



The U.S. Sentencing Commission’s Amendments to the Reduction in Sentence/Compassionate Release Policy Statement, §1B1.13

Background: How We Got Here & Summary of Changes to §1B1.13

Congress abolished parole in the Sentencing Reform Act of 1984 (SRA) and introduced determinate sentencing. One of the narrow exceptions to finality of a sentence is when an individual presents “extraordinary and compelling reasons” warranting early release. This exception, colloquially referred to as “compassionate release,” permits the sentencing court to reduce an otherwise final sentence.¹ The SRA directed the Sentencing Commission to describe the reasons that would be “extraordinary and compelling.” And Congress gave the federal Bureau of Prisons (BOP) the sole authority to identify prisoners who met the Commission’s criteria and to bring reduction in sentence motions on their behalf to the court.

The Commission added a policy statement at § 1B1.13 of the Sentencing Guidelines to describe these reasons. The reasons included medical, geriatric, and extreme family circumstances. But for decades, BOP failed to do its job. Sick and dying people were routinely denied any relief, and others languished or died in prison while waiting for BOP to decide whether it would ask for a reduced sentence. BOP filed only 24 compassionate release motions on average per year, a fraction of the thousands of people who sought such relief.

In the First Step Act of 2018, Congress acted to increase the use of the authority. It provided that prisoners could file sentence reduction motions on their own behalf, rather than wait for the BOP. This change to 18 U.S.C. § 3582(c)(1)(A) made the existing policy statement obsolete because that statement expressly applied only to BOP-filed motions. The Sentencing Commission, which under normal circumstances would have updated the policy statement, could not because it had lost a voting quorum.

In these unique circumstances, every Court of Appeals except for the Eleventh ruled that the policy statement did not apply to defendant-filed motions. So, sentencing courts had discretion to determine when a case presented “extraordinary and compelling reasons” for a sentence reduction, even if that reason was not described in the policy statement. Courts found that circumstances such as COVID vulnerability, inadequate medical care, and unusually long sentences that could not be imposed today were extraordinary and compelling. Courts reduced sentences in certain cases, but only after considering the defendant’s individual circumstances and the appropriateness of any reduction.

¹ 18 U.S.C. § 3582(c)(1)(A).



In 2022, President Biden nominated, and the Senate confirmed, a bipartisan slate of Sentencing Commission nominees. On April 5, 2023, the U.S. Sentencing Commission voted to recommend a set of amendments to the Sentencing Guidelines, including to USSG § 1B1.13. The amendments describe new “extraordinary and compelling reasons” that might warrant a reduction in sentence. These amendments go into effect on November 1, 2023. In addition to maintaining the existing medical, geriatric, and family circumstances reasons, the Commission voted to add new extraordinary and compelling reasons:

- **Inadequate medical care:** This provision covers individuals who are suffering from a medical condition and require, but are not receiving, long-term or specialized care, putting them at risk of serious deterioration or death.
- **Pandemic health:** Reflecting lessons learned from COVID, this new ground covers individuals who are (1) housed at a correctional facility that is affected by or at imminent risk of an ongoing infectious disease outbreak or public health emergency; and (2) who, due to personal medical conditions, are at increased risk of suffering from severe complications or death that cannot be mitigated should they be exposed.
- **Family circumstances:** Certain family circumstances have long been grounds for a reduction in sentence, such as release to care for a minor child when the incarcerated person is the only available caregiver. The Commission’s amendment recognizes that individuals also may be eligible for reduction if they are the only available caregiver for a debilitated parent or adult child who is incapable of self-care because of a mental or physical condition. The Commission also allows defendants to demonstrate that there may be others who are similar in kind to immediate family members, for whom the defendant would be the only caregiver.
- **Sexual and physical abuse:** This provision covers individuals who are survivors of sexual abuse by prison personnel, as well as survivors of physical abuse by prison personnel that results in serious bodily injury. The misconduct must be established by a finding in a civil, criminal, or administrative proceeding, unless those proceedings are unduly delayed or the individual is facing imminent danger.
- **Other reasons:** The Director of the BOP always has had broad discretion to identify other reasons for a sentence reduction. The new provision provides a more limited authority. It gives the BOP Director *and judges* the discretion to identify an unlisted extraordinary and compelling reason. The other reasons must be similar in gravity to the ones expressly listed in the policy statement: terminal illness, serious medical condition, advanced age, extreme family circumstance, and sexual or physical abuse.
- **Unusually long sentences:** This provision gives judges discretion, after full consideration of the prisoner’s individualized circumstances, to determine whether a change in the law that would result in a lower sentence today *could be* a ground for sentence reduction. The person must have served at least ten years of an unusually long sentence, and there must be a gross disparity between the sentence being served and the one that would be imposed today. (Changes to the guidelines that are not made retroactive cannot be considered a change in the law for purposes of this ground.)