

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, 2025

MEMORANDUM

TO: Chair Reeves
Commissioners
Ken Cohen, Staff Director

FROM: Office of Research and Data
Office of General Counsel

SUBJECT: Retroactivity Impact Analysis of Certain 2025 Amendments¹

On April 30, 2025, the United States Sentencing Commission submitted to Congress amendments² to the federal sentencing guidelines.³ As relevant to this memorandum, Subparts 1 and 2 of Part A of the drug offenses amendment make certain revisions to USSG §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy).⁴ Parts A and B of the circuit conflicts amendment address circuit conflicts involving §2B3.1 (Robbery) and §4A1.2 (Definitions and Instructions for Computing Criminal History).⁵

¹ This memorandum discusses four of the 2025 amendments: (1) Subpart 1 of Part A of the drug offenses amendment; (2) Subpart 2 of Part A of the drug offenses amendment; (3) Part A of the circuit conflicts amendment; and (4) Part B of the circuit conflicts amendment.

² Sentencing Guidelines for United States Courts, 90 FR 19798 (May 9, 2025).

³ U.S. SENT'G COMM'N, GUIDELINES MANUAL (Nov. 2024) [hereinafter USSG].

⁴ Amendment 2 of the amendments submitted by the Commission to Congress on April 30, 2025, 90 FR 19798 (May 9, 2025).

⁵ Amendment 1 of the amendments submitted by the Commission to Congress on April 30, 2025, 90 FR 19798 (May 9, 2025).

The amendments make the following changes:

- First, Subpart 1 of Part A of the drug offenses amendment revises the mitigating role provisions in §2D1.1(a)(5) to set certain mitigating role caps depending on the defendant’s base offense level under §2D1.1(c) and the adjustment received under §3B1.2 (Mitigating Role).⁶
- Second, Subpart 2 of Part A of the drug offenses amendment adds a new special instruction at §2D1.1(e)(2) providing that, in addition to the circumstances identified in §3B1.2, an adjustment under §3B1.2 is generally warranted in a §2D1.1 case if the defendant’s primary function in the offense was performing a low-level trafficking function.⁷
- Third, Part A of the circuit conflicts amendment revises §2B3.1(b)(4)(B) to clarify that the 2-level “physically restrained” enhancement applies only when “any person’s freedom of movement was restricted through physical contact or confinement, such as being tied, bound, or locked up, to facilitate commission of the offense or to facilitate escape;” and amends §2B3.1(b)(2)(B) to clarify that the 6-level “otherwise used” enhancement applies “if a firearm was used to convey a specific (not general) threat of harm (*e.g.*, pointing the firearm at a specific victim or victims; directing the movement of a specific victim or victims with the firearm) or to make physical contact with a victim (*e.g.*, pistol whip; firearm placed against victim’s body).”⁸ Fourth, Part B of the circuit conflicts amendment revises §4A1.2(a)(2) to state that a traffic stop is not an “intervening arrest” for purposes of determining whether multiple prior sentences should be “counted separately or treated as a single sentence” when assigning criminal history points under §4A1.2(a)(2).⁹

Because each of the above provisions reduces the sentencing range for some individuals, the Commission is statutorily required to determine whether the amendments should be applied retroactively to individuals who were previously sentenced and are currently incarcerated.¹⁰ As

⁶ Amendment 2 of the amendments submitted by the Commission to Congress on April 30, 2025, 90 FR 19798 (May 9, 2025).

⁷ *Id.*

⁸ Amendment 1 of the amendments submitted by the Commission to Congress on April 30, 2025, 90 FR 19798 (May 9, 2025).

⁹ *Id.*

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

required by its Rules of Practice and Procedure,¹¹ the Commission voted at the April 11, 2025, 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.

Part I 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 II of the memorandum provides an estimate of the impact of each of the amendments if the Commission were to authorize the courts to apply these amendments retroactively. Part III explains how the analysis was performed. Part IV concludes.

I. RETROACTIVITY OF GUIDELINE AMENDMENTS

A. Statutory Authority

Because Subparts 1 and 2 of Part A of the drug offenses amendment and Parts A and B of the circuit conflicts amendment reduce the sentencing range applicable to a particular offense or category of offenses for some individuals, 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.¹²

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:

¹¹ U.S. SENT’G COMM’N, *Rules of Practice and Procedure*, Rule 4.1A (2016).

¹² 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 11, 2025, public meeting, the Commission voted both to publish an issue for comment on whether to make the amendments available for retroactive application, with a public comment period closing on June 2, 2025, and to instruct staff to prepare this retroactivity impact analysis.

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.¹³

Modifications of sentence under 18 U.S.C. § 3582(c)(2) are unaffected by *United States v. Booker*,¹⁴ and USSG §1B1.10 remains binding on courts in such proceedings.¹⁵

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.¹⁶

Section 1B1.10 further explains that a reduction would not be consistent with the policy statement if a listed amendment “does not have the effect of lowering the defendant's applicable guideline range.”¹⁷

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:

¹³ 18 U.S.C. § 3582(c)(2).

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

¹⁵ See *Dillon v. United States*, 560 U.S. 817 (2010).

¹⁶ USSG §1B1.10(a)(1).

¹⁷ USSG §1B1.10(a)(2).

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.¹⁸

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).¹⁹ 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.”²⁰ Under no circumstances may a court reduce a term of imprisonment to less than the term already served by the defendant.²¹

C. Policy Determinations and Factors to be Considered Regarding Retroactivity

The decision to list an amendment as retroactively applicable to previously sentenced, imprisoned individuals 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.”²²

The retroactivity impact analysis and accompanying data that follow is intended to share available data with the public and inform the Commission’s decision as to whether to include Subpart 1 of Part A of the drug offenses amendment, Subpart 2 of Part A of the drug offenses amendment, Part A of the circuit conflicts amendment, and/or Part B of the circuit conflicts amendment 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

¹⁸ USSG §1B1.10(b)(1).

¹⁹ USSG §1B1.10(b)(2)(A).

²⁰ USSG §1B1.10(b)(2)(B).

²¹ USSG §1B1.10(b)(2)(C).

²² See USSG §1B1.10, comment. (backg’d.).

guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range under subsection (b)(1).”²³ The determination under each of these factors, as well as the weight they are accorded, may differ for each amendment. As discussed above, the purpose of each amendment was different, and each amendment addressed different concerns.

Similarly, the magnitude of the change in the guideline range as a result of each amendment and the difficulty of applying each amendment retroactively differ. For Subpart 1 of Part A of the drug offenses amendment, pertaining to the mitigating role provisions in §2D1.1(a)(5), additional fact-finding is not required to determine the amended guideline range. For Subpart 2 of Part A of the drug offenses amendment, pertaining to the new special instruction on the application of §3B1.2 to §2D1.1 cases, courts may need to perform additional fact-finding to determine whether an individual’s primary function in the offense was a low-level trafficking function and, if so, whether an adjustment is warranted and the extent of the reduction that is warranted. For Part A of the circuit conflicts amendment, courts may need to conduct additional fact-finding to determine whether to apply the “physically restrained” and “otherwise used” enhancements, as amended. Finally, for Part B of the circuit conflicts amendment, courts will need to examine the record to determine whether an individual received criminal history points because multiple prior sentences were counted separately due to a traffic stop being deemed an “intervening arrest.” Some cases may require additional fact-finding if it is not clear from the record whether prior sentences were separated by an “intervening arrest,” as defined in §4A1.2(a)(2).

II. IMPACT OF THE RETROACTIVE APPLICATION OF CERTAIN 2025 AMENDMENTS TO THE *GUIDELINES MANUAL*

A. Introduction to the Data Analysis

In response to the Commission’s directive to staff on April 11, 2025, this section of the memorandum provides an analysis of the estimated impact of four of the Commission’s 2025 amendments on persons incarcerated in the federal prison system, should the Commission authorize the courts to apply those amendments retroactively. This analysis is based, in part, on data from the Federal Bureau of Prisons (BOP) indicating that there were 154,155 persons incarcerated in the BOP on March 29, 2025. Of that group, 134,766 were serving a new sentence for a federal offense (*i.e.*, not a revocation sentence, a sentence for an offense in the District of Columbia offense, or a sentence imposed by a court-martial). Commission records could be matched to 133,074 of those persons.

²³ *Id.*

B. Findings as to Subpart 1 of Part A of the Drug Offenses Amendment (Mitigating Role Provisions at §2D1.1(a)(5))

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

The Commission estimates that there are 62,045 persons incarcerated in the BOP who were sentenced for a drug trafficking offense. In 3,697 of those cases, the court applied a mitigating role adjustment under §3B1.2. In 2,313 of the 3,697 cases, the base offense level determined by the court based on the quantity of drugs involved in the offense was between 31 and 38. Among those cases, in 2,075 cases (89.7%) the court determined the sentenced individual was a minor participant in the offense and in 140 cases (6.1%) the court determined the individual was a minimal participant. In the remaining 98 cases (4.2%), the court determined the individual's role in the offense fell between a minor and a minimal participant.

Staff estimates that 650 of these 2,313 individuals would have a lower guideline range if the Commission were to make Subpart 1 of Part A of the 2025 drug offenses amendment retroactive and, therefore, would be eligible to seek a modification of sentence under 18 U.S.C. § 3582(c)(2). In those 650 cases, the amendment would lower the base offense level by one level in 169 cases (26.0%), by two levels in 448 cases (68.9%), by three levels in 29 cases (4.5%), and by four levels in four cases (0.6%).

The current average sentence for these 650 individuals is 81 months. If the courts were to grant the full reduction possible in each case, the projected new average sentence for those individuals would be 69 months, a reduction of 12 months (or 14.8%). These individuals would be released over a period of six years.

The reasons why the remaining 1,663 individuals would not have a lower guideline range under the amendment were:²⁴

- The individual's current sentence is below the new guideline range, and the individual did not receive a departure for substantial assistance when initially sentenced (59.1%, n = 982).
- The base offense level determined by the court, after application of the current version of the mitigating role cap provision in §2D1.1(a)(5), did not change under the amendment

²⁴ In some cases, more than one reason applied. For this analysis, only one reason is provided.

and, therefore, the guideline range that applies in the case did not change (26.0%, n = 432).

- The individual was sentenced to a statutory mandatory minimum sentence (12.0%, n = 200).
- The guideline range in the case was determined under §4B1.1 (Career Offender) and would not be affected by the amendment (2.9%, n = 48).
- The court documentation reported to the Commission was missing the information necessary to determine whether any change in the applicable guideline range would result from application of the amendment (0.1%, n = 1).

1. *Geographic distribution of eligible individuals*

Table 1 presents information on the number of potentially eligible individuals sentenced in each judicial district and, therefore, where the consideration of the issue of retroactive application of the amendment would most likely occur. This list presents the individuals in descending order by the number of individuals in each district.

Table 1
Geographic Distribution of Potentially Eligible Individuals
By District

District	N	%	District	N	%
TOTAL	650	100.0			
Western Texas	74	11.4	Montana	3	0.5
Southern Texas	73	11.2	Southern New York	2	0.3
Northern Texas	46	7.1	Western Pennsylvania	2	0.3
Middle Florida	36	5.5	Western North Carolina	2	0.3
Southern Florida	33	5.1	Northern West Virginia	2	0.3
Virgin Islands	29	4.5	Eastern Louisiana	2	0.3
Eastern Texas	23	3.5	Eastern Michigan	2	0.3
Central California	21	3.2	Western Michigan	2	0.3
Arizona	20	3.1	Eastern Arkansas	2	0.3
Southern California	16	2.5	Southern Iowa	2	0.3
New Mexico	16	2.5	Nevada	2	0.3
Oregon	15	2.3	Northern Mariana Islands	2	0.3
Eastern California	14	2.2	Western Washington	2	0.3
Southern Indiana	13	2.0	Middle Alabama	2	0.3
Kansas	13	2.0	Northern Florida	2	0.3
Northern Oklahoma	12	1.8	Massachusetts	1	0.2
Middle North Carolina	10	1.5	Western New York	1	0.2
Western Kentucky	9	1.4	Delaware	1	0.2
Northern Georgia	9	1.4	Eastern North Carolina	1	0.2
Northern Ohio	7	1.1	Middle Tennessee	1	0.2
Western Oklahoma	7	1.1	Northern Illinois	1	0.2
Southern Ohio	6	0.9	Southern Illinois	1	0.2

District	N	%	District	N	%
Western Missouri	6	0.9	Eastern Wisconsin	1	0.2
Colorado	6	0.9	North Dakota	1	0.2
Western Louisiana	5	0.8	Northern California	1	0.2
Southern Mississippi	5	0.8	Guam	1	0.2
Eastern Tennessee	5	0.8	Northern Alabama	1	0.2
Northern Indiana	5	0.8	District of Columbia	0	0.0
Minnesota	5	0.8	Maine	0	0.0
Nebraska	5	0.8	New Hampshire	0	0.0
Eastern Washington	5	0.8	Rhode Island	0	0.0
Middle Georgia	5	0.8	Connecticut	0	0.0
Eastern Pennsylvania	4	0.6	Eastern New York	0	0.0
South Carolina	4	0.6	Northern New York	0	0.0
Eastern Kentucky	4	0.6	Vermont	0	0.0
Eastern Missouri	4	0.6	Middle Pennsylvania	0	0.0
South Dakota	4	0.6	Maryland	0	0.0
Hawaii	4	0.6	Southern West Virginia	0	0.0
Idaho	4	0.6	Middle Louisiana	0	0.0
Utah	4	0.6	Northern Mississippi	0	0.0
Puerto Rico	3	0.5	Western Wisconsin	0	0.0
New Jersey	3	0.5	Western Arkansas	0	0.0
Eastern Virginia	3	0.5	Alaska	0	0.0
Western Virginia	3	0.5	Eastern Oklahoma	0	0.0
Western Tennessee	3	0.5	Wyoming	0	0.0
Central Illinois	3	0.5	Southern Alabama	0	0.0
Northern Iowa	3	0.5	Southern Georgia	0	0.0

SOURCE: U.S. Sentencing Commission, FY 1991 through FY 2024 Datafiles, USSCFY91-USSCFY24, and Preliminary Data from FY 2025, USSCFY25.

2. *Individual characteristics*

Table 2 presents information on the demographic characteristics of the potentially eligible individuals. The majority are male (83.8%) and U.S. citizens (58.7%). Hispanic individuals account for 71.8 percent of these persons, followed by White individuals (14.6%), Black individuals (11.8%), and Other race individuals (1.7%). The average age of these individuals on March 29, 2025, was 39 years.

Table 2
Demographic Characteristics of Potentially Eligible Individuals

DEMOGRAPHICS		
<u>Race/Ethnicity</u>		
White	95	14.6%
Black	77	11.8%
Hispanic	467	71.8%
Other	11	1.7%
Total	650	100.0%

Citizenship			
	U.S. Citizen	381	58.7%
	Non-Citizen	268	41.3%
	Total	649	100.0%

Gender			
	Male	545	83.8%
	Female	105	16.2%
	Total	650	100.0%

Average Age			
		39 years	36 years
		(as of 3/29/2025)	(at sentencing)

The analysis involves a total of 650 cases, however, cases missing information for any specific analysis are excluded from that analysis.

Total percentages may not add to 100% due to rounding.

SOURCE: U.S. Sentencing Commission, FY 1991 through FY 2024 Datafiles, USSCFY91-USSCFY24, and Preliminary Data from FY 2025, USSCFY25.

3. *Offense characteristics*

Table 3 presents information about selected offense-related factors that contributed to the guideline range that applied when the potentially eligible individuals were initially sentenced, the Criminal History Categories of these individuals, and the extent to which the original sentence in these cases was within the applicable guideline range.

Table 3

Sentencing Characteristics, Criminal History, Average Sentence, and Position Relative to the Guideline Range for Potentially Eligible Individuals

CHARACTERISTICS		
Average Base Offense Level	33	
Select Sentencing Characteristics		
Weapons Specific Offense Characteristic	98	15.1%
Firearms Mandatory Minimum Applied	18	2.8%
Safety Valve §5C1.2	335	51.5%
Obstruction Adjustment §3C1.1	7	1.1%
Career Offender Status §4B1.1	0	0.0%
Criminal History Category		
I	374	57.5%
II	70	10.8%
III	78	12.0%
IV	39	6.0%
V	43	6.6%

VI	46	7.1%
Total	650	100.0%
<hr/>		
Average Sentence Imposed (in months)	82	
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Sentence Relative to the Guideline Range		
Within Range	363	55.9%
Above Range	6	0.9%
Substantial Assistance §5K1.1	201	30.9%
Otherwise Below Range	80	12.3%
Total	650	100.0%

The analysis involves a total of 650 cases, however, cases missing information for any specific analysis are excluded from that analysis.

Total percentages may not add to 100% due to rounding.

SOURCE: U.S. Sentencing Commission, FY 1991 through FY 2024 Datafiles, USSCFY91-USSCFY24, and Preliminary Data from FY 2025, USSCFY25.

4. *Primary drug type*

Table 4 provides information on the primary drug type involved in the instant offense for the potentially eligible individuals. Methamphetamine was the most common drug type, accounting for 76.9 percent of such cases.

Table 4
Primary Drug Type
for Potentially Eligible Individuals

Primary Drug Type	N	%
TOTAL	650	100.0
Methamphetamine	500	76.9
Powder Cocaine	109	16.8
Fentanyl	35	5.4
Heroin	3	0.5
Crack Cocaine	1	0.2
Marijuana	1	0.2
Other	1	0.2

Total percentages may not add to exactly 100% due to rounding.

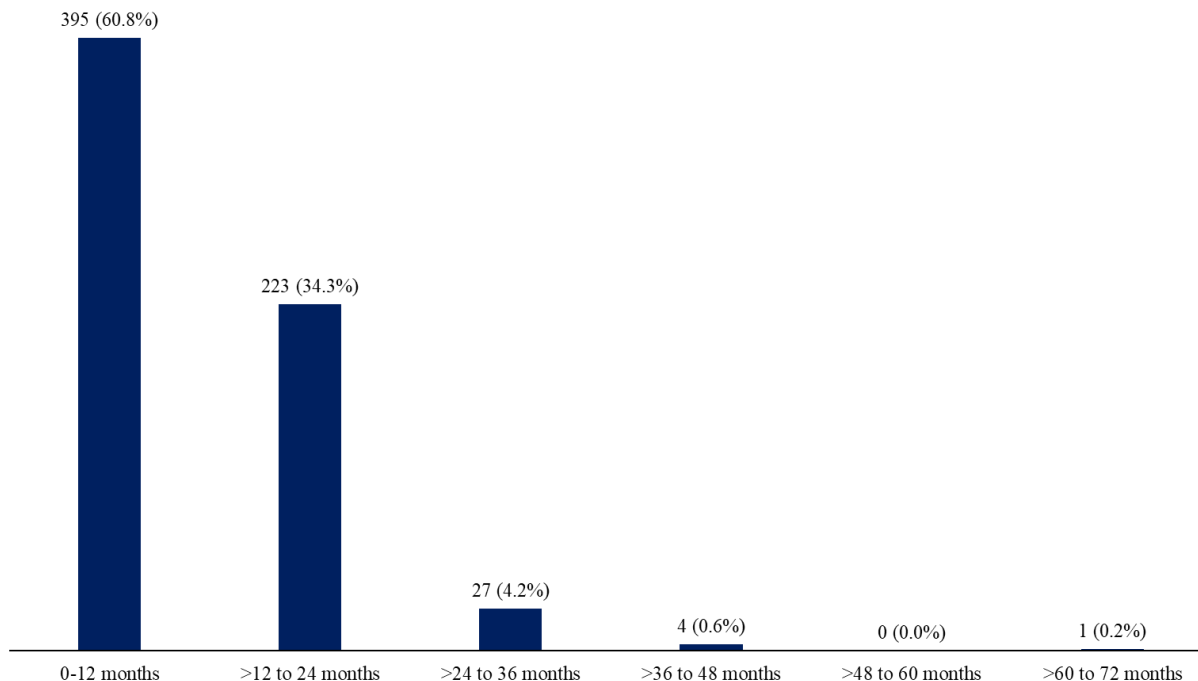
SOURCE: U.S. Sentencing Commission, FY 1991 through FY 2024 Datafiles, USSCFY91-USSCFY24, and Preliminary Data from FY 2025, USSCFY25.

5. *Extent of possible sentence reduction*

As discussed above, the average sentence reduction for those individuals who would be potentially eligible for a reduced sentence under Subpart 1 of Part A of the drug offenses amendment is 14.8 percent. Figure 1 shows the distribution of the extent of the possible

reductions by the sentence length for these individuals. More than half (60.8%) would receive a sentence reduction of one year or less. Conversely, less than 1.0 percent would receive a sentence reduction of more than three years.

Figure 1
Extent of Possible Sentence Reduction for Potentially Eligible Individuals



Total percentages may not add to exactly 100% due to rounding.

SOURCE: U.S. Sentencing Commission, FY 1991 through FY 2024 Datafiles, USSCFY91-USSCFY24, and Preliminary Data from FY 2025, USSCFY25.

6. *Projected release dates*

The individuals who are potentially eligible to seek a reduced sentence under 18 U.S.C. § 3582(c)(2) if Subpart 1 of Part A of the drug offenses amendment were made retroactive are projected to be eligible for release at various times over a period of more than five years. As shown in Table 5, if this amendment were retroactive on November 1, 2025, 67 individuals would be eligible for immediate release. Almost two-thirds (63.5%; n = 413) of the eligible individuals are eligible to be released within the first two years after the effective date of the amendment.

Table 5 also compares the projected release dates for the eligible individuals by year if the amendment is not made retroactive. For example, if the amendment is made retroactive, a total of 238 individuals would be eligible for release within the first year after the effective date of the amendment, while 105 will be released in that same period under their current sentence.

As such, retroactive application of the amendment would make an additional 133 persons eligible for release within the first year.

Table 5
Projected Year of Release for Potentially Eligible Individuals

	IF AMENDMENT RETROACTIVE	IF AMENDMENT NOT RETROACTIVE
Release Date	N	N
Immediate Release	67	-
Within Year 1	171	105
Within Year 2	175	189
Within Year 3	105	146
Within Year 4	56	74
Within Year 5	31	55
After Year 5	45	81

SOURCE: U.S. Sentencing Commission, FY 1991 through FY 2024 Datafiles, USSCFY91-USSCFY24, and Preliminary Data from FY 2025, USSCFY25.

C. Findings as to Subpart 2 of Part A of the Drug Offenses Amendment (Special Instruction Relating to §3B1.2)

Subpart 2 of Part A of the drug offenses amendment would add a new special instruction at §2D1.1(e)(2) regarding the application of §3B1.2 to §2D1.1 cases. The amendment would provide that, in addition to the circumstances identified in §3B1.2, an adjustment under §3B1.2 is generally warranted if the defendant’s primary function in the offense was performing a low-level trafficking function. It would also provide directions to the court on when the specific adjustments at §3B1.2(a) and (b) are generally warranted. In particular, it would provide that an adjustment under §3B1.2(a) is generally warranted if the defendant’s primary function in the offense was plainly among the lowest level of drug trafficking functions, such as serving as a courier, running errands, sending or receiving phone calls or messages, or acting as a lookout. It would provide that an adjustment under §3B1.2(b) is generally warranted if the defendant’s primary function in the offense was performing another low-level trafficking function, such as distributing controlled substances in user-level quantities for little or no monetary compensation or with a primary motivation other than profit (*e.g.*, the defendant was otherwise unlikely to commit such an offense and was motivated by an intimate or familial relationship, or by threats or fear to commit the offense).

The Commission does not regularly collect information on a defendant's primary function in a drug trafficking offense. Therefore, the Commission cannot estimate the impact of this portion of the drug offenses amendment should it be made retroactive. Staff are able to provide some information about the application of the mitigating role adjustment in drug trafficking cases. As discussed above, the Commission estimates that there are 62,045 persons currently incarcerated in the BOP who were sentenced for a drug trafficking offense. In 3,697 of those cases, the court applied a mitigating role adjustment under §3B1.2. In 3,429 of the 3,697 cases the adjustment to the final offense level was less than four levels. In the remaining 58,348 cases, the court did not apply a mitigating role adjustment. However, in 8,756 of those cases the court applied an aggravating role adjustment under §3B1.1.

D. Findings as to Part A of the Circuit Conflicts Amendment (Circuit Conflict Concerning “Physically Restrained” Enhancement)

Part A of the circuit conflicts amendment resolves a circuit conflict over whether §2B3.1(b)(4)(B)—which provides for a 2-level increase “if any person was physically restrained to facilitate commission of the offense or to facilitate escape”—applies where a robbery victim is restricted from moving at gunpoint but is not otherwise immobilized through measures like those in the definition of “physically restrained” in Application Note 1 to §1B1.1 (*i.e.*, “by being tied, bound, or locked up”). Part A would amend §2B3.1(b)(4)(B) to clarify that the 2-level “physically restrained” enhancement applies only when “any person’s freedom of movement was restricted through physical contact or confinement, such as being tied, bound, or locked up, to facilitate commission of the offense or to facilitate escape.” It would also amend §2B3.1(b)(2)(B) to clarify that the 6-level “otherwise used” enhancement applies “if a firearm was used to convey a specific (not general) threat of harm (*e.g.*, pointing the firearm at a specific victim or victims; directing the movement of a specific victim or victims with the firearm) or to make physical contact with a victim (*e.g.*, pistol whip; firearm placed against victim’s body).”

To promote consistency in application of offense guidelines with similar specific offense characteristics (SOC), the amendment also makes parallel changes to two other Chapter Two guidelines with “physically restrained” and “otherwise used” enhancements: §§2B3.2 (Extortion by Force or Threat of Injury or Serious Damage) and 2E2.1 (Making or Financing an Extortionate Extension of Credit; Collecting an Extension of Credit by Extortionate Means).

The Commission estimates that there are 8,962 persons currently incarcerated in the BOP who were sentenced under §§2B3.1, 2B3.2, or 2E2.1 of the *Guidelines Manual*.²⁵ Of those, 5,273 persons were sentenced in the district courts in a circuit where the court of appeals had previously decided a case inconsistent with the amendment, or where the court of appeals had

²⁵ The court applied §2B3.1 in 98.9% of the cases (n=8,867), §2B3.2 in 1.0% of the cases (n=83), and §2E2.1 in 0.1% of the cases (n=12).

not interpreted any of the provisions to which the amendment applies. In 1,063 of those cases, the district court applied a physical restraint SOC under §§2B3.1, 2B3.2, or 2E2.1.²⁶ In 397 of those 1,063 cases, the court also applied the 6-level “otherwise used” firearm enhancement or the 5-level “brandished” firearm enhancement from one of those guidelines.

The Commission does not regularly collect information on the facts underlying a court’s decision to apply the physical restraint enhancement in the applicable guidelines. Therefore, the Commission cannot determine with precision the impact of the amendment on the 1,063 individuals who might seek a sentence modification because a physical restraint SOC under §§2B3.1, 2B3.2, or 2E2.1 was applied in their case. Therefore, these cases should be regarded as an “outer bound” of the number of cases in which the amendment might apply should it be made retroactive. Because staff cannot determine which of the 1,063 persons might be eligible to seek a sentence modification, staff is providing information about all of those persons.

1. *Geographic distribution*

Table 1 presents information on the circuit in which the 1,063 persons were sentenced and, therefore, where the consideration of the issue of retroactive application of the amendment would most likely occur.

Table 1
Geographic Distribution of Potentially Eligible Incarcerated Individuals
By Circuit

Circuit	N	%
TOTAL	1,063	100.0
First Circuit	44	4.1
Fourth Circuit	281	26.4
Sixth Circuit	224	21.1
Eighth Circuit	94	8.8
Tenth Circuit	99	9.3
Eleventh Circuit	315	29.6
D.C. Circuit	6	0.6

Total percentages may not add to 100% due to rounding.
SOURCE: U.S. Sentencing Commission, FY 1991 through FY 2024
Datafiles, USSCFY91-USSCFY24, and Preliminary Data from FY
2025, USSCFY25.

2. *Individual characteristics*

Table 2 presents information on the demographic characteristics of the 1,063 individuals. The majority are male (96.9%) and U.S. citizens (96.0%). Black individuals account for 73.8

²⁶ The court applied §2B3.1 in 99.9% of the cases (n=1,061) and §2B3.2 in 0.1% of the cases (n=2).

percent of these persons, followed by Hispanic individuals (12.2%), White individuals (11.6%), and Other race individuals (2.4%). The average age of these individuals on March 29, 2025, was 38 years.

Table 2
Demographic Characteristics of Potentially Eligible Incarcerated Individuals

DEMOGRAPHICS		
<u>Race/Ethnicity</u>		
White	123	11.6%
Black	784	73.8%
Hispanic	130	12.2%
Other	25	2.4%
Total	1,062	100.0%
<u>Citizenship</u>		
U.S. Citizen	1,021	96.0%
Non-Citizen	42	4.0%
Total	1,063	100.0%
<u>Gender</u>		
Male	1,030	96.9%
Female	33	3.1%
Total	1,063	100.0%
<u>Average Age</u>		
	38 years	31 years
	(as of 3/29/2025)	(at sentencing)

The analysis involves a total of 1,063 cases, however, cases missing information for any specific analysis are excluded from that analysis.

SOURCE: U.S. Sentencing Commission, FY 1991 through FY 2024 Datafiles, USSCFY91-USSCFY24, and Preliminary Data from FY 2025, USSCFY25.

3. *Average sentence and position of the sentence relative to the guideline range.*

Table 3 provides the average sentence imposed in the 1,063 cases and an analysis of the position of the sentence imposed relative to the guideline range that applied in those cases.

Table 3
Average Sentence Imposed and Position Relative to the Guideline
Range of Potentially Eligible Incarcerated Individuals

CHARACTERISTICS		
<hr/>		
<u>Average Sentence Imposed (in months)</u>	212	
<hr/>		
<u>Sentence Relative to the Guideline Range</u>	N	%
Within Range	525	49.4
Above Range	110	10.4
Substantial Assistance §5K1.1	127	12.0
Otherwise Below Range	301	28.3
Total	1,063	100.0

The analysis involves a total of 1,063 cases, however, cases missing information for any specific analysis are excluded from that analysis.

Total percentages may not add to 100% due to rounding.

SOURCE: U.S. Sentencing Commission, FY 1991 through FY 2024 Datafiles, USSCFY91-USSCFY24, and Preliminary Data from FY 2025, USSCFY25.

E. Findings as to Part B of the Circuit Conflicts Amendment (Circuit Conflict Concerning Meaning of “Intervening Arrest” in §4A1.2(a)(2))

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

The Commission does not collect information about traffic stops as part of its regular collection of criminal history information about sentenced individuals. Therefore, the Commission cannot estimate the impact of Part B of the circuit conflicts amendment on persons currently incarcerated in the BOP.

III. 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 individuals and to project the future impact those amendments will have on the size of the BOP population. For this analysis, individuals 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 individual was calculated to determine when the person would be eligible for release if he or she received the full reduction in sentence provided by the amendment.

B. The Population Studied

The BOP provided the Commission with a datafile of persons in its custody on March 29, 2025. That file contained information on 154,155 persons. Of that group, 134,766 were serving a new sentence for a federal offense (*i.e.*, not a revocation sentence, a sentence for an offense in the District of Columbia offense, or a sentence imposed by a court-martial).²⁷ The Commission was able to match the BOP data to 133,074 persons in Commission records sentenced between fiscal year 1991 and fiscal year 2025.²⁸

C. Assumptions Made for the Analysis as to Subpart 1 of Part A of the Drug Offenses Amendment

In performing the analysis discussed in Part III B of the memorandum, staff was required to make certain assumptions. Staff assumed that the effective date of retroactivity for Subpart 1 of Part A of the drug offenses amendment would be November 1, 2025.²⁹ Further, staff assumed that the courts would modify the sentences of individuals in a manner that is consistent with the *Guidelines Manual* in effect as of November 1, 2025.

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

- (A) the court applied the mitigating role cap at §2D1.1(a)(5), and the resulting base offense level determined under that provision was between 31 and 38;
- (B) the final offense level was not derived from the career offender or armed career criminal guideline;³⁰

²⁷ There were approximately 19,389 persons in BOP custody who were awaiting trial, serving a sentence after revocation of a term of supervised release, sentenced in the courts of the District of Columbia, or sentenced in a court-martial. Those individuals were excluded from this analysis.

²⁸ BOP records for 1,692 individuals could not be matched to Commission records due to missing or inconsistent information on name, sentence date, or other identifying information. Some of these persons may be eligible to seek a reduced sentence pursuant to Subpart 1 of Part A of the drug offenses amendment.

²⁹ Should the Commission make Subpart 1 of Part A of the drug offenses amendment retroactive, it will also specify the date on which that part of the amendment may be applied retroactively, which may be after November 1, 2025.

³⁰ In cases where the sentenced individual is classified as a career offender or an armed career criminal under USSG §4B1.1 and §4B1.4, the final offense level that applies in the case is the level determined pursuant to either of these guideline provisions or the applicable Chapter 2 and Chapter 3 guidelines, whichever is higher. Individuals for whom the original final offense level was controlled by the career offender or armed career criminal guidelines,

- (C) the original sentence was greater than any applicable statutory mandatory minimum punishment, unless the sentenced individual received relief from the mandatory minimum punishment pursuant to the statutory safety valve³¹ or the individual received a departure for substantial assistance³² when originally sentenced;³³ and
- (D) the original sentence was greater than the minimum of the amended guideline range, unless the sentenced individual received a departure for substantial assistance when originally sentenced.³⁴

IV. CONCLUSION

Subpart 1 of Part A of the drug offenses amendment revises the mitigating role provisions in §2D1.1(a)(5). Staff estimate that if the Commission were to authorize the retroactive application of Subpart 1 of the amendment, there are 650 individuals in BOP custody who would have a lower sentencing range under the guidelines. The average sentence imposed in those cases was 81 months. If the courts were to grant the full reduction possible in each case, the projected new average sentence for those individuals would be 69 months, a reduction of 12 months (or 14.8%). Approximately 67 individuals would be eligible for immediate release on November 1, 2025.

therefore, were excluded from the analysis because Subpart 1 of Part A of the drug offenses amendment would not affect their sentencing range.

³¹ 18 U.S.C. § 3553(f).

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

³³ Individuals 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 individuals 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 individual's substantial assistance to the government. Under this rule, the court may impose a sentence below any otherwise applicable mandatory minimum term of imprisonment. Therefore, an individual 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). Therefore, the staff's estimate of the number of individuals who appear to be eligible to seek a reduced sentence may underestimate the actual number of such individuals.

³⁴ 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 982 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 Subpart 1 of Part A of the drug offenses 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.

Subpart 2 of Part A of the drug offenses amendment adds a new special instruction at §2D1.1(e)(2) regarding the application of the mitigating role adjustment at §3B1.2 in drug trafficking cases. The Commission does not regularly collect the information courts would consider in determining whether to apply this subpart of the amendment; therefore, staff cannot estimate the impact of Subpart 2 of the amendment, should it be made retroactive.

Part A of the circuit conflicts amendment resolves a circuit conflict over the application of §2B3.1(b)(4)(B)—which provides for a 2-level increase “if any person was physically restrained to facilitate commission of the offense or to facilitate escape”—and also makes parallel changes to two other guidelines (§§2B3.2 and 2E2.1) with similar enhancements. The Commission estimates that there are 1,063 persons currently incarcerated in the BOP who were sentenced under §§2B3.1, 2B3.2, or 2E2.1 in the district courts in a circuit where the court of appeals had previously decided a case inconsistent with the amendment, or where the court of appeals had not interpreted any of the provisions to which the amendment applies, and where the court applied the physical restraint SOC of one of those guidelines. The Commission does not regularly collect information on the facts underlying a court’s decision to apply the physical restraint enhancement in the applicable guidelines; therefore, staff cannot determine with precision the impact of the amendment on the 1,063 individuals who might seek a sentence modification because a physical restraint SOC under §§2B3.1, 2B3.2, or 2E2.1 was applied in their case. This number should be regarded as an “outer bound” of the number of cases in which the amendment might apply, should it be made retroactive.

Part B of the circuit conflicts amendment resolves a circuit conflict on whether a traffic stop qualifies as an “intervening arrest” for purposes of determining whether multiple prior sentences should be “counted separately or treated as a single sentence” when assigning criminal history points (“single-sentence rule”) under §4A1.2(a)(2). The Commission does not collect information about traffic stops as part of its regular collection of criminal history information about sentenced individuals; therefore, staff cannot estimate the impact of this part of the amendment, should it be made retroactive.