



ANDREW S. BIRRELL
President

July 27, 2026

Honorable Judge Carlton W. Reeves
Chair, United States Sentencing Commission
One Columbus Circle, N.E., Suite 2-500
Washington, D.C. 20002-8002

Re: Comments to the U.S. Sentencing Commission on Proposed 2026-2027 Priorities

Dear Judge Reeves:

The National Association of Criminal Defense Lawyers (NACDL) appreciates this opportunity to express its views on policy priorities for the amendment cycle ending May 1, 2027.¹ We concur with other advocates and stakeholders that current sentences are excessively long, and certain sentencing factors disproportionately affect racial minorities within the criminal legal system. Whatever issues the Commission determines to prioritize, these flaws should be foremost in considering potential amendments.

Priority 1

NACDL is generally supportive of the Commission's proposal to evaluate the Sentencing Guidelines and federal sentencing practices in light of its mission, the statutory purposes of sentencing in 18 U.S.C. § 3553(a)(2), and relevant legal developments that have occurred in the four decades since the Commission's inception. We are also supportive of its plan to consider regional public hearings, symposiums, roundtable discussions, conferences, and other tools as methods of gleaning feedback and information from a variety of stakeholders in the federal criminal legal system.

We of course ask that the voices of Federal Public Defenders, the private criminal defense bar, and Criminal Justice Act counsel are heard and considered as part of this effort. We also urge the Commission to seek input from individuals who have been sentenced under the Guidelines to gather their unique perspective.

¹ NACDL is the preeminent organization advancing the mission of the criminal defense bar to ensure justice and due process for persons accused of crime or wrongdoing. A professional bar association founded in 1958, NACDL's many thousands of direct members in 28 countries – and 90 state, provincial and local affiliate organizations totaling up to 40,000 attorneys – include private criminal defense lawyers, public defenders, military defense counsel, law professors and judges committed to preserving fairness and promoting a rational and humane criminal legal system.

Priority 2

NACDL urges the Commission to treat data transparency as a central component of its review under Priority 2. The Commission's proposed review of its Rules of Practice and Procedure specifically contemplates what analyses supporting agency policymaking are conducted and released publicly. NACDL respectfully submits that this review should extend beyond the Commission's internal deliberative materials to the underlying sentencing data itself, including data linked to individual district courts and, where appropriate, to individual judges.

The Commission's current data-release practices leave a significant gap that has long frustrated practitioners, courts, and researchers alike. The Commission collects, but does not publicly release, sentencing data linked to the sentencing judge, and district-linked data is similarly limited. This gap is not merely academic. Defense counsel routinely invoke 18 U.S.C. § 3553(a)(6) to argue against unwarranted sentencing disparities, yet counsel and courts are frequently forced to make those arguments without access to the very data that would substantiate them. The consequence is that the Commission, which Congress created in part to reduce unwarranted disparity, is also the sole custodian of the data that would allow disparity to be rigorously measured and addressed, and it has generally declined to share that data in a form that permits such analysis.

NACDL commends the Commission's recent establishment of the Ad Hoc Advisory Group on Research and Data Practices (RDPAG), as well as Chair Reeves's stated commitment to ensuring that the Commission's research operation remains "world-class and cutting-edge" and consistent with best practices employed by other government agencies and non-governmental organizations. Notably, the RDPAG's charter already directs the group to study practices for "maintaining data . . . for both internal use and making such data publicly available for external analysis and research," and for "disseminating data to outside researchers and other members of the public for purposes of testing and replicating the findings of data analyses." RDPAG Charter §§ 6(b)(4), (10). The Commission has therefore already recognized, in its own governing document, that public dissemination of research-ready data is squarely within scope. NACDL urges the Commission to ensure that RDPAG's work under these provisions produces concrete recommendations, not a general survey, on:

1. Whether and how the Commission can release judge-linked or district-linked sentencing data, consistent with the confidentiality protections that apply to individual defendants;
2. Development of a controlled-access research protocol, comparable to those used by other federal statistical agencies, that would allow qualified researchers to work with more granular data under appropriate safeguards.

The Commission's own charter for RDPAG already models the kind of controlled-access framework NACDL has in mind: RDPAG members will receive non-public Commission data under signed confidentiality agreements in order to perform their work. RDPAG Charter § 7. That the Commission has built this infrastructure for a 15-member advisory group is proof that a similar model, scaled appropriately, could extend to qualified outside researchers more broadly.

Finally, NACDL notes that RDPAG’s charter requires only a status update at nine months and a final report at eighteen months, with no built-in mechanism for practitioner or public comment before the final report is presented to the Commission. RDPAG Charter § 6(c)–(d). Given that NACDL’s membership is directly affected by the disparities that judge- and district-linked data would help illuminate, NACDL respectfully requests that the Commission build in an opportunity for public and practitioner comment on RDPAG’s draft recommendations before they are finalized. NACDL further suggests that the Commission ensure RDPAG’s at-large membership, selected under § 3(a)(3) of its charter, includes at least one individual with direct experience navigating the Commission’s existing data-access limitations from the requester’s perspective — for example, a researcher who has worked on judge-linked sentencing datasets — and not solely individuals whose expertise runs to agency-side data practices generally.

On a separate matter that is also part of Priority 2: NACDL is generally supportive of the Commission’s current position with respect to *ex parte* communications and believes no change is needed. However, when interested groups, advocates, or agencies share data with the Commission that affects Commission decisionmaking, NACDL believes that that data should be made public.

Priority 3

NACDL wishes to bring to the Commission’s attention a recent federal court decision on the constitutionality of the acceptance-of-responsibility Guideline, § 3E1.1(b). As the Commission knows, this provision provides a one-level reduction only to defendants who accept responsibility early enough to permit “the government to avoid preparing for trial.” A recent District Court decision ruled that this provision unconstitutionally infringes on the Sixth Amendment right to trial.²

As the Commission is aware, NACDL and other advocacy organizations generally refer to the often-massive differential between post-trial and post-plea sentences as the “trial penalty,” an additional number of years in prison that defendants face, if convicted, for exercising their constitutional right to go to trial. NACDL published a research report in 2018 that showed, using Sentencing Commission data, that for most primary offense categories, the average trial sentence in the federal system is three times higher than a plea sentence for the same crime.³ For some crimes, the prison sentence for a person convicted at trial is as much as eight times greater than for those convicted after a plea.

This significant sentencing differential has major impacts on the criminal legal system. To begin, the trial penalty has virtually eliminated trials from the federal system. In 2025, over 97% of convictions in the federal system were the result of pleas with less than 3% occurring after trials.⁴ These figures have been remarkably consistent over the past several years.

² *United States v. Tavberidze*, 769 F.Supp.3d 264 (S.D.N.Y. 2026) (appeal pending).

³ NACDL, *The Trial Penalty: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It* (2018), <https://www.nacdl.org/Document/TrialPenaltySixthAmendmentRighttoTrialNearExtinct>.

⁴ U.S. Sentencing Comm’n, 2025 Annual Report and Sourcebook of Federal Sentencing Statistics, at 56 table 11, <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and->

The trial penalty also has a major coercive effect, with defendants understandably influenced to accept pleas because of the real threat of a significantly higher sentence if convicted at trial, even if a defendant has a strong defense. The trial penalty also allows for other coercive tactics including piling on charges, charge bargaining, threats of superseding indictments and sentencing enhancements, and threats to withdraw plea offers if the defendant seeks to assert other constitutional rights under the Fourth or Fifth Amendments.⁵ Perhaps most concerning, the trial penalty in our system is often so severe that it coerces even innocent people into pleading guilty.⁶

NACDL has long believed that §3E1.1(b) unfairly burdens the constitutional right to trial and agrees with the recent decision that it is an unconstitutional trial penalty.⁷ We encourage the Commission to consider amending this guideline, in any legally permissible way, so that it does not both discourage defendants from exercising their constitutional rights and impose a penalty on those who do.

Priorities 4 & 5

NACDL has no comment on these issues.

Respectfully Submitted,

Andrew S. Birrell
President, NACDL

Lisa Monet Wayne
Executive Director, NACDL

JaneAnne Murray
Chair, NACDL Sentencing Committee

Nathan Pysno
Director of Procedural Justice & Senior
Counsel, NACDL

Ebise Bayisa
Member, NACDL Sentencing Committee

[sourcebooks/2025/2025-Annual-Report-and-Sourcebook.pdf](#) (showing that 97.7% of federal criminal convictions in fiscal year 2025 were the result of guilty pleas).

⁵ Even Department of Justice official policy frowns on the use of these tactics which are largely made possible by the trial penalty. See DOJ, Justice Manual, 9-27.260, <https://www.justice.gov/jm/justice-manual> (“Charges or statutory sentencing enhancements may not be filed, nor the option of filing charges or enhancements raised, simply to exert leverage to induce a plea or because the defendant elected to exercise the right to trial.”).

⁶ Data from the National Registry of Exonerations shows that roughly 18% of exonerees—people who have been found innocent and completely cleared of the crime they were once convicted of—pleaded guilty. See The National Registry of Exonerations, Browse Cases, <https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View=%7BF6AF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7%7D&FilterField1=Group&FilterValue1=P>. For individual stories of innocent defendants who were coerced to plead guilty, see <https://guiltypleaproblem.org>.

⁷ See *Tavberidze*, 769 F.Supp.3d 264.