



First Step Act



Introduction

Raquel Wilson

Director

Office of Education and Sentencing Practice

Email – rwilson@ussc.gov

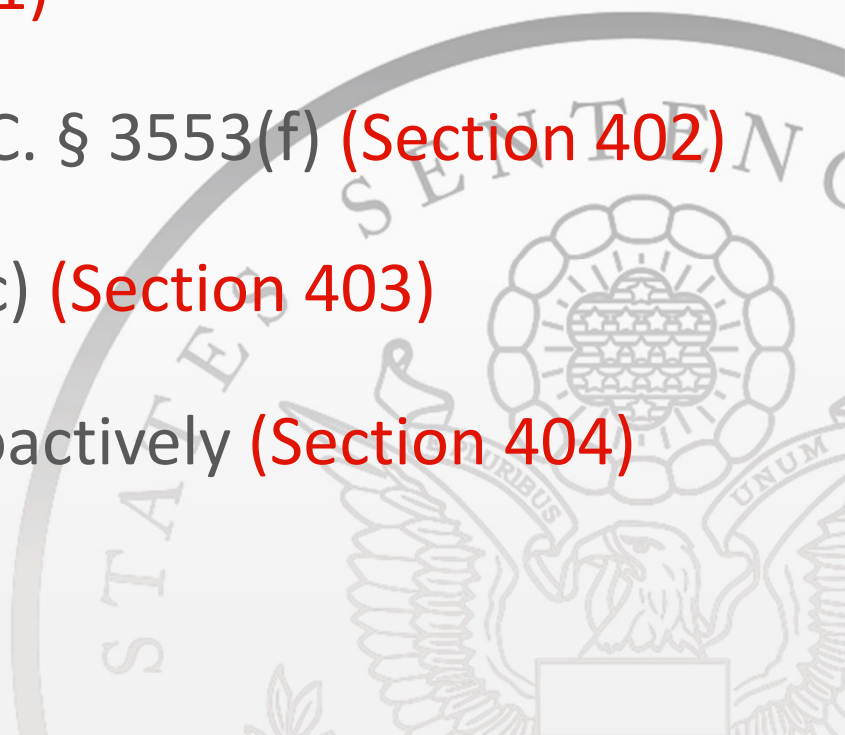
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First Step Act Sentencing Provisions

- Reduces certain enhanced mandatory minimum penalties for some drug offenders (Section 401)
- Broadens the safety valve at 18 U.S.C. § 3553(f) (Section 402)
- Clarifies stacking at 18 U.S.C. § 924(c) (Section 403)
- Applies the Fair Sentencing Act retroactively (Section 404)



Commission Resources on the First Step Act

- *ESP INSIDER EXPRESS Special Edition*
 - Located at ussc.gov
- Sentence and Prison Impact Estimates
 - Located at ussc.gov
- HelpLine: (202) 502-4545



Key Points for § 851 Changes

- Mandatory minimums reduced
- New criteria for enhanced penalties
 - Predicate offenses have changed
 - New time-served requirement



Enhanced Penalties

Statutory Provision	Statutory Penalty	Enhanced Penalty BEFORE First Step Act	Enhanced Penalty AFTER First Step Act
21 U.S.C. § 841(b)(1)(A)	10-year Mandatory Minimum	<p>20-year Mandatory Minimum (after one prior conviction for a felony drug offense)</p> <p>Life (after two or more prior convictions for a felony drug offense)</p>	<p>15-year Mandatory Minimum (after one prior conviction for a serious drug felony or serious violent felony)</p> <p>25-year Mandatory Minimum (after two or more prior convictions for a serious drug felony or serious violent felony)</p>
21 U.S.C. § 841(b)(1)(B)	5-year Mandatory Minimum	10-year Mandatory Minimum (after one prior conviction for a felony drug offense)	10-year Mandatory Minimum (after one prior conviction for a serious drug felony or serious violent felony)

Table D-12

APPLICATION OF RECIDIVIST PENALTIES IN DRUG TRAFFICKING CASES¹
Fiscal Year 2018

DRUG TYPE	ENHANCEMENT FILED	ENHANCEMENT WITHDRAWN		ENHANCEMENT NOT WITHDRAWN	
	N	N	%	N	%
TOTAL	1,261	254	20.1	1,007	79.9
Powder Cocaine	206	33	16.0	173	84.0
Crack Cocaine	203	49	24.1	154	75.9
Heroin	184	23	12.5	161	87.5
Marijuana	69	11	15.9	58	84.1
Methamphetamine	537	134	25.0	403	75.0
Other	62	4	6.5	58	93.5



Predicate Offenses Have Changed

- Serious Drug Felony
- Serious Violent Felony
- Time-Served Requirement



Serious Drug Felony

- Statutory maximum of at least ten years
- Time served exceeded 12 months
- Released within 15 years of commencement of the instant offense



Serious Violent Felony

- Three-part definition
- Statutory maximum of at least ten years for some
- Time served exceeded 12 months



Effective Date of Safety Valve Section

- Applies to a “conviction entered” on or after December 21, 2018
- Interpretations vary
- Consult Rules of Criminal Procedure



Safety Valve Eligibility Under the First Step Act

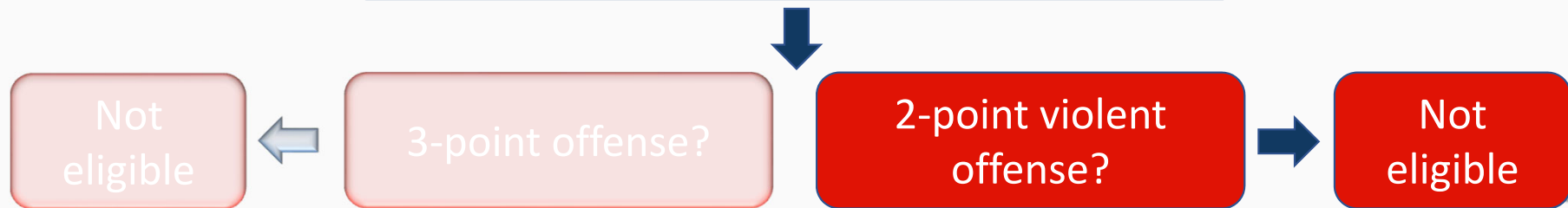


3-point offense?

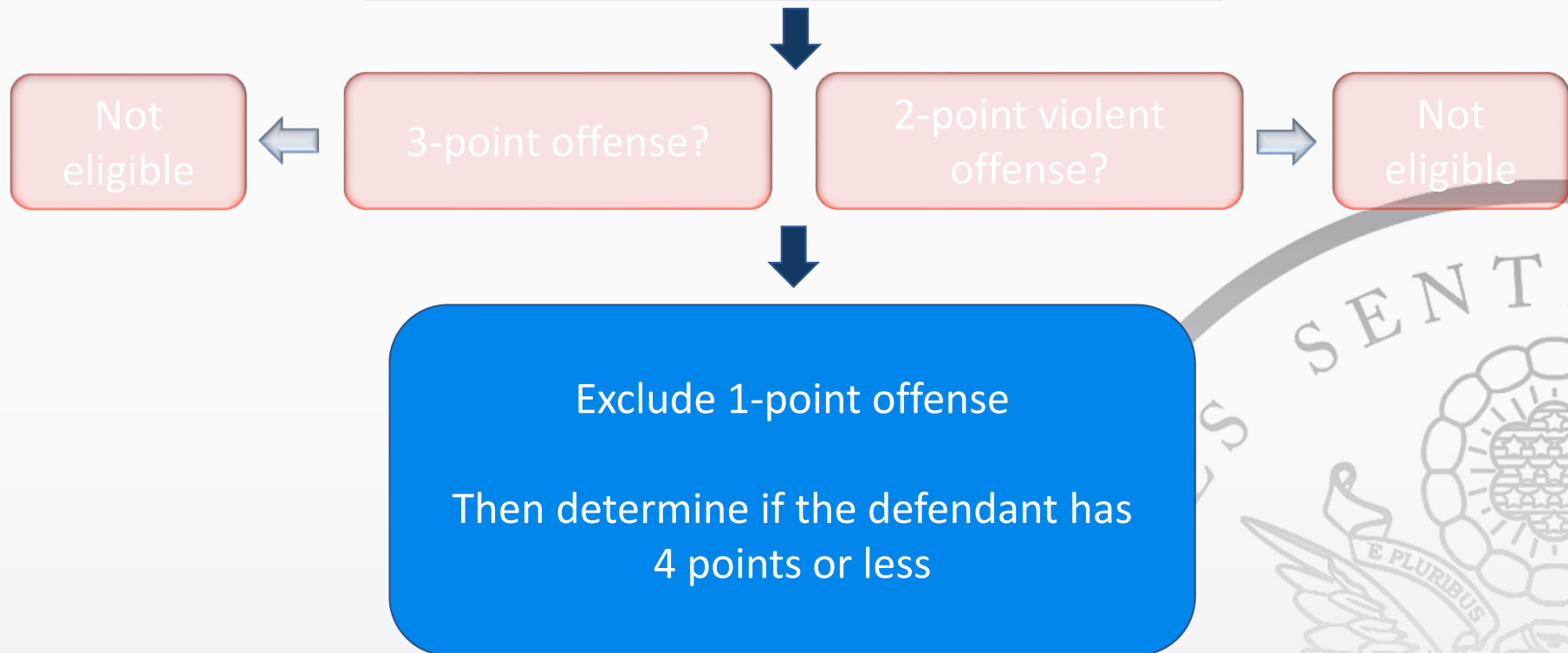
Not
eligible



Safety Valve Eligibility Under the First Step Act



Safety Valve Eligibility Under the First Step Act



Safety Valve Eligibility Under the Guidelines



Two or more criminal history points
=
not eligible



Two-Level Safety Valve Decrease

- Drug Guideline:
 - If defendant meets the criteria in the safety valve guideline, decrease by 2 levels.
- Safety Valve Guideline:
 - “defendant does not have more than 1 criminal history point...”



18 U.S.C. § 924(c) Stacking Provisions

§ 924(c) Possession Counts	<u>Before</u> First Step Act	<u>After</u> First Step Act
1 Count	Mandatory minimum of 5 Years	Mandatory minimum of 5 Years
2 Counts in same indictment	Mandatory minimum of $5 + 25 = 30$ years	Mandatory minimum of $5 + 5 = 10$ years
3 Counts in same indictment	Mandatory minimum of $5 + 25 + 25 = 55$ years	Mandatory minimum of $5 + 5 + 5 = 15$ years

BEFORE	The Fair Sentencing Act	AFTER
5 g 50 g	21 U.S.C. § 841 5-yr min - 40-yr max 10-yr min - life max	28 g 280 g
5 g 50 g	21 U.S.C. § 960 5-yr min - 40-yr max 10-yr min - life max	28 g 280 g

Other First Step Act Provisions

- Compassionate Release
- Risk and Needs Assessments
- Good Conduct Time
- Inmate Programming and Release Planning



Questions or Comments?



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