

July 8, 2013

The Honorable Patti B. Saris  
Chair  
United States Sentencing Commission  
One Columbus Circle, NE  
Suite 2-500, South Lobby  
Washington, DC 20002-8002

RE: 2013-14 Priorities

Dear Judge Saris:

I write on behalf of the American Bar Association (ABA) regarding the Commission's priorities for the 2013-14 amendment cycle. Our recommendations were developed based on ABA policies after careful study by the ABA's Criminal Justice Section Sentencing Committee, co-chaired by James Felman and Barry Boss.

The ABA strongly supports the following proposed Commission priorities for the 2013-14 amendment cycle.

1) Continuation of its work with regard to mandatory minimums.

The ABA has long supported the repeal of statutory mandatory minimum sentencing, and we urge the Commission to continue its excellent work on this important issue. As recognized by the ABA Justice Kennedy Commission in 2004, mandatory minimum sentences should be avoided "so that sentencing courts may consider the unique characteristics of offenses and offenders that may warrant an increase or decrease in a sentence." American Bar Association Justice Kennedy Commission, Reports with Recommendations to the ABA House of Delegates, August 2004 at 26, available at:

[http://www.americanbar.org/content/dam/aba/publishing/criminal\\_justice\\_section\\_newsletter/crimjust\\_kennedy\\_JusticeKennedyCommissionReportsFinal.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_kennedy_JusticeKennedyCommissionReportsFinal.authcheckdam.pdf)

4) Continuation of its work on economic crimes.

The ABA considers sentencing for economic crimes under the current regime to be overly punitive and in dire need of reform. In fact, the ABA has formed a Special Task Force on the Reform of Federal Sentencing for Economic Crimes. Though this Special Task Force, the ABA looks forward to providing input to the Commission as it addresses these issues during the upcoming amendment cycle.

8) Compassionate Release

The ABA has long supported the adoption of sentence reduction mechanisms to respond to those extraordinary changes in a prisoner's situation that arise from time to time after a sentence has become final. The Department of Justice Inspector General Report on compassionate release earlier this year revealed what all who practice in this area already knew: the "the existing BOP compassionate release program has been poorly managed and implemented inconsistently, likely resulting in eligible inmates not being considered for release and in terminally ill inmates dying before their requests were decided." U.S. Department of Justice Office of the Inspector General, The Federal Bureau of Prisons' Compassionate Release Program, April 2013 at i, available at: <http://www.justice.gov/oig/reports/2013/e1306.pdf>. The Commission's intervention is desperately needed.

12) Child pornography offenses

The ABA in 2011 adopted a resolution urging the Commission to complete a comprehensive assessment of the guidelines for child pornography offenses, taking into account the severity of each offense and factors pertaining to the current nature of these offenses, offenders, victims, and the role of technology in these offenses. Given the findings and recommendations contained in the Commission's 2012 Report to Congress, child pornography offenses should clearly be a priority during the upcoming amendment cycle.

The ABA does not, however, support the following proposed priority:

3) Implementing the recommendations set forth in the Commission's 2012 Report on The Continuing Impact of *United States v. Booker* on Federal Sentencing.

The ABA does not support implementation of the recommendations set forth in the Commission's 2012 *Booker* Report and therefore does not support making this a priority during the upcoming amendment cycle. Most of the recommendations are focused on addressing perceived sentencing disparities, nationally, locally and by offense type. The ABA believes that the "problem" of disparity is overstated due to factors such as government-sponsored sentencing reductions and "fast track" programs that previously were available in only a limited number of districts. From our perspective, the focus of the Commission should not be on eliminating this perceived disparity, but rather upon the more significant problems of over-reliance on incarceration and substantial periods of incarceration for non-violent offenders.

We appreciate the Commission's consideration of the ABA's perspective on these important issues and will be pleased to provide any additional information or input that you might require.

Respectfully submitted,



Thomas M. Susman