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## Congressional Review of Proposed Amendments to the U.S. Sentencing Guidelines

The U.S. Sentencing Commission promulgates the U.S. Sentencing Guidelines, which serve as the starting point for every federal criminal sentence imposed across the country. The Commission is required by statute to revise the Guidelines periodically. Any such revisions must follow a statutorily prescribed amendments process. Under that process, the Commission must send proposed amendments to Congress. Submission triggers a 180-day congressional review period. If Congress allows for the review period to pass without further action, each of the proposed amendments takes effect. Alternatively, Congress may modify or reject a proposed amendment.

This In Focus provides an overview of the Commission, outlines the amendments process, describes the lone historical instance in which Congress rejected proposed amendments to the Guidelines, and offers considerations for Congress.

### Congress's Creation of the U.S. Sentencing Commission

A 1983 Senate report observed that, for most of American history, federal judges possessed virtually “unfettered discretion” at sentencing: a judge generally could impose any sentence that fell within the broad bounds of the statutory minimum or maximum penalties set by Congress. If a statute specified that a sentence for a given offense shall be “no more than twenty years” in prison, for example, a judge theoretically could impose a sentence anywhere within that twenty-year range.

In the 1970s and 1980s, federal judges, scholars, and others expressed concern that wide statutory ranges and maximum judicial discretion together produced widespread sentencing disparities—i.e., that similarly situated defendants were not receiving similar sentences. A leading voice on federal sentencing reform, U.S. District Judge Marvin Frankel, recommended that Congress create a “National Commission” that would identify national norms on sentencing. If federal judges referenced the same norms at sentencing, greater uniformity in sentencing outcomes would likely result, Judge Frankel and others argued.

Congress agreed. In 1984, Congress enacted the Sentencing Reform Act (SRA), P.L. 98-473, found in Title II of the Comprehensive Crime Control Act of 1984. The SRA established the U.S. Sentencing Commission and directed this new agency to develop “sentencing policies and practices for the Federal criminal justice system” that would, among other things, “avoid[] unwarranted sentencing disparities.”

Though designed to be mandatory, the Guidelines are now advisory and remain the anchor for federal sentencing determinations. More than 1.9 million defendants have been sentenced under the Guidelines since their inception.

### The Guidelines Amendments Process

In the SRA, Congress instructed the Commission to “periodically . . . review and revise” the Guidelines in light of additional data, cases, and congressional directives. In the inaugural Guidelines, the Commission acknowledged that the Guidelines were designed to be “evolutionary.” The Commission explained that “continuing research, experience, and analysis will result in modifications and revisions to the guidelines.”

The SRA also spells out the steps and the schedule that must be followed for revisions to be made to the Guidelines—generally known as the “amendments cycle.” The Commission’s amendment cycle typically begins in June with the publication in the *Federal Register* of proposed priorities for agency analysis and possible further action, and a request for public comment on these priorities. The Commission reviews and considers any public comments and, in August of the same year, publishes in the *Federal Register* a list of final priorities. The agency next performs additional research and confers with key stakeholders, and this engagement may include public hearings. In January of the following year, the Commission publishes proposed amendments in the *Federal Register* and again requests public comment. The Commission may revise the proposed amendments based on comments and further stakeholder input. The Commissioners typically vote on any proposed amendments in April.

If the Commission approves any proposed amendments that year, the SRA requires the Commission to submit such amendments to Congress by May 1. The SRA then provides Congress with a review period of 180 days to modify or disapprove the proposed amendments. The SRA further states that the amendments will take effect on November 1, unless Congress modifies or rejects them.

### Rejection of Proposed Amendments to the Guidelines

The Commission has amended the Guidelines Manual (including Guideline provisions, policy statements, and official commentary) more than 800 times. Each of these amendments is listed in Appendix C to the Guidelines and a Supplement to Appendix C. In the history of the Commission, there has been one instance in which Congress rejected proposed amendments to the Guidelines.

## Precedent and Procedure for Rejecting Proposed Amendments

In the Anti-Drug Abuse Act of 1996 (ADAA), Congress amended the Controlled Substances Act to establish a 100:1 ratio of the quantities of powder and crack cocaine needed to trigger mandatory minimum penalties. The Commission calibrated the relevant penalty levels in the Guidelines to correspond with the statutory ratio. In 1995, however, the Commission unanimously agreed to move away from the 100:1 ratio for purposes of the drug trafficking guidelines. The Commission voted, 4-3, to adopt a 1:1 ratio instead. The Commission reasoned that this ratio would “equalize[] sentences for offenses involving similar amounts of crack cocaine and powder cocaine at the level currently provided for powder cocaine.”

In the same amendments cycle, the Commission voted to revise the guidelines applicable to money laundering offenses, which also were originally traceable to the ADAA. The Commission explained that the money laundering guidelines were overbroad and that the proposed guidelines would be both simplified and proportionate. Pursuant to the amendments process, the Commission sent a package of twenty-seven proposed amendments—including the two pertaining to the drug and money laundering guidelines—to Congress.

On September 18, 1995, Senator Spencer Abraham introduced a bill that would reject both of the aforementioned proposed amendments. The bill was cosponsored by several Senators, including Senators Dianne Feinstein, Orrin Hatch, and Mitch McConnell. The bill passed in the Senate, then in the House, and was signed into law by President Bill Clinton on October 30, 1995, P.L. 104-38.

This single act, disapproving of two proposed amendments, represents the first and only time that proposed revisions to the Guidelines have been formally rejected by Congress. The disapproval is thus the sole precedent for the possible rejection of future proposed amendments to the Guidelines.

There are “fast track” or “expedited” procedures enacted into law governing House and/or Senate consideration of particular kinds of measures, but there is no set of expedited procedures specific to the Guidelines. For example, the current *Senate Manual* enumerates the various sets of expedited procedures available to the Senate by *U.S. Code*; however, the provisions of the *U.S. Code* governing the Commission and the amendments process in particular—18 U.S.C. §§ 3551 *et seq.*, and 28 U.S.C. § 994(p), respectively—are not included in this list. Accordingly, ordinary legislative procedures would seem to apply to the rejection of any proposed amendments.

## Congressional Considerations

Congress may disapprove of proposed amendments to the Guidelines by way of statute, as it did in 1995. Congress has additional options at its disposal to exercise oversight

over the Commission. Congress created the Commission, 28 U.S.C. §§ 991 *et seq.*, and thus could go so far as to eliminate the agency entirely if it chose. Short of that, with respect to substance, Congress can amend the Guidelines directly by statute, issue directives to the Commission, and order reports from the agency. With respect to budget, Congress supplies and can adjust the funding for the Commission. With respect to composition, the Senate must confirm Commissioners to the Sentencing Commission. Twice in the agency’s history, the Commission has lacked a quorum due to a shortage of Senate-confirmed Commissioners. Most recently, the Commission was without a quorum from 2019 to 2022 and was unable to propose amendments during this time.

While the scope of congressional authority regarding the Commission and Guidelines is extensive, Congress may consider specific exercises of that authority against the backdrop of its motivation for enacting the SRA to begin with—the persistence of unwarranted sentencing disparities—and the sense of Congress that a specialized agency would be well-suited to imbue federal sentencing with increased uniformity, proportionality, and reliability. As the Supreme Court recognized, “Developing proportionate penalties for hundreds of different crimes by a virtually limitless array of offenders is precisely the sort of intricate, labor-intensive task for which delegation to an expert body is especially appropriate.” *Mistretta v. United States*, 488 U.S. 361, 379 (1989).

Congress and the Commission can consult and confer with one another prior to the submission of any proposed amendments to Congress. Doing so may help the Commission assess the political viability of proposed amendments and head-off the possibility that Congress may disapprove proposed revisions to the Guidelines.

### Additional Reading

The following CRS products provide additional analysis of legal and policy issues presented in this sidebar:

- CRS Legal Sidebar LSB10910, *When Is a Mandatory Minimum Sentence Not Mandatory Under the First Step Act?*, by Dave S. Sidhu
- CRS Legal Sidebar LSB10929, *Can Retribution Justify the Revocation of Supervised Release? Courts Disagree.*, by Dave S. Sidhu
- CRS In Focus IFI1965, *Cocaine: Crack and Powder Sentencing Disparities*, by Lisa N. Sacco and Kristin Finklea
- CRS Legal Sidebar LSB10890, *Back in Action, the U.S. Sentencing Commission to Resolve Circuit Splits on Controlled Substances and Sentencing Reductions*, by Dave S. Sidhu

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