



ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

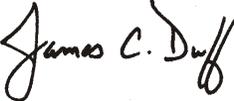
JAMES C. DUFF
Director

WASHINGTON, D.C. 20544

February 21, 2008

MEMORANDUM

To: Judges, United States District Courts
United States Magistrate Judges
Federal Public/Community Defenders
District Court Executives
Clerks, United States District Courts
Chief Probation Officers
Chief Pretrial Services Officers

From: James C. Duff 

RE: BUREAU OF PRISONS' PROCEDURES RELATING TO RETROACTIVE
APPLICATION OF THE CRACK COCAINE GUIDELINE AMENDMENT
(IMPORTANT INFORMATION)

Attached is a copy of a letter that was sent by Bureau of Prisons (BOP) Director Harley Lappin to Judge Julie E. Carnes, Chair of the Judicial Conference Committee on Criminal Law, to request the courts' cooperation when resentencing crack cocaine offenders. The BOP has identified four areas of concern, and has outlined procedures to facilitate the processing of these cases. First, the BOP has asked judges to consider imposing a ten-day delay in the effective date of any resentence that results in the inmate's immediate release (e.g., "time served"). This would allow the BOP to satisfy certain statutory requirements and work with the probation officer who will supervise the offender in the community. Second, the BOP has asked that requests for institutional progress reports or disciplinary records be sent to a central e-mail account for the institution in which the inmate is housed. Third, the BOP would like any requests for inmates to appear by videoconferencing to be sent to a central e-mail account for the institution in which the inmate is housed. Finally, the BOP asks that any orders, judgments, or other documents needed to recalculate the inmate's sentence be transmitted to the BOP through the e-Designate system, which is available to all probation offices, clerks offices and U.S. Marshals offices.

If you have any questions, please contact Probation Administrator John Fitzgerald at (202) 502-1625 or by e-mail at John.Fitzgerald/DCA/AO/USCOURTS.

Attachment



U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, DC 20534

February 13, 2008

The Honorable Julie E. Carnes, Chair
Committee on Criminal Law of the
Judicial Conference of the United States
Richard B. Russell Federal Building
and Federal Courthouse
75 Spring Street, SW
Atlanta, Georgia 30303-3309

Re: Sentence Reduction for Crack Cocaine Offenders

Dear Judge Carnes:

The purpose of this letter is to request that the Criminal Law Committee relay to Federal District Court Judges certain concerns of the Bureau of Prisons (BOP) relating to sentence reductions for crack offenders. Our first request is that District Court Judges consider imposing a ten-day delay in the effective date of certain sentence reduction orders entered pursuant to 18 U.S.C. § 3582(c). That is, if a judge is going to reduce an inmate's sentence under the amended U.S. Sentencing Guidelines for crack cocaine, and the reduction would result in an immediate release, we request that the release be stayed for a period of ten days.

There are several important goals that would be served by this short delay. Title 18 U.S.C. § 4248 requires that the BOP review releasing inmates for possible civil commitment as sexually dangerous persons. Such determinations are made as inmates near the end of their terms of imprisonment. Absent a ten-day stay, it is possible that an inmate who meets the statutory criteria of a "sexually dangerous person" could be released before a review could be performed.¹

¹ While the BOP attempts to "flag" candidates for potential certification approximately one year in advance of their projected release date, it is impossible for BOP to perform these reviews before March 3, 2008, for the thousands of inmates who may be eligible for sentence reductions.

The BOP also has a number of other statutorily imposed public safety obligations which must be performed at or near the time of an inmate's release. These include notification to victims and witnesses of the release of an offender pursuant to 18 U.S.C. § 3771, and notification of law enforcement officials and sex offender registration officials of the release of a violent offender or sex offender pursuant to 18 U.S.C. §§ 4042(b) and (c) (even if that offender does not meet the definition of "sexually dangerous person" referenced above). Additionally, the BOP is required to collect DNA samples from inmates pursuant to 42 U.S.C. § 14135a. Absent a ten-day stay in cases where inmates are immediately released, the notifications and/or collection of DNA would not occur until after the inmate has already been released.²

Additionally, inmates eligible for immediate release likely lack adequate release planning. A ten-day stay would give Probation Officers and BOP staff time to attempt to arrange suitable housing, whether it be in a Residential Reentry Center, community shelter, or otherwise.³

Our second request relates to requests for information on the institutional adjustment of inmates seeking sentence reductions. We would ask that all requests for Progress Reports be submitted to the institution where the inmate is housed, utilizing the e-mail address provided in the next paragraph. If the Progress Report on file is less than 180 days old, we will

²Please note that entering a new sentence of "time served plus ten days" would not serve our goals. The inmate would earn one day of Good Conduct Time in the additional period, resulting in only nine days to accomplish our objectives.

³We do not want to overstate the extent of our obligations in immediate release cases. It is not uncommon for the BOP to receive immediate release orders, (e.g., an inmate's conviction is overturned on appeal), and we act quickly to honor the Order and fulfill our statutory obligations. There is, however, a quantum difference between receiving an occasional immediate release order, and receiving potentially thousands of such orders system-wide, and in a short period of time. We also recognize that in certain circumstances, e.g., an inmate who is already in pre-release custody in a Residential Reentry Center, a ten-day stay would be superfluous.

forward it as quickly as possible. If the Court requires more recent information, U.S. Probation Officers can access up-to-date information on the inmate's education, work records, drug treatment, etc., in our computer system (SENTRY). If the Progress Report on file is over 180 days old, we will prepare an updated Progress Report and forward it as quickly as possible. Courts should be aware, however, that it will take some additional time to prepare and transmit the new report.

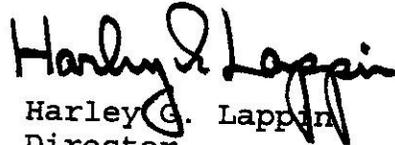
Our third request relates to videoconferencing. We understand that a number of Courts have expressed interest in utilizing the BOP's videoconferencing technology to arrange the inmate's "presence" at sentence reduction proceedings. We support this approach to accomplishing the Court's objective of securing the inmate's presence at hearings. However, at many institutions the videoconferencing equipment is used extensively and advanced scheduling would greatly assist our efforts to comply with the Court's request. Additionally, in many institutions the videoconferencing equipment is located outside the secure perimeter of the institution. At some of these locations, depending on the security level of the inmate, staff must employ extensive security measures when escorting the inmate to the videoconference and during the videoconference itself. Accordingly, if a Court is considering utilizing videoconferencing for sentence reduction proceedings, we request that the Court send an e-mail to that effect to the Executive Assistant at the institution where the inmate is housed. That e-mail address is the same one listed under the "Contact Information" heading for each institution on our public website, www.bop.gov. The Executive Assistant will coordinate with the Warden in responding to all such communications.

As you know, it is the stated position of the Department of Justice that hearings are not warranted for sentence reduction proceedings, and nothing in this letter should be taken to the contrary. If the sentencing judge holds otherwise, however, then the BOP's offer to utilize videoconferencing, or the more traditional method of teleconferencing, still stands.

Our final request relates to the manner in which sentence reduction orders are distributed. When inmates are resentenced, we ask that the information be transmitted to BOP via the most expeditious means available. In many cases, this is the E-Designate system. Regardless of the method used, the sooner we receive the information, the sooner we can calculate the new sentence.

Please feel free to contact me if you wish to discuss these matters further.

Sincerely,


Harley G. Lappin
Director

cc: John Hughes, Assistant Director
Office of Probation and Pretrial Services
Administrative Office of U.S. Courts