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TZEDEK
ASSOCIATION

March 17, 2026

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

Re: Tzedek Association Comments on the Commission's Proposed 2026 Amendments Posted on January 20, 2026

Dear Judge Reeves and Members of the Commission,

Tzedek Association again welcomes the opportunity to comment on the Commission's latest Proposed Amendments for the current cycle.

Tzedek is a nonprofit humanitarian organization that focuses on criminal justice reform, religious liberty, and humanitarian cases around the globe. Since Tzedek has regularly provided written comments (most recently, earlier this year by providing input on the proposed amendments posted in December), as well as oral testimony during the past several amendment cycles, this submission omits the full description of Tzedek's efforts to promote compassion and fairness in the nation's sentencing policies. One of Tzedek's most consistent and paramount concerns is overreliance on incarceration as a punishment of choice in our justice systems. For this reason, Tzedek commends the Commission for its willingness to consider sentencing options and broaden alternatives to incarceration in the latest round of proposed amendments. These comments will focus exclusively on that subject.

Save A Life, Save A World

202.221.7513 I rabbimoshe@tzedekassociation.org I 571 Bedford Ave, Brooklyn, NY

Context:
The Need for Greater Use of Alternatives to Incarceration

Tzedek has previously provided the Commission with extensive testimony urging amendments to enable and ensure the Guidelines' sentencing instructions place far greater emphasis on alternatives to incarceration.[1] The landscape has not materially changed since 2023 when Tzedek most comprehensively addressed this issue, although significant clemency grants since that time by both President Joseph Biden and President Donald Trump document that the leaders of both major political parties recognize our system relies unnecessarily and excessively on incarceration. The fact that so many non-violent, first-time offenders receive prison sentences is disturbing and fundamentally at odds with the clear intent of the legislation that created the Commission and provided priorities for the development of a guidelines system. Congress, in the Sentencing Reform Act of 1984, stated clearly that 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," and also provided that the guidelines should direct that imprisonment is generally appropriate when persons are "convicted of a crime of violence that results in serious bodily injury." 28 U.S.C. § 994(j) (emphasis added).

Despite Congress's clear directive that first-time, non-violent offenders should generally receive sentences other than imprisonment, the structure of the Guidelines has produced precisely the opposite result: prison became the default sentence even for first offenders where the law contemplates alternatives. The congressional directive favoring sentences other than imprisonment is not only sound policy, it reflects what experience has shown—non-custodial sanctions frequently better promote rehabilitation, preserve employment and family stability, and advance other key sentencing goals. They are also dramatically less costly to taxpayers than imprisonment.

Given the § 994(j) directive from Congress, it is difficult to justify the Guidelines' Zone framework. In the pre-*Booker* environment, the Zones effectively foreclosed non-imprisonment sentences for most eligible offenders despite the congressional

[1] www.ussc.gov/policymaking/public-comment/public-comment-august-1-2023 at pages 195, 203-214

directive. Even after *Booker*, the Zones operate as a categorical, grid-driven constraint that discourages courts from imposing probationary and other non-custodial sentences based largely on offense level and criminal history category—rather than on individualized circumstances bearing directly on rehabilitation, risk, family impact, employment stability, and the purposes of sentencing. Whatever the original rationale for Zones may have been, in practice they function as an arbitrary "thumb on the scale" that systematically narrows sentencing options for defendants who Congress expected would often be appropriate candidates for non-imprisonment sentences.

Further, given that the various alternatives to incarceration—including probation, community confinement, home confinement, and fines—all impose real punishment (to say nothing of the stigma of a criminal conviction and the cascade of collateral consequences that result from it), resort to imprisonment should, as Congress clearly intended, be reserved principally for those repeated offenders who present an ongoing danger to society.

More specifically, a substantial body of research indicates that imprisonment itself can be criminogenic—disrupting employment, housing, family/community ties and increasing the likelihood of recidivism.[2] Indeed, individuals, families, and communities are better served when an offender's punishment is fashioned to facilitate rehabilitation and enable the offender to maintain or resume productive behavior. The Commission's own recent data is consistent with that concern, showing that of those United States citizens who were statutorily eligible for probation and were either placed on probation or released from prison in 2015 only 19% were rearrested, versus 42% of those who received a prison sentence—more than double.[3]

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[2] Imprisonment is widely described in the criminological literature as criminogenic—that is, increasing the likelihood of future offending—through mechanisms such as socialization into criminal networks, psychological deterioration, weakened community ties, and post-release stigma. *See, e.g.*, Olga Cunha et al., *The Impact Of Imprisonment On Individuals' Mental Health And Society Reintegration: Study Protocol*, 11 BMC Psychol 215 (2023) ("research suggests that prison sentences have a null or a criminogenic effect on recidivism and a critical impact on inmates' mental health, negatively interfering with their successful reintegration into society and recidivism"); William D. Bales & Alex R. Piquero, *Assessing The Impact Of Imprisonment On Recidivism*. 8 J Exp Criminology 71 (2012) ("various methods yield results that are at least in a similar direction and support overall conclusions of prior literature that imprisonment has a criminogenic effect on reoffending compared to non-incarcerative sanctions").

[3] 2026 Sentencing Options Data Briefing | United States Sentencing Commission p. 8, "Rearrest Rates for Individuals with Non-Imprisonment Sentences or Released from Federal Prison in 2015"

Even more importantly, the data show that rearrest rates among those individuals who were statutorily eligible for probation, those with Criminal History Category I who were in Zone D offense levels 16, 17, 20, 21, 27 and 29 (and hence per the Guidelines did not qualify for a non-jail sentence), had substantially lower rearrest rates than those whose offense levels put them in Zones A through C.[4]

If nothing else, these data points underscore that the Zone framework is at best hit or miss—establishing no sound empirical basis for Guideline recommendations that, if followed, would foreclose a non-imprisonment sentence even for those not posing a serious threat to public safety. Further, while these data fail to show a demonstrable correlation between offense levels and recidivism, they also cannot begin to capture the profound real-world impacts and implications of even a relatively short prison sentence on an individual with a network of responsibilities and relationships.

For example, imposing a prison sentence upon anyone with care-giving responsibility for minor children or an ill or elderly family member imposes cascading negative consequences on families and communities. A substantial body of research shows that parental incarceration is associated with significant adverse outcomes for children, including educational disruption, economic instability, behavioral challenges, and an increased likelihood of later justice system involvement.[5] And if a defendant has secured gainful employment or taken meaningful steps to address a precipitating cause of their criminal conduct, such as mental health or substance-use disorder treatment, even a limited term of imprisonment can disrupt the path to a law-abiding life creating profoundly negative consequences for the defendant and the community.

Case in point: One of the contributors to these comments recently represented a first-time offender convicted of a misdemeanor, economic offense. Although the offense level was 15, which would have carried a Zone D sentencing range of 15 –

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[4] *Id*. at p. 9, "Rearrest Rates for Individuals with Non-Imprisonment Sentences by Cell on the Sentencing Table."

[5] See National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* 260–268 (2014) (finding strong evidence that parental incarceration negatively affects children's educational attainment, behavioral health, and economic stability); Kristin Turney, *Stress Proliferation Across Generations? Examining the Relationship Between Parental Incarceration and Childhood Health*, 95 J. Health & Soc. Behavior (2014); Joseph Murray & David P. Farrington, *The Effects of Parental Imprisonment on Children*, 37 Crime & Justice 133 (2008).

18 months, the statutory maximum reduced the Guideline to 12 months, a Zone C sentence. The Presentence Investigation Report (PSR), as is typical in such circumstances, included the statement that the defendant was ineligible for probation, citing USSG § 5B1.1, comment (n.2). The government requested and the court imposed a sentence that included 30 days incarceration. As a result of his arrest and indictment, the individual had lost his job, which was a management level position at an agency for which he had worked for three decades starting as a youth intern and working his way up the ladder. He was supporting his wife and two school-age children in a modest home. Notwithstanding the devastating impact of the arrest and loss of employment, within weeks this defendant procured a job as a delivery person for a shipping company, earning just enough along with this wife's income to keep the family together in their home.

Fortunately, and it turns out, quite unusually, the judge granted the defense request to impose the sentence intermittently, enabling this defendant to serve the sentence on weekends and thereby keep his job and his home. Had the court not done so, incarceration would have cost this defendant his new job, very likely leading to the loss of his home and the ensuing disruption of his children's schooling.

This result was unusual—perhaps because the Zone framework has so stringently limited the application of non-imprisonment and intermittent sentences that federal judges all too rarely impose such sentences. Indeed, in fiscal year 2024, 85% of individuals statutorily eligible for probation received some term of imprisonment and 88% were given sentences that included some form of confinement.[6]

With respect to intermittent sentences, a recent study by the Drug Enforcement and Policy Center at The Ohio State University underscores how rarely that option is used in our courts nationwide, despite survey results that indicate that a majority of respondent probation officers agreed that intermittent confinement can serve as just punishment, can be an adequate deterrent, can adequately protect public safety, can allow for effective rehabilitation and, most importantly, can help people keep their jobs, maintain familial relationships, and maintain optimal care for serious medical issues.[7]

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[6] 2026 Sentencing Options Data Briefing, *supra*., at p. 6, "*Types of Sentence Imposed for Individuals Eligible for Probation, Fiscal Year 2024*"

[7] Peter Leasure, Douglas A. Berman & Jana Hrdinova, *An Overview of Intermittent Confinement and Weekend Incarceration in the U.S.* (February 12, 2024). Ohio State Legal Studies Research Paper No. 824, Drug Enforcement and Policy Center, February 2024, Available at SSRN: https://ssrn.com/abstract=4723504 or http://dx.doi.org/10.2139/ssrn.4723504 pp. 29-30,33.

That same study shows how rarely federal courts impose intermittent sentences. Based on Commission data for the eleven fiscal years culminating with 2021–2022, the total number of defendants sentenced yearly to intermittent confinement ranged from 81 to 163, representing 0.13% to 0.24% of all sentencing cases.[8] Significantly, data on state sentencing shows considerable higher rates, with a range of 0.7 to 1.8% of cases during the period of 2005–2019.[9] Finally, that study concludes that the principal explanation for the lack of such sentences, at least with respect to federal sentencing, is logistical difficulties in accommodating intermittent sentences.[10] Indeed, in the anecdote described above, it took weeks and tremendous persistence to overcome the logistical challenges to arrange for the intermittent sentence.

It is a curious state of affairs when opportunities to promote rehabilitation, preserve families, and more generally achieve the objectives of sentencing are frustrated by systemic inability to accommodate lawful sentences. By making clear that all alternatives to imprisonment are to be broadly considered, the Commission can create the environment in which the various agencies, including the Probation Department, the United States Marshals Service, and the Bureau of Prisons will ensure that these logistical obstacles are resolved.

Indeed, many persons subject to federal prosecution fit the category that Congress stated should generally receive a "sentence other than imprisonment" (and should be subject to guidelines that "reflect the general appropriateness of imposing a sentence other than imprisonment"). Nevertheless, as the Commission data referenced above shows, the overwhelming majority of defendants who are statutorily eligible for probation are instead sentenced to prison.

Thus, as a general matter, Tzedek urges the Commission to reconfigure the Guidelines, as was called for by the Sentencing Reform Act, to affirmatively encourage judges to utilize the important option of alternatives to incarceration when sentencing offenders deserving of such consideration, regardless of the base offense level, and with a flexible approach irrespective of criminal history.

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[8] *Id*. at 3. It should also be noted that this data is somewhat skewed by the fact that at least in the 2020-21 period, the overwhelming majority of intermittent sentences were imposed in the Southern and Western Districts of Texas, where 15 and 53 defendants received such sentences out of a total nationally of 106. *Id*. at pp. 9-10.
[9] *Id.* at 22-23.
[10] *Id.* at 32.

Comments on Sentencing Options Proposals

With the above context, Tzedek urges the Commission to eliminate the Zone framework. The Zones are neither compelled by statute nor justified by the available empirical data. They operate as a categorical constraint that steer courts away from non-custodial sentences for probation-eligible defendants, even where such sentences would satisfy § 3553(a) and § 994(j)'s direction. The Commission's cell-level rearrest data discussed above underscores that Zone-based eligibility rules are inconsistent with known evidence regarding recidivism risk.

Additionally, Tzedek notes that at the recent public hearing on this proposed amendment, testimony on behalf of the judiciary's Criminal Law Committee (CJC) underscores the importance of amending the Guidelines to ensure that non-incarceration and alternative sentencing must be considered. In his testimony, the Chair of that Committee, Hon. Edmond E-Min Chang noted that "many judges come to the bench with no experience in the federal criminal justice system whatsoever," and further observed that "even those of us who are steeped in the criminal law, before you all [the Sentencing Commission] pointed out 994(j) and the general guidance on the general inappropriateness of prison for someone who has just committed their first offense and has not otherwise committed a serious crime or a crime of violence, I would not have been able to tell you that that the language was in 994(j)…"[11]

Indeed, although the CJC opposes the proposed expansion of Zones B and C, in Tzedek's view Judge Chang's acknowledgement that the congressional directive in § 994(j) is not widely known and understood further supports the view that the Zones should be eliminated. When you couple the lack of recognition of that directive with the standard language in PSRs, as referenced in the case above, which advises judges about the unavailability of probation based upon the Zone designation, the deleterious impact of the current Zone approach is clear. Indeed, it suggests that the Zones operate in contravention of the statutory directive of § 994(j).

Contextualized by those preliminary observations, Tzedek commends the Commission for its proposal to add new Introductory Commentary to Part A of Chapter Five. Tzedek supports adding a new guideline § 5A1.1 (Determination of Type of Sentence), but with substantial revisions to the proposed § 5A1.1(a).

[11] https://www.ussc.gov/policymaking/meetings-hearings/public-hearing-march-9-2026 at 16:01-16:32.

Notwithstanding Tzedek's position that the Zones should be eliminated, if Zones are retained, Tzedek supports expansion of Zones B and C, and also believes that Zone A should be significantly expanded as well. There is simply no rational basis to exclude all Criminal History I offenders above Offense Level 8 from Zone A.

Part A (*Changes to Part A of Chapter Five*).

Proposed New Commentary

- With one important caveat, Tzedek wholeheartedly endorses the addition of the proposed new commentary. As drafted, the commentary provides important new context, highlighting that Congress did not establish a general presumption in favor of any particular sentence type and that a court may consider and weigh various sentencing purposes as they relate to each individual case. Additionally, the proposed commentary's recognition that non-imprisonment sentences "undoubtedly serve a punitive function" (together with appropriate supporting citations for that proposition) should appropriately encourage judges to exercise their authority to seriously and meaningfully consider alternatives to incarceration in more cases. Finally, Tzedek especially lauds the inclusion of the final proposed sentence, which specifically supports and provides authority for courts to fully exercise their discretion to tailor a sentence to the circumstances of the individual case.

  One caveat: Tzedek strongly encourages the Commission to include within the commentary reference to 28 U.S.C. § 994(j) to highlight that Congress has long indicated that the guidelines system is to reflect the appropriateness of sentencing non-violent first offenders to a sentence other than imprisonment. This clear statutory instruction to the Commission can and should serve as a powerful reminder to judges that Congress intended expansive use of alternatives to incarceration, particularly for first-time offenders. Tzedek would similarly support including the reference to the second section of § 994(j), which expresses Congress's perspective as to when imprisonment is generally appropriate.

- Because Tzedek agrees in principle with the promulgation of a new guideline § 5A1.1, the commentary should include the bracketed references to the new guideline.

- Tzedek expresses concerns as to the inclusion of the bracketed language concerning the employment of "more advanced tools to assess and respond to

individual defendants' unique risks and needs." Without knowing more about what those tools may be and whether and to what extent such tools have been validated or may perpetuate various systemic biases, it might be prudent to omit that sentence. It should be axiomatic that when courts assess the circumstances relevant to any defendant upon whom sentence is imposed and fully consider all the factors that must be considered pursuant to 18 U.S.C. § 3553(a), they will be sensitive to devising a sentencing option that considers the resources necessary to address that individual's needs.

Proposed New Guideline § 5A1.1

- With the caveat noted below as to § 5A1.1(a), Tzedek endorses the inclusion of the new guideline. The steps outlined in subsections (a) – (d) provide a clear and concise roadmap to guide courts in the appropriate application of the Guidelines in formulating a sentence.

- Consistent with the position expressed above, Tzedek urges the Commission to amend proposed guideline § 5A1.1(a) to read as follows:

> DETERMINING THE AVAILABLE SENTENCING OPTIONS – Determine
> the guideline ~~and zone~~ applicable to the defendant's offense level and criminal history category in accordance with the Sentencing Table set forth in § 5A1.2 (Sentencing Table).

Tzedek urges deletion of the reference to "and zone" in the above provision as well as omission of subsections (1) – (3) referencing Zones A, B and C. Without fully restating the basis for this position, it must be stressed that the artificial limitations imposed by the various Zones are at odds with the thrust of the new commentary and the otherwise laudable recognition of the fact that alternatives to imprisonment are punitive and the need for sentences to be tailored to fit the needs of the individual.

- Tzedek does see the need for the Commission to delineate specific factors under new guideline § 5A1.1(b). (Responding to Issues for Comment 2 and 3). However, the Commission should consider adding the phrase "and applicable statutes." Thus, the subsection would read as follows:

> (b) DETERMINING THE APPROPRIATE SENTENCE OPTION- In determining the appropriate sentencing option(s) from among those

authorized under the Guidelines and applicable statutes, courts should consider which option(s) will best meet the purposes of sentencing and the needs of the individual defendant

The addition of the reference to "applicable statutes" obviates the need to delineate specific factors as raised in Issues for Comment 2 and 3 and also makes clear that courts are in no way bound by any suggested limitation in the Guidelines that circumscribe statutory discretion, such as the Zone designations if they are preserved.

If, however, the Commission opts to specify factors, Tzedek strongly urges the Commission to include an additional factor in sum and substance as follows: "Any relevant factor the ensures that a sentence is sufficient, but not greater than necessary, to comply with the purposes of sentencing."

- Tzedek strongly endorses the inclusion of the bracketed language in proposed § 5A1.1(d) explicitly advising courts that any sentence authorized by statute may be appropriate even if not authorized by the Guidelines. This sentence is especially important if the Zone distinctions are maintained to underscore that such distinctions are in no way binding upon the court.

Part B (*Expansion of Zones B and C of the Sentencing Table*)

Tzedek lauds the maximum extension of Zones B and C to provide greater opportunities for decreased incarceration for a greater number of defendants who are eligible for non-imprisonment sentences. For the reasons stated above, however, Tzedek does not understand why, at a minimum, there is no comparable expansion of Zone A sentences. As previously discussed, the data shows lower recidivism at several higher Zone D base offense levels than at lower Zone A offense levels for Criminal History I offenders. The data strongly support the abolition of the Zones altogether. But if they are maintained, Zone A should be commensurately expanded.

To the specific Issues for Comment, two of which relate to where the Zone B and C lines are drawn (Issues 1 and 3) and one of which seeks input on whether the Commission should provide additional guidance as to when Zone B sentences of probation with conditions of confinement or Zone C sentences authorizing split sentences should be imposed, Tzedek responds as follows: The line drawing remains fundamentally arbitrary, is untethered from empirical data, and detracts from the courts' authority to tailor an

appropriate sentence that respects the Congressional mandates to impose a sentence that is "sufficient, but not greater than necessary" and to prioritize non-imprisonment sentences for first-time, non- violent offenders. As to whether additional guidance is necessary, Tzedek asserts that the revised commentary, as amended in accordance with the above suggestions, provides ample guidance for courts to determine when to impose probation with conditions of confinement, split sentences, or intermittent sentences.

Conclusion

The Sentencing Reform Act envisioned a system in which imprisonment would be reserved primarily for those who pose a genuine danger to the public. Yet today, incarceration too often remains the default outcome even for individuals who Congress expressly intended should generally receive non-custodial sentences. The Commission has an opportunity in this cycle to realign the Guidelines with congressional intent and modern empirical evidence by ensuring that courts fully consider alternatives to incarceration—and by removing, or at minimum substantially revising, the Zone framework that has too often operated as a categorical barrier to those alternatives. Doing so would promote rehabilitation, preserve family stability, reduce unnecessary costs, and advance public safety.

As always, Tzedek enormously appreciates the opportunity to share its perspective on the proposed amendments for the 2026 cycle and looks forward to continuing to provide input and support for the Commission's critical work.

Sincerely,

Rabbi Moshe Margaretten[12]
President

[12] Tzedek wishes to express enormous gratitude to Norman L. Reimer and Professor Douglas A. Berman for their instrumental assistance and counsel to formulate this letter.