

FEDERAL DEFENDER SENTENCING

THE U.S. SENTENCING GUIDELINES:

Whether you plead guilty or are found guilty after a trial, generally you will be sentenced about 10-11 weeks later. In some cases you can be sentenced sooner. Your sentence will be based in part on the U.S. Sentencing Guidelines. The Guidelines are an *advisory* set of rules for all federal sentences. Your attorney will review your Guidelines with you, to show you how these rules apply to your case.

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. A chart tells the judge what sentence the Guidelines recommend in your case, according to these two scores.

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 what sentence is required for all possible combinations of Criminal History Category and Offense Level. Your attorney can show you the Table and explain how it works. 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 Guidelines recommend the judge give you, and the "high end" is the maximum the Guidelines recommend. For example, if your "range" is 121-135, this means that the Guidelines recommend the

judge sentence you anywhere from 121 to 135 months in prison.

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.

Departures: "Departures" from the recommended Guidelines 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 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. You do not have to talk to the probation officer. Your attorney will help you make this decision. 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 get within your range. The judge relies heavily on Probation's recommendation.

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The probation officer will send a copy of the PSR to your lawyer. You will get to review the PSR, and tell your lawyer if there are any factual mistakes. Your lawyer will look for legal mistakes. Your lawyer may file objections to the PSR about any changes that should be made. The judge will consider any objections at the sentencing hearing and decide whether to revise your PSR before it becomes final.

THE SENTENCING HEARING: In most cases 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 and sentence within the Guideline range from the plea agreement.

At the hearing, the judge will ask whether you have read your PSR and discussed it with your lawyer. If your lawyer filed objections to the PSR, factual or legal, the judge will rule on the objections. 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 you like to the judge about yourself or your case, but should discuss it with your attorney in advance. You can also write the judge a letter instead. 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.

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 get credit for time served, as long as you were not also serving another sentence (like a state sentence) while your case was pending.

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 green card, you will not go to a halfway house. If you are subject to deportation, that will happen after release.

Supervised Release: 99% of all 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 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.