

Chief Judge Patti B. Saris
Chair, United States Sentencing Commission
Remarks for Public Meeting
April 10, 2014

Thank you all for coming to this public meeting of the United States Sentencing Commission. Your attendance here is a testament to the extraordinary interest in federal sentencing issues right now and specifically in the amendments that the Commission is considering today.

The massive response to our request for public comment also speaks to the interest in these issues. We received more than 20,000 letters during our public comment period. I want to thank the members of Congress who submitted letters: Congressman Goodlatte and Senator Grassley; Senators Leahy, Durbin, and Paul; and Senators Feinstein and Boxer and Congressmen Huffman, LaMalfa, Thompson, Farr, Lamborn, and Cook. I also want to thank the Criminal Law Committee of the Judicial Conference, the Department of Justice, the Federal Public and Community Defenders, our advisory groups, and the many advocacy groups, law enforcement organizations, and of course individuals who submitted views. Your input was of paramount importance in this process.

The issue that has received the most attention is our proposal to reduce the guidelines applicable to the drug quantity table by two levels, across all drug types. This is an important question, one with which the Commission has grappled for several years. We are also considering amendments today on several other important issues including responding to provisions of the Violence Against Women Reauthorization Act of 2013, considering whether the guidelines sufficiently address the environmental and other harms caused by cultivation of marijuana on public lands or trespassing on private land, and resolving several longstanding circuit conflicts.

The Commission first considered whether to reduce the guideline levels in the Drug Quantity Table by two levels across all drug types in 2010 when we were adjusting crack sentencing guidelines levels in response to the Fair Sentencing Act. We decided not to act on the proposal then, but returned to this issue this past year as part of our overall focus pursuant to 28 U.S.C. § 994(g) on finding ways to reduce costs of incarceration and overcapacity of prisons, without endangering public safety.

Reducing the federal prison population has become urgent, with that population almost three times where it was in 1991. Federal prisons are 32% overcapacity, and federal prison spending exceeds \$6 billion a year, making up more than a quarter of the budget of the entire Department of Justice and reducing the resources available for federal prosecutors and law enforcement, aid to state and local law enforcement, crime victim services, and crime prevention programs – all of which promote public safety.

We take the responsibility of considering this issue very seriously and have given significant consideration to the arguments both for and against the proposed drug amendment.

Many factors support adoption of this modest amendment. When the drug quantity tables were set at their current level, above the mandatory minimum penalties, drug quantity was the primary

driver of drug sentences. There was only one other specific offense characteristic in the drug guideline. Now, there are sixteen specific offense characteristics, including enhancements for violence, firearms, aggravating role, and a whole host of other factors to help ensure that dangerous offenders receive long sentences. Quantity, while still an important proxy for seriousness, no longer needs to be quite as central to the calculation.

Also, originally, drug guideline levels were set above the mandatory minimum penalties so that, even for the lowest level drug offenders with minimal criminal history, there would still be some room for their sentences to move down before hitting the mandatory minimum. That way these offenders would have some incentive to plead and cooperate. Since then, Congress added the “safety valve,” which provides for sentences below mandatory minimum levels for low-level offenders and gives those offenders substantial incentive to cooperate. It is no longer necessary to set the guidelines above mandatory minimum penalties to encourage low-level offenders to cooperate. That is why it is appropriate that the amended guideline would continue to link guideline ranges to existing mandatory minimum penalties, but would place mandatory minimum within the guideline ranges, rather than below the ranges, for those with a low criminal history level.

This modest reduction in drug penalties is an important step toward reducing the problem of prison overcrowding at the federal level. It reduces the penalties by an average of 11 months for 70 % of offenders for all drug types. Within five years, the federal prison population would be reduced by more than 6,500. Over time, the effects could be much greater. Indeed, the offenders sentenced in just the first year after the change would, over time, serve almost 14,000 fewer years than they would have without the change.

The Commission has recommended that Congress reduce mandatory minimum penalties for drug offenses, which would have a greater impact on prison costs and populations, and will continue to work with the bipartisan members of Congress who have co-sponsored legislation to do so. The more modest amendment we vote on today stays within the current statutory framework, but still would be a significant step toward addressing this problem of overcrowding.

Many of those who submitted public comment to the Commission support the proposed amendment, including defense attorneys, civil rights organizations, sentencing reform organizations, faith groups, Right on Crime, the Chairman of the Senate Judiciary Committee and other prominent bipartisan Senators, and the Department of Justice.

I have also listened very carefully to those who do not support the amendment, including the National District Attorneys Association, the National Association of Assistant United States Attorneys, the Chairman of the House Judiciary Committee, and the Ranking Member of the Senate Judiciary Committee. We have immense respect for the hard work law enforcement officers do to keep us safe, and we are sensitive to law enforcement concerns that reducing drug sentences will undermine public safety, including threatening the reduction in crime rates we have experienced over the past several decades. I remember the high levels of violence in American cities in the 1980’s, the high-profile tragedies like the death of Len Bias, and the worry about crack babies. I understand the concern about going back to those days.

The Department of Justice supports this amendment, and the Attorney General testified here that it would not undercut public safety. Our recent experience with reducing sentences for federal crack cocaine offenders suggests the same, consistent with the experience of many states. In addition, existing guideline and statutory enhancements for career offenders and for traffickers who use weapons or violence help to ensure that the most serious offenders receive very substantial sentences.

We have also crafted the amendment we vote on today such that there will not be any reduction in sentences for drug traffickers with the highest quantities of drugs. We will continue monitoring drug sentencing, as we have consistently, to determine whether there are additional modifications that need to be made to ensure that the most harmful conduct results in appropriate sentences. We have given careful consideration to public safety in making this decision today and will continue to focus on it going forward.

I know there has also been particular concern about increases in the use of heroin and the devastating effect of that drug. That is why I made a point of asking the Attorney General at our March hearing about whether this amendment could undercut the Department's efforts to address the growing heroin epidemic. He assured us that it would not.

I am convinced that this amendment is a modest, well thought out step to appropriately reduce prison costs and overcapacity. It updates the drug guidelines to account for changes in the law and guidelines over the past several decades and reflects our careful consideration of data. Working in conjunction with existing guideline and statutory provisions that ensure severe sentences for those who use firearms or violence or traffic the largest quantities of drugs, the amendment will not undermine public safety. That is why I am voting for this amendment.

Over the next few months, the Commission will be studying the issue of whether the drug amendment should apply retroactively, which we are statutorily required to do. This is a complex and difficult issue, and requires a different analysis than the decision we have made today about reducing drug sentences prospectively. The Commission will take into account, as it always does when considering retroactivity, the purposes of the amendment, the magnitude of the change, and the difficulty of applying the change retroactively, among other factors. I know the Commission will carefully consider this issue, and many stakeholders will have strong views. I do not know how it will come out, but we will carefully review data and the retroactivity impact analysis we have directed staff to conduct as well as public comment in order to ensure that we weigh all perspectives.

I want to again thank all of you for coming and all of the members of Congress, judges, organizations, and members of the public who submitted comments and contributed so much to this process. Thank you also to my fellow Commissioners who considered these important issues so carefully to ensure thoughtful and appropriate results.

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