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United States Sentencing Commission  
One Columbus Circle  
NE, Suite 2-500, South Lobby  
Washington, DC 20002-8002  
VIA email: [pubaffairs@ussc.gov](mailto:pubaffairs@ussc.gov)



Attention: Public Affairs - Priorities Comment

The Drug Policy Alliance (DPA), the nation's leading organization advancing drug policies that are grounded in science, compassion, health and human rights, appreciates this opportunity to submit our recommendations to the United States Sentencing Commission's proposed priorities for 2014. The United States has spent a trillion dollars and holds 25% of the world's prison population as consequences of more than 40 years spent waging the war on drugs. The rate of incarceration in the United States is currently "almost five times higher than the historical norm prevailing throughout most of the twentieth century."<sup>1</sup>

A recent report by the Global Commission on Drug Policy highlighted the problems with American drug policy's over-reliance on incarceration and called for policies that improve health, instead of perpetuating the criminalization and stigmatization of drug users who do no harm to others.<sup>2</sup> In addition, the Organization of American States ("OAS") released a report in May 2013 calling for a "public health" approach to address drug problems, including exploring alternatives to mass criminalization for people who use or possess drugs.<sup>3</sup> Further, Human Rights Watch released a statement in June 2013 asserting that criminalizing people for personal drug use infringes basic human rights.<sup>4</sup> These reports reflect growing political momentum throughout the United States and Latin America for major reforms of our drug policies.

DPA supports the Commission's recommendations to evaluate and reform policies driving over-incarceration at the federal level in the recent Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System<sup>5</sup>. In particular, DPA supports repealing mandatory minimums for drug offenses, expanding access to the safety valve, mitigating the cumulative impact of criminal history, diminishing the incidence of stacking mandatory minimum sentences, undertaking a comprehensive study of recidivism. In addition, we urge the Commission to evaluate drug sentencing guidelines, including reducing all drug sentencing guidelines by at least two levels in order to conform federal drug sentences to 18 U.S.C. § 3553(a)(2), 28 U.S.C. § 994(c) and (d), and 28 U.S.C. § 994(g).

Our specific recommendations are as follows:

**Repeal Mandatory Minimum Sentences for Drug Offenses**

Federal sentencing laws and policies, including mandatory minimum sentences for drug offenses, directly contribute to the problem of mass incarceration and prison overcrowding. The federal prison population continues to grow every year<sup>6</sup> and currently "system-wide [prison] crowding is at 38 percent over rated capacity, with 53 percent and 49 percent at high and

medium security institutions respectively (data as of February 2, 2012)”<sup>7</sup> The Federal Bureau of Prisons (BOP) “continues to face unprecedented challenges in managing the growing federal inmate population.”<sup>8</sup> And, absent reforms, the “BOP projects that the inmate population will continue to grow for the foreseeable future.”<sup>9</sup>

The Commission has a duty to ensure that sentencing policies “minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons[]”<sup>10</sup> In that regard, DPA supports the Commission’s recommendations to evaluate the severity and scope of mandatory minimum penalties for drug offenses, and urges the Commission to prioritize efforts aimed at reducing mass incarceration, including repealing mandatory minimum sentences for drug offenses.

Nearly half (48%) of inmates in federal prison were serving time for drug offenses in 2011<sup>11</sup> and a majority of drug cases are subject to mandatory minimum sentences. The Commission has acknowledged that “Given that drug trafficking constitutes the largest offense group sentenced in the federal courts, the two-and-a-half time increase in their average prison term has been the *single sentencing policy change having the greatest impact on prison populations.* (emphasis added)”<sup>12</sup> Further, this “one sentencing rule contributes more to the differences in average sentences between African-American and White offenders than any possible effect of discrimination.”<sup>13</sup>

Congress intended mandatory minimum penalties to apply to mid-level and major drug traffickers<sup>14</sup>. However, mandatory sentences effectively prevent judges from applying any mitigating circumstances that may reduce sentences for less culpable offenders.<sup>15</sup> As such, many low-level offenders receive mandatory minimum sentences regardless of their level of culpability. In addition, “mandatory minimums often result in sharp variations in sentences based on what are often only minimal differences in criminal conduct or prior record.”<sup>16</sup> Mandatory minimum sentences lead to lengthy and harsh sentences for many low level offenders and contribute to prison overcrowding. The Commission should propose repealing mandatory minimum sentences for drug offenses, especially those tied to drug quantities and those triggering sentence enhancements for prior criminal records.

### **Expand Access to the Safety Valve**

Congress intended mandatory minimum penalties to apply to mid- and high level offenders<sup>17</sup>, and enacted the safety valve provision as an exception to mandatory minimum sentences.<sup>18</sup> However, the safety valve provision under 18 U.S.C. § 3553(f) applies restrictively and the eligibility requirements are so narrow in scope that many low level offenders are not eligible for the relief it provides.

Restricting the safety valve opportunity perpetuates racial inequality, which permeates our criminal justice system. Although African Americans are no more likely than whites to use or sell illegal drugs, racial profiling in African American neighborhoods has led to African Americans being much more likely to hold past felony drug convictions.<sup>19</sup> In fact, although African Americans comprise only 15% of drug users, they comprise 74% of those sentenced to prison for a drug offense.<sup>20</sup> According to testimony by Federal Public Defender Michael Nachmanoff to a Senate Judiciary subcommittee in 2008, “Because African Americans have a

higher risk of conviction than similar white offenders, they already have higher criminal history scores and thus higher guideline ranges and are more often disqualified from safety valve relief.”<sup>21</sup> In 2010, only 9.8% of African American defendants convicted of a drug offense carrying a mandatory minimum were relieved of the penalty through the safety valve, as opposed to 26.9% of White defendants, 36.8% of Hispanic defendants, and 29.5% of defendants of other races.<sup>22</sup> Unfortunately, aggressive policing and racial profiling has placed many minorities in Criminal History Categories III. Therefore, the Commission must continue to urge Congress to expand safety valve access to higher criminal history categories in order to address dramatic racial disparities in our drug sentencing laws.

The current highly restrictive safety valve policy unjustly punishes former prisoners who often recidivate as a response to a broken system. Former prisoners find barriers to reentry upon returning to their communities caused by social stigma, civic sanctions,<sup>23</sup> employment discrimination,<sup>24</sup> and a lack of social capital.<sup>25</sup> These obstacles can fuel further criminal activity and recidivism.<sup>26</sup>

Finally, broadening the eligibility criteria for the safety valve would help alleviate prison overcrowding. For example, as the Commission reported, expanding access of the safety valve to drug offenders in Criminal History Category II would have made 1,127 offenders convicted of drug offenses eligible for relief from mandatory minimums in 2010.<sup>27</sup>

In sum, DPA supports the Commission’s recommendation to Congress regarding the expansion of the safety valve (18 U.S.C. § 3553(f)) to include drug offenders in higher criminal history categories.

### **Reassess the Scope and Severity of Recidivist Provisions**

The Drug Policy Alliance supports the Commission’s recommendation that Congress reassess the scope and severity of the recidivist provisions at 21 U.S.C. § 841 and 960. Current harsh recidivist provisions waste tax payer dollars and have little to no effect on public safety. Studies have shown that harsh penalties do not lead to an increased perception of punishment by the public<sup>28</sup> and have little or no effect on crime rates.<sup>29</sup> A study of California’s similarly severe recidivist provisions, known as the “Three Strikes Laws,” showed results consistent with these findings.<sup>30</sup>

DPA also believes that the current scope and severity of recidivist provisions conflicts with 18 U.S.C. § 3553(a)(1), especially with regards to low-level, non-violent drug offenders. Non-violent drug users should not be punished for multiple manifestations of repeat behavior that is caused by addiction, mental illness, and/or other health issues. To impose mandatory minimums for such repeat behavior is to ignore both the nature and circumstances of the offense and the history and characteristics of the defendant. The Commission should conform repeat offense sentencing to 18 U.S.C. § 3553(a)(1) by removing simple possession offenses from the list of prior drug offenses used to apply recidivist provisions. A prior drug felony conviction triggers the recidivist enhancements for any “offense that is punishable by imprisonment for more than one year under any law of the United States or of a State or foreign country that prohibits or restricts conduct relating to narcotic drugs, marihuana, anabolic steroids, or depressant or

stimulant substances.”<sup>31</sup> The definition of felony drug offense is tremendously broad and encompasses federal, state and foreign laws. Therefore, even minor drug offenses can trigger the recidivist enhancements. For example, a most states classify simple possession of drugs for personal use as a felony punishable by more than 1 year of imprisonment, despite the fact that federal law classifies this conduct as a misdemeanor punishable by 1 year or less of imprisonment.<sup>32</sup> This leads to anomalous results since a person with a prior federal conviction for drug possession could be spared from the recidivist provisions, while another person with a state law conviction for the same conduct would be subject to a doubling of a mandatory minimum sentence.

In addition to leading to disparate outcomes, the current policy’s harsh treatment of past offenders ignores evidence that prison sentences do not lead to rehabilitation,<sup>33</sup> that imprisonment as a response to drug offenses can actually increase recidivism rates,<sup>34</sup> and that racial disparities are exacerbated by the policy.<sup>35</sup> Lengthy sentences for drug use and possession are ineffective at addressing what is fundamentally a health issue.<sup>36</sup> What is needed is an expanded access to community programs for addiction treatment and/or other medical interventions, and DPA supports the Commission’s recommendation that Congress amend the recidivist provisions.

### **Reduce the Use of Stacking Mandatory Minimums in Relation to 18 U.S.C. § 924(c)**

The stacking of mandatory minimums sentences as laid out in 18 U.S.C. § 924(c) leads to overly severe sentences, regionally inconsistent application, and disproportionate punishment of African American offenders. The average sentence of an offender convicted to stacked mandatory minimums under 18 U.S.C. § 924(c) is over 16 years greater than those convicted of a single charge under 18 U.S.C. § 924(c).<sup>37</sup> Many of these are for non-violent offenses that did not involve any physical harm or threat of physical harm, yet they face far greater sentences than those who commit the “most serious, violent crimes.”<sup>38</sup> Further, The Commission’s sentencing data also shows that the practice of stacking mandatory minimums is being exercised disproportionately in a few select judicial districts, despite no evidence to show that offenses in violation of 18 U.S.C. § 924(c) occur more frequently in those districts than in others.<sup>39</sup> Stacking mandatory minimums also exacerbates racial disparities in our criminal justice system. According to the Commission’s report, *Mandatory Minimums in the Federal Criminal Justice System*, African Americans make-up “61% of offenders convicted of multiple counts of an offense under section 924(c).”<sup>40</sup>

DPA supports the Commission’s recommendations to reduce the length of mandatory minimums for 924(c) penalties and amend section 924(c) to reduce the incidence of overly severe sentences that are applied disproportionately on the basis of location and race.

### **Examining Rehabilitative Opportunities**

We support the Commission’s recommendation to undertake a comprehensive, multi-year study of recidivism and policies that will aid in successful prisoner reentry. In particular, we recommend that the Commission analyze how barriers to reentry, aging, familial connection, and access to addiction treatment impact recidivism rates.

Returning citizens face a multitude of barriers to effective reentry upon returning home from prison. In addition to barriers to employment, housing, public benefits, and civic participation, individuals are often returning to socioeconomically disadvantaged neighborhoods.<sup>41</sup> Returning citizens are in need of social resources, such as addiction treatment, housing, and job placement, in order to successfully reenter society.<sup>42</sup> As stated above, these barriers fuel recidivism. The Commission should examine the impact on recidivism of policies that address these barriers, such as “Ban the Box,” which prohibits inquiries regarding criminal history on initial job applications, or state-sponsored support programs that provide returning citizens with housing and other necessities. The Commission should also investigate how evidence-based programs can be effectively incorporated into the guidelines, possibly through the use of intensive home confinement programs.

Although the barriers to recidivism affect returning citizens of all ages, according to the Commission’s report, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines*, “Recidivism rates decline relatively consistently as age increases.” The report also found that, “offenders are most likely to recidivate (25.6%) when their sentence is a straight prison sentence.”<sup>43</sup> This data implies that considering age as a factor for imposing community confinement in place of incarceration may save tax payer dollars, reduce prison overcrowding, and improve public safety. The Commission should expand on previous research to study the impact community confinement has on recidivism in relation to the age of the offender.

Another factor that affects returning citizens’ success is the extent to which prisoners can stay connected with their families while incarcerated.<sup>44</sup> This is especially true among female offenders with children,<sup>45</sup> who are less likely than their male counterparts to reoffend.<sup>46</sup> In fact, a survey of female prisoners found that they ranked estrangement from their children as their highest concern while incarcerated.<sup>47</sup> The distance of the facility from the prisoner’s home can be a large barrier to maintaining familial connections while incarcerated.<sup>48</sup> The majority of parents in federal facilities are held over 100 miles from their home and 43% are held over 500 miles from their homes.<sup>49</sup> The lack of connection not only affects parents, but also increases the negative outcomes for children with incarcerated parents, including increased likelihood of being incarcerated themselves.<sup>50</sup> Unfortunately, the Bureau of Prisons has activated a new women’s facility in Aliceville, Alabama, which is 111 miles from Birmingham and 254 miles from Atlanta and will exclusively house women from around the country.

The Commission should evaluate the impact familial estrangement has on recidivism, as well as examine evidence-based programs that can keep offenders close to home, such as community confinement and localized placement, can have on maintaining these critical relationships. The Commission should consider the effect of maintaining community and familial connections, gender, and parental status in order to amend the Guidelines Manual pursuant to 28 U.S.C. § 994(d)(7) and (8) and 18 U.S.C. § 3553(a)(2)(C).

The Commission should also examine how drug use, misuse and addiction, and access (or lack thereof) to non-compulsory addiction treatment programs can affect recidivism. The Commission’s recidivism report, *Measuring Recidivism: The Criminal History Computation of*

*the Federal Sentencing*, found that offenders who had used illicit drugs a year before their instant offense were almost twice as likely to reoffend upon release.<sup>51</sup> However, the data does not distinguish drug *use* from drug *addiction*. In order to more fully understand the impact drugs can have on recidivism, the Commission should collect data on recidivism among both those who struggle with drug addiction and those who use drugs sparingly and responsibly, as the vast majority of drug users in America do.

### **Review and Amend Sentencing Guidelines Applicable to Drug Offenses**

DPA urges the Commission to amend drug sentencing guidelines, which result in longer sentences for nonviolent offenders than faced by serious or violent offenders. For example, under the base offense level for distributing 300 grams of crack or 500 grams of methamphetamine is 32. However, this ranking “is greater than that given for the forcible rape of an adult (30), killing a person in a voluntary manslaughter, disclosing top secret national defense information to the North Koreans (29), arson creating a substantial risk of death (24), and extortion (18).”<sup>52</sup>

Reducing all drug sentencing guidelines by at least two levels would be an effective method to ensure proportionality in sentencing and better conform drug sentences to 18 U.S.C. § 3553, 28 U.S.C. § 994(c) and (d), and 28 U.S.C. § 994(g), while having no negative impact on public safety. Under this approach, statutory mandatory minimums would fall within, rather than below, the guideline’s recommended sentence range for first-time, nonviolent drug offenses. If there are aggravating factors present in the Commission of the offense, these offenders could be dealt with through the available enhancements under the guidelines.

The Commission reported in 1995 that it sets the base offense level for drug offenses slightly higher than the mandatory minimum in order to pressure defendants to plead guilty or otherwise cooperate with the government.<sup>53</sup> This reasoning proved to be unfounded when the Commission reduced crack cocaine sentences by two levels in 2007 and the rate of guilty pleas and cooperation were unaffected.<sup>54</sup> Additionally, low quantity thresholds result in the apprehension of many small-time sellers who, even if they want to cooperate, do not have valuable information to provide prosecutors with to receive substantial assistance departures from mandatory minimum sentences.<sup>55</sup>

Regardless, placing the base offense levels for drug offenses above the prescribed mandatory minimums is an inappropriate mechanism by which to encourage cooperation. In fact, this policy has the unfortunate consequence of punishing *noncooperation*, which raises a host of due process concerns and arguably infringes on a defendant’s 6th amendment right to trial.

In addition, the current guidelines do not accomplish their stated goals to provide just punishment, deterrence, incapacitation, and rehabilitation.<sup>56</sup> While the federal government spends an enormous amount of money in the apprehension, prosecution, and incarceration of low- to mid-level drug offenders, it does not have a positive impact on public safety and has led to significant overcrowding in the Federal Bureau of Prisons.<sup>57</sup> There is no evidence to support the claim that longer sentences lead to safer communities and studies, including a major study conducted by the Department of Justice, have concluded there is little – if any – connection

between fluctuations in criminal activity and incarceration rates,<sup>58</sup> especially in reference to drug crimes.<sup>59</sup> Furthermore, evidence is beginning to show that imprisonment leads to greater rates of recidivism among drug offenders, when compared to probation and other alternatives,<sup>60</sup> and prison has long been abandoned as an ideal space for rehabilitative intervention.<sup>61</sup>

Lengthy terms of imprisonment do not result in lower rates of drug use or drug-related crime. A 1997 report by the RAND Corporation found that mandatory minimums and long terms of incarcerations are less cost-effective at reducing cocaine consumption and drug-related crime than putting heavy users through treatment programs.<sup>62</sup>

Research has also found that while imposing longer sentences only on high-level dealers has the potential to be cost-effective in reducing consumption, determining offense seriousness based solely on drug quantity is an ineffective means by which to accomplish this feat.<sup>63</sup> Additionally, high-level dealers are less likely to possess large amounts of drugs, as they are able to pay others to assume this risk.<sup>64</sup>

These studies show that our draconian quantity-based drug sentencing approach has little to no effect on criminal activity and recidivism, or increasing rehabilitation and public safety, thus highlighting the need for reductions in drug sentencing levels in order to fulfill mandates laid out by Congress in 18 U.S.C. § 3553(a)(2)(B), (C), and (D). The U.S. must respond to calls from world leaders<sup>65</sup> and move away from a criminal justice approach to drug policy in favor of a public health model that expands and emphasizes access to treatment and rehabilitation, such as the decriminalization regime that has proved extremely successful in Portugal since being enacted more than a decade ago.<sup>66</sup>

The current federal guidelines result in the imprisonment of a vast number of non-violent, low- to mid-level drug offenders and trigger a downward spiral of disadvantage and collateral consequences that negatively affects those incarcerated, their families, and their communities. The excessive incarceration in drug sentencing makes thousands of people permanent economic, labor market, and civic outsiders.<sup>67</sup> It increases and entrenches poverty in our most vulnerable communities.<sup>68</sup> Individuals suffer when their lives are disrupted by unnecessary imprisonment and the lifetime of legal discrimination that follows. Families suffer when a financial contributor is imprisoned and communities suffer from a cumulative loss of earning power when high concentrations of residents are incarcerated and returning ex-offenders are unable to procure employment.<sup>69</sup> Tragically, incarceration promotes a cycle of involvement with the criminal justice system for the children of offenders, hindering intergenerational economic mobility, familial stability, and public safety.<sup>70</sup> The literature shows that current drug sentencing guidelines do not adequately take into accounts the considerations outlined in 28 U.S.C. § 994(c) and (d). Reducing all drug sentencing guidelines by two levels would work towards conforming to these standards by more properly addressing both the factors that lead many drug offenders to commit drug related crimes and the consequences of lengthy imprisonment as a response.

Current drug sentencing levels are also in violation of 28 U.S.C. § 994(g), which dictates that “guidelines prescribed [by the Commission] shall be formulated to minimize the likelihood that the federal prison population will exceed the capacity of the federal prisons.”<sup>71</sup> Since the creation of the Commission, the level of overcrowding in federal prisons has been dramatically

increasing and is now approaching 40%.<sup>72</sup> In 2010, 23,964 people were convicted of federal drug violations<sup>73</sup> and a majority of federal prisoners – 103,194 of 191,757 – were housed in federal facilities because of drug convictions.<sup>74</sup> 87,323 of these prisoners were convicted of an offense carrying a mandatory minimum sentence of at least 5 years. Marijuana offenses accounted for 6,161– or more than 25% – of the 23,964 drug-related convictions in 2010 and 12,473 federal inmates,<sup>75</sup> despite the drug being arguably less dangerous than alcohol<sup>76</sup> and having been decriminalized in almost a third of U.S. states, and legalized in two states. Reducing all drug sentencing guidelines by at least two levels would bring sentencing policy in line with 28 U.S.C. § 994(g) by significantly reducing overcrowding in federal prisons.

## CONCLUSION

As it stands now, federal drug sentencing places too much emphasis on the punishment of past offenses, are too long, and come at too high a cost to communities and taxpayers. Federal sentences perpetuate a system that is not cost-effective in reducing drug consumption or prohibition-related crime and violence, does not improve public safety, fuels overcrowding in federal prisons, and destabilizes the lives of countless non-violent individuals, their families, and their communities. The Drug Policy Alliance urges the Commission to increase safety valve access, reassess recidivist provisions, reduce the stacking of mandatory minimums, conduct a multi-year study on recidivism, and take a step towards conforming federal drug sentences to Congressional mandates laid out in 18 U.S.C. § 3553(a)(2), 28 U.S.C. § 994(c) and (d), and 28 U.S.C. § 994(g) by reducing all federal drug guidelines by at least two levels.

Sincerely,

/s/

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<sup>1</sup> Todd R. Clear & James Austin, *Reducing Mass Incarceration: Implications of the Iron Law of Prison Populations*, 3 Harv. L. & Pol’y Rev. 307, 307 (2009).

<sup>2</sup> Global Commission on Drug Policy. *War on Drugs* (June 2011).

<sup>3</sup> Organization of American States, *The Drug Problem in the Americas*, May 2013, available at:

[http://www.cicad.oas.org/Main/Template.asp?File=/main/policy/default\\_eng.asp](http://www.cicad.oas.org/Main/Template.asp?File=/main/policy/default_eng.asp)

<sup>4</sup> Human Rights Watch Statement to the Organization of American States, June 2013, available at:

<http://www.hrw.org/news/2013/06/04/americas-decriminalize-personal-use-drugs>. The statement provided in part:

“National drug control policies that impose criminal penalties for personal drug use undermine basic human rights.

To deter harmful drug use, governments should rely instead on non-penal regulatory and public health policies.”

<sup>5</sup> U.S. Sentencing Commission, *Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System* (2011): 348-360

<sup>6</sup> E. Ann Carson & William J. Sabol, Dep’t of Justice, *Prisoners in 2011*, at 2 (2012) available at

<http://bjs.ojp.usdoj.gov/content/pub/pdf/p11.pdf>

<sup>7</sup> Dep’t of Justice, *Federal Prison System: FY 2013 Congressional Budget:*

*Buildings and Facilities 1* (2013), available at <http://www.justice.gov/jmd/2013justification/pdf/fy13-bop-bf-justification.pdf>



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<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> 18 U.S.C Section 994(g).

<sup>11</sup> E. Ann Carson & William J. Sabol, Dep't of Justice, Prisoners in 2011, at 2 (2012) available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/p11.pdf>

<sup>12</sup> U.S. Sentencing Commission, Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System Is Achieving the Goals of Sentencing Reform 113-35 (2004)

<sup>13</sup> U.S. Sentencing Commission, Fifteen Years of Guidelines Sentencing: An Assessment of How Well the Federal Criminal Justice System Is Achieving the Goals of Sentencing Reform 113-35 (2004)

<sup>14</sup> H.R. Rep. No. 99-845

<sup>15</sup> Jane L. Froyd, Safety Valve Failure: Low-Level Drug Offenders and the Federal Sentencing Guidelines, 94 Nw. U. L. Rev. 1471, 1484 (2000) (internal citations omitted).

<sup>16</sup> Orrin G. Hatch, The Role of Congress in Sentencing: The United States Sentencing Commission, Mandatory Minimum Sentences, and the Search for a Certain and Effective Sentencing System, 28 Wake Forest L. Rev. 185 (1993).

<sup>17</sup> H.R. Rep. No. 99-845

<sup>18</sup> Pub. L. No. 103-322, § 80001, 108 Stat. 1796, 1985 (1994) 18 U.S.C. §3553(f) (1994 & Supp. II 1996).

<sup>19</sup> Statement of Professor Christopher Stone, Kennedy School of Government, Before the USSC, New York, NY, July 9-10, 2009 at 418-26.

<sup>20</sup> Statement of Michael Nachmanoff, Federal Defender for the Eastern District of Virginia, Before the Judiciary Subcommittee on Crime, Terrorism and Homeland Security, February 26, 2008 at 8.

<sup>21</sup> Ibid. at 10.

<sup>22</sup> U.S. Sentencing Commission. *Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System* (2011): 159, Figure 8-4.

<sup>23</sup> Nora Demleitner, "Collateral Damage: No Reentry for Drug Offenders," *Villanova Law Review*, vol. 47 (2002).

<sup>24</sup> Harry Holzer, Steven Raphael, and Michael Stoll, "Employment Barriers Facing Ex-Offender," *Employment Dimensions of Reentry: Understanding the Nexus Between Prisoner Reentry and Work*, NYU Law School, May 19-20, 2003 at 11.

<sup>25</sup> Ibid. at 4.

<sup>26</sup> Nora Demleitner, "Collateral Damage: No Reentry for Drug Offenders," *Villanova Law Review*, vol. 47 (2002).; Also Harry Holzer, Steven Raphael, and Michael Stoll, "Employment Barriers Facing Ex-Offender," *Employment Dimensions of Reentry: Understanding the Nexus Between Prisoner Reentry and Work*, NYU Law School, May 19-20, 2003 at 2.

<sup>27</sup> U.S. Sentencing Commission, *Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System* (2011): 354.

<sup>28</sup> Gary Kleck et al., "The Missing Link in General Deterrence Research," *Criminology* vol. 43, no. 3 (2005): 623.

<sup>29</sup> Alfred Blumfield, et al, *Criminal Careers and "Career Criminals"*, National Academic Press: Washington, DC (1986); Also Jeffrey Fagan, Tracey Meares, "Punishment, Deterrence and Social Control: The Paradox of Punishment in Minority Communities," *Ohio State Journal of Criminal Law*, vol. 6 (2008); Also Anthony Doob and Cheryl Marie Webster, "Sentence Severity and Crime: Accepting the Null Hypothesis," *Crime and Justice*, vol. 30 (2003).

<sup>30</sup> Mike Males and Dan Macallair, "Striking Out: The Failure of California's 'Three Strikes and You're Out' Law," *Stanford Law and Policy Review*, vol. 11, no. 1 (1999).

<sup>31</sup> 21 U.S.C. § 802(44) (2006).

<sup>32</sup> 21 U.S.C. §§ 844(a), 841, 18 U.S.C. § 3607

<sup>33</sup> Charles Tittle, "Prisons and Rehabilitation: The Inevitability of Disfavor," *Social Problems* vol. 21, no. 3 (1974): 385; Also Paula Smith, Claire Goggin, Paul Gendreau, "The Effects of Prison Sentences and Intermediate Sanctions on Recidivism: General Effects and Individual Differences," *Portfolio of the Solicitor General of Canada*, (2002).

<sup>34</sup> Cassia Spohn and David Holleran, "The Effect of Imprisonment on Recidivism Rates of Felony Offenders: A Focus on Drug Offenders." *Criminology* vol. 40, no. 2 (2002): 331

<sup>35</sup> Statement of Michael Nachmanoff, Federal Defender for the Eastern District of Virginia, Before the Judiciary Subcommittee on Crime, Terrorism and Homeland Security, February 26, 2008 at 9.

<sup>36</sup> Organization of American States, *The Drug Problem in the Americas*, May 2013, available at:

[http://www.cicad.oas.org/Main/Template.asp?File=/main/policy/default\\_eng.asp](http://www.cicad.oas.org/Main/Template.asp?File=/main/policy/default_eng.asp)

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- <sup>37</sup> U.S. Sentencing Commission. *Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System* (2011): 359
- <sup>38</sup> *Ibid.* at 359, 361.
- <sup>39</sup> *Ibid.* at 361
- <sup>40</sup> *Ibid.* at 363
- <sup>41</sup> Jeremy Travis, "But They All Comeback: Rethinking Prisoner Reentry," U.S. Department of Justice, Pub. No. NCJ 18 1413 (May 2000)
- <sup>42</sup> Jeremy Travis, "Prisoner Reentry Seen Through a Community Lens," Luncheon Address at the Neighborhood Reinvestment Corporation Training Institute 2 (Aug. 23, 2001)
- <sup>43</sup> U.S. Sentencing Commission, *Measure Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines* (2004): 12-13.
- <sup>44</sup> Creasie Hairson, "Family Ties During Imprisonment: Important to Whom and for What?" *Journal of Soc. and Soc. Welfare*. 18 (1991). Also Dodge, Mary and Pogrebin, Mark. "Collateral Costs of Imprisonment for Women: Complications of Reintegration." *The Prison Journal*. 81 (2001): 42-54.
- <sup>45</sup> Z.W. Henriques, *Imprisoned Mothers and their Children*, (Washington, DC: University Press of America, 1996).
- <sup>46</sup> Creasie Hairson, "Family Ties During Imprisonment: Important to Whom and for What?" *Journal of Soc. and Soc. Welfare*. 18 (1991): 11.
- <sup>47</sup> Z.W. Henriques, *Imprisoned Mothers and their Children*, (Washington, DC: University Press of America, 1996).
- <sup>48</sup> Cynthia Seymour, "Children with Parents in Prison: Child Welfare Policy, Program, and Practice Issues," *Journal on Child Welfare*, 77.5 (1998): 469-93.
- <sup>49</sup> Christopher J. Mumola, *Incarcerated Parents and Their Children*, Bureau of Justice Statistics (August 2000)
- <sup>50</sup> Katherine Gabel and Denise Johnston, *Children of Incarcerated Parents* (New York, NY: Lexington Press, 1995).
- <sup>51</sup> U.S. Sentencing Commission, *Measure Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines* (2004): 13.
- <sup>52</sup> Mark Osler, *Amoral Numbers and Narcotics Sentencing*, Valparaiso University Law Review (forthcoming 2013), available at <http://papers.ssrn.com/abstract=2271380>
- <sup>53</sup> U.S. Sentencing Commission, Special Report to Congress: Cocaine and Federal Sentencing Policy at 148 (1995).
- <sup>54</sup> U.S. Sentencing Commission. *Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System* (2011): 55.
- <sup>55</sup> Eric Sevigny and Jonathon Caulkins, "Kingpins or Mules: An Analysis of Drug Offenders Incarcerated in Federal and State Prisons," *Criminology & Public Policy* vol. 3, no. 3 (2004): 401-34.
- <sup>56</sup> U.S. Sentencing Commission, *An Overview of the United States Sentencing Commission* (Washington, DC), 1.
- <sup>57</sup> Statement of Charles E. Samuels, Jr., Director of the Federal Bureau of Prisons, before the House of Representatives Committee on Appropriations, Sub-Committee on Commerce, Science, Justice and Related Agencies, March 6, 2012.
- <sup>58</sup> James Austin and John Irwin, *It's About Time. America's Imprisonment Binge*, 3rd ed. (Palo Alto, CA: Wadsworth 2000), cited in James Austin and Tony Fabelo, *The Diminishing Returns of Increased Incarceration: A Blueprint to Improve Public Safety and Reduce Costs*, The JFA Institute (Washington, D.C.: July 2004); U.S. Department of Justice, *Recidivism of Prisoners Released in 1994*, Bureau of Justice Statistics, NCJ 193427 (Washington, D.C.: June 2002).
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- <sup>60</sup> *Ibid.* at 329-357, 351.
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- <sup>62</sup> Jonathon Caulkins, et al., *Mandatory Minimum Sentences: Throwing Away the Key or the Taxpayers' Money?* RAND: Drug Policy Research Center (1997): 62.
- <sup>63</sup> *Ibid.* at 61-62.
- <sup>64</sup> *Ibid.* at 61-62.
- <sup>65</sup> Ari Rosmarin and Niamh Eastwood, "A Quiet Revolution: Drug Decriminalisation Policies in Practice Across the Globe," Release Campaign: Drugs – It's Time for Better Laws (2012).
- <sup>66</sup> For a more thorough report documenting the benefits of Portuguese decriminalization, see Caitlin Hughes and Alex Stevens, "What Can We Learn From the Portuguese Decriminalization of Illicit Drugs?" *The British Journal of Criminology* vol. 50, no. 6 (2010): 999-1022; Also Glen Greenwald, "Drug Decriminalization in Portugal: Lessons

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<sup>67</sup> Alex Stevens, *Drugs, Crime and Public Health: The Political Economy of Drug Policy*, Abingdon: Routledge (2010): p.116.

<sup>68</sup> Dina Rose and Todd Clear, “Incarceration, Social Capital and Crime: Implications for Social Disorganization Theory,” *Criminology* vol. 36, no. 3 (August 1998).

<sup>69</sup> Dina Rose, Todd Clear, and Judith Ryder, *Drugs, Incarceration and Neighborhood Life: The Impact of Reintegrating Offenders into the Community*, National Criminal Justice Reference Service (Rockville MD: 2002): 14.

<sup>70</sup> Joseph Murray, Carl-Gunnar Janson, and David P. Farrington, “Crime in Adult Offspring of Prisoners: A Cross-National Comparison of Two Longitudinal Studies,” *Criminal Justice and Behavior* vol. 34, no. 1 (January 2007): 133-49.

<sup>71</sup> See 28 USC § 994(g)

<sup>72</sup> Statement of Charles Samuel, Director of the Bureau of Prisons, Before the U.S. Sentencing USSC. February 16, 2012.

<sup>73</sup> U.S. Sentencing Commission. *Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System* (2011): 162.

<sup>74</sup> *Ibid.* at 165.

<sup>75</sup> *Ibid.* at 218.

<sup>76</sup> Robert Gable, “The Toxicity of Recreational Drugs,” *American Scientist*, vol. 94 (2006).; Also Tristan Kirby and Adam Barry, “Alcohol as a Gateway Drug: A Study of US 12th Graders,” *Journal of School Health*, vol. 82, no. 8 (2012).