THE OFFICE OF THE FEDERAL PUBLIC DEFENDER
FOR THE EASTERN DISTRICT OF VIRGINIA

PRESENTS A CJA PANEL TRAINING PROGRAM

MITIGATION
(AND OTHER MATTERS)
IN FEDERAL CRIMINAL CASES

Wednesday, November 20, 2019
Omni Richmond Hotel
100 South 12th Street, Richmond
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PROGRAM SCHEDULE

9:40    Program check-in begins

10:00   Mental Health Evaluations in Child Pornography Cases
        Travis Flower, J.D., Psy.D.
        Shauna Keller, Psy.D., CSOTP
        Katherine Snably, Psy.D., CSOTP

A panel discussion of the use of mental health evaluations in child pornography cases, including the pros and cons of an evaluation, the use of different assessment tools, using an evaluation report to most effectively tell the client’s story, and how to work with the expert in the report drafting process.

12:00   Lunch (on your own)

1:15    Common and Costly Sentencing Mistakes
        Justin Paperny, Co-Founder, Prisons Professors

A presentation of the common pitfalls (and how to avoid them) with federal sentencing, including preparing your client for the sentencing hearing.

2:15    Break

2:30    The First Step Act: What You Need to Know
        Mary Price, GC, FAMM

An explanation of the changes enacted by the First Step Act of 2018 that are most pertinent to federal criminal law practitioners, including changes to the mandatory minimums for drug offenders involving enhancements for prior drug convictions; broadening of the “safety valve” in drug cases; changes to 18 U.S.C. § 924(c); changes to “compassionate release;” and provisions regarding “earned” time credits.

3:30    Complete evaluations and adjourn
FACULTY INFORMATION

TRAVIS D. FLOWER

Clinical and Forensic Psychologist, Woodbridge Psychological Associates, PC (Woodbridge, VA)

Education: University of Texas at Austin, B.A. 1996; Widener University, M.A. 2002, J.D. and Psy.D. 2004 (Doctorate in Clinical Psychology); Licensed as a Clinical and Forensic Psychologist in Virginia, Maryland and Washington, D.C.

Professional: Psychologist, Keystone Center Extended Care Unit, 2005-07; Staff Psychologist, Saint Elizabeths Hospital, 2007-2019; Private Practice 2010-2019; Psychologist, Woodbridge Psychological Associates, 2019 to present. Specialties include forensic evaluations, consultation, and expert testimony in legal matters, with a primary focus on evaluating adults in criminal justice contexts, including evaluations of criminal responsibility, competency, sentence mitigation, and risk of violence and sexual violence.

SHAUNA KELLER

Clinical and Forensic Psychologist and Certified Sex Offender Treatment Provider, Woodbridge Psychological Associates, PC (Woodbridge, VA)


Professional: Psychology Intern, Sharper Future - Outpatient Sex Offender Treatment Program, California, 2007-2008; Psychologist and Senior Psychologist Specialist, Coalinga State Hospital, California, 2008-2009 and 2009-2011; Contract Clinical Psychologist, United States Navy aboard Marine Corps Base Camp Lejeune, North Carolina, 2011-2014; Clinical Psychologist, California Department of Corrections, 2014-2016; Clinical and Forensic Psychologist, Woodbridge Psychological...
Associates, Virginia, 2016 to present. Specialties include sex offender evaluation and risk assessment, combat-related trauma/stress and deployment issues for active duty or veteran service members, general sentence mitigation, competency, and mental status at the time of the offense.

JUSTIN M. PAPERNY  
Federal Prison Consultant, Corporate Ethics Speaker and Co-Founder, Prisons Professors (Los Angeles)

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Education: University of Oregon, B.S. 1992; Georgetown University Law Center, J.D. 1996.

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Professional: Psychology Intern, St. Peter Regional Treatment Center, St. Peter, Minnesota, 2011-2012; Psychologist II, Virginia Department of Juvenile Justice, 2013-2014; Senior Clinician, Fairfax County Adult Detention Center, 2014-2016; Psychologist, Center for Clinical and Forensic Services, 2015-2017; Clinical and Forensic Psychologist, Woodbridge Psychological Associates, 2016 to present; Quality Control Evaluation Reviewer, Virginia Department of Behavioral Health and Rehabilitation Services Assessment Review Panel, 2017 to present. Specialties include sex offender risk assessment and treatment, sexually violent predator evaluations, assessments with Spanish speaking clients, capital offense mitigation, competency, mental status at the time of the offense, capacity to waive Miranda rights, and general sentence mitigation.
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MENTAL HEALTH EVALUATIONS IN CHILD PORNOGRAPHY CASES

Travis Flower, J.D., Psy.D.
Shauna Keller, Psy.D., CSOTP
Katherine Snably, Psy.D., CSOTP

NOTES
Mental Health Evaluations for Individuals Charged with Sexual Offenses

Presented By: Shauna Keller, Psy.D., CSOTP  
Katherine Snably, Psy.D., CSOTP  
Travis Flower, J.D., Psy.D.

Spectrum of online sex culture

- Online sexual culture is vast, ranging from criminal (i.e., Child pornography, solicitation, sex trafficking, prostitution, etc.) to non-criminal and/or transgressive (BDSM, FetLife, adult chat rooms, etc.) interests and behaviors.

- When an individual is charged with a sexual crime their sexual behavior as a whole is scrutinized and that behavior often provides significant insight into their sexual desires and interests.
Sexual Offenses

- Non-contact offenses- includes child pornography, exhibitionism, voyeurism, sexual chatting with minors (without attempts to meet the victim)

- Contact offenses- any kind of sexual touching, manipulating/coercing/tricking victim to send naked pictures, sexual chatting with minor with attempt to meet victim (regardless if the attempt was successful), consensual sexual activity between a minor (assume 16 years of age) and an adult whose age is greater than 3 years older.

- There is a higher prevalence of sexual interest in children amongst child pornography offenders than offenders who commit a contact sexual offense against a child (Babchishin, Hanson, & Hermann, 2011).

Characteristics of Online Sexual Offenders

- Child pornography offenders typically are male, less antisocial with a minimal criminal history, if any, but they tend to be more sexually deviant and are likely to be pedophilic or hebephilic. They also tend to be younger with a higher level of education.

- Solicitation sexual offenders are unlikely to have a pedophilic interest because they tend to focus on adolescents and are hebephilic (Seto, 2013).

- Child pornography can be a better indicator of sexual preference than having sexual contact with children.
• Michael Seto and Karl Hanson (2011) suggest there are two views distinguishing those offenders who utilize the Internet to commit sexual offenses and those that used other means (e.g., becoming a coach to access children) to commit their offenses:

1. One view likens Internet offending to online banking; that is “Internet-facilitated sexual offending to be an extension of conventional offending.” The similarities and differences of the Internet and real world offending behavior resemble one another.

2. The second view of Internet-facilitated sexual offending maintains that these individuals would not have committed a sexual offense if the properties of the Internet did not exist. In other words the perceived anonymity, accessibility, and affordability.

Sexual Erotica

• Often times material is discovered that, although not illegal, is still concerning whether due to content or why the individual in question possesses such materials.

• Images containing minors, but are not considered to be pornographic (i.e., modeling pictures, child clothing magazines, etc.)

• Images of minors that cause sexual arousal and/or are utilized for such purposes.

• Often such images were obtained prior to the child pornography or used to initially satisfy the desire.
Pornography Preferences

- When trying to get a sense of a client’s sexual fantasies, a good question to ask is, “What type of pornography does he search for?” or “What terms does he enter into the search engine (e.g., PTHC, PT, daddy-daughter, etc.,)?

- Many individuals have a favorite type of pornography, though they rarely openly disclose their preference.

- Professional v. “amateur” websites- this is a big distinction. Many people find the professional sites to be unrealistic and therefore less desirable. There seems to be a lot of people who now prefer amateur porn.

Types of Child Pornography

- Age ranges are very young (about 8 and under), tween (9-12’ish), and pubescent 13’ish -17

- Themes:
  - Incest
  - Adult on child
  - Child on child
  - Nudity or sexual posing
  - Sadomasochistic/bondage (S&M material does not contribute to risk estimates).
Other Online Sexual Material

- Sexually explicit stories that involve children

- Online forum/chat room presence that involves sexual conversations involving children or other sexual behaviors. Some individuals have limited interaction with other forum members, but instead are a voyeur to the conversation.

- Pseudo online luring is when adults engage in fantasy role playing with one person taking on a role of a minor (Seto, 2013).
What is Deviant Arousal?

• Repeated sexual arousal to themes that are illegal or that lack consent.

• *Deviant is not synonymous with fetish or “non-traditional” sex.*

• Examples of deviant arousal patterns are sex with children, rape, bestiality, incest.

Determining Paraphilic and other Deviant Interests

• Ways in which sexual interests can be measured:

1. Objective measures- like the PPG and viewing time measures like the Abel and Look. These methods are not perfect, they have drawbacks as well.

2. Self-report- actually does happen some times. Some self-reporters are aware of the deviant nature of their admission, some are not.

3. Offending and non-offending behaviors (e.g., interest in child-like activities)

4. Content of pornography they view. However, simply having CP on your device does not always equate to pedophilic interest.
Assessing Sexual Interest within Child Pornography

Factors to consider when determining an Individual’s sexual preference (Seto, 2013):

• Amount of images/videos

• Ratio of specific pornography categories to others

• Frequency of downloading and viewing and recency of access

• Characteristics of children depicted within the pornography (gender, age, secondary sexual characteristics)

Assessing for Pedophilic Interest

METADATA IS CRUCIAL

• Amount of pubescent v. clearly prepubescent porn- not just adult v. child. Does the individual have secondary sex characteristics (i.e., breast development, hips, pubic hair, etc.)?

• Organization of pornography- Is the material sorted (i.e., arranged in a particular fashion according to genre, victim type, or some other feature). This provides a window into how much time and energy is spent in this activity.

• Frequency the file was viewed, saved, modified, how much of the video was watched, etc.

• Does he admit to becoming sexually aroused to the images and/or did he masturbate to the material.
• Some individuals may have an inordinate amount of pornographic material that they have collected that is not of interest to them, but could be used for trading or have yet to delete those images due to the large number of images to sort through. This type of stored content would be less indicative of a sexual preference compared to a person who organizes and manages the pornography they have obtained.

• Larger amounts of material does not predict sexual recidivism, nor does it correlate with admitted sexual interest in children. In part, large collections are fairly easily downloaded (torrents). As well, collecting large volumes of material may have more to do with a desire to collect than a desire to fantasize or masturbate to the material.

• Depending on the results of the metadata (e.g., time frame of downloads and frequency of viewing) alternative explanations of the offending behavior could be considered (e.g., Did an offense occur exclusively in the context of severe symptoms of mania or psychosis?)

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**Diagnostic Statistical Manual-5 (DSM-5)**

• There are 10 Paraphilic Disorders outlined within the DSM-5.

• When considering the possibility of a paraphilic disorder there are two criteria that are the same across the disorders. (American Psychiatric Association, 2013).

• Although there are sexual behaviors and fantasies that are inappropriate, not everyone that engages in them meets criteria for a paraphilic disorder.
Paraphilic Disorders

• The sexual fantasies, urges, or behaviors have been present for at least 6 months, are recurrent and cause intense sexual arousal from the specific fantasy, urge, or act.

• The individual has acted on these urges or the sexual urges or fantasies cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.

Pedophilic Disorder

• Diagnostic Criteria:

  1. Over a period of at least 6 months, recurrent, sexually arousing fantasies, sexual urges, or behaviors involving sexual activity with a prepubescent child or children

  2. Individual has acted on these urges, or the sexual urges or fantasies cause marked distress or interpersonal difficulty

  3. Individual is at least 16, and at least 5 years older than the child or children

  4. **Do not include an individual in late adolescence involved in an ongoing sexual relationship with a 12 or 13-year-old.***
Specifiers

- Exclusive Type
- Nonexclusive type
- Sexually attracted to males
- Sexually attracted to females
- Sexually attracted to both
- Limited to incest

Attraction to Prepubescent Features

- Hallmark symptoms of Pedophilic Disorder is sexual attraction to prepubescent features
- Age of 13 is generally used, however, the degree of physical maturation is the most important aspect
- Facial photos of victim or description of sexual maturation are helpful (i.e., females: developed breasts, hips, pubic hair; males: Adam’s apple, facial hair, increased muscle mass, etc.)
Pedophilic v. Hebephilic

• Hebephilia is a sexual attraction to young, but pubescent children (usually 11-14 years-old)

• Hebephilic Disorder is not recognized by the DSM

• Reason it is not in the DSM- although it is stigmatized and illegal, attraction to young, pubescent individuals is normal, from a biological and evolutionary standpoint

Development and Course

• Pedophilic interests usually start developing around puberty, when normal sexual interests start developing

• Like with most attractions, it typically persists throughout the lifetime (treatment success is variable)

• Sexual behaviors involving children usually diminish with advanced age (just like with other paraphilic behaviors and normal sexual behaviors. As you get older, your sexual desire begins diminishes)
Utilizing an Expert

Questions to ask yourself:

- What do I want to know or achieve?

- Does the client’s history, situation, or circumstance provide factors that can be useful in mitigation?

- What is the client’s risk to the community or probability to sexually recidivate?

- Does the client have a significant psychiatric illness or emotional problems that have not been adequately addressed or that contributed to the commission of his offending behavior?
Maybe you don’t know what you need or are looking for

• Client is unwillingly to share information and/or denies aspects of or all of the charges against them.

• Client’s presentation is complicated, seems off, or outright weird (technical term)

• There are multiple ways in which an evaluator can be of assistance or useful in forensic cases.

Within cases involving sexual offenses, evaluators are often utilized to perform the following evaluations:

• Sentence Mitigation

• Future Risk to the Community – Risk to Sexually Recidivate

• Diagnostic Clarification- for complicated client presentation

• Consultation/Determining what type of evaluation may be helpful

• Review of the client’s prior psychological or forensic evaluations which can assist in determining if factors were overlooked
Advantages and Disadvantages of an Evaluation

Advantages:

• Clients often share more with evaluators than their attorneys, especially when it pertains to intimate details of their lives (i.e., prior abuse, sexual history and interests, etc.)

• A client’s life experiences and/or circumstances, as awful, mundane, or privileged as it might be, can provide insight into their sexually offending behavior.

• Evaluators can provide a balanced picture of the client’s risk to recidivate Evaluators can also point out common misconceptions regarding sexual offending behavior that might otherwise be assumed to be correct

Disadvantages:

• Evaluations may uncover unfavorable conditions (e.g., pedophilic preference) or other information that may outweigh mitigating factors or level of risk to recidivate.

• Sexual preferences or other behaviors that the Court or others will not be able to move past

• Unreported prior sexual offenses

• Too many negative factors
Working with an Evaluator

• Prior to retaining an evaluator it is good to have a conversation with the evaluator about the referral question(s), case timeframe (we essentially work on Court deadlines), what his/her evaluation protocol will look like, and attorney and evaluator expectations.

• If a report is to be written, have a discussion about what content will be included in the report, so both you and the evaluator are on the same page.

Changes into the Final Product

After reviewing the report there may be statements or aspects of the report that you would like changed or removed.

• We are working through different lenses… Having an open discussion as to why you would like something altered/removed or asking why the evaluator included the information can often be a useful approach.

• Ultimately, it depends on the evaluator. Some say their reports are final, others may be willing to work with you, as long as the requested changes do not alter their clinical opinion or the important points in the report.
Report Components

The main components of a report include:

- Client’s Background
- Findings
  - Testing/Risk Assessment
- Conclusions
- Recommendations

Psychological Testing

- Psychological testing needs to be considered within the context of the referral question
- Complicated presentation
- Use within risk evaluations

**It is important to consider and discuss how the results could support or undermine sentence mitigation.**
Sexual Risk Assessment Measures

• The rules of each assessment determine whether that tool can be utilized in assessing risk for recidivism. These rules can be tricky and you really have to know what you’re doing to use them.

• Does the assessments require a conviction in order to be utilized or just charges?

• Initial Charges v. Convictions

• Manufacturing v. Possession of Child Pornography

Static v. Dynamic Risk Factors

• Risk factors can influence recidivism, but differ in their amenability to treatment. These are factors that are identified throughout risk assessments.

• Static risk factors- aspects of the offenders' histories that are not amenable to deliberate intervention, such as prior offense(s) charges and convictions.

• Dynamic risk factors- those features that are potentially changeable, such as substance abuse or emotional regulation problems. An individual’s dynamic factors can be viewed as potential causal factors toward offending behavior.
Static Risk Assessments

- Risk Matrix 2000 (Thorton, 2007; 2017)
- Child Pornography Offender Risk Tool (CPORT) (Eke, Helmus, & Seto June 2018)
- Correlates of Admission of Sexual Interest in Children (CASIC) (Eke & Seto, 2013; Seto & Eke, 2017)

Static – 99R

- Actuarial risk assessment instrument designed to assess risk of sexual recidivism for adult males who have already been charged with or convicted of at least one sex offense against a child or a non-consenting adult.
- Evaluates the risk of sexual recidivism based on commonly available demographic and criminal history information when applied to the appropriate reference group that the offender most closely resembles.
- Risk level is considered a baseline estimate of risk to sexually recidivate; it is not a prediction specific to the individual
- On average it demonstrates only moderate predictive accuracy
• Static – 99R scores translate into risk levels, that although indicate a risk categories, they also discuss criminogenic needs and risk compared to other offenders.

1. Level I – Very low risk (Scores of -3 to -2)
2. Level II – Below average risk (Scores of -1 to 0)
3. Level III – Average risk (Scores of 1 to 3)
4. Level IVa – Above average risk (Scores of 4 to 5)
5. Level IVb – Well above average risk (Scores of 6+)

Risk Matrix 2000 (RM2000)

• Widely used in the United Kingdom, but has an international version that is utilized.

• RM2000 is an actuarial measure that provides a risk classification process for males aged at least 18 who have been convicted of a sexual offense.

• At least one of these sexual offenses should have been committed when the perpetrator was aged 17 or older.

• Utilizes simple factual information about offenders’ past history to divide them into broad categories that differ substantially in their rates of reconviction for sexual or other violent offences.
• The RM2000 consists of two scales
  • Risk Matrix 2000/Sex is a prediction scale for sexual offending
  • Risk Matrix 2000/Violence is a prediction scale for non-sexual violence (NSV) engaged in by sexual offenders.

• The meta-analysis conducted supported that the Risk Matrix 2000 scales show moderate predictive accuracy, which are consistent with results obtained by other similar prediction scales. (Hanson & Morton-Bourgon, 2009; Helmus, Babchishin, & Hanson, 2013)

• Similar to the Static–99R this measure can be utilized for dual offenders.

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Child Pornography Offender Risk Tool (CPORT Version 2)

• The CPORT is the only empirically developed tool for child pornography offenders. "It is a risk assessment tool designed to predict any sexual recidivism among adult male offenders with a conviction for a child pornography offense (Seto & Eke, 2015).

• The CPORT contains 7 items that relate to the offender's age, criminal history, sexual interest in children, and child-related content. It is to be used for adult offenders whose index offense contains a conviction of a child pornography charge.

• The CPORT’s small sample size does not allow for reliable recidivism estimates and applying the risk level framework (i.e., Level 1, 2, etc.) may not distinguish the individual’s actual risk.
At this time, the authors do not recommend use of the CPORT with reference to reporting recidivism estimates or probabilities until there are further validation studies.

Rather, the CPORT may be useful in ranking offenders in relation to risk management (e.g., supervision and/or treatment).

An individual's score on the CPORT can be described by providing percentile estimates about how this individual’s risk compares to other offenders (i.e., higher score, same score, lower score), not to infer absolute recidivism rates.

CPORT Limitations

It was developed to assist in the prioritization of cases for law enforcement and therefore the variables assessed are those available during the investigation period and lack items from a clinical assessment.

The CPORT does not include all relevant risk factors (e.g., phallometric testing- PPG) relating to child pornography and sexual offending. However, most measures can not include all risk factors (e.g., static v dynamic risk factors)

The CPORT poses challenges in utilizing the standardized 5 level risk/need classification system adopted by other risk tools (i.e., Static – 99R, Stable – 2007, etc.)
Correlates of Admission of Sexual Interest in Children (CASIC)

CASIC is a 6 item measure that correlates with indication of pedophilic or hebephilic sexual interests.

1. Never Married
2. Child pornography content included videos
3. Child pornography content included sex stories involving children
4. Evidence of interest in child pornography spanned 2 or more years
5. Volunteered in a role with high access to children
6. Engaged in online sexual communication with a minor or officer posing as a minor.

CASIC score of 3 and higher can be used to substitute for missing information on CPORT Item 5

Stable – 2007 Dynamic Risk Assessment
(Fernandez, Harris, Hanson & Sparks, 2014)

- The Stable – 2007 was developed to identify domains of behavior and psychological functioning that may be amenable to treatment and supervision, to assess change in intermediate-term risk status, and to help predict recidivism in sexual offenders.

** There is a caveat, the STABLE-2007 can be used on its own to identify targets for treatment and intervention, but in order to estimate recidivism rates it must be combined with a static risk scale. **
• Stable – 2007 consists of 13 factors organized into five subsections
  1. Significant social influences
  2. Intimacy deficits
  3. Sexual self-regulation
  4. General self-regulation
  5. Cooperation with supervision

• The relevance/strength of each of the 13 factors for the individual in question is considered, and a corresponding numerical rating is assigned.

• Based on the total score, offenders can be assigned to one of three risk categories (Low, Moderate, High) that pertains to that individual’s criminogenic needs.

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Composite Score

• The Stable-2007 can be combined with a static risk assessment (Static-99R, Static-2002, Risk Matrix 2000) to provide a composite assessment of risk, and to produce estimates of sexual recidivism. These three static assessments provide a similar level of predictive accuracy.

• The composite assessment places the individual within the standardized risk framework (Level I/II/III/IVa/IVb) for supervision and intervention.
Structured Professional Judgment (SPJ) Risk Assessment

- The Sexual Violence Risk – 20 (SVR-20) is a structured professional judgment (SPJ) risk assessment tool.

- The SVR – 20 is a 20-item instrument including both static and dynamic risk factors that capture three domains:
  1. psychosocial adjustment risk factors
  2. sexual offense risk factors
  3. future plans risk factors.

- Total scores are expressed as an estimate of relative risk and placed in a categorical risk judgment (Low, Moderate, High) and are not to be used as statistical predictors of risk, but rather as an important piece of a larger formulation process.

Other Risk Tools

The Abel Assessment for Sexual Interest-3 (AASI-3) (Abel, 1995)

The Look

- Both measures were designed to measure an individual’s sexual interest and to obtain information regarding involvement in a number of abusive or problematic sexual behaviors. The assessments are performed on a computer and the programs measure the amount of time that a person views each picture. Longer viewing time is indicative of a sexual interest/preference.
Assessment Take Away

• As evaluators, we utilize, to the best of our ability, what is available with regard to actuarial measures and research to support use of those measures.

• **However**, it is important to combine both static and dynamic assessments, when feasible, because static risk scales alone do not appear to provide consistent estimates of recidivism across samples (Helmus, Hanson, Thornton, Babchishin, & Harris, 2012). Dynamic factors are important.

• When a dynamic assessment is unable to be utilized, considering the offenders dynamic risk and protective factors can provide very useful information.

Research - Internet-only Offenders

• Internet-only offenders who go on to commit known sexual re-offenses are likely to commit another Internet offense, rather than escalating to a contact sexual offense (Seto, Hanson & Babchishin, 2011; Wakeling, Howard & Barnett, 2011).

• Offenders who commit sexual offenses online have similar dynamic risk factors to offline offenders, but Internet offenders have greater self-control and more psychological barriers to acting on their deviant interests, than the latter (Babchishin, Hanson, & Hermann, 2011).

• Child pornography offenders are likely to be pedophiles, whereas solicitation offenders appear to be predominantly interested in adolescent females (Seto, 2015).

• The ratio of child pornography content depicting boys compared to girls predicts child pornography recidivism (Eke & Seto, 2012), which is in line with much research showing that contact sex offenders who target boys are more likely to be pedophiles and more likely to sexually reoffend than those who target girls (Seto, 2008).
Questions?

Contact Information

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James: Case Vignette 1

Charge(s) and Conviction(s)
The offenses occurred between March 2014 and May 2016. James was charged with 12 counts and ultimately convicted on counts two, three, four, and eleven.

- Count One: Unlawful Transport of Explosive Materials by a Non-Licensee
- Count Two: Illegal Possession of a Machine Gun
- Count Three: Receipt and Possession of Unregistered Short-Barreled Rifles
- Count Four: Receipt and Possession of Unregistered Destructive Devices
- Counts Five through Ten: Production and Attempted Production of Child Pornography
- Count Eleven: Possession of Child Pornography
- Count Twelve: Witness Tampering

** For purposes of this vignette Counts One through Four and Twelve will not be discussed, but are noted for information purposes.

The Offense Conduct

On May 5, 2016, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) Special Agents executed federal search warrants at two properties associated with James, including his personal residence and his childhood home. At the personal residence, law enforcement located, among other items, an underground bunker containing a cache of weapons, explosives, destructive devises, and child pornography. Child pornography was also discovered on electronic devices seized inside and outside the residence.

Numerous electronic devices were seized from James’ residences that included assorted covert recording devices. During the search warrant of his main residence, a 17-year-old minor was present and admitted that James instructed the minor to remove a laptop, a camera, and a external hard drive from the residence and cover them with leaves in the woods behind the residence.

Forensic analysis of James’ electronic devices and the following was discovered:

- User created folders entitled ‘[name of Victim 1, Victim 2, and Victim 3]’ with a subfolder labeled ‘Hidden Camera Videos’ and ‘toy hauler and bedroom.’ The folders contained videos that James surreptitiously recorded (at different times) of both victims using a hidden surveillance camera. The videos depict victims in various stages of undress with some videos of their genitals being exposed to the camera, and the camera focuses in on their genitals. During the period of time the recording were made all victims were adolescents (i.e., 15-17).

In total, James recorded over 100 videos capturing the genitals of Victim 1 and Victim 2 between March 2014 and January 2016. Additionally, he created screen captures of the portions of the videos where Victim 1 and Victim 2 were nude with their genitals exposed.

James also possessed other images and videos of child pornography that do not appear to have been produced by him, including depictions of prepubescent minors and depictions of bondage involving minors. James’ collection of child pornography included more than 280 images and 54 videos depicting children engaged in sexually explicit conduct. He also had file boxes of pictures of predominately pubescent boy models.
Luke: Case Vignette 1

THE OFFENSE

Charge(s) and Conviction(s)

The National Center for Missing and Exploited Children (NCMEC) Cyber Tipline indicated that on October 1, 2016, Luke had uploaded one image of child pornography utilizing his Google account under a factious user name. On January 1, 2017, Google submitted a second report that indicated Luke had uploaded four images of child pornography. The descriptions of the images of child pornography depicted minor females exposing their genitals and/or engaged in a sexually suggestive act.

Upon seizure of his laptop and external hard drive, 118 image files and 131 video files depicting child pornography was discovered on his laptop and the external hard drive contained 158 image files and 53 video files depicting child pornography. Several of these images depicted minors engaged in sexual intercourse and other images depicted prepubescent children exposing their genitals in a lascivious manner. Luke was charged with two counts of distribution of child pornography, four counts of receiving child pornography, and two counts of possession of child pornography. He was ultimately convicted of one count of Possession of Child Pornography.
Looking Beyond the Screen: A Critical Review of the Literature on the Online Child Pornography Offender

Marie Henshaw1, James R. P. Ogloff1, and Jonathan A. Clough2

Abstract
This article reviews the current literature pertaining to those who engage in child pornography offending. The basic characteristics of online child pornography offenders (CPOs) and related typologies are briefly presented prior to reviewing the comparative literature pertaining to CPOs and child contact sexual offenders. In general, CPOs have been found to be relatively high functioning and generally pro-social individuals with less extensive and diverse offending histories than contact offenders. CPOs also display high levels of sexual pre-occupation, deviant sexual interests, and deficits in interpersonal and affective domains that surpass those of contact offenders. Although further research is required to replicate and clarify preliminary findings, the available evidence indicates that existing sexual offender risk assessment tools and treatment programs are not suitable for use with CPOs, and thus require revision and empirical evaluation prior to widespread use among this population. The article concludes with implications for clinical practice and directions for future research.

Keywords
child pornography, online sexual offending, Internet, risk factors, treatment needs

In late 2007, a European website was hacked and 99 images of child pornography were posted on the website. Within just 76 hours, the website had received 12 million hits from more than 144,000 Internet Protocol (IP) addresses across 170 countries.

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The magnitude of online activity that occurred in the 3 days in which this material remained on the Internet emphasizes the way in which the Internet has dramatically altered the ability to access, possess, distribute, and produce child pornography in modern society. Although involvement with child pornography long pre-dates the advent of the Internet, the mass communication capabilities afforded by the Internet have exponentially increased the availability and accessibility of this material (Wall, 2007), resulting in an increase in child pornography offending over the last two decades (Brennan, 2012; Motivans & Kyckelhahn, 2007; Victoria Police, 2014; Wall, 2007).

Accordingly, questions concerning the motives and characteristics of those who engage in online child pornography offending have been raised, and have led to both public and professional concerns regarding the risk of harm to children posed by these offenders. Underpinning these concerns is the key question of whether or not child pornography offenders (“CPOs”) represent a distinct class of sexual offender that differs from traditional “offline” contact sexual offenders, or whether they are merely typical child sexual offenders employing a new medium to facilitate their offending (Seto & Hanson, 2011). The answer to this question has important implications for determining whether the risks and treatment needs of CPOs are being appropriately identified and targeted by current clinical practice in the field of forensic psychology.

**Scope of the Review and Terminology**

This article aims to highlight what is currently known, as well as gaps in available knowledge, regarding those who engage in online child pornography offenses. The challenges associated with characterizing the CPO population in light of the limitations of the extant literature will be briefly discussed prior to providing a critical analysis of the literature surrounding the demographic, psychosocial, offending, and psychological characteristics of CPOs. The findings of studies that compare the characteristics of child pornography and child contact sexual offenders will be a particular focus of this article. This research has important applications, as it informs the extent to which extant risk assessment and treatment practices pertaining to contact child sex offenders may extend to CPOs.

It is important to acknowledge that the Internet has facilitated the sexual exploitation of children in broader sense, including solicitation or “online grooming” offenses, as well as child “sexual tourism” and trafficking (Calder, 2004; Seto, 2013). However, it is the view of the authors that these crimes likely differ in nature when compared with child pornography offenses. With the exception of those production offenses where the offender is directly involved in the abuse of the child, child pornography offenses do not typically involve the direct victimization of children. In contrast, solicitation and sexual tourism offenses commonly have contact offending, or at least sexual interaction with a child, as their aim. Thus, while acknowledging that this distinction is not always clear within the literature discussed, particularly the earlier studies, this article seeks to limit discussion to those engage in child pornography offenses specifically. As such, literature relating specifically to the online solicitation and trafficking of children will not be addressed within this review.
Given that the majority of modern child pornography offenses are committed online (Motivans & Kyckelhahn, 2007), the term “child pornography offender” (CPO) will be adopted throughout to refer to those who use the Internet to access, download, distribute, or produce child pornography. Although it is acknowledged that increasingly popular terms such as “child exploitation material,” and “child abuse material” (Criminal Code Act, 1995; Virtual Global Taskforce, 2011) more accurately reflect the nature of the harm committed against those depicted in such material, the term “child pornography” has been adopted throughout this review to remain consistent with the majority of the existing literature and legislation. Similarly, unless otherwise specified, the term “contact offender” will be used to refer to those who engage in contact sexual offenses against children specifically.

The Heterogeneous Nature of CPOs

The increase in child pornography offending over the last two decades has resulted in an increased awareness of this phenomenon and a subsequent emergence of a small but growing literature base dedicated to understanding the unique motivations, characteristics, risks, and needs of those who engage in this type of offending. It is critical to emphasize from the outset that there are a range of people who are found to possess child pornography; as such, it is important to realize that when trying to characterize populations of CPOs, there will be a mixture of offenders with broad ranging motivations, histories, and characteristics. Thus, when dealing with individuals, due caution must be used not to assume that the offender has particular characteristics.

Preliminary research findings suggest that, on average, CPOs are almost exclusively male and Caucasian in ethnicity, and tend to be in their late-30s to mid-40s, employed and well educated (Bourke & Hernandez, 2009; Merdian, Wilson, & Boer, 2009; Motivans & Kyckelhahn, 2007; O’Brien & Webster, 2007; Seto, Reeves, & Jung, 2010; Wakeling, Howard, & Barnett, 2011). This is in stark contrast to findings pertaining to the general offending population, high proportions of whom are of ethnic minority status and have limited educational backgrounds (Beck & Harrison, 2006; Coley & Barton, 2006; Corrections Victoria, 2010; Harlow, 2003). Moreover, studies have typically reported low rates of historical and prospective offending in this population, with between 53% and 89% of CPOs having no known history of offending, and up to one third being convicted of further offenses following their involvement with child pornography (Barnett, Wakeling, & Howard, 2010; Eke, Seto, & Williams, 2011; Elliott, Beech, Mandeville-Norden, & Hayes, 2009; Endrass et al., 2009).

This basic characterization of CPOs would appear to indicate the existence of a somewhat specialist group of offenders who, outside of their involvement with child pornography, appear quite similar to the average member of the community. Although the majority of past comparative research has made comparisons between child pornography and contact offenders, there is evidence to suggest the presence of a third group (typically referred to as “dual” offenders) who engage in both child pornography and contact offenses (Seto, Hanson, & Babchishin, 2011). In fact, this may well be the largest group of so-called CPOs. Moreover, different patterns of offending are
emerging in clinical practice anecdotally. Typically, it has been assumed that offenders commence with viewing online child pornography and then “escalate” to contact offending. Increasingly, however, we are seeing the opposite pattern in our own clinical work, with some offenders with a history of contact offending reoffending by accessing or downloading online child pornography. Thus, there is no single pattern of offending and no single type of offender who engages with online child pornography. Although little is currently known about the process of dual offending, emerging research has reported some differences in the characteristics of contact, dual, and CPOs (Babchishin, Hanson, & VanZuylen, 2015; Elliott, Beech, & Mandeville-Norden, 2013), indicating that these are likely to constitute three distinct offending groups: CPO exclusively, contact only, and dual offending (i.e., child pornography and contact child sexual offending).

Moreover, although less attention has been paid to this within the empirical literature to date, there may also be important within-group differences among exclusive CPOs, given that various ways in which individuals can engage with sexualized materials of children. It is quite possible, for example, that those who access and download child pornography may differ in their characteristics to those who actively trade, sell, and produce child pornography online. Indeed, the small number of existing typologies pertaining to child pornography offending suggests that CPOs are a heterogeneous group who present with a range of motivations and behaviors associated with their offending (Aslan, 2011). Although an extensive review of these typologies is beyond the scope of this article, Table 1 provides a summary of each of the emerging typologies relating to child pornography offending, should readers wish to examine these in greater depth. However, a major weakness of this body of work is the dearth of empirical input, with these typologies typically being developed on the basis of clinical experiences and/or qualitative analysis of small and potentially biased samples. Moreover, none of the typologies has yet to be subject to empirical validation, limiting their generalizability and constituting a clear area for research in future.

**Challenges Within the Existing Literature**

Prior to presenting the available findings relating to the characteristics of CPOs in comparison with contact offenders, it is important to discuss some of the weaknesses within the existing literature. These weaknesses both limit the ability to make firm conclusions about those who engage in child pornography offenses, as well as to meaningfully synthesize and interpret findings within the literature. Key to this discussion is the significant variability in the way those who commit child pornography offenses are defined, labeled, and categorized within the empirical literature. For example, some studies have utilized broadly defined samples of “online” or “Internet” offenders, either collapsing different types of online sexual offenders into one big group or failing to adequately specify the offense types included within their samples (Hernandez, 2000; Middleton, Mandeville-Norden, & Hayes, 2009; Tomak, Weschler, Ghahramanlou-Holloway, Virden, & Nademin, 2009). Other studies have utilized methodologies that do not differentiate between those who exclusively commit child
### Table 1. Summary of the Main Typologies Relating to Child Pornography Offending.

<table>
<thead>
<tr>
<th>Author(s)</th>
<th>Focus</th>
<th>Categories</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hartman, Burgess, and Lanning (1984)</td>
<td>Behavioral/ motivational (Pre-Internet)</td>
<td>Closet collector</td>
<td>Covert interest in child pornography (CP), without direct victimization of children, believing this to be wrong.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Pedophile collector</td>
<td>Clear sexual interest in children, manifesting in “monogamous” child contact offending and varying levels of involvement in CP collecting.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Cottage collector</td>
<td>Non-commercial production and solicitation of CP in group contexts, with intent of forming connections with other CP collectors.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Commercial collector</td>
<td>Direct involvement in contact victimization for the sole purpose of benefitting financially from the production and dissemination of CP material.</td>
</tr>
<tr>
<td>Alexy, Burgess, and Baker (2005)</td>
<td>Behavioral</td>
<td>Trader</td>
<td>Collect and/or trade CP online. Includes possession, distribution, and production offenses.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Traveler</td>
<td>Engage in discussion with children online and use their skills at manipulation and coercion to meet a child in person for sexual purposes.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Trader/ traveler</td>
<td>Engage in both trading and traveling.</td>
</tr>
<tr>
<td>Sullivan and Beech (2004)</td>
<td>Untitled</td>
<td>Collect material as a larger part of sexual offending, which may include the direct sexual victimization of children.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Untitled</td>
<td>Collect material to feed an emerging sexual interest in children.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Untitled</td>
<td>Access material due to curiosity.</td>
</tr>
<tr>
<td>Lanning (2001)</td>
<td>Motivational</td>
<td>Situational</td>
<td>No specific sexual interest in children. Either offend as a result of 1. impulsivity or curiosity (<em>normals</em>), 2. a pattern of anger- or power-driven antisocial behavior (<em>morally indiscriminants</em>), and 3. a desire to profit financially from distribution of material (<em>profiteers</em>).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Preferential</td>
<td>Clear sexual interest in children, which is 1. specific to children and long-standing (<em>pedophiles</em>).</td>
</tr>
</tbody>
</table>
Table 1. (continued)

<table>
<thead>
<tr>
<th>Author(s)</th>
<th>Focus</th>
<th>Categories</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Private fantasy</td>
<td>Conscious creation of online text or digital images for private use. Nil networking, nil security, indirect abuse.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Trawler</td>
<td>Large collection of pornography in which child pornography features. Actively seeking child pornography using openly available browsers. Low level of networking, nil security, indirect abuse.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Non-secure collector</td>
<td>Actively seeking material, often through peer-to-peer networks. High level of networking, nil security, indirect abuse.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Secure collector</td>
<td>Actively seeking material but only through secure networks using encryption, passwords, or trading for entry. Driven by a desire to gather a collection. High level of networking, security measures utilized, indirect abuse.</td>
</tr>
</tbody>
</table>
Table 1. (continued)

<table>
<thead>
<tr>
<th>Author(s)</th>
<th>Focus</th>
<th>Categories</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Groomer</td>
<td></td>
<td>Culminating an online relationship with one or more children to establish sexual relationship (online or offline). The offender may or may not seek material in any of the above ways. Pornography may be used to facilitate abuse. Variable level of networking and security (dependent on victim), direct abuse.</td>
<td></td>
</tr>
<tr>
<td>Physical abuser</td>
<td>Direct contact offending with child pornography used to supplement or facilitate offending. The offender may or may not seek material in any of the above ways. May include production without intent to distribute. Variable level of networking and security, direct abuse.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Producer</td>
<td>Records own abuse or that of others (or induces children to submit images of themselves) and distributes to others. Variable level of networking and security, direct abuse.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Distributor</td>
<td>May distribute at any one of the above levels and may or may not have a sexual interest in children. Variable level of networking, security measures utilized, indirect abuse.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Merdian, Curtis, Thakker, Wilson, and Boer (2013) | Multi-dimensional Each individual is classified across three dimensions | Dimension 1: Fantasy or contact driven |

1. Where CP is used to fuel individual sexual fantasy (fantasy-driven offending) |

2. Where CP offending occurs as a result of contact offending (producing own materials) or as a means of facilitating contact offending by showing materials to potential victims to normalize adult–child sexual activity (contact-driven offending) |

Dimension 2: Motivation |

1. CP use is driven by a specific sexual interest in children, either in fantasy (possessors) or real life (producers; pedophilic) (continued)
<table>
<thead>
<tr>
<th>Author(s)</th>
<th>Focus</th>
<th>Categories</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>2.</td>
<td>Engage with CP as part of a wider pattern of sexual deviance and deviant pornography use (<em>general deviant sexual interest</em>)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3.</td>
<td>May be sexually interested in CP, but primarily motivated by the value of child pornography, either financially or as a currency to access other deviant materials (<em>financial</em>)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4.</td>
<td>Motivated by other, non-sexual reasons, such as curiosity, moral considerations, or the act of “collecting” itself (<em>other</em>)</td>
</tr>
</tbody>
</table>

### Dimension 3: Social component

An individual’s level of networking is determined by the pattern of interaction with CP-related technologies and like-minded others. A higher level of networking is considered to represent higher offending severity and possibly higher recidivism risk.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th>1.</th>
<th>Primarily engaged in static online services (e.g., websites) with little or no use of interactive communication tools (e.g., chat services or message boards; <em>low networking</em>)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>2.</td>
<td>Indicated by use of interactive communication tools (e.g., chat services or messaging boards), being a member of CP newsgroups, or trading material with like-minded others (<em>high networking</em>)</td>
</tr>
</tbody>
</table>

Table 1. (continued)

Pornography or contact offenses and those with a history of both offending, typically due to categorizing offenders based only on their most recent offenses, rather than their entire criminal histories (Aslan & Edelmann, 2014; Elliott et al., 2009; Jung, Ennis, Stein, Choy, & Hook, 2013; Webb, Craissati, & Keen, 2007). Therefore, it cannot be guaranteed that offenders within their samples constitute “pure” child pornography or contact samples. As such, although we use the term “child pornography offender” to refer to those who commit child pornography offenses exclusively, it is emphasized that such clarity is not always afforded within the extant literature base.

Finally, an additional challenge to accurately characterizing the CPO population relates to the broader issue of the infancy of the Internet as a technological entity, and...
thus the infancy of online child pornography offending as a topic of empirical investigation. As such, the literature base pertaining to this phenomenon is currently small in size and scope, and in some instances, characterized by mixed findings. Similarly, most existing studies have used samples of convenience that are drawn from forensic populations, and thus unlikely to be representative of the entire population of child pornography users. Therefore, the characteristics of more sophisticated offenders who use additional technological measures to evade detection by police online remain unknown at this stage. It is possible that such individuals will differ from offender samples, and thus may constitute another form of heterogeneity within the broader group of people who engage with child pornography.

Comparisons Between Child Pornography and Child Contact Sexual Offenders

Despite the limitations outlined above, this article seeks to review the available findings pertaining to the characteristics of CPOs when compared with contact sexual offenders. Understanding the extent to which CPOs differ from other types of sexual offenders is crucial to enhancing current sexual offending assessment and treatment frameworks, which may not adequately address the needs of CPOs as separate to child contact sexual offenders. Although findings are best considered preliminary in nature given the small amount of comparative research that has been conducted to date, there is evidence to suggest that CPOs may differ from contact sexual offenders across a number of socio-demographic, psychosocial, criminological, and psychological domains. Table 2 provides a summary of these preliminary findings, including the instances where findings have been inconsistent across the existing literature.

Socio-Demographic Characteristics

As detailed in Table 2, findings pertaining to the demographic characteristics of CPOs have tended to be fairly stable among the available literature, with CPOs typically being more likely to be identified as Caucasian and of higher academic and occupational standing than child contact sexual offenders (Aslan & Edelmann, 2014; Babchishin, Hanson, & Hermann, 2011; Babchishin et al., 2015; Meridian et al., 2009). Although findings relating to offender age have been less consistent across the literature, a recent meta-analysis of the available research characterized CPOs as younger in age than contact offenders (Babchishin et al., 2015). It is possible that these differences may represent the demographic characteristics of the overall population of Internet users, as those who are younger and have higher levels of educational and occupational attainment are more likely to have access to the technology required to engage in child pornography offending (Tomak et al., 2009; Zickuhr & Smith, 2012). Similarly, findings related to ethnicity may reflect global Internet usage trends, given the limited accessibility and usage of the Internet in developing countries when compared with the Western world (International Telecommunication Union, 2011), as well as the fact that the majority of the available research data have been drawn from...
Table 2. Summary of the Characteristics of CPOs in Comparison With Contact Sexual Offenders.

<table>
<thead>
<tr>
<th>Variable</th>
<th>Outcome</th>
<th>Summary of findings</th>
</tr>
</thead>
<tbody>
<tr>
<td>Socio-demographics</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Age</td>
<td>Younger</td>
<td>Meta-analytic and other findings indicate that CPOs tend to be younger than contact offenders.</td>
</tr>
<tr>
<td>Ethnicity</td>
<td>Caucasian</td>
<td>With the exception of one study that reported no difference, CPOs have typically been characterized as less likely to be of ethnic minority status than contact offenders.</td>
</tr>
<tr>
<td>Education</td>
<td>Higher functioning</td>
<td>CPOs typically have higher levels of academic achievement than contact offenders, as measured by both categorical education attainment levels and total years of schooling.</td>
</tr>
<tr>
<td>Employment</td>
<td>Higher functioning</td>
<td>Comparisons regarding overall employment rates are lacking, a small number of studies have reported higher stability in employment and employment in more skilled positions among CPOs than contact offenders.</td>
</tr>
<tr>
<td>Relationship status</td>
<td>Lower functioning</td>
<td>CPOs are typically less likely to be involved in a romantic relationship than contact offenders, both at the time of measurement and historically.</td>
</tr>
<tr>
<td>Psychosocial background</td>
<td></td>
<td></td>
</tr>
<tr>
<td>History of sexual abuse</td>
<td>Less likely</td>
<td>Conflicting results among the two available meta-analyses, although the later findings indicate that CPOs are less likely to have experienced early sexual victimization than contact offenders. However, an additional study found no difference in rates of sexual abuse.</td>
</tr>
<tr>
<td>History of physical abuse</td>
<td>Less likely</td>
<td>Meta-analytic results indicate that CPOs are less likely to have experienced early physical victimization than contact offenders, however findings of an additional study found no difference in rates of physical abuse.</td>
</tr>
<tr>
<td>Mental health problems</td>
<td>Mixed findings</td>
<td>Meta-analytic and other findings suggest similar levels of lower severity mental disorder (depression and anxiety) across groups, but that contact offenders are more likely than CPOs to experience major mental illness. Whereas one study reported a higher level of contact with mental health services among CPOs than contact offenders, another reported no difference.</td>
</tr>
<tr>
<td>Substance use problems</td>
<td>Less likely</td>
<td>Meta-analytic findings suggest that contact offenders experience higher levels of substance use problems than CPOs, although an additional study reported no difference in substance use patterns.</td>
</tr>
<tr>
<td>Criminological</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Historical offending—Overall</td>
<td>Less likely</td>
<td>CPOs typically are less likely to have committed prior offenses and have less extensive criminal histories than contact offenders.</td>
</tr>
</tbody>
</table>

(continued)
Variable Outcome Summary of findings

<table>
<thead>
<tr>
<th>Historical offending—Sexual</th>
<th>Less likely</th>
<th>Meta-analytic and other findings indicate that CPOs demonstrate lower rates of historical sexual offending than contact offenders.a,c</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recidivism—Sexual</td>
<td>Undetermined</td>
<td>Although one study found the short-term rates of sexual recidivism (18 months) to be similarly low among both CPOs and contact offenders.f there has been no comparison of the recidivism trends of these groups over the longer term.</td>
</tr>
</tbody>
</table>

Psychological Offense-supportive beliefs Fewer CPOs tend to demonstrate more empathy toward victims, less distorted thinking regarding offending, and lower levels of identification with children when compared with contact offenders.a,c,h

CPOs have been found to demonstrate lower levels of antisociality, aggression, and psychopathic traits compared with contact offenders, as measured by standardized clinical personality and psychopathy inventories.a

Some initial evidence to suggest that the cognitive distortions held more strongly by CPOs tend to be specific to their offense type.i

Interpersonal and affective deficits Higher Similar levels of mood disorder when compared with other sexual offenders, but higher levels of emotional loneliness, underassertiveness, and passivity and lower levels of self-esteem have been found in the CPO population when compared with contact offenders.a,c

Fantasy proneness and sexual deviancy Higher Studies have reported that when compared with contact offenders, CPOs demonstrate higher levels of sexual pre-occupation and fantasy, sexual attraction to children, pedophilic fantasy, and use of sexual activity as a coping strategy.a,c

Note. CPO = child pornography offenders.

aBabchishin, Hanson, and VanZuylen (2015).
bAslan and Edelmann (2014).
cElliott, Beech, Mandeville-Norden, and Hayes (2009).
dBabchishin, Hanson, and Hermann (2011).
gJung and Stein (2012).
hMerdian, Curtis, Thakker, Wilson, and Boer (2014).
iHowitt and Sheldon (2007).

samples in Western countries. Thus, with growing number of Internet users across the life span and economic strata, the demographic characteristics of CPOs might well change over time.

Preliminary findings have also suggested that CPOs and contact offenders differ in terms of their functioning within romantic relationships. When compared with contact
sexual offenders, a higher proportion of CPOs have been found to identify as “single,” and fewer have reported being in co-habiting relationships or to have previously lived with a romantic partner (Elliott et al., 2013; Seto, Wood, Babchishin, & Flynn, 2012; Webb et al., 2007). Although it is difficult to make any definitive assertions at this point in time, two possible explanations for this are that CPOs demonstrate a lower level of interest in romantic relationships when compared with contact offenders, or alternatively, that CPOs are less skilled than contact offenders in initiating and maintaining intimate relationships. Both suggestions are supported by the available research pertaining to the psychological characteristics of CPOs and contact offenders, with higher levels of both sexual interest in children and interpersonal and affective deficits being reported among CPOs when compared with contact sexual offenders (Babchishin et al., 2015). Further research would be of assistance in clarifying this issue, however, given that conceptualizations of relationship status and functioning have been inconsistent among the small number of studies in this area.

Psychosocial Background

A small number of studies have also examined the psychosocial backgrounds of CPOs in comparison with contact offenders, allowing for the preliminary identification of potential differentiating factors in this domain. Building upon a prior meta-analysis of the characteristics of “online sexual offenders” (Babchishin et al., 2011), Babchishin and colleagues (2015) recently conducted a meta-analysis of 29 published and unpublished studies comparing CPOs with contact and/or dual offenders across a range of demographic, background, offending, and psychological variables. It was found that despite displaying similar levels of general mental health and psychological difficulties, contact offenders were more likely to use substances and to suffer from severe forms of mental illness, such as schizophrenia, than CPOs. In contrast, of the two studies that have reported on contacts with mental health services, both detected higher rates among CPOs than contact offenders (Aslan & Edelmann, 2014; Webb et al., 2007), although it should be noted that the difference did not reach statistical significance in one of the studies (Aslan & Edelmann, 2014).

In regard to early life adversity, the Babchishin et al. (2015) meta-analysis found that contact offenders were more likely to have experienced significant difficulties during childhood, including family disruption, conduct problems, and both physical and sexual victimization, when compared with CPOs. Interestingly, no significant difference in historical sexual abuse was detected between CPOs and contact offenders in the earlier meta-analysis (Babchishin et al., 2011), perhaps reflecting the fact that, unlike the later meta-analysis, dual offending was not accounted for. However, consistent with prior research that has suggested that early sexual victimization may play a role in the etiology of later sexual and violent offending (Ogloff, Cutajar, Mann, & Mullen, 2012; Stinson, Sales, & Becker, 2008), the original meta-analysis did find that both groups were more likely to have experienced sexual victimization in childhood than the normative population. Additional findings from a subsequent study were somewhat inconsistent with prior findings; although child pornography, contact, and dual offenders
were not found to differ on the basis of rates of childhood sexual or physical or emotional abuse, contact offenders were more likely to have experienced multiple forms of childhood abuse when compared with CPOs (Aslan & Edelmann, 2014). Such findings indicate a need for further research that teases out the potential and complex impacts of early victimization on both child pornography and contact offending.

**Offending Characteristics**

Despite concerns regarding the risk of contact offending that CPOs pose, very few studies have empirically compared the offending patterns of CPOs and contact sexual offenders, with the majority of the available findings relating to historical, rather than prospective, offending characteristics. When compared with contact offenders, CPOs have consistently been characterized as less likely to have committed prior offenses, both in regard to general offending (Babchishin et al., 2015; Elliott et al., 2009) and sexual offending specifically (Babchishin et al., 2015). In contrast, very little is known about the offending trajectories of CPOs as compared with contact sexual offenders, with the only existing study reporting that the rates of sexual recidivism were similarly low among both child pornography (3%) and contact (2%) offenders at an 18-month follow-up (Webb et al., 2007). Given the dearth of research in this area, it remains unknown whether these rates would remain stable over the longer term or across offenses of a non-sexual nature, neither of which have been subject to empirical examination at this stage, thus constituting questions for investigation within future research.

**Psychological Characteristics**

Although the current literature has tended to demonstrate more similarities than differences surrounding the psychological characteristics of child pornography and contact offenders (Merdian et al., 2009), some key differentiating features have been identified. As outlined in Table 2, there is evidence to suggest that CPO and contact offenders differ based on their antisocial or offense-supportive beliefs, interpersonal and affective characteristics, and their levels of fantasy proneness and sexual deviancy.

**Offense-supportive beliefs.** As a broad category, research surrounding offense-supportive beliefs has typically centered on levels of victim empathy, cognitive distortions and emotional identification with children. When compared with sexual offenders, CPOs have been consistently found to demonstrate fewer offense-supportive beliefs, typically displaying more empathy toward victims, less distorted thinking regarding offending, and lower levels of emotional identification with children (Babchishin et al., 2015; Elliott et al., 2009; Merdian, Curtis, Thakker, Wilson, & Boer, 2014). These findings are supported by other research that has identified higher levels of antisociality, aggression, and psychopathic traits among child-oriented and generalist sexual offenders when compared with CPOs, as measured by both clinical personality inventories (Magaletta, Faust, Bickart, & McLearen, 2014; Tomak et al., 2009) and a specific psychopathy screening tool (Webb et al., 2007).
However, it has been suggested that CPOs may hold distorted beliefs that relate specifically to their offense type, which are unlikely to be captured by existing measures (Howitt & Sheldon, 2007; Merdian et al., 2014). Howitt and Sheldon (2007) administered a cognitive distortion measure that incorporated items specific to child pornography offending to a small sample of child pornography, contact, and dual offenders, and found that CPOs endorsed statements relating to children being sexual objects and child pornography offenses being less harmful than contact offenses to a significantly higher degree than contact offenders. Similarly, although Merdian et al. (2014) did not find any difference in the level of endorsement of beliefs specific to child pornography offending among their sample of contact, dual, and CPOs, they considered the lower levels of endorsement detected among CPOs on traditional cognitive distortion measures as evidence to suggest that these measures are currently ill-equipped to detect offense-specific distortions among the CPO population. Although there is clearly a need for further research and development in this area, findings from the available literature appear to indicate that CPOs hold fewer generalized offense-supportive beliefs than contact sexual offenders.

Interpersonal and affective deficits. Variations among interpersonal and affective domains have also been recognized as factors that might differentiate CPOs and contact sexual offenders. Although affective and interpersonal deficits have been linked to sexual offending more globally (Hanson & Morton-Bourgon, 2005; Stinson et al., 2008), research has suggested that subtle differences in these domains can be observed among CPOs and other types of sexual offenders. For example, Babchishin and colleagues (2015) examined a number of interpersonal and affective variables in their recent meta-analysis. Although CPOs and contact offenders were not found to differ on the basis of broader intimacy, social or coping deficits, CPOs were found to present with lower levels of self-esteem and interpersonal assertiveness when compared with contact offenders. These findings seem to paint a picture of an offender who is passive in his approach to interpersonal relationships, consistent with the aforementioned findings of higher levels of single relationship status and lower functioning with romantic relationships within the CPO population.

Fantasy proneness and sexual deviancy. Alongside fewer offense-supportive beliefs and deficits in interpersonal functioning, research has also indicated that CPOs are highly sexualized individuals. Higher levels of sexual pre-occupation, fantasy (operationalized in the study as a tendency to identify emotionally with fictional characters), and use of sexual activity as a coping strategy have been identified in this population when compared with contact sexual offenders (Babchishin et al., 2015; Elliott et al., 2009). Moreover, higher levels of deviant sexual fantasy and interests, including pedophilia, have typically been detected among CPOs when compared with contact offenders, across studies utilizing both self-report and physiological measures of deviant sexual interests (Babchishin et al., 2015). Indeed, Seto, Cantor, and Blanchard (2006) provided compelling evidence to suggest that having a history of child pornography offenses was a stronger predictor of pedophilia than historical contact offenses against
children. Using a physiological measure of penile blood flow, they found that a significantly higher proportion of CPOs (61%) met physiological criteria for pedophilia when compared with both contact offenders (35%) and a control sample of patients with various sexual disorders (22%), and that CPOs displayed higher levels of sexual arousal to images of children than either of these groups. These findings are important as they suggest that engaging with child pornography may well be a more reliable indicator of deviant sexual interest than the direct sexual victimization of children, highlighting the need for further investigation into the role of exposure to such material in the development and maintenance of deviant sexual interests.

**Summary of Comparative Findings**

Although further comparative research is required to replicate, clarify, and improve upon the small number of existing findings regarding the characteristics of the CPO population, the preliminary findings appear to suggest that CPOs may represent a distinct group of offenders who differ from traditional contact sexual offenders in a number of ways. Overall, the findings are indicative of the presence of a somewhat higher functioning group of offenders who largely confine their offending to online or other non-contact sexual activities, and who are otherwise seemingly successful in life. One exception to this appears to be in the domain of romantic relationships, with CPOs tending to be less successful in relationships than contact sexual offenders. This is consistent with the findings of research into the psychological differences between these offender groups, which have generally reported lower levels of antisocial beliefs and higher levels of sexual pre-occupation, deviant sexual interests, and interpersonal deficits in the CPO population.

Studies that have expanded upon initial comparative findings by including dual offenders and conducting multivariate statistical analyses have tended to support the idea of the CPO as a generally pro-social, but emotionally withdrawn offender. For instance, Elliott et al. (2013) found that a function characterized by lower levels of antisocial beliefs and higher fantasy proneness in CPOs when compared with contact offenders explained 80.9% of variance in scores between child pornography, contact, and dual sexual offenders. Similarly, Lee, Li, Lamade, Schuler, and Prentky (2012) found that offenders in their sample were best differentiated based on their levels of antisocial behavior and Internet pre-occupation, with CPOs demonstrating lower levels of historical and recent antisocial behavior and higher levels of Internet pre-occupation and contact offenders demonstrating the opposite pattern. Interestingly, dual offenders were found to display elevated scores across both Internet pre-occupation and antisocial behavior, suggesting that an antisocial orientation may constitute a particular risk factor for the escalation to contact sexual offending in the CPO population. This is consistent with the meta-analytic findings of Babchishin et al. (2015), who labeled dual offenders as a particularly high-risk group after finding that they displayed higher levels of sexual interest in children than both CPOs and contact offenders, along with high levels of antisociality, offense-supportive belief systems, and access to children. However, given that only a small number of comparative studies
involving dual offenders exist at this time (Babchishin et al., 2015; Elliott et al., 2013; Howitt & Sheldon, 2007; Lee et al., 2012; Long, Alison, & McManus, 2013; McCarthy, 2010), future research surrounding this phenomenon is clearly warranted.

The Relationship Between Child Pornography and Contact Sexual Offending

Alongside the increase in availability and accessibility of online child pornography and this form of offending, concerns have been raised about the nature of the relationship between online and offline forms of sexual offending, and in particular, the risk that CPOs pose to children in the offline world (Bow, Bailey, & Samet, 2005; Seto & Hanson, 2011). Central to this issue is the question of whether child pornography leads to, deters, or has no relationship to contact sexual offending. For example, while some have argued that exposure to child pornography may promote contact sexual offending by validating and reinforcing attitudes surrounding the sexualization of children (Bourke & Hernandez, 2009), others have argued that child pornography acts as a substitute for contact offending, thereby preventing the direct sexual victimization of children (Riegel, 2004). Although plausible, such causative positions are yet to be directly examined or established within the existing empirical literature base, limiting the strength of these arguments.

Nonetheless, the small amount of research that has examined the offending trajectories of CPOs has provided some initial insights into this relationship. One particularly rigorous study that reported on the offending trajectories of 541 CPOs found that 30% of the sample had also come into contact with the police in regard to a contact sexual offense against a child over the course of their lives (Eke et al., 2011). Within the sample, the majority of CPOs had offended against children either prior (18%) or concurrently to their child pornography offenses (8%), while only 3.9% were detected for contact offenses over a 5.9-year period following their child pornography offenses (Eke et al., 2011). These figures are similar to those reported within a recent prospective study conducted by two of the same authors (Seto & Eke, 2015). Furthermore, a meta-analysis of studies that examined crossover offending demonstrated a similar pattern, reporting overall historical and recidivism contact sexual offending rates of 17.3% and 2%, respectively (Seto et al., 2011). Importantly, this meta-analysis also included studies that gathered offending data via self-report methodologies, and found that rates of historical contact offending differed significantly across self-report (55.1%) and official record (12.2%) methodologies. Although the results of some of the included self-report studies (Bourke & Hernandez, 2009) have been called into question due to the fact that offenders may have ulterior motives (e.g., feigning treatment progress) for falsely admitting to previous offenses following conviction (Burgess, Carretta, & Burgess, 2012), this difference may also reflect the tendency for official statistics to underrepresent the true extent of sexual offending (Gelb, 2007). Indeed, recent findings of Bourke et al. (2015) revealed high levels of undetected contact offending among individuals who were apprehended in relation to child pornography offenses. Rates of disclosure about contact offending increased from 4.7% to 57.5% during a polygraph interview procedure, which occurred at the point of police
intervention rather than post-conviction. Consistent with the meta-analytic findings of Seto et al. (2011), these findings indicate that contact offending is likely to be much more common among CPOs than research based on official data would suggest, although almost half of offenders appear to limit their sexual offending to engaging with child pornography online.

Research that both aims to further investigate and address these methodological inconsistencies and employs longer follow-up periods will be of great benefit in providing more accurate estimates of crossover offending and the typical trajectories of offending. Nonetheless, the available evidence does not appear to support the idea of a direct causal relationship between child pornography and contact sexual offending, at least in the short-term. This is consistent with the findings of McCarthy (2010), who reported that the majority of dual offenders in her sample (84%) had committed contact sexual offenses prior to, rather than following, their involvement with child pornography. Furthermore, if child pornography directly promoted contact sexual offending, one would reasonably expect rates of contact sexual offending to have similarly increased over the last two decades (Glasgow, 2010). Fortunately, official crime statistics indicate that this has not been the case (Brennan, 2012; Motivans & Kyckelhahn, 2007; Victoria Police, 2014).

In an effort to further understand the relationship between child pornography and contact offending, McManus and Almond (2014) compared trends in the rates of various child pornography offenses against the rates of 17 different contact sexual offenses involving minors over a 7-year period in the United Kingdom. The authors found that only 6 out the 17 possible contact offenses were positively correlated with a pooled group of take, make, and distribute child pornography offenders. Moreover, there were no significant associations between rates of any of the contact sexual offenses and the offense of possession of child pornography (McManus & Almond, 2014). Although these findings may indicate partial support for an increased risk of contact offending among those who engage in the distribution and production of child pornography, the direction of causality cannot be determined from the analyses conducted in this study. Similarly, the extent of overlap in offenders within each of these groups was unknown, again limiting ability to make direct casual inferences between these offense types or determine the trajectory of offending in overlapping cases.

Taken together, these findings suggest that although some CPOs do go on to commit sexual offenses against children, engaging in child pornography offending does not inevitably lead to the direct sexual victimization of children. This may at first seem contradictory to the well-established finding that the presence of sexual deviance is one of the major risk factors for sexual recidivism (Hanson & Morton-Bourgon, 2005), particularly as high levels of sexual deviance have been detected among groups of CPOs. However, in addition to sexual deviance, Hanson and Morton-Bourgon (2005) also identified antisociality as a leading risk factor for sexual offense recidivism. These earlier findings are consistent with recent meta-analytic research that has reported higher levels of both sexual deviancy and antisociality among recidivist dual offenders (Babchishin et al., 2015). Thus, the relatively low levels of antisociality in samples of CPOs may act as a safeguard against escalation to contact sexual offending.
Further research into dual offending and offending trajectories will be of great benefit in further understanding the relationship between these online and offline forms of sexual offending.

**Clinical Implications**

Evidence of characteristics that differentiate CPOs from contact sexual offenders suggests that these offenders are likely to constitute a distinct type of child sexual offender with different risk profiles and treatment needs to contact offenders. This raises the question of whether or not existing sexual offender assessment and treatment frameworks, which have not typically been developed or validated for use with those who commit child pornography offenses alone, adequately address the needs of this population. Although there is likely to be some overlap in the risk profiles and treatment needs of these offender populations, some factors may be less relevant to the child pornography population, while others that are specifically relevant to this population may not be considered within existing frameworks. Currently, research surrounding the efficacy of utilizing current assessment and treatment practices within the CPO population is limited, posing significant challenges for clinicians working with this population.

**Risk Assessment of CPOs**

Although the available data indicate that recidivism among CPOs appears to be low overall (Eke et al., 2011; Seto et al., 2011), it is clear that at least some CPOs go on to commit further offenses. A major challenge faced by clinicians working with this population is determining which of these offenders pose the greatest risk of reoffending, including escalation to contact sexual offending. The findings of the available studies that have examined the efficacy of pre-existing sexual offending risk assessment tools have indicated that some traditional risk factors are likely to be less relevant to the CPO population. For example, Osborn, Elliott, Middleton, and Beech (2010) found that two traditional static risk assessment tools, the Static-99 (Harris, Phenix, Hanson, & Thornton, 2003) and the Risk Matrix 2000 (RM2000; Thornton et al., 2003), severely over-estimated the risk of reoffending among CPOs. Despite the fact that no offenders in the sample had reoffended in the 1.5- to 4-year follow-up period, the majority were categorized as either moderate-high or high risk (90%) on the Static-99 or medium risk (72%) on the RM2000, with none being categorized as low risk. However, when items relating to the relationship to the victim (known or stranger) and having a history of non-contact offenses were removed, the accuracy of the RM2000 was found to improve substantially, with 72.6% of offenders being classified as low risk.

As most child pornography offending is non-contact in nature and involves victims who are not known to offenders, these items are less likely to be relevant to predicting the risk of these offenders, and may mistakenly inflate risk estimates associated with reoffending in this population. Support for the findings of Osborn et al. (2010) has
been inconsistent among the two other studies that have evaluated the accuracy of the modified RM2000 in predicting the future offending of CPOs; whereas Wakeling et al. (2011) found that the modified RM2000 performed no better than chance when predicting the risk of CPOs, a second study by the same group reported a moderate level (Area Under the Curve [AUC] = .70) of predictive accuracy (Barnett et al., 2010). Although this discrepancy is difficult to interpret given the extremely low base rates of recidivism in these studies (Barnett et al., 2010), these initial findings provide some evidence to suggest that traditional static risk assessment measures, particularly those that include items relating to nature of the offender’s relationship with the victim and non-contact offending, may overestimate the risk posed by this population.

While these findings suggest possible utility of using existing risk assessment tools within the wider CPO population, there is currently no risk assessment tool that is valid for use with individuals who commit child pornography offenses alone. Indeed, the risk profiles of this population are poorly understood at the current time, with most existing research identifying factors associated with recidivism among broader samples of CPOs, such as those including dual offenders. In their rigorous and large-scale investigation into the prospective offending patterns of CPOs, Eke et al. (2011) found that 32.3% of CPOs went on to commit a further offense of some kind in the 5.9-year follow-up period. Those with a history of violent offenses (including contact sexual offenses) were significantly more likely to reoffend (50.5%) with any offense than offenders with a history of non-violent (40.2%) or child pornography offenses alone (15.4%). Consistent with the wider sexual offending risk assessment literature (Hanson & Bussière, 1998), younger offender age at first conviction and prior offending, including with general, violent, and contact sexual offenses, were identified as significant predictors of future general offending as well as contact sexual offenses specifically.

More recently, Seto and Eke (2015) examined the predictive validity of their static risk checklist, the Child Pornography Offender Risk Tool (CPORT), among a sample of 286 CPOs who were followed over a fixed period of 5 years. Based on preliminary univariate analyses, the CPORT included seven items relating to offender age, prior criminality and breaches, sexual interests, and content of child pornography possessed, which were coded as present or not present and summed to obtain an overall risk score. Analyses revealed the total CPORT score was found to be a significant predictor of both general (AUC = .66) and sexual recidivism (AUC = .74) among the overall sample. Importantly, however, the tool did not significantly predict sexual recidivism among offenders who committed child pornography offenses in the absence of other sexual or non-sexual offenses. In contrast, the CPORT performed best for those with a history of both child pornography and contact sexual offenses (AUC = .80). The authors suggested that the failure to detect a significant difference for the child pornography-only offenders might be due to the lower rates of sexual recidivism among this group (6%) when compared with dual offenders (23%), consistent with other research that has reported higher rates of recidivism among dual offenders when compared with CPOs (Goller, Graf, Frei, & Dittmann, 2010; Graf & Dittmann, 2011). Alternatively, these findings may indicate that CPOs are a distinct group of offenders...
who present with unique risk profiles, whereas dual offenders may represent a particularly high-risk group (as per Babchishin et al.’s, 2015, characterization) with similar risk profiles to contact sexual offenders.

Thus, the available findings suggest that the risk profiles of dual offenders and other sexual offenders are likely to overlap to some degree. However, very little is known about the risk factors that may be unique to the CPO population. One particular area of growing interest is the relationship between the characteristics of an offender’s collection of child pornography and their level of risk. This idea was first raised by Taylor, Holland, and Quayle (2001) who, based on their assumption that individuals were likely to seek out material that was of specific interest to them, contended that the content of offenders’ collections could provide unique information about the psychological characteristics and motivations of offenders, which might prove useful in making judgments about both the likelihood and severity of their offending and subsequent behavior. Their collection typology, known as the COPINE (Combating Paedophile Information Networks in Europe) scale, was developed via qualitative analyses of an extensive database of child pornography in an attempt to provide an objective means of characterizing an offender’s collection. The scale consists of 10 categories of images ranging from least (level 1 = indicative) to most (level 10 = sadistic/bestiality) severe, allowing for the inclusion of material that typically falls outside of legal definitions of child pornography (see Taylor et al., 2001). Due to its utility in quantifying the severity of an individual’s offending, the COPINE scale has since been adapted for use within the legal setting, with some jurisdictions using this information to inform prosecutions and guide sentencing decisions within child pornography cases (Mizzi, Gotsis, & Poletti, 2010; Sentencing Council, 2013; United States Sentencing Commission, 2009).

Currently, it is largely unknown how these collection characteristics relate to risk, with the existing studies that have made comparisons between the collection characteristics of CPOs and dual offender’s producing mixed findings. In her study, McCarthy (2010) found that dual offenders possessed a higher proportion of child pornography in their overall pornography collections as well as a greater number of child pornography images overall when compared with CPOs, although the two groups spent similar amounts of time viewing child pornography each week. However, the groups differed based on their adult pornography use, with dual offenders spending significantly more time viewing adult pornography each week than CPOs. In contrast, both McManus, Long, Alison, and Almond (2015) and Long et al. (2013) found that CPOs were more likely to possess larger collection sizes and to have paid for material than dual offenders, with the latter study also reporting that CPOs were more likely to have been downloading child pornography for a longer period of time than dual offenders. Further, Seto and Eke (2015) found the gender of the victim depicted in child pornography images to be a discriminating factor, with a higher proportion of material featuring boys relative to girls (both clothed and nude) being identified among dual offenders’ collections than CPOs’. Items relating to this were subsequently included in their preliminary risk tool, the CPORT, however, as with the overall tool, this factor did not predict recidivism in those with child pornography offenses alone. Given the small
number of studies examining this issue overall, further research is required to clarify both the significance of existing findings and the potential relationship between the various collection characteristics and risk.

Given the ever-expanding capabilities of the Internet and computer technologies, which now allow thousands of images to be downloaded with a single click of a mouse button, it is possible that factors such as collection size and image severity have little bearing on the risk posed by those who engage in child pornography offending. Indeed, Glasgow (2010) proposed that information pertaining to the level of involvement with material is likely to be of greater relevance than the characteristics of the overall collection. He argued that certain patterns of digital activity, such as repeated access, replication, and movement of particular files within an offender’s collection, reflects a higher level of engagement with that material, thus suggesting a specific sexual interest in the content depicted. Although theoretically sound, research examining this idea is limited by the fact that digital evidence of this kind is not routinely generated during police investigations and thus not available to researchers at this time. Given that some of these characteristics may be considered when sentencing individuals convicted of child pornography offenses, ongoing research into these factors is essential.

**Psychological Treatment of CPOs**

Assuming that ongoing research will continue to facilitate the development and modification of risk assessment tools and procedures that accurately identify the CPOs who are at greatest risk of reoffending, the issue of treatment arises. Seto (2013) recently provided a very apt appraisal of the current climate surrounding treatment practices in this area, stating that practice is largely based on clinical intuition and knowledge of the treatment needs of the wider sexual offender population. He considered the key issues to be addressed through future research endeavors to be determining what the most important targets for treatment are, how they would be most effectively addressed, and whether gains in these areas actually translate to a reduction in recidivism. Although very little research has been conducted in the latter two areas, the findings of comparative research have allowed for initial hypotheses regarding the likely targets of treatment for CPOs to be formed.

The fact that CPOs have been found to display higher levels of sexual preoccupation, deviant sexual interests and interpersonal deficits than contact offenders indicates that these factors are likely to constitute salient targets for clinical intervention when working with this population. Based on the knowledge gained from their and other comparative studies, Magaletta et al. (2014) considered the development of adaptive self-regulation strategies (that do not rely on sexualized behaviors) and interpersonal skills (e.g., communication skills, conflict resolution, and assertiveness) to be important targets for intervention. In addition, treatment aimed at this population is likely to require a greater emphasis on the management of deviant sexual arousal and interests, as well as interventions aimed at addressing problematic online behavior more generally, such as engaging in the use of other forms of pornography, social networks, and pedophilia forums (Holt, Blevins, & Burkert, 2010; Median, Curtis, Thakker, Wilson,
& Boer, 2013; Seto, 2013). In contrast, treatment that targets antisocial cognitions and lifestyle factors may be less indicated, even though offenders have been found to hold some distorted beliefs that are specific to child pornography offending (Howitt & Sheldon, 2007). Indeed, some have suggested that these distortions might be better conceptualized as problems with victim awareness, rather than global deficits in victim empathy (Burke, Sowerbutts, Blundell, & Sherry, 2002; Seto, 2013), with Middleton et al. (2009) reporting that once the CPOs in their sample developed an awareness of how engaging with child pornography facilitated the direct sexual abuse of children, appropriate levels of victim empathy were displayed among participants. Thus, although CPOs with no other offending history may not require extensive intervention surrounding generalized pro-offending attitudes and antisocial lifestyle factors, they are likely to require targeted interventions that aim to increase their victim awareness.

As highlighted by Seto (2013), consideration also needs to be given to how to most effectively deliver intervention to those who commit child pornography offenses. Although the treatment needs of child pornography and contact offenders are likely to overlap somewhat, the presence of the unique needs of each of these offender populations suggests that child pornography treatment is likely to be most effectively and efficiently delivered through specialized treatment programs. One such program, which has now been implemented nationally throughout the United Kingdom, is the Internet Sexual Offender Treatment Program (i-SOTP) developed by Middleton et al. (2009). The program is specifically designed for those who commit online child pornography offenses, and thus in addition to traditional program content, has a strong emphasis on online behavior, problematic Internet use, and sexual compulsivity. It is designed to be delivered in either individual or group format and comprises six modules that address the following issues: (a) value identification and motivation to change; (b) functional analysis of offending behavior; (c) offense-supportive beliefs and victim awareness; (d) intimacy and emotional self-regulation deficits; (e) compulsivity, problematic Internet use, and sexual deviancy; and (f) relapse prevention and development of a “new life plan.”

Initial evaluative findings have provided some support for the efficacy of i-SOTP as an agent of change, with Middleton et al. (2009) reporting that those who undertook the program demonstrated positive changes across 12 of the 15 socio-affective and offense-supportive domains captured by the pre- and post-treatment assessment battery. Overall, 53% of the sample was deemed to have achieved “treated profile status,” as determined by demonstrating scores comparable with a normative population on a number of measures across both socio-affective and offense-supportive domains. However, given that a comparison sample was not utilized within this evaluation, it is unclear whether these changes can be truly attributed to participation in the treatment program, or to another factor common to participants, such as receiving a criminal justice sanction. A further limitation of these findings relates to the fact that recidivism outcomes were not examined as part of this study. It is therefore unknown whether the treatment gains made through i-SOTP translated to a reduction in reoffending in CPOs. Indeed, given the paucity of research concerning recidivism among CPOs more
broadly, little is known about whether or not the psychological problems exhibited by CPOs constitute “criminogenic needs”; that is, needs that can be successfully treated via intervention and which, as a result of this intervention, reduce offending behavior (Andrews & Bonta, 2010). Further research that aims to clarify this will play an important role in informing the ongoing development of effective and relevant treatment programs that meaningfully reduce the risk of reoffending among the CPO population.

**Summary and Future Research Directions**

With the growth in the capacity and availability of the Internet over the last two decades has come an increase in the number of individuals coming into contact with the criminal justice system for child pornography offenses. This, in turn, has prompted the emergence of a growing body of literature dedicated to enhancing current understandings of CPOs and how this population is related to those who are involved in the direct sexual abuse of children. It is important to note that people who access or download child Internet pornography are a heterogeneous group. Thus, care must be taken not to assume that the general findings reviewed in this article necessarily apply to all people charged or convicted of accessing or downloading child pornography.

Although the research base surrounding this phenomenon is still in its infancy, preliminary findings have indicated that CPOs differ from contact offenders in a number of important ways, suggesting that they are likely to represent a distinct type of offender with unique risks and treatment needs. Although CPOs demonstrate similar levels of historical and prospective sexual offending, they appear to be less diverse in their offending, typically limiting this to sexual offenses. Moreover, the available (albeit limited) evidence indicates that there is a substantial minority of CPOs who do not commit contact sexual offenses against children, refuting the idea of a direct causal relationship between child pornography and contact sexual offending. Such evidence is consistent with the findings of psychological studies, which have typically characterized CPOs as pro-social outside their involvement with child pornography, but highly sexualized and emotionally avoidant individuals who are more likely to display a specific sexual interest in children than contact offenders.

Given these differences, pre-existing risk assessment and treatment programs may not adequately address the needs of this population and thus require revision and evaluation prior to widespread use among this population. Preliminary evidence has suggested that current static risk assessment tools are likely to overestimate the risk of CPOs, and that more accurate assessments may be obtained by removing any items regarding non-contact offenses and the offender’s relationship to victims. Conversely, items relating to previous offending, violent offending, and younger age when offending are likely to remain relevant to risk judgments about this population, particularly those who fall into the dual offender category, with those demonstrating these characteristics likely to be at increased risk of further offending than those without these characteristics.

Although less extensively researched, there is some initial evidence to suggest that CPOs and dual offenders may differ in the ways in which they engage with
pornographic material. In particular, preliminary findings suggest that dual offenders may have more diverse sexual interests than CPOs. However, the significance of this is unclear at this stage and warrants further investigation prior to certain collection characteristics being labeled as “risk” or “protective” factors in relation to the CPO population. As digital evidence becomes more available, research efforts should be directed toward determining whether the characteristics of collections and/or digital indicators of the level of involvement in offender can be accurately and reliably linked to risk.

These findings also indicate that the treatment of CPOs is likely to differ in focus than that of contact offenders, and thus might be best accommodated within specialized, rather than traditional, treatment programs. In general, when compared with contact offenders, CPOs are likely to require less intervention surrounding antisocial lifestyle and cognitions, and greater intervention surrounding sexual deviancy and interpersonal, affective, and self-regulation deficits. In addition, intervention surrounding problematic online behavior, such as engaging with other CPOs online, participating in online pedophilia forums, and general pornography use, is of particular relevance to this population, but is unlikely to be addressed within traditional sexual offender treatment programs. Although initial findings regarding the i-SOTP (Middleton et al., 2009) have provided preliminary support for specialized treatment, more rigorous evaluations that utilize comparison samples and examine outcome data are required to make more definitive assertions. Moreover, little is known about the treatment needs of higher risk CPOs, and whether they are more likely to be best accommodated for by specialized or traditional treatment programs. Given that they may present with more extensive and diverse criminal histories, it is possible that they may be more similar to contact offenders than lower risk CPOs; however, research surrounding this population is limited at this stage.

Indeed, despite the increase in the amount of research surrounding CPOs over the last decade, it is clear that many questions remain unanswered at this stage and that there is much scope for further research within this area. One issue that is poorly understood is the offending trajectories of those who engage in child pornography offending. Given the discrepancy between self-report and official record methodologies, further research is required to clarify the true incidence of historical offending, as well as to investigate the longer term recidivism patterns of individuals who commit child pornography offenses. In particular, very little is known about those who engage in both child pornography and contact offending, the likely trajectory of dual offending and if there are differences between offenders who have opposing trajectories of dual offending. That is, just as there are differences between child pornography, contact, and dual offenders, there may also be differences between dual offenders who escalate from child pornography to contact offenses compared with dual offenders who first commit contact offenses and later reoffend with child pornography offenses. Further research is required to both quantify the different trajectories of dual offending and investigate and understand potential differences between these groups.

Other potential areas for further inquiry include research aimed at furthering the current understanding of the role of the Internet in child pornography offending and
the characteristics of those who engage in this type of offending. For example, although it is clear that the Internet has facilitated an increase in child pornography offending in recent times, it is not known how (or if) this relates to the development of deviant sexual interests in those who are engaging in child pornography offending through this medium. Similarly, it would be useful to understand whether the various socio-demographic characteristics identified among the CPOs represent true differences between child pornography and contact offenders or if they are merely artifacts of those who are using the Internet more broadly. In addition, despite the emergence of a number of typologies surrounding this offense type, there has been a lack of empirical scrutiny of these typologies, and none has yet comprehensively incorporated both motivational and behavioral components of child pornography offending. Moreover, despite the significant findings surrounding the interpersonal and affective deficits of CPOs, no typology has included affective dysregulation, loneliness, or poor social skills as potential motivators for engaging in child pornography offending.

Given the infancy of the research within this area, there is also a need for ongoing research to clarify the mixed findings and replicate preliminary trends. Further efforts to identify and confirm the characteristics that differentiate CPOs from both contact and dual child sexual offenders across socio-demographic, psychosocial, offending, and psychological domains are required to inform the ongoing development of clinical practice surrounding the risk assessment and treatment of this population. Unfortunately, findings within the existing literature have likely been muddied by inconsistencies in definitions and selection criteria across studies, with many studies failing to specify what they mean by “online offender,” separate different types of online offenders, or take historical offenses into account when categorizing offender types. Thus, on a practical level, future research would benefit from applying more stringent, clear, and uniform selection criteria for participants, including criteria that differentiate between different forms of online offending, and classify dual, child pornography, and contact offenders according to their entire criminal histories, rather than on the basis of their most recent offense.

The knowledge gained from continuing research efforts within this area will have widespread applications within the criminal justice system and the associated forensic mental health field. Ongoing research into this population would enhance current understandings about both the nature of the broader CPO population and the relationship between child pornography and contact offending, and would potentially allow for the identification and clarification of risk factors and treatment needs associated with those within CPO population. Most important, by enhancing the assessment and treatment practices of clinicians working with individuals who engage in this form of offending, ongoing research will assist in combatting the cycle of abuse perpetuated by the child pornography market and aid in the prevention of ongoing child sexual abuse.

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References


Introduction

There is increasing concern about the number of online sexual offending cases seen in the criminal justice system, with an exponential increase over the past decade in the United States (Motivans & Kyckelhan, 2007; Wolak et al., 2011). The number of arrests nationally tripled from 2001 to 2009. Though the absolute number of cases is still only a fraction of the total number of conventional sexual abuse and exploitation cases that are seen, the number of online cases is expected to continue to rise, with implications for law enforcement, the courts, prisons, and probation/parole. The large majority of such cases involve child pornography offending, though an increasing number involve so-called luring or solicitation offenses, where the internet or related communication technologies are used to sexually solicit minors.

Research conducted in the past five years provides information about the characteristics of online child pornography offenders and the risk they pose to commit contact sexual offenses or to commit online offenses again. This research has been summarized in two recent systematic reviews, both published in the past year: Babchishin, Hanson and Hermann (2011) and Seto, Hanson and Babchishin (2011). There are also a growing number of studies on the factors that can predict recidivism among online offenders (Eke et al., 2011; Seto & Eke, 2005; Faust et al., 2009; Wakeling et al., 2011).

I review each of these areas briefly in the following sections. I draw upon research that my colleagues and I have conducted over the past seven years, as well as research from teams in Canada, the United States, and the United Kingdom.

Offender Characteristics

Comparison studies have confirmed that online sexual offenders differ from conventional sexual offenders in meaningful ways, including differences in average age, education, prior criminal history, and the psychological risk factors of sexual deviance, sexual preoccupation, and sexual self-regulation (Babchishin et al., 2011; Seto, Wood et al., in press). Online offenders are younger, on average, better educated, and have less prior criminal history than contact offenders. Online offenders scored higher on sex-related psychological risk factors, but score lower on criminal risk factors such as criminal history and antisocial personality traits, suggesting that online offenders may pose a lower risk to reoffend overall than contact offenders.
Other research has explored the motivations of child pornography offenders. The intuitive idea that child pornography offenders are sexually attracted to children is partially supported (e.g., Seto, Reeves, & Jung, 2010). A significant proportion of child pornography offenders interviewed by police investigators or by clinicians admit to being sexually interested in children and/or child pornography when asked to explain their crimes. Moreover, almost two-thirds of child pornography offenders showed equal or greater sexual arousal to children than to adults when assessed in the laboratory (Seto, Cantor & Blanchard, 2006). These research findings are consistent with self-report surveys that show a strong association between pedophilia or hebephilia and child pornography use (e.g., Neutze et al., 2011; Riegel, 2004). The association is sufficiently strong that persistent child pornography use is now being considered as part of the diagnosis of pedophilia (see Seto, 2010).1

The association between pedophilia and child pornography offending is not one-to-one, however. Some child pornography offenders are not pedophilic or hebephilic. Instead, they may be showing evidence of compulsive sexual behavior, whereby their viewing of child pornography is just one part of a pattern of risky behavior, including sexual chat, use of other online pornography, webcam exposure to teens or adults, etc. Other explanations that have been proffered include pornography “addiction” and curiosity (Seto et al., 2010).

Contact Offending History

Seto et al. (2011) identified 21 studies, representing a total of 4,464 online offenders, that reported on contact sexual offending history. Approximately 1 in 8 (12%) of the online offenders (most in trouble for child pornography offenses) had an official record for sexual offending, but approximately 1 in 2 (55%) admitted having committed a contact sexual offense in the subset of six studies that had self-report data (totaling 523 online offenders). The self-report result is more tentative because of the smaller number of studies and smaller sample size, but it does contradict the idea that most online offenders have already committed contact sexual offenses, even if some of those who denied any prior sexual contacts were lying.

A study by Bourke and Hernandez (2009) examining the sexual offense histories of a sample of federally incarcerated child pornography offenders at the Butner Correctional Institution is frequently cited. This study was a statistical outlier in our meta-analysis. Bourke and Hernandez found that approximately a quarter (24%) of their sample of 155 child pornography offenders had an official record of contact sexual offending, but most (85%) of their sample had a history of contact offending after participating in treatment and, in about half of the cases, undergoing polygraph examinations. Different explanations have been proposed for this unusual finding, including the composition of

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1 Pedophilia is defined here as a persistent and recurrent sexual interest in prepubescent children, consistent with the standard clinical diagnosis (American Psychiatric Association, 2000). Hebephilia is defined here as a persistent and recurrent sexual interest in pubescent children, that is, children who are showing some signs of sexual development (unlike prepubescent children) but who are not yet sexually mature as older adolescents and adults are.
the sample and allegations that there was an incentive for treatment participants to disclose previously undetected offenses. Nonetheless, the key point – that some child pornography offenders have committed officially undetected contact offenses – is not controversial.

Risk to Reoffend

In the same systematic review, Seto et al. (2011) reported on the results of nine samples of online (mostly child pornography) offenders, followed for an average of three and a half years. The recidivism rates were relatively low compared to the average recidivism rates found for contact sexual offenders (e.g., Hanson & Morton-Bourgon, 2005): Approximately 5% of the child pornography offenders were caught for a new sexual offense of any kind, with 3.4% being rearrested, recharged or reconvicted for a new CP offense and 2.1% for a new contact sexual offense. Not all new offenses are detected and the observed recidivism will increase with time. Nevertheless, these data belie the idea that online child pornography offenders are very high risk to reoffend. There is heterogeneity, as in other offender populations, and risk assessment is necessary to identify those who are of greatest concern.

Risk Factors

Across online offender follow-up studies, online offender risk to reoffend is predicted by many of the same factors that predict recidivism among conventional sexual offenders, or even among offenders in general. These factors include age, criminal history, substance use problems, and single/unmarried status. However, there is also research support for some unique risk factors, including self-admitted sexual interest in young adolescents and the ratio of child pornography content depicting boys relative to content depicting girls (Eke et al., 2011; Seto & Eke, 2005; Faust et al., 2009; Wakeling et al., 2011). I and my colleagues are currently working on the development of a child pornography offender risk checklist that would combine risk factors in a single tool suitable for prioritization.

Summary

The research evidence is beginning to provide a clearer picture of online offending in terms of offender characteristics and risk to reoffend. The typical online offender is male, Caucasian, and in his 20s or 30s (Babchishin et al., 2011; Wolak, 2011). Unlike the typical contact offender, he is unlikely to have any prior criminal record, and is less likely to show evidence of antisocial or unstable behavior in the past, in terms of substance misuse, sporadic employment even though able, or undetected criminal activity. Though online offenders are more likely to exhibit signs of pedophilia than contact offenders with child victims, on average, online offenders appear to pose a lower risk of contact sexual offending because they score lower on antisocial tendencies. In other words, online offenders are likely to have a strong motivation to sexually offend against children, because of their sexual interest in children, but have more inhibitions against acting on these kinds of motivations.
Follow-up research suggests there are meaningful distinctions to make among child pornography offenders. In particular, first-time child pornography possession only offenders appear to be very low risk of sexual recidivism, in contrast to those with any prior or concurrent criminal convictions or those who engage in other sexual offending (e.g., attempted or actual contacts with a child, production of child pornography). Research is advancing at a pace that it is likely that a modified or new risk measure will become available specifically for online offenders in the next few years.
REFERENCES


COMMON AND COSTLY SENTENCING MISTAKES

Justin Paperny

NOTES
Thank You!
What we do not do...

The Triangle

Although I agreed to continue with our arrangement, beneath the surface I could feel Kyle exploiting me. When I

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Lessons From Prison

spotted an opportunity to even the playing field, I took it. Those actions, I now recognize, represented my succumbing to what others have called the fraud triangle. It’s a trap that can lead to moral failure, a slippery slope that frequently lands people in prison.

With the fraud triangle, the individual feels the pressure. He feels as if he is being cheated, or as if he needs to overcome some hurdle. The hurdle may present itself in the form of the need for a higher income to pay an obligation, or even some desire to advance one’s standing.

In my case, I resented the concept that I had to pay dues. I was bringing in the money. I felt entitled to respect and to more compensation. Without that perceived sense of fairness, I felt as if my colleague was taking advantage of me. In my mind, that injustice could not stand.
What is Sentencing Mitigation? In our view, an effective sentence-mitigation plan will strive to achieve several outcomes:

- It will help the judge see and understand the defendant as an individual,
- It will help the judge grasp influences that led the defendant to the current situation,
- It will help the judge see aspects of the defendant’s life that could not be conveyed by the defense attorney’s eloquence alone,
- It will help the judge see the defendant in his own environment,
- It will help the judge learn what other people in the community think about the defendant.

Personal Narratives/Videos

- Show an understanding and an appreciation for the victim’s pain, suffering, or loss.
- Show influences that led the defendant to become involved in the instant offense.
- Show what the defendant has learned from the experience.
- Show what steps the defendant has taken to reconcile with society, the victims, and his community to make things right.
- Articulate a coherent plan to show why the defendant will never break the law again.
What are the huge benefits to getting the narrative in the completed pre-sentence report (PSR)? Twice each year, a case manager and a unit manager will assess a prisoner. They will consult the PSR during the assessment, and their assessment will influence a person's ability to participate in programs. Those programs can influence factors in prison that include:

- Quarters assignment
- Job assignment
- Courses that could lead to "time credit," which can influence access to home confinement
- Liberty while in halfway house
- Liberty while on supervised release

For those reasons, we recommend submitting the narrative to the probation officer. On many occasions, probation officers will cut and paste directly from the narrative. They will insert those words into the PSR section that describes a defendant’s version of events. Such language can be helpful to a person who is being assessed by a case manager.

VALUES MODULE:

Instead of thinking about me, I'm thinking about others. I am thinking about how others define me today:

1. How do the people that investigated my crime view me?
2. With the evidence that he has seen, what does the prosecutor think about me as a human being?
3. What thoughts do my victims have about me?
4. How have my actions influenced the lives of others?
5. In what ways have my actions influenced the community where I live?
6. What steps can I take today to work toward reconciling with society and making things right?
7. With the information that he has, what is the judge thinking about my character as a human being?
8. What do others know about the influences that led to where I am right now?
9. If others knew more about the influences in my life, how would they perceive me?
10. Given the decisions I've made in the past, what is the best possible outcome for my life in the months, years, and decades ahead?
Sentencing Prep

Videos?
RDAP – Facts
Social Media? Volunteer Work?
Letters
Would your clients work at McDonald's?
Specific prison and date to surrender

Prison

Highest value in prison?
What should you tell your client about prison? (Disciplinary Infractions)
How to legally run a business from prison? Got Policy!
Post Prison:
Halfway House/ Home Confinement/ Prison

If your client does not have the right job lined up in the halfway house, they may want to stay in prison.

What is the answer? Sow seeds from prison.

How? Write unsolicited letters, share the personal narrative and grow the network from the inside.
Prospects In Need:
21% of the 900 people who opt in each month are home from prison. They are scared. What do I do now, Justin?
THE FIRST STEP ACT: WHAT YOU NEED TO KNOW

Mary Price, General Counsel, FAMM

NOTES
Compassionate Release

Under the First Step Act
Compassionate Release
Clearinghouse Training

Course Outline

◊ Statute
◊ 1B1.13 criteria and considerations
◊ BOP 5050.50 criteria and considerations
◊ Getting started: compassionate release request to the warden
◊ Denials
◊ Exhaustion
◊ Motions Practice
◊ The Compassionate Release Clearinghouse

The court may not modify a term of imprisonment once it has been imposed except that—

(1) in any case—

(A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the [BOP] to bring a motion on the defendant’s behalf OR the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier,—

3582 (c)(1)(A)(i) continued

may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—

(i) extraordinary and compelling reasons warrant such a reduction . . . .,

(ii) . . . and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.
18 U.S.C. § 3553(a)

The court shall impose a sentence sufficient, but no greater than necessary, to comply with [the purposes of punishment]. The court shall consider . . .

◊ Nature and circumstances of the offense.
◊ History and characteristics of the defendant.

18 U.S.C. § 3553(a) continued

Purposes of Punishment:
◊ To reflect the seriousness of the offense; promote respect for the law; and provide just punishment;
◊ deter criminal conduct;
◊ protect the public; and
◊ provide defendant needed education or training, medical care and other treatment in most effective manner.
Extraordinary and Compelling Reasons
USSG § 1B1.13

Terminal Illness | Serious Medical Condition | Age-related Medical Condition | Family Circumstances | BOP Criteria
--- | --- | --- | --- | ---

Terminal Illness
A serious and advanced illness with an end of life trajectory. A specific prognosis of life expectancy is not necessary.

Examples include:
- Metastatic cancer.
- ALS.
- End-stage organ disease.
- Advanced dementia.

US Sentencing Guideline 1B1.13
Serious Medical Condition

A condition that substantially diminishes the ability of the prisoner to provide self-care in prison, and from which s/he is not expected to recover due to:

◊ serious physical or medical condition,
◊ serious functional or cognitive impairment, or
◊ experiencing deteriorating physical or mental health due to the aging process.

U.S. Sentencing Guideline 1B1.13

Age-Related Medical Condition

◊ At least 65 years old,
◊ experiencing a serious deterioration in physical or mental health due to the aging process, and
◊ has served the lesser of ten years or 75 percent of the sentence.

U.S. Sentencing Guideline 1B1.13
Family Circumstances

◊ The death or incapacitation of the caregiver of the prisoner’s minor children.
◊ The incapacitation of the prisoner’s spouse for whom the prisoner would be the only caregiver.

U.S. Sentencing Guideline 1B1.13

Foreseeability

The fact that an extraordinary and compelling reason reasonably could have been known or anticipated by the sentencing court is not a bar to compassionate release.

U.S. Sentencing Guideline 1B1.13
## BOP Criteria

<table>
<thead>
<tr>
<th>Terminal Medical Condition</th>
<th>Debilitated Medical Condition</th>
<th>70 years old + 30 years served</th>
<th>Elderly with Medical Condition</th>
<th>Elderly + time served</th>
<th>Family Circumstances</th>
</tr>
</thead>
</table>

### Terminal Medical Condition

- Diagnosis of terminal, incurable, disease and
- Life expectancy of 18 months or less or
- The disease or condition has an “end-of-life trajectory.”

BOP P.S. 5050.50
Debilitated Medical Condition

◊ Incurable, progressive disease or
◊ Debilitating injury from which prisoner will not recover and only limited self care and confined to bed/chair at least 50% of time, or
◊ Completely disabled:
  ◊ confined to bed or chair 100 % of the time and
  ◊ cannot carry on any self care.

BOP P.S. 5050.50

70 Years Old + 30 Years Served

◊ Has to have served 30 years for the instant offense.

BOP P.S. 5050.50
Elderly With Medical Condition

◊ At least 65 years old, **and**
◊ chronic/serious condition related to age, **and**
◊ deteriorating mental/physical health that “substantially diminishes” ability to function in prison, **and**
◊ conventional treatment “promises no substantial improvement, **and**
◊ served 50% of sentence.

BOP P.S. 5050.50

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Elderly With Medical Condition Continued

◊ BOP Operations Memorandum 002-2016 provides examples of medical conditions.
◊ BOP also considers:
  ◊ Age at time of the offense.
  ◊ Whether the prisoner suffered from condition prior to incarceration.

BOP P.S. 5050.50
Operations Memo

Provides examples of age-related medical conditions that diminish prisoner’s ability to function in prison.

Conditions must “substantially diminish” the prisoner’s ability to function in prison:

◊ determined by examining whether the prisoner is limited in IADL’s (standing count, getting to meals, pill line, etc.)

◊ and whether the prisoner is housed at a Medical Center or if not, needs staff help with IADL’s.

Other Elderly Prisoner (Age + Time)

◊ 65 years old.

◊ Has served the greater of ten years or 75 % of the sentence.
Family Circumstances

◊ Death or incapacitation of the family member caregiver of the prisoner’s minor child.
◊ Incapacitation of the prisoner’s spouse or registered partner.

Caregiver of a Minor Child

◊ Three-stage warden review.
◊ Extensive documentation requirements.
◊ “In reviewing these requests, BOP should assess . . . whether release of the inmate to care for the child is in the best interests of the child.”

BOP P.S. 5050.50
Caregiver of Incapacitated Spouse

◊ Spouse must be completely disabled, so that he or she “cannot carry out any self-care and is totally confined to a bed or chair,” or
◊ spouse suffers from a “severe cognitive defect . . . that has severely affected . . . mental capacity or function” but need not be bedridden, and
◊ prisoner must be the only available caregiver.

BOP P.S. 5050.50

Getting Started

Prisoner, or another person on the prisoner’s behalf makes a request, generally in writing, to the warden:

◊ The extraordinary or compelling circumstance—the objective criteria.
◊ The prisoner’s proposed release plan:
  ◊ Proposed residence.
  ◊ Financial support.
  ◊ Medical care and how it will be paid for.
Warden Referral

The request is considered “submitted” when the warden receives it. If the warden approves, s/he refers the prisoner to the Central Office with:

◊ Judgment.
◊ Sentence Computation Data Sheet.
◊ Progress Report.
◊ “Comprehensive Medical Summary” including prognosis.
◊ USPO approved Release Plan.
◊ PSR.
◊ Views of the Prosecuting Attorney.

Central Office

◊ General Counsel solicits opinion from Medical Director and/or Correctional Programs Director.

◊ If the Director approves; GC contacts the Assistant U.S. Attorney to file the motion on behalf of the BOP.

◊ If the Director (or General Counsel) denies, that is final administrative action and prisoner is considered exhausted.
The Stages of Denial

Warden denial triggers Administrative Remedy Process:
◊ W/I 20 days file appeal (BP-9) with warden.
◊ W/I 20 days of denial or after response deadline file BP-10 with Region.
◊ W/I 30 days of denial or after response deadline, file BP-11 with Central Office.
◊ Exhaustion occurs on Central Office denial or 40 days after BP-11 filed.

Sample Denial

◊ Mr. S has stage IV gastrointestinal cancer and life expectancy of less than six months. The government acknowledges he fits the criteria: “[his] ability to function independently had been significantly reduced, ... he has chronic pain, and ... is confined to a bed or wheelchair most of the day. [H]e has multiple large masses, extensive metastasis, severe hand and foot disease, and weakness.”
◊ But because he trafficked in large quantities of heroin, release would “denigrate the nature of his offense.”
When May Prisoners Bring a Motion?

◊ Exhaustion

BOP Central Office:
◊ Declines to file a motion recommended by warden, or
◊ Denies prisoner’s appeal of warden’s denial, or
◊ Lapse of 30 days from warden’s receipt of the request.
◊ Whichever is earlier.

Documents You May Need

For terminal/medical cases:
◊ Medical Records.

For Family Circumstances cases (full list at USSG 1B1.13 p. 7):
◊ Proof of death or incapacitation –death certificate/medical records.
◊ Proof that the prisoner is spouse or registered partner (marriage certificate).
◊ Proof (for minor children) that prisoner is parent (birth or adoption records) and was involved (BOP records of calls/visits).
◊ Proof that the prisoner is the only available caregiver (letters).
◊ Proof the prisoner can regain custody.
Documents Continued

For all cases:

- Court records.
- Documents demonstrating prisoner is not a risk to reoffend or danger to the community:
  - BOP Progress report.
  - Evidence of debilitation.
  - BOP commendations-certificates.
- Release Plan information:
  - Housing.
  - Income.
  - Health insurance.

Compassionate Release Clearinghouse

- Identify prisoners in need of legal assistance.
- Screen those requests and gather information.
- Recruit and train lawyers to represent prisoners, and
- Provide the lawyers with wrap-around support:
  - Individualized placement and training.
  - Resource support and troubleshooting.
JOIN TODAY

Compassionate_Release@Washlaw.org
Compassionate Release Clearinghouse
Helpful Materials for Federal Compassionate Release Cases

I. The Statute and its Interpretation. The materials below contain the law and policy you need to know:

- An [explainer](#) produced by FAMM on federal compassionate release.

- 18 U.S.C. § 3582 (c), Modification of an Imposed Term of Imprisonment (the law of compassionate release).

- 18 U.S.C. § 3553 (a), Factors to be Considered in Imposing a Sentence.

- [U.S.S.G. § 1B1.13](#), the U.S. Sentencing Commission’s guidance to courts considering motions for compassionate release. The Commission’s criteria were broadened in the Policy Statement in 2016 and the new policy statement added some finger wagging to the BOP that it bring the motion whenever the prisoner met the 1B1.13 criteria in light of the fact the court is in the best position to evaluate whether the prisoner should be released. The guidance provided by the Commission and the BOP program statement are different in several important respects, so it is good to examine both when considering grounds. NB: this guideline has not been updated since the First Step Act as the Commission is dormant at present.

- [P.S. 5050.50](#), the BOP rules governing compassionate release. Note that the BOP includes both objective criteria (such as terminal illness or age and time served) as well as factors we believe Congress committed to the court, such as whether early release from prison will pose a danger to public safety or minimize the seriousness of the offense.

- [O.M. 02-2016](#), the BOP Operations Memorandum that helps wardens figure out whether prisoners who are seeking compassionate release due to their age and chronic medical condition have a qualifying medical condition.

- The Washington Lawyer’s Committee [guide](#) to the BOP administrative remedy process.

II. Logistical Materials

- Obtaining Medical Records for prisoners who are terminally ill or debilitated. Some attorneys have been told by the BOP that they need to file a FOIA request to
obtain such clients’ medical records. **If your client is terminally ill or debilitated**, there is a different procedure.

- You will need to use a **Certification of Identity** Form. Fill in as much of the form as you can. Send it to your client as soon as you can. Prisoner information goes on the top and the prisoner signs it. Your name must appear below in the section that begins “Optional” as the prisoner is authorizing release to you. Fill that part in yourself as we find that prisoners sometimes put their own name in that section.

- Once you have the form, you should make the request to the BOP legal counsel responsible for the institution where you client is incarcerated.

- Be sure to explain you are representing the individual and they are seeking compassionate release as they are terminally ill or debilitated.

- You will find the legal counsel’s name and phone number starting on page 54 of this **BOP Legal Resource Guide**. When you contact them, be clear you are representing the prisoner in a compassionate release matter.

  - **If you have any trouble with securing medical records, please contact FAMM General Counsel Mary Price at mprice@famm.org or 202-621-5040.**

**Obtaining Medical Records for all other prisoners.** We are working to resolve delays in this process. In the meantime, we recommend you try the procedure outlined above. We also recommend:

- Ask your client to request the records (they may require he or she pay for them – we are working to see if the BOP will waive this fee for indigent prisoners)

- Simultaneously, file a FOIA request. Rather than ask for all medical records, especially for prisoners with a long medical history in the BOP, try tailoring the request to the records you need for your representation. We have been told this may speed things up.

- Some lawyers have had success getting records from the AUSA.

- If all else fails, and you are filed or filing, ask the court to order them released to you.

- **Rules for legal correspondence** are found in **P.S. 5265.14** at § 540.18

- “**Special mail,“** and **visits** are covered in **P.S. 5267.09** at §540.46 “**Attorney Visits.”** Generally, you should be able to arrange a legal visit through the prisoner’s unit team, but if you run into trouble, **contact the BOP Legal Counsel responsible for the prison.** You can find that person on this **BOP Legal Resource Guide** starting on page 54.

- Note that prisoners can communicate via an **email-like system called Corrlinks.** Corrlinks messages are monitored by prison staff for discussions about crime, contraband, and other such forbidden topics. So, Corrlinks communications are not confidential or privileged, but if you comfortable using it to do more mundane communications, it is quite handy. If you are assigned a case via the
Clearinghouse, one of us can ask your client to add you to their Corrlinks list. Or you can do so in your first communication with the client. Prisoners have a limited number of people with whom they can communicate on Corrlinks. Once your client adds you to their list, you will get a Corrlinks generated email advising you that the prisoner wishes to communicate with you. Be sure to check your spam, clutter and junk files for these notices. Then accept and you are on your way.

- Rules for legal calls are found in P. 5264.08 at § 10 and a little in P. 1315.07. Again, if you run into trouble with arranging a legal call, contact the BOP Legal Counsel responsible for the prison. You can find that person on this BOP Legal Resource Guide starting on page 54.

- There appears to be a Visiting Attorney Statement located here.

- There is always a possibility that your client may be moved so it is good to check the BOP Inmate Locator to be sure before writing or visiting.

II. Special things to address
- Have your client ask for their most recent Progress Report. This includes lots of information about programming, disciplinary history, whether your client has a detainer from another jurisdiction that has to be cleared, education, etc.
- Be sure to clear detainers. These are holds from other jurisdictions. If there is a detainer on the file, the BOP has to notify the jurisdiction that placed the detainer, who may then exercise the right to have your client released to that jurisdiction. Common detainers are from ICE for non-citizens, and from states or parole boards, for prisoners who have pending state charges, parole violations or a sentence left to be served. You will need to find out if the jurisdiction intends to enforce the detainer and work to lift those. You will also want to advise the BOP if a detainer has been lifted or the receiving jurisdiction will no longer seek to enforce it. ICE, for example, may lift a detainer for a critically ill or dying prisoner, or one who cannot travel.
- Read the Conditions of Supervised Release carefully. You will find this on the Judgment and Commitment Order on your client’s docket. Once you have entered an appearance, consider reaching out to the U.S. Probation Office in the jurisdiction of sentencing to discuss how you might go about suggesting in your motion that the judge alter the supervised release order in light of your client’s medical condition and/or age. The judge cannot terminate supervision for one year after release, but the judge can alter the terms of supervised release to remove requirements such as holding down a job.
- Develop a release plan if you have time. You want to tell the court where your client will live, how they will be supported, where they will receive medical or hospice care and how it will be paid for. Families are often very helpful in this regard. If you have trouble with this or the family is unable to help, contact Mary Price (mprice@famm.org) or Juliana Andonian (jandonian@famm.org). We are working to develop a clearinghouse of social resources.
workers who can help guide this inquiry. This kind of release planning will help reassure the court that your client has a safe place to live and the medical care s/he needs.

III. Briefs and Support. FAMM is maintaining a brief bank and has resource counsel to help should you run into problems. Reach out to Mary Price (mprice@famm.org) or Juliana Andonian (jandonian@famm.org) or call us at 2020-822-6700. If we don’t know the answer, we will find someone who does.
Compassionate Release Under The First Step Act

Resource Materials

• Explainer
• 18 U.S.C. § 3582(c)(1)(A)(i)
• 18 U.S.C. § 3553(a)
• U.S.S.G 1B1.13
• BOP P.S. 5050.50
• BOP P.S. Operations Memorandum
• Grievance Guide
Compassionate Release and the First Step Act: Then and Now

In the Sentencing Reform Act of 1984 Congress included several “safety valves” authorizing federal courts to revisit and consider reducing sentences in a few specific situations.¹ One of them is when the prisoner develops “extraordinary and compelling reasons.” This authority is known colloquially as “compassionate release.” Congress divided compassionate release responsibility among three actors:

- The U.S. Sentencing Commission (USSC) determines what constitute extraordinary and compelling reasons, such as terminal illness or advanced age;²
- The federal Bureau of Prisons (BOP) identifies prisoners who meet the criteria and brings their cases to the courts’ attention by filing a motion for a reduction in sentence; and
- The sentencing court decides whether to reduce the sentence after considering the factors in section 3553(a) and if it finds that “extraordinary and compelling reasons” warrant a reduction.³

Before the First Step Act

The BOP regularly exercised its gatekeeping role to prevent courts from considering compassionate release requests from prisoners who meet the USSC (and even the BOP) criteria for extraordinary and compelling reasons. It did so simply by refusing to bring a motion to the court. The BOP was able to deny the court jurisdiction because:

- **The BOP developed its own set of criteria.** They included such things as terminal illness, extreme debilitation, and extraordinary family circumstances, but they also included considerations that Congress had committed to the courts. For example, the BOP examined whether a prisoner’s release might pose a threat to public safety, minimize the seriousness of the offense, or was otherwise not warranted.
- **The BOP denied compassionate release for the wrong reasons.** If the BOP found that a prisoner who otherwise met compassionate release criteria did not “deserve” to be released, it only had to deny the prisoner’s request and refuse to file a motion with the court.
- **There was no right of appeal.** The statute did not include any way for the prisoner to appeal the BOP’s denial of compassionate release.

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¹ 18 U.S.C. sec. 3582 (c).
Compassionate Release Under The First Step Act

The First Step Act made important changes to how federal compassionate release works. It changes and expands the compassionate release eligibility criteria; ensures the prisoners have the right to appeal the BOP’s denial or neglect of the prisoner’s request for a compassionate release directly to court; and provides other important features, such as notification, assistance, and visitation rules.

Compassionate Release Objective Criteria Under the First Step Act

The criteria for determining whether a prisoner has an “extraordinary and compelling reason” for a sentence reduction are sometimes broader under the Sentencing Guidelines than under the BOP Program Statement. Prisoners seeking compassionate release and/or filing motions should consult USSG 1B1.13, in addition to the BOP Program Statement 5050.50 for guidance on what reasons are considered by courts to be “extraordinary and compelling.” We indicate the differences in the outline below.

- **Terminal Medical Condition:**
  - The prisoner has been diagnosed with a terminal, incurable disease with a life expectancy of 18 months; or
  - The prisoner has a disease or condition with an end-of-life trajectory, meaning that the disease or condition will lead to death. A specific prediction of time left to live is not necessary.

- **Debilitated Medical Condition:**
  - **BOP:** The prisoner has an incurable, progressive illness or has suffered a debilitating injury without hope of recovery. BOP will consider a compassionate release if the prisoner is
    - Completely disabled so they cannot carry on any self-care and is totally confined to a bed or chair; or
    - Able to do only limited self-care and is confined for 50 percent of waking hours to a bed or chair.
  - **Sentencing Commission:** The prisoner’s ability to provide self-care in the prison is substantially diminished and recovery is not expected because the prisoner is
    - Suffering from a serious physical or medical condition;
    - Suffering from a serious functional or cognitive impairment; or
    - Experiencing deteriorating physical or mental health due to age.

- **New Law Elderly Prisoners** are those sentenced for an offense that occurred after November 1, 1987, who are
  - 70 years old or older; and
  - Have served 30 years of the sentence.

- **Elderly Prisoners (with Medical Conditions)**
  - **BOP**
    - 65 years old or older;
    - Suffer from chronic or serious medical condition related to age;
- Are experiencing deteriorating physical or mental health that substantially diminishes their ability to function in prison;
- Conventional treatment promises no substantial improvement; and
- Have served at least 50 percent of their sentence.

- **Sentencing Commission**
  - 65 years old;
  - Are experiencing serious physical or mental health deterioration due to age; and
  - Have served at least the lesser of 10 years or 75 percent of their sentence.

- **Other Elderly Prisoners (BOP only)**
  - 65 years old or older; and
  - Have served the greater of 10 years of 75 percent of their sentence.

- **Family Circumstances**
  - Death or incapacitation of the family member or caregiver of the prisoner’s minor children (BOP adds that to be eligible, the prisoner must be the only family member capable of caring for the children); or
  - Incapacitation of the prisoner’s spouse or registered partner
    - BOP: "Incapacitation” means the spouse or partner has
      - Suffered a serious injury or debilitating illness and is completely disabled so as to be unable to carry on any self-care and is totally confined to a bed or chair; or
      - Has severe cognitive defect such as Alzheimer’s.
    - BOP: The prisoner must be the only available family caregiver.

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**The First Step Act Gives Prisoners the Right to Go to Court**

The most significant change to compassionate release is that the Act provides prisoners the power to file a motion for compassionate release if they can demonstrate they have tried and failed to convince the BOP to do so for them. Before passage of the First Step Act a denial by the BOP was not appealable.

**Prisoners now have the right to file a motion** under 18 U.S.C. sec. 3582(c)(1)(A)(i) directly with the court under certain circumstances:

- Prisoners may file a motion after the earlier of
  - having “fully exhausted all administrative rights to appeal a failure of the BOP to bring a motion...” or
  - 30 days after the date the warden received a request for compassionate release from the prisoner.

- A prisoner **exhausts administrative rights** when one of two things happens:
  - The Central Office of the BOP rejects a warden’s recommendation that the BOP file a compassionate release motion, or
The warden refuses to recommend the BOP file a compassionate release motion and the prisoner appeals the denial using the BOP’s Administrative Remedy Program.  

**Other changes made by the First Step Act include:**

- **Notification when a prisoner is diagnosed with a terminal condition**
  - Within 72 hours after a terminal diagnosis, the BOP **must notify** the prisoner’s attorney, partner, and family and inform them they may submit a request for the prisoner’s compassionate release;
  - Within seven days the BOP **must provide** the partner and family members a **visit**;
  - BOP staff **must assist** a prisoner with a compassionate release request if asked to do so by the prisoner, the attorney, partner, or family member; and
  - The BOP **must “process”** a request for compassionate release from the prisoner, the attorney, partner, or family member within 14 days.
    - **Note** that P.S. 5050.50 (3)(a) interprets this provision to mean the request must be forwarded to the Central Office within 14 days, but this is not what the statute says.
    - **Note** that “terminal medical condition” is any “disease or condition with an end-of-life trajectory.”

- **Support for prisoners who are physically or mentally unable to submit a compassionate release request on their own**
  - The BOP **must inform** the prisoner’s attorney, partner, and family that they can submit a request and **must accept** a request from people other than the prisoner; and
  - BOP staff **must assist** a prisoner with a compassionate release request if asked to do so by the prisoner, the attorney, partner, or family member.

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4 Program Statement 1330.18
18 U.S.C. section 3582 (c) MODIFICATION OF AN IMPOSED TERM OF IMPRISONMENT.—

The court may not modify a term of imprisonment once it has been imposed except that—

(1) in any case—

(A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—

(i) extraordinary and compelling reasons warrant such a reduction;  
(ii) . . . and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission; and
18 U.S.C section 3553(a) FACTORS TO BE CONSIDERED IN IMPOSING A SENTENCE

The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed—

   (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

   (B) to afford adequate deterrence to criminal conduct;

   (C) to protect the public from further crimes of the defendant; and

   (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for—

   (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—

   (i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

   (ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

   (B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission
pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement—

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

Upon motion of the Director of the Bureau of Prisons under 18 U.S.C. § 3582(c)(1)(A), the court may reduce a term of imprisonment (and may impose a term of supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment) if, after considering the factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable, the court determines that—

(1) (A) extraordinary and compelling reasons warrant the reduction; or

(B) the defendant (i) is at least 70 years old; and (ii) has served at least 30 years in prison pursuant to a sentence imposed under 18 U.S.C. § 3559(c) for the offense or offenses for which the defendant is imprisoned;

(2) the defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g); and

(3) the reduction is consistent with this policy statement.

Commentary

Application Notes:

1. Extraordinary and Compelling Reasons.—Provided the defendant meets the requirements of subdivision (2), extraordinary and compelling reasons exist under any of the circumstances set forth below:

(A) Medical Condition of the Defendant.—

(i) The defendant is suffering from a terminal illness (i.e., a serious and advanced illness with an end of life trajectory). A specific prognosis of life expectancy (i.e., a probability of death within a specific time period) is not required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.

(ii) The defendant is—

(I) suffering from a serious physical or medical condition,
(II) suffering from a serious functional or cognitive impairment, or

(III) experiencing deteriorating physical or mental health because of the aging process,

that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

(B) Age of the Defendant.—The defendant (i) is at least 65 years old; (ii) is experiencing a serious deterioration in physical or mental health because of the aging process; and (iii) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.

(C) Family Circumstances.

(i) The death or incapacitation of the caregiver of the defendant's minor child or minor children.

(ii) The incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

(D) Other Reasons.—As determined by the Director of the Bureau of Prisons, there exists in the defendant's case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).

2. Foreseeability of Extraordinary and Compelling Reasons.—For purposes of this policy statement, an extraordinary and compelling reason need not have been unforeseen at the time of sentencing in order to warrant a reduction in the term of imprisonment. Therefore, the fact that an extraordinary and compelling reason reasonably could have been known or anticipated by the sentencing court does not preclude consideration for a reduction under this policy statement.

3. Rehabilitation of the Defendant.—Pursuant to 28 U.S.C. § 994(t), rehabilitation of the defendant is not, by itself, an extraordinary and compelling reason for purposes of this policy statement.

4. Motion by the Director of the Bureau of Prisons.—A reduction under this policy statement may be granted only upon motion by the Director of the
Bureau of Prisons pursuant to 18 U.S.C. § 3582(c)(1)(A). The Commission encourages the Director of the Bureau of Prisons to file such a motion if the defendant meets any of the circumstances set forth in Application Note 1. The court is in a unique position to determine whether the circumstances warrant a reduction (and, if so, the amount of reduction), after considering the factors set forth in 18 U.S.C. § 3553(a) and the criteria set forth in this policy statement, such as the defendant’s medical condition, the defendant’s family circumstances, and whether the defendant is a danger to the safety of any other person or to the community.

This policy statement shall not be construed to confer upon the defendant any right not otherwise recognized in law.

5. Application of Subdivision (3).—Any reduction made pursuant to a motion by the Director of the Bureau of Prisons for the reasons set forth in subdivisions (1) and (2) is consistent with this policy statement.

Background: The Commission is required by 28 U.S.C. § 994(a)(2) to develop general policy statements regarding application of the guidelines or other aspects of sentencing that in the view of the Commission would further the purposes of sentencing (18 U.S.C. § 3553(a)(2)), including, among other things, the appropriate use of the sentence modification provisions set forth in 18 U.S.C. § 3582(c). In doing so, the Commission is authorized by 28 U.S.C. § 994(t) to "describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples." This policy statement implements 28 U.S.C. § 994(a)(2) and (t).

Historical Note: Effective November 1, 2006 (amendment 683). Amended effective November 1, 2007 (amendment 698); November 1, 2010 (amendment 746); November 1, 2016 (amendment 799); November 1, 2018 (amendment 813).

EFFECTIVE November 1, 2018

United States Sentencing Commission

/s/
Approved: Hugh J. Hurwitz
Acting Director, Federal Bureau of Prisons

1. PURPOSE AND SCOPE

§571.60 Purpose and scope.

Under 18 U.S.C. 4205(g), a sentencing court, on motion of the Bureau of Prisons, may make an inmate with a minimum term sentence immediately eligible for parole by reducing the minimum term of the sentence to time served. Under 18 U.S.C. 3582(c)(1)(A), a sentencing court, on motion of the Director of the Bureau of Prisons, may reduce the term of imprisonment of an inmate sentenced under the Comprehensive Crime Control Act of 1984.

The Bureau uses 18 U.S.C. 4205(g) and 18 U.S.C. 3582(c)(1)(A) in particularly extraordinary or compelling circumstances which could not reasonably have been foreseen by the court at the time of sentencing.

18 U.S.C. 3582 was amended by the First Step Act of 2018, revisions noted below in Summary of Changes.

For the purposes of this Program Statement, the terms “compassionate release” and “reduction in sentence” are used interchangeably.
In deciding whether to file a motion under either 18 U.S.C. 4205(g) or 18 U.S.C. 3582, the Bureau of Prisons (BOP) should consider whether the inmate’s release would pose a danger to the safety of any other person or the community.

Under 18 USC 3582 (d)(2)(3), the Bureau ensures that all facilities regularly and visibly post, including in prisoner handbooks, staff training materials, and facility law libraries and medical and hospice facilities, and make available to prisoners upon demand, notice of—

(i) a defendant’s ability to request a sentence reduction pursuant to subsection (c)(1)(A);

(ii) the procedures and timelines for initiating and resolving requests described in clause (i); and

(iii) the right to appeal a denial of a request described in clause (i) after all administrative rights to appeal within the Bureau of Prisons have been exhausted.

§572.40 Compassionate release under 18 U.S.C. 4205(g).

18 U.S.C. 4205(g) was repealed effective November 1, 1987, but remains the controlling law for inmates whose offenses occurred prior to that date. For inmates whose offenses occurred on or after November 1, 1987, the applicable statute is 18 U.S.C. 3582(c)(1)(A). Procedures for compassionate release of an inmate under either provision are contained in 28 CFR part 571, subpart G.

a. **Program Objectives.** The expected results of this program are:

- A motion for a modification of a sentence will be made to the sentencing court only in particularly extraordinary or compelling circumstances that could not reasonably have been foreseen by the court at the time of sentencing.
- The public will be protected from undue risk by careful review of each compassionate release request.
- Compassionate release motions will be filed with the sentencing judge in accordance with the statutory requirements of 18 U.S.C. 3582 or 4205(g).

b. **Summary of Changes**

*Policy Rescinded*

P 5050.49 CN-1 Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582(c)(1)(A) and 4205(g)
The following have been added to this version of the Program Statement:

- Requirements of section 603(b) of the First Step Act, codified at 18 USC § 3582:
  - Requiring inmates be informed of reduction in sentence availability and process;
  - Modifying definition of “terminally ill;”
  - Requiring notice and assistance for terminally ill offenders;
  - Requiring requests from terminally ill offenders to be processed within 14 days;
  - Requiring notice and assistance for debilitated offenders; and
  - Specifying inmates may file directly to court after exhaustion of administrative remedies, or 30 days from receipt of a request by the Warden’s Office.

2. INITIATION OF REQUEST – EXTRAORDINARY OR COMPELLING CIRCUMSTANCES

§ 571.61 Initiation of request – extraordinary or compelling circumstances.

a. A request for a motion under 18 U.S.C. 4205(g) or 3582(c)(1)(A) shall be submitted to the Warden. Ordinarily, the request shall be in writing, and submitted by the inmate. An inmate may initiate a request for consideration under 18 U.S.C. 4205(g) or 3582(c)(1)(A) only when there are particularly extraordinary or compelling circumstances which could not reasonably have been foreseen by the court at the time of sentencing. The inmate’s request shall at a minimum contain the following information:

(1) The extraordinary or compelling circumstances that the inmate believes warrant consideration.

(2) Proposed release plans, including where the inmate will reside, how the inmate will support himself/herself, and, if the basis for the request involves the inmate’s health, information on where the inmate will receive medical treatment, and how the inmate will pay for such treatment.

b. The Bureau of Prisons processes a request made by another person on behalf of an inmate in the same manner as an inmate’s request. Staff shall refer a request received at the Central Office to the Warden of the institution where the inmate is confined.

A request for a RIS is considered “submitted” for the purposes of 18 USC §3582 (c)(1), when received by the Warden in accordance with this section.
3. REQUESTS BASED ON MEDICAL CIRCUMSTANCES

The criteria for a reduction in sentence (RIS) request may include the following:

a. Terminal Medical Condition. RIS consideration may be given to inmates who have been diagnosed with a terminal, incurable disease and whose life expectancy is eighteen (18) months or less, and/or has a disease or condition with an end-of-life trajectory under 18 USC § 3582(d)(1). The BOP’s consideration should include assessment of the primary (terminal) disease, prognosis, impact of other serious medical conditions of the inmate, and degree of functional impairment (if any). Functional impairment (e.g., limitations on activities of daily living such as feeding and dressing oneself) is not required for inmates diagnosed with terminal medical conditions; however, functional impairment may be a factor when considering the inmate’s ability or inability to reoffend.

Pursuant to 18 U.S.C. § 3582(d)(2)(A), in the case of a diagnosis of a terminal illness, the Bureau of Prisons shall, subject to confidentiality requirements:

(i) not later than 72 hours after the diagnosis notify the defendant’s attorney, partner, and family members of the defendant’s condition and inform the defendant’s attorney, partner, and family members that they may prepare and submit on the defendant’s behalf a request for a sentence reduction pursuant to subsection (c)(1)(A);

(ii) not later than 7 days after the date of the diagnosis, provide the defendant’s partner and family members (including extended family) with an opportunity to visit the defendant in person;

(iii) upon request from the defendant or his attorney, partner, or a family member, ensure that Bureau of Prisons employees assist the defendant in the preparation, drafting, and submission of a request for a sentence reduction pursuant to subsection (c)(1)(A); and

(iv) not later than 14 days of receipt of a request for a sentence reduction submitted on the defendant’s behalf by the defendant or the defendant’s attorney, partner, or family member, process the request.

The statutory time frames of section 3582(d)(2)(A), begin once the Clinical Director of an institution makes a terminal diagnosis. Once the diagnosis is made, the Clinical Director will inform the Warden and the appropriate Unit Manager as soon as possible so as to ensure requirements are met.
If the inmate is physically/psychologically able, the inmate should consent to notifications above using Form BP-A0192, Release of Information Consent, or equivalent written authorization.

If a visit is denied for security concerns, as reflected in 18 U.S.C. § 3582(d)(3)(J), the reasons should be documented.

The Warden will forward the information indicated in Section 8 of this policy, below, to Central Office within 14 days.

b. **Debilitated Medical Condition.** RIS consideration may also be given to inmates who have an incurable, progressive illness or who have suffered a debilitating injury from which they will not recover. The BOP should consider a RIS if the inmate is:

- Completely disabled, meaning the inmate cannot carry on any self-care and is totally confined to a bed or chair; or
- Capable of only limited self-care and is confined to a bed or chair more than 50% of waking hours.

The BOP’s review should also include any cognitive deficits of the inmate (e.g., Alzheimer’s disease or traumatic brain injury that has affected the inmate’s mental capacity or function). A cognitive deficit is not required in cases of severe physical impairment, but may be a factor when considering the inmate’s ability or inability to reoffend.

Pursuant to 18 U.S.C. § 3582(d)(2)(B), in the case of an inmate unable to submit a request for a RIS BOP institution staff shall:

(i) inform the defendant’s attorney, partner, and family members that they may prepare and submit on the defendant’s behalf a request for a sentence reduction pursuant to subsection (c)(1)(A)

(ii) accept and process a request for sentence reduction that has been prepared and submitted on the defendant’s behalf by the defendant’s attorney, partner, or family member under clause (i); and

(iii) upon request from the defendant or his attorney, partner, or family member, ensure that Bureau of Prisons employees assist the defendant in the preparation, drafting, and submission of a request for a sentence reduction pursuant to subsection (c)(1)(A).

All RIS requests should be assessed using the factors outlined in Section 7.
4. REQUESTS BASED ON NON-MEDICAL CIRCUMSTANCES – ELDERLY INMATES

The criteria for a RIS request may include the following:

a. **“New Law” Elderly Inmates.** Inmates sentenced for an offense that occurred on or after November 1, 1987 (e.g., “new law”), who are age 70 years or older and have served 30 years or more of their term of imprisonment.¹

b. **Elderly Inmates with Medical Conditions.** Inmates who fit the following criteria:

- Age 65 and older.
- Suffer from chronic or serious medical conditions related to the aging process.
- Experiencing deteriorating mental or physical health that substantially diminishes their ability to function in a correctional facility.
- Conventional treatment promises no substantial improvement to their mental or physical condition.
- Have served at least 50% of their sentence.

Additionally, for inmates in this category, the BOP should consider the following factors when evaluating the risk that an elderly inmate may reoffend:

- The age at which the inmate committed the current offense.
- Whether the inmate suffered from these medical conditions at the time the inmate committed the offense.
- Whether the inmate suffered from these medical conditions at the time of sentencing and whether the Presentence Investigation Report (PSR) mentions these conditions.

The BOP Medical Director will develop and issue medical criteria to help evaluate the inmate’s suitability for consideration under this RIS category.

c. **Other Elderly Inmates.** Inmates age 65 or older who have served the greater of 10 years or 75% of the term of imprisonment to which the inmate was sentenced.

¹ These criteria are different from those provided in 18 U.S.C 3582(c)(1)(a)(ii), which states that a court, upon motion of the BOP Director, may reduce a sentence term if it finds that “the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g).”
Elderly inmates who were age 60 or older at the time they were sentenced ordinarily should not be considered for RIS if their current conviction is listed in the Categorization of Offenses Program Statement.

All RIS requests should be assessed using the factors outlined in Section 7.

5. REQUESTS BASED ON NON-MEDICAL CIRCUMSTANCES – DEATH OR INCAPACITATION OF THE FAMILY MEMBER CAREGIVER.

The criteria for a RIS request may include the death or incapacitation of the family member caregiver of an inmate’s child, e.g., RIS requests from inmates whose biological or legally adopted child or children (“child”) are suddenly without a family member caregiver due to that caregiver’s death or incapacitation.

For these requests, “child” means a person under the age of 18 and “incapacitation” means the family member caregiver suffered a severe injury (e.g., auto accident) or suffers from a severe illness (e.g., cancer) that renders the caregiver incapable of caring for the child.

In reviewing these requests, BOP should assess, based on the information provided, whether release of the inmate to care for the inmate’s child is in the best interest of the child.

a. First Stage of the Warden’s Review. The following information should be provided by the inmate to the Warden in writing for RIS requests based on the death or incapacitation of the family member caregiver:

- A statement that explains that the inmate’s family member caregiver has died or become incapacitated and that person was the caregiver for the inmate’s biological or legally adopted child.
- A statement that this person was the only family member capable of caring for the inmate’s child.
- The name of the deceased or incapacitated family member caregiver and the relationship of that person to the inmate (e.g., spouse, common-law spouse, mother, sister) and statement that the caregiver is a family member of the child.
- For requests based on a deceased family member caregiver, an official copy of the family member caregiver’s death certificate.
- For requests based on an incapacitated family member caregiver, verifiable medical documentation of the incapacitation.
- Verifiable documentation that the inmate is the parent of the child. Acceptable documentation includes birth certificates, adoption papers, or verification of the inmate’s paternity.
Verifiable documentation providing the name and age of the child.

A clear statement and documentation that the inmate has a release plan, including housing, and the financial means to care for the child immediately upon the inmate’s release.

Authorization from the inmate for the BOP to obtain any information or documents from any individual, medical entity or doctor, or any government agency about the inmate, family members, and minor child.

The Warden may deny the inmate’s request at the institution level of review if the Warden finds that the inmate has not provided adequate information and documentation as set forth above.

b. **Second Stage of the Warden’s Review.** Even if the inmate provides adequate and sufficient information and documentation set forth above regarding the RIS request, further investigation is appropriate. At this stage, the Warden should convene a committee consisting of the inmate’s unit manager, correctional counselor, and any other relevant staff (social worker, physician, psychologist, etc.) to investigate the facts and circumstances provided by the inmate and to review supporting letters and documents before the Warden makes a recommendation to approve or deny the RIS request. The additional information and supporting documentation gathered by the committee for the Warden’s review should include:

- A general description of the child’s physical and mental condition.
- A description of the nature of the child’s care both during the inmate’s pre-arrest and pre-sentence period, and during the inmate’s current incarceration.
- Letters or documentation that the deceased/incapacitated family member was and still is the only family member caregiver capable of caring for the inmate’s minor child. These letters or documentation should include:
  - Information indicating whether this family member was, in fact, caring for the child during the inmate’s incarceration and immediately prior to the family member’s death or incapacitation.
  - An explanation of who has been caring for the child since the family member’s death or incapacitation.
  - If the child is in foster care, documentation verifying that the inmate will be able to immediately obtain custody of the child.

All RIS requests should be assessed using the factors outlined in Section 7 as well as the following factors.

- Has the inmate committed violent acts before or during the period of incarceration as reflected in the PSR, institutional disciplinary records, or other appropriate documentation?
- Did the inmate have drugs, drug paraphernalia, firearms, or other dangerous substances in the home while caring for the child prior to incarceration?
To what degree has the inmate had contact with or cared for the child prior to arrest, pretrial or pre-sentence, and during incarceration? Staff should review institution records for evidence of contact (telephone, mail, email, visiting log, etc.).

Is there any evidence of child abuse, neglect, or exploitation in the PSR or other documents?

Are there any documents regarding the inmate’s parenting skills or obligations (e.g., child support orders, restraining orders for physical or emotional abuse of spouse, registered partner or children, certificates for classes in anger management or other types of counseling, removal of child from the home for any reasons)?

Are there records regarding the termination of parental rights or loss of custody of the inmate’s (other) child?

Does the inmate have a detainer as a deportable alien to a country other than where the child resides?

Has the inmate received public funding or had a job with a living wage for any period of time prior to incarceration?

Has the inmate engaged in programming (e.g., parenting, anger management) during incarceration that would indicate efforts to improve parenting skills or that would indicate a commitment to caring for the child upon release?

Wardens should also consider any additional reliable documentation (e.g., letters of support from family members, neighbors, doctors, hospitals, and state or local agencies). Documentation may be obtained with the assistance of the Office of Probation and Pretrial Services. Wardens should also consider whether the inmate participated in the Inmate Financial Responsibility Program and any information relating to the inmate’s substance abuse treatment, physical/mental/emotional health, and work evaluations during incarceration.

The care of a child may be requested to be a condition of the inmate’s release to a supervised release term. Thus, failure to care for the child may result in a finding of a supervised release violation and return to custody.

6. REQUESTS BASED ON NON-MEDICAL CIRCUMSTANCES – INCAPACITATION OF A SPOUSE OR REGISTERED PARTNER

The criteria for a RIS request may include the incapacitation of an inmate’s spouse or registered partner when the inmate would be the only available caregiver for the spouse or registered partner.

For these requests, “spouse” means an individual in a relationship with the inmate, where that relationship has been legally recognized as a marriage, including a legally-recognized common-law marriage. “Registered partner” means an individual in a relationship with the inmate, where that relationship has been legally recognized as a civil union or registered domestic partnership.
The relationship should have been established before the inmate’s offense date of arrest, and should be verified by information in the PSR or other administratively acceptable documentation (e.g. marriage certificate).

For these requests, “incapacitation” means the inmate’s spouse or registered partner has:

- Suffered a serious injury, or a debilitating physical illness and the result of the injury or illness is that the spouse or registered partner is completely disabled, meaning that the spouse or registered partner cannot carry on any self-care and is totally confined to a bed or chair; or
- A severe cognitive deficit (e.g., Alzheimer’s disease or traumatic brain injury that has severely affected the spouse’s or registered partner’s mental capacity or function), but may not be confined to a bed or chair.

For these requests, the inmate should demonstrate that the inmate is the only available caregiver for the spouse or registered partner, meaning there is no other family member or adequate care option that is able to provide primary care for the spouse or registered partner.

a. First Stage of the Warden’s Review. The following information should be provided by the inmate to the Warden in writing for RIS requests based on the incapacitation of the spouse or registered partner:

- Statement that explains that the inmate’s spouse or registered partner has become incapacitated.
- Statement that the inmate is the only family member capable of caring for the spouse or registered partner.
- Verifiable medical documentation of the incapacitation of the spouse or registered partner.
- A clear statement and documentation of the inmate’s release plan, including housing, and the financial means to care for the spouse or registered partner immediately upon release.
- Written authorization from the inmate and others (as needed) for the BOP to obtain any information or documents from any individual, medical entity or doctor, or any government agency about the inmate, the spouse or registered partner, or other family members.

The Warden may deny the inmate’s request at the institution level of review if the Warden finds that the inmate has not provided adequate information and documentation as set forth above.

b. Second Stage of the Warden’s Review. Even if the inmate provides adequate and sufficient information and documentation set forth above regarding the RIS request, further investigation is appropriate. At this stage, the Warden should convene a committee consisting of the inmate’s unit manager, correctional counselor and any other relevant staff (social worker, physician, psychologist, etc.) to investigate the facts and circumstances provided by the inmate and to
review supporting letters and documents before the Warden makes a recommendation to approve or deny the RIS request. The information and supporting documentation gathered by the committee for the Warden’s review should include:

- A general description of the spouse’s or registered partner’s physical and mental condition.
- A description of the nature of the spouse’s or registered partner’s care, as relevant, during the inmate’s pre-arrest and pre-sentence period, and during the inmate’s current incarceration.
- Letters or documentation indicating whether the inmate is the only family member caregiver capable of caring for the spouse or registered partner. This should include an explanation of who has been caring for the spouse or registered partner during the inmate’s period of incarceration, as relevant.
- Letters or documentation indicating the spouse or registered partner is, or would be, supportive of the inmate’s release, and of the inmate assuming the role of the primary caregiver.

All RIS requests should be assessed using the factors outlined in Section 7 as well as the following factors.

- Has the inmate committed violent acts before or during the period of incarceration, as reflected in the PSR, institution disciplinary records, or other appropriate documentation?
- To what extent would the inmate and spouse or registered partner be relying on publicly available resources (e.g., financial or medical) to provide care to the spouse or registered partner?
- Has the inmate ever been charged with, or convicted of, a crime of domestic violence?
- Did the inmate share a residence with the spouse or registered partner prior to the period of incarceration?
- Did the inmate have drugs, drug paraphernalia, firearms, or other dangerous substances in the home shared with the spouse or registered partner prior to incarceration?
- To what degree has the inmate had contact with (or cared for) the spouse or registered partner prior to arrest, pretrial or pre-sentence, and during incarceration? Staff should review institution records for evidence of contact (telephone, mail, email, visiting log, etc.).
- Is there any evidence of abuse or neglect involving the spouse or registered partner in the PSR or other documents?
- Are there any documents regarding the inmate’s custodial skills or obligations (e.g., child support orders, restraining orders for physical or emotional abuse of spouse or registered partner or children, certificates for classes in anger management or other types of counseling, removal of children from the home for any reasons)?
- Does the inmate have a detainer as a deportable alien to a country other than where the spouse or registered partner resides?
- Has the inmate received public funding or had a job with a living wage for any period of time prior to incarceration?
Has the inmate engaged in programming (e.g., anger management, financial responsibility program) during incarceration that would indicate efforts to improve custodial skills and/or that would indicate a commitment to the inmate’s spouse or registered partner upon release?

Wardens should also consider any additional reliable documentation (e.g., letters of support from family members, neighbors, doctors, hospitals, and state or local agencies). Documentation may be obtained with the assistance of the Office of Probation and Pretrial Services.

The care of the spouse or registered partner may be requested to be a condition of the inmate’s release to a supervised release term. Thus, failure to care for the spouse or registered partner may result in a finding of a supervised release violation and return to custody.

7. FACTORS AND EVALUATION OF CIRCUMSTANCES IN RIS REQUESTS

For all RIS requests, the following factors should be considered:

- Nature and circumstances of the inmate’s offense.
- Criminal history.
- Comments from victims.
- Unresolved detainers.
- Supervised release violations.
- Institutional adjustment.
- Disciplinary infractions.
- Personal history derived from the PSR.
- Length of sentence and amount of time served. This factor is considered with respect to proximity to release date or Residential Reentry Center (RRC) or home confinement date.
- Inmate’s current age.
- Inmate’s age at the time of offense and sentencing.
- Inmate’s release plans (employment, medical, financial).
- Whether release would minimize the severity of the offense.

When reviewing RIS requests, these factors are neither exclusive nor weighted. These factors should be considered to assess whether the RIS request presents particularly extraordinary and compelling circumstances.

Overall, for each RIS request, the BOP should consider whether the inmate’s release would pose a danger to the safety of any other person or the community.

8. APPROVAL OF REQUEST

§571.62 Approval of request.
a. The Bureau of Prisons makes a motion under 18 U.S.C. 4205(g) or 3582(c)(1)(A) only after review of the request by the Warden, the General Counsel, and either the Medical Director for medical referrals or the Assistant Director, Correctional Programs Division for non-medical referrals, and with the approval of the Director, Bureau of Prisons.

(1) The Warden shall promptly review a request for consideration under 18 U.S.C. 4205(g) or 3582(c)(1)(A). If the Warden, upon an investigation of the request determines that the request warrants approval, the Warden shall refer the matter in writing with recommendation to the Office of General Counsel.

The Warden’s referral at a minimum must include the following:

a. The Warden’s written recommendation as well as any other pertinent written recommendations or comments made by staff during the institution review of the request.

b. A complete copy of Judgment and Commitment Order or Judgment in a Criminal Case and sentence computation data.

c. A progress report that is not more than 30 days old. All detainers and holds should be resolved prior to the Warden’s submission of a case under 18 U.S.C. 3582 (c)(1)(A) or 4205(g). If a pending charge or detainer cannot be resolved, an explanation of the charge or conviction status is needed.

d. All pertinent medical records if the reason for the request involves the inmate’s health. Pertinent records include, at a minimum, a Comprehensive Medical Summary by the attending physician, which should also include an estimate of life expectancy, and all relevant test results, consultations, and referral reports/opinions.

e. The referral packet must include, when available, a copy of the Presentence Investigation and Form U.S.A. 792, Report on Convicted Offender by U.S. Attorney, Custody Classification form, Notice of Action forms, Probation form 7a, information on fines, CIM Case Information Summary (BP-A0339), and any other documented information that is pertinent to the request. In the absence of a Form U.S.A. 792, the views of the prosecuting Assistant U.S. Attorney may be solicited; those views should be made part of the Warden’s referral memo.

f. If the inmate is subject to the Victim and Witness Protection Act of 1982 (VWPA), confirmation of notification to the appropriate victim(s) or witness(es) must be incorporated into the Warden’s referral. A summary of any comments received must also be incorporated into the referral. If the inmate is not subject to the VWPA, a statement to that effect must be in the referral.
g. For a request under 18 U.S.C. 3582(c)(1)(A), when a term of supervised release follows the term of imprisonment, confirmation that release plans have been approved by the appropriate U.S. Probation Office must be included in the referral. If the inmate will be released to an area outside the sentencing district, the U.S. Probation Office assuming supervision must be contacted. If no supervision follows the term of imprisonment, release plans must still be developed.

h. The development of release plans must include, at a minimum, a place of residence and the method of financial support, and may require coordination with various segments of the community, such as hospices, the Department of Veterans Affairs or veterans’ groups, Social Security Administration, welfare agencies, local medical organizations, or the inmate’s family.

i. Because there is no final agency decision until the Director has reviewed the request, staff at any level may not contact the sentencing judge or solicit the judge’s opinion through other officers of the court.

(2) If the General Counsel determines that the request warrants approval, the General Counsel shall solicit the opinion of either the Medical Director or the Assistant Director, Correctional Programs Division depending upon the nature of the basis for the request. With this opinion, the General Counsel shall forward the entire matter to the Director, Bureau of Prisons, for final decision.

(3) If the Director, Bureau of Prisons, grants a request under 18 U.S.C. 4205(g), the Director will contact the U.S. Attorney in the district in which the inmate was sentenced regarding moving the sentencing court on behalf of the Bureau of Prisons to reduce the minimum term of the inmate’s sentence to time served. If the Director, Bureau of Prisons, grants a request under 18 U.S.C. 3582(c)(1)(A), the Director will contact the U.S. Attorney in the district in which the inmate was sentenced regarding moving the sentencing court on behalf of the Director of the Bureau of Prisons to reduce the inmate’s term of imprisonment to time served.

b. Upon receipt of notice that the sentencing court has entered an order granting the motion under 18 U.S.C. 4205(g), the Warden of the institution where the inmate is confined shall schedule the inmate for hearing on the earliest Parole Commission docket.

Institution staff prepare an amended Sentence Data Summary for use at this hearing. Staff provide a copy of the most recent progress report to the Parole Commission.

Upon receipt of notice that the sentencing court has entered an order granting the motion under 18 U.S.C. 3582(c)(1)(A), the Warden of the institution where the inmate is confined shall release the inmate forthwith.
c. In the event the basis of the request is the medical condition of the inmate, staff shall expedite the request at all levels.

A request for an expedited review permits the review process to be expedited, but does not lessen the requirement that documentation be provided.

9. DENIAL OF REQUEST

§571.63 Denial of request.

a. When an inmate’s request is denied by the Warden, the inmate will receive written notice and a statement of reasons for the denial. The inmate may appeal the denial through the Administrative Remedy Procedure (28 CFR part 542, subpart B).

b. When an inmate’s request for consideration under 18 U.S.C. 4205(g) or 3582(c)(1)(A) is denied by the General Counsel, the General Counsel shall provide the inmate with a written notice and statement of reasons for the denial. This denial constitutes a final administrative decision.

c. When the Director, Bureau of Prisons, denies an inmate’s request, the Director shall provide the inmate with a written notice and statement of reasons for the denial within 20 workdays after receipt of the referral from the Office of General Counsel. A denial by the Director constitutes a final administrative decision.

d. Because a denial by the General Counsel or Director, Bureau of Prisons, constitutes a final administrative decision, an inmate may not appeal the denial through the Administrative Remedy Procedure.

Under 18 USC 3582 (c) (1), an inmate may file a request for a reduction in sentence with the sentencing court after receiving a BP-11 response under subparagraph (a), the denial from the General Counsel under subparagraph (d), or the lapse of 30 days from the receipt of such a request by the Warden of the inmate’s facility, whichever is earlier.

10. INELIGIBLE OFFENDERS

§571.64 Ineligible offenders.

The Bureau of Prisons has no authority to initiate a request under 18 U.S.C. 4205(g) or 3582(c)(1)(A) on behalf of state prisoners housed in Bureau of Prisons facilities or D.C. Code offenders confined in federal institutions. The Bureau of Prisons cannot initiate such a motion on behalf of federal offenders who committed their offenses prior to November 1, 1987, and received non-parolable
11. TRACKING REDUCTION IN SENTENCE REQUESTS

To ensure consistent handling and documentation of RIS requests, Wardens must identify a staff member to serve as an institution RIS Coordinator (IRC) and an alternate. The principal responsibility of the IRC is to receive and document RIS requests and other RIS-related information in the RIS electronic tracking database.

For each RIS request, the following information is entered into the RIS tracking database by the IRC:

- Inmate’s full name.
- Federal register number.
- Date of birth and age.
- Institution.
- Date RIS request received by institution.
- Reason for RIS request.
- Whether staff assisted the inmate with submitting the RIS request.
- Whether the request was submitted by a third party (attorney, partner, family member).
- Disposition of request (e.g., approval or denial).
- Reason for disposition.
- Date of disposition of request.

At the Central Office (CO) level, information regarding RIS requests is entered into the database by RIS Coordinators in the Office of General Counsel, the Health Services Division, and the Correctional Programs Division. The following information is entered into the RIS tracking database by CO staff:

- Date RIS request received by CO.
- Director’s final decision.

12. ANNUAL REPORT

Under 18 U.S.C. § 3582 (d)(3), not later than December 21, 2019, and once every year thereafter, the Director of the Bureau of Prisons shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on requests for sentence reductions pursuant to subsection (c)(1)(A), which shall include a description of, for the previous year—

(A) the number of prisoners granted and denied sentence reductions, categorized by the criteria
relied on as the grounds for a reduction in sentence;
(B) the number of requests initiated by or on behalf of prisoners, categorized by the criteria relied on as the grounds for a reduction in sentence;
(C) the number of requests that Bureau of Prisons employees assisted prisoners in drafting, preparing, or submitting, categorized by the criteria relied on as the grounds for a reduction in sentence, and the final decision made in each request;
(D) the number of requests that attorneys, partners, or family members submitted on a defendant’s behalf, categorized by the criteria relied on as the grounds for a reduction in sentence, and the final decision made in each request;
(E) the number of requests approved by the Director of the Bureau of Prisons, categorized by the criteria relied on as the grounds for a reduction in sentence;
(F) the number of requests denied by the Director of the Bureau of Prisons and the reasons given for each denial, categorized by the criteria relied on as the grounds for a reduction in sentence;
(G) for each request, the time elapsed between the date the request was received by the warden and final decision, categorized by the criteria relied on as the grounds for a reduction in sentence;
(H) for each request, the number of prisoners who died while their request was pending and, for each, the amount of time that had elapsed between the date the request was received by the Bureau of Prisons, categorized by the criteria relied on as the grounds for a reduction in sentence;
(I) the number of Bureau of Prisons notifications to attorneys, partners, and family members of their right to visit a terminally ill defendant as required under paragraph (2)(A)(ii) and, for each, whether a visit occurred and how much time elapsed between the notification and the visit;
(J) the number of visits to terminally ill prisoners that were denied by the Bureau of Prisons due to security or other concerns, and the reasons given for each denial; and
(K) the number of motions filed by defendants with the court after all administrative rights to appeal a denial of a sentence reduction had been exhausted, the outcome of each motion, and the time that had elapsed between the date the request was first received by the Bureau of Prisons and the date the defendant filed the motion with the court.

13. ACA AGENCY ACCREDITATION PROVISIONS

None.

REFERENCES

Directives Referenced
P5162.05 Categorization of Offenses (3/16/09)

Federal Regulations
■ Rules cited in this Program Statement are contained in 28 CFR 571.60 through 571.64.
Rules referenced in this Program Statement are contained in 28 CFR 542.10 through 542.16 and 572.40.

**U.S. Code Referenced**
- Title 18, United States Code, Section 4205(g).
- Title 18, United States Code, Section 3582.

**BOP Forms**
- BP-A0339 CIM Case Information Summary
- BP-A0192 Release of Information Consent

**Records Retention Requirements**
Requirements and retention guidance for records and information applicable to this program are available in the Records and Information Disposition Schedule (RIDS) system on Sallyport.
Reduction in Sentence (RIS) Criteria for Elderly Inmates with Medical Conditions

/s/
Approved: Deborah G. Schult, Ph.D.
Assistant Director, Health Services Division

1. PURPOSE AND SCOPE

This OM provides guidance to staff for review of inmate requests under the Program Statement Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582(c)(1)(A) and 4205(g), Section (4)(b), Elderly Inmates with Medical Conditions. Specifically, this guidance addresses the medical evaluation portion of the assessment.

Following a determination that the requirements of age, percentage of sentence served, and medical criteria are met, other assessment factors related to elderly offenders with medical conditions, including the evaluation of risk that the inmate may reoffend, a current conviction for a crime listed in the Program Statement Categorization of Offenses, and factors outlined in Section 7 of the Program Statement Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582(c)(1)(A) and 4205(g), must be addressed before the inmate can be recommended for a reduction in sentence (RIS).

The Health Services Division (HSD), with input from the Office of General Counsel, has developed the following guidance for staff to use as a tool when considering whether an inmate is appropriate for a RIS under the criteria for Elderly Inmates with Medical Conditions.
These criteria, as defined in the Program Statement Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582(c)(1)(A) and 4205(g), Section (4)(b), require that eligible elderly inmates must be age 65 or older and have served at least 50% of their sentence. The Program Statement also specifies that eligible inmates must also:

■ Suffer from chronic or serious medical conditions related to the aging process.
■ Be experiencing deteriorating mental or physical health that substantially diminishes their ability to function in a correctional facility.
■ Have medical conditions for which conventional treatment promises no substantial improvement to their mental or physical condition.

2. PROGRAM OBJECTIVES

This OM will assist institution medical staff in making appropriate referrals for elderly inmates with medical conditions and give a clearer understanding of how HSD reviewers will evaluate RIS requests under this criterion.

3. RESPONSIBILITIES

The first step in the review process is to establish that an inmate meets the requirement of age 65 years or older and service of 50% of his/her sentence.

After this determination is made, institution medical staff evaluate the inmate to establish that the inmate is suffering from chronic or serious medical condition(s) related to the aging process for which conventional treatment promises no substantial improvement to his/her mental or physical condition, and that the deteriorating physical or cognitive limitations substantially diminishes his/her ability to function in a correctional facility.

The following examples are medical conditions that are permanent, progressive, and ordinarily related to diseases associated with aging that substantially diminish the ability to function in a correctional facility. These conditions include but are not limited to:

■ Atherosclerotic cardiovascular disease.
■ Obstructive and restrictive lung diseases.
■ Dementias such as Alzheimer, Lewy body dementia (LBD), and frontotemporal dementia.
■ Complications of infectious diseases such as HIV dementia or progressive multifocal leukencephalopathy.
■ Degenerative neurological diseases such as ALS, Parkinson, and Huntington disease, and certain forms of multiple sclerosis.
■ Severe chronic pain that persists despite optimal medical management.
■ Chronic liver failure with recurring ascites or encephalopathy (with no possibility of transplantation).
■ Chronic renal failure stage 4 or 5 (with no possibility of transplantation).
■ Rheumatologic conditions that have progressed to deformity, such as rheumatoid arthritis, gout, and ankylosing spondylitis.
■ Diabetes mellitus, either Type 1 diabetes or Type 2, with established retinopathy, nephropathy, or peripheral neuropathy.
■ Severe musculoskeletal degeneration, such as end-stage osteoarthritis.

While an inmate may be diagnosed with one of these conditions (or another condition) that is permanent, progressive, and deteriorating, medical staff must also determine that the condition has substantially diminished the inmate’s ability to function in a correctional facility.

In reviewing the functional and/or cognitive limitations that substantially diminish the inmate’s ability to function in a correctional facility, the key question that should be considered and carefully documented in the RIS summary is whether there are functional or cognitive limitations evidenced by the inmate’s inability to perform instrumental activities of daily living (IADL).

IADLs refer to abilities/skills that are necessary for a person to be able to live independently. IADLs involve management of, or interaction with activities in a person’s environment and surroundings. Examples of IADLs include such activities as shopping, food preparation, housecleaning and laundry, medication and money management, telephone calls, and transportation. In contrast to IADLs, activities of daily living (ADLs) involve the management of basic bodily functions and needs, such as ambulating [mobility], bathing, dressing, eating, and toileting, which are reviewed as criteria for medical debilitated inmates.

Inmates are likely to have a diminished ability to function in a correctional environment when they require assistance with IADLs from staff or other inmates with medication management, personal hygiene, doing laundry, standing count, going to pill line, callout, commissary, meals, etc. In addition, inmates with cognitive limitations who require human assistance to be reoriented to person, place, or time are likely to have diminished ability to function in a correctional environment.

A final consideration for determining whether an inmate’s condition substantially diminishes his/her ability to function in a correctional facility involves the specific institution designation and degree of human assistance required for the inmate to accomplish his/her IADLs. The following factors should be considered in forming an opinion whether an inmate’s condition substantially diminishes his/her ability to function in a correctional facility:

■ Designated permanently to a Medical Referral Center (MRC) for medical treatment or treatment for cognitive impairment; OR
■ Designated to a non-MRC, but due to age-related medical conditions, requires human assistance (staff or inmate) on a daily basis to accomplish IADLs such as getting to meals, pill lines, and/or call-outs. This assistance should be observed and documented in the electronic health record (EHR) by health care staff. (The need for “human assistance” is independent of whether the inmate uses other assistive devices such as wheelchair, walker, reacher, hearing aids, portable oxygen, etc.); OR

■ Designated to a non-MRC, but due to cognitive impairments requires human assistance (more than once a week by staff or inmate) to be reoriented to person, place, or time as observed and documented in the EHR by health care staff; OR

■ Designated temporarily to an MRC for treatment, but expected to be redesignated to a non-MRC and will require human assistance for necessary IADLs in a correctional setting or being reoriented to person, place, or time.

Based on P.S. 1330.18

Following all the steps helps to protect your legal rights.
You must finish all administrative steps before suing about prison conditions under federal law. If you stop before completing the entire process, for any reason, a court may say that you have not “exhausted” your administrative remedies and dismiss your case. There are strict time limits you must follow in order to complete the grievance process.

This Guide was created by the D.C. Prisoners’ Project of the Washington Lawyers’ Committee for Civil Rights and Urban Affairs. It was last updated in July 2018. It is based on BOP Program Statement 1330.18 published January 6, 2014.

It is not an official document of the Bureau of Prisons.
It does not replace the advice of an attorney. It is not legal advice and does not create an attorney client relationship. You are responsible for meeting all necessary deadlines and requirements.

Updated July 2018
This guide will help you with the Administrative Remedy Request process.

You must finish all administrative steps before suing about prison conditions under federal law. This is because of the Prison Litigation Reform Act (PLRA).

If you stop before completing the entire process, for any reason, the court may say that you have not “exhausted” your administrative remedies and dismiss your case. There are strict time limits you must follow in order to complete the grievance process.

It also creates a paper trail and shows you tried to resolve the problem. It might even work.

**General Tips**

- The full regulation is in P.S. 1330.18. You can read it in your law library.
- Use one grievance form for each complaint, instead of writing about multiple unrelated issues on one form.
- Describe the problem in as much detail as possible. If you run out of room, you can attach ONE extra letter-size page.
- Make at least three copies of each of your grievances. You can write out the copies by hand.
- If you miss the deadline to file a grievance, file it anyway. Explain in the grievance why you are late.
- For situations in which filing a grievance with the staff at the prison would put you in danger, you can skip Step 1, the informal complaint, and send your BP-9 form straight to the Regional Director. You should write “Sensitive” on the grievance and explain why filing the grievance with staff at the prison would put you in danger.
- Keep copies of any documents you include with your grievance – you will not get them back.
- Include copies of prior grievances and responses as you move through each step (e.g., when filing a BP-10, you must include a copy of your BP-9 and the Warden’s response).

**Sample Language**

Review the sample language below to get an idea of how to write your own grievance. A good grievance is one that specifies why you are making the request and states exactly what you want. We have provided a good example and a bad example of two common situations.

**Medical care situation:**

- Bad example: “I want an x-ray done on my knee.”
- Good example: “I have had sharp pain in my knee for the last 3 weeks. I would like to get an x-ray done as soon as possible to get a diagnosis of my issue. If an x-ray is not appropriate, I would like to know why not and I would like appropriate treatment.”

**Assault situation:**

- Bad example: “I want to be moved out of my cell.”
- Good example: “I was assaulted by my cellmate on March 18, 2018. We have not been separated, and I fear for my safety. I would like to be separated from him immediately.”

*Note: Complaints about sexual abuse and involving disability issues have slightly different procedures. If you don’t have our guides to those issues, write and ask us for a copy.
Overview of the Administrative Remedy Process

1. Informal Resolution
   - Check with Staff of your
   - Informal Resolution
   - Learn what the informa
   - Your Resolution Panel is
   - Your Resolution Panel is
   - The incident occurs again
   - The incident occurs again

2. Administrative Remedy
   - Fill out Form BP-9, then the
   - The incident occurs again
   - The incident occurs again
   - If you do not have a response
   - The incident occurs again
   - The incident occurs again

3. Appeal
   - File Form BP-10 with the
   - The incident occurs again
   - The incident occurs again
   - If you do not have a response
   - The incident occurs again

4. Final Appeal
   - File Form BP-11 with the
   - The incident occurs again
   - The incident occurs again
   - If you do not have a response
   - The incident occurs again

Overview of the Administrative Remedy Process
ADMINISTRATIVE REMEDY REQUEST WORKSHEET

1. **INFORMAL RESOLUTION**
   
   A. Date of Incident: 
   
   B. Add 20 days to date on line A:
   This is your deadline to file your Informal Complaint and BP-9.
   
   C. Date you made an Informal Complaint:

2. **BP-9:**
   
   Submit the original BP-9 form with carbon copies by the date calculated on line B. If you use an extra page, you must submit two copies to the Warden. Keep at least one copy of your full submission at all times.

   D. What day did you file your BP-9?
   
   E. Add 20 days to the date on line D:
   This is when you should receive a response to your BP-9. The warden has 20 days to respond.

   If you receive a Continuance Form that extends the Warden’s deadline, update line E with the new response deadline.

   **Did you receive a response to your BP-9?**

   If yes: 
   
   F. Date of Warden’s response: 
   
   If no:
   
   F. Date on Line E:

   G. Add 20 days to date on line F:
   This is your deadline to file your BP-10.
   
   G. Add 20 days to date on line F:
   This is your deadline to file your BP-10.

3. **BP-10:**
   
   Submit the original BP-10 form with carbon copies by the date calculated on line G. If you use an extra page, you must submit three copies to the Regional Director. Keep at least one copy of your full submission at all times. You can find the address for your Regional Director on Page 6.

   H. What day did you file your BP-10?
   
   I. Add 30 days to the date on line H:
   This is when you should receive a response to your BP-10. The Regional Director has 30 days to respond.
Did you receive a response to your BP-10?

If yes:

J. Date of Reg. Director’s response: __________

K. Add 30 days to date on line J: __________

This is your deadline to file your BP-11. You should send it as early as possible to make sure it arrives before the deadline.

If no:

J. Date on Line I: __________

K. Add 30 days to date on line J: __________

This is your deadline to file your BP-11. You should send it as early as possible to make sure it arrives before the deadline.

4. BP-11:

Submit the original BP-11 with carbon copies by the date calculated on line K. If you use an extra page, you must submit four copies of it to the Office of General Counsel. Keep at least one copy of your full submission at all times. You should send it to this address:

National Inmate Appeals Administrator
Office of General Counsel
320 First St., NW
Washington, DC 20534

L. What day did you file your BP-11? __________

M. Add 40 days to the date on line L: __________

This is when you should receive a response to your BP-11. General Counsel has 40 days to respond.

The grievance process is now complete. This means that you have finished all of the administrative steps required before suing about prison conditions under federal law.

*Note: If you are filing about a disability issue, remember that there is another administrative process to complete before you can go to court.

If you do file in court, it is good to have two copies of what you submitted at each level.
Addresses of Bureau of Prisons Regional Directors

If you are in Delaware, Kentucky, Maryland, North Carolina, Tennessee, Virginia, or West Virginia:
  Regional Director
  Mid-Atlantic Regional Office
  302 Sentinel Drive, Suite 200
  Annapolis Junction, MD 20701

If you are in Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, or Wisconsin:
  Regional Director
  North Central Regional Office
  400 State Avenue, Suite 800
  Kansas City, KS 66101

If you are in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, or Vermont:
  Regional Director
  Northeast Regional Office
  U.S. Custom House, 7th Floor
  200 Chestnut Street
  Philadelphia, PA 19106

If you are in Arkansas, Louisiana, New Mexico, Oklahoma, or Texas:
  Regional Director
  South Central Regional Office
  U.S. Armed Forces Reserve Complex
  344 Marine Forces Drive
  Grand Prairie, TX 75051

If you are in Alabama, Florida, Georgia, Mississippi, Puerto Rico, or South Carolina:
  Regional Director
  Southeast Regional Office
  3800 Camp Creek Parkway, S.W.
  Building 2000
  Atlanta, Georgia 30331

If you are in Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, or Wyoming:
  Regional Director
  Western Regional Office
  Federal Bureau of Prisons
  7338 Shoreline Drive
  Stockton, CA 95219
Elderly and family reunification pilot program FAQ

**Background:** The First Step Act (P.L. 115-391) reauthorized a 2009 pilot program that allows the Bureau of Prisons (BOP) to transfer certain elderly prisoners into home confinement without regards to the time limits laid out in 18 U.S.C. § 3624(c). In addition to reauthorizing the pilot program, the First Step Act allows the Department of Justice to implement the program in more than one BOP facility and expanded the eligibility criteria.

**Q1: How long will the pilot program be in effect?**  
A: The First Step Act authorized the pilot program for fiscal years 2019 through 2023.

**Q2: Where will the program be offered?**  
A: Under the original program, the pilot program was only offered in one BOP facility. The First Step grants the Attorney General authority to multiple BOP facilities and does not prevent the Attorney General from implementing this program in every BOP facilities. The available facilities will not be known until the DOJ releases guidance on the program.

**Q3: Who will be eligible?**  
A: During the first iteration of the program elderly prisoners who were not less than 65 years old and had served either 10 years or 75% of their prison sentence were eligible for early transfer to home confinement.

Under the First Step Act – the elderly prisoners who are not less than 60 years old and have served 2/3 of their sentence are eligible for early transfer to home confinement. In addition to elderly prisoner, the reauthorization of the pilot program will be offered to “terminally ill” prisoners. Under this pilot program an individual is considered to be terminally ill if a BOP approved medical doctor finds that the person 1) needs care in a nursing home, intermediate care facility, or assisted living facility or 2) diagnosed with a terminal illness.

Under both the initial pilot program and the First Step reauthorization, individuals convicted of a violent offense as defined in 18 U.S.C. § 16, sex offense as defined in 34 U.S.C. § 20911(5), offense described in 18 U.S.C. § 2332b(g)(5)(B) or offense under 18 U.S.C. §§ 791 et seq are ineligible.

**Q4: What’s the process for selection?**  
A: The First Step reauthorization now allows for the elderly prisoners to submit written requests to the BOP for early transfer into home confinement. The decision for early transferal will be made by the Attorney General.
Q5: Do I need an attorney to apply for this program?
A: No. The decision to place an elderly or terminally ill prisoner in home confinement will be made at the discretion of the Attorney General. Prisoners are not entitled to representation in this process, nor is it necessary.
If you have questions regarding this process or if an attorney is offering you release in exchange for payment please contact Mary Price at mprice@famm.org
Prisoner Assessment Tool Targeting Estimated Risk and Needs (PATTERN)

**Background:** On December 21, 2018, President Trump the First Step Act into law. The new law required the Department of Justice, in coordination with an Independent Review Committee, to create a new risk and needs assessment tool to periodically assess the risk of recidivism for each person incarcerated within the Bureau of Prisons (BOP). On July 20th, the National Institute of Justice released a report detailing the new First Step Act risk and needs assessment tool, Prisoner Assessment Tool Targeting Estimated Risk and Needs (PATTERN). The tool expands on the BOP’s previous recidivism prediction tool, BRAVO-R, and utilizes static (fixed factors such as age at offense) and dynamic (changing factors such as program participation) factors to predict the likelihood of both general recidivism (any new arrest or return to BOP custody) and violent recidivism (likelihood of arrest related to a violent offense). PATTERN scores will be used to assess individuals as either minimum, low, medium, or high risk.

**Measures:** The PATTERN system will determine a risk of recidivism based on the following static and dynamic measures:

- **Static:**
  - Age at first arrest;
  - Age at time of assessment;
  - Instant offense (violent or nonviolent);
  - Sex offender;
  - Criminal history score;
  - History of violence; and
  - Voluntary surrender

- **Dynamic:**
  - Infraction convictions while incarcerated (any);
  - Infraction convictions while incarcerated (serious and violent);
  - Number of programs completed (any);
  - Number of technical or vocational courses;
  - UNICOR employment;
  - Drug treatment while incarcerated;
  - Non-compliance with financial restitution;
  - History of escapes; and
  - Education (GED or HS Degree)
**Risk levels:** The following PATTERN scores are used to determine whether an individual is at a minimum, low, medium, or high risk of recidivating.

- **Minimum risk:**
  - Male – 0 - 10 points
  - Female – 0 - 9 points

- **Low risk:**
  - Male – 11 - 33 points
  - Female – 10 - 29 points

- **Medium risk:**
  - Male – 34 - 45 points
  - Female – 30 - 45 points

- **High risk:**
  - Male – 45+ points
  - Female – 45+ points

**Scores:** The following chart details how each measure is weighted and scored under PATTERN.

<table>
<thead>
<tr>
<th>Measure</th>
<th>Male General Recidivism</th>
<th>Female General Recidivism</th>
<th>Male Violent Recidivism</th>
<th>Female Violent Recidivism</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Age at Conviction</strong></td>
<td>Less than 18: 12</td>
<td>Less than 18: 15</td>
<td>Less than 18: 6</td>
<td>Less than 18: 3</td>
</tr>
<tr>
<td>18 – less than 25: 8</td>
<td>18 – less than 25: 10</td>
<td>18 – less than 25: 4</td>
<td>18 – less than 25: 2</td>
<td>18 – less than 25: 2</td>
</tr>
<tr>
<td>25 – less than 35: 4</td>
<td>25 – less than 35: 5</td>
<td>25 – less than 35: 2</td>
<td>25 – less than 35: 1</td>
<td>25 – less than 35: 1</td>
</tr>
<tr>
<td>35 or older: 0</td>
<td>35 or older: 0</td>
<td>35 or older: 0</td>
<td>35 or older: 0</td>
<td>35 or older: 0</td>
</tr>
<tr>
<td><strong>Age at Assessment</strong></td>
<td>Less than 18 – 25: 30</td>
<td>Less than 18 – 25: 15</td>
<td>Less than 18 – 25: 5</td>
<td>Less than 18 – 25: 5</td>
</tr>
<tr>
<td>41 – 50 : 12</td>
<td>41 – 50 : 6</td>
<td>41 – 50 : 2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>51 – 60: 6</td>
<td>51 – 60: 3</td>
<td>51 – 60: 1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>60 + - 0</td>
<td>60 + - 0</td>
<td>60 + - 0</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 convictions: 6</td>
<td>2 convictions: 4</td>
<td>2 convictions: 4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 conviction: 3</td>
<td>1 conviction: 2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>0 convictions: 0</td>
<td>0 convictions: 0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2 convictions: 4</td>
<td>2 convictions: 4</td>
<td>2 convictions: 4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 conviction: 2</td>
<td>1 conviction: 2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>0 convictions: 0</td>
<td>0 convictions: 0</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Number of programs completed (any)</strong></td>
<td>More than 10: -12</td>
<td>More than 10: -8</td>
<td>More than 10: -4</td>
<td>More than 10: -4</td>
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<tr>
<td>4 - 10: -9</td>
<td>4 - 10: -6</td>
<td>4 - 10: -3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 – 3: -6</td>
<td>1 – 3: -4</td>
<td>1 – 3: -2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1: -3</td>
<td>1: -2</td>
<td>1: -1</td>
<td></td>
<td></td>
</tr>
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<td>0: 0</td>
<td>0: 0</td>
<td>0: 0</td>
<td></td>
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</tr>
<tr>
<td><strong>Number of technical or vocational courses</strong></td>
<td>More than one: 0</td>
<td>More than one: 0</td>
<td>More than one: 0</td>
<td>More than one: 0</td>
</tr>
<tr>
<td>1 course: -1</td>
<td>1 course: -1</td>
<td>1 course: -1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>0 courses: -2</td>
<td>0 courses: -2</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- CJA 137 -
| Federal Industry Employment (UNICOR) | Yes: -1  
No: 0 | Yes: -1  
No: 0 | Yes: -1  
No: 0 |
| Drug Treatment While Incarcerated | No need indicated: -6  
Completed RDAP: -4  
Completed drug treatment during incarceration: -2  
Need indicated but no treatment during incarceration: 0 | No need indicated: -9  
Completed RDAP: -6  
Completed drug treatment during incarceration: -3  
Need indicated but no treatment during incarceration: 0 | No need indicated: -3  
Completed RDAP: -2  
Completed drug treatment during incarceration: -1  
Need indicated but no treatment during incarceration: 0 |
| Drug Education While Incarcerated | No: 0  
Yes: -1  
Completed RDAP: -4  
Completed drug treatment during incarceration: -2  
Need indicated but no treatment during incarceration: 0 | No: 0  
Yes: -1  
Completed RDAP: -6  
Completed drug treatment during incarceration: -3  
Need indicated but no treatment during incarceration: 0 | No: 0  
Yes: -1  
Completed RDAP: -2  
Completed drug treatment during incarceration: -1  
Need indicated but no treatment during incarceration: 0 |
| Non-compliance with financial responsibility | No: 0  
Yes: 3  
Completed RDAP: -4  
Completed drug treatment during incarceration: -2  
Need indicated but no treatment during incarceration: 0 | No: 0  
Yes: 3  
Completed RDAP: -6  
Completed drug treatment during incarceration: -3  
Need indicated but no treatment during incarceration: 0 | No: 0  
Yes: 3  
Completed RDAP: -2  
Completed drug treatment during incarceration: -1  
Need indicated but no treatment during incarceration: 0 |
| Instant Offense Violent | No: 0  
Yes: 4  
Completed RDAP: -4  
Completed drug treatment during incarceration: -2  
Need indicated but no treatment during incarceration: 0 | No: 0  
Yes: 5  
Completed RDAP: -6  
Completed drug treatment during incarceration: -3  
Need indicated but no treatment during incarceration: 0 | No: 0  
Yes: 3  
Completed RDAP: -2  
Completed drug treatment during incarceration: -1  
Need indicated but no treatment during incarceration: 0 |
| Sex offender | No: 0  
Yes: 1  
Completed RDAP: -4  
Completed drug treatment during incarceration: -2  
Need indicated but no treatment during incarceration: 0 | No: 0  
Yes: 1  
Completed RDAP: -6  
Completed drug treatment during incarceration: -3  
Need indicated but no treatment during incarceration: 0 | No: 0  
Yes: 1  
Completed RDAP: -2  
Completed drug treatment during incarceration: -1  
Need indicated but no treatment during incarceration: 0 |
| Criminal History Points | 0 – 1 points: 0  
2 – 3 points: 6  
4 – 6 points: 12  
7 – 9 points: 18  
10 – 12 points: 24  
13+ points: 30 | 0 – 1 points: 0  
2 – 3 points: 6  
4 – 6 points: 12  
7 – 9 points: 18  
10 – 12 points: 24  
13+ points: 30 | 0 – 1 points: 0  
2 – 3 points: 6  
4 – 6 points: 12  
7 – 9 points: 18  
10 – 12 points: 24  
13+ points: 30 |
| History of Violence | None: 0  
>10 years minor: 1  
>15 years serious: 2  
5-10 years minor: 3  
10-15 years serious: 4  
<5 years minor: 5  
5-10 years serious: 6  
<5 years serious: 7 | None: 0  
>10 years minor: 1  
>15 years serious: 2  
5-10 years minor: 3  
10-15 years serious: 4  
<5 years minor: 5  
5-10 years serious: 6  
<5 years serious: 7 | None: 0  
>10 years minor: 1  
>15 years serious: 2  
5-10 years minor: 3  
10-15 years serious: 4  
<5 years minor: 5  
5-10 years serious: 6  
<5 years serious: 7 |
| History of Escapes | None: 0  
>10 years minor: 2  
5-10 years minor: 4  
<5 years minor any serious: 6 | None: 0  
>10 years minor: 2  
5-10 years minor: 4  
<5 years minor any serious: 6 | None: 0  
>10 years minor: 1  
5-10 years minor: 2  
<5 years minor any serious: 3 |
| Voluntary Surrender | Yes: -12  
No: 0 | Yes: -9  
No: 0 | Yes: -1  
No: 0 | Yes: -2  
No: 0 |