

Sentence and Prison Impact Estimate Summary
S. 756, The First Step Act of 2018
(as enacted on December 21, 2018)

Section	Summary	Sentencing & Imprisonment Impact
101	Risk and Needs Assessment System ¹	Impact: 106,114 eligible offenders were in BOP custody as of May 26, 2018. Sentence and prison impact cannot be estimated. Demographics: 83.0% Citizen, 90.9% Male, 25.6% White, 37.1% Black, 33.9% Hispanic, 3.4% Other
102(b)	Prerelease Custody (increase in good time credit available to incarcerated offenders) ²	Impact: 142,448 eligible offenders were in BOP custody as of May 26, 2018. Savings of 27,126 “bed-years” of incarceration, to be realized over a period of more than 20 years. Demographics: 80.3% Citizen, 92.5% Male, 27.5% White, 33.9% Black, 34.8% Hispanic, 3.8% Other
401	Reduce and Restrict Enhanced Sentencing for Prior Drug Felonies (section 851 enhancements) ³	Impact: 56 Offenders Annually; -21.0% Sentence Reduction; Decrease of 0 beds in BOP 5 years after effective date. Demographics: 96.4% Citizen, 96.4% Male, 30.4% White, 50.0% Black, 17.9% Hispanic, 1.8% Other
402	Broadening of Existing Safety Valve ⁴ (to offenders with up to 4 criminal history points)	Impact: 2,045 Offenders Annually; -21.8% Sentence Reduction; Decrease of 1,072 beds in BOP 5 years after effective date. Demographics: 78.0% Citizen, 81.7% Male, 26.2% White, 21.9% Black, 48.5% Hispanic, 3.4% Other
403	Clarification of 18 U.S.C. § 924(c) (regarding second and subsequent convictions for certain offenses involving possession of a firearm) ⁵	Impact: 57 Offenders Annually; -52.6% Sentence Reduction; Decrease of 0 beds in BOP 5 years after effective date. Demographics: 89.5% Citizen, 100.0% Male, 12.3% White, 70.2% Black, 17.5% Hispanic, 0.0% Other
404	Retroactive Application of Fair Sentencing Act (to defendants previously sentenced) ⁶	Impact: 2,660 eligible offenders were in BOP custody as of May 26, 2018. Demographics: 97.0% Citizen, 98.8% Male, 4.0% White, 89.1% Black, 6.2% Hispanic, 0.7% Other
603	Federal Prison Reentry Initiative Reauthorization ⁷	Impact: 1,882 offenders were in BOP custody as of May 26, 2018. Sentence and prison impact cannot be estimated. Demographics: 78.0% Citizen, 91.3% Male, 42.8% White, 25.1% Black, 30.2% Hispanic, 1.9% Other

SOURCE: U.S. Sentencing Commission Prison and Sentencing Impact Model using FY2017 Data, USSCFY2017. Impact estimates of individual sections may have also used one or more of the following supplemental datafiles: DRUG851FY2017, preliminary CHFY2017, or FUNCSAMP2016. All retroactive analyses used a datafile from the Bureau of Prisons (BOP) that was matched with USSCFY1992-USSCFY2017 datafiles to determine which offenders were incarcerated on May 26, 2018 (the date of the most recent BOP data available to the Commission). For more information about sentence and prison impact of these provisions, see the underlying summary tables for each section.

¹ Offenders incarcerated in the BOP as of May 26, 2018 who are not disqualified as an “ineligible prisoner,” as defined in the act. Of the 106,114 offenders, approximately 17.0% are non-citizens and may be precluded from the “time credits” portion of this program by virtue of other provisions in the act that limit eligibility for time credits for persons who are subject to a final order of removal from the United States. Because the Commission cannot estimate the number of offenders who will participate in and complete this program, the Commission is unable to estimate the sentence or prison impact for this provision.

² Offenders with a sentence of more than one year but other than a term of imprisonment for life may receive credit towards the service of their sentence if they demonstrate “exemplary compliance with institutional disciplinary regulations.” 18 U.S.C. § 3624(b). In some circumstances, offenders can lose a portion of their good time credit for misconduct. *See* Fed. Bureau of Prisons, U.S. Dep’t of Justice, Program Statement 5270.090 “Inmate Discipline Program” (July, 2011). The Commission’s analysis assumes that all eligible offenders will earn and retain the maximum amount of good time credit allowed under the statute, as amended by the act.

³ Offenders convicted of a drug trafficking offense carrying a 10-year mandatory minimum penalty which will be enhanced to a 15-year or 25-year mandatory minimum penalty under the act. There are an additional 305 offenders convicted of a drug trafficking offense carrying a mandatory minimum penalty of five years and who had previously been convicted of a serious violent felony but not a serious drug felony, and an additional 230 offenders convicted of a drug trafficking offense carrying a mandatory minimum penalty of ten years and who had previously been convicted of a serious violent felony but not a serious drug felony, who are eligible to receive an enhanced sentence under this provision. Because the decision to seek an enhanced penalty is within the government’s prosecutorial discretion, the Commission is unable to estimate the number of cases in which the government may seek an enhanced sentence for these offenders due to the prior conviction for a serious violent felony.

⁴ Includes offenders who become eligible for a sentence reduction under the sentencing guidelines safety valve provision (USSG §5C1.2), regardless of whether a mandatory minimum penalty applied in the case. As provided in the act, all 1-point offenses are excluded from consideration towards the four point maximum criminal history point limitation. Offenders with any prior 3-point offense or any prior 2-point violent offense are excluded from eligibility for the safety valve. The estimated reduction in sentence assumes that eligible offenders will receive the two-level reduction in offense level for safety valve eligible offenders under the sentencing guidelines as provided in USSG §2D1.1(b)(17). Offenders who were eligible for safety valve relief under current law were excluded from this analysis.

⁵ Offenders convicted of multiple counts of section 924(c) who were sentenced on the same day, but who had no prior conviction under that section, were assumed to be sentenced to consecutive terms of the most serious firearms mandatory minimum penalty (five, seven, or ten years) for all counts of conviction. Offenders who received relief from these mandatory minimum penalties at sentencing were excluded from this analysis.

⁶ Offenders incarcerated in the BOP as of May 26, 2018 whose sentencing range would be lower under the current version of USSG §2D1.1 than the version of that guideline in effect on the date they were sentenced, or who would have a lower sentencing range under USSG §4B1.1 than the range determined by the court at the time of sentencing (due to a change in the statutory maximum penalty that applied in the case). Because the act does not specify the extent of any sentence reduction under this provision, the Commission is unable to estimate the sentence reduction for these offenders.

⁷ These offenders are age 60 or older, have served at least 2/3 of their sentence, and were in BOP custody as of May 26, 2018. The Commission does not have information as to the current health of incarcerated offenders. Therefore, the provisions of the section regarding whether an offender is suffering from a terminal illness are not included in this analysis. Offenders who were eligible for compassionate release under current law were excluded from this analysis. The Commission is unable to estimate the sentence or prison impact for this provision.

U.S. Sentencing Commission

Estimated Effect of Reducing and Restricting Enhanced Sentencing for Prior Drug Felonies¹

Section 401 of The First Step Act of 2018

Change in Sentences Imposed						
Total Cases²	Affected Cases³	Percent Affected	Current Average Sentence in Affected Cases	New Average Sentence in Affected Cases	Number Of Months Change	Percent Change
189	56	29.6	267	211	-56	-21.0

Change in Sentences Served							
<i>Change in years of incarceration served for offenders sentenced in a single fiscal year⁴</i>							
1st Year	2nd Year	3rd Year	4th Year	5th Year	10th Year	15th Year	Total⁵
0	0	0	0	0	0	-36	-164
<i>Change in total BOP population in future years⁶</i>							
One Year After Effective Date	Two Years After Effective Date	Three Years After Effective Date	Four Years After Effective Date	Five Years After Effective Date			
0	0	0	0	0			

¹ The prison and sentencing impact request estimates the effect of changes to mandatory minimum penalties that are triggered by an information filed by the government under 21 U.S.C. § 851 in drug trafficking offenses. Specifically, the current 20-year mandatory minimum penalty was reduced to 15 years and the current mandatory minimum penalty of life was reduced to 25 years. Cases were identified using data drawn from the 21 U.S.C. § 851 coding project in 2017. This impact does not model any changes to the sentencing guidelines that may result from the change to the mandatory minimum penalty nor does it make any estimate of the potential increase in sentence for offenders with a prior serious violent felony and no prior serious drug felony who would now be eligible for an enhanced sentence.

² **Total Cases** are those with a particular sentencing factor being analyzed.

³ **Affected Cases** are those in which the sentence is estimated to change as a result of the sentencing factor being analyzed. Not all cases will change as a result of the application of the sentencing factor being analyzed.

⁴ This table represents the number of prison beds saved each year by a cohort of offenders sentenced in a single year.

⁵ This is the total number of prison beds that will be saved when all offenders who were sentenced in the same year are released from prison.

⁶ This is the annual number of prison beds saved as additional cohorts of offenders who have been sentenced based on the changed sentencing factor enter the Bureau of Prisons.

U.S. Sentencing Commission
Estimated Effect of Broadening Existing Safety Valve to Four Total Criminal History Points¹
Section 402 of The First Step Act of 2018

Change in Sentences Imposed

Total Cases²	Affected Cases³	Percent Affected	Current Average Sentence in Affected Cases	New Average Sentence in Affected Cases	Number Of Months Change	Percent Change
2,260	2,045	90.5	55	43	-12	-21.8

Change in Sentences Served

Change in years of incarceration served for offenders sentenced in a single fiscal year⁴

1st Year	2nd Year	3rd Year	4th Year	5th Year	10th Year	15th Year	Total⁵
-101	-128	-304	-340	-199	-43	-13	-1,791

Change in total BOP population in future years⁶

One Year After Effective Date	Two Years After Effective Date	Three Years After Effective Date	Four Years After Effective Date	Five Years After Effective Date
-101	-229	-533	-873	-1,072

¹ The sentence and prison impact estimates the effect of a reduction in sentences for drug trafficking offenders by expanding the eligibility criteria for the safety valve defined in 18 U.S.C. § 3553(f) to offenders with up to four total criminal history points assessed under the federal sentencing guidelines and to include additional eligible statutes (46 U.S.C. §§ 70503 and 70506). Note that one-point offenses were not counted towards the total of four points. As provided in the bill, offenders with a prior criminal conviction assessed at three criminal history points were excluded from eligibility. Additionally, offenders with a prior criminal conviction for a violent offense assessed at two criminal history points were excluded from eligibility. This analysis assumes that offenders meeting the safety valve criteria would be sentenced without regard to the otherwise applicable drug mandatory minimum penalty. This analysis also assumes that offenders meeting the eligible criteria would receive a reduction of two levels in their final offense level under USSG §2D1.1 of the sentencing guidelines (and under §§2D1.2, 2D1.5, 2D1.6, 2D1.8, 2D1.10, or 2D1.14 via the cross-reference to §2D1.1).

² **Total Cases** are those with a particular sentencing factor being analyzed.

³ **Affected Cases** are those in which the sentence is estimated to change as a result of the sentencing factor being analyzed. Not all cases will change as a result of the application of the sentencing factor being analyzed.

⁴ This table represents the number of prison beds saved each year by a cohort of offenders sentenced in a single year.

⁵ This is the total number of prison beds that will be saved when all offenders who were sentenced in the same year are released from prison.

⁶ This is the annual number of prison beds saved as additional cohorts of offenders who have been sentenced based on the changed sentencing factor enter the Bureau of Prisons.

U.S. Sentencing Commission
Estimated Effect of Clarification of 18 U.S.C. § 924(c)¹
Section 403 of The First Step Act of 2018

Change in Sentences Imposed

Total Cases²	Affected Cases³	Percent Affected	Current Average Sentence in Affected Cases	New Average Sentence in Affected Cases	Number Of Months Change	Percent Change
103	57	55.3	624	296	-328	-52.6

Change in Sentences Served

Change in years of incarceration served for offenders sentenced in a single fiscal year⁴

1st Year	2nd Year	3rd Year	4th Year	5th Year	10th Year	15th Year	Total⁵
0	0	0	0	0	-4	-20	-748

Change in total BOP population in future years⁶

One Year After Effective Date	Two Years After Effective Date	Three Years After Effective Date	Four Years After Effective Date	Five Years After Effective Date
0	0	0	0	0

¹ The prison and sentencing impact estimates the effect of a reduction in the mandatory minimum penalties imposed on second and subsequent convictions under 18 U.S.C. § 924(c). For offenders convicted of multiple counts of section 924(c) and sentenced on the same day, but who had no prior conviction under that section, the analysis applies the most serious gun mandatory minimum (5, 7, or 10 years) for all counts of conviction. This impact does not model any changes to the sentencing guidelines that may result from the change to the mandatory minimum penalty.

² **Total Cases** are those with a particular sentencing factor being analyzed.

³ **Affected Cases** are those in which the sentence is estimated to change as a result of the sentencing factor being analyzed. Not all cases will change as a result of the application of the sentencing factor being analyzed.

⁴ This table represents the number of prison beds saved each year by a cohort of offenders sentenced in a single year.

⁵ This is the total number of prison beds that will be saved when all offenders who were sentenced in the same year are released from prison.

⁶ This is the annual number of prison beds saved as additional cohorts of offenders who have been sentenced based on the changed sentencing factor enter the Bureau of Prisons.