

EXPLANATION OF THE PRESENTENCE REPORT

(Pursuant to *United States v. Booker*, the guidelines are advisory)

PART A: THE OFFENSE

Charge(s) and Conviction(s): This section reports the charges against the defendant, the present status of the charges, the title of the offense and statute violated, the date of the offense, and the status of any codefendant and respective charges.

Related Cases: This section provides status information concerning other defendants with federal charges related to the instant offense.

The Offense Conduct: This section describes the offense conduct that is relevant to the determination of the offense level under Chapter 2 of the guidelines. It also describes the role the defendant played in carrying out the offense pursuant to Chapter 3. The section identifies any victim of the offense and any harm the victim suffered. It includes information indicating if the offense of conviction was part of a scheme or plan that included other criminal conduct and information which may be relevant to the defendant's state of mind or motive in committing the offense. Such information may be relevant to the determination of the appropriate guideline, the selection of a sentence within the guideline range, and the decision to depart or vary from the guidelines.

Offense Behavior Not Part of Relevant Conduct: This section describes criminal behavior that has not been reported in **The Offense Conduct** section because it is not considered relevant conduct by the guidelines (see Chapter 1, Part B). This section may include offense behavior described in dismissed counts that is not part of relevant conduct.

Victim Impact: While this section is part of the offense conduct for which the defendant is responsible, this information is presented under a separate heading to emphasize its importance. It includes the impact on all victims of the offense, regardless of whether the information affects guideline application or is compensable under the count of conviction. An assessment of the financial, social, psychological, and medical impact upon any individual victim of the offense is presented and any financial loss caused by the conduct in the offense is reported.

PART B: THE DEFENDANT'S CRIMINAL HISTORY

This part contains the record of the defendant's criminal history. Sections 4A1.1(a) - (e) of the guidelines establish numerical values for prior convictions (see Chapter 4).

Juvenile Adjudication(s)/Criminal Conviction(s): These sections contain a report of the defendant's record of juvenile adjudications of guilty or delinquency, criminal convictions, and diversionary dispositions based on a finding or admission of guilt. Adjudications and convictions are included in chronological order, regardless if they are used in calculating the criminal history category. The value assigned to each sentence under Chapter 4 is shown. Convictions not used in the calculation may be considered by the sentencing judge in deciding whether to depart or vary from the guideline range. In addition, the entire record of convictions may be relevant in selecting a sentence within the applicable guideline range and in determining conditions of probation or supervised release.

Criminal History Computation: This section assigns the criminal history category. It is based entirely on the criminal record reported in Part B. See Section 4A1.2 of the guidelines for definitions and instructions for calculating the criminal history category, including a list of convictions that are excluded.

Other Criminal Conduct: This section reports prior unadjudicated criminal conduct that may have made the defendant's commission of the offense of conviction more serious and, therefore, deserving of greater punishment. This information may also indicate a propensity to engage in criminal conduct, and, therefore, a need to incapacitate the defendant. Such conduct may be relevant in determining whether the offense of conviction was part of a pattern of criminal conduct from which the defendant derived a substantial portion of income (see Section 4B1.3). Section 4A1.3 suggests that such conduct may also be considered by the sentencing judge as a ground for departing from the guideline range. The conduct reported in this section may also be relevant in determining conditions of probation or supervised release.

Pending Charges: This section lists any pending charges against the defendant.

Other Arrests: All other arrests of the defendant are reported in this section to provide information regarding the defendant's contact with law enforcement authorities.

PART C: OFFENDER CHARACTERISTICS

This part sets forth information relative to the defendant's personal background. Included is information concerning: (1) personal and family data, (2) physical conditions, (3) mental and emotional health, (4) substance abuse, (5) education and vocational skills, (6) employment, and (7) financial condition, including an assessment of the defendant's ability to pay restitution or a fine. (See Chapter 5, Part H, and Chapter 5, Part E, of the Guidelines Manual.)

PART D: GUIDELINE COMPUTATIONS

Offense Level Computation: This section presents the calculation of the total offense level. For each count, it identifies the applicable guideline and shows the base offense level, any specific offense characteristics, and any adjustments that affect the offense level. In cases involving multiple counts, the groups of closely-related counts are displayed. The number of units for each count or group of closely-related counts is identified and the combined adjusted offense level for the entire case is computed (see Chapter 3, Part D). If the defendant is a career offender, committed the instant offense as part of a pattern of criminal conduct from which he derived a substantial portion of income as defined in Chapter 4, Part B, is an armed career criminal, or a repeat and dangerous sex offender against minors, the defendant's total offense level may be increased. Any such increase is set forth in this section following the total offense level computation.

PART E: SENTENCING OPTIONS

This part sets forth the penalties authorized by statute along with the kinds of sentences available under the guidelines. Included are the statutory and guideline provisions for custody, impact of the Plea Agreement, supervised release, probation, fines, restitution, and denial of benefits for drug offenses. Guideline sentencing options are found in Chapter 5 of the Guidelines Manual.

Impact of Plea Agreement: This part is relevant in Presentence Reports when a Plea Agreement has been tendered to the court. The probation officer assesses the impact of the Plea Agreement on the guideline sentence by comparing the guidelines applicable under the Plea Agreement with the guidelines that would apply if the defendant were to plead to all counts. The analysis is based on the conclusion that the allegations of the counts to be dismissed could be proven by a preponderance standard and the additional relevant facts are accurate.

PART F: FACTORS THAT MAY WARRANT DEPARTURE OR VARIANCE

This part contains the probation officer's statement of any factors that may constitute a basis for a sentence outside the applicable sentencing range by virtue of a departure or a variance. (Fed. R. Crim., P. 32(d)(1)(E)). Such factors include those set forth in Chapter 5, Part K, of the guidelines and in 18 U.S.C. § 3553(a). Inclusion of a factor in this part does not constitute a recommendation by the probation officer that a departure or a variance be made.

ADDENDUM TO THE PRESENTENCE REPORT

The Presentence Report is disclosed to the defendant, counsel for the defendant, and counsel for the government before it is submitted to the court. This procedure allows both counsel to communicate with the probation officer to resolve any objections regarding material information, sentencing classifications, or the sentencing guidelines range.. Early disclosure of the report to the attorney allows the probation officer to conduct further investigation and make necessary revisions. Any unresolved issues or objections are reported to the sentencing judge in an addendum to the Presentence Report. The addendum also contains the probation officer's comments regarding the issues.