

Important Changes to Federal Criminal Sentencing Guidelines

November 2, 2023

Effective November 1, 2023, the United States Sentencing Commission's **Amendment 821**, also known as the "2023 Criminal History Amendment," has officially become part of the federal sentencing guidelines. Thousands of incarcerated individuals, as well as those currently facing pending federal criminal charges, may be eligible for a marked reduction in their sentences.

I. The New Zero-Criminal History Category

Amendment 821 addresses disproportionate sentencing by introducing the Zero Criminal History category at the newly created Section 4C1.1 to the U.S. Sentencing Guidelines. Any offenders who did not receive any criminal history points (i.e., scored on Criminal History Category I) and whose offense conduct does not contain certain aggravating factors (e.g., crimes of violence or a sex-related offense) will be eligible for the new "Zero Criminal History" category, which results in a decrease of two levels from the total offense scoring level. The amendment also includes provisions for retroactive application, allowing those sentenced prior to the amendment's enactment to reap its benefits.

Previously, even individuals with minor or non-violent offenses may have received higher sentences due to their criminal history. Amendment 821 aims to rectify this by ensuring that sentences are based on the current offense rather than past convictions, promoting a fairer and more proportionate approach to sentencing. It is important, however, to note that no automatic sentence reductions will be granted. Each case will be reviewed and determined by a district judge. If approved, sentence reduction proceedings may take place before February 1, 2024, but any order reducing a defendant's term of imprisonment must have an effective date of February 1, 2024, or later.

II. Presumption Against Imprisonment

In addition to the new two-level reduction under Section 4C1.1, the **new Commentary** (p. 80) for Section 5C1.1 (Imposition of a Term of Imprisonment) features a presumption against imprisonment for defendants who both receive the newly enacted Zero-Point Offender adjustment and have an applicable guideline range within Zones A or B. Zone A consists of sentencing ranges of 0–6 months. Zone B consists of sentencing ranges above Zone A but with a maximum penalty of no more than 15 months. The Commission's new commentary is significant, as it is in line with Congress' directive that a sentence other than imprisonment may be appropriate in cases where the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense. See **28 USC 994(j)**.

III. Changes to "Status Point" Scorings

Part A of Amendment 821 also changes the so-called "status points" for offenders. Status points are added criminal history "points" that may be added to a person's sentence if the offense took place while one was on a current criminal sentence (e.g., probation, parole, supervised release, work release, etc.). Currently, the sentencing guidelines provide for an upward adjustment of two criminal history points if the defendant committed the charged offense "while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status." Section 4A1.1(d). Amendment 821 limits the overall criminal history impact of status points in two distinct ways. First, only offenders with 7 or more criminal history points can receive status points adjustments. But offenders with 6 or fewer criminal history points will no longer receive "status points." Second, Amendment 821 changes the scoring from 2

Continued

points to 1 point the “status points” assessed for offenders to whom the revised language applies to. The Commission proposed the changes because it found that “status points add little to the overall predictive value associated with criminal history score” and do not conform to empirical data on recidivism rates and patterns of career criminal behavior.

It is essential to note that each case will be reviewed and granted by a district judge, ensuring a fair and individualized approach to sentence reductions. Should you wish to discuss the impact of these amendments to the federal sentencing guidelines further or other federal criminal matters, please contact your Miller Canfield attorney or the authors of this alert.