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Dear Members of the U.S. Sentencing Commission:

I support the work that Prisology is doing to reform the criminal justice system. I am writing to strongly urge the Commission to make Prisology's proposed new Sentencing Table a priority during the Commission's 2018 Guideline Amendment cycle.

The Commission is tasked by statute with ensuring that the Sentencing Guidelines are "formulated to minimize the likelihood that the Federal prison population will exceed the capacity of the Federal prisons." 28 U.S.C. § 994(g). While the federal prison population has declined in recent years, every federal prison in the nation continues to operate at levels in excess of original design capacity.

Overpopulated prisons are less safe for staff and inmates, make the delivery of medical care and other essential services more difficult, and impede the ability of the Federal Bureau of Prisons to provide meaningful rehabilitation programs to inmates who genuinely want to make a better future for themselves.

In 2014 the Commission adopted, and made retroactive, Amendment 782 to the Guidelines. Commonly known as "drugs minus 2," this Amendment allowed for thousands of federal prisoners to apply for sentence reductions in a way that has not negatively affected public safety. Tax payers have saved billions of dollars as a result of this change. It is time for the Commission to make another similar bold move.

The current Guideline Sentencing Table is overly punitive and should be amended consistent with Prisology's new proposed Sentencing Table. Prisology's proposed sentencing table would replace current Guideline ranges, across all criminal history categories, with the Guideline range called for by the offense level two levels lower. For example, the current Guideline ranges for offense level 43 would be replaced with the Guideline ranges for offense level 41.

Further, under the revised new sentencing table, the maximum of each sentencing range is set not to exceed more than 15 percent of the bottom of the range. Statute instructs the Commission, "[i]f a sentence specified by the guidelines includes a term of imprisonment, the maximum of the range established for such a term shall not exceed the minimum of that range by more than the greater of 25 percent or 6 months, except that, if the minimum term of the range is 30 years or more, the maximum may be life imprisonment." 28 U.S.C. § 994(b) (2). When the Sentencing Table was originally created, the Commission--without explanation--chose 25 percent from the bottom of each range as the default maximum for most sentencing ranges. A 15 percent difference between the bottom of the range and top of the range is more than sufficient to achieve the purposes of sentencing.

This proposed change is simple and easily administrable. In addition, this change would eliminate from the Guidelines a sentencing range of life imprisonment for first time offenders. It would also eliminate "life - life" Guideline ranges. While the Guidelines should continue to allow for life sentences in appropriate cases, the Guidelines should never dictate that the only sentence in a given case should be life imprisonment.

Thank you for your consideration of my comments.

PROPOSED REVISED SENTENCING TABLE

	I	II	III	IV	V	VI
1	0-6	0-6	0-6	0-6	0-6	0-6
2	0-6	0-6	0-6	0-6	0-6	1-7
3	0-6	0-6	0-6	0-6	1-7	2-8
4	0-6	0-6	0-6	1-7	2-8	3-9
5	0-6	0-6	0-6	2-8	4-10	6-12
6	0-6	0-6	1-7	2-8	4-10	6-12
7	0-6	1-7	1-7	4-10	6-12	9-15
8	0-6	1-7	2-8	6-12	9-15	12-18
9	1-7	2-8	4-10	8-14	12-18	15-21
10	2-8	4-10	6-12	10-16	15-21	18-24
11	4-10	6-12	8-14	12-18	18-24	21-27
12	6-12	8-14	10-16	15-21	21-27	24-30
13	8-14	10-16	12-18	18-24	24-30	27-33
14	10-16	12-18	15-21	21-27	27-33	30-36
15	12-18	15-21	18-24	24-30	30-36	33-39
16	15-21	18-24	21-27	27-33	33-39	37-43
17	18-24	21-27	24-30	30-36	37-43	41-47
18	21-27	24-30	27-33	33-39	41-47	46-53
19	24-30	27-33	30-36	37-43	46-53	51-58
20	27-33	30-36	33-39	41-47	51-58	57-65
21	30-36	33-39	37-43	46-53	57-65	63-72
22	33-39	37-43	41-47	51-58	63-72	70-80
23	37-43	41-47	46-53	57-65	70-80	77-88
24	41-47	46-53	51-58	63-72	77-88	84-96
25	46-53	51-58	57-65	70-80	84-96	92-105
26	51-58	57-65	63-72	77-88	92-105	100-115
27	57-65	63-72	70-80	84-96	100-115	110-126
28	63-72	70-80	78-89	92-105	110-126	120-138
29	70-80	78-89	87-100	100-115	120-138	130-149
30	78-89	87-100	97-111	110-126	138-149	140-161
31	87-100	97-111	108-124	121-139	140-161	151-173
32	97-111	108-124	121-139	135-155	151-173	168-193
33	108-124	121-139	135-155	151-173	168-193	188-216
34	121-139	135-155	151-173	168-193	188-216	210-241
35	135-155	151-173	168-193	188-216	210-241	235-270
36	151-173	168-193	188-216	210-241	235-270	262-301
37	168-193	188-216	210-241	235-270	262-301	292-335
38	188-216	210-241	235-270	262-301	292-335	324-372
39	210-241	235-270	262-301	292-335	324-372	360-life
40	235-270	262-301	292-335	324-372	360-life	360-life
41	262-301	292-335	324-372	360-life	360-life	360-life
42	292-335	324-372	360-life	360-life	360-life	360-life
43	324-372	360-life	360-life	360-life	360-life	360-life

First Name

Last Name

E-mail Address

Address

To Whom it may Concern,

I am writing this letter as a suggestion on an important issue that should be changed in the United States Sentencing Guidelines. I believe this change would have a great impact, as well as correctly reflect the just punishment defendants deserve.

The change is to divide methamphetamine into two different drug categories.

First let me state that my experience with methamphetamine (meth) is from actual use. Between the ages of 15-17, and 19-21 I used or sold meth.

Meth is a huge problem in America. In fact it used to be an epidemic. However prescription pills and heroin are taking it's place. But let's discuss meth.

There are two different kinds of meth. I know that the government believes that there is "Ice" or actual meth, and the a substance containing a detectable amount of meth. This is incorrect.

The first type of methamphetamine is what the street's call "old school" meth. This is meth that is "cooked" or manufactured. This type usually includes multiple chemicals such as ephedrine, phosphorus, iodine, and the list goes on. But basically, to make this type of meth, certain chemicals have to be combined in a certian way, and then usually turned into a white powder substance. This type of meth can also come in a "putty" like substance that is usally brown. The street name for this is "peanut butter dope". The chemicals needed for this type of meth are fairly hard to obtain. As an example, you can no longer buy cold medicine that contains ephedrine, without signing a book and providing ID. For the purposes of this letter we are will call this "cooked meth".

The second type of meth is what the street calls "Ice". This meth usually looks like crystal shards, or crushed glass. For the purposes of this letter we will call this type "ICE". Now ice can be made a couple of different ways. The most common way is in super labs in mexico and then brought into the U.S. However it can also be made at home using certain chemicals that are really easy to obtain like Gun Blue, which is at every Wal-Mart in the country. The "real" way to make ice is as a mold. All the chemicals are placed in a tank, usually a fish tank. Then the tank is buried underground or placed in complete darkness for a period of time until the ice "grows". There are other numerous ways that ice is made, but the general difference is that it is not cooked.

Strength

The difference between these two types of meth are substantial. First

is the strength. Cooked meth is significantly stronger than ice. Regardless of what "purity" level it shows, ice will never be as strong as cooked meth. The precursors is cooked meth make for a stronger chemical than ice. When I was 16 years old, I was using cooked meth. I could purchase a "teenager" which is 1.7 grams (1/16 of an ounce) and me and three or four friends would stay awake and "tweeking" (being high on meth) for multiple days, usually three or four. When using ice, the same amount of people could stay high for about a day and a half. With cooked meth a person possessing an "eight ball" or 3.5 grams was going to be high for a week. On ice that amount might last the weekend.

The difference between ice and cooked meth is the same as the difference of cocaine to crack. One is substantially stronger then the other.

The second major difference is the substance itself. It is significantly harder to obtain the chemicals to make cooked meth, and now because it is so rare, it brings a higher street value. Plus a person can overdose easier on cooked meth. Also the side effects of cooked meth are more "intense" (for a lack of a better word). Cooked meth usually causes the more extreme side effects because you actually stay awake longer. The longest I have ever personally stayed awake on cooked meth is 22 straight days. I did not eat, and was hallucinating before I finally blacked out. On ice the longest I stayed awake was 5 day's and at that time I was smoking almost an ounce a day. On cooked meth, I was smoking maybe a half gram a day to stay awake.

It is pretty rare to get any large amount of cooked meth now. The government has done a good job of controlling the precursors. Ice is more common and is almost everywhere.

Classification

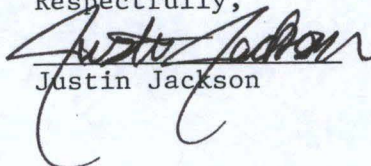
There should be two different types of classification's of meth. Not the Actual or Meth, as the USSG has listed now. There are multiple problems with the Guidelines "Actual" determination now. First is that it is using a purity test to determine actual. However a substance can easily be 100% pure and still not be that strong. This is usually the case with ice. It always reads that it is a high purity, but still does not have a strong effect when compared to cooked meth. Yet meth has a stronger Guidelines punishment than all other comparable substances. Another reason that this classification is needed, is that the Guidelines for meth were written at a time that the most common methamphetamine on the streets was cooked meth. Now the most common is ice but the Guidelines don't reflect this.

Again, it is the same as the crack to cocaine argument. An ounce of cocaine will keep a party going all night, but an ounce of crack will keep it going all week. An ounce of ice will keep a party going for a day or two, but an ounce of cooked meth will keep it going for the better part of a month.

For these reasons I think that the Sentencing Commission should consider the reclassification of the two different types of methamphetamine. I understand that for this to be done a actual study would have to be conducted. If I am needed to testify or better explain any of this, please contact me at the address on the cover sheet. Moreover if needed to testify to these facts, I would be glad to do so, although I do not get released for another year or so.

Thank you for taking the time to read this.

Respectfully,


Justin Jackson

Recommendation to the United States Sentencing Commission requesting that a policy statement be implemented advising that Offense Level 43'S recommendation of life without parole be reduced to 360 months – life without parole for offenders in criminal history category I AND II who are convicted of a nonviolent crime. (For Those Left Behind to Die Amendment)

RESPECTFULLY SUBMITTED ON JULY 25TH, 2016 BY:

Jason Hernandez, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

And

Corena White, [REDACTED]

TABLE OF CONTENTS

A. Summary of problem and solution to the United States Sentencing Guideline - Offense Level.....	2
B. Why the Sentencing Commission should amend Offense Level 43.....	4
C. Why the Sentencing Commission should amend Offense Level 43's recommendation of life without parole for nonviolent offenders in criminal history Category I and II.....	9
D. Subnotes.....	
E. Appendix.....	

**A. Summary of Problem and Solution to the United States Sentencing Guideline
Offense Level 43**

The problem presented is that the United States Sentencing Guidelines recommends life without parole for any defendant who falls into Offense Level 43. This is despite the fact a defendant could be:

- (1) A non-violent offender
- (2) A first time offender
- (3) A juvenile; and, indeed
- (4) All the above.

What makes Level 43 all the more cruel and unusual is that the sentence of life without parole is determined not by a judge or jury, but rather, what amounts to a mathematical equation? There seems to be no other sentencing process that determines when life without parole for nonviolent offenders should be implemented other than the Sentencing Guidelines.

Because the severity of life without parole, Level 43 should be amended in one of two ways:

A) Offense Level 43 CHC I and II should be changed from the current version:

LEVEL	I	II	III	IV	V	VI
43	(0-1)	(2-3)	(4, 5, 6,)	(7, 8, 9)	(10, 11, 12)	(13 or more)
	LIFE	LIFE	LIFE	LIFE	LIFE	LIFE

To reflect:

LEVEL	I	II	III	IV	V	VI
43	(0-1)	(2-3)	(4, 5, 6,)	(7, 8, 9,)	(10, 11, 12)	(13 or more)
	360-life	360-life	LIFE	LIFE	LIFE	LIFE

Or the Commission could include a policy statement or commentary advising United States District Courts of the following:

(B) When a court is sentencing a nonviolent offender who has attained an offense level of 43 or higher, the starting point shall not be LIFE, but rather 360 months-life. This benchmark will (1) allow a sentencing court to consider the defendant's characteristics, potential for rehabilitation, and the other factors set forth in Title 18 USC 3553(a), and (2) to impose a sentence that the Court may feel will not only sufficiently punish the defendant for his criminal conduct, but will also allow the defendant to obtain the goal of reformation and rehabilitation and once again re-enter society.

President Obama has taken major steps in rectifying the unjust and racially disparate impact Offense Level 43 has had on nonviolent offenders by becoming the first president to ever commute the sentences of dozens of prisoners serving life without parole. It is assumed that the next president will not be as forgiving and understanding as President Obama and those serving life without parole will ultimately be left behind to die in prison.

Thus, in the interest of justice, the recommendations stated above should not only be implemented, but also made retroactive to allow District Courts the discretion to predetermine whether a previous sentence of LWOP was required to satisfy the goals set forth in Section 3553(a)

B. Why the Sentencing Commission Should amend Offense Level 43's Recommendation of LWOP for nonviolent offenders in criminal history Category I and II

(1) OFFENSE LEVEL 43 MAKES NO DISTINCTION BETWEEN OFFENDERS WITH MINIMAL TO NO CRIMINAL HISTORY FROM THOSE WHO ARE CONSIDERED HABITUAL OFFENDERS

As currently constructed offense level one through forty- two of the Guidelines Sentencing table share one or two important characteristics: For instance, each one of these offense levels gives courts a recommended sentencing range to choose from (e.g., offense level 32 CHC I recommends 121-151 months imprisonment). Second, each offense levels recommended sentencing range increases in years the more criminal history points a defendant has (e.g., offense level 34 CHC I recommends 151-180 months and offense level 34 CHC VI recommends 262-327 months: 111-170 month increase).

However, in formulating the sentences for offense level 43 the Sentencing Commission abandoned not only one, but both of these approaches. Under level 43, it makes no difference if a defendant is a first time offender or a career offender, because only one sentence is recommended - LWOP.

The Commission has published three reports on recidivism acknowledging that the criminal history rules were never based on empirical evidence. **(1)** The same reports also established that offenders with minimal to no criminal history points "have substantially lower recidivism rates than offenders who are in Criminal History Category IV, V, and VI." The Commission has also found that there is "no correlations between recidivism and the Guidelines offense level. Whether an offender has a low or high guideline offense level, recidivism rates are similar." However, despite these findings offense level 43 continues to hold offenders in all six criminal categories equally culpable.

(2) THERE IS A NATIONAL CONSENSUS AGAINST IMPRISONING NON-VIOLENT OFFENDERS WITH MINIMAL TO NO CRIMINAL HISTORY TO LIFE WITHOUT PAROLE

A review of the criminal punishments enacted within this country seems to produce only two states that mandate a sentence of life without parole for an offender with no criminal history who commits a felony that is not a "crime of violence." **(2)** However, there are several states that have recidivist statutes that do allow or mandate courts to impose life sentences on defendants for non-violent offenses.

(3) There are numerous federal criminal statutes that authorize LWOP to be imposed as the maximum sentence. Most of these statutes involve drug trafficking, racketeering, and firearms

crimes. Additionally, there are federal criminal statutes that mandate LWOP for cases such as killing a federal or government employee, piracy, repeat offenses involving drugs or weapons.

(4) The Guidelines provide for a mandatory LWOP sentence in only four types of crimes. These involve murder, treason, certain drug offenses, and certain firearms offenses that are committed by career offenders. However, under the Guidelines, any crime can be subject to a recommendation of life without parole if the defendant attains level 43 of the Sentencing Table, even if the maximum punishment for the crime set by statute does not authorize such a severe punishment these sentences are called "de facto LWOP;" wherein the sentences are ran consecutively equaling a sentence of more than 470 months. This appears to be the only sentencing scheme in the nation to do so.

Sentencing Court's across the county have spoken out against LWOP sentences for nonviolent offenders **(5)** And since the Guidelines have been rendered advisory courts are more likely to depart from Level 43's recommendation of LWOP when sentencing first time and/or nonviolent offenders. **(6) (7)**

Of the 3,281 inmates serving LWOP for a non-violent crime in the United States, more than 2,000 of these sentences are being served by federal inmates. **(8)** This is a disturbing comparison when one takes into account that of 2.2 million individuals imprisoned in the United States, 2 million of them are incarcerated in state prisons and the remaining 200,000 are housed in federal facilities. It is not known how many federal inmates are serving LWOP as a result of Offense Level 43, but a study by the Commission shows that in 2013 there were 153 defendants sentenced to LWOP and that 67 of these sentences were based on the Guidelines not a statute. **(9)** Nor is known how many of the additional 1,983 federal inmates who are serving "de facto life sentences" non-violent offenders are.

(3) THERE IS A GLOBAL CONSENSUS AGAINST IMPRISONING FIRST TIME NON VIOLENT
OFFENDERS TO LIFE WITHOUT PAROLE

The United States is among the minority of countries (20%) known to researchers as having life without parole sentences. **(10)** The vast majority of countries that do allow such punishment have high restrictions on when life without parole can be issued. Such as only for murder or two or more convictions of life sentence eligible crimes. **(11)** Whereas in the United States LWOP can be recommended, under the Sentencing Guidelines for example, for a non-violent crime such as drug dealing or fraud.

(12) Currently, there are around 5,500 inmates in the Bureau of Prisons serving LWOP for violent and nonviolent crimes. **(13)** In contrast, this population dwarfs other nations that share our Anglo-American heritage, and by the leading members of the Western community. For instance, there are 59 individuals serving such sentences in Australia **(14)**, 41 in England **(15)**, and 37 in the Netherlands.

(16) The United States as party to the International Covenant on Civil and Political Rights has agreed that the essential aim of its correctional system shall be reformation and social rehabilitation. **(17)** Regional Human Rights experts have agreed that long sentences can undermine the rehabilitative purpose of corrections. As the Special Rapporteur on Prisons and Conditions in Africa has stated, "Punishments which attack the dignity and integrity of the human being, such as long-term and life imprisonment, run contrary to the essence of imprisonment. **(18)** Thus it would appear that offense level 43's recommendation of LWOP (regardless of what crime is committed) contradicts not only this country's obligation to the

International Community, but is also a sentencing practice rejected by a great majority of the civilized world. **(19)**

(4) LIFE WITHOUT PAROLE IS A CRUEL AND UNUSUAL PUNISHMENT

Life without parole is the second most severe penalty permitted by law. It is true that a death sentence is unique in its severity and irrevocability: yet LWOP sentences share some characteristics with death sentences that are shared by no other sentences. **(20)** The offender serving LWOP is not executed, but the sentence alters the offender's life by a forfeiture. It deprives the convict of the most basic liberties without giving hope of restoration. As one jurist observed, LWOP "means denial of hope; it means that good behavior and character improvement are immaterial;" it means that whatever the future might hold in store for the mind and spirit of (the convict), he will remain in prison for the rest of his days." **(21)** Indeed, some believe it to be more humane to execute an individual than "to keep them in prison until they actually die of old age or disease."

(22) Because LWOP forswears altogether the rehabilitative idea, the penalty rests on a determination that the offender has committed criminal conduct so atrocious that he is irredeemable, incapable of rehabilitation, and will be a danger to society for the rest of his life.

(23) It is a determination primarily made by a judge or jury if certain set elements are present. The Guidelines, on the other hand, makes this same condemnation of a defendant based solely on a mathematical equation, which is calculated on a "preponderance of the evidence finding" by a sentencing court.

Furthermore, the Commission's rejection of rehabilitation for all offenders in level 43 goes beyond a mere expressive judgment. Federal inmates serving LWOP are normally required to serve the initial eight-to-twelve years in a United States Penitentiary; **(24)** prisons which are known to have "a predatory environment...engendered by gangs, racial tensions, overcrowding, weapons, violence and sexual assaults." **(25)** Because in such prisons safety and security override rehabilitation, programs are limited and without substance. And in prisons where vocational training and other rehabilitative programs are available inmates serving LWOP are not allowed to participate in them or are passed over for prisoners with release dates.

This despite offenders in Criminal History Category I and II are in most need of and receptive to rehabilitation. **(26)**

5. Federal Life Sentences without Parole and Minorities

Although the Sentencing Commission's Report does not state how many of the offenders serving LWOP for a nonviolent or violent offense are minorities, it is reasonable to concluded that at least 75%, if not more, are minorities based on the racial breakdown of the 153 LWOP sentences given in 2013: **(27)**

Blacks-45.0%

Whites-24.8%

Hispanics-24.2%

Asian, Native Americans

And others- 6.0%

As the Clemency Report stated, "The [Commission's] new report offers strong statistical proof that federal life sentences are used vigorously against minorities and mostly for nonviolent offenses. (28) With minorities making up one third of the United States population the Clemency Report's conclusion cannot be refuted.

C. AMEND OFFENSE LEVEL 43

In 2005, the U.S. Supreme Court ruled in *U.S. v. Booker* that the Sentencing Guidelines were no longer mandatory when sentencing a defendant. Under the approach set forth by the Supreme Court, "district courts, while not bound to apply the Guidelines, must consult those Guidelines and take them into account when sentencing, and are "subject to review by the court of appeals for "unreasonableness." The Supreme Court has continued to stress the importance of the Sentencing Guideline in following cases. See *Gall v. U.S.*, 128 S. Ct. 588 (2007) ("As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and initial benchmark" at sentencing).

Because there is no empirical data, research, or studies that demonstrate that a first time nonviolent offender is irredeemable, incorrigible, or incapable of rehabilitation, Offense Level 43's recommendation of LWOP for all offenders must not be the benchmark and should be amended to reflect one of the following:

(A) Offense Level 43 CHC I and II should be changed from the current version:

LEVEL	I	II	III	IV	V	VI
43	(0-1)	(2-3)	(4, 5, 6,)	(7, 8, 9)	(10, 11, 12)	(13 or more)
	LIFE	LIFE	LIFE	LIFE	LIFE	LIFE

To reflect:

LEVEL	I	II	III	IV	V	VI
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43	(0-1)	(2-3)	(4, 5, 6,)	(7, 8, 9,)	(10, 11, 12)	(13 or more)
	360-life	360-life	LIFE	LIFE	LIFE	LIFE

(29)

Or the Commission could include a policy statement or commentary advising district courts of the following:

When a court is sentencing a nonviolent offender who has attained an offense level of 43 or higher, the starting point shall not be LIFE, but rather 360 months-life. This benchmark will (1) allow a sentencing court to consider the defendant's characteristics, potential for rehabilitation, and the other factors set forth in Title 18 USC 3553(a), and (2) to impose a sentence that the Court may feel will not only sufficiently punish the defendant for his criminal conduct, but will also allow the defendant to obtain the goal of reformation and rehabilitation and once again re-enter society.

Then, in the interest of justice, this Amendment should be made retroactive to allow district courts the discretion to predetermine whether a previous sentence of LWOP was required to satisfy the goals set forth in 3553(a).

THEREFORE, it is prayed that the Sentencing Commission make revising offense level 43 a priority in accordance with the recommendations set forth herein.

Respectfully Submitted,

Jason Hernandez, [REDACTED]
[REDACTED]

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1. U.S. Sentencing Comm'n, Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines (May 2004); U.S. Sentencing Comm'n Recidivism and the First Offender (May 2004); U.S. Sentencing Comm'n, A Comparison Of The Federal Sentencing Guidelines Criminal History Category and the U.S. Parole Comm'n Salient Factor Score (January 2005).
 2. See Alabama Code 13A-12-231(2)(d)(provides LWOP for a first time offender who possesses 10 kilograms or more of cocaine); And Michigan's "650 Lifer Law" which made LWOP mandatory for any offender possessing more than 650 grams of cocaine or heroin.
 3. See Nevada Rev. Stat. Sections 207.010(1).
 4. See generally SENT., COMM'N MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM (2011) (hereinafter Mandatory Minimum Report).
 5. See U.S. v. Miller, 2010 U.S. Dist. LEXIS 79763 (Dist. of Minn. 2010) ("The Court has no hesitancy in stating that a mandatory life sentence without the possibility of parole is vastly too long for this defendant. [...]he accumulated a dreadful criminal record - and at an early age....but a non-discretionary sentence, assuring he will die of old age in federal prison, is too heavy a burden.").
 6. See U.S. v. Faulkenberry, 759 F.Supp.2d 915 (S.D. Ohio 2010)(despite obtaining an offense level of 47 for fraud violations district judge imposes sentence of only 120 months); and U.S. v. Watt, 707 F.Supp.2d 149 (D. Mass. 2010)(despite obtaining an offense level of 43 for fraud violations district court imposes sentence of 24 months).
 7. The Supreme Court stated in Roper v. Simmons, 543 U.S. 551, 563-64 (2005) that in determining whether a punishment is "cruel and unusual" a factor to be considered is the "objective indicia of society's standards, as expressed in legislative enactments and state practice."
 8. See Jennifer Turner, ACLU Report, A Living Death: Life Without Parole for Nonviolent Offenses. (Nov. 13, 2013).

9. See U.S.S.C. Report, Life Sentences in the Federal System, p. 9 (2015)
10. See University of San Francisco's Report entitled Cruel and Unusual: U.S. Sentencing Practices in a Global Context, at p.8
11. Cruel and unusual, *supra* at p.24.
12. Under 18 USC Section 1341 a defendant cannot be sentenced to more than thirty years. Nevertheless, a defendant convicted for fraud can still attain an offense level of 43, and under such circumstances the Guidelines instruct courts that if the count carrying the highest statutory maximum is less than the total punishment, then the sentence imposed on one or more of the counts shall run consecutively..." See U.S.S.G. 5G1.2 (d); and also U.S. v. Okun, 453 Fed. Appx. 364 (4th Cir. 2011) (where defendant obtained an offense level of 43 for Ponzi Scheme district court imposed consecutive sentences equaling 1200 months to equal recommendation of LWOP); U.S. v. Lewis, 594 F.3d 1270 (10th Cir. 2010) (sentenced to 330 years as a result of obtaining offense level 43 for fraud); United States v. Robert Allen Stanford, (sentenced to 150 years for fraud under Guidelines).
13. There are 1,983 people serving de facto life sentences in the federal system. It is not known how many of these violent or non-violent offenders are
14. See Englan Vinter and Others v. United Kingdom, App. Nos. 66069189 and 3986/10 Eur.Ct.H.R., 37 (2012)
15. Vinter, *supra* note 12, para. 37
16. Dirk Van Zyl Smit, Outlawing Irreducible Life Sentences, Europe On The Brink? 23 Fed.Sent.R.39, 41 (2010).
17. International Covenant on Civil and Political Rights, Dec. 16, 1996, S. Treaty Doc. No. 95-20 (1992 Art. 10(3) 999 U.N.T.S. 171
18. African Commission On Human And Peoples Rights, Reports Of The Special Rapporteur On Prison Conditions In Africa.
19. See Thompson v. Oklahoma, 487 U.S. 815, 830 (1998)(In ruling that a 14-year-old convicted of murder could not be executed the Supreme Court stated, "We have previously recognized the relevance of the views of the international community in determining whether a punishment is cruel and unusual" and "by other nations that share our Anglo-American heritage...").
20. See Graham v. Florida, 176 L.Ed.2d 825, 842 (2010) (Kennedy, Justice).
21. Naovarath v. State, 105 Nev. 525, 526, 779 P.2d 944 (1989).
22. Holberg v. State, 38 S.W.3d, 140 (Tex.Crim.App. 2000); and S v. Hehemia Tijji, April 9, 1991 (unreported) quoted in Nanibia Supreme Court Feb. 6, 1996, S v. Tcoeib, (10 SACR (MnS)(1996)("The concept of life imprisonment destroys human dignity reducing a prisoner to a number behind the walls of jail waiting only for death to set him free.")
23. Harmelin v. Michigan, 115 L.Ed. 836, 887 (1991)(Justice Stevens dissent)("Because [LWOP] does not even purport to serve a rehabilitative function, the sentence must rest on a rational

determination that the punished criminal conduct is so atrocious that society's interest in deterrence and retribution wholly outweighs any consideration of reform or rehabilitation for the perpetrator. Serious as this defendant's crime was, (drug possession) I believe it is irrational to conclude every similar offender is wholly incorrigible.")

24. See Bureau of Prisons Program Statement 5100.08(1)(Inmate Security Designation and Custody Classification)("A male inmate with more than 30 years remaining to serve (including non-parolable LIFE sentences) will be housed in a High Security Level Institution unless the [Public Safety factor] has been waived.").

25. Quoting U.S. v. Silks, 1995 U.S.App.LEXIS 35355 (9th Cir. 1995): Holt v. Bledsoe, 2011 U.S. Dist.LEXIS 73631 (Mid.Penn. 2011)("Inmate-on-inmate violence is common and uncontrollable at USP Lewisburg."); Penson v. Pacheco, 2011 U.S.Dist.LEXIS 52856 (D.Colo.2011)("...USP Victorville housed violent prison gangs and was where dozens of assaults and a murdered had occurred."); Jones v. Willingham, 248 F.Supp. 791 (Kansas 1965 (describing USP's as "powder keg[s]").); and Leah Caldwell's Article in Prison Legal News, Sept. 2005 p.10-13 entitled "USP Beaumont, Texas: Murder and Mayhem In The Thunder Dome.").

26. See Graham v. Florida, 176 L.Ed.2d at 846 ("...the absence of rehabilitative opportunities or treatment makes the disproportionality of the sentence [LWOP for juveniles], all the more evident.").

27. U.S.S.C. Report, Life Sentences in the Federal System (2015): at page .7

28. See <http://clemencyreport.org/new-report-most-federal-life-sentences-given-to-minorities/>

29. See U.S. v. Heath, 840 F.Supp.2d 129 (USDF (1993)(district court recommending Offense Level be reduced from LIFE to 399 months-LIFE, after observing that "the sentencing of defendant in the instant crack cocaine case caused the court to face squarely a gaping, inexplicable omission in the sentencing table of the Sentencing Guidelines.")

30. S. v. Dodo, 2001 (3) SA 382, 404 (CC) at Paragraph 38 (S. Africa)("To attempt to justify any period of penal incarceration, let alone imprisonment for life....without inquiring into the proportionality between the offenses and the period of imprisonment, is to ignore, if not to deny, that which lies at the very heart of human dignity..."); and U.S. v. Miller, 2010 U.S. Dist. LEXIS 79763 (Dist. Minn. 2010)("The Court is of the view that the Supreme Court will visit the next decade the issue of whether mandatory life sentences for nonviolent crimes committed by adults offends the prohibition against cruel and unusual punishment....However, I am reluctant to predict the outcome of such a review. Were this Court a member of the Supreme Court, this Court would follow the reasoning of Justice Kennedy in Graham v. Florida, and conclude that such a sentencing regime that resulted in the defendant's life sentence does violate the Eighth Amendment

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U.S. Sentencing Commission
Attn: Public Affairs
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Washington, D.C. 20002-8002

Dear Members of the U.S. Sentencing Commission:

Re: Proposed guideline range amendment changes/alternatives to prison/
1st time offenders

With legislature in Congress apparently being considered on a bipartisan basis to de schedule marijuana from the controlled substance act (per www.norml.org), it is time to lower all marijuana as a crime. Yet the current administration is trying to make it worse! Thank you for sticking to your retroactivity in your 'drugs minus 2' policy. During your public comment period I'd like to comment on lowering guideline ranges so pot offenders don't have to spend as much time, or any time in jail due to mandatory minimums and guideline ranges, etc. The topics are 1st time offenders, bipartisan budget act and alternatives to incarceration.

It is amazing that there has been a lot of bipartisan support for criminal reform in Congress. They just don't seem to get it passed. Such bills as the SAFE Justice Act, and Smarter Sentencing Act, and bills lowering mandatory minimums and giving power back to judges are prevalent. Over sentencing is usually derived by subjective, unscrupulous prosecutors (more interested in pressuring a plea deal by using threats of outrageous sentences to get a defendant to agree to a lower sentence- which may still be decades of time especially in cannabis cases!) are common. It is an unjust system (prosecutor becoming the judge) during a time when marijuana is becoming more legal across all the states. Trump administration is trying to go back to 1970 era war on drugs while it is costing \$80 billion per year (*Hamilton Project, Brookings Institute*) now to lock up millions of mostly 1st time, low level nonviolent offenders (prison population is made up of 95% nonviolent offenders *per FBOP Director Charles E. Samuels Jr., 08-04-15*). More commissioners need to be appointed so common sense legislature can be put before Congress.

It has been shown that Safety Valve should not be decided on by prosecutors; as judges should decide the issues. Safety Valve and mandatory minimums have become a venue for *lying* testimony, by codefendants (encouraged by prosecutors), seeking leniency in their own cases. 'Lie' against someone else, provide 'substantial assistance' (prosecutors decide that, too) and one's own sentence is reduced while a codefendant's sentence goes up! It is easy to collectively say someone is a "leader" in a drug case whether true or not. So what happens to the person who has been called unfairly a "leader" (while the real 'leader' may be in another state)? That individual does not get Safety Valve, even though they may be a first time, non violent (weaponless) offender and yet face very long jail time. Safety Valve doesn't work justly. The quantity of drugs is also suspect due to same "lying" codefendants. Prosecutors have been known to use jailhouse snitches for leverage.



First time offenders in weaponless (drug/pot) crimes should be given alternative to incarceration through community/residential confinement programs, or probation. Many states have done this effectively (Texas) preventing a young person from losing the prime of their life during which they could be preparing for a job and/or to contribute to society, instead of wasting away in prison at taxpayer expense.

I do have a concern on your Zone D classification. As prosecutors have all the power to decide on the amount of time (often wrongly calculated due to lying codefendants- encouraged by mandatory minimum

sentencing to lie for personal leniency - a proven fact-*and* prosecutor's freedom to assign enhancements or threaten/pressure plea agreements); the ensuing sentence (which judges apparently can't question) can be a lot higher than is truthful. The fact a zone D or anyone given more than 15 offense level, it seems (or 15 months or more) apparently becomes ineligible for the lower guideline range does not seem fair. Congressmen have tried to re-write the law (SAFE Justice Act, etc where they specified how a prosecutor had to PROVE a conviction before adhering to a sentencing range(!)) but Congress has been unable to pass anything (partly due to a few objectors). Now that mass incarceration is back on the table and the unjustness of the sentencing is apparent, and while many states are legalizing a medicinal plant (pot); inmates are locked up for decades under the old laws. And many are 1st time, nonviolent offenders!

Please reclassify these lengths. 1st time, nonviolent offenders can now still get high range sentencing due to the whims of prosecutors and it is not U.S. justice to do so. Prisology has submitted a new, fairer, lower guideline range (so prison population will not exceed capacity of Federal Prisons, 28 U.S.C. 994(g), -which they already have exceeded said capacity). Such guideline range should replace the old one, as automatic, and avoid making prisoners have to retroactively go before the courts to try and get their sentences reduced (as in the 'drugs minus 2' policy). Again prosecutors have too much power and sway in these types of scenarios with serious 'weight' being put on prosecutors' opinions (who the majority of time used unfair tactics to sentence the individual in the first place even for Criminal Level 1 offenders). A Criminal level I history individual, especially in a nonviolent, weaponless, first time offense for marijuana and drugs should receive two levels BELOW what Prisology is suggesting (or NO sentence) as the new guideline range (i.e.: a level 37 individual should be downgraded to a 35, if they are a first time, nonviolent pot offender, using Prisology's new guideline range, reducing the months from 168 to 135 months) without having to go back to the courts to request a reduction! Most cases (as a horribly high percentage of the prison population is due to drugs) were put there by prosecutors using unjust tactics of lying codefendants (avoiding mandatory minimums) and by using intimidation of a defendant by threatening life sentences, et al, to get an inmate to take a plea bargain rather than prove the case in trial. Since the individual was over sentenced and over incarcerated to begin with, it is only fair to roll back these sentences (for a medicinal plant becoming legalized). The dangerous over crowding causing poor health conditions, lack of retraining for the outside world, ruining families, lives and communities is proof the sentencing needs to change. President Obama (2015) met with prisoners and heard how prosecutors threatened defendants with life in prison (for drugs) to get them to accept a 30 year plea deal. It has been proven that longer sentences do not deter crimes nor that longer sentences make the "punishment" more effective. Per Peter Orszag (White House Budget Director, 04-25-16) "longer sentences do not deter crime...it is not soft on crime to bring prisoners back into society...[it is] common sense reform." Retraining programs, community confinement and getting folks out sooner reduces the recidivism rate. So while many billions of dollars are being spent to maintain prisons, there are few "re training" programs offered and not enough good time credits are allowed. Lives are being wasted for mostly nonviolent, weaponless offences and families are being punished in the meantime. Pot offenders should not be sentenced at all!

Sally Yates deputy attorney general (Congressional Hearing on Sentencing Reform,10-19-15) did say that statistically of drug offenders less than 1% had a violent past and one half of them had NO criminal history at all. Yet we have millions in prison! (costing \$80 billion annually with poor health care and there are too few programs to retrain or allow early release for the 77% nonviolent drug offenders, per www.drugpolicy.org). Apparently studies show that housing a prisoner in Calif. for one year costs more than one year at Harvard (\$75,560. per *LATimes.com*).

We are apparently the most highly incarcerated country in the world. It needs to change as *1.53 million were the number people arrested for nonviolent drug charges in 2011*; <http://www.drugpolicy.org/drug-war-statistics>). It seems all the wasted money could be used to fight  real,  violent crime, terrorism, cartels, etc. After approximately 45 years of prohibition, 2.4 million incarcerated [\[1\]](#) (approximately 77%[\[2\]](#)

locked up from 10 years to life), are lower level nonviolent drug (pot) offenders. A strong reason to grant first time, weaponless pot offenders, alternative community confinement or probation.

Back in Aug. 1, 2012, the American Bar Association President, Wm. T. Robinson III, testified before the U.S. Senate Committee on the Judiciary, stating: **“we cannot build ourselves out of this crisis. The most significant source feeding this growth is the increased incarceration of nonviolent drug offenders.”** He *recommends*:

BOP has been urged by House and Senate Appropriations Committees **“to**, among other things: maximize the reentry time people spend in residential reentry centers as well as home confinement; expand the criteria for the use of **“compassionate release”** for compelling and extraordinary circumstances; and expand the use of Residential Drug Abuse Program by removing barriers to full use of the program.

Allow judges to sentence certain first-time drug offenders to probation instead of incarceration

Congress should authorize expedited consideration of prisoner eligibility for supervised release (this policy will reduce overcrowding and costs, while creating additional incentives for inmates to engage in service, educational, and vocational activities)

Early release for elderly nonviolent offenders (Second Chance Act)

EXPAND TIME CREDITS FOR GOOD BEHAVIOR. Congress should quickly implement a DOJ proposal creating a new (i.e.: Barber Amendment, as amended gives up to 128 days) good time credit that can be earned for successful participation in recidivism-reducing programs, such as education or occupational programming.

ELIMINATE MANDATORY MINIMUM SENTENCES. Restore federal judicial discretion in drug cases. The excessive mandatory minimum sentences associated with drug offences have led to over-representation of low-level and nonviolent drug offences in the federal criminal justice system.

The only way to reduce over incarceration is to put less people in jail, and to release more people (Craig DeRoche; Justice Fellowship).

The Colson Taskforce, Report to Congress by *Nathan James (Analyst in Crime Policy)*: **The Federal Prison Population Buildup: Overview, Policy Changes, Issues, and Options** , (**“(1) reinstating parole, (2) expanding good time credits, and (3) expanding conditions under which courts could reduce sentences pursuant to 18 U.S.C. §3582(c)(1)(A).**) are other alternatives offered by experts and studies.

The concept that consuming cannabis leads to violence is laughable. Alcohol or meth is much more likely to lend itself to violence, than marijuana. Again, Sally Yates, former Deputy Attorney General states that

only 1% of drug offenders are violent and 1/2 are likely to have **NO** criminal history. Why are they imprisoned for decades!?

In your recent Overview of Mandatory Minimum Penalties in Federal Criminal Justice System, 2017, as part of Rule 5.2, "drug offenses accounted for slightly more than two-thirds of the offenses (67.3%), carrying a mandatory minimum penalty in fiscal year 2016 significantly higher than the next closest category of offenses."

Charles E. Samuels Jr. (former Director of FBOP; CSPAN 08-01-12) and Inspector General Horowitz (03-14-13) both said over crowding in prisons were due mostly to drug offenders being sentenced for **much longer** than most other offenses (murder?).

Your report, 2017, also says:

"the average sentence for Federal offenders convicted of an offense carrying a mandatory minimum penalty in fiscal year 2016 was 110 months of prison, nearly four times the average sentence (28 months) for offenders whose offense did not carry a mandatory minimum. Less people got relief from mandatory minimums in 2016 compared to 2010" and more than one half of federal inmates (2016) were convicted of an offense carrying a mandatory minimum.

In your 2011 Mandatory Minimum Report by the Commission, under "Use of Mandatory Minimum Penalties in Selected Districts, 105-111, Oct. 2011" the report flatly states in the section on discretion and studies of prosecutors that "prosecutors will charge the most serious...offense...that generates the most substantial sentence...admitting mandatory minimums play a significant role in decisions." Law enforcement purposely "file charges carrying the mandatory minimum penalty whenever applicable (id. 107)." Another example of our injustice system at work as law enforcement will purposely add to a charge to increase the mandatory minimum levels for marijuana (thus the over crowding of prisons due to drugs), while 117 million in the U.S. have admitted to using it, and approval of its use is greater than the majority of the country's population (www.drugpolicy.org). 86% of Americans say medical marijuana should be available (per Rep. Steve Cohen, www.cbsnews.com). Children's hospitals and scientific journals tout the health benefits of the product.

Congress has tried to reduce the severity of mandatory minimums and revise drug laws/ criminal reform numerous times. The Sentencing Commission has power to get it done.

People are being sent to prison for too long! An Attorney General, Inspector General, FBI Director James Comey Jr., DEA, U.S. Attorneys, former and current Congressional representatives all admit "Safety Valve, mandatory minimums, guideline ranges, conspiracy are used to coerce defendants to testify (lie) against each other for leniency" (in their own cases). We do not have a fair, impartial, or "just" justice system.

Many Congressional hearings have concluded ("Right on Crime," Criminal Justice System [Reform]; CSPAN, 07-06-16, RHOB, Capital Hill, WA D.C.) that "we need to do a much better job of helping people become productive members of society" and "there is no over-sight for prosecutors.". "We have abuses in the criminal justice system."

Texas Public Policy and Director, Marc Levin found in Texas..."staying longer in prison does not reduce recidivism" but reform/ training program and early release does!

Reforming the criminal justice system means more public safety and less crime in America. The more reentry and retraining programs are provided, the recidivism reduction rate goes up.

Besides the overcrowding, past the capacity of prisons (28 U.S.C. 994(g)), health care costs in prison have risen 61%, (per Inspector General, Congressional Oversight hearing on Bureau of Prisons, 08-04-15):

In the Report Congress To: Mandatory Minimum Penalties in the Federal Criminal Justice System, October 2011, Appendix E (11-12) the Supreme Court in *Solem v. Helm*, 463 U.S. 277 (1983) held that **◆a criminal sentence must be proportionate to the crime for which the defendant has been convicted.◆** The General Accounting Office concluded **◆inmates with chronic issues were not receiving proper health care◆throughout the BOP system.◆**[3]

◆Enduring illness is not part of a prisoner◆s sentence any more than starvation is, or torture◆the numbers of prisoners with end-stage organ failure can no longer be ignored (http://virtualmentor.ama-assn.org/ 2008/02/ msoc2-0802.htm, ◆Hard Times and Health Care: The Squeeze on Medicine Behind Bars◆)◆ ◆◆medically eligible inmates are dying behind bars◆ (See Reform Needed for Compassionate Release of Prison Inmates (http://www.ucsf.edu/news/2011). Per *Gregg v Georgia*, 428, U.S. 153, 428, U.S. 173 (1976), ◆death◆ does not fit the crime, especially for pot.

Yet there are "waiting lists" for compassionate care release (per Director Samuels, Jr., 08-04-15). His authority was limited as the sentencing prosecutor can void a compassionate release even after the Director of the FBOP has approved it! Prosecutors have too much power to abuse the system!

The most powerful deterrent to recidivism is shorter sentencing, retraining, and not being put in the prison system at all. Community/residential incarceration should apply to 1st time offenders, mandatory minimums eliminated, guideline ranges changed, marijuana de- scheduled, and pot offenders given an alternative to prison (not jailed for a legalized medicinal plant).

Thank you for considering this very serious matter regarding our justice system.

Respectfully,

Rose Adams

[1] Drug War Statistics <http://www.drugpolicy.org/drug-war-statistics> 2013

[2] Lessons from the U.S. Sentencing Commission Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System, Oct 31, 2011 <http://www.famm.org>

[3] GAO Report on Bureau of Prisons Health Care: ◆Inmates Access to Health Care is Limited by Lack of Clinical Staff (GAO/HEHS-94-36-BOP)

- **You think too many people go to prison – you can ask the commission to change the guidelines so that more people get probation.**

I highly believe that too many people go to prison, and are sentenced for many years with proof of amount of crime. In terms of a small amount of crime, the Commission wants to sentence right away or act in the form of punishment right away, because they have a chart to follow. There have been people who have been accused of a crime and were sent to prison for years, and it turned out that they were innocent. They have also been people who have committed a crime or a felony and were not a major crime but due to their reckless behavior and unknown knowledge about the laws and its consequence of actions, who in the end are good people just with a bit of lack of priorities are sent to prison right away. I believe that the court order should give more people the opportunity to get probation as well the knowledge of the consequences of breaking probation. In these inmates need more guidance counseling on society because of half of the time once they are sent free, they don't know how to trust the freedom they have in their hands.

- **You think that too much of a person's criminal record counts against them – you can ask the commission to change the criminal history guidelines.**

I do think that too much a person criminal records counts against them, the commission should be able to change the history guidelines. My reasons are a lot of the times these inmates are young and not aware of the consequences of laws and their behaviors. A person's past should not define their future, I will guarantee that those people with a past and even those who done time in prison turn out being the greatest father and husband. They also turn out being the greatest advice givers. This gives the same amount of pressure to the judges to make a decision and to the attorneys to fight around the proof or to get more proofs because in the end it all by the commission criminal history

guidelines. The judge can't face the chances on risking of letting a criminal go on loose to the streets, because the judge does not trust his behaviors due to his past, and the lawyer has the pressure of the money they are pay and the reputation they have among society. The lawyer also has the pressure of it clients and the personal relationship they have built among their client, but personal does not come when there is a guideline to be followed. In other words, the law is unfair because how the guidelines are not wanting to be changed and how everything just seems to be going in circles.

June 6, 2017

United States

455 Dirken Office Building

Washington, D.C 2017

Dear Charles,

Hello and good day. My name is Maggie Weuste. I am currently a [REDACTED] student at [REDACTED] High School located in [REDACTED], New York. Over the past few months I have learned many things in the state-mandated Participation in Government course. As a concerned and engaged citizen from your representative district I am writing you this letter. The purpose of my letter is because I don't agree with how the life sentence system is. This document will address certain realities and discuss my research as well as elaborate how my ideas will improve society within our state and country.

There have been many cases where people haven't committed serious crimes and they've been sentenced to life in prison or even just a few years in prison. There have also been some cases in the past where murderers have been sentenced to life in prison and they've gotten out for good behavior. When people get caught with drugs or get a DUI or anything related to that, they shouldn't be put away in jail. They should immediately get checked into a rehabilitation center and if it's a serious case where they have been selling drugs or get a DUI and put other people into danger, they should be put away in jail for at least a year or a few months. Even when it comes to self defense, there have been cases where people have been put away in jail. If someone says that they killed someone in self defense, they shouldn't be put away. Their case should be reviewed over and over again until they finally find evidence that they're innocent or not. I don't agree with the system because it seems as though everyone just gets thrown into prison and the people that get out are the true criminals. Only murderers should get a life sentence for prison. I think that they shouldn't get parole and they should just stay in prison.

I think that the life sentencing system should be changed. People who have a drug or alcohol problem should not be put away in jail, they should get put into a rehabilitation center so they can get better. People who murdered someone in cold blood should either be put to death (that's a whole other thing) or should be locked up. If someone got a DUI they should have their driver's licenses taken away and they should have to take a whole class to get it back, it shouldn't be an easy test. They would really have to work hard to get their licenses back. They should be a

law to make the actual criminals be put into prison for life without parole and the "innocent" crimes to be put into other places like a rehab or they should have to take classes.

Hopefully, in the future everything would be safer if this became a law. The true criminals would be put away in jail, the people who did innocent crimes would be helped, and the self defense cases would be studied harder so they'll be released back to their normal lives. Anyway, thank you so much for taking the time to read this letter, I really appreciate it.