

*United States Sentencing Commission*  
**TRIBAL ISSUES ADVISORY GROUP**

*Honorable Ralph Erickson, Chair  
One Columbus Circle N.E.  
Suite 2-500, South Lobby  
Washington, D.C. 20002*



*Voting Members  
Manny Atwal  
Mark Echo Hawk  
Jesse Lasovich  
Winter Martinez  
Honorable Mekko Miller*

*Tim Purdon  
Tricia Tingle  
Sam Winder*

February 27, 2023

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Hon. Carlton W. Reeves, Chair  
United States Sentencing Commission  
One Columbus Circle, NE  
Suite 2-500, South Lobby  
Washington, DC 20002-8002

Dear Judge Reeves,

On behalf of the Tribal Issues Advisory Group, we submit the following views, comments, and suggestions in response to the Proposed Amendments to the Federal Sentencing Guidelines, Policy Statements and Official Commentary approved by the U.S. Sentencing Commission on January 12, 2023, and published in the Federal Register on February 2, 2023. See 88 Fed. Reg. 7180 (Feb. 2, 2023); see also 28 U.S.C. § 994(o).

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## **2. Proposed Amendment No. 7 – Zero Point Offenders**

The proposed amendment sets forth a new guideline at §4C1.1 for the treatment of offenders with zero criminal history points who meet certain other criteria. Looking at Option 1 of the proposed amendment, important to the determination is whether “the defendant did not receive any criminal history points . . . and had no prior convictions or other comparable judicial dispositions of any kind.”

The proposed amendment does not expressly include or exclude tribal court convictions from the analysis. In our view, this ambiguity could lead to difficulty in application, especially because tribal court convictions “or other comparable judicial dispositions” may come in many different forms. Some tribal courts have very good record-keeping systems, others do not. Some tribes have systems of justice that are very similar to state and federal courts, while others maintain more traditional forms of justice, using systems involving sentencing circles or other restorative justice measures quite unlike those commonly seen in state and federal courts.

In short, the proposed amendment as written likely will prove to be problematic in the sentencing of tribal members in federal court. The Commission may wish to clarify whether tribal convictions are included in the new guideline, and to more specifically define the scope of “other comparable judicial dispositions of any kind.”

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Thank you for consideration of our views and for being responsive to our concerns regarding how the Commission’s sentencing priorities may impact defendants who are tribal members. As

always, we look forward to working with you during the remainder of this amendment cycle and to continue our collaboration in the future.

Sincerely yours,



Ralph R. Erickson  
Chair