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Newsletter

*From Federal CURE's Director,
Karen Bond*

Last fall, Forbes Magazine contained an article by Penelope Patsuris entitled "Best Places to Go to Prison." It struck me that most Americans really do believe that the federal prisons are literally ClubFeds that cater to white-collar criminals. As a lawyer, I bought into that mythical media portrayal of federal prisons. As a former federal inmate, I can tell you from personal experience that the media portrayal of the federal prisons is blatantly misleading. Having viewed the federal prison system as a lawyer, an inmate, and from a purely academic perspective, it has become increasingly clear to me that until we educate society on the reality of prison life, they will continue to believe that federal prisons are ClubFeds where America sends its white-collar criminals, myself included, to relax while we serve our prison sentences. I need your help in changing America's ClubFed perceptions.

On behalf of the Board of Directors, I would like to extend an invitation to each of you to join us in our efforts to reform the federal prison system. Federal CURE, Inc. (FedCURE) is a nonprofit organization that deals solely with the issues faced by federal inmates and their loved ones. We are working to

promote a system that incarcerates fewer people and provides humane conditions for those who are incarcerated or under post-incarceration supervision via parole or supervised release.

As of Jan. 23, 2003, there were 165,005 federal inmates in 102 facilities nationwide. The Federal Bureau of Prisons (FBOP) has now become the largest prison system in the United States. In last week's Correctional News, Publisher Eli Gage stated that while "states have been suspending prison construction, scaling back mandatory sentencing laws, and exploring alternative sentencing, the FBOP has continued to build, and build quickly."

FedCURE's mission is to serve as the advocate for systemic change in the federal system. FedCURE's board of directors consists of former federal inmates and family members of federal inmates. Kenny Linn, Mark Varca, Fred Mosely, and I all hold law degrees. Working closely with the entire FedCURE Board, we have implemented strategies for reform in the federal prison system. Daily interactions via email and phone conversations with BOP personnel have allowed us to establish credibility as a direct result of our ex-prisoner and former lawyer status. In short, we've been there, done that!

Mark Varca, a former federal inmate, is developing our website to promote prison reform through the use of technology. Mark also oversees our webmaster volunteers. **WWW.FEDCURE.ORG** will be interactive once finished, and will provide a state-of-the art arena for our members and the general public to use as an electronic tool for lobbying for changes in the federal system.

My focus as Executive Director will be to build a strong organization that will provide leadership to teach inmates and their families how to advocate for themselves to improve their incarceration and reentry experiences. At the invitation of the Soros Foundation's Open Society Institute (OSI) in

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THE TOUGH GETTING TOUGHER

by Todd Bussert, Esq.

The Federal Bureau of Prisons (BOP), in response to a December 16 directive from the Department of Justice (DOJ or Justice), has discontinued its longstanding practice of designating low-risk, short-term offenders directly to Community Corrections Centers (CCCs). At the same time, the BOP adopted a new interpretation of 18 U.S.C. § 3624(c) that sets limits on CCC placement restricting pre-release transfers -- except of RDAP or ICC graduates -- to no more than the last ten percent (10%) of a prisoner's sentence up to six (6) months. One hundred and twenty five directly committed CCC prisoners are slated for transfer as a result of these changes; numerous legal challenges are underway; and prisoners' rights groups are rallying to devise a measured response. While the true impact of these policy changes is as yet unclear, DOJ, in what many characterize as a politically motivated effort to increase punishments for high-profile, corporate white-collar offenders, has significantly curtailed re-entry opportunities for most of the 165,000 men and women currently under federal correctional supervision.

Newsweek's Michael Isikoff first reported this story on December 20, the same day that BOP Director Kathleen Hawk Sawyer sent a memorandum to federal judges informing them of the changes. Focusing principally on direct CCC placements, Isikoff indicates that Justice intended the policy move to assist federal prosecutors with securing stiffer punishments in cases involving white-collar defendants, who were perceived as taking advantage of the practice as a means of avoiding "actual prisons." The new policy, unfortunately, sweeps far more broadly.

CCCs are not the exclusive domain of white-collar offenders. Courts commonly recommended the direct CCC placement of eligible defendants for a host of compelling reasons, like enabling a family's primary breadwinner to continue working or keeping a nonviolent offender close to an infirmed relative. As BOP spokesperson Judy Garrett told the New York Times, "There are a lot of drug offenders, single moms and ordinary folks who aren't wealthy people who have benefited from this. It's not just Enron types." Moreover, amendments to the Federal Sentencing Guidelines, made as part of the 2001 economic crimes package as well as in response to the Sarbanes-Oxley Act of 2002, carry heavy penalties for serious white-collar defendants. Such penalties precluded direct CCC placement, which was only available to those qualified

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Washington, D.C., I am serving as FedCURE's representative on the OSI task force. Their goal is to find ways to reduce the federal prison population.

This introductory issue of the FedCURE newsletter contains articles that directly affect your lives. In this edition, you will find in-depth articles about:

- Status of the DOJ order to the BOP that changed halfway house procedures;
- The realities of parole and how technical violations contribute to the recidivism rate;
- How the American Bar Association's proposed "Safety Valve" initiative could get you out of prison earlier;
- Life after prison and surviving when someone you love resides in a BOP facility;
- How you can help eliminate the 300 minute per month phone restrictions;
- Book reviews of books written by FedCURE members that have become big sellers;
- Learn the real history behind FPC Alderson;
- How USP Marion affected one man.

What are the current issues that FedCURE is working on? The removal of the 300-minute per month phone usage limit. Seeing legislation enacted that will prevent the DOJ from cutting halfway house time for federal inmates. Lobbying Congress for the reinstatement of parole in the federal system. Advocating for better medical care, both physical and mental. Stopping the use of the ion detectors that are denying innocent family members their visits at BOP facilities because of false positives. Seeking legislation on a national level that would restore your voting rights once you serve your sentence and barring employers from asking about your felony record except in very limited, specific circumstances.

There are four things you can do to help us help you:

- (1) FedCURE needs to be kept abreast of issues you are confronting while you or a loved one is incarcerated in the BOP;
- (2) FedCURE needs members who are innovative advocates in order to facilitate changes in the federal prison system;
- (3) FedCURE needs you to become actively involved in the fight to accomplish the reforms needed in the federal prison system, and;
- (4) FedCURE needs your support through membership and tax deductible donations so we can keep fighting to secure the rights of all 165,000+ federal inmates. §

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minimum-security prisoners serving relatively short (e.g., six months or less) sentences. See Community Corrections Manual (P.S. 7300.09).

Media accounts raise two other aspects of the policy move: 1) Justice's feigned ignorance of well-established procedure and 2) what has become a public rebuke of Director Hawk Sawyer. According to Newsweek, aides to Attorney General Ashcroft reported ignorance of the direct CCC commitment practice until a West Virginia federal judge brought it to their attention via a complaint letter in 2001. However, as BOP officials told the Times, direct commitments, which usually called for a judicial recommendation at sentencing (in which Justice Department prosecutors always participate), were used for more than 20 years. In fact, both bureau program statements and DOJ publications long laid out the practice. See e.g., Security Designation and Custody Classification Manual (P.S. 5100.07) and A Judicial Guide to the Federal Bureau of Prisons (1995). Indeed, the Solicitor General's Office's May 2001 brief in *Correctional Services Corp. v. Malesko*, 122 S. Ct. 515 (2001) explicitly cites BOP policy when noting that "the BOP employs [CCCs] as an alternative to 'institutional confinement for certain short-term offenders'."

As troubling as Justice's supposed lack of knowledge is, Deputy Attorney General Larry Thompson's reported reprimand of Director Hawk Sawyer—a trained professional who has dedicated 26 years of service to one of this nation's largest correctional systems—for the administration of a practice that pre-dated her appointment by more than a decade. Although some may find fault with the BOP and its policies, direct CCC commitments were not only consistent with the bureau's authority to designate an offender's place of imprisonment, but they were also a sensible use of bed space in the midst of unyielding population pressures. Sadly, the Justice Department's interest in punishing the Fastows of the world, like this country's failed War on Drugs, may well have a disproportionate impact on those already afforded the least protections.

BOP community corrections officials in Washington, D.C. confirm that the bureau provided statistical information to the Justice Department concerning the potential impact of a change in the direct CCC placement policy. Importantly, these same officials assert that Justice made no inquiry into the impact of modifying pre-release policies, which affect the vast majority of those currently incarcerated. Traditionally, bureau personnel considered 18 U.S.C. § 3624(c) when preparing and reviewing halfway house packages, but wardens and

community corrections managers regularly recommended/granted pre-release halfway house stays greater than ten percent of a prisoner's sentence. See PS 7310.04, Community Corrections Center (CCC) Utilization and Transfer Procedure (Dec. 16, 1998). The practice was viewed as a means of relieving institutional overcrowding while affording prisoners the greatest opportunity to reintegrate into the community. Now, barring completion of the RDAP or ICC, federal prisoners can expect to receive halfway house placement for no more than the last ten percent of their sentence up to six (6) months total (e.g., 24 month sentence = 2.4 months or less in a CCC). Although this change is not seen as modifying § 3624(c)'s home confinement allowance, it will undoubtedly disadvantage those persons requiring extra time and assistance to establish employment and residency or simply to identify and secure

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CCM Change Impact Letters

When FedCURE asked how the halfway house changes had affected federal inmates and their families, the replies we received were all negative. The following are excerpts from letters written by both inmates and their loved ones.

The following letter excerpt was written by Tina Moore to the BOP Regional Director. Tina found out about the policy change when she arrived at the FPC to pick her husband up and drive him to the halfway house:

I would like to share with you an incident that took place on Monday, December 23rd at the Federal Prison Camp at Seymour Johnson AFB. I was supposed to pick my husband up at 8:00 am to transport him to the halfway house in Raleigh. I arrived at 7:45 and checked in at the Visitor's Center at the base entrance. At 9:00 am an Air Force Officer comes to my car and tells me that they are running late and will bring my husband out in a few minutes. About 9:15 am he arrives with his unit supervisor. The supervisor, Mr. Earp, tells me that he will not be leaving today because there was a change in policy. Apparently the new policy states that a person cannot go to the halfway house until the 10 percent date. My husband was allowed to speak with me for a few minutes before he was taken back to the camp.

I certainly don't have a problem with a policy

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necessary resources before being released to the street.

FedCURE and several other concerned organizations have already heard of scheduled halfway house placement dates being pushed back as a direct result of the DOJ directive. For many, this sudden and unexpected news has substantially influenced release plans and had consequences ranging from the loss of prospective jobs to exasperating delays in family reunifications. FedCURE is working to ascertain and address difficulties that individuals and families are experiencing due to the recent policy changes and welcomes comments and information. It will update developments through this newsletter as well as on its listserve.

FedCURE member Todd Bussert is a Connecticut attorney who frequently speaks and writes on federal sentencing and prison-related issues. He can be reached at tbussert@bussertlaw.com. §

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change. I believe that there should be some sort of reasonable time to allow implementation so that those that had already out processed could leave. I do have a problem with being told on the morning of his release. The only word that I can use to describe it is CRUEL. We could have been and should have been notified earlier. It is my understanding that this policy was received at the institution on Dec. 13th. They had 10 days to let us know.

When these decisions are made in the future, I wish that someone would consider the implications to the family. I'll use myself as an example. In order to pick him up that day I had to stay in a hotel and take a day off work. This equals about a \$200.00 loss. I also had to add him to my health insurance policy, which is \$250.00 a month. If I drop him now, I can't add him back until next year. I will now have to incur this expense every month until he gets out. We were counting on him to be able to work at the halfway house to help me pay for it. Now, I will have no help. Last but not least, I'll have to take another day off work and spend another night in a hotel when he is released again. Even the smallest amounts of money mean a lot when you are trying to raise a child on one income.

In conclusion, I think something went terribly wrong in the dissemination of information at that institution. The two inmates that had family there

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Federal Bureau of Prisons Changes Halfway-House Designation Procedures

In response to a U.S. Department of Justice, Office of Legal Counsel (OLC) opinion, the Federal Bureau of Prisons (BOP) recently changed its procedures for designating inmates to halfway houses (also known as community correction centers, or "CCCs"). The OLC opinion, dated December 13, 2002, found unlawful the BOP's long-standing practice of accommodating judicial recommendations for direct CCC designation of low-risk, non-violent offenders serving short prison sentences. The OLC opinion concluded that the BOP's only authority to place inmates in CCCs is found in section 3624(c) of Title 18, United States Code. This statute allows the BOP to place inmates in CCCs to facilitate reentry, and such placements are limited to the last 10% of the prison time being served, not to exceed six months.

The BOP will recognize two exceptions to this limitation. Inmates completing the community transition component of residential drug abuse programs (RDAP) may exceed the 10% time limit, but will be limited to 180 days CCC placement. Additionally, inmates designated to CCCs following completion of an intensive confinement center (ICC) program are not limited by either the 10% or six month limits.

As a result of the OLC opinion, low-risk, non-violent inmates serving short prison sentences, for whom sentencing judges recommend direct CCC placement will no longer be designated to CCCs for service of their entire sentences. Additionally, inmates not yet transferred to CCCs as part of their pre-release programming will be reviewed to insure compliance with the 10% limitation. In some cases, CCC transfer dates may be delayed.

Persons having general questions related to these procedure changes should contact the BOP's Office of Public Affairs at (202) 307-3198.

Written for FedCURE publication by the Bureau of Prison's Office of Legal Counsel Staff. §

Please help Federal CURE, Inc. in its fight to identify federal prison injustices, and pursue and promote federal prison reform. For your convenience, we have included a membership application in the back of this issue.