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May 21, 2026

Honorable Carlton W. Reeves
Chair
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Re: Proposed Priorities for the 2026-2027 Amendment Cycle

Dear Judge Reeves:

Over the last four amendment cycles, the Commission has published ambitious priorities and proposed amendments while calling for participation from every corner of our criminal legal system. Likewise, it has received extensive written public comments from diverse stakeholders, held lengthy roundtables and hearings, and formed new advisory groups to tackle some of the most pressing sentencing guideline issues of the moment.

While many of the Commission's reforms over the last few years have lived up to its statutory obligations to "provide certainty and fairness in meeting the purposes of sentencing," avoid unwarranted disparities, respond to "comments and data coming to its attention," and reflect "advancement in knowledge of human behavior as it relates to the criminal justice process,"¹ the last amendment cycle was disappointing. Although the Commission proposed wide-ranging amendments that presented real opportunities for meaningful improvements to the federal sentencing system, the final amendments affected very little change. The amendments failed to address, for instance, the methamphetamine or career-offender guidelines, although these are almost universally criticized. Nor did they address the concern that federal probation and other alternatives to prison are on the brink of

¹ 28 U.S.C. §§ 991(b)(1); 994(f); 994(o).

extinction, while the Bureau of Prisons faces overcapacity, understaffing, infrastructure failures, and other resource crises that put impacted people at significant risk day in and day out.²

As we look to the future, we know that the Commission takes seriously its statutory obligations and the feedback it has received—often from judges through the sentences they impose—about guidelines in need of reform. Our topline ask then is that the Commission continue its efforts to fix broken guidelines. In the methamphetamine context, that means equalizing offense levels no higher than the current meth-mixture levels (and better yet, at powder-cocaine levels).³ In the career-offender context, that means narrowing §4B1.2’s definitions as much as possible under the directive.⁴ We also request, as we have in the past, that the Commission add a Defender representative to the Commission to promote parity between Defenders and DOJ and support legislation to add a Defender *ex officio* member.⁵

Beyond these continuing concerns, about which we’ve written extensively over the last several years, this letter discusses several additional reforms the Commission should undertake in this amendment cycle, including:

- Eliminate §2K2.1’s “large capacity magazine” enhancement (pp. [3-6](#))

² See 28 U.S.C. § 994(g).

³ See [Defenders’ Comment on the USSC’s 2025-2026 Proposed Amendment on Drug Offenses](#) at 8-10 (Feb. 10, 2026).

⁴ [Defenders’ Supplemental Comment on the USSC’s 2025-2026 Proposed Amendments on Career Offender and Circuit Conflicts](#) at 25-26 (Mar. 18, 2026) (arguing that the “controlled substance offense definition” should be narrowed to the offense in the directive); *id.* at 28 (contending that the “simplest way to focus on the convictions the directive was designed to reach, while avoiding state-based anomalies” is “a high minimum-prior sentence threshold” for “crimes of violence”).

⁵ See [Defenders’ 2024 Annual Letter to the USSC](#) at 16 (May 15, 2024) (“For decades, Defenders have asked the Commission to support legislation adding a Federal Defender *ex officio* member to the Sentencing Commission and scholars have decried the structural imbalance caused by the absence of a Defender voice on the Commission.”).

- Add mens rea requirements throughout the guidelines (pp. [6-8](#))
- Reform the criminal history rules (pp. [8-11](#))
- Revisit guidelines that overemphasize quantity-based measures of culpability (pp. [11-12](#))
- Ensure acceptance of responsibility is appropriately awarded (pp. [13-14](#))
- Engage in new data and research projects (pp. [14-15](#))

I. Eliminate §2K2.1’s “large capacity magazine” enhancement

The Commission should remove the overbroad and outdated “large capacity magazine” (LCM) enhancement from §§2K2.1(a)(1), (a)(3), and (a)(4). Last month, the Supreme Court granted certiorari in *Beaird v. United States*, which addresses a circuit split over how guidelines commentary should be considered in the context of commentary regarding LCMs.⁶

In light of *Beaird*, Defenders anticipate that the Commission will take action related to the relevant commentary. We urge the Commission to use this opportunity to delete the LCM enhancement from §2K2.1 entirely for three reasons: it is outdated, overbroad, and generates unwarranted disparities.

⁶ See *Beaird v. United States*, [Pet. for Cert.](#) at 16, No. 25-5343 (U.S. filed Aug. 11, 2025) (citing *Kisor v. Wilkie*, 588 U.S. 558, 574-75 (2019)). The commentary of §2K2.1 defines LCM as a “magazine or similar device that could accept more than 15 rounds of ammunition” attached or “in close proximity to the firearm.” USSG §2K2.1, cmt. n. 2. Because the text of §2K2.1 does not define LCM—but the commentary does—Beaird argues that, under controlling law, the sentencing court improperly used the commentary definition to increase his base offense level. Without the commentary definition, Beaird contends that the 17-round magazine, a “perfectly ordinary sized magazine in the contemporary consumer market” should not qualify as an LCM. See *Beaird*, [Pet. for Cert.](#) at 19 (“But in the absence of *Stinson* -- that is, in a framework that required the courts to exhaust tools of statutory construction before deferring to the Commentary -- a 17-bullet magazine would not likely qualify for enhancement as a ‘large capacity magazine.’”). Without the LCM enhancement, Beaird’s base offense level would be reduced six levels—from a 20 to a 14. Compare §§ 2K2.1(a)(4) with 2K2.1(a)(6).

First, the LCM enhancement is outdated and lacks an empirical basis. The Commission adopted its original LCM enhancement in the wake of the 1994 federal “assault weapons” ban, which was repealed via a sunset provision more than 20 years ago.⁷ This enhancement, however, was neither the result of an explicit Congressional directive nor the Commission’s empirical function.⁸ Instead, with no explanation, the Commission increased the offense level for possession of certain semiautomatic firearms capable of accepting large capacity magazines.⁹ Although the federal ban expired over two decades ago,¹⁰ and even though, after the expiration, Defenders and DOJ both urged the Commission to remove the LCM enhancement from §2K2.1¹¹—this enhancement remains.

Second, the LCM enhancement is wildly overbroad and completely out of touch with the reality of the contemporary firearms market. As DOJ

⁷ See USSG, App. C., [Amend. 522](#) (Nov. 1, 1995); [Pub. L. No. 103-322](#), 108 Stat. 1796 at § 110501 (Sept. 13, 1994) (Violent Crime Control and Law Enforcement Act of 1994). This ban applied to both assault weapons and large capacity magazines. [Pub. L. No. 103-322](#), 108 Stat. 1796 at §§ 110102; 110503.

⁸ [Statement of Michael Carter on behalf of Defenders to the USSC on Firearms Offenses](#) at 21-22 (Mar. 7, 2023) (discussing how the 1994 law’s only directive to the Commission was to provide enhanced punishment for a crime of violence or drug trafficking crime if a semiautomatic firearm was involved and, “[a]side from this directive . . . Congress required no action relating to this new offense.”); see also [Pub. L. No. 103-322](#), 108 Stat. 1796 at § 110501.

⁹ See USSG, App. C., [Amend. 522](#) (Nov. 1, 1995); see also [2023 Carter Statement](#) at 22 (“The Commission offered no explanation for this amendment or its decision to enhance penalties beyond the narrower dictates of the directive.”).

¹⁰ See [Pub. L. No. 103-322](#), 108 Stat. 1796 at § 110105(2) (Sept. 13, 1994) (stating that the amendments made by this subtitle are repealed effective ten years after the date of their enactment, that is, in 2004).

¹¹ [Testimony of Richard A. Hertling on behalf of the DOJ to the USSC on Firearms](#) at 11 (Mar. 15, 2006) (“The Department favors th[e] upward-departure approach over the offense-level approach in light of the fact that possession of such firearms is no longer illegal *per se*.”); [Defenders’ Comment on the USSC’s 2005-2006 Proposed Amendment on the Firearms Guideline, §2K2.1](#) at 3 (Mar. 9, 2006) ([T]he Commission should delete the references to the repealed legislation, and take no action unless and until a particular action is demonstrated to be necessary . . .”).

recently argued in challenging Colorado’s restriction on magazine size,¹² today, “magazines capable of holding more than 15 rounds are, in fact, standard capacity magazines for many popular firearms.”¹³ Indeed, the most popular modern firearms are semiautomatic weapons capable of accepting over 15 rounds.¹⁴

Third, it generates unwarranted disparities. Beyond exacerbating the well-documented racial disparities baked into the firearms guideline,¹⁵ the LCM enhancement is likely to lead to unwarranted geographic disparities as only a minority of states have magazine size restrictions today.¹⁶

Since the LCM enhancement is outdated, overbroad, generates disparities, and targets possession of magazines that DOJ has elsewhere

¹² See [United States v. Colorado](#), No. 1:26-CV-1950, ECF No. 1 at 2 (May 6, 2026) (Complaint for Declaratory and Injunctive Relief) (alleging that Colorado’s ban against magazines that can accept more than 15 rounds violates the Second Amendment); [Colo. Rev. Stat. § 18-12-302](#); [Colo. Rev. Stat. § 18-12-301\(2\)](#).

¹³ *Id.* (explaining that the “Magazine Ban’s characterization of these magazines as ‘large capacity’ is a misnomer”); see also Jack Healy, [Justice Department Sues Colorado Over Gun Law](#), N.Y. Times (May 6, 2026).

¹⁴ [Defenders’ Comment on the USSC’s 2024-2025 Proposed Amendment on Firearms: Machinegun Conversion Devices](#) at A-10 n.42 (Feb. 3, 2025) (“For example, the popular Glock 17 comes with a magazine that holds 17 rounds.”); see also *id.* at A-10 n. 40 (discussing how “70% of firearms manufactured in the United States in 2023 were pistols or rifles” and “[m]ost modern pistols are manufactured with magazines holding ten to seventeen rounds, and many popular rifles are manufactured with magazines holding twenty or thirty rounds” (internal citation omitted)).

¹⁵ [2023 Carter Statement](#) at 6-7 (discussing how the felon in possession statute disproportionately impacts and harms Black people because they are arrested, prosecuted, and convicted at higher rates for felony offenses compared to white people, and federal firearms initiatives have exacerbated the disparate enforcement of criminal laws).

¹⁶ See USCCA, [Gun Magazine Capacity Laws by State: Complete Guide](#) (Mar. 27, 2026) (last visited May 11, 2026) (noting only 15 out of 50 states (including Puerto Rico) have magazine size restrictions; see also [2025 Defender Comment on Firearms: Machinegun Conversion Devices](#) at A-11 n. 47 (discussing how, in states without magazine size restrictions, an individual often would have to actively seek out smaller magazines that may not be as common)).

noted are “in fact, standard capacity” given today’s market and manufacturing realities,¹⁷ the Commission should delete this concept from §§2K2.1(a)(1), (a)(3), and (a)(4) entirely, reducing, at least to some extent, the firearm guideline’s confusingly numerous base offense levels.¹⁸

II. Add mens rea requirements throughout the guidelines

Defenders again encourage the Commission to include mens rea requirements for guideline enhancements that currently lack a scienter element.¹⁹ Enhancements with no mens rea effectively create a strict liability standard that is “held by many to be incompatible with the basic requirements of . . . any civilized jurisprudence”²⁰ Moreover, strict liability enhancements do not promote just punishment because they fail to meaningfully distinguish culpability between actors,²¹ and they do not promote deterrence because “a person cannot be deterred from doing what he or she does not know is being done.”²²

¹⁷ See [United States v. Colorado](#), No. 1:26-CV-1950, ECF No. 1 at 2.

¹⁸ See [2025 Defender Comment on Firearms: Machinegun Conversion Devices](#) at A-4 (discussing how §2K2.1 “has grown into a guideline haunted by factor creep, unstudied increases, and racial disparity” (footnotes omitted)).

¹⁹ See e.g., [Defenders’ 2025 Annual Letter to the USSC](#) at 3 n. 3 (May 16, 2025) (collecting Defender comments). While some enhancements in the guidelines contain mens rea requirements, see [Defenders’ 2022 Annual Letter to the USSC](#) at 9–10 & n. 50 (Sept. 14, 2022) (providing specific examples), many others do not. See *id.* at 10–12 (providing examples from §§2D1.1, 2K2.1, and 3B1.4).

²⁰ Richard A. Wasserstrom, [Strict Liability in the Criminal Law](#), 12 Stan. L. Rev. 731, 731 (1960); see also *Ruan v. United States*, 597 U.S. 450, 457–58 (2022) (explaining that “wrongdoing must be conscious to be criminal” and that reading a mens rea presumptions into statutes that are silent as to the required mental state is “necessary to separate wrongful conduct from otherwise innocent conduct” (internal quotations and citations omitted)).

²¹ *Ruan*, 597 U.S. at 458 (discussing how mens rea is necessary to separate wrongful conduct from otherwise innocent conduct).

²² *United States v. Handy*, 570 F. Supp. 2d 437, 480 (E.D.N.Y. 2008); see also 18 U.S.C. §§ 3553(a)(2)(A) & (B) (the court shall consider the need for the sentence imposed to reflect the seriousness, promote respect for the law, provide just punishment, and afford adequate deterrence).

The most straightforward solution is to establish a default mens rea requirement of knowledge or intent for any enhancement silent on (or expressly not requiring) intent.²³ In addition, the Commission will need to eliminate the “reasonable foreseeability” requirement for jointly undertaken criminal activity under the relevant conduct guideline, §1B1.3(a)(1)(B). This requirement “effectively imposes a negligence standard for a co-conspirator’s crime”²⁴ as justification to increase a person’s term of imprisonment—a practice that undermines just punishment and respect for the law.²⁵

At a minimum, the Commission should address some of the Manual’s more troubling strict liability enhancements, such as those found in the

²³ See [2025 Defender Annual Letter](#) at 3-4; [Defenders’ Comment on the USSC’s 2024-2025 Proposed Priorities](#) at 17 (July 15, 2024). A default mens rea requirement would also align the Guidelines with the Model Penal Code and reflect the original intent of the Guidelines to have a default mens rea requirement. See Model Penal Code § 2.02(1) (outlining the “Minimum Requirements of Culpability” where typically “a person is not guilty of an offense unless he acted purposely, knowingly, recklessly or negligently, as the law may require, with respect to each material element of the offense”); [2024 Defender Priority Letter](#) at 17 & n. 52 (explaining that §1B1.3 originally contained a limited mens rea default requirement).

²⁴ Mark Noferi, [Towards Attention: A “New” Due Process Limit on Pinkerton Conspiracy Liability](#), 33 Am. J. Crim. L. 91, 100 (2006); see also *Elonis v. United States*, 135 S. Ct. 2001, 2011 (2015) (holding that a reasonable person standard effectively reduces culpability to “negligence” and, while a familiar feature of civil liability in tort law, this standard “is inconsistent with the conventional requirement for criminal conduct—*awareness* of some wrongdoing” (internal quotation marks and citations omitted)).

²⁵ [Defenders’ 2018 Annual Letter to the USSC](#) at 8 (June 14, 2018) (“The purposes of sentencing are not furthered by holding a defendant responsible for the acts of another merely because he was negligent in not understanding what the other person might do and the consequences of the other person’s actions.”).

human smuggling guideline²⁶ and firearms guideline (where some §2K2.1 enhancements have mens rea requirements while others do not).²⁷

III. Reform the criminal history rules

We appreciate the Commission's recent efforts to reform certain Chapter Four criminal history rules, particularly during the 2022-2023 amendment cycle.²⁸ But there is much left to be done. As we discussed last

²⁶ See USSG §2L1.1(b)(6), (b)(7); see also [Defenders' Comment on the USSC's 2025-2026 Proposed Amendment on Human Trafficking](#) at 13-15 (Mar. 2, 2026) (citing *United States v. Gaspar-Felipe*, 4 F.4th 330, 335 (5th Cir. 2021) (upholding the application of the 10-level (b)(7)(D) enhancement after Border Patrol engaged in a high-speed car chase, fired their rifles into a vehicle, and killed a migrant even though the person the enhancement applied to was not part of the car chase and was acquitted of causing the migrant's death)).

²⁷ For firearms, the Commission should fix the inherent disparity in §2K2.1(b)(4) and apply a heightened mens rea requirement for all enhancements therein. See [Defenders' 2023 Annual Letter to the USSC](#) at 26 (May 24, 2023) (identifying why scienter is essential for §2K2.1(b)(4)). In its current form, §2K2.1(b)(4) imposes a strict liability requirement for the stolen firearm and modified serial number enhancements but not for the privately made firearm (PMF) enhancement. Compare USSG §§2K2.1(b)(4)(A) (stolen firearm) and (b)(4)(B)(i) (illegible serial number) with §2K2.1(b)(4)(B)(ii) (PMF); see also USSG, App. C., [Amend. 819](#) (Nov. 1, 2023) (adding a heightened mens rea requirement for new PMF enhancement in (b)(4) while leaving the other (b)(4) enhancements without scienter requirements but also stating incongruously that "there is no meaningful distinction" between the PMF enhancement and the modified serial number enhancement); see USSC, [2024-2025 Proposed Amendment on Firearms Offenses: Mens Rea Requirement](#) at 44-46 (Dec. 19, 2024) (proposing but not adopting expanded mens rea requirement for all enhancements in §2K2.1(b)(4)). And if the Commission keeps the LCM enhancement in §2K2.1(a), it should add a mens rea requirement for the enhanced base offense levels for offenses involving certain types of firearms. See [2022 Defender Annual Letter](#) at 10 (discussing how §2K2.1(a)'s enhanced base offense levels can apply "whether the person charged was aware of the firearm's characteristics or capability or not").

²⁸ USSG, App. C., [Amend. 821](#) (Nov. 1, 2023) (amending the "status points" rule, adding a downward adjustment for people with zero criminal history points, implementing § 994(j) through updated commentary, and adding downward departure language related to marijuana possession priors); USSG, App. C., [Amend. 825](#) (Nov. 1, 2023) (applying Amendment 821 retroactively).

year, the criminal history rules need an overhaul.²⁹ We encourage the Commission to continue reviewing and revising criminal history guidelines that are outdated, create racial disparities, and otherwise fail to advance the Commission's sentencing objectives.

This section does not retread familiar ground, although we urge Commissioners to reacquaint themselves with our 2024 annual letter outlining needed reforms to Chapter Four, which we continue to support.³⁰ Here, in light of recent executive actions, we encourage the Commission to add simple possession of marijuana to the list of excluded offenses in §4A1.2(c)(2).³¹

²⁹ [2025 Defender Annual Letter](#) at 6 n. 16 (discussing how Chapter Four is “full of outdated vestigial structures inherited from the Parole Commission”) (citing USSC, [A Comparison of the Federal Sentencing Guidelines Criminal History Category and the U.S. Parole Commission Salient Factor Score](#) at 3-4 (2005)).

³⁰ See [Defenders' 2024 Annual Letter to the USSC](#) at 12 n. 27 (May 15, 2024); see also [2025 Defender Annual Letter](#) at 5-7 (asking the Commission to amend §4A1.2(d), the criminal history rule for prior convictions involving youthful individuals).

³¹ See Devlin Barrett, [Trump Administration Loosens Restrictions on Medical Marijuana](#), N.Y. Times (Apr. 23, 2026). The Commission solicited comment on this issue during the 2022-2023 amendment cycle but declined to exclude sentences for possession of marijuana from the criminal history score calculation at that time. See USSC, [2022-2023 Proposed Amendment to Criminal History: Impact of Simple Possession of Marijuana Offenses](#) at 206-210 (Feb. 2, 2023) (proposing an amendment that provided a discretionary downward departure for receiving criminal history points for possession of marijuana and requesting comment (IFC #2) on whether the Commission should “exclude all sentences for possession of marijuana offenses from the criminal history score calculation”); see also [Defenders' Comment on the USSC's 2022-2023 Proposed Amendment on Criminal History: Impact of Simple Possession of Marijuana](#) at 1-7 (Mar. 14, 2023) (addressing the Commission's Issue for Comment). While the Commission did revise the commentary to §4A1.3 (Departures Based on Inadequacy of Criminal History Category) to include sentences resulting from possession of marijuana offenses as an example of when a downward departure may be warranted, see USSG, App. C., [Amend. 821](#) (Nov. 1, 2023), the Commission deleted all departure language from the Guideline Manual two years later, meaning this discretionary departure language is no longer there. See USSG, App. C., [Amend. 836](#) (simplifying the three-step sentencing process by removing departures to reduce tension between § 3553(a) and the Guidelines Manual).

On April 24, 2026, the DOJ and DEA announced the federal government was immediately rescheduling FDA-approved products containing marijuana and marijuana products regulated by state medical marijuana licenses from Schedule I to Schedule III of the Controlled Substance Act.³² The order also expedited the process to consider the broader rescheduling of marijuana from Schedule I to Schedule III.³³

The rescheduling of medical marijuana and potential rescheduling of recreational marijuana represent the federal government's official acknowledgement of marijuana's rapidly shifting status.³⁴ And so we again encourage the Commission to eliminate criminal history points for simple possession of marijuana convictions for three reasons that are even more important today.³⁵ **First**, excluding marijuana from the criminal history score would reduce unwarranted racial disparities, particularly since, in fiscal year 2021, "over 80% of persons 'whose criminal history category was impacted by a prior marijuana possession sentence' were either Black or Hispanic."³⁶ **Second**, the changing public perception of marijuana use supports the categorical exclusion of marijuana-possession offenses.³⁷ And **third**, adding marijuana possession to the excluded offenses in §4A1.2(c)(2) would promote certainty, uniformity, and fairness in sentencing by ensuring

³² [Attorney General Order No. 6754-2026](#), 91 Fed. Reg. 22714 (Apr. 28, 2026).

³³ *Id.*; see also Drug Enf't and Pol'y Ctr at The Ohio State Univ. Moritz Coll. of Law, [Federal Marijuana Rescheduling: Process and Impact](#) (last visited May 19, 2026) (discussing the impact of rescheduling on consumers and businesses).

³⁴ As the Congressional Research Service recently explained, "nearly all the states have changed their laws to permit the use of marijuana or other cannabis products for medical purposes," while 24 states and the District of Columbia have removed criminal prohibitions on recreational use. Cong. Rsch. Serv., [Department of Justice Eases Control of Medical Marijuana](#) (Apr. 30, 2026). Additionally, in October 2022, President Biden issued pardons for individuals with federal convictions for simple possession of marijuana. See Administration of Joseph R Biden, [Statement on Marijuana Reform](#) (October 6, 2022).

³⁵ See [2023 Defender Comment on the Impact of Simple Possession of Marijuana](#) at 1-7 (Mar. 14, 2023).

³⁶ See *id.* at 2 (quoting USSC, [Weighing the Impact of Simple Possession of Marijuana: Trends and Sentencing in the Federal System](#) at 3 (2023)).

³⁷ *Id.* at 3-4.

that “similarly situated individuals are treated similarly” regardless of their state or local practice concerning simple possession of marijuana.³⁸

IV. Revisit guidelines that overemphasize quantity-based measures of culpability

Both the drug guideline at §2D1.1 and the economic-offenses guideline at §2B1.1 suffer from the same fundamental flaw: an overreliance on quantity (either drug weight or loss amount) and an insufficient emphasis on offense seriousness and individual culpability.³⁹ Moreover, courts overwhelmingly reject sentencing ranges produced by these guidelines as too harsh.⁴⁰ Indeed, in fiscal years 2021-2025, 71% of people sentenced under §2D1.1 received below-guideline sentences and 57% of people sentenced under §2B1.1 received below-guideline sentences.⁴¹ As stakeholders,⁴²

³⁸ See *id.* at 5 (“In many states, simple possession of marijuana is treated with more leniency than the offenses currently excluded from the criminal history calculation.”).

³⁹ See [Statement of Daniel Dena on behalf of Defenders to the USSC on Loss](#) at 1 (Feb. 27, 2024) (“Section 2B1.1’s most impactful flaw is its over-reliance on loss as a proxy for offense seriousness and culpability, which suffers from many of the same problems as USSG §2D1.1, the drug guideline.”); [2022 Defender Annual Letter](#) at 17 (discussing how the drug trafficking guideline’s “excessive emphasis” on “quantity above all else” fails to meaningfully identify sentences sufficient, but not greater than necessary); see also *United States v. Genao*, 831 F. Supp. 246, 248 (S.D.N.Y. 1993) (criticizing §2D1.1’s emphasis on quantity instead of culpability).

⁴⁰ See [Defenders’ Comment on the USSC’s 2025-2026 Proposed Amendment on Economic Crimes](#) at 2-3 (Feb. 10, 2026) (“For fiscal years 2020-2024, 56% of §2B1.1 cases were below the guideline range.”); see also [Defenders’ Comment on the USSC’s 2024-2025 Proposed Amendment on Drug Offenses](#) at 8 & n. 30 (Mar. 3, 2025) (noting that between FY 2019 to FY 2023, even excluding those who received government sponsored departures, 40.3% of people sentenced under §2D1.1 received below guidelines sentences and only 29.4% of cases under §2D1.1 received within-guidelines range sentences).

⁴¹ The data used for these analyses were extracted from the U.S. Sentencing Commission’s “Individual Datafiles” for fiscal years 2021-2025. The Commission’s “Individual Datafiles” are publicly available for download on its [website](#).

⁴² See 2026 [Defender Comment on Economic Crimes](#) at 1 & n. 1 (collecting Defender arguments); [2018 Defender Annual Letter](#) at 15 (June 14, 2018) (“As the Commission is aware, Defenders have long advocated a comprehensive, start from scratch, study of the drug guidelines.”); see also [2024 Dena Statement](#) at 16 n. 52-53

scholars,⁴³ and judges⁴⁴ have said for decades, these guidelines are broken, rely too heavily on quantity, and need wholesale reform. We hope the Commission considers overhauling these quantity-based guidelines this year.⁴⁵

(citing stakeholder comments that also criticize §2B1.1's overreliance on loss as a proxy for offense seriousness and culpability); [Statement of Alan J. Chaset on behalf of NACDL to the USSC](#) at 2 (Mar. 22, 1993) (discussing how the guidelines overemphasize drug quantities and loss amounts but provide insufficient emphasis on “who the [individual] is and what function he/she may have played in the offense”).

⁴³ See e.g., Mark H. Allenbaugh, [“Drawn from Nowhere”: A Review of the U.S. Sentencing Commission’s White-Collar Sentencing Guidelines and Loss Data](#), 26 Fed. Sent. Rep. 19, 25 (Oct. 1, 2013) (concluding that “the fraud Guidelines themselves are in need of a thorough revision, which should start with a reconsideration of the definition and role of loss”); Peter Reuter & Jonathan P. Caulkins, [Redefining the goals of national drug policy: recommendations from a working group](#), 85 Am. J. Pub. Health 1059, 1062 (1995) (“The U.S. Sentencing Commission should review [the drug guidelines] to allow more attention to the gravity of the offense and not simply to the quantity of the drug.”)

⁴⁴ See *United States v. Johnson*, 379 F. Supp. 3d 1213, 1227–28 (M.D. Ala. 2019) (discussing how “the Guidelines overemphasize drug quantity and purity, which are not always accurate proxies for the defendant's role or culpability; and, at the same time, the Guidelines underemphasize the defendant's role, which is more useful for assessing culpability;”); *United States v. Gupta*, 904 F. Supp. 2d 349, 351 (S.D.N.Y. 2012) (“By making a Guidelines sentence turn, for all practical purposes, on [loss amount], the Sentencing Commission . . . effectively guaranteed that many such sentences would be irrational on their face.”); *United States v. Cabrera*, 567 F. Supp. 2d 271, 273 (D. Mass. 2008) (arguing that “false uniformity” occurs under the Guidelines “when we treat equally individuals who are not remotely equal because we permit a single consideration, like drug quantity, to mask other important factors”); see also Hon. Jon O. Newman, [The Federal Sentencing Guidelines: A Good Idea Badly Implemented](#), 46 Hofstra L. Rev. 805, 815 (Spring 2018) (arguing that a “basic defect of the Guidelines” is that amounts of money and quantities of narcotics are the major determinants of sentencing ranges for financial and drug crimes, “while role in the offense is relegated to a slight adjustment”); Hon. Jed S. Rakoff, [Why the Federal Sentencing Guidelines Should be Scrapped](#), 26 Fed. Sent. Rep. 6, 6-7 (Oct. 1, 2013) (discussing how the federal guidelines should be scrapped “in their entirety,” citing as a reason that drug weight in drug cases and loss amount in fraud cases have become factors with an overwhelming focus for sentencing).

⁴⁵ For §2B1.1, at minimum the Commission should do the following: **First**, eliminate the arbitrary \$500 per access device rule, which is inconsistent with an individual's subjective intent and often overstates culpability. See USSG §2B1.1,

V. Ensure acceptance of responsibility is appropriately awarded

Last year, the Commission listed as a proposed priority an examination of whether §3E1.1 fully accounts for the ways an individual may manifest acceptance of responsibility and possible consideration of amendments that might be appropriate.⁴⁶ Although many stakeholders (including Defenders) pointed out extensive flaws with the operation of §3E1.1,⁴⁷ the Commission’s proposed amendment focused on just one issue—

cmt. n. 3(E)(i); [Statement of Michael Caruso on behalf of Defenders to the USSC on Economic Crimes](#) at 12 (Mar. 12, 2015); and **Second**, either eliminate or severely curtail the impact of the long-controversial intended loss rule. See *United States v. Corsey*, 723 F.3d 366, 377 (2d Cir. 2013) (Underhill, J., concurring) (explaining that “the loss guideline is fundamentally flawed,” and “those flaws are magnified where . . . the entire loss amount consists of intended loss.”); [2024 Dena Statement](#) at 20 (proposing that loss “be measured with reference to actual loss or intended loss” depending on which measure best reflects culpability). If the Commission is not prepared to overhaul the quantity-based guidelines, we hope the Commission will seriously consider our requests from 2015 and 2025 to add mitigating role caps to §2B1.1. See [2026 Defender Comment on Economic Crimes](#) at 28 (“Perhaps the Commission could create mitigating role caps that could counteract §2B1.1’s overemphasis on (broadly defined) loss, similar to §2D1.1(a)(5).”); [Defenders’ Comment on the USSC’s 2015-2016 Proposed Priorities](#) at 11 (June 15, 2015) (discussing how §2B1.1 and the relevant conduct rules may subject those performing low-level functions—such as delivering packages—to high loss amounts which could be remedied with an appropriate role cap in §2B1.1).

⁴⁶ See USSC, [2025-2026 Proposed Priorities](#) at 4-5 (June 2025); USSC, [2025-2026 Final Priorities](#) at 4 (Aug. 2025). The proposed priorities also considered the role of §5K1.1 and how an individual may provide substantial assistance.

⁴⁷ See, e.g., [Hon. Martha Vazquez’s Comments on the USSC’s 2025-2026 Proposed Priorities](#) at 1 (asking that the acceptance of responsibility reduction be liberally construed so that everyone who pleads guilty receives the reduction and that it does not operate as a trial penalty); [Tzedek Association’s Comments on the USSC’s 2025-2026 Proposed Priorities](#) at 8-14 (July 18, 2015) (advocating for reform of the acceptance of responsibility reduction, the obstruction enhancement, and substantial assistance to authorities); [TIAG’s Comments on the USSC’s 2025-2026 Proposed Priorities](#) at 6 (July 17, 2025) (supporting amendments reflecting that neither loss of acceptance of responsibility nor the application of obstruction of justice is “ordinarily warranted by fairly debatable objections to Guidelines calculations or technical violations of pretrial release minimally related to the charged offense”). Last year, Defenders recommended that the Commission remove all references to “relevant conduct” in §3E1.1 cmt. n. 1(A) to prevent individuals

a post-offense rehabilitation adjustment that it unfortunately did not adopt.⁴⁸ The Commission should continue exploring ways to ensure those who have stepped up and taken responsibility for their conduct receive the maximum benefit under the Guidelines.⁴⁹ To that end, Defenders hope the Commission will reconsider our acceptance of responsibility recommendations from last cycle.

VI. Engage in new data and research projects

Defenders appreciate the Commission's critical data responsibilities which are "necessarily intertwined" with its other guidelines-related duties.⁵⁰ We welcome the opportunity to collaborate with the Commission to determine appropriate and timely topics for the Commission to research.

Two areas particularly ripe for research and reporting this cycle are:

- Supervised release
 - We understand that the Commission is now collecting and analyzing data on supervised release revocations and plans to

from losing acceptance points for challenging relevant conduct (which can even occur when the individual has admitted to the conduct for which he had pled guilty or was convicted). See [2025 Defender Priority Letter](#) at 18-20. We also voiced concern that, in some courtrooms, people lose acceptance based on pre-sentencing conduct, including technical violations, that are wholly unrelated to the offense. See *id.* at 20-22 (urging the Commission to either delete or clarify §3E1.1 cmt. n. 1(B)). And finally, we asked the Commission to take steps to prevent prosecutors from abusing §3E1.1, cmt. n. 2 by refusing conditional pleas and then arguing against the third acceptance point (or all acceptance points) despite the plain language of the application note. [2025 Defender Priority Letter](#) at 22-23.

⁴⁸ USSC, [2025-2026 Proposed Amendment on Post-Offense Rehabilitation Adjustment](#) at 83-87 (Dec. 12, 2025).

⁴⁹ See [2025 Defender Priority Letter](#) at 17 ("So many of the *Manual*'s provisions target offense conduct (and beyond) and resultant harms; it is essential that the Guidelines also adequately reward accountability, contrition, rehabilitation, and assistance to the government.").

⁵⁰ [Defenders' 2019 Annual Letter to the USSC](#) at 2 (Oct. 10, 2019) ([T]he data the Commission chooses to collect and report affects the operation, evaluation and evolution of the guidelines."); see also 28 U.S.C. §§995(a)(12); (a)(14)-(16).

release this data sometime this year.⁵¹ Relatedly, we ask the Commission to report on the results of the 2024-2025 Supervised Release amendment. In particular, we are interested in whether, post-amendment, courts are imposing fewer supervised release conditions at sentencing; the length of supervision terms (and if there has been any decrease in the length of terms since the amendment was enacted); whether there has been a decline in supervised release revocations; and if there has been an increase in early termination of supervised release.

- In addition, we request that the Commission make publicly available its data on supervised release revocations and terminations on an ongoing basis, similar to its Individual Datafiles, which it releases annually.⁵²
- Alternatives to Incarceration (ATI) court programs
 - As requested last year, the Commission should update its 2017 report on ATI court programs in an effort to promote alternative sentences for those demonstrating rehabilitation potential.⁵³

As always, Defenders are happy to discuss any of the above suggestions and requests with the Commission, and we look forward to working together this amendment cycle to improve federal sentencing policy.

⁵¹ USSC, [2025 Annual Report](#) at 9 (“The Commission is routinely collecting and analyzing data on approximately 20,000 supervised release revocations each year. The Commission expects to release data about these cases in 2026.”).

⁵² If the Commission is collecting and analyzing data on probation violations (which we hope it is), Defenders request this data as well.

⁵³ See [2025 Defender Annual Letter](#) at 10; USSC, [Federal Alternative-to-Incarceration Court Programs](#) (Sept. 2017).

Hon. Carlton W. Reeves
May 21, 2026
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Very truly yours,



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