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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)
- Reduces the severity of the stacking of § 924(c) counts (Section 403)
- Fair Sentencing Act applies retroactively (Section 404)



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United States Sentencing Commission | Office of Education & Sentencing Practice

ESP INSIDER EXPRESS

SPECIAL EDITION

First Step Act

Signed Into Law on December 21st, 2018

The First Step Act (P.L. 115-391) was signed into law by the President on December 21, 2018. The Act deals mostly with reentry of the incarcerated, directing the Federal Bureau of Prisons to take specific actions regarding programming, good-time credit, and compassionate release, among other issues. The Act does not contain any directives to the Commission.

Related to its sentencing reform provisions (Title IV), the Act makes important changes to mandatory minimum penalties and to the safety valve provision (a provision that allows courts to sentence a defendant without regard to the mandatory minimum). Specifically, in relation to Title IV, the Act:

- reduces certain enhanced mandatory minimum penalties for some drug offenders (Section 401);
- broadens the existing safety valve at 18 U.S.C. § 3553(f), increasing the number of offenders eligible for relief from mandatory minimum penalties (Section 402);
- reduces the severity of the "stacking" of multiple § 924(c) offenses (Section 403); and
- applies retroactively the Fair Sentencing Act of 2010 which reduced mandatory minimum penalties for crack cocaine offenses (Section 404).

February 2019

First Step Act

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Featured:

OVERVIEW OF THE
FIRST STEP ACT
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First Step Act Provisions



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Commission Resources on the First Step Act

- ESP INSIDER EXPRESS Special Edition
 - Located at ussc.gov
- Sentence and Prison Impact Estimate
 - Located at ussc.gov
- Commission's Helpline (202) 502-4545



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Key Points for § 851 Changes

- Reductions in mandatory minimum provisions:
 - 20 year mandatory min reduced to 15 years
 - Life mandatory min reduced to 25 years
- Instead of predicate offense being for “any prior drug felony”, predicate offense must now be:
 - “serious drug felony” or “serious violent felony”



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What is a Serious Drug Felony?

- Defined at 18 U.S.C. § 924(e)(2)(A)
 - an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46 or
 - an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802))



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Requirements for the Prior Offense to Qualify as a Serious Drug Felony

- Must have a statutory maximum of at least ten years
- Defendant had to have served a term of imprisonment of more than 12 months
- Release from imprisonment had to be within 15 years of commencement of the instant offense



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What is a Serious Violent Felony?

- Defined at 18 U.S.C. § 3559(c)(2)
 - Enumerated offenses (*e.g.*, murder, certain sex offenses, kidnapping, and certain firearms offense)
 - Force clause
 - Residual clause

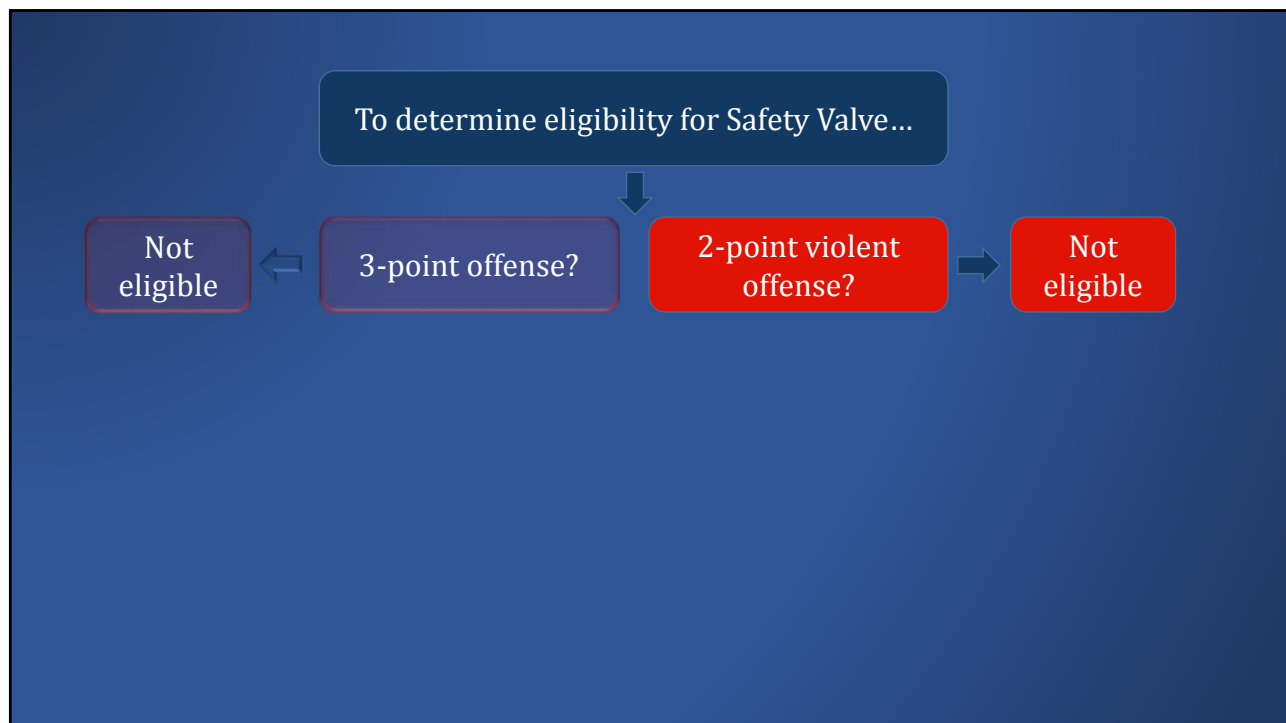
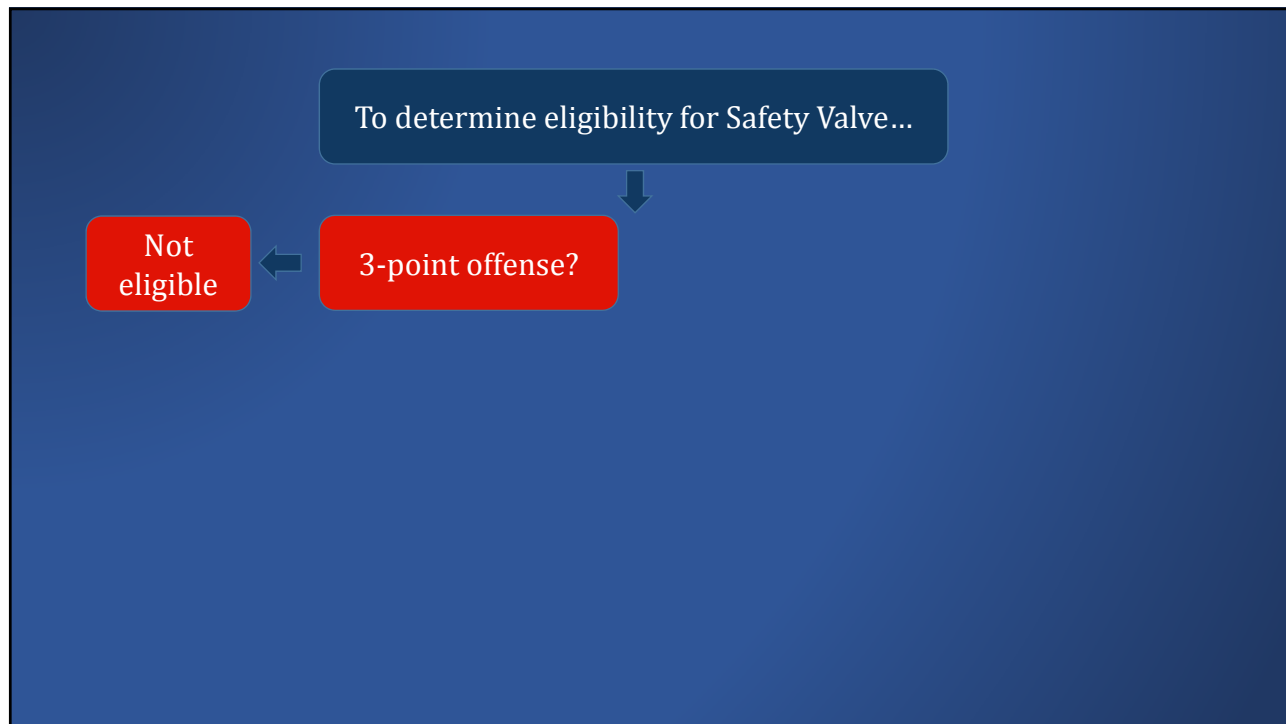


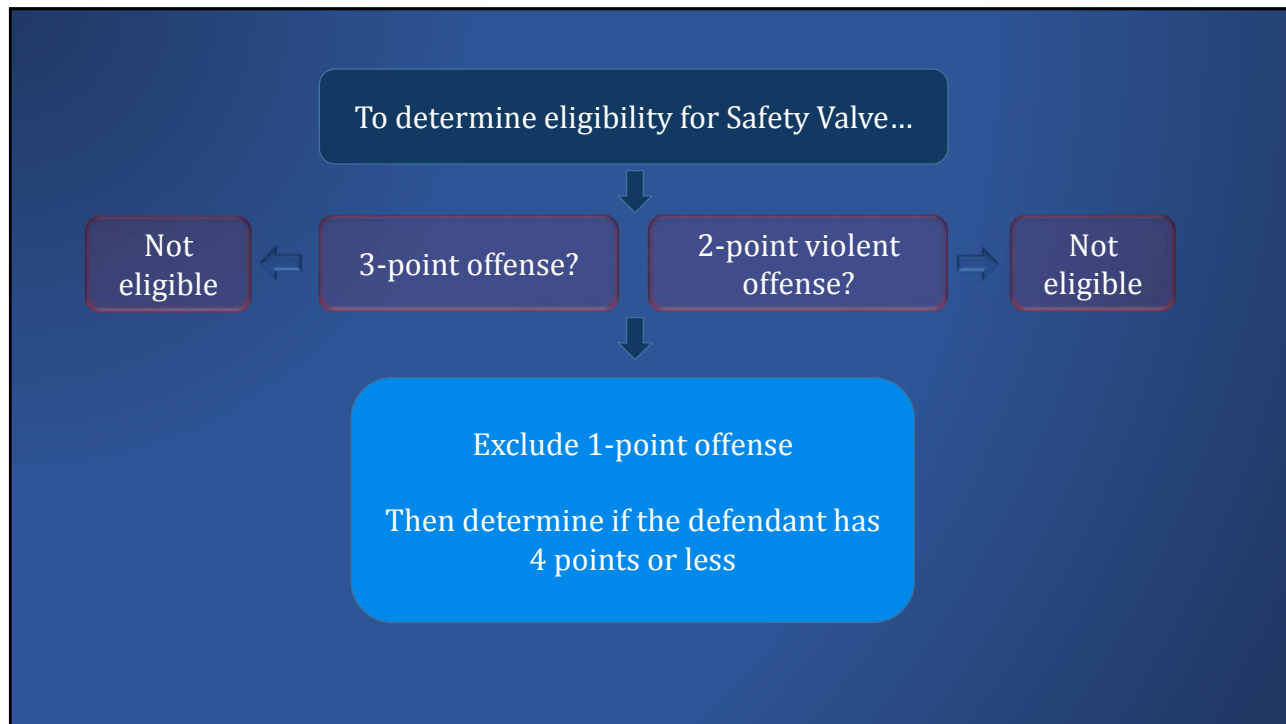
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Requirements for the Prior Offense to Qualify as a Serious Violent Felony

- Defendant must have served a term of imprisonment of more than 12 months
- If prior offense qualifies under force or residual clauses, offense must have a maximum term of imprisonment of ten years or more







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Effective Date of Safety Valve Section

- The amendments made by this section shall apply only to a **conviction entered** on or after the date of the enactment of the Act



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Determining §2D1.1(b)(18) (2-level decrease)

- §2D1.1(b)(18):
 - If defendant meets the criteria set forth in subdivisions (1)-(5) of subsection (a) of §5C1.2, decrease by 2 levels.
- §5C1.2(a)(1):
 - “defendant does not have more than 1 criminal history point...”



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18 U.S.C. § 924(c)

- Amends the “stacking provision” at 18 U.S.C. 924(c) to apply only to offenders who have previously been convicted of a 924(c)
- Effective date: applies to any offense that was committed before the date of the enactment of the Act



18 U.S.C. § 924(c) Possession Counts of Conviction in the Same Indictment

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§ 924(c) Counts of Conviction in Same Indictment	<u>Before</u> the First Step Act	<u>After</u> the First Step Act
1 Count	Mandatory minimum of 5 Years	Mandatory minimum of 5 Years
2 Counts	Mandatory minimum of $5 + 25 = 30$ years	Mandatory minimum of $5 + 5 = 10$ years
3 Counts	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

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Amy, Vicky, and Andy Child Pornography Assistance Act of 2018

- Provides guidance to courts to determine restitution in cases of possession, trafficking, and production of child pornography
- Court must impose a minimum of \$3,000 in restitution for each victim
- Special assessments may be imposed on defendants:



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2018 Guideline Amendments



Amendments to the Sentencing Guidelines

Effective Date
November 1, 2018

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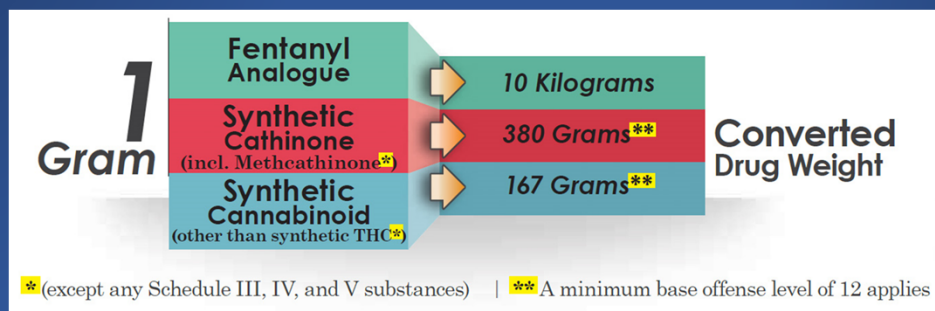
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2018 Guideline Amendments, effective November 1, 2018

- Fentanyl and Synthetic Drugs
 - New definition of fentanyl analogue: effectively increasing guideline penalties
 - New increase for knowingly misrepresenting fentanyl or fentanyl analogue as another substance
 - Establishes drug ratios and minimum offense levels for synthetic drugs (cathinones and cannabinoids)



Synthetic Drugs



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Stokeling v. United States, 139 S. Ct. 544 (2019)

- A robbery offense that has an element of force sufficient to overcome a victim's resistance meets the level of force necessary to qualify as a violent felony under the elements clause of the Armed Career Criminal Act



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U.S. v. Stitt, 139 S. Ct. 399 (2018)

- Generic burglary, as described in the ACCA, includes burglary of a structure or vehicle that has been adapted or is customarily used for overnight habitation. These include mobile homes, recreational vehicles, trailers, and camping tents.



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U.S. v. Quarles, 850 F.3d 836 (6th Cir. 2017), *cert. granted*, -S. Ct.-, 2019 WL 166873 (2019)

- Whether *Taylor v. United States*' definition of generic burglary requires proof that intent to commit a crime was present at the time of unlawful entry or first unlawful remaining, as two circuits hold; or whether it is enough that the defendant formed the intent to commit a crime at any time while "remaining in" the building or structure, as the court below and three other circuits hold.



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U.S. v. Davis, 903 F.3d 483 (5th Cir. 2018), *cert. granted*, -S. Ct.-, 2019 WL 98544 (2019)

- Whether the subsection-specific definition of "crime of violence" in 18 U.S.C. § 924(c)(3)(B) [residual clause], which applies only in the limited context of a federal criminal prosecution for possessing, using or carrying a firearm in connection with acts comprising such a crime, is unconstitutionally vague.



***U.S. v. Haymond*, 869 F.3d 1153 (10th Cir. 2017),
cert. granted, 139 S. Ct. 398 (2018)**

- Whether the U.S. Court of Appeals for the 10th Circuit erred in holding “unconstitutional and unenforceable” the portions of 18 U.S.C. § 3583(k) that required the district court to revoke the respondent’s 10-year term of supervised release, and to impose five years of reimprisonment, following its finding by a preponderance of the evidence that the respondent violated the conditions of his release by knowingly possessing child pornography.

