

TO PROVIDE THAT THE AMOUNT OF TIME THAT AN ELDERLY OFFENDER MUST SERVE BEFORE BEING ELIGIBLE FOR PLACEMENT IN HOME DETENTION IS TO BE REDUCED BY THE AMOUNT OF GOOD TIME CREDITS EARNED BY THE PRISONER, AND FOR OTHER PURPOSES

NOVEMBER 26, 2019.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 4018]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4018) to provide that the amount of time that an elderly offender must serve before being eligible for placement in home detention is to be reduced by the amount of good time credits earned by the prisoner, 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 is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. GOOD CONDUCT TIME CREDITS FOR CERTAIN ELDERLY NONVIOLENT OFFENDERS.

Section 231(g)(5)(A)(ii) of the Second Chance Act of 2007 (34 U.S.C. 60541(g)(5)(A)(ii)) is amended by striking “to which the offender was sentenced” and inserting “reduced by any credit toward the service of the prisoner’s sentence awarded under section 3624(b) of title 18, United States Code”.

Purpose and Summary

H.R. 4018, “To provide that the amount of time that an elderly offender must serve before being eligible for placement in home detention is to be reduced by the amount of good time credits earned by the prisoner, and for other purposes,” would ensure that participants in the Second Chance Act elderly prisoner pilot program receive credit for good conduct time.

Background and Need for the Legislation

The Federal Prisoner Reentry Initiative, under the Second Chance Act of 2007, established a pilot program whereby certain prisoners were allowed release to home confinement, but only if they met very narrow criteria.¹ Prisoners had to be at least 65 years old and had to have served either 10 years or 75 percent of their sentences whichever was longer.² The result was that an incredibly low number of elderly prisoners were released to home confinement under the pilot program.

The First Step Act, which became law in 2018, reauthorized the Second Chance Act and reauthorized and improved the elderly prisoner pilot program.³ The First Step Act reduced the age eligibility to 60 years old and modified the requirement to serve the longer of 10 years or 75 percent of a sentence to serving two thirds of a sentence.⁴ The First Step Act also expanded the eligibility criteria for the pilot program to include terminally ill offenders.⁵ Unfortunately, due to what was likely a drafting error in the Second Chance Act, the elderly prisoner pilot program does not allow elderly inmates to receive good conduct time.

Under 18 U.S.C. 3624(b) (as clarified in the First Step Act), all prisoners who have satisfactory behavior received 54 days of “good conduct time” (often referred to as “good time credits”)—or days off their sentence—per year.⁶ H.R. 4018 would slightly amend the pilot program language to ensure that elderly offenders become eligible for the pilot program at a point in time that takes into account any good conduct time credits they may have accumulated in the course of their time in prison.

This change is important for at least three reasons: (1) the elderly offender pilot program should be consistent with the way the Bureau of Prisons (BOP) calculates other transfers, which includes credit for good conduct time; (2) offenders who otherwise have satisfactory behavior should not lose good conduct time solely due to their elderly status; and (3) one of the goals of the pilot program is to save taxpayer dollars, and older inmates tend to be more costly for BOP to house.

Hearings

The Committee held no hearings on H.R. 4018 in the 116th Congress.

¹ Pub. L. No. 110–199, 122 Stat. 657 231(g) (2008) (codified at 34 U.S.C. 60451(g)).

² *Id.*

³ Pub. L. No. 115–391, 132 Stat. 5194 603 (2018).

⁴ *See id.* at 603(a)(5)(A)(ii), codified at 34 U.S.C. 60541(g)(5)(A)(ii).

⁵ *See id.* at 603(a)(5)(B), codified at 34 U.S.C. 60541(g)(5)(D).

⁶ *See id.* at 102(b), codified at 18 U.S.C. 3624(b)(1) (2019).

Committee Consideration

On Tuesday, September 10, 2019, the Committee met in open session and ordered H.R. 4018 favorably reported with an amendment, by a roll call vote of 28 to 8, 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. 4018.

1. Motion to report H.R. 4018 favorably, as amended. Adopted by a vote of 28 to 8.

Roll Call No.

Date: 9/10/19

COMMITTEE ON THE JUDICIARY

House of Representatives
116th Congress

Final Passage on HR 4018

PASSED
 FAILED

	AYES	NOS	PRES.
Jerrold Nadler (NY-10)	✓		
Zoe Lofgren (CA-19)	✓		
Sheila Jackson Lee (TX-18)	✓		
Steve Cohen (TN-09)			
Hank Johnson (GA-04)	✓		
Ted Deutch (FL-02)	✓		
Karen Bass (CA-37)			
Cedric Richmond (LA-02)			
Hakeem Jeffries (NY-08)	✓		
David Cicilline (RI-01)	✓		
Eric Swalwell (CA-15)	✓		
Ted Lieu (CA-33)	✓		
Jamie Raskin (MD-08)	✓		
Pramila Jayapal (WA-07)	✓		
Val Demings (FL-10)	✓		
Lou Correa (CA-46)	✓		
Mary Gay Scanlon (PA-05)	✓		
Sylvia Garcia (TX-29)	✓		
Joseph Neguse (CO-02)	✓		
Lucy McBath (GA-06)	✓		
Greg Stanton (AZ-09)	✓		
Madeleine Dean (PA-04)	✓		
Debbie Mucarsel-Powell (FL-26)	✓		
Veronica Escobar (TX-16)	✓		
	AYES	NOS	PRES.
Doug Collins (GA-27)	✓		
James F. Sensenbrenner (WI-05)			
Steve Chabot (OH-01)	✓		
Louie Gohmert (TX-01)		✓	
Jim Jordan (OH-04)		✓	
Ken Buck (CO-04)		✓	
John Ratcliffe (TX-04)			
Martha Roby (AL-02)	✓		
Matt Gaetz (FL-01)		✓	
Mike Johnson (LA-04)		✓	
Andy Biggs (AZ-05)		✓	
Tom McClintock (CA-04)		✓	
Debbie Lesko (AZ-08)	✓		
Guy Reschenthaler (PA-14)	✓		
Ben Cline (VA-06)		✓	
Kelly Armstrong (ND-AL)	✓		
Greg Steube (FL-17)	✓		
	AYES	NOS	PRES.
TOTAL	28	7	

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 and Congressional Budget Office Cost Estimate

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for this bill from the Director of Congressional Budget Office. The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

Duplication of Federal Programs

No provision of H.R. 4018 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.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 4018 would ensure that participants in the Second Chance Act elderly prisoner pilot program receive credit for good conduct time.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 4018 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

Section-by-Section Analysis

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

Sec 1. Good Conduct Time Credits for Certain Elderly Nonviolent Offenders. Section 1 would amend the Second Chance Act of 2007 (as amended by the First Step Act) as it relates to a pilot program for certain elderly nonviolent offenders. It would ensure that prisoners who apply for home confinement under the pilot program receive good conduct time credits by ensuring that they become eligi-

ble for the program at a point in time that is reduced by any good conduct time credits for which they are eligible.

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, H.R. 4018, as reported, are shown as follows:

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):

SECOND CHANCE ACT OF 2007

* * * * *

TITLE II—ENHANCED DRUG TREATMENT AND MENTORING GRANT PROGRAMS

* * * * *

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 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, 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 Judiciary 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 Bureau of Prisons facilities 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 Bureau of Prisons facilities 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 Bureau of Prisons facilities 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 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 Bureau of Prisons facilities designated by the Attorney General as appropriate for the pilot program and shall be carried out during fiscal years 2019 through 2023.

(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 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 $\frac{2}{3}$ of the term of imprisonment [to which the offender was sentenced] *reduced by any credit toward the service of the prisoner’s sentence awarded under section 3624(b) of title 18, United States Code;*
- (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.

(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) 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 2019 through 2023.

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