

Prison and Sentencing Impact Assessments for 2025 Guideline Amendments to the Federal Sentencing Guidelines

For a complete description of the 2025 amendments, please visit https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/202505_RF.pdf.

1) Circuit Conflicts

This two-part amendment addresses circuit conflicts involving §2B3.1 (Robbery) and §4A1.2 (Definitions and Instructions for Computing Criminal History).

Part A of the amendment responds to a circuit conflict over whether §2B3.1(b)(4)(B)—which provides for a 2-level increase “if any person was physically restrained to facilitate commission of the offense or to facilitate escape”—applies where a robbery victim is restricted from moving at gunpoint but is not otherwise immobilized through measures like those in the definition of “physically restrained” in Application Note 1 to §1B1.1 (Application Instructions) (i.e., “by being tied, bound, or locked up”). The amendment clarifies that the guidelines enhancement applies only “if any person’s freedom of movement was restricted through physical contact or confinement, such as by being tied, bound, or locked up, to facilitate commission of the offense or to facilitate escape.” The amendment also revises §2B3.1(b)(2) to ensure that the use of a firearm during a robbery is accounted for under this enhancement with more uniformity by amending §2B3.1(b)(2)(B) to state that the 6-level increase applies “if a firearm was used to convey a specific (not general) threat of harm (e.g., pointing the firearm at a specific victim or victims; directing the movement of a specific victim or victims with the firearm) or to make physical contact with a victim (e.g., pistol whip; firearm placed against victim’s body).” Additionally, to promote consistency in application of offense guidelines with similar specific offense characteristics, the amendment also makes parallel changes to two other Chapter Two guidelines with “physically restrained” and “otherwise used” enhancements: §§2B3.2 (Extortion by Force or Threat of Injury or Serious Damage) and 2E2.1 (Making or Financing an Extortionate Extension of Credit; Collecting an Extension of Credit by Extortionate Means).

In fiscal year 2024, there were 1,341 individuals sentenced under §§2B3.1, 2B3.2, or 2E2.1 of the *Guidelines Manual*. Of those, 642 were sentenced in the district courts in a circuit where the court of appeals had previously decided a case inconsistent with the amendment, or where the court of appeals had not interpreted any of the provisions to which the amendment applies. In 118 of those cases, the district court applied a physical restraint SOC under §§2B3.1, 2B3.2, or 2E2.1. The Commission does not regularly collect information on the facts underlying a court’s decision to apply the physical restraint enhancement in those guidelines. Therefore, the Commission cannot determine with precision the number of these cases in which a physical restraint SOC under §§2B3.1, 2B3.2, or 2E2.1 would continue to apply had the amendment been in effect when the individual was sentenced. In cases where the SOC no longer applied, the amendment would result in a two-level reduction in the guideline range from the level that applied at sentencing.

In 15 of those 118 cases, the court applied the 5-level “brandished” firearm enhancement from one of those guidelines. Under the amendment, the 6-level “otherwise used” firearms enhancement now could apply in those cases. Because the Commission does not regularly collect information on the facts underlying a court’s decision to apply the firearms enhancement in the applicable guidelines, the Commission cannot determine with precision in which of the 15 cases the six-level enhancement now would apply. In those cases, the resulting change in the final offense level from the application of the amendment would be a reduction of one level, rather than two levels.

Due to the small number of persons affected by this amendment each year, the decrease in the size of the Bureau of Prisons population would be minimal.

Part B of the amendment addresses a circuit conflict over whether a traffic stop is an “intervening arrest” for purposes of determining whether multiple prior sentences should be “counted separately or treated as a single sentence” when assigning criminal history points (“single-sentence rule”) under §4A1.2(a)(2). Part B of the amendment provides that a traffic stop should not be considered an “intervening arrest” for purposes of the single-sentence rule.

The Commission does not collect information about traffic stops as part of its regular collection of criminal history information about sentenced individuals. Therefore, the Commission cannot estimate the impact of Part B of the amendment on sentencing or on the size of the Bureau of Prisons population.

2) Drug Offenses

This two-part amendment addresses operation of §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy).

Subpart 1 of Part A of the drug offenses amendment would revise the provisions at §2D1.1(a)(5) to set a mitigating role cap at level 32 if the defendant has a base offense level above 34 and receives an adjustment under §3B1.2. If the defendant has a resulting base offense level greater than 30 and receives a 4-level adjustment under §3B1.2(a), a mitigating role cap of 30 would apply.

In fiscal year 2024, there were 18,029 individuals sentenced for drug trafficking. In 3,175 of those cases, the court applied the adjustment at §3B1.2 for having a mitigating role in the offense. In 2,062 of those cases the court determined the base offense level under 2D1.1(a)(5) by applying the mitigating role cap reduction. Of those individuals, 1,124 (54.5%) would have been impacted by the amendment to the mitigating role provision in Subpart 1 of Part A of the proposed amendment. Most of the individuals who would be affected by the proposed amendment were sentenced for trafficking methamphetamine (77.3%) or fentanyl or fentanyl analogues (14.9%).

If these 1,124 individuals had been sentenced under the amendment, most (71.9%) would have experienced a 2-level decrease to their base offense level, and 27.8 percent would have

experienced a 1-level decrease. The average sentence in the cases that would be impacted was 38 months. Under the amendment, the average sentence would have been 32 months. This change in sentencing for 1,124 persons annually would result in a decrease in the size of the Bureau of Prisons population by 422 persons after five years.

Subpart 2 of Part A of the drug offenses amendment would add a new special instruction at §2D1.1(e)(2) regarding the application of §3B1.2 to §2D1.1 cases. The amendment would provide that, in addition to the circumstances identified in §3B1.2, an adjustment under §3B1.2 is generally warranted if the defendant's primary function in the offense was performing a low-level trafficking function. It would also provide directions to the court on when the specific adjustments at §3B1.2(a) and (b) are generally warranted.

The Commission does not regularly collect information on a defendant's primary function in a drug trafficking offense. Therefore, the Commission cannot estimate the impact of this portion of the 2025 drug offenses amendment on sentencing or on the size of the Bureau of Prisons population.

3) Firearms

This amendment revises §2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition), the primary firearms guideline, to more fully account for machinegun conversion devices (MCDs). It establishes a new tiered specific offense characteristic at §2K2.1(b)(5) for cases involving MCDs. New subsection (b)(5)(A) provides a two-level enhancement when a defendant (i) possessed four or more MCDs or (ii) transferred or sold an MCD or attempted or conspired to commit such a transfer or sale. New subsection (b)(5)(B) provides a four-level enhancement when a defendant possessed 30 or more MCDs. The amendment includes a definition of "machinegun conversion device" consistent with the NFA's statutory definition at 26 U.S.C. § 5845(b). The Commission also concluded that the new specific offense characteristic should be subject to the offense level cap in §2K2.1. Therefore, the amendment revises the cap to provide that the cumulative offense level may not exceed level 29 after application of subsections (b)(1) through the new subsection (b)(5), unless subsection (b)(3)(A) applies.

In fiscal year 2023, the most recent year for which such information is available, 105 individuals sentenced under §2K2.1 possessed four or more MCDs or transferred an MCD and, therefore, would have been impacted by the amendment had it been in effect that year. The average sentence for these individuals was 40 months, with a median sentence of 33 months. The estimated new average sentence for these individuals would be 52 months, with a median sentence of 41 months. This is an increase in the average sentence of 12 months, or 30.0 percent. This change in sentencing for 105 persons annually would result in an increase in the Bureau of Prisons population by 43 persons after five years.

4) Supervised Release

This amendment updates the Guidelines Manual's approach to supervised release by revising Part D (Supervised Release) of Chapter Five (Determining the Sentence) and Chapter Seven

(Violations of Probation and Supervised Release). In particular, among the several changes made by the amendment, the amendment revises §5D1.1 to provide greater judicial discretion in determining whether any term of supervised release is warranted. The amendment also removes the requirement to impose supervised release whenever the sentence of imprisonment is more than one year and instead requires supervised release only when mandated by statute. The amendment also revises §5D1.2 to provide courts with greater discretion in determining the appropriate length of the term of supervised release. It removes the recommended minimum terms by class of offense from §5D1.2(a) and instead instructs the court to conduct an individualized assessment to determine the length of the term, which shall be not less than any statutorily required minimum term. The amendment also divides Chapter Seven into Part B (Violations of Probation) and Part C (Violations of Supervised Release) to reflect that probation serves all the goals of sentencing, including punishment, while supervised release primarily “fulfills rehabilitative ends, distinct from those served by incarceration.” *United States v. Johnson*, 529 U.S. 53, 59 (2000). The amendment also encourages courts to consider a graduated response to a defendant’s non-compliant behavior.

In fiscal year 2024, 50,835 individuals were sentenced to a term of imprisonment followed by a term of supervised release. The Commission is unable to estimate whether and to what extent the courts would have imposed different terms of supervised release and/or different conditions of supervision had the proposed amendment to Chapter Five been in effect when those individuals were sentenced. Because the proposed amendment would not affect the length of incarceration imposed, it would have no impact on sentence lengths.

During the year ending December 31, 2024, 45,870 federal supervised release cases were closed. Just over one-third (37.6% or 17,249) of those cases were closed with revocations. As one of the goals of the proposed amendment to Chapter Seven is to reduce the frequency of revocations, by encouraging courts to use alternatives to incarceration for noncompliance, the amendment may decrease the size of the Bureau of Prisons population by reducing the portion of that population serving revocation sentences. However, the Commission cannot estimate the extent of such a decrease.

5) Simplification of the Three-Step Process

This amendment removes one of the steps in the current three-step sentencing process, which requires courts to consider departures provided for within the *Guidelines Manual*. As amended, the *Guidelines Manual* will now provide for a two-step process whereby the sentencing court must first correctly calculate the applicable guideline range as the “starting point and initial benchmark” and then must determine an appropriate sentence after consideration of the factors set forth in 18 U.S.C. § 3553(a). *See Gall v. United States*, 552 U.S. 38, 49–51 (2007). To accomplish this goal, the amendment makes changes throughout the *Guidelines Manual*.

The Commission envisions this amendment to be outcome neutral. Therefore, the Commission estimates that this amendment will have no effect on the sentences imposed for federal offenses or the size of the Bureau of Prisons population