



## **2026 PROPOSED AMENDMENT ON HUMAN SMUGGLING**

My name is Tracey Kyckelhahn, and I am a Senior Research Associate at the United States Sentencing Commission. On January 30, 2026, the Commission voted to publish proposed amendments to the United States Sentencing Guidelines, including a proposed amendment on Human Smuggling Offenses. The Commission is seeking public comment on the proposed amendments. This presentation provides data analyses to inform the public's comment on the proposed human smuggling offenses amendment.

This proposed amendment contains several potential changes. The Commission is considering whether to promulgate any or all of these changes, as they are not mutually exclusive. First, the proposed amendment would amend §2L1.1(b)(2), which provides an increase based on the number of aliens involved in the offense, to create more tiers and to decrease the number of aliens in each tier. Next, the proposed amendment would insert a new specific offense characteristic to address the specific risks created if the offense involved certain behavior related to motor vehicles or vessels. The proposed amendment also would make changes to the existing injury provision at subsection (b)(7), offering two options that provide for an enhancement for cases in which multiple people die or sustain an injury. Finally, the proposed amendment would add a cross reference that could apply in cases where there was sexual conduct described in 18 U.S.C. §§ 2241–2244. An issue for comment seeks feedback on whether the Commission should promulgate a specific offense characteristic to further address certain risks associated with human smuggling offenses committed by members of transnational criminal organizations.

First, we will review data related to the part of the proposed amendment addressing the table at §2L1.1(b)(2), which provides for an increase based on the number of aliens involved in the offense.

Currently, the table at subsection (b)(2) contains three tiers and adds three levels if the offense involved 6–24 aliens, six levels if the offense involved 25–99 aliens, and nine levels if the offense involved 100 or more aliens. The proposed amendment would increase the number of tiers from three to six, reduce the number of aliens accounted for in each tier, and provide more gradual increases based on the number of aliens involved. Under the proposed amendment, the table



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would add three offense levels for offenses involving 6–12 aliens, four levels for offenses involving 13–18 aliens, five levels for offenses involving 19–24 aliens, six levels for offenses involving 25–49 aliens, seven levels for offenses involving 50–99 aliens, and nine levels for offenses involving 100 or more aliens.

In fiscal year 2024, the enhancement at subsection (b)(2) applied in 41 percent of the 4,178 cases sentenced under §2L1.1. Of the 1,702 cases in which the enhancement was applied, the 3-level enhancement applied most often in offenses involving six to 24 aliens. Those 1,391 cases accounted for 82 percent of all §2L1.1 cases in which the enhancement applied. In another 191 cases, six levels were applied for an offense involving 25-99 aliens, and nine levels applied in 120 cases for an offense involving 100 or more aliens.

As the number of aliens involved in the offense increased, the average guideline minimum and average sentence both increased. For those cases with no enhancement the average guideline minimum was 12 months and the average sentence was 11 months, while for those cases with the highest level of enhancement, the average guideline minimum was 83 months and the average sentence was 73 months.

This slide provides the data on the position of the sentence relative to the guideline range for all 2L1.1 cases by the level of any enhancement for the number of aliens. The within-range rates were similar across all enhancement levels, at about 50 percent for each level until the nine-level enhancement for 100 or more aliens, when it drops to 35 percent. The reason for this difference is the increase in the rate of substantial assistance and other government-sponsored below-range sentences in cases involving the highest enhancement.

The Commission collected a sample of §2L1.1 cases with a base offense level of 12 sentenced in fiscal year 2024. The following data uses weighted analyses to provide information on these cases. Under the proposed amendment, ten percent of the individuals sentenced under §2L1.1 would be impacted. Of the approximately 400 cases in which an increased enhancement would apply under the amended subsection (b)(2), 70 percent would involve an increase of one level, and 30 percent would involve an increase of two levels.



The next two slides compare the demographics of those individuals who would be impacted by the proposed amendment versus those who would not be impacted. The racial breakdown of those impacted is similar to those not impacted. The Hispanic share among the impacted population is slightly higher than those not impacted, while White individuals are a smaller share of those impacted.

Men were a considerably larger share of those impacted. The citizenship of those impacted was evenly split between citizens and non-citizens.

Next, we will present data related to a proposed new specific offense characteristic related to specific risks posed by motor vehicles and vessels in §2L1.1 cases.

The proposed amendment would insert a new subsection (b)(6) to apply a two-level enhancement—or an offense-level floor of 18—if the offense involved concealing persons in the trunk or engine compartment of a motor vehicle or carrying substantially more passengers than the rated capacity of a motor vehicle or vessel. The criteria for this proposed new specific offense characteristic are taken from the examples in the commentary to the existing risk provision. The existing risk provision would be renumbered and would no longer apply on the basis of the types of risk identified in the proposed vehicle- and vessel-related specific offense characteristic. This addition aims to address Commission data showing that motor-vehicle accidents are the most common cause of injury and to reflect the particular risk that applies in these two situations that the Commission has long recognized.

Cases in which the current risk enhancement applied were more likely also to have had the existing injury enhancement at §2L1.1(b)(7) applied as well. Application of the injury enhancement occurred in ten percent of cases where the existing risk enhancement applied, compared to only one-half of one percent of the cases in which the existing risk enhancement did not apply.

Cases in which the existing risk enhancement applied also involved more aliens. The number-of-aliens enhancement at subsection (b)(2) occurred in just over half of cases in which the risk provision was applied compared to only 34 percent of cases where the risk enhancement was not applied.



Next, we will discuss the proposed revisions to the injury provision, currently located at subsection (b)(7) in 2L1.1 but which would appear as subsection (b)(8) after renumbering under the proposed amendment. The existing injury table contains four tiers and adds two offense levels if the most serious injury was bodily injury, four levels if the most serious injury was serious bodily injury, six levels if the most serious injury was permanent or life-threatening injury, and ten levels if the most serious injury resulted in death.

In fiscal year 2024, the injury table applied in four percent of cases sentenced under §2L1.1, for a total of 160 cases. Of these 160 cases, 55 involved a 2-level enhancement for bodily injury, 46 involved a 4-level enhancement for serious bodily injury, nine involved a 6-level enhancement for permanent or life-threatening bodily injury, and 50 involved a 10-level enhancement for death.

This slide provides the average guideline minimum and average sentence imposed for cases in which the injury enhancement applied in fiscal year 2024. The lowest averages were for those cases that did not involve the enhancement. In general, as the severity of injury increased, the average guideline minimum and average sentence also increased. While the highest averages were for those cases that received the enhancement for permanent or life-threatening injury, there were only nine of those cases, so this result should be interpreted with caution.

This slide provides data on the position of the sentence relative to the guideline range by level of enhancement for those receiving the injury enhancement. Unlike with the number of aliens enhancement, there was no clear pattern of within range rates by level of injury enhancement. However, in cases involving the highest enhancement—those involving death—the rates of substantial assistance sentences, other government-sponsored below range sentences, and other below range sentences were generally higher than those in other cases.

The proposed amendment would first modify the existing injury table at the current two-level increase for bodily injury by providing that this increase also could apply based on “conduct constituting criminal sexual contact under 18 U.S.C. § 2244.” This amendment would respond to prior comment from the Department of Justice that §2L1.1 does not adequately address cases in which a victim was sexually abused or otherwise sexually assaulted. The proposed amendment also



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clarifies that the definition of “serious bodily injury” under the *Guidelines Manual* includes “criminal sexual abuse under 18 U.S.C. § 2241 or § 2242 or any similar offense under state law.”

Aside from these modifications, the existing injury table would continue to function as it does today—applying one time for the most serious level of injury or death in a given case.

In considering whether the existing injury provision should be amended to account for multiple victims, the Commission collected data, when available, on the number of victims and type of injury involved in cases in which the existing injury provision applied. Some cases involved multiple types of injury and are therefore represented in this table more than once. Bodily injury occurred in 90 cases and involved 267 known victims. Serious bodily injury occurred in 72 cases with 106 known victims, while permanent or life-threatening injury involved 11 cases with 11 known victims. Death occurred in 49 cases with 197 known victims.

In light of this data, the proposed amendment sets forth two options that would provide an enhancement for cases in which multiple people die or sustain an injury. Both options contain bracketed alternative language as to whether the enhancement should apply if the “offense involved” any additional death or injury, or whether it should apply if “the defendant intentionally or knowingly caused” any additional death or injury. These provisions differ, however, in what types of additional injuries would trigger the increases and at what levels.

Option 1 would make an individual subject to a 1-level increase if one or two additional people died or sustained any degree of injury, or to a 2-level increase if three or more additional people died or sustained any degree of injury.

Of the 160 cases in which the existing injury provision applied, information necessary for an impact analysis of Option 1 was available in 152 cases. In 98 cases, or 64 percent of the 152 cases, the new enhancement would apply. In the 98 cases with an increase under option 1, 54 cases (or 55 percent) would increase by one level and 44 cases (or 45 percent) would increase by two levels.

Option 2 would require more serious injuries for application of the enhancement and result in higher increases. Under this option, an individual would



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be subject to a 3-level increase if one or two additional people died or sustained permanent or life-threatening bodily injury, or a 6-level increase if three or more additional people died or sustained permanent or life-threatening bodily injury.

Under a similar analysis as performed for Option 1, Option 2 would have an impact on 23 of the same 152 cases, or 15 percent. Of those 23 cases, 13 (or 57 percent) would increase by three levels, and 10 (or 43 percent) would increase by six levels.

The next two slides provide demographic information on those impacted by the two options. There is no clear impact on one racial group by either options. Hispanics comprise 91 percent of those not impacted, 87 percent of those impacted by Option 1, and 96 percent of those impacted by Option 2.

Likewise, there is no clear impact based on gender, though females are slightly more likely to be impacted by the two options than males. U.S. citizens are more likely to be impacted by Option 1 but less likely to be impacted by Option 2.

Next, we will present data related to a proposed new cross reference.

The proposed amendment brackets two possibilities for adding a new cross reference at §2L1.1(c)(2) that would instruct courts to apply the appropriate guideline from Chapter Two, Part A, Subpart 3, if there was conduct described in 18 U.S.C. §§ 2241–2244.

The Commission collected data on the prevalence of this conduct. Among all cases sentenced under §2L1.1 in fiscal year 2024, 35 cases involved some form of sexual conduct against one or multiple victims. Of these cases, 16 cases involved aggravated criminal sexual abuse (as prohibited by 18 U.S.C. § 2241 (Aggravated sexual abuse)) and 20 cases involved criminal sexual abuse (as prohibited by 18 U.S.C. § 2242 (Sexual abuse)).

Finally, we will present data related to an issue for comment related to transnational criminal organizations.

The proposed amendment contains an issue for comment—Issue for Comment #4—seeking feedback on whether the Commission should add a specific



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offense characteristic to further address the risks associated with human smuggling offenses committed by members of transnational criminal organizations.

The Commission undertook a special coding project to analyze cases relevant to this issue. In fiscal year 2024, an estimated 201 (or 5%) of §2L1.1 cases involved a “cartel or transnational criminal organization,” hereafter referred to as “TCO.”

As reflected on this slide, cases involving a TCO were more likely to receive an increase for the number of aliens involved in the offense under the table at §2L1.1(b)(2) than cases that did not involve a TCO. Cases involving a TCO also were significantly more likely to receive 6- and 9-level increases—those involving larger numbers of aliens—than cases not involving a TCO.

Similarly, cases involving a TCO were more likely to receive enhancements under the injury table than cases not involving a TCO. As with the number of aliens involved, cases involving a TCO also were significantly more likely to receive increases for more severe types of injury, including death, than cases not involving a TCO.

In light of this data, the Commission requests feedback on whether it should adopt a specific offense characteristic related to TCOs and, if so, what the appropriate offense-level increase would be. Additionally, the Commission welcomes comment on the criteria that it might select for any such specific offense characteristic, including: an appropriate definition, whether role should be accounted for, whether a *mens rea* requirement is appropriate, and whether unwarranted sentencing disparities could result.

This concludes the data presentation.

Comments may be submitted to the Commission at the addresses shown. The public comment period concludes on March 18, 2026.