

THE FIRST STEP ACT

What We Got Right, What We Got
Wrong, What We Do Next



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Congress passed and President Trump signed into law the First Step Act in 2018. The Act's goal was simple: reduce the number of people in federal prisons but maintain public safety.



WHAT WE GOT RIGHT

Interrogating Justice, like many attorneys, advocates and allies across the country, supports all three of these components. Together, all three parts aim to bring people home from prison sooner, provide resources for rehabilitative programming and create more meaningful and effective prison environments. In general, the First Step Act includes three major components.

Risk and Needs Assessment

The First Step Act requires the DOJ to establish a risk and needs assessment for the BOP. Once it determines a prisoner's risk and needs, the BOP must assign each prisoner to "evidence-based recidivism reduction programs" and "productive activities."

Through participation in these programs and activities, prisoners earn time credits. These time credits, in turn, help get them out of prison and into prerelease custody. In short, prisoners get home and to their families, return to the workforce and successfully reenter society sooner.

Sentencing Reform

The First Step Act also modifies several sentencing provisions at the federal level by

- reducing mandatory minimums for some federal drug offenses and redefining the types of prior convictions that trigger mandatory-minimum rules,
- expanding the “safety valve” provision that lets judges to sentence low-level, nonviolent drug offenders to sentences below the mandatory minimums,
- eliminating the “stacking” provision that lets judges “stack” two or more drug-trafficking offenses in the same case to trigger a 25-year minimum, and
- retroactively applying the Fair Sentencing Act to continue addressing the disparity between sentences for crack and powder cocaine.

The Second Chance Act

Finally, the First Step Act reauthorizes the Second Chance Act to expand prison programming addressing areas like reentry, education, substance abuse, career training, early release, research, and more.

WHAT WE GOT WRONG

The First Step Act undoubtedly includes many positive measures aimed at reforming the criminal justice and prison systems. But it’s aptly named: it’s only a first step. And it’s an imperfect one at that.

Fixing the 15-30 Problem

Perhaps the most significant criticism so far centers on the Act’s provision providing for 15 days of time credits for every 30 days of programs and activities. On the surface, the 15-30 provision makes it sound relatively straightforward to earn time credits.

But a recent report from the BOP gives a different impression. On the positive side of things, the report shows that some programming provides prisoners a decent opportunity to earn time credits. For example, the “Bureau of Literacy Program” is 240 hours and has a half-hour-a-day schedule.

But other programs paint a grim picture when it comes to the usefulness of time credits. Two female-only programs, “Assert Yourself for Female Offenders” and “Understanding Your

Feelings: Shame and Low Self Esteem,” are only eight- and seven-week programs. And they are only available on a one-hour-a-week schedule.

This means it would take you roughly two months to earn seven or eight hours in time credits. And that leads to another significant issue: how many hours of programming constitutes a “day” under the First Step Act?

If it’s eight, a prisoner could earn just one day of time credit over the course of the eight-week “Assert Yourself for Female Offenders.” It would take nearly 60 of those eight-week programs to earn 15 days of time credits to shorten your sentence.

Ensuring Program Availability

Making matters worse, some advocates have already expressed concern that the BOP is applying the law’s exclusions too broadly. In doing so, critics explain, the BOP disqualifies a much larger portion of the prison population than Congress intended.

And these concerns assume that the necessary programs and activities exist in federal facilities in the first place. Prisoners from facilities across the country have indicated that their facilities offer few, sometimes even none, of the programs and activities that can be used to earn time credits.

INTERROGATING JUSTICE FIRST STEP INITIATIVE

The goal of this project is to provide transparency in First Step Act implementation.

The first step is to create a database describing the number and type of First Step applicable programs offered by each federal and state prison. We will look at how the hours are being counted.

This information would then be posted onto the Interrogating Justice Website, provided to journalists, and put in front of the sponsors of the original First Step Act legislation. 