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Early Release for Federal Inmates: Fact Sheet

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February 3, 2014

Congressional Research Service

7-5700

www.crs.gov

R43392

Congress has shown interest in ways to reduce the size of the federal prison population by reducing the amount of time inmates serve in prison through such measures as allowing inmates to earn credit toward their sentences for participating in rehabilitative programs. In considering whether or how to modify existing federal sentencing policy, some policymakers might be interested in examining existing means to reduce a federal inmate's sentence. This fact sheet highlights current authorities available to provide for the early release of federal inmates.

Good Conduct Time

Under 18 U.S.C. §3624(b), the Bureau of Prisons (BOP) can award up to 54 days of good conduct time for each year an inmate serves. The credit earned is in addition to any credit the inmate receives for time served. In order to be eligible for good conduct time credits, the inmate must be serving a sentence of more than one year, but not life. The BOP can award good conduct time credits for exemplary compliance with institutional disciplinary regulations. The BOP must also consider whether the inmate is making satisfactory progress on completing a General Equivalency Degree (GED) (assuming the inmate does not have a GED or a high school diploma). The amount of good conduct time an inmate earns is subject to the determination of the BOP.

Participation in a Residential Substance Abuse Treatment Program

Current law (18 U.S.C. §3621) requires BOP to provide, subject to appropriations, residential substance abuse treatment and appropriate aftercare for all prisoners who are deemed to have a substance abuse problem and are willing to participate in a residential substance abuse treatment program. Prisoners who are convicted of nonviolent crimes and who successfully complete a residential substance abuse treatment program are eligible to have their sentence reduced by up to one year.¹

Modification of an Imposed Sentence

Under 18 U.S.C. §3582(c)(1)(A), the BOP can petition the court to reduce an inmate's sentence if the court finds that "extraordinary and compelling reasons warrant such a reduction"; or the inmate is at least 70 years of age, has served at least 30 years of his or her sentence, and a determination has been made by the Director of the BOP that the inmate is not a danger to the safety of any other person or the community. Congress required the U.S. Sentencing Commission (USSC), when issuing a policy statement regarding sentence modification under 18 U.S.C. §3582(c)(1)(A), to "describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples."² Under §1B1.13 of the U.S. Sentencing Guidelines, the USSC deemed the following circumstances to be "extraordinary and compelling reasons" for a sentence reduction:

¹ The following categories of inmates are *not* eligible for early release: (1) Immigration and Customs Enforcement detainees; (2) pretrial inmates; (3) contractual boarders (for example, District of Columbia, state, or military inmates); (4) inmates who have a prior felony or misdemeanor conviction for homicide, forcible rape, robbery, aggravated assault, or child sexual abuse offenses; (5) inmates who are not eligible for participation in a community-based program as determined by the institution's warden on the basis of his or her professional discretion; or (6) inmates whose current offense is a felony. 28 C.F.R. §550.55.

² 28 U.S.C. §994(t).

- The inmate is suffering from a terminal illness.
- The inmate is suffering from a permanent physical or medical condition, or is experiencing deteriorating physical or mental health because of the aging process, that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and for which conventional treatment promises no substantial improvement.
- The only family member capable of caring for the inmate's minor child or minor children dies or is incapacitated.
- As determined by the Director of the BOP, there exists in the inmate's case an extraordinary and compelling reason other than, or in combination with, the reasons described above.

The BOP was subject to critiques that it narrowly interpreted while determining when inmates should be allowed to apply for a sentence reduction, effectively limiting applications to cases where the inmate is terminally ill and near death.³ In August 2013, the BOP revised its compassionate release policy statement to broaden the circumstances under which it will consider a sentence reduction request to include

- terminal and non-terminal (e.g., the inmate has a serious physical or mental impairment) medical circumstances;
- circumstances for elderly inmates;
- circumstances in which there has been the death or incapacitation of the family member caregiver of an inmate's child; and
- circumstances in which the spouse or registered partner of an inmate has become incapacitated.⁴

Before submitting a compassionate release request to the court, the BOP will continue to consider whether an inmate's release would pose a danger to the safety of anyone in the community.⁵

If the court grants a sentence reduction under 18 U.S.C. §3582(c)(1)(A), the court is also allowed to impose a term of probation or supervised release, with or without conditions, for a period up to the amount of time that was remaining on the inmate's sentence.

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³ Stephen R. Sady, "Second Look Resentencing under 18 U.S.C. §3582(c) as an Example of Bureau of Prisons Policies That Result in Overincarceration," *Federal Sentencing Reporter*, vol. 21, no. 3 (February 2009), p. 167.

⁴ Rafael Lemaitre, *Real #DrugPolicyReform: DOJ's New Criteria on Compassionate Release Requests*, Executive Office of the President, Office of National Drug Control Policy, August 12, 2013 (this document is on file with author).

⁵ *Ibid.*