



March 3, 2025

Hon. Carlton W. Reeves, Chair
United States Sentencing Commission
Thurgood Marshall Building
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20008

**Re: Proposed 2025 Amendments Regarding Supervised Release and Drug Offenses
Amendments**

Dear Judge Reeves:

FWD.us is a bipartisan advocacy organization that believes America's families, communities, and economy thrive when more individuals are able to achieve their full potential. To that end, FWD.us is committed to ending mass incarceration, eliminating racial disparities, expanding opportunities for people and families impacted by the criminal justice system, and evidence-based approaches to advancing public safety.

We write today to urge the Sentencing Commission to adopt the Supervised Release Amendment, because it will reduce unnecessary imposition of supervised release and the number of revocations that lead to unnecessary re-incarceration. These changes will help align federal community supervision with evidence-based best practices and continue to prioritize public safety. Specifically, we urge the Commission to:

- Adopt Part A of the Supervised Release Amendment, which would remove the requirement for courts to impose supervised release for all sentences exceeding one year, except when mandated by statute and/or warranted by an individualized needs assessment. Additionally, the amendment includes a new policy statement advising judges to terminate supervision after one year when warranted by the individual's conduct and when it serves the interest of justice.
- Adopt Option 1 of Part B of the Supervised Release Amendment regarding how courts should respond to a violation of supervised release. Option 1 would advise revocation only when required by statute.

We also write in support of Part A (Setting New Highest Base Offense Level in Drug Quantity Table and New Trafficking Functions Adjustment Amendments), Part B (Methamphetamine Amendment), and Part E (Safety Valve Amendment) of the Drug Offenses Amendment. These proposed changes will begin to address disproportionately long drug sentences that do not improve public safety. Specifically, we urge the Commission to:

- Adopt Option 3 of Subpart 1 of Part A of the Drug Offenses Amendment, which would set the highest base offense level in the Drug Quantity Table at level 30. Furthermore, we support the adoption of Subpart 2 of Part A of the Drug Offenses Amendment, which introduces new specific offense characteristics that reduce the base offense level for individuals playing limited roles in drug trafficking.
- Adopt Subpart 1 of Part B of the Drug Offenses Amendment, eliminating references to “meth ice” in the Guidelines. We also support Option 1 of Subpart 2 of Part B of the Drug Offenses Amendment, which would set the quantity thresholds for methamphetamine at the current level for methamphetamine mixture. Both changes make important updates to the Guidelines to reflect current knowledge that methamphetamine purity does not correspond to culpability.
- Adopt Part E of the Drug Offenses Amendment because it provides much-needed clarity to ensure that people who provide truthful information to the government receive the appropriate departures from statutory minimums, regardless if the information is provided in-person or in writing.

Lastly, we urge the Commission to reject Part C (Fentanyl Misrepresentation Amendment) and Part D (Machine Guns Amendment) of the Drug Offenses Amendment, as both amendments would result in increased prison terms without improvements to public safety. Instead, before any changes are made, we encourage the Commission to conduct further study on these issues to determine whether the proposed enhancements are necessary.¹

I. The Supervised Release Amendment Aligns Federal Community Supervision with Evidence-Based Best Practices

A. Support for the Adoption of Part A of the Supervised Release Amendment

¹ The parsimony principle posits that the criminal justice system must impose only “the least restrictive intervention to achieve societal goals.” See Jeremy Travis and Bruce Western, ed., *Parsimony and Other Radical Ideas About Justice*, p. 3-4 (2023). This principle offers a framework for assessing the Commission’s policy decisions to ensure courts impose the least restrictive punishment required to satisfy the purposes of sentencing. Increasing penalties, as proposed in Parts C and D of the Drug Offenses Amendment can only be justified under the parsimony principle if they effectively advance the underlying purposes of punishment.

We urge the Commission to adopt Part A of the Supervised Release Amendment because it reduces unnecessary imposition of supervised release and aligns federal community supervision with evidence-based best practices. Part A would remove the requirement that courts impose supervised release for all sentences exceeding one year, except when required by statute and/or warranted by an individualized needs assessment. This amendment would fulfill the rehabilitative goal of supervision without a blanket imposition of supervised release that does not advance public safety.

Best practices and research regarding the most effective supervision policies emphasize a “focused” approach, prioritizing resources for individuals who need supervision, rather than a broad use that does not advance public safety.² Research also shows that maintaining supervision for a large number of people undermines probation officers’ ability to prioritize those who present the most risk to public safety or require the most intensive support to be successful.³ Part A of the proposed amendment would narrow the scope of supervised release in line with research and best practice, which will help ensure that people are not unnecessarily subjected to supervision when it does not support public safety or individual rehabilitative goals.

The Commission’s data shows that from 2005 to 2009, courts imposed supervised release in 99.1% of cases where supervised release was not required by statute and the average term was 35 months.⁴ Consequently, the federal supervised release population nearly tripled between 1995 and 2015.⁵ This significant increase in the use of supervised release does not make our communities safer. The overly broad use of supervised release burdens federal probation officers, and costs taxpayers an estimated \$500 million annually,⁶ without prioritizing individuals who may need more support to ensure their successful reentry.

Removing the blanket recommendation of imposing supervised release as proposed by Part A of the Supervised Release Amendment is in line with data that suggests narrowing supervision to those individuals where there may be a public safety concern. For example, a study that

² The Pew Charitable Trusts, “Probation and Parole Systems Marked by High Stakes, Missed Opportunities,” p.15, September 2018, https://www.pewtrusts.org/-/media/assets/2018/09/probation_and_parole_systems_marked_by_high_stakes_missed_opportunities_pew.pdf

³ The Pew Charitable Trusts, “Policy Reforms Can Strengthen Community Supervision: A Framework to Improve Probation and Parole,” p. 24, April 2020. https://www.pewtrusts.org/-/media/assets/2020/04/policyreform_communitysupervision_report_final.pdf

⁴ United States Sentencing Commission [hereinafter “U.S.S.C.”], “Federal Offenders Sentenced to Supervised Release,” p. 4, July 2010, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2010/20100722_Supervised_Release.pdf

⁵ The Pew Charitable Trusts, “Number of Offenders on Federal Supervised Release Hits All-Time High,” p.1, January 2017, https://www.pewtrusts.org/-/media/assets/2017/01/number_of_offenders_on_federal_supervised_release_hits_alltime_high.pdf

⁶ See Safer Supervision Coalition, <https://safer-supervision.com/>. Although this budget is not published separately from other judiciary spending, a per year cost of \$4,392 per person on supervision in FY2017 supports the high-level estimate produced by the coalition.

examined probation agencies found that reduced caseloads delivered better outcomes in Oklahoma City and Polk County, Iowa, when evidence-based community supervision strategies were also implemented.⁷ There was a statistically significant reduction in recidivism for people supervised by officers with reduced caseloads in Oklahoma City and Polk County.⁸ Another study similarly found that reducing case loads coupled with evidence-based supervision strategies reduced recidivism by 30%.⁹ These findings underscore that supervision outcomes are better when supervision is not automatic for everyone to ensure that available resources can be used more judiciously, and probation officers can deploy evidence-based strategies for individuals who need additional support.

Importantly, Part A of the Supervised Release Amendment would also add a new policy statement advising judges to terminate supervision after one year when warranted by the conduct of the individual and when it is in the interest of justice. Research shows that people entering parole are the most likely to reoffend in the first weeks and months after release from prison and the risk of recidivating decreases significantly after one year.¹⁰ Similarly, lengthy probation terms, compared to shorter ones, are more likely to result in incarceration for a violation of a condition that is often not a new crime.¹¹ Long supervision terms also delays an individual's ability to fully integrate into their communities, which undermines the central goal of supervised release, which is to "facilitate reentry into society."¹²

Implementing early discharge of community supervision, as proposed, is a well-established and widely adopted policy that promotes rehabilitation and eases the strain on correctional systems and probation officer caseloads while still prioritizing public safety. Currently, at least 20 states across the political spectrum allow people to reduce their probation term by complying with the terms of their supervision.¹³ For example, Missouri's Earned Compliance Credits program, which

⁷ Sarah Kuck Jalbert, et al., "A Multi-Site Evaluation of Reduced Probation Caseload Size in an Evidence-Based Practice Setting," p.1-2, March 2011, <https://www.ojp.gov/library/publications/multi-site-evaluation-reduced-probation-caseload-size-evidence-based-practice>

⁸ Id.

⁹ Sarah Kuck Jalbert and William Rhodes, "Reduced caseloads improve probation outcomes," Journal of Crime and Justice, April 2012, <https://www.tandfonline.com/doi/abs/10.1080/0735648X.2012.679875>

¹⁰ The Pew Charitable Trusts, "Policy Reforms Can Strengthen Community Supervision: A Framework to Improve Probation and Parole," p. 24, April 2020, https://www.pewtrusts.org/-/media/assets/2020/04/policyreform_communitysupervision_report_final.pdf

¹¹ The Pew Charitable Trusts, "States Can Shorten Probation and Protect Public Safety," p.9, December 2020, https://www.pewtrusts.org/-/media/assets/2020/12/shorten_probation_and_public_safety_report.pdf

¹² The Pew Charitable Trusts, "Policy Reforms Can Strengthen Community Supervision: A Framework to Improve Probation and Parole," p. 24, April 2020, https://www.pewtrusts.org/-/media/assets/2020/04/policyreform_communitysupervision_report_final.pdf; U.S.S.C., "Federal Probation and Supervised Release Violations," p. 7, July 2020, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2020/20200728_Violations.pdf

¹³ Pew Charitable Trusts, "Incentives Can Improve Probation Success," p.4, December 2023, https://www.pewtrusts.org/-/media/assets/2023/12/3968_pspp_incentives_can_improve_probation_success_brief_v3.pdf

was enacted in 2012, reduces probation and parole supervision by 30 days for each month of compliance.¹⁴ This allowed the state to reduce its supervised population by 23% and save approximately 1.3 million months of supervision time by 2018.¹⁵ Notably, early discharge did not lead to an increase in recidivism rates. A study of the Missouri program found that people who were discharged early from parole had similar very low one, two, and three-year rates of new felony sentences and new prison admissions as those who completed parole through ordinary discharge.¹⁶ Another example, utilizing a different approach, is Iowa, where judges have discretion to reduce the length of probation if they determine that the “purposes of probation have been fulfilled.”¹⁷ Most recently, Illinois advanced bipartisan legislation in 2023 mandating parole boards to evaluate a person’s suitability for early release from supervision at least every six months.¹⁸

Furthermore, a new study from the Administrative Office of the U.S. Courts Probation and Pretrial Services Office found that people whose federal supervision was terminated early were two percentage points less likely to recidivate compared to those who completed their full supervision term.¹⁹ People whose supervision was terminated early had a similar arrest rate for a violent offense (2.9%) as people who did not (3.2%).²⁰ Supervised release can also create an individual burden because people may have to miss work to meet with their probation officer or be more limited in their employment opportunities based on supervision requirements. Allowing for early termination removes these burdens that could impact their long-term success where there is no public safety benefit to continued supervision. These findings at the state and federal levels highlight that early termination of supervision can safely reduce the number of people on supervised release, help ensure a more effective use of federal resources, and lessen the individual burden of supervised release.

B. Support Adoption of Part B, Option 1 of the Supervised Release Amendment

Part B of the Supervised Release Amendment provides two policy options for how courts should respond to a violation of supervised release. We urge the Commission to adopt Option 1, which would allow for revocation only when required by statute. In certain circumstances, the existing

¹⁴ Robin Olsen, et al., “An Assessment of Earned Discharge Community Supervision Policies in Oregon and Missouri,” Urban Institute, p. 19, January 2022, <https://www.urban.org/sites/default/files/publication/105347/an-assessment-of-earned-discharge-community-supervision-policies-in-oregon-and-missouri.pdf>

¹⁵ Id., p.22-30

¹⁶ Id., p. 32

¹⁷ Iowa Code § 907.7-9.

¹⁸ Illinois General Assembly, SB 0423, 103rd General Assembly, <https://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=112&GA=103&DocTypeId=SB&DocNum=0423&GAID=17&LegID=144171&SpecSess=&Session=>

¹⁹ Administrative Office of the United States Courts Probation and Pretrial Services Office, “Early Termination: Shortening Federal Supervision Terms Without Endangering Public Safety,” p. 19-20, January 2025, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5098803

²⁰ Id.

statute requires judges to revoke a person's post-release supervision and incarcerate them in response to a violation of the conditions of their supervision. The mandatory grounds for revocation of supervision are found in 18 U.S.C. § 3583(g). In other cases, however, there is no directly applicable statute. In such cases, where the statute is silent, Option 1 authorizes judges to conduct an individualized case-by-case analysis to determine the appropriate response to a violation.

Since Congress has specified circumstances where revocation and imprisonment are required, the Commission should not extend this mandate to Grade A and B violations which are otherwise not covered by the statute. Instead, the Commission should align its recommendations with the statutory framework for supervised release revocations, which mandates revocation only under the specific circumstances enumerated in the law and otherwise allows judges to use their discretion and implement an alternative to incarceration that can address the violation through other requirements. To reduce supervised release revocations in instances that are not mandated by statute, we urge the Commission to adopt Option 1 of the court's response to a violation of supervised release.

II. Parts A, B, and E of the Drug Offenses Amendment Promote Necessary Changes to Reduce Disproportionately Long Sentences and Ensure an Evidence-Based Approach to Drug Sentencing

Over forty years ago, the federal government launched the War on Drugs, implementing harsh penalties – lengthy prison sentences and mandatory minimums – in an attempt to stem drug use and sales. A 2012 study by the Urban Institute found that the increase in expected time served for drug offenses “was the single greatest contributor to growth in the federal prison population between 1998 and 2010.”²¹ However, since then, research has found that increased penalties and longer sentences are ineffective in deterring drug use or trade and do not advance public safety.²² Based on this data, there has been a growing movement at the state and federal levels to shorten drug penalties to align with this growing body of research. In the last 15 years, red, blue and purple states have advanced a range of evidence-based changes to drug laws, including reclassifying simple drug possession to a misdemeanor that is ineligible for state prison terms,²³ limiting or eliminating sentence enhancements that significantly increase prison stays,²⁴ and

²¹ Kamala Mallik-Kane, Barbara Parthasarathy, and William Adams, “Examining Growth in the Federal Prison Population, 1998 to 2010,” p.3, <https://www.ojp.gov/pdffiles1/bjs/grants/239785.pdf>

²² The Pew Charitable Trusts, “More Imprisonment Does Not Reduce State Drug Problems,” March 2018, <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/more-imprisonment-does-not-reduce-state-drug-problems>

²³ Brian Elderbroom and Julia Durnan, “Reclassified State Drug Law Reforms to Reduce Felony Convictions and Increase Second Chances,” Urban Institute, October 2018, https://www.urban.org/sites/default/files/publication/99077/reclassified_state_drug_law_reforms_to_reduce_felony_convictions_and_increase_second_chances.pdf

²⁴ Vera Institute of Justice, “Drug War Détente? A Review of State-level Drug Law Reform, 2009-2013,” <https://vera-institute.files.svdcdn.com/production/downloads/publications/state-drug-law-reform-review-2009-2013-v5.pdf>

eliminating the unwarranted sentencing disparity between crack cocaine and powder cocaine.²⁵ Congress has also taken steps to reexamine federal drug sentencing. In 2010, the Fair Sentencing Act reduced the crack-powder cocaine sentencing disparity from 100:1 to 18:1,²⁶ and later in 2018, the First Step Act made additional and important changes to drug sentencing, including narrowing sentence enhancements for people convicted of multiple drug offenses.²⁷

Some of the proposed amendments are critically needed policy changes to continue to address the lasting and disparate harm caused by failed mass incarceration policies and align federal drug sentencing with current research and data. Today, 44% of people in federal prison are there primarily for a drug offense.²⁸ More than 26,000 people in federal custody are serving sentences over 20 years.²⁹ A growing body of research over the last twenty years has made clear that the marginal benefit of lengthier sentences is minimal at best—and counterproductive at worst.³⁰ There is a growing consensus among researchers that incarceration cannot be justified on the grounds that it increases public safety by decreasing reoffending and in fact, it can actually increase the likelihood of returning to jail or prison.³¹

Imposing lengthy sentences does not effectively deter drug trafficking, instead, it leads to family separation, destabilizes communities, and drains public funds. It is for these reasons that we urge the Commission to adopt Parts A, B, and E of the Drug Offenses Amendments, which will safely reduce disproportionately long drug sentences and continue the work of moving the Guidelines toward a more evidence-based approach to drug sentencing. The proposed amendments FWD supports will ensure evidence-based sentencing decisions that will reduce the federal prison population without compromising public safety.

²⁵ FAMM, “Crack-Cocaine Disparity Reform In The States,”

<https://famm.org/wp-content/uploads/2024/11/Crack-Disparity-in-the-States-2025.pdf>

²⁶ Congressional Research Service, “Cocaine: Crack and Powder Sentencing Disparities,” November 2021,

<https://sgp.fas.org/crs/misc/IF11965.pdf>

²⁷ Congressional Research Service, “The First Step Act of 2018: An Overview,” March 2019

<https://crsreports.congress.gov/product/pdf/R/R45558>

²⁸ Federal Bureau of Prisons, Population Statistics,

https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp

²⁹ FWD.us, “With the Stroke of a Pen: A Primer on Presidential Clemency,” October 2024, p.1,

<https://www.fwd.us/wp-content/uploads/2024/10/Presidential-Clemency-Primer.pdf>

³⁰ See Laura Bennett and Felicity Rose, Center for Just Journalism and FWD.us, “Deterrence and Incapacitation: A Quick Review of the Research,”

<https://justjournalism.org/page/deterrence-and-incapacitation-a-quick-review-of-the-research>; Roger Pryzybylski, et

al., “The Impact of Long Sentences on Public Safety: A Complex Relationship,” November 2022,

<https://counciloncj.org/wp-content/uploads/2024/05/Impact-of-Long-Sentences-on-Public-Safety.pdf>

³¹ Damon M. Petrich, Travis C. Pratt, Cheryl Lero Jonson, and Francis T. Cullen, “Custodial Sanctions and Reoffending: A Meta-Analytic Review,” Crime and Justice, 2021,

<https://www.journals.uchicago.edu/doi/abs/10.1086/715100?journalCode=cj>; Charles E. Loeffler and Daniel S.

Nagin, “The Impact of Incarceration on Recidivism,” Annual Review of Criminology, 2022,

<https://www.annualreviews.org/doi/abs/10.1146/annurev-criminol-030920-112506>

A. Support Adoption of Option 3 of Subpart 1 and Subpart 2 of Part A of the Drug Offenses Amendment

We encourage the Commission to adopt Option 3 of Subpart 1 of Part A of the Drug Offenses Amendment, which would set the highest base offense level in the Drug Quantity Table at level 30. Additionally, we support the adoption of Subpart 2 of Part A of the Drug Offenses Amendment, which would add new specific offense characteristics that reduce the base offense level for individuals who play limited roles in drug trafficking.

The use of drug quantity as a primary factor in federal sentencing has proven to be a flawed approach. The assumption that greater drug quantity indicates greater culpability and therefore warrants harsher sentences has resulted in disproportionately long sentences that do not make communities any safer. Congress established the framework of linking drug quantity with perceived culpability during the War on Drugs era with the Anti-Drug Abuse Act of 1986³² and the Commission adopted this framework by using drug weight to determine the base offense level in the Guidelines.³³ The Commission's own prior study has since shown drug quantity to be a poor indicator of culpability. In 2010, using a sample of drug cases from FY 2009, the Commission conducted a special coding analysis to assess the role performed by people convicted of drug offenses. This study determined that the weight of drugs was not closely connected to a person's role in the drug offense.³⁴ When the Commission analyzed the median base offense level by role for the five major drug types, it concluded that, "there was not a strong correlation between base offense level and level of the [person's] function in the offense."³⁵ Despite Congress's intention to identify and harshly punish people higher in the drug trafficking chain by using drug quantity to determine sentences, this approach has instead resulted in people at all levels of the drug chain facing disproportionately long sentences that are often unrelated to their role in the offense. Further, the current approach ignores the overwhelming research demonstrating that long sentences do not advance public safety.

While the proposed Amendments do not delink drug type and quantity from the calculation of sentences, Option 3 of Subpart 1 of Part A of the Drug Offenses Amendment, would help reduce some of the longest sentences in the Guidelines, while Subpart 2 will help ensure that individuals with limited involvement in drug trafficking are not subjected to excessively long sentences. The

³² U.S.S.C., "2011 Report To The Congress: Mandatory Minimum Penalties In The Federal Criminal Justice System," Chapter Two, p. 24, https://www.usc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/mandatory-minimum-penalties/20111031-rtc-pdf/Chapter_02.pdf

³³ See U.S.S.C., Amendment 782, Reason for Amendment (eff. Nov. 1, 2014), <https://www.usc.gov/guidelines/amendment/782#:~:text=Reason%20for%20Amendment%3A%20This%20amendment,Quantity%20Table%20in%20C2%A72D1.>

³⁴ U.S.S.C., "2011 Report To The Congress: Mandatory Minimum Penalties In The Federal Criminal Justice System," Chapter Eight, p. 168, https://www.usc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/mandatory-minimum-penalties/20111031-rtc-pdf/Chapter_08.pdf

³⁵ Id.

Commission's data shows that judges are already imposing sentencing below the guidelines in most drug trafficking cases, especially in the highest base offense levels.³⁶ This is further evidence that all drug sentences in the guidelines are too excessive. The current guidelines fail to produce sentences that accurately reflect a person's role, making them an ineffective tool for judges. Moreover, the fact that judges frequently deviate from the guideline recommendations indicates that drug quantity does not reflect the true nature of a person's culpability in a drug offense and judges find it essential to look at the individual circumstances of each case. This can perpetuate disproportionate sentencing and does not prioritize public safety. Option 3 of Subpart 1 of Part A of the Drug Offenses Amendment would address this in part by codifying current guideline departures to ensure consistency in application and lowering some of the longest sentences in the guidelines.

Additionally, many of the Commission's prior amendments demonstrate that base offense levels can be reduced safely. For instance, in 2014, the Commission voted unanimously to reduce the applicable sentencing guideline range for most federal drug trafficking offenses by two base levels across all drug types. The Drugs Minus Two Amendment was subsequently applied retroactively. The Commission found no statistically significant difference in the recidivism rates of people who were released an estimated average of 37 months early through the retroactive application of the Amendment (27.9%) and people who served their full sentences and were released before the amendment (30.5%).³⁷ Similarly, when the Commission lowered base levels for crack offenses prospectively and retroactively, the Commission found that the recidivism rate for people who received an average retroactive sentence reduction of approximately 20% was similar to the rate for people who had been released prior to the adoption of the Crack Minus Two Amendment.³⁸ Adopting Option 3 of Subpart 1 and Subpart 2 of Part A of the Drug Offenses Amendment builds on the Commission's successful precedent in advancing safe and effective data-driven changes to drug sentencing.

B. Support Adoption of Subpart 1 and Option 1 of Subpart 2 of Part B of the Drug Offenses Amendment

We urge the Commission to adopt Part B of the Drug Offenses Amendment to update the Guidelines to be in line with current data that methamphetamine purity has drastically increased and is now similar across all three forms of the substance and therefore, the sentencing disparity

³⁶ U.S.S.C., "Proposed Amendments on Drug Offenses Public Data Briefing,"

https://www.ussc.gov/sites/default/files/pdf/research-and-publications/data-briefings/2025_Drug-Offenses.pdf

³⁷ U.S.S.C., "Retroactivity & Recidivism: The Drugs Minus Two Amendment," p.6, July 2020,

https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2020/20200708_Recidivism-Drugs-Minus-Two.pdf. It is also worth noting that the study found that one-third of the recidivism, for both the study group and the control group, was attributable to court or supervision violations.

³⁸ U.S.S.C., "Recidivism Among Offenders Receiving Retroactive Sentence Reductions: The 2007 Crack Cocaine Amendment," p. 3, May 2014,

https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20140527_Recidivism_2007_Crack_Cocaine_Amendment.pdf

is no longer warranted. In particular, we urge the Commission to adopt Subpart 1 of Part B of the Drug Offenses Amendment, eliminating references to “meth ice” in the Guidelines. We also support Option 1 of Subpart 2 of Part B of the Drug Offenses Amendment, which would set the quantity thresholds for methamphetamine at the current level for methamphetamine mixture.

Currently, the Guidelines differentiate methamphetamine offenses based on the purity of the drug, assigning higher base offense levels for pure methamphetamine (“meth actual”) and meth ice (a form of methamphetamine that is at least 80% pure) than methamphetamine mixture. The weight of methamphetamine mixture that determines the base offense level under the guidelines is ten times the quantity of meth actual or meth ice because the latter forms of the substance are considered to be more pure. When the penalty disparity for methamphetamine offenses was first established in 1988,³⁹ trafficking a highly pure form of the drug was presumed to be an indicator of having higher involvement in the drug distribution chain. However, in the last two decades, purity has proven to be a weak marker of culpability. From 2011 to 2019, the average purity of methamphetamine seized and tested by the Drug Enforcement Agency has consistently been over 90%.⁴⁰ The Commission’s study of people sentenced for trafficking methamphetamine in FY 2022 has also found no statistically significant difference in the purity of the drug and the person’s role in the offense – the purity level was similar among people who were at the top of the drug distribution chain and people who had a very limited and low-level function in the chain.⁴¹ As the data shows, purity is no longer an indication of increased involvement or culpability and therefore should not be used to significantly increase a person’s offense level and corresponding sentence.

Assigning higher base offense levels in the Guidelines for meth actual and meth ice results in disproportionately harsh sentences that do not advance public safety. For example, people who are sentenced for trafficking meth ice receive sentences that are on average 20 months longer than people sentenced for trafficking methamphetamine mixture.⁴² These lengthy sentences also stand out from the general trend in federal drug sentencing. In FY 2022, the average imposed sentence for methamphetamine offenses was 30 months longer than the average for all other drug trafficking offenses.⁴³

Longer sentences for methamphetamine offenses do not deter drug use or sale, but instead add years to people’s sentences and contribute to the growing federal prison population that has been

³⁹ U.S.S.C., “Methamphetamine Final Report,” p.8, November 1999,

https://www.ussc.gov/sites/default/files/pdf/research/working-group-reports/drugs/199911_Meth_Report.pdf

⁴⁰ U.S.S.C., “Methamphetamine Trafficking Offenses In The Federal Criminal Justice System,” p. 7, June 2024, <https://www.ussc.gov/research/research-reports/methamphetamine-trafficking-offenses-federal-criminal-justice-system>

⁴¹ Id., p. 39

⁴² Id., p. 50

⁴³ Id. p. 45

on an upward trend since 2020.⁴⁴ This increasing prison population comes at a significant cost to taxpayers and does not improve public safety. As we know, incarceration is one of the most expensive and least effective public safety strategies. The purity distinction is likely driving the sentencing disparity between methamphetamine offenses and other drug offenses since people receive much longer sentences for trafficking meth ice than for methamphetamine mixture.

For the reasons highlighted above, we urge the Commission to eliminate the unnecessary methamphetamine purity distinction and adopt Subpart 1 and Option 1 of Subpart 2 of Part B of the Drug Offenses Amendment.

C. Support for Adoption of Part E of the Drug Offenses Amendment

Lastly, we urge the Commission to adopt Part E of the Drug Offenses Amendment, which would provide much-needed clarity that the manner in which a person provides information to the government under §5C1.2(a)(5) of the guidelines— whether in person or writing – shouldn’t impact the applicability of a departure from statutory minimums. Currently, the guidelines are being interpreted as necessitating an in-person meeting with the government, causing some individuals who would otherwise qualify for the safety valve to forgo it because they may not feel safe or comfortable with an in-person meeting. This technical amendment would ensure everyone who provides information to the government under this provision can receive the applicable departure. Importantly, it promotes consistency across judicial districts by resolving discrepancies in how §5C1.2(a)(5) should be interpreted and applied.

III. The Commission Should Reject Part C and Part D of the Drug Offenses Amendment

We urge the Commission to reject Part C (Fentanyl Misrepresentation Amendment) and Part D (Machine Guns Amendment) of the Drug Offenses Amendment.

The increased prevalence of fentanyl is deeply concerning and demands an evidence-based response. However, the proposal in Part C of the Drug Offenses Amendment to lower the mens rea requirement for the fentanyl misrepresentation enhancement under §2D1.1(b)(13) is not the correct approach. Rather than advancing policies that will increase incarceration without improving public safety, the Commission should prioritize measures that address the root causes of drug trafficking offenses. Watering down or otherwise amending the mens rea requirement in an effort to increase the application of the fentanyl misrepresentation enhancement risks repeating the failures of mass incarceration policies, which relied on punitive measures rather than addressing the underlying issues contributing to drug use and sales. The amendment also

⁴⁴ Federal Bureau of Prisons, Population Statistics and Past Inmate Population Totals, https://www.bop.gov/about/statistics/population_statistics.jsp

risks increasing penalties without providing justification that such an increase will make communities safer or further the underlying purpose of punishment, as advised by the parsimony principle.

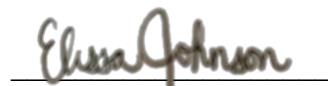
Similarly, we oppose the adoption of Part D of the Drug Offenses Amendment which would create a tiered enhancement based on whether the weapon possessed was a machine gun (4-level enhancement) or another dangerous weapon (2-level enhancement). This proposal, much like the Part C Amendment, is a reactive measure that will likely increase incarceration without improving public safety. Before making any changes, we encourage the Commission to do a more thorough analysis of this issue to determine whether the proposed enhancements would be effective in advancing the goals of the Guidelines.

IV. Conclusion

FWD.us urges the Commission to adopt the proposed amendments that align federal community supervision and drug sentencing with evidence-based practices. Specifically, we support the adoption of the Supervised Release Amendment, and Parts A, B, and E of the Drug Offenses Amendment. We also call on the Commission to conduct further study on the proposed Part C and Part D of the Drug Offenses Amendment, as they could lead to harsher sentences without improving public safety.

We thank the Commission for the opportunity to submit written comments and for your consideration of our recommendations to the proposed amendments.

Sincerely,

A handwritten signature in dark ink, reading "Elissa Johnson", is positioned above a horizontal line.

Elissa Johnson

Vice President, Criminal Justice Campaigns

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