



February 10, 2026

United States Sentencing Commission
One Columbus Circle NE, Suite 2-500
Washington, DC 200002-8002
Attention: Public Affairs—Proposed Amendments

Re: Proposed Amendments, 2025-2026 Amendment Cycle, Sentencing Guidelines for United States Courts, U.S. Sentencing Commission

Dear Chairman Reeves:

The Sentencing Project appreciates this opportunity to comment on proposed amendments for the amendment cycle ending May 1, 2026. The Sentencing Project advocates for effective and humane responses to crime that minimize imprisonment and criminalization of youth and adults by promoting racial, ethnic, economic, and gender justice. We are eager to be a resource as you work to create just, equitable sentencing policies.

Two themes run through our feedback this amendment comment period. First, that in the context of drugs or economic crimes, the sentencing guidelines for drug offences and economic crimes should focus on culpability, not rigid quantity or loss matrices. As discussed in detail below, drug quantity and economic loss are both poor proxies for culpability and harm. Low-level actors in broader criminal offenses can be held liable for large drug quantities or economic losses that do not reflect their actual role in the offense, *mens rea*, relative power, or mitigating factors. Rather than continuing to amend the drug quantity table and loss table, we urge the Commission to explore more holistic revisions to these guidelines.

Next, we oppose new sentencing enhancements for several reasons. First, federal sentences are already lengthy – nearly 56% of people in federal prisons are serving sentences of 10 years or more and nearly 19% of people are serving 20 years or more.¹ And a wealth of evidence makes clear that lengthening already long sentences does not improve public safety, while disproportionately harming Black communities.² Second, we urge the Commission to ground its rulemaking in the reality of the extremely poor conditions inside federal pre-trial detention and federal prisons.³ The Sentencing Commission should be parsimonious and recommend incarceration for as few people as necessary to advance public safety. Additionally, the guidelines are already so complex that simplification has been an enduring issue for comment.

¹ Federal Bureau of Prisons. (n.d.). *Statistics: Inmate sentences imposed*. U.S. Department of Justice. Retrieved February 4, 2026, from https://www.bop.gov/about/statistics/statistics_inmate_sentences.jsp.

² National Research Council. (2014). *The growth of incarceration in the United States: Exploring causes and consequences* (J. Travis, B. Western, & S. Redburn, Eds.; p. 131). Committee on Causes and Consequences of High Rates of Incarceration, Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. The National Academies Press. <https://www.nationalacademies.org/read/18613/chapter/7>.

³ See U.S. Department of Justice, Office of Inspector General. (2024, February 27). *Compendium of Federal Bureau of Prisons oversight products*. <https://oig.justice.gov/news/compendium-federal-bureau-prisons-oversight-products>.

Finally, we are particularly concerned by proposed enhancements that would be duplicative or potentially impact large numbers of individuals, such as the proposed 4-level enhancement for substantial non-economic harm to one or more victims which could arguably apply to most economic crimes as discussed below.

Rather pursuing longer sentences that fall short of public safety and equity goals, we encourage the Commission to embrace other tools at its disposal. For example, we appreciate that the Commission is considering amendments related to post-offense rehabilitation which have the power to incentivize recidivism reducing behavior prior to sentencing. This rulemaking cycle we hope to see continued progress towards a *Guidelines Manual* and a federal criminal legal system that advances equal justice and evidence-based sentencing.

Proposed Amendment 1: The Commission should revise §2D1.1 to focus on actual culpability for drug offenses, rather than quantity.

Eliminate the distinction between methamphetamine (actual) and methamphetamine mixture. Use instead, at minimum, the methamphetamine mixture thresholds for all methamphetamine offenses.

As the Commission notes, when Congress set the different statutory penalties for methamphetamine (actual) and methamphetamine mixture in the Anti-Drug Abuse Act of 1988, the average methamphetamine purity was far lower than today, so individuals sentenced for trafficking highly pure methamphetamine were reasoned to have a higher role in the drug distribution chain and greater culpability.⁴ In light of the near uniform purity of methamphetamine in the current drug market, there is no relationship between purity and culpability. Purity-based penalties have made methamphetamine sentences the longest among federal drug sentences. Methamphetamine offenses made up 46% of federal drug trafficking sentences in FY2024 and methamphetamine offenses received, on average, 96 month sentences – far longer than fentanyl (76 months), crack cocaine (68 months), heroin (66 months), and cocaine (64 months).⁵ As The Sentencing Project has previously commented, we urge the Commission to eliminate the distinction between methamphetamine (actual) and methamphetamine mixture and increase the lowest weight threshold for triggering methamphetamine mandatory minimum sentences to the mixture threshold.⁶

Merely eliminating purity distinctions and using the methamphetamine mixture threshold, however, would fail to adequately address the excess of Guidelines. On average, all types of methamphetamine sentences were well below the guidelines: 83 months on average was imposed for methamphetamine mixture, below a guideline minimum of 116 months – clear feedback from the judiciary that even methamphetamine mixture sentences are too long. The Commission’s

⁴ United States Sentencing Commission. (2025, December 12). “Reader-Friendly” proposed amendments to the sentencing guidelines (p. 3). https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/202512_rf-proposed.pdf.

⁵ U.S. Sentencing Commission. (2026, January 8). 2026 drug offenses data briefing [Video]. United States Sentencing Commission. <https://www.ussc.gov/education/videos/2026-drug-offenses-data-briefing>

⁶ The Sentencing Project. (2024, July 15). [Re: Potential priorities, 2024–2025 amendment cycle, Sentencing Guidelines for United States Courts, U.S. Sentencing Commission](#) [Public comment].

proposed downward departure for non-crystalline, non-smokeable methamphetamine would address the congressional directive to distinguish sentences based on purity levels, but it is not a comprehensive solution.

Ideally, we continue to urge the Commission to delink the drug quantity table at §2D1.1 from statutory mandatory minimums altogether.⁷ If the Commission remains committed to the drug quantity table, then we urge the Commission to consider evidence as to methamphetamine's relative harm to public health. As U.S. District Judge Mark Bennett of the Northern District of Iowa wrote in his decision explaining why he was reducing a methamphetamine offense sentence from nearly 16 years to just more than six years, "the [methamphetamine] Guidelines were crafted by Congressional directive and not precise analysis and empirical research."⁸ During his March 12, 2025 testimony before the Commission, drug policy expert Dr. Jonathan Caulkins voiced support for treating methamphetamine mixture and methamphetamine (actual) at the same level as cocaine. Public health experts who rank the harmfulness of drugs have placed methamphetamine below other substances and near cocaine; both are psychostimulants.⁹ While methamphetamine-related deaths have recently increased, these are primarily deaths also involving opioids.¹⁰

Lengthening fentanyl sentences will not improve public safety.

The Commission has proposed an amendment to §2D1.1 which would add four new specific offense characteristics that increase offense levels in fentanyl and fentanyl analogue trafficking cases involving certain factors, namely: distribution of fentanyl or a fentanyl analogue to an individual less than 18 or 21 years of age or the use or attempted use of such an individual to commit a fentanyl or fentanyl analogue offense; using the darkweb to conceal or commit an offense; distributing a mixture of fentanyl or fentanyl analogue and xylazine; and using or possessing a tabletting machine for the purposes of manufacturing fentanyl or a fentanyl analogue. The Commission proposes either a 2- or 4-level increase for each specific offense characteristic. The Sentencing Project opposes all proposed §2D1.1 enhancements. Fentanyl sentences are already second only to methamphetamine sentences in length.¹¹ In FY2024, nearly 38% of fentanyl trafficking sentences were downward variances from the Guidelines Manual, implicit feedback from the judiciary that the guideline recommended sentences are often too

⁷ The Sentencing Project. (2024, July 15). [Re: Potential priorities, 2024–2025 amendment cycle, sentencing guidelines for United States Courts, U.S. Sentencing Commission](#) [Public comment].

⁸ *Order*, United States v. Hayes, No. 3:12-cr-101 (N.D. Iowa June 7, 2013) (Bennett, J.), available at <https://www.documentcloud.org/documents/710550-judge-bennetts-meth-sentencing-order/>.

⁹ Nutt, D. J., King, L. A., & Phillips, L. D. (2010). Drug harms in the UK: A multicriteria decision analysis. *The Lancet*, 376(9752), 1558–1565. [https://doi.org/10.1016/S0140-6736\(10\)61462-6](https://doi.org/10.1016/S0140-6736(10)61462-6).

¹⁰ Tanz, L. J., Miller, K. D., Dinwiddie, A. T., Gladden, R. M., Asher, A., Baldwin, G., Nesbit, B., & O'Donnell, J. (2025, August 28). *Drug overdose deaths involving stimulants — United States, January 2018–June 2024. Morbidity and Mortality Weekly Report*, 74(32), 491–499.

<https://www.cdc.gov/mmwr/volumes/74/wr/mm7432a1.htm>; U.S. Drug Enforcement Administration. (2025, May 13). *2025 National drug threat assessment* (DEA Publication). <https://www.dea.gov/sites/default/files/2025-07/2025NationalDrugThreatAssessment.pdf>.

¹¹ U.S. Sentencing Commission. (2026, January 8). *2026 drug offenses data briefing* [Video]. United States Sentencing Commission. <https://www.ussc.gov/education/videos/2026-drug-offenses-data-briefing>.

high.¹² We share the Commission’s desire to be responsive to the overdose crisis, but there is no evidence to suggest that making already lengthy drug sentences longer will decrease crime, let alone save lives.¹³

The most concerning proposed enhancements involve fentanyl and youthful individuals. The Commission proposes a few variations of an enhancement involving distributing fentanyl to a youthful individual. Those variations include whether the defendant must have knowledge of the recipient’s age and/or that the substance is fentanyl, whether the youthful individual must be under 18 or 21 years old, and whether the defendant must be at least 4, 6, or 8 years older or “substantially older.” Similarly, the Commission proposes a few versions of an enhancement involving using or attempting to use a youthful individual to commit a fentanyl offense. They likewise include whether the defendant must have knowledge of the recipient’s age and/or that the substance is fentanyl, whether the youthful individual must be under 18 or 21 years old, and whether the defendant must be at least 4, 6, or 8 years older or “substantially older.”

Young people often engage in illicit activities together. Co-offending rates peak around 17 years old and decline with the age-crime curve.¹⁴ As such, this enhancement has the potential to criminalize peers engaged in drug use or the drug trade together. Although a 17 year old and 23 year old may not be classmates in school, they are developmentally similar in many ways.¹⁵ Research shows that most adolescents are not fully matured into adulthood until their mid-twenties.¹⁶ Emerging adults remain in a unique stage of life between childhood and adulthood well into their early twenties which is recognized within the fields of neuroscience, sociology, and psychology – and increasingly in state legislatures and state supreme courts.¹⁷ Should the Commission adopt this enhancement, it should draft it as narrowly as possible and limit its impact as much as possible: requiring that the youthful individual be under 18, requiring *mens rea* as to both the substance and the individual’s age, imposing at least an 8 year age difference

¹² U.S. Sentencing Commission. (May 2025). *Quick facts: Fentanyl trafficking*. United States Sentencing Commission. <https://www.ussc.gov/research/quick-facts/fentanyl-trafficking>.

¹³ The Pew Charitable Trusts. (2018, March 8). More imprisonment does not reduce state drug problems: Data show no relationship between prison terms and drug misuse (Issue Brief). <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/more-imprisonment-does-not-reduce-state-drug-problems>; National Research Council. (2014). *The growth of incarceration in the United States: Exploring causes and consequences* (J. Travis, B. Western, & S. Redburn, Eds.; p. 131). Committee on Causes and Consequences of High Rates of Incarceration, Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. The National Academies Press. <https://www.nationalacademies.org/read/18613/chapter/7>.

¹⁴ Goldweber, A., Dmitrieva, J., Cauffman, E., Piquero, A. R., & Steinberg, L. (2010). The development of criminal style in adolescence and young adulthood: Separating the lemmings from the loners. *Journal of Youth and Adolescence*, 40(3), 332–346.

¹⁵ Piquero, A. R., Brame, R., Mazerolle, P., & Haapanen, R. (2002). Crime in emerging adulthood. *Criminology*, 40(1), 137–170. <https://doi.org/10.1111/j.1745-9125.2002.tb00952.x>

¹⁶ Arnett, J. (2000). Emerging adulthood: A theory of development from the late teens through the twenties. *American Psychologist*, 55, 469–480. <https://doi.org/10.1037/0003-066X.55.5.469>.

¹⁷ See, e.g. Maryland Code, Criminal Procedure § 8-110 (Juvenile Restoration Act, JUVR); D.C. Code § 24-403.03 (Modification of an imposed term of imprisonment for violations of law committed before 25 years of age); *People v. Czarnecki*, ___ Mich. ___, ___ N.W.2d ___ (2025) (No. 166654)(finding mandatory LWOP sentences for emerging adults under 21 unconstitutional under MI constitution); *In re Personal Restraint of Monschke*, 197 Wash. 2d 305, 482 P.3d 276 (2021)(finding LWOP sentences for emerging adults under 21 unconstitutional under WA constitution); *Commonwealth v. Sheldon Mattis*, 493 Mass. 216, 224 N.E.3d 410 (2024)(finding LWOP sentences for emerging adults under 21 unconstitutional MA constitution).

requirement that reduces the likelihood that they may be social peers, and imposing at most a 2-level increase.

Finally, the proposed darkweb enhancement is concerning given not only potential duplicativeness with the proposed Chapter Three “sophisticated means” adjustment discussed below, but also its limited relationship to actual culpability and harm. The Commission’s concern regarding the growing role of the darkweb in drug trafficking is understandable. But the drug trade always adapts to the latest, most effective technology available – from beepers, to cellphones, to encrypted messaging platforms,¹⁸ cryptocurrency,¹⁹ and the darkweb. This enhancement will not halt the inevitable shift of the drug trade to the latest technological platform. Nor does it target the individuals actually responsible for creating and maintaining the platform itself. In fact, Silk Road darkweb drug market creator Ross Ulbricht received a full pardon at the beginning of the Trump Administration.²⁰ It will simply indiscriminately add yet another enhancement to many drug offenses, without any public health benefit or any meaningful relationship to culpability.

Proposed Amendment 3: The economic crimes guideline should be focused on culpability, not loss or specific offense characteristics.

Over the last 30 years, the growing length and complexity of the economic crimes guideline has led to increasingly extreme sentence recommendations and routine downward departures. As Assistant Federal Defender Daniel Dena outlined in his 2024 statement on behalf of the Federal Public and Community Defenders to the Commission during a public hearing on the loss proposal, continuous amendments to §2B1.1 (economic crimes including theft, fraud, forgery, and counterfeiting) over the past three decades have been a “one-way upward ratchet” for severity.²¹ As with drug offenses we urge the commission to move from an overly complex and rigid emphasis on loss and specific offense characteristics and quantities to a model focused on culpability and actual harm – including *mens rea* and evidence of rehabilitation.²²

¹⁸ See, e.g., U.S. Department of Justice, U.S. Attorney’s Office for the Southern District of California. (2021, June 8). *FBI’s encrypted phone platform infiltrated hundreds of criminal syndicates; Result is massive worldwide takedown* [Press release]. <https://www.justice.gov/usao-sdca/pr/fbi-s-encrypted-phone-platform-infiltrated-hundreds-criminal-syndicates-result-massive>.

¹⁹ InSight Crime. (2025, December 30). *GameChangers 2025: Cryptocurrency is now in the criminal mainstream*. InsightCrime. <https://insightcrime.org/news/gamechangers-2025-cryptocurrency-now-criminal-mainstream/>.

²⁰ U.S. Department of Justice. (2025, January 21). *Executive grant of clemency: Ross William Ulbricht*. <https://www.justice.gov/pardon/media/1386096/dl?inline=>.

²¹ U.S. Sentencing Commission. (2024, February 27). *Statement of Daniel Dena: March 2024 public hearing testimony on proposed amendments*. U.S. Sentencing Commission. <https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20240306-07/dena.pdf>.

²² The 2014 ABA Task Force report offers an example of one potential revision, although the loss amount contained in the draft guidelines should be adjusted for inflation. Criminal Justice Section Task Force on the Reform of Federal Sentencing for Economic Crimes. (2014). *Final draft report* (November 10, 2014). American Bar Association. <https://www.postschell.com/uploads/Draft%20Guideline%20Final%20Draft%2011.10.14.pdf>.

A new enhancement for non-economic harm would be profoundly duplicative.

The Sentencing Project strongly opposes the proposed new 2B1.1(b)(3), which would impose a 2, 3, or 4 level enhancement for offenses that result in substantial non-economic harm to one or more victims of economic crimes. This enhancement is duplicative in multiple ways. The loss calculation itself strives to capture the non-economic harms inherent in economic loss. The non-economic harms suffered by victims – trauma, grief, fear, loss of security – are at the heart of arguments justifying a sentencing scheme that centers punishment on an amount of financial loss.²³ There are numerous enhancements that also capture non-economic harms, such as the Chapter Three adjustments for vulnerable victims.²⁴ A non-economic harm enhancement would also be nearly universally applicable. Nearly all victims experience non-economic harms. Finally, non-economic harm is deeply subjective and would inject more vagueness and opportunity for bias into the guidelines.

The proposed mitigating factors are a step towards more accurately weighing culpability and should yield a more significant level decrease.

The Commission proposes adding two mitigating factors to §2B1.1. The first would provide for a 2-level decrease “if the individual committed the offense at the direction of their employer for fear of negative employment consequences; 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; or was unusually vulnerable to being persuaded or induced to commit the offense due to a physical or mental condition.” The second mitigating factor would provide for a tiered decrease of potentially up to 6 levels based on whether “prior to the defendant’s knowledge of the criminal investigation or prosecution for the offense, the defendant voluntarily ceased the criminal activity, made efforts to return the money or property to the victim, or reported the offense to appropriate governmental authorities.”²⁵

While we urge the Commission to move away from a loss-focused and increasingly complex economic crimes guideline toward a more holistic approach to culpability and harm, in the absence of more sweeping reforms, adding mitigating factors to §2B1.1 is valuable. The Sentencing Project supports robust mitigation opportunities. The first mitigating factor, however, should result in a greater level decrease, especially for individuals motivated by threats or fear to commit the offense (and a greater decrease should be available elsewhere in the guidelines when fear or threats motivate an individual to commit an offense, such as in the mitigating factors in §2D1.1). Survivors of crime are frequently criminalized for coerced criminal acts or for protecting themselves or a loved one.²⁶ A growing number of jurisdictions are responding to this

²³ Bowman, F. O., III. (2016). “Loss” revisited: A guarded defense of the centerpiece of the economic crime guideline, Section 2B1.1 (SSRN Scholarly Paper No. 2796353). Social Science Research Network.

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2796353.

²⁴ United States Sentencing Commission. (2025). *United States Sentencing Guidelines Manual* § 3A1.1(b)(1). <https://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2025/GLMFull.pdf>.

²⁵ United States Sentencing Commission. (2025, December 12). “Reader-Friendly” proposed amendments to the sentencing guidelines (p. 66). https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/202512_rf-proposed.pdf.

²⁶ Goodmark, L. (2021). Gender-based violence, law reform, and the criminalization of survivors of violence. *International Journal for Crime, Justice and Social Democracy*, 10(4), 13–25. <https://doi.org/10.5204/ijcjsd.1994>.

problem by passing or considering bills designed to allow survivors of family violence, intimate partner violence, and human trafficking to receive shorter sentences for offenses deeply entwined with their victimization.²⁷ Individuals who prove to these courts that their criminal conduct was related to their victimization are often entitled to substantial sentence reductions – a model that the Commission should consider in weighing the level reduction merited. In New York, for example, the minimum sentence becomes the maximum.²⁸ We urge the Commission to consider a tiered approach to this mitigating factor as well with a 6-level decrease for some of the more vulnerable individuals who might fall into it, such as coerced survivors of intimate partner violence.

The two mitigating factors proposed, however, fail to encompass many circumstances in which individuals may have diminished culpability. No list of specific offense characteristics will capture every set of facts. We encourage the Commission to revisit the economic crimes guideline in the future to deemphasize loss and refocus the guideline on a holistic assessment of culpability.

Proposed Amendment 4: The Guidelines should incentivize post-offense rehabilitation.

The Commission proposes an amendment which would reduce the offense level of individuals who demonstrate rehabilitation post-offense and pre-sentence. The Sentencing Project strongly supports the opportunity for individuals who demonstrate rehabilitation prior to sentencing to receive an appropriate sentence. The purposes of federal sentencing are well-served by incentivizing participation in rehabilitative programming, productive employment, and payment of restitution from the moment an individual commits an offense. Regardless of whether an individual is more motivated initially by genuine remorse or by a desire for a shorter sentence, participation in rehabilitative activities reduces recidivism and is a societal good worth incentivizing. That reasoning underlies the bipartisan First Step Act's earned time credits and should inspire the Commission here.

The Commission offers two potential options for the amendment – one more broadly applicable and one available to fewer individuals. In considering which language to adopt, the Commission should strive to incentivize individuals with clear guidance as to how post-offense behavior activities will be considered by the court. Option two makes eligibility for the reduction dependent on demonstrating efforts that “go beyond the typical action undertaken by defendants prior to sentencing” – a standard that is vague and prone to bias.

Within both options, the Commission also seeks comment on whether only voluntarily initiated (non-court ordered) conduct should be considered. All conduct should be considered in assessing eligibility for the decrease. If an individual participates in needed substance abuse treatment pre-sentencing or makes prompt restitution payments those actions benefit public safety regardless of

²⁷ See, e.g., *Domestic Violence Survivors Justice Act*, Laws of New York 2019, ch. 31 & ch. 55, Part WW. <https://www.nysenate.gov/legislation/laws/PEN/60.12>; Oklahoma Survivors' Act (Senate Bill 1835, codified in Title 22 OK Stat. § 1090.3). <https://www.oklegislature.gov/BillInfo.aspx?Bill=SB1835&Session=2400>; Georgia Survivor Justice Act (H.B. 582; effective July 1, 2025). <https://www.legis.ga.gov/api/legislation/document/20252026/233484>; H.R. 4323: Trafficking Survivors Relief Act (Public Law No. 119-73).

²⁸ *Domestic Violence Survivors Justice Act*, Laws of New York 2019, ch. 31 & ch. 55, Part WW. <https://www.nysenate.gov/legislation/laws/PEN/60.12>.

whether they are subject to a court order. Privileging only non-court ordered conduct as eligible for the decrease would also mean privileging a specific segment of defendants – those not subject to court-ordered treatment or programming who nonetheless have the means to access it, often at great expense. Finally, in the highly coercive context of awaiting sentencing for a federal criminal offense and attempting to earn the lowest sentence possible, the separation between “voluntary” and “involuntary” is flimsy. Going to an inpatient drug treatment as a condition of pretrial release versus going to an inpatient drug treatment because one’s attorney strongly advises that it could meaningfully reduce the amount of time one spends in prison is a distinction without a difference. If the Commission wants to reward self-motivated individuals, an additional decrease for positive post-offense behavior or rehabilitative efforts undertaken before the criminal investigation or prosecution for the offense is an appropriate vehicle.

Given the importance of rehabilitation, a substantial level reduction is warranted. The Commission should incentivize positive conduct with the opportunity for at least a 4-level decrease as suggested in option two, with an additional 1-2 level decrease available for post-offense behavior or rehabilitative efforts undertaken before the criminal investigation or prosecution for the offense.

Finally, if the Commission adopts a tiered approach, the tiers should be calculated to reflect the reality of federal pre-trial detention. In the wake of ongoing correctional officer shortages, lockdowns are also a growing part of daily life,²⁹ preventing access to rehabilitative activities and programs. Disturbing rates of violence in federal pre-trial detention also underscore the need to incentivize compliance with institutional rules.³⁰ Here, guidelines should take another cue from the First Step Act, which addresses this reality in federal prisons by giving individuals earned time credits for time they spend on the waitlist for rehabilitative programming.³¹ The guidelines should also provide for at least up to a 2-level decrease for successful compliance with institutional rules. For many individuals in federal pre-trial detention, full compliance with

²⁹ Gross, C. (2024, June 24). *Exclusive: Inmates decry conditions inside Brooklyn jail*. Spectrum News NY1. <https://ny1.com/nyc/all-boroughs/politics/2024/06/24/brooklyn-federal-jail-murder-conditions>; Quandt, K. R., & Brennan, M. (2025, June 30). *Lockdowns, violence, and “barbaric conditions” in a Brooklyn federal jail known for its famous detainees*. The Appeal & Solitary Watch. <https://solitarywatch.org/2025/06/30/in-a-federal-jail-known-for-its-famous-detainees-hundreds-of-others-face-lockdowns-violence-and-barbaric-conditions/>; LegalClarity Team. (2025, December 17). *DC jail conditions: Sanitation, medical care, and safety*. <https://legalclarity.org/dc-jail-conditions-sanitation-medical-care-and-safety/>; Ossoff, J. (2022, July 26). *Opening statement at the Senate Permanent Subcommittee on Investigations Hearing on Corruption, Abuse, and Misconduct at U.S. Penitentiary Atlanta* [Statement]. U.S. Senate Committee on Homeland Security and Governmental Affairs, <https://www.hsgac.senate.gov/library/member-files/ossoff-jon-chair-ossoff-opening-statement-2/>.

³⁰ See, e.g., Goldman, D. (2024, July 19). *Statement on ongoing issues at the Brooklyn Metropolitan Detention Center*. <https://goldman.house.gov/media/press-releases/congressman-dan-goldmans-statement-ongoing-issues-brooklyn-metropolitan-detention-center>; Pavlo, W. (2024, August 10). *Judge cites horrid conditions at MDC Brooklyn at sentence hearing*. Forbes. <https://www.forbes.com/sites/walterpavlo/2024/08/10/judge-cites-horrid-conditions-at-mdc-brooklyn-at-sentence-hearing/>.

³¹ United States Sentencing Commission. (2025). *United States Sentencing Guidelines Manual* § 2B1.1 (Theft, Property Destruction, and Fraud); United States Sentencing Commission. (2025). *United States Sentencing Guidelines Manual* § 2S1.1 (Laundering of monetary instruments; engaging in monetary transactions in property derived from unlawful activity); United States Sentencing Commission. (2025). *United States Sentencing Guidelines Manual* § 2T1.1(b)(2); United States Sentencing Commission. (2025). *United States Sentencing Guidelines Manual* § 2T1.4(b)(2); United States Sentencing Commission. (2025). *United States Sentencing Guidelines Manual* § 2T3.1(b)(1).

institutional rules requires constant effort, sacrifice, and careful avoidance of conflict with correctional officers and fellow detainees. It is a meaningful achievement that may require significantly more commitment than, for example, participation in an outpatient private rehabilitation program – especially for young people, individuals with few resources, and those in the most notoriously violent facilities.

Proposed Amendments 3 & 7: The Commission should eliminate, not expand, the “sophisticated means” specific offense characteristic.

Currently, only five guidelines - three tax guidelines, Section 2B1.1 (Theft, Property Destruction, and Fraud), and §2S1.1 (Laundering of Monetary Instruments; Engaging in Monetary Transactions in Property Derived from Unlawful Activity) - contain specific offense characteristics that address “sophisticated” conduct, generally providing for a 2-level increase. In response to criticism from some stakeholders that the “sophisticated means” offense characteristic is applied too broadly and not uniformly, the Commission has offered two potential pathways to amend the enhancement.³² The first would create a new Chapter Three 2-level adjustment, with a minimum offense level of 12, potentially applicable to *all offenses*, which would standardize how the guidelines address “sophisticated” conduct by referring to the use of “advanced or emerging technologies.” The second would amend the five guidelines which currently contain sophisticated conduct specific offense characteristics to provide uniform guidance. The Sentencing Project appreciates that the Commission is attempting to respond to concerns from stakeholders about the uneven and overbroad application of this offense characteristic, but we are concerned that neither of the proposed amendments will address those concerns and that creating a Chapter Three adjustment would significantly worsen the problem. We instead urge the Commission to eliminate the sophisticated conduct offense characteristics from the Guidelines to increase uniformity and simplify the Guidelines.

Creating a new Chapter Three adjustment would worsen problems with overbroad application.

The Sentencing Project strongly opposes the creation of a new Chapter Three adjustment, particularly given the risk that it would be applied in a wide array of contexts other than theft and financial crimes. Creating a new Chapter Three adjustment would allow federal prosecutors to seek a sophisticated conduct adjustment for far more offenses, potentially dramatically increasing its application and inconsistency.

Much, if not most crime, prosecuted at the federal level involves some level of complexity or intricate concealment, whether a drug offense or an economic offense. Indeed, this is among the more common reasons that cases “go federal”: local and federal prosecutors, working collaboratively, decide that complex cases over which either could lawfully exercise their jurisdiction would be more successfully prosecuted at the federal level with a higher level of resources.³³

³² United States Sentencing Commission. (2025, December 12). “*Reader-Friendly*” proposed amendments to the sentencing guidelines (p. 155). https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/202512_rf-proposed.pdf.

³³ Baer, M. H. (2016). Some skepticism about criminal discovery empiricism. *73 Wash. & Lee Law Review Online* 347–358. Washington and Lee Law Review Online. <https://scholarlycommons.law.wlu.edu/wlulr->

Many non-economic crimes could potentially be considered sophisticated. Consider if a group of young people arranged drug sales via an encrypted messaging application and took payment in the form of cryptocurrency. A federal judge could readily find their conduct constituted using advanced or emerging technologies and an elaborate or unusual means of selling drugs. To the 19- and 20-year-old defendants in question though, they might simply be arranging drug sales on the application they regularly use to converse and taking payment with a currency normalized by the President on social media – hardly a reflection of heightened culpability. This example illustrates the subjectiveness of potential definitions offered by the Commission and the vagueness inherent in a sophisticated means enhancement as a whole. Particularly given current U.S. Department of Justice policy which mandates that prosecutors seek the highest sentence possible, it is reasonable to expect that prosecutors will argue this enhancement should apply in nearly every case.³⁴ If the Commission does create a new Chapter Three adjustment, we urge the Commission to consider the categories of offenses which are already subject to the most significant racial disparities, the longest sentences, and the highest rates of downward variances when deciding which offenses to exclude.

The proposed definition of “sophisticated means” will not resolve issues with uneven application of the specific offense characteristic.

The Commission proposes this amended definition of “sophisticated means”:

committing or concealing an offense with a greater level of complexity than typical for an offense of that nature. Such complexity may be achieved through various methods, including by using advanced or emerging technologies [in ways not routinely employed by everyday users][in a more specialized, elaborate, or unusual way than an ordinary user would]. Sophisticated means are often used to increase the scale of the offense or to make especially difficult the detection of the offense [or the detection of the defendant’s participation in the offense].

Defining sophisticated means based on “using advanced or emerging technologies,” however, remains overinclusive. “Advanced and emerging technologies,” as noted above, is a vague and subjective category. Further specifying that these technologies must be used in “ways not routinely employed by everyday users” or “in a more specialized, elaborate, or unusual way than an ordinary user would” does little to narrow the applicability of the specific offense characteristic. Is an “ordinary user” an individual using the technology for a licit purpose? If so, this may be a test that defendants always fail. Who is the hypothetical “everyday user” or “ordinary user” to whom the defendant should be compared – a peer, the judge? The proposed definitions remain too vague and prone to bias to address concerns about overbroad application and uniformity.

[online/vol73/iss1/14](https://online.vol73.iss1/14) (“Cases that would otherwise be prosecuted in state court “go federal” for any number of reasons, but the most prominent among them have been better resources, government-friendly criminal procedure doctrines, and more severe punishment”); Blondel, E. C. (2023). The structure of criminal federalism. *98 Notre Dame Law Review* 1037. <https://ndlawreview.org/the-structure-of-criminal-federalism/>.

³⁴ Bondi, P. J. (2025, February 5). *General policy regarding charging, plea negotiations, and sentencing* [Memorandum], U.S. Department of Justice. <https://www.justice.gov/ag/media/1388541/dl>

We urge the Commission to refrain from creating a Chapter Three adjustment and to ideally eliminate the “sophisticated means” specific offense characteristic entirely.

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The Sentencing Project appreciates the opportunity to share its perspective on these amendments for the 2026 cycle and looks forward to continuing to support the Commission’s critical work. Please reach out with any questions to Liz Komar, Senior Policy Counsel, at lkomar@sentrencingproject.org.

Many thanks,



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