

## **Information on Home Confinement and Compassionate Release For People Incarcerated in the Federal Bureau of Prisons**

The COVID-19 pandemic is a national emergency. This information sheet describes two avenues that vulnerable inmates may pursue to protect their health in light of COVID-19: home confinement and compassionate release. You may pursue both avenues at the same time; you do not need to choose one or the other.

### **HOME CONFINEMENT**

If you are incarcerated in a federal Bureau of Prisons facility, you may try to seek “**home confinement.**” You make this request to the Warden of your prison. You do not make this request through the court system.

#### **Background on Home Confinement**

Congress passed the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) in March 2020. The CARES Act expanded the Bureau of Prison’s (“BOP”) authority to transfer incarcerated people to home confinement. The CARES Act stated that home confinement can be used as a “tool for combatting the dangers that COVID-19 poses to our vulnerable inmates.”<sup>1</sup>

At this time, the BOP is “reviewing all inmates who have COVID-19 risk factors, as described by the CDC.”<sup>2</sup> Priority is given to institutions that have experienced significant levels of COVID-19 disrupting operations.<sup>3</sup>

#### **Individuals at High Risk for Severe Illness from COVID-19**

The CDC has identified the following individuals to be at high risk for severe illness from COVID-19:

1. people 65 years of age or older;
2. people of all ages with underlying medical conditions, including:
  - a. people with chronic lung disease or moderate to severe asthma;
  - b. People who have serious heart conditions

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<sup>1</sup> Memorandum of 4/3/20 from Attorney General William Barr to Director of Bureau of Prisons.

<sup>2</sup> BOP, *Update on COVID-19 and Home Confinement*, [https://www.bop.gov/resources/news/20200405\\_covid19\\_home\\_confinement.jsp](https://www.bop.gov/resources/news/20200405_covid19_home_confinement.jsp) (last visited Apr. 6, 2020).

<sup>3</sup> The BOP also is reviewing inmates “to determine which ones meet the criteria established by the Attorney General.” BOP, *Update on COVID-19 and Home Confinement*, [https://www.bop.gov/resources/news/20200405\\_covid19\\_home\\_confinement.jsp](https://www.bop.gov/resources/news/20200405_covid19_home_confinement.jsp).

- c. people who are immunocompromised – which can be caused by
  - i. cancer treatment,
  - ii. smoking,
  - iii. bone marrow or organ transplantation,
  - iv. immune deficiencies, poorly controlled HIV or AIDS, and
  - v. prolonged use of corticosteroids and other immune weakening medications;
- d. people with severe obesity (body mass index (“BMI”) of 40 or higher);
- e. people with diabetes;
- f. people with chronic kidney disease undergoing dialysis; and
- g. people with liver disease.<sup>4</sup>

### **Factors the BOP Will Consider In Reviewing Home Confinement Request**

BOP Acting Assistant Director Correctional Programs Division Andre Matevousian, and Assistant Director Reentry Services Division Hugh Hurwitz explained in Memorandum: “In our continued effort to protect the health and safety of staff and inmates during the COVID-19 pandemic, it is imperative to review at-risk inmates for placement on home confinement.”<sup>5</sup>

According to this memo, the following factors will be assessed to determine which inmates are suitable for home confinement:

1. Reviewing the inmate’s institutional discipline history for the last twelve months. (Inmates who have received a 300 or 400 series incident report in the last 12 months may be referred for placement on home confinement if, in the Warden’s judgment, such placement does not create an undue risk to the community);
2. Ensuring the inmate has a verifiable release plan;
3. Verifying the inmate’s primary offense is not violent, a sex offense, or terrorism-related;
4. Confirming the inmate does not have a current detainer;
5. Priority should be given to inmates residing in Low and Minimum security facilities;
6. Inmates who have anything above a Minimum score not receiving priority treatment;

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<sup>4</sup> See CDC, *People Who Are at Higher Risk for Severe Illness*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html> (last visited June 23, 2020)

<sup>5</sup> Memorandum of 5/8/20 from Andre Matevousian and Hugh Hurwitz to Chief Executive Officers.

7. Age and vulnerability of the inmate to COVID-19, in accordance with the CDC guidelines.<sup>6</sup>

### **Priority For Those With Short Amounts of Time Remaining On Their Sentence**

In addition, home confinement “is generally prioritized for those inmates who have served a certain portion of their sentence, or who only have a relatively short amount of time remaining on their sentence.”<sup>7</sup>

At this time, the BOP is “prioritizing for consideration” inmates who either:

1. have served 50% or more of their sentence, or
2. have 18 months or less remaining on their sentence and have served 25% or more of their sentence.<sup>8</sup>

### **Process for Seeking Home Confinement**

If you believe you qualify for home confinement, the steps you would take are:

1. Contact your case manager or counselor and request to be referred for placement on home confinement.
2. Include a release plan describing where you will live, with whom you will live, your ability to follow self-quarantine guidelines to limit contact with others for 14 days, and transportation plan from facility to the home confinement location (if available).

### **COMPASSIONATE RELEASE**

If you are sick, elderly, or otherwise more at risk for severe illness from COVID-19, or if you are currently experiencing symptoms (such as fever or chills, cough, shortness of breath or difficulty breathing, fatigue, body aches, headache, new loss of taste or smell, sore throat, congestion or runny nose, nausea or vomiting, and/or diarrhea), you may also consider submitting a request for **compassionate release** to the **Warden** of your facility. If the Warden denies your request, then you would seek compassionate release in **court**.

If you want to seek compassionate release, then *it is very important that you make this request as soon as possible*.

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

## **Process for Seeking Compassionate Release**

The steps for seeking compassionate release are listed below. Specifically, **the sentencing judge may not be able to grant compassionate release unless you make your request in writing to the Warden and wait 30 days.**

You should also confirm all deadlines for submission with your counselor/case manager/unit manager

### **1. Initiate your request in writing.**

The BOP procedures for Compassionate Release/Reduction in Sentence are set forth in Program Statement 5050.50.

Program Statement 5050.50 states that you must make a request for a motion for compassionate release under 18 U.S.C. 3582(c)(1)(A) ***in writing*** to the Warden. This request in writing may be on an official BOP form (such as the BP-8 or BP-9 form) or on regular paper.

At a minimum, this request must include:

- a. The “extraordinary and compelling” reasons why you believe you should receive a reduction in sentence/compassionate release.
  - i. Your request is based, in part, on the threat of the COVID-19 virus<sup>9</sup>, but you should also include any other extraordinary and compelling reasons you qualify for compassionate release.
  - ii. A list of extraordinary and compelling reasons is included below.
- b. Your proposed release plan, including where you will live, with whom you will live, and confirmation of your ability to self-quarantine for 14 days.

**Keep records:** It is important that you make a record of **when** you submitted your written request for compassionate release. Note the **name** of the prison staff member to

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<sup>9</sup> Extraordinary and compelling reasons based on the coronavirus may be described in the following way:

The coronavirus disease 2019 (COVID-19) is rapidly spreading in all parts of the United States, including its prisons. There is no vaccine or cure for this deadly disease. The Centers for Disease Controls (CDC) recommends protecting oneself from the disease by frequent handwashing, frequent sterilizing of surfaces, and remaining at a distance of at least six feet from each other. It is impossible to do that in this facility.

whom you submitted your request, and **make a copy** of your request (even if the copy must be handwritten on separate paper).

**Gather medical records:** In addition, during the 30-day waiting period, begin gathering all medical records you have related to any of your health issues. The court will need documentation of your medical condition, and getting documents directly from you may help move the process along.

**2. If the warden denies your request, appeal that denial and exhaust all administrative remedies.**

In some jurisdictions, courts will grant compassionate release motions 30 days after the defendant submits a request to the Warden – or sometimes even sooner. However, in other jurisdictions, courts have held that if the Warden denies your request before the expiration of 30 days, you are required to go through the entire BOP Administrative Appeal process. To be safe, appeal any denials and exhaust all administrative remedies.

**3. File a Compassionate Release Motion.**

After you make your request to the Warden, you can file a motion for a reduction in sentence directly with the court. The Federal Defender Office in the district where you were convicted may be able to help with this. If you file pro se, you may ask the court to appoint counsel to assist you.

**Further Information on “Extraordinary and Compelling” Reasons**

**1. If your request is based on MEDICAL circumstances:**

**a. Terminal medical condition:**

- i. A terminal, incurable disease with a life expectancy of 18 months or less; or
- ii. A disease or condition with an end-of-life trajectory (meaning that the disease will lead to death).
- iii. For terminal medical conditions, limits on daily life activities (such as, feeding and dressing yourself) are not required, but if you have difficulties doing these things due to your illness, please include this information. The BOP will use this as a factor to determine whether you have the ability/inability to reoffend.

- b. **Debilitated Medical Condition:**
  - i. In reviewing debilitated medical condition, the BOP will consider “cognitive deficits of the inmate (e.g., Alzheimer’s disease or traumatic brain injury that has affected the inmate’s mental capacity or function).”<sup>10</sup>
  - ii. **BOP:** You have an incurable, progressive illness, or debilitating injury with no hope of recovery. BOP will consider compassionate release if the prisoner is:
    - a) Completely disabled so that he or she cannot carry on any self-care and is totally confined to a bed or chair; or
    - b) Capable of only limited self-care and is confined to a bed or chair more than 50% of waking hours.
  - iii. **Sentencing Commission:** Your ability to carry on self-care within the prison is substantially diminished and you are not expected to recover because you are:
    - a) suffering from a serious physical or medical condition,
    - b) suffering from a serious functional or cognitive impairment, or
    - c) experiencing deteriorating physical or mental health because of the aging process.

**2. If your request is based on NON-MEDICAL circumstances:**

- a. **“New Law” Elderly Prisoners<sup>11</sup>**
  - i. You have been sentenced for an offense that occurred after November 1, 1987;
  - ii. You are 70 years old or older;
  - iii. You have served 30 years of your sentence.
- b. **Elderly Prisoners (BOP)**
  - i. 65 years or older
  - ii. Served the greater of 10 years or 75% of your sentence.
- c. **Elderly Prisoners (with Medical Conditions)**
  - i. **BOP:**
    - a) 65 years or older
    - b) Suffering from chronic or serious medical conditions related to the aging process.

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<sup>10</sup> BOP Program Statement 5050.50 (1/17/19). A finding of cognitive deficit “is not required in cases of severe physical impairment, but may be a factor when considering the inmate’s ability or inability to reoffend.” *Id.*

<sup>11</sup> “New Law” inmates are “[i]nmates sentenced for an offense that occurred on or after November 1, 1987[.]” *Id.*

- c) Experiencing deteriorating mental or physical health that substantially diminishes their ability to function in a prison.
- d) Conventional treatment promises no substantial improvement to their mental or physical condition.
- e) Have served at least 50% of your sentence.

ii. **Sentencing Commission:**

- i. 65 years old;
- ii. Experiencing a serious deterioration in physical or mental health because of the aging process; and
- iii. Have served at least the lesser of 10 years or 75 percent of their sentence.

**d. Family Circumstances**

i. **BOP:**

- i. The death or incapacitation<sup>12</sup> of a family member caregiver of the prisoner's child under the age of 18.
- ii. The incapacitation of a spouse or registered partner when the inmate would be the only available caregiver for the spouse or registered partner.<sup>13</sup>

ii. **Sentencing Commission:**

- i. The death or incapacitation of the caregiver of the defendant's minor child or minor children.
- ii. The incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

*This information was compiled by the Lewisburg Prison Project and Pennsylvania Institutional Law Project, but does not constitute legal advice. The Lewisburg Prison Project and Pennsylvania Institutional Law Project are unable to provide any legal advice on home confinement or compassionate release. For information specific to your situation, you may want to consult an attorney.*

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<sup>12</sup> "Incapacitation" means "the family member caregiver suffered a severe injury (e.g., auto accident) or suffers from a severe illness (e.g., cancer) that renders the caregiver incapable of caring for the child." BOP Program Statement 5050.50.

<sup>13</sup> "Spouse" means "an individual in a relationship with the inmate, where that relationship has been legally recognized as a marriage, including a legally-recognized common-law marriage." *Id.* "Registered partner" means "an individual in a relationship with the inmate, where that relationship has been legally recognized as a civil union or registered domestic partnership." *Id.*