

## Response to Sentencing Guideline Amendments

### *Proposed Amendment – First Offenders/Alternatives to Incarceration: Response to Public Comment*

The comments set forth below are in response to Section 3. Propose Amendment: First Offenders/Alternatives to Incarceration

#### *Issues for comment*

In reference to the definition of a first offender, the commission is seeking comments as how best to define the term “first offender”. We believe a first offender should include a combination of Option 1 and Option 2. The defendant should have no prior federal convictions that resulted in the accumulation of criminal history points from Chapter four (4), part A. In response to the relevance of time in determining the definition of a first offender, we do not believe it to be a factor for consideration.

Our belief is a base level decrease of 2 is warranted if the defendant meets the criteria of a non-violent first offender. This decrease should not be predicated on a base offense level, enhancements received, final offense level, government cooperation, or any other requirements.

If the intent is to amend the guidelines based on statistics that support lower recidivism rates for first offenders, then this downward departure is warranted. We have researched, gathered and read numerous state and federal reports and articles that unequivocally show a relationship between the rate of recidivism and the age of a defendant. Older adults, over the age of 45, have a much lower rate of recidivism than adults younger in age. We believe this fact alone warrants incorporation of further level reductions for defendants aged 45 and older. To this end, we are proposing language such as that presented below be added to this amendment and incorporated with the revised sentencing guidelines.

1. If the base offense level was under level 16 one additional downward departure should be given
2. If the defendant is between the ages of 45 – 55, one level reduction should be given; if over 55 then a reduction of 2 levels should be given

<u>Criteria</u>	<u>Downward Level Adjustments</u>
First Time Offender	(2)
Base Offense Level Under 16	(1)
Age Adjustments (based on recidivism reports)	
Age 45 – 55	(1)
Age over 55	(2)

The chart below summarizes our recommendations

In the event the definition of a first offender is added by the Sentencing Commission and a determination is made to retroactively apply the definition and hence a level reduction to those currently incarcerated, we recommend special consideration be given to define the change not on an individual case basis, but consistently across the board. In other words, all of the defendants meeting the definition of a first offender receive a level adjustment that translates into a sentence reduction.

Exceptions should not and cannot in good conscience be made based on application of sentencing guidelines; plea deals entered; case assumptions, and disputes over level calculations based on enhancements defined prior to sentencing guideline amendments. Similar to the above table, we summarize our recommendation by applying the level reductions as a percentage of a sentence received, regardless of guideline recommendations; type of plea deal accepted; appeal status, etc....

Application of Guideline Change to Prisoners Currently Serving a Federal Sentence

<u>Criteria</u>	<u>Percent of Sentence Reduction</u>
First Time Offender	10%
Base Offense Level Under 16	5%
Age 45 – 55	5%
Age 55 and Older	10%

To further demonstrate how this process would be used, we offer the following example:

In 2016, the defendant is sentenced to 60 months for fraud having a base offense level of 7. The defendant meets the definition of a first offender and has already served 5 months of his sentence. He is currently 53 years of age. The application of the sentence reduction would be as follows:

	<u>Reduction Percentage</u>	<u>Months</u>
Federal prison sentence	N/A	60
Qualifies as first offender	10%	(6)
Base offense level under 16	5%	(3)
Current age of 54	5%	(3)
Time served		(5)
Remaining length of sentence prior to sentence reduction		55
Sentence Reduction		(12)
Revised remaining sentence		43

We appreciate the opportunity to provide our comments on the proposed amendment; section entitled first offenders/alternatives to incarceration and look forward to reading the final version.

Thank you for taking the time to read our comments and incorporating changes necessary to improve the guidelines.

Sincerely,

A Better Light