



July 9, 2012

Honorable Patti B. Saris, Chair
United States Sentencing Commission
One Columbus Circle, N.E., Suite 2-500
Washington, D.C. 20002-8002
Attn: Public Affairs, Priorities Comment

Member Organizations

National Bar Association
Association of
Black Psychologists
National Association of
Black Social Workers, Inc.
Howard University
School of Law
Congressional Black Caucus
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National Dental Association
National Black Caucus of
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National Conference of Black
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Black Psychiatrists of
America, Inc.
National Black Prosecutors
Association
National Organization of
African Americans in
Housing
Thurgood Marshall Action
Coalition

Dear Chairperson Patti B. Saris:

I write with the background of having been one of the United States Magistrate Judges in the United States District Court for the District of Columbia for more than fourteen (14) years and then as a Superior Court of the District of Columbia Associate Judge for almost eleven (11) years, followed by being a Senior Judge of that Court now for almost 14 years. As a Senior Judge I sat full time for almost six (6) years after retiring as an Associate Judge of that Court. Thus, for almost 31 years I sat and heard cases almost every day. For the past nearly 8 years I have been on Sabbatical as a Senior Judge, Inactive Status, heading the National African American Drug Policy Coalition, Inc. as its Vice President of Administration and National Executive Director and principal spokesperson on drug laws, mental health issues, and needed reforms in our criminal and juvenile justice systems, as well as in related areas impacted by our drug laws involving education, access to affordable housing, workforce development and access to employment.

As a trial judge, I note that many of us regard mandatory sentences as being arbitrary and not taking into consideration the individual defendant, his or her personal history, and the circumstances of his or her involvement in the offense. As a judge I have taken numerous guilty pleas of defendants who had a drug problem who was charged with distribution of drugs merely under circumstances to get their own supply, and when the prosecutor offered "attempt distribution" or possession as a lesser included offense, they begged me to take the guilty pleas because they did not want to gamble with a jury rejecting their coercion or duress defense in convicting them as aiders and abettors in a conspiracy or distribution trial. Frequently, they would explain in sympathetic and credible terms that they participated in the offense of distribution because of coercion or threats to harm them or a member of their family or because of their craving for the illegal drugs based on their addiction. With reference to women defendants, many of them who were in romantic relationships with a man involving in distribution of drugs, they advised me in the course of their pleas that they were forced into participating in a drug deal or be subject to domestic violence, or being put out of an apartment where they lived with one or two minor children. They too pled guilty to a lesser included offense because of fear that a jury would reject their defense for their behavior or conduct in a trial for conspiracy or being aiders and abettors in the distribution operation. While judges can not go below an applicable mandatory sentence, a reduction of a guideline sentence by two levels when it does not result in going below the mandatory sentence level, would give federal judges greater latitude to sentence a defendant at the very lowest level of the guideline because of such mitigating circumstances.

Second, there is considerable sentiment by citizens in the community at large that sentences for drug law violations even when merited are far too long in duration and add unnecessarily to prison costs to the detriment of other needs for the government in education, health, provision of affordable housing and other related functions. Indeed, based on the aggregate of my experience as a trial judge and now as a policy expert for a non-profit entity with twenty-five (25) member organizations included in its membership, a more humane approach in considering drug addiction as a disease that should be treated with emphasis on a public health and medical approach rather than merely a criminal law sanction approach, would be the imposition of a short sentence, when warranted, followed by supervised release with participation in a re-entry drug court setting, subject to its process of sufficient duration to cure the person of the addiction and really give such persons a chance to re-organize their lives and become a productive and law-abiding citizen.

In the past 4 to 5 years drug courts in the United States have really proven their value in reducing recidivism and re-integrating former addicted drug users and criminal defendants into positive contributing citizens in our communities. Many such individuals have gone on and received college and post graduate degrees and are rendering valuable social services to many other individuals in need. Others have gained employment and are now leading productive lives. Even a cost cutting U. S. Congress on a bipartisan basis has taken note of the successes of drug courts, and the initiation of Veterans Drug Courts and their tremendous increase in numbers in the past two (2) years. But current drug courts are only serving a small percentage, estimated to be between 10 – 15 percent of the people who end up even in our judicial system who could use their services and programs. Thus the money used to warehouse drug defendants for excessively long sentences, were such sentences shorten, could be re-allocated to drug courts with much better result for society and for the individual inmate. Thus, I suggest, the role of Drug Courts could be greatly expanded as post-sentence Re-Entry Drug Courts much as our current pretrial diversion and our guilty plea drug courts functioning in lieu of probation, with the guilty plea set aside if the individual is successful and graduates from the drug court program and the criminal case is dismissed. Further when there are technical violations or even a drug usage relapse, more intense supervision, including return even to transitional housing in the community, could be a far more effective option and less costly than returning the individual to prison for an additional period of incarceration.

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These views are respectively submitted on behalf of the National African American Drug Policy Coalition, Inc. and should you so desire in your future deliberations to call on me to testify in support of any of these concepts and principles, I will make myself available. Thank you and the Members of the Sentencing Commission for consideration of this submission.

Respectfully,



Arthur L. Burnett, Sr.
National Executive Director