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May 27, 2014

**MEMORANDUM**

**TO:** Chair Saris  
Commissioners  
Kenneth Cohen

**FROM:** Office of Research and Data  
Office of General Counsel

**SUBJECT:** Analysis of the Impact of the 2014 Drug Guidelines Amendment  
If Made Retroactive

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 Table in section 2D1.1 of the *Guidelines Manual*<sup>1</sup> incorporate the statutory mandatory minimum penalties for such offenses.<sup>2</sup> 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. Offense levels for quantities above and below the mandatory minimum threshold quantities similarly would be adjusted downward by two levels, except that the minimum base offense level of 12 and the maximum base offense level of 38 for most drug types would be retained, as would other previously existing minimum and maximum base offense levels for particular drug types. The

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<sup>1</sup> 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).

<sup>2</sup> 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 (Unlawfully Distributing, Importing, Exporting or Possessing a Listed Chemical; Attempt or Conspiracy). Several other guidelines would be affected by this amendment. *See infra* note 21 and accompanying text.

amendment would also make parallel changes to the quantity tables in §2D1.11, which apply to offenses involving chemical precursors of controlled substances.

Part I of this memorandum describes the statutory and guideline penalty structure for drug trafficking crimes. It also discusses the 2014 drug guidelines amendment and the statutory authority and guidelines policy statement governing retroactive application of amendments to the federal sentencing guidelines. Part II of the memorandum provides a data analysis of the likely impact of the possible permanent guidelines amendment if the Commission were to authorize the courts to apply the amendment retroactively. Part III of this memorandum describes how the analysis was performed.

**I. LEGAL FRAMEWORK FOR RETROACTIVELY REDUCING SENTENCES BASED ON GUIDELINE AMENDMENTS**

**A. Statutory Penalties for Drug Trafficking Offenses**

The Anti-Drug Abuse Act of 1986<sup>3</sup> establishes the basic framework of statutory penalties currently applicable to federal drug trafficking offenses. The 1986 Act specifies statutory penalty ranges for manufacturing, distributing, or dispensing the drug, or possessing the drug with intent to manufacture, distribute or dispense the drug. For each of several drug types, the 1986 Act specifies separate statutory ranges for such offenses involving various quantities of the drug. The statutory penalty ranges for first-time offenders<sup>4</sup> convicted of trafficking in a mixture or substance containing a detectable amount of the five most common drug types<sup>5</sup> are reflected in the tables below:

<b>Heroin Quantity</b>	<b>Statutory Range</b>	<b>Provision</b>
Less than 100 grams	0-20 years	21 U.S.C. § 841(b)(1)(C)
100 grams or more but less than 1 kilogram	5-40 years	21 U.S.C. § 841(b)(1)(B)(i)
1 kilogram or more	10 years-life	21 U.S.C. § 841(b)(1)(A)(i)

<b>Powder Cocaine Quantity</b>	<b>Statutory Range</b>	<b>Provision</b>
Less than 500 grams	0-20 years	21 U.S.C. § 841(b)(1)(C)
500 or more but less than 5,000 grams	5-40 years	21 U.S.C. § 841(b)(1)(B)(ii)
5,000 or more grams	10 years-life	21 U.S.C. § 841(b)(1)(A)(ii)

<b>Crack Cocaine Quantity</b>	<b>Statutory Range</b>	<b>Provision</b>
Less than 28 grams	0-20 years	21 U.S.C. § 841(b)(1)(C)
28 or more but less than 280 grams	5-40 years	21 U.S.C. § 841(b)(1)(B)(iii)
280 or more grams	10 years-life	21 U.S.C. § 841(b)(1)(A)(iii)

<sup>3</sup> Pub. L. No. 99-570, 100 Stat. 3207 (1986) [hereinafter 1986 Act].

<sup>4</sup> Repeat offenders are subject to increased penalties. See 21 U.S.C. §§ 841(b), 851.

<sup>5</sup> The 1986 Act also provided statutory minimum penalties for several other drug types. See 21 U.S.C. § 841(b)(1)(A)(iv)-(vi), (b)(1)(B)(iv)-(vi).

<b>Marijuana Quantity</b>	<b>Statutory Range</b>	<b>Provision</b>
Less than 100 kilograms	0-20 years	21 U.S.C. § 841(b)(1)(C)
100 or more but less than 1,000 kilograms	5-40 years	21 U.S.C. § 841(b)(1)(B)(vii)
1,000 kilograms or more	10 years-life	21 U.S.C. § 841(b)(1)(A)(vii)

<b>Methamphetamine (Mixture) Quantity</b>	<b>Statutory Range</b>	<b>Provision</b>
Less than 50 grams	0-20 years	21 U.S.C. § 841(b)(1)(C)
50 or more but less than 500 grams	5-40 years	21 U.S.C. § 841(b)(1)(B)(viii)
500 grams or more	10 years-life	21 U.S.C. § 841(b)(1)(A)(viii)

The same ranges apply to defendants convicted of offenses involving importing or exporting these drugs, and to attempts or conspiracies to commit these offenses.<sup>6</sup>

#### B. Guideline Penalties for Drug Trafficking Offenses

The Commission has incorporated into the Drug Quantity Table in USSG §2D1.1 the penalty structure of federal drug laws and the relevant statutory mandatory minimum sentences and has extrapolated upward and downward to set guideline sentencing ranges for all drug quantities.<sup>7</sup> By extrapolating upward and downward, the guidelines avoid sharp differentials or “sentencing cliffs” based upon small differences in drug quantities.

A minimum base offense level of 12 and a maximum base offense level of 38 are incorporated into the Drug Quantity Table across most drug types. In addition, certain higher minimum base offense levels are incorporated into the Drug Quantity Table for particular drug types, *e.g.*, a minimum base offense level of 12 applies if the offense involved any quantity of certain Schedule I or II controlled substances.<sup>8</sup> Similarly, certain maximum base offense levels and associated drug quantity “caps” are incorporated into the Drug Quantity Table for particular drug types, *e.g.*, a maximum base offense level of 8 and a combined equivalent weight “cap” of 999 grams of marijuana apply if the offense involved any quantity of Schedule V substances.<sup>9</sup>

The drug quantity thresholds in the Drug Quantity Table have previously been set so that the drug quantity that triggers a statutory mandatory minimum penalty is assigned a base offense

<sup>6</sup> 21 U.S.C. § 960 (Import and Export); 21 U.S.C. § 846 (Attempt and conspiracy).

<sup>7</sup> See §2D1.1, comment. (backg’d.) (“The base offense levels in §2D1.1 are either provided directly by the Anti-Drug Abuse Act of 1986 or are proportional to the levels established by statute, and apply to all unlawful trafficking.”).

<sup>8</sup> See §2D1.1(c)(14); §2D1.1, comment. (n.8(D)) (“Provided, that the minimum offense level from the Drug Quantity Table for any of these controlled substances individually, or in combination with another controlled substance, is level 12.”).

<sup>9</sup> See §2D1.1(c)(16) (applying a base offense level of 8 if the offense involved 40,000 or more units of Schedule V substances); §2D1.1, comment. (n.8(D)) (“Provided, that the combined equivalent weight of Schedule V substances shall not exceed 999 grams of marihuana.”).

level that corresponds (at Criminal History Category I) to a guideline range slightly above the statutory mandatory minimum penalty. Thus, the quantity that triggers a statutory 5-year (60 month) mandatory minimum term of imprisonment is assigned a base offense level of 26 (corresponding to a guideline range of 63 to 78 months), and the quantity that triggers a statutory 10-year (120 month) mandatory minimum term of imprisonment also triggers a base offense level of 32 (corresponding to a guideline range of 121 to 151 months).<sup>10</sup>

The amendment changes how the base offense levels in the Drug Quantity Table incorporate the statutory mandatory minimum penalties. Specifically, it amends the table so that the quantities that trigger the statutory mandatory minimum penalties correspond to base offense levels 24 and 30, rather than 26 and 32. Setting base offense levels at levels 24 and 30 establishes guideline ranges with a lower limit below, and an upper limit above, the statutory minimum; *e.g.*, level 30 corresponds (at Criminal History Category I) to a guideline range of 97 to 121 months, where the statutory minimum term is ten years (120 months).

Under the amendment, section 2D1.1 continues to reflect the minimum base offense level of 12 and the maximum base offense level of 38 that are incorporated into the Drug Quantity Table. It also continues to reflect the other minimum base offense levels that are incorporated into the Drug Quantity Table for particular drug types<sup>11</sup> or combinations of drugs.<sup>12</sup> Similarly, it continues to reflect the maximum base offense levels and associated drug quantity “caps” that are incorporated into the Drug Quantity Table for particular drug types, *e.g.*, the maximum base offense level of 8 and the combined equivalent weight “cap” of 999 grams of marijuana that apply if the offense involved any quantity of Schedule V substances.<sup>13</sup>

In the amendment the various minimum and maximum base offense levels and drug quantity “caps” are associated with new drug quantities, determined by extrapolating upward or downward as appropriate. The amendment also makes parallel changes to the quantity tables in section 2D1.11, which apply to offenses involving the chemical precursors of controlled substances. Section 2D1.11 is generally structured to provide base offense levels that are tied to, but less severe than, the base offense levels in section 2D1.1. The amendment changes the quantities that trigger each base offense level in order to retain this relationship.

### C. Retroactivity of Guideline Amendments

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<sup>10</sup> See §2D1.1, comment. (backg’d.) (“The base offense levels at levels 26 and 32 establish guideline ranges with a lower limit as close to the statutory minimum as possible; *e.g.*, level 32 ranges from 121 to 151 months, where the statutory minimum is ten years or 120 months.”).

<sup>11</sup> For example, the minimum base offense level is 6 for drug trafficking offenses involving marijuana.

<sup>12</sup> A minimum base offense level is specified for cases involving multiple drugs. See, *e.g.*, §2D1.1(c)(14); §2D1.1, comment. (n.8(D)) (“Provided, that the minimum offense level from the Drug Quantity Table for any of these controlled substances individually, or in combination with another controlled substance, is level 12.”).

<sup>13</sup> See §2D1.1(c)(16) (applying a base offense level of 8 if the offense involved 40,000 or more units of Schedule V substances); §2D1.1, comment. (n.8(D)) (“Provided, that the combined equivalent weight of Schedule V substances shall not exceed 999 grams of marijuana.”).

## 1. Statutory authority

The Commission is statutorily required to determine whether a guideline amendment that reduces the sentencing range applicable to a particular offense or category of offenses may be retroactively applied. Section 994(u) of title 28, United States Code, provides that:

[i]f the Commission reduces the term of imprisonment recommended in the guidelines applicable to a particular offense or category of offenses, it shall specify in what circumstances and by what amount the sentences of prisoners serving terms of imprisonment for the offense may be reduced.<sup>14</sup>

Sentencing courts are statutorily precluded from applying a guideline amendment retroactively unless the Commission has designated such amendment for retroactive application. Section 3582(c)(2) of title 18, United States Code, provides that the court may not modify a term of imprisonment once it has been imposed except that:

in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), . . . the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.<sup>15</sup>

Modifications of sentence under 18 U.S.C. § 3582(c)(2) are unaffected by the decision in *Booker v. United States*.<sup>16</sup> The Federal Rules of Criminal Procedure provide that the defendant is not required to be present at a proceeding under 18 U.S.C. § 3582(c)(2).<sup>17</sup>

## 2. Guidelines Manual policy statement

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<sup>14</sup> 28 U.S.C. § 994(u). The Commission’s Rules of Practice and Procedure provide that “in those cases in which the Commission considers an amendment for retroactive application to previously sentenced, imprisoned defendants, it shall decide whether to make the amendment retroactive at the same meeting at which it decides to promulgate the amendment. Prior to final Commission action on the retroactive application of an amendment, the Commission shall review the retroactivity impact analysis . . . .” United States Sentencing Commission, *Rules of Practice and Procedure*, Rule 4.1 (2007). At its April 10, 2014 public meeting, the Commission voted to waive this rule and, pursuant to Rule 2.2, instructed staff to prepare a retroactivity impact analysis to be presented to it at a later date. This memorandum is that analysis.

<sup>15</sup> 18 U.S.C. § 3582(c)(2).

<sup>16</sup> *Dillon v. United States*, 560 U.S. 817 (2010) (holding that proceedings under 18 U.S.C. § 3582(c)(2) do not implicate the Sixth Amendment jury trial right and that the decision in *United States v. Booker*, 543 U.S. 220 (2005) (rendering guidelines advisory) does not prevent courts from giving effect to USSG §1B1.10 in such proceedings).

<sup>17</sup> Fed. R. Crim. P. 43(b)(4) (“A defendant need not be present [when a] proceeding involves the correction or reduction of sentence under Rule 35 or 18 U.S.C. § 3582(c)(2).”).

The Commission promulgated USSG §1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range) (Policy Statement) to implement 28 U.S.C. § 994(u) and to provide guidance to a court when considering a motion under 18 U.S.C. § 3582(c)(2). Subsection (a) of section 1B1.10 specifies when a reduction pursuant to 18 U.S.C. § 3582(c)(2) is available:

In a case in which a defendant is serving a term of imprisonment, and the guideline range applicable to that defendant has subsequently been lowered as a result of an amendment to the Guidelines Manual listed in subsection (c) below, the court may reduce the defendant's term of imprisonment as provided by 18 U.S.C. § 3582(c)(2). As required by 18 U.S.C. § 3582(c)(2), any such reduction in the defendant's term of imprisonment shall be consistent with this policy statement.

Section 1B1.10 further explains that a reduction would not be consistent with the policy statement if none of the amendments listed in subsection (c) of section 1B1.10 are applicable to the defendant or if a listed amendment "does not have the effect of lowering the defendant's applicable guideline range."<sup>18</sup> Additionally, that section provides that proceedings under 18 U.S.C. § 3582(c)(2) "do not constitute a full resentencing of the defendant."<sup>19</sup>

In addition to specifying which guideline amendments may be retroactively applied, consistent with 28 U.S.C. § 994(u), section 1B1.10 guides courts as to the amount by which a sentence may be reduced under 18 U.S.C. § 3582(c)(2). Subsection (b)(1) of USSG §1B1.10 states:

In determining whether, and to what extent, a reduction in the term of imprisonment is warranted for a defendant eligible for consideration under 18 U.S.C. § 3582(c)(2), the court shall determine the amended guideline range that would have been applicable to the defendant if the amendment(s) to the guidelines listed in subsection (c) had been in effect at the time the defendant was sentenced. In making such determination, the court shall substitute only the amendments listed in subsection (c) for the corresponding guideline provisions that were applied when the defendant was sentenced and shall leave all other guideline application decisions unaffected.<sup>20</sup>

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<sup>18</sup> USSG §1B1.10(a)(2).

<sup>19</sup> USSG §1B1.10(a)(3). Listing an amendment in §1B1.10(c) "reflects policy determinations by the Commission that a reduced guideline range is sufficient to achieve the purposes of sentencing and that, in the sound discretion of the court, a reduction in the term of imprisonment may be appropriate for previously sentenced, qualified defendants." *See* USSG §1B1.10, comment. (backg'd.) The background commentary further provides that "authorization of such a discretionary reduction does not otherwise affect the lawfulness of a previously imposed sentence, does not authorize a reduction in any other component of the sentence, and does not entitle a defendant to a reduced term of imprisonment as a matter of right." *Id.* Among the factors considered by the Commission in selecting the amendments included in subsection (c) are "the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range under subsection (b)(1)." *Id.*

<sup>20</sup> USSG §1B1.10(b)(1).

Section 1B1.10 further provides that, as a general matter, the extent of the reduction granted should not go below the amended guideline range determined in accordance with subsection (b)(1).<sup>21</sup> However, an exception is noted where the sentence originally imposed “was less than the term of imprisonment provided by the guideline range . . . pursuant to a government motion to reflect the defendant’s substantial assistance to authorities” in which case “a reduction comparably less than the amended guideline range . . . may be appropriate.”<sup>22</sup>

## II. IMPACT OF THE RETROACTIVE APPLICATION OF THE 2014 DRUG GUIDELINES AMENDMENT

### A. Introduction to the Data Analysis

This section of the memorandum provides an analysis of the estimated impact of the Commission’s 2014 drug guidelines amendment on those offenders incarcerated in the federal prison system as of November 1, 2014, should the Commission vote to make that amendment retroactive. This analysis was prepared by the Commission’s Office of Research and Data (ORD) in response to the Commission’s directive to staff on April 10, 2014.<sup>23</sup>

### B. Findings

ORD estimates that 51,141 offenders sentenced between October 1, 1991 and October 31, 2014,<sup>24</sup> would be eligible to seek a reduction in their current sentence if the Commission were to make the 2014 drug guidelines amendment retroactive.<sup>25</sup> These offenders would be released over a period of many years.

The current average sentence for the offenders who would be eligible to seek a sentence reduction under the amendment is 125 months. If the courts were to grant the full reduction possible in each case, the projected new average sentence for these offenders would be 102 months, a reduction of 23 months (or 18.4%). Based on this reduction, the estimated total savings to the Federal Bureau of Prisons (BOP) from the retroactive application of the 2014 drug

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<sup>21</sup> USSG §1B1.10(b)(2).

<sup>22</sup> USSG §1B1.10(b)(2)(B).

<sup>23</sup> *See supra* note 14 and accompanying text.

<sup>24</sup> 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.

<sup>25</sup> This estimate includes 1,026 offenders for whom the information necessary to perform the analysis in the Commission’s Prison Impact Model was missing. They are included in the total number of offenders who appear to be eligible to receive a reduced sentence if the 2014 drug guidelines amendment were made retroactive because they meet all of the criteria for inclusion based on the information that is available.

guidelines amendment would be 83,525 bed years.<sup>26</sup> This savings would not be realized in any single year but is the cumulative savings realized over many years.

1. Distribution of eligible offenders by year of sentence

Table 1 presents the number of offenders who appear to be eligible for retroactive application of the 2014 drug guidelines amendment by the year in which the offender was sentenced. As would be expected, the more recent the sentencing year the greater the number of offenders who are still serving their sentence and so would be eligible to seek a reduced sentence.

**Table 1**  
**Year of Sentence for Eligible Offenders**  
**(FY1992 through FY2015)**

FISCAL YEAR	ELIGIBLE OFFENDERS	
	N	%
TOTAL	51,141	100.0
<b>Fiscal Year</b>		
2015	986	1.9
2014	11,621	22.7
2013	8,378	16.4
2012	6,990	13.7
2011	5,210	10.2
2010	3,815	7.5
2009	3,065	6.0
2008	2,433	4.8
2007	2,123	4.2
2006	1,657	3.2
2005	1,146	2.2
2004	887	1.7
2003	682	1.3
2002	477	0.9
2001	355	0.7
2000	312	0.6
1999	249	0.5
1998	210	0.4
1997	172	0.3
1996	140	0.3
1995	120	0.2
1994	60	0.1
1993	53	0.1
1992	0	0.0

Total percentages may not add to exactly 100% due to rounding.  
SOURCE: U.S. Sentencing Commission, 1992 - 2013 Datafiles, USSCFY92 - USSCFY13.

<sup>26</sup> A “bed year” is the cost to the BOP of incarcerating one inmate for one year. For example, one inmate who serves five years of imprisonment accounts for five bed years.



2. Geographic distribution of eligible offenders

Table 2 presents information on the number of eligible offenders sentenced in each judicial district and, therefore, where the consideration of the issue of retroactive application of the amendment in their cases would most likely occur. This list presents the offenders in descending order by the number of offenders in each district.

**Table 2**  
**Geographic Distribution of Eligible Offenders**  
**By District**  
**(FY1992 through FY2015)**

<b>District</b>	<b>N</b>	<b>%</b>	<b>District</b>	<b>N</b>	<b>%</b>
<b>TOTAL</b>	<b>51,141</b>	<b>100.0</b>			
Western Texas	3,987	7.8	Southern Mississippi	370	0.7
Southern Texas	3,326	6.5	Eastern Arkansas	363	0.7
Puerto Rico	1,739	3.4	Minnesota	345	0.7
Eastern Texas	1,510	3.0	Eastern Louisiana	343	0.7
Middle Florida	1,494	2.9	Eastern New York	339	0.7
Northern Texas	1,473	2.9	Utah	339	0.7
Southern Florida	1,446	2.8	Northern California	336	0.7
Eastern Virginia	1,228	2.4	Northern Alabama	328	0.6
Eastern Tennessee	1,190	2.3	Idaho	327	0.6
Eastern North Carolina	1,178	2.3	Nevada	320	0.6
South Carolina	1,014	2.0	Middle Pennsylvania	319	0.6
Arizona	967	1.9	Northern New York	318	0.6
Southern New York	937	1.8	Hawaii	311	0.6
Central California	804	1.6	Connecticut	303	0.6
Southern California	782	1.5	Eastern Wisconsin	299	0.6
Nebraska	777	1.5	Western Washington	296	0.6
Eastern California	745	1.5	Western Kentucky	289	0.6
Northern Illinois	734	1.4	Western Arkansas	288	0.6
Western Virginia	715	1.4	Western Louisiana	279	0.5
Western North Carolina	699	1.4	Colorado	277	0.5
Kansas	687	1.3	Southern West Virginia	267	0.5
Northern Iowa	661	1.3	Middle Georgia	261	0.5
Eastern Missouri	639	1.2	Western Oklahoma	251	0.5
Maryland	629	1.2	North Dakota	238	0.5
Eastern Kentucky	619	1.2	Wyoming	238	0.5
Northern Ohio	598	1.2	Oregon	235	0.5
Western Missouri	592	1.2	District of Columbia	225	0.4
Southern Iowa	575	1.1	Eastern Washington	225	0.4
Northern Georgia	572	1.1	Western Pennsylvania	210	0.4
Eastern Pennsylvania	560	1.1	Maine	203	0.4
New Mexico	512	1.0	Massachusetts	200	0.4
Southern Ohio	510	1.0	Alaska	200	0.4
Southern Illinois	502	1.0	Middle Alabama	186	0.4
Western Tennessee	500	1.0	Northern Mississippi	173	0.3
Northern Florida	498	1.0	Middle Tennessee	170	0.3
Middle North Carolina	456	0.9	Northern Oklahoma	168	0.3
Eastern Michigan	455	0.9	Western Wisconsin	165	0.3
Southern Indiana	451	0.9	South Dakota	156	0.3
Southern Georgia	428	0.8	Middle Louisiana	131	0.3
Central Illinois	424	0.8	Eastern Oklahoma	117	0.2
Montana	406	0.8	Rhode Island	102	0.2
Western New York	404	0.8	Vermont	92	0.2
Northern West Virginia	394	0.8	New Hampshire	68	0.1
Southern Alabama	391	0.8	Delaware	47	0.1
Western Michigan	379	0.7	Guam	43	0.1
New Jersey	376	0.7	Virgin Islands	35	0.1
Northern Indiana	375	0.7	Northern Mariana Islands	8	0.0

Total percentages may not add to exactly 100% due to rounding.

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

3. Offender characteristics

Table 3 presents information on the demographic characteristics of the offenders who appear to be eligible for retroactive application of the 2014 drug guidelines amendment. The majority are men (91.7%) and U.S. citizens (74.9%). Hispanic offenders account for 43.5 percent of the eligible group, followed by 30.6 percent Black, 23.3 percent White, and 2.6 percent Other races. The average age of these offenders on November 1, 2014 will be 38 years.

**Table 3**  
**Demographic Characteristics of Eligible Offenders**  
**(FY1992 through FY2015)**

<b>DEMOGRAPHICS</b>		
<b><u>Race/Ethnicity</u></b>		
White	11,899	23.3%
Black	15,600	30.6%
Hispanic	22,224	43.5%
Other	1,327	2.6%
<b>Total</b>	<b>51,050</b>	<b>100.0%</b>
<b><u>Citizenship</u></b>		
U.S. Citizen	38,270	74.9%
Non-Citizen	12,832	25.1%
<b>Total</b>	<b>51,102</b>	<b>100.0%</b>
<b><u>Gender</u></b>		
Male	46,892	91.7%
Female	4,247	8.3%
<b>Total</b>	<b>51,139</b>	<b>100.0%</b>
<b><u>Average Age</u></b>		
	<b>38</b>	<b>35</b>
	(as of	
	<b>November 1, 2014)</b>	<b>(at sentencing)</b>

The analysis involves a total of 51,141 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.

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

4. Offense characteristics

Table 4A presents information about the primary drug type involved in the offense. Methamphetamine and powder cocaine were the most common drugs involved in the offenses committed by the offenders who appear to be eligible to seek a reduced sentence under the amendment. Offenses involving one or the other of these two drugs accounted for more than half of the offenses in this analysis.

Offenses involving crack cocaine accounted for 18.7 percent of the offenses in this analysis. Approximately 17 percent of the crack cocaine offenders eligible to seek a reduced sentence under the 2014 amendment previously received reduced sentences pursuant to retroactive application of the 2007 crack cocaine amendment<sup>27</sup> or the 2011 FSA guideline amendment,<sup>28</sup> or both.

**Table 4A**  
**Primary Drug Type for**  
**Eligible Offenders**  
**(FY1992 through FY2015)**

<b>Primary Drug Type</b>	<b>N</b>	<b>%</b>
<b>TOTAL</b>	<b>50,782</b>	<b>100.0</b>
Methamphetamine	14,066	27.7
Powder Cocaine	13,902	27.4
Crack Cocaine	9,475	18.7
Marijuana	6,870	13.5
Heroin	3,814	7.5
Oxycodone	1,523	3.0
Other	1,132	2.2

There were 359 cases without a primary drug type listed. Some of these cases were sentenced under the §2D1.11 guideline and involved precursor chemicals.

Total percentages may not add to exactly 100% due to rounding.

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

<sup>27</sup> USSG, App. C, Amend. 713 (effective Mar. 3, 2008) (adding Amendment 706 as amended by Amendment 711 to the list of amendments in subsection (c) of USSG §1B1.10 that apply retroactively).

<sup>28</sup> USSG, App. C, Amend. 759 (effective Nov. 11, 2011) (adding Amendment 750 to the amendments listed in subsection (c) of USSG §1B1.10 that apply retroactively).

Table 4B presents information about selected offense-related factors that contributed to the sentence originally imposed on each offender, as well as the criminal history categories of these offenders, and the extent to which their original sentences were within the applicable guideline ranges.

**Table 4B**  
**Guideline Sentencing Characteristics, Criminal History, and**  
**Position Relative to the Guideline Range of Eligible Offenders**  
**(FY1992 through FY2015)**

<b><u>CHARACTERISTICS</u></b>		
<b>Average Base Offense Level</b>		<b>31</b>
<b>Weapon Specific Offense Characteristic</b>	10,290	20.1%
<b>Firearms Mandatory Minimum Applied</b>	5,404	10.6%
<b>Safety Valve §5C1.2</b>	9,919	19.5%
<b>Aggravating Role §3B1.1</b>	7,968	15.6%
<b>Mitigating Role §3B1.2</b>	3,180	6.2%
<b>Obstruction Adjustment §3C1.1</b>	2,506	4.9%
<b>Career Offender Status §4B1.1</b>	401	0.8%
<b><u>Criminal History Category</u></b>		
<b>I</b>	20,178	39.5%
<b>II</b>	6,946	13.6%
<b>III</b>	10,009	19.6%
<b>IV</b>	5,862	11.5%
<b>V</b>	3,581	7.0%
<b>VI</b>	4,565	8.9%
<b>Total</b>	<b>51,141</b>	<b>100.0%</b>
<b><u>Sentence Relative to the Guideline Range</u></b>		
<b>Within Range</b>	30,081	58.9%
<b>Above Range</b>	1,009	2.0%
<b>Substantial Assistance §5K1.1</b>	14,588	28.6%
<b>Otherwise Below Range</b>	5,383	10.5%
<b>Total</b>	<b>51,061</b>	<b>100.0%</b>

The analysis involves a total of 51,141 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.

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

5. Sentencing guidelines affected by retroactive application of the amendment

Table 5 provides a list of the sentencing guidelines that the courts applied at the time the offenders eligible for a reduction in sentence pursuant to the retroactive amendment were initially sentenced and which would be affected by retroactive application of the 2014 drug guidelines amendment. In the vast majority of these cases, the court determined that USSG §2D1.1 was the primary sentencing guideline.<sup>29</sup>

**Table 5**  
**Affected Sentencing Guideline for**  
**Eligible Offenders**  
**(FY1992 through FY2015)**

Guideline	N	%
<b>TOTAL</b>	<b>51,141</b>	<b>100.0</b>
§2D1.1	48,880	95.6
§2D1.2	1,751	3.4
§2D1.5	62	0.1
§2D1.6	1	0.0
§2D1.8	21	0.0
§2D1.10	29	0.1
§2D1.11	397	0.8
§2D1.14	0	0.0

Total percentages may not add to exactly 100% due to rounding.

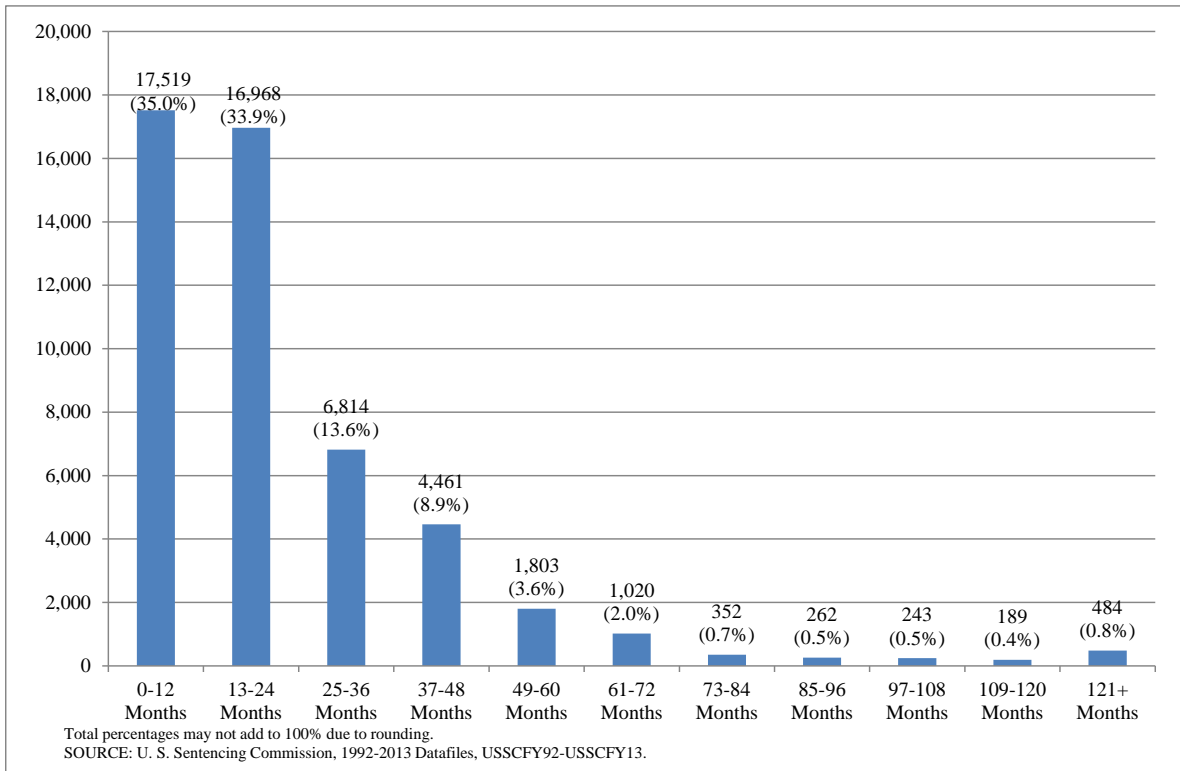
SOURCE: U. S. Sentencing Commission, 1992 - 2013 Datafiles, USSCFY92 - USSCFY13.

6. Extent of possible sentence reduction

As discussed above, the average extent of reduction for all offenders who are eligible for a reduced sentence under the 2014 drug guidelines amendment is 18.4 percent. Table 6 shows the distribution of the extent of the possible reduction in sentence for all offenders. Thirty-five percent of offenders would receive a sentence reduction of one year or less. Conversely, 4.9 percent would receive a sentence reduction of more than 60 months.

<sup>29</sup> In cases involving multiple counts of conviction, the court may apply more than one guideline in order to determine the applicable guidelines sentence. *See* USSG § 1B1.1. The guideline used in the calculation that provides the highest sentencing range is considered to be the “primary guideline.”

**Table 6**  
**Extent of Possible Sentence Reduction**  
**(FY1992 through FY2015)**



7. Projected release dates

Based on the assumptions discussed below, the offenders who appear to be eligible to seek a reduced sentence under 18 U.S.C. § 3582(c)(2) if the amendment were made retroactive are projected to be eligible for release at various times over a period of more than 30 years. Approximately one-quarter (25.4%) of the offenders (for whom the Commission had sufficient data to perform this analysis<sup>30</sup>) are projected to be released at various points within the first year after November 1, 2014, if the amendment were made retroactive as of that date. Conversely, approximately 24.4 percent of the eligible offenders are projected to remain incarcerated during the first five years. ORD estimates that 395 offenders will be released who would otherwise die in prison if the amendment were not made retroactive.<sup>31</sup>

Table 7 shows the projected release dates for these offenders by year and compares them to the estimated release dates for these same offenders if the amendment were not made

<sup>30</sup> See *supra* note 25.

<sup>31</sup> ORD uses life expectancy data in determining the length of incarceration that offenders will serve. See *infra* notes 33-47 and accompanying text.

retroactive. As can be seen on this table, if the amendment were fully retroactive on November 1, 2014, 4,571 offenders would be eligible for immediate release.<sup>32</sup> Within the first year of the effective date of the amendment, a total of 12,749 offenders would be eligible for release; which is 7,962 more than the number of offenders who will be released under their current sentence.

**Table 7**  
**Projected Year of Release for Eligible Offenders**  
**(FY1992 through FY2015)**

<b>Release Date</b>	<b>IF AMENDMENT RETROACTIVE N</b>	<b>IF AMENDMENT NOT RETROACTIVE N</b>
<b>Immediate Release</b>	4,571	--
<b>within 1 yr</b>	8,178	4,787
<b>within 2 yr</b>	8,535	7,606
<b>within 3 yr</b>	6,936	7,465
<b>within 4 yr</b>	5,474	6,198
<b>within 5 yr</b>	4,168	5,295
<b><u>within 6 yr +</u></b>	12,253	18,764

Of the 51,141 offenders who appear to be eligible for relief under the amendment, Commission records contained sufficient information to perform this analysis for 50,115 offenders.

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

Table 8 (attached as an appendix) presents this information for each judicial district.

### III. HOW THE ANALYSIS WAS PERFORMED

#### A. Methodology

The methodology for this analysis is based on the Commission’s Prison Impact Model, which has been in use in some form since the guidelines were first developed. This model is used to estimate the impact of proposed statutory and guideline amendments on newly sentenced offenders and to project the future impact those amendments will have on bed space in the BOP. For this analysis, those offenders who appear to be eligible to receive a reduced sentence were hypothetically “resentenced” with the computer program as if the amendment had been in effect in the year in which they were sentenced. A new release date for each offender also was calculated in order to determine when the offender would be eligible for release if he or she were to receive the full reduction in sentence provided by the amendment.

<sup>32</sup> Approximately 25% (1,154) of the offenders eligible for immediate release are non-citizens.



## B. The Offender Population Studied

The Bureau of Prisons provided ORD with a datafile of inmates who were in the custody of the BOP on Jan 25, 2014. That file contained information about approximately 189,000 offenders. Approximately 184,000 of these offenders were sentenced between fiscal year 1992 and fiscal 2013.<sup>33</sup> ORD was able to match 171,765 of these offenders to Commission records.<sup>34</sup> Of these, 138,894 were estimated to remain incarcerated on November 1, 2014.

In order to approximate the number of offenders who will be sentenced in fiscal year 2014, the Commission used the FY2013 datafile and moved all sentence dates forward by one year. ORD then determined which of these offenders would be incarcerated on November 1, 2014. This process added another 40,178 offenders into the analysis.

In order to approximate the number of offenders who will be sentenced in October, 2014 (the first month of fiscal year 2015), ORD used data from cases involving offenders sentenced in September, 2013, the most recent month in the FY2013 datafile. ORD used this data in order to better reflect the changing composition of drug cases in the federal system.<sup>35</sup> ORD changed the sentence dates for those cases from dates in September, 2013 to dates in October, 2014. ORD then determined which of these offenders would be incarcerated on November 1, 2014. This process added another 3,683 offenders into the analysis.

Among these three groups, the Commission's analysis included data on 179,508 offenders. One-third of them (28.5%) were found to be eligible to seek a reduced sentence under the amendment.

## C. Assumptions

In performing the analysis, ORD was required to make some assumptions (set forth below) concerning the decisions that Congress and the courts would make in determining whether, and to what extent, to reduce the sentences of offenders eligible to receive a modification of sentence pursuant to the amendment. These assumptions may not hold in every case.

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<sup>33</sup> See *supra* note 24.

<sup>34</sup> BOP records for approximately 12,000 offenders could not be matched to Commission records for one or more reasons, primarily missing or inconsistent information on offender name, sentence date, or other identifying information. Some of these offenders may be eligible to seek a reduced sentence pursuant to the 2014 drug guidelines amendment.

<sup>35</sup> Compare, e.g., 2012 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS 11 (2013) (19.5% of all drug cases involved methamphetamine) with 2013 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS S-11 (2014) (21.8% of all drug cases involve methamphetamine).

1. Eligibility for the amendment

We have assumed that the 2014 drug guidelines amendment would not be disapproved by Congress and would become effective on November 1, 2014.<sup>36</sup> We have also assumed that the courts would resentence offenders in a manner that is consistent with the *Guidelines Manual* in effect as of November 1, 2014.

Accordingly, a case was determined eligible for retroactive application of the amendment if it met the following criteria:

(A) the guidelines range that applied in the case was determined under one of the drug guidelines affected by the amendment;<sup>37</sup>

(B) in cases where the court determined the base offense level by using the Drug Quantity Table at USSG §2D1.1:

(1) the base offense level was greater than level 12 for offenses involving heroin, cocaine, cocaine base, PCP, methamphetamine, amphetamine, LSD, or fentanyl;<sup>38</sup>

(2) the base offense level was greater than level 8 for offenses involving flunitrazepam;<sup>39</sup>

(3) the base offense level was greater than level 6 for offenses involving marijuana, hashish, ketamine, Schedule I or II Depressants, Schedule III Hydrocodone, Schedule III substances (other than Ketamine and Hydrocodone), Schedule IV substances (except flunitrazepam), and Schedule V substances;<sup>40</sup>

(C) in cases where the court determined the base offense level by using either of the quantity tables at USSG §2D1.11, the base offense level was greater than level 12;<sup>41</sup>

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<sup>36</sup> The Commission's 2014 drug guidelines amendment was submitted to Congress on April 30, 2014. It will become effective on November 1, 2014 unless Congress acts to disapprove the amendment. *See* 28 U.S.C. § 994(p).

<sup>37</sup> The drug guidelines affected by the 2014 drugs guideline amendment are: USSG §§2D1.1, 2D1.2, 2D1.5, 2D1.6, 2D1.8, 2D1.10, 2D1.11, and 2D1.14. *See also* Table 5, *infra*.

<sup>38</sup> Offenses involving these drugs at a base offense level of 12 were unaffected by the 2014 drug quantity amendment because the base offense level that applied in those cases is unchanged.

<sup>39</sup> Offenses involving flunitrazepam at a base offense level of 8 were unaffected by the 2014 drug quantity amendment because the base offense level that applied in those cases is unchanged.

<sup>40</sup> Offenses involving these drugs at a base offense level of 6 were unaffected by the 2014 drug quantity amendment because the base offense level that applied in those cases is unchanged.

<sup>41</sup> Offenses involving these chemicals at a base offense level of 12 were unaffected by the 2014 drug quantity amendment because the base offense level that applied in those cases is unchanged.

(D) the base offense level was not level 43;<sup>42</sup>

(E) the offender's final offense level was not derived from the career offender or armed career criminal guideline;<sup>43</sup>

(F) the offender's original sentence was greater than any applicable statutory mandatory minimum punishment, unless the offender received relief from the mandatory minimum punishment pursuant to the statutory safety valve<sup>44</sup> or the offender received a departure for substantial assistance<sup>45</sup> when originally sentenced;<sup>46</sup> and

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<sup>42</sup> Offenders sentenced under USSG §2D1.1(a)(1) with a BOL of 43: (1) were convicted under 21 U.S.C § 841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 21 U.S.C. § 960(b)(1), (b)(2), or (b)(3); and (2) the offense of conviction establishes that death or serious bodily injury resulted from use of the substance and that the defendant committed the offense after one or more prior convictions for a similar offense. The BOL in these cases will not be affected by the 2014 drug guidelines amendment because the BOL was not based on drug quantity. In contrast, offenders sentenced under USSG §2D1.1(a)(2) (*i.e.*, those with a BOL of 38 who were convicted under 21 U.S.C § 841(b)(1)(A), (b)(1)(B), or (b)(1)(C), or 21 U.S.C. § 960(b)(1), (b)(2), or (b)(3) and whose offense of conviction establishes that death or serious bodily injury resulted from use of the substance) are included in this analysis because the Commission's data do not currently distinguish those offenders and offenders who received a BOL of 38 as determined under USSG §2D1.1(a)(3). This fact could result in a slight overestimate of the number of offenders affected by the amendment.

<sup>43</sup> In cases where the offender is classified as a career offender or an armed career criminal under USSG §4B1.1 and §4B1.4 of the guidelines, the final offense level that applies in the case is the level determined pursuant to either these guideline provisions or the applicable Chapter 2 and Chapter 3 guidelines, whichever is higher. Offenders for whom the original final offense level was controlled by the career offender or armed career criminal sections of the guidelines, therefore, were excluded from the analysis because the 2014 amendment will not affect their sentencing range.

<sup>44</sup> 18 U.S.C. § 3553(f) (incorporated into the guidelines at USSG §5C1.2).

<sup>45</sup> 18 U.S.C. § 3553(e); USSG §5K1.1 (Substantial Assistance to Authorities).

<sup>46</sup> Offenders sentenced at the applicable mandatory minimum term of imprisonment, who did not receive relief under the statutory safety valve or who did not receive a substantial assistance departure were excluded because their sentence cannot be reduced below the existing mandatory minimum punishment. Despite a reduction in their guideline level based on the amendment, these offenders were originally sentenced to the shortest sentence of imprisonment available to the court, the statutory minimum for the offense.

The Commission's data do not reflect any reduction in sentence that may have occurred after the date of the original sentence, for example, pursuant to Federal Rule of Criminal Procedure 35(b) based on an offender's substantial assistance to the government. Under this rule, the court may sentence an offender below any otherwise applicable mandatory minimum term of imprisonment. Therefore, an offender who received a sentence reduction pursuant to Rule 35(b) would be eligible to seek a reduced sentence under the amendment if it were to be made retroactive (assuming all other criteria above are met). Commission data do not include the information necessary to determine which offenders originally sentenced at a mandatory minimum term of imprisonment receive a reduced sentence pursuant to Rule 35(b) after the original sentence was imposed. Therefore, ORD's estimate of the number of offenders who appear to be eligible to seek a reduced sentence may underestimate the actual number of such offenders.

(G) the offender's original sentence was greater than the minimum of the amended guideline range, unless the offender received a departure for substantial assistance when originally sentenced.<sup>47</sup>

## 2. Other assumptions

ORD made additional assumptions in order to conduct this analysis. For example, ORD assumed that the sentence for each offender would be reduced based on the maximum good conduct credit allowed by the BOP and that offenders would serve the lesser of the newly calculated sentence or their life expectancies. ORD also assumed that the effective date of retroactivity for the 2014 drug guideline amendment would be November 1, 2014. Therefore, only offenders incarcerated as of that date would be eligible to seek a reduction in sentence pursuant to the amendment. Finally, ORD assumed that the Commission's 2014 amendment to USSG § 1B1.10 also would become effective on November 1, 2014<sup>48</sup> and that courts would apply the 2014 drug guideline amendment in accordance with section 1B1.10 as amended by the 2014 amendment to that policy statement.

## IV. CONCLUSION

The Commission staff estimates that if the Commission were to authorize the retroactive application of the 2014 drug guidelines amendment, 51,141 offenders who will be incarcerated in the federal prison system on November 1, 2014 would be eligible to seek a reduction in their current sentence. If the courts were to grant the full reduction in sentence possible in each case, the average reduction in sentence would be 18.4 percent. Approximately 4,600 offenders would be eligible for immediate release on November 1, 2014. The total savings to the Federal Bureau of Prisons from the retroactive application of the amendment would be 83,525 bed years, realized over a period of several years.

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<sup>47</sup> See USSG § 1B1.10(b)(2)(A) (Except as provided in subdivision (B), the court shall not reduce the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement to a term that is less than the minimum of the amended guideline range . . . ). There were 9,254 cases excluded from the analysis based on this assumption. Although the term of imprisonment in these cases was based on a sentencing range that would be lowered by the 2014 drug guidelines amendment, the original sentence imposed is equal to or less than the minimum of the amended guideline range. In none of these cases did the court grant a departure for substantial assistance to the government.

<sup>48</sup> The Commission's amendment to USSG § 1B1.10 was submitted to Congress on April 30, 2014. It will become effective on November 1, 2014 unless Congress acts to disapprove the amendment. See 28 U.S.C. § 994(p).

# **Appendix**

**Table 8**  
**Possible Release Timing for Retroactive Eligible Offenders by District**  
**(FY1992 through FY2015)**

CIRCUIT District	Eligible for Immediate Release 11/01/14		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
<b>TOTAL</b>	<b>4,571</b>	<b>9.1</b>	<b>8,178</b>	<b>16.3</b>	<b>8,535</b>	<b>17.0</b>	<b>6,936</b>	<b>13.8</b>	<b>5,474</b>	<b>10.9</b>	<b>4,168</b>	<b>8.3</b>	<b>12,253</b>	<b>24.4</b>	<b>50,115</b>
D.C. CIRCUIT	15	7.0	27	12.6	37	17.3	38	17.8	27	12.6	12	5.6	58	27.1	214
District of Columbia	15	7.0	27	12.6	37	17.3	38	17.8	27	12.6	12	5.6	58	27.1	214
FIRST CIRCUIT	118	5.2	252	11.1	412	18.1	388	17.0	340	14.9	256	11.2	511	22.4	2,277
Maine	14	7.0	50	25.0	45	22.5	32	16.0	21	10.5	19	9.5	19	9.5	200
Massachusetts	10	5.2	27	14.1	37	19.4	33	17.3	19	9.9	16	8.4	49	25.7	191
New Hampshire	6	9.0	10	14.9	21	31.3	14	20.9	5	7.5	1	1.5	10	14.9	67
Puerto Rico	81	4.7	150	8.7	296	17.1	290	16.8	279	16.2	214	12.4	416	24.1	1,726
Rhode Island	7	7.5	15	16.1	13	14.0	19	20.4	16	17.2	6	6.5	17	18.3	93
SECOND CIRCUIT	186	8.4	385	17.3	379	17.0	327	14.7	264	11.9	196	8.8	489	22.0	2,226
Connecticut	24	8.1	48	16.2	67	22.6	50	16.9	31	10.5	32	10.8	44	14.9	296
New York															
Eastern	32	10.1	43	13.6	49	15.5	66	20.8	43	13.6	21	6.6	63	19.9	317
Northern	20	6.5	69	22.3	58	18.8	53	17.2	39	12.6	29	9.4	41	13.3	309
Southern	68	8.3	135	16.4	132	16.0	104	12.6	101	12.3	65	7.9	219	26.6	824
Western	35	9.0	73	18.7	52	13.3	43	11.0	43	11.0	37	9.5	107	27.4	390
Vermont	7	7.8	17	18.9	21	23.3	11	12.2	7	7.8	12	13.3	15	16.7	90
THIRD CIRCUIT	122	8.2	254	17.2	268	18.1	198	13.4	160	10.8	120	8.1	357	24.1	1,479
Delaware	2	4.3	14	29.8	9	19.1	8	17.0	2	4.3	1	2.1	11	23.4	47
New Jersey	35	9.4	76	20.4	83	22.3	57	15.3	38	10.2	26	7.0	57	15.3	372
Pennsylvania															
Eastern	39	7.6	57	11.2	73	14.3	65	12.7	63	12.3	46	9.0	168	32.9	511
Middle	39	12.3	62	19.6	59	18.6	40	12.6	36	11.4	31	9.8	50	15.8	317
Western	5	2.5	41	20.7	38	19.2	23	11.6	16	8.1	12	6.1	63	31.8	198
Virgin Islands	2	5.9	4	11.8	6	17.6	5	14.7	5	14.7	4	11.8	8	23.5	34
FOURTH CIRCUIT	590	9.1	890	13.7	949	14.6	811	12.5	683	10.5	559	8.6	1,999	30.8	6,481
Maryland	42	6.9	96	15.8	101	16.6	102	16.7	80	13.1	49	8.0	139	22.8	609
North Carolina															
Eastern	86	7.4	106	9.1	147	12.6	142	12.2	122	10.5	112	9.6	451	38.7	1,166
Middle	48	10.6	63	14.0	88	19.5	50	11.1	44	9.8	36	8.0	122	27.1	451
Western	90	13.2	93	13.6	118	17.3	82	12.0	60	8.8	63	9.2	177	25.9	683
South Carolina	86	8.5	111	11.0	117	11.6	116	11.5	118	11.7	109	10.8	349	34.7	1,006
Virginia															
Eastern	106	8.8	127	10.5	126	10.5	145	12.0	121	10.0	98	8.1	481	40.0	1,204
Western	71	10.1	124	17.6	100	14.2	83	11.8	73	10.4	49	7.0	204	29.0	704
West Virginia															
Northern	42	10.7	106	27.0	86	21.9	51	13.0	37	9.4	29	7.4	41	10.5	392
Southern	19	7.1	64	24.1	66	24.8	40	15.0	28	10.5	14	5.3	35	13.2	266

**Table 8**  
**Possible Release Timing for Retroactive Eligible Offenders by District**  
**(FY1992 through FY2015)**

CIRCUIT District	Eligible for Immediate Release 11/01/14		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
FIFTH CIRCUIT	1,098	9.6	2,109	18.4	2,020	17.6	1,562	13.6	1,180	10.3	897	7.8	2,619	22.8	11,485
Louisiana															
Eastern	36	10.7	35	10.4	56	16.7	47	14.0	37	11.0	31	9.2	94	28.0	336
Middle	16	12.5	20	15.6	24	18.8	20	15.6	12	9.4	8	6.3	28	21.9	128
Western	29	10.6	35	12.8	35	12.8	49	17.9	29	10.6	19	6.9	78	28.5	274
Mississippi															
Northern	14	8.1	33	19.2	33	19.2	23	13.4	22	12.8	14	8.1	33	19.2	172
Southern	24	6.6	54	14.8	54	14.8	50	13.7	44	12.0	24	6.6	116	31.7	366
Texas															
Eastern	101	6.7	197	13.1	209	13.9	203	13.5	182	12.1	142	9.5	468	31.2	1,502
Northern	147	10.0	169	11.5	179	12.2	183	12.5	150	10.2	124	8.5	512	35.0	1,464
Southern	325	9.9	667	20.2	676	20.5	465	14.1	335	10.2	252	7.6	576	17.5	3,296
Western	406	10.3	899	22.8	754	19.1	522	13.2	369	9.3	283	7.2	714	18.1	3,947
SIXTH CIRCUIT	393	8.5	807	17.5	913	19.9	711	15.5	513	11.2	361	7.8	901	19.6	4,599
Kentucky															
Eastern	44	7.2	109	18.0	123	20.3	117	19.3	64	10.5	47	7.7	103	17.0	607
Western	30	10.8	50	18.1	62	22.4	36	13.0	34	12.3	23	8.3	42	15.2	277
Michigan															
Eastern	47	11.1	73	17.2	76	17.9	52	12.2	57	13.4	32	7.5	88	20.7	425
Western	37	9.9	46	12.3	61	16.3	49	13.1	38	10.1	28	7.5	116	30.9	375
Ohio															
Northern	63	10.7	111	18.8	131	22.2	90	15.2	63	10.7	45	7.6	88	14.9	591
Southern	37	7.5	114	23.1	101	20.5	77	15.6	56	11.4	36	7.3	72	14.6	493
Tennessee															
Eastern	71	6.1	177	15.1	231	19.7	203	17.3	132	11.3	103	8.8	256	21.8	1,173
Middle	15	9.1	31	18.8	30	18.2	21	12.7	23	13.9	17	10.3	28	17.0	165
Western	49	9.9	96	19.5	98	19.9	66	13.4	46	9.3	30	6.1	108	21.9	493
SEVENTH CIRCUIT	274	9.5	343	11.9	437	15.1	389	13.5	292	10.1	252	8.7	899	31.2	2,886
Illinois															
Central	49	11.8	39	9.4	51	12.3	38	9.1	32	7.7	30	7.2	177	42.5	416
Northern	71	10.0	86	12.1	93	13.1	101	14.2	75	10.5	59	8.3	226	31.8	711
Southern	26	5.2	43	8.6	63	12.6	48	9.6	58	11.6	77	15.4	185	37.0	500
Indiana															
Northern	31	8.8	50	14.1	73	20.6	68	19.2	28	7.9	21	5.9	83	23.4	354
Southern	31	7.0	50	11.2	53	11.9	72	16.1	56	12.6	35	7.8	149	33.4	446
Wisconsin															
Eastern	38	12.9	50	16.9	76	25.8	48	16.3	30	10.2	10	3.4	43	14.6	295
Western	28	17.1	25	15.2	28	17.1	14	8.5	13	7.9	20	12.2	36	22.0	164

**Table 8**  
**Possible Release Timing for Retroactive Eligible Offenders by District**  
**(FY1992 through FY2015)**

CIRCUIT District	Eligible for Immediate Release 11/01/14		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	436	9.5	660	14.4	739	16.1	626	13.7	502	11.0	401	8.8	1,217	26.6	4,581
Arkansas															
Eastern	21	5.8	63	17.4	75	20.7	45	12.4	46	12.7	41	11.3	72	19.8	363
Western	29	10.1	45	15.6	44	15.3	47	16.3	42	14.6	21	7.3	60	20.8	288
Iowa															
Northern	65	9.9	92	14.0	81	12.4	73	11.1	65	9.9	81	12.4	198	30.2	655
Southern	49	8.7	54	9.5	85	15.0	78	13.8	63	11.1	41	7.2	196	34.6	566
Minnesota	42	12.5	58	17.3	55	16.4	39	11.6	36	10.7	23	6.8	83	24.7	336
Missouri															
Eastern	74	11.8	128	20.4	124	19.7	95	15.1	53	8.4	42	6.7	112	17.8	628
Western	54	9.2	80	13.6	87	14.8	86	14.7	70	11.9	47	8.0	163	27.8	587
Nebraska	64	8.3	80	10.4	126	16.3	113	14.6	93	12.0	73	9.5	223	28.9	772
North Dakota	21	9.0	32	13.7	38	16.2	32	13.7	21	9.0	17	7.3	73	31.2	234
South Dakota	17	11.2	28	18.4	24	15.8	18	11.8	13	8.6	15	9.9	37	24.3	152
NINTH CIRCUIT	436	7.5	1,128	19.3	1,148	19.7	875	15.0	666	11.4	465	8.0	1,121	19.2	5,839
Alaska	11	5.7	36	18.8	34	17.7	27	14.1	24	12.5	19	9.9	41	21.4	192
Arizona	86	9.1	351	37.3	219	23.2	112	11.9	58	6.2	33	3.5	83	8.8	942
California															
Central	55	7.1	108	14.0	133	17.2	103	13.3	88	11.4	72	9.3	213	27.6	772
Eastern	49	6.6	94	12.8	132	17.9	124	16.8	98	13.3	82	11.1	158	21.4	737
Northern	30	9.2	65	19.9	52	16.0	49	15.0	37	11.3	28	8.6	65	19.9	326
Southern	30	4.0	116	15.4	176	23.3	135	17.9	129	17.1	68	9.0	101	13.4	755
Guam	4	9.5	7	16.7	9	21.4	5	11.9	5	11.9	1	2.4	11	26.2	42
Hawaii	34	11.1	49	16.0	54	17.6	37	12.1	29	9.4	28	9.1	76	24.8	307
Idaho	27	8.5	49	15.5	60	18.9	43	13.6	37	11.7	23	7.3	78	24.6	317
Montana	24	6.0	54	13.5	65	16.2	61	15.2	49	12.2	34	8.5	114	28.4	401
Nevada	18	5.8	59	18.8	56	17.9	59	18.8	36	11.5	17	5.4	68	21.7	313
Northern Mariana Islands	0	0.0	2	25.0	3	37.5	0	0.0	0	0.0	2	25.0	1	12.5	8
Oregon	17	7.2	46	19.6	50	21.3	43	18.3	28	11.9	13	5.5	38	16.2	235
Washington															
Eastern	18	8.2	36	16.4	41	18.7	35	16.0	23	10.5	24	11.0	42	19.2	219
Western	33	12.1	56	20.5	64	23.4	42	15.4	25	9.2	21	7.7	32	11.7	273



**Table 8**  
**Possible Release Timing for Retroactive Eligible Offenders by District**  
**(FY1992 through FY2015)**

CIRCUIT District	Eligible for Immediate Release 11/01/14		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	244	9.7	442	17.5	426	16.9	321	12.7	265	10.5	184	7.3	643	25.5	2,525
Colorado	10	3.7	47	17.2	48	17.6	46	16.8	33	12.1	18	6.6	71	26.0	273
Kansas	65	9.6	85	12.5	103	15.2	81	11.9	77	11.4	63	9.3	204	30.1	678
New Mexico	53	11.0	136	28.3	91	19.0	60	12.5	39	8.1	21	4.4	80	16.7	480
Oklahoma															
Eastern	9	7.7	20	17.1	20	17.1	8	6.8	15	12.8	13	11.1	32	27.4	117
Northern	20	12.0	26	15.7	31	18.7	21	12.7	22	13.3	9	5.4	37	22.3	166
Western	34	13.5	39	15.5	40	15.9	29	11.6	23	9.2	15	6.0	71	28.3	251
Utah	29	8.8	63	19.1	64	19.5	53	16.1	39	11.9	23	7.0	58	17.6	329
Wyoming	24	10.4	26	11.3	29	12.6	23	10.0	17	7.4	22	9.5	90	39.0	231
ELEVENTH CIRCUIT	659	11.9	881	16.0	807	14.6	690	12.5	582	10.5	465	8.4	1,439	26.1	5,523
Alabama															
Middle	25	13.5	34	18.4	17	9.2	29	15.7	21	11.4	18	9.7	41	22.2	185
Northern	54	16.9	53	16.6	40	12.5	34	10.7	34	10.7	30	9.4	74	23.2	319
Southern	50	12.9	74	19.1	71	18.3	48	12.4	29	7.5	31	8.0	85	21.9	388
Florida															
Middle	155	10.5	225	15.2	207	14.0	196	13.3	155	10.5	128	8.7	413	27.9	1,479
Northern	74	15.0	65	13.2	48	9.7	43	8.7	45	9.1	37	7.5	181	36.7	493
Southern	143	10.0	257	17.9	232	16.2	198	13.8	153	10.7	114	8.0	335	23.4	1,432
Georgia															
Middle	19	7.3	35	13.5	57	22.0	45	17.4	37	14.3	21	8.1	45	17.4	259
Northern	64	11.8	62	11.4	61	11.2	49	9.0	67	12.3	55	10.1	185	34.1	543
Southern	75	17.6	76	17.9	74	17.4	48	11.3	41	9.6	31	7.3	80	18.8	425

Of the 51,141 offenders identified as eligible for relief under the amendment, Commission records contained sufficient information to perform this analysis for 50,115 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 Tables); 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 trumps 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.