



VIRGINIA CRIMINAL SENTENCING COMMISSION



Recidivism Study on Released Federal Offenders (House Bill 1105)

June 6, 2016

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.**



Background

Federal Anti-Drug Abuse Act of 1986

- Established mandatory minimum terms of incarceration for federal drug offenses involving specified quantities.
- Differentiated between powder cocaine and crack cocaine and created the 100-to-1 powder-to-crack drug quantity ratio.
 - 100 times as much powder cocaine (compared to crack) was needed to trigger mandatory minimums.

EXAMPLE: First-Time Drug Trafficking Conviction

<u>Type of Drug</u>	<u>Drug Amount</u>	<u>Mandatory Minimum</u>
Crack Cocaine	5 grams	5 years
Powder Cocaine	500 grams	5 years



Anti-Drug Abuse Act of 1986 and Federal Sentencing Guidelines

- **The U.S. Sentencing Commission (USSC), which was in the process of developing the initial federal sentencing guidelines in 1986, incorporated the mandatory minimum sentences 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.**



2007 Federal Sentencing Guidelines Changes

- In 2007, the USSC lowered the sentencing guidelines for crack cocaine offenses and made these changes retroactive.
 - This change was driven by longtime concerns about sentencing disparities for offenders convicted of crack cocaine versus powder cocaine offenses.
 - Inmates could submit an application for a sentence reduction to the court.
- As it had in previous years, the USSC also recommended that Congress revise the mandatory minimum terms required by federal statutes for certain cocaine offenses.



Federal Fair Sentencing Act of 2010 (FSA)

- **Increased crack cocaine quantity thresholds that trigger mandatory minimum penalties for federal drug trafficking offenses.**
 - **Effectively reduced the powder-to-crack drug quantity ratio from 100-to-1 to 18-to-1.**
- **Removed the five-year mandatory minimum term for simple possession of crack cocaine (originally established by the Anti-Drug Abuse Act of 1988).**
- **Directed the USSC to review sentencing guidelines for drug offenses to better account for certain aggravating factors and the defendant's role in the offense.**
 - **USSC revised the sentencing guidelines, as instructed, in 2010.**



Federal Sentencing Guidelines Changes: Amendments 782 & 788

- In 2014, the USSC lowered sentence recommendations for drug offenders by reducing base offense levels for crimes contained in the Drug Quantity Table by two levels.
 - This change was projected to reduce penalties for new drug cases by an average of 11 months for 70% of drug trafficking offenders.
- The lower recommendations can be applied retroactively; however, no prisoners were allowed to be released based on retroactively reduced sentences before November 1, 2015.
 - The USSC estimates that approximately 46,000 prisoners may be eligible to have their sentences reduced by an average of 2.1 years (18.8%).



Federal Sentence Reductions

- **In order to receive a reduction in their sentences, eligible inmates must submit an application to the 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.**

- **The release of individuals whose sentences have been reduced retroactively under Amendments 782 and 788 began on October 30, 2015.**





Available Information

Applications for Federal Retroactive Sentence Reductions

As of March 25, 2016, 38,242 federal inmates had submitted applications for a sentence reduction associated with Amendment 782 nationally.

Applications for Retroactive Sentence Reductions U.S. Fourth Circuit November 1, 2014 - March 25, 2016*

State	Number of Applications*	Granted	Denied
Maryland	497	82.3%	17.7%
North Carolina	2,147	63.6%	36.4%
South Carolina	1,013	72.9%	27.1%
Virginia	1,864	72.2%	27.8%
West Virginia	448	83.0%	17.0%
Fourth Circuit	5,969	70.9%	29.1%

*Only includes applications resolved by the court as of March 25, 2016.

Note: Offenders are not necessarily released to the state in which they apply for a sentence reduction.



Average Federal Sentence Reduction

Applications Granted U.S. Fourth Circuit November 1, 2014 - March 25, 2016*

State	Applications Granted*	Avg. Existing Sentence (Years)	Avg. Sentence Reduction (Years)
Maryland	405	10.6	1.8
North Carolina	1,301	12.6	2.2
South Carolina	706	13.3	2.5
Virginia	1,289	13.8	2.3
West Virginia	371	9.6	1.7
Fourth Circuit	4,072	12.6	2.2

*Only includes applications resolved by the court as of March 25, 2016.

Note: Offenders are not necessarily released to the state in which they apply for a sentence reduction.

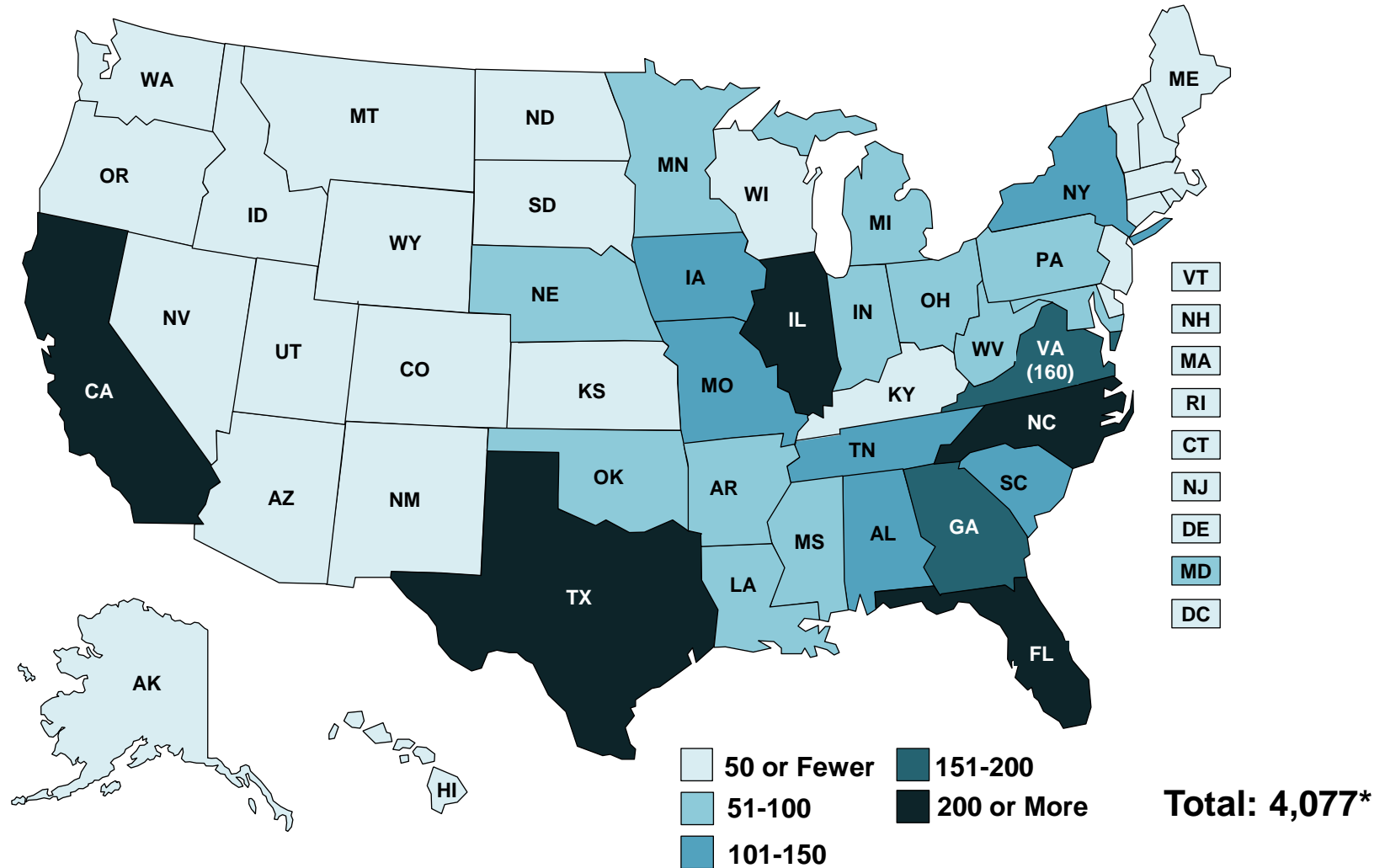


Releases of Eligible Inmates

- **The first wave of 6,000 federal offenders was released between October 30, 2015, and November 1, 2015.**
 - **Based on information provided by the Bureau of Prisons to the Washington Post:**
 - **160 of these offenders were released to Virginia,**
 - **North Carolina received 208 inmates,**
 - **150 were released to Tennessee, and**
 - **Fewer than 100 inmates were released to each of the remaining states that share a border with Virginia.**



Number of Federal Inmates Released by State (First Wave)



* The Bureau of Prisons indicates that approx. 1/3 of the 6,000 inmates with reduced sentences were released to ICE for deportation hearings.

Source: The Washington Post (October 7, 2015). The U.S. is set to release thousands of prisoners early. Here's where they're headed. Accessed 5/16/16 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/>

Releases of Additional Federal Inmates

The USSC anticipates that an additional 8,550 federal inmates will be released due to a sentence reduction associated with Amendment 782 by November 1, 2016.

Offenders Eligible for Sentence Reduction (Sentenced FY1992 through FY2015)

Number of Inmates	Projected Release Date (if Application Granted)
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



Recidivism Among Federal Offenders Released Under 2007 Guidelines Changes

- **The USSC studied the five-year recidivism rate for offenders whose sentences were reduced retroactively under the 2007 guidelines changes for crack cocaine offenses.**
 - **Recidivism was defined as a re-conviction for any new offense, a re-arrest without case disposition information available, or a revocation of probation/parole.**

- **Key finding:**
 - **When compared to offenders released prior to 2007, the recidivism rate for offenders released under the retroactive guidelines changes was similar (47.8% and 43.3%, respectively).**
 - **This difference was not statistically significant.**





**Virginia Criminal Sentencing
Commission 2016 Study
(HB 1105)**

Steps Taken to Date

- **Steps taken to date have not proven fruitful:**
 - **Staff's initial request for data from Bureau of Prisons on federal inmates who were released to Virginia in 2015 was denied.**
 - **Director contacted two local law enforcement agencies to determine if they have any relevant information about offenders released under these changes.**
 - **Limited information available to local law enforcement.**
 - **Director has begun to explore the possibility of gaining access to the federal Public Access to Court Electronic Records (PACER) system, which does not appear to be promising.**



