



February 10, 2026

Dear Judge Reeves and Members of the United States Sentencing Commission:

Thank you for seeking public comment on proposed amendments for the U.S. Sentencing Commission's ("Commission") amendment cycle. On behalf of Right On Crime—a national criminal justice campaign of the Texas Public Policy Foundation focused on conservative, data-driven solutions resulting in less crime, fewer victims, and safer communities—I am pleased to submit the following comments and recommendations.

In the proposed amendments published on December 12, 2025, the Commission invited comment on nine proposed amendments.¹ Right On Crime appreciates this Commission's consistent and comprehensive comment process in seeking feedback from a diverse array of stakeholders. To that end, Right On Crime respectfully submits to the Commission the below select comments and further recommendations to the proposed amendments.

(1) Drug Trafficking offenses under §2D1.1

Methamphetamine purity distinctions:

Methamphetamine is the most common drug in the federal criminal justice system.² But, unlike the vast majority of the illicit drugs triggering federal criminal penalties, methamphetamine offenders are subjected to different sentences based on the purity of the drug involved in the offense. The current statutory penalties effectively create a 10-to-1 ratio, where it takes ten times less pure methamphetamine to trigger the same penalty as it would for a more pure, detectable amount of methamphetamine.³ The Guidelines similarly use drug purity as a proxy for a defendant's culpability.⁴ This disparity has resulted in overly punitive and lengthy sentences for offenders culpable of the same conduct.

The impetus of the purity distinction for methamphetamine offenders was rooted in addressing the domestic production crisis earlier this century.⁵ However, most methamphetamine now distributed and used in the United States originated in Mexico and is smuggled across the southwest border.⁶ And more so, the purity of this Mexican-made methamphetamine rarely tests less than 90% pure.⁷ Commission data further show that the average purity of methamphetamine does not vary based on the role or function of the drug trafficker. For instance, high-level

¹ U.S. Sentencing Comm'n, Proposed Amendments to the Sentencing Guidelines (Dec. 12, 2025), available at:

https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/202512_rf-proposed.pdf

² U.S. Sentencing Comm'n, *Methamphetamine Trafficking Offenses in the Federal Criminal Justice System* (June 13, 2024).

³ *Id.*

⁴ U.S.S.G. § 2D1.1 comment 27(C).

⁵ *Supra* n. 2.

⁶ U.S. Drug Enforcement Administration, *National Drug Threat Assessment 2025*, p. 25 (May 2025).

⁷ *Supra* n. 2.



suppliers distributed drugs that were on average 95.2% pure, and lower-down players in the drug trafficking organization had drugs that were 93.3% pure.⁸ So the alleged purpose behind the purity disparity is now moot.

Purity is no longer an accurate measure of offense culpability. Methamphetamine – across the board – is highly and uniformly pure, and “ice” cases do not involve a higher level of purity than other forms of methamphetamine. To that end, Right On Crime applauds the Commission’s proposed amendment that would delete all references to “ice” in §2D1.1.

Right On Crime urges the Commission to eliminate this arbitrary and meaningless purity distinction and instead apply the “mixture” Guidelines for all methamphetamine cases. This will result in more predictable and consistent sentencing ranges for offenders while still ensuring that culpable actors are held accountable for their illegal methamphetamine-related acts.

Likewise, there should be more focus on conduct-based factors, which will result in sentences reflecting culpability, not just quantity of the drug possessed as a proxy.

Therefore, Right On Crime recommends that the Commission adopt Option 2 of Part A in the Commission’s proposed amendments. Option 2 of Part A would maintain different base offense levels for methamphetamine offenses but establish those levels through an assessment of both the quantity of the drug involved in the offense and conduct-based factors. This option would set the baseline quantity thresholds for methamphetamine at a level between the current quantity thresholds for all methamphetamine drugs at the same level as those for trafficking offenses sentenced for cocaine base. Additionally, if certain conduct-based factors applied, the initial base offense level established by the quantity of the drug in the case could be reduced or heightened. Option 2 outlines factors that the court would have to find before reducing or heightening the base offense levels based on quantity. All said, Option 2 would be the best avenue for courts to hand down sentences that best reflect the evolving and conduct driven nature of drug trafficking.

Fentanyl and Fentanyl Analogues:

Last year, Congress advanced the *Halt All Lethal Trafficking of Fentanyl Act (HALT Fentanyl Act)*, which amends the *Controlled Substances Act* to permanently classify illicit fentanyl analogues – also known as fentanyl-related substances (FRS) – in Schedule I.⁹ President Trump signed this bill into law on July 16, 2025. Placing all FRS in Schedule I will certainly impact federal criminal sentencing and the Guidelines.

For instance, all individuals who manufacture, import, or possess with the intent to distribute FRS will face mandatory minimum sentences aligned with other Schedule I drugs. Right On Crime agrees with the Commission’s proposals that adjust FRS penalty ranges in the Guidelines

⁸ *Supra* n. 2.

⁹ S. 331, 119th Cong. Available at <https://www.congress.gov/bill/119th-congress/senate-bill/331/text?s=1&r=1&q=%7B%22search%22%3A%22halt+fentanyl%22%7D>.



in accordance with congressional intent. However, to assist in balancing an inadvertent overinclusion of criminal behavior,¹⁰ the Commission could include commentary language allowing judges to consider the following relevant factors when deciding where in the statutory range a defendant's sentence should be: scientific developments, research, or studies that call into question or undermine the lethality of the instant FRS that could warrant the statutory mandatory minimum overly punitive; the role of the defendant in the manufacture, distribution, or importation of the FRS; and the mens rea of the defendant.¹¹

The Commission proposes an amendment that would somewhat accomplish this, by adding four new specific-offense characteristics (SOCs). All these SOCs would increase prison time for traffickers. They cover offenders who: (1) distribute fentanyl to individuals under age 18 or 21; (2) use the dark web or darknets to facilitate or conceal their crimes; (3) distribute fentanyl mixed with xylazine or medetomidine; or (4) use or possess tableting or encapsulating machines.

To be sure, the plague of fentanyl and FRS is serious and deadly. In fact, since FY 2020, fentanyl cases have skyrocketed, increasing by 255.7% to where this drug is involved in almost 1/4 of drug trafficking cases.¹² Despite this drug's known lethality and prevalence, it may nonetheless be prudent for the Commission to delay further Guidelines amendments pertaining to fentanyl and FRS crimes until the Commission can see the impact of recent amendments made in 2025.

Last year, the Commission amended the mens rea requirement in §2D1.1(b)(13)(B) from "willful blindness or conscious avoidance of knowledge" to "reckless disregard" with regards to representing or marketing fentanyl or a fentanyl analogue as a legitimately manufactured drug.¹³ This amendment very well may have the intended impact of increasing the number of successful prosecutions of deadly fentanyl dealers; however, it could also inadvertently ensnare too many individuals lower down in the drug trafficking organization. Understanding the impact that this discrete change may have on fentanyl and FRS cases could be helpful before instituting further punitive measures.

Similarly, the Commission also passed an amendment to more "adequately account for the lower culpability of individuals performing low-level functions in a drug trafficking offense."¹⁴ A review of this amendment's impact on sentence length, for example, would be helpful and interesting information. This would be true under any circumstances. But now in particular, when the Commission is considering the flip side of the coin and proposing factors that would

¹⁰ See, e.g., U.S. Gov't Accountability Off., *Synthetic Opioids: Considerations for the Class-Wide Scheduling of Fentanyl-Related Substances*, Apr. 2021, p. 60 – 64.

¹¹ Such factors could arguably be encompassed already in 18 U.S.C. §3553(a), but its inclusion specifically in reference to FRS could be beneficial for practitioners and judges alike. And to be sure, the Commission considers some of these factors in its recent mitigating factor amendment. However, these suggestions could help bolster the current Guideline framework.

¹² *Supra* n. 1 at p. 38.

¹³ U.S. Sentencing Comm'n, *Amendments to the Sentencing Guidelines* (April 30, 2025), p. 11, available at https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/202505_RF.pdf.

¹⁴ *Id.* at p 9.



potentially increase sentences, it may be more sensible to allow the courts and parties to resolve ongoing cases under this existing Guideline framework to understand its isolated impact. After more time, the Commission could then assess the effect that this amendment and the *mens rea* amendment had on sentence lengths, plea deals, charging instruments, demographics, and other important information pertinent to the formulation of the Guidelines.

(2) Post-Offense Rehabilitation Adjustment

The Commission has proposed a new Chapter Three adjustment that would reward positive efforts toward behavioral changes made after the offense was committed but before sentencing. The effect of this amendment is to incentivize offenders to succeed in post-offense treatment, pay restitution, and gain training or employment experience.

At the outset, Right On Crime applauds the Commission for addressing the importance and utility of rehabilitation in the Guidelines themselves. Congress instructs sentencing judges in 18 U.S.C. §3553(a) to consider retribution, deterrence, public safety, *and* rehabilitation. However, the Guidelines have very little to say about rehabilitation.¹⁵

The federal sentencing framework currently lacks a robust mechanism for judicial review of an offender’s progress following the imposition of a sentence. The federal system provides no meaningful “second look” provision. However, as the Commission’s proposed amendment suggests, the pre-sentence period offers a critical window where judicial discretion can be leveraged to reward individual initiative and lower the risk of recidivism.

In most federal cases, a significant duration—often exceeding a year—elapses between the commission of an offense and the sentencing hearing. This interval is a vital period for assessing a defendant’s commitment to law-abiding behavior. From a conservative perspective, rewarding proactive rehabilitation is not an act of leniency; it is a strategy to ensure that those who demonstrate a “sustained commitment to positive behavioral change”¹⁶ are incentivized to remain on a path toward eventual productive reentry.

The proposed creation of §3E1.2 would formalize judicial consideration of an offender’s rehabilitative efforts. By providing a structured downward adjustment for defendants who demonstrate verifiable positive behavior, the amendment serves several core objectives:

- **Judicial Efficiency:** It provides clear guidance and structure for judges to exercise their discretion, ensuring more consistent application of the law.

¹⁵ The Guidelines currently give a modest reduction in sentence length for an offender’s timely acceptance of responsibility in §3E1.1.

¹⁶ *Supra* n. 1 at p. 81, 83.



- Evidence-Based Reform: It establishes a new sentencing variable that allows the Commission to track which pre-sentence interventions most effectively reduce recidivism.
- Fiscal Stewardship: By identifying and incentivizing low-risk behavior early in the process, the system can more accurately calibrate the use of resources.

The Commission provides several factors and considerations that a court may review in determining whether a defendant should be considered for a proposed reduction. The Commission issued a request for comment asking if these considerations “appropriately address[]”¹⁷ the concern that rehabilitative efforts of defendants have not been sufficiently incentivized. Overall, sound criminal justice policies have promoted opportunities for defendants to *earn* benefits. The carrot, therefore, is an effective motivating factor. This can be seen in the form of earned time credits awarded through First Step Act compliant programming, and substantial assistance sentence reductions. Other bipartisan proposals follow similar structures, thereby underlining the utility of letting people seeking to rehabilitate themselves the chance to do so.¹⁸ With that being said, the proposed adjustment is a great start to appropriately address the rehabilitative absences by outlining non-exhaustive ideas for courts to consider that frequently arise.

Right On Crime greatly appreciate the Commission’s thoughtful and thorough review of these recommendations and looks forward to continuing to work with the Commission to improve our criminal justice system.

Sincerely,

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Right On Crime

¹⁷ *Supra* n. 1 at p. 83.

¹⁸ *See, e.g., the Safer Supervision Act*, which contains a provision allowing offenders on federal supervised release to earn time off the length of their supervised release term after proven compliance, and prosecutor-initiated resentencing laws (as implemented so far California, Washington, Oregon, Illinois, and Minnesota) that give prosecutors the power to consider whether further confinement of an offender still services the interest of justice by reviewing factors including rehabilitation.