

# **S.3649 – The First Step Act**

## **Section-by-Section**

### ***Section. 1. Short Title; Table of Contents***

Sets forth the short title for the entire Act as the “First Step Act” and sets forth the table of contents.

## **TITLE I: RECIDIVISM REDUCTION**

### ***Section 101. Risk and needs assessment system***

Amends title 18 of the U.S. Code to add Section 3631, which outlines the duties of the Attorney General in relation to establishing a new risk and needs assessment system within the Bureau of Prisons (BOP). Specifically, the new Section 3631:

- Directs the Attorney General to conduct a review of the existing risk and needs assessment system used by the BOP; develop recommendations on evidence-based recidivism reduction programs and productive activities; conduct ongoing research and data analysis on the programming and its effectiveness; annually review and validate the risk and needs assessment system; update and revise the risk and needs assessment system as determined appropriate; and report to Congress.

Amends title 18 of the U.S. Code to add Section 3632, which requires the development of the new risk and needs assessment system. Specifically, the new Section 3632:

- Requires the Attorney General, within 180 days of enactment of this Act and in consultation with the Independent Review Committee created by this Act, to develop and release a risk and needs assessment system (the System) that will (1) determine the recidivism risk level (minimum, low, medium, or high) of each prisoner at intake; (2) assess and determine the risk of violent or serious misconduct of each prisoner; (3) determine the type and amount of programming for each prisoner and assign programming accordingly; (4) reassess each prisoner periodically and adjust programming assignments accordingly; (5) reassign prisoners to appropriate programs based on revised determinations; (6) determine when to provide incentives and rewards for successful participation in programming or productive activities; and (7) determine when a prisoner is ready to transfer into prerelease custody or supervised release. In developing the risk and needs assessment system, the Attorney General may use existing tools as appropriate.
- Mandates that the System provide guidance on the type, amount, and intensity of programming and productive activities assigned to prisoners, as well as provide guidance on program grouping and housing assignment decisions and provide that prisoners with similar risk levels are grouped together in housing and assignment decisions to the extent practicable.

- Requires the System to also provide incentives and rewards for prisoners to participate in programming and activities, including increased phone and visitation privileges, transfer to an institution closer to the inmate's release residence, and earned time credits. Further, BOP is instructed to develop additional policies to provide appropriate incentives for successful participation in programming, which may include increased commissary spending limits and product offerings, extended opportunities to access the email system, and consideration of transfer to preferred housing units.
- Permits prisoners to earn 10 days of time credits for each 30 days of successful participation in recidivism risk reduction programming or activities. A prisoner that is classified as minimum or low risk for recidivating and that has not increased their risk of recidivism over two reassessments can earn an additional 5 days for each 30 days of successful participation (for a total of 15 days earned per period). A prisoner may not earn time credits for programming or activities participated in before enactment of this Act and before the prisoner's sentence commences. Prisoners who have successfully participated in recidivism reduction programs or productive activities and who have been determined to be at minimum or low risk for recidivating at their last two reassessments shall apply their time credits toward time in pre-release custody or supervised release.
- In addition to the exclusion preventing all but those classified as minimum or low risk from redeeming time credits, makes clear that prisoners are ineligible to earn time credits if the prisoner is serving a sentence for conviction of certain offenses, including crimes relating to terrorism, murder, sexual exploitation of children, espionage, violent firearms offenses, or those that are organizers, leaders, managers, supervisors in the fentanyl and heroin drug trade. Prisoners are also ineligible to apply time credits if subject to a final order of removal under the Immigration and Nationality Act.
- Requires prisoners participating in the recidivism reduction programming or productive activities to be reassessed for recidivism risk not less than annually. Requires prisoners determined to be at medium or high risk and with an anticipated release date within 5 years to be reassessed more frequently. If a reassessment shows that a prisoner's risk of recidivating has changed, BOP shall update the prisoner's classification and reassign the prisoner to appropriate recidivism reduction programming based on such changes.
- Requires BOP to establish guidelines for reducing rewards and incentives for prisoners who violate prison, program, or activity rules, and for restoring those rewards and incentives based on individual progress.
- Requires the Attorney General to develop and implement training programs for BOP officials and employees responsible for administering the System and to conduct annual audits of BOP's use of the System.

Amends title 18 of the U.S. Code to add Section 3633, which requires the new risk and needs assessment system to rely on evidence-based recidivism reduction programs. Specifically, the new Section 3633:

- Requires the Attorney General, prior to releasing the risk and needs assessment system and in consultation with the Independent Review Committee created by this Act, to review the effectiveness of evidence-based recidivism reduction programs that exist in prisons operated by BOP, review such programs that exist in State-operated prisons throughout the U.S., identify the most effective evidence-based recidivism reduction programs, review policies for entering into evidence-based recidivism reduction partnerships, and direct BOP on such programming and partnerships.

Amends title 18 of the U.S. Code to add Section 3634, which requires a report on the new risk and needs assessment system. Specifically, the new Section 3634:

- Directs the Attorney General to submit a report about the activities undertaken as a result of this Act, beginning two years after enactment and annually thereafter for five years. The report shall assess the types and effectiveness of programming and activities, recidivism rates, the status of prison work programs, BOP compliance with implementation requirements, progress and savings, and recommend how to reinvest savings.

Amends title 18 of the U.S. Code to add Section 3635, which defines a number of key terms used in this Act.

***Section 102. Implementation of system and recommendations by Bureau of Prisons***

Amends Section 3621 of title 18 of the U.S. Code to implement the risk and needs assessment system. Specifically, directs BOP to, within 180 days of the Attorney General’s release of the System, (1) implement the System and complete a risk and needs assessment for each prisoner; (2) begin to expand the effective programs it offers and add any new ones necessary to effectively implement the System; and (3) begin to implement the other risk and needs assessment tools necessary to effectively implement the System over time. Requires BOP to phase in such programs within two years and to develop and validate the risk and needs assessment tool to be used in reassessments during the phase-in period. Permits BOP to begin expanding programming and production activities and offering incentives and rewards for participation upon enactment of the Act, and requires Attorney General to develop policies to allow BOP wardens to enter into partnerships with nonprofit organizations, institutions of higher education, private entities, and industry-sponsored organizations. Ensures that all prisoners have the opportunity to actively participate in programming or activities.

Amends Section 3624 of title 18 of the U.S. Code to clarify congressional intent behind good time credit, which is earned for “exemplary compliance with institutional disciplinary regulations,” to ensure that a prisoner who is serving a term of imprisonment of more than 1 year may receive good time credit of 54 days per year toward the service of the prisoner’s sentence. Also establishes eligibility for prerelease custody or supervised release for risk and needs assessment system participants. Allows such eligible prisoners to be placed in home confinement or residential reentry centers, subject to the conditions required by the Act and the BOP Director, or transferred to begin a term of supervised release; a violation of the conditions of prerelease custody may result in revocation and require the violator to return to prison.. Requires the Attorney General, in

consultation with the Assistant Director for the Office of Probation and Pretrial Services, to issue guidelines for BOP to use in determining the appropriate type of prerelease custody or supervised release and level of supervision required, as well as consequences for violations of prerelease custody conditions. Requires the BOP Director to enter into agreements with the United States Probation and Pretrial Services to supervise prisoners placed in home confinement and ensure that there is sufficient prerelease custody capacity to accommodate all eligible prisoners. Additionally, allows prisoners to receive mentoring services from a person that provided those services to the prisoner while incarcerated, absent a significant security risk.

Clarifies that the amendments in this section related to prerelease custody shall take effect on the date that the Attorney General completes and releases the new risk and needs assessment system, and apply with respect to offenses committed before, on, or after the date of enactment of the Act, except with respect to offenses committed before November 1, 1987 (which are subject to federal parole).

### ***Section 103. GAO report***

Requires the Comptroller General to conduct a biennial audit on BOP's use of the risk and needs assessment system, including an analysis of the implementation of the System, recidivism reduction programs and productive activities, and transfers to prerelease custody or supervised release.

### ***Section 104. Authorization of appropriations***

Authorizes \$75 million annually for fiscal years 2019 through 2023 to carry out the activities described in the Act. Clarifies that it is the sense of Congress that savings associated with recidivism reduction resulting from the Act be reinvested into resources for state and local law enforcement, evidence-based recidivism reduction programs offered by BOP, and ensuring eligible prisoners have access to such programs and productive activities.

### ***Section 105. Rule of construction***

Sets forth that nothing in this Act may be construed to provide authority to place a prisoner on prerelease custody who is serving a term of imprisonment for a non-federal crime.

### ***Section 106. Faith-Based considerations***

Clarifies that a program, treatment, regimen, group, company, charity, person, or entity of any kind considered under this Act may not be discriminated against on the basis that it may be or is faith-based.

### ***Section 107. Independent Review Committee***

Establishes an Independent Review Committee, which shall be hosted by a nonpartisan and nonprofit organization selected by the National Institute of Justice; the organization must have

expertise in the study and development of risk and needs assessment tools. The Committee must be established within 30 days of enactment, and the organization hosting the Committee shall appoint at least six experts in implementation, study and assessment of risk assessment tools, as members of the Committee. The Committee shall assist the Attorney General in the development of the risk and needs assessment system and terminate 30 days after the System is released.

## **TITLE II: BUREAU OF PRISONS SECURE FIREARMS STORAGE**

### ***Section 201. Short Title***

Sets forth the short title for Title II as the “Lieutenant Osvaldo Albarati Correction Officer Self-Protection Act of 2016.”

### ***Section 202. Secure firearms storage***

Requires the Director of BOP to ensure that employees are allowed to store firearms in a vehicle lockbox approved by the Director of the BOP. Where storage in vehicles isn’t possible, the BOP should provide alternative opportunities to store weapons. Allows employees to carry concealed firearms on the premises outside the secured perimeter of the institution.

## **TITLE III: RESTRAINTS ON PREGNANT PRISONERS PROHIBITED**

### ***Section 301. Use of restraints on prisoners during the period of pregnancy and postpartum recovery prohibited***

Prohibits the use of restraints on prisoners during the period of pregnancy and postpartum recovery. The prohibition shall not apply if the prisoner is determined to be an immediate and credible flight risk or poses an immediate and serious threat of harm to herself, or others. In such a case, the least restrictive means must be used, and certain restraint methods that pose heightened risk are nonetheless prohibited. Requires a report to be filed with the Director of BOP and prisoner’s healthcare professional when restraints are used. Requires BOP to provide information to Congress annually. Requires appropriate training and the development of guidelines, and requires notice to pregnant prisoners of restrictions on use of restraints

## **TITLE IV: SENTENCING REFORM**

### ***Section 401. Reduce and restrict enhanced sentencing for prior drug felonies***

The enhanced mandatory minimums for prior drug felons are reduced: the three-strike mandatory penalty is reduced from life imprisonment to 25 years, and the 20-year mandatory minimum is reduced to 15 years. The offenses that trigger these enhanced mandatory minimum sentences are also reformed. Currently, those offenses may include any prior drug felony. This bill would both limit qualifying prior convictions to serious drug felonies which occurred within 15 years, and expand qualifying prior convictions to include serious violent felonies. This provision is not retroactive and will not apply to any person sentenced before enactment of the Act.

### ***Section 402. Broadening of existing safety valve***

Under section 3553 of title 18, the existing “safety valve” authorizes a sentencing court to consider a sentence below the statutory minimum for certain non-violent, low-level drug offenders. But the court may only do this if an offender (1) has only 1 criminal history point, (2) did not use violence, or possess any dangerous weapon; (3) did not commit an offense resulting in death or serious bodily injury; (4) was not an organizer, leader, manager, supervisor of others in the offense; and (5) has fully cooperated with law enforcement in providing all information and evidence related to his or her crimes. Those criteria remain in place, but this section expands the existing safety valve to include offenders with up to four criminal history points, excluding 1-point offenses, such as minor misdemeanors. However, offenders with prior “3 point” felony convictions (sentences exceeding one year and one month) or prior “2 point” violent offenses (violent offenses with sentences of at least 60 days) will *not* be eligible for the safety valve absent a judicial finding that those prior offenses substantially overstate the defendant’s criminal history and danger of recidivism. This provision is not retroactive and will only apply where a conviction is entered on or after the date of enactment.

### ***Section 403. Clarification of section 924(c) of title 18, United States Code***

This section clarifies congressional intent that the enhanced mandatory minimum sentence for using a firearm during a crime of violence or drug crime is limited to offenders who have previously been convicted and served a sentence for such an offense—the so-called 924(c) “stacking” problem. This provision does not apply retroactively, and will not apply to any person sentenced before enactment of the Act.

### ***Section 404. Application of Fair Sentencing Act***

The Fair Sentencing Act of 2010 reduced the disparity in sentencing between crack and powder cocaine. This provision permits offenders sentenced under those provisions before they were modified to petition the sentencing court for a reduction in sentence consistent with the new crack cocaine sentencing law. The section expressly prohibits successive requests for relief and double relief under the Fair Sentencing Act and the First Step Act.

## **TITLE V: MISCELLANEOUS CRIMINAL JUSTICE**

### ***Section 501. Placement of prisoners close to families***

Provides that prisoners shall be, subject to bed availability, the prisoner’s security designation and other considerations such as mental and medical health needs, placed in a facility as close as practicable to the prisoner’s primary residence, and to the extent practicable, not more than 500 driving miles from the prisoner’s primary residence. A prisoner with a security designation higher than the facilities closest to its release will not be transferred to a lower-security prison as a result of this provision.

***Section 502. Home confinement for low-risk prisoners***

Requires the Bureau of Prisons to place prisoners with lower risk levels and needs on home confinement for the maximum amount of time permitted.

***Section 503. Federal prisoner reentry initiative reauthorization; modification of imposed term of imprisonment***

Expands consideration of eligibility for the Federal Prisoner Reentry Initiative under the Second Chance Act of 2007, and to permit home detention of elderly and terminally ill offenders.

Increases the use and transparency of compassionate release procedures under section 3582 of title 18, by expediting BOP consideration of petitions; providing family members the opportunity to visit terminally ill offenders; ensuring assistance with submissions of petitions for compassionate release; and improving notice and review requirement. Requires the Director of the Bureau of Prisons to provide an annual report describing requests and releases made under this subsection, as well as additional information.

***Section 504. Identification for returning citizens***

Requires that, prior to release from a Federal prison, an individual should be provided with his or her birth certificate and photo identification.

***Section 505. Expanding inmate employment through Federal Prison Industries***

Authorizes new markets for Federal prison industries products, including to public entities for use in penal or correctional institutions or disaster relief, to the government of the District of Columbia, and to any 501(c)(3), (c)(4), or (d) tax-exempt organization. Requires a GAO Report not later than 90 days after enactment of the Act on Federal Prison Industries, including on its scope, effectiveness, and quality of workplace conditions and products.

***Section 506. De-escalation training***

Requires the BOP to provide de-escalation training as part of the regular training requirements of correctional officers to assist them in managing encounters with prisoners, including prisoners who possess a mental illness or cognitive defect, to ensure the officers' and prisoners' safety.

***Section 507. Evidence-Based treatment for opioid and heroin abuse***

Requires BOP to submit to Congress a report and evaluation of the current pilot program to treat heroin and opioid abuse through medication-assisted treatment, and a plan to expand it.

***Section 508. Pilot programs***

Requires BOP to establish two pilot programs for five years in twenty facilities. The first is a mentorship program for youth and the second is for the training and therapy of abandoned, rescued, or otherwise vulnerable animals. Requires a report to Congress on each pilot program.

***Section 509. Ensuring supervision of released sexually dangerous persons***

Provides U.S. Probation and Pretrial Services authority to supervise sexually dangerous persons who have been conditionally released from civil commitment.

***Section 510. Data collection***

Establishes for BOP a statistical and demographic data reporting requirement. Beginning not later than one year after the date of enactment, this data must be provided to Congress annually for 7 years and as part of the National Prisoner Statistics Program. Also requires the Bureau of Justice Statistics to include the same information.

***Section 511. Healthcare products***

Requires BOP to provide feminine hygiene products to female inmates at no cost.

***Section 512. Adult and juvenile collaboration programs***

Increases funding available for state and county adult and juvenile collaboration programs.

***Section 513. Juvenile Solitary Confinement***

Restricts the use of juvenile solitary confinement for any reason other than as a temporary response to a juvenile's behavior that poses a serious and immediate risk of physical harm. Requires BOP staff to use the least restrictive techniques, including talking with the juvenile, and attempting care by a qualified mental health professional. If solitary confinement is necessary, staff are required to fully inform the juvenile concerning the confinement; and maximum periods of confinement are set, depending on the immediate risk of physical harm.