

TITLE IV—SENTENCING REFORM

SEC. 401. SENTENCING REFORM.

(a) ENFORCEMENT OF SENTENCING GUIDELINES FOR CHILD ABDUCTION AND SEX OFFENSES.—Section 3553(b) of title 18, United States Code is amended—

(1) by striking “The court” and inserting the following:

“(1) IN GENERAL.—Except as provided in paragraph (2), the court”; and

(2) by adding at the end the following:

“(2) CHILD CRIMES AND SEXUAL OFFENSES.—

“(A) SENTENCING.—In sentencing a defendant convicted of an offense under section 1201 involving a minor victim, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117, the court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless—

“(i) the court finds that there exists an aggravating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence greater than that described;

“(ii) the court finds that there exists a mitigating circumstance of a kind or to a degree, that—

“(I) has been affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines or policy statements issued under section 994(a) of title 28, taking account of any amendments to such sentencing guidelines or policy statements by Congress;

“(II) has not been taken into consideration by the Sentencing Commission in formulating the guidelines; and

“(III) should result in a sentence different from that described; or

“(iii) the court finds, on motion of the Government, that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense and that this assistance established a mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence lower than that described.

In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guide-

lines, policy statements, and official commentary of the Sentencing Commission, together with any amendments thereto by act of Congress. In the absence of an applicable sentencing guideline, the court shall impose an appropriate sentence, having due regard for the purposes set forth in subsection (a)(2). In the absence of an applicable sentencing guideline in the case of an offense other than a petty offense, the court shall also have due regard for the relationship of the sentence imposed to sentences prescribed by guidelines applicable to similar offenses and offenders, and to the applicable policy statements of the Sentencing Commission, together with any amendments to such guidelines or policy statements by act of Congress.”.

(b) CONFORMING AMENDMENTS TO GUIDELINES MANUAL.—The Federal Sentencing Guidelines are amended—

(1) in section 5K2.0—

(A) by striking “Under” and inserting the following:

“(a) DOWNWARD DEPARTURES IN CRIMINAL CASES OTHER THAN CHILD CRIMES AND SEXUAL OFFENSES.—Under”; and

(B) by adding at the end the following:

“(b) DOWNWARD DEPARTURES IN CHILD CRIMES AND SEXUAL OFFENSES.—

“Under 18 U.S.C. § 3553(b)(2), the sentencing court may impose a sentence below the range established by the applicable guidelines only if the court finds that there exists a mitigating circumstance of a kind, or to a degree, that—

“(1) has been affirmatively and specifically identified as a permissible ground of downward departure in the sentencing guidelines or policy statements issued under section 994(a) of title 28, United States Code, taking account of any amendments to such sentencing guidelines or policy statements by act of Congress;

“(2) has not adequately been taken into consideration by the Sentencing Commission in formulating the guidelines; and

“(3) should result in a sentence different from that described.

The grounds enumerated in this Part K of chapter 5 are the sole grounds that have been affirmatively and specifically identified as a permissible ground of downward departure in these sentencing guidelines and policy statements. Thus, notwithstanding any other reference to authority to depart downward elsewhere in this Sentencing Manual, a ground of downward departure has not been affirmatively and specifically identified as a permissible ground of downward departure within the meaning of section 3553(b)(2) unless it is expressly enumerated in this Part K as a ground upon which a downward departure may be granted.”.

(2) At the end of part K of chapter 5, add the following:

“§ 5K2.22 Specific Offender Characteristics as Grounds for Downward Departure in child crimes and sexual offenses (Policy Statement)

“In sentencing a defendant convicted of an offense under section 1201 involving a minor victim, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117 of title 18, United States Code, age may be a reason to impose a sentence below the applicable guideline range only if and to the extent permitted by § 5H1.1.

“An extraordinary physical impairment may be a reason to impose a sentence below the applicable guideline range only if and to the extent permitted by § 5H1.4. Drug, alcohol, or gambling dependence or abuse is not a reason for imposing a sentence below the guidelines.

(3) Section 5K2.20 is amended by striking “A” and inserting “Except where a defendant is convicted of an offense under section 1201 involving a minor victim, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117 of title 18, United States Code, a”.

(4) Section 5H1.6 is amended by inserting after the first sentence the following: “In sentencing a defendant convicted of an offense under section 1201 involving a minor victim, an offense under section 1591, or an offense under chapter 71, 109A, 110, or 117 of title 18, United States Code, family ties and responsibilities and community ties are not relevant in determining whether a sentence should be below the applicable guideline range.”

(5) Section 5K2.13 is amended by—

(A) striking “or” before “(3)”; and

(B) replacing “public” with “public; or (4) the defendant has been convicted of an offense under chapter 71, 109A, 110, or 117 of title 18, United States Code.”.

(c) STATEMENT OF REASONS FOR IMPOSING A SENTENCE.—Section 3553(c) of title 18, United States Code, is amended—

(1) by striking “described.” and inserting “described, which reasons must also be stated with specificity in the written order of judgment and commitment, except to the extent that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32. In the event that the court relies upon statements received in camera in accordance with Federal Rule of Criminal Procedure 32 the court shall state that such statements were so received and that it relied upon the content of such statements.”;

(2) by inserting “, together with the order of judgment and commitment,” after “the court’s statement of reasons”; and

(3) by inserting “and to the Sentencing Commission,” after “to the Probation System”.

(d) REVIEW OF A SENTENCE.—

(1) REVIEW OF DEPARTURES.—Section 3742(e)(3) of title 18, United States Code, is amended to read as follows:

“(3) is outside the applicable guideline range, and

“(A) the district court failed to provide the written statement of reasons required by section 3553(c);

“(B) the sentence departs from the applicable guideline range based on a factor that—

“(i) does not advance the objectives set forth in section 3553(a)(2); or

“(ii) is not authorized under section 3553(b); or

“(iii) is not justified by the facts of the case; or

“(C) the sentence departs to an unreasonable degree from the applicable guidelines range, having regard for the factors to be considered in imposing a sentence, as set forth in section 3553(a) of this title and the reasons for the im-

sition of the particular sentence, as stated by the district court pursuant to the provisions of section 3553(c); or”.

(2) *STANDARD OF REVIEW.*—The last paragraph of section 3742(e) of title 18, United States Code, is amended by striking “shall give due deference to the district court’s application of the guidelines to the facts” and inserting “, except with respect to determinations under subsection (3)(A) or (3)(B), shall give due deference to the district court’s application of the guidelines to the facts. With respect to determinations under subsection (3)(A) or (3)(B), the court of appeals shall review de novo the district court’s application of the guidelines to the facts”.

(3) *DECISION AND DISPOSITION.*—

(A) The first paragraph of section 3742(f) of title 18, United States Code, is amended by striking “the sentence”;

(B) Section 3742(f)(1) of title 18, United States Code, is amended by inserting “the sentence” before “was imposed”;

(C) Section 3742(f)(2) of title 18, United States Code, is amended to read as follows:

“(2) the sentence is outside the applicable guideline range and the district court failed to provide the required statement of reasons in the order of judgment and commitment, or the departure is based on an impermissible factor, or is to an unreasonable degree, or the sentence was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable, it shall state specific reasons for its conclusions and—

“(A) if it determines that the sentence is too high and the appeal has been filed under subsection (a), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate, subject to subsection (g);

“(B) if it determines that the sentence is too low and the appeal has been filed under subsection (b), it shall set aside the sentence and remand the case for further sentencing proceedings with such instructions as the court considers appropriate, subject to subsection (g);” and

(D) Section 3742(f)(3) of title 18, United States Code, is amended by inserting “the sentence” before “is not described”.

(e) *IMPOSITION OF SENTENCE UPON REMAND.*—Section 3742 of title 18, United States Code, is amended by redesignating subsections (g) and (h) as subsections (h) and (i) and by inserting the following after subsection (f):

“(g) *SENTENCING UPON REMAND.*—A district court to which a case is remanded pursuant to subsection (f)(1) or (f)(2) shall resentence a defendant in accordance with section 3553 and with such instructions as may have been given by the court of appeals, except that—

“(1) In determining the range referred to in subsection 3553(a)(4), the court shall apply the guidelines issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, and that were in effect on the date of the previous sentencing of the defendant prior to the appeal, together with any amendments thereto by any act of Congress that was in effect on such date; and

“(2) The court shall not impose a sentence outside the applicable guidelines range except upon a ground that—

“(A) was specifically and affirmatively included in the written statement of reasons required by section 3553(c) in connection with the previous sentencing of the defendant prior to the appeal; and

“(B) was held by the court of appeals, in remanding the case, to be a permissible ground of departure.”

(f) DEFINITIONS.—Section 3742 of title 18, United States Code, as amended by subsection (e), is further amended by adding at the end the following:

“(j) DEFINITIONS.—For purposes of this section—

“(1) a factor is a ‘permissible’ ground of departure if it—

“(A) advances the objectives set forth in section 3553(a)(2); and

“(B) is authorized under section 3553(b); and

“(C) is justified by the facts of the case; and

“(2) a factor is an ‘impermissible’ ground of departure if it is not a permissible factor within the meaning of subsection (j)(1).”

(g) REFORM OF GUIDELINES GOVERNING ACCEPTANCE OF RESPONSIBILITY.—Subject to subsection (j), the Guidelines Manual promulgated by the Sentencing Commission pursuant to section 994(a) of title 28, United States Code, is amended—

(1) in section 3E1.1(b)—

(A) by inserting “upon motion of the government stating that” immediately before “the defendant has assisted authorities”; and

(B) by striking “taking one or more” and all that follows through and including “additional level” and insert “timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently, decrease the offense level by 1 additional level”;

(2) in the Application Notes to the Commentary to section 3E1.1, by amending Application Note 6—

(A) by striking “one or both of”; and

(B) by adding the following new sentence at the end: “Because the Government is in the best position to determine whether the defendant has assisted authorities in a manner that avoids preparing for trial, an adjustment under subsection (b) may only be granted upon a formal motion by the Government at the time of sentencing.”; and

(3) in the Background to section 3E1.1, by striking “one or more of”.

(h) IMPROVED DATA COLLECTION.—Section 994(w) of title 28, United States Code, is amended to read as follows:

“(w)(1) The Chief Judge of each district court shall ensure that, within 30 days following entry of judgment in every criminal case, the sentencing court submits to the Commission a written report of the sentence, the offense for which it is imposed, the age, race, sex of the offender, and information regarding factors made relevant by the guidelines. The report shall also include—

“(A) the judgment and commitment order;

“(B) the statement of reasons for the sentence imposed (which shall include the reason for any departure from the otherwise applicable guideline range);

“(C) any plea agreement;

“(D) the indictment or other charging document;

“(E) the presentence report; and

“(F) any other information as the Commission finds appropriate.

“(2) The Commission shall, upon request, make available to the House and Senate Committees on the Judiciary, the written reports and all underlying records accompanying those reports described in this section, as well as other records received from courts.

“(3) The Commission shall submit to Congress at least annually an analysis of these documents, any recommendations for legislation that the Commission concludes is warranted by that analysis, and an accounting of those districts that the Commission believes have not submitted the appropriate information and documents required by this section.

“(4) The Commission shall make available to the Attorney General, upon request, such data files as the Commission may assemble or maintain in electronic form that include any information submitted under paragraph (1). Such data files shall be made available in electronic form and shall include all data fields requested, including the identity of the sentencing judge.”.

(i) SENTENCING GUIDELINES AMENDMENTS.—(1) Subject to subsection (j), the Guidelines Manual promulgated by the Sentencing Commission pursuant to section 994(a) of title 28, United States Code, is amended as follows:

(A) Application Note 4(b)(i) to section 4B1.5 is amended to read as follows:

“(i) IN GENERAL.—For purposes of subsection (b), the defendant engaged in a pattern of activity involving prohibited sexual conduct if on at least two separate occasions, the defendant engaged in prohibited sexual conduct with a minor.”.

(B) Section 2G2.4(b) is amended by adding at the end the following:

“(4) If the offense involved material that portrays sadistic or masochistic conduct or other depictions of violence, increase by 4 levels.

“(5) If the offense involved—

“(A) at least 10 images, but fewer than 150, increase by 2 levels;

“(B) at least 150 images, but fewer than 300, increase by 3 levels;

“(C) at least 300 images, but fewer than 600, increase by 4 levels; and

“(D) 600 or more images, increase by 5 levels.”.

(C) Section 2G2.2(b) is amended by adding at the end the following:

“(6) If the offense involved—

“(A) at least 10 images, but fewer than 150, increase by 2 levels;

“(B) at least 150 images, but fewer than 300, increase by 3 levels;

“(C) at least 300 images, but fewer than 600, increase by 4 levels; and

“(D) 600 or more images, increase by 5 levels.”

(2) *The Sentencing Commission shall amend the Sentencing Guidelines to ensure that the Guidelines adequately reflect the seriousness of the offenses under sections 2243(b), 2244(a)(4), and 2244(b) of title 18, United States Code.*

(j) *CONFORMING AMENDMENTS.—*

(1) *Upon enactment of this Act, the Sentencing Commission shall forthwith distribute to all courts of the United States and to the United States Probation System the amendments made by subsections (b), (g), and (i) of this section to the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission. These amendments shall take effect upon the date of enactment of this Act, in accordance with paragraph (5).*

(2) *On or before May 1, 2005, the Sentencing Commission shall not promulgate any amendment to the sentencing guidelines, policy statements, or official commentary of the Sentencing Commission that is inconsistent with any amendment made by subsection (b) or that adds any new grounds of downward departure to Part K of chapter 5.*

(3) *With respect to cases covered by the amendments made by subsection (i) of this section, the Sentencing Commission may make further amendments to the sentencing guidelines, policy statements, or official commentary of the Sentencing Commission, except that the Commission shall not promulgate any amendments that, with respect to such cases, would result in sentencing ranges that are lower than those that would have applied under such subsection.*

(4) *At no time may the Commission promulgate any amendment that would alter or repeal the amendments made by subsection (g) of this section.*

(5) *Section 3553(a) of title 18, United States Code, is amended—*

(A) by amending paragraph (4)(A) to read as follows:

“(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—

“(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

“(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or”;

(B) in paragraph (4)(B), by inserting “, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing

Commission into amendments issued under section 994(p) of title 28)" after "Code";

(C) by amending paragraph (5) to read as follows:

"(5) any pertinent policy statement—

"(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

"(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced."

(k) COMPLIANCE WITH STATUTE.—Section 994(a) of title 28, United States Code, is amended by striking "consistent with all pertinent provisions of this title and title 18, United States Code," and inserting "consistent with all pertinent provisions of any Federal statute"

(l) REPORT BY ATTORNEY GENERAL.—

(1) DEFINED TERM.—For purposes of this section, the term "report described in paragraph (3)" means a report, submitted by the Attorney General, which states in detail the policies and procedures that the Department of Justice has adopted subsequent to the enactment of this Act—

(A) to ensure that Department of Justice attorneys oppose sentencing adjustments, including downward departures, that are not supported by the facts and the law;

(B) to ensure that Department of Justice attorneys in such cases make a sufficient record so as to permit the possibility of an appeal;

(C) to delineate objective criteria, specified by the Attorney General, as to which such cases may warrant consideration of an appeal, either because of the nature or magnitude of the sentencing error, its prevalence in the district, or its prevalence with respect to a particular judge;

(D) to ensure that Department of Justice attorneys promptly notify the designated Department of Justice component in Washington concerning such adverse sentencing decisions; and

(E) to ensure the vigorous pursuit of appropriate and meritorious appeals of such adverse decisions.

(2) REPORT REQUIRED.—

(A) IN GENERAL.—Not later than 15 days after a district court's grant of a downward departure in any case, other than a case involving a downward departure for substantial assistance to authorities pursuant to section 5K1.1 of the United States Sentencing Guidelines, the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and the Senate containing the information described under subparagraph (B).

(B) CONTENTS.—The report submitted pursuant to subparagraph (A) shall set forth—

(i) the case;

(ii) the facts involved;

(iii) the identity of the district court judge;

(iv) the district court's stated reasons, whether or not the court provided the United States with advance notice of its intention to depart; and

(v) the position of the parties with respect to the downward departure, whether or not the United States has filed, or intends to file, a motion for reconsideration.

(C) *APPEAL OF THE DEPARTURE.*—Not later than 5 days after a decision by the Solicitor General regarding the authorization of an appeal of the departure, the Attorney General shall submit a report to the Committees on the Judiciary of the House of Representatives and the Senate that describes the decision of the Solicitor General and the basis for such decision.

(3) *EFFECTIVE DATE.*—Paragraph (2) shall take effect on the day that is 91 days after the date of enactment of this Act, except that such paragraph shall not take effect if not more than 90 days after the date of enactment of this Act the Attorney General has submitted to the Judiciary Committees of the House of Representatives and the Senate the report described in paragraph (3).

(m) *REFORM OF EXISTING PERMISSIBLE GROUNDS OF DOWNWARD DEPARTURES.*—Not later than 180 days after the enactment of this Act, the United States Sentencing Commission shall—

(1) review the grounds of downward departure that are authorized by the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission; and

(2) promulgate, pursuant to section 994 of title 28, United States Code—

(A) appropriate amendments to the sentencing guidelines, policy statements, and official commentary to ensure that the incidence of downward departures are substantially reduced;

(B) a policy statement authorizing a downward departure of not more than 4 levels if the Government files a motion for such departure pursuant to an early disposition program authorized by the Attorney General and the United States Attorney; and

(C) any other conforming amendments to the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission necessitated by this Act, including a revision of paragraph 4(b) of part A of chapter 1 and a revision of section 5K2.0.

(n) *COMPOSITION OF SENTENCING COMMISSION.*—

(1) *IN GENERAL.*—Section 991(a) of title 28, United States Code, is amended by striking “At least three” and inserting “Not more than 3”.

(2) *APPLICABILITY.*—The amendment made under paragraph (1) shall not apply to any person who is serving, or who has been nominated to serve, as a member of the Sentencing Commission on the date of enactment of this Act.