



In Federal Sentencing, Age Begins to Matter

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On November 1, 2010, a new amendment to the U.S. Sentencing Guidelines will go into effect that will allow a judge to consider a defendant's age far more often than before in handing down a sentence in federal court.

We think this change will have a major impact on sentencing in white-collar criminal cases. Defendants in financial crimes tend to be older, so even a relatively modest sentence of 15 or 20 years can amount to a life term, as a practical matter, for a defendant who is in his seventies. We expect that the frequency of this kind of sentence will be reduced quite a bit. White-collar crime lawyers need to take note of this.

The change might well affect cases like that of Rachel Tucker, a 67-year-old woman who was convicted of possession and intention to distribute methamphetamine. A federal trial court in Arkansas sentenced her to three years of home detention rather than the guideline-recommended 155 to 188 months in prison, citing Tucker's age among other matters. But in the U.S. Court of Appeals for the 8th Circuit found that there was nothing about Tucker's situation that justified this approach and sent the case back for a sentence of 72 months.

Another example is the case of Billie Quicksall, a former Texas government official convicted of bribery and other crimes whose sentence was reduced by the trial court partially because he was 60 years old. The U.S. Court of Appeals for the 5th Circuit found that the trial court had wrongly taken his age into account.

The new amendment allows the courts to consider age whenever that characteristic is "present to an unusual degree" so as to make the case atypical. The courts are now free to use the very young age, or the advanced age, of an offender as a factor in granting a downward departure from the sentencing guidelines. Previously, a defendant's age was considered "not ordinarily relevant" in determining whether a sentence below the guidelines was warranted.



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The U.S. Sentencing Commission voted to adopt the new amendment last April. Under law, any amendments that the commission makes to the guidelines must be submitted to Congress on or before May 1, and they become effective on November 1 if not disapproved by Congress.

We expect that starting November 1, age will become one of the most popular reasons for granting a downward departure from the guideline range. Until now, since the guidelines found a defendant's age not ordinarily relevant, departures based on age were granted very rarely. In 2009, age was cited in only 2.6% of downward departures.

Crime in the Suites is authored by the [Ifrah Law Firm](#), a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.

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