



**U.S. Department of Justice
Federal Bureau of Prisons**

Central Office
320 First St., NW
Washington, DC 20534

March 29, 2023

Reed Rubinstein
America First Legal Foundation
foia@aflegal.org

Request Number: 2022-02154-LIT (First Rolling Release)
America First Legal Foundation v. U.S. DOJ, Civil Action No : 1-23-cv-00391 (D.D.C.)

Dear Reed Rubinstein:

This is the first rolling release in response to the above referenced Freedom of Information Act (FOIA) request. The BOP portion of this request is set forth in Item II, Custodians, and Item 3; Records Requested Subsections B, C, E, and F.

In response to your request, staff located 39 pages of responsive records, which were forwarded to this office for a release determination. After careful review, we determined 34 pages are appropriate for release in full and 5 pages are appropriate for release in part. Copies of releasable records are attached.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, records were redacted under the following exemptions: (b)(6) and (b)(7)(C). BOP considered the foreseeable harm standard when reviewing responsive records and applying FOIA exemptions. An explanation of FOIA exemptions is enclosed.

Additional records relating to the Cares Act are publicly available at: https://www.bop.gov/foia/foia_available_records.jsp. Records relating to the First Step Act are available at <https://www.bop.gov/inmates/fsa/>.

If you have questions about this response please feel free to contact the undersigned, this office, or the Federal Bureau of Prisons' (BOP) FOIA Public Liaison, Mr. Eugene Baime, at 202-616-7750, 320 First Street NW, Suite 936, Washington DC 20534, or bop-ogc-efoia-s@bop.gov.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of

Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,



S. Lilly, GIS, for
Eugene E. Baime, Supervisory Attorney

AMERICA FIRST LEGAL FOUNDATION

Explanation of FOIA Exemptions Used by the Federal Bureau of Prisons

5 U.S.C. § 552(b)(1) protects classified information.

5 U.S.C. § 552(b)(2) concerns matters related solely to internal agency personnel rules or practices.

5 U.S.C. § 552(b)(3) concerns matters specifically exempted from release by statute.

5 U.S.C. § 552(b)(4) concerns trade secrets and commercial or financial information obtained from a person that is privileged or confidential.

5 U.S.C. § 552(b)(5) concerns certain inter- and intra-agency communications protected by the deliberative process privilege, the attorney work-product privilege, and/or the attorney client privilege.

5 U.S.C. § 552(b)(6) concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties.

5 U.S.C. § 552(b)(7)(A) concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to interfere with enforcement proceedings.

5 U.S.C. § 552(b)(7)(B) concerns records or information compiled for law enforcement purposes the release of which would deprive a person of a right to a fair trial or an impartial adjudication.

5 U.S.C. § 552(b)(7)(C) concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of third parties.

5 U.S.C. § 552(b)(7)(D) concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to disclose the identities of confidential sources and information furnished by such sources.

5 U.S.C. § 552(b)(7)(E) concerns records or information compiled for law enforcement purposes the release of which would disclose techniques and procedures for law enforcement investigations or prosecutions.

5 U.S.C. § 552(b)(7)(F) concerns records or information compiled for law enforcement purposes the release of which could reasonably be expected to endanger the life or personal safety of an individual

5 U.S.C. § 552(b)(8) concerns matters that are "contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions."

5 U.S.C. § 552(b)(9) concerns geological and geophysical information and data, including maps, concerning wells.



Office of the Attorney General
Washington, D. C. 20530

March 26, 2020

MEMORANDUM FOR DIRECTOR OF BUREAU PRISONS

FROM: THE ATTORNEY GENERAL *UpBarr*
SUBJECT: Prioritization of Home Confinement As Appropriate in Response to COVID-19 Pandemic

Thank you for your tremendous service to our nation during the present crisis. The current situation is challenging for us all, but I have great confidence in the ability of the Bureau of Prisons (BOP) to perform its critical mission during these difficult times. We have some of the best-run prisons in the world and I am confident in our ability to keep inmates in our prisons as safe as possible from the pandemic currently sweeping across the globe. At the same time, there are some at-risk inmates who are non-violent and pose minimal likelihood of recidivism and who might be safer serving their sentences in home confinement rather than in BOP facilities. I am issuing this Memorandum to ensure that we utilize home confinement, where appropriate, to protect the health and safety of BOP personnel and the people in our custody.

I. TRANSFER OF INMATES TO HOME CONFINEMENT WHERE APPROPRIATE TO DECREASE THE RISKS TO THEIR HEALTH

One of BOP's tools to manage the prison population and keep inmates safe is the ability to grant certain eligible prisoners home confinement in certain circumstances. I am hereby directing you to prioritize the use of your various statutory authorities to grant home confinement for inmates seeking transfer in connection with the ongoing COVID-19 pandemic. Many inmates will be safer in BOP facilities where the population is controlled and there is ready access to doctors and medical care. But for some eligible inmates, home confinement might be more effective in protecting their health.

In assessing which inmates should be granted home confinement pursuant to this Memorandum, you are to consider the totality of circumstances for each individual inmate, the statutory requirements for home confinement, and the following non-exhaustive list of discretionary factors:

- The age and vulnerability of the inmate to COVID-19, in accordance with the Centers for Disease Control and Prevention (CDC) guidelines;

- The security level of the facility currently holding the inmate, with priority given to inmates residing in low and minimum security facilities;
- The inmate's conduct in prison, with inmates who have engaged in violent or gang-related activity in prison or who have incurred a BOP violation within the last year not receiving priority treatment under this Memorandum;
- The inmate's score under PATTERN, with inmates who have anything above a minimum score not receiving priority treatment under this Memorandum;
- Whether the inmate has a demonstrated and verifiable re-entry plan that will prevent recidivism and maximize public safety, including verification that the conditions under which the inmate would be confined upon release would present a lower risk of contracting COVID-19 than the inmate would face in his or her BOP facility;
- The inmate's crime of conviction, and assessment of the danger posed by the inmate to the community. Some offenses, such as sex offenses, will render an inmate ineligible for home detention. Other serious offenses should weigh more heavily against consideration for home detention.

In addition to considering these factors, before granting any inmate discretionary release, the BOP Medical Director, or someone he designates, will, based on CDC guidance, make an assessment of the inmate's risk factors for severe COVID-19 illness, risks of COVID-19 at the inmate's prison facility, as well as the risks of COVID-19 at the location in which the inmate seeks home confinement. We should not grant home confinement to inmates when doing so is likely to increase their risk of contracting COVID-19. You should grant home confinement only when BOP has determined—based on the totality of the circumstances for each individual inmate—that transfer to home confinement is likely not to increase the inmate's risk of contracting COVID-19.

II. PROTECTING THE PUBLIC

While we have an obligation to protect BOP personnel and the people in BOP custody, we also have an obligation to protect the public. That means we cannot take any risk of transferring inmates to home confinement that will contribute to the spread of COVID-19, or put the public at risk in other ways. I am therefore directing you to place any inmate to whom you grant home confinement in a mandatory 14-day quarantine period before that inmate is discharged from a BOP facility to home confinement. Inmates transferred to home confinement under this prioritized process should also be subject to location monitoring services and, where a court order is entered, be subject to supervised release.

We must do the best we can to minimize the risk of COVID-19 to those in our custody, while also minimizing the risk to the public. I thank you for your service to the country and assistance in implementing this Memorandum.



Office of the Attorney General
Washington, D. C. 20530

April 3, 2020

MEMORANDUM FOR DIRECTOR OF BUREAU OF PRISONS

FROM: THE ATTORNEY GENERAL *W. Barr*
SUBJECT: Increasing Use of Home Confinement at Institutions Most Affected by COVID-19

The mission of BOP is to administer the lawful punishments that our justice system imposes. Executing that mission imposes on us a profound obligation to protect the health and safety of all inmates.

Last week, I directed the Bureau of Prisons to prioritize the use of home confinement as a tool for combatting the dangers that COVID-19 poses to our vulnerable inmates, while ensuring we successfully discharge our duty to protect the public. I applaud the substantial steps you have already taken on that front with respect to the vulnerable inmates who qualified for home confinement under the pre-CARES Act standards.

As you know, we are experiencing significant levels of infection at several of our facilities, including FCI Oakdale, FCI Danbury, and FCI Elkton. We have to move with dispatch in using home confinement, where appropriate, to move vulnerable inmates out of these institutions. I would like you to give priority to these institutions, and others similarly affected, as you continue to process the remaining inmates who are eligible for home confinement under pre-CARES Act standards. In addition, the CARES Act now authorizes me to expand the cohort of inmates who can be considered for home release upon my finding that emergency conditions are materially affecting the functioning of the Bureau of Prisons. I hereby make that finding and direct that, as detailed below, you give priority in implementing these new standards to the most vulnerable inmates at the most affected facilities, consistent with the guidance below.

I. IMMEDIATELY MAXIMIZE APPROPRIATE TRANSFERS TO HOME CONFINEMENT OF ALL APPROPRIATE INMATES HELD AT FCI OAKDALE, FCI DANBURY, FCI ELKTON, AND AT OTHER SIMILARLY SITUATED BOP FACILITIES WHERE COVID-19 IS MATERIALLY AFFECTING OPERATIONS

Subject: Increasing Use of Home Confinement at Institutions Most Affected by COVID-19

While BOP has taken extensive precautions to prevent COVID-19 from entering its facilities and infecting our inmates, those precautions, like any precautions, have not been perfectly successful at all institutions. I am therefore directing you to immediately review all inmates who have COVID-19 risk factors, as established by the CDC, starting with the inmates incarcerated at FCI Oakdale, FCI Danbury, FCI Elkton, and similarly situated facilities where you determine that COVID-19 is materially affecting operations. You should begin implementing this directive immediately at the facilities I have specifically identified and any other facilities facing similarly serious problems. And now that I have exercised my authority under the CARES Act, your review should include all at-risk inmates—not only those who were previously eligible for transfer.

For all inmates whom you deem suitable candidates for home confinement, you are directed to immediately process them for transfer and then immediately transfer them following a 14-day quarantine at an appropriate BOP facility, or, in appropriate cases subject to your case-by-case discretion, in the residence to which the inmate is being transferred. It is vital that we not inadvertently contribute to the spread of COVID-19 by transferring inmates from our facilities. Your assessment of these inmates should thus be guided by the factors in my March 26 Memorandum, understanding, though, that inmates with a suitable confinement plan will generally be appropriate candidates for home confinement rather than continued detention at institutions in which COVID-19 is materially affecting their operations.

I also recognize that BOP has limited resources to monitor inmates on home confinement and that the U.S. Probation Office is unable to monitor large numbers of inmates in the community. I therefore authorize BOP to transfer inmates to home confinement even if electronic monitoring is not available, so long as BOP determines in every such instance that doing so is appropriate and consistent with our obligation to protect public safety.

Given the speed with which this disease has spread through the general public, it is clear that time is of the essence. Please implement this Memorandum as quickly as possible and keep me closely apprised of your progress.

II. PROTECTING THE PUBLIC

While we have a solemn obligation to protect the people in BOP custody, we also have an obligation to protect the public. That means we cannot simply release prison populations en masse onto the streets. Doing so would pose profound risks to the public from released prisoners engaging in additional criminal activity, potentially including violence or heinous sex offenses.

That risk is particularly acute as we combat the current pandemic. Police forces are facing the same daunting challenges in protecting the public that we face in protecting our inmates. It is impossible to engage in social distancing, hand washing, and other recommend steps in the middle of arresting a violent criminal. It is thus no surprise that many of our police officers have fallen ill with COVID-19, with some even dying in the line of duty from the disease. This pandemic has dramatically increased the already substantial risks facing the men and women who keep us safe, at the same time that it has winnowed their ranks while officers recover from getting sick, or self-quarantine to avoid possibly spreading the disease.

Subject: Increasing Use of Home Confinement at Institutions Most Affected by COVID-19

The last thing our massively over-burdened police forces need right now is the indiscriminate release of thousands of prisoners onto the streets without any verification that those prisoners will follow the laws when they are released, that they have a safe place to go where they will not be mingling with their old criminal associates, and that they will not return to their old ways as soon as they walk through the prison gates. Thus, while I am directing you to maximize the use of home confinement at affected institutions, it is essential that you continue making the careful, individualized determinations BOP makes in the typical case. Each inmate is unique and each requires the same individualized determinations we have always made in this context.

I believe strongly that we should do everything we can to protect the inmates in our care, but that we must do so in a careful and individualized way that remains faithful to our duty to protect the public and the law enforcement officers who protect us all.

AMERICA FIRST LEGAL FOUNDATION



U.S. Department of Justice
Memorandum
Federal Bureau of Prisons

Central Office

Washington, DC 20534

April 13, 2021

MEMORANDUM FOR CHIEF EXECUTIVE OFFICERS

**FROM: ANDRE MATEVOUSIAN, ASSISTANT DIRECTOR
CORRECTIONAL PROGRAMS DIVISION**

**SONYA D. THOMPSON, ASSISTANT DIRECTOR
REENTRY SERVICES DIVISION**

MICHAEL SMITH Digitally signed by MICHAEL SMITH
Date: 2021.04.13 16:01:39 -04'00'

**M. D. SMITH, ASSISTANT DIRECTOR
HEALTH SERVICES DIVISION**

SUBJECT: HOME CONFINEMENT

In our ongoing effort to protect the health and safety of staff and inmates during the COVID-19 pandemic, it is imperative to continue reviewing at-risk inmates for placement on home confinement in accordance with the CARES Act and guidance from the Attorney General. This memorandum provides updated guidance and direction and supercedes the memorandum dated November 16, 2020.

The following factors are to be assessed to ensure inmates are suitable for home confinement under the CARES Act:

- Reviewing the inmate's institutional discipline history for the last twelve months (Inmates who have received a 300 or 400 series incident report in the past 12 months may

be referred for placement on home confinement, if in the Warden's judgement such placement does not create an undue risk to the community);

- Ensuring the inmate has a verifiable release plan;
- Verifying the inmate's primary offense is not violent, a sex offense, or terrorism-related;
- Confirming the inmate does not have a current detainer;
- Ensuring the inmate is Low or Minimum security;
- Ensuring the inmate has a Low or Minimum PATTERN recidivism risk score;
- Ensuring the inmate has not engaged in violent or gang-related activity while incarcerated (must be reviewed by SIS);
- Reviewing the COVID-19 vulnerability of the inmate, in accordance with CDC guidelines; and
- Confirming the inmate has served 50% or more of their sentence; or has 18 months or less remaining on their sentence and have served 25% or more of their sentence.

Additionally, pregnant inmates should be considered for viability of placement in a community program to include Mothers and Infants Together (MINT) programs and home confinement.

If the Warden determines there is a need to refer an inmate for placement in the community due to COVID-19 risk factors who is outside of the criteria listed above, they may forward the home confinement referral to the Correctional Programs Division for further review.

Referrals to a Residential Reentry Management (RRM) Office must be made based on appropriateness for home confinement. This assessment should include verification that the conditions under which the inmate would be confined upon release would be more effective in protecting their health than continued confinement at their present place of incarceration.

To this end, the inmate must be provided education on CDC guidance on how to protect themselves and others from COVID-19 transmission. This education includes, but is not limited to: hand washing, social distancing, wearing of facial coverings and self-assessment for signs and symptoms of COVID-19. Inmates should understand how home confinement provides the opportunity to practice optimal infection control measures, which may mitigate existing risks, based on rates of transmission in the local area, and exercising best practices. The information (education) provided to the inmate must be documented on the BEMR exit summary.

All referrals should clearly document the review of the following items prior to being submitted to the RRM office:

- Specific type of release residence (House/Apt/Group Home etc.);
- List of individuals with whom inmate will be living;
- Any health concerns of individuals in the residence;
- Contact phone numbers of the inmate should he/she be placed on home confinement; and,
- Transportation plan as to how the inmate will be transferred to the home confinement location.

Any questions as to eligibility in relation to the release plan will be referred to the Residential Reentry Management Branch Administrator.

Inmates determined to have a viable release residence will be further screened by Health Services and a determination made as to whether they require frequent and ongoing medical care within the next 90 days. If frequent and on-going medical care is required then:

- Health Services staff will coordinate with RRMB's Health Services Specialists to determine if the inmate's medical needs can be met in the community. RRMB will establish follow-up care prior to inmate transfer. The inmate must transfer with at least 90 days of any prescribed medications.
- If the inmate's medical needs cannot be met in the community, then the inmate will remain at his/her current institution. (If the inmate does not require frequent and on-going medical care then the referral will be processed.)

If an inmate is referred or denied for home confinement once a review is completed, the appropriate Case Management Activity (CMA) assignment should be loaded.

Case Management Coordinators must track all inmates determined to be ineligible for CARES Act home confinement or the Elderly Offender Home Confinement Pilot Program and ensure the appropriate denial code is entered in SENTRY. Reports outlining the reason for denial must be submitted to the Correctional Programs Administrator in the appropriate Regional Office.

If an inmate does not qualify for CARES Act home confinement under the above criteria, they should be reviewed at the appropriate time for placement in a Residential Reentry Center and/or home confinement consistent with applicable laws and BOP policies.

If you have any questions, please contact (b)(6); (b)(7)(C) Administrator, Correctional Programs Branch.



U.S. Department of Justice
Federal Bureau of Prisons

OPERATIONS MEMORANDUM

OPI: RSD/RRM
NUMBER: 001-2021
DATE: May 3, 2021
EXPIRATION DATE: May 3, 2022

Home Confinement under the First Step Act

/s/

Approved: Sonya D. Thompson
Assistant Director, Reentry Services Division

The First Step Act of 2018 (FSA) contained additional requirements for the Bureau of Prisons (Bureau) in placing inmates in home confinement generally, and re-established and expanded a pilot program under the Second Chance Act to place elderly and terminally ill inmates in home confinement.

The terms “home confinement” and “home detention” are used interchangeably in this Operations Memorandum.

Institution Supplement. None required. Should local facilities make any changes outside the required changes in the national policy or establish any additional local procedures to implement the national policy, the local Union may invoke to negotiate procedures or appropriate arrangements.

1. HOME CONFINEMENT FOR LOW RISK OFFENDERS

Section 602 of the FSA modified 18 U.S.C. § 3621 (c)(1), authorizes the Bureau to maximize the amount of time spent on home confinement when possible. The provision now states, with the new FSA language in **bold**,

“Home confinement authority. – The authority under this subsection may be used to place a prisoner in home confinement for the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months. **The Bureau of Prisons shall, to the extent practicable, place prisoners with lower risk levels and lower needs on home confinement for the maximum amount of time permitted under this paragraph.**”

The Bureau interprets the language to refer to inmates that have lower risks of reoffending in the community as defined by individual PATTERN scores, and reentry needs that can be addressed without RRC placement. The Bureau currently utilizes home confinement for these inmates. Accordingly, staff should refer eligible inmates for the maximum amount of time permitted under the statutory requirements.

The statutory language will be added to the Program Statement **Home Confinement**.

2. PILOT PROGRAM FOR ELIGIBLE ELDERLY OFFENDERS AND TERMINALLY ILL OFFENDERS

Section 603 (a) of the FSA reauthorized and modified the pilot program conducted under the Second Chance Act, 34 U.S.C. § 60541, as follows:

(a) Scope of Pilot

The Bureau shall conduct a pilot program to determine the effectiveness of removing eligible elderly offenders and eligible terminally ill offenders from Bureau facilities and placing such offenders on home detention until the expiration of the prison term to which the offender was sentenced.

Under 34 U.S.C. § 60541 (h), the pilot will be conducted during Fiscal Years 2019 through 2023.

(b) Placement in home detention

The Bureau may release some or all eligible elderly offenders and eligible terminally ill offenders from Bureau facilities to home detention, upon written request from either the Bureau staff, or an eligible elderly offender or eligible terminally ill offender.

(c) Waiver

Under 34 U.S.C. § 60541 (g)(1)(C), the Bureau is authorized to waive the requirements of section 3624 of Title 18 [home confinement for the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months] as necessary to provide for the release of some or all eligible elderly offenders and eligible terminally ill offenders from Bureau facilities to home detention for the purposes of the pilot program.

(d) Violation of terms of home detention

A violation by an eligible elderly offender or eligible terminally ill offender of the terms of home detention (including the commission of another Federal, State, or local crime) shall result in the removal of that offender from home detention and the return of that offender to the designated Bureau institution in which that offender was imprisoned immediately before

placement on home detention as part of this pilot, or to another appropriate Bureau institution, as determined by the Bureau.

The Bureau will remove an inmate from this pilot in accordance with the Program Statement **Inmate Discipline Program**, and the Program Statement **Home Confinement**.

(e) Definitions

The following statutory definitions set out criteria for the implementation of this pilot program only:

Eligible elderly offender means an offender in the custody of the Bureau—

- (1) who is not less than 60 years of age;
- (2) who is serving a term of imprisonment that is not life imprisonment based on conviction for an offense or offenses that do not include any crime of violence (as defined in section 16 of Title 18), sex offense (as defined in section 20911(5) of this title), offense described in section 2332b(g)(5)(B) of Title 18, or offense under chapter 37 of Title 18, and has served 2/3 of the term of imprisonment to which the offender was sentenced;
- (3) who has not been convicted in the past of any Federal or State crime of violence, sex offense, or other offense described in paragraph (2), above.
- (4) who has not been determined by the Bureau, on the basis of information the Bureau uses to make custody classifications, and in the sole discretion of the Bureau, to have a history of violence, or of engaging in conduct constituting a sex offense or other offense described in paragraph 2 above;
- (5) who has not escaped, or attempted to escape, from a Bureau of Prisons institution (to include all security levels of Bureau facilities);
- (6) with respect to whom the Bureau of Prisons has determined that release to home detention under this section will result in a substantial net reduction of costs to the Federal Government; and
- (7) who has been determined by the Bureau to be at no substantial risk of engaging in criminal conduct or of endangering any person or the public if released to home detention.

Eligible terminally ill offender means an offender in the custody of the Bureau who—

- (1) is serving a term of imprisonment based on conviction for an offense or offenses that do not include any crime of violence (as defined in section 16(a) of Title 18, United States Code), sex offense (as defined in section 111(5) of the Sex Offender Registration and Notification Act (34 U.S.C. § 20911(5))), offense described in section 2332b(g)(5)(B) of Title 18, United States Code, or offense under chapter 37 of Title 18, United States Code;
- (2) satisfies the criteria specified in paragraphs 3 through 7 included in the Eligible Elderly Offender definition, above; and
- (3) has been determined by a medical doctor approved by the Bureau, i.e. Clinical Director of the local institution, to be:
 - in need of care at a nursing home, intermediate care facility, or assisted living facility, as those terms are defined in section 232 of the National Housing Act (12 U.S.C. § 1715w); or
 - diagnosed with a terminal illness.

Home detention has the same meaning given the term in the Federal Sentencing Guidelines as of April 9, 2008, and includes detention in a nursing home or other residential long-term care facility. As with all home confinement placements, the home must be found to be appropriate under the provisions of the Program Statement **Home Confinement**.

Term of imprisonment includes multiple terms of imprisonment ordered to run consecutively or concurrently, which shall be treated as a single, aggregate term of imprisonment for purposes of this section.

(f) Procedures

Offenders referred under this pilot shall be processed for home detention utilizing current RRC/Home Confinement procedures.

For Eligible Elderly Offenders, a BP-A0210, Institutional Referral for CCC Placement, will be completed. Staff should refer all inmates meeting criteria (1) through (5) in the definition of Eligible Elderly Offender, above. Reentry Services Division (RSD) staff will determine if the inmate meets criteria (6) and (7) under the definition. A clear annotation will be made on the referral packet that “**This inmate is being referred for Home Confinement placement under the provisions contained in the First Step Act for placement of eligible elderly offenders and eligible terminally ill offenders.**”

For Eligible Terminally Ill Offenders, to include debilitated offenders that may need placement in nursing home, intermediate care facility, or assisted living facility, institution staff will refer the inmate for a Reduction in Sentence (RIS) under Program Statement

Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582 and 4205(g). If not appropriate for a RIS, the Office of General Counsel will provide RSD the RIS packet for consideration under this pilot.

(g) Reporting and Tracking

34 U.S.C. § 60541 (g) (4), as amended by the FSA, requires an evaluation of the pilot program, and a report to Congress after its conclusion in 2023. The following data points, at a minimum, will be tracked by RSD to assist with this evaluation and report:

- The number of Eligible Elderly Inmates referred to RSD;
- The number of Eligible Terminally Ill Inmates referred to RSD;
- The number of placements in home detention for each category;
- The length of time of home confinement afforded under each category;
- The estimated amount net reduction of costs to the Federal Government for each case; and
- The estimated amount net reduction of costs to the Federal Government for the pilot period.

ADDENDUM – REFERENCED AUTHORITIES 18 U.S.C. § 16 - Crime of violence defined

The term “crime of violence” means–

- (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or
- (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

NOTE: 34 U.S.C. § 60541, as amended by the FSA, provides that section 16 (a) and (b) be applied when determining eligibility of an elderly offender; but only section 16 (a) should be applied when determining the eligibility of a terminally ill offender under this pilot.

Please contact the Office of General Counsel for any questions of whether an offense is a crime of violence under 18 U.S.C. § 16.

34 U.S.C. § 20911 (5) - Relevant definitions, including Amie Zyla expansion of sex offender definition and expanded inclusion of child predators

(A) Generally

Except as limited by subparagraph (B) or (C), the term “sex offense” means—

- (i) a criminal offense that has an element involving a sexual act or sexual contact with another;
- (ii) a criminal offense that is a specified offense against a minor;
- (iii) a Federal offense (including an offense prosecuted under section 1152 or 1153 of Title 18) under section 1591, or chapter 109A, 110 (other than section 2257, 2257A, or 2258), or 117, of Title 18;
- (iv) a military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. 951 note); or
- (v) an attempt or conspiracy to commit an offense described in clauses (i) through (iv).

(B) Foreign convictions

A foreign conviction is not a sex offense for the purposes of this subchapter if it was not obtained with sufficient safeguards for fundamental fairness and due process for the accused under guidelines or regulations established under section 20912 of this title.

(C) Offenses involving consensual sexual conduct

An offense involving consensual sexual conduct is not a sex offense for the purposes of this subchapter if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least 13 years old and the offender was not more than 4 years older than the victim.

18 U.S.C. § 2332b(g)(5)(B) - Acts of terrorism transcending national boundaries

A violation of the following sections of Title 18, United States Code:

- 32 (relating to destruction of aircraft or aircraft facilities),
- 37 (relating to violence at international airports),
- 81 (relating to arson within special maritime and territorial jurisdiction),
- 175 or 175b (relating to biological weapons),
- 175c (relating to variola virus),
- 229 (relating to chemical weapons),
- 351, Subsections (a), (b), (c), or (d) (relating to congressional, cabinet, and Supreme Court assassination and kidnaping), 831 (relating to nuclear materials),
- 832 (relating to participation in nuclear and weapons of mass destruction threats to the United

States),
842(m) or (n) (relating to plastic explosives),
844(f)(2) or (3) (relating to arson and bombing of Government property risking or causing death),
844(i) (relating to arson and bombing of property used in interstate commerce),
930(c) (relating to killing or attempted killing during an attack on a Federal facility with a dangerous weapon),
956(a)(1) (relating to conspiracy to murder, kidnap, or maim persons abroad),
1030(a)(1) (relating to protection of computers),
1030(a)(5)(A) resulting in damage as defined in 1030(c)(4)(A)(i)(II) through (VI) (relating to protection of computers),
1114 (relating to killing or attempted killing of officers and employees of the United States),
1116 (relating to murder or manslaughter of foreign officials, official guests, or internationally protected persons),
1203 (relating to hostage taking),
1361 (relating to government property or contracts),
1362 (relating to destruction of communication lines, stations, or systems),
1363 (relating to injury to buildings or property within special maritime and territorial jurisdiction of the United States),
1366(a) (relating to destruction of an energy facility),
1751(a), (b), (c), or (d) (relating to Presidential and Presidential staff assassination and kidnaping),
1992 (relating to terrorist attacks and other acts of violence against railroad carriers and against mass transportation systems on land, on water, or through the air), 2155 (relating to destruction of national defense materials, premises, or utilities),
2156 (relating to national defense material, premises, or utilities),
2280 (relating to violence against maritime navigation),
2280a (relating to maritime safety),
2281 through 2281a (relating to violence against maritime fixed platforms),
2332 (relating to certain homicides and other violence against United States nationals occurring outside of the United States),
2332a (relating to use of weapons of mass destruction),
2332b (relating to acts of terrorism transcending national boundaries),
2332f (relating to bombing of public places and facilities),
2332g (relating to missile systems designed to destroy aircraft),
2332h (relating to radiological dispersal devices),
2332i (relating to acts of nuclear terrorism),
2339 (relating to harboring terrorists),
2339A (relating to providing material support to terrorists),
2339B (relating to providing material support to terrorist organizations),
2339C (relating to financing of terrorism),
2339D (relating to military-type training from a foreign terrorist organization), or
2340A (relating to torture).

A violation of the following sections of Title 42, United States Code:

2122 (relating to prohibitions governing atomic weapons), or
2284 (relating to sabotage of nuclear facilities or fuel).

A violation of the following sections of Title 49, United States Code:

46502 (relating to aircraft piracy),
46504 - the second sentence of the section (relating to assault on a flight crew with a dangerous weapon),
46505(b)(3) or (c) (relating to explosive or incendiary devices, or endangerment of human life by means of weapons, on aircraft),
46506 if homicide or attempted homicide is involved (relating to application of certain criminal laws to acts on aircraft), or
60123(b) (relating to destruction of interstate gas or hazardous liquid pipeline facility).

A violation of the following section of Title 21:

960, which is section 1010A of the Controlled Substances Import and Export Act (relating to narco-terrorism).

18 U.S.C. Chapter 37 - Espionage and Censorship

792, Harboring or Concealing Persons
793, Gathering, Transmitting or Losing Defense Information
794, Gathering or Delivering Defense Information to Aid Foreign Government
795, Photographing and Sketching Defense Installations
796, Use of Aircraft for Photographing Defense Installations
797, Publication and Sale of Photographs of Defense Installations
798, Disclosure of Classified Information
798a, Temporary Extension of Section 794
799, Violation of Regulations of National Aeronautics and Space Administration

12 U.S.C. § 1715w - Mortgage insurance for nursing homes, intermediate care facilities, and board and care homes

(a) Definitions - For the purposes of this section—

- (1) the term “**nursing home**” means a public facility, proprietary facility or facility of a private nonprofit corporation or association, licensed or regulated by the State (or, if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located), for the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care but who require skilled nursing care and related medical

services, in which such nursing care and medical services are prescribed by, or are performed under the general direction of, persons licensed to provide such care or services in accordance with the laws of the State where the facility is located;

- (2) the term “**intermediate care facility**” means a proprietary facility or facility of a private nonprofit corporation or association licensed or regulated by the State (or, if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located) for the accommodation of persons who, because of incapacitating infirmities, require minimum but continuous care but are not in need of continuous medical or nursing services;
- (3) the term a “**nursing home**” or “**intermediate care facility**” may include such additional facilities as may be authorized by the Secretary for the nonresident care of elderly individuals and others who are able to live independently but who require care during the day; . . .
- (4) the term “**assisted living facility**” means a public facility, proprietary facility, or facility of a private nonprofit corporation that--
- a. is licensed and regulated by the State (or if there is no State law providing for such licensing and regulation by the State, by the municipality or other political subdivision in which the facility is located);
 - b. makes available to residents supportive services to assist the residents in carrying out activities of daily living, such as bathing, dressing, eating, getting in and out of bed or chairs, walking, going outdoors, using the toilet, laundry, home management, preparing meals, shopping for personal items, obtaining and taking medication, managing money, using the telephone, or performing light or heavy housework, and which may make available to residents home health care services, such as nursing and therapy; and
 - c. provides separate dwelling units for residents, each of which may contain a full kitchen and bathroom, and which includes common rooms and other facilities appropriate for the provision of supportive services to the residents of the facility;

Home Confinement Milestone

Over 30,000 inmates have been transferred to Home Confinement



HOME
CONFINEMENT

Updated 14:50 PM EDT, August 23, 2021

(BOP) - As of August 17, 2021, the Bureau of Prisons (BOP) has transferred over 30,000 eligible inmates (including inmates who have completed service of their sentence) to Home Confinement since receiving the memorandum from the Attorney General on March 26, 2020, instructing us to prioritize home confinement as an appropriate response to the COVID-19 pandemic. This milestone number also includes inmates eligible for Home Confinement under the emergency authority exercised by the Attorney General on April 3, 2020 in accordance with the CARES Act.

In response to COVID-19, the BOP instituted a comprehensive management approach that includes screening, testing, appropriate treatment, prevention, education, and infection control measures. The BOP continues to aggressively screen all potential inmates, identifying those who have COVID-19 risk factors as described by the CDC, for appropriate placement in Home Confinement. Additional COVID-19 Home Confinement Information, including the most recent numbers and answers to Frequently Asked Questions, can be found on the BOP's public website.

Inmates do not need to apply to be considered for home confinement. Case management staff continue to review all inmates to determine which ones meet the criteria established by the Attorney General on March 26, 2020 and April 3, 2020. The Department has also increased resources to review and make appropriate determinations as soon as possible. All inmates are being reviewed for suitability, however, any inmate who believes they are eligible may request to be referred to Home Confinement and provide a release plan to their Case Manager. The BOP may contact family members to gather needed information when making decisions concerning Home Confinement placement.

The BOP is deeply concerned for the health and welfare of those inmates who are entrusted to our care, and for our staff, their families, and the communities where we live and work. It remains our highest priority to continue to do everything we can to mitigate the spread of COVID-19 in our facilities.

The BOP appreciates the dedication and significant work of our staff in carrying out an already difficult mission in the face of the nationwide public emergency. The BOP continues to be thankful for the support and assistance of the Attorney General, the CDC, the Public Health Service, and our state and local community partners in forming and carrying out the BOP's COVID-19 response.



U.S. Department of Justice
Federal Bureau of Prisons

Central Office

Washington, D.C. 20534

December 21, 2022

MEMORANDUM FOR CHIEF EXECUTIVE OFFICERS

LINDA GETER Digitally signed by LINDA GETER
Date: 2022.12.21 07:35:44 -06'00'

FROM: Catricia Howard, Assistant Director
Correctional Programs Division

ALISON LEUKEFELD Digitally signed by ALISON LEUKEFELD
Date: 2022.12.21 09:58:47 -05'00'

Alison Leukefeld, Acting Assistant Director
Reentry Services Division

Chris A. Bina Digitally signed by CHRISTOPHER BINA
Date: 2022.12.21 14:34:54 -05'00'

RADM Chris A. Bina, Acting Assistant Director
Health Services Division

SUBJECT: Home Confinement Criteria and Guidance

This memorandum provides updated guidance and direction that supersedes the Home Confinement memorandum dated April 13, 2021.

As an agency, we must continue our duty to protect the public, while we also safeguard our most vulnerable inmates from COVID-19. We must continue to focus on potentially at-risk inmates who are non-violent, pose minimal risks of recidivism, who may be appropriate to serve the remainder of their sentences in Home Confinement, rather than in Bureau facilities.

With the issuance of this memorandum, the following factors are to be assessed in determining inmates who are suitable for Home Confinement under the CARES Act:

- Reviewing the COVID-19 vulnerability (risk factors) of the inmate, in accordance with the most recent CDC guidelines.
- Ensuring the inmate has a Minimum or Low PATTERN risk score;

- Ensuring the inmate is Minimum or Low security level;
- Verifying the inmate's current offense or prior criminal history is not violent, a sex crime, nor terrorism-related.
- Ensuring the inmate has a verifiable release plan (at a minimum, verified telephonically by Unit Team) or approved in writing by United States Probation for relocation cases;
- Reviewing the inmate's institutional discipline history for the past twelve months. Inmates who have received a 100 or 200 series incident report in the past 12 months are not ordinarily eligible (inmates who have received a 300 or 400 series incident report in the past 12 months may be referred for placement on Home Confinement, if in the Warden's judgment such placement does not create an undue risk to the community);
- Confirming the inmate does not have a current detainer or pending charge. The Case Management Activity (CMA) assignment must be updated accordingly;
- Ensuring the inmate has not engaged in violent or gang-related activity while incarcerated (must be reviewed by SIS);
- Confirming the inmate has served 50% or more of the statutory sentence; or has 18 months or less remaining to serve on the sentence and has served 25% or more of the sentence (calculation does not to include First Step Act Time Credits). If, after satisfying this percentage of time served, the inmate has five (5) years or more remaining on the sentence, this is to be noted on the request for Home Confinement. Upon receipt, the Residential Reentry Management (RRM) Office will contact the Assistant U.S. Attorney's (AUSA's) office in the respective Court of Jurisdiction to solicit input regarding the request for Home Confinement. The input from the AUSA is to be considered among the factors used by the RRM Office in making a Home Confinement decision.
- Additional factors that should be considered when determining home confinement suitability include the community transmission levels of the home confinement location; the inmate's prior adjustment while on supervised release, bond or pre-trial supervision; prior instances of violating terms of supervised release, etc.

Referrals to a Residential Reentry Management (RRM) Office must

be made based on appropriateness for home confinement. The assessment should include verification that the conditions under which the inmate would be confined upon release would be more effective in protecting their health than continued confinement at their current location. The RRM's retain the final authority based on the referral and availability of community resources.

If the Warden determines there is a need to refer an inmate for placement in the community due to factors who is outside the criteria listed above, they may forward the home confinement referral as an exception case to the Home Confinement Committee (HCC) under the Correctional Programs Division (CPD) for further review. The HCC will contact the Assistant U.S. Attorney's (AUSA's) office for input regarding the request for Home Confinement. The input from the AUSA is to be considered among the factors used by the HCC in making a Home Confinement decision.

Inmates should understand home confinement provides the opportunity to practice optimal infection prevention measures that may mitigate existing risks based on community transmission level. This formal education provided to the inmate must be documented on the BEMR exit summary.

All referrals should clearly document the review of the following items prior to submission to the respective RRM office:

- Specific type of release residence (house, apartment, etc.)
- List of individuals with whom inmate will be living;
- Any health concerns of individuals in the residence;
- Contact phone numbers of the inmate should he/she be placed on Home Confinement;
- Transportation plan as to how the inmate will be transferred to the Home Confinement location and how the inmate will be transported to the RRC for weekly check-ins.

Any questions as to eligibility in relation to the release plan will be referred to the Residential Reentry Branch Administrator.

Inmates determined to have a viable release residence will be further screened by Health Services and a determination made as to whether they require frequent and ongoing medical care within the next 90 days, including inmates prescribed medication-assisted treatment (MAT). If frequent and ongoing medical care is required, then:

- Health Services staff will coordinate with RRMB's Health

Services Specialists to determine if the inmate's medical needs can be met in the community. RRMB will establish follow-up care prior to the inmate's transfer. The inmate must transfer with a 90-day supply of current chronic medications as legally and clinically appropriate.

- If the inmate's medical needs cannot be met in the community, the inmate will remain at his/her current institution. If the inmate does not require frequent and on-going medical care, the referral will be processed.

If an inmate is referred or denied for Home Confinement once a review is completed, the appropriate CMA assignment should be entered. Once denied, subsequent requests for Home Confinement should only be submitted if circumstances have significantly changed since the denial decision. Examples of change in circumstances include worsening health condition/illness of the inmate, factors that were not known when the denial decision was made, etc.

For those exception cases that were denied home confinement by the HCC, all subsequent requests for Home Confinement should be sent to the HCC for review (regardless if the inmate meets all established criteria).

Case Management Coordinators must track all inmates determined to be ineligible for CARES Act Home Confinement or the Elderly Offender Home Confinement Pilot Program and ensure the appropriate denial code is entered in SENTRY. Reports outlining the reason for denial must be submitted to the Correctional Programs Administrator in the appropriate Regional Office.

If an inmate does not qualify for CARES Act Home Confinement under the above criteria, they should be reviewed at the appropriate time for placement in a Residential Reentry Center and/or Home Confinement with applicable laws and BOP policies.

If you have any questions, please contact (b)(6); (b)(7)(C)
Administrator, Correctional Programs Branch.



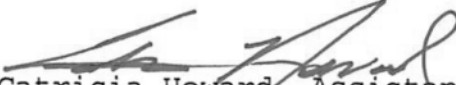
U.S. Department of Justice
Memorandum
Federal Bureau of Prisons

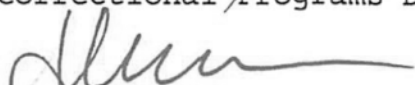
Correctional Programs Division

Central Office
320 First Street, N.W.
Washington, DC 20534

JAN 11 2022

MEMORANDUM FOR ALL CHIEF EXECUTIVE OFFICERS

FROM:  Catricia Howard, Assistant Director
Correctional Programs Division

FROM:  Alix M. McLearn, Acting Assistant Director
Reentry Services Division

SUBJECT: Retroactive Application of Federal Time Credit
under the First Step Act

This memorandum is to advise staff of procedures for the retroactive application of Federal Time Credit (FTC) under the provisions of the First Step Act (FSA).

The First Step Act of 2018 provided inmates the opportunity to earn time credits for their successful participation in Evidence Based Recidivism Reducing Programs and Productive Activities. Further, these credits could be applied toward placement in pre-release community placement (i.e., Residential Reentry Centers (RRC) and home confinement (HC)) or, at the Director's discretion, up to 12 months of credit could be applied toward Supervised Release.

The policy is in the process of being developed. In order to ensure timely implementation, the Bureau has established interim procedures to begin on January 14, 2022. These interim procedures will remain in effect during this "phase in" period and will continue pending the SENTRY updates required for the automated FTC calculation process, and establishment of policy. Even with the urgency in accomplishing this priority, accuracy is the paramount concern when calculating and applying time credits.

While eligible inmates with all PATTERN risk scores may earn FTC, only those with Low and Minimum scores are eligible to

apply them at this time. Additionally, the following inmates are ineligible for FTC:

- Federal inmates in state custody
- State boarders in BOP custody
- DC Superior Court inmates
- Military code inmates
- Old Law/Parole inmates

Inmates must have a Supervised Release term following their incarceration in order for FTC to be applied towards their release. Inmates without Supervised Release are eligible to have their credits applied toward community placement.

Based on a decision by the Department of Justice, inmates are eligible to earn time credits retroactively back to December 21, 2018, subject to BOP's determination of eligibility. Credit will not be earned while the inmate was in Special Housing Unit (SHU), on temporary release (e.g., writ, outside hospital, etc.), or in Financial Responsibility Program (FRP) Refuse status. The Office of Research and Evaluation (ORE) will calculate time credits for each inmate and generate rosters identifying the following inmate groups by priority:

- inmates who will receive an immediate release;
- inmates who have less than 45 days remaining to serve, following the application of time credits;
- inmates who will require immediate referral for pre-release community placement, and
- inmates who will require a referral for pre-release placement in the near term, following the completion of all the immediate referrals noted above.

In an effort to vacate pre-release community bed space for inmates releasing from secure facilities, the Bureau is prioritizing the immediate release of inmates currently housed in RRCs, or on home confinement. Accordingly, ORE is preparing separate rosters for community and institution-based inmates, and the Designation and Sentence Computation Center (DSCC) is being directed to prioritize the processing of the community-based inmates first.

These rosters are forthcoming and updated rosters will be distributed on a monthly basis until the SENTRY automation is complete. The monthly rosters will be distributed by the Correctional Programs Branch to the Regional Correctional Programs Administrators and the institution Case Management Coordinators.

The Office of Information Technology (OIT) is finalizing a Sentence Computation FSA screen, which will allow DSCC staff to update the inmate sentence computations via SENTRY. This update will allow field staff to generate rosters to capture the changes to release dates as they currently do via the daily updated sentence computation (i.e., CLUD) roster.

Immediate Releases: Beginning January 14, 2022, inmates whose number of FTC days earned exceeds their days remaining to serve, are less than 12 months from release, and have a Supervised Release term, will begin receiving immediate releases. These releases will not happen all at once, rather releases will be occurring on a continuous basis as DSCC staff work through the computations for the identified inmates.

Once an inmate has been identified for release, the Residential Reentry Management (RRM) office and institution staff will satisfy the sentence computation and release the inmate using the ARS code FSA REL. It will not be necessary to adjust the inmate's original sentencing data. DSCC staff will annotate the applicable FSA time credits and new Projected Release Date in the remarks section of the sentence computation and will notify institution staff via email to the Correctional Systems and Case Management Coordinator resource mailboxes. Once the previously referenced OIT updates are completed, email notification will no longer be necessary.

Near Term Releases: For inmates who are within 45 days of release after the application of time credits, case management staff will solicit release plan information from the inmate and initiate final release preparation. Due to the minimum amount of time remaining to serve, and in an effort to assure we utilize finite RRC/HC beds most efficiently, these inmates will not be referred for community placement.

Immediate RRC Referrals: For inmates whose number of FTC days earned exceeds their days remaining to serve, but have more than 12 months remaining to serve, the first 365 days will be applied to the new release date, with the remainder of the credit applied to pre-release community placement. Unit Management staff will immediately and expeditiously initiate RRC/HC referrals for these inmates. If an inmate already has an RRC/HC placement date, the unit staff will contact the RRM office to request an advancement of the placement date if the credits exceed the days left to serve. RRC/HC referrals will be for no less than 30 days, and inmates must otherwise be eligible for RRC placement.

For inmates with no supervision to follow, an RRC referral will be prepared, which takes into consideration the number of FTCs earned. Inmates requiring a relocation of their Supervised

Release will require an approved release plan prior to submission of the RRC referral.

Remaining Inmates: All remaining inmates whose FTC days do not exceed their number of days remaining to serve, but do not require an immediate RRC/HC referral for pre-release placement, should be prioritized by case management staff based on their expected date of transfer to RRC/HC and processed in the normal manner.

When submitting inmates for community placement, unused time credits should be considered. For example, if an inmate would have been referred for 120 days of RRC placement prior to the passage of the First Step Act, and has 90 days of unused FTC, they should be considered for up to 210 days of community placement.

Unit Managers are primarily responsible for communication with the inmate population regarding FTC implementation information, e.g., town hall meetings, fielding inmate questions, etc. Additionally, Unit Managers are to ensure their staff are afforded reasonable time to complete tasks associated with this initiative and provide support.

Attached you will find talking points to assist you with communicating this information to both staff and inmates. Additionally, Central Office will publish a message on TRULINCS for the entire inmate population.

Should you have any questions, please contact (b)(6); (b)(7)(C),
Chief, Unit Management Section, or (b)(6); (b)(7)(C) Assistant
Administrator, Residential Reentry Management Branch.

Cc: Case Management Coordinators
Regional Correctional Programs



U.S. Department of Justice
Memorandum
Federal Bureau of Prisons

Correctional Programs Division

Central Office
320 First Street, N.W.
Washington, DC 20534

MEMORANDUM FOR REGIONAL CORRECTIONAL PROGRAMS ADMINISTRATORS

FROM: (b)(6); (b)(7)(C)
(b)(6); (b)(7)(C) Acting Administrator
Correctional Programs Branch

SUBJECT: Retroactive Application of Federal Time Credit
under the First Step Act

This memorandum is to provide guidance regarding the attached roster, which will facilitate the implementation of Federal Time Credit (FTC) under the provisions of the First Step Act. This memo should be read in conjunction with the AD Howard memorandum dated January 11, 2022.

The spreadsheets have been sorted by region and institution. The four priority categories are highlighted in different colors. Updated monthly rosters will be distributed by the Correctional Programs Branch to the Regional Correctional Programs Administrators and the institution Case Management Coordinators.

Immediate Releases: Inmates whose number of FTC days earned exceeds their days remaining to serve, are less than 12 months from release, and have a Supervised Release term.

Pending Releases: Inmates who are less than 45 days from release, after the application of time credits. Staff should begin developing release plans for these inmates immediately. Due to the time remaining to serve, these inmates will not be referred for community placement.

Immediate RRC Referrals: Inmates whose remaining number of FTC days earned, after applying the first 365 days of credit to early release, exceeds their days remaining to serve. The remaining credits are applied to RRC/HC placement, Case Managers

should immediately and expeditiously initiate RRC/HC referrals for these inmates. These referrals should be submitted to the RRM within one week or less, ensuring the opportunity to receive at least a 30-day placement.

If an inmate already has an RRC/HC placement date, the Unit Management staff will contact the RRM office to request an advancement of the placement date if the remaining credits exceed the days left to serve.

RRC/HC referrals will be for no less than 30 days, and inmates must otherwise be eligible for RRC placement. Inmates requiring a relocation of their Supervised Release will require an approved release plan prior to submission of the RRC referral.

Pending RRC Referral: Inmates who, after application of the FTCs toward early release, are either between 45 and 180 days of their release date or with the application of their remaining FTCs, require referral for RRC/HC placement and transfer within 45 to 180 days. Case Managers should initiate these referrals, if the inmate is otherwise eligible for placement, following the completion of the "immediate RRC referrals".

All inmates are to be reviewed consistent with current practices under the Second Chance Act, but with unused time credits also being considered. For example, if an inmate would have been referred for 120 days of RRC placement prior to the passage of the First Step Act, and has 90 days of unused FTC, they should be considered for up to 210 days of community placement.

RDAP Inmates: These cases will need to be reviewed individually as the spreadsheet calculations are based on their current projected release method.

Inmates currently in the community participating in the community treatment component of RDAP will receive the benefit of the FTC and 3621(e) release even if they have not completed all 120 days of program participation. Inmates who transfer from an institution to community confinement prior to the application of time credits will be unaffected.

Inmates currently in institutions participating in RDAP will receive the benefit of FTC, but may have their 3621(e) release date adjusted to ensure (after an individual review) that the community treatment component of RDAP is completed (i.e., 120 days of community placement) before the 3621(e) early release benefit is applied. This means their current priority group may change as the FSA credit will be applied first, prior to the adjustments of the 3621e date.

The DSCC will update the sentence computations to apply the FTC credits earned which will result in a new release date. In many cases, during the initial implementation, this will result in inmates being immediately eligible for release. Unit staff will have up to two business days to release the offender. For example, if DSCC completes the update to a sentence computation on Tuesday, January 25th, staff will have until Thursday, January 27th at 11:59 p.m. to release the inmate. This will allow time to finalize and process releases; however, staff should begin to plan for inmate releases immediately upon receipt of the attached roster.

Office of Information Technology staff are finalizing a Sentence Computation FSA screen, which will allow DSCC to update the inmate sentence computations via SENTRY. This update will allow for routine monitoring of release date changes via CLUD roster. Once the SENTRY updates are completed, CLUD rosters should be monitored throughout the work day, rather than only once day.

Please note, this spreadsheet **DOES NOT** include all inmates, nor all inmate releases, it only includes inmates whose release and/or RRC/HC placement may be impacted by the application of FTC within the next 180 days. Normal release rosters will need to be monitored in addition to releases impacted by FTC.

The Correctional Programs Branch will be scheduling a WebEx meeting in the immediate future with Regional Correctional Programs Administrators. Please review this memorandum, as well as the attached rosters, and solicit input and questions from the CMCs in your regions. Once compiled, Regional Administrators should submit any questions or comments to BOP-CPD-CorrPgms-S. We plan to address these issues at the WebEx meeting and provide additional guidance to the field as necessary.

Cc: Case Management Coordinators

(b)(6); (b)(7)(C)

Senior Deputy Assistant Director, CPD, DSCC



U.S. Department of Justice
Federal Bureau of Prisons

Office of the General Counsel

Washington, DC 20534

December 10, 2021

MEMORANDUM FOR CHRISTOPHER H. SCHROEDER
Assistant Attorney General, Office of Legal Counsel

A handwritten signature in black ink, appearing to be "KH", is written above the typed name "Ken Hyle".

FROM: Ken Hyle
Assistant Director/General Counsel

SUBJECT: Views Regarding OLC Opinion, "Home Confinement of Federal Prisoners
After the COVID-19 Emergency" dated January 15, 2021

Introduction

Traditionally the Federal Bureau of Prisons (BOP or Bureau) placed inmates on home confinement as part of reentry programming, consistent with 18 U.S.C. § 3624(c)(2)¹, and other recent authorities relevant to certain elderly offenders. However, in response to the COVID-19 pandemic, Congress passed the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The statute expanded the Bureau's authority to place potentially all inmates on home confinement in response to the COVID 19 pandemic.

Specifically, the CARES Act states, "During the covered emergency period, if the Attorney General finds that emergency conditions will materially affect the functioning of the Bureau, the Director of the Bureau may lengthen the maximum amount of time for which the Director is authorized to place a prisoner in home confinement under the first sentence of section 3624(c)(2) of Title 18, United States Code, as the Director determines appropriate." See Pub. L. No. 116-136, § 12003(b)(2), 134 Stat. 281, 516 (2020).

The term "covered emergency period" means the period beginning on the date on which the President declared a national emergency under the National Emergencies Act (50 U.S.C. § 1601

¹ Providing, as amended by the FIRST STEP Act of 2018, "The authority under this subsection may be used to place a prisoner in home confinement for the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months. The Bureau of Prisons shall, to the extent practicable, place prisoners with lower risk levels and lower needs on home confinement for the maximum amount of time permitted under this paragraph."

et seq.) with respect to the Coronavirus Disease 2019 (COVID-19) and ending on the date that is 30 days after the date on which the national emergency declaration terminates. Id.

On January 15, 2021, the Office of Legal Counsel (OLC) issued an opinion to the BOP, stating that the CARES Act authorizes the Director of BOP to place prisoners in home confinement only during the statute's covered emergency period and when the Attorney General finds that the emergency conditions are materially affecting BOP's functioning. OLC determined that once the expanded authority to place inmates in home confinement under § 12003(b)(2) expires, so too does the authority to keep those inmates in home confinement unless they are otherwise eligible for home confinement under 18 U.S.C. § 3624(c)(2). OLC also concluded that the general imprisonment authorities of 18 U.S.C. § 3621(a) and (b) do not supplement the CARES Act authority to authorize home confinement under the Act beyond the limits of section 3624(c)(2).²

OLC has informed us that the Attorney General has requested that OLC reconsider its earlier opinion, and as part of that process, OLC has asked for our views. As described below, BOP believes the language and legislative history of the CARES Act are most reasonably interpreted not to require the return of inmates placed on home confinement pursuant to the expanded authority it provided. This is consistent with the position that BOP had taken in relation to the earlier OLC opinion. As such, we recommend that OLC's earlier opinion be rescinded and that it write a new opinion providing the BOP with discretion to allow inmates placed on home confinement pursuant to the CARES Act to remain on home confinement after the expiration of the covered emergency period.

Statutory Authority

The CARES Act, as quoted above, is silent as to any necessary result at the end of the covered emergency period. Given this ambiguity, we believe it is the better reading, as well as more consistent with the statutory language and Congressional intent of the CARES Act and the existing statutory authorities of the BOP, to allow the BOP discretion in determining the conditions of confinement during the service of a criminal sentence after the emergency period is over.

A common misconception concerning home confinement is that inmates are "released" from custody. While it is true that such inmates are transferred from correctional facilities and placed in the community, they are still serving a sentence which is administered by the BOP. Section 3621(a) of Title 18 clearly states that inmates serving a term of imprisonment, ". . . shall be committed to the custody of the Bureau of Prisons until the expiration of the term imposed . . ." The statute goes on to specify that the Bureau has the discretion to designate the place of imprisonment, considering a number of factors. Further, the Bureau's designation decisions are not reviewable by any court. See 18 U.S.C. § 3621(b).

²Home Confinement of Federal Prisoners After the COVID-19 Emergency, 45 Op. O.L.C. __ (January 15, 2021), available at <https://www.justice.gov/olc/file/1355886/download>.

Statutory language specifically addressing home confinement makes it clear such placements are at the discretion of the BOP (e.g. “. . .may be used . . .”, “. . .to the extent practicable. . .”). See 18 U.S.C. § 3624(c)(2). Although Congress set out general limitations to home confinement authority in § 3624, it also recognized that the BOP’s general designation authority takes precedence. See 18 U.S.C. § 3624(c)(4) (“Nothing in this subsection shall be construed to limit or restrict the authority of the Director of the Bureau of Prisons under section 3621.”).

The CARES Act gives the BOP Director the authority to lengthen the home confinement timeframe in § 3624(c)(2) for a specific prisoner. Nothing in section 12003(b)(2), or any other provision of the CARES Act, discusses rescinding that determination and reverting to the 18 U.S.C. § 3624(c)(2) standard timeframe for home confinement once the “covered emergency period” has concluded. Instead, “during the covered emergency period” refers to the timing of the decision lengthening the home confinement period, not its ultimate outcome (remaining on home confinement or returning to a BOP facility). Once a decision has been made to “lengthen” a particular inmate’s home confinement term, no further action (i.e., bringing the inmate back into secure custody from home confinement) is compelled or contemplated by the statute.

Further, given the context surrounding recent Congressional adjustments to community placements and home confinement designations described below, an interpretation of the statute reading BOP’s discretion to determine the conditions of confinement necessary for service of a criminal sentence more broadly is more consistent with apparent Congressional intent than the narrow reading prescribed by the January 15, 2021 OLC opinion.

Additional Congressional Intent

Although the CARES Act was passed, in relevant part, to mitigate the impact of COVID-19 on specific inmates who would otherwise be confined in a traditional correctional setting, Congress recently passed other legislation supporting maximizing the use of home confinement and placing inmates on home confinement for longer periods of time than has been traditionally used and beyond the prior time frames of 18 U.S.C. § 3624(c)(2). The First Step Act of 2018, Pub.L. 115-391 (2018) (FSA), expanded the Bureau’s use of home confinement in three contexts.

Section 602 of the FSA, which modified 18 U.S.C. § 3624(c)(2), left the existing time frames in place, but directed the Bureau to maximize the amount of time spent on home confinement when possible.³

Section 603(a) of the FSA reauthorized and modified the pilot program provided for by the Second Chance Act, Pub.L. 110-199 (2008), codified in relevant part at 34 U.S.C. § 60541, to determine the effectiveness of removing eligible elderly offenders from Bureau facilities and placing such offenders on home confinement. In order to be eligible for the pilot, an offender has to be 60 years old, serve at least 2/3 of the sentence imposed, and not have a disqualifying conviction, among other criteria. The new FSA criteria expanded the pilot by lowering the age

³ “The Bureau of Prisons shall, to the extent practicable, place prisoners with lower risk levels and lower needs on home confinement for the *maximum amount of time* permitted under this paragraph.” *Id.* (emphasis supplied).

from the original requirement of being 65 years old, reducing the sentence criteria from the original percentage to the greater of 10 years or 75 percent of the sentence imposed, and allowing for its application to terminally ill and/or debilitated inmates regardless of age. Eligible inmates can be placed on home confinement without regard to the timeframes of 18 U.S.C. § 3624(c)(2).⁴

Finally, section 101 of the FSA created an incentive for eligible inmates to participate in programs shown to reduce their risk of recidivism, by allowing individuals to earn time credits which may be used for earlier transfer to pre-release custody, including home confinement, again without regard for the timeframes of 18 U.S.C. § 3624(c)(2). See 18 U.S.C. § 3624(g). The statute provides that an inmate who is placed in home confinement “shall remain in home confinement until the [inmate] has served not less than 85 percent of the prisoner’s imposed term of imprisonment,” and that the BOP should provide increasingly less restrictive conditions on inmates who demonstrate continued compliance with the conditions of such prerelease custody. See 18 U.S.C. §§ 3624(g)(2)(A)(iv), (g)(4).

Again, although the CARES Act was passed under differing circumstances, the above legislative activity reflects a clear indication of recent Congressional intent to expand the use of home confinement based on the needs of the offender. As explained further below, the ambiguity in the CARES Act should be read, in part, with the impact on individual offenders and penological need in mind.

Operational Concerns

One of the vital tools in operating a correctional system is the ability to effectively manage bedspace, based on the needs of the offender, security requirements, and agency resources. Courts have recognized that the authority explicitly provided to the Bureau by 18 U.S.C. §§ 3621 (a) and (b) to designate inmates is in the agency’s sole discretion, supporting this management principle. See e.g., *U.S. v. Wilson*, 503 U.S. 329, 335 (1992); *Rodriguez v. Copenhaver*, 823 F.3d 1238, 1242 (9th Cir. 2016). Being able to control populations in BOP-operated institutions as well as, where appropriate, in the community allows for flexibility to respond to circumstances as varied as an increase in prosecutions, responses to local or national emergencies or natural disasters, or the need to provide assistance to the U.S. Marshals Service following, for example, limitations placed on the use of private detention facilities. Although the BOP could accommodate bringing CARES Act inmates back into its correctional facilities, having some discretion in determining which inmates should return to BOP’s secure custody will increase the agency’s ability to respond to outside circumstances, and manage its resources in an efficient manner that considers both public safety and the needs of the individual offender.

The aspects of a criminal sentence that serve public safety concerns can be managed while also allowing an individual to effectively prepare for life when a criminal sentence is concluded. Inmates that were placed on home confinement under the CARES Act were evaluated by BOP case management staff using criteria provided by the Attorney General which included among

⁴ See BOP Operations Memorandum 001-2021, Home Confinement under the First Step Act, available at <https://www.bop.gov/policy/om/001-2021.pdf>

other factors criminal history and institution adjustment determinations, received a higher level review by headquarters staff in some cases, and were treated consistent with COVID-19 protocols in effect at that time before release (e.g. a 14 day quarantine period for unvaccinated inmates). Before being placed on home confinement, an inmate signs an agreement which requires consent to submit to home visits and drug and alcohol testing, acknowledgement of monitoring requirements, and affirmation that he or she will not engage in criminal behavior or possess firearms, among other terms. Through the use of independent contractors, or, less frequently, the U.S. Probation Office, individuals placed on home confinement are monitored electronically; have check-in requirements; and are subject to alcohol and drug testing and transfer back to secure correctional facilities if there are any significant disciplinary infractions or violations of the agreement. CARES Act inmates that would remain on home confinement after the emergency period would continue to be subject to these monitoring procedures until the end of their sentence, and possibly into a term of supervised release post-sentence.

As seen by the passage of the FSA and other ongoing criminal justice initiatives, the use of incarceration is being re-evaluated as compared to the societal benefits of non-custodial rehabilitative programs. The benefits to home confinement from a penological standpoint is as one of the last steps of a reentry program. An inmate would usually be moved over the course of the sentence to less secure conditions of confinement (i.e. a secure prison facility, to a residential reentry center, to home confinement), to provide transition back into the community with support, resources, and supervision from the agency. Under regular circumstances, inmates who have made this transition to home confinement would not be returned to a secured facility, unless there was a disciplinary reason for doing so, as the benefit of home confinement is to adjust to life back in the community, and therefore removal from the community would obviously frustrate that goal. The widespread return of prisoners without a disciplinary reason would be unprecedented.

Of course, placements made under the CARES Act are not simply for reentry purposes; rather, they are also to allow for more social distancing in our facilities and protection of particularly vulnerable offenders. However, the best use of agency resources and best outcome for the affected offenders is to allow the agency to assess CARES Act placement inmates with a reentry focus. Allowing the BOP to have discretion in terms of returning inmates who have been successfully serving their sentences in the community to secure custody will allow a determination of whether there is actual penological reason for doing so, rather than make the kind of “all or nothing” determination made under the previous OLC opinion.

Individualized assessments allow the needs of the offender to be taken into account and evaluated to determine if it would be more beneficial to return the inmate to a secure facility for programming and treatment only offered in BOP facilities (e.g. Residential Drug Treatment offered under 18 U.S.C. § 3621(e)(2)(B), which may result in a reduction of sentence). However, individualized assessments need to be conducted using common criteria, in order to promote operational consistency and equitable treatment of the offenders. The BOP intends to develop criteria, in conjunction with the Department, to use to evaluate which offenders should be returned to secure custody. The criteria will likely include the inmate’s adjustment while on home confinement, program participation in the community (e.g. jobs or vocational training),

whether or not there are programs to benefit the inmate that are delivered at BOP facilities, as well as the length of time remaining on the sentence.

Sentence length is likely to be a significant factor, as the more time that remains will provide the agency a more meaningful opportunity to provide programming and services to the offender in a secure facility. The nature of the sentence imposed, the interests of the prosecuting U.S. Attorneys' Office, the potential impact on any victims or witnesses, and deterrence are other potential factors for the criteria BOP would develop. It is likely that inmates that have longer terms remaining would be returned to secure custody, while those with shorter terms left who are doing well in their current placement would be allowed to remain there, subject to the supervisory conditions described above.

The management of inmates on Home Confinement since the beginning of the COVID-19 pandemic, despite numerous challenges, has been robust as the BOP's community confinement population has reached its highest in recent history. As of December 6, 2021:

- A total of 35,277 inmates placed on home confinement through all authorities (i.e. section 3624(c)(2), Elderly Offender Pilot, and CARES Act placements) since March 26, 2020.
- There are 7730 inmates currently on home confinement.
- 4879 of these inmates have been placed on home confinement pursuant to the CARES Act.
- 231 of the inmates currently on home confinement were placed under the Elderly Offender authority.
- 2830 inmates on CARES Act Home Confinement have release dates in more than 12 months;
2160 inmates have release dates more than 18 months;
359 inmates have release dates in 5 years or more; and
18 inmates have release dates in 10 years or more.

As of November 5, 2021, 289 inmates on CARES Act Home Confinement have been returned to secure custody for violations or new crimes:

- 152 were returned due to misconduct in violation of program rules (alcohol use & drug use);
- 49 were returned after escape;
- 9 for new criminal conduct (six drug related, one violence and firearms, one escape with prosecution, and one smuggling non-citizens);

- The remainder were returned for technical violations (for example, non-compliance with monitoring check-in requirements).

This data demonstrates that inmates placed on longer term home confinement under the CARES Act can be and have been successfully managed, with a small percentage of inmates needing to be returned to secure custody for disciplinary reasons.⁵

If the January 15, 2021 OLC opinion remains in effect, once the covered emergency period is declared over, the BOP will work to bring offenders back into secure custody consistent with relevant existing authorities.⁶ However, inmates that do not qualify under these limited authorities would be brought back into a secure facility.

Conclusion

As noted above, the CARES Act is silent as to as any required action once the covered emergency period concludes. Given the ambiguity of the CARES Act, existing statutory authorities supporting BOP discretion in designations, other examples of Congressional support for utilization of longer terms of home confinement, operational efficiencies for the BOP, and the potential benefit to appropriate individual offenders, their families, and their communities, BOP believes that OLC should revise its view to give BOP discretion over the placements of prisoners in CARES Act home confinement. Thank you for your consideration of this matter.

⁵ Additional observation and research should be conducted to determine if this very low level of recidivism can be maintained, or if it was affected by the unique external circumstances caused by the global pandemic.

⁶ For example, inmates meeting the terms of section 3624 (c)(2), would remain on home confinement; eligible inmates may be transferred to a residential reentry center consistent with 18 U.S.C. 3621 (c)(1); qualifying inmates would be considered under the FSA/Elderly Offender Pilot; and some inmates may be considered for a furlough for a limited time under 18 U.S.C. § 3622.



U.S. Department of Justice
Federal Bureau of Prisons

OPERATIONS MEMORANDUM

OPI: CPD/CSB
NUMBER: 002-2022
DATE: June 29, 2022
EXPIRATION DATE: June 29, 2023

**Video Visiting and Telephone Calls Under the
Coronavirus Aid, Relief, and Economic Security
(CARES) Act**

/s/

Approved: Catricia Howard
Assistant Director, Correctional Programs Division

This Operations Memorandum provides for the extension of the use of additional regulatory provision in volume 28, Code of Federal Regulations, Chapter V, part 540, regarding Contact With Persons in the Community, Subpart I, Telephone Regulations for Inmates.

On March 13, 2020, the President of the United States declared a national emergency existed with respect to the outbreak of the novel coronavirus, SARS-Co V-2, known as Coronavirus Disease 2019 (COVID-19). Proclamation 9994 of March 13, 2020, 85 FR 15337 (Mar. 18, 2020), available at <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-corona-disease-covid-19-outbreak/>.

In the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Congress provided that, during the emergency period beginning on the date the President declared a national emergency with respect to COVID-19 and ending on the date 30 days after the date on which the national emergency declaration terminates, if the Attorney General finds that emergency conditions will materially affect the functioning of the Bureau of Prisons (Bureau), the Director of the Bureau shall promulgate a regulation regarding the ability of inmates to conduct visitation through video teleconferencing and by phone, free of charge to inmates. *See* CARES Act, Pub. L. 116-136, § 1203(c)(1), 134 Stat 281, 618 (2020) [HR 748].

On April 9, 2020, the Bureau of Prisons began exercising the authority authorized by the

Attorney General under the CARES Act.

Addition to the regulatory provision in volume 28, Code of Federal Regulations, Chapter V, part 540, regarding Contact With Persons in the Community, Subpart I, Telephone Regulations for Inmates, as follows:

§ 540.106 Video Visiting and telephone calls under the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

- (a) During the “covered emergency period” as defined by the CARES Act with respect to the coronavirus disease (COVID-19, when the Attorney General determines that emergency conditions will materially affect the functioning of the Bureau of Prisons (Bureau), the Bureau may, on a case-by-case basis, authorize inmates to conduct visitation through video teleconferencing and telephonically, free of charge to inmates, notwithstanding provisions in part 540 to the contrary.**
- (b) Access to video and telephone visitation will only occur consistent with logistical and security provisions in this subpart to ensure Bureau safety, security and good order and protection of the public.**
- (c) Access to video and telephone visitation under this section may be modified, terminated, or reinstated during the emergency period based upon a determination by the Director, as designee of the Attorney General, regarding the level of material effect that emergency conditions continue to have on Bureau functions.**
- (d) Misuse of Bureau systems or technology may result in communication restriction and/or disciplinary action under 28 CFR part 541.**
- (e) Inmates may challenge the Bureau’s decisions under this section through the Bureau’s administrative remedy program under CFR part 542.**

Protocols for Considering Reductions in Sentence (RIS) in Response to COVID-19

If inmate requests a RIS, but meets criteria for home confinement consideration (e.g., appropriate release residence; low risk under PATTERN and BRAVO; no detainees; no excluding offenses, etc.), then place inmate in quarantine and process under home confinement; hold RIS request in abeyance. Please note, under the CARES Act, the length of the remaining sentence is not a factor in home confinement consideration. Upon approval of home confinement, recommend institution deny RIS request absent compelling circumstances independently warranting a RIS notwithstanding the transfer to home confinement.

If inmate does not meet criteria for home confinement (e.g., has conviction of excluding offense, etc.), or if home confinement is not approved, determine if RIS request is based solely on possible COVID-19 exposure. If that is the only basis of the RIS request, it is recommended that institution deny request. Inmate may exhaust administrative remedies, or can petition the court 30 days after date of receipt of the RIS request by the Warden under statutory language.

If inmate does not meet criteria for home confinement or home confinement is not approved, but does meet the objective criteria for a RIS, process the request with the context of the COVID-19 pandemic in mind (e.g., a debilitated inmate who would be considered vulnerable to infection under CDC guidance or an elderly inmate with/without medical conditions). This will entail following the usual RIS process, including verification of eligibility (including any qualifying medical condition), approval of release plan by USPO, and, if the Warden recommends approval of the request, forwarding of the request to the Central Office. Central Office will then review and obtain the concurrence of USAO, prepare the request for consideration by the Director, and, if approved, coordinate with the USAO to file the appropriate motion with the sentencing court. Cases of inmates with terminal or debilitated conditions will be expedited as much as possible during the pandemic response; again, the inmate may petition court directly 30 days after date of receipt of the RIS request by the Warden. If denied by the General Counsel or the Director, the inmate is deemed to have exhausted administrative remedies and can petition their sentencing court directly at that time.