Public Comment - Proposed Amendment on Rules of Practice and Procedure

Submitter:

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Topics:

1. Rules of Practice and Procedure

Comments:

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

I respectfully submit this comment regarding the Commission's proposed amendments to its Rules of Practice and Procedure, particularly the provisions governing retroactivity.

I urge the Commission to adopt procedures that provide meaningful, timely, and transparent consideration of retroactivity whenever an amendment reduces punishment, corrects an outdated guideline, adjusts monetary thresholds for inflation, or otherwise reflects the Commission's conclusion that an existing guideline should be changed.

I particularly urge the Commission during the 2026–2027 amendment cycle to revisit retroactivity for the 2026 inflationary adjustments affecting economic offenses, including the monetary tables used under §2B1.1.

The people who most urgently need consideration of a sentencing correction are often the people already incarcerated under the guideline that has been changed.

The Commission acknowledged during the 2026 process that three Commissioners may have favored retroactivity for Amendment 2 concerning inflationary adjustments. Nevertheless, the Commission did not solicit public comment or hold a retroactivity hearing for the amendments submitted to Congress on April 30, 2026.

That meant incarcerated people, their families, Federal Public Defenders, judges, prosecutors, researchers, victims, and other stakeholders never received a full opportunity to address whether those changes should benefit people already serving sentences.

I respectfully ask the Commission not to allow that missed opportunity to become permanent.

RETROACTIVITY IS A MATTER OF SENTENCING FAIRNESS

The Commission's own Rule 4.1A discusses retroactive application to "previously sentenced, imprisoned defendants."

Those words are important.

Consider two similarly situated defendants convicted of substantially similar economic conduct.

One is sentenced shortly before a guideline change. The other is sentenced shortly afterward.

If the later defendant receives the benefit of updated monetary thresholds while the earlier defendant remains incarcerated under thresholds the Commission has determined should be adjusted, the date of sentencing can become the primary reason for substantially different punishment.

That is difficult to reconcile with the federal sentencing system's goals of proportionality, consistency, and avoiding unwarranted sentencing disparities.

The Supreme Court's reasoning in Dorsey v. United States, 567 U.S. 260 (2012), is instructive, although Dorsey does not itself require a Sentencing Guidelines amendment to be retroactive.

The Court recognized the problem created when similarly situated defendants receive significantly different punishment because of timing and discussed "sentencing disparities of a kind that Congress enacted the Sentencing Reform Act and the Fair Sentencing Act to prevent."

The same fairness concern deserves consideration here.

If inflation has changed the real-world meaning of monetary thresholds enough that those thresholds should be adjusted for future defendants, the Commission should seriously examine whether people presently incarcerated under the older measurements should at least be permitted to ask their sentencing judges for reconsideration.

RETROACTIVITY DOES NOT MEAN AUTOMATIC RELEASE

Making an amendment retroactive does not open prison doors automatically.

Congress already created a careful mechanism in 18 U.S.C. §3582(c)(2).

When an applicable amendment is made retroactive, an eligible person may ask the sentencing court for a reduction. The judge can then consider the amended guideline range, public safety, institutional conduct, rehabilitation, the §3553(a) factors, and other legally appropriate circumstances.

Some motions will be granted. Some will receive partial reductions. Others will be denied.

That is individualized judicial review.

Retroactivity therefore does not require the Commission to choose between fairness and public safety. It simply gives courts authority to determine whether continued incarceration at the original length remains appropriate.

Without retroactivity, potentially deserving individuals may never receive that consideration.

PEOPLE ALREADY INCARCERATED SHOULD NOT BE AN AFTERTHOUGHT

When a sentencing policy is corrected only prospectively, the greatest human consequences fall upon people already serving sentences.

They are already separated from children, parents, spouses, and communities.

They are losing employment opportunities and earning capacity.

Children continue growing up without parents.

Aging and seriously ill parents continue waiting for their sons and daughters to return.

Taxpayers continue financing incarceration.

Some incarcerated individuals have spent years completing programming, accepting responsibility, paying restitution, mentoring others, maintaining employment, preparing for reentry, and demonstrating rehabilitation.

Those individuals deserve meaningful consideration when the Commission evaluates retroactivity.

Economic offenses are serious. Victims matter. Restitution matters. Accountability matters.

But accountability and proportionality are not opposites.

A sentence can punish wrongdoing while still being reconsidered when the sentencing policy used to calculate that punishment materially changes.

ECONOMIC AND FRAUD OFFENSES REQUIRE PARTICULAR ATTENTION

Economic-crime sentences can be heavily influenced by monetary calculations. Inflation therefore matters.

A dollar threshold established years earlier does not retain the same economic significance indefinitely.

If the Commission adjusts monetary thresholds because inflation has changed their real-world meaning, applying the correction only prospectively risks creating two classes of defendants:

Those sentenced after the new amendment who receive the benefit of updated economic measurements;

and

those sentenced earlier who continue serving imprisonment influenced by thresholds the Commission has now adjusted.

Justice should not unnecessarily depend upon which side of an effective date a person's sentencing hearing occurred.

THE COMMISSION SHOULD REVISIT THIS DURING THE 2026–2027 CYCLE

I respectfully ask the Commission to:

1. Preserve a meaningful and accessible process for retroactivity rather than making retroactive consideration unnecessarily difficult.

2. Give substantial consideration to currently incarcerated individuals whenever an ameliorative guideline amendment is considered for retroactivity.

3. Revisit the 2026 inflationary/economic-crime amendment during the 2026–2027 policymaking cycle and consider whether applicable portions should be included in §1B1.10(d).

4. Conduct a full retroactivity impact analysis examining the number of incarcerated individuals potentially affected, estimated sentence reductions, public-safety considerations, prison-population effects, incarceration costs, restitution implications, and time already served.

5. Allow incarcerated individuals, their families, Federal Public Defenders, judges, prosecutors, victims, academics, reentry organizations, and other stakeholders to comment specifically on retroactivity.

6. Where legally and procedurally permissible, act promptly rather than requiring incarcerated individuals to spend additional unnecessary months or years serving sentences that may ultimately qualify for judicial reconsideration.

RETROACTIVITY CAN BENEFIT THE ENTIRE FEDERAL SENTENCING SYSTEM

Appropriate retroactivity can do more than promote fairness for individual defendants.

It can reduce unnecessary incarceration costs and prison overcrowding.

It can reunite families.

It can return rehabilitated individuals to lawful employment.

It can allow individuals to earn income, pay taxes, support dependents, and continue paying restitution.

And it can strengthen public confidence in the legitimacy of federal sentencing.

It is difficult to explain why the federal sentencing system can determine that a sentencing measurement should change, give that correction to someone sentenced tomorrow, but refuse even to allow a federal judge to consider whether someone sitting in prison today deserves the same benefit.

Retroactivity does not guarantee freedom.

It guarantees consideration.

The sentencing judge can still say no.

But the judge should have the opportunity to say yes when the facts, amended guideline, rehabilitation, public safety, and purposes of sentencing justify a reduction.

The Sentencing Reform Act sought greater fairness, proportionality, consistency, and rationality in federal sentencing.

Those principles should benefit not only people entering federal court tomorrow, but also people currently living with sentences imposed under policies the Commission subsequently determines should be changed.

The Commission missed an important opportunity to conduct a full public retroactivity process concerning the 2026 inflationary adjustments.

Please do not allow that missed opportunity to become permanent.

During the 2026–2027 cycle, please revisit this issue.

Please hear from the people presently incarcerated.

Please study the actual human, fiscal, prison-population, public-safety, and sentencing-disparity consequences.

And where appropriate, please give federal judges the authority to reconsider these sentences.

A fairer sentencing system should not only benefit the next person sentenced.

It should also be willing to look backward at the people still serving sentences under the policies the system has chosen to change.

Respectfully submitted.

Submitted on: September 3, 2026