



## 2023 AMENDMENTS IN BRIEF

In April 2023, the U.S. Sentencing Commission promulgated amendments to the federal sentencing guidelines. For a more detailed discussion of the policy determinations made by the Commission, please refer to the *Reason for Amendment* in the “Reader-Friendly” and Official Text (link in QR code).

### Amendment #821

## Criminal History

Part A of the amendment addresses “**Status Points**,” decreasing them by one point for individuals with seven or more criminal history points and eliminating Status Points for those with six or less criminal history points.

Part B creates a new §4C1.1 guideline that provides a decrease of two offense levels for “**Zero-Point Offenders**” (no criminal history points) whose offense did not involve specific aggravating factors. The amendment revises §5C1.1 to provide guidance regarding the appropriateness of a sentence other than prison for certain first offenders—as directed by 28 U.S.C. § 994(j).

Part C amends the §4A1.3 Commentary to include prior **marijuana possession** sentences as an example of when a downward departure may be warranted for criminal history reasons.

### RETROACTIVITY

In August 2023, the Commission voted to allow retroactive application of **Parts A and B**, extending these reductions to currently incarcerated individuals with a 3-month delay in implementation (meaning orders must have an effective date **no earlier than February 1, 2024** (see p.4 for more information)).

### THE ISSUE

## New Data & A Changing Legal Landscape

While relatively common in federal cases, status points add less predictive value to the criminal history score than the original Commission may have expected.

The Commission’s recidivism studies also found that offenders with zero criminal history points were less likely to be rearrested following their release than other federal offenders. The Commission also observed consistently high departure and variance rate for zero-point offenders.

Meanwhile, many states have reduced or eliminated penalties for marijuana possession but these convictions still impact a federal offender’s criminal history score.

The Commission determined that this research coupled with court feedback warranted refinements to Chapter Four.

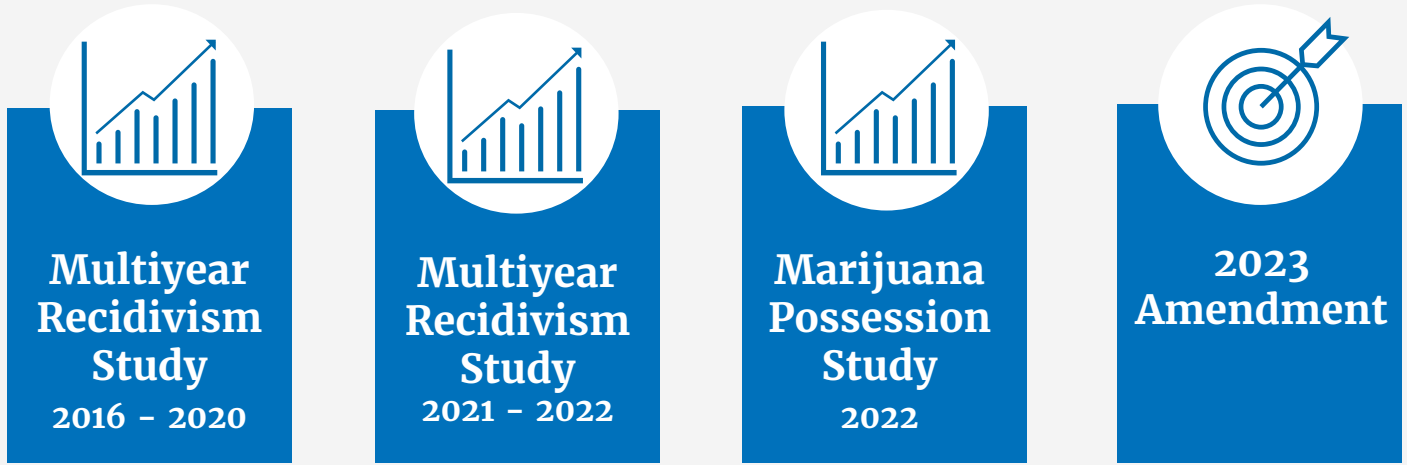
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Scan or click QR code  
for full Reason for  
Amendment.



## TIMELINE

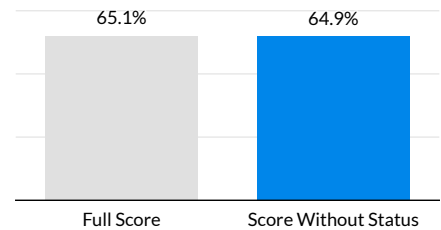


## FACTS & FIGURES

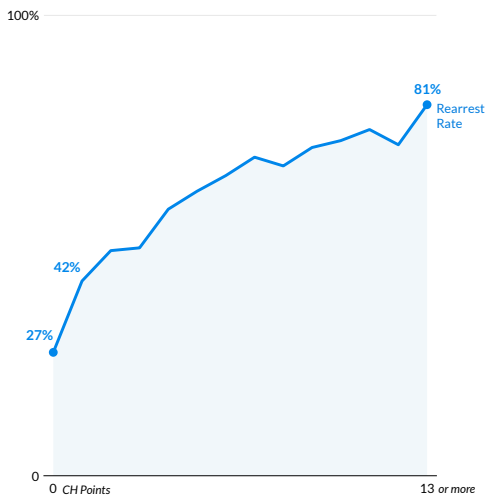
### Predictive Value of Status Points

Over the last five years, status points were applied in 38% of cases—moving 62% of such offenders into a higher criminal history category. At the same time, Commission data demonstrate that status points minimally improve the criminal history score’s successful prediction of rearrest—by just 0.2%.

Successful Prediction of Rearrest by Criminal History Score



Rearrest Rate by Criminal History Points



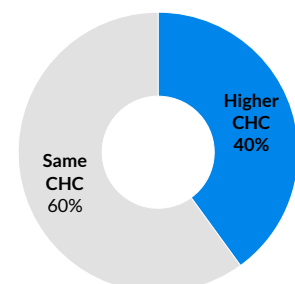
### Zero-Point vs. Other Offenders

In several recidivism studies, the Commission found that zero-point offenders recidivated far less often than other offenders (27% vs. 42% for one-point offenders, and 49% overall). In FY 2021, zero-point offenders accounted for one-third of the federal sentencing caseload. The district courts sentenced just 39% of these offenders within the guideline range—often citing overstatement of criminal history as a reason for the below-range sentence.

### Impact of Marijuana Possession Priors

Marijuana possession priors increased the criminal history score for 8% of all federal offenders sentenced in FY 2021—moving 40% of such offenders into a higher criminal history category. Most marijuana possession priors were for state court convictions resulting in less than 60 days in prison.

Impact of Marijuana Possession Priors



## RATIONALE

### Part A: Limiting the Impact of Status Points

Commission research has found that an offender's criminal history guideline calculation is strongly associated with the likelihood of future recidivism by the defendant but that status points only minimally improve the predictive value of the criminal history score—and less than the original Commission may have expected.

§4A1.1

The amendment retains status points in a more targeted fashion for offenders with seven or more criminal history points. Applying status points to a more targeted group of offenders continues to serve the broader purposes of sentencing while also addressing some of the other concerns raised regarding the impact of status points.

### Part B: Decreasing Offense Levels, Expanding Alternatives for Zero-Point Offenders

The new §4C1.1 provides a targeted decrease of two levels from the offense level determined under Chapters Two and Three for offenders who did not receive any criminal history points under Chapter Four, Part A and whose instant offense did not involve specified aggravating factors. The eligibility criteria is finely tailored—excluding offenders from eligibility based upon offense seriousness and aggravating factors. The exclusionary criteria were again informed by extensive data analyses and public comment as well as by existing congressional legislation (*e.g.*, the statutory safety valve at 18 U.S.C. § 3553(f) and the Bipartisan Safer Communities Act).

§4A1, §4C1.1, §5C1.1

The amendment also implements Congress's directive at 28 U.S.C. § 994(j) that the Commission ensure 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. The Commission determined that the revised commentary fulfills Congress's intent in promulgating section 994(j) while providing appropriate limitations and guidance through reliance on the criteria set forth in new §4C1.1 and the specific statutory language set forth in section 994(j).

The amendment also considers the Commission's extensive recidivism research and feedback from the district courts—as noted by the consistently high rate of below-range sentences citing criminal history issues. The Commission believes these changes will strengthen the overall sentencing guidelines system.

### Part C: Specifying Marijuana Possession Priors as a Downward Departure Scenario

The amendment responds to shifting trends in many states regarding the treatment of simple possession of marijuana and the continued impact of such prior convictions on a federal offender's sentence.

§4A1.3

The Commission found that in FY 2021, 97% of federal offenders' marijuana possession priors were for state convictions—some from states that have changed their laws to decriminalize, legalize, expunge or seal records for marijuana possession (or some combination thereof). Marijuana possession priors from these states resulted in higher criminal history calculations under the federal sentencing guidelines for 695 offenders.

## Retroactivity

Because Parts A and B of the amendment reduce the sentencing range of future defendants, the Commission was required by law to consider whether judges can extend those reductions to previously sentenced individuals.

In August 2023, the Commission **voted to allow for delayed retroactive application of Parts A and B with an effective date no earlier than February 1, 2024**—reflecting a 3-month delay in implementation to provide all parties with the time needed to review petitions and prepare for successful reentry.

The Commission’s July 2023 analysis estimated the following impact:

- **11,495 incarcerated individuals** will have a lower sentencing range under **Part A** (“Status Points”) with a possible **sentence reduction of 11.7%, on average**.
- **7,272 incarcerated individuals** will be eligible for a lower sentencing range under **Part B** (“Zero-Point Offenders”) with a possible **sentence reduction of 17.6%, on average**.

The Commission received expert testimony and public comment from a wide spectrum of stakeholders, including senators, judges, lawyers, religious leaders, doctors, professors, advocates, victims, families, and incarcerated individuals.

## ADDITIONAL RESOURCES

The Criminal History Amendment makes several changes to Chapter Four: (1) to implement the Congressional directive to the Commission at 28 U.S.C. § 994(j); (2) to respond to shifts in the legal landscape; (3) to reflect new Commission recidivism data; and (4) in consideration of the factors identified by courts when imposing below-range sentences. The amendment is informed by extensive public comment and a public hearing with perspectives of various stakeholders in the federal criminal justice system.



### Research & Data Reports

U.S. SENT’G COMM’N, COMPARISON TO PREVIOUS RETROACTIVE GUIDELINE AMENDMENTS (JULY 2023)

U.S. SENT’G COMM’N, ANALYSIS OF THE IMPACT OF 2023 CRIMINAL HISTORY AMENDMENT (PARTS A AND B) IF MADE RETROACTIVE (MAY 2023)

U.S. SENT’G COMM’N, WEIGHING THE IMPACT OF SIMPLE POSSESSION OF MARIJUANA: TRENDS AND SENTENCING IN THE FEDERAL SYSTEM (JAN. 2023)

U.S. SENT’G COMM’N, REVISITING STATUS POINTS (JUN. 2022)

U.S. SENT’G COMM’N, RECIDIVISM OF FEDERAL OFFENDERS RELEASED IN 2010 (SEPT. 2021)

U.S. SENT’G COMM’N, THE CRIMINAL HISTORY OF FEDERAL OFFENDERS (MAY 2018)

U.S. SENT’G COMM’N, CRIMINAL HISTORY AND RECIDIVISM OF FEDERAL OFFENDERS (MAR. 2017)



### Comment & Testimony

U.S. SENT’G COMM’N, TESTIMONY FROM PUBLIC HEARING ON RETROACTIVITY OF PARTS A AND B (JULY 2023)

- EXECUTIVE BRANCH PERSPECTIVE
- PRACTITIONERS’ PERSPECTIVES
- ADVISORY GROUP PERSPECTIVES
- LAW ENFORCEMENT PERSPECTIVES
- COMMUNITY PERSPECTIVES
- FORMERLY INCARCERATED INDIVIDUALS’ PERSPECTIVES

THOUSANDS OF PUBLIC COMMENT SUBMISSIONS ON RETROACTIVITY OF PARTS A AND B (JUNE 2023)

U.S. SENT’G COMM’N, TESTIMONY FROM PUBLIC HEARING ON PROPOSED AMENDMENTS (MAR. 2023)

- EXECUTIVE BRANCH PERSPECTIVE
- FEDERAL PUBLIC DEFENDER PERSPECTIVE
- ADVISORY GROUP PERSPECTIVES

THOUSANDS OF PUBLIC COMMENT SUBMISSIONS ON PROPOSED AMENDMENTS (MAR. 2023)