

in the establishment of general sentencing practices; and (3) reflect, to the extent practicable, advancement in knowledge of human behavior as it relates to the criminal justice process. 28 U.S.C. § 994(f).

As background, Congress provided specific directives to the Commission when setting a guideline range for “each category of offense involving each category of defendant.” 28 U.S.C. § 994(b)(1).

First, the Act directs the Commission to consider, for purposes of establishing categories of offenses, whether the following seven matters, “among others,” have any relevance to the nature, extent, place of service, or other aspects of an appropriate sentence: (1) the grade of the offense; (2) the circumstances under which the offense was committed which mitigate or aggravate the seriousness of the offense; (3) the nature and degree of the harm caused by the offense, including whether it involved property, irreplaceable property, a person, a number of persons, or a breach of public trust; (4) the community view of the gravity of the offense; (5) the public concern generated by the offense; (6) the deterrent effect a particular sentence may have on the commission of the offense by others; and (7) the current incidence of the offense in the community and in the Nation as a whole. *See* 28 U.S.C. § 994(c).

Second, the Act directs the Commission to consider, for purposes of establishing categories of defendants, whether the following eleven matters, “among others,” have any relevance to the nature, extent, place of service, or other aspects of an appropriate sentence, and to take them into account in the guidelines and policy statements only to the extent that they do have relevance: (1) age; (2) education; (3) vocational skills; (4) mental and emotional condition to the extent that such condition mitigates the defendant’s culpability or to the extent that such condition is otherwise plainly relevant; (5) physical condition, including drug dependence; (6) previous employment record; (7) family ties and responsibilities; (8) community ties; (9) role in the offense; (10) criminal history; and (11) degree of dependence upon criminal activity for a livelihood. *See* 28 U.S.C. § 994(d). The Act also directs the Commission to ensure that the guidelines and policy statements “are entirely neutral” as to five characteristics—race, sex, national origin, creed, and socioeconomic status. *See* 28 U.S.C. § 994(d).

Third, the Act directs the Commission to ensure that the guidelines and policy statements, in recommending a term of imprisonment or length of a term of imprisonment, reflect the “general inappropriateness” of considering five of those characteristics—education; vocational skills; employment record; family ties and responsibilities; and community ties. *See* 28 U.S.C. § 994(e).

In formulating the guidelines used to calculate the guideline range, the Commission remains cognizant of these detailed instructions directing the Commission to consider whether, and to what extent, specific offense-based and offender-based factors are relevant to sentencing. *See* 28 U.S.C. § 994(c), (d). Similarly, the Commission has ensured that the guidelines, policy statements, and commentary used to calculate the guideline range are: (1) neutral as to the race, sex, national origin, creed, and socioeconomic status of the defendant; and (2) generally do not reflect consideration of education, vocational skills, employment record, family ties and responsibilities, and community ties of the defendant in recommending a term of imprisonment or length of imprisonment. *See* 28 U.S.C. § 994(d), (e).

The requirements and limitations imposed upon the Commission by 28 U.S.C. § 994, however, do not apply to the sentencing court. To the contrary, Congress set forth the factors that a court must consider in imposing a sentence that is “sufficient but not greater than necessary” to comply with the purposes of sentencing in 18 U.S.C. § 3553(a). These statutory factors permit a sentencing court to consider the “widest possible breadth of information” about a defendant ensuring the court is in “possession of the fullest information possible concerning the defendant’s life and characteristics.” *See Pepper v. United States*, 562 U.S. 476, 488 (2011); *see also Concepcion v. United States*, 597 U.S. 481, 493 (2022). Accordingly, the application instructions set forth in the following part are structured to reflect this two-step process whereby the sentencing court must first correctly calculate the applicable guide-