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## U.S. Probation Office Western District of Texas

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# The Presentence Report

This explanation is intended to acquaint the public with the format of the presentence report. The content and purpose of each section are described in the context of how the information reported is related to the guidelines issued by the United States Sentencing Commission.

### **The Face Sheet**

The face sheet contains significant court-related information provided for ease of reference. It also contains demographic data provided for the use of the sentencing judge, probation officer, U.S. Sentencing Commission, U.S. Parole Commission, and the U.S. Bureau of Prisons.

### **Part A: The Offense**

#### ***Charges and Conviction(s)***

This section provides a brief chronological history of the prosecution of the case from the filing of the initial charges to the referral to the probation office for a presentence report.

#### ***The Offense Conduct***

The Offense Conduct section provides all pertinent information regarding the offense to assist the court in understanding the facts of the offense and the elements relevant to application of the sentencing guidelines in accordance with the provisions of Chapter Two of the guidelines.

This section may also include information indicating whether the offense of conviction was part of a larger scheme or plan that included other criminal conduct which may be relevant to the determination of the appropriate guideline, the selection of a sentence within the guideline range, and the decision to depart from the guidelines. It further describes the role of the defendant and the conduct of codefendants and other participants during the offense, including planning, preparation for the offense, and the circumstances leading to the arrest or summons of the defendant. The objective of this section is to report what happened as established by the probation officer's investigation, using the officer's best judgment to resolve factual discrepancies among sources.

#### ***Custody Status***

This section provides relevant details of the defendant's custody status. The following should be included at the very minimum: date of arrest; by whom and where; brief history of appearances before judicial officers and decisions which have been reached; amount of bail and whether made or not; conditions of release and degree to which the defendant has complied.

#### ***Victim Impact***

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

#### ***Adjustment for Obstruction of Justice***

This section describes any efforts made by the defendant to impede the investigation or prosecution of this case.

#### ***Adjustment for Acceptance of Responsibility***

This section contains an assessment of the defendant's acceptance of responsibility for the offense of conviction.

#### ***Offense Level Computation***

This section presents the application and calculation of the sentencing guidelines and includes a short synopsis of facts underlying each application, providing tentative findings for the court. For each count, it identifies the applicable guideline and shows the base offense level and any specific offense characteristics or adjustments that modify the base offense level. An explanation indicating the reason for grouping or not grouping counts when a case involves multiple counts. In all cases, the guideline application is displayed, resulting in the total offense level for the case.

The guidelines contain enhancements in Chapter IV of the Guidelines Manual that may override the initial guideline calculation. For example, if the defendant is a career criminal or committed the instant offense as part of a pattern of criminal conduct from which he derived a substantial portion of his income, the defendant's total offense level may be increased. Any such increase is set forth in this section, following the total offense level computation.

#### ***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. This section may include offense behavior described in dismissed counts that is not part of relevant conduct for guideline calculations.

### **Part B: The Defendant's Criminal History**

#### ***Juvenile Adjudications***

This section contains a report of the defendant's record of juvenile adjudications of crime or delinquency and diversionary dispositions based on a finding or admission of guilt. Adjudications are included in chronological order, whether or not they are used in calculating the criminal history category under the Guidelines. The value assigned to each sentence under Chapter IV of the guidelines is also shown.

#### ***Criminal Convictions***

This section contains a report of the defendant's adult criminal convictions and those diversions resulting from a guilty plea in a judicial proceeding. It includes a description of the defendant's prior criminal convictions and dispositions in each case as well as the defendant's adjustment while incarcerated or under supervision.



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Adult criminal convictions are included in chronological order, whether or not they are used in calculating the criminal history score under the guidelines. The value assigned to each sentence pursuant to Chapter IV of the guidelines is also shown.

**Criminal History Computation**

This section displays the calculation of the criminal history category and the basis for the calculation.

**Pending Charges**

This section lists any pending charges against the defendant. This section is omitted if there are no charges.

**Other Criminal Conduct**

This section reports reliable information regarding other past criminal conduct which may indicate the criminal history category does not adequately reflect the seriousness of the defendant's past criminal conduct, or the defendant's likelihood to commit future crimes. The information is relevant in determining the adequacy of the defendant's criminal history category.

**Other Arrests**

All other arrests of the defendant are reported in this section in order to provide information to the court 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 condition; (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 make restitution or pay a fine.

**Part D: Sentencing Options**

This part sets forth 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, forfeitures, and for drug offenses, denial of benefits. By presenting the statutory and guideline provisions, the parameters of each may be compared. Guideline sentencing options are found in Chapter V of the Guideline Manual.

**Impact of the Plea Agreement**

This part is included in presentence reports that are prepared 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.

**Part E: Factors That May Warrant Departure**

This part contains the probation officer's statement of "any factors that may indicate that a sentence of a different kind or of a different length from the one within the applicable guideline would be more appropriate under all the circumstances." Fed. R. Crim. P. 32(c) (2) (B). Inclusion of information in this section does not necessarily constitute a recommendation by the probation officer for a departure.

**Part F: Factors That May Warrant a Sentence Outside of the Advisory Guideline System**

As a result of the Supreme Court's ruling in *U.S. v. Booker*, 125 S.Ct. 738 (2005), a system was developed in which the sentencing courts are required to consider the sentencing options recommended by the sentencing guidelines, but the judges are free to impose any sentence authorized by Congress. This part contains information identified by the officer as any fact or circumstance addressed in the report that may be relevant to sentencing that was not otherwise considered in the guideline calculations or departure analysis. Since most grounds will have already been considered by the guidelines or policy statements, officers are cautious when identifying these factors.

**Addendum to the Presentence Report**

In some courts, the presentence report is disclosed to the defendant, counsel for the defendant, and counsel for the Government before it is submitted to the judge. This procedure allows both counsel to communicate with the probation officer to resolve any concerns or objections regarding material information, sentencing classifications, or the sentencing guideline range contained in the presentence report.

Early disclosure of the report to the attorneys allows the probation officer to conduct any further investigation and make revisions to the presentence report that may be necessary. Any unresolved issues or objections are reported to the sentencing judge in the addendum to the presentence report. The addendum also contains the probation officer's comments regarding the issues.



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