



The key to rehabilitation

401 Ninth Street, NW, Suite 640, Washington, DC 20004

Greg J. Neimeyer, Ph.D.
Department of Psychology
University of Florida
Gainesville, FL 32611
(202) 271-5910
neimeyer@ufl.edu

Federal Prisoner Reentry Initiative
Call for Rational Reform
to Elderly Release Criteria

Précis

The established eligibility criteria for the early release of nonviolent, elderly prisoners are designed to support Federal goals to reduce prison overcrowding and overfunding while ensuring public safety and maintaining public trust. Releasing the maximum number of low-risk inmates who have served ample time replaces costly incarceration with streamlined integration, providing both justice and a reduced Federal deficit. Minor modifications in current eligibility criteria for elderly release can facilitate this goal.

Background

The [BOP has requested \\$7.3 billion](#) from the Congressional Budget for Fiscal Year 2016. This amount is a *\$400 million increase* over the current fiscal year. The [BOP agrees](#) that “significant savings can be achieved by **reducing sentence lengths and the number of people sentenced to prison.**” The priority, then, should be placed on **early release of low-risk inmates** to diminish populations within Federal facilities. Elderly prisoners are among the lowest-risk populations and have served as a previous target of early release programs for that reason. *The Second Chance Act* legislation is a case in point.

The Second Chance Act legislation is currently up for reconsideration and provides a potent opportunity to exercise the earliest possible release of eligible elderly prisoners, but it must be revised carefully to maximize its benefits.

Updated Criteria for Elderly Release

In its latest attempt at Reauthorization, Second Chance has already proposed edits to reduce the **arbitrary or damaging eligibility requirements** for prisoner age and time served. The terms of the Program are explained below, with those under consideration **bolded** and the recommended changes shown with strikethrough.

- (A) *Eligible elderly offender*—an offender in the custody of the Bureau of Prisons
- (i) who is not less than **65 years of age (lowering to age 60 is currently under consideration)**;
 - (ii) 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 or sex, and who will have served at least ~~the greater of 10 years or 3/4~~ **2/3 of the term of imprisonment** to which the offender was sentenced;

(iii) who has not been convicted in the past of any Federal or State crime of violence or sex;

(iv) who has not been determined by the Bureau of Prisons to have a history of violence, or of engaging in conduct constituting a sex offense;

(v) who has not escaped, or attempted to escape, from a Bureau of Prisons institution;

(vi) 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

(vii) who has been determined by the Bureau of Prisons to be at no substantial risk of engaging in criminal conduct or of endangering any person or the public if released ~~to home detention~~.

In medium security prisons alone, 23% of prisoners do not have any history of violence, while a full 52% have sentences in excess of 9 years. Minor modifications in eligibility requirements can substantially increase the impact of a release program, helping to reduce prison overcrowding and providing secure, cost-effective alternatives to continued imprisonment.

Do Nonviolent Prisoners *Really* Have a Second Chance?

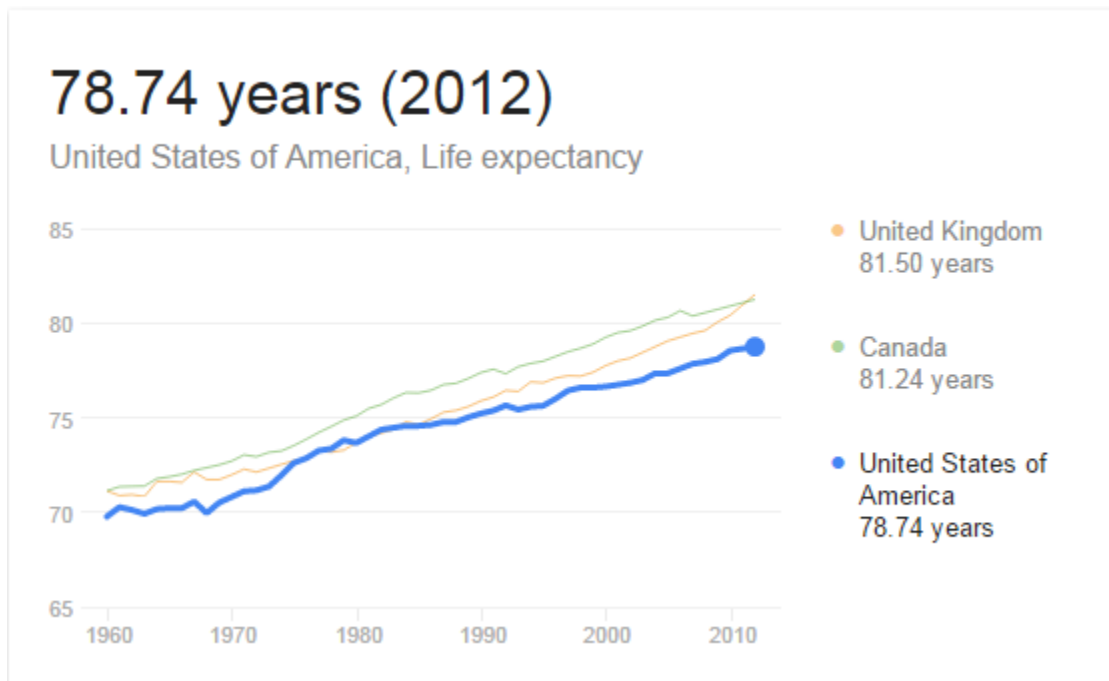
In its first two-year run, the "Elderly and Family Reunification for Certain Non-Violent Offenders" Pilot Program, carried out from October 1st, 2008 through September 30th, 2010, hoped to release eligible elderly offenders and place them into **home detention** until the expiration of their remaining sentences. But many promising prisoners were put through a long and costly review process not to be released at all. According to [a report](#) by the Government Accountability Office (GAO), of the 855 inmates who applied for the Pilot, 750 were excluded for disqualifying crimes or for not meeting **age or sentence length requirements**. Further, more money was spent to keep prisoners under 'house arrest'—or in payments to Residential Reentry Centers—than on setting them fully free. In the end, only 71 prisoners were released under the pilot program. Among those released, however, their 0% recidivism rate is noteworthy, underscoring the potential value of an expanded release program with rationally configured eligibility criteria.

The effectiveness of the initial program was significantly compromised by the limited number of inmates who ended up benefitting from the program, which followed in large part from the **excessive limitations** imposed by the requirements. If the criteria were revised even modestly, the BOP's own estimate of the number of low-risk inmates who could pass through the Program would increase by 250%.

Addressing the Problems of the Status Quo—A Tip from the States

According to the [Center for Disease Control](#), the overall national life expectancy continues to steadily rise, and is currently up to 78.8 years. In the previous elderly release pilot program the eligibility age was set at 65 years of age, and consideration

is now being given to lowering that eligibility age to age 60. This recommendation would incur the advantage of increasing the number of eligible prisoners, but run counter to increasing life expectancy rates. Importantly, the goal of increased eligibility can be accomplished effectively without reducing the age of eligibility and by instead altering the stipulation that elderly prisoners serve a minimum of $\frac{3}{4}$ of their sentences in favor of serving a minimum of $\frac{2}{3}$ of their sentences. This revision is already the standard that is exercised in many States.



Moreover, while Federal prisoners are not eligible for parole, they can currently earn up to 54 days of "good time" credit per year against their sentence (18 U.S.C.A. § 3624(b)). **This means that "good time" can reduce a Federal sentence by up to 15%.** According to the [Bureau of Justice Statistics](#), most prisoners have been required to serve only 85% of their sentences under the Federal Truth-in-Sentencing Incentive eligibility criteria established in the late 1990s. Because they are already reducing their sentences by 15%, the $\frac{3}{4}$ minimum in the previous elderly release pilot meant only a 10% savings in time-served, moving these prisoners from the completion of 85% of their sentences to a completion of 75% of their sentences. When an inmate further qualified for [RDAP](#), his/her sentence could be reduced by an *additional* 12-18 months, making the potential reductions in sentencing negligible using the $\frac{3}{4}$ criteria. Revising the time-served criteria to $\frac{2}{3}$ of the stipulated sentence is a more rational criteria that would result in greater savings among otherwise-eligible, low-risk elderly inmates (i.e., those 65 years of age and older, with no prior history and no violent or sexual offenses or escape attempts).

In addition to the revision of the $\frac{3}{4}$ minimum to a $\frac{2}{3}$ minimum time served, consideration should be given to the complete release of otherwise-eligible elderly inmates, rather than their retention in a house-arrest program for the remainder of their sentences. The ACLU produced a report analyzing the taxpayer savings that could be achieved if low-risk elderly prisoners were set free completely. On average, releasing an aging prisoner could save State Governments between \$28,363 and \$66,294 per year per prisoner, taking into account the possibility of housing, government healthcare, and other public benefit costs after full community integration. Adopting this strategy would similarly relieve the Federal deficit.

SUCCESS Results from Shifting Focus

An analysis of the BOP's Budget per capita helps to highlight the fact that processing as many prisoners as possible through **expanded guidelines for early and complete release** would be far more fiscally effective than any in-house measure or age leniency.

Federal prisoners currently cost approximately \$35,000 per capita annually, including facilities *and* rehabilitation programs, according to BOP averages. But with expanded elderly release criteria, the expected yearly drop in prison population could go from 10,000 to **over 35,700 eligible inmates** in the next year—*an increase of more than 350%*. If this sheer number of inmates were *not* simply forwarded on to home detention, the BOP's 2016 budgetary needs would go down by approximately **\$1.25 billion**.

CALL FOR RATIONAL REFORM

Early release requirements that keep benign prisoners behind bars compromise Federal goals to reduce overcrowding and overfunding of prisons. The 10-year or $\frac{3}{4}$ minimum requirement should be eliminated and replaced with the rationale that any nonviolent inmate aged 65 or older may be eligible for release after completing $\frac{2}{3}$ of their term of imprisonment. In addition, "home detention" should be eliminated for these inmates, given the otherwise continuing costs associated with such detention. Extremely elderly inmates pose no danger, and a reasonable reduction in their sentences should yield total reintegration into their communities for the short remainder of their lives.

About the Center for Prison Reform

CPR is a new think-tank dedicated to evidence-based reform throughout the full spectrum of the Criminal Justice System. We are backed by a national coalition of grassroots organizations that support rehabilitation and reduced sentencing for low- and medium-risk U.S. prisoners. We all see a unique opportunity in today's Congress to secure passage of federal legislation to lower recidivism rates and boost post-incarceration productivity. Since such legislation is both socially progressive and fiscally responsible, it provides an excellent opportunity for truly cross-partisan momentum.

We are here to serve as a resource-hub for government staff, and we are working diligently to broaden our foundation of stakeholders at the local, state, national, and international levels. Edwina Rogers, CEO, has been involved in public policy for over twenty years, and is currently available to meet on the Hill or at the Executive Branch to discuss the most promising bills and measures.

Edwina Rogers, CEO

[Center for Prison Reform](#)

(202) 674-7800

edwina@centerforprisonreform.org