

Historical Note: Chapter One, Part A, as in effect on November 1, 1987, read as follows:

Chapter One—Introduction and General Application Principles

Part A—Introduction

1. Authority

The United States Sentencing Commission (‘Commission’) is an independent agency in the judicial branch composed of seven voting and two non-voting, ex officio members. Its principal purpose is to establish sentencing policies and practices for the federal criminal justice system that will assure the ends of justice by promulgating detailed guidelines prescribing the appropriate sentences for offenders convicted of federal crimes.

The guidelines and policy statements promulgated by the Commission are

issued pursuant to Section 994(a) of Title 28, United States Code.

2. The Statutory Mission

The Comprehensive Crime Control Act of 1984 foresees guidelines that will further the basic purposes of criminal punishment, *i.e.*, deterring crime, incapacitating the offender, providing just punishment, and rehabilitating the offender. It delegates to the Commission broad authority to review and rationalize the federal sentencing process.

The statute contains many detailed instructions as to how this determination should be made, but the most important of them instructs the Commission to create categories of offense behavior and offender characteristics. An offense behavior category might consist, for example, of ‘bank robbery/committed with a gun/\$2500 taken.’ An offender characteristic category might be ‘offender with one prior conviction who was not sentenced to imprisonment.’ The Commission is required to prescribe guideline ranges that specify an appropriate sentence for each class of convicted persons, to be determined by coordinating the offense behavior categories with the offender characteristic categories. The statute contemplates the guidelines will establish a range of sentences for every coordination of categories. Where the guidelines call for imprisonment, the range must be narrow: the maximum imprisonment cannot exceed the minimum by more than the greater of 25 percent or six months. 28 U.S.C. 994(b)(2).

The sentencing judge must select a sentence from within the guideline range. If, however, a particular case presents atypical features, the Act allows the judge to depart from the guidelines and sentence outside the range. In that case, the judge must specify reasons for departure. 18 U.S.C. 3553(b). If the court sentences within the guideline range, an appellate court may review the sentence to see if the guideline was correctly applied. If the judge departs from the guideline range, an appellate court may review the reasonableness of the departure. 18 U.S.C. 3742. The Act requires the offender to serve virtually all of any prison sentence imposed, for it abolishes parole and substantially restructures good behavior adjustments.

The law requires the Commission to send its initial guidelines to Congress by April 13, 1987, and under the present statute they take effect automatically on November 1, 1987. Public Law No. 98–473, 235, reprinted at 18 U.S.C. 3551. The Commission may submit guideline