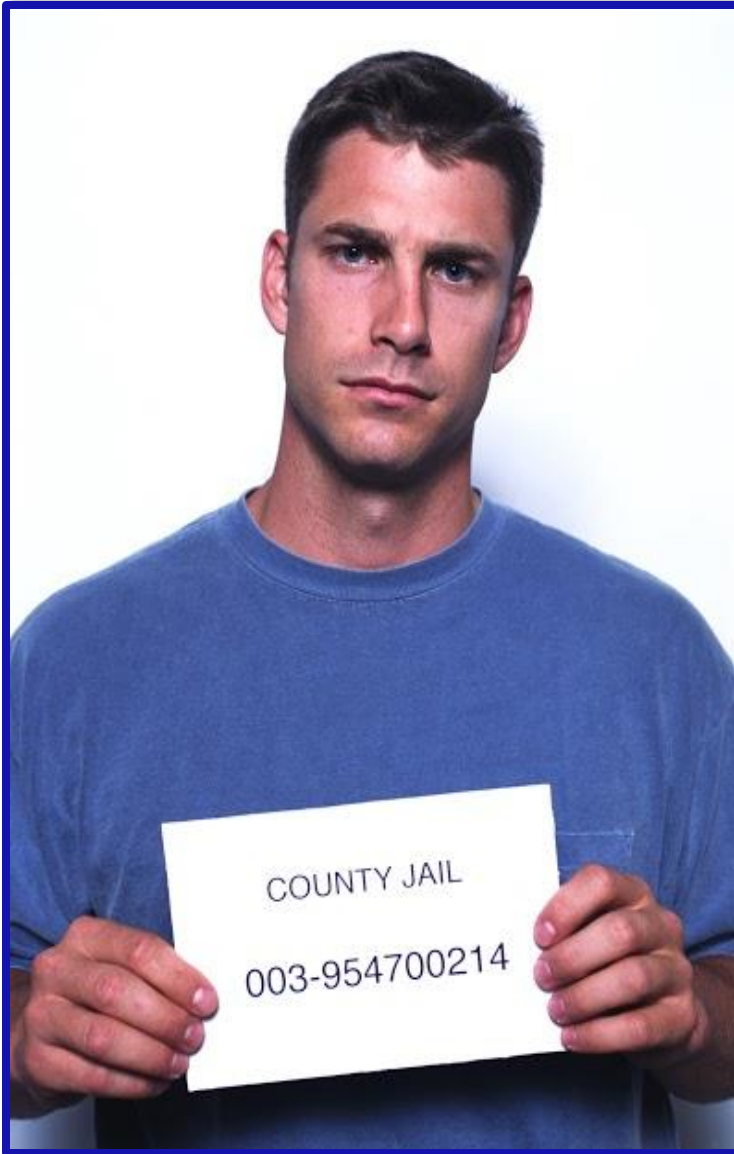


UNDERSTANDING THE NEBRASKA FEDERAL SENTENCING GUIDELINES

“The Guidelines are complex, as is the manner in which they are implemented, which is why you should always consult with an experienced Nebraska federal criminal defense attorney regarding your specific situation; however, if you have been charged with a criminal offense in federal court, it is in your best interest to have at least a basic understanding of how the Federal Sentencing Guidelines work.”



Petersen Criminal Defense Law



In the United States we operate under a federalist system of government, meaning we have a strong central government along with numerous smaller governments in the form of state governments. As a result, an individual can be charged with a criminal offense at the state level, the federal level, or both. Because the U.S. Constitution is the ultimate authority for both the state and federal criminal justice systems there are significant similarities between the two systems; however, there are some differences as well.

One aspect of the federal system, for example, that is not found in all state systems is the use of sentencing guidelines. The Guidelines are complex, as is the manner in which they are implemented, which is why you should always consult with an experienced Nebraska federal criminal defense attorney regarding your specific situation; however, if you have been charged with a criminal offense in federal court, it is in your best interest to have at least a basic understanding of how the Federal Sentencing Guidelines work.

WHY WERE THE FEDERAL SENTENCING GUIDELINES CREATED?



In the federal criminal justice system, there are currently 94 District Courts that act as the trial-level courts for the system. Prior to the creation of the Guidelines, all 94 of those courts handled prosecutions involving the same offenses; however, the sentencing handed down varied wildly from one court to another. The obvious disparity in sentencing is what led to the push for uniformity in sentencing. That, in turn, led to the enactment of the Sentencing Reform Act of 1984. That Act created the United States Sentencing Commission, or USSC. The USSC then created the Federal Sentencing Guidelines in 1987. Though the Guidelines have been modified and interpreted by the courts over the last 30 years the original Guidelines are still being used across the country today.

ARE THE GUIDELINES MANDATORY?



Language in the Guidelines was originally taken to mean their usage was required. As such, they were once considered to be mandatory; however, in *United States v. Booker*, 543 U.S. 220 (2005), the Supreme Court decided that mandatory guidelines created a system where facts that had not been decided by a jury were used to determine a defendant's sentence, a clear violation of the Sixth Amendment right to a trial by jury. The result of that decision was that the Guidelines are now officially considered to be advisory only; however, in practice most courts continue to use the Guidelines to determine a sentence and only deviate from them with good cause.

WHAT IS AN OFFENSE LEVEL?

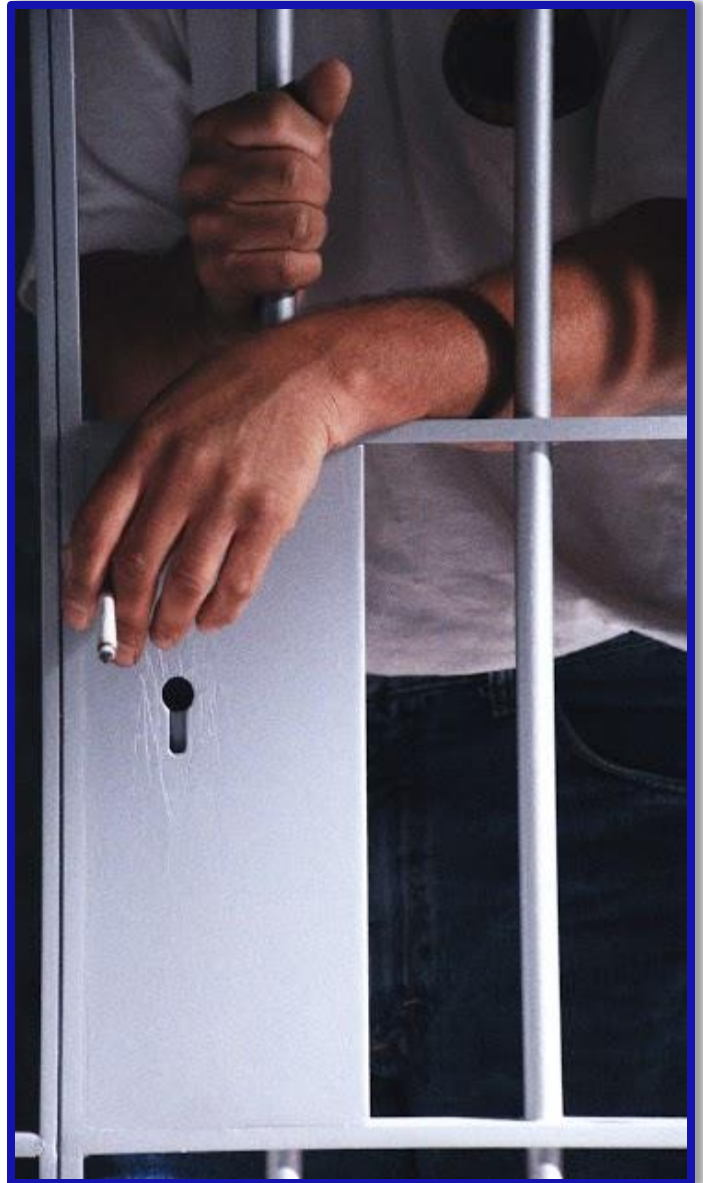
The first consideration when determining a sentencing range using the Guidelines is the offense level.

Currently, there are 43 offense levels with level 43 representing the most serious offense and level one the least serious offense. Each offense has a starting point; however a defendant's offense level can be increased or decreased if the individual facts and circumstances warrant an upward or downward departure.

HOW DOES A DEFENDANT'S CRIMINAL HISTORY IMPACT SENTENCING UNDER THE GUIDELINES?

A defendant's criminal history, or lack thereof, has long been considered when it comes time to hand down a sentence in both state and federal

courts. The Guidelines simply created a uniform method for taking criminal history into account when fashioning a sentence in federal court. There are six criminal history categories in the Guidelines with category I being the best and category VI the worst. Placement in a category is determined by "points." A



defendant with zero to one point falls into category I. A defendant with 13 or more points falls into category VI

HOW ARE POINTS CALCULATED UNDER THE GUIDELINES?

For purposes of determining what category a defendant falls into, points are calculated as follows:

- a) Add 3 points for each prior sentence of imprisonment exceeding one year and one month.
- b) Add 2 points for each prior sentence of imprisonment of at least sixty days not counted in (a).
- c) Add 1 point for each prior sentence not counted in (a) or (b), up to a total of 4 points for this subsection.
- d) Add 2 points if the defendant committed the instant offense while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status.
- e) Add 1 point for each prior sentence resulting from a conviction of a crime of violence that did not receive any points under (a), (b), or (c) above because such sentence was counted as a single sentence, up to a total of 3 points for this subsection.

HOW IS A SENTENCING RANGE DETERMINED?

A sentencing range for a defendant is determined by referring to the Sentencing Table attached to the Guidelines. The recommended sentencing range is found where the offense level and the criminal history category meet in the Sentencing Table. For example, an offense level 10 with a criminal history category of I has a recommended sentencing range of 6-12 months. The recommended sentencing range increases to 10-16 months if the criminal history category changes to a category III and to 24-30 months for a category VI.



WHEN IS A JUDGE LIKELY TO DEVIATE FROM THE RECOMMENDED SENTENCING RANGE?

Because the Guidelines are only advisory in nature, both upward and downward deviations from the recommended sentencing range are possible. Common reasons for an **upward departure** include:

- Death or physical injury resulting from the criminal conduct
- Extreme psychological injury
- Possession and/or use of a weapon during the commission of the crime
- Abduction or unlawful restraint of a victim
- Disruption of governmental function
- Participation in a gang
- Property loss not already accounted for in the sentence

Common reasons found for a **downward departure** include:

- “Substantial assistance” to authorities in solving this or another crime
- Contributing conduct from victim – if the victim’s conduct significantly provoked your conduct
- Coercion, duress, or diminished capacity
- Voluntarily disclosing or admitting to the commission of the crime

Despite the fact that the U.S. Supreme Court has ruled that the Federal Sentencing Guidelines are advisory in nature only, the reality is that they continue to be heavily relied on by judges when it comes time to sentence a defendant convicted of an offense. With that in mind, be sure to consult with an experienced Nebraska federal criminal defense attorney regarding your potential sentence under the Guidelines if you have been charged with a federal offense in the State of Nebraska.

REFERENCES

Cornell University Law School, [Federal Sentencing Guidelines](#)

United States Sentencing Commission, [2013 USSC Guidelines Manual](#)

United States Sentencing Commission, [Sentencing Table](#)

Defender Services Office U.S. Courts, [Federal Sentencing under the Advisory Guidelines](#)

About Petersen Criminal Defense Law



Omaha, Nebraska Law Firm: Committed To Making Your Voice Heard By The System

Established in 1995, Petersen Criminal Law follows a simple firm philosophy: Our clients are presumed innocent until proven guilty. Our firm's attorney, Thomas M. Petersen, has devoted his career to this philosophy, helping clients throughout the Omaha, Nebraska, area make sure their voices are heard in the criminal defense system.

In that time, he has handled over 6,000 criminal defense cases and represented clients in numerous trials. This experience means he is a battle-tested veteran of the criminal defense system who has committed himself to putting to work for you the insights he has gained.

Your Decision Today Affects The Rest Of Your Life

Facing criminal charges means your future is at stake. You do not have to let a Nebraska criminal case ruin your life, though your choices today do affect your future.

For that reason, you want an adviser in your corner who has traveled this road before and understands the terrain. You do not want to test your ability to learn the law on your own when your own liberty is at stake.

No Lectures No Judging. We Just Defend You.

Call Petersen Criminal Law at 402-909-0367. You can also schedule your initial consult by contacting the firm online. All consultations with our firm remain completely confidential.

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