August 27, 2026
Carolyn A. Dubay, Secretary
Committee on Rules of Practice and Procedure
Administrative Office of the United States Courts
One Columbus Circle, NE, Room 7-300
Washington, DC 20544

Re: Rules Suggestion - Proposed Amendments to Federal Rule of Criminal Procedure 32(i)(3), Particularized Findings on Disputed Sentencing Predicates

Dear Ms. Dubay:

I respectfully submit the enclosed suggestion for targeted amendments to Federal Rule of Criminal Procedure 32(i)(3). The proposal does not change any substantive sentencing standard or burden of proof. It clarifies what it means for a sentencing court to "rule on" a disputed factual predicate and when a general adoption of a presentence report is sufficient.

Current Rule 32 requires the court to resolve any disputed portion of the presentence report or other controverted matter that will affect sentencing. In practice, however, a summary overruling of an objection or global adoption of a report may leave the parties, the court of appeals, and the Bureau of Prisons unable to determine which person, act, amount, intent, communication, or causal proposition the court actually found. The proposed amendment requires enough specificity to disclose the basis of the ruling, while preserving concise oral findings and incorporation of a sufficiently detailed report.

My own federal sentencing is included as a disclosed illustration. This submission does not ask the Rules Committee to decide any issue in my case or to review any judgment. It identifies a prospective procedural problem: deferential appellate review cannot reliably operate when the finding to be reviewed is uncertain, and the Bureau of Prisons should not receive a report that leaves rejected, unresolved, and adopted allegations indistinguishable.

Please assign this suggestion an agenda number and forward it to the Advisory Committee on Criminal Rules for consideration.

Respectfully submitted,

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RULES SUGGESTION
PROPOSED AMENDMENTS TO FEDERAL RULE OF CRIMINAL PROCEDURE 32(i)(3)

Particularized Findings on Disputed Sentencing Predicates

Submitted to the Advisory Committee on Criminal Rules
Committee on Rules of Practice and Procedure
Judicial Conference of the United States

Submitted August 27, 2026

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EXECUTIVE SUMMARY

Federal Rule of Criminal Procedure 32(i)(3)(B) requires a sentencing court to rule on every disputed portion of the presentence report or other controverted matter that may affect sentencing. Rule 32(i)(3)(C) requires the court to append its determinations to the report sent to the Bureau of Prisons. Those commands protect accurate sentencing, meaningful appellate review, and fair downstream administration. Yet the rule does not state how definite a ruling must be or when a general adoption of a presentence report actually resolves a specific factual objection.[1]

The omission matters because modern sentencing adjustments and statutory factors often turn on discrete predicates: whether a particular person acted knowingly, whether a communication reached or influenced a witness, which loss items were foreseeable, what statement was false, or what conduct demonstrated a prohibited intent. A conclusory statement that an enhancement applies may announce the result without identifying the fact found. A global adoption of a report may do the same when the report offers only a legal conclusion, alternative possibilities, or group-level allegations.

This suggestion proposes a modest clarification. When a dispute may affect sentencing, the court should state findings and conclusions with enough specificity to disclose the factual and legal basis, permit meaningful review, and guide implementation. Adoption of a presentence report, addendum, or party submission should remain permissible, but only if the adopted material itself resolves the specific dispute and the court identifies what it is adopting. No formal catechism, written opinion, or evidentiary hearing would be required. Oral findings, concise incorporation, and sealed or anonymized findings would remain available.

1 Fed. R. Crim. P. 32(i)(3)(B)–(C); Fed. R. Crim. P. 32 advisory committee's notes to the 1974 and 1983 amendments.

1. Clarify that a ruling must disclose the material factual and legal basis with sufficient specificity for review and implementation.

2. Preserve incorporation, but require the adopted material itself to resolve the disputed predicate rather than merely state a conclusion.

3. Clarify that when a ruling depends on a particular person, act, amount, communication, knowledge, intent, causation, credibility, or effect, the court must identify that predicate by name or a sufficiently definite description.

4. Require the appended determination sent with the presentence report to distinguish adopted findings from allegations the court rejected or declined to consider.

5. Preserve current burdens of proof, evidentiary standards, confidentiality protections, harmless-error doctrine, and judicial discretion over the form of the findings.

I. CURRENT RULE 32 REQUIRES RESOLUTION BUT DOES NOT DEFINE AN ADEQUATE RULING

Rule 32 creates an orderly adversarial process. The report must be disclosed in advance; the parties must state written objections; the probation officer may investigate further and prepare an addendum; the parties may comment and introduce information; and the court must resolve disputes that matter to the sentence. The current rule provides:

> **(A)** The court may accept any undisputed portion of the presentence report as a finding of fact.
> **(B)** For any disputed portion of the presentence report or other controverted matter, the court must rule on the dispute or determine that a ruling is unnecessary because the matter will not affect sentencing or will not be considered.
> **(C)** The court must append its determinations to any copy of the presentence report made available to the Bureau of Prisons.

The structure is sound. The uncertainty is concentrated in the phrase "rule on the dispute." A court may clearly resolve a dispute through express oral findings, a written order, or adoption of detailed findings in a presentence report. But the same phrase is sometimes treated as satisfied by a one-line denial of the objection or by adopting a document that never answers the objection at the level of the controlling predicate.

The difference is not semantic. If the objection is that no identified employee knowingly participated in an offense, a finding that the defendant supervised many employees does not necessarily resolve the disputed knowledge predicate. If the objection is that no identified witness received a threat, a conclusion that the defendant had a reputation for litigiousness does not necessarily resolve who was influenced, by what act, with what intent, and with what connection to the proceeding. If the objection concerns loss, the statement that the total is reasonable does not identify the transactions or methodology accepted.

The Sentencing Commission recognizes that reliable resolution is central to sentencing. Section 6A1.3 provides that when an important factor is reasonably in dispute, the parties must have an adequate opportunity to present information, and the court may rely only on information bearing sufficient indicia of reliability to support probable accuracy. It then directs resolution under Rule

32(i). The rule should make clear that resolution means adjudication of the material predicate, not merely announcement of the bottom-line adjustment.[2]

II. PARTICULARIZED FINDINGS SERVE THREE DISTINCT INSTITUTIONAL FUNCTIONS

A. They protect sentencing accuracy and the adversarial process

A defendant has no right to trial rules of evidence at sentencing, but sentencing cannot rest on materially false assumptions or unreliable information. The Supreme Court has long treated reliance on materially untrue information as a due process concern. It has also identified selection of a sentence based on clearly erroneous facts and failure to explain the chosen sentence as procedural errors.[3]

Particularized findings discipline the decision before the sentence is imposed. They force the court and parties to focus on the actual disputed proposition. They reveal whether the government proved the fact on which the adjustment depends, whether the court relied on a different fact, or whether the matter was unnecessary. That discipline is especially important when a presentence report combines facts, conclusions, and alternative theories in a single paragraph.

The Supreme Court has already required this kind of clarity in a recurring sentencing context. In United States v. Dunnigan, the Court held that when a defendant specifically objects to a perjury-based obstruction adjustment, the sentencing court must review the evidence and make independent findings necessary to establish perjury. The Court preferred separate findings on each element but did not demand a ritualistic recitation; a concise finding is sufficient if it encompasses the essential predicates. That calibrated approach supplies the correct model for Rule 32 generally.[4]

B. They permit genuine appellate review rather than appellate reconstruction

Clear-error review assumes a finding exists. The court of appeals asks whether the district court selected among permissible views of the evidence. It cannot perform that function reliably when the sentencing basis is unclear. The appellate court may then be tempted to search the record for a factual theory that could sustain the sentence, infer that the district court must have accepted it, and defer to a finding supplied for the first time on appeal.

The circuits agree in general that a district court may adopt sufficiently detailed presentence findings, but their cases reveal recurring disagreement over when adoption is enough. Some decisions permit adoption in toto when the context makes clear that the court intended to resolve each identified dispute. Others hold that a summary adoption cannot satisfy Rule 32 after a specific objection unless the report itself contains facts resolving the contested predicate. Repeated remands arise when the court announces a conclusion but leaves the appellate panel to guess at the underlying finding.[5]

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2 U.S. Sent'g Guidelines Manual § 6A1.3(a) & cmt. (U.S. Sent'g Comm'n 2025).

3 Townsend v. Burke, 334 U.S. 736, 740–41 (1948); United States v. Tucker, 404 U.S. 443, 447–49 (1972); Gall v. United States, 552 U.S. 38, 51 (2007); Rita v. United States, 551 U.S. 338, 356–57 (2007).

4 United States v. Dunnigan, 507 U.S. 87, 95–96 (1993).

5 See United States v. Carreon, 11 F.3d 1225, 1231 (5th Cir. 1994); United States v. Walker, 29 F.3d 908, 911 (4th Cir. 1994); United States v. Sykes, 357 F.3d 672, 674 (7th Cir. 2004); United States v. White, 492 F.3d 380, 414–16 (6th Cir. 2007); United States v. Saeteurn, 504 F.3d 1175, 1178–80 (9th Cir. 2007); United States v. West, 550 F.3d 952, 974–75 (10th Cir. 2008);

A national clarification would not dictate the result of those cases. It would supply a common question: Does the sentencing record disclose, with reasonable specificity, the factual and legal basis that resolved the objection?

C. They protect accurate downstream use of the presentence report

The presentence report does not disappear after judgment. Rule 32(i)(3)(C) requires the court's determinations to accompany the copy made available to the Bureau of Prisons. That requirement reflects the reality that the report may affect classification, designation, programming, security decisions, release planning, and other administrative judgments.

An appended order helps only if it distinguishes what the court found from what it rejected or declined to consider. When the court merely says "objection overruled" or adopts an ambiguous report, downstream officials may treat every allegation as adjudicated. Conversely, when the court states that a matter did not affect sentencing and was not considered, the attachment should identify that matter clearly enough that it is not mistaken for an adopted fact.

III. PROPOSED RULE TEXT

I recommend revising Rule 32(i)(3) as follows. Existing subdivision (A) would remain unchanged; additions are stated in full for clarity.

(3) Court Determinations. At sentencing, the court:

- **(A)** may accept any undisputed portion of the presentence report as a finding of fact;
- **(B)** must - for any disputed portion of the presentence report or other controverted matter - either:
  - **(i)** rule on the dispute by stating findings and conclusions with sufficient specificity to disclose the material factual and legal basis for the ruling and to permit meaningful review and implementation of the sentence; or
  - **(ii)** determine that a ruling is unnecessary because the matter will not affect sentencing or because the court will not consider the matter in sentencing;
- **(C)** may satisfy (B)(i) by adopting identified findings or reasoning in the presentence report, an addendum, or a party's submission only if the adopted material itself resolves the dispute with the specificity required by (B)(i); and
- **(D)** must append a copy of the court's determinations under this paragraph, including any identified adopted material or relevant transcript excerpt, to any copy of the presentence report made available to the Bureau of Prisons. A determination under (B)(ii) must identify the matter not considered and state that it was not adopted as a finding.

IV. PROPOSED COMMITTEE NOTE

Subdivision (i)(3) is amended to clarify the degree of specificity required when the court resolves a disputed sentencing matter and the circumstances in which incorporation of another document satisfies the rule.

The amendment does not require formal findings on every sentencing fact, a written opinion, or a mechanical recitation of each item of evidence. The required specificity depends on the nature of the objection and the predicate governing the sentencing issue. A brief oral ruling may suffice. Consistent with United States v. Dunnigan, the finding need not follow a ritualistic formula if the record clearly encompasses the facts necessary to resolve the dispute.

United States v. Graham, 83 F.3d 1466, 1477–78 (D.C. Cir. 1996).

The rule is triggered by a genuine dispute. An objection should identify the alleged factual inaccuracy, omitted predicate, or contested inference with reasonable specificity. A bare denial or general disagreement does not require the court to catalog evidence or make unnecessary subsidiary findings.

When the ruling depends on a particular person, act, transaction, amount, communication, event, knowledge, intent, causation, credibility determination, or effect, the ruling should identify that predicate with enough specificity to show how the dispute was resolved. The rule does not invariably require use of a person's name. A sufficiently definite description may be used when identity is unknown, protected, or immaterial. Rule 32(d)(3), in camera procedures, sealing, redaction, and other protections remain available.

Subdivision (C) preserves the efficient practice of adopting a presentence report, addendum, or party submission. Adoption is sufficient only when the identified material itself contains findings or reasoning that resolve the specific objection. A general adoption does not convert a legal conclusion, alternative possibility, or unsupported allegation into a finding of fact. The court may supplement an adopted document with a concise oral explanation.

Subdivision (D) preserves and clarifies the existing attachment requirement. The court may append a written order, a transcript excerpt, an annotated statement of reasons, or another reliable memorialization. When the court declines to consider a matter, the attachment should make clear that the allegation was not adopted as a sentencing finding. The amendment does not require alteration or deletion of the historical presentence report.

The amendment does not change the governing burden of proof, the admissibility of sentencing information, the standard of appellate review, preservation requirements, or harmless-error doctrine. It addresses only the clarity of the district court's determination.

V. A DISCLOSED CASE ILLUSTRATION

My own sentencing illustrates the problem without requiring the Committee to resolve any disputed merits question. After a federal tax trial, the presentence report recommended a four-level organizer-or-leader adjustment. I objected that section 3B1.1 required at least one other criminally responsible participant whom I led, while the report identified employees and ordinary business functions but did not identify an employee who knowingly joined a tax offense.

The addendum stated generally that unidentified employees were criminally responsible. The government argued in writing that I either supplied all false information myself or others assisted me. At the hearing, the prosecutor stated that unnamed relatives "probably could have been charged." The district court adopted the report and addendum, overruled the objection, and remarked that if I was not an organizer or leader, the court had never seen one. The Fifth Circuit later upheld the adjustment after concluding that it was "plausible" at least one employee was criminally culpable.[6]

The reviewing court and I disagreed about whether the district court's adoption amounted to an implicit participant finding. This suggestion does not ask the Rules Committee to decide that

6 United States v. Castro, No. 24-11000, consolidated with No. 26-10428, slip op. at 15–17 (5th Cir. Aug. 11, 2026) (per curiam) (unpublished); Record on Appeal at 2669–77, 2827, 2881–82, 2896, United States v. Castro, No. 24-11000 (5th Cir.).

disagreement. It asks what the sentencing record should disclose in future cases. A finding that a defendant led a business may coexist with a disputed question whether another person knowingly participated in the crime. If the court resolves that question in the government's favor, a concise statement identifying the person or definite category, the knowing conduct, and the defendant's authority would make the basis reviewable. If the report already contains those facts, identifying and adopting the paragraph would suffice.

The obstruction adjustment in the same case presents a second illustration. The presentence report characterized lawsuits and communications as threatening investigators, while the appellate opinion also relied on generalized testimony that multiple witnesses were hesitant to testify. No allegedly hesitant witness testified. Again, the prospective question is not whether the adjustment was correct. It is whether a ruling based on witness influence should identify the witness or sufficiently defined category, the act or communication, the required intent or unlawfulness, and the connection to the proceeding rather than rely only on a global characterization.[7]

These examples show why the proposed amendment is not a naming formality. The issue is whether the record discloses the adjudicated predicate rather than leaving later readers to infer it from the overall atmosphere of the case.

VI. APPLICATIONS BEYOND THE ILLUSTRATION

A. Aggravating and mitigating roles

When criminal responsibility of another participant is disputed, the ruling should identify the person or sufficiently definite description, the conduct and mens rea supporting participant status, and the relationship establishing organization, leadership, management, or supervision. The court need not make findings about every worker or outsider.

B. Obstruction and perjury

For perjury, Dunnigan already supplies the model: the finding must encompass falsity, materiality, and willfulness. For witness influence, the court should identify the act, the affected witness or sufficiently defined category, the obstructive intent, and the nexus required by the applicable provision. A finding may be concise, but it should disclose why lawful persuasion, ordinary litigation, or reputation became punishable obstruction.

C. Loss, restitution, and forfeiture

When an amount is disputed, the court should identify the accepted methodology and material categories or transactions. It need not recite every spreadsheet entry. The finding should be specific enough to show whether the court accepted the probation officer's calculation, a party's alternative, or an independent estimate and why the amount is supported.

7 United States v. Castro, No. 24-11000, consolidated with No. 26-10428, slip op. at 18–20 (5th Cir. Aug. 11, 2026) (per curiam) (unpublished); Record on Appeal at 2009–10, 2823–28, 2857–59, 2880–82, United States v. Castro, No. 24-11000 (5th Cir.).

D. Enhancements based on knowledge, intent, causation, or effect

Many adjustments turn on a mental state or causal proposition not apparent from the act alone. A conclusion that an enhancement applies may hide whether the court found actual knowledge, deliberate avoidance, foreseeability, purpose, or some other standard. The proposal requires the ruling to identify the standard applied and the material facts satisfying it, without demanding exhaustive findings on every inference.

VII. RESPONSES TO LIKELY OBJECTIONS

A. The amendment would not require a sentencing catechism

The proposed standard is functional: enough specificity for meaningful review and implementation. Most disputes can be resolved in a few sentences. If the report contains detailed and reliable findings, the court can identify and adopt them. Dunnigan demonstrates that required predicates and concise sentencing practice can coexist.

B. It would not reward vague objections

The Committee Note should require a genuine, reasonably specific objection. A defendant who says only "I disagree" has not identified a disputed predicate. A defendant who identifies a person, transaction, statement, amount, source, or missing mens rea has. The specificity obligations should be reciprocal: the objection frames the issue, and the ruling resolves it.

C. It would not invade sentencing discretion or change substantive law

The amendment does not tell judges which inference to draw, what sentence to impose, or which burden applies. It does not convert sentencing into a trial or restrict consideration of reliable information. It requires only that the court reveal the material basis after deciding the dispute.

D. Confidentiality can be preserved

Rule 32 already permits exclusion of sensitive information and in camera summaries. The same tools can protect cooperating witnesses, minors, medical information, sealed evidence, and institutional security. A definite description can replace a public name, and a sealed supplement can preserve the full basis for review.

E. The amendment should reduce, not increase, appellate burden

A short finding at sentencing can prevent years of dispute over whether a finding was implicit, which paragraph was adopted, whether an appellate court supplied a new predicate, or whether an unresolved allegation reached the Bureau of Prisons. Remands caused by ambiguity consume far more judicial resources than a focused ruling made while the record and parties are before the court.

F. Ordinary preservation and harmless-error rules remain available

The proposal does not create automatic reversal. A party must preserve the relevant objection, and a court of appeals may apply ordinary harmless-error or plain-error principles. The amendment improves the record on which those doctrines operate.

VIII. RULES ENABLING ACT AUTHORITY AND REQUESTED STUDY

The proposal regulates sentencing procedure, judicial findings, the record for review, and transmission of determinations with the presentence report. It does not alter the elements of an offense, the substance of a Guidelines adjustment, the permissible sentencing range, or any burden imposed by statute or constitutional law. It therefore fits comfortably within the Rules Enabling Act.[8]

If the Committee concludes that immediate publication is premature, I respectfully request focused study of:

- how often appellate courts remand because a district court failed to resolve a Rule 32 dispute with sufficient clarity;
- how often courts treat general adoption of a presentence report as sufficient after a specific objection, and what the adopted report actually contains;
- whether sentencing judges, probation officers, prosecutors, defenders, appellate judges, and Bureau of Prisons personnel would benefit from model finding language;
- whether the Statement of Reasons or a standardized Rule 32 findings form could provide an efficient alternative to rule text; and
- how appended determinations are transmitted to and used by the Bureau of Prisons.

The Federal Judicial Center could review a sample of published remands and conduct interviews or surveys. The Committee could also develop model oral findings for common disputed predicates without awaiting a formal amendment.

CONCLUSION

Rule 32 already requires the court to resolve sentencing disputes. The proposed amendment would make that protection operational by clarifying what a ruling must disclose and when incorporation is adequate. It would preserve concise sentencing practice, judicial discretion, confidentiality, and current standards while reducing appellate reconstruction and downstream ambiguity.

I respectfully request that the Advisory Committee place this suggestion on its agenda, consider publication of the proposed amendment and Committee Note, or commission focused study and model practices concerning particularized sentencing findings.

Respectfully submitted,

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8 28 U.S.C. §§ 2072–2074.