



ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

HONORABLE ROSLYNN R. MAUSKOPF
Director

WASHINGTON, D.C. 20544

January 31, 2022

MEMORANDUM

To: Judges, United States District Courts

From: Judge Roslynn R. Mauskopf *Roslynn R. Mauskopf*

RE: EARLY RELEASE OF INMATES UNDER THE FIRST STEP ACT
(INFORMATION)

I am writing to provide you with information on the recent release of more than 6,000 inmates from the custody of the Federal Bureau of Prisons (BOP) stemming from the implementation of the system of early release credits authorized under the First Step Act of 2018. The enabling [regulations](#) triggering these releases were published without prior notice to the Judiciary on January 13, 2022. Under these regulations, inmates who have earned early release credits equal to or exceeding their remaining prison sentence are eligible to (1) be moved to residential reentry centers, (2) be placed on pre-release home confinement, or (3) commence supervised release. Details on the First Step Act and the new regulations are included in the attached summary. Chief probation officers have been provided with rosters of inmates eligible for early release, and officers are working diligently to facilitate the safe reentry of the individuals who are released.

This influx of new cases comes at a time when probation offices across the country are already experiencing significant workload increases. Recognizing the need for additional resources to meet these new demands, I have authorized AO staff to provide some additional funding from the FY 2022 allotment reserve. This funding is intended to help probation offices hire more staff and support costs of reentry-related services, including transitional housing for homeless individuals. Courts may also experience an increase in requests for modifications to terms of supervised release in response to the risks and needs of individuals released to the community.

Finally, I am concerned about the short notice the courts received on the release of the final regulations, including the substantial changes made between the original draft and final version. Implementing a change of this magnitude in the federal criminal

justice system calls for close coordination between the Executive and Judicial Branches. I have already been in contact with Judge Randolph Moss, chair of the Criminal Law Committee, and we will work to promote better communication with the Department of Justice on these matters.

In the coming days, chief probation officers will receive additional information about the additional funding and other strategies to address this surge in new workload. If you have any questions or concerns about the First Step Act or the early release of inmates from BOP custody, please contact John Fitzgerald, chief of the AO's Probation and Pretrial Services Office at John.Fitzgerald@ao.uscourts.gov or at (202) 502-1625.

Attachment

cc: Chief Probation Officers

Early Release of BOP Inmates under the First Step Act of 2018

Background

The First Step Act of 2018 (P.L. 115-391) was signed by President Trump on December 21, 2018. According to a 2019 [summary](#) by the Congressional Research Service (CRS), the purposes of the Act include:

- Correctional reform via the establishment of a risk and needs assessment and the creation of a system of earned early release credits at the Bureau of Prisons (BOP),
- Sentencing reform via changes to penalties for some federal offenses, and
- The reauthorization of the Second Chance Act of 2007, which established requirements for the BOP to facilitate the reentry of inmates back into the community.

Significant provisions of the Act have already been implemented and have impacted the workload of the courts. For example, the Act:

- Made sentence reductions under the Fair Sentencing Act of 2010 retroactive. This resulted in the courts reducing the sentences of approximately 2,400 inmates.
- Directed the BOP to adjust its calculation of good time credits, and to make those adjustments retroactive. As a result of this provision, approximately 3,100 inmates were released from BOP custody on July 19, 2019.
- Authorized inmates to directly petition the courts for compassionate release. Since this provision was enacted, over 20,000 petitions have been submitted to the courts and more than 3,600 petitions have been granted.

Early Release Credits

Most of the Act centers around the creation of a new risk and needs assessment to be used by the BOP and the creation and implementation of a system of earned early release credits. The new risk and needs assessment, called [PATTERN](#), places inmates into one of four risk categories (Minimum, Low, Moderate, and High).

Under the system of earned early release credits:

- Inmates may participate in “evidence-based recidivism reduction” programs or “productive activities” to earn credits towards their early release.
- Inmates who are categorized as Minimum or Low risk may earn up to 15 days of credits for every 30 days of programming.¹
- Inmates categorized as Moderate or High risk may earn up to 10 days of credits for every 30 days of programming.

¹ As defined in the implementing regulations, inmates complete a “day” of programming for participating in programming for any part of a day.

- Inmates who have two consecutive PATTERN scores of Minimum or Low and have earned credits equal to their remaining prison sentence may use those credits to be placed in a residential reentry center or on home confinement.
- No more than 12 months of earned credits may be applied to the early commencement of supervised release. Note: policy is pending on this (Rule, p. 25).
- The Act identifies 68 offenses of conviction (Rule, p. 29) that would exclude an inmate from earning credit towards early release.

First Step Act Regulations

The Act requires the BOP to issue regulations to implement the system of earned early release credits. The first draft of the regulations was published for comment on November 25, 2020. The BOP received over 250 comments on the proposed regulations, many of which encouraged the BOP to expand how credits get awarded. Public comment on the regulations was reopened on October 18, 2021. The single question for comment was whether DC Code offenders serving time in BOP facilities should be eligible for early release credits. There was no indication during this second public comment period that changes would be made to the original draft rules. The [final regulations](#) were published on January 13, 2022. Despite significant changes from the original draft, the courts were not offered an advance view or briefing on the final version before publication. The chart below illustrates differences between the original draft and final regulations.

Draft Regs	Final Regs
8 hours of programming equals 1 day of programming.	Programming during any part of the day equals 1 day of programming.
Credits start accruing on January 15, 2020.	Credits start accruing on December 21, 2018.
Credits cannot be earned for RDAP, UNICOR, or certain other BOP programs.	Inmates may earn early release credits for these programs.
Inmate must complete the program to earn the credit.	Inmate may earn the credit for participating in the program; credit is not contingent on completion.
Inmates may only earn credits while in BOP facilities; ability to earn credits ends when at RRC or on HC.	Inmates may continue to earn credits while at RRC and on HC.
BOP infractions would result in losing earned credits.	Penalties are reduced for infractions.

The implementation of the final regulations began on January 13, 2022, when they were published on the BOP's website. The BOP supplied the AO with a roster of inmates whose earned credits equaled or exceeded their remaining prison sentences. The roster listed more than

6,900 inmates. Many of the names on the rosters were individuals who were already in the community on pre-release custody at an RRC or on home confinement. Those individuals are immediately eligible to commence supervised release. The rosters also identified individuals still residing within a BOP institution—some of these individuals are eligible to immediately commence supervised release, while others will be moved to community confinement settings earlier than expected based on the application of earned time credits.