

SUMMARY OF FEENEY AMENDMENT

- (1) prohibits downward departures based on factors that are not enumerated in Part K of chapter 5 of the Sentencing Guidelines [subsections (a) and (b)];
- (2) prohibits judicial consideration of whether a case falls outside the "heartland of cases in the Guideline," as set forth in *Koon v. United States* and incorporated in the Guidelines [subsection (b)(1)];
- (3) prohibits departures based on a combination of factors, none of which independently would warrant a departure [subsection (b)(2)];
- (4) prohibits departures based on youth [subsection (b)(2)];
- (5) limits certain departures based on physical impairment [subsection (b)(2)];
- (6) prohibits departures based on gambling dependence [subsection (b)(2)];
- (7) strictly regulates "fast track" departures in illegal reentry (and other) cases and limits such departures to 4 levels [subsection (b)(2)];
- (8) prohibits departures based on aberrant behavior [subsection (b)(3)];
- (9) prohibits departures based on family ties and responsibilities and community ties [subsection (b)(4)];
- (10) prohibits departures based on military service and good works [subsection (b)(4)];
- (11) prohibits departures based on diminished capacity in cases involving obscenity, sexual abuse, sexual exploitation of children, and transportation for illegal sexual activity [subsection (b)(5)];
- (12) requires that the court's written order of judgment state with specificity the reasons for any departure [subsection (c)];
- (13) requires de novo review of a district court's fact-based departure decisions (disapproving the substantial deference accorded such determinations under the

abuse-of-discretion standard of review set forth in *Koon v. United States*) [subsection (d)(2)];

(14) prohibits district courts, upon remand for resentencing, from departing from the Sentencing Guidelines based on a reason not set forth in the original order of judgment and approved by the circuit court [subsection (e)];

(15) requires a government motion for the extra one-level reduction for acceptance of responsibility [subsection (g)(1)(A)];

(16) makes timely notification of intention to plead guilty the only basis for the additional one-level reduction for acceptance of responsibility, eliminating the alternative basis of timely providing complete information to the government [subsection (g)(1)(B)];

(17) requires increased case-specific reporting by district courts to the Sentencing Commission, and requires that the Commission make the reports and underlying documents available to the House and Senate Judiciary Committees [subsection (h)];

(18) requires that the Sentencing Commission submit annual reports to Congress, containing an analysis of the sentencing documents received, suggestions for legislative change, and a list of districts that failed to comply with the enhanced reporting requirements [subsection (h)];

(19) sets forth specific amendments to the guidelines applicable to repeat child sex offenses and child pornography [subsection (i)];

(20) prohibits the Sentencing Commission from ever amending the bill's provisions governing "fast-track" departures and acceptance of responsibility [subsection (j)(2) and (j)(4)];

(21) prohibits the Sentencing Commission from ever lowering the guideline sentences for repeat child sex offenses and child pornography [subsection (j)(3)];

(22) declares a moratorium, effective until May 1, 2005, on new grounds for downward departures and any other Commission-promulgated amendments that are inconsistent with the bill's direct changes to the guidelines governing departure decisions [subsection (j)(2)];

(23) makes Congress-passed guideline amendments effective immediately, regardless whether the amendments have yet to be incorporated into the Sentencing Guidelines by the Sentencing Commission [subsection (j)(5)];

(24) requires that the Attorney General report downward departures not based on substantial assistance, within 15 days, to the House and Senate Judiciary Committees, including the identity of the judge, the facts of the case, and other information [subsection (l)(1)]; and

(25) requires that the Attorney General report whether the Solicitor General has authorized an appeal of any downward departure decision, within 5 days, to the House and Senate Judiciary Committees, including the reasons for declining or pursuing an appeal [subsection (l)(2)].