

§2C1.8. Making, Receiving, or Failing to Report a Contribution, Donation, or Expenditure in Violation of the Federal Election Campaign Act; Fraudulently Misrepresenting Campaign Authority; Soliciting or Receiving a Donation in Connection with an Election While on Certain Federal Property

\* \* \*

(b) Specific Offense Characteristics

(1) If the value of the illegal transactions exceeded \$6,500\$15,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

\* \* \*

§2E5.1. Offering, Accepting, or Soliciting a Bribe or Gratuity Affecting the Operation of an Employee Welfare or Pension Benefit Plan; Prohibited Payments or Lending of Money by Employer or Agent to Employees, Representatives, or Labor Organizations

(b) Specific Offense Characteristics

\* \* \*

\* \* \*

(2) If the value of the prohibited payment or the value of the improper benefit to the payer, whichever is greater (A) exceeded \$2,500 but did not exceed \$6,500\$15,000, increase by 1 level; or (B) exceeded \$6,500\$15,000, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to that amount.

not exceed \$6,500\$15,000, increase by 1 level; or (B) exceeded \$6,500\$15,000, increase by the number of levels from the table

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In a season where fund raising fraud, and stolen election evidence is at an all time high, I find it suspicious that the commission is attempting to increase the amount of fraud before it is considered a punishable offense. The \$6500. For illegal transactions should be LOWERED to \$2K in order to reduce the illegal activity! Act blue is a primary example of why this amount should be reduced, not increased. Please consider yourself responsible for election honesty and integrity fund raising efforts.

American Patriot Relief Organization

Speak up for those who cannot speak for themselves, for the rights of all who are destitute.~Proverbs 31:8  
For many are called but few are chosen ~Mathew 22:14

## Public Comment - Proposed 2026 Amendments (December 2025)

### Submitter:

Beat the Streetz

### Topics:

1. Drug Offenses
2. Inflationary Adjustments
4. Post-Offense Rehabilitation Adjustment
5. Multiple Counts

### Comments:

I appreciate the opportunity to submit a public comment regarding proposed changes to the federal sentencing guidelines. Sentencing guidelines play a critical role in shaping outcomes that affect not only individuals, but also families and entire communities.

From my experience working directly with youth and families, I have seen how overly punitive sentencing practices can contribute to cycles of instability rather than rehabilitation. Guideline changes that promote proportionality, consistency, and individualized consideration are essential to reducing disparities and improving long term public safety outcomes.

I encourage the Commission to continue prioritizing evidence based approaches within the guidelines that emphasize accountability while also supporting prevention, rehabilitation, and successful reentry. Sentencing policies that recognize the root causes of criminal behavior and provide opportunities for growth are more effective in reducing recidivism and strengthening community stability.

Thank you for your consideration of public input and for your ongoing work to ensure the federal sentencing guidelines are fair, balanced, and responsive to the needs of the communities they impact. In particular, I encourage the Commission to closely examine guideline provisions that result in disproportionately lengthy sentences for nonviolent offenders. Excessive prison terms in these cases often do little to enhance public safety and instead increase barriers to rehabilitation, family stability, and successful reentry. Thoughtful guideline changes can help ensure that sentences are proportional, effective, and aligned with long term community well being.

Submitted on: January 1, 2026

## Public Comment - Proposed 2026 Amendments (December 2025)

### Submitter:

Confronting Injustice Incorporated

### Topics:

1. Drug Offenses

### Comments:

To Whom It May Concern,

I strongly and unequivocally support the proposed reduction to the Methamphetamine Guideline. There is no credible data demonstrating that an individual found in possession of methamphetamine at 79% purity is more culpable—or poses greater harm—than someone found with methamphetamine at 95% purity. Treating purity as a proxy for culpability is unsupported by evidence and results in unjust sentencing disparities.

Moreover, the current framework enables Assistant U.S. Attorneys to leverage purity-based charges as a coercive tool—pressuring defendants to cooperate under the threat of dramatically increased sentences. This practice inflates the number of indictments and convictions, often serving institutional metrics and career advancement rather than the interests of justice or public safety.

Our justice system should never be structured to reward individuals based on how many years of another human being's life they can help place behind prison walls. Yet that is precisely the effect of the existing purity distinction. Eliminating this distinction between two versions of the same substance would remove one of the most harmful and inequitable mechanisms embedded in current sentencing practices.

I also strongly support the retroactive application of Option 1 of the Methamphetamine Amendment. Justice should not depend on timing, and individuals already sentenced under an unfair and unproven standard deserve the same consideration as those sentenced moving forward.

Thank you for your time, your careful consideration, and the important work you do on behalf of the Sentencing Commission and the broader pursuit of a more fair and equitable justice system.

Submitted on: December 23, 2025

# FORMAL COMMENT TO THE UNITED STATES SENTENCING COMMISSION

## Proposed Amendment to §2D1.1(b)(15) - Dark Web Enhancement Information-Theoretic Framework for Sentencing Drug Trafficking Offenses

Submitted by: January, CEO | Infoton

Comment Period: December 2025 – February 10, 2026

### I. EXECUTIVE SUMMARY

The Commission's proposed enhancement for dark web use in §2D1.1(b)(15) is a critical first step, but it lacks scientific foundation for calibrating offense levels. We propose an information-theoretic framework that:

- 1) Quantifies dark web obfuscation using computational signatures
- 2) Enables law enforcement to trace trafficking origins with precision
- 3) Provides objective metrics for sentencing enhancement magnitude
- 4) Reduces unwarranted disparities in dark web drug offense sentencing

### II. THE INFORMATION-OBFUSCATION FRAMEWORK

#### A. The Core Problem with Current Dark Web Enhancement

The proposed §2D1.1(b)(15) enhancement treats dark web use as a binary categorical variable (yes/no, [2][4] levels). This approach:

- 1) Ignores degree of obfuscation sophistication
- 2) Treats all dark web trafficking equally (Silk Road vs. casual marketplace seller)
- 3) Fails to account for traceable vs. undetectable operations
- 4) Creates sentencing disparities based on detection luck rather than culpability

#### B. Information-Theoretic Alternative

We propose sentencing enhancements should scale based on measurable information-obfuscation intensity, quantified through:

$$\text{Obfuscation Index} = \sum_i \log(\lambda_i / \rho_0) + \alpha \tau c$$

**Where:**

$\lambda_i$  = encrypted communication channel characteristics (packet signatures, routing obfuscation, mixing protocol sophistication)

$\rho_0$  = baseline legitimate dark web traffic (privacy advocates, journalists, dissidents)

$\alpha \tau c$  = operational persistence (how long the trafficking infrastructure sustained coherent operations)

**Translation for sentencing context:**

- Higher  $\lambda_i / \rho_0$  ratio = more sophisticated obfuscation = higher culpability = higher enhancement
- Longer  $\tau c$  (coherence time) = sustained operation = greater harm = higher enhancement

### **III. COMPUTATIONAL TRACEABILITY: WHERE INFOTON'S WORK APPLIES**

#### **A. Current Problem: Dark Web as "Black Box"**

The prosecution struggles to:

- Prove defendant intentionally used dark web (not accidentally; not for privacy)
- Quantify sophistication level (why is this [2] vs [4] levels?)
- Connect dark web operations to supply chains (where did the drugs originate?)

#### **B. Infoton's Advanced Computation Framework**

Using information-theoretic analysis of network data, we can now identify:

- 1) Trafficking origination points – By analyzing information signatures across encrypted channels, computational methods can locate where obfuscation begins (source jurisdiction/organization)

- 2) Operational sophistication – Measure coherence time, redundancy, and information-theoretic complexity of trafficking infrastructure
- 3) Intentionality vs. incidental use – Distinguish between defendants using dark web for trafficking vs. legitimate privacy users
- 4) Supply chain mapping – Track information flow backward through trafficking networks to identify manufacturers/importers

#### **IV. RECOMMENDATIONS FOR SENTENCING COMMISSION**

##### **A. Revise §2D1.1(b)(15) Enhancement to Include Computational Metrics**

###### **Current Proposed Language:**

- 1) "If [the defendant used][the offense involved the use of] the dark web or darknets... to facilitate the commission or concealment of an offense involving fentanyl... increase by [2][4] levels."

###### **Proposed Revision:**

- "If the offense involved use of the dark web or darknets, increase by:

[2] levels if the defendant's information-obfuscation practices were routine (standard Tor routing, basic encryption);

[3] levels if obfuscation involved intermediate sophistication (mixing protocols, multi-hop routing verified computationally);

[4] levels if obfuscation involved advanced sophistication (custom protocols, sustained operational security verified through information-theoretic analysis) or if law enforcement traced the trafficking origin using advanced computational methods.

For purposes of this provision, 'obfuscation sophistication' shall be determined based on information-theoretic analysis of encrypted communication patterns and operational persistence metrics."

## **B. Add Application Note Incorporating Computational Evidence**

- "Application Note X: Computational Traceability and Information-Theoretic Analysis

In determining whether §2D1.1(b)(15) enhancement applies and at what level, courts may consider expert testimony regarding:

1. Information-theoretic analysis demonstrating the defendant's communication patterns deviated significantly from legitimate dark web users (measured by divergence of  $\lambda_i/\rho_0$  ratio);
2. Sustained operational coherence metrics ( $\tau_c$ ) indicating intentional trafficking infrastructure (not incidental use);
3. Computational evidence of trafficking origination point, indicating the defendant's role in the supply chain.

Such evidence may support application of the enhancement and inform the magnitude of the increase."

## **V. WHY THIS APPROACH SERVES COMMISSION GOALS**

### **A. Reduces Unwarranted Disparities**

Current approach: Two defendants with identical quantities receive [2] vs [4] enhancement based on vague determinations.

Proposed approach: Objective computational metrics replace prosecutorial discretion.

### **B. Reflects Actual Culpability**

A defendant who accidentally accessed dark web  $\neq$  defendant who engineered sophisticated trafficking infrastructure.

### **C. Incentivizes Cooperation and Legitimate Privacy Use**

- 1) Defendants with low obfuscation indices have lower sentencing exposure → incentivizes cooperation
- 2) Legitimate privacy advocates protected from overreaching enhancement
- 3) Reduces chilling effect on legitimate dark web use

#### **D. Aligns with Congressional Intent**

The FEND Off Fentanyl Act and HALT Fentanyl Act require sentencing to account for trafficking sophistication. Information-theoretic metrics provide the scientific basis.

#### **VI. IMPLEMENTATION: INFOTON'S AVAILABILITY**

Infoton is prepared to:

- 1) Provide expert testimony on information-theoretic obfuscation analysis in federal prosecutions
- 2) Develop standardized computational metrics for dark web obfuscation sophistication
- 3) Train DOJ and DEA personnel on interpreting information-theoretic evidence
- 4) Consult with Sentencing Commission on drafting technical application notes

#### **VII. CONCLUSION**

The Commission has an opportunity to move beyond categorical enhancements to objective, science-based metrics that:

- 1) Better identify trafficking origins
- 2) Distinguish culpable actors from legitimate privacy users
- 3) Reduce sentencing disparities
- 4) Provide law enforcement with computational tools to trace supply chains

We respectfully urge the Commission to incorporate this information-theoretic framework into §2D1.1(b)(15) enhancement language and supporting application notes.

Respectfully submitted,

January Walker  
Chief Executive Officer, Infoton  
Salt Lake City, Utah



## Public Comment - Proposed 2026 Amendments (December 2025)

### Submitter:

Legacy Resources

### Topics:

1. Drug Offenses
3. Economic Crimes
5. Multiple Counts
7. Sophisticated Means
8. Miscellaneous

### Comments:

Federal sentencing policy too often proceeds from an implicit assumption that rehabilitation has failed, when the record demonstrates that meaningful rehabilitative opportunities were frequently absent prior to sentencing.

A substantial portion of individuals entering the federal system lacked access to evidence-based substance-use treatment, mental-health care, trauma-informed services, or structured interventions before indictment. Nonetheless, they are sentenced under guideline frameworks that impose lengthy terms of imprisonment and later penalize them for failing to demonstrate rehabilitation within custodial environments that are not designed to foster it.

Sentencing should reflect actual conduct and demonstrable harm. Guideline outcomes driven by conspiracy stacking, overlapping counts, and technical charging structures risk overstating culpability and producing sentences greater than necessary to comply with 18 U.S.C. § 3553(a). Empirical evidence does not support the conclusion that such excess materially advances deterrence or public safety, while the collateral consequences to families and communities are substantial.

Public safety is best served through proportional punishment, timely access to treatment, and recognition of an individual's capacity for change. I respectfully urge the Commission to reject guideline amendments that increase sentencing exposure through stacking mechanisms rather than individualized assessment.

If the Commission adopts reforms that reduce sentencing ranges or correct guideline inequities,

those reforms should be made fully retroactive. Equity and consistency in sentencing require that relief not be limited by the date of sentencing alone.

Submitted on: January 2, 2026

## Public Comment - Proposed 2026 Amendments (December 2025)

### Submitter:

Loved Ones Coalition

### Topics:

1. Drug Offenses

### Comments:

The Loved Ones Coalition submits this comment in response to the Commission's proposed amendments to the drug trafficking guideline, §2D1.1, including proposed adjustments related to fentanyl, methamphetamine, and other controlled substances.

Based on extensive engagement with families and individuals impacted by federal drug sentences nationwide, LOC urges the Commission to ensure that any revisions to §2D1.1 more accurately distinguish role, culpability, and actual conduct, rather than relying predominantly on drug type or quantity as a proxy for offense seriousness.

Current guideline structures often result in disproportionately severe sentencing ranges for individuals who played low-level or peripheral roles, including couriers, addicts with substance use disorders, and individuals with limited decision-making authority. Enhancements tied to drug type or purity—particularly in fentanyl and methamphetamine cases—risk compounding these disparities when they are applied without sufficient consideration of individual responsibility or intent.

LOC encourages the Commission to adopt amendments that:

- Reduce over-reliance on quantity-driven enhancements;
- Better differentiate between leadership-level trafficking and lower-level participation;
- Avoid guideline inflation that increases sentence lengths without corresponding public-safety benefit; and
- Promote proportionality and consistency across districts.

Families directly experience the downstream effects of excessive drug sentencing, including prolonged separation, economic instability, and diminished prospects for rehabilitation and reintegration. Sentencing policy that better reflects actual culpability supports not only fairness, but long-term community safety.

The Loved Ones Coalition strongly urges the Commission to apply any guideline reductions or clarifications adopted under §2D1.1 retroactively pursuant to §1B1.10. Individuals currently serving sentences under drug guideline frameworks the Commission has determined warrant revision should have a meaningful opportunity to seek relief consistent with updated policy judgments. Retroactive application would advance equity, reduce unnecessary incarceration, and restore confidence in the fairness of the federal sentencing system.

Submitted on: December 20, 2025

## Public Comment - Proposed 2026 Amendments (December 2025)

### Submitter:

Rescue Angel@□

### Topics:

1. Drug Offenses

### Comments:

As a mother of a Fentanyl Poisoning Victim street level dealers should be charged with murder and sentenced to life without the possibility of parole.

Submitted on: December 12, 2025

## Public Comment - Proposed 2026 Amendments (December 2025)

### Submitter:

Rescue Angel@ Dec. 12, 2025

### Topics:

- 4. Post-Offense Rehabilitation Adjustment
- 8. Miscellaneous

### Comments:

As the mother of a homicide victim defendants captured on video participating in the murder should all be charged, indicted and brought to trial for the offense of gang assault and murder. Let a jury decide innocence or guilt. Judges and District Attorneys should not decide which defendants they can prove intent and which ones they cannot when all are on clear video participating in the brutal murder. Jurors should decide innocence or guilt on all murder cases.  
Sgt. Hasons Law

Submitted on: December 12, 2025

## Public Comment - Proposed 2026 Amendments (December 2025)

### Submitter:

Charles Howard, Nd, Mmm, Physician, Correctional Medicine (Ret Clinical Director)

### Topics:

1. Drug Offenses
6. Simplification

### Comments:

Keep it simple:

1. Methamphetamine, any form, or derivative that metabolizes to Methamphetamine, or mixed or ICE all treated the same.
2. Fentanyl, any form or derivative that metabolizes to fentanyl in ANY Form all treated the same.

Donot differentiate forms in either product.

Retroactive issue: yes up to at least 10 years, and/or now over 65yo.

Thank you for the opportunity to comment. I would love to participate in sentencing Guidelines changes.

Submitted on: January 8, 2026

## Public Comment - Proposed 2026 Amendments (December 2025)

### Submitter:

Jayne Law Group

### Topics:

1. Drug Offenses
3. Economic Crimes
4. Post-Offense Rehabilitation Adjustment
5. Multiple Counts

### Comments:

Agree that these should be implemented.

Submitted on: January 7, 2026

## Public Comment - Proposed 2026 Amendments (December 2025)

### Submitter:

Elaine Kauschinger, University of Miami

### Topics:

3. Economic Crimes

### Comments:

The sentencing table correction is past due economic offenses, and has to be adjusted to the current market economic situation. The new loss amount table should be approved and made it retroactive (at least from year 2015).

Submitted on: January 13, 2026

## Public Comment - Proposed 2026 Amendments (December 2025)

### Submitter:

Paul Skarupa, Ohio, Northern

### Topics:

1. Drug Offenses

### Comments:

Hello. Is it possible for the proposed fentanyl amendment to address fentanyl precursors? I do not know if this is a regional/national issue or not; however, the precursor 4ANPP being identified as a fentanyl analogue by the presentence officer is a regular objection in fentanyl cases in the ND/OH. To the extent that it may be helpful, I have attached our objection response. Of course, probation officers are not chemists, so our objection response is more one of logical reasoning than scientific interpretation. Above all, we just want to make sure we're getting it right; therefore, if a flaw is noted in our approach, please let me know as we embrace critical feedback. Thank you!

Submitted on: December 18, 2025

**ADDENDUM TO THE PRESENTENCE REPORT**

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
UNITED STATES V. XXXX, DKT. XXXX-XXX**

**OBJECTIONS**

**By the Government**

[Insert 4ANPP objection if applicable]

**By the Defendant**

[Insert 4ANPP objection if applicable]

**Response by U.S. Probation Officer**

The following response is based on the probation office’s review of a United States Sentencing Commission’s (“the Commission”) report on fentanyl and fentanyl analogues dated January 2021, and the Commission’s primer report on drug offenses dated September 2022; the probation office’s interpretation of the Guidelines Manual and statute; and the probation office’s consultation with the Commission’s helpline. This response is organized as follows: summarization of relevant information from reputable sources, interpretation of the Guidelines, and interpretation of statute.

Fentanyl, 4ANPP, and other known fentanyl analogues are classified as schedule II controlled substances. According to [www.dea.gov](http://www.dea.gov), “Schedule II drugs, substances, or chemicals are defined as drugs with a high potential for abuse, with use potentially leading to severe psychological or physical dependence. These drugs are also considered dangerous.” Additionally, according to a 2018 press release from the United States Attorney’s Office for the Southern District of California (<https://www.justice.gov/usao-sdca/pr/former-border-patrol-agent-pleads-guilty-conspiracy-distribute-4anpp-used-manufacturing>), 1 kilogram of of 4ANPP is enough to manufacture approximately 25 kilograms of fentanyl.

In January 2021, the Commission published a 54-page report titled, “Fentanyl and Fentanyl Analogues: Federal Trends and Trafficking Patterns.” In that report, the Commission explained their reasoning for amending a few areas of the §2D1.1 guideline, including clarifying meanings of the terms fentanyl and fentanyl analogue.

Specifically, pursuant to page 13 of that report, “the Commission amended the Drug Quantity Table to clarify that §2D1.1 uses the term ‘fentanyl’ to refer to the International Union of Pure and Applied Chemistry chemical name. This, in combination with the clarification of the definition of ‘fentanyl analogue’ and the addition of fentanyl analogues to the Drug Equivalency Tables is intended to limit the use of the listing for ‘fentanyl’ only to cases involving the specific substance named in the statute, as opposed to the situation where ‘fentanyl’ may be considered the most closely related controlled substance to fentanyl analogues that are already scheduled as controlled substances.”

To that end, “fentanyl analogue” is now defined in §2D1.1 as “any substance (including any salt, isomer, or salt of isomer thereof), whether a controlled substance or not, that has a chemical structure that is similar to fentanyl (N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide).” Based on the probation officer’s lay review of chemical structure, it appears that fentanyl, 4ANPP, and other fentanyl analogues (i.e. carfentanil and/or acetylfentanyl) all have “similar” chemical structures: Fentanyl = C<sub>22</sub>H<sub>28</sub>N<sub>2</sub>O, 4ANPP = C<sub>19</sub>H<sub>24</sub>N<sub>2</sub>, Carfentanil = C<sub>24</sub>H<sub>30</sub>N<sub>2</sub>O<sub>3</sub>, and Acetylfentanyl = C<sub>21</sub>H<sub>26</sub>N<sub>2</sub>O.

In September 2022, the Commission published a primer report titled, “Drug Offenses” to provide an overview of sentencing guidelines, statutes, and case law applicable to federal drug offenses. Page 10 of that report discusses analogues. Specifically, that section states the following, “Federal law also controls analogues and other substances beyond the more common controlled substances identified on the Drug Quantity Table. Except where otherwise provided, any reference to a controlled substance in §2D1.1 includes all analogues, salts, isomers, and salts of isomers. Fentanyl serves as one important exception where this rule does not apply because the guideline provides for the separate treatment of “any substance . . . , whether a controlled substance or not, that has a chemical structure that is similar to fentanyl.” Further, the general rule for analogues [to wit: determining if a substance is an analogue by referring to 21 U.S.C. § 802(32)] does not apply to an analogue that is subsequently listed as a controlled substance.”

Based on the aforementioned information from the Commission and definitions provided in §2D1.1, the probation officer maintains that 4ANPP should be classified as a fentanyl analogue, and an analysis of statute (21 U.S.C. § 802(32)) is not required since fentanyl analogues are excluded from that rule because the Guidelines provide a definition for fentanyl analogue. The probation officer is not opining that 4ANPP has the same or similar effects on the central nervous system as fentanyl or other fentanyl analogues; however, the Guidelines’ definition for fentanyl analogue does not require such a determination.

While the probation officer believes no further analysis is required, in an effort to be extremely thorough the probation officer also explored Application Note 6 (Analogues and Controlled Substances Not Referenced in this Guideline) of §2D1.1, which states in part, “Unless otherwise specified, ‘analogue,’ for the purpose of this guideline, has the meaning given the term ‘controlled substance analogue’ in 21 U.S.C. § 802(32).” However, the criteria for a fentanyl analogue is “otherwise specified” under (J) of Notes to Drug Quantity Table in §2D1.1 of the Guidelines; therefore, the probation officer does not believe further analysis is required in order to determine if a substance is a fentanyl analogue. As such, the probation officer does not believe this note applies because (1) criteria for fentanyl analogues are referenced in §2D1.1 and, (2) as noted above, general rules for determining if a substance is an analogue do not apply to fentanyl, including the determination that it meets the “controlled substance analogue” definition under 21 U.S.C. § 802(32).

Application Note 6 also discusses using the “most closely related” controlled substance when substances are not specifically identified in the Guidelines; however, as noted in the Commission’s January 2021 report, the Commission specifically added a definition of fentanyl analogue to the Guidelines to minimize this approach relative to fentanyl analogues. Moreover, if any part of the unresolved objection suggests that 4ANPP does not have an effect on the central nervous system and, therefore, classification of 4ANPP should be based on the “most closely related substance”

[to wit: fentanyl], rather than the Guidelines' definition for fentanyl analogue, the probation officer would question how a controlled substance (4ANPP) with reportedly no independent impact on the central nervous system used to illegally manufacture fentanyl and fentanyl analogues would be "most closely related" to fentanyl. If 4ANPP does not have an independent impact on the nervous system, it does not appear "closely related" to either fentanyl or fentanyl analogues in relation to its effect on the body; rather, it would appear "most closely related" to whatever substance in the Guidelines impacts the body least or not at all. Conversely, if the thought is that 4ANPP just has a chemical structure "most closely related" to fentanyl, then the probation officer submits that the similar chemical structures of 4ANPP and fentanyl satisfies the criteria in the Guidelines' definition for fentanyl analogue under §2D1.1, Note (J).

In consultation with the Commission, the probation office does not believe that determining fentanyl analogues requires analyzing 21 U.S.C. 802(32) for the reasons noted above; however, in the event that the Court believes that 21 U.S.C. § 802(32) may apply in determining fentanyl analogues, the probation officer offers the following: 21 U.S.C. § 802(32) reads as follows:

(A) Except as provided in subparagraph (C), the term "controlled substance analogue" means a substance—

(i) the chemical structure of which is substantially similar to the chemical structure of a controlled substance in schedule I or II;

(ii) which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II; or

(iii) with respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in schedule I or II.

The probation officer's plain meaning interpretation of statute is that only one of (i), (ii), or (iii) must exist for a controlled substance to be considered an analogue. In this case, based on a lay comparison of their chemical structures, the probation officer believes that 4ANPP has a chemical structure that is "substantially similar" to fentanyl and other fentanyl analogues as required in (i). Further, the probation officer believes that if Congress intended for (i) and either of (ii) or (iii) to apply in order for a controlled substance to be considered an analogue, Congress would have incorporated the word "and" after the semicolon at the end of (i); however, as it reads, the probation officer's plain meaning interpretation of statute is that it resembles the Guidelines' definition for fentanyl analogue and the common definition of analogue in that there is not a requirement that the substance must impact the central nervous system as long as the chemical structures are similar and/or substantially similar. To further support this position, the probation officer notes that Merriam-Webster's Dictionary defines analogue as, "a chemical compound that is structurally similar to another but differs slightly in composition," and [www.dea.gov](http://www.dea.gov) states, "A controlled substance analogue is a substance which is intended for human consumption and is structurally **or**

pharmacologically substantially similar to or is represented as being similar to a Schedule I or Schedule II substance and is not an approved medication in the United States.” (Emphasis added).

To the extent that 4ANPP may not impact the central nervous system in the same ways as other known fentanyl analogues, the probation officer offers that Application Note 6 of §2D1.1 recommends that the Court consider that factor when fashioning an appropriate guideline range or variance sentence. Specifically, Application Note 6 states in part, “In determining the appropriate sentence, the court also may consider whether the same quantity of analogue produces a greater effect on the central nervous system than the controlled substance for which it is an analogue.” Regardless of 4ANPP’s impact on the nervous system, based on information cited above, it appears that there is a significant need to deter the trafficking of this controlled substance because even a small quantity of 4ANPP can assist in the illegal manufacturing of a large quantity of fentanyl.

In conclusion, absent case law to the contrary and/or scientific evidence that 4ANPP does not have a chemical structure similar to fentanyl, the probation officer maintains that 4ANPP is a fentanyl analogue by the preponderance of evidence for the purposes of sentencing. Lastly, the probation officer is not aware of any lawful medical use of 4ANPP; therefore, it appears that 4ANPP is a precursor used exclusively in the illegal manufacture of fentanyl and other fentanyl analogues, and the control of it is necessary to prevent or limit the continued illegal manufacturing of fentanyl.

Respectfully submitted,

Robin K. Grimes  
Chief U.S. Pretrial Services & Probation  
Officer

By: /s/ XXXX  
XXXX  
U.S. Probation Officer

Approved:

/s/ XXXX  
XXXX  
Supervisory U.S. Probation Officer