We applaud the United States Sentencing Commission for its proposed amendment to encourage post-offense rehabilitation.

As sponsors and cosponsors of the *Safer Supervision Act of 2025*, we believe that our criminal justice system should be structured to promote public safety by encouraging rehabilitation and reducing recidivism. To that end, our bill establishes a framework for early termination of supervision for individuals who have demonstrated good conduct and substantial compliance and also shown that termination of their release would not jeopardize public safety. This legislative initiative recognizes that our system should create positive incentives that distinguish between people who have proven themselves capable of redemption and those who have not. It also embodies our belief that law enforcement resources should be directed in a way that best maximizes public safety.

These principles do not only apply when a person leaves prison. Indeed, courts can and should provide an adjustment to defendants who have demonstrated rehabilitation prior to sentencing. As the U.S. Supreme Court held in *Pepper v. United States*, evidence of rehabilitation that occurs prior to sentencing is "clearly relevant to the selection of an appropriate sentence" under Section 3553 of Title 18.[1] The Court explained that it is a "critical part of the 'history and characteristics' of a defendant that Congress intended sentencing courts to consider," it "sheds light on the likelihood that he will engage in future criminal conduct" or the need for further "correctional treatment," and it thus "bears directly on the District Court's overarching duty to 'impose a sentence sufficient, but not greater than necessary' to serve the purposes of sentencing."[2]

The Court's clarity makes it all the more remarkable that the U.S. Sentencing Guidelines do little to distinguish between defendants as to this critical point. U.S.S.G. 3E1.1 provides for a sentencing reduction for defendants who "clearly demonstrate[] acceptance of responsibility," and the application notes suggest that post-offense rehabilitative efforts could be relevant to this analysis.[3] But data provided by Commission staff make clear that in practice this adjustment is driven entirely by one question only: whether or not the defendant pleads guilty.[4] That means that two defendants who commit the same crime

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[1] 562 U.S. 476, 491 (2011). *Pepper* focused specifically on rehabilitation between an initial sentencing and a resentencing, but its reasoning applies equally to any post-offense rehabilitation that precedes the final sentence.

[2] *Id.* (citing 18 U.S.C. 3553(a)(1), (a)(2)(B)-(D)).

[3] U.S.S.G. 3E1.1, App. Note 1(G).

[4] In particular, your staff informed us that in fiscal year 2024, defendants received acceptance of responsibility credit in 98% of cases with guilty pleas, and they received such credit in just 5% of cases that went to trial.

and both plead guilty (or both go to trial) will face the exact same Guidelines range, even if one defendant spent their time prior to sentencing working to remedy the harm they caused, participating in treatment or counseling, holding a job, supporting their family and community, preventing others from engaging in criminal conduct, or engaging in other positive behavior, while the other defendant did none of those things. That makes no sense.

In working through the details of a final amendment, we expect that some conforming edits will be necessary to eliminate reference to post-offense rehabilitative efforts in U.S.S.G. 3E1.1 and thereby avoid confusion or double-counting. We would also encourage the Commission to account for the fact that many individuals cannot afford to participate in programs that are not court-ordered, or may have limited options available to them especially if they are detained. And just as the *Safer Supervision Act* makes clear that extraordinary circumstances are not required to earn early termination, we would avoid imposing requirements that make this adjustment out of reach to all but a few. At the same time, the adjustment should reflect sincere and meaningful efforts toward rehabilitation. In other words, the analysis should focus on a holistic and individualized evaluation of whether a particular defendant, with the opportunities that are reasonably available to them, has taken sincere and meaningful steps to turn their life in a new positive direction.

Committing a federal crime is a life-altering mistake that will typically mean a person will be in prison for many years. The months to years between the offense and final sentence are thus a critical period in that person's life, in which, regardless of whether they exercise their constitutional right to trial, they have the opportunity to show how they will respond to that mistake and what kind of person they plan to be going forward, with whatever liberty is left for them. Sentencing should reflect the defendant's answers to these questions. The Guidelines already account for various kinds of post-offense misconduct through its calculation of criminal history, relevant conduct, and other adjustments; it is time that it account for post-offense rehabilitation as well.[5]

Thank you for considering our views.

[5] *See Pepper*, 562 U.S. at 504 (noting that nothing in the statute "remotely suggests" that Congress intended for only misbehavior before final sentencing to be considered while "turning a blind eye" to positive rehabilitation).