

UNDERSTANDING THE FEDERAL COMPASSIONATE RELEASE PROCESS

What is compassionate release?

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

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

Getting a compassionate release is not easy. Only the BOP can bring a motion in court for a prisoner's compassionate release, and first there must be a multi-leveled review process. Sometimes, that process takes so long that prisoners die before requests can be fully reviewed and granted.

How the process works, from start to finish:

- 1. Submission of request:** The prisoner, or someone on his or her behalf, makes a request to the warden. There is no compassionate release form, and the request can take any form, but ordinarily should be in writing. The request should include
 - The grounds for compassionate release: The BOP recognizes a number of grounds for compassionate release, including age, medical conditions, and family circumstances.³
 - A release plan: where the prisoner will live and how his or her needs, including medical needs, will be met.
- 2. Review by warden, medical team, and probation office:**
 - Wardens should “promptly” review requests – but there is no deadline that must be met.
 - In BOP medical facilities, the warden can have a medical and multi-disciplinary team review the request prior to making a decision.
 - In cases where the request is based on family circumstances, the warden convenes a multidisciplinary committee to assess the request in light of the BOP criteria.
 - The Probation Office visits the proposed residence to evaluate the release plan.
- 3. If the warden approves the request:** The prisoner is notified and the warden sends a packet of information and the positive recommendation to the General Counsel in the BOP's Central Office.
 - In medical cases, the General Counsel refers the request to the Medical Director, who can conduct an independent review of the grounds for release.
 - In non-medical cases, the General Counsel refers the request to the Correctional Programs Division for review.
 - The General Counsel also seeks the opinion of the Assistant U.S. Attorney in the district where the prisoner was convicted.

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

² 28 U.S.C. § 994(t).

³ Bureau of Prisons, Program Statement 5050.49, CN-1 (Mar. 25, 2015), https://www.bop.gov/policy/progstat/5050_049_CN-1.pdf.

4. **If the General Counsel approves the request:** The request with the recommendation is sent to the BOP Director.
5. **If the BOP Director approves the request:**
 - If the request is non-medical or is a medical request based on non-terminal severe and permanent medical or mental health condition, the Director forwards the case to the Office of the Deputy Attorney General (ODAG) for review. The ODAG can object or raise concerns with the Director before the motion is filed.
 - The General Counsel drafts a motion for a reduction in sentence and asks the U.S. Attorney to file the motion with the sentencing court.
6. **The court rules on the motion.** Courts can
 - Deny compassionate release if they find that release does not fulfill the purposes of punishment (e.g., public safety, just punishment, etc.), and
 - Place released prisoners on supervised release for up to the remainder of their sentences (i.e., the person would report to a probation officer and must abide by other release conditions).

At any stage, the BOP can deny the prisoner's request – with no access to court for relief for the prisoner.

1. **If the warden denies the request:** The warden informs the prisoner, who may appeal the decision, using the BOP's Administrative Remedy Process.⁴ The Administrative Remedy Process includes a timetable for how claims should be appealed, along with deadlines for BOP officials to respond.
2. **If the warden recommends release but the General Counsel does not agree:** The General Counsel issues a denial to the prisoner after consulting with the Director. This denial is final and cannot be appealed.
3. **If the General Counsel recommends release but the Director does not agree:** The General Counsel issues a written denial to the warden, which is final and cannot be appealed.
 - The notice of denial must include the reasons for the denial and the decision, and
 - The reasons for denial must be conveyed to the prisoner within 20 working days of the Director's receipt of the General Counsel's recommendation.
4. **No access to court for review:** After the prisoner exhausts the BOP's Administrative Remedy Process and receives a denial that is final, the prisoner cannot appeal the BOP's decision in court – no matter why it was denied.

⁴ Bureau of Prisons, Program Statement 1330.18 (Jan. 6, 2014), https://www.bop.gov/policy/progstat/1330_018.pdf.