



Guidance on Attorney General Barr’s Inmate Home Confinement Program During the COVID-19 Crisis

On March 26, 2020, following the outbreak of COVID-19, and states taking drastic precautions to prevent transmission, Attorney General William Barr (“AG Barr”) issued a memorandum for the Director of the Bureau of Prisons instructing that inmates who meet certain criteria be considered for home confinement to alleviate the risk of contracting COVID-19 while incarcerated.

Since adoption of this policy in March, the BOP has increased home confinement by over 40% and is continuing to screen all potential inmates for possible home confinement.¹ Per its website, the BOP has placed an additional 566 inmates on home confinement following AG Barr’s directive. While the BOP’s website says that inmates need not apply to be considered for home confinement, inmates and their families should consider contacting the inmate’s case manager in order to hasten the process.

While the government is concerned about the well-being of inmates, it is also concerned about protecting the public from COVID-19. Therefore, any inmate who is granted home confinement will be placed in a mandatory 14-day quarantine period before that inmate may be released to home confinement.

This memorandum will address in further detail who is eligible for release under AG Barr’s memorandum.

I. Categories of Inmates Eligible for Home Confinement.

a. Inmates Incarcerated in BOP operated prisons.

First and foremost, AG Barr’s memorandum applies only to inmates in BOP operated prisons. This means that if your family member, friend, or other loved one is incarcerated in a state operated prison—for example, any of the Texas Department of Criminal Justice units—they are **not** eligible for consideration under this memorandum. However, it is possible that the state system in which they are incarcerated has adopted a similar home confinement, furlough, or other policy. For example, California is granting early release to 3,500 non-violent inmates in an effort to curb the spread of COVID-19 among prisoners.² Thus, even if the inmate in question is not incarcerated at a BOP-prison, it is possible that the state system in which they are

¹ https://www.bop.gov/resources/news/20200405_covid19_home_confinement.jsp

² <https://www.latimes.com/california/story/2020-03-31/coronavirus-california-release-3500-inmates-prisons>

incarcerated has adopted contingency plans to address community spread of COVID-19 in prison.

b. Those Vulnerable to COVID-19 per the CDC.

The Centers for Disease Control and Prevention (“CDC”) has identified certain categories of people that are more susceptible to COVID-19. While they are not necessarily more likely to contract the virus, those with certain risk factors are more likely to succumb to the illness or have prolonged and difficult recovery.

Among these categories, and of most relevance to this memorandum, are those over 65, those with pre-existing illnesses, such as heart disease, chronic lung problems, diabetes, and asthma.³ Also at heightened risk are those who are immunocompromised such as those undergoing or who have recently underwent cancer treatment, those who underwent an organ transplantation, immune deficiencies, or uncontrolled HIV/AIDS.

c. The Security Level of the Facility Currently Housing the Inmate and Inmate’s Conduct While in Prison.

Prisons have different security classifications ranging from low security to maximum security. As the name suggests, maximum security prisons are generally reserved for the worst of inmates, who have often committed violent or sex offenses. While AG Barr’s memorandum does not necessarily exclude inmates incarcerated at maximum security prisons from consideration for home confinement, it provides that inmates residing in low and minimum security facilities will be given priority.

Similarly, the inmate’s disciplinary record will be considered. Those who have engaged in violent activities or gang-related activities, or those who committed a violation within the last year, will not be given priority for consideration for home confinement.

Per the memorandum, there are certain offenses such as sex offenses that preclude an inmate from consideration for home confinement. Similarly, other serious offenses will weigh more heavily against home confinement, though they are not specifically listed.

II. The Inmate’s PATTERN Score.

In 2018, the President signed into law the First Step Act which was meant to improve criminal justice outcomes by reducing the size of the prison population while also maintaining public safety. As a requirement of the Act, the Department of Justice created the Prisoner Assessment Tool Targeting Estimated Risk and Needs (“PATTERN”). This risk assessment tool predicts the risk of reoffending based on several factors such as age, sex, initial crime, history of violence, etc. These factors are each assigned positive or negative point values which yield a “risk score.” The score then places the inmate in minimum, low, medium, or high-risk categories.

³ <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html>

Per AG Barr’s memorandum, those with a minimum score—a score of 10 and under for men and nine and under for women—are given priority for home confinement.^{4,5}

III. The Inmate’s Proposed Re-Entry Plan.

The goal of the prison system is rehabilitation. Of course, the prison has interests in ensuring that inmates to whom it grants home confinement status to do not fall victim to recidivism or becomes a public charge. Therefore, a consideration identified by AG Barr is whether the inmate has demonstrated a re-entry plan that will prevent recidivism and maximize public safety, and that the environment the inmate will be confined to will pose less of a risk for contraction of COVID-19 than the prison itself.

Some things that should be considered in the re-entry plan is specifically where and with whom the inmate will be living, how the inmate will financially sustain themselves, and in the event of illness, how the inmate will pay for the care (e.g., Medicare, Medicaid, private insurance). Additionally, the prison will consider whether home confinement is likely to increase the risk of contracting COVID-19—for example, to a home where someone living there has already tested positive.

Conclusion

Eligibility for home confinement will be based on a totality of the circumstances determined on a case-by-case basis. If you believe a loved one may be a candidate for home confinement, consider writing a letter on their behalf to the prison’s warden and the inmate’s case manager clearly explaining the re-entry plan and each of the other factors explained above.

⁴ https://nij.ojp.gov/sites/g/files/xyckuh171/files/media/document/the-first-step-act-of-2018-risk-and-needs-assessment-system_1.pdf at p. 58.

⁵ A PATTERN calculator can be found here: <https://apps.urban.org/features/risk-assessment/>