

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Chambers of
Lynn Adelman
Judge

364 U.S. Courthouse
517 East Wisconsin Avenue
Milwaukee, Wisconsin 53202-4583

414/297-1285
Fax 414/297-1211

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United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, DC 2002-8002

Dear Members of the Commission:

We write as district court judges in the Seventh Circuit to applaud the Commission for recognizing that the current drug trafficking guidelines fail to satisfy the purposes of sentencing and to urge the Commission to take the further step of making the “drugs-minus two” amendment fully retroactive without any exclusions or carve-outs.

Retroactivity is required as a matter of fundamental fairness. As Judge Keeley indicated on behalf of the Criminal Law Committee of the Judicial Conference, given the Commission’s considered decision to reduce penalties in these cases, it would be unjust – and a source of unwarranted disparity – if the date the sentence was imposed dictated the length of imprisonment. Applying the amendment retroactively will simply place previously sentenced defendants on the same footing as defendants who commit the same offenses in the future. We also note that the Commission’s research reveals that recidivism rates for those released early under the crack amendment are indistinguishable from the rates of those who served their full terms.

Further, retroactivity will create no significant procedural problems. Judges, probation officers, prosecutors, and defense counsel have twice navigated without difficulty

the § 3582(c)(2) process with the crack cocaine amendments. We have confidence that the system will be able to handle the requests of all offenders eligible for relief.

Finally, we see no reason for selective retroactivity. Offenders who received certain enhancements or who fell in higher criminal history categories should not be automatically excluded from consideration. The better practice would be to allow judges to decide on a case by case basis whether offenders should be re-sentenced. Guideline enhancements and criminal history scores are imperfect proxies for dangerousness. For instance, a defendant may receive a firearm enhancement based on a co-defendant's possession under the relevant conduct rules. Or a defendant's prior record, while recent enough to score at the time of sentencing, may be remote by the time the § 3582(c)(2) motion is heard. In neither case would a categorical exclusion produce a reasoned prediction of future dangerousness. Rather, a judge, familiar with a defendant's record and post-sentencing conduct and appropriately advised by the parties, can do a better job of determining whether early release would endanger the public. Nor should the Commission be concerned that retroactivity for all would depreciate the seriousness of the offense of conviction; offenders will still serve sentences consistent with their enhancements; only the base offense level would be reduced. (Indeed, by excluding offenders with enhancements, the Commission would in effect "double count" the enhancement.)

In sum, it is not necessary to categorically deny relief to approximately 30,000 of the 50,000 otherwise eligible offenders as it appears the Justice Department's proposal would do. For all of these reasons, we urge the Commission to make the amendment retroactive and decline to carve out any offenders from eligibility for sentence reductions.

Thank you for considering our views.

Sincerely,

/s/

Lynn Adelman
District Judge, Eastern District of Wisconsin

/s/

Elaine Bucklo
Senior District Judge, Northern District of Illinois

/s/

Ruben Castillo
Chief Judge, Northern District of Illinois

/s/

William M. Conley
Chief Judge, Western District of Wisconsin

/s/

Thomas M. Durkin
District Judge, Northern District of Illinois

/s/

Robert W. Gettleman
District Judge, Northern District of Illinois

/s/

Joan Gottschall
Senior District Judge, Northern District of Illinois

/s/

John F. Grady
Senior District Judge, Northern District of Illinois

/s/

David R. Herndon
Chief Judge, Southern District of Illinois

/s/

Joan Lefkow
Senior District Judge, Northern District of Illinois

/s/

James D. Peterson
District Judge, Western District of Wisconsin