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NATIONAL CONFERENCE *of* STATE LEGISLATURES

First Step Act Section by Section Summary

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Prepared by NCSL Staff

The pending First Step Act S.3649 is the first major federal criminal justice reform bill to move close to passage in many years. The bill is divided into three main sections. The first is dedicated to the creation and funding of evidence-based recidivism reduction programs in federal prisons with the main goal of achieving successful reentry of inmates into their communities upon release. The second focuses on the expansion of good behavior and early release programs in which inmates can participate during their incarceration in federal prison. The third contains amendments to federal sentencing laws. The legislation passed the House in May and is now likely to receive a vote in the Senate, before the 115th Congress adjourns.

Title I – RECIDIVISM REDUCTION

SEC. 101 RISK AND NEEDS ASSESSMENT SYSTEM – Amends 18 U.S.C., Chapter 229 as follows:

SUBCHAPTER D – RISK AND NEEDS ASSESSMENT SYSTEM

3631 Duties of the Attorney General: (a) The attorney general (AG) must consult with the director of the Bureau of Prisons (BOP), the director of the Administrative Office of the U.S. Courts, the director of the Office of Probation and Pretrial Services, the director of the National Institute of Justice, and the director of the National Institute of Corrections.

(b) The AG shall:

1. Conduct a review of existing prisoner risk and needs assessment systems,
2. Develop recommendations regarding evidence-based recidivism reduction programs,
3. Conduct ongoing research and data analysis on evidence-based recidivism reduction programs including what works most effectively and efficiently and whether products purchased by federal agencies that are manufactured overseas can be made instead by prisoners in a prison work program,
4. Annually review and approve the risk and needs assessment system to include any changes made after enactment date, any recommendations made, an evaluation to

insure that the risk and needs assessment system is dynamic and can account for changes in progress as a result of incarceration, statistical validation of tools used in the risk and needs assessment system, and an evaluation of recidivism rates among similarly classified prisoners to identify disparities,

5. Make revisions as the AG deems necessary, and
6. Report to Congress.

3632. Development of Risk and Needs Assessment System: (a) Within 180 days of enactment, the AG (after consultation with the Independent Review Committee created by this Act) shall develop and release a risk and needs assessment system (“system”) that shall be used to:

1. Determine the recidivism risk of each prisoner as low, medium, or high upon intake,
2. Determine (as practicable) the risk of violent or serious misconduct of each prisoner,
3. Determine the type and amount of recidivism reduction programming for each prisoner and assign them to it,
4. Reassess the recidivism risk of each prisoner periodically based on dynamic factors,
5. Reassign prisoners to appropriate recidivism reduction programs or productive activities based on the revised determination
 - a. Prisoners at each risk level must have a meaningful opportunity to reduce their prison time.
 - b. Specific criminogenic needs of each prisoner must be addressed.
 - c. All prisoners must be able to successfully participate in the programs.
6. Determine when to provide incentives and rewards, and
7. Determine when a prisoner is ready to transfer into prerelease custody or supervised release.

(b) Mandates that the system have guidance on the type, amount, and intensity of the recidivism reduction programming and other activities assigned for each prisoner:

1. The BOP shall list appropriate programs for each prisoner.
2. The BOP shall provide information on how those programs can be tailored to each prisoner’s needs.

(c) The system shall provide housing guidance and program grouping based on safety needs and the risk levels of prisoners to the extent practicable.

(d) The system shall provide incentives and rewards to prisoners in programs:

1. Phone and visitation rewards (additional time and video conferencing),
2. Transfer to a facility closer to prisoners' home residence if the security designation is compatible, upon recommendation of the current warden and if there is a bed available.
3. Additional incentives (at least 2) as follows: increased commissary spending and offerings, enhance email access, transfer to preferred housing units, prisoner-solicited incentives.
4. ((A) Time credits) for successfully completing a recidivism reduction program unless ineligible under (D) below:

(B) Time credits do not apply if the prisoner successfully completed a program prior to the enactment date of this subchapter.

(C) Time credits shall be applied toward time in prerelease custody or supervised release.

(D) In addition to the exclusion preventing all but those classified as minimum or low risk from redeeming time credits, makes clear that prisoners are eligible to earn time credits if the prisoner is serving a sentence for conviction of certain offenses, including crimes relating to terrorism, murder, sexual exploitation of children, espionage, violent firearms offenses, or those that are organizers, leader, managers, supervisors in the fentanyl and heroin drug trade.

(E) Deportable prisoners (subject to a final order of removal under the Immigration and Nationality Act) are not eligible for time credits.

5. Reassessments and level adjustments shall occur annually, or more frequently in the case of medium or high- risk prisoners with less than 5 years left on their sentences.

- (e) There shall be penalties for violations of prison rules or recidivism reduction program rules.
- (f) The AG shall develop training programs for BOP officers and employees who are responsible for administering the system to include continuing education, periodic training updates, and competency tests.
- (g) The AG shall conduct annual audits of the BOP to ensure that the system is being used and implemented properly.

3633. Evidence-Based Recidivism Reduction Program and Recommendations: Prior to releasing the system, the AG shall review the effectiveness of all programs and identify those that are the most effective. The AG shall also provide direction on these programs to the Bureau of Prisons, along with the ability of faith-based organizations to function as a provider of educational evidence-based programs outside of chaplaincy programs.

3634. Report: The AG must submit a report to Congress on the success of implementing this statute two years after enactment and then each year for the next five years including such data as recidivism rates, types of programs and activities, details on each prisoner in a program, fiscal savings, and recommendations for how to reinvest savings into other federal, state, and local law enforcement activities and evidence-based recidivism reduction programs in the Bureau of Prisons.

3635. Definitions:

(1) Evidence-based recidivism program is defined as one that has been shown by empirical evidence to, or research that makes it likely to reduce recidivism. It is designed to help prisoners with their reentry and may include life skills training, family relationship building, academic or ethics classes, mentoring, cognitive behavioral or substance abuse treatment, vocational training, faith-based classes, civic engagement or community service, prison jobs, victim impact classes and trauma counseling.

(3) Risk and needs assessment tool is defined as an objective and statistically validated method done at intake to determine the likelihood of recidivism, the programs that would lessen those odds, and the periodic reassessment of risk of recidivism.

(4) A productive activity is defined as a group or individual activity designed for medium to low risk prisoners to keep them productive and can include delivery of programs in (1) above.

SEC. 102 IMPLEMENTATION OF SYSTEM AND RECOMMENDATIONS BY BUREAU OF PRISONS:

(a) Section 18 U.S.C. 3621 is amended by adding:

(h) (1) Not later than 180 days after the AG completes and releases the risk and needs assessment system, implementation of the system shall begin.

(2) There is a phase-in period of two years to give the BOP time to provide appropriate programming for eligible and interested prisoners and to develop and validate the risk and needs assessment tool to be used in reassessments.

(3) Priority during the phase-in period is given to prisoners with earlier release dates.

(4) The BOP has the authority to expand programming.

(5) The AG shall develop policies for partnerships between the BOP and nonprofit organizations including faith-based, art, and community-based organizations on a paid or volunteer basis. Partnerships can also be created with higher education institutions or private entities that will provide vocational training, employ prisoners, or assist prisoners in prerelease custody or supervised release in finding jobs.

(6) The BOP director shall provide all prisoners with an opportunity to participate in recidivism reduction programs and productive activities with priority given to medium and high-risk

prisoners for recidivism reduction programs and access to productive activities priority is given to medium and low risk prisoners.

(b) Prerelease custody definition is amended and a new subsection (g) is added.

(g) Prerelease custody or supervised release for risk and needs assessment system participants.

(1) Eligible prisoners are those who:

(a) Have earned time credits under the risk and needs assessment in an amount equal to the remainder of the term of imprisonment,

(b) Have shown through risk assessments a demonstrated recidivism risk reduction or have been a low recidivism risk throughout term of incarceration,

(c) Have had the remainder of term computed under applicable law and

(d) Are minimum or low-risk to recidivate as determined by two prior reassessments or have the recommendation of the warden.

(2) Types of prerelease custody include (A) home confinement where the prisoner is subject to 24-hour electronic monitoring and must remain in the residence except can leave, upon approval of the director of the Bureau of Prisons, to go to a job, perform community service, attend religious or family activities, obtain medical care, or participate in crime victim restoration activities. If electronic monitoring isn't feasible, alternatives may be used; or (B) residential reentry centers.

(3) Supervised release is indicated if the sentencing court imposed it.

(4) Determination of conditions. To prepare a prisoner for reentry, the director of the Bureau of Prisons shall impose increasingly less restrictive conditions on prisoners who comply with the conditions of prerelease custody.

(5) Violations of conditions. Additional conditions may be imposed if a prisoner violates the terms of prerelease custody. Revocation of prerelease custody may also be imposed.

(6) Issuance of guidelines. The AG shall issue appropriate guidelines to the Bureau of Prisons for the appropriate type of prerelease custody and the consequences for violating those terms.

(7) Agreements with United States Probation and Pretrial Services.

(8) Assistance. U.S. Pretrial and Probation Services shall offer assistance to any prisoner not under its supervision during prerelease custody under this subsection.

(9) Mentoring services. Mentoring services cannot be withheld from a prisoner in prerelease custody unless the warden has deemed it to be a security risk to either the prisoner or the provider of services.

(11) Prerelease custody capacity. The director of the Bureau of Prisons must ensure there is enough capacity for all eligible prisoners.

SEC. 103. GAO REPORT: Requires the Comptroller General conduct a comprehensive audit of the BOP risk and needs assessment system every two years.

SEC. 104. AUTHORIZATION OF APPROPRIATIONS: Of the \$75 million for FY 2019-2023, 80 percent of this sum shall be used for the Bureau of Prisons to implement the system. Savings from reduced recidivism should be reinvested into BOP programs.

SEC. 105. RULE OF CONSTRUCTION: Nothing in this Act shall be construed to provide authority to place a prisoner in prerelease custody who is serving a term of imprisonment under state or territorial law, or to amend or affect the enforcement of immigration laws.

SEC. 106. FAITH-BASED CONSIDERATIONS: The fact that a program provider is a faith-based organization shall not be used as a basis to discriminate against it in any manner.

SEC. 107. INDEPENDENT REVIEW COMMITTEE: (a) The AG shall consult with an Independent Review Committee on the development of the risk and needs assessment system.

(b) The National Institute of Justice shall select a nonpartisan and nonprofit organization to host the Independent Review Committee. The Independent Review Committee shall be established within 30 days of enactment of this bill.

(c) The organization selected by the National Institute of Justice shall appoint at least six members to the Independent Review Committee.

(d) Membership of the Independent Review Committee shall include:

1. Two individuals who have published peer-reviewed scholarship about risk and needs assessments in both corrections and community settings.
2. Two corrections practitioners who have developed and implemented a risk and needs assessment tool in a corrections system or in a community supervision setting. One must have Bureau of Prisons experience.
3. One person with expertise in assessing risk assessment implementation.

(e) The Independent Review Committee shall assist the AG in developing the risk and needs assessment system including:

1. Conducting a review of the existing prisoner risk and needs assessment systems in place at the time of enactment;
2. Developing recommendations regarding evidence-based recidivism reduction programs and productive activities, and
3. Conduct research and data analysis on various recidivism and reduction programs.

(f) The Bureau of Prisons shall cooperate with the Independent Review Committee.

(g) The Independent Review Committee shall terminate 30 days after the risk and needs assessment system is released.

TITLE II – BUREAU OF PRISONS SECURE FIREARMS STORAGE

SEC. 201 SHORT TITLE.

SEC. 202. SECURE FIREARMS STORAGE: Amends 18 U.S.C. Chapter 303 by requiring that the director of the Bureau of Prisons provide a secure storage area outside of the secure perimeter of the institution for 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: Amends 18 U.S.C. Chapter 317 by prohibiting restraints on pregnant and postpartum prisoners unless the prisoner is an immediate flight risk, poses an immediate threat of harm to herself or others, or a healthcare professional determines that the use of restraints is appropriate for the medical safety of the prisoner. If restraints are used under one of the exceptions, only the least restrictive restraints necessary may be used. Training and guidance is required.

TITLE IV – SENTENCING REFORM

SEC. 401. REDUCE AND RESTRICT ENHANCED SENTENCING FOR PRIOR DRUG FELONIES:

(a) (1) and (2) The enhanced mandatory minimums for drug felons are reduced: the three-strike mandatory penalty is reduced from life imprisonment to 25 years and the 20-year mandatory minimum is reduced to 15 years. The offenses that trigger these enhanced mandatory minimum sentences are also reformed. Currently, these offenses may include any prior drug felony. The bill limits qualifying prior convictions to serious drug felonies, which occurred within 15 years and expands qualifying prior convictions to include serious violent felonies. This provision is not retroactive and will not apply to any person sentenced before enactment.

SEC. 402. BROADENING OF EXISTING SAFETY VALVE: Under 18 U.S.C. Sec. 3553, the existing safety valve permits a sentencing court to consider a sentence below the statutory minimum for certain non-violent, low level drug offender only under certain specific circumstances. This section expands the safety valve to broaden the number of criminal history “points” an offender can have from one to four to be eligible for the safety valve sentencing.

SEC. 404. APPLICATION OF FAIR SENTENCING ACT: The Fair Sentencing Act of 2010 reduced the disparity in sentencing between crack and powder cocaine. This provision permits offenders sentenced under those provisions before they were modified to petition the sentencing court for a reduction in sentence consistent with the new crack cocaine sentencing law.

SEC. 405. REINVESTMENT OF SAVINGS IN EVIDENCE-BASED RECIDIVISM REDUCTION: Savings from reductions in recidivism should be reinvested into future recidivism reduction programs.

TITLE V – MISCELLANEOUS CRIMINAL JUSTICE

SEC. 501. PLACEMENT OF PRISONERS CLOSE TO FAMILIES: If possible and such facility meets the correctional and prisoner’s needs, prisoners shall be placed as close to their primary residence as possible.

SEC. 502. HOME CONFINEMENT FOR LOW-RISK PRISONERS: To the extent practicable.

SEC. 503. FEDERAL PRISONER REENTRY INITIATIVE REAUTHORIZATION; MODIFICATION OF IMPOSED TERM OF IMPRISONMENT: Amends the Second Chance Act (34 U.S.C. 60541(g) to include eligible terminally ill offenders in addition to elderly offenders as eligible for family reunification through home detention instead of being housed in a federal facility. All provisions affecting elderly prisoners will apply to terminally ill prisoners. Defines an eligible terminally ill offender as one who needs the care at a nursing home or assisted living facility or has been diagnosed with a terminal illness.

SEC. 504. IDENTIFICATION FOR RETURNING CITIZENS: Requires that a person being released from federal prison be given his or her birth certificate and photo identification.

SEC. 505. EXPANDING INMATE EMPLOYMENT THROUGH FEDERAL PRISON INDUSTRIES: (a) Amends 18 U.S.C. Chapter 307 as follows:

4130 Additional Markets. (a) Federal Prison Industries may sell products to public entities for use in correctional institutions, public entities for use in disaster relief or emergency response, the D.C. government, and except for office furniture, any 501 (a) tax exempt organization.

(b) The term “public entity” means a state, subdivision of a state, Indian tribe, and any agency or governmental corporation or business of any of the foregoing. It also means territory and D.C.

SEC. 506. DE-ESCALATION TRAINING: The BOP shall incorporate this training into current training programs. The goal is to teach how to de-escalate encounters between law enforcement, Bureau of Prisons employees and a civilian or prisoner.

SEC. 507. EVIDENCE-BASED TREATMENT FOR OPIOID AND HEROIN ABUSE:

(a) Not later than 90 days after date of enactment, the BOP shall submit to Congress its capacity to treat heroin and opioid abuse through evidence-based programs, including medication assisted treatment where appropriate. This report should contain plans to expand access to evidence-based treatment.

(b) Not later than 120 days after date of enactment, the director of the Administrative Office of the U.S. Courts shall submit to Congress a report assessing the availability and capacity for the provision of medication assisted treatment.

SEC. 508. PILOT PROGRAMS: (a) There shall be 5-year pilot programs in at least 20 facilities that include:

1. Mentorship for youth.
2. Service to abandoned, rescued, or otherwise vulnerable animals.

SEC. 509. ENSURING SUPERVISION OF RELEASED SEXUALLY DANGEROUS PERSONS: Technical amendments.

SEC. 510. DATA COLLECTION: The Bureau of Justice Statistics shall collect data in a variety of areas.

SEC. 511. HEALTHCARE PRODUCTS: Requires BOP to provide feminine hygiene products to female inmates at no cost.

SEC. 512. ADULT AND JUVENILE COLLABORATION PROGRAMS.

SEC. 513. JUVENILE SOLITARY CONFINEMENT: Restricts the use of juvenile solitary confinement for any reason except as a temporary response to a juvenile's behavior that poses a serious and immediate risk of physical harm. Requires BOP staff to use the least restrictive means, including "talking it out" and attempting care by a qualified mental health professional. If solitary confinement is necessary, staff must fully inform the juvenile concerning the confinement. Maximum periods of confinement are set based on the immediate risk of physical harm.

