

# The Sentencing Project

## Criminal Justice Issues and Prisoners' Rights

<https://www.sentencingproject.org/publications/comment-on-proposed-drug-sentencing-amendment/>

## Public Facing Advocacy Writing

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March 14, 2014

Honorable Patti B. Saris  
Chair  
United States Sentencing Commission  
One Columbus Circle, N.E.  
Suite 2-500, South Lobby  
Washington, D.C. 20002-8002

### **Re: Comment on Retroactivity of the 2014 Drug Guidelines Amendment to Reduce Sentencing Guideline Levels for Federal Drug Trafficking Offenses**

Dear Judge Saris:

On behalf of The Sentencing Project, I am writing to offer comments on the United States Sentencing Commissions proposed amendment to lower by two levels the base offense levels in the Drug Quantity Table across drug types in guideline 2D1.1. According to the Commissions analysis, this change would result in a sentence reduction of about 11 months for those offenders who would benefit. Current drug sentencing policies have led to ballooning federal prison populations and costs, and have contributed to significant racial and ethnic disparities, yet have done little to enhance public safety. Therefore, we strongly support this proposed amendment as a means of addressing these problems and providing a greater measure of justice in the federal court system.

For over 25 years, The Sentencing Project has conducted research and advocacy related to federal and state sentencing. We appreciate the Commissions ongoing commitment to examining and refining federal sentencing policy, and we welcome this opportunity to comment.

Since the launch of the War on Drugs three decades ago, the number of people serving time in federal prison for a drug offense has [skyrocketed](#). In 1980, about 4,700 individuals were incarcerated for a drug offense. By 2011, the number had grown to 94,600 a 20-fold increase in thirty years. In the [past two decades](#), the number of annual drug trafficking cases has increased 79%, from 13,721 cases in 1992 to 24,563 cases in 2012.

Today [half of federal prisoners](#) are incarcerated for a drug offense, constituting the most significant source of the 800% growth in the federal prison population during this time. Though the [Bureau of Justice Statistics](#) recently reported that the U.S. prison population has declined for three consecutive years, the number of federal prisoners continues to grow. Moreover, the heavy proportion of drug offenders in the federal prison population has contributed to significant racial and ethnic disparities in the criminal justice system.

The Commissions proposed amendment to lower by two levels the base offense levels would directly confront these disturbing trends. The decisions of this body will have a significant impact on the lives of thousands of men and women entangled in the federal criminal justice system and facing lengthy imprisonment, many for low-level and nonviolent drug offenses.

Federal sentencing for drug offenses is excessive in far too many cases. Nearly half (48.1%) of drug offenders in 2009 were in the [lower levels](#) of the drug trade either mules, couriers, brokers, or street-level dealers yet a majority of these drug offenders were sentenced under [mandatory minimum](#) provisions. As of [fiscal year 2012](#), 60.4% of federal drug defendants received either five-year (28.0%) or ten-year (32.4%) mandatory prison terms. Though some of these individuals may be truly dangerous, as Deputy Attorney General James Cole recently said, others are lower level drug offenders, many with their own drug abuse issues, who fall into the all too common vicious

cycle of drug abuse, crime, incarceration, release and then the cycle repeats. There is little evidence to suggest that harshly punishing such individuals is a cost-effective strategy for dealing with substance abuse.

While there is ongoing debate about the effect of imprisonment on reducing crime, drug offenses are particularly immune to being affected by more and longer prison terms. This is largely due to the replacement nature of these offenses the fact that there is a virtually endless supply of potential offenders in the drug trade. Since the vast majority of incarcerated drug offenders are from the lower and middle ranks of the drug trade, their imprisonment in effect creates a job opportunity for another individual seeking a source of income. As long as there is a demand for illegal drugs, there will be a large pool of potential sellers, as evidenced by the fact that the number of persons incarcerated for a drug offense nationwide has increased by [more than 1000% since 1980](#).

Moreover, there is evidence to suggest that longer prison terms do not reduce recidivism. In 2007, the Commission amended the Drug Quantity Table for crack cocaine so that the quantities that trigger mandatory minimum penalties also trigger base offense levels 24 and 30, rather than 26 and 32 a two-level decrease in guideline levels similar to those proposed in the instant amendment. The Commission then followed for two years those offenders who received a reduced sentence under the two-level decrease and compared them to a group of individuals released in the year prior to the amendment who had not received a sentence reduction. The Commission found no statistically significant difference in recidivism rates for those offenders released under the revised guidelines (30.4% recidivism) compared to those who served their sentence under the higher base offense levels (32.6% recidivism).

Indeed, there is evidence to suggest that harsh penalties may actually increase recidivism by creating a criminogenic effect. A [2002 review](#) conducted by leading Canadian criminologists involved a meta-analysis of 117 studies measuring various aspects of recidivism. The researchers concluded that longer periods in prison were associated with a small increase in recidivism and that the results appear to give some credence to the prison as schools of crime perspective.

The federal prison system currently operates at [33% over-capacity](#), consuming an ever-greater share of the budget of the Department of Justice. In keeping with [the Commissions charge](#) to ensure that the sentencing guidelines are formulated to minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons, the proposed amendment would address overcrowding, as well as costs of incarceration, by reducing the number of federal prisoners.

The proposed reduced drug quantity tables [would affect](#) nearly 70% (17,457) of the 24,968 drug trafficking offenders sentenced in fiscal year 2012. The current average sentence for these offenders is 62 months. Under the proposed amendment, the Commission estimates that the average sentence would be reduced to 51 months, a 17.7% reduction. The result, according to the Commission, would be a reduction in the federal prison population of approximately 6,550 inmates by the fifth year after the amendment becomes effective.

The amendment would address penalties that have led to staggering racial and ethnic disparities among those serving time for federal drug offenses. As a wealth of documentation has shown, the War on Drugs has had extremely disproportionate effects on communities of color. According to the [Commissions 2012 data](#), 72.1% of all persons sentenced for federal drug trafficking offenses were either black (25.9%) or Hispanic (46.2%). For cases involving powder cocaine, crack cocaine, or marijuana which made up 66% of all drug cases more than 80% of offenders were black or Hispanic.

These racial disparities do not originate in sentencing policy, but rather in law enforcement priorities. But existing sentencing guidelines apply harsh penalties to a population that is not necessarily representative of all persons who have violated the applicable laws.

In addition to this amendment, federal legislation is needed to reverse the unsustainable growth of our federal prison system. The proposed amendment would reduce the federal prison population by approximately 6,550 inmates after five years, according to the Commissions estimate. While commendable, this reduction represents only a small fraction of the more than 100,000 federal prisoners currently serving time for a drug offense.

To truly address the burgeoning federal prison population, legislation is needed to reform mandatory penalties, which apply a one-size-fits-all approach that keeps federal judges from assessing cases on an individualized basis. Each year, about [15,000 drug defendants](#) are sentenced under mandatory penalties. [The Commission](#) unanimously believes that certain mandatory minimum penalties apply too broadly, are excessively severe, and are applied inconsistently.

To address the unsustainable consequences of such mandatory sentencing, Congress should pass 4 legislation such as the [bipartisan Smarter Sentencing Act](#), which would reduce the severity of mandatory minimum penalties for drug offenses, grant judges discretion to avoid overly harsh sentences for lower-level drug offenders, and extend the 2010 Fair Sentencing Act retroactively to prisoners sentenced under the old law. The legislation would reduce the federal prison population by tens of thousands of individuals over time, potentially saving billions of dollars. In addition, it would represent a major milestone in reversing the severe racial disparities inherent in federal drug sentencing policy.

We appreciate this opportunity to comment on the Commissions proposed amendment to lower by two levels the base offense levels in the Drug Quantity Table across drug types in guideline 2D1.1. We urge the Commission to adopt this amendment as a significant step forward as our nation moves to address our ineffective and too often unjust system of punishment for drug offenses.

Sincerely,

Marc Mauer  
Executive Director

Increase in number of women incarcerated in the U.S. since 1980

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