

Federal Sentencing Guidelines Come Under Scrutiny To Change

Abstract

After years of clamor from the law community and public, the growing outcry for alternatives to incarceration in federal sentencing guidelines has been heard and acted upon by the US

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After years of clamor from the law community and public, the growing outcry for alternatives to incarceration in federal sentencing guidelines has been heard and acted upon by the U.S. Sentencing Commission.

The major concerns over the years have been overcrowded prisons and courtrooms, questions over rigid sentences and the need to factor in extenuating circumstances, such as mental health issues and drug and alcohol abuse.

The issue came to a head on April 19, 2010, when the U.S. Sentencing Commission announced it had voted to promulgate sentencing guideline

amendments that expand the availability of alternatives to incarceration and address the relevance of certain specific offender characteristics in sentencing.

The Commission also voted to promulgate guideline amendments on additional topics including hate crimes, the calculation of a defendant's criminal history and sentencing corporate offenders.

"The Commission has heard from virtually every sector of the criminal justice community that there is a great need for alternatives to incarceration," said Chair of the Commission, William K. Sessions III. "Expanding the availability of alternatives to straight incarceration is a public safety issue. Providing flexibility in sentencing for certain low-level, nonviolent offenders helps lower recidivism, is cost effective and protects the public. The Commission's action in this area amounts to a very modest but important step in the right direction."

As the U.S. Sentencing Commission reported the amendment on sentencing alternatives has several key components. First it informs courts that departures from the guidelines may be warranted in situations where an offender's criminal activity is related to a treatment issue such as drug or alcohol abuse or significant mental illness and sentencing options such as home or community confinement or intermittent confinement would serve a specific treatment purpose.

Secondly, the Commission voted to increase the availability of alternative sentencing options in the guidelines' sentencing table. This would allow alternatives to straight imprisonment such as split sentences and home or community confinement.

Any amendments made by the Commission to the guidelines are submitted to Congress on or before May 1 of each year and become effective on Nov.1 if not disapproved by Congress. The seven-member Commission is an independent

agency of the judicial branch of the federal government.

As part of the U.S. Sentencing Commission input process, National Association of Criminal Defense Lawyers President Cynthia Hujar Orr testified March 17, 2010, before the Commission in Washington, D.C., on various proposed amendments to the sentencing guidelines.

As the association reported, "Topics covered include the nature and implementation of amendments concerning offender characteristics relevant to downward departure determinations, alternatives to incarceration, factors considered in the calculation of a person's criminal history score, as well as organizational guidelines regarding compliance and ethics programs, various conditions of organizational probation and mitigation credit."

"NACDL's positions on the proposed amendments currently before the U.S. Sentencing Commission reflect NACDL's commitment to more individualized sentencing in federal court," Orr explained after the hearing.

She added, "NACDL's positions here reflect its strong support for common sense approaches to sentencing in the U.S. that neither unnecessarily expend society's limited resources nor unduly tie the hands of federal judges to craft an appropriate sentence."

References

About The Author

Daryl D. Anthony represents clients accused of all state and federal crimes. He is a former Orange County deputy district attorney and deputy public defender in California. His website is at www.attorney-orangecounty.com