

# **Virginia Criminal Sentencing Commission**

## **RECIDIVISM AMONG CERTAIN RELEASED FEDERAL PRISONERS**

**To The General Assembly**



**Commonwealth of Virginia**

**Richmond, December 30, 2016**

This page intentionally left blank.

# Commonwealth of Virginia

HON. EDWARD L. HOGSHIRE (RET.)  
CHAIRMAN



MEREDITH FARRAR-OWENS  
DIRECTOR

100 NORTH NINTH STREET  
RICHMOND, VIRGINIA 23219  
TEL (804) 225-4398  
FAX (804) 786-3934

## Supreme Court of Virginia Virginia Criminal Sentencing Commission

December 30, 2016

TO: The Honorable David B. Albo  
Chairman, House Courts of Justice Committee

The Honorable Mark D. Obenshain  
Chairman, Senate Courts of Justice Committee

The 2016 General Assembly adopted legislation directing the Virginia Criminal Sentencing Commission to conduct a special study of recidivism among certain released federal prisoners. Specifically, House Bill 1105 (Chapter 394 of the 2016 Acts of Assembly) directed the Commission to examine recidivism among released federal inmates whose sentences had been retroactively reduced pursuant to Amendments 782 and 788 of the US Sentencing Commission's Guidelines Manual and to calculate the recidivism rate of these offenders for crimes committed in the Commonwealth. The provisions of House Bill 1105 are in effect until January 1, 2018. The legislation requires the Commission to report to the Chairmen of the House and Senate Courts of Justice Committees by December 31 of each year until the directive expires.

This report documents the Commission's activities in relation to House Bill 1105 and it is respectfully submitted for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Edward L. Hogshire".

Edward L. Hogshire  
Circuit Judge, Ret.

This page intentionally left blank.

## **Preface**

During its 2016 Session, the General Assembly adopted legislation directing the Virginia Criminal Sentencing Commission to conduct a special study of recidivism among certain released federal prisoners. Specifically, House Bill 1105 (Chapter 394 of the 2016 Acts of Assembly) directed the Commission to examine recidivism among released federal inmates whose sentences had been retroactively reduced pursuant to Amendments 782 and 788 of the US Sentencing Commission's Guidelines Manual and to calculate the recidivism rate of these offenders for crimes committed in the Commonwealth. The provisions of House Bill 1105 are in effect until January 1, 2018. The legislation requires the Commission to report to the Chairmen of the House and Senate Courts of Justice Committees by December 31 of each year until the directive expires.

This document contains the Commission's report for 2016 and it is respectfully submitted to fulfill the requirements of Chapter 394 of the 2016 Acts of Assembly.

This page intentionally left blank.

## Table of Contents

	Page
Introduction .....	1
Background .....	2
Applications for Retroactive Sentence Reductions under Amendments 782/788 .....	4
Federal Inmates Released based on Retroactive Sentence Reductions .....	7
Previous Studies of Federal Offender Recidivism .....	9
Study Mandated by House Bill 1105 .....	11
References .....	15
Appendices	
Appendix 1: Legislative Directive .....	19

This page intentionally left blank.



## Introduction

During its 2016 Session, the General Assembly adopted legislation directing the Virginia Criminal Sentencing Commission to conduct a special study of recidivism among certain released federal inmates. Specifically, House Bill 1105 (Chapter 394 of the 2016 Acts of Assembly) directed the Commission to examine recidivism among released federal inmates whose sentences had been retroactively reduced pursuant to Amendments 782 and 788 of the US Sentencing Commission's Guidelines Manual and to calculate the recidivism rate of these offenders for crimes committed in the Commonwealth. The provisions of House Bill 1105 are in effect until January 1, 2018. The legislation requires the Commission to report to the Chairmen of the House and Senate Courts of Justice Committees by December 31 of each year until the directive expires.

As background for the study, the Commission reviewed the federal sentencing guidelines system, with particular focus on Amendments 782 and 788 of the US Sentencing Commission's Guidelines Manual. The Commission also examined recidivism studies completed by the US Sentencing Commission on other federal offender populations. To respond to the legislative mandate, the Commission must have a list of federal inmates who received retroactive sentence reductions under Amendments 782 and 788, along with personal identifiers for those individuals. The Commission has taken a number of steps in an attempt to acquire the necessary information. To date, however, the Commission has been denied access to the information needed to complete the study.

This report documents the Commission's activities in relation to House Bill 1105.

<b>2016 SESSION</b>	<b>REPRINT</b>
<b>CHAPTER 394</b>	
<i>An Act to direct the Virginia Criminal Sentencing Commission to calculate and report the recidivism rate for certain released federal prisoners.</i>	
[H 1105]	
Approved March 11, 2016	
<b>Be it enacted by the General Assembly of Virginia:</b>	
<b>1. § 1.</b> That the Virginia Criminal Sentencing Commission shall calculate annually the recidivism rate of federal prisoners released by the U.S. Bureau of Prisons whose sentences were retroactively reduced pursuant to Amendments 782 and 788 of the U.S. Sentencing Commission's Guidelines Manual for crimes committed in the Commonwealth. The Commission shall make a reasonable attempt to acquire the information necessary to complete the calculation from any available source, including any state or federal entity that has access to such information. The Commission shall report annually to the Chairmen of the House and Senate Committees for Courts of Justice (i) such recidivism rate no later than December 31 for the preceding 12-month period complete through the last day of October or (ii) if the Commission is unable to complete the calculation, any information regarding the recidivism rate of such prisoners as the Commission was able to acquire.	
<b>2. That the provisions of this act shall expire on January 1, 2018.</b>	

## **Background**

The Anti-Drug Abuse Act of 1986 enacted by Congress established the basic framework of statutory mandatory minimum penalties applicable to federal drug trafficking offenses. The quantities of drugs triggering the mandatory minimum penalties differed for various drugs and, in some cases, for different forms of the same drug (United States Sentencing Commission, 2007). As a result of the 1986 Act, federal law required a five-year mandatory minimum sentence for a first-time trafficking offense involving five grams or more of crack cocaine or 500 grams or more of powder cocaine. A ten-year mandatory minimum sentence applied for first-time traffickers who sold 50 grams or more of crack or 5,000 grams or more of powder cocaine. Because it took 100 times more powder cocaine than crack cocaine to trigger the five-year and ten-year mandatory penalties, this structure was referred to as the “100-to-1 drug quantity ratio” (United States Sentencing Commission, 2007). The United States Sentencing Commission (USSC), which was in the process of developing the initial federal sentencing guidelines in 1986, incorporated the mandatory minimum penalty structure into the guidelines. The USSC also set the guidelines based on the same 100-to-1 ratio for cocaine quantities above and below the mandatory minimum penalty thresholds. As a result, the federal sentencing guidelines were significantly higher for certain offenses involving crack cocaine compared to powder cocaine.

After nearly 20 years of mandatory federal sentencing guidelines, the US Supreme Court, in 2005, issued an opinion that rendered the federal guidelines advisory. This decision led to a series of court cases focused on the 100-to-1 crack-to-powder drug quantity ratio. The US Supreme Court ultimately held that a judge may consider the disparity between the guidelines’ treatment of crack and powder cocaine when determining a sentencing range and that the sentencing judge has the authority to substitute a crack-to-powder drug quantity ratio different than 100-to-1 to avoid that disparity (United States Sentencing Commission, 2015). In 2007, due to ongoing concern about the 100-to-1 crack-to-powder ratio, the USSC lowered the guidelines for crack cocaine offenses processed in federal courts. The USSC subsequently made the reduction applicable retroactively. Incarcerated federal offenders could then submit an application for a sentence reduction and federal courts had the authority to grant reductions in the sentences for federal inmates who had been sentenced under the higher crack cocaine guidelines. The USSC also recommended that Congress revise the mandatory minimum terms required by federal statutes for certain cocaine offenses.

In 2010, Congress enacted the Federal Fair Sentencing Act (FSA), which effectively reduced the 100-to-1 crack-to-powder ratio to 18-to-1. This legislation also removed the mandatory minimum penalty for simple possession of crack cocaine. The USSC incorporated the new 18-to-1 structure into the federal sentencing guidelines and approved the application of the change retroactively. The USSC also revised the guidelines in 2010 to better account for certain aggravating factors and the defendant’s role in the offense, as directed by Congress.

In 2014, following full implementation of the FSA, the USSC took additional steps by reducing the federal sentencing guidelines for all drug types, including crack cocaine, by two levels (Amendment 782 to the Sentencing Guidelines Manual). This change was also approved for retroactive application to federal offenders who had been sentenced under the prior guidelines structure (Amendment 788). Congress did not act to modify or countermand the change, and the amendment became effective on November 1, 2014. Amendment 782 was projected to reduce penalties for new drug cases by an average of 11 months for 70% of drug trafficking offenders (United States Sentencing Commission, *Policy Profile, Sensible Sentencing Reform: The 2014 Reduction of Drug Sentences*). The USSC also estimated that approximately 40,000 prisoners may be eligible to have their sentences reduced under Amendment 788 by an average of 2.1 years (18.8%). Amendments 782 and 788 are the focus of the directive outlined in House Bill 1105 adopted by the 2016 General Assembly.

Procedures were established for incarcerated federal inmates to apply for a retroactive sentence reduction under Amendments 782/788. In order to receive a reduction in sentence, eligible inmates must submit an application to the appropriate federal court. After considering all relevant factors, including the revised sentencing guidelines, the court determines whether a reduction in the term of imprisonment is warranted and, if so, the length of the sentence reduction that should be given. Courts began hearing motions for retroactive sentence reductions as of November 1, 2014, but no inmates were to be released for a year after the effective date of the amendment. This delay in release provided federal courts time to hear the large number of applications that were expected and carefully consider each case. It also allowed the federal probation system time to prepare for additional offenders to be released to community supervision. Releases of individuals whose sentences were reduced retroactively under Amendments 782/788 began on October 30, 2015.

## Applications for Retroactive Sentence Reductions under Amendments 782/788

According to the USSC, as of September 30, 2016, 43,491 federal inmates had submitted applications for a sentence reduction associated with Amendments 782/788 of the US Sentencing Commission’s Sentencing Guidelines Manual. Of those, federal courts have granted sentence reductions in approximately two-thirds of the applications (Figure 1). The remaining one-third were denied. Courts in the Fourth Circuit (which encompasses Maryland, North Carolina, South Carolina, Virginia and West Virginia) heard 6,598 of the total number of applications, granting roughly the same proportion as were approved nationally. In Virginia, federal judges approved a slightly higher proportion of the applications for sentence reductions (70.5%).

**Figure 1**  
**Applications for Retroactive Sentence Reductions under Amendments 782/788**  
**of the US Sentencing Commission’s Sentencing Guidelines Manual**  
**November 1, 2014 – September 30, 2016**

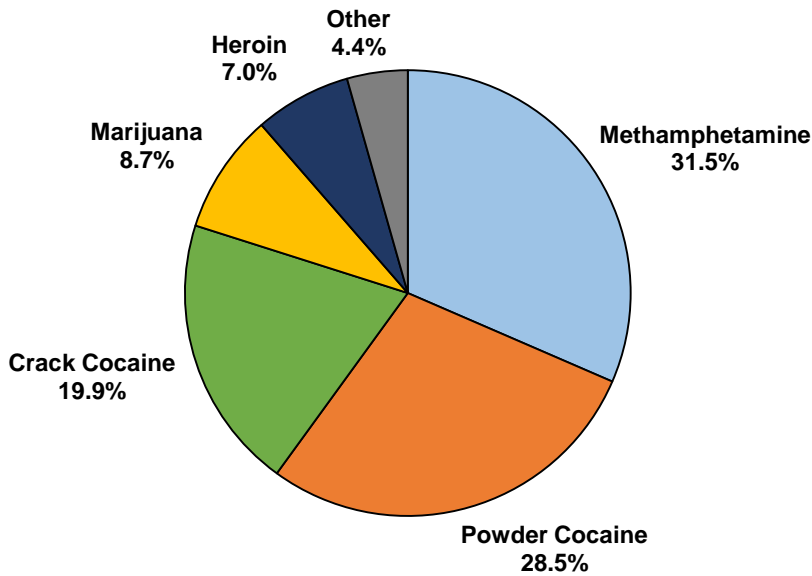
State	Number of Applications	Granted	Denied
Maryland	560	78.8%	21.3%
North Carolina	2,564	60.7%	39.3%
South Carolina	1,041	72.3%	27.7%
Virginia	1,975	70.5%	29.5%
West Virginia	458	83.4%	16.6%
Fourth Circuit	6,598	68.6%	31.4%
<b>US Total</b>	43,491	67.6%	32.4%

Note: Figures only include applications resolved by the court as of September 30, 2016.

Source: United States Sentencing Commission. (2016c). *US Sentencing Commission 2014 Drug Guidelines Amendment Retroactivity Data Report*.

Amendments 782/788 reduced the federal sentencing guidelines for all drug types by two levels. Of the federal inmates granted retroactive sentence reductions under Amendments 782/788, approximately one-third (31.5%) had been convicted of offenses involving methamphetamine (Figure 2). Offenders convicted of offenses involving powder cocaine and crack cocaine accounted for 28.5% and 19.9% of the granted applications, respectively. Marijuana, heroin, and other types of drugs were associated with smaller proportions of the offenders for whom a sentence reduction was granted.

**Figure 2**  
**Federal Inmates Granted Retroactive Sentence Reductions under Amendments 782/788**  
**of the US Sentencing Commission's Sentencing Guidelines Manual**  
**by Drug Type**  
**November 1, 2014 – September 30, 2016**



Source: United States Sentencing Commission. (2016c). *US Sentencing Commission 2014 Drug Guidelines Amendment Retroactivity Data Report*.

Nationally, for federal offenders granted a sentence reduction, the average sentence originally imposed (based on guidelines in place prior to Amendments 782/788) was 11.9 years (Figure 3). When federal courts granted a sentence reduction, the average reduction was 2.1 years. This is equivalent to a 17.2% reduction of the original sentence. For applications handled in the Fourth Circuit, the offenders had been originally sentenced to a slightly longer prison term on average (13.1 years); however, judges in the Fourth Circuit approved sentence reductions averaging 2.3 years, resulting in a 17.1% reduction of the original sentence, on average. Thus, the percentage reduction in the Fourth Circuit is very close to the national average. In Virginia, federal judges have approved sentence reductions of 16.8% on average.

**Figure 3**  
**Retroactive Sentence Reductions Granted under Amendments 782/788**  
**of the US Sentencing Commission’s Sentencing Guidelines Manual**  
**November 1, 2014 – September 30, 2016**

State	Applications Granted	Avg. Existing Sentence (Years)	Avg. Sentence Reduction (Years)	Avg. Sentence Reduction (Percent)
Maryland	437	11.3	2.0	17.0%
North Carolina	1,488	13.5	2.3	16.9%
South Carolina	718	13.4	2.5	17.9%
Virginia	1,336	13.9	2.3	16.8%
West Virginia	381	9.7	1.8	18.0%
Fourth Circuit	4,360	13.1	2.3	17.1%
US Total	28,544	11.9	2.1	17.2%

Note: Figures only include applications resolved by the court as of September 30, 2016. Analysis excludes cases that could not be matched back to the original case in the US Sentencing Commission’s records and cases in which the length of imprisonment after the reduction could not be determined.

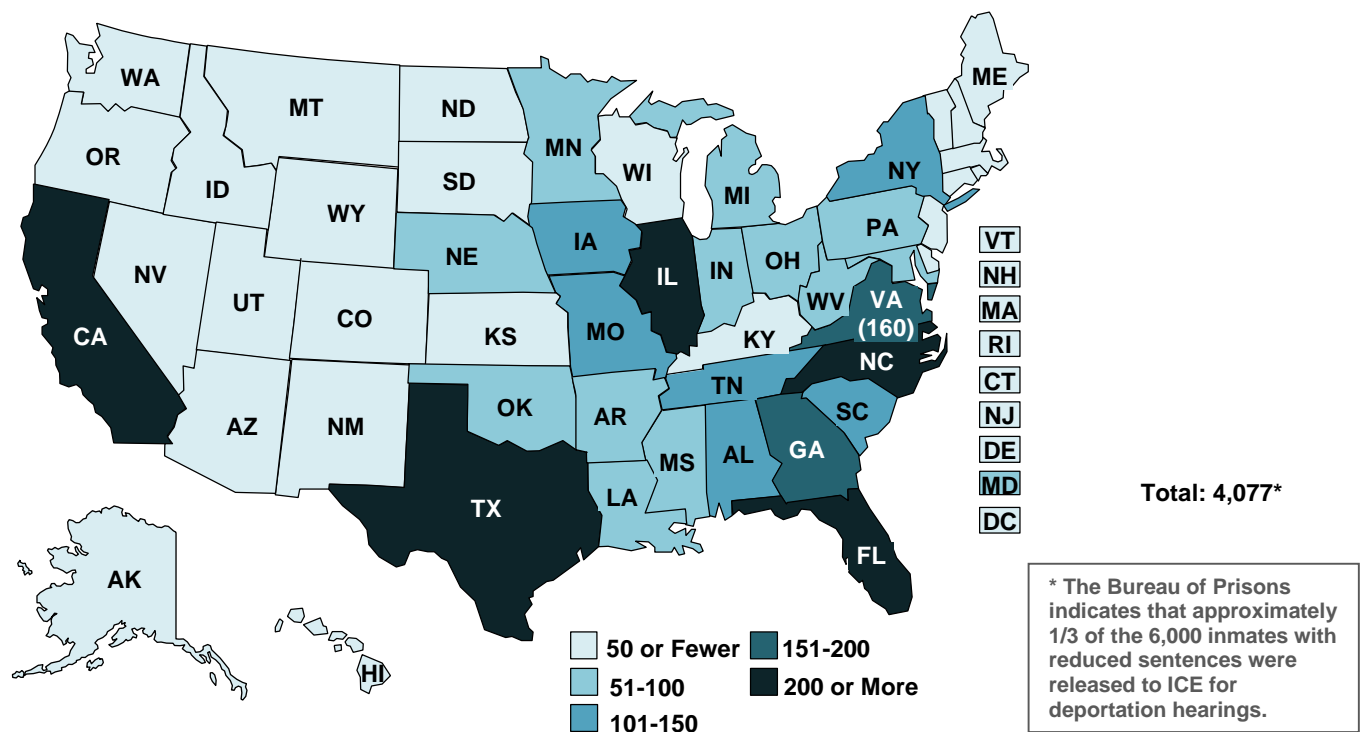
Source: United States Sentencing Commission. (2016c). *US Sentencing Commission 2014 Drug Guidelines Amendment Retroactivity Data Report*.

## Federal Inmates Released based on Retroactive Sentence Reductions Granted under Amendments 782/788

Approximately 6,000 federal offenders granted sentence reductions under Amendments 782/788 were released between October 30, 2015, and November 2, 2015. This represented the first wave of federal inmates to be released based on retroactive application of these Amendments. According to information provided by the Federal Bureau of Prisons to the Washington Post, approximately one-third of the 6,000 inmates granted reduced sentences were released to Immigration and Customs Enforcement (ICE) for deportation hearings (Horwitz, 2015). The states receiving the largest numbers of federal offenders in this first wave were Texas (578), Florida (295), Illinois (253), and California (229). However, nearly as many (218) were released to the state of North Carolina. Of the federal inmates released in the first wave, 160 were reportedly released to Virginia. Another 150 were discharged to Tennessee. Fewer than 100 inmates were released to each of the remaining states that share a border with Virginia. Figure 4 provides a visual comparison by state. Offenders are not necessarily released to the state in which they apply for a sentence reduction.

**Figure 4**  
Federal Inmates Released based on Retroactive Sentence Reductions under Amendments 782/788  
by State

First Wave: October 31, 2015 through November 1, 2015



Source: Horwitz, Sari. (2015). The US is set to release thousands of prisoners early. Here's where they're headed. *The Washington Post*. Retrieved from <https://www.washingtonpost.com/news/post-nation/wp/2015/10/07/the-u-s-is-set-to-release-thousands-of-prisoners-early-heres-where-theyre-headed/>.

After the first wave of federal inmates in 2015, the USSC estimated that an additional 8,550 federal inmates would be released by November 1, 2016 (Figure 5). Decreasing numbers of inmates were expected to be released in each subsequent year through November 1, 2020. However, a large number of inmates are not expected to be released until after November 1, 2020.

**Figure 5**  
**Estimated Number of Federal Inmates Expected To Be Released**  
**Based on Retroactive Sentence Reductions under Amendments 782/788**

<b>Estimated Number of Inmates</b>	<b>Projected Release Date (if Application Granted)</b>
8,550	Nov. 1, 2015 - Nov. 1, 2016
6,938	Nov. 1, 2016 - Nov. 1, 2017
5,473	Nov. 1, 2017 - Nov. 1, 2018
4,177	Nov. 1, 2018 - Nov. 1, 2019
2,909	Nov. 1, 2019 - Nov. 1, 2020
9,350	After Nov. 1, 2020

Source: United States Sentencing Commission. (2014b). *Summary of key data regarding retroactive application of the 2014 drug guidelines amendment.*

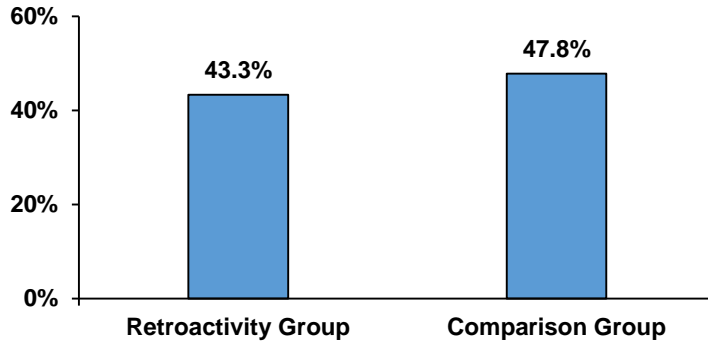


## **Previous Studies of Federal Offender Recidivism by the United States Sentencing Commission**

The USSC has conducted multiple studies of recidivism among federal offenders. In May 2014, the USSC published a report on recidivism rates of crack cocaine offenders who had been released based on retroactive application of the 2007 amendment to the US Sentencing Guidelines Manual. As described above, the 2007 change lowered the guidelines for crack cocaine offenses to address concerns about the 100-to-1 crack-to-powder ratio. In conjunction with this change, the USSC made the reduction applicable retroactively. In order to study the impact of retroactive sentence reductions on recidivism rates, the USSC analyzed the recidivism rate for a group of crack cocaine offenders whose sentences were reduced pursuant to retroactive application of the 2007 crack cocaine amendment. The results were compared to the rate of recidivism for a group of offenders who would have been eligible to seek a reduced sentence under the 2007 crack cocaine amendment but were released before the amendment took effect and, thus, served their full prison terms, less good time and other earned credits (US Sentencing Commission, 2014a). Released federal offenders were tracked for five years following discharge. Recidivism was defined as re-conviction for any new offense, re-arrest without case disposition information available, or revocation of probation/parole.

As of June 29, 2011, the federal courts had granted 16,511 motions (64.2% of the applications) for reduced sentences under the 2007 crack cocaine amendment. The recidivism rate for offenders released under the retroactively-applied guidelines change was 43.3%, while the recidivism rate for the comparison group offenders was 47.8%. The difference in recidivism rates was not statistically significant. Differences in the type of recidivism (new arrest versus revocation) were also not statistically significant. The USSC concluded that there was no evidence that offenders whose sentence lengths were reduced pursuant to retroactive application of the 2007 crack cocaine amendment recidivated at higher rates than the comparison group of crack cocaine offenders released before the effective date of the 2007 amendment (United States Sentencing Commission, 2014a).

**Figure 6**  
**Recidivism Rates among Released Federal Offenders:**  
**Offenders Who Received Retroactive Sentence Reductions under 2007 Crack Cocaine Amendment**  
**versus Offenders Released Prior to 2007 Amendment**



Note: Difference in rates is not statistically significant.

Source: United States Sentencing Commission. (2014a). *Recidivism among Offenders Receiving Retroactive Sentence Reductions: The 2007 Crack Cocaine Amendments*.

In March 2016, the USSC released a broader study of recidivism among federal inmates. This research expanded on the scope of previous USSC recidivism projects. In this study, the USSC examined 25,431 federal offenders released in 2005 and tracked these offenders for eight years post-release. The USSC examined three measures of recidivism: re-arrest (for a new crime or violation of supervised release), reconviction, and re-incarceration. It is important to note that none of these measures are equivalent to the measure of recidivism used for the 2014 study discussed above. Based on the 2016 study, the recidivism rate of federal offenders, as measured by re-arrest, was 42.1% after a five-year follow-up period and 49.3% after the full eight-year follow-up period (United States Sentencing Commission, 2016a). After tracking offenders for eight years, individuals whose federal offense involved firearms were most likely to be re-arrested (68.3%), followed by those whose original offense involved robbery (67.3%), immigration (55.7%), drug trafficking (49.9%), larceny (44.4%), and fraud (34.2%).

## **Study Mandated by House Bill 1105**

To respond to the legislative mandate established by House Bill 1105 (Chapter 394 of the 2016 Acts of Assembly), the Commission requires a list, in electronic format, of federal inmates who received retroactive sentence reductions under Amendments 782/788 of the US Sentencing Guidelines Manual. This list must include not only the names and release dates of the inmates but also personal identifiers, such as birthdate and social security number. This information is necessary in order to match the records to Virginia's criminal history information system maintained by the Virginia State Police. By matching records to the criminal history information (or "rap sheet") system, the Commission has the ability to identify new arrests and convictions associated with federal inmates who were granted reduced sentences under Amendments 782/788.

The Commission has taken a number of steps in an attempt to acquire the necessary information. An initial request submitted to the Federal Bureau of Prisons was denied. A Freedom of Information Act (FOIA) request was submitted to the Federal Bureau of Prisons in August 2016. The Commission's FOIA request was also denied. The response from the Bureau of Prisons is shown in Figure 7. In rejecting the Commission's FOIA request, the Bureau of Prisons stated that lists or rosters of federal inmates cannot be provided as they would disclose personal information concerning federal inmates and that "disclosure of such lists could threaten the safety and well-being of these individuals." According to the Bureau of Prisons, release of rosters and lists has been determined to be exempt from disclosure pursuant to 5 U.S.C. §§ 552(b)(6), (b)(7)(C) and/or (b)(7)(F). As described in the Bureau's letter, exemption (b)(6) concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties. Exemption (b)(7)(C) concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties. Exemption (b)(7)(F) concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to endanger the life or personal safety of an individual. Finally, the Bureau of Prisons determined that birthdates, social security numbers, and release dates are maintained in a system of records protected by the Privacy Act. Information subject to the Privacy Act requires written authorization from the subject of the record before it can be released. The Commission determined that obtaining authorization from the thousands of federal inmates released pursuant to Amendments 782/788 is unfeasible.

**Figure 7**  
**Response of the Federal Bureau of Prisons to the Freedom of Information Act (FOIA) Request Submitted by the Virginia Criminal Sentencing Commission**



**U.S. Department of Justice**  
**Federal Bureau of Prisons**

*Central Office*  
*320 First St., NW*  
*Washington, DC 20534*

September 16, 2016

The Honorable Edward Hogshire (Ret.)  
100 North Ninth Street  
Richmond, VA 23219

Request Number: 2016-06729

Dear Judge Hogshire:

This is in response to the above referenced Freedom of Information Act (FOIA) request in which you seek information about individuals released from federal prisons pursuant to Amendments 782 and 788 of the U.S. Sentencing Commission's Guideline Manuals. Specifically, you requested the full name, birthdate, social security number, and release date of all individuals released.

Lists or rosters of federal inmates cannot be provided as they would disclose personal information concerning federal inmates. Likewise, disclosure of such lists could threaten the safety and well-being of these individuals. Pursuant to 28 C.F.R. 513.34(b), "Lists of Bureau of Prisons inmates shall not be disclosed." Release of rosters and lists has been determined to be exempt from disclosure pursuant to 5 U.S.C. §§ 552(b)(6), (b)(7)(C) and/or (b)(7)(F). Exemption (b)(6) concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties. Exemption (b)(7)(C) concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties. Exemption (b)(7)(F) concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to endanger the life or personal safety of an individual.

Insofar as you are requesting the birthdate, social security number, and release date of individuals released, or scheduled to be released, pursuant to Amendments 782 and 788, we have determined that this information is maintained in a Privacy Act protected system of records and requires written authorization from the subject of the record before it can be released. Further, this information would be exempt from disclosure pursuant to 5 U.S.C. §§ 552(b)(6), (b)(7)(C) and/or (b)(7)(F). The written authorization must meet the requirements of 28 C.F.R. §16.41(d). Please resubmit your request, and provide the information identified below. Until such time as this information is received, your request is considered closed.

Please be advised, we considered your request under the Privacy Act and applicable BOP System of Records Notices, however, we have determined that your request does not meet one of the routine use exceptions provided in the relevant notices.

Exemption (b)(6) concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties. Exemption (b)(7)(C) concerns records or information compiled for law enforcement purposes the release of which could reasonably be

**Figure 7 (continued)**

**Response of the Federal Bureau of Prisons to the Freedom of Information Act (FOIA) Request Submitted by the Virginia Criminal Sentencing Commission**

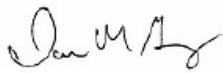
expected to constitute an unwarranted invasion of the personal privacy of third parties. Finally, exemption (b)(7)(F) concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to endanger the life or personal safety of an individual.

If you have any questions, you have the right to seek assistance from the undersigned or BOP's FOIA Public Liaison, Mr. C. Darnell Stroble ((202) 616-7750).

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account at: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Additionally, you have the right to seek dispute resolution services from BOP's FOIA Public Liaison, Mr. C. Darnell Stroble ((202) 616-7750) or the Office of Government Information Services (OGIS). OGIS offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information, Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

9/16/2016

X 

---

Ian M. Guy, Supervisory Attorney-Advisor  
for, Ronald Rodgers, Senior Counsel  
Signed by: IAN GUY

The Commission's Director contacted two local law enforcement agencies to determine if either agency had any relevant information about federal offenders released to the community after being a granted reduced sentence under Amendments 782/788. Neither agency had the information needed by the Commission.

The Commission subsequently submitted a request to the US Probation and Pretrial Services division of the federal court system. Nearly all federal offenders released from incarceration who are not subject to deportation must satisfy a period of supervision under a federal probation officer. Therefore, the Commission requested records on federal inmates whose sentences were retroactively reduced under Amendments 782/788 who have entered federal probation supervision. If the request is approved, the Commission will use these records to track offenders for recidivist activity. As of November 18, 2016, the Commission had not received a response from the US Probation and Pretrial Services agency.

Despite the efforts described above, the Commission has not been given access to the information needed to complete the study mandated by House Bill 1105. In the coming year, the Commission will consider other options for acquiring the necessary data. If the data can be obtained, the Commission will conduct the recidivism analysis described in House Bill 1105 and submit its report to the General Assembly by December 31, 2017.

## References

- Horwitz, Sari. (2015). The US is set to release thousands of prisoners early. Here's where they're headed. *The Washington Post*. Retrieved from <https://www.washingtonpost.com/news/post-nation/wp/2015/10/07/the-u-s-is-set-to-release-thousands-of-prisoners-early-heres-where-theyre-headed/>.
- United States Sentencing Commission. *Policy Profile, Sensible Sentencing Reform: The 2014 Reduction of Drug Sentences*. Retrieved from [http://www.ussc.gov/sites/default/files/pdf/research-and-publications/backgrounders/profile\\_2014\\_drug\\_amendment.pdf](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/backgrounders/profile_2014_drug_amendment.pdf).
- United States Sentencing Commission. (2007). *Cocaine and Federal Sentencing Policy*. Retrieved from [http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/200705\\_RtC\\_Cocaine\\_Sentencing\\_Policy.pdf](http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/200705_RtC_Cocaine_Sentencing_Policy.pdf).
- United States Sentencing Commission. (2014a). *Recidivism among Offenders Receiving Retroactive Sentence Reductions: The 2007 Crack Cocaine Amendments*. Retrieved from [http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20140527\\_Recidivism\\_2007\\_Crack\\_Cocaine\\_Amendment.pdf](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20140527_Recidivism_2007_Crack_Cocaine_Amendment.pdf).
- United States Sentencing Commission. (2014b). *Summary of key data regarding retroactive application of the 2014 drug guidelines amendment*. Retrieved from <http://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/drug-guidelines-amendment/20140725-Drug-Retro-Analysis.pdf>.
- United States Sentencing Commission. (2015). *Report to the Congress: Impact of the Fair Sentencing Act of 2010*. Retrieved from [http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/201507\\_RtC\\_Fair-Sentencing-Act.pdf](http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/201507_RtC_Fair-Sentencing-Act.pdf).
- United States Sentencing Commission. (2016a). *Recidivism among Federal Offenders: A Comprehensive Overview*. Washington, DC: United States Sentencing Commission.

United States Sentencing Commission. (2016b). *US Sentencing Commission 2014 Drug Retroactivity Data Report*. Retrieved from <http://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/drug-guidelines-amendment/20160407-Drug-Retro-Analysis.pdf>.

United States Sentencing Commission. (2016c). *US Sentencing Commission 2014 Drug Guidelines Amendment Retroactivity Data Report*. Retrieved from <http://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/drug-guidelines-amendment/20161025-Drug-Retro-Analysis.pdf>.



## **Appendices**

This page intentionally left blank.

**Appendix 1**  
**Legislative Directive**

**2016 SESSION**

**REPRINT**

**CHAPTER 394**

*An Act to direct the Virginia Criminal Sentencing Commission to calculate and report the recidivism rate for certain released federal prisoners.*

[H 1105]

Approved March 11, 2016

**Be it enacted by the General Assembly of Virginia:**

1. § 1. That the Virginia Criminal Sentencing Commission shall calculate annually the recidivism rate of federal prisoners released by the U.S. Bureau of Prisons whose sentences were retroactively reduced pursuant to Amendments 782 and 788 of the U.S. Sentencing Commission's Guidelines Manual for crimes committed in the Commonwealth. The Commission shall make a reasonable attempt to acquire the information necessary to complete the calculation from any available source, including any state or federal entity that has access to such information. The Commission shall report annually to the Chairmen of the House and Senate Committees for Courts of Justice (i) such recidivism rate no later than December 31 for the preceding 12-month period complete through the last day of October or (ii) if the Commission is unable to complete the calculation, any information regarding the recidivism rate of such prisoners as the Commission was able to acquire.
2. **That the provisions of this act shall expire on January 1, 2018.**

