

Estimate of the Impact of Selected Sections of S. 1014, The First Step Act Implementation Act of 2021

Section	Summary	Sentencing & Imprisonment Impact
101(b) ¹	Amendments to 21 U.S.C. §§ 841(b)(1)(C), (D), and (E), and to 21 U.S.C. § 960(b)(3).	<p>Prospective Impact: Approximately 73 offenders each year would benefit from this portion of the bill. The average sentence for those offenders is 73 months.</p> <p>Retroactive Impact: Approximately 3,067 offenders in BOP custody could be eligible to seek a modification of their sentence based on this section of the bill.² However, the Commission estimates that as many as 75 percent of these offenders have a prior conviction for a serious drug felony or a serious violent felony. The average sentence for those offenders is 118 months.</p> <p>Assumptions made by CBO for release year estimate: Assume that 25% of these offenders are eligible for a sentence reduction (i.e., 75% would not qualify). In cases where an offender's actual sentence was above the new statutory maximum penalty, they would be resentenced to the new statutory maximum penalty. Provide the effect on the federal prison population for the 10 years after enactment.</p>
101(c)	Retroact Application of Section 401 of the First Step Act: Reduce and Restrict Enhanced Sentencing for Prior Drug Felonies (section 851 enhancements) ³	<p>Prospective Impact: N/A</p> <p>Retroactive Impact: There are 3,742 offenders in BOP custody who appear to be eligible for retroactive application of section 401 of the First Step Act, if such authority were to be enacted. These offenders meet the following criteria: sentenced for a drug trafficking offense, before the date of enactment of the First Step Act, and where the mandatory minimum penalty imposed for the drug offense in the case was 20 years or longer. Of these offenders, 675 were sentenced to life imprisonment. The average sentence for the 3,067 offenders not sentenced to life imprisonment is 251 months.</p> <p>Assumptions made by CBO for release year estimate: Assume that the offenders currently sentenced to life imprisonment (675 inmates – sentence assigned a value of 470 months) will be sentenced to the median of the difference in average sentences discussed above. I.e., these offenders would be sentenced to the middle value between 25 years and 470 months (which is 385 months). For the 3,742 inmates not currently sentenced to life imprisonment, assume a 5-year reduction to the current sentence. Provide the effect on the federal prison population for the 10 years after enactment.</p>
101(c)	Retroactive Application of Section 403 of First Step Act: Clarification of Section 924(c) of Title 18, United States Code (regarding second and subsequent convictions for certain offenses involving possession of a firearm) ⁴	<p>Prospective Impact: N/A</p> <p>Retroactive Impact: There are 2,412 offenders in BOP custody who appear to be eligible for a retroactive application of section 403 of the First Step Act, if such authority were to be enacted. These offenders meet the following criteria: convicted under 18 U.S.C. § 924(c), sentenced before the date of enactment of the First Step Act, and where the mandatory minimum penalty imposed for that offense was more than 120 months incarceration. The average sentence for these offenders is 418 months.</p> <p>Assumptions made by CBO for release year estimate: Assume that whatever act forming the basis for the section 924(c) conviction (e.g., possess, brandish, discharge) committed during the first violation of the statute was also committed for any second and subsequent conviction under that statute. Because a section 924(c) sentence is a mandatory consecutive sentence to the punishment for the underlying offense, determine and retain the sentence imposed for the underlying offense, and apply the new section 924(c) punishment(s) consecutively to the underlying punishment. Provide the effect on the federal prison population for the 10 years after enactment.</p>

102	Modifying Safety Valve for Drug Offenses	<p>Prospective Impact: Approximately 698 offenders would be eligible each year for consideration under the new provision of 18 U.S.C. 3553(f), as enacted by this section of the bill. These offenders meet the following criteria: convicted of a drug trafficking offense carrying a mandatory minimum penalty, for which the safety valve is authorized by statute, who meet the current statutory requirements for the application of safety valve (other than the exclusion for criminal history), and had not been convicted previously of a serious drug felony or serious violent felony. The average sentence for these offenders is 99 months. Because the decision to grant safety valve relief under this new provision involves the exercise of a court's discretion, the Commission is unable to estimate the number of offenders who would actually receive safety valve relief.</p> <p>Retroactive Impact: N/A</p> <p>Assumptions made by CBO for release year estimate: Assume judges will exercise their discretion to provide safety valve relief in 50 percent of the cases where the offender is eligible for this new authority. Assume a percentage reduction to the sentence based on the average percent reduction for offender who currently receive safety valve relief under current law. Provide the effect on the federal prison population for the 10 years after enactment.</p>
201	Parole for Juveniles	<p>Prospective Impact: N/A</p> <p>Retroactive Impact: There are nine offenders in BOP custody who appear to be eligible for consideration under this section of the bill. The average sentence for these offenders is 427 months.</p>

SOURCE: U.S. Sentencing Commission. All retroactive analyses were based on data from Federal Bureau of Prisons (BOP) regarding offenders incarcerated on March 27, 2021.

¹ Section 101(c) of the bill authorizes courts to apply the statutory amendments made by section 101(b) to offenders incarcerated as of the date of enactment of the bill as if the amendment were in effect at the time the offense was committed.

² The Commission does not have complete criminal history information concerning all offenders currently incarcerated in the Bureau of Prisons. Therefore, we cannot estimate with precision how many of the 3,067 offenders would be disqualified from consideration due to having a prior conviction for a serious drug felony or serious violent felony. The estimate as to the percentage of offenders who may be ineligible for a sentence reduction is based on data regarding drug trafficking offenders with recidivist enhancements sentenced in fiscal year 2020.

³ The Commission does not have detailed information concerning the application of recidivist drug trafficking enhancements (commonly called section 851 enhancements) for all offenders in BOP custody. However, a drug mandatory minimum penalty of 20 years or longer would most commonly have occurred through a section 851 enhancement.

⁴ Prior to enactment of the First Step Act, offenders sentenced to second and successive convictions under section 924(c) would have mandatory minimum sentences of more than 120 months (generally, 360 months and longer). A small number of other offenders with only one count of conviction (for a machine gun or destructive device, where the 30-year sentence would be identical to the sentence for someone with two stacked convictions for a pistol) may be included in this estimate, but would be ineligible for retroactive application of section 403.

Year by Year Release Analysis of Selected Sections of S. 1014, The First Step Implementation Act of 2021

Sec. 101(b). Amendments to 21 U.S.C. §§ 841(b)(1)(C), (D), and (E), and to 21 U.S.C. § 960(b)(3).

*Prospective Analysis (annual)***

	Total	Immediate	end of year 1	end of year 2	end of year 3	end of year 4	end of year 5	end of year 6	end of year 7	end of year 8	end of year 9	end of year 10	More than 10 years
Current	73	N/A	8	13	9	7	8	7	3	1	2	3	12
New	73	N/A	8	13	9	7	8	7	3	1	2	3	12

**No impact on release timing

Retrospective Analysis

	Total	Immediate	end of year 1	end of year 2	end of year 3	end of year 4	end of year 5	end of year 6	end of year 7	end of year 8	end of year 9	end of year 10	More than 10 years
Current	3,067	503	531	506	344	265	216	186	121	105	71	62	157
New	3,067	511	530	505	344	265	214	185	122	102	73	62	154

Sec. 101(c). Retroactive Application of Section 401 of the First Step Act: Reduce and Restrict Enhanced Sentencing for Prior Drug Felonies (section 851 enhancements).

Retrospective Analysis

	Total	Immediate	end of year 1	end of year 2	end of year 3	end of year 4	end of year 5	end of year 6	end of year 7	end of year 8	end of year 9	end of year 10	More than 10 years
Current	3,742	97	159	179	212	226	251	283	238	247	231	162	1,457
New	3,742	961	250	265	252	252	208	179	161	172	175	116	751

Sec. 101(c). Retroactive Application of Section 403 of First Step Act: Clarification of Section 924(c) of Title 18, United States Code. (regarding second and subsequent convictions for certain offenses involving possession of a firearm)

*Retrospective Analysis**

	Total	Immediate	end of year 1	end of year 2	end of year 3	end of year 4	end of year 5	end of year 6	end of year 7	end of year 8	end of year 9	end of year 10	More than 10 years
Current	2,410	59	36	43	38	47	48	53	64	59	68	69	1,826
New	2,410	570	78	90	78	72	78	94	84	87	80	81	1,018

* Information necessary for this analysis was missing in two cases.

Sec. 102. Modifying Safety Valve for Drug Offenses.

Prospective Analysis (annual)

	Total	Immediate	end of year 1	end of year 2	end of year 3	end of year 4	end of year 5	end of year 6	end of year 7	end of year 8	end of year 9	end of year 10	More than 10 years
Current	698	N/A	5	15	27	19	179	99	41	35	146	30	102
New	698	N/A	9	18	32	124	134	76	96	36	76	30	67

SOURCE: U.S. Sentencing Commission. All retroactive analyses were based on data from the Federal Bureau of Prisons (BOP) regarding offenders incarcerated on March 27, 2021.