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IN FOCUS

The U.S. Sentencing Commission Approves Drone Sentencing Enhancement

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On December 18, 2025, Congress enacted the SAFER SKIES Act. The statute included several penalty provisions: It added a new felony offense for repeated violations of airspace designated as "necessary in the interest of national defense," as well as increased penalties for using an unmanned aircraft to deliver contraband to a prison inmate or in furtherance of a felony. In the statute, Congress also instructed the U.S. Sentencing Commission ("the Commission") to increase penalty levels in the U.S. Sentencing Guidelines Manual ("the Guidelines") for offenses involving the use of an unmanned aircraft.

On August 27, 2026, the Commission approved an amendment to the Guidelines that would, if approved and not otherwise modified by Congress, include a new sentencing enhancement applicable to the use of an unmanned aircraft. The amendment also would contain references to the new felony offense to aid in the application of the Guidelines.

This In Focus addresses the Commission's proposed amendment. It first provides a general overview of the Guidelines. It next outlines the amendments process, which provides that, once the Commission submits a proposed amendment to Congress, Congress has 180 days to review, modify, accept, or reject that proposed amendment. The In Focus identifies governmental concerns with drones as expressed in testimony and reflected in data. The In Focus then sketches the SAFER SKIES Act's penalty provisions related to drones and summarizes the Commission's proposed amendment to implement these provisions. The In Focus closes with considerations for Congress.

The Federal Sentencing Guidelines

In 1984, Congress responded to concerns about sentencing disparities—that defendants who had committed similar offenses with similar criminal histories were not receiving similar sentences—by enacting the Sentencing Reform Act (SRA), codified in 18 U.S.C. §§ 3551, et seq. and 28 U.S.C. §§ 991, et seq. This statute established the Commission, an independent agency within the federal judiciary, and charged it with the responsibility to publish mandatory guidelines that, when used by judges at sentencing, would promote greater uniformity in federal sentencing outcomes. The inaugural Guidelines became effective in 1987.

In 2005, however, the Supreme Court held that a mandatory Guidelines system violated the Sixth Amendment right to a jury trial insofar as the Guidelines permitted a judge to enhance a sentence, beyond the otherwise applicable Guidelines range, based on a judge's finding of a fact (other than a prior conviction) that was not found by the jury or admitted by the defendant. As a result, the Court construed the Guidelines as advisory, which, in the Court's view, avoided the Sixth Amendment problem. Under the current advisory Guidelines system, to determine a defendant's sentence, a federal judge follows a two-step process. *First*, the judge calculates the "total offense level." The "total offense level" is the product of several factors, including the "base offense level" (located in Chapter 2 of the Guidelines) applicable to the crime of conviction; any "special offense characteristics," meaning aggravating and mitigating circumstances specific to a particular offense type (Chapter 2); and "adjustments," meaning aggravating and mitigating circumstances applicable across different offense types (Chapter 3). The judge also calculates the defendant's criminal history category (1 to 6) (Chapter 4) and then finds the intersection of the offense and criminal history inputs on the 258-boxed grid known as the Sentencing Table (Chapter 5). Each box in the grid contains an advisory range of months to which defendants may be sentenced in typical cases.

Second, the judge ensures that the final sentence complies with the sentencing values memorialized in 18 U.S.C. § 3553(a), including the principle that the sentence should be "sufficient, but not greater than necessary," to effectuate the purposes of punishment. This step enables the judge to impose a proportionate sentence in light of relevant sentencing factors and the potential that the case may present atypical features.

As evidenced by the first step in the sentencing process, the Guidelines serve as the starting point and anchor for every federal sentence imposed across the country.

Amending the Guidelines

In the SRA, Congress instructed the Commission to "periodically ... review and revise" the Guidelines based on additional data, cases, and congressional directives. The Commission generally follows a process to update the Guidelines, known as the "amendment cycle," which contains several steps. The Commission's amendment cycle begins with the publication in the *Federal Register* of proposed priorities for agency analysis and possible further action, and a request for public comment. The Commission then considers any submitted public comment and publishes in the *Federal Register* a list of final priorities. The agency next performs additional research, confers with key stakeholders, and may hold public hearings. The Commission then publishes proposed amendments in the *Federal Register* and again requests public comment. The Commission may revise the proposed amendments based, among other things, on public comments and further stakeholder input. The Commissioners will vote on any proposed amendments. If the Commission approves any proposed amendments, the SRA requires the Commission to submit any such amendments to Congress. The SRA provides Congress with a review period of 180 days to approve, modify, or reject the proposed amendments. The SRA further provides that if

Congress takes no action, the amendments will take effect, usually at the expiration of the review period. (For more information on the amendment cycle and the two historical instances in which Congress disapproved proposed amendments, *see* CRS Infographic IG10078, *Amending the U.S. Sentencing Guidelines*, by Dave S. Sidhu (2025).)

Governmental Concern over Drone Misuse

Federal law defines an *unmanned aircraft system* (UAS), commonly called a *drone*, as an "aircraft that is operated without the possibility of direct human intervention from within or on the aircraft." According to a Senate committee report, "Extremists and criminals continue to develop and promote the use of drone technology for illicit means," including to "carry and drop explosive payloads, deliver harmful and illegal substances, and conduct surveillance" for potential attacks and "surveillance on potential targets." Congress has heard testimony from federal executive agencies regarding the misuse of drones. For example, in the context of border enforcement, a Department of Homeland Security official testified that transnational criminal organizations "are adopting the use of drones into their tactics as a means of surveilling and evading [U.S. Customs and Border Protection] agents and officers and other law enforcement" along the southern border. In the context of drug trafficking, officials from the Department of Justice and the Federal Bureau of Investigation testified that "UAS are frequently used by organized crime groups" to deliver drugs and other contraband to inmates in the Federal Bureau of Prisons.

These twin observations were echoed by the Commission. According to Commission data, the "two predominant crime types" involving UAS in the federal system are "drug trafficking and immigration." In particular, the Commission found that UAS are used to "provide contraband, including controlled substances, into correctional facilities" and to "conduct surveillance during border crossings."

SAFER SKIES Act's Penalty Provisions

In the SAFER SKIES Act ("the Act"), part of the National Defense Authorization Act for Fiscal Year 2026, Congress enacted several penalty provisions. The Act established a new federal felony offense, punishable by up to five years imprisonment, for multiple violations of 49 U.S.C. § 46307, which makes it unlawful to "knowingly or willfully" enter airspace that is "necessary in the interest of national defense." A single violation of the statute remains a misdemeanor punishable by up to one year in prison.

The Act also increased the statutory maximum penalties for violating 18 U.S.C. § 1791, which makes it unlawful to provide a prohibited object to a prison inmate. The baseline statutory penalties depend on the nature of the prohibited object. The new provision imposes a five-year term of imprisonment onto that baseline in cases where the defendant uses a drone.

The Act also doubled or increased by five years (whichever is less) the statutory penalty for violating 6 U.S.C. § 124n–1(c), which makes it unlawful for anyone convicted of a felony offense (other than an offense based solely on the operation of an unmanned aircraft) to knowingly operate an unmanned aircraft to facilitate that felony.

The Act also directed the Commission to "substantially increase the sentencing range for all offenses involving the use of an unmanned aircraft." The Act further instructed the Commission to increase the base offense level by 6 levels when § 124n–1(c) applies, and by at least 4 levels "in all other cases."

The Commission's Proposed Amendment

On April 16, 2026, the Commission initially proposed an amendment, published in the *Federal Register*, to implement the directive. The initial proposal specified two options with respect to § 124n–1(c): that a new sentencing enhancement (in Chapter 3) would apply a 6-level increase to the base offense level when the statutory enhancement applied, *or* when the offense conduct satisfied the statutory enhancement regardless of whether the statutory enhancement formally applied. A 4-level increase would apply in other instances in which the crime involved the use of a drone. The initial proposal clarified that "use" of a drone entails more than "mere possession." In an appendix to the Guidelines that matches federal criminal statutes to the associated guidelines, the initial proposal identified §§ 2A5.2 and 2X5.2 of the Guidelines as the provisions applicable to 49 U.S.C. § 46307 violations.

On August 27, 2026, the Commission approved final proposed amendments. The final proposal applies the 6-level statutory increase if (1) the defendant is convicted of an offense to which the statutory enhancement applies or (2) "the parties stipulate to such an offense for purposes of calculating the guideline range or that the adjustment applies to the offense of conviction." The final proposal adds an application instruction, advising judges—in cases in which the use of an unmanned aircraft "forms the basis for an adjustment" under the new Chapter 3 enhancement—to use the greater enhancement as between any applicable Chapter 2 aggravating factor or an adjustment under Chapter 3. Additionally, the final proposal retains the 4-level catchall enhancement, the interpretation of "use," and the cross-references in the appendix.

The amendments will go into effect on March 27, 2027, unless Congress modifies or rejects the amendments.

Considerations for Congress

On September 14, 2026, the Commission submitted the approved proposed amendment to Congress, which triggered Congress's 180-day review period. Congress may use that time to evaluate the proposed amendment and determine whether it fulfills the directives of and other penalty components in the SAFER SKIES Act. It also may consider whether the amendment adequately addresses current Members' concerns regarding the unlawful use of drones more generally.

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