

Public Law 100-182
100th Congress

An Act

Dec. 7, 1987
[S. 1822]

To amend title 18, United States Code, and other provisions of law relating to sentencing for criminal offenses.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sentencing Act
of 1987.
Penalties.
Prisoners.
18 USC 3551
note.
18 USC 3551
note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Sentencing Act of 1987".

SEC. 2. PROSPECTIVE APPLICATION OF SENTENCING REFORM ACT.

(a) **APPLICATION.**—Section 235(a)(1) of the Comprehensive Crime Control Act of 1984 is amended by inserting after "date of enactment" the first place it appears the following: "and shall apply only to offenses committed after the taking effect of this chapter".

(b) **CONFORMING AMENDMENTS.**—(1) Section 235(b)(1) of the Comprehensive Crime Control Act of 1984 is amended by striking out "convicted of an offense or adjudicated to be a juvenile delinquent" and inserting in lieu thereof "who committed an offense or an act of juvenile delinquency".

(2) Section 235(b)(3) of the Comprehensive Crime Control Act of 1984 is amended by striking out "that is within the range that applies to the prisoner under the applicable parole guideline" and inserting in lieu thereof "pursuant to section 4206 of title 18, United States Code".

SEC. 3. STANDARD FOR DEPARTURE.

Section 3553(b) of title 18, United States Code, is amended—

(1) by striking out "an aggravating or mitigating circumstance exists that was" and inserting in lieu thereof "there exists an aggravating or mitigating circumstance of a kind, or to a degree,";

(2) by striking out "guidelines and" and inserting in lieu thereof "guidelines"; and

(3) by inserting after the first sentence the following: "In determining whether a circumstance was adequately taken into consideration, the court shall consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission."

Courts, U.S.

SEC. 4. PROCEDURE FOR APPEALING SENTENCE IMPOSED BY A MAGISTRATE.

Section 3742 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(f) **APPLICATION TO A SENTENCE BY A MAGISTRATE.**—An appeal of an otherwise final sentence imposed by a United States magistrate may be taken to a judge of the district court, and this section shall apply as though the appeal were to a court of appeals from a sentence imposed by a district court."

SEC. 5. REVIEW OF A SENTENCE FOR WHICH THERE IS NO APPLICABLE GUIDELINE.

Section 3742 of title 18, United States Code, is further amended—

- (1) in subsection (a)(4), by inserting “plainly unreasonable or” before “greater than” and by striking out “, if any,”;
- (2) in subsection (b)(4), by inserting “plainly unreasonable or” before “less than” and by striking out “, if any,”;
- (3) in subsection (d)—
 - (A) by striking out “or” at the end of paragraph (2);
 - (B) by striking out the period at the end of paragraph (3) and inserting in lieu thereof “; or”; and
 - (C) by inserting after paragraph (3) the following new paragraph:

“(4) was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable.”;
- (4) in subsection (e)(2), by inserting “or was imposed for an offense for which there is no applicable sentencing guideline and is plainly unreasonable” after “is outside the range of the applicable sentencing guideline and is unreasonable”; and
- (5) in subsections (e)(2)(A) and (e)(2)(B), by striking out “the court shall” and inserting in lieu thereof “and”.

SEC. 6. CLARIFICATION OF BASIS FOR AFFIRMING AN APPEAL.

Section 3742(e)(3) of title 18, United States Code, is amended to read as follows:

“(3) is not described in paragraph (1) or (2), it shall affirm the sentence.”.

SEC. 7. CORRECTION OF PROBATION EXCLUSION FOR ORGANIZATIONS CONVICTED OF SERIOUS OFFENSES.

Section 3561(a)(1) of title 18, United States Code, is amended by inserting after “Class B felony” the following: “and the defendant is an individual”.

SEC. 8. EXTENSION OF MAXIMUM TERMS OF SUPERVISED RELEASE.

Section 3583(b) of title 18, United States Code, is amended—

- (1) in paragraph (1), by striking out “three years” and inserting in lieu thereof “five years”;
- (2) in paragraph (2), by striking out “two years” and inserting in lieu thereof “three years”; and
- (3) in paragraph (3), by inserting after “misdemeanor” the following: “(other than a petty offense)”.

SEC. 9. INCLUSION OF PROTECTION OF PUBLIC AS FACTOR IN DECIDING WHETHER TO IMPOSE SUPERVISED RELEASE.

Section 3583(c) of title 18, United States Code, is amended by inserting “(a)(2)(C),” after “(a)(2)(B),”.

SEC. 10. CLARIFICATION OF PROCEDURE FOR MODIFYING CONDITIONS OF PROBATION.

Section 3563(c) of title 18, United States Code, is amended—

- (1) by striking out “revocation or modification of probation” and inserting in lieu thereof “the modification of probation and”; and
- (2) by striking out the comma after “may”.

SEC. 11. CLARIFICATION OF PROCEDURE FOR EARLY TERMINATION OF PROBATION.

Section 3564(c) of title 18, United States Code, is amended by inserting after "may" the following: ", pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation,".

SEC. 12. CLARIFICATION OF PROCEDURE FOR EARLY TERMINATION OF SUPERVISED RELEASE.

Section 3583(e) of title 18, United States Code, is amended—

(1) in paragraph (1), by inserting "pursuant to the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation," after "one year of supervised release,"; and

(2) in paragraph (2)—

(A) by striking out "after a hearing,"; and

(B) by inserting "the provisions of the Federal Rules of Criminal Procedure relating to the modification of probation and" after "pursuant to".

SEC. 13. REMEDIES FOR FAILURE TO PAY RESTITUTION.

Section 3663(g) of title 18, United States Code, is amended in each of the second and third sentences by inserting "or a term of supervised release" after "probation" and by inserting "probation or" after "conditions of".

SEC. 14. DETERMINATION OF GUIDELINE SENTENCE FOR PRISONERS TRANSFERRED PURSUANT TO TREATY FROM FOREIGN COUNTRIES.

Section 4106 of title 18, United States Code, is amended to read as follows:

"§ 4106. Transfer of offenders on parole; parole of offenders transferred

"(a) Upon the receipt of an offender who is on parole from the authorities of a foreign country, the Attorney General shall assign the offender to the United States Parole Commission for supervision.

"(b) The United States Parole Commission and the Chairman of the Commission shall have the same powers and duties with reference to an offender transferred to the United States to serve a sentence of imprisonment or who at the time of transfer is on parole as they have with reference to an offender convicted in a court of the United States except as otherwise provided in this chapter or in the pertinent treaty. Sections 4201 through 4204; 4205 (d), (e), and (h); 4206 through 4216; and 4218 of this title shall be applicable.

"(c) An offender transferred to the United States to serve a sentence of imprisonment may be released on parole at such time as the Parole Commission may determine.

"(d) This section shall apply only to offenses committed before November 1, 1987, and the Parole Commission's performance of its responsibilities under this section shall be subject to section 235 of the Comprehensive Crime Control Act of 1984."

SEC. 15. PROCEDURE FOR RELIEF OF LABOR DISABILITIES FOLLOWING CONVICTION.

(a) **LMRDA AMENDMENT.**—Section 504(a) of the Labor Management Reporting and Disclosure Act of 1959 (29 U.S.C. 504(a)) is amended—

(1) by striking out “the United States Parole Commission” and inserting in lieu thereof “if the offense is a Federal offense, the sentencing judge or, if the offense is a State or local offense, the United States district court for the district in which the offense was committed, pursuant to sentencing guidelines and policy statements under section 994(a) of title 28, United States Code,”;

(2) by striking out “Commission” and “Commission’s” and inserting in lieu thereof “court” and “court’s”, respectively; and

(3) by striking out “an administrative hearing” and inserting in lieu thereof “a hearing”.

(b) **ERISA AMENDMENT.**—Section 411(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1111(a)) is amended—

(1) by striking out “the United States Parole Commission” and inserting in lieu thereof “if the offense is a Federal offense, the sentencing judge or, if the offense is a State or local offense, the United States district court for the district in which the offense was committed, pursuant to sentencing guidelines and policy statements under section 994(a) of title 28, United States Code,”;

(2) by striking out “Commission shall” and inserting in lieu thereof “court shall”;

(3) by striking out “Commission’s” and inserting in lieu thereof “court’s”;

(4) by striking out “such Parole Commission” and inserting in lieu thereof “such court”; and

(5) by striking out “an administrative hearing” and inserting in lieu thereof “a hearing”.

SEC. 16. PETTY OFFENSE.

(a) **SENTENCE TO BE IMPOSED IN THE ABSENCE OF AN APPLICABLE SENTENCING GUIDELINE.**—Section 3553(b) of title 18, United States Code, is amended by striking out the last sentence and inserting in lieu thereof the following: “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.”.

(b) **CONFORMING AMENDMENT.**—Section 994(w) of title 28, United States Code, is amended by inserting after “each sentence imposed” the following: “(other than a sentence imposed for a petty offense, as defined in title 18, for which there is no applicable sentencing guideline)”.

SEC. 17. MODIFICATION OF REQUIREMENT OF STATING REASONS FOR CHOOSING A POINT WITH THE PRESCRIBED SENTENCING RANGE.

Section 3553(c)(1) of title 18, United States Code, is amended by inserting after "in subsection (a)(4)," the following: "and that range exceeds 24 months,".

SEC. 18. CLARIFICATION OF AUTHORITY OF BUREAU OF PRISONS TO ACCEPT COMMITMENTS TO ITS COMMUNITY CORRECTIONS FACILITY AS CONDITION OF PROBATION OR SUPERVISED RELEASE.

Section 3563(b)(12) of title 18, United States Code, is amended by inserting after "community corrections facility" the following: "(including a facility maintained or under contract to the Bureau of Prisons)".

SEC. 19. APPOINTMENT OF COUNSEL IN RELATION TO SUPERVISED RELEASE.

Section 3006A(a)(1) of title 18, United States Code, is amended—
 (1) by redesignating subparagraphs (E) through (H) as subparagraphs (F) through (I), respectively; and
 (2) by inserting after subparagraph (D) the following new subparagraph:

"(E) is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;".

SEC. 20. AUTHORITY OF DIRECTOR OF ADMINISTRATIVE OFFICE OF UNITED STATES COURTS TO CONTRACT FOR PSYCHIATRIC AFTERCARE.

Section 3672 of title 18, United States Code, is amended—
 (1) by amending the seventh undesignated paragraph to read as follows:

"He shall have the authority to contract with any appropriate public or private agency or person for the detection of and care in the community of an offender who is an alcohol-dependent person, an addict or a drug-dependent person, or a person suffering from a psychiatric disorder within the meaning of section 2 of the Public Health Service Act. This authority shall include the authority to provide equipment and supplies; testing; medical, educational, social, psychological and vocational services; corrective and preventative guidance and training; and other rehabilitative services designed to protect the public and benefit the alcohol-dependent person, addict or drug-dependent person, or a person suffering from a psychiatric disorder by eliminating his dependence on alcohol or addicting drugs, by controlling his dependence and his susceptibility to addiction, or by treating his psychiatric disorder. He may negotiate and award such contracts without regard to section 3709 of the Revised Statutes of the United States."; and

(2) by adding at the end the following new undesignated paragraph:

"Whenever the court finds that funds are available for payment by or on behalf of a person furnished such services, training, or guidance, the court may direct that such funds be paid to the Director. Any moneys collected under this paragraph shall be used

Alcohol and alcoholic beverages.
 Drugs and drug abuse.
 Health and medical care.

to reimburse the appropriations obligated and disbursed in payment for such services, training, or guidance.”

SEC. 21. EMERGENCY GUIDELINES PROMULGATION AUTHORITY.

28 USC 994 note.

(a) **IN GENERAL.**—In the case of—

- (1) an invalidated sentencing guideline;
 - (2) the creation of a new offense or amendment of an existing offense; or
 - (3) any other reason relating to the application of a previously established sentencing guideline, and determined by the United States Sentencing Commission to be urgent and compelling;
- the Commission, by affirmative vote of at least four members of the Commission, and pursuant to its rules and regulations and consistent with all pertinent provisions of title 28 and title 18, United States Code, shall promulgate and distribute to all courts of the United States and to the United States Probation System a temporary guideline or amendment to an existing guideline, to remain in effect until and during the pendency of the next report to Congress under section 994(p) of title 28, United States Code.

(b) **EXPIRATION OF AUTHORITY.**—The authority of the Commission under paragraphs (1) and (2) of subsection (a) shall expire on November 1, 1989. The authority of the Commission to promulgate and distribute guidelines under paragraph (3) of subsection (a) shall expire on May 1, 1988.

SEC. 22. APPLICATION OF RULE 35(b) TO CONDUCT OCCURRING BEFORE EFFECTIVE DATE OF SENTENCING GUIDELINES.

18 USC app.

The amendment to rule 35(b) of the Federal Rules of Criminal Procedure made by the order of the Supreme Court on April 29, 1985, shall apply with respect to all offenses committed before the taking effect of section 215(b) of the Comprehensive Crime Control Act of 1984.

SEC. 23. GRADING OF OFFENSES AND DEFENDANT PETITIONS.

(a) **POSTPONEMENT OF DEADLINE FOR COMMISSION REPORT MAKING RECOMMENDATIONS ON THE GRADING AND PENALTIES FOR OFFENSES.**—Section 994(r) of title 28, United States Code, is amended by striking out “one year” and inserting in lieu thereof “two years”.

(b) **ELIMINATION OF REQUIREMENT THAT SENTENCING COMMISSION RESPOND TO DEFENDANT PETITIONS FOR GUIDELINES MODIFICATIONS.**—Section 994(s) of title 28, United States Code, is amended by striking out the last three sentences.

SEC. 24. AUTHORITY TO LOWER A SENTENCE BELOW A STATUTORY MINIMUM FOR OLD OFFENSES.

18 USC 3553 note.

Notwithstanding section 235 of the Comprehensive Crime Control Act of 1984—

- (1) section 3553(e) of title 18, United States Code;
 - (2) rule 35(b) of the Federal Rules of Criminal Procedure as amended by section 215(b) of such Act; and
 - (3) rule 35(b) as in effect before the taking effect of the initial set of guidelines promulgated by the United States Sentencing Commission pursuant to chapter 58 of title 28, United States Code,
- shall apply in the case of an offense committed before the taking effect of such guidelines.

SEC. 25. LIMITATION ON TERM TO BE SERVED FOR VIOLATION OF CONDITIONS OF SUPERVISED RELEASE.

Section 3583(e)(4) of title 18, United States Code, is amended by striking out "Commission." and inserting in lieu thereof "Commission, except that a person whose term is revoked under this paragraph may not be required to serve more than 3 years in prison if the offense for which the person was convicted was a Class B felony, or more than 2 years in prison if the offense was a Class C or D felony."

18 USC 3006A
note.

SEC. 26. GENERAL EFFECTIVE DATE.

The amendments made by this Act shall apply with respect to offenses committed after the enactment of this Act.

Approved December 7, 1987.

The amendments made by this Act shall apply with respect to offenses committed after the enactment of this Act.

LEGISLATIVE HISTORY—S. 1822:

- CONGRESSIONAL RECORD, Vol. 133 (1987):
- Oct. 28, considered and passed Senate.
- Nov. 16, considered and passed House, amended.
- Nov. 20, Senate concurred in House amendments.