

# The Federal Sentencing Process

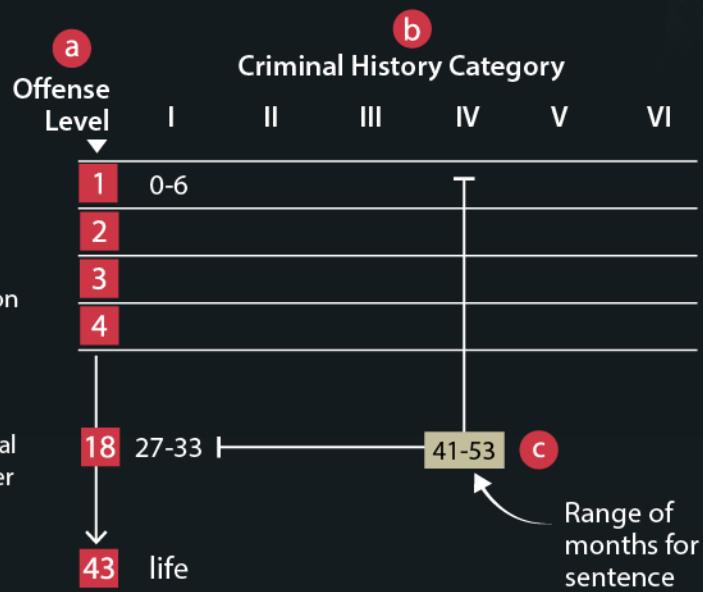
In 1984, Congress standardized federal sentencing. That year, Congress established the U.S. Sentencing Commission (the Commission) and directed this new agency to promulgate the first-ever federal sentencing guidelines that would operate within any statutory minimums or maximums set by Congress.<sup>1</sup> In 1987, the Commission published the inaugural U.S. Sentencing Guidelines Manual (the Guidelines), which is to serve as the starting point and anchor for every federal sentence imposed across the country.<sup>2</sup> In fiscal year 2024, a total of 61,678 defendants were sentenced under the Guidelines.<sup>3</sup>

## The Two Steps

In November 2025, the Commission amended the Guidelines to streamline the sentencing process from three steps to two.<sup>4</sup>

### 1 Consult the Guidelines

- a The judge determines the offense level (1 to 43) that corresponds to the crime of conviction and the offense conduct.
- b The judge determines the criminal history category (I to VI) based on the defendant's prior convictions.
- c The judge finds the intersection of these two inputs on the 258-box grid known as the "Sentencing Table." Each box in the grid specifies a range of months for a typical case.
- d The judge considers reasons to "depart" from the initial Guidelines range—that is, to identify a higher or lower range than would otherwise apply—based on the specific facts and circumstances of the defendant's case. One such reason is whether the defendant has provided "substantial assistance" to the government in investigating or prosecuting another individual.



### 2 Consult a Federal Statute

The judge ensures that the final sentence complies with seven sentencing factors codified in 18 U.S.C. § 3553(a).

#### 18 U.S.C. § 3553(a)

Congress has instructed courts to impose a sentence **"sufficient, but not greater than necessary,"** to effectuate the purposes of punishment and to ensure that the sentence will not further unwarranted sentencing disparities.

#### "Variance"



If the sentence ultimately imposed in Step 2 differs from the sentence that the court would have otherwise imposed after Step 1, the sentence is deemed a "variance." According to Commission data, in 2024 judges varied in about 33% of sentences.<sup>5</sup>

## Why Are the Guidelines "Advisory"?



In 2005, the Supreme Court held that the then-mandatory Guidelines system violated the Sixth Amendment right to a jury trial because it allowed judges to enhance sentences based on findings of fact (other than prior convictions) that were neither determined by a jury nor admitted by the defendant. As a result, the Court interpreted the Guidelines as advisory.<sup>6</sup>

<sup>1</sup> 28 U.S.C. §§ 991, 994.

<sup>2</sup> See *Gall v. United States*, 552 U.S. 38, 49 (2007); *Peugh v. United States*, 569 U.S. 530, 541 (2013).

<sup>3</sup> U.S. SENT'G COMM'N, 2024 ANNUAL REPORT 11 (2025).

<sup>4</sup> U.S. SENT'G GUIDELINES MANUAL app. C, amend. 836 (U.S. SENT'G COMM'N 2025). See U.S. SENT'G GUIDELINES MANUAL § 1B1.1 (U.S. SENT'G COMM'N 2025) (enumerating sentencing criteria). This infographic presents this list in general and simplified form.

<sup>5</sup> U.S. SENT'G COMM'N, 2024 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS tbls. 1, 33 (2025) (20,255 out of 61,678 reported cases).

<sup>6</sup> *United States v. Booker*, 543 U.S. 220, 249 (2005).

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