



The First Step Act of 2018 (S.3649) – *as introduced*

Grassley, Durbin, Lee, Whitehouse, Graham, Booker, Scott, Leahy, Ernst, Klobuchar, Moran, Coons

Reducing Federal Recidivism and Crime

- Provides for increased programming designed to reduce recidivism and provides incentives for participation in those programs.
- Implements a post-sentencing dynamic risk assessment system to determine an inmate's risk of committing more crimes upon release from prison.
- Establishes eligibility criteria for and incentivizes participation in evidence-based recidivism reduction programs by allowing prisoners to earn time credits for prerelease custody (defined as residential reentry centers or, for low risk prisoners, home confinement). For example, a prisoner may earn 10 days of time credit for every 30 days of successful participation in a recidivism-reduction program or other eligible activity. However, only prisoners classified as minimum or low risk may redeem these time credits to reduce their sentence.
- In addition to the exclusion preventing all but those classified as minimum or low risk from redeeming time credits, the bill makes clear that violent and high-risk criminals convicted of certain serious offenses are ineligible for the pre-release custody program, including those convicted of 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.

Preparing Inmates for Successful Return to Society

- Provides more meaningful employment and training opportunities for inmates by expanding the federal prison industries program.
- Requires the Bureau of Prisons (BOP) to submit a report and evaluation of the current pilot program to treat heroin and opioid abuse through medication—assisted treatment.
- Extends the compassionate elderly release provision from the *Second Chance Act* that allows the prisoner to request for his or her compassionate release if he or she meets the requirements set out in the law.
- Codifies BOP's rules that generally prohibit the use of restraints on pregnant inmates except those who are an immediate and credible flight risk or threat of harm to herself or others.
- Mandates inmates be housed no more than 500 miles from the prisoner's primary residence and grants authority for prisoners to save earnings in an escrow account used for pre-release expenses, such as transportation and housing.
- Clarifies the formula by which the BOP calculates good time credit (time off for good behavior) in line with original Congressional intent. Under current law, prisoners can earn up to 54 days per year for good behavior in prison, but technicalities in the law keep prisoners on early release from utilizing those days.

Enhancing Prison Security and Officer Safety

- Requires the Director of BOP to provide a secure storage area outside the secure perimeter for employees to store firearms or to allow for vehicle lock boxes for firearms.



- Directs the Director of BOP to provide de-escalation training as part of the regular training requirements of correctional officers.

Reforming Federal Criminal Sentencing

- **Clarification of 18 U.S.C. § 924(c)** – *S.1917 Section 104 applied prospectively*: This section clarifies 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. Previously the courts interpreted this law intended for repeat offenders as applying also to first-time offenders, sometimes requiring courts to impose overly harsh, decades-long sentences for charges brought in a single indictment.
- **Reform to 21 U.S.C. 841 & 851** - *S.1917 Section 101 applied prospectively*: The section focuses the toughest criminal sentencing on serious drug felons and expands the definition of serious violent felons to enhance the sentences of violent criminals. Maximum penalties remain in place. Mandatory minimum penalties are reduced to permit some additional judicial discretion, but not eliminated. The three-strike penalty is reduced from life imprisonment to 25 years, and the 20-year minimum is reduced to 15 years. But while the mandatory minimum for the three-strike penalty is reduced, it is also adjusted to apply to the worst criminals—including, for the first time, to violent felons. The third-strike penalty currently applies only to offenders with prior drug felonies. This penalty now applies to all offenders convicted of a serious drug felony or a serious violent felony.
- **Expansion of existing federal safety valve for mandatory minimum sentencing** – *S.1917 Section 102 applied prospectively*: 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. Consistent with existing law, a judge cannot apply the safety valve unless the defendant has *fully cooperated* with law enforcement and has not used or threatened to use violence or firearms, caused death or serious bodily injury, or was an organizer, leader, manager, or supervisor of others in connection with the offense.
- **Retroactive Application of the Fair Sentencing Act of 2010** – *S.1917 Section 105*: This section allows prisoners sentenced before the *Fair Sentencing Act of 2010* reduced the 100-to-1 disparity in sentencing between crack and powder cocaine to petition the court for an individualized review of their case. This reform would bring sentences imposed prior to 2010 in line with sentences imposed after the Fair Sentencing Act was passed.

Other Reforms

- **Immigration Fix.** The bill clarifies that prisoners subject to a final order of removal under 8 U.S.C. 1101, including illegal immigrants, are not eligible to apply time credits.
- **Fentanyl and Heroin Exclusion.** Upon input from law enforcement, the bill excludes prisoners from receiving time credits under the First Step Act who were convicted of fentanyl or heroin offenses involving 5 and 10 year mandatory minimums and who were organizers, leaders, managers or supervisors in the offense.
- **Firearm Offense Exclusion.** Upon input from law enforcement, the bill excludes prisoners from receiving time credits under the First Step Act who brandish or discharge firearms. Those who committed a felony with possession of a firearm are also excluded if they are repeat offenders who have already taken advantage of recidivism programming under the First Step Act.
- **Crimes Against Children Exclusion.** Offenders who have committed serious crimes against children will not be able to shorten their sentences. This includes anyone convicted of sex trafficking of children (18 U.S.C. § 1591), sexual abuse of a child (18 U.S.C. §§ 2243, 2244(c)), child pornography offenses (18 U.S.C. §§ 2251, 2252, 2252A, 2260), buying and selling of children (18 U.S.C. § 2251A), or the recruitment of child soldiers (18 U.S.C. § 2442).

