



National Association of Assistant United States Attorneys

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March 18, 2014

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

Re: Proposed Amendments to Sentencing Guidelines for Drug Trafficking Offenses

Dear Chief Judge Saris:

The National Association of Assistant United States Attorneys (NAAUSA) submits the following comments regarding the proposed amendments to the federal sentencing guidelines, published in the Federal Register on January 17, 2014, that would revise the Drug Quantity Table used in the sentencing guidelines for those convicted of drug trafficking offenses. The Commission's proposed amendment to the Drug Quantity Table (together with conforming adjustments to the chemical quantity tables) would reduce the base offense level associated with quantities that trigger the statutory and ten-year mandatory minimum penalties from base offense levels 26 and 32 in the current guideline to levels 24 and 30, respectively.

The National Association of Assistant United States Attorneys represents the interests of the 5,400 Assistant United States Attorneys (AUSAs) employed by the Department of Justice and responsible for the prosecution of federal crimes and the handling of civil litigation involving the United States. United States Attorneys and Assistant United States Attorneys are the gatekeepers of our system of justice. Their primary responsibility is to protect the innocent and prosecute the guilty.

Mindful of these responsibilities, NAAUSA opposes the Commission's proposed amendments because they will put public safety at risk and compromise the incentive of drug trafficking offenders to cooperate with law enforcement in the pursuit of crime.¹ These concerns were confirmed by a recent NAAUSA survey of Assistant United States Attorneys that reflected strong concerns by AUSAs to reducing sentencing levels applied to drug traffickers. Seventy-six percent of AUSAs participating in the survey opposed the Commission's proposed amendments and nearly the same percentage expressed strong concern that a reduction in sentencing levels would adversely affect public safety.

¹ NAAUSA's position does not suggest that AUSAs disregard the policy of the Department of Justice, announced in a memorandum effective March 13, 2014, that AUSAs refrain from opposing any request for a reduction of two base levels for drug offenses.

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Public safety is adversely affected by recidivism, the measurement of how much crime is repeated by offenders after release from prison. NAAUSA finds troubling the Commission's projection of recidivism created by the proposed amendments. In projecting future recidivism rates as a result of the amendments, the Commission relies on its 2011 study of crack cocaine offenders who received a reduced sentence pursuant to a similar two-level decrease in guideline levels for crack cocaine offenders in 2007.² That study, the Commission states, found no difference in recidivism rates for offenders released early, compared to those who served their full terms. But the recidivism baseline used by the Commission is extraordinarily high. The underlying Commission data reflects an expected recidivism rate of 30.4% after only two years following release, with the recidivism trend line growing steadily beyond two years. In fact, depending on criminal history, the Commission's data suggests that recidivism among drug offenders may rise as high as fifty percent -- a shocking level of reoccurrence of crime that will most certainly affect public safety.

In addition, advocates of lower sentences for drug traffickers often describe the crime of drug trafficking as "non-violent," as though it were associated with a relatively benign social offense. This is a gross mischaracterization of drug trafficking, a crime with dramatic and pernicious impact upon society. Courts, prosecutors and the public at large all recognize the frequent association of drug trafficking at all levels with armed violent activity. Moreover, the proposed amendments do not distinguish between different levels of drug traffickers. Instead, they provide across-the-board sentencing reductions for all drug trafficking offenses associated with drugs covered by the Drug Quantity Table. This is remarkable, especially, at a time when a heroin epidemic of historic proportions grips the country.

Drug trafficking (even in instances without armed violence) is incredibly destructive to society. In comparing drug trafficking to the crime of murder, the Fifth Circuit Court of Appeals wrote: "Except in rare cases, the murderer's red hand falls on one victim only, however grim the blow; but the foul hand of the drug dealer blights life after life and, like the vampire of fable, creates others in its owner's evil image--others who create others still, across our land and down our generations, sparing not even the unborn." *Terrebonne v. Butler*, 848 F.2d 500, 504 (5th Cir.1988) (en banc), *cert. denied*, 489 U.S. 1020 (1989).

Finally, the sentences established by the current sentencing guideline ranges (along with the parallel minimum mandatory penalty scheme) are the single most valuable tool that law enforcement has to infiltrate and dismantle large drug trafficking organizations—organizations that often are international in scope and extremely violent by nature. To be successful, organized criminal activity like drug trafficking requires a coordinated and secretive effort among conspirators. Participants who are caught have incentives not to assist law enforcement by revealing the organizations' methods of operation, the names of other participants, or the location of contraband or proceeds. And these

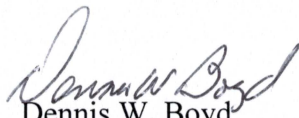
² Memorandum of Kim Steven Hunt, Senior Research Associate, and Andrew Peterson, Research Associate, Office of Research Data, United States Sentencing Commission, to Chair Saris and Other Commissioners, dated May 31, 2011, regarding Recidivism Among Offenders with Sentence Modifications Made Pursuant to Retroactive Application of 2007 Crack Cocaine Amendment, <http://bit.ly/1d9MzYj>; Retroactivity Did Not Affect Recidivism, *The Third Branch*, August 2011, <http://1.usa.gov/1qPekc0>.

motivations can be incredibly strong, ranging from death threats by coconspirators to a desire to maintain ties to the criminal organization.

The threat of tough and firm sentences is necessary to provide an incentive to cooperate with law enforcement officials. Every time that penalty scheme is weakened, the ability of law enforcement to convince drug traffickers to cooperate against their criminal conspirators is incrementally undermined. The formula here is simple: the higher the penalty a criminal faces absent cooperation, the greater the motive to cooperate. Conversely, the lower the perceived penalties, the lower the likelihood that those with critical inside information about the operation of the criminal conspiracy will assist agents and prosecutors.

In summary, the proposed across-the-board reduction for drug trafficking penalties will put dangerous and violent criminals with high recidivism rates back on the street more quickly, lower the deterrent to engage in drug trafficking, and reduce incentives for those arrested to cooperate with law enforcement officials attempting to dismantle organized crime. We urge the Commission to refrain from adopting these drug trafficking amendments. Thank you for your consideration of these comments.

Sincerely yours,


Dennis W. Boyd
Executive Director