

PRACTITIONERS ADVISORY GROUP

A Standing Advisory Group of the United States Sentencing Commission

David Patton, Chair
Patrick F. Nash, Vice Chair



Circuit Representatives

Matthew Morgan, First Circuit
Susan Walsh, Second Circuit
Abraham Rein, Third Circuit
Marshall H. Ellis, Fourth Circuit
Marlo Cadeddu, Fifth Circuit
Michael Stengel, Sixth Circuit
Michelle L. Jacobs, Seventh Circuit

John R. Murphy, Eighth Circuit
Vacant, Ninth Circuit
Jeremy Delicino, Tenth Circuit
Lauren Krasnoff, Eleventh Circuit
Vacant, D.C. Circuit
Leigh M. Skipper, At-Large
Deborah Roden, At-Large
Alysson Mills, At-Large

March 2, 2026

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. 20008-8002

RE: Practitioners Advisory Group Comment on Proposed Amendments to the Sentencing Guidelines, January 30, 2026

Dear Judge Reeves,

The Practitioners Advisory Group (“PAG”) submits these comments to the Commission’s proposed amendments regarding (1) sentencing options, (2) the career offender enhancement, (3) certain circuit splits affecting § 4B1.2, and (4) human smuggling.

With respect to sentencing options, the PAG is grateful to the Commission for proposing the revised introductory language making clear judges’ non-carceral options and the expansion of Zones B and C. The proposals are welcome and would better align the Guidelines with the Sentencing Reform Act and the realities of current sentencing practices. That said, the PAG suggests further refinement to the introductory language and recommends the elimination of zones altogether. The zone-based structure incorrectly suggests non-statutory limits on judicial discretion with respect to sentencing options and is inconsistent with post-*Booker* judicial authority. In the alternative, the PAG recommends further expansions to the zones, including Zone A, and replacing the prefatory term “authorizes” in § 5A1.1(a)(1)-(4) with “recommends” to comport with the Commission’s stated goal of emphasizing the options available to judges and avoid impermissibly narrowing those options.

Regarding the career offender guidelines, the PAG opposes eliminating the categorical approach for crimes of violence. That said, of the options presented for comment, the PAG supports Option 1 for both the crime of violence and controlled substance offenses. Those options provide the best hope for a simplified determination of career offender status and for narrowing the class of people subject to a provision that has been roundly criticized for its overbreadth and unjustified severity. For similar reasons, we recommend Option 1 for both circuit splits regarding the timing and scope of substances covered by § 4B1.2.

Lastly, we oppose the proposed amendments to the human smuggling guidelines as unsupported by empirical evidence or valid policy considerations.

I. Sentencing Options

The Commission seeks comment on a proposed amendment relating to sentencing options. The Commission has noted, “[t]he proposed amendment would retain the *Guideline Manual*’s zone-based structure”¹ The Commission then sets forth two non-mutually exclusive options upon which it seeks comment.² The PAG respectfully submits (1) that the zone-based structure is a relic of the pre-*Booker* mandatory Guidelines regime; (2) that it suggests constraints to judicial discretion that are potentially in conflict with 18 U.S.C. § 3553(a); and (3) that it conflicts with the Commission’s stated goal of simplification of the Guidelines.

Accordingly, the PAG respectfully asks the Commission to eliminate the zone-based structure and to adopt: (1) the Introductory Comment set forth in part A of the proposed amendment as well as (2) the following revised version of proposed guideline § 5A1.1 that eliminates references to sentencing zones:

§ 5A1.1. Determination of Type of Sentence

- (a) DETERMINING THE AVAILABLE SENTENCING OPTIONS.— Determine the guideline applicable to the defendant’s offense level and criminal history category in accordance with the Sentencing Table set forth in § 5A1.2 (Sentencing Table).
- (b) DETERMINING THE APPROPRIATE SENTENCING OPTION.—In determining the appropriate sentencing option(s), courts should consider which option(s) will best meet the purposes of sentencing and the needs of the individual defendant.
- (c) DETERMINING THE SENTENCE UNDER THE GUIDELINES.—Determine the length, conditions, and other aspects of the sentence by applying the provisions in this chapter.
 - (1) If the court determines that a term of probation is appropriate, proceed to Part B (Probation) of this chapter to determine the length and conditions of any term of probation. Certain conditions of probation are addressed in further detail in Part F (Sentencing Options) of this chapter.
 - (2) If the court determines that a term of imprisonment is appropriate, proceed to Parts C (Imprisonment) and D (Supervised Release) of this chapter to determine the length of the term of imprisonment, whether to impose a term of supervised release, and, if a term of supervised release is imposed, the length

¹ U.S. Sent’g Comm’n, Proposed Amendments to the Sentencing Guidelines (“Proposed Amendments”) at 1 (Jan. 30, 2026), *available at* https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/202602_rf-proposed.pdf.

² *Id.* at 1-4.

and conditions of that term. Certain conditions of supervised release are specifically addressed in further detail in Part F (Sentencing Options) of this chapter.

- (3) In all cases, proceed to Part E (Restitution, Fines, Assessments, Forfeitures) to determine whether to impose restitution, fines, forfeiture, or a special assessment.
 - (4) If applicable, proceed to Part G (Implementing the Total Sentence of Imprisonment) to determine how to implement a sentence in a case involving multiple counts of conviction, an undischarged term of imprisonment, or an anticipated state term of imprisonment.
- (d) CONSIDERATION OF FACTORS SET FORTH IN 18 U.S.C. § 3553(a).—The court shall consider the applicable factors in 18 U.S.C. § 3553(a) to determine a sentence that is sufficient, but not greater than necessary, to comply with the purposes of sentencing. Any sentencing option authorized by statute may be appropriate based on the consideration of these factors.

The elimination of sentencing zones is consistent with the statutory language of 18 U.S.C. § 994(j) which provides that “[t]he Commission shall insure that the guidelines reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense.” It is also consistent with 18 U.S.C. § 994(k)’s directive that “[t]he Commission shall insure that the guidelines reflect the inappropriateness of imposing a sentence to a term of imprisonment for the purpose of rehabilitating the defendant or providing the defendant with needed educational or vocational training, medical care, or other correctional treatment.” Sentencing zones, by contrast, suggest limits on the ability of sentencing courts to fashion sentences that are “sufficient, but not greater than necessary” to comply with the purposes of sentencing upon consideration of all the factors set forth by Congress in 18 U.S.C. § 3553(a).

The original Commission expected that “continuing research, experience, and analysis [would] result in modifications and revisions to the guidelines,” which is why the Commission was established “as a permanent agency to monitor sentencing practices in the federal courts.”³ The recent amendments resulting in the elimination of many departures reflected the Commission’s recognition that departures had largely become obsolete in the post-*Booker* sentencing regime. So, too, are sentencing zones. And they should suffer the same fate as departures, jettisoned in favor of a recognition that, aside from statutory prohibitions, courts can—and should—consider all sentencing options no matter the offense level or criminal history category.

³ U.S. Sent’g Comm’n, *Guidelines Manual* at ch. 1, part A (1987), available at https://www.uscc.gov/sites/default/files/pdf/guidelines-manual/1987/manual-pdf/1987_Guidelines_Manual_Full.pdf.

In addition to suggesting to sentencing courts that certain types of sentences are not “authorized” when in fact courts are constrained only by 18 U.S.C. § 3553(a) and statutory sentencing limits, sentencing zones are needlessly complex. In the most recent amendment cycle, the Commission amended the Guidelines to eliminate the three-step process in favor of a two-step process that recognized the reality of post-*Booker* sentencing practice. The PAG supported this simplification initiative and respectfully submits that the elimination of sentencing zones and implementation of the Introductory Comment set forth in part A of the proposed amendment as well as the revised version of § 5A1.1 proposed above would provide clearer guidance to sentencing courts.⁴

Should the Commission retain the current sentencing zones, however, the PAG supports both parts A and B of the proposed amendment with two additional suggestions: (1) the Commission should replace “authorizes” with “recommends” in each of the proposed subsections, and (2) the Commission should expand the reach of Zone A so that the Guidelines more clearly recognize that probation often constitutes sufficient punishment, particularly for those offenders with minimal to no criminal history.

A. *Replacing “authorizes” with “recommends”*

The Commission’s choice of words in § 5A1.1(a) has the potential to lead courts astray from the discretion they have exercised since *Booker*. Each subsection in § 5A1.1(a) begins with nearly identical prefatory language stating that the particular Zone “authorizes” the type of sentence described. The implication, of course, is that a sentence other than one described in that zone is unauthorized. But this flouts the Supreme Court’s federal sentencing jurisprudence, which long ago rendered the Guidelines advisory.

And even if courts are not confused by the imprecise and potentially misleading language, other concerns persist. Much has been written about the anchoring effect of the Guidelines. Telling courts that particular zones “authorize” particular types of sentences may have anchoring effects on what types of sentences to impose, frustrating congressional intent.⁵ The PAG recommends that “authorizes” be replaced by “recommends” in § 5A1.1(a)(1)-(4) to better comport with current sentencing law. The PAG is not alone in this recommendation, which in many ways mirrors last year’s comment from the Federal Public and Community Defenders that “identified additional language in tension with the post-*Booker* advisory Guidelines system—that is, language suggesting certain Commission guidance is mandatory.”⁶ In support of its recommendation that the Commission amend its phrasing, the Defenders argued that “replacing language that mandates a specific sentence with permissive language is consistent with the rest of the Proposal’s post-*Booker* update.”⁷

⁴ Stephen G. Breyer, *The Original U.S. Sentencing Guidelines and Suggestions for a Fairer Future*, 46 Hofstra L. Rev. 799, 804 (2018) (“My final suggestion, one for the Commission, is simplification. Simplification is important and everybody knows that.”).

⁵ See 28 U.S.C. § 994(j) (“The Commission shall insure that the guidelines reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense”).

⁶ Letter from Federal Public and Community Defenders to U.S. Sent’g Comm’n, at 11 (Feb. 3, 2025) (commenting on Simplification of Three-Step Process), available at <https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20250212/FPD.pdf>.

⁷ *Id.*

B. *Expanding Zone A*

The PAG appreciates that the proposed amendments would expand the reach of Zones B and C. Doing so is a welcome recognition that alternatives to incarceration can serve the purposes of sentencing. But the PAG asks the Commission to go further still and believes that expanding Zone A is necessary to reflect contemporary sentencing practices. Probationary sentences often better comport with congressional directives in § 3553(a) and § 994(j), they save precious taxpayer funds by eliminating the cost of incarceration⁸, and they can also be imposed without compromising public safety.⁹

The Commission’s proposed introductory commentary highlights the groundswell of authority in recent years that has recognized that probation constitutes punishment,¹⁰ and rightfully so. But it need not stop there. Instead, the PAG recommends an expansion of Zone A beyond the sentencing range of 0-6 months. If an offense level is thought to reflect the seriousness of the offense, there is little reason to limit probationary sentences to 0-6 months. Because of the increasing sentencing ranges for each criminal history category, offenses with uncommonly low offense levels are excluded from Zone A. The result is that Zone A is largely an illusory promise outside of the first two criminal history categories. While the PAG agrees that Zones B and C should be expanded, the Commission should do the same to Zone A to recognize, as the Supreme Court has repeatedly, that probation can be “sufficient, but not greater than necessary”¹¹ to achieve the purposes of sentencing.

⁸ See *The Public Costs of Supervision Versus Detention*, U.S. Courts (June 5, 2025), available at <https://www.uscourts.gov/data-news/judiciary-news/2025/06/05/public-costs-supervision-versus-detention> (“In fiscal year 2024, detaining a person before trial and then incarcerating them post-conviction was roughly 10 times more costly than supervising an individual in the community. . . . ‘Supervision is an effective and affordable alternative to incarceration that achieves similar public safety outcomes in cases not involving violent crime,’ said John Fitzgerald, who leads the national U.S. Probation and Pretrial Services office.”).

⁹ See, e.g., Statistical Tables for the Federal Judiciary, Table E-7A, U.S. Courts (2025), available at <https://www.uscourts.gov/data-news/data-tables/2025/06/30/statistical-tables-federal-judiciary/e-7a> (showing that 66.6% of post-conviction supervision cases terminated without revocation, and of the remaining 33.4%, 22.4% terminated with only technical violations and 2.8% with minor violations); Thomas H. Cohen, *Early Termination: Shortening Federal Supervision Terms Without Endangering Public Safety*, 88 Fed. Probation 3, 11 (2024) (finding that early terminations of post-conviction supervision “did not endanger community safety” and that “the post-supervision rearrest rates for violent offenses were relatively similar for the early- and regular-termed groups”).

¹⁰ See *Gall v. United States*, 552 U.S. 38, 48 (2007); *Esteras v. United States*, 606 U.S. 185, 196 (2025).

¹¹ See 18 U.S.C. § 3553(a).