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JULY 19, 2023

The purpose of the criminal justice system is, first and foremost, to make communities safer. One way to ensure we do that is by focusing on proportionality, accountability, fiscal responsibility, and human dignity. The United States Sentencing Commission can accomplish these goals, in part, by tailoring its guidance to allow for retroactivity only in the cases where early release would benefit public safety. Accordingly, retroactive application of Part B to the Criminal History Amendment has the potential to accomplish this by freeing up resources that can be effectively reallocated to the most serious offenders and more proven crime prevention efforts.

At its core, the retroactive application of Part B would facilitate proportionality and accountability by addressing a limitation in the Sentencing Guidelines. Previously, the Guidelines failed to differentiate between "zero-point offenders"--individuals without any prior criminal history points--and "one-point offenders," despite a significant difference in their recidivism rates. Zero-point offenders are actually *16 percent less likely to re-offend* compared to one-point offenders.¹ The Commission acknowledged this disparity with Part B, providing for a two-level reduction for those without prior criminal history points. By taking into account an offender's recidivism potential, we can ensure that the severity of their sentence aligns with the actual risk an individual poses to public safety.

It is important to note that these amendments do not establish a blanket reduction for all applicants. Retroactivity is designed to create a pathway for individuals who meet specific criteria and have worked hard to earn a sentence reduction. We saw this proven to be effective with the retroactive application of the 2007 Crack Cocaine Amendment, where only 64.2% of

¹ U.S. SENTENCING COMM'N, *Amendments to the Sentencing Guidelines* 1-3 (April 2023).

reduction requests were actually granted.² Further, those who did receive a sentence reduction through retroactivity did not exhibit higher recidivism rates compared to a similar group of individuals who had not earn early release.³ Therefore, history shows us that retroactivity can be successfully implemented without compromising public safety.

The advantages of retroactive application extend beyond the scope of recidivism. It also has the potential to generate substantial cost savings within the federal prison system. We are well aware that prison is expensive, as each federal inmate costs taxpayers nearly \$40,000 per year.⁴ Now, consider this: the Commission estimates that retroactive application of Part B could result in an average sentence reduction of 15 months for nearly 9,000 zero-point offenders.⁵ If we do the math, it's estimated those reductions can turn into savings of nearly *half a billion dollars* in incarceration costs.

These considerable savings not only alleviate the financial burden on taxpayers but allow for smarter investments in crime prevention. The evidence is clear: to achieve long-term crime reduction, *we must address the drivers of recidivism*.⁶ Instead of locking up zero-point offenders, who have demonstrated significantly lower recidivism rates, we can strategically allocate our system's limited resources toward higher-risk individuals. For example, we can invest our resources into employment and educational programming in prisons, which are proven to reduce recidivism.⁷ Research even estimates that for every dollar invested in correctional education programming, we can save between four and five dollars in reincarceration costs.⁸ This proves the financial incentive is rooted in improving public safety.

Ultimately, when we grant reductions solely based on the fortunate timing of an offender's sentencing hearing, it shakes the public's faith in our criminal justice system. When people perceive the system as unfair, they become less willing to work in it and develop a general skepticism toward law enforcement. This distrust in our justice system would, in turn,

² U.S. SENTENCING COMM'N, *Recidivism Among Offenders Receiving Retroactive Sentence Reductions: The 2007 Crack Cocaine Amendment*, 2-3 (May 2014).

³ *Id.*

⁴ U.S. BUREAU OF PRISONS, *Annual Determination of Average Cost of Incarceration Fee* (Sept. 2021).

⁵ U.S. SENTENCING COMM'N, *Analysis of the Impact of 2023 Criminal History Amendment (Parts A and B) if Made Retroactive*, 9-10 (May 2023).

⁶ Bronna Kahle & David Guenther, *Give inmates an education and they'll be less likely to re-offend*, Crain's Detroit Business, May 31, 2022 (Mackinac Policy Center and State Representative Bronna Kahle: "Other states with similar programs have seen resounding success. According to a recent report co-authored by two renowned former corrections officials, Ohio prisoners who took part in a college degree program while behind bars were half as likely to commit new crimes. These programs also lead to millions of dollars worth of savings for taxpayers, with Pennsylvania saving more than \$400 million after 10 years").

⁷ Lois M. Davis, et al., *Evaluating the Effectiveness of Correctional Education: A Meta-Analysis of Programs That Provide Education to Incarcerated Adults*, 18, 77-78 (2013) (observing a 43% lower recidivism rate among the program's inmate participants).

⁸ *Id.*

undercut public safety. This is especially true when we consider offenders who are eligible for retroactive application of sentencing reductions and have earned the opportunity for a second chance by demonstrating good behavior. The Commission's decision to apply Part B retroactively would preserve judicial discretion, ensuring that each offender's unique background and record are considered before release.

If this amendment is applied retroactively, we are confident that giving certain zero-point offenders the ability to earn a sentence reduction will benefit our communities in more ways than one. By providing narrowly tailored retroactivity that requires a comprehensive review of each individual case, the Commission is ensuring that reducing recidivism is at the core of any decision made in our justice system. When we reduce recidivism, this means there is one less problem for law enforcement to solve, one less case for a prosecutor to handle, and, most importantly, one less victim who faces the consequences of our justice system's failure to rehabilitate those in its care. Thank you for the opportunity to testify today and I look forward to any follow up that can be of assistance to the Commission.



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