Judicial Discretion and Sentencing Behavior

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Abstract
This research studies the impact of changes to federal judicial discretion on criminal sentencing outcomes. The Feeney Amendment to the 2003 PROTECT Act restricted federal judges' ability to impose sentences outside of the U.S. Sentencing Guidelines and required appellate courts to review downward departures. Using data on all federal sentences between 1999 and 2004, we examine the effect of the Feeney Amendment on the downward departures rate and prison sentence. We control for type of offense, district of sentencing, criminal history, and demographic characteristics of the offender, in order to isolate the changes in judicial sentencing due to the implementation of the Feeney Amendment. Our results suggest that the Feeney Amendment reduced the probability of a downward departure by 5% and increased prison sentences by two months. There is no evidence that judges adjust sentences in an effort to circumvent the intentions of the Feeney Amendment.

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Introduction

Over 74,000 people each year are tried and sentenced in federal court and over $17 billion are spent annually prosecuting and housing federal criminals (Hughes 2007). Since the mid-eighties, individuals convicted in the federal court system were sentenced under uniform sentencing guidelines laid out by the United States Sentencing Commission (USSC). In recent years, the U.S. Congress has instituted major changes to the U.S. Sentencing Guidelines that district court justices must follow. Specifically, the Feeney Amendment to the PROTECT Act (effective April 30th, 2003) was passed to reduce the downward departures by judges from the standard guideline sentencing ranges. This research studies the impact of the Feeney Amendment on sentencing outcomes of criminal cases.

The Feeney Amendment restricted federal judges' ability to impose sentences outside of the guidelines and required appellate courts to review downward departures. A controversial feature of the Feeney Amendment is the mandate for a reporting system; the district's chief judge must submit a written explanation for any departure to the U.S. Sentencing Commission, who then passes the data along to the Justice Department or Congress when requested. Also as a result of the Feeney Amendment, Attorney General John Ashcroft ordered federal prosecutors to charge defendants with the most serious provable offense and actively oppose downward departures. At this time, prosecutors and judges no longer must abide by the Feeney Amendment provisions. In January of 2005, the Supreme Court ruled that the amendment and the mandatory Sentencing Guidelines violated the Sixth Amendment. The ruling, however, was written in such a manner that the U.S. Congress could recreate the amendment to be considered more constitutional.

Using U.S. Sentencing Commission data on all federal sentences between 1999 and 2004, we examine the effect of the Feeney Amendment on the rate of downward departures and total prison sentence. We control for the type of offense, offense level, criminal history of the offender and offender demographic characteristics, in order to isolate the changes in judicial sentencing due solely to the implementation of the Feeney Amendment. For policymakers considering reintroducing legislation to restrict judicial discretion, this analysis shows the impact of the reduction in discretion resulting from the Feeney Amendment.

Probit analysis shows a strong negative impact of the Feeney Amendment on the probability of a downward departure; in fact, the Feeney Amendment resulted in almost a 5% decrease in the likelihood of an offender receiving a downward departure. The effect of the amendment on total prison sentence is positive and significant. Because judges are not departing from the sentencing Guidelines as much during the Feeney time period, offenders are sentenced to a longer prison term (on average, the increase is two months). We also examine whether the Feeney Amendment impacts the number of adjustments justices make to the base offense level or the criminal history points an offender is assigned. There is no evidence judges adjust base offense levels downward or altered criminal history points in an effort to circumvent the intentions of the Feeney Amendment. Thus, our results suggest the change in sentence length due to the Feeney Amendment is a result of the decrease in departures.

Background on Sentencing Guidelines

The U.S. Sentencing Commission was created by the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984. The commission was directed to create the Federal Sentencing Guidelines which establish uniform sentencing of defendants sentenced across the federal court system. Congressional reform of the judicial system was both a response to the perceived liberalism in sentencing during the seventies and early eighties, as well as an effort to reduce disparity among sentences for the same crime (Anderson, Kling and Stith 1999, Weinstein 2003).[1] In addition to reducing judicial discretion over sentencing, the Sentencing Reform Act also initiated Appellate review of sentences and abolished parole for federal offenders.

The Federal Sentencing Guidelines take into account both the seriousness of the crime and the defendant's criminal record when determining sentencing length. To establish the seriousness of the crime, the Sentencing Guidelines assign each type of crime (murder, robbery, antitrust violations, etc.) a base offense level (BOL). The more serious the crime, the higher the base offense level assigned (*e.g.*, robbery has a base offense level of 20, while for trespassing the

[1] See Stith and Cabranes (1998) for an in-depth discussion of the Sentencing Guidelines as well as the history of federal sentencing and sentencing reform.

BOL is 4).[2] The Guidelines also prescribe a complex set of rules on how the final offense level is calculated. For example, specific offense characteristics listed in Chapter Two of the Guidelines either add or subtract from the base offense level; these characteristics vary across offenses.[3] Chapter Three adjustments are then taken into account. These are based on victim characteristics, the offender's role in the offense, and whether or not obstruction of justice took place. Finally, after adjustments for multiple count adjustments and acceptance of responsibility are made, one derives the final offense level (FOL) used to determine sentencing length.[4]

The Guidelines account for an offender's criminal record by assigning criminal history points which place the offender in one of six possible criminal history categories. The first category captures those criminals assigned zero or one criminal history point by the judge in post-conviction sentencing proceedings. Category 6 reflects those offenders assigned 13 or more criminal history points. The total points assigned by the judge depend on the number of prior adult convictions and how long the offender was imprisoned for each prior adult offense. For example, the judge will assign 3 points for each prior conviction greater than 13 months, 2 points for each prior conviction less than 13 months, but greater than 60 days, and 1 point for a prior conviction less than 60 days. Additional points are assigned if prior convictions were crimes of violence.

Table A1 of the appendix reproduces the Federal Sentencing Table that depicts how both the offense level and criminal history category determine sentencing. On the vertical axis, the numerical values 1 to 43 represent the severity of the criminal offense, with 1 being the least severe. If the final offense level, which is the base offense level plus all adjustments, exceeds 43, it is treated as if it were 43 for sentencing purposes. The horizontal axis indicates the six different criminal history categories. The final offense level and criminal history category intersection indicates the presumptive sentencing range in months; the cell expresses the lower and upper bound of the prison term to which the judge may sentence the defendant. Note the

[2] §2B3.1(a) and §2B2.3, respectively.
[3] As an example, if there were a carjacking involved in committing a robbery, two levels are added to the base offense level and the total offense level is 22. If there were a permanent or life-threatening bodily injury, the judge adds an additional 6 levels, for a total offense level of 28.
[4] See the *2004 Federal Sentencing Guidelines* for details on how to calculate the final offense level for robbery and other types of crime. The U.S. Sentencing Commission posts sample worksheets on their website that detail how to calculate final offense levels: http://www.ussc.gov/training/sent_ex_rob.pdf.

sentencing range is relatively small; the upper bound is only 25% more than the lower bound. A judge can impose a sentence of any length within the range so long as the sentence is not outside statutory limits.[5] In addition, the 258 cells of the Sentencing Table have been divided into four zones that reflect the extent to which alternatives to prison sentencing may be used (*e.g.*, home confinement, community service). For example, "if the applicable guideline range is in Zone A of the Sentencing Table, a sentence of imprisonment is not required, unless the applicable guideline in Chapter Two expressly requires such a term" (2004 *Federal Sentencing Guidelines Manual*).

In addition to discretion on where the sentence falls within the sentencing range, judges may "depart" from the Guidelines if there is 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 that should result in a sentence different from that described."[6] If the judge departs (upwards or downwards) from the range specified in Guidelines, the judge must state in writing the reasons for the departure. Departures are subject to appeal. Schanzenbach (2005b) discusses departures in detail but there some important elements of departures that should be noted. First, departures may be granted when the defendant has provided substantial assistance to the government in the prosecution of others, with the agreement of the prosecutor. These "substantial assistance departures" are the most common reason for a sentence outside the range of the Sentencing Guidelines. Second, the judge may depart if it can be shown that the circumstances of the case or offender are unusual and lay outside the "heartland" (ordinary crimes) of the Guidelines; however the Guidelines prohibit departures due to race, sex, citizenship or religion.[7] In addition to a departure, some offenders receive sentences outside the Sentencing Guidelines if the "safety valve" is applied. The "safety valve" removes the statutory minimum sentence for some drug crimes if the court finds the defendant has minimal criminal history, the crime did not result in death or serious injury, and the defendant provided the government with truthful, complete information.[8]

[5]Generally, the statutory sentence is binding if an offense has a statutory minimum or maximum outside the Guidelines, except in certain cases that are eligible for the "safety valve" provision discussed below.
[6] 18 U.S.C. § 3553(b).
[7] U.S.S.G. § 5H1.10.
[8] 18 U.S.C. § 3553(f).

Background on the Feeney Amendment

In 2003, Congress passed the Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act (the PROTECT Act) in an effort to increase the severity of punishment for child victim crimes and establish a national notification system for child kidnappings. The PROTECT Act included an amendment by Congressman Tom Feeney (R-FL), who argued that the number of downward departures were becoming more common and the federal judiciary were more lenient than Guidelines required.[9] This amendment, which became known as the Feeney Amendment, called for several sentencing reforms which significantly reduced the ability of a district judge to sentence an offender outside of the Guidelines range.

The Feeney Amendment requires judges to give more detailed reasons for downward departures, limits the grounds for departing in remanded cases, and expands the grounds and tightens the standards of appellate review (Berman, 2003). The district's chief judge must submit a written explanation to the USSC within thirty days, which the Commission forwards to the Department of Justice and congressional judiciary committees. The Feeney Amendment also mandated *de novo* review of judicial departures by the appellate court, thereby expanding the grounds for appellate review of departures.[10] If the appellate court remands a case (sends it back to the district court for action), the district court could only depart from the Guidelines if the reason for departure was written in the original statement of reasons for the original sentence and was found to be a reasonable basis for departure by the appellate court. The amendment also required the Sentencing Commission to amend the Guidelines so that departures were substantially reduced, and limited the judicial representation on the Sentencing Commission to three (out of seven) members.

The Sentencing Reform Act of 1984 gave prosecutors relatively more power in the plea-bargaining process (Weinstein 2003) and the Feeney Amendment extended this prosecutorial power; one doctrine of the amendment required a government motion for defendants to receive

[9] Note, hereafter we will refer to the Feeney Amendment as the policy of interest although it is part of the larger PROTECT Act.

[10] Prior to the Feeney Amendment, appellate courts could reverse a departure based on the legal conclusion that the Guidelines already accounted for the type of circumstances the district judge considered in sentencing the defendant (*i.e.*, the appellate court could find the case did indeed fall within the 'heartland' of the Guidelines). By mandating *de novo* review of departure cases, the Feeney Amendment called for appellate courts to review all elements of the case.

the full three-point downward adjustment for acceptance of responsibility (Etienne 2003). Although the objective of the amendment was to reduce the number of judicial departures, Congress also included the possibility of "fast track" programs upon motion of the prosecutor; programs allowing for downward departures up to four levels in exchange for early disposition of the case.[11] Fast track program are only available in certain districts and require approval by the Attorney General and the local U.S. Attorney. In response to the Feeney Amendment, Attorney General John Ashcroft ordered federal prosecutors to only agree to downward departures in "rare" circumstances, to prosecute the "most serious, readily provable offense," and to actively oppose downward departures in sentencing.[12]

In January of 2005, after two years of opposition by many judges, the Supreme Court ruled in *United States v. Booker* that the Sentencing Guidelines violated the Sixth Amendment (the right to a jury trial). Under the Guidelines, lower court judges could sentence defendants based on additional findings that had not been proven to a jury beyond a reasonable doubt. Rather than eliminate the Sentencing Guidelines, the Supreme Court held that the Sentencing Guidelines should be considered advisory rather than mandatory. The advisory nature of the Guidelines, however, could lead the U.S. Congress to pass more constitutional versions of the Feeney Amendment or install mandatory minimum sentences.

Table A2 in the appendix shows the number of departures received by offenders for the years 1999-2005, by categories of offense type.[13] Notice that the columns for 2003 and 2004 are shaded, as these are the years where the Feeney Amendment was in effect. For almost every crime category, the percentages of departures decrease during those years, most noticeably in 2004. For example, violent crime offenders receive downward departures in roughly 28% of the cases prior to 2003, but only 21% of the violent crime offenders are granted downward departures in 2004. The two categories that do not exhibit this pattern of decreasing departure

[11] The fast track program, designed to allow for early disposition of a case in congested districts, requires the defendant to waive rights to appeal, pretrial motions, and collateral relief.
[12] Ashcroft, John.. *Department Policy Concerning Charging Criminal Offenses, Disposition of Charges, and Sentencing. Internal memo to all Federal Prosecutors.* #516. September 22, 2003. U.S. Department of Justice. http://www.usdoj.gov/opa/pr/2003/September/03_ag_516.htm
[13] We group the offenses into categories similar to Schanzenbach and Tiller (2006). For example, violent crimes include murder, sexual abuse, assault and arson. White collar crimes include antitrust, fraud, bribery, and tax crimes. Racketeering also includes gambling offenses.

rates are environmental crimes and civil rights crimes; however the number of these offense types is relatively minor. Another noteworthy trend in the data is the change in percentage of departures in 2005, after the Sentencing Guidelines are ruled advisory in *U.S. v. Booker*. In every crime category, the percentage of downward departures increases, suggesting that judges begin to depart from the Guidelines immediately once the Guidelines are no longer mandatory.

Previous Research

Because one of the objectives of the Sentencing Reform Act of 1984 was to reduce sentencing disparity, several studies have scrutinized whether sentencing disparity diminished after implementation of the Guidelines. Hofer, Blackwell, and Ruback (1999) conclude that sentencing disparity has decreased after implementation of the Guidelines. The authors note, however, that improvement in sentencing disparity varies regionally and across cases. Anderson, Kling and Stith (1999) examine inter-judge disparity in the average length of prison sentence before and after implementation of the Sentencing Guidelines. One of the unique features of this paper is that it utilizes data from a special extract from the U.S. Federal Courts that includes information that allows one to link together cases heard by the same judge (but does not provide data on the characteristics of the judge). Anderson et. al. (1999) show that inter-judge disparity in nominal sentencing is less pronounced in the Guidelines era (1988 – 1993) than it was in the era of discretionary sentencing. Before the Guidelines, the expected difference in sentence length across judges was 16-18 percent and after the Guidelines the expected difference ranges between 8-13 percent.

In addition to examining whether sentencing disparity was reduced after the Guidelines, considerable literature exists regarding the degree to which individual offender characteristics (race, gender, ethnicity, etc.) may explain observed sentencing disparities.[14] Mustard (2001) extends this literature by examining sentencing disparity among all 41 offenses defined by the U.S. Sentencing Commission, and then disaggregating by the six most frequently committed crimes (drug trafficking, fraud, larceny, firearm possession and trafficking, immigration, and bank robbery). He finds that after controlling for offense level, criminal history, and offense

[14] Examples include (but are not limited to) Lacasse and Payne (1999), Payne (1997), and Bushway and Piehl (2001).

type, large differences still exist in prison sentence across individuals by race, gender, education level, income, and citizenship status. Additionally, Mustard shows that some groups (Blacks, males, less educated, lower income earners, non U.S. citizens) are less likely to receive a downward departure and less likely to receive no prison term.

The literature also addresses the extent to which the demographic composition of the district court in which an offender was sentenced explains sentencing disparity. Schanzenbach (2005a) studies the impact of judicial race, gender and political affiliation (political party of nominating president) on inter-judge sentencing disparity on the basis of offender characteristics displayed in Mustard (2001). While some significant effects of interaction terms were observed (more females judges reduce disparity in sentencing of female offenders), overall, Schanzenbach (2005a) shows that the proportions of the district judges that are black, female, or appointed by a Democrat do not have significant effects on sentencing for minority offenders. In addition, the proportion of Democrat-appointed judges had no effect on disparity.

Although judicial demographics do not have a clear, definitive impact on sentencing disparity, the political composition of the bench may impact the discretionary tools utilized by a judge. Schanzenbach and Tiller (2006) look at whether judicial discretion is related to judge's policy preferences. Specifically, they focus on whether the political alignment of the circuit and district court (both appointed by the same party) may have an impact on the behavior of the sentencing judge. Judges are strategic policy makers that have two instruments of discretion (1) fact-oriented aggravating and mitigating factors that judges use to make changes to the base offense level and (2) upward or downward departures from the Guidelines Sentencing range. District judges anticipate the actions of the circuit court justices and try to maximize their preferences, considering the likelihood for review of the decision and its impact on their career advancement. The authors focus on street crimes (largest part of case sample) and data from 1992-2003. The results show there exist partisan differences in the sentencing of street crimes (roughly 10% difference between Democrat-appointed and Republican-appointed benches). Alignment of a democrat district judge with circuit court results in a reduction of 9.5 months versus 5.5 months if not aligned.

Recently studies have looked at the new policies of the Feeney Amendment and the effect of *U.S. v. Booker* making the Sentencing Guidelines advisory rather than mandatory. Schanzenbach (2005b) analyzes the arguments Representative Feeney made in favor of his amendment to the PROTECT Act using 1993-2001 data on defendants sentenced under Guidelines and political composition of districts from the Federal Judicial Center biographical data. The analysis tries to find measurable, significant changes over time that match up with Feeney's argument that judges were becoming more lenient. The general finding is that downward departures increased, but the increase is attenuated when controls for the nature of the offense and district in which case was prosecuted are included. Offender demographics do not alter the trends in downward departures, which is encouraging since judges are not permitted to consider demographic information in making departures. Although the rate of departures increased prior to the Feeney Amendment, the increase was not as large as supporters of the amendment argued. When Schanzenbach includes the proportion of Democrat-appointed district judges, the coefficient is positive but never significant. So the increasing number of Democrat-appointed judges pre-Feeney is not a factor in explaining the increase in downward departure rates. Another important finding is that when one controls for offense and demographics, prison sentence length does not change much over the time period. Including the proportion of Democrat-appointed judges does not affect the length of prison sentence.[15]

The legal and political science literature on the impact of *U.S. v. Booker* is growing as well. Using fact pattern matching to control for differences in case facts for drug trafficking cases Tiede (2008) analyzes the impact of both the PROTECT Act and the *U.S. v. Booker* decision on a small subsample of cases (less than 2000 observations). She finds that policies limiting judicial discretion lead to longer sentences than when judges are not constrained. Our paper improves upon this work by utilizing the full dataset (over 100,000 observations on cases) and incorporating fixed effects regression analysis to control for the individual case characteristics. Hofer (2007) analyzes disparity among judges given the *US v. Booker* decision of 2005. In U.S. v. Booker, the Supreme Court holds that Sentencing Guidelines are advisory rather than mandatory. The Booker decision may free up judges to use their discretion more, however they

[15] In all of the following analysis, we perform alternative specifications which include the percentage of the district bench appointed by a Democrat president as a covariate. The results are not qualitatively or quantitatively different. These results are available from the authors upon request.

must still consider the guideline range as advisory. Looking at 2001-2006 data, Hofer argues that during the Booker quarter, non-government sponsored below-range sentences jump from ~4% to ~12% and within-range sentences decrease. Hofer shows that there appears to be increasing trend toward severity and after the Feeney Amendment and PROTECT Act there is an increase in sentence length. Hofer argues that the changes in sentencing lengths between 2001 and 2006 may be due to different types of offenses being prosecuted and sentenced.

This paper is most similar to Tiede (2008), Hofer (2007) and Schanzenbach (2005b) in that we analyze the impact of a policy change (the Feeney Amendment) on judicial sentencing behavior, specifically the likelihood of downward departures and total prison term length. Schanzenbach (2005b) uses similar regression analysis to study whether an increase in judicial leniency existed in the period before the PROTECT Act. Tiede (2008) studies the impact of the Feeney Amendment and *U.S. v. Booker* and shows an increase in sentence length; however, she limits the data to fewer than 2000 observations of drug cases. To our knowledge, there are no other studies that use the complete set of federal offenders to specifically test the effect of the Feeney Amendment on the probability of a downward departure and the prison term length. In addition, we examine whether judges tried to circumvent Feeney through adjustments to offense levels and/or criminal history points in order to lower prison terms.

Data

The data we use are from the "Monitoring of Federal Criminal Sentences" series collected by the United States Sentencing Commission (USSC).[16] The USSC data include records for every offender sentenced under the Sentencing Guidelines and report key characteristics of the sentencing such as the primary offense, the offense level calculated by the court, the length of the prison sentence, and whether a departure from the Sentencing Guidelines was granted. The offender's criminal history is also reported, as well as the offender's demographic characteristics.

[16] The data are publicly-available through the Federal Justice Statistics Center maintained by the Urban Institute at http://fjsrc.urban.org/download/getinfor.cfm. Alternatively, researchers with access to the Inter-university Consortium for Political and Social Research (ICPSR) may download the USSC data at http://www.icpsr.umich.edu/cocoon/ICPSR/SERIES/00083.xml

We use sentencing years 1999-2004 and January of 2005 (the *U.S. v. Booker* decision), which gives us data from four years prior to the enactment of the PROTECT Act (with the Feeney Amendment) and the entire time period Feeney was valid. There are 355,454 valid cases that fall within this time period.[17] We exclude cases with more than one count of conviction or more than one sentencing guideline computation, which yields 282,588 observations. Following Schanzenbach and Tiller (2006), we eliminate immigration, traffic, national-defense, other, and miscellaneous offenses, leaving a sample size of 214,165. We also exclude cases with sentences of "life in prison" or "death" which results in a sample of 213,019 cases. Finally, the sample size is reduced due to missing data on demographic and offense characteristics or key information to determine sentencing and likelihood of departures.

Table 1 provides the summary statistics for the dependent variables and control variables of interest. In all model specifications, we include demographic characteristics of the offender, characteristics of the offense, and dummy variables for sentencing year.[18] The first panel of Table 1 describes the sentencing characteristics; departures occur in 35% of the cases in our sample and 12.6% of those are downward departures that are not government sponsored. The majority of the sample occurs prior to the Feeney Amendment, with 25% of cases being sentenced post-Feeney. The average prison sentence is 54 months and 97% of all cases are sentenced through plea agreements. The second panel of Table 1 presents the demographic variables, which include age, age-squared, dummies for Black, Hispanic, Asian, American Indian and other race, a dummy for female, a dummy for whether or not the defendant is a U.S. citizen, dummies for whether the defendant has one, two, or more than two dependents, and

[17] There are a total of 451,310 cases from 1999-2004, however, based on recommendations from our contact at the USSC, we delete all observations where the USSC provided variable "Sources" does not equal 1. For these observations, the Commission did not receive enough information about the case to determine the final court findings, or some of the information reported for the case is taken from multiple documents because the information was inconsistent.

[18] Previous research has shown demographic variables have significant effects on sentencing (Glaser and Sacerdote 2003), even after controlling for characteristics of the crime (Mustard 2001; Schanzenbach 2005; Bjerk 2005). The Sentencing Guidelines generally prohibit the consideration of race or citizenship status in determining sentencing in an attempt to promote uniformity in sentencing in the federal court system. Part H of the Guidelines, however, allows the judge to consider age, number of dependents and educational attainment in departing from the guidelines or determining where to place the sentence within the guidelines range. The Commission's policy is that these factors are "not ordinarily relevant" (Campbell and Bemporad 2004).

dummies for educational attainment.[19] A dummy for whether the offender was defended by private legal counsel is also included as a demographic variable to act as a proxy for offender income.[20]

Estimation and Results

Using the sentencing data described above, we can look at the empirical effects of the Feeney Amendment. Specifically, we will analyze (1) whether the probability of downward departures decreased after Feeney; (2) whether the total prison sentence increased after the Feeney Amendment was passed; (3) the impact of Feeney on the offense level adjustments that judges make prior to sentencing; and (4) whether the passage of Feeney impacted the adjustment to criminal history points that judges perform prior to sentencing.

Downward Departure

We first examine the relationship between the Feeney Amendment and downward departures. Recall that one of the main arguments for the Feeney Amendment was that the rate of downward departures was high and judicial departures led to unwarranted leniency and sentencing disparity. The provisions of the Feeney Amendment and the resulting actions of Attorney General Ashcroft lead us to expect a decrease in the probability of an offender receiving a downward departure post Feeney. We estimate probit models of the form:

$$Downward\ Departure_{ijt} = \alpha + \lambda SentYear_t + \delta Demographics_{it} + \gamma District_j + \theta Offense\ Characteristics_{ijt} + \beta Feeney + \varepsilon_{ijt}$$

where *i* indexes the offender, *j* indexes the district of sentencing, and *t* indexes the year of sentencing. Downward Departure is equal to 1 if the judge departs from the guidelines and sentences the offender to a shorter sentence than the minimum guideline, and zero otherwise.

[19] The categories for educational attainment include less than high school, completion of high school or GED, trade school, some college, associate's degree, college degree, military school and graduate or professional school.

[20] Mustard (2001) shows that offender income has a significant impact on the probability of receiving a prison sentence. Unfortunately, the USSC no longer reports offender income after 2002. Instead we use private defense counsel as a proxy for income. The USSC also stops reporting counsel information in 2003, but the information is available in the Administrative Office of U.S. District Court (AOUSC) dataset called "Defendants in Federal criminal cases terminated in U.S. District Court." We use the Bureau of Justice's "Linking Data File" to link the datasets to obtain more complete defense counsel information. When we rerun the regressions without the private defense counsel dummy, the results do not change qualitatively or quantitatively.

The coefficient of interest is β, the effect of the implementation of the Feeney Amendment on prison sentences. In all model specifications, we include demographic characteristics of the offender, and fixed effects for district and year of sentencing (*SentYear*). The offense characteristics include dummies for the 35 offense categories such as murder, drug trafficking, larceny, etc. Table A3 in the Appendix lists the frequency of the USSC offenses in our main sample data. In addition, a dummy for whether the case was settled by a trial (rather than a plea agreement), and the guideline minimum sentence were included as offense characteristics.[21] Following Schanzenbach and Tiller (2005b), we report robust standard errors that are clustered by district.

We estimate three model specifications for the probability of departure. Model 1 does not control for criminal history category and offense level, however, the second and third models include dummies for position on the sentencing grid. Position can be determined in one of two ways: a dummy for the cell on the sentencing table conditional on the base offense level and criminal history category (Model 2), or a dummy for the cell conditional on the final offense level and criminal history category (Model 3).[22] Table 2 reports the marginal effects and significance of the probit coefficients on the likelihood of receiving a downward departure. Note the sample sizes are smaller than that of Table 1 because we exclude all cases that have a downward departure due to substantial assistance, cases that were fast-tracked, or cases where the safety valve was applied. We also eliminate all cases that fall into 'Zone A' because probation, non-prison terms and alternate confinement are available sentencing options for cases in this zone.[23] As expected, the coefficients for the Feeney Amendment are consistently negative and significant for all models. Specifically, setting all other variables equal to their means, the implementation of Feeney resulted in roughly a 5% decrease in the probability of receiving a downward departure.

[21] The guideline minimum sentence is the bottom of the final guideline range, taking statutory trumps into account.
[22] Mustard (2001) uses a similar strategy to control for position on the sentencing table. Schanzenbach and Tiller (2006) control for the position on the sentencing grid by including dummies for base (or final) offense level, dummies for criminal history category, and interaction terms for offense level and criminal history category. When we include this larger set of controls for offense characteristics, the results do not change.
[23] Since zero months of prison is a sentencing option for Zone A cases, it would be difficult to identify the impact of Feeney on the probability of a departure from the Guidelines.

Total Prison Sentence

We next consider the potential impact of the Feeney Amendment on total prison sentence length. Schanzenbach (2005b) showed that prison sentence lengths were relatively stable in the years 1993-2001, controlling for offense and offender characteristics. Because Feeney restricted judicial discretion and departures were less likely, we expect the length of prison sentences to be longer post-Feeney than when departures were more likely. We estimate the following equation for prison sentencing:

$$PrisonTerm_{ijt} = \alpha + \lambda SentYear_t + \delta Demographics_{it} + \gamma District_j + \theta Offense\ Characteristics_{ijt} + \beta Feeney + \varepsilon_{ijt}$$

Prison term is the total prison sentence in months offender *i* receives when sentenced in district *j* in sentencing year *t*. The control variables are defined as described above in the downward departure analysis. As before, we exclude all cases that fall into "Zone A" because zero months is a possibility according to the sentencing guidelines (this represents about 10% of all cases), but do not (initially) exclude departures due to substantial assistance, fast-track cases, or safety valve cases.

Table 3 presents coefficient estimates for alternative specifications for estimating the prison sentencing model. Model 1 controls for individual offender characteristics and offense characteristics with sentencing year and district fixed effects, [24] Model 2 includes controls for the position on the sentencing table with the base offense level and Model 3 uses the final offense level to control for sentencing position. The coefficient estimate on the Feeney dummy (Feeney in effect) is positive and significant in all models, implying that the effect of Feeney was to increase the total length of prison sentence by about 1.9 months, even after controlling for characteristics of the individual and characteristics of the crime. The coefficients on demographics are consistent with Mustard (2001) and Schanzenbach (2005a). For example, Black and Hispanic offenders receive longer sentences, women receive shorter sentences, and older offenders receive longer sentences. Because departures due to substantial assistance are driven by the prosecution and thus represent prosecutorial discretion rather than judicial discretion, we exclude cases where the offender was granted a downward departure due to

[24] Several studies have shown there is variation in sentencing across districts and so it is common in the literature to control for district fixed effects (Mustard 2001, Schanzenbach 2005, Schanzenbach and Tiller 2006).

substantial assistance in Models 2b and 3b. Cases that were fast tracked or cases where the safety valve was applied were also excluded because these departures are granted by law. The number of observations is reduced; however the coefficient on Feeney remains positive and significant.

Model 4 presents the estimates when we exclude *all* cases where the judge departed from the sentencing guidelines. Note that the magnitude of coefficient estimate on Feeney is greatly reduced and is no longer significantly different from zero, even at the 10% level. This implies that the increase in sentencing length due to Feeney is exhibited disproportionately in the departures cases.

Judicial Sentencing Tools

The sentencing range is determined by both the offense level (which may be adjusted up or down given the facts of the case) and criminal history category. Although the Feeney Amendment reduced the likelihood of a judicial departure from the guidelines, it may be possible that judges shifted judicial discretion into adjustments of the offense level or adjustments to criminal history points (which determine criminal history category).

To study the potential effect of the Feeney Amendment on changes to the offense level, we calculate the difference between final prison sentence received and the Guideline minimum sentence conditional on the criminal history category and the base offense level (before the judge makes any adjustments to the offense level). We regress this difference in months of sentencing on the same set of control variables and present the results in Table 4. The first column presents the results with all offenders. The coefficient on Feeney is positive and significant, implying that the Feeney Amendment led to positive adjustments (increases) to the base offense level that resulted in longer sentences. Next, we exclude all offenders who did not receive a substantial assistance departure, have their case fast tracked, or have the safety valve applied. The coefficient remains positive and significant. If the Feeney amendment restricted judicial leniency and judges were using adjustment as an instrument for leniency, we would expect negative adjustments (decreases) to the base offense level. In the final column, we exclude all cases where a departure was granted. The coefficient on Feeney is still positive but not significant. We interpret these results as providing evidence that the difference in sentence length from the

Guideline minimum for the base offense level due to the Feeney Amendment is a result of the decrease in departures. There is no evidence that judges adjusted base offense levels downward in an effort to circumvent the intentions of the Feeney Amendment.

We next study the change in criminal history points assigned to the offender. The criminal history category is determined by criminal history points, which are assigned on the basis of the offender's past record and judicial determination in those previous offenses. The USSC data include the subtotal of criminal history points and the total number of criminal history points applied. We regress the change in criminal history points on the same set of control variables as above. We also use the same three specifications: a) all offenders, b) offenders who did not receive a substantial assistance departure, fast-track or safety valve, and c) all non-departure cases. The results are displayed in Table 5. The Feeney Amendment is not significant in any of the specifications. Thus, there is no evidence that judges tried to circumvent Feeney by using *legal* judicial discretion to lower prison sentences.

Conclusion

This paper uses USSC data on federal offender between 1999 and 2004 to examine the effect of the Feeney Amendment on the rate of downward departures and total prison sentence. We control for offense type, criminal history and demographic characteristics of the offender, in order to isolate the changes in judicial sentencing due to the Feeney Amendment. The probit analysis shows a strong negative impact of the Feeney Amendment on the probability of a downward departure. The effect of the amendment on total prison sentence is positive and significant; conditional on offender demographics and crime characteristics, offenders are sentenced to a prison term that is two months longer while the Feeney Amendment is in effect. We also examine the number of adjustments justices make to the base offense level and the criminal history points assigned to an offender. Our results suggest that the impact of the Feeney Amendment is largely exhibited by a decrease in the rate of downward departures. We find no evidence judges adjust base offense levels downward or altered criminal history points in an effort to circumvent the intentions of the Feeney Amendment.

Our next step is to identify the effect of the Feeney Amendment on the sentencing dispersion. Given that the Feeney Amendment led to a decrease in departures from the Guidelines, we intend to study the location of the prison sentence within the Guidelines as a result of Feeney. For example, rather than departing from the Guidelines, do we observe judges sentencing at the minimum of the Guideline range post Feeney? Recognizing that one of the stated purposes of the Feeney Amendment was to reduce perceived disparity and leniency, we also will examine the impact of the Feeney Amendment on the racial, ethnic and gender disparities in sentencing length documented in previous literature.

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Appendix

Table A1: U.S.S.C. Federal Sentencing Table

	Offense Level	Criminal History Category (Criminal History Points) I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
	1	0-6	0-6	0-6	0-6	0-6	0-6
	2	0-6	0-6	0-6	0-6	0-6	1-7
	3	0-6	0-6	0-6	0-6	2-8	3-9
	4	0-6	0-6	0-6	2-8	4-10	6-12
Zone A	5	0-6	0-6	1-7	4-10	6-12	9-15
	6	0-6	1-7	2-8	6-12	9-15	12-18
	7	0-6	2-8	4-10	8-14	12-18	15-21
	8	0-6	4-10	6-12	10-16	15-21	18-24
	9	4-10	6-12	8-14	12-18	18-24	21-27
Zone B							
	10	6-12	8-14	10-16	15-21	21-27	24-30
	11	8-14	10-16	12-18	18-24	24-30	27-33
Zone C	12	10-16	12-18	15-21	21-27	27-33	30-37
	13	12-18	15-21	18-24	24-30	30-37	33-41
	14	15-21	18-24	21-27	27-33	33-41	37-46
	15	18-24	21-27	24-30	30-37	37-46	41-51
	16	21-27	24-30	27-33	33-41	41-51	46-57
	17	24-30	27-33	30-37	37-46	46-57	51-63
	18	27-33	30-37	33-41	41-51	51-63	57-71
	19	30-37	33-41	37-46	46-57	57-71	63-78
	20	33-41	37-46	41-51	51-63	63-78	70-87
	21	37-46	41-51	46-57	57-71	70-87	77-96
	22	41-51	46-57	51-63	63-78	77-96	84-105
	23	46-57	51-63	57-71	70-87	84-105	92-115
	24	51-63	57-71	63-78	77-96	92-115	100-125
	25	57-71	63-78	70-87	84-105	100-125	110-137
	26	63-78	70-87	78-97	92-115	110-137	120-150
	27	70-87	78-97	87-108	100-125	120-150	130-162
Zone D							
	28	78-97	87-108	97-121	110-137	130-162	140-175
	29	87-108	97-121	108-135	121-151	140-175	151-188
	30	97-121	108-135	121-151	135-168	151-188	168-210
	31	108-135	121-151	135-168	151-188	168-210	188-235
	32	121-151	135-168	151-188	168-210	188-235	210-262
	33	135-168	151-188	168-210	188-235	210-262	235-293
	34	151-188	168-210	188-235	210-262	235-293	262-327
	35	168-210	188-235	210-262	235-293	262-327	292-365
	36	188-235	210-262	235-293	262-327	292-365	324-405
	37	210-262	235-293	262-327	292-365	324-405	360-life
	38	235-293	262-327	292-365	324-405	360-life	360-life
	39	262-327	292-365	324-405	360-life	360-life	360-life
	40	292-365	324-405	360-life	360-life	360-life	360-life
	41	324-405	360-life	360-life	360-life	360-life	360-life
	42	360-life	360-life	360-life	360-life	360-life	360-life
	43	life	life	life	life	life	life

Table A2: Number and Percentage of Departures by Year and Offense Type

	Year						
	1999	2000	2001	2002	2003	2004	2005
Violent	389	383	363	367	357	218	341
	29%	*29%*	*28%*	*28%*	*26%*	*21%*	*32%*
Drugs	7958	7792	8459	8486	7385	4831	6451
	46%	*44%*	*46%*	*45%*	*39%*	*37%*	*49%*
Theft	499	664	783	944	1044	753	1213
	24%	*23%*	*25%*	*25%*	*21%*	*19%*	*29%*
White Collar	2140	2299	2173	2209	1938	1336	1912
	26%	*28%*	*27%*	*27%*	*24%*	*23%*	*35%*
Racketeering	207	161	140	162	139	104	126
	41%	*37%*	*42%*	*38%*	*35%*	*38%*	*44%*
Civil Rights	10	15	14	13	11	15	7
	23%	*31%*	*22%*	*33%*	*28%*	*43%*	*37%*
Pornography	101	120	96	134	127	72	209
	37%	*34%*	*28%*	*31%*	*23%*	*17%*	*33%*
Obstruction	175	183	229	209	188	131	192
	29%	*26%*	*30%*	*30%*	*28%*	*25%*	*39%*
Environmental	34	43	24	20	23	11	15
	39%	*38%*	*38%*	*47%*	*58%*	*29%*	*42%*
Total # of Departures	11513	11660	12281	12544	11212	7471	10466
	38%	*37%*	*38%*	*37%*	*32%*	*30%*	*41%*

Note: The Feeney Amendment to the PROTECT ACT became effective on April 30, 2003 and subsequently was ruled unconstitutional by the Supreme Court in January of 2005.

Table A3: Frequency of USSC Offenses in Full Sample

USSC Code	Offense	Freq.	Percent
1	Murder	218	0.14
2	Manslaughter	240	0.15
3	Kidnapping/Hostage	108	0.07
4	Sexual Abuse	879	0.56
5	Assault	1,348	0.86
6	Bank Robbery, includes other Robbery	4,121	2.63
9	Arson	194	0.12
10	Drugs: Trafficking	95,137	60.78
11	Drugs: Communication Facilities	1,438	0.92
12	Drugs: Simple Possession	380	0.24
13	Firearms: Use (includes Firearms possession)	18,046	11.53
15	Burglary/Breaking and Entering	185	0.12
16	Auto Theft	352	0.22
17	Larceny	3,232	2.06
18	Fraud	12,905	8.25
19	Embezzlement	1,492	0.95
20	Forgery/Counterfeiting	2,982	1.91
21	Bribery	270	0.17
22	Tax Offenses	802	0.51
23	Money Laundering	2,072	1.32
24	Racketeering (includes Extortion)	1,655	1.06
25	Gambling/Lottery	120	0.08
26	Civil Rights Offenses	159	0.1
27	Immigration	1,289	0.82
28	Pornography/Prostitution	2,123	1.36
29	Offenses in Prison	1,292	0.83
30	Administration of Justice - Related; including accessory after the fact, misprision of felony, witness tampering	2,252	1.44
31	Environmental, Game, Fish, and Wildlife Offenses	96	0.06
32	National Defense Offenses	13	0.01
33	Antitrust Violations	34	0.02
34	Food and Drug Offenses	52	0.03
35	Traffic Violations and Other Offenses	1,033	0.66
.	Missing	1	

	Total	156,920	

Table 1: Descriptive Statistics

Variable	Mean	Standard Error
Offense/Sentencing Characteristics		
Prison Sentence	54.06	55.42
Departed from Guidelines	0.350	0.477
Downward Departure	0.126	0.332
Upward Departure	0.006	0.078
Post-Feeney Dummy	0.245	0.430
No Plea Agreement	0.024	0.154
Guideline Minimum	64.24	63.40
Criminal History Category	2.384	1.716
Base Offense Level	22.07	9.406
Demographic Characteristics		
Age	33.47	10.30
U.S. Citizen	0.758	0.428
No dependents	0.371	0.483
One dependent	0.187	0.390
Two dependents	0.171	0.376
Three or more dependents	0.272	0.445
Less than High School	0.455	0.498
High School Graduate	0.325	0.468
Trade School Graduate	0.012	0.108
Some College	0.149	0.356
College Graduate	0.037	0.189
Associates Degree	0.012	0.109
Professional/Graduate School	0.009	0.095
Military School	0.000	0.014
Hispanic	0.340	0.474
White	0.642	0.479
Black	0.319	0.466
American Indian or Alaskan Native	0.019	0.137
Asian	0.017	0.130
Other Race	0.003	0.050
Male	0.869	0.338
Female	0.131	0.338
Private Counsel	0.192	0.394
Number of Observations	156,520	

Table 2: Marginal Effects, Probability of Downward Departure

	Model 1 (No GRID)		Model 2 (GRID Using Base Offense)		Model 3 (GRID Using Final Offense)	
	dF/dx	Robust Std. Err	dF/dx	Robust Std. Err	dF/dx	Robust Std. Err
Post-Feeney Dummy	**-0.046**	0.006	**-0.045**	0.006	**-0.046**	0.006
Not Plea Agreement	**-0.029**	0.006	**-0.022**	0.006	**-0.021**	0.007
Guideline Minimum Sentence	**0.000**	0.000	**0.000**	0.000	0.000	0.000
Age	**-0.006**	0.001	**-0.006**	0.001	**-0.007**	0.001
Age Squared	**0.000**	0.000	**0.000**	0.000	**0.000**	0.000
U.S. Citizen	-0.006	0.007	-0.007	0.006	-0.006	0.006
One dependent	**0.006**	0.003	0.006	0.003	0.006	0.003
Two dependents	**0.008**	0.003	**0.008**	0.003	**0.008**	0.003
Three or more dependents	**0.012**	0.003	**0.011**	0.003	**0.012**	0.003
High School Graduate	-0.002	0.002	-0.002	0.002	-0.002	0.002
Trade School Graduate	0.006	0.012	0.006	0.011	0.008	0.011
Some College	**0.013**	0.004	**0.013**	0.004	**0.015**	0.004
College Graduate	**0.035**	0.007	**0.032**	0.006	**0.033**	0.006
Associates Degree	-0.002	0.009	-0.001	0.009	-0.002	0.009
Professional/Graduate School	**0.052**	0.011	**0.046**	0.011	**0.047**	0.012
Military School	0.074	0.081	0.087	0.086	0.076	0.078
Hispanic	**-0.016**	0.005	**-0.015**	0.005	**-0.013**	0.005
Black	**-0.027**	0.004	**-0.028**	0.004	**-0.029**	0.004
American Indian/Alaskan Native	-0.025	0.014	-0.023	0.013	-0.022	0.014
Asian	-0.007	0.009	-0.009	0.008	-0.004	0.009
Other Race	0.014	0.022	0.016	0.023	0.014	0.022
Female	**0.065**	0.009	**0.064**	0.009	**0.068**	0.009
Private Counsel	**-0.011**	0.005	-0.008	0.005	-0.008	0.005
Sentencing Table Position FE	NO		YES		YES	
Exclude Substantial Assistance, Safety Valve & Fast Track Cases	YES		YES		YES	
Number of Observations	98369		98264		98280	
Pseudo R2	0.2202		0.2288		0.2311	
Log pseudolikelihood	-32742.34		-32364.52		-32275.31	

Note: All models include sentencing year fixed effects, district court fixed effects, and dummies for each type of offense. Bold indicates significance at a 10% level or higher.

Table 3: Total Prison Time in Months

	Model 1 (No GRID)		Model 2 (Include GRID - Base)		Model 3 (Include GRID -Final)	
	Coefficient	Robust Std. Err	Coefficient	Robust Std. Err	Coefficient	Robust Std. Err
Post-Feeney Dummy	**1.968**	0.416	**1.891**	0.409	**1.954**	0.412
Not Plea Agreement	**22.103**	1.500	**21.823**	1.441	**21.543**	1.520
Guideline Minimum Sentence	**0.751**	0.015	**0.754**	0.016	**0.718**	0.018
Age	**0.416**	0.043	**0.240**	0.040	**0.212**	0.041
Age Squared	**-0.005**	0.001	**-0.003**	0.000	**-0.002**	0.001
U.S. Citizen	**-1.372**	0.456	**-2.311**	0.466	**-2.561**	0.478
One dependent	**-0.516**	0.212	**-0.455**	0.199	**-0.438**	0.204
Two dependents	**-0.506**	0.170	**-0.264**	0.163	-0.256	0.166
Three or more dependents	**-0.732**	0.178	**-0.376**	0.171	**-0.394**	0.167
High School Graduate	**-0.782**	0.212	**-0.747**	0.197	**-0.718**	0.191
Trade School Graduate	**-1.516**	0.483	**-1.099**	0.480	**-0.928**	0.480
Some College	**-2.925**	0.224	**-2.393**	0.216	**-2.305**	0.224
College Graduate	**-3.668**	0.342	**-2.737**	0.329	**-2.612**	0.332
Associates Degree	**-2.236**	0.539	**-1.545**	0.533	**-1.504**	0.530
Professional/Graduate School	**-3.940**	0.487	**-2.848**	0.485	**-2.809**	0.498
Military School	**-9.191**	3.261	**-9.085**	3.140	**-8.017**	3.008
Hispanic	**2.289**	0.415	**2.428**	0.390	**2.512**	0.405
Black	**3.265**	0.361	**2.877**	0.353	**2.664**	0.358
American Indian/Alaskan Native	**3.816**	1.671	**3.882**	1.616	**4.054**	1.700
Asian	0.015	0.595	0.412	0.537	0.374	0.565
Other Race	0.085	1.525	0.084	1.504	0.105	1.506
Female	**-5.134**	0.467	**-4.500**	0.461	**-4.320**	0.447
Private Counsel	-0.568	0.352	-0.036	0.307	0.080	0.307
Constant	**34.096**	5.041	**42.706**	5.051	**60.099**	7.977
Sentencing Table Position FE	NO		YES		YES	
Exclude Substantial Assistance, Safety Valve and Fast Track Cases	NO		NO		NO	
Number of Observations	156525		156519		156519	
R-squared	0.805		0.811		0.810	

Notes: 1. Regressions are OLS. Bold indicates significance at a 10% level or higher.
2. All models include sentencing year fixed effects, district court fixed effects, and dummies for each type of offense.

Table 3: Total Prison Time in Months (continued)

	Model 2b (Include GRID – Base, Data Exclusions)		Model 3b (Include GRID – Final, Data Exclusions)		Model 4 (Include GRID – Base, Exclude All Departures)	
	Coefficient	Robust Std. Err	Coefficient	Robust Std. Err	Coefficient	Robust Std. Err
Post-Feeney Dummy	**1.606**	0.337	**1.614**	0.339	0.199	0.121
Not Plea Agreement	**5.379**	0.580	**5.031**	0.566	**3.259**	0.258
Guideline Minimum Sentence	**0.935**	0.009	**0.928**	0.010	**0.992**	0.004
Age	**0.248**	0.039	**0.244**	0.038	**0.076**	0.018
Age Squared	**-0.003**	0.000	**-0.003**	0.000	**-0.001**	0.000
U.S. Citizen	-0.642	0.350	**-0.742**	0.361	**-0.309**	0.132
One dependent	-0.077	0.145	-0.107	0.143	-0.060	0.085
Two dependents	-0.185	0.141	-0.233	0.146	-0.166	0.093
Three or more dependents	-0.185	0.156	-0.244	0.155	-0.133	0.096
High School Graduate	0.045	0.156	0.058	0.160	-0.031	0.082
Trade School Graduate	0.214	0.468	0.213	0.454	0.216	0.235
Some College	**-0.596**	0.178	**-0.580**	0.181	**-0.240**	0.119
College Graduate	**-0.856**	0.274	**-0.906**	0.288	-0.111	0.161
Associates Degree	-0.225	0.400	-0.250	0.414	-0.165	0.242
Professional/Graduate School	-0.644	0.367	-0.709	0.377	0.188	0.173
Military School	-1.923	1.403	-1.277	1.456	-0.228	0.882
Hispanic	0.286	0.271	0.327	0.278	0.118	0.095
Black	**1.011**	0.160	**1.011**	0.158	**0.436**	0.095
American Indian/Alaskan Native	1.179	1.043	1.274	1.064	0.429	0.402
Asian	0.209	0.413	0.158	0.407	0.310	0.192
Other Race	0.090	1.508	0.228	1.495	0.505	1.257
Female	**-2.328**	0.299	**-2.237**	0.295	**-0.660**	0.102
Private Counsel	0.254	0.195	0.242	0.199	0.043	0.078
Constant	**24.399**	4.943	9.853	14.438	**8.662**	2.170
Sentencing Table Position FE	YES		YES		YES	
Exclude Substantial Assistance, Safety Valve and Fast Track Cases	YES		YES		YES	
Number of Observations	98041		98041		101811	
R-squared	0.931		0.931		0.974	

Notes: Regressions are OLS. Bold indicates significance at a 10% level or higher.

Table 4: Difference in Sentence Received and Guideline Minimum Sentence

Dependent Variable:	Change in Sentencing Months from Base Offense All Offenders		Change in Sentencing Months from Base Offense Exclude Special Cases		Change in Sentencing Months from Base Offense Exclude All Departures	
	Coefficient	t-stat	Coefficient	t-stat	Coefficient	t-stat
Feeney Amendment	**1.788**	3.38	**1.493**	3.18	0.415	1.09
Number of Observations	150,834		93,311		78,242	
R-Squared	0.5386		0.5096		0.5891	

Notes:
1. The change in sentencing is the difference in the final sentence given and the minimum sentence the offender could have been received using the assigned criminal history points and the base offence level (as opposed to the final offense level).
2. Special cases excluded include departures due to substantial assistance, cases that were fast-tracked, and cases where the safety valve was applied.

Table 5: Adjustment to Criminal History Points

Dependent Variable:	Change in Criminal History Points All Offenders		Change in Criminal History Points Exclude Special Cases		Change in Criminal History Points Exclude All Departures	
	Coefficient	t-stat	Coefficient	t-stat	Coefficient	t-stat
Feeney Amendment	0.008	0.75	0.022	1.27	0.016	1.14
Number of Observations	155,892		97,646		101,151	
R-Squared	0.5231		0.4799		0.5213	

Note:
1. The change in criminal history points is the difference in history points based on number of prior adult convictions and their duration and history points after the judge makes adjusts for the violent nature of past crimes for instance.
2. Special cases excluded include departures due to substantial assistance, cases that were fast-tracked, and cases where the safety valve was applied.