



VIRGINIA CRIMINAL SENTENCING COMMISSION



Recidivism Study on Released Federal Offenders (House Bill 1105) - Status Update -

November 2, 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.**

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 estimated that approximately 46,000 prisoners were 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.



Applications for Federal Retroactive Sentence Reductions

As of September 30, 2016, 43,491 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 – 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%

*Only includes applications resolved by the court as of September 30, 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 – September 30, 2016*

State	Applications Granted*	Avg. Existing Sentence (Years)	Avg. Sentence Reduction (Years)	Avg. Sentence Reduction (Percent)
Maryland	437	11.3	2.0	17.8%
North Carolina	1,488	13.5	2.3	16.9%
South Carolina	718	13.4	2.5	18.6%
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	17.2%

*Only includes applications resolved by the court as of September 30, 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.**



Releases of Additional Federal Inmates

The USSC estimated that an additional 8,550 federal inmates would be released due to a sentence reduction associated with Amendment 782/788 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

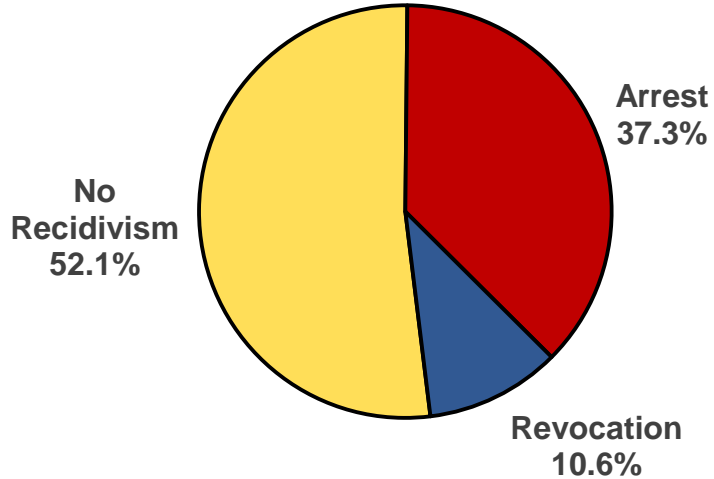
- **The USSC studied the five-year recidivism rate for offenders whose sentences were reduced retroactively under the 2007 guidelines changes for crack cocaine offenses.**
 - **Recidivism was defined as a re-conviction for any new offense, a re-arrest without case disposition information available, or a revocation of probation/parole within 5 years.**

- **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.**

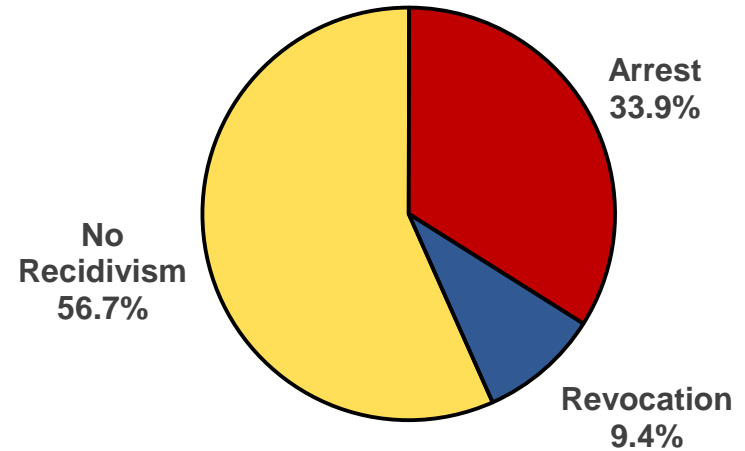


Recidivism Among Federal Offenders Released Under 2007 Guidelines Changes

Comparison Group



Retroactivity Group





**Virginia Criminal Sentencing Commission Study
HB 1105**

Commonwealth of Virginia

HON. EDWARD L. HOGSHIRE (RET.)
CHAIRMAN



Supreme Court of Virginia Virginia Criminal Sentencing Commission

August 4, 2016

MEREDITH FARRAR-OWENS
DIRECTOR

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

Mr. Eugene Baime, Supervisory Attorney
FOIA/Privacy Act Requests
Federal Bureau of Prisons
Department of Justice
Room 924, HOLC Building
320 First Street, N.W.
Washington, DC 20534

Dear Mr. Baime:

During its 2016 Session, the Virginia General Assembly adopted legislation directing the Virginia Criminal Sentencing Commission to conduct a special study of crimes committed in the Commonwealth by recently released federal offenders. Specifically, House Bill 1105 directs the Commission to calculate annually the recidivism rate of federal prisoners who were released by the U.S. Bureau of Prisons after their sentences were retroactively reduced pursuant to Amendments 782 and 788 of the U.S. Sentencing Commission's Guidelines Manual. In conducting the study, the Commission is to focus on crimes committed by such offenders in Virginia.

To fulfill this directive, the Virginia Criminal Sentencing Commission is requesting electronic records containing identifying information for specified offenders in order to match the records to Virginia's criminal history database. As such, the Commission is requesting the following information for all individuals who have been released under Amendments 782 and 788 of the U.S. Sentencing Commission's Guidelines Manual:

- Full name
- Birthdate
- Social Security Number
- Release Date

Data provided by the Bureau of Prisons will be placed on a secure server maintained by Virginia's Department of Judicial Information Technology (DJIT).

Mr. Eugene Baime
FOIA/Privacy Act Requests
Federal Bureau of Prisons
August 4, 2016
Page 2

Thank you for your time and attention on this matter. Should you have any questions or require any additional information, please contact the Commission's staff director, Meredith Farrar-Owens, at (804) 371-7626.

Sincerely,

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

Edward L. Hogshire
Circuit Judge, Ret.



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

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; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

9/16/2016

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

Commonwealth of Virginia

HON. EDWARD L. HOGSHIRE (RET.)
CHAIRMAN



Supreme Court of Virginia Virginia Criminal Sentencing Commission

September 30, 2016

MEREDITH FARRAR-OWENS
DIRECTOR

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

Probation Data Request
U.S. Probation and Pretrial Services
One Columbus Circle, NE
Washington, DC 20544

Dear Sir or Madame:

During its 2016 Session, the Virginia General Assembly adopted legislation directing the Virginia Criminal Sentencing Commission to conduct a special study of crimes committed in the Commonwealth by recently released federal offenders. Specifically, House Bill 1105 directs the Commission to calculate annually the recidivism rate of federal prisoners who were released by the U.S. Bureau of Prisons after their sentences were retroactively reduced pursuant to Amendments 782 and 788 of the U.S. Sentencing Commission's Guidelines Manual. In conducting the study, the Commission is to focus on crimes committed by such offenders in Virginia. The first wave of individuals released under these Amendments left federal prison between October 30 and November 1, 2015.

To fulfill the legislative directive, the Virginia Criminal Sentencing Commission is requesting electronic records containing identifying information for specified offenders in order to match the records to Virginia's criminal history database. As such, the Commission is requesting the following information for all individuals who have been released under Amendments 782 and 788 of the U.S. Sentencing Commission's Guidelines Manual who entered federal probation supervision:

- Full name
- Birthdate
- Social Security Number
- Release Date and/or Probation Start Date

Data provided by U.S. Probation and Pretrial Services will be placed on a secure server maintained by Virginia's Department of Judicial Information Technology (DJIT).

Probation Data Request
U.S. Probation and Pretrial Services
September 30, 2016
Page 2

Thank you for your time and attention on this matter. Should you have any questions or require any additional information, please contact me at (804) 371-7626.

I look forward to your response.

Sincerely,

A handwritten signature in black ink, appearing to read "Meredith Farrar-Owens".

Meredith Farrar-Owens
Director



Re: Information Request from the Virginia Criminal Sentencing Commission

ProbationDataRequest to: Meredith.Farrar-Owens

09/30/2016 12:21 PM

This is an automated response from the Probation Data Request Mailbox. Do not reply to this message.

We acknowledge receipt of your message. Requests for data are reviewed on a monthly basis. Your request will be processed during the next monthly cycle. If your request appears to meet the approved criteria for the release of data in connection with research, it will be referred to a screening committee for a final determination. You will be notified once a decision has been made. Thank you for your patience

2016 SESSION

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- 2.** **That the provisions of this act shall expire on January 1, 2018.**

