



Chairman Reeves, Commission Members: Thank you for the opportunity to testify on the proposed amendment on federal supervised release.

My name is Brett Tolman. I'm a former United States Attorney for the District of Utah, appointed by George Bush in 2006, and a former chief counsel for crime and terrorism for the U.S. Senate Judiciary Committee. Today, I serve as the Executive Director of Right On Crime, a national criminal justice campaign of the Texas Public Policy Foundation, where we focus on conservative, data-driven solutions to reduce crime, restore victims, reform offenders, and lower taxpayer costs.

Right On Crime is pleased to support the Sentencing Commission's proposed amendment on supervised release. This amendment's overarching goal is to provide courts with more discretion to decide when, why, and for how long an offender will be on federal supervision. It empowers the courts with the ability to conduct individualized assessments at each stage of federal supervised release. This is a sharp contrast to the knee-jerk and routine imposition of supervision that is currently happening in our federal courts. In fact, supervised release is imposed in virtually every case.<sup>1</sup> This was never intended by Congress, the courts, or the Commission. Today's amendment takes a needed step to recalibrate this system and make federal supervised release more fair and less burdensome.

And it's not just the offender who bears the burden of supervised release. The massive bloat of the system weighs heavily on probation officers and the taxpayer. Probation officers monitor offenders for years, squandering the precious resource of time to keep tabs on too many supervisees. This means that probation officers are unable to provide high-risk supervisees with the close supervision needed because they are tending to too many cases, many of which do not warrant as close supervision.<sup>2</sup>

And taxpayers also reap little benefit from the current supervision system. According to some estimates, the federal supervised release system is a \$500 million drain on the taxpayer each year.<sup>3</sup> The tradeoff of such an investment is that supervised release will keep our communities safe. But with a recidivism rate hovering around 50%, it is willful ignorance to assert that the current supervised release system is serving the taxpayer well.

This amendment's focus on the individualized assessment, therefore, is a welcome change for the better.

First, it will be good for public safety. A tailored review of the offender – through the guiderails of 18 U.S.C. § 3553(a) – will give judges and parties an opportunity to meaningfully review the

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<sup>1</sup> <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2022/Table18.pdf>

<sup>2</sup> <https://www.foxnews.com/opinion/spent-20-years-prison-mistake-know-system-broken-even-when> ("As a result [of the increase in federal supervised release], case officers have become overburdened, often managing up to 100 cases at once. With probation officers overstretched, they cannot devote adequate time or resources to managing those who pose higher public safety risks, and this "mismatch" can lead to recidivism").

<sup>3</sup> [https://www.realclearpolicy.com/articles/2024/03/27/congress\\_must\\_pass\\_the\\_safer\\_supervision\\_act\\_1021209.html](https://www.realclearpolicy.com/articles/2024/03/27/congress_must_pass_the_safer_supervision_act_1021209.html).

offender, the crime, and potential outcomes. It will assess how the terms and length of supervision will complement public safety. And it will encourage a thoughtful, as opposed to rote, decision.

Some skeptics may argue that the best way to limit recidivism is to impose the longest supervised release term allowable under the law. However, lengthy supervision can actually lead to more reimprisonment with little to no benefit to public safety.<sup>4</sup> Simply put, languishing on supervised release for too many years might actually lead to more crime. To wit, research has found that longer terms of probation are not correlated with lower rates of re-offending and are more likely than shorter terms to result in technical violations, which studies have shown are a key driver of state incarceration rates and costs.<sup>5</sup> Also, the Justice Department reported that meaningful reintegration into society helps reduce recidivism, which in turn promotes public safety.<sup>6</sup> To that end, opportunities tailoring the terms and length of supervised release will help “eliminat[e] barriers associated with justice system involvement” and “improve[] outcomes and reduce[] recidivism, thereby promoting public safety.”<sup>7</sup>

Similarly, modifying the terms and length of supervised release is also a proven public safety tool. The positive incentive of early termination will encourage faithful compliance with the terms of supervision. And a recent study by the U.S. Administrative Office of the Courts backs this up, concluding that “early terminations [of federal supervised release] did not threaten community safety.”<sup>8</sup>

And on the flip side, the proposal allows for modifying supervised release to lengthen its term. This would give courts and the parties an opportunity to assess what is best for public safety and the offender. And it dispels notions that this body would seek to eliminate supervised release wholesale.

Today’s proposal largely mimics the bipartisan, bicameral bill pending in Congress: The *Safer Supervision Act*. While there are some notable differences – namely the bill’s presumption in favor of early termination of supervision and the proposal’s restructuring of supervised release separate from probation – both focus on one central theme: that to improve our criminal justice

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<sup>4</sup> Sakoda, Ryan, Abolish or Reform? An Analysis of Post-Release Supervision (June 14, 2024). Available at SSRN: <https://ssrn.com/abstract=4670939> or <http://dx.doi.org/10.2139/ssrn.4670939>.

<sup>5</sup> K.D. Morgan, “Factors Associated With Probation Outcome,” *Journal of Criminal Justice* 22, no. 4 (1994): 341-53, <https://www.sciencedirect.com/science/article/pii/0047235294900817>; D.E. Olson and A.J. Lurigio, “Predicting Probation Outcomes: Factors Associated With Probation Rearrest, Revocations, and Technical Violations During Supervision,” *Justice Research and Policy* 2, no. 1 (2000): 73-86, <https://journals.sagepub.com/doi/abs/10.3818/JRP.2.1.2000.73>; B. Sims and M. Jones, “Predicting Success or Failure on Probation: Factors Associated With Felony Probation Outcomes,” *Crime & Delinquency* 43, no. 3 (1997): 314-27, <https://journals.sagepub.com/doi/abs/10.1177/0011128797043003005>; The Council of State Governments, “Confined and Costly: How Supervision Violations Are Filling Prisons and Burdening Budgets” (2019), <https://csgjusticecenter.org/publications/confined-costly/>.

<sup>6</sup> <https://www.justice.gov/d9/2023-05/Sec.%2015%28h%29%20-%20DOJ%20Report%20on%20Resources%20and%20Demographic%20Data%20for%20Individuals%20on%20Federal%20Probation.pdf>

<sup>7</sup> *Id.* at 8.

<sup>8</sup> Cohen, Thomas, Early Termination: Shortening Federal Supervision Terms Without Endangering Public Safety (Jan. 15, 2025). Available at SSRN: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=5098803#:~:text=State%2DLevel%20Studies%20of%20Early,al.%2C%20017%3B%20Pew%20Charitable](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5098803#:~:text=State%2DLevel%20Studies%20of%20Early,al.%2C%20017%3B%20Pew%20Charitable).

system, supervised release must be more individually tailored to the offender. The amendment before the Commission today is an important step to promoting public safety and limiting the government's footprint. This proposal and the *Safer Supervision Act* complement each other in achieving these goals.

I thank you again for your time and will be happy to take your questions.