

UNITED STATES SENTENCING COMMISSION
ONE COLUMBUS CIRCLE, NE
SUITE 2-500, SOUTH LOBBY
WASHINGTON, DC 20002-8002
(202) 502-4500
FAX (202) 502-4699



July 25, 2014

MEMORANDUM

TO: Chair Saris
Commissioners
Kenneth Cohen

FROM: Office of Research and Data

SUBJECT: Summary of Key Data Regarding Retroactive Application of the
2014 Drug Guidelines Amendment

I. INTRODUCTION

On April 30, 2014, the United States Sentencing Commission submitted to Congress an amendment to the federal sentencing guidelines that would revise the guidelines applicable to drug trafficking offenses by changing how the base offense levels in the drug quantity tables in sections 2D1.1 and 2D1.11 of the *Guidelines Manual*¹ incorporate the statutory mandatory minimum penalties for drug trafficking offenses (Amendment 782).² Specifically, the amendment would reduce by two levels the offense levels assigned to the quantities that trigger the statutory mandatory minimum penalties, resulting in corresponding guideline ranges that include the mandatory minimum penalties, and make conforming changes to section 2D2.11. On July 18, the Commission voted to give retroactive effect to Amendment 782 beginning on the effective date of the amendment, which will be November 1, 2014, unless Congress acts to modify or disapprove the amendment.

¹ U.S. SENTENCING COMMISSION, GUIDELINES MANUAL §2D1.1 (Unlawful Manufacturing, Importing, Exporting or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) (2013) (hereinafter USSG); USSG §2D1.11 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy).

² References in this memorandum to the “2014 drug guidelines amendment,” “the amendment,” or any similar references mean the amendment the Commission submitted to Congress on April 30, 2014, that would modify the drug quantity tables in USSG §§2D1.1 and 2D1.11.

As part of the Commission's decision to retroactively apply Amendment 782, it required that no offender may be released pursuant to the retroactive application of the amendment until November 1, 2015 or later. This memorandum provides information concerning the effect of this limitation.

II. FURTHER ANALYSES OF THE IMPACT OF RETROACTIVE APPLICATION OF THE 2014 DRUG GUIDELINES AMENDMENT

A. Summary of Data on the Eligible Offenders

ORD previously estimated that 51,141 offenders sentenced between October 1, 1991 and October 31, 2014,³ would be eligible to seek a reduction in their current sentence if the Commission were to make the 2014 drug guidelines amendment retroactive.⁴ Of this group, there are 46,376 offenders who would not be released under their current sentence until on or after November 1, 2015, and so could benefit from the Commission's decision to retroactively apply Amendment 782.

The current average sentence for the 46,376 offenders who could benefit under retroactive application of the amendment is 133 months. Applying the amendment retroactively to these offenders the new average sentence would be 108 months. This is a difference of 25 months, which represents an 18.8 percent reduction in the sentence. The number of bed years saved by this reduction is 79,740 bed years, which would be realized by the Bureau of Prisons over a period of years, of course.

The most common drug types involved in these cases are methamphetamine (28.8%), powder cocaine (27.8%), crack cocaine (19.3%), marijuana (11.6%), heroin (7.6%), and other drugs (5.0%). Attached to this memorandum is a summary of selected offender characteristics about these offenders as well as information about their criminal history.

B. Summary of Data on the Projected Release Dates of the Eligible Offenders

We estimate that on November 1, 2015 there would be 7,953 offenders eligible for immediate release. Another 8,550 offenders would be released during the year that begins on November 1, 2015 and ends on October 31, 2016. That is, a total of 16,503 offenders will be released during the first year in which offenders may be released pursuant to retroactive application of the amendment. If the Commission had not authorized the amendment to be applied retroactively, we estimate that 7,609 offenders would still have been released during that year, as their current terms of incarceration expired. Attached to this memorandum is a table that provides additional information concerning the release years of these offenders and the districts in which they were sentenced.

³ The analysis was limited to data from fiscal year 1992 and later because the Commission's data collection efforts prior to fiscal year 1992 were not as complete as in later years.

⁴ Memorandum from the Office of Research and Data and the Office of General Counsel to Chair Saris, Commissioners, and Kenneth Cohen (May 27, 2014), *available at* www.ussc.gov.

Selected Characteristics of Eligible Offenders
Retroactive Application of Amendment 782 With
Release On or After November 1, 2015
(FY1992 through FY2015)

Race/Ethnicity

White	10,734	23.2%
Black	14,427	31.2%
Hispanic	19,958	43.1%
Other	1,171	2.5%
Total	46,290	100.0%

Citizenship

U.S. Citizen	34,928	75.4%
Non-Citizen	11,411	24.6%
Total	46,339	100.0%

Gender

Male	42,759	92.2%
Female	3,615	7.8%
Total	46,374	100.0%

Criminal History Category

I	17,580	37.9%
II	6,320	13.6%
III	9,232	19.9%
IV	5,473	11.8%
V	3,417	7.4%
VI	4,354	9.4%
Total	46,376	100.0%

Projected Year of Release

<u>Projected Year of Release</u>	<u>Retroactive*</u>	<u>If Not Retroactive</u>
November 1, 2015	7,953	--
within 1 yr	8,550	7,609
within 2 yr	6,938	7,461
within 3 yr	5,473	6,207
within 4 yr	4,177	5,291
within 5 yr	2,909	3,923
more than 5 yr	9,350	14,859
Total	45,350	45,350

The analysis involves a total of 46,376 cases, however, cases missing information for any specific analysis are excluded from that analysis. Total percentages may not add to exactly 100% due to rounding.

* A total of 16,503 offenders are estimated to be eligible for release during the first year in which offenders may be released under retroactive application of the amendment. This is 8,894 more than will be released upon expiration of their current sentence.

SOURCE: U.S. Sentencing Commission, 1992 - 2005 Datafiles, USSCFY92 - USSCFY13.

Possible Release Timing for Retroactive Eligible Offenders by District
(FY1992 through FY2015)

CIRCUIT District	Eligible for Immediate Release 11/01/15		Eligible for Release in Year One*		Eligible for Release in Year Two		Eligible for Release in Year Three		Eligible for Release in Year Four		Eligible for Release in Year Five		Eligible for Release in Six or More Years		TOTAL	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%
TOTAL	7,953	17.5	8,550	18.9	6,938	15.3	5,473	12.1	4,177	9.2	2,919	6.4	9,350	20.6	45,350	
D.C. CIRCUIT	25	12.7	37	18.8	38	9.3	27	13.7	12	6.1	8	4.1	50	25.4	197	
District of Columbia	25	12.7	37	18.8	38	9.3	27	13.7	12	6.1	8	4.1	50	25.4	197	
FIRST CIRCUIT	231	10.8	412	19.3	387	18.1	342	16.0	256	12.0	147	6.9	364	17.0	2,139	
Maine	18.1	45	27	18.2	31	18.7	22	13.3	19	11.4	7	4.2	12	7.2	166	
Massachusetts	27	14.9	37	20.4	33	18.2	19	10.5	16	8.8	9	5.0	40	22.1	181	
New Hampshire	1	17.7	21	33.9	14	22.6	5	8.1	1	1.6	3	4.8	7	11.3	62	
Puerto Rico	149	9.1	295	17.9	290	17.6	280	17.0	214	13.0	122	7.4	294	17.9	1,644	
Rhode Island	14	16.3	14	16.3	19	22.1	16	18.6	6	7.0	6	11	12.8	86		
SECOND CIRCUIT	344	17.2	380	19.0	328	16.4	264	13.2	196	9.3	118	5.9	371	18.5	2,001	
Connecticut	45	16.7	67	24.8	51	18.9	31	11.5	32	11.9	18	6.7	26	9.6	270	
New York																
Eastern	51	17.4	49	16.7	66	22.5	43	14.7	21	7.2	14	4.8	49	16.7	293	
Northern	48	17.9	58	21.6	53	19.8	39	14.6	29	10.8	10	3.7	31	11.6	268	
Southern	136	18.0	132	17.4	104	13.7	101	13.3	65	8.6	48	6.3	171	22.6	757	
Western	55	16.3	52	15.4	43	12.8	37	12.8	37	11.0	22	6.5	85	25.2	337	
Vermont	9	11.8	22	28.9	11	14.5	7	9.2	12	15.8	6	7.9	9	11.8	76	
THIRD CIRCUIT	207	15.8	267	20.4	198	15.1	160	12.2	120	9.2	74	5.6	284	21.7	1,310	
Delaware	9	22.5	9	22.5	8	20.0	2	5.0	1	2.5	0	0.0	11	27.5	40	
New Jersey	54	17.1	82	26.0	58	18.4	38	12.1	26	8.3	16	5.1	41	13.0	315	
Pennsylvania																
Eastern	55	11.7	73	15.5	64	13.6	64	13.6	46	9.8	33	7.0	135	28.7	470	
Middle	65	23.1	59	21.0	40	14.2	36	12.8	31	11.0	7	2.5	43	15.3	281	
Western	19	11.1	38	22.2	23	13.5	15	8.8	12	7.0	15	8.8	49	28.7	171	
Virgin Islands	5	15.2	6	18.2	5	15.2	5	15.2	4	12.1	3	9.1	5	15.2	33	
FOURTH CIRCUIT	1,028	17.0	954	15.8	812	13.5	683	11.3	559	9.3	454	7.5	1,545	25.6	6,035	
Maryland	85	15.3	102	18.3	102	18.3	80	14.4	49	8.8	37	6.6	102	18.3	557	
North Carolina																
Eastern	140	12.6	147	13.2	143	12.8	122	10.9	112	10.0	111	10.0	340	30.5	1,115	
Middle	86	20.1	89	20.8	50	11.7	44	10.3	36	8.4	29	6.8	93	21.8	427	
Western	150	23.1	118	18.2	82	12.6	60	9.2	63	9.7	40	6.2	137	21.1	650	
South Carolina	133	14.1	117	12.4	116	12.3	118	12.5	109	11.6	85	9.0	264	28.0	942	
Virginia																
Eastern	170	14.9	127	11.1	145	12.7	121	10.6	98	8.6	85	7.4	396	34.7	1,142	
Western	134	20.8	100	15.6	83	12.9	73	11.4	49	7.6	44	6.8	160	24.9	643	
West Virginia																
Northern	88	26.4	87	26.1	51	15.3	37	11.1	29	8.7	13	3.9	28	8.4	333	
Southern	42	18.6	67	29.6	40	17.7	28	12.4	14	6.2	10	4.4	25	11.1	226	

* For example, in the District of Columbia, 62 offenders are eligible for release between November 1, 2015 and October 31, 2016.

**Possible Release Timing for Retroactive Eligible Offenders by District
(FY1992 through FY2015)**

Circuit	District	Eligible for Immediate Release 11/01/15			Eligible for Release in Year One			Eligible for Release in Year Two			Eligible for Release in Year Three			Eligible for Release in Year Four			Eligible for Release in Year Five			Eligible for Release in Six or More Years			TOTAL		
		N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	
FIFTH CIRCUIT	Louisiana	1,853	18.3	2,023	20.0	1,562	15.4	1,180	11.6	901	8.9	608	6.0	2,013	19.9	608	6.0	2,013	19.9	608	6.0	2,013	19.9	10,140	
	Eastern	46	14.6	56	18.0	46	14.8	38	12.2	31	10.0	28	9.0	66	21.2	31	9.0	66	21.2	31	9.0	66	21.2	311	
	Middle	22	19.3	24	21.1	20	17.5	12	10.5	8	7.0	6	5.3	22	19.3	14	5.2	64	24.0	14	5.2	64	24.0	114	
	Western	57	21.3	35	13.1	49	18.4	29	10.9	19	7.1	14	5.2	64	24.0	14	5.2	64	24.0	14	5.2	64	24.0	267	
MISSISSIPPI	Northern	34	21.4	33	20.8	23	14.5	22	13.8	14	8.8	7	4.4	26	16.4	14	8.8	26	16.4	14	8.8	26	16.4	159	
	Southern	46	13.8	52	15.6	52	15.6	44	13.2	24	7.2	24	7.2	92	27.5	24	7.2	92	27.5	24	7.2	92	27.5	334	
TEXAS	Eastern	210	14.8	209	14.8	203	14.3	183	12.9	142	10.0	101	7.1	367	25.9	101	7.1	367	25.9	101	7.1	367	25.9	1,415	
	Northern	220	16.1	179	13.1	183	13.4	150	11.0	124	9.1	109	8.0	403	29.5	109	8.0	403	29.5	109	8.0	403	29.5	1,368	
	Southern	559	19.5	680	23.7	462	16.4	334	11.6	255	8.9	145	5.1	432	15.1	145	5.1	432	15.1	145	5.1	432	15.1	2,867	
	Western	659	19.9	755	22.8	524	15.9	368	11.1	284	8.6	174	5.3	541	16.4	174	5.3	541	16.4	174	5.3	541	16.4	3,305	
SIXTH CIRCUIT	Kentucky	739	17.9	913	22.1	709	17.1	514	12.4	362	8.7	265	6.4	637	15.4	637	15.4	637	15.4	637	15.4	637	15.4	4,139	
	Eastern	92	16.8	123	22.5	116	21.2	64	11.7	48	8.8	30	5.5	73	13.4	48	8.8	30	5.5	73	13.4	48	8.8	546	
	Western	49	19.9	61	24.8	37	15.0	34	13.8	23	9.3	12	4.9	30	12.2	12	4.9	30	12.2	12	4.9	30	12.2	246	
Michigan	Eastern	73	19.3	77	20.3	52	13.7	57	15.0	32	8.4	16	4.2	72	19.0	16	4.2	72	19.0	16	4.2	72	19.0	379	
	Western	55	15.9	61	17.6	48	13.8	39	11.2	27	7.8	30	8.6	87	25.1	30	8.6	87	25.1	30	8.6	87	25.1	347	
Ohio	Northern	95	18.6	131	25.6	90	17.6	63	12.3	45	8.8	29	5.7	59	11.5	45	8.8	29	5.7	59	11.5	512			
	Southern	87	20.3	101	23.5	76	17.7	57	13.3	36	8.4	27	6.3	45	10.5	27	6.3	45	10.5	27	6.3	45	10.5	429	
TENNESSEE	Eastern	179	16.2	231	20.9	203	18.4	131	11.9	104	9.4	88	8.0	168	15.2	104	9.4	88	8.0	168	15.2	104	9.4	1,104	
	Middle	32	21.2	30	19.9	21	13.9	23	15.2	17	11.3	6	4.0	22	14.6	17	11.3	6	4.0	22	14.6	17	11.3	6	425
	Western	77	18.1	98	23.1	66	15.5	46	10.8	30	7.1	27	6.4	81	19.1	27	6.4	81	19.1	27	6.4	81	19.1	425	
SEVENTH CIRCUIT	Illinois	455	16.7	437	16.0	389	14.3	292	10.7	252	9.3	210	7.7	689	25.3	210	7.7	689	25.3	210	7.7	689	25.3	2,724	
	Central	79	19.4	51	12.5	38	9.3	32	7.9	30	7.4	29	7.1	148	36.4	30	7.4	29	7.1	148	36.4	407			
	Northern	123	18.2	93	13.7	101	14.9	75	11.1	59	8.7	55	8.1	171	25.3	59	8.7	55	8.1	171	25.3	677			
	Southern	51	10.6	63	13.1	48	10.0	58	12.0	77	16.0	58	12.0	127	26.3	77	16.0	58	12.0	127	26.3	482			
Indiana	Northern	56	17.0	73	22.2	68	20.7	28	8.5	21	6.4	20	6.1	63	19.1	21	6.4	20	6.1	63	19.1	329			
	Southern	63	14.7	53	12.4	72	16.8	56	13.1	35	8.2	23	5.4	126	29.4	35	8.2	23	5.4	126	29.4	428			
Wisconsin	Eastern	45	17.9	76	30.2	48	19.0	30	11.9	10	4.0	16	6.5	27	10.7	10	4.0	16	6.5	27	10.7	252			
	Western	38	25.5	28	18.6	14	9.4	13	8.7	20	13.4	9	6.0	27	18.1	9	6.0	27	18.1	9	6.0	27	18.1	149	

Possible Release Timing for Retroactive Eligible Offenders by District
(FY1992 through FY2015)

CIRCUIT District	Eligible for Immediate Release 11/01/15		Eligible for Release in Year One		Eligible for Release in Year Two		Eligible for Release in Year Three		Eligible for Release in Year Four		Eligible for Release in Year Five		Eligible for Release in Six or More Years		TOTAL	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%
EIGHTH CIRCUIT	742	17.5	739	17.5	628	14.8	501	11.8	401	9.5	285	6.7	933	22.1	4,229	
Arkansas	51	15.5	75	22.7	45	13.6	42	12.7	21	6.4	51	15.5	51	15.5	330	
Eastern	45	17.4	44	17.0	47	18.1	42	16.2	21	8.1	19	7.3	41	15.8	259	
Western																
Iowa																
Northern	123	19.8	80	12.9	74	11.9	65	10.5	80	12.9	47	7.6	152	24.5	621	
Southern	82	15.0	85	15.6	78	14.3	63	11.6	41	7.5	38	7.0	158	29.0	545	
Minnesota	75	24.1	55	17.7	39	12.5	36	11.6	23	7.4	22	7.1	61	19.6	311	
Missouri																
Eastern	130	23.4	123	22.1	96	17.3	53	9.5	42	7.6	24	4.3	88	15.8	556	
Western	89	16.4	88	16.2	86	15.8	70	12.9	47	8.7	43	7.9	120	22.1	543	
Nebraska	91	12.6	127	17.6	113	15.7	93	12.9	73	10.1	47	6.5	176	24.4	720	
North Dakota	30	14.2	38	18.0	32	15.2	21	10.0	17	8.1	12	5.7	61	28.9	211	
South Dakota	26	19.5	24	18.0	18	13.5	13	9.8	15	11.3	12	9.0	25	18.8	133	
NINTH CIRCUIT	889	17.2	1,153	22.3	873	16.9	667	12.9	465	9.0	273	5.3	849	16.4	5,169	
Alaska	36	19.9	34	18.8	27	14.9	24	13.3	19	10.5	11	6.1	30	16.6	181	
Arizona	172	25.3	223	32.7	111	16.3	59	8.7	33	4.8	14	2.1	69	10.1	681	
California																
Central	114	15.7	154	18.5	103	14.2	88	12.2	72	9.9	44	6.1	169	23.3	724	
Eastern	92	13.4	132	19.2	124	18.1	98	14.3	82	12.0	44	6.4	114	16.6	686	
Northern	58	20.1	52	18.0	49	17.0	37	12.8	28	9.7	20	6.9	45	15.6	289	
Southern	77	11.2	176	25.7	135	19.7	128	18.7	68	9.9	33	4.8	69	10.1	686	
Guam	6	16.2	9	24.3	5	13.5	5	13.5	1	2.7	1	2.7	10	27.0	37	
Hawaii	55	19.7	54	19.4	37	13.3	29	10.4	28	10.0	15	5.4	61	21.9	279	
Idaho	48	16.6	60	20.8	43	14.9	37	12.8	23	8.0	10	3.5	68	23.5	289	
Montana	49	13.2	65	17.5	60	16.1	50	13.4	34	9.1	19	5.1	95	25.5	372	
Nevada	55	18.9	56	19.2	59	20.3	36	12.4	17	5.8	18	6.2	50	17.2	291	
Northern Mariana Islands	0	0.0	3	50.0	0	0.0	0	0.0	2	33.3	1	6.7	0	0.0	6	
Oregon	40	18.9	50	23.6	43	20.3	28	13.2	13	6.1	14	6.6	24	11.3	212	
Washington	39	19.1	41	20.1	35	17.2	23	11.3	24	11.8	17	8.3	25	12.3	204	
Eastern																
Western	48	20.7	64	27.6	42	18.1	25	10.8	21	9.1	12	5.2	20	8.6	232	

**Possible Release Timing for Retroactive Eligible Offenders by District
(FY1992 through FY2015)**

CIRCUIT District	Eligible for Immediate Release 11/01/15		Eligible for Release in Year One		Eligible for Release in Year Two		Eligible for Release in Year Three		Eligible for Release in Year Four		Eligible for Release in Year Five		TOTAL	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
TENTH CIRCUIT	419	18.5	428	18.9	322	14.2	263	11.6	186	8.2	151	6.7	492	21.8
Colorado	37	14.6	48	19.0	46	18.2	35	13.0	18	7.1	17	6.7	54	21.3
Kansas	84	13.7	104	17.0	81	13.2	76	12.4	64	10.4	46	7.5	158	25.8
New Mexico	89	23.3	92	24.1	61	16.0	39	10.2	21	5.5	23	6.0	57	14.9
Oklahoma														382
Eastern	21	19.3	20	18.3	8	7.3	14	12.8	14	12.8	5	4.6	27	24.8
Northern	24	16.7	31	21.5	21	14.6	22	15.3	9	6.3	9	6.3	28	19.4
Western	51	22.3	40	17.5	29	12.7	23	10.0	15	6.6	16	7.0	55	24.0
Utah	72	23.3	64	20.7	55	17.2	39	12.6	23	7.4	16	5.2	42	13.6
Wyoming	41	18.5	29	13.1	25	10.4	17	7.7	22	9.9	19	8.6	71	32.0
ELEVENTH CIRCUIT	1,021	20.4	807	16.1	692	13.8	580	11.6	467	9.3	316	6.3	1,123	22.4
Alabama														5,006
Middle	45	26.3	17	9.9	29	17.0	21	12.3	18	10.5	5	2.9	36	21.1
Northern	78	26.9	40	13.8	34	11.7	33	11.4	31	10.7	17	5.9	57	19.7
Southern	80	23.3	70	20.3	49	14.2	29	8.4	31	9.0	25	7.3	60	17.4
Florida														344
Middle	235	17.6	207	15.5	196	14.7	155	11.6	128	9.6	115	8.6	298	22.3
Northern	97	21.5	48	10.6	43	9.5	45	10.0	37	8.2	28	6.2	153	33.9
Southern	249	19.4	234	18.2	198	15.4	152	11.8	115	9.0	69	5.4	266	20.7
Georgia														1,283
Middle	31	13.1	57	24.2	45	19.1	37	15.7	21	8.9	9	3.8	36	15.3
Northern	100	19.3	61	11.8	49	9.5	67	13.0	55	10.6	32	6.2	153	29.6
Southern	106	21.9	73	19.2	49	12.9	41	10.8	31	8.2	16	4.2	64	16.8
														380

Of the 46,376 offenders identified as eligible for relief under the amendment, Commission records contained sufficient information to perform this analysis for 45,550 offenders.

Estimated release dates are determined using the Commission's prison and sentencing impact model which applies proposed guideline changes to affected offenders and resentences these offenders in a proportional manner. Under this model, affected offenders: 1) receive a new offense level; 2) have a new sentencing range determined (using the ranges from the Sentencing Tables); 3) are resented to the same relative position within (or outside) the original guideline range (e.g., an offender currently sentenced at the midpoint of the original guideline range will be sentenced to the midpoint of the new guideline range); and 4) receive statutory and guideline credits when applicable. Other assumptions incorporated into the model include: 1) offenders earn the maximum allowable good-time (currently 54 days per year served for imposed sentences greater than one year but not life imprisonment); and 2) offenders serve the lesser of A) the sentence imposed less the maximum allowable good conduct time, or B) their estimated remaining life expectancy, based upon an actuarial table incorporating age, race, and sex.

SOURCE: U.S. Sentencing Commission, 1992 - 2013 Datafiles, USSCFY92 - USSCFY13.