



2024 AMENDMENTS IN BRIEF

In April 2024, the U.S. Sentencing Commission approved 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).

Acquitted Conduct

The amendment revises §1B1.3 (Relevant Conduct (Factors that Determine the Guideline Range)) to exclude federally acquitted conduct from the scope of relevant conduct considered under the sentencing guidelines, while not abrogating a court’s authority under 18 U.S.C. § 3661.

This amendment does not comment on the use of uncharged, dismissed, or other relevant conduct as defined in §1B1.3.

THE ISSUE

Protection of the Jury-Trial Right

The use of acquitted conduct to increase an individual’s federal sentence has been the subject of robust debate among jurists, academics, practitioners, and members of the public, including sentenced individuals.

Bills with bipartisan support have been introduced recently in Congress to limit or prohibit consideration of acquitted conduct. Multiple Supreme Court Justices also suggested, in denying certiorari last year in *McClinton*, that it would be appropriate for the Commission to resolve the question of how acquitted conduct is considered under the federal sentencing guidelines.

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FACTS & FIGURES

Of the 62,529 individuals sentenced in fiscal year 2022, a total of 1,613 individuals were convicted and sentenced after a trial (2.5% of all sentenced individuals), and of those, only 286 (0.4% of all sentenced individuals) were acquitted of at least one offense or found guilty of only a lesser included offense.

All Sentenced Individuals

62,529

Trial

1,613

Acquitted

286

TIMELINE



2023 Proposed Amendment

In January 2023, the Commission first proposed an amendment addressing the use of acquitted conduct.

Chair Reeves noted, “We received an immense amount of comment on our proposals regarding acquitted-conduct sentencing. Some asked us to preserve judges’ ability to consider acquitted conduct. Some asked us to move forward with the proposal to significantly limit how judges can use such conduct. But many others wanted us to go bolder, either by banning any consideration of acquitted conduct when using the guidelines or addressing other forms of conduct judges can currently consider.”

In April 2023, the Commission determined it needed more time to consider the issue and announced it would prioritize acquitted conduct again the next amendment year.



Supreme Court

In *McClinton v. United States*, 143 S. Ct. (June 2023), multiple Justices suggested that it would be appropriate for the Commission to resolve the question of how acquitted conduct is considered under the guidelines.

Justice Kavanaugh, joined by Justice Gorsuch and Justice Barrett wrote, “As Justice Sotomayor explains, the Court’s denial of certiorari today should not be misinterpreted. The use of acquitted conduct to alter a defendant’s Sentencing Guidelines range raises important questions. But the Sentencing Commission is currently considering the issue. It is appropriate for this Court to wait for the Sentencing Commission’s determination before the Court decides whether to grant certiorari in a case involving the use of acquitted conduct.”



118th Congress

In the 118th session of Congress, the Senate and House both introduced bills with bipartisan support that would limit or prohibit consideration of acquitted conduct at sentencing.

See Prohibiting Punishment of Acquitted Conduct Act of 2023, S. 2788 and Prohibiting Punishment of Acquitted Conduct Act of 2023, H.R. 5430 (introduced September 2023).

Senators Durbin and Booker submitted public comment in February 2024 stating that the use of acquitted conduct to increase sentences “largely frustrates” the goals of sentencing and the Commission’s mission. “Punishing a defendant for acquitted conduct is a fundamentally unfair practice, which fails to uphold the goals of sentencing and promote respect for the law.”



2024 Amendment

Following another year of fact-gathering and consideration, the bipartisan Commission unanimously voted in April 2024 to exclude conduct for which a person was acquitted in federal court from being used in calculating a sentence range under the federal guidelines. Limiting the scope to federal acquittals reflects the principles of the dual-sovereignty doctrine and responds to concerns about administrability.

The amendment acknowledges the court’s authority to consider acquitted conduct under 18 U.S.C. § 3661.

“Not guilty means not guilty,” said Chair Reeves. “By enshrining this basic fact within the federal sentencing guidelines, the Commission is taking an important step to protect the credibility of our courts and criminal justice system.”