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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)

<u>Race/Ethnicity</u>		
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%

<u>Citizenship</u>		
U.S. Citizen	34,928	75.4%
Non-Citizen	11,411	24.6%
Total	46,339	100.0%

<u>Gender</u>		
Male	42,759	92.2%
Female	3,615	7.8%
Total	46,374	100.0%

<u>Criminal History Category</u>		
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%

<u>Projected Year of Release</u>	Retroactive*	If Not Retroactive
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	2,909	6.4	9,350	20.6	45,350	
D.C. CIRCUIT	25	12.7	37	18.8	38	19.3	27	13.7	12	6.1	8	4.1	50	25.4	197	
District of Columbia	25	12.7	37	18.8	38	19.3	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	30	18.1	45	27.1	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	11	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	7.0	11	12.8	86	
SECOND CIRCUIT	344	17.2	380	19.0	328	16.4	264	13.2	196	9.8	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	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	43	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	55	11.7	73	15.5	64	13.6	64	13.6	46	9.8	33	7.0	135	28.7	470	
Eastern	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	140	12.6	147	13.2	143	12.8	122	10.9	112	10.0	111	10.0	340	30.5	1,115	
Eastern	86	20.1	89	20.8	50	11.7	44	10.3	36	8.4	29	6.8	93	21.8	427	
Middle	150	23.1	118	18.2	82	12.6	60	9.2	63	9.7	40	6.2	137	21.1	650	
Western	133	14.1	117	12.4	116	12.3	118	12.5	109	11.6	85	9.0	264	28.0	942	
South Carolina	170	14.9	127	11.1	145	12.7	121	10.6	98	8.6	85	7.4	396	34.7	1,142	
Virginia	134	20.8	100	15.6	83	12.9	73	11.4	49	7.6	44	6.8	160	24.9	643	
West Virginia	88	26.4	87	26.1	51	15.3	37	11.1	29	8.7	13	3.9	28	8.4	333	
Northern	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	%
TENTH CIRCUIT	419	18.5	428	18.9	322	14.2	263	11.6	186	8.2	151	6.7	492	21.8	2,361	100
Colorado	37	14.6	48	19.0	46	18.2	33	13.0	18	7.1	17	6.7	54	21.3	253	10.7
Kansas	84	33.7	104	40.4	81	31.2	76	29.3	64	24.4	46	17.6	158	61.3	613	26.4
New Mexico	89	33.3	92	34.1	61	22.6	39	14.4	21	7.8	23	8.7	57	22.0	382	15.8
Oklahoma	21	8.1	20	7.6	8	3.0	14	5.3	14	5.3	5	1.9	27	10.4	109	4.2
Eastern	24	9.3	31	11.7	21	7.8	22	8.2	9	3.3	9	3.3	28	10.6	144	5.7
Northern	51	19.3	40	15.1	29	10.9	23	8.7	15	5.6	16	6.0	55	20.7	229	8.9
Western	72	27.6	64	23.7	53	19.6	39	14.4	33	12.2	16	5.9	42	15.6	309	11.8
Utah	41	15.5	29	10.7	23	8.6	17	6.3	22	8.2	19	7.0	71	27.0	222	8.5
Wyoming	1,021	38.4	807	29.1	692	25.2	580	21.1	467	17.0	316	11.5	1,123	42.4	5,006	182.3
ELEVENTH CIRCUIT	45	17.6	17	6.7	29	11.2	21	8.1	18	6.8	5	1.9	36	13.5	171	6.2
Alabama	78	26.9	40	13.8	34	11.7	33	11.4	31	10.7	17	5.9	57	19.7	290	10.5
Middle	80	23.3	70	20.3	49	14.2	29	8.4	31	9.0	25	7.3	60	17.4	344	12.3
Northern	235	68.8	207	59.5	196	56.2	155	44.4	128	36.4	115	32.9	298	85.3	1,334	47.5
Southern	97	28.5	48	14.6	43	13.1	45	13.7	37	11.0	28	8.2	153	44.1	451	15.8
Florida	249	72.2	234	68.2	198	57.4	152	43.7	115	33.1	69	20.0	266	76.8	1,283	45.3
Middle	31	9.1	57	16.5	45	13.1	37	10.6	21	6.1	9	2.6	36	10.3	236	6.8
Northern	100	28.8	61	17.5	49	14.0	67	19.2	55	15.6	32	9.1	153	43.8	517	14.8
Southern	106	30.7	73	20.8	49	14.0	41	11.7	31	8.8	16	4.5	64	18.2	380	10.7

Of the 46,376 offenders identified as eligible for relief under the amendment, Commission records contained sufficient information to perform this analysis for 45,330 offenders.

Estimated release dates are determined using the Commission's prison and sentencing impact model which applies proposed guideline changes to affected offenders and re-sentences these offenders in a proportional manner. Under the model, affected offenders: 1) receive a new offense level; 2) have a new sentencing range determined (using the ranges from the Sentencing Table); 3) are resentenced 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 then 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 actuary table incorporating age, race, and sex.

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