

## FREQUENTLY ASKED QUESTIONS ABOUT THE SECOND CHANCE ACT (SCA)

### **Q1: What is the Second Chance Act (SCA)?**

**A:** The SCA is a piece of legislation signed into law by President George W. Bush on April 9, 2008. FAMM supported and played a key role in passing the SCA; the law had bipartisan support in both houses of Congress. The law authorized federal funding for state and federal reentry programs. It also directed – but did not require – the Bureau of Prisons (BOP) to consider giving federal prisoners longer stays in halfway houses, and it authorized funds for a very limited test program for elderly prisoners (see Q10 below for details). The “second chance” the act referred to applied almost exclusively to people leaving prison – it did not give shorter sentences to people already in prison.

### **Q2: Did the SCA help people only when they got out of prison?**

**A:** With few exceptions, yes. The SCA was designed to provide federal funding for programs that help people leaving prison reenter their communities, so that they do not reoffend. Only three parts of the law affected how long a person stayed in prison. These three parts only affected people in federal, not state, prisons.

1. First, the SCA lengthened the outer limits of the time an individual is guaranteed *consideration for* prerelease community corrections (halfway house) from six months to 12 months. However, the SCA did not require the BOP to give every federal prisoner a full 12 months in a halfway house at the end of their sentences. At a U.S. Sentencing Commission Conference held in July 2008, the BOP stated that it was unlikely to increase the amount of halfway house time to more than six months, but that individuals would nevertheless be considered for more time than that on a case-by-case basis. The BOP has since issued an interim rule (see Q8 below) that supports its July 2008 statements. In practice, the vast majority of federal prisoners continue to get no more than 6 months halfway house time.
2. Second, the SCA created a limited pilot program called the Elderly and Family Reunification for Certain Nonviolent Offenders program. The program was only in effect for a short time and provided relief for a very small number of prisoners (see Q10 below).
3. Finally, the SCA increased slightly the percentage of a federal sentence that can be served in home confinement. The SCA did not, however, require the BOP to give prisoners any time in home confinement.

### **Q3: What federal funding did the SCA authorize? How was it distributed?**

**A:** The SCA authorized federal funding for state and federal reentry programs. In Congress, no money can be spent (appropriated) unless it is first authorized. Once authorized, the appropriations committee appropriates or distributes funds to a program. Sometimes Congress distributes the full amount authorized; sometimes it distributes less. Since 2009, 368 Second Chance Act grants have been awarded to community and faith-based organizations and tribal,

state, and local governments across the country. The SCA authorized funding for:

- **Existing demonstration and long-term adult and juvenile offender state and local reentry programs (did not apply to federal prisons), including:**
  - Existing adult and juvenile offender state and local reentry demonstration projects (including educational, literacy, vocational and job placement services; a full continuum of substance abuse treatment services; and provision of comprehensive services upon reentry, including mental and physical health care).
  - New grants to states, tribal, and local reentry courts for demonstration programs that would monitor juvenile and adult offenders reentering the community and provide them with coordinated and comprehensive reentry services and programs, including: drug and alcohol testing and health services and assessment; community and victim impact panel classes; and community services to juvenile and adult offenders, including housing assistance, education, job training and conflict intervention skills.
  - Development, implementation, or expansion of state, tribal, or local demonstration drug treatment programs that are alternatives to imprisonment.
  - Development, implementation, or expansion of comprehensive and clinically appropriate family-based demonstration substance abuse treatment programs as alternatives to incarceration for nonviolent parent drug offenders, or prison-based family treatment programs for incarcerated parents of minor children.
  - Improvements in education at state, tribal, and local prisons, jails and juvenile facilities.
  - Technology career training demonstration programs.
- **Enhanced drug treatment and mentoring programs, including**
  - Continued and improved drug treatment programs at state, tribal and local prisons, jails, or juvenile facilities. (Did not apply to federal prisons.)
  - Nonprofit and tribal initiatives to provide mentoring and other transitional services. (Did not apply to federal prisons.)
  - Nonprofit initiatives to provide mentoring, job training, and job placement services to eligible offenders (over the age of 18 and never convicted of a violent or a sex-related offense). (Applied to both federal and state prisons.)
- **Improved federal offender reentry (applied to federal prisons only), including:**
  - Demonstration programs that establish a federal prisoner reentry strategy.
  - Assistance to prisoners with obtaining identification prior to release.
  - The Elderly and Family Reunification for Certain Nonviolent Offenders pilot program. The program gave a very small number of eligible elderly offenders who had served ten years or more of a long sentence the opportunity to serve out the remainder of their terms in home detention. (See Q10.)
  - A demonstration program to supervise high-risk individuals in community corrections facilities and home confinement.

- **Reentry research:** Funding for research on juvenile and adult offender reentry, post-incarceration supervision violations and revocations, the needs of incarcerated parents, and the effectiveness of depot naltrexone for heroin addiction.
- **Community corrections (applied to federal prisons only) (see Q5)**
  - Required the Bureau of Prisons (BOP) to ensure that a prisoner serving a term of imprisonment spends a portion of the final months of that term (up to 12 months) in a community correctional facility (halfway house) or in conditions that will afford the prisoner a reasonable opportunity to adjust and prepare for reentry to the community. Clarified that the BOP may place a prisoner in home confinement for 10 percent of the term of imprisonment or six months, whichever is shorter.

**Q4: What is a demonstration program, demonstration project or pilot program?**

**A:** These are all different ways of describing an experimental program that takes place in a limited number of prisons and that is designed to show the government whether or not a program will work.

**Q5: How did the SCA encourage increased use of halfway house placement prior to release from federal prison?**

**A:** It clarified the statute governing federal halfway house placement prior to release, and it ensured that prisoners are considered for longer placements – but the SCA did not require that the BOP put people in halfway houses earlier or for longer periods of time. The SCA:

- Required the BOP to ensure that, to the extent practicable, a prisoner is considered for halfway house placement or other release preparation conditions for up to 12 months, not just up to six months, as previous law had stated. **The SCA did not require the BOP to grant each prisoner 12 months in a halfway house.** In fact, the BOP has since stated that while it considers each prisoner individually, the standard amount of halfway house time most prisoners will receive is a maximum of 6 months, and only in extraordinary cases will a prisoner receive more than 6 months halfway house time;
- Made a strong statement about how the BOP should approach pre-release halfway house decisions. It directed the BOP to issue regulations that ensure that halfway house placement is, among other things, determined on an individual basis and is of “sufficient duration to provide the greatest likelihood of successful reintegration into the community”;
- Clarified 18 U.S.C. § 3624(c), which allows the BOP to place a prisoner in a halfway house or on home confinement. In the past, the BOP had relied on a mistaken reading of this statute to issue regulations that limited halfway house and home confinement placement to the final 10 percent of the person’s good-time adjusted sentence or six months, whichever was shorter. The SCA fixed this problem (see Q6);
- Clarified that BOP’s broad discretion to determine the place of confinement, including a halfway house (but not home confinement) is not limited by 18 U.S.C. § 3624(c). In other words, any limits expressed in the halfway house provision, 18 U.S.C. § 3624(c), do not restrain the BOP’s discretion to determine the place of imprisonment under 18 U.S.C. § 3621(b).

**Q6: Under the SCA, when can someone be placed on home confinement?**

**A:** The SCA gave the BOP discretion to place a prisoner in home confinement for six months or 10 percent of the whole term of imprisonment, whichever is less. The SCA did not, however, require the BOP to award six months, 10 percent, or any time at all on home confinement. The decision is completely discretionary – in other words, how much time a person gets in home confinement, if any, is entirely up to the BOP.

**Q7: When did the SCA’s changes to halfway house time go into effect?**

**A:** The SCA went into effect on April 9, 2008. It gave the BOP 90 days after that date to issue regulations implementing the new halfway house provisions. The SCA required that the BOP’s regulations must ensure that halfway house placement is determined on an individualized basis and is sufficiently long to provide the greatest chance for successful reentry. Again, the SCA did not guarantee or give anyone the right to the full 12 months in a halfway house, only the right to be *considered* for up to 12 months in a halfway house.

On October 21, 2008, the BOP issued an “interim rule with request for comments,” which went into effect on that date. The BOP explained that the SCA’s 90-day timeframe was too short to allow the BOP to follow the usual process of publishing a proposed regulation and seeking comments from the public, so the BOP published the “interim rule with a request for comments” instead. The BOP announced that it would “consider and discuss comments received during the comment period in our final rule document.” The BOP has not issued a final rule yet. The BOP’s interim rule is available online at <http://www.gpo.gov/fdsys/pkg/FR-2008-10-21/html/E8-24928.htm>.

**Q8: What do the BOP’s new rules say about halfway house placement?**

**A:** Unfortunately, the BOP’s interim rule provides few clues on how the BOP will implement the SCA’s halfway house provisions. The interim rule simply restates the SCA’s requirement that the BOP give individualized consideration to each prisoner when deciding how much halfway house time to award. This “individualized consideration” includes considering the five factors set forth in 18 U.S.C. § 3621(b), as well as ensuring that the time granted to each prisoner is long enough “to provide the greatest likelihood of successful reintegration into the community.” The five factors that must be considered when determining how long a prisoner serves in a halfway house are:

- (1) the halfway house’s resources (e.g., whether there is bed space);
- (2) the nature and circumstances of the offense;
- (3) the history and characteristics of the prisoner;
- (4) any statement by the court that sentenced the offender;
- (5) any pertinent Sentencing Commission policies.

**Q9: How did FAMM respond to the BOP’s interim rule?**

**A:** On December 22, 2008, FAMM and the National Association of Criminal Defense Lawyers (NACDL) submitted written comments responding to the BOP’s interim rule. FAMM and the NACDL argued that the interim rule was an effort by the BOP to reinstate a categorical rule that halfway house time would be limited to 6 months. This categorical limitation violates the SCA and flies in the face of Congress’s plain intent:

- Congress passed the SCA because it wanted each and every prisoner to get meaningful, *individualized* consideration for how much time they should spend in a halfway house – the BOP’s interim rule is merely an effort to reinstate the old categorical rule that all prisoners get a maximum of only 6 months in a halfway house;
- Courts and the BOP have long recognized halfway houses as “places of imprisonment” – in other words, the BOP could designate a person to serve part *or even all* of his sentence in a halfway house. The BOP’s recent decisions to rename halfway houses “Residential Reentry Centers” and to limit time in these “RRC’s” to only 6 months are efforts to restrict halfway houses only to reentry, when by law they can be used for much greater portions of the sentence or even an entire sentence;
- Six months is the maximum amount of time, historically, that the BOP has allowed prisoners to serve in halfway houses. The BOP has not released any research supporting its claim that more than 6 months in a halfway house will be harmful to offenders;
- The per-day cost of placing a person in a halfway house is lower than the per-day cost of keeping a person in prison.

The written comments from FAMM and NACDL are available online at [http://www.famm.org/Repository/Files/NACDLFAMMCCCcomment\(12-22-08\).pdf](http://www.famm.org/Repository/Files/NACDLFAMMCCCcomment(12-22-08).pdf).

**Q10: Did the SCA let elderly prisoners out early?**

**A:** Yes, the SCA let a very small number of elderly federal inmates out of prison early. The SCA included a pilot program for federal prisoners called the Elderly and Family Reunification for Certain Nonviolent Offenders. The program allowed the BOP to select individuals who met the criteria listed below and give them an early release to home confinement. The BOP began the program in October 2008 and ran it through September 2010. About 855 inmates applied for the program, but because of the strict criteria, only 71 were ultimately released early from prison and put on home confinement. The SCA’s criteria for eligibility for the program were:

1. Prisoner is not less than 65 years of age;
2. Serving a term of imprisonment that is not life imprisonment --
  - Based on conviction for an offense or offenses that do not include any crime of violence (as defined in section 16 of title 18, United States Code), sex offense (as defined in section 111(5) of the Sex Offender Registration and Notification Act), offense described in section 2332b(g)(5)(B) of title 18, United States Code, or offense under chapter 37 of title 18, United States Code, and
  - Has served the greater of 10 years or 75 percent of the term of imprisonment to which the offender was sentenced (75 percent becomes more than 10 years when the sentence is for longer than 160 months);

3. Has not been convicted in the past of any federal or state crime of violence, sex offense, or other offense described in clause (2) above;
4. Has not been determined, in the BOP's sole discretion, to have a history of violence, or of engaging in conduct constituting a sex offense or other offense described in clause (ii), even without a record of convictions;
5. Has not escaped, or attempted to escape, from a BOP institution;
6. With respect to whom the BOP has determined that release to home detention under this section will result in a substantial net reduction of costs to the federal government; and
7. Has been determined by the BOP to be at no substantial risk of engaging in criminal conduct or of endangering any person or the public if released to home detention.

**Q11: Did the SCA create more residential drug abuse programs (RDAP) in federal prisons?**

**A:** No. It did not authorize funding for more RDAP programs.

**Q12: Did the SCA authorize funding for drug treatment as an alternative to incarceration?**

**A:** Not in the federal system. The SCA authorized funding to state, tribal, or local prosecutors to expand, develop, or implement qualified drug treatment programs that serve as alternatives to imprisonment. However, no state, tribal, or local entity was required to enact such programs.

**Q13: Did the SCA reinstate federal parole or increase the rate of good conduct time?**

**A:** No.

**Q14: Why was the SCA an important piece of legislation?**

**A:** The SCA was important because it increased the amount of time federal prisoners may receive in halfway houses; clarified confusion about the BOP's use of home confinement; created a test program that allowed some elderly offenders to be released early; and authorized funding for reentry programs across the country. All of these aspects of the SCA were positive steps forward in sentencing reform. Improving reentry and reducing the number of people who return to prison is good for public safety, taxpayers, and state and federal prison systems, many of which are overcrowded.

**Q14: Are there any bills that would reauthorize the SCA's reentry funding?**

**A:** Yes. On June 20, 2011, S. 1231, the Second Chance Reauthorization Act, was introduced by Senator Patrick Leahy (D-Vt.) and Senator Rob Portman (R-Ohio). The bill is not a law yet, and it may never become a law. If it becomes a law, S. 1231 would extend and expand the Elderly and Family Reunification for Certain Nonviolent Offenders Pilot Program and allow for a 60-day increase in earned good time credit for qualifying prisoners who participate in recidivism-reducing programs. FAMM supports S. 1231. You can follow the bill's progress and read our answers to frequently asked questions about the bill at our website, [www.famm.org](http://www.famm.org).



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