



U.S. Department of Justice

Federal Bureau of Prisons

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## MEMORANDUM FOR CHIEF EXECUTIVE OFFICERS

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SUBJECT: Pre-Release Residential Re-Entry Center Placements  
Following the Second Chance Act of 2007

The Second Chance Act of 2007 (hereinafter referred to as "the Act"), Pub. L. No. 110-199, was signed into law April 9, 2008. Among its many provisions, the Act changes the Federal Bureau of Prisons' (Bureau) statutory authorities for making pre-release Residential Re-Entry Center (RRC) placement decisions.<sup>1</sup> This memorandum provides staff guidance for implementing those changes. Guidance regarding other Bureau policies affected by the Act will be issued, as necessary, under separate cover.

If necessary, further assistance should be sought from your regional Correctional Programs, Community Corrections, and Regional Counsel or Consolidated Legal Center offices.

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<sup>1</sup> For your convenience, copies of 18 U.S.C. §§ 3621 and 3624(c), as amended by the Act, are included with this memorandum as attachments. Additionally, for your convenience, these copies illustrate the previous text as ~~strikeout~~, and the new text as redline.

## I. What are the statutory changes to RRC placement authorities?

As interpreted by the Office of General Counsel, the Act's statutory changes affect the Bureau's RRC placement procedures as follows:

- (A) **Pre-Release RRC Placement Timeframe Increased to 12 Months** - The pre-release RRC placement timeframe is increased to a maximum allowable 12 months. There is no percentage of "term to be served" limitation. See 18 U.S.C. § 3624(c)(1) (amended).<sup>2</sup>
- (B) **Individualized Placement Decisions Required** - The Act requires that pre-release RRC placement decisions be made on an individual basis in every inmate's case, according to new criteria in the Act, as well as the criteria in 18 U.S.C. § 3621(b). See 18 U.S.C. § 3624(c)(6) (amended). As a result, the Bureau's categorical timeframe limitations on pre-release community confinement, found at 28 C.F.R. §§ 570.20 and 570.21, are no longer applicable, and must no longer be followed.<sup>3</sup>
- (C) **Court Recommendations Lack Binding Effect** - The Act provides that a sentencing court order, recommendation, or request directing an inmate's placement in an RRC lacks binding effect. See 18 U.S.C. § 3621(b) (amended). As a result, the Bureau is not required to follow such a directive.<sup>4</sup>

## II. What procedures should staff use in making pre-release RRC decisions?

With minor adjustments (explained in the next section), staff should make inmates' pre-release RRC placement decisions on an individual basis using current Bureau policy, Program Statement No. 7310.04, Community Corrections Center (CCC) Utilization and Transfer Procedure (12/16/1998) (hereinafter referred to as

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<sup>2</sup> The pre-release home confinement timeframe remains at a maximum six months, or ten percent of the term of imprisonment of that prisoner, whichever is shorter. See 18 U.S.C. § 3624(c)(2) (amended).

<sup>3</sup> The Act requires the Bureau to issue new federal regulations regarding pre-release RRC placements. The federal regulation process (rulemaking) will take several months to complete. Bureau staff will be informed as soon as new regulations take effect.

<sup>4</sup> Sentencing court recommendations for a particular type institution, however, remain a factor to be considered when making pre-release RRC placement decisions. See, infra, Section III.(C)(4).

PS 7310.04). As indicated in Section I.(B) above, the Bureau's categorical timeframe limitations on pre-release community confinement, found at 28 C.F.R. §§ 570.20 and 570.21, are no longer applicable, and must no longer be followed. Similarly, any previous guidance memorandums that were issued regarding those regulations are no longer applicable, and must no longer be followed.

**III. What procedural adjustments to current policy are required?**

Staff must comply with PS 7310.04 in considering inmates for pre-release RRC placements, with the following adjustments:

- (A) **Disregard Section 5, Statutory Authority** - Because the Act amends the Bureau's statutory authorities related to pre-release RRC placements, the quoted passages in Section 5 of PS 7310.04 must be disregarded. Instead, if needed, refer to the amended versions included with this memorandum as attachments.
- (B) **Review Inmates for Pre-Release RRC Placements 17-19 Months Before Projected Release Dates** - Because the Act increases the maximum available pre-release RRC placement timeframe to 12 months, Bureau staff must review inmates for pre-release RRC placements earlier than provided in PS 7310.04. Specifically, inmates must now be reviewed for pre-release RRC placements **17-19 months** before their projected release dates.
- (C) **Criteria for Pre-Release RRC Placements** - The Act requires that inmates be individually considered for pre-release RRC placements using the following five-factor criteria from 18 U.S.C. § 3621(b):
- (1) The resources of the facility contemplated;
  - (2) The nature and circumstances of the offense;
  - (3) The history and characteristics of the prisoner;
  - (4) Any statement by the court that imposed the sentence:
    - (a) concerning the purposes for which the sentence to imprisonment was determined to be warranted; or
    - (b) recommending a type of penal or correctional facility as appropriate; and
  - (5) Any pertinent policy statement issued by the U.S. Sentencing Commission.<sup>5</sup>

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<sup>5</sup> As of this memorandum's date, the U.S. Sentencing Commission has not issued any policy statements related to the Bureau's pre-release RRC placement procedures.

Assessing inmates under the above criteria necessarily includes continuing to consider the more specific, and familiar, correctional management criteria found in PS 7310.04, including, but not limited to, the inmate's needs for services, public safety, and the necessity of the Bureau to manage its inmate population responsibly. In doing so, staff must not view any of the criteria listed in PS 7310.04, especially Sections 9 and 10, or any other policy, as automatically precluding an inmate's pre-release RRC placement. Rather, in accordance with the Act, each individual inmate's pre-release RRC decision must be analyzed and supported under the five-factor criteria.

**Additionally**, the Act requires staff to ensure that each pre-release RRC placement decision is "of sufficient duration to provide the greatest likelihood of successful reintegration into the community." See 18 U.S.C. § 3624(c)(6)(C) (amended). This means Bureau staff must approach every individual inmate's assessment with the understanding that he/she is now eligible for a maximum of 12 months pre-release RRC placement. Provisions in PS 7310.04 that reflect any other possible maximum timeframe must be ignored.

- (D) Regional Director Approval Required for Pre-Release RRC Placement Beyond Six Months** - While the Act makes inmates eligible for a maximum of 12 months pre-release RRC placements, Bureau experience reflects inmates' pre-release RRC needs can usually be accommodated by a placement of six months or less. Should staff determine an inmate's pre-release RRC placement may require greater than six months, the Warden must obtain the Regional Director's written concurrence before submitting the placement to the Community Corrections Manager.

**IV. Does the Act apply to inmates whose RRC decisions have already been made?**

Yes. Inmates previously reviewed for pre-release RRC placements under any circumstances, and not yet transferred to an RRC, must be reconsidered utilizing the standards set forth in this guidance memorandum, whereby they are eligible for a maximum of 12 months placement. These reviews must be conducted by the classification team and documented on the Inmate Activity record (BP-A381.058).

Any inmate whose Program Review is scheduled at a time when consideration for a 12 month RRC placement is not feasible, will need to be reviewed and documented as indicated above.