

**FEDERAL PUBLIC DEFENDER**  
**Western District of Washington**

*Thomas W. Hillier, II*  
*Federal Public Defender*

December 22, 2008

Ms. Sarah Qureshi, Esq.  
Office of General Counsel, Rules Unit  
Bureau of Prisons  
320 First Street, NW  
Washington, DC 20534

**RE: BOP Docket No. 1151-I**  
**Interim Rule Change**

Dear Ms. Qureshi,

On behalf of the Federal Public and Community Defenders, we are pleased to provide the following comments regarding the Bureau of Prisons' revised rules relating to pre-release community confinement at 28 C.F.R. part 570, subpart B, promulgated to conform with the requirements of the Second Chance Act of 2007. *See* 73 Fed. Reg. 62,440, 62,441 (Oct. 21, 2008).

Although the Bureau restates the requirements of the Second Chance Act with respect to pre-release community confinement, the rules do not guarantee implementation of the Act, particularly in light of the administrative guidance issued just after the Act was passed. Rather than adopt a general approach aimed at maximizing the use of the least restrictive means of confinement to achieve the greatest likelihood of successful reintegration, the Bureau continues to apply a presumption *against* optimizing the use of community confinement.

To avoid legal challenges to the Bureau's procedure and practice regarding its policy on community confinement, the Bureau should (1) adopt a presumption in favor of twelve months' pre-release placement in a halfway house absent identifiable circumstances indicating that a lesser period will be sufficient "to provide the greatest likelihood of successful reintegration into the community"; (2) clarify that an inmate can spend the final twelve months of imprisonment in a graduated reentry program including a period spent in a halfway house followed by home confinement; (3) clarify that so-called "front-end" designations to community confinement are not limited or restricted by the time-frames in 28 C.F.R. § 570.21(a); and (4) clarify that a prisoner eligible for a sentence reduction under 18 U.S.C. § 3621(e) for successful completion of a residential

substance abuse program is not precluded from receiving consideration for the maximum available community placement offered to all prisoners.

## **I. Background**

In 2005, and in the wake of nationwide litigation regarding its abrupt change in practice and policy relating to its authority to designate an inmate to community confinement under 18 U.S.C. §§ 3621(b) and 3624(c), the Bureau of Prisons promulgated regulations at 28 C.F.R. §§ 570.20 and 570.21 purporting to implement “its categorical exercise of discretion” to “designate inmates to community confinement only as a condition of pre-release custody and programming, during the last ten percent of the prison sentence being served, for a period not exceeding six months, unless specific Bureau programs allow greater periods of community confinement.” *Id.*; *see also* 70 Fed. Reg. 1,659 (2005); 28 C.F.R. § 570.20; *id.* § 570.21. With this rule, the Bureau formalized its decision to no longer follow the recommendation of a sentencing court to designate to community confinement a defendant sentenced to a short term of imprisonment (so-called “front-end” placements), as had been the Bureau’s longstanding practice.

More litigation ensued in the following two years, with inmates challenging the Bureau’s authority to exercise “categorical discretion” in this manner, as well as its erroneous interpretation of the provisions of 18 U.S.C. § 3621(b) to exclude all front-end designations to halfway houses.

On April 9, 2008, the President signed into law the Second Chance Act of 2007. Pub. L. No. 110-199, 122 Stat. 657 (2008). Among its many provisions, the Act expands the Bureau’s affirmative duty to provide pre-release programming under 18 U.S.C. § 3624(c), now requiring the Bureau, to the extent practicable, to ensure that every inmate spends up to twelve months, unlimited by any percentage of time to be served, under “conditions that will afford the prisoner a reasonable opportunity to adjust to and prepare for the prisoner’s reentry into the community” and clarifying that “such conditions may include a community correctional facility,” such as a halfway house. *Id.* § 251; *see* 18 U.S.C. § 3624(c)(1) (as amended).

The Act also reaffirmed the Bureau’s broad discretion to make individualized front-end or direct placements to “any correctional facility” under 18 U.S.C. § 3621(b) without regard to the time-frames in § 3624(c) by affirmatively stating that “nothing in this subsection shall be construed to limit or restrict the authority of the Director of the Bureau of Prisons under section 3621.” *See* 18 U.S.C. § 3624(c)(4) (as amended).

To implement these changes to § 3624(c), Congress directed the Bureau to “issue regulations pursuant to this subsection . . . which shall ensure that placement in a community correctional facility by the Bureau of Prisons is – (A) conducted in a manner

consistent with section 3621(b) of this title; (B) determined on an individual basis; and (C) of sufficient duration to provide the greatest likelihood of successful reintegration into the community.” Pub. L. No. 110-199, § 251; *see* 18 U.S.C. § 3624(c)(6) (as amended). Section 3621(b), in turn, requires the Bureau to consider, *inter alia*, the nature and circumstances of the offense, the history and characteristics of the prisoner, and any statement by the court that imposed the sentence. 18 U.S.C. § 3621(b)(2)-(4). The Act clarified, however, that the Bureau is not bound by any order, request or recommendation of the sentencing court that a defendant serve a term of imprisonment in a community corrections facility. *Id.* § 3621(b) (as amended).

## **II. The April 2008 Memorandum**

Five days after the Second Chance Act was signed into law, the Bureau issued a memorandum to provide guidance to staff for implementing the changes made by the Act with respect to pre-release halfway house placement. *See* Memorandum from Joyce K. Conley, Assistant Director Correctional Programs Division, Bureau of Prisons, Regarding Pre-Release Residential Reentry Center Placement Following the Second Chance Act of 2007, to Chief Executive Officers (April 14, 2008) (“BOP Pre-Release Memo”) (attached). In this memorandum, the Bureau recognized that the Act requires individualized placement decisions for pre-release community confinement, such that the “categorical timeframe limitations on pre-release community confinement, found at 28 C.F.R. §§ 570.20 and 570.21, are no longer applicable, and must no longer be followed.” BOP Pre-Release Memo at 3 (emphasis in original). The Bureau also emphasized that staff must now make pre-release community confinement decisions on an individual basis, following the Bureau’s Program Statement No. 7310.04, *Community Corrections Center (CCC) Utilization and Transfer Procedure* (1998), with certain specified adjustments. *Id.*

Despite its emphasis on individualized determinations and its declaration that the categorical timeframe limitations set forth in the regulations are no longer applicable, the Bureau instructed its staff that any pre-release placement in community confinement for a period greater than six months requires special written concurrence by the Regional Director. *See* BOP Pre-Release Memo at 4. The Bureau explained that “Bureau experience reflects inmates’ pre-release RRC needs can usually be accommodated by a placement of six months or less.” *Id.* In effect, the Bureau retained a categorical presumption limiting the time frame available for pre-release placement in a halfway house to six months or less, absent special circumstances.

The Memorandum did not address front-end designations or the Bureau’s reaffirmed discretion under § 3621(b) to designate or transfer an inmate to a community corrections facility at any time. Nor does the Memorandum address the interplay between pre-release programming under 18 U.S.C. § 3624(c) and other re-entry programs such as the residential drug treatment program provided under § 3621(e).

At the United States Sentencing Commission's Symposium on Alternatives to Incarceration, held in July 2008, Bureau Director Harley Lappin stated that the Bureau would continue to presumptively limit placement in a halfway house to a maximum of six months, based on "research that we've done for many years reflect[ing] that many offenders who spend more than six months in a halfway house tend to do worse rather than better." See USSC, *Proceedings from the Symposium on Alternatives to Incarceration* at 263 (July 14-15, 2008). The Bureau would only place an offender in a halfway house for a longer period on a "case-by-case basis and that would warrant more than six months." *Id.*

### III. The Revised Regulations

On October 21, 2008, and pursuant to Congress's directive, the Bureau revised its regulations at subpart B of 28 C.F.R. part 570 in order "to conform with the requirements of the Second Chance Act of 2007." See 73 Fed. Reg. 62,440, 62,441 (Oct. 21, 2008). As amended, subpart B now addresses pre-release placement only. See *id.* at 62,443.

First, the Bureau defined "community confinement" and "home detention" for purposes of pre-release placement as those terms are defined by the Act. See 28 C.F.R. § 570.20 (as amended). Second, the Bureau reiterated without significant change or elaboration the time frames for pre-release placement as provided in the Act. *Id.* § 570.21 (as amended). Third, the Bureau restated the Act's requirements that inmates will be considered for pre-release placement "in a manner consistent with 18 U.S.C. § 3621(b), determined on an individual bases, and of sufficient duration to provide the greatest likelihood of successful reintegration in to the community, within the time frames set forth in this part." *Id.* § 570.22.

Insofar as the new rules reiterate and affirm the Bureau's authority and obligations under 18 U.S.C. § 3624(c) regarding an inmate's eligibility for twelve months of pre-release placement in community confinement, including a halfway house, we support them. However, the interim rules do little more than simply list the statutory requirements under § 3621(b) and do not set forth any additional guidance beyond the requirements set forth in the Act itself. As a result, it remains unclear how the Bureau will actually implement Congress's clear directive. We are particularly concerned that the April Pre-Release Memorandum will continue to represent the Bureau's actual policy and practice regarding pre-release designations, which would be inconsistent with the Act.

First, § 3624(c) places an affirmative obligation on the Bureau to "ensure that a prisoner serving a term of imprisonment spends a portion of the final months of that term (not to exceed 12 months), under conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare for the reentry of that prisoner into the community."

Yet, the Bureau's operational presumption in favor of limiting pre-release placement in a halfway house to six months or less, absent special circumstances, merely continues the Bureau's historic practice without regard to the Second Chance Act. *See* Bureau of Prisons, Program Statement 7310.04 (Dec. 16, 1998). The Bureau has provided no support, such as empirical data or studies, for its categorical presumption that a maximum of six months of placement in a halfway house will generally be "of sufficient duration to provide the greatest likelihood of successful reintegration into the community." 18 U.S.C. § 3624(c)(6); 28 C.F.R. § 581.22. Rather than presumptively limit pre-release halfway house placement to the last six months except in extraordinary circumstances, the Bureau should adopt an approach that generally favors the least restrictive means of confinement for every inmate, *except* when its individualized assessment of an inmate's risks and needs indicates that a shorter period would best further the goals of successful reentry.

Second, the Bureau should address the issue of home detention and its potential use as part of a graduated program of pre-release community confinement. As before, nothing precludes the use of *both* halfway house and home detention, so that an inmate can be placed in a halfway house followed by up to six months' of home detention. If, for example, the Bureau's individualized assessment of a particular inmate's risks and needs indicates that the inmate would receive maximum benefit from less than twelve months in a halfway house, the Bureau should next consider whether that period should be followed by period of home detention (up to the maximum term available). Likewise, for those inmates serving a term greater than sixty months, the Bureau should consider a graduated program that maximizes the least restrictive means of confinement so that such inmates can spend the full six months in home detention, if appropriate. Such an approach not only promotes fuller implementation of pre-release community confinement as a reentry strategy, as Congress intended, but also results in substantial cost savings.

#### **IV. Proposed Revisions**

##### **A. Pre-release placement**

To implement the purpose of the Second Chance Act to ensure that prisoners are afforded the greatest opportunity for successful re-integration, the Bureau should adopt a presumption in favor of twelve months' pre-release placement in a halfway house for those inmates so designated, unless its individualized assessment of the inmate indicates that a lesser period will be "of sufficient duration to provide the greatest likelihood of successful reintegration into the community." The rules should also make clear that home confinement can be used in conjunction with placement in a halfway house. Finally, the rules should clarify that nothing in the regulation precludes a prisoner eligible for a sentence reduction under § 3621(e) from receiving consideration for the maximum available community placement offered to all prisoners.

We propose the following amendment to 28 C.F.R. § 570.21(a):

(a) *Community confinement.* Inmates may be designated to community confinement as a condition of pre-release custody and programming during the final months of the inmate's term of imprisonment. An inmate designated to community confinement under this subsection shall be so placed for the final twelve months of the inmate's term of imprisonment, unless the Bureau determines on an individual basis that a lesser period will be of sufficient duration to provide the greatest likelihood of successful reintegration into the community.

If the Bureau determines that an inmate should be placed in a halfway house under this subsection, the Bureau shall also consider whether that period should be followed by a period of home detention up to the maximum term available. This determination shall be made on an individual basis and consistent with the criteria set forth in 18 U.S.C. § 3621(b).

An inmate's eligibility for a sentence reduction under 18 U.S.C. § 3621(e) shall not preclude consideration for the maximum available community confinement placement, including home confinement.

**B. Front-end designations**

The Bureau's new rules also fail to address new subsection (c)(4), which can fairly be read to express Congress's view that nothing in § 3624(c) regarding pre-release placement in community confinement limits the Bureau's authority under § 3621(b) to designate an inmate to community confinement for the entire term of imprisonment or at any time during the term of imprisonment. Because Congress directed the Bureau to issue regulations that will ensure that "placement in a community correctional facility is [] conducted in a manner consistent with section 3621(b)," the Bureau should clarify its broad authority as reaffirmed by § 3624(c)(4). We propose the following new rule:

**§ 570.23 No limitation**

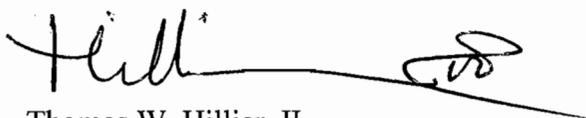
Nothing in this subpart shall be construed to limit or restrict the authority of the Director of Prisons under 18 U.S.C. § 3621(b) to designate a community confinement facility as the inmate's place of imprisonment.

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**V. Conclusion**

We appreciate the opportunity to offer our input on these interim rules, and we hope that our perspective is useful to the Bureau as it carries out its responsibilities under the Second Chance Act.

Very truly yours,

A handwritten signature in black ink, appearing to read "Hillier" followed by a stylized flourish.

Thomas W. Hillier, II  
Federal Public Defender  
Chair, Legislative Expert Panel, Federal Public and  
Community Defenders



U.S. Department of Justice  
Federal Bureau of Prisons

Washington, D.C. 20534

April 14, 2008

MEMORANDUM FOR CHIEF EXECUTIVE OFFICERS

*Joyce K. Conley*  
FROM: Joyce K. Conley, Assistant Director  
Correctional Programs Division

*Kathleen M. Kenney*  
Kathleen M. Kenney  
Assistant Director/General Counsel

SUBJECT: Pre-Release Residential Re-Entry Center Placements  
Following the Second Chance Act of 2007

The Second Chance Act of 2007 (hereinafter referred to as "the Act"), Pub. L. No. 110-199, was signed into law April 9, 2008. Among its many provisions, the Act changes the Federal Bureau of Prisons' (Bureau) statutory authorities for making pre-release Residential Re-Entry Center (RRC) placement decisions.<sup>1</sup> This memorandum provides staff guidance for implementing those changes. Guidance regarding other Bureau policies affected by the Act will be issued, as necessary, under separate cover.

If necessary, further assistance should be sought from your regional Correctional Programs, Community Corrections, and Regional Counsel or Consolidated Legal Center offices.

<sup>1</sup> For your convenience, copies of 18 U.S.C. §§ 3621 and 3624(c), as amended by the Act, are included with this memorandum as attachments. Additionally, for your convenience, these copies illustrate the previous text as ~~strikeout~~, and the new text as redline.

I. What are the statutory changes to RRC placement authorities?

As interpreted by the Office of General Counsel, the Act's statutory changes affect the Bureau's RRC placement procedures as follows:

- (A) **Pre-Release RRC Placement Timeframe Increased to 12 Months** - The pre-release RRC placement timeframe is increased to a maximum allowable 12 months. There is no percentage of "term to be served" limitation. See 18 U.S.C. § 3624(c) (1) (amended).<sup>2</sup>
- (B) **Individualized Placement Decisions Required** - The Act requires that pre-release RRC placement decisions be made on an individual basis in every inmate's case, according to new criteria in the Act, as well as the criteria in 18 U.S.C. § 3621(b). See 18 U.S.C. § 3624(c) (6) (amended). As a result, the Bureau's categorical timeframe limitations on pre-release community confinement, found at 28 C.F.R. §§ 570.20 and 570.21, are no longer applicable, and must no longer be followed.<sup>3</sup>
- (C) **Court Recommendations Lack Binding Effect** - The Act provides that a sentencing court order, recommendation, or request directing an inmate's placement in an RRC lacks binding effect. See 18 U.S.C. § 3621(b) (amended). As a result, the Bureau is not required to follow such a directive.<sup>4</sup>

II. What procedures should staff use in making pre-release RRC decisions?

With minor adjustments (explained in the next section), staff should make inmates' pre-release RRC placement decisions on an individual basis using current Bureau policy, Program Statement No. 7310.04, Community Corrections Center (CCC) Utilization and Transfer Procedure (12/16/1998) (hereinafter referred to as

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<sup>2</sup> The pre-release home confinement timeframe remains at a maximum six months, or ten percent of the term of imprisonment of that prisoner, whichever is shorter. See 18 U.S.C. § 3624(c) (2) (amended).

<sup>3</sup> The Act requires the Bureau to issue new federal regulations regarding pre-release RRC placements. The federal regulation process (rulemaking) will take several months to complete. Bureau staff will be informed as soon as new regulations take effect.

<sup>4</sup> Sentencing court recommendations for a particular type institution, however, remain a factor to be considered when making pre-release RRC placement decisions. See, infra, Section III.(C) (4).

PS 7310.04). As indicated in Section I.(B) above, the Bureau's categorical timeframe limitations on pre-release community confinement, found at 28 C.F.R. §§ 570.20 and 570.21, are no longer applicable, and must no longer be followed. Similarly, any previous guidance memorandums that were issued regarding those regulations are no longer applicable, and must no longer be followed.

**III. What procedural adjustments to current policy are required?**

Staff must comply with PS 7310.04 in considering inmates for pre-release RRC placements, with the following adjustments:

- (A) **Disregard Section 5, Statutory Authority** - Because the Act amends the Bureau's statutory authorities related to pre-release RRC placements, the quoted passages in Section 5 of PS 7310.04 must be disregarded. Instead, if needed, refer to the amended versions included with this memorandum as attachments.
- (B) **Review Inmates for Pre-Release RRC Placements 17-19 Months Before Projected Release Dates** - Because the Act increases the maximum available pre-release RRC placement timeframe to 12 months, Bureau staff must review inmates for pre-release RRC placements earlier than provided in PS 7310.04. Specifically, inmates must now be reviewed for pre-release RRC placements 17-19 months before their projected release dates.
- (C) **Criteria for Pre-Release RRC Placements** - The Act requires that inmates be individually considered for pre-release RRC placements using the following five-factor criteria from 18 U.S.C. § 3621(b):
  - (1) The resources of the facility contemplated;
  - (2) The nature and circumstances of the offense;
  - (3) The history and characteristics of the prisoner;
  - (4) Any statement by the court that imposed the sentence:
    - (a) concerning the purposes for which the sentence to imprisonment was determined to be warranted; or
    - (b) recommending a type of penal or correctional facility as appropriate; and
  - (5) Any pertinent policy statement issued by the U.S. Sentencing Commission.<sup>5</sup>

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<sup>5</sup> As of this memorandum's date, the U.S. Sentencing Commission has not issued any policy statements related to the Bureau's pre-release RRC placement procedures.

Assessing inmates under the above criteria necessarily includes continuing to consider the more specific, and familiar, correctional management criteria found in PS 7310.04, including, but not limited to, the inmate's needs for services, public safety, and the necessity of the Bureau to manage its inmate population responsibly. In doing so, staff must not view any of the criteria listed in PS 7310.04, especially Sections 9 and 10, or any other policy, as automatically precluding an inmate's pre-release RRC placement. Rather, in accordance with the Act, each individual inmate's pre-release RRC decision must be analyzed and supported under the five-factor criteria.

Additionally, the Act requires staff to ensure that each pre-release RRC placement decision is "of sufficient duration to provide the greatest likelihood of successful reintegration into the community." See 18 U.S.C. § 3624(c)(6)(C) (amended). This means Bureau staff must approach every individual inmate's assessment with the understanding that he/she is now eligible for a maximum of 12 months pre-release RRC placement. Provisions in PS 7310.04 that reflect any other possible maximum timeframe must be ignored.

- (D) **Regional Director Approval Required for Pre-Release RRC Placement Beyond Six Months** - While the Act makes inmates eligible for a maximum of 12 months pre-release RRC placements, Bureau experience reflects inmates' pre-release RRC needs can usually be accommodated by a placement of six months or less. Should staff determine an inmate's pre-release RRC placement may require greater than six months, the Warden must obtain the Regional Director's written concurrence before submitting the placement to the Community Corrections Manager.

**IV. Does the Act apply to inmates whose RRC decisions have already been made?**

Yes. Inmates previously reviewed for pre-release RRC placements under any circumstances, and not yet transferred to an RRC, must be reconsidered utilizing the standards set forth in this guidance memorandum, whereby they are eligible for a maximum of 12 months placement. These reviews must be conducted by the classification team and documented on the Inmate Activity record (BP-A381.058).

Any inmate whose Program Review is scheduled at a time when consideration for a 12 month RRC placement is not feasible, will need to be reviewed and documented as indicated above.

§ 3621. Imprisonment of a convicted person (as amended by the Second Chance Act of 2007, Pub. L. No. 110-199, April 9, 2008).

(a) Commitment to custody of Bureau of Prisons.--A person who has been sentenced to a term of imprisonment pursuant to the provisions of subchapter D of chapter 227 shall be committed to the custody of the Bureau of Prisons until the expiration of the term imposed, or until earlier released for satisfactory behavior pursuant to the provisions of section 3624.

(b) Place of imprisonment.--The Bureau of Prisons shall designate the place of the prisoner's imprisonment. The Bureau may designate any available penal or correctional facility that meets minimum standards of health and habitability established by the Bureau, whether maintained by the Federal Government or otherwise and whether within or without the judicial district in which the person was convicted, that the Bureau determines to be appropriate and suitable, considering--

- (1) the resources of the facility contemplated;
- (2) the nature and circumstances of the offense;
- (3) the history and characteristics of the prisoner;
- (4) any statement by the court that imposed the sentence--

(A) concerning the purposes for which the sentence to imprisonment was determined to be warranted; or

(B) recommending a type of penal or correctional facility as appropriate; and

(5) any pertinent policy statement issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28.

In designating the place of imprisonment or making transfers under this subsection, there shall be no favoritism given to prisoners of high social or economic status. The Bureau may at any time, having regard for the same matters, direct the transfer of a prisoner from one penal or correctional facility to another. The Bureau shall make available appropriate substance abuse treatment for each prisoner the Bureau determines has a treatable condition of substance addiction or abuse. Any order, recommendation, or request by a sentencing court that a convicted person serve a term of imprisonment in a community corrections facility shall have no binding effect on the authority of the Bureau under this section to determine or change the place of imprisonment of that person.

(c) Delivery of order of commitment.--When a prisoner, pursuant to a court order, is placed in the custody of a person in charge of a penal or correctional facility, a copy of the order shall be delivered to such person as evidence of this authority to hold the prisoner, and the original order, with the return endorsed thereon, shall be returned to the court that issued it.

(d) Delivery of prisoner for court appearances.--The United States marshal shall, without charge, bring a prisoner into court or return him to a prison facility on

order of a court of the United States or on written request of an attorney for the Government.

(e) Substance abuse treatment.--

(1) Phase-in.--In order to carry out the requirement of the last sentence of subsection (b) of this section, that every prisoner with a substance abuse problem have the opportunity to participate in appropriate substance abuse treatment, the Bureau of Prisons shall, subject to the availability of appropriations, provide residential substance abuse treatment (and make arrangements for appropriate aftercare)--

(A) for not less than 50 percent of eligible prisoners by the end of fiscal year 1995, with priority for such treatment accorded based on an eligible prisoner's proximity to release date;

(B) for not less than 75 percent of eligible prisoners by the end of fiscal year 1996, with priority for such treatment accorded based on an eligible prisoner's proximity to release date; and

(C) for all eligible prisoners by the end of fiscal year 1997 and thereafter, with priority for such treatment accorded based on an eligible prisoner's proximity to release date.

(2) Incentive for prisoners' successful completion of treatment program.--

(A) Generally.--Any prisoner who, in the judgment of the Director of the Bureau of Prisons, has successfully completed a program of residential substance abuse treatment provided under paragraph (1) of this subsection, shall

remain in the custody of the Bureau under such conditions as the Bureau deems appropriate. If the conditions of confinement are different from those the prisoner would have experienced absent the successful completion of the treatment, the Bureau shall periodically test the prisoner for substance abuse and discontinue such conditions on determining that substance abuse has recurred.

(B) Period of custody.--The period a prisoner convicted of a nonviolent offense remains in custody after successfully completing a treatment program may be reduced by the Bureau of Prisons, but such reduction may not be more than one year from the term the prisoner must otherwise serve.

(3) Report.--The Bureau of Prisons shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives on January 1, 1995, and on January 1 of each year thereafter, a report. Such report shall contain--

(A) a detailed quantitative and qualitative description of each substance abuse treatment program, residential or not, operated by the Bureau;

(B) a full explanation of how eligibility for such programs is determined, with complete information on what proportion of prisoners with substance abuse problems are eligible; and

(C) a complete statement of to what extent the Bureau has achieved compliance with the requirements of this title.

(4) Authorization of appropriations.--There are authorized to carry out this

subsection such sums as may be necessary for each of fiscal years 2007 through 2011.

(5) Definitions.--As used in this subsection--

(A) the term "residential substance abuse treatment" ~~means a course of individual and group activities, lasting between 6 and 12 months, in residential treatment facilities set apart from the general prison population~~

~~(i) directed at the substance abuse problems of the prisoner;~~

~~(ii) intended to develop the prisoner's cognitive, behavioral, social, vocational, and other skills so as to solve the prisoner's substance abuse and related problems; and~~

~~(iii) which may include the use of pharmacotherapies [FNI], if appropriate, that may extend beyond the treatment period, means a course of individual and group activities and treatment, lasting at least 6 months, in residential treatment facilities set apart from the general prison population (which may include the use of pharmacotherapies, where appropriate, that may extend beyond the 6-month period);~~

(B) the term "eligible prisoner" means a prisoner who is--

(i) determined by the Bureau of Prisons to have a substance abuse problem; and

(ii) willing to participate in a residential substance abuse treatment program; and

(C) the term "aftercare" means placement, case management and

monitoring of the participant in a community-based substance abuse treatment program when the participant leaves the custody of the Bureau of Prisons.

(6) Coordination of Federal assistance.--The Bureau of Prisons shall consult with the Department of Health and Human Services concerning substance abuse treatment and related services and the incorporation of applicable components of existing comprehensive approaches including relapse prevention and aftercare services.

(f) Sex offender management.--

(1) In general.--The Bureau of Prisons shall make available appropriate treatment to sex offenders who are in need of and suitable for treatment, as follows:

(A) Sex offender management programs.--The Bureau of Prisons shall establish non-residential sex offender management programs to provide appropriate treatment, monitoring, and supervision of sex offenders and to provide aftercare during pre-release custody.

(B) Residential sex offender treatment programs.--The Bureau of Prisons shall establish residential sex offender treatment programs to provide treatment to sex offenders who volunteer for such programs and are deemed by the Bureau of Prisons to be in need of and suitable for residential treatment.

(2) Regions.--At least 1 sex offender management program under paragraph (1)(A), and at least one residential sex offender treatment program under paragraph (1)(B), shall be established in each region within the Bureau of Prisons.

(3) Authorization of appropriations.--There are authorized to be appropriated to the Bureau of Prisons for each fiscal year such sums as may be necessary to carry out this subsection.

(g) CONTINUED ACCESS TO MEDICAL CARE.--

(1) IN GENERAL.--In order to ensure a minimum standard of health and habitability, the Bureau of Prisons should ensure that each prisoner in a community confinement facility has access to necessary medical care, mental health care, and medicine through partnerships with local health service providers and transition planning.

(2) DEFINITION.--In this subsection, the term "community confinement" has the meaning given that term in the application notes under section 5F1.1 of the Federal Sentencing Guidelines Manual, as in effect on the date of the enactment of the Second Chance Act of 2007.

[BOP Editor's Note: The definition of "community confinement" provided in the application notes under U.S.S.G. § 5F1.1 on April 9, 2008, is as follows:

"'Community confinement' means residence in a community treatment center, halfway house, restitution center, mental health facility, alcohol or drug rehabilitation center, or other community facility; and participation in gainful employment, employment search efforts, community service, vocational training, treatment, educational programs, or similar facility-approved programs during non-residential hours."]

§ 3624. Release of a prisoner  
(as amended by the Second Chance  
Act of 2007, Pub. L. No. 110-199,  
April 9, 2008).

\* \* \*

~~(c) Pre release custody. The Bureau of Prisons shall, to the extent practicable, assure that a prisoner serving a term of imprisonment spends a reasonable part, not to exceed six months, of the last 10 per centum of the term to be served under conditions that will afford the prisoner a reasonable opportunity to adjust to and prepare for the prisoner's re-entry into the community. The authority provided by this subsection may be used to place a prisoner in home confinement. The United States Probation System shall, to the extent practicable, offer assistance to a prisoner during such pre release custody.~~

(c) PRELEASE CUSTODY.-

(1) IN GENERAL.-The Director of the Bureau of Prisons shall, to the extent practicable, ensure that a prisoner serving a term of imprisonment spends a portion of the final months of that term (not to exceed 12 months), 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.

(2) HOME CONFINEMENT AUTHORITY.-The authority under this subsection may be used to place a prisoner in home confinement for the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months.

(3) ASSISTANCE.-The United States Probation System shall, to the extent practicable, offer assistance to a prisoner during prerelease custody under this subsection.

(4) NO LIMITATIONS.-Nothing in this subsection shall be construed to limit or restrict the authority of the Director of the Bureau of Prisons under section 3621.

(5) REPORTING.-Not later than 1 year after the date of the enactment of the Second Chance Act of 2007 (and every year thereafter), the Director of the Bureau of Prisons shall transmit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report describing the Bureau's utilization of community corrections facilities. Each report under this paragraph shall set forth the number and percentage of Federal prisoners placed in community corrections facilities during the preceding year, the average length of such placements, trends in such utilization, the reasons some prisoners are not placed in community corrections facilities, and any other information that may be useful to the committees in determining if the Bureau is utilizing community corrections facilities in an effective manner.

(6) ISSUANCE OF REGULATIONS.-The Director of the Bureau of Prisons shall issue regulations pursuant to this subsection not later than 90 days after the date of the enactment of the Second Chance Act of 2007, which shall ensure that

placement in a community  
correctional facility by the Bureau  
of Prisons is-

(A) conducted in a manner  
consistent with section 3621(b) of  
this title;

(B) determined on an individual  
basis; and

(C) of sufficient duration to  
provide the greatest likelihood  
of successful reintegration into  
the community.