

TO: United States Sentencing Commission
ATTN: Public Affairs - Priorities Comment
RE: First time Offenders – Sentencing Relief also to Child Pornography
DATE: July 2018

Statement of the issue –

The USSC Guidelines do not allow sufficient relief for First Time Offenders. Current consideration is to provide relief for Drug convictions. But you should include all non-human offence crimes. This should include non-contact non-production Child Pornography.

Please let me give you a personal example of why this is should be a priority

My son was charged with a non-contact non-production Child Pornography offense. Despite his previously 100% clean record, he received virtually no points reductions and certainly no relief or allowance for his perfectly led life up to that point.

Here is his story

My son was Magna Cum Laude High School and Magna Cum Laude College graduate in Engineering with two honor societies. He had 8 years of continuous employment with three promotions, created 3 patents, home owner, perfect credit score, zero previous law encounters, and was a respected community volunteer.

He is currently serving an 84-month sentence for merely possessing and viewing Child Pornography. (FBI confirmed no child contact).

What is the solution

I am aware that the USSC has proposed some slight relief in the 2011 Mandatory Minimum Penalties in the Federal Criminal Justice. But more can and needs to be done.

Current public comment requests public input on relief for drug sentencing. Non-contact non-production Child Pornography should also receive relief.

The simplest solution would be easy -- to provide much bigger point reductions for a truly clean record first offender.

And it would be possible to extend or expand the Federal First Offenders Act from just drug offenses to include non-contact non-production Child Pornography. The following shows how apparently simple this would be.

As you well know, The Federal First Offender Act, also known as FFOA, provides a special probation program for first offenders. The term "first-time offender" often refers

to people who are convicted of a legal offense for the first time. This designation usually gives the accused an opportunity to fight for some leniency in the legal process.

In essence, the code specifies that in certain non-violent cases of ~~drug possession~~ (non-contact Child Pornography), first-time offenders may complete a period of probation that would allow them to have the charge dismissed without a conviction being entered. The arrest and the case itself also may be expunged (**optional**). The result is that the first-time offender can truthfully deny having been convicted of the underlying criminal offense.

Avoiding a criminal record and all the penalties that can accompany a conviction is important. However, not everyone who commits a crime for the first time is eligible for the program. In order to qualify for first offender treatment under federal law, a person must show he or she:

- Has been found guilty of simple possession of a ~~controlled substance~~ **(non-contact Child Pornography)**
- Has not, prior to the commission of such offense, been convicted of violating a federal or state law relating to ~~controlled~~ **(non-contact Child Pornography)**
- Has not previously been accorded first offender treatment under any law
- The court has entered an order pursuant to a state rehabilitative statute under which the criminal proceedings have been deferred pending successful completion of probation or the proceedings have been or will be dismissed after probation

There is much more to this law, but I am sure you have better access and knowledge than I do. But this simple approach to a solution that would resolve the issue.

Thank you for your consideration of this issue.

Sincerely,

Dan Holbert

Aug 1, 2018

U.S. Sentencing Commission

Dear Commission,

Dear Judge Pryor:

I am a 73-year old retired public servant (teacher, and an employee of the Department of Defense) and have been a long-time volunteer in several local public service activities. I have a very close family, every single one of whom is kind, caring, civic-minded, public-service oriented, and highly educated. Yet, one member of our family is now in federal prison, and another is facing an unrelated felony charge that may result in a state prison term. Both of these charges are for non-malicious, non-violent acts.

We ask, how could this possibly happen? TWO good people, members of a gentle and socially responsible family, for crimes of poor judgment but for where there was no intended or identified victim? This to me is another shocking example of the widespread degree to which the justice system has become over-zealous in imprisoning too many people, many for non-violent crimes, while also harming their families and wasting tax dollars.

With that background, I would like to offer the following comments on the USSC's Proposed Priorities for 2019.

A. I strongly support:

- The Commission's intent to include reduction of costs of incarceration and reduced overcrowding of prisons as priority factors where relevant to any of the other identified priorities.

- The Commission's continued work to improve the guidelines so they promote proportionality, reduce sentencing disparities, and give appropriate consideration to the defendant's role, culpability and relevant conduct (Priority 1).

- The Commission's continued work with Congress and others to implement the recommendations of the Commission's 2011 report to Congress, Mandatory Minimum Penalties in the Federal Criminal Justice System (Priority 4).

B. A few missing items which I hope the Commission will add into the priority list:

1. Under Priority 1, please consider addressing and recommending solutions for disproportionate sentencing of impoverished people, African-Americans, and Latinos.

2. Alternatives to Incarceration. This was a key item in last year's proposals. Please revisit this important issue! In addition to helping eligible prisoners where appropriate as well as their families, alternatives to incarceration will in many cases reduce costs, and

reduce prison overcrowding.

(a) As part of this effort, I hope you will study and attempt to ensure that compassionate release, as has been encouraged by the Commission, is actually being implemented by the Bureau of Prisons.

(b) Please consider adding reduced prison sentences for first offenders under this category.

3. Re-evaluation of how to recognize and apply distinctions between offenses in the same category but of varying degrees of seriousness so as to avoid an unfair one-size-fits-all label and sentence.

One example affects my family. The USSC study of 2013 on Child Pornography stated that the current sentencing structure does not "...adequately distinguish among offenders based on their degree of culpability or sexually dangerous behavior."

In our loved one's case involving downloaded internet pornography on a home computer, some downloaded material contained images of children. There was no malice intended. My family member was 62 years old when arrested, a wonderful person and a model citizen, but is 65 and in prison now. He had never once in his life had any inappropriate sexual contact or conversations with children and wouldn't ever have dreamed of doing so. Yet today he is labeled with a "Public Safety Factor" and was sentenced to 45 months of federal prison, which will be followed by a 15 year probation including registration as a "Sex Offender". Senseless!

Thank you for allowing me to submit these comments. I am very grateful for the fine work you have been doing to improve our sentencing guidelines and in turn to help our society!

Sincerely,



Sincerely,

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Dear Sirs/Madams:

I am writing today to implore the US Sentencing Commission to review and reconsider the current housing of first time non-violent offenders in federal maximum security facilities simply due to the length of their sentence. By sending non-violent offenders who have been given lengthy (and often unfair life sentences) into maximum security facilities you are placing these non-violent individuals in situations where their lives are at risk. The only choice left to these prisoners is that they either have to file a grievance regarding their concerns which then puts a target on their back with other inmates, physically fight to protect and save their life which then risks picking up new charges which could harm their appeals or lengthen already overboard sentences, or submit themselves to daily beatings, sexual assaults and more. My concern is growing daily for the safety of my family member who was recently given what amounts to a life sentence as a first time non-violent offender due to the current mandatory minimums, and then because of the length of his sentence he is currently being housed in a maximum security facility, fearing for his life daily. There is clear abuse of this policy by prosecutors with the “stacking” of charges against those who attempt to exercise their right to trial, as afforded to them under the United States Constitution.

Specific to my family member, he received a 40 year sentence for drug dealing (after having chosen to go to trial versus taking an plea deal). He had never been arrested once before in his life. He was arrested as part of a large undercover operation. He was a drug addict who had only known those associated for a few months. He received the longest sentence of all 22 arrested as he chose not to take a plea deal. He erroneously believed in the justice system and did not understand the mandatory minimum laws currently in place. He was the only person associated with this case that was allowed out on house arrest while awaiting trial, during which time he held down 2 jobs, got sober, attended NA meetings, paid his court fees and rent. The judge over his case admonished the prosecutors at trial for having aggressively stacked the charges in his case, for having targeted him specifically for exercising his right as a US Citizen. Jurors in his case have since contacted the media (Washington Post) to discuss how they do not feel safer with him having been given what amounts to a life sentence, that they cried tears in the jury room knowing they were destroying a life but not having any other choice given the current federal mandatory minimums in place. Had he faced the same charges at a state level he would have been given the rehabilitation he so desperately needed, and probation and would have then contributed to society. The judge was powerless to enact justice in this case – how is this possible in the year 2018 in the United States of America?

When Congress passed the mandatory minimum laws in 1986, they directed the Department of Justice to focus on “major drug traffickers”, however this has not proven to be the case. In 2011, it was shown that less than 11% of those sentenced and impacted by these laws were those who it was intended to pursue. In my research it has become evident that mandatory minimum sentencing laws are being used against low level offenders such as my brother versus who they were intended to be used for. Society has gained nothing from locking my 37 year old brother away for life, and the story is the same for hundreds of other first time offenders lost in the federal system and current mandatory minimums.

On the exact opposite end of the judicial spectrum, my son was a 25-year-old police officer in the state of Utah. He was murdered on November 6, 2016 in the line of duty by 3 documented members of the Norteno gang (a subset of the Mexican Latino Bloods). The 3 individuals who murdered my son had multiple violent charges against them prior to the night they murdered Cody. They had participated in multiple rival gang fights, assaulted others when robbing them and other crimes. They received 3-6 years when they plead guilty to murdering my son. How is this justice? How do we live in a country where a non violent first time offender is given a 40 year sentence (without the possibility of early release) but someone with a violent history who murders a police officer is given a sentence of a few years simply because one was charged in federal court while the others were charged in state court system. Let me also add that these 3 individuals have committed additional crimes while incarcerated including assault on staff members.

By placing non-violent federal prisoners with lengthy sentences in maximum security facilities, they are not able to participate in programs as readily, have jobs, focus on rehabilitation. It seems inhumane and almost retaliatory that this is the current

process being used today by the federal government.

Once again I implore this committee to review the process specifically related to where federal prisoners are assigned.

Thank you for your time -

Jenny Brotherson

This email is in reference to the upcoming meet being held by the Sentencing Commission.

The primary issue I'd like to address with the commission is the effect unjust sentencing is having on children in the home after a parent has been removed due to incarceration. When a parent is removed from a household, the children of the home will suffer the most severe long term effect from the incarceration. The time spent away from the parent widens the disconnect and each missed opportunity of reconciliation between the child and incarcerated parent begins to negatively effect the child's behavior and their contributions to society. Unjust sentencing is typically the outcome of unjust circumstances. For example, the "stacking" of 18. U.S.C 924(c) is currently being used by prosecutors to coerce young males into taking extensive sentences that exceed the purpose of justice. Mandatory "stacking" practices leave inmates with limited option pleas similar to life sentences. These unfair practices are not only unconstitutional, but also threatens the faith entrusted in the judicial system.

Ma'am/Sir,

Minimum mandatory sentencing leaves no room for discretion on the part of the judge. There are so many variables in these cases, mental health being the most important, and the most ignored, politicians and law enforcement officials like to talk it up and then do nothing to help, but it looks good when they're running for office. I was a police officer for 34+ yrs and I know that all that looks good on paper but, whether they win or not doesn't matter, nobody follows up on their promises, not the politicians or the voters. Next year is too long for the people inside to wait, let's move the elected and appointed officials to act now, not when they decide to get up off their collective behind.

Joe McCormack



**COMMENT TO THE UNITED STATES SENTENCING COMMISSION
THAT A POLICY STATEMENT BE IMPLEMENTED ADVISING THAT
OFFENSE LEVEL 43'S RECOMMENDATION OF LIFE WITHOUT
PAROLE BE REDUCED TO 360 MONTHS - LIFE WITHOUT PAROLE
FOR OFFENDERS WITH A CRIMINAL HISTORY CATEGORY I AND II
WHO ARE CONVICTED OF A NONVIOLENT CRIME**

Submitted: August 10, 2018

**Jason Hernandez
*2013 Clemency Recipient***

