



Proposed Amendment to the Sentencing Guidelines (Preliminary)

April 16, 2026

This document contains the proposed amendment to the sentencing guidelines, policy statements, and commentary, in the “reader-friendly” form in which it was made available at the public meeting on April 16, 2026. As with all proposed amendments on which a vote to publish for comment has been made but not yet officially submitted to the Federal Register for formal publication, authority to make technical and conforming changes may be exercised and motions to reconsider may be made. Once submitted to the Federal Register, official text of the proposed amendment as submitted will be posted on the Commission’s website at www.ussc.gov and will be available in a forthcoming edition of the Federal Register. In addition, an updated “reader-friendly” version of the proposed amendment as submitted will be posted on the Commission’s website at www.ussc.gov.

The proposed amendment and issues for comment will be subject to a public comment period running through **June 18, 2026**. Public comment received after the close of the comment period may not be considered. Further information on the submission of public comment will be provided in the forthcoming edition of the Federal Register referred to above. Such information will also be available at www.ussc.gov.

PROPOSED AMENDMENT

1. UNMANNED AIRCRAFT

SUPPLEMENTARY INFORMATION

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

The proposed amendment included in this document 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.

PROPOSED AMENDMENT: 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.

Proposed Amendment:

CHAPTER THREE

ADJUSTMENTS

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PART B — ROLE IN THE OFFENSE

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§3B1.6. Use of Unmanned Aircraft

[Option 1 (6-level increase if statutory enhancement applies):

(a) (Apply the greater):

- (1) If a statutory sentencing enhancement under 6 U.S.C. § 124n-1(c) applies, increase by **[6]** levels.
- (2) If the offense involved the use of an unmanned aircraft, increase by **[4]** levels.

(b) For purposes of this guideline:

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

[(2) **“Use”** does not include mere possession.]]

[Option 2 (6-level increase regardless of whether statutory enhancement applies):

(a) (Apply the greater):

(1) If the defendant (1) is convicted of a felony offense that is not based solely on the operation of an unmanned aircraft; and (2) knowingly operated an unmanned aircraft during, in relation to, or in furtherance of that offense, increase by **[6]** levels.

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

(b) For purposes of this guideline:

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

[(2) **“Use”** does not include mere possession.]]

Commentary

Background: This guideline implements the directive in the SAFER SKIES Act (section 8605(e) of the National Defense Authorization Act for Fiscal Year 2026, Pub. L. 119–60).

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APPENDIX A

STATUTORY INDEX

49 U.S.C. § 32709(b) 2N3.1

49 U.S.C. § 46307 2A5.2, 2X5.2

49 U.S.C. § 46308 2A5.2

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§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

- (a) Base Offense Level (Apply the greatest):
- (1) **30**, if the offense involved intentionally endangering the safety of: (A) an airport or an aircraft; or (B) a mass transportation facility or a mass transportation vehicle;
 - (2) **18**, if the offense involved recklessly endangering the safety of: (A) an airport or an aircraft; or (B) a mass transportation facility or a mass transportation vehicle;
 - (3) if an assault occurred, the offense level from the most analogous assault guideline, §§2A2.1–2A2.4; or
 - (4) **9**.
- (b) Specific Offense Characteristic
- (1) If (A) subsection (a)(1) or (a)(2) applies; and (B)(i) a firearm was discharged, increase by **5** levels; (ii) a dangerous weapon was otherwise used, increase by **4** levels; or (iii) a dangerous weapon was brandished or its use was threatened, increase by **3** levels. If the resulting offense level is less than level **24**, increase to level **24**.
- (c) Cross References
- (1) If death resulted, apply the most analogous guideline from Chapter Two, Part A, Subpart 1 (Homicide), if the resulting offense level is greater than that determined above.
 - (2) If the offense involved possession of, or a threat to use (A) a nuclear weapon, nuclear material, or nuclear byproduct material; (B) a chemical weapon; (C) a biological agent, toxin, or delivery system; or (D) a weapon of mass destruction, apply §2M6.1 (Nuclear, Biological, and Chemical Weapons, and Other Weapons of Mass Destruction), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 39B, 1992(a)(1), (a)(4), (a)(5), (a)(6); 49 U.S.C. §§ 46307, 46308, 46503, 46504 (formerly 49 U.S.C. § 1472(c), (j)). For additional statutory provision(s), see Appendix A (Statutory Index).

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§2X5.2. Class A Misdemeanors (Not Covered by Another Specific Offense Guideline)

(a) Base Offense Level: 6

Commentary

Statutory Provisions: 10 U.S.C. § 2733a(g)(2); 18 U.S.C. §§ 39B, 1365(f), 1801, 2259(d)(4); 34 U.S.C. § 12593; 49 U.S.C. §§ 31310, 46307. For additional statutory provision(s), see Appendix A (Statutory Index).

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Issues for Comment

1. The SAFER SKIES Act (the “Act”) directs the Commission to “substantially increase the sentencing range for all offenses involving the use of an unmanned aircraft.” 6 U.S.C. § 124n-1(e)(1)(A). The directive specifically calls for “an increase of at least 6 levels” for cases in which the sentencing enhancements under 6 U.S.C. § 124n-1(c) apply and an increase of “at least 4 levels” in all other cases. *See id.* § 124n-1(e)(2). The proposed amendment would implement this directive by creating an adjustment in new §3B1.6 (Use of an Unmanned Aircraft). The Commission seeks comment on whether this is the appropriate approach to implement the directive or whether the Commission should adopt an alternative approach. If so, what should that approach be? Are there any different or additional approaches that would address cases subject to the minimum 4-level increase while ensuring compliance with the directive?
2. In the Act, Congress directs the Commission to provide for “an increase of *at least* 6 levels” for cases in which the sentencing enhancements under 6 U.S.C. § 124n-1(c) apply and an increase of “*at least* 4 levels” in all other cases involving the use of an unmanned aircraft. *See* 6 U.S.C. § 124n-1(e) (emphasis added). The proposed amendment responds to this directive by providing a tiered adjustment, bracketed at 6 and 4 levels, for offenses involving unmanned aircraft. The Commission seeks comment on whether the levels of the adjustment are appropriate or whether the Commission should increase the levels above those required by the directive. If so, at what levels should the Commission set the adjustment?
3. The Commission seeks comment on how the proposed new Chapter Three adjustment should interact with other guidelines that may also account for conduct involving the use of unmanned aircraft. For example, the specific offense characteristic at §2D1.1(b)(3)(A) (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) applies if the defendant unlawfully imported or exported a controlled substance under circumstances in which “an aircraft other than a

regularly scheduled commercial air carrier was used to import or export the controlled substance.” In addition, in some circumstances, the use of an unmanned aircraft could be considered indicative of sophisticated means, *see, e.g.*, §§2B1.1(b)(10)(C) (Theft, Property Destruction, and Fraud), 2T3.1(b)(1) (Evading Import Duties or Restrictions (Smuggling); Receiving or Trafficking in Smuggled Property), or the use of a special skill, *see* §3B1.3 (Abuse of Position of Trust or Use of Special Skill). Are there other guidelines provisions that may apply based on the same conduct as the proposed new Chapter Three adjustment? How should the new adjustment interact with these provisions while ensuring compliance with the congressional directive to “substantially increase the sentencing range for all offenses involving the use of an unmanned aircraft”? Should the proposed amendment preclude or limit the application of any other specific offense characteristic or Chapter Three adjustment if the new §3B1.6 also applies?

4. The Act increases the statutory maximum penalty for an individual convicted under 18 U.S.C. § 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). Offenses under section 1791 are referenced to §2P1.2 (Providing or Possessing Contraband in Prison), which provides a range of base offense levels depending on the type of contraband at issue. Under the newly created §3B1.6, an individual subject to the enhanced statutory penalty would be subject to a [6]-level or [4]-level adjustment for the use of an unmanned aircraft. Should the Commission take any additional action to implement the enhanced statutory penalty under 18 U.S.C. § 1791? If so, what action should the Commission take? For example, should the Commission amend §2P1.2 to address cases in which the enhanced statutory penalty under 18 U.S.C. § 1791 applies, or should it provide a special instruction on the application of the new §3B1.6 in such cases?
5. To address the new felony offense under the Act for repeated violations of 49 U.S.C. § 46307, 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 (Class A Misdemeanors (Not Covered by Another Specific Offense Guideline)). The Commission seeks comment on whether the proposed references are appropriate and whether any additional changes to the guidelines are required to account for the new felony offense created by the Act.