

United States Sentencing Commission

2026 Amendment Cycle

Public Comment on the Proposed
Unmanned Aircraft Amendment

91 FR 22228



UNITED STATES SENTENCING COMMISSION



**2026 PUBLIC COMMENT ON THE PROPOSED
UNMANNED AIRCRAFT AMENDMENT
91 FR 22228**

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission

ACTION: Notice and request for public comment.

SUMMARY: The United States Sentencing Commission is considering promulgating an amendment to the sentencing guidelines, policy statements, and commentary. This notice sets forth the proposed amendment and a synopsis of the issues addressed by the proposed amendment. This notice also sets forth several issues for comment together with the proposed amendment.

DATES: Written public comment regarding the proposed amendment and issues for comment set forth in this notice should be received by the Commission not later than **June 18, 2026**. Public comment regarding the proposed amendment received after the close of the comment period may not be considered.

ADDRESSES: There are two methods for submitting public comment.

Electronic Submission of Comments. Comments may be submitted electronically via the Commission’s Public Comment Submission Portal at <https://comment.ussc.gov>. Follow the online instructions for submitting comments.

Submission of Comments by Mail. Comments may be submitted by mail to the following address: United States Sentencing Commission, One Columbus Circle, N.E., Suite 2-500, Washington, D.C. 20002-8002, Attention: Public Affairs – Proposed Amendment.

FOR FURTHER INFORMATION CONTACT: Jennifer Dukes, Senior Public Affairs Specialist, (202) 502-4597.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

Publication of a proposed amendment requires the affirmative vote of at least three voting members of the Commission and is deemed to be a request for public comment on the proposed amendment. *See* USSC Rules of Practice and Procedure 2.2,

4.4. In contrast, the affirmative vote of at least four voting members is required to promulgate an amendment and submit it to Congress. *See id.* 2.2; 28 U.S.C. 994(p).

The Commission published notices of proposed amendments in the *Federal Register* on December 19, 2025 (*see* 90 FR 59660) and February 6, 2026 (*see* 91 FR 5556). The Commission held public hearings on those proposed amendments in Washington, D.C., on February 17, 2026, and March 9, 2026. Pursuant to 28 U.S.C. § 994 and its emergency authority under section 5017 of the Consolidated Appropriations Act, 2026 (Public Law 119–75), the Commission is now considering promulgating an additional amendment to the sentencing guidelines, policy statements, and commentary. This notice sets forth that proposed amendment.

The proposed amendment as presented in this notice contains specific revisions to the guidelines. It also contains bracketed text indicating a heightened interest on the Commission’s part in comment and suggestions regarding alternative policy choices; for example, a proposed enhancement of [6] levels indicates that the Commission is considering, and invites comment on, alternative policy choices regarding the appropriate level of enhancement. Similarly, bracketed text means that the Commission specifically invites comment on whether the proposed provision is appropriate. Additionally, the Commission has highlighted certain issues for comment and invites suggestions on how the Commission should respond to those issues.

In summary, the proposed amendment and issues for comment set forth in this notice are as follows: A proposed amendment to the *Guidelines Manual* to implement the SAFER SKIES Act (Title LXXXVI of the National Defense Authorization Act for Fiscal Year 2026, Pub. L. 119–60), including (A) two options for setting forth a new guideline at §3B1.6 (Use of Unmanned Aircraft) providing a tiered adjustment for offenses involving the use of an unmanned aircraft; (B) amendments to Appendix A (Statutory Index) to reference the new offenses created by the Act to the most appropriate guidelines; and (C) related issues for comment.

The text of the proposed amendment and related issues for comment are set forth below. Additional information pertaining to the proposed amendment and issues for comment described in this notice may be accessed through the Commission’s website at www.ussc.gov. In addition, as required by 5 U.S.C. 553(b)(4), a plain-language summary of the proposed amendment is available at <https://www.ussc.gov/guidelines/amendments/reader-friendly-version-2026-proposed-amendment-unmanned-aircraft>.

AUTHORITY: 28 U.S.C. 994(a), (o), (p), (x); USSC Rules of Practice and Procedure 2.2, 4.3, 4.4.

Carlton W. Reeves,

Chair.

PROPOSED AMENDMENT TO THE SENTENCING GUIDELINES, POLICY STATEMENTS, AND OFFICIAL COMMENTARY

1. UNMANNED AIRCRAFT

Synopsis of Proposed Amendment: This proposed amendment responds to the SAFER SKIES Act (title LXXXVI of the National Defense Authorization Act for Fiscal Year 2026, Pub. L. 119–60) (the “Act”), which contains several provisions relating to criminal penalties for offenses involving aircraft. *See* Pub. L. 119–60, § 8605 (2025).

The Act creates a felony offense for repeated convictions for violating national defense airspace under 49 U.S.C. § 46307. Section 46307 establishes a criminal offense when an individual knowingly and willfully violates an order issued pursuant to 49 U.S.C. § 40103(b)(3) that restricts or prohibits civil aircraft in certain navigable airspace “in the interest of national defense.” An offense under section 46307 constitutes a Class A misdemeanor, punishable by up to one year in prison. The Act adds to section 46307 a five-year-maximum penalty if a person is convicted of a second or subsequent offense under the section.

The Act also amends the statutory penalties for providing contraband to imprisoned individuals, in violation of 18 U.S.C. § 1791. Section 1791 sets out statutory maximum terms of imprisonment ranging from six months to twenty years depending on the type of contraband object provided to the imprisoned individual. The Act increases the maximum

penalties by five years for individuals convicted under section 1791 who “knowingly used an unmanned aircraft to provide a prohibited object to an inmate of a prison.”

6 U.S.C. § 124n-1(d).

In addition to these specific statutory increases, the Act provides more generally that “[i]f a person who is convicted of a felony offense (other than an offense based solely on the operation of an unmanned aircraft) knowingly operated an unmanned aircraft during, in relation to, or in furtherance of such offense,” the maximum penalty for that offense is doubled or increased by five years, whichever is less. *Id.* § 124n-1(c).

The Act also directs the Sentencing Commission to “promulgate guidelines, or amendments to guidelines, that substantially increase the sentencing range for all offenses involving the use of an unmanned aircraft.” *Id.* § 124n-1(e)(1)(A). Specifically, for offenses in which the enhanced penalties under 6 U.S.C. § 124n-1(c) apply—that is, where the individual knowingly operated an unmanned aircraft during, in relation to, or in furtherance of a felony offense (other than an offense based solely on the operation of an unmanned aircraft)—the guidelines “shall call for an increase of at least 6 levels in the base offense level,” and “in all other cases, the base offense level shall be increased by at least 4 levels.” *Id.* § 124n-1(e)(2).

The proposed amendment would implement these provisions of the Act.

First, the proposed amendment would create a new guideline at §3B1.6 (Use of Unmanned Aircraft) providing a tiered adjustment for offenses involving the use of an unmanned aircraft. The proposed amendment provides two options for the adjustment. Under **Option 1**, an offense would receive a [6]-level increase if the statutory sentencing enhancement under 6 U.S.C. § 124n-1(c) applies. Under **Option 2**, an offense would receive a [6]-level increase if the defendant is convicted of a felony offense that is not based solely on the operation of an unmanned aircraft, and the defendant knowingly operated an unmanned aircraft during, in relation to, or in furtherance of that offense. Under both options, all other offenses involving the use of an unmanned aircraft would receive a [4]-level increase.

Second, the proposed amendment would address the new felony offense for repeated violations of 49 U.S.C. § 46307. Section 46307 is not currently referenced in Appendix A (Statutory Index) to a specific guideline, so a preexisting misdemeanor offense under this section is sentenced under §2X5.2 (Class A Misdemeanors (Not Covered by Another Specific Offense Guideline)). The proposed amendment would amend Appendix A to reference 49 U.S.C. § 46307 to §2A5.2 (Interference with Flight Crew Member or Flight Attendant; Interference with Dispatch, Navigation, Operation, or Maintenance of Mass Transportation Vehicle; Unsafe Operation of Unmanned Aircraft) and §2X5.2. Accordingly, courts would continue to use §2X5.2 for misdemeanor violations of section 46307 and would use §2A5.2 for the new felony violation.

Issues for comment are also provided.



U.S. Department of Justice

Criminal Division

Appellate Section

Washington, DC 20530

June 12, 2026

The Honorable Carlton W. Reeves, Chair
United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, DC 20002-8002

Dear Judge Reeves:

This letter responds to the Sentencing Commission’s request for comment on its proposed amendments to the Sentencing Guidelines and issues for comment published in the Federal Register on April 24, 2026.¹ The Department of Justice appreciates the opportunity to provide comments on the Commission’s proposed amendments relating to unmanned aircraft. As Congress recognized in enacting the SAFER SKIES Act, the growing use of unmanned aircraft to facilitate criminal activity—including interference with protected airspace, delivery of prison contraband, and support for transnational smuggling—poses serious and evolving public safety risks. The Commission’s proposal reflects careful consideration of this emerging threat, and the Department supports efforts to ensure that the Guidelines respond effectively, proportionately, and consistently to offenses involving unmanned aircraft. Specifically, the Department supports the Commission’s proposals on how to incorporate the Act’s misdemeanor and new felony offense into the Guidelines and its decision to implement Congress’s directive to substantially increase the sentencing ranges for certain offenders through a tiered Chapter Three adjustment. The Department also supports, although with several suggested changes, the proposed Option One for establishing the scope and substance of the tiered adjustment. We explain the reasons for these positions below.

* * *

I. Unmanned Aircraft Amendments

a. The SAFER SKIES Act of 2025

In December 2025, Congress enacted the SAFER SKIES Act (“the Act”) as part of the National Defense Authorization Act for Fiscal Year 2026.² The Act renewed and expanded law

¹ *Notice of Request for Public Comment and Hearing*, 91 Fed. Reg. 22228 (April 24, 2026), <https://www.govinfo.gov/content/pkg/FR-2026-04-24/pdf/2026-08088.pdf>; see also U.S. Sent’g Comm’n, *Proposed Amendment to the Sentencing Guidelines* (April 16, 2026) (“*Proposed Amendment*”), https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/202604_rf-proposed.pdf.

² *Securing the Airspace, Facilitating Emergency Response, and Safeguarding Key Infrastructure, Entertainment*

enforcement authorities to counter threats from unmanned aerial systems.³ As relevant here, the Act also contained several provisions that reflect Congress’s serious concerns about the growing use of unmanned aircraft systems in connection with criminal activity, including threats to national security and other restricted airspace, the introduction of contraband into federal prisons, and the facilitation of serious felony offenses. Subsections 8605(b), (c), (d) of the Act increased the statutory penalties for certain offenses involving unmanned aircraft, and subsection (e) contained a directive to the Commission.⁴ Subsection 8605(b) created a felony offense for second or subsequent convictions for violating National Defense or other restricted Airspace under 49 U.S.C. § 46307.⁵ While a first offense under 49 U.S.C. § 46307 remains a Class A misdemeanor, a second offense is now a felony with a five-year statutory maximum.⁶ Subsection 8605(d) increased the statutory maximum penalty by five years for a defendant who “knowingly used an unmanned aircraft” to provide prison contraband under 18 U.S.C. § 1791.⁷ Subsection 8605(c) increased the statutory maximum for “knowingly operat[ing]” an unmanned aircraft “during, in relation to, or in furtherance of” a felony offense, other than an offense based on solely on the operation of an unmanned aircraft.⁸ For those cases, the Act doubled the statutory maximum or increased it by five years, whichever is less.⁹

Additionally, subsection 8605(e) directed the Sentencing Commission to “substantially increase the sentencing range for all offenses involving the use of an unmanned aircraft.”¹⁰ Specifically, subsection 8605(e)(2) directed the Commission to increase the base offense level by “at least 6 levels” in “any case in which the enhanced penalties of subsection (c) apply”—that is, knowingly operating an unmanned aircraft during, in relation to, or in furtherance of a felony offense (other than an offense based solely on the operation of an unmanned aircraft)—and by “at least 4 levels” in “all other cases.”¹¹ Although the law as enacted required the Commission to take action within the previous amendment cycle, Congress later extended the deadline for Commission

Venues, and Stadiums (SAFER SKIES) Act (Title LXXXVI of the National Defense Authorization Act for Fiscal Year 2026, Pub L. No. 119–60, §§ 8601–07 (2025)).

³ *Id.* §§ 8602–04 (codified at 6 U.S.C. §§ 124n-1(c)–(e) and 49 U.S.C. § 46307); see Press Release, Senate Homeland Security and Governmental Affairs Committee, *Peters, Johnson, Grassley & Cortez Masto Bill to Help Law Enforcement Stop Dangerous Drones Signed Into Law As Part of Annual Defense Legislation* (Dec. 18, 2025), <https://www.hsgac.senate.gov/media/dems/peters-johnson-grassley-cortez-masto-bill-to-help-law-enforcement-stop-dangerous-drones-signed-into-law-as-part-of-annual-defense-legislation/>.

⁴ Pub. L. No. 119–60, § 8605 (2025). The Act adopts the definition of “unmanned aircraft” set forth in 49 U.S.C. § 44801(11).

⁵ Pub. L. No. 119–60, § 8605(b) (codified at 49 U.S.C. § 46307).

⁶ *Id.*

⁷ *Id.* § 8605(d) (codified at 6 U.S.C. § 124n-1(d)).

⁸ *Id.* § 8605(c) (codified at 6 U.S.C. § 124n-1(c)).

⁹ *Id.*

¹⁰ *Id.* § 8605(e)(1)(A) (codified at 6 U.S.C. § 124n-1(e)(1)(A)).

¹¹ *Id.* § 8605(e) (codified at 6 U.S.C. § 124n-1(e)).

action until the end of the calendar year while still requiring the Commission to act “as soon as possible.”¹²

In specifying that “all other cases” involving unmanned aircraft would be subject to “at least” the broad four-level increase, Congress set a floor for the Commission to “substantially increase” the “sentencing range” for “all offenses involving the use of an unmanned aircraft.”¹³ The Department strongly supports implementing the Act’s directive. In the Department’s view, Congress’s specific wording in the directive restricts the Commission’s discretion on many of the policy questions normally attendant to the amendment process. Accordingly, our focus here is on a narrow set of questions regarding whether a Chapter Three adjustment is the correct mechanism to implement the directive, the scope of the six-level increase, whether conforming changes are needed to certain guidelines to effectuate the Act’s increased statutory maximum penalties, and how to incorporate the misdemeanor and new felony offense into the Guidelines. We discuss each issue in turn below.

b. Chapter Three Adjustment

As a threshold matter, the Department agrees with the Commission’s approach that a tiered Chapter Three adjustment at §3B1.6 is the appropriate mechanism to implement the Act’s directive. The text of the Act requires an adjustment of “at least 6 levels” when the enhanced penalties of subsection 8605(c) apply—that is, when a defendant who is “convicted of a felony offense (other than an offense based solely on the operation of an unmanned aircraft) knowingly operated an unmanned aircraft during, in relation to, or in furtherance of that offense.” The broader offense-based adjustment of “at least 4 levels” applies in “all other cases.”¹⁴

The use of an unmanned aircraft to facilitate criminal activity reflects the type of distinct and aggravated criminal conduct—irrespective of the underlying offense—appropriately captured by a cross-cutting Chapter Three adjustment. A Chapter Three adjustment is also the best mechanism for implementing the directive in light of the wide range of offenses in which unmanned aircraft use might occur, including drug trafficking;¹⁵ prison contraband; espionage; national security violations; interfering with civilian, military or emergency personnel;¹⁶ and other

¹² Consolidated Appropriations Act of 2026, Pub L. 119-75, § 5017(a).

¹³ Pub. L. No. 119-60, § 8605(e) (codified at 6 U.S.C. § 124n-1(e)).

¹⁴ *Id.* §§ 8605(e)(1)(A) and (2).

¹⁵ See, e.g., Press Release, U.S. Drug Enf’t Admin., *Lancaster Man Sentenced to 14½ Years in Federal Prison for Using Drone to Deliver Fentanyl, Including to Customer Who Later Died from Overdose* (Apr. 20, 2026) (defendant used a drone to deliver fentanyl and methamphetamine to buyers, one of whom died by overdose), <https://www.dea.gov/press-releases/2026/04/20/lancaster-man-sentenced-14-12-years-federal-prison-for-using-drone>.

¹⁶ See, e.g., Press Release, U.S. Dep’t of Just., *Laguna Beach Man Pleads Guilty to Unsafely Operating Drone Near Several Aircraft, Including a Coast Guard Helicopter in Mid-Flight* (July 13, 2023) (defendant willfully operated a drone hazardously close to civilian and military aircraft on three separate occasions, forcing emergency evasive maneuvers), <https://www.justice.gov/usao-cdca/pr/laguna-beach-man-pleads-guilty-unsafely-operating-drone-near-several-aircraft>; Press Release, U.S. Dep’t of Just., *Culver City Man Agrees to Plead Guilty to Recklessly Crashing Drone into Super Scooper Firefighting Aircraft During Palisades Fire* (Jan. 31, 2025) (during Pacific Palisades wildfires, defendant flew a drone towards the fires in violation of FAA restrictions and crashed into a firefighting

offenses.¹⁷ And implementation via a single Chapter Three adjustment aligns with the Commission’s ongoing simplification efforts. By contrast, the alternative approach of multiple Chapter Two amendments risks gaps in coverage that could run counter to the Act’s directive. Any approach that the Commission adopts must fully comply with the floor set by Congress.

i. The Six-Level Increase

The Commission has set forth two options for implementing the six-level increase mandated by the Act for a defendant convicted of a felony offense (other than an offense based solely on the operation of an unmanned aircraft) who knowingly operated an unmanned aircraft in connection with the offense.¹⁸ Option One would require that the defendant be charged and convicted of an offense carrying the enhanced statutory penalty to trigger the six-level enhancement. Option Two would apply the six-level increase if the factual predicates for the enhanced statutory penalties are met, regardless of whether the defendant was charged and convicted of the offense carrying the higher penalty. The Act requires that the four-level increase apply “in all other cases” involving the use of an unmanned aircraft. Accordingly, both Options One and Two include a four-level increase when the “the offense involved the use of an unmanned aircraft.”¹⁹

The Department supports Option One with two changes. First, we recommend adding a provision allowing for a stipulation that the factual predicates for the increased statutory maximum apply. Second, we recommend explicitly including in the six-level increase at proposed §3B1.6(a)(1) conduct giving rise to the enhanced penalty provisions in subsection 8605(b) relating to violations of National Defense Airspace and in subsection 8605(d) relating to facilitating prison contraband through unmanned aircraft. With our recommended changes, the six-level increase would apply if the penalties in sections 8605(b), (c), or (d) apply, or if the defendant stipulated to the application of the enhancement or the conduct underlying the statutory enhancements.

The statutory enhancements and accompanying directive in the Act serve to ensure proportional, swift, and predictable punishment for facilitating criminal conduct with an unmanned aircraft. Allowing the parties to stipulate that the offense involved the use of an unmanned aircraft

helicopter, significantly damaging the helicopter and taking it out of service, full restitution was part of sentence), <https://www.justice.gov/usao-cdca/pr/culver-city-man-agrees-plead-guilty-recklessly-crashing-drone-super-scooper>.

¹⁷ See, e.g., Press Release, U.S. Dep’t of Just., *Northampton County Man Sentenced to Five Years For Using Drone to Harass Ex-Girlfriend, Illegally Possessing Bombs and Guns* (Sep. 24, 2020) (defendant used a drone to drop explosive devices to harass a former girlfriend), <https://www.justice.gov/usao-edpa/pr/northampton-county-man-sentenced-five-years-using-drone-harass-ex-girlfriend-illegally>; Press Release, U.S. Dep’t of Just., *Tennessee Man Sentenced to Life in Prison for Conspiring to Murder Law Enforcement and Attack FBI Office* (July 2, 2025) (defendant and others conspired to use bombs and incendiary devices attached to drones to murder state and federal law enforcement officers), <https://www.justice.gov/opa/pr/tennessee-man-sentenced-life-prison-conspiring-murder-law-enforcement-and-attack-fbi-office>; Press Release, U.S. Dep’t. of Just., *Man Pleads Guilty to Attempting to Use a Weapon of Mass Destruction and Attempting to Destroy an Energy Facility in Nashville* (Sep. 9, 2025) (defendant attempted to use a drone carrying explosives to attack an electric substation), <https://www.justice.gov/opa/pr/man-pleads-guilty-attempting-use-weapon-mass-destruction-and-attempting-destroy-energy>.

¹⁸ *Proposed Amendment* at 2–3.

¹⁹ *Id.*

would maintain fidelity to Congress' goal while avoiding unanticipated sentencing outcomes. Stipulations facilitate efficient, effective, and calibrated case resolutions that hold offenders to account while preserving prosecutorial discretion and flexibility for the parties to reach a tailored resolution. We recommend modeling the stipulation on amendment 830, in which the Commission added stipulation provisions for application of the heightened base offense levels in §§2D1.1(a)(1)-(4) when death results, regardless of whether the defendant is convicted of an offense under 21 U.S.C. §§ 841(b) or 960(b).²⁰

Turning to our second suggested change to Option One, a substantial increase in the statutory maximum generally warrants a corresponding increase in the guidelines range. Because the Act specifically targeted unmanned-aircraft-facilitated prison contraband as a distinct and serious harm, the Department recommends applying a six-level increase to convictions under § 1791. Congress raised the statutory maximum for those offenses by five years in recognition that unmanned aircraft facilitate the dangerous introduction of controlled substances and other contraband into correctional facilities. Prison contraband undermines safety by introducing weapons, illegal drugs,²¹ unauthorized communication devices, and other illicit goods that can fuel violence or other unlawful conduct,²² create black markets,²³ and endanger both inmates and

²⁰ U.S.S.G. App. C., amend. 830 (effective Nov. 1, 2024).

²¹ See, e.g., Press Release, U.S. Dep't of Just., *One Federal Inmate and 2 Georgia Residents Sentenced for Conspiring to Smuggle Meth into S.C. Federal Prison* (Apr. 29, 2025) (defendants used a drone to deliver 38 grams of pure methamphetamine and electronics chargers to the third defendant), <https://www.justice.gov/usao-sc/pr/three-georgia-residents-sentenced-conspiring-smuggle-meth-sc-federal-prison>; Press Release, U.S. Dep't of Just., *Former Inmate Sentenced to 43 Months in Prison for Role in Scheme to Use Drones to Smuggle Contraband into Federal Correctional Facility at Fort Dix* (Sep. 14, 2021) (defendant and co-conspirators used a drone to deliver cell phones, tobacco, and other items to a federal prison; defendant simultaneously possessed heroin and fentanyl with intent to distribute), <https://www.justice.gov/usao-nj/pr/former-inmate-sentenced-43-months-prison-role-scheme-use-drones-smuggle-contraband>.

²² See, e.g., Press Release, U.S. Dept. of Just., *Five Men Sentenced for Their Role in Conspiracy to Murder Federal Bureau of Prisons Correctional Officer Osvaldo Albarati-Casanas* (Apr. 30, 2019) (inmate defendants used contraband cellphones to order and coordinate killing of a corrections officer who seized and tried to stop flow of contraband into Guaynabo Puerto Rico Metropolitan Detention Center), <https://www.atf.gov/news/press-releases/five-men-sentenced-their-role-conspiracy-murder-federal-bureau-prisons-correctional-officer>; Press Release, U.S. Dep't of Just., *South Carolina Inmate Sentenced To Federal Prison For Role In Military Sextortion Scheme* (April 21, 2023) (defendant used contraband cellphones to sextort at least 25 victims on dating websites for money totaling over \$60,000), <https://www.justice.gov/usao-sc/pr/south-carolina-inmate-sentenced-federal-prison-role-military-sextortion-scheme-1>; Press Release, U.S. Dep't of Just., *Two Federal Inmates Who Coordinated Washington Drug Trafficking from Oklahoma Prison Sentenced to Additional Long Prison Terms* (Nov. 3, 2023) (inmate defendants used contraband cellphones to direct trafficking of large quantities of methamphetamine), <https://www.justice.gov/usao-wdwa/pr/two-federal-inmates-who-coordinated-washington-drug-trafficking-oklahoma-prison>.

²³ See, e.g., Press Release, U.S. Dep't of Just., *Tennessee Man Sentenced for Using Drone to Fly Marijuana into Yazoo City Federal Correctional Complex* (Jan. 8, 2025) (defendant used a drone to deliver approximately 195 grams of marijuana to an inmate in the Federal Correctional Complex in Yazoo City), <https://www.justice.gov/usao-sdms/pr/tennessee-man-sentenced-using-drone-fly-marijuana-yazoo-city-federal-correctional>; Press Release, U.S. Dep't of Just., *Houston Man Guilty of Attempting to Use Drone to Drop Contraband into Beaumont Federal Prison Complex* (Nov. 8, 2022) (defendant tried to use a drone to deliver tobacco, cell phones, cell phone chargers, various tools, vape pens, and other items to inmates to sell within federal prison), <https://www.justice.gov/usao-edtx/pr/houston-man-guilty-attempting-use-drone-drop-contraband-beaumont-federal-prison-complex>.

correctional officers. Contraband cellphones pose a serious danger because inmates use them to continue their criminal conduct while incarcerated and evade standard monitoring—including to run large-scale drug trafficking rings,²⁴ facilitate murders,²⁵ and engage in other criminal conduct. Unmanned aircraft make it significantly easier to deliver contraband and harder to detect.

The Commission’s data confirm the prevalence of prison-contraband smuggling among the recent cases involving unmanned aircraft. Approximately 47 percent of unmanned aircraft cases in the last two fiscal years involved delivery of prison contraband,²⁶ consisting primarily of controlled substances, cellphones, and cellphone accessories. Yet the lower base offense levels in §2P1.2—the guideline to which § 1791 offenses are indexed—would yield ranges that fail to reflect Congress’s assessment of the seriousness of the conduct. Because Congress recognized that unmanned aircraft greatly enhance prison-contraband operations (and accordingly increased the statutory maximum), offenses involving their use warrant substantially higher guideline penalties to ensure the punishment fully reflects the seriousness of the conduct.

Similarly, because the Act specifically recognized that repeat violations of National Defense Airspace or civilian aircraft restrictions pose unique and significant public safety risks, the Department recommends applying the six-level increase to the felony recidivist convictions under 49 U.S.C. § 46307. Even with the four-level increase, the default offense level of 9 applicable under §2A5.2(a)(4) is likely to yield advisory ranges far below Congress’s newly enacted statutory maximum in many cases resulting in guilty pleas. Applying a six-level increase to this recidivist conduct therefore best effectuates Congress’s intent to “substantially increase” the guidelines range for “all offenses involving the use of an unmanned aircraft,” and aligns with Congress’s increased statutory maximum penalties for those offenses.

Because cases involving unmanned aircraft represent an exceptionally small percentage of cases sentenced under the Guidelines each year,²⁷ there is little risk that the six-level increase will be overapplied or create systemic distortions across the Guidelines. The Commission should, though, ensure that the tailored enhancement appropriately targets the entirety of the small subset

²⁴ See, e.g., Press Release, U.S. Dept of Just., *Federal Inmate and Eight Co-Conspirators Indicted for International Drug Trafficking* (Jun. 26, 2024) (inmate defendants used contraband cell phone to run international drug trafficking scheme resulting in over 500 grams of methamphetamine, 1 kilogram of heroin, and more than 400 grams of fentanyl being imported from Mexico into the United States and distributed in at least eight states), <https://www.justice.gov/archives/opa/pr/federal-inmate-and-eight-co-conspirators-indicted-international-drug-trafficking>.

²⁵ See, e.g., Press Release, U.S. Dept of Just., *Federal Inmate at MDC Brooklyn Charged with Orchestrating Murder-For-Hire Using Contraband Cellphone* (Oct 17, 2024) (inmate defendant used a contraband cellphone to conspire to order the murder for hire of a rival gang member with whom the defendant had been feuding on social media while in federal custody, resulting in the shooting of the victim, who survived, and the death of his girlfriend), <https://www.justice.gov/usao-sdny/pr/federal-inmate-mdc-brooklyn-charged-orchestrating-murder-hire-using-contraband>.

²⁶ U.S. Sent’g Comm’n, *Public Data Briefing: 2026 Proposed Amendment Regarding Unmanned Aircraft*, at Slide 18, (“*Public Data Briefing*”), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/data-briefings/2026_Unmanned-Aircraft.pdf.

²⁷ *Id.* at Slide 7 (cases involving unmanned aircraft represent approximately 0.1% of cases sentenced for the last two fiscal years).

of cases Congress intended to address. Only about 7 percent of cases were based solely on operating an unmanned aircraft, confirming that drone use is typically integrated into broader, more serious criminal schemes.²⁸

Our recommended language for §3B1.6 is underlined below:

(a) (Apply the greater):

(1) Increase by 6 levels if:

(A) a statutory sentencing enhancement under 6 U.S.C. § 124n-1(c) or 6 U.S.C. 124n-1(d) applies;

(B) the defendant is convicted of a felony offense under 49 U.S.C. § 46307;
or

(C) the parties stipulate (i) to such an offense listed in (A) or (B) for the purposes of calculating the guidelines range under §1B1.2 (Applicable Guidelines), or (ii) that such an enhancement applies.

(2) If the offense involved the use of an unmanned aircraft, increase by 4 levels.

(b) For the purposes of this guideline:

(1) “**unmanned aircraft**” has the meaning given that term in 49 U.S.C. § 44801.

The Commission has proposed excluding “mere possession” from the phrase “use of an unmanned aircraft” in the text of §3B1.6(a)(2).²⁹ We do not support this limitation for two reasons. First, narrowly defining “use” to exclude “mere possession” could be in tension with the Act’s enhanced penalties for all 18 U.S.C. § 1791 convictions involving unmanned aircraft, potentially leading to unnecessary litigation. In particular, we note that § 1791 criminalizes “attempts” to make or obtain prohibited objects, and such an attempt could involve the acquisition and related “possession” of an unmanned aircraft. Nothing in the Act, however, suggests that Congress intended to narrow application of the enhanced penalty provisions of § 8605(d) to only completed § 1791 violations and to exclude attempts. Second, the proposed limitation appears to address a problem that does not exist. There is no indication in the Commission’s data that possession of an unmanned aircraft, without more, has been seen as an aggravating factor in existing cases—and thus no reason to believe that the Act’s increased penalties would apply to possession of an unmanned aircraft alone. Absent a demonstrated risk, a categorical exclusion risks creating litigation over the scope of “use” versus “possession,” particularly in cases involving attempts under § 1791. In short, we do not see a serious or substantiated concern that justifies the exclusion.

If the Commission nevertheless proceeds with its proposed limitation, we recommend modifying the language to make clear that it is not designed to exclude attempt scenarios—*i.e.*, foiled plots or substantial steps such as purchasing an unmanned aircraft to commit an offense.

²⁸ *Id.* at Slide 14.

²⁹ *Proposed Amendment* at 3.

ii. The Four-Level Increase

Subject to the caveat about the definition of “use” above, we support the Commission’s proposed four-level increase at §3B1.6 with one clarification: “if the offense otherwise involved the use of an unmanned aircraft.”³⁰ We suggest adding the word “otherwise” before “involved” to clarify that this increase is intended to be a catch-all applicable to all cases not subject to the six-level increase.

c. Interactions with Other Guidelines

The Commission asks about overlap with other guidelines. With the exception of §2D1.1(b)(3)(A), we think that the specific offense characteristics and adjustments identified by the Commission appropriately provide enhancements for aggravated conduct separate from the use of unmanned aircraft and that the Commission should not limit their application to scenarios where §3B1.6 may also apply.

i. The Specific Offense Characteristic at §2D1.1(b)(3)(A)

The specific offense characteristic at §2D1.1(b)(3)(A) applies when “an aircraft other than a regularly scheduled commercial air carrier was used to import or export the controlled substance.” Because an unmanned aircraft would qualify as such an “aircraft,” a defendant who used an unmanned aircraft to import or export a controlled substance could be subject to both §2D1.1(b)(3)(A) and the new §3B1.6. The Department recommends that the Commission add an application note to either or both guidelines to clarify that the enhancements at §2D1.1(b)(3)(A) and §3B1.6 may both apply if predicated on different conduct:

Application note to §2D1.1(b)(3)(A) clarifying that: If the enhancement in subsection (b)(3)(A) and the adjustment at §3B1.6 (Use of Unmanned Aircraft) apply to the same conduct, apply only the adjustment at §3B1.6 (Use of an Unmanned Aircraft), unless the enhancement in §2D1.1(b)(3)(A) is based on different conduct.

Application note to §3B1.6: If the enhancement at §2D1.1(b)(3)(A) also applies based on the same conduct, do not apply §2D1.1(b)(3)(A), and instead apply the adjustment at §3B1.6. Both the enhancement at §2D1.1(b)(3)(A) and the adjustment at §3B1.6 may apply if based on different conduct.

This approach ensures that defendants who use unmanned aircraft to traffic controlled substances receive the enhanced unmanned aircraft-specific adjustment mandated by the Act, while avoiding unwarranted double-counting for the same conduct. But the instruction should leave open the possibility for both §§2D1.1(b)(3)(A) and 3B1.6 to apply if based on different conduct.

ii. Other Chapter Two Specific Offense Characteristics

We do not believe that the other enhancements and adjustments identified by the Commission raise double-counting concerns.³¹ As the Commission’s own data demonstrates, those

³⁰ *Proposed Amendment* at 3.

³¹ *Proposed Amendment* at 6.

concerns are largely speculative and not borne out in actual cases. This is especially true for the various Chapter Two sophisticated means enhancements identified by the Commission at §§2B1.1(b)(10)(C) and 2T3.1(b)(1). The Commission’s own data show that the existing sophisticated means enhancements do not capture the aggravated conduct associated with use of unmanned aircraft to facilitate criminal conduct. In particular, no defendant in the Commission’s dataset received a sophisticated means enhancement for use of an unmanned aircraft.³²

As they become more common, the use of unmanned aircraft alone may not necessarily constitute sophisticated conduct. But the converse is also true: certain unmanned aircraft may become more complex than typical consumer models as unmanned aircraft become more common. Similarly, a defendant’s use of an unmanned aircraft may evidence more complexity, sophistication, or may constitute more aggravating conduct (*e.g.*, surveillance of border patrol to facilitate alien smuggling, surveillance of defense assets, or use of unmanned aircraft to drop prison contraband) meriting additional punishment. To avoid serial amendments to the same guideline, the Commission’s amendments here should endure for some time even as technology changes. Given the Act’s directive to “substantially increase” the guidelines range for use of unmanned aircraft across all offenses, we do not think that a limiting instruction is appropriate or necessary. If, however, the Commission includes one, it should specify that use of an unmanned aircraft, without more, does not constitute sophisticated means.

Similarly, we do not believe that double-counting concerns apply to the Chapter Three adjustment at §3B1.3 for Abuse of a Position of Trust or Use of Special Skill. As the Application Note 4 of §3B1.3 already clarifies, the definition of “special skill” requires something more than a skill “possessed by members of the general public” and often involves “substantial education, training, or licensing.”³³ This is perhaps why overlap concerns appear speculative—none of the defendants whose offenses involved unmanned aircraft in the Commission’s data also received an adjustment under §3B1.3.³⁴ That said, when the defendant’s specialized skill or technical expertise in unmanned aircraft operation facilitated the offense beyond what would have otherwise been accomplished by more common usage (*e.g.*, particularly complex conditions or navigation), the criteria for applying both adjustments may be satisfied—and appropriately so. Likewise, both adjustments should apply when the defendant engaged in criminal conduct by using an unmanned aircraft *and* abused a position of trust, such as where a law enforcement officer, corrections officer, or attorney introduced prison contraband using an unmanned aircraft. There, too, we do not think that a limiting instruction is appropriate or necessary, especially given the Act’s directive to “substantially increase” the guidelines range for use of unmanned aircraft across all offenses. If the Commission nevertheless provides a limiting instruction, it should include language to

³² Transcript, U.S. Sent’g Comm’n, *Public Data Briefing: 2026 Proposed Amendment Regarding Unmanned Aircraft* (“*Public Data Briefing Transcript*”) at 6 (“[O]f the 113 identified cases involving unmanned aircraft, there were two cases in which the sophisticated means enhancement at §2B1.1(b)(10)(C) applied. In these cases, however, it was other conduct—and not the use of an unmanned aircraft—that constituted sophisticated means resulting in the enhancement.”), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/data-briefings/transcript_2026_Unmanned-Aircraft.pdf.

³³ U.S.S.G. §3B1.3, comment. (n.4).

³⁴ *Public Data Briefing Transcript* at 5.

Application Note 4 in §3B1.3 indicating that use of an unmanned aircraft alone may not constitute a special skill without additional aggravating conduct.

The Commission's issues for comment also asked about overlap with other specific offense characteristics.³⁵ The Commission's public data briefing included data on the application of §2D1.1(b)(4).³⁶ Section §2D1.1(b)(4) provides a two-level enhancement if the controlled substance was distributed in a prison, correctional facility, or detention facility. This enhancement covers conduct—distributing controlled substances in a prison—that is distinct and separate from the harm created by using an unmanned aircraft to deliver contraband. Unmanned aircraft evade detection and screening protocols, and their use makes the offense more dangerous. Using an unmanned aircraft to facilitate contraband in prison therefore warrants the six-level adjustment at §3B1.6. And, when the contraband delivered is a controlled substance that the offender then distributes, it also warrants the enhancement at §2D1.1(b)(4). As the Commission's data show, unmanned aircraft routinely deliver more contraband than just controlled substances.³⁷

If, however, the Commission were to include any application note in the Guidelines limiting application of §3B1.6 and other Chapter Two enhancements, we recommend that any note explicitly state that other Chapter Two specific offense characteristics and §3B1.6 may apply to the same conduct unless specifically excluded.

d. Violations of National Defense or Restricted Airspace

The Department supports the Commission's proposal to reference 49 U.S.C. § 46307 to both §2A5.2 and §2X5.2 in Appendix A. Section 46307 establishes a Class A misdemeanor offense for knowingly and willfully violating National Defense or restricted civilian Airspace. That offense covers conduct of substantial gravity: unmanned aircraft flying over a military base, an intelligence facility, a nuclear facility, or the White House complex, or interfering with emergency personnel, or that are weaponized with a toxin, a biological agent, or nuclear material are especially dangerous threats. The Act made subsequent convictions a felony offense subject to a five-year statutory maximum. We agree that the Commission's approach appropriately distinguishes between the first-offense misdemeanor and the repeat-offense felony. As noted above, we think that the recidivist felony conviction should be subject to the six-level enhancement at §3B1.6.

* * *

We appreciate the opportunity to provide the Commission with our views and suggestions on implementing the important Congressional directive in the SAFER SKIES Act. The heightened penalties provided in the SAFER SKIES Act reflect the significant threats posed by drone-related offenses and the need both to punish offenders and deter others from engaging in this dangerous conduct. We look forward to working with the Commission on this and other issues throughout the amendment year.

³⁵ *Proposed Amendment* at 6 (Issue for Comment 3).

³⁶ *Public Data Briefing* at Slide 13; *Public Data Briefing Transcript* at 6.

³⁷ *Public Data Briefing* at Slide 23.

Sincerely,

Scott Meisler

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Ex Officio Member, U.S. Sentencing Commission

cc: Commissioners
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**FEDERAL DEFENDER
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June 18, 2026

Honorable Carlton W. Reeves
Chair
United States Sentencing Commission
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Washington, D.C. 20002-8002

**Re: Defender Comment on 2026 Unmanned Aircraft Proposed
Amendment**

Dear Judge Reeves:

The Federal Public and Community Defenders appreciate the opportunity to comment on the Commission’s proposed amendment on the use of unmanned aircraft, which implements the Congressional directive in the SAFER SKIES Act.¹ The proposed amendment would create a new guideline at §3B1.6 providing a tiered enhancement of either 4 or 6 levels for offenses involving the use of an unmanned aircraft (drone), with different options for when the 6-level increase would apply. It would also amend the statutory index to refer the Act’s newly-created felony offense to §2A5.2. The Commission further raises five “Issues for Comment” (IFC), which we address below.

Defenders understand that Congress has mandated the Commission to increase penalties for offenses involving drones.² We encourage the Commission to implement this mandate as narrowly as possible. As with all guidelines created from directives, the Commission is not exercising its

¹ See generally [2026 Proposed Guidelines Amendment, Unmanned Aircraft](#) (Apr. 16, 2026).

² See SAFER SKIES Act, Pub. L. 119-60, §8605(e), 139 Stat. 718, 1944 (2025).

“characteristic institutional role.”³ The proposed enhancements are not borne from thoughtful study or guided by the purposes of sentencing, but are dictated by Congress’s political process.⁴ As such, they are less useful to judges attempting to discern sentences that will further the purposes of sentencing, and, thus, likely to be disparately applied.⁵

³ *Kimbrough v. United States*, 552 U.S. 85, 109 (2007).

⁴ This directive is particularly problematic Congressional decision-making. It comes from a provision, subjected to limited debate, and tacked on to over 1,200 pages of must-pass, time-sensitive legislation. *See generally* National Defense Authorization Act for Fiscal Year 2026, Pub. L. 119-60, 139 Stat. 718 (Dec. 18, 2025) (“NDAA of FY2026”). The Commission is thus left to guess at why Congress felt 4- and 6-level increases were appropriate.

⁵ Commentators, including the Commission itself, have long derided directive-based amendments. *See* USSC, [Mandatory Minimum Penalties in the Federal Criminal Justice System](#) at 122 (1991) (“[S]pecific directives, while clearly within the congressional prerogative, are potentially in tension with the fundamental Sentencing Reform Act objectives of delegating to an independent expert body in the judicial branch of the government the finer details of formulating sentencing policy, and revising that policy in light of actual court sentencing experience over time.”); *see also, e.g.,* [Defenders’ Comment on the USSC’s 2025-2026 Drug Offenses Proposed Amendments](#) at 3-8 (Mar. 3, 2025) (renewing decades of criticism from Defenders and others regarding Commission decisions to abandon its empirical approach in favor of politics when designing §2D1.1 and grafting a statutory mandatory minimum scheme onto the Guidelines); Paul Hofer, *After Ten Years of Advisory Guidelines, and Thirty Years of Mandatory Minimums, Federal Sentencing Still Needs Reform*, 47 U. of Tol. L. Rev. 649, 665-66 (2016) (discussing “[c]ongressional micro-management of the Guidelines”). Further, courts are both empowered and willing to disregard directive-driven guidelines. *See, e.g., United States v. Dais*, 482 F. Supp. 3d 800, 803 (E.D. Wisc. 2020) (noting that a Chapter 3 adjustment “was enacted pursuant to a congressional directive and absent empirical evidence” and that “[s]uch guidelines do not exemplify the Sentencing Commission’s exercise of its characteristic institutional role and are generally entitled to less respect” (citations omitted)); *see also Kimbrough*, 552 U.S. at 109-10 (differentiating instances where Commission acts without “exercis[ing] its characteristic institutional role” as those instances do not create the same “rough approximation” of what § 3553(a) seeks); *United States v. Henderson*, 649 F.3d 955, 962-63 (9th Cir. 2011) (allowing courts to reject child pornography guideline as a matter of policy because the guideline’s reliance on directives meant the guideline does not reflect the Commission’s institutional role).

Further, the proposed enhancements are not supported by empirical evidence, which supports implementing the directive as narrowly as possible.

The Commission's data show that cases involving the use of a drone are exceedingly rare, accounting for no more than 0.1% of all cases over the last two fiscal years. And, in those rare drone-involved cases, judges generally found the current guideline ranges either sufficient or too high: nearly half (56) of the 113 identified cases involving drones resulted in below-guidelines sentences while only 2% resulted in above-guidelines sentences.⁶

Also telling, for the most common crime types involving drones—immigration and drug trafficking—the average sentences imposed were below the current average guideline minimums.⁷ For immigration cases involving drones, the average sentence was 8 months while the average guideline minimum was 11 months.⁸ For drug-trafficking cases involving drones, the average sentence was 79 months while the average guideline minimum was 97 months.⁹

Moreover, 58% of the people sentenced in the 113 identified cases involving drones were in Criminal History Category I.¹⁰ Criminal History Category I is associated with lower recidivism rates and thus less appropriate for long sentences.¹¹

⁶ USSC, [Public Data Briefing Slideshow](#) at 26 (2026).

⁷ *Id.* at 27-28.

⁸ *Id.* at 27.

⁹ *Id.* at 28.

¹⁰ *Id.* at 9.

¹¹ *See e.g.*, USSC, [Recidivism of Federal Offenders Released in 2010](#) at 27 & fig. 14 (Sep. 2021) (showing rearrest rate of 42% for people with one criminal history point versus rearrest rates between 49% and 81% for people who had between 2 and “13 or more” criminal history points). The Data Briefing does not identify what portion of the CHC I people had zero criminal history points. To the extent that people with zero points are impacted, the enhancements are inconsistent with the Commission's recent empirically-guided efforts to reduce sentences for people with zero criminal history points, reflecting their lower recidivism rates, and to

Finally, the data briefing shows that the enhancements are likely to fall most heavily on Hispanic individuals, who accounted for 49% of cases involving drones during the relevant time period.¹² More broadly, the data suggest that nearly three-quarters of the individuals who will be affected by these enhancements are non-white.¹³ The Commission's overarching directive to avoid unwarranted sentencing disparities counsels caution here.¹⁴

Where, as here, the Commission must increase the guidelines despite substantial reasons not to, it is imperative that it do no more than the statute requires. Therefore, Defenders encourage the Commission to:

- Adopt Option 1's approach to the 6-level increase at §3B1.6(a)(1), applying that enhancement only in cases where the statutory sentencing enhancement applies (*see pp. 5-8*).
- Add a *mens rea* requirement of "knowledge" to the proposed §3B1.6(a)(2) (*see pp. 8-10*).
- Include the bracketed language in §3B1.6(b) that "use" does not mean "mere possession" and add language to prevent double-counting (*see pp. 10-11*).
- Instruct courts, in the statutory index, to use §2X5.2 for a misdemeanor first offense and §2A5.2 only for second and subsequent (felony) offenses (*see pp. 11-12*).

implement 28 U.S.C. § 994(j). *See* USSG, App. C., [Amend. 821](#) (Nov. 1, 2023), Reason for Amendment.

¹² [Public Data Briefing Slideshow](#) at 8.

¹³ *Id.*

¹⁴ *See* 28 U.S.C. §§ 991(b)(1)(B); 994(f).

I. Section 3B1.6(a)(1): Option 1 provides the narrowest, simplest approach, which is appropriate given the severity of the 6-level enhancement.

In December 2025, Congress passed the SAFER SKIES Act (“the Act”) as part of the National Defense Authorization Act for Fiscal Year 2026.¹⁵ The Act created a series of new statutory sentencing enhancements for offenses involving drones.¹⁶ It also directed the Sentencing Commission to add: (1) at least a 6-level increase to a person’s base offense level when a statutory enhancement applies (for “knowingly operating a drone during, in relation to, or in furtherance of” another felony offense under 6 U.S.C. § 124n-1(c)); and (2) at least a 4-level increase in other cases involving drones.¹⁷

The Commission proposes two options in response to the directive. Option 1 applies the 6-level enhancement only if the person was convicted of the aggravating statutory enhancement at § 124n-1(c). Option 2 applies the 6-level enhancement regardless of whether the person was convicted under the enhanced penalty provision at § 124n-1(c), as long as they were convicted of a felony offense not based solely on operating a drone and “knowingly operated [a drone] during, in relation to, or in furtherance of that offense.”

Option 1 is better for two primary reasons. *First*, a 6-level increase is extremely harsh, and Option 1 is the narrowest option that complies with the

¹⁵ Pub. L. No. 119-60, § 8601-07 (2025).

¹⁶ *First*, the Act created a felony penalty of up to 5 years in prison for repeated violations of 49 U.S.C. § 46307 (violation of national defense airspace)—a first offense remains a misdemeanor, punishable by up to 1 year in prison. *Id.* at § 8605(b) (codified at 49 U.S.C. § 46307). *Second*, the Act raised the statutory maximum penalty for any felony offense not based solely on the operation of an unmanned aircraft—by either five years or double the statutory maximum for the underlying felony (whichever is less)—if the convicted person knowingly operated an unmanned aircraft during, in relation to, or in furtherance of such offense. *Id.* at § 8605(c) (codified at 6 U.S.C. § 124n-1(c)). *Third*, the Act increased by five years the statutory maximum penalties under 18 U.S.C. § 1791 for knowingly using an unmanned aircraft to introduce contraband into a prison. *Id.* at § 8605(d) (codified at 18 U.S.C. § 124n-1(d)).

¹⁷ *Id.* at § 8605(e).

statutory text.¹⁸ In addition to the concerns we raise above about applying directives (and particularly *this* directive) over-broadly, consider the levels involved with other enhancements for similar or considerably more egregious conduct. Take, for example, sophisticated means—an enhancement the Commission recently considered expanding to include using emerging technologies, potentially including unmanned aircraft.¹⁹ Unless the offense level floor applies, sophisticated means triggers a 2-level increase.²⁰ Use of a special skill also garners a 2-level bump.²¹ What’s more, consider *dissimilar*, more serious conduct: a person receives a 4-level increase for committing a rape where the victim is under 12 years old,²² or for using a dangerous weapon during a robbery.²³ And a person receives a 6-level increase for conduct like inflicting greater-than-serious bodily injury on aggravated assault victims,²⁴ or sexually exploiting a victim during a kidnapping.²⁵ Clearly then, a 4- or 6-level enhancement for committing an offense that involved the use of a drone is unusually severe.

These increases are also excessive relative to the base offense level that often applies in these cases. As the Commission’s data briefing notes, in fiscal years 2024 and 2025, the most common use for drones was to deliver contraband to people in prison—most commonly, controlled substances or

¹⁸ Congress required the 6-level increase only when “the enhanced penalties of subsection (c) apply.” Pub. L. No. 119-60, § 8605(e)(2). In other words, Congress *did not* mandate a 6-level increase in the absence of a conviction under § 124n-1(c) where the government proves by a preponderance at sentencing that those elements were met.

¹⁹ See [2026 Proposed Amendments to the Sentencing Guidelines](#) at 155-68 (Dec. 12, 2025).

²⁰ USSG §2B1.1(b)(10)(C). The Commission’s Issue for Comment #3 identifies sophisticated means enhancements as one possible area of overlap with the proposed enhancements.

²¹ USSG §3B1.3.

²² USSG §2A3.1(b)(2)(A).

²³ USSG §2B3.1(b)(2)(D).

²⁴ USSG §2A2.2(b)(3)(E).

²⁵ USSG §2A4.1(b)(5).

cellphones.²⁶ Section 2P1.2 applies to possessing or providing contraband in a prison. Unless a cross-reference applies for distribution of a controlled substance,²⁷ §2P1.2(a) assigns a base offense level based on the nature of the smuggled contraband. Where the contraband was a cellphone or certain controlled substances, the base offense level is 6.²⁸ In other words, if applied in a prison contraband case involving a cellphone or certain controlled substances, the proposed enhancements would result in offense-level increase of 66% or even 100%.²⁹ Again, the scope of the increases—particularly the 6-level increase—militates strongly in favor of the narrowest possible approach, along with maintaining the offense-level increases at 4 and 6 levels, rather than going any higher.³⁰

Second, Option 1 is easier than Option 2 to interpret and apply and, as such, will result in less litigation. Under Option 1, courts need not struggle over whether the 6-level enhancement applies. Courts need only look at the statute(s) of conviction. Consider the Commission’s recent clarification that §2D1.1(a)(1)-(4)’s enhanced base offense levels are based on the offense of conviction, not conduct.³¹ Prior to that amendment, a circuit conflict arose over whether those enhancements applied even in cases where a person was not subject to the relevant enhanced statutory penalties.³² Now it’s clear they

²⁶ USSC, [Public Data Briefing Transcript](#) at 8 (May 13, 2026); *see also* [Public Data Briefing Slideshow](#) at 22 (showing 47% of cases involving prison contraband).

²⁷ USSG §2P1.2(c).

²⁸ USSG §2P1.2(a)(3) (providing for a base offense level of 6 “if the object was . . . a mobile phone or similar device, or a controlled substance (other than LSD, PCP, methamphetamine, or a narcotic drug)”).

²⁹ These increases are excessive even when looking at the more-harshly-punished controlled substances in §2P1.2. Section 2P1.2(a)(2) applies a base offense level of 13 to contraband cases involving methamphetamine, LSD, PCP, or narcotics. A 4- or 6-level increase to a BOL 13 would represent a 31% or 46% increase based solely on the means of smuggling.

³⁰ *See* IFC #2; IFC #4.

³¹ *See* USSG, App. C, [Amend. 830](#) (Part D) (Nov. 1, 2024).

³² *Compare United States v. Johnson*, 706 F.3d 728, 732 (6th Cir. 2013) (holding the district court “was still permitted to take into account” a prior conviction when determining whether to apply §2D1.1(a)(1) even though the government did not file an information under § 851 and therefore the statutory enhancement did not apply),

apply only if “the defendant is convicted of an offense under” the relevant enhancement statute. Equally clear—Option 1 is consistent with this common-sense approach.³³

II. Section 3B1.6(a)(2): Consistent with the statutory directive, the 4-level enhancement should include a *mens rea* requirement.

The current proposal at §3B1.6(a)(2) is broader than the directive requires because it lacks a *mens rea* requirement. As currently phrased, the 4-level enhancement applies even to a person who did not know the offense involved the use of a drone. And, as the Commission observed in its data briefing, many of the drone-involved cases from fiscal years 2024 and 2025 involved multiple individuals jointly engaged in criminal activity.³⁴ Indeed, in 42% of drone-involved cases, the sentenced individual’s own conduct did not include using a drone.³⁵ And, in 46% of cases in which the offense involved the use of a drone, the identity of the person who operated the drone was unknown.³⁶ As a result, in many cases, the “court would ultimately have to make a determination as to whether the relevant conduct of a particular sentenced individual included the use of an unmanned aircraft.”³⁷ Doing so

with United States v. Lawler, 818 F.3d 281, 284 (7th Cir. 2016) (holding §2D1.1(a)(2) applies “only when death is an element of the crime that is admitted by the defendant or proven beyond a reasonable doubt”) and *Greenough*, 669 F.3d at 575 (same); see also *United States v. Sica*, 676 F. Appx. 81, 86 (2d Cir. 2017) (collecting additional decisions indicating a wider circuit split).

³³ As was done in the §2D1.1 enhanced base offense levels context, Defenders are amenable to adding language that would allow the parties to agree to the 6-level increase in the absence of a statutory sentencing enhancement under § 124n-1(c).

³⁴ [Public Data Briefing Transcript](#) at 4.

³⁵ [Public Data Briefing Slideshow](#) at 15. Even among the 58% of cases where the sentenced individual’s conduct involved a drone, the pilot was the person being sentenced in only 28 cases. *Id.* at 16.

³⁶ *Id.* at 17.

³⁷ [Public Data Briefing Transcript](#) at 4.

would require the court to assess what was, and was not, reasonably foreseeable to the person being sentenced.³⁸

As Defenders have previously underscored, the “reasonable foreseeability” standard, which “effectively imposes a negligence standard for a co-conspirator’s crime,”³⁹ is entirely appropriate in civil tort law, “but is inconsistent with the conventional requirement for criminal conduct—*awareness* of some wrongdoing.”⁴⁰ Enhancements that lack a knowledge or intent requirement are antithetical to § 3553(a) concerns of just punishment and deterrence: they do not promote just punishment because they do not meaningfully distinguish culpability between actors,⁴¹ and they do not promote deterrence because “a person cannot be deterred from doing what [they do] not know is being done.”⁴²

As a result, we have encouraged the Commission to add a *mens rea* requirement to enhancements that lack a scienter element throughout the Guidelines Manual.⁴³ Here, that would mean modifying proposed §3B1.6(a)(2) to state (with proposed additions in red text):

If the offense involved the use of an unmanned aircraft **and the defendant knew the offense would involve the use of an unmanned aircraft**, increase by [4] levels.

³⁸ See USSG §1B1.3(a)(1)(B)(iii).

³⁹ [Defenders’ Annual Letter to the USSC](#) at 11 (Sep. 14, 2022) (citations omitted).

⁴⁰ [Defenders’ Annual Letter to the USSC](#) at 16 (July 15, 2024) (*quoting* *Elonis v. United States*, 575 U.S. 723, 737-38 (2015)).

⁴¹ See *Ruan v. United States*, 597 U.S. 450, 458 (2022) (discussing how *mens rea* is necessary to separate wrongful conduct from otherwise-innocent conduct).

⁴² *United States v. Handy*, 570 F. Supp. 2d 437, 480 (E.D.N.Y. 2008).

⁴³ See, e.g., [Defenders’ Annual Letter to the USSC](#) at 7 (May 21, 2026); [Statement of Deirdre D. von Dornum on behalf of Defenders to USSC on Circuit Conflicts](#) at A-15-19 (Feb. 27, 2024); [Defenders’ Comment on the USSC’s 2023 Firearms Offenses Proposed Amendments](#) at 20–27 (Mar. 14, 2023); [Defenders’ Annual Letter to the USSC](#) at 9-11 (Sep. 14, 2022).

To the Commission's credit, the Commission has increasingly included *mens rea* requirements in upward adjustments in recent years.⁴⁴ Continuing this trend here would not contravene Congress's directive. Rather, the directive is silent as to *mens rea*, which "by itself does not necessarily suggest that Congress intended to dispense with a conventional *mens rea* element."⁴⁵ Quite the opposite, the Supreme Court has "repeatedly held that mere omission from a criminal enactment of any mention of criminal intent should not be read as dispensing with it."⁴⁶

III. Section 3B1.6(b): The Commission should define "use" as more than mere possession and include language to prevent double counting.

In bracketed text at §3B1.6(b)(2), the Commission proposes to clarify that a person does not "use" a drone for purposes of the adjustment by merely possessing it. The Commission should include this language, which is fully consistent with the ordinary meaning of the term "use." "Use" requires not just possession but employing or seeking to benefit from the thing being used.⁴⁷ This language is also consistent with how the Commission

⁴⁴ See, e.g., USSG App. C, [Amend. 833](#), Reason for Amendment (Nov. 1, 2025) (altering but maintaining *mens rea* requirement for fentanyl misrepresentation); USSG App. C, [Amend. 819](#), Reason for Amendment (Nov. 1, 2023) ("The Commission determined that the [privately manufactured firearms enhancement] should apply only to those defendants who knew or consciously avoided knowing that the firearm was not marked with a serial number."); USSG App. C, [Amend. 801](#), Reason for Amendment (Nov. 1, 2016) (resolving circuit split over whether child pornography distribution enhancement required knowing *mens rea* in favor of including *mens rea*).

⁴⁵ *Staples v. United States*, 511 U.S. 600, 605 (1994).

⁴⁶ *Elonis*, 575 U.S. at 734 (cleaned up).

⁴⁷ See [Use](#), Merriam-Webster Dictionary (defining "use" as, *inter alia*, "to put into action or service," "to benefit from the use of," and "to carry out a purpose or action by means of").

distinguishes the terms “use” and “possession” in other contexts.⁴⁸ Nothing in the SAFER SKIES Act requires “use” to reach passive presence.

Further, §3B1.6(b) should include language to prevent double counting given that there are already SOCs in the Manual that could potentially be interpreted to reach the use of a drone.⁴⁹ Thus, the Commission should add a new provision stating:

(3) If the conduct establishing an adjustment under this provision is the conduct establishing an enhancement under Chapter Two or Chapter Three, apply the greater of the adjustment or this provision.

Because of the directive’s requirement that the Commission increase sentences for using drones by at least 4 or 6 levels, the Commission is likely foreclosed from allowing another provision to result in a lower offense level increase than §3B1.6. Defenders’ proposed language ensures that this won’t happen—meeting the directive’s mandate without going beyond it.

IV. The Statutory Index should make clear that §2A5.2 applies only to second and subsequent violations of 49 U.S.C. § 46307.

Finally, the Commission proposes to amend Appendix A (the Statutory Index) to reflect the new statutory maximum applicable to second and subsequent convictions under 49 U.S.C. § 46307.⁵⁰ Presently, the Statutory Index refers all violations of § 46307 to §2X5.2, the guideline applicable to misdemeanors not covered by a different guideline. This was appropriate prior to the SAFER SKIES Act, as all § 46307 convictions were previously

⁴⁸ See, e.g., USSG §2B3.1(b)(2) (distinguishing brandishing and possessing a dangerous weapon or firearm from using a dangerous weapon or firearm and providing a greater adjustment for use).

⁴⁹ In IFC #3, the Commission identified several such SOCs, including §§2D1.1(b)(3)(A) (importing or exporting controlled substances with certain aircraft), 2B1.1(b)(10)(C) (sophisticated means in a fraud offense), 2T3.1(b)(1) (involving sophisticated means when evading import duties or receiving/trafficking smuggled property), and 3B1.3 (abuse of position of trust or use of special skill).

⁵⁰ See IFC #5 (asking whether this reference is the appropriate approach).

misdemeanors. After the Act, first offenses remain misdemeanors, but subsequent violations are now felonies carrying a five-year maximum prison term. Thus, the Commission proposes to refer subsequent violations to §2A5.2 by adding that guideline to the Statutory Index entry for § 46307 alongside the current §2X5.2 reference.

Defenders agree that §2A5.2 is the best fit for subsequent convictions; however, as done elsewhere in the Appendix, the Commission should clarify that this provision applies only to subsequent (felony) convictions. We propose the following:

49 U.S.C. § 46307	2X5.2,
	2A5.2 (felony provision only)

This would ensure that courts do not erroneously apply §2A5.2 to the misdemeanor version of the offense.⁵¹

V. Conclusion

Complying with the SAFER SKIES Act will necessarily require the Commission to abdicate the exercise of its characteristic institutional role to carefully consider and study proposed guideline changes before enacting them. Defenders urge the Commission to do the least harm by adhering closely to the statutory directive's lowest mandated increases.

We appreciate the Commission's consideration of our views and look forward to continuing to work together to improve federal sentencing policy.

⁵¹ The Statutory Index includes other parenthetical clarifications, like for 7 U.S.C. § 2156 and 18 U.S.C. § 1716, which clarify that the guideline references pertain to "felony provisions only," and 18 U.S.C. § 1001, which directs courts to §2B1.1 generally, but instead to §2J1.2 when the same provision triggers a different statutory maximum.

Hon. Carlton W. Reeves
June 18, 2026
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Very truly yours,



Heather Williams
Federal Public Defender
Chair, Federal Defender Sentencing
Guidelines Committee

Sentencing Resource Counsel
Federal Public and Community
Defenders

Cc: Hon. Luis Felipe Restrepo, Vice Chair
Hon. Laura E. Mate, Vice Chair
Hon. Claire Murray, Vice Chair
Hon. Candice C. Wong, Commissioner
Patricia K. Cushwa, Commissioner *Ex Officio*
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An Advisory Group of the United States Sentencing Commission

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June 17, 2026

The Honorable Carlton W. Reeves
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Dear Judge Reeves,

The Probation Officers Advisory Group (POAG) submits the following written testimony to the United States Sentencing Commission (the Commission) regarding the proposed amendments related to unmanned aircraft.

Unmanned Aircraft

POAG unanimously supports Option One of the proposed amendment. POAG believes that the reliance on actual statutory citation provides clearer guidance and promotes greater consistency in application. POAG was not in favor of Option Two because of its *mens rea* component, which has historically created evidentiary challenges. While the *mens rea* component is part of the statutory elements necessary for application of the enhancement, the defendant's mental state would have already been established through the underlying conviction.

One concern POAG has regarding the proposed language is that the wording closely resembles that used in USSG §3C1.3, referring to Commission of Offense While on Release. Under USSG §3C1.3, the phrase "statutory sentencing enhancement under 18 U.S.C. § 3147 applies" has been interpreted to mean that the enhancement applies when a defendant meets the criteria that would support the enhancement, regardless of whether the statutory enhancement was actually imposed. See *United States v. Rosas*, 615 F.3d 1058 (9th Cir. 2010); *United States v. Samuel*, 296 F.3d 1169 (DC Cir. 2002); and *United States v. Dison*, 573 F.3d 204 (5th Cir. 2009).

POAG believes it would be even more clear to use language that the defendant is “convicted of an offense” under 6 U.S.C. § 124n-1(c), similar to the approach used in the base offense level provisions of USSG §2D1.1. This may reduce unintended or disparate interpretive outcomes.

While POAG supports Option One, we also encourage the Commission to provide additional commentary regarding the interaction of the Guideline with other provisions of the Guideline Manual. For example, should the application of this guideline preclude application of USSG §2D1.1(b)(3)(A) – an aircraft other than a regularly scheduled commercial air carrier was used to import or export the controlled substance. Similarly, should the application of this guideline preclude the application of USSG §3B1.3 – use of special skill. It would also be valuable to include clarification of the interaction between these enhancements and whether the different harms are sufficient to apply both enhancements.

In conclusion, POAG would like to sincerely thank the United States Sentencing Commission for the opportunity to submit written testimony on this issue.

Respectfully,

Probation Officers Advisory Group
June 2026

SENTENCE IMPACT ADVISORY GROUP

A Standing Advisory Group of the United States Sentencing Commission

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June 2, 2026

Hon. Carlton W. Reeves
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Re: Proposed Amendment to the Sentencing Guidelines – Unmanned Aircraft (SAFER SKIES Act); 2026 Supplemental Amendment Cycle

Dear Chairman Reeves and Members of the Commission:

The Sentence Impact Advisory Group (“SIAG”) respectfully submits the following commentary regarding the Commission’s proposed amendment to the Sentencing Guidelines implementing the SAFER SKIES Act (title LXXXVI of the National Defense Authorization Act for Fiscal Year 2026, Pub. L. 119–60).

I. The Proposed Amendment

Congress directed the Commission, through the SAFER SKIES Act, to “substantially increase the sentencing range for all offenses involving the use of an unmanned aircraft.”¹ The Act establishes a tiered statutory framework: a minimum 6-level increase for cases in which the statutory enhancement under 6 U.S.C. § 124n-1(c) applies, and a minimum 4-level increase in all other cases involving the use of an unmanned aircraft.² The proposed amendment would

¹See 6 U.S.C. § 124n-1(e)(1)(A) (directing the Commission to “substantially increase the sentencing range for all offenses involving the use of an unmanned aircraft”).

²See 6 U.S.C. § 124n-1(e)(2) (“[I]n cases described in subsection (c) ... the guidelines shall call for an increase of at least 6 levels in the base offense level, and in all other cases, the base offense level shall be increased by at least 4 levels.”).

implement that directive by creating a new Chapter Three adjustment at §3B1.6 (Use of Unmanned Aircraft) and by amending Appendix A (Statutory Index) to address the new felony offense under 49 U.S.C. § 46307.

The Commission has identified five issues for comment. SIAG addresses each in Section IV below.

II. SIAG'S APPROACH TO SENTENCING

In evaluating the proposed amendment, SIAG applies its established principles of proportionality, predictability, fairness, transparency, and public safety. For purposes of this submission, the guiding principle of simplification is particularly central to our commentary.

Simplification

SIAG believes that the justice system gains credibility and is more effective at deterring crime when individuals understand the consequences of their actions. Where Congress has directed the Commission to act, SIAG's view is that the Commission should implement the directive in the clearest and least duplicative manner available. Layering categorical enhancements on top of pre-existing specific offense characteristics, role adjustments, or cross-references, without clear empirical justification, risks producing guideline ranges that are disconnected from culpability and difficult for defendants, courts, and the public to understand.

Structural simplification is particularly important here, where Congress has set a statutory floor for the enhancement. The Commission should faithfully implement the directive without compounding it through overlapping provisions that effectively re-punish the same underlying conduct.

III. SUMMARY OF SIAG'S POSITION

The table below summarizes SIAG's position on the Commission's proposed amendment in light of the principles described above. The following section addresses each issue for comment and explains SIAG's position in greater detail.

Proposed Amendment	SIAG’s Position	Key Rationale
Unmanned Aircraft (Proposed §3B1.6 — Implementation of the SAFER SKIES Act directive)	Support Compliance with Directive at Statutory Minimum; Adopt Option 1; Oppose Enhancement Stacking; Oppose Additional Action on §2P1.2	The Commission should faithfully implement the directive at the minimum levels Congress prescribed, preserve the line Congress drew between charged statutory enhancement cases and all other cases, and avoid duplicative layering of enhancements arising from the same conduct. Addressing supply of contraband through penalty increases (due to drone use or other mechanisms for smuggling contraband into federal prisons) is only part of the solution. Unless many of the reasons for demand are addressed, contraband will continue to be an issue for the Bureau of Prisons, which drives much of the targeted conduct.

IV. COMMENTARY ON PROPOSED AMENDMENT

A. Issue 1 — Approach to Implementing the Directive: Adopt Option 1

The Commission seeks comment on whether the proposed §3B1.6 adjustment is the appropriate vehicle for implementing the directive in 6 U.S.C. § 124n-1(e)(1)(A), and which of the two bracketed options the Commission should adopt.

SIAG strongly supports Option 1—the version that triggers the 6-level adjustment only when the statutory enhancement under 6 U.S.C. § 124n-1(c) actually applies.

- 1. Statutory Fidelity.** Option 1 most faithfully implements Congress’s directive by adhering to the plain language of the statute, which expressly ties the heightened 6-level enhancement to “cases in which” the statutory enhancement under 6 U.S.C. § 124n-1(c) applies. Congress drew a deliberate line between the 6-level cases and “all other” cases, and the Commission should preserve that line rather than collapse it.
- 2. Prevention of Guideline Overreach.** Option 2 would permit the 6-level adjustment based on judicial fact-finding even where prosecutors elect not to charge, or are unable to prove, the statutory enhancement. This would convert the Guidelines into an independent mechanism for imposing the higher tier without the corresponding statutory finding, which exceeds what the directive requires.

3. Avoidance of Double Counting. Imposition of a 6-level adjustment absent a formal fact finding effectively creates duplicative punishment for the same conduct and undermines the distinction Congress intentionally established between the 6-level and 4-level tiers.

4. Prosecutorial Accountability and Due Process. Option 1 ensures that the higher-tier enhancement is tethered to a formal charging decision, providing defendants with notice and ensuring that the Government bears the burden of justifying the most severe enhancement before sentencing exposure expands. These are core requirements of proportionality, transparency, and fairness within the federal sentencing process.

SIAG also supports retention of the bracketed definitional provision clarifying that “use” does not include mere possession. This narrowing is consistent with the principle that sentencing enhancements should be tied to actual conduct rather than to the speculative or hypothetical danger associated with the inert presence of equipment.

B. Issue 2 — Level of Adjustment: Decline to Increase Above [6] and [4] Levels

The Commission seeks comment on whether the bracketed levels are appropriate or whether the Commission should set the adjustment higher than required by the directive.

SIAG urges the Commission to set the adjustment at the statutory minimum—[6] levels in §3B1.6(a)(1) and [4] levels in §3B1.6(a)(2). The directive provides a floor, not a target. The Commission’s own research has found that recidivism outcomes are more strongly associated with factors such as criminal history and age than with incremental increases in sentence length,³ and that there is no evidence that incarceration for sentences of five years or less produces a measurable deterrent or preventive effect.⁴ Setting the adjustment above the statutory floor would add sentencing severity without an empirical basis that doing so would meaningfully reduce the conduct the Act is designed to address.

³See U.S. Sent’g Comm’n, *Recidivism Among Federal Offenders: A Comprehensive Overview* (Mar. 2016), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism_overview.pdf (documenting that recidivism outcomes are more strongly correlated with criminal history and age than with incremental increases in sentence length).

⁴See U.S. Sent’g Comm’n, *Length of Incarceration and Recidivism* (June 2022), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2022/20220621_Recidivism-SentLength.pdf (finding no evidence that incarceration for sentences of five years or less produces a measurable deterrent or preventive effect).

C. Issue 3 — Interaction with Other Guidelines: Oppose Enhancement Stacking

The Commission asks how the proposed §3B1.6 adjustment should interact with other guidelines that may also account for conduct involving an unmanned aircraft, including the specific offense characteristic at §2D1.1(b)(3)(A) (use of a non-commercial aircraft to import or export a controlled substance), the “sophisticated means” enhancements at §§2B1.1(b)(10)(C) and 2T3.1(b)(1), and the “special skill” adjustment at §3B1.3.

SIAG urges the Commission to include an express limiting instruction providing that the new §3B1.6 adjustment shall not apply if, and to the extent that, the conduct giving rise to the adjustment has already been accounted for by another specific offense characteristic or Chapter Three adjustment based on the same use of an unmanned aircraft.

1. Enhancement Stacking Has Been a Primary Driver of Excessive Federal Sentencing.

Layering categorical enhancements that arise from the same operative facts—the use of the unmanned aircraft—produces guideline ranges that materially exceed culpability and that the public cannot readily understand. Without an express anti-stacking instruction, the same conduct could plausibly trigger §3B1.6, §2D1.1(b)(3)(A), §2B1.1(b)(10)(C) or §2T3.1(b)(1) (as “sophisticated means”), and §3B1.3 (as a “special skill”), producing compounded increases that the directive does not require.

2. Congress Set a Floor; It Did Not Mandate Sentence Stacking. The directive requires the Commission to “substantially increase” the sentencing range for these offenses. A single, clearly applied 4 or 6-level adjustment under §3B1.6 satisfies that directive. Compelling courts to apply multiple overlapping provisions converts a substantial increase into an unnecessarily punitive one without any corresponding showing that the additional severity will deter the conduct.

3. Recommended Mechanism. SIAG respectfully suggests that the Commission add an Application Note to §3B1.6 specifying that the adjustment shall apply in addition to the otherwise applicable offense level, but that no other specific offense characteristic or Chapter Three adjustment shall be applied based on the same conduct relating to the use of an unmanned aircraft. The Commission could alternatively provide reciprocal

Application Notes in the affected guidelines (e.g., §§2D1.1(b)(3), 2B1.1(b)(10), 2T3.1(b)(1), 3B1.3) cross-referencing §3B1.6.

D. Issue 4 — 18 U.S.C. § 1791 Contraband: No Additional Guideline-Level Action; Note Underlying Drivers

The Commission asks whether it should take any additional action, such as amending §2P1.2 (Providing or Possessing Contraband in Prison) or providing a special instruction, to implement the enhanced statutory penalty under 18 U.S.C. § 1791 for use of an unmanned aircraft to deliver contraband to incarcerated individuals.

SIAG urges the Commission to take no additional action beyond the new §3B1.6 adjustment.

- 1. The Existing Structure Already Suffices.** Section 2P1.2 already provides tiered base offense levels keyed to the type of contraband involved. The proposed §3B1.6 adjustment will, in qualifying cases, add a further 4 or 6 levels on top of that base. Adding a third layer, whether through amendment to §2P1.2 itself or a special instruction, would compound the very kind of duplicative enhancement that SIAG addresses in Section IV, subsection C above.
- 2. The Empirical Case for Deterrence Through Severity Is Weak.** The Commission's own research does not support the proposition that incremental increases in sentence length produce measurable additional deterrence, particularly for offenses where the underlying conduct is driven by demand inside the facility rather than by deliberative cost-benefit calculation by the courier.⁵
- 3. Attacking Supply Using Additional Penalties Has No Impact on Demand for Contraband.** Drawing on the lived experience of SIAG members, their families, and the professionals among the Group, the demand for contraband inside federal facilities is fueled by needs that the federal prison system does not currently meet at scale: substance abuse treatment, mental health care, meaningful programming and education, family contact, and humane conditions of confinement. Increasing the sentencing exposure of couriers, and pairing those increases with enhanced counter-drone technology, may succeed in restricting supply along certain pathways. But absent corresponding

⁵See U.S. Sent'g Comm'n, *Length of Incarceration and Recidivism*, *supra* note 4.

investment in the underlying drivers of demand, supply-restriction measures predictably produce three outcomes well-documented in other supply-side enforcement contexts:

- (a) escalation of contraband prices inside the facility, increasing the profitability of the very smuggling activity the Act seeks to deter;
- (b) consolidation of supply among more sophisticated and more dangerous criminal actors, who can absorb the higher risk and price out smaller participants; and
- (c) intensified coercion and exploitation within facilities as scarce contraband becomes a more valuable currency.

These dynamics do not argue against the statutory directive. Congress has clearly spoken. They do, however, argue against compounding the directive with additional, non-required guideline-level enhancements that are unlikely to deter the targeted conduct and that would predictably increase collateral harm within federal facilities.

4. SIAG's Recommendation. The Commission should decline to amend §2P1.2 or to add a special instruction. The new §3B1.6 adjustment, applied in conformity with the anti-stacking instruction urged in Section IV, subsection C, is sufficient to implement the statutory increase. To the extent the Commission wishes to ensure ongoing visibility into the operational impact of the Act, SIAG would support the inclusion of background commentary committing the Commission to study, in subsequent amendment cycles, whether the enhanced statutory penalties under § 1791, combined with operational countermeasures by the Bureau of Prisons and other federal entities, produce measurable reductions in prison contraband interdiction rates over time.

E. Issue 5 — Appendix A References for 49 U.S.C. § 46307: Support

The Commission proposes to reference the new felony offense under 49 U.S.C. § 46307 to both §2A5.2 (for felony violations) and §2X5.2 (for misdemeanor violations).

SIAG supports the proposed Appendix A references. The dual reference appropriately preserves the existing treatment of misdemeanor violations under §2X5.2 while routing the new felony offense to §2A5.2, which already addresses unsafe operation of unmanned aircraft and related

interference offenses. This approach is consistent with SIAG's simplification principle: it places the new offense within the existing analytical structure rather than creating a parallel framework.

F. Additional Recommendation — Ongoing Empirical Review

The Commission has, in past amendment cycles, committed to monitoring the practical impact of significant new guideline provisions. Consistent with that practice, SIAG urges the Commission to:

- collect data, beginning with the first full sentencing year after promulgation, on the frequency of §3B1.6 application, the types of underlying offenses, and the proportion of cases in which the 6-level versus the 4-level adjustment applies;
- study the relationship, if any, between the new adjustment and outcomes such as recidivism, deterrence (where measurable), and unwarranted disparity among similarly situated defendants; and
- revisit the adjustment in a subsequent amendment cycle if the data indicate that the chosen levels produce sentencing ranges materially in excess of those required to address the conduct, including consideration of retroactive application of any corrective amendment.

This data-driven approach is consistent with the Commission's longstanding evidence-based mission and would position the Commission to recalibrate §3B1.6 should the empirical record support doing so.

V. CONCLUSION

SIAG appreciates the opportunity to submit commentary on the proposed implementation of the SAFER SKIES Act and recognizes the Commission's obligation to implement Congress's directive and to support public safety in connection with the misuse of unmanned aircraft.

In implementing the Act, SIAG respectfully urges the Commission to (i) set the new §3B1.6 adjustment at the statutory minimums of 6 and 4 levels; (ii) adopt Option 1, preserving the line Congress drew between charged statutory enhancement cases and all other cases; (iii) include an express anti-stacking instruction to prevent duplicative application of overlapping enhancements based on the same use of an unmanned aircraft; (iv) decline to add any further enhancement to

§2P1.2; (v) approve the proposed Appendix A references for 49 U.S.C. § 46307; and (vi) commit to ongoing empirical review of the new §3B1.6 adjustment.

The Commission's work has long sought to reduce unwarranted disparities while promoting transparency and public safety. SIAG respectfully submits that the recommendations above will best implement Congress's directive while preserving the proportionality and clarity on which the legitimacy of guideline-driven sentencing depends.

In closing, SIAG remains committed to continued engagement with the Commission and looks forward to supporting thoughtful, data-driven refinement of the Guidelines.

Respectfully submitted,

SENTENCE IMPACT ADVISORY GROUP (SIAG)

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VICTIMS' RIGHTS ADVISORY GROUP

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June 16, 2026

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RE: Request for Comment on Proposed Amendments to the Sentencing Guidelines

Dear Chair Reeves, Vice-Chairs, Members of the Commission:

The Victims' Rights Advisory Group (VRAG) thanks each of you for the opportunity to publicly comment on your proposed amendments to the Federal Sentencing Guidelines ("Guidelines"). We are appointed to assist you in considering how victims and survivors, who are key stakeholders in the federal criminal court process, may be affected by important Guidelines decisions that you make. Your decisions, in turn, guide the courts. We provide the following to assist you in fulfilling your responsibilities under 28 U.S.C. § 994(o).

This single proposed Guidelines amendment on Unmanned Aircraft, specially filed late in the 2025-2026 amendment cycle at the directive of Congress, affects people who are or will be crime victims of the identified offenses. When victims are involved in federal criminal court proceedings, their rights pursuant to the under the Crime Victim Rights Act (CVRA), 18 U.S.C. § 3771, are always implicated.

The VRAG appreciates that each of you listen to and understand the harm that victims and survivors suffer, the acceptance of responsibility from offenders they want, and how victims and survivors may be made whole through the sentencing process. By listening, your

important decisions will compel fairer and more just federal sentencing processes and outcomes.

The VRAG respectfully submits the following for your consideration.

Pursuant to the Safer Skies Act, Congress created additional offenses and penalties for: the use of unmanned aircraft in navigable airspace, 49 U.S.C. § 46307; using unmanned aircraft to provide contraband to an inmate of a prison, 6 U.S.C. § 124n-1(d); and providing a statutory sentence enhancement, 6 U.S.C. § 124n-1(c). Congress further directs the United States Sentencing Commission to make certain amendments to the United States Sentencing Guidelines to address these statutory changes. 6 U.S.C. § 124n-1(e).

On April 16, 2026, the Commission proposed Guidelines amendments to address the Congressional directive. The amendment proposes a new Guideline, §3B1.6 (Use of Unmanned Aircraft).

The VRAG supports the Commission's proposed amendment, creating a new guideline at §3B1.6, with the adoption of its proposed Option 2.

The VRAG is always especially concerned with Guideline amendments that address federal offenses directed at individual victims and protecting the public. The federal Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771, provides victims enforceable rights including rights to fairness and dignity. This Guideline amendment supports these rights by recognizing the serious risks imposed by the criminal use of unmanned aircraft and deterrence through enhanced penalties. The unlawful use of unmanned aircraft, commonly known as "drones," in navigable airspace or to provide contraband in prison are criminal offenses directly affecting people as victims. The unlawful use of drones in navigable airspace may directly interfere with or damage aircraft, leading to a substantial risk of catastrophic personal injury or death of pilots, crew members, passengers, and people on the ground. With the proliferation of drone use and the small size of drones, locating and avoiding drones in navigable airspace makes pilots' flight work more challenging and hazardous. Increased federal penalties for subsequent offenses provides an appropriate deterrent and penalty for those who knowingly use drones in navigable airspace in violation of the law, thereby helping to protect people from the serious harm that the drones pose.

Using drones to provide contraband in prisons is globally widely reported as an increasing risk. Contraband delivered, or attempted to be delivered, by drones is reported to include drugs, cell phones, cell phone chargers, SIM cards, weapons and other material. Each of these types of contraband delivered to inmates in prison poses a risk of physical harm to people.

The proposed amendment is consistent with the CVRA's recognition that crime victims have "[t]he right to be "reasonably protected from the accused." 18 U.S.C. § 3771(a)(1). Contraband cell phones in prison are reported to be used for planning witness murders or threats outside of the prison, coordinating prison escapes, orchestrating assaults on correctional officers, planning additional drone deliveries and assisting navigating drones to specific drop-off locations within the prison, even to a specific prison cell window. Cell phones may be used in furtherance of other crimes affecting victims, such as drug trafficking, fraud and financial crimes. [Countering the Emerging Drone Threat to Correctional Security, Russo, et al., RAND Corp., March 13, 2024.]

Contraband drugs, such as methamphetamine, fentanyl, heroin and cocaine, delivered by drones pose the obvious risk of overdose deaths and physical injury to inmates but also may increase violence directed at correctional staff by inmates under the influence, and fuel competing, and sometimes violent, black market drug rivalries within the prison. [Id.]

The VRAG supports the new §3B1.6 focus on Unmanned Aircraft. Congress' directive to the Commission in 6 U.S.C. § 124n-1(e) is "substantially increase the sentencing range for all offenses involving the use of an unmanned aircraft" and to provide "an increase of at least 6 levels" where the enhanced penalties of 6 U.S.C. § 124n-1(c) apply, and an increase of "at least 4 levels" in all other cases. Proposed Option 2 advances the purposes of federal sentencing including the need for penalties to reflect the seriousness of the offense, to promote respect for the law, deterrence, and to protect the public. 18 U.S.C. § 3553(a)(2).

Proposed Option 2 meets Congress' directive. Option 2's new §3B1.6(a)(1) provides a 6 level increase, encompassing the 6 U.S.C. § 124n-1(c) enhancement, while intelligently broadening the scope to include "a felony offense that is not based solely on the operation of an unmanned aircraft, and the defendant knowingly operated an unmanned aircraft during, in

relation to, or in furtherance of that offense.” The VRAG finds this language plain, appropriately within the Congressional directive, and anticipatory of the need for greater criminal deterrence as drone usage expands.¹

Option 2’s new §3B1.6(a)(2) provides a 4 level increase for all other offenses involving the use of an unmanned aircraft, also meeting the 6 U.S.C. § 124n-1(e) directive for increases of at least 4 levels.

The proposed amendment’s identified references to 49 U.S.C. § 46307 also are appropriate.

For the foregoing reasons, the VRAG asks the Commission to adopt the proposed amendment with its Option 2 language.

Respectfully yours,

Christopher Quasebarth

The Victims’ Rights Advisory Group
Christopher Quasebarth, Chair

pc: Victims’ Rights Advisory Group Members

¹ The VRAG respectfully asks the Commission to continue research on whether levels soon may need to be increased from the 6 and 4 levels proposed in Option 2. Congress’ 6 U.S.C. § 124n-1(e) directive to the Commission to “substantially increase” the sentencing range and to increase by “at least” 6 and 4 levels, underscores Congress’ concern for the rapid advances in unmanned aircraft technology *and* the serious risk of dangerous harm from the criminal use of unmanned aircraft. Small drones are difficult for pilots to see. To avoid them, pilots may have to abruptly change direction, altitude, or flight path; pilots may have to make emergency evasive maneuvers to avoid collision; or, worse yet, collisions and deadly crashes may occur.

The VRAG recognizes that the Safer Skies Act creates new criminal offenses and new criminal penalties, and that the Commission is responding to Congress by creating a new Guideline §3B1.6 (Use of Unmanned Aircraft). As unmanned aircraft usage increases, the VRAG asks the Commission to closely monitor the facts underlying convictions and sentences imposed under these new provisions to determine whether amendments imposing higher levels soon may be needed.

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