



FRATERNAL ORDER OF POLICE

Testimony of
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on

**Retroactive Application of Recent Changes
to the Proposed Criminal History Amendment**

before the U.S. Sentencing Commission



Good afternoon, Mr. Chairman, the Vice Chairmen and the distinguished Commissioners of the U.S. Sentencing Commission. My name is Patrick Yoes, the National President of the Fraternal Order of Police, our nation's oldest and largest law enforcement labor organization representing more than 367,000 members from every region of our country.

I want to thank you, Mr. Chairman, and the rest of the Commission for inviting me here this afternoon to share the views of America's rank-and-file officers on potentially applying Parts A and B of the 2023 Criminal History Amendment retroactively. Specifically, Part A of the amendment reduces the impact of "status points" for offenders, and Part B provides a decrease of two levels for the offense level for offenders who did not receive any criminal history points and whose offense did not involve specified eligibility criteria. The Commission is statutorily required to consider whether either or both parts of the amendment should be applied retroactively to currently incarcerated offenders sentenced previously. The FOP opposes the retroactive application of both Parts of the Criminal History Amendment.

Our rank-and-file officers put themselves in harm's way to investigate, arrest, and assist in the conviction of these offenders who were then justly sentenced under the rules promulgated by this Commission in accordance with our Federal laws. The offenders knew what the penalties might be at the time they were committing their crimes, the prosecutors charged and convicted them under the existing rules, and they were sentenced under the guidelines which were then in place. This is our system at work and its results—under the rules in place at the time—are just.

I recognize that our criminal justice system is not a static one and that our system, like any other, must be periodically adjusted so that its results are fair and just. It is imperative, however, for reasons of justice and continuity to apply any such adjustments prospectively and not second-guess, reconfigure or relitigate prior results. The sentences for offenders currently serving time were fair and just at the time.

We also must assess the impact that retroactivity will have on the safety of the public. The American public is currently experiencing a nationwide spike in violent crime.

All across the United States, our communities are seeing the real-life consequences of and feeling the immense pain caused by the recent surge in violent crime. More and more citizens in our country are justifiably living in fear, constantly wondering if they too will become victims. In too many of our communities, the rule of law is set aside in favor of so-called reforms or to advance a "reform agenda." This is creating greater danger on our streets and in our communities. We need to find strategies that improve the criminal justice system which will reduce crime and reject policies and practices which do not prioritize public safety. The FOP does not believe that the retroactive application of Parts A and B of the Criminal History will do this.

According to the Bureau of Prisons (BOP), there are 50,545 currently incarcerated offenders who were assigned "status points." "Status points" are a term for the two criminal history points

added if the offender committed the crime “while under any criminal justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status.” Of these, 20,598 (40.8%) have been assigned a criminal history score of 6 or lower when they were sentenced under the existing guidelines. If Part A is applied retroactively, the criminal history score of these offenders would be reduced by two points and the scores of the other 59.2% percent of offenders with an assigned criminal history score of 7 or higher would be reduced by one. This would result in approximately 11,495 of the 50,545 status points offenders (22.7%) being able to be eligible to petition for a reduction in their sentence. According to BOP, the current average sentence for those offenders is 120 months. If the courts were to grant the full reduction possible in each case, the projected new average sentence for those offenders would be 106 months, a reduction of 14 months (or 11.7%). More than three-quarters of these eligible offenders could be released in the next five years and approximately 2,000 would be eligible for immediate release. This will have a considerable impact on public safety.

Similarly, we also oppose the retroactive application of Part B, which would apply to offenders with one or no criminal history points. The Criminal History Amendment provides a decrease of two levels on the Criminal History Category on the Sentencing Table for these “zero-point offenders.”

The BOP estimates that there are 34,922 zero-point offenders incarcerated in Federal facilities, of which 12,574 meet the additional criteria established in Federal law. Slightly more than half—57.8% or 7,272 offenders—would have a lower guideline range if the Commission were to make Part B retroactive and, therefore, would be eligible to seek a modification of sentence.

According to the Commission’s own data, the current average sentence for those eligible zero-point offenders is 85 months. If the courts were to grant the full reduction possible in each case, the projected new average sentence for those offenders would be 70 months, a reduction of 15 months. Approximately 1,200 offenders would be eligible for immediate release.

We know our criminal justice system struggles to integrate released offenders back into society. From the perspective of law enforcement and public safety, these challenges include a lack of communication with State and local authorities when an offender’s release date is changed into the communities they protect. We also must consider the resources needed to make absolutely sure that victims are advised of an offender’s release.

The resources of the U.S. Probation and Pretrial Services were severely strained during the Obama Administration’s clemency initiative and in the implementation of the First Step Act. The FOP is very proud of our work in enacting the First Step Act, one of the most sweeping and comprehensive changes to our criminal justice system in decades. However, we strongly believed that greater resources were necessary—especially personnel—to ensure that released offenders would have the support they needed to maximize their chances of successful integration into their communities. These resources never materialized.

The First Step Act has only been law for five years and the Prisoner Assessment Tool Targeting Estimated Risk and Needs (PATTERN), which measures an offender's rehabilitation during incarceration, already provides opportunities for inmates to expedite their release.

We believe that the BOP and the Federal criminal justice system are doing everything they can to ensure that our ultimate goal—integrating former offenders into our law-abiding society—is met. The FOP sees no compelling reason to apply Parts A and B retroactively as they do not correct any existing injustice. Quite the opposite—to change the rules after a just result is manifestly unfair.

I want to thank you and the Commission in advance for your consideration of the view of the more than 367,000 members of the Fraternal Order of Police and now I would now be pleased to answer any questions you might have.