

THE U.S. BUREAU OF PRISONS' PRE-RELEASE PROGRAM

Getting Out Early

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Pre-release placement refers to the latter stages of a prisoner's sentence, when the Bureau of Prisons (BOP) begins to prepare the prisoner for reintegration into society through home confinement and/or designation to a halfway house (also known as a residential reentry center, formerly known as a community corrections center). The general purpose of pre-release placement is to assist those with transitional needs in establishing a foothold in the community before being discharged from BOP custody. Although the law provides for up to 12 months' halfway is no more than six months, with less time afforded those serving shorter sentences and/or possessing greater personal and community resources. Home confinement is limited to six months or the last 10 percent of an inmate's sentence, whichever is less.

BRIEF HISTORY

The BOP, the nation's largest correctional system, traditionally used community-based facilities as places of imprisonment for qualified inmates based on individualized placement and programming needs. In the mid-1960s, following enactment of the Prisoner Rehabilitation Act, the BOP expanded halfway house use for those in need of substance abuse treatment and, later, for any prisoner who might benefit from and be safely managed in structured community-based confinement. Then BOP director Myrl E. Alexander emphasized that reentry support was central to the agency's mission of preparing "our clientele for community adjustment rather than adjustment probation or to the correctional institution."

Community corrections grew through the 1970s and 1980s, becoming a standard component of the BOP's overall range of placement options. Congress expressly provided for the BOP's use of residential treatment centers as places of imprisonment in 18 U.S.C. § 4082(a) and (c), and reaffirmed the agency's designation responsibilities in promulgating the Sentencing Reform Act of 1984 (SRA). Through 18 U.S.C. § 3621(b), Congress authorized the BOP to "designate the place of the prisoner's imprisonment" at "any available penal or correctional facility that meets minimum standards of health and habitability." In 1985, the BOP's general counsel issued a legal opinion interpreting the phrase "penal or correctional facility" in § 3621(b) as coincident with "institution or facility" in the former 18 U.S.C. § 4082(a).

In 1990, the statutory definition of "imprisonment" expanded to include home confinement when employed at the end of a prisoner's sentence. (See 18 U.S.C. § 3624(c).) Shortly after the enactment of § 3624(c), which limits home confinement to the final 10 percent of a prisoner's sentence, the BOP issued a written policy statement that announced its intention to "promote greater use of community corrections programs for low risk offenders." The BOP acknowledged that "[t]here is no statutory limit on the amount of time inmates may spend in CCCs [community corrections centers]" and instructed that, "[u]nless the warden determines otherwise, minimum security inmates will ordinarily be referred [for CCC placement at the end of their sentences] for a period of 120 to 180 days." The Department of Justice's Office of Legal Counsel (OLC) upheld the bureau's analysis and flexible use of CCCs in a 1992 legal opinion:

There is . . . no basis in section 3621(b) for distinguishing between residential community facilities and secure facilities. Because the plain language of section 3621(b) allows BOP to designate 'any available penal or correctional facility,' we are unwilling to find a limitation on that designation authority based on legislative history. Moreover, the subsequent deletion of the definition of 'facility' further undermines the argument that Congress intended to distinguish between residential community facilities and other kinds of facilities.

(Statutory Auth. to Contract with the Private Sector for Secure Facilities, 16 Op. O.L.C. 65, 71 (1992).)

The BOP discussed its practices in the use of halfway houses in a 1994 report to Congress, explaining that, in keeping with the objective of housing prisoners "in the least restrictive environment consistent with correctional needs," it had created a two-part community corrections model that differentiated between those designated to halfway houses to serve their entire sentences and those placed there in preparation for reentry. The report explained that a "community corrections component" used for direct commitments (initial designation) was "sufficiently punitive to be a legitimate sanction, meeting

the needs of the court and society, yet allowing the offender to undertake other responsibilities, such as participation in work, substance abuse education, and community service.” The pre-release component, on the other hand, was for those nearing the ends of their sentences—ordinarily six months or less—to “assist offenders in making the transition from an institutional setting to the community.”

The BOP’s view of sanctioned halfway house usage remained constant in all versions of its official written policy statements. The most recent program statement, Program Statement (PS) 7310.04, which was promulgated in 1998, provides: “[T]he Bureau is *not* restricted by § 3624(c) in designating a CCC for an inmate and may place an inmate in a CCC for more than the ‘last ten per centum of the term,’ or more than six months, if appropriate. Section 3624(c), however, *does* restrict the Bureau in placing inmates on home confinement . . .” (emphasis added).

The BOP’s pre-release practices remained relatively constant until December 2002, when, as directed by the Justice Department, it implemented a much more restrictive view including the elimination of the use of direct halfway house placement for the service of one’s sentence. The resultant litigation produced a substantial body of case law declaring the policy change unlawful. (*See, e.g.,* Levine v. Apker, 455 F.3d 71, 77–78 (2d Cir. 2006); Woodall v. Fed. Bureau of Prisons, 432 F.3d 235 (3d Cir. 2005).) In the midst of the litigation, the BOP began referring to halfway houses as residential reentry centers (RRCs) while making clear that the name change “will not affect existing facilities . . . [W]e have used the terms halfway house and CCC synonymously for years and now we can add RRC.” (Stuart Rowles, *Community Update: Notes to BOP’s Local Partners* (May 2006).)

Through the Second Chance Act of 2007 (Pub. L. No. 110-199, 122 Stat. 657 (2008)), Congress restored and expanded historic norms. Congress directed the BOP to ensure that each federal prisoner serve a portion of his or her term of imprisonment, not to exceed one year, “under conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare for the reentry of that prisoner

into the community. Such conditions may include a community correctional facility.” (18 U.S.C. § 3624(c)(1).) The act also restores the use of a halfway house for the service of an inmate’s entire sentence.

PRE-RELEASE FOLLOWING THE SECOND CHANCE ACT

Section 3621(b) requires the BOP to consider certain factors when making any designation decision, including pre-release placement. The factors include offender-specific variables such as “the history and characteristics of the prisoner,” “the nature and circumstances of the offense,” and the sentencing court’s statements concerning a sentence’s purpose or facility recommendations. In addition to these statutory factors, BOP personnel must also account for the controlling program statement (PS 7310.04) and operations memoranda. (*See* Memorandum from D. Scott Dodrill, Assistant Dir., Corr. Programs Div., Revised Guidance for Residential Reentry Center (RRC) Placements (June 24, 2010) (setting forth guiding criteria).) Other factors include available contract halfway house bed space, which is usually at a premium; the length of time an individual has served, with a presumption that individuals serving longer sentences have greater need given the amount of time they have been away from the community; the nature and quality of family and community ties, with stronger ties indicating less need; and an inmate’s conduct during confinement. In short, pre-release placement, and the programming and community access it provides, is intended to reduce the risk of recidivism, meaning that priority is given to those inmates who pose a greater risk to reoffend upon completion of their sentences.

There are some offenders who, because of the crime they committed, will be excluded from pre-release placement. However, most prisoners will receive the benefit of some pre-release placement (RRC and/or home confinement), though not likely the full year that Congress contemplated. The BOP has tended to limit placements to the final six months of a prisoner’s sentence, with a growing emphasis on maximizing home confinement for those prisoners lacking transitional need (i.e., those with a home, financial resources, and/or awaiting job). One suggested method to assist a client in receiving the maximum allowable pre-release placement time is to have the court expressly recommend it in the judgment order.

BOP staff are to begin release planning at an inmate’s initial classification meeting with the unit team (unit manager, case manager, and correctional counselor). Usually at a prisoner’s periodic program review, staff will address pre-release considerations, including release residence, employment opportunities, community support, assistance programs, identification, financial support, and any goals toward reaching a viable release plan. Not every inmate will have a residence to go to, or financial and community support. Most do not, which is why planning as early as possible for release is essential. Inmates are required to participate in the BOP’s Release Preparation Program (RPP), as early as 30 months prior to their projected release date. Inmates serving sentences of 30 months or less should consider immediate enrollment.

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There are six core courses presented during RPP:

1. Health and nutrition;
2. Employment;
3. Personal finance/consumer skills;
4. Information/community resources;
5. Release requirements and procedures; and
6. Personal growth and development.

It is up to the individual instructor(s) of each course to determine the length and amount of participation. For example, the employment course may include a mock job fair with prerequisite classes in interview skills, resume writing, etc. Some courses may have an outside guest speaker for a one-hour program. Refusal to participate in the RPP will usually preclude an inmate from pre-release placement in a halfway house. A final and specific release plan, including a staff decision regarding halfway house referral, is to be made no later than 11 to 13 months prior to the inmate's projected release date.

It is a prisoner's unit team that prepares his or her release plan and pre-release referral, the latter being sent to the BOP residential reentry manager (RRM), who oversees contract halfway houses in the judicial district to which the prisoner is being referred, for final approval. For instance, where the unit team recommends a period of pre-release confinement, usually a range of days, the RRM is most familiar with available bed space and the transitional needs with which other potential halfway house residents present, meaning the RRM may authorize less time than the institution believes appropriate. Also, issues that can delay the referral and transfer process include the receiving district's probation office's inspection of the release residence, the inability to secure a promise to pay for medical care for those inmates lacking health insurance, and resolution of outstanding charges. Once notified of a placement date, travel planning and release procedures begin.

Every halfway house resident is required to maintain gainful employment and to contribute a percentage of his or her earnings toward the cost of his or her bed. To the extent that a halfway house permits residents to drive their own motor vehicles to work (subject to RRM approval), the resident must be prepared and able to provide a copy of a valid driver's license, automobile registration, and an insurance certificate indicating the resident as a named insured. Similarly, where a cell phone is a necessary tool of employment, the RRM can authorize use, upon receipt of a letter from the employer establishing the need. RRC residents cannot be self-employed nor can they work for family-owned businesses. The strong preference is for residents to work for a business with a permanent location, with a manager amenable to responding to inquiries from the halfway house operator concerning the resident (for example, worksite visits, random phone calls).

As time progresses and a resident develops a track record with the halfway house operator, he or she may gain great privileges. Most notably, usually after providing the RRC with two pay stubs (which indicates the importance of finding an employer who pays weekly), a resident will be granted a "day pass" permitting travel home during daylight

hours on a Saturday or Sunday. Assuming all continues to go well, thereafter the resident can expect to begin receiving "weekend passes" that allow for release from the halfway house from Friday evening to late Sunday afternoon.

For those inmates who do not need the services of a halfway house (i.e., inmates unlikely to be employed in the community, due to factors like retirement or disability), direct commitment to home confinement is authorized for up to 10 percent of one's sentence, not to exceed six months. While policy does permit *direct* placement on home confinement, the BOP typically requires that prisoners transition through a halfway house, which can last from a few hours to several days depending on the district and the halfway house. This type of home confinement, unlike home confinement as a condition of presentence release, does not include electronic monitoring. (18 U.S.C. § 3624(c).)

While viewed by many as an early-out option (i.e., the end of one's term of imprisonment), pre-release placement is restrictive, program-oriented, and subject to the same disciplinary rules and regulations as an institution. Violations of pre-release rules most often result in immediate placement in the local federal pretrial holding facility, the loss of good conduct time credits, and, depending on the amount of time remaining to serve, transfer back to the correctional institution from which the prisoner was referred.

A listing and a map of RRCs contracted with the BOP can be found at <http://tinyurl.com/ohz65z3>.

RELOCATION

When an inmate who will have a period of post-release supervision wishes to be released to a district other than the one in which he or she was sentenced, the inmate must initiate a request for supervision relocation through his or her case manager. The request should provide:

- the specific rationale for wanting to release to the proposed district;
- the family and community ties the inmate has in the proposed release area;
- how and where the inmate could secure residence in the release district; and
- what employment opportunities and/or job skills the inmate has.

If some transitional assistance through pre-release placement in an RRC (halfway house) will be needed, the case manager should include such information in the relocation request. The request for relocation of supervision is sent to the U.S. probation office in the district where relocation is being requested, and that office will investigate the proposed release plan. If the requesting inmate has indicated an available residence upon release, the U.S. probation office can be expected to conduct a home visit at the proposed address. Upon completion of its review and investigation, the U.S. probation office will either approve or deny the request. It is important that this process be completed in time to be taken under consideration before the unit staff prepare a final RRC placement referral. ■