

Is This the First Step in Undoing Mass Incarceration? 6,000 Federal Drug Offenders Set to be Released

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In early November, the Bureau of Prisons (BOP) is scheduled to [release approximately 6,000 federal inmates](#) convicted of drug trafficking offenses. While some have cheered the releases as a sign of efforts to ["right size" drug sentences](#) or [reduce mass incarceration](#), others are concerned about [what effect it might have on public safety](#).

Why Are These Inmates to be Released Early?

In April 2014, the [U.S. Sentencing Commission](#) (Commission) [submitted to Congress proposed amendments](#) to the [Federal Sentencing Guidelines](#) (Guidelines) that would reduce by two levels the base offense levels assigned to drug offenses, thereby lowering the Guideline ranges for most federal drug trafficking offenses. In July 2014, the Commission [voted to apply](#) the amendment [retroactively](#) (with the condition that no prisoners who receive reduced drug sentences may be released before November 1, 2015). The amendment [went into effect on November 1, 2014](#), in the absence of disapproval by an act of Congress.

How Do the Guidelines Function?

Congress [establishes](#) the maximum penalty, and sometimes a minimum penalty, for every federal crime. The Guidelines assist federal courts in determining an appropriate imprisonment term and criminal fine for a particular offender by providing a [recommended](#) range of sentences that fall between the statutory maximum and minimum penalties. The Guidelines assign drug trafficking offenses to [17 "base offense levels"](#) corresponding to the kind and amount of controlled substances involved in the offense. In [calculating an offender's sentence](#), a court starts at the offense level recommended by the Guidelines and then increases or decreases that level depending on aggravating and mitigating circumstances. The final offense level, in combination with the defendant's criminal record, is used to determine the [offender's sentencing range](#).

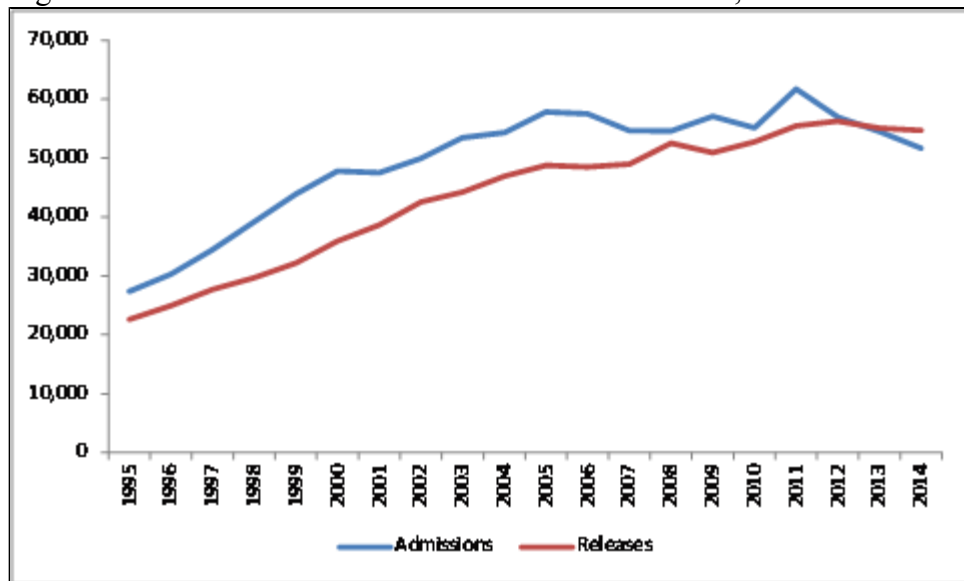
The Commission—an independent judicial branch agency [responsible for](#) issuing, and periodically revising, the Guidelines—must follow several statutory directives, including ensuring that the Guidelines reduce unwarranted sentence disparities and minimize the likelihood of overcrowding in federal prisons. The Commission also has

[discretionary authority](#) to make Guidelines amendments retroactive. However, no one is automatically entitled to a sentence reduction by virtue of a retroactively applied Guideline amendment; a court must first determine (1) the prisoner's eligibility for a reduction; (2) if such reduction is warranted, after considering [several statutory factors](#) (including the risk to public safety and the defendant's criminal history and behavior in prison); and (3) the extent of any reduction.

What Effect Might This Have on the Federal Prison Population?

The Commission's changes to the Guidelines [were motivated, in part, by overcrowding in federal prisons](#). The number of federal inmates steadily increased from 24,363 in 1980 to 210,567 in 2014 ([30% over rated capacity](#)). The number of prisoners decreased in both 2013 and 2014 because in both years releases exceeded admissions (see [Figure 1](#)). The recent decrease in the federal prison population was mostly the result of fewer offenders entering prison rather than an increase in the number of inmates being released.

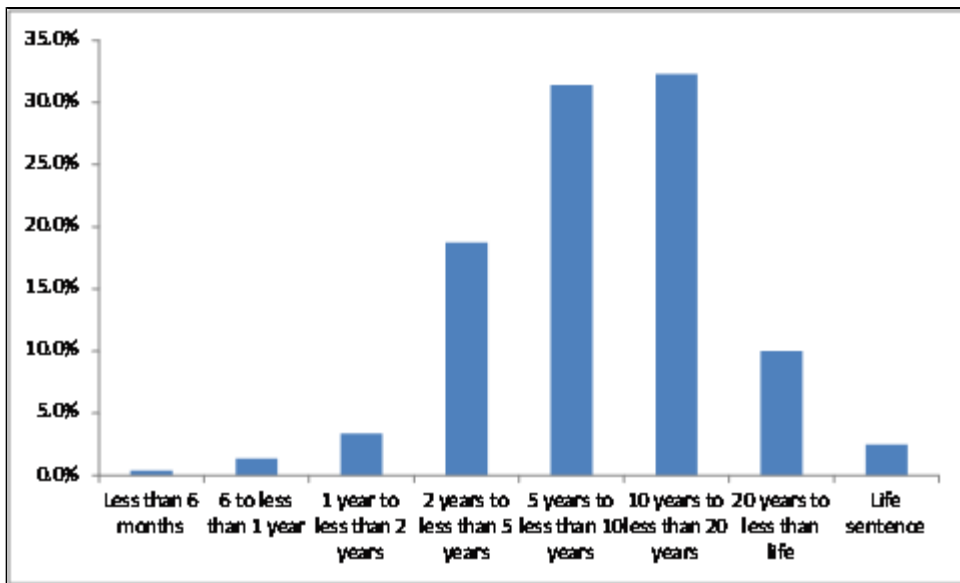
Figure 1. Admissions and Releases from Federal Prisons, 1995-2014



Source: Bureau of Justice Statistics, Corrections Statistical Analysis Tool —Prisoners.

About [half of federal inmates are drug offenders](#), and nearly all (99%) drug offenders were sentenced for trafficking offenses. Approximately three-quarters of drug trafficking offenders are serving sentences of five years or more (see [Figure 2](#)).

Figure 2. Sentences for Drug Trafficking Offenders, 2012



Source: Bureau of Justice Statistics, Federal Criminal Case Processing Statistics.

Notes: Data are for BOP inmates at the end of 2012, the most recent data available.

It is estimated that [between 40,000 and 45,000 are eligible to apply for a sentence reduction](#). Inmates who have been granted a sentence reduction have, on average, [had their sentences shortened by 23 months](#), from 131 months to 109 months. Given that drug offenders are still facing, on average, nine years' incarceration after receiving a sentence reduction, changes to the Guidelines might only have a modest effect on the size of the federal prison population. Also, the effect might be limited by the fact that inmates sentenced to a mandatory minimum term of imprisonment, as well as those sentenced as Career Offenders or Armed Career Criminals, are [ineligible for a sentence reduction](#).

Current Legislative Efforts

Legislation in the current Congress would make offenders convicted for some drug trafficking offenses that carry a mandatory minimum sentence eligible for a sentence reduction. Both [S. 2123](#) and [H.R. 3713](#) would [reduce mandatory minimum sentences](#) for certain drug trafficking offenses. The legislation would also authorize retroactive application of the amended mandatory minimums, permitting federal courts to reduce the terms of imprisonment of defendants who were convicted and sentenced before the date of enactment. However, before granting a sentence reduction, courts would have to consider several [statutory sentencing factors](#), including "the nature and seriousness of the danger to any person or the community," and the defendant's post-sentence conduct. ([H.R. 3713](#) would prohibit a sentencing court from granting a sentence reduction to a defendant with a prior conviction for a serious violent felony.)

Concerns About Recidivism

The release of a large cohort of inmates has generated concern about a threat to public safety. Data show that approximately [three-quarters of federal drug offenders released in 2005 were rearrested within five years](#). Drug offenders were more likely to be rearrested for a public order offense (56.1%) or another drug crime (51.2%) rather than a violent (24.8%) or property (33.1%) offense.

However, the inmates now scheduled to be released might not be at a greater risk to recidivate than other drug offenders. As mentioned above, courts had to consider the offender's risk to public safety when making a decision about whether to grant a sentence reduction. In 2007 the Commission adjusted the Guidelines to reduce disparities in crack and powder cocaine sentences. The adjustment allowed approximately 16,000 prisoners to have their sentences reduced. A [subsequent analysis](#) found inmates granted early release did not recidivate at a significantly higher rate.

Also, these inmates are to first be placed in [Residential Reentry Centers](#) and/or home confinement, and afterwards they

are to serve a [period of supervised release](#).