

FORMERLY INCARCERATED REENTER SOCIETY TRANS-  
FORMED SAFELY TRANSITIONING EVERY PERSON ACT

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MAY 22, 2018.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

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Mr. GOODLATTE, from the Committee on the Judiciary,  
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 5682]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5682) to provide for programs to help reduce the risk that prisoners will recidivate upon release from prison, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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## The Amendment

The amendment is as follows:

Strike all after the enacting clause and insert the following:

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

(a) **SHORT TITLE.**—This Act may be cited as the “Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act” or the “FIRST STEP Act”.

(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.

#### 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—MISCELLANEOUS CRIMINAL JUSTICE

Sec. 401. Placement of prisoners close to families.  
 Sec. 402. Home confinement for low risk prisoners.  
 Sec. 403. Federal prisoner reentry initiative reauthorization; modification of imposed term of imprisonment.  
 Sec. 404. Identification for returning citizens.  
 Sec. 405. Miscellaneous.  
 Sec. 406. Expanding inmate employment through Federal prison industries.  
 Sec. 407. De-escalation training.  
 Sec. 408. Evidence-based treatment for opioid and heroin abuse.  
 Sec. 409. Pilot programs.  
 Sec. 410. Ensuring supervision of released sexually dangerous persons.  
 Sec. 411. Data collection.  
 Sec. 412. Healthcare products.  
 Sec. 413. Prison rape elimination standards auditors.  
 Sec. 414. Adult and juvenile collaboration programs.

## 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:

#### “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

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

- “(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; and
- “(5) the Director of the National Institute of Corrections.

“(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 the enactment of the FIRST STEP Act;
- “(2) develop recommendations regarding evidence-based recidivism reduction programs and productive activities in accordance with section 3633;
- “(3) conduct ongoing research and data analysis on—
  - “(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 reducing job opportunities for other workers in the United States;

“(4) on an annual basis, review and validate the risk and needs assessment system, which review shall include—

“(A) any subsequent changes to the risk and needs assessment system made after the date of the enactment of this subchapter;

“(B) the recommendations developed under paragraph (2), using the research conducted under paragraph (3);

“(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;

“(D) statistical validation of any tools that the risk and needs assessment system uses; and

“(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;

“(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

“(6) report to Congress in accordance with section 3634.

**“§ 3632. Development of risk and needs assessment system**

“(a) IN GENERAL.—Not later than 180 days after the date of the enactment of the FIRST STEP Act, the Attorney General shall develop and release a risk and needs assessment system (referred to in this subchapter as the ‘System’), which shall be used to—

“(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;

“(2) assess and determine, to the extent practicable, the risk of violent or serious misconduct of each prisoner;

“(3) determine the type, amount, and intensity of evidence-based recidivism reduction programs that are appropriate for each prisoner and assign each prisoner to such programs accordingly, and based on the prisoner’s specific criminogenic needs, and in accordance with subsection (b);

“(4) reassess the recidivism risk of each prisoner periodically and reassign the prisoner to appropriate evidence-based recidivism reduction programs or productive activities based on the revised determination to ensure that—

“(A) all prisoners at each risk level have a meaningful opportunity to reduce their classification during the period of incarceration;

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

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

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

“(6) determine when a prisoner is ready to transfer into prerelease custody in accordance with section 3624(c).

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—

“(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 pris-

oners with a similar risk level be grouped together in housing and assignment decisions to the extent practicable.

“(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.

“(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. Such incentives shall include not less than two 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.

“(ii) A prisoner determined by the Bureau of Prisons to be at a minimum or low risk for recidivating, who, over two 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 the enactment of this Act;

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

“(iii) if that prisoner is an inadmissible or deportable alien under the immigration laws (as such term is defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)).

“(C) APPLICATION OF TIME CREDITS TOWARD PRE-RELEASE CUSTODY.—Time credits earned under this paragraph by prisoners who successfully participate in recidivism reduction programs or productive activities and who have been determined to be at minimum risk or low risk for recidivating pursuant to their last two reassessments shall be applied toward time in pre-release custody. The Director of the Bureau of Prisons shall transfer prisoners described in this subparagraph into prerelease custody, except that the Director of the Bureau of Prisons may deny such a transfer if the warden of the prison finds by clear and convincing evidence that the prisoner should not be transferred into prerelease custody based only on evidence of the prisoner’s actions after the conviction of such prisoner and not based on evidence from the underlying conviction, and submits a detailed written statement regarding such finding to the Director of the Bureau of Prisons.

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

“(i) Section 113(a)(1), relating to assault with intent to commit murder.

“(ii) 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.

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

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

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

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

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

“(viii) 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).

“(ix) Section 842(p), relating to distribution of information relating to explosive, destructive devices, and weapons of mass destruction, but only if the conviction involved a weapon of mass destruction (as defined in section 2332a(c)(2) of such title).

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

“(xi) Section 924(e), relating to unlawful possession of a firearm by a person with 3 or more convictions for a violent felony.

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

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

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

“(xv) Any offense under chapter 77, relating to peonage, slavery, and trafficking in persons, except for sections 1592 through 1596.

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

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

“(xviii) 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.

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

“(xx) Section 2118(c)(2), relating to robberies and burglaries involving controlled substances resulting in death.

“(xxi) Section 2119(3), relating to taking a motor vehicle (commonly referred to as ‘carjacking’) that results in death.

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

“(xxiii) Any section of chapter 109A, relating to sexual abuse, except that with regard to section 2244, only a conviction under subsection (c) of that section (relating to abusive sexual contact involving young children) shall make a prisoner ineligible under this subparagraph.

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

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

“(xxvi) Any of paragraphs (1) through (3) of section 2252(a), relating to certain activities relating to material involving the sexual exploitation of minors.

“(xxvii) A second or subsequent conviction under any of paragraphs (1) through (6) of section 2252A(a), relating to certain activities relating to material constituting or containing child pornography.

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

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

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

“(xxxix) Section 2291, relating to the destruction of a vessel or maritime facility, but only if the conduct which led to the conviction involved a substantial risk of death or serious bodily injury.

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

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

“(xxxix) Section 2381, relating to treason.

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

“(xxxix) 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.

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

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

“(xxxix) 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.

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

“(xli) Section 60123(b) of title 49, United States Code, 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.

“(xlii) Section 401(a) of the Controlled Substances Act (21 U.S.C. 841), relating to manufacturing or distributing a controlled substance, but only 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.

“(xliii) 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.

“(xliv) Any section of the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.)

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

“(xlvi) 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.

“(xlvii) An offense described in section 3559(c)(2)(F), for which the offender was sentenced to a term of imprisonment of more than one year, if the offender has a previous conviction, for which the offender served a term of imprisonment of more than one 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).

“(xlviii) Section 2118(c)(2) of title 18, United States Code, relating to robberies and burglaries involving controlled substances resulting in death.

“(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.

“(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 (e) for prisoners who violate prison rules or evidence-based recidivism reduction program or productive activity rules, which shall provide—

“(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

“(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.

“(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.

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

“Prior to releasing the System, the Attorney General shall—

“(1) review the effectiveness of evidence-based recidivism reduction programs that exist as of the date of the 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

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

**“§ 3634. Report**

“Beginning on the date that is two years after the date of the 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:

“(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—

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

“(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 Act, 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).

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

“(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 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 chapter.

“(7) Recommendations for how to reinvest any savings into other Federal, State, and local law enforcement activities and evidence-based recidivism reduction programs in the Bureau of Prisons.

#### “§ 3635. Definitions

“In this subchapter the following definitions apply:

“(1) 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.

“(2) 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.

“(3) 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) the risk that a prisoner will recidivate upon release from prison; and

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

“(4) PRODUCTIVE ACTIVITY.—The term ‘productive activity’ means either a group or individual activity that is designed to allow prisoners determined as having a low or no 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.”.

(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 System ..... 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.—

“(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 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 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, amount, and intensity 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

“(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 the enactment of the FIRST STEP Act, 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.

“(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:

“(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 actively participate 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,”;

(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 FOR RISK AND NEEDS ASSESSMENT SYSTEM PARTICIPANTS.—

“(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 been classified by the warden of the prison as otherwise qualified to be transferred into prerelease custody; and

“(D)(i) has been determined under the System to be a minimum or low risk to recidivate; or

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

“(I) the prisoner would not be a danger to society if transferred to prerelease custody;

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

“(III) the prisoner is unlikely to recidivate; and

“(IV) the transfer of the prisoner to prerelease custody is otherwise appropriate.

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

“(A) HOME CONFINEMENT.—

“(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 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; or
- “(ff) attend religious activities; 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 alternative 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.

“(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) 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.

“(4) 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.

“(5) 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 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.

“(6) 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 or community supervision 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.

“(7) 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.

“(8) MENTORING SERVICES.—Any prerelease custody into which a prisoner is placed under this subsection may not include a condition prohibiting the prisoner from receiving mentoring 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 require-

ment 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 mentoring services and to the prisoner.

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

“(h) ALIEN PRISONERS SUBJECT TO DEPORTATION.—If a prisoner who is placed in prerelease custody is an alien whose deportation was ordered as a condition of such prerelease custody or who is subject to a detainer filed by United States Immigration and Customs Enforcement for the purposes of determining the alien’s deportability, United States Immigration and Customs Enforcement shall take custody of the alien upon the alien’s transfer to prerelease custody.”.

(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.

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

#### 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:

(1) Whether inmates are being assessed under the risk and needs assessment system with the frequency required under such section 3621.

(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).

(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.

(5) Whether officers and employees of the Bureau of Prisons are receiving the training described in section 3236(f) of title 18, United States Code.

(6) Whether the Bureau of Prisons offers work assignments to all prisoners who might benefit from such an assignment.

(7) Whether the Bureau of Prisons transfers prisoners to prerelease custody as soon as they are eligible for such a transfer under section 3624(g) of title 18, United States Code.

(8) 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.

#### SEC. 104. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to carry out this title \$50,000,000 for each of fiscal years 2019 through 2023. Of the amount appropriated under this subsection, 80 percent shall be reserved for use by the Director of the Bureau of Prisons to implement the system under section 102 and the amendments made by that section.

(b) SAVINGS.—Any savings associated with reductions in recidivism that result from this title should be reinvested—

(1) into evidence-based recidivism reduction programs offered by the Bureau of Prisons; and

(2) into ensuring eligible prisoners have access to such programs and productive activities offered by the Bureau of Prisons.

#### SEC. 105. RULE OF CONSTRUCTION.

Nothing in this Act, or the amendments made by this Act, may be construed to provide authority to place a prisoner in prerelease custody who is serving a term of imprisonment pursuant to a conviction for an offense under the laws of one of the 50 States, or of a territory or possession of the United States.

#### SEC. 106. FAITH-BASED CONSIDERATIONS.

In considering any program, treatment, regimen, group, company, charity, person or entity of any kind under any provision of this Act or the amendments made by

this Act, the fact that it may be or is faith-based may not be a basis for any discrimination against it in any manner or for any purpose.

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

### **SEC. 201. SHORT TITLE.**

This title may be cited as the “Lieutenant Osvaldo Albarati Correctional Officer Self-Protection Act of 2018”.

### **SEC. 202. SECURE FIREARMS STORAGE.**

(a) IN GENERAL.—Chapter 303 of title 18, United States Code, is amended by adding at the end the following:

#### **“§ 4050. Secure firearms storage**

“(a) DEFINITIONS.—In this section—

“(1) the term ‘employee’ means a qualified law enforcement officer employed by the Bureau of Prisons; and

“(2) the terms ‘firearm’ and ‘qualified law enforcement officer’ have the meanings given those terms under section 926B.

“(b) SECURE FIREARMS STORAGE.—The Director of the Bureau of Prisons shall ensure that each chief executive officer of a Federal penal or correctional institution—

“(1)(A) provides a secure storage area located outside of the secure perimeter of the institution for employees to store firearms; or

“(B) allows employees to store firearms in a vehicle lockbox approved by the Director of the Bureau of Prisons; and

“(2) notwithstanding any other provision of law, allows employees to carry concealed firearms on the premises outside of the secure perimeter of the institution.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 303 of title 18, United States Code, as amended by this Act, is further amended by adding at the end the following:

“4050. 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.**

(a) IN GENERAL.—Chapter 317 of title 18, United States Code, is amended by inserting after section 4321 the following:

#### **“§ 4322. Use of restraints on prisoners during the period of pregnancy, labor, and postpartum recovery prohibited**

“(a) PROHIBITION.—Except as provided in subsection (b), beginning on the date on which pregnancy is confirmed by a healthcare professional, and ending at the conclusion of postpartum recovery, a prisoner in the custody of the Bureau of Prisons, or in the custody of the United States Marshals Service pursuant to section 4086, shall not be placed in restraints.

“(b) EXCEPTIONS.—

“(1) IN GENERAL.—The prohibition under subsection (a) shall not apply if—

“(A) an appropriate corrections official, or a United States marshal, as applicable, makes a determination that the prisoner—

“(i) is an immediate and credible flight risk that cannot reasonably be prevented by other means; or

“(ii) poses an immediate and serious threat of harm to herself or others that cannot reasonably be prevented by other means; or

“(B) a health care professional responsible for the health and safety of the prisoner determines that the use of restraints is appropriate for the medical safety of the prisoner.

“(2) LEAST RESTRICTIVE RESTRAINTS.—In the case that restraints are used pursuant to an exception under paragraph (1), only the least restrictive restraints necessary to prevent the harm or risk of escape described in paragraph (1) may be used.

“(3) APPLICATION.—

“(A) IN GENERAL.—The exceptions under paragraph (1) may not be applied—

- “(i) to place restraints around the ankles, legs, or waist of a prisoner;
- “(ii) to restrain a prisoner’s hands behind her back;
- “(iii) to restrain a prisoner using four-point restraints; or
- “(iv) to attach a prisoner to another prisoner.

“(B) MEDICAL REQUEST.—Notwithstanding paragraph (1), upon the request of a healthcare professional who is responsible for the health and safety of a prisoner, a corrections official or United States marshal, as applicable, shall refrain from using restraints on the prisoner or remove restraints used on the prisoner.

“(c) REPORTS.—

“(1) REPORT TO THE DIRECTOR AND HEALTHCARE PROFESSIONAL.—If a corrections official or United States marshal uses restraints on a prisoner under subsection (b)(1), that official or marshal shall submit, not later than 30 days after placing the prisoner in restraints, to the Director of the Bureau of Prisons or the Director of the United States Marshals Service, as applicable, and to the healthcare professional responsible for the health and safety of the prisoner, a written report which describes the facts and circumstances surrounding the use of restraints, and includes—

- “(A) the reasoning upon which the determination to use restraints was made;
- “(B) the details of the use of restraints, including the type of restraints used and length of time during which restraints were used; and
- “(C) any resulting physical effects on the prisoner observed by or known to the corrections official or United States marshal, as applicable.

“(2) SUPPLEMENTAL REPORT TO THE DIRECTOR.—Upon receipt of a report under subsection (c)(1), the healthcare professional responsible for the health and safety of the prisoner may submit to the Director such information as the healthcare professional determines is relevant to the use of restraints on the prisoner.

“(3) REPORT TO JUDICIARY COMMITTEES.—

“(A) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Director of the Bureau of Prisons and the Director of the United States Marshals Service shall each submit to the Judiciary Committee of the Senate and of the House of Representatives a report that certifies compliance with this section and includes the information required to be reported under paragraph (1).

“(B) PERSONALLY IDENTIFIABLE INFORMATION.—The report under this paragraph shall not contain any personally identifiable information of any prisoner.

“(d) NOTICE.—Not later than 48 hours after the confirmation of a prisoner’s pregnancy by a health care professional, that prisoner shall be notified by an appropriate health care professional, corrections official, or United States marshal, as applicable, of the restrictions on the use of restraints under this section.

“(e) VIOLATION REPORTING PROCESS.—The Director of the Bureau of Prisons, in consultation with the Director of the United States Marshals Service, shall establish a process through which a prisoner may report a violation of this section.

“(f) TRAINING.—

“(1) IN GENERAL.—The Director of the Bureau of Prisons and the Director of the United States Marshals Service shall each develop training guidelines regarding the use of restraints on female prisoners during the period of pregnancy, labor, and postpartum recovery, and shall incorporate such guidelines into appropriate training programs. Such training guidelines shall include—

- “(A) how to identify certain symptoms of pregnancy that require immediate referral to a health care professional;
- “(B) circumstances under which the exceptions under subsection (b) would apply;
- “(C) in the case that an exception under subsection (b) applies, how to apply restraints in a way that does not harm the prisoner, the fetus, or the neonate;
- “(D) the information required to be reported under subsection (c); and
- “(E) the right of a health care professional to request that restraints not be used, and the requirement under subsection (b)(3)(B) to comply with such a request.

“(2) DEVELOPMENT OF GUIDELINES.—In developing the guidelines required by paragraph (1), the Directors shall each consult with health care professionals with expertise in caring for women during the period of pregnancy and postpartum recovery.

“(g) DEFINITIONS.—For purposes of this section:

“(1) The term ‘postpartum recovery’ means the twelve-week period, or longer as determined by the healthcare professional responsible for the health and safety of the prisoner, following delivery, and shall include the entire period that the prisoner is in the hospital or infirmary.

“(2) The term ‘restraints’ means any physical or mechanical device used to control the movement of a prisoner’s body, limbs, or both.

“(3) 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, including a person in a Bureau of Prisons contracted facility.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 317 of title 18, United States Code, is amended by adding after the item relating to section 4321 the following:

“4322. Use of restraints on prisoners during the period of pregnancy, labor, and postpartum recovery prohibited.”.

## TITLE IV—MISCELLANEOUS CRIMINAL JUSTICE

### SEC. 401. PLACEMENT OF PRISONERS CLOSE TO FAMILIES.

Subsection (b) of section 3621 of title 18, United States Code, is amended by striking “shall designate the place of the prisoner’s imprisonment.” and inserting “shall designate the place of the prisoner’s imprisonment, and shall, subject to bed availability, the prisoner’s security designation, the prisoner’s programmatic needs, and the prisoner’s mental and medical health needs, place the prisoner in a facility as close as practicable to the prisoner’s primary residence, but, in any case, not more than 500 driving miles from the prisoner’s primary residence. Subject to bed availability and the prisoner’s security designation, the Bureau shall transfer prisoners to facilities that are closer to the prisoner’s primary residence even if the prisoner is already in a facility within 500 driving miles of that residence, unless the prisoner chooses to remain at his or her current facility.”.

### SEC. 402. HOME CONFINEMENT FOR LOW RISK PRISONERS.

Section 3624(c)(2) of title 18, United States Code, is amended by adding at the end the following: “The Bureau of Prisons shall, to the extent practicable, place prisoners with lower risk levels and lower needs on home confinement for the maximum amount of time permitted under this paragraph.”.

### SEC. 403. FEDERAL PRISONER REENTRY INITIATIVE REAUTHORIZATION; MODIFICATION OF IMPOSED TERM OF IMPRISONMENT.

(a) FEDERAL PRISONER REENTRY INITIATIVE REAUTHORIZATION.—Section 231(g) of the Second Chance Act of 2007 (34 U.S.C. 60541(g)) is amended—

(1) in paragraph (1)—

(A) by inserting “and eligible terminally ill offenders” after “elderly offenders” each place the term appears; and

(B) in subparagraph (B), by inserting “, upon written request from either the Bureau of Prisons or an eligible elderly offender or eligible terminally ill offender” after “to home detention”;

(2) in paragraph (2), by inserting “or eligible terminally ill offender” after “elderly offender”;

(3) in paragraph (3)—

(A) by striking “at least one Bureau of Prisons facility” and inserting “Bureau of Prisons facilities”; and

(B) by striking “and shall be carried out during fiscal years 2009 and 2010” and inserting “and shall be carried out during fiscal years 2019 through 2022”;

(4) in paragraph (4)—

(A) by inserting “or eligible terminally ill offender” after “each eligible elderly offender”; and

(B) by inserting “and eligible terminally ill offenders” after “eligible elderly offenders”; and

(5) in paragraph (5)—

(A) in subparagraph (A)—

(i) in clause (i), striking “65 years of age” and inserting “60 years of age”;

(ii) in clause (ii)—

(I) by striking “the greater of 10 years or”; and

(II) by striking “75 percent” and inserting “ $\frac{2}{3}$ ”; and

(iii) in clause (vii), by inserting before the period at the end the following: “, and beginning on the date that is 2 years after the date on which the Bureau of Prisons has completed the initial intake risk and needs assessment for each prisoner under section 3621(h)(1)(A) of title 18, United States Code, has been determined to have a minimum or low risk of recidivism based on 2 consecutive assessments described in such section 3621”; and

(B) by adding at the end the following:

“(D) ELIGIBLE TERMINALLY ILL OFFENDER.—The term ‘eligible terminally ill offender’ means an offender in the custody of the Bureau of Prisons who—

“(i) is serving a term of imprisonment based on conviction for an offense or offenses that do not include any crime of violence (as defined in section 16(a) of title 18, United States Code), sex offense (as defined in section 111(5) of the Sex Offender Registration and Notification Act (34 U.S.C. 20911(5))), offense described in section 2332b(g)(5)(B) of title 18, United States Code, or offense under chapter 37 of title 18, United States Code;

“(ii) satisfies the criteria specified in clauses (iii) through (vii) of subparagraph (A); and

“(iii) has been determined by a medical doctor approved by the Bureau of Prisons to be—

“(I) in need of care at a nursing home, intermediate care facility, or assisted living facility, as those terms are defined in section 232 of the National Housing Act (12 U.S.C. 1715w); or

“(II) diagnosed with a terminal illness.”.

(b) INCREASING THE USE AND TRANSPARENCY OF COMPASSIONATE RELEASE.—Section 3582 of title 18, United States Code, is amended—

(1) in subsection (c)(1)(A), in the matter preceding clause (i), by inserting after “Bureau of Prisons,” the following: “or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier,”;

(2) by redesignating subsection (d) as subsection (e); and

(3) by inserting after subsection (c) the following:

“(d) NOTIFICATION REQUIREMENTS.—

“(1) TERMINAL ILLNESS DEFINED.—In this subsection, the term ‘terminal illness’ means a disease or condition with an end-of-life trajectory.

“(2) NOTIFICATION.—The Bureau of Prisons shall, subject to any applicable confidentiality requirements—

“(A) in the case of a defendant diagnosed with a terminal illness—

“(i) not later than 72 hours after the diagnosis notify the defendant’s attorney, partner, and family members of the defendant’s condition and inform the defendant’s attorney, partner, and family members that they may prepare and submit on the defendant’s behalf a request for a sentence reduction pursuant to subsection (c)(1)(A);

“(ii) not later than 7 days after the date of the diagnosis, provide the defendant’s partner and family members (including extended family) with an opportunity to visit the defendant in person;

“(iii) upon request from the defendant or his attorney, partner, or a family member, ensure that Bureau of Prisons employees assist the defendant in the preparation, drafting, and submission of a request for a sentence reduction pursuant to subsection (c)(1)(A); and

“(iv) not later than 14 days of receipt of a request for a sentence reduction submitted on the defendant’s behalf by the defendant or the defendant’s attorney, partner, or family member, process the request;

“(B) in the case of a defendant who is physically or mentally unable to submit a request for a sentence reduction pursuant to subsection (c)(1)(A)—

“(i) inform the defendant’s attorney, partner, and family members that they may prepare and submit on the defendant’s behalf a request for a sentence reduction pursuant subsection (c)(1)(A);

“(ii) accept and process a request for sentence reduction that has been prepared and submitted on the defendant’s behalf by the defendant’s attorney, partner, or family member under clause (i); and

“(iii) upon request from the defendant or his attorney, partner, or family member, ensure that Bureau of Prisons employees assist the de-

defendant in the preparation, drafting, and submission of a request for a sentence reduction pursuant subsection (c)(1)(A); and

“(C) ensure that all Bureau of Prisons facilities regularly and visibly post, including in prisoner handbooks, staff training materials, and facility law libraries and medical and hospice facilities, and make available to prisoners upon demand, notice of—

“(i) a defendant’s ability to request a sentence reduction pursuant to subsection (c)(1)(A);

“(ii) the procedures and timelines for initiating and resolving requests described in clause (i); and

“(iii) the right to appeal a denial of a request described in clause (i) after all administrative rights to appeal within the Bureau of Prisons have been exhausted.

“(3) ANNUAL REPORT.—Not later than 1 year after the date of enactment of this subsection, and once every year thereafter, the Director of the Bureau of Prisons shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on requests for sentence reductions pursuant to subsection (c)(1)(A), which shall include a description of, for the previous year—

“(A) the number of prisoners granted and denied sentence reductions, categorized by the criteria relied on as the grounds for a reduction in sentence;

“(B) the number of requests initiated by or on behalf of prisoners, categorized by the criteria relied on as the grounds for a reduction in sentence;

“(C) the number of requests which Bureau of Prisons employees assisted prisoners in drafting, preparing, or submitting, categorized by the criteria relied on as the grounds for a reduction in sentence, and the final decision made in each request;

“(D) the number of requests which attorneys, partners, or family members submitted on a defendant’s behalf, categorized by the criteria relied on as the grounds for a reduction in sentence, and the final decision made in each request;

“(E) the number of requests approved by the Director of the Bureau of Prisons, categorized by the criteria relied on as the grounds for a reduction in sentence;

“(F) the number of requests denied by the Director of the Bureau of Prisons and the reasons given for each denial, categorized by the criteria relied on as the grounds for a reduction in sentence;

“(G) for each request, the time elapsed between the date the request was received by the warden and the final decision, categorized by the criteria relied on as the grounds for a reduction in sentence;

“(H) for each request, the number of prisoners who died while their request was pending and, for each, the amount of time that had elapsed between the date the request was received by the Bureau of Prisons, categorized by the criteria relied on as the grounds for a reduction in sentence;

“(I) the number of Bureau of Prisons notifications to attorneys, partners, and family members of their right to visit a terminally ill defendant as required under paragraph (2)(A)(ii) and, for each, whether a visit occurred and how much time elapsed between the notification and the visit;

“(J) the number of visits to terminally ill prisoners that were denied by the Bureau of Prisons due to security or other concerns, and the reasons given for each denial; and

“(K) the number of motions filed by defendants with the court after all administrative rights to appeal a denial of a sentence reduction had been exhausted, the outcome of each motion, and the time that had elapsed between the date the request was first received by the Bureau of Prisons and the date the defendant filed the motion with the court.”.

**SEC. 404. IDENTIFICATION FOR RETURNING CITIZENS.**

(a) IDENTIFICATION AND RELEASE ASSISTANCE FOR FEDERAL PRISONERS.—Section 231(b) of the Second Chance Act of 2007 (34 U.S.C. 60541(b)) is amended—

(1) in paragraph (1)—

(A) by striking “(including” and inserting “prior to release from a term of imprisonment in a Federal prison or if the individual was not sentenced to a term of imprisonment in a Federal prison, prior to release from a sentence to a term in community confinement, including”; and

(B) by striking “(or birth certificate) prior to release” and inserting “and a birth certificate”; and

(2) by adding at the end the following:

“(4) DEFINITION.—In this subsection, the term ‘community confinement means’ residence in a community treatment center, halfway house, restitution center, mental health facility, alcohol or drug rehabilitation center, or other community facility.”.

(b) DUTIES OF THE BUREAU OF PRISONS.—Section 4042(a) of title 18, United States Code, is amended—

(1) by redesignating paragraphs (D) and (E) as paragraphs (6) and (7), respectively;

(2) in paragraph (6) (as so redesignated)—

(A) in clause (i)—

(i) by striking “Social Security Cards,”; and

(ii) by striking “and” at the end;

(B) by redesignating clause (ii) as clause (iii);

(C) by inserting after clause (i) the following:

“(ii) obtain identification, including a social security card, driver’s license or other official photo identification, and a birth certificate; and”;

(D) in clause (iii) (as so redesignated), by inserting after “prior to release” the following: “from a sentence to a term of imprisonment in a Federal prison or if the individual was not sentenced to a term of imprisonment in a Federal prison, prior to release from a sentence to a term of community confinement”; and

(E) by redesignating clauses (i), (ii), and (iii) (as so amended) as subparagraphs (A), (B), and (C), respectively; and

(3) in paragraph (7) (as so redesignated), by redesignating clauses (i) through (vii) as subparagraphs (A) through (G), respectively.

#### SEC. 405. MISCELLANEOUS.

(a) REPEAL.—Section 4351 of title 18, United States Code, is repealed.

(b) CONFORMING AMENDMENT.—Section 4352 of title 18, United States Code, is amended in subsection (a), by striking “National Institute of Corrections” and inserting “National Institute of Justice”.

(c) STRIKE RELATED TO FUNCTIONS OF THE NATIONAL INSTITUTE OF CORRECTIONS.—The Department of Justice Appropriations Act, 1997 (Title I, Div. A, Public Law 104–208, 110 Stat. 3009–11) is amended under the heading “Federal Prison System, Salaries and Expenses” by striking the eighth proviso (pertaining to the budget and functions of the National Institute of Corrections).

#### SEC. 406. EXPANDING INMATE EMPLOYMENT THROUGH FEDERAL PRISON INDUSTRIES.

(a) NEW MARKET AUTHORIZATIONS.—Chapter 307 of title 18, United States Code, is amended by inserting after section 4129 the following:

##### “§ 4130. Additional markets

“(a) IN GENERAL.—Notwithstanding any other provision of law, Federal Prison Industries may sell products to—

“(1) public entities for use in penal or correctional institutions;

“(2) public entities for use in disaster relief or emergency response;

“(3) the government of the District of Columbia; and

“(4) any organization described in section 501(c)(3), (c)(4), or (d) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of such Code.

“(b) DEFINITIONS.—In this section:

“(1) The term ‘public entity’ means a State, a subdivision of a State, an Indian tribe, and an agency or governmental corporation or business of any of the foregoing.

“(2) The term ‘State’ means a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, and the United States Virgin Islands.”.

(b) TECHNICAL AMENDMENT.—The table of sections for chapter 307 of title 18, United States Code, is amended by inserting after the item relating to section 4129 the following:

“4130. Additional markets.”.

(c) DEFERRED COMPENSATION.—Section 4126(c)(4) of title 18, United States Code, is amended by inserting after “operations,” the following: “not less than 15 percent of such compensation for any inmate shall be reserved in the fund or a separate account and made available to assist the inmate with costs associated with release from prison.”.

#### SEC. 407. DE-ESCALATION TRAINING.

Beginning not later than 1 year after the date of the enactment of this Act, the Director of the Bureau of Prisons shall incorporate into training programs provided

to officers and employees of the Bureau of Prisons (including officers and employees of an organization with which the Bureau of Prisons has a contract to provide services relating to imprisonment) specialized and comprehensive training in procedures to—

(1) de-escalate encounters between a law enforcement officer or an officer or employee of the Bureau of Prisons, and a civilian or a prisoner (as such term is defined in section 106 of this Act); and

(2) identify and appropriately respond to incidents that involve the unique needs of individuals who have a mental illness or cognitive deficit.

**SEC. 408. EVIDENCE-BASED TREATMENT FOR OPIOID AND HEROIN ABUSE.**

(a) **REPORT ON EVIDENCE-BASED TREATMENT FOR OPIOID AND HEROIN ABUSE.**—Not later than 90 days after the date of the enactment of this Act, the Director of the Bureau of Prisons shall submit to the Committees on the Judiciary and the Committees on Appropriations of the Senate and of the House of Representatives a report assessing the availability of and the capacity of the Bureau of Prisons to treat heroin and opioid abuse through evidence-based programs, including medication-assisted treatment where appropriate. In preparing the report, the Director shall consider medication-assisted treatment as a strategy to assist in treatment where appropriate and not as a replacement for holistic and other drug-free approaches. The report shall include a description of plans to expand access to evidence-based treatment for heroin and opioid abuse for prisoners, including access to medication-assisted treatment in appropriate cases. Following submission, the Director shall take steps to implement these plans.

(b) **REPORT ON THE AVAILABILITY OF MEDICATION-ASSISTED TREATMENT FOR OPIOID AND HEROIN ABUSE, AND IMPLEMENTATION THEREOF.**—Not later than 120 days after the date of the enactment of this Act, the Director of the Administrative Office of the United States Courts shall submit to the Committees on the Judiciary and the Committees on Appropriations of the Senate and of the House of Representatives a report assessing the availability of and capacity for the provision of medication-assisted treatment for opioid and heroin abuse by treatment-service providers serving prisoners who are serving a term of supervised release, and including a description of plans to expand access to medication assisted treatment for heroin and opioid abuse whenever appropriate among prisoners under supervised release. Following submission, the Director will take steps to implement these plans.

**SEC. 409. PILOT PROGRAMS.**

(a) **IN GENERAL.**—The Bureau of Prisons shall establish each of the following pilot programs for 5 years, in at least 20 facilities:

(1) **MENTORSHIP FOR YOUTH.**—A program to pair youth with volunteers from faith-based or community organizations, which may include formerly incarcerated offenders, that have relevant experience or expertise in mentoring, and a willingness to serve as a mentor in such a capacity.

(2) **SERVICE TO ABANDONED, RESCUED, OR OTHERWISE VULNERABLE ANIMALS.**—A program to equip prisoners with the skills to provide training and therapy to animals seized by Federal law enforcement under asset forfeiture authority and to organizations that provide shelter and similar services to abandoned, rescued, or otherwise vulnerable animals.

(b) **REPORTING REQUIREMENT.**—Not later than one year after the conclusion of the pilot programs, the Attorney General shall report to Congress on the results of the pilot programs under this section. Such report shall include cost savings, numbers of participants, and information about recidivism rates among participants.

(c) **DEFINITION.**—In this title, the term “youth” means a prisoner (as such term is defined in section 106) who was 21 years of age or younger at the time of the commission or alleged commission of the criminal offense for which the individual is being prosecuted or serving a term of imprisonment, as the case may be.

**SEC. 410. ENSURING SUPERVISION OF RELEASED SEXUALLY DANGEROUS PERSONS.**

(a) **PROBATION OFFICERS.**—Section 3603 of title 18, United States Code, is amended in paragraph (8)(A) by striking “or 4246” and inserting “, 4246, or 4248”.

(b) **PRETRIAL SERVICES OFFICERS.**—Section 3154 of title 18, United States Code, is amended in paragraph (12)(A) by striking “or 4246” and inserting “, 4246, or 4248”.

**SEC. 411. DATA COLLECTION.**

(a) **NATIONAL PRISONER STATISTICS PROGRAM.**—Beginning not later than one year after the date of the enactment of this Act, and annually thereafter, pursuant to the authority under section 302 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3732), the Director of the Bureau of Justice Statistics, with information that shall be provided by the Director of the Bureau of Prisons, shall include in the National Prisoner Statistics Program the following:

- (1) The number of prisoners (as such term is defined in section 106 of this Act) who are veterans of the Armed Forces of the United States.
  - (2) The number of prisoners who have been placed in solitary confinement at any time during the previous year.
  - (3) The number of female prisoners known by the Bureau of Prisons to be pregnant, as well as the outcomes of such pregnancies, including information on pregnancies that result in live-birth, still-birth, miscarriage, abortion, ectopic pregnancy, maternal death, neonatal death, and preterm birth.
  - (4) The numbers of prisoners who volunteered to participate in a substance abuse treatment program, and the number of prisoners who have participated in such a program.
  - (5) The number of prisoners provided methadone or buprenorphine while in custody in order to manage withdrawal or to continually treat substance dependence and abuse.
  - (6) The number of prisoners who were receiving methadone or buprenorphine therapy prior to the commencement of their term of imprisonment.
  - (7) The number of prisoners who are the parent or guardian of a minor child.
  - (8) The numbers of prisoners who are single, married, or otherwise in a committed relationship.
  - (9) The number of prisoners who have not achieved a GED, high school diploma, or equivalent prior to entering prison.
  - (10) The number of prisoners who, during the previous year, received their GED or other equivalent certificate while incarcerated.
  - (11) The numbers of prisoners for whom English is a second language.
  - (12) The number of incidents, during the previous year, in which restraints were used on a female prisoner during pregnancy, labor, or postpartum recovery, as well as information relating to the type of restraints used, and the circumstances under which each incident occurred.
  - (13) The vacancy rate for medical and health care staff positions, and average length of such a vacancy.
  - (14) The number of facilities that operated, at any time during the previous year, without at least one clinical nurse, certified paramedic, or licensed physician on-site.
  - (15) The number of facilities that during the previous year were accredited by the American Correctional Association.
  - (16) The number and type of recidivism reduction partnerships described in section 3621(h)(5) of title 18, United States Code, entered into by each facility.
  - (17) The number of facilities with remote learning capabilities.
  - (18) The number of facilities that offer prisoners video conferencing.
  - (19) Any changes in costs related to legal phone calls and visits following implementation of section 403 of this Act.
  - (20) The number of aliens in prison during the previous year.
  - (21) For each Bureau of Prisons facility, the total number of violations that resulted in reductions in rewards, incentives, or time credits, the number of such violations for each category of violation, and the demographic breakdown of the prisoners who have received such reductions.
  - (22) The number of assaults on Bureau of Prison staff by prisoners and the number of criminal prosecutions of prisoners for assaulting Bureau of Prison staff.
  - (23) The capacity of each recidivism reduction program and productive activity to accommodate eligible inmates at each Bureau of Prisons facility.
  - (24) The number of volunteers who were certified to volunteer in a Bureau of Prisons facility, broken down by level (level I and level II), and by each Bureau of Prisons facility.
  - (25) The number of prisoners enrolled in recidivism reduction programs and productive activities at each Bureau of Prisons facility, broken down by risk level and by program, and the number of those enrolled prisoners who successfully completed each program.
  - (26) The breakdown of prisoners classified at each risk level by demographic characteristics, including age, sex, race, and the length of the sentence imposed.
- (b) REPORT TO JUDICIARY COMMITTEES.—Beginning not later than one year after the date of the enactment of this Act, and annually thereafter for a period of 7 years, the Director of the Bureau of Justice Statistics shall submit a report containing the information described in paragraphs (1) through (26) of subsection (a) to the Committees on the Judiciary of the House of Representatives and of the Senate.

**SEC. 412. HEALTHCARE PRODUCTS.**

(a) **AVAILABILITY.**—The Director of the Bureau of Prisons shall make the healthcare products described in subsection (c) available to prisoners for free, in a quantity that is appropriate to the healthcare needs of each prisoner.

(b) **QUALITY PRODUCTS.**—The Director shall ensure that the healthcare products provided under this section conform with applicable industry standards.

(c) **PRODUCTS.**—The healthcare products described in this subsection are tampons and sanitary napkins.

**SEC. 413. PRISON RAPE ELIMINATION STANDARDS AUDITORS.**

Section 8(e)(8) of the Prison Rape Elimination Act of 2003 (34 U.S.C. 30307(e)(8)) is amended to read as follows:

“(8) **STANDARDS FOR AUDITORS.**—

“(A) **IN GENERAL.**—

“(i) **BACKGROUND CHECKS FOR AUDITORS.**—An individual seeking certification by the Department of Justice to serve as an auditor of prison compliance with the national standards described in subsection (a) shall, upon request, submit fingerprints in the manner determined by the Attorney General for criminal history record checks of the applicable State and Federal Bureau of Investigation repositories.

“(ii) **CERTIFICATION AGREEMENTS.**—Each auditor certified under this paragraph shall sign a certification agreement that includes the provisions of, or provisions that are substantially similar to, the Bureau of Justice Assistance’s Auditor Certification Agreement in use in April 2018.

“(iii) **AUDITOR EVALUATION.**—The PREA Management Office of the Bureau of Justice Assistance shall evaluate all auditors based on the criteria contained in the certification agreement. In the case that an auditor fails to comply with a certification agreement or to conduct audits in accordance with the PREA Auditor Handbook, audit methodology, and instrument approved by the PREA Management Office, the Office may take remedial or disciplinary action, as appropriate, including decertifying the auditor in accordance with subparagraph (B).

“(B) **AUDITOR DECERTIFICATION.**—

“(i) **IN GENERAL.**—The PREA Management Office may suspend an auditor’s certification during an evaluation of an auditor’s performance under subparagraph (A)(iii). The PREA Management Office shall promptly publish the names of auditors who have been decertified, and the reason for decertification. Auditors who have been decertified or are on suspension may not participate in audits described in subsection (a), including as an agent of a certified auditor.

“(ii) **NOTIFICATION.**—In the case that an auditor is decertified, the PREA Management Office shall inform each facility or agency at which the auditor performed an audit during the relevant three-year audit cycle, and may recommend that the agency repeat any affected audits, if appropriate.

“(C) **AUDIT ASSIGNMENTS.**—The PREA Management Office shall establish a system, to be administered by the Office, for assigning certified auditors to Federal, State, and local facilities.

“(D) **DISCLOSURE OF DOCUMENTATION.**—The Director of the Bureau of Prisons shall comply with each request for documentation necessary to conduct an audit under subsection (a), which is made by a certified auditor in accordance with the provisions of the certification agreement described in subparagraph (A)(ii). The Director of the Bureau of Prisons may require an auditor to sign a confidentiality agreement or other agreement designed to address the auditor’s use of personally identifiable information, except that such an agreement may not limit an auditor’s ability to provide all such documentation to the Department of Justice, as required under section 115.401(j) of title 28, Code of Federal Regulations.”

**SEC. 414. ADULT AND JUVENILE COLLABORATION PROGRAMS.**

Section 2991 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10651) is amended—

(1) by striking subsection (b)(4)(D);

(2) in subsection (e), by striking “may use up to 3 percent” and inserting “shall use not less than 6 percent”; and

(3) by amending subsection (g) to read as follows:

“(g) **COLLABORATION SET ASIDE.**—The Attorney General shall use not less than 8 percent of funds appropriated to provide technical assistance to State and local governments receiving grants under this part to foster collaboration between such gov-

ernments in furtherance of the purposes set forth in section 3 of the Mentally Ill Offender Treatment and Crime Reduction Act of 2004 (34 U.S.C. 10651 note).”.

### **Purpose and Summary**

H.R. 5682 will enhance public safety by improving the effectiveness and efficiency of the Federal prison system with offender risk and needs assessment, individual risk reduction incentives and rewards, and risk and recidivism reduction. It also makes various changes to Bureau of Prisons’ policies and procedures to ensure prisoner and guard safety and security.

### **Background and Need for the Legislation**

The federal prison system needs to be reformed through the implementation of corrections policy reforms designed to enhance public safety by improving the effectiveness and efficiency of the federal prison system in order to control corrections spending, manage the prison population, and reduce recidivism.

According to the Bureau of Prisons (BOP), over the past five calendar years, they have released 224,425 prisoners from their facilities.<sup>1</sup> These inmates were released regardless of their risk to recidivate and regardless of what programming they received while incarcerated. Their sentences had simply concluded. We know that the vast majority of federal prisoners will one day be released from BOP custody regardless of what efforts are taken to reduce their risk of recidivism. The United States Sentencing Commission analyzed data on 25,400 former inmates who were either released outright from BOP custody or placed on probation in 2005. Their report found 49.3% had been arrested within the next eight years. Among the same set of offenders, during the same period, 31.7% had been re-convicted, with 24.7% of them also re-incarcerated.<sup>2</sup> The data indicates that unless the government acts to reduce the recidivism rate among federal inmates, there is a strong possibility that former prisoners will recidivate and be rearrested or end up re-incarcerated. Not only is it in the fiscal interest of the government to reduce recidivism, it is in the public safety interest as well. It is estimated that the implementation of this bill will create significant cost savings. It is imperative that the savings created be reinvested into the evidence-based recidivism reduction programs offered by the Bureau of Prisons and to ensure that eligible prisoners have access to such programs and productive activities offered by the Bureau of Prisons.

In January 2016, the Congressionally mandated Charles Colson Task Force on Federal Corrections (CCTF) determined that:

Lengthy waitlists indicate that BOP needs to immediately expand occupational training and educational programs. Research shows that such programs hold significant promise to reduce recidivism and improve individual outcomes following release, making their expansion all the more urgent. Research suggests that earning a working wage as a component of prison industry participation may

<sup>1</sup>Numbers do not include inmates who have released to the custody of another custodial jurisdiction such as a treaty transfer, a release to a state for service of sentence, or release to ICE for detention/deportation.

<sup>2</sup>See [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism\\_overview.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism_overview.pdf)

enhance such program's effectiveness in reducing recidivism and improving employment outcomes. To increase the availability of occupational training opportunities, the Task Force also recommends that Congress expand the Federal Prison Industry's (FPI) authority, including increasing reliance on FPI products by federal agencies.

Addressing the CCTF findings, the Committee is very concerned that inmate participation in prison industry over the last eight years has plummeted from a decades long track record of 25% of eligible inmates participating to less than 8% today, coupled with dozens of industry factories, which provide meaningful inmate work opportunities, being shut down across the country. It is the hope of the Committee that provisions within this legislation and other legislative initiatives will reverse the decline in inmate participation in prison industry.

The Committee believes that this precipitous decline in inmate prison industry employment levels, system-wide, can be tracked to the passage of specific legislative initiatives. The Committee strongly believes that without addressing the damage these legislative initiatives have caused, and reversing same, that it will be difficult to implement many of the recidivism reduction programming goals of this bill.

Moreover, the Committee is deeply concerned with the increased burden to taxpayers for the burgeoning costs of inmate incarceration, which has also led to increased pressure on the Department's budget and other important Department priorities being forced into competition for these limited funds.

BOP has a growing prison population that, because of its rising costs, is becoming a real and immediate threat to public safety. The growing prison budget is consuming an ever-increasing percentage of the Department of Justice's budget. According to the Statement of the Department's Inspector General before Congress on March 14, 2013, concerning oversight of the Department of Justice: "it is clear that something must be done . . . the Department cannot solve this challenge by spending more money to operate more federal prisons unless it is prepared to make drastic cuts to other important areas of the Department's operations."<sup>3</sup>

Further, according to the Department's Criminal Division in 2013:

Now with the sequester, the challenges for federal criminal justice have increased dramatically and the choices we all face—Congress, the Judiciary, the Executive Branch—are that much clearer and more stark: control federal prison spending or see significant reductions in the resources available for all non-prison criminal justice areas. If the current spending trajectory continues and we do not reduce the prison population and prison spending, there will continue to be fewer and fewer prosecutors to bring charges, fewer agents to investigate federal crimes, less support to state and local criminal justice partners, less

<sup>3</sup> <http://www.justice.gov/oig/testimony/t1303.pdf>. "Drastic cuts" in DOJ budgets may directly impact the investigative and prosecutorial resources in areas such as counterterrorism, cybercrimes, financial fraud, crimes against children, drug trafficking and other vital areas of current DOJ focus.

support to treatment, prevention and intervention programs, and cuts along a range of other criminal justice priorities. . .

Taken together, reductions in public safety spending that have already occurred and that are likely to continue in the coming years mean that the remarkable public safety achievements of the last 20 years are threatened unless reforms are instituted to make our public safety expenditures smarter and more productive.<sup>4</sup>

### Hearings

The Committee on the Judiciary held no hearings on H.R. 5682.

### Committee Consideration

On May 9, 2018, the Committee met in open session and ordered the bill (H.R. 5682) favorably reported, with amendments, by a roll call vote of 25 to 5, a quorum being present.

### Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee's consideration of H.R. 5682.

1. An amendment offered by Mr. Cohen to make permanent a pilot program was defeated by a roll call vote of 14 to 15.

### ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Goodlatte (VA), Chairman .....		X	
Mr. Sensenbrenner, Jr. (WI) .....			
Mr. Smith (TX) .....			
Mr. Chabot (OH) .....			
Mr. Issa (CA) .....			
Mr. King (IA) .....		X	
Mr. Gohmert (TX) .....		X	
Mr. Jordan (OH) .....		X	
Mr. Poe (TX) .....			
Mr. Marino (PA) .....		X	
Mr. Gowdy (SC) .....			
Mr. Labrador (ID) .....			
Mr. Collins (GA) .....		X	
Mr. DeSantis (FL) .....		X	
Mr. Buck (CO) .....		X	
Mr. Ratcliffe (TX) .....		X	
Ms. Roby (AL) .....		X	
Mr. Gaetz (FL) .....		X	
Mr. Johnson (LA) .....		X	
Mr. Biggs (AZ) .....			
Mr. Rutherford (FL) .....		X	
Ms. Handel (GA) .....		X	
Mr. Rothfus (PA) .....		X	

<sup>4</sup> <http://www.justice.gov/criminal/foia/docs/2013annual-letter-final-071113.pdf>.

**ROLLCALL NO. 1—Continued**

	<b>Ayes</b>	<b>Nays</b>	<b>Present</b>
Mr. Nadler (NY), Ranking Member .....	X		
Ms. Lofgren (CA) .....	X		
Ms. Jackson Lee (TX) .....	X		
Mr. Cohen (TN) .....	X		
Mr. Johnson (GA) .....	X		
Mr. Deutch (FL) .....	X		
Mr. Gutierrez (IL) .....			
Ms. Bass (CA) .....			
Mr. Richmond (LA) .....	X		
Mr. Jeffries (NY) .....	X		
Mr. Cicilline (RI) .....	X		
Mr. Swalwell (CA) .....			
Mr. Lieu (CA) .....	X		
Mr. Raskin (MD) .....	X		
Ms. Jayapal (WA) .....	X		
Mr. Schneider (IL) .....	X		
Ms. Demings (FL) .....	X		
<b>Total</b> .....	<b>14</b>	<b>15</b>	

2. Motion to report H.R. 5682 favorably to the House. Approved 25 to 5.

**ROLLCALL NO. 2**

	<b>Ayes</b>	<b>Nays</b>	<b>Present</b>
Mr. Goodlatte (VA), Chairman .....	X		
Mr. Sensenbrenner, Jr. (WI) .....			
Mr. Smith (TX) .....			
Mr. Chabot (OH) .....	X		
Mr. Issa (CA) .....	X		
Mr. King (IA) .....		X	
Mr. Gohmert (TX) .....	X		
Mr. Jordan (OH) .....	X		
Mr. Poe (TX) .....	X		
Mr. Marino (PA) .....	X		
Mr. Gowdy (SC) .....			
Mr. Labrador (ID) .....			
Mr. Collins (GA) .....	X		
Mr. DeSantis (FL) .....	X		
Mr. Buck (CO) .....	X		
Mr. Ratcliffe (TX) .....	X		
Ms. Roby (AL) .....			
Mr. Gaetz (FL) .....	X		
Mr. Johnson (LA) .....	X		
Mr. Biggs (AZ) .....			
Mr. Rutherford (FL) .....	X		
Ms. Handel (GA) .....			
Mr. Rothfus (PA) .....	X		
Mr. Nadler (NY), Ranking Member .....		X	

**ROLLCALL NO. 2—Continued**

	<b>Ayes</b>	<b>Nays</b>	<b>Present</b>
Ms. Lofgren (CA) .....	X		
Ms. Jackson Lee (TX) .....		X	
Mr. Cohen (TN) .....	X		
Mr. Johnson (GA) .....	X		
Mr. Deutch (FL) .....	X		
Mr. Gutierrez (IL) .....			
Ms. Bass (CA) .....			
Mr. Richmond (LA) .....	X		
Mr. Jeffries (NY) .....	X		
Mr. Cicilline (RI) .....	X		
Mr. Swalwell (CA) .....			
Mr. Lieu (CA) .....	X		
Mr. Raskin (MD) .....		X	
Ms. Jayapal (WA) .....		X	
Mr. Schneider (IL) .....	X		
Ms. Demings (FL) .....	X		
<b>Total</b> .....	<b>25</b>	<b>5</b>	

**Committee Oversight Findings**

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

**New Budget Authority and Tax Expenditures**

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

**Congressional Budget Office Cost Estimate**

The Congressional Budget Office did not provide a cost estimate at the time of this printing.

**Duplication of Federal Programs**

No provision of H.R. 5682 establishes or reauthorizes a program of the Federal government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

**Disclosure of Directed Rule Makings**

The Committee finds that H.R. 5682 contains no directed rule making within the meaning of 5 U.S.C. 551.

### **Performance Goals and Objectives**

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 5682 will enhance public safety by improving the effectiveness and efficiency of the Federal prison system with offender risk and needs assessment, individual risk reduction incentives and rewards, and risk and recidivism reduction.

### **Advisory on Earmarks**

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 5682 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

### **Section-by-Section Analysis**

The following discussion describes the bill as reported by the Committee.

*Section 1. Short Title; Table of Contents.* Section 1 sets forth the short title for the bill as the “Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Prisoner (FIRST STEP) Act” and sets forth the table of contents.

*Title I. Recidivism Reduction Act.*

*Sec. 101. Risk and Needs Assessment System.*

Directs the Attorney General to conduct a review of the risk and needs assessment system used by the Bureau of Prisons’ and develop recommendations on recidivism reduction programs and productive activities; to conduct ongoing research and data analysis on the programming and its effectiveness; to conduct biennial reviews of the system and recommendations; and to report to Congress.

Requires the Attorney General to develop and release a risk and needs assessment system that will: (1) determine the recidivism risk level (minimum, low, medium, or high) of each prisoner at intake; (2) assess and determine the risk of violent or serious misconduct of each prisoner; (3) determine the type, amount, and intensity of programming for each prisoner and assign programming accordingly; (4) reassess each prisoner periodically and adjust programming assignments accordingly; and (5) determine when a prisoner is ready to transfer into prerelease custody. In developing the risk and needs assessment system, the Attorney General may use existing tools as appropriate.

The Attorney General should review the risk and needs assessment system annually and validate any tools it uses in consultation with the Director of the Bureau of Prisons and the Director of the National Institute of Justice. Further, the Attorney General should ensure that the risk and needs assessment system does not result in any unwarranted disparities. In developing the system, researchers and stakeholders with expertise in risk assessment systems should evaluate, review and provide recommendations or improvement of the tool before it is implemented in order to ensure that decisions are made using the data based on the best available statistical and empirical evidence. Furthermore, the Attorney Gen-

eral should make every effort to make the system transparent and publicly available.

The risk and needs assessment system used by the Bureau of Prisons following enactment of this Act should provide that prisoners with similar risk levels are grouped together in housing and assignment decisions to the extent practicable.

Establishes incentives and rewards for prisoners to participate in programming and activities. This includes increased family phone and visitation privileges, transfer to an institution closer to the inmate's release residence, and earned time credits. Further, the Bureau of Prisons is instructed to develop additional policies to provide appropriate incentives for successful participation in programming, which may include increased commissary spending limits and product offerings, extended opportunities to access the email system, and direct placement in home confinement for minimum security level inmates who completed recommended programming.

Prisoners shall earn 10 days of time credits for each 30 days of successful participation in recidivism risk reduction programming or activities. A prisoner that is classified as minimum or low risk for recidivating and who has not increased their risk of recidivism over two reassessments can earn an additional five days (for a total of 15 days).

A prisoner may not earn time credits for programming or activities participated in before enactment of this Act and before the prisoner's sentence commences. Makes prisoners ineligible to earn time credits if the prisoner is serving a sentence for conviction of certain offenses. Allows times credits earned under this Act to be applied toward time in community-based confinement.

Requires prisoners with an anticipated release date within five years to be reassessed more frequently. If a reassessment shows that a prisoner's risk of recidivating has changed, the Bureau of Prisons should update the prisoner's classification and reassign the prisoner to appropriate recidivism reduction programming based on the changes. Requires BOP to establish guidelines for reducing rewards and incentives for prisoners who violate prison, program, or activity rules, and for restoring those rewards and incentives based on individual progress.

Requires the Attorney General to develop training programs for BOP officials and employees related to the implementation and operation of the System and to conduct periodic audits of the System.

*Sec. 102. Implementation of System and Recommendations by Bureau of Prisons.*

Directs the BOP to: (1) implement the System and complete a risk and needs assessment for each prisoner; (2) expand the effective programs it offers and add any new ones necessary to effectively implement the System; (3) phase in such programs within 2 years; and (4) develop policies for the warden of each prison to enter into partnerships with specified nonprofit organizations, institutions of higher education, and private entities to expand such programs. The Bureau of Prisons shall partner with non-profits, including faith-based organizations, offering free and volunteer programming as a means of bolstering its prison program offerings. Such program partnerships do not violate existing rules regarding augmenting Bureau of Prisons appropriations.

Sets forth requirements for prerelease custody for risk and needs assessment system participants to include those who have earned time credits, have displayed and maintained a lower recidivism risk, and have been classified by the warden of the prison as qualified to be transferred into prerelease custody. Allows such prisoners to be placed in prerelease custody, including home confinement and halfway homes. Requires the Attorney General to consult with the Assistant Director for the Office of Probation and Pretrial Services to issue guidelines for Bureau of Prisons' use to determine the appropriate prerelease custody for prisoners as well as consequences for violating prerelease custody conditions. Further requires the Director of the Bureau of Prisons to enter into agreements with the United States Probation and Pretrial Services to supervise prisoners placed in home confinement under this subsection. When the Director of the Bureau of Prisons places a prisoner in a residential reentry center, he can place such conditions as he determines appropriate. This can include alternate means of monitoring that are as effective as, or more effective than, the electronic monitoring described in this Act. The Committee urges the Bureau of Prisons and the Office of Probation and Pretrial Services to protect public safety by ensuring enough officers are monitoring these systems to be able to promptly respond to alerts of violations of release conditions, that all alerts are so responded to, and that sufficient oversight is undertaken of the electronic devices used in the monitoring to prevent systematic malfunctions.

Allows prisoners to receive mentoring services from a person that provided those services to the prisoner while incarcerated.

Directs the Attorney General to review the effectiveness of existing programs in prisons operated by the BOP and in state-operated prisons and may direct the BOP regarding programming and activity and the replication of effective programs.

Directs the Attorney General to submit an annual report about the activities undertaken as a result of this Act.

*Sec. 103. GAO Report.*

Requires 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.

*Sec. 104. Authorization of Appropriations.*

Authorizes \$50 million from 2019 to 2023 to carry out the activities described in the Act.

*Sec. 105. Rule of Construction.*

Sets forth that nothing in this Act may be construed to provide authority to place a prisoner on prerelease custody who is serving a term of imprisonment for a non-federal crime.

*Sec. 106. Faith-Based Considerations.*

Makes clear that faith-based organizations cannot be discriminated against for any purpose under any provision of this Act.

*Title II. Bureau of Prisons Secure Firearms Storage*

*Sec. 201. Short Title.*

Sets forth the short title for Title IV as the “Lieutenant Osvaldo Albarati Correctional Officer Self-Protection Act of 2017.”

*Sec. 202. Secure firearms storage.*

Requires the Director of BOP to provide a secure storage area outside the secure perimeter of the facility for employees to store firearms or to allow the employee to place firearms in secure storage boxes within vehicles.

*Title III. Restraints on pregnant prisoners prohibited Sec. 301. Use of Restraints on Prisoners During the Period of Pregnancy and Postpartum Recovery Prohibited.*

Prohibits the use of restraints on prisoners during the period of pregnancy and postpartum recovery. The prohibition shall not apply if the prisoner is determined to be an immediate and credible flight risk or poses an immediate and serious threat of harm to herself, the fetus, or others.

*Title IV. Miscellaneous Criminal Justice.*

*Sec. 401. Placement of Prisoners Close to Families.*

Provides that prisoners should be placed in a facility as close as practicable to the prisoner’s primary residence, but not more than 500 driving miles from the prisoner’s primary residence subject to bed availability, the prisoner’s security designation, the prisoner’s programmatic needs, and the prisoner’s mental and medical health needs, or if the prisoner chooses to remain in a facility further away.

*Sec. 402. Home Confinement for Low-risk Prisoners.*

Requires the Bureau of Prisons to place prisoners with lower risk levels and needs on home confinement for the maximum amount of time permitted.

*Sec. 403. Federal Prisoner Reentry Initiative Reauthorization; Modification of Imposed Term of Imprisonment.*

Allows for a pilot program for the compassionate release to home detention of elderly and terminally ill offenders. Requires the Director of the Bureau of Prisons to provide an annual report describing requests and releases made under this subsection, as well as additional information.

*Sec. 404. Identification for Returning Citizens.*

Requires that, prior to release from a Federal prison, an individual should be provided with his or her birth certificate and photo identification.

*Sec. 405. Miscellaneous.*

Transfers the National Institute of Corrections to become a sub-component of the National Institute of Justice.

*Sec. 406. Expanding Inmate Employment through Federal Prison Industries.*

Authorizes new markets for Federal prison industries, including public entities for use in penal or correctional institutions or disaster relief, the government of the District of Columbia, and any 501(c)(3), (c)(4), or (d) tax-exempt organization. Allows for the creation of escrow accounts in which prisoners may store a portion of compensation from the Federal prison industries to be used following release from custody. Any expansion of federal prison industries into new markets should prioritize the manufacture of products purchased by public entities that are manufactured overseas and could be manufactured by prisoners participating in a prison work program without reducing job opportunities for other workers in the United States.

*Sec. 407. De-escalation Training.*

Requires BOP to provide de-escalation training as part of the regular training requirements of correctional officers.

*Sec. 408. Evidence-based Treatment for Opioid and Heroin Abuse.*

Requires BOP to submit a report and evaluation of the current pilot program to treat heroin and opioid abuse through medication assisted treatment.

*Sec. 409. Pilot Programs.*

Requires BOP to establish two pilot programs. The first is a mentorship program for youth and the second is for the training and therapy of abandoned, rescued, or otherwise vulnerable animals.

*Sec. 410. Ensuring Supervision of Released Sexually Dangerous Persons.*

Provides U.S. Probation and Pretrial Services the authority to supervise sexually dangerous persons who have been conditionally released from civil commitment.

*Sec. 411. Data Collection.*

Establishes for BOP a statistical and demographic data reporting requirement. This data must be provided Congress annually for seven years and as part of the National Prisoner Statistics Program.

*Sec. 412. Healthcare Products.*

Requires BOP to provide feminine hygiene products to female inmates at no cost.

*Sec. 413. Prison Rape Elimination Standards Auditors.*

Requires all auditors to sign an Auditor Certification Agreement clarifies the Department's PREA Management Office (PMO) has the authority to ensure that auditors uphold the standards spelled out in the Auditor Certification Agreement. Permits the PMO to take remedial and disciplinary action when auditors do not fulfill their obligations, namely suspension and decertification of auditors who clearly disregard the standards to which they are required to adhere.

*Sec. 414. Adult and Juvenile Collaboration Programs.*

Raises the training and technical assistance cap for the Mentally Ill Offender Treatment and Crime Reduction Act's (MIOTCRA) Justice and Mental Health Collaboration Program (JMHCP) to no less than six percent of appropriated funds (up from the current cap of three percent). To ensure that Bureau of Justice Assistance and TTA providers can keep pace with the demand for assistance from counties and states, the proposal sets a minimum of eight percent of appropriated funds.

**Changes in Existing Law Made by the Bill, as Reported**

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

**TITLE 18, UNITED STATES CODE**

\* \* \* \* \*

**PART II—CRIMINAL PROCEDURE**

\* \* \* \* \*

**CHAPTER 207—RELEASE AND DETENTION PENDING JUDICIAL PROCEEDINGS**

\* \* \* \* \*

**§ 3154. Functions and powers relating to pretrial services**

Pretrial services functions shall include the following:

(1) Collect, verify, and report to the judicial officer, prior to the pretrial release hearing, information pertaining to the pretrial release of each individual charged with an offense, including information relating to any danger that the release of such person may pose to any other person or the community, and, where appropriate, include a recommendation as to whether such individual should be released or detained and, if release is recommended, recommend appropriate conditions of release; except that a district court may direct that information not be collected, verified, or reported under this paragraph on individuals charged with Class A misdemeanors as defined in section 3559(a)(6) of this title.

(2) Review and modify the reports and recommendations specified in paragraph (1) of this section for persons seeking release pursuant to section 3145 of this chapter.

(3) Supervise persons released into its custody under this chapter.

(4) Operate or contract for the operation of appropriate facilities for the custody or care of persons released under this chapter including residential halfway houses, addict and alcoholic treatment centers, and counseling services, and contract with any appropriate public or private agency or person, or expend

funds, to monitor and provide treatment as well as nontreatment services to any such persons released in the community, including equipment and emergency housing, corrective and preventative guidance and training, and other services reasonably deemed necessary to protect the public and ensure that such persons appear in court as required.

(5) Inform the court and the United States attorney of all apparent violations of pretrial release conditions, arrests of persons released to the custody of providers of pretrial services or under the supervision of providers of pretrial services, and any danger that any such person may come to pose to any other person or the community, and recommend appropriate modifications of release conditions.

(6) Serve as coordinator for other local agencies which serve or are eligible to serve as custodians under this chapter and advise the court as to the eligibility, availability, and capacity of such agencies.

(7) Assist persons released under this chapter in securing any necessary employment, medical, legal, or social services.

(8) Prepare, in cooperation with the United States marshal and the United States attorney such pretrial detention reports as are required by the provisions of the Federal Rules of Criminal Procedure relating to the supervision of detention pending trial.

(9) Develop and implement a system to monitor and evaluate bail activities, provide information to judicial officers on the results of bail decisions, and prepare periodic reports to assist in the improvement of the bail process.

(10) To the extent provided for in an agreement between a chief pretrial services officer in districts in which pretrial services are established under section 3152(b) of this title, or the chief probation officer in all other districts, and the United States attorney, collect, verify, and prepare reports for the United States attorney's office of information pertaining to the pretrial diversion of any individual who is or may be charged with an offense, and perform such other duties as may be required under any such agreement.

(11) Make contracts, to such extent and in such amounts as are provided in appropriation Acts, for the carrying out of any pretrial services functions.

(12)(A) As directed by the court and to the degree required by the regimen of care or treatment ordered by the court as a condition of release, keep informed as to the conduct and provide supervision of a person conditionally released under the provisions of section 4243 [or 4246], 4246, or 4248 of this title, and report such person's conduct and condition to the court ordering release and the Attorney General or his designee.

(B) Any violation of the conditions of release shall immediately be reported to the court and the Attorney General or his designee.

(13) If approved by the district court, be authorized to carry firearms under such rules and regulations as the Director of the Administrative Office of the United States Courts may prescribe.

(14) Perform, in a manner appropriate for juveniles, any of the functions identified in this section with respect to juveniles awaiting adjudication, trial, or disposition under chapter 403 of this title who are not detained.

(15) Perform such other functions as specified under this chapter.

\* \* \* \* \*

**CHAPTER 227—SENTENCES**

\* \* \* \* \*

**SUBCHAPTER D—IMPRISONMENT**

\* \* \* \* \*

**§ 3582. Imposition of a sentence of imprisonment**

(a) **FACTORS TO BE CONSIDERED IN IMPOSING A TERM OF IMPRISONMENT.**—The court, in determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term, shall consider the factors set forth in section 3553(a) to the extent that they are applicable, recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation. In determining whether to make a recommendation concerning the type of prison facility appropriate for the defendant, the court shall consider any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2).

(b) **EFFECT OF FINALITY OF JUDGMENT.**—Notwithstanding the fact that a sentence to imprisonment can subsequently be—

- (1) modified pursuant to the provisions of subsection (c);
- (2) corrected pursuant to the provisions of rule 35 of the Federal Rules of Criminal Procedure and section 3742; or
- (3) appealed and modified, if outside the guideline range, pursuant to the provisions of section 3742;

a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes.

(c) **MODIFICATION OF AN IMPOSED TERM OF IMPRISONMENT.**—The court may not modify a term of imprisonment once it has been imposed except that—

- (1) in any case—

(A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—

- (i) extraordinary and compelling reasons warrant such a reduction; or

(ii) the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g);

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission; and

(B) the court may modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure; and

(2) in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

(d) *NOTIFICATION REQUIREMENTS.*—

(1) *TERMINAL ILLNESS DEFINED.*—*In this subsection, the term “terminal illness” means a disease or condition with an end-of-life trajectory.*

(2) *NOTIFICATION.*—*The Bureau of Prisons shall, subject to any applicable confidentiality requirements—*

(A) *in the case of a defendant diagnosed with a terminal illness—*

(i) *not later than 72 hours after the diagnosis notify the defendant’s attorney, partner, and family members of the defendant’s condition and inform the defendant’s attorney, partner, and family members that they may prepare and submit on the defendant’s behalf a request for a sentence reduction pursuant to subsection (c)(1)(A);*

(ii) *not later than 7 days after the date of the diagnosis, provide the defendant’s partner and family members (including extended family) with an opportunity to visit the defendant in person;*

(iii) *upon request from the defendant or his attorney, partner, or a family member, ensure that Bureau of Prisons employees assist the defendant in the preparation, drafting, and submission of a request for a sentence reduction pursuant to subsection (c)(1)(A); and*

(iv) *not later than 14 days of receipt of a request for a sentence reduction submitted on the defendant’s behalf by the defendant or the defendant’s attorney, partner, or family member, process the request;*

(B) *in the case of a defendant who is physically or mentally unable to submit a request for a sentence reduction pursuant to subsection (c)(1)(A)—*

(i) inform the defendant's attorney, partner, and family members that they may prepare and submit on the defendant's behalf a request for a sentence reduction pursuant subsection (c)(1)(A);

(ii) accept and process a request for sentence reduction that has been prepared and submitted on the defendant's behalf by the defendant's attorney, partner, or family member under clause (i); and

(iii) upon request from the defendant or his attorney, partner, or family member, ensure that Bureau of Prisons employees assist the defendant in the preparation, drafting, and submission of a request for a sentence reduction pursuant subsection (c)(1)(A); and

(C) ensure that all Bureau of Prisons facilities regularly and visibly post, including in prisoner handbooks, staff training materials, and facility law libraries and medical and hospice facilities, and make available to prisoners upon demand, notice of—

(i) a defendant's ability to request a sentence reduction pursuant to subsection (c)(1)(A);

(ii) the procedures and timelines for initiating and resolving requests described in clause (i); and

(iii) the right to appeal a denial of a request described in clause (i) after all administrative rights to appeal within the Bureau of Prisons have been exhausted.

(3) ANNUAL REPORT.—Not later than 1 year after the date of enactment of this subsection, and once every year thereafter, the Director of the Bureau of Prisons shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on requests for sentence reductions pursuant to subsection (c)(1)(A), which shall include a description of, for the previous year—

(A) the number of prisoners granted and denied sentence reductions, categorized by the criteria relied on as the grounds for a reduction in sentence;

(B) the number of requests initiated by or on behalf of prisoners, categorized by the criteria relied on as the grounds for a reduction in sentence;

(C) the number of requests which Bureau of Prisons employees assisted prisoners in drafting, preparing, or submitting, categorized by the criteria relied on as the grounds for a reduction in sentence, and the final decision made in each request;

(D) the number of requests which attorneys, partners, or family members submitted on a defendant's behalf, categorized by the criteria relied on as the grounds for a reduction in sentence, and the final decision made in each request;

(E) the number of requests approved by the Director of the Bureau of Prisons, categorized by the criteria relied on as the grounds for a reduction in sentence;

(F) the number of requests denied by the Director of the Bureau of Prisons and the reasons given for each denial,

*categorized by the criteria relied on as the grounds for a reduction in sentence;*

*(G) for each request, the time elapsed between the date the request was received by the warden and the final decision, categorized by the criteria relied on as the grounds for a reduction in sentence;*

*(H) for each request, the number of prisoners who died while their request was pending and, for each, the amount of time that had elapsed between the date the request was received by the Bureau of Prisons, categorized by the criteria relied on as the grounds for a reduction in sentence;*

*(I) the number of Bureau of Prisons notifications to attorneys, partners, and family members of their right to visit a terminally ill defendant as required under paragraph (2)(A)(ii) and, for each, whether a visit occurred and how much time elapsed between the notification and the visit;*

*(J) the number of visits to terminally ill prisoners that were denied by the Bureau of Prisons due to security or other concerns, and the reasons given for each denial; and*

*(K) the number of motions filed by defendants with the court after all administrative rights to appeal a denial of a sentence reduction had been exhausted, the outcome of each motion, and the time that had elapsed between the date the request was first received by the Bureau of Prisons and the date the defendant filed the motion with the court.*

**[(d)] (e) INCLUSION OF AN ORDER TO LIMIT CRIMINAL ASSOCIATION OF ORGANIZED CRIME AND DRUG OFFENDERS.**—The court, in imposing a sentence to a term of imprisonment upon a defendant convicted of a felony set forth in chapter 95 (racketeering) or 96 (racketeer influenced and corrupt organizations) of this title or in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 et seq.), or at any time thereafter upon motion by the Director of the Bureau of Prisons or a United States attorney, may include as a part of the sentence an order that requires that the defendant not associate or communicate with a specified person, other than his attorney, upon a showing of probable cause to believe that association or communication with such person is for the purpose of enabling the defendant to control, manage, direct, finance, or otherwise participate in an illegal enterprise.

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**CHAPTER 229—POSTSENTENCE ADMINISTRATION**

Subchapter .....	Sec.
A. Probation .....	3601
* * * * *	
D. <i>Risk and Needs Assessment System</i> .....	3631

**SUBCHAPTER A—PROBATION**

\* \* \* \* \*

**§ 3603. Duties of probation officers**

A probation officer shall—

- (1) instruct a probationer or a person on supervised release, who is under his supervision, as to the conditions specified by

the sentencing court, and provide him with a written statement clearly setting forth all such conditions;

(2) keep informed, to the degree required by the conditions specified by the sentencing court, as to the conduct and condition of a probationer or a person on supervised release, who is under his supervision, and report his conduct and condition to the sentencing court;

(3) use all suitable methods, not inconsistent with the conditions specified by the court, to aid a probationer or a person on supervised release who is under his supervision, and to bring about improvements in his conduct and condition;

(4) be responsible for the supervision of any probationer or a person on supervised release who is known to be within the judicial district;

(5) keep a record of his work, and make such reports to the Director of the Administrative Office of the United States Courts as the Director may require;

(6) upon request of the Attorney General or his designee, assist in the supervision of and furnish information about, a person within the custody of the Attorney General while on work release, furlough, or other authorized release from his regular place of confinement, or while in prerelease custody pursuant to the provisions of section 3624(c);

(7) keep informed concerning the conduct, condition, and compliance with any condition of probation, including the payment of a fine or restitution of each probationer under his supervision and report thereon to the court placing such person on probation and report to the court any failure of a probationer under his supervision to pay a fine in default within thirty days after notification that it is in default so that the court may determine whether probation should be revoked;

(8)(A) when directed by the court, and to the degree required by the regimen of care or treatment ordered by the court as a condition of release, keep informed as to the conduct and provide supervision of a person conditionally released under the provisions of section 4243 [or 4246], 4246, or 4248 of this title, and report such person's conduct and condition to the court ordering release and to the Attorney General or his designee; and

(B) immediately report any violation of the conditions of release to the court and the Attorney General or his designee;

(9) if approved by the district court, be authorized to carry firearms under such rules and regulations as the Director of the Administrative Office of the United States Courts may prescribe; and

(10) perform any other duty that the court may designate.

\* \* \* \* \*

SUBCHAPTER C—IMPRISONMENT

\* \* \* \* \*

**§ 3621. Imprisonment of a convicted person**

(a) COMMITMENT TO CUSTODY OF BUREAU OF PRISONS.—A person who has been sentenced to a term of imprisonment pursuant to the

provisions of subchapter D of chapter 227 shall be committed to the custody of the Bureau of Prisons until the expiration of the term imposed, or until earlier released for satisfactory behavior pursuant to the provisions of section 3624.

(b) PLACE OF IMPRISONMENT.—The Bureau of Prisons [shall designate the place of the prisoner's imprisonment.] *shall designate the place of the prisoner's imprisonment, and shall, subject to bed availability, the prisoner's security designation, the prisoner's programmatic needs, and the prisoner's mental and medical health needs, place the prisoner in a facility as close as practicable to the prisoner's primary residence, but, in any case, not more than 500 driving miles from the prisoner's primary residence. Subject to bed availability and the prisoner's security designation, the Bureau shall transfer prisoners to facilities that are closer to the prisoner's primary residence even if the prisoner is already in a facility within 500 driving miles of that residence, unless the prisoner chooses to remain at his or her current facility.* The Bureau may designate any available penal or correctional facility that meets minimum standards of health and habitability established by the Bureau, whether maintained by the Federal Government or otherwise and whether within or without the judicial district in which the person was convicted, that the Bureau determines to be appropriate and suitable, considering—

- (1) the resources of the facility contemplated;
- (2) the nature and circumstances of the offense;
- (3) the history and characteristics of the prisoner;
- (4) any statement by the court that imposed the sentence—
  - (A) concerning the purposes for which the sentence to imprisonment was determined to be warranted; or
  - (B) recommending a type of penal or correctional facility as appropriate; and
- (5) any pertinent policy statement issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28.

In designating the place of imprisonment or making transfers under this subsection, there shall be no favoritism given to prisoners of high social or economic status. The Bureau may at any time, having regard for the same matters, direct the transfer of a prisoner from one penal or correctional facility to another. The Bureau shall make available appropriate substance abuse treatment for each prisoner the Bureau determines has a treatable condition of substance addiction or abuse. Any order, recommendation, or request by a sentencing court that a convicted person serve a term of imprisonment in a community corrections facility shall have no binding effect on the authority of the Bureau under this section to determine or change the place of imprisonment of that person.

(c) DELIVERY OF ORDER OF COMMITMENT.—When a prisoner, pursuant to a court order, is placed in the custody of a person in charge of a penal or correctional facility, a copy of the order shall be delivered to such person as evidence of this authority to hold the prisoner, and the original order, with the return endorsed thereon, shall be returned to the court that issued it.

(d) DELIVERY OF PRISONER FOR COURT APPEARANCES.—The United States marshal shall, without charge, bring a prisoner into court or return him to a prison facility on order of a court of the

United States or on written request of an attorney for the Government.

(e) SUBSTANCE ABUSE TREATMENT.—

(1) PHASE-IN.—In order to carry out the requirement of the last sentence of subsection (b) of this section, that every prisoner with a substance abuse problem have the opportunity to participate in appropriate substance abuse treatment, the Bureau of Prisons shall, subject to the availability of appropriations, provide residential substance abuse treatment (and make arrangements for appropriate aftercare)—

(A) for not less than 50 percent of eligible prisoners by the end of fiscal year 1995, with priority for such treatment accorded based on an eligible prisoner's proximity to release date;

(B) for not less than 75 percent of eligible prisoners by the end of fiscal year 1996, with priority for such treatment accorded based on an eligible prisoner's proximity to release date; and

(C) for all eligible prisoners by the end of fiscal year 1997 and thereafter, with priority for such treatment accorded based on an eligible prisoner's proximity to release date.

(2) INCENTIVE FOR PRISONERS' SUCCESSFUL COMPLETION OF TREATMENT PROGRAM.—

(A) GENERALLY.—Any prisoner who, in the judgment of the Director of the Bureau of Prisons, has successfully completed a program of residential substance abuse treatment provided under paragraph (1) of this subsection, shall remain in the custody of the Bureau under such conditions as the Bureau deems appropriate. If the conditions of confinement are different from those the prisoner would have experienced absent the successful completion of the treatment, the Bureau shall periodically test the prisoner for substance abuse and discontinue such conditions on determining that substance abuse has recurred.

(B) PERIOD OF CUSTODY.—The period a prisoner convicted of a nonviolent offense remains in custody after successfully completing a treatment program may be reduced by the Bureau of Prisons, but such reduction may not be more than one year from the term the prisoner must otherwise serve.

(3) REPORT.—The Bureau of Prisons shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives on January 1, 1995, and on January 1 of each year thereafter, a report. Such report shall contain—

(A) a detailed quantitative and qualitative description of each substance abuse treatment program, residential or not, operated by the Bureau;

(B) a full explanation of how eligibility for such programs is determined, with complete information on what proportion of prisoners with substance abuse problems are eligible; and

(C) a complete statement of to what extent the Bureau has achieved compliance with the requirements of this title.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to carry out this subsection such sums as may be necessary for each of fiscal years 2007 through 2011.

(5) DEFINITIONS.—As used in this subsection—

(A) the term “residential substance abuse treatment” means a course of individual and group activities and treatment, lasting at least 6 months, in residential treatment facilities set apart from the general prison population (which may include the use of pharmacotherapies, where appropriate, that may extend beyond the 6-month period);

(B) the term “eligible prisoner” means a prisoner who is—

(i) determined by the Bureau of Prisons to have a substance abuse problem; and

(ii) willing to participate in a residential substance abuse treatment program; and

(C) the term “aftercare” means placement, case management and monitoring of the participant in a community-based substance abuse treatment program when the participant leaves the custody of the Bureau of Prisons.

(6) COORDINATION OF FEDERAL ASSISTANCE.—The Bureau of Prisons shall consult with the Department of Health and Human Services concerning substance abuse treatment and related services and the incorporation of applicable components of existing comprehensive approaches including relapse prevention and aftercare services.

(f) SEX OFFENDER MANAGEMENT.—

(1) IN GENERAL.—The Bureau of Prisons shall make available appropriate treatment to sex offenders who are in need of and suitable for treatment, as follows:

(A) SEX OFFENDER MANAGEMENT PROGRAMS.—The Bureau of Prisons shall establish non-residential sex offender management programs to provide appropriate treatment, monitoring, and supervision of sex offenders and to provide aftercare during pre-release custody.

(B) RESIDENTIAL SEX OFFENDER TREATMENT PROGRAMS.—The Bureau of Prisons shall establish residential sex offender treatment programs to provide treatment to sex offenders who volunteer for such programs and are deemed by the Bureau of Prisons to be in need of and suitable for residential treatment.

(2) REGIONS.—At least 1 sex offender management program under paragraph (1)(A), and at least one residential sex offender treatment program under paragraph (1)(B), shall be established in each region within the Bureau of Prisons.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Bureau of Prisons for each fiscal year such sums as may be necessary to carry out this subsection.

(g) CONTINUED ACCESS TO MEDICAL CARE.—

(1) IN GENERAL.—In order to ensure a minimum standard of health and habitability, the Bureau of Prisons should ensure that each prisoner in a community confinement facility has access to necessary medical care, mental health care, and medi-

cine through partnerships with local health service providers and transition planning.

(2) DEFINITION.—In this subsection, the term “community confinement” has the meaning given that term in the application notes under section 5F1.1 of the Federal Sentencing Guidelines Manual, as in effect on the date of the enactment of the Second Chance Act of 2007.

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

(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 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 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, amount, and intensity 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

(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 the enactment of the FIRST STEP Act, 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.*

(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:*

(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 actively participate 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.*

\* \* \* \* \*

#### **§ 3624. Release of a prisoner**

(a) **DATE OF RELEASE.**—A prisoner shall be released by the Bureau of Prisons on the date of the expiration of the prisoner's term of imprisonment, less any time credited toward the service of the prisoner's sentence as provided in subsection (b). If the date for a prisoner's release falls on a Saturday, a Sunday, or a legal holiday at the place of confinement, the prisoner may be released by the Bureau on the last preceding weekday.

(b) **CREDIT TOWARD SERVICE OF SENTENCE FOR SATISFACTORY BEHAVIOR.**—

(1) Subject to paragraph (2), a prisoner who is serving a term of imprisonment of more than 1 year other than a term of imprisonment for the duration of the prisoner's life, may receive credit toward the service of the prisoner's sentence[, 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,] *of up to 54 days for each year of the prisoner's sentence imposed by the court*, subject to determination by the Bureau of Prisons that, during that year, the prisoner has displayed exemplary compliance with institutional disciplinary regulations. Subject to paragraph (2), if the Bureau determines that, during that year, the prisoner has not satisfactorily complied with such institutional regulations, the prisoner shall receive no such credit toward service of the prisoner's sentence or shall receive such lesser credit as the Bureau determines to be appropriate. In awarding credit under this section, the Bureau shall consider whether the prisoner, during the relevant period, has earned, or is making satisfactory progress toward earning, a high school diploma or an equivalent degree. Credit that has not been earned may not later be granted. Subject to paragraph (2), [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] *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.*

(2) Notwithstanding any other law, credit awarded under this subsection after the date of enactment of the Prison Litigation Reform Act shall vest on the date the prisoner is released from custody.

(3) The Attorney General shall ensure that the Bureau of Prisons has in effect an optional General Educational Development program for inmates who have not earned a high school diploma or its equivalent.

(4) Exemptions to the General Educational Development requirement may be made as deemed appropriate by the Director of the Federal Bureau of Prisons.

(c) PRERELEASE CUSTODY.—

(1) IN GENERAL.—The Director of the 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. Such conditions may include a community correctional facility.

(2) HOME CONFINEMENT AUTHORITY.—The authority under this subsection may be used to place a prisoner in home confinement for the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months. *The Bureau of Prisons shall, to the extent practicable, place prisoners with lower risk levels and lower needs on home confinement for the maximum amount of time permitted under this paragraph.*

(3) ASSISTANCE.—The United States Probation System shall, to the extent practicable, offer assistance to a prisoner during prerelease custody under this subsection.

(4) NO LIMITATIONS.—Nothing in this subsection shall be construed to limit or restrict the authority of the Director of the Bureau of Prisons under section 3621.

(5) REPORTING.—Not later than 1 year after the date of the enactment of the Second Chance Act of 2007 (and every year thereafter), the Director of the Bureau of Prisons shall transmit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report describing the Bureau's utilization of community corrections facilities. Each report under this paragraph shall set forth the number and percentage of Federal prisoners placed in community corrections facilities during the preceding year, the average length of such placements, trends in such utilization, the reasons some prisoners are not placed in community corrections facilities, and any other information that may be useful to the committees in determining if the Bureau is utilizing community corrections facilities in an effective manner.

(6) ISSUANCE OF REGULATIONS.—The Director of the Bureau of Prisons shall issue regulations pursuant to this subsection not later than 90 days after the date of the enactment of the Second Chance Act of 2007, which shall ensure that placement in a community correctional facility by the Bureau of Prisons is—

(A) conducted in a manner consistent with section 3621(b) of this title;

(B) determined on an individual basis; and

(C) of sufficient duration to provide the greatest likelihood of successful reintegration into the community.

(d) ALLOTMENT OF CLOTHING, FUNDS, AND TRANSPORTATION.—Upon the release of a prisoner on the expiration of the prisoner's term of imprisonment, the Bureau of Prisons shall furnish the prisoner with—

(1) suitable clothing;

(2) an amount of money, not more than \$500, determined by the Director to be consistent with the needs of the offender and the public interest, unless the Director determines that the financial position of the offender is such that no sum should be furnished; and

(3) transportation to the place of the prisoner's conviction, to the prisoner's bona fide residence within the United States, or to such other place within the United States as may be authorized by the Director.

(e) SUPERVISION AFTER RELEASE.—A prisoner whose sentence includes a term of supervised release after imprisonment shall be released by the Bureau of Prisons to the supervision of a probation officer who shall, during the term imposed, supervise the person released to the degree warranted by the conditions specified by the sentencing court. The term of supervised release commences on the day the person is released from imprisonment and runs concurrently with any Federal, State, or local term of probation or supervised release or parole for another offense to which the person is subject or becomes subject during the term of supervised release. A term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a Federal, State, or local crime unless the imprisonment is for a period of less than 30 consecutive days. Upon the release of a prisoner by the Bureau of Prisons to supervised release, the Bureau of Prisons shall notify such prisoner, verbally and in writing, of the

requirement that the prisoner adhere to an installment schedule, not to exceed 2 years except in special circumstances, to pay for any fine imposed for the offense committed by such prisoner, and of the consequences of failure to pay such fines under sections 3611 through 3614 of this title.

(f) MANDATORY FUNCTIONAL LITERACY REQUIREMENT.—

(1) The Attorney General shall direct the Bureau of Prisons to have in effect a mandatory functional literacy program for all mentally capable inmates who are not functionally literate in each Federal correctional institution within 6 months from the date of the enactment of this Act.

(2) Each mandatory functional literacy program shall include a requirement that each inmate participate in such program for a mandatory period sufficient to provide the inmate with an adequate opportunity to achieve functional literacy, and appropriate incentives which lead to successful completion of such programs shall be developed and implemented.

(3) As used in this section, the term “functional literacy” means—

(A) an eighth grade equivalence in reading and mathematics on a nationally recognized standardized test;

(B) functional competency or literacy on a nationally recognized criterion-referenced test; or

(C) a combination of subparagraphs (A) and (B).

(4) Non-English speaking inmates shall be required to participate in an English-As-A-Second-Language program until they function at the equivalence of the eighth grade on a nationally recognized educational achievement test.

(5) The Chief Executive Officer of each institution shall have authority to grant waivers for good cause as determined and documented on an individual basis.

(g) PRERELEASE CUSTODY FOR RISK AND NEEDS ASSESSMENT SYSTEM PARTICIPANTS.—

(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 been classified by the warden of the prison as otherwise qualified to be transferred into prerelease custody; and*

*(D)(i) has been determined under the System to be a minimum or low risk to recidivate; or*

*(ii) has had a petition to be transferred to prerelease custody approved by the warden of the prison, after the warden’s determination that—*

*(I) the prisoner would not be a danger to society if transferred to prerelease custody;*

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

(III) the prisoner is unlikely to recidivate; and

(IV) the transfer of the prisoner to prerelease custody is otherwise appropriate.

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

(A) *HOME CONFINEMENT.*—

(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 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; or

(ff) attend religious activities; 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 alternative 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.

(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) *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.*

(4) *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.*

(5) *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 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.*

(6) *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 or community supervision 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.*

(7) *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.*

(8) *MENTORING SERVICES.*—*Any prerelease custody into which a prisoner is placed under this subsection may not include a condition prohibiting the prisoner from receiving mentoring 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 mentoring services and to the prisoner.

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

(h) *ALIEN PRISONERS SUBJECT TO DEPORTATION.*—If a prisoner who is placed in prerelease custody is an alien whose deportation was ordered as a condition of such prerelease custody or who is subject to a detainer filed by United States Immigration and Customs Enforcement for the purposes of determining the alien's deportability, United States Immigration and Customs Enforcement shall take custody of the alien upon the alien's transfer to prerelease custody.

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#### 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**

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

- (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; and
- (5) the Director of the National Institute of Corrections.

(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 the enactment of the *FIRST STEP* Act;
- (2) develop recommendations regarding evidence-based recidivism reduction programs and productive activities in accordance with section 3633;
- (3) conduct ongoing research and data analysis on—
  - (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 reducing job opportunities for other workers in the United States;

(4) on an annual basis, review and validate the risk and needs assessment system, which review shall include—

(A) any subsequent changes to the risk and needs assessment system made after the date of the enactment of this subchapter;

(B) the recommendations developed under paragraph (2), using the research conducted under paragraph (3);

(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;

(D) statistical validation of any tools that the risk and needs assessment system uses; and

(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;

(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

(6) report to Congress in accordance with section 3634.

**§ 3632. Development of risk and needs assessment system**

(a) *IN GENERAL.*—Not later than 180 days after the date of the enactment of the *FIRST STEP Act*, the Attorney General shall develop and release a risk and needs assessment system (referred to in this subchapter as the “System”), which shall be used to—

(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;

(2) assess and determine, to the extent practicable, the risk of violent or serious misconduct of each prisoner;

(3) determine the type, amount, and intensity of evidence-based recidivism reduction programs that are appropriate for each prisoner and assign each prisoner to such programs accordingly, and based on the prisoner's specific criminogenic needs, and in accordance with subsection (b);

(4) reassess the recidivism risk of each prisoner periodically and reassign the prisoner to appropriate evidence-based recidivism reduction programs or productive activities based on the revised determination to ensure that—

(A) all prisoners at each risk level have a meaningful opportunity to reduce their classification during the period of incarceration;

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

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

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

(6) *determine when a prisoner is ready to transfer into prerelease custody in accordance with section 3624(c). 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—*

(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.*

(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.*

(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. Such incentives shall include not less than two 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.*

(ii) *A prisoner determined by the Bureau of Prisons to be at a minimum or low risk for recidivating, who, over two 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 the enactment of this Act;*

(ii) *during official detention prior to the date that the prisoner's sentence commences under section 3585(a);*  
or

(iii) *if that prisoner is an inadmissible or deportable alien under the immigration laws (as such term is defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)).*

(C) *APPLICATION OF TIME CREDITS TOWARD PRE-RELEASE CUSTODY.—Time credits earned under this paragraph by prisoners who successfully participate in recidivism reduction programs or productive activities and who have been determined to be at minimum risk or low risk for recidivating pursuant to their last two reassessments shall be applied toward time in pre-release custody. The Director of the Bureau of Prisons shall transfer prisoners described in this subparagraph into prerelease custody, except that the Director of the Bureau of Prisons may deny such a transfer if the warden of the prison finds by clear and convincing evidence that the prisoner should not be transferred into prerelease custody based only on evidence of the prisoner's actions after the conviction of such prisoner and not based on evidence from the underlying conviction, and submits a detailed written statement regarding such finding to the Director of the Bureau of Prisons.*

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

(i) *Section 113(a)(1), relating to assault with intent to commit murder.*

(ii) *Section 115, relating to influencing, impeding, or retaliating against a Federal official by injuring a fam-*

ily member, except for a threat made in violation of that section.

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

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

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

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

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

(viii) 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).

(ix) Section 842(p), relating to distribution of information relating to explosive, destructive devices, and weapons of mass destruction, but only if the conviction involved a weapon of mass destruction (as defined in section 2332a(c)(2) of such title).

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

(xi) Section 924(e), relating to unlawful possession of a firearm by a person with 3 or more convictions for a violent felony.

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

(xiii) Any section of chapter 51, relating to homicide, except for section 1112 (relating to manslaughter), 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).

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

(xv) Any offense under chapter 77, relating to peonage, slavery, and trafficking in persons, except for sections 1592 through 1596.

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

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

(xviii) 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.

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

(xx) Section 2118(c)(2), relating to robberies and burglaries involving controlled substances resulting in death.

(xxi) Section 2119(3), relating to taking a motor vehicle (commonly referred to as "carjacking") that results in death.

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

(xxiii) Any section of chapter 109A, relating to sexual abuse, except that with regard to section 2244, only a conviction under subsection (c) of that section (relating to abusive sexual contact involving young children) shall make a prisoner ineligible under this subparagraph.

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

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

(xxvi) Any of paragraphs (1) through (3) of section 2252(a), relating to certain activities relating to material involving the sexual exploitation of minors.

(xxvii) A second or subsequent conviction under any of paragraphs (1) through (6) of section 2252A(a), relating to certain activities relating to material constituting or containing child pornography.

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

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

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

(xxxi) Section 2291, relating to the destruction of a vessel or maritime facility, but only if the conduct which led to the conviction involved a substantial risk of death or serious bodily injury.

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

(xxxiii) Section 2340A, relating to torture.

(xxxiv) Section 2381, relating to treason.

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

(xxxvi) 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.

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

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

(xxxix) 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.

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

(xli) Section 60123(b) of title 49, United States Code, 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.

(xlii) Section 401(a) of the Controlled Substances Act (21 U.S.C. 841), relating to manufacturing or distributing a controlled substance, but only 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.

(xliii) 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.

(xliv) Any section of the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.)

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

(xlvi) 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.

(xlvii) An offense described in section 3559(c)(2)(F), for which the offender was sentenced to a term of imprisonment of more than one year, if the offender has a previous conviction, for which the offender served a term of imprisonment of more than one 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).

(xlviii) Section 2118(c)(2) of title 18, United States Code, relating to robberies and burglaries involving controlled substances resulting in death.

(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 Pris-

ons 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.

(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 (e) for prisoners who violate prison rules or evidence-based recidivism reduction program or productive activity rules, which shall provide—

(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

(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.

(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.

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

Prior to releasing the System, the Attorney General shall—

(1) review the effectiveness of evidence-based recidivism reduction programs that exist as of the date of the 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
  - (C) the addition of any new effective evidence-based recidivism reduction programs that the Attorney General finds.

### **§ 3634. Report**

Beginning on the date that is two years after the date of the 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:

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

(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 Act, 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).

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

(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 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 chapter.

(7) Recommendations for how to reinvest any savings into other Federal, State, and local law enforcement activities and evidence-based recidivism reduction programs in the Bureau of Prisons.

### **§ 3635. Definitions**

In this subchapter the following definitions apply:

(1) **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.*

(2) *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.*

(3) *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) the risk that a prisoner will recidivate upon release from prison; and*

*(B) the recidivism reduction programs that will best minimize the risk that the prisoner will recidivate upon release from prison.*

(4) *PRODUCTIVE ACTIVITY.—The term “productive activity” means either a group or individual activity that is designed to allow prisoners determined as having a low or no 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.*

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**PART III—PRISONS AND PRISONERS**

\* \* \* \* \*

**CHAPTER 303—BUREAU OF PRISONS**

Sec.  
4041. Bureau of Prisons; director and employees.

\* \* \* \* \*

4050. *Secure firearms storage.*

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**§ 4042. Duties of Bureau of Prisons**

(a) **IN GENERAL.**—The Bureau of Prisons, under the direction of the Attorney General, shall—

(1) have charge of the management and regulation of all Federal penal and correctional institutions;

(2) provide suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States, or held as witnesses or otherwise;

(3) provide for the protection, instruction, and discipline of all persons charged with or convicted of offenses against the United States;

(4) provide technical assistance to State, tribal, and local governments in the improvement of their correctional systems;

(5) provide notice of release of prisoners in accordance with subsections (b) and (c);

**[(D)]** (6) establish prerelease planning procedures that help prisoners—

[(i)] (A) apply for Federal and State benefits upon release (including [Social Security Cards,] Social Security benefits, and veterans' benefits); [and]

(B) obtain identification, including a social security card, driver's license or other official photo identification, and a birth certificate; and

[(ii)] (C) secure such identification and benefits prior to release from a sentence to a term of imprisonment in a Federal prison or if the individual was not sentenced to a term of imprisonment in a Federal prison, prior to release from a sentence to a term of community confinement, subject to any limitations in law; and

[(E)] (7) establish reentry planning procedures that include providing Federal prisoners with information in the following areas:

[(i)] (A) Health and nutrition.

[(ii)] (B) Employment.

[(iii)] (C) Literacy and education.

[(iv)] (D) Personal finance and consumer skills.

[(v)] (E) Community resources.

[(vi)] (F) Personal growth and development.

[(vii)] (G) Release requirements and procedures.

(b) NOTICE OF RELEASE OF PRISONERS.—(1) At least 5 days prior to the date on which a prisoner described in paragraph (3) is to be released on supervised release, or, in the case of a prisoner on supervised release, at least 5 days prior to the date on which the prisoner changes residence to a new jurisdiction, written notice of the release or change of residence shall be provided to the chief law enforcement officers of each State, tribal, and local jurisdiction in which the prisoner will reside. Notice prior to release shall be provided by the Director of the Bureau of Prisons. Notice concerning a change of residence following release shall be provided by the probation officer responsible for the supervision of the released prisoner, or in a manner specified by the Director of the Administrative Office of the United States Courts. The notice requirements under this subsection do not apply in relation to a prisoner being protected under chapter 224.

(2) A notice under paragraph (1) shall disclose—

(A) the prisoner's name;

(B) the prisoner's criminal history, including a description of the offense of which the prisoner was convicted; and

(C) any restrictions on conduct or other conditions to the release of the prisoner that are imposed by law, the sentencing court, or the Bureau of Prisons or any other Federal agency.

(3) A prisoner is described in this paragraph if the prisoner was convicted of—

(A) a drug trafficking crime, as that term is defined in section 924(c)(2); or

(B) a crime of violence (as defined in section 924(c)(3)).

(c) NOTICE OF SEX OFFENDER RELEASE.—(1) In the case of a person described in paragraph (3), or any other person in a category specified by the Attorney General, who is released from prison or sentenced to probation, notice shall be provided to—

(A) the chief law enforcement officer of each State, tribal, and local jurisdiction in which the person will reside; and

(B) a State, tribal, or local agency responsible for the receipt or maintenance of sex offender registration information in the State, tribal, or local jurisdiction in which the person will reside.

The notice requirements under this subsection do not apply in relation to a person being protected under chapter 224.

(2) Notice provided under paragraph (1) shall include the information described in subsection (b)(2), the place where the person will reside, and the information that the person shall register as required by the Sex Offender Registration and Notification Act. For a person who is released from the custody of the Bureau of Prisons whose expected place of residence following release is known to the Bureau of Prisons, notice shall be provided at least 5 days prior to release by the Director of the Bureau of Prisons. For a person who is sentenced to probation, notice shall be provided promptly by the probation officer responsible for the supervision of the person, or in a manner specified by the Director of the Administrative Office of the United States Courts. Notice concerning a subsequent change of residence by a person described in paragraph (3) during any period of probation, supervised release, or parole shall also be provided to the agencies and officers specified in paragraph (1) by the probation officer responsible for the supervision of the person, or in a manner specified by the Director of the Administrative Office of the United States Courts.

(3) The Director of the Bureau of Prisons shall inform a person who is released from prison and required to register under the Sex Offender Registration and Notification Act of the requirements of that Act as they apply to that person and the same information shall be provided to a person sentenced to probation by the probation officer responsible for supervision of that person.

(5) The United States and its agencies, officers, and employees shall be immune from liability based on good faith conduct in carrying out this subsection and subsection (b).

(d) APPLICATION OF SECTION.—This section shall not apply to military or naval penal or correctional institutions or the persons confined therein.

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#### **§ 4050. Secure firearms storage**

(a) DEFINITIONS.—*In this section—*

(1) *the term “employee” means a qualified law enforcement officer employed by the Bureau of Prisons; and*

(2) *the terms “firearm” and “qualified law enforcement officer” have the meanings given those terms under section 926B.*

(b) SECURE FIREARMS STORAGE.—*The Director of the Bureau of Prisons shall ensure that each chief executive officer of a Federal penal or correctional institution—*

(1)(A) *provides a secure storage area located outside of the secure perimeter of the institution for employees to store firearms; or*

(B) *allows employees to store firearms in a vehicle lockbox approved by the Director of the Bureau of Prisons; and*

(2) notwithstanding any other provision of law, allows employees to carry concealed firearms on the premises outside of the secure perimeter of the institution.

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**CHAPTER 307—EMPLOYMENT**

Sec.  
4121. Federal Prison Industries; board of directors.

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4130. Additional markets.

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**§ 4126. Prison Industries Fund; use and settlement of accounts**

(a) All moneys under the control of Federal Prison Industries, or received from the sale of the products or by-products of such Industries, or for the services of federal prisoners, shall be deposited or covered into the Treasury of the United States to the credit of the Prison Industries Fund and withdrawn therefrom only pursuant to accountable warrants or certificates of settlement issued by the Government Accountability Office.

(b) All valid claims and obligations payable out of said fund shall be assumed by the corporation.

(c) The corporation, in accordance with the laws generally applicable to the expenditures of the several departments, agencies, and establishments of the Government, is authorized to employ the fund, and any earnings that may accrue to the corporation—

(1) as operating capital in performing the duties imposed by this chapter;

(2) in the lease, purchase, other acquisition, repair, alteration, erection, and maintenance of industrial buildings and equipment;

(3) in the vocational training of inmates without regard to their industrial or other assignments;

(4) in paying, under rules and regulations promulgated by the Attorney General, compensation to inmates employed in any industry, or performing outstanding services in institutional operations, *not less than 15 percent of such compensation for any inmate shall be reserved in the fund or a separate account and made available to assist the inmate with costs associated with release from prison*, and compensation to inmates or their dependents for injuries suffered in any industry or in any work activity in connection with the maintenance or operation of the institution in which the inmates are confined.

In no event may compensation for such injuries be paid in an amount greater than that provided in chapter 81 of title 5.

(d) Accounts of all receipts and disbursements of the corporation shall be rendered to the Government Accountability Office for settlement and adjustment, as required by the Comptroller General.

(e) Such accounting shall include all fiscal transactions of the corporation, whether involving appropriated moneys, capital, or receipts from other sources.

(f) Funds available to the corporation may be used for the lease, purchase, other acquisition, repair, alteration, erection, or maintenance of facilities only to the extent such facilities are necessary for the industrial operations of the corporation under this chapter. Such funds may not be used for the construction or acquisition of penal or correctional institutions, including camps described in section 4125.

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**§ 4130. Additional markets**

(a) *IN GENERAL.*—Notwithstanding any other provision of law, Federal Prison Industries may sell products to—

- (1) public entities for use in penal or correctional institutions;
- (2) public entities for use in disaster relief or emergency response;
- (3) the government of the District of Columbia; and
- (4) any organization described in section 501(c)(3), (c)(4), or (d) of the Internal Revenue Code of 1986 that is exempt from taxation under section 501(a) of such Code.

(b) *DEFINITIONS.*—In this section:

- (1) The term “public entity” means a State, a subdivision of a State, an Indian tribe, and an agency or governmental corporation or business of any of the foregoing.
- (2) The term “State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, and the United States Virgin Islands.

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**CHAPTER 317—INSTITUTIONS FOR WOMEN**

Sec.  
4321. Board of Advisers.  
4322. Use of restraints on prisoners during the period of pregnancy, labor, and postpartum recovery prohibited.

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**§ 4322. Use of restraints on prisoners during the period of pregnancy, labor, and postpartum recovery prohibited**

(a) *PROHIBITION.*—Except as provided in subsection (b), beginning on the date on which pregnancy is confirmed by a healthcare professional, and ending at the conclusion of postpartum recovery, a prisoner in the custody of the Bureau of Prisons, or in the custody of the United States Marshals Service pursuant to section 4086, shall not be placed in restraints.

(b) *EXCEPTIONS.*—

- (1) *IN GENERAL.*—The prohibition under subsection (a) shall not apply if—
  - (A) an appropriate corrections official, or a United States marshal, as applicable, makes a determination that the prisoner—
    - (i) is an immediate and credible flight risk that cannot reasonably be prevented by other means; or

(ii) poses an immediate and serious threat of harm to herself or others that cannot reasonably be prevented by other means; or

(B) a health care professional responsible for the health and safety of the prisoner determines that the use of restraints is appropriate for the medical safety of the prisoner.

(2) *LEAST RESTRICTIVE RESTRAINTS.*—In the case that restraints are used pursuant to an exception under paragraph (1), only the least restrictive restraints necessary to prevent the harm or risk of escape described in paragraph (1) may be used.

(3) *APPLICATION.*—

(A) *IN GENERAL.*—The exceptions under paragraph (1) may not be applied—

(i) to place restraints around the ankles, legs, or waist of a prisoner;

(ii) to restrain a prisoner's hands behind her back;

(iii) to restrain a prisoner using four-point restraints;

or

(iv) to attach a prisoner to another prisoner.

(B) *MEDICAL REQUEST.*—Notwithstanding paragraph (1), upon the request of a healthcare professional who is responsible for the health and safety of a prisoner, a corrections official or United States marshal, as applicable, shall refrain from using restraints on the prisoner or remove restraints used on the prisoner.

(c) *REPORTS.*—

(1) *REPORT TO THE DIRECTOR AND HEALTHCARE PROFESSIONAL.*—If a corrections official or United States marshal uses restraints on a prisoner under subsection (b)(1), that official or marshal shall submit, not later than 30 days after placing the prisoner in restraints, to the Director of the Bureau of Prisons or the Director of the United States Marshals Service, as applicable, and to the healthcare professional responsible for the health and safety of the prisoner, a written report which describes the facts and circumstances surrounding the use of restraints, and includes—

(A) the reasoning upon which the determination to use restraints was made;

(B) the details of the use of restraints, including the type of restraints used and length of time during which restraints were used; and

(C) any resulting physical effects on the prisoner observed by or known to the corrections official or United States marshal, as applicable.

(2) *SUPPLEMENTAL REPORT TO THE DIRECTOR.*—Upon receipt of a report under subsection (c)(1), the healthcare professional responsible for the health and safety of the prisoner may submit to the Director such information as the healthcare professional determines is relevant to the use of restraints on the prisoner.

(3) *REPORT TO JUDICIARY COMMITTEES.*—

(A) *IN GENERAL.*—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Director of the Bureau of Prisons and the Director of the United States Marshals Service shall each submit to the Judiciary

Committee of the Senate and of the House of Representatives a report that certifies compliance with this section and includes the information required to be reported under paragraph (1).

(B) *PERSONALLY IDENTIFIABLE INFORMATION.*—The report under this paragraph shall not contain any personally identifiable information of any prisoner.

(d) *NOTICE.*—Not later than 48 hours after the confirmation of a prisoner's pregnancy by a health care professional, that prisoner shall be notified by an appropriate health care professional, corrections official, or United States marshal, as applicable, of the restrictions on the use of restraints under this section.

(e) *VIOLATION REPORTING PROCESS.*—The Director of the Bureau of Prisons, in consultation with the Director of the United States Marshals Service, shall establish a process through which a prisoner may report a violation of this section.

(f) *TRAINING.*—

(1) *IN GENERAL.*—The Director of the Bureau of Prisons and the Director of the United States Marshals Service shall each develop training guidelines regarding the use of restraints on female prisoners during the period of pregnancy, labor, and postpartum recovery, and shall incorporate such guidelines into appropriate training programs. Such training guidelines shall include—

(A) how to identify certain symptoms of pregnancy that require immediate referral to a health care professional;

(B) circumstances under which the exceptions under subsection (b) would apply;

(C) in the case that an exception under subsection (b) applies, how to apply restraints in a way that does not harm the prisoner, the fetus, or the neonate;

(D) the information required to be reported under subsection (c); and

(E) the right of a health care professional to request that restraints not be used, and the requirement under subsection (b)(3)(B) to comply with such a request.

(2) *DEVELOPMENT OF GUIDELINES.*—In developing the guidelines required by paragraph (1), the Directors shall each consult with health care professionals with expertise in caring for women during the period of pregnancy and postpartum recovery.

(g) *DEFINITIONS.*—For purposes of this section:

(1) The term “postpartum recovery” means the twelve-week period, or longer as determined by the healthcare professional responsible for the health and safety of the prisoner, following delivery, and shall include the entire period that the prisoner is in the hospital or infirmary.

(2) The term “restraints” means any physical or mechanical device used to control the movement of a prisoner's body, limbs, or both.

(3) 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 Bu-

*reau of Prisons, including a person in a Bureau of Prisons contracted facility.*

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## CHAPTER 319—NATIONAL INSTITUTE OF CORRECTIONS

### **§ 4351. Establishment; Advisory Board; appointment of members; compensation; officers; committees; delegation of powers; Director, appointment and powers**

[(a) There is hereby established within the Bureau of Prisons a National Institute of Corrections.

[(b) The overall policy and operations of the National Institute of Corrections shall be under the supervision of an Advisory Board. The Board shall consist of sixteen members. The following six individuals shall serve as members of the Commission ex officio: the Director of the Federal Bureau of Prisons or his designee, the Director of the Bureau of Justice Assistance or his designee, Chairman of the United States Sentencing Commission or his designee, the Director of the Federal Judicial Center or his designee, the Associate Administrator for the Office of Juvenile Justice and Delinquency Prevention or his designee, and the Assistant Secretary for Human Development of the Department of Health, Education, and Welfare or his designee.

[(c) The remaining ten members of the Board shall be selected as follows:

[(1) Five shall be appointed initially by the Attorney General of the United States for staggered terms; one member shall serve for one year, one member for two years, and three members for three years. Upon the expiration of each member's term, the Attorney General shall appoint successors who will each serve for a term of three years. Each member selected shall be qualified as a practitioner (Federal, State, or local) in the field of corrections, probation, or parole.

[(2) Five shall be appointed initially by the Attorney General of the United States for staggered terms, one member shall serve for one year, three members for two years, and one member for three years. Upon the expiration of each member's term the Attorney General shall appoint successors who will each serve for a term of three years. Each member selected shall be from the private sector, such as business, labor, and education, having demonstrated an active interest in corrections, probation, or parole.

[(d) The members of the Board shall not, by reason of such membership, be deemed officers or employees of the United States. Members of the Commission who are full-time officers or employees of the United States shall serve without additional compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of the duties vested in the Board. Other members of the Board shall, while attending meetings of the Board or while engaged in duties related to such meetings or in other activities of the Commission pursuant to this title, be entitled to receive compensation at the rate not to exceed the daily equivalent of the rate authorized for GS-18 by section 5332 of title 5, United States Code, including traveltime, and while away

from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence equal to that authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

[(e) The Board shall elect a chairman from among its members who shall serve for a term of one year. The members of the Board shall also elect one or more members as a vice-chairman.

[(f) The Board is authorized to appoint, without regard to the civil service laws, technical, or other advisory committees to advise the Institute with respect to the administration of this title as it deems appropriate. Members of these committees not otherwise employed by the United States, while engaged in advising the Institute or attending meetings of the committees, shall be entitled to receive compensation at the rate fixed by the Board but not to exceed the daily equivalent of the rate authorized for GS-18 by section 5332 of title 5, United States Code, and while away from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence equal to that authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

[(g) The Board is authorized to delegate its powers under this title to such persons as it deems appropriate.

[(h) The Institute shall be under the supervision of an officer to be known as the Director, who shall be appointed by the Attorney General after consultation with the Board. The Director shall have authority to supervise the organization, employees, enrollees, financial affairs, and all other operations of the Institute and may employ such staff, faculty, and administrative personnel, subject to the civil service and classification laws, as are necessary to the functioning of the Institute. The Director shall have the power to acquire and hold real and personal property for the Institute and may receive gifts, donations, and trusts on behalf of the Institute. The Director shall also have the power to appoint such technical or other advisory councils comprised of consultants to guide and advise the Board. The Director is authorized to delegate his powers under this title to such persons as he deems appropriate.]

**§ 4352. Authority of Institute; time; records of recipients; access; scope of section**

(a) In addition to the other powers, express and implied, the [National Institute of Corrections] *National Institute of Justice* shall have authority—

(1) to receive from or make grants to and enter into contracts with Federal, State, tribal, and general units of local government, public and private agencies, educational institutions, organizations, and individuals to carry out the purposes of this chapter;

(2) to serve as a clearinghouse and information center for the collection, preparation, and dissemination of information on corrections, including, but not limited to, programs for prevention of crime and recidivism, training of corrections personnel, and rehabilitation and treatment of criminal and juvenile offenders;

(3) to assist and serve in a consulting capacity to Federal, State, tribal, and local courts, departments, and agencies in

the development, maintenance, and coordination of programs, facilities, and services, training, treatment, and rehabilitation with respect to criminal and juvenile offenders;

(4) to encourage and assist Federal, State, tribal, and local government programs and services, and programs and services of other public and private agencies, institutions, and organizations in their efforts to develop and implement improved corrections programs;

(5) to devise and conduct, in various geographical locations, seminars, workshops, and training programs for law enforcement officers, judges, and judicial personnel, probation and parole personnel, correctional personnel, welfare workers, and other persons, including lay ex-offenders, and paraprofessional personnel, connected with the treatment and rehabilitation of criminal and juvenile offenders;

(6) to develop technical training teams to aid in the development of seminars, workshops, and training programs within the several States and tribal communities, and with the State, tribal, and local agencies which work with prisoners, parolees, probationers, and other offenders;

(7) to conduct, encourage, and coordinate research relating to corrections, including the causes, prevention, diagnosis, and treatment of criminal offenders;

(8) to formulate and disseminate correctional policy, goals, standards, and recommendations for Federal, State, tribal, and local correctional agencies, organizations, institutions, and personnel;

(9) to conduct evaluation programs which study the effectiveness of new approaches, techniques, systems, programs, and devices employed to improve the corrections system;

(10) to receive from any Federal department or agency such statistics, data, program reports, and other material as the Institute deems necessary to carry out its functions. Each such department or agency is authorized to cooperate with the Institute and shall, to the maximum extent practicable, consult with and furnish information to the Institute;

(11) to arrange with and reimburse the heads of Federal departments and agencies for the use of personnel, facilities, or equipment of such departments and agencies;

(12) to confer with and avail itself of the assistance, services, records, and facilities of State, tribal, and local governments or other public or private agencies, organizations, or individuals;

(13) to enter into contracts with public or private agencies, organizations, or individuals, for the performance of any of the functions of the Institute; and

(14) to procure the services of experts and consultants in accordance with section 3109 of title 5 of the United States Code, at rates of compensation not to exceed the daily equivalent of the rate authorized for GS-18 by section 5332 of title 5 of the United States Code.

(c) Each recipient of assistance under this chapter shall keep such records as the Institute shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or

used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(d) The Institute, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for purposes of audit and examinations to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this chapter.

(e) The provision of this section shall apply to all recipients of assistance under this title, whether by direct grant or contract from the Institute or by subgrant or subcontract from primary grantees or contractors of the Institute.

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**SECOND CHANCE ACT OF 2007**

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**TITLE II—ENHANCED DRUG TREATMENT AND MENTORING GRANT PROGRAMS**

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**Subtitle C—Administration of Justice Reforms**

**CHAPTER 1—IMPROVING FEDERAL OFFENDER REENTRY**

**SEC. 231. FEDERAL PRISONER REENTRY INITIATIVE.**

(a) **IN GENERAL.**—The Attorney General, in coordination with the Director of the Bureau of Prisons, shall, subject to the availability of appropriations, conduct the following activities to establish a Federal prisoner reentry initiative:

(1) The establishment of a Federal prisoner reentry strategy to help prepare prisoners for release and successful reintegration into the community, including, at a minimum, that the Bureau of Prisons—

(A) assess each prisoner’s skill level (including academic, vocational, health, cognitive, interpersonal, daily living, and related reentry skills) at the beginning of the term of imprisonment of that prisoner to identify any areas in need of improvement prior to reentry;

(B) generate a skills development plan for each prisoner to monitor skills enhancement and reentry readiness throughout incarceration;

(C) determine program assignments for prisoners based on the areas of need identified through the assessment described in subparagraph (A);

(D) ensure that priority is given to the reentry needs of high-risk populations, such as sex offenders, career criminals, and prisoners with mental health problems;

(E) coordinate and collaborate with other Federal agencies and with State, Tribal, and local criminal justice agencies, community-based organizations, and faith-based organizations to help effectuate a seamless reintegration of prisoners into communities;

(F) collect information about a prisoner's family relationships, parental responsibilities, and contacts with children to help prisoners maintain important familial relationships and support systems during incarceration and after release from custody; and

(G) provide incentives for prisoner participation in skills development programs.

(2) Incentives for a prisoner who participates in reentry and skills development programs which may, at the discretion of the Director, include—

(A) the maximum allowable period in a community confinement facility; and

(B) such other incentives as the Director considers appropriate (not including a reduction of the term of imprisonment).

(b) IDENTIFICATION AND RELEASE ASSISTANCE FOR FEDERAL PRISONERS.—

(1) OBTAINING IDENTIFICATION.—The Director shall assist prisoners in obtaining identification **[(including] prior to release from a term of imprisonment in a Federal prison or if the individual was not sentenced to a term of imprisonment in a Federal prison, prior to release from a sentence to a term in community confinement, including a social security card, driver's license or other official photo identification, [or birth certificate) prior to release] and a birth certificate.**

(2) ASSISTANCE DEVELOPING RELEASE PLAN.—At the request of a direct-release prisoner, a representative of the United States Probation System shall, prior to the release of that prisoner, help that prisoner develop a release plan.

(3) DIRECT-RELEASE PRISONER DEFINED.—In this section, the term “direct-release prisoner” means a prisoner who is scheduled for release and will not be placed in prerelease custody.

(4) DEFINITION.—*In this subsection, the term “community confinement means” residence in a community treatment center, halfway house, restitution center, mental health facility, alcohol or drug rehabilitation center, or other community facility.*

(c) IMPROVED REENTRY PROCEDURES FOR FEDERAL PRISONERS.—The Attorney General shall take such steps as are necessary to modify the procedures and policies of the Department of Justice with respect to the transition of offenders from the custody of the Bureau of Prisons to the community—

(1) to enhance case planning and implementation of reentry programs, policies, and guidelines;

(2) to improve such transition to the community, including placement of such individuals in community corrections facilities; and

(3) to foster the development of collaborative partnerships with stakeholders at the national, State, and local levels to facilitate the exchange of information and the development of resources to enhance opportunities for successful offender reentry.

(d) DUTIES OF THE BUREAU OF PRISONS.—

(1) DUTIES OF THE BUREAU OF PRISONS EXPANDED.—Section 4042(a) of title 18, United States Code, is amended—

(A) in paragraph (4), by striking “and” at the end;

(B) in paragraph (5), by striking the period and inserting a semicolon; and

(C) by adding at the end the following:

“(D) establish prerelease planning procedures that help prisoners—

“(i) apply for Federal and State benefits upon release (including Social Security Cards, Social Security benefits, and veterans’ benefits); and

“(ii) secure such identification and benefits prior to release, subject to any limitations in law; and

“(E) establish reentry planning procedures that include providing Federal prisoners with information in the following areas:

“(i) Health and nutrition.

“(ii) Employment.

“(iii) Literacy and education.

“(iv) Personal finance and consumer skills.

“(v) Community resources.

“(vi) Personal growth and development.

“(vii) Release requirements and procedures.”.

(2) MEASURING THE REMOVAL OF OBSTACLES TO REENTRY.—

(A) CODING REQUIRED.—The Director shall ensure that each institution within the Bureau of Prisons codes the reentry needs and deficits of prisoners, as identified by an assessment tool that is used to produce an individualized skills development plan for each inmate.

(B) TRACKING.—In carrying out this paragraph, the Director shall quantitatively track the progress in responding to the reentry needs and deficits of individual inmates.

(C) ANNUAL REPORT.—On an annual basis, the Director shall prepare and submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report that documents the progress of the Bureau of Prisons in responding to the reentry needs and deficits of inmates.

(D) EVALUATION.—The Director shall ensure that—

(i) the performance of each institution within the Bureau of Prisons in enhancing skills and resources to assist in reentry is measured and evaluated using recognized measurements; and

(ii) plans for corrective action are developed and implemented as necessary.

(3) MEASURING AND IMPROVING RECIDIVISM OUTCOMES.—

(A) ANNUAL REPORT REQUIRED.—

(i) IN GENERAL.—At the end of each fiscal year, the Director shall submit to the Committee on the Judici-

ary of the Senate and the Committee on the Judiciary of the House of Representatives a report containing statistics demonstrating the relative reduction in recidivism for inmates released by the Bureau of Prisons within that fiscal year and the 2 prior fiscal years, comparing inmates who participated in major inmate programs (including residential drug treatment, vocational training, and prison industries) with inmates who did not participate in such programs. Such statistics shall be compiled separately for each such fiscal year.

(ii) SCOPE.—A report under this paragraph is not required to include statistics for a fiscal year that begins before the date of the enactment of this Act.

(B) MEASURE USED.—In preparing the reports required by subparagraph (A), the Director shall, in consultation with the Director of the Bureau of Justice Statistics, select a measure for recidivism (such as rearrest, reincarceration, or any other valid, evidence-based measure) that the Director considers appropriate and that is consistent with the research undertaken by the Bureau of Justice Statistics under section 241(b)(6).

(C) GOALS.—

(i) IN GENERAL.—After the Director submits the first report required by subparagraph (A), the Director shall establish goals for reductions in recidivism rates and shall work to attain those goals.

(ii) CONTENTS.—The goals established under clause (i) shall use the relative reductions in recidivism measured for the fiscal year covered by the first report required by subparagraph (A) as a baseline rate, and shall include—

(I) a 5-year goal to increase, at a minimum, the baseline relative reduction rate of recidivism by 2 percent; and

(II) a 10-year goal to increase, at a minimum, the baseline relative reduction rate of recidivism by 5 percent within 10 fiscal years.

(4) FORMAT.—Any written information that the Bureau of Prisons provides to inmates for reentry planning purposes shall use common terminology and language.

(5) MEDICAL CARE.—The Bureau of Prisons shall provide the United States Probation and Pretrial Services System with relevant information on the medical care needs and the mental health treatment needs of inmates scheduled for release from custody. The United States Probation and Pretrial Services System shall take this information into account when developing supervision plans in an effort to address the medical care and mental health care needs of such individuals. The Bureau of Prisons shall provide inmates with a sufficient amount of all necessary medications (which will normally consist of, at a minimum, a 2-week supply of such medications) upon release from custody.

(e) ENCOURAGEMENT OF EMPLOYMENT OF FORMER PRISONERS.—The Attorney General, in consultation with the Secretary of Labor,

shall take such steps as are necessary to educate employers and the one-stop partners and one-stop operators (as such terms are defined in section 3 of the Workforce Innovation and Opportunity Act) that provide services at any center operated under a one-stop delivery system established under section 121(e) of the Workforce Innovation and Opportunity Act regarding incentives (including the Federal bonding program of the Department of Labor and tax credits) for hiring former Federal, State, or local prisoners.

(f) MEDICAL CARE FOR PRISONERS.—Section 3621 of title 18, United States Code, is further amended by adding at the end the following new subsection:

“(g) CONTINUED ACCESS TO MEDICAL CARE.—

“(1) IN GENERAL.—In order to ensure a minimum standard of health and habitability, the Bureau of Prisons should ensure that each prisoner in a community confinement facility has access to necessary medical care, mental health care, and medicine through partnerships with local health service providers and transition planning.

“(2) DEFINITION.—In this subsection, the term ‘community confinement’ has the meaning given that term in the application notes under section 5F1.1 of the Federal Sentencing Guidelines Manual, as in effect on the date of the enactment of the Second Chance Act of 2007.”.

(g) ELDERLY AND FAMILY REUNIFICATION FOR CERTAIN NON-VIOLENT OFFENDERS PILOT PROGRAM.—

(1) PROGRAM AUTHORIZED.—

(A) IN GENERAL.—The Attorney General shall conduct a pilot program to determine the effectiveness of removing eligible elderly offenders *and eligible terminally ill offenders* from a Bureau of Prisons facility and placing such offenders on home detention until the expiration of the prison term to which the offender was sentenced.

(B) PLACEMENT IN HOME DETENTION.—In carrying out a pilot program as described in subparagraph (A), the Attorney General may release some or all eligible elderly offenders *and eligible terminally ill offenders* from the Bureau of Prisons facility to home detention, *upon written request from either the Bureau of Prisons or an eligible elderly offender or eligible terminally ill offender.*

(C) WAIVER.—The Attorney General is authorized to waive the requirements of section 3624 of title 18, United States Code, as necessary to provide for the release of some or all eligible elderly offenders *and eligible terminally ill offenders* from the Bureau of Prisons facility to home detention for the purposes of the pilot program under this subsection.

(2) VIOLATION OF TERMS OF HOME DETENTION.—A violation by an eligible elderly offender *or eligible terminally ill offender* of the terms of home detention (including the commission of another Federal, State, or local crime) shall result in the removal of that offender from home detention and the return of that offender to the designated Bureau of Prisons institution in which that offender was imprisoned immediately before placement on home detention under paragraph (1), or to another ap-

appropriate Bureau of Prisons institution, as determined by the Bureau of Prisons.

(3) SCOPE OF PILOT PROGRAM.—A pilot program under paragraph (1) shall be conducted through [at least one Bureau of Prisons facility] *Bureau of Prisons facilities* designated by the Attorney General as appropriate for the pilot program [and shall be carried out during fiscal years 2009 and 2010] *and shall be carried out during fiscal years 2019 through 2022*.

(4) IMPLEMENTATION AND EVALUATION.—The Attorney General shall monitor and evaluate each eligible elderly offender *or eligible terminally ill offender* placed on home detention under this section, and shall report to Congress concerning the experience with the program at the end of the period described in paragraph (3). The Administrative Office of the United States Courts and the United States probation offices shall provide such assistance and carry out such functions as the Attorney General may request in monitoring, supervising, providing services to, and evaluating eligible elderly offenders *and eligible terminally ill offenders* released to home detention under this section.

(5) DEFINITIONS.—In this section:

(A) ELIGIBLE ELDERLY OFFENDER.—The term “eligible elderly offender” means an offender in the custody of the Bureau of Prisons—

(i) who is not less than [65 years of age] *60 years of age*;

(ii) who is serving a term of imprisonment that is not life imprisonment based on conviction for an offense or offenses that do not include any crime of violence (as defined in section 16 of title 18, United States Code), sex offense (as defined in section 111(5) of the Sex Offender Registration and Notification Act), offense described in section 2332b(g)(5)(B) of title 18, United States Code, or offense under chapter 37 of title 18, United States Code, and has served [the greater of 10 years or 75 percent]  $\frac{2}{3}$  of the term of imprisonment to which the offender was sentenced;

(iii) who has not been convicted in the past of any Federal or State crime of violence, sex offense, or other offense described in clause (ii);

(iv) who has not been determined by the Bureau of Prisons, on the basis of information the Bureau uses to make custody classifications, and in the sole discretion of the Bureau, to have a history of violence, or of engaging in conduct constituting a sex offense or other offense described in clause (ii);

(v) who has not escaped, or attempted to escape, from a Bureau of Prisons institution;

(vi) with respect to whom the Bureau of Prisons has determined that release to home detention under this section will result in a substantial net reduction of costs to the Federal Government; and

(vii) who has been determined by the Bureau of Prisons to be at no substantial risk of engaging in criminal conduct or of endangering any person or the

public if released to home detention, *and beginning on the date that is 2 years after the date on which the Bureau of Prisons has completed the initial intake risk and needs assessment for each prisoner under section 3621(h)(1)(A) of title 18, United States Code, has been determined to have a minimum or low risk of recidivism based on 2 consecutive assessments described in such section 3621.*

(B) HOME DETENTION.—The term “home detention” has the same meaning given the term in the Federal Sentencing Guidelines as of the date of the enactment of this Act, and includes detention in a nursing home or other residential long-term care facility.

(C) TERM OF IMPRISONMENT.—The term “term of imprisonment” includes multiple terms of imprisonment ordered to run consecutively or concurrently, which shall be treated as a single, aggregate term of imprisonment for purposes of this section.

(D) ELIGIBLE TERMINALLY ILL OFFENDER.—*The term “eligible terminally ill offender” means an offender in the custody of the Bureau of Prisons who—*

*(i) is serving a term of imprisonment based on conviction for an offense or offenses that do not include any crime of violence (as defined in section 16(a) of title 18, United States Code), sex offense (as defined in section 111(5) of the Sex Offender Registration and Notification Act (34 U.S.C. 20911(5))), offense described in section 2332b(g)(5)(B) of title 18, United States Code, or offense under chapter 37 of title 18, United States Code;*

*(ii) satisfies the criteria specified in clauses (iii) through (vii) of subparagraph (A); and*

*(iii) has been determined by a medical doctor approved by the Bureau of Prisons to be—*

*(I) in need of care at a nursing home, intermediate care facility, or assisted living facility, as those terms are defined in section 232 of the National Housing Act (12 U.S.C. 1715w); or*

*(II) diagnosed with a terminal illness.*

(h) FEDERAL REMOTE SATELLITE TRACKING AND REENTRY TRAINING PROGRAM.—

(1) ESTABLISHMENT OF PROGRAM.—The Director of the Administrative Office of the United States Courts, in consultation with the Attorney General, may establish the Federal Remote Satellite Tracking and Reentry Training (ReStart) program to promote the effective reentry into the community of high risk individuals.

(2) HIGH RISK INDIVIDUALS.—For purposes of this section, the term “high risk individual” means—

(A) an individual who is under supervised release, with respect to a Federal offense, and who has previously violated the terms of a release granted such individual following a term of imprisonment; or

(B) an individual convicted of a Federal offense who is at a high risk for recidivism, as determined by the Director

of the Bureau of Prisons, and who is eligible for early release pursuant to voluntary participation in a program of residential substance abuse treatment under section 3621(e) of title 18, United States Code, or a program described in this section.

(3) PROGRAM ELEMENTS.—The program authorized under paragraph (1) shall include, with respect to high risk individuals participating in such program, the following core elements:

(A) A system of graduated levels of supervision, that uses, as appropriate and indicated—

(i) satellite tracking, global positioning, remote satellite, and other tracking or monitoring technologies to monitor and supervise such individuals in the community; and

(ii) community corrections facilities and home confinement.

(B) Substance abuse treatment and aftercare related to such treatment, mental and medical health treatment and aftercare related to such treatment, vocational and educational training, life skills instruction, conflict resolution skills training, batterer intervention programs, and other programs to promote effective reentry into the community as appropriate.

(C) Involvement of the family of such an individual, a victim advocate, and the victim of the offense committed by such an individual, if such involvement is safe for such victim (especially in a domestic violence case).

(D) A methodology, including outcome measures, to evaluate the program.

(E) Notification to the victim of the offense committed by such an individual of the status and nature of such an individual's reentry plan.

(i) AUTHORIZATION FOR APPROPRIATIONS FOR BUREAU OF PRISONS.—There are authorized to be appropriated to the Attorney General to carry out this section, \$5,000,000 for each of fiscal years 2009 and 2010.

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**DEPARTMENT OF JUSTICE APPROPRIATIONS ACT, 1997**

**TITLE I—DEPARTMENT OF JUSTICE**

\* \* \* \* \*

**FEDERAL PRISON SYSTEM**

\* \* \* \* \*

**SALARIES AND EXPENSES**

For expenses necessary for the administration, operation, and maintenance of Federal penal and correctional institutions, including purchase (not to exceed 836, of which 572 are for replacement only) and hire of law enforcement and passenger motor vehicles, and for the provision of technical assistance and advice on correc-

tions related issues to foreign governments; \$2,768,316,000: *Provided*, That the Attorney General may transfer to the Health Resources and Services Administration such amounts as may be necessary for direct expenditures by that Administration for medical relief for inmates of Federal penal and correctional institutions: *Provided further*, That the Director of the Federal Prison System (FPS), where necessary, may enter into contracts with a fiscal agent/fiscal intermediary claims processor to determine the amounts payable to persons who, on behalf of the FPS, furnish health services to individuals committed to the custody of the FPS: *Provided further*, That uniforms may be purchased without regard to the general purchase price limitation for the current fiscal year: *Provided further*, That not to exceed \$6,000 shall be available for official reception and representation expenses: *Provided further*, That not to exceed \$90,000,000 for the activation of new facilities shall remain available until September 30, 1998: *Provided further*, That of the amounts provided for Contract Confinement, not to exceed \$20,000,000 shall remain available until expended to make payments in advance for grants, contracts and reimbursable agreements, and other expenses authorized by section 501(c) of the Refugee Education Assistance Act of 1980, as amended, for the care and security in the United States of Cuban and Haitian entrants: *Provided further*, That notwithstanding section 4(d) of the Service Contract Act of 1965 (41 U.S.C. 353(d)), FPS may enter into contracts and other agreements with private entities for periods of not to exceed 3 years and 7 additional option years for the confinement of Federal prisoners]: *Provided further*, That the National Institute of Corrections hereafter shall be included in the FPS Salaries and Expenses budget, in the Contract Confinement program and shall continue to perform its current functions under 18 U.S.C. 4351, et seq., with the exception of its grant program and shall collect reimbursement for services whenever possible]: *Provided further*, That any unexpended balances available to the "National Institute of Corrections" account shall be credited to and merged with this appropriation, to remain available until expended.

## **SECTION 8 OF THE PRISON RAPE ELIMINATION ACT OF 2003**

### **SEC. 8. ADOPTION AND EFFECT OF NATIONAL STANDARDS.**

#### (a) PUBLICATION OF PROPOSED STANDARDS.—

(1) FINAL RULE.—Not later than 1 year after receiving the report specified in section 7(d)(3), the Attorney General shall publish a final rule adopting national standards for the detection, prevention, reduction, and punishment of prison rape.

(2) INDEPENDENT JUDGMENT.—The standards referred to in paragraph (1) shall be based upon the independent judgment of the Attorney General, after giving due consideration to the recommended national standards provided by the Commission under section 7(e), and being informed by such data, opinions, and proposals that the Attorney General determines to be appropriate to consider.

(3) LIMITATION.—The Attorney General shall not establish a national standard under this section that would impose substantial additional costs compared to the costs presently ex-

pended by Federal, State, and local prison authorities. The Attorney General may, however, provide a list of improvements for consideration by correctional facilities.

(4) TRANSMISSION TO STATES.—Within 90 days of publishing the final rule under paragraph (1), the Attorney General shall transmit the national standards adopted under such paragraph to the chief executive of each State, the head of the department of corrections of each State, and to the appropriate authorities in those units of local government who oversee operations in one or more prisons.

(b) APPLICABILITY TO FEDERAL BUREAU OF PRISONS.—The national standards referred to in subsection (a) shall apply to the Federal Bureau of Prisons immediately upon adoption of the final rule under subsection (a)(4).

(c) APPLICABILITY TO DETENTION FACILITIES OPERATED BY THE DEPARTMENT OF HOMELAND SECURITY.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Violence Against Women Reauthorization Act of 2013, the Secretary of Homeland Security shall publish a final rule adopting national standards for the detection, prevention, reduction, and punishment of rape and sexual assault in facilities that maintain custody of aliens detained for a violation of the immigrations laws of the United States.

(2) APPLICABILITY.—The standards adopted under paragraph (1) shall apply to detention facilities operated by the Department of Homeland Security and to detention facilities operated under contract with the Department.

(3) COMPLIANCE.—The Secretary of Homeland Security shall—

(A) assess compliance with the standards adopted under paragraph (1) on a regular basis; and

(B) include the results of the assessments in performance evaluations of facilities completed by the Department of Homeland Security.

(4) CONSIDERATIONS.—In adopting standards under paragraph (1), the Secretary of Homeland Security shall give due consideration to the recommended national standards provided by the Commission under section 7(e).

(5) DEFINITION.—As used in this section, the term “detention facilities operated under contract with the Department” includes, but is not limited to contract detention facilities and detention facilities operated through an intergovernmental service agreement with the Department of Homeland Security.

(d) APPLICABILITY TO CUSTODIAL FACILITIES OPERATED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Violence Against Women Reauthorization Act of 2013, the Secretary of Health and Human Services shall publish a final rule adopting national standards for the detection, prevention, reduction, and punishment of rape and sexual assault in facilities that maintain custody of unaccompanied alien children (as defined in section 462(g) of the Homeland Security Act of 2002 (6 U.S.C. 279(g))).

(2) APPLICABILITY.—The standards adopted under paragraph (1) shall apply to facilities operated by the Department of

Health and Human Services and to facilities operated under contract with the Department.

(3) COMPLIANCE.—The Secretary of Health and Human Services shall—

(A) assess compliance with the standards adopted under paragraph (1) on a regular basis; and

(B) include the results of the assessments in performance evaluations of facilities completed by the Department of Health and Human Services.

(4) CONSIDERATIONS.—In adopting standards under paragraph (1), the Secretary of Health and Human Services shall give due consideration to the recommended national standards provided by the Commission under section 7(e).

(e) ELIGIBILITY FOR FEDERAL FUNDS.—

(1) COVERED PROGRAMS.—

(A) IN GENERAL.—For purposes of this subsection, a grant program is covered by this subsection if, and only if—

(i) the program is carried out by or under the authority of the Attorney General;

(ii) the program may provide amounts to States for prison purposes; and

(iii) the program is not administered by the Office on Violence Against Women of the Department of Justice.

(B) LIST.—For each fiscal year, the Attorney General shall prepare a list identifying each program that meets the criteria of subparagraph (A) and provide that list to each State.

(2) ADOPTION OF NATIONAL STANDARDS.—

(A) IN GENERAL.—For each fiscal year, any amount that a State would otherwise receive for prison purposes for that fiscal year under a grant program covered by this subsection shall be reduced by 5 percent, unless the chief executive officer of the State submits to the Attorney General proof of compliance with this Act through—

(i) a certification that the State has adopted, and is in full compliance with, the national standards described in subsection (a); or

(ii) an assurance that the State intends to adopt and achieve full compliance with those national standards so as to ensure that a certification under clause (i) may be submitted in future years, which includes—

(I) a commitment that not less than 5 percent of such amount shall be used for this purpose; or

(II) a request that the Attorney General hold 5 percent of such amount in abeyance pursuant to the requirements of subparagraph (E).

(B) RULES FOR CERTIFICATION.—

(i) IN GENERAL.—A chief executive officer of a State who submits a certification under this paragraph shall also provide the Attorney General with—

(I) a list of the prisons under the operational control of the executive branch of the State;

(II) a list of the prisons listed under subclause (I) that were audited during the most recently concluded audit year;

(III) all final audit reports for prisons listed under subclause (I) that were completed during the most recently concluded audit year; and

(IV) a proposed schedule for completing an audit of all the prisons listed under subclause (I) during the following 3 audit years.

(ii) **AUDIT APPEAL EXCEPTION.**—Beginning on the date that is 3 years after the date of enactment of the Justice for All Reauthorization Act of 2016, a chief executive officer of a State may submit a certification that the State is in full compliance pursuant to subparagraph (A)(i) even if a prison under the operational control of the executive branch of the State has an audit appeal pending.

**(C) RULES FOR ASSURANCES.**—

(i) **IN GENERAL.**—A chief executive officer of a State who submits an assurance under subparagraph (A)(ii) shall also provide the Attorney General with—

(I) a list of the prisons under the operational control of the executive branch of the State;

(II) a list of the prisons listed under subclause (I) that were audited during the most recently concluded audit year;

(III) an explanation of any barriers the State faces to completing required audits;

(IV) all final audit reports for prisons listed under subclause (I) that were completed during the most recently concluded audit year;

(V) a proposed schedule for completing an audit of all prisons under the operational control of the executive branch of the State during the following 3 audit years; and

(VI) an explanation of the State’s current degree of implementation of the national standards.

(ii) **ADDITIONAL REQUIREMENT.**—A chief executive officer of a State who submits an assurance under subparagraph (A)(ii)(I) shall, before receiving the applicable funds described in subparagraph (A)(ii)(I), also provide the Attorney General with a proposed plan for the expenditure of the funds during the applicable grant period.

(iii) **ACCOUNTING OF FUNDS.**—A chief executive officer of a State who submits an assurance under subparagraph (A)(ii)(I) shall, in a manner consistent with the applicable grant reporting requirements, submit to the Attorney General a detailed accounting of how the funds described in subparagraph (A) were used.

**(D) SUNSET OF ASSURANCE OPTION.**—

(i) **IN GENERAL.**—On the date that is 3 years after the date of enactment of the Justice for All Reauthorization Act of 2016, subclause (II) of subparagraph (A)(ii) shall cease to have effect.

(ii) **ADDITIONAL SUNSET.**—On the date that is 6 years after the date of enactment of the Justice for All Reauthorization Act of 2016, clause (ii) of subparagraph (A) shall cease to have effect.

(iii) **EMERGENCY ASSURANCES.**—

(I) **REQUEST.**—Notwithstanding clause (ii), during the 2-year period beginning 6 years after the date of enactment of the Justice for All Reauthorization Act of 2016, a chief executive officer of a State who certifies that the State has audited not less than 90 percent of prisons under the operational control of the executive branch of the State may request that the Attorney General allow the chief executive officer to submit an emergency assurance in accordance with subparagraph (A)(ii) as in effect on the day before the date on which that subparagraph ceased to have effect under clause (ii) of this subparagraph.

(II) **GRANT OF REQUEST.**—The Attorney General shall grant a request submitted under subclause (I) within 60 days upon a showing of good cause.

(E) **DISPOSITION OF FUNDS HELD IN ABEYANCE.**—

(i) **IN GENERAL.**—If the chief executive officer of a State who has submitted an assurance under subparagraph (A)(ii)(II) subsequently submits a certification under subparagraph (A)(i) during the 3-year period beginning on the date of enactment of the Justice for All Reauthorization Act of 2016, the Attorney General will release all funds held in abeyance under subparagraph (A)(ii)(II) to be used by the State in accordance with the conditions of the grant program for which the funds were provided.

(ii) **RELEASE OF FUNDS.**—If the chief executive officer of a State who has submitted an assurance under subparagraph (A)(ii)(II) is unable to submit a certification during the 3-year period beginning on the date of enactment of the Justice for All Reauthorization Act of 2016, but does assure the Attorney General that  $\frac{2}{3}$  of prisons under the operational control of the executive branch of the State have been audited at least once, the Attorney General shall release all of the funds of the State held in abeyance to be used in adopting and achieving full compliance with the national standards, if the State agrees to comply with the applicable requirements in clauses (ii) and (iii) of subparagraph (C).

(iii) **REDISTRIBUTION OF FUNDS.**—If the chief executive officer of a State who has submitted an assurance under subparagraph (A)(ii)(II) is unable to submit a certification during the 3-year period beginning on the date of enactment of the Justice for All Reauthorization Act of 2016 and does not assure the Attorney General that  $\frac{2}{3}$  of prisons under the operational control of the executive branch of the State have been audited at least once, the Attorney General shall redis-

tribute the funds of the State held in abeyance to other States to be used in accordance with the conditions of the grant program for which the funds were provided.

(F) PUBLICATION OF AUDIT RESULTS.—Not later than 1 year after the date of enactment of the Justice for All Reauthorization Act of 2016, the Attorney General shall request from each State, and make available on an appropriate Internet website, all final audit reports completed to date for prisons under the operational control of the executive branch of each State. The Attorney General shall update such website annually with reports received from States under subparagraphs (B)(i) and (C)(i).

(G) REPORT ON IMPLEMENTATION OF NATIONAL STANDARDS.—Not later than 2 years after the date of enactment of the Justice for All Reauthorization Act of 2016, the Attorney General shall issue a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on the status of implementation of the national standards and the steps the Department, in conjunction with the States and other key stakeholders, is taking to address any unresolved implementation issues.

(3) REPORT ON NONCOMPLIANCE.—Not later than September 30 of each year, the Attorney General shall publish a report listing each grantee that is not in compliance with the national standards adopted pursuant to section 8(a).

(4) COOPERATION WITH SURVEY.—For each fiscal year, any amount that a State receives for that fiscal year under a grant program covered by this subsection shall not be used for prison purposes (and shall be returned to the grant program if no other authorized use is available), unless the chief executive of the State submits to the Attorney General a certification that neither the State, nor any political subdivision or unit of local government within the State, is listed in a report issued by the Attorney General pursuant to section 4(c)(2)(C).

(5) REDISTRIBUTION OF AMOUNTS.—Amounts under a grant program not granted by reason of a reduction under paragraph (2), or returned by reason of the prohibition in paragraph (4), shall be granted to one or more entities not subject to such reduction or such prohibition, subject to the other laws governing that program.

(6) IMPLEMENTATION.—The Attorney General shall establish procedures to implement this subsection, including procedures for effectively applying this subsection to discretionary grant programs.

(7) EFFECTIVE DATE.—

(A) REQUIREMENT OF ADOPTION OF STANDARDS.—The first grants to which paragraph (2) applies are grants for the second fiscal year beginning after the date on which the national standards under section 8(a) are finalized.

(B) REQUIREMENT FOR COOPERATION.—The first grants to which paragraph (4) applies are grants for the fiscal year beginning after the date of the enactment of this Act.

[(8) BACKGROUND CHECKS FOR AUDITORS.—An individual seeking certification by the Department of Justice to serve as an auditor of prison compliance with the national standards described in subsection (a) shall, upon request, submit fingerprints in the manner determined by the Attorney General for criminal history record checks of the applicable State and Federal Bureau of Investigation repositories.]

(8) STANDARDS FOR AUDITORS.—

(A) IN GENERAL.—

(i) BACKGROUND CHECKS FOR AUDITORS.—*An individual seeking certification by the Department of Justice to serve as an auditor of prison compliance with the national standards described in subsection (a) shall, upon request, submit fingerprints in the manner determined by the Attorney General for criminal history record checks of the applicable State and Federal Bureau of Investigation repositories.*

(ii) CERTIFICATION AGREEMENTS.—*Each auditor certified under this paragraph shall sign a certification agreement that includes the provisions of, or provisions that are substantially similar to, the Bureau of Justice Assistance's Auditor Certification Agreement in use in April 2018.*

(iii) AUDITOR EVALUATION.—*The PREA Management Office of the Bureau of Justice Assistance shall evaluate all auditors based on the criteria contained in the certification agreement. In the case that an auditor fails to comply with a certification agreement or to conduct audits in accordance with the PREA Auditor Handbook, audit methodology, and instrument approved by the PREA Management Office, the Office may take remedial or disciplinary action, as appropriate, including decertifying the auditor in accordance with subparagraph (B).*

(B) AUDITOR DECERTIFICATION.—

(i) IN GENERAL.—*The PREA Management Office may suspend an auditor's certification during an evaluation of an auditor's performance under subparagraph (A)(iii). The PREA Management Office shall promptly publish the names of auditors who have been decertified, and the reason for decertification. Auditors who have been decertified or are on suspension may not participate in audits described in subsection (a), including as an agent of a certified auditor.*

(ii) NOTIFICATION.—*In the case that an auditor is decertified, the PREA Management Office shall inform each facility or agency at which the auditor performed an audit during the relevant three-year audit cycle, and may recommend that the agency repeat any affected audits, if appropriate.*

(C) AUDIT ASSIGNMENTS.—*The PREA Management Office shall establish a system, to be administered by the Office, for assigning certified auditors to Federal, State, and local facilities.*

*(D) DISCLOSURE OF DOCUMENTATION.—The Director of the Bureau of Prisons shall comply with each request for documentation necessary to conduct an audit under subsection (a), which is made by a certified auditor in accordance with the provisions of the certification agreement described in subparagraph (A)(ii). The Director of the Bureau of Prisons may require an auditor to sign a confidentiality agreement or other agreement designed to address the auditor’s use of personally identifiable information, except that such an agreement may not limit an auditor’s ability to provide all such documentation to the Department of Justice, as required under section 115.401(j) of title 28, Code of Federal Regulations.*

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**OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF  
1968**

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**TITLE I—JUSTICE SYSTEM IMPROVEMENT**

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**PART HH—ADULT AND JUVENILE  
COLLABORATION PROGRAM GRANTS**

**SEC. 2991. ADULT AND JUVENILE COLLABORATION PROGRAMS.**

(a) **DEFINITIONS.**—In this section, the following definitions shall apply:

(1) **APPLICANT.**—The term “applicant” means States, units of local government, Indian tribes, and tribal organizations that apply for a grant under this section.

(2) **COLLABORATION PROGRAM.**—The term “collaboration program” means a program to promote public safety by ensuring access to adequate mental health and other treatment services for mentally ill adults or juveniles that is overseen cooperatively by—

(A) a criminal or juvenile justice agency or a mental health court; and

(B) a mental health agency.

(3) **CRIMINAL OR JUVENILE JUSTICE AGENCY.**—The term “criminal or juvenile justice agency” means an agency of a State or local government or its contracted agency that is responsible for detection, arrest, enforcement, prosecution, defense, adjudication, incarceration, probation, or parole relating to the violation of the criminal laws of that State or local government.

(4) **DIVERSION AND ALTERNATIVE PROSECUTION AND SENTENCING.**—

(A) **IN GENERAL.**—The terms “diversion” and “alternative prosecution and sentencing” mean the appropriate use of effective mental health treatment alternatives to juvenile justice or criminal justice system institutional placements for preliminarily qualified offenders.

(B) APPROPRIATE USE.—In this paragraph, the term “appropriate use” includes the discretion of the judge or supervising authority, the leveraging of graduated sanctions to encourage compliance with treatment, and law enforcement diversion, including crisis intervention teams.

(C) GRADUATED SANCTIONS.—In this paragraph, the term “graduated sanctions” means an accountability-based graduated series of sanctions (including incentives, treatments, and services) applicable to mentally ill offenders within both the juvenile and adult justice system to hold individuals accountable for their actions and to protect communities by providing appropriate sanctions for inducing law-abiding behavior and preventing subsequent involvement in the criminal justice system.

(5) MENTAL HEALTH AGENCY.—The term “mental health agency” means an agency of a State or local government or its contracted agency that is responsible for mental health services or co-occurring mental health and substance abuse services.

(6) MENTAL HEALTH COURT.—The term “mental health court” means a judicial program that meets the requirements of part V of this title.

(7) MENTAL ILLNESS; MENTAL HEALTH DISORDER.—The terms “mental illness” and “mental health disorder” mean a diagnosable mental, behavioral, or emotional disorder—

(A) of sufficient duration to meet diagnostic criteria within the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; and

(B)(i) that, in the case of an adult, has resulted in functional impairment that substantially interferes with or limits 1 or more major life activities; or

(ii) that, in the case of a juvenile, has resulted in functional impairment that substantially interferes with or limits the juvenile’s role or functioning in family, school, or community activities.

(8) NONVIOLENT OFFENSE.—The term “nonviolent offense” means an offense that does not have as an element the use, attempted use, or threatened use of physical force against the person or property of another or is not a felony that by its nature involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(9) PRELIMINARILY QUALIFIED OFFENDER.—

(A) IN GENERAL.—The term “preliminarily qualified offender” means an adult or juvenile accused of an offense who—

(i)(I) previously or currently has been diagnosed by a qualified mental health professional as having a mental illness or co-occurring mental illness and substance abuse disorders;

(II) manifests obvious signs of mental illness or co-occurring mental illness and substance abuse disorders during arrest or confinement or before any court; or

(III) in the case of a veterans treatment court provided under subsection (i), has been diagnosed with, or manifests obvious signs of, mental illness or a substance abuse disorder or co-occurring mental illness and substance abuse disorder;

(ii) has been unanimously approved for participation in a program funded under this section by, when appropriate—

(I) the relevant—

(aa) prosecuting attorney;

(bb) defense attorney;

(cc) probation or corrections official; and

(dd) judge; and

(II) a representative from the relevant mental health agency described in subsection (b)(5)(B)(i);

(iii) has been determined, by each person described in clause (ii) who is involved in approving the adult or juvenile for participation in a program funded under this section, to not pose a risk of violence to any person in the program, or the public, if selected to participate in the program; and

(iv) has not been charged with or convicted of—

(I) any sex offense (as defined in section 111 of the Sex Offender Registration and Notification Act (42 U.S.C. 16911)) or any offense relating to the sexual exploitation of children; or

(II) murder or assault with intent to commit murder.

(B) DETERMINATION.—In determining whether to designate a defendant as a preliminarily qualified offender, the relevant prosecuting attorney, defense attorney, probation or corrections official, judge, and mental health or substance abuse agency representative shall take into account—

(i) whether the participation of the defendant in the program would pose a substantial risk of violence to the community;

(ii) the criminal history of the defendant and the nature and severity of the offense for which the defendant is charged;

(iii) the views of any relevant victims to the offense;

(iv) the extent to which the defendant would benefit from participation in the program;

(v) the extent to which the community would realize cost savings because of the defendant's participation in the program; and

(vi) whether the defendant satisfies the eligibility criteria for program participation unanimously established by the relevant prosecuting attorney, defense attorney, probation or corrections official, judge and mental health or substance abuse agency representative.

(10) SECRETARY.—The term “Secretary” means the Secretary of Health and Human Services.

(11) UNIT OF LOCAL GOVERNMENT.—The term “unit of local government” means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State, including a State court, local court, or a governmental agency located within a city, county, township, town, borough, parish, or village.

(b) PLANNING AND IMPLEMENTATION GRANTS.—

(1) IN GENERAL.—The Attorney General, in consultation with the Secretary, may award nonrenewable grants to eligible applicants to prepare a comprehensive plan for and implement an adult or juvenile collaboration program, which targets preliminarily qualified offenders in order to promote public safety and public health.

(2) PURPOSES.—Grants awarded under this section shall be used to create or expand—

(A) mental health courts or other court-based programs for preliminarily qualified offenders;

(B) programs that offer specialized training to the officers and employees of a criminal or juvenile justice agency and mental health personnel serving those with co-occurring mental illness and substance abuse problems in procedures for identifying the symptoms of preliminarily qualified offenders in order to respond appropriately to individuals with such illnesses;

(C) programs that support cooperative efforts by criminal and juvenile justice agencies and mental health agencies to promote public safety by offering mental health treatment services and, where appropriate, substance abuse treatment services for—

(i) preliminarily qualified offenders with mental illness or co-occurring mental illness and substance abuse disorders; or

(ii) adult offenders with mental illness during periods of incarceration, while under the supervision of a criminal justice agency, or following release from correctional facilities; and

(D) programs that support intergovernmental cooperation between State and local governments with respect to the mentally ill offender.

(3) APPLICATIONS.—

(A) IN GENERAL.—To receive a planning grant or an implementation grant, the joint applicants shall prepare and submit a single application to the Attorney General at such time, in such manner, and containing such information as the Attorney General and the Secretary shall reasonably require. An application under part V of this title may be made in conjunction with an application under this section.

(B) COMBINED PLANNING AND IMPLEMENTATION GRANT APPLICATION.—The Attorney General and the Secretary shall develop a procedure under which applicants may apply at the same time and in a single application for a planning grant and an implementation grant, with receipt of the implementation grant conditioned on successful completion of the activities funded by the planning grant.

## (4) PLANNING GRANTS.—

(A) APPLICATION.—The joint applicants may apply to the Attorney General for a nonrenewable planning grant to develop a collaboration program.

(B) CONTENTS.—The Attorney General and the Secretary may not approve a planning grant unless the application for the grant includes or provides, at a minimum, for a budget and a budget justification, a description of the outcome measures that will be used to measure the effectiveness of the program in promoting public safety and public health, the activities proposed (including the provision of substance abuse treatment services, where appropriate) and a schedule for completion of such activities, and the personnel necessary to complete such activities.

(C) PERIOD OF GRANT.—A planning grant shall be effective for a period of 1 year, beginning on the first day of the month in which the planning grant is made. Applicants may not receive more than 1 such planning grant.

[(D) AMOUNT.—The amount of a planning grant may not exceed \$75,000, except that the Attorney General may, for good cause, approve a grant in a higher amount.]

(E) COLLABORATION SET ASIDE.—Up to 5 percent of all planning funds shall be used to foster collaboration between State and local governments in furtherance of the purposes set forth in the Mentally Ill Offender Treatment and Crime Reduction Act of 2004.

## (5) IMPLEMENTATION GRANTS.—

(A) APPLICATION.—Joint applicants that have prepared a planning grant application may apply to the Attorney General for approval of a nonrenewable implementation grant to develop a collaboration program.

(B) COLLABORATION.—To receive an implementation grant, the joint applicants shall—

(i) document that at least 1 criminal or juvenile justice agency (which can include a mental health court) and 1 mental health agency will participate in the administration of the collaboration program;

(ii) describe the responsibilities of each participating agency, including how each agency will use grant resources to provide supervision of offenders and jointly ensure that the provision of mental health treatment services and substance abuse services for individuals with co-occurring mental health and substance abuse disorders are coordinated, which may range from consultation or collaboration to integration in a single setting or treatment model;

(iii) in the case of an application from a unit of local government, document that a State mental health authority has provided comment and review; and

(iv) involve, to the extent practicable, in developing the grant application—

(I) preliminarily qualified offenders;

(II) the families and advocates of such individuals under subclause (I); and

(III) advocates for victims of crime.

(C) CONTENT.—To be eligible for an implementation grant, joint applicants shall comply with the following:

(i) DEFINITION OF TARGET POPULATION.—Applicants for an implementation grant shall—

(I) describe the population with mental illness or co-occurring mental illness and substance abuse disorders that is targeted for the collaboration program; and

(II) develop guidelines that can be used by personnel of an adult or juvenile justice agency to identify preliminarily qualified offenders.

(ii) SERVICES.—Applicants for an implementation grant shall—

(I) ensure that preliminarily qualified offenders who are to receive treatment services under the collaboration program will first receive individualized, validated, needs-based assessments to determine, plan, and coordinate the most appropriate services for such individuals;

(II) specify plans for making mental health, or mental health and substance abuse, treatment services available and accessible to preliminarily qualified offenders at the time of their release from the criminal justice system, including outside of normal business hours;

(III) ensure that there are substance abuse personnel available to respond appropriately to the treatment needs of preliminarily qualified offenders;

(IV) determine eligibility for Federal benefits;

(V) ensure that preliminarily qualified offenders served by the collaboration program will have adequate supervision and access to effective and appropriate community-based mental health services, including, in the case of individuals with co-occurring mental health and substance abuse disorders, coordinated services, which may range from consultation or collaboration to integration in a single setting treatment model;

(VI) make available, to the extent practicable, other support services that will ensure the preliminarily qualified offender's successful reintegration into the community (such as housing, education, job placement, mentoring, and health care and benefits, as well as the services of faith-based and community organizations for mentally ill individuals served by the collaboration program); and

(VII) include strategies, to the extent practicable, to address developmental and learning disabilities and problems arising from a documented history of physical or sexual abuse.

(D) HOUSING AND JOB PLACEMENT.—Recipients of an implementation grant may use grant funds to assist mentally ill offenders compliant with the program in seeking housing or employment assistance.

(E) POLICIES AND PROCEDURES.—Applicants for an implementation grant shall strive to ensure prompt access to defense counsel by criminal defendants with mental illness who are facing charges that would trigger a constitutional right to counsel.

(F) FINANCIAL.—Applicants for an implementation grant shall—

(i) explain the applicant's inability to fund the collaboration program adequately without Federal assistance;

(ii) specify how the Federal support provided will be used to supplement, and not supplant, State, local, Indian tribe, or tribal organization sources of funding that would otherwise be available, including billing third-party resources for services already covered under programs (such as Medicaid, Medicare, and the State Children's Insurance Program); and

(iii) outline plans for obtaining necessary support and continuing the proposed collaboration program following the conclusion of Federal support.

(G) OUTCOMES.—Applicants for an implementation grant shall—

(i) identify methodology and outcome measures, as required by the Attorney General and the Secretary, to be used in evaluating the effectiveness of the collaboration program;

(ii) ensure mechanisms are in place to capture data, consistent with the methodology and outcome measures under clause (i); and

(iii) submit specific agreements from affected agencies to provide the data needed by the Attorney General and the Secretary to accomplish the evaluation under clause (i).

(H) STATE PLANS.—Applicants for an implementation grant shall describe how the adult or juvenile collaboration program relates to existing State criminal or juvenile justice and mental health plans and programs.

(I) USE OF FUNDS.—Applicants that receive an implementation grant may use funds for 1 or more of the following purposes:

(i) MENTAL HEALTH COURTS AND DIVERSION/ALTERNATIVE PROSECUTION AND SENTENCING PROGRAMS.—Funds may be used to create or expand existing mental health courts that meet program requirements established by the Attorney General under part V of this title, other court-based programs, or diversion and alternative prosecution and sentencing programs (including crisis intervention teams and treatment accountability services for communities) that meet requirements established by the Attorney General and the Secretary.

(ii) TRAINING.—Funds may be used to create or expand programs, such as crisis intervention training, which offer specialized training to—

(I) criminal justice system personnel to identify and respond appropriately to the unique needs of preliminarily qualified offenders; or

(II) mental health system personnel to respond appropriately to the treatment needs of preliminarily qualified offenders.

(iii) SERVICE DELIVERY.—Funds may be used to create or expand programs that promote public safety by providing the services described in subparagraph (C)(ii) to preliminarily qualified offenders.

(iv) IN-JAIL AND TRANSITIONAL SERVICES.—Funds may be used to promote and provide mental health treatment and transitional services for those incarcerated or for transitional re-entry programs for those released from any penal or correctional institution.

(v) TEAMS ADDRESSING FREQUENT USERS OF CRISIS SERVICES.—Multidisciplinary teams that—

(I) coordinate, implement, and administer community-based crisis responses and long-term plans for frequent users of crisis services;

(II) provide training on how to respond appropriately to the unique issues involving frequent users of crisis services for public service personnel, including criminal justice, mental health, substance abuse, emergency room, healthcare, law enforcement, corrections, and housing personnel;

(III) develop or support alternatives to hospital and jail admissions for frequent users of crisis services that provide treatment, stabilization, and other appropriate supports in the least restrictive, yet appropriate, environment; and

(IV) develop protocols and systems among law enforcement, mental health, substance abuse, housing, corrections, and emergency medical service operations to provide coordinated assistance to frequent users of crisis services.

(J) GEOGRAPHIC DISTRIBUTION OF GRANTS.—The Attorney General, in consultation with the Secretary, shall ensure that planning and implementation grants are equitably distributed among the geographical regions of the United States and between urban and rural populations.

(c) PRIORITY.—The Attorney General, in awarding funds under this section, shall give priority to applications that—

(1) promote effective strategies by law enforcement to identify and to reduce risk of harm to mentally ill offenders and public safety;

(2) promote effective strategies for identification and treatment of female mentally ill offenders;

(3) promote effective strategies to expand the use of mental health courts, including the use of pretrial services and related treatment programs for offenders;

(4) propose interventions that have been shown by empirical evidence to reduce recidivism;

(5) when appropriate, use validated assessment tools to target preliminarily qualified offenders with a moderate or high risk of recidivism and a need for treatment and services; or

(6)(A) demonstrate the strongest commitment to ensuring that such funds are used to promote both public health and public safety;

(B) demonstrate the active participation of each co-applicant in the administration of the collaboration program;

(C) document, in the case of an application for a grant to be used in whole or in part to fund treatment services for adults or juveniles during periods of incarceration or detention, that treatment programs will be available to provide transition and reentry services for such individuals; and

(D) have the support of both the Attorney General and the Secretary.

(d) MATCHING REQUIREMENTS.—

(1) FEDERAL SHARE.—The Federal share of the cost of a collaboration program carried out by a State, unit of local government, Indian tribe, or tribal organization under this section shall not exceed—

(A) 80 percent of the total cost of the program during the first 2 years of the grant;

(B) 60 percent of the total cost of the program in year 3; and

(C) 25 percent of the total cost of the program in years 4 and 5.

(2) NON-FEDERAL SHARE.—The non-Federal share of payments made under this section may be made in cash or in-kind fairly evaluated, including planned equipment or services.

(e) FEDERAL USE OF FUNDS.—The Attorney General, in consultation with the Secretary, in administering grants under this section, **[may use up to 3 percent]** *shall use not less than 6 percent* of funds appropriated to—

(1) research the use of alternatives to prosecution through pretrial diversion in appropriate cases involving individuals with mental illness;

(2) offer specialized training to personnel of criminal and juvenile justice agencies in appropriate diversion techniques;

(3) provide technical assistance to local governments, mental health courts, and diversion programs, including technical assistance relating to program evaluation;

(4) help localities build public understanding and support for community reintegration of individuals with mental illness;

(5) develop a uniform program evaluation process; and

(6) conduct a national evaluation of the collaboration program that will include an assessment of its cost-effectiveness.

(f) INTERAGENCY TASK FORCE.—

(1) IN GENERAL.—The Attorney General and the Secretary shall establish an interagency task force with the Secretaries of Housing and Urban Development, Labor, Education, and Veterans Affairs and the Commissioner of Social Security, or their designees.

(2) RESPONSIBILITIES.—The task force established under paragraph (1) shall—

(A) identify policies within their departments that hinder or facilitate local collaborative initiatives for preliminarily qualified offenders; and

(B) submit, not later than 2 years after the date of enactment of this section, a report to Congress containing recommendations for improved interdepartmental collaboration regarding the provision of services to preliminarily qualified offenders.

[(g) MINIMUM ALLOCATION.—Unless all eligible applications submitted by any State or unit of local government within such State for a planning or implementation grant under this section have been funded, such State, together with grantees within the State (other than Indian tribes), shall be allocated in each fiscal year under this section not less than 0.75 percent of the total amount appropriated in the fiscal year for planning or implementation grants pursuant to this section.]

*(g) COLLABORATION SET ASIDE.—The Attorney General shall use not less than 8 percent of funds appropriated to provide technical assistance to State and local governments receiving grants under this part to foster collaboration between such governments in furtherance of the purposes set forth in section 3 of the Mentally Ill Offender Treatment and Crime Reduction Act of 2004 (34 U.S.C. 10651 note).*

(h) LAW ENFORCEMENT RESPONSE TO MENTALLY ILL OFFENDERS IMPROVEMENT GRANTS.—

(1) AUTHORIZATION.—The Attorney General is authorized to make grants under this section to States, units of local government, Indian tribes, and tribal organizations for the following purposes:

(A) TRAINING PROGRAMS.—To provide for programs that offer law enforcement personnel specialized and comprehensive training in procedures to identify and respond appropriately to incidents in which the unique needs of individuals with mental illnesses are involved.

(B) RECEIVING CENTERS.—To provide for the development of specialized receiving centers to assess individuals in the custody of law enforcement personnel for suicide risk and mental health and substance abuse treatment needs.

(C) IMPROVED TECHNOLOGY.—To provide for computerized information systems (or to improve existing systems) to provide timely information to law enforcement personnel and criminal justice system personnel to improve the response of such respective personnel to mentally ill offenders.

(D) COOPERATIVE PROGRAMS.—To provide for the establishment and expansion of cooperative efforts by criminal and juvenile justice agencies and mental health agencies to promote public safety through the use of effective intervention with respect to mentally ill offenders.

(E) CAMPUS SECURITY PERSONNEL TRAINING.—To provide for programs that offer campus security personnel training in procedures to identify and respond appropriately to incidents in which the unique needs of individuals with mental illnesses are involved.

(F) **ACADEMY TRAINING.**—To provide support for academy curricula, law enforcement officer orientation programs, continuing education training, and other programs that teach law enforcement personnel how to identify and respond to incidents involving persons with mental health disorders or co-occurring mental health and substance abuse disorders.

(2) **BJA TRAINING MODELS.**—For purposes of paragraph (1)(A), the Director of the Bureau of Justice Assistance shall develop training models for training law enforcement personnel in procedures to identify and respond appropriately to incidents in which the unique needs of individuals with mental illnesses are involved, including suicide prevention.

(3) **MATCHING FUNDS.**—The Federal share of funds for a program funded by a grant received under this subsection may not exceed 50 percent of the costs of the program. The non-Federal share of payments made for such a program may be made in cash or in-kind fairly evaluated, including planned equipment or services.

(4) **PRIORITY CONSIDERATION.**—The Attorney General, in awarding grants under this subsection, shall give priority to programs that law enforcement personnel and members of the mental health and substance abuse professions develop and administer cooperatively.

(i) **ASSISTING VETERANS.**—

(1) **DEFINITIONS.**—In this subsection:

(A) **PEER-TO-PEER SERVICES OR PROGRAMS.**—The term “peer-to-peer services or programs” means services or programs that connect qualified veterans with other veterans for the purpose of providing support and mentorship to assist qualified veterans in obtaining treatment, recovery, stabilization, or rehabilitation.

(B) **QUALIFIED VETERAN.**—The term “qualified veteran” means a preliminarily qualified offender who—

- (i) served on active duty in any branch of the Armed Forces, including the National Guard or Reserves; and
- (ii) was discharged or released from such service under conditions other than dishonorable, unless the reason for the dishonorable discharge was attributable to a substance abuse disorder.

(C) **VETERANS TREATMENT COURT PROGRAM.**—The term “veterans treatment court program” means a court program involving collaboration among criminal justice, veterans, and mental health and substance abuse agencies that provides qualified veterans with—

- (i) intensive judicial supervision and case management, which may include random and frequent drug testing where appropriate;
- (ii) a full continuum of treatment services, including mental health services, substance abuse services, medical services, and services to address trauma;
- (iii) alternatives to incarceration; or
- (iv) other appropriate services, including housing, transportation, mentoring, employment, job training,

education, or assistance in applying for and obtaining available benefits.

(2) VETERANS ASSISTANCE PROGRAM.—

(A) IN GENERAL.—The Attorney General, in consultation with the Secretary of Veterans Affairs, may award grants under this subsection to applicants to establish or expand—

- (i) veterans treatment court programs;
- (ii) peer-to-peer services or programs for qualified veterans;
- (iii) practices that identify and provide treatment, rehabilitation, legal, transitional, and other appropriate services to qualified veterans who have been incarcerated; or
- (iv) training programs to teach criminal justice, law enforcement, corrections, mental health, and substance abuse personnel how to identify and appropriately respond to incidents involving qualified veterans.

(B) PRIORITY.—In awarding grants under this subsection, the Attorney General shall give priority to applications that—

- (i) demonstrate collaboration between and joint investments by criminal justice, mental health, substance abuse, and veterans service agencies;
- (ii) promote effective strategies to identify and reduce the risk of harm to qualified veterans and public safety; and
- (iii) propose interventions with empirical support to improve outcomes for qualified veterans.

(j) FORENSIC ASSERTIVE COMMUNITY TREATMENT (FACT) INITIATIVE PROGRAM.—

(1) IN GENERAL.—The Attorney General may make grants to States, units of local government, territories, Indian Tribes, nonprofit agencies, or any combination thereof, to develop, implement, or expand Assertive Community Treatment initiatives to develop forensic assertive community treatment (referred to in this subsection as “FACT”) programs that provide high intensity services in the community for individuals with mental illness with involvement in the criminal justice system to prevent future incarcerations.

(2) ALLOWABLE USES.—Grant funds awarded under this subsection may be used for—

(A) multidisciplinary team initiatives for individuals with mental illnesses with criminal justice involvement that address criminal justice involvement as part of treatment protocols;

(B) FACT programs that involve mental health professionals, criminal justice agencies, chemical dependency specialists, nurses, psychiatrists, vocational specialists, forensic peer specialists, forensic specialists, and dedicated administrative support staff who work together to provide recovery oriented, 24/7 wraparound services;

(C) services such as integrated evidence-based practices for the treatment of co-occurring mental health and sub-

stance-related disorders, assertive outreach and engagement, community-based service provision at participants' residence or in the community, psychiatric rehabilitation, recovery oriented services, services to address criminogenic risk factors, and community tenure;

(D) payments for treatment providers that are approved by the State or Indian Tribe and licensed, if necessary, to provide needed treatment to eligible offenders participating in the program, including behavioral health services and aftercare supervision; and

(E) training for all FACT teams to promote high-fidelity practice principles and technical assistance to support effective and continuing integration with criminal justice agency partners.

(3) SUPPLEMENT AND NOT SUPPLANT.—Grants made under this subsection shall be used to supplement, and not supplant, non-Federal funds that would otherwise be available for programs described in this subsection.

(4) APPLICATIONS.—To request a grant under this subsection, a State, unit of local government, territory, Indian Tribe, or nonprofit agency shall submit an application to the Attorney General in such form and containing such information as the Attorney General may reasonably require.

(k) SEQUENTIAL INTERCEPT GRANTS.—

(1) DEFINITION.—In this subsection, the term “eligible entity” means a State, unit of local government, Indian tribe, or tribal organization.

(2) AUTHORIZATION.—The Attorney General may make grants under this subsection to an eligible entity for sequential intercept mapping and implementation in accordance with paragraph (3).

(3) SEQUENTIAL INTERCEPT MAPPING; IMPLEMENTATION.—An eligible entity that receives a grant under this subsection may use funds for—

(A) sequential intercept mapping, which—

(i) shall consist of—

(I) convening mental health and criminal justice stakeholders to—

(aa) develop a shared understanding of the flow of justice-involved individuals with mental illnesses through the criminal justice system; and

(bb) identify opportunities for improved collaborative responses to the risks and needs of individuals described in item (aa); and

(II) developing strategies to address gaps in services and bring innovative and effective programs to scale along multiple intercepts, including—

(aa) emergency and crisis services;

(bb) specialized police-based responses;

(cc) court hearings and disposition alternatives;

(dd) reentry from jails and prisons; and

- (ee) community supervision, treatment and support services; and
  - (ii) may serve as a starting point for the development of strategic plans to achieve positive public health and safety outcomes; and
  - (B) implementation, which shall—
    - (i) be derived from the strategic plans described in subparagraph (A)(ii); and
    - (ii) consist of—
      - (I) hiring and training personnel;
      - (II) identifying the eligible entity’s target population;
      - (III) providing services and supports to reduce unnecessary penetration into the criminal justice system;
      - (IV) reducing recidivism;
      - (V) evaluating the impact of the eligible entity’s approach; and
      - (VI) planning for the sustainability of effective interventions.
- (1) CORRECTIONAL FACILITIES.—
- (1) DEFINITIONS.—
- (A) CORRECTIONAL FACILITY.—The term “correctional facility” means a jail, prison, or other detention facility used to house people who have been arrested, detained, held, or convicted by a criminal justice agency or a court.
- (B) ELIGIBLE INMATE.—The term “eligible inmate” means an individual who—
- (i) is being held, detained, or incarcerated in a correctional facility; and
  - (ii) manifests obvious signs of a mental illness or has been diagnosed by a qualified mental health professional as having a mental illness.
- (2) CORRECTIONAL FACILITY GRANTS.—The Attorney General may award grants to applicants to enhance the capabilities of a correctional facility—
- (A) to identify and screen for eligible inmates;
  - (B) to plan and provide—
    - (i) initial and periodic assessments of the clinical, medical, and social needs of inmates; and
    - (ii) appropriate treatment and services that address the mental health and substance abuse needs of inmates;
  - (C) to develop, implement, and enhance—
    - (i) post-release transition plans for eligible inmates that, in a comprehensive manner, coordinate health, housing, medical, employment, and other appropriate services and public benefits;
    - (ii) the availability of mental health care services and substance abuse treatment services; and
    - (iii) alternatives to solitary confinement and segregated housing and mental health screening and treatment for inmates placed in solitary confinement or segregated housing; and

(D) to train each employee of the correctional facility to identify and appropriately respond to incidents involving inmates with mental health or co-occurring mental health and substance abuse disorders.

(m) ACCOUNTABILITY.—All grants awarded by the Attorney General under this section shall be subject to the following accountability provisions:

(1) AUDIT REQUIREMENT.—

(A) DEFINITION.—In this paragraph, the term “unresolved audit finding” means a finding in the final audit report of the Inspector General of the Department of Justice that the audited grantee has utilized grant funds for an unauthorized expenditure or otherwise unallowable cost that is not closed or resolved within 12 months from the date when the final audit report is issued.

(B) AUDITS.—Beginning in the first fiscal year beginning after the date of enactment of this subsection, and in each fiscal year thereafter, the Inspector General of the Department of Justice shall conduct audits of recipients of grants under this section to prevent waste, fraud, and abuse of funds by grantees. The Inspector General shall determine the appropriate number of grantees to be audited each year.

(C) MANDATORY EXCLUSION.—A recipient of grant funds under this section that is found to have an unresolved audit finding shall not be eligible to receive grant funds under this section during the first 2 fiscal years beginning after the end of the 12-month period described in subparagraph (A).

(D) PRIORITY.—In awarding grants under this section, the Attorney General shall give priority to eligible applicants that did not have an unresolved audit finding during the 3 fiscal years before submitting an application for a grant under this section.

(E) REIMBURSEMENT.—If an entity is awarded grant funds under this section during the 2-fiscal-year period during which the entity is barred from receiving grants under subparagraph (C), the Attorney General shall—

(i) deposit an amount equal to the amount of the grant funds that were improperly awarded to the grantee into the General Fund of the Treasury; and

(ii) seek to recoup the costs of the repayment to the fund from the grant recipient that was erroneously awarded grant funds.

(2) NONPROFIT ORGANIZATION REQUIREMENTS.—

(A) DEFINITION.—For purposes of this paragraph and the grant programs under this part, the term “nonprofit organization” means an organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and is exempt from taxation under section 501(a) of such Code.

(B) PROHIBITION.—The Attorney General may not award a grant under this part to a nonprofit organization that holds money in offshore accounts for the purpose of avoiding paying the tax described in section 511(a) of the Internal Revenue Code of 1986.

(C) DISCLOSURE.—Each nonprofit organization that is awarded a grant under this section and uses the procedures prescribed in regulations to create a rebuttable presumption of reasonableness for the compensation of its officers, directors, trustees, and key employees, shall disclose to the Attorney General, in the application for the grant, the process for determining such compensation, including the independent persons involved in reviewing and approving such compensation, the comparability data used, and contemporaneous substantiation of the deliberation and decision. Upon request, the Attorney General shall make the information disclosed under this subparagraph available for public inspection.

(3) CONFERENCE EXPENDITURES.—

(A) LIMITATION.—No amounts made available to the Department of Justice under this section may be used by the Attorney General, or by any individual or entity awarded discretionary funds through a cooperative agreement under this section, to host or support any expenditure for conferences that uses more than \$20,000 in funds made available by the Department of Justice, unless the head of the relevant agency or department, provides prior written authorization that the funds may be expended to host the conference.

(B) WRITTEN APPROVAL.—Written approval under subparagraph (A) shall include a written estimate of all costs associated with the conference, including the cost of all food, beverages, audio-visual equipment, honoraria for speakers, and entertainment.

(C) REPORT.—The Deputy Attorney General shall submit an annual report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on all conference expenditures approved under this paragraph.

(4) ANNUAL CERTIFICATION.—Beginning in the first fiscal year beginning after the date of enactment of this subsection, the Attorney General shall submit, to the Committee on the Judiciary and the Committee on Appropriations of the Senate and the Committee on the Judiciary and the Committee on Appropriations of the House of Representatives, an annual certification—

(A) indicating whether—

(i) all audits issued by the Office of the Inspector General under paragraph (1) have been completed and reviewed by the appropriate Assistant Attorney General or Director;

(ii) all mandatory exclusions required under paragraph (1)(C) have been issued; and

(iii) all reimbursements required under paragraph (1)(E) have been made; and

(B) that includes a list of any grant recipients excluded under paragraph (1) from the previous year.

(n) PREVENTING DUPLICATIVE GRANTS.—

(1) IN GENERAL.—Before the Attorney General awards a grant to an applicant under this section, the Attorney General

shall compare potential grant awards with other grants awarded under this Act to determine if duplicate grant awards are awarded for the same purpose.

(2) REPORT.—If the Attorney General awards duplicate grants to the same applicant for the same purpose the Attorney General shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report that includes—

- (A) a list of all duplicate grants awarded, including the total dollar amount of any duplicate grants awarded; and
- (B) the reason the Attorney General awarded the duplicate grants.

(o) AUTHORIZATION OF APPROPRIATIONS.—(1) IN GENERAL.—There are authorized to be appropriated to the Department of Justice to carry out this section—

- (A) \$50,000,000 for fiscal year 2005;
- (B) such sums as may be necessary for each of the fiscal years 2006 and 2007; and
- (C) \$50,000,000 for each of the fiscal years 2017 through 2021.

(2) ALLOCATION OF FUNDING FOR ADMINISTRATIVE PURPOSES.—For fiscal year 2009 and each subsequent fiscal year, of the amounts authorized under paragraph (1) for such fiscal year, the Attorney General may obligate not more than 3 percent for the administrative expenses of the Attorney General in carrying out this section for such fiscal year.

(3) LIMITATION.—Not more than 20 percent of the funds authorized to be appropriated under this section may be used for purposes described in subsection (i) (relating to veterans).

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### Dissenting Views

H.R. 5682, known as the “FIRST STEP Act,” would establish a new system to be administered by the Federal Bureau of Prisons (BOP) to allow federal prisoners to earn early entrance into pre-release custody by participating in programs or activities to reduce recidivism. Despite the bill’s good intentions, we must oppose it because we believe the new incentive system could exacerbate racial biases in our criminal justice system and, unlike previous criminal justice reform efforts, is not balanced with necessary reforms to our federal sentencing system. As Monday’s New York Times editorial observed:

The biggest problem with the First Step Act, however, isn’t what’s in it; it’s what’s left out. Specifically, sentencing reform. Harsh sentencing laws passed in the 1980s and 1990s, like mandatory minimums of 10 or 20 years even for low-level drug crimes, have been among the main drivers of the nation’s exploding prison population. If the states’ experience has demonstrated anything, it’s that effective justice reform can’t happen without addressing both ends of the problem at once—not simply helping the people now behind bars, but limiting how many get locked up in the first place. . . .[A] partial bill could end up being worse than nothing, especially if its benefits don’t live up

to expectations, and if Congress, which has many other pressing matters to attend to, decides it's had enough of the topic. "Get a bill to my desk," Mr. Trump said on Friday [at a forum on prison issues]. "I will sign it." If he means this, and if he genuinely cares about reforming the federal justice system, he'll demand a bill that addresses the system's most pressing problems.<sup>1</sup>

And as former Attorney General Eric Holder writes in today's Washington Post, "to reform America's prison, we must change the laws that send people to them in the first place. Anything less represents a failure of leadership."<sup>2</sup>

It is also notable that H.R. 5682 is opposed by the vast majority of civil rights and criminal justice advocacy organizations, organized labor, and religious organizations, including the Leadership Conference on Civil and Human Rights (LCCHR), the ACLU, the Center for American Progress, the NAACP and NAACP Legal Defense and Educational Fund, the AFL-CIO, the American Federation of Government Employees, the National Immigration Law Center, United We Dream, the Brennan Center for Justice, Law Enforcement Leaders to Reduce Crime and Incarceration, the Religious Action Center of Reform Judaism, Bend the Arc, the National Bar Association, People for the American Way, the Southern Poverty Law Center, and former U.S. Attorney General Eric Holder.<sup>3</sup>

#### CONCERNS WITH H.R. 5682

Title I of the bill would authorize the development and implementation a new system to allow federal prisoners to participate in recidivism reduction programming (such as education, counseling, drug treatment, and job training), and earn time credits which would allow them to be eligible for pre-release custody (but not end their sentences early). Unfortunately, some inmates who might want to participate would not be eligible to earn these time credits at all; and some who are otherwise eligible and do earn time credits might not be granted pre-release custody because of the applicability of a new risk assessment system to be developed by BOP.

As a threshold matter, several categories of prisoners would be excluded entirely from eligibility to earn time credits based on the nature of their offense, including a limited range of drug offenses.<sup>4</sup> The legislation also specifically excludes most non-citizens from being eligible for time credits.<sup>5</sup> Specifically, the bill excludes un-

<sup>1</sup> Editorial, *The Right Way to Fix Prisons*, N.Y. Times, May 21, 2018, at A22 (emphasis added), available at <https://www.nytimes.com/2018/05/20/opinion/trump-prison-reform.html>.

<sup>2</sup> Eric H. Holder, Jr., Opinion, *There's Something Huge Missing from the White House's Prison Bill*, Wash. Post, May 22, 2018 (emphasis added), available at [https://www.washingtonpost.com/opinions/dont-let-the-trump-administration-derail-criminal-justice-reform/2018/05/21/7b3374d8-5d17-11e8-b2b8-08a538d9dbd6\\_story.html?noredirect=on&utm\\_term=.6eaf0e2cf782](https://www.washingtonpost.com/opinions/dont-let-the-trump-administration-derail-criminal-justice-reform/2018/05/21/7b3374d8-5d17-11e8-b2b8-08a538d9dbd6_story.html?noredirect=on&utm_term=.6eaf0e2cf782).

<sup>3</sup> Letter from Leadership Conference on Civil and Human Rights and ACLU signed by more than 70 other organizations to H. Comm. on the Judiciary Members (May 8, 2018); see also Letter from Law Enforcement Leaders to Reduce Crime & Incarceration on Law Enforcement Perspective on the FIRST STEP Act to Rep. Paul Ryan (R-WI), Speaker of the House, et al., (May 9, 2018); Letter from the American Federation of Government Employees on to Sen. Chuck Grassley (R-IA), Chair, S. Comm. on the Judiciary, et al. (May 8, 2018) (on file with H. Comm. on the Judiciary Democratic staff).

<sup>4</sup> H.R. 5682, 115th Cong. §101(a) (2018) (amending title 18 of the U.S. Code to add section 3632(d)(4)(D)). The legislation specifies 48 separate statutory exclusions of offenses for prisoners who are deemed not eligible to receive time credits, including certain drug offenses.

<sup>5</sup> *Id.* (amending title 18 of the U.S. Code to add section 3632(d)(4)(B), which provides that a "prisoner may not earn time credits . . . if that prisoner is an inadmissible or deportable alien

documented individuals, including those who remained in the United States longer than permitted, even if they have no previous involvement in the criminal justice system. The bill also excludes lawful permanent residents with certain criminal convictions triggering removability, including marijuana possession.<sup>6</sup> Indeed, as currently written, such lawful permanent residents could be excluded even if they are eligible for, and ultimately receive, relief under U.S. immigration laws.

The National Immigrant Justice Center, the Immigrant Justice Network, the Immigrant Defense Project, the National Immigration Project of the National Lawyers Guild, the Immigrant Legal Resource Center, and the ACLU have expressed concerns that the “bill excludes from its reforms most undocumented immigrants and many long-time lawful permanent residents. . . . This bill further criminalizes migration, a significant percentage of those currently serving time in federal prison, by including certain illegal reentry convictions in the list of those offenses that disqualify individuals from receiving time credit.”<sup>7</sup>

Further, both of these types of exclusions would disincentivize large categories of inmates from participating in recidivism reduction programs and potentially have a racially disparate impact on the federal prison system. As the LCCHR, ACLU, and more than 70 civil rights and criminal justice advocacy organizations wrote to us:

The long list of exclusions in the bill sweep in, for example, those convicted of certain immigration offenses and drug offenses. . . . [M]any people could be excluded from utilizing the time credits they earned after completing the programming. Furthermore the exclusions could also have a disparate impact on racial minorities since the majority of those held in federal prison for immigration and drug offenses are people of color.<sup>8</sup>

In addition, certain prisoners who are eligible to earn good time credits and are able to successfully participate in recidivism reduction programs would face being denied early entry to pre-release custody if the inmate is not judged to be a “low recidivism risk” under the new risk assessment system.<sup>9</sup> We believe as a matter of

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under the immigration laws[.]”). Under the legislation, a prisoner does not need to be subject to a final order of deportation to be excluded from the program. New section 3632(d)(4)(D)(xlili) also adds certain immigration offenses relating to reentry to the list of individuals who are “ineligible to receive time credits.”

<sup>6</sup>See, e.g., 8 U.S.C. §237(a)(2) (2018) (making lawful permanent residents and other immigrants deportable for, among other things, multiple theft offenses, possession of more than 30 grams of marijuana (even if for personal use), or being a drug addict).

<sup>7</sup>Press Release, The National Immigrant Justice Center, the Immigrant Justice Network, the Immigrant Defense Project, the National Immigration Project of the National Lawyers Guild, the Immigrant Legal Resource Center, & the ACLU, The FIRST STEP Act’s Harmful Impact on Immigrant Communities (May 22, 2018).

<sup>8</sup>Letter from Leadership Conference on Civil and Human Rights and ACLU signed by more than 70 other organizations to H. Comm. on the Judiciary Members (May 8, 2018). It is worth noting that this was a serious concern even of one of the bill’s supporters, Families Against Mandatory Minimums, which wrote that “the best evidence we have about prison programming is that it should be targeted at individuals who need it the most and that incentives should be used to encourage participation. We fear that the bill’s failure to direct incentivized programming to this group will result in little or no reduction in the federal recidivism rate, and, worse, that that failure will be blamed on prisoners and not the bill’s mistaken design.” Memorandum from FAMM to Reps. Doug Collins (R-GA) & Hakeem Jeffries (D-NY) (May 8, 2018).

<sup>9</sup>H.R. 5682, 115th Cong. §102(b) (2018) (amending title 18 of the U.S. Code to add section 3624(g), referencing “minimum or low recidivism risk” as a principal factor in ascertaining eligibility for prerelease custody).

equity our federal prison system should not dangle a promise to prisoners of early release to a half-way house if they work hard in recidivism reduction programs only to tell them at the end of the process they cannot redeem the credits they earned because of determinations made by this new risk assessment system.

Even more importantly, application of the new risk assessment system to inmates could exacerbate racial and socioeconomic disparities already present in the criminal justice system. As the LCCHR, ACLU and others warned, “[R]elying on a risk assessment tool for earning time credits could amplify racial disparities and perpetuate other injustices in the criminal justice system. Studies have shown that these tools can produce results that are heavily biased against Black defendants and have a disparate negative impact on African Americans . . . [and] that African Americans are more likely to be misclassified than White or Hispanic offenders.”<sup>10</sup>

We recognize and appreciate that the sponsors were able to add provisions to the legislation in an effort to mitigate concerns regarding racial and other disparities. These include requiring the Justice Department to conduct a review of the risk assessment system to limit “unwarranted disparities;” periodic Government Accountability Office reviews of such disparities; requiring that the recidivism reduction programming and risk assessment system be “evidence-based”; and allowing a warden to override an inmate’s medium or high-risk classification to allow access to pre-release custody.<sup>11</sup> However, in our view—and the view of the vast majority of the civil rights advocacy community—the effectiveness of these mitigating provisions is too untested and uncertain. Although well-intended, the reality is that these provisions have never been scrutinized in a legislative hearing, provide no access to judicial or mandatory congressional review, do not limit the disparities inherent in the initial statutory exclusions from eligibility for time credits, and most importantly, fail to address the racial bias inherent in our criminal justice system stemming from discredited and outdated mandatory minimum sentences.

#### FAILURE TO INCLUDE SENTENCING REFORMS

Just as important as our concerns about exclusions from the recidivism reduction program and eligibility for early entry into pre-release custody, we believe prison reform legislation alone will not ameliorate the crisis of mass incarceration unless we address the principal cause of the problem—unjust sentencing laws. As recently stated by the Legislative Committee of the Federal Public and Community Defenders:

[T]he need for and benefits of sentencing reform are well-established by three decades of experience and data. The most significant driver of the five-fold increase in the federal prison population over those 30 years has been mandatory minimums, particularly those for drug offenses. The extreme levels of incarceration come at a human and financial cost that is unjustified by the legitimate purposes

<sup>10</sup> Letter from Leadership Conference on Civil and Human Rights and ACLU signed by more than 70 other organizations to H. Comm. on the Judiciary Members (May 8, 2018).

<sup>11</sup> We understand a similar system has been utilized in Louisiana.

of sentencing, and that perversely undermines public safety.<sup>12</sup>

And even legislative supporters, such as Families Against Mandatory Minimums, have written that “sentencing reform should be included in any final justice reform package.”<sup>13</sup>

Over the past four decades, the U.S. prison population has skyrocketed. There are 2.3 million people currently in the nation’s prisons and jails, which represents a more than 500% increase over the last 40 years.<sup>14</sup> During the period of 1980 to the present, the federal prison population has grown from approximately 25,000 to 184,000.<sup>15</sup> Equally as important are the social costs of increased imprisonment, which disproportionately affect low-income and minority communities as well as society’s more vulnerable individuals, such as the mentally ill.<sup>16</sup> According to the BOP, nearly 40 percent of the federal prison population is African-American,<sup>17</sup> while African-Americans constitute only 13.2 percent of the general U.S. population.<sup>18</sup> Similarly, 32.8 percent of the federal prison population is Hispanic,<sup>19</sup> compared to only 17.4 percent of the general U.S. population.<sup>20</sup>

When the Judiciary Committee began the effort to examine the problem of over-criminalization and mass incarceration several years ago, Members on both sides of the aisle recognized the negative impact of excessive sentencing in general, and mandatory minimums in particular. As a result, the Judiciary Committee in the last Congress approved sentencing reform legislation as part of a bipartisan package of criminal justice reforms. Unfortunately, H.R. 5682 does not include any reforms to our sentencing laws, and the Committee has made no progress in developing bipartisan sentencing reform legislation this Congress. During the Committee’s consideration of this bill, Ranking Member Jerrold Nadler (D–NY) moved to postpone the markup session so that the Committee could work towards an agreement on sentencing reform legislation, but the Majority tabled the motion.

<sup>12</sup>Letter from the Legislative Committee of the Federal Public and Community Defenders to Sen. Chuck Grassley (R–IA) *et al.* (Apr. 24, 2018).

<sup>13</sup>Memorandum from FADM to Reps. Doug Collins (R–GA) & Hakeem Jeffries (D–NY) (May 8, 2018).

<sup>14</sup>Pete Wagner & Wendy Sawyer, *Mass Incarceration: The Whole Pie 2018*, Prison Policy Initiative (Mar. 2018), available at <https://www.prisonpolicy.org/reports/pie2017.html>

<sup>15</sup>Federal Bureau of Prisons, Statistics: Total Federal Inmates (accessed May 11, 2018), available at [https://www.bop.gov/about/statistics/population\\_statistics.jsp](https://www.bop.gov/about/statistics/population_statistics.jsp). In recent years, the Justice Department’s expenditures on prisons have constituted from 20 to 25 percent of its total outlays. Nathan James, *FY2017 Appropriations for the Department of Justice*, Cong. Research Serv. Rep. (May 30, 2017); see also U.S. Dep’t of Justice, *FY 2018 Budget Request at a Glance*, (accessed May 11, 2018) available at <https://www.justice.gov/jmd/page/file/968276/download>.

<sup>16</sup>Emily Badger, *The Meteoric, Costly and Unprecedented Rise of Incarceration in America*, Wash. Post (Apr. 30, 2014), available at <https://www.washingtonpost.com/news/wonk/wp/2014/04/30/the-meteoric-costly-and-unprecedented-rise-of-incarceration-in-america>.

<sup>17</sup>Federal Bureau of Prisons, Statistics: Inmate Ethnicity, (accessed May 11, 2018), available at [https://www.bop.gov/about/statistics/statistics\\_inmate\\_race.jsp](https://www.bop.gov/about/statistics/statistics_inmate_race.jsp).

<sup>18</sup>U.S. Census Bureau, Quick Facts: United States (accessed May 11, 2018), available at <https://www.census.gov/quickfacts/fact/table/US/PST045216>.

<sup>19</sup>Federal Bureau of Prisons, Statistics: Inmate Ethnicity (accessed May 11, 2018), available at [https://www.bop.gov/about/statistics/statistics\\_inmate\\_race.jsp](https://www.bop.gov/about/statistics/statistics_inmate_race.jsp).

<sup>20</sup>U.S. Census Bureau, Quick Facts: United States (accessed May 11, 2018), available at <https://www.census.gov/quickfacts/fact/table/US/PST045216>. If state prison populations are taken into account, minorities constitute 60 percent of the U.S. prison population. Emily Badger, “The Meteoric, Costly and Unprecedented Rise of Incarceration in America,” Wash. Post (Apr. 30, 2014) available at <https://www.washingtonpost.com/news/wonk/wp/2014/04/30/the-meteoric-costly-and-unprecedented-rise-of-incarceration-in-america>. As a result of these higher incarceration rates, African-American men under the age of 35 and who lack a high school diploma are more likely to be in prison than to be a participant in the labor market. *Id.*

## CONCLUSION

Members on both sides of the aisle have worked in good faith over many years on both criminal justice reform and prison-related issues. In particular, we commend Representative Hakeem Jeffries (D–NY) for his work in narrowing H.R. 5682’s list of statutory exclusions and including language designed to mitigate some of the racial disparities that could exist under the new risk assessment system; Representative Cedric Richmond (D–LA) for amending the legislation to insure that the new good time credit language for early release is applied retroactively; and Representative Karen Bass (D–CA) for including language banning the shackling of pregnant women prisoners. They have worked with Crime Subcommittee Ranking Member Representative Sheila Jackson Lee (D–TX), Representative Doug Collins (R–GA), Chairman Bob Goodlatte (R–VA), and others in an effort to improve this legislation. We also support provisions in the legislation that, among other things, enhance opportunities for elder and compassionate relief, expand use and eligibility of home confinement, provide identification documents for prisoners who are about to be released, and place prisoners closer to their families.

Unfortunately, these improvements—many of the latter of which could be implemented administratively—do not offset our above-noted concerns that the legislation’s statutory exclusions from eligibility for pre-release credits and biases in the proposed new risk assessment system remain likely to perpetuate and compound the very serious racial and other socioeconomic biases embedded in our criminal justice system. The fact that after waiting nearly one and one-half years to take up the issue of criminal justice reform, the Majority was unwilling to subject H.R. 5682 to a single legislative hearing so we could examine its efficacy, or await the completion of a Congressional Budget Office score, before its consideration only compounds our fears.

These same concerns were present in the previous Congress, but were limited in a context where prison reform was being paired with sentencing reform legislation directly addressing the problems of racial bias in prosecution and sentencing. By delinking these efforts at the request of the Trump Administration, the Majority has put us in the untenable position of not just asking us to support “half a loaf,” but asking us to endorse legislation that taken alone could exacerbate the problem of bias in our criminal justice system.

We do not believe that at this juncture we can accept opposition to sentencing reform by a Trump Administration that changes its legislative positions on a near-daily basis and has already done so much to weaken and undermine the criminal justice system.<sup>21</sup> Nor

<sup>21</sup> Among other things, the Trump Justice Department has rescinded Obama Administration orders phasing out the use of private prisons, limited the use of consent decrees to oversee local law enforcement, overturned Attorney General Holder’s “Smart on Crime Initiative” thereby directing U.S. Attorneys to seek the harshest possible penalties for drug crimes, and removed barriers holding back prosecution of marijuana offenses in states that have legalized its possession. The Trump BOP has also been subject to considerable criticism and controversy, and the Director, Marc Inch, resigned on May 18, 2018. See Danielle Ivory, *Director of Bureau of Prisons to Step Down*, N.Y. Times, May 18, 2018, available at <https://www.nytimes.com/2018/05/18/us/politics/mark-inch-director-bureau-of-prisons-resigns.html> (“Over the last year, the prison agency has been the subject of a review by the House Oversight and Government Reform Committee over allegations of staffing shortages, sexual harassment and other problems. . . . Last week, reports emerged that the Justice Department was seeking to roll back policies offering protec-

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do we believe that more balanced reform is not viable when Senator Chuck Grassley, the Republican Chairman of the Senate Judiciary Committee and Senator Dick Durbin, the Democratic Whip, have unequivocally stated that “for any criminal justice reform proposal to win approval in the Senate, it must include . . . sentencing reform.”<sup>22</sup> That is why we want to pursue the strongest set of reforms possible, consistent with the empirical evidence and expert outside input.

\* \* \* \* \*

We have long believed that Congress should enact comprehensive criminal justice reform, with a primary focus on changing our unjust sentencing laws. Unfortunately, H.R. 5682 not only fails to address the threshold issue of sentencing reform, it could exacerbate the disparities in the treatment of offenders that begins at the investigation and sentencing phases of the process. Although we must oppose this legislation, we remain fully committed to achieving balanced reform as part of an effort to make our criminal justice system more just and our constituents more safe.

For the foregoing reasons, we respectfully dissent.

MR. NADLER.  
MS. JACKSON LEE.  
MS. JAYAPAL.  
MR. RASKIN.

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tions for gay and transgender people at the prisons bureau. The agency will now use an inmate’s biological sex to initially determine where that person will be housed and which bathroom that person will use.”)

<sup>22</sup> Press Release, Sen. Chuck Grassley (R-IA) & Sen. Richard Durbin (D-IL) Sentencing Reform Necessary for Senate Consideration of Criminal Justice Reform, (accessed May 19, 2018), available at <https://www.judiciary.senate.gov/press/rep/releases/grassley-durbin-sentencing-reform-necessary-for-senate-consideration-of-criminal-justice-reform>.