



Compassionate Release and the First Step Act: Then and Now

In the Sentencing Reform Act of 1984 Congress included several “safety valves” authorizing federal courts to revisit and consider reducing sentences in a few specific situations.¹ One of them is when the prisoner develops “extraordinary and compelling reasons.” This authority is known colloquially as “compassionate release.” Congress divided compassionate release responsibility among three actors:

- The U.S. Sentencing Commission (USSC) determines what constitute extraordinary and compelling reasons, such as terminal illness or advanced age;²
- The federal Bureau of Prisons (BOP) identifies prisoners who meet the criteria and brings their cases to the courts’ attention by filing a motion for a reduction in sentence; and
- The sentencing court decides whether to reduce the sentence after considering the factors in section 3553(a) and if it finds that “extraordinary and compelling reasons” warrant a reduction.³

Before the First Step Act

The BOP regularly exercised its gatekeeping role to prevent courts from considering compassionate release requests from prisoners who meet the USSC (and even the BOP) criteria for extraordinary and compelling reasons. It did so simply by refusing to bring a motion to the court. The BOP was able to deny the court jurisdiction because:

- **The BOP developed its own set of criteria.** They included such things as terminal illness, extreme debilitation, and extraordinary family circumstances, but they also included considerations that Congress had committed to the courts. For example, the BOP examined whether a prisoner’s release might pose a threat to public safety, minimize the seriousness of the offense, or was otherwise not warranted.
- **The BOP denied compassionate release for the wrong reasons.** If the BOP found that a prisoner who otherwise met compassionate release criteria did not “deserve” to be released, it only had to deny the prisoner’s request and refuse to file a motion with the court.
- **There was no right of appeal.** The statute did not include any way for the prisoner to appeal the BOP’s denial of compassionate release.

¹ 18 U.S.C. sec. 3582 (c).

² 18 U.S.C. sec. 994 (t).

³ 18 U.S.C. sec. 3582(c)(1)(A)(i).

Compassionate Release Under The First Step Act

The First Step Act made important changes to how federal compassionate release works. It changes and expands the compassionate release eligibility criteria; ensures the prisoners have the right to appeal the BOP's denial or neglect of the prisoner's request for a compassionate release directly to court; and provides other important features, such as notification, assistance, and visitation rules.

Compassionate Release Objective Criteria Under the First Step Act

The criteria for determining whether a prisoner has an “extraordinary and compelling reason” for a sentence reduction are sometimes broader under the Sentencing Guidelines than under the BOP Program Statement. Prisoners seeking compassionate release and/or filing motions should consult USSG [1B1.13](#), in addition to the [BOP Program Statement 5050.50](#) for guidance on what reasons are considered by courts to be “extraordinary and compelling.” We indicate the differences in the outline below.

- **Terminal Medical Condition:**
 - The prisoner has been diagnosed with a terminal, incurable disease with a life expectancy of 18 months; or
 - The prisoner has a disease or condition with an end-of-life trajectory, meaning that the disease or condition will lead to death. A specific prediction of time left to live is not necessary.
- **Debilitated Medical Condition:**
 - **BOP:** The prisoner has an incurable, progressive illness or has suffered a debilitating injury without hope of recovery. BOP will consider a compassionate release if the prisoner is
 - **Completely disabled** so they cannot carry on any self-care and is totally confined to a bed or chair; or
 - Able to do only **limited self-care** and is confined for 50 percent of waking hours to a bed or chair.
 - **Sentencing Commission:** The prisoner's ability to provide self-care in the prison is substantially diminished and recovery is not expected because the prisoner is
 - Suffering from a serious physical or medical condition;
 - Suffering from a serious functional or cognitive impairment; or
 - Experiencing deteriorating physical or mental health due to age.
- **New Law Elderly Prisoners** are those sentenced for an offense that occurred after November 1, 1987, who are
 - 70 years old or older; and
 - Have served 30 years of the sentence.
- **Elderly Prisoners (with Medical Conditions)**
 - **BOP**
 - 65 years old or older;
 - Suffer from chronic or serious medical condition related to age;

- Are experiencing deteriorating physical or mental health that substantially diminishes their ability to function in prison;
 - Conventional treatment promises no substantial improvement; and
 - Have served at least 50 percent of their sentence.
 - **Sentencing Commission**
 - 65 years old;
 - Are experiencing serious physical or mental health deterioration due to age; and
 - Have served at least **the lesser of 10 years or 75 percent** of their sentence.
- **Other Elderly Prisoners (BOP only)**
 - 65 years old or older; and
 - Have served the greater of 10 years or 75 percent of their sentence.
- **Family Circumstances**
 - Death or incapacitation of the family member or caregiver of the prisoner's minor children (**BOP adds that** to be eligible, the prisoner must be the only family member capable of caring for the children); or
 - Incapacitation of the prisoner's spouse or registered partner
 - **BOP:** "Incapacitation" means the spouse or partner has
 - Suffered a serious injury or debilitating illness and is completely disabled so as to be unable to carry on any self-care and is totally confined to a bed or chair; or
 - Has severe cognitive defect such as Alzheimer's.
 - **BOP:** The prisoner must be the only available family caregiver.

The First Step Act Gives Prisoners the Right to Go to Court

The most significant change to compassionate release is that the Act provides prisoners the power to file a motion for compassionate release if they can demonstrate they have tried and failed to convince the BOP to do so for them. Before passage of the First Step Act a denial by the BOP was not appealable.

Prisoners now have the right to file a motion under 18 U.S.C. sec. 3582(c)(1)(A)(i) directly with the court under certain circumstances:

- Prisoners may file a motion after the earlier of
 - having "fully exhausted all administrative rights to appeal a failure of the BOP to bring a motion. . ." or
 - 30 days after the date the warden received a request for compassionate release from the prisoner.
- A prisoner **exhausts administrative rights** when one of two things happens:
 - The Central Office of the BOP rejects a warden's recommendation that the BOP file a compassionate release motion, or

- The warden refuses to recommend the BOP file a compassionate release motion and the prisoner appeals the denial using the BOP's [Administrative Remedy Program](#).⁴

Other changes made by the First Step Act include:

- **Notification when a prisoner is diagnosed with a terminal condition**
 - Within 72 hours after a terminal diagnosis, the BOP **must notify** the prisoner's attorney, partner, and family and inform them they may submit a request for the prisoner's compassionate release;
 - Within seven days the BOP **must provide** the partner and family members a **visit**;
 - BOP staff **must assist** a prisoner with a compassionate release request if asked to do so by the prisoner, the attorney, partner, or family member; and
 - The BOP **must "process"** a request for compassionate release from the prisoner, the attorney, partner, or family member within 14 days.
 - **Note** that P.S. 5050.50 (3)(a) interprets this provision to mean the request must be forwarded to the Central Office within 14 days, but this is not what the statute says.
 - **Note** that "terminal medical condition" is any "disease or condition with an end-of-life trajectory."
- **Support for prisoners who are physically or mentally unable to submit a compassionate release request on their own**
 - The BOP **must inform** the prisoner's attorney, partner, and family that they can submit a request and **must accept** a request from people other than the prisoner; and
 - BOP staff **must assist** a prisoner with a compassionate release request if asked to do so by the prisoner, the attorney, partner, or family member.

⁴ Program Statement 1330.18