

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

VANESSA CROWE  
Reg. 15427-002  
FCI Marianna  
Satellite Camp  
P.O. Box 7006  
Marianna, FL 32447

GLEN GALEMMO  
Reg. 72083-061  
FCI Williamsburg  
Satellite Camp  
P.O. Box 340  
Salters, SC 29590

*on behalf of themselves and others similarly  
situated,*

*Plaintiffs,*

v.

FEDERAL BUREAU OF PRISONS,  
320 First St NW  
Washington, D.C. 20534

COLETTE PETERS, *in her official capacity as  
Director of the Bureau of Prisons,*  
320 First St NW  
Washington, D.C. 20534

*Defendants.*

No. 1:24-cv-\_\_\_\_\_

**CLASS ACTION COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

(Administrative Procedure Act: Bureau of Prisons regulation violates First Step Act)

## INTRODUCTION

In the First Step Act of 2018, Congress created a system under which many people incarcerated in the custody of the Federal Bureau of Prisons (BOP) can earn time credits that reduce their time in prison. Under that statute, the BOP *must* transfer eligible people from its prisons to home confinement or residential reentry centers (commonly called halfway houses) when the time credits they have earned equal the remaining time on their sentences. The statute is clear: time credits “*shall be applied* toward time in prerelease custody or supervised release,” and the BOP “*shall transfer* eligible prisoners . . . into prerelease custody or supervised release.” 18 U.S.C. § 3632(d)(4)(C) (emphasis added).

But the BOP has unlawfully treated this statutory program as discretionary, promulgating regulations that directly conflict with the plain language of the First Step Act. The regulations impermissibly and inexplicably substitute “may” for “shall,” providing that “the Bureau *may apply* FSA Time Credits toward prerelease custody or supervised release.” 28 C.F.R. § 523.44(a)(1) (emphasis added); *see also id.* §§ 523.44(c), (d).

This difference is not academic—it affects real people, every day. For thousands of people, the BOP’s unlawful regulation has already resulted in additional time in prison beyond what the law allows. And it will continue to affect thousands more every year. Here, the named plaintiffs and members of the class they seek to represent will be held in prison for months after they have a clear statutory right to be transferred out.

Plaintiffs ask this Court to restore the statutory scheme Congress enacted by vacating the unlawful regulation and ordering the BOP to transfer eligible people from its prisons into prerelease custody or supervised release as directed by the First Step Act.

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction under 28 U.S.C. § 1331 and 5 U.S.C. §§ 702–704. The Court has remedial authority pursuant to 5 U.S.C. §§ 702, 706; 28 U.S.C. §§ 2201-02; and the inherent equitable powers of this Court.
2. Venue is proper in this District pursuant to 5 U.S.C. § 703 and 28 U.S.C. §§ 1391(e)(1)(A), (B), because Defendants reside in this District and a substantial part of the events or omissions giving rise to the claims occurred in this District.

### **PARTIES**

3. Plaintiff Vanessa Crowe is a 50-year-old mother and grandmother who is serving a federal criminal sentence at FCI Marianna in Florida for aiding and abetting possession with intent to distribute methamphetamine. She has been serving this sentence for nearly 10 years and is eligible to earn time credits under the First Step Act. The BOP has continuously classified her recidivism risk as low since December 2018. On December 24, 2024, her earned time credits will be equal to the remainder of her sentence. Although she will meet all the prerequisites under the First Step Act to be transferred out of prison on that date, the BOP has expressed its intent to continue imprisoning Ms. Crowe until May 7, 2025.
4. Plaintiff Glen Galemmo is a 59-year-old father and grandfather who is serving a federal criminal sentence at FCI Williamsburg in South Carolina for wire fraud and money laundering. He has been serving this sentence for over 10 years and is eligible to earn time credits under the First Step Act. The BOP has continuously classified his recidivism risk as minimum since December 2018. On February 26, 2025, his earned time credits will be equal to the remainder of his sentence. Although he will meet all the prerequisites under the First Step Act to be transferred out of prison on that date, the BOP has expressed its intent to continue imprisoning Mr. Galemmo until May 22, 2025.

5. Defendant Federal Bureau of Prisons is a federal agency headquartered in the District of Columbia. The BOP is responsible for administering the execution of federal criminal sentences and for implementing the earned time credit program established in the First Step Act. It promulgated the regulation at issue here: Application of FSA Time Credits, 28 C.F.R. § 523.44 (2022).

6. Defendant Colette Peters is the Director of the Bureau of Prisons and is sued in her official capacity. As Director, Defendant Peters oversees the operations of the BOP, including implementation of the earned time credit program established in the First Step Act.

## **BACKGROUND**

### **I. Statutory and Regulatory Framework**

#### *A. The Statute*

7. Six years ago, significant bipartisan majorities in Congress passed—and President Trump signed—the First Step Act, a comprehensive legislative effort to “allow prisons to help criminals transform their lives . . . so that we are not perpetuating the cycle of crime that continues to plague communities across the country . . . .” 164 Cong. Rec. S7639, S7642 (Dec. 17, 2018) (statement of Sen. Cornyn).

8. A centerpiece of the First Step Act is a system of earned time credits that incentivizes eligible people incarcerated in federal prisons to participate in programs designed to reduce recidivism. *See* First Step Act of 2018, Pub. L. No. 115-391, § 101, 132 Stat. 5194, 5196-5208 (2018).<sup>1</sup>

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<sup>1</sup> The First Step Act is codified in many scattered sections of the United States Code. The relevant provisions are filed as Exhibit A to this complaint.

9. People who have been convicted of homicide, terrorism-related offenses, threats to public officials, and numerous other federal offenses are not eligible to earn credits. 18 U.S.C. § 3632(d)(4)(D).

10. The First Step Act provides that an eligible person who “successfully completes evidence-based recidivism reduction programming or productive activities, shall earn time credits.” *Id.* § 3632(4)(A).

11. The First Step Act further provides that time credits “shall” be earned as follows:

- a. First, a “prisoner shall earn 10 days of time credits for every 30 days of successful participation in evidence-based recidivism reduction programming or productive activities.” *Id.* § 3632(d)(4)(A)(i).
- b. Second, a “prisoner determined by the Bureau of Prisons to be at a minimum or low risk for recidivating, who, over 2 consecutive assessments, has not increased their risk of recidivism, shall earn an additional 5 days of time credits for every 30 days of successful participation in evidence-based recidivism reduction programming or productive activities.” *Id.* § 3632(d)(4)(A)(ii).

12. The purpose of the earned time credit program is to give incarcerated people an incentive to participate in recidivism-reducing programming and productive activities. The incentive is that these credits will eventually reduce their time spent in prison.

13. The First Step Act’s system of “earn[ed] time credits” is not entrusted to the discretion of the BOP: an eligible person “who successfully completes evidence-based recidivism reduction programming or productive activities, *shall* earn time credits.” *Id.* § 3632(d)(4)(A) (emphasis added); *see also id.* § 3632(d)(6) (“The incentives described in this subsection *shall* be in addition

to any other rewards or incentives for which a prisoner may be eligible.”) (emphasis added).<sup>2</sup> As the law clearly indicates, each time credit is equal to one day of imprisonment. *Id.* § 3632(d)(4)(A)(i) (“shall earn 10 days of time credits”).

14. Application of earned time credits is also not entrusted to the discretion of the BOP: the First Step Act provides that “[t]ime credits earned . . . by prisoners who successfully participate in recidivism reduction programs . . . *shall be applied* toward time in prerelease custody or supervised release.” *Id.* § 3632(d)(4)(C) (emphasis added).

15. Earned time credits can be used in three ways, each of which results in early release from incarceration:

- a. First, if a person’s sentence includes a term of supervised release, the BOP can apply up to 365 time credits to begin the person’s supervised release up to 12 months early. 18 U.S.C. § 3624(g)(3). Supervised release is a form of supervision that occurs after a person’s prison sentence is over. Thus, applying 365 credits towards early transfer to supervised release is the equivalent of taking one year off a person’s prison sentence.
- b. Second, time credits may be applied toward placement in home confinement. *Id.* § 3624(g)(2)(A). Home confinement is referred to in the statute as one form of “prerelease custody.” *Id.* § 3624(g)(2).
- c. Third, time credits may be applied toward placement in a residential reentry center, commonly referred to as a halfway house. *Id.* § 3624(g)(2)(B). Placement in a

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<sup>2</sup> Although they sound similar, “earned time credits” are different from “good time credits.” Good time credits pre-date the First Step Act. The First Step Act amended the good time credit system and created the earned time credit system. This complaint concerns only the earned time credit system.

residential reentry center is also referred to in the statute as a form of “prerelease custody.” *Id.* § 3624(g)(2).

16. While the law does not give the BOP discretion over whether to apply time credits in the first place, the statute does allow it some discretion in deciding among the release options. For example, the BOP may apply up to 365 earned time credits towards early supervised release, but it is not required to do so. *Id.* § 3624(g)(3). Whether the BOP applies a person’s time credits toward early supervised release does not change whether the person is entitled to the credits they have earned. If the credits are not used toward supervised release, they must be used toward prerelease custody.

17. Upon information and belief, the BOP is generally applying the maximum amount of earned time credits toward supervised release that the First Step Act allows. This means that in practice, the first 365 days of earned time credits go towards early placement on supervised release. When people earn more than 365 credits, the BOP must apply those time credits toward prerelease custody—placement in a halfway house or in home confinement. *See id.* § 3624(g)(3) (early supervised release is “not to exceed 12 months”). Unlike for supervised release, the statute does not limit the number of credits a person can earn toward prerelease custody.

18. The First Step Act explicitly provides that BOP “*shall transfer* eligible prisoners . . . into prerelease custody or supervised release,” 18 U.S.C. § 3632(d)(4)(C) (emphasis added), when certain conditions are met:

- a. First, a person has earned a sufficient number of time credits. The First Step Act defines an “eligible prisoner” for prerelease custody or supervised release as a person who has “earned time credits . . . in an amount that is equal to the remainder of the prisoner’s imposed term of imprisonment[.]” 18 U.S.C. § 3624(g)(1)(A).

- b. Second, a person “has shown,” based on periodic risk reassessments administered by the BOP, “a demonstrated recidivism risk reduction or has maintained a minimum or low recidivism risk, during the prisoner’s term of imprisonment[.]” *Id.* § 3624(g)(1)(B).
- c. Third, a person “has had the remainder of [their] imposed term of imprisonment computed under applicable law[.]” *Id.* § 3624(g)(1)(C).<sup>3</sup>
- d. Fourth, for a person to be placed in prerelease custody, the person must have been “determined . . . to be a minimum or low risk to recidivate pursuant to the last 2 reassessments of the prisoner” or alternatively have had a “petition to be transferred to prerelease custody or supervised release approved by the warden of the prison” following a determination that the person “would not be a danger to society if transferred,” that the person has “made a good faith effort to lower their recidivism risk,” and that the “prisoner is unlikely to recidivate[.]” *Id.* § 3624(g)(1)(D).

19. As explained above, the BOP has the option to place eligible people in two types of prerelease custody: home confinement or a halfway house. The First Step Act instructs that the “Director of the Bureau of Prisons *shall ensure* there is sufficient prerelease custody capacity to accommodate *all eligible prisoners.*” *Id.* § 3624(g)(11) (emphasis added).

20. This unqualified, mandatory language is unique to prerelease custody under the First Step Act’s earned time credit system. Prior to the First Step Act, Congress granted the BOP some discretion when transferring people to prerelease custody, providing that “[t]he Director of the

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<sup>3</sup> “Computation of sentence” is a process the BOP undertakes according to the Sentence Computation Manual. *See* U.S. Dep’t of Just., Fed. Bureau of Prisons, Program Statement 5880.28, Section 3 Computation of Sentence at 1–5 (1992) [https://www.bop.gov/policy/progstat/5880\\_028.pdf](https://www.bop.gov/policy/progstat/5880_028.pdf).



Bureau of Prisons shall, *to the extent practicable*, ensure that a prisoner serving a term of imprisonment spends a portion of the final months of that term (not to exceed 12 months), under conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare for the reentry of that prisoner into the community.” *Id.* § 3624(c)(1) (emphasis added).

21. Under that directive, which still exists as a separate authority for the BOP to move people out of prisons when earned time credits are not at issue, the BOP has discretion to determine whether transfer to a “community correctional facility” (another statutory term used to refer to a halfway house) or similar prerelease custody setting is “practicable.” *Id.* Upon information and belief, BOP has considered a lack of bed space in the community facility as making transfer under § 3624(c)(1) impracticable. Similarly, when acting under that pre-First Step Act directive, the BOP has discretion to determine when to transfer someone, so long as the person has 12 months or less of their sentence remaining. *Id.*

22. The First Step Act’s earned time credit system is separate from and in addition to this prior directive and does not allow for any such discretion. The First Step Act does not include language permitting the BOP to comply with its prerelease requirements only “to the extent practicable.” To the contrary, the First Step Act provides that the BOP “*shall ensure* there is sufficient prerelease custody capacity to accommodate *all* eligible prisoners” and that such prisoners “*shall [be] transfer[red].*” 18 U.S.C. §§ 3624(g)(11), 3632(d)(4)(C) (emphasis added).

#### *B. The Regulation*

23. In 2022, more than three years after the First Step Act’s enactment, the BOP adopted new regulations purporting to implement the statute’s system of earned time credits. *See* 28 C.F.R. § 523.44. This regulation conflicts with the First Step Act’s text by treating the application of earned time credits as permissive rather than mandatory.

24. Whereas the First Step Act provides that any earned time credits “shall be applied” toward time in prerelease custody or supervised release where certain conditions are met, 18 U.S.C. § 3632(d)(4)(C), the BOP’s regulation provides that the BOP “*may* apply FSA Time Credits toward prerelease custody or supervised release” where certain conditions are met, 28 C.F.R. § 523.44(a)(1) (emphasis added); *see also id.* § 523.44(c)–(d).

25. The BOP’s practice is consistent with its regulations. The BOP has taken the position in litigation, and the BOP’s employees have stated in fact declarations, that the BOP has discretion over whether and when to apply earned time credits. *See, e.g.,* Sur-reply to Pet’r’s Reply in Supp. of Writ of Habeas Corpus Pursuant to § 28 U.S.C. 2241 at 7, *Gattis v. Jacquez*, No. 3:23-cv-00301 (D. Ore. Oct. 2, 2023), ECF No. 23 (asserting that “[t]he FSA thus merely accelerates when an inmate may be considered for prerelease custody, but the FSA does not strip BOP’s discretion to make that decision.”); Decl. of Alisha Gallagher at 3, *Mercedes-Valdez v. Warden*, No. 1:23-cv-04079, (D.N.J. Sept. 25, 2023), ECF No. 5-1 (Senior Consolidated Legal Center Attorney employed by BOP stating “Petitioner is also now eligible to have his remaining 340 days of earned time credits applied toward prerelease custody. . . . Petitioner’s placement in a pre-release community placement is ultimately subject to resource availability and the consent of a residential reentry center. . . .”). Neither of those courts reached the issue of whether the BOP’s position was correct.

### **III. BOP Is Imprisoning People Longer than the Law Allows**

26. Defendants are failing to administer the First Step Act according to the unambiguous statutory requirements. This failure results directly in people spending more time in prison than the First Step Act allows.

27. Plaintiff Vanessa Crowe has been incarcerated for nearly 10 years. The BOP's own records reflect that she will have earned enough credits to be moved out of prison and into prerelease custody on December 24, 2024. But the BOP intends to incarcerate Ms. Crowe until May 7, 2025.

28. Plaintiff Glen Glemmo has spent over 10 years in prison. The BOP's own records reflect that he will have earned enough credits to be moved out of prison and into prerelease custody on February 26, 2025. But BOP intends to incarcerate Mr. Glemmo until May 22, 2025.

29. In addition to Plaintiffs Crowe and Glemmo, other proposed class members are experiencing similar harms. For example:

- a. Richard Rudisill is 66 years old and has been incarcerated for over 23 years. He is currently incarcerated at FCI Petersburg in Virginia. He was convicted of conspiracy to possess with intent to distribute cocaine and sentenced to 360 months. The BOP has continuously classified his risk recidivism level as low since December 2018. The BOP's own records reflect that as of March 30, 2024, he had earned 415 credits towards prerelease custody. Upon information and belief, as of November 30, 2024, he had earned 535 days towards prerelease custody and had only 435 days left on his sentence. He is currently over-detained and has lost over 100 days in prerelease custody. Upon information and belief, the BOP intends to continue incarcerating Mr. Rudisill until April 3, 2025.
- b. Danyell Roberts is 51 years old and has spent over six years in prison. She is currently incarcerated at FCI Marianna in Florida. She was convicted of possession with intent to distribute cocaine and sentenced to 121 months. The BOP has continuously classified her risk recidivism level as minimum since January 2019. Upon information and belief, BOP's own records reflect that as of November 21, 2024, Ms. Roberts had earned

enough credits to be moved out of prison and into prerelease custody. But Ms. Roberts is still incarcerated and, upon information and belief, the BOP intends to continue incarcerating Ms. Roberts until March 19, 2025.

- c. Richard Ambre Williams is 53 years old and has been incarcerated for over 10 years. He is currently incarcerated at FCI Williamsburg in South Carolina. He was convicted of being a felon in possession of a firearm and ammunition and sentenced to 180 months. The BOP has continuously classified his recidivism risk as low since December 2018. The BOP's own records reflect that as of September 5, 2024, he had earned 625 credits towards prerelease custody and only had 406 days left on his sentence. He is currently over-detained and has lost over 200 days in prerelease custody.
- d. Jamie Sigmon is 37 years old and has spent over five years in prison. She is currently incarcerated at FCI Pekin in Illinois. She was convicted of conspiracy to distribute and possession with intent to distribute methamphetamine and sentenced to 114 months. The BOP classified her risk recidivism level as low from November 2019 until May 2023 and as minimum since May 2023. The BOP's own records reflect that Ms. Sigmon will have earned enough credits to be moved out of prison and into prerelease custody on January 6, 2025. Upon information and belief, the BOP intends to continue incarcerating Ms. Sigmon until March 21, 2025.
- e. Kay Gow is 74 years old and has spent over five years in prison. She is currently incarcerated at FCI Marianna in Florida. She was convicted of conspiracy to commit wire fraud, wire fraud, conspiracy to commit money laundering, and illegal monetary transactions, and sentenced to 120 months. The BOP has continuously classified her

risk recidivism level as minimum since June 2019. The BOP's own records reflect that Ms. Gow will have earned enough credits to be moved out of prison and into prerelease custody on March 27, 2025. But the BOP has expressed its intent to incarcerate Ms. Gow until September 9, 2025.

30. Every day of imprisonment past the date on which a person is required to be moved to prerelease custody causes serious harm. Spending time in prison is meaningfully different from spending time in a halfway house or on home confinement. For example:

- a. People in halfway houses are generally required to work full-time jobs and are permitted to leave for additional activities including visiting, counseling, and recreation. As a result, they are out in the community on a regular basis experiencing a degree of liberty that is materially different from life in prison.
- b. For people in home confinement, the contrast with prison is even greater because they are permitted to live with, help care for, and reintegrate into their families' day-to-day lives.

31. Defendants' failure to implement Congress's clear, mandatory directive in the First Step Act to move Plaintiffs and proposed class members out of prison and into the community when they have earned credits equal to the time remaining on their sentences is a violation of law. The BOP's regulation, 28 C.F.R. § 523.44, is contrary to statutory authority.

### **CLASS ALLEGATIONS**

32. Pursuant to Fed. R. Civ. P. 23(b)(2), Plaintiffs seek to represent a class of all incarcerated people who have earned or will earn time credits under the First Step Act, who meet or will meet the prerequisites for prerelease custody in 18 U.S.C. § 3624(g)(1), and who have not been or will

not be transferred to prerelease custody on or before the date when their time credits equal their remaining sentences.

33. Plaintiffs reserve the right to amend or modify the class definition or to propose sub-classes as appropriate if discovery or further investigation reveals that the class should be expanded or otherwise modified.

34. The class meets the prerequisites of Fed. R. Civ. P. 23(a).

35. Numerosity (Rule 23(a)(1)): The class is so numerous that joinder is impracticable because of the very large number of putative class members.

a. While the precise size of the class is unknown, the Department of Justice reported that as of January 2024, over 87,000 people in the BOP's custody were eligible to earn time credits under the First Step Act based on their crime of conviction; over 47,000 of those people had a low or minimum risk of recidivism, which people generally have to maintain over time to be eligible to apply their earned time credits towards prerelease custody.<sup>4</sup>

b. Thousands of these 47,000 people will earn credits equal to the time remaining on their sentences within the foreseeable future, and Defendants will not transfer them to supervised release or prerelease custody at or before that time because of the discretionary wording of the BOP's regulation and because Defendants treat the requirement to transfer people to prerelease custody under the First Step Act as permissive.

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<sup>4</sup> U.S. Dep't of Just., *First Step Act Annual Report 19* (2024), <https://www.ojp.gov/pdffiles1/nij/309223.pdf>.

- c. While giving sworn testimony to the House Judiciary Committee, Defendant Peters was recently asked if it is accurate that more than 60,000 FSA-eligible people are facing 3–12-month delays in transfer to FSA prerelease or full release to freedom. She responded: “I’d want to confirm with my team on the accuracy of those numbers but anecdotally that is what I’m hearing.”<sup>5</sup>

36. Commonality (Rule 23(a)(2)): The claims of the class members share common issues of fact and law, including but not limited to: (1) Whether the BOP is violating the First Step Act by failing to move class members out of prison no later than the date upon which their earned time credits are equal to the remainder of their sentence; (2) Whether the BOP regulation entitled Application of FSA Time Credits, 28 C.F.R. § 523.44 is a final agency action; (3) Whether the regulation is not in accordance with the First Step Act and is in excess of statutory authority in violation of the Administrative Procedure Act, 5 U.S.C. §§ 706(2)(A), (2)(C).

37. Typicality (Rule 23(a)(3)): The claims of named Plaintiffs are typical of the class members’ claims: they are incarcerated and statutorily eligible to earn First Step Act time credits, they will meet the prerequisites for prerelease custody in 18 U.S.C. § 3624(g)(1), and the BOP will not transfer them to prerelease custody by the date on which their credits will be equal to their remaining sentences.

38. Adequacy (Rule 23(a)(4)): Plaintiffs are adequate class representatives who meet all of the requirements of Rule 23(a)(4). They have no conflict of interest with other class members, they will fairly and adequately protect the interests of the class, and they understand and accept their responsibilities as class representatives.

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<sup>5</sup> See *Oversight of the Federal Bureau of Prisons Before the Subcomm. on Crime and Fed. Gov’t Surveillance of the H. Comm. on the Judiciary*, 118th Cong. at 2:05:34 (2024), (Testimony of Colette Peters, Director, BOP), <https://www.youtube.com/watch?v=fqwvjvDaWPY&t=7s>.

39. Defendants have acted, and will act, on grounds generally applicable to the class, thereby making final injunctive or declaratory relief appropriate to the class as a whole. The class may therefore properly be certified under Fed. R. Civ. P. 23(b)(2).

40. Counsel for Plaintiffs are qualified to be certified as class counsel. They have experience litigating class actions and cases involving civil rights generally, and the rights of incarcerated people and those otherwise involved in the criminal system specifically.

### **CLAIMS FOR RELIEF**

#### ***First Claim for Relief***

#### **Violation of the Administrative Procedure Act, 5 U.S.C. § 706**

*By All Plaintiffs, On Behalf of Themselves and All Others Similarly Situated, Against All Defendants*

41. The First Step Act directs that BOP “shall” award earned time credits to eligible incarcerated people who participate in qualifying programs, 18 U.S.C. § 3632(d)(4)(A); that BOP “shall” provide earned time credits in addition to any other incentives for which people are eligible, 18 U.S.C. § 3632(d)(6); and that BOP “shall” move people who meet certain qualifications into prerelease custody when their credits are equal to the time remaining on their sentences, 18 U.S.C. § 3624(g)(1)(A)–(C).

42. BOP’s regulation, Application of FSA Time Credits, 28 C.F.R. § 523.44, provides that BOP “may” give people the benefit of their earned time credits by moving them out of prison when they have earned sufficient credits. That regulation is contrary to the provisions of the First Step Act.

43. Defendants are systematically failing to ensure that eligible people, including Plaintiffs Crowe, Galemme, and all those similarly situated, receive the full benefit of their earned time credits.



44. As a result, Plaintiffs Crowe, Galemmo, and all those similarly situated will spend more time in prison than the First Step Act permits.

45. As a result of Defendants' actions, Plaintiffs and putative class members face the irreparable harm of unlawful over-detention.

46. The promulgation of the BOP regulation, Application of FSA Time Credits, 28 C.F.R. § 523.44, is a final agency action that is not in accordance with law and is in excess of statutory authority, in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), § 706(2)(C).

***Second Claim for Relief***  
**First Step Act, via inherent equitable power**

*By All Plaintiffs, On Behalf of Themselves and All Others Similarly Situated, Against All Defendants*

47. The First Step Act requires that people who are incarcerated in the custody of the BOP and who have earned time credits and satisfied other prerequisites must be transferred to prerelease custody or supervised release no later than the date on which their earned time credits are equal to the time remaining on their sentences. 18 U.S.C. §§ 3624(g)(1)(A)–(C), 3632(d)(4)(C).

48. Plaintiff Crowe's earned time credits will be equal to the remainder of her sentence as of December 24, 2024. Plaintiff Galemmo's earned time credits will be equal to the remainder of his sentence as of February 26, 2025. Defendants intend to imprison Plaintiffs until May 2025, months longer than the First Step Act allows.

49. Defendants are systematically failing to ensure that Plaintiffs and all those similarly situated will be transferred to supervised release or prerelease custody within the time required by the First Step Act.

50. As a result of Defendants' actions, Plaintiffs and putative class members face the irreparable harm of unlawful incarceration.

51. Defendants' systemic violations of the First Step Act, carried out under color of law, may be enjoined under this Court's equitable power. *See Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320 (2015).

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court:

- A. Certify the proposed class under Fed. R. Civ. P. 23(b)(2), and appoint the named Plaintiffs as class representatives and the undersigned counsel as class counsel;
- B. Declare that Defendants' administration of the earned time credit program violates the First Step Act;
- C. Vacate and set aside 28 C.F.R. § 523.44, Application of FSA Time Credits, pursuant to 5 U.S.C. §§ 706(2)(A), (C);
- D. Enter injunctive relief ordering Defendants to ensure, consistent with the First Step Act, that Plaintiffs and class members are transferred to supervised release or to prerelease custody no later than the date upon which their earned time credits are equal to the remainder of their sentence;
- E. Award Plaintiffs their costs and reasonable attorneys' fees pursuant to 28 U.S.C. § 2412 and 5 U.S.C. § 504 *et seq.*, and any other applicable source of law; and
- F. Award such further relief as the Court deems appropriate.

[signatures on following page]

Dated: December 20, 2024

Respectfully submitted,

/s/ Elizabeth Henthorne  
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limited to matters before federal courts and  
District of Columbia agencies.*

*Attorneys for Plaintiffs and the Proposed Class*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on the 20th day of December, 2024, I caused the foregoing to be electronically filed with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

By: /s/ Elizabeth Henthorne  
Elizabeth Henthorne

# **EXHIBIT A**

PUBLIC LAW 115–391—DEC. 21, 2018

FIRST STEP ACT OF 2018

132 STAT. 5194

PUBLIC LAW 115–391—DEC. 21, 2018

Public Law 115–391  
115th Congress

An Act

Dec. 21, 2018  
[S. 756]

To reauthorize and amend the Marine Debris Act to promote international action to reduce marine debris, and for other purposes.

First Step Act of 2018.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

18 USC 1 note.

(a) **SHORT TITLE.**—This Act may be cited as the “First Step Act of 2018”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—RECIDIVISM REDUCTION**

- Sec. 101. Risk and needs assessment system.
- Sec. 102. Implementation of system and recommendations by Bureau of Prisons.
- Sec. 103. GAO report.
- Sec. 104. Authorization of appropriations.
- Sec. 105. Rule of construction.
- Sec. 106. Faith-based considerations.
- Sec. 107. Independent Review Committee.

**TITLE II—BUREAU OF PRISONS SECURE FIREARMS STORAGE**

- Sec. 201. Short title.
- Sec. 202. Secure firearms storage.

**TITLE III—RESTRAINTS ON PREGNANT PRISONERS PROHIBITED**

- Sec. 301. Use of restraints on prisoners during the period of pregnancy and postpartum recovery prohibited.

**TITLE IV—SENTENCING REFORM**

- Sec. 401. Reduce and restrict enhanced sentencing for prior drug felonies.
- Sec. 402. Broadening of existing safety valve.
- Sec. 403. Clarification of section 924(c) of title 18, United States Code.
- Sec. 404. Application of Fair Sentencing Act.

**TITLE V—SECOND CHANCE ACT OF 2007 REAUTHORIZATION**

- Sec. 501. Short title.
- Sec. 502. Improvements to existing programs.
- Sec. 503. Audit and accountability of grantees.
- Sec. 504. Federal reentry improvements.
- Sec. 505. Federal interagency reentry coordination.
- Sec. 506. Conference expenditures.
- Sec. 507. Evaluation of the Second Chance Act program.
- Sec. 508. GAO review.

**TITLE VI—MISCELLANEOUS CRIMINAL JUSTICE**

- Sec. 601. Placement of prisoners close to families.
- Sec. 602. Home confinement for low-risk prisoners.
- Sec. 603. Federal prisoner reentry initiative reauthorization; modification of imposed term of imprisonment.

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Sec. 604. Identification for returning citizens.  
 Sec. 605. Expanding inmate employment through Federal Prison Industries.  
 Sec. 606. De-escalation training.  
 Sec. 607. Evidence-Based treatment for opioid and heroin abuse.  
 Sec. 608. Pilot programs.  
 Sec. 609. Ensuring supervision of released sexually dangerous persons.  
 Sec. 610. Data collection.  
 Sec. 611. Healthcare products.  
 Sec. 612. Adult and juvenile collaboration programs.  
 Sec. 613. Juvenile solitary confinement.

## TITLE I—RECIDIVISM REDUCTION

### SEC. 101. RISK AND NEEDS ASSESSMENT SYSTEM.

(a) IN GENERAL.—Chapter 229 of title 18, United States Code, is amended by inserting after subchapter C the following: 18 USC 3631 prec.

#### “SUBCHAPTER D—RISK AND NEEDS ASSESSMENT SYSTEM

“Sec.  
 “3631. Duties of the Attorney General.  
 “3632. Development of risk and needs assessment system.  
 “3633. Evidence-based recidivism reduction program and recommendations.  
 “3634. Report.  
 “3635. Definitions.

#### “§ 3631. Duties of the Attorney General

18 USC 3631.

“(a) IN GENERAL.—The Attorney General shall carry out this subchapter in consultation with— Consultation.

“(1) the Director of the Bureau of Prisons;

“(2) the Director of the Administrative Office of the United States Courts;

“(3) the Director of the Office of Probation and Pretrial Services;

“(4) the Director of the National Institute of Justice;

“(5) the Director of the National Institute of Corrections;

and

“(6) the Independent Review Committee authorized by the First Step Act of 2018

“(b) DUTIES.—The Attorney General shall—

“(1) conduct a review of the existing prisoner risk and needs assessment systems in operation on the date of enactment of this subchapter; Review.

“(2) develop recommendations regarding evidence-based recidivism reduction programs and productive activities in accordance with section 3633; Recommendations.

“(3) conduct ongoing research and data analysis on— Analysis.

“(A) evidence-based recidivism reduction programs relating to the use of prisoner risk and needs assessment tools;

“(B) the most effective and efficient uses of such programs;

“(C) which evidence-based recidivism reduction programs are the most effective at reducing recidivism, and the type, amount, and intensity of programming that most effectively reduces the risk of recidivism; and

“(D) products purchased by Federal agencies that are manufactured overseas and could be manufactured by prisoners participating in a prison work program without



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	reducing job opportunities for other workers in the United States;
Review. Public information. Web posting. Assessment.	<p>“(4) on an annual basis, review, validate, and release publicly on the Department of Justice website the risk and needs assessment system, which review shall include—</p> <p>“(A) any subsequent changes to the risk and needs assessment system made after the date of enactment of this subchapter;</p> <p>“(B) the recommendations developed under paragraph (2), using the research conducted under paragraph (3);</p> <p>“(C) an evaluation to ensure that the risk and needs assessment system bases the assessment of each prisoner’s risk of recidivism on indicators of progress and of regression that are dynamic and that can reasonably be expected to change while in prison;</p> <p>“(D) statistical validation of any tools that the risk and needs assessment system uses; and</p> <p>“(E) an evaluation of the rates of recidivism among similarly classified prisoners to identify any unwarranted disparities, including disparities among similarly classified prisoners of different demographic groups, in such rates;</p>
Evaluation.	“(5) make any revisions or updates to the risk and needs assessment system that the Attorney General determines appropriate pursuant to the review under paragraph (4), including updates to ensure that any disparities identified in paragraph (4)(E) are reduced to the greatest extent possible; and
Evaluation.	“(6) report to Congress in accordance with section 3634.
Determination.	
18 USC 3632.	<b>“§ 3632. Development of risk and needs assessment system</b>
Deadline. Consultation. Public information. Web posting. Determinations.	<p>“(a) IN GENERAL.—Not later than 210 days after the date of enactment of this subchapter, the Attorney General, in consultation with the Independent Review Committee authorized by the First Step Act of 2018, shall develop and release publicly on the Department of Justice website a risk and needs assessment system (referred to in this subchapter as the ‘System’), which shall be used to—</p> <p>“(1) determine the recidivism risk of each prisoner as part of the intake process, and classify each prisoner as having minimum, low, medium, or high risk for recidivism;</p> <p>“(2) assess and determine, to the extent practicable, the risk of violent or serious misconduct of each prisoner;</p> <p>“(3) determine the type and amount of evidence-based recidivism reduction programming that is appropriate for each prisoner and assign each prisoner to such programming accordingly, and based on the prisoner’s specific criminogenic needs, and in accordance with subsection (b);</p> <p>“(4) reassess the recidivism risk of each prisoner periodically, based on factors including indicators of progress, and of regression, that are dynamic and that can reasonably be expected to change while in prison;</p> <p>“(5) reassign the prisoner to appropriate evidence-based recidivism reduction programs or productive activities based on the revised determination to ensure that—</p> <p>“(A) all prisoners at each risk level have a meaningful opportunity to reduce their classification during the period of incarceration;</p>

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“(B) to address the specific criminogenic needs of the prisoner; and

“(C) all prisoners are able to successfully participate in such programs;

“(6) determine when to provide incentives and rewards for successful participation in evidence-based recidivism reduction programs or productive activities in accordance with subsection (e);

“(7) determine when a prisoner is ready to transfer into prerelease custody or supervised release in accordance with section 3624; and

“(8) determine the appropriate use of audio technology for program course materials with an understanding of dyslexia.

In carrying out this subsection, the Attorney General may use existing risk and needs assessment tools, as appropriate.

“(b) ASSIGNMENT OF EVIDENCE-BASED RECIDIVISM REDUCTION PROGRAMS.—The System shall provide guidance on the type, amount, and intensity of evidence-based recidivism reduction programming and productive activities that shall be assigned for each prisoner, including—

Guidance.

“(1) programs in which the Bureau of Prisons shall assign the prisoner to participate, according to the prisoner’s specific criminogenic needs; and

“(2) information on the best ways that the Bureau of Prisons can tailor the programs to the specific criminogenic needs of each prisoner so as to most effectively lower each prisoner’s risk of recidivism.

“(c) HOUSING AND ASSIGNMENT DECISIONS.—The System shall provide guidance on program grouping and housing assignment determinations and, after accounting for the safety of each prisoner and other individuals at the prison, provide that prisoners with a similar risk level be grouped together in housing and assignment decisions to the extent practicable.

Guidance.

“(d) EVIDENCE-BASED RECIDIVISM REDUCTION PROGRAM INCENTIVES AND PRODUCTIVE ACTIVITIES REWARDS.—The System shall provide incentives and rewards for prisoners to participate in and complete evidence-based recidivism reduction programs as follows:

“(1) PHONE AND VISITATION PRIVILEGES.—A prisoner who is successfully participating in an evidence-based recidivism reduction program shall receive—

“(A) phone privileges, or, if available, video conferencing privileges, for up to 30 minutes per day, and up to 510 minutes per month; and

“(B) additional time for visitation at the prison, as determined by the warden of the prison.

“(2) TRANSFER TO INSTITUTION CLOSER TO RELEASE RESIDENCE.—A prisoner who is successfully participating in an evidence-based recidivism reduction program shall be considered by the Bureau of Prisons for placement in a facility closer to the prisoner’s release residence upon request from the prisoner and subject to—

“(A) bed availability at the transfer facility;

“(B) the prisoner’s security designation; and

“(C) the recommendation from the warden of the prison at which the prisoner is incarcerated at the time of making the request.

Recommendations.

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“(3) ADDITIONAL POLICIES.—The Director of the Bureau of Prisons shall develop additional policies to provide appropriate incentives for successful participation and completion of evidence-based recidivism reduction programming. The incentives shall include not less than 2 of the following:

“(A) Increased commissary spending limits and product offerings.

“(B) Extended opportunities to access the email system.

“(C) Consideration of transfer to preferred housing units (including transfer to different prison facilities).

“(D) Other incentives solicited from prisoners and determined appropriate by the Director.

“(4) TIME CREDITS.—

“(A) IN GENERAL.—A prisoner, except for an ineligible prisoner under subparagraph (D), who successfully completes evidence-based recidivism reduction programming or productive activities, shall earn time credits as follows:

“(i) A prisoner shall earn 10 days of time credits for every 30 days of successful participation in evidence-based recidivism reduction programming or productive activities.

Determination.

“(ii) A prisoner determined by the Bureau of Prisons to be at a minimum or low risk for recidivating, who, over 2 consecutive assessments, has not increased their risk of recidivism, shall earn an additional 5 days of time credits for every 30 days of successful participation in evidence-based recidivism reduction programming or productive activities.

“(B) AVAILABILITY.—A prisoner may not earn time credits under this paragraph for an evidence-based recidivism reduction program that the prisoner successfully completed—

“(i) prior to the date of enactment of this subchapter; or

“(ii) during official detention prior to the date that the prisoner’s sentence commences under section 3585(a).

“(C) APPLICATION OF TIME CREDITS TOWARD PRERELEASE CUSTODY OR SUPERVISED RELEASE.—Time credits earned under this paragraph by prisoners who successfully participate in recidivism reduction programs or productive activities shall be applied toward time in prerelease custody or supervised release. The Director of the Bureau of Prisons shall transfer eligible prisoners, as determined under section 3624(g), into prerelease custody or supervised release.

Determination.

“(D) INELIGIBLE PRISONERS.—A prisoner is ineligible to receive time credits under this paragraph if the prisoner is serving a sentence for a conviction under any of the following provisions of law:

“(i) Section 32, relating to destruction of aircraft or aircraft facilities.

“(ii) Section 33, relating to destruction of motor vehicles or motor vehicle facilities.

“(iii) Section 36, relating to drive-by shootings.

“(iv) Section 81, relating to arson within special maritime and territorial jurisdiction.

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“(v) Section 111(b), relating to assaulting, resisting, or impeding certain officers or employees using a deadly or dangerous weapon or inflicting bodily injury.

“(vi) Paragraph (1), (7), or (8) of section 113(a), relating to assault with intent to commit murder, assault resulting in substantial bodily injury to a spouse or intimate partner, a dating partner, or an individual who has not attained the age of 16 years, or assault of a spouse, intimate partner, or dating partner by strangling, suffocating, or attempting to strangle or suffocate.

“(vii) Section 115, relating to influencing, impeding, or retaliating against a Federal official by injuring a family member, except for a threat made in violation of that section.

“(viii) Section 116, relating to female genital mutilation.

“(ix) Section 117, relating to domestic assault by a habitual offender.

“(x) Any section of chapter 10, relating to biological weapons.

“(xi) Any section of chapter 11B, relating to chemical weapons.

“(xii) Section 351, relating to Congressional, Cabinet, and Supreme Court assassination, kidnapping, and assault.

“(xiii) Section 521, relating to criminal street gangs.

“(xiv) Section 751, relating to prisoners in custody of an institution or officer.

“(xv) Section 793, relating to gathering, transmitting, or losing defense information.

“(xvi) Section 794, relating to gathering or delivering defense information to aid a foreign government.

“(xvii) Any section of chapter 39, relating to explosives and other dangerous articles, except for section 836 (relating to the transportation of fireworks into a State prohibiting sale or use).

“(xviii) Section 842(p), relating to distribution of information relating to explosives, destructive devices, and weapons of mass destruction, but only if the conviction involved a weapon of mass destruction (as defined in section 2332a(c)).

“(xix) Subsection (f)(3), (h), or (i) of section 844, relating to the use of fire or an explosive.

“(xx) Section 871, relating to threats against the President and successors to the Presidency.

“(xxi) Section 879, relating to threats against former Presidents and certain other persons.

“(xxii) Section 924(c), relating to unlawful possession or use of a firearm during and in relation to any crime of violence or drug trafficking crime.

“(xxiii) Section 1030(a)(1), relating to fraud and related activity in connection with computers.

“(xxiv) Section 1091, relating to genocide.

“(xxv) Any section of chapter 51, relating to homicide, except for section 1112 (relating to manslaughter),

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1113 (relating to attempt to commit murder or manslaughter, but only if the conviction was for an attempt to commit manslaughter), 1115 (relating to misconduct or neglect of ship officers), or 1122 (relating to protection against the human immunodeficiency virus).

“(xxvi) Any section of chapter 55, relating to kidnapping.

“(xxvii) Any offense under chapter 77, relating to peonage, slavery, and trafficking in persons, except for sections 1593 through 1596.

“(xxviii) Section 1751, relating to Presidential and Presidential staff assassination, kidnapping, and assault.

“(xxix) Section 1791, relating to providing or possessing contraband in prison.

“(xxx) Section 1792, relating to mutiny and riots.

“(xxxi) Section 1841(a)(2)(C), relating to intentionally killing or attempting to kill an unborn child.

“(xxxii) Section 1992, relating to terrorist attacks and other violence against railroad carriers and against mass transportation systems on land, on water, or through the air.

“(xxxiii) Section 2113(e), relating to bank robbery resulting in death.

“(xxxiv) Section 2118(c), relating to robberies and burglaries involving controlled substances resulting in assault, putting in jeopardy the life of any person by the use of a dangerous weapon or device, or death.

“(xxxv) Section 2119, relating to taking a motor vehicle (commonly referred to as ‘carjacking’).

“(xxxvi) Any section of chapter 105, relating to sabotage, except for section 2152.

“(xxxvii) Any section of chapter 109A, relating to sexual abuse.

“(xxxviii) Section 2250, relating to failure to register as a sex offender.

“(xxxix) Section 2251, relating to the sexual exploitation of children.

“(xl) Section 2251A, relating to the selling or buying of children.

“(xli) Section 2252, relating to certain activities relating to material involving the sexual exploitation of minors.

“(xlii) Section 2252A, relating to certain activities involving material constituting or containing child pornography.

“(xliii) Section 2260, relating to the production of sexually explicit depictions of a minor for importation into the United States.

“(xliv) Section 2283, relating to the transportation of explosive, biological, chemical, or radioactive or nuclear materials.

“(xlv) Section 2284, relating to the transportation of terrorists.

“(xlvi) Section 2291, relating to the destruction of a vessel or maritime facility, but only if the conduct

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that led to the conviction involved a substantial risk of death or serious bodily injury.

“(xlvii) Any section of chapter 113B, relating to terrorism.

“(xlviii) Section 2340A, relating to torture.

“(xlix) Section 2381, relating to treason.

“(l) Section 2442, relating to the recruitment or use of child soldiers.

“(li) An offense described in section 3559(c)(2)(F), for which the offender was sentenced to a term of imprisonment of more than 1 year, if the offender has a previous conviction, for which the offender served a term of imprisonment of more than 1 year, for a Federal or State offense, by whatever designation and wherever committed, consisting of murder (as described in section 1111), voluntary manslaughter (as described in section 1112), assault with intent to commit murder (as described in section 113(a)), aggravated sexual abuse and sexual abuse (as described in sections 2241 and 2242), abusive sexual contact (as described in sections 2244(a)(1) and (a)(2)), kidnapping (as described in chapter 55), carjacking (as described in section 2119), arson (as described in section 844(f)(3), (h), or (i)), or terrorism (as described in chapter 113B).

“(lii) Section 57(b) of the Atomic Energy Act of 1954 (42 U.S.C. 2077(b)), relating to the engagement or participation in the development or production of special nuclear material.

“(liii) Section 92 of the Atomic Energy Act of 1954 (42 U.S.C. 2122), relating to prohibitions governing atomic weapons.

“(liv) Section 101 of the Atomic Energy Act of 1954 (42 U.S.C. 2131), relating to the atomic energy license requirement.

“(lv) Section 224 or 225 of the Atomic Energy Act of 1954 (42 U.S.C. 2274, 2275), relating to the communication or receipt of restricted data.

“(lvi) Section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), relating to the sabotage of nuclear facilities or fuel.

“(lvii) Section 60123(b) of title 49, relating to damaging or destroying a pipeline facility, but only if the conduct which led to the conviction involved a substantial risk of death or serious bodily injury.

“(lviii) Section 401(a) of the Controlled Substances Act (21 U.S.C. 841), relating to manufacturing or distributing a controlled substance in the case of a conviction for an offense described in subparagraph (A), (B), or (C) of subsection (b)(1) of that section for which death or serious bodily injury resulted from the use of such substance.

“(lix) Section 276(a) of the Immigration and Nationality Act (8 U.S.C. 1326), relating to the reentry of a removed alien, but only if the alien is described in paragraph (1) or (2) of subsection (b) of that section.

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“(lx) Section 277 of the Immigration and Nationality Act (8 U.S.C. 1327), relating to aiding or assisting certain aliens to enter the United States.

“(lxi) Section 278 of the Immigration and Nationality Act (8 U.S.C. 1328), relating to the importation of an alien into the United States for an immoral purpose.

“(lxii) Any section of the Export Administration Act of 1979 (50 U.S.C. 4611 et seq.)

“(lxiii) Section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705).

“(lxiv) Section 601 of the National Security Act of 1947 (50 U.S.C. 3121), relating to the protection of identities of certain United States undercover intelligence officers, agents, informants, and sources.

“(lxv) Subparagraph (A)(i) or (B)(i) of section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) or paragraph (1)(A) or (2)(A) of section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)), relating to manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, dispense, or knowingly importing or exporting, a mixture or substance containing a detectable amount of heroin if the sentencing court finds that the offender was an organizer, leader, manager, or supervisor of others in the offense, as determined under the guidelines promulgated by the United States Sentencing Commission.

“(lxvi) Subparagraph (A)(vi) or (B)(vi) of section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) or paragraph (1)(F) or (2)(F) of section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)), relating to manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense, a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide, or any analogue thereof.

Determination.  
Guidelines.

“(lxvii) Subparagraph (A)(viii) or (B)(viii) of section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) or paragraph (1)(H) or (2)(H) of section 1010(b) of the Controlled Substances Import and Export Act (21 U.S.C. 960(b)), relating to manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense, or knowingly importing or exporting, a mixture of substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomers, if the sentencing court finds that the offender was an organizer, leader, manager, or supervisor of others in the offense, as determined under the guidelines promulgated by the United States Sentencing Commission.

“(lxviii) Subparagraph (A) or (B) of section 401(b)(1) of the Controlled Substances Act (21 U.S.C. 841(b)(1)) or paragraph (1) or (2) of section 1010(b) of the Controlled Substances Import and Export Act

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(21 U.S.C. 960(b)), relating to manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense, a controlled substance, or knowingly importing or exporting a controlled substance, if the sentencing court finds that—

“(I) the offense involved a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide, or any analogue thereof; and

“(II) the offender was an organizer, leader, manager, or supervisor of others in the offense, as determined under the guidelines promulgated by the United States Sentencing Commission.

Determination.  
Guidelines.

“(E) DEPORTABLE PRISONERS INELIGIBLE TO APPLY TIME CREDITS.—

“(i) IN GENERAL.—A prisoner is ineligible to apply time credits under subparagraph (C) if the prisoner is the subject of a final order of removal under any provision of the immigration laws (as such term is defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17))).

“(ii) PROCEEDINGS.—The Attorney General, in consultation with the Secretary of Homeland Security, shall ensure that any alien described in section 212 or 237 of the Immigration and Nationality Act (8 U.S.C. 1182, 1227) who seeks to earn time credits are subject to proceedings described in section 238(a) of that Act (8 U.S.C. 1228(a)) at a date as early as practicable during the prisoner’s incarceration.

Consultation.

“(5) RISK REASSESSMENTS AND LEVEL ADJUSTMENT.—A prisoner who successfully participates in evidence-based recidivism reduction programming or productive activities shall receive periodic risk reassessments not less often than annually, and a prisoner determined to be at a medium or high risk of recidivating and who has less than 5 years until his or her projected release date shall receive more frequent risk reassessments. If the reassessment shows that the prisoner’s risk of recidivating or specific needs have changed, the Bureau of Prisons shall update the determination of the prisoner’s risk of recidivating or information regarding the prisoner’s specific needs and reassign the prisoner to appropriate evidence-based recidivism reduction programming or productive activities based on such changes.

Update.  
Determination.

“(6) RELATION TO OTHER INCENTIVE PROGRAMS.—The incentives described in this subsection shall be in addition to any other rewards or incentives for which a prisoner may be eligible.

“(e) PENALTIES.—The Director of the Bureau of Prisons shall develop guidelines for the reduction of rewards and incentives earned under subsection (d) for prisoners who violate prison rules or evidence-based recidivism reduction program or productive activity rules, which shall provide—

Guidelines.

“(1) general levels of violations and resulting reductions;

“(2) that any reduction that includes the loss of time credits shall require written notice to the prisoner, shall be limited to time credits that a prisoner earned as of the date of the prisoner’s rule violation, and shall not include any future time credits that the prisoner may earn; and

Notice.



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Procedures.

“(3) for a procedure to restore time credits that a prisoner lost as a result of a rule violation, based on the prisoner’s individual progress after the date of the rule violation.

“(f) BUREAU OF PRISONS TRAINING.—The Attorney General shall develop and implement training programs for Bureau of Prisons officers and employees responsible for administering the System, which shall include—

“(1) initial training to educate officers and employees on how to use the System in an appropriate and consistent manner, as well as the reasons for using the System;

“(2) continuing education;

“(3) periodic training updates; and

“(4) a requirement that such officers and employees demonstrate competence in administering the System, including interrater reliability, on a biannual basis.

Audits.

“(g) QUALITY ASSURANCE.—In order to ensure that the Bureau of Prisons is using the System in an appropriate and consistent manner, the Attorney General shall monitor and assess the use of the System, which shall include conducting annual audits of the Bureau of Prisons regarding the use of the System.

“(h) DYSLEXIA SCREENING.—

“(1) SCREENING.—The Attorney General shall incorporate a dyslexia screening program into the System, including by screening for dyslexia during—

“(A) the intake process; and

“(B) each periodic risk reassessment of a prisoner.

“(2) TREATMENT.—The Attorney General shall incorporate programs designed to treat dyslexia into the evidence-based recidivism reduction programs or productive activities required to be implemented under this section. The Attorney General may also incorporate programs designed to treat other learning disabilities.

18 USC 3633.

**“§ 3633. Evidence-based recidivism reduction program and recommendations**

Consultation.  
Reviews.

“(a) IN GENERAL.—Prior to releasing the System, in consultation with the Independent Review Committee authorized by the First Step Act of 2018, the Attorney General shall—

“(1) review the effectiveness of evidence-based recidivism reduction programs that exist as of the date of enactment of this subchapter in prisons operated by the Bureau of Prisons;

“(2) review available information regarding the effectiveness of evidence-based recidivism reduction programs and productive activities that exist in State-operated prisons throughout the United States;

“(3) identify the most effective evidence-based recidivism reduction programs;

“(4) review the policies for entering into evidence-based recidivism reduction partnerships described in section 3621(h)(5); and

“(5) direct the Bureau of Prisons regarding—

“(A) evidence-based recidivism reduction programs;

“(B) the ability for faith-based organizations to function as a provider of educational evidence-based programs outside of the religious classes and services provided through the Chaplaincy; and

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“(C) the addition of any new effective evidence-based recidivism reduction programs that the Attorney General finds.

“(b) REVIEW AND RECOMMENDATIONS REGARDING DYSLEXIA MITIGATION.—In carrying out subsection (a), the Attorney General shall consider the prevalence and mitigation of dyslexia in prisons, including by—

“(1) reviewing statistics on the prevalence of dyslexia, and the effectiveness of any programs implemented to mitigate the effects of dyslexia, in prisons operated by the Bureau of Prisons and State-operated prisons throughout the United States; and

“(2) incorporating the findings of the Attorney General under paragraph (1) of this subsection into any directives given to the Bureau of Prisons under paragraph (5) of subsection (a).

**“§ 3634. Report**

18 USC 3634.

“Beginning on the date that is 2 years after the date of enactment of this subchapter, and annually thereafter for a period of 5 years, the Attorney General shall submit a report to the Committees on the Judiciary of the Senate and the House of Representatives and the Subcommittees on Commerce, Justice, Science, and Related Agencies of the Committees on Appropriations of the Senate and the House of Representatives that contains the following:

Effective date.  
Time period.

“(1) A summary of the activities and accomplishments of the Attorney General in carrying out this Act.

“(2) A summary and assessment of the types and effectiveness of the evidence-based recidivism reduction programs and productive activities in prisons operated by the Bureau of Prisons, including—

Assessment.

“(A) evidence about which programs have been shown to reduce recidivism;

“(B) the capacity of each program and activity at each prison, including the number of prisoners along with the recidivism risk of each prisoner enrolled in each program; and

“(C) identification of any gaps or shortages in capacity of such programs and activities.

“(3) Rates of recidivism among individuals who have been released from Federal prison, based on the following criteria:

“(A) The primary offense of conviction.

“(B) The length of the sentence imposed and served.

“(C) The Bureau of Prisons facility or facilities in which the prisoner’s sentence was served.

“(D) The evidence-based recidivism reduction programming that the prisoner successfully completed, if any.

“(E) The prisoner’s assessed and reassessed risk of recidivism.

“(F) The productive activities that the prisoner successfully completed, if any.

“(4) The status of prison work programs at facilities operated by the Bureau of Prisons, including—

“(A) a strategy to expand the availability of such programs without reducing job opportunities for workers in the United States who are not in the custody of the Bureau

Strategy.

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of Prisons, including the feasibility of prisoners manufacturing products purchased by Federal agencies that are manufactured overseas;

Assessment.

“(B) an assessment of the feasibility of expanding such programs, consistent with the strategy required under subparagraph (A), with the goal that 5 years after the date of enactment of this subchapter, not less than 75 percent of eligible minimum- and low-risk offenders have the opportunity to participate in a prison work program for not less than 20 hours per week; and

“(C) a detailed discussion of legal authorities that would be useful or necessary to achieve the goals described in subparagraphs (A) and (B).

Assessment.

“(5) An assessment of the Bureau of Prisons’ compliance with section 3621(h).

Assessment.

“(6) An assessment of progress made toward carrying out the purposes of this subchapter, including any savings associated with—

“(A) the transfer of prisoners into prerelease custody or supervised release under section 3624(g), including savings resulting from the avoidance or deferral of future construction, acquisition, and operations costs; and

“(B) any decrease in recidivism that may be attributed to the System or the increase in evidence-based recidivism reduction programs required under this subchapter.

Assessment.

“(7) An assessment of budgetary savings resulting from this subchapter, including—

“(A) a summary of the amount of savings resulting from the transfer of prisoners into prerelease custody under this chapter, including savings resulting from the avoidance or deferral of future construction, acquisition, or operations costs;

“(B) a summary of the amount of savings resulting from any decrease in recidivism that may be attributed to the implementation of the risk and needs assessment system or the increase in recidivism reduction programs and productive activities required by this subchapter;

Strategy.

“(C) a strategy to reinvest the savings described in subparagraphs (A) and (B) in other—

“(i) Federal, State, and local law enforcement activities; and

“(ii) expansions of recidivism reduction programs and productive activities in the Bureau of Prisons; and

“(D) a description of how the reduced expenditures on Federal corrections and the budgetary savings resulting from this subchapter are currently being used and will be used to—

“(i) increase investment in law enforcement and crime prevention to combat gangs of national significance and high-level drug traffickers through the High Intensity Drug Trafficking Areas Program and other task forces;

“(ii) hire, train, and equip law enforcement officers and prosecutors; and

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“(iii) promote crime reduction programs using evidence-based practices and strategic planning to help reduce crime and criminal recidivism.

“(8) Statistics on—

“(A) the prevalence of dyslexia among prisoners in prisons operated by the Bureau of Prisons; and

“(B) any change in the effectiveness of dyslexia mitigation programs among such prisoners that may be attributed to the incorporation of dyslexia screening into the System and of dyslexia treatment into the evidence-based recidivism reduction programs, as required under this chapter.

### “§ 3635. Definitions

18 USC 3635.

“In this subchapter the following definitions apply:

“(1) DYSLEXIA.—The term ‘dyslexia’ means an unexpected difficulty in reading for an individual who has the intelligence to be a much better reader, most commonly caused by a difficulty in the phonological processing (the appreciation of the individual sounds of spoken language), which affects the ability of an individual to speak, read, and spell.

“(2) DYSLEXIA SCREENING PROGRAM.—The term ‘dyslexia screening program’ means a screening program for dyslexia that is—

“(A) evidence-based (as defined in section 8101(21) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(21))) with proven psychometrics for validity;

“(B) efficient and low-cost; and

“(C) readily available.

“(3) EVIDENCE-BASED RECIDIVISM REDUCTION PROGRAM.—The term ‘evidence-based recidivism reduction program’ means either a group or individual activity that—

“(A) has been shown by empirical evidence to reduce recidivism or is based on research indicating that it is likely to be effective in reducing recidivism;

“(B) is designed to help prisoners succeed in their communities upon release from prison; and

“(C) may include—

“(i) social learning and communication, interpersonal, anti-bullying, rejection response, and other life skills;

“(ii) family relationship building, structured parent-child interaction, and parenting skills;

“(iii) classes on morals or ethics;

“(iv) academic classes;

“(v) cognitive behavioral treatment;

“(vi) mentoring;

“(vii) substance abuse treatment;

“(viii) vocational training;

“(ix) faith-based classes or services;

“(x) civic engagement and reintegrative community services;

“(xi) a prison job, including through a prison work program;

“(xii) victim impact classes or other restorative justice programs; and

“(xiii) trauma counseling and trauma-informed support programs.

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“(4) PRISONER.—The term ‘prisoner’ means a person who has been sentenced to a term of imprisonment pursuant to a conviction for a Federal criminal offense, or a person in the custody of the Bureau of Prisons.

“(5) PRODUCTIVE ACTIVITY.—The term ‘productive activity’ means either a group or individual activity that is designed to allow prisoners determined as having a minimum or low risk of recidivating to remain productive and thereby maintain a minimum or low risk of recidivating, and may include the delivery of the programs described in paragraph (1) to other prisoners.

“(6) RISK AND NEEDS ASSESSMENT TOOL.—The term ‘risk and needs assessment tool’ means an objective and statistically validated method through which information is collected and evaluated to determine—

“(A) as part of the intake process, the risk that a prisoner will recidivate upon release from prison;

“(B) the recidivism reduction programs that will best minimize the risk that the prisoner will recidivate upon release from prison; and

“(C) the periodic reassessment of risk that a prisoner will recidivate upon release from prison, based on factors including indicators of progress and of regression, that are dynamic and that can reasonably be expected to change while in prison.”.

18 USC 3601  
prec.

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 229 of title 18, United States Code, is amended by adding at the end the following:

“D. Risk and Needs Assessment ..... 3631”.

**SEC. 102. IMPLEMENTATION OF SYSTEM AND RECOMMENDATIONS BY BUREAU OF PRISONS.**

(a) IMPLEMENTATION OF SYSTEM GENERALLY.—Section 3621 of title 18, United States Code, is amended by adding at the end the following:

“(h) IMPLEMENTATION OF RISK AND NEEDS ASSESSMENT SYSTEM.—

Deadline.

“(1) IN GENERAL.—Not later than 180 days after the Attorney General completes and releases the risk and needs assessment system (referred to in this subsection as the ‘System’) developed under subchapter D, the Director of the Bureau of Prisons shall, in accordance with that subchapter—

“(A) implement and complete the initial intake risk and needs assessment for each prisoner (including for each prisoner who was a prisoner prior to the effective date of this subsection), regardless of the prisoner’s length of imposed term of imprisonment, and begin to assign prisoners to appropriate evidence-based recidivism reduction programs based on that determination;

“(B) begin to expand the effective evidence-based recidivism reduction programs and productive activities it offers and add any new evidence-based recidivism reduction programs and productive activities necessary to effectively implement the System; and

“(C) begin to implement the other risk and needs assessment tools necessary to effectively implement the System over time, while prisoners are participating in and

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completing the effective evidence-based recidivism reduction programs and productive activities.

“(2) PHASE-IN.—In order to carry out paragraph (1), so that every prisoner has the opportunity to participate in and complete the type and amount of evidence-based recidivism reduction programs or productive activities they need, and be reassessed for recidivism risk as necessary to effectively implement the System, the Bureau of Prisons shall—

“(A) provide such evidence-based recidivism reduction programs and productive activities for all prisoners before the date that is 2 years after the date on which the Bureau of Prisons completes a risk and needs assessment for each prisoner under paragraph (1)(A); and

Time period.

“(B) develop and validate the risk and needs assessment tool to be used in the reassessments of risk of recidivism, while prisoners are participating in and completing evidence-based recidivism reduction programs and productive activities.

“(3) PRIORITY DURING PHASE-IN.—During the 2-year period described in paragraph (2)(A), the priority for such programs and activities shall be accorded based on a prisoner’s proximity to release date.

“(4) PRELIMINARY EXPANSION OF EVIDENCE-BASED RECIDIVISM REDUCTION PROGRAMS AND AUTHORITY TO USE INCENTIVES.—Beginning on the date of enactment of this subsection, the Bureau of Prisons may begin to expand any evidence-based recidivism reduction programs and productive activities that exist at a prison as of such date, and may offer to prisoners who successfully participate in such programs and activities the incentives and rewards described in subchapter D.

Effective date.

“(5) RECIDIVISM REDUCTION PARTNERSHIPS.—In order to expand evidence-based recidivism reduction programs and productive activities, the Attorney General shall develop policies for the warden of each prison of the Bureau of Prisons to enter into partnerships, subject to the availability of appropriations, with any of the following:

Policies.

“(A) Nonprofit and other private organizations, including faith-based, art, and community-based organizations that will deliver recidivism reduction programming on a paid or volunteer basis.

“(B) Institutions of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) that will deliver instruction on a paid or volunteer basis.

“(C) Private entities that will—

“(i) deliver vocational training and certifications;

“(ii) provide equipment to facilitate vocational training or employment opportunities for prisoners;

“(iii) employ prisoners; or

“(iv) assist prisoners in prerelease custody or supervised release in finding employment.

“(D) Industry-sponsored organizations that will deliver workforce development and training, on a paid or volunteer basis.

“(6) REQUIREMENT TO PROVIDE PROGRAMS TO ALL PRISONERS; PRIORITY.—The Director of the Bureau of Prisons shall provide all prisoners with the opportunity to actively participate

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in evidence-based recidivism reduction programs or productive activities, according to their specific criminogenic needs, throughout their entire term of incarceration. Priority for participation in recidivism reduction programs shall be given to medium-risk and high-risk prisoners, with access to productive activities given to minimum-risk and low-risk prisoners.

“(7) DEFINITIONS.—The terms in this subsection have the meaning given those terms in section 3635.”

(b) PRERELEASE CUSTODY.—

(1) IN GENERAL.—Section 3624 of title 18, United States Code, is amended—

(A) in subsection (b)(1)—

(i) by striking “, beyond the time served, of up to 54 days at the end of each year of the prisoner’s term of imprisonment, beginning at the end of the first year of the term,” and inserting “of up to 54 days for each year of the prisoner’s sentence imposed by the court,”; and

(ii) by striking “credit for the last year or portion of a year of the term of imprisonment shall be prorated and credited within the last six weeks of the sentence” and inserting “credit for the last year of a term of imprisonment shall be credited on the first day of the last year of the term of imprisonment”; and

(B) by adding at the end the following:

“(g) PRERELEASE CUSTODY OR SUPERVISED RELEASE FOR RISK AND NEEDS ASSESSMENT SYSTEM PARTICIPANTS.—

Applicability.

“(1) ELIGIBLE PRISONERS.—This subsection applies in the case of a prisoner (as such term is defined in section 3635) who—

“(A) has earned time credits under the risk and needs assessment system developed under subchapter D (referred to in this subsection as the ‘System’) in an amount that is equal to the remainder of the prisoner’s imposed term of imprisonment;

“(B) has shown through the periodic risk reassessments a demonstrated recidivism risk reduction or has maintained a minimum or low recidivism risk, during the prisoner’s term of imprisonment;

“(C) has had the remainder of the prisoner’s imposed term of imprisonment computed under applicable law; and

Determinations.

“(D)(i) in the case of a prisoner being placed in prerelease custody, the prisoner—

“(I) has been determined under the System to be a minimum or low risk to recidivate pursuant to the last 2 reassessments of the prisoner; or

“(II) has had a petition to be transferred to prerelease custody or supervised release approved by the warden of the prison, after the warden’s determination that—

“(aa) the prisoner would not be a danger to society if transferred to prerelease custody or supervised release;

“(bb) the prisoner has made a good faith effort to lower their recidivism risk through participation in recidivism reduction programs or productive activities; and

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“(cc) the prisoner is unlikely to recidivate; or  
 “(ii) in the case of a prisoner being placed in supervised release, the prisoner has been determined under the System to be a minimum or low risk to recidivate pursuant to the last reassessment of the prisoner.

“(2) TYPES OF PRERELEASE CUSTODY.—A prisoner shall be placed in prerelease custody as follows:

“(A) HOME CONFINEMENT.—

Determinations.

“(i) IN GENERAL.—A prisoner placed in prerelease custody pursuant to this subsection who is placed in home confinement shall—

“(I) be subject to 24-hour electronic monitoring that enables the prompt identification of the prisoner, location, and time, in the case of any violation of subclause (II);

“(II) remain in the prisoner’s residence, except that the prisoner may leave the prisoner’s home in order to, subject to the approval of the Director of the Bureau of Prisons—

“(aa) perform a job or job-related activities, including an apprenticeship, or participate in job-seeking activities;

“(bb) participate in evidence-based recidivism reduction programming or productive activities assigned by the System, or similar activities;

“(cc) perform community service;

“(dd) participate in crime victim restoration activities;

“(ee) receive medical treatment;

“(ff) attend religious activities; or

“(gg) participate in other family-related activities that facilitate the prisoner’s successful reentry such as a family funeral, a family wedding, or to visit a family member who is seriously ill; and

“(III) comply with such other conditions as the Director determines appropriate.

“(ii) ALTERNATE MEANS OF MONITORING.—If the electronic monitoring of a prisoner described in clause (i)(I) is infeasible for technical or religious reasons, the Director of the Bureau of Prisons may use alternate means of monitoring a prisoner placed in home confinement that the Director determines are as effective or more effective than the electronic monitoring described in clause (i)(I).

“(iii) MODIFICATIONS.—The Director of the Bureau of Prisons may modify the conditions described in clause (i) if the Director determines that a compelling reason exists to do so, and that the prisoner has demonstrated exemplary compliance with such conditions.

“(iv) DURATION.—Except as provided in paragraph (4), a prisoner who is placed in home confinement shall remain in home confinement until the prisoner has served not less than 85 percent of the prisoner’s imposed term of imprisonment.



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“(B) RESIDENTIAL REENTRY CENTER.—A prisoner placed in prerelease custody pursuant to this subsection who is placed at a residential reentry center shall be subject to such conditions as the Director of the Bureau of Prisons determines appropriate.

“(3) SUPERVISED RELEASE.—If the sentencing court included as a part of the prisoner’s sentence a requirement that the prisoner be placed on a term of supervised release after imprisonment pursuant to section 3583, the Director of the Bureau of Prisons may transfer the prisoner to begin any such term of supervised release at an earlier date, not to exceed 12 months, based on the application of time credits under section 3632.

“(4) DETERMINATION OF CONDITIONS.—In determining appropriate conditions for prisoners placed in prerelease custody pursuant to this subsection, the Director of the Bureau of Prisons shall, to the extent practicable, provide that increasingly less restrictive conditions shall be imposed on prisoners who demonstrate continued compliance with the conditions of such prerelease custody, so as to most effectively prepare such prisoners for reentry.

“(5) VIOLATIONS OF CONDITIONS.—If a prisoner violates a condition of the prisoner’s prerelease custody, the Director of the Bureau of Prisons may impose such additional conditions on the prisoner’s prerelease custody as the Director of the Bureau of Prisons determines appropriate, or revoke the prisoner’s prerelease custody and require the prisoner to serve the remainder of the term of imprisonment to which the prisoner was sentenced, or any portion thereof, in prison. If the violation is nontechnical in nature, the Director of the Bureau of Prisons shall revoke the prisoner’s prerelease custody.

Consultation.  
Determination.

“(6) ISSUANCE OF GUIDELINES.—The Attorney General, in consultation with the Assistant Director for the Office of Probation and Pretrial Services, shall issue guidelines for use by the Bureau of Prisons in determining—

“(A) the appropriate type of prerelease custody or supervised release and level of supervision for a prisoner placed on prerelease custody pursuant to this subsection; and

“(B) consequences for a violation of a condition of such prerelease custody by such a prisoner, including a return to prison and a reassessment of evidence-based recidivism risk level under the System.

“(7) AGREEMENTS WITH UNITED STATES PROBATION AND PRETRIAL SERVICES.—The Director of the Bureau of Prisons shall, to the greatest extent practicable, enter into agreements with United States Probation and Pretrial Services to supervise prisoners placed in home confinement under this subsection. Such agreements shall—

“(A) authorize United States Probation and Pretrial Services to exercise the authority granted to the Director pursuant to paragraphs (3) and (4); and

“(B) take into account the resource requirements of United States Probation and Pretrial Services as a result of the transfer of Bureau of Prisons prisoners to prerelease custody or supervised release.

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“(8) ASSISTANCE.—United States Probation and Pretrial Services shall, to the greatest extent practicable, offer assistance to any prisoner not under its supervision during prerelease custody under this subsection.

“(9) MENTORING, REENTRY, AND SPIRITUAL SERVICES.—Any prerelease custody into which a prisoner is placed under this subsection may not include a condition prohibiting the prisoner from receiving mentoring, reentry, or spiritual services from a person who provided such services to the prisoner while the prisoner was incarcerated, except that the warden of the facility at which the prisoner was incarcerated may waive the requirement under this paragraph if the warden finds that the provision of such services would pose a significant security risk to the prisoner, persons who provide such services, or any other person. The warden shall provide written notice of any such waiver to the person providing such services and to the prisoner.

Waiver authority.

Notice.

“(10) TIME LIMITS INAPPLICABLE.—The time limits under subsections (b) and (c) shall not apply to prerelease custody under this subsection.

“(11) PRERELEASE CUSTODY CAPACITY.—The Director of the Bureau of Prisons shall ensure there is sufficient prerelease custody capacity to accommodate all eligible prisoners.”

(2) EFFECTIVE DATE.—The amendments made by this subsection shall take effect beginning on the date that the Attorney General completes and releases the risk and needs assessment system under subchapter D of chapter 229 of title 18, United States Code, as added by section 101(a) of this Act.

18 USC 3624 note.

(3) APPLICABILITY.—The amendments made by this subsection shall apply with respect to offenses committed before, on, or after the date of enactment of this Act, except that such amendments shall not apply with respect to offenses committed before November 1, 1987.

18 USC 3624 note.

**SEC. 103. GAO REPORT.**

Not later than 2 years after the Director of the Bureau of Prisons implements the risk and needs assessment system under section 3621 of title 18, United States Code, and every 2 years thereafter, the Comptroller General of the United States shall conduct an audit of the use of the risk and needs assessment system at Bureau of Prisons facilities. The audit shall include analysis of the following:

Time period. Audit. Analysis. 18 USC 3621 note.

(1) Whether inmates are being assessed under the risk and needs assessment system with the frequency required under such section 3621 of title 18, United States Code.

(2) Whether the Bureau of Prisons is able to offer recidivism reduction programs and productive activities (as such terms are defined in section 3635 of title 18, United States Code, as added by section 101(a) of this Act).

(3) Whether the Bureau of Prisons is offering the type, amount, and intensity of recidivism reduction programs and productive activities for prisoners to earn the maximum amount of time credits for which they are eligible.

(4) Whether the Attorney General is carrying out the duties under section 3631(b) of title 18, United States Code, as added by section 101(a) of this Act.