

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

*Honorable Ralph Erickson, Chair  
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*Voting Members  
Honorable Natasha K. Anderson  
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June 2, 2025

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 United States Sentencing Commission's call for public comment on possible retroactive application of Parts A and B of Amendment 1, and Subparts 1 and 2 of Part A of Amendment 2 to the United States Sentencing Guidelines.

**Amendment 2, Subpart 1 of Part A: Revision to the mitigating role provisions under § 2D1.1(a)(5).**

TIAG supports retroactive application of Subpart 1 of Part A of Amendment 2 as consistent with the factors the Commission considers when determining whether a guideline should apply retroactively.

First, it appears that a significant purpose of the amendment is to respond to feedback from observational study of district court judges around the country, the majority of which appear routinely to impose sentences below those recommended by the Guidelines in cases involving defendants responsible for large quantities of drugs who receive a minor role reduction. The collective wisdom of these judges suggests that individuals who received within- or above-Guidelines sentences for the same conduct, *i.e.* defendants theoretically eligible for a retroactive sentence adjustment, may currently be

serving sentences longer than necessary to accomplish the statutory purposes of sentencing under 18 U.S.C. § 3553(a). TIAG therefore believes that considerations of equity and fairness militate in favor of retroactive application.

Second, with 650 potentially eligible defendants, the magnitude of the change appears significant. It moreover appears from the data briefing that more than 1/3 of eligible defendants would be eligible for a reduction in sentence of over one year, which is a significant reduction.

Lastly, retroactive application of this amendment appears to raise no substantial administrability concerns. Individuals who qualify are readily ascertainable from a review of the presentence report and statement of reasons without the need for additional investigation or fact-finding.

**Amendment 2, Subpart 2 of Part A: Revision to the mitigating role provisions under § 2D1.1(a)(5).**

TIAG does not support the retroactive application of Subpart 2 of Part A of Amendment 2 primarily because of concerns about administrability. Because the amendment introduces new factual criteria for evaluating whether § 3B1.2 applies in drug cases, it appears that retroactive application of this amendment would require additional investigation and fact-finding in many, if not most, potentially eligible cases. For TIAG, these issues of administrability are significant enough to overcome positive equities related to the purpose of the amendment and the magnitude of the change.

**Amendment 1, Part A: Circuit Conflict Concerning “Physically Restrained” Enhancements.**

TIAG supports retroactive application of Part A of Amendment 1 as consistent with the Commission’s mission to promulgate Guidelines that encourage uniform application across the nation. TIAG considered whether the fact-specific nature of the inquiry would pose administrability problems but ultimately concluded that because district courts in affected jurisdictions were required to make factual findings regarding both physical restraint and the use of a firearm at the time of sentencing, the presentence report likely contains all the information necessary for district courts to determine whether the

amendment affects the resultant Guidelines calculation. This distinguishes this amendment from Subpart 2 of Part A to Amendment 2, which introduces new criteria not foreseen at the time of sentencing.

**Amendment 1, Part B: Circuit Conflict Concerning Meaning of “Intervening Arrest” in 4A1.2 §(a)(2).**

TIAG generally favors making this amendment retroactive as a matter of equity and fairness but acknowledges that the only circuit that appears affected is one in which there is limited Indian country jurisdiction. It is therefore not clear the number of Indians in Indian country affected by this amendment.

Sincerely yours,

A handwritten signature in blue ink, reading "Ralph R. Erickson". The signature is fluid and cursive, with the first name "Ralph" being the most prominent part.

Ralph R. Erickson