

PS 5331.01 EARLY RELEASE PROCEDURES UNDER 18 U.S.C. § 3621(e)



Program Statement

OPI: CPD
NUMBER: 5331.01
DATE: 9/29/2003
SUBJECT: Early Release
Procedures Under
18 U.S.C. § 3621(e)

1. **PURPOSE AND SCOPE.** To establish criteria and procedures when considering an inmate for early release.

As an incentive for inmates to participate in residential drug abuse programs, non-violent inmates may be considered for early release in accordance with the provisions of 18 U.S.C. § 3621(e).

2. **PROGRAM OBJECTIVES.** The expected results of this program are:

a. For purposes addressed in this Program Statement, early release will be available for eligible inmates.

b. Staff will ensure that only eligible inmates will be released early from Bureau custody.

c. The public will be protected from undue risk by following all early release procedures.

d. All early releases will be reviewed properly and errors will be processed appropriately.

3. **DIRECTIVES REFERENCED**

PS 5162.02	Definition of Term, Crime of Violence (7/24/95)
PS 5162.04	Categorization of Offenses (10/9/97)
PS 5270.07	Inmate Discipline and Special Housing Units (12/29/87)
PS 5310.12	Psychology Services Manual (8/13/93)
PS 7430.02	Community Transitional Drug Abuse Treatment For Inmates (4/14/99)

[Bracketed Bold - Rules]

Regular Type - Implementing Information

4. STANDARDS REFERENCED

- a. American Correctional Association 3rd Edition Standards for Adult Correctional Institutions: 3-4388-4
- b. American Correctional Association 3rd Edition Standards for Adult Local Detention Facilities: 3-ALDF-4F-09
- c. American Correctional Association 2nd Edition Standards for Administration of Correctional Agencies: None

5. **EARLY RELEASE CRITERIA.** In this section, we briefly describe the criteria that an inmate must meet to be eligible for early release. For details on the early release criteria, see the administrative regulations [**in brackets and bold**] in Attachment A.

Throughout this PS, we use the terms "**eligible**" and "**ineligible**" for early release. However, we note here that eligibility or ineligibility is provisional and may change (e.g., detainers may be dropped or lodged, administrative corrections may be made [e.g., early release assignment was incorrectly entered], CCC placement decisions reversed).

a. **Eligibility Criteria for Early Release.** Inmates must meet the following eligibility criteria to earn an early release:

- **"New law" Inmate.** An inmate must be sentenced under the Sentencing Reform Act (SRA). Ordinarily, these inmates have been sentenced for an offense that occurred on or after November 1, 1987.
- **Non-violent Offense.** An inmate must be sentenced for a non-violent offense. Rather than define "non-violent offenses," the Bureau defines offenses that are violent or exclude an inmate from early release. See the Program Statement on Categorization of Offenses for additional information.
- **Substance Abuse Problem.** The federal statute on early release requires that the inmate have a substance abuse problem. The statute also allows the Bureau to define a substance abuse problem. Specific criteria are contained in the drug programs chapter of the Psychology Services Manual.

- **Residential Drug Abuse Program Completion.** To earn early release, an inmate must complete all required components of the residential drug abuse program (RDAP) successfully. RDAP completion is defined in the Psychology Services Manual.

b. **Early Release Special Circumstances**

- **Physically and Medically Disabled Inmates.** Inmates with physical or medical conditions who reside on a non-RDAP unit may be considered for early release. They must meet two conditions. First, they must meet all the admission criteria for the RDAP. Second, they must participate in all of the RDAP program components, including community-based treatment.
- **Inmates with Detainers.** Inmates with detainers who were in the RDAP on or before August 17, 1995, and who have completed follow-up treatment services in the institution, may receive the early release incentive.

c. **Inmates Ineligible for Early Release.** The Bureau has determined that the following categories of inmates **are not eligible for early release:**

- **INS Detainees and Pretrial Inmates.** These inmates may be held in Bureau custody, but they are **not serving a federal sentence under the "new law."**
- **Contract Boarders** (e.g., state or military inmates). This also includes inmates sentenced under provisions other than 18 U.S.C. Chapter 227.
- **Prior Violent Convictions.** Inmates whose offense history contains a felony or misdemeanor conviction for homicide, forcible rape, robbery, aggravated assault, or child sexual abuse offenses.
- **Prior Early Release Granted.** Inmates may earn an early release for successful RDAP completion only once. Inmates returning on supervised release violations and/or inmates who are sentenced for new offenses are not eligible for early release if they received it previously.

- **Current Conviction for Violence or Excluding Crime.** Offenses that are violent or those considered an excluding crime are contained in the Program Statement on Categorization of Offenses.
- **Parole Eligible Inmates.** Parole eligible inmates are not eligible for early release. These inmates may, at the U.S. Parole Commission's (USPC) discretion, be eligible for an advanced release date through an award of Superior Program Achievement (SPA). When an inmate completes the RDAP, the Drug Abuse Program (DAP) Coordinator is to send the Treatment Summary to the unit team promptly.
- **District of Columbia Inmates.** Inmates sentenced under provisions other than 18 U.S.C. Chapter 227 (e.g., D.C. inmates).

6. **EARLY RELEASE PROCEDURES.** DAP Coordinators play a key role in identifying, monitoring, and documenting an inmate's eligibility for early release. The process involves several steps, and are summarily provided in the 3621(e) Procedural Checklist (BP-S769.055).

a. **Residential Drug Abuse Program (RDAP) Notice To Inmate.** Before an inmate enters RDAP, he or she must be informed of his or her early release status using the **Residential Drug Abuse Program Notice to Inmate** form (BP-S761.055). This form contains the early release eligibility criteria. Before this form is completed, communication between the DAP Coordinator and the unit team is required. In some cases, legal review is also necessary.

Once the entire **RDAP Notice to Inmate** form has been completed, it must be provided to the inmate and entered into the Psychology Data System (PDS). DAP staff will enter the appropriate SENTRY early release eligibility assignment and, at the same time, enter the DAP WAIT assignment.

b. **Request for Unit Team Determination.** The DAP Coordinator must ensure that the **Request for Unit Team Determination** form (BP-S762.055) is sent to the unit team. This form is used to determine if the instant offense allows, or excludes, an inmate from early release.

The Program Statement on Categorization of Offenses applies to all inmates who began RDAP participation on or after October 9, 1997. All other cases are reviewed based on the Program Statement on Definition of Term, Crime of Violence.

c. **Request for Legal Review.** The DAP Coordinator reviews prior criminal convictions to see if there are any previous convictions that exclude the inmate from early release, and documents this on the RDAP Notice to Inmate Form. When necessary, the DAP Coordinator must send the **Request for Legal Review** form (BP-S763.055) to the Consolidated Legal Center for guidance.

d. **Notice to Inmate Systems Management (ISM) of 3621(e) Release Date.** When the early release criteria have been met, and the inmate is placed in the RDAP, the DAP Coordinator must notify ISM. The **Notice to ISM of 3621(e) Date** form (BP-S764.055) requests that ISM staff change the inmate's Good Conduct Time Release Date to a 3621(e) date.

e. **Early Release Review.** DAP Coordinators oversee the completion of the **Early Release Review** form (BP-S765.055). The DAP Coordinator must send this form to the Regional DAP Coordinator at least 90 days, but not more than 120 days, before the inmate's anticipated transfer date to a community-based program. Specifically:

(1) the **Warden (or designee)** must:

- complete all items on the Early Release Review form;
- print and sign the Early Release Review form before routing;
- send the Early Release Review form via BOPNet GroupWise to the Regional Director, or designee, for review;
- file the original signed and dated copy of the Early Release Review form in the inmate's DAP file; and
- file the Central Office response:
 - on the left side of the Judgment in a Criminal Case (J&C) file on top of the J&C Order;
 - in section 1 of the Inmate Central File on top of the J&C Order; and
 - in the DAP file along with other drug program information.

(2) the **Regional Director (or designee)** must:

- review the SENTRY Security Designation and Custody Classification screens to determine if information contained within has been adequately explained in the institution comments section. In some cases, further regional legal review may be requested.
- print his or her name and the date of review on the Early Release Review form;
- add comments (see instructions in BP-S765.055); and
- send the Early Release Review form via BOPNet GroupWise to the Assistant Director, Correctional Programs Division, or designee.

The Regional DAP Coordinator must send the Early Release Review form via BOPNet GroupWise to the Central Office-DAP Coordinator mailbox at least 60 calendar days before the inmate's anticipated transfer date to the Community Corrections Center (CCC).

(3) the **Assistant Director of the Correctional Programs Division or designee** must:

- review all Early Release Review forms forwarded to them by the Regional Office under § 3621(e) and
- send a letter via BOPNet GroupWise to the Warden, ISM, the respective Unit Team, Regional DAPC, and the institution DAPC to confirm or deny an inmate's eligibility for early release. Denial letters will include a rationale.

If there is a change in the inmate's status that affects his or her eligibility for early release after the institution receives the Central Office letter, the institution DAP Coordinator must report these changes to the Regional DAP Coordinator promptly. It is the Regional DAP Coordinator's responsibility to notify the Central Office via BOPNet GroupWise promptly.

If necessary, the Central Office will then send an approval or denial letter to the Warden, ISM, Unit Team, and the DAP Coordinator rescinding the previous letter.

f. **Unit Team Final Review.** After the Central Office approval letter has been sent to institution staff, there is still an additional review procedure to complete. The Unit Manager (or designee) must ensure completion of a **Unit Team Final Review** form

(BP-S766.055) before transfer to a community-based program or detainer (ordinarily within 30 days from CCC transfer or release). This form ensures that all criteria for early release have been met.

- **The DAP Coordinator** completes items 1, 2, and 3 of the Unit Team Final Review form.
- **The Unit Team** completes all other items and then routes the form to the Warden. Ordinarily, it should be routed along with other final release paperwork (furlough transfer form, release and gratuity form, etc.).

Once signed and dated, a copy must be filed in the disclosable portion of Section 5 in the Inmate Central File. The original must be forwarded to the ISM, with a copy provided to the DAPC.

- **The ISM** will file the original in the J&C file.

No inmate may be released from custody or transferred to a community-based program under 18 U.S.C. § 3621(e) until the ISM receives the Unit Team Final Review form with all appropriate signatures and the Central Office approval memorandum.

7. **CHANGES IN EARLY RELEASE ELIGIBILITY.** An inmate may lose his or her early release eligibility at any time as a result of:

- a failure to complete **all** RDAP components (including follow up services and transitional drug abuse treatment);
- identification of a previous error; or
- committing certain prohibited acts.

The Drug Abuse Programs chapter of the Psychology Services Manual contains specific information on the circumstances that may lead to expulsion and loss of early release.

a. **When an inmate is participating in a RDAP,** the DAP Coordinator monitors the status of early release eligibility. If there are changes in the inmate's early release status, the DAP Coordinator will complete and route the **Change in Drug Abuse Status Memorandum** (BP-S767.055) to the Unit Team. At this time, DRG SENTRY assignments must be changed.

b. **When an inmate completes the RDAP,** the Unit Team monitors the inmate's early release eligibility status. If there are changes in the inmate's early release status, the unit team must notify ISM and the DAP Coordinator with the **Change in Drug Abuse Status** form.

c. **When an inmate is placed in community-based treatment,** the Transitional Drug Abuse Treatment Coordinator (T-DATC) monitors the inmate's treatment. The T-DATC must make a recommendation to the Community Corrections Regional Administrator (CCRA) to have the inmate's early release delayed or removed.

The T-DATC must complete the Change in Drug Abuse Program Status form (BP-S767.055) when appropriate (e.g., returned to secure custody).

8. **DELAYING EARLY RELEASE.** If the inmate cannot fulfill his or her community-based treatment obligations by the presumptive release date, the CCRA may adjust the presumptive release date by the minimum amount of time necessary to allow the inmate to fulfill his or her treatment obligations.

If the CCRA determines that a § 3621(e) release date should be delayed, the Community Corrections Manager (CCM) must establish a new SENTRY early release date. The CCM must monitor this new § 3621(e) release date closely for release purposes.

a. **Reducing the Early Release Benefit.** To delay early release in a community-based program, the T-DATC must make a recommendation to the CCRA.

Examples of circumstances when a CCRA may delay early release:

(1) the inmate cannot fulfill his or her transitional drug abuse treatment obligations by the presumptive § 3621(e) release date or,

(2) the additional time in transitional drug abuse treatment will increase the likelihood that the inmate will refrain from drug use and criminality.

Additional guidance on delaying early release is contained in the Program Statement on Community Transitional Drug Abuse Treatment. The T-DATC must use the Request for Delay of Provisional 3621(e) Date form (BP-S768.055) to delay an inmate's early release.

b. **Removing Early Release Benefit.** If an inmate fails a community-based placement, the T-DATC must ensure that the inmate's SENTRY assignment is changed to RDAP failure, and the CCM must ensure that the inmate's early release date is removed immediately. At no time should an inmate have a SENTRY assignment of RDAP failure and maintain an early release date.

/s/

Harley G. Lappin
Director

**CODE OF FEDERAL REGULATIONS ON EARLY RELEASE
§550.58.**

[Consideration for Early Release §550.58. An inmate who was sentenced to a term of imprisonment pursuant to the provisions of 18 U.S.C. Chapter 227, Subchapter D for a non-violent offense, and who is determined to have a substance abuse problem, and successfully completes a residential drug abuse treatment program during his or her current commitment may be eligible, in accordance with paragraph (a) of this section, for early release by a period not to exceed 12 months.

a. Additional Early Release Criteria.

(1) As an exercise of the discretion vested in the Director of the Federal Bureau of Prisons, the following categories of inmates are not eligible for early release:

(i) INS detainees;

(ii) Pretrial inmates;

(iii) Contractual boarders (for example, D.C., State, or military inmates);

(iv) Inmates who have a prior felony or misdemeanor conviction for homicide, forcible rape, robbery, aggravated assault, or child sexual abuse offenses;

(v) Inmates who are not eligible for participation in a community-based program as determined by the Warden on the basis of his or her professional discretion;

(vi) Inmates whose current offense is a felony:

(A) that has an element, the actual, attempted, or threatened use of physical force against the person or property of another, or

(B) that involved the carrying, possession, or use of a firearm or other dangerous weapon or explosives (including any explosive material or explosive device), or

(C) that by its nature or conduct, presents a serious potential risk of physical force against the person or property of another, or

(D) that by its nature or conduct involves sexual abuse offenses committed upon children.

(2) An inmate who had successfully completed a Bureau of Prisons residential drug abuse treatment program before October 1, 1989 is otherwise eligible if:

- (i) Staff confirm that the completed program matches the treatment required by statute;
- (ii) The inmate signs an agreement acknowledging his/her program responsibility;
- (iii) The inmate completes a refresher treatment program and all applicable transitional services programs in a community-based program (i.e., in a Community Corrections Center or on home confinement); and
- (iv) Since completion of the program, the inmate has not been found to have committed a 100 level prohibited act and has not been found to have committed a prohibited act involving alcohol or drugs.

(3) An inmate who has successfully completed a Bureau of Prisons residential drug abuse treatment program on or after October 1, 1989 is otherwise eligible if:

- (i) The inmate completes all applicable transitional services programs in a community-based program (i.e., in a Community Corrections Center or on home confinement); and
- (ii) Since completion of the program, the inmate has not been found to have committed a 100 level prohibited act and has not been found to have committed a prohibited act involving alcohol or drugs.

b. Application.

(1) Inmates Currently Enrolled. Eligible inmates currently enrolled in a residential drug abuse treatment program shall automatically be considered for early release.

(2) Inmates Who Had Previously Completed Program Requirements. Eligible inmates who have previously completed a residential drug abuse treatment program (or which matches the treatment required by statute) must notify the institution's drug abuse program coordinator via a Request to Staff in order to be considered for early release.

c. Length of Reduction.

(1) Except as specified in paragraphs (c) (2) and (3) of this section, an inmate who is approved for early release may receive a reduction of up to 12 months.

(2) If the inmate has less than 12 months to serve after completion of all required transitional services, the amount of reduction may not exceed the amount of time left on service of sentence.

(3) If the inmate cannot fulfill his or her community-based treatment obligations by the presumptive release date, the Community Corrections Regional Administrator may adjust the presumptive release date by the minimum amount of time necessary to allow for fulfillment of the treatment obligations.]

