VICTIMS' RIGHTS ADVISORY GROUP

A Standing Advisory Group of the United States Sentencing Commission

March 2, 2026

United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington D.C. 20008-8002

RE: Request for Comment on Proposed Amendments to the Sentencing Guidelines

Dear Chair Reeves, Vice-Chairs, Members of the Commission:

Thank you, once again, for the opportunity for the Victims' Rights Advisory Group (VRAG) to publicly comment on your proposed amendments to the Federal Sentencing Guidelines ("Guidelines"). We are appointed to assist you in considering how victims and survivors, who are key stakeholders in the federal criminal court process, may be affected by important Guidelines decisions that you make. Your decisions, in turn, guide the courts. We provide the following to assist you in fulfilling your responsibilities under 28 U.S.C. § 994(o).

As you each listen to and understand the harm that victims and survivors suffer, the acceptance of responsibility from offenders they want, and how they may be made whole through the sentencing process, your important decisions will be fairer and more just.

The VRAG encourages the Commission to provide a fair and just sentencing process resulting in fair and just outcomes. The VRAG promotes the Commission's respect for and adherence to victim legal rights under the Crime Victim Rights Act (CVRA), 18 U.S.C. § 3771. The VRAG reminds the Commission that retroactive application of approved amendments reopens victim survivor wounds, requires victim notification and the right to be heard, and may undermine victim survivor faith in the fairness, justice, and finality of the federal criminal court process. From this foundation, VRAG respectfully submits the following for your consideration.

PROPOSED AMENDMENT: SENTENCING OPTIONS

EXECUTIVE SUMMARY

The VRAG supports Part A's framework for guiding sentencing option determinations but urges the Commission to add explicit victim protection factors and avoid creating mandatory procedural requirements that generate litigation.

We strongly and unequivocally oppose Part B's expansion of Zones B and C to higher criminal history categories. The Commission's data demonstrates that this expansion would:

- Double the percentage of violent offenders eligible for community-based sentences (from 6% to 12%)
- Triple the percentage of weapon-involved offenses eligible for alternatives to incarceration (from 4% to 12%)
- More than double the number of defendants with aggravating role adjustments receiving leniency (from 2% to 5%)
- Endanger victims by placing repeat offenders in their communities with inadequate supervision
- Abandon progressive punishment by offering alternatives to career criminals who have already failed at rehabilitation
- Overwhelm probation resources that are already critically strained

The bottom line: Criminal History Categories IV, V, and VI represent defendants who have repeatedly chosen crime despite prior sanctions. The Commission's own data shows that expanding Zone C would authorize community placement for substantially more dangerous offenders, those with violent convictions, weapon enhancements, and leadership roles in criminal activity. These individuals have almost certainly been incarcerated before. Offering them home detention now does not create progressive punishment; it creates regressive punishment where victims bear the consequences of failed policy.

PART A: GUIDANCE ON SENTENCING OPTIONS

Issue 1-2: New Commentary and §5A1.1 Guideline

On behalf of victims, we support providing courts with guidance on selecting sentencing options. The framework proposed in §5A1.1 is helpful for ensuring courts thoughtfully consider threshold sentencing decisions. However, we urge two critical modifications:

1. Add Explicit Victim Protection Factor

Current proposed §5A1.1(b) states:

> In determining the appropriate sentencing option(s) from among those authorized under the guidelines, courts should consider which option(s) will best meet the purposes of sentencing and the needs of the individual defendant.

Courts also should consider:

- Whether the sentencing option adequately addresses victim safety
- The defendant's access to or proximity to the victim
- Whether the option allows for meaningful restitution to victims while ensuring victims' safety
- Victim impact statements regarding the defendant's danger to the victim or community
- The need to protect victims and the community from further crimes by the defendant

Victim protection is a core purpose of sentencing under 18 U.S.C. § 3553(a). The proposed language centers defendant needs while forgetting victim safety, an inversion of priorities that the Commission must correct.

2. Avoid Mandatory Procedural Requirements

Regarding Issue 3 (whether to list 18 U.S.C. § 3553(a) factors), we recognize these factors are familiar and useful to practitioners. However, we oppose listing them as mandatory considerations that could create procedural requirements subject to appellate litigation. This would delay finality for victims awaiting closure, generate endless appeals claiming courts failed to "adequately address" each factor, and transform sentencing into a checklist exercise rather than holistic judgment.

PART B: EXPANSION OF ZONES B AND C

I. Criminal History Categories IV-VI: Who We Are Really Talking About

To reach CHC IV, a defendant might have three prior felony convictions with significant sentences, or numerous lesser convictions, plus recent criminal activity. To reach CHC V-VI, a defendant has an extensive record of repeated offending, almost certainly including prior incarceration.

The Commission already made significant recent changes that reduced criminal history calculations, including Amendment 821 (2023), which reduced criminal history points for certain prior sentences; narrowed circumstances for adding status points, and modified how older convictions are counted. In other words, today's CHC IV, V, or VI defendant would have scored even higher under prior rules.

The amendment proposed in Part B is not progressive punishment. It is punishment regression.

II. The Victim Safety Crisis: Home Detention Reality

The amendment assumes that electronic monitoring provides reliable location tracking; probation officers supervise offenders closely; violations are detected and addressed quickly; and victims are safer than with no supervision at all. But in reality home detention, by definition, places offenders in "the community," often the same community where their victims live, work, shop, worship, and send their children to school.

For victims, this means unexpected encounters, constant hypervigilance and fear during routine activities, and a disrupted sense of safety in their own neighborhoods. While victims are fearful, home detention offers the freedom for defendants to have employment, medical appointments, religious services, grocery shopping, family emergencies, and treatment programs. Each time leaving the home provides opportunity for "coincidental" contact with victims.

A. Electronic Monitoring Is Routinely Defeated

Courts and the public often assume GPS ankle monitors provide foolproof tracking. They do not. The reality of electronic monitoring is far more complicated and far less reliable than the sanitized version presented in courtrooms. Physical tampering occurs, with offenders

cutting straps, removing devices entirely, or using simple materials to shield GPS signals. Signal dead zones are pervasive in buildings, tunnels, and rural areas where GPS loses signal entirely, creating blind spots that offenders quickly learn to exploit. Battery issues plague the system, with devices "accidentally" going uncharged by offenders who know that a dead battery creates hours of unmonitored freedom. In more brazen cases, offenders deliberately remove monitors, commit crimes during the window of freedom, and replace the monitors before anyone responds. Even when the technology functions as designed, there are inherent limitations, including lagging time between when a violation occurs and when notification reaches supervising probation officers.

B. The Nightmare Scenario: When Tamper Alerts Come In

When an ankle monitor tampers or signals a violation, a cascade of systemic failures begins. An automated alert goes to the probation duty officer, often after hours when resources are most limited. The probation officer must immediately assess whether this is an equipment malfunction, which is common, or actual tampering with intent to evade supervision. The working assumption among experienced probation officers is stark: when someone tampers with their monitor to defeat it, they are planning to commit serious harm. Yet the reality demonstrates that by the time the system responds effectively through all these decision points and bureaucratic processes, harm may have already occurred.

C. Probation Resources Cannot Support This Expansion

U.S. Probation and Pretrial Services is a source of pride for our nation. Already overworked, they currently supervise over 135,000 individuals nationwide with approximately 4,000 officers, with significant variation by district[1]. High-risk offenders like CHC IV-VI defendants should receive intensive supervision that includes weekly face-to-face contacts, random drug testing, employment verification, residence checks, coordination with treatment providers, and victim safety monitoring, but the math simply does not work. Intensive supervision of 50 high-risk offenders would require a minimum of 50 weekly contacts, exceeding more than 50 hours of direct supervision time, plus additional hours for travel time,

[1] https://www.govinfo.gov/content/pkg/GOVPUB-JU10-PURL-LPS40954/pdf/GOVPUB-JU10-PURL-LPS40954.pdf (last visited 02/23/2026).

documentation, court appearances, and violation processing. The current reality is that many officers struggle to provide intensive supervision to their existing caseloads. Adding thousands more CHC IV-VI offenders through zone expansion would require nearly one-to-one officer-to-offender ratios to provide adequate supervision. That ratio is fiscally and practically impossible.

III. The Commission's Data Confirms the Danger

The Commission's own data, USSC Public Data Briefing on Sentencing Options, Slide 23, reveals the stark reality of who would benefit from this expansion.

Offense Characteristics	Current Zone C (n = 2,101)	Proposed Zone C (n = 4,061)
Received Mitigating Role Adjustment	8%	17%
Received Aggravating Role Adjustment	2%	5%
Received Weapon SOC or 924(c)	4%	12%
Convicted of a Violent Offense	6%	12%
Received Acceptance of Responsibility	97%	95%
Received Substantial Assistance	8%	16%

Under current Zone C, six percent of defendants have violent offense convictions, but the proposed expansion would double that to twelve percent, a 100% increase in violent offenders eligible for community placement.

The weapon offense data is even more alarming. Currently, four percent of Zone C defendants received weapon enhancements or convictions under 18 U.S.C. § 924(c), but the proposed expansion would triple that to twelve percent, a 200% increase in weapon-involved offenses eligible for community placement.

The data on criminal leadership tells an equally troubling story. Currently, two percent of Zone C defendants received aggravating role adjustments, but the proposed expansion would increase that to five percent, a 150% increase in criminal leaders eligible for community placement.

The cumulative effect reveals that this is not a minor technical adjustment to zone boundaries but rather a fundamental policy shift that would systematically authorize community placement for demonstrably more dangerous offenders.

IV. The Restitution Argument is Unsupported by Data

The proposed amendment's emphasis on restitution payment ability misconstrues victim priorities and is based on false assumptions. Restitution is important, but ancillary to safety and justice.

The Commission assumes that community placement increases restitution payment through maintained employment, court-ordered payment plans, and probation officer oversight, but this assumption should be supported by data not provided. Critical questions remain unanswered: What are actual restitution payment rates for probationary sentences versus imprisonment? What percentage of restitution orders are fully satisfied under each sentence type? How long does it take to complete restitution under different sentence types? Do high criminal history offenders like those in CHC IV-VI actually pay more restitution when on probation? Without this data, the restitution rationale is speculation, not evidence-based policy.

V. Judges Already Have Discretion for Extraordinary Cases

The current system already provides flexibility. Judges possess extensive authority to depart or vary from guideline recommendations under 18 U.S.C. § 3553(a). They can consider:

- Nature and circumstances of the offense
- History and characteristics of the defendant
- Need for just punishment, deterrence, incapacitation, and rehabilitation
- Kinds of sentences available
- Guideline ranges and policy statements
- Need to avoid unwarranted sentencing disparities
- Need to provide restitution to victims

When judges find extraordinary circumstances warranting downward variance (unusual rehabilitation efforts, extraordinary cooperation, unique family circumstances, atypical offense conduct), they can and do vary. The system works for outlier cases.

VI. Answering the Commission's Specific Questions

Issue 1: Should the Commission expand Zones B and C?

No. The Commission should not expand Zones B and C to higher criminal history categories.

Data considerations: The Commission's own data (Slide 23, February 2026 briefing) demonstrates the expansion would:

- Double violent offender eligibility (6% → 12%)
- Triple weapon offense eligibility (4% → 12%)
- More than double criminal leadership eligibility (2% → 5%)
- Nearly double the total affected population (2,101 → 4,061)

Statutory provisions:

- 18 U.S.C. § 3553(a): purposes of sentencing include "adequate deterrence," "protection of the public," and "just punishment, all undermined by this expansion
- 18 U.S.C. § 3771: Crime Victims' Rights Act guarantees victims "the right to be reasonably protected from the accused," directly threatened by community placement of repeat, violent, weapon-involved offenders

Policy considerations:

- Progressive punishment requires escalating consequences for repeat offenders, not expanded leniency
- Victim safety must be paramount, especially with demonstrated dangerous conduct
- Probation resources are finite and already critically strained
- Recent criminal history reductions already benefit these defendants

Issue 2: Whether authorizing different sentencing options for defendants with the same guideline range is appropriate

The question the Commission asks is whether criminal history is a credible differentiator in sentencing, a question already answered by the Commission itself:

> Conclusion
>
> As found in previous Commission reports, Criminal History Category is a strong predictor of recidivism. The analyses contained in this report show that the various components of Chapter Four of the *Guidelines Manual*, including criminal history points, category, and seriousness of past offenses as reflected in point assignment to past convictions also are strong predictors of recidivism.[2]

[2] https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research publications/2017/20170309_Recidivism-CH.pdf at 20 (last visited 02/23/2026).

The current system appropriately authorizes different sentencing options based on criminal history. Two defendants with the same offense level but different criminal histories (e.g., CHC I vs. CHC III) present different risks to victims and the public. The defendant with extensive criminal history has demonstrated greater disregard for law and victims' safety through actual conduct, not speculation.

VII. If the Commission Proceeds: Minimum Safeguards Required

We urge the Commission to reject Part B entirely. However, if the Commission insists on proceeding despite the dangers documented above and in its own data, at minimum the following safeguards must be implemented:

1. Categorical Exclusions

No expansion for:

- Violent offenses (as defined in 18 U.S.C. § 16)
- Offenses where weapon enhancement or § 924(c) conviction applies
- Sex offenses (USSG Chapter 2, Part A, Subpart 3)
- Offenses involving victims under 18, over 65, or with disabilities
- Defendants with prior protective order violations in criminal history
- Offenses against the same victim as any prior conviction
- Defendants who received aggravating role adjustments (leaders/organizers)

Rationale: The Commission's own data shows these categories represent substantially elevated danger. At a minimum, they must be excluded from expanded alternatives.

2. Mandatory Victim Protections

Required for any community placement:

- **Victim notification** of proposed community placement with sufficient time for input
- **Victim right to be heard** on safety concerns at sentencing
- **Geographic restrictions:** Minimum distance requirements from victim residence, workplace, children's schools
- **Enhanced GPS monitoring** with real-time geo-fencing around victim locations
- **Immediate detention** for any violation without requiring warnings, no second chances, no "technical violation" distinctions
- **Victim impact assessment** as part of presentence report addressing specific safety risks

3. Resource Requirements and Accountability

Before expanding zones:

- **Mandatory intensive supervision** classification (not standard supervision)
- **Caseload limits:** No officer supervising more than 25 intensive supervision cases
- **Technology upgrades:** Modern monitoring equipment with proven reliability
- **Training requirements:** Officers supervising high-risk offenders must complete specialized training

Ongoing accountability:

- **Annual reporting** on violation rates, victim safety incidents, and recidivism by zone and criminal history category
- **Victim surveys** on whether they feel safer under current supervision
- **Data collection** on actual restitution payment rates by sentence type
- **Sunset provision:** Expansion automatically expires in 5 years unless renewed based on demonstrated success

4. Strong Presumption Against Community Placement When Victims Object

Create rebuttable presumption that community placement is inappropriate when:

- Victim files formal objection based on safety concerns
- Victim demonstrates ongoing fear based on defendant's history or conduct
- Prior relationship existed between victim and defendant (domestic violence, stalking, etc.)
- Defendant has made threats or intimidating statements about victim