UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

IN THE MATTER OF:

(1) AO 245B and Future Revisions (Statement of Reasons);

(2) Requests to Courtroom Deputy Clerks And Probation Officers.

Misc. No. 15-988 (JAF)

RECEIVED AND FILED
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CLERK'S OFFICE
U.S. DISTRICT COURT
SAN JUAN, P.R.

STANDING ORDER

1. Since the time in which the AO form for Statement of Reasons (SOR) was introduced, it has been the practice in this District, or at least in my court, to entrust the preparation of the SOR to the Probation Officer who covers the sentencing hearing. This is an approved practice.

The present AO Form 245B and the revised format that will substitute the present form next November 1, 2015 (245B rev. 9/15), is a document or form designed with the input of the U.S. Sentencing Commission and the Criminal Law Committee of the Judicial Conference of the United States for the purpose of complying with different federal statutes requiring reporting on criminal sentences to the United States Congress, and to mainly serve as a statistical source for the U.S. Sentencing Commission. As a matter of fact, the SOR is not filed in the public record.

Effective immediately, all SORs generated in my court should be made available to me for revision and any needed correction will be made by the court. The Clerk will not transmit the SOR until this judge has reviewed the same.

Any party or court in need of reviewing a criminal sentence should rely mainly on the transcript of proceedings generated from the sentencing hearing. The SOR form, while containing valuable information for Congress and the U.S. Sentencing Commission, is not designed to include

every single reason or justification behind an imposed sentence. The transcript for the sentencing hearing is the document that fully describes what the district judge did or did not consider at the time of sentencing.

2. The Probation Department is instructed to calculate and publish in presentence reports everything related to criminal history under Chapter Four of the Sentencing Guidelines, irrespective of the type of case, *i.e.*, guideline case or non-guideline case. This is of specific application in firearms cases, where the guideline is the statutory minimum contained in a particular statute. Even in those cases, sometimes referred to as non-guideline cases, the complete criminal history assists the court in crafting the appropriate "non-guideline sentence" for a particular case.

3. It has been brought to our attention that in many instances defense counsel do not allow a criminal defendant to fully cooperate with probation officers regarding those sections of the Presentence Investigation Report (PSI) that cover acceptance of responsibility and other particulars regarding defendant's social history. Effective immediately, whenever this situation occurs, the Probation Officer will inform the court in the PSI of any limitation placed by counsel in the preparation of any specific section of the PSI.

IT IS SO ORDERED.

San Juan, Puerto Rico, this 13th day of October, 2015.

JOSE ANTONIO FUSTE
United States District Judge

Attachments:

1) 2/11/2004 Memo to Judges, Courts of Appeals and District Courts; Magistrate Judges; Circuit Executives; District Court Executives; Clerks, Courts of Appeals and District Courts, and Chief Probation Officers, from AO Director L. Ralph Mecham;

2) 10/2005 Publication "The Statement of Reasons for Use in Reporting Sentencing Decisions."

3) 10/17/2005 Memo to Judges, Courts of Appeals and District Courts; Magistrate Judges; Circuit Executives; District Court Executives; Clerks, Courts of Appeals and District Courts;

Chief Probation Officers, and Chief Pretrial Services Officers, from AO Director L. Ralph Mecham;

4) 6/9/2006 Memo to Judges, Courts of Appeals and District Courts; Magistrate Judges; Circuit Executives; District Court Executives; Clerks, Courts of Appeals and District Courts; Chief Probation Officers, and Chief Pretrial Services Officers, from AO Director L. Ralph Mecham;

5) 9/28/2015 Memo to Judges, United States District Courts; Magistrate Judges; Clerks, United States District Courts, Federal Public/Community Defenders, and Chief Probation Officers, from Honorable Irene M. Keeley, Chair, Committee on Criminal Law, Judicial Conference of the United States.

LEONIDAS RALPH MECHAM
Director

CLARENCE A. LEE, JR.
Associate Director

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

WASHINGTON, D.C. 20544

February 11, 2004

MEMORANDUM TO : **JUDGES, UNITED STATES COURTS OF APPEALS**
JUDGES, UNITED STATES DISTRICT COURTS
UNITED STATES MAGISTRATE JUDGES
CIRCUIT EXECUTIVES
DISTRICT COURT EXECUTIVES
CLERKS, UNITED STATES COURTS OF APPEALS
CLERKS, UNITED STATES DISTRICT COURTS
CHIEF PROBATION OFFICERS

SUBJECT: Revised Forms for Judgments in a Criminal Case (AO245B - AO245I)
(IMPORTANT INFORMATION)

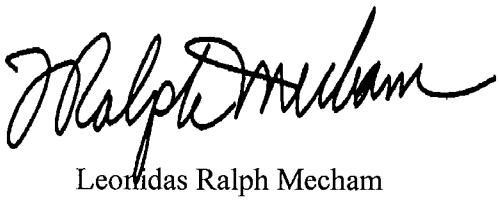
At its September 2003 session, the Judicial Conference of the United States approved revised forms for judgments in a criminal case (AO245B - 245I (Rev. 12/03)) for use by the courts. The Judicial Conference also designated the Statement of Reasons, which is attached to the judgment, as the mechanism by which courts comply with the requirements of the Prosecutorial Remedies and Other Tools to end the Exploitation of the Children Today Act of 2003, or the PROTECT Act" (Public Law No. 108-21, 117 Stat. 650 (April 30, 2003)) to report reasons for sentences to the United States Sentencing Commission. On December 10, 2003, acting on behalf of the Judicial Conference, the Executive Committee approved technical changes to the Statement of Reasons recommended by the Sentencing Commission to help perfect its data collection and reporting efforts. Attached is a summary of the significant changes to the forms.

At its March 1995 session, the Judicial Conference adopted the use of standard orders of judgment to ensure that significant information required by all components of the criminal justice system is included in the judgment orders. The PROTECT Act requires the court to prepare a statement of reasons to be included in the written order of judgment in every case where the sentencing range exceeds 24 months, or whenever there is a downward departure, and to describe with specificity the reasons for departing from the guideline range. The Statement of Reasons attached to the judgment has been revised substantially to facilitate better reporting of sentencing decisions. This is very important because the United States Sentencing Commission relies heavily on the Statement of Reasons to record courts' sentencing decisions, particularly in non-substantial assistance downward departures.

Also available is a new instructional booklet, entitled *The Statement of Reasons for Use in Reporting Sentencing Decisions*. It outlines the history, the importance, and the many uses of the Statement of Reasons, and is designed to assist court personnel in using the revised form. The National Sentencing Policy Institute, scheduled for June 2004, and each of the national workshops for district judges, scheduled for April 19-21, 2004, in Philadelphia; June 2004, in Chicago; and September 2004, in Seattle will include a session on the PROTECT Act, with emphasis on the Statement of Reasons. In addition, the Federal Judicial Center is producing a program for the Federal Judicial Television Network, scheduled for live broadcast on February 12, 2004, *The PROTECT Act: The Statement of Reasons*, which will contain more detailed training on the Statement of Reasons for courtroom deputies, probation officers, and law clerks. The program will be re-aired several times, and videocassettes of it will be available.

All of the new forms are designed in WordPerfect and posted on the judiciary's Intranet at http://jnet.ao.dcn/Forms/AO_National_Forms.html. To gain access from the J-Net home page, click on "Forms" and click on "AO National Forms." Court staff can download the forms and customize the layout of the form for local use. Courts are urged to use the most current version of the judgments to avoid difficulties that can result from using outdated forms.

Questions from chief probation officers concerning the new forms should be directed to your regional administrator in the Office of Probation and Pretrial Services, at (202)502-1600. Questions from clerks should be directed to your regional administrator in the District Court Administration Division, at (202)502-1570.



Leonidas Ralph Mecham
Director

Attachments

SUMMARY OF REVISIONS TO JUDGMENT IN A CRIMINAL CASE, INCLUDING THE STATEMENT OF REASONS (AO245B)

Sheet 1

The block that contains the defendant's social security number and address has been removed from Sheet 1 of the judgment form and placed on the new page 3 of the Statement of Reasons attachment. The Statement of Reasons is no longer routinely made available to the public, pursuant to Judicial Conference policy. JCUS-MAR 01, p. 17. The removal of significant personal information and its placement on the non-public Statement of Reasons is intended to address serious defendant safety and privacy concerns created by the electronic access to criminal case files, and to ensure, to the extent practical, that paper and electronic copies of the judgment are identical.

While 18 U.S.C. § 3612(b) requires that the defendant's social security number appear in the judgment if the judgment imposes fines or restitution, including it in the non-public Statement of Reasons will fulfill this statutory requirement because, for collection purposes, the Statement of Reasons will continue to be forwarded routinely, along with the judgment, to the United States attorneys offices as designated by the court.

Sheets 3 and 4

New mandatory supervision conditions regarding DNA collection, sex offender registration requirements, and domestic violence have been added to Sheets 3 and 4.

Sheet 6

A new payment option has been added to the Schedule of Payments. Option E defers the setting of a payment schedule until after an offender's release from imprisonment. Such a deferral would give the court an opportunity to evaluate an offender's earning ability and set a payment schedule at the time of release. This would be more accurate than projecting an offender's net worth, cash flow, and ability to pay at the time of sentencing.

The Antiterrorism and Effective Death Penalty Act of 1996 amended 18 U.S.C. § 3611 to include restitution payments, along with fines and special assessments, as payments that the clerks' offices may receive. Today, in most districts, clerks' offices have assumed responsibility for receiving all payments. As a result, this sheet has been revised to require that criminal monetary penalties–except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program–are made to the clerk of the court to ensure proper financial accounting.

Statement of Reasons

Page 1

The Statement of Reasons has been revised to facilitate better preparation and to ensure that guideline-related findings (e.g., specific offender characteristics) and non-guideline-related comments or findings (e.g., prior history of sexual misconduct, escapes, or violence) that were made by the court at the time of sentencing and that differ from the tentative findings made in the presentence investigation report, are properly documented and transmitted to the Bureau of Prisons.

Options have been added to identify specific guideline-related findings, including those related to chapters 2, 3, and 4 in the sentencing guidelines manual. An option also has been added to indicate that the court has made comments or findings that differ from those in the presentence investigation report. References have been added to alert preparers that a new page 3 of the Statement of Reasons can be used to record findings and comments of the court.

Page 2

The Statement of Reasons also has been revised to facilitate better documentation on departure decisions made by the courts. For example, the revised Statement of Reasons includes check boxes for courts to identify whether departures were pursuant to plea agreements, or granted based on motions filed by the parties. The courts also can delineate and record whether or not the government objected or did not object to a defense motion for departure.

Language emphasizing the statutory requirement that the court must provide specific reasons for departures in the judgment has been added. The preparer is asked to check the appropriate reason for a guideline departure and, if necessary, to use page 3 to explain the reason.

Page 3

As mentioned above, a new page 3 provides space to record (1) additional presentence report and guideline application changes, (2) reasons for a specific sentence within a guideline range that exceeds 24 months, (3) additional comments or findings concerning information in the presentence report, and (4) additional reasons for departing from the guidelines.

The Statement of Reasons
for Use in Reporting Sentencing Decisions

October 2005

The Statement of Reasons Form

Background

In *United States v. Booker*, 125 S. Ct. 738 (2005), the Supreme Court held that factual findings used to enhance the sentence under the federal sentencing guidelines were required to be presented to a jury and that the remedy to this constitutional defect was to sever the provisions of the Sentencing Reform Act that rendered the guidelines mandatory. This leaves in place an "advisory" guidelines system and the remainder of the Sentencing Reform Act intact.

In light of the *Booker* decision, on June 27, 2005, the Executive Committee approved on behalf of the Judicial Conference revisions to the Statement of Reasons form attached to the Judgments in a Criminal Case (AO 245B and AO 245C). These revisions were recommended by the Judicial Conference Committee on Criminal Law and based on suggestions received from the United States Sentencing Commission, judges, and court staff. The revisions are designed to incorporate changes in the law as a result of *Booker* and to make it easier for courts to report on sentencing decisions. The revised form will also facilitate the Sentencing Commission's data collection, analysis, and reporting. For example, the revised form allows courts to fully document (1) findings on mandatory minimum penalties, (2) reasons for imposing sentences within the advisory sentencing guideline system, including any departure authorized by the *Guidelines Manual* (such as departures initiated or supported by the government), and (3) reasons for imposing sentences outside the advisory guideline system based on other sentencing factors in 18 U.S.C. § 3553(a) (including those sentencing adjustments initiated or supported by the government). The revised Judgment in a Criminal Case, including the Statement of Reasons form, is posted in WordPerfect and pdf formats on the judiciary's Intranet site http://jnet.ao.dcn/Forms/AO_National_Forms/AO_245B.html.

Courts have always been required at the time of sentence to state in open court the reasons for imposition of a particular sentence. 18 U.S.C. § 3553(c). If the sentence is within a guideline range that is greater than 24 months (*e.g.*, 108 to 135 months), the Statement of Reasons shall include the reason for choosing a particular point within the guideline range. If the sentence is not within the applicable guideline range, the sentence must be explained with written specificity. 18 U.S.C. § 3553(c)(2). If restitution is not ordered, or only partial restitution is ordered, the statement shall include an explanation. The above statutory requirements are not impacted by the *Booker* decision.

The court is required to state on the record "in open court" the reasons for a particular sentence. The varied purposes of stating the reasons for sentence in open court were articulated in the legislative history of the Sentencing Reform Act (Public Law Number 98-473, Title II, Ch.11, 98 Stat. 1987 (Oct. 12, 1984)).

> [The statement of reasons is important] to inform the defendant and the public of the reasons why the offender is subject to that particular guideline and in order to guide probation officers and prison officials to develop a program to meet his needs....[It] will play an important role in the evaluation of the reasonableness of the sentence [on appeal]....[It also] provides information to criminal justice researchers evaluating the effectiveness of various sentencing practices in achieving their stated purposes. Finally, it assists the Sentencing Commission in its continuous re-examination of its guidelines and policy statements.

S.Rep. No. 225, 98th Cong., 1st Sess. 1983, 1984 U.S.C.C.A.N. 3182 (Sept. 14, 1983)

In 1988, to administratively facilitate the reporting of sentencing decisions, the predecessor to the current Committee on Criminal Law introduced a Statement of Reasons form (*Report of Statement of Reasons for Imposing a Guideline Sentence,* AO247). The form was intended to reduce the administrative burdens on probation officers, prison officials, and the Sentencing Commission and was created to alleviate the need for judiciary staff to obtain and review sentencing transcripts to determine the reasons for all sentences.

The AO Director, in consultation with the Committee and the Sentencing Commission, asked courts to send the Statement of Reasons form, along with other documents, to the Commission to meet the courts' obligation under 28 U.S.C. § 994(w) and to aid the Commission in exercising its authority under 28 U.S.C. § 995(a)(8) regarding sentencing data collection requirements.

Over the years, the Committee, in consultation with the Sentencing Commission and others, has proposed revisions to the form's content to incorporate statutory changes and to make various improvements suggested by users of the form. For example, the form was revised to include whether a defendant provided substantial assistance to the government. This information is needed by the Commission to better document the reasons for specific sentences. Over time, the form's use has further evolved. The form also includes information that helps the Bureau of Prisons with inmate designation and classification decisions.

Because the Statement of Reasons form is attached to the Judgments in a Criminal Case (AO 245B and AO 245C)—which are public documents, the Judicial Conference at its September 2000 session, recognized the need to safeguard confidential information in the form in order to better protect the safety of defendants and placed reasonable restrictions on public access to the form. Researchers, academics, and others have access to the Commission's aggregate data on sentencing information, and courts have discretion to honor legitimate requests for access to specific sentencing documents, including the Statement of Reasons form.

In April 2003, the importance of the Statement of Reasons was further highlighted with the passage of the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, or "PROTECT Act," (Pub. L. No. 108-21, 117 Stat. 650 (2003)), which amended 18 U.S.C. § 3553(c) to require the court to describe with specificity on the written judgment the reasons relied on when departing from the then-mandatory sentencing guidelines. The PROTECT Act also amended 28 U.S.C. §

994(w) to require courts to submit the Statement of Reasons, together with four other documents, to the Sentencing Commission and to direct the Sentencing Commission to report submission rates for these documents to Congress.

At its September 2003 session, the Judicial Conference designated the Statement of Reasons form as the mechanism by which courts were to comply with the new statutory requirements set forth in the PROTECT Act with regard to reporting sentencing information to the Commission. As such, a Statement of Reasons form must be prepared in every criminal case (except Class B or C misdemeanors or infractions) and forwarded to the Commission.

This booklet has been developed to assist in the accurate preparation of the form and includes instructions for preparing the form. Courts are encouraged not to change the form and to use the most current version of the Statement of Reasons form (Rev. 06/05) to ensure that the courts' forms properly reflect the content and confidentiality requirements of the Judicial Conference. Use of the up-to-date form will also avoid difficulties that may result from using outdated forms and will also ensure that the Sentencing Commission's data collection, analysis and reporting needs, as well as the information needs of Congress and the judiciary, are met.

To ensure that the forms are complete and accurate, probation offices (and financial administrators in the clerks' offices when complex financial penalties are imposed) are encouraged to review draft Judgments in a Criminal Case, including the Statement of Reasons form, before they are presented to the judge for review and signature. Each court determines which court unit–the clerk's or probation office–is responsible for the preparation and distribution of the judgment and the Statement of Reasons form. Courts are encouraged not to file the Statement of Reasons forms in the public case file, or to keep these documents where they might mistakenly be disclosed to the public. Probation officers are asked to maintain the official version of the Statement of Reasons form (as well as the presentence report).

While any document may be filed under seal by the court, courts should ensure that the Statement of Reasons form and other necessary documents are made available to the Sentencing Commission. Pursuant to 28 U.S.C. § 994(w), courts are required to submit these documents to the Sentencing Commission within 30 days of entry of judgment. It is also important that the judgment and Statement of Reasons form be made available promptly to defense counsel, government attorneys, financial litigation units of the United States attorneys' offices, probation and pretrial services offices, and, if a term of imprisonment is imposed, the Federal Bureau of Prisons and the United States Marshals Service.

Preparing the Statement of Reasons

Pursuant to 18 U.S.C. § 3552(d) and Rule 32(e) of the Rules of Criminal Procedure, the presentence report is disclosed to the defendant, the defendant's counsel, and the attorney for the government at least 35 days prior to sentencing to provide an opportunity to resolve disagreements about material facts and the advisory guideline applications before the sentencing hearing. As authorized by Rule 32(h), the presentence report may identify grounds and specific reasons for departures and serves as notice to the parties that the court could depart from the advisory guideline range.

In most instances the parties file with the probation officer objections to material information, sentencing classifications, sentencing guideline ranges, departure grounds, and policy statements contained in, or omitted from, the report. Some controverted issues may be resolved by the probation officer prior to sentencing and the presentence report may be revised as appropriate.

Unresolved objections, the grounds for those objections, and the probation officer's comments on the objections are generally set forth in an addendum to the presentence report to ensure that those disagreements not resolved prior to sentencing

are identified for the court. However, in some cases, the parties raise objections to the presentence report for the first time at the sentencing hearing.

Rule 32(i) requires the court to rule on any disputed portion of the presentence report or other controverted matter but allows the court to determine that a ruling is unnecessary either because the matter will not affect sentencing or because the court will not consider the matter in sentencing. The court is directed in Rule 32(i) to append a copy of the court's determination on disputed facts or controverted matters to any copy of the presentence report made available to the Bureau of Prisons. The Statement of Reasons form has been revised over time to serve this purpose. Therefore, it is critical that the judgment and Statement of Reasons form completely and accurately document the court's sentencing record and findings on disputed facts or controverted matters.

Since it is critical that the Statement of Reasons form be prepared accurately and promptly, courts may wish to adopt procedures for completing the form at the time of sentencing. As an alternative, they may prefer developing procedures for recording during the sentencing hearing all of the information needed to complete the Statement of Reasons form quickly and correctly.

The Statement of Reasons form (Rev. 06/05)

The revised form has new headings, sections, and subsections to navigate its preparation. There are seven major sections to the Statement of Reasons form (Sections I - VII) as noted below:

Section I	Court Findings on Presentence Investigation Report
Section II	Court Finding on Mandatory Minimum Sentence
Section III	Court Determination of Advisory Guideline Range (Before Departures)
Section IV	Advisory Guideline Sentence Determination
Section V	Departures Authorized by the Advisory Sentencing Guidelines

Section VI Court Determination for Sentence Outside the Advisory Guideline System

Section VII Court Determinations of Restitution

Section VIII Additional Facts Justifying the Sentence in This Case

A Statement of Reasons form must be prepared in every criminal case (except Class B or C misdemeanors or infractions) and forwarded to the Commission. In all felony cases, Sections I, II, III, IV, and VII of the Statement of Reasons form must be completed. The Committee on Criminal Law with the assistance of the Sentencing Commission has prepared the following section-by-section description on how to prepare the Statement of Reasons form to ensure its consistency and accuracy.

I COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT

Section I of the Statement of Reasons form allows the court to describe findings or comments made with respect to the presentence investigation report.

A ☐ **The court adopts the presentence investigation report without change.**

The presentence investigation report contains advisory guideline calculations and other information relevant to the defendant and sentencing options. Courts are required to fully consider the advisory guideline calculations and sentencing ranges. Pursuant to Rule 32(i), the court may accept any undisputed portion of the presentence report as a finding of fact. In many instances the court will adopt the information in the presentence investigation report without change. Check Option A if the court adopts the presentence investigation report, including the advisory guideline calculations, without change and move to Section II.

B ☐ **The court adopts the presentence investigation report with the following changes.** (Check all that apply and specify court determinations, findings, or comments, referencing paragraph numbers in the presentence report, if applicable.) (Use page 4 if necessary.)

Sometimes at the sentencing hearing the court may determine, find, or comment on information contained in the presentence investigation report. Such determinations, findings, or comments may be based on information contained in Chapter Two, Three, or Four of the *Guidelines Manual*. It is important that all advisory guideline calculations determined by the court, but that differ from the presentence report, are described in the Statement of Reasons form. Absent an explanation of the court's determinations, findings, or comments in the Statement of Reasons form, the Sentencing Commission will rely on the *facts of the instant offense* and *prior criminal record* as outlined in the presentence investigation report, including drug type(s) and amounts in drug cases, description of the offender's role in the instant offense, use of a firearm or violence, sexual conduct, escape attempts, threats, and the number and nature of prior prison or jail commitments in compiling data. Similarly, the Bureau of Prisons will rely on the facts of the instant and prior criminal record to make inmate classification, designation, and programming decisions. A list of factors commonly considered by the federal Bureau of Prisons in classification and designation decisions is attached as an Appendix to this booklet. Check Option B if the court makes determinations, findings, or comments different from those contained in the presentence report and indicate whether they relate to Options 1, 2, 3, and/or 4 below.

1 ☐ **Chapter Two of the U.S.S.G. Manual** determinations by court (including changes to base offense level, or specific offense characteristics):

Chapter Two of the *Guidelines Manual* relates to determinations of the offense level based on offense conduct and offender characteristics. The court can make

determinations and findings as to the base offense level (*e.g.*, offense levels determined from drug amounts referenced in the drug quantity table) or to specific offense characteristics (*e.g.*, amount of loss, possession of a dangerous weapon, death or bodily injury). Check Option 1 for Chapter Two determinations and findings that differ from the presentence report and describe with specificity the finding made by the court (*e.g.*, the court finds the loss amount to be $10,000 in this case). Use Section VIII on page 4 if necessary.

2 ☐ **Chapter Three of the U.S.S.G. Manual** determinations by court (including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple counts, or acceptance of responsibility):

Chapter Three of the *Guidelines Manual* relates to determinations of the based offense level based on offense conduct and offender characteristics that are not covered in specific guidelines in Chapter Two. These include Chapter Three, Part A (victim-related, including, *e.g.*, vulnerable, official, or restrained victim); Part B (role in the offense, including, *e.g.*, aggravating role (organizer, leader, manager, or supervisor) or mitigating role (minor or minimal participant), abuse of trust, use of a minor; Part C (obstruction); Part D (multiple counts, including, *e.g.*, grouping decisions and combined offense level determinations); and Part E (acceptance of responsibility, including, *e.g.*, reduction of the offense level by 2, or by an additional one level upon motion of the government). The court may make multiple determinations or findings related to Chapter Three adjustments.

Check Option 2 for Chapter Three court determinations or findings that differ from the presentence report and describe with specificity the determinations or findings made by the court that differ from those in the presentence report (*e.g.*, the court finds that the defendant was not a leader, organizer, or manager in this case; the court finds

the defendant was a minor participant; or the court grants a 3-level reduction for acceptance of responsibility upon motion of the government). Use Section VIII on page 4 if necessary.

3 ☐ **Chapter Four of the U.S.S.G. Manual** determinations by court (including changes to criminal history category or scores, career offender, or criminal livelihood determinations):

Chapter Four of the *Guidelines Manual* relates to the offender's criminal background and includes Chapter Four, Part A (criminal history) and Part B (career offender and criminal livelihood). The court may correct mathematical errors or find that certain prior convictions described in the presentence report are invalid or excluded. The court may also make findings as to the offender's status as a career offender or whether the defendant committed an offense as part of a pattern of criminal conduct engaged in as a livelihood (*i.e.*, criminal livelihood), or that the defendant is an armed career criminal.

Check Option 3 for Chapter Four determinations and describe with specificity the finding made by the court if different from those in the presentence report (*e.g.*, the court finds that the defendant engaged in a pattern of criminal conduct as a livelihood, or the court finds that the felony conviction in paragraph 64 of the presentence report is invalid because the defendant was not afforded counsel). Use Section VIII on page 4 if necessary.

4 ☐ **Additional Comments or Findings** (including comments or factual findings concerning certain information in the presentence report that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions).

Rule 32(i) of the Federal Rules of Criminal Procedure provides that if the defendant alleges factual inaccuracies in the presentence report, the judge shall make a finding as to the matter controverted, or shall determine that the matter will not be taken into account in sentencing.

It is widely recognized that courts will not always have sufficient information to resolve such disputes, especially when counsel do not object until the time of sentencing. Nevertheless, to the extent possible, courts are encouraged to resolve disputes not only when they have sentencing ramifications, but also when they have a material effect on sentence administration.

Staff at the federal Bureau of Prisons rely heavily on the presentence report as a principal source of information, including information describing prior history of sexual misconduct, escapes, bail jumping, military absence without leave, immigration status, or threats against government officials. While not ordinarily relevant in determining sentence, such information is used by the Bureau of Prisons in making inmate institutional classification, designation, and programming decisions. A list of factors commonly considered by the Bureau of Prisons in classification and designation decisions is included in the attached Appendix.

Check Option 4 when the court makes comments or findings concerning information in the presentence investigation report that the Bureau of Prisons may rely on when making inmate classification, designation, or program decisions. Describe the comments or findings and reference specific paragraph numbers of the presentence report (*e.g.*, the court finds that the prior conviction for disorderly conduct at paragraph 64 includes a description that the defendant resisted arrest, but this claim cannot be substantiated by the court). Use Section VIII on page 4 if necessary.

C ☐ **The record establishes no need for a presentence investigation report pursuant to Fed.R.Crim.P. 32.**

Pursuant to Rule 32(c), the court may find that the information in the record enables it to meaningfully exercise its sentencing authority without a presentence investigation report. For example, presentence investigation reports are sometimes waived in districts along the southwest border that have early disposition or "fast-track" programs. Check Option C if the presentence investigation report has been waived by the court.

II COURT FINDING ON MANDATORY MINIMUM SENTENCE (Check all that apply.)

In some cases charging instruments, plea agreements, or presentence investigation reports indicate that a mandatory minimum penalty is applicable in a case. However, for a variety of reasons, the court may not be impose a statutory minimum penalty. Without an explanation for this apparent inconsistency the Sentencing Commission or other observes may conclude that the court erroneously imposed an illegal sentence. A new section on mandatory minimum sentences has been added to the Statement of Reasons form to address these findings.

A ☐ No count of conviction carries a mandatory minimum sentence.

Check Option A to indicate that no count of conviction carries a mandatory minimum penalty. If no count of conviction carries a mandatory minimum penalty, move to Section III.

B ☐ Mandatory minimum sentence imposed.

Check Option B to indicate that the court imposed at least the mandatory minimum sentence. If the court imposed the mandatory minimum sentence, move to Section III.

While the charging instrument might allege that one or more counts carry a mandatory minimum term of imprisonment, the court may impose a sentence below the mandatory minimum penalty for one of the following reasons. Check Option C and then indicate the reason why the mandatory minimum penalty was not imposed.

C ☐ One or more counts of conviction alleged in the indictment carry a mandatory minimum term of imprisonment, but the sentence imposed is below a mandatory minimum term because the court has determined that the mandatory minimum does not apply based on

☐ findings of fact in this case

The court may find, for example, that a drug quantity amount or loss amount attributable to a particular defendant in a conspiracy did not trigger the mandatory minimum sentence.

☐ substantial assistance (18 U.S.C. § 3553(e))

The court may find that a mandatory minimum penalty did not apply because the court granted a substantial assistance motion.

☐ the statutory safety valve (18 U.S.C. § 3553(f))

The court can impose a sentence without regard to any statutory mandatory minimum sentence when the court determines that the defendant meets the enumerated criteria of the statutory safety valve in 18 U.S.C. § 3553(f).

III COURT DETERMINATION OF ADVISORY GUIDELINE RANGE (BEFORE DEPARTURES)

The court should determine the advisory guideline range, including the total offense level, criminal history category, imprisonment range, supervised release range, and fine range. If the court adopts the presentence investigation report without change, enter the advisory guideline range as recorded in the presentence investigation report. If the court makes other determinations or findings, record the final advisory guideline range as determined by the court. This will highlight any differences between the court-determined advisory guideline range and those ranges recommended in the presentence investigation report.

The court may also waive a fine or impose a fine below the guideline range because of the defendant's inability to pay. If the court waives the fine or imposes a fine below the guideline range, check the fine box, and move to Section IV.

When a mandatory minimum penalty is greater than an advisory guideline range minimum, the mandatory minimum penalty in months becomes the minimum advisory guideline penalty. For example, the advisory guideline range of 57-71 months for an offense that includes a 5-year mandatory minimum penalty becomes a range of 60-71 months. On the other hand, when a separate count of conviction includes a consecutive mandatory minimum penalty, the consecutive sentence is not included in the court-determined advisory sentencing guideline and is instead reflected in the sentence as recorded on Sheet 2, in the Judgment in a Criminal Case (AO 245B). Also,

the *Guidelines Manual* provides for sentencing in a manner that takes into account a consecutive penalty.

This section does not include advisory guideline ranges that are revised by the court pursuant to a departure. Some courts structure departures by making incremental increases or decreases in the offense level or in the criminal history category based on factors that form the basis for a departure. For example, the court may determine that based on U.S.S.G. §5K2.3 (Extreme Psychological Injury) a 3-level increase in the offense level is warranted. Calculations and the rationale for such departures should not be included in the calculation of the advisory guideline range but rather should be explained as a departure in Section V, Subsection D.

Total Offense Level: _____

Criminal History Category: _____

Imprisonment Range: _____ to _____ months

Supervised Release Range: _____ to _____ years

Fine Range: $ _____ to $ _____

☐ Fine waived or below the guideline range because of inability to pay.

IV ADVISORY GUIDELINE SENTENCING DETERMINATION (Check only one.)

The court is not required to provide a reason for the choice of a particular sentence when the applicable advisory guideline sentencing range does not exceed 24 months (e.g., 27 to 33 months), provided that the sentence is not a departure from the advisory guideline range. Check Option A if the advisory sentence range does not exceed 24 months and the court has found no reason to depart, then move to Section VI.

A ☐ **The sentence is within an advisory guideline range that is not greater than 24 months, and the court finds no reason to depart.**

Pursuant to 18 U.S.C. § 3553(c)(1), the court is required to provide a reason for imposing a sentence at a particular point within the advisory guideline range when the advisory sentencing guideline range is greater than 24 months (*e.g.*, 108 to 135 months). Check Option B if the court imposes a sentence within an advisory sentencing range that is greater than 24 months. Also, describe the rationale articulated by the court for selecting a particular point in that range. Use page 4 if additional space is needed. Then, move to Section VI.

B ☐ **The sentence is within an advisory guideline range that is greater than 24 months, and the specific sentence is imposed for these reasons.** (Use page 4 if necessary.)

Throughout the *Guidelines Manual* the Sentencing Commission has provided guidance (or commentary) on advisory sentencing guideline departures—both upward and downward departures. For example, U.S.S.G. §4A1.3 describes standards for departures based on the inadequacy of a defendant's criminal history category. Chapter Five, Part H includes policy statements on departures based on specific offender characteristics. The *Guidelines Manual* explains that certain specific offender characteristics, such as a defendant's age, education, vocational skills, employment record, and family ties and responsibilities are not ordinarily relevant in determining whether a departure is warranted. The *Guidelines Manual* also explains that certain specific offender characteristics, such as addiction to drugs, alcohol, or gambling are not reasons for downward departures. Also, many courts of appeals decisions have addressed the appropriateness of certain specific offender characteristics in determining whether a departure is warranted.

After considering the guidance provided by the *Guidelines Manual* and circuit law, the court may depart from the advisory guideline range for reasons authorized by the *Guidelines Manual*, such as substantial assistance under §5K1.1 or early disposition

under §5K3.1, or the departure grounds of §5K2.0. Generally, the departure mechanisms authorized by the *Guidelines Manual* may enable the court to impose a sentence outside the applicable advisory guideline range without having to resort to the imposition of a sentence outside the advisory guideline system pursuant to 18 U.S.C. § 3553(a) factors. Check Option C if the court departs from the advisory guideline range based on reasons authorized by the *Guidelines Manual*. Section V of the Statement of Reasons form should also be completed.

C ☐ **The court departs from the advisory guideline range for reasons authorized by the sentencing guidelines manual.**
(Also complete Section V.)

The Court in *Booker* noted that even under an advisory guidelines regime, the Sentencing Reform Act still requires judges to consult and consider the guidelines together with other sentencing goals. Courts applying *Booker* have interpreted this requirement to mean that courts must continue to calculate the advisory sentencing guidelines and consider policy statements, commentary, and other advice in the *Guidelines Manual*. The requisite weight (*e.g.*, equal, considerable, substantial, or heavy) the sentencing guidelines should be given compared to other 18 U.S.C. § 3553(a) sentencing factors remains an open question subject to judicial interpretation. After determining and considering the advisory guideline sentence, the court may exercise discretion to impose a sentence that varies from the advisory guideline system to achieve the other congressionally prescribed purposes of sentencing. Exercise of such discretion will result in a non-guideline sentence.

Check Option D if the court imposes a sentence outside of the advisory guideline system. Section VI should also be completed.

D ☐ **The court imposes a sentence outside the advisory sentencing guideline system.** (Also complete Section VI.)

V DEPARTURES AUTHORIZED BY THE ADVISORY SENTENCING GUIDELINES (If applicable.)

Under the advisory sentencing guideline system, courts may depart and impose a sentence outside the range established by the applicable advisory guidelines, if the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines. Such a sentence is authorized by §5K2.0 of the *Guidelines Manual* and therefore within the advisory guideline system.

The PROTECT Act requires courts to state with specificity the reasons relied upon in deciding to depart from the guidelines. This section of the Statement of Reasons form has been designed to obtain more complete documentation of a court's departure decision and to meet the PROTECT Act's reporting requirement.

Courts are authorized in the *Guidelines Manual* to depart below or above the advisory guideline range for a variety of reasons. If the court departs either above or below the advisory guideline range, check Option A, indicate whether the departure is below or above the advisory guideline range, and move to Subsection B.

A **The sentence imposed departs** (Check only one.):

☐ below the advisory guideline range

☐ above the advisory guideline range

B. **Departure based on** (Check all that apply.):

Courts may depart from the advisory guideline range for a variety of reasons authorized in the *Guidelines Manual*. Some reasons for departure may be documented

in an accompanying written plea agreement. Other reasons are articulated in motions made by either party at the time of sentence. In some instances, there may be more than one reason (both in the written plea agreement and oral motions made at the time of sentencing) accepted by the court to support departure decisions. Care should be taken to document all of the departure reasons adopted by the court.

1 **Plea Agreement** (Check all that apply and check reason(s) below.):

The grounds for a departure from the advisory guideline range may be included in a plea agreement. For example, the plea agreement may provide that pursuant to section 5K1.1 of the *Guidelines Manual*, upon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense, the court may depart from the advisory guideline range. If the court departs based on the defendant's substantial assistance, check the box below. If no other departure grounds are articulated by the court, move to Section VII.

☐ 5K1.1 plea agreement based on the defendant's substantial assistance

Pursuant to a statutory provision of the PROTECT Act and the 5K3.1 policy statement in the *Guidelines Manual*, a downward departure of not more than four levels may be given if the government moves for such a departure pursuant to an early disposition program authorized by the United States attorney and the Attorney General. Such motions are often contained in written plea agreements. If the court grants a downward departure based on an early disposition or "fast-track" program that meets the requirements of §5K3.1, check the box below. If no other departure grounds are articulated by the court, move to Section VII.

☐ 5K3.1 plea agreement based on Early Disposition or "Fast-track" program

A plea agreement made pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure that is accepted by the court is binding. As such, the court will impose the sentence contemplated in the agreement. In some Rule 11(c)(1)(C) plea agreements the parties may agree on departure grounds. If the court accepts a Rule 11(c)(1)(C) plea, and departs on the grounds agreed to by the parties, check the box below. Also, check the applicable boxes under reason(s) for departure identified in the plea agreement. If no other departure grounds are articulated by the court, move to Section VII.

☐ binding plea agreement for departure accepted by the court

If the plea agreement is not a binding plea agreement (*i.e.*, not made pursuant to Rule 11(c)(1)(C)), but still includes agreed upon departure grounds, check the box below. Also, check the applicable box for the reason(s) for departure identified in the plea agreement. If no other departure grounds are articulated by the court, move to Section VII.

☐ plea agreement for departure, which the court finds to be reasonable

In some instances, a plea agreement may indicate that the government will not oppose a motion made by the defendant for a departure. If the court grants a motion for departure made by the defense attorney and the government does not object, check the box below. Also, check the applicable box for the reason(s) for departure at Section V(c). If no other departure grounds are articulated by the court, move to Section VII.

☐ plea agreement that states that the government will not oppose a defense departure motion

In some cases the court may depart based on a motion not addressed in a plea agreement.

2 **Motion Not Addressed in a Plea Agreement** (Check all that apply and check reason(s) below.):

If the court grants a government motion based on a substantial assistance motion that was not mentioned in the written plea agreement, check the box below. If no other departure grounds are articulated by the court, move to Section VII.

☐ 5K1.1 government motion based on the defendant's substantial assistance

In some cases, pursuant to a statutory provision of the PROTECT Act and the 5K3.1 policy statement in the *Guidelines Manual*, a downward departure of not more than four levels may be given if the government moves for such departures pursuant to an early disposition program authorized by the United States attorney and the Attorney General. If the court grants a departure motion based on an early disposition or fast-track program not included in the written plea agreement, check the box below. If no other departure grounds are articulated by the court, move to Section VII.

☐ 5K3.1 government motion based on a Early Disposition or "Fast-track" program

Sometimes the government may make a motion for departure. If the court grants a government motion for departure, check the box below. Also, check the

applicable box for the reason(s) for the departure at Section V(c). If no other departure grounds are articulated by the court, move to Section VII.

☐ government motion for departure

Likewise, sometimes the defense may make a motion for departure. In some cases, the government may not object to the defense motion for departure, including not taking a position on the defense motion for departure. If the court grants a defense motion and the government does not object or does not take a position, check the box below. Also, check the applicable box for the reason(s) for departure at Section V(c). If no other departure grounds are articulated by the court, move to Section VII.

☐ defense motion for departure to which the government did not object

In some cases the defense may make a motion for departure and the government may object. If the court grants the defense motion over the objections of the government, check the box below. Also, check the applicable box for the reason(s) for the departure. If no other departure grounds are articulated by the court, move to Section VII.

☐ defense motion for departure to which the government objected

3 Other

In the absence of a plea agreement or motion by either party, the court may conclude on its own that a departure is appropriate. If the court departs under these circumstances, check the box below. Also, check the applicable box for the reason(s) for departure.

☐ Other than plea agreement or motion by the parties for departure. (Check reason(s) below.)

C **Reason(s) for Departure** (Check all that apply other than 5K1.1 or 5K3.1.)

The *Guidelines Manual* provides guidance (or commentary) on advisory sentencing guideline departures—both upward and downward departures. For example, U.S.S.G. §4A1.3 describes standards for departures based on the inadequacy of a defendant's criminal history category. Chapter Five, Part H includes policy statements on departures based on specific offender characteristics. For example, according to the *Guidelines Manual,* certain specific offender characteristics, such as a defendant's age, education, vocational skills, employment record, and family ties and responsibilities are not ordinarily relevant in determining whether a departure is warranted. Identified grounds for departures also are included in the *Guidelines Manual* in commentary (e.g., U.S.S.G. §2B1.1, comment, note 19).

The court may depart from the advisory guideline range for more than one reason. Below is a non-exhaustive list of departure reasons included in the *Guidelines Manual.* If the court departs for one or more of the reasons specifically listed, check the applicable box(es). If the court departs pursuant to commentary contained elsewhere in the *Guideline Manual,* check "other guideline basis" and explain the basis for the departure on page 4.

☐ 4A1.3 Criminal History Inadequacy
☐ 5H1.1 Age
☐ 5H1.2 Education and Vocational Training
☐ 5H1.3 Mental and Emotional Condition
☐ 5H1.4 Physical Condition
☐ 5H1.5 Employment Record
☐ 5H1.6 Family Ties and Responsibilities
☐ 5H1.11 Military Record, Charitable Service, Good Works
☐ 5K2.0 Aggravating or Mitigating Circumstances

☐ 5K2.1 Death
☐ 5K2.2 Physical Injury
☐ 5K2.3 Extreme Psychological Injury
☐ 5K2.4 Abduction or Unlawful Restraint
☐ 5K2.5 Property Damage or Loss
☐ 5K2.6 Weapon or Dangerous Weapon
☐ 5K2.7 Disruption of Government Function
☐ 5K2.8 Extreme Conduct
☐ 5K2.9 Criminal Purpose
☐ 5K2.10 Victim's Conduct

☐ 5K2.11 Lesser Harm
☐ 5K2.12 Coercion and Duress
☐ 5K2.13 Diminished Capacity
☐ 5K2.14 Public Welfare
☐ 5K2.16 Voluntary Disclosure of Offense
☐ 5K2.17 High-Capacity, Semiautomatic Weapon
☐ 5K2.18 Violent Street Gang
☐ 5K2.20 Aberrant Behavior
☐ 5K2.21 Dismissed and Uncharged Conduct
☐ 5K2.22 Age or Health of Sex Offender
☐ 5K2.23 Discharged Terms of Imprisonment
☐ Other guideline basis (e.g., 2B1.1 commentary)

Care should be taken to succinctly summarize and describe the facts of the offense or characteristics of the defendant that the court articulated at the time of sentence to justify a departure from the advisory sentencing guidelines. For example, if age was a relevant factor, the explanation should indicate how the defendant's age was relevant to the court's decision to depart. Use Section VIII on page 4 of the Statement of Reasons form if necessary.

D **Explain the facts justifying the departure** (Use page 4 if necessary.)

VI COURT DETERMINATION FOR SENTENCE OUTSIDE THE ADVISORY GUIDELINE SYSTEM (Check all that apply.)

As noted previously, courts interpreting *Booker* continued to calculate the advisory sentencing guidelines range, and consult and consider policy statements and other commentary from the *Guidelines Manual*. Having considered the advisory guideline sentence, including any departures, courts then have discretion to sentence outside the advisory guideline system based on the factors set forth in 18 U.S.C. § 3553(a). If the court imposes a sentence outside of the advisory guideline system, indicate whether the sentence imposed is below or above the court-determined advisory guideline range.

A **The sentence imposed is** (Check only one.):

☐ below the advisory guideline range

☐ above the advisory guideline range

B **Sentence imposed pursuant to** (Check all that apply.):

Courts may impose a sentence outside of the advisory guideline system for a variety of reasons. Some reasons may be documented in the written plea agreement. Other reasons may be articulated in motions by either party at the time of sentencing. In some instances there may be more than one reason (both in the written plea agreement and oral motions made at the time of sentencing) accepted by the court to support a decision to impose a sentence outside of the advisory guideline system. Care should be taken to document with specificity all of the reasons for a sentence outside of the advisory guideline system articulated by the court.

1 **Plea Agreements** (Check all that apply and check reason(s) below.):

The grounds for a sentence outside of the advisory guideline system may be included in a written plea agreement. For example, a plea agreement made pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure that is accepted by the court is binding. In some Rule 11(c)(1)(C) plea agreements, the parties may agree on a sentence outside of the advisory guideline system. If the court accepts a Rule 11(c)(1)(C) plea, and imposes a sentence outside of the advisory guideline system agreed to by the parties, check the box. All of the enumerated factors in 18 U.S.C. § 3553(a) are provided below. Check the applicable 18 U.S.C. § 3553(a) reason box(es) identified in the plea agreement, or if not identified in the plea agreement, that the court found relevant. If no other grounds are articulated by the court for a sentence outside of the advisory guideline range, move to Section VII.

☐ binding plea agreement for a sentence outside the advisory guideline system accepted by the court

If the plea agreement is not a binding plea agreement (*i.e.*, not made pursuant to Rule 11(c)(1)(C)), but still includes agreed upon grounds for a sentence outside of the advisory guideline system that the court finds to be reasonable, check the box below. Also, check the applicable 18 U.S.C. § 3553(a) reason box(es) identified in the plea agreement, or if not identified in the plea agreement, that the court found relevant. If no other reasons are articulated by the court for a sentence outside of the advisory guideline range, move to Section VII.

☐ plea agreement for a sentence outside the advisory guideline system, which the court finds to be reasonable

In some instances a plea agreement may indicate that the government will not oppose a motion made by the defendant for a sentence outside the advisory guideline system. If the court grants such a motion, check the box below. Also, check the applicable 18 U.S.C. § 3553(a) reason box(es) based on the defense motion for a sentence outside the advisory system. If no other reasons are articulated by the court for a sentence outside of the advisory guideline range, move to Section VII.

☐ plea agreement that states that the government will not oppose a defense motion to the court to sentence outside the advisory guideline system

In some cases, there may be no plea agreement or the plea agreement may not address grounds for a sentence outside the advisory guideline system. In any event, either party may make a motion for such a sentence.

2 Motions Not Addressed in a Plea Agreement

Sometimes the government may make a motion for a sentence outside of the advisory guideline system. If the government makes such a motion that is accepted by the court, check the box below. Also, check the applicable 18 U.S.C. § 3553(a) reason box(es) relied on by the court for imposing a sentence outside the advisory system. If no other reasons are articulated by the court for a sentence outside of the advisory guideline range, move to Section VII.

☐ government motion for a sentence outside of the advisory guideline system

Likewise, sometimes the defense may make a motion for a sentence outside of the advisory guideline system. In some cases the government may not object to the motion, including not taking a position on the defense motion for a sentence outside of the advisory guideline system. If the defense makes such a motion that is accepted by the court and the government does not object or does not take a position, check the box below. Also, check the applicable 18 U.S.C. § 3553(a) reason box(es) relied on by the court for imposing a sentence outside the advisory system. If no other reasons are articulated by the court for a sentence outside of the advisory guideline range, move to Section VII.

☐ defense motion for a sentence outside of the advisory guideline system to which the government did not object

In some cases, the defense may move for a sentence outside the advisory guideline system and the government may object. If the defense makes such a motion that is accepted by the court over the objections by the government, check the box below. Also, check the applicable 18 U.S.C. § 3553(a) reason box(es) relied on by the

court for imposing a sentence outside the advisory system. If no other reasons are accepted by the court for a sentence outside of the advisory guideline range, move to Section VII.

☐ defense motion for a sentence outside of the advisory guideline system to which the government objected

3 **Other**

In the absence of a plea agreement or motion by either party, the court may conclude on its own initiative that a sentence outside of the advisory guideline system is appropriate. If the court makes such a determination, check the box below. Also, check the applicable 18 U.S.C. § 3553(a) reason box(es) below relied on by the court for a sentence outside the advisory system. If no other reasons are articulated by the court for a sentence outside of the advisory guideline range, move to Section VII.

☐ Other than plea agreement or motion by the parties for a sentence outside of the advisory guideline system. (Check reason(s) below.)

C **Reason(s) for Sentence Outside the Advisory Guideline System** (Check all that apply.)

Generally, the departure mechanisms provided by the *Guideline Manual* may enable the court to impose a sentence outside the applicable guideline range without having to resort to the imposition of a sentence outside the advisory guideline system pursuant to 18 U.S.C. § 3553(a) factors. But the court may consider these 3553(a) factors to determine whether to impose a sentence that varies from the advisory guideline system. Pursuant to a plea agreement, or to a motion made by a party, or by exercising its own discretion, the court may impose a sentence outside of the advisory guideline

system if the court believes that to do so would better achieve the statutory purposes of sentencing. Exercise of such discretion will result in an non-guideline sentence. All of the enumerated factors in 18 U.S.C. § 3553(a) are provided below. Check the applicable 18 U.S.C. § 3553(a) reason box(es) below if the court imposes a sentence outside the advisory guideline system pursuant to a plea agreement, or to motion of a party, or based on the court's own initiative to impose a sentence outside the advisory guideline system is appropriate.

- ☐ the nature and circumstances of the offense and the history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(1)
- ☐ to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense (18 U.S.C. § 3553(a)(2)(A))
- ☐ to afford adequate deterrence to criminal conduct (18 U.S.C. § 3553(a)(2)(B))
- ☐ to protect the public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C))
- ☐ to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner (18 U.S.C. § 3553(a)(2)(D))
- ☐ to avoid unwarranted sentencing disparities among defendants (18 U.S.C. § 3553(a)(6))
- ☐ to provide restitution to any victims of the offense (18 U.S.C. § 3553(a)(7))

Care should be taken to succinctly summarize and describe the facts of the offense or the characteristics of the defendant that were articulated by the court at the time of sentencing to justify a sentence outside of the advisory sentencing system. For example, if the court determined that providing restitution to a victim is a factor not

adequately taken into account by the guideline system, the explanation should detail how the facts in the case are relevant to the decision to impose a sentence outside of the advisory guideline system. Use Section VIII on page 4 of the Statement of Reasons form if necessary.

D **Explain the facts justify a sentence outside of the advisory guideline system.** (Use page 4 if necessary.)

VII COURT DETERMINATIONS OF RESTITUTION

The court is required to make determinations of restitution. Check Option A if restitution is not applicable and move to Section VIII if applicable.

A ☐ Restitution Not Applicable

The court should determine the total amount of loss subject to restitution. Check Option B and enter the total amount of loss subject to restitution.

B Total Amount of Restitution: $ _____

The Statement of Reasons form includes all of the current statutory explanations as to why full restitution may not have been ordered by the court. For example, 18 U.S.C. §§ 2248, 2259, 2264, or 2327 in Chapters 109A, 110, 110A, and 113A of Title 18 require that for offenses committed on or after September 13, 1994, but before April 23, 1996, the total amount of loss must be stated. Furthermore, those statutes prohibit a court from declining to order restitution even if the defendant's economic circumstances indicate that he will be unable to pay any amount of restitution now or in the foreseeable future under any reasonable schedule of payments. Check Option C and

the applicable statutory reason (Options 1-3) why restitution was not ordered by the court.

C Restitution not ordered (Check only one.):

1 ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).

2 ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).

3 ☐ For other offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweigh the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(1)(B)(ii).

Sometimes, there are other reasons why restitution is not ordered. For example, restitution might have been paid in full prior to sentencing. If there are other reasons why restitution is not ordered, check Option 4 and explain the reason(s).

4 ☐ Restitution is not ordered for other reasons. (Explain.)

Sometimes the court may only order partial restitution. Check Option D if the court orders partial restitution and explain the reason.

D ☐ Partial restitution is ordered for these reasons (18 U.S.C. § 3553(c)):

Throughout the Statement of Reasons form additional information may be required that cannot fit in the space provided. Use the section below to record any additional text with respect to additional facts the court may have relied upon in justifying a sentence in this case.

VIII ADDITIONAL FACTS JUSTIFYING THE SENTENCE IN THIS CASE (If applicable.)

Defendant Information and Signature of Judge

Judgments in a Criminal Case are public documents. Judgments are maintained in the court's file and may be available on the internet through remote electronic public access to criminal case files.

Pursuant to 18 U.S.C. § 3612(b), the defendant's social security number and address must appear in judgments that order a fine or restitution in excess of $100. This is to assist the attorney general (through local financial litigation units) in collection activities. However, recognizing the need to address privacy and safety concerns, Department of Justice officials agreed to remove the defendant's social security number, residence and mailing address from Sheet 1 of the Judgments in a Criminal Case. This information now appears on the Statement of Reasons form since the form is not subject to routine public disclosure but is made available to authorized recipients, including the United States attorneys' offices and financial litigation units immediately after sentencing. In judgments that do not contain Statement of Reasons forms, private identifiers should be redacted prior to public disclosure.

In addition, the Statement of Reasons now includes the sentencing date and space for the judge's signature to certify review.

Conclusion

Over the years the Statement of Reasons form has evolved to become a vital document in sentencing and post-sentencing administration. In addition to addressing the statutory requirements of the PROTECT Act, the Statement of Reasons form has been revised to facilitate the inclusion of court comments or findings on disputed issues that may not be required for sentencing purposes, but that may be relevant for other post-sentencing purposes, such as data compilation by the Sentencing Commission and inmate classification, designation, and programming decisions made by staff at the federal Bureau of Prisons. It is critical that the Statement of Reasons form completely and accurately reflect findings made by the court at the time of sentencing and that the form is promptly forwarded to the Sentencing Commission. This will ensure that the Sentencing Commission's data, relied upon by Congress, the judiciary, the Department of Justice, and others are complete and accurate. This in turn will better inform the public debate on future sentencing policy.

Questions from chief probation and pretrial services officers concerning the judgment or the Statement of Reasons may be directed to their circuit representatives in the AO's Office of Probation and Pretrial Services at 202/502-1600. Questions form district clerks may be directed to their regional administrator in the District Court Administration Division at 202/502-1570 and questions from judges may be directed to the Office of Judges Programs at 202/502-1800.

Appendix

List of Factors Commonly Considered by the Federal Bureau of Prisons in Classification and Designation

Current Offense Conduct, including:

- the date of offense;
- descriptions of the bases for sentencing enhancements (such as organizer/leader);
- type(s) and amount(s) of drugs for which the defendant is held responsible;
- international connections;
- ties to terrorist organizations or gangs;
- descriptions of the offender's use of violence;
- threats to government officials or other security threats;
- use or possession of firearms; or
- sexual misconduct.

Prior and Pending Criminal Offenses, including:

- offense dispositions involving firearms;
- actual or threat of violence;
- threats to government officials or other security threats;
- escape;
- military absence without leave;
- sexual misconduct;
- bail jumping; and
- alien status, including immigration detainer.

Verification of offender-provided information, including:

- age;
- release residence area;
- medical condition;

education;

financial resources;

mental health issues;

immediate family members;

employment history;

special skills (e.g., pilot, locksmith, martial arts); and

substance abuse history (such as types of drug use, time periods of use, drug test results, prior treatment for drug use or role of drug use in instant offense).

Voluntary surrender for instant offense.

LEONIDAS RALPH MECHAM
Director

CLARENCE A. LEE, JR.
Associate Director

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

WASHINGTON, D.C. 20544

October 17, 2005

MEMORANDUM TO ALL: **JUDGES, UNITED STATES COURTS OF APPEALS**
JUDGES, UNITED STATES DISTRICT COURTS
UNITED STATES MAGISTRATE JUDGES
CIRCUIT EXECUTIVES
DISTRICT COURT EXECUTIVES
CLERKS, UNITED STATES COURTS OF APPEALS
CLERKS, UNITED STATES DISTRICT COURTS
CHIEF PROBATION OFFICERS
CHIEF PRETRIAL SERVICES OFFICERS

SUBJECT: Revised Statement of Reasons Form in the Judgments in a Criminal Case (AO 245B and AO 245C) (**IMPORTANT INFORMATION**)

In *United States v. Booker*, 125 S. Ct. 738 (2005), the Supreme Court held that the factual findings used to enhance the sentence under the federal sentencing guidelines were required to be presented to a jury and that the remedy to this constitutional defect was to sever the provisions of the Sentencing Reform Act that rendered the guidelines mandatory. This leaves in place an "advisory" guidelines system and the remainder of the Sentencing Reform Act intact.

In light of the *Booker* decision, on June 27, 2005, the Executive Committee approved on behalf of the Judicial Conference revisions to the Statement of Reasons form attached to the Judgments in a Criminal Case (AO 245B and AO 245C). It is important that judges ensure these forms are completed fully because the resulting statistics produced by the United States Sentencing Commission are vital information for legislators and other policy makers involved in sentencing matters.

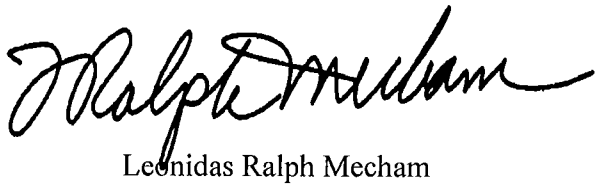
These revisions were recommended by the Judicial Conference Committee on Criminal Law and based on suggestions received from the United States Sentencing Commission, judges, and court staff. The revisions are designed to incorporate changes in the law as a result of *Booker* and to enable the courts to report accurately on sentencing decisions. The revised form will also facilitate the Sentencing Commission's data collection, analysis, and reporting. For example, the form allows courts to fully document (1) findings on mandatory minimum penalties, (2) reasons for imposing sentences within the advisory sentencing guideline system, including any departure authorized in the *Guidelines Manual* (such as departures initiated or supported by the government), and (3) reasons for imposing sentences outside the advisory

guideline system based on other sentencing factors in 18 U.S.C. § 3553(a) (including those sentencing adjustments initiated or supported by the government).

Since 1988, courts have been submitting the Statement of Reasons form, along with other documents, to the Commission to meet the courts' obligations under 28 U.S.C. § 994(w) and to aid the Sentencing Commission in exercising its authority under 28 U.S.C. § 995(a)(8) regarding sentencing data collection. Over the years, the Criminal Law Committee, in consultation with the Commission and others, has proposed revisions to the form's content to incorporate statutory changes and to make various improvements suggested by users of the form. For example, at its September 2000 session, the Judicial Conference placed restrictions on public access to the Statement of Reasons form to protect the safety of defendants. As a result, while the judgements Judgments in a Criminal Case (AO 245B and AO 245C) are public documents, the Statement of Reasons is not. At its September 2003 session, the Judicial Conference designated the Statement of Reasons form as the mechanism by which courts were to comply with the enhanced statutory reporting requirements set forth in the Prosecutorial Remedies and Other Tools to end the Exploitation of Children Today Act of 2003, or "PROTECT Act," (Pub. L. No. 108-21, 117 Stat. 650 (2003)).

Attached are a sample copy of the Judgment in a Criminal Case (AO 245B), including the revised Statement of Reasons form and an instructional booklet entitled The Judgment in a Criminal Case (A) 245B), including the revised Statement of Reasons form, is posted in WordPerfect and pdf formats on the judiciary's Intranet at http://jnet.ao.dcn/Forms/AO_National_Forms/AO_245B.html. To access the form from the J-Net Home Page, click on "Forms," click on "AO National Forms," and then click on AO 245B or AO 245C. Court staff can download the forms for local use. Courts are urged not to modify the forms and to use the most current version of the Statement of Reasons form to avoid difficulties that can occur by using outdated forms. A booklet entitled *The Statement of Reasons for Use in Reporting Sentencing Decisions* is also available to assist judges and court personnel in preparing the revised form.

Questions from chief probation and pretrial services officers concerning the revised Statement of Reasons form should be directed to their circuit representative in the Office of Probation and Pretrial Services at (202) 502-1600. Questions from district clerks should be directed to their regional administrator in the District Court Administration Division at (202) 502-1570 and questions from judges should be directed to the Office of Judges Programs at (202) 502-1800.



Leonidas Ralph Mecham

LEONIDAS RALPH MECHAM
Director

CLARENCE A. LEE, JR.
Associate Director

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

WASHINGTON, D.C. 20544

June 9, 2006

MEMORANDUM TO ALL: **JUDGES, UNITED STATES COURTS OF APPEALS**
JUDGES, UNITED STATES DISTRICT COURTS
UNITED STATES MAGISTRATE JUDGES
CIRCUIT EXECUTIVES
DISTRICT COURT EXECUTIVES
CLERKS, UNITED STATES COURTS OF APPEALS
CLERKS, UNITED STATES DISTRICT COURTS
CHIEF PROBATION OFFICERS
CHIEF PRETRIAL SERVICES OFFICERS

SUBJECT: Statutory Requirement to Use the Statement of Reasons Form in Judgment in a Criminal Case (AO 245B and AO 245C, Rev. 06/05) **(IMPORTANT INFORMATION)**

On March 9, 2006, the President signed into law the USA PATRIOT Improvement and Reauthorization Act, Pub. L. 109-177, which contains provisions relating to federal sentencing documentation required to be submitted to the United States Sentencing Commission. Specifically, section 735 of the Act amended 28 U.S.C. § 994(w) to require that the statement of reasons for the sentence imposed be "stated on the written statement of reasons form issued by the Judicial Conference and approved by the United States Sentencing Commission."

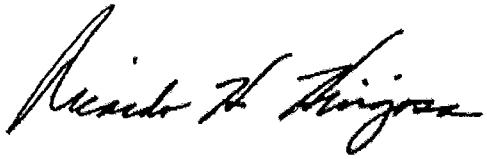
The Judicial Conference and the Sentencing Commission have taken the requisite steps under the statute to make use of the Statement of Reasons form for individual defendants mandatory. Sentencing courts now are statutorily required to use and submit to the Sentencing Commission AO Form 245B/C, Rev. 06/05 for individual defendants, along with the other sentencing documentation required under 28 U.S.C. § 994(w). After receiving input from federal judges, court staff, and the Sentencing Commission, the Executive Committee distributed the revised Statement of Reasons form for individual defendants in June 2005 to reflect the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005). The Judicial Conference has informed the Commission that the June 2005 revision of the Statement of Reasons form constitutes "issuance" for purposes of section 994(w) as amended. The Sentencing Commission approved that form on May 15, 2006. A Statement of Reasons form for organizational defendants has not yet been issued or approved for purposes of section 994(w).

The Statement of Reasons form is available on the judiciary's intranet at http://jnet.ao.dcn/Forms/AO_National_Forms.html. An accompanying explanatory booklet is available at http://jnet.ao.dcn/Probation_and_Pretrial_Services/Investigation_and_Supervision_Topics/Investigation/Statement_of_Reasons_for_Use.html.

Compliance with this new statutory requirement by sentencing courts is important because standardized collection of sentencing data is critical for the sound evaluation of federal sentencing practices. Uniform and complete utilization of the revised Statement of Reasons form is an essential step toward achieving uniformity and accuracy in sentencing documentation. The Sentencing Commission, the Administrative Office, and the Criminal Law Committee will continue to explore ways to achieve this goal.

Thank you for your attention to this important issue.

Paul G. Cassell
Chair, Committee on Criminal Law
of the Judicial Conference
of the United States



Ricardo H. Hinojosa
Chair, United States Sentencing Commission

COMMITTEE ON CRIMINAL LAW
of the
JUDICIAL CONFERENCE OF THE UNITED STATES
United States District Court
500 West Pike Street, 2nd Floor
Clarksburg, WV 26301

Honorable Curtis Lynn Collier
Honorable Jeffrey R. Howard
Honorable Ellen Segal Huvelle
Honorable Sterling Johnson, Jr.
Honorable C. Darnell Jones II
Honorable Dale A. Kimball
Honorable William T. Lawrence
Honorable Ricardo S. Martinez
Honorable Franklin L. Noel
Honorable Linda R. Reade
Honorable Margaret Casey Rodgers
Honorable Keith Starrett

Honorable Irene M. Keeley, Chair

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September 28, 2015

MEMORANDUM

To: Judges, United States District Courts
United States Magistrate Judges
Clerks, United States District Courts
Federal Public/Community Defenders
Chief Probation Officers

From: Honorable Irene M. Keeley Irene M. Keeley
Chair, Criminal Law Committee

Honorable Patti B. Saris Patti B. Saris
Chair, United States Sentencing Commission

RE: REVISED STATEMENT OF REASONS FORM EFFECTIVE NOVEMBER 1, 2015
(IMPORTANT INFORMATION)

We are writing to notify you of revisions to the statement of reasons form (attached to the AO 245 series of judgment forms) that were recently approved by the U.S. Sentencing Commission and issued by the Judicial Conference, pursuant to 28 U.S.C. § 994(w). The revisions are primarily designed to help the Commission learn more about why courts impose sentences outside the guideline range, especially when the sentence is a variance. The changes should not significantly increase the time or resources needed to complete the revised form. In fact, many of the changes responded to feedback from judges, probation officers, court clerks, and others regarding sections

that were confusing or difficult to apply. **Please note that the effective date of the form has been changed from October 1, 2015, to November 1, 2015**. This delay responds to concerns expressed by courts about the scheduled roll out of the form.

You will see that the most significant change is an expansion of the reasons for variances listed on the variance page of the form. The revised form, a copy of which is attached, contains more check boxes in the variance section, reflecting the most common reasons for variances currently provided by the courts.

The Commission stands ready to offer any assistance needed to implement use of the form by November 1, 2015. You may review an instructional video on the revised form on the Commission's website, www.ussc.gov. Official versions of the form in different formats (e.g., Word, Adobe) will soon be posted on the JNet on the forms page. If you have any questions about the revised form, please contact the Commission's Helpline at (202) 502-4545. Additionally, the Commission's training staff is available to assist the court family in person. To set up a training session, please contact Acting Director of Education and Sentencing Practice, Raquel Wilson at rwilson@ussc.gov. As always, we appreciate the assistance of the courts with the fulfillment of the Commission's statutory mission.

DEFENDANT:
CASE NUMBER:
DISTRICT:

STATEMENT OF REASONS

(Not for Public Disclosure)

Sections I, II, III, IV, and VII of the Statement of Reasons form must be completed in all felony and Class A misdemeanor cases.

I. COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT

A. ☐ **The court adopts the presentence investigation report without change.**

B. ☐ **The court adopts the presentence investigation report with the following changes:** (*Use Section VIII if necessary*)
(*Check all that apply and specify court determination, findings, or comments, referencing paragraph numbers in the presentence report*)

1. ☐ **Chapter Two of the United States Sentencing Commission Guidelines Manual** determinations by court (*briefly summarize the changes, including changes to base offense level, or specific offense characteristics*):

2. ☐ **Chapter Three of the United States Sentencing Commission Guidelines Manual** determinations by court (*briefly summarize the changes, including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple counts, or acceptance of responsibility*):

3. ☐ **Chapter Four of the United States Sentencing Commission Guidelines Manual** determinations by court (*briefly summarize the changes, including changes to criminal history category or scores, career offender status, or criminal livelihood determinations*):

4. ☐ **Additional Comments or Findings** (*include comments or factual findings concerning any information in the presentence report, including information that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions; any other rulings on disputed portions of the presentence investigation report; identification of those portions of the report in dispute but for which a court determination is unnecessary because the matter will not affect sentencing or the court will not consider it*):

C. ☐ **The record establishes no need for a presentence investigation report pursuant to Fed.R.Crim.P. 32.**
Applicable Sentencing Guideline (*if more than one guideline applies, list the guideline producing the highest offense level*): _____

II. COURT FINDINGS ON MANDATORY MINIMUM SENTENCE (*Check all that apply.*)

A. ☐ One or more counts of conviction carry a mandatory minimum term of imprisonment and the sentence imposed is at or above the applicable mandatory minimum term.

B. ☐ One or more counts of conviction carry a mandatory minimum term of imprisonment, but the sentence imposed is below the mandatory minimum term because the court has determined that the mandatory minimum term does not apply based on:

☐ findings of fact in this case (*Specify*): _____

☐ substantial assistance (18 U.S.C. § 3553(e))

☐ the statutory safety valve (18 U.S.C. § 3553(f))

C. ☐ No count of conviction carries a mandatory minimum sentence.

III. COURT DETERMINATION OF GUIDELINE RANGE (*BEFORE DEPARTURES OR VARIANCES*):

Total Offense Level: _____
Criminal History Category: _____
Guideline Range (*after application of §5G1.1 and §5G1.2*): _____ to _____ months
Supervised Release Range _____ to _____ years
Fine Range: $ _____ to $ _____

☐ Fine waived or below the guideline range because of inability to pay.

DEFENDANT:
CASE NUMBER:
DISTRICT:

STATEMENT OF REASONS

IV. GUIDELINE SENTENCING DETERMINATION *(Check all that apply)*

A. ☐ The sentence is within the guideline range and the difference between the maximum and minimum of the guideline range does not exceed 24 months.

B. ☐ The sentence is within the guideline range and the difference between the maximum and minimum of the guideline range exceeds 24 months, and the specific sentence is imposed for these reasons: _____. *(Use Section VIII if necessary)*

C. ☐ The court departs from the guideline range for one or more reasons provided in the Guidelines Manual. *(Also complete Section V)*

D. ☐ The court imposed a sentence otherwise outside the sentencing guideline system (*i.e.*, a variance). *(Also complete Section VI)*

V. DEPARTURES PURSUANT TO THE GUIDELINES MANUAL *(If applicable)*

A. **The sentence imposed departs** *(Check only one)*:

☐ above the guideline range
☐ below the guideline range

B. **Motion for departure before the court pursuant to** (*Check all that apply and specify reason(s) in sections C and D*):

1. **Plea Agreement**
   - ☐ binding plea agreement for departure accepted by the court
   - ☐ plea agreement for departure, which the court finds to be reasonable
   - ☐ plea agreement that states that the government will not oppose a defense departure motion
2. **Motion Not Addressed in a Plea Agreement**
   - ☐ government motion for departure
   - ☐ defense motion for departure to which the government did not object
   - ☐ defense motion for departure to which the government objected
   - ☐ joint motion by both parties
3. **Other**
   - ☐ Other than a plea agreement or motion by the parties for departure

C. **Reasons for departure** (*Check all that apply*):

☐	4A1.3	Criminal History Inadequacy	☐	5K2.1	Death	☐	5K2.12	Coercion and Duress
☐	5H1.1	Age	☐	5K2.2	Physical Injury	☐	5K2.13	Diminished Capacity
☐	5H1.2	Education and Vocational Skills	☐	5K2.3	Extreme Psychological Injury	☐	5K2.14	Public Welfare
☐	5H1.3	Mental and Emotional Condition	☐	5K2.4	Abduction or Unlawful Restraint	☐	5K2.16	Voluntary Disclosure of Offense
☐	5H1.4	Physical Condition	☐	5K2.5	Property Damage or Loss	☐	5K2.17	High-Capacity Semiautomatic Weapon
☐	5H1.5	Employment Record	☐	5K2.6	Weapon	☐	5K2.18	Violent Street Gang
☐	5H1.6	Family Ties and Responsibilities	☐	5K2.7	Disruption of Government Function	☐	5K2.20	Aberrant Behavior
☐	5H1.11	Military Service	☐	5K2.8	Extreme Conduct	☐	5K2.21	Dismissed and Uncharged Conduct
☐	5H1.11	Charitable Service/Good Works	☐	5K2.9	Criminal Purpose	☐	5K2.22	Sex Offender Characteristics
☐	5K1.1	Substantial Assistance	☐	5K2.1	Victim's Conduct	☐	5K2.23	Discharged Terms of Imprisonment
☐	5K2.0	Aggravating/Mitigating Circumstances	☐	5K2.1	Lesser Harm	☐	5K2.24	Unauthorized Insignia
						☐	5K3.1	Early Disposition Program (EDP)

☐ Other Guideline Reason(s) for Departure, to include departures pursuant to the commentary in the Guidelines Manual (*see* "List of Departure Provisions" following the Index in the Guidelines Manual). (*Please specify*):

_____

D. **State the basis for the departure.** *(Use Section VIII if necessary)*

DEFENDANT:
CASE NUMBER:
DISTRICT:

STATEMENT OF REASONS

VI. COURT DETERMINATION FOR A VARIANCE *(If applicable)*

A. The sentence imposed is *(Check only one)*:

☐ above the guideline range
☐ below the guideline range

B. Motion for a variance before the court pursuant to *(Check all that apply and specify reason(s) in sections C and D)*:

1. **Plea Agreement**
   ☐ binding plea agreement for a variance accepted by the court
   ☐ plea agreement for a variance, which the court finds to be reasonable
   ☐ plea agreement that states that the government will not oppose a defense motion for a variance
2. **Motion Not Addressed in a Plea Agreement**
   ☐ government motion for a variance
   ☐ defense motion for a variance to which the government did not object
   ☐ defense motion for a variance to which the government objected
   ☐ joint motion by both parties
3. **Other**
   ☐ Other than a plea agreement or motion by the parties for a variance

C. 18 U.S.C. § 3553(a) and other reason(s) for a variance *(Check all that apply)*:

☐ The nature and circumstances of the offense pursuant to 18 U.S.C. § 3553(a)(1):
- ☐ Mens Rea ☐ Extreme Conduct ☐ Dismissed/Uncharged Conduct
- ☐ Role in the Offense ☐ Victim Impact
- ☐ General Aggravating or Mitigating Factors (*Specify*) _____

☐ The history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(1):
- ☐ Aberrant Behavior ☐ Lack of Youthful Guidance
- ☐ Age ☐ Mental and Emotional Condition
- ☐ Charitable Service/Good Works ☐ Military Service
- ☐ Community Ties ☐ Non-Violent Offender
- ☐ Diminished Capacity ☐ Physical Condition
- ☐ Drug or Alcohol Dependence ☐ Pre-sentence Rehabilitation
- ☐ Employment Record ☐ Remorse/Lack of Remorse
- ☐ Family Ties and Responsibilities ☐ Other (*Specify*): _____
- ☐ Issues with Criminal History (*Specify*): _____

☐ To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense (18 U.S.C. § 3553(a)(2)(A))
☐ To afford adequate deterrence to criminal conduct (18 U.S.C. § 3553(a)(2)(B))
☐ To protect the public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C))
☐ To provide the defendant with needed educational or vocational training (18 U.S.C. § 3553(a)(2)(D))
☐ To provide the defendant with medical care (18 U.S.C. § 3553(a)(2)(D))
☐ To provide the defendant with other correctional treatment in the most effective manner (18 U.S.C. § 3553(a)(2)(D))
☐ To avoid unwarranted sentencing disparities among defendants (18 U.S.C. § 3553(a)(6)) *(Specify in section D)*
☐ To provide restitution to any victims of the offense (18 U.S.C. § 3553(a)(7))
☐ Acceptance of Responsibility ☐ Conduct Pre-trial/On Bond ☐ Cooperation Without Government Motion for Departure
☐ Early Plea Agreement ☐ Global Plea Agreement
☐ Time Served (*not counted in sentence*) ☐ Waiver of Indictment ☐ Waiver of Appeal
☐ Policy Disagreement with the Guidelines (*Kimbrough v. U.S.*, 552 U.S. 85 (2007). *(Specify)*: _____
☐ Other (*Specify*): _____

D. State the basis for a variance. *(Use Section VIII if necessary)*

DEFENDANT:
CASE NUMBER:
DISTRICT:

STATEMENT OF REASONS

VII. COURT DETERMINATIONS OF RESTITUTION

A. ☐ **Restitution not applicable.**

B. **Total amount** _____

C. **Restitution not ordered** *(Check only one)*:

1. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).

2. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).

3. ☐ For other offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweigh the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(1)(B)(ii).

4. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. §§ 1593, 2248, 2259, 2264, 2327 or 3663A, restitution is not ordered because the victim(s)'(s) losses were not ascertainable (18 U.S.C. § 3664(d)(5)).

5. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. §§ 1593, 2248, 2259, 2264, 2327 or 3663A, restitution is not ordered because the victim(s) elected to not participate in any phase of determining the restitution order (18 U.S.C. § 3664(g)(1)).

6. ☐ Restitution is not ordered for other reasons. *(Explain)*

D. ☐ **Partial restitution is ordered for these reasons** *(18 U.S.C. § 3553(c))*:

VIII. ADDITIONAL BASIS FOR THE SENTENCE IN THIS CASE *(If applicable)*

Defendant's Soc. Sec. No.: _____

Date of Imposition of Judgment: _____

Defendant's Date of Birth: _____

_____
Signature of Judge

Defendant's Residence Address: _____

_____

_____
Name and Title of Judge

Defendant's Mailing Address: _____

_____

Date: _____