

## Chapter 5 – Determining the Sentence

**Western District of Arkansas** 

June 11, 2025

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Office of Education and Sentencing Practice

Online HelpLine Form

Pete Brennan is being sentenced in federal court for a drug conspiracy. Mr. Brennan was recently convicted in the state and sentenced to two years in prison.

How should Mr. Brennan's sentence to run relative to the sentence on his state conviction?

- A. Concurrent
- **B.** Partially Concurrent
- C. Consecutive
- **D.** Need More Information



### **Learning Objectives**

#### Your active engagement in this session will enable you to:

- **Identify** the sovereign with primary custody over a defendant;
- Describe the rule for crediting detention prior to sentencing;
- **Apply** the rules for undischarged, anticipated, and discharged sentences; and
- Locate Commission resources.

#### **Multiple Sentence Problem**



- Skinny Pete is serving a state sentence for sale of methamphetamine.
- After being sentenced in state court, the federal government charges him with conspiracy.
- The conspiracy is broader than, but includes, the sale of methamphetamine in state court.
- The court grants a writ of habeas corpus ad prosequendum to facilitate the federal prosecution.

Primary Custody

Concurrent

Vs.
Consecutive

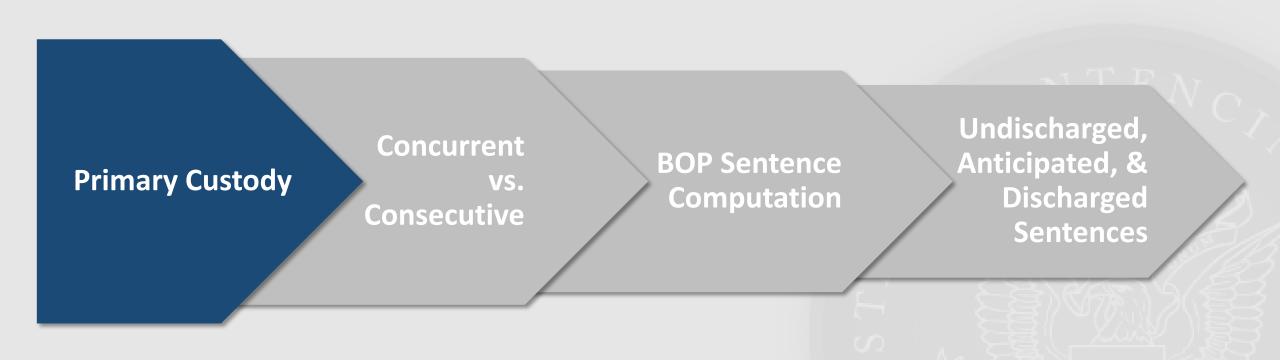
Computation

Concurrent

Concurrent

Computation

Undischarged,
Anticipated, &
Discharged
Sentences



## **Primary Custody**



First Sovereign to <u>Arrest</u>
Has Primary Custody

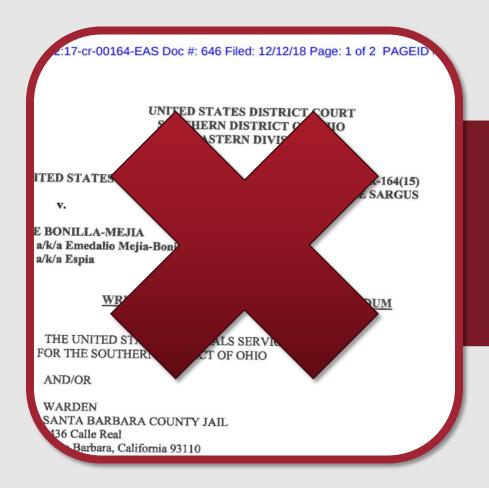
## **Primary Custody**



#### **Sovereign Relinquishes Custody**

- Bail
- Dismissal
- Parole
- Sentence Completion

### **Primary Custody**

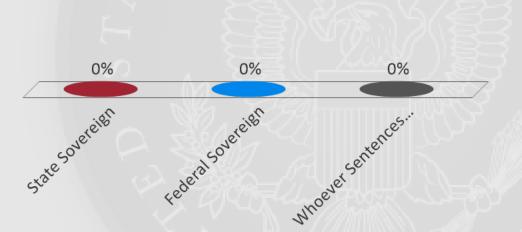


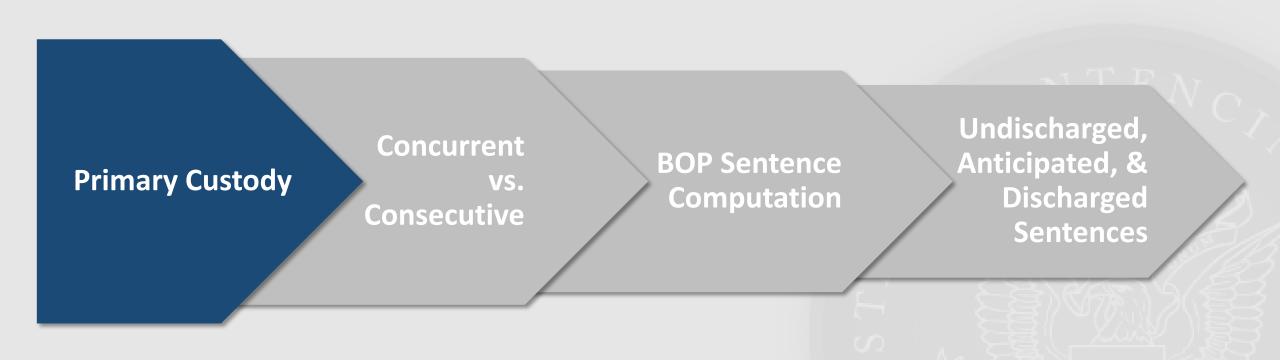
Writ Is Not Relinquishment of Primary Custody

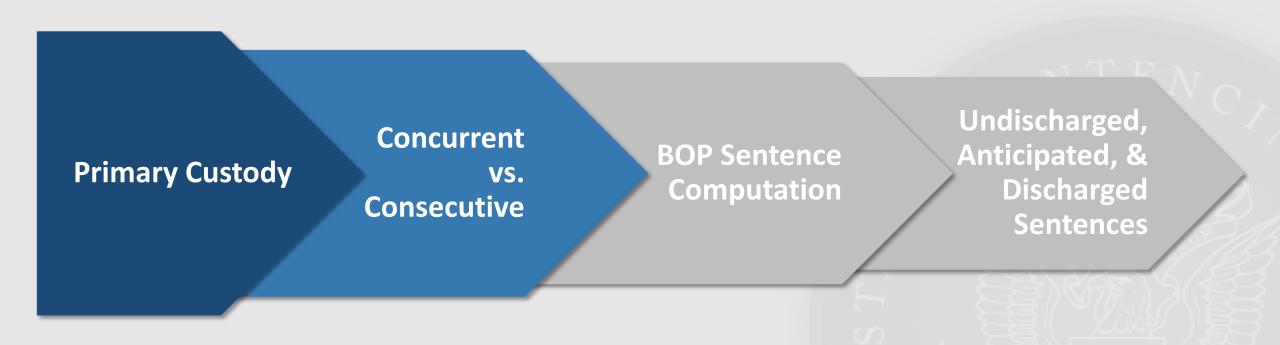
Skinny Pete is currently serving a state sentence for sale of methamphetamine. After being sentenced in state court, the federal government charges him with conspiracy to distribute methamphetamine. The charged conspiracy is broader than, but includes, the sale of methamphetamine in state court. The court grants a writ of habeas corpus ad prosequendum to facilitate the federal prosecution.

#### Who has primary custody of Skinny Pete?

- A. State Sovereign
- B. Federal Sovereign
- C. Whoever Sentences First

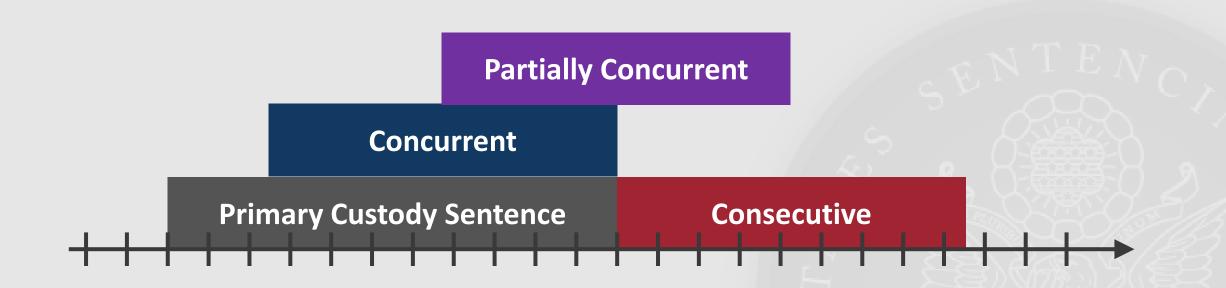






#### Concurrent v. Consecutive

**Why Primary Custody Matters** 



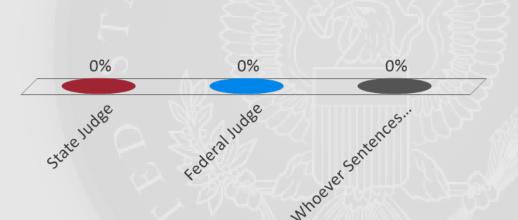
Primary Custody
Served First

Other Jurisdiction Determines
When Its Sentence Begins

Skinny Pete is currently serving a state sentence for sale of methamphetamine. After being sentenced in state court, the federal government charges him with conspiracy to distribute methamphetamine. The charged conspiracy is broader than, but includes, the sale of methamphetamine in state court. The court grants a writ of habeas corpus ad prosequendum to facilitate the federal prosecution.

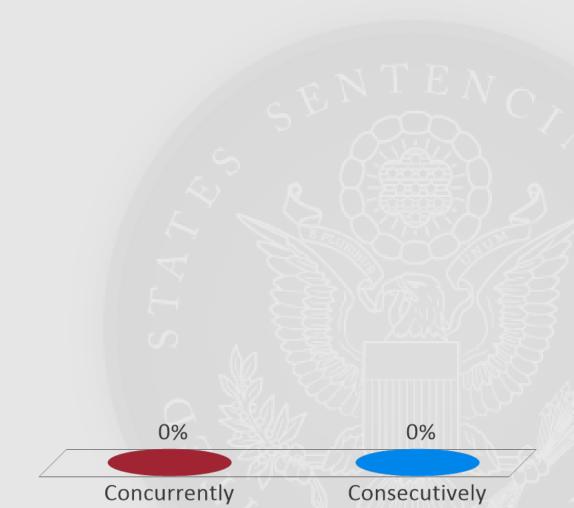
#### Who determines whether the sentences will run concurrently or consecutively?

- A. State Judge
- B. Federal Judge
- C. Whoever Sentences First



If the federal judge does not rule on the issue, the state and federal sentences will run –

- A. Concurrently
- **B.** Consecutively



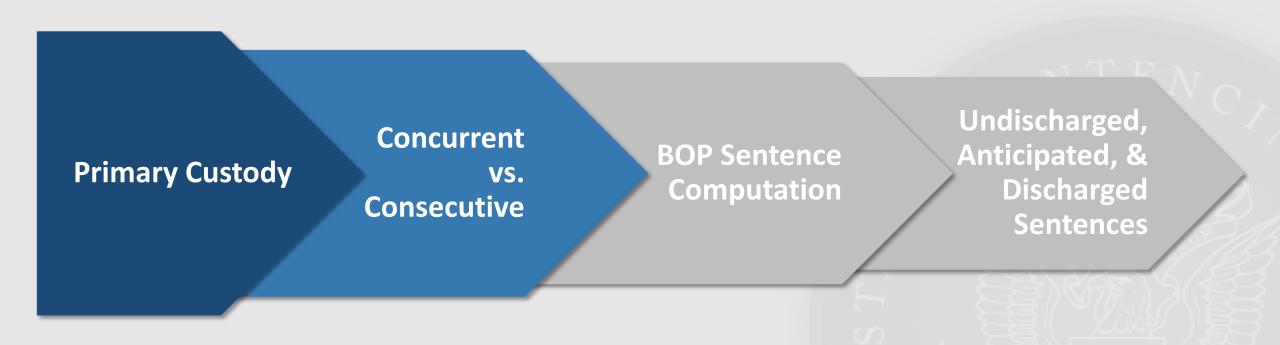
#### Multiple Terms of Imprisonment

18 U.S.C. § 3584(a)

Sentences imposed:



Unless statute mandates or the court orders otherwise.



**Primary Custody** 

Concurrent vs. Consecutive

**BOP Sentence Computation** 

Undischarged, Anticipated, & Discharged Sentences

#### **BOP Sentence Computation**

18 U.S.C. § 3585(a)



**Custody Awaiting Transportation** 



**Arrives Voluntarily to Serve Sentence** 

**Never Before Sentencing!** 

#### **BOP Sentence Computation**

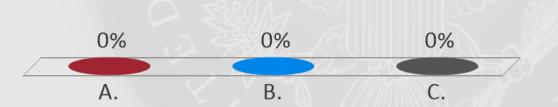
18 U.S.C. § 3585(b)



Skinny Pete is currently serving a state sentence for sale of methamphetamine. After being sentenced in state court, the federal government charges him with conspiracy to distribute methamphetamine. The charged conspiracy is broader than, but includes, the sale of methamphetamine in state court. The court grants a writ of habeas corpus ad prosequendum to facilitate the federal prosecution.

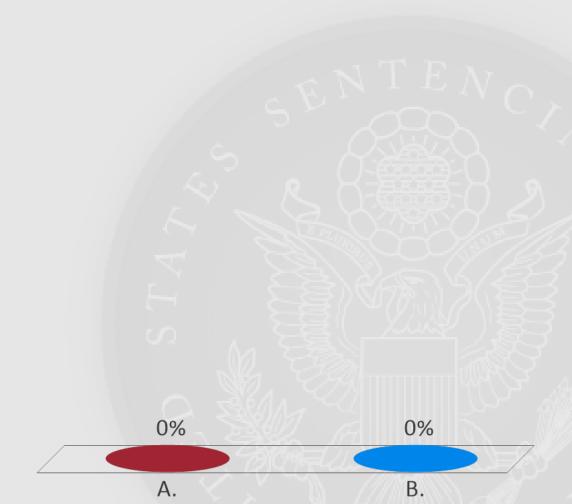
Will the BOP credit Skinny Pete for the time he spent incarcerated before federal sentencing?

- A. Yes
- B. No
- C. If the Judge Orders the BOP to "Credit" the Sentence



**True or False:** Because the Bureau of Prisons determines whether to credit time a defendant has served in state custody, the district court need not consider the time the defendant has and will serve on a separate state sentence when imposing a federal state sentence.

- A. True
- B. False

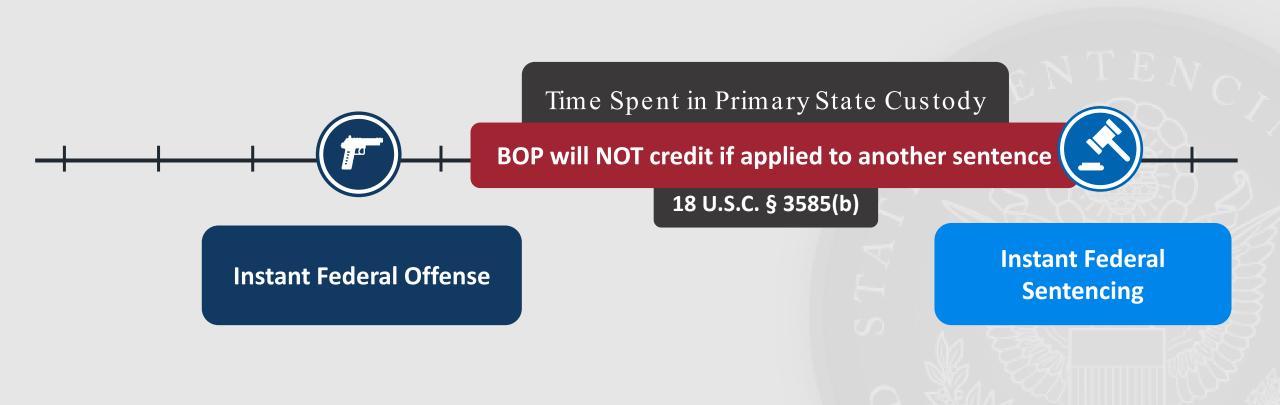


# **United States v. Lee**71 F.4th 1217 (10th Cir. 2023)

Where the district court mistakenly believed "it was not in a position to know" whether BOP would credit time served on an undischarged state sentence, it "procedurally erred when it purported to impose a within-Guideline sentence . . . without accounting for U.S.S.G. §5G1.3(b)."

#### **BOP Sentence Computation**

18 U.S.C. § 3585(b)



**Primary Custody** 

Concurrent vs. Consecutive

**BOP Sentence Computation** 

Undischarged, Anticipated, & Discharged Sentences

Primary Custody

Concurrent

Vs.
Consecutive

Computation

Concurrent

Concurrent

Computation

Undischarged,
Anticipated, &
Discharged
Sentences

#### Section 5G1.3: Key Information



**Type of Other Sentence** 



**Committed While in or Awaiting Prison** 



**Relevant Conduct to the Instant Offense** 

### **Types of Other Sentences**



#### **Type of Other Sentence**



Undischarged

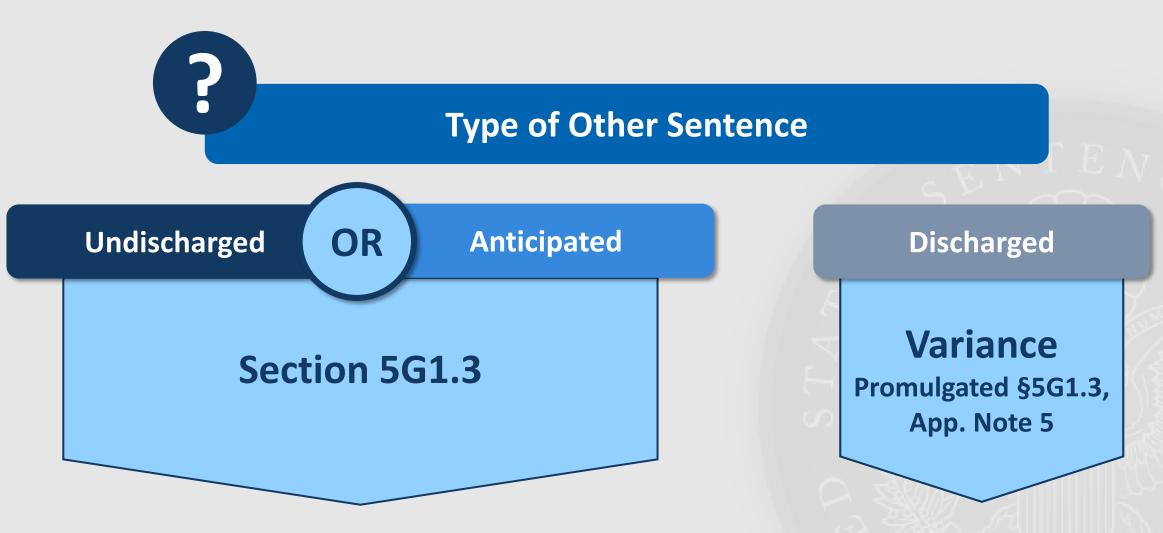


**Anticipated** 



Discharged

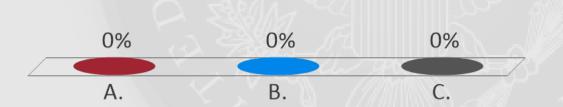
#### **Types of Other Sentences**



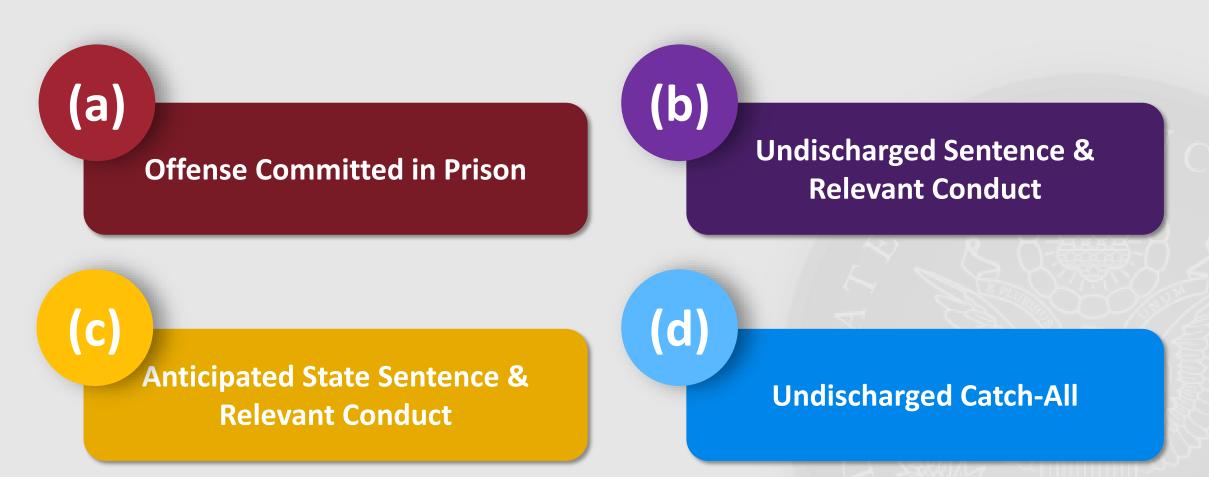
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Is Skinny Pete's state sentence anticipated, undischarged, or discharged?

- A. Anticipated
- B. Undischarged
- C. Discharged



Section 5G1.3



## Undischarged and Anticipated Sentences Section 5G1.3

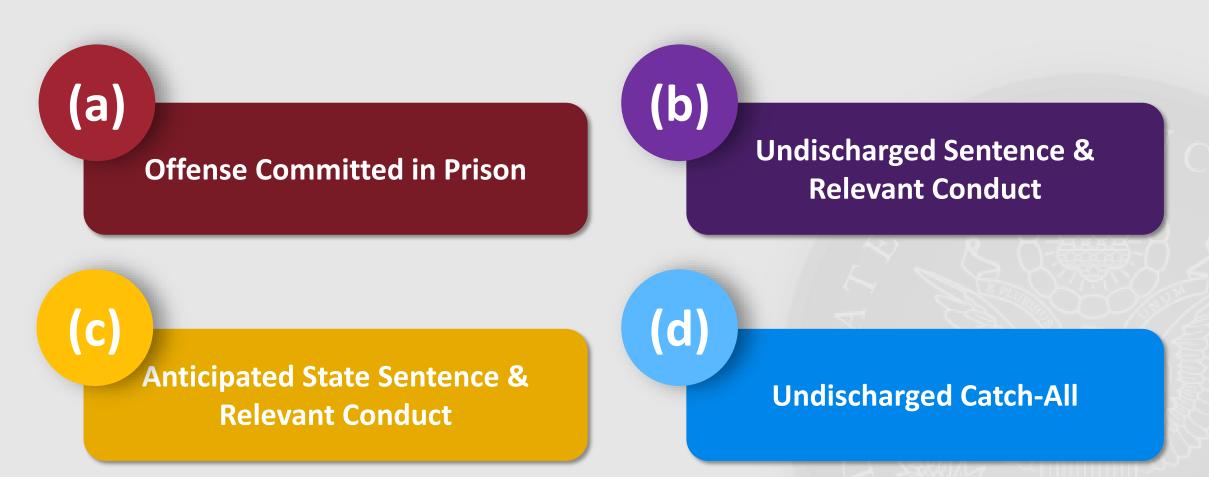
(a)

#### **Offense Committed in Prison**

Was the instant offense committed in prison, on work release, or awaiting commencement of prison sentence?

**Run Sentences Consecutively** 

Section 5G1.3



Section 5G1.3

(b)

**Undischarged Sentence & Relevant Conduct** 

Is there a partially served term of imprisonment?



Is that sentence relevant conduct under §1B1.3(a)(1), (a)(2), or (a)(3)?

Section 5G1.3

(b)

**Undischarged Sentence & Relevant Conduct** 

§1B1.3(a)(1)

Acts of the Defendant & Jointly Undertaken Criminal Activity

§1B1.3(a)(2)

Same Course of Conduct & Common Scheme or Plan

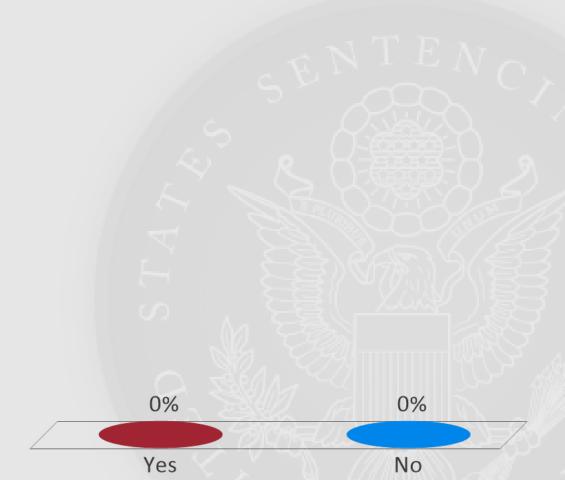
§1B1.3(a)(3)

Harms

Skinny Pete is currently serving a state sentence for sale of methamphetamine. After being sentenced in state court, the federal government charges him with conspiracy to distribute methamphetamine. The charged conspiracy is broader than, but includes, the sale of methamphetamine in state court. The court grants a writ of habeas corpus ad prosequendum to facilitate the federal prosecution.

Does §5G1.3(b) apply?

- A. Yes
- B. No



# **Undischarged and Anticipated Sentences**

**Section 5G1.3** 

(b)

**Undischarged Sentence & Relevant Conduct** 

This mechanism should be noted clearly on the judgment.

Adjust Sentence for Uncredited Time



Run Remainder Concurrently

# Applying §5G1.3(b) to Skinny Pete



- Skinny Pete received a 24-month sentence in state court.
- The federal judge determines that a 60-month sentence is appropriate.
- At the time of the federal sentence, Skinny Pete will have served 12 months of his state sentence.



# Applying §5G1.3(b) to Skinny Pete

State Sentence 24 Months

**12 Months** 

**12 Months** 

**Run Remainder Concurrently** 

Federal Sentence
60 Months

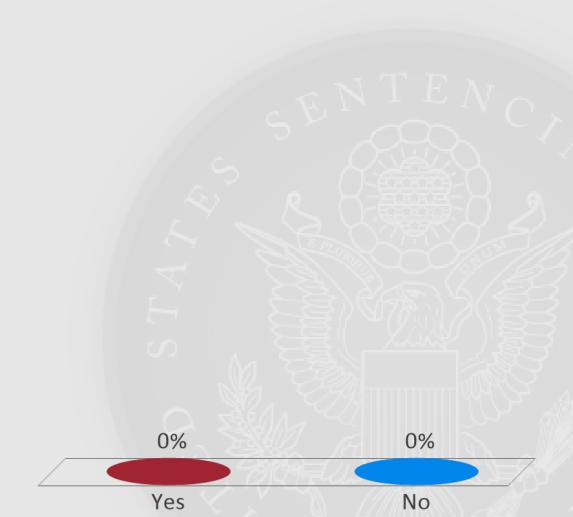
48 Months

**Adjust Sentence for Uncredited Time** 

# Can the court adjust a sentence under §5G1.3(b) <u>below</u> a mandatory minimum term of imprisonment?

A. Yes

B. No



# **Undischarged and Anticipated Sentences**

**Section 5G1.3** 

(b)

### **Undischarged Sentence & Relevant Conduct**

### **May Adjust Below Mandatory Minimum**

*United States v. Rivers*, 329 F.3d 119 (2d Cir. 2003)

*United States v. Dorsey*, 166 F.3d 558 (3d Cir. 1999)

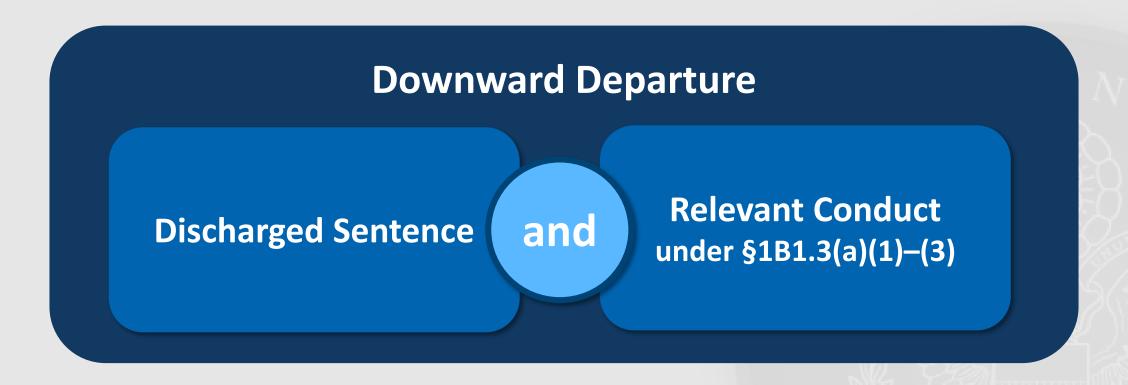
*United States v. Ross*, 219 F.3d 592 (7th Cir. 2000)

*United States v. Kiefer*, 20 F.3d 874 (8th Cir. 1994)

United States v. Drake, 49 F.3d 1438 (9th Cir. 1995)

## **Discharged Terms of Imprisonment**

Section 5K2.23

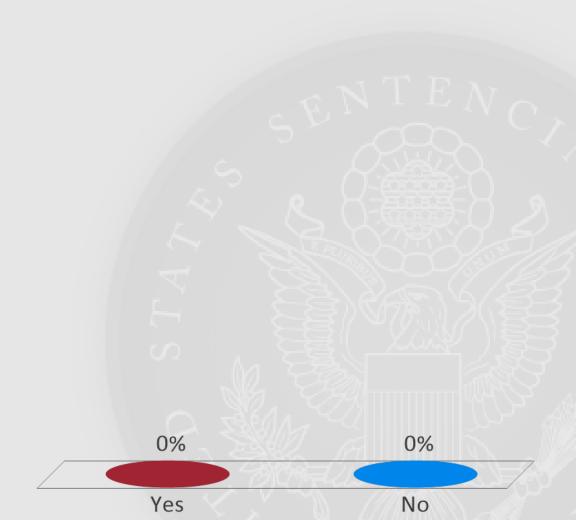


Any such departure should be fashioned to achieve a reasonable punishment for the offense.

# Can the court depart <u>below</u> a mandatory minimum term of imprisonment under §5K2.23?

A. Yes

B. No



## **Downward Departure**

### **NOT** Below Mandatory Minimum

*United States v. Lucas*, 745 F.3d 626 (2d Cir. 2014)

United States v. Moore, 918 F.3d 368 (4th Cir. 2019)

*United States v. Cruz*, 595 F.3d 744 (7th Cir. 2010)

*United States v. Fisher*, 25 F.4th 1080 (8th Cir. 2022)

Suppose Skinny Pete was convicted in federal court of conspiring to distribute methamphetamine from June 2020 to June 2024.

In December 2023, Skinny Pete was sentenced in state court for a sale of methamphetamine that was part of the federal conspiracy. He began serving his state sentence in July 2024, after his state appeals were denied. He is now appearing for federal sentencing on a writ of habeas corpus ad prosequendum.

Does §5G1.3(b) provide for an adjustment to Skinny Pete's sentence to account for the time served on his state sentence prior to federal sentencing?

- A. Yes
- B. No



# United States v. Millsap

115 F.4th 861 (8th Cir. 2024)

Section 5G1.3(b) was inapplicable where the defendant committed part of the instant conspiracy "after he was sentenced in state court but while he was released on bond pending appeal."

Because "the instant offense was committed . . . after sentencing for, but before commencing service of a term of imprisonment for the state offense," §5G1.3(a) applied.

Imagine instead that Skinny Pete has been convicted of, but not yet sentenced on, the state sale of methamphetamine.

Does a federal court have the legal authority to make a recommendation that the federal sentence run concurrently with this anticipated state sentence?

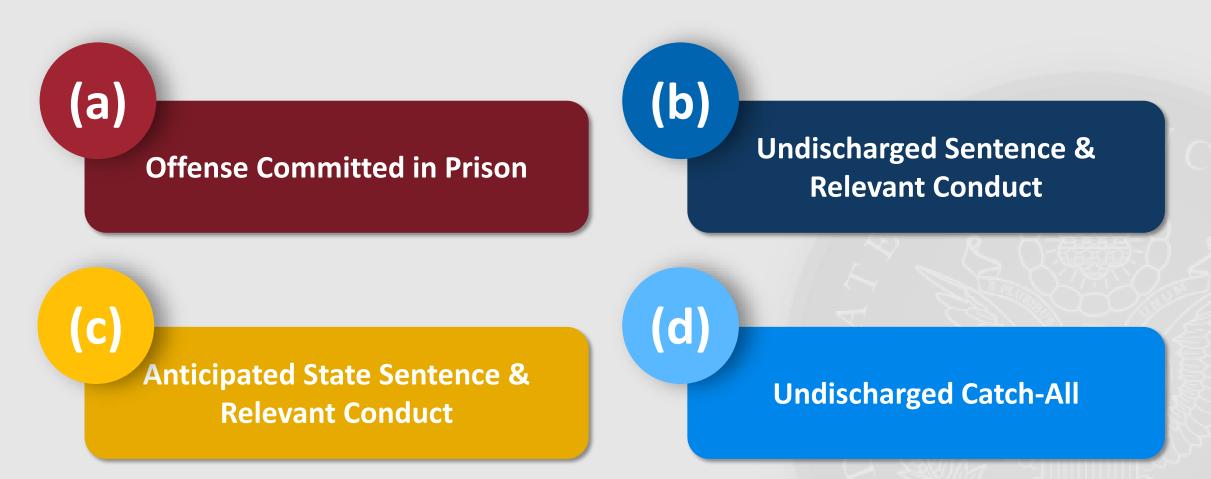
A. Yes

B. No



# **Undischarged and Anticipated Sentences**

Section 5G1.3



# Undischarged and Anticipated Sentences Section 5G1.3

(c)

**Anticipated State Sentence & Relevant Conduct** 

Is a future state sentence anticipated?

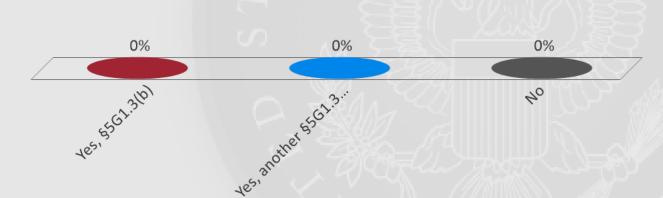
Is that sentence relevant conduct under §1B1.3(a)(1), (a)(2), or (a)(3)?

Run Sentences Concurrently

Imagine that Skinny Pete is serving two concurrent state sentences. The first is for an unrelated robbery and the other, as in the prior scenario, is for drug trafficking.

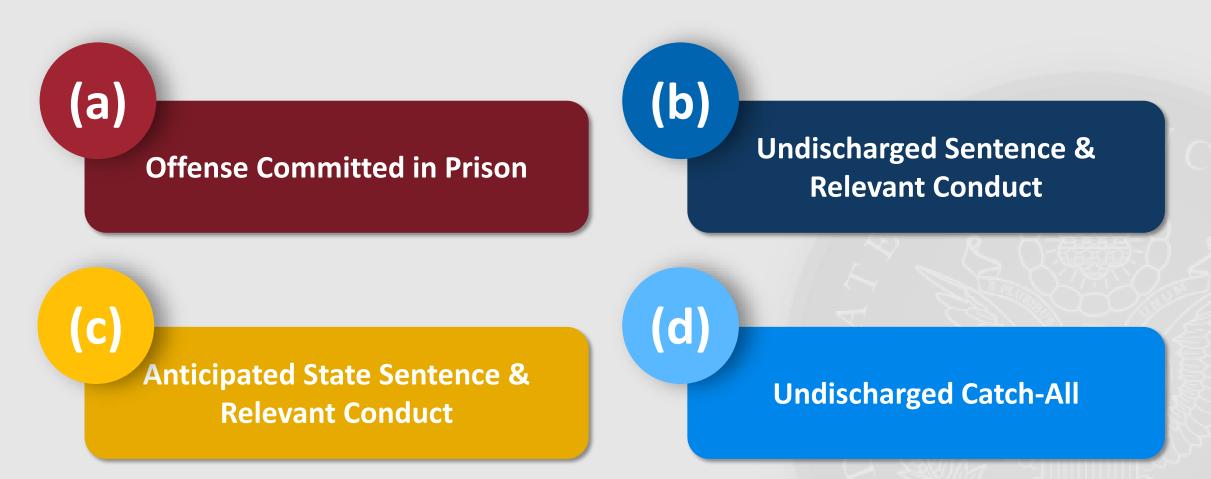
Does any provision of §5G1.3 apply to Skinny Pete, given that only one of the state sentences is relevant conduct to the instant federal offense?

- A. Yes, §5G1.3(b)
- B. Yes, another §5G1.3 provision
- C. No



# **Undischarged and Anticipated Sentences**

Section 5G1.3



# **Undischarged and Anticipated Sentences**

**Section 5G1.3** 

(d)

**Undischarged Catch-All** 

Are there other undischarged sentences that do not fall under (a)-(c)?

**Unrelated Conduct** 

**Complex Situations** 

**Revocations Terms** 

# Undischarged and Anticipated Sentences Section 5G1.3

(d)

**Undischarged Catch-All** 

Are there other undischarged sentences that do not fall under (a)–(c)?

Concurrent, partially concurrent, or consecutive

Reasonable Punishment for the Instant Offense

Consider again that Skinny Pete is serving two concurrent state sentences. The first is for an unrelated robbery and the other, as in the prior scenario, is for drug trafficking.

Can the court "adjust" the sentence to account for time served in the state prior to federal sentencing?

- A. Yes
- B. No



# Undischarged and Anticipated Sentences Section 5G1.3

(d)

### **Undischarged Catch-All**

Are there other undischarged sentences that do not fall under (a)-(c)?

Concurrent, partially concurrent, or consecutive

Reasonable Punishment for the Instant Offense

**Potential Departure or Variance for Uncredited Time** 

# **Key Takeaways**

**Time Served Before Federal Sentencing** 

**Court Cannot Order BOP to Credit** 

Section 5G1.3

**Applies to Undischarged & Anticipated Sentences** 

**Undischarged Sentence**& Relevant Conduct

Adjust & Run Concurrent under §5G1.3(b)

Section 5G1.3(b) Adjustment

**Note Mechanism on the Judgment** 

Section 5G1.3(d) Catchall

**Achieve a Reasonable Punishment for Instant Offense** 



### **Undischarged Terms of Imprisonment**

§5G1.3 – Imposing Sentence When the Defendant is Serving or Will Serve an Undischarged Term of Imprisonment or Has an Anticipated State Term of Imprisonment

#### HOW TO DETERMINE WHEN THE COURT SHOULD IMPOSE A CONSECUTIVE OR CONCURRENT SENTENCE Is there an undischarged Is there an anticipated Was the instant offense term of imprisonment? term of imprisonment?\* committed while in prison, or on work release, furlough, or escape status? see §5G1.3(a) Is it relevant conduct to the Is it relevant conduct to the instant offense under (a)(1), (a) instant offense under (a)(1), (a) (2), or (a)(3) of §1B1.3? see §5G1.3(c) (2), or (a)(3) of §1B1.3? see §5G1.3(b) Adjust sentence for Consecutive time served if BOP will not credit. see §5G1.3(b)(1) Concurrent, partially concurrent, or consecutive. Concurrent

\* The Supreme Court held that federal courts also generally have discretion to order that the sentences they impose will run concurrently with or consecutively to other state sentences that are anticipated but not yet imposed.

See Setser v. United States, 566 U.S. 231 (2012)



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The USSC HelpLine assists practitioners in applying the guidelines.

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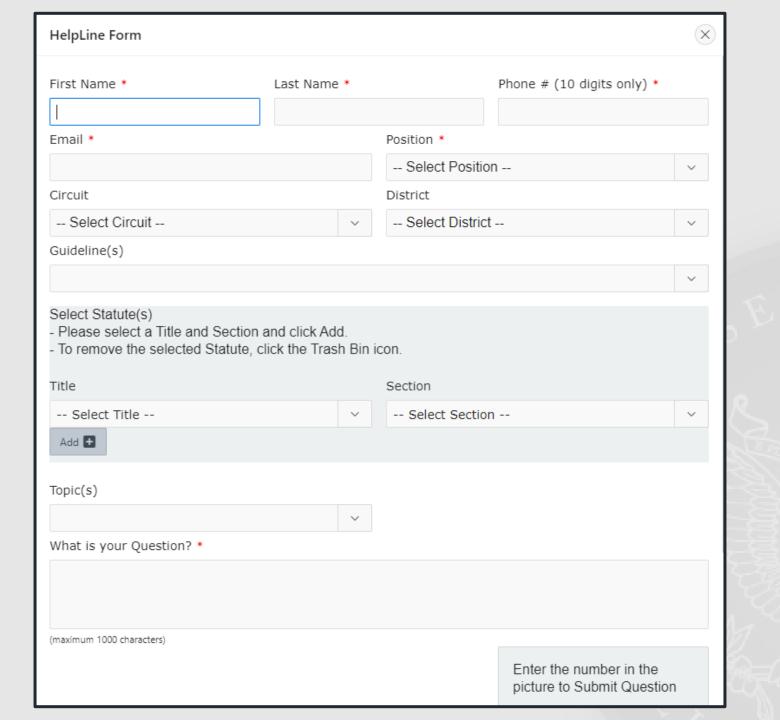
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**Drug Conversion Calculator** 

**Drug Quantity Calculator** 

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- JUDICIARY SENTENCING INFORMATION (JSIN) Tutorial Video

## THE FEDERAL SENTENCING GUIDELINES

- The Commission promulgates guidelines that judges consult when sentencing federal offenders. When the guidelines are amended, a subsequent Guidelines Manual is published.
- In this section, you will find the Commission's comprehensive archive of yearly amendments and Guidelines Manuals dating back to 1987.

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### 2024 GUIDELINES MANUAL ANNOTATED

The 2024 Guidelines Manual Annotated (effective November 1, 2024) featured below offers quick integrated access to guidelines history and reasons for amendments. Use the icon next to a provision to access a list of related amendments. The list is arranged in chronological order and provides hyperlinks to the full text of the amendments.

The manual is also available as a PDF or through the Guidelines App—a mobile-friendly web-based app accessible through any internet browser (no download or installation necessary).

# Guidelines Manual Annotated (Effective November 1, 2024)



COVER LETTER

CHAPTER ONE - INTRODUCTION, AUTHORITY, AND GENERAL APPLICATION PRINCIPLES	_
PART A - INTRODUCTION AND AUTHORITY	_
Introduction and Authority	

#### §2A2.2. Aggravated Assault

(a) Base Offense Level: 14

levels.

- Specific Offense Characteristics
- (1) If the assault involved more than minimal planning, increase by 2 levels.

intimate partner, or dating partner, increase by 3 levels.

- (2) If (A) a firearm was discharged, increase by 5 levels; (B) a dangerous weapon (including a firearm) was otherwise used, increase by 4 levels; (C) a dangerous weapon (including a firearm) was brandished or its use was threatened, increase by 3 levels.
- (3) If the victim sustained bodily injury, increase the offense level according to the seriousness of the injury:

If the offense involved strangling, suffocating, or attempting to strangle or suffocate a spouse,

However, the cumulative adjustments from application of subdivisions (2), (3), and (4) shall not exceed 12

		Degree of Bodily Injury	Increase in Level	
	(A)	Bodily Injury	add 3	
	(B)	Serious Bodily Injury	add 5	
	(C)	Permanent or Life-Threatening Bodily Injury	add <b>7</b>	
	(D)	If the degree of injury is between that specified in subdivisions (A) a	nd (B), add <b>4</b> levels; or	
	(E) If the degree of injury is between that specified in subdivisions (B) and (C), add 6 levels.		Historical Note:	
Howe	ver, the	cumulative adjustments from application of subdivisions (2) and (3) s	hall not exceed 10 levels.	Effective November 01, 2014 (Amendment 781)



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**781** 

Reason for Amendment: This amendment responds to recent statutory changes made by the Violence Against Women Reauthorization Act of 2013 (the "Act"), Pub. L. No. 113–4 (March 7, 2013), which provided new and expanded criminal offenses and increased penalties for certain crimes pertaining to assault, sexual abuse, stalking, domestic violence, and human trafficking.

Accordingly, the amendment amends Appendix A to reference section 113(a)(8) to §2A2.2 (Aggravated Assault) and amends the Commentary to §2A2.2 to provide that the term "aggravated assault" includes an assault involving strangulation, suffocation, or an attempt to strangle or suffocate. The amendment amends §2A2.2 to provide a 3-level enhancement at §2A2.2(b)(4) for strangling, suffocating, or attempting to strangle or suffocate a spouse, intimate partner, or dating partner. The amendment also provides that the cumulative impact of the enhancement for use of a weapon at §2A2.2(b)(2), bodily injury at §2A2.2(b)(3), and strangulation or suffocation at §2A2.2(b)(4) is capped at 12 levels. The Commission determined that the cap would assure that these three specific offense characteristics, which data suggests co-occur frequently, will enhance the ultimate sentence without leading to an excessively severe result.



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Categorical Approach

**Criminal History** 

Multiple Counts/Grouping

Relevant Conduct

See All Topics

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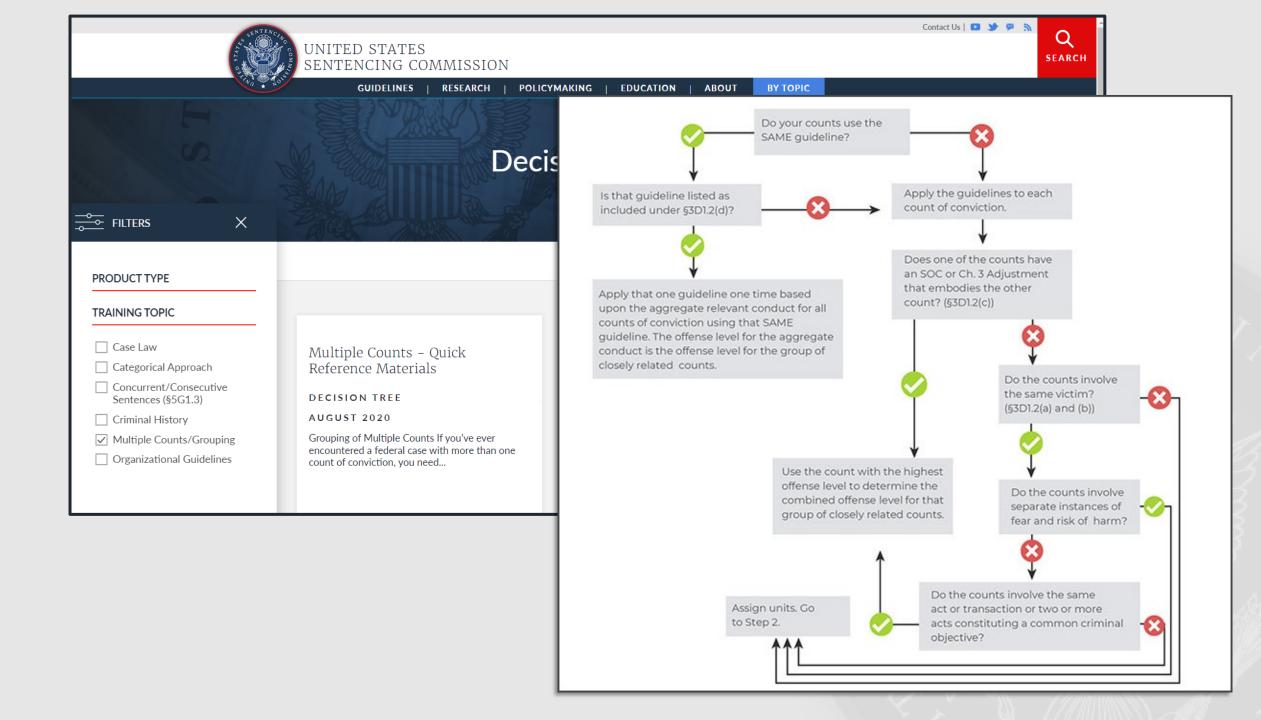
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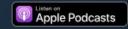
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### Sentencing Practice Talk Podcast



Brought to you by the Office of Education & Sentencing Practice (ESP), Sentencing Practice Talk is a podcast series designed to inform those interested in federal sentencing or guideline application issues. Topics range from frequently asked questions on the HelpLine and sentencing practice tips, to recent case law developments. The information presented is intended to aid those involved in federal sentencing in the proper application of the guidelines and relevant case law. It does not represent the official position of the Commission and should not be cited as such. Listeners are advised to conduct their own independent research.

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POLICYMAKING

**EDUCATION** 

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**BY TOPIC** 

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- The Commission serves as an information resource for Congress, the executive branch, the courts, criminal justice practitioners, the academic community, and the public.
- In this section, you will find resources to assist you in understanding and applying the federal sentencing guidelines.

#### EDUCATION TOPICS

Bureau of Prisons Issues

Categorical Approach

**Criminal History** 

Multiple Counts/Grouping

Relevant Conduct

See All Topics

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#### CASE LAW RESOURCES

Supreme Court Cases

Case Law Update

#### PROBLEM-SOLVING COURT RESOURCES

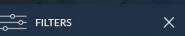
- GLOSSARY OF SENTENCING TERMS
- > HELPLINE QUESTION?



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Primer



#### TOPIC

- About Us
- Alien Smuggling
- Antitrust
- Backgrounder
- Case Law
- Categorical Approach
- Computer Fraud
- Copyright/Trademark
- Corporate Crime
- Criminal History
- Departures/Variances
- Drugs
- Economic Crime
- Family Ties and Responsibilities

#### BACKGROUNDER 🏦

#### Criminal History

#### PRIMER

#### AUGUST 2024

This primer provides a general overview of the sentencing guidelines and statutes relevant to application of Chapter...







#### Primer on Categorical Approach (2024)

means of actual or threatened force, or violence . . . to his person or property."34 Every court of appeals to have addressed the issue has held that Hobbs Act robbery categorically qualifies as a "crime of violence" under 18 U.S.C. § 924(c) because that provision includes force against property or a person.35 There is a circuit split with respect to whether Hobbs Act robbery qualifies as a "violent felony" under 18 U.S.C. § 924(e) (the ACCA).36 However, every court of appeals to have addressed the issue has held that Hobbs Act robbery is not a categorical match with the force clause at §4B1.2.37 To address these different approaches, in 2023, the Commission promulgated an amendment to §4B1.2 to add a definition of "robbery" at §4B1.2(e)(3) that mirrors the definition of the term at 18 U.S.C. § 1951(b)(1).38

#### "Enumerated offenses" clauses

Terms like "violent felony" or "crime of violence" also can be defined by a list of specific offenses whose generic elements qualify as a predicate offense.<sup>39</sup> For example, the

- 34 18 U.S.C. § 1951(b)(1).
- 35 See United States v. García-Ortiz, 904 F.3d 102, 107-09 (1st Cir. 2018); United States v. Hill, 890 F.3d 51, 60 (2d Cir. 2018); United States v. Stoney, 62 F.4th 108 (3d Cir. 2023); United States v. Mathis, 932 F.3d 242, 266 (4th Cir. 2019); United States v. Buck, 847 F.3d 267, 275 (5th Cir. 2017); United States v. Gooch, 850 F.3d 285, 291-92 (6th Cir. 2017); United States v. Fox, 878 F.3d 574, 579 (7th Cir. 2017); United States v. Jones, 919 F.3d 1064, 1072 (8th Cir. 2019); United States v. Eckford, 77 F.4th 1228, 1236-37 (9th Cir. 2023) (aiding and abetting Hobbs Act robbery, like Hobbs Act robbery, is a "crime of violence" under the elements clause of 18 U.S.C. § 924(c)), cert. denied, 144 S. Ct. 521 (2023); United States v. Melgar-Cabrera, 892 F.3d 1053, 1066 (10th Cir. 2018); United States v. Wiley, 78 F.4th 1355, 1363-64 (11th Cir. 2023).
- 36 Compare United States v. Hatley, 61 F.4th 536 (7th Cir. 2023) (Hobbs Act robbery is a "violent felony" under 18 U.S.C. § 924(e) (ACCA), cert. denied, 144 S. Ct. 545 (2024); accord United States v. Becerril-Lopez, 541 F.3d 881, 891-92, 892 n.9 (9th Cir. 2008); United States v. Castillo, 811 F.3d 342, 348 (10th Cir. 2015); United States v. Montiel-Cortes, 849 F.3d 221, 228 (5th Cir. 2017), with Raines v. United States, 898 F.3d 680, 689-90 (6th Cir. 2018); United States v. Gardner, 823 F.3d 793, 802 n.5 (4th Cir. 2016), overruled on different grounds by United States v. Dinkins, 928 F.3d 349, 355-56 (4th Cir. 2019).
- 37 See United States v. Chappelle, 41 F.4th 102, 109-12 (2d Cir. 2022); United States v. Scott, 14 F.4th 190, 198 n.7 (3d Cir. 2021); United States v. Green, 996 F.3d 176, 184 (4th Cir. 2021); United States v. Camp, 903 F.3d 594, 604 (6th Cir. 2018); Bridges v. United States, 991 F.3d 793, 801-02 (7th Cir. 2021); United States v. Prigan. 8 F.4th 1115, 1117 (9th Cir. 2021) (collecting cases); United States v. O'Connor, 874 F.3d 1147, 1158 (10th Cir. 2017); United States v. Eason, 953 F.3d 1184, 1194-95 (11th Cir. 2020).
- 38 See USSG App. C, amend. 822 (effective Nov. 1, 2023) (amending §4B1.2). To "eliminate potential litigation over the meaning of actual or threatened force," the new definition relied on Stokeling v. United States, 586 U.S. 73 (2019). Id. Stokeling clarified for the ACCA that "force capable of causing pain or injury," includes the amount of force necessary to overcome a victim's resistance." 586 U.S. at 87.
- 39 Many statutory provisions also include or included now-defunct residual clauses, which were catchall provisions—i.e., "or otherwise involves conduct that presents a serious potential risk of physical injury to another" in 18 U.S.C. § 924(e)(2)(B)(ii)—to define applicable terms. In Johnson v. United States, 576 U.S. 591 (2015), the Supreme Court invalidated the residual clause in 18 U.S.C. § 924(e) as unconstitutionally vague. However, Congress has not yet altered section 924(e) in response to Johnson. The Supreme Court also invalidated the residual clause in 18 U.S.C. § 16(b) in Sessions v. Dimaya, 584 U.S. 148 (2018), and the residual clause in 18 U.S.C. § 924(c)(3)(B) in United States v. Davis, 588 U.S. 445 (2019), See also Hall v. United States. 58 F.4th 55, 60 (2d Cir. 2023) (Davis applies retroactively to cases on collateral review).



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INTERACTIVE

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#### EXPLORE BY TOPIC:

(Click to view by topic)

U.S. Supreme Court Career Offender Categorical Approach

Chapter Three Adjustments

Compassionate Release

Click the icon to view U.S. Supreme Court decisions:

Select Supreme Court



Click the icons to browse a list of cases by circuit (or view index):

### U.S. Supreme Court

**Drug Offenses** 

**Fifth Circuit** 

A "backward-looking" test applies "when evaluating whether a prior drug offense qualifies

the followy drug offense contensing enhancement" under 21 U.S.C. 8 9/1/b)/1)/D)



Brewer v. United States, 89 F.4th 1091 (8th Cir. 2024) (Categorical Approach)

United States v. Donath, 107 F.4th 830 (8th Cir. 2024) (Chapter Three Adjustments)

United States v. Austin, 104 F.4th 695 (8th Cir. 2024) (Criminal History)

United States v. Tucker Jackson, 106 F.4th 772 (8th Cir. 2024) (Firearms)

United States v. Garner, 119 F.4th 571 (8th Cir. 2024) (Sex Offenses)

United States v. Morin, 95 F.4th 592 (8th Cir. 2024) (Supervised Release)

United States v. Lester, 92 F.4th 740 (8th Cir. 2024) (Supervised Release)

United States v. Zhong, 95 F.4th 1296 (10th Cir. 2024)

about that state of mind to the Government in order to qualify for safety-valve relief under [18 U.S.C.] § 3553(f)(5)."

eadings delines.

#### **Eleventh Circuit**

United States v. Graham, 123 F.4th 1197 (11th Cir. 2024)

The language of the §2D1.1(b)(2) enhancement—"the defendant used violence, made a credible threat to use violence, or directed the use of violence"-focuses on the defendant's own conduct; thus, the enhancement cannot be based on the actions of co-conspirators. Here, because the use of force by others was not a reasonably foreseeable consequence of the defendant's own acts, the district court clearly erred in application of the enhancement.

## Research and Data Resources



2024 SOURCEBOOK

Archive

#### DATA REPORTS

By Geography

By Guideline

By Quarter

Prison Impact Reports

Retroactivity Reports

Compassionate Release

#### DATAFILES

Research Notes

### QUICK FAC'

Quick Facts publications give readers basic facts about a single area of federal Commission releases new Quick Facts periodically. The date in parentheses is

#### **Individual Characteristics**

- NEW Individuals in the Federal Bureau of Prisons (May 2025)
- Career Offenders (May 2024)
- Non-U.S. Citizens (July 2024)
- Federally Sentenced Women (September 2024)
- Federally Sentenced Native Americans (September 2024)

#### **Drug Offenses**

- Drug Trafficking (May 2024)
- Methamphetamine Trafficking (May 2024)
- Fentanyl Trafficking (May 2024)
- Fentanyl Analogue Trafficking (May 2024)
- Powder Cocaine Trafficking (June 2024)
- Crack Cocaine Trafficking (June 2024)
- Marijuana Trafficking (June 2024)
- Oxycodone Trafficking (June 2024)
- Oxycodone frameking (same 202
- Heroin Trafficking (July 2024)

#### **Immigration Offenses**

- Illegal Reentry (July 2024)
- Alien Smuggling (July 2024)

#### Firearm Offenses

- Section 924(c) (June 2024)
- Section 922(g) (June 2024)

#### **Economic Offenses**

- Theft, Property Destruction, and Fraud (August 2024)
- Aggravated Identity Theft (August 2024)
- Bribery (August 2024)
- Counterfeiting (August 2024)



64,124 cases were reported in FY23;

18,939 involved drug trafficking.2

Most Common Drugs Trafficked<sup>3</sup>

Average Sentence Length for Drug Traffickers

Means of Relief from the Mandatory Minimum

19.066 involved drugs:1

Seven drug types account for 98.1% of drug

trafficking offenses.

Marijuana (3.0%)

Crack Cocaine (4.6%)

### **QuickFacts**

**Drug Trafficking Offenses** 

https://www.ussc.gov/research/quick-facts

#### Individual and Offense Characteristics<sup>4</sup>

83.6% of individuals sentenced for drug trafficking were men.

43.5 were Hispanic, 27.6% were Black, 25.8% were White, and 3.0% were Other races.

Their average age was 38 years.

81.9% were United States citizens.

42.5% had little or no prior criminal history (Criminal History Category I); 5.6% were career offenders.

Sentences were increased for:

- possessing a weapon (28.8%);
- a leadership or supervisory role in the offense (6.3%).

Sentences were decreased for:

- minor or minimal participation in the offense (18.3%):
- meeting the safety valve criteria in the sentencing guidelines (33.2%).

The top five districts for drug trafficking offenses were:

- Southern District of California (1,457);
- Western District of Texas (920):
- Southern District of Texas (884):
- Northern District of Texas (722):
- District of Puerto Rico (573).

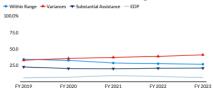
#### Punishment

The average sentence for drug traffickers was 82 months but varied by drug type.

97.2% were sentenced to prison.

62.1% were convicted of an offense carrying a mandatory minimum penalty; 53.5% of those individuals were relieved of that penalty.

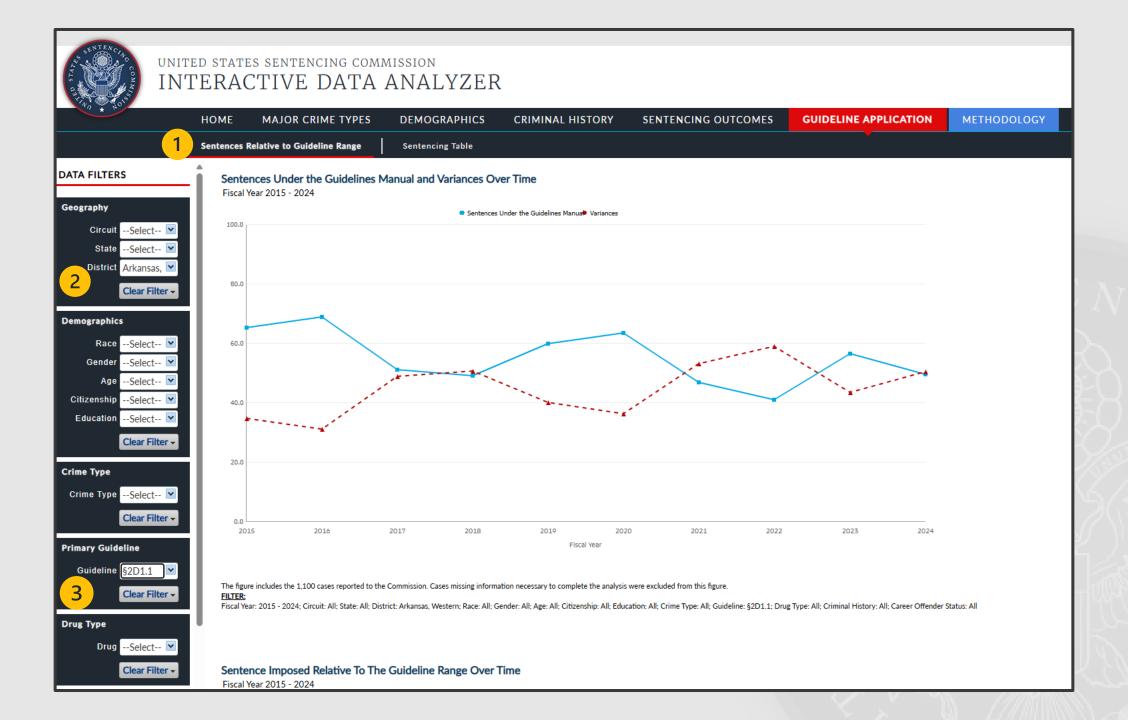
#### Sentences Relative to the Guideline Range



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## Research and Data Resources





# UNITED STATES SENTENCING COMMISSION INTERACTIVE DATA ANALYZER

Career

Offender Status --Select-- 🕶

HOME **MAJOR CRIME TYPES DEMOGRAPHICS CRIMINAL HISTORY** SENTENCING OUTCOMES **GUIDELINE APPLICATION METHODOLOGY Economic Crime** Drugs Immigration Firearms DATA FILTERS Distribution of Primary Drug Type in Federal Drug Cases Number of Drug Trafficking Cases by Major Drug Type Over Time Fiscal Year 2024 Fiscal Year 2015 - 2024 Fiscal Year - Powder Cocaine - Crack Cocaine - Methamphetamine Fiscal Year 2024 Powder Cocai... Clear Filter -Heroin 0.9% Marijuana 0.9% 120 Geography Circuit --Select-- 💌 100 State --Select--District Arkansas, Fentanyl 15.0% Clear Filter -Other 0.9% **Demographics** Race --Select-- Y Gender -Select--Methamphetamine 76.6% --Select-- 💌 Age Citizenship --Select-- 💌 --Select--Education Clear Filter • 2017 2018 2019 2021 2022 Fiscal Year **Drug Type** Drug --Select-- V Individuals sentenced under §§2D1.1 (Drug Trafficking), 2D1.2 (Protected Locations), 2D1.5 (Continuing Criminal Enterprise), 2D1.6 (Use of a Of the cases sentenced, 107 individuals were sentenced under USSG Chapter Two, Part D (Drugs). Cases missing information necessary to complete Clear Filter • Communication Facility), 2D1.8 (Rent/Manage Drug Establishment), 2D1.10 (Endangering Human Life While Manufacturing), or 2D1.14 (Narcothe analysis were excluded from this figure. Terrorism) are depicted in this figure. Cases missing information necessary to complete the analysis were excluded from this figure. Fiscal Year: 2024; Circuit: All; State: All; District: Arkansas, Western; Race: All; Gender: All; Age: All; Citizenship: All; Education: All; Guideline: All; **Criminal History** Fiscal Year: 2015 - 2024; Circuit: All; State: All; District: Arkansas, Western; Race: All; Gender: All; Age: All; Citizenship: All; Education: All; Guideline: Drug Type: All; Criminal History: All; Career Offender Status: All All; Drug Type: All; Criminal History: All; Career Offender Status: All Category --Select--

# **Please Review Our Session**



# **Learning Outcomes**

### You should now be able to:

- **Identify** the sovereign with primary custody over a defendant;
- Describe the rule for crediting detention prior to sentencing;
- **Apply** the rules for undischarged, anticipated, and discharged sentences; and
- Locate Commission resources.

# **Questions?**



