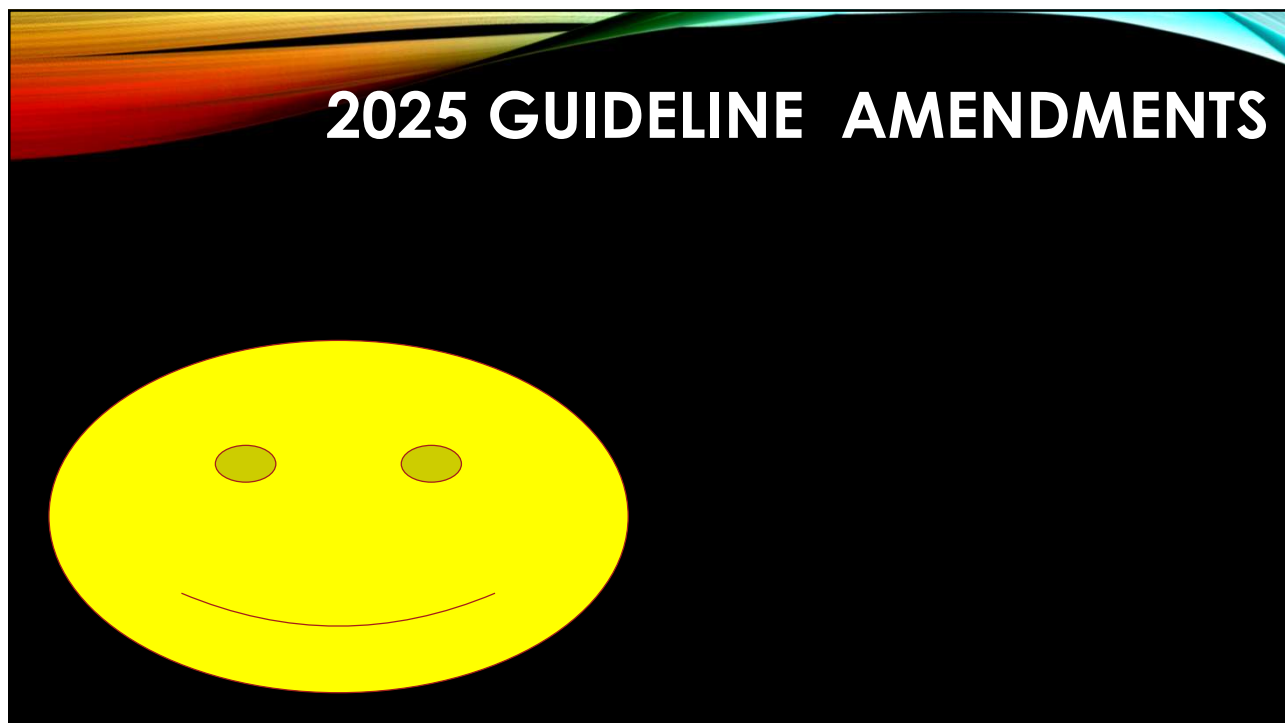
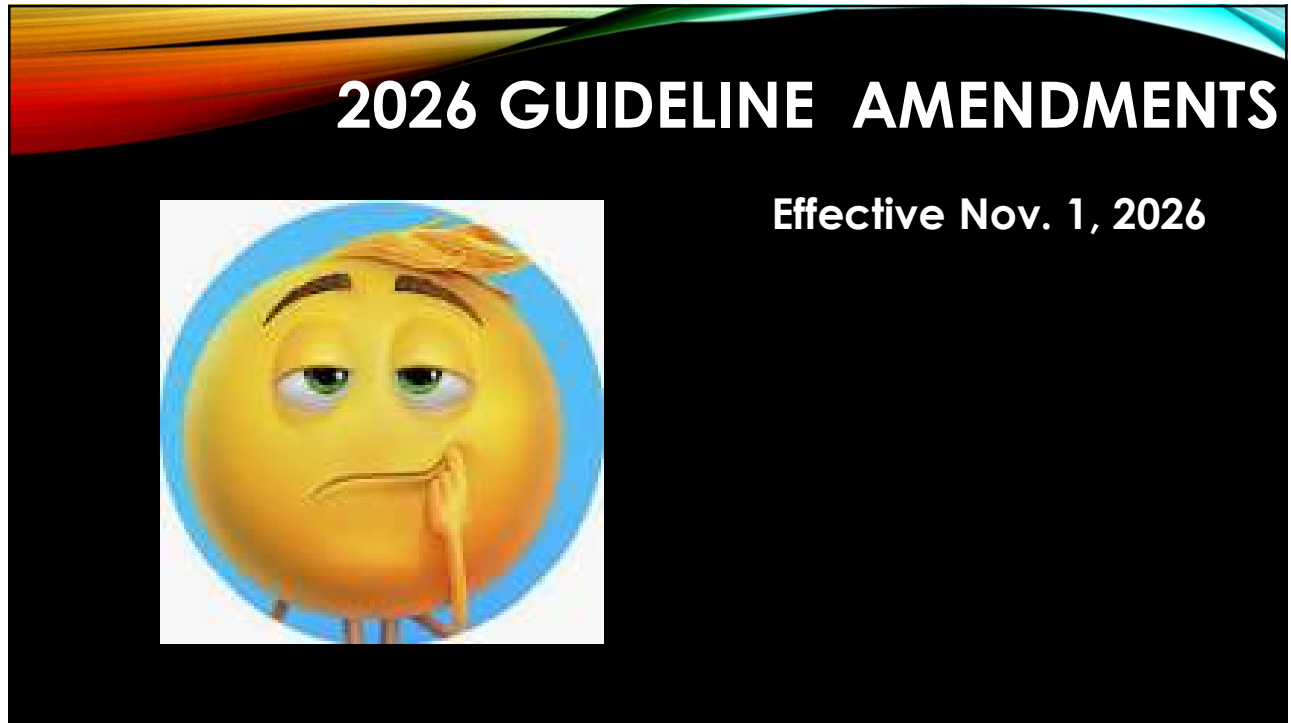




1



2



3



4

THE BIG 3
OF 2025



- Drugs: Mitigating role
- Supervised Release
- "Simplification"

5



EVERYTHING IS
AWESOME!

MITIGATING
ROLE IN DRUG
CASES

6

MITIGATING ROLE REFRESHER

§3B1.2. Mitigating Role

“Substantially less culpable than the average participant”- Note 3

Based on the defendant's role in the offense, decrease the offense level as follows:

- (a) If the defendant was a **minimal participant** in any criminal activity, + decrease by 4 levels.
 - (b) If the defendant was a **minor participant** in any criminal activity, + decrease by 2 levels.
- In cases falling **between (a) and (b)**, decrease by 3 levels.

7

MITIGATING ROLE REFRESHER

Factors for the Court to consider under §3B1.2:

- 1) Understanding of scope/structure of criminal activity
- 2) Participation in planning/organizing
- 3) Exercise of decision-making authority or influence
- 4) Nature and extent of participation
- 5) Potential personal benefit.

8

REASON FOR AMENDMENT

Part A – Application of Mitigating Role Adjustment in Drug Trafficking Cases

Part A of the amendment contains two subparts to address concerns that §2D1.1 and §3B1.2 (Mitigating Role) as they currently apply in tandem do not adequately account for the lower culpability of individuals performing low-level functions in a drug trafficking offense.

Subpart 2 (Special Instruction Relating to §3B1.2)

Subpart 2 of Part A adds a new special instruction at §2D1.1(e) to address the inconsistent application of §3B1.2 in §2D1.1 cases and to encourage broader use of §3B1.2 in these cases.

9

A New Day for Mitigating Role in Drug Cases



- A new “special instruction” in the text of §2D1.1 (e) that is **expressly intended** to increase the number of people who get mitigating role adjustments
- More generous BOL caps under §2D1.1 (a) (5)
- New analytical framework: focus on function – not comparative culpability

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NEW LOW-LEVEL TRAFFICKING FUNCTION PROVISION

(2D1.1(e)(2)(b) expands 3B1.2)

(2) Application of §3B1.2 (Mitigating Role) to §2D1.1 Cases

(A) Determine whether an adjustment under §3B1.2 (Mitigating Role) applies.

(B) 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.

(i) 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; or

(ii) 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).

For purposes of subsection (e)(2)(B), the provisions of §3B1.2 apply in determining whether a mitigating role adjustment is warranted, except that the adjustment shall apply regardless of whether the offense involved other participants in addition to the defendant, and regardless of whether the defendant was

substantially less culpable than the average participant in the criminal activity. The extent of the adjustment shall be based on the totality of the circumstances and involves a determination that is heavily dependent upon the facts of the particular case.

(C) The mitigating role provisions at subsection (a)(5) and the 2-level reduction at subsection (b)(17) apply regardless of whether the defendant receives the required adjustment from §3B1.2 (Mitigating Role) by direct application of §3B1.2 or by use of the special instruction in subsection (e)(2)(B).

(b) Specific Offense Characteristics

* * *

(17) If the defendant receives the 4-level ("minimal participant") reduction in §3B1.2(a) and the offense involved all of the following factors:

(A) the defendant was motivated by an intimate or familial relationship or by threats or fear to commit the offense and was otherwise unlikely to commit such an offense;

(B) the defendant received no monetary compensation from the illegal purchase, sale, transport, or storage of controlled substances; and

(C) the defendant had minimal knowledge of the scope and structure of the enterprise,

decrease by 2 levels.

Expanded
"Minimal Role"

Expanded
"Minor Role"

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FUNCTION VS ROLE

Note what is NOT in the text:

- Any reference to violence or firearms
- Any reference to drug quantity
- Comparative role language
- Language re who/what your client knew



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- (5) the offense level specified in the Drug Quantity Table set forth in subsection (c), except that if (A) the defendant receives an adjustment under §3B1.2 (Mitigating Role); and (B) the base offense level under subsection (c) is (i) level 32, decrease by 2 levels; (ii) level 34 or level 36, decrease by 3 levels; or (iii) level 38, decrease by 4 levels above level 34 decrease to level 32. If the resulting offense level is greater than level 3230 and the defendant receives the 4-level ("minimal participant") reduction in §3B1.2(a), decrease to level 3230.

**EXPANDED MINIMAL PARTICIPANT/
LOWEST-LEVEL FUNCTION**

20	33-41	37-46	41-51
21	37-46	41-51	46-57
22	41-51	46-57	51-63
23	46-57	51-63	57-71
24	51-63	57-71	63-78
25	57-71	63-78	70-87
26	63-78	70-87	78-97
27	70-87	78-97	87-108
28	78-97	87-108	97-121
29	87-108	97-121	108-135
30	97-121	108-135	121-151
31	108-135	121-151	135-168
32	121-151	135-168	151-188
33	135-168	151-188	168-210
34	151-188	168-210	188-235
35	168-210	188-235	210-262
36	188-235	210-262	235-293
37	210-262	235-293	262-327
38	235-293	262-327	292-365
39	262-327	292-365	324-405
40	292-365	324-405	360-life

**EXPANDED MINOR PARTICIPANT/
LOW-LEVEL FUNCTION**

20	33-41	37-46	41-51
21	37-46	41-51	46-57
22	41-51	46-57	51-63
23	46-57	51-63	57-71
24	51-63	57-71	63-78
25	57-71	63-78	70-87
26	63-78	70-87	78-97
27	70-87	78-97	87-108
28	78-97	87-108	97-121
29	87-108	97-121	108-135
30	97-121	108-135	121-151
31	108-135	121-151	135-168
32	121-151	135-168	151-188
33	135-168	151-188	168-210
34	151-188	168-210	188-235
35	168-210	188-235	210-262
36	188-235	210-262	235-293
37	210-262	235-293	262-327
38	235-293	262-327	292-365
39	262-327	292-365	324-405
40	292-365	324-405	360-life

13

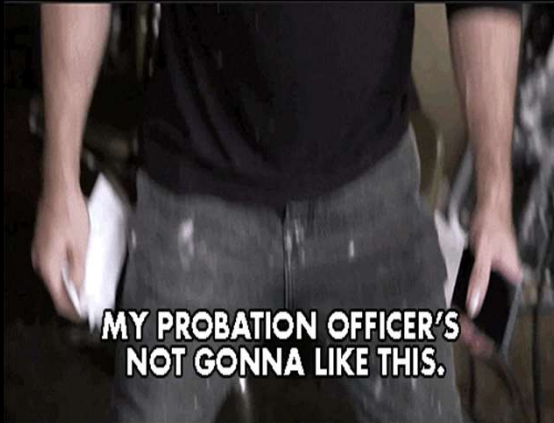
BASE OFFENSE LEVEL CAPS

If you receive -4 for minimal participant:

BOL → 30

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RESISTANCE WE'VE BEEN SEEING



- USPO Reactions
- AUSA Reactions
- District Court reactions

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(e) Special Instructions

(2) Application of §3B1.2 (Mitigating Role) to §2D1.1 Cases

(A) Determine whether an adjustment under §3B1.2 (Mitigating Role) applies

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; or

(ii) 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).

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Methamphetamine Trafficking Offenses37	
Table 5. Most Serious Function in Methamphetamine Trafficking Offense, Fiscal Year 2022	
High Level Supplier 13.9% (n=192) Supplies large quantities of drugs, usually to other drug distributors; is near the top of the distribution chain; and generally, does not deal in retail amounts; may employ no or very few subordinates; owns the drugs.	
Organizer/Leader 0.4% (n=6) Organizes, leads, directs, or otherwise runs a drug distribution organization; has the largest share of the profits and the most decision-making authority; owns the drugs.	
Wholesaler 36.6% (n=504) Buys and sells more than retail/user-level quantities in a single transaction; sells any amount to another dealer; owns the drugs.	
Manager/Supervisor 0.7% (n=9) Serves as a "lieutenant" in a drug organization; manages or supervises a portion of the drug operation (manufacturing, importation, or distribution); takes instructions from a superior and conveys them to subordinates; supervises at least one other co-participant in an organization; does not own the drugs.	
Street-Level Dealer 12.3% (n=170) Distributes retail/user quantities directly to the user; owns the drugs.	
Broker/Go-Between 4.1% (n=56) Arranges for two parties to buy/sell drugs or directs potential buyers to a potential seller; does not own the drugs.	
Courier 23.4% (n=323) Transports or carries drugs in or on their person or with the assistance of a vehicle or other equipment; does not own the drugs.	
Renter/Storer 0.9% (n=13) Provides own residence (barns, storage bins, buildings), land, or equipment for use to further the offense in exchange for payment or compensation; does not own the drugs.	
Employee 5.6% (n=77) Performs very limited, low-level function in the offense including running errands, answering the telephone, scouting, receiving packages, packaging the drugs, acting as a lookout, or acting as a deckhand or crew member on a vessel or aircraft transporting drugs; does not own the drugs.	
Other Function 2.0% (n=28) Performed some other function, such as couriering money for a drug trafficking organization, working as a bodyguard, or financing a drug organization.	

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DEFINING “COURIER”



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RESOURCES

U.S.S.G. mitigating role reduction as applied in drug-trafficking cases Sentencing Resource Counsel – October 2025

Step 1: Determine whether the ordinary role-focused rules (§3B1.2) support an argument for a reduction.

To qualify, a defendant must be "substantially less culpable than the average participant in the criminal activity," based on a comparison to other participants in the offense. Note that other participants need not have been charged.

- **Minimal Participant** (-4 levels): "plainly among the least culpable of those involved in the conduct of a group, limited knowledge of the larger scheme"
- **Minor Participant** (-2 levels): "less culpable than most other participants but not minimal"
- **Between Minimal & Minor** (-3 levels)

Factors to consider (see commentary for full text):

- Understanding of scope/structure of criminal activity
- Participation in planning/organizing
- Exercise of decision-making authority or influence
- Nature and extent of participation
- Potential personal benefit

Step 2: Determine whether the special instruction (§2D1.1(c)(2)), focusing on function, supports an argument for a reduction.

In drug cases, §2D1.1(c)(2) expands §3B1.2's criteria: a reduction under §3B1.2 is "generally warranted" if the person's "primary function" (i.e., job) was a low-level drug-trafficking function. This applies regardless of whether others were involved or whether the defendant was more culpable than others.

- **Lowest-level drug-trafficking functions** (-4 levels): Non-exhaustive examples include "serving as a courier, running errands, sending or receiving phone calls or messages, or acting as a lookout."
- **Other low-level trafficking functions** (-2 levels): Non-exhaustive examples include "distributing controlled substances in user-level quantities for little or no monetary compensation or with a primary motivation other than profit."
- **Between lowest- & low-level drug trafficking functions** (-3 levels)

This rule is expected to apply broadly. The Commission adopted §2D1.1(c)(2) "to encourage broader use of §3B1.2" in drug-trafficking cases, and to ensure that penalties are "commensurate with an individual's function" (particularly in cases where drug type and quantity—factors that often bear little relationship to role or function—would otherwise result in the highest base offense levels). See U.S.S.G. Reason for Amendment at 9-10.

STOP! The mitigating-role reduction reduces a client's offense level in several cumulative ways (discussed below), so make sure you don't leave any arguments on the table at either Step 1 or Step 2!

Step 3: Where the reduction will (arguably) apply under either Step 1 or Step 2, determine the base offense level (BOL) under §2D1.1(a)(5) (mitigating role cap).

If a 4-level reduction applies and the BOL based on drug quantity would be greater than 30 + the BOL becomes **30**.

If a 2- or 3-level reduction applies and the BOL based on drug quantity would be [first number] it is reduced to [second number]:

32 + 30	34 + 31	Above 34 + 32
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Step 4: Apply specific offense characteristics like normal under §2D1.1(b).

Apply specific offense characteristics the same as you would in any other case, including provisions that reduce the offense level: §2D1.1(b)(17) (2-level reduction for select individuals receiving the 4-level mitigating role reduction) and §2D1.1(b)(18) (2-level reduction for safety-value).

Step 5: Apply the mitigating role reduction (§3B1.2) and calculate total adjusted offense level.

Apply the mitigating role reduction as determined under Step 1 and/or Step 2:

-4 if a minimal participant or lowest-level function.	-2 if a minor participant or low-level function.	-3 if falling in between.
---	--	---------------------------

Then apply any other Chapter 3 adjustments (including, as appropriate, acceptance of responsibility) to get the total adjusted offense level.

****** This document covers only calculation of the offense level. Once you finish this, you'll need to apply the Chapter Four rules for calculating criminal history—which can impact the offense level, see §4C1.1 (Zero Point Offender)—and the Chapter Five rules for determining the sentencing range. U.S.S.G. §1B1.1(a). And most critically, you'll need to develop an argument for a sentence that is "sufficient, but not greater than necessary" to comply with the purposes of sentencing. 18 U.S.C. §3553(a); U.S.S.G. §1B1.1(b).

 01 Mitigating Role 2-pager.pdf

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are available in single-defendant criminal offenses and regardless of individual's culpability relative to others in the same criminal conduct).

Under § 2D1.1(e)(2), [CLIENT NAME] is entitled to a **-4** point role reduction. When combined with the amended mitigating role base offense level caps, his total adjusted offense level is **30**.

Potential affirmative arguments regarding the new rule's broad application:

HEADING 1: Under the new, broadly worded special instruction at § 2D1.1(e)(2), a person's primary function in the global drug trade is sufficient on its own to trigger the § 3B1.2 role reductions.

This Court's assessment of § 2D1.1(e)(2) begins with the text. **INSERT LOCAL CIRCUIT CITATION** Section 2D1.1(e)(2) is expansive on its face: It instructs courts to apply § 3B1.2 based upon a person's place within the generic drug trafficking hierarchy and not, as § 3B1.2 otherwise provides, based solely on comparing the defendant's conduct to others within his specific criminal scheme. The text of § 2D1.1(e)(2) is expansive in at least five ways:

- First, § 2D1.1(e)(2) affirmatively establishes that a role reduction is now generally warranted for individuals whose functions are among the "low" and "lowest" drug trafficking functions and specifies functions meeting those standards. See § 2D1.1(e)(2)(B)(i)–(ii). Prior to this amendment, courts had interpreted § 3B1.2 as not permitting a reduction based solely on function. See, e.g., *United States v. McWaters*, 139 F.4th 727, 729-30 (8th Cir. 2025) ("The fact that [defendant] was a courier . . . alone, is insufficient to show his entitlement to a reduction."); *United States v. McCombs*, 128 F.4th 911, 915-16 (7th Cir. 2025) ("[D]rug couriers are neither automatically entitled to, nor precluded from, a mitigating role reduction."). Now, function plainly suffices.
- Second, § 2D1.1(e)(2) specifies that its focus is on the person's "primary" function—not necessarily the most serious function that the person performed. See § 2D1.1(e)(2)(B)(i)–(iii).³

³ As discussed *infra*, the Commission sought input on whether to use a person's primary function or most serious conduct and opted for the former.

Standalone PSR objection re mitigating role for courier clients

Sentencing Resource Counsel for the Federal Public and Community Defenders
December 19, 2025

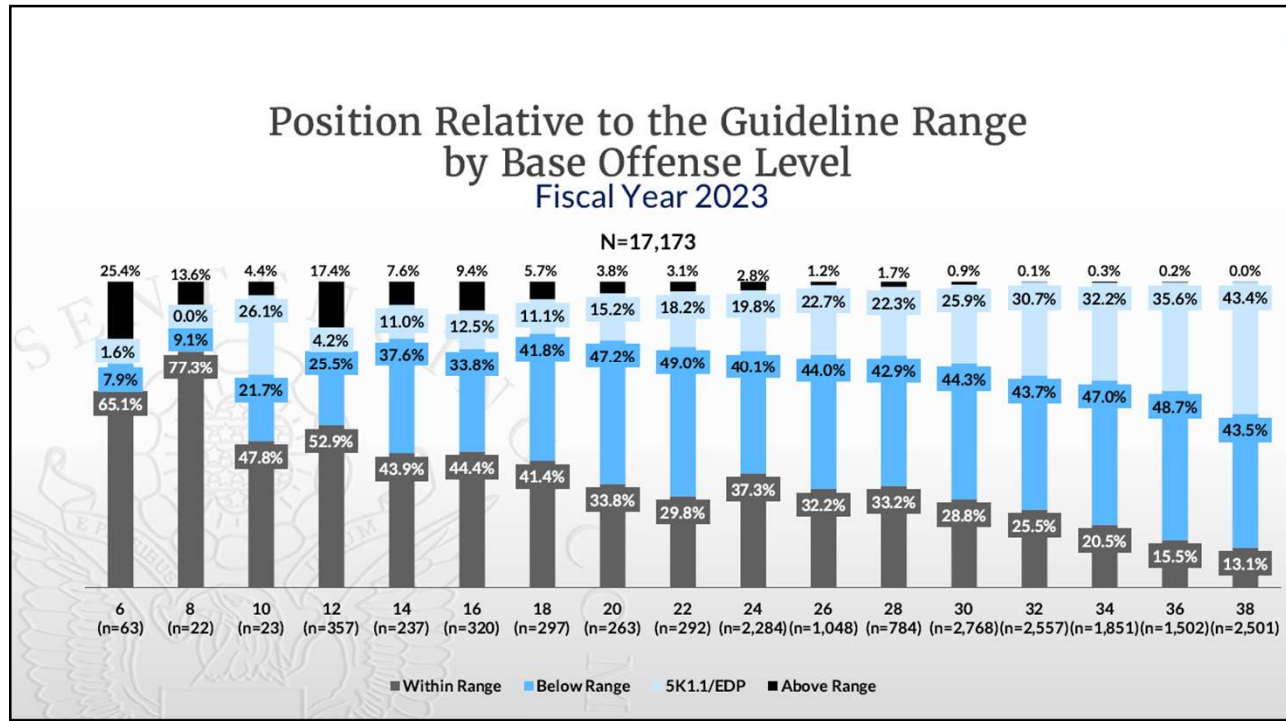
This document is very specifically designed and intended for use only in cases involving courier clients where the draft/initial PSR does not ask for any mitigating-role reduction or only asks for a 2-level reduction, although the new special rule at § 2D1.1(e)(2)(B)(i) clearly states that couriers should get the 4-level reduction. Where the PSR already calls for a 4-level reduction, this objection would not be necessary. However, if the government objects to the PSR's call for a 4-level reduction, content in this model objection can be modified, as appropriate, for use in a reply. If you are in this latter situation, SRC would very much appreciate you getting in touch with us about the government's objection so that we can continue to update materials as needed to reflect the strongest arguments in favor of our position and against the government's position.

SRC has produced other materials regarding the new special rule. This new document was created after reports that some district judges are accepting the government's position that § 2D1.1(e)(2)(B)(i)'s reference to "courier" excludes international couriers who transported large quantities of controlled substances. In those cases, our textual argument—which is very strong—did not win the day. This standalone objection still leads with text. But it also provides significant context surrounding the Sentencing Commission's decision to grant couriers (even, or especially, large-quantity couriers) a 4-level reduction, so that judges can better understand the text that the Commission adopted and make the right call.

As with all templates and models that SRC creates, please read this very carefully and modify as appropriate for your client and situation—do not simply copy and paste. Text is highlighted in yellow where modification will be necessary in every case, or where SRC is making notes to you, the user, that are not intended to be included in filings. But please note that additional modifications will almost be necessary to account for case-specific details, local filing practices, and/or style preferences.

As always, please alert SRC immediately if you find any error in this document or have questions or concerns about any of it. You can email shelley_fit@fd.org or SRC@fd.org.

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SUPERVISED RELEASE

Big Takeaways:

- SR is not punitive!
- Individualized assessment!
- No more presumptions/minimum recommendations of SR
- Invitation to modify/terminate SR early
- Lifetime supervision for sex offenses removed



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PART D – SUPERVISED RELEASE

Introductory Commentary

The Sentencing Reform Act of 1984 requires the court to assess a wide range of factors “in determining whether to include a term of supervised release, and, if a term of supervised release is to be included, in determining the length of the term and the conditions of supervised release.” 18 U.S.C. § 3583(c). These determinations aim to make the imposition and scope of supervised release dependent on the needs of the defendant for supervision. See S. Rep. No. 225, 98th Cong., 1st Sess. 124 (1983). In conducting such an individualized assessment, the court can “assure that [those] who will need post-release supervision will receive it” while “prevent[ing] probation system resources from being wasted on supervisory services for releasees who do not need them.” *Id.* at 54; see also *Johnson v. United States*, 529 U.S. 694, 710 (2000) (“Supervised release departed from the parole system it replaced by giving district courts the freedom to provide postrelease supervision for those, and only those, who needed it. . . . Congress aimed, then, to use the district courts’ discretionary judgment to allocate supervision to those releasees who needed it most.”). Supervised release “fulfills rehabilitative ends, distinct from those served by incarceration.” *United States v. Johnson*, 529 U.S. 53, 59 (2000). Accordingly, a court should consider whether the defendant needs supervision in order to ease transition into the community or to provide further rehabilitation and whether supervision will promote public safety. See 18 U.S.C. §§ 3583(c), 3553(a)(2)(C)); see also S. Rep. No. 225, 98th Cong., 1st Sess. 124 (1983) (indicating that a “primary goal of [a term of supervised release] is to ease the defendant’s transition into the community after the service of a long prison term for a particularly serious offense, or to provide rehabilitation to a defendant who has spent a fairly short period in prison for punishment or other purposes but still needs supervision and training programs after release”).

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IMPOSITION 5D1.1: NO LONGER MANDATORY

§5D1.1. Imposition of a Term of Supervised Release

- (a) The court ~~shall order~~ a term of supervised release to follow imprisonment—

(1) when required by statute (*see* 18 U.S.C. § 3583(a)); or

 (2) ~~except as provided in subsection (c), when a sentence of imprisonment of more than one year is imposed.~~

- (b) ~~The~~ When a term of supervised release is not required by statute, the court ~~may~~ should order a term of supervised release to follow imprisonment in any other case when warranted by an individualized assessment of the need for supervision. *See* 18 U.S.C. § 3583(a).

- (c) The court ordinarily should not impose a term of supervised release in a case in which supervised release is not required by statute and the defendant is a deportable alien who likely will be deported after imprisonment.



- (d) The court should state in open court the reasons for imposing or not imposing a term of supervised release. *See* 18 U.S.C. § 3553(c).

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LENGTH 5D1.2: NO MORE RECOMMENDED TERMS

§5D1.2. Term of Supervised Release

- (b) ~~Notwithstanding subdivisions (a)(1) through (3), the length of the term of supervised release shall be not less than the minimum term of years specified for the offense under subdivisions (a)(1) through (3) and may be up to life, if the offense is—~~

(1) any offense listed in 18 U.S.C. § 2332b(g)(5)(B), the commission of which resulted in, or created a foreseeable risk of, death or serious bodily injury to another person; or

(2) a sex offense.



(Policy Statement) If the instant offense of conviction is a sex offense, however, the statutory maximum term of supervised release is recommended.



- (c) ~~The term of supervised release imposed shall be not less than any statutorily required term of supervised release.~~ The court should state in open court the reasons for the length of the term imposed. *See* 18 U.S.C. § 3553(c).

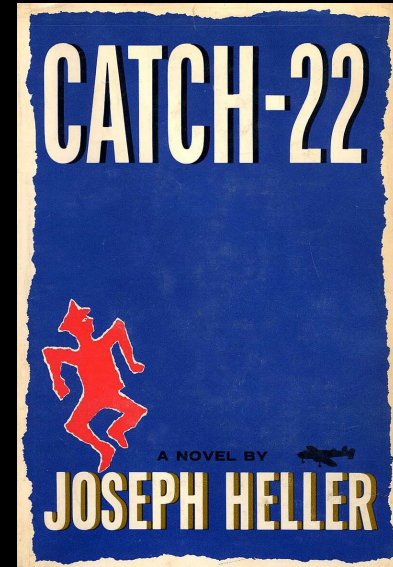
26

LENGTH: WATCH OUT FOR FSA CREDITS

§5D1.1. Imposition of a Term of Supervised Release

7. Evidence-Based Recidivism Reduction Programming.—Whether a defendant's sentence includes a term of supervised release may impact the application of time credits earned by the defendant under the First Step Act of 2018, Pub. L. 115–391. The First Step Act of 2018 allows individuals in custody who successfully complete evidence-based recidivism reduction programming or productive activities to earn time credits. See 18 U.S.C. § 3632(d)(4)(A). Regarding the application of those time credits, the First Step Act of 2018 provides: “If the sentencing court included as a part of the prisoner’s sentence a requirement that the prisoner be placed on a term of supervised release after imprisonment pursuant to [18 U.S.C. § 3583], the Director of the Bureau of Prisons may transfer the prisoner to begin any such term of supervised release at an earlier date, not to exceed 12 months, based on the application of time credits under [18 U.S.C. § 3632].” 18 U.S.C. § 3624(g)(3).

(d) The court should state in open court the reasons for imposing or not imposing a term of supervised release. See 18 U.S.C. § 3583(d).



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5D1.3: SR CONDITIONS

§5D1.3. Conditions of Supervised Release

(a) MANDATORY CONDITIONS

- (1) The defendant shall not commit another federal, state or local offense (see 18 U.S.C. § 3583(d)).

(b) DISCRETIONARY CONDITIONS

- (1) **IN GENERAL.**—The court ~~may impose~~ should conduct an individualized assessment to determine what, if any, other conditions of supervised release are warranted.

(e2) “STANDARD” CONDITIONS (POLICY STATEMENT)

The following are “standard” conditions of supervised release, which the court may modify, expand, or omit in appropriate cases are recommended for supervised release. Several of the conditions are expansions of the conditions required by statute:

(e3) “SPECIAL” CONDITIONS (POLICY STATEMENT)

The ~~One or more~~ conditions from the following non-exhaustive list of “special” conditions of supervised release are recommended may be appropriate in a particular case, including in the circumstances described and, in addition, may otherwise be appropriate in particular cases therein:

Discretionary!

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(vi) whether termination will jeopardize public safety, as evidenced by the nature of the defendant's offense, the defendant's criminal history, the defendant's record while incarcerated, the defendant's efforts to reintegrate into the community and avoid recidivism, any statements or information provided by the victims of the offense, and other factors the court finds relevant.



7B: Probation

7C: Supervised Release

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CHAPTER 7: VIOLATIONS

Part C — Supervised Release Violations

[The proposed amendment would create this new Part C to address violations of supervised release. To highlight how these new policy statements differ from the current policy statements addressing supervised release violations, the current policy statements of Part B are duplicated below into this new Part C, with modifications.]

Introductory Commentary

Because supervised release is intended to provide a period of supervision for a defendant's transition back into the community, the court should, to the extent possible—to consider a wide array of options to respond to violations of the conditions of supervised release. The

§7C1.3. Responses to Violations of Supervised Release (Policy Statement)

- (a) **REPORT OF NON-COMPLIANCE.**—Upon receiving a report that the defendant is in non-compliance with a condition of supervised release, the court should conduct an individualized assessment to determine what response, if any, is appropriate.
- (b) **FINDING OF A VIOLATION.**—Upon a finding of a violation for which revocation is required by statute (see 18 U.S.C. § 3583(g)), the court shall revoke supervised release. Upon a finding of any other violation, the court should conduct an individualized assessment, taking into consideration the grade of the violation, to determine whether to revoke supervised release. Revocation is generally appropriate for a Grade A violation, often appropriate for a Grade B violation, and may be appropriate for a Grade C violation.

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“SIMPLIFICATION”

Departure vs Variance

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“SIMPLIFICATION”

- No more departures!



Ch. 1 Pt. A

In 2025, the Commission amended the Guidelines Manual to remove departures and policy statements relating to specific personal characteristics. (See USSG, App. C, amendment [...]). The Commission sought to make these changes to better align the requirements placed on the court and acknowledge the growing shift away from the use of departures provided for within the Guidelines Manual in the wake of *Booker* and subsequent decisions. The Commission envisioned and framed this 2025 amendment to be outcome neutral, intending that judges who would have relied upon facts previously identified as a basis for a departure would continue to have the authority to rely upon such facts to impose a sentence outside of the applicable guideline range as a variance under 18 U.S.C. § 3553(a). The removal of departures from the Guidelines Manual does not limit the information courts may consider in imposing a sentence nor does it reflect a view from the Commission that such facts should no longer inform a court for purposes of determining the appropriate sentence. In this regard, Appendix B of the Guidelines Manual compiles the departure provisions as they were last provided in the 2024 edition of the Manual. Similarly, information describing the historical development and evolution of the federal sentencing guidelines is also set forth in Appendix B of the Guidelines Manual.

Department of Justice, Office of the Sentencing Guidelines Commission

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THE BOTTOM LINE

Don't Depart, Just Vary!

35

“SIMPLIFICATION”: NEW CHAPTER ONE AND NEW EMPHASIS ON 3553(A)

Introductory Commentary

The Guidelines Manual is structured to reflect the advisory sentencing scheme established following the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005), recognizing both essential steps of the court's inquiry in imposing a sentence “sufficient, but not greater than necessary.” See 18 U.S.C. § 3553(a). The guidelines and policy statements set forth throughout the Guidelines Manual represent the first step in the sentencing process and are one of multiple factors judges must consider under 18 U.S.C. § 3553(a).

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31. AUTHORITY

§1A3-1A1.1. Commission's Authority

As background, Congress provided specific directives to the Commission when setting a guideline range for "each category of offense involving each category of defendant." 28 U.S.C. § 994(b)(1).

In formulating the guidelines used to calculate the guideline range, the Commission remains cognizant of these detailed instructions directing the Commission to consider whether, and to what extent, specific offense-based and offender-based factors are relevant to sentencing. See 28 U.S.C. § 994(c), (d). Similarly, the Commission has ensured that the guidelines, policy statements, and commentary used to calculate the guideline range are: (1) neutral as to the race, sex, national origin, creed, and socioeconomic status of the defendant; and (2) generally do not reflect consideration of education, vocational skills, employment record, family ties and responsibilities, and community ties of the defendant in recommending a term of imprisonment or length of imprisonment. See 28 U.S.C. § 994(d), (e).



The requirements and limitations imposed upon the Commission by 28 U.S.C. § 994, however, do not apply to the sentencing court. To the contrary, Congress set forth the factors that a court must consider in imposing a sentence that is "sufficient but not greater than necessary" to comply with the purposes of sentencing in 18 U.S.C. § 3553(a). These statutory factors permit a sentencing court to consider the "widest possible breadth of information" about a defendant ensuring the court is in "possession of the fullest information possible concerning the defendant's life and characteristics." See *Pepper v. United States*, 562

U.S. 476, 488 (2011); see also *Concepcion v. United States*, 597 U.S. 481, 493 (2022). Accordingly, the application instructions set forth in the following part are structured to reflect this two-step process whereby the sentencing court must first correctly calculate the applicable guideline range as the "starting point and initial benchmark" and then must determine an appropriate sentence upon consideration of all the factors set forth by Congress in 18 U.S.C. § 3553(a). See *Gall v. United States*, 552 U.S. 38, 49–51 (2007).

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PART B — GENERAL APPLICATION PRINCIPLES

§1B1.1. Application Instructions

- (a) **STEP ONE: CALCULATION OF GUIDELINE RANGE AND DETERMINATION OF SENTENCING REQUIREMENTS AND OPTIONS UNDER THE GUIDELINES MANUAL** — The court shall determine the kinds of sentence and the guideline range as set forth in the guidelines (see 18 U.S.C. § 3553(a)(4)) by applying the provisions of this manual in the following order, except as specifically directed:
- (1) Determine, pursuant to §1B1.2 (Applicable Guidelines), the offense guideline section from Chapter Two (Offense Conduct) applicable to the offense of conviction. See §1B1.2.
 - (2) Determine the base offense level and apply any appropriate specific offense characteristics, cross references, and special instructions contained in the particular guideline in Chapter Two in the order listed.
 - (3) Apply the adjustments as appropriate related to victim, role, and obstruction of justice from Parts A, B, and C of Chapter Three.
 - (4) If there are multiple counts of conviction, repeat steps (1) through (3) for each count. Apply Part D of Chapter Three to group the various counts and adjust the offense level accordingly.
 - (5) Apply the adjustment as appropriate for the defendant's acceptance of responsibility and the reduction pursuant to an early disposition program, as appropriate, from Part E and F of Chapter Three.
 - (6) Determine the defendant's criminal history category as specified in Part A of Chapter Four. Determine from Parts B and C of Chapter Four any other applicable adjustments.
 - (7) Determine the guideline range in Part A of Chapter Five that corresponds to the offense level and criminal history category determined above.
 - (8) For the particular guideline range, determine from Parts B through G of Chapter Five the sentencing requirements and options related to probation, imprisonment, supervision conditions, fines, and restitution.

(9) Apply, as appropriate, Part K of Chapter Five.

§1B1.1

(b) The court shall then consider the applicable factors in 18 U.S.C. § 3553(a) taken as a whole. See 18 U.S.C. § 3553(a).

(c) **STEP TWO: CONSIDERATION OF FACTORS SET FORTH IN 18 U.S.C. § 3553(a)** — After determining the kinds of sentence and guideline range pursuant to subsection (a) of §1B1.1 (Application Instructions) and 18 U.S.C. § 3553(a)(4) and (5), the court shall consider the other applicable factors in 18 U.S.C. § 3553(a) to determine a sentence that is sufficient, but not greater than necessary, to comply with the purposes of sentencing. Specifically, as set forth in 18 U.S.C. § 3553(a), in determining the particular sentence to be imposed, the court shall also consider:

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed to meet the purposes of sentencing listed in 18 U.S.C. § 3553(a)(2);
- (3) the kinds of sentences available;
- (4) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (5) the need to provide restitution to any victims of the offense.

38

THREE-STEP PROCESS → NOW TWO STEPS

1. Court
calculates
applicable
GL range



2. Court
considers
policy
statements
and
commentary
re: departures



3. Court
considers
3553(a)
factors

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40

RESOURCES

SRC – Annotated Mitigation Bibliography
& mitigation resources box folder

SRC – bank of sentencing memos for
inspiration

Fd.org – capital and non-capital
mitigation trainings and materials

Experts & mitigation specialists

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**Annotated Bibliography for Federal Non-Capital Sentencing:
Scientific Research, Expert Views, and Online Resources Relevant to the
Purposes of Sentencing¹**
March 2025

Recent research in criminology and other related social and behavioral sciences provides evidence relevant to the purposes of sentencing² and the court's obligation to consider "the nature and circumstances of the offense and the history and characteristics" of your client when imposing a sentence.³ This publication identifies resources that may be helpful in conducting a mitigation investigation,⁴ plea negotiations, and sentencing advocacy. Providing the court with social science and statistical data strengthens individualized mitigation arguments concerning your clients. It also helps undercut incorrect assumptions about: the sentencing guidelines; how to best satisfy the purposes of sentencing; and the relevance and significance of individual characteristics.

This publication is designed to be updated on an annual basis as new relevant research becomes available. A noncapital mitigation listserv is available to receive periodic emails about new research. If you come across a relevant resource, please send it to Cherelle_Herbert@fd.org so it can be shared with the Defender community.

¹ This bibliography is an updated version of *Social Science at Sentencing: An Annotated Bibliography and Fighting Fiction with Fact to Attain Lower Sentences*, previously prepared by members of the Sentencing Resource Counsel Project. This list was originally created by Denise C. Barrett, J.D., M.S.W., Assistant Federal Public Defender, District of Arizona. Most recently, it was updated in March 2025 by AFPD Cherelle Herbert, National Sentencing Resource Counsel, District of Arizona, AFPD Aden Kahassai, District of Nevada, and AFPD Cristen Thayer, District of Nevada.

² "[T]he need for the sentence imposed—(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; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed education or vocational training, medical care, or other correctional treatment in the most effective manner." 18 U.S.C. § 3553(a)(2).

³ 18 U.S.C. § 3553(a)(1).

⁴ A mitigation investigation gathers information relevant to 18 U.S.C. § 3553(a)(1)–(2). It explains the client's strengths, why the crime was committed, and what will help prevent him or her from committing future crimes. See Denise Barrett, Frank Draper, & Sarah Gannett, *Mitigation, Defending a Federal Criminal Case*, <https://www.fd.org/sites/default/files/training/sessions/Mitigation%20101/Defending%20a%20Federal%20Criminal%20Case%20Chap%2016%20-%20Mitigation.pdf>. An extensive investigation combined with relevant social and behavioral sciences can substantially improve case outcomes and reduce recidivism.

ANNOTATED MITIGATION BIBLIOGRAPHY

42

2026 GUIDELINE AMENDMENTS

Effective Nov. 1, 2026

*Why Disappointment
is Good*

1. New multi-count (f/k/a grouping) rules
2. Inflation adjustments to loss amounts
3. Addition of "fentanyl related substances"
4. New intro to the sentencing table
5. Deletion of rarely used SOC's

43

§3D1.1. Procedure for Determining Offense Level on Multiple Counts



4-Step Process



44

STEP ONE:
IF MULTIPLE COUNTS UNDER ANY OF THESE, CALCULATE THEM IN THE AGGREGATE UNDER A SINGLE GUIDELINE

These are currently the aggregate harm GLs under 3D1.2(d)

Fraud

Drug trafficking

Firearm offenses

Illegal reentry

CP non-production offenses

§2A3.5;
§§2B1.1, 2B1.4, 2B1.5, 2B4.1, 2B5.1, 2B5.3, 2B6.1;
§§2C1.1, 2C1.2, 2C1.8;
§§2D1.1, 2D1.2, 2D1.5, 2D1.11, 2D1.13;
§§2E4.1, 2E5.1;
§§2G2.2, 2G3.1;
§2K2.1;
§§2L1.1, 2L2.1;
§2N3.1;
§2Q2.1;
§2R1.4;
§§2S1.1, 2S1.3;
§§2T1.1, 2T1.4, 2T1.6, 2T1.7, 2T1.9, 2T2.1, 2T3.1.

45

STEP TWO:
(A) IF MULTIPLE COUNTS UNDER THE SAME GUIDELINE LISTED HERE

AND

(B) COUNTS INVOLVE EITHER DIFFERENT VICTIMS OR SAME VICTIM ON DIFFERENT OCCASIONS

THEN ADD LEVELS

These are currently the GLs excluded from 3D1.2(d)

Robbery

Murder, assault, rape, obstruction, etc.

CP production

all offenses in Chapter Two, Part A (except §2A3.5);
§§2B2.1, 2B3.1, 2B3.2, 2B3.3;
§2D2.3;
§§2E1.3, 2E1.4, 2E2.1;
§§2G1.1, 2G1.3, 2G2.1;
§§2H1.1, 2H4.1;
§2J1.2, 2J1.3;
§2K1.4;
§§2M3.9, 2M6.1;
§2N1.1;
§2Q1.4;
§2X6.1.

NUMBER OF COUNTS COVERED BY GUIDELINE LISTED IN PARAGRAPH (1)	INCREASE IN OFFENSE LEVEL
(A) 2	add 2 levels
(B) 3	add 3 levels
(C) 4 or 5	add 4 levels
(D) 6 or more	add 5 levels.

46

STEP THREE:
CALCULATE ALL OTHER
COUNTS INDIVIDUALLY

47

STEP FOUR:

FIND THE HIGHEST OFFENSE LEVEL B/W STEPS
1-3

THIS LEVEL NOW APPLIES TO ALL COUNTS

(EVEN IF IT'S NOT BASED ON EXTRA LEVELS)



48



SPECIAL INSTRUCTION:

DON'T INCLUDE COUNTS
INCLUDING MANDATORY
CONSECUTIVE PUNISHMENT

(E.G., 924(C) OR 1028A)

49



Example #1

50

Example #1

Bank Robbery, in violation of Title 18, United States Code, Sections 2113(a) and (d), a Class B Felony

Possession of a Firearm in Connection to a Crime of Violence, in violation of Title 18, United States Code, § 924(c)(1)(B)(i), a Class A Felony

Escape, in violation of Title 18, United States Code, Section 751, a Class D felony



51

Step One: calculate in aggregate?

Bank Robbery, in violation of Title 18, United States Code, Sections 2113(a) and (d), a Class B Felony

Escape, in violation of Title 18, United States Code, Section 751, a Class D felony

2B3.1

2P1.1

§2A3.5;
 §§2B1.1, 2B1.4, 2B1.5, 2B4.1, 2B5.1, 2B5.3, 2B6.1;
 §§2C1.1, 2C1.2, 2C1.8;
 §§2D1.1, 2D1.2, 2D1.5, 2D1.11, 2D1.13;
 §§2E4.1, 2E5.1;
 §§2G2.2, 2G3.1;
 §2K2.1;
 §§2L1.1, 2L2.1;
 §2N3.1;
 §2Q2.1;
 §2R1.1;
 §§2S1.1, 2S1.3;
 §§2T1.1, 2T1.4, 2T1.6, 2T1.7, 2T1.9, 2T2.1, 2T3.1.



52

Step Two: Additional levels?

Bank Robbery, in violation of Title 18, United States Code, Sections 2113(a) and (d), a Class B Felony

Escape, in violation of Title 18, United States Code, Section 751, a Class D felony

2B3.1

2P1.1

all offenses in Chapter Two, Part A (except §2A3.5);
 §§2B2.1, 2B3.1, 2B3.2, 2B3.3;
 §2D2.3;
 §§2E1.3, 2E1.4, 2E2.1;
 §§2G1.1, 2G1.3, 2G2.1;
 §§2H1.1, 2H4.1;
 §2J1.2, 2J1.3;
 §2K1.4;
 §§2M3.9, 2M6.1;
 §2N1.1;
 §2Q1.4;
 §2X6.1.



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Step 3: Calculate individually

Count One - Bank Robbery

20. **Base Offense Level:** The United States Sentencing Commission Guideline for a violation of 18 U.S.C. §§2113(a) and (d) is found in USSG §2B3.1(a) and calls for a base offense level of 20. 20
21. **Specific Offense Characteristic:** Since the property of a financial institution was taken during the instant offense, the base offense level is increased by two levels, pursuant to USSG §2B3.1(b)(1). +2
22. **Victim-Related Adjustments:** None. 0
23. **Adjustments for Role in the Offense:** None. 0
24. **Adjustment for Obstruction of Justice:** None. 0
25. **Adjusted Offense Level (Subtotal)** 22

Count Five - Escape

27. **Base Offense Level:** The United States Sentencing Commission Guideline for violation of 18 U.S.C. § 751(a) is found in USSG §2P1.1(a)(1) and calls for a base offense level of 13, if the defendant was in custody or confinement by virtue of an arrest on a charge of a felony, or conviction of any offense. In this case, the defendant was being housed at the Greene County Detention Center while in the custody of the Attorney General on the charge of bank robbery. 13
28. **Specific Offense Characteristic:** Pursuant to USSG §2P1.1(b)(1), if the use or the threat of force against any person was involved, increase the offense level by five levels. In the present case, during the defendant's escape, he assaulted Deputy McCauley, causing serious bodily injury which required stitches. +5
29. **Victim-Related Adjustments:** Pursuant to USSG §3A1.2 (c)(2), if, in a manner creating a substantial risk of serious bodily injury, the defendant knowing or having reasonable cause to believe that a person was a prison official, assaulted such official while the defendant was in the custody or control of a prison or other correctional facility, increase by six levels. +6
30. **Adjustments for Role in the Offense:** None. 0
31. **Adjustment for Obstruction of Justice:** None. 0
32. **Adjusted Offense Level (Subtotal):** 24

54

Step 4: Highest level controls

Count One - Bank Robbery

20. Base Offense Level: The Use of Force or Threat of Force in Violation of 18 U.S.C. §§2113(a)(1) and (b)(1) has a base offense level of 20.

21. Specific Offense Characteristic: During the instant offense, the defendant used a dangerous weapon, a handgun, in violation of USSG §2B3.1(b)(1).

22. Victim-Related Adjustments: None.

23. Adjustments for Role in the Offense: None.

24. Adjustment for Obstruction of Justice: None.

25. Adjusted Offense Level (Subtotal):

Multiple-Count Adjustment (See § 3D1.4)		Units
33. Adjusted Offense Level for Count One		1
34. Adjusted Offense Level for Count Five		1
35. Total Number of Units		2
36. Greater Adjusted Offense Level		24
37. Increase in Offense Level		2
38. Combined Adjusted Offense Level		26
39. Adjustment for Acceptance of Responsibility: None.		0
40. Adjusted Offense Level:		26

Commission Guideline for 2P1.1(a)(1) and calls for a base offense level of 13. In this case, the defendant was in the custody of the... while in the custody of the... 13

2P1.1(b)(1), if the use or the possession of a dangerous weapon increases the offense level by five levels. In this case, the defendant assaulted Deputy... stitches. +5

A1.2 (c)(2), if, in a manner that endangers the life of a defendant knowing or having reason to know that such official is a prison or other correctional institution, assaulted such official... +6

0

0

32. Adjusted Offense Level (Subtotal):

24

55

Example #2

56

Example #2

Count 1: Possessing a Firearm in Furtherance of a Crime of Violence, 18 U.S.C. § 924(c)(1)(A)(ii).

Count 2: Carjacking, 18 U.S.C. § 2119.

Counts 3-5: Interference with Commerce by Robbery, 18 U.S.C. § 1951.



57

Step One: calculate in aggregate?

Count 2: Carjacking, 18 U.S.C. § 2119.

Counts 3-5: Interference with Commerce by Robbery, 18 U.S.C. § 1951.

§2A3.5;
 §§2B1.1, 2B1.4, 2B1.5, 2B4.1, 2B5.1, 2B5.3, 2B6.1;
 §§2C1.1, 2C1.2, 2C1.8;
 §§2D1.1, 2D1.2, 2D1.5, 2D1.11, 2D1.13;
 §§2E4.1, 2E5.1;
 §§2G2.2, 2G3.1;
 §2K2.1;
 §§2L1.1, 2L2.1;
 §2N3.1;
 §2Q2.1;
 §2R1.1;
 §§2S1.1, 2S1.3;
 §§2T1.1, 2T1.4, 2T1.6, 2T1.7, 2T1.9, 2T2.1, 2T3.1.

**ALL FOUR
2B3.1**

58

Step Two: additional levels?

2B3.

Count 1: Carjacking of a white Toyota Corolla (bearing license plate 1FB011)

51. **Base Offense Level:** The guideline for a violation of 18 U.S.C. § 2119 is USSG §2B3.1. The base offense level for a robbery is 20. USSG §2B3.1(a). 20

52. **Specific Offense Characteristics:** Because the offense involved carjacking, increase by 2 levels. USSG §2B3.1(b)(5). 22

53. **Victim-Related Adjustment:** None. 0

54. **Adjustment for Role in the Offense:** None. 0

55. **Adjustment for Obstruction of Justice:** None. 0

56. **Adjusted Offense Level (Subtotal):** Twenty-two. 22

Count 2: Interference with Commerce by Robbery of Econmax Gas Station, Road #752 in Cidra, PR

57. **Base Offense Level:** The guideline for a violation of 18 U.S.C. § 1951 is USSG §2B3.1. The base offense level for a robbery is 20. USSG §2B3.1(a). 20

58. **Specific Offense Characteristics:** If a firearm was otherwise used, increase by 6 levels. USSG §2B3.1(b)(2)(B). 26

59. **Victim-Related Adjustment:** None. 0

60. **Adjustment for Role in the Offense:** None. 0

61. **Adjustment for Obstruction of Justice:** None. 0

62. **Adjusted Offense Level (Subtotal):** Twenty-six. 26

Count 3: Interference with Commerce by Robbery of Econmax Gas Station, Road #171 in Cidra, PR

63. **Base Offense Level:** The guideline for a violation of 18 U.S.C. § 1951 is USSG §2B3.1. The base offense level for a robbery is 20. USSG §2B3.1(a). 20

64. **Specific Offense Characteristics:** If a firearm was otherwise used, increase by 6 levels. USSG §2B3.1(b)(2)(B). 26

65. **Victim-Related Adjustment:** None. 0

66. **Adjustment for Role in the Offense:** None. 0

67. **Adjustment for Obstruction of Justice:** None. 0

68. **Adjusted Offense Level (Subtotal):** Twenty-six. 26

Count 4: Interference with Commerce by Robbery of Puma Gas Station, Road #173 in Cidra, PR

69. **Base Offense Level:** The guideline for a violation of 18 U.S.C. § 1951 is USSG §2B3.1. The base offense level for a robbery is 20. USSG §2B3.1(a). 20

70. **Specific Offense Characteristics:** If a firearm was otherwise used, increase by 6 levels. USSG §2B3.1(b)(2)(B). 26

71. **Victim-Related Adjustment:** None. 0

72. **Adjustment for Role in the Offense:** None. 0

73. **Adjustment for Obstruction of Justice:** None. 0

74. **Adjusted Offense Level (Subtotal):** Twenty-six. 26

75. Multiple Count Adjustments: Units are assigned pursuant to USSG §3D1.4(a), (b) and (c). One unit is assigned to the group with the highest offense level. One additional unit is assigned for each group that is equally serious or from 1 to 4 levels less serious. One-half unit is assigned to any group that is 5 to 8 levels less serious than the highest offense level. Any groups that are 9 or more levels less serious than the group with the highest offense level are disregarded.

Group/Count	Adjusted	Units
Count 1		0
Count 2		
Count 3		1.0
Count 4		1.0
Count 5		1.0
Total		4.0

76. Groups with Offense Levels Above: 26

77. Increase Base Level: The offense level is increased pursuant to the number of units assigned by the amount indicated in the table at USSG §3D1.4. 30

78. Combined Adjusted Offense Level: The Combined Adjusted Offense Level is determined by taking the offense level applicable to the Group with the highest offense level and increasing the offense level by the amount indicated in the table at USSG §3D1.4. 30

26 + 4 = 30

59

Example #3

60

Client has 5 convictions:

- **2 counts of fraud (2B1.1)**
- **1 count of tax evasion (2T1.1)**
- **2 counts of impeding a federal officer each involving a different officer (2A2.4)**

61

Step 1: Aggregate?

§2A3.5;
§§2B1.1, 2B1.4, 2B1.5, 2B4.1, 2B5.1, 2B5.3, 2B6.1;
§§2C1.1, 2C1.2, 2C1.8;
§§2D1.1, 2D1.2, 2D1.5, 2D1.11, 2D1.13;
§§2E1.1, 2E5.1;
§§2G2.2, 2G3.1;
§2K2.1;
§§2L1.1, 2L2.1;
§2N3.1;
§2Q2.1;
§2R1.1;
§§2S1.1, 2S1.3;
§§2T1.1, 2T1.4, 2T1.6, 2T1.7, 2T1.9, 2T2.1, 2T3.1.

- **2 counts of fraud (2B1.1)** ✓
- ~~1 count of tax evasion (2T1.1)~~
- ~~2 counts of impeding a federal officer (2A2.4)~~

18

Step 2: Levels?

all offenses in Chapter Two, Part A (except §2A3.5);
~~§§2B2.1, 2B3.1, 2B3.2, 2B3.9;~~
§2D2.3;
§§2E1.3, 2E1.4, 2E2.1;
§§2G1.1, 2G1.3, 2G2.1;
§§2H1.1, 2H4.1;
§2J1.2, 2J1.3;
§2K1.4;
§§2M3.9, 2M6.1;
§2N1.1;
§2Q1.4;
§2X6.1.

NUMBER OF COUNTS COVERED BY GUIDELINE LISTED IN PARAGRAPH (1)	INCREASE IN OFFENSE LEVEL
(A) 2	add 2 levels
(B) 3	add 3 levels
(C) 4 or 5	add 4 levels
(D) 6 or more	add 5 levels

- ~~1 count of tax evasion (2T1.1)~~
- **2 counts of impeding a federal officer (2A2.4)** +2

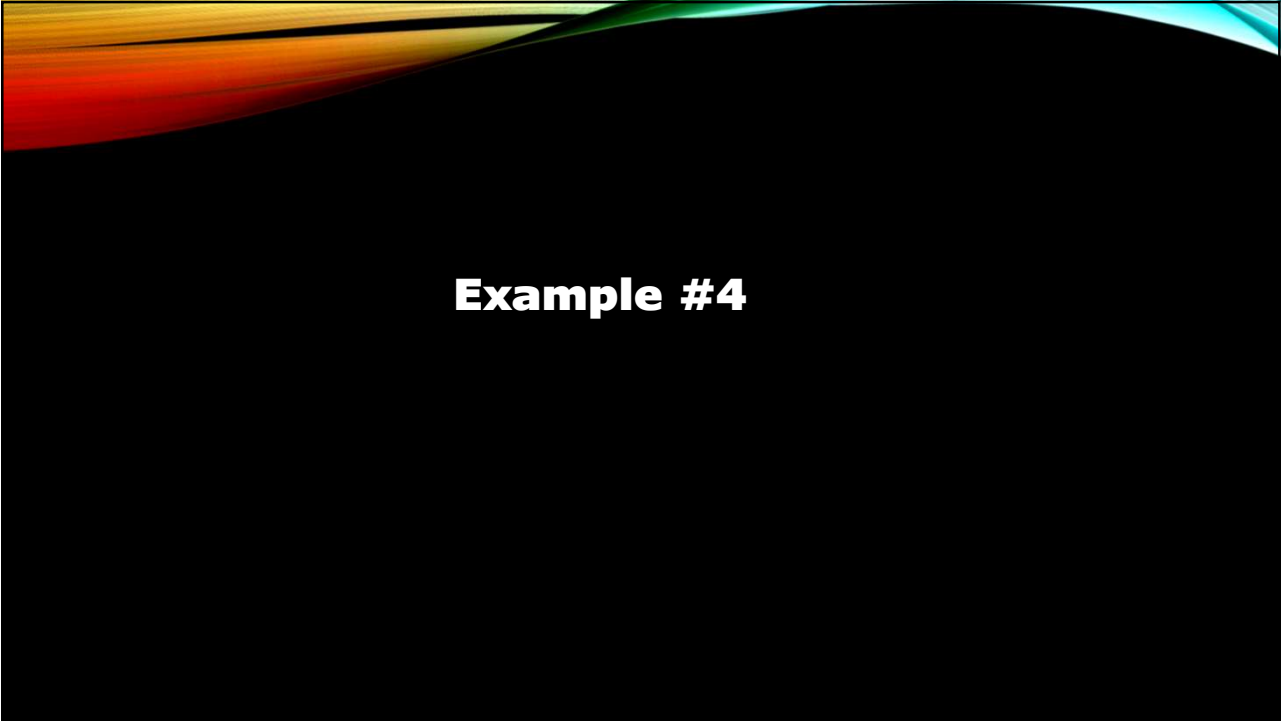
20+2=22

Step 3: Other?

1 count of tax evasion (2T1.1)

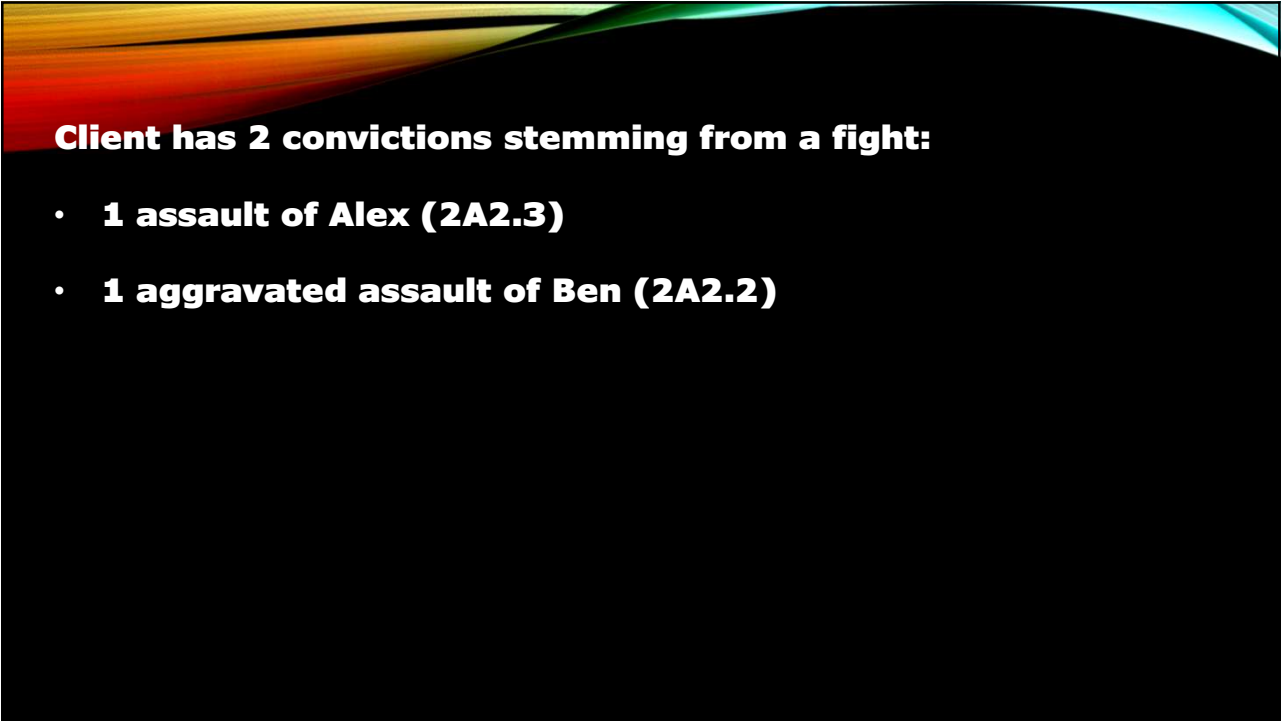
30

62



Example #4

63



Client has 2 convictions stemming from a fight:

- **1 assault of Alex (2A2.3)**
- **1 aggravated assault of Ben (2A2.2)**

64

Step 1: Aggregate?

§2A3.5;
 §§2B1.1, 2B1.4, 2B1.5, 2B4.1, 2B5.1, 2B5.3, 2B6.1;
 §§2C1.1, 2C1.2, 2C1.8;
 §§2D1.1, 2D1.2, 2D1.5, 2D1.11, 2D1.13;
 §§2E4.1, 2E5.1;
 §§2G2.2, 2G3.1;
 §2K2.1;
 §§2L1.1, 2L2.1;
 §2N3.1;
 §2Q2.1;
 §2R1.1;
 §§2S1.1, 2S1.3;
 §§2T1.1, 2T1.4, 2T1.6, 2T1.7, 2T1.9, 2T2.1, 2T3.1.

1 assault of Alex (2A2.3)

1 aggravated assault of Ben (2A2.2)

No multiple counts under same guideline (and not listed)

Step 2: Levels?

all offenses in Chapter Two, Part A (except §2A3.5);
~~§§2B1.1, 2B1.4, 2B1.5, 2B4.1, 2B5.1, 2B5.3, 2B6.1;~~
 §2D2.3;
 §§2E1.3, 2E1.4, 2E2.1;
 §§2G1.1, 2G1.3, 2G2.1;
 §§2H1.1, 2H4.1;
 §2J1.2, 2J1.3;
 §2K1.4;
 §§2M3.9, 2M6.1;
 §2N1.1;
 §2Q1.4;
 §2X6.1.

NUMBER OF COUNTS COVERED BY GUIDELINE LISTED IN PARAGRAPH (1)	INCREASE IN OFFENSE LEVEL
(A) 2	add 2 levels
(B) 3	add 3 levels
(C) 4 or 5	add 4 levels
(D) 6 or more	add 5 levels.

1 assault of Alex (2A2.3)

1 aggravated assault of Ben (2A2.2)

No multiple counts under same guideline

Step 3: Other?



1 assault of Alex (2A2.3)

1 aggravated assault of Ben (2A2.2)

Highest offense level controls

65



66

2025

1. Added distinct SOC for machinegun conversion devices
2. Clarified language in robbery guideline
3. Added more SOC's related to fentanyl

2026

1. Added "fentanyl related substances"
2. Inflation adjustments to loss amounts
3. New intro to the sentencing table
4. Deletion of rarely used SOC's

67

2K2.1 – MCDs (Glock Switches and Auto Sears)

(5) (Apply the Greatest) If the defendant—

(A) (i) possessed four or more machinegun conversion devices; or
(ii) transferred or sold any machinegun conversion device to another person, or attempted or conspired to commit such a transfer or sale, increase by **2** levels; or

(B) possessed 30 or more machinegun conversion devices, increase by **4** levels.

For purposes of this subsection, "**machinegun conversion device**" means any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun (*i.e.*, any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger).



Possession of 4 or more MCDs → +2

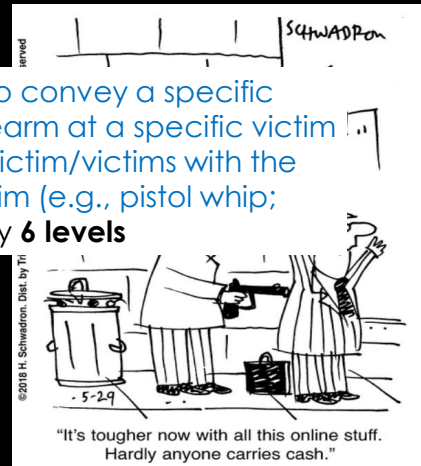
Sale of 1 or more MCDs → +2

Possession of 30 or more MCDs → +4

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CIRCUIT CONFLICTS: ROBBERY

§2B3.1(b)(2)(B) – if a firearm was ~~otherwise~~ 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/victims with the firearm; or to make physical contact with the victim (e.g., pistol whip; firearm placed against victim's body), increase by **6 levels**



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CIRCUIT CONFLICTS: ROBBERY

§2B3.1(b)(4)(B) – if any ~~person was physically restrained~~ person's freedom of movement was restricted through **physical contact or confinement**, such as by being tied, bound, or locked up, to facilitate the commission of the offense or to facilitate escape,

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FENTANYL §2D1.1 – FAKE PILLS

§2D1.1(b)(13) – If a person:

(A) knowingly misrepresented or knowingly marketed as another substance a mixture/substance containing fentanyl or a fentanyl analogue, **increase by 4 levels**; or



...and acted ~~with willful blindness or conscious avoidance of knowledge~~ **with reckless disregard** that such mixture or substance was not the legitimately manufactured drug, **increase by two levels.**

drug, **increase by 2 levels.**

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"Fentanyl related substance"

(c) DRUG QUANTITY TABLE

CONTROLLED SUBSTANCES AND QUANTITY*	BASE OFFENSE LEVEL
(1) ● 90 KG or more of Heroin; ● 450 KG or more of Cocaine; ● 25.2 KG or more of Cocaine Base; ● 90 KG or more of PCP, or 9 KG or more of PCP (actual); ● 45 KG or more of Methamphetamine, or 4.5 KG or more of Methamphetamine (actual), or 4.5 KG or more of "Ice"; ● 45 KG or more of Amphetamine, or 4.5 KG or more of Amphetamine (actual); ● 900 G or more of LSD; ● 36 KG or more of Fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] Propanamide); ● 9 KG or more of a Fentanyl Analogue; ● 9 KG or more of a Fentanyl-Related Substance; ● 90,000 KG or more of Marijuana; ● 18,000 KG or more of Hashish; ● 1,800 KG or more of Hashish Oil; ● 90,000,000 units or more of Ketamine; ● 90,000,000 units or more of Schedule I or II Depressants; ● 5,625,000 units or more of Flunitrazepam; ● 90,000 KG or more of <i>Converted Drug Weight</i>.	Level 38

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"Fentanyl related substance"

*Notes to Drug Quantity Table:

* * *

(K) The term "**Fentanyl-Related Substance**" is defined in 21 U.S.C. § 812(e). There is a rebuttable presumption that the base offense level specified in the Drug Quantity Table applies to fentanyl-related substances. However, if the defendant establishes either that the fentanyl-related substance (i) functions to block, diminish, or counteract the effect produced by fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide) or a fentanyl analogue, or (ii) is significantly less potent than fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide), the court should instead determine the base offense level for the fentanyl-related substance using the converted drug weight of the most closely related controlled substance referenced in this guideline (as provided in Application Note 6 below).

What are FRS's that are significantly less potent than fentanyl?

What about acetyl fentanyl, butyryl fentanyl, meta-fluorofentanyl, & 4'-fluorofentanyl?

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Inflationary adjustment

§2B1.1. Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States

* * *

(b) Specific Offense Characteristics

(1) If the loss exceeded ~~\$6,500~~\$9,000, increase the offense level as follows:

[MULTIPLIER USED]	LOSS (APPLY THE GREATEST)	INCREASE IN LEVEL
[1.38]	(A) \$6,500 \$9,000 or less	no increase
[1.38]	(B) More than \$6,500 \$9,000	add 2
[1.33]	(C) More than \$15,000 \$20,000	add 4
[1.38]	(D) More than \$40,000 \$55,000	add 6
[1.58]	(E) More than \$95,000 \$150,000	add 8
[1.33]	(F) More than \$150,000 \$200,000	add 10
[1.40]	(G) More than \$250,000 \$350,000	add 12
[1.36]	(H) More than \$550,000 \$750,000	add 14
[1.33]	(I) More than \$1,500,000 \$2,000,000	add 16
[1.43]	(J) More than \$3,500,000 \$5,000,000	add 18
[1.58]	(K) More than \$9,500,000 \$15,000,000	add 20
[1.40]	(L) More than \$25,000,000 \$35,000,000	add 22
[1.38]	(M) More than \$65,000,000 \$90,000,000	add 24
[1.33]	(N) More than \$150,000,000 \$200,000,000	add 26
[1.40]	(O) More than \$250,000,000 \$350,000,000	add 28
[1.36]	(P) More than \$550,000,000 \$750,000,000	add 30.



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New ch. 5, part A language

PART A — SENTENCING TABLE DETERMINATION OF SENTENCING RANGE AND SENTENCING OPTIONS

Introductory Commentary

By statute, sentencing courts must consider and balance a broad range of factors when determining the appropriate sentence to impose in each individual case. Among these factors, courts are required to consider "all available sentencing options." 18 U.S.C. § 3553(a)(3). Each of the available sentencing options—imprisonment, probation, and fines—serves a punitive function, and the sentencing court must determine the option, or combination of options, that best achieve a sentence "sufficient, but not greater than necessary to comply with the purposes set forth in [18 U.S.C. § 3553(a)(2)]." 18 U.S.C. § 3553(a).

Congress charged the Commission with promulgating guidelines for sentencing courts to use in determining "whether to impose a sentence to probation, a fine, or a term of imprisonment" (see 28 U.S.C. § 994(a)(1)(A)). The provisions within Chapter Five, in combination, guide all aspects of determining the appropriate sentence under the guidelines, including the initial determination of sentence type. By clearly delineating the sentencing options available under the guidelines, the Commission intends for Part A of this chapter to assist courts in making this critical decision.

(b) The Sentencing Table is divided into Zones A, B, C, and D. Each zone provides for different sentencing options for the court's consideration. Subject to any statutory limitations in an individual case (see, e.g., §5B1.1(b) (statutory eligibility for probation), §§5G1.1, 5G1.2 (statutory minima and maxima)), the sentencing options in each zone are as follows:

SENTENCING OPTIONS

Zone A	- probation; - probation with a period of intermittent confinement, community confinement, or home detention; - a "split sentence" (i.e., part of the term satisfied by imprisonment and the remainder satisfied by a term of supervised release with a condition that substitutes community confinement or home detention for imprisonment, according to the schedule in §5C1.1(e)); or - imprisonment. See §5B1.1(a)(1); §5C1.1(a)–(b), (e); §5C1.1, comment. (n.2).
Zone B	- probation with the minimum term of imprisonment satisfied by a period of intermittent confinement, community confinement, or home detention, according to the schedule in §5C1.1(e); - a "split sentence" (with at least one month satisfied by imprisonment); or - imprisonment. See §5B1.1(a)(2); §5C1.1(e), (e); §5C1.1, comment. (n.3).
Zone C	- a "split sentence" (with at least one-half of the minimum term satisfied by imprisonment); or - imprisonment. See §5C1.1(d), (e); §5C1.1, comment. (n.4).
Zone D	imprisonment. See §5C1.1(f).

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Deleting unused SOCs



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THE BIG THREE THAT GOT AWAY

Career offender (eliminating state drug priors and resolving circuit conflicts)

Meth (eliminating purity distinctions from meth sentencing)

Loss table (improving 2B1.1 in general)



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Collected policy arguments for downward variances from the applicable guideline range in meth cases

Sentencing Resource Counsel Project of the Federal Public & Community Defenders

November 1, 2024 (updated 12/9/24)

I. Background – methamphetamine

- Meth 101
- Purity and the changing meth market

II. Background – sentencing law

III. Policy arguments for varying downward from the pure-meth-based guideline range—at least down to the range that would result from the mixed-meth base offense level, but ideally even more

- Section 2D1.1 distinguishes between pure meth and meth mixture in setting the base offense level for meth offenses, with pure meth punished more harshly than meth mixture by a factor of ten to one.
- As a general matter, the meth guidelines are poorly calibrated: even the meth-mixture guideline is too high for a large percentage of cases, and the pure-meth guideline is too high for essentially all cases.
- The extreme disparity between the mixed-meth and pure-meth base offense levels is irrational and creates unwarranted disparities between similarly situated individuals convicted of meth offenses.

IV. Arguments against application of the meth-specific “importation” enhancement

- The enhancement
- Policy arguments against the meth-specific importation enhancement at § 2D1.1(b)(5) that could be used in any case, whether or not the client was directly involved in importation
- Argument against the § 2D1.1(b)(5) enhancement only applicable specifically where the client’s individual offense did not involve importation – do not raise unless the PSR/government is pushing this issue

c. The extreme disparity between the mixed-meth and pure-meth base offense levels is irrational and creates unwarranted disparities between similarly situated individuals convicted of meth offenses.⁴¹

i. The Sentencing Commission’s justification for higher sentences based on higher purity is that “unusually pure substances” indicate a prominent role in the criminal enterprise and proximity to the source of the drugs.”⁴²

ii. While the Commission’s tiered treatment of actual/mixture methamphetamine offenses in the past may have at least appeared logical, “[r]ealities on the ground have since changed.”⁴³ Even if it were true in the past that only kingpins had access to highly pure meth,⁴⁴ it is not true anymore—now, essentially all meth is pure. In

⁴¹ See 18 U.S.C. § 3553(a)(6) (instructing courts to consider “the need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct” when imposing sentences).

⁴² U.S.S.G. § 2D1.1, app. note 27(C) (“Since controlled substances are often diluted and combined with other substances as they pass down the chain of distribution, the fact that a defendant is in possession of unusually pure narcotics may indicate a prominent role in the criminal enterprise and proximity to the source of the drugs.”); see also *United States v. Barro-Sandau*, 265 F. Supp. 3d 1249, 1255 (D.N.M. 2017) (recognizing that the theory underlying the purity-based distinction in the methamphetamine guidelines is found at application note 27(C)). This application note is more precisely related to an upward departure, encouraging sentencing courts to impose terms of imprisonment above the guideline range where a defendant was “[t]rafficking in controlled substances, compounds or mixtures of unusually high purity” U.S.S.G. § 2D1.1, app. note 27(C). But there is no doubt that it is relevant here: methamphetamine is expressly excluded from this upward departure provision because “the guideline itself provides for the consideration of purity.” *Id.* In other words, high purity is not a factor relevant to a departure because the purity-as-proxy-for-culpability reasoning is already “baked into” the meth guidelines. See U.S.S.G. § 1A1.4(b) (introduction to the Guidelines Manual, explaining that “departures” are intended to permit judicial discretion only in “unusual cases outside the range of the more typical offenses for which the guidelines were designed”).

⁴³ *United States v. Hoover*, No. 4:17-CR-327, 2018 WL 5924500, at *2 (D. Idaho Nov. 13, 2018) (“From my experience, purity levels of seized drugs in the 10% range were common until approximately 20 years ago. Realities on the ground have since changed.”).

⁴⁴ There is evidence that it has never been true that, with meth, higher purity indicated higher status in the distribution chain. The President’s Office of National Drug Control Policy reported in 2004 that while heroin, cocaine, and other substances tended to be diluted as they progressed through the distribution chain, “[h]istorically, there has been little variation in average d-methamphetamine purity across quantity levels.” Executive Office of the President, Office of National Drug Control Policy, 2004 Price and Purity Report, *supra* note 12, at 16. And “since the late 1990s, the highest purities have been

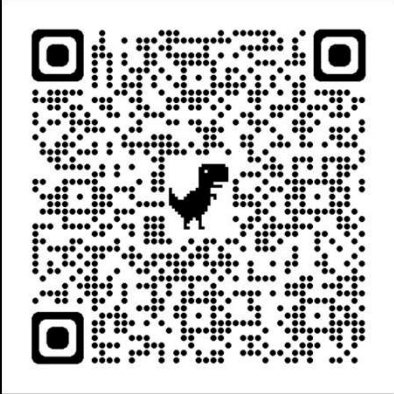
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SRC sentencing
resource
counsel

[Benjamin flick@fd.org](mailto:Benjamin_flick@fd.org)

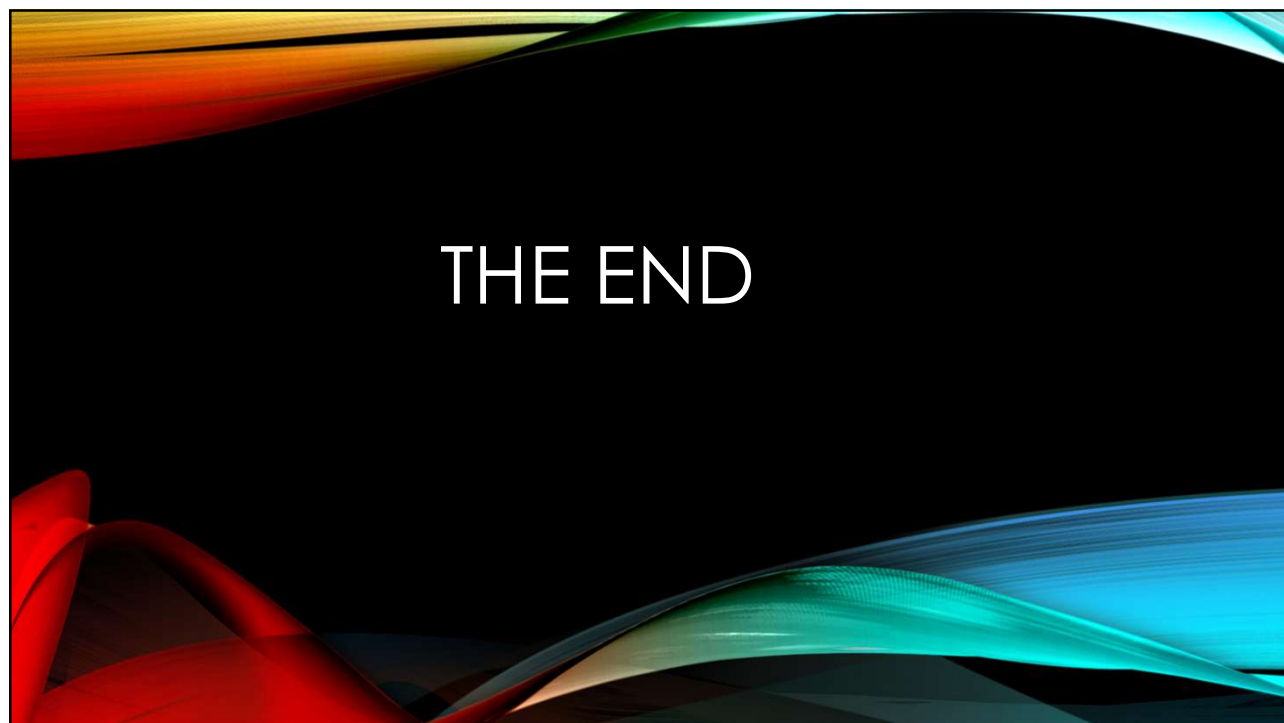
Additional Resources:

- SRC's box folders
- SRC's listservs – email me
- SRC website: src.fd.org
- SRC Office Hours
- Sentencing data resources



**Office Hours
signup**

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