



## Frequently Asked Questions About The Second Chance Act (SCA)

### **LEGAL DISCLAIMER:**

**FAMM cannot provide legal advice, representation, referrals, or guidance to those who need legal help. Nothing on this form is intended to be legal advice or should be relied on as legal advice. If you or your loved one feel that you need legal advice, you should consult with an attorney or check a law library for resources.**

### **Q: What does the Second Chance Act (SCA) do?**

**A:** The SCA primarily authorizes federal funding for state and federal reentry programs. It also directs – but does not require – the Bureau of Prisons (BOP) to consider giving federal prisoners longer stays in halfway houses, and authorizes funds for a very limited test program for elderly prisoners (see below for details). The “second chance” the act refers to applies almost exclusively to people leaving prison – it does not give shorter sentences to people already in prison.

### **Q: Is the SCA a law?**

**A:** Yes. President Bush signed the SCA into law on April 9, 2008. To read the official transcript of the bill signing ceremony posted on the White House website, please follow this link: <http://www.whitehouse.gov/news/releases/2008/04/20080409-2.html>. To see a final copy of the bill, please follow this link, [http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_cong\\_bills&docid=f:h1593enr.txt.pdf](http://thomas.loc.gov/cgi-bin/t2GPO/http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:h1593enr.txt.pdf), and click on “Continue to GPO Site.”

### **Q: Does the SCA help people only when they get out of prison?**

**A:** With few exceptions, yes. The SCA is designed to provide programs that help people leaving prison reenter their communities, so that they do not reoffend. Only three parts of the law may be able to affect how long a person stays in prison. These three parts only affect people in federal prison.

1. The first lengthens the outer limits of the time an individual is guaranteed *consideration for* prerelease community corrections (halfway house) from six months to 12 months. However, there is no new requirement that the BOP give every person the full 12 months in a halfway house at the end of their sentence. At a U.S. Sentencing Commission Conference held in July 2008, the BOP stated that it was unlikely there would be a general increase in halfway house time to more than six months, but that individuals would nevertheless be considered on a case by case basis. The BOP has since issued an interim rule (see below) that seems to support its July 2008 statements.
2. The second creates a limited pilot program called the Elderly and Family Reunification for Certain Nonviolent Offenders provision. This provision is not in effect yet and is unlikely to provide relief for many individuals (see below for requirements).
3. Finally, the SCA increases slightly the percentage of a federal sentence that can be served in home confinement. There is no requirement that the BOP give prisoners any time in home confinement.



**Q: What federal funding is authorized under the SCA? How is it distributed?**

**A:** The SCA authorizes federal funding for state and federal reentry programs. In Congress, no money can be spent (appropriated) unless it is first authorized. Once authorized, the appropriations committee appropriates or distributes funds to a program. Sometimes it distributes the full amount authorized. Sometimes the amount available is less than the amount authorized. **We do not know yet whether Congress will appropriate some, all or none of the money the SCA authorizes.**

The SCA authorizes funding for:

- **Existing demonstration and long-term adult and juvenile offender state and local reentry programs (does not apply to federal prisons), including:**
  - Existing adult and juvenile offender state and local reentry demonstration projects (includes educational, literacy, vocational and job placement services; a full continuum of substance abuse treatment services; and provision of comprehensive services upon reentry including mental and physical health care).
  - New grants to states, tribal and local reentry courts for demonstration programs that would monitor juvenile and adult offenders reentering the community and provide them with coordinated and comprehensive reentry services and programs, including: coordinated and comprehensive reentry services and programs including drug and alcohol testing and health services and assessment; community impact panels and victim impact classes; and community services to juvenile and adult offenders, including housing assistance, education, job training and conflict intervention skills.
  - Development, implementation or expansion of state, tribal or local demonstration drug treatment programs that are alternatives to imprisonment.
  - Development, implementation or expansion of comprehensive and clinically appropriate family-based demonstration substance abuse treatment programs as alternatives to incarceration for nonviolent parent drug offenders or prison-based family treatment programs for incarcerated parents of minor children.
  - Improvements in education at state, tribal, and local prisons, jails and juvenile facilities.
  - Technology career training demonstration programs.
- **Enhanced drug treatment and mentoring programs, including**
  - Continued and improved drug treatment programs at state, tribal and local prisons, jails or juvenile facilities. (Does not apply to federal prisons.)
  - Nonprofit and tribal initiatives to provide mentoring and other transitional services. (Does not apply to federal prisons.)
  - Nonprofit initiatives to provide mentoring, job training, and job placement services to eligible offenders (over the age of 18 and never convicted of a violent or a sex-related offense). (Applies to both federal and state prisons.)
- **Improved federal offender reentry (applies to federal prisons only), including:**
  - Demonstration programs that establish a federal prisoner reentry strategy.
  - Assistance to prisoners with obtaining identification prior to release.
  - A pilot program called “Elderly and Family Reunification for Certain Nonviolent Offenders.” This program will probably take place at a single facility designated by the Attorney General and will allow eligible elderly offenders who have served ten years or more of a long sentence to serve out the remainder of their terms in home detention. (Please see FAQ on this program below for more information on who is eligible.)



- A demonstration program to supervise high risk individuals in community corrections facilities and home confinement.
- **Reentry research**
  - Funding for research on juvenile and adult offender reentry, post-incarceration supervision violations and revocations, the needs of incarcerated parents, and the effectiveness of depot naltrexone for heroin addiction.
- **Community corrections (applies to federal prisons only)**
  - The Bureau of Prisons (BOP) shall ensure that a prisoner serving a term of imprisonments spends a portion of the final months of that term (not to exceed 12 months) in a community correctional facility or appropriate conditions that will afford the prisoner a reasonable opportunity to adjust and prepare for the reentry of that prisoner to the community. The BOP may place a prisoner in home confinement for the shorter of 10 percent of the term of imprisonment or six months.

**Q: What is a demonstration program, demonstration project or pilot program?**

**A:** These are all different ways of describing an experimental program that takes place in a limited number of prisons and that is designed to show the government whether or not a program will work.

**Q: How does the SCA encourage increased use of halfway house placement prior to release from federal prison?**

**A:** It clarifies the statute governing federal halfway house placement prior to release, and ensures that prisoners are given consideration for longer placements – but it does not require that the BOP put people in halfway houses earlier or for longer periods of time. The SCA:

- Requires the BOP to ensure that, to the extent practicable, a prisoner is considered for halfway house placement or other conditions assisting in release preparation for up to 12 months, not just up to six months as set forth in current law. **This provision does not require the BOP to grant each prisoner 12 months in a halfway house.** In fact, the BOP recently stated that while it would consider each prisoner individually, the standard amount of time most prisoners would receive would be only a maximum of 6 months, and only in extraordinary cases would a prisoner receive more than 6 months halfway house time;
- Makes a strong statement about how the BOP should approach pre-release halfway house decisions. It directs the BOP to issue regulations that ensure that placement in a halfway house is, among other things, determined on an individual basis and of “sufficient duration to provide the greatest likelihood of successful reintegration into the community”;
- Eliminates 18 U.S.C. § 3624(c)’s reference to placing a prisoner in a halfway house for only 10 percent of the prisoner’s sentence, a provision the BOP has relied on to limit halfway house time to only the final 10 percent of the person’s good-time adjusted sentence or six months, whichever was shorter. In the past, the BOP had relied on a mistaken reading of the 10 percent provision to issue regulations limiting its own ability to consider a prisoner for pre-release halfway house to the final 10 percent or six months of the prisoner’s good-time adjusted sentence – the SCA fixes this problem;
- Clarifies that BOP’s broad discretion to determine the place of confinement, including to a halfway house (but not home confinement) is not limited by 18 U.S.C. § 3624(c). That is, any limits expressed in the halfway house provision, 18 U.S.C. § 3624(c), do not restrain the BOP’s discretion to determine the place of imprisonment under 18 U.S.C. § 3621(b).



**Q: When can someone be placed on home confinement?**

**A:** The SCA gives the BOP discretion to place a prisoner in home confinement for six months or 10 percent of the whole term of imprisonment, whichever is less. This section of the bill does not require the BOP will award six months, 10 percent or any time on home confinement.

**Q: Who benefits from the change in halfway house time? When will this go into effect?**

**A:** While the SCA went into effect immediately upon receiving the President's signature, the BOP was provided 90 days after that to issue regulations implementing the new halfway house provisions. The SCA required that the BOP's regulations must ensure that halfway house placement is determined on an individualized basis and is sufficiently long to provide the greatest chance for successful reentry. Again, the SCA does not guarantee or give anyone the right to the full 12 months in a halfway house, only the right to be considered for up to 12 months in a halfway house.

**Q: Has the BOP issued new regulations implementing the halfway house provisions of the SCA?**

**A:** Yes. The BOP was originally given 90 days to issue regulations to implement the SCA's halfway house provisions. However, more than 90 days passed before the BOP issued regulations. The BOP did issue several statements before it issued a regulation:

On April 14, 2008, a guidance memo issued by the BOP stated that, except in unusual cases, six months would be long enough to ensure that a prisoner could successfully reenter the community.

At a July 2008 conference put on by the U.S. Sentencing Commission, a BOP representative stated that it was unlikely there would be a general increase in halfway house time to more than six months, but that individuals would nevertheless be considered on a case by case basis. They offered two reasons why:

- More than six months in a halfway house is "counterproductive" in preparing prisoners for release; and
- Halfway house placement costs more than keeping someone in medium- or low-security prison.

Finally, on October 21, 2008, the BOP issued an "interim rule with request for comments." The BOP explained that the SCA's 90-day timeframe was too short to allow the BOP to follow the usual process of publishing a proposed regulation and seeking comments from the public. Instead, the BOP published the "interim rule with a request for comments," and that interim rule went into effect immediately. The BOP announced that it will "consider and discuss comments received during the comment period in our final rule document." The BOP's interim rule is available online at <http://www.setonresourcecenter.com/register/2008/oct/21/62440A.pdf>.

**Q: What does the BOP's new interim rule say about how the BOP will decide how much time people will serve in halfway houses?**

**A:** Unfortunately, the BOP's new interim rule provides few clues on how the BOP will implement the SCA's halfway house provisions. The new BOP interim rule simply restates the SCA's requirement that the BOP give individualized consideration to each prisoner when deciding how much halfway house time to award. This "individualized consideration" will include considering the five factors set forth in 18 U.S.C. § 3621(b), as well as ensuring that the time granted to each prisoner is long enough "to provide the greatest likelihood of successful reintegration into the community." The five factors that must be considered when determining how long a prisoner serves in a halfway house are:

- (1) the resources of the facility (i.e., the halfway house) 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
- (5) any pertinent policy statement issued by the Sentencing Commission pursuant to 28 U.S.C. § 994(a)(2).

**Q: Has FAMM responded to the BOP's interim rule?**

**A:** Yes. On December 22, 2008, FAMM and the National Association of Criminal Defense Lawyers (NACDL) submitted written comments regarding the BOP's interim rule. FAMM and the NACDL argued that the interim rule was an effort by the BOP to reinstate a categorical rule that halfway house time would be limited to 6 months. This categorical limitation violates the law and flies in the face of Congress's plain intent in passing the SCA:

- Congress passed the SCA because it wanted each and every prisoner to get meaningful, *individualized* consideration for how much time they should spend in a halfway house – the BOP's interim rule is merely an effort to reinstate the old categorical rule that all prisoners get a maximum of only 6 months in a halfway house;
- Courts and the Bureau of Prisons have long recognized halfway houses as “places of imprisonment” – in other words, the BOP could designate a person to serve part *or even all* of his sentence in a halfway house. The BOP's recent decisions to rename halfway houses “Residential Reentry Centers” and to limit time in these “RRC's” to only 6 months are efforts to restrict halfway houses only to reentry, when by law they can be used for much greater portions of the sentence or even an entire sentence;
- Six months is the maximum amount of time, historically, that the BOP has allowed prisoners to serve in halfway houses. The BOP has not released any research supporting its claim that more than 6 months in a halfway house will be harmful to offenders;
- Contrary to the BOP's claims, the per-day cost of placing a person in a halfway house is, in fact, lower than the per-day cost of keeping a person in prison.

The written comments from FAMM and NACDL are available online at [http://www.famm.org/Repository/Files/NACDLFAMMCCCcomment\(12-22-08\).pdf](http://www.famm.org/Repository/Files/NACDLFAMMCCCcomment(12-22-08).pdf).

**Q: Will the SCA let elderly prisoners out early?**

**A:** The SCA includes a pilot program for federal prisoners called the Elderly and Family Reunification for Certain Nonviolent Offenders. It is a demonstration program that may be established at one or more BOP facilities. At this time, FAMM does not know which facilities – or how many facilities – will have one of these programs. At the facilities that have the program, the BOP can select individuals who meet the following criteria for early release to home confinement:

- i. not less than 65 years of age;
- ii. 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 (as defined in section 16 of title 18, United States Code), sex offense (as defined in section 111(5) of the Sex Offender Registration and Notification Act), offense described in section 2332b(g)(5)(B) of title 18, United States Code, or offense under chapter 37 of title 18, United States Code,
  - and has served the greater of 10 years or 75 percent of the term of imprisonment to which the offender was sentenced (75 percent becomes more than 10 years when the sentence is for longer than 160 months);
- iii. has not been convicted in the past of any federal or state crime of violence, sex offense, or other offense described in clause (ii);



- iv. has not been determined by the Bureau of Prisons and in the sole discretion of the BOP, to have a history of violence, or of engaging in conduct constituting a sex offense or other offense described in clause (ii), even without a record of convictions;
- v. has not escaped, or attempted to escape, from a BOP institution;
- vi. with respect to whom the BOP 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. has been determined by the BOP to be at no substantial risk of engaging in criminal conduct or of endangering any person or the public if released to home detention.

The BOP is required to carry out this program in FY 2009 (that is, beginning in October 2008) and FY 2010. Congress has not appropriated any money yet for this program, but the BOP is currently working on a policy statement to implement the demonstration program and hopes, if its budget allows, to have demonstration programs in place at facilities nation-wide within the next two years.

**Q: Does the SCA mean that people in state prisons will get to do drug treatment sooner?**

**A:** Unfortunately, we do not know the answer to this question yet. Many prisons are likely to have increased funding for drug treatment programs. However, we do not know which prisons will be able to expand the number of drug treatment programs available to incarcerated individuals. In addition, increased numbers of programs are not likely to be immediate. Prisons will need to find qualified instructors for the new classes, and this process will take some time.

**Q: Does the SCA mean there will be more RDAP programs in federal prisons?**

**A:** No. It does not authorize new funding for more RDAP programs.

**Q: Does the SCA provide drug treatment as an alternative to incarceration?**

**A:** Not in the federal system. The SCA authorizes funding to states, tribal, or local prosecutors to expand, develop or implement qualified drug treatment programs that are alternatives to imprisonment. This does not apply to individuals convicted in a federal court. State, tribal or local prosecutors must apply for funding from the U.S. government and local entities if they would like to expand, develop or implement drug treatment programs that act as an alternative to incarceration. No state, tribal or local entity is required to enact such a program.

**Q: Does FAMM know where each demonstration program will be implemented, including alternatives to incarceration, drug treatment programs or the Elderly and Family Reunification program?**

**A:** No, FAMM does not know and is unable to track what prisons will carry out which demonstration programs. We urge you to let us know as new programs are introduced in prisons.

**Q: Does the SCA reinstate federal parole or increase the rate of good conduct time?**

**A:** No, the bill does not reinstate federal parole, nor does it increase the rate at which good conduct time is awarded. Similarly, the bill does not clarify or correct the BOP's present method of computing good conduct time.