

March 18, 2014

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

Dear Judge Saris:

I write on behalf of the American Bar Association (ABA) to offer our views in response to the Commission's request for comments on pending proposed amendments to the Sentencing Guidelines. The ABA strongly supports the proposed amendment of guidelines applicable to drug offenses to lower the Drug Quantity Table across drug types.

The Commission's proposal to reduce the Drug Quantity Table offense levels by two would reduce the disproportionate role that the single factor of the drug quantity plays in sentences tied to mandatory minimums for drug offenses. The undue weight given to the factor of drug quantity currently results in subjecting lower level offenders to guideline ranges at or near the ranges for the most serious offenders. The majority of drug offenders are neither "managers" nor "leaders" and the sentences they receive should reflect their lesser role in the offense.

If adopted, offenders who do not have significant roles in drug distribution offenses will receive sentences that are more appropriately distinguishable from more serious offenders. This improvement in the Guidelines will have a significant impact on the length of such sentences, as detailed in the Commission's study of the proposed amendment. However, as the Commission has recognized, the broad problem of over-severity in drug sentencing will ultimately require reform of the statutory mandatory minimum provisions that remain in effect for federal drug offenses.

The ABA has long opposed mandatory minimums because they lead to sentences that are excessive, arbitrary, and promote the concept that punishment is determined by charging decisions made by prosecutors. Mandatory minimums consider only a single fact – in drug offenses it is a quantity of drugs that may bear no relationship to the defendant's particular culpability.

The ABA strongly supports the Commission's efforts to address the unduly harsh sentences that result from the current penalty structure for federal drug offenses. We

strongly supported the Commission's recent recommendations to Congress to reduce mandatory minimums in drug offenses, to make the Fair Sentencing Act retroactive and to expand the safety valve. We strongly support the proposed two-level reduction across the drug quantity table which will have the effect of modestly reducing guideline penalties for drug trafficking offenses while keeping the guidelines consistent with the current statutory minimum penalties. It would still provide for significant punishment for drug offenses, while more appropriately giving account for individual culpability, deterrence and the overall seriousness of the offense.

At a time when lawmakers are extending efforts to reduce the mandatory minimum penalties for non-violent drug offenders, we commend the Commission's efforts to address some of the same concerns created by mandatory minimum penalties by closely examining the drug guidelines. The ABA encourages the Commission to continue to examine and amend the drug guidelines in response to any future changes in mandatory minimum penalties and continue its efforts to address the overpopulation of prisons.

Thank you for the opportunity to comment and for consideration of our views.

Respectfully submitted,

A handwritten signature in black ink, reading "Thomas M. Susman" with a long horizontal flourish extending to the right.

Thomas M. Susman