

UNITED STATES SENTENCING COMMISSION

One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, DC 20002-8002
(202) 502-4500 / Fax (202) 502-4699
www.ussc.gov



May 15, 2023

MEMORANDUM

TO: Chair Reeves
Commissioners
Ken Cohen, Staff Director

FROM: Office of Research and Data
Office of General Counsel

SUBJECT: Retroactivity Impact Analysis of Parts A and B of the 2023 Criminal History Amendment

On April 27, 2023, the United States Sentencing Commission submitted to Congress an amendment to the federal sentencing guidelines revising two criminal history provisions found in Chapter Four of the *Guidelines Manual*.¹ Specifically, Part A of the amendment makes targeted changes to reduce the impact of providing additional criminal history points for offenders under a criminal justice sentence (commonly known as “status points”), and Part B, Subpart 1 provides a two-level downward adjustment for certain offenders with zero criminal history points under the guidelines (“zero-point offenders”).² Because these two provisions reduce the sentencing range for some offenders, the Commission is statutorily required to determine whether either or both of these parts of the amendment should be applied retroactively to previously sentenced, imprisoned defendants.³ As required by its Rules of Practice and Procedure,⁴ the Commission voted at the April 5, 2023 public meeting to instruct staff to prepare a retroactivity impact analysis to aid the Commission in determining whether to do so. This memorandum provides that analysis.

¹ U.S. SENT’G COMM’N, *Guidelines Manual* Ch.4, Pt.A (Criminal History) (2021) (hereinafter USSG).

² See 88 FR 28254 (May 3, 2023).

³ 28 U.S.C. § 994(u); see also Section II, *infra*.

⁴ U.S. SENT’G COMM’N, *Rules of Practice and Procedure*, Rule 4.1A (2016).

Part I of this memorandum summarizes the operation of the 2023 criminal history amendment applicable to “status points” and “zero-point offenders.” Part II of the memorandum provides background on the statutory authority and guidelines policy statement governing retroactive application of amendments to the federal sentencing guidelines, noting the factors to be considered in the Commission’s decision regarding retroactivity. Part III of the memorandum provides an estimate of the impact of Parts A and B, Subpart 1 of the amendment if the Commission were to authorize the courts to apply these parts of the amendment retroactively. Part IV of this memorandum describes how the analysis was performed.

I. THE 2023 CRIMINAL HISTORY GUIDELINE AMENDMENT

The 2023 criminal history amendment makes two changes to the Chapter Four criminal history rules, both of which would reduce the guidelines range for some offenders. Each relevant part of the amendment is described below.

A. Status Points

Part A of the promulgated amendment limits the impact of “status points.” Under the current *Guidelines Manual*, two criminal history points, colloquially referred to as “status points,” are added under §4A1.1(d) if the defendant committed the instant offense “while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status.”⁵ Like other provisions in Chapter Four, status points are included in the calculation of a defendant’s criminal history as a reflection of several statutory purposes of sentencing.⁶ Accounting for a defendant’s criminal history in the guidelines addresses the need for the sentence “(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; [and] (C) to protect the public from further crimes of the defendant.”⁷ The original Commission envisioned status points as “consistent with the extant empirical research assessing correlates of recidivism and patterns of career criminal behavior” and therefore envisioned “status points” as being reflective of, among other sentencing goals, the increased likelihood of future recidivism.⁸

A series of recent Commission publications has focused on one of these purposes of sentencing—namely, specific deterrence and the need to protect the public from future crimes—through detailed analyses regarding the recidivism rates of federal offenders.⁹ These reports concluded that a defendant’s criminal history calculation under the guidelines is strongly associated

⁵ A “criminal justice sentence” refers to a “sentence countable under §4A1.2 having a custodial or supervisory component, although active supervision is not required.” USSG §4A1.1, comment. (n.4).

⁶ To calculate a criminal history score, courts are instructed to assign one, two, or three points to qualifying prior sentences under §§4A1.1(a)–(c). One point is also added under §4A1.1(e) for any crime of violence that did not receive criminal history points because it was treated as a single sentence with another crime of violence.

⁷ USSG Ch.4, Pt.A, intro. comment. (citing 18 U.S.C. § 3553(a)(2)).

⁸ *Id.*

⁹ *See, e.g.*, U.S. SENT’G COMM’N, RECIDIVISM OF FEDERAL OFFENDERS RELEASED IN 2010 (2021), available at <https://www.ussc.gov/research/research-reports/recidivism-federal-offenders-released-2010>.

with the likelihood of future recidivism by the defendant.¹⁰ In a related publication, the Commission also studied the extent to which status points contribute to the overall predictivity of the criminal history score.¹¹ This study of status points built upon a previous 2010 study in which the Commission analyzed both “status points” and “recency points,” finding that the combined effects of “recency points” and “status points” had limited impact on the predictive ability of an offender’s criminal history score.¹² As a result of the 2010 study, the Commission eliminated “recency points” from Chapter Four.¹³

The Commission’s recent status points study again reached the conclusion that status points add little to the overall predictive value associated with the criminal history score.¹⁴ Nevertheless, “status points” are relatively common in cases with at least one criminal history point, having been applied in 37.5 percent of cases with criminal history points over the last five fiscal years. Of the offenders who received “status points,” 61.5 percent had a higher Criminal History Category (CHC) as a result of the addition of the “status points.”¹⁵ The Commission’s recent research suggests that “status points” improve the predictive value of the criminal history score less than the original Commission may have expected, suggesting that the treatment of “status points” under Chapter Four should be refined.

In light of this research, Part A of the 2023 criminal history amendment reduces the impact of “status points” for offenders who committed the instant offense while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status. As amended, the “status points” provision under redesignated subsection (e) applies only to offenders with more serious criminal histories under the guidelines. “Status points” will no longer apply to offenders with less serious criminal histories—six or fewer criminal history points under subsections (a) through (d)—even if the instant offense was committed while the offender was under a criminal justice sentence. Offenders under a criminal justice sentence with seven or more criminal history points under subsections (a) through (d) will be assessed *one* additional criminal point under amended §4A1.1(e), rather than the two points previously assigned. By retaining but reducing the impact of “status points” for offenders in higher criminal history categories, the Commission continues to recognize that “status points,” like the other criminal history provisions in Chapter Four, reflect and serve multiple purposes of sentencing, including the offender’s perceived lack of respect

¹⁰ *Id.*

¹¹ U.S. SENT’G COMM’N, REVISITING STATUS POINTS (2022), available at <https://www.ussc.gov/research/research-reports/revisiting-status-points>. This report utilized the same methodology the Commission previously used when studying recency points in its 2010 study.

¹² U.S. SENT’G COMM’N, COMPUTATION OF RECENCY CRIMINAL HISTORY POINTS UNDER USSG §4A1.1(E) (2010), available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2010/20100818_Recency_Report.pdf.

¹³ See USSG App. C, amend. 742 (effective Nov. 1, 2010) (Reason for Amendment) (“Recent research isolating the effect of §4A1.1(e) on the predictive ability of the criminal history score indicated that consideration of recency only minimally improves the predictive ability.”).

¹⁴ U.S. SENT’G COMM’N, REVISITING STATUS POINTS (2022), available at <https://www.ussc.gov/research/research-reports/revisiting-status-points>.

¹⁵ *Id.*

for the law, as reflected both in the offender’s overall criminal history and the fact that the offender has reoffended while under a criminal justice sentence ordered by a court.¹⁶

B. Zero-Point Offenders

The Sentencing Table in Chapter Five, Part A is divided into six criminal history categories, from I (lowest) to VI (highest). The lowest Criminal History Category on the Sentencing Table in Chapter Five, Part A of the *Guidelines Manual*, CHC I, includes offenders with zero or one criminal history point. The Commission’s analysis of recidivism data, however, suggests that offenders with zero criminal history points (“zero-point offenders”) have considerably lower recidivism rates than other offenders, including offenders in CHC I with one criminal history point.¹⁷ Among other findings, the Commission’s recent recidivism report concluded that “zero-point” offenders were less likely to be rearrested than “one point” offenders (26.8% compared to 42.3%). This represents the largest difference in recidivism rates of any comparison of offenders within the same CHC.

Informed by this recidivism data, as well as other extensive data analyses of offenders with no criminal history points, Part B, Subpart 1 of the 2023 criminal history amendment creates a new Chapter Four guideline at §4C1.1 (Adjustment for Certain Zero-Point Offenders), which provides a decrease of two levels from the offense level determined under Chapters Two and Three for offenders who did not receive any criminal history points under Chapter Four, Part A and whose instant offense did not involve specified eligibility criteria.

New §4C1.1 defines “zero-point offenders” as those offenders with no criminal history points, including (1) offenders with no prior convictions; (2) offenders who have prior convictions that are not counted because those convictions were not within the time limits set forth in subsection (d) and (e) of §4A1.2 (Definitions and Instructions for Computing Criminal History); and (3) offenders who have prior convictions that are not used in computing the CHC for reasons other than their “staleness” (*e.g.*, sentences resulting from foreign or tribal court convictions, minor misdemeanor convictions, or infractions). This definition reflects the long-standing and carefully crafted criminal history rules set forth in Chapter Four regarding which prior convictions count for criminal history purposes and which do not.

While determining that a reduction is appropriate for some offenders with zero criminal history points, the Commission also identified circumstances in which zero-point offenders are appropriately excluded from eligibility in light of the seriousness of the instant offense of conviction

¹⁶ See 18 U.S.C. § 3553(a)(2)(A)–(C).

¹⁷ See U.S. SENT’G COMM’N, RECIDIVISM OF FEDERAL OFFENDERS RELEASED IN 2010 (2021), at 5, 27, available at <https://www.ussc.gov/research/research-reports/recidivism-federal-offenders-released-2010>. The report notes that as a group, offenders with zero criminal history points had a rearrest rate of 26.8 percent. Among offenders with zero criminal history points, approximately half (47.9%) had no prior contact with the criminal justice system. The remaining half (52.1%) of offenders with zero points had either prior arrests that did not result in convictions or convictions that did not qualify for criminal history points, or both. One-fifth (20.3%) of zero-point offenders with no prior contact with the criminal justice system were rearrested during the study period. In comparison, nearly one-third (32.7%) of zero-point offenders with prior contact were rearrested. However, both groups of zero-point offenders were rearrested at lower rates compared to their CHC I counterparts with one criminal history point, 42.3 percent of whom were rearrested during the study period. *Id.* at 27–28.

or the existence of aggravating factors in the instant offense. In addition to having zero criminal history points, all of the following criteria must be met:

- the defendant did not receive an adjustment under §3A1.4 (Terrorism);
- the defendant did not use violence or credible threats of violence in connection with the offense;
- the offense did not result in death or serious bodily injury;
- the instant offense of conviction is not a sex offense;
- the defendant did not personally cause substantial financial hardship;
- the defendant did not possess, receive, purchase, transport, transfer, sell, or otherwise dispose of a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;
- the instant offense of conviction is not covered by §2H1.1 (Offenses Involving Individual Rights);
- the defendant did not receive an adjustment under §3A1.1 (Hate Crime Motivation or Vulnerable Victim) or §3A1.5 (Serious Human Rights Offense); and
- the defendant did not receive an adjustment under §3B1.1 (Aggravating Role) and was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. § 848.

These exclusionary criteria were informed by extensive data analyses, public comment, and existing legislation, including the congressionally established criteria for the statutory safety valve at 18 U.S.C. § 3553(f) and the recent firearms legislation set forth in the Bipartisan Safer Communities Act.

II. RETROACTIVITY OF GUIDELINE AMENDMENTS

A. Statutory Authority

Because Parts A and B of the 2023 criminal history amendment reduces the sentencing range applicable to a particular offense or category of offenses for some offenders, the Commission is statutorily required to determine whether they may be retroactively applied. Section 994(u) of title 28, United States Code, provides that:

[i]f the Commission reduces the term of imprisonment recommended in the guidelines applicable to a particular offense or category of offenses, it shall specify in what circumstances and by what amount the sentences of prisoners serving terms of imprisonment for the offense may be reduced.¹⁸

¹⁸ 28 U.S.C. § 994(u). The Commission’s Rules of Practice and Procedure address retroactive application of amendments and list the procedures that the Commission will follow when considering retroactivity. Among other things, “the Commission shall – (1) at the public meeting at which it votes to promulgate the amendment, or in a timely manner thereafter, vote to publish a request for comment on whether to make the amendment available for retroactive application; (2) instruct staff to prepare a retroactivity impact analysis of the amendment, if practicable....” U.S. SENT’G COMM’N, *Rules of Practice and Procedure*, Rule 4.1A (2016). At its April 5, 2023 public meeting, the Commission voted both to publish an issue for comment on whether to make the criminal history amendment available for retroactive

Sentencing courts are statutorily precluded from applying a guideline amendment retroactively unless the Commission has designated such amendment for retroactive application. Section 3582(c)(2) of title 18, United States Code, provides that the court may not modify a term of imprisonment once it has been imposed except that:

in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), . . . the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.¹⁹

Modifications of sentence under 18 U.S.C. § 3582(c)(2) are unaffected by *United States v. Booker*²⁰ and USSG §1B1.10 remains binding on courts in such proceedings.²¹ The Federal Rules of Criminal Procedure provide that the defendant is not required to be present at a proceeding under 18 U.S.C. § 3582(c)(2).²²

B. Guidelines Manual Policy Statement

The Commission promulgated USSG §1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range) (Policy Statement) to implement 28 U.S.C. § 994(u) and to provide guidance to a court when considering a motion under 18 U.S.C. § 3582(c)(2). Subsection (a) of §1B1.10 specifies when a reduction pursuant to 18 U.S.C. § 3582(c)(2) is available:

In a case in which a defendant is serving a term of imprisonment, and the guideline range applicable to that defendant has subsequently been lowered as a result of an amendment to the Guidelines Manual listed in subsection (d) below, the court may reduce the defendant’s term of imprisonment as provided by 18 U.S.C. § 3582(c)(2). As required by 18 U.S.C. § 3582(c)(2), any such reduction in the defendant’s term of imprisonment shall be consistent with this policy statement.²³

Section 1B1.10 further explains that a reduction would not be consistent with the policy statement if none of the amendments listed in subsection (d) of section 1B1.10 are applicable to the defendant or if a listed amendment “does not have the effect of lowering the defendant’s applicable guideline

application, with a public comment period closing on June 23, 2023, and to instruct staff to prepare this retroactivity impact analysis.

¹⁹ 18 U.S.C. § 3582(c)(2).

²⁰ 543 U.S. 220 (2005) (rendering guidelines advisory).

²¹ *See* *Dillon v. United States*, 560 U.S. 817 (2010).

²² Fed. R. Crim. P. 43(b)(4) (“A defendant need not be present [when a] proceeding involves the correction or reduction of sentence under Rule 35 or 18 U.S.C. § 3582(c)(2).”).

²³ USSG §1B1.10(a)(1).

range.”²⁴ Additionally, that section provides that proceedings under 18 U.S.C. § 3582(c)(2) “do not constitute a full resentencing of the defendant.”²⁵

In addition to specifying which guideline amendments may be retroactively applied, consistent with 28 U.S.C. § 994(u), section 1B1.10 guides courts as to the extent of a sentence reduction under 18 U.S.C. § 3582(c)(2). Subsection (b)(1) of USSG §1B1.10 states:

In determining whether, and to what extent, a reduction in the term of imprisonment is warranted for a defendant eligible for consideration under 18 U.S.C. § 3582(c)(2), the court shall determine the amended guideline range that would have been applicable to the defendant if the amendment(s) to the guidelines listed in subsection (d) had been in effect at the time the defendant was sentenced. In making such determination, the court shall substitute only the amendments listed in subsection (d) for the corresponding guideline provisions that were applied when the defendant was sentenced and shall leave all other guideline application decisions unaffected.²⁶

Section 1B1.10 further provides that, as a general matter, the extent of the reduction granted should not go below the amended guideline range determined in accordance with subsection (b)(1).²⁷ However, an exception is noted where the sentence originally imposed “was less than the term of imprisonment provided by the guideline range . . . pursuant to a government motion to reflect the defendant’s substantial assistance to authorities” in which case “a reduction comparably less than the amended guideline range . . . may be appropriate.”²⁸ Under no circumstances may a court reduce a term of imprisonment to less than the term already served by the defendant.²⁹

C. Policy Determinations and Factors to be Considered Regarding Retroactivity

The decision to list an amendment as retroactively applicable to previously sentenced, imprisoned defendants in §1B1.10(d) (Covered Amendments) “reflects policy determinations by the Commission that a reduced guideline range is sufficient to achieve the purposes of sentencing and that, in the sound discretion of the court, a reduction in the term of imprisonment may be appropriate for previously sentenced, qualified defendants.”³⁰ The background commentary further provides that “authorization of such a discretionary reduction does not otherwise affect the lawfulness of a previously imposed sentence, does not authorize a reduction in any other component of the sentence, and does not entitle a defendant to a reduced term of imprisonment as a matter of right.”³¹

²⁴ USSG §1B1.10(a)(2).

²⁵ USSG §1B1.10(a)(3).

²⁶ USSG §1B1.10(b)(1).

²⁷ USSG §1B1.10(b)(2)(A).

²⁸ USSG §1B1.10(b)(2)(B).

²⁹ USSG §1B1.10(b)(2)(C).

³⁰ See USSG §1B1.10, comment. (backg’d.).

³¹ *Id.*

The retroactivity impact analysis and accompanying data that follow is intended to inform the Commission’s decision as to whether to include the Part A of the amendment regarding “status points” or Part B, Subpart 1 of the amendment regarding “zero-point offenders” in §1B1.10(d) as retroactive. Specifically, the below analyses are intended to assist the Commission’s evaluation of the factors traditionally considered in selecting the amendments for retroactivity, including “the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range under subsection (b)(1).”³² The determination under each of these factors, as well as the weight they are accorded, may differ for each part of the criminal history amendment. As discussed above, the purpose of each part of the criminal history amendment was different. While both relied upon recidivism and other data analyses, each part of the amendment addressed different concerns.

Similarly, the magnitude of the change in the guideline range and the difficulty of applying the amendment retroactively differ. Staff has prepared the following to assist the Commission’s consideration of these factors. As reflected in the analysis, the magnitude of the change in the guideline range, as reflected by the magnitude and extent of the reduction, is different for Part A and Part B of the criminal history amendment. Additionally, the difficulty of applying each part retroactively may be different, as reflected in the scope and nature of the assumptions required for each separate analysis. For the amendment made by Part A pertaining to status points, additional fact-finding is not required to determine the amended guideline range and thus it was not necessary to make factual methodological assumptions in completing the analysis. On the other hand, additional fact-finding relating to some of the exclusionary criteria under the new §4C1.1 is required to determine whether a “zero-point offender” receives the two-level reduction. As such, it was necessary to make certain factual methodological assumptions to approximate such fact-finding in order to conduct the retroactivity analysis for Part B, Subpart 1.

³² *Id.*

III. IMPACT OF THE RETROACTIVE APPLICATION OF THE 2023 CRIMINAL HISTORY AMENDMENT

A. Introduction to the Data Analysis

In response to the Commission’s instruction to staff on April 5, 2023, this section of the memorandum provides an analysis of the estimated impact of the Commission’s 2023 criminal history amendment for offenders incarcerated in the federal prison system, should the Commission vote to make Parts A or B, Subpart 1 of that amendment retroactive.

B. Findings as to the Retroactivity of Part A of the 2023 Criminal History Amendment

Staff estimates that there are 50,545 offenders in the custody of the Federal Bureau of Prisons (BOP) as of January 28, 2023,³³ who were assigned status points at sentencing (“status points offenders”). Of the 50,545 offenders, 20,598 (40.8%) were assigned a criminal history score of 6 or lower (without regard to status points) at sentencing under USSG §4A1.1. Under retroactive application of Part A of the 2023 criminal history amendment, the total criminal history score for these offenders would be reduced by two points. The remaining 29,943 offenders (59.2%)³⁴ were assigned a criminal history score of 7 or higher (without regard to status points) at sentencing under USSG §4A1.1. Under retroactive application of Part A of the 2023 criminal history amendment, the total criminal history score for these offenders would be reduced by one point.

Staff estimates that approximately one-quarter (22.7%, n = 11,495) of the 50,545 status points offenders would have a lower guideline range if the Commission were to make Part A of the 2023 criminal history amendment retroactive and, therefore, would be eligible to seek a modification of sentence under 18 U.S.C. § 3582(c)(2).³⁵ The current average sentence for those offenders is 120 months. If the courts were to grant the full reduction possible in each case, the projected new average sentence for those offenders would be 106 months, a reduction of 14 months (or 11.7%). The offenders would be released over a period of many years.

The most common reasons why the remaining status points offenders would not have a lower guideline range were:

- the change to the offender’s criminal history score did not change the Criminal History Category (CHC) to which they were assigned (53.5%, n = 20,847);
- the offender’s CHC was determined by another guideline provision³⁶ (25.7%,

³³ The most recent date for which the Commission received information from the BOP regarding incarcerated offenders.

³⁴ The criminal history score of four offenders was missing.

³⁵ Of the 11,495 eligible offenders, 8,964 were assigned a criminal history score of 6 or lower (without regard to status points) at sentencing under USSG §4A1.1, and 2,531 were assigned a criminal history score of 7 or higher (without regard to status points) at sentencing under USSG §4A1.1.

³⁶ *E.g.*, USSG §§4B1.1 (career offender), 4B1.4 (armed career criminal), 4B1.5 (repeat and dangerous sex offenders against minors), or 3A1.4 (terrorism).

- n = 10,014);
- the offender's current sentence is below the new guideline range and the offender did not receive a departure for substantial assistance when initially sentenced (11.0%, n = 4,299); or
 - the offender was sentenced to a statutory mandatory minimum sentence (5.2%, n = 2,032).³⁷

1. Distribution of eligible offenders by fiscal year of sentence

Table 1 presents the number of offenders who are eligible for retroactive application of Part A of the 2023 criminal history amendment by the fiscal year in which the offender was sentenced. As would be expected, the more recent the fiscal year the greater the number of offenders who are still serving their sentence and so would be eligible to seek a reduced sentence.

³⁷ Other reasons that status points offenders were estimated to not have a lower guidelines range under the amendment include: the guideline range did not change (3.9%, n = 1,532); the only statute or statutes of conviction were 18 U.S.C. § 924(c) or 18 U.S.C. § 1028(A) (0.5%, n = 186); or the projected change in sentence was less than one month (0.2%, n = 57).

Table 1A
Fiscal Year of Sentence
for Offenders Eligible Under Part A

	ELIGIBLE OFFENDERS	
	N	%
TOTAL	11,495	100.0
<u>Fiscal Year of Sentence</u>		
2023	436	3.8
2022	2,809	24.4
2021	1,962	17.1
2020	1,340	11.7
2019	1,354	11.8
2018	938	8.2
2017	687	6.0
2016	487	4.2
2015	317	2.8
2014	249	2.2
2013	193	1.7
2012	168	1.5
2011	94	0.8
2010	96	0.8
2009	61	0.5
2008	58	0.5
2007	47	0.4
2006	34	0.3
2005	34	0.3
2004	23	0.2
2003	20	0.2
2002	19	0.2
2001	11	0.1
2000	16	0.1
1999	6	0.1
1998	6	0.1
1997	8	0.1
1996	8	0.1
1995	2	0.0
1994	6	0.1
1993	1	0.0
1992	3	0.0
1991	2	0.0

SOURCE: U.S. Sentencing Commission, FY 1991 through FY 2022 Datafiles, USSCFY91-USSCFY22, and Preliminary Data from FY 2023, USSCFY23.

2. Geographic distribution of eligible offenders

Table 2 presents information on the number of eligible offenders sentenced in each judicial district and, therefore, where the consideration of the issue of retroactive application of the amendment in their cases would most likely occur. This list presents the offenders in descending order by the number of offenders in each district.

Table 2A
Geographic Distribution of Offenders Eligible Under Part A
By District

<u>District</u>	<u>N</u>	<u>%</u>	<u>District</u>	<u>N</u>	<u>%</u>
TOTAL	11,495	100.0			
Western Texas	822	7.2	North Dakota	91	0.8
Southern Texas	647	5.6	Middle Pennsylvania	90	0.8
Northern Texas	525	4.6	Western New York	89	0.8
Eastern Tennessee	345	3.0	South Dakota	89	0.8
Eastern North Carolina	336	2.9	Southern Alabama	88	0.8
Eastern Virginia	305	2.7	Southern California	87	0.8
Northern Ohio	265	2.3	Northern Indiana	87	0.8
Western Missouri	264	2.3	Eastern Louisiana	76	0.7
Eastern Missouri	263	2.3	New Jersey	75	0.7
Eastern Texas	228	2.0	Western Oklahoma	72	0.6
Maryland	207	1.8	Idaho	71	0.6
Western North Carolina	203	1.8	Utah	71	0.6
Middle Florida	196	1.7	Northern West Virginia	71	0.6
Southern Georgia	194	1.7	Western Kentucky	68	0.6
Puerto Rico	194	1.7	Eastern Wisconsin	68	0.6
Southern Florida	192	1.7	Northern California	63	0.6
Arizona	188	1.6	Nebraska	63	0.6
South Carolina	185	1.6	Eastern New York	59	0.5
Eastern Kentucky	178	1.6	Western Arkansas	58	0.5
Southern Iowa	157	1.4	Southern West Virginia	57	0.5
Eastern Michigan	157	1.4	Eastern Oklahoma	55	0.5
Western Tennessee	156	1.4	Connecticut	54	0.5
Middle North Carolina	153	1.3	Middle Tennessee	54	0.5
Northern Alabama	147	1.3	Northern Oklahoma	52	0.5
Southern Indiana	146	1.3	Middle Alabama	49	0.4
New Mexico	143	1.2	Northern New York	47	0.4
Eastern Pennsylvania	142	1.2	Oregon	46	0.4
Northern Iowa	140	1.2	Eastern Washington	45	0.4
Southern New York	140	1.2	District of Columbia	44	0.4
Central California	138	1.2	Northern Mississippi	44	0.4
Northern Georgia	134	1.2	Hawaii	42	0.4
Eastern Arkansas	131	1.1	Nevada	38	0.3
Eastern California	114	1.0	Alaska	37	0.3
Kansas	112	1.0	Massachusetts	34	0.3
Western Virginia	109	1.0	Northern Florida	32	0.3
Southern Ohio	108	0.9	Wyoming	32	0.3
Northern Illinois	105	0.9	Western Washington	29	0.3
Central Illinois	104	0.9	New Hampshire	28	0.2
Western Michigan	103	0.9	Middle Louisiana	22	0.2
Middle Georgia	100	0.9	Western Wisconsin	21	0.2
Southern Illinois	99	0.9	Maine	18	0.2
Montana	99	0.9	Delaware	12	0.1
Southern Mississippi	98	0.9	Vermont	7	0.1
Western Louisiana	97	0.8	Guam	5	0.0
Western Pennsylvania	97	0.8	Rhode Island	5	0.0
Colorado	91	0.8	Virgin Islands	2	0.0
Minnesota	91	0.8	Northern Mariana Islands	0	0.0

SOURCE: U.S. Sentencing Commission, FY 1991 through FY 2022 Datafiles, USSCFY91-USSCFY22, and Preliminary Data from FY 2023, USSCFY23.

3. Offender characteristics

Table 3 presents information on the demographic characteristics of the offenders who are eligible for retroactive application of Part A of the 2023 criminal history amendment. The majority are men (93.2%) and U.S. citizens (87.2%). Black offenders account for 43.0 percent of the eligible group, followed by Hispanic offenders (27.8%), White offenders (25.0%), and Other races (4.2%). The average age of these offenders on January 28, 2023 was 38 years.

Table 3A
Demographic Characteristics of Offenders Eligible Under Part A

<u>Race/Ethnicity</u>		
White	2,868	25.0%
Black	4,941	43.0%
Hispanic	3,194	27.8%
Other	478	4.2%
Total	11,481	100.0%
<u>Citizenship</u>		
U.S. Citizen	10,017	87.2%
Non-Citizen	1,475	12.8%
Total	11,492	100.0%
<u>Gender</u>		
Male	10,718	93.2%
Female	777	6.8%
Total	11,495	100.0%
<u>Average Age</u>		
	38 years	34 years
	(as of 01/28/2023)	(at sentencing)

The analysis involves a total of 11,495 cases, however, cases missing information for any specific analysis are excluded from that analysis.

SOURCE: U.S. Sentencing Commission, FY 1991 through FY 2022 Datafiles, USSCFY91-USSCFY22, and Preliminary Data from FY 2023, USSCFY23.

4. Offense characteristics

Table 4 presents information about selected offense-related factors that contributed to the guideline range that applied when the offenders were initially sentenced, the Criminal History Categories of these offenders, and the extent to which their original sentences were within the applicable guideline ranges.

Table 4A
Sentencing Characteristics, Criminal History, and Position Relative to the
Guideline Range of Offenders Eligible Under Part A

<hr/>		
Average Base Offense Level		23
<hr/>		
Select Sentencing Characteristics		
Weapon Specific Offense Characteristic	2,176	18.9%
Firearms Mandatory Minimum Applied	2,074	18.0%
Safety Valve §5C1.2	210	1.8%
Aggravating Role §3B1.1	980	8.5%
Mitigating Role §3B1.2	218	1.9%
Obstruction Adjustment §3C1.1	460	4.0%
Career Offender Status §4B1.1	0	0.0%
<hr/>		
Original Criminal History Category		
I	0	0.0%
II	1,033	9.0%
III	3,788	32.9%
IV	4,138	36.0%
V	1,515	13.2%
VI	1,021	8.9%
Total	11,495	100.0%
<hr/>		
Sentence Relative to the Guideline Range		
Within Range	7,091	61.7%
Above Range	1,030	9.0%
Substantial Assistance §5K1.1	2,032	17.7%
Otherwise Below Range	1,342	11.6%
Total	11,495	100.0%
<hr/>		

The analysis involves a total of 11,495 cases, however, cases missing information for any specific analysis are excluded from that analysis.

The original criminal history category is the category before status points were removed.

SOURCE: U.S. Sentencing Commission, FY 1991 through FY 2022 Datafiles, USSCFY91-USSCFY22, and Preliminary Data from FY 2023, USSCFY23.

5. Type of crime of offenders eligible for retroactive application of the amendment

Table 5 provides the type of crime for the instant offense of offenders eligible for a reduction in sentence pursuant to Part A of the 2023 criminal history amendment. Drug trafficking was the most common instant offense (40.5%) among offenders eligible to seek a modification of sentence under 18 U.S.C. § 3582(c)(2).

Table 5A
Instant Type of Crime for
Offenders Eligible Under Part A

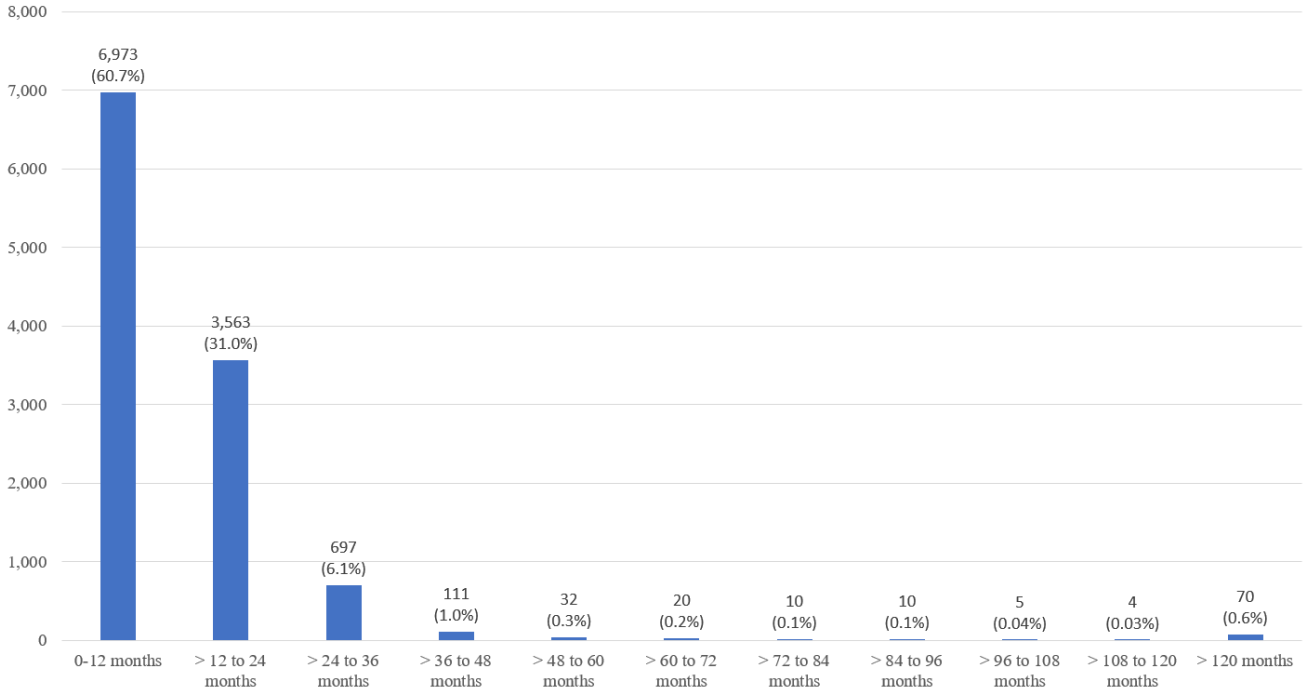
Crime Type	N	%
TOTAL	11,495	100.0
Drug Trafficking	4,658	40.5
Firearms	2,371	20.6
Robbery	1,391	12.1
Immigration	1,049	9.1
Fraud/Theft/Embezzlement	419	3.7
Child Pornography	325	2.8
Assault	257	2.2
Sexual Abuse	250	2.2
Money Laundering	171	1.5
Murder	156	1.4
Prison Offenses	144	1.3
Obscenity/Other Sex Offenses	55	0.5
Kidnapping	43	0.4
Stalking/Harassing	39	0.3
Administration of Justice	35	0.3
Manslaughter	35	0.3
All Other Crime Types	97	0.8

SOURCE: U.S. Sentencing Commission, FY 1991 through FY 2022 Datafiles, USSCFY91-USSCFY22, and Preliminary Data from FY 2023, USSCFY23.

6. Extent of possible sentence reduction

As discussed above, the average extent of reduction for offenders who are eligible for a reduced sentence under Part A of the 2023 criminal history amendment is 11.7 percent. Figure 1 shows the distribution of the extent of the possible reductions by the sentence length for these offenders. A majority (60.7%) of offenders would receive a sentence reduction of one year or less. Conversely, 2.3 percent would receive a sentence reduction of more than 36 months.

Figure 1A
Extent of Possible Sentence Reduction for Offenders Eligible Under Part A



SOURCE: U.S. Sentencing Commission, FY 1991 through FY 2022 Datafiles, USSCFY91-USSCFY22, and Preliminary Data from FY 2023, USSCFY23.

7. Projected release dates

The offenders who are eligible to seek a reduced sentence under 18 U.S.C. § 3582(c)(2) if Part A of the 2023 criminal history amendment made retroactive are projected to be eligible for release at various times over a period of more than 30 years.

As shown on Table 6, if the amendment were retroactive on November 1, 2023, 2,090 offenders would be eligible for immediate release.³⁸ Approximately forty percent (38.5%; n = 4,429) of the offenders (for whom the Commission had sufficient data to perform this analysis) are eligible to be released within the first year after the effective date of the amendment (November 1, 2023, if the Commission were to make the amendment retroactive as of that date). Approximately four-fifths (77.9%) of the eligible offenders would be eligible for release during the first five years.

Table 6 also compares the projected release dates for eligible offenders by year if the amendment is made retroactive to the estimated release dates for these same offenders if the amendment were not made retroactive. For example, if the amendment is made retroactive, a total

³⁸ Non-U.S. citizens comprise 23.7% (n=495) of the offenders eligible for immediate release.

of 4,429 offenders would be eligible within the first year of the effective date of the amendment, while 3,163 will be released under their current, unamended sentence. As such retroactive application of the amendment would make an additional 1,266 offenders eligible for release within the first year.

Table 6A
Projected Year of Release for Offenders Eligible Under Part A

Release Date	IF AMENDMENT RETROACTIVE N	IF AMENDMENT NOT RETROACTIVE N
Immediate Release	2,090	--
Within Year 1	2,339	3,163
Within Year 2	1,694	1,902
Within Year 3	1,210	1,379
Within Year 4	950	1,063
Within Year 5	667	844
After Year 5	2,545	3,144

SOURCE: U.S. Sentencing Commission, FY 1991 through FY 2022 Datafiles, USSCFY91-USSCFY22, and Preliminary Data from FY 2023, USSCFY23.

C. Findings as to the Retroactivity of Part B, Subpart 1 of the 2023 Criminal History Amendment

Staff estimates that there are 34,922 offenders in BOP custody as of January 28, 2023, for whom no criminal history points were assigned under Chapter Four, Part A of the *Guidelines Manual* when sentenced for their instant offense. Of those 34,922 zero-point offenders, 12,574 meet the criteria in Part B, Subpart 1 of the 2023 Criminal History Amendment.³⁹ Staff estimates that slightly more than half (57.8%, n = 7,272) of those offenders would have lower guideline range if the Commission were to make Part B, Subpart 1 of the 2023 criminal history amendment retroactive and, therefore, would be eligible to seek a modification of sentence under 18 U.S.C. § 3582(c)(2). The current average sentence for those eligible zero-point offenders is 85 months. If the courts were to grant the full reduction possible in each case, the projected new average sentence for those offenders would be 70 months, a reduction of 15 months (or 17.6%). The offenders would be released over a period of many years.

³⁹ See *supra*, at Part IB of this memorandum, for a discussion of these criteria.

The two most common reasons why the remaining zero-point offenders meeting the eligibility criteria under the amendment would not have a lower guideline range were:

- the offender’s current sentence is below the new guideline range and the offender did not receive a departure for substantial assistance when initially sentenced (82.0%, n = 4,248); or
- the offender was sentenced to a statutory mandatory minimum sentence (15.7%, n = 811).⁴⁰

1. Distribution of eligible zero-point offenders by fiscal year of sentence

Table 1 presents the number of offenders who are eligible for retroactive application of Part B, Subpart 1 of the 2023 criminal history amendment by the fiscal year in which the offender was sentenced. As would be expected, except for 2023, the more recent the sentencing year the greater the number of offenders who are still serving their sentence and so would be eligible to seek a reduced sentence.

⁴⁰ Other reasons that offenders were estimated to not have a lower guidelines range under the amendment include: the guideline range did not change (1.6%, n = 81); the only statute or statutes of conviction were 18 U.S.C. § 924(c) or 18 U.S.C. § 1028(A) (0.7%, n = 37); the projected change in sentence was less than one month (0.1%, n = 3); or the final offense level did not change (0.02%, n = 1).

Table 1B
Fiscal Year of Sentence for Offenders Eligible Under Part B

ELIGIBLE OFFENDERS		
	N	%
TOTAL	7,272	100.0
<u>Fiscal Year of Sentence</u>		
2023	525	7.2
2022	2,496	34.3
2021	1,336	18.4
2020	730	10.0
2019	600	8.3
2018	559	7.7
2017	440	6.1
2016	265	3.6
2015	125	1.7
2014	45	0.6
2013	29	0.4
2012	29	0.4
2011	22	0.3
2010	13	0.2
2009	7	0.1
2008	5	0.1
2007	14	0.2
2006	8	0.1
2005	2	0.0
2004	5	0.1
2003	5	0.1
2002	1	0.0
2001	6	0.1
2000	0	0.0
1999	2	0.0
1998	0	0.0
1997	0	0.0
1996	1	0.0
1995	0	0.0
1994	1	0.0
1993	1	0.0

SOURCE: U.S. Sentencing Commission, FY 1991 through FY 2022 Datafiles, USSCFY91-USSCFY22, and Preliminary Data from FY 2023, USSCFY23.

2. Geographic distribution of eligible offenders

Table 2 presents information on the 7,272 eligible zero-point offenders sentenced by judicial district. Therefore, these districts are where the consideration of the issue of retroactive application of the amendment in their cases would most likely occur. This list presents the offenders in descending order by the number of eligible offenders in each district.

Table 2B
Geographic Distribution of Offenders Eligible Under Part B
By District

District	N	%	District	N	%
TOTAL	7,272	100.0			
Middle Florida	1,122	15.4	Montana	31	0.4
Southern Texas	717	9.9	Northern California	30	0.4
Western Texas	695	9.6	Middle Georgia	30	0.4
Southern Florida	636	8.8	Eastern Louisiana	29	0.4
Northern Texas	426	5.9	Western New York	29	0.4
Eastern Texas	303	4.2	District of Columbia	28	0.4
Puerto Rico	195	2.7	Northern Oklahoma	28	0.4
Southern California	137	1.9	Nevada	27	0.4
Southern New York	115	1.6	New Mexico	27	0.4
Eastern Virginia	109	1.5	South Dakota	27	0.4
Northern Georgia	104	1.4	Eastern New York	26	0.4
New Jersey	92	1.3	Middle Pennsylvania	26	0.4
Central California	87	1.2	Western Virginia	26	0.4
Eastern Pennsylvania	75	1.0	Idaho	25	0.3
Eastern California	73	1.0	Southern Illinois	25	0.3
Eastern Tennessee	72	1.0	Northern Florida	24	0.3
Northern Ohio	65	0.9	Northern Iowa	24	0.3
Northern Alabama	63	0.9	Western Oklahoma	24	0.3
Nebraska	61	0.8	Virgin Islands	24	0.3
Eastern Michigan	60	0.8	Northern Indiana	23	0.3
Massachusetts	59	0.8	Eastern Washington	23	0.3
Eastern Kentucky	58	0.8	Connecticut	21	0.3
Colorado	55	0.8	New Hampshire	21	0.3
Eastern North Carolina	54	0.7	Northern West Virginia	21	0.3
Northern Illinois	53	0.7	Western Tennessee	19	0.3
Eastern Missouri	52	0.7	Central Illinois	18	0.3
Western Missouri	52	0.7	Oregon	18	0.3
Southern Indiana	51	0.7	Western Kentucky	17	0.2
Utah	51	0.7	Southern West Virginia	16	0.2
Southern Ohio	50	0.7	Western Washington	16	0.2
Kansas	48	0.7	Eastern Oklahoma	15	0.2
Maryland	47	0.7	Western Arkansas	13	0.2
Arizona	45	0.6	Guam	13	0.2
Western North Carolina	43	0.6	Middle Alabama	11	0.2
Northern New York	43	0.6	Middle Louisiana	11	0.2
Minnesota	42	0.6	Western Wisconsin	11	0.2
South Carolina	42	0.6	North Dakota	10	0.1
Southern Alabama	41	0.6	Wyoming	8	0.1
Southern Georgia	41	0.6	Alaska	7	0.1
Eastern Arkansas	40	0.6	Maine	7	0.1
Southern Mississippi	39	0.5	Northern Mississippi	7	0.1
Hawaii	35	0.5	Rhode Island	6	0.1
Western Pennsylvania	34	0.5	Delaware	5	0.1
Western Michigan	33	0.5	Vermont	5	0.1
Middle North Carolina	33	0.5	Eastern Wisconsin	4	0.1
Southern Iowa	31	0.4	Northern Mariana Islands	3	0.0
Western Louisiana	31	0.4	Middle Tennessee	3	0.0

SOURCE: U.S. Sentencing Commission, FY 1991 through FY 2022 Datafiles, USSCFY91-USSCFY22, and Preliminary Data from FY 2023, USSCFY23.

3. Offender characteristics

Table 3 presents information on the demographic characteristics of the zero-point offenders who are eligible for retroactive application of Part B, Subpart 1 of the 2023 criminal history amendment. The majority are men (84.5%). More than half are not U.S. citizens (53.2%). Hispanic offenders account for 69.9 percent of the eligible group, followed by White offenders (16.9%), Black offenders (9.9%), and Other races (3.3%). The average age of these offenders on January 28, 2023, was 41 years.

Table 3B
Demographic Characteristics of Offenders Eligible Under Part B

Race/Ethnicity			
	White	1,224	16.9%
	Black	716	9.9%
	Hispanic	5,076	69.9%
	Other	243	3.3%
	Total	7,259	100.0%
Citizenship			
	U.S. Citizen	3,399	46.8%
	Non-Citizen	3,857	53.2%
	Total	7,256	100.0%
Gender			
	Male	6,147	84.5%
	Female	1,125	15.5%
	Total	7,272	100.0%
Average Age			
		41 years	38 years
		(as of 01/28/2023)	(at sentencing)

The analysis involves a total of 7,272 cases, however, cases missing information for any specific analysis are excluded from that analysis.

SOURCE: U.S. Sentencing Commission, FY 1991 through FY 2022 Datafiles, USSCFY91-USSCFY22, and Preliminary Data from FY 2023, USSCFY23.

4. Offense characteristics

Table 4 presents information about selected offense-related factors that contributed to the guideline range that applied when the eligible offenders were initially sentenced, the Criminal History Categories of these offenders, and the extent to which their original sentences were within the applicable guideline ranges.

Table 4B
Sentencing Characteristics, Criminal History, and Position Relative to the
Guideline Range of Offenders Eligible Under Part B

Average Base Offense Level	29	
Select Sentencing Characteristics		
Weapon Specific Offense Characteristic	0	0.0%
Firearms Mandatory Minimum Applied	0	0.0%
Safety Valve §5C1.2	4,603	63.3%
Aggravating Role §3B1.1	0	0.0%
Mitigating Role §3B1.2	1,129	15.5%
Obstruction Adjustment §3C1.1	295	4.1%
Career Offender Status §4B1.1	0	0.0%
Original Criminal History Category		
I	7,272	100.0%
II	0	0.0%
III	0	0.0%
IV	0	0.0%
V	0	0.0%
VI	0	0.0%
Total	7,272	100.0%
Sentence Relative to the Guideline Range		
Within Range	4,030	55.4%
Above Range	224	3.1%
Substantial Assistance §5K1.1	1,645	22.6%
Otherwise Below Range	1,370	18.9%
Total	7,269	100.0%

The analysis involves a total of 7,272 cases, however, cases missing information for any specific analysis are excluded from that analysis.

SOURCE: U.S. Sentencing Commission, FY 1991 through FY 2022 Datafiles, USSCFY91-USSCFY22, and Preliminary Data from FY 2023, USSCFY23.

5. Type of crime of zero-point offenders eligible for retroactive application of the amendment

Table 5 provides the type of crime for the instant offense of offenders eligible for a reduction in sentence pursuant to Part B, Subpart 1 of the 2023 criminal history amendment. Drug trafficking was the most common instant offense (74.3%) for eligible zero-point offenders.

Table 5B
Instant Type of Crime
for Offenders Eligible Under Part B

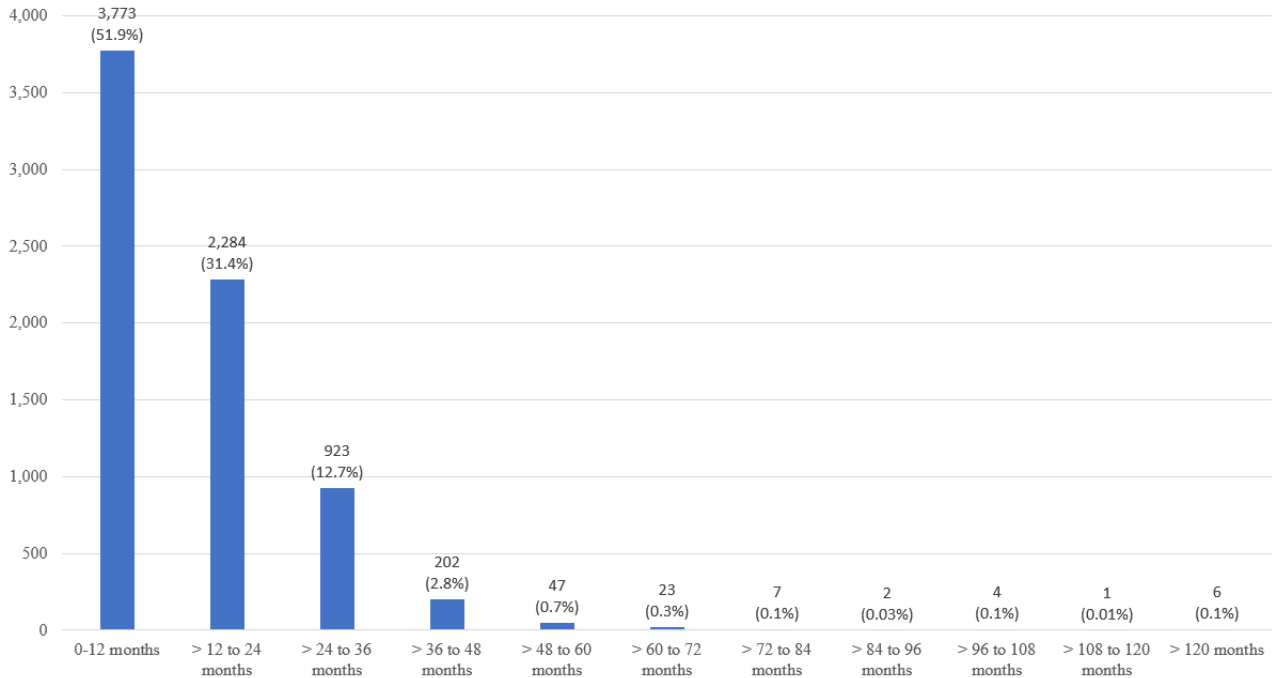
Crime Type	N	%
TOTAL	7,272	100.0
Drug Trafficking	5,404	74.3
Fraud/Theft/Embezzlement	932	12.8
Money Laundering	421	5.8
Immigration	154	2.1
Bribery/Corruption	92	1.3
Tax	87	1.2
Administration of Justice	41	0.6
Obscenity/Other Sex Offenses	31	0.4
Stalking/Harassing	26	0.4
Manslaughter	18	0.2
All Other Crime Types	66	0.9

SOURCE: U.S. Sentencing Commission, FY 1991 through FY 2022 Datafiles, USSCFY91-USSCFY22, and Preliminary Data from FY 2023, USSCFY23.

6. Extent of possible sentence reduction

As discussed above, the average extent of reduction for offenders who are eligible for a reduced sentence under Part B, Subpart 1 of the 2023 criminal history amendment is 17.6 percent. Figure 1 shows the distribution of the extent of the possible reductions by the sentence length for these offenders. More than half (51.9%) would receive a sentence reduction of one year or less. Conversely, 4.0 percent would receive a sentence reduction of more than 36 months.

Figure 1B
Extent of Possible Sentence Reduction for Offenders Eligible Under Part B



SOURCE: U.S. Sentencing Commission, FY 1991 through FY 2022 Datafiles, USSCFY91-USSCFY22, and Preliminary Data from FY 2023, USSCFY23.

7. Projected release dates

The offenders who are eligible to seek a reduced sentence under 18 U.S.C. § 3582(c)(2) if Part B, Subpart 1 of the 2023 criminal history amendment were made retroactive are projected to be eligible for release at various times over a period of more than 30 years.

As shown on Table 6, if this part of the criminal history amendment were retroactive on November 1, 2023, 1,198 offenders would be eligible for immediate release.⁴¹ Almost half (45.0%; n = 3,274) of the eligible zero-point offenders (for whom the Commission had sufficient data to perform this analysis) are eligible to be released at within the first year after the effective date of the amendment. More than 90 percent (91.6%) of the eligible zero-point offenders would be eligible for release during the first five years if the amendment were made retroactive.

Table 6 also compares the projected release dates for eligible offenders by year if the amendment is made retroactive to the estimated release dates for these same offenders if the

⁴¹ Non-U.S. citizens comprise 73.5% (n=878) of the offenders eligible for immediate release.

amendment were not made retroactive. For example, if the amendment is made retroactive, a total of 3,274 offenders would be eligible within the first year of the effective date of the amendment, while 1,802 will be released under their current, unamended sentence. As such retroactive application of the amendment would make an additional 1,472 offenders eligible for release within the first year.

Table 6B
Projected Year of Release for Offenders Eligible Under Part B

Release Date	IF AMENDMENT RETROACTIVE	IF AMENDMENT NOT RETROACTIVE
N	N	N
Immediate Release	1,198	--
Within Year 1	2,076	1,802
Within Year 2	1,535	1,733
Within Year 3	976	1,240
Within Year 4	558	845
Within Year 5	309	510
After Year 5	620	1,142

SOURCE: U.S. Sentencing Commission, FY 1991 through FY 2022 Datafiles, USSCFY91-USSCFY22, and Preliminary Data from FY 2023, USSCFY23.

IV. HOW THE ANALYSIS WAS PERFORMED

A. Methodology

The methodology for this analysis is based on the Commission’s Prison Impact Model, which has been in use in some form since the guidelines were first developed. This model is used to estimate the impact of proposed statutory and guideline amendments on newly sentenced offenders and to project the future impact those amendments will have on bed space in the BOP. For this analysis, offenders who appear to be eligible to receive a reduced sentence were hypothetically “resentenced” pursuant to the limitations set forth in §1B1.10 as if the amendment had been in effect in the year in which they were sentenced. A new release date for each offender was calculated in order to determine when the offender would be eligible for release if he or she were to receive the full reduction in sentence provided by the amendment.

B. The Offender Population Studied

The Bureau of Prisons provided the Commission with a datafile of inmates who were in the custody of the BOP on January 28, 2023. That file contained information on 139,803 federal offenders.⁴² The Commission was able to match the BOP data to 138,702 offenders in Commission records sentenced between fiscal year 1991 and fiscal year 2023.⁴³ The sentencing information needed to conduct the analysis discussed in this memorandum was sufficient for 137,020 of these offenders.⁴⁴

C. Assumptions Made for This Analysis

In performing the analysis, staff was required to make some assumptions (set forth below) concerning the fact-finding decisions the courts would be required to make in determining whether, and to what extent, to reduce the sentences of offenders eligible to receive a modification of sentence pursuant to the 2023 criminal history amendment. These assumptions may not hold in every case.

1. Eligibility for Part A of the 2023 Criminal History Amendment Regarding Status Points

Staff have assumed that the effective date of retroactivity for Part A of the 2023 criminal history amendment would be November 1, 2023.⁴⁵ Further, we assumed that the courts would resentence offenders in a manner that is consistent with the *Guidelines Manual* in effect as of November 1, 2023.

A case was determined to be eligible for retroactive application of the Part A of the amendment if it met the following criteria:

- (A) the offender was assigned status points under USSG §4A1.1(d) when initially sentenced;

⁴² There were approximately 5,800 additional offenders in BOP custody who were pre-trial offenders, offenders sentenced in the courts of the District of Columbia, or military offenders. Those offenders were excluded from this analysis.

⁴³ BOP records for 1,101 offenders could not be matched to Commission records due to missing or inconsistent information on offender name, sentence date, or other identifying information. Some of these offenders may be eligible to seek a reduced sentence pursuant to Part A or Part B, Subpart 1 of the 2023 criminal history amendment.

⁴⁴ Some of the 1,682 offenders for whom the Commission's sentencing information was insufficient to conduct the analysis discussed in this memorandum may be eligible to seek a reduced sentence pursuant to Part A or Part B, Subpart 1 of the 2023 criminal history amendment.

⁴⁵ Should the Commission make Part A of the 2023 criminal history amendment retroactive, it will also specify the date on which that part of the amendment may be applied retroactively.

- (B) the offender’s final offense level was not derived from the career offender or armed career criminal guideline;⁴⁶
- (C) the offender’s Criminal History Category was not determined through application of the adjustment at USSG §3A1.4 (Terrorism);⁴⁷
- (D) the offender’s Criminal History Category was not determined through application of the provision at USSG §4B1.5(a) regarding repeat and dangerous sex offenders against minors;⁴⁸
- (E) the offender’s original sentence was greater than any applicable statutory mandatory minimum punishment, unless the offender received relief from the mandatory minimum punishment pursuant to the statutory safety valve⁴⁹ or the offender received a departure for substantial assistance⁵⁰ when originally sentenced;⁵¹ and

⁴⁶ In cases where the offender is classified as a career offender or an armed career criminal under USSG §4B1.1 and §4B1.4 of the guidelines, the final offense level that applies in the case is the level determined pursuant to either these guideline provisions or the applicable Chapter 2 and Chapter 3 guidelines, whichever is higher. Offenders for whom the original final offense level was controlled by the career offender or armed career criminal sections of the guidelines, therefore, were excluded from the analysis because Part A of the 2023 criminal history amendment will not affect their sentencing range.

⁴⁷ That provision requires that the offender be assigned to CHC VI. Offenders whose CHC was assigned by this provision were excluded from the analysis because the Part A of the 2023 criminal history amendment will not affect their sentencing range.

⁴⁸ That provision requires that the offender’s CHC be the higher of the CHC determined under Chapter Four, Part A of the *Guidelines Manual* or CHC V. Offenders whose CHC was assigned by this provision were excluded from the analysis because Part A of the 2023 criminal history amendment will not affect their sentencing range.

⁴⁹ 18 U.S.C. § 3553(f).

⁵⁰ 18 U.S.C. § 3553(e); USSG §5K1.1 (Substantial Assistance to Authorities).

⁵¹ Offenders sentenced at the applicable mandatory minimum term of imprisonment, who did not receive relief under the statutory safety valve or who did not receive a substantial assistance departure were excluded because their sentence cannot be reduced below the existing mandatory minimum punishment despite a reduction in their guideline level based on the amendment. These offenders were originally sentenced to the shortest sentence of imprisonment available to the court, the statutory minimum for the offense.

The Commission’s data do not reflect any reduction in sentence that may have occurred after the date of the original sentence, for example, pursuant to Federal Rule of Criminal Procedure 35(b) based on an offender's substantial assistance to the government. Under this rule, the court may sentence an offender below any otherwise applicable mandatory minimum term of imprisonment. Therefore, an offender who received a sentence reduction pursuant to Rule 35(b) would be eligible to seek a reduced sentence under the amendment if it were to be made retroactive (assuming all other criteria above are met). Commission data do not include the information necessary to determine which offenders originally sentenced at a mandatory minimum term of imprisonment receive a reduced sentence pursuant to Rule 35(b) after the original sentence was imposed. Therefore, staff’s estimate of the number of offenders who appear to be eligible to seek a reduced sentence may underestimate the actual number of such offenders.

- (F) the offender’s original sentence was greater than the minimum of the amended guideline range, unless the offender received a departure for substantial assistance when originally sentenced.⁵²

2. Eligibility for Part B, Subpart 1 of the 2023 Criminal History Amendment Regarding Status Points

Staff have assumed that the effective date of retroactivity for Part B, Subpart 1 of the 2023 criminal history amendment would be November 1, 2023.⁵³ Further, we assumed that the courts would resentence offenders in a manner that is consistent with the *Guidelines Manual* in effect as of November 1, 2023.

A case was determined to be eligible for retroactive application of Part B, Subpart 1 of the amendment if it met the following criteria:

- (A) the offender was assigned zero criminal history points under USSG §4A1.1(a–e) when initially sentenced;
- (B) the offender was not excluded by any of the eligibility criteria of Part B, Subpart 1 of the 2023 criminal history amendment,⁵⁴ as follows –
 - (1) the court did not apply the adjustment at USSG §3A1.4 (Terrorism) for any guideline calculation in connection with the offense;
 - (2) the defendant did not use violence or credible threats of violence in connection with the offense (*see* Appendix A);⁵⁵
 - (3) the offense did not result in death or serious bodily injury (*see* Appendix B);⁵⁶

⁵² *See* USSG §1B1.10(b)(2)(A) (Except as provided in subdivision (B), the court shall not reduce the defendant’s term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement to a term that is less than the minimum of the amended guideline range.). There were 4,299 cases excluded from the analysis based on this assumption. Although the term of imprisonment in those cases was based on a sentencing range that would be lowered by Part A of the 2023 criminal history amendment, the original sentence imposed is equal to or less than the minimum of the amended guideline range. In none of those cases did the court grant a departure for substantial assistance to the government.

⁵³ Should the Commission decide to make Part B of the 2023 criminal history amendment retroactive, it will also specify the date on which that part of the amendment may be applied retroactively.

⁵⁴ *See supra*, at Part IB of this memorandum, for a discussion of these eligibility criteria.

⁵⁵ The Commission’s methodology for determining which offenders were excluded by this eligibility criterion for the purpose of this estimate is detailed in Appendix A. That methodology should not be considered as the Commission’s interpretation of how this criterion should be applied in all cases. The courts may apply this eligibility criterion differently.

⁵⁶ The Commission’s methodology for determining which offenders were excluded by this by this eligibility criterion for the purpose of this estimate is detailed in Appendix B. That methodology should not be considered as

- (4) no count of conviction was a sex offense (*see* Appendix C);⁵⁷
- (5) the defendant did not personally cause substantial financial hardship (*see* Appendix D);⁵⁸
- (6) the defendant did not possess, receive, purchase, transport, transfer, sell, or otherwise dispose of a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense (*see* Appendix E);⁵⁹
- (7) the court did not apply any of the guidelines in USSG Chapter 2, Part H, Subpart 1 in connection with the offense;
- (8) the court did not apply the adjustment under USSG §3A1.1 (Hate Crime Motivation or Vulnerable Victim) or the adjustment under USSG §3A1.5 (Serious Human Rights Offense) for any guideline calculation in connection with the offense;
- (9) the court did not apply the adjustment under USSG §3B1.1 (Aggravating Role) for any guideline calculation in connection with the offense; and
- (10) no count of conviction was 21 U.S.C. § 848;

(C) the offender's original sentence was greater than any applicable statutory mandatory minimum punishment, unless the offender received relief from the mandatory minimum punishment pursuant to the statutory safety valve⁶⁰ or the offender received a departure for substantial assistance⁶¹ when originally sentenced;⁶² and

the Commission's interpretation of how this criterion should be applied in all cases. The courts may apply this eligibility criterion differently.

⁵⁷ The Commission's methodology for determining which offenders were excluded by this by this eligibility criterion for the purpose of this estimate is detailed in Appendix C. That methodology should not be considered as the Commission's interpretation of how this criterion should be applied in all cases. The courts may apply this eligibility criterion differently.

⁵⁸ The Commission's methodology for determining which offenders were excluded by this eligibility criterion for the purpose of this estimate is detailed in Appendix D. That methodology should not be considered as the Commission's interpretation of how this criterion should be applied in all cases. The courts may apply this eligibility criterion differently.

⁵⁹ The Commission's methodology for determining which offenders were excluded by this eligibility criterion for the purpose of this estimate is detailed in Appendix E. That methodology should not be considered as the Commission's interpretation of how this criterion should be applied in all cases. The courts may apply this eligibility criterion differently.

⁶⁰ 18 U.S.C. § 3553(f).

⁶¹ 18 U.S.C. § 3553(e); USSG §5K1.1 (Substantial Assistance to Authorities).

⁶² Offenders sentenced at the applicable mandatory minimum term of imprisonment, who did not receive relief under the statutory safety valve or who did not receive a substantial assistance departure were excluded because their sentence cannot be reduced below the existing mandatory minimum punishment despite a reduction in their guideline level based on the amendment. These offenders were originally sentenced to the shortest sentence of imprisonment available to the court, the statutory minimum for the offense.

(D) the offender's original sentence was greater than the minimum of the amended guideline range, unless the offender received a departure for substantial assistance when originally sentenced.⁶³

3. Other assumptions

For purposes of this analysis, staff also assumed that:

- the BOP population incarcerated on November 1, 2023 will be substantially similar to that incarcerated on January 28, 2023;
- the sentence for each offender would be reduced based on the maximum good conduct credit allowed by the BOP;⁶⁴
- offenders would serve the lesser of the newly calculated sentence or their life expectancies; and
- courts would apply the criminal history amendment in accordance with section 1B1.10 as amended by the 2023 amendment to that policy statement.

The Commission's data do not reflect any reduction in sentence that may have occurred after the date of the original sentence, for example, pursuant to Federal Rule of Criminal Procedure 35(b) based on an offender's substantial assistance to the government. Under this rule, the court may sentence an offender below any otherwise applicable mandatory minimum term of imprisonment. Therefore, an offender who received a sentence reduction pursuant to Rule 35(b) would be eligible to seek a reduced sentence under the amendment if it were to be made retroactive (assuming all other criteria above are met). Commission data do not include the information necessary to determine which offenders originally sentenced at a mandatory minimum term of imprisonment receive a reduced sentence pursuant to Rule 35(b) after the original sentence was imposed. Therefore, staff's estimate of the number of offenders who appear to be eligible to seek a reduced sentence may underestimate the actual number of such offenders.

⁶³ See USSG §1B1.10(b)(2)(A) (Except as provided in subdivision (B), the court shall not reduce the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement to a term that is less than the minimum of the amended guideline range.). There were 4,248 cases excluded from the analysis based on this assumption. Although the term of imprisonment in those cases was based on a sentencing range that would be lowered by Part B of the 2023 criminal history amendment, the original sentence imposed is equal to or less than the minimum of the amended guideline range. In none of those cases did the court grant a departure for substantial assistance to the government.

⁶⁴ The First Step Act of 2018 provides eligible inmates the opportunity to earn time credits for successful participation in evidence-based recidivism reduction programs and productive activities. 18 U.S.C. § 3632(d). The time credits can be applied toward earlier placement in pre-release custody, such as in residential re-entry centers and home confinement, or earlier transfer to supervised release (i.e., early satisfaction of the inmate's term of imprisonment). 18 U.S.C. § 3624(g). The Commission has no data with which to estimate whether and to what extent offenders may earn these time credits after November 1, 2023. Some offenders who do may be released under their current sentence prior to the release date used for this analysis. In such cases, the staff's estimate of the extent of the impact of the retroactive application of Part A and Part B, Subpart 1 of the 2023 criminal history amendment may be overstated.

V. CONCLUSION

The Commission staff estimates that if the Commission were to authorize the retroactive application of the Part A of the 2023 criminal history amendment (regarding status points), there are 11,495 offenders in BOP custody who would have a lower sentencing range under the guidelines. If the courts were to grant the full reduction in sentence possible in each case, the average reduction in sentence would be 11.7 percent. Approximately 2,000 offenders would be eligible for immediate release on November 1, 2023.

The Commission staff estimates that if the Commission were to authorize the retroactive application of Part B, Subpart 1 of the 2023 criminal history amendment (regarding zero-point offenders), there are 7,272 offenders in BOP custody, who would have lower sentencing range under the guidelines. If the courts were to grant the full reduction in sentence possible in each case, the average reduction in sentence would be 17.6 percent. Approximately 1,200 offenders would be eligible for immediate release on November 1, 2023.

Appendix A

A defendant was determined to have used violence or credible threats of violence in connection with the offense if any of the following applied:

- 1) The enhancement under §3A1.3 (Restraint of Victim) was applied for any guideline calculation in connection with the offense.
- 2) Any of the following guidelines were included as a guideline calculation in connection with the offense:

<i>Guidelines Manual Part</i>											
Part A	§2A1.1	§2A1.2	§2A1.3	§2A1.5	§2A2.1	§2A2.2	§2A2.3	§2A3.1	§2A3.2	§2A5.1	§2A5.3
Part B	§2B3.1	§2B3.2									
Part D	§2D1.9										
Part E	§2E1.1	§2E1.2	§2E1.3	§2E1.4	§2E1.5						
Part G	§2G1.2	§2G2.1	§2G2.3	§2G2.4	§2G2.6						
Part H	§2H4.1										
Part K	§2K1.3	§2K1.4	§2K1.7								
Part M	§2M2.1	§2M2.3	§2M5.3								
Part X	§2X6.1										

- 3) Any of the following guidelines were included as a guideline calculation in connection with the offense and resulted in the application of a cross-reference to §2A1.4:
 - (1) §2A5.2
 - (2) §2K2.1
 - (3) §2K3.2
 - (4) §2L1.1
 - (5) §2L2.2
 - (6) §2K5.1

- 4) Any of the following guidelines were included as a guideline calculation in connection with the offense and resulted in the application of a cross-reference to §2M6.1:
- (1) §2A5.2
 - (2) §2A6.1
- 5) An enhancement under any of the following *Guidelines Manual* provisions was applied in any guideline calculation in connection with the offense:

Chapter Two Guideline	Guidelines Manual Year Start	Guidelines Manual Year End	Guidelines Manual Part
2A2.2	1987	2018	(b)(2)(A) Firearm discharged (5 levels)
2A2.2	1987	2018	(b)(2)(B) Dangerous weapon otherwise used (4 levels)
2A2.2	2014	2018	(b)(4) Offense involved strangulation or suffocating a spouse or partner (3 levels)
2A3.1	1987	2018	(b)(5) Victim abducted (4 levels)
2A3.4	2004	2018	(a)(1) If offense committed by means in 18 U.S.C. § 2241(a) or (b) (Base offense level 20)
2A4.1	1987	2018	(b)(3) Dangerous weapon used (2 levels)
2A4.1	1991	2003	(b)(5) Victim sexually exploited (3 levels)
2A4.1	2003	2018	(b)(5) Victim sexually exploited (6 levels)
2A4.1	1991	2018	(b)(7)(A) Kidnapped in connection with another offense (Offense level from applicable guideline with an adjustment for kidnapping)
2A4.1	1991	2018	(b)(7)(B) Kidnapped in connection with another crime (Offense level from applicable guideline, plus 4 levels, no greater than level 43)
2A5.1	1987	2018	(b)(1) Death resulting from act (5 levels)
2A5.2	1987	2018	(a)(1)(A) Intentionally endangering safety of an airport or aircraft (Base offense level 30)
2A5.2	1987	2018	(a)(1)(B) Intentionally endangering safety of a mass transportation facility or vehicle (Base offense level 30)
2A5.2	2002	2018	(b)(1)(A) and (B)(i) Subsection (a)(1) or (a)(2) applies, firearm discharged (5 levels, increase to level 24)
2A5.2	2002	2018	(b)(1)(A) and (B)(ii) Subsection (a)(1) or (a)(2) applies, dangerous weapon otherwise used (4 levels, increase to level 24)
2A6.1	2009	2018	(b)(5) Convicted under 18 U.S.C. § 115, made a public threatening communication, and knew the communication created a substantial risk to violate 18 U.S.C. § 115 (2 levels)
2A6.2	2014	2018	(b)(1)(C) Strangling, suffocating or an attempt to strangle or suffocate (2 levels)

Chapter Two Guideline	Guidelines Manual Year Start	Guidelines Manual Year End	Guidelines Manual Part
2A6.2	1997	2013	(b)(1)(A)-(E) Violation of more than one of above (4 levels)
2A6.2	2014	2018	(b)(1)(A)-(E) Violation of more than one of above (4 levels)
2A6.2	1997	2018	(b)(1)(A)-(E) Violation of more than one of above (4 levels)
2A6.2	1997	2018	(b)(1)(A)-(E) Violation of more than one of above (4 levels)
2A6.2	1997	2018	(b)(1)(A)-(E) Violation of more than one of above (4 levels)
2A6.2	1997	2018	(b)(1)(A)-(E) Violation of more than one of above (4 levels)
2A6.2	2014	2018	(b)(1)(A)-(E) Violation of more than one of above (4 levels)
2B3.1	1987	1990	(b)(2)(A) Firearm discharged (5 levels)
2B3.1	1991	2018	(b)(2)(A) Firearm discharged (7 levels)
2B3.1	1987	1990	(b)(2)(B) Firearm or dangerous weapon otherwise used (4 levels)
2B3.1	1991	2018	(b)(2)(B) Firearm otherwise used (6 levels)
2B3.1	1991	2018	(b)(2)(D) Dangerous weapon otherwise used (4 levels)
2B3.1	1989	1990	(b)(2)(F) Threat of death (2 levels)
2B3.1	1991	2018	(b)(2)(F) Threat of death (2 levels)
2B3.1	1987	2018	(b)(4)(A) Person abducted during offense (4 levels)
2B3.1	1987	2018	(b)(4)(B) Person physically restrained during offense (2 levels)
2B3.2	1991	2018	(b)(3)(A)(i) Firearm discharged (7 levels)
2B3.2	1991	2018	(b)(3)(A)(ii) Firearm otherwise used (6 levels)
2B3.2	1991	2018	(b)(3)(A)(iv) Dangerous weapon otherwise used (4 levels)
2B3.2	1991	2018	(b)(3)(B)(i)(I) Offense involved preparation to carry out threat of death (3 levels)
2B3.2	1991	2018	(b)(3)(B)(i)(III) Offense involved preparation to carry out threat of kidnaping (3 levels)
2B3.2	2003	2018	(b)(3)(B)(ii) Participants demonstrated ability to carry out a threat described in (i)(I) through (i)(V) (3 levels)
2B3.2	1987	1990	(b)(5)(A) Person abducted during offense (4 levels)
2B3.2	1991	2018	(b)(5)(A) Person abducted during offense (4 levels)
2B3.2	1987	1990	(b)(5)(B) Person physically restrained during offense (2 levels)
2B3.2	1991	2018	(b)(5)(B) Person physically restrained during offense (2 levels)

Chapter Two Guideline	Guidelines Manual Year Start	Guidelines Manual Year End	Guidelines Manual Part
2D1.1	2010	2018	(b)(2) Defendant used violence, threat of violence or directed violence (2 levels)
2E2.1	1987	2018	(b)(1)(A) Firearm discharged (5 levels)
2E2.1	1987	2018	(b)(1)(B) Dangerous weapon otherwise used (4 levels)
2E2.1	1987	2018	(b)(3)(A) Person abducted to facilitate commission of the offense or escape (4 levels)
2E2.1	1987	2018	(b)(3)(B) Person physically restrained to facilitate commission or escape (2 levels)
2G1.1	1987	1999	(b)(1) Used physical force, or coercion by drugs or otherwise (4 levels)
2G1.1	2000	2001	(b)(1) Involved prostitution and use of physical force, or coercion by threats or drugs (4 levels)
2G1.1	2002	2003	(b)(1) Involved a commercial sex act and use of physical force, fraud, or coercion (4 levels)
2G1.3	2007	2018	(a)(1) Conviction under 18 U.S.C. § 1591(b)(1) (Base offense level 34)
2G2.1	2004	2018	(b)(2)(A) Offense involved the commission of a sexual act or sexual contact (2 levels)
2G2.1	2004	2018	(b)(2)(B) Offense involved the commission of a sexual act and conduct as described in 18 U.S.C. § 2241(a) or (b) (4 levels)
2G2.1	2016	2018	(b)(4)(B) Offense involved portrayal of an infant or toddler (4 levels)
2G2.2	2004	2018	(b)(5) Defendant engaged in a pattern of activity involving the sexual exploitation of a minor (5 levels)
2H1.1	1995	2018	(a)(3)(A) Offense involved use/threat of force (Base Offense Level 10)
2H2.1	1987	2018	(a)(1) Obstruction occurred by use of force or threat against persons or property (Base offense level 18)
2H4.1	1997	2000	(b)(2)(A) Dangerous weapon used (2 levels)
2H4.1	2001	2018	(b)(2)(A) Dangerous weapon used (4 levels)
2J1.2	1987	2006	(b)(1)(B) Causing/threatening physical injury to a person or damage to property (8 levels)
2J1.2	2007	2018	(b)(1)(B) Causing/threatening physical injury to a person or damage to property (8 levels)
2J1.3	1987	2018	(b)(1) Suborned perjury by causing/threatening physical injury to a person or property (8 levels)
2K1.4	2007	2018	(a)(1)(B) Destruction or attempted destruction of a dwelling, airport, aircraft, mass transportation facility/vehicle, maritime facility, vessel, vessel's cargo, a public transportation system, state/government facility, infrastructure facility, or a place of public use (Base offense Level 24)
2K1.4	2007	2018	(a)(2)(B) Destruction or attempted destruction of a structure other than a dwelling, airport, aircraft, mass transportation facility/vehicle, maritime facility, vessel, vessel's cargo, a public transportation system, state/government facility, infrastructure facility, or a place of public use (Base offense level 20)

Chapter Two Guideline	Guidelines Manual Year Start	Guidelines Manual Year End	Guidelines Manual Part
2K1.4	2007	2018	(a)(2)(C) Endangered a dwelling or a structure other than a dwelling, airport, aircraft, mass transportation facility/vehicle, maritime facility, vessel, vessel's cargo, a public transportation system, state/government facility, infrastructure facility, or a place of public use (Base offense level 20)
2K2.1	1991	2005	(b)(6)(B) Firearms/ammunition used in connection with another felony offense (4 levels, increase to level 18)
2K2.1	2006	2010	(b)(6)(B) Firearms/ammunition used in connection with another felony offense (4 levels, increase to level 18)
2K2.1	2011	2018	(b)(6)(B) Firearms/ammunition used in connection with another felony offense (4 levels, increase to level 18)
2L1.1	1997	2005	(b)(5)(A) Firearm discharged (6 levels, increase to level 22)
2L1.1	2007	2018	(b)(5)(A) Firearm discharged (6 levels, increase to level 22)
2M2.1	1993	2018	§2M2.1 Destruction of, or Production of Defective, War Material, Premises, or Utilities
2M2.3	1987	1992	§2M2.3 Destruction of National Defense Material, Premises, or Utilities
2M2.3	1993	2018	§2M2.3 Destruction of, or Production of Defective, National Defense Material, Premises, or Utilities
2M2.3	1987	2018	(a) Base offense level 26
2M5.3	2002	2002	§2M5.3 Providing Material Support or Resources to Designated Foreign Terrorist Organizations
2M5.3	2003	2006	§2M5.3 Providing Material Support or Resources to Designated Foreign Terrorist Organizations or For a Terrorist Purpose
2M5.3	2007	2018	§2M5.3 Providing Material Support or Resources to Designated Foreign Terrorist Organizations or Specially Designated Global Terrorists, or For a Terrorist Purpose
2M6.1	2001	2001	(a)(4)(B) Involved a threat to use a nuclear weapon/material/by-product, chemical weapon, biological agent/toxin, or delivery system, or a weapon of mass destruction, but did not involve any conduct evidencing intent or ability to carry out threat (Base offense level 20)
2P1.1	1987	2018	(b)(1) Involved use of or threat of force against any person (5 levels)
2T1.9	1987	2018	(b)(1) Involved the planned or threatened use of violence (4 levels)

Appendix B

An offense was determined to result in death or serious bodily injury if any of the following applied:

- 1) Any of the following *Guidelines Manual* provisions were applied in any guideline calculation in connection with the offense:

Chapter Two Guideline	<i>Guidelines Manual Year Start</i>	<i>Guidelines Manual Year End</i>	<i>Guidelines Manual Part</i>
2A2.1	1990	2018	(b)(1)(A) Permanent or life-threatening bodily injury (4 levels)
2A2.1	1990	2018	(b)(1)(B) Serious bodily injury (2 levels)
2A2.1	1990	2018	(b)(1)(C) Between permanent/life-threatening and serious bodily injury (3 levels)
2A2.2	1987	2003	(b)(3)(A) Bodily injury (2 levels)
2A2.2	2004	2018	(b)(3)(A) Bodily injury (3 levels)
2A2.2	1987	2003	(b)(3)(B) Serious bodily injury (4 levels)
2A2.2	2004	2018	(b)(3)(B) Serious bodily injury (5 levels)
2A2.2	1987	2003	(b)(3)(C) Permanent or life-threatening injury (6 levels)
2A2.2	2004	2018	(b)(3)(C) Permanent or life-threatening injury (7 levels)
2A2.2	1989	2003	(b)(3)(D) Between serious and “simple” bodily injury (3 levels)
2A2.2	2004	2018	(b)(3)(D) Between serious and “simple” bodily injury (4 levels)
2A2.2	1989	2003	(b)(3)(E) Between permanent/life-threatening and serious bodily injury (5 levels)
2A2.2	2004	2018	(b)(3)(E) Between permanent/life-threatening and serious bodily injury (6 levels)
2A2.3	2004	2018	(b)(1)(A) Bodily injury to victim (2 levels)
2A2.3	1995	2003	(b)(1)(B) Substantial bodily injury to victim under age of 16 (4 levels)
2A2.3	2004	2013	(b)(1)(B) Substantial bodily injury to victim under age of 16 (4 levels)
2A2.3	2014	2018	(b)(1)(B) Substantial bodily injury to partner or victim under age of 16 (4 levels)
2A2.4	2004	2018	(b)(1)(A) Physical Contact
2A3.1	1987	2018	(b)(4)(A) Permanent or life-threatening bodily injury (4 levels)
2A3.1	1987	2018	(b)(4)(B) Serious bodily injury (2 levels)
2A3.1	1989	2018	(b)(4)(C) Between permanent/life-threatening and serious bodily injury (3 levels)

Chapter Two Guideline	Guidelines Manual Year Start	Guidelines Manual Year End	Guidelines Manual Part
2A4.1	1987	2018	(b)(2)(A) Victim sustained permanent or life-threatening bodily injury (4 levels)
2A4.1	1987	2018	(b)(2)(B) Serious bodily injury (2 levels)
2A4.1	1989	2018	(b)(2)(C) Between permanent or life-threatening and serious bodily injury (3 levels)
2A6.2	1997	2018	(b)(1)(B) Bodily injury (2 levels)
2B1.1	2001	2003	(b)(16)(A) Conscious/reckless risk of death/serious bodily injury (2 levels, increase to level 14)
2B1.1	2004	2007	(b)(16)(A) Conscious/reckless risk of death/serious bodily injury (2 levels, increase to level 14)
2B1.1	2008	2010	(b)(16)(A) Conscious/reckless risk of death/serious bodily injury (2 levels, increase to level 14)
2B1.1	2011	2012	(b)(16)(A) Conscious/reckless risk of death/serious bodily injury (2 levels, increase to level 14)
2B1.1	2013	2016	(b)(16)(A) Conscious/reckless risk of death/serious bodily injury (2 levels, increase to level 14)
2B1.1	2018	2018	(b)(16)(A) Conscious/reckless risk of death/serious bodily injury (2 levels, increase to level 14)
2B3.1	1987	2018	(b)(3)(A) Bodily injury occurred (2 levels)
2B3.1	1987	2018	(b)(3)(B) Serious bodily injury (4 levels)
2B3.1	1987	2018	(b)(3)(C) Permanent/life-threatening bodily injury (6 levels)
2B3.1	1989	2018	(b)(3)(D) Between bodily and serious bodily injury (3 levels)
2B3.1	1989	2018	(b)(3)(E) Between serious and permanent/life-threatening bodily injury (5 levels)
2B3.2	1991	2018	(b)(1) Express or implied threat of death, bodily injury or kidnaping (2 levels)
2B3.2	1991	2018	(b)(3)(B)(i)(II) Offense involved preparation to carry out threat of serious bodily injury (3 levels)
2B3.2	1987	1990	(b)(4)(A) Bodily injury occurred (2 levels)
2B3.2	1991	2018	(b)(4)(A) Bodily injury occurred (2 levels)
2B3.2	1987	1990	(b)(4)(B) Serious bodily injury (4 levels)
2B3.2	1991	2018	(b)(4)(B) Serious bodily injury (4 levels)
2B3.2	1987	1990	(b)(4)(C) Permanent/life-threatening bodily injury (6 levels)
2B3.2	1991	2018	(b)(4)(C) Permanent/life-threatening bodily injury (6 levels)
2B3.2	1989	1990	(b)(4)(D) Between bodily and serious bodily injury (3 levels)
2B3.2	1991	2018	(b)(4)(D) Between bodily and serious bodily injury (3 levels)
2B3.2	1989	1990	(b)(4)(E) Between serious and permanent/life-threatening bodily injury (5 levels)

Chapter Two Guideline	Guidelines Manual Year Start	Guidelines Manual Year End	Guidelines Manual Part
2B3.2	1991	2018	(b)(4)(E) Between serious and permanent/life-threatening bodily injury (5 levels)
2B5.3	2000	2004	(b)(6)(A) Conscious/reckless risk of serious bodily injury (2 levels, increase to level 13)
2B5.3	2005	2008	(b)(6)(A) Conscious/reckless risk of serious bodily injury (2 levels, increase to level 13)
2B5.3	2009	2012	(b)(6)(A) Conscious/reckless risk of serious bodily injury (2 levels, increase to level 14)
2B5.3	2013	2018	(b)(6)(A) Conscious/reckless risk of serious bodily injury (2 levels, increase to level 14)
2D1.1	1987	1988	(a)(1) Offense that results in death or serious bodily injury with a prior conviction for a similar drug offense (Base offense level 43)
2D1.1	1989	2018	(a)(1) Convicted under 21 U.S.C. § 841(b)(1)(A), (b)(1)(B), (b)(1)(C) or 21 U.S.C. § 960(b)(1), (b)(2), or (b)(3) and conviction establishes death/serious bodily injury after more than one prior conviction for similar offense (Base offense level 43)
2D1.1	1987	1988	(a)(2) Offense that results in death or serious bodily injury and involved controlled substances (except Schedule III, IV, and V controlled substances and less than: (A) fifty kilograms of marihuana,(B) ten kilograms of hashish, and (C) one kilogram of hashish oil) (Base offense level 38)
2D1.1	1989	2018	(a)(2) Convicted under 21 U.S.C. § 841(b)(1)(A), (b)(1)(B), (b)(1)(C) or 21 U.S.C. § 960(b)(1), (b)(2), or (b)(3) and conviction establishes death/serious bodily injury (Base offense level 38)
2D1.1	2009	2018	(a)(3) Convicted under 21 U.S.C. § 841(b)(1)(E) or 21 U.S.C. § 960(b)(5) and conviction establishes death/serious bodily injury after more than one prior conviction for similar offense (Base offense level 30)
2D1.1	2009	2018	(a)(4) Convicted under 21 U.S.C. §§ 841(b)(1)(E) or 960(b)(5) and conviction establishes death/serious bodily injury resulted from use of substance (Base offense level 26)
2D2.3	1989	2018	(a)(1) Death resulted (Base Offense Level 26)
2D2.3	1989	2018	(a)(2) Serious bodily injury resulted (Base Offense Level 21)
2E2.1	1987	2018	(b)(2)(A) Bodily injury (2 levels)
2E2.1	1987	2018	(b)(2)(B) Serious bodily injury (4 levels)
2E2.1	1987	2018	(b)(2)(C) Permanent or life-threatening bodily injury (6 levels)
2E2.1	1989	2018	(b)(2)(D) Between bodily injury and serious bodily injury (3 levels)
2E2.1	1989	2018	(b)(2)(E) Between serious bodily injury and permanent/life-threatening injury (5 levels)
2F1.1	1989	1997	(b)(7)(A) Involved conscious or reckless risk of serious bodily injury (2 levels, increase to level 13)
2F1.1	1998	1999	(b)(7)(A) Involved conscious or reckless risk of serious bodily injury (2 levels, increase to level 13)
2F1.1	2000	2000	(b)(7)(A) Involved conscious or reckless risk of serious bodily injury (2 levels, increase to level 13)

Chapter Two Guideline	Guidelines Manual Year Start	Guidelines Manual Year End	Guidelines Manual Part
2H4.1	1997	2018	(b)(1)(A) Victim sustained permanent or life-threatening bodily injury (4 levels)
2H4.1	1997	2018	(b)(1)(B) Victim sustained serious bodily injury (2 levels)
2H4.2	2001	2018	(b)(1)(A) Involved serious bodily injury (4 levels)
2H4.2	2001	2018	(b)(1)(B) Involved bodily injury (2 levels)
2K1.4	1990	2018	(a)(1)(A) Knowingly created substantial risk of death/serious bodily injury (Base offense Level 24)
2K1.4	1990	2018	(a)(2)(A) Substantial risk of death/serious bodily injury (Base offense level 20)
2K3.2	1990	2018	(a)(2) Death resulted, apply the most analogous offense guideline from Chapter Two, Part A, Subpart 1
2L1.1	1997	2005	(b)(6) Intentionally or recklessly creating a substantial risk of death or serious bodily injury to another person (2 levels, increase to level 18)
2L1.1	2007	2018	(b)(6) Intentionally or recklessly creating a substantial risk of death or serious bodily injury to another person (2 levels, increase to level 18)
2L1.1	1997	2005	(b)(7)(A) Person sustained bodily injury (2 levels)
2L1.1	2006	2018	(b)(7)(A) Person sustained bodily injury (2 levels)
2L1.1	1997	2005	(b)(7)(B) Person sustained serious bodily injury (4 levels)
2L1.1	2006	2018	(b)(7)(B) Person sustained serious bodily injury (4 levels)
2L1.1	1997	2005	(b)(7)(C) Person sustained permanent or life-threatening bodily injury (6 levels)
2L1.1	2006	2018	(b)(7)(C) Person sustained permanent or life-threatening bodily injury (6 levels)
2L1.1	1997	2005	(b)(7)(D) Person died (8 levels)
2L1.1	2006	2018	(b)(7)(D) Person died (10 levels)
2M6.1	2001	2001	(b)(2)(A) and (B)(i) Subsection (a)(2) applies and any victim died or sustained permanent life-threatening bodily injury (4 levels)
2M6.1	2002	2002	(b)(2)(A) and (B)(i) Subsection (a)(2),(a)(3), or (a)(4) applies and any victim died or sustained permanent life-threatening bodily injury (4 levels)
2M6.1	2003	2018	(b)(2)(A) and (B)(i) Subsection (a)(2),(a)(3), or (a)(4)(A) applies and any victim died or sustained permanent life-threatening bodily injury (4 levels)
2M6.1	2001	2001	(b)(2)(A) and (B)(ii) Subsection (a)(2) applies and any victim sustained serious bodily injury (2 levels)
2M6.1	2002	2002	(b)(2)(A) and (B)(ii) Subsection (a)(2),(a)(3), or (a)(4) applies and any victim sustained serious bodily injury (2 levels)

Chapter Two Guideline	Guidelines Manual Year Start	Guidelines Manual Year End	Guidelines Manual Part
2M6.1	2003	2018	(b)(2)(A) and (B)(ii) Subsection (a)(2),(a)(3), or (a)(4)(A) applies and any victim sustained serious bodily injury (2 levels)
2M6.1	2001	2001	(b)(2)(A) and (B)(iii) Subsection (a)(2) applies and the degree of injury of any victim is between that specified in (B)(i) and (B)(ii) (3 levels)
2M6.1	2002	2002	(b)(2)(A) and (B)(iii) Subsection (a)(2),(a)(3), or (a)(4) applies and the degree of injury of any victim is between that specified in (B)(i) and (B)(ii) (3 levels)
2M6.1	2003	2018	(b)(2)(A) and (B)(iii) Subsection (a)(2),(a)(3), or (a)(4)(A) applies and the degree of injury of any victim is between that specified in (B)(i) and (B)(ii) (3 levels)
2N1.1	1991	2018	(b)(1)(A) Victim sustained permanent or life-threatening bodily injury (4 levels)
2N1.1	1991	2018	(b)(1)(B) Victim sustained serious bodily injury (2 levels)
2N1.1	1991	2018	(b)(1)(C) Degree of injury victim sustained between that specified in subdivisions (A) and (B) (3 levels)
2Q1.2	1987	2018	(b)(2) Resulted in substantial likelihood of death or serious bodily injury (9 levels)
2Q1.3	1987	2018	(b)(2) Resulted in substantial likelihood of death or serious bodily injury (11 levels)
2Q1.4	2003	2018	(b)(1)(A) Victim sustained permanent/life-threatening bodily injury (4 levels)
2Q1.4	2003	2018	(b)(1)(B) Victim sustained serious bodily injury (2 levels)
2Q1.4	2003	2018	(b)(1)(C) The degree of injury victim sustained is between subdivisions (A) and (B) (3 levels)

Appendix C

The offense of conviction was a sex offense if any of the following applied:

- 1) An enhancement under §4B1.5 (Repeat and Dangerous Sex Offenders Against Minors) was applied for any guideline calculation in connection with the offense.
- 2) Any offense of conviction was:

Offense of Conviction										
Title 18	§ 1591	§ 2241	§ 2242	§ 2243(a)	§ 2243(b)	§ 2244	§ 2245	§ 2251	§ 2251A	§ 2252
	§ 2252A	§ 2252B	§ 2260	§ 2260A	§ 2423	§ 2421A				

- 3) Any of the following guidelines were applied in connection with the offense:

Guidelines Manual Part							
Part A	§2A3.4						
Part G	§2G1.2	§2G1.3	§2G2.1	§2G2.2	§2G2.3	§2G2.4	§2G2.6

- 4) An enhancement under any of the following *Guidelines Manual* provisions was applied in any guideline calculation in connection with the offense:

Chapter Two Guideline	<i>Guidelines Manual</i> Year Start	<i>Guidelines Manual</i> Year End	<i>Guidelines Manual Part</i>
2G1.1	1996	1999	(b)(2)(A) Victim less than 12 years of age (9 levels)
2G1.1	2000	2003	(b)(2)(A) Victim less than 12 years of age (4 levels)
2G1.1	1996	1999	(b)(2)(B) Victim at least 12 years of age but less than 16 (7 levels)
2G1.1	2000	2003	(b)(2)(B) Victim at least 12 years of age but less than 16 (2 levels)
2G1.1	1996	1999	(b)(2)(C) Victim at least 16 years of age but less than 18 (5 levels)
2G1.1	2000	2003	(b)(5)(A) Computer was used to facilitate travel of a minor to engage in prostitution (2 levels)

Chapter Two Guideline	<i>Guidelines Manual Year Start</i>	<i>Guidelines Manual Year End</i>	<i>Guidelines Manual Part</i>
2G1.1	2000	2003	(b)(5)(B) Computer was used to solicit a person to engage in prohibited sexual conduct with a minor (2 levels)

Appendix D

A defendant was determined to have personally caused substantial financial hardship in connection with the offense if any of the following applied:

- 1) An enhancement under any of the following *Guidelines Manual* provisions was applied in any guideline calculation in connection with the offense:

Chapter Two Guideline	<i>Guidelines Manual Year Start</i>	<i>Guidelines Manual Year End</i>	<i>Guidelines Manual Part</i>
2B1.1	2015	2018	(b)(2)(A)(iii) Resulted in financial hardship to one or more victims (2 levels)
2B1.1	2015	2018	(b)(2)(B) Resulted in financial hardship to five or more victims (4 levels)
2B1.1	2015	2018	(b)(2)(C) Resulted in financial hardship to 25 or more victims (6 levels)
2B1.1	2018	2018	(b)(17)(B)(i) Jeopardized the safety and soundness of financial institution (4 levels, increase to level 24)
2F1.1	1990	1997	(b)(8)(A) Substantially jeopardized the safety and soundness of a financial institution (4 levels, increase to level 24)
2F1.1	1998	1999	(b)(8)(A) Substantially jeopardized the safety and soundness of a financial institution (4 levels, increase to level 24)
2F1.1	2000	2000	(b)(8)(A) Substantially jeopardized the safety and soundness of a financial institution (4 levels, increase to level 24)

Appendix E

A defendant was determined to have possessed, received, purchased, transported, transferred, sold, or otherwise disposed of a firearm or other dangerous weapon (or induced another participant to do so) in connection with the offense, if any of the following applied:

- 1) Any count of conviction was 18 U.S.C. § 924(c).
- 2) The enhancement under §4B1.4 (Armed Career Criminal) was applied in connection with the offense.
- 3) Any of the following guidelines were applied in connection with the offense:

<i>Guidelines Manual Part</i>									
Part K	§2K1.3	§2K1.4	§2K1.5	§2K1.7	§2K2.1	§2K2.2	§2K2.3	§2K2.4	§2K2.5
Part M	§2M2.2	§2M5.1	§2M5.2	§2M6.1					

4) An enhancement under any of the following *Guidelines Manual* provisions was applied in any guideline calculation in connection with the offense:

Chapter Two Guideline	<i>Guidelines Manual Year Start</i>	<i>Guidelines Manual Year End</i>	<i>Guidelines Manual Part</i>
2A2.2	1987	2018	(b)(2)(A) Firearm discharged (5 levels)
2A2.2	1987	2018	(b)(2)(B) Dangerous weapon otherwise used (4 levels)
2A2.2	1987	2018	(b)(2)(C) Dangerous weapon brandished or threatened (3 levels)
2A2.4	2004	2018	(b)(1)(B) Dangerous weapon possessed/threatened (3 levels)
2A4.1	1987	2018	(b)(3) Dangerous weapon used (2 levels)
2A5.2	2002	2018	(b)(1)(A) and (B)(i) Subsection (a)(1) or (a)(2) applies, firearm discharged (5 levels, increase to level 24)
2A5.2	2002	2018	(b)(1)(A) and (B)(ii) Subsection (a)(1) or (a)(2) applies, dangerous weapon otherwise used (4 levels, increase to level 24)

Chapter Two Guideline	Guidelines Manual Year Start	Guidelines Manual Year End	Guidelines Manual Part
2A5.2	2002	2018	(b)(1)(A) and (B)(iii) Subsection (a)(1) or (a)(2) applies, weapon brandished/threatened (3 levels, increase to level 24)
2A6.2	1997	2013	(b)(1)(D) Possession, or threatened use of a dangerous weapon (2 levels)
2A6.2	2014	2018	(b)(1)(D) Possession, or threatened use of a dangerous weapon (2 levels)
2B1.1	2001	2003	(b)(16)(B) Possession of a dangerous weapon (2 levels, increase to level 14)
2B1.1	2004	2007	(b)(16)(B) Possession of a dangerous weapon (2 levels, increase to level 14)
2B1.1	2008	2010	(b)(16)(B) Possession of a dangerous weapon (2 levels, increase to level 14)
2B1.1	2011	2012	(b)(16)(B) Possession of a dangerous weapon (2 levels, increase to level 14)
2B1.1	2013	2016	(b)(16)(B) Possession of a dangerous weapon (2 levels, increase to level 14)
2B1.1	2018	2018	(b)(16)(B) Possession of a dangerous weapon (2 levels, increase to level 14)
2B1.5	2002	2018	(b)(6) Dangerous weapon brandished/threatened (2 levels, increase to level 14)
2B2.1	1987	2018	(b)(4) Dangerous weapon possessed (2 levels)
2B2.2	1987	1992	(b)(4) Dangerous weapon possessed (2 levels)
2B2.3	1987	2018	(b)(2) Dangerous weapon possessed (2 levels)
2B3.1	1987	1990	(b)(2)(A) Firearm discharged (5 levels)
2B3.1	1991	2018	(b)(2)(A) Firearm discharged (7 levels)
2B3.1	1987	1990	(b)(2)(B) Firearm or dangerous weapon otherwise used (4 levels)
2B3.1	1991	2018	(b)(2)(B) Firearm otherwise used (6 levels)
2B3.1	1987	1990	(b)(2)(C) Firearm or other dangerous weapon brandished or possessed (3 levels)
2B3.1	1991	2018	(b)(2)(C) Firearm brandished or possessed (5 levels)
2B3.1	1991	2018	(b)(2)(D) Dangerous weapon otherwise used (4 levels)
2B3.1	1991	2018	(b)(2)(E) Dangerous weapon brandished or possessed (3 levels)
2B3.2	1991	2018	(b)(3)(A)(i) Firearm discharged (7 levels)
2B3.2	1991	2018	(b)(3)(A)(ii) Firearm otherwise used (6 levels)
2B3.2	1991	2018	(b)(3)(A)(iii) Firearm brandished or possessed (5 levels)
2B3.2	1991	2018	(b)(3)(A)(iv) Dangerous weapon otherwise used (4 levels)
2B3.2	1991	2018	(b)(3)(A)(v) Dangerous weapon brandished or possessed (3 levels)

Chapter Two Guideline	Guidelines Manual Year Start	Guidelines Manual Year End	Guidelines Manual Part
2B3.2	1991	2018	(b)(3)(B)(i)(IV) Offense involved preparation to carry out threat of product tampering (3 levels)
2B3.2	2003	2018	(b)(3)(B)(i)(V) Offense involved preparation to carry out threat of damage to a computer system used to maintain critical infrastructure (3 levels)
2B5.1	1995	2000	(b)(4) Dangerous weapon possessed (2 levels, increase to level 13)
2B5.1	2001	2018	(b)(4) Dangerous weapon possessed (2 levels, increase to level 13)
2B5.3	2000	2004	(b)(6)(B) Possession of a dangerous weapon (2 levels, increase to level 13)
2B5.3	2005	2008	(b)(6)(B) Possession of a dangerous weapon (2 levels, increase to level 13)
2B5.3	2009	2012	(b)(6)(B) Possession of a dangerous weapon (2 levels, increase to level 14)
2B5.3	2013	2018	(b)(6)(B) Possession of a dangerous weapon (2 levels, increase to level 14)
2D1.1	1987	2018	(b)(1) Dangerous weapon possessed (2 levels)
2D1.11	1991	2018	(b)(1) Dangerous weapon possessed (2 levels)
2E2.1	1987	2018	(b)(1)(A) Firearm discharged (5 levels)
2E2.1	1987	2018	(b)(1)(B) Dangerous weapon otherwise used (4 levels)
2E2.1	1987	2018	(b)(1)(C) Dangerous weapon brandished or possessed (3 levels)
2F1.1	1995	1997	(b)(7)(B) Possession of dangerous weapon (2 levels, increase to level 13)
2F1.1	1998	1999	(b)(7)(B) Possession of dangerous weapon (2 levels, increase to level 13)
2F1.1	2000	2000	(b)(7)(B) Possession of dangerous weapon (2 levels, increase to level 13)
2H4.1	1997	2000	(b)(2)(A) Dangerous weapon used (2 levels)
2H4.1	2001	2018	(b)(2)(A) Dangerous weapon used (4 levels)
2H4.1	2001	2018	(b)(2)(B) Dangerous weapon brandished or threatened (2 levels)
2K1.3	1991	2002	(b)(3)(B) Use/possession of explosive material in connection with another felony offense (4 levels, increase to level 18)
2K1.3	2003	2018	(b)(3)(B) Use/possession of explosive material in connection with another felony offense (4 levels, increase to level 18)
2K2.5	1989	1990	§2K2.5 Possession of Firearms and Dangerous Weapons in Federal Facilities
2K2.5	1991	2018	§2K2.5 Possession of Firearm or Dangerous Weapon in Federal Facility; Possession or Discharge of Firearm in School Zone
2L1.1	1997	2005	(b)(5)(A) Firearm discharged (6 levels, increase to level 22)

Chapter Two Guideline	Guidelines Manual Year Start	Guidelines Manual Year End	Guidelines Manual Part
2L1.1	2007	2018	(b)(5)(A) Firearm discharged (6 levels, increase to level 22)
2L1.1	1997	2005	(b)(5)(B) Dangerous weapon brandished or otherwise used (4 levels, increase to level 20)
2L1.1	2007	2018	(b)(5)(B) Dangerous weapon brandished or otherwise used (4 levels, increase to level 20)
2L1.1	1997	2005	(b)(5)(C) Dangerous weapon possessed (2 levels, increase to level 18)
2L1.1	2007	2018	(b)(5)(C) Dangerous weapon possessed (2 levels, increase to level 18)
2M6.1	2002	2018	(a)(3) Convicted under 18 U.S.C. § 175b (Base offense level 22)
2M6.1	2002	2002	(a)(4) Convicted under 18 U.S.C. § 175(b) (Base offense level 20)
2M6.1	2003	2018	(a)(4)(A) Convicted under 18 U.S.C. § 175(b) (Base offense level 20)
2M6.1	2002	2002	(a)(4)(B) Involved a threat to use a nuclear weapon/material/by-product, chemical weapon, biological agent/toxin, or delivery system, or a weapon of mass destruction, but did not involve any conduct evidencing intent or ability to carry out threat (Base offense level 20)
2M6.1	2003	2018	(a)(4)(B) Involved a threat to use a nuclear weapon/material/by-product, chemical weapon, biological agent/toxin, or delivery system, or a weapon of mass destruction, but did not involve any conduct evidencing intent or ability to carry out threat (Base offense level 20)
2P1.2	1987	2018	(a)(1) A firearm or destructive device (Base offense level 23)
2P1.2	1987	1994	(a)(2) A weapon (other than firearm/destructive device), object to be used as a weapon or as a means of escape, ammunition, LSD, PCP, or a narcotic drug (Base offense level 13)
2P1.2	1995	2018	(a)(2) A weapon (other than firearm/destructive device), object to be used as a weapon or as a means of escape, ammunition, LSD, PCP, methamphetamine, or a narcotic drug (Base offense level 13)