

Thomas M. Susman
Director
Governmental Affairs Office

AMERICAN BAR ASSOCIATION
1050 Connecticut Avenue, NW - Suite 400
Washington, DC 20036
(202) 662-1760
FAX: (202) 662-1762

August 7, 2018

The Honorable William H. Pryor, Jr.
Acting Chair
United States Sentencing Commission
One Columbus Circle, NE
Suite 2-500, South Lobby
Washington, DC 20002-8002

Re: Comments on United States Sentencing Commission Priorities thru May 1, 2019

Dear Judge Pryor:

I write on behalf of the American Bar Association (ABA) in response to the Commission's request for public comment on its proposed priorities for the amendment cycle ending May 1, 2019. Based on a careful review of ABA policy, the ABA supports the following proposed Commission priorities.

1. Mandatory Minimum Sentences

The ABA supports the Commission's proposal to again make addressing mandatory minimum sentences a policy priority. The ABA has a lengthy and robust history of opposition to mandatory minimum sentences dating back at least fifty years.¹ It has on multiple occasions adopted resolutions and presented testimony opposing mandatory minimum sentences.² Most recently, in August 2017, the ABA House of Delegates

¹ See 1968 ABA Standards Relating to Sentencing Alternatives and Procedures § 2.1(c) ("The legislature should not specify a mandatory sentence for any sentencing category or for any particular offense."); Proceedings of the 1974 Midyear meeting of the ABA House of Delegates, Report No. 1 of the Section of Criminal Justice, at 443-44 ("Be it Resolved, that the American Bar Association opposes, in principle, legislatively imposed mandatory minimum prison sentences not subject to probation or parole for criminal offenders, including those convicted of drug offenses."); 1980 ABA Standards Relating to Sentencing Alternatives and Procedures (2d Ed.) § 18-4.3(a) ("Because there are so many factors in an individual case which cannot be assessed in advance and because a guideline drafting agency can respond to changed circumstances and factual complexity with greater flexibility and precision than can the legislature, it is unsound for the legislature to prescribe a minimum or mandatory period of imprisonment.").

² See, e.g., Recommendation 121A, Annual 2004 (resolution urging "that states, territories, and the federal government ... [r]epeal mandatory minimum sentence statutes"); Testimony

adopted a resolution stating that the ABA “opposes the imposition of a mandatory minimum sentence” and “urges Congress, state and territorial legislatures to repeal existing criminal laws requiring minimum sentences, and to refrain from enacting laws punishable by mandatory minimum sentences.”³ The report prepared in conjunction with the 2017 resolution explains that mandatory minimum sentences are detrimental to society because they lead to excessive sentences, result in sentencing disparities, undermine the discretion of the judiciary, and punish minority defendants disproportionately.

For these reasons, the ABA strongly supports tentative priority (4) in the Notice for Public Comment for the Commission to continue its work to implement the recommendations contained in its 2011 report to Congress regarding mandatory minimums, including its recommendations regarding the severity and scope of mandatory minimum penalties, consideration of expanding the safety valve at 18 U.S.C. § 3553(f), and elimination of the mandatory “stacking” of penalties under 18 U.S.C. § 924(c).

2. Compassionate Release

The ABA also supports tentative priority (9) in the Notice for Public Comment for the Commission to study whether U.S.S.G. § 1B1.13 effectively encourages the Director of the Bureau of Prisons to file a motion for compassionate release when “extraordinary and compelling reasons” exist. Again, this is an area in which the ABA has long supported action. In February 2003, the ABA House of Delegates adopted a resolution urging “federal, state, local and territorial governments to evaluate their existing laws, practices, and procedures and to develop criteria relating to the consideration of prisoner requests for reduction or modification of sentence based on extraordinary and compelling circumstances arising after sentencing, to ensure their timely and effective operation” and to “develop criteria for reducing or modifying a term of imprisonment in extraordinary and compelling circumstances, provided that a prisoner does not present a substantial danger to the community.”⁴ Similarly, in 2004, the ABA adopted a resolution urging jurisdictions to “establish standards and provide an accessible process by which prisoners may request a reduction of sentence in exceptional circumstances, both medical and non-medical, arising after imposition of sentence, including but not limited to old age, disability, changes in the law, exigent family circumstances, heroic acts, or extraordinary suffering.”⁵ The same resolution specifically urged “expanded use of the procedure for sentence reduction for federal prisoners for ‘extraordinary and compelling reasons’

of James E. Felman on behalf of the ABA before the United States Sentencing Commission, May 27, 2010 (“Sentencing by mandatory minimums is the antithesis of rational sentencing policy.”), *available at* https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20100527/Testimony_Felman_ABA.pdf.

³ Resolution 10A, Annual 2017, available at <https://www.americanbar.org/content/dam/aba/images/abanews/2017%20Annual%20Resolutions/10B.pdf>.

⁴ Resolution 103B, Midyear 2003.

⁵ Resolution 121C, Annual 2004.

August 7, 2018

Page 3 of 3

pursuant to 18 U.S.C. 3582(c)(1)(A)(i)” and that the “Commission promulgate policy guidance for sentencing courts and the Bureau of Prisons in considering petitions for sentence reduction, which will incorporate a broad range of medical and non-medical circumstances.”⁶ The ABA accordingly supports the proposal policy priority that the Commission study compassionate release and the effectiveness of Section 1B1.13 in this regard.

The ABA appreciates the Commission’s consideration of the ABA’s comments on these important issues and would be happy to provide additional information or input that may be helpful to the Commission. If you have any questions about these comments or need more information, please contact Holly Cook in the ABA Governmental Affairs Office at 202-662-1860 or at holly.cook@americanbar.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas M. Susman", with a long horizontal flourish extending to the right.

Thomas M. Susman

⁶ *Id.*