

Prison and Sentencing Impact Assessments for 2015 Guideline Amendments to the Federal Sentencing Guidelines

For a complete description of the 2015 amendments, please visit <http://www.ussc.gov/guidelines/amendments/reader-friendly-version-amendments-submitted-congress-april-30-2015-effective-november-1-2015>.

1) Jointly Undertaken Criminal Activity

The Commission does not have sufficient information to perform a sentencing and prison impact analysis.

2) Inflationary Adjustments

This amendment adjusts the monetary tables in the guidelines for inflation, i.e., the tables in §§2B1.1 (Theft, Property, Destruction, and Fraud), 2B2.1 (Burglary), 2B3.1 (Robbery), 2R1.1 (Bid-Rigging, Price-Fixing or Market-Allocation Agreements Among Competitors), 2T4.1 (Tax Table), 5E1.2 (Fines for Individual Defendants), and 8C2.4 (Base Fine). The amendment adjusts each table for inflation (as set by the Bureau of Labor Statistics' Consumer Price Index) from the year that monetary table was last substantively amended by the Commission.

Change in Sentences Imposed. The table below shows the estimated sentencing impact for offenders sentenced in fiscal year 2012 (which is used as a proxy for offenders sentenced in the future) using each of the monetary tables. For example, of the 8,854 §2B1.1 offenders identified for this analysis, it is estimated that 18.8 percent (n = 1,665) would have been affected by the proposal if it had been in place at the time of sentencing. The average sentence imposed on these 1,665 offenders was 35 months. It is estimated that, had the proposal been in effect at the time these offenders had been sentenced, the average sentence would have been 27 months, resulting in a 22.9 percent reduction (eight months). The table also shows the current average sentence imposed and new estimated average sentence for all 8,854 offenders. The current average sentence imposed on these 8,854 offenders was 23 months. It is estimated that, had the proposal been in effect at the time these offenders were sentenced, the average sentence would have been 21 months, resulting in an 8.7 percent reduction (two months). Estimated impacts are also provided for the other monetary tables subject to the proposed amendment

**Estimated Effect on Sentencing of Adjusting the Monetary Tables for Inflation
with Amounts Then Rounded Under an Extrapolated Methodology
FY 2012 Cases
Change in Sentences Imposed**

	Total Cases ¹	Affected Cases ²	Percent Affected	Current Average Sentence	Affected Cases			All Relevant Cases	
					New Average Sentence	Number Of Months Change	Percent Change	Current Average Sentence	New Average Sentence
§2B1.1 ³	8,854	1,654	18.7	37	29	-8	-21.6	23	21
Guidelines Referring to									
§2B1.1 ⁴	2,329	423	18.2	41	31	-10	-24.4	27	26
§2B2.1 (Burglary) ⁵	77	7	9.1	29	25	-4	-13.8	29	29
§2B3.1 (Robbery) ⁶	1,841	175	9.5	118	109	-9	-7.6	135	134
§2R1.1 (Antitrust) ⁷	14	2	14.3	25	19	-6	-24.0	12	11
§2T4.1 (Tax) ⁸	895	137	15.3	33	26	-7	-21.2	23	22

¹**Total Cases** are those with a particular sentencing factor being analyzed.

²**Affected Cases** are those in which the sentence is estimated to change as a result of the sentencing factor being analyzed. Not all cases will change as a result of the application of the sentencing factor being analyzed.

³ Inflation adjustment uses an initial 1.34 multiplier, with amounts then rounded consistent with 28 U.S.C. § 2641 note.

⁴ Inflation adjustment uses an initial 1.34 multiplier, with amounts then rounded consistent with 28 U.S.C. § 2641 note.

⁵ Inflation adjustment uses an initial 1.91 multiplier, with amounts then rounded consistent with 28 U.S.C. § 2641 note.

⁶ Inflation adjustment uses an initial 1.91 multiplier, with amounts then rounded consistent with 28 U.S.C. § 2641 note.

⁷ Inflation adjustment uses an initial 1.22 multiplier, with amounts then rounded consistent with 28 U.S.C. § 2641 note.

⁸ Inflation adjustment uses an initial 1.34 multiplier, with amounts then rounded consistent with 28 U.S.C. § 2641 note.

Change in years of incarceration served for offenders sentenced in a single fiscal year. The table below shows, for all cases combined, the estimated change in sentences served for cases affected by the amendment. It is estimated that this proposal would reduce the Federal Bureau of Prisons (BOP) population by 224 person years of bed space in the first year. It is estimated, based solely on the sentencing of a single year of offenders, that this proposal ultimately would save the BOP 1,354 person years of bed space once the last offenders of this cohort have finished serving their sentences.

Change in total BOP Population in Future Years. It is estimated that the BOP would have an additional 224 additional prison beds available at the end of the first year after implementation. At the end of the fifth year after implementation of this proposal it is estimated that the BOP would have saved 956 prison beds.

Estimated Effect on Sentences Served of Adjusting the Monetary Tables for Inflation with Amounts Then Rounded Using an Extrapolated Methodology

All Affected FY12 Cases Combined⁹

Change in years of incarceration served for offenders sentenced in a single fiscal year¹⁰

1st Year	2nd Year	3rd Year	4th Year	5th Year	10th Year	15th Year	Total¹¹
-224	-203	-233	-179	-115	-29	-9	-1,354

Change in total BOP population in future years¹²

One Year After Effective Date	Two Years After Effective Date	Three Years After Effective Date	Four Years After Effective Date	Five Years After Effective Date
-224	-428	-661	-840	-956

3) Economic Crime

This amendment makes several changes to §2B1.1 (Theft, Property, Destruction, and Fraud). The Commission does not have sufficient information to perform a sentencing or prison impact analysis.

The amendment, in part, modifies the definition of “intended loss” under this guideline to require courts to determine the defendant’s subject intent. Sentencing documents generally provide little information

⁹ This analysis combines all cases affected under Option 2 that referenced guidelines using one of the monetary tables in §§2B1.1, 2B2.1, 2B3.1, 2R1.1, or 2T4.1. Each analysis involves a unique offender population exclusive of the others. Because of this the prison impact estimates for each group can be combined to provide an overall estimate.

¹⁰ This table represents the number of prison beds saved each year by a cohort of offenders sentenced in a single year.

¹¹ This is the total number of prison beds that will be saved when all offenders who were sentenced in the same year are released from prison.

¹² This is the annual number of prison beds saved as additional cohorts of offenders who have been sentenced based on the changed sentencing factor enter the Bureau of Prisons.

regarding the type of loss involved (*i.e.*, actual versus intended). Even when courts indicate that intended loss was used to determine the sentencing guideline range, there is often little detail regarding whether the court made its determination based on the defendant's subjective or objective intent. Consequently, the sentencing and prison impact of this portion of the amendment cannot be estimated.

The amendment also modifies the manner in which courts are to consider the number of victims in economic crime cases and the extent of the harm done to them. Because an assessment of the extent of the harm done to fraud victims has not been part of the guideline calculation in the past, the Commission has no data on which to base any estimate of the sentencing or prison impact of this portion of the amendment. Consequently, the sentencing or prison impact cannot be estimated for this portion of the amendment.

The amendment also modifies the manner in which courts are to assess the loss involved in cases involving the fraudulent inflation or deflation in the value of securities or commodities. The amendment allows the court to use any method that is appropriate and practicable under the circumstances. The Commission is unable to estimate the methods that courts may use in these cases; consequently, the sentencing or prison impact cannot be estimate for this portion of the amendment.

The amendment also contains a provision to clarify when the "sophisticated means" enhancement under 2B1.1 applies. The Commission does not collect information specifically relating to the underlying facts supporting application of the sophisticated means enhancement; consequently, the sentencing or prison impact cannot be estimate for this portion of the amendment.

4) Hydrocodone

The amendment would require courts to consider the formulation of hydrocodone involved in a drug offense in order to determine the actual quantity of hydrocodone involved in the offense. Because this information was not previously relevant to the sentencing guideline calculation in these cases, it is not uniformly reported in the court documents available to the Commission. Consequently, the Commission does not have sufficient information with which to perform a sentencing impact of this amendment.

However, because of the small number of offenders sentenced for drug offenses involving hydrocodone (65 in fiscal year 2013), the impact to the prison population is expected to be negligible.

5) Mitigating Role

The Commission does not have sufficient information to perform a sentencing or prison impact analysis. The Commission is unable to estimate the extent to which the court will apply this amendment, or the cases in which it may apply.

6) Single Sentence Rule

The Commission does not have sufficient information to perform a prison impact analysis.

The amendment addresses a circuit conflict involving whether a predicate conviction that is subsumed within a “single sentence” for criminal history purposes (along with another, non-predicate conviction) can be used to increase penalties under certain guidelines, such as the career offender guideline. The Commission does not regularly collect the offense type or specific length of sentence imposed on federal offenders in connection with prior criminal convictions, therefore, the Commission is unable to identify the prior convictions to which the amendment might apply.

7) Technical Amendment

The amendment is not substantive; consequently, there is no prison impact.

For more information about why the Commission may not perform prison and sentencing impact assessments, see the Frequently Asked Questions:

<http://www.ussc.gov/research-and-publications/most-frequently-asked-questions-prison-sentencing-impact-assessments>.