



2023 AMENDMENTS IN BRIEF

In April 2023, the U.S. Sentencing Commission promulgated amendments to the federal sentencing guidelines. For a more detailed discussion of the policy determinations made by the Commission, please refer to the *Reason for Amendment* in the “Reader-Friendly” and Official Text (link in QR code).

Amendment #814

Reduction in Sentence Pursuant to Section 3582(c)(1)(A)

The amendment revises §1B1.13 (colloquially referred to as the Commission’s “Compassionate Release” policy statement) to reflect that a defendant is now authorized to file a motion under 18 U.S.C. § 3582(c)(1)(A), making §1B1.13 applicable to both defendant-filed and BOP-filed motions.

The amendment expands the list of “extraordinary and compelling reasons” in five ways to better account for the plain language of section 3582(c)(1)(A) and its legislative history, to reflect the reasons relied upon by many courts after passage of the First Step Act in the absence of a binding policy statement, and to account for recent experiences—including those pertaining to the pandemic:

- (1) adds “Medical Circumstances” subcategories;
- (2) modifies the “Family Circumstances” category;
- (3) adds a “Victim of Abuse” category;
- (4) revises the “Other Reasons” category; and
- (5) adds an “Unusually Long Sentences” category, permitting consideration of non-retroactive changes in law in a narrow set of circumstances.

THE ISSUE

Responding to the First Step Act of 2018

Congress passed the First Step Act of 2018 granting defendants the authority to file motions for compassionate release. Without a Commission quorum necessary to amend the guidelines accordingly, nearly every circuit court held that the unamended policy statement was not “applicable” to defendant-filed motions. In circuits where the policy statement did not apply, district courts began identifying their own “extraordinary and compelling” grounds for a sentence reduction—including whether nonretroactive statutory changes could ever be an “extraordinary and compelling” reason and, if so, under what circumstances.

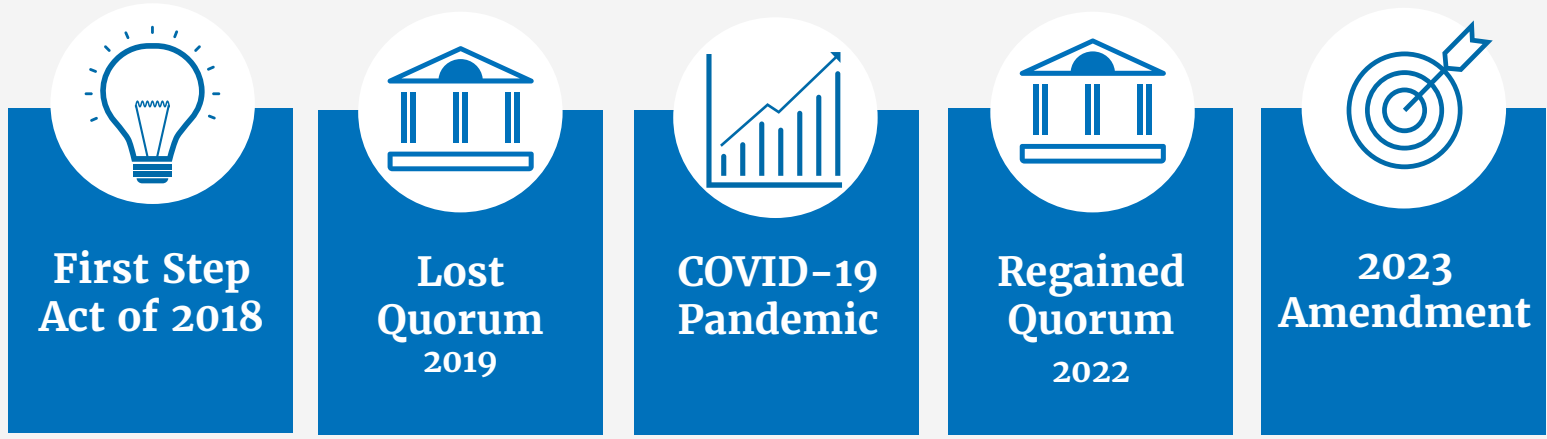
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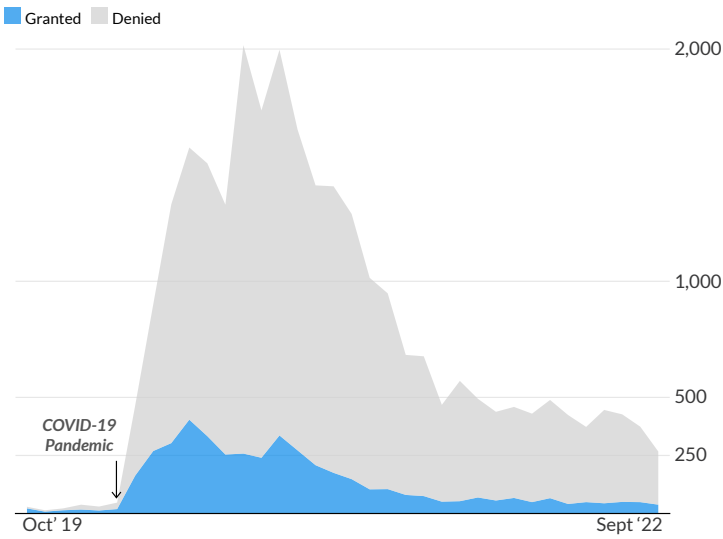
Scan or click QR code
for full Reason for
Amendment.



TIMELINE



FACTS & FIGURES



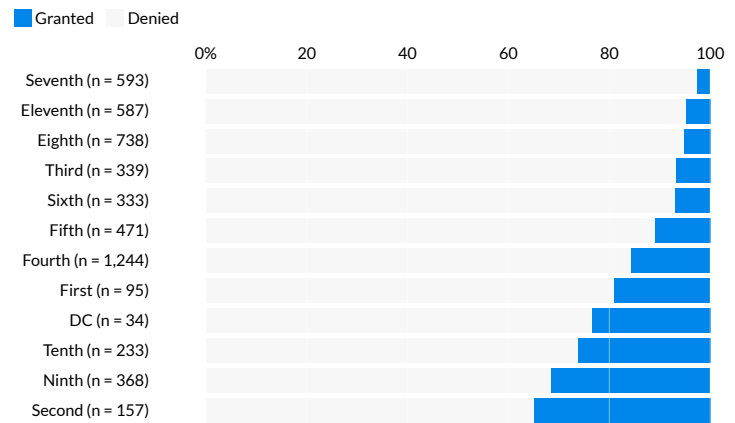
Trends

Motions under Section 3582(c)(1)(A) reached their highest filing levels in the second half of 2020—correlating with developments in the COVID-19 pandemic. Their prevalence has since declined but remains higher than before the pandemic due to defendant-filed motions newly authorized by the First Step Act of 2018.

Grant Rates

In FY 2022, the overall grant rate was 12.2%, but there was substantial variation in grant rates among the circuits (ranging from 2.5% to 35%).

	FY 2020	FY 2021	FY 2022
COVID-19/pandemic	72%	62%	29%
Terminal illness (Note 1(A)(i))	4%	2%	6%
Other Medical	12%	9%	16%
Age	2%	1%	4%
Family Circumstances	2%	3%	6%
Comparable to Note (1)(A)-(C)	1%	1%	7%
Stacking 18 U.S.C. § 924c	2%	7%	15%
21 U.S.C. § 851 Enhanced Penalties	0%	2%	6%
Career Offender Issues	1%	1%	8%
Conviction/Sentencing Errors	0%	0%	3%
Other Sentence	1%	2%	9%
Other	1%	4%	6%
Reason Unspecified	16%	17%	14%



Grant Reasons

The percentage of cases in which a sentence-related reason was cited as a reason to grant compassionate release steadily increased year-to-year. Most recent data show that sentence-related reasons are cited as often as reasons in (or comparable to those in) the prior policy statement.

RATIONALE

Expanding the List of “Extraordinary and Compelling Reasons”

ADDITIONAL MEDICAL CIRCUMSTANCES

The new subcategories reflect the medical circumstances not expressly provided in §1B1.13 that were most often cited by courts in granting sentence reduction motions.

§1B1.13(b)(1)

The amendment recognizes serious medical conditions requiring long-term care that is not being provided while in custody and also adds language to address some of the unique and unforeseen circumstances arising from the COVID-19 pandemic. The new reasons are targeted to ensure consideration of the defendant’s individual health circumstances, the level of risk at the defendant’s facility, and the ability to adequately mitigate the defendant’s individualized risk.

MODIFIED FAMILY CIRCUMSTANCES

First, this modification expands the existing provision relating to the death or incapacitation of the caregiver of a defendant’s minor child to include a child who is 18 years of age or older and incapable of self-care because of a mental or physical disability or a medical condition. Second, the modification adds a new provision for cases in which a defendant’s parent is incapacitated. Finally, the modification adds a second new provision that applies when similar circumstances exist with respect to a person whose relationship with the defendant is similar in kind to that of an immediate family member.

§1B1.13(b)(3)

Relief is available under the two new provisions only if the defendant establishes both the existence of the qualifying relationship and that the defendant is the only available caregiver.

NEW “VICTIM OF ABUSE” CATEGORY

This provision responds, in part, to the Department of Justice’s recognition that use of Section 3582(c)(1)(A) may be appropriate “where an individual in BOP custody has been determined to have been the victim of sexual assault perpetrated by BOP personnel.”

§1B1.13(b)(4)

The misconduct must be established by a conviction in a criminal case, a finding or admission of liability in a civil case, or a finding in an administrative proceeding, unless the defendant establishes that such proceedings are unduly delayed or the defendant is in imminent danger.

MODIFIED “OTHER REASONS” CATEGORY

The Commission determined that, by retaining a broad catchall provision that allows for consideration of reasons similar in gravity to those enumerated in the policy statement, courts would have both discretion and guidance necessary to grant reductions in any appropriate case.

§1B1.13(b)(5)

NEW “UNUSUALLY LONG SENTENCES” CATEGORY

This amendment responds to a circuit split concerning when, if ever, changes in law may be considered in ruling on a sentence reduction motion under section 3582(c)(1)(A).

§1B1.13(b)(6)

The amendment adopts a tailored approach, permitting the consideration of changes in law only under limited circumstances and only within the framework of “unusually long sentences,” one circumstance that the legislative history to the Sentencing Reform Act expressly identified as an appropriate ground for relief.

“The Commission, in promulgating general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A) of title 18, shall describe what should be considered extraordinary and compelling reasons for sentence reduction . . .” – 28 U.S.C. § 994(t)

ADDITIONAL RESOURCES

The Reduction in Sentence Amendment makes several changes to §1B1.13 to respond to the changes made by the First Step Act, case law that developed after its enactment, and Commission data analyzing the factors identified by courts in granting sentence reduction motions. The amendment is also informed by extensive public comment and a public hearing with perspectives from all stakeholders in the federal criminal justice system.



Research & Data Reports

U.S. SENT'G COMM'N, COMPASSIONATE RELEASE
DATA REPORT (DEC. 2022)

U.S. SENT'G COMM'N, COMPASSIONATE RELEASE:
THE IMPACT OF THE FIRST STEP ACT AND COVID-19
PANDEMIC (2022)

U.S. SENT'G COMM'N, THE FIRST STEP ACT OF
2018: ONE YEAR OF IMPLEMENTATION (2020)



Comment & Testimony

THOUSANDS OF PUBLIC COMMENT SUBMISSIONS ON
PROPOSED AMENDMENTS (MAR. 2023)

U.S. SENT'G COMM'N, TESTIMONY FROM PUBLIC
HEARING ON PROPOSED AMENDMENTS (FEB. 2023)

- EXECUTIVE BRANCH PERSPECTIVE
- PRACTITIONERS' PERSPECTIVES
- LAW ENFORCEMENT PERSPECTIVES
- JUDICIAL BRANCH PERSPECTIVE
- COMMUNITY PERSPECTIVES
- ADVISORY GROUP PERSPECTIVES
- FORMERLY INCARCERATED INDIVIDUALS' PERSPECTIVES
- ACADEMIC PERSPECTIVES

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