



2023 AMENDMENTS IN BRIEF

In April 2023, the U.S. Sentencing Commission promulgated amendments to the federal sentencing guidelines. For a more detailed discussion of the policy determinations made by the Commission, please refer to the *Reason for Amendment* in the “Reader-Friendly” and Official Text (link in QR code).

Amendment #816

Sexual Abuse Offenses

The amendment first creates Appendix A references for new offenses created by the [Violence Against Women Act \(VAWA\) Reauthorization Act of 2022](#) at [18 U.S.C. § 250](#) concerning sexual misconduct while committing civil rights offenses and [18 U.S.C. § 2243\(c\)](#) concerning sexual abuse of an individual in federal custody.

The amendment also [increases the base offense level](#) at §2A3.3 (Criminal Sexual Abuse of a Ward or Attempt to Commit Such Acts) for cases involving sexual abuse committed by law enforcement or correctional personnel against victims in their custody, care, or supervision [from 14 to 22](#). It also addresses the presence of [aggravating factors](#) in sexual abuse offenses by providing a cross reference to §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse) for cases where the offense involved criminal sexual abuse or attempt to commit criminal sexual abuse.

THE ISSUE

Response to Congress, DOJ concerns

Congress passed the Violence Against Women Act Reauthorization Act in 2022, establishing two new crimes. The first, at 18 U.S.C. § 250(a), prohibits any person from engaging in, or causing another to engage in, sexual misconduct, including certain attempts, while committing any civil rights offense. The second at 18 U.S.C. § 2243(c) prohibits law enforcement officers from knowingly engaging in a sexual act with an individual under arrest or supervision, in detention, or in federal custody.

Separately, in its annual letter to the Commission, the Department of Justice urged the Commission to address concerns regarding the increasing number of cases involving sexual abuse committed by law enforcement or correctional personnel against victims in their custody, care, or supervision.

CONTENTS

The Amendment	1
The Issue	1
Comment & Testimony	2
Facts & Figures	2

Scan or click QR code
for full Reason for
Amendment.



COMMENT & TESTIMONY

Part A: New Offenses Established by VAWA Reauthorization Act of 2022



Congress

“We commend the Commission on proposing amendments to the Guidelines Manual in response to the passage of the Violence Against Women Act (VAWA) Reauthorization Act of 2022, which reauthorizes VAWA through 2027 and modernizes current law to better address the evolving needs of domestic violence and sexual assault survivors.”

–Senators Durbin, Hirono, Booker



Department of Justice

“The Department supports the Commission’s proposed amendment to include in §2A3.3 a cross reference to §2A3.1 for offenses with aggravating factors ... [I]t encourages the Commission to also make applicable the Abuse of Position of Trust adjustment under §3B1.3. The Department believes the absence of enhancements or upward adjustments in §2A3.3 leaves the Guidelines range inadequate to address more egregious offenses in the prison setting.”



Advisory Groups

The Probation Officers Advisory Group “concur[s] with the proposed amendment to refer convictions under the newly enacted statute at 18 U.S.C. § 250 to USSG §2H1.1, particularly because the manner in which the base offense level underlying that guideline is structured.”

FACTS & FIGURES

Part B: Criminal Sexual Abuse of a Ward

A review of offenders sentenced between FY 2012 and FY 2021 indicates a change in offense conduct over the time period—with a greater number of cases involving force, threats, or coercion.

The Commission also observed an increasing rate of upward departures and variances over the last five fiscal years. The rate of upward departures and variances was also substantially higher in §2A3.3 cases than the overall federal caseload (3% in FY 2022).

Relatedly, the average sentence (35 months) was nearly double the average guideline minimum (17 months) in §2A3.3 cases. This, too, is uncommon, as the average sentence imposed is usually below the average guideline minimum.

§2A3.3 Sentences Relative to the Guideline Range, Fiscal Years 2018-2022 (n=22)

