Families Against Mandatory Minimums
FOUNDATION

June 2, 2011

Hon. Patti B. Saris, Chair
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Re: Issue for Comment, Retroactivity of Permanent Crack Cocaine Amendment

Dear Judge Saris,

We offer these comments on behalf of the board, staff, and the more than 20,000 members of Families Against Mandatory Minimums (FAMM), including the two dozen who travelled from as far away as Michigan, Indiana, New Hampshire and North Carolina to attend the June 1 public hearing on the issue. They convey our recommendations as you consider whether and how to make the permanent guidelines drafted pursuant to the Fair Sentencing Act (FSA) retroactive. FAMM has consistently urged that lower guidelines for drugs and other offenses be made retroactive so that prisoners sentenced under a discarded guideline can benefit from the change. We do so again and with special force with respect to the new, lower crack cocaine sentences. We urge you to adopt retroactivity without condition, without temporal restriction and without requiring the courts to consider and apply the various enhancements resulting from the directives of the FSA.

A. The Commission should make retroactive the FSA-conforming base offense levels so that they are applicable to previously sentenced defendants.

FAMM urges the Commission to make the crack guideline reductions retroactive because the amendment meets the criteria set out by the Commission for retroactivity. The purpose of the reduction, its magnitude, and the ease of application all weigh in favor of retroactivity. Above all, retroactivity of the lower sentences is, simply and sufficiently, the right thing to do.

Section 1B1.10 sets out the factors for consideration when weighing retroactivity. They strongly favor making the amended crack sentencing ranges retroactive.

(1) *Purpose.* The Commission fought for years to have crack cocaine sentences reduced and were rewarded last Congress with victory. The purpose of the amendment, which reflects changes in the FSA, is to address the multifaceted problems with the crack sentencing structure. The Commission and Congress found that crack sentences overstated the drug's harmfulness with respect to powder cocaine sentences, was overbroad and reached too many low-level

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offenders, contributed to significant racial disparity in sentencing, overstated the seriousness of most crack offenses and failed to provide adequate proportionality.[1]

One of the reasons the Commission worked so hard to convince Congress to reduce crack cocaine sentences was that the crack sentencing structure "significantly undermine[d] the various congressional objectives set forth in the Sentencing Reform Act."[2] As Judge Reggie Walton pointed out on behalf of the Judicial Conference of the United States:

> Given . . . the rationale [for the amendment], amendments that reduce that disparity should apply equally to offenders who were sentenced in the past as well as offenders who will be sentenced in the future. Regardless of the date on which they were sentenced, *they were sentenced under a guideline that "undermined" Congress' sentencing objectives.*[3]

The Commission reached its conclusions about the harms inflicted by the crack cocaine sentencing structure by observing their impact on the tens of thousands of people sentenced for crack cocaine offenses under the mandatory minimums and the corresponding guidelines. Having achieved some measure of justice for crack cocaine defendants, it would be decidedly cruel to deny the benefit to the very people whose experiences you relied on and whose sentences you condemned.

Attorney General Eric Holder underscored the purpose of the reduction when he announced the Administration's support for retroactivity. Testifying on June 1 he said, "Although the Fair Sentencing Act is being successfully implemented nationwide, achieving its central goals of promoting public safety and public trust – and ensuring a fair and effective criminal justice system – requires the retroactive application of its guideline amendment."[4]

(2) *Magnitude of the change*. Congress gave the Commission the sole authority to choose to make guideline reductions retroactive precisely to confer the benefits of "sweeping and serious changes" such as this amendment effects.[5] If made retroactive, the permanent amendment will affect a large number of people, 12,040[6], reducing their sentences by an average of 37 months.[7] As with the 2007 decision, releases would be spread out over many years. The

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[1] U.S. SENTENCING COMMISSION, REPORT TO THE CONGRESS: COCAINE AND FEDERAL SENTENCING POLICY v-viii (2002).
[2] U.S. SENTENCING COMMISSION, REPORT TO THE CONGRESS: COCAINE AND FEDERAL SENTENCING POLICY 8 (2007) (2007 Cocaine Report).
[3] TESTIMONY OF JUDGE REGGIE B. WALTON PRESENTED TO THE UNITED STATES SENTENCING COMMISSION ON JUNE 1, 2011 ON THE RETROACTIVITY OF THE CRACK COCAINE GUIDELINE AMENDMENT at 2 (emphasis added).
[4] STATEMENT OF ERIC H. HOLDER, JR., ATTORNEY GENERAL OF THE UNITED STATES BEFORE THE UNITED STATES SENTENCING COMMISSION, HEARING ON RETROACTIVE APPLICATION OF THE PROPOSED AMENDMENT TO THE FEDERAL SENTENCING GUIDELINES IMPLEMENTING THE FAIR SENTENCING ACT OF 2010, WASHINGTON, D.C. (June 1, 2011) ("Holder Statement")
[5] TESTIMONY OF JUDGE REGGIE B. WALTON PRESENTED TO THE UNITED STATES SENTENCING COMMISSION ON THE RETROACTIVITY OF THE CRACK-POWDER COCAINE GUIDELINE AMENDMENT 5 (Nov. 13, 2007) (Walton Testimony").
[6] Memorandum from Office of Research and Data to Chair Saris, et al. 14 (May 20, 2011) ("Retroactivity Memo").
[7] *Id.* at 28.

numbers of people who will be eligible by these analyses are lower than those eligible under the 2007 decision, though the sentence reductions are greater in length on average.

Given the magnitude of change with respect both to the number of potential beneficiaries as well as the promise of significant sentence reductions to match those now considered appropriate, we can think of no principled way to distinguish the two amendments for retroactivity consideration.

(3) *Ease of application.* The implementation of the 2007 retroactivity decision was coordinated among prosecutors, probation officers, federal defenders and the courts in a collaborative project to ensure that prisoners applying for the sentence reduction were processed in an orderly and fair manner.

Several witnesses at the June 1, 2007 hearing addressed the ease of application inquiry from their unique perspectives as participants in the process. For example, for the judiciary, Judge Reggie Walton reminded the Commission that concerns about workload for the crack minus two retroactivity were, "real and justified" but the "workload was managed amazingly well" with the collaboration of court and criminal justice personnel.[8] Information technology, policies, procedures and national forms were developed then, he said, that can be pressed into service again.[9] For defenders, Michael Nachmanoff, Federal Public Defender for the Eastern District of Virginia (which would handle by far the largest number of motions) also discussed the cooperative relationship and added that legal issues that have been raised and resolved will make retroactivity even easier this time around.[10] And, while no probation officers testified, several witnesses on June 1 mentioned in their oral testimony having polled probation officers in their districts who, they reported, stood ready to act again. For federal prosecutors, Attorney General Holder testified on June 1 that the Bureau of Prisons, Marshals, prosecutors, judges and probation officers, among others

> stepped up and did the necessary work to ensure the successful and effective retroactive application of the 'crack minus two' amendment. Today – despite growing demands and limited budgets – my colleagues across the Department of Justice and the criminal justice community stand ready to do whatever is necessary to make our sentencing system fairer and more effective.[11]

We were therefore frankly surprised and not a little disappointed to hear the remarkable assertion of U.S. Attorney Stephanie M. Rose under questioning from the Commission, that apparently notwithstanding the Attorney General's characterization of the 2008 process, prosecutors were forced to make concessions and did not object in a majority of cases because

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[8] Walton Testimony at 3.
[9] *Id.*
[10] STATEMENT OF MICHAEL NACHMANOFF, FEDERAL PUBLIC DEFENDER FOR THE EASTERN DISTRICT OF VIRGINIA, PUBLIC HEARING BEFORE THE UNITED STATES SENTENCING COMMISSION, RETROACTIVE APPLICATION OF THE GUIDELINE AMENDMENTS IMPLEMENTING THE FAIR SENTENCING ACT OF 2010 at 10 (June 1, 2011) (Nachmanoff Statement). Nachmanoff also cited Judge John Antoon II, whose court in the Middle District of Florida handled the second largest number of crack minus two retroactivity motions, calling the process "seamless." *Id.*
[11] Holder Statement at 4.

they did not have the resources to process all of the cases. She offered this assessment to explain her concern about the administrative burden. Given the overriding concern of the Department for public safety, we were frankly a little skeptical of this claim. But, as Commissioner Ketanji B. Jackson pointed out, the pool today is smaller, hard cases can be put off for a closer look, and the participants have the benefit of the 2008 process.

We believe therefore that there is no reason to doubt that the agencies and personnel administering the FSA reductions will benefit from the last run and cooperate to ensure a smoothly functioning and fair process this time around.

B. The Commission should not make enhancements adopted pursuant to the Fair Sentencing Act retroactive.

The Commission should not insist that enhancements adopted pursuant to directives in the Fair Sentencing Act be made retroactive for purposes of crack sentence reductions under 18 U.S.C. § 3582 (c)(2). Retroactivity is intended to confer the benefit of a reduced guideline to defendants sentenced under a previous, higher guideline or the benefit of a new mitigating factor to those sentenced before it went into effect. While we appreciate that the enhancements could not operate to increase a sentence above that currently served by a prisoner, the enhancements could undo much or all of the benefit the retroactive guideline means to confer.

Making the enhancements effectively retroactive would not meet the criteria set out in U.S.S.G. § 1B1.10: purpose, magnitude and ease of application.

(1) *Purpose*. Adding enhancements back into the calculation would frustrate the purpose of the crack guideline reductions, which were intended to lessen crack sentences, reduce racial disparity, and better account for the relative harm of crack cocaine. The FSA maintains a distinction between crack and powder, reflecting congressional belief that trafficking in crack is inherently more harmful and defendants should be subject to higher sentences. In other words, crack cocaine prisoners are serving sentences that have factored in assumptions captured by some of the enhancements. Adding enhancements on top of crack sentences that are already higher than powder cocaine sentences because of features Congress meant to punish could pile on months and years, creating redundancies and potentially erasing any benefit the reduction achieved.

Furthermore, if the purpose of adding the enhancements is to accommodate public safety concerns, the courts and prosecutors are equipped to identify those prisoners whose records and post-conviction conduct make them unfit candidates for reduced sentences. Hundreds of defendants who applied for crack-minus-two retroactivity were denied due to 18 U.S.C. § 3553(a) factors (238), protection of the public (206), and post-sentencing or conviction conduct (160).[12] The courts have demonstrated they can certainly handle issues of public safety using the current version of 1B1.10, which was reconfigured to account for public safety in 2007.[13]

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[12] U.S. SENTENCING COMMISSION, PRELIMINARY CRACK COCAINE RETROACTIVITY DATA REPORT Tbl. 9 (April 2011 Data).

[13] *See* U.S.S.G. §1B1.10, cmt. n.1(B)(ii) (2010) as amended by Amendment 712 (adopted Nov. 1, 2007).

(2) *Magnitude of the change.* While it is not known how many crack defendants would be subject to the new enhancements, we understand that it is likely to be a very small fraction of the universe of eligible defendants and as such would not affect enough defendants to make it worthy of categorical consideration.

(3) *Ease of application.* Requiring the courts to make determinations about enhancements that did not exist at the time of the original sentencing or were not accounted for in a manner easily discernable would place an unwarranted and unnecessary burden on the process. Trying to tease out conduct or events from old records that might not include information relevant to the FSA-compliant enhancements would frustrate the objectives of the crack reduction and retroactivity. It would also burden the courts unnecessarily.

Most significantly, requiring the courts to calculate enhancements for crack cocaine retroactivity would be unprecedented. Over the years, 27 guideline amendments have been made retroactive.[14] The Commission has never directed that the court responding to a motion to reduce under 18 U.S.C. § 3582(c)(2) explore and apply any intervening enhancements that did not exist in the guidelines at the time of the original sentencing. By our count, the Commission has adopted 31 amendments that have the potential to increase sentences just in the drug trafficking context, either by way of specific offense characteristics in U.S.S.G. §§ 2D1.1 through 2D3.5, enhancements under Chapter 3, or upward departure provisions in U.S.S.G. §§ 5K1.1 through 5K2.3.[15] None of these enhancements, whether specifically applicable to drug offenders or generally applicable to all offenders, has ever been required consideration when applying the subsequently adopted retroactive guidelines.

It would strike at best a discordant note to require that the one guideline most calculated to reduce racial disparity in sentencing be the one and only guideline granted retroactivity, if and only if the courts were forced to calculate enhancements that are themselves applicable to all drug sentences, not simply those for crack cocaine.

C. The Commission should not limit consideration of retroactivity based on temporal, criminal history, or other concerns.

The Commission asks whether, assuming the new crack cocaine base offense levels are made retroactive, it ought to provide guidance and/or limitations about the circumstances or extent of sentence reductions. Should, for example, the Commission allow retroactivity only for defendants sentenced within a particular criminal history category or categories, or those who received a Safety Valve adjustment? Or, the request for comment asks, should certain categories of defendants be excluded due to particular enhancements applied at sentencing, such as aggravating role, firearms, or because they used a minor to commit a crime?

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[14] *See* U.S.S.G. § 1B1.10(c) (2010).
[15] See Appendix A (attached).

The Commission should do no such thing, but rather adopt retroactivity in a straightforward fashion, allowing the sentencing courts to determine who should or should not be eligible for early release.

Courts are, of course, as committed as prosecutors, law enforcement personnel and others to avoiding releasing unprepared, dangerous prisoners into the community before their time. Insinuations to the contrary are unwarranted and do a disservice to the judiciary and to the many deserving prisoners who would be left behind by applying blanket exclusions.

The Issue for Comment suggests a variety of exclusions that taken alone or together could eliminate potentially large numbers of prisoners due to factors already taken into account at sentencing. Going forward, judges sentencing defendants with one or more of the recommended exclusions, such as aggravating role or firearm conviction, will start with a guideline range lower than the one a similarly situated pre-FSA defendant was subject to. They will then consider these very enhancements and, if applicable, add them to the post-FSA base offense level to arrive at the calculated guideline range. What would be the point of denying a sentence reduction for defendants whose sentence, everyone agrees, was overblown – before the addition of the enhancements? The prisoners received a crack sentence already too long, on top of which they received an enhanced sentence for the aggravated conduct.

While we understand that the Commission must be expressing concern about community safety, we think this is the wrong way to address it. Nothing that happened when crack-minus-two retroactivity was put into place helps us understand why the Commission would feel the need to now impose such exclusions. The Commission recently announced that recidivism rates for those released after March 2008 with reduced sentences are roughly equal to, if not slightly below, the 33 percent recidivism rates of a control group made of similarly situated but already released crack cocaine defendants.

When the Commission last amended U.S.S.G. § 1B1.10, it included a set of factors for consideration when assessing motions for sentence reductions. The Commission added a section entitled "Public Safety Considerations" and directed courts to "consider the nature and seriousness of the danger to any person or the community that may be posed by a reduction in the defendant's term of imprisonment" when deciding whether and to what extent to reduce a sentence.[16]

The better course is to permit judges the discretion to apply the public safety application note at §1B1.10 to forbid retroactivity to defendants who will pose a danger to the community if released early.

(1) *Criminal History.* We discourage the Commission from limiting retroactivity to defendants in a certain criminal history category. While the issue for comment does not shed light on the Commission's concerns, we assume that the criminal history limitation is designed to better secure public safety. But we know that criminal history categories are simply inadequate proxies for future dangerousness. Judges find them unhelpful in many cases. In 2010, judges

[16] U.S.S.G. § 1B1.10 (2010).

granted downward departures from the guideline range in 1,687 cases.[17] Criminal history downward departures comprised almost 91 percent of those departures.[18] Criminal history made up almost 44 percent of reasons given for departures.[19] That year, judges imposed below guideline sentences in an additional 4,150 cases employing *Booker*/18 U.S.C. § 3553(a).[20] Judges ruled that calculated criminal history was overstated in 528 (61 percent) of those departures.[21] That year, judges sentenced below the guidelines (using *Booker* and § 3553(a)) in an additional 11,116 cases; in 1,828 (16.4 percent) of them, criminal history was cited as the reason.[22] Taken together, judges departed or varied in 13,668 cases in 2010. In 3,889 of those cases, or 28.4 percent, they did so for reasons of criminal history. In other words, in more than a quarter of all cases in which downward departures or variances were given, criminal history has been found to overstate the seriousness of a defendant's criminal history or the likelihood of recidivism. Given how often judges find they cannot rely on the defendant's criminal history category, we think using it as a limitation on eligibility would be unjust and unwarranted and not unhelpful.

Criminal history has a pernicious impact on racial disparity as well. African-American defendants face higher arrest rates and accumulate more criminal history points than similarly situated white defendants.[23] It would hardly be fair to lessen the impact of one unfair rule, the unduly harsh crack sentencing disparity that contributed so much to racial disparity in sentencing, only to deny defendants, the vast majority of whom are African American, its benefit because of another racial disparity in the sentencing system.

We particularly oppose the Department's proposal, enunciated in U.S. Attorney Rose's statement, to limit retroactivity to prisoners who were sentenced in Criminal History Categories I-III.[24] As several commissioners pointed out in questioning Ms. Rose, the just released recidivism analysis of prisoners who were released early due to the 2008 retroactivity decision, demonstrated that there was little discernible difference in reoffending rates overall based on criminal history.[25] Strikingly, the recidivism rate for the 2007 Amendment Group in CH IV was 13% *lower* than for the similarly situated Comparison Group.[26] And yet, the Department seeks to prevent defendants in that group from eligibility to "minimize risk for the community."[27] They offer no evidence to support their contention that these defendants or those in the higher

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[17] 2010 SOURCEBOOK, at 67, tbl. 25 n.1.
[18] 2010 SOURCEBOOK, at tbl. 25.
[19] *Id.*
[20] 2010 SOURCEBOOK, at tbl. 25A
[21] *Id.*
[22] 2010 SOURCEBOOK, at tbl. 25B
[23] Fifteen Year Report, at 134.
[24] STATEMENT OF STEPHANIE M. ROSE, UNITED STATES ATTORNEY, NORTHERN DISTRICT OF IOWA, BEFORE THE UNITED STATES SENTENCING COMMISSION, HEARING ON RETROACTIVE APPLICATION OF THE PROPOSED AMENDMENT TO THE FEDERAL SENTENCING GUIDELINES IMPLEMENTING THE FAIR SENTENCING ACT OF 2010, WASHINGTON, D.C., 8-9 (June 1, 2010) ("Rose Statement").
[25] Memorandum to Chair Saris, et al. from Kim Steven Hunt, Senior Research Associate, et al., "Recidivism Among Offenders with Sentence Modifications Made Pursuant to Retroactive Application of 2007 Crack Cocaine Amendment, 10 (May 31, 2011) ("Recidivism Memo").
[26] *Id* at tbl. 2.
[27] Rose Statement at 8.

criminal history categories, whose recidivism rates were indistinguishable from those of their comparison group counterparts, pose a greater danger to the community by their early release. In fact, as the numbers demonstrate, early release may have a beneficial effect on this population.

This exclusion would also eliminate 6,489 prisoners from the pool you projected of 12,040, 3,357 who received a weapon specific offense characteristic and 1,778 who received a firearms mandatory minimum..[28]

We urge you to reject the Department's suggested categorical exclusion based on criminal history.

(2) *Safety Valve*

That criminal history rates for crack cocaine defendants are high is one reason why crack offenders are the least likely of all drug offenders to receive the benefit of the safety valve.[29] Of the 4,731 defendants sentenced for crack cocaine offenses in 2010, only 86 not subject to a mandatory minimum received the safety valve (1.8 percent) and only 448 of those who were subject to a mandatory minimum (9.5 percent) were sentenced with the safety valve.[30] Limiting retroactivity to the handful of crack offenders who received the safety valve would severely undermine the goals of the amended guidelines: undoing the unwarranted racial and sentencing disparities created by years of an unsupportable distinction between crack and powder cocaine punishments. It would also inject unfairness and unwarranted disparity into sentencing, because all crack cocaine defendants going forward, not only those who earn safety valve consideration, will receive the benefit of the lower guideline.

(3) *Weapons exclusion.*

The Department witnesses also recommended absolutely excluding anyone from the pool who had a gun bump or mandatory minimum.[31] But, as the Commission's recidivism analysis makes clear,

> [w]eapon possession or use as part of the instant offense did not distinguish the two groups of crack cocaine offenders. Recidivism rates for offenders with weapon involvement are similar, 32.1 percent in the 2007 Crack Cocaine Amendment Group and 29.8 percent in the Comparison Group, and this difference is not statistically significant.[32]

Barring these defendants would eliminate 5,215 prisoners or 44.3 percent of otherwise eligible defendants.[33] Given the broad reach of the guideline and statutory

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[28] Retroactivity Memo at 21, tbl. 5.
[29] 2007 Cocaine Report, at 49.
[30] 2010 SOURCEBOOK, tbl. 44.
[31] Rose Statement at 8-9.
[32] Recidivism Memo at 10.
[33] Retroactivity Memo at 21, tbl. 5.

weapons provisions, such exclusions would eliminate not only potentially dangerous prisoners, but also defendants who did not personally possess or use a weapon or be aware that another participant in the offense did so. As Julie Stewart pointed out in her oral testimony, Natasha Darrington, the FAMM member who testified about her own early release under the 2007 amendment, is one such person. Her gun bump was based not on her possession or use of a gun but that of a co-defendant. Her complete and successful reentry into the community belies any inference that she was, by the fact of the gun bump, inherently a danger to the community.

Moreover, a weapons' bar would disproportionally affect African Americans. The Commission has found that the use of gun mandatory minimums under 18 U.S.C. § 924 (c) "disproportionately disadvantage[s] minorities."[34]

For these reasons, we strongly urge you to reject the Department's recommendation and permit the courts to account for community safety by exercising their discretion, using the guidance at U.S.S.G. § 1B1.10.

(4) *Temporal Restrictions.* We urge the Commission not to impose temporal limitations on judges weighing retroactivity decisions. The majority of sentences from which reductions would be taken (even those post-*Kimbrough* and post-*Spears*) started their lives as guideline sentences. The U.S. Supreme Court has been clear that the guidelines are the beginning of the sentencing decision-making process. Courts must "give respectful consideration to the Guidelines" even as they fashion sentences that respond to other statutory priorities.[35] And, while courts impose sentences based on the consideration of factors laid out in 18 U.S.C. §3553(a), the "Guidelines should be the starting point and the initial benchmark."[36]

As such, every judge is obliged to calculate the sentencing guidelines, including the various grounds for departure, before launching the inquiry under 18 U.S.C. § 3553(a). This means that pre-FSA guidelines for crack cocaine sentences were the starting point for every judge who will face a reduction motion should the post-FSA guidelines be made retroactive. The sentencing courts can identify any defendants who under advisory guidelines received consideration at sentencing -- or reductions following the 2007 crack reduction -- so generous that an additional sentence reduction would be uncalled for. Making hard and fast temporal rules would unfairly affect all the others who received no such consideration and limit the courts' ability to right a longstanding injustice in sentencing.

D. Conclusion

[34] Fifteen Year Review at 90,92.
[35] *Kimbrough v. United States*, 552 U.S. 85, 101 (2007) (internal quotations and citations omitted).
[36] *Gall v. United States*, 552 U.S. 38, 49-51 (2007).

Amidst all of the worthy and important policy arguments you consider, please don't lose sight of the fact that there is a very real human component to the decision before you.

Thousands of Americans are serving sentences that Congress just recently repudiated as excessive. It would be cruel and unconscionable to change policy because of the injustice they suffered and then deny them relief. And, as for their families, we simply do not know how we tell a young child that she must live without her father for an extra five or ten years simply because he broke the law before Congress realized the law itself was broken and before the Commission had the opportunity to fix it.

We appreciate the Commission's attention to our concerns and recommendations.

Sincerely,

Julie Stewart
President

Mary Price
Vice President and General Counsel

Appendix A
Enhancements to the Sentencing Guidelines
Amendments containing sentencing enhancements in Chapter 3, 2D1.1-2D3.5, 5K1.1-5K2.3

Amendment Number, Effective Date, Guideline, Change

#347. 1990. §3C1.1 2-level enhancement for reckless endangerment during flight.

#457. 1992. §§3C1.1, 3C1.2. Expands scope of relevant conduct; holds defendants accountable for conduct aided and abetted, counseled, commanded, induced, procured or willfully caused. Invites upward departure for death or bodily injury or when the offense posed a risk to more than one person.

#500. 1993. §3B1.1. Suggests upward department for individuals not covered by §3B1.1 but who exercised managerial responsibility over property, assets, or activities of a criminal organization.

#514. 1995.

- §2D1.1. 2-level increase if offense involved possession of controlled substances in prison, correctional or detention facility.
- §2D1.1. 2-level increase if offense involved distribution of controlled substances in prison, correctional or detention facility

#532. 1995.§5K1.8. Provides basis for upward departure when def. is subject to stat maximum under 18 USC 521 (pertaining to criminal street gangs).

#555. 1997. §2D1.1.

- 2-level enhancement for environmental violation with illicit manufacturing or drug trafficking offense.
- Invited upward departure for extreme cases of environmental violations above.
- 2-level enhancement for importation of meth and precursors.

#604. 2000. §1B1.4 Allows upward departure for aggravating conduct dismissed or not charged in connection with plea agreement.

#608 (620). 2000. §§2D1.1, 2D1.10. New SOCs for

- 3 levels for substantial risk to life or environment
- 6 levels for same risk to minor.

#659. 2003. §3B1.5.

- 2-level enhancement if drug trafficking or crime of violence involved use of body armor.
- 4-level enhancement if body armor used to prepare, commit, or avoid apprehension for the offense.

#667. 2004. §§2D1.1, 2D1.11, 2D1.12.

- 2-level increase for marketing precursor chemicals, controlled substances or prohibited equipment thru the internet.
- 6-level increase for stealing or transporting stolen anhydrous ammonia.

#681. 2006. §2D1.1.

- 2-level increase for anabolic steroids with masking agents.
- 2-level increase for distribution of anabolic steroids to an athlete.

#684. 2006. §3C1.3. 3-level enhancement for offense committed while on release.

#691. 2006. §5K2.17. Upward departure warranted if def. possessed semiautomatic firearm capable of accepting a large capacity magazine in connection with a crime of violence or drug offense.

#693. 2006. §3C1.1. Extends obstruction enhancement for conduct that occurs prior to start of investigation.

#700. 2007. §2D1.14. 6-level increase if penalties for terrorism do not apply.

#705. 2007. §§2D1.1, 2D1.11.

- 2-level increase if defendant convicted of 21 USC 865.
- 2-level increase for individuals who had knowledge of or reason to believe date rape drugs were going to be used to commit a criminal sexual act.
- Increases penalties for manufacturing, distributing or possessing with intent to distribute meth while children are present, including 2-level increase for PWID or distribution of meth and
- 3-level enhancement for manufacturing meth while a minor is present.
- 6-level enhancement and minimum BOL of 30 if meth manufacturing created substantial harm to the life of a minor.

#728. 2009. §2D1.1.

- SOC: failure to heave to vessel at police direction(+2)
- SOC: attempt to sink a vessel(+4)
- SOC: sinking a vessel (+8)
- Upward departure provided if defendant engaged in pattern of using semi or submersible vessels to commit other felonies or if offense involved use of vessel in ongoing criminal enterprise.