



July 18, 2012

Honorable Patti Saris, Chair
United States Sentencing Commission
Suite 2-500, South Lobby
Washington, D.C. 20002-8002
Attn: Public Affairs – Priorities Comment

Dear Judge Saris,

I am pleased to write on behalf of The Sentencing Project to offer comments on the Commission's proposed priorities for the coming amendment cycle. For over 25 years, The Sentencing Project has conducted research and advocacy on federal and state sentencing and related issues. We appreciate the ongoing commitment of the Commission to examine and refine federal sentencing policy, and the Commission's engagement with the broader criminal justice community in this process.

Our comments address two of the issues identified as proposed priorities for the coming year: the Commission's ongoing engagement regarding mandatory sentencing and the proposed multi-year study of recidivism.

Recommendations Regarding Work with Congress and Other Interested Parties on Mandatory Minimum Penalties

First, we congratulate the Commission for its 2011 report to Congress, "Mandatory Minimum Penalties in the Federal Criminal Justice System," which provides a comprehensive assessment of the impact of mandatory minimum penalties on federal sentencing. We encourage the Commission to engage Congress in considering the findings of the report through hearings and to propose remedial legislation as appropriate.

In particular, the Commission's analyses suggest that Congress should consider the following key issues:

- Examine the rarely used mandatory minimum penalties to determine whether they are necessary and appropriate. Of the 194 current statutory provisions requiring mandatory minimum terms of imprisonment, six (6) provisions accounted for 65% of all convictions. Under 116 of these mandatory minimum provisions, ten or fewer individuals were convicted, and dozens of these provisions appear to have never been used.

- Analyze and respond to the racial disparities documented in the imposition of mandatory penalties, and consider the effect of prosecutorial discretion in this regard, as documented in several recent analyses. The Commission should consider encouraging legislation such as the *Justice Integrity Act*, which has called for the establishment of task forces in federal districts to assess whether unwarranted disparities exist in federal prosecutions.
- Evaluate the utility of mandatory sentencing for drug offenses in particular. Such an assessment should incorporate an examination of the public safety benefits of mandatory minimums given the role they play in sustaining high rates of incarceration at great financial and social costs.

Recommendations for Research on Recidivism

As has been well documented, much of the dramatic rise in both federal and state prison populations in recent decades can be explained by changes in sentencing policy and practice. Essentially, more individuals are being sentenced to prison and they are staying longer in prison than in previous decades. One key measure of the effectiveness of such strategies is their impact on recidivism. The Commission's proposed multi-year study of recidivism can aid policymaking by providing evidence to:

1. Identify potential sentencing reforms to reduce the excessive number of prison sentences and overly punitive sentence lengths without adverse effects on recidivism;
2. Inform decisions about the development and dissemination of prison-based programming that reduces recidivism; and
3. Test scenarios in which sentencing reforms and the expansion of effective prison-based programs are most likely to yield cost savings, which could then be reinvested in expanding recidivism-reducing programming.

1. Identify potential sentencing reforms to reduce the excessive number of prison sentences and overly punitive sentence lengths without adverse effects on recidivism.

Many sentencing structures, whether guidelines or indeterminate systems, have been developed with little reliance on empirical data to project the effects of various sentencing decisions on outcomes such as recidivism. As is well known, many analysts have concluded that current federal sentencing practice results in an excessive number of prison terms and overly punitive sentence lengths. In order to assess the effectiveness of current sentencing policy and to make informed decisions about potential reforms, the Commission should determine whether additional numbers of individuals could be diverted to community punishment and in which circumstances sentence lengths could be reduced without adversely affecting recidivism. Providing feedback on these issues to federal judges could potentially be of great benefit in making sentencing decisions.

2. Inform decisions about the development and dissemination of prison-based programming that reduces recidivism.

The Commission should conduct research to identify prison-based programming that effectively reduces recidivism in order to identify exemplary programs for broader dissemination. This might be accomplished through a combination of meta-analyses of existing research and original research.

It is important that such an assessment appraise whether program effectiveness differs for men versus women or for members of different racial and ethnic groups, and if so, to suggest program modifications that would improve outcomes. Also, the capacity for effective programs to reduce recidivism will be limited if resources do not permit access to all people who might benefit from them. Therefore, researchers should also determine the extent to which exemplary programs are currently available, the population in prison that could potentially benefit from existing or expanded programming, and barriers to accessing these programs.

3. Test scenarios in which sentencing reforms and the expansion of effective prison-based programs are most likely to yield cost savings, in turn freeing resources for reinvestment in additional recidivism-reducing programming.

After determining sentencing reforms that could reduce the incidence of incarceration and lessen sentence lengths without negatively impacting recidivism, and after identifying programs that effectively reduce recidivism, the Commission is encouraged to undertake research using statistical forecasting methods to develop empirical “what if” models of cost-benefit tradeoffs. Such statistical models could be used to estimate potential reductions in the demand for prison beds and associated cost savings that might ensue from different sentencing reforms that divert people to community sanctions and/or reduce existing sentence lengths. Furthermore, they could estimate the additional probable savings that might be realized if all or part of the cost savings were redirected to fund the expansion of effective prison programs.

The Sentencing Project appreciates this opportunity to comment on the Commission’s proposed priorities and hopes these recommendations will assist the Commission in continuing to examine and strengthen federal sentencing policy. We would be pleased to discuss any of the points raised in this letter in additional detail.

Sincerely,



Marc Mauer
Executive Director