

WITH CARES ACT ALMOST OVER, BOP STREAMLINES PROCESS – UPDATE FOR MARCH 20, 2023

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BOP STEPS ON THE GAS IN CARES ACT'S FINAL DAYS



And that's all for CARES Act home confinement.

President Biden will end the COVID-19 [national emergency](#) on May 11, 2023. The immediate effect for the Federal Bureau of Prisons is that the agency will lose its authorization to place prisoners in extended [Coronavirus Aid, Relief, and Economic Security \("CARES"\) Act](#), home confinement 30 days later.

Among the myriad of federal responses mandated by the bloated [CARES Act](#), a \$2.2 trillion response to COVID-19 that runs some 324 pages in Volume 134 of the United States Statutes, the BOP was given authority in [§ 12003\(b\)\(2\)](#) to "lengthen the maximum amount of time for which the Director is authorized to place a prisoner in home confinement under the first sentence of [section 3624\(c\)\(2\) of title 18](#), United States Code, as the Director determines appropriate." Practically speaking, this gave the BOP the right to place prisoners on home confinement indefinitely, despite the old [18 USC 3624\(c\)\(2\)](#) limitation of 10% of the sentence up to a maximum of six months.

The [CARES Act](#) authority continues during what [§ 12003\(a\)\(2\)](#) calls the "covered emergency period." This period ends "on the date that is 30 days after the date on which the national emergency declaration ter-

minates.” In other words, with the national emergency ending on May 11, the “covered emergency period” ends on Saturday, June 10th.

As the BOP’s **CARES Act** authority sunsets, some have speculated the Bureau would slow the transfer of prisoners to home confinement. But **writing in Forbes last week, Walter Pavlo** reported that the BOP’s Office of Public Affairs told him, “The Bureau of Prisons (BOP) has not made efforts to slow **CARES Act** home confinement placements as the end of the **CARES Act** approaches. We have issued no guidance regarding this matter.” **Pavlo called that** “welcome news to prisoners who meet the eligibility requirements for **CARES Act** placement.”

Hard evidence the BOP is pushing **CARES Act** release arrived last week with the report of an **internal BOP memorandum** dated March 9 that relaxed prior BOP policy on **CARES Act** approvals. The BOP has established criteria for **CARES Act** placement, including serving a minimum portion of one’s sentence, prior disciplinary reports, and history of violence. When a prisoner did not meet all of the conditions, he or she could still be recommended by the institution for home confinement, but the referral had to be approved by a BOP Central Office Home Confinement Committee.



One of the HCC’s practices was to solicit comment from the US Attorney’s Office that had prosecuted the inmate. **Pavlo noted** that “in many cases, prosecutors did oppose rather than just defer to the BOP, who know best how to house prisoners in its care.”

Up to now, those prisoners denied **CARES Act** placement by the HCC have been required to go back to Central Office later even when they met all **CARES Act** criteria. Pavlo said, “This usually led to the same opposition and denial.” But the **March 9 memo** ends the endless cycle of HCC approval. It says, “Effective with the issuance of this memo, referrals for home confinement placement no longer need to be submitted to the HCC if the inmate now meets all established criteria.” Now, if the inmate meets all BOP criteria, referrals for **CARES Act** will now be sent directly to the appropriate Residential Reentry Management Office . The RRM “will retain the final authority based on the referral and availability of community resources,” the memo says.

Pavlo writes that “[m]any are also hoping that the DOJ extends the 30 days after the end of **CARES Act** to something that takes into consideration the success of the program and the conditions of prison.” Unfortunately, the hopes of those who are looking for a magical extension are misplaced. Because the BOP’s authority to place people in home confinement is limited by statute, any extension of a **CARES Act**-style home confinement will have to come from Congress.



Writing last week in his *Sentencing Law and Policy* blog, Ohio State law professor Doug Berman said, “Though it makes sense to wind down the pandemic-driven authority to transfer certain persons from federal prison to home confinement, Congress and the US Sentencing Commission and the Justice Department should carefully study the apparent success of this *CARES Act* program and consider ways to give BOP broader authority in non-pandemic times to move low-risk prisoners into home confinement.”

BOP, *Home Confinement Criteria and Guidance (Addendum)* (March 9, 2023)

Forbes, *Bureau Of Prisons Sees End Of Cares Act Home Confinement, Some Prisoners Will Be Left Behind* (March 14, 2023)

Sentencing Law and Policy, *With pandemic legally winding down, should Congress build in CARES Act success to greatly expand BOP home confinement authority?* (March 15, 2023)

- Thomas L. Root



◀ CARES ACT ◀ HOME CONFINEMENT