

**STATEMENT OF HONORABLE PATTI B. SARIS, CHAIR
UNITED STATES SENTENCING COMMISSION
BEFORE THE SUBCOMMITTEE ON
FINANCIAL SERVICES AND GENERAL GOVERNMENT
OF THE COMMITTEE ON APPROPRIATIONS OF THE
UNITED STATES SENATE**

March 24, 2015

Chairman Boozman, Senator Coons, and members of the Subcommittee, the United States Sentencing Commission (Commission) thanks you for the opportunity to submit this statement in support of its appropriations request for fiscal year 2016. The Commission's statutory mission to ensure sound and just federal sentencing policy while prioritizing limited resources to best ensure public safety, as set forth in the Sentencing Reform Act of 1984, continues to be of tremendous importance.

RESOURCES REQUESTED

The Commission is requesting \$17,540,000 for fiscal year 2016, representing a 3.8 percent increase over the fiscal year 2015 appropriation of \$16,894,000. The Commission fully appreciates the serious budget constraints facing the nation and the need for government agencies to allocate their resources responsibly and has limited its requests accordingly.

JUSTIFICATION FOR COMMISSION'S APPROPRIATIONS REQUEST

The statutory duties of the United States Sentencing Commission include (1) promulgating sentencing guidelines to be determined, calculated, and considered in all federal criminal cases; (2) collecting sentencing data systematically to detect new criminal trends, to determine if federal crime policies are achieving their goals, and to serve as a clearinghouse for federal sentencing statistics; (3) conducting research on sentencing issues and serving as an information center for the collection, preparation, and dissemination of information on federal sentencing practices; and (4) providing specialized training to judges, probation officers, staff attorneys, law clerks, prosecutors, defense attorneys, and other members of the federal criminal justice community on federal sentencing issues, including application of the guidelines.

The Commission sits at the intersection of all three branches of government and synthesizes the interests of the three branches to effectuate sound federal sentencing policy. Consistent with statutory guidance and Supreme Court case law, the Commission continues its core mission to promulgate new guidelines and guideline amendments in response to legislation, sentencing data, and information and feedback from sentencing courts, Congress, the Executive Branch, Federal Public Defenders, and others in the federal criminal justice system. The Commission continues to expand its specialized training on federal sentencing issues, including application of the guidelines to federal judges, probation officers, staff attorneys, law clerks, prosecutors, defense attorneys, and others.

In fiscal year 2014, the Commission has taken a leading role in reducing costs associated with rising prison populations, increasing the fairness and efficiency of sentencing, and improving recidivism outcomes, thereby saving additional funds. The Commission's efforts are calibrated to ensure public safety and provide that the statutory purposes of sentencing are achieved. The Commission will continue these efforts in fiscal years 2015 and 2016 and is also prioritizing finding ways to make the guidelines work better, promoting efficiency and effectiveness and reducing unnecessary litigation.

Furthermore, the Commission continues to refine its data collection, analysis, and reporting efforts to provide up-to-date data about federal sentencing practices and trends. The Commission continues to disseminate sentencing information in real time and in new ways to fulfill its statutory duties to monitor the operation of the guidelines and to advise Congress on federal sentencing policy. The Commission also continues to analyze major sentencing issues and report its findings and recommendations to Congress, as well as to respond to requests from Congress for data and analysis.

Even as the demand for Commission work-product, information, and services is increasing, the Commission is not requesting program increases for fiscal year 2016 because it continues to maximize existing resources. The Commission appreciates the funding Congress has provided for the Commission's fulfillment of its statutory duties.

SENTENCING POLICY DEVELOPMENT

In light of the increasing costs of incarceration and the ongoing overcapacity of the federal prison system, since fiscal year 2014 the Commission has made implementing its mandate at Section 994(g) of the Sentencing Reform Act, which requires that the guidelines "minimize the likelihood that the federal prison population will exceed the capacity of the federal prisons," an overarching policy priority. Consistent with that goal, in fiscal year 2014 the Commission reexamined the guideline covering federal drug trafficking offenses since federal drug offenders account for more than half of the federal prison population.

The Commission conducted hearings on how the guidelines account for the quantity of drugs involved in federal drug trafficking offenses, analyzed sentencing and recidivism data, considered legislative and guideline developments, reviewed tens of thousands of letters from the public, and carefully considered input from members of Congress and other key stakeholders, and other relevant information. The Commission's exhaustive re-examination resulted in the promulgation of an amendment that somewhat reduces the guideline penalties based on the quantity of drugs involved in an offense. The amendment is anticipated to affect approximately 70 percent of federal drug trafficking defendants, with their sentences decreasing an average of 11 months, or 17 percent, from 62 to 51 months. In addition to addressing prison populations and costs, these changes to the drug guidelines respond appropriately to statutory changes Congress has made and developments in the guidelines in the years since the drug guideline levels were originally set.

The Commission carefully weighed public safety concerns and, based on past experience, existing statutory and guideline enhancements, and expert testimony, concluded that the amendment should not jeopardize public safety. To the contrary, the Commission received testimony from the Department of Justice and other stakeholders that the amendment would promote public safety by permitting resources otherwise dedicated to housing prisoners to be used to reduce overcrowding, enhance programming designed to reduce the risk of recidivism, and increase law enforcement and crime prevention efforts.

Section 994(u) of the Sentencing Reform Act also required that the Commission consider whether to make the drug amendment retroactive, and after extensive consideration, the Commission decided to make the amendment retroactive with a one-year delay in implementation. In reaching its decision, the Commission was informed by its study of recidivism following retroactive application of the 2007 crack cocaine amendment which suggests that modest reductions in drug penalties can be accomplished without an increase in recidivism. The one year delay in implementation will also help to ensure public safety by allowing judges time to carefully consider each case, providing time for the Probation and Pretrial Services Office to prepare to supervise more offenders, and ensuring that the Bureau of Prisons can provide offenders with transitional services before they are released.

Retroactive application of the amendment is anticipated to have a significant impact on reducing prison costs and overcapacity, and the impact will come much more quickly than from a prospective change alone. More than 40,000 offenders may be eligible for reduced sentences, and these offenders are eligible to have their sentences reduced by an average of 25 months or 18.8 percent. This reduction is estimated to result over time in a savings of more than 70,000 prison bed years.

The Commission believes that the 2014 drug amendment and its retroactive application are important first steps toward addressing prison costs and populations with proportionate guidelines, without negatively impacting public safety. The Commission hopes the amendment will lay the groundwork for more comprehensive action by Congress in the future, and the Commission's Chair testified to that effect before the House Judiciary Committee's Over-Criminalization Task Force in June 2014.

In fiscal year 2014, the Commission also implemented the Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, a major piece of legislation impacting a variety of offenses in Indian Country and beyond. It also resolved circuit conflicts in Courts of Appeals relating to the guidelines, including differences in calculating tax loss under the guidelines and the circumstances under which a defendant receives full credit for acceptance of responsibility.

In fiscal year 2015 and looking forward to fiscal year 2016, the Commission has prioritized examining ways the guidelines can be made fairer, more efficient, and more effective. In furtherance of this goal, the Commission expects to promulgate guideline amendments resulting from its multi-year review of economic crimes that target specific areas of ongoing concern, such as cases involving particularly high loss amounts and fraud on the market offenses.

In addition, the Commission is prepared to respond to recent rescheduling by the Drug Enforcement Administration for the drug hydrocodone.

Furthermore, the Commission convened an expert roundtable discussion on application issues caused by differing statutory, guideline, and case law definitions of crimes of violence. Differing and complex statutory and guideline definitions have caused significant litigation in federal sentencing, draining judicial resources and causing increased uncertainty and lack of uniformity in sentencing.

The Commission also continued work on a multi-year study on recidivism of federal offenders. In fiscal year 2013, the Commission held a recidivism roundtable where it heard from a variety of experts on methodology, quantitative statistical analysis, and program evaluation. The recidivism study will draw on partnerships across the federal criminal justice system and will combine data from the Commission, the Department of Justice, and the Administrative Office of the U.S. Courts to develop a comprehensive trajectory of offenders prior to incarceration, during incarceration, and following reentry into the community. The Commission believes this research will contribute significantly to the consideration of federal sentencing policy by Congress and others in fiscal year 2015 and beyond.

In addition, in fiscal year 2014, the Commission undertook a study of federal sentencing practices pertaining to imposition and violations of conditions of probation and supervised release, including possible consideration of amending the relevant provisions in the *Guidelines Manual*. The Commission believes this research may inform congressional consideration of issues including identification of conditions of supervised release that are correlated with lower recidivism.

Also in fiscal year 2014, the Commission began work on a review of the use of risk-assessment instruments in the federal criminal justice system in order to be able to provide the Commission's data and expertise to Congress, the Probation and Pretrial Services Office of the Administrative Office of the U.S. Courts, and researchers at the Federal Judicial Center. The Commission's study is aimed at considering these tools in the context of the goals and requirements of the Sentencing Reform Act of 1984 that sentences remain neutral with respect to race, gender, and socioeconomic status, among other consideration.

In fiscal year 2014, the Commission focused on making its data and research more readily accessible in more easily understood ways to Congress, the courts, the public, and the press. To this end, the Commission expanded its Quick Facts series first introduced in fiscal year 2013. The Quick Facts series is designed to provide concise facts about a single area of federal crime in an easy-to-read, two-page format. The Commission released fourteen publications in the Quick Facts series in fiscal year 2014 covering topics including illicit drugs, Native American offenders, female offenders, alien smuggling, and national defense offenses. The Commission will release new publications in fiscal year 2015 and update them regularly.

In fiscal year 2014, the Commission also introduced a series of relatively short reports on various topics of interest. For example, the Commission released a brief publication about

recidivism in connection with 2007 amendments that reduced sentences for crack offenders. The Commission will continue this short publication series in fiscal year 2015 and beyond.

The Commission has also continued to work with Congress on its reports from fiscal years 2011 and 2012 on mandatory minimum penalties, child pornography offenses, and disparity in sentencing. These comprehensive reports provide policy-makers with relevant and important sentencing information and data, as well as the most relevant social science research and case law.

The information and data contained in these reports has contributed to the consideration of federal sentencing policy by Congress and others in fiscal years 2013 and 2014 and will likely continue to do so. In particular, during the 113th Congress the Commission worked to implement recommendations from its report on statutory mandatory minimum penalties and updated its recommendations on mandatory minimum penalties to address legislation before both the House and Senate. The Commission stands ready to work with the 114th Congress and others on steps that can be taken regarding the findings and recommendations in those reports.

COLLECTING AND REPORTING SENTENCING DATA

Each year the Commission collects data regarding every felony and class A misdemeanor offense sentenced during that year. Sentencing courts are statutorily required to submit five sentencing documents to the Commission within 30 days of entry of judgment in a criminal case: the charging document, the plea agreement, the presentence investigation report, the judgment and commitment order, and the statement of reasons form. The Commission analyzes these documents and collects information of interest and importance to policy-makers and the federal criminal justice community.

The Commission's data collection, analysis, and reporting requirements are impacted by the high volume of cases sentenced in the federal system annually. The Commission will receive documentation on more than 350,000 documents for more than 76,000 original sentencings for fiscal year 2014. To put this caseload in perspective, in fiscal year 1995, the Commission received documentation for 38,500 cases sentenced under the guidelines.

The Commission also collects real-time data from the courts on retroactive application of its permanent amendment implementing the Fair Sentencing Act of 2010, Pub. L. No. 110–220. The guideline amendment took effect on November 1, 2011.

As of December 2014, the Commission has collected data on approximately 14,000 cases in which a modification of the sentence imposed was sought under the 2011 amendment to the sentencing guidelines that implemented the provisions of the Fair Sentencing Act and which the Commission voted to retroactively apply to persons sentenced before the date of that amendment. The Commission anticipates eventually receiving documentation on more than 15,000 motions for retroactive application of the 2011 crack cocaine amendment. These documents and original research will form the basis for a study on implementation of the Fair Sentencing Act in fiscal year 2015 as contemplated by the Act, which requires the Commission to submit a report to Congress five years after its enactment (August 3, 2010).

The Commission has also begun collecting data on retroactive application of the 2014 drug amendment. Beginning November 1, 2014, judges were able to review sentences imposed prior to that date to determine if offenders' sentences should be reduced consistent with the 2014 drug amendment. Offenders will not be eligible for release from Bureau of Prisons custody until November 1, 2015. The Commission anticipates receiving documentation on more than 40,000 motions for retroactive application of the 2014 drug amendment.

The Commission's sustained investment in modernization and refinement of data collection and analysis have kept pace with demands placed on it, but full funding of the Commission's fiscal year 2016 budget request is necessary to ensure efficient and effective performance of its data responsibilities given the number of federal cases.

The Commission continually updates and modernizes the system that enables sentencing courts to submit documentation directly to the Commission electronically. In recent years, the Commission advanced from an internal electronic data transmission submission system to a web-based system and improved its processes related to the receipt and analysis of sentencing data. By the end of fiscal year 2014, 79 districts were using the web-based system.

The Commission continues to work to develop means to automatically extract some data fields from the court documents to improve the efficiency of its data collection and to expand the type of information the Commission can collect and analyze on a routine basis. The Commission began to collect some data through this automated means in fiscal year 2014, and will continue to do so in fiscal year 2015 and beyond.

The Commission makes its sentencing data available to the public in several ways. Analyses of the data extracted from the sentencing documents it receives are reported in the Commission's Annual Report and Sourcebook of Federal Sentencing Statistics, which is available in print and on its website. In order to provide the most timely information on national sentencing trends and practices, the Commission also disseminates on its website key aspects of this data on a quarterly basis and provides trend analyses of the changes in federal sentencing practices over time.

The Commission continued to improve and expand use of its Interactive Sourcebook. The Interactive Sourcebook allows users to re-create and customize tables and figures, for example by circuit, district, or state and has improved the transparency and accessibility of its sentencing data to the public. Additionally, the Interactive Sourcebook provides analyses not found elsewhere, including analyses of sentence length by the primary guideline the court used at sentencing, amount of loss in fraud cases, and age of offenders in drug cases for each major drug type. In fiscal year 2014, additional analyses were added to this resource, including several new figures that examine trends in sentencing data over time.

As required by 28 U.S.C. § 994(g) and 18 U.S.C. § 4047, when the Commission considers amendments to the guidelines, it considers the impact of these amendments on the federal prison population. In addition, the Commission is asked often by Congress to complete prison and sentencing impact assessments for proposed legislation. Since fiscal year 2012, the

Commission makes its prison and sentencing impact analyses available to the public on its website.

The Commission often is asked by Congress to complete prison and sentencing impact assessments using real-time data of sentencing trends related to proposed and pending legislation. These assessments are often complex and time-sensitive and require highly-specialized Commission resources. In addition, the Commission responds to more general data requests from Congress on issues such as drugs, immigration, fraud, and sex offenses and provides district, state-wide, and circuit data analyses to House and Senate Judiciary Committee members and, on an as-requested basis, to other members of Congress.

The Commission also responds to requests for data analyses from federal judges, including specific data requests relating to pending cases. In fiscal year 2014, the Commission responded to 77 such requests from the courts. The Commission's ability to provide these analyses on demand and with real-time data provides a unique and helpful resource to judges.

CONDUCTING RESEARCH

Research is a critical part of the Commission's overall mission. The Commission's research staff regularly analyzes the current and prior fiscal years' data to identify the manner in which the courts are sentencing offenders and using the guidelines. The Commission routinely uses these analyses when considering proposed changes to the guidelines. Similarly, some analyses are published by the Commission as a resource for policy-makers and the criminal justice community.

In May 2014, the Commission published an updated study on the recidivism of offenders whose sentences were reduced as a result of changes to the 2007 crack cocaine sentencing guidelines. The study compared the recidivism rates for offenders who were released early as a result of retroactive application of the 2007 crack cocaine amendment with a control group of offenders who served their full terms of imprisonment. The Commission detected no statistically significant difference in the rates of recidivism for the two groups of offenders over five years. This information represents some of the first high-quality, quasi-experimental, federal recidivism data that uses sentence length as a dependent variable. This data was crucial to the Commission in making its fiscal year 2014 changes to the drug quantity table. It has also been used by members of Congress in their own evaluations of proposed sentencing legislation.

Since fiscal year 2013, the Commission makes individual offender datafiles available on its website. Datafiles from fiscal years 2002 through 2013 are now available.

TRAINING AND OUTREACH

The Commission continues to fulfill its statutory duty to provide training and specialized technical assistance on federal sentencing issues, including application of the guidelines, to federal judges, probation officers, staff attorneys, law clerks, prosecutors, and defense attorneys by providing educational programs around the country throughout the year. In fiscal year 2014, Commissioners and Commission staff conducted training programs in all twelve circuits and

approximately half of the 94 judicial districts providing instruction and guidance to more than 6000 judges, probation officers, prosecutors, defense attorneys and others throughout the year.

In September 2014, the Commission held its annual national training program in Philadelphia, Pennsylvania with more than 900 attendees, including many federal district court judges. The Commission also participated in training an unusually large number of new federal district judges, many of whom were unfamiliar with the federal sentencing system prior to their appointments.

Commissioners and Commission staff also participated in numerous academic programs, symposia, and circuit conferences as part of the ongoing discussion of federal sentencing issues. The Commission anticipates that these expanded efforts and requests for training will continue throughout fiscal years 2015 and 2016.

The Commission also is relying on a more robust program of distance and online learning as part of cost containment efforts. The Commission has increased the number of sentencing-related webinars and training videos on its website throughout fiscal year 2014 and will continue to do so in 2015 and 2016. In October 2014, the Commission released its first training video focused at addressing the needs of federal crime victims. The video informs victims of the federal sentencing process and prepares them to participate more fully in the process.

SUMMARY

The Commission remains uniquely positioned to assist the federal criminal justice community, including Congress, in ensuring sound and just federal sentencing policy and prioritizing limited resources to best protect the public safety. Located in the judicial branch and composed of federal judges, individuals with diverse experience in the federal criminal justice community, and *ex officio* representatives of the Executive Branch, the Commission is an expert, bipartisan body that works collaboratively with all three branches of government on matters of federal sentencing policy.

As evidenced from the discussion above, demand for the Commission's various work products continues to increase. The Commission has responded in recent years by placing a high priority on increasing public access to its sentencing data, information, analyses, and training. The Commission has achieved this increased public access in great part by expanding the availability of resources on its website, and the Commission plans to continue this trend in fiscal year 2016 and beyond.

The Commission appreciates the funding it has received from Congress and respectfully submits that full funding of its fiscal year 2016 appropriations request of \$17,540,000 will ensure that the Commission can continue to fulfill its various statutory missions efficiently and effectively.