

Aug 29 2014

United States District Court
Northern District of Ohio
General Order

GENERAL ORDER NO. 2014-07

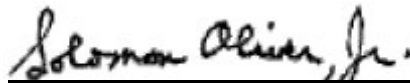
**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

APPOINTING THE OFFICE OF THE)	
FEDERAL PUBLIC DEFENDER FOR)	
THE NORTHERN DISTRICT OF OHIO)	
TO POTENTIALLY ELIGIBLE)	
INMATES WITH THE FUTURE)	ORDER NO. 2014-07
POSSIBILITY OF HAVING PRIVATE)	
OR CJA COUNSEL REPRESENT)	
THESE INMATES AS THE CLIENT,)	
LAWYER, OR COURT MAY LATER)	
DECIDE)	
)	

The Court hereby appoints the Office of the Federal Public Defender for the Northern District of Ohio to represent those inmates who have been identified as being potentially eligible for sentence reductions pursuant to the decision of the United States Sentencing Commission on July 18, 2014, U.S.S.G. § 2D1.1, as amended and codified as U.S.S.G. Amendment 782 (effective November 1, 2014). This Order shall also entitle the Office of the Federal Public Defender to have access to defendants' presentence investigation reports. In the event private counsel or previously-appointed CJA counsel wish to enter an appearance on behalf of a particular inmate, or the Court deems it more appropriate for prior counsel to represent the inmate, the attorney will file a notice of appearance on behalf of the inmate, and the Federal Public Defender will then seek to withdraw from the representation.

IT IS SO ORDERED.

FOR THE COURT



 SOLOMON OLIVER, JR.
 CHIEF JUDGE
 UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE THE INMATES SERVING : GENERAL ORDER NO. 2014-7
SENTENCES FOR DRUG OFFENSES :
WHO MAY BE ELIGIBLE FOR A : CHIEF JUDGE SOLOMON OLIVER JR.
SENTENCE REDUCTION UNDER :
UNITED STATES SENTENCING : UNOPPOSED REQUEST FOR A
GUIDELINE AMENDMENT 782 : GENERAL ORDER
:

On April 30, 2014, the Sentencing Commission passed an amendment to the sentencing guidelines. This amendment has become codified as U.S.S.G. Amendment 782, and revises the base offense levels for all drug trafficking offenses and the corresponding drug quantity table found in U.S.S.G. § 2D1.1 and § 2D1.11. On July 18, 2014, the Sentencing Commission voted to give Amendment 782 retroactive effect beginning November 1, 2014. The Sentencing Commission and the Office of Research and Data have found there are 46,376 inmates nationwide who are eligible for a sentence reduction under this amendment. As of August 7, 2014, the Bureau of Prisons currently houses 173,159 inmates.¹ This means that approximately 27% of all federal prisoners are eligible for a sentence reduction under Amendment 782. Attached is a memorandum from the Sentencing Commission detailing additional statistics. In the Northern District of Ohio alone, there are 512 eligible inmates. See Attachment, p. 5.

These 512 inmates need the guiding hand of counsel to properly advise them on their rights and eligibility for a sentence reduction motion under 18 U.S.C. § 3582(c)(2). We now seek a general

¹ Available at: http://www.bop.gov/about/statistics/population_statistics.jsp.

order from this Court to appoint the Office of the Federal Defender for the Northern District of Ohio ("FPD") to represent all potentially eligible inmates under this amendment. The government has indicated to us that it does not oppose this request. A proposed order is attached.

This Court has granted a similar order in regards to previous retroactive guideline amendments. On October 4, 2011, this Court appointed the FPD to represent all potentially-eligible inmates who qualified for a sentence reduction under 18 U.S.C. § 3582(c)(2) and U.S.S.G. Amendment 750 (eff. Nov. 1, 2011). See General Order 2011-24. The FPD asserted the legal interest of inmates who were potentially-eligible under that amendment. The FPD kept detailed files on all potentially-eligible inmates, and was even able to identify and represent inmates not identified by the Bureau of Prisons. By being the central location for all inmate inquiries on the effect of this amendment, the FPD was able to aid all inmates, the CJA panel, the Court itself, and the government in our collective efforts to apply the amended guidelines. The FPD believes these efforts to organize all potentially-eligible inmates made communication with all inmates much easier, and as a result, the number of *pro se* filings was reduced.

The FPD, however, recognizes an inmate may want their original counsel on this matter, or that a conflict arises in which the FPD is unable to represent the inmate. In that event, if private counselor previously appointed CJA counsel wishes to enter an appearance on behalf of a particular inmate, or the Court deems it more appropriate for prior counsel to represent the inmate, the Office of the Federal Defender will then seek to withdraw from the representation. The proposed order addresses this concern.

Accordingly, for the reasons set forth above, undersigned counsel moves this Court for a general order to appoint the Office of the Federal Defender for the Northern District of Ohio to

represent all potentially eligible inmates under U.S.S.G. Amendment 782. A proposed order is included with this motion.

Respectfully submitted,

s/ Dennis G. Terez

DENNIS G. TEREZ

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CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2014, a copy of the foregoing was filed with the Clerk's Office by means of hand-delivery. A copy was hand-delivered to United States Attorney, Steven M. Dettelbach, and Assistant United States Attorneys David Sierleja and Joseph Pinjuh.

s/ Dennis G. Terez

DENNIS G. TEREZ

Federal Public Defender

UNITED STATES SENTENCING COMMISSION
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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>	<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 8,394 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	%	
TOTAL	7,963	17.0	8,650	18.9	6,978	15.3	5,473	12.1	4,177	9.2	2,909	6.4	9,350	20.6	46,340
D.C. CIRCUIT District of Columbia	25	12.3	37	18.8	38	19.3	37	13.7	12	6.1	8	4.1	50	25.4	197
FIRST CIRCUIT	231	10.8	412	19.3	347	18.1	342	16.0	356	12.0	147	6.9	364	17.0	2,109
Missouri	38	18.1	47	27.1	31	18.7	22	13.3	19	11.4	7	4.2	17	7.2	166
Massachusetts	27	14.9	37	20.4	35	18.2	19	10.5	16	8.8	9	5.0	48	22.1	181
New Hampshire	11	17.7	21	33.0	14	22.6	5	8.1	1	1.6	3	4.8	7	11.3	62
New Mexico	149	9.1	295	17.0	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	113	5.9	371	18.5	2,001
Connecticut	45	18.7	67	24.8	51	18.9	31	13.5	32	11.9	18	6.7	25	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	291
Eastern	31	17.4	31	21.6	33	19.8	19	14.6	29	10.8	10	3.7	31	11.6	268
Northwest	20	17.9	18	21.6	33	19.8	24	14.6	12	10.8	4	3.7	18	15.3	123
Southern	126	16.0	132	17.6	104	13.7	101	13.3	65	8.4	48	6.3	171	22.6	757
Western	55	14.3	52	15.4	43	12.8	43	12.8	37	11.0	22	6.5	85	25.2	337
Vermont	6	11.0	22	20.9	11	14.5	7	9.2	12	15.8	6	7.9	6	14.3	76
THIRD CIRCUIT	302	15.8	267	28.4	198	15.1	160	12.2	120	9.2	74	5.4	284	21.7	1,330
Delaware	9	32.5	9	22.5	8	20.0	2	5.0	1	2.5	0	0.0	11	27.5	46
New Jersey	54	17.1	82	26.0	58	18.4	38	12.3	26	8.3	16	5.1	41	13.0	315
Pennsylvania	35	11.7	72	15.5	64	13.6	64	13.6	46	9.4	33	7.0	134	28.7	470
Eastern	65	23.1	59	21.0	40	14.2	26	17.6	31	11.8	7	2.5	43	15.3	281
Middle	19	11.1	38	22.2	23	13.5	15	8.8	12	7.0	15	8.8	66	28.7	171
Western	5	15.2	6	18.2	5	15.2	5	15.2	4	12.1	3	9.1	5	15.2	33
Virgin Islands	1,028	17.0	954	15.8	812	12.6	683	11.3	559	9.3	454	7.5	1,545	23.6	4,034
FOURTH CIRCUIT	85	15.3	102	18.3	102	19.3	80	14.4	49	8.5	17	6.6	102	18.3	517
Maryland	140	12.6	147	13.2	147	13.8	122	10.9	112	10.0	111	10.0	140	30.5	1,115
Eastern	86	20.1	89	20.8	50	11.7	44	10.3	26	5.4	29	6.8	92	21.8	427
Middle	150	22.3	118	18.2	82	12.6	40	9.2	63	9.7	20	5.2	137	21.1	650
Western	133	14.1	117	12.4	116	12.3	118	12.5	109	11.6	85	9.0	264	25.0	942
North Carolina	170	14.9	127	13.1	145	12.7	121	10.6	98	8.6	85	7.4	398	34.7	1,842
Eastern	134	20.5	100	15.6	63	12.9	73	11.4	49	7.6	44	6.8	160	24.9	643
Western	36	26.4	27	26.1	51	15.3	37	11.1	29	8.7	13	3.9	24	8.1	333
West Virginia	42	18.6	67	29.6	48	19.7	28	13.4	14	6.2	10	4.4	35	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 11/8/95		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	1,833	18.3	2,023	20.0	1,562	15.4	1,180	11.6	901	8.9	696	6.8	2,011	19.9	10,168
Louisiana															
Eastern	46	14.8	56	18.0	46	14.8	38	12.1	31	10.0	28	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	23	19.3	114
Western	57	21.3	35	13.1	49	18.4	29	10.9	19	7.1	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	159
Southern	46	18.8	52	15.6	52	15.6	44	13.2	24	7.2	24	7.2	92	27.5	324
Texas															
Eastern	210	14.3	209	14.8	203	14.3	183	13.0	142	10.0	101	7.3	167	15.9	1,413
Northern	220	16.1	179	12.1	183	13.4	150	11.0	124	9.1	109	8.0	403	29.5	1,348
Southern	539	19.3	680	23.7	462	16.1	334	11.6	253	8.9	145	5.1	432	15.1	2,867
Western	659	19.9	755	22.8	524	15.9	368	11.1	264	8.6	174	5.3	541	16.4	3,505
SIXTH CIRCUIT	739	17.9	913	22.1	709	17.1	514	12.4	362	8.7	266	6.4	637	15.4	4,139
Kentucky															
Eastern	92	14.8	123	22.5	116	21.2	64	13.7	48	8.8	30	5.5	73	13.4	546
Western	49	19.9	61	24.8	37	15.0	34	13.8	23	9.3	12	4.9	30	12.2	246
Michigan															
Eastern	75	19.3	77	20.3	52	13.7	57	15.0	32	8.4	16	4.2	32	19.0	379
Western	55	15.9	61	17.6	48	13.8	39	11.2	23	7.3	20	5.6	17	25.1	347
Ohio															
Northern	95	14.6	131	25.6	90	17.6	63	12.3	45	8.8	29	5.7	59	11.5	512
Southern	87	20.3	101	25.5	76	17.7	57	13.3	36	8.4	27	6.3	45	10.5	429
Tennessee															
Eastern	179	18.2	231	20.9	203	18.4	131	11.9	106	9.4	88	8.0	168	15.2	1,104
Middle	32	21.2	30	19.9	21	13.9	23	15.2	17	11.3	6	4.0	32	14.6	151
Western	77	18.3	98	23.1	66	15.5	46	10.8	30	7.1	27	6.4	81	19.3	425
SEVENTH CIRCUIT	455	16.7	437	16.0	389	14.3	292	10.7	252	9.1	210	7.7	689	23.3	2,726
Illinois															
Central	79	19.4	51	12.5	38	9.3	32	7.9	30	7.4	29	7.1	148	16.4	407
Northern	123	18.2	93	13.7	101	14.9	75	11.1	59	8.7	55	8.1	171	25.3	675
Southern	53	10.6	63	13.1	48	10.0	58	12.0	37	10.0	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	329
Southern	63	14.7	59	12.4	72	16.8	50	11.1	25	8.2	23	5.4	126	29.4	428
Wisconsin															
Eastern	45	17.9	26	10.2	48	19.9	30	11.9	19	4.0	14	6.3	37	10.7	252
Western	38	25.5	24	18.8	14	9.4	13	8.7	20	11.8	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 11/8/15		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	719	17.5	625	14.8	501	11.8	401	9.5	285	6.7	951	22.1	4,329
Arkansas	51	15.5	75	22.7	45	13.6	45	13.6	42	12.7	21	6.4	51	15.5	370
Eastern	45	17.4	44	17.0	47	18.1	42	16.2	21	8.1	19	7.1	41	15.8	259
Western															
Iowa	123	19.8	90	12.9	74	11.9	65	10.5	80	12.9	47	7.6	152	24.5	621
Northern	92	15.0	85	15.6	78	14.3	61	11.6	41	7.5	38	7.0	158	20.0	545
Southwest	75	24.1	55	17.7	39	12.5	36	11.6	23	7.4	22	7.1	61	19.6	311
Minnesota															
Missouri	130	23.4	123	22.1	96	17.3	53	9.5	42	7.6	24	4.3	88	15.8	356
Eastern	89	16.4	88	16.2	86	15.8	70	12.9	47	8.7	43	7.9	120	22.1	543
Western	41	12.6	127	17.6	112	13.7	43	12.9	73	10.1	47	6.5	176	24.4	720
Nebraska	30	14.2	38	18.0	32	15.2	31	10.0	17	8.1	12	5.7	61	28.9	211
North Dakota	24	19.5	24	18.0	18	13.5	13	9.8	15	11.3	13	9.0	25	18.8	133
South Dakota															
NINTH CIRCUIT	889	17.2	1,157	22.3	873	16.9	667	12.9	465	9.9	273	5.3	949	16.4	5,169
Alaska	36	19.9	24	18.8	27	14.0	24	13.3	19	10.3	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	68	10.1	651
California															
Central	114	15.7	124	18.5	103	14.2	86	12.2	72	9.9	44	6.1	169	23.3	724
Eastern	92	13.3	132	19.2	124	18.1	96	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	229
Southern	77	11.2	178	25.7	135	19.7	128	18.7	66	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	48	21.9	279
Idaho	48	16.6	40	20.8	43	14.9	37	12.8	25	8.0	10	3.5	68	23.4	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	294
Northern Mariana Islands	0	0.0	3	30.0	0	0.0	0	0.0	2	71.7	1	16.7	0	0.0	6
Oregon	40	18.0	50	23.4	43	20.3	28	13.2	13	6.1	14	6.6	24	11.3	212
Washington															
Eastern	39	19.1	41	20.1	35	17.2	23	11.3	24	11.8	17	8.3	25	12.3	204
Western	48	20.7	64	22.6	42	18.1	25	10.9	21	9.1	12	5.2	20	8.6	232

