

**PRISON REFORM AND REDEMPTION ACT – 115TH CONGRESS
H.R. 3356 (Collins)**

STATUS: H.R. 3356 is a bipartisan bill pending in Congress. It is not a law. We do not know if or when it could become law. To become law, the bill must be approved by the U.S. House Judiciary Committee, the full U.S. House, the full U.S. Senate, and signed by the President.

IN A NUTSHELL: If passed, H.R. 3356 would allow some federal prisoners to earn time credits that would reduce their sentences, if they lower their risk of recidivism by completing recidivism-reducing programs and jobs.

WHAT H.R. 3356 WOULD NOT DO:

- Reduce or eliminate any mandatory minimum sentences, or create “safety valve” exceptions for those sentences;
- Change or reduce other prison sentences;
- Increase the number of “good time credits” federal prisoners can earn for good behavior (currently, 47 days per year of incarceration);
- Re-instate federal parole;
- Require the construction of more halfway houses;
- Require the hiring of additional probation officers.

WHAT H.R. 3356 WOULD DO: If passed into law, H.R. 3356 would:

Require the federal Bureau of Prisons (BOP) to create a risk assessment tool and use it to assess each prisoner’s risk of recidivism, then provide programming to reduce that risk (Sections 101, 105)

If passed into law, the bill would give the BOP six months to create and validate a risk assessment tool, then give the BOP an additional six months to apply that tool to each federal prisoner. The tool will look at static and dynamic risk factors for each inmate, such as the person’s age, criminal record, skills, attitude, family support, and education, and classify each person as being at high, medium, or low risk of reoffending. The prison will then create a plan to address each prisoner’s need for “recidivism reduction programs” (e.g., education, drug treatment, etc.) and “productive activities” (e.g., holding a prison job). A prisoner can move from one risk category to another (e.g., from high to medium risk, or from medium to low risk) if they complete programming and are re-assessed as being at lower risk of reoffending. Under the bill, the BOP would re-assess a prisoner’s risk level once each year. Higher-risk prisoners within five years of release would be reassessed more frequently.

Higher-risk prisoners will participate in more programming than lower-risk prisoners. Subject to space and security concerns, BOP is supposed to house prisoners together based on their risk level.

Require BOP to assess, create, and expand rehabilitative programming for prisoners (Section 104)

If passed into law, the bill would require BOP to increase the amount and availability of recidivism-reducing programming and productive activities and jobs in prisons. Sufficient programming must be made available for all eligible prisoners within five years of the bill's enactment. Prisoners closest to release will get to participate in programs first, as they become available.

New partnerships

To expand programming, wardens may partner with non-profit, faith-based, art, and community-based organizations; universities and colleges; private corporations that will provide jobs and job training, and help with finding jobs after release; and industry-sponsored organizations that deliver workforce development and training.

Expanding recidivism-reducing programs

The bill also requires the Justice Department to assess current BOP programs to determine if they reduce recidivism; consider the evidence-based, effective programs states are using; determine which programs BOP should use and expand in federal prisons; and report annually to Congress on programs used, whether they work, how many people participate in them, and how they need to be expanded.

Expanding work programs

The Justice Department must annually report to Congress on work programs in the BOP and create a strategy to expand them so that within five years, 75 percent of eligible lower-risk prisoners have the opportunity to participate in a prison work program for at least 20 hours a week.

Authorize Congress to fund and implement the bill and reinvest the savings (Section 107)

If passed into law, the bill would allow (but not require) Congress to spend up to \$50 million each year from 2018 to 2022 so that BOP can create the risk assessment tool, rehabilitative programming, and prerelease custody. The bill also suggests (but does not require) that any cost savings generated by H.R. 3356 be used to pay for more rehabilitative programming and supplement federal funding to state and local law enforcement.

Permit some (not all) federal prisoners to earn “earned time credits” and other benefits (Sections 102, 105)

If passed into law, the bill would allow eligible prisoners who successfully complete recidivism-reducing programs and productive activities to earn time credits as follows:

- **For all eligible prisoners:** 10 days of credit for each 30 days of successful completion of a recidivism-reducing program or productive activity, increased to 15 days of credit for each 30 days of program completion once prisoners reduce their risk level (i.e., from high to medium risk or from medium risk to low risk) over the course of two consecutive risk assessments.

- **For eligible prisoners classified as low-risk:** 10 days of credit for 30 days of successful completion of a recidivism-reducing program or productive activity, increased to 15 days of credit for each 30 days of program completion once prisoners reduce their risk level (i.e., from high to medium risk or from medium risk to low risk) over the course of two consecutive risk assessments.

This provision would NOT be retroactive – in other words, prisoners could not get time credits for programs they completed in prison or jail before the bill becomes law. Credits earned could be reduced and taken away if the person engages in bad behavior or rule violations in prison, but can also be restored if the person later makes progress.

Prisoners could also earn other benefits for completing programming or jobs:

- Up to an additional 30 phone minutes each day and
- Additional time for visitation with family and friends. The warden of the prison would determine how much extra visitation time prisoners may earn.

Exclude many groups of people from earning time credits (Section 102)

If passed into law, the bill would exclude many prisoners from earning credits. Those serving time for the offenses listed below would not be able to earn time credits:

- Assault with intent to commit murder (18 U.S.C. § 113(a)(1))
- Influencing, impeding, retaliating against a federal officer by injuring a family member, except for a threat (18 U.S.C. § 115)
- Biological weapons (18 U.S.C., chapter 10)
- Chemical weapons (18 U.S.C., chapter 11B)
- Assassination, kidnaping, or assault of a congressional, cabinet, or Supreme Court member (18 U.S.C. § 351)
- Gathering, transmitting, losing defense information (18 U.S.C. § 793)
- Gathering or delivering defense information to aid a foreign government (18 U.S.C. § 794)
- Explosives or dangerous articles (chapter 39, U.S. Code, except for § 836 offenses involving transportation of fireworks into a state that prohibits their sale or use)
- Distribution of information relating to weapons of mass destruction (18 U.S.C. § 842(p))
- Use of fire or explosive (18 U.S.C. § 844(f)(3), (h), or (i))
- Armed Career Criminal Act (18 U.S.C. § 924(e))
- Computer fraud (18 U.S.C. § 1030(a)(1))
- Murder under 18 U.S.C., chapter 51, except for manslaughter (18 U.S.C. § 1112), attempt to commit manslaughter (18 U.S.C. § 1113), misconduct or neglect of ship officers (18 U.S.C. § 1115), protection against HIV (18 U.S.C. § 1122)
- Kidnaping (18 U.S.C., chapter 55)
- Human trafficking and slavery (18 U.S.C., chapter 77), except for sections 1592 through 1596
- Assault, kidnaping, or assassination of president or presidential staff (18 U.S.C. § 1751)

- Intentionally killing or attempting to kill an unborn child (18 U.S.C. § 1841(a)(2)(C))
- Terrorist attacks against railways or mass transportation systems (18 U.S.C. § 1992)
- Bank robbery resulting in death (18 U.S.C. § 2113(e))
- Robberies or burglaries involving drugs, which result in death (18 U.S.C. § 2118(c)(2))
- Carjacking that results in death (18 U.S.C. § 2119(3))
- Sabotage (18 U.S.C., chapter 105, except for § 2152)
- Sexual abuse (18 U.S.C., chapter 109A, except for those convicted under any provision of § 2244 other than subdivision (c))
- Sexual exploitation of children (18 U.S.C. § 2251)
- Selling or buying children (18 U.S.C. § 2251A)
- Receipt and distribution of child pornography (18 U.S.C. § 2252(a)(1), (2), or (3))
- Second or subsequent conviction for possession, distribution, sale of child pornography (18 U.S.C. § 2252A(a)(1) through (6))
- Producing child pornography for importation (18 U.S.C. § 2260)
- Transportation of explosive, biological, radioactive, chemical, or nuclear materials (18 U.S.C. § 2283)
- Transportation of terrorists (18 U.S.C. § 2284)
- Destroying a vessel or port, if it involved substantial risk of death or serious bodily injury (18 U.S.C. § 2291)
- Terrorism (18 U.S.C. chapter 113B)
- Torture (18 U.S.C. § 2340A)
- Treason (18 U.S.C. § 2381)
- Recruiting or using child soldiers (18 U.S.C. § 2442)
- Developing or producing nuclear material (42 U.S.C. § 2077(b))
- Atomic weapons (42 U.S.C. § 2122)
- Atomic energy license violations (42 U.S.C. § 2131)
- Communication or receipt of restricted atomic data (42 U.S.C. § 2274, 2275)
- Sabotage of nuclear facilities or fuel (42 U.S.C. § 2284)
- Damaging or destroying a pipeline facility, if the conduct involved a substantial risk of death or serious bodily injury (49 U.S.C. § 60123(b))
- Manufacturing or distributing drugs, with death or serious bodily injury resulting from the use of those drugs (21 U.S.C. § 841(b)(1)(A), (B), or (C))
- Illegal reentry of certain removed aliens listed in 8 U.S.C. § 1326(b)(1) or (2) (e.g., the person has a prior conviction for a felony, an aggravated felony, or 3 or more misdemeanor drug or person crimes)
- Export violations (50 U.S.C. App. 2401 et seq.)
- International Emergency Economic Powers Act (50 U.S.C. § 1705)
- Disclosing identities of undercover agents, informants, sources (50 U.S.C. § 3121)
- A conviction for
 - An offense listed in 18 U.S.C. § 3559(c)(2)(F) (murder, manslaughter, voluntary manslaughter, assault with intent to commit murder, assault with intent to commit rape, aggravated sexual abuse, sexual abuse, abusive sexual contact, kidnapping, aircraft piracy, robbery, carjacking, extortion, arson, firearm use, firearm

possession during a drug offense or crime of violence, and attempt, conspiracy, or solicitation to commit any of these offenses) AND

- The person was sentenced to a year or more in prison for this conviction, AND
- The person has a prior state or federal conviction for murder, manslaughter, assault with intent to commit murder, aggravated sexual abuse, sexual abuse, abusive sexual contact, kidnaping, carjacking, arson, or terrorism, for which the person served a year or more in prison.
- A third or subsequent conviction for a drug offense, unless the person did not have a meaningful opportunity to participate in recidivism reduction programs for one of the prior convictions
- District of Columbia offenders housed in federal prisons
- State offenders housed in federal prisons
- People serving life sentences.

Even though these offenders would not be eligible to earn time credits or be released onto prerelease custody, they would be eligible to receive other incentives for completing programming, such as increased visiting time with families or more minutes for phone calls.

Permit some prisoners to “cash in” their earned time credits and be released from prison to a different type of confinement.

If passed into law, the bill would allow prisoners to “cash in” their accumulated time credits at the end of their sentences if they

1. Have earned more time credits than they have time remaining on their imposed sentences (example: a person who has 180 days left on their imposed sentence cannot cash in their credits unless they have 180 days or more of credits), and
2. The prison warden decides they are qualified for transfer to prerelease custody, and
3. Have reduced their recidivism risk, as shown by their risk assessments, or maintained a lower-risk status, and
4. Are NOT classified in their latest risk assessment as being more likely than not to reoffend, unless the warden recommends transfer to prerelease custody regardless of the prisoner’s risk level.

- **If prerelease custody is approved:** The warden or the BOP director submits a recommendation for release to the U.S. District Court where the prisoner was convicted. The court may deny release if it finds, in writing and by clear and convincing evidence, with detailed reasons for the denial, that release is not warranted based solely on the prisoner’s post-conviction content (i.e., not his crime of conviction). The court may hold a hearing, and the prisoner has a right to be present at the hearing in person or by video conference. If the court does not deny the release within 30 days, it is automatically approved.
- **If prerelease custody is denied:** A prisoner can challenge a warden’s decision that they are not qualified for prerelease custody by filing a written request for reconsideration. The warden has 30 days to respond to the request. If the warden denies the request or does not respond to it within 30 days, the prisoner may submit a written request for

reconsideration to the BOP director. The director has 60 days to respond. If the director denies the request or does not respond to it within 60 days, the prisoner may file a written request for reconsideration with the U.S. District Court that convicted the prisoner. The court can approve or reject the denial of the prisoner's release to prerelease custody.

Allow prisoners cashing in credits to spend them in three types of prerelease custody

If passed into law, the bill would make three types of prerelease custody available to prisoners who can cash in their credits. The BOP would decide which type of custody a prisoner will receive based on guidelines to be created by the attorney general and assistant director of the Office of Probation and Pretrial Services. BOP's goal would be to put the prisoner in increasingly lower levels of supervision to prepare them gradually for release. A prisoner who commits new offenses or violates release conditions in a serious way would have his prerelease custody revoked and be sent back to prison, or have new conditions imposed, as directed by the guidelines set up by the attorney general and assistant director of the Office of Probation and Pretrial Services. The three types of prerelease custody are:

- **Halfway house** (residential reentry center, or RRC). The 12-month cap on halfway house time does not apply to stays in a halfway house during the prerelease custody period.
- **Home confinement** – The person would be placed on 24-hour electronic monitoring (or another type of monitoring) and remain at home except for when he is at activities that the BOP approves (like a job or church). If the person follows all these conditions, BOP can lessen or eliminate the restrictions. A person placed on home confinement for his prerelease custody must remain on home confinement until he has served 85 percent of his imposed prison term. However, the 10 percent/6-month cap on home confinement does not apply to home confinement during the prerelease custody period.
- **Community supervision** – Prisoners could be placed on community supervision for the remainders of their sentences once they have less time left on their prerelease custody period than the time they are eligible for community supervision (in other words, if the person had 180 days of prerelease custody credits to cash in, he could only spend the last 90 of them on community supervision).

People placed on home confinement or community supervision would be supervised by an officer from U.S. Probation and Pretrial Services. Funding for this supervision would be provided by BOP.

Aliens

If passed into law, the bill would make aliens eligible to earn earned time credits, "cash in" those credits, and be put on prerelease custody. However, if aliens have detainers with Immigration and Customs Enforcement (ICE) or are facing deportation, they would be immediately delivered to ICE custody.

Require BOP to develop release plans for each prisoner (Section 408)

The bill, if passed, would require BOP to have at least one employee at each prison that helps prisoners prepare for release and develops release plans for each prisoner.

Permit some elderly offenders to be released early to supervision at home (Section 407)

The bill would re-start the Elderly Offender Early Release Pilot Program created by the Second Chance Act of 2007 and let it run from 2018 to 2022. If passed, the bill would allow either the BOP or an elderly prisoner to request early release onto home detention, if the federal prisoner meets all of the following criteria:

1. He is at least 60 years old;
2. He has served at least two-thirds of the imposed sentence;
3. He is not serving a sentence for one of the crimes that disqualifies a prisoner from earning earned time credits for completing recidivism-reducing programming or productive activities, under the Prison Reform and Rehabilitation Act (H.R. 3356) (see list of exclusions from earned time credits above);
4. He has no prior convictions for any federal or state crime of violence, sex offense, or one of the offenses that excludes a person from earning time credits under the Prison Reform and Rehabilitation Act (H.R. 3356);
5. He does not, according to the BOP, have a history of violence or engaging in conduct constituting a sex offense;
6. He has never escaped or attempted to escape from a BOP facility;
7. The release will, according to the BOP, reduce costs for the government; and
8. He is not, according to the BOP, at substantial risk of reoffending or endangering the public if released.

Permit prisoners to request a compassionate release (Section 407)

Under current law, prisoners can be released early on compassionate release for “extraordinary and compelling circumstances” only if they first file a request with the BOP, and the BOP makes a motion to the court. Many times, though, the BOP does not file motions to the court even when prisoners ask it to; often, people die in prison because the BOP fails to process compassionate release requests. This bill, if passed, would improve that. It would allow a prisoner to file a motion for compassionate release with the court themselves if the BOP does not do so for the prisoner within 30 days of receiving a prisoner’s request for compassionate release.

Prohibit the BOP from shackling pregnant inmates (Section 301)

The bill would, if passed, prohibit the shackling of any pregnant woman while she is in BOP or U.S. Marshals custody. The prohibition would begin on the date the pregnancy is confirmed by a doctor and would end after the end of postpartum recovery (usually, 6 weeks after birth). Restraints may be used if they are necessary to prevent the woman’s flight, harm to herself or others, or for medical reasons. If used, restraints must be the least restrictive possible.

Require BOP to provide secure places for staff to store weapons at each prison (Sections 201- 203)

The bill, if passed, would require each warden to set up a secure storage area outside the perimeter of each prison for correctional employees to store their guns in, and allow correctional employees to carry concealed firearms on the premises outside the prison’s perimeter.

Require de-escalation training for correctional staff (Section 401)

The bill, if passed, would require BOP to train its officers and employees to de-escalate encounters between BOP employees and prisoners and respond appropriately to the needs of prisoners with mental illness or cognitive defects.

Require establishment of plans for opioid and heroin abuse treatment (Section 402)

The bill, if passed, would require BOP and the courts to report on the availability and capacity of medication-assisted treatment of opioid and heroin abuse for prisoners who are on supervised release, and plan how to expand access to that treatment.

Require BOP to ensure communications with lawyers are private (Section 403)

The bill, if passed, would ban the BOP from monitoring any electronic communication between a prisoner and his lawyer.

Require BOP to run pilot programs for rehabilitation (Section 404)

The bill, if passed, would require BOP to set up pilot programs that would run for two years each, in at least 10 prisons. The bill does not list which prisons would get the programs – the BOP would decide. These programs would include:

- Providing mentors from community organizations to prisoners who were under age 21 when they committed their crimes
- Training prisoners to provide training and therapy to animals that have been abandoned, rescued, or seized by the federal government.

Require collection of data on federal prisoners (Section 406)

The bill, if passed, would require the Bureau of Justice Statistics to collect data on the number of federal prisoners who are military veterans; are aliens; have been placed in solitary confinement each year; are pregnant; are single, married, or in a committed relationship; are participating in drug treatment programs; are provided methadone or buprenorphine to treat drug addiction or abuse; are parents of minor children; do not have a GED or high school diploma; received their GED or diploma in prison; speak English as a second language; were restrained during a pregnancy or post-partum recovery; and the lack of mental health and medical professionals in prisons; the number of recidivism-reduction programs BOP entered into with people or organizations in the community; the number of prisons accredited by the American Correctional Association; the facilities with remote learning capabilities; the facilities with video conferencing; and the costs of legal phone calls and visits.