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## Drug Offense Sentencing Relief Under the First Step Act and the U.S. Sentencing Guidelines

Congress may establish maximum penalties and mandatory minimum penalties for federal crimes. These statutory penalties form the outer bounds of permissible federal criminal sentences. Within these statutory limits, the U.S. Sentencing Guidelines establish sentencing ranges that federal judges must consider prior to imposing a sentence. Together, federal statutes and the Guidelines provide the basic structure for federal sentencing decisions.

Despite their name, mandatory minimums are not always mandatory. In 2018, Congress enacted the First Step Act, which, among other things, amended a federal “safety valve” provision authorizing federal judges to impose sentences below mandatory minimums for certain drug offenses in some circumstances. Federal appeals courts disagreed on the scope of this revised safety valve and, on March 15, 2024, the Supreme Court issued an opinion in *Pulsifer v. United States*, a case that resolved the disagreement. The Supreme Court decision contracts the universe of federal defendants who may obtain relief under the safety-valve provision, and that interpretation will form the basis for the interpretation of counterpart language in the Sentencing Guidelines. This In Focus offers an overview of the safety-valve provision, the Supreme Court’s decision, and the impact of the decision on the Guidelines.

### The Federal Safety Valve and the First Step Act

Mandatory minimums require judges to impose a sentence of imprisonment for at least the number of years specified in the applicable statute. Mandatory minimums are generally triggered by the offense of conviction and/or the defendant’s recidivism. In the 1980s, Congress, primarily in the Anti-Drug Abuse Act of 1986, attached mandatory minimums to certain drug offenses, including unlawful possession of a controlled substance and unauthorized possession with intent to distribute a controlled substance. Concerned that mandatory minimums for drug offenses could result in equally severe penalties for both more and less culpable offenders, Congress introduced the first safety-valve provision as part of the Violent Crime Control and Law Enforcement Act of 1994. Under this statute, a judge could impose a sentence below a drug-related mandatory minimum if the defendant satisfied five criteria, including not having “more than one criminal history point as determined under the Sentencing Guidelines.” (According to the Guidelines, a defendant’s criminal history is reflected in points, and the computation of these points depends on the nature and number of prior offenses.) The U.S. Sentencing Commission, which promulgates the Guidelines, adopted a corresponding Guideline provision

allowing for a two-level reduction in the Guidelines offense level based on the same 1994 criteria.

In 2011, the Commission reported to Congress that the safety valve was underinclusive. The Commission therefore urged Congress to expand the safety valve to encompass certain additional offenders. In 2018, Congress enacted the First Step Act, which, among other things, expanded criminal-history eligibility for safety-valve relief. Whereas federal defendants with zero or one criminal-history points under the Sentencing Guidelines could receive relief under previous law, the First Step Act made drug offenders with somewhat more substantial criminal histories newly eligible for safety-valve relief.

18 U.S.C. § 3553(f)(1) now permits a federal defendant convicted of certain drug offenses to receive a sentence below a mandatory minimum as long as, in relevant part,

- (1) the defendant does not have—
  - (A) more than four criminal history points, excluding any criminal history points resulting from a one-point offense, as determined under the Sentencing Guidelines;
  - (B) a prior three-point offense; and
  - (C) a prior two-point violent offense.

### The Circuit Split

The First Step Act enumerated three criminal-history conditions generally designed to disqualify from safety-valve relief those defendants with more serious criminal histories. Federal appeals courts disagreed, however, about the scope of the amended safety-valve provision. Under the conjunctive view adopted by the Fourth, Ninth, and Eleventh Circuits, a defendant would be ineligible for the safety valve only if they possessed *all three* of the listed criminal-history conditions ((A), (B), *and* (C)).

By contrast, the distributive approach taken by the Fifth, Sixth, Seventh, and Eighth Circuits, treated the prefatory clause “does not have” as applying to each subsequent condition. For these courts, a defendant satisfying *any one* of the three conditions ((A), (B), *or* (C)) would be disqualified from safety-valve relief. Because this reading treats the “and” connecting the three conditions as an “or,” this approach also is described as a “disjunctive” one.

### The Commission’s Amendment

Pursuant to 28 U.S.C. § 944(a), the Commission has the statutory responsibility to promulgate Guidelines “consistent with all pertinent provisions of any Federal

statute.” The Supreme Court also suggested in *Braxton v. United States* that the Commission has a primary role in resolving circuit conflicts involving the Guidelines.

Following the enactment of the First Step Act, the Commission sought to implement the statute insofar as it implicated the Guidelines. In 2022, the Commission indicated that it might amend the Guidelines provision corresponding with the safety valve, U.S.S.G. § 5C1.2, in light of the change to the statutory safety valve, 18 U.S.C. § 3553(f)(1). The Commission then announced that it was considering two options with respect to amending the safety valve in the Guidelines: the first option would reproduce the statutory language in the Guidelines without reflecting a position as to how the language should be interpreted. This route would permit federal courts to interpret the safety valve according to a conjunctive or distributive approach. The second option also would reproduce the statutory safety-valve language but would expressly adopt the distributive interpretation, disqualifying a defendant with any one of the criminal-history conditions.

The Supreme Court subsequently agreed to resolve the circuit split on the meaning of the statutory safety valve. The Commission therefore took the first option, revising the Guidelines to reproduce the new statutory safety-valve language while not taking a position on the circuit conflict. The Chair of the Commission pointed to the Court’s “recent choice to consider open questions about this ‘safety valve’” as a reason why the Commission selected a “neutral approach to implementing Congress’s directives on this matter.” After the expiration of the congressional review period, the amendment to the Guidelines became effective on November 1, 2023.

### The Supreme Court’s *Pulsifer* Ruling

In March 2024, the Supreme Court issued a ruling in *Pulsifer v. United States*, adopting the distributive or disjunctive reading of the safety valve. The majority reasoned that an alternative reading would render the first condition superfluous, explaining that “if a defendant has a three-point offense under Subparagraph B and a two-point offense under Subparagraph C, he will always have more than four criminal-history points under Subparagraph A.” The Court also wrote that each part of Section 3553(f)(1) serves a gatekeeping function and is needed to block a different category of culpable offender from safety-valve relief: the first condition covers recidivists, the second covers defendants who have committed a serious offense, and the third covers defendants who have committed a violent offense. The Court characterized Section 3553(f)(1) as “an eligibility checklist” that reserves safety-valve relief for only those defendants lacking any of the three conditions.

### Impact of *Pulsifer* on the Amended Guidelines

The Commission adopted, but declined to interpret, the Guidelines provision memorializing the safety-valve language as amended by the First Step Act. The Supreme Court’s interpretation of the statutory safety valve applies by extension to the corresponding Guidelines provision. The Supreme Court has stated that once it has “determined a statute’s meaning,” the Court “assess[es] an agency’s later interpretation of the statute against settled law.” Specifically addressing the Commission, the Court has also emphasized that the Commission “has no authority to override [a] statute as we have construed it.” In *United States v. LaBonte*, the Court confronted a case in which the Commission’s commentary was “at odds” with the Court’s understanding of the statute’s text and concluded that the commentary “must give way.” Accordingly, the Supreme Court’s interpretation of Section 3553(f)(1) forecloses a contrary reading of the corresponding Guideline provision in U.S.S.G. § 5C1.2. Early post-*Pulsifer* opinions in the lower federal courts reflect this understanding.

### Congressional Considerations

If the Court’s *Pulsifer* decision does not align with congressional intent, Congress may further amend Section 3553(f)(1), which would then impact the meaning of § 5C1.2. Should the Commission propose other amendments to the Guidelines counterpart to the statutory safety valve, Congress will have the opportunity to review, modify, or disapprove any such amendments to the Guidelines.

#### Additional Reading

The following CRS products provide additional analysis of legal issues presented in this In Focus:

- 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
- CRS Legal Sidebar LSB11145, *Supreme Court Clarifies Scope of Drug Offense Sentencing Relief Under the First Step Act*, by Dave S. Sidhu
- CRS In Focus IF12422, *Congressional Review of Proposed Amendments to the U.S. Sentencing Guidelines*, by Dave S. Sidhu

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