

The Sentencing Project

Criminal Justice Issues and Prisoners' Rights

<https://www.sentencingproject.org/publications/sentencing-projects-comments-u-s-sentencing-commission-2018-policy-priorities/>

Policy Issue Resources

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The Honorable William H. Pryor, Jr., Acting Chair
United States Sentencing Commission
1 Columbus Circle, NE, Suite 2-500, South Lobby
Washington, DC 20002-8002

July 28, 2017

Attn: Public Affairs Priorities Comment

Dear Judge Pryor:

On behalf of The Sentencing Project, a national research and advocacy organization dedicated to a fair and proportionate criminal justice system, I am writing to submit public comments to the United States Sentencing Commission (USSC) regarding its policy priorities for the amendment cycle ending May 1, 2018. For over a decade the USSC has taken critical steps to amend the sentencing guidelines, particularly in federal cases involving drugs, to ensure greater fairness and to limit racial disparity and excessive sentencing. The USSC's ongoing attention to mandatory sentencing and commitment to studying the effects of these changes is laudable.

The population in the custody of the Bureau of Prisons reached a peak in 2013, with 219,000 people. By 2016, this figure had declined by 12%, reaching 192,000. There is little doubt that the USSC's adjustments to the sentencing guidelines as well as its amendments to retroactively apply these changes made a substantial contribution to this reduction. The decline has resulted in a lower scale of overcrowding and substantial cost savings, as well as in reuniting early thousands of families with loved ones serving harsh punishments.

Nonetheless, the federal prison population is 700% higher than in 1980, incurs substantial costs which hamstring the Department of Justice's overall law enforcement obligations, and still results in dangerous overcrowding and conditions of confinement. This growth is the result of a number of factors, including: a dramatic escalation of federal drug prosecutions since the mid-1980s; the adoption of a range of mandatory sentencing policies by Congress; the elimination of parole; and a guideline structure that sets sentencing ranges higher than necessary to achieve the USSC goals of just punishment, deterrence, incapacitation, and rehabilitation.

Nationally, the population growth of recent decades has been due to changes in policy, not crime rates. At the state level, the National Research Council's 2014 report, *The Growth of Incarceration in the United States*, concluded that the tripling of the prison population between 1980 and 2010 was entirely due to increased prison admissions and time served in prison. Similar trends can be seen in the federal system. According to findings of the Charles Colson Task Force on Federal Corrections, between 1985 and 2014, the probability of receiving a prison sentence as opposed to probation for a federal crime increased dramatically, from 50 percent to 90 percent. The number of convictions in US courts nearly doubled, from 40,924 to 76,835, and average time served for drug and weapon crimes each went up from about two years to almost five.

A number of developments and research findings of recent years suggest that it would be timely for the Commission to take a fresh look at the guidelines structure to determine if sentence lengths are sufficient, but *not greater than necessary* (emphasis added), to achieve the goals of sentencing. Such an exploration would be particularly important for long sentences, as described below, but would be beneficial for all offenses and sentence lengths. International comparisons of prison terms show that sentence lengths in the United States are generally considerably longer than in comparable nations, with little criminological justification. Indeed, other nations have maintained dramatically lower rates of incarceration than the U.S., with no adverse effects on public safety. The Commission's careful consideration

of this evidence is essential to maintain a fair and effective guideline system. For example:

The Sentencing Project supports ALIs recent conclusion that public safety can be safeguarded more efficiently, and at far less human cost, through evidence-based policies that are wielded carefully and are continuously tested and improved. We applaud the Commissions thoughtful initiatives to reduce guideline sentences up until this point. However, in the decades since the creation of the USSC, its guidelines and most of the mandatory minimum sentences authorized by Congress, a wealth of research about effective punishment demonstrates that more adjustments to excessive sentences with diminishing public safety benefits are needed.

I appreciate your consideration of this proposal and look forward to collaborating with the Commission as you explore policy priorities during the upcoming amendment cycle.

Sincerely,

Marc Mauer
Executive Director

Increase in U.S. jail & prison population in the last 40 years

Sentencing Policy

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