

BRIEFING STATEMENT OF
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BEFORE THE U.S. SENTENCING COMMISSION
ON IMPACT OF THE CRACK COCAINE AMENDMENT IF MADE RETROACTIVE

November 13, 2007

Members of the U.S. Sentencing Commission:

Good morning and thank you for the opportunity to testify on behalf of the U.S. Marshals Service (USMS) concerning the impact of the retroactive application of the new Crack Cocaine Amendment.

The new amendment to the Crack Cocaine sentencing guidelines would significantly reduce the sentence of several thousand prisoners currently in the Bureau of Prisons custody if the amendment were applied retroactively. These prisoners could be entitled to new sentencing hearings. If this were to occur, preliminary numbers indicate that approximately 19,500 prisoners could be eligible to be brought back into USMS custody. This would result in enormous costs, both financial and workload related, to the USMS. Additional consequences could also occur, to include new pretrial sentencing

reports, the redesignation of some prisoners and delaying the judicial process for prisoners currently in USMS custody.

Currently, the USMS has custody and responsibility for over 55,000 prisoners, the majority in pretrial status. It should be noted that this prisoner population has more than doubled over the past decade alone. The responsibilities placed upon the USMS include the housing, subsistence, medical care and transportation of these prisoners, and their production for court proceedings. At present, the USMS, with funding from the Office of the Federal Detention Trustee, expends over one billion dollars each year just for the housing, subsistence and medical care for the ever growing prisoner population in USMS custody. This does not include the salaries and expenses of the Deputy U.S. Marshals and administrative personnel that support this mission.

Since the USMS neither owns nor operates detention facilities, it must rely on a variety of methods to house prisoners. As of FY 2007, 67 percent were housed in State and local facilities, 21 percent in BOP facilities, and 13 percent in private detention facilities. Because State and local governments are experiencing higher volumes of their own prisoners due to increased law enforcement initiatives, the Federal Government has been forced to look to private contractors. If 19,500 prisoners were brought back in for resentencing hearings, using an average daily per diem of \$65.11 and housed for a month, the cost to the Federal Detention Appropriation would be approximately \$38 million dollars for housing alone. This average cost does not reflect the regional differences in prisoner housing costs throughout the country. For example, in the Eastern District of

Virginia where approximately 1,400 prisoners may have to be brought back in for resentencing hearings, the per diem housing costs range from \$50.00 per day for a facility almost two hours from the court house to \$113.00 per day for the facility closest to the courthouse. The \$38 million also does not account for any medical costs.

The one month amount of time allotted for the average prisoner stay in USMS custody was calculated by conferring with several districts and using the average amount of time a prisoner brought in on a writ or court order spends in USMS custody before and after his/her hearing. The amount of time in custody is affected by several criteria. First, one to two weeks is the time period it takes to actually bring a prisoner in from another location. This is based on the fact that the Justice Prisoner and Alien Transportation System (JPATS) airlift stops in each region at most once a week, or, in some locations, only every other week. The airlift stops in one location and the different USMS districts must meet the plane at the designated location. Each district only has a specified number of allotted seats on the plane. An example of this would be in the Eastern District of Virginia where personnel from the district drive to Harrisburg, Pennsylvania, once a week to meet the airlift. The District has between 9-12 seats on the plane. This total number of seats must be balanced against the average of 15 requests from the district for prisoner movement per week. Along the way, the prisoner may be housed in several locations before he/she actually boards the plane to his/her final destination. The second factor is that the prisoner's attorney and the Assistant U.S. Attorney in the case may also request the prisoner be brought to the district earlier in order to meet with them to prepare for the hearing. Third, once, the hearing is completed, the same process that brought the

prisoners in is followed to return them to their Bureau of Prisons place of origin.

Additional factors that could affect this time period would be if Pretrial Services needs time to complete a new presentence report and if the prisoner will require redesignation after resentencing.

The transportation of the prisoner is another area of concern for the USMS. The average cost to transport one prisoner is \$1100 dollars. This takes into account any necessary ground movement costs as well as flight cost. To transport 19,500 prisoners would cost approximately \$42.9 million dollars. Currently, JPATS takes an average of 25 days to bring a prisoner in and about the same to return him/her to their place of origin. Presently, there are 8,000 prisoner transportation requests. Last year JPATS transported 244,136 prisoners at a total cost of \$119,488,000 using two large planes and four or five small ones.

Along with the housing costs and the transportation issues, there is the overall lack of detention space in several of the top 25 districts that the retroactive application could affect. The attached map shows the districts with an Emergency Detention Status. This means that for these locations, all bedspace within the district is exhausted or terminated, and the district is forced to use facilities in other districts to house their prisoner load, which sometimes requires JPATS land and airlift support. Emergency status districts include Maryland, Western North Carolina, South Carolina and several of the Texas districts. An example of an Emergency bed space issue would be that a district has a population of 756 prisoners but only has guaranteed bed space in the district of 540

beds. The remainder of the beds depends on the availability in the State and local facilities at any given time. Many of these districts have to constantly juggle prisoners from one facility to another. USMS district management tries to house those prisoners needed in court closest to the court, and then move them to outlying facilities when they are no longer needed in court.

Finally, there is the issue of manpower. The USMS produces 770,000 prisoners in court each year. If another 19,500 were added, that would result in 92 more work years of effort. The estimated cost is \$13.6 million based on the modular cost of new positions in FY 2008 to handle the workload. The USMS would expend 100,000 deputy marshal work hours to receive these prisoners, process Judgment and Commitment Orders, and produce them to court from the cellblock, and another 32,000 hours would be required to transport the prisoners to the airlift. If the standard productive work year is 1,740 hours, then that translates into approximately 76 deputy marshal full-time equivalent (FTE) work years. While this number may not seem that large, consider that many of our 94 districts are operating at manpower deficits. To gain additional manpower the USMS employs hundreds of guards to make up for not having the necessary deputy marshals.

In summary, bringing 19,500 prisoners back for resentencing hearings would result in an enormous additional workload and may require that manpower and funding be diverted from task forces, protection details and new initiatives like the Adam Walsh Child Protection and Safety Act for which the USMS is the lead agency. Add this to the

burden 19,500 prisoners would place on a transportation system, JPATS, already working at maximum capacity; a prisoner housing shortage in key areas of the country and the strain on manpower due to the high volume of drug, terrorism and immigration cases the with which the USMS is already dealing and you can see why the USMS is concerned with the possibility of the Crack Cocaine Amendment becoming retroactive.

Thank you for the opportunity to address the Commission on this important issue, and the substantial financial and workload impact the retroactive application of the Crack Cocaine Amendment would have on the U.S. Marshals Service.