



U.S. Department of Justice

Criminal Division

Office of the Assistant Attorney General

Washington, DC 20530-0001

July 14, 2006

The Honorable Ricardo H. Hinojosa
Chair, U.S. Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, DC 20002-8002

Dear Judge Hinojosa:

This letter provides the comments of the Department of Justice in relation to the policy statement submitted to Congress by the Sentencing Commission on May 1, 2006, § 1B1.13 (Reduction in Term of Imprisonment as a Result of Motion by Director of Bureau of Prisons). The Commission has requested such comments for its development of further criteria and a list of specific examples of extraordinary and compelling reasons for sentence reduction, as provided in 28 U.S.C. 994(t), as well as guidance regarding the extent of any such reduction and modifications to a term of supervised release.

In brief, the recommendations of the Department of Justice are as follows:

- The specific criteria should be to grant a motion for reduction of sentence under 18 U.S.C. 3582(c)(1)(A)(i) upon the filing of such a motion by the Department of Justice based on a determination by the Bureau of Prisons that:
 - the inmate for whom the reduction in sentence is sought has a terminal illness with a life expectancy of one year or less, or a profoundly debilitating (physical or cognitive) medical condition that is irreversible and irremediable and that has eliminated or severely limited the inmate's ability to attend to fundamental bodily functions and personal care needs without substantial assistance from others;
 - a reduction in sentence is appropriate after assessing public safety concerns and the totality of the circumstances; and
 - a satisfactory release plan has been provided including information about where the inmate will live and receive medical treatment, and the inmate's means of support and payment for medical care.

[4]

- Specific examples of cases warranting a reduction of sentence should be consistent with the foregoing criteria.
- The amount of sentence reduction and modifications to a term of supervised release should be as requested in the government's motion.

I will address each of these recommendations in greater detail below.

THRESHOLD REQUIREMENT OF QUALIFYING MEDICAL CONDITION

The Department of Justice and its correctional component, the Bureau of Prisons, have used 18 U.S.C. 3582(c)(1)(A)(i) primarily to seek reductions of sentence for terminally ill inmates with a prognosis (to reasonable medical certainty) of death within a year. The legislative history of 18 U.S.C. 3582(c)(1)(A) supports this specific ground – that of a terminally ill inmate – as an “extraordinary and compelling” circumstance that may warrant a reduction in sentence:

The first “safety valve” [i.e., current 18 U.S.C. 3582(c)(1)(A)(i)] applies, regardless of the length of sentence, to the unusual case in which the defendant's circumstances are so changed, such as by terminal illness, that it would be inequitable to continue the confinement of the prisoner. In such a case, under subsection (c)(1)(A), the Director of the Bureau of Prisons could petition the court for a reduction in sentence, and the court could grant a reduction if it found that the reduction was justified by “extraordinary and compelling reasons” and was consistent with applicable policy statements issued by the Sentencing Commission.

S. Rep. No. 225, 98th Cong., 1st Sess. 121 (1983).¹

¹ The cited report elsewhere noted as changed circumstances which the committee believed may warrant a sentence reduction “severe illness” and “cases in which other extraordinary and compelling circumstances justify a reduction of an unusually long sentence,” *id.* at 55, and stated that subsection (t) [originally subsection (s)] of 28 U.S.C. 994 “requires the [Sentencing] Commission to describe the ‘extraordinary and compelling reasons’ that would justify a reduction of a particularly long sentence imposed pursuant to proposed 18 U.S.C. 3582(c)(1)(A),” *id.* at 179. However, in the portion of the report quoted in the accompanying text, the report stated that the “safety valve” of 18 U.S.C. 3582(c)(1)(A)(i) applies “regardless of the length of sentence.” The Department has never utilized 18 U.S.C. 3582(c)(1)(A)(i) as a means of second-guessing the judgments of the Sentencing Commission or sentencing courts concerning the appropriate length of sentences, and does not believe that the policy statements issued by the Commission should make the propriety of a reduction turn on whether the sentence is “unusually” or “particularly” long, notwithstanding the scattered and not particularly consistent statements about this which appeared in the committee report.

In addition, in a small number of cases, the Department has sought reductions in sentence for inmates suffering from a profoundly debilitating (physical or cognitive) medical condition that is irreversible and cannot be remedied through medication or other measures, and that has eliminated or severely limited the inmate's ability to attend to fundamental bodily functions and personal care needs without substantial assistance from others (including personal hygiene and toilet functions, basic nutrition, medical care, and physical safety). Cf. *id.* at 55 (noting belief of committee that there may be unusual cases in which eventual reduction of prison term is justified by changed circumstances including "cases of severe illness"); H.R. Rep. No. 685, 107th Cong., 2d Sess. 189 (2002) ("limited authority" of court to reduce prison term under 18 U.S.C. 3582(c)(1)(A) on motion of the Bureau of Prisons "has been generally utilized when a defendant sentenced to imprisonment becomes terminally ill or develops a permanently incapacitating illness not present at the time of sentencing"). In the absence of these medical conditions as described, requests from inmates to seek reductions of their sentences under 18 U.S.C. 3582(c)(1)(A)(i) are not entertained.

This limitation is necessary to avoid undermining the abolition of parole and the system of determinate sentencing pursuant to sentencing guidelines established by the Sentencing Reform Act of 1984. The authority of the Bureau of Prisons under the Sentencing Reform Act to seek reductions of sentence for extraordinary and compelling reasons obviously was not intended by Congress as a back door for the reintroduction of a parole-like early release mechanism, but as an element of a system whose fundamental premise is that prisoners should serve an actual term of imprisonment close to that imposed by the court in sentencing, subject only to very limited qualifications and exceptions.

Prisoners frequently seek reduction in their sentences. The grounds they offer include, for example, subsequent good works, rehabilitation and good conduct in prison, hardship to themselves and their families if their incarceration continues, alleged unfairness of their sentences in comparison with those received by other offenders, alleged unsoundness or injustice of the statutory penalties and sentencing guidelines that put them where they are, purported changes in societal attitudes towards the criminal conduct in which they engaged, and so on.

To the extent that such considerations may warrant a departure from the sentence originally imposed by the court, they are already addressed through carefully controlled and defined exceptions. For example, the "good conduct" credit of 18 U.S.C. 3624(b)(1) allows progress towards rehabilitation and good behavior in prison to be rewarded with a reduction of time served – but such a reduction must be earned through "exemplary compliance" with institutional rules, and it is capped at a maximum reduction of 54 days per year. The provisions of 18 U.S.C. 3621(e)(2)(B) similarly authorize some reduction of time served for inmates who successfully complete drug treatment – but the reduction cannot exceed a year, and it is not available to violent offenders. 18 U.S.C. 3582(o)(2) effectively allows sentence reduction based on changes in the seriousness with which an offense is viewed – but only if the change is confirmed by the Sentencing Commission's lowering of the applicable sentencing range.

An overly broad reading of the statutory authority to seek reductions of sentence for "extraordinary and compelling" reasons would potentially nullify all of these carefully considered limitations in existing law on departing from the sentence originally imposed by the court, and the general system of truth-in-sentencing they protect. The Department of Justice has accordingly not taken 18 U.S.C. 3582(c)(1)(A)(i) as an open-ended invitation to second guess the legislative decision to abolish parole, to undermine the guidelines/determinate sentencing system created to replace it, and to revisit the decisions of courts in imposing sentence, but rather has limited the use of this authority to cases of impending mortality and profound incapacitation as described above.

So limited, the Department's use of this authority has not conflicted significantly with the principles of certainty and consistency in criminal sanctions which underlie the federal sentencing system, and the objectives of those sanctions as set forth in 18 U.S.C. 3553(a)(2). Under the usual mortality in a year standard, the inmate's imprisonment would be terminated by death within a year or less in any event, so the practical reduction of imprisonment under this standard cannot be more than a year. Nor are the sentencing system and its underlying objectives undermined by seeking reductions of sentence in rare cases for prisoners with irreversible, profoundly debilitating medical conditions, as described above. Such an offender carries his prison in his body and mind, and will not in any event be living in freedom in any ordinary sense if released from a correctional hospital facility to be cared for in some other setting.

The policy statements adopted by the Sentencing Commission for granting motions under 18 U.S.C. 3582(c)(1)(A)(i) cannot appropriately be any broader than the Department's standards for filing such motions. In contrast to 18 U.S.C. 3582(c)(2), which allows sentence reductions based on guidelines changes on motion of the defendant, the Bureau of Prisons, or the court, 18 U.S.C. 3582(c)(1)(A) expressly provides that the court may reduce a sentence on the grounds set forth in that provision only on motion of the Bureau of Prisons. As the concluding language in section 3582(c)(1)(A) indicates, the policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(t) function as a further constraint on the court's discretion to reduce the sentence, following an antecedent decision by the Bureau of Prisons to exercise its discretion to seek such a reduction. Given the legislative decision to control the reduction of sentences for "extraordinary and compelling" reasons by allowing such reductions to be considered only on the initiative of the agency responsible for the inmate's custody, it would be senseless to issue policy statements allowing the court to grant such motions on a broader basis than the responsible agency will seek them.

At best, such an excess of permissiveness in the policy statement would be a dead letter, because the Department will not file motions under 18 U.S.C. 3582(c)(1)(A)(i) outside of the circumstances allowed by its own policies. At worst, it would be an incitement to prisoners to file more suits seeking to compel the Department to exercise its authority under section 3582(c)(1)(A)(i) — in contravention of its own policies, judgment, and discretion — in order to get them out of prison before they have served their sentences as imposed by the court. At a minimum, this would waste the time and resources of the courts and the Department in dealing with meritless suits of this type, concerning an issue which simply should not be open to litigation. The risk also must be considered that some courts might be misled by such a discrepancy between the policy statement and the

Department's standards and practices into misconstruing the assignment of responsibility under the statute for seeking reductions of sentence, and might then enjoin the Department to seek such reductions under more permissive standards. If this occurred, the result would be exactly the evil – the undermining of the abolition of parole and determinate sentencing – that Congress sought to avoid by vesting exclusive authority to seek reductions of sentence for prisoners under section 3582(c)(1)(A)(i) in the executive agency responsible for their custody.

We also reject the argument that the Commission should adopt more permissive standards for reduction of sentence based on certain factors mentioned in the United States Attorneys Manual (USAM § 1-2.113) – “disparity or undue severity of sentence, critical illness or old age, and meritorious service rendered to the government” – which may be considered in deciding whether to recommend that the President commute a sentence. The Manual does not state that any of these factors in isolation is a sufficient basis for recommending commutation. Rather, it simply notes that appropriate grounds for considering commutation have traditionally included those mentioned, and states that “a combination of these [factors] and/or other equitable factors” may provide a basis for recommending commutation in the context of a particular case. Since commutation is purely a matter of executive grace, referring to a range of factors that may be considered in the Department's internal guidance regarding executive clemency entails no risk that prisoners will have any measure of success in attempting to turn these references into litigable issues, in an effort to persuade courts to compel the Department to seek their release against its judgment, as may occur if the Commission's policy statements relating to judicial reduction of sentence are more permissive than the policies the Department has adopted for seeking such reductions. More basically, the decision to show mercy and commute a prisoner's sentence is a power reserved by the Constitution to the President, which by its nature is boundless in its legal scope and in the factors that may be considered in its exercise, but also extremely limited in its practical operation given the need for a personal decision by the Chief Executive. The Department has not regarded 18 U.S.C. 3582(c)(1)(A)(i) as a backdoor method to obtain clemency without having to seek it from the President through the established process, and it should not be so regarded in the Commission's formulation of policy statements relating to judicial granting of the Department's motions under that provision.

CONSIDERATION OF PUBLIC SAFETY AND OTHER RELEVANT CIRCUMSTANCES

The medical criteria described above are a threshold requirement for the Department's consideration of seeking a reduction of sentence. If this threshold requirement is satisfied, the Bureau of Prisons carefully assesses the public safety concerns and the totality of the circumstances (including the impact of a reduction of sentence on any victims). The Bureau may find that the inmate is not likely to pose a danger to the public or the community if released, and that the other objectives of criminal sanctions – such as confinement, punishment, and rehabilitation – are no longer principal considerations. Viewing the totality of the circumstances, it may be concluded that extraordinary and compelling circumstances exist that warrant a reduction of sentence.

In this connection, it should be noted that the policy statement submitted to Congress by the Sentencing Commission is at odds in one respect with the statute, in that it refers to 18 U.S.C.

3142(g) – a statute providing criteria for assessing dangerousness and flight risk in the context of pretrial release – as the basis for assessing dangerousness in relation to reductions of sentence. In the statute itself, this reference applies only to section 3582(c)(1)(A)(ii), a provision incorporating various specific limitations, including requirements that the defendant must be at least 70 years old, must have served at least 30 years in prison, and must be doing time under a sentence imposed under 18 U.S.C. 3559(c). In contrast, the policy statement makes the same provision regarding the determination of non-dangerousness apply as well to reductions of sentence sought for extraordinary and compelling reasons under section 3582(c)(1)(A)(i).

The application of 18 U.S.C. 3142(g) to determinations relating to dangerousness in the post-conviction reduction-in-sentence context will present difficulties because it includes features which presuppose the pretrial release context, and because it mixes together factors relevant to dangerousness with factors relevant to risk of flight or nonappearance. As a practical matter, these issues will not have to be addressed for decades in relation to section 3582(c)(1)(A)(ii), given its requirement that the inmate must have served at least 30 years of a sentence under the statutory "three strikes" provision. But there is no reason to bring them into play in relation to reductions of sentence under section 3582(c)(1)(A)(i). As noted, public safety concerns and potential dangerousness of an inmate are fully considered by the Bureau of Prisons before such a reduction is sought, and there is no benefit in stipulating that the standards of 18 U.S.C. 3142(g) apply to such assessments, where the statute itself does not make them applicable. It would certainly be wrong to equate the inquiries concerning these matters in relation to reductions of sentence for extraordinary and compelling reasons with the corresponding inquiry concerning dangerousness in relation to pretrial release. A defendant before trial has not been proven guilty of the charged offense, and is subject to detention only upon clear proof that no release conditions will adequately protect the public. In contrast, a defendant for whom a reduction of sentence is sought has been convicted, and the strong presumption must be that he is to serve the sentence imposed by the court. In these circumstances, early release should not be considered unless there is a high degree of confidence that there will be no resulting danger to the public.

Hence, in finalizing or modifying the policy statement in the future, the cross reference to determining non-dangerousness on the basis of the standards of 18 U.S.C. 3142(g) should be confined to section 3582(c)(1)(A)(ii), as the statute provides.

PLAN FOR RELEASE

The final element in the Department's assessment of an inmate for the appropriateness of a reduction in sentence is ensuring that adequate provision has been made for the inmate following his release. The inmate, or those seeking release on his behalf, are accordingly required to provide a proposed release plan, including information about where the inmate will live and receive medical treatment, and about his means of support and payment for medical care.

EXTENT OF REDUCTION AND SUPERVISED RELEASE

The Commission's solicitation of comments referred specifically to "guidance regarding the extent of any such reduction and modifications to a term of supervised release." As discussed above, before seeking a reduction of sentence, the Bureau of Prisons will have determined with reasonable medical certainty that the inmate is terminally ill with a prognosis of death within a year, or suffers from a profoundly debilitating medical condition as described. The Bureau of Prisons will also have carefully considered public safety concerns and all other relevant circumstances in determining whether such a reduction is appropriate. A release plan will have been submitted relating to the inmate's means of support and care following his release, and the Bureau of Prisons will be aware of any timing or logistical considerations relating to transferring the inmate from correctional confinement to care and treatment in some other setting. In light of the foregoing, it would be appropriate for the court to accept the Department's recommendation in its motion regarding the extent of the reduction of sentence – i.e., the timing of the inmate's release.

Similar considerations apply to "modifications to a term of supervised release." The authority of the court to "impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment" as part of a reduction of sentence under 18 U.S.C. 3582(c)(1)(A)(i) was added in 2002 by § 3006 of Pub. L. 107-273. The conference committee report explained:

This section would confer express authority on courts under section 3582(c)(1)(A), when exercising the power to reduce a term of imprisonment for extraordinary and compelling reasons, to impose a sentence of probation or supervised release with or without conditions. Such added flexibility is consistent with the purposes for which the statute was designed and will likely facilitate its use in appropriate cases.

Under 18 U.S.C. 3582(c)(1)(A), a court is authorized, on motion of the Bureau of Prisons and consistent with the purposes of sentencing in 18 U.S.C. 3553, to "reduce the term of imprisonment" upon a finding that "extraordinary and compelling reasons" warrant such a reduction. This limited authority has been generally utilized when a defendant sentenced to imprisonment becomes terminally ill or develops a permanently incapacitating illness not present at the time of sentencing. In such circumstances, the situation of a prisoner (e.g., one suffering from a contagious debilitating disease), may make a court reluctant simply to release the prisoner back into society unless another sentencing option such as home confinement as a condition of supervised release or probation can be imposed. Presently, however, it is doubtful whether a court can order such a sentence since section 3582(c)(1)(A) speaks only in terms of reducing "the term of imprisonment," not imposing in its stead a lesser type of sentence. Cf. Fed. R. Crim. P. 35(b), which gives a court the power to "reduce a sentence" to reflect substantial assistance. The proposed language also makes it clear that any new term of supervised release or probation cannot be longer than the unserved portion of the original prison term, as it is not intended that this provision be used to increase the total amount of time that a person's liberty is restricted.

As the committee report indicates, the authority to impose a period of supervision and terms of supervision under 18 U.S.C. 3582(c)(1)(A)(i) provides a means of responding to new concerns, and particularly public safety concerns, raised by the release of the inmate from a correctional facility, such as controlling the risk to others from an offender with a contagious condition. As discussed above, the Bureau of Prisons will have assessed the inmate's medical condition and any public safety concerns related to the inmate's release before the decision is made to seek a reduction of sentence. If concerns of this type cannot be adequately addressed, then the Department will not seek a reduction of sentence. If such concerns can be adequately addressed through an appropriate term of supervision and conditions of supervision, the Department will propose such conditions in its motion. As with the timing of release, it would be appropriate for the court to accept the Department's recommendation in its motion concerning these matters.

SPECIFIC EXAMPLES

Any specific examples provided concerning extraordinary and compelling reasons for sentence reduction should be consistent with the principles described above. We would suggest specifically the following:

Example 1: An offender is sentenced to three years of imprisonment for income tax evasion. After serving two years of the term, he is diagnosed with metastatic cancer, with a life expectancy (to reasonable medical certainty) of less than a year. The Bureau of Prisons' review of the case indicates that there is no realistic concern that the inmate will be a danger to others, or that the purposes of criminal sanctions will otherwise be seriously disserved, if the inmate is released, considering his personal history, the nature of the offense, his current condition, and all other relevant circumstances. Victim impact concerns are not deemed to countervail because the offense lacks an individual victim and the inmate has satisfied the tax liability to the best of his ability. The inmate has made arrangements for hospice care to commence immediately following his release and to continue until his death, and has submitted a satisfactory release plan to that effect. A reduction in sentence to time served could appropriately be allowed under the circumstances.

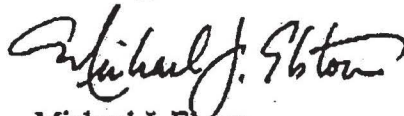
Example 2: An offender is sentenced to five years of imprisonment for a drug offense. After serving three years of the term, the inmate attempts to kill himself. The suicide attempt is unsuccessful, but it results in severe brain damage. This reduces the inmate's mentality to that of a three-year-old, irreversibly and irremediably, which largely eliminates his ability to attend to fundamental bodily functions and personal care needs without substantial assistance from others. The facts relating to the inmate's medical condition, its consequences, and its permanent character are confirmed with reasonable medical certainty by Bureau of Prisons medical personnel or a Bureau-selected consulting physician. The Bureau of Prisons determines that the inmate is no potential danger to anyone and incapable of further criminality considering his condition and all relevant circumstances, and that a reduction of sentence is warranted. Victim impact concerns are not deemed to countervail because there is no identifiable victim of the offense who would be endangered or aggrieved by the

inmate's release. A satisfactory release plan is submitted which shows that the inmate's family is willing and able to assume responsibility for his care on a permanent basis. Allowing a reduction of the sentence to time served would be appropriate under the circumstances.

In sum, the authority to seek reductions of sentence for extraordinary and compelling reasons is vested by law in the Bureau of Prisons. Properly exercised, this authority allows an appropriate measure of compassion to be shown to offenders who are mortally ill or profoundly debilitated, without undermining the objectives of criminal sanctions and the integrity of the federal determinate sentencing system. Policy statements adopted for the courts' granting of such motions will similarly be sound, productive, and free of offsetting costs if formulated in a manner consistent with the Justice Department's statutory role and the policies it has adopted for this purpose, as described in this letter.

Thank you for this opportunity to provide the Commission with the views, comments, and suggestions of the Department of Justice. We look forward to continuing to work with the Commission to improve the federal sentencing guidelines.

Sincerely,



Michael J. Elston
Senior Counsel to the
Assistant Attorney General



Practitioners' Advisory Group

A Standing Advisory Group of the United States Sentencing Commission

July 13, 2006

Honorable Ricardo H. Hinojosa
Chair
United States Sentencing Commission
One Columbus Circle, N.E.
Suite 2-500, South Lobby
Washington, D.C. 20002-8002

Re: Sentencing Commission Request for Comments on
Sentence Reduction Motions under 18 U.S.C. § 3582 (c)(1)(A)(i).

Dear Judge Hinojosa:

This letter is written by the Practitioners' Advisory Group to the United States Sentencing Commission ("PAG") in response to the Commission's request for comments on suggested modifications to the proposed policy statement, submitted to Congress on May 1, 2006 for reduction of a term of imprisonment in cases presenting "extraordinary and compelling reasons" pursuant to 18 U.S.C. § 3582 (c)(1)(A)(i) and USSG § 1B1.13.

The PAG has previously submitted letters to the Commission on this provision and has offered testimony on the matter, most recently in March of this year. The Commission's current request is for specific suggestions regarding appropriate criteria for, and examples of, extraordinary and compelling reasons for the reduction of a term of imprisonment as well as guidance regarding the extent of any reduction and modifications to a term of supervised release.

The American Bar Association (ABA) prepared and submitted a response to the Commission's request on July 12, 2006. The ABA incorporated in that response the testimony presented by the ABA on March 15, 2006 before the Commission as well as the ABA submission of March 28, 2006 with proposed language for a policy statement describing specific criteria for determining when a prisoner's situation warrants reduction under the statute and providing specific examples of when the criteria might apply.

The PAG has reviewed and provided comments to the ABA on the proposed policy statement dated July 12, 2006. This document (attached) is the product of a joint effort by a number of interested practitioner groups to develop a consensus position that we could commend to the Commission for its consideration. The July 12, 2006, policy statement is fully endorsed by the PAG with respect to its specific suggestions for appropriate criteria as well as its examples

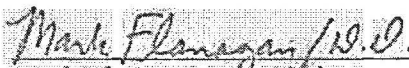
The Honorable Ricardo H. Hinojosa
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of extraordinary and compelling reasons for a reduction of a term of imprisonment. We also concur in the views expressed in the ABA's letter of July 12, 2006, regarding the extent of any such reduction and possible substitution of a term of supervised release.

We commend the Commission for taking this important step toward specifying the criteria for sentence reductions under Section 1B1.13. By statute, that responsibility lies with the Commission. *See* 28 U.S.C. § 994(t). By elaborating on the appropriate criteria and providing examples, the Commission will help to ensure the fair and consistent application of this important provision.

The Practitioner's Advisory Group respectfully requests that the proposal submitted by the ABA be adopted.

Sincerely,


Mark Flanagan, Co-Chair
McKenna, Long & Aldridge, LLP
1900 K Street, NW
Washington, DC 20006
(202) 496-7553 telephone
(202) 496-7756 facsimile
mflanagan@mckennalong.com


David Debold, Co-Chair
Gibson Dunn & Crutcher, LLP
1050 Connecticut Ave, N.W.
Washington, DC 20036
(202) 955-8551 telephone
(202) 530-9682 facsimile
ddebald@gibsondunn.com

cc: Hon. Ruben Castillo, Vice Chair
Hon. William K. Sessions, III, Vice Chair
Commissioner John R. Steer, Vice Chair
Commissioner Michael E. Horowitz
Commissioner Beryl Howell
Commissioner Edward F. Reilly, Jr.
Commissioner Michael J. Elston
Judith Sheon

Enclosure

American Bar Association
Proposed Policy Statement

**§ 1B1.13 Reduction in Term of Imprisonment Upon Motion of Director of the
Bureau of Prisons (Policy Statement)**

- (a) Upon motion of the Director of the Bureau of Prisons under 18 U.S.C. § 3582(c)(1)(A), the court may reduce a term of imprisonment if, after considering the factors set forth in 18 U.S.C. § 3553(a), the court determines that –
- (1) either –
 - (A) extraordinary and compelling reasons warrant such a reduction; or
 - (B) the defendant (i) is at least 70 years old, and (ii) has served 30 years in prison on a sentence imposed under 18 U.S.C. § 3559(e) for the offense or offenses for which the defendant is imprisoned;
 - (2) the defendant is not a present danger to the safety of any other person or to the community pursuant to 18 U.S.C. § 3142(g)(4); and
 - (3) the reduction is consistent with this policy statement.
- (b) “Extraordinary and compelling reasons” may be found where
- (1) the defendant’s circumstances are so changed since the sentence was imposed that it would be inequitable to continue the defendant’s confinement; or
 - (2) information unavailable to the court at the time of sentencing becomes available and is so significant that it would be inequitable to continue the defendant’s confinement; or
 - (3) the court was prohibited at the time of sentencing from taking into account certain considerations relating to the defendant’s offense or circumstances; the law has subsequently been changed to permit the court to take those considerations into account; and the change in the law has not been made generally retroactive.
- (c) When a term of imprisonment is reduced by the court pursuant to the authority

in 18 U.S.C. § 3582(c)(1)(A), the court may reduce the term of imprisonment to one it deems appropriate in light of the facts of the particular case, the government's recommendation, and information provided by or on behalf of the prisoner, including to time served. In its discretion, the court may but is not required to impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment, provided that any new term of supervision shall be in addition to the term of supervision imposed by the court in connection with the original sentencing.

Commentary

Application Note:

Application of subdivisions (a)(1)(A) and (b):

- 1) The term "extraordinary and compelling reasons" includes, for example, that –
 - (a) the defendant is suffering from a terminal illness;
 - (b) the defendant is suffering from a permanent physical or mental disability or chronic illness that significantly diminishes the prisoner's ability to function within the environment of a correctional facility;
 - (c) the defendant is experiencing deteriorating physical or mental health as a consequence of the aging process;
 - (d) the defendant has provided significant assistance to any government entity that was not adequately taken into account by the court in imposing or modifying the sentence;
 - (e) the defendant would have received a lower sentence under a subsequent change in applicable law that has not been made retroactive;
 - (f) the defendant received a significantly higher sentence than similarly situated codefendants because of factors beyond the control of the sentencing court;
 - (g) the defendant has experienced an extraordinary and compelling change in family circumstances, such as the death or incapacitation of family members capable of caring for the defendant's minor children; or
 - (h) the defendant's rehabilitation while in prison has been extraordinary.

- 2) "Extraordinary and compelling reasons" sufficient to warrant a sentence reduction may consist of a single reason, or it may consist of several reasons, each of which standing alone would not be considered extraordinary and compelling, but that together justify sentence reduction; *provided that* neither a change in the law alone, nor rehabilitation of the defendant alone, shall constitute "extraordinary and compelling reasons" warranting sentence reduction pursuant to this section.
- 3) "Extraordinary and compelling reasons" may warrant sentence reduction without regard to whether or not any changes in the defendant's circumstances could have been anticipated by the court at the time of sentencing.

Background: The Commission is directed by 28 U.S.C. § 994(t) to "describe what should be considered extraordinary and compelling reasons for sentence reduction under 18 U.S.C. § 3582(c)(1)(A)(i), including the criteria to be applied and a list of specific examples." This section provides that "rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason." This policy statement implements 28 U.S.C. § 994(t).