THE SENTENCING PROJECT

October 26, 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: The Sentencing Project Comment on Proposed Amendment to the Rules of Practice and Procedure

Dear Chairman Reeves:

The Sentencing Project appreciates this opportunity to comment on the Commission's Proposed Amendments to the Rules of Practice and Procedure. The Sentencing Project advocates for effective and humane responses to crime that minimize imprisonment and criminalization of youth and adults by promoting racial, ethnic, economic, and gender justice. We are eager to be a resource as you work to create just, equitable sentencing policies.

We urge the Commission to allow the attendance and non-voting participation of a member of the Federal Public and Community Defenders at all Commission meetings at which Commission staff are present, including non-public meetings.

Federal Defenders and Criminal Justice Act counsel represent the overwhelming majority of people charged with federal crimes. This depth of experience gives Defenders unique expertise in federal criminal law and the federal sentencing guidelines. The Department of Justice similarly has deep expertise based on practice and therefore has an *ex officio* non-voting seat at Commission meetings. The Sentencing Reform Act of 1984, however, which created the Sentencing Commission, omitted such a seat for the Defenders. As such, the Defenders are excluded from non-public commission meetings where important policies are developed and denied access to internal materials which influence policy decisions. TSP joins a broad array of stakeholders in our support for the concept of adding an *ex officio* Defender member to the Commission, including among the Judicial Conference of the federal courts,[1] the Council on Criminal Justice,[2] and academics,[3] among others.[4]

[1]Judicial Conference of the United States. (2004, March 16). *Report of the proceedings of the Judicial Conference of the United States*. Administrative Office of the United States Courts, 11. https://www.uscourts.gov/file/2131/download.

[2] Council on Criminal Justice. (2020). *Federal priorities task force report: 1. Reinvigorate the U.S. Sentencing Commission*. https://priorities.counciloncj.org/federal-priorities/rec1

[3] Osler, M. (2016). A "Holocaust in Slow Motion?": America's Mass Incarceration and the Role of Discretion. *DePaul Journal for Social Justice*, *7*(2). https://via.library.depaul.edu/cgi/viewcontent.cgi?article=1006&context=jsj

[4] The Constitution Project. (2009). *Smart on crime: Recommendations for Congress and the executive branch*. https://static.prisonpolicy.org/scans/SmartOnCrime.pdf

The Commission is now evaluating whether to amend the Rules to allow a representative of the Committee on Criminal Law of the Judicial Conference of the United States and a representative of the Defenders to participate in meetings and public hearings of the Commission. Specifically, it would amend Rule 3.1 (Meetings) to allow the attendance of representatives of such institutions in either public meetings and nonpublic briefing sessions of the Commission or all Commission meetings at which Commission staff is present, except for those parts of meetings in which matters not related to policymaking or data are addressed. Additionally, the proposed amendment would amend Rule 3.4 (Public Hearings) to allow these representatives to participate in public hearings alongside commissioners and, as necessary, pose questions to witnesses.[5]

Adding a Defender representative will balance the voice of the Department of Justice on the Commission, strengthening policymaking. The Department's *ex officio* role allows it to participate in internal discussions, view non-public briefing material, and accordingly tailor its guidance to the needs of the Commission. Meanwhile, Defenders are denied access to internal material that shape policy decisions, such as staff briefings, memoranda, and data analyses. This imbalance is in contrast to the adversarial system and undermines the Commission's credibility. Creating an *ex officio* role for the Defenders would not only balance the Department's voice but improve the perceived legitimacy of the policymaking process.

Adding a Defender representative would also allow the Defenders to better fulfill their statutory mandate under 28 U.S.C. 994(o) to comment on the work of the Commission. The Defenders are required to "submit to the Commission any observations, comments, or questions pertinent to the work of the Commission whenever they believe such communication would be useful, and shall, at least annually, submit to the Commission a written report commenting on the operation of the Commission's guidelines, suggesting changes in the guidelines that appear to be warranted, and otherwise assessing the Commission's work." Access to internal policymaking documents, discussions, and memoranda will improve the utility of the Defender's commentary.

The Sentencing Project thanks the Commission for this opportunity to provide comment. We urge the Commission to ensure the attorneys who are closest to individuals serving the sentences the Commission imposes have a voice. We are grateful for the Commission's continued openness to evidence-based reform and look forward to remaining a resource as this work continues.

Please reach out with any questions to Liz Komar, Senior Policy Counsel, at lkomar@sentencingproject.org.

Many thanks,

Kara Gotsch
Executive Director
The Sentencing Project

[5] United States Sentencing Commission. (2026, August 27). *Proposed amendment: Rules of practice and procedure* ("reader-friendly" version). https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/202608_rf-proposed.pdf.