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Federal Defender Newsletter

March 2019

CJA PANEL TRAINING

Sacramento: March 20th at 5:00 p.m. in the jury room of the Sacramento courthouse, AFD Timothy Zindel on “*Carpenter and Beyond: Challenging Gov’t Use of New Technologies*.”

Bonus Sacramento MCLE: Friday, May 3, 2019 from 12:00 to 1:00 p.m. at the Federal Defender’s Office, 801 I Street: Professor Irene Jo on “*Representing the Difficult or Mentally Ill Client*.” Ethics MCLE credit available.

Fresno: March 19th at 5:30 in the jury room of the Fresno courthouse, AFD Hanni Fakhoury from the Northern District of California will present on “*21st Century Surveillance: Predictive Policing*.”

PLEASE SAVE THE FOLLOWING DATES

Wednesday, April 24, 2019: 1pm-3pm – Veterans and (in) the Criminal Justice System at the Kennedy Center– Judge Delaney will be one of our guest speakers.

Wednesday, May 8, 2019: 1-3:30pm – Pathways to Progress Empowerment Fair at the Kennedy Center.

GOV. NEWSOM TO ORDER HALT TO CALIFORNIA’S DEATH PENALTY

Gov. Gavin Newsom, in a March 13, 2019 Executive Order, is declaring a moratorium on executions for the 737 inmates on the California’s Death Row, the largest in the United States.

In explaining the reason for his Executive Order, Gov. Newsom said, “I do not believe that a civilized society can claim to be a leader in the world as long as its government continues to sanction the premeditated and discriminatory execution of its people. The death penalty is inconsistent with our bedrock values and strikes at the very heart of what it means to be a Californian. . . . [It] discriminate(s) against defendants who are mentally ill, black and brown, or can’t afford expensive legal representation. . . . The intentional killing of another person is wrong and, as governor, I will not oversee the execution of any individual.”

The Order immediately shuts down San Quentin State Prison’s death chamber and withdraws California’s recently revised lethal injection procedures for executions. It cites as its basis that the death penalty is biased, costly and pointless, without evidence it deters murder.

TOPICS FOR FUTURE TRAINING SESSIONS

Know a good speaker for the Federal Defender's panel training program? Want the office to address a particular legal topic or practice area? Email suggestions to:

Fresno: Peggy Sasso, peggy_sasso@fd.org
or Karen Mosher, karen_mosher@fd.org
Sacramento: Lexi Negin, lexi_negin@fd.org
or Noa Oren, noa_oren@fd.org

CJA Representatives

David Torres of Bakersfield, (661) 326-0857, dtorres@lawtorres.com , is our District's CJA Representative. The Backup CJA Representative is Kresta Daly, (916) 440.8600, kdaly@barth-daly.com .

CJA Online & On Call

Check out www.fd.org for unlimited information to help your federal practice. You can also sign up on the website to receive emails when fd.org is updated. CJA lawyers can log in, and any private defense lawyer can apply for a login from the site itself. Register for trainings at this website as well.

The Federal Defender Training Division also provides a **telephone hotline** with guidance and information for all FDO staff and CJA panel members: 1-800-788-9908.

IMMIGRATION LEGAL SUPPORT

The Defender Services Office (DSO) collaborated with Heartland Alliance's National Immigrant Justice Center (NIJC) to provide training and resources to CJA practitioners (FPD and Panel lawyers) on immigration-related issues. Call NIJC's Defenders Initiative at (312) 660-1610 or e-mail defenders@heartlandalliance.org with questions on potential immigration issues affecting their clients. An NIJC attorney will respond within 24 business hours. Downloadable practice advisories and

training materials are also available on NIJC's website: www.immigrantjustice.org.

INTERESTING PODCASTS

- *The 3rd Chair's D.E.S.K., Dialogue, Education, Strategy, and Knowledge: Defender Services Office Training Division (DSOTD) podcast designed to provide valuable information and inspiration for federal criminal defense practitioners. Topics will include substantive federal criminal law subjects, from sentencing to mental health, to trial skills, to*

Sign into fd.org.
<https://www.fd.org/training-division-podcasts>

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- *The GEN WHY Lawyer: Discovering the Y of Law: interviews with lawyers on how to build a meaningful life and fulfilling legal career.*
- *First Mondays: about the Supreme Court, co-hosted by former Court law clerks.*
- *The Moth: storytelling at its best.*
- *Ear Hustle: podcast from inside San Quentin Prison.*
- *Conversations with People Who Hate Me: Host Dylan Marron deliberately interviews people who he disagrees with and who disagree with him and*

who he is.

- *Criminal*: no description really needed, is there?
- *Code Switch*: Helping with the delicate, minefield of today's race and identity issues.

FIRST STEP ACT

As a reminder, December 21, 2018 Congress passed the First Step Act. A summary is here **plus** at this Newsletter's end is a handout given our district's judges summarizing the law and possible issues. It:

- Changes qualification for safety valve to when a defendant does not have (A) more than 4 criminal history points, excluding any criminal history points resulting from a 1-point offense, as determined under the sentencing guidelines; (B) a prior 3-point offense, as determined under the sentencing guidelines; and (C) a prior 2-point violent offense, as determined under the sentencing guidelines.
- For 21 USC §§ 841 (b)(1)(A) and § 960(b)(1) mandatory minimums:
 - For these drug quantities: (i) ≥ 1 kg {2.2 lb} heroin; (ii) ≥ 5 kg {11.03 lb} cocaine; (iii) ≥ 280 g {9.88 oz} coke base; (iv) ≥ 100 g {3.5 oz} PCP; (v) ≥ 10 g {.35 oz} LSD; (vii) ≥ 1000 kg {2200 lb} marijuana; ≥ 1000 marijuana plants; (viii) ≥ 50 g {1.4 oz} meth] = PRISON = 10 yrs-life.
 - ~ With 1 Serious Drug or Violent Felony (SDF & SVF) prior = 15 yrs-life.
 - ~ With 2+ SDF/SVF priors = 25 yrs-life.
 - "serious drug felony" (SDF) under 21 USC § 802(57) = Only offenses @ § 924(e)(2) [ACCA]:
 - ~ federal offense = 21 USC § 801+, 21 USC § 951, 46 ch. § 705; **or**
 - ~ state offense = manufacture, distribute, or possess with intent to manufacture or distribute controlled substance = 21 USC § 802; **AND**
 - ~ maximum 10 years+ imprisonment prescribed by law; **AND**
 - ~ served imprisonment > 12 months; **AND**
 - ~ released from that term within 15 years of commencing instant offense.
 - **Adds**: "serious violent felony" (SVF) under 21 USC § 801(58):
 - ~ offense described @ § 3559(c)(2) **or**
 - ~ "any offense = felony violation of [18 USC § 113] if committed in special maritime & territorial jurisdiction of US;" **AND**
 - ~ "for which offender served imprisonment of >12 months"
 - no matter how old the conviction.
 - Revisits possible reduced sentences for crack cocaine convictions, even after Crack 1 and 2. The Sentencing Commission identified 12 California Eastern District defendants eligible for possible immediate release, but there may exist many more. For questions on this, please contact AFD David Porter, 916.498.5700, David_porter@fd.org.
 - Requires Bureau of Prisons (BOP) to notify an inmate's family and most recent lawyer of an inmate's diagnosis with a terminal illness. If BOP fails to apply to the sentencing court for the inmate's compassionate release, the court can appoint counsel to assist the inmate with a motion. For questions, contact AFD Ann McClintock, 916.487.5700, ann_mcclintock@fd.org.
 - Changes the days of good time credits earned from "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," to "of up to 54 days for each year of the prisoner's sentence imposed by the court."

- Inspiring, in return for additional good times credits (but only if the inmate does not have certain convictions [and they are numerous]), participation in various BOP programs.

California Eastern's District Court's General Order 595 appoints counsel to review and when applying for relief under the First Step Act for indigent inmates.

SUPREME COURT

Garza v. Idaho, 586 U.S. ___ (2019), No. 17-1026 (Sotomayor, J.)

The Supreme Court held Flores-Ortega's presumption of prejudice applies regardless whether a defendant signed an appeal waiver. This means, **even if your client has signed an appeal waiver in his or her plea agreement, you must still file a timely notice of appeal if the client wants to appeal.**

Following in the footsteps of Garza v. Idaho, AFD Peggy Sasso, from the Fresno office, won a grant of certiorari at the California Supreme Court and summary relief for her client on the issue. Congratulations, Peggy!

NINTH CIRCUIT

US v. Vederoff, No. 17-30096 (Gaitan w/McKeown & Friedland). This is a categorical analysis in the felon in possession context. In its opinion, the Ninth Circuit quoted the sentencing court: "it drives me absolutely nuts as a trial judge to think that things like murder and assault with a dangerous weapon could be conceived as not being crimes of violence,

but these are highly technical rulings from courts that predominately don't have people who have ever been in a trial court, let alone been a trial-court lawyer or trial-court judge." The Ninth Circuit applied the categorical approach to the priors and held that, under Washington law: (1) second-degree assault; and (2) second-degree murder do not qualify as "crimes of violence" under USSG § 4B1.2(a). The Ninth Circuit so held because Washington law, for second-degree assault, is overbroad in having assault with an intent to commit any felony (not a specified set). The second-degree murder is overbroad because it can include felony murder. The statutes were not divisible. The Ninth Circuit in its exhaustive opinion looked at generic statutes, Model Penal Codes, and other state statutes. Despite a downward variance, the error in the sentencing was not harmless. The sentencing was vacated and remanded.

US v. Hall, No. 15-10322 (1-11-2019)(Per Curiam). The Ninth Circuit rejected a condition of supervised release that would limit the defendant's contact with his co-defendant and convicted felon son to "normal" familial relations. (The father and son had been convicted of a criminal enterprise to defraud the government.) The Ninth Circuit held that the condition was unconstitutionally vague and struck the words "only for normal familial relations" from the condition. Keep in mind that the Government cannot save an impermissible condition by promising to enforce it in a narrow manner. The Ninth Circuit noted the fundamental liberty interest in having contact with one's own children. Keep this line of cases in mind when the Probation Office recommends "no contact with minors" for people with minor children.

LETTER FROM THE DEFENDER

As a friend is so fond of reminding me, this is my 30th year as a public defender. And February 15 marked the 30th anniversary of the start of my very first jury trial.

My client was Michael Lennon in a case I inherited a month into working in the Pima County Public Defenders. Michael's original public defender was leaving the office to become a prosecutor who, in his transmittal memo, said Michael's case was not defensible and he should plead. Michael was adamant he was not guilty.

Michael was homeless and, during Tucson's hot late summer, would seek shade out of the public eye by hanging out underneath bridges in dry arroyos. One of those late afternoons, a boy and a girl, both about 8 years old, friends and neighbors from the nearby apartment complex, snuck into the arroyo to play under the bridge where Michael rested. He chatted with them but mostly ignored them. Once the girl returned home, she realized quickly she was in trouble as her mother didn't know where she'd been and going into the arroyo was forbidden. As the girl explained she was okay, she mentioned the man under the bridge. Mom's stranger-danger alarm went off and, after a series of questions (which basically let the girl know mom's worry shifted from the girl being in trouble), there were ambiguous descriptions of an attempted child molest by the man under the bridge. Mom called police who found Michael walking nearby.

My most usual and effective trial practice rules I developed working Michael's case. I learned the importance of investigation, going to the scene, tracking down witnesses. The State was calling the

little girl as a witness, but not the little boy. One evening, I went to his apartment to interview him (later realizing how foolish that was without an investigator, though I had a tape recorder). His mother let me in, and I vividly remember sitting on the floor in front of their TV to talk with the boy as a Michael Jackson video played on MTV. The boy wore glasses, which he admitted he had not worn into the arroyo. He didn't support the girl's claim the man touched her.

So, I subpoenaed his mother to bring the boy to the trial (slated just 3 months after I started with the Office), which an office investigator served on her. She didn't bring her son to court, so I pushed it with the judge who sent a deputy to the boy's school to bring him to court to testify. His school called his mom and the deputy told her to meet them at the courtroom. They let the boy sit in the judge's chamber until his mother arrived. Then I called him to the stand. He wore his glasses and admitted he wasn't wearing them that day under the bridge. And when I asked him if he saw in the courtroom the man who was under the bridge that day (not sure what he would say), he looked at the people in the courtroom, starting with the jury box, sometimes leaning forward to see them better, glanced quickly past Michael and finally up at the judge who he looked at for a really long time before saying, "No." Boy and mom left the courtroom shortly after.

I learned I loved closing argument because it is about telling the client's story. How important it is to weave the facts with bits of law, to paint important scenes, to create empathetic understandings of motives and fears. I felt better knowing the law having crafted my jury instructions while I read disclosure. And I designed in that first trial a *Trial Reminder* sheet I still use - a form I keep track of the basic, vital information on

the case within 1 page: attorney and judge with phone numbers; client's birthday; case number; charges, statutes, alleged victim names and offense dates; statutory enhancements; Government & defense witnesses and report or interview dates; pretrial and in limine motions; investigation to do, subpoenas to issue and record collection. I attached to this the indictment, statute charged, and elements jury instruction.

I learned the importance of taking care of my client. Police seized Michael's shoes to compare with shoeprints found under the bridge, but never presented testimony about this at trial. I bought him for trial the same shoe style the police took – desert wallabees. Which triggered the last important trial lawyer truth I learned: juries are TOTALLY unpredictable. Now ***spoiler alert*** the jury found Michael “not guilty” of his charge. And when I talked with some jurors after the trial, 3 women told me the reason they acquitted Michael. See, Michael is very tall and sometimes during trial he would stretch his legs out the side of the enclosed counsel table, so these women had a good look at those new-to-Michael wallabees I bought him. These women found Michael not guilty because his shoes didn't look like the shoes of a homeless person – they were too new.

And then I learned the trial truth about when lawyers talk with jurors after trial: if a defendant was acquitted, prosecutors try to talk them out of their decisions by criticizing them for not giving enough weight to something or telling them a bad fact the judge precluded -TOO LATE! Defense lawyers, when there is a guilty verdict, listen to try to learn so their next trial client won't hear “guilty.”

So, Michael gave me that final trial lesson: one of the best visions a defense lawyer can have is seeing their client walk out the back door of the courtroom, free.

~ Heather E. Williams
FD-CAE

FIRST STEP Act (signed into law 12/21/2018)

Heather E. Williams
Federal Defender – CAE
3/6/2019

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SECTION 102(b)(1): GOOD TIME CREDITS (GTC)	
LAW AMENDED	18 U.S.C. § 3624(b)
HOW AMENDED	<p>§ 3624(b)(1): 54 days per year for a sentence greater than one year and one day.</p> <p>§ 3624(b)(3): applied retroactively - “shall apply ... to offenses committed before, on, or after the date of enactment of this Act, except . . . shall not apply with respect to offenses committed before November 1, 1987 [when 18 USC § 4161 still applies - 60-120 days GTC per year depending on sentence length with AG/BOP discretion to reduce by 3 days per month of actual employment in an industry or camp, or for performing exceptionally meritorious service, or for performing duties of outstanding importance. Parole still applies].”</p>
POSSIBLE ISSUES	<ul style="list-style-type: none"> ▪ When is the effective date? BOP/DOJ position: Section 101(a) = same effective date as once AG completes and releases the risk assessment system/earned time credit <i>i.e.</i>, 210 days post-enactment. NOTE: DOJ already indicated it will need additional time to complete, so further issue whether 54 days GTC also extended? Defendants’ position: Congressional record clarifying § 3624(b) says 54 days was Congress’ intent all along; BOP & SCOTUS misinterpreted statute, therefore effective immediately.

SECTION 401(a): REDUCE & RESTRICT MANDATORY DRUG MINIMUMS FOR PRIOR DRUG FELONIES	
LAW AMENDED	21 USC § 841 (b)(1)(A) 21 USC § 960(b)(1)
HOW AMENDED	<p>For these drug quantities: (i) ≥1 kg {2.2 lb} heroin; (ii) ≥5 kg {11.03 lb} cocaine; (iii) ≥280 g {9.88 oz} coke base; (iv) ≥100 g {3.5 oz} PCP; (v) ≥10 g {.35 oz} LSD; (vii) ≥1000 kg {2200 lb} marijuana; ≥1000 marijuana plants; (viii) ≥50 g {1.4 oz} meth PRISON = 10 yrs-life. 1 Serious Drug or Violent Felony (SDF & SVF) prior =15 yrs-life. 2+ SDF/SVF priors = 25 yrs-life.</p> <p>Narrows and expands prior applicable felonies: Now: “serious drug felony” (SDF) under 21 USC § 802(57): Only offenses @ § 924(e)(2) [ACCA]:</p> <ul style="list-style-type: none"> ○ federal offense = 21 USC §801+, 21 USC §951, 46 ch. §705; or ○ state offense = manufacture, distribute, or possess with intent to manufacture or distribute controlled substance = 21 USC §802; AND ○ maximum 10 years+ imprisonment prescribed by law; AND ○ served imprisonment > 12 months; AND ○ released from that term within 15 years of commencing instant offense. <p>Adds: “serious violent felony” (SVF) under 21 USC § 801(58):</p> <ul style="list-style-type: none"> ● offense described @ §3559(c)(2) or ● “any offense = felony violation of [18 USC §113] if committed in special maritime & territorial jurisdiction of US;” AND ● “for which offender served imprisonment of >12 months” ● no matter how old the conviction.
POSSIBLE ISSUES	<ul style="list-style-type: none"> ▪ Section 401(c) effective date: “Applicability to Pending Cases—This section, and the amendments made by this section, shall apply to any offense that was committed before the date of enactment of this Act, if a sentence for the offense has not yet been imposed.” <p>Issues:</p> <ul style="list-style-type: none"> ○ Violates Ex Post Facto to rely on SVF to set statutory range for instant offense committed before 12/21/18. <i>See, e.g., Calder v. Bull</i>, 3 Dall. 386, 390 (1798); <i>Peugh v. U.S.</i>, 569 U.S. 530, 532–33 (2013).

SECTION 401(a): REDUCE & RESTRICT MANDATORY DRUG MINIMUMS FOR PRIOR DRUG FELONIES

	<ul style="list-style-type: none">○ And Govt must, “before trial, or before entry of a plea of guilty,” & not later, “file[] an information with the court (& serve[] a copy of such information on the person or counsel for the person) stating in writing previous convictions to be relied upon.” 21 USC § 851(a)(1).▪ Many state & a few federal drug offenses have statutory maximums less than 10 years. If lower, maximum term of imprisonment is the term in effect at the time of the prior conviction. <i>U.S. v. Elder</i>, 840 F.3d 455, 461 (7th Cir. 2016).▪ Maximum term of imprisonment is the maximum <i>this</i> defendant could have received under the jurisdiction’s binding or presumptive sentencing rules, not the statutory maximum a hypothetical defendant could have received. <i>Simmons v. US</i>, 649 F.3d 237 (4th Cir. 2011) (en banc) (North Carolina); <i>US v. Haltiwanger</i>, 637 F.3d 881 (8th Cir. 2011) (Kansas); <i>US v. Brooks</i>, 751 F.3d 1204 (10th Cir. 2014) (Kansas); <i>US v. Newbold</i>, 791 F.3d 455 (4th Cir. 2015); <i>US v. Romero-Leon</i>, 622 Fed. Appx. 712 (10th Cir. 2015) (New Mexico); <i>US v. Valencia-Mendoza</i>, __ F.3d __, 2019 WL 149827 (9th Cir. Jan. 10, 2019) (Washington, Oregon).▪ Will require checking sentencing system/rules in effect when defendant was convicted. <i>E.g.</i> US mandatory guidelines (before <i>Booker</i>/Jan. 12, 2005); Alabama (guidelines, beginning in 2013, drug and certain property offenses); Arizona (statutory); California (statutory); Colorado (statutory); Florida (former guidelines - before 1998, GL system not materially different from Oregon); Massachusetts (statutory); Michigan (guidelines); Minnesota (guidelines); Ohio (statutory); Pennsylvania (guidelines); Tennessee (statutory, 1989-2005)
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SECTION 402: SAFETY VALVE	
LAW AMENDED	18 USC § 3553(f)(1)
HOW AMENDED	<p>Safety valve applies when</p> <p>(1) the defendant does not have—</p> <p>(A) more than 4 criminal history points, excluding any criminal history points resulting from a 1-point offense, as determined under the sentencing guidelines;</p> <p>(B) a prior 3-point offense, as determined under the sentencing guidelines; and</p> <p>(C) a prior 2-point violent offense, as determined under the sentencing guidelines.</p> <p>When it comes, under subsection (f)(5) to requiring a defendant to truthfully provide to the Government all information and evidence the defendant has concerning the offense(s) part of the same course of conduct/common scheme or plan, “Information disclosed by a defendant under this subsection may not be used to enhance the sentence of the defendant unless the information relates to a violent offense,” adding:</p> <p>(g) DEFINITION OF VIOLENT OFFENSE.—As used in this section, the term ‘violent offense’ means a crime of violence, as defined in section 16, that is punishable by imprisonment.”</p>
POSSIBLE ISSUES	<ul style="list-style-type: none"> ▪ Safety Valve amendments “apply only to a <i>conviction entered</i> on or after the date of enactment of this Act (12/21/18).” <ul style="list-style-type: none"> ○ Probation defines “conviction entered” the way the Guidelines do (§ 4A1.2(a)(4)): when a guilty plea is entered or a defendant is found guilty of the offense. However, FIRST STEP is a statutory amendment and the Sentencing Commission is unable to amend that Guideline section as it doesn’t have enough Commissioners. ○ DOJ’s FIRST STEP Act , in early February 2019, says, “As a matter of Department policy, prosecutors should take the position that the expanded safety valve provision in Section 402(b) of the First Step Act applies to defendants who were found guilty pre-Act, but against whom judgment was or will be entered on or after December 21, 2018.” ○ Sec.401 and 403 both apply to offenses “committed before the date of enactment of this Act, if a sentence for the offense has not yet been imposed,” so Congressional intent similarly applies to safety valve application. ○ If necessary: If client pled guilty, court may vacate acceptance of plea and reaccept it, or allow client to withdraw plea for “fair and just reason.” Fed. R. Crim. P. 11(d)(2)(B). Otherwise expect § 2255/IAC motions.

SECTION 403: 18 USC § 924(c) STACKING CLARIFICATION	
LAW AMENDED	18 USC § 924(c)(1)(C)
HOW AMENDED	Clears up the Congressional intent 25-year or life minimum applies only to “violation of this subsection that occurs after a prior conviction under this subsection has become final.”
NOTES	<ul style="list-style-type: none"> • Addresses <i>Deal v. US</i>, 508 U.S. 129 (1993) saying § 924(c) required stacking of 25-year or life minimum for offenses charged in the same case with no intervening conviction. • Effective Date: applies to any offense committed before FIRST STEP Act enacted, “if a sentence for the offense has not been imposed as of such date of enactment.” • Example sentencings: 5, 7 or 10 yrs required for each count & still consecutively stacked. E.g.: <ul style="list-style-type: none"> ○ 15 yrs (5+5+5) – rather than 55 yrs ○ 30 years if all 3 firearms discharged (10+10+10) – rather than 60 years

SECTION 404: APPLICATION OF FAIR SENTENCING ACT (FSA: CRACK 2)	
LAW AMENDED	21 USC § 841 as applied to crack cocaine
HOW AMENDED	Specifically makes retroactive the <i>Fair Sentencing Act of 2010</i> which reduced increased crack cocaine weights for certain sentencing mandatory minimums
NOTES	<p>FSA when enacted Aug. 3, 2010 was not retroactive.</p> <ul style="list-style-type: none"> • § 2 reduced statutory ranges & minimum Sup Rel terms by increasing crack needed §§ 841(b)/960(b). • § 3 eliminated 5-year Mand Min for simple possession. • Applicable only for all sentenced after Aug. 3, 2010. <i>Dorsey v. US</i>, 132 S. Ct. 2321 (2012). <p>Now Sec. 404(a) says:</p> <ul style="list-style-type: none"> • Freestanding remedy. • §3582(c)(2)/§1B1.10 do not apply. • Only for those convicted of crack cocaine crimes. <p>Upon Defendant’s, BOP’s, Govt’s, or Court’s motion, the court:</p> <ul style="list-style-type: none"> • Sec. 404(b): may “impose a reduced sentence as if sections 2 and 3 of the Fair Sentencing Act of 2010 [] were in effect at the time the covered offense was committed,” therefore retroactively; • Sec. 404(c): at the courts discretion – not required to reduce any sentence.

SECTION 603: MODIFYING IMPOSED PRISON TERM (INCLUDES COMPASSIONATE RELEASE)	
LAW AMENDED	18 USC § 3582(c)(1)(A) 34 USC § 60541(g) – Elderly and Family Reunification for Certain Nonviolent Offenders Pilot Program [Judges not involved]
HOW AMENDED	<i>Compassionate Release</i> : now either BOP or the Inmate (including thru counsel) can move the court to modify the sentence to permit release. <i>Pilot Program</i> allows removing eligible elderly or eligible terminally ill offenders to home detention until their prison term expires.
COMPASSIONATE RELEASE	<ol style="list-style-type: none"> 1. Inmate diagnosed with terminal illness [“a disease or condition with an end-of-life trajectory.” 18 USC § 3582(d)(1)]. 2. No later than 72 hours after the diagnosis, BOP notifies Defendant’s attorney, partner, and family members that they may submit a request for a sentence reduction under § 3582(c)(1)(A). 3. Not later than 7 days of diagnosis, BOP must provide Inmate’s partner and family (including extended family) an opportunity to visit in person. 4. BOP MUST ensure BOP employees assist Defendant in preparing and submitting request for sentence reduction, if asked. 5. BOP MUST process sentencing reduction request not later than 14 days of receipt. 6. Motion to the Court: <ol style="list-style-type: none"> a. If BOP approves, BOP can ask the Court to reduce Inmate’s sentence, and b. if BOP refuses or delays, the Inmate can file for reduced sentence <ul style="list-style-type: none"> ~ after fully exhausting all administrative rights (BOP denial) or ~ “the lapse of 30 days from the receipt of ...a request by the warden.” <p>Court’s decision based on considering § 3553(a) factors PLUS:</p> <ol style="list-style-type: none"> (i) “extraordinary and compelling reasons” [defined at USSG § 1B1.13 via 28 USC 994(t)] <ul style="list-style-type: none"> ○ Terminal illness; ○ Suffering substantially diminished ability to provide self-care in prison and not expected to recover; ○ Serious physical or medical condition; ○ Serious functional or cognitive impairment; or ○ Deteriorating physical/mental health (aging); OR ○ Family circumstances: <ul style="list-style-type: none"> ~ death or incapacitation of minor child’s caregiver, or

SECTION 603: MODIFYING IMPOSED PRISON TERM (INCLUDES COMPASSIONATE RELEASE)	
	<p>~ incapacitated spouse/registered partner when inmate would be the only available caregiver; OR</p> <p>(ii) 70 years old, served at least 30 years for a § 3559(c) [Three Strikes] sentence, & is not a danger; OR</p> <p>(iii) Any reason deemed extraordinary and compelling by BOP other than or in combination with above.</p> <p>BOP MUST visibly post new procedures at all BOP facilities.</p>
JUDGES NOT INVOLVED	<p><i>Pilot Program:</i> Written request made to the Attorney General;</p> <ul style="list-style-type: none"> • By BOP; • By Inmate; <p>“eligible elderly offender” =</p> <ul style="list-style-type: none"> ○ 60 years or older ○ who is not a lifer or serving term for excluded offenses or have no excluded priors [any violent crime (18 USC § 16), sex offense (34 USC § 20911(5)), offense described in 18 USC 2332b(g)(5)(B) (listing terrorism offenses), or offense under chapter 37 of title 18 (espionage and censorship)] ○ served greater of 10 years or 2/3 of his prison term ○ <i>AND release to home detention [includes detention in a nursing home or other residential long-term care facility] . . . will result in a substantial net reduction of costs to the Federal Government.</i>