

Research NOTES



The Significance of [SOURCES] Resolving Guideline Application Discrepancies in Federal Sentencing Documents

By: Cassandra Syckes, M.A., Research Associate

This paper explains how the United States Sentencing Commission collects and reports court findings regarding guideline application and criminal history details in the sentencings of individual offenders.¹ It discusses a key variable, [SOURCES], that indicates whether the guideline-based variables in each case definitively represent the court's findings. In addition, it discusses analytical issues that may arise when using the Commission's data, including when to consider limiting analyses based on [SOURCES].² The key variables in the Commission's individual offender datafile are noted in all capital letters inside of brackets throughout the text.


The United States Sentencing Commission is an independent agency in the judicial branch of the federal government. The Commission's primary responsibility is to promulgate and amend the federal sentencing guidelines. The Commission has other responsibilities, including (1) establishing a data collection, analysis, and research program to serve as a clearinghouse and information center for the collection, preparation, and dissemination of information on federal sentencing practices; (2) publishing data concerning the sentencing process; (3) collecting and disseminating information concerning sentences actually imposed and the relationship of such sentences to the factors set forth in 18 U.S.C. § 3553(a); and (4) collecting and disseminating information regarding the effectiveness of sentences imposed.³

Office of Research and Data

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 AskORD@ussc.gov

 202-502-4500

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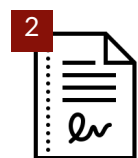
Research Notes give background information on the technical details of the Commission's data collection and analysis process. They are designed to help researchers use the Commission's datafiles by providing answers to common data analysis questions.

Documents Received, Data Collected

To meet its responsibilities, the Commission receives and collects data from sentencing documents sent directly from the federal courts. Within 30 days of entry of judgment in a criminal case, the chief judge of each sentencing court is required to submit sentencing documents to the Commission that include:



1 An **indictment** is a written statement of the essential facts constituting the offenses charged by a grand jury.



2 A **Plea Agreement** is a written agreement between the government and the defendant in which the defendant agrees to plead guilty to one or more of the charged offenses, often in return for the government's agreement to dismiss other charges or to support a specific sentence.



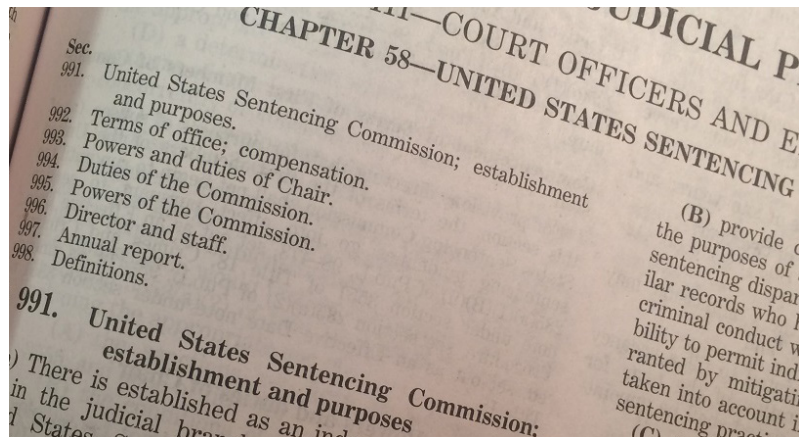
3 A **Presentence Report (PSR)** is prepared by a probation officer and contains information about the offense and offender, the statutory range of punishment, the guideline calculation, and any bases for imposing a sentence above or below the guideline range.⁴



4 The **Judgment and Commitment Order (J&C)** is a written record of the defendant's conviction(s) and the sentence the court imposes.



5 The **Statement of Reasons (SOR)** is a form on which judges explain the reasons for imposing the sentence outside the guidelines range.



The Commission records whether each sentencing document was received in the document status variables [DSJANDC, DSSOR, DSPLEA, DSIND, DSPSR].⁵ These variables indicate if a document was received, in whole or in part.⁶ [DSPLEA] includes additional values that account for instances with no written plea agreement, including oral plea agreements, guilty pleas with no agreement, and trials. If a complete document is not received for an offender (e.g., if a document is not received or if some sections are not completed), variables collected from that document are likely to be missing.



[SOURCES] indicates whether there are unresolved guideline application discrepancies.

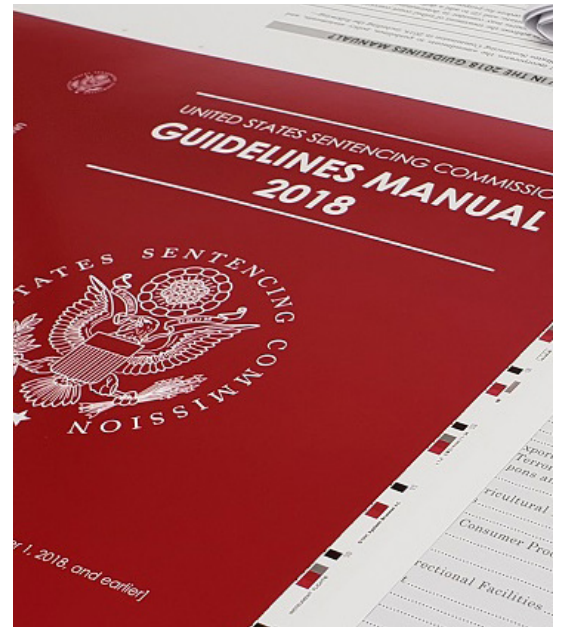


In these cases, Commission staff review other sentencing documents provided to determine if the missing information is available elsewhere (e.g., if no PSR is present, the plea agreement is reviewed for guideline computations). When the information is available and reflects the court's findings, the missing information is recorded from these other sentencing documents. Using all available sentencing documents, Commission staff record the variable [SOURCES] in each case to indicate whether there are unresolved guideline application discrepancies.



Guideline Computations

Once an offender is adjudicated guilty, the probation officer prepares a PSR. The statute or statutes of conviction are used to determine the Chapter Two sentencing guideline applicable to the instant offense. The appropriate base offense level (BOL), specific offense characteristics (SOCs), and any cross references or special instructions are applied, followed by any applicable Chapter Three adjustments for harm to victims, the offender's role in the offense, and obstruction of justice. The sum of these values is the adjusted offense level for the first guideline computation [ADJOFL1]. If there are multiple counts of convictions, this process is repeated for each count and will result in multiple adjusted offense levels [ADJOFL1-ADJOFLX]. The guideline computation resulting in the highest adjusted offense level [ADJOFLHI] is then used for the remaining Chapter Three and Four calculations.

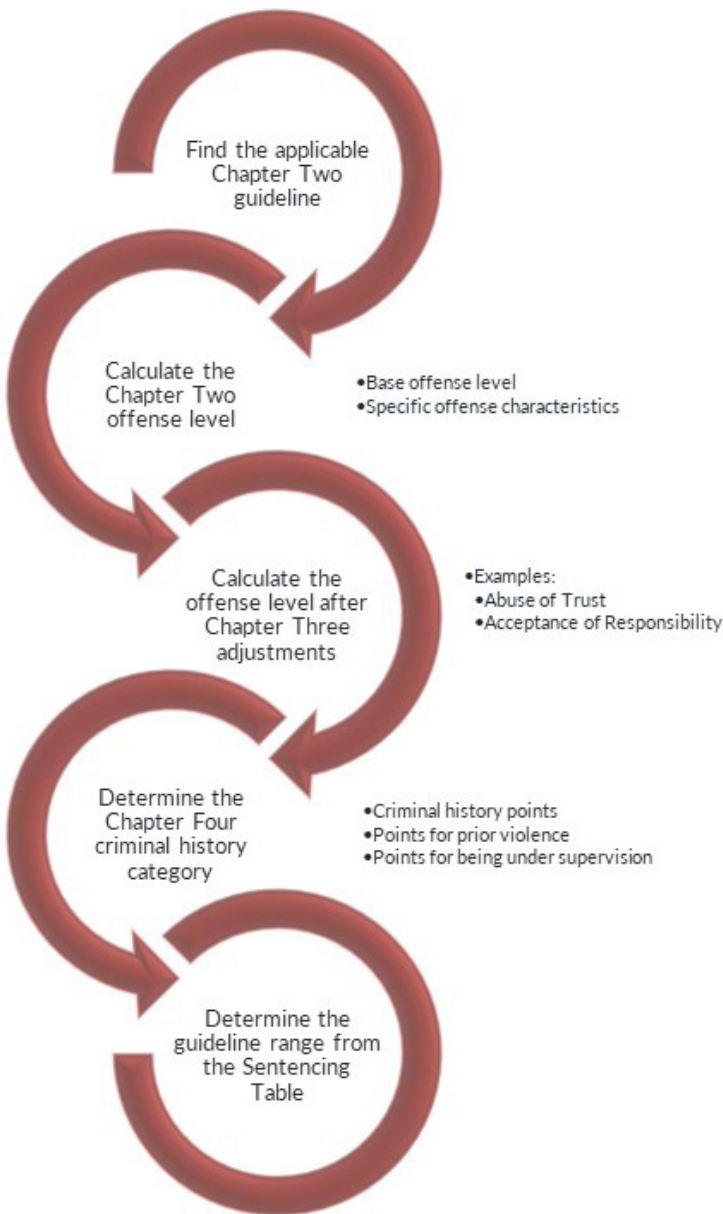


After an offender is adjudicated guilty, the probation officer applies the appropriate base offense level (BOL), specific offense characteristics (SOCs), and any cross references or special instructions from the *Guidelines Manual*.

Multiple counts are grouped and any additional units [TOTUNIT] are added to [ADJOFLHI], creating [COADJLEV]. Any points awarded for acceptance of responsibility [ACCTRESP] are subtracted which completes the Chapter Three calculations.

Chapter Four accounts for an offender's criminal history. Past convictions may increase the adjusted offense level if the offender was convicted of certain types of crimes or under certain statutes. Once any applicable Chapter Four points are added, the probation officer reaches the final offense level (FOL).

Chapter Four also calculates an offender's criminal history score. Points are awarded to past convictions based on the sentence length and proximity to the instant offense [POINT3, POINT2, POINT1]. These criminal history points are totaled and added to any additional points for prior crimes of violence [VIOL1PTS] or committing the instant offense while under a criminal justice sentence [SENTPTS] to arrive at the total criminal history points [TOTCHPTS]. This criminal history score is then used to determine an offender's criminal history category (CHC), ranging from I to VI.⁷



SENTENCING TABLE (in months of imprisonment)

Offense Level	Criminal History Category (Criminal History Points)					
	I (0 or 1)	II (2 or 3)	III (4, 5, 6)	IV (7, 8, 9)	V (10, 11, 12)	VI (13 or more)
1	0-6	0-6	0-6	0-6	0-6	0-6
2	0-6	0-6	0-6	0-6	0-6	1-7
3	0-6	0-6	0-6	0-6	2-8	3-9
4	0-6	0-6	0-6	2-8	4-10	6-12
5	0-6	0-6	1-7	4-10	6-12	9-15
6	0-6	1-7	2-8	6-12	9-15	12-18
7	0-6	2-8	4-10	8-14	12-18	15-21
8	0-6	4-10	6-12	10-16	15-21	18-24
9	4-10	6-12	8-14	12-18	18-24	21-27
10	6-12	8-14	10-16	15-21	21-27	24-30
11	8-14	10-16	12-18	18-24	24-30	27-33
12	10-16	12-18	15-21	21-27	27-33	30-37
13	12-18	15-21	18-24	24-30	30-37	33-41
14	15-21	18-24	21-27	27-33	33-41	37-46
15	18-24	21-27	24-30	30-37	37-46	41-51
16	21-27	24-30	27-33	33-41	41-51	46-57
17	24-30	27-33	30-37	37-46	46-57	51-63
18	27-33	30-37	33-41	41-51	51-63	57-71
19	30-37	33-41	37-46	46-57	57-71	63-78
20	33-41	37-46	41-51	51-63	63-78	70-87
21	37-46	41-51	46-57	57-71	70-87	77-96
22	41-51	46-57	51-63	63-78	77-96	84-105
23	46-57	51-63	57-71	70-87	84-105	92-115
24	51-63	57-71	63-78	77-96	92-115	100-125
25	57-71	63-78	70-87	84-105	100-125	110-137
26	63-78	70-87	78-97	92-115	110-137	120-150
27	70-87	78-97	87-108	100-125	120-150	130-162
28	78-97	87-108	97-121	110-137	130-162	140-175
29	87-108	97-121	108-135	121-151	140-175	151-188
30	97-121	108-135	121-151	135-168	151-188	168-210
31	108-135	121-151	135-168	151-188	168-210	188-235
32	121-151	135-168	151-188	168-210	188-235	210-262
33	135-168	151-188	168-210	188-235	210-262	235-293
34	151-188	168-210	188-235	210-262	235-293	262-327
35	168-210	188-235	210-262	235-293	262-327	292-365
36	188-235	210-262	235-293	262-327	292-365	324-405
37	210-262	235-293	262-327	292-365	324-405	360-life
38	235-293	262-327	292-365	324-405	360-life	360-life
39	262-327	292-365	324-405	360-life	360-life	360-life
40	292-365	324-405	360-life	360-life	360-life	360-life
41	324-405	360-life	360-life	360-life	360-life	360-life
42	360-life	360-life	360-life	360-life	360-life	360-life
43	life	life	life	life	life	life

The Sentencing Table

The court uses the final offense level and criminal history category on the Statement of Reasons to determine the guideline range on the Sentencing Table.

The Sentencing Table establishes the sentencing or guideline range for an offender. The vertical axis represents the FOL and the horizontal axis represents the CHC. The intersection of the two displays the guideline range in months of imprisonment.⁸ For example, an offender with a FOL of 18 and a CHC of I has a guideline range of 27 to 33 months of imprisonment. The court uses the FOL and CHC on the SOR to determine the guideline range.⁹

For most cases where an SOR is received, the FOL on the SOR is [XFOLSOR] and the CHC on the SOR is [XCRHISSR].¹⁰ [XFOLSOR] and [XCRHISSR] represent the court's final findings and are captured in every case where the court has provided this information. These values may differ from the FOL and CHC on the PSR if the court makes changes to these calculations on the SOR.¹¹ In order to most accurately capture the court's final findings, [XFOLSOR] and [XCRHISSR] along with any additional guideline application information (e.g., BOL, SOCs, guideline applied, etc.) and criminal history details provided on the SOR are compared to the PSR.¹² This comparison is the basis for the variable [SOURCES].

Determining [SOURCES], The Court's Findings



Some values of [SOURCES] signify the Commission cannot definitively determine the final decision of the court.

The Commission's [SOURCES] variable indicates the extent to which the underlying guideline application information and criminal history details that make up the FOL [XFOLSOR] and the CHC [XCRHISSR] reported on the datafile is based upon final decision of the court.¹³ Commission staff reviews the PSR and SOR for an offender and determines the value of [SOURCES] based on any guideline application or criminal history differences between the two documents and whether those differences can be reconciled.¹⁴



There are seven possible values for [SOURCES].

There are seven possible values for [SOURCES]. Which value (or, in some instances, values) to include in the analysis is an important consideration for researchers, particularly when conducting guideline-based analysis. Some values of [SOURCES] signify the Commission cannot definitively determine the final decision of the court. Guideline application and criminal history variables for cases with those [SOURCES] values may not represent the court's final findings.

Limiting the analyses to certain [SOURCES] values ensures all guideline application variables (e.g., BOL, SOCs, criminal history points, etc.) were clearly documented as being applied or not applied.

Each value of [SOURCES] will be discussed in further detail in order of completeness of guideline application information, beginning with [SOURCES] = 1.¹⁵

[SOURCES] Values

1

Information Represents Known Court Findings

3

PSR is Coded (Insufficient Information in SOR)

5

PSR is Coded (No SOR Present)

6

18 U.S.C. § 924(c) only

7

18 U.S.C. § 1028A only

8

No Analogous Guidelines

9

PSR Waived, Missing, or Multiple Offense Levels

Overview

The most common value for [SOURCES] is one, “Information Represents Known Court Findings.”

Most Often

Matching FOLs and CHCs in the Documents

When the FOL and CHC on the PSR match the SOR FOL [XFOLSOR] and CHC [XCRHISSR].

Example:

The SOR lists a FOL [XFOLSOR] of 18 and CHC [XCRHISSR] of I which matches the FOL and CHC on the PSR. No further review is needed. [SOURCES] = 1 (“Court Findings”).

Scenario 1

Using the 2018 *Guidelines Manual*, an offender is convicted under 18 U.S.C. § 1343 and sentenced under USSG §2B1.1 with a BOL of seven.

The PSR lists the loss amount in the case as \$1,000,000 so 14 additional levels are added, bringing the offense level to 21.

The offender accepted responsibility for his or her actions and three levels are subtracted for acceptance of responsibility, resulting in a FOL of 18.

The offender had no criminal history points and was assigned to CHC I.

Some Instances of Incomplete Documentation

Instances where documents or guideline information are incomplete.

Example A (*Scenario 1*):

The court leaves the FOL and CHC fields blank on the SOR, but indicates it accepted the guideline application and criminal history details in the PSR without change [ACCGDLN].

Our Rationale:

Even though a “partial” SOR was received [DSSOR], [SOURCES] is still one because the court accepted the PSR without changes.

Example B (*Scenario 1*):

The CHC on the SOR [XCRHISSR] and PSR match, but the PSR is partially complete [DSPSR] and does not contain Chapter Two and Three guideline application information.

Our Rationale:

If this guideline application information is present in the plea agreement and the plea FOL matches the FOL on the SOR [XFOLSOR], Chapter Two and Three guideline application will be recorded from the plea. This is common among border districts where the PSR is waived [DSPSR] due to a fast track or §5K3.1 plea agreement.

Further Insights:

[SOURCES] is not interchangeable with the document status variables [DSIND, DSJANDC, DSPLEA, DSPSR, DSSOR] because, if a complete document is not received, Commission staff may record the information from other sentencing documents if the information is available.

Guideline application variables are not present for several values of [SOURCES]. If [SOURCES] = 1, however, then all Chapter Two, Chapter Three, and Chapter Four variables should exist for the case with one exception. The Commission records [SOURCES] as one in those cases to capture certain variables despite incomplete guideline information. This applies to career offenders without a Chapter Two guideline application in the PSR, often convicted under 18 U.S.C. § 924(c) only.¹⁶ Sometimes a career offender is convicted of other offenses in addition to 18 U.S.C. § 924(c), but the probation officer only documents the 18 U.S.C. § 924(c) guideline because it results in the highest final offense level.¹⁷ As Commission staff do not record certain variables for 18 U.S.C. § 924(c) only cases, [SOURCES] = 1 rather than the anticipated value of six (“18 U.S.C. § 924(c) only”) to document career offender status and other criminal history details.

Scenario 1 (Revised A)

The PSR lists the offender as having no criminal history points under the guidelines.

The PSR sums the criminal points and arrives at a total criminal history score of one.

Scenario 1 (Revised B)

The PSR lists the loss amount in the case as \$1,000,000 and the FOL as 18 (CHC is I).

At sentencing, the court determines the loss amount to be \$500,000 and the FOL [XFOLSOR] to be 16 ([XCRHISSR] is I).

Scenario 2

Using the 2018 *Guidelines Manual*, an offender is convicted under 18 U.S.C. § 1343 and sentenced under USSG §2B1.1 with a BOL of seven.

The PSR lists the loss amount in the case as \$0 so no additional levels are added.

The offense involved sophisticated means so two additional levels are applied for the sophisticated means SOC, bringing the offense level to nine.

The PSR does not apply the sophisticated means SOC “floor” which states the offense level becomes 12 if the resulting offense level is less than 12.

The offender did not accept responsibility for his or her actions, resulting in a FOL of nine (CHC is I).

PSR Contains Math Errors Accepted By Court

Often consist of incorrectly summing the criminal history points or BOL and applicable SOCs.

Example (*Scenario 1 - Revised A*):

The PSR incorrectly totaled the points and arrived at a total criminal score of one, therefore [TOTCHPTS] would be one while the sum of the criminal history point variables ([POINT3], [POINT2], [POINT1], [SENTPTS], [VIOL1PTS]) would be zero.¹⁸

Our Rationale:

Because the court accepted the PSR with this mathematical error, [SOURCES] = 1 despite the mismatch. There will be a mismatch in the datafile between [TOTCHPTS] and the sum of the criminal history point variables because the court accepted the PSR calculations with the incorrect total.

Reconcilable Differences

When the FOLs or CHCs are different, but differences can be reconciled.

Example A (*Scenario 1 - Revised B*):

At sentencing, the court determines the loss amount is \$500,000 and the FOL [XFOLSOR] is 16 ([XCRHISSR] is I). Commission staff apply the new loss amount to the PSR computations to determine if the difference between the PSR and SOR FOL [XFOLSOR] can be reconciled. A \$500,000 loss reduces the number of levels added from 14 to 12; adding 12 levels to the BOL of seven brings the offense level to 19. After three levels are subtracted for acceptance of responsibility, the FOL is 16.

Our Rationale:

Incorporating the court's changes into the PSR guideline computation results in the FOL listed on the SOR [XFOLSOR]; therefore, if the court clearly documents the new loss amount, the difference between the PSR and SOR FOL [XFOLSOR] is reconciled. The court's updated guideline application resulting in a FOL of 16 and CHC of I is recorded and [SOURCES] = 1.

Example B (*Scenario 2*):

In the revised scenario, the “floor” is not applied in the PSR and the court accepted the calculation, so the combined adjusted offense level applied by the court is nine. Incorrect guideline application often includes misapplying the “floor” or “ceiling” for SOCs, applying a nonexistent value for a BOL/SOC/Chapter Three adjustment, or applying the wrong BOL or SOC value based on the drug or loss amount.¹⁹

Our Rationale:

The Commission database automatically applies any applicable “floors” or “ceilings” so the combined adjusted offense level calculated by the Commission database [COADJLEV] in this example is 12.²⁰ Because the court accepted the PSR with this guideline error, [SOURCES] = 1 (“Court Findings”).

RESEARCHER IMPACT

In [SOURCES] = 1 cases, all guideline variables reflect the court's final findings. Limiting analyses to [SOURCES] = 1 ensures that cases with incomplete guideline application information are excluded. [SOURCES] = 1 ensures all guideline application variables (e.g., BOL, SOCs, criminal history points, etc.) were documented completely. For example, if a researcher is looking for all cases that applied an SOC, the researcher would want to limit to [SOURCES] = 1 cases to ensure the SOC was conclusively applied at sentencing.

Overview

When guideline application or criminal history details on the PSR differ from the court findings on the SOR, the Commission reviews all available documents to determine whether those differences can be reconciled. In cases where the differences cannot be reconciled, [SOURCES] = 3, “PSR Is Coded (Insufficient Information in SOR).”

Scenario 1 (Revised C)

The PSR lists the FOL as 18 and the CHC as I. At sentencing, the court determines the FOL [XFOLSOR] is 16 ([XCRHISSR] is I).

Undocumented Differences in FOLs and CHCs

When the FOL and CHC on the PSR do NOT match the SOR FOL [XFOLSOR] and CHC [XCRHISSR].

Example (Scenario 1 - Revised C):

At sentencing, the court determines the FOL is 16 and the CHC is I.

Our Rationale:

The SOR and plea are reviewed to reconcile the difference. If there is no clear documentation of how the court arrived at a different FOL than listed on the PSR, the court’s guideline application is unknown and the difference cannot be reconciled, therefore [SOURCES]=3.

Scenario 1 (Revised D)

The PSR lists the FOL as 18 and the CHC as I. At sentencing, the court determines the loss amount is \$2,000,000 and the FOL [XFOLSOR] is 16 ([XCRHISSR] is I).

Documented But Irreconcilable Differences

When the SOR clearly documents a change to the FOL [XFOLSOR] or CHC [XCRHISSR] but, when applied, those changes are not reconcilable with the PSR.

Example (Scenario 1 - Revised D):

At sentencing, the court determines the loss amount is \$2,000,000 and the FOL [XFOLSOR] is 16 ([XCRHISSR] is I). Increasing the loss amount from \$1,000,000 to \$2,000,000 adds two additional levels to the PSR offense level, bringing the FOL to 20 after acceptance of responsibility.

Our Rationale:

Commission staff apply the updated loss amount to the PSR computations to see if the difference between the PSR and SOR FOL [XFOLSOR] can be reconciled. Despite clear documentation, the FOL on the SOR [XFOLSOR] is 16, so incorporating the court’s changes into the PSR guideline computation does not result in the same FOL. The difference between the PSR and SOR FOL therefore is not reconciled, and [SOURCES] = 3. If guideline application or criminal history changes are clearly documented but, when applied to the guideline application or criminal history details in the PSR, do not result in the FOL [XFOLSOR] or CHC [XCRHISSR] listed on the SOR, [SOURCES] = 3.

Even though the change in loss amount to \$2,000,000 is clearly documented by the court, a loss amount of \$1,000,000 is recorded because the change in the FOL cannot be reconciled. If all changes cannot be reconciled, all guideline application information and criminal history details are recorded from the PSR and no changes are recorded from the SOR.

RESEARCHER IMPACT

[SOURCES] = 3 includes cases with incomplete guideline application information. Guideline variables in the Commission database may not reflect the court’s final findings.

Including cases that may not reflect the court’s final findings should be approached with caution.

Overview

Some [SOURCES] values apply to cases with specific statutes of conviction.

Offenders Convicted of Only 18 U.S.C. § 924(c)

Example:

[SOURCES] = 6 (“18 U.S.C. § 924(c) only”) is recorded for offenders whose only count or counts of conviction are 18 U.S.C. § 924(c).²¹ In these cases, guideline application variables are missing because a guideline is not recorded in cases where 18 U.S.C. § 924(c) is the only count of conviction.

Our Rationale:

In these cases, guideline application variables such as amendment year [AMENDYR], primary sentencing guideline [GDLNEHI], total criminal history points [TOTCHPTS], and SOR FOL [XFOLSOR] are often missing. If an offender is convicted of another count in addition to 18 U.S.C. § 924(c), [SOURCES] is not six. To identify all cases with at least one count of conviction under 18 U.S.C. § 924(c), researchers should use [IS924C]. As previously discussed, career offenders convicted under 18 U.S.C. § 924(c) only do not have a [SOURCES] value of six so the career offender status and criminal history details of the offender can be captured.

RESEARCHER IMPACT

[SOURCES] = 6 cases are missing guideline application variables because a guideline is not recorded in cases where 18 U.S.C. § 924(c) is the only count of conviction.

Researchers must decide whether to include these cases despite the missing variables, particularly if conducting offense-based analysis of firearms cases.

Offenders Convicted of Only 18 U.S.C. § 1028A

Example:

Similar to 18 U.S.C. § 924(c) only cases, [SOURCES] = 7 (“18 U.S.C. § 1028A only”) is recorded for offenders whose only count or counts of conviction are 18 U.S.C. § 1028A. In these cases, guideline application variables are missing because a guideline is not recorded in cases where 18 U.S.C. § 1028A is the only count of conviction.²²

Our Rationale:

In these cases, guideline application variables such as amendment year [AMENDYR], primary sentencing guideline [GDLNEHI], total criminal history points [TOTCHPTS], and SOR FOL [XFOLSOR] are often missing. If an offender is convicted of another count in addition to 18 U.S.C. § 1028A, [SOURCES] will not be seven. To identify all cases with at least one count of conviction under 18 U.S.C. § 1028A, researchers should use [IS1028A].

RESEARCHER IMPACT

[SOURCES] = 7 cases are missing guideline application variables because a guideline is not recorded in the cases where 18 U.S.C. § 1028A is the only count of conviction.

Researchers must decide whether to include these cases despite the missing variables, particularly if conducting offense-based analysis of fraud, theft, or embezzlement cases.

8

SOURCES = 8 “No Analogous Guidelines”

Overview

In some cases, the court may determine that there is no applicable sentencing guideline under the *Guidelines Manual*.²³ [SOURCES] = 8 (“No Analogous Guidelines”) in these cases, which are frequently Class A misdemeanors or assimilated state offenses cases.

Example:

The PSR [DPSR] and SOR [DSSOR] are incomplete or not received, with incomplete documents listing “Not Applicable” for the FOL.

Further Insights:

Guideline application variables such as amendment year [AMENDYR], primary sentencing guideline [GDLNEHI], total criminal history points [TOTCHPTS], and SOR FOL [XFOLSOR] will likely be missing in the Commission datafile. [SOURCES] = 8 is NOT used for 18 U.S.C. § 1028A only or 18 U.S.C. § 924(c) only cases without guideline application information.

RESEARCHER IMPACT

[SOURCES] = 8 cases are missing various guideline application variables because a guideline is not recorded.

Researchers must decide whether to include these cases despite the missing variables, particularly if conducting analysis on Class A misdemeanors or assimilated state offenses.

5

SOURCES = 5 “PSR Coded (No SOR Present)”

Overview

When a PSR that contains complete guideline application information and criminal history details is received but a complete SOR is not, [SOURCES] = 5 (“PSR Coded (No SOR Present)”).

Example:

The Commission may receive no documentation of the court’s FOL and CHC, either because the SOR was not received [DSSOR] or a “partial” SOR was received but was missing the FOL or CHC.²⁴

Our Rationale:

Without an SOR to confirm the court’s findings, the final guideline application and criminal history information is unknown. To create as complete a datafile as possible, all guideline and criminal history information is recorded from the PSR, including [XFOLSOR] and [XCRHISSR]. This includes cases with no SOR FOL or CHC where 1) the SOR indicates no PSR was ordered (even if a PSR is present) [ACCGDLN] or 2) the court accepts the PSR with changes but does not document the Chapter changes [CHP2CHG1-CHP2CHGX, CHP3CHG1-CHP3CHGX, CHP4CHG1-CHP4CHGX]. As previously discussed, if the FOL and CHC fields on the SOR are blank but the SOR indicates the court accepted the PSR guideline application and criminal history details without change [ACCGDLN], [SOURCES] = 1 (“Court Findings”).

RESEARCHER IMPACT

In [SOURCES] = 5 cases, the Commission records guideline and criminal history information from the PSR that is typically recorded from the SOR because the SOR is incomplete or not present.

Without a complete SOR, the court’s final guideline application is unknown. Guideline variables in the Commission’s database may not reflect the court’s final findings. Including cases where the court’s final findings are unknown should be approached with caution.

Overview

When the PSR is missing or incomplete [DSPSR] and the remaining guideline application information cannot be collected from the SOR or plea agreement, [SOURCES] = 9 (“PSR Waived, Missing, or Multiple Offense Levels”). Courts have the authority to waive the PSR [DSPSR] in accordance with the Federal Rules of Criminal Procedure.²⁵ This occurs most commonly in illegal reentry, simple drug possession, and misdemeanor cases.

Example A:

No PSR is received [DSPSR] and the SOR is either not received [DSSOR] or the FOL [XFOLSOR] and CHC [XCRHISSR] is blank.

Example B:

The SOR has a FOL [XFOLSOR] and CHC [XCRHISSR] but the PSR is missing both guideline application and criminal history details. The plea agreement is reviewed for the missing guideline and criminal history information. If the plea agreement does not contain the missing guideline and criminal history information, [SOURCES] = 9.

Example C:

The PSR cites multiple *Guidelines Manuals* (e.g., 2005 *Guidelines Manual* for count one and 2018 *Guidelines Manual* for count two) or calculates multiple final offense levels (e.g., FOL of 15 for count one and FOL of 27 for count two), [SOURCES] = 9. These are the only [SOURCES] = 9 cases where a complete PSR may be received [DSPSR].

Our Rationale:

The *Guidelines Manual* instructs the probation officer to arrive at one FOL using a singular *Guidelines Manual*;²⁶ therefore, the structure of the Commission’s database cannot capture guideline application information for cases.

RESEARCHER IMPACT

[SOURCES] = 9 cases are missing various guideline application variables due to insufficient documentation.

Researchers must decide whether to include these cases despite the missing variables, particularly if conducting offense-based analysis of illegal reentry, simple drug possession, or misdemeanor cases.

Conclusion

Whether to include only cases where [SOURCES] = 1 (“Court Findings”) is an important consideration for researchers. Variables relating to demographics, statutes of conviction, sentence length, and sentence imposed relative to the guideline range are not affected by [SOURCES], thus cases with any value of [SOURCES] can be included in an analysis involving these variables. However, when conducting guideline-based analysis, it is preferable to include cases where guideline application is clearly documented by the court. Including only [SOURCES] = 1 cases in the analysis will minimize, but not eliminate, data inconsistencies (as incorrect guideline application accepted by the court is recorded as [SOURCES] = 1). Choosing to only include [SOURCES] = 1 cases for some variables and not others will result in different Ns throughout the analysis. It may be preferable to include only [SOURCES] = 1 cases at the start of any guideline-based analysis to avoid this inconsistency. When Commission publications limit the data in the analysis to [SOURCES] = 1, a footnote is included stating cases were “excluded due to incomplete guideline application information” or only cases with “complete guideline application information” were included.

See Appendix A for a more detailed list of variables unaffected by [SOURCES]. See Appendix B for a more detailed list of variables affected by [SOURCES]. Selecting cases where [SOURCES] = 1 will affect analyses for some types of crimes more than others. See Appendices C and D for the impact of limiting analyses to [SOURCES] = 1.

Appendix A: Variables Unaffected by [SOURCES]²⁷

Variable Description	Variable Name
Age	AGE
Circuit/District	CIRCDIST
	MONCIRC
Citizenship	CITIZEN
	NEWCIT
Criminal History Category	XCRHISSR
Disposition	DISPOSIT
Document status	DSIND
	DSJANDC
	DSPLEA
	DSPSR
Drug type	DSSOR
	CHEMTYP1-CHEMTYPX
	COMBDRG2
Education level	DRUGTYP1-DRUGTYPX
	EDUCATN
Final offense level	NEWEDUC
	XFOLSOR
Gender	MONSEX
Guideline minimum	GLMIN
Guideline maximum	GLMAX
Number of counts	NOCOUNTS
Offense type	OFFGUIDE (FY2018 onward)
	OFFTYPE2 (FY2002-FY2017)
	OFFTYP2B (FY2010-FY2017)
Position relative to the guideline range	BOOKERCD (FY2005-FY2017)
	SENTRNGE (FY2018 onward)
Race/Ethnicity	HISPORIG
	MONRACE
	NEWRACE
Sentence length	MOCOMCON
	MOHOMDET
	MOINTCON
	PROBATN
	SENSPLT
	SENSPLT0 (FY2002-FY2017)
	SENSPCAP (FY2018 onward)
	SENTTCAP (FY2018 onward)
	SENTTOT
	SENTTOT0 (FY2002-FY2017)
SUPREL	
Reasons for departure/variance	TOTDAYS
	TOTPRISN
Sentence type	REAS1-REASX
	REASTXT1-REASTXTX
Sentence type	SENTIMP
	ZONE

Appendix A (continued)

Statute(s) of conviction	IS1028A
	IS924C
	NWSTAT1-NWSTATX
	STA1_1-STA1_X
	STA2_1-STA2_X
	STA3_1-STA3_X
Statutory minimum(s)	SMIN1-SMINX
	STATMIN
Statutory maximum(s)	SMAX1-SMAXX
	STATMAX

Appendix B: Variables Affected by [SOURCES]

Variable Description	Variable Name
Adjusted offense level*	COADJLEV
Amendment year	AMENDYR
Armed Career Criminal application*	ACCAP
	ACCCAT
	ACCOFFLV
	ARMCRI
Career Offender application*	CAROFFAP
	CAROFFEN
	CAROFFLV
	CO924TAB
Chapter Two adjustments*	ADJL_B1-ADJL_BX, ADJL_T1-ADJL_TX, ADJ_BHI-ADJ_THI
	ADJOFL1-ADJOFLX, ADJOFLHI
	BASADJ1-BASADJX, BASADJHI
	BASE1-BASEX, BASEHI
	BASEL1-BASELX, BASELHI
	BASLN1-BASLNx, BASLNHI
Chapter Two changes	CHP2CHG1-CHP2CHGX
	CHP2TXT1-CHP2TXTX
Chapter Two guideline*	GDLINE1-GDLINEX, GDLINEHI
	GDSTAT1-GDSTAX, GDSTATHI
	GDREF1-GDREFX, GDREFHI
	GDCROS1-GDCROX, GDCROSHI
	GDUNDR1-GDUNDRX, GDUNDRHI
Chapter Three adjustments*	ABUS1-ABUSX, ABUSHI
	ACCTRESP
	FALDM1-FALDMX, FALDMHI
	AGGROL1-AGGROLX, AGGROLHI
	FLIGHT1-FLIGHTX, FLIGHTHI
	HUMAN1-HUMANX, HUMANHI
	HUMLB1-HUMLBX, HUMLBHI
	MITCAP
	MITROL1-MITROLX, MITROLHI
	OBSTR1-OBSTRX, OBSTRHI
	OFFVCT1-OFFVCTX, OFFVCTHI
	RLEAS1-RLEASX, RLEASHI
	ROLADJ1-ROLADJX, ROLADJHI
	RSTRVC1-RSTRVCX, RSTRVCHI
	TEROR1-TERORX, TERORHI
	USARM1-USARMX, USARMHI
	USKID1-USKIDX, USKIDHI
	VCTADJ1-VCTADJX, VCTADJHI
	VULVCT1-VULVCTX, VULVCTHI
Chapter Three changes	CHP3CHG1-CHP3CHGX
	CHP3TXT1-CHP3TXTX
Chapter Four adjustments*	CRIMLIV
	CRIMPTS
	POINT1
	POINT2
	POINT3
	REL2PTS
	SENTPTS
	TOTCHPTS

Appendix B (continued)

	VIOL1PTS
Chapter Four changes	CHP4CHG1-CHP4CHGX CHP4TXT1-CHP4TXTX
Drug amount	CHMAM1-CHMAMX DRGAM1-DRGAMX
	MWEIGHT MWGT1-MWGTX
	WGT1-WGTX
Loss amount	LOSS1-LOSSX, LOSSHI
Number of computations	NOCOMP
Number of units	TOTUNIT
Safety valve	SAFE
Sex offender application*	MONSXOFB SEXACCA SEXACCB SEXADJB SEXCAP SEXOFFNA SEXOFFNB
Weapon used	WEAPON WEAPSCHI WEAPSOC

* When conducting research on guideline application information (e.g. BOL, SOCs, etc.) or criminal history details, it is preferable to include only [SOURCES]=1 cases.

Appendix C: FY2015-FY2019 Cases by [SOURCES]

[SOURCES] description	[SOURCES] value	Number of cases with that specific [SOURCES] value	Percent of total cases with that specific [SOURCES] value
Information Represents Known Court Findings	1	322,088	91.6
PSR is Coded (Insufficient Information in SOR)	3	4,107	1.2
PSR is Coded (No SOR Present)	5	423	0.1
18 U.S.C. § 924(c) only	6	1,668	0.5
18 U.S.C. § 1028A only	7	654	0.2
No Analogous Guidelines	8	266	0.1
PSR Waived, Missing, or Multiple Offense Levels	9	22,375	6.4
	TOTAL	351,581	100.0

Appendix D: FY2015-FY2019 Cases by [OFFGUIDE] and [SOURCES]

[OFFGUIDE]	Number of cases	[SOURCES]	Number of cases with that specific [SOURCES]	Percent of cases with that specific [SOURCES]
TOTAL	351,581	-	351,581	100.0
Administration of Justice	3,655	Known Court Findings [1]	3,459	94.6
		Insufficient Info in SOR [3]	45	1.2
		No SOR Present [5]	12	0.3
		No Analogous Guideline [8]	5	0.1
		PSR Waived, Missing [9]	134	3.7
Antitrust	129	Known Court Findings [1]	123	95.3
		PSR Waived, Missing [9]	6	4.7
Arson	326	Known Court Findings [1]	320	98.2
		Insufficient Info in SOR [3]	3	0.9
		No SOR Present [5]	1	0.3
		PSR Waived, Missing [9]	2	0.6
Assault	3,439	Known Court Findings [1]	2,914	84.7
		Insufficient Info in SOR [3]	47	1.4
		No SOR Present [5]	11	0.3
		No Analogous Guideline [8]	9	0.3
		PSR Waived, Missing [9]	458	13.3
Bribery/Corruption	1,823	Known Court Findings [1]	1,777	97.5
		Insufficient Info in SOR [3]	32	1.8
		No SOR Present [5]	1	0.1
		No Analogous Guideline [8]	1	0.1
		PSR Waived, Missing [9]	12	0.7
Burglary/Trespass	294	Known Court Findings [1]	270	91.8
		Insufficient Info in SOR [3]	6	2.0
		PSR Waived, Missing [9]	18	6.1
Child Pornography	7,344	Known Court Findings [1]	7,254	98.8
		Insufficient Info in SOR [3]	78	1.1
		No SOR Present [5]	2	0.0
		No Analogous Guideline [8]	1	0.0
		PSR Waived, Missing [9]	9	0.1
Commercialized Vice	690	Known Court Findings [1]	671	97.3
		Insufficient Info in SOR [3]	6	0.9
		No SOR Present [5]	1	0.1
		PSR Waived, Missing [9]	12	1.7
Drug Possession	6,783	Known Court Findings [1]	932	13.7
		Insufficient Info in SOR [3]	10	0.2
		No SOR Present [5]	63	0.9
		No Analogous Guideline [8]	15	0.2
		PSR Waived, Missing [9]	5,763	85.0
Drug Trafficking	98,344	Known Court Findings [1]	96,112	97.7
		Insufficient Info in SOR [3]	1,878	1.9
		No SOR Present [5]	37	0.0
		No Analogous Guideline [8]	5	0.0
		PSR Waived, Missing [9]	312	0.3

Appendix D (continued)

Environmental	930	Known Court Findings [1]	703	75.6
		Insufficient Info in SOR [3]	13	1.4
		No SOR Present [5]	5	0.5
		No Analogous Guideline [8]	5	0.5
		PSR Waived, Missing [9]	204	21.9
Extortion/Racketeering	1,101	Known Court Findings [1]	1,035	94.0
		Insufficient Info in SOR [3]	26	2.4
		PSR Waived, Missing [9]	40	3.6
Firearms	34,603	Known Court Findings [1]	32,432	93.7
		Insufficient Info in SOR [3]	268	0.8
		No SOR Present [5]	23	0.1
		18 U.S.C. § 924(c) only [6]	1,668	4.8
		No Analogous Guideline [8]	14	0.0
		PSR Waived, Missing [9]	198	0.6
Food and Drug	288	Known Court Findings [1]	228	79.2
		No SOR Present [5]	3	1.0
		PSR Waived, Missing [9]	57	19.8
Forgery/Counter/Copyright	1,731	Known Court Findings [1]	1,699	98.2
		Insufficient Info in SOR [3]	26	1.5
		No SOR Present [5]	1	0.1
		PSR Waived, Missing [9]	5	0.3
Fraud/Theft/Embezzlement	36,846	Known Court Findings [1]	32,713	88.8
		Insufficient Info in SOR [3]	484	1.3
		No SOR Present [5]	55	0.2
		18 U.S.C. § 1028A only [7]	654	1.8
		No Analogous Guideline [8]	13	0.0
		PSR Waived, Missing [9]	2,927	7.9
Immigration	114,802	Known Court Findings [1]	105,983	92.3
		Insufficient Info in SOR [3]	664	0.6
		No SOR Present [5]	76	0.1
		No Analogous Guideline [8]	25	0.0
		PSR Waived, Missing [9]	8,054	7.0
Individual Rights	360	Known Court Findings [1]	336	93.3
		Insufficient Info in SOR [3]	3	0.8
		No SOR Present [5]	3	0.8
		PSR Waived, Missing [9]	18	5.0
Kidnapping	485	Known Court Findings [1]	479	98.8
		Insufficient Info in SOR [3]	5	1.0
		PSR Waived, Missing [9]	1	0.2
Manslaughter	336	Known Court Findings [1]	333	99.1
		Insufficient Info in SOR [3]	3	0.9
Money Laundering	6,390	Known Court Findings [1]	6,175	96.6
		Insufficient Info in SOR [3]	154	2.4
		No SOR Present [5]	2	0.0
		PSR Waived, Missing [9]	59	0.9
Murder	1,736	Known Court Findings [1]	1,676	96.5
		Insufficient Info in SOR [3]	51	2.9
		No SOR Present [5]	1	0.1
		PSR Waived, Missing [9]	8	0.5
National Defense	863	Known Court Findings [1]	808	93.6
		Insufficient Info in SOR [3]	4	0.5
		No SOR Present [5]	1	0.1
		No Analogous Guideline [8]	4	0.5
		PSR Waived, Missing [9]	46	5.3

Appendix D (continued)

Obscenity/Other Sex Offenses	2,112	Known Court Findings [1]	2,078	98.4
		Insufficient Info in SOR [3]	12	0.6
		No SOR Present [5]	2	0.1
		No Analogous Guideline [8]	5	0.2
		PSR Waived, Missing [9]	15	0.7
Prison Offenses	2,646	Known Court Findings [1]	2,184	82.5
		Insufficient Info in SOR [3]	14	0.5
		No SOR Present [5]	101	3.8
		No Analogous Guideline [8]	9	0.3
		PSR Waived, Missing [9]	338	12.8
Robbery	8,422	Known Court Findings [1]	8,283	98.3
		Insufficient Info in SOR [3]	118	1.4
		No SOR Present [5]	5	0.1
		PSR Waived, Missing [9]	16	0.2
Sexual Abuse	5,418	Known Court Findings [1]	5,319	98.2
		Insufficient Info in SOR [3]	92	1.7
		No SOR Present [5]	1	0.0
		PSR Waived, Missing [9]	6	0.1
Stalking/Harassing	934	Known Court Findings [1]	907	97.1
		Insufficient Info in SOR [3]	7	0.8
		No SOR Present [5]	1	0.1
		PSR Waived, Missing [9]	19	2.0
Tax	3,199	Known Court Findings [1]	3,132	97.9
		Insufficient Info in SOR [3]	47	1.5
		No SOR Present [5]	3	0.1
		No Analogous Guideline [8]	1	0.0
		PSR Waived, Missing [9]	16	0.5
Other	5,552	Known Court Findings [1]	1,753	31.6
		Insufficient Info in SOR [3]	11	0.2
		No SOR Present [5]	12	0.2
		No Analogous Guideline [8]	154	2.8
		PSR Waived, Missing [9]	3,622	65.2

¹ New variables are added each fiscal year due to amendments to the guideline or methodological changes. See the latest codebook at <https://www.uscc.gov/research/datafiles/commission-datafiles> for a current list of variables and documentation for changes over time.

Endnotes

- 1 The United States Sentencing Commission is an independent agency in the judicial branch of government. Established by the Sentencing Reform Act of 1984, its principal purposes are (1) to establish sentencing policies and practices for the federal courts, including guidelines regarding the appropriate form and severity of punishment for offenders convicted of federal crimes; (2) to advise and assist Congress, the federal judiciary, and the executive branch in the development of effective and efficient crime policy; and (3) to collect, analyze, research, and distribute a broad array of information on federal crime and sentencing issues. See 28 U.S.C. §§ 991–994.
- 2 The Commission’s individual offender datafiles from FY 2002 through FY 2019 are available for download in either SPSS or SAS formats at <https://www.ussc.gov/research/datafiles/commission-datafiles>, along with the codebook describing all of the available variables and values.
- 3 The Commission’s research and data duties are described in 28 U.S.C. § 995(a)(12)–(16).
- 4 28 U.S.C. § 994(w)(1).
- 5 The document status variables on the organizational datafile are [INDICT, JANDC, PLEA, PSR, REASONS]. To assess the completeness of its datafile, the Commission matches its data to data maintained by the Administrative Office of the U.S. Courts twice per year and notifies districts of any cases that have not been received by the Commission. The Commission will also request any documents missing from cases that have been received, and records with the document status variables if there are documents that will never be received. For additional information on the collection of Commission data, see U.S. SENTENCING COMM’N, COMMISSION COLLECTION OF INDIVIDUAL OFFENDER DATA (2019), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-notes/20190719_Research-Notes-Issue1.pdf.
- 6 Some document status values were modified or eliminated prior to FY 2008 (see the Commission’s codebook at <https://www.ussc.gov/research/datafiles/commission-datafiles>).
- 7 The criminal history category will not be determined by the criminal history points total when certain Chapter Three or Four adjustments are applied (USSG §3A1.4, §4B1.1, §4B1.4, and §4B1.5). [TOTCHPTS] may not correspond with an offender’s CHC if these adjustments were applied or if the computations accepted by the court contain an error (e.g., the criminal history points are totaled incorrectly).
- 8 The guideline range represents the amount of imprisonment for offenders in Zone D. Zones A, B, and C allow for sentences within the guideline range that include probation or alternative confinement in addition to imprisonment, provided the specific zone requirements are satisfied. For additional information on zone requirements, please see Chapter Five of the *Guidelines Manual* at <https://www.ussc.gov/guidelines>.
- 9 The SOR is part of the same form as the J&C (AO 245B), see <https://www.uscourts.gov/services-forms/forms>. The SOR details information about final court findings with respect to any changes made at sentencing to information documented in the PSR.
- 10 [XFOLSOR] and [XCRHISSR] are recorded from the PSR for some cases, including [SOURCES]=5 (“PSR is Coded (No SOR Present)”) cases.
- 11 The SOR has sections for the court to document any changes to the PSR. Fully documented changes to Chapter Two, Chapter Three, or Chapter Four are recorded under the respective chapter variable [CHP2CHG1-CHP2CHGX, CHP3CHG1-CHP3CHGX, CHP4CHG1-CHP4CHGX].
- 12 For additional information on guideline variables, see U.S. SENTENCING COMM’N, CHAPTER TWO AND CHAPTER THREE GUIDELINE APPLICATION INFORMATION (forthcoming 2020), <https://www.ussc.gov/research/datafiles/research-notes>.
- 13 The variable [SOURCES] is available on the Commission’s individual offender datafiles, organizational datafiles, and select report and special collection datafiles. [SOURCES] values on the organizational datafiles are different than the values on other datafiles. All files are available for download at <https://www.ussc.gov/research/datafiles/commission-datafiles>, along with the respective codebooks describing all the available variables and their values.

14 Differences between the PSR and SOR for nonguideline variables (such as demographics, statutes of conviction, or statutory ranges) are not used to determine [SOURCES].

15 [SOURCES] values of six through nine will be missing data for many variables, including AMENDYR, GDLNEHI, TOTCHPTS, and XFOLSOR.

16 18 U.S.C. § 924(c) prohibits using or carrying a firearm during and in relation to, or possessing a firearm in furtherance of, a “crime of violence” or “drug trafficking crime.”

17 18 U.S.C. § 924(c) (Use of a Firearm, Armor-Piercing Ammunition, or Explosives During or in Relation to Certain Crimes) is sentenced under USSG §2K2.4. This guideline is not recorded by the Commission because it only directs the statutory minimum to be applied and contains no BOL or SOCs.

18 Offenders can receive up to two additional criminal history points for recency, [REL2PTS], in cases sentenced under *Guidelines Manuals* effective before November 1, 2010. An offender receives these points for committing the instant offense within two years of release from confinement for a three or two point offense or while in imprisonment or on escape status.

19 *I.e.* under USSG §2X4.1 (Misprision of Felony), the offense level is nine levels lower than the offense level for the underlying conduct but has a floor of four levels (*i.e.*, if, after the nine levels are subtracted, the resulting offense level is less than four, it becomes four) and a “ceiling” of 19 levels (*i.e.*, if, after subtracting the nine levels, the resulting offense level is greater than 19, it becomes 19).

20 COADJLEV] and [EDIT_COADJLEV] include all Chapter Two and Three guideline calculations through multiple counts which have been applied but not acceptance of responsibility.

21 *See supra* note 16.

22 18 U.S.C. § 1028A (Aggravated Identity Theft) was added to the 2005 *Guidelines Manual* under USSG §2B1.6. This guideline is not recorded by the Commission because it only directs the statutory minimum to be applied and contains no BOL or SOCs. “18 U.S.C. § 1028A only” is a valid [SOURCES] value in the individual offender file starting in FY 2005.

23 Under USSG §2X5.1, for felonies without “a sufficiently analogous guideline, the provisions of 18 U.S.C. § 3553 shall control.”

24 When the SOR is not received, [DSSOR] is “not received” or “will never be received.” When the SOR is completely blank or only contains demographic information, [DSSOR] is “received blank.” When a partial SOR is received, [DSSOR] is “partial or alternate document received.”

25 Under Fed. R. Crim. P. 32(c)(1)(A), “The probation officer must conduct a presentence investigation and submit a report to the court before it imposes sentence unless (i) 18 U.S.C. § 3593(c) or another statute requires otherwise; or (ii) the court finds that the information in the record enables it to meaningfully exercise its sentencing authority under 18 U.S.C. § 3553, and the court explains its findings on the record.” [SORGDL], the Chapter Two guideline listed on the SOR as having been applied in cases where the PSR was waived, is in the individual offender datafile starting in FY 2017.

26 Under USSG §1B1.1(a)(4), “If there are multiple counts of conviction, [...] group the various counts and adjust the offense level accordingly.” Under USSG §1B1.11(b)(3), “If the defendant is convicted of two offenses, the first committed before, and the second after, a revised edition of the Guidelines Manual became effective, the revised edition of the Guidelines Manual is to be applied to both offenses.”


27 New variables are added each fiscal year due to amendments to the guidelines or methodological changes. See the latest codebook at <https://www.uscc.gov/research/datafiles/commission-datafiles> for a current list of variables and documentation for changes over time.



United States Sentencing Commission

OFFICE OF RESEARCH AND DATA
One Columbus Circle NE
Suite 2-500, South Lobby
Washington, DC 20002

 AskORD@ussc.gov

 202-502-4500

 @TheUSSCGov

 www.ussc.gov

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