

**EXPERT INSIGHT** | America Combats Trafficking and Child Exploitation Initiative

# SEXUAL ABUSE & HUMAN SMUGGLING: ENSURING THE PUNISHMENT FITS THE SEVERITY OF THE CRIME

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## TOPLINE POINTS

- ★ Human smuggling often involves the sexual abuse of those being smuggled.
- ★ Under the current United States Sentencing Guidelines, the offense of human smuggling does not include an enhancement for those who perpetrate sexual abuse in the commission thereof.
- ★ The United States Sentencing Commission should adopt a sentencing enhancement that reflects the severity of the crimes committed by human smuggling, especially when those crimes include sexual abuse.

## Overview

The United States Sentencing Commission (USSC) is responsible for establishing the federal sentencing guidelines that inform judges what the appropriate sentence should be for a defendant. A base [offense](#) level is assigned, which is a number based on the crimes the defendant was convicted of. The higher the number and the more significant the person's criminal history is, the longer the recommended sentence will be. The guidelines allow for [adjustments](#), which are factors that can apply to any offense; like specific characteristics, they increase or decrease the offense level. For example, the guidelines currently include a two-level enhancement for any offense if the offender knows their victim was unusually [vulnerable](#) due to age or physical or mental conditions. This means that the base offense level would increase by two, resulting in a longer recommended prison term.

An area where sentencing guidelines do not currently appropriately reflect the severity of the defendant's actions is when acts of sexual violence are committed during human

smuggling. In response to the USSC's request for public comment, the United States Department of Justice called for [enhancements](#) to the Sentencing Guidelines on the grounds that it does not adequately address human smuggling cases in which a victim was sexually abused or otherwise sexually assaulted.

Due to the unique vulnerabilities that victims find themselves in during a smuggling operation, any sexual violence should be treated as an aggravating factor and should be enhanced to have a longer recommended prison term. Enhancements are necessary to ensure the guidelines are reflective of the sexual assault guidelines, which ensures that the punishment appropriately reflects the severity and seriousness of the crime.

## Background

Human smuggling involves the provision of a service, typically transportation or fraudulent documents, to an individual who [voluntarily](#) seeks to gain illegal entry into a foreign country. However, those being smuggled are vulnerable to harm, especially sexual violence. When sexual crimes occur during human smuggling, the Sentencing Guidelines must reflect the severity of the crime and the lifelong effects that these crimes have on the victims.

When sexual [violence](#) occurs during smuggling, the harm inflicted is more serious and traumatic. Victims can experience lifelong physical and psychological issues, such as psychological issues, post-traumatic stress disorders, depression, anxiety, and suicidal thoughts, as well as recurring reproductive, gastrointestinal, cardiovascular, and sexual health problems. Furthermore, victims of smuggling are uniquely [vulnerable](#) to sexual abuse, as many illegal aliens are fearful of admitting that they have been a victim of a crime, in part because they believe they will be removed (deported) from the United States if they report the crime.

Under the existing guideline structure, the base offense level for human smuggling under [U.S.S.G. §2L1.1](#) begins at level 12 and may increase through a variety of adjustments. While enhancements do currently exist for bodily injury or serious bodily injury, the resulting offense levels fail to capture the severity of sexual abuse committed during a smuggling operation. Presently, it is unclear whether a violent sexual crime in itself allows for enhancement. This discrepancy may influence how judges enhance penalties when the language is unclear or when there are no specific guidelines.

## Current Enhancements Under §2L1.1 Do Not Adequately Reflect the Severity of Sexual Violence

Under the current guideline structure, the base offense level under §2A3.1 (Criminal Sexual Abuse) is significantly higher than the base offense level under §2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien). For example, the base offense level under aggravated sexual abuse involving a child under the age of 12 years old under 18



U.S.C. § 2241(c) is level 38. Otherwise, the base offense level under §2A3.1 is 30, with further [increases](#) possible. A recent case is an example of how the current guideline framework may be under-punishing sexual violence that occurs during smuggling offenses.

In *United States v. Ballesteros-Moreno*, a [smuggler](#) who was transporting an undocumented migrant sexually assaulted an 18-year-old woman. Here, the offender was sentenced under the smuggling guideline §2L1.1 rather than the sexual abuse guidelines in §2A3.1. The court imposed a prison sentence of 72 months. The average sentence for human [smuggling](#) is 15 months, whereas the average sentence for sexual [assault](#) is 18.4 years. For this reason, AFPI believes that the federal guidelines need stronger enhancements, and the option for a cross-reference to stronger enhancements is critical and necessary to ensure that penalties appropriately reflect the severity of the crimes that were committed.

## Policy Recommendations

When a federal offense involves conduct described in 18 U.S.C. §§ 2241–2244, AFPI recommends enhancements that would be more aligned with the sexual assault guidelines.

We recommend the following prescriptions:

- Adopt stronger sentencing enhancements when crimes such as criminal sexual contact and sexual abuse occur during other offenses, such as human smuggling.
- When criminal sexual contact and sexual abuse occur, implement the option for directing courts to apply the sexual abuse Guideline at U.S.S.G. Chapter Two, Part A, Subpart 3 when conduct described in 18 U.S.C. §§ 2241–2244 occurs during smuggling operations.
- When crimes such as criminal sexual contact and sexual abuse occur during other offenses, broader cross-reference language should be applied when “the offense involved such conduct.”
- During sentencing, the court should prioritize the more serious offense by applying the higher guideline range to ensure that the sentence reflects the severity of the crime.

## Conclusion

Because of these vulnerabilities, sexual violence during smuggling is an aggravating factor and should be treated more severely. These changes would ensure that the federal sentencing guidelines better reflect the gravity of such crimes and deliver proper justice for the victims and proportional punishment for the seriousness of the offense.

The America First approach to protecting our children and victims must include preventative, proactive, and reactive measures that ensure that protections, justice, and accountability are always prioritized.

