Compassionate Release

Aging and medically incapacitated prisoners are costly to incarcerate and not a serious risk to public safety.

- Aging individuals are increasing as a proportion of the federal prison population. A report by the Urban Institute found that the proportion of elderly individuals in federal prison will grow to 28% by 2019. The costs of incarcerating these individuals are three to five times higher than younger individuals.
- As prisoners age, their risk of re-offending declines. Prisoners 50 years and older have a 15% re-arrest rate compared to a 41% re-arrest rate for all federal prisoners.
- Prisoners released through the compassionate release program had the lowest recidivism rates of all: 3.5%.

The criteria for compassionate release have been expanding.

- Under the Sentencing Reform Act of 1986, the Bureau of Prisons (BOP) has the power to ask the court to grant an individual with “extraordinary and compelling reasons” an early release. Traditionally this has been used for people facing imminent death and the severely ill and disabled.
- In 2007, the U.S. Sentencing Commission, which is charged with creating the criteria for compassionate release, published criteria to include end of life and severe disability as well as certain elderly prisoners with or without medical conditions, and parents of children who have lost their only caregivers to death or disability.
- In 2013 the BOP, spurred by criticism from advocates like FAMM as well as the Department of Justice’s Inspector General, added similar criteria to its own rules.

Despite expanding the criteria, the federal process remains fundamentally flawed and marred by neglect.

- Compassionate release relies on the BOP to identify individuals who meet the criteria and petition the court for a reduction in their sentence. The U.S. Attorney represents the BOP in court. The judge determines if the prisoner deserves early release and will not pose a threat to public safety and, if so, orders the sentence reduction.
  - Under this design, the BOP is the gate keeper for early release. In practice the BOP does not ask the court to reduce a sentence – even for people who meet compassionate release criteria – if it feels the prisoner does not deserve to be released. Prisoners have no recourse; there is no right to appeal a BOP denial.
- The DOJ Inspector General found that in one year only two of the 93 elderly prisoners who applied for release under the non-medical provision were granted an early release. None of the 203 elderly prisoners with medical conditions who applied that year were granted elderly release.

In 2016, the Sentencing Commission fired back.

- Frustrated by the slow pace and limited kinds of releases, the Commission held a hearing devoted to compassionate release, after which it
  - Further expanded and clarified the grounds for release and;
  - Urged the BOP to seek compassionate release for any prisoner meeting the criteria.

FAMM is a leading advocate for compassionate release reform.

- FAMM has led the fight before the Bureau of Prisons and the Sentencing Commission for the robust use of compassionate and elderly release, winning changes to policy and practice that bring prisoners home when continued imprisonment would be pointless and cruel.
Michael Mahoney (not pictured) was sentenced in 1994 to a mandatory minimum term of 15 years as an "armed career criminal." The career criminal designation derived from three drug sales totaling less than $300 to an undercover agent, over a three-week period in the late 1970s. Felons, like Mr. Mahoney, may not legally possess firearms. Erroneously believing that enough time had lapsed since his prior convictions, Mahoney began carrying a firearm to protect himself when making late-night deposits from his small business. After Mr. Mahoney's gun was stolen, he reported the theft to the authorities, who learned of his prior convictions. Mr. Mahoney was arrested, charged, and convicted. The judge did not want to impose the 15-year mandatory minimum, but had no recourse.

Ten years later, Mahoney was dying in prison from lymphoma and asked for compassionate release. The warden at the Lexington Federal Medical Center thought the BOP should file a motion on his behalf, and the regional director agreed. In late July, the BOP Director denied Mahoney's request, which was unopposed by the U.S. attorney. The denial was based on the "totality of the circumstances" and Mahoney's "multiple felony convictions."

Judge James D. Todd, who had sentenced Mahoney, learned of the denial and wrote to the BOP director, stating that in 20 years on the bench he had never written to a corrections official on behalf of a prisoner he sentenced. He did so now because "Mr. Mahoney's case has troubled me since I sentenced him in 1994 . . . [as] one of those cases in which a well-intentioned and sound law resulted in an injustice." He suggested that "a motion [for compassionate release] is the only way to mitigate in a very small way the harshness which [the Armed Career Criminal Act] has caused in this unusual and unfortunate case."

He received no response and Mr. Mahoney died in prison a short time later.