

# How Bureaucrats Stand in the Way of Releasing Elderly and Ill Prisoners



*Prisons are struggling to cope with the growing number of elderly and ill inmates incarcerated in the U.S. (Photo by Tim Gruber)*

*by Christie Thompson  
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Former inmate Veronica Barnes had three years left to serve in federal prison when she found out in January 2011 that her husband John was dying of pancreatic cancer. Doctors said it was inoperable. They gave him less than a year to live.

Barnes worried who would look after her children, who were four and five years old at the time. A social worker suggested she apply for compassionate release, a program that lets federal inmates convicted of nonviolent crimes who face “extraordinary and compelling circumstances” get out of prison early.

Barnes, 32, seemed to fit most of the criteria. She was in prison on a nonviolent drug charge, and there was no one to care for her children when her husband died.

Barnes had been living with her family in Yarnell, Ariz. and working at the local market when she was arrested in 2008. She plead guilty to intent to distribute methamphetamine, and was sentenced to six years in prison. At the federal prison camp in Phoenix, Arizona, she saw her children every week, completed a parenting class, took college courses, and graduated from a drug rehab program.

The assistant U.S. attorney who tried Barnes' case said she believed it was “a sympathetic case,” and that Barnes was unlikely to reoffend. The warden at the prison camp in Phoenix supported freeing Barnes.

“Based on the ages of the children and the death of their father, the children are dealing with a doubly traumatic situation since their mother is not able to render support or care,” the warden wrote [1]. “I am in favor of recommending Ms. Barnes for compassionate release so she may reunite with her young children during this difficult time.”

A year and three months after submitting her first application — and nearly eight months after her husband died — Barnes received a letter from the Bureau of Prisons' central office. Her request had been denied.

“All that time I spent waiting for their response, my children were living with strangers,” Barnes said.

Officials at the federal Bureau of Prisons central office decided it was in the best interest of Barnes' two children to stay with a local couple in Yarnell who Barnes' pastor had found to care for the kids.

Review of Ms. Barnes' past history raises concern as to whether she will be able to sustain the stresses of sole parenting and employment while remaining crime-free," wrote Kathleen Kenney [2], general counsel and assistant director of the Bureau of Prisons.

The government has long been criticized [3] for rarely granting compassionate release. This August, Attorney General Eric Holder announced [4] the Justice Department would try to change that by expanding criteria for who can apply.

Under the new guidelines [5], compassionate release can be granted not just to prisoners who have terminal illnesses, but also to those with debilitating conditions. Prisoners who need to serve as caregivers for family members may now also seek reductions in sentencing. And for the first time [6], elderly federal inmates who aren't necessarily dying or incapacitated can apply to be let out early.

Holder touted the compassionate release initiative as one way to cut down on the "astonishing" federal prison population, which has grown by nearly 800 percent since 1980 [7].

But even if the changes enable more inmates to apply for compassionate release, prison officials still have almost total discretion over who is approved.

A federal prison's warden, as well as the Bureau of Prisons' regional director and central office must sign off on an inmate's application before it is passed on to a judge. Any of those officials can reject applications for a number of reasons, from a perceived risk of recidivism to concern for what's best for a prisoner's child, as in Barnes' case. There is no process for inmates to appeal those decisions in court.

Many advocates say they expect eligible inmates will remain behind bars despite the changes. "I don't believe it's going to change at all," said lawyer Marc Seitles, whose client was denied release despite terminal cancer. "It's still the same people making decisions."

In September, Bureau of Prisons Director Charles Samuels said he predicted [8] expanding eligibility would result in the "release of some non-violent offenders, although we estimate the impact will be modest." (The agency declined to make Samuels available for comment to ProPublica.)

As of October 29, The Bureau of Prisons had approved and passed along 50 compassionate release requests to judges this year. That's up from 39 in 2012 and 29 in 2011.

It's impossible to know if the overall rate of approval has increased, as the federal Bureau of Prisons hasn't released the number of inmates who have applied.

The Bureau says it recently started to track inmate requests, after an Inspector General report [9] earlier this year excoriated the department for failing to do so. The report also found most inmates didn't even know the program existed.

The expansion of compassionate release was motivated in part by the rising number of sick and elderly inmates incarcerated in the U.S. As of 2011, there were over 26,000 inmates [10] over 65 in state and federal custody.

And as the elderly population in prison grows, so do their medical bills [11]. Housing an inmate in a prison medical center costs taxpayers nearly \$60,000 a year [9] — more than twice the cost of housing an inmate in general population.

Many lawyers and prisoner advocates have said the "jailers are acting as judges [12]" by rejecting most compassionate release cases without ever passing them onto the courts for a final decision.

"The Bureau of Prisons should be letting judges have the opportunity to decide every time extraordinary and compelling reasons come to their attention, and [they are] not doing that," said federal public defender Steve Sady, who has written extensively on the issue and represented clients requesting early release. "We believe that, under the statute, the sentence is for the judge to decide."

Prisons spokesman Edmond Ross said in an emailed statement that "Congress gave the [Bureau of Prisons] authority" to decide which inmates should be granted release.

"Review includes deliberation on the most important factor, ensuring that an inmate's release would not pose a danger to the safety of any other person or the community," he said. "This must be considered before any request is submitted to a court." (Read their full statement [13].)

Mary Price, general counsel for Families Against Mandatory Minimums, says prison officials are ill-equipped to make those kinds of decisions. Prison officials' "job is to keep people locked up. Identifying people who should no longer be incarcerated is just not what they do," she said.



*The Barnes family (Photo courtesy of Veronica Barnes)*

This is especially true in cases like Barnes', Price said, in which prison officials decide complicated legal questions such as whether an inmate is fit to parent. "You would never trust your child's guardianship issues to a bureaucrat in the Bureau of Prisons," she said. "They have no competence or expertise in this."

Ross said the Bureau of Prisons has implemented new training programs to better prepare wardens and other prison officials to make these decisions.

Some inmates have tried to take their cases directly to court, but most judges say their hands are tied without the prison bureau's approval.

Federal inmate and lawyer Lynne Stewart tried to seek compassionate release from a federal judge after she was diagnosed with breast cancer. Stewart is serving a 10-year sentence in a Texas federal prison for serving as a messenger [14] for her client, Sheik Omar Abdel Rahman, who was convicted of terrorism charges in connection with the 1993 bombing of the World Trade Center.

Prison officials denied Stewart's request [15] in June, saying she hadn't proven she had less than 18 months to live. So Stewart took her case to court [16], hoping a federal judge would overrule the prisons' decision.

"There is no doubt that Lynne is dying," said Stewart's husband, Ralph Poynter. "She can't breath, the cancer has taken over both lungs." Stewart "sounds like she's running" when they talk on the phone, Poynter said.

The judge wrote that he had no choice but to deny her request. "The court would give prompt and sympathetic consideration to any motion for compassionate release," the judge wrote [17], "but it is for the [Bureau of Prisons] to make that motion in the first place."

Stewart's lawyer Jill Shellow was "disappointed" the judge refused to weigh in on Stewart's case. "She's not at risk of recidivism," Shellow said. "I remain convinced that it is inappropriate for the Bureau of Prisons to be making the decisions."

Prisoner advocates at Human Rights Watch and other organizations have proposed [3] allowing inmates to go before a judge to appeal rejections.

"Unless there's an institutional change or a criteria that they have to follow, this will never change," Seitles said.

While Barnes was not granted early release, the Bureau of Prisons did give her a one-day furlough. She had to choose between visiting her husband on his deathbed or attending his funeral.

Barnes decided to see her husband while he was still alive. "It's very hard to wake up in the morning and know that that's the last time you're going to see him," she said. "My kids were all excited that mommy's home. I had to explain that I was just there for a couple hours."

Barnes completed her sentence in June, and has since been a single parent to her two children. She's returned to her job at the market, and is taking classes at a nearby community college. But remaining behind bars as her husband died has had a lasting impact.

"The relationship with my children will never be repaired," she said. "I wasn't there when their father was dying."

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1. <http://www.propublica.org/documents/item/844578-wardens-rec>
2. <http://www.propublica.org/documents/item/809311-veronicas-last-rejection>
3. <http://www.hrw.org/reports/2012/11/30/answer-no>
4. <http://www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-130812.html>
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6. <http://www.hrw.org/news/2013/08/13/dispatches-good-news-us-prisoners-seeking-compassionate-release>
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