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THE FEDERAL ISSUE CHAPTER OF WWW.INTERNATIONALCURE.ORG

*"A National Effort to Reduce Crime
Through Federal Criminal Justice Reform"*

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FEDCURE TESTIMONY TO THE U. S. SENTENCING COMMISSION BY KENNY LINN, J.D., LL.M. - 3/17/09

The U. S. Sentencing Commission was instrumental in the length of stay changes that were codified for those sentenced for criminal activity that occurred after November 1, 1987. The result of the elimination of parole¹ and old law good time² and the de facto doubling of sentences has led to the tripling of the federal inmate population in a little over twenty-one and one-half years at a cost of nearly a trillion dollars to the nation's taxpayers for prisons, courts, prosecutions, defense and post-incarceration supervision. The Federal Bureau of Prisons (BOP) is now operating at 137% of capacity with nearly 203,000 inmates. The BOP is now resorting to triple bunking in cells designed for one inmate because of the rampant overcrowding. The federal prison system is made up primarily of low level drug dealers with sentences that sometimes exceed that of murderers and rapists at a cost of a minimum of \$40,000 per inmate per year.³

What looked like a good idea when the Sentencing Reform Act of 1984 was conceived has instead been an abject failure. It was disavowed many years ago by its primary author, Eric Sterling, and many of those in the criminal justice community have been calling for a change to the dismal consequences of an overly harsh system of punishment that costs more than the country can afford and extends the length of stay for nearly all inmates to an unjustified extreme

Last summer FedCURE was privileged to be invited to a symposium put on by this Commission. The symposium's title was a welcome breath of fresh air: "Symposium on Alternatives to Incarceration." At that conference speaker after speaker presented treatises documenting evidenced proven ways to deal with those already incarcerated - including expanded good time, reinstatement of parole and alternative plans to recidivism for technical violations - all to reduce the prison populations. At the root of all recommendations centering on reducing the prison population is the conclusion that our current form and range of punishments are disproportionate to the harm that has been inflicted. Moreover, current efforts to punish those who commit such crimes are not cost effective.

It was obvious to me long ago that the states are way ahead of the feds in this regard except for one small branch of the Department of Justice (DOJ). The National Institute of Corrections (NIC) has an ongoing endeavor called the Norval Morris Project. It is calling for the halving of the present population in federal prisons and the halving of the federal post-incarceration populace as well. A paper by James Austin, Ph.D. explains how and the whys and the wherefores far better than I can, but rest assured that this approach to alternatives to incarceration and FedCURE's focus are one and the same.

"The good news is that the necessary reforms have either currently been adopted in many states or were in use previously, so the desired reduction is readily achievable. It should also be noted that changes are neither radical nor need to take a long time to implement. What is required is relatively modest, but steady changes in current practices over a sustained period of time. This is because relatively small adjustments in key decision points will have a large cumulative effect over a relatively short period of time."⁴

Recently, the Pew Center on the States has argued that new supervision strategies and technologies can help manage more lower-risk offenders safely outside of prison at lower cost

and with better results than incarceration. Such efforts need to be strengthened, not scaled back in a time of budget crises, said Pew.⁵

With all of these thoughts in mind, FedCURE presented its suggestions to the Commission for inclusion in their next cycle of recommendations to Congress. Our recommendations were not adopted. Apparently there is a difference of opinion as to whether the Commission may have the statutory authority to make the dramatic changes that are necessary to solve the present problem of "length of stay." Specifically, the Commission's proposed recommendations to Congress for May, 2009 as they are presently specified do not in any way attack the back end of sentences already set.

At this time, 1B1.13 of the Guidelines Manual gives authority to the Director of the BOP, by its motion, to seek release of any inmate if the court finds "extraordinary and compelling reasons warrant the reduction." FedCURE requested the Manual give authority to give that same Director the ability to inclusively seek earlier release by a speed up of good time and authority for the Chairman of the U. S. Parole Commission to give a second look to long term inmates who might be paroleable under their guidelines.

Admittedly, it is not an exact comparison to match 1B1.13 with our proposed 1B1.14 and 1B1.15, but the Commission has only two options here. It can either continue down its present path and let the BOP attempt to build its way out of this incarceration crisis (and hope that Congress decides to appropriate hundreds of billions of dollars to undertake this foolish course of action) or it can take a bold initiative and interpret broadly, so as to recognize very "extraordinary circumstances" here that are included in the statutory construction of 18 U.S.C. § 3582(c)(1)(A).

The question here is one of interpretation of the statute and a decision as to what are "extraordinary circumstances?" In short, it is the position of FedCURE that it is unlikely this Government or this Commission will face anything more "extraordinary," in order to justify the intervention that is surely necessary. It is all a matter of interpretation. This is the reason why FedCURE requested our presence on your agenda today. We argue that the Commission has a unique opportunity to do more than make minor sentencing guideline changes for future federal inmates. FedCURE feels that the Commission was given a mandate by Congress to make wholesale changes to the criminal justice system when it deemed that "extraordinary circumstances" demanded change. That is exactly what FedCURE requests be done today for the Commission's next recommendations to Congress.

At the very least, if the Commission feels their present mandate does not include the steps necessary to attack the back end of sentences as well as the front end, then we strenuously request that you go to Congress and resolutely insist that such authority be recognized and not let years go by while the situation worsens.

Thank you for the opportunity to make this presentation.

DATED, this 7th day of March, 2009

Respectfully submitted, *Kenneth Linn*

Kenneth Linn, J.D., LL.M., Chairman.

Serving Federal Prisoners and Their Families ... Working to Reinstate Parole and to Increase Good Time Allowances

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1 FedCURE's leadership is made up of former old law inmates who were released on parole and did not recidivate, proving that parole can and does work.

2 Introduction of a Congressional bill to reinstate old law good time is set for March 12, 2009.

3 Includes operational costs and amortization of buildings and land.

4 Reducing America's Correctional Populations, A Strategic Plan, James Austin, Ph. D., Executive Summary, iv.

5 http://www.pewcenteronthestates.org/initiatives_detail.aspx?initiativeID=31336