



# 2019 CJA Panel Training

October 3, 2019

Southern District of Georgia: Savannah, GA



# Presenter

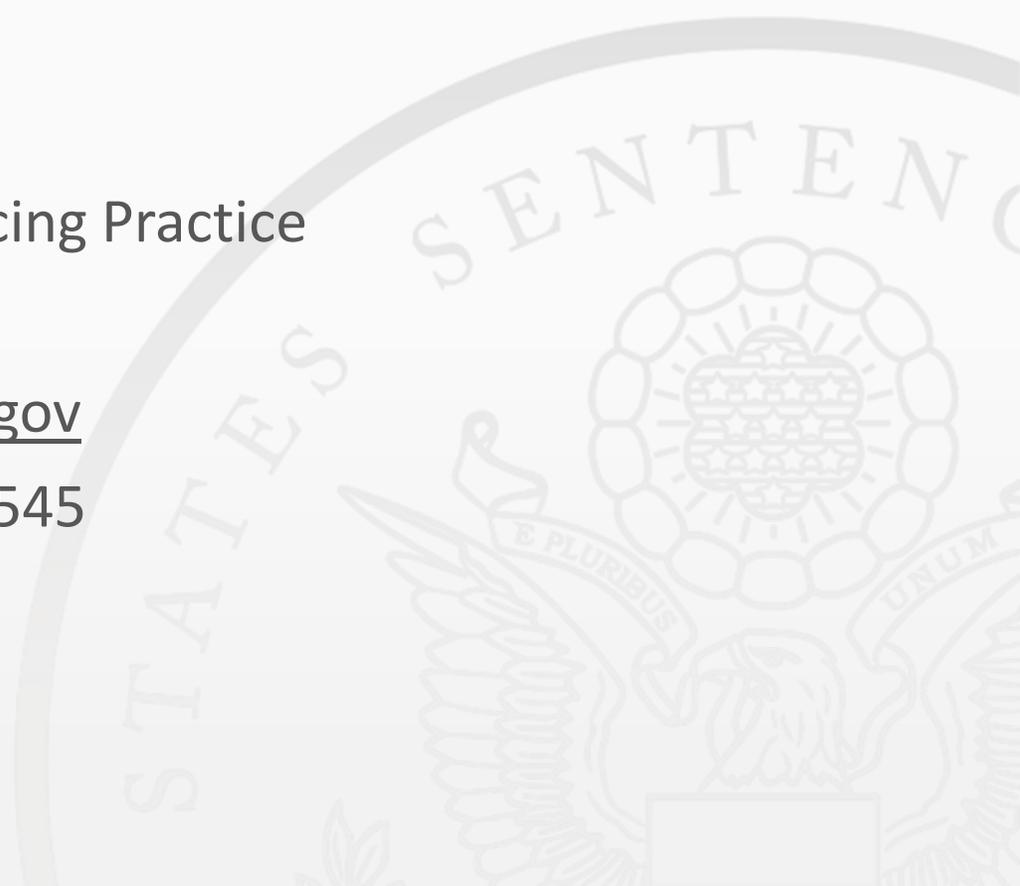
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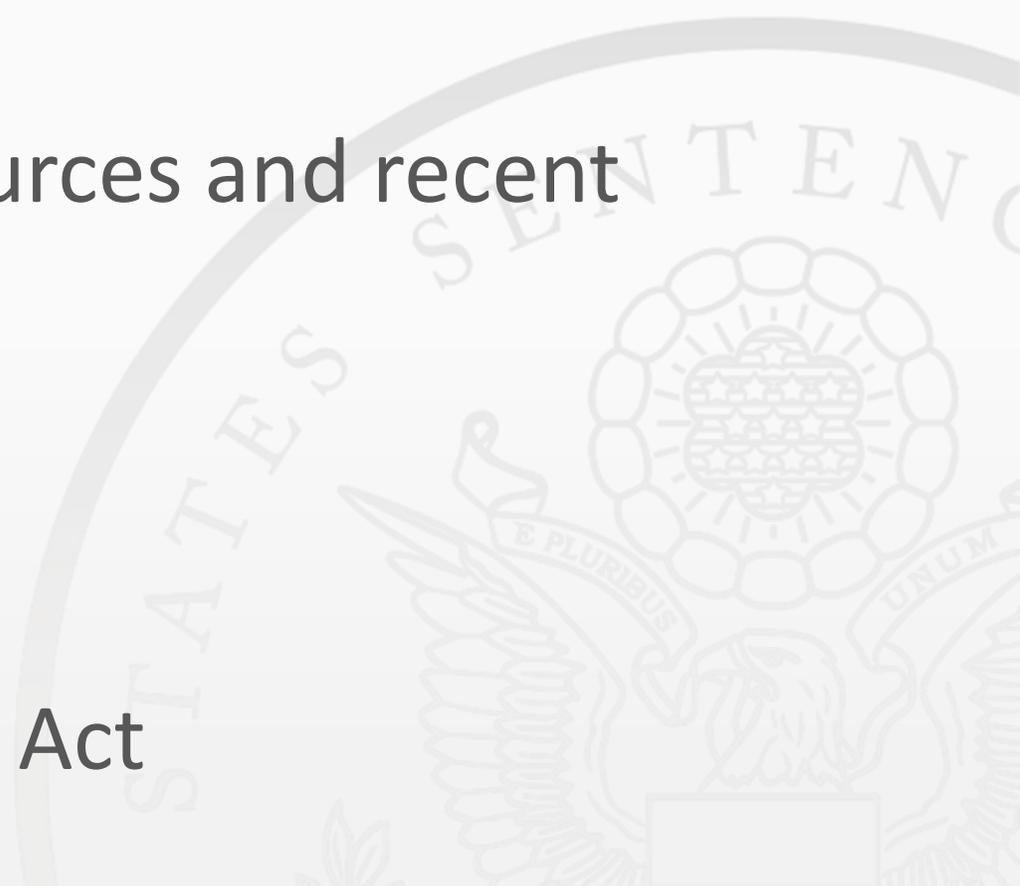
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HelpLine – (202) 502-4545



# Topics

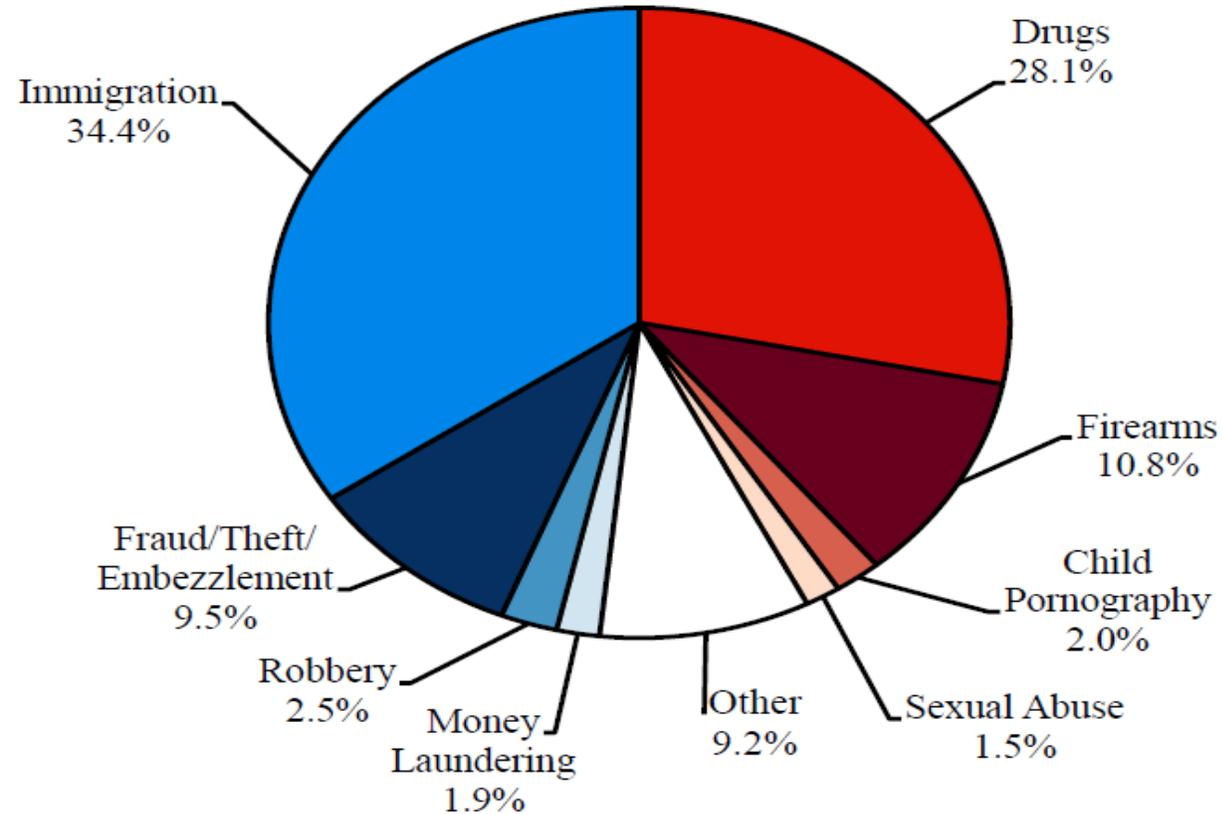
- District Statistics
- Sentencing Commission's resources and recent work
- 2018 Amendments
- Key provisions of the First Step Act



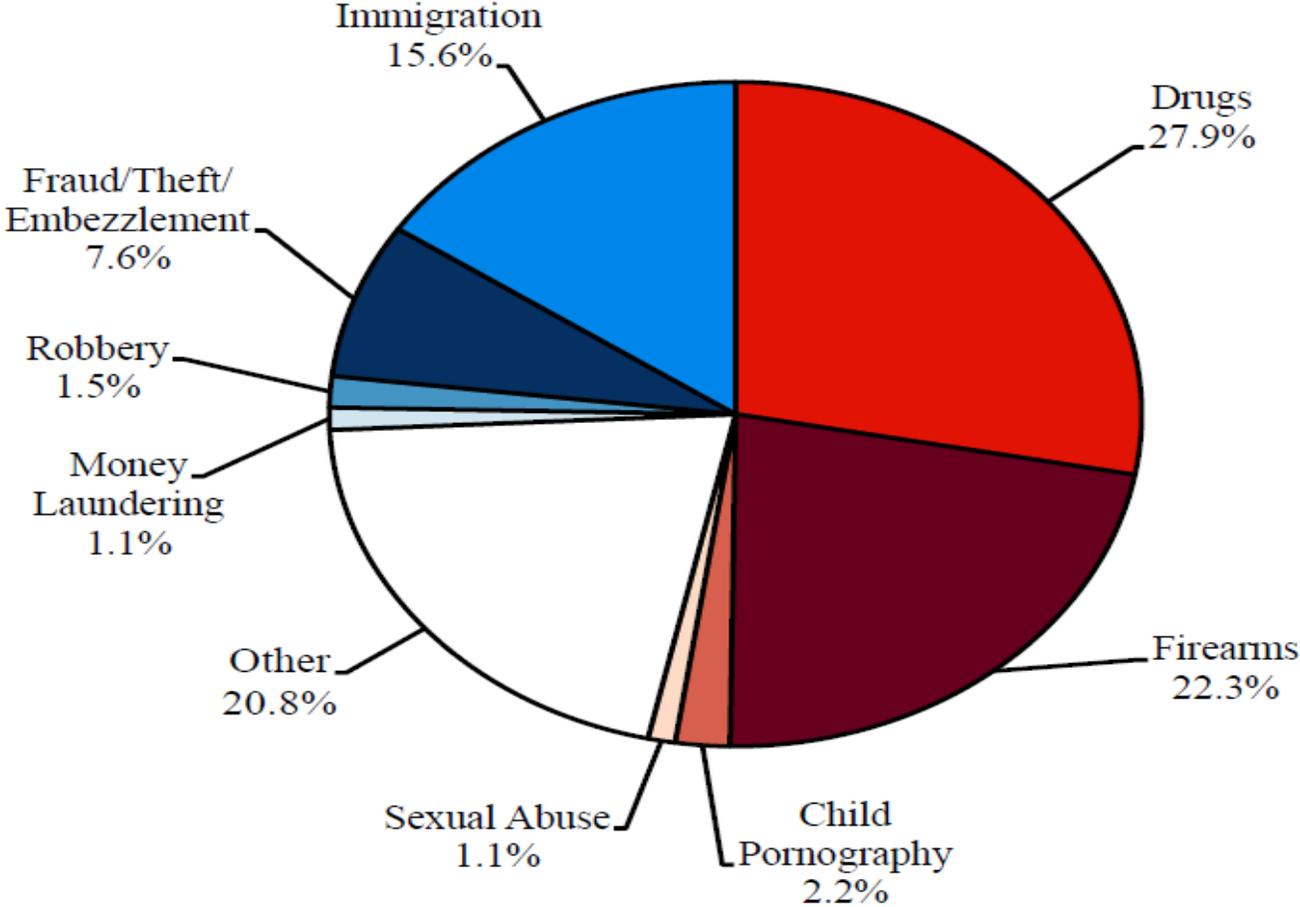


# District Statistics

# National: FY 2018 Federal Offenders by Type of Crime



# Southern Georgia: FY 2018 Federal Offenders by Type of Crime



# Position of Sentences in Relation to Guideline Range National – FY 2018

**Total  
Variances  
25%**

**Downward  
Variance –  
Gov't  
5.5%**

**Upward  
Variance  
2%**

**Downward  
Variance –  
No Gov't  
17.5%**

**Sentences Under  
the Guideline  
Manual  
75%**

Within Guideline Range

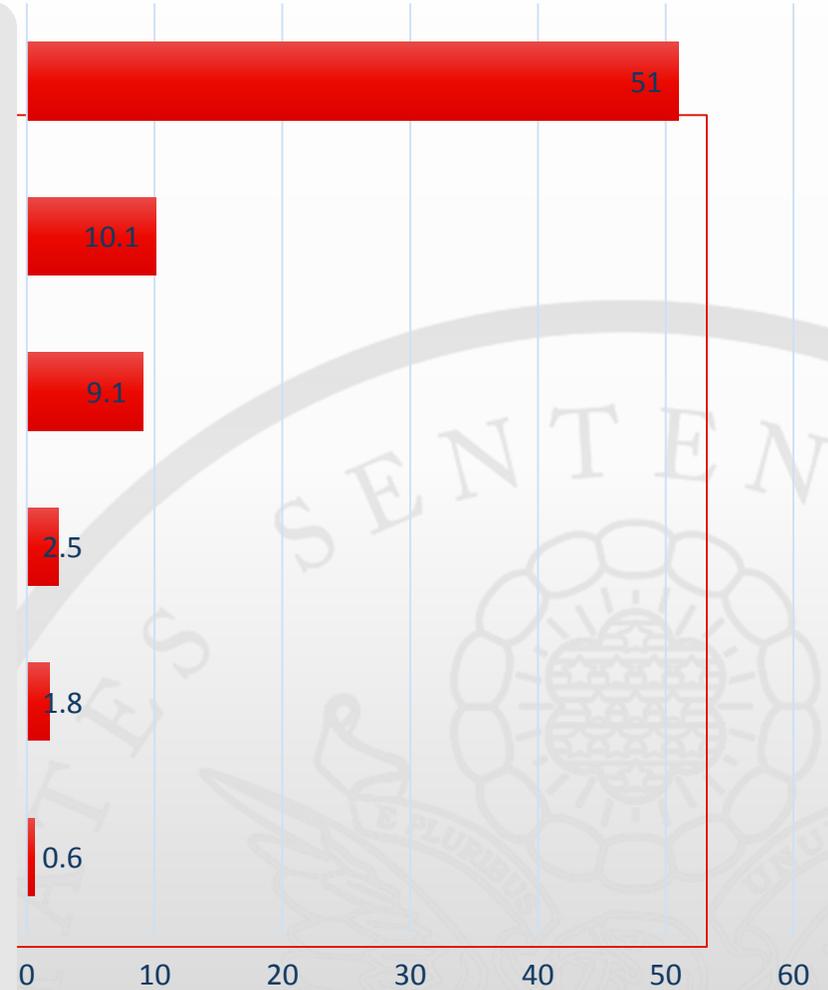
§5K1.1

§5K3.1

Non Gov't Departure

Other Gov't Motion

Upward Departure



SOURCE: 2017 Datafile, USSCFY17

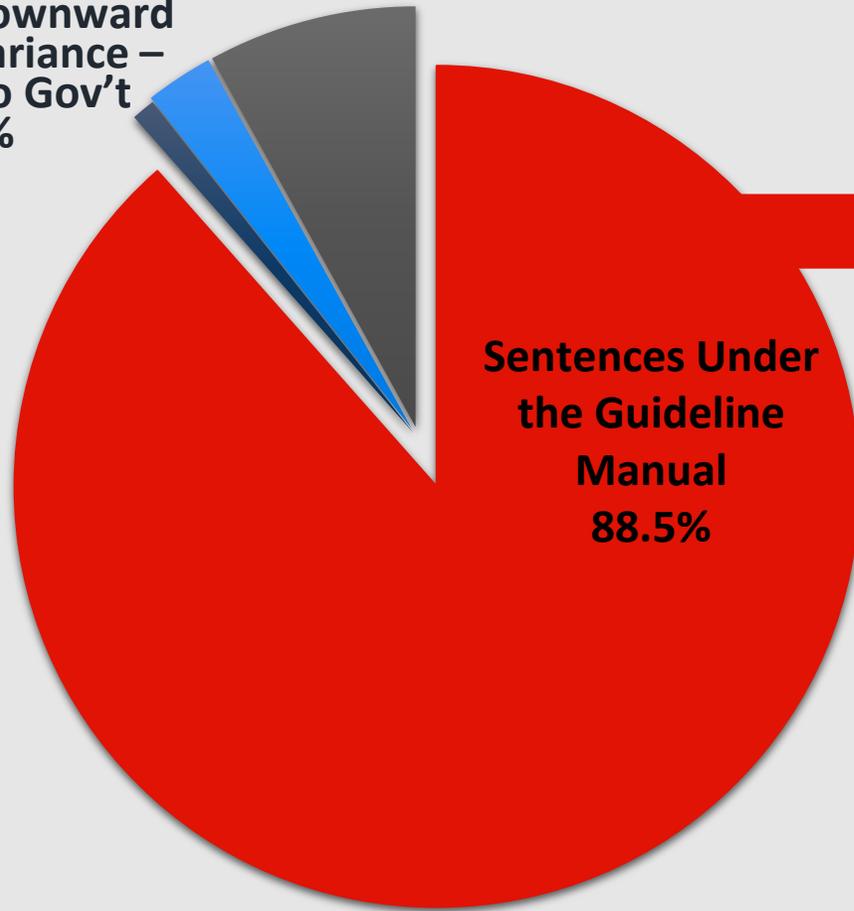
# Position of Sentences in Relation to Guideline Range SD Georgia – FY 2018

**Total  
Variances  
11.5%**

**Downward  
Variance –  
No Gov't  
8%**

**Downward  
Variance –  
Gov't  
2.6%**

**Upward  
Variance  
0.9%**



Within Guideline Range

75.8

§5K1.1

11.9

§5K3.1

0

Non Gov't Departure

0.2

Other Gov't Motion

0.2

Upward Departure

0.7

0 20 40 60 80

SOURCE: 2017 Datafile, USSCFY17



# Helpful Commission Resources

# New Training Resources



Case Law Concierge

# New Training Resources

United States Sentencing Commission | Office of Education & Sentencing Practice

## ESP INSIDER EXPRESS



Vol. #2 | Issue #3  
Summer 2018  
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**Featured:**  
2019 PRIORITIES  
USSC is seeking  
public comment...Pg. 1

**FIREARMS MANDATORY  
MINIMUMS**  
The major findings  
of the Commission's  
report on Mandatory  
Minimum Penalties  
for Firearms  
Offenses...Pg. 3

**CASE LAW**  
New decisions from the  
Supreme Court...Pg. 3

**HELPLINE CALLS**  
Have a look at recent  
questions fielded via  
our HelpLine!...Pg. 2

### Get Involved!

#### The Commission Seeks Public Comment on Proposed Priorities

June marked the beginning of the next guideline amendment cycle. Last month, the Commission formally announced tentative priorities for that cycle. The cycle ends on May 1, 2019, the deadline for submitting any amendments to Congress. Absent Congressional action, such amendments would take effect on November 1, 2019, and would be included in the 2019 version of the Guidelines Manual.

With the publication of tentative priorities in the Federal Register, the Commission invites specific stakeholder groups, such as the Criminal Law Committee of the

Judicial Conference, the Federal Public Defender community, the Criminal Division of the United States Department of Justice, and the Probation Officers' Advisory Group, as well as the general public, to comment on those priorities. Comment must be received by August 10, 2018, and specific instructions for sending comment, by regular mail or email, are provided on the Notice of Proposed Priorities, which can be accessed here:

<https://www.ussc.gov/policymaking/federal-register-notices/federal-register-notice-proposed-2018-2019-priorities>

Conf. on Pg. 4

#### The Criminal History of Federal Offenders

Released May 17, 2018



The Commission's Criminal History of Federal Offenders report utilizes recent technological improvements that expand the scope of information the Commission can now collect. In completing this report, the Commission was able to extract and analyze the criminal histories of 61,946 of the 67,742 offenders sentenced in fiscal year 2016.

Some of the key findings include that almost three-quarters (72.8%) of federal offenders sentenced in fiscal year 2016 had been convicted of a prior offense. The average number of previous convictions was 6.1 among offenders with criminal history. Public order was the most common prior offense; 43.7 percent of offenders with prior criminal history had at least one conviction for a public order offense. For additional key findings of the study and the complete report see:

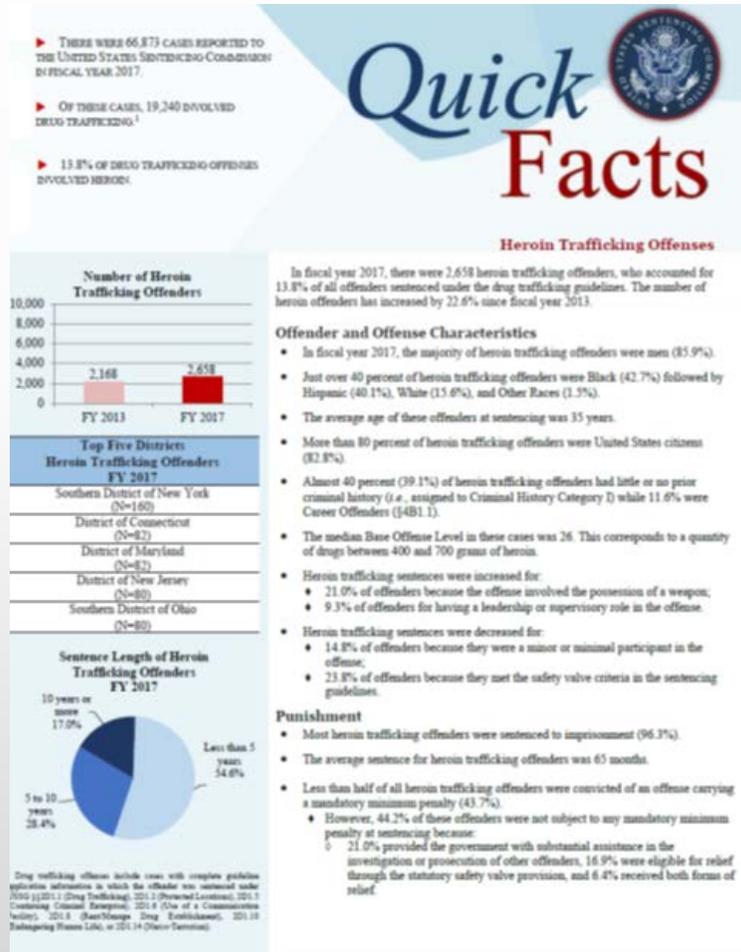
<https://www.ussc.gov/research/research-reports/criminal-history-federal-offenders>



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# “Quick Facts”



- Drugs – all types
- Firearms
- Immigration
- Economic Crimes
- Other Chapter Two Offenses
- Offender Groups
- Mandatory Minimum Penalties

# Series on Recidivism of Federal Offenders

New!  
Jan.  
2019

Recidivism Among Federal Violent Offenders

UNITED STATES SENTENCING COMMISSION



- Violent offenders
- Effects of aging
- Criminal history
- Drug trafficking offenders
- General overview



# 2018 Amendments

# Other Amendments



## Amendments to the Sentencing Guidelines

April 30, 2018

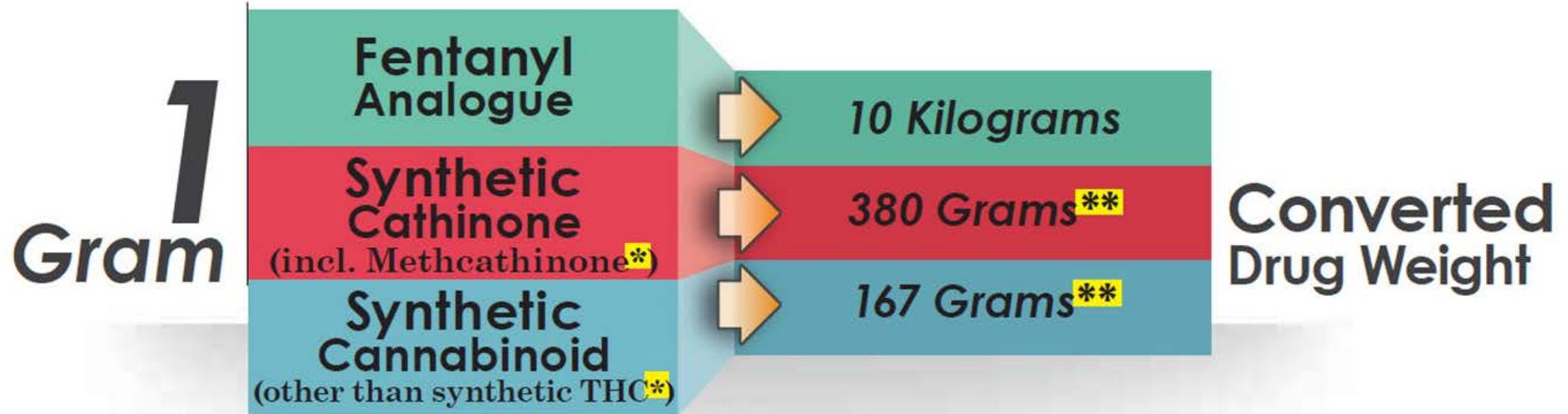
**Effective Date**  
November 1, 2018

This compilation contains unofficial text of amendments to the sentencing guidelines, policy statements, and commentary submitted to Congress, and is provided only for the convenience of the user. Official text of the amendments can be found on the Commission's website at [www.ussc.gov](http://www.ussc.gov) and will appear in a forthcoming edition of the *Federal Register*.

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# 2018 Fentanyl and Synthetic Drug Amendment



\* (except any Schedule III, IV, and V substances) | \*\* A minimum base offense level of 12 applies



# First Step Act of 2018

# First Step Act Sentencing Provisions

- Reduces certain enhanced mandatory minimum penalties for some drug offenders (Section 401)
- Broadens the safety valve at 18 U.S.C. § 3553(f) (Section 402)
- Clarifies stacking at 18 U.S.C. § 924(c) (Section 403)
- Applies the Fair Sentencing Act retroactively (Section 404)

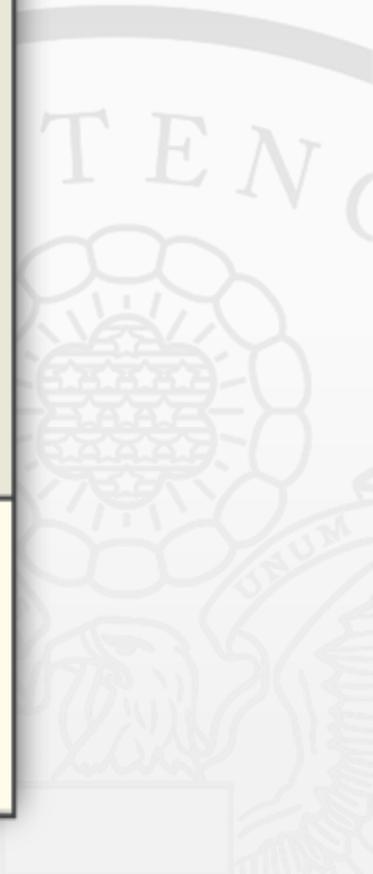
# Key Points for § 851 Changes

- Mandatory minimums reduced
- New criteria for enhanced penalties
  - Predicate offenses have changed
  - New time-served requirement



# Enhanced Penalties

Statutory Provision	Statutory Penalty	Enhanced Penalty BEFORE First Step Act	Enhanced Penalty AFTER First Step Act
21 U.S.C. § 841(b)(1)(A)	10-year Mandatory Minimum	<p><b>20-year</b> Mandatory Minimum (after one prior conviction for a <b>felony drug offense</b>)</p> <p><b>Life</b> (after two or more prior convictions for a <b>felony drug offense</b>)</p>	<p><b>15-year</b> Mandatory Minimum (after one prior conviction for a <b>serious drug felony or serious violent felony</b>)</p> <p><b>25-year</b> Mandatory Minimum (after two or more prior convictions for a <b>serious drug felony or serious violent felony</b>)</p>
21 U.S.C. § 841(b)(1)(B)	5-year Mandatory Minimum	<p><b>10-year</b> Mandatory Minimum (after one prior conviction for a <b>felony drug offense</b>)</p>	<p><b>10-year</b> Mandatory Minimum (after one prior conviction for a <b>serious drug felony or serious violent felony</b>)</p>



**Table D-12****APPLICATION OF RECIDIVIST PENALTIES IN DRUG TRAFFICKING CASES<sup>1</sup>**  
**Fiscal Year 2018**

<b>DRUG TYPE</b>	<b>ENHANCEMENT FILED</b>	<b>ENHANCEMENT WITHDRAWN</b>		<b>ENHANCEMENT NOT WITHDRAWN</b>	
	N	N	%	N	%
<b>TOTAL</b>	<b>1,261</b>	<b>254</b>	<b>20.1</b>	<b>1,007</b>	<b>79.9</b>
<b>Powder Cocaine</b>	<b>206</b>	33	16.0	173	84.0
<b>Crack Cocaine</b>	<b>203</b>	49	24.1	154	75.9
<b>Heroin</b>	<b>184</b>	23	12.5	161	87.5
<b>Marijuana</b>	<b>69</b>	11	15.9	58	84.1
<b>Methamphetamine</b>	<b>537</b>	134	25.0	403	75.0
<b>Other</b>	<b>62</b>	4	6.5	58	93.5



# Predicate Offenses Have Changed

- Serious Drug Felony
- Serious Violent Felony
- Time-Served Requirement





# Serious Drug Felony

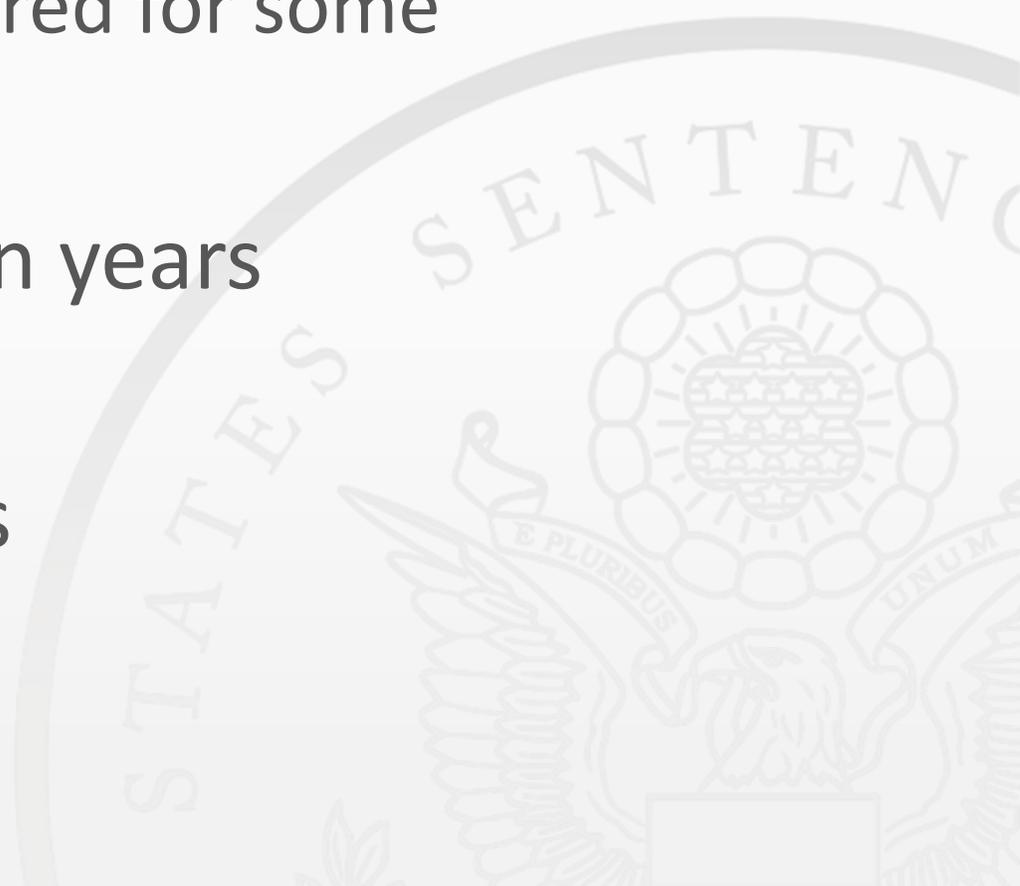
- Statutory maximum of at least ten years
- Time served exceeded 12 months
- Released within 15 years of commencement of the instant offense





# Serious Violent Felony

- Three-part definition
  - Stat max of 10 years or more required for some
- Statutory maximum of at least ten years
- Time served exceeded 12 months





# Safety Valve Changes

- Applies to maritime drug trafficking statute (boat cases)
- Open to those with more criminal history than just one point



# 18 U.S.C. § 3553(f)

## Subdivisions (1) – (5)

1. Defendant does not have more than 4 Criminal History Points....
2. Defendant did not use violence/threats of violence or possess a firearm or other dangerous weapon in connection with the offense
3. Offense did not result in death or serious bodily injury
4. Defendant was not an organizer/leader/ manager/supervisor of others in the offense; was not engaged in a CCE
5. Not later than the time of the sentencing hearing, defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or common scheme or plan.



# Safety Valve Effective Date

- Applies to a “conviction entered” on or after December 21, 2018
  - Different approaches on pipeline cases
  - Consult Rules of Criminal Procedure
- 

# Safety Valve Eligibility Under the First Step Act



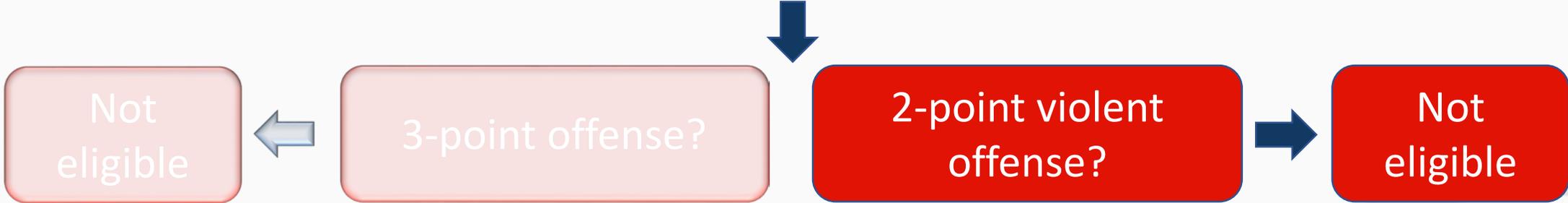
3-point offense?



Not eligible



# Safety Valve Eligibility Under the First Step Act



Safety Valve Eligibility Under the First Step Act

Not eligible



3-point offense?



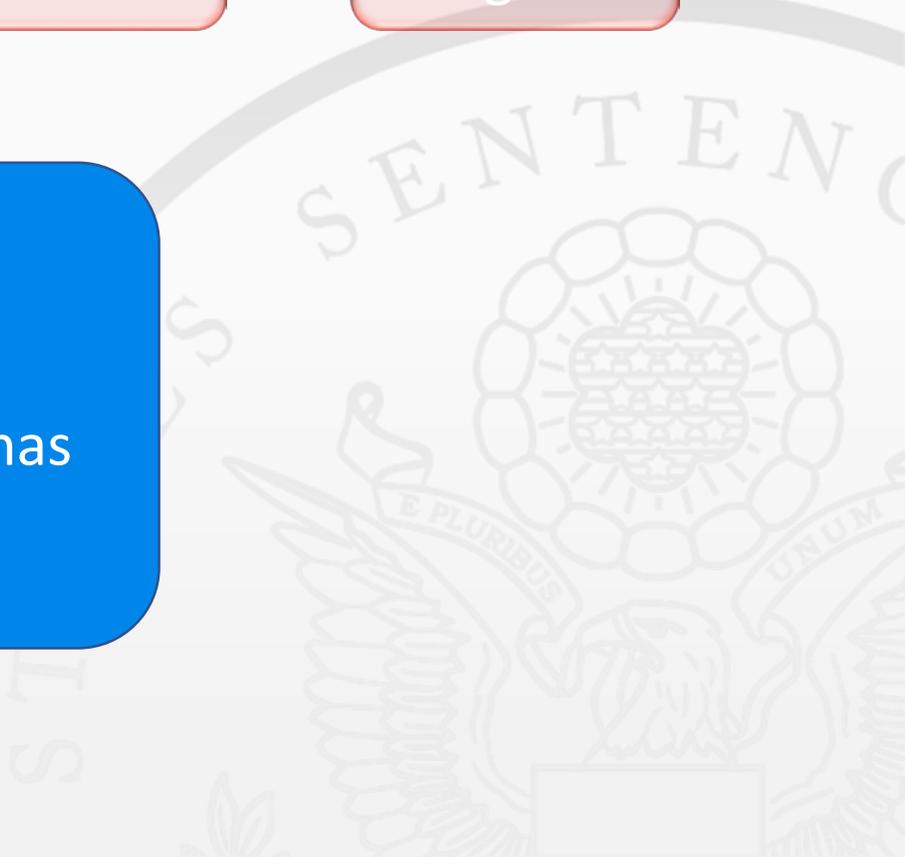
2-point violent offense?



Not eligible



Exclude 1-point offense  
Then determine if the defendant has 4 points or less



# Example of Safety Valve Defendant

- DUI: ~~One Point~~
- DUI: ~~One Point~~
- Theft: ~~One Point~~
- Theft: ~~One Point~~
- PWID: Two Points
- PWID: Two Points



## Safety Valve Eligibility Under the Guidelines

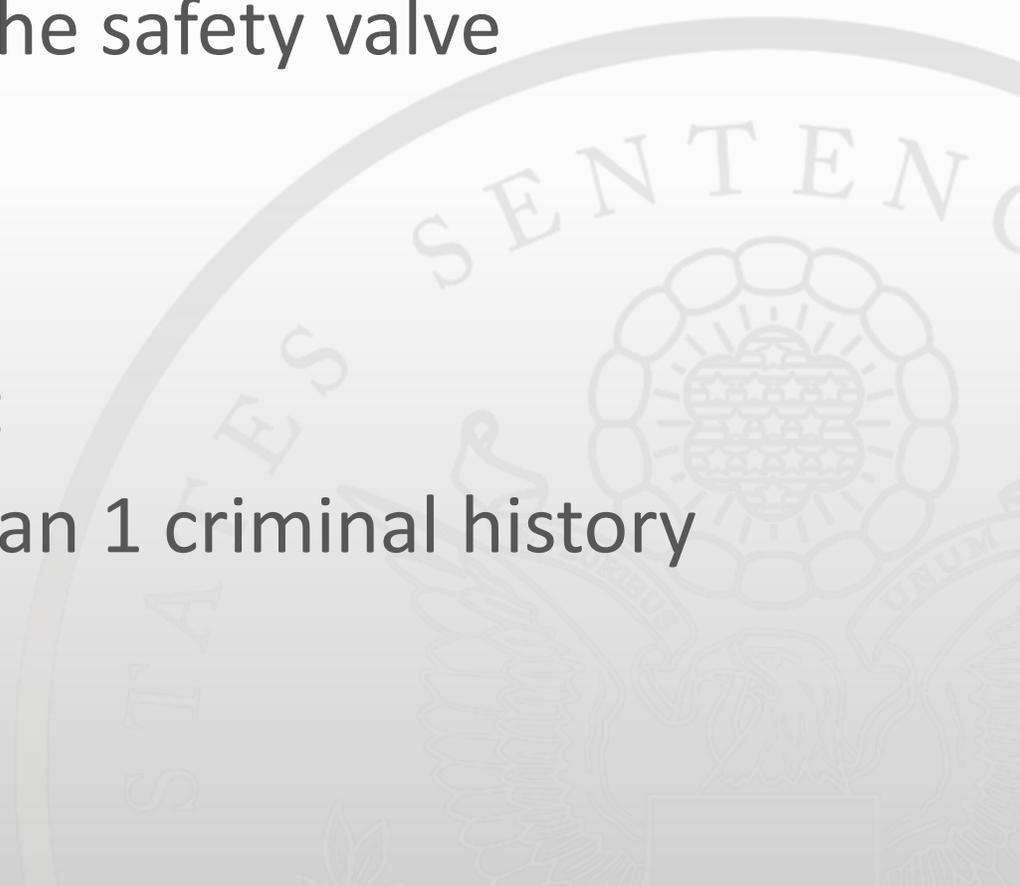


Two or more criminal history points  
=  
not eligible





# Two-Level Safety Valve Decrease

- Drug Guideline at §2D1.1:
    - If defendant meets the criteria in the safety valve guideline, decrease by 2 levels.
  - Safety Valve Guideline at § 5C1.2:
    - “defendant does not have more than 1 criminal history point...”
- 

# 18 U.S.C. § 924(c) Stacking Provisions

<b>§ 924(c) Possession Counts</b>	<b><u>Before</u> First Step Act</b>	<b><u>After</u> First Step Act</b>
1 Count	Mandatory minimum of 5 Years	Mandatory minimum of 5 Years
2 Counts in same indictment	Mandatory minimum of $5 + 25 = 30$ years	Mandatory minimum of $5 + 5 = 10$ years
3 Counts in same indictment	Mandatory minimum of $5 + 25 + 25 = 55$ years	Mandatory minimum of $5 + 5 + 5 = 15$ years



<b>BEFORE</b>	<b>The Fair Sentencing Act</b>	<b>AFTER</b>
5 g 50 g	<b>21 U.S.C. § 841</b> 5-yr min - 40-yr max 10-yr min - life max	28 g 280 g
5 g 50 g	<b>21 U.S.C. § 960</b> 5-yr min - 40-yr max 10-yr min - life max	28 g 280 g



# Other First Step Act Provisions

- Compassionate Release
- Risk and Needs Assessments
- Good Conduct Time
- Inmate Programming and Release Planning



# Questions or Comments?



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