



July 3, 2014

U.S. Sentencing Commission
Attn: Public Affairs-Retroactivity Public Comment
One Columbus Circle NE
Suite 2-500
Washington, DC 20002-8002
Public_comment@ussc.gov

RE: RETROACTIVITY OF 2014 DRUG GUIDELINES AMENDMENT

Dear Judge Saris and Commissioners:

Legal Services for Prisoners with Children (“LSPC”) writes to express our strong support of applying the 2014 Drug Guidelines Amendment #3 retroactively in whole. We applaud the unanimous decision of the U.S. Sentencing Commission (“the Commission”) to reduce by two levels the base offense levels associated with drug quantity for all drug types, a decision that we believe will deliver more just treatment to people sentenced after November 1, 2014, who will face drug sentences that are less unnecessarily long, promote the wellbeing and stability of their families and communities, and reduce prison overcrowding and its associated costs. In order to maximize those benefits, we believe that this decision must be implemented retroactively without condition.

Founded in 1978, Legal Services for Prisoners with Children (LSPC) enjoys a long history advocating for the civil and human rights of people in prison, their loved ones and the broader community. Our vision of public safety is more than a lock and key. We believe that the escalation of tough-on-crime policies over the past three decades has not made us safer. We believe that in order to build truly safe and healthy communities we must ensure that **all** people have access to adequate housing, quality health care and education, healthy food, meaningful work, and the ability to fully participate in the democratic process, regardless of their involvement with the criminal justice system. Based on these organizational beliefs and the Commission’s own emphasis on balancing fairness, public safety, and fiscal feasibility,¹ we urge retroactive application of the 2014 Drug Guidelines Amendment #3 (“the amendment”) without condition.

Fairness: unduly severe sentences are unjust regardless of sentencing date, as past Commission retroactivity decisions have recognized.

One of the key motivating factors behind the Commission’s amendment of the drug sentencing guidelines was the concern, expressed in its mandatory minimum reports in 1991 and 2011, that mandatory sentences are often overly severe, applied unnecessarily broadly, and considered excessive; as Families Against Mandatory Minimums (“FAMM”) noted in their written testimony for the June 10, 2014 hearing, these findings

¹ U.S. Sentencing Commission, *Public Hearing on Retroactivity of 2014 Drug Amendment*, 14 June 2010, 315.

also apply to the “guidelines anchored above them.”² LSPC agrees with the Commission’s findings that the previous sentencing guidelines were excessively severe; that excessive severity applies equally to people sentenced before and after November 1, 2014. No one should be deprived of 23 months in which to celebrate their children’s birthdays, care for their elderly parents or grandparents, or contribute to their communities simply because of the date on which they were sentenced.

Since the Commission has been given the discretion to apply the amendment retroactively, the most just course of action is to remedy this excessive severity of sentencing for *all* incarcerated people sentenced under the harsh drug sentencing guidelines by applying the amendment retroactively. The fairness of our recommendation is supported by the Committee’s own precedent: drug guideline amendments for LSD in 1993, marijuana in 1995, oxycodone in 2003, and crack in 2007 and 2011 have all been implemented retroactively,³ and we urge the Commission to continue its commitment to fairness by applying this amendment retroactively as well.

Public safety: communities will be safer with retroactive implementation.

While some stakeholders have expressed public safety concerns regarding retroactivity, even to the point of delaying its implementation,⁴ the recidivism rates of people released after retroactive sentence reductions due to the 2008 crack cocaine amendment indicate that people released after reduced sentences are no more likely to return to custody than other recently released individuals,⁵ a statistic that Deputy Chief U.S. Probation Officer O. Quincy of South Carolina testified aligned with his district’s experience.⁶ Additionally, the people eligible for sentence reductions would be released on average 23 months later regardless of retroactivity; if the public is not comfortable with their fellow community members convicted of drug offenses being released, many of them after serving lengthy sentences, that is an issue that needs to be addressed through fundamental changes in how the criminal justice system operates, not by refusing to mitigate their harsh sentences.

Meanwhile, the opportunity to spend extra time with loved ones will provide an incalculable benefit to currently incarcerated people and their families and friends. In fact, the benefits of reuniting those families an average of 23 months earlier than expected can lead to significant improvements in the stability and safety of families and communities. When parents and mentors spend time in prison for drug offenses, their children and others in their lives suffer the consequences of that lack of guidance and connection, including mental health issues, poor school performance and other problem behaviors.⁷ As Mary Price of FAMM attested to with the story of formerly incarcerated mother Dorothy Gaines,⁸ those consequences often include or contribute to children’s involvement in the criminal justice system, and people whose parents are incarcerated during their childhood are incarcerated or placed in juvenile detention centers at estimated rates ranging from two to five times that of the general population.⁹ Fortunately, connectedness to family can

² Mary Price, General Counsel, *Families Against Mandatory Minimums, Written Statement to the U.S. Sentencing Commission, Public Hearing on Retroactive Application of 2014 Drug Guidelines* (Washington, D.C.: 10 June 2014), 4.

³ U.S.S.G. § 1B1.10(c), U.S.S.G. app. C, Vol. I, Amend.488, 516, 657, 748, 750.

⁴ U.S.S.C., *Public Hearing*, 30.

⁵ U.S. Sentencing Commission, *Recidivism Among Offenders Receiving Retroactive Sentence Reductions: The 2007 Crack Cocaine Amendment* (2014), 3.

⁶ U.S.S.C., *Public Hearing*, 306.

⁷ Barbara J. Myers, et al., “Children of Incarcerated Mothers,” *Journal of Child and Family Studies*, 8:1 (1999), 19; Joseph Murray and David P. Farrington, “Evidence-Based Programs for Children of Prisoners,” (2006), 722; D.H. Dallaire, “Children with Incarcerated Mothers Developmental Outcomes,” *Journal of Applied Developmental Psychology*, 28 (2007), 18.

⁸ U.S.S.C., *Public Hearing*, 306.

⁹ Sarah Wakefield, “The Consequences of Incarceration for Parents and Children,” (2007), 5; Murray and Farrington, 722-3; Dallaire, 18.

substantially reduce behaviors that put youth at risk of entering the criminal justice system.¹⁰ The Commission is now in the position to help families reestablish that connectedness. Given the damaging effects of prolonged family separation on communities and the lack of increased recidivism risks posed by sentence reductions, we believe that it is firmly in the interest of public safety to implement the amendment retroactively.

Fiscal feasibility: the systemic and financial benefits of reducing prison overcrowding far outweigh the manageable fiscal and administrative burdens of retroactivity.

Applying the amendment retroactively will not only benefit tremendously the people, families and communities that continue to be affected by harsh drug sentencing guidelines, it will also further the amendment's goal of slowing the growth of the federal prison population. As the Office of Research and Data's analysis notes, retroactivity would make 51,141 people eligible to seek reduced sentences, potentially saving a cumulative 83,525 bed years.¹¹ This would mark significant progress toward reducing prison populations and the strains overcrowding puts on the federal criminal justice system, and create significant savings in the process.

Some stakeholders have expressed concerns about the fiscal and administrative burden this process would place on their agencies; however, past experiences with retroactivity show that the process can be managed successfully without creating an undue burden for judicial agencies. Deputy Chief U.S. Probation Officer O. Quincy Avinger's testimony regarding South Carolina's experience during the 2008 crack cocaine retroactivity process demonstrated that while retroactivity does create additional work for judicial and probation agencies, that burden can be reasonably managed and need not interfere with their other duties.¹² Furthermore, that reasonable burden is justified—and, we believe, even necessitated—by the progress that retroactivity will make toward delivering just sentences to parents, children and siblings incarcerated for drug offenses and toward reducing stresses on the criminal justice system.

Retroactivity should be implemented without condition.

In light of the arguments we have already made in favor of retroactive application of the amendment, we believe that no one class of incarcerated individuals should be excluded from this retroactivity. In order to truly deliver justice and reduce overcrowding, every individual affected by harsh sentencing guidelines must have the opportunity to have their sentence reviewed: once retroactivity is established, to exclude some classes of people from consideration entirely would be morally inconsistent. That includes people sentenced post-*Booker*; as the Commission reported in 2012, sentences continue to be heavily influenced by federal sentencing guidelines despite *Booker*,¹³ and so many people sentenced post-*Booker* were affected by excessively severe guidelines and deserve to be eligible for retroactive release. From a public safety perspective, the recidivism rates of people released early due to crack cocaine sentencing amendments indicate that when such amendments are made retroactive in full, the people being released early are no more likely to be re-arrested or re-convicted than people released on a standard timeline.¹⁴ There is no reason to presume that people convicted of offenses involving other drugs would behave any differently. Judges' discretion proved sufficient to ensure that incarcerated people who were released early, regardless of whether they had time to complete transitional reentry programs or had been convicted of higher-level offenses (which, we would like to note, were already accounted for in their sentences), were prepared for their release. From a resources perspective, the experience of South Carolina demonstrates that it is possible to handle retroactive sentencing cases effectively without placing an overwhelming burden on administering agencies,

¹⁰ Dallaire, 18.

¹¹ U.S. Sentencing Commission, Office of Research and Data, *Memorandum: Analysis of the Impact of the 2014 Drug Guidelines Amendment If Made Retroactive* (27 May 2014), 6-7.

¹² U.S.S.C., *Public Hearing*, 87.

¹³ U.S. Sentencing Commission, *Continuing Impact of United States v. Booker on Federal Sentencing* (2012), 60-62.

¹⁴ U.S.S.C., *Recidivism*, 3.

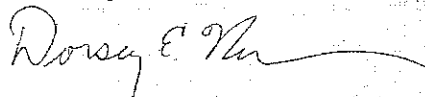
several witnesses testified that “weeding out” some individuals from the resentencing process on the front end could involve at least as many resources as reviewing all of the eligible individuals incarcerated for drug offenses.¹⁵ There is strong evidence that reviewing all incarcerated people eligible for retroactive release will not adversely affect counties’ financial or administrative burdens or public safety, and the importance of every release to children gaining valuable time with their formerly incarcerated parents, or to an incarcerated person spending extra months, and for some, years, with an elderly or ailing friend or relative, cannot be overstated. As such, the amendment will best serve its purpose if all eligible people have the opportunity to benefit from it, and it should therefore be implemented retroactively without conditions.

Conclusion

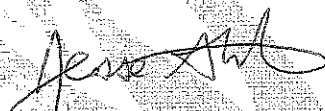
The Commission has demonstrated its commitment to fairness by reducing harsh sentencing guidelines for people sentenced for drug offenses after November 1, 2014. Implementing the amendment retroactively would demonstrate the Commission’s commitment to fair sentencing for *all* people currently incarcerated for drug offenses, reunite families and communities--benefiting public safety in the process--and result in prison population reductions that far outweigh the manageable administrative burdens.

Taking all of the above factors into consideration, we urge you to apply the amendment retroactively without condition, in order to deliver justice to people currently incarcerated for drug offenses, their families, and communities across America.

Sincerely,



Dorsey E. Nunn
Executive Director



Jesse Stout
Policy Director

¹⁵ U.S.S.C., *Public Hearing*, 210.