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Sensible Sentencing Reform: The 2014 Reduction of Drug Sentences

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ROLE OF CONGRESS

The Congress intends the Commission to **act as an expert body to inform sentencing policy** and make guideline amendments and statutory recommendations to reflect advancement in the study of crime.

Congress directed the Commission in 28 U.S.C. § 994(g) to “**minimize the likelihood that the Federal prison population will exceed the capacity** of the Federal prisons.”

Congress further directed the Commission in 28 U.S.C. § 994(u) to **consider retroactivity of any amendment** that may have the effect of reducing a term of imprisonment recommended in the guidelines. The Commission’s decision as to the applicability of retroactivity to any guideline amendment is binding on the courts.

WHAT THE COMMISSION DID

In April 2014, the United States Sentencing Commission **voted unanimously to reduce sentencing guidelines** for most federal drug trafficking offenders.

In July 2014, the Commission **voted, again unanimously, to make this sentencing reduction retroactive**. Congress did not act to modify or disapprove the change, so the amendment became effective on November 1, 2014.

Courts can now consider motions for retroactive sentence reductions, but **no prisoners may be released** based on this reduction **prior to November 1, 2015**.

The Commission examined the issue thoroughly and took careful, bipartisan action.

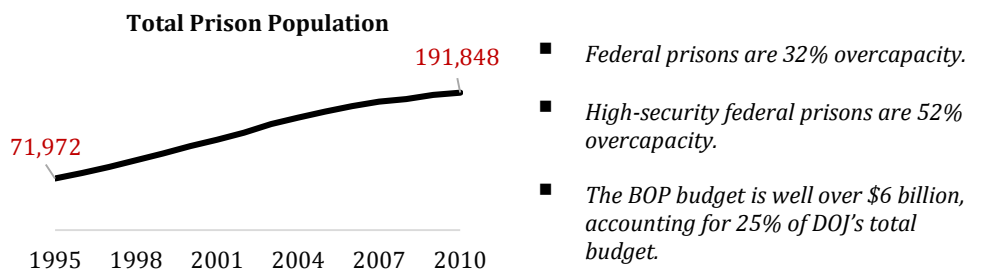
The Commission held **two extensive public hearings** on this issue, hearing testimony from federal judges, the Department of Justice, federal public defenders, state and local law enforcement, sentencing advocates, conservative thinkers, and many others.

The Commission received and considered **more than 80,000 public comment letters** on this issue from stakeholders and interested members of the public, the vast majority in support of sentencing reductions.

The seven Commissioners come from all over the country, a wide range of backgrounds, and all parts of the political spectrum. Commissioners **spoke with one voice on this issue**, twice voting unanimously to reduce federal drug guidelines in order to help control federal prison costs and populations, ensure fair and just sentences, and protect public safety.

The reductions were supported by the Department of Justice, the Federal Public Defenders, the Judicial Conference, Democratic and Republican members of Congress, the Major Cities Chiefs Association, and many others.

The 2014 drug amendment will help reduce federal prison costs and populations.



The Commission has prioritized controlling federal prison costs and populations. The Justice Department testified that the dramatic increase in the federal prison population makes prisons less safe for guards and inmates and makes successful reentry programming more difficult. The Department also testified that increased Bureau of Prisons costs mean less funding for law enforcement, prosecutors, crime prevention programs, crime victim services, and other priorities.

Reducing drug sentences prospectively will reduce the federal prison population by around 6,500 after five years and far more over time.

Retroactive application could allow more than 40,000 prisoners to be eligible for reductions in their sentences and **could save close to 80,000 prison bed years over time**.



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IMPACT

The amendment reduced the sentencing levels associated with drug quantity in the advisory United States Sentencing Guidelines.

- This change will **reduce penalties by an average of 11 months for 70% of drug trafficking offenders** in new drug cases.
- More than **40,000 currently imprisoned** offenders could be eligible to have their sentences retroactively reduced by an average of **25 months**.
- They would **still serve an average of 108 months**.

ABOUT US

The **United States Sentencing Commission** is an independent agency in the judicial branch whose mission is to:

- establish sound and equitable sentencing policies and practices for the federal courts;
- advise and assist Congress and executive branch in the development of effective and efficient crime policy; and,
- collect, analyze, research, and distribute a broad array of information on federal crime.

The **federal sentencing guidelines** are designed to:

- provide certainty and fairness;
- ensure similarly situated offenders receive similar sentences;
- reflect proven and effective strategies to ensure sentences are sufficient, but not greater than necessary to advance the purposes of punishment.

Changes in federal sentencing laws and guidelines make this amendment appropriate.

Enhancements: When the guideline levels for drug quantity were initially set, the drug guideline contained only one enhancement.

- **There are now 14 enhancements** in the drug guideline for violence, firearms, aggravating role, and many other factors.
- Quantity, while still an important measure of seriousness, no longer needs to play as large a role in determining the sentence.

Safety valve: When the guideline levels were first set, the Commission set them above the mandatory minimum penalty even for low-level drug offenders. That gave room for these offenders' sentences to be reduced if they pled guilty.

- Subsequently Congress set up the "safety valve," which allows low-level drug offenders who cooperate to be sentenced below the mandatory minimum.
- **The safety valve provides much greater incentive to plead**, so the guidelines can be set at, rather than below, the mandatory minimum without reducing pleas.
- When the Commission reduced crack guidelines in 2007 in a way similar to the 2014 drug guidelines amendment, there was little change in plea or cooperation rates.

Most of the drug offenders in federal prison were sentenced after these statutory and guidelines changes occurred, so the same factors support making the guideline reduction retroactive.

The 2014 drug amendment is consistent with promoting public safety.

The Commission compared crack cocaine offenders who served shorter sentences pursuant to the 2007 reduction in crack guidelines with those who served their full original sentence and found no statistically significant difference in recidivism rates. **Drug offenders serving slightly less time are no more likely to commit new crimes.**

Existing statutory enhancements for offenders who have guns, are violent, have an aggravating role, or are repeat offenders ensure that the most serious or dangerous offenders receive an appropriately long sentence. Courts also must consider these same public safety factors in deciding whether to reduce sentences.

The Department of Justice and other law enforcement witnesses testified before the Commission that the amendment will not undermine public safety. The amendment will free up resources to reduce overcrowding, fund programs that reduce recidivism, and increase law enforcement and crime prevention efforts – all of which may be more effective ways to reduce crime.

No prisoner will be released without his or her case being individually reviewed by a judge. The delayed release of prisoners until November 1, 2015 gives judges time to consider each case carefully and ensure that dangerous offenders are not released earlier.