

September 21, 2017

Amanda B. Lowe

[REDACTED]

United States Sentencing Commission  
One Columbus Circle NE  
Suite 2-500  
Washington, DC 20002

To Whom It May Concern:

I write today to express strong support for the First Offender amendment to the United States Sentencing Guidelines (the “Guidelines Manual”) included in the Proposed 2017 Holdover Amendments to the Sentencing Guidelines. Adoption of this amendment, along with its much-needed retroactive application to previously sentenced defendants, will reflect the reality that first-time offenders are at an extremely low risk of reoffending, will reduce recidivism generally, and will decrease the exorbitantly large correctional population of the United States.

I. A BROAD DEFINITION OF “FIRST OFFENDER” IS NEEDED TO FAIRLY REFLECT THE LOW RECIDIVISM RATE OF FIRST OFFENDERS GENERALLY

**In response to Issue 1 for comment**, a broad definition of “first offender” is needed to fairly reflect the truth that the recidivism rate for these defendants overall is remarkably low. In its 2004 report on recidivism and first offenders, the United States Sentencing Commission (the “Commission”) reported that the recidivism rate for first offenders generally was only 11.7 percent; half the rate of recidivism for offenders with even just one criminal history point.<sup>1</sup> Included in this category of first offenders were those with prior convictions that did not result in criminal history points under § 4A1.2(c)(2)—these offenders were even less likely to reoffend than those first offenders with prior arrests but no prior convictions.<sup>2</sup> Moreover, while the Commission’s eight-year follow-up found that the rearrest rate for those with zero criminal history points increased to 30 percent as time went on, this number remains significantly lower than the rates of rearrest for offenders with one or more criminal history points.<sup>3</sup> This reported percentage also does not reflect actual additional *convictions* and includes alleged technical violations of the conditions of supervision, not just new crimes.<sup>4</sup>

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<sup>1</sup> UNITED STATES SENTENCING COMM’N, RECIDIVISM AND THE “FIRST OFFENDER,” (2004), 13.

<sup>2</sup> Defendants with prior convictions under § 4A1.2(c)(2) had a recidivism rate of 8.8 percent, compared to 17.2 percent for those with prior arrests but no convictions. *Id.* at 5, 14. The 2005 First Offender Report also notes that the 17.2 percent rate for defendants with prior arrests but no convictions is still lower than the recidivism rate for non-first offenders. *Id.* at 14.

<sup>3</sup> UNITED STATES SENTENCING COMM’N, RECIDIVISM AMONG FEDERAL OFFENDERS: A COMPREHENSIVE OVERVIEW (2016), 18.

<sup>4</sup> *Id.* at 15.

As a result, **the Commission should utilize Option 1** to define a defendant as a “first offender” if the defendant did not receive any criminal history points. Broadly defining first offender in such a way ensures that the amendment will apply to all defendants with the lowest rate of recidivism, and best reflects the Commission’s goal of lowering the guideline range for those least likely to reoffend.

## II. DECREASES IN OFFENSE LEVEL SHOULD NOT BE LIMITED

**In response to Issue 2 for comment**, decreases in offense level for first offenders should not be any more limited than an across-the-board reduction by one level from the final offense level. Any limitation to whom the reduction in level would apply would be counterproductive to achieving the Commission’s purpose of recognizing the low risk of recidivism for first time offenders. While a higher final offense level generally corresponds with greater severity of offense, the lengthy prison sentences that accompany higher final offense levels yield no benefits when applied to first offenders.<sup>5</sup> Indeed, longer prison sentences likely have a negative effect on whether a person reoffends; the more time spent in prison, the higher the recidivism rate.<sup>6</sup>

Therefore, **the Commission should utilize an adjustment no more limited than Option 1**, a one-level decrease for all first offenders regardless of the final offense level. At best, long prison sentences for first offenders with higher final offense levels produce no tangible benefit by reducing recidivism once the offender is released; at worst, the harsh punishments imposed actually increase recidivism. The Commission—and the American public—would be best served by preventing first offenders, whose risk for reoffending is already low, from any potential pull towards recidivism generated by long prison sentences resulting from higher final offense levels.

## III. THE FIRST OFFENDER AMENDMENT SHOULD BE RETROACTIVELY APPLIED

**In response to Issue 4 for comment**, if the Commission were to promulgate Part A of the proposed amendment, then the Commission should also amend the Guidelines Manual to apply

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<sup>5</sup> See Pew Center on the States, “Time Served: The High Cost, Low Return of Longer Prison Terms,” PEW RESEARCH CTR. (June 2012), 1-2, 33, [http://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/sentencing\\_and\\_corrections/prisontimeservedpdf.pdf](http://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/sentencing_and_corrections/prisontimeservedpdf.pdf) [hereinafter Pew Report].

<sup>6</sup> This applies to offenders convicted of both nonviolent and violent crimes. See Don M. Gottfredson et al., *Four Thousand Lifetimes: A Study of Time Served and Parole Outcomes*, NAT’L COUNCIL ON CRIME AND DELINQUENCY (1973); Don M. Gottfredson, Michael R. Gottfredson and James Garofalo, *Time served in prison and parole outcomes among parolee risk categories*, 5 J. CRIM. JUSTICE 1, 1-12 (1977); Thomas Orsagh and Jong-Rong Chen, *The Effect of Time Served on Recidivism: An Interdisciplinary Theory*, 4 J. QUANTITATIVE CRIMINOLOGY 155 (1988). A few more recent studies have shown that lengthy prison sentences have no significant effect on recidivism, either positive or negative; if longer sentences are not actually reducing recidivism, then shortening sentences would save tens of millions of dollars per year at virtually no social or public safety cost. See Pew Report, *supra* note 5, at 33-34, 37.

the First Offender amendment retroactively to previously sentenced defendants. The factors that the Commission considers in selecting amendments to apply retroactively under § 1B1.10(d) of the Guidelines Manual—the purpose of the amendment and of sentencing, the magnitude of the change, and the difficulty in applying it to defendants already sentenced—all point to retroactive application of the First Offender amendment.<sup>7</sup>

First, retroactive application will accomplish the purposes of the amendment and of sentencing of first offenders. This amendment aims to decrease the final offense level—and consequently the sentence length—of first offenders, for whom recidivism is unlikely. Including qualified, previously sentenced defendants in the scope of the amendment will ensure that lengthy sentences do not further jeopardize this tendency not to recidivate through institutionalization or other pressures that encourage even first offenders to reoffend.<sup>8</sup> Moreover, one or two-point decreases in final offense level will not undermine the purpose of sentences already being served by first offenders; the change is not great enough to undercut the certainty, deterrence, punishment, or public safety rationales behind sentences imposed (particularly since long sentences also likely have a negative overall impact on recidivism for first offenders<sup>9</sup>).

Second, as noted in the previous paragraph, while the change will not wreak havoc on sentences already being served, it is substantial enough to justify “burden[ing] the courts with [retroactive] adjustment.”<sup>10</sup> For many first offenders, a one or two-point decrease will reduce their sentence length by more than six months, meaning a retroactive change will not merely result in “isolated instances of sentences falling above the old guidelines” or a “minor downward adjustment.”<sup>11</sup> Retroactive application, therefore, would not only affect a significant portion of first offenders, but would also result in savings of tens of millions of dollars per year for first offenders whose low rate of recidivism means there is no need to keep them incarcerated for long periods of time.<sup>12</sup>

Third, because the amendment would result in a straightforward adjustment to final offense levels for first offenders, the difficulty in applying the amendment retroactively would be insignificant. The Commission has already successfully implemented a similar retroactive change via Amendment 782, reducing the final offense level by two for virtually all federal drug

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<sup>7</sup> See § 1B1.10 comment 8.

<sup>8</sup> See, e.g., Section II *supra*.

<sup>9</sup> And at best, have no impact whatsoever on preventing future crime by first offenders. See Section II *supra*.

<sup>10</sup> See § 1B1.10 comment 8.

<sup>11</sup> *Id.* According to the Commission’s 2005 report, roughly 30 percent of first offenders were sentenced to terms of imprisonment exceeding two years; this means that a downward adjustment of even one point could result in a reduction of several years in sentence length for first offenders with higher final offense levels. See, e.g., UNITED STATES SENTENCING COMM’N, RECIDIVISM AND THE “FIRST OFFENDER,” (2004), 10.

<sup>12</sup> See Pew Report, *supra* note 5, at 33-34, 37. Similarly, Amendment 782 also resulted in large cost savings. See Matt Apuzzo, “New Rule Permits Early Release for Thousands of Drug Offenders,” NY TIMES (July 18, 2014), <https://www.nytimes.com/2014/07/19/us/new-rule-permits-early-release-for-thousands-of-drug-offenders.html>.

crimes.<sup>13</sup> A one or two-point reduction to the final offense level for first offenders would be equally implementable, and feasibility should be no obstacle to retroactive implementation.

Accordingly, **the First Offender amendment should be applied retroactively to previously sentenced defendants.**

Sincerely,

Amanda B. Lowe  
[signed]

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<sup>13</sup> See “Frequently Asked Questions: Retroactive Application of the 2014 Drug Guidelines Amendment,” UNITED STATES SENTENCING COMM’N, [https://www.ussc.gov/sites/default/files/pdf/amendment-process/materials-on-2014-drug-guidelines-amendment/20140724\\_FAQ.pdf](https://www.ussc.gov/sites/default/files/pdf/amendment-process/materials-on-2014-drug-guidelines-amendment/20140724_FAQ.pdf).

Honorable William H. Pryor, Jr.  
Acting Chair  
United States Sentencing Commission  
One Columbus Circle, N.E., Suite 2-500  
Washington, D.C. 20002-8002  
Attention: Public Affairs

Re: Public Comment, Proposed 2017 Holdover Amendments: (3) First Offenders/Alternatives to Incarceration, and (4) Acceptance of Responsibility

Dear Judge Pryor,

I write to express my support of the entirety (Part A and Part B) of Proposed Amendment 3 (First Offenders/Alternatives to Incarceration) and Proposed Amendment 4 (Acceptance of Responsibility) to the U.S.S.G.

**Proposed Amendment 3 (First Offenders/Alternatives to Incarceration) Part A & Part B:**

In the interest of furthering the goals of the Sentencing Reform Act of 1984, specifically consistency between offenses and sentence, I support the addition of a category of literal "first offenders." As it stands currently the forceful conflation of those who have no prior convictions with those who do leads to an imbalance in sentencing; that is, it over-penalizes those who are truly people with no criminal history and those who generally pose the lowest risk of recidivism (per the USSC's 2016 Report on Recidivism).

**Part A Issues for Comment:**

1. Under Part A of §4C1.1 Definition of "First Offender"; I support Option 1: (a) A defendant is a first offender if the defendant did not receive any criminal history points from Chapter Four, Part A.

2. While, under Part A of §4C1.1 Decrease in Offense Level for First Offenders; Option 2 improves the fairness of first-offender sentencing, I support Option 2, preferable would be the larger decrease by 2 Levels for those first offenders if the offense level determined under Chapters Two and Three is Level 16 or greater. In other words, (b) If the defendant is determined to be a first offender under subsection (a), decrease the offense level determined under Chapters Two and Three by 2 levels.

A larger reduction in level for those with relatively lower risk of recidivism better and more thoughtfully furthers the idea of fairness in sentencing, protects the public, and reduces the population of the Federal Bureau of Prisons. There should be no limitations to the applicability of the adjustment based upon crime or number of levels as offense levels already serve to reconcile sentencing with severity of offense.

3. The Amendment of §5C1.1 under the new §4C1.1 should NOT be further limited beyond "a crime of violence." I support amendment of §5C1.1 under §4C1.1 as proposed.

**Retroactivity:** Crucially, I support making Part A of Proposed Amendment 3 (First Offenders/Alternatives to Incarceration) retroactive and included in §1B1.10(d) in order that the court may apply it retroactively under 18 U.S.C. 3582(c)(2). Sentencing Guidelines must apply evenly across the board, to future offenders and those currently serving time, as a matter of equity. The courts showed an amazing ability and capability in retroactive application of Amendment 782 to the Drug Quantity Table under §2D1.1 (commonly known as "Drugs minus 2"), while this "to be numbered" proposed amendment will generally be easier to determine to whom it applies, it will also affect a significantly smaller percentage of the current FBOP population, thus alleviating the difficulty of applying the amendment retroactively to determine an amended guideline range under §1B1.10(b).

Part B Issues for Comment:

Part B's consolidation of Zones reflects a conceptual step forward; discretionary probation in place of extended imprisonment is often the better choice for offenders, particularly those with offense levels as low as those in Zone B and Zone C. I fully support eliminating Zone C by folding it into Zone B and thereby allowing Zone B's probation substitution to be applied to offenders who would have fallen into Zone C. I would support, as the Issues for Comment consider, a Zone B that applies to all offenses, without additional categorization, because the further breakdown would be redundant. Offense levels already serve to reconcile sentencing with severity of offense; singling out offenses (such as white-collar offenders, to adhere to the example provided in the Issues) expressly works against the goal of consistency.

I also support making Part B retroactive for the same reasons stated above in Part A: Retroactivity.

Proposed Amendment 4 (Acceptance of Responsibility):

I support the Commission's REMOVAL from §5E1.1 all references to relevant conduct for which the defendant is accountable under §1B1.3, and reference only the elements of the offense of conviction; instead of adopting either Option 1 or Option 2. I further support listing Proposed Amendment 4 (Acceptance of Responsibility) in §1B1.10 (d) to be retroactively applicable under 18 U.S.C. 3582(c)(2), as a matter of equity.

Thank you for proposing the 2017 Holdover Amendments to the Sentencing Guidelines so quickly in this cycle and bringing forward all previous data, research, and public comment collected this past winter and spring. I look forward to the promulgating of these amendments to Congress as quickly as possible. The anticipated benefits of Amendment 3 (First Offenders/Alternatives to Incarceration) are vast for currently incarcerated first and low-level offenders (Proposed Zones A & B), offenders awaiting sentencing, and future first and low-level offenders, and their families. Speedy implementation is imperative.

I look forward to your continued work and future corrections and updates to the U.S.S.G.

Respectfully,

Florence Sakyiana

Orozco, Garcia Reynaldo  
Name and Reg. No. [REDACTED]

Date: 9-13-17

Dear Members of the U.S. Sentencing Commission: —

Re: 2018 Guideline Amendment Priorities

The U.S. Sentencing Commission is tasked by statute with ensuring that the Sentencing Guidelines are "formulated to minimize the likelihood that the Federal prison population will exceed the capacity of the Federal Prisons" 28 U.S.C. 994(g). While the federal prison population has declined in recent years, every federal prison in the nation continues to operate at levels in excess of original design and capacity.

Overpopulated prisons are less safe for staff and inmates, make the delivery of medical care and other essential services more difficult and impede the ability of the B.O.P. to provide meaningful rehabilitation programs to inmates who genuinely want to make a better future of themselves.

The current Guideline Sentencing Table is overly punitive and should be amended consistent with FARM and Prisology's proposals. This in turn would not affect the public safety as it proved with Amendment 782 to the Guidelines and would save taxpayers billions of dollars as a result of this change.

I support the work that FARM and Prisology is doing to reform the criminal justice system. I am writing to strongly urge the Commission to make these proposed new changes a priority during the Commission's 2018 Guideline Amendment cycle, as these changes are simple and easily administrable.

Thank you for your consideration of my comments.

Sincerely,

Orozco, Garcia Reynaldo  
Name and Reg. No. [REDACTED]

9-13-17  
Date

**WALTER A. STRINGFELLOW**

Honorable William H. Pryor, Jr.  
Acting Chair  
United States Sentencing Commission  
One Columbus Circle, N.E., Suite 2-500  
Washington, D.C. 2002-8002  
Attention: Public Affairs

Re: Public Comment, Proposed 2017 Holdover Amendments: (3) First Offenders/Alternatives to Incarceration, and (4) Acceptance of Responsibility

Dear Judge Pryor,

I write to express my support of the entirety (Part A and Part B) of Proposed Amendment 3 (First Offenders/Alternatives to Incarceration) and Proposed Amendment 4 (Acceptance of Responsibility) to the U.S.S.C. I strongly support changes that will reduce the incarceration required of first time offenders who pose no threat to society and whose return to freedom will be of significant benefit to themselves, their families and their communities.

**Proposed Amendment 3 (First Offenders/Alternatives to Incarceration) Part A & Part B:**

In the interest of furthering the goals of the Sentencing Reform Act of 1984, specifically, consistency between offenses and sentence, I support the addition of a category of literal "first offenders." As it stands currently, the forceful conflation of those who have no prior convictions with those who do leads to an imbalance in sentencing; that is, it over-penalizes those who are truly people with no criminal history and those who generally pose the lowest risk of recidivism (per the USSC's 2016 Report on Recidivism).

**Part A. Issues for Comment:**

1. Under Part A of 4C1.1 Definition of "First Offender"; I support Option 1: (a) A defendant is a first offender if the defendant did not receive any criminal history points from Chapter Four, Part A.
2. While under Part A of 4C1.1 Decrease in Offense Level for First Offenders; Option 2 improves the fairness of first offender sentencing, I support Option 2, preferable would be the larger decrease by 2



Levels for those first offenders if the offense level determined under Chapters Two and Three is Level 16 or greater. In other words, (b) If the defendant is determined to be a first offender under subsection (a), decrease the offense level determined under Chapters Two and Three by 2 levels.

A larger reduction in level for those with relatively lower risk of recidivism better and more thoughtfully furthers the idea of fairness in sentencing, protects the public, and reduces the population of the Federal Bureau of Prisons. There should be no limitations to the applicability of the adjustment based upon crime or number of levels as offense levels already served to reconcile sentencing with severity of offense.

3. The Amendment of 5C1.1 under the new 4C1.1 should **not** be further limited beyond "a crime of violence." I support amendment of 5C1.1 under 4C1.1 as proposed.

**Retroactivity:** Crucially, I support making Part A of Proposed Amendment 3 (First Offenders/Alternatives to Incarceration) retroactive and included in 1B1.10(d) in order that the court may apply it retroactively under 18 U.S.C. 3582(c) (2). Sentencing Guidelines must apply evenly across the board, to future offenders and those currently serving time, as a matter of equity. The courts showed an amazing ability and capability in retroactive application of Amendment 782 to the Drug Quantity Table under 2D1.1 (commonly known as "Drugs minus 2"), while this "to be numbered" proposed amendment will generally be easier to determine to whom it applies, it will also affect a significantly smaller percentage of the current FBOP population thus alleviating the difficulty of applying the amendment retroactively to determine an amended guideline range under 1B1.10(b).

#### **Part B Issues for Comment:**

Part B's consolidation of Zones reflects a conceptual step forward; discretionary probation in place of extended imprisonment is often the better choice for offenders, particularly those with offense levels as low as those in Zone B and Zone C. I fully support eliminating Zone C by folding it into Zone B and thereby allowing Zone B's probation substitution to be applied to offenders who would have fallen into Zone C. I would support, as the Issues for Comment consider, a Zone B that applies to all offenses, without additional categorization, because the further breakdown would be redundant. Offense levels already serve to reconcile sentencing with severity of offense; singling out offenses (such as white-collar offenders, to adhere to the example provided in the Issues) expressly works against the goal of consistency.

I also support making Part B retroactive for the same reasons stated above in Part A Retroactivity.

#### **Proposed Amendment 4 (Acceptance of Responsibility)**

I support the commission's **REMOVAL** from 3E1.1 all references to relevant conduct for which the defendant is accountable under 1B1.3, and reference only the elements of the offense of conviction; instead of adopting either Option 1 or Option 2. I further support listing Proposed Amendment 4 (Acceptance of Responsibility) in 1B1.10 (d) to be retroactively applicable under 18 U.S.C. 3582 (c) (2), as a matter of equity.

Thank you for proposing the 2017 Holdover Amendments to the Sentencing Guidelines so quickly in this cycle and bringing forward all previous data, research, and public comment collected this past winter and spring. I look forward to the promulgating of these amendments to Congress as quickly as possible. The anticipated benefits of Amendment 3 (First Offenders/Alternatives to Incarceration) are vast for currently incarcerated first and low-level offenders (Proposed Zones A & B), offenders awaiting sentencing, and future first and low-level offenders, and their families. Speedy implementation is imperative.

I look forward to your continued work and future corrections and updates to the U.S.S.G.

Sincerely,

A handwritten signature in black ink, appearing to read "Walter A. Stringfellow". The signature is written in a cursive, somewhat stylized script.

Walter A. Stringfellow