

1 **SEC. 401. SENTENCING REFORM.**

2 (a) ENFORCEMENT OF SENTENCING GUIDELINES
3 FOR CHILD ABDUCTION AND SEX OFFENSES.—Section
4 3553(b) of title 18, United States Code is amended—

5 (1) by striking “The court” and inserting the
6 following:

7 “(1) IN GENERAL.—Except as provided in para-
8 graph (2), the court”; and

9 (2) by adding at the end the following:

10 “(2) CHILD CRIMES AND SEXUAL OFFENSES.—

11 “(A) SENTENCING.—In sentencing a de-
12 fendant convicted of an offense under section
13 1201 involving a minor victim, an offense under
14 section 1591, or an offense under chapter 71,
15 109A, 110, or 117, the court shall impose a
16 sentence of the kind, and within the range, re-
17 ferred to in subsection (a)(4) unless—

18 “(i) the court finds that there exists
19 an aggravating circumstance of a kind, or
20 to a degree, not adequately taken into con-
21 sideration by the Sentencing Commission
22 in formulating the guidelines that should
23 result in a sentence greater than that de-
24 scribed;



1 “(ii) the court finds that there exists
2 a mitigating circumstance of a kind or to
3 a degree, that—

4 “(I) has been affirmatively and
5 specifically identified as a permissible
6 ground of downward departure in the
7 sentencing guidelines or policy state-
8 ments issued under section 994(a) of
9 title 28, taking account of any amend-
10 ments to such sentencing guidelines or
11 policy statements by Congress;

12 “(II) has not been taken into
13 consideration by the Sentencing Com-
14 mission in formulating the guidelines;
15 and

16 “(III) should result in a sentence
17 different from that described; or

18 “(iii) the court finds, on motion of the
19 Government, that the defendant has pro-
20 vided substantial assistance in the inves-
21 tigation or prosecution of another person
22 who has committed an offense and that
23 this assistance established a mitigating cir-
24 cumstance of a kind, or to a degree, not
25 adequately taken into consideration by the



1 Sentencing Commission in formulating the
2 guidelines that should result in a sentence
3 lower than that described.

4 In determining whether a circumstance was adequately
5 taken into consideration, the court shall consider only the
6 sentencing guidelines, policy statements, and official com-
7 mentary of the Sentencing Commission, together with any
8 amendments thereto by act of Congress. In the absence
9 of an applicable sentencing guideline, the court shall im-
10 pose an appropriate sentence, having due regard for the
11 purposes set forth in subsection (a)(2). In the absence of
12 an applicable sentencing guideline in the case of an offense
13 other than a petty offense, the court shall also have due
14 regard for the relationship of the sentence imposed to sen-
15 tences prescribed by guidelines applicable to similar of-
16 fenses and offenders, and to the applicable policy state-
17 ments of the Sentencing Commission, together with any
18 amendments to such guidelines or policy statements by act
19 of Congress.”.

20 (b) CONFORMING AMENDMENTS TO GUIDELINES
21 MANUAL.—The Federal Sentencing Guidelines are
22 amended—

23 (1) in section 5K2.0—

24 (A) by striking “Under” and inserting the
25 following:



1 “(a) DOWNWARD DEPARTURES IN CRIMINAL CASES
2 OTHER THAN CHILD CRIMES AND SEXUAL OFFENSES.—
3 Under”; and

4 (B) by adding at the end the following:

5 “(b) DOWNWARD DEPARTURES IN CHILD CRIMES
6 AND SEXUAL OFFENSES.—

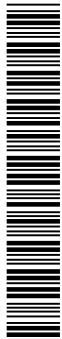
7 “Under 18 U.S.C. § 3553(b)(2), the sentencing court may
8 impose a sentence below the range established by the ap-
9 plicable guidelines only if the court finds that there exists
10 a mitigating circumstance of a kind, or to a degree, that—

11 “(1) has been affirmatively and specifically identified
12 as a permissible ground of downward departure in
13 the sentencing guidelines or policy statements issued
14 under section 994(a) of title 28, United States Code,
15 taking account of any amendments to such sen-
16 tencing guidelines or policy statements by act of
17 Congress;

18 “(2) has not adequately been taken into consider-
19 ation by the Sentencing Commission in formulating
20 the guidelines; and

21 “(3) should result in a sentence different from that
22 described.

23 The grounds enumerated in this Part K of chapter 5 are
24 the sole grounds that have been affirmatively and specifi-
25 cally identified as a permissible ground of downward de-



1 parture in these sentencing guidelines and policy state-
2 ments. Thus, notwithstanding any other reference to au-
3 thority to depart downward elsewhere in this Sentencing
4 Manual, a ground of downward departure has not been
5 affirmatively and specifically identified as a permissible
6 ground of downward departure within the meaning of sec-
7 tion 3553(b)(2) unless it is expressly enumerated in this
8 Part K as a ground upon which a downward departure
9 may be granted.”.

10 (2) At the end of part K of chapter 5, add the
11 following:

12 **“§ 5K2.22 Specific Offender Characteristics as**
13 **Grounds for Downward Departure in**
14 **child crimes and sexual offenses (Policy**
15 **Statement)**

16 “In sentencing a defendant convicted of an offense under
17 section 1201 involving a minor victim, an offense under
18 section 1591, or an offense under chapter 71, 109A, 110,
19 or 117 of title 18, United States Code, age may be a rea-
20 son to impose a sentence below the applicable guideline
21 range only if and to the extent permitted by § 5H1.1.

22 “An extraordinary physical impairment may be a reason
23 to impose a sentence below the applicable guideline range
24 only if and to the extent permitted by § 5H1.4. Drug, alco-



1 hol, or gambling dependence or abuse is not a reason for
2 imposing a sentence below the guidelines.

3 (3) Section 5K2.20 is amended by striking “A”
4 and inserting “Except where a defendant is con-
5 victed of an offense under section 1201 involving a
6 minor victim, an offense under section 1591, or an
7 offense under chapter 71, 109A, 110, or 117 of title
8 18, United States Code, a”.

9 (4) Section 5H1.6 is amended by inserting after
10 the first sentence the following: “In sentencing a de-
11 fendant convicted of an offense under section 1201
12 involving a minor victim, an offense under section
13 1591, or an offense under chapter 71, 109A, 110,
14 or 117 of title 18, United States Code, family ties
15 and responsibilities and community ties are not rel-
16 evant in determining whether a sentence should be
17 below the applicable guideline range.”.

18 (5) Section 5K2.13 is amended by—

19 (A) striking “or” before “(3)”; and

20 (B) replacing “public” with “public; or (4)
21 the defendant has been convicted of an offense
22 under chapter 71, 109A, 110, or 117 of title
23 18, United States Code.”.



1 (c) STATEMENT OF REASONS FOR IMPOSING A SEN-
2 TENCE.—Section 3553(c) of title 18, United States Code,
3 is amended—

4 (1) by striking “described.” and inserting “de-
5 scribed, which reasons must also be stated with
6 specificity in the written order of judgment and com-
7 mitment, except to the extent that the court relies
8 upon statements received in camera in accordance
9 with Federal Rule of Criminal Procedure 32. In the
10 event that the court relies upon statements received
11 in camera in accordance with Federal Rule of Crimi-
12 nal Procedure 32 the court shall state that such
13 statements were so received and that it relied upon
14 the content of such statements.”;

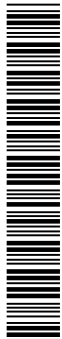
15 (2) by inserting “, together with the order of
16 judgment and commitment,” after “the court’s
17 statement of reasons”; and

18 (3) by inserting “and to the Sentencing Com-
19 mission,” after “to the Probation System”.

20 (d) REVIEW OF A SENTENCE.—

21 (1) REVIEW OF DEPARTURES.—Section
22 3742(e)(3) of title 18, United States Code, is
23 amended to read as follows:

24 “(3) is outside the applicable guideline range,
25 and



1 “(A) the district court failed to provide the
2 written statement of reasons required by section
3 3553(c);

4 “(B) the sentence departs from the appli-
5 cable guideline range based on a factor that—

6 “(i) does not advance the objectives
7 set forth in section 3553(a)(2); or

8 “(ii) is not authorized under section
9 3553(b); or

10 “(iii) is not justified by the facts of
11 the case; or

12 “(C) the sentence departs to an unreason-
13 able degree from the applicable guidelines
14 range, having regard for the factors to be con-
15 sidered in imposing a sentence, as set forth in
16 section 3553(a) of this title and the reasons for
17 the imposition of the particular sentence, as
18 stated by the district court pursuant to the pro-
19 visions of section 3553(c); or”.

20 (2) STANDARD OF REVIEW.—The last para-
21 graph of section 3742(e) of title 18, United States
22 Code, is amended by striking “shall give due def-
23 erence to the district court’s application of the
24 guidelines to the facts” and inserting “, except with
25 respect to determinations under subsection (3)(A) or



1 (3)(B), shall give due deference to the district
2 court's application of the guidelines to the facts.
3 With respect to determinations under subsection
4 (3)(A) or (3)(B), the court of appeals shall review
5 de novo the district court's application of the guide-
6 lines to the facts".

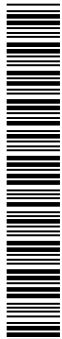
7 (3) DECISION AND DISPOSITION.—

8 (A) The first paragraph of section 3742(f)
9 of title 18, United States Code, is amended by
10 striking "the sentence";

11 (B) Section 3742(f)(1) of title 18, United
12 States Code, is amended by inserting "the sen-
13 tence" before "was imposed";

14 (C) Section 3742(f)(2) of title 18, United
15 States Code, is amended to read as follows:

16 "(2) the sentence is outside the applicable
17 guideline range and the district court failed to pro-
18 vide the required statement of reasons in the order
19 of judgment and commitment, or the departure is
20 based on an impermissible factor, or is to an unrea-
21 sonable degree, or the sentence was imposed for an
22 offense for which there is no applicable sentencing
23 guideline and is plainly unreasonable, it shall state
24 specific reasons for its conclusions and—



1 “(A) if it determines that the sentence is
2 too high and the appeal has been filed under
3 subsection (a), it shall set aside the sentence
4 and remand the case for further sentencing pro-
5 ceedings with such instructions as the court
6 considers appropriate, subject to subsection (g);

7 “(B) if it determines that the sentence is
8 too low and the appeal has been filed under
9 subsection (b), it shall set aside the sentence
10 and remand the case for further sentencing pro-
11 ceedings with such instructions as the court
12 considers appropriate, subject to subsection
13 (g);” and

14 (D) Section 3742(f)(3) of title 18, United
15 States Code, is amended by inserting “the sen-
16 tence” before “is not described”.

17 (e) IMPOSITION OF SENTENCE UPON REMAND.—
18 Section 3742 of title 18, United States Code, is amended
19 by redesignating subsections (g) and (h) as subsections (h)
20 and (i) and by inserting the following after subsection (f):

21 “(g) SENTENCING UPON REMAND.—A district court
22 to which a case is remanded pursuant to subsection (f)(1)
23 or (f)(2) shall resentence a defendant in accordance with
24 section 3553 and with such instructions as may have been
25 given by the court of appeals, except that—



1 “(1) In determining the range referred to in
2 subsection 3553(a)(4), the court shall apply the
3 guidelines issued by the Sentencing Commission pur-
4 suant to section 994(a)(1) of title 28, United States
5 Code, and that were in effect on the date of the pre-
6 vious sentencing of the defendant prior to the ap-
7 peal, together with any amendments thereto by any
8 act of Congress that was in effect on such date; and

9 “(2) The court shall not impose a sentence out-
10 side the applicable guidelines range except upon a
11 ground that—

12 “(A) was specifically and affirmatively in-
13 cluded in the written statement of reasons re-
14 quired by section 3553(c) in connection with
15 the previous sentencing of the defendant prior
16 to the appeal; and

17 “(B) was held by the court of appeals, in
18 remanding the case, to be a permissible ground
19 of departure.”.

20 (f) DEFINITIONS.—Section 3742 of title 18, United
21 States Code, as amended by subsection (e), is further
22 amended by adding at the end the following:

23 “(j) DEFINITIONS.—For purposes of this section—

24 “(1) a factor is a ‘permissible’ ground of depar-
25 ture if it—



1 “(A) advances the objectives set forth in
2 section 3553(a)(2); and

3 “(B) is authorized under section 3553(b);
4 and

5 “(C) is justified by the facts of the case;
6 and

7 “(2) a factor is an ‘impermissible’ ground of de-
8 parture if it is not a permissible factor within the
9 meaning of subsection (j)(1).”.

10 (g) REFORM OF GUIDELINES GOVERNING ACCEPT-
11 ANCE OF RESPONSIBILITY.—Subject to subsection (j), the
12 Guidelines Manual promulgated by the Sentencing Com-
13 mission pursuant to section 994(a) of title 28, United
14 States Code, is amended—

15 (1) in section 3E1.1(b)—

16 (A) by inserting “upon motion of the gov-
17 ernment stating that” immediately before “the
18 defendant has assisted authorities”; and

19 (B) by striking “taking one or more” and
20 all that follows through and including “addi-
21 tional level” and insert “timely notifying au-
22 thorities of his intention to enter a plea of
23 guilty, thereby permitting the government to
24 avoid preparing for trial and permitting the
25 government and the court to allocate their re-



1 sources efficiently, decrease the offense level by
2 1 additional level”;

3 (2) in the Application Notes to the Commentary
4 to section 3E1.1, by amending Application Note 6—

5 (A) by striking “one or both of”; and

6 (B) by adding the following new sentence
7 at the end: “Because the Government is in the
8 best position to determine whether the defend-
9 ant has assisted authorities in a manner that
10 avoids preparing for trial, an adjustment under
11 subsection (b) may only be granted upon a for-
12 mal motion by the Government at the time of
13 sentencing.”; and

14 (3) in the Background to section 3E1.1, by
15 striking “one or more of”.

16 (h) IMPROVED DATA COLLECTION.—Section 994(w)
17 of title 28, United States Code, is amended to read as
18 follows:

19 “(w)(1) The Chief Judge of each district court shall
20 ensure that, within 30 days following entry of judgment
21 in every criminal case, the sentencing court submits to the
22 Commission a written report of the sentence, the offense
23 for which it is imposed, the age, race, sex of the offender,
24 and information regarding factors made relevant by the
25 guidelines. The report shall also include—



1 “(A) the judgment and commitment order;

2 “(B) the statement of reasons for the sentence
3 imposed (which shall include the reason for any de-
4 parture from the otherwise applicable guideline
5 range);

6 “(C) any plea agreement;

7 “(D) the indictment or other charging docu-
8 ment;

9 “(E) the presentence report; and

10 “(F) any other information as the Commission
11 finds appropriate.

12 “(2) The Commission shall, upon request, make
13 available to the House and Senate Committees on
14 the Judiciary, the written reports and all underlying
15 records accompanying those reports described in this
16 section, as well as other records received from
17 courts.

18 “(3) The Commission shall submit to Congress
19 at least annually an analysis of these documents,
20 any recommendations for legislation that the Com-
21 mission concludes is warranted by that analysis, and
22 an accounting of those districts that the Commission
23 believes have not submitted the appropriate informa-
24 tion and documents required by this section.



1 “(4) The Commission shall make available to
2 the Attorney General, upon request, such data files
3 as the Commission may assemble or maintain in
4 electronic form that include any information sub-
5 mitted under paragraph (1). Such data files shall be
6 made available in electronic form and shall include
7 all data fields requested, including the identity of the
8 sentencing judge.”.

9 (i) SENTENCING GUIDELINES AMENDMENTS.—(1)
10 Subject to subsection (j), the Guidelines Manual promul-
11 gated by the Sentencing Commission pursuant to section
12 994(a) of title 28, United States Code, is amended as fol-
13 lows:

14 (A) Application Note 4(b)(i) to section 4B1.5 is
15 amended to read as follows:

16 “(i) IN GENERAL.—For purposes of
17 subsection (b), the defendant engaged in a
18 pattern of activity involving prohibited sex-
19 ual conduct if on at least two separate oc-
20 casions, the defendant engaged in prohib-
21 ited sexual conduct with a minor.”.

22 (B) Section 2G2.4(b) is amended by adding at
23 the end the following:



1 “(4) If the offense involved material that por-
2 trays sadistic or masochistic conduct or other depic-
3 tions of violence, increase by 4 levels.

4 “(5) If the offense involved—

5 “(A) at least 10 images, but fewer than
6 150, increase by 2 levels;

7 “(B) at least 150 images, but fewer than
8 300, increase by 3 levels;

9 “(C) at least 300 images, but fewer than
10 600, increase by 4 levels; and

11 “(D) 600 or more images, increase by 5
12 levels.”.

13 (C) Section 2G2.2(b) is amended by adding at
14 the end the following:

15 “(6) If the offense involved—

16 “(A) at least 10 images, but fewer than
17 150, increase by 2 levels;

18 “(B) at least 150 images, but fewer than
19 300, increase by 3 levels;

20 “(C) at least 300 images, but fewer than
21 600, increase by 4 levels; and

22 “(D) 600 or more images, increase by 5
23 levels.”.

24 (2) The Sentencing Commission shall amend the Sen-
25 tencing Guidelines to ensure that the Guidelines ade-



1 quately reflect the seriousness of the offenses under sec-
2 tions 2243(b), 2244(a)(4), and 2244(b) of title 18, United
3 States Code.

4 (j) CONFORMING AMENDMENTS.—

5 (1) Upon enactment of this Act, the Sentencing
6 Commission shall forthwith distribute to all courts of
7 the United States and to the United States Probation
8 System the amendments made by subsections
9 (b), (g), and (i) of this section to the sentencing
10 guidelines, policy statements, and official com-
11 mentary of the Sentencing Commission. These
12 amendments shall take effect upon the date of en-
13 actment of this Act, in accordance with paragraph
14 (5).

15 (2) On or before May 1, 2005, the Sentencing
16 Commission shall not promulgate any amendment to
17 the sentencing guidelines, policy statements, or offi-
18 cial commentary of the Sentencing Commission that
19 is inconsistent with any amendment made by sub-
20 section (b) or that adds any new grounds of down-
21 ward departure to Part K of chapter 5.

22 (3) With respect to cases covered by the amend-
23 ments made by subsection (i) of this section, the
24 Sentencing Commission may make further amend-
25 ments to the sentencing guidelines, policy state-



1 ments, or official commentary of the Sentencing
2 Commission, except that the Commission shall not
3 promulgate any amendments that, with respect to
4 such cases, would result in sentencing ranges that
5 are lower than those that would have applied under
6 such subsection.

7 (4) At no time may the Commission promulgate
8 any amendment that would alter or repeal the
9 amendments made by subsection (g) of this section.

10 (5) Section 3553(a) of title 18, United States
11 Code, is amended—

12 (A) by amending paragraph (4)(A) to read
13 as follows:

14 “(A) the applicable category of offense
15 committed by the applicable category of defend-
16 ant as set forth in the guidelines—

17 “(i) issued by the Sentencing Commis-
18 sion pursuant to section 994(a)(1) of title
19 28, United States Code, subject to any
20 amendments made to such guidelines by
21 act of Congress (regardless of whether
22 such amendments have yet to be incor-
23 porated by the Sentencing Commission
24 into amendments issued under section
25 994(p) of title 28); and



1 “(ii) that, except as provided in sec-
2 tion 3742(g), are in effect on the date the
3 defendant is sentenced; or”;

4 (B) in paragraph (4)(B), by inserting “,
5 taking into account any amendments made to
6 such guidelines or policy statements by act of
7 Congress (regardless of whether such amend-
8 ments have yet to be incorporated by the Sen-
9 tencing Commission into amendments issued
10 under section 994(p) of title 28)” after “Code”;

11 (C) by amending paragraph (5) to read as
12 follows:

13 “(5) any pertinent policy statement—

14 “(A) issued by the Sentencing Commission
15 pursuant to section 994(a)(2) of title 28,
16 United States Code, subject to any amendments
17 made to such policy statement by act of Con-
18 gress (regardless of whether such amendments
19 have yet to be incorporated by the Sentencing
20 Commission into amendments issued under sec-
21 tion 994(p) of title 28); and

22 “(B) that, except as provided in section
23 3742(g), is in effect on the date the defendant
24 is sentenced.”.



1 (k) COMPLIANCE WITH STATUTE.—Section 994(a) of
2 title 28, United States Code, is amended by striking “con-
3 sistent with all pertinent provisions of this title and title
4 18, United States Code,” and inserting “consistent with
5 all pertinent provisions of any Federal statute”.

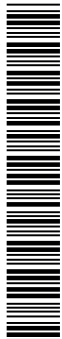
6 (l) REPORT BY ATTORNEY GENERAL.—

7 (1) DEFINED TERM.—For purposes of this sec-
8 tion, the term “report described in paragraph (3)”
9 means a report, submitted by the Attorney General,
10 which states in detail the policies and procedures
11 that the Department of Justice has adopted subse-
12 quent to the enactment of this Act—

13 (A) to ensure that Department of Justice
14 attorneys oppose sentencing adjustments, in-
15 cluding downward departures, that are not sup-
16 ported by the facts and the law;

17 (B) to ensure that Department of Justice
18 attorneys in such cases make a sufficient record
19 so as to permit the possibility of an appeal;

20 (C) to delineate objective criteria, specified
21 by the Attorney General, as to which such cases
22 may warrant consideration of an appeal, either
23 because of the nature or magnitude of the sen-
24 tencing error, its prevalence in the district, or



1 its prevalence with respect to a particular
2 judge;

3 (D) to ensure that Department of Justice
4 attorneys promptly notify the designated De-
5 partment of Justice component in Washington
6 concerning such adverse sentencing decisions;
7 and

8 (E) to ensure the vigorous pursuit of ap-
9 propriate and meritorious appeals of such ad-
10 verse decisions.

11 (2) REPORT REQUIRED.—

12 (A) IN GENERAL.—Not later than 15 days
13 after a district court's grant of a downward de-
14 parture in any case, other than a case involving
15 a downward departure for substantial assist-
16 ance to authorities pursuant to section 5K1.1 of
17 the United States Sentencing Guidelines, the
18 Attorney General shall submit a report to the
19 Committees on the Judiciary of the House of
20 Representatives and the Senate containing the
21 information described under subparagraph (B).

22 (B) CONTENTS.—The report submitted
23 pursuant to subparagraph (A) shall set forth—

- 24 (i) the case;
25 (ii) the facts involved;



1 (iii) the identity of the district court
2 judge;

3 (iv) the district court's stated reasons,
4 whether or not the court provided the
5 United States with advance notice of its in-
6 tention to depart; and

7 (v) the position of the parties with re-
8 spect to the downward departure, whether
9 or not the United States has filed, or in-
10 tends to file, a motion for reconsideration.

11 (C) APPEAL OF THE DEPARTURE.—Not
12 later than 5 days after a decision by the Solic-
13 itor General regarding the authorization of an
14 appeal of the departure, the Attorney General
15 shall submit a report to the Committees on the
16 Judiciary of the House of Representatives and
17 the Senate that describes the decision of the
18 Solicitor General and the basis for such deci-
19 sion.

20 (3) EFFECTIVE DATE.—Paragraph (2) shall
21 take effect on the day that is 91 days after the date
22 of enactment of this Act, except that such paragraph
23 shall not take effect if not more than 90 days after
24 the date of enactment of this Act the Attorney Gen-
25 eral has submitted to the Judiciary Committees of



1 the House of Representatives and the Senate the re-
2 port described in paragraph (3).

3 (m) REFORM OF EXISTING PERMISSIBLE GROUNDS
4 OF DOWNWARD DEPARTURES.—Not later than 180 days
5 after the enactment of this Act, the United States Sen-
6 tencing Commission shall—

7 (1) review the grounds of downward departure
8 that are authorized by the sentencing guidelines, pol-
9 icy statements, and official commentary of the Sen-
10 tencing Commission; and

11 (2) promulgate, pursuant to section 994 of title
12 28, United States Code—

13 (A) appropriate amendments to the sen-
14 tencing guidelines, policy statements, and offi-
15 cial commentary to ensure that the incidence of
16 downward departures are substantially reduced;

17 (B) a policy statement authorizing a down-
18 ward departure of not more than 4 levels if the
19 Government files a motion for such departure
20 pursuant to an early disposition program au-
21 thorized by the Attorney General and the
22 United States Attorney; and

23 (C) any other conforming amendments to
24 the sentencing guidelines, policy statements,
25 and official commentary of the Sentencing



1 Commission necessitated by this Act, including
2 a revision of paragraph 4(b) of part A of chap-
3 ter 1 and a revision of section 5K2.0.

4 (n) COMPOSITION OF SENTENCING COMMISSION.—

5 (1) IN GENERAL.—Section 991(a) of title 28,
6 United States Code, is amended by striking “At
7 least three” and inserting “Not more than 3”.

8 (2) APPLICABILITY.—The amendment made
9 under paragraph (1) shall not apply to any person
10 who is serving, or who has been nominated to serve,
11 as a member of the Sentencing Commission on the
12 date of enactment of this Act.

