

FEDERAL COMPASSIONATE RELEASE CRITERIA: WHICH PRISONERS QUALIFY?

What is compassionate release?

Federal law permits sentence reductions and early releases for certain dying, incapacitated, and elderly prisoners.¹ Congress

- Directed the U.S. Sentencing Commission to define compassionate release criteria;²
- Gives the federal Bureau of Prisons (BOP) responsibility to file motions that ask federal courts to reduce sentences for prisoners who meet those criteria; and
- Empowers federal courts to grant compassionate release motions filed by the BOP if releasing the prisoner is consistent with the purposes of punishment (e.g., public safety, just punishment, etc.).

There are four broad criteria³ for compassionate release, set by the U.S. Sentencing Commission:⁴

- 1. Medical condition:** Prisoners qualify for compassionate release if they have
 - A terminal illness which will lead to the end of life, even if there is not a specific prognosis of life expectancy; OR
 - A physical or mental condition
 - That substantially diminishes the prisoner's ability to provide self-care in prison;
 - From which the prisoner is not expected to recover; and
 - The condition should be a
 - Serious medical or mental health condition;
 - Serious functional or cognitive impairment; or
 - Deteriorating physical or mental health condition due to the aging process.
- 2. Age:** Prisoners qualify for compassionate release if they are
 - At least 65 years old;
 - Experiencing a serious deterioration in physical or mental health due to age; and
 - Have served at least 10 years or 75 percent of the sentence, whichever is less.
- 3. Family circumstances:** Prisoners qualify for compassionate release if they experience
 - The death or incapacitation of the caregiver of the prisoner's minor child(ren), or
 - Incapacitation of the prisoner's spouse or registered partner, for whom the prisoner is the only available caregiver.
- 4. Other reasons:** Prisoners qualify for compassionate release if the Director of the BOP finds that the prisoner is facing extraordinary and compelling reasons other than, or in combination with, the above criteria.

¹ 18 U.S.C. §§ 3582(c)(1)(A), 4205(g) (2017).

² 28 U.S.C. § 994(t).

³ For any of the bases, the extraordinary and compelling reason for requesting a compassionate release need not have been unforeseen at the time of sentencing. USSG § 1B1.13, Commentary n.2 (2017).

⁴ USSG § 1B1.13.

A problem: The Bureau of Prisons fails to use compassionate release – and uses narrower criteria.

The U.S. Sentencing Commission “encourages” the BOP to file a compassionate release motion with the court if the prisoner meets any of the criteria outlined above.⁵ Despite that urging, the BOP files few compassionate release motions – and has established narrower grounds for compassionate release than those set forth by the commission.⁶

The BOP recognizes five bases for compassionate release and, unlike the U.S. Sentencing Commission, has no “catch-all” provision for other extraordinary and compelling reasons⁷:

- 1. Medical circumstances:** Prisoners qualify for compassionate release if they
 - Have a “terminal medical condition”: a terminal, incurable disease and a life expectancy of 18 months or less; or
 - Have a debilitated medical condition, which is defined as having an incurable, progressive illness or having suffered a debilitating injury from which they will not recover, and the prisoner
 - Is completely disabled, meaning the prisoner cannot carry on any self-care and is totally confined to a bed or chair; or
 - Is capable of only limited self-care and is confined to a bed or chair more than 50 percent of waking hours.
- 2. Elderly inmates with medical conditions:** Prisoners qualify for compassionate release if they
 - Are at least 65 years old;
 - Suffer from chronic or serious medical conditions related to the aging process;
 - Are experiencing deteriorating mental or physical health that substantially diminishes their ability to function in a correctional facility;
 - Are not promised substantial improvement to their mental or physical condition based on conventional treatment; and
 - Have served at least 50 percent of the sentence.
- 3. Other elderly inmates** qualify for compassionate release if they are
 - At least 65 years old; and
 - Have served 10 years or 75 percent of the sentence, whichever is greater.
- 4. Incapacitation of child caregiver:** Prisoners qualify for compassionate release if
 - The family member caregiver of a prisoner’s child(ren) has died or become incapacitated due to severe injury or illness that makes him or her incapable of caring for the child(ren);
 - The BOP decides that the prisoner’s release is in the best interests of the child(ren);
 - The prisoner’s biological or adopted child(ren) are under age 18; and
 - The prisoner is the only family member capable of caring for the child(ren).
- 5. Incapacitation of spouse:** Prisoners qualify for compassionate release if
 - Their spouse or registered partner⁸ is totally confined to a bed or chair and cannot carry on any self-care or has a severe cognitive deficit; and
 - The prisoner is the only available caregiver for the spouse or registered partner.

⁵ USSG § 1B1.13 Commentary, n.4.

⁶ U.S. Sentencing Comm’n, Amendment to USSG § 1B1.13 (Apr. 28, 2016), at 4-6,

https://www.ussc.gov/sites/default/files/pdf/amendment-process/official-text-amendments/20160428_Amendments.pdf.

⁷ Bureau of Prisons, Program Statement 5050.49, CN-1 (Mar. 25, 2015), https://www.bop.gov/policy/progstat/5050_049_CN-1.pdf.

⁸ The marriage or registered partnership must have been established before the arrest for the instant offense occurred.