

WHAT CJA ATTORNEYS NEED TO KNOW ABOUT THE 2025 USSG AMENDMENTS

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I. Mitigating-role-related amendments to §2D1.1

a. Section 2D1.1(a)(5): Amendments to the base-offense-level cap related to mitigating role

- i. Refresher: §2D1.1(a)(5) blunts the impact of base-offense-level rules based on drug type and quantity for individuals who get a mitigating-role reduction, by capping the base offense level.¹
- ii. The amendment makes these caps more generous, such that the highest base offense level that a person with a 4-level mitigating-role reduction can get is 30; and the highest base offense level that person with a 2- or 3-level mitigating-role reduction can get is 32. (It is possible for the cap to go lower – see the guideline for more details.)²

b. Section 2D1.1(e)(2): New “special instructions” for the mitigating-role reduction in drug-trafficking cases

- i. The new special instructions expand who can be applicable for a mitigating-role reduction under U.S.S.G. §3B1.2. Note that if the ordinary rules for §3B1.2 call for a reduction, then those rules should be applied like normal. The special instructions permit certain individuals who do *not* come within the terms of §3B1.2 and its commentary to nevertheless get a mitigating-role reduction.

¹ This provision does not cap “specific offense characteristics,” although it is usually the case that individuals who are entitled to the mitigating-role reduction do not get large numbers of upward specific offense characteristics.

² The mitigating-role caps do not apply to base offense levels that are set based on the rules in §2D1.1(a)(1)–(4), rather than drug type and quantity under (a)(5) and (c). This has always been true and remains so.

ii. The focus of the special instructions is on the individual's "primary function" – not their *exclusive* function – in the drug-trafficking market. "Function" is essentially the person's job in the trafficking business (e.g. courier, street dealer, wholesaler).

iii. Level of reduction

1. If the individual's primary function was "plainly among the lowest level of drug trafficking functions": 4-level reduction.

a. Non-exhaustive examples of functions fitting within this provision: "serving as a courier, running errands, sending or receiving phone calls or messages, or acting as a lookout."

2. If the individual's primary function was performing "another low-level trafficking function": 2-level reduction.

a. Non-exhaustive example of this: "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)."

b. The example suggests that this will be extremely fact intensive.

3. While the special instruction does not refer to a 3-level reduction, given that §3B1.2 permits this Goldilocks reduction for cases where the 4- and 2-level reductions don't quite fit, a 3-level reduction should also be possible here.

iv. Clarifying notes in the text of the new instructions

1. Unlike with the ordinary §3B1.2 rules, the special instruction can apply “regardless of whether the offense involved other participants in addition to the defendant.”
 2. Also unlike with the ordinary §3B1.2 rules, the special instruction can apply “regardless of whether the defendant was substantially less culpable than the average participant in the criminal activity.”
 3. “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.”
 4. Other reductions via “specific offense characteristics” that also touch on the person’s role can still apply.
- v. Where §3B1.2 applies under the special instruction, don’t forget to go back and apply the base-offense-level cap! (See section I.a., above.)

II. Simplification amendments

a. Amendment to §1B1.1 and elimination of all references to “departure” throughout the manual

- i. Previously, the instructions for using the manual at §1B1.1 described a three-step process: (1) calculate the guideline range; (2) apply any departures; (3) determine the appropriate sentence under 18 U.S.C. § 3553(a).
- ii. Now it’s a two-step process: (1) calculate the guideline range, and then (2) determine the appropriate sentence under § 3553(a). And note that in describing that second step, the Commission finally actually references § 3553(a)’s parsimony principle (“sufficient but not greater than necessary”).

- iii. Consistent with this two-step process, all departures have been deleted, but note that they are now published in the appendix.
- iv. In response to concerns that deleting departures might cause judges to reflexively impose guideline-range sentences, rather than simply vary from the guideline range in circumstances where they would have previously departed, the Commission added language to the Chapter One, Part A introductory commentary, described below, clarifying that judges can and should continue to rely on all relevant circumstances, including ones previously identified as departures, in determining the appropriate sentence under § 3553(a).

b. Amendments to Chapter One, Part A

- i. Introductory commentary
 - 1. The previous introduction to the manual, which focused on lauding the Commission's excellent work and emphasizing the importance of the guidelines (even post-*Booker*), has been entirely deleted.
 - 2. The new introduction more neutrally (and briefly) describes the structure of the manual and the fact that § 3553(a) provides the overarching instructions for sentencing courts, starting with the parsimony principle. Calculation of the guideline range is only the "first step" of the sentencing process, and just "one of multiple factors" that a court considers.
 - 3. The final paragraphs of the new introduction clarify that the Commission deleted departures to better align the manual with *Booker*, not to suggest that circumstances that were previously recognized as departure grounds should not impact the sentence. Just now, they are considerations for the ultimate § 3553(a)

determination, rather than a technical guideline-calculation matter:

Following *Booker*, courts are permitted to impose sentences outside the applicable guideline range as “variances,” both for reasons related to the operation of the applicable guideline provisions and in light of individual characteristics unrelated to guideline provisions. In the years after *Booker*, courts used departures with much less frequency in favor of variances.

In 2025, the Commission amended the Guidelines Manual to remove departures and policy statements relating to specific personal characteristics. (See USSG App. C, amendment 836). 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.

ii. Section 1A1.1 (Commission’s authority)

1. Amended so that it now starts with the parsimony principle and purposes of sentencing, to ensure that courts understand their role, and only then describes the Commission’s authority to promulgate guidelines, policy statements, and commentary.
2. Added commentary to this policy statement that again starts with the parsimony principle; describes the various statutory constraints on the Commission’s authority to promulgate guidelines and policy statements; and then clarifies that “[t]he 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.’”³

c. Further clarifications

- i. *Substantial assistance*. Still operates just the same, and still at §5K1.1; just, instead of saying “the court may depart from the guidelines” it now says “a sentence that is below the otherwise applicable guideline range may be appropriate.”
- ii. *Fast track (Early Disposition Programs)*. Still operates the same but moved from §5K3.1 to §3F1.1; instead of saying “the court may depart downward not more than 4 levels,” it now says “the court may decrease the defendant’s offense level . . . not more than 4 levels.”
- iii. *Section 5G1.3*. In order to avoid confusion that could be caused by the elimination of departures in the commentary, the Commission added two new application notes that essentially perform the same work as the old downward departures (and are potentially easier to follow), just not labeled as departures.
 1. “Imposition of sentence”: clarifies that a sentencing court may adjust a sentence downward to account for an already-served portion of an undischarged term of imprisonment even where the other sentence is for an offense that was not relevant conduct to

³ Citing *Pepper v. United States*, 562 U.S. 476, 488 (2011), and *Concepcion v. United States*, 597 U.S. 481, 493 (2022).

the instant offense, and provides advice for how to accomplish this so that the BOP will honor it.

2. “Discharged term of imprisonment”: clarifies that a sentencing court may adjust a sentence downward to account for a discharged term of imprisonment.

III. Supervised-release amendments

a. Amendments to Chapter Five, Part D (imposition of supervised release (“SR”))

- i. Introductory commentary: emphasizes that whether and how much SR to impose should be determined on an individualized basis; that SR should be used for people who need rehabilitative resources (suggesting that it should not be imposed for people who do not need such resources); and that SR should be imposed for rehabilitative, not punitive, purposes.
- ii. Section 5D1.1 (Imposition of a term of SR)
 1. Amended language makes clear that a court should not impose SR if not warranted after an individualized assessment, and that the court should state the reasons for imposing or not imposing SR.)
 2. Commentary notes that in order to apply FSA credits, the court needs to impose *some* SR.⁴
- iii. Section 5D1.2 (Term of SR): Amended language stresses the need for an individualized assessment and eliminates all minimum terms of SR (including in “sex offense” cases).
- iv. Section 5D1.3 (Conditions of SR): Amended language re “discretionary conditions” stresses the need for an individualized assessment and no longer

⁴ One day of SR should be sufficient, although this hasn’t been tested in litigation.

“recommend[s]” any standard or special conditions, although it does still list them. Also adds potential special conditions relating to contacting victims and obtaining educational or vocational training. The commentary now lists a non-exhaustive list of factors the court may wish to consider when deciding whether to terminate supervision early.

- v. Section 5D1.4 (Modification, early termination, and extension of SR): New policy statement encourages modification and early termination of SR (any time after one year), as appropriate.
- vi. This amendment also makes numerous technical and minor changes throughout Chapter Five (and fixes cross-references), consistent with the above.

b. Amendments to Chapter Seven, Part C (revocation of SR)

- i. The 2025 amendments limited Chapter Seven, Part B, to probation only and created a new Part C that is specific to SR, to emphasize the difference between the two and call for less punitive measures in response to SR violations: “While probation serves all the goals of sentencing, including punishment, supervised release primarily ‘fulfills rehabilitative ends, distinct from those served by incarceration.’ *United States v. Johnson*, 529 U.S. 53, 59 (2000). In light of these differences, Part B continues to recommend revocation for most probation violations. Part C encourages courts to consider a graduated response to a violation of supervised release, including considering all available options focused on facilitating a defendant’s transition into the community and promoting public safety.”⁵
- ii. The new Chapter Seven, Part C, borrows – but with amendments summarized below – language from Part B re probation.

⁵ This quote is in Chapter Seven’s new introduction.

- iii. Introductory commentary to new Part C: focuses on the need for an individualized assessment and the fact that SR is intended to promote rehabilitation; and discourages reflexive use of revocation to respond to violations.
- iv. Section 7C1.3 (Responses to violations of supervised release): quite different than §7B1.3 (Revocation of probation), in that it does not necessarily push revocation. Instead, where there is a violation, the new guideline calls for an individualized assessment to determine what, if any, response is appropriate (unless revocation is required by law). Commentary to this guideline includes all possible responses, which includes “informal” responses, like giving a warning or directing the defendant to additional resources. Commentary also recommends issuing a summons rather than an arrest warrant “where appropriate.”
- v. Section 7C1.4 (Revocation of supervised release): This is comparable to §7B1.3 (Revocation of probation), but not the same. Again, it emphasizes the need for an individualized assessment – now in the context of determining the appropriate length of a revocation sentence. Note that it says that a revocation sentence “generally should” be consecutive to a new sentence for new criminal conduct – rather than “shall,” as in the probation context.
- vi. Section 7C1.5 (Term of imprisonment – supervised release): uses the same table of recommended terms of imprisonment as before (and as in the probation context).⁶ New commentary expressly clarifies that text providing that the “criminal history category is the category applicable at the time the defendant originally was sentenced to a term of supervised release” means that if a person was sentenced before

⁶ This provision deletes all the language following the table that appears in the probation context, which mostly just states the obvious (*e.g.*, must impose mandatory-minimum sentence where one exists, revocation sentence can fall anywhere within the provided range).

the Commission created the “zero-point offender” rule at §4C1.1, the revocation-sentence table is based on the criminal history category that originally applied, not the one that would apply after application of §4C1.1 (notwithstanding that §4C1.1 was deemed retroactive).⁷

- vii. This amendment also makes numerous technical and minor changes throughout Chapter Seven (and fixes cross-references), consistent with the above.

IV. Other

a. Section 2D1.1: Fentanyl-related amendment

- i. Two-level enhancement (at §2D1.1(b)(13)) previously applicable where person represented or marketed fentanyl or fentanyl analogue as a legitimate drug “and acted with willful blindness or conscious avoidance of knowledge that such mixture or substance was not the legitimately manufactured drug” now refers to a situation where a person represents or markets fentanyl or fentanyl analogue as a legitimate drug “with reckless disregard that such mixture or substance was not the legitimately manufactured drug.”
- ii. This amendment was responsive to a DOJ argument that the mens rea requirement for this enhancement was vague and difficult to apply.

b. Section 2K2.1: MCD-related amendment

- i. New tiered enhancement (at §2K2.1(b)(5)) related to “machinegun conversion devices” (aka MCD, Glock switch, auto sear):
 - 1. Two-level increase where the person either “possessed four or more machinegun conversion devices” or “transferred or sold any

⁷ In the probation context, new commentary to §7B1.4 makes precisely this same clarification.

machinegun conversion device to another person, or attempted or conspired to commit such a transfer or sale.”

2. Four-level increase where the person “possessed 30 or more machinegun conversion devices.”

- ii. Note that this new enhancement was situated before §2K2.1’s offense-level cap, which now reads: “The cumulative offense level determined from the application of subsections (b)(1) through (b)(5) may not exceed level 29, except if subsection (b)(3)(A) applies.”

- iii. The amendment also renumbers subsequent specific offense characteristics and cleans up commentary to §§2K2.1 and 2K2.4.

c. Section 2B3.1: Clarification of “physically restrained” and “otherwise used” in robbery and extortion guidelines

- i. Physical restraint

1. Two-level enhancement (at §2B3.1(b)(4)(B)) previously applicable where “any person was physically restrained” now refers more precisely to a situation where “any person’s freedom of movement was restricted through physical contact or confinement, such as by being tied, bound, or locked up.”
2. This resolves a circuit split regarding whether holding a gun to someone’s head and directing them to move from one place to another was “physical restraint.”⁸

⁸ Compare, e.g., *United States v. Anglin*, 169 F.3d 154, 164 (2d Cir. 1999) (holding that the psychological coercion of pointing a gun at a victim, without more, does not qualify, and that a restraint must be “physical” for the enhancement to apply), *United States v. Bell*, 947 F.3d 49, 57 (3d Cir. 2020) (same), *United States v. Garcia*, 857 F.3d 708, 713–14 (5th Cir. 2017) (same), *United States v. Herman*, 930 F.3d 872, 877 (7th Cir. 2019) (same), and *United States v. Parker*, 241 F.3d 1114, 1118–19 (9th Cir. 2001) (same), with, e.g., *United*

ii. Otherwise used

1. Six-level enhancement (at §2B3.1(b)(2)(B)) previously applicable where “a firearm was otherwise used” now refers more precisely to a situation where “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).
2. This change was made in conjunction with the “physical restraint” amendment to clarify that this firearm-related conduct still garners the six-point enhancement although it does not *additionally* garner the two-point enhancement.

- iii. Identical amendments made to §2B3.2 (extortion by force or threat) and §2E2.1 (extortionate extension of credit), and commentary cleaned up at §§2B3.1, 2B3.2, 2E2.1, and 2X1.1.

d. Section 4A1.2: Clarification of “arrest” in Chapter Four definitions

- i. Adds (at §4A1.2(a)(2)), “For purposes of this provision, a traffic stop is not an intervening arrest.”
- ii. This resolves a circuit split in which only the Seventh Circuit was on the wrong side of the split.⁹

States v. Wallace, 461 F.3d 15, 34–35 (1st Cir. 2006) (holding that restricting a victim’s movement at gunpoint suffices for the enhancement), *United States v. Dimache*, 665 F.3d 603, 608 (4th Cir. 2011), *United States v. Howell*, 17 F.4th 673, 692 (6th Cir. 2021), *United States v. Miera*, 539 F.3d 1232, 1235–36 (10th Cir. 2008), and *United States v. Deleon*, 116 F.4th 1260, 1264 (11th Cir. 2024).

⁹ *United States v. Morgan*, 354 F.3d 621, 623–24. (7th Cir. 2003). On the right side of the split – holding that a traffic stop is not an arrest – were the Third, Sixth, Ninth, and Eleventh Circuits. See *United States v. Ley* 876 F.3d 103, 109 (3rd Cir. 2017); *United States v. Rogers*, 86 F.4th 259 (6th Cir. 2023); *United States v. Leal-Felix*, 665 F.3d 1037 (9th Cir. 2011); *United States v. Wright*, 862 F.3d 1265, 1281–83 (11th Cir. 2017).