October 8, 2019

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable Kevin McCarthy
Republican Leader
U.S. House of Representatives
Washington, DC 20515

Re: ABA Support for H.R. 4018; a technical corrections bill to include good time credit when calculating eligibility for the Elderly Offender Home Detention Pilot Program

Dear Speaker Pelosi and Republican Leader McCarthy:

On behalf of the American Bar Association, which is the largest voluntary association of attorneys and legal professionals in the world, I write to express our strong support for H.R. 4018, bipartisan legislation introduced by Representatives Ted Deutch (FL), Jerrold Nadler (NY), Doug Collins (GA), Karen Bass (CA), Matt Gaetz (FL), and Hakeem Jeffries (NY). This non-controversial bill would make a technical correction to Section 231(g) of the Second Chance Act of 2007 (P.L. 110-199) to ensure that incarcerated individuals would no longer have to forfeit the “good time” credits they have earned when calculating their eligibility for the Elderly Offender Home Detention Pilot Program (“the Elderly Program”).

Under the Elderly Program, which was originally authorized by the Second Chance Act and then expanded by the First Step Act of 2018 (P.L. 115-391) enacted last December, nonviolent individuals serving time in federal prison can be transferred to home confinement if they are at least 60 years old and have served at least two-thirds of their respective sentences, which the statute describes as “the term of imprisonment to which the offender was sentenced.”

After the Bureau of Prisons (BOP) established the initial Elderly Program under the Second Chance Act, a lawsuit challenged BOP’s position that the relevant statutory language required individuals to serve at least the minimum required percentage of their entire sentence imposed by the court to qualify for home confinement, without any credits for good time. At the conclusion of that suit, the Tenth Circuit Court of Appeals upheld BOP’s interpretation of that statutory language. Based on that 2010 ruling, BOP has concluded that those applying for the current Elderly Program must serve at least two-thirds of their entire sentence imposed by the court and that BOP cannot consider good conduct credits in determining eligibility for the pilot program.

This restrictive approach to determining an individual’s eligibility for the Elderly Program is a major departure from the way BOP calculates most other transfer and release decisions. In those

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1 While the Second Chance Act allowed individuals, who were 65 or older and served the greater of 10 years or 75 percent of their sentences to participate in the Elderly Program, the First Step Act broadened these eligibility standards to include those who were 60 or older and served two-thirds of their sentences.

2 See Izzo v. Wiley, 620 F. 3d 1257, 1260 (10th Cir. 2010).
other situations, BOP does include “good time” credits when determining an individual’s eligibility for other types of transfers, such as a transfer from a low-security facility to a “Camp,” or from a “Camp” to a “Residential Reentry Center.”

H.R. 4018 would help restore consistency to BOP’s transfer and release decisions by clarifying that the amount of time an elderly individual must serve before being eligible for placement in home detention must be reduced by the amount of good time credits earned by that individual. To accomplish this, the bill would simply amend the statute by replacing the phrase “to which the offender was sentenced” with the phrase “reduced by any credit toward the service of the prisoner’s sentence awarded under section 3624(b) of title 18, United States Code.” Therefore, H.R. 4018 would allow elderly individuals to qualify for the Elderly Program if they served at least two-thirds of their original court-imposed sentences minus any credits for good time and they met the other specific requirements of the statute.

By removing unnecessary delays and maximizing participation in the Elderly Program, the bill would provide several important benefits to elderly individuals, the criminal justice system, and society-at-large. First, home detention removes elderly persons from conditions that may increasingly place their health and safety in jeopardy, with very little risk to the public. Second, such transfers also benefit BOP by making additional space available in the facility, improving conditions for other inmates, and helping to ensure that space is available for more violent offenders. Lastly, these transfers typically provide substantial cost savings to taxpayers.

The urgent need for this legislation is further underscored by the findings in a 2015 Department of Justice report titled The Impact of an Aging Inmate Population on the Federal Bureau of Prisons. In that report, U.S. Inspector General Michael Horowitz found that “[a]ccording to BOP data, inmates age 50 and older were the fastest growing segment of its inmate population, increasing 25 percent from 24,857 in fiscal year (FY) 2009 to 30,962 in FY 2013.” Mr. Horowitz also noted that “based on BOP cost data, we estimate that the BOP spent approximately $881 million, or 19 percent of its total budget, to incarcerate aging inmates in FY 2013.”

For all these reasons, and to minimize the human cost of continuing to hold a vulnerable, non-violent elderly population behind bars for longer than is necessary, we urge you to bring H.R. 4018 swiftly to the floor and to support prompt passage of this vitally important legislation.

Sincerely,

Judy Perry Martinez