

Dear Judge Pryor,

I have a deep interest in improving our federal prisons. I am writing to let you know what I think about the priorities you are proposing.

First, I am happy to learn that the U.S. Sentencing Commission might study how the Family Ties and Responsibilities policy statement works when incarcerating a parent means that minor children lose the parent's care or financial support. I hope you will conduct this study. Families like mine suffer emotionally and financially when a loved one is behind bars.

Second, I also support the proposal to study whether the Bureau of Prisons is following the Commission's encouragement to file a motion for compassionate release whenever extraordinary and compelling reasons exist. I think it may not be doing so.

Your study could shine a light on how BOP is failing elderly, sick, and dying prisoners and help achieve the changes you have promoted.

Finally, I want you to know I was disappointed to learn that the Commission will not consider whether to amend the guidelines to reduce sentences for first offenders. Treating them the same as defendants with criminal history strikes me as wrong. I thought the Commission was on the right track last year when it proposed a first offender sentence reduction, and I hope you will consider that idea again soon.

Thank you for your work and for considering my opinion.

Adriane Mullins

Jul 23, 2018

U.S. Sentencing Commission

Dear Commission,

I am writing to express my concerns about lengthy federal sentences for prisoners with Autism Spectrum Disorder. My son was diagnosed with Asperger's Syndrome which is a form of Autism. This year he was convicted of distribution of child pornography and sentenced to 15 years in federal prison. The diagnosis was presented in court and the judge ruled that he did have Asperger's Syndrome but then gave him the same mandatory sentence as for a mentally competent criminal.

Autism spectrum disorders are neurological dysfunction due to brain damage and there are US laws in place to protect victims of Autism from being prosecuted and sentenced as other criminals.

I will quote from a book on this subject titled Caught in the Web of the Criminal Justice System: Autism, Developmental Disabilities, and Sex Offenses (2017) The book is authored by 18 professionals to educate attorneys and judges to bring about change in the criminal justice system regarding the prosecution and sentencing of autistic sex offenders, who are not criminals but people with neurological dysfunction.

"We have a national policy to protect and accommodate those with developmental disabilities, reflected in the Americans with Disabilities Act, and the correlative Rehabilitation Act. This sets a national policy that applies to those in law enforcement and must circumscribe their exercise of discretion. In "Examples and Resources to Support Criminal Justice Entities in Compliance with Title II of the Americans with Disabilities Act."

(USDOJ, Civil Rights Division, Technical Assistance Publication, January 11, 2017, p.2:2 <https://www.ada.gov/cjta.html>)

"'Nondiscrimination requirements, such as providing reasonable modifications to policies, practices, and procedures and taking appropriate steps to communicate effectively with people with disabilities, also support the goals of ensuring public safety, promoting public welfare, and avoiding unnecessary criminal justice involvement for people with disabilities. (Emphasis added)." (p. 19)

Since prisoners with Autism Spectrum Disorder, which is brain damage, are not mentally competent, they need medical treatment and therapy, not harsh sentences. Please consider making compliance with the Americans with Disabilities Act mandatory for judges in cases of Autistic spectrum persons convicted of breaking the law. Thank you.

Sincerely,



Jul 23, 2018

U.S. Sentencing Commission

Dear Commission,

I am writing to let you know what I think about the priorities you are proposing.

First, I am happy to learn that the Commission might study how the Family Ties and Responsibilities policy statement works when incarcerating a parent means that minor children lose the parent's care or financial support. I hope you will conduct this study. Families like mine suffer emotionally and financially when a loved one is behind bars.

Second, I also support the proposal to study whether the Bureau of Prisons is following the Commission's encouragement to file a motion for compassionate release whenever "extraordinary and compelling reasons" exist. I think it may not be doing so.

My husband was a 1st offender and he has stage 4 prostate cancer. He's 62 years old and no threat whatsoever to society. He's served 3 years of a 5.5 year sentence. His attorney has subsequently been disbarred and though my husband could've sought a 2255 motion, he did not, as he felt he must be accountable for the consequences of his bad choices. There are other similarly situated, and it's a travesty of justice, to not differentiate between those that are clearly on likely to reoffend and made poor decision(s). Haven't we all? We learn from our mistakes, and I hope and pray every day, that my husband will actually make it home and not be one of those that actually dies in prison.

Your study could shine a light on how BOP is failing elderly, sick, and dying prisoners and help achieve the changes you have promoted.

Finally, I want you to know I was disappointed to learn that the Commission will not consider whether to amend the guidelines to reduce sentences for first offenders. Treating them the same as defendants with criminal history strikes me as wrong. I thought the Commission was on the right track last year when it proposed a first offender sentence reduction, and I hope you will consider that idea again soon.

Thank you for your work and for considering my opinion.

Sincerely,

A large black rectangular redaction box covering the signature and name of the sender.



TO: United States Sentencing Commission

ATTN: Public Affairs - Priorities Comments

RE: Amendment Priorities --- Recommended Changes for Child Pornography Guidelines

DATE: July 2018

Good morning USSC Commission Members and staff,

I am writing concerning the 2017-2018 USSC amendment cycle - the federal child pornography (CP) guidelines. The guidelines for non-production, non-contact CP are far too harsh.

- Many respected people and organizations including federal judges, law scholars and even the USSC itself agree that guidelines are far too long for these types of crimes.
- This situation has advanced to where federally prosecuted non-production non-contact child pornography offenders routinely receive longer sentences than hands-on offenders charged at the state or local level.

The USSC provided a report to Congress in 2012 titled Federal Child Pornography Offenses stating the fact that they were too harsh and backed it with empirical data.

- According to a USSC study in 2010, 70% of federal judges think the guidelines are too high, and have backed that up by sentencing over 66% of offenders below the recommended guidelines.
- The continual increases of legislated sentence guidelines and time is clearly opposite to the judicial judgement, who know the facts of the case, as evidenced by ongoing trends – in 2004 there were 83.2% of sentences within guidelines and by 2011 only 32.7% were within guidelines.
- The current guidelines are based on emotion or public “noise” rather than fact. This must be fixed!

The USSC must be concerned about public safety – but long sentences are not helpful or necessary.

- The BOP and USSC have both published studies that show recidivism rates among non-contact non-violent CP offenders are very low – 5.7% and 7.4% respectively - for committing another sex crime. This is much lower than a typical drug offender which recently had their guidelines reduced by 2 points for many offenses.
- An FBI study shows that this Child Pornography category of felon is the least likely of any felon to harm a child.
- An often-cited Butner Study on this topic has been debunked as non-professional, non-standardized, non-controlled, non-randomized, non-replicable and must be ignored.
- State courts, which typically give much less time than federal courts for these crimes are not grappling with high recidivism.
- A Wall Street Journal Study in 2008 showed that there is little if any evidence of a direct correlation between viewing child pornography and a viewer’s commission of a contact offense.
- These studies show that overly long sentences are not needed for public safety.

When creating the USSC, Congress directed them to "take the community view of the gravity of the offense" into account when crafting criminal sanctions (28 U.S.C. S 994 (c)(4)) – but they are not doing so with CP guidelines.

- In the case U.S. v. Collins (825 F.3d 386, 6th Cir., 2016) Mr. Collins was found guilty after a trial for possession of child pornography. Despite being a first-time offender and having a relatively modest number of images and videos, his guideline range was 262-327 months. The district judge polled each of the 12 jurors asking what they thought the appropriate sentence should be. The responses ranged from 0 to 60 months with a mean of 14.5 months and a median of 8 months . 12 ordinary people from the community recommended but a fraction of the guideline range! This shows that USSC is failing in it's directive to take the community view into account.

Many of the guideline point enhancements that quickly increase the guidelines are duplicated or are obsolete in this internet world.

- Computers are used in over 90% of these cases and should be considered part of the base offense rather than an aggravating factor, and thus the 2-point enhancement eliminated.
- The 4-point enhancement for sadistic and masochistic images, which can include anything even suggestive of violence or pain, is included in nearly 75% of cases. Images of pre-pubescent minors are found over 95% of that time. These could both be eliminated since they appear as part of the base offense.
- The 5-point enhancement for possessing more than 600 images is also outdated. According to the USSC report, more than 95% of cases involve more than this amount. Twenty or thirty years ago someone would have to work long and hard to collect 600 images, but nowadays with high-speed internet and peer-to-peer networks, 600 images can be had in minutes. The current enhancement structure should be changed by a factor of up to 100 so that only the worst of the worst offenders (those with over 60,000 images in this example – which could be purposely or accidentally (in an open peer-to-peer network) collected in a matter of a couple hours) should be treated as such, rather than 95% of defendants receiving the full 5-point enhancement.

The vast majority of CP offense are unnecessarily and incorrectly enhanced 11-13 points.

- (2 for the use of a computer, 4 for sadistic images, 2 for pre-pubescent images, and 5 for possessing over 600 images) effectively creates a base offense level of 29-33 points depending on the exact charges being levied. This corresponds to a guideline range of 89- 168 months. This is far too high for the "typical" offender in today's fast computerized world.
- According to the report to Congress in 2012, many of the common enhancements are mandated by Congress, including the use of a computer, sadistic images and image count enhancements. Changing these would require Congress to act and must be initiated, proposed and recommended by you, the USSC.

But, do not wait for congress, USSC, for beginning these changes!

- While I implore the USSC to petition Congress for these changes, there are other ways to begin reducing unfair sentencing guidelines without Congress.
- These include a reduction or elimination of the pre-pubescent minor enhancement and a reduction of the base offense level of 2G2.2(a)(1) and 2G2.2(a)(2) from 18 and 22 to 15 and 17, respectively. These changes, without the need for Congress to act, are a significant starting point, and only that - a starting point - to help reduce these sentences.

Of course, any and all changes to the federal sentencing guidelines need to be retroactive so that offenders currently serving unjustly long sentences get equal benefit from the new guidelines.

- Most child pornography offenders are not incurable, criminally-minded people: in fact, they are often professionals who are otherwise productive and law-abiding citizens. Also, the majority are first time offenders for any crime other than possibly traffic tickets.
- Long incarceration does not provide meaningful results for this type of person and does not keep communities safer. Their recidivism rate is one of the lowest.
- Federal non-production, non-contact "picture" offences are often being treated more harshly than State and Local actual-hands on child-abusers. There is scant evidence of "lookers" becoming "touchers".

Commission, please set the CP sentencing guidelines at realistic and appropriate rates, based on empirical data from the USSC, BOP, Federal Judges decisions, and other professional groups rather than emotionally charged rhetoric.

Thank you.

Sincerely,

Dan Holbert and Kate Holbert



**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***



**SUMMARY OF PROBLEM AND SOLUTION TO THE UNITED STATES SENTENCING  
GUIDELINE OFFENSE LEVEL 43**

The problem presented is that the United States Sentencing Guidelines Recommends Life without parole for any defendant who falls into Offense Level 43. This is so despite the fact a defendant could be:

- (1) a non-violent offender
- (2) a first time offender
- (3) a juvenile; and, indeed
- (4) all the above.

What makes Level 43 all the more cruel and unusual is that the sentence of Life without parole is determined not by a judge or jury, but rather what amounts to a mathematical equation. There seems to be no other sentencing process, in the world, that determines when life without parole for non-violent offenders should be implemented other than the Sentencing Guidelines.

Because the severity of life without parole, Level 43 should be amended in one of two ways

A) Offense Level 43 CHC I and II should be changed from the current version:

<i>LEVEL</i>	<i>I</i>	<i>II</i>	<i>III</i>	<i>IV</i>	<i>V</i>	<i>VI</i>
<b>43</b>	<b>(0-1)</b>	<b>(2-3)</b>	<b>(4,5,6,)</b>	<b>(7,8,9)</b>	<b>(10,11,12)</b>	<b>( 13 or more)</b>
	<b>LIFE</b>	<b>LIFE</b>	<b>LIFE</b>	<b>LIFE</b>	<b>LIFE</b>	<b>LIFE</b>

To reflect:

<i>LEVEL</i>	<i>I</i>	<i>II</i>	<i>III</i>	<i>IV</i>	<i>V</i>	<i>VI</i>
<b>43</b>	<b>(0-1)</b>	<b>(2-3)</b>	<b>(4,5,6,)</b>	<b>(7,8,9,)</b>	<b>(10,11,12)</b>	<b>(13 or more)</b>
	<b>360-life</b>	<b>360-life</b>	<b>LIFE</b>	<b>LIFE</b>	<b>LIFE</b>	<b>LIFE</b>

Or the Commission could include a policy statement or commentary advising district court's of the following:

***(B) When a court is sentencing a nonviolent offender who has attained an offense level of 43 or higher, the starting point shall not be LIFE, but rather 360 months-life. This benchmark will (1) allow a sentencing court to consider the defendant's characteristics, potential for rehabilitation, and the other factors set forth in Title 18 USC 3553(a), and (2) to impose a sentence that the Court may feel will not only sufficiently punish the defendant for his criminal conduct, but will also allow the defendant to obtain the goal of reformation and rehabilitation and once again re-enter society.***

Thus, in the interest of justice, the recommendations stated above should not only be implemented, but also made retroactive to allow district court's the discretion to determine whether a previous sentence of LWOP was required to satisfy the goals set forth in Section 3553(a).

## **B. WHY THE SENTENCING COMMISSION SHOULD AMEND OFFENSE LEVEL'S**

### **43 RECOMMENDATION OF LIFE WITHOUT PAROLE FOR NONVIOLENT**

#### **OFFENDERS IN CRIMINAL HISTORY CATEGORY I AND II**

(1) **OFFENSE LEVEL 43 MAKES NO DISTINCTION BETWEEN OFFENDERS WITH MINIMAL TO NO CRIMINAL HISTORY FROM THOSE WHO ARE CONSIDERED HABITUAL OFFENDERS**

As currently constructed offense level one through forty-two of the Guidelines Sentencing table share one or two important characteristics: For instance, each one of these offense levels gives courts a recommended sentencing range to choose from (e.g., offense level 32 CHC I recommends 121-151 months imprisonment). Second, each offense level's recommended sentencing range increases in years the more criminal history points a defendant has (e.g.,

offense level 34 CHC I recommends 151-180 months and offense level 34 CHC VI recommends 262-327 months: 111-170 month increase).

However, in formulating the sentences for offense level 43 the Sentencing Commission abandoned not only one, but both of these approaches. Under level 43, it makes no difference if a defendant is a first time offender or a career offender, because only one sentence is recommended---LIFE WITHOUT PAROLE (LWOP).

The Commission has published three reports on recidivism acknowledging that the criminal history rules were never based on empirical evidence.**(1)** The same reports also established that offenders with minimal to no criminal history points "have substantially lower recidivism rates than offenders who are in Criminal History Category IV, V, and VI." The Commission has also found that there is "no correlations between recidivism and the Guidelines offense level. Whether an offender has a low or high guideline offense level, recidivism rates are similar." However, despite these findings offense level 43 continues to hold offenders in all six criminal categories equally culpable.

(2) THERE IS A NATIONAL CONSENSUS AGAINST IMPRISONING NON-VIOLENT OFFENDERS WITH MINIMAL TO NO CRIMINAL HISTORY TO LIFE WITHOUT PAROLE

A review of the criminal punishments enacted within this country seems to produce only two states that mandate a sentence of life without parole for an offender with no criminal history who commits a felony that is not a "crime of violence."**(2)** However, there are several states that have recidivist statutes that do allow or mandate courts to impose life sentences on defendant's for non-violent offenses. **(3)**

There are numerous federal criminal statutes that authorize LWOP to be imposed as the maximum sentence. Most of these statutes involve drug trafficking, racketeering, and firearms crimes. Additionally, there are federal criminal statutes that mandate LWOP for cases such as killing a federal or government employee, piracy, repeat offenses involving drugs or weapons.

**(4)**

The Guidelines provide for a mandatory LWOP sentence in only four types of crimes. These involve murder, treason, certain drug offenses, and certain firearms offenses that are committed by career offenders. However, under the Guidelines, any crime can be subject to a recommendation of life without parole if the defendant attains level 43 of the Sentencing Table, even if the maximum punishment for the crime set by statute does not authorize such a severe punishment (these sentences are called "de facto LWOP", wherein the sentences are run consecutively equaling a sentence of more than 470 months). This appears to be the only sentencing scheme in the nation to do so.

Sentencing Court's across the country have spoken out against LWOP sentences for non-violent offenders **(5)** And since the Guidelines have been rendered advisory court's are more likely to depart from Level 43's recommendation of LWOP when sentencing first time and/or nonviolent offenders. **(6) (7)**

Of the 3,000 inmates serving LWOP for a non-violent crime in the United States, more than 2,000 of these sentences are being served by federal inmates. **(8)** This is a disturbing comparison when one takes into account that of 2.2 million individuals imprisoned in the United States, 2 million of them are incarcerated in state prisons and the remaining 200,000 are housed in federal facilities. It is not known how many federal inmates are serving LWOP as a result of Offense Level 43, but a study by the Commission shows that in 2013 there were 153

defendants sentenced to LWOP and that 67 of these sentences were based on the Guidelines not a statute. **(9)** Nor is not known how many of the additional 1,983 federal inmates who are serving de facto life sentences are non-violent offenders.

(3) THERE IS A GLOBAL CONSENSUS AGAINST IMPRISONING FIRST TIME NON VIOLENT OFFENDERS TO LIFE WITHOUT PAROLE

The United States is among the minority of countries (20%) known to researchers as having life without parole sentences. **(10)** The vast majority of countries that do allow such punishment have high restrictions on when life without parole can be issued. Such as only for murder or two or more convictions of life sentence eligible crimes. **(11)** Whereas in the United States LWOP can be recommended, under the Sentencing Guidelines for example, for a non-violent crime such as drug dealing or fraud. **(12)**

Currently, there are around 5,500 inmates in the Bureau of Prisons serving LWOP for violent and non-violent crimes. **(13)** In contrast, this population dwarfs other nations that share our Anglo-American heritage, and by the leading members of the Western Community. For instance, there are 59 individuals serving such sentences in Australia **(14)**, 41 in England **(15)**, and 37 in the Netherlands **(16)**

The United States as party to the International Covenant on Civil and Political Rights has agreed that the essential aim of its correctional system shall be reformation and social rehabilitation. **(17)** Regional Human Rights Experts have agreed that long sentences can undermine the rehabilitative purpose of corrections. As the Special Rapporteur on Prisons and Conditions in Africa has stated, "Punishments which attack the dignity and integrity of the human being, such as long-term and life imprisonment, run contrary to the essence of imprisonment. **(18)** Thus it

would appear that offense level 43's recommendation of LWOP (regardless of what crime is committed) contradicts not only this country's obligation to the International Community, but is also a sentencing practice rejected by a great majority of the civilized world. **(19)**

(4) LIFE WITHOUT PAROLE IS A CRUEL AND UNUSUAL PUNISHMENT

Life without parole is the second most severe penalty permitted by law. It is true that a death sentence is unique in its severity and irrevocability: yet LWOP sentences share some characteristics with death sentences that are shared by no other sentences. **(20)** The offender serving LWOP is not executed, but the sentence alters the offender's life by a forfeiture. It deprives the convict of the most basic liberties without giving hope of restoration. As one jurist observed, LWOP "means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of (the convict), he will remain in prison for the rest of his days." **(21)** Indeed, some believe it to be more humane to execute an individual than "to keep them in prison until they actually die of old age or disease." **(22)**

Because LWOP forswears altogether the rehabilitative idea, the penalty rests on a determination that the offender has committed criminal conduct so atrocious that he is irredeemable, incapable of rehabilitation, and will be a danger to society for the rest of his life. **(23)** It is a determination primarily made by a judge or jury if certain set elements are present. The Guidelines, on the other hand, makes this same condemnation of a defendant based solely on a mathematical equation, that is calculated on a "preponderance of the evidence finding" by a sentencing court.

Furthermore, the Commission's rejection of rehabilitation for all offenders in level 43 goes beyond a mere expressive judgment. Federal inmates serving LWOP are normally required to serve the initial eight-to-twelve years in a United States Penitentiary; **(24)** prisons which are known to have "a predatory environment...engendered by gangs, racial tensions, overcrowding, weapons, violence and sexual assaults." **(25)** Because in such prisons safety and security override rehabilitation, programs are limited and without substance. And in prisons where vocational training and other rehabilitative programs are available inmates serving LWOP are not allowed to participate in them or are passed over for prisoners with release dates.

This despite offenders in Criminal History Category I and II are in most need of and receptive to rehabilitation. **(26)**

##### 5. Federal Life Sentences Without Parole and Minorities

Although the Sentencing Commission's Report does not state how many of the offenders serving LWOP for a non-violent or violent offense are minorities, it is reasonable to conclude that at least 75%, if not more, are minorities based on the racial breakdown of the 153 LWOP sentences given in 2013: **(27)**

blacks-45.0%

whites-24.8%

Hispanics-24.2%

Asian, Native Americans

and others- 6.0%



As the Clemency Report stated, "The [Commission's] new report offers strong statistical proof that federal life sentences are used vigorously against minorities and mostly for non-violent offenses. **(28)** With minorities making up one third of the United States population the Clemency Report's conclusion can not be refuted.

**C. AMEND OFFENSE LEVEL 43**

In 2005, the U.S. Supreme Court ruled in U.S. v. Booker that the Sentencing Guidelines were no longer mandatory when sentencing a defendant. Under the approach set forth by the Court, "district courts, while not bound to apply the Guidelines, must consult those Guidelines and take them into account when sentencing, and are "subject to review by the court of appeals for "unreasonableness." The Supreme Court has continued to stress the importance of the Sentencing Guideline in following cases. See Gall v. U.S., 128 S.Ct. 588 (2007)("As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and initial benchmark" at sentencing).

Because there is no empirical data, research, or studies that demonstrate that a first time nonviolent offender is irredeemable, incorrigible, or incapable of rehabilitation, Offense Level 43's recommendation of LWOP for all offenders must not be the benchmark and should be amended to reflect one of the following:

(A) Offense Level 43 CHC I and II should be changed from the current version:

LEVEL	I	II	III	IV	V	VI
43	(0-1)	(2-3)	(4,5,6,)	(7,8,9)	(10,11,12)	( 13 or more)

	LIFE	LIFE	LIFE	LIFE	LIFE	LIFE
To reflect:						
LEVEL	I	II	III	IV	V	VI
43	(0-1)	(2-3)	(4,5,6,)	(7,8,9,)	(10,11,12)	(13 or more)
	360-life	360-life	LIFE	LIFE	LIFE	LIFE

**(29)**

Or the Commission could include a policy statement or commentary advising district court's of the following:

*When a court is sentencing a nonviolent offender who has attained an offense level of 43 or higher, the starting point shall not be LIFE, but rather 360 months-life. This benchmark will (1)allow a sentencing court to consider the defendant's characteristics, potential for rehabilitation, and the other factors set forth in Title 18 USC 3553(a), and (2) to impose a sentence that the Court may feel will not only sufficiently punish the defendant for his criminal conduct, but will also allow the defendant to obtain the goal of reformation and rehabilitation and once again re-enter society.*

Then, in the interest of justice, this Amendment should be made retroactive to allow district court's the discretion to determine whether a previous sentence of LWOP was required to satisfy the goals set forth in 3553(a). **(30)**

WHEREFORE, it is prayed that the Sentencing Commission make revising offense level 43 a priority in accordance with the recommendations set forth herein.

Respectfully Submitted.

Jason Hernandez  
*Clemency Recipient*

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1. U.S. Sentencing Comm'n, Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines (May 2004): U.S. Sentencing Comm'n Recidivism and the First Offender (May 2004): U.S. Sentencing Comm'n, A Comparison Of The Federal Sentencing Guidelines Criminal History Category and the U.S. Parole Comm'n Salient Factor Score (January 2005).
  2. See Alabama Code 13A-12-231(2)(d)(provides LWOP for a first time offender who possesses 10 kilograms or more of cocaine); And Michigan's "650 Lifer Law" which made LWOP mandatory for any offender possessing more than 650 grams of cocaine or heroin.
  3. See Nevada Rev. Stat. Sections 207.010(1).
  4. See generally SENT., COMM'N MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM (2011)(hereinafter Mandatory Minimum Report).
  5. See U.S. v. Miller, 2010 U.S. Dist. LEXIS 79763 (Dist. of Minn. 2010)("The Court has no hesitancy in stating that a mandatory life sentence without the possibility of parole is vastly to long for this defendant. [...]he accumulated a dreadful criminal record - and at an early age....but a non-discretionary sentence, assuring he will die of old age in federal prison, is to heavy a burden.").
  6. See U.S. v. Faulkenberry, 759 F.Supp.2d 915 (S.D. Ohio 2010)(despite obtaining an offense level of 47 for fraud violations district judge imposes sentence of only 120 months); and U.S. v. Watt, 707 F.Supp.2d 149 (D.Mass. 2010)(despite obtaining an offense level of 43 for fraud violations district court imposes sentence of 24 months).
  7. The Supreme Court stated in Roper v. Simmons, 543 U.S. 551, 563-64 (2005) that in determining whether a punishment is "cruel and unusual" a factor to be considered is the "objective indicia of society's standards, as expressed in legislative enactments and state practice."
  8. See Jennifer Turner, ACLU Report, A Living Death: Life Without Parole for Nonviolent Offenses. (Nov. 13, 2013).
  9. See U.S.S.C. Report, Life Sentences In The Federal System, p. 9 (2015)
  10. See University of San Francisco's Report entitled Cruel And Unusual: U.S. Sentencing Practices In A Global Context, at p.8
  11. Cruel and Unusual, supra at p.24.
  12. Under 18 USC Section 1341 a defendant cannot be sentenced to more than thirty years. Nevertheless, a defendant convicted for fraud can still attain an offense level of 43, and under such circumstances the Guidelines instruct courts that if the count carrying the highest statutory maximum is less than the total punishment, then the sentence imposed on one or more of the counts shall run consecutively..." See U.S.S.G. 5G1.2(d); and also U.S. v. Okun, 453 Fed. Appx.

364 (4th Cir. 2011)(where defendant obtained an offense level of 43 for Ponzi Scheme district court imposed consecutive sentences equalling 1200 months to equal recommendation of LWOP); U.S. v. Lewis, 594 F.3d 1270 (10th Cir. 2010)(sentenced to 330 years as a result of obtaining offense level 43 for fraud); United States v. Robert Allen Stanford, (sentenced to 150 years for fraud under Guidelines).

13. There are 1,983 people serving de facto life sentences in the federal system. It is not known how many of these are violent or non-violent offenders

14. See Englan Vinter and Others v. United Kingdom, App. Nos. 66069189 and 3986/10 Eur.Ct.H.R., 37 (2012)

15. Vinter, supra note 12, para. 37

16. Dirk Van Zyl Smit, Outlawing Irreducible Life Sentences, Europe On The Brink? 23 Fed.Sent.R.39, 41 (2010).

17. International Covenant On Civil And Political Rights, Dec. 16, 1996, S. Treaty Doc. No. 95-20 (1992 Art. 10(3) 999 U.N.T.S. 171

18. African Commission On Human And Peoples Rights, Reports Of The Special Rapportuer On Prison Conditions In Africa.

19. See Thompson v. Oklahoma, 487 U.S. 815, 830 (1998)(In ruling that a 14-year-old convicted of murder could not be executed the Supreme Court stated, "We have previously recognized the relevance of the views of the international community in determining whether a punishment is cruel and unusual" and "by other nations that share our Anglo-American heritage...").

20. See Graham v. Florida, 176 L.Ed.2d 825, 842 (2010)(Kennedy, Justice).

21. Naovarath v. State, 105 Nev. 525, 526, 779 P.2d 944 (1989).

22. Holberg v. State, 38 S.W.3d, 140 (Tex.Crim.App. 2000); and S v. Hehemia Tijji, April 9, 1991 (unreported) quoted in Nanibia Supreme Court Feb. 6, 1996, S v. Tcoeib, (10 SACR (MnS)(1996)("The concept of life imprisonment destroys human dignity reducing a prisoner to a number behind the walls of jail waiting only for death to set him free.")

23. Harmelin v. Michigan, 115 L.Ed. 836, 887 (1991)(Justice Stevens dissent)("Because [LWOP] does not even purport to serve a rehabilitative function, the sentence must rest on a rational determination that the punished criminal conduct is so atrocious that society's interest in deterrence and retribution wholly outweighs any consideration of reform or rehabilitation for the perpetrator. Serious as this defendant's crime was, (drug possession) I believe it is irrational to conclude every similar offender is wholly incorrigible.")

24. See Bureau of Prisons Program Statement 5100.08(1)(Inmate Security Designation and Custody Classification)("A male inmate with more than 30 years remaining to serve (including non-parolable LIFE sentences) will be housed in a High Security Level Institution unless the [Public Safety factor] has been waived.").

25. Quoting U.S. v. Silks, 1995 U.S.App.LEXIS 35355 (9th Cir. 1995); Holt v. Bledsoe, 2011 U.S. Dist.LEXIS 73631 (Mid.Penn. 2011)("Inmate-on-inmate violence is common and uncontrollable at USP Lewisburg."); Penson v. Pacheco, 2011 U.S.Dist.LEXIS 52856 (D.Colo.2011)("...USP Victorville housed violent prison gangs and was where dozens of assaults and a murdered had occurred."); Jones v. Willingham, 248 F.Supp. 791 (Kansas 1965 (describing USP's as "powder keg[s]")); and Leah Caldwell's Article in Prison Legal News, Sept. 2005 p.10-13 entitled "USP Beaumont, Texas: Murder and Mayhem In The Thunderdome").

26. See Graham v. Florida, 176 L.Ed.2d at 846 ("...the absence of rehabilitative opportunities or treatment makes the disproportionality of the sentence [LWOP for juveniles], all the more evident.").

27. U.S.S.C. Report, Life Sentences In The Federal System (2015): at page .7

28. See <http://clemencyreport.org/new-report-most-federal-life-sentences-given-to-minorities/>

29. See U.S. v. Heath, 840 F.Supp.2d 129 (USDF (1993)(district court recommending Offense Level be reduced from LIFE to 399 months-LIFE, after observing that "the sentencing of defendant in the instant crack cocaine case caused the court to face squarely a gaping, inexplicable omission in the sentencing table of the Sentencing Guidelines.")

30. S. v. Dodo, 2001 (3) SA 382, 404 (CC) at Paragraph 38 (S.Africa)("To attempt to justify any period of penal incarceration, let alone imprisonment for life...without inquiring into the proportionality between the offenses and the period of imprisonment, is to ignore, if not to deny, that which lies at the very heart of human dignity..."); and U.S. v. Miller, 2010 U.S. Dist. LEXIS 79763 (Dist. Minn. 2010)("The Court is of the view that the Supreme Court will visit the next decade the issue of whether mandatory life sentences for nonviolent crimes committed by adults offends the prohibition against cruel and unusual punishment....However, I am reluctant to predict the outcome of such a review. Were this Court a member of the Supreme Court, this Court would follow the reasoning of Justice Kennedy in Graham v. Florida, and conclude that such a sentencing regime that resulted in the defendant's life sentence does violate the Eighth Amendment....").

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**United States Sentencing Commission**  
**One Columbus Circle, NE**  
**Suite 2-500, South Lobby**  
**Washington DC 20002 - 8002**

**Attention: Public Affairs- Priority**

**Subject:** Child Pornography/ Sex offender Registration

Dear Reader(s):

It is with a heavy heart that I write this after all the prolonged suffering and ache that our son, his family and friends have undergone since he was accused, investigated and convicted on several counts of child pornography due to photo and text evidence. He is now 27 and incarcerated in federal military prison for events occurring in 2014 when he was 23 and an officer in the military stationed in Florida. He had an impeccable record as a student, in the community and the military when he entered a dating website ( more like a hookup site) where you have to attest that you are older than 18. There he met two girls with whom he had consensual sexual relations under the pretense that they were of age. It turned out that they were in the mid-teens and sexually experienced attending a reform high school. One thing led to another and my son was arrested and accused by county authorities with having sex with minors. In a deposition taken before the trial , both females admitted to lying about their age, their extensive sexual history and wished no harm to my son. He entered a plea deal with the county prosecutor that entailed a probation that has since been terminated. But being that he was in the military, his service branch asked for the evidence that the county had and they, after investigating for over two years accused him with the same evidence that the county had seized with child pornography and distribution ( he send pictures to one friend). He was offered a plea deal of three years which he took rather than risk serving a way longer term.

My point in recounting his case is:

Each case has to be looked at individually. Whereas the Florida county gave him a 5 year probation after a 5 month process, the federal military took 2 plus years to accuse and convict him of far more serious crimes that involved teen aged girls that were sexually active who admitted they lied about their age and entered web sites where they agreed to be of age. My son is not a pedophile, pervert or a sex offender that has be listed in a sex offender or child pornography registry with others who are or can be classified in that category as such. If any description would fit him is to be an all-American type of young man. Did he commit an indiscretion and lacked judgement: YES? Is his crime worthy or of sufficient merit to be listed in a sex offender/child pornography registry:

NO BY ALL MEANS?

The end result of all this is that he will be marked way into his future in a very negative stereotype by being listed in a registry that can be accessed in internet web sites, google etc, in such in a manner that will diminish exponentially his livelihood, chances of employment, housing, community acceptance and way of life.

In summary, I strongly believe it not fair and just to lump individual cases who served their time and after release be further penalized for life by being listed in a sex ofender / child pornography registry. It is a travesty of justice particularly since no child was involved. Mid teens is not a child, especially when they are sexually active at their age.


Thank you for giving serious consideration to this matter that needs to be corrected.

Philip D. Hopgood

[REDACTED]  
[REDACTED]

Sent from [Outlook](#)

USSC  
Public Affairs/Comment  
1 Columbus Cir NE  
Washington, DC 20002-8002

Sandra Cook  


August 1, 2018

RE: Sentencing Reform  
Public Comment

Dear Commission,

I am writing as a federal inmate with first hand experience with the judicial system. From pre-trial detainee to prisoner. There are so many issues I would like to discuss but I will try to keep it short and very percise. These issues that I am raising are based on my own experience and would take too long to detail so I will only give one or two examples to prove my point. The first set of issues is in the mandatory minimum sentences and the problems with them:

1. The safety valve needs to be extended to people who can't snitch because of lack of knowledge. They are being forced to involve minor users to major players to get a sentence reduction.
2. Sentencing enhancements. I received 10 years with 17 years in enhancements for 4 kilos verses my cellmate had 40 kilos and received a 5 year sentence. I am a 53 year old widow with a criminal history of 0/1 and I am not sure what she is.
3. As stated in #1 - major/minor roles.
4. Non-conformity of the current guidelines and amendments - i.e. Compassionate Releases are being denied based on outdated guidelines. The FBOP is following 2015 Program Statements and not the Amendment 799. See the enclosed letter to the Congressman.

There has to be a bell curve when the sentence outweighs its benefit. The benefit being that the person will not be a repeat offender.

Thinking that if 10 years isn't working lets give them 20 years is not the right mentality. Inmates demise the longer they are incarcerated. Their conditions get worse and worse.



The mental, emotional, physical and social demise of an inmate over the time of their incarceration would be something like this:

1. Initial traumatization
2. loss of family ties/children despondent
3. prolonged mental deterioration
4. psychosis - medication for mental stagnation
5. homosexual or aggressive behavior
6. health issues/mental and increased suicide attempts
7. dental issues

Not to mention:

1. loss of income for retirement
2. inability to start, continue or finish career
3. breakdown of family
4. inability to adjust to society
5. new addiction to drugs including opioids/heroin rampant in prison
6. extensive mental, physical and dental deterioration

Combine this with the overcrowding where cell changes are few resulting in fights and loss of good time, homosexuality is the norm, no incentives to work or program, food and toilet paper shortages, classification of elderly and sick with inappropriate inmates, violent and non-violent offenders living together, dilapidated structures and plumbing, the list goes on and on. Ignoring these conditions is ignoring the conditions of punishment, the two should not be separated. The conditions we have to endure is part of the punishment. Prolonged exposure to bright lights, loud speakers and constant population counts including every 2 hours during the sleeping hours equates to sleep deprivation. According to the Human Rights Organization these conditions are human rights violations. I have seen woman within a year become addicted to heroin shooting up for the first time. The trauma of being removed from society so harshly is only curtailed by more drug use regardless of risky blood disease conditions.

I find it hard to believe that decades of this treatment will result in any corrective behavior or benefit to society. I am willing to answer any and all questions you may have about being incarcerated. Thank you for considering my letter when you implement changes. We are all human and we all make mistakes.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sandra Cook', written in a cursive style.

Sandra Cook