

**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

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*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>
<i>43</i>	<i>(0-1)</i>	<i>(2-3)</i>	<i>(4,5,6,)</i>	<i>(7,8,9)</i>	<i>(10,11,12)</i>	<i>(13 or more)</i>
	<i>LIFE</i>	<i>LIFE</i>	<i>LIFE</i>	<i>LIFE</i>	<i>LIFE</i>	<i>LIFE</i>

To reflect:

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

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....").

Honorable William H. Pryor, Jr.

Acting Chair

United States Sentencing Commission

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Attn: Public Affairs ♦ Priorities Comment

pubaffairs@ussc.gov

Re: Proposed Priorities for Amendment Cycle ending May 1, 2019

Dear Judge Pryor:

The 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 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 Federal Bureau of Prisons to provide meaningful rehabilitation programs to inmates who genuinely want to make a better future for themselves.

I appreciate the Commission ♦s work to amend and improve the guidelines and welcome this opportunity to express my views on a proposed amendment to be added to this amendment cycle ♦s priorities.

In 2014 the Commission adopted, and made retroactive, the Amendment 782 to the guidelines. Commonly known as ♦ drugs minus 2 ♦, this Amendment allowed for thousands of federal prisoners to apply for sentence reductions in a way that has not negatively affected public safety. The federal prison population was substantially reduced and taxpayers have saved billions of dollars as a result of this change. It is time for the Commission to make another similar bold move and pass an amendment acknowledging first offenders and provide them a measure of sentencing relief by way of a reduced guideline range.

The sheer size of the federal prison population remains a significant concern, despite reductions due in part to actions the Commission has taken to lower sentences and make those changes retroactive (Amendment 782 above). At the end of FY 2016, BOP facilities remained overcrowded. Overall, institutions were 16 percent over rated capacity and high security institutions stood at 31 percent over rated capacity. (DOJ Office of the Inspector General). Per the DOJ, the BOP still consumes more than 25 percent of the DOJ ♦s discretionary budget and the administration has requested approximately \$7.2 billion for the BOP in the FY 2018 budget. This request includes \$10 million for ♦ expected population growth ♦. (DOJ, FY 2018 Budget Request, Discretionary Budget Authority 4).

In the interest of furthering the goals of the Sentencing Reform Act of 1984, specifically consistency between offenses and sentence, I urge the Commission to adopt the addition of a criminal history category (CHC) of literal first offenders. As it stands currently, the forceful conflation of those who have no prior convictions (and those without countable criminal history points under 4A1.2 c)) 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).

The Commission has struggled with recognizing first offenders for some years. In 2004 the Commission (through a staff working group) proposed a two-level reduction for defendants with no criminal history points that had not used violence or weapons during the offense. According to the Commission, [t]he significance of this proposal was that it responded to the intent of 28 U.S.C. 994(j) and finessed the need to create a new first offender CHC. (USSC's Commission, Recidivism and the First Offender 3 (May 2004)). This proposal did not advance in 2005, according to the Commission, due to the early commissions lack of recidivism data.

Thanks to the Commission's now robust collection and analysis of sentencing data, today we know that offenders with zero criminal history points (defined as first offender) have the lowest recidivism rates of any sentenced in the federal system. (USSC's Commission, The Past Predicts the Future: Criminal History and Recidivism of Federal Offenders (March 2017)).

The Commission also proposed a first offender amendment during the 2017 and 2018 cycles. During these past two years, the Commission collected a large amount of data, public comment, and public testimony supporting a first offender CHC. While the proposed amendment did not pass in 2017 due to the lack of a quorum, it is unknown to me and hundreds of thousands of others who supported the amendment via their public comments, why the Commission did not pass, vote, or comment on the proposed amendment in April of 2018. I can only assume that there were too many variables proposed for four of the Commissioners to agree upon.

I propose the Commission again prioritizes a first offender amendment, using the resources of the past two years to streamline the proposed amendment to reduce the possible variables.

An amendment creating a new CHC for first offenders that is two levels below the current CHC I, not limited by offense level nor offense, and define first offender as those CHC I defendants with no criminal history whatsoever as well as those with no criminal history points because their prior convictions are not countable, for example under 4A1.2(c)(1) and (2).

Thank you for considering my view on proposed priorities for the 2019 cycle. I look forward to the Commission again proposing, and this year passing, a first offender amendment that when made retroactive will benefit the safety of our federal prisons and again save the taxpayers billions of dollars.

Sincerely,

Laura McMaster _____

Laura McMaster
[REDACTED]