

Talking Points Re: FIRST STEP

- On Friday December 21, 2018, the President signed into law new criminal justice legislation called the "FIRST STEP Act".
- This law is complex and requires the BOP to implement a number of changes. The agency is analyzing all the changes required but taking careful note of which changes are effective immediately and which changes require additional action.
- We know that inmates and their families are particularly interested in the changes regarding **good conduct time**. The law will allow BOP in the future to apply 54 days of credit for every year a sentence was imposed, which is a change to the prior law.
- While this change may result in additional credit for inmates, we note that is not effective immediately nor is it applicable to all inmates.
- Specifically, Section 102 (b) (2) states "*EFFECTIVE DATE.—The amendments made by this subsection shall take effect **beginning on the date that the Attorney General completes and releases the risk and needs assessment system** under subchapter D of chapter 229 of title 18, United States Code, as added by section 101(a) of this Act.*"
- Section 102 (b) (3) states, "*APPLICABILITY.—The amendments made by this subsection shall apply with respect to offenses committed before, on, or after the date of enactment of this Act, **except that such amendments shall not apply with respect to offenses committed before November 1, 1987.***"
- Although this revision is not in effect at this time, the BOP is currently preparing to issue new sentence computations when the risk and needs assessment system is issued.
- The Department of Justice and the BOP are reviewing the legislation and will carry out all necessary steps to comply with this significant piece of legislation.

First Step Act..

RRC/HC Information: This information was sent to the RRM's by [REDACTED] RRM Branch

For clarification purposes:

For inmates who a RRC/HC packet has already been submitted by the institution and a DST to a RRC is in SENTRY - If the institution requests an earlier placement date via email from the CMC (With cc to Warden) then no additional paperwork is required the RRM office should process the earlier placement date as requested as bed space allows.

The same holds true for those inmates whom the institution has already submitted a RRC/HC packet and a DST to a RRC is in SENTRY - the Institutional staff now want the offender considered for immediate placement under the elderly offender program contained in the FSA. If the institution requests an earlier direct home confinement date via email from the CMC (with cc to Warden) then the referral should be processed.

Couple Reminders:

No offices should be denying any eligible offenders requested for placement under the Elderly Offender Provision of the First Step Act without first consulting with the SMT and Central Office as necessary. These cases should be tracked carefully and appropriate justification recorded in the case file, as it is early in the inception of this program we anticipate a lot of litigation in this area.

Federal Location Monitoring Program: Emphasis needs to be placed on the utilization of this program in every office, every placement under the Elderly Offender Provisions of the FSA should default to a FLM referral, it should be the goal of every manager and office to double the population on the FLM program by the end of the year.

Institutions should not be sending paperwork directly to the USPO asking for placement into the Federal Location Monitoring Program, this program is managed by the RRM offices and the referrals should be sent directly to the RRM office for processing same as with any other RRC referral.

There has been some confusion when processing furlough paperwork to a Federal Location Monitoring or Home Confinement Designation in SENTRY.

1. For those inmates who receive a designation to a Federal Location Monitoring location code in SENTRY (PPC1 description is USPO Federal Location Monitoring with no address/ For example look at location code FSD under the CMS office) then the inmate furlough paperwork should direct him to his residence where he is approved to reside while in the program, the referral paperwork must further direct the inmate to report to the local United States Probation Office as soon as possible after arrival but no later than the next business day.
2. For those inmates who are going to direct home confinement under the supervision of a RRC (PPC1 description is home confinement location for XXX where XXX is the RRC/ For example use 8MA HC under the CMS office) the inmate furlough paperwork should direct him to report directly to the RRC where he will be checked in and provided instructions etc. prior to being placed on home confinement.
3. There are some area specific variables to the above but those should be communicated from the RRM office to the CMCs as appropriate when processing RRC/HC referrals.

Q & A:

Q: Should institutions be delaying the submission of a referral under the Elderly Offender Program due to pending approval of a release plan from the USPO?

A: No, it is not an institution responsibility, it's up to the RRM Office.

Q: What about inmates who already have a RRC date? For example, the inmate has a RRC date of July 2019 but once his sentence computation is updated, he releases in July. Can his RRC date be adjusted in preparation of the updated PRD?

A: An email to the RRM would suffice to adjust an RRC date due to a change in the PRD because of the First Step Act. Attach the original referral to the email.

3621(e) Information: This information was sent out from [REDACTED]

The First Step Act included provisions for changing the way **Good Conduct Time (GCT)** is calculated. Staff at the Designations and Sentence Computations Center (DSCC) have begun the process of recalculating GCT release dates for all inmates who release after July 19, 2019. As a result of these recalculations, the 3621(e) release dates for RDAP inmates are being recalculated as well. Please note the following:

1. Inmates will be given the earliest possible release date [GCT or 3621(e)], taking into account the requirements regarding completion of the Community Treatment Services (CTS) component of RDAP.
2. It is not necessary to submit a new BP-A0764 *Notice of 3621(e) Date* form to have an inmate's release date recalculated. Recalculations pursuant to the First Step Act will be done automatically.
3. Release dates will be recalculated by DSCC teams in order of current Projected Release Dates (PRDs). There may be some variance in the speed with each DSCC team completes the recalculations for the inmates assigned to them. This process may take up to a year.
4. In the event an RDAP inmate completes the unit-based component of RDAP but receives no RRC placement at all as a result of this sentence recalculation, the Drug Abuse Program Coordinator (DAPC) is asked to replace the SENTRY code of DAP COMP with a SENTRY code of DAP RRCD I, which documents the inmate completed the unit-based portion of RDAP but was denied RRC placement.
5. Every effort should be made to ensure an RRC placement of at least 120 days for RDAP inmates. In the event an RDAP inmate completes the unit-based component of RDAP but receives an RRC placement of less than 120 days, the SENTRY code of DAP COMP will remain until the inmate transfers to RRC and is reviewed by CTS staff. DAP staff at the institution are not to enter DAP RRCT I SENTRY codes for these inmates. This is a slight change from previous procedures.
6. Questions regarding sentence recalculations and projected release dates should be referred to Unit Team staff.

Q & A:

Q: The 3621e date has not changed and we have not been advised if a new review has to occur and their date adjusted. Do we need to do new Attachments? As the new dates are right now, the inmates are not receiving the benefit of the new law? We need to be advised of what the BOPs position on this as it appears to go against currently policy, but not sure how it applies to new law. Then if we change their 3621 e date, and they have less than 120 days of RRC are they going to be listed as fail or is there going to be a waiver?

A: DSCC will automatically recalculate 3621(e) dates; no new form is necessary. Recalculation of dates is being processed in order of projected release dates, and recalculating dates for all Bureau inmates may take a year or more. The Bureau will make every effort to accommodate minimum 120-day RRC placements for RDAP inmates, and Community Treatment Services has been made aware of the need to monitor these cases closely.

Q: Do you know if this is going to affect RDAP inmates? In other words, are RDAP inmates going to qualify for the First Step Act as well. Just curious, because if so, this is probably going to prevent them from completing RDAP, as many of them have just enough time to complete the residential and transitional (RRC) portion.

A: Yes, the provisions relating to changes in Good Conduct Time mandated by FSA are applicable to RDAP inmates. Some inmates may not have sufficient time to complete all required components of RDAP prior to release