

108TH CONGRESS  
2D SESSION

# S. CON. RES.

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Expressing the sense of Congress that the Supreme Court of the United States should act expeditiously to resolve the confusion and inconsistency in the Federal criminal justice system caused by its decision in *Blakely v. Washington*, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

Mr. HATCH (for himself, Mr. LEAHY, Mrs. FEINSTEIN, and Mr. SCHUMER) submitted the following concurrent resolution; which was referred to the Committee on \_\_\_\_\_

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## CONCURRENT RESOLUTION

Expressing the sense of Congress that the Supreme Court of the United States should act expeditiously to resolve the confusion and inconsistency in the Federal criminal justice system caused by its decision in *Blakely v. Washington*, and for other purposes.

Whereas Congress enacted the Sentencing Reform Act of 1984 to provide certainty and fairness in sentencing, avoid unwarranted disparities among defendants with similar records found guilty of similar offenses, and maintain sufficient flexibility to permit individualized sentences when warranted;

Whereas Congress established the United States Sentencing Commission as an independent commission in the Judi-

cial branch of the United States to establish sentencing policies and practices for the Federal criminal justice system that meet the purposes of sentencing and the core goals of the Sentencing Reform Act;

Whereas Congress has prescribed both statutory minimum and statutory maximum penalties for certain offenses and the Sentencing Reform Act authorizes the Sentencing Commission to promulgate guidelines and establish sentencing ranges for the use of a sentencing court in determining a sentence within the statutory minimum and maximum penalties prescribed by Congress;

Whereas the statutory maximum penalty is the maximum penalty provided by the statute defining the offense of conviction, including any applicable statutory enhancements, and not the upper end of the guideline sentencing range promulgated by the Sentencing Commission and determined to be applicable to a particular defendant;

Whereas both Congress and the Sentencing Commission intended the Federal Sentencing Guidelines to be applied as a cohesive and integrated whole, and not in a piecemeal fashion;

Whereas in *Mistretta v. United States*, 488 U.S. 361 (1989), the Supreme Court of the United States upheld the constitutionality of the Sentencing Reform Act and the Federal Sentencing Guidelines against separation-of-powers and non-delegation challenges;

Whereas in *Blakely v. Washington*, 124 S. Ct. 2531 (2004), the Supreme Court held that the sentencing guidelines of the State of Washington violated a defendant's Sixth Amendment right to trial by jury;

Whereas despite *Mistretta* and numerous other Supreme Court opinions over the past 15 years affirming the constitutionality of various aspects of the Guidelines, the *Blakely* decision has raised concern about the continued constitutionality of the Federal Sentencing Guidelines;

Whereas the *Blakely* decision has created substantial confusion and uncertainty in the Federal criminal justice system;

Whereas the lower Federal courts have reached inconsistent positions on the applicability of *Blakely* to the Federal Sentencing Guidelines;

Whereas there is a split among the circuit courts of appeal as to the applicability of *Blakely* to the Federal Sentencing Guidelines, and the Second Circuit Court of Appeals has certified the question to the Supreme Court;

Whereas the orderly administration of justice in pending and resolved trials, sentencing and plea negotiations has been affected by the uncertainty surrounding the applicability of the *Blakely* decision to the Federal Sentencing Guidelines;

Whereas the current confusion in the lower Federal courts has and will continue to produce results that disserve the core principles underlying the Sentencing Reform Act;

Whereas two and one-half weeks after the Supreme Court issued its decision in *Blakely*, the Senate Judiciary Committee convened a hearing to consider the implications of the decision for the Federal criminal justice system; and

Whereas the Department of Justice, the Sentencing Commission, and others advised the Committee that corrective legislation was not necessary at this time, with the hope that the Supreme Court would clarify the applicability of

its Blakely decision to the Federal Sentencing Guidelines in an expeditious manner: Now, therefore, be it

1        *Resolved by the Senate (the House of Representatives*  
2 *concurring)*, That it is the sense of Congress that the Su-  
3 preme Court of the United States should act expeditiously  
4 to resolve the current confusion and inconsistency in the  
5 Federal criminal justice system by promptly considering  
6 and ruling on the constitutionality of the Federal Sen-  
7 tencing Guidelines.