

June 30, 2014

Chair Patti Saris  
U.S. Sentencing Commission  
One Columbus Circle NE, Suite 2-500  
Washington, DC 20002-8002

Attn: Public Affairs-Retroactivity Public Comment

Dear Chair Saris:

I write to express my support for amending U.S.S.G. § 1B1.10 to make Amendment 3, the “drugs minus two” amendment submitted by the U.S. Sentencing Commission to Congress on April 30, 2014, retroactive.

The “drugs minus two” amendment should be made retroactive without restriction or limitation, as a matter of equity and fundamental fairness. Retroactive application of the amendment will save billions of dollars, ease overcrowding in federal prisons, and lessen the disproportionate impact of drug sentences on tens of thousands of people and families of color. As past experiences in 2007 and 2011 have shown, extending eligibility for retroactivity can be done safely and effectively.

The “drugs minus two” amendment fixes a flaw in the guidelines that has resulted in excessive punishment for approximately 51,000 currently incarcerated federal drug offenders sentenced since 1987. Making this amendment retroactive will allow these federal drug offenders to seek punishments that hew more closely to the mandatory minimum drug sentences that set the baseline for the drug sentencing guidelines.

The Commission has a long and commendable track record of recognizing that corrections to flawed drug sentencing guidelines should, as a matter of fundamental fairness, be made retroactively applicable. The Commission has previously made guideline changes to sentences for LSD (1993), marijuana (1995), and crack cocaine (2007, 2011) offenses retroactive.

In 2007 and 2011, when the Commission changed crack cocaine sentencing guidelines, measures were implemented to ensure that courts, prosecutors, defenders, probation officers, and the Department of Justice could handle the tens of thousands of retroactive sentence requests it received. With planning and foresight, they can do it again now, with minimal disruption to ongoing case and docket management.

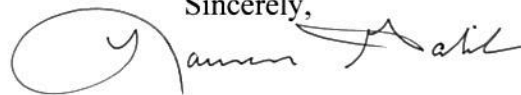
Moreover, when these changes were made, courts had the ability to deny retroactive sentence reductions to offenders who posed a danger to public safety. Indeed, the offenders who received retroactive crack guideline sentence reductions in 2007 went on to re-offend at no higher rate than those who did not receive such reductions. The same individualized court review process can be implemented today if the “drugs minus two” amendment is made retroactive.

Making the “drugs minus two” amendment retroactive will also help alleviate the disproportionate impact of our drug sentencing laws on communities of color. Almost three quarters of the people eligible for retroactive application of the “drugs minus two” amendment are Black or Hispanic, according to the Commission’s retroactivity impact analysis. While national data show that people of all races use drugs at about the same rate, Black and Hispanic men and women are sentenced and imprisoned for federal drug offenses at disproportionately high rates, for virtually every kind of drug. For example, in FY 2013, Blacks and Hispanics comprised almost 75 percent of all federal drug offenders and more than 80 percent of offenders sentenced for powder cocaine, crack cocaine, and heroin offenses. Making the “drugs minus two” amendment retroactive will not only provide more proportionate sentences for eligible offenders of color, but also restore these men and women to their communities and families sooner, which will strengthen communities disproportionately effected by these policies.

Finally, I commend the Commission for also recognizing its role in ensuring that sentencing policies do not over-burden our prison system and the taxpayers it protects. Our federal prison system is currently at 132 percent of its capacity and consumes a full quarter of the Justice Department’s budget. This level of overcrowding and funding is unsustainable and threatens the safety of correctional officers, inmates, and the general public. Every dollar spent on the incarceration of low-level, nonviolent drug offenders is a dollar that cannot be returned to taxpayers or used more responsibly, to increase public safety by putting more police on the streets, funding victim services, or capturing violent offenders and terrorists. Making the “drugs minus two” amendment retroactive will bring enormous savings to taxpayers, and will allow space and resources to be prioritized for those offenders who pose the greatest threat to public safety.

For all these reasons, I urge the Commission to make Amendment 3 fully retroactive, without limitation or restrictions. I hope the Commission agrees that justice should not depend on something as arbitrary as the date a person was sentenced. I thank you for your leadership and commitment to repairing the flaws in our sentencing guidelines, and I thank you for your laudable record of ensuring that everyone benefits when these flaws are fixed.

Sincerely,

A handwritten signature in black ink, appearing to read "Lauren Galik". The signature is written in a cursive style with a large, looping initial "L" on the left side.

Lauren Galik

Director of Criminal Justice Reform  
Reason Foundation  
Washington, D.C.