(A) no voting member of the Commission may serve more than two full terms; and

(B) a voting member appointed to fill a vacancy that occurs before the expiration of the term for which a predecessor was appointed shall be appointed only for the remainder of such term.

(2) A voting member of the Commission whose term has expired may continue to serve until the earlier of—

(A) the date on which a successor has taken office; or

(B) the date on which the Congress adjourns sine die to end the session of Congress that commences after the date on which the member's term expired.

(c) The Chair and Vice Chairs of the Commission shall hold full-time positions and shall be compensated during their terms of office at the annual rate at which judges of the United States courts of appeals are compensated. The voting members of the Commission, other than the Chair and Vice Chairs, shall hold full-time positions until the end of the first six years after the sentencing guidelines go into effect pursuant to section 235(a)(1)(B)(ii) of the Sentencing Reform Act of 1984, and shall be compensated at the annual rate at which judges of the United States courts of appeals are compensated. Thereafter, the voting members of the Commission, other than the Chair and Vice Chairs,,[1] shall hold part-time positions and shall be paid at the daily rate at which judges of the United States courts of appeals are compensated. A Federal judge may serve as a member of the Commission without resigning the judge's appointment as a Federal judge.

(d) Sections 44(c) and 134(b) of this title (relating to the residence of judges) do not apply to any judge holding a full-time position on the Commission under subsection (c) of this section.

(Added Pub. L. 98–473, title II, §217(a), Oct. 12, 1984, 98 Stat. 2018; amended Pub. L. 99–646, §§4, 6(a), Nov. 10, 1986, 100 Stat. 3592; Pub. L. 102–349, §1, Aug. 26, 1992, 106 Stat. 933; Pub. L. 103–322, title XXVIII, §280005(b), (c)(1), (3), Sept. 13, 1994, 108 Stat. 2096, 2097.)

REFERENCES IN TEXT

Section 235(a)(1)(B)(ii) of the Sentencing Reform Act of 1984, referred to in subsec. (c), is section 235(a)(1)(B)(ii) of Pub. L. 98–473, which is set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

AMENDMENTS

1994—Subsec. (a)(1). Pub. L. 103–322, §280005(c)(1), substituted ''Chair'' for ''Chairman''.

Subsec. (c). Pub. L. 103–322, §280005(b), (c)(3), amended first sentence generally, substituting ''The Chair and Vice Chairs of the Commission shall hold full-time positions and shall be compensated during their terms'' for ''The Chairman of the Commission shall hold a full-time position and shall be compensated during the term'', in second sentence, substituted ''Chair and Vice Chairs'' for ''Chairman'', in third sentence, substituted ''Chair and Vice Chairs,'' for ''Chairman'', and in last sentence, substituted ''the judge's appointment'' for ''his appointment''.

1992—Subsec. (b). Pub. L. 102–349 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''No voting member may serve more than two full terms. A voting member appointed to fill a vacancy that occurs before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.''

1986—Subsec. (c). Pub. L. 99–646, §4, substituted ''section 235(a)(1)(B)(ii) of the Sentencing Reform Act of 1984'' for ''section 225(a)(1)(B)(ii) of the Sentencing Reform Act of 1983''.

Subsec. (d). Pub. L. 99–646, §6(a), added subsec. (d).

COMMENCEMENT OF TERMS OF FIRST MEMBERS OF COMMISSION

For provisions directing that, for purposes of subsec. (a) of this section, the terms of the first members of the United States Sentencing Commission shall not begin to run until the sentencing guidelines go into effect pursuant to section 235(a)(1)(B)(ii) of Pub. L. 98–473, see section 235(a)(2) of Pub. L. 98–473, both of which are set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

§993. Powers and duties of Chair

The Chair shall—

(a) call and preside at meetings of the Commission, which shall be held for at least two weeks in each quarter after the members of the Commission hold part-time positions; and

(b) direct—

(1) the preparation of requests for appropriations for the Commission; and

(2) the use of funds made available to the Commission.

(Added Pub. L. 98–473, title II, §217(a), Oct. 12, 1984, 98 Stat. 2019; amended Pub. L. 99–22, §1(2), Apr. 15, 1985, 99 Stat. 46; Pub. L. 99–646, §5, Nov. 10, 1986, 100 Stat. 3592; Pub. L. 103–322, title XXVIII, §280005(c)(1), Sept. 13, 1994, 108 Stat. 2097.)

AMENDMENTS

1994—Pub. L. 103–322 substituted ''Chair'' for ''Chairman'' in section catchline and introductory provisions.

1986—Subsec. (b)(2). Pub. L. 99–646 struck out provision that, before appointment of first Chairman, Administrative Office of the United States Courts may make requests for appropriations for Commission.

1985—Subsec. (b)(2). Pub. L. 99–22 inserted provision authorizing the Administrative Office of the United States Courts to make requests for appropriations for the Commission before the appointment of the first Chairman of the Commission.

§994. Duties of the Commission

(a) 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 any Federal statute shall promulgate and distribute to all courts of the United States and to the United States Probation System—

(1) guidelines, as described in this section, for use of a sentencing court in determining the sentence to be imposed in a criminal case, including—

(A) a determination whether to impose a sentence to probation, a fine, or a term of imprisonment;

(B) a determination as to the appropriate amount of a fine or the appropriate length of a term of probation or a term of imprisonment;

(C) a determination whether a sentence to a term of imprisonment should include a re-

[1] So in original.

quirement that the defendant be placed on a term of supervised release after imprisonment, and, if so, the appropriate length of such a term;

(D) a determination whether multiple sentences to terms of imprisonment should be ordered to run concurrently or consecutively; and

(E) a determination under paragraphs (6) and (11)[1] of section 3563(b) of title 18;

(2) general policy statements regarding application of the guidelines or any other aspect of sentencing or sentence implementation that in the view of the Commission would further the purposes set forth in section 3553(a)(2) of title 18, United States Code, including the appropriate use of—

(A) the sanctions set forth in sections 3554, 3555, and 3556 of title 18;

(B) the conditions of probation and supervised release set forth in sections 3563(b) and 3583(d) of title 18;

(C) the sentence modification provisions set forth in sections 3563(c), 3564, 3573, and 3582(c) of title 18;

(D) the fine imposition provisions set forth in section 3572 of title 18;

(E) the authority granted under rule 11(e)(2) of the Federal Rules of Criminal Procedure to accept or reject a plea agreement entered into pursuant to rule 11(e)(1); and

(F) the temporary release provisions set forth in section 3622 of title 18, and the prerelease custody provisions set forth in section 3624(c) of title 18; and

(3) guidelines or general policy statements regarding the appropriate use of the provisions for revocation of probation set forth in section 3565 of title 18, and the provisions for modification of the term or conditions of supervised release and revocation of supervised release set forth in section 3583(e) of title 18.

(b)(1) The Commission, in the guidelines promulgated pursuant to subsection (a)(1), shall, for each category of offense involving each category of defendant, establish a sentencing range that is consistent with all pertinent provisions of title 18, United States Code.

(2) If a sentence specified by the guidelines includes a term of imprisonment, the maximum of the range established for such a term shall not exceed the minimum of that range by more than the greater of 25 percent or 6 months, except that, if the minimum term of the range is 30 years or more, the maximum may be life imprisonment.

(c) The Commission, in establishing categories of offenses for use in the guidelines and policy statements governing the imposition of sentences of probation, a fine, or imprisonment, governing the imposition of other authorized sanctions, governing the size of a fine or the length of a term of probation, imprisonment, or supervised release, and governing the conditions of probation, supervised release, or imprisonment, shall consider whether the following matters, among others, have any relevance to the nature, extent, place of service, or other incidents[2] of an appropriate sentence, and shall take them into account only to the extent that they do have relevance—

(1) the grade of the offense;

(2) the circumstances under which the offense was committed which mitigate or aggravate the seriousness of the offense;

(3) the nature and degree of the harm caused by the offense, including whether it involved property, irreplaceable property, a person, a number of persons, or a breach of public trust;

(4) the community view of the gravity of the offense;

(5) the public concern generated by the offense;

(6) the deterrent effect a particular sentence may have on the commission of the offense by others; and

(7) the current incidence of the offense in the community and in the Nation as a whole.

(d) The Commission in establishing categories of defendants for use in the guidelines and policy statements governing the imposition of sentences of probation, a fine, or imprisonment, governing the imposition of other authorized sanctions, governing the size of a fine or the length of a term of probation, imprisonment, or supervised release, and governing the conditions of probation, supervised release, or imprisonment, shall consider whether the following matters, among others, with respect to a defendant, have any relevance to the nature, extent, place of service, or other incidents[2] of an appropriate sentence, and shall take them into account only to the extent that they do have relevance—

(1) age;

(2) education;

(3) vocational skills;

(4) mental and emotional condition to the extent that such condition mitigates the defendant's culpability or to the extent that such condition is otherwise plainly relevant;

(5) physical condition, including drug dependence;

(6) previous employment record;

(7) family ties and responsibilities;

(8) community ties;

(9) role in the offense;

(10) criminal history; and

(11) degree of dependence upon criminal activity for a livelihood.

The Commission shall assure that the guidelines and policy statements are entirely neutral as to the race, sex, national origin, creed, and socioeconomic status of offenders.

(e) The Commission shall assure that the guidelines and policy statements, in recommending a term of imprisonment or length of a term of imprisonment, reflect the general inappropriateness of considering the education, vocational skills, employment record, family ties and responsibilities, and community ties of the defendant.

(f) The Commission, in promulgating guidelines pursuant to subsection (a)(1), shall promote the purposes set forth in section 991(b)(1), with particular attention to the requirements of subsection 991(b)(1)(B) for providing certainty

[1] See References in Text note below.

[2] So in original. Probably should be ''incidence''.

and fairness in sentencing and reducing unwarranted sentence disparities.

(g) The Commission, in promulgating guidelines pursuant to subsection (a)(1) to meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code, shall take into account the nature and capacity of the penal, correctional, and other facilities and services available, and shall make recommendations concerning any change or expansion in the nature or capacity of such facilities and services that might become necessary as a result of the guidelines promulgated pursuant to the provisions of this chapter. The sentencing guidelines prescribed under this chapter shall be formulated to minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons, as determined by the Commission.

(h) The Commission shall assure that the guidelines specify a sentence to a term of imprisonment at or near the maximum term authorized for categories of defendants in which the defendant is eighteen years old or older and—

(1) has been convicted of a felony that is—

(A) a crime of violence; or

(B) an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), sections 1002(a), 1005, and 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, and 959), and chapter 705 of title 46; and

(2) has previously been convicted of two or more prior felonies, each of which is—

(A) a crime of violence; or

(B) an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), sections 1002(a), 1005, and 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952(a), 955, and 959), and chapter 705 of title 46.

(i) The Commission shall assure that the guidelines specify a sentence to a substantial term of imprisonment for categories of defendants in which the defendant—

(1) has a history of two or more prior Federal, State, or local felony convictions for offenses committed on different occasions;

(2) committed the offense as part of a pattern of criminal conduct from which the defendant derived a substantial portion of the defendant's income;

(3) committed the offense in furtherance of a conspiracy with three or more persons engaging in a pattern of racketeering activity in which the defendant participated in a managerial or supervisory capacity;

(4) committed a crime of violence that constitutes a felony while on release pending trial, sentence, or appeal from a Federal, State, or local felony for which he was ultimately convicted; or

(5) committed a felony that is set forth in section 401 or 1010 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 841 and 960), and that involved trafficking in a substantial quantity of a controlled substance.

(j) The Commission shall insure that the guidelines reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense, and the general appropriateness of imposing a term of imprisonment on a person convicted of a crime of violence that results in serious bodily injury.

(k) The Commission shall insure that the guidelines reflect the inappropriateness of imposing a sentence to a term of imprisonment for the purpose of rehabilitating the defendant or providing the defendant with needed educational or vocational training, medical care, or other correctional treatment.

(*l*) The Commission shall insure that the guidelines promulgated pursuant to subsection (a)(1) reflect—

(1) the appropriateness of imposing an incremental penalty for each offense in a case in which a defendant is convicted of—

(A) multiple offenses committed in the same course of conduct that result in the exercise of ancillary jurisdiction over one or more of the offenses; and

(B) multiple offenses committed at different times, including those cases in which the subsequent offense is a violation of section 3146 (penalty for failure to appear) or is committed while the person is released pursuant to the provisions of section 3147 (penalty for an offense committed while on release) of title 18; and

(2) the general inappropriateness of imposing consecutive terms of imprisonment for an offense of conspiring to commit an offense or soliciting commission of an offense and for an offense that was the sole object of the conspiracy or solicitation.

(m) The Commission shall insure that the guidelines reflect the fact that, in many cases, current sentences do not accurately reflect the seriousness of the offense. This will require that, as a starting point in its development of the initial sets of guidelines for particular categories of cases, the Commission ascertain the average sentences imposed in such categories of cases prior to the creation of the Commission, and in cases involving sentences to terms of imprisonment, the length of such terms actually served. The Commission shall not be bound by such average sentences, and shall independently develop a sentencing range that is consistent with the purposes of sentencing described in section 3553(a)(2) of title 18, United States Code.

(n) The Commission shall assure that the guidelines reflect the general appropriateness of imposing a lower sentence than would otherwise be imposed, including a sentence that is lower than that established by statute as a minimum sentence, to take into account a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense.

(*o*) The Commission periodically shall review and revise, in consideration of comments and data coming to its attention, the guidelines promulgated pursuant to the provisions of this section. In fulfilling its duties and in exercising its powers, the Commission shall consult with authorities on, and individual and institutional

representatives of, various aspects of the Federal criminal justice system. The United States Probation System, the Bureau of Prisons, the Judicial Conference of the United States, the Criminal Division of the United States Department of Justice, and a representative of the Federal Public Defenders shall submit to the Commission any observations, comments, or questions pertinent to the work of the Commission whenever they believe such communication would be useful, and shall, at least annually, submit to the Commission a written report commenting on the operation of the Commission's guidelines, suggesting changes in the guidelines that appear to be warranted, and otherwise assessing the Commission's work.

(p) The Commission, at or after the beginning of a regular session of Congress, but not later than the first day of May, may promulgate under subsection (a) of this section and submit to Congress amendments to the guidelines and modifications to previously submitted amendments that have not taken effect, including modifications to the effective dates of such amendments. Such an amendment or modification shall be accompanied by a statement of the reasons therefor and shall take effect on a date specified by the Commission, which shall be no earlier than 180 days after being so submitted and no later than the first day of November of the calendar year in which the amendment or modification is submitted, except to the extent that the effective date is revised or the amendment is otherwise modified or disapproved by Act of Congress.

(q) The Commission and the Bureau of Prisons shall submit to Congress an analysis and recommendations concerning maximum utilization of resources to deal effectively with the Federal prison population. Such report shall be based upon consideration of a variety of alternatives, including—

(1) modernization of existing facilities;

(2) inmate classification and periodic review of such classification for use in placing inmates in the least restrictive facility necessary to ensure adequate security; and

(3) use of existing Federal facilities, such as those currently within military jurisdiction.

(r) The Commission, not later than two years after the initial set of sentencing guidelines promulgated under subsection (a) goes into effect, and thereafter whenever it finds it advisable, shall recommend to the Congress that it raise or lower the grades, or otherwise modify the maximum penalties, of those offenses for which such an adjustment appears appropriate.

(s) The Commission shall give due consideration to any petition filed by a defendant requesting modification of the guidelines utilized in the sentencing of such defendant, on the basis of changed circumstances unrelated to the defendant, including changes in—

(1) the community view of the gravity of the offense;

(2) the public concern generated by the offense; and

(3) the deterrent effect particular sentences may have on the commission of the offense by others.

(t) The Commission, in promulgating general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A) of title 18, shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples. Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.

(u) If the Commission reduces the term of imprisonment recommended in the guidelines applicable to a particular offense or category of offenses, it shall specify in what circumstances and by what amount the sentences of prisoners serving terms of imprisonment for the offense may be reduced.

(v) The Commission shall ensure that the general policy statements promulgated pursuant to subsection (a)(2) include a policy limiting consecutive terms of imprisonment for an offense involving a violation of a general prohibition and for an offense involving a violation of a specific prohibition encompassed within the general prohibition.

(w)(1) The Chief Judge of each district court shall ensure that, within 30 days following entry of judgment in every criminal case, the sentencing court submits to the Commission, in a format approved and required by the Commission, a written report of the sentence, the offense for which it is imposed, the age, race, sex of the offender, and information regarding factors made relevant by the guidelines. The report shall also include—

(A) the judgment and commitment order;

(B) the written statement of reasons for the sentence imposed (which shall include the reason for any departure from the otherwise applicable guideline range and which shall be stated on the written statement of reasons form issued by the Judicial Conference and approved by the United States Sentencing Commission);

(C) any plea agreement;

(D) the indictment or other charging document;

(E) the presentence report; and

(F) any other information as the Commission finds appropriate.

The information referred to in subparagraphs (A) through (F) shall be submitted by the sentencing court in a format approved and required by the Commission.

(2) The Commission shall, upon request, make available to the House and Senate Committees on the Judiciary, the written reports and all underlying records accompanying those reports described in this section, as well as other records received from courts.

(3) The Commission shall submit to Congress at least annually an analysis of these documents, any recommendations for legislation that the Commission concludes is warranted by that analysis, and an accounting of those districts that the Commission believes have not submitted the appropriate information and documents required by this section.

(4) The Commission shall make available to the Attorney General, upon request, such data files as the Commission itself may assemble or maintain in electronic form as a result of the in-

formation submitted under paragraph (1). Such data files shall be made available in electronic form and shall include all data fields requested, including the identity of the sentencing judge.

(x) The provisions of section 553 of title 5, relating to publication in the Federal Register and public hearing procedure, shall apply to the promulgation of guidelines pursuant to this section.

(y) The Commission, in promulgating guidelines pursuant to subsection (a)(1), may include, as a component of a fine, the expected costs to the Government of any imprisonment, supervised release, or probation sentence that is ordered.

(Added Pub. L. 98–473, title II, §217(a), Oct. 12, 1984, 98 Stat. 2019; amended Pub. L. 99–217, §3, Dec. 26, 1985, 99 Stat. 1728; Pub. L. 99–363, §2, July 11, 1986, 100 Stat. 770; Pub. L. 99–570, title I, §§1006(b), 1008, Oct. 27, 1986, 100 Stat. 3207–7; Pub. L. 99–646, §§6(b), 56, Nov. 10, 1986, 100 Stat. 3592, 3611; Pub. L. 100–182, §§16(b), 23, Dec. 7, 1987, 101 Stat. 1269, 1271; Pub. L. 100–690, title VII, §§7083, 7103(b), 7109, Nov. 18, 1988, 102 Stat. 4408, 4417, 4419; Pub. L. 103–322, title II, §20403(b), title XXVIII, §280005(c)(4), title XXXIII, §330003(f)(1), Sept. 13, 1994, 108 Stat. 1825, 2097, 2141; Pub. L. 108–21, title IV, §401(h), (k), Apr. 30, 2003, 117 Stat. 672, 674; Pub. L. 109–177, title VII, §735, Mar. 9, 2006, 120 Stat. 271; Pub. L. 109–304, §17(f)(1), Oct. 6, 2006, 120 Stat. 1708.)

REFERENCES IN TEXT

Paragraphs (6) and (11) of section 3563(b) of title 18, referred to in subsec. (a)(1)(E), were renumbered paragraphs (5) and (10), respectively, of section 3563(b) by Pub. L. 104–132, title II, §203(2)(B), Apr. 24, 1996, 110 Stat. 1227.

The Federal Rules of Criminal Procedure, referred to in subsec. (a)(2)(E), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

AMENDMENTS

2006—Subsec. (h)(1)(B), (2)(B). Pub. L. 109–304 substituted ''chapter 705 of title 46'' for ''the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)''.

Subsec. (w)(1). Pub. L. 109–177, §735(1)(A), (C), inserted '', in a format approved and required by the Commission,'' after ''submits to the Commission'' in introductory provisions and inserted concluding provisions.

Subsec. (w)(1)(B). Pub. L. 109–177, §735(1)(B), inserted ''written'' before ''statement of reasons for the sentence imposed'' and ''and which shall be stated on the written statement of reasons form issued by the Judicial Conference and approved by the United States Sentencing Commission'' after ''applicable guideline range''.

Subsec. (w)(4). Pub. L. 109–177, §735(2), substituted ''itself may assemble or maintain in electronic form as a result of the'' for ''may assemble or maintain in electronic form that include any''.

2003—Subsec. (a). Pub. L. 108–21, §401(k), substituted ''consistent with all pertinent provisions of any Federal statute'' for ''consistent with all pertinent provisions of this title and title 18, United States Code,''.

Subsec. (w). Pub. L. 108–21, §401(h), amended subsec. (w) generally. Prior to amendment, subsec. (w) read as follows: ''The appropriate judge or officer shall submit to the Commission in connection with each sentence imposed (other than a sentence imposed for a petty offense, as defined in title 18, for which there is no applicable sentencing guideline) a written report of the sentence, the offense for which it is imposed, the age, race, and sex of the offender, information regarding factors made relevant by the guidelines, and such other information as the Commission finds appropriate. The Commission shall submit to Congress at least annually an analysis of these reports and any recommendations for legislation that the Commission concludes is warranted by that analysis.''

1994—Subsec. (h)(1)(B), (2)(B). Pub. L. 103–322, §330003(f)(1), substituted ''the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)'' for ''section 1 of the Act of September 15, 1980 (21 U.S.C. 955a)''.

Subsec. (i)(2). Pub. L. 103–322, §280005(c)(4), substituted ''the defendant'' for ''he'' and ''the defendant's'' for ''his''.

Subsec. (y). Pub. L. 103–322, §20403(b), added subsec. (y).

1988—Subsec. (a)(1)(E). Pub. L. 100–690, §7103(b), added subpar. (E).

Subsec. (n). Pub. L. 100–690, §7083, substituted ''as a minimum sentence'' for ''as minimum sentence''.

Subsec. (p). Pub. L. 100–690, §7109, amended subsec. (p) generally. Prior to amendment, subsec. (p) read as follows: ''The Commission, at or after the beginning of a regular session of Congress but not later than the first day of May, shall report to the Congress any amendments of the guidelines promulgated pursuant to subsection (a)(1), and a report of the reasons therefor, and the amended guidelines shall take effect one hundred and eighty days after the Commission reports them, except to the extent the effective date is enlarged or the guidelines are disapproved or modified by Act of Congress.''

1987—Subsec. (r). Pub. L. 100–182, §23(a), substituted ''two years'' for ''one year''.

Subsec. (s). Pub. L. 100–182, §23(b), struck out at end: ''Within one hundred and eighty days of the filing of such petition the Commission shall provide written notice to the defendant whether or not it has approved the petition. If the petition is disapproved the written notice shall contain the reasons for such disapproval. The Commission shall submit to the Congress at least annually an analysis of such written notices.''

Subsec. (w). Pub. L. 100–182, §16(b), inserted ''(other than a sentence imposed for a petty offense, as defined in title 18, for which there is no applicable sentencing guideline)'' after ''each sentence imposed''.

1986—Subsec. (a)(2)(C). Pub. L. 99–363, §2(1)(B), amended subpar. (C) generally, inserting ''3564,'' after ''3563(c),''.

Subsec. (a)(2)(D) to (F). Pub. L. 99–363, §2(1)(A), (C), added subpar. (D) and redesignated former subpars. (D) and (E) as (E) and (F), respectively.

Subsec. (a)(3). Pub. L. 99–570, §1006(b), inserted ''and revocation of supervised release'' after ''supervised release''.

Pub. L. 99–363, §2(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''guidelines or general policy statements regarding the appropriate use of the probation revocation provisions set forth in section 3565 of title 18, and the provisions for modification of the term or conditions of probation or supervised release set forth in sections 3563(c), 3564(d), and 3583(e) of title 18.''

Subsec. (b). Pub. L. 99–363, §2(3), designated existing provisions as pars. (1) and (2), and in par. (2) substituted ''the greater of 25 percent or 6 months, except that, if the maximum term of the range is 30 years or more, the maximum may be life imprisonment'' for ''25 per centum''.

Subsec. (b)(2). Pub. L. 99–646, §56, substituted ''that, if the minimum'' for ''that, if the maximum''.

Subsec. (h). Pub. L. 99–646, §6(b)(1), (2), substituted ''guidelines specify'' for ''guidelines will specify'' and struck out ''by section 3581(b) of title 18, United States Code,'' after ''term authorized'' in introductory text.

Subsec. (i). Pub. L. 99–646, §6(b)(2), substituted ''guidelines specify'' for ''guidelines will specify''.

Subsecs. (n) to (t). Pub. L. 99–570, §1008(1), (2), added subsec. (n) and redesignated former subsecs. (n) to (t) as (*o*) to (u), respectively.

Subsec. (u). Pub. L. 99–646, §6(b)(3), which directed that subsec. (t) be amended by inserting ''in what cir-

cumstances and'' after ''specify'' and striking out ''that are outside the applicable guideline ranges'' after ''terms of imprisonment'', was executed to subsec. (u) to reflect the probable intent of Congress and the intervening redesignation of subsec. (t) as (u) by Pub. L. 99–570.

Pub. L. 99–570, § 1008(2), redesignated subsec. (t) as (u).

Subsecs. (v) to (x). Pub. L. 99–570, § 1008(2), redesignated former subsecs. (u) to (w) as (v) to (x), respectively.

1985—Subsec. (q). Pub. L. 99–217 substituted ''not later than one year after the initial set of sentencing guidelines promulgated under subsection (a) goes into effect'' for ''within three years of the date of enactment of the Sentencing Reform Act of 1983''.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100–182 applicable with respect to offenses committed after Dec. 7, 1987, see section 26 of Pub. L. 100–182, set out as a note under section 3006A of Title 18, Crimes and Criminal Procedure.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (w) of this section relating to requirement that the Commission submit to Congress at least annually an analysis of reports and recommendations for legislation that the Commission concludes is warranted by that analysis, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 13 of House Document No. 103–7.

PROVISIONS FOR REVIEW, PROMULGATION, OR AMENDMENT OF FEDERAL SENTENCING GUIDELINES

Pub. L. 111–273, § 4, Oct. 12, 2010, 124 Stat. 2860.—Drug offense resulting from authorization to receive scheduled substances from ultimate user or long-term care facility.

Pub. L. 111–220, §§ 5–8, Aug. 3, 2010, 124 Stat. 2373, 2374.—Violence during drug trafficking offenses; increased emphasis on defendant's role; aggravating and mitigating factors.

Pub. L. 111–203, title X, § 1079A(a), July 21, 2010, 124 Stat. 2077.—Securities fraud and financial institutions fraud.

Pub. L. 111–148, title X, § 10606(a), Mar. 23, 2010, 124 Stat. 1006.—Health care fraud.

Pub. L. 110–457, title II, § 222(g), Dec. 23, 2008, 122 Stat. 5071.—Alien harboring in furtherance of prostitution.

Pub. L. 110–425, § 3(k)(2), Oct. 15, 2008, 122 Stat. 4833.—Offenses involving dispensing of controlled substances by means of the Internet.

Pub. L. 110–407, title I, § 103, Oct. 13, 2008, 122 Stat. 4298.—Operating or embarking in a submersible or semi-submersible vessel without nationality.

Pub. L. 110–384, Oct. 10, 2008, 122 Stat. 4094.—Desecration or theft of veterans' grave markers.

Pub. L. 110–326, title II, § 209, Sept. 26, 2008, 122 Stat. 3564.—Identity theft, computer fraud, illegal wiretapping, and unlawful access to stored information.

Pub. L. 110–179, § 5, Jan. 7, 2008, 121 Stat. 2557.—Fraud or theft in connection with major disasters or emergencies.

Pub. L. 110–177, title II, § 209, Jan. 7, 2008, 121 Stat. 2538.—Online threats against United States officials, judges, or law enforcement officers and immediate family members.

Pub. L. 109–476, § 4, Jan. 12, 2007, 120 Stat. 3571.—Fraud in obtaining confidential phone records information of covered entity.

Pub. L. 109–295, title V, § 551(d), Oct. 4, 2006, 120 Stat. 1390; Pub. L. 110–161, div. E, title V, § 553(c), Dec. 26, 2007, 121 Stat. 2082.—Offenses involving border tunnels and passages.

Pub. L. 109–248, title I, § 141(b), July 27, 2006, 120 Stat. 602.—Offenses committed by person who fails to register as sex offender.

Pub. L. 109–181, § 1(c), Mar. 16, 2006, 120 Stat. 287.—Trafficking in counterfeit goods, services, labels, documentation, and packaging.

Pub. L. 109–177, title III, § 307(c), Mar. 9, 2006, 120 Stat. 240.—Theft of interstate and foreign shipments.

Pub. L. 109–162, title XI, § 1191(c), Jan. 5, 2006, 119 Stat. 3129.—Offenses committed while wearing illicitly received public employee insignia or uniform.

Pub. L. 109–76, § 3, Sept. 29, 2005, 119 Stat. 2035.—False testimony and obstruction of justice involving international or domestic terrorism or anabolic steroids.

Pub. L. 109–9, title I, § 105, Apr. 27, 2005, 119 Stat. 222.—Intellectual property rights crimes.

Pub. L. 108–482, title II, § 204(b), Dec. 23, 2004, 118 Stat. 3917.—Online felony offenses involving use of a domain name registered with materially false contact information.

Pub. L. 108–458, title VI, § 6703(b), Dec. 17, 2004, 118 Stat. 3766.—False testimony and obstruction of justice involving international or domestic terrorism.

Pub. L. 108–358, § 3, Oct. 22, 2004, 118 Stat. 1664.—Offenses involving anabolic steroids.

Pub. L. 108–275, § 5, July 15, 2004, 118 Stat. 833.—Identity theft involving abuse of authority.

Pub. L. 108–187, § 4(b), Dec. 16, 2003, 117 Stat. 2705.—Fraud and related activity in connection with electronic mail.

Pub. L. 108–21, title I, § 104(a), Apr. 30, 2003, 117 Stat. 653.—Kidnapping.

Pub. L. 108–21, title IV, § 401(b), (g), (i), (j)(1)–(4), (m), Apr. 30, 2003, 117 Stat. 668, 671–673, 675.—Child crimes and sexual offenses, child pornography, downward departures, and acceptance of responsibility.

Pub. L. 108–21, title V, § 504(c)(2), Apr. 30, 2003, 117 Stat. 682.—Obscene visual representations of the sexual abuse of children.

Pub. L. 108–21, title V, § 512, Apr. 30, 2003, 117 Stat. 685.—Interstate travel to engage in sexual act with a juvenile.

Pub. L. 108–21, title V, § 513(c), Apr. 30, 2003, 117 Stat. 685.—Activities relating to material constituting or containing child pornography.

Pub. L. 108–21, title VI, § 608(e), Apr. 30, 2003, 117 Stat. 691.—Offenses involving gamma hydroxybutyric acid (GHB).

Pub. L. 107–296, title II, § 225(b), Nov. 25, 2002, 116 Stat. 2156.—Computer fraud.

Pub. L. 107–273, div. C, title I, § 11008(e), Nov. 2, 2002, 116 Stat. 1819.—Assaults and threats against Federal judges and certain other Federal officials and employees.

Pub. L. 107–204, title VIII, § 805, July 30, 2002, 116 Stat. 802.—Obstruction of justice and extensive criminal fraud.

Pub. L. 107–204, title IX, § 905, July 30, 2002, 116 Stat. 805.—Certain white collar offenses.

Pub. L. 107–204, title XI, § 1104, July 30, 2002, 116 Stat. 808.—Securities and accounting fraud and related offenses.

Pub. L. 107–155, title III, § 314, Mar. 27, 2002, 116 Stat. 107.—Violations of Federal Election Campaign Act of 1971 and related election laws.

Pub. L. 107–56, title VIII, § 814(f), Oct. 26, 2001, 115 Stat. 384.—Computer fraud and abuse.

Pub. L. 106–420, § 3, Nov. 1, 2000, 114 Stat. 1868.—Higher education financial assistance fraud.

Pub. L. 106–386, div. B, title I, § 1107(b)(2), Oct. 28, 2000, 114 Stat. 1498.—Interstate stalking.

Pub. L. 106–310, div. B, title XXXVI, § 3611, Oct. 17, 2000, 114 Stat. 1228.—Manufacture of and trafficking in amphetamine.

Pub. L. 106–310, div. B, title XXXVI, § 3612, Oct. 17, 2000, 114 Stat. 1228.—Manufacture of amphetamine or methamphetamine.

Pub. L. 106–310, div. B, title XXXVI, § 3651, Oct. 17, 2000, 114 Stat. 1238.—Trafficking in list I chemicals.

Pub. L. 106–310, div. B, title XXXVI, §§ 3663, 3664, Oct. 17, 2000, 114 Stat. 1242, 1244.—Manufacture of or trafficking in Ecstasy.

Pub. L. 106–160, § 3, Dec. 9, 1999, 113 Stat. 1774.—Electronic theft offenses.

Pub. L. 105–318, § 4, Oct. 30, 1998, 112 Stat. 3009.—Fraud and related activity in connection with identification documents and information.

Pub. L. 105–314, title V, Oct. 30, 1998, 112 Stat. 2980.—Sexual abuse, transportation for illegal sexual activity, and distribution of pornography.

Pub. L. 105–184, §6, June 23, 1998, 112 Stat. 521.—Telemarketing fraud.

Pub. L. 105–172, §2(e), Apr. 24, 1998, 112 Stat. 55.—Wireless telephone cloning.

Pub. L. 105–147, §2(g), Dec. 16, 1997, 111 Stat. 2680.—Crimes against intellectual property.

Pub. L. 105–101, Nov. 19, 1997, 111 Stat. 2202; Pub. L. 105–368, title IV, §403(d)(1), Nov. 11, 1998, 112 Stat. 3339.—Offenses against property at national cemeteries.

Pub. L. 104–305, §2(b)(3), Oct. 13, 1996, 110 Stat. 3808.—Offenses involving flunitrazepam.

Pub. L. 104–237, title II, §203(b), Oct. 3, 1996, 110 Stat. 3102.—Manufacture of methamphetamine.

Pub. L. 104–237, title III, §301, Oct. 3, 1996, 110 Stat. 3105.—Manufacture of and trafficking in methamphetamine.

Pub. L. 104–237, title III, §302(c), Oct. 3, 1996, 110 Stat. 3105.—Offenses involving list I chemicals.

Pub. L. 104–237, title III, §303, Oct. 3, 1996, 110 Stat. 3106.—Dangerous handling of controlled substances.

Pub. L. 104–208, div. C, title II, §203(e), Sept. 30, 1996, 110 Stat. 3009–566.—Smuggling, transporting, harboring, and inducing aliens.

Pub. L. 104–208, div. C, title II, §211(b), Sept. 30, 1996, 110 Stat. 3009–569.—Fraudulent acquisition and use of government-issued documents.

Pub. L. 104–208, div. C, title II, §218(b), (c), Sept. 30, 1996, 110 Stat. 3009–573, 3009–574.—Involuntary servitude.

Pub. L. 104–208, div. C, title III, §333, Sept. 30, 1996, 110 Stat. 3009–634.—Conspiring with or assisting an alien to import, export, possess, manufacture, or distribute a controlled substance.

Pub. L. 104–208, div. C, title III, §334, Sept. 30, 1996, 110 Stat. 3009–635.—Failure to depart, illegal reentry, and passport and visa fraud.

Pub. L. 104–201, div. A, title XIV, §1423, Sept. 23, 1996, 110 Stat. 2725; Pub. L. 105–261, div. A, title X, §1069(c)(1), Oct. 17, 1998, 112 Stat. 2136.—Offenses relating to importation and exportation of nuclear, biological, or chemical weapons or technologies.

Pub. L. 104–132, title II, §208, Apr. 24, 1996, 110 Stat. 1240.—Mandatory victim restitution.

Pub. L. 104–132, title VII, §730, Apr. 24, 1996, 110 Stat. 1303.—International terrorism.

Pub. L. 104–132, title VIII, §805, Apr. 24, 1996, 110 Stat. 1305.—Terrorist activity damaging Federal interest computer.

Pub. L. 104–132, title VIII, §807(h), Apr. 24, 1996, 110 Stat. 1308.—International counterfeiting of United States currency.

Pub. L. 104–71, §§1–4, Dec. 23, 1995, 109 Stat. 774.—Sex crimes against children.

Pub. L. 103–322, title IV, §40111(b), Sept. 13, 1994, 108 Stat. 1903.—Sexual abuse by repeat sex offender.

Pub. L. 103–322, title IV, §40112, Sept. 13, 1994, 108 Stat. 1903.—Aggravated sexual abuse or sexual abuse.

Pub. L. 103–322, title IV, §40503(c), Sept. 13, 1994, 108 Stat. 1947.—Intentional transmission of HIV.

Pub. L. 103–322, title VIII, §80001(b), Sept. 13, 1994, 108 Stat. 1986.—Importing, exporting, possessing, manufacturing, and distributing a controlled substance.

Pub. L. 103–322, title IX, §90102, Sept. 13, 1994, 108 Stat. 1987.—Drug-dealing in ''drug-free'' zones.

Pub. L. 103–322, title IX, §90103(b), Sept. 13, 1994, 108 Stat. 1987.—Use or distribution of illegal drugs in the Federal prisons.

Pub. L. 103–322, title XI, §110501, Sept. 13, 1994, 108 Stat. 2015.—Use of semiautomatic firearm during crime of violence or drug trafficking.

Pub. L. 103–322, title XI, §110502, Sept. 13, 1994, 108 Stat. 2015.—Second offense of using explosive to commit felony.

Pub. L. 103–322, title XI, §110512, Sept. 13, 1994, 108 Stat. 2019.—Using firearm in commission of counterfeiting or forgery.

Pub. L. 103–322, title XI, §110513, Sept. 13, 1994, 108 Stat. 2019.—Firearms possession by violent felons and serious drug offenders.

Pub. L. 103–322, title XII, §120004, Sept. 13, 1994, 108 Stat. 2022.—Felonies promoting international terrorism.

Pub. L. 103–322, title XIV, §140008, Sept. 13, 1994, 108 Stat. 2033.—Solicitation of minor to commit crime.

Pub. L. 103–322, title XVIII, §180201(c), Sept. 13, 1994, 108 Stat. 2047.—Possession or distribution of drugs at truck stops or safety rest areas.

Pub. L. 103–322, title XXIV, §240002, Sept. 13, 1994, 108 Stat. 2081.—Crimes against elderly victims.

Pub. L. 103–322, title XXV, §250003, Sept. 13, 1994, 108 Stat. 2085.—Fraud against older victims.

Pub. L. 103–322, title XXVIII, §280003, Sept. 13, 1994, 108 Stat. 2096; Pub. L. 111–84, div. E, §4703(a), Oct. 28, 2009, 123 Stat. 2836.—Hate crimes.

Pub. L. 102–141, title VI, §632, Oct. 28, 1991, 105 Stat. 876.—Sexual abuse or exploitation of minors.

Pub. L. 101–647, title III, §321, Nov. 29, 1990, 104 Stat. 4817.—Sexual crimes against children.

Pub. L. 101–647, title XXV, §2507, Nov. 29, 1990, 104 Stat. 4862.—Major bank crimes.

Pub. L. 101–647, title XXVII, §2701, Nov. 29, 1990, 104 Stat. 4912.—Methamphetamine offenses.

Pub. L. 101–73, title IX, §961(m), Aug. 9, 1989, 103 Stat. 501.—Offenses substantially jeopardizing safety and soundness of federally insured financial institutions.

Pub. L. 100–700, §2(b), Nov. 19, 1988, 102 Stat. 4631.—Major fraud against the United States.

Pub. L. 100–690, title VI, §6453, Nov. 18, 1988, 102 Stat. 4371.—Importation of controlled substances by aircraft and other vessels.

Pub. L. 100–690, title VI, §6454, Nov. 18, 1988, 102 Stat. 4372.—Drug offenses involving children.

Pub. L. 100–690, title VI, §6468(c), (d), Nov. 18, 1988, 102 Stat. 4376.—Drug offenses within Federal prisons.

Pub. L. 100–690, title VI, §6482(c), Nov. 18, 1988, 102 Stat. 4382.—Common carrier operation under influence of alcohol or drugs.

COCAINE AND CRACK SENTENCES AND SENTENCES FOR MONEY LAUNDERING AND OTHER UNLAWFUL ACTIVITY; REDUCTION OF SENTENCING DISPARITIES

Pub. L. 104–38, Oct. 30, 1995, 109 Stat. 334, disapproved of certain amendments relating to lowering of crack sentences and sentences for money laundering and transactions in property derived from unlawful activity submitted by the United States Sentencing Commission to Congress on May 1, 1995, required the Commission to recommend changes to the statutes and sentencing guidelines for unlawful manufacturing, importing, exporting, and trafficking of cocaine, and like offenses, required the Department of Justice to submit to Congress, no later than May 1, 1996, a report on the charging and plea practices of Federal prosecutors with respect to the offense of money laundering, and required the Commission to submit to Congress comments on the Department of Justice study.

EMERGENCY GUIDELINES PROMULGATION AUTHORITY

Section 21 of Pub. L. 100–182 provided that:

''(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.''

SUBMISSION TO CONGRESS OF INITIAL SENTENCING GUIDELINES

Provisions directing that the United States Sentencing Commission submit to Congress within 30 months of Oct. 12, 1984, the initial sentencing guidelines promulgated pursuant to subsec. (a)(1) of this section, see section 235(a)(1)(B)(i) of Pub. L. 98–473, as amended, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

EFFECTIVE DATE OF SENTENCING GUIDELINES

Sentencing guidelines promulgated pursuant to this section effective when U.S. Sentencing Commission has submitted the initial set of sentencing guidelines to Congress, the General Accounting Office has studied and reported to Congress on the guidelines, Congress has examined the guidelines, and section 212(a)(2) of Pub. L. 98–473 takes effect [Nov. 1, 1987], see section 235(a)(1)(B)(ii) of Pub. L. 98–473, as amended, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

STUDIES OF IMPACT AND OPERATION OF SENTENCING GUIDELINE SYSTEM; REPORTING REQUIREMENTS

Pub. L. 98–473, title II, § 236, Oct. 12, 1984, 98 Stat. 2033, provided that, four years after the sentencing guidelines promulgated pursuant to section 994(a)(1) of this title and sections 3581, 3583, and 3624 of title 18 went into effect, the General Accounting Office was to undertake a study of the guidelines to determine their impact and compare the guidelines system with the operation of the previous sentencing and parole release system, and, within six months of such undertaking, report the results to Congress; provided that, within one month of the start of the study, the United States Sentencing Commission was to submit a report detailing the operation of the sentencing guideline system and discussing any problems with the system or reforms needed; and provided that Congress was to review the study.

§ 995. Powers of the Commission

(a) The Commission, by vote of a majority of the members present and voting, shall have the power to—

(1) establish general policies and promulgate such rules and regulations for the Commission as are necessary to carry out the purposes of this chapter;

(2) appoint and fix the salary and duties of the Staff Director of the Sentencing Commission, who shall serve at the discretion of the Commission and who shall be compensated at a rate not to exceed the highest rate now or hereafter prescribed for Level 6 of the Senior Executive Service Schedule (5 U.S.C. 5382);

(3) deny, revise, or ratify any request for regular, supplemental, or deficiency appropriations prior to any submission of such request to the Office of Management and Budget by the Chair;

(4) procure for the Commission temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, United States Code;

(5) utilize, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, local, and private agencies and instrumentalities with or without reimbursement therefor;

(6) without regard to 31 U.S.C. 3324, enter into and perform such contracts, leases, cooperative agreements, and other transactions as may be necessary in the conduct of the functions of the Commission, with any public agency, or with any person, firm, association, corporation, educational institution, or nonprofit organization;

(7) accept and employ, in carrying out the provisions of this title, voluntary and uncompensated services, notwithstanding the provisions of 31 U.S.C. 1342, however, individuals providing such services shall not be considered Federal employees except for purposes of chapter 81 of title 5, United States Code, with respect to job-incurred disability and title 28, United States Code, with respect to tort claims;

(8) request such information, data, and reports from any Federal agency or judicial officer as the Commission may from time to time require and as may be produced consistent with other law;

(9) monitor the performance of probation officers with regard to sentencing recommendations, including application of the Sentencing Commission guidelines and policy statements;

(10) issue instructions to probation officers concerning the application of Commission guidelines and policy statements;

(11) arrange with the head of any other Federal agency for the performance by such agency of any function of the Commission, with or without reimbursement;

(12) establish a research and development program within the Commission for the purpose of—

(A) serving as a clearinghouse and information center for the collection, preparation, and dissemination of information on Federal sentencing practices; and

(B) assisting and serving in a consulting capacity to Federal courts, departments, and agencies in the development, maintenance, and coordination of sound sentencing practices;

(13) collect systematically the data obtained from studies, research, and the empirical experience of public and private agencies concerning the sentencing process;

(14) publish data concerning the sentencing process;

(15) collect systematically and disseminate information concerning sentences actually imposed, and the relationship of such sentences to the factors set forth in section 3553(a) of title 18, United States Code;

(16) collect systematically and disseminate information regarding effectiveness of sentences imposed;

(17) devise and conduct, in various geographical locations, seminars and workshops providing continuing studies for persons engaged in the sentencing field;

(18) devise and conduct periodic training programs of instruction in sentencing techniques for judicial and probation personnel and other persons connected with the sentencing process;

(19) study the feasibility of developing guidelines for the disposition of juvenile delinquents;