

To: President-Elect Biden DOJ Agency Review Team

From: Federal Public and Community Defenders

Date: December 17, 2020

**Re: How the BOP Can Reduce Unnecessary Incarceration Through Administrative Action that Fully Implements Existing Ameliorative Statutes**

---

In 2012, the Governmental Accountability Office and the Federal Public and Community Defenders issued reports identifying the many statutes that, with administrative action by the Bureau of Prisons, could save millions in incarceration costs while enhancing the quality and availability of reentry programs. Since then, few of the available changes have been implemented, even though Congress encouraged greater use of community corrections in the First Step Act and the CARES Act. The following are practical administrative measures the BOP can take to alleviate the mass incarceration, which falls most heavily on minorities, without legislative action.

**A. Residential Drug Abuse Program (RDAP) – 18 U.S.C. § 3621(e)**

- The BOP should take the steps necessary to ensure that all inmates who successfully complete RDAP receive the full 12-month reduction, regardless of sentence length.
- The BOP should rescind its categorical rule excluding inmates with state or immigration detainers from participating in RDAP.
- The BOP should rescind its categorical rule excluding inmates convicted of possession of a firearm and those convicted of a drug offense who received an enhancement under the guidelines because a weapon was possessed.

**B. Residential Reentry and Home Detention – 18 U.S.C. § 3624(c)**

- The BOP should abandon informal limitations on community corrections and promulgate the regulation required by the Second Chance Act, which should include a presumption of maximum available community corrections, limited only by considerations of individualized risk and available resources.
- The BOP should allocate sufficient resources to assure that all prisoners who are not barred from community corrections have residential reentry centers available.
- The BOP should include as part of its new regulation a description of studies and analyses considered in arriving at criteria for the exercise of individualized discretion to maximize the duration of community confinement.
- The BOP should direct earlier placement of inmates in residential reentry centers to maximize the ensuing home confinement component of community corrections.
- The BOP should implement the earned credit provisions of the First Step Act to maximize eligibility and time in community corrections.

**C. Good Conduct Time – 18 U.S.C. § 3624(b)**

- The BOP should change its methodology for calculating good time credit so that fractions for partial credit are rounded up rather than down.
- The BOP should promulgate rules to implement good time for sentences adjusted to reflect concurrent state sentences under U.S.S.G. § 5G1.3 (b).
- The BOP should assure that an inmate's disability, which may impair his ability to participate in educational classes or complete general education programming, does not result in a loss of good time credit.

**D. Credit for Time Served in Custody – 18 U.S.C. § 3585(b)**

- The BOP should amend its rules to credit time served pretrial in administrative custody of the Immigration and Customs Enforcement as time in official detention.

**E. Modification of an Imposed Sentence – 18 U.S.C. § 3582(c)**

- Wardens should be instructed to implement the First Step Act's compassionate release provisions by filing motions to reduce sentence based solely on a determination of eligibility, rather than usurping the judicial role of determining whether the motion should be granted.

**F. Elderly Offender Pilot Program – 42 U.S.C. § 17541(g)**

- Congress should consider removing some of the restrictions on eligibility to better address the humanitarian and financial challenges of housing an aging prison population. [not sure if this belongs]

**G. Sentence Computation Authority to Allow Concurrent Service of State and Federal Sentences – 18 U.S.C. § 3584**

- The BOP should fully credit a later state sentence that is imposed to run concurrently with a previously imposed federal sentence rather than making judicial decisions regarding concurrency.