

# United States Senate

WASHINGTON, DC 20510

March 25, 2014

The Honorable Patti B. Saris  
United States Sentencing Commission  
One Columbus Circle, N.E.  
Suite 2-500, South Lobby  
Washington, D.C. 20002-8002  
Attention: Public Affairs

Dear Chair Saris:

We write in response to the Sentencing Commission's request for comment on its January 17, 2014 Proposed Amendment Number 3 to the Sentencing Guidelines. This amendment would adjust the Drug Quantity Table so that base offense levels 24 and 30 correspond with the mandatory minimums for all drugs. While these mandatory minimums remain in place, we believe that judges should not have to actually sentence *above* them in order to remain compliant with the Sentencing Guidelines. We have long supported this change along with certain other approaches to increasing judicial discretion in sentencing, and Senators Durbin and Leahy urged the Commission to adopt it in comments they submitted to the Commission in April 2011. This amendment would complement, and be consistent with, the goals of the bipartisan Smarter Sentencing Act (S.1410, H.R.3382).

The drug quantity thresholds that trigger a mandatory minimum penalty currently correspond to guideline ranges that are uniformly above the mandatory minimum penalty. While we also believe that there are flaws with the current drug mandatory minimum structure itself, we strongly believe that the current sentencing guideline ranges should include, rather than exceed, the statutory minimum penalties. A judge should be able to sentence a defendant to the mandatory minimum sentence without departing from the Sentencing Guidelines. Such a scheme encourages adherence to the guidelines and allows for limited but necessary flexibility based on a defendant's individual circumstances. The Commission's proposed revisions are good sentencing policy for that reason alone.

As reflected in the Commission's statutory duty to formulate the guidelines to minimize the likelihood of federal prison overcrowding, we must confront today's crisis levels of overcrowding. The Commission's proposed revisions are advisable because the growing rate of our prison population is unsustainable and a failure to change course is in itself a threat to public safety. Studies have repeatedly shown that our prisons are overcrowded with those serving sentences for lower-level, nonviolent drug offenses. As Federal Bureau of Prisons (BOP) Director Samuels testified to the Senate Judiciary Committee last November, our federal prisons are 36 percent over capacity and high security facilities are 51 percent over capacity. This overcrowding places the lives of prison guards and inmates in jeopardy and dramatically diminishes the availability and effectiveness of recidivism reduction programming in improving public safety. Adjusting the Drug Quantity Table downward by two levels would help address this crisis without jeopardizing public safety. Federal judges would have discretion to sentence those defendants that pose the least risk to society at, and not above, the mandatory minimum, thereby freeing up critical bed space and programming for the most serious offenders.

There is also the fundamental issue of our public safety budget. According to BOP, the current annual cost to house a federal prisoner is \$29,291. The proposed adjustment to the Drug Quantity Table would allow valuable taxpayer dollars to be invested in critical law enforcement functions, crime prevention, recidivism reduction, and victim services.

This administrative change alone would not fully solve the problems of prison overcrowding, the burgeoning BOP budget, or unnecessarily long and unfair sentences. These problems are fueled in large part by certain inflexible drug mandatory minimums, and this amendment cannot offer any relief with respect to these statutory minimums. Congress must therefore act to reduce drug mandatory minimum sentences themselves through reforms like those proposed in the Smarter Sentencing Act. We in Congress have two options: either continue to give more resources to the Bureau of Prisons to build ever more prisons at the expense of other public safety priorities and victim services, or find a way to allow for more individualized sentencing for non-violent drug offenses and safely reduce the prison population to a sustainable level.

We are also confident that this proposal will not undermine the ability of prosecutors to seek tough sentences in appropriate cases. Base offense levels are just a starting point for sentencing and the guidelines now contain more than a dozen separate enhancements for drug offenders that ensure that the most serious drug offenders will continue to receive lengthy sentences.

The proposed amendment will also encourage guilty pleas, but not reduce the levels of cooperation. As the Commission's studies demonstrate, the Commission's previous two-level reduction in the crack cocaine guidelines did not result in a lower rate of cooperation, nor did the creation of the federal "safety valve." In fact, the availability of a lower sentence through the "safety valve" has resulted in a larger proportion of guilty pleas for "safety valve" eligible defendants.

The proposed amendment would recalibrate the drug guidelines to begin to restore appropriate judicial discretion in sentencing, address our unsustainable prison population growth, and create greater opportunity for investing in public safety. It is consistent with important legislative reform like the Smarter Sentencing Act. For these reasons, we encourage the Commission to adopt this overdue proposed amendment.

Thank you for considering our views.

Sincerely,

  
PATRICK LEAHY  
United States Senator

  
RICHARD J. DURBIN  
United States Senator

  
RAND PAUL  
United States Senator