

# Vera Institute of Justice

## Criminal Justice Issues and Prisoners' Rights

**<https://www.vera.org/blog/peugh-v-united-states-advisory-sentencing-guidelines-cannot-apply-retroactively>**

### Public Facing Advocacy Writing

In [\*Peugh v. United States\*](#), the Supreme Court held that sentencing courts cannot use amended sentencing guidelines in effect at the time of sentencing if they yield higher sentences than the guidelines in effect at the time of the crime were used. To do so would violate Article I, Section 9 of the Constitution, which mandates that "No [...] ex post facto Law shall be passed."

Ex post facto laws are laws that retroactively alter the legal consequences of actions, including the prescribed punishment for a crime, committed prior to the laws enactment. The ban on ex post facto laws is designed to promote basic fairness by giving people fair warning of applicable laws and preventing a vindictive government from changing a law midway through a case in order to exact a harsher punishment.

In the present case, Marvin Peugh was convicted of fraud in 2009 and sentenced to 70 months in prison based on current federal sentencing guidelines which call for a sentence range of 70 to 87 months. This was significantly higher than the 30 to 37 months that the guidelines called for when the fraud was committed in 1999 and 2000. At issue was whether the constitutional prohibition against ex post facto laws applies to federal sentencing guidelines even though the 2005 Supreme Court decision in [\*United States v. Booker\*](#) rendered the guidelines advisory rather than mandatory.

In deciding that the prohibition does apply, the court recognized that sentencing guidelines are not merely a volume a district court reads in the course of sentencing. Rather, guidelines are a sentencing courts starting point when crafting appropriate sentences, and courts are required to provide compelling justifications to support any deviation from them. Moreover, errors in calculating guideline ranges are vulnerable to reversal for procedural error. Although advisory, the guidelines thus remain the go-to framework that both guides and constrains judicial decision making in sentencing, and as such have sufficient weight as law to trigger a constitutional violation in this case.

In finding in favor of Peugh and confirming that even advisory sentencing guidelines cannot be retroactively applied if there is a sufficient risk of a higher sentence being imposed the Supreme Court has reaffirmed the centrality of the rule of law in the sentencing process.

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