



Frequently Asked Questions on the First Step Act, S. 756

Q1: What does the First Step Act do?

A: The First Step Act (S. 756) is a comprehensive criminal justice reform law that reforms some federal mandatory minimum sentencing laws as well as some aspects of the federal prison system. At the core of the Act is a new system that allows some federally incarcerated individuals to earn time credits by completing rehabilitative programming. The individuals considered by the BOP to have a low or minimum risk of reoffending can earn 15 days of credits for each 30 days of programming completed; medium- and high-risk individuals can earn 10 days of credits for each 30 days of programming completed. Some prisoners (see Q10 and Q12, below) can redeem their earned time credits for additional time in a halfway house, home confinement, or supervised release at the end of their sentences.

The Act also includes four modest sentencing reform provisions, along with a number of reforms to how we treat individuals in federal prison.

Q2: Is the First Step Act law?

A: Yes. The First Step Act was signed into law by President Trump on December 21, 2018.

Q3: When is the First Step Act effective?

A: The sentencing and compassionate release reforms are effective now; other parts of the bill are being phased in over the next three years.

Good time and earned time credits

Q4: What is the difference between earned time credit and good time credit?

A: “Earned time credits” are a new feature created by the Act. Some individuals can earn time credits by completing rehabilitative programming and engaging in “productive activities” like helping deliver programming to other prisoners. Depending on a person’s risk level, they could earn up to 15 days of credit for every 30 days of programming or productive activities. These time credits can be redeemed by some people for early transfer into a halfway house, home confinement, or supervised release. Earned time credits do not reduce a prisoner’s sentence. A number of people are ineligible to receive earned time credits based on the crime they committed (see Q10 for the list of crimes), and non-citizens with immigration detainers cannot redeem earned time credits (see Q12).

“Good time credits” result in real time deducted from a prisoner’s sentence and are gained by maintaining good behavior during incarceration. All incarcerated individuals, other than those serving a life sentence, are eligible for good time credits.



1100 H Street NW, Suite 1000 • Washington, D.C. 20005



(202) 822-6700



www.famm.org

\Q5: What changes does the First Step Act make to good time credit calculation?

A: The BOP currently calculates good time so that prisoners receive up to 47 days off their sentence per year for good conduct. The First Step Act will increase the credit to up to 54 days per year of the sentence imposed.

Q6: When can people redeem earned time credits for transfer to pre-release custody?

A: Earned time credits can be redeemed when a prisoner's earned time credit balance is equal to or greater than the remainder of their imposed term of imprisonment. In order to redeem earned time credits for transfer, a prisoner must also be assessed as low- or minimum-risk for two consecutive assessments OR have a petition for transfer approved by a warden after the warden determines the prisoner will not be a risk to public safety and is unlikely to recidivate. All prisoners who successfully participate in programming are to have their risk assessed at least once each year, and more frequently for medium- and high-risk prisoners who are within five years of their release date.

The current limits on time in a halfway house (up to 12 months) and home confinement (six months or 10 percent of the sentence, whichever is less) in federal law **do not apply to earned time credits**. In other words, a person can be released to the halfway house and/or home confinement earlier (for example, so that they spend more than 12 months in halfway house) due to accumulating earned time credits.

Q7: When do the new good time credit rules go into effect?

A: FAMM believes that Congress intended for the good time credit calculation go into effect immediately, but the language of the law says otherwise. According to the Act, the change to the good time credit calculation goes into effect after the Department of Justice (DOJ) finalizes and releases publicly the risk assessment tool (see Q13). The First Step Act requires that the risk assessment tool be finalized and released publicly no later than 210 days (seven months) after the Act's signing. In other words, no one will see additional good time credit added to their sentence until at least seven months after December 21, 2018, unless the DOJ completes and releases the risk assessment tool sooner than that.

Again, FAMM does not believe that is what the sponsors of the legislation intended when they added the good time provision to the bill. As a result, we have reached out to the White House and congressional leaders and are working with other organizations to find a remedy that will allow the good time change to apply as soon as possible.

Q8: When does the earned time credit system go into effect?

A: Not immediately. The First Step Act gives the DOJ seven months (210 days) to finalize and release publicly the risk assessment tool. After that, the BOP gets six months to apply the tool to every person in federal prison, and two years to create enough programming and productive activities so that all prisoners who are eligible to earn time credits can participate in the program. During this two-year phase-in, prisoners who are closest to their release will get priority to participate in programs or productive activities and earn time credits. After the two-year phase-in, prisoners who are medium- or high-risk will get priority to participate in programs, while low- and minimum-risk prisoners will get priority to participate in productive activities.

The Act also gives the BOP the ability to begin expanding existing evidence-based recidivism reducing programs and productive activities and offer incentives and rewards but any credits cannot be redeemed until the system is implemented.

In other words, no one will begin to be able to earn time credits for completing programs or productive activities until at least seven months after December 21, 2018, unless the DOJ completes and releases the risk assessment tool sooner than that or the BOP expands existing evidence-based programming or productive activity prior to the completion of the risk assessment tool. Earned-time credits received prior to the implementation of the risk assessment tool will not be eligible for redemption until the tool is implemented. The ability to start earning credits may not actually come for most prisoners until even later than that, depending on how long it takes BOP to apply the risk assessment tool and create programming and productive activities and assign prisoners to them.

Q9: Which of the time credit reforms are retroactive – good time, earned time, or both?

A: Only the additional seven days per year of good time credit will be applied retroactively. This means that prisoners who have not lost good time credit during their sentence will earn an additional seven days for each year of the sentence imposed during which they earned 47 days of good time. For example, a person serving a 10-year sentence who has earned all possible good time credit would receive an extra 70 days of good time credit under the First Step Act. We do not know – and the Act does not say – how BOP will award good time credit retroactively if a person has, in previous years, lost some or all of their good time credit for rule infractions.

Q10: Who is not eligible for earned time credits?

A: The First Step Act is the result of political compromise. As part of the compromise, a number of offenders are excluded from receiving earned time credits. These offenders include (but are not limited to) fentanyl traffickers, heroin or methamphetamine traffickers who played a leadership role in the crime, sex offenders, some immigration offenders, all 18 U.S.C. § 924(c) offenders, and people convicted of other violent offenses. [Click here for a complete list of ineligible offenses.](#)

Q11: Are there other incentives for those who are unable to receive earned time credits?

A: Yes. Offenders who complete rehabilitative programs and who are high-risk or on the list of those not eligible to receive earned time credits are eligible for other incentives. They include increased phone and email time, expanded visitation, and more options at the commissary. The incentives made available will be decided by each prison's warden.

Q12: Are non-citizens eligible to earn earned time credits?

A: Prisoners with immigration detainers may complete programs and earn time credits, but they are NOT eligible to redeem those earned time credits for additional time in a halfway house, home confinement, or supervised release at the end of their sentences. However, certain offenses related to illegal entry are ineligible to earn time credits (see Q10 for more details). Also, all people who cannot earn time credits may still earn other incentives for program completion, such as more phone minutes, visitation, or commissary privileges (see Q11).

Q13: What is the risk assessment tool?

A: The BOP currently uses a risk assessment tool to decide which prisons to put people in, based on security level. The First Step Act requires the DOJ to create and use a new risk assessment tool that will be periodically applied to assess each prisoner’s risk of reoffending. Prisoners will be assessed at least once each year, with more frequent assessments for medium- and high-risk prisoners who are within five years of release.

The Act requires the DOJ to create the risk assessment tool within the first seven months after the Act becomes law, with input from academic and correctional communities. The tool will look at, among other factors, a person’s age and criminal record to determine whether the person is at minimum, low, medium, or high risk of reoffending.

Q14. Can a prisoner’s risk level change during the course of incarceration?

A: Yes. The Act specifically says that the risk assessment tool BOP uses must be one that allows people’s risk level to change over time.

Q15. If so, does the person become eligible to redeem earned time credits in a halfway house or home confinement?

A: Yes. Unless they are excluded from earning or redeeming time credits (see Q10 and Q12), people who move from medium- or high-risk down to low- or minimal-risk and maintain that lower-risk level over two consecutive assessments can redeem their time credits. People who score as medium- or high-risk may still petition to redeem their earned time credits. Redemption will only be allowed if the warden determines the prisoner will not be a risk to public safety and is unlikely to recidivate.

Sentencing Reform

Q16: What are the Act’s sentencing reforms?

A: The First Step Act includes five sentencing reform provisions:

- Reduces the mandatory life sentence for a third drug offense under 21 U.S.C. §§ 841/851 to a 25-year mandatory minimum (not retroactive). The Act also changes this law so that this sentence going forward will apply to people who have two or more prior convictions for a “felony drug offense” OR a “serious violent felony”;
- Reduces the 20-year mandatory minimum for a second drug offense under 21 U.S.C. §§ 841/851 to a 15-year mandatory minimum (not retroactive). The Act also changes this law so that this sentence going forward will apply to people who have one prior conviction for a “felony drug offense” OR a “serious violent felony”;
- Ensures that defendants cannot receive the 25-year mandatory sentence for a second or subsequent offense under 18 U.S.C. § 924(c) in their first criminal proceeding for a § 924(c) offense. This fixes the 924(c) “stacking” issue (not retroactive). Individuals will still receive a 25-year mandatory minimum if they are convicted of a 924(c) offense after serving a sentence for a first 924(c) offense.
- Expands the safety valve for drug mandatory minimums (not retroactive). The safety valve will now apply to defendants who meet the current criteria (no gun, no violence, no leadership role, no death or serious bodily injury, provides truthful information to the government concerning the offense). It will now also cover defendants who have up to

four criminal history points (not counting one-point offenses), as calculated under the U.S. Sentencing Guidelines. However, individuals with a three-point offense or a two-point violent offense are not eligible; and

- Makes the Fair Sentencing Act of 2010's crack cocaine sentencing reforms retroactive. This will allow prisoners serving sentences based on the old crack laws to petition for resentencing in the district court (see Q18).

Q17: Are the sentencing reforms retroactive?

A: Only the Fair Sentencing Act will be made retroactive. The other four sentencing reforms will apply prospectively only – in other words, to people sentenced after December 21, 2018.

Q18: How does Fair Sentencing Act retroactivity apply to federal prisoners?

A: Prior to the Fair Sentencing Act of 2010, the crack cocaine weight threshold for a 10-year mandatory minimum to life sentence was 50 grams, and for a five-year mandatory minimum to 40 years in prison was five grams. The Fair Sentencing Act also eliminated the five-year mandatory minimum for simple possession of crack cocaine. The Fair Sentencing Act raised those drug quantity thresholds to 280 and 28 grams of crack, respectively. However, the Fair Sentencing Act was not retroactive. The First Step Act finally applies this reform retroactively. A federal prisoner serving a sentence calculated under the old weight thresholds (meaning the crack weight they were charged with falls between five and 28 grams or 50 and 280 grams) can file a motion for resentencing to their sentencing court. The court is not obliged to reduce the sentence. This reform applies only to people sentenced for crack cocaine, not other kinds of drugs, and only to people sentenced before August 3, 2010. Federal crack offenders sentenced after August 3, 2010, have already received the full benefit of the Fair Sentencing Act's reforms.

Q19: What should I do if I think the First Step Act reduces my sentence?

A: Contact the federal public defender in the district in which you were sentenced and ask for legal help. You can find the complete list of federal public defenders [here](#). Please note that FAMM cannot give you legal advice, representation, or referrals to attorneys and cannot tell you whether the First Step Act changes your loved one's sentence.

You should also be cautious about hiring and paying for legal help – the federal public defenders are available to help for free, and you should check with them first before paying for an attorney. You should also be careful about filing a motion for a sentence reduction because under the First Step Act, prisoners have only one chance to ask the court to reduce their old crack sentence. If a well-meaning but inexperienced lawyer or volunteer does not do a good job and misses a claim for a lower sentence in their motion to the court, you cannot go back a second time to correct it.

Compassionate and Elderly Release

Q20: What does the First Step Act do to improve compassionate release?

A: The First Step Act makes a number of important reforms to how the BOP handles compassionate release requests. The Act requires increased notification to prisoners on the availability of compassionate release and their eligibility for it. It will also require the BOP to expedite the application review process for terminally ill prisoners and make sure that families are notified of a person's terminal illness and given a chance to visit that person quickly.

Most significantly, the First Step Act gives federal prisoners the ability to petition directly to the sentencing court for compassionate release in the event that the BOP has waited more than 30 days to respond to a petition **or** the federal prisoner has been denied compassionate release after exhausting all administrative remedies at the BOP.

Q21: What is the elderly prisoner release provision of the First Step Act?

A: In addition to the changes made to compassionate release, the First Step Act reauthorizes the Elderly Offender Pilot Program (see 34 U.S.C. § 60541(g)), which was initially part of the Second Chance Act of 2007. This program is authorized to run through FY 2023 and gives the attorney general discretion to select which federal prisons will use the pilot program. Under it, some elderly prisoners, any prisoner determined to need a nursing home or intermediate or assisted living, and terminally ill prisoners are eligible to be placed in home confinement earlier than would otherwise be allowed under law.

People **cannot apply** for elderly release until the attorney general decides and announces which prisons will run this pilot program. The Act does not require the attorney general to do this by a specific date.

Elderly prisoners are eligible if they

1. Are nonviolent and non-sex offenders;
2. Are at least 60 years old;
3. Have served two-thirds (2/3) of their sentence;
4. Do not have prior convictions for federal or state violent or sex crimes;
5. Have not been determined by the BOP to have a history of violence or of engaging in conduct constituting a sex offense;
6. Have not escaped or attempted to escape from a BOP facility;
7. Will save the federal government money by being housed in home confinement rather than prison; and
8. Have not been determined by the BOP to be a public safety risk.

Elderly terminally ill prisoners are eligible if they

1. Are nonviolent and non-sex offenders;
2. Have been determined by a BOP-approved medical doctor to be in need of care in a nursing home, intermediate care facility, or assisted living facility OR have a terminal illness;
3. Do not have prior convictions for federal or state violent or sex crimes;
4. Have not been determined by the BOP to have a history of violence or of engaging in conduct constituting a sex offense;
5. Have not escaped or attempted to escape from a BOP facility;
6. Will save the federal government money by being housed in home confinement rather than prison; and
7. Have not been determined by the BOP to be a public safety risk.

Other Frequently Asked Questions

Q22: What is the 500-mile driving mile rule reform?

A: Currently, it is BOP policy to try to place prisoners within 500 air miles of their post-release residence. This is not law, but BOP policy. The 500 miles is determined “as the crow flies,” meaning families sometimes have to drive much farther than 500 highway miles to visit their loved ones.

The First Step Act requires that the BOP place people within 500 driving miles of their post-release residence whenever possible, as long as there is bed space and the placement lines up with security factors and the prisoner’s medical and programming needs. Furthermore, the Act requires that a person be moved even closer to their family if a bed opens up in a facility that is at the appropriate security level.

Q23: How will the First Step Act apply to people heading into prison?

A: If they have already been sentenced, the sentencing reform provisions will not apply to them. If they are sentenced after the enactment date of the First Step Act (December 21, 2018), they should benefit from the sentencing reforms automatically when they are sentenced.

Q24: How does the First Step Act help people convicted of violent crimes or sex offenses?

A: Many violent and sex offenders are excluded from benefiting from the reforms included in this Act. However, all federal prisoners will benefit from a few of the reforms, including increased good time credits (except for those serving life), the 500 driving mile rule (see Q22), and the compassionate release reforms.

Q25: Does the First Step Act help people convicted in state courts?

A: No. The reforms in the First Step Act apply only to people convicted in federal courts.

Q26: How can FAMM help me or a loved one get a reduced sentence?

A: FAMM cannot give you legal advice, representation, or referrals to attorneys and cannot tell you whether the First Step Act changes your loved one’s sentence. We do not represent people in court and cannot help you or a loved one get a reduced sentence.

Q27: Does this mean that there will be no more federal sentencing and prison reform?

A: No! FAMM does not believe that the First Step Act makes all the reforms to the federal criminal justice system that we need. We will continue fighting for more improvements to mandatory minimum sentencing laws and prison conditions and programs. You and your family members can sign up to be advocates and help us at <https://famm.org/famm-allies-justice-now-action-center/>.