

New Compassionate Release Rules: Breaking it down.

On August 12 the Federal Bureau of Prisons (BOP) published [new guidelines](#) for the Compassionate Release/Reduction in Sentence program. The guidelines are contained in Program Statement 5050.49 and set out the grounds for compassionate release, place new demands on prisoners for documentation in some cases, and set up a system for BOP staff to track requests from prisoners.

Congress authorizes compassionate release when a prisoner has “extraordinary and compelling” reasons for it. The BOP can bring a motion to the court asking that the sentence be reduced and the prisoner be released early. The problem: the BOP has, until now, considered few circumstances extraordinary and compelling enough to warrant releasing the prisoner.

The BOP has come under sharp criticism for refusing in the vast majority of cases to seek compassionate release, even for dying prisoners, as well as for unconscionable delays in processing requests and system-wide chaos in the program. Late last year, FAMM and Human Rights Watch published a sharply critical report, [The Answer is No](#), finding that only a handful of prisoners are released annually, and many die waiting for a decision. FAMM called on the BOP to, among other things, expand compassionate release criteria, leave public safety decisions to the courts, and hasten and track applications in medical cases. The Inspector General of the Department of Justice (OIG) followed with a [scathing report](#) on the failures and mismanagement of the program.

The new guidelines implement some of the recommendations from The Answer is No and the OIG report. They are contained in a Program Statement. It outlines, among other things,

1. What constitutes extraordinary and compelling reasons
2. Additional information prison officials should take into account
3. Information the prisoner (or someone acting for him) must provide to the warden.

The new criteria break down into three categories: medical, non-medical, and elderly (which in turn breaks down into medical and non-medical). Please note: this is just a summary of the Program Statement. Anyone interested in pursuing compassionate release should read the entire [Program Statement](#).

1. Medical

- a. Terminal medical condition:** requires terminal disease and life expectancy of 18 months or fewer. Whether the condition impairs a prisoner’s functioning may be taken into account when considering ability to reoffend.
- b. Debilitated medical condition:** requires incurable progressive illness or debilitating injury with no hope of recovery. Cognitive impairment not required but may be taken into account when considering ability to reoffend. Prisoner must be:

- i. Completely disabled and totally confined to bed or chair
- ii. Capable of only limited self-care and confined to bed or chair 50% or more during waking hours.

2. Elderly

a. Elderly non-medical

- i. Prisoners sentenced for an offense committed after Nov. 1, 1987 who are at least 70 years old and have served at least 30 years of their sentence **OR**
- ii. Prisoners who are at least 65 and who have served at least 10 years or 75% of the term of imprisonment
 - 1. But *ordinarily not eligible* if they were sentenced at age 60 or older for a crime of violence (list found in BOP [Categorization of Offenses](#)).

b. Elderly medical – must meet **all** criteria below

- i. 65 or older
- ii. Served 50% or more of sentence
- iii. Suffers chronic or serious condition related to aging
- iv. Has deteriorating mental or physical health substantially diminishing ability to function in prison **AND**
- v. Treatment will not improve the condition.
- vi. BOP will also consider the age at offense, if the prisoner suffered from the condition when sentenced, and if the PSI mentioned it.

3. Non-Medical I – Need to Care for Child. The BOP will consider compassionate release for prisoners whose children are cared for while in prison by a family member who becomes unable to continue care.

a. Death or incapacitation of family member who cared for prisoner's child

- i. Child must be biological or adopted and under 18 **AND**
- ii. Person must have died, or have become so ill or been so injured that they are incapable of caring for the child any longer **AND**
- iii. BOP decides that releasing the prisoner is in the child's best interests.

b. First review stage: Statements and documentation to warden: Note that the BOP will require not only statements laying out the reasons for the request, but also significant documentation from the prisoner seeking a request to be released under this prong, including death certificate or verifiable medical documentation, child(ren)'s birth certificate(s) or adoption papers, etc., and written authorization to

allow the BOP to gather additional information from other government agencies, doctors, etc.

- c. Second review: Committee review:** If the documentation is sufficient, warden convenes a committee to investigate circumstances and receive supporting documentation and make a recommendation to the warden. This review will among other things:

 - i.** Determine how well the child had been cared for previously by the defendant and
 - ii.** Verify that the family member is unable to provide care and the prisoner is eligible to obtain custody.

 - d. Special considerations:** Additional factors will be used to assess whether releasing the prisoner to parent is in the child’s best interest. Prison staff will gather information about any violent conduct in prison, possession of drugs in the child’s home, contact with the child since incarceration, evidence of abuse or neglect, whether prisoner has lost parental rights, and other measures of parenting skills, rehabilitation, appropriateness, and availability.
- 4. Non-Medical II– Need to care for spouse or registered domestic partner.** The BOP will consider compassionate release when a prisoner’s spouse or domestic partner (spouse/d.p.) becomes incapacitated and the prisoner is their only available caregiver.
- a. Incapacitation** means a

 - i.** Serious injury or debilitating physical illness that completely disables the spouse/d.p. so that (s)he “cannot carry on any self-care and is totally confined to a bed or chair.”
 - ii.** Severe cognitive defect (Alzheimer’s disease or traumatic brain injury) that has “severely affected” the spouse/d.p. mental capacity or function but need not be confined to bed or chair.

 - b. First review stage: statements and documentation to warden:** The BOP will require statements about the reason for the request, verifiable medical documentation, and written authorization from the prisoner so the BOP can gather information from other government agencies, doctors, etc.

 - c. Second review stage: Committee review:** If the documentation is sufficient, the warden then convenes a committee to investigate circumstances and receive supporting documentation and make a recommendation to the warden. This review will cover, among other things:

- i. The spouse/d.p.'s condition, care before and during the prisoner's incarceration and a determination whether the prisoner is the only family member capable of providing care.
 - ii. Documentation that the spouse/d.p. wishes the prisoner to be released to provide the needed care.
- d. Special considerations:** Additional factors will be used to assess whether releasing the prisoner is called for. Prison staff will gather information about, among other things, any violent conduct in prison, public sources of financial support, domestic violence charges against the prisoner, possession of drugs by the prisoner in the home, contact with the spouse/d.p. before and since incarceration, evidence of abuse or neglect, and other measures of parenting skills, rehabilitation, appropriateness, and availability.

In addition to the new criteria and evidence requirements, the BOP also outlined a series of factors to consider aimed at ensuring that release does not compromise public safety. In *The Answer is No*, FAMM and Human Rights Watch were especially critical of BOP taking on the role of determining whether compassionate release would jeopardize public safety. We urged the BOP to leave the assessment to the court, which is better equipped to do the job.

- 5. Additional public safety criteria:** Consideration of compassionate release will include factors related to criminality and potential for a crime-free life upon release. "These factors should be considered to assess whether the ... request presents particularly extraordinary and compelling circumstances." They include, among others:
- a. Criminal history, age at offense, current age, personal history from PSR, nature and circumstances of the offense, supervised release violations, detainers and institutional adjustments and problems.
 - b. Comments from victims
 - c. Length of sentence and amount left to serve
 - d. Release plans
 - e. Whether release would minimize the severity of the offense.
 - f. Whether release would pose a danger to the safety of any person or the community.

Finally, the BOP put in place a system to track requests for compassionate release and monitor how they are handled and resolved. One staff member at each institution and one in the Central Office will be designated to maintain the RIS (reduction in sentence) database.

FAMM encourages anyone interested in pursuing compassionate release to obtain and carefully read the new Program Statement 5050.49, especially given the specificity of the criteria and the many factors and the documents and evidence required in non-medical cases.