

## **Summary: H.R. 3356, Prison Reform and Redemption Act (115th Congress, 2018)**

**Sponsors:** Representatives Doug Collins (R-GA) and Hakeem Jeffries (D-NY)

**FAMM’s position on H.R. 3356:** FAMM does not endorse H.R. 3356. FAMM of course supports sentencing reform, but we are also supportive of prison reform, so long as the prison reform is evidence-based and effective. We are grateful for the hard work of the bill sponsors, who have carefully listened to our feedback and incorporated some of our suggestions. While the bill makes some important reforms to federal prisons, it should be improved before it advances because

1. **It is unlikely to reduce recidivism** because it gives time credit incentives for completing rehabilitative programs to minimal- and low-risk prisoners who are least likely to reoffend, not to medium- and higher-risk who are more likely to reoffend and more in need of incentives to complete programs. Only minimal- and low-risk prisoners can “cash in” and actually enjoy the time credit incentives they earn, and these prisoners are able to earn more time credits than medium- and high-risk prisoners. This approach is not evidence-based. It is unclear from the bill whether the risk assessment tool the Bureau of Prisons (BOP) would adopt would actually allow people with higher risk levels to move into a lower risk category in which they can “cash in” the time credits they would earn.
2. **The bill’s time credit incentives are not real time off the person’s sentence.** Even those prisoners who would be able to cash in their credits would be unlikely to have a place to go to spend them, because of lack of halfway houses and limited use of home confinement. The most successful BOP rehabilitation program is the residential drug abuse program (RDAP) – and it works and has a 5,000-person waiting list because it gives a one-year sentence reduction to those who complete it. Congress should be following that model in doing prison reform and give people real time off their sentences, not a promise of more of something they already cannot get.
3. **The bill excludes many people from earning and using time credits.** Any person who will return to our communities from prison someday should get time credit incentives for completing rehabilitative programs. The bill excludes many people from earning time credits and excludes many others from redeeming them.

**What the bill would do:** H.R. 3356 would require the BOP to adopt a risk assessment tool, assess all prisoners for their risk of recidivism, and categorize them as minimal, low, medium, or high risk. Some prisoners would be able to earn time credits for completing rehabilitative programs, which minimal- and low-risk prisoners would be allowed to redeem for more time in a halfway house or home confinement at the end of a person’s sentence, so long as their warden does not object in writing. While H.R. 3356 is not evidence-based in the model it follows for awarding credits for recidivism-reduction programming, the bill does have some positive reforms. Below we highlight the good parts of the bill and those that need improvement.

## **Needs improvement:**

1. **Focuses incentives on lower-risk prisoners who do not need incentives to do programs:**
  - a. Minimal- and low-risk prisoners earn 15 days of credits for each 30 days of programming or jobs completed and can “cash in” these credits if they have maintained their risk level for two assessment periods (i.e., 2 years) and the warden does not object in writing to the redemption of their credits;
  - b. Medium- and high-risk prisoners earn 10 days of credits for each 30 days of programming or jobs completed, and cannot “cash in” these credits unless they first reduce their risk levels to minimal or low. Since risk level is heavily determined by static factors that programs do not change (like a person’s criminal record or history of substance abuse), it may be difficult or impossible for some higher-risk people to reduce their risk levels so that they can “cash in” the credits they earn;
  - c. Time credits can be lost if the person violates prison rules;
2. **Earned time credits are not real time off the person’s sentence.** Credits may be cashed in only by minimal- and low-risk prisoners, and only for more time in a halfway house or on home confinement. Once a person is in a halfway house or on home confinement, they can be sent back to prison if they violate the conditions of their confinement;
3. **Excludes many prisoners from earning time credits,** including
  - Any people who were inadmissible or are facing deportation;
  - People serving a sentence for murder (as described in 18 U.S.C. section 1111); manslaughter other than involuntary manslaughter (as described in 18 U.S.C. section 1112); assault with intent to commit murder (as described in 18 U.S.C. section 113(a)); assault with intent to commit rape; aggravated sexual abuse and sexual abuse (as described in 18 U.S.C. sections 2241 and 2242); abusive sexual contact (as described in 18 U.S.C. sections 2244(a)(1) and (a)(2)); kidnapping; aircraft piracy (as described in 18 U.S.C. section 46502 of Title 49); robbery (as described in 18 U.S.C. sections 2111, 2113, or 2118); carjacking (as described in 18 U.S.C. section 2119); extortion; arson; firearms use; or attempt, conspiracy, or solicitation to commit any of the above offenses;
  - People convicted of 18 U.S.C. section 924(c) offenses involving brandishing or discharge of a firearm during a drug trafficking offense or crime of violence, AND
  - People convicted of a second or subsequent 18 U.S.C. section 924(c) offense for possession, brandishing, or discharging a firearm during a drug trafficking offense or crime of violence;
  - People convicted of an offense under 18 U.S.C. sections 1591 (relating to sex trafficking of children), 2241 (relating to aggravated sexual abuse), 2242 (relating to sexual abuse), 2244(a)(1) (relating to abusive sexual contact), 2245 (relating to sexual abuse resulting in death), 2251 (relating to sexual exploitation of children), 2251A (relating to selling or buying of children), 2422(b) (relating to coercion and enticement of a minor into prostitution), or 2423(a) (relating to transportation of minors);
  - People convicted of a crime involving international terrorism, sabotage, or weapons of mass destruction.

## **Positive reforms:**

1. **Attempts to fix good time credit calculation** so that prisoners receive 54 days of good time credit per year, not 47 days, for following prison rules – however, there is some unresolved doubt about whether the bill’s current language will actually fix the calculation problem;
2. **Gives other incentives to prisoners who cannot earn time credits**, including:
  - Up to 510 phone minutes per month (which prisoners must pay for);
  - Additional time for visits, determined by the warden;
  - Addition time using the BOP’s email system (which prisoners must pay for);
  - Transfer to a prison closer to the person’s home, if the warden approves;
  - Increased commissary spending limits and product offerings;
  - Consideration for transfer to preferred housing units;
3. **Requires BOP to put lower-risk, lower-needs people in home confinement** for the full amount of time permitted under current law (10 percent of the person’s sentence or 6 months, whichever is less);
4. **Requires BOP to create a job expansion plan** so that 75 percent of eligible minimal- and low-risk prisoners can work at jobs at least 20 hours per week, within 5 years of the bill’s passage;
5. **Requires the BOP to place prisoners within 500 driving miles, not air miles, of home**, if security classification and bed space allow it;
6. **Reforms the BOP’s compassionate release process** for prisoners facing “extraordinary and compelling” circumstances, including
  - Requiring annual data reporting on BOP’s use of compassionate release;
  - Creating an expedited timeline for BOP consideration of compassionate release requests of terminally ill prisoners;
  - Permitting family members, lawyers, and BOP staff to help prisoners file compassionate release requests;
  - Requiring better notice to BOP staff and prisoners of when compassionate release is available and how to ask for it;
  - Allowing prisoners to appeal denials of compassionate release to federal courts after all other BOP remedies have been exhausted or at least 30 days have passed since the request was submitted;
7. **Authorizes \$50 million in funding per year for 5 years** for rehabilitative programs in federal prisoners;
8. **Requires BOP to help people get government identification** cards and birth certificates before they leave prison;
9. **Reauthorizes an elderly prisoner early release pilot program** from the Second Chance Act of 2007;
10. **Bans shackling of pregnant women** in federal prisons and jails;
11. **Requires BOP to expand programs more quickly**, putting them in place for all eligible prisoners within three years of the bill’s passage. Previous versions of the bill had a longer phase-in of up to 6 years. During this phase-in period, prisoners closest to release get priority for being placed in programs. After the phase-in period, medium- and higher-risk prisoners are given priority to be placed in programs, while jobs are prioritized for minimal- and low-risk prisoners.

**In sum:**

- While H.R. 3356 incentivizes rehabilitation, it does so for federal prisoners who are unlikely to reoffend no matter what. This is unlikely to reduce recidivism – a result that could dissuade future prison reforms and embolden those who believe that “nothing works.” Evidence shows that reducing recidivism requires focusing programs, jobs, and real and meaningful incentives on those most likely, not least likely, to reoffend.
- Earned time credits are not meaningful incentives because of halfway house shortages and underutilization of home confinement.
- H.R. 3356 excludes many federal prisoners from earning time credits.
- H.R. 3356 excludes many federal prisoners from being able to “cash in” the credits they earn, and it is unclear whether these prisoners will be able to reduce their risk levels to do so under the risk assessment tool to be adopted by BOP.