

U.S. Sentencing Commission Adopts ABA Recommendations on Federal Sentence Reduction

On April 18, the United States Sentencing Commission voted unanimously to approve a new policy statement to guide judges considering whether to reduce a federal prisoner's term of imprisonment for "extraordinary and compelling reasons" under 18 U.S.C. § 3582(c)(1)(A)(i). This was a great victory for the ABA, whose leadership role in developing the policy statement was publicly acknowledged by the Commission.

The ABA has long argued that the sentence reduction authority in § 3582(c)(1)(A)(i) should be given a broad interpretation, and that it should act as a safety value in a range of situations where a prisoner's circumstances change in some fundamental way. The new policy will give advocates important new grounds for arguing that some federal prisoners should be released. Commissioner Castillo mentioned at the meeting that he had hoped to get consensus on more of the ABA's proposed factors, and he added that he views this as just the first step in a process.

The ABA's efforts to persuade the Sentencing Commission to adopt a broad policy for sentence reduction motions, initiated by the section's Corrections & Sentencing Committee in 2000, were described in the Criminal Justice Section Newsletter of September 2005. Federal sentence reduction under § 3582(c)(1)(A)(i) was the subject of a resolution of the House proposed by the Justice Kennedy Commission in 2004. Since the fall of 2005, the ABA has written additional letters and testified twice before the Commission on this subject.

In the spring of 2006, at the Commission's invitation, the ABA drafted a proposed policy statement for the Commission's consideration. This policy statement was endorsed by the USSC Practitioners Advisory Group, the Federal Defenders, the NACDL, and Families Against Mandatory Minimums. Section chair-elect Steve Saltzburg's March 20, 2007, testimony before the Commission, the ABA's proposed policy statement, and other related documents, can be found on the Section's website, www.abanet.org/crimjust.

Sentence reduction motions (so-called "compassionate release") have for many years been reserved by the federal Bureau of Prisons for situations in which a prisoner was close to death. Now, under the new Sentencing Commission policy, the range of eligible cases will be broadened to include prisoners "suffering from a permanent physical or medical condition," or "experiencing deteriorating physical or mental health because of the aging process." Release may also be sought because of "the death or incapacitation of the defendant's only family member capable of caring for the defendant's minor child or minor children." Finally, a catch-all provision authorizes a court to reduce a prisoner's sentence when, in the judgment of the Director of BOP, some other extraordinary and compelling reasons exists, alone or in combination with one of the other identified circumstances.

The Commission's policy makes clear that "rehabilitation of the defendant is not, by itself, an extraordinary and compelling reason." This reservation is taken directly from

the statute authorizing the Commission to adopt policy, 18 U.S.C. § 994(t). The ABA has argued that its use of the word “alone” strongly indicates that Congress regarded a prisoner’s “rehabilitation” as potentially relevant the court’s release decision.

In announcing the revised policy, Commissioner Reuben Castillo singled out the ABA as having played an important role in helping the Commission with development of its policy statement. He remarked that he had hoped to get consensus on more of the ABA’s proposed factors, and that he views this as just the first step in a process.

The proposed new policy states in pertinent part that:

(A) Extraordinary and Compelling Reasons: Provided that the defendant meets the requirements of subdivision (2) [the defendant is not a danger to the safety of any person or to the community] such reasons "exist under any of the following circumstances:

(i) the defendant is suffering from a terminal illness;

(ii) the defendant is suffering from a permanent physical or medical condition, or is experiencing deteriorating physical or mental health because of the aging process, that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility for which conventional treatment promises no substantial improvement;

(iii) the death or incapacitation of the defendant's only family member capable of caring for the defendant's minor child or minor children; or

(iv) as determined by the Director of the Bureau of Prisons, there exists in the defendant's case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (i), (ii) and (iii).

(B) Rehabilitation of the Defendant - Pursuant to 28 USC § 994(t), rehabilitation of the defendant is not, by itself, an extraordinary and compelling reasons for purposes of subdivision (1)(A).

The new policy statement becomes effective on November 1, 2007. (Unlike guidelines amendments, policy statements are not subject to Congressional approval.) It is not clear how the new Commission policy will affect BOP policy and practice, and of course it does not change the fact that only a BOP motion can trigger a court’s jurisdiction. The Justice Department has resisted a broad interpretation of the § 3582(c)(1)(A)(i) authority, warning the Commission in a letter dated July 14, 2007, that any policy statement at variance with BOP practice would be regarded as a “dead letter.” The situation will be monitored by the Section in coming months.