

WHAT'S NEW IN THE 2018 GUIDELINES MANUAL?

This edition of the *Guidelines Manual* incorporates the amendments to guidelines, policy statements, and commentary promulgated by the United States Sentencing Commission in 2018, including the following—

Amendment 805 (Tribal Issues)

- The Commission amended the guidelines: (1) to address the treatment of tribal court convictions in §4A1.3 by providing a non-exhaustive list of factors that courts may consider in determining whether an upward departure based on a tribal court conviction is appropriate; and (2) to add a definition for “court protection order” in §1B1.1 to ensure consistent treatment of such orders for purposes of sentencing enhancements.

Amendment 806 (Bipartisan Budget Act)

- The Commission increased offense levels for certain Social Security fraud offenses to incorporate statutory changes resulting from the Bipartisan Budget Act of 2015. The amendment revised §2B1.1 to provide an enhancement and a minimum offense level for defendants who are convicted under 42 U.S.C. § 408(a), § 1011(a), or §1383a(a) and who are subject to the 10-year statutory maximum.

Amendment 807 (Synthetic Drugs)

- The Commission amended §2D1.1 to create a class-based approach to synthetic cathinones and synthetic cannabinoids. The amendment established drug ratios and minimum offense levels for both new classes of synthetic drugs. Recognizing that the potencies of drugs in these classes vary, the Commission also adopted departure language for drugs that are more or less potent than a typical drug in the class.
- The Commission also revised §2D1.1: (1) to clarify the definitions of fentanyl and fentanyl analogue; and (2) to create a four-level enhancement for a defendant who knowingly misrepresents or knowingly markets as another substance a mixture containing fentanyl or a fentanyl analogue.

Amendment 808 (Marihuana Equivalency)

- The Commission made technical changes to §2D1.1 to remove “marihuana equivalency” as the conversion factor used to determine the offense level for controlled substances not specifically reference in the Drug Quantity Table or when combining differing controlled substances. The amendment replaced the term “marihuana equivalency” with the new term “converted drug weight” and changed the title of the “Drug Equivalency Tables” to “Drug Conversion Tables.”

Amendment 809 (Illegal Reentry Guidelines Enhancements)

- The Commission revised §2L1.2: (1) to establish that the application of the subsection (b)(2) enhancement depends on the timing of the underlying criminal conduct rather than the timing of the resulting conviction; and (2) to clarify that, for purposes of the guideline enhancements for prior convictions, the length of the sentence imposed includes any additional term of imprisonment imposed upon revocation of probation, parole, or supervised release, regardless of when the revocation occurred.

Amendment 810 (Acceptance of Responsibility)

- The Commission revised the Commentary to §3E1.1 to clarify that the fact that a defendant’s challenge to relevant conduct is unsuccessful does not necessarily preclude a reduction for acceptance of responsibility.

Amendment 811 (Alternatives to Incarceration)

- The Commission added a new application note to §5C1.1 providing that judges should consider imposing a sentence other than imprisonment for a nonviolent first offender whose applicable guideline range is in Zone A or B of the Sentencing Table. The application note includes a definition of “nonviolent first offender.”
- The Commission also revised the Commentary to §5F1.2 to remove language that encouraged courts to use electronic monitoring when home detention is made a condition of supervision.