



FREQUENTLY ASKED QUESTIONS ABOUT COMPASSIONATE RELEASE

Q: What is “compassionate release”?

A: Compassionate release refers to the court’s authority to release a federal prisoner from prison earlier than he otherwise would be released when there is a finding of “extraordinary and compelling reasons” that justify an early release.

Q: What federal statute governs compassionate release?

A: Compassionate release was created by Congress in a federal statute, 18 U.S.C. § 3582(c)(1)(A)(i), which provides:

(c) Modification of an Imposed Term of Imprisonment. The court may not modify a term of imprisonment once it has been imposed except that—

(1) in any case—

(A) the court, upon motion of the Director of the Bureau of Prisons, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553 (a) to the extent that they are applicable, if it finds that—

(i) extraordinary and compelling reasons warrant such a reduction; . . .

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission; . . .

Q: What do the sentencing guidelines say about compassionate release?

A: The U.S. Sentencing Guidelines (the “guidelines”), which are written and updated by the U.S. Sentencing Commission (the “Commission”), have a section that guides courts when they are considering motions for compassionate release. Section 1B1.13 of the guidelines reads:

§1B1.13. Reduction in Term of Imprisonment as a Result of Motion by Director of Bureau of Prisons (Policy Statement).

Upon motion of the Director of the Bureau of Prisons under 18 U.S.C. § 3582(c)(1)(A), the court may reduce a term of imprisonment (and may impose a term of supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment) if, after considering the factors



set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable, the court determines that—

- (1)
 - (A) extraordinary and compelling reasons warrant the reduction; . . .
- (2) the defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g); and
- (3) the reduction is consistent with this policy statement.

Q: Based on 18 U.S.C. § 3582(c)(1)(A)(i) and § 1B1.13 of the guidelines, when may a prisoner get compassionate release?

A: A prisoner may be granted compassionate release when:

1. The director of the BOP makes a motion to the court requesting early release;
2. The court finds that there are “extraordinary and compelling reasons” to give a reduction; and
3. The court finds that the prisoner is not a danger to others or the community.

All three of these requirements must be met for the court to grant compassionate release.

Q: Can a prisoner bring a motion to the court for compassionate release?

A: No. Under 18 U.S.C. § 3582(c)(1)(A)(i), **the BOP must make a motion to the sentencing court asking for a sentence reduction for extraordinary and compelling reasons.** Prisoners, their attorneys, their family members, and judges cannot make a motion for compassionate release. **Only the BOP can make the motion.**

Q: How can a prisoner get the BOP to bring a motion for compassionate release?

A: To ask the BOP to bring a motion for compassionate release, the prisoner should submit a written request to his current warden. Additionally, another person (i.e., a family member or attorney) can submit a request to the warden on the prisoner’s behalf. Every request submitted must include: (1) a description of the “extraordinary and compelling reasons” that exist to justify the early release, and (2) “proposed release plans, including where the inmate will reside, how the inmate will support himself/herself, and, if the basis for the request involves the inmate’s health, information on where the inmate will receive medical treatment and how the inmate will pay for such treatment.” *See* BOP Policy Statement 5050.46 (May 19, 1998), available at http://www.bop.gov/policy/progstat/5050_046.pdf (Adobe Reader required).

Q: What are considered “extraordinary and compelling reasons” that warrant early release?

A: On May 1, 2007, the Commission amended the application notes to § 1B1.13 to give courts more guidance when they consider motions for compassionate release. The new application



notes are designed to help judges decide whether “extraordinary and compelling reasons” are present in a case in which the BOP brings a motion for compassionate release. The Commission’s new application notes went into effect on November 1, 2007, and provide:

(A) Extraordinary and Compelling Reasons.—Provided the defendant meets the requirements of subdivision (2), extraordinary and compelling reasons exist under any of the following circumstances:

- (i) The defendant is suffering from a terminal illness.
- (ii) The defendant 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.
- (iii) The death or incapacitation of the defendant’s only family member capable of caring for the defendant’s minor child or minor children.
- (iv) As determined by the Director of the Bureau of Prisons, there exists in the defendant’s case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (i), (ii), and (iii).

(B) Rehabilitation of the Defendant.—Pursuant to 28 U.S.C. § 994(t), rehabilitation of the defendant is not, by itself, an extraordinary and compelling reason for purposes of subdivision (1)(A).

Q: What are the BOP’s criteria for allowing compassionate release?

A: The BOP’s current criteria for making a motion for compassionate release are not the same as those in the Commission’s application note. BOP Policy Statement 5050.46 (May 19, 1998) is the most current policy statement on compassionate release, and it describes the BOP’s criteria for making motions for compassionate release:

A motion for a modification of a sentence will be made to the sentencing court only in particularly extraordinary or compelling circumstances that could not reasonably have been foreseen by the court at the time of sentencing.

The policy statement is available online at http://www.bop.gov/policy/progstat/5050_046.pdf (Adobe Reader required). In practice, the BOP has only made motions for compassionate release **very rarely**, usually only when a prisoner has a **terminal illness with a prognosis of one year or less to live or has a debilitating physical or mental illness or injury**. In fact, the BOP is



preparing to issue new rules regarding its own authority that will further restrict its ability to bring motions to only cases of prisoners who are within one year of death or are so disabled that they cannot take care of their personal needs without assistance. It remains to be seen whether the BOP will alter its practice to correspond with the Commission's new definition of "extraordinary and compelling reasons," which the BOP is obliged to account for when making a motion for compassionate release. However, the legislative history of the "compassionate release" statute makes it clear that Congress meant compassionate release to be used in many different kinds of circumstances, not just cases in which a prisoner is about to die or suffers from a debilitating illness.

Q: What does the Commission's application note mean for prisoners?

A: The Commission's application note provides examples of the kinds of "extraordinary and compelling reasons" that should merit early release. For example, a prisoner whose spouse dies while the person is incarcerated, leaving their children with no one to care for them, could argue that these circumstances allow for a compassionate release motion. The new definitions could also be used to argue for a shorter sentence: a defendant awaiting sentencing who is the only family member capable of caring for his minor child or children should consider citing the new compassionate release provisions to support an argument that this circumstance justifies varying from the guidelines.

Q: The Commission's application note seems to provide more grounds for compassionate release than the BOP regulations contemplate. Given that the BOP has exclusive authority to bring compassionate release motions, how will applications from prisoners meeting the Commission's criteria be handled?

A: We do not know at this time how the BOP plans to handle such requests. We encourage prisoners who meet the Commission's broader criteria and otherwise meet the BOP's criteria for compassionate release to request it of their current warden.

Q: What if the request for compassionate release is based on terminal illness with a prognosis of one year or less to live or the prisoner has a debilitating physical or mental illness or injury (the currently acceptable grounds for compassionate release according to the BOP)?

A: The prisoner should work with prison staff to make a request for compassionate release and to ensure that the request includes documentation about the prisoner's qualifying condition, including medical records, medical opinions and other evidence of qualification. It is sometimes helpful to have a doctor (either a BOP doctor or an outside specialist) write a letter detailing the condition and prognosis as evidence that the prisoner is eligible for compassionate release. Prison staff or outside advocates, such as family members, should be able to help assemble this documentation.



Q: What if the prisoner meets the criteria identified in one of the specific examples laid out by the Commission’s application note, but does not meet the criteria of the BOP?

A: The BOP has not issued new regulations governing compassionate release for some time and has not indicated how it will treat compassionate release requests that rely on grounds other than imminent death or incapacitating illness. When making a request based on the Commission’s application note, the prisoner should cite U.S.S.G § 1B1.13, application note 1, and explain in the written request to the warden how his situation conforms with the example in the application note. We do not yet know how such a request will be handled by the BOP.

Q: What happens when a prisoner submits a request for compassionate release?

A: All submitted requests are first reviewed by the warden and the Medical Director (if the request is based on medical reasons) or the warden and the Assistant Director of the Correctional Programs Division (if the request is not based on medical reasons). The warden is required to review and investigate all requests promptly, but if the request is based on medical reasons, the prisoner should specifically ask that the request be expedited (i.e., given priority and handled quickly). When a request for compassionate release is based on medical reasons, BOP staff members are required to expedite the request through all levels of review.

Step One: The Warden. If the warden decides the request should be *denied*, written notice must be given to the prisoner, including stating the reasons the request was denied. The inmate may appeal this denial through the Administrative Remedy Procedure by filing an appeal with the Regional Director using a BP-10 form. (See Policy Statement 1330.13 for a full description of the BOP Administrative Remedy Procedure, available online at http://www.bop.gov/policy/progstat/1330_013.pdf (Adobe Reader required)). Such forms can be requested from a unit manager, counselor, case manager, or warden, or found in the prison’s law library. If the warden decides the request should be *approved*, he/she sends a written recommendation to the Regional Director, including copies of the prisoner’s presentence investigation report, judgment and commitment order, most recent progress report, medical records (if necessary), and the U.S. Probation Office’s approval of the prisoner’s post-release plans (including where the prisoner will live and how he will be financially supported).

Step Two: The Regional Director. If the Regional Director decides the request should be *denied*, written notice must be given to the prisoner, including stating the reasons the request was denied. The inmate may appeal this denial through the Administrative Remedy Procedure by filing a BP-11 form with the National Inmate Appeals Administrator in the BOP’s Office of the General Counsel. If the Regional Director *approves* compassionate release, he/she must send a written recommendation to the BOP’s Office of the General Counsel, which then reviews it.

Step Three: The Office of the General Counsel. If the Office of the General Counsel decides the request should be *denied*, written notice must be given to the prisoner, including stating the reasons the request was denied. Denial by the Office of the General Counsel is considered a final administrative decision, which means that the denial cannot be challenged any



further through the administrative review process. If the Office of the General Counsel reviews the request and *approves* it, the request is sent forward to the Director of the BOP for final approval.

Step Four: The Director of the BOP. If the Director of the BOP decides the request should be *denied*, written notice must be given to the prisoner within 20 workdays after receiving the request from the Office of the General Counsel. The denial must state the reasons the request was denied. Denial by the Director of the BOP is considered a final administrative decision, which means that the denial cannot be challenged through the administrative review process. If the Director of the BOP *approves* the early release, he/she will contact the United States Attorney in the district where the prisoner was convicted and ask the prosecutor to bring a motion in court on the BOP's behalf requesting compassionate release.

Step Five: The Court. The court will hear the motion brought by the United States Attorney and decide whether compassionate release is warranted. The court will make a decision and issue an order. If the motion is granted, the court's order is sent to the BOP, which then releases the prisoner in accordance with the terms of the order.

Q: Which prisoners cannot be considered for compassionate release?

A: The following people cannot be considered for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i):

1. State prisoners. 18 U.S.C. § 3582(c)(1)(A)(i) only applies to federal prisoners. However, many states have their own compassionate release laws that set out eligibility requirements and procedures for obtaining compassionate release. Frequently, these laws allow early release for elderly or terminally ill prisoners who do not present a danger to the public. Some states handle requests for compassionate release the same way they handle requests for executive clemency (i.e., a pardon or commutation)—the early release may have to be approved or recommended by a parole or clemency board and ultimately granted by the state's governor. State prisoners should ask their counselors, case managers, or wardens for information about how to request compassionate release in their state, or look for information about how the process works in their prison's law library.
2. State prisoners who are incarcerated at a federal prison.
3. District of Columbia Code offenders who are incarcerated at a federal prison.
4. Federal prisoners who committed their offenses prior to November 1, 1987, and received non-parolable sentences.

Q: What is FAMM's involvement in compassionate release efforts?

A: FAMM fought hard over a number of years to convince the Commission to provide needed guidance to sentencing courts regarding compassionate release motions. We urged the Commission to use broad language to allow for compassionate release in more circumstances



than simply old age or terminal illness. The Commission did just that when it expanded the definition of “extraordinary and compelling reasons” in November 2007.

FAMM is currently keeping a close eye on how the BOP treats requests for compassionate release in light of the Commission’s new definition of “extraordinary and compelling reasons.” If you or your loved one are making an effort to obtain compassionate release, you or your attorney are welcome to write to us and tell us about your progress. You can send updates to: FAMM, Attn: Compassionate Release, 1612 K St. NW, Suite 700, Washington, DC 20006. Please Note: Because of the large amounts of mail we receive, we may not be able to respond to everyone who writes to us.

LEGAL DISCLAIMER:

FAMM cannot provide legal advice, representation, referrals, or guidance to those seeking compassionate release. Nothing on this form is intended to be legal advice or should be relied on as legal advice. If you or your loved one feels that you need legal advice, you should consult with an attorney. Finally, BOP policies change frequently, and you should not rely on this document as the most recent statement of BOP policy.