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Notable Sections of the “Legislative History”

for the 2025 Mitigating Role Eligibility Amendment

There is a wealth of support in the Commission’s explanations for both its proposed and adopted amendments that demonstrates that the Commission intends to significantly increase the number of people receiving mitigating role reductions, including for 3- and 4-point reductions. Key passages are listed below, with their corresponding pincite pages in parentheses.

Both the Judicial Conference’s Committee on Criminal Law and the Department of Justice opposed the Commission expanding access to mitigating role to individuals who occupied low-level trafficking roles. Their comments may be useful in two ways: 1) certain of the comments demonstrate that the Commission necessarily rejected arguments that DOJ will almost certainly now make in opposition to role reductions at sentencings; and 2) they provide an explanation for why the Commission simply modified 3B1.2’s applicability in drug cases instead of creating a new specific offense characteristic. The pincite pages for these sources refers to the page of the comment itself and not the broader, all-submitted-comments PDF.

The Sentencing Commission’s Explanations for the 2025 Eligibility Amendments

- Explanations of the Proposed Amendments. U.S. Sent’g Comm’n, [*Proposed Amendments to Sentencing Guidelines*](#), 90 Fed. Reg. 8,968 (Feb. 4, 2025).
 - o Part A of these proposed amendments proposed creating a new low-level trafficking SOC that would reduce the guideline range by 2, 4, or 6 levels. The SOC is substantially similar to the eventually promulgated special instruction amendment.
 - “Part A of the proposed amendments includes two subparts to address concerns that the Drug Quantity Table . . . overly relies on drug type and quantity as a measure of offense culpability and results in sentences greater than necessary to accomplish the purposes of sentencing.” (8985)
 - “The Commission has received comment over the years indicating that §2D1.1 overly relies on drug type and quantity as a measure of offense culpability and results in sentences greater than necessary to accomplish the purposes of sentencing.” (8986)
 - “In addition, commenters have raised concerns that the mitigating role adjustment from Chapter 3, Part B . . . is applied inconsistently in drug trafficking cases and does

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not adequately reflect individuals' roles in drug trafficking offenses." (8986)

- Notably, the Commission considered and then opted **not** to do several things with the proposal:
 - Did not include disqualifying people from role for violence or firearm possession (8987)
 - Chose to focus on primary function instead of most serious conduct (8987)
 - Opted against possibly providing an exclusive list, instead of just examples, of eligible functions (8987)
- Explanations of the Adopted Amendments. U.S. Sent'g Comm'n, [*Amendments to the Sentencing Guidelines*](#) (Apr. 30, 2025).
 - Notes that the original purpose behind creating §2D1.1's mitigating role cap was to "somewhat limit the sentencing impact of drug quantity for offenders who perform relatively low level trafficking functions" (9)
 - Describes instant amendments as meaning "to address the inconsistent application of §3B1.2 in §2D1.1 cases and to encourage the broader use of §3B1.2 in these cases." (10)
 - Notes that they amended it in 2015 "to increase its usage" "However, Commission data shows that the prior amendment did not result in a sustained increase in application of the mitigating role adjustment in §2D1.1 cases." (10)
 - Note as well that the vast majority only receive a 2-level reduction (10)
 - And that there are variations across districts (10)
 - "The amendment expands the circumstances in which an adjustment under §3B1.2 is warranted in §2D1.1 cases by instructing courts that an adjustment is generally warranted if the defendant's 'primary function' in the offense was performing a low-level trafficking function." (11)
 - "Section 2D1.1(e)(2)(A) directs the court to determine whether an adjustment under §3B1.2 applies as a court already does under the *Guidelines Manual*. Section 2D1.1(e)(2)(B) then provides that, in addition to the circumstances 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. Thus, a defendant may qualify for a mitigating role adjustment under §3B1.2 [either way]." (11)

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- The listed functions “are illustrative rather than a definitive list.”
(11)

Notable Public Comments in Opposition to the Proposed §3B1.2 Expansion

- [Letter from Committee on Crim. Law of the Judicial Conf. of the U.S. regarding U.S. Sent’g Comm’ns’ Proposed Amendments](#) (Mar. 3, 2025)
 - Suggested that the role reduction should not be available for “extremely large-scale couriers using special skills” (11)
 - Proposed an alternative wherein the Commission would not create a new specific offense characteristic and instead simply amend applicability of §3B1.2
 - “Instead of introducing an entirely new specific offense category and scrapping part of Chapter 3 for drug trafficking cases, perhaps the Commission should consider further expanding the scope of the role provisions” (page 11)
- [Letter from U.S. Dep’t of Justice regarding U.S. Sent’g Comm’ns’ Proposed Amendments](#) (Mar. 3, 2025)
 - Urged the Commission not to specify functions that constituted low-level trafficking because “[e]ach offense is unique involving specific situations and actors, and each participant important furthering the conspiracy We note that many of the roles that the Commission has identified are not low-level at all but are fundamental to the success of drug trafficking operations.” (10)
 - “those who package, store, or engage in electronic communications related to drug transactions . . . are not necessarily less culpable than the individual who engages in the final sale, particularly if they do so on a regular basis.” (10)
 - Criticized fact that “the proposal makes no distinction based on quantity or frequency. It does not distinguish between an individual who does so once and another who does so dozens of times, regardless of the quantities involved.” (10–11)
 - Criticized characterizing street-level dealers as low-level function because they “are key players in drug distribution networks.” (12)
 - Urged the Commission not to enable people receiving the reduction if their offense led to death or serious bodily injury (12)