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International Association of Residential & Community Alternatives

POST OFFICE BOX 1987 • LA CROSSE, WISCONSIN 54602
(608) 785-0200 • FAX (608) 784-5335 PETER R. KINZIGER, ADMINISTRATOR

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Washington, DC • (202) 307-3171

Correctional Services of Canada Liaison
James Murphy
Ottawa, Ontario • (613) 992-6374

March 15, 1994

The Honorable William W. Wilkins, Jr.
Chairman

United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, DC 20002-8002

RE: Proposed Guideline Amendments for Comment

Dear Chairman Wilkins:

On behalf of the International Association of Residential and Community Alternatives (IARCA), this is to respond to your December 21, 1993 issues for comment. Specifically, I address proposed amendment number 16: the question whether and how the guidelines, policy statements and pertinent statutory provisions should be amended to provide greater sentencing flexibility or authority for modification of a previously imposed sentence of imprisonment, in the case of older, infirm defendants who do not pose a risk to public safety.

The situation in our Federal system is unparalleled: an increasing number of persons are aged and infirm. This is caused in part by mandatory minimums and a greater number of older persons receiving prison terms. (Bureau of Prisons, Long-Term Confinement and the Aging Population, Dec. 7, 1990, Forum on Issues in Corrections, U.S. Dept of Justice). About 12% of all prisoners are now over age fifty. (U.S. Dept of Justice, An Analysis of Non-Violent Drug Offenders with Minimal Criminal Histories, Washington, D.C., Feb. 4, 1994). Given an increasing number of mandatory sentences for drug and repeat offenders, the infirm are likely to increase. The controlling statutes should be revised to expedite matters and modification of sentence process should be clarified.

IARCA urges the Sentencing Commission to hold hearings to develop clear policy statements concerning modification of a term of imprisonment for aged or infirm prisoners. Such hearings should include development of policies and guidelines under the present Statute as well as reasons for changes in the relevant statutory provisions. Of particular importance

are circumstances under which it is appropriate to require nonviolent, elderly and infirm persons to be held in a prison rather than an unsupervised release, supervised community release or residential facility.

Although 28 U.S.C. Sec. 994(t) specifies that the Commission define what may be considered as "extraordinary and compelling reasons" for modification of an infirm person's sentence, the precise test remains unresolved. Secs. 5H1.1 and 5H1.4 indicate that a below guideline departure in sentencing may be appropriate where the defendant is elderly or infirm and that home confinement may be appropriate. But applicability of this provision is unclear on the modification issue. Lack of guidance could make it difficult to screen for appropriate cases and for judges to render decisions whether proposed releases will be consistent with the Commission's policies as required by 18 U.S.C. sec. 3582 (c)(1)(a).

IARCA believes that the Commission should consider what changes are needed in the statutes governing modification of a sentence. 18 U.S.C. sec. 3582 (c)(1)(A) provides for an exception to the rule that a court may not generally modify a sentence of imprisonment. This applies where the Director of the Bureau of Prisons may by motion affirm that there are circumstances covered by 3553(a), and the court finds extraordinary and compelling reasons for a reduction, and that they are consistent with "applicable policy statements issued by the sentencing Commission." This three part test presents a number of hurdles to be overcome resulting in unnecessary delay. The statute should be reconsidered particularly as to who is permitted to make this motion Should it remain the Bureau of Prison's responsibility? Should the Public Defender be allowed to bring the motion forward?

28 U.S.C. Sec. 994(t) requires the Commission to describe what are "extraordinary and compelling reasons" for reducing a sentence. Criteria to be applied, and a list of specific examples should be developed. Applying a system of interchangeable punishment and supervision options under these circumstances would make it possible to release and supervise such inmates. Supervised release of elderly and aged prisoners could be a vehicle for introducing interchangeable punishment units to the sentencing guidelines. The remainder of the sentence to be served could be considered as a community correctional option under this approach.

Thank you for this opportunity to comment. If I can provide the Commission with additional information about residential or community-based correctional facilities, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "James J. Lawrence".

James J. Lawrence
President

cc: Peter R. Kinziger