

The Department of Justice Office of the Inspector General (OIG) today released a review of the Federal Bureau of Prisons' (BOP) compassionate release program. The OIG report found that the program has been poorly managed and implemented inconsistently, resulting in ad hoc decision making that has likely resulted in eligible inmates not being considered for release and terminally ill inmates dying before their requests were decided.

In the *Sentencing Reform Act of 1984*, Congress authorized the Director of the BOP to request that a federal judge reduce an inmate's sentence for "extraordinary and compelling" circumstances. Under the statute, the request can be based on either medical or non-medical conditions that could not reasonably have been foreseen by the judge at the time of sentencing. The OIG's review found that an effectively managed compassionate release program would result in cost savings for the BOP, and would assist in managing the continually growing inmate population and the resulting challenge to the capacity of the federal prison system. However, the report found ongoing problems with the BOP's management of the program, concentrated in the following four areas:

First, the BOP does not have clear standards as to when compassionate release is warranted and, specifically, whether particular medical or non-medical circumstances qualify for consideration. As a result, BOP staff has varied and inconsistent understandings of the circumstances that warrant consideration for compassionate release.

[UPDATE ISSUED BY THE OIG ON THE AFTERNOON OF MAY 1, 2013: Earlier this morning, the Office of the Inspector General was provided by the BOP with a guidance memorandum, dated yesterday, April 30, 2013, from the BOP Assistant Director/General Counsel, stating that the medical criteria for consideration for reduction in sentence under the compassionate release program may include (a) inmates diagnosed with a terminal, incurable disease whose life expectancy is eighteen (18) months or less, and (b) inmates who have an incurable, progressive illness or have suffered a debilitating injury from which they will not recover, who are either completely disabled or are capable of only limited self-care and are confined to a bed or chair more than 50% of waking hours, with consideration also given to any cognitive deficits.]

Second, the BOP does not have formal timeliness standards for reviewing requests. Although many inmates eligible for compassionate release have terminal illnesses and limited life expectancies, the BOP's applicable Program Statement only directs staff to "expedite" the review process. As a result, institutions have interpreted this direction differently. Not all institutions have timeliness standards, and even for those institutions that do, the timeframe for reviewing requests ranged from 5 to 65 days.

Third, the BOP does not have effective procedures to inform inmates about the program. The compassionate release program is not a BOP program about which staff is required to inform inmates. As a result, the means used to inform inmates about the program are informal and vary by institution.

Fourth, the BOP does not have a system to track all compassionate release requests, the timeliness of the review process, and whether decisions made by Wardens and Regional Directors on requests are consistent with each other and with BOP policy. During the period of our review, requests for compassionate release went from the individual facility Warden, to the BOP Regional Director, and then on to the BOP Central Office for consideration by the BOP Director. However, we found that the BOP tracked only those requests that were approved by both the Warden and Regional Director and then sent to the Central Office for the Director's consideration, and those of inmates who were appealing a Warden or Regional Director decision denying their original request, but not, for instance, requests that were denied by a Warden or Regional Director but not appealed. We also found that the BOP cannot determine if requests were processed in a timely manner because it does not track how long it takes to approve or deny requests. As a result, the BOP cannot determine if delays in the process exist, take corrective actions where delays occur, or ensure that inmates who may be eligible for the program, particularly those with terminal illnesses, are considered for release in a timely manner in light of their situations. According to case files the BOP provided, in 13 percent (28 of 208) of the cases in which inmate requests for compassionate release were approved by a Warden and Regional Director, the inmate died before the Director made a final decision. We also found that the BOP does not conduct any systematic reviews of decisions made by Wardens or Regional Directors to ensure that they are consistent with each other and with the BOP's Program Statement and the underlying statutory authority.

In addition to the problems in these four areas of management of the compassionate release program, we also found that the BOP does not maintain cost data associated with the custody of inmates eligible for consideration under the program, and that the BOP has conducted no analysis of cost savings achieved by releasing such inmates. As a result, neither the BOP nor the OIG can determine with any precision the costs associated with providing health care to inmates eligible for compassionate release or the cost savings that could be achieved by releasing eligible inmates.

Finally, the OIG report looked at the impact of the compassionate release program on public safety, and found a recidivism rate of only 3.5 percent (5 of 142) for inmates released through the program from 2006 through 2011. By comparison, the general recidivism rate for federal prisoners has been estimated to be as high as 41 percent.

The OIG made 11 recommendations to improve the BOP's management of the compassionate release program and to ensure that eligible inmates are considered for release in a timely and consistent manner. The BOP concurred with 9 of the recommendations and partially concurred with 2 recommendations.

The report released today can be found on the OIG's website at: <http://www.justice.gov/oig/reports/2013/e1306.pdf>.