

# Prisology

On behalf of Prisology, I thank Judge Saris and the other Commissioners for inviting our organization to appear and provide testimony concerning retroactive application of the so-called “drugs minus two” amendment.<sup>1</sup>

I founded Prisology in 2013 after witnessing first hand many of the problems that face our criminal justice system. Prisology—with the help of tens of thousands of supporters—advocates for sensible criminal justice policies and practices through litigation, awareness campaigns, public speaking, and grass roots activism. We strongly support the Commission’s efforts to bring greater fairness and proportionality to the federal sentencing guidelines, and urge the Commission to make the amendment retroactive.

## I. Why Prisology Supports Retroactivity

There are three basic reasons why Prisology supports retroactivity: (a) retroactivity will promote public safety; (b) retroactivity will reduce prison over capacity and save taxpayers billions of dollars; and (c) retroactivity is just and fair.

### (a) RETROACTIVE APPLICATION OF THE AMENDMENT WILL PROMOTE PUBLIC SAFETY

Some opponents argue that retroactive application of the amendment will harm public safety, but Prisology respectfully submits that the amendment will do the opposite. There are many collateral consequences of incarceration, but one of the most prominent—and often forgotten—is how incarceration affects children. According to a 2008 report from the Bureau of Justice Statistics, nearly 60 percent of federal prisoners are parents of children.<sup>2</sup> The adverse effects of incarceration on children is well documented, and includes, but is not limited to, increased risk of drug or alcohol abuse, depression, antisocial behavior, withdrawing from school, and aggression.<sup>3</sup> Through retroactive application of the amendment, the Commission is uniquely situated to help restore broken family units that desperately need the presence of an incarcerated mother or father.

<sup>1</sup> Throughout our written testimony we refer to the “drugs minus two” amendment as “the amendment.”

<sup>2</sup> Bureau of Justice Statistics. (2008). *Parents in Prison and Their Minor Children*. Retrieved from Office of Justice Programs, U. S. Department of Justice website: <http://www.bjs.gov/content/pub/pdf/pptmc.pdf>

<sup>3</sup> Sanders, Emily, & Dunifon, Rachel. “Children of Incarcerated Parents.” (2011) <http://www.human.cornell.edu/pam/outreach/parenting/research/upload/Children-of-Incarcerated-Parents.pdf>



Alexis Rivera

My brother Elijah Salazar #04483063 is a low level first time offender. He was incarcerated in March of 2006. My brother WAS SENTENCED TO 14 YEARS! He has been gone for 8 years. My brother has 3 daughters that admire him and need their daddy! He has completed every program possible to reduce his time. Eli is not the individual the Feds made him out to be! Eli is a very kind loving man that deserves a second chance at life with his daughters! He may be just another inmate to the federal justice system but in our family he is our rock. Eli was very young and yes he did wrong but all he was trying to accomplish was taking care of his family. Eli not only took care of his family but there are many many friends of ours that can vouch for him. These young men are being over sentenced! They are being robbed of holidays, family bonding, and most of all they are being robbed of their lives!! Making this retroactive will give these young men the second chance at life they all deserve!!!



Bailey L. Green

I’m here on behalf of Elijah Salazar # 04483063. He is above all else ONE OF THE MOST AMAZING fathers I have ever known. He has 3 little girls that think he absolutely hung the moon. Eli did wrong, but he is far from the monster that the federal government made him out to be. He is a family man, and a child of God. He is an amazing person and deserves nothing more than to be home with his family. He has missed the birth of his youngest daughter, and several nieces & nephews. He’s missed birthdays, 8 Christmas’s, and many more. He missed watching his nephew best cancer at 9 years old!! He missed his mother beat cancer for the SECOND time. We need him home. His family needs him home. His girls need him home. I pray that this goes into effect and he can be home where he belongs.



(b) RETROACTIVITY WILL REDUCE FEDERAL PRISON OVER CAPACITY AND SAVE TAXPAYERS BILLIONS OF DOLLARS

In creating the Sentencing Guidelines, Congress directed the Commission to “minimize the likelihood that the Federal Prison population will exceed the capacity of the Federal prisons, as determined by the Commission.” 28 U.S.C. § 994(g). According to data from the Department of Justice’s fiscal year 2015 budget request to Congress, the Federal Bureau of Prisons is presently operating at “32 percent over rated capacity.”<sup>4</sup> Medium and high security institutions are 41 and 51 percent over capacity, respectively.<sup>5</sup>

According to the Commission’s recent *Analysis of the Impact of the 2014 Drug Guidelines Amendment If Made Retroactive* (“Impact Study”), retroactive application of the amendment has the potential to reduce “83,525 bed years” from the federal prison system.<sup>6</sup> A reduction in bed years will help the federal prison system address its present over capacity. Moreover, on May 30, 2014, the Huffington Post reported that retroactive application of the amendment could potentially save taxpayers over \$2.4 billion dollars.<sup>7</sup> In our era of fiscal restraint, these dollars are sorely needed elsewhere.

(c) RETROACTIVITY IS JUST AND FAIR

Our final premise in support of retroactivity is that it is simply just and fair. One of the primary purposes of the Commission is to “establish sentencing policies and practices ... that ... avoid[] unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct.” 28 U.S.C. § 991(b)(1)(B). As the Commission’s impact study reflects, retroactive application of the amendment has the potential to affect over 50,000 federal prisoners. If the Commission were to decline to apply this amendment retroactive, massive disparities would exist between offenders sentenced before November 1, 2014, and those sentenced afterwards. Such a result would neither be just nor fair.

## II. Prisology’s Response To Arguments Against Retroactivity

We recognize that there are individuals and organizations that oppose retroactive application of the amendment. Opponents offer a variety of arguments why the amendment should not be made retroactive. We address some of these arguments below.

<sup>4</sup> <http://www.justice.gov/jmd/2015justification/pdf/bop-se-justification.pdf>

<sup>5</sup> *Id.*

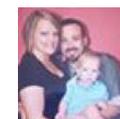
<sup>6</sup> [http://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/drug-guidelines-amendment/20140527\\_Drug\\_Retro\\_Analysis.pdf](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/drug-guidelines-amendment/20140527_Drug_Retro_Analysis.pdf)

<sup>7</sup> [http://www.huffingtonpost.com/2014/05/29/sesentencing-commission-reform-retroactive\\_n\\_5412762.html](http://www.huffingtonpost.com/2014/05/29/sesentencing-commission-reform-retroactive_n_5412762.html)



Miranda Francisca

My husband has been away from his family for 7 years. We have three children who get to see him at most 48 hours out of the month. He has missed out on so much of their lives but more importantly they have missed out on having a present father. He has done amazing things in there and I’m grateful that we have gone through this and endured, it has truly made him a better person and showed us our strength. He has received 4 degrees and made us all proud, but now that he has been rehabilitated it is due time for him to come home. The system has worked but it needs to follow through. Sentencing should be based upon justice not when you were sentenced. Before he went away, it was his father’s dream to have at least one more barbecue with his son; his father has had several close calls this year and I pray that he is given this chance by the retroactive application of drugs minus two.



Kelli Brook English

My fiance was incarcerated in August 2012 and sentenced in Nov of that year. A month after being locked up we found out I was pregnant. Right now we only get to visit once a month because Phillip is so far away. Everyone deserves a chance to make things right and most the time it takes someone to actually believe they can. We need our family, together. In August it will be two years on this journey and its been a bit of a struggle but we’ve made it. A child’s life is most impacted in these early years. My son needs his father and Phillip needs to be able to see him grow. We have a great support system with both our family’s by our side. Without them we may not have made it. Let’s make this retroactive and get our daddy HOME where he BELONGS. So we can start our NEW life together, As A Family.

(a) RETROACTIVE APPLICATION OF THE AMENDMENT WILL NOT RESULT IN MASS PRISONER RELEASES INTO THE COMMUNITY

Based on the Commission's impact study, some 4,571 prisoners would be eligible for immediate release on November 1, 2014, if the Commission were to make the amendment retroactive. See, Impact Study at p. 16, Table 7. Of those 4,571 prisoners, nearly 25 percent (1,154) are non-citizens who are likely subject to deportation. *Id.* at n.32. Thus, excluding non-citizens, approximately 3,417 prisoners would be eligible for immediate release on November 1, 2014, into U.S. communities if the amendment is made retroactive.

The Commission's impact study did not address where these 3,417 prisoners would be releasing from, but Prisology believes that most of these 3,417 prisoners will likely expire their federal sentences from a Residential Re-Entry Center ("RRC") or home confinement if granted relief under 18 U.S.C. § 3582(c)(2).

This conclusion is supported by a review of the Federal Bureau of Prisons' weekly population report, which reflects that as of May 29, 2014, some 12,777 federal prisoners are presently serving their sentences in RRCs or on home confinement.

Population of Community-Based Facilities Nationwide

CONTRACT JUVENILES	95
HOME CONFINEMENT	3284
JAIL/SHORT-TERM DETENTION	647
LONG-TERM BOARDERS	324
RRC'S	9493

13843 Total Inmates in Community-Based Facilities

Source: [http://www.bop.gov/about/statistics/population\\_statistics.jsp](http://www.bop.gov/about/statistics/population_statistics.jsp)

While Prisology has no data on the specific conviction make-up of offenders in RRCs or home confinement, it is fair to assume that the offender population in community based confinement closely tracks that of offenders in federal institutions. In all, drug offenses make up 49.9 percent of all federal prisoners.<sup>8</sup> Assuming RRC and home confinement population levels remain constant until November 1, 2014, approximately 6,388 drug offenders would be in community confinement on the effective date of the amendment. Thus, most of the 3,417 prisoners eligible for release would already be in the community, transitioning back into society. Offenders in RRCs or home confinement have or are seeking employment, and are permitted to attend religious services, medical appointments, and other activities in the community. In addition, many have already become acquainted with their future U.S. Probation officer. Consequently, early release pursuant to the amendment would merely hasten the beginning of the period of supervised release for these offenders, and not result in the release of thousands of prisoners into the community—affected prisoners will already be there.

<sup>8</sup> [http://www.bop.gov/about/statistics/statistics\\_inmate\\_offenses.jsp](http://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp)



Rhonda J Salazar

My Brother in law Elijah Salazar #04483063 on a first-time non violent conviction on a plea bagin recieved almost 15 yrs! He has missed MOST of his two precious litle girls Mia & Ariel's lives,including the birth of Ariel,the youngest. ALSO He has missed his Amazing Mother's Second battle with Colon Cancer &his 9yr old nephew s battle with cancer whom both by the Grace of God Won ! This barely touches ALL He is missing & we as his family are missing him as a part of! He has MORE Than done his time for his crime &Im more than PROUD &THANKFUL To say he is a Transformed Man! I am Praying That this amendment passes &looking forward to Seeing The New Man Elijah Salazar home with his family &Loved ones ESPECIALLY his daughters who NEED Their Daddy & to be an Example of What God can do With the Second chance @life I belive this will give him.&many other young men who have had a True change of heart. Thank You for listening &may God be with you in making this Very CRUCIAL &potentially Life Changing decision.



Maja Valdez

My fiancé was incarcerated in 2010 and we have two kids. We've been praying and have been faithfully visiting him and sticking by his side and waiting for him to come home. Please bring our Daddy back home so we can be a normal family again. We can't afford anymore times wasted as our kids continue to grow and cannot take those times back. This will be a MIRACLE for my family if this goes through!



Allyson Marshall Kilby

My husband's sentence will be reduced about 2 years if this passes. A few days after he was taken in to custody I found out I was pregnant. We also have a 14 year old son. He has missed out on the past 2 years of his life and the birth of our youngest. Just the other day, at supper, my oldest tells me he misses his dad and wished he could come home. Yes, he made a mistake, but he is not violent. I see murders get lesser sentences than what he received.

Furthermore, the remainder of eligible prisoners will be released over a series of years. Most of these offenders will exit through normal federal prison pre-release procedures, which include a period of placement in an RRC or home confinement.<sup>9</sup>

(b) THE EFFECTS OF RETROACTIVE APPLICATION ON U.S. PROBATION CASELOADS CAN BE MITIGATED BY THE COMMISSION PROVIDING GUIDANCE TO PROBATION OFFICERS ENCOURAGING EARLY TERMINATION OF POST-CONVICTION SUPERVISION FOR APPROPRIATE OFFENDERS

Prisology has heard concerns that retroactive application of the amendment will further overburden U.S. Probation Officers who already manage busy supervision caseloads. At the end of fiscal year 2013, some 131,869 offenders were serving terms of post-conviction supervision.<sup>10</sup> A mere 13.3 percent of the post-conviction supervision population completed their terms by way of early termination.<sup>11</sup> The vast majority of offenders terminated their supervision via full-term expiration.<sup>12</sup>

Prisology believes that the impact of the amendment on supervision case loads could be mitigated by the Commission encouraging U.S. Probation Officers to recommend early termination of “low-intensity” supervision<sup>13</sup> cases.<sup>14</sup> In addition to helping lower supervision case loads, early termination of supervision also reduces the risk of recidivism.<sup>15</sup>

<sup>9</sup> For offenders who qualify for immediate release under the amendment, but do not have the benefit of family support or a place to live, the Commission could require such persons to serve an initial period of their supervised release in an RRC as a condition to granting relief under 18 U.S.C. § 3582(c). 28 U.S.C. § 994(u)(authorizing the Commission to “specify in what circumstances and by what amount the sentences of prisoners serving terms of imprisonment for the offense may be reduced.”).

<sup>10</sup> <http://www.uscourts.gov/uscourts/Statistics/JudicialBusiness/2013/appendices/E01Sep13.pdf>.

<sup>11</sup> <http://www.uscourts.gov/uscourts/Statistics/JudicialBusiness/2013/appendices/E7ASep13.pdf>

<sup>12</sup> *Id.*

<sup>13</sup> A supervision case is considered appropriate for “low-intensity” supervision when assessment reveals that the “defendant is likely to remain crime free, to appear in court, and to comply with all other conditions without further interventions by the officer.” *Supervision of Federal Defendants*, Monograph 111 § 525. In 2012, approximately 40 percent of all supervision cases were classified as low-intensity. <http://news.uscourts.gov/new-national-supervision-policy-redirects-resources>

<sup>14</sup> According to 28 U.S.C. § 995(a)(10), the Commission has the authority to “[i]ssue instructions to probation officers concerning the application of Commission guidelines and policy statements.” 28 U.S.C. § 995(a)(10). At present, the Sentencing Guidelines address early termination of supervised release in only an application note. U.S.S.G. § 5D1.2, Application Note 5.

<sup>15</sup> *Federal Offenders Sentenced to Supervised Release*, (July 2012) citing *Terminated Offenders a Greater Risk to the Community*, NEWS & VIEWS, Vol. XXXV, No. 2, at 1 (Jan. 18, 2010) “In fact, early-term offenders in this study presented a lower risk of recidivism than their full-term counterparts. Not only were early-term offenders charged with a new criminal offense at a lower rate than full-term offenders, they were charged with proportionally fewer felonies . . . .” *Id.*



Barbara Trapp

My son, Chad Latham, is currently serving time in FPC Sheridan on a 15 year sentence for a marijuana grow. Chad’s son, Devin, was 11 years old when his Father was incarcerated, and is now 19. He grew up without his Dad and wants nothing more than to have him home. Chad’s grandmother is now 97 years old, and it is her heart’s desire to see Chad free. Chad has served his time well, improving himself by working, teaching, pursuing a college degree, and participating in the RDAP program. Our family aches to have him home with us.



Valerie DawnStar

My husband pled guilty for a non-violent first offense and got sentenced to 97 months. He is scheduled to be released when he is 67 years old. Since he has been incarcerated he has had 3 grandchildren born that he won’t be seeing grow up. He is now in the 6th facility since his arrest and he is seriously depressed about the unfairness of this “justice” system, being so far away from his family and friends and suffers from medical problems which are not being adequately addressed.



Starlena Jerome

Retroactive Amendment: My believing & encouragement keeps him going to not give up. When he tells me... I’m tired babe, just don’t know how much more I can go. It’s the most scariest words to read. Amendment gives us back our loved ones sooner. Y’all would give back holding kids, holding hands, holding conversations with no time limits, & holding our families together. David Acosta non violent drug offender FCI BIG SPRINGS, TEXAS. The system has had him 9 years. I would appreciate my love to come home now.

(c) THE COMMISSION SHOULD NOT IMPOSE CATEGORICAL EXCLUSIONS ON RETROACTIVE APPLICATION OF THE AMENDMENT

In soliciting public comment on retroactivity of the amendment, the Commission asked whether certain categorical exclusions should be imposed.

Prisology believes that the amendment, if adopted, should be done free of any categorical exclusions. Designation of the amendment as retroactive is but one step in an individualized process that each offender's case must undergo. In the end, the determination of whether to grant or deny relief to an individual will rest with an experienced federal district judge. Prisology, our supporters, and indeed a majority of individuals in society have faith in the federal judiciary to make the right decisions in cases that come before them.<sup>16</sup>

### III. CONCLUSION

Considering all of the above, Prisology respectfully urges the Commission to designate the amendment for retroactive application.

Respectfully,



Brandon Sample  
Executive Director



David  
Hamilton

I have a friend her name is Kelly, she was incarcerated in 2010. She was sentenced to 10 years for ephedrine. Kelly is a mother of 4 she has 2 grandchildren and another on the way. What purpose is it serving keeping her in prison, If this bill were made retroactive Kelly, would get released to go home to her family.

Incarcerating Kelly costs taxpayers \$25,000 per year. For purchasing ephedrine an over the counter decongestant. So far, she has served close to 4 years, that is over one hundred thousand dollars.

I think it's time to send Kelly home to her family, where she can be a benefit to society, rather than a burden on the already overcrowded prison system.



Christie  
Avery

How our lives will be affected, by allowing a man to begin his life with his family, he can finally hug his baby girl when she needs him she doesn't have to ask for him any more he will be there for her. He can support his kids physically instead of through emails and phone calls with school, friends, sports and life, we can handle life issues together instead of me by myself. Nobody knows what life is like without your other half until you have to live it on your own and it's hard. Kids need a mother and father, most don't get that opportunity, but when they do their life is stable and complete, and with the retroactive application we will be able to be a complete family. Not many Native American kids get that blessing. I want it for mine. Please consider making this retroactive...



Amber  
Ireland

My child's father has been gone since he was 6 months old in 2011. He has gotten to hold him once. Can't see him because he has been placed miles away from home. Its hard seeing my child grow up asking why he doesn't have a dad & will he ever have one.

<sup>16</sup> [http://www.uscourts.gov/news/TheThirdBranch/06-11-01/Polls\\_What\\_Do\\_Americans\\_Think\\_of\\_Their\\_Courts.aspx](http://www.uscourts.gov/news/TheThirdBranch/06-11-01/Polls_What_Do_Americans_Think_of_Their_Courts.aspx)