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THE FEDERAL ISSUE CHAPTER OF WWW.INTERNATIONALCURE.ORG

*"A National Effort to Reduce Crime
Through Federal Criminal Justice Reform"*

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PRIORITY FOR AMENDMENT CYCLE ENDING MAY 1, 2009

Pursuant to an issue the Commission has identified as a tentative priority for the coming cycle of recommendations from the Commission to Congress in its Notice published in the Federal Register, August 8, 2008 (Volume 73, Number 154), under (1)(C) Development of recommendations for legislation regarding federal sentencing policy and (2) Consideration of alternatives to incarceration, FedCURE respectfully submits the following public comment as a recommendation:

I. Insertion in the Guidelines under Part B of Chapter 1 General Application Principles a new subsection denoted as 1B1.14 called Reduction in the Term of Imprisonment as a Result of Motion of the Chairman of the U. S. Parole Commission (Policy Statement), which would state:

Upon Motion of the Chairman of the U. S. Parole Commission, the Commission may reduce a term of imprisonment (and may impose a term of supervised release with or without conditions that do not exceed the unserved portion of the original term of imprisonment) and set a release date for those inmates with sentences of more than seven (7) years if, after considering the factors set forth in 18 U.S.C. § 3553(a) (1), to the extent that they are applicable, the Commission determines that—

- (1) the defendant meets a Commission guideline range for the sentenced offense,
- (2) the defendant is not a danger to the safety of any other person or to the community, and
- (3) the reduction is consistent with this policy statement.

Background:

There are presently nearly 202,000 incarcerated federal inmates. The number has increased exponentially since 1987 with no end in sight for this significant growth – fueled by draconian sentences put in place by the U. S. Sentencing Commission's reliance on guidelines and Congress' mandatory minimums. More than half (55%) of federal prisoners are serving time for drug related crimes. Nearly three-fourths (72%) of the federal prison population is non-violent offenders. More than one-fourth (34.4%) are first-time non-violent offenders. The average stay is thirteen years.

Even though 97% of federal inmates eventually are released, discharge may not occur for

many years because better than nine out of ten inmates convicted of federal crimes will be released only after serving approximately 87.5% of their sentences under the new Sentencing Guidelines. "New law" inmates have no incentive to rehabilitate and are all painted with the same brush. Since the bulk of the population is "new law" the evidence based result is prison overcapacity, facility instability and increased danger to both inmates and staff. The new system essentially doubled the sentences that judges were forced to impose with no chance for early release and these sentences have uniformly been initiated and determined by the charging decisions of prosecutors.

In contrast, "old law" inmates have an opportunity (pursuant to USPC's discretion) for early release from prison and early termination of parole. Historically, USPC has promoted public safety and justice by fairly exercising its authority to release and supervise offenders under its jurisdiction through a conscious application of its own guidelines in each case. It has done this by a willingness to give due regard to individual circumstances while applying the least restrictive sanction that is consistent with public safety and the appropriate punishment for the offense.

Lengthy sentences have an inordinate impact on inmates' families, particularly on the children who must be raised by one parent or grandparent. Moreover, with the loss of a wage earner, inmates' families are forced onto the welfare rolls with the resulting negative impact on state budgets. Depending upon whose numbers one wishes to use, the cost to the country to incarcerate our huge federal population runs approximately \$30,000 to \$40,000 per inmate per year. The total operational cost exceeds \$6 billion yearly and if one includes amortization of land and buildings total yearly cost is more than \$8 billion. Our prison population is aging dramatically. The cost to house older inmates is over twice that of younger inmates because of the increased medical costs.

Inmates can be rehabilitated and should have a second chance to lead positive lives. The fact that there are over 18,000 federal inmates with sentences longer than twenty years most of who are non-violent and many of whom are first-time offenders indicates that review of these sentences by the USPC would be attractive and advantageous to reducing the burgeoning prison population and its attendant costs. The USPC, an existing federal agency with inmate release expertise, is standing by to take over supervision of this plan.

II. Insertion in the Guidelines under Part B of Chapter 1 General Application Principles a new subsection denoted as 1B1.15 called Reduction in the Term of Imprisonment as a Result of Motion of the Director of the Bureau of Prisons (Policy Statement), which would state:

Upon Motion of the Director of the Bureau of Prisons, the Bureau of Prisons may reduce a term of imprisonment by awarding institutional good time to those inmates who demonstrate good behavior and/or superior programming achievement during their term of imprisonment as follows:

Computation generally –

A. Each prisoner convicted of an offense against the United States and confined in a penal or correctional institution for a definite term other than for life, whose record of conduct shows that s/he has faithfully observed all the rules and has not been subjected to punishment, shall be entitled to a deduction from the term of his sentence beginning with the day on which the sentence commences to run, as follows:

Five days for each month, if the sentence is not less than six months and not more than one year.

Six days for each month, if the sentence is more than one year and less than three years.

Seven days for each month, if the sentence is not less than three years and less than five years.

Eight days for each month, if the sentence is not less than five years and less than ten years.

Ten days for each month, if the sentence is ten years or more.

When two or more consecutive sentences are to be served, the aggregate of the several sentences shall be the basis upon which the deduction shall be computed.

B. (1) A prisoner may, in the discretion of the Director of the Bureau of Prisons, be allowed a deduction from his sentence of not to exceed three days for each month of any year or any part thereof, where the prisoner is employed at a job.

(2) In the discretion of the Director of the Bureau of Prisons such allowance may also be made to a prisoner performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations.

(3) A prisoner may, in the discretion of the Director of the Bureau of Prisons, be allowed a deduction from his sentence of up to three additional days for each month or part thereof for superior program achievement. Superior program achievement includes, but is not limited to, satisfactory progress toward degrees from accredited educational institutions or completion certificates from vocational technical or rehabilitative programs and teaching such courses of study.

All current and future sentences shall be recalculated by the Director of the Bureau of Prisons based upon the criteria set forth in Section II (A) and Section II (B)(1)(2) and (3) notwithstanding any other statute to the contrary.

Except as hereinafter provided a prisoner shall be released at the expiration of his term of sentence less the time deducted for good conduct. A certificate of such deduction shall be entered on the commitment by the warden or keeper. If such release date falls upon a Saturday, a Sunday, or on a Monday which is a legal holiday at the place of confinement, the prisoner may be released at the discretion of the warden or keeper on the preceding Friday. If such release date falls on a holiday, which falls other than on Saturday, Sunday, or Monday, the prisoner may be released at the discretion of the warden or keeper on the day preceding the holiday.

Background:

Prison good time allowances should be designed to promote institutional good conduct by rewarding exemplary behavior and encouraging educational pursuits. Instead, section 3624(b) of Title 18 states: “a prisoner who is serving a term of imprisonment of more than one year other than a term of imprisonment for the duration of the prisoner’s life, may receive credit toward the service of the prisoner’s sentence, beyond the time served, of up to 54 days at the end of each year of the prisoner’s term of imprisonment, beginning at the end of the first year of the term, subject to determination by the Bureau of Prisons that, during that year, the prisoner has displayed exemplary compliance with institutional disciplinary regulations.”

In other words, each “new law” inmate (other than lifers) is limited to this amount of time that can be deducted from his sentence for good behavior. This statutory requirement has been interpreted by the Bureau of Prisons to amount to a maximum of 47 days each year that can be subtracted from the sentence, only after each year of the sentence is completed.

On the other hand, “old law” inmates are entitled to up to as much as three times the amount of good time as “new law” inmates because the repealed sections of Title 18 U.S.C., (4161-4166), are much more generous. The result of this change has been a dramatic upsurge in prison violence and grave institutional misconduct by all prisoners leading to a dangerous environment for both staff and inmates.

If the Sentencing Guidelines focus on “truth in sentencing” had not, in effect, doubled the time to serve, the good time plan in effect today might prove somewhat important. Instead, the reverse is true and the present plan is meaningless, especially for those with enormous sentences. Upon enactment of the recommended provision, 18 U.S.C. 3624(b) should be repealed.

FedCURE believes there is evidence that the majority of federal inmates can be rehabilitated with significant educational courses, substance abuse programs, and a good time plan that serves as an incentive to improve one’s life by proving there is light at the end of the tunnel. The good time plan enumerated herein does all of the above by making statutory good time allowances available to all those in a particular sentencing range and giving additional incentives for educational pursuits and superior program achievement.

Respectfully submitted, this 7th day of September 2008,

Kenneth Linn, J.D

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Serving Federal Prisoners and Their Families ... Working to Reinstate Parole and to Increase Good Time Allowances

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