



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

August 20, 2018

### **H.R. 5682** **FIRST STEP Act**

*As passed by the House of Representatives on May 22, 2018*

#### **SUMMARY**

H.R. 5682 would direct the Department of Justice (DOJ) to establish a risk assessment system for prisoners and expand programs within the federal prison system to reduce recidivism. The act also would change early-release rules to extend the amount of time credited for good conduct. Using information from DOJ, the Bureau of Prisons (BOP), and the U.S. Sentencing Commission (USSC), CBO estimates that implementing the legislation would reduce the cost of incarcerating offenders and lead to a net reduction in discretionary costs of \$342 million over the 2019-2028 period, assuming future appropriation actions consistent with the projected reduction in the prison population.

In addition, CBO estimates that enacting H.R. 5682 would result in the release of thousands of people from federal prisons earlier than would occur under current law. CBO expects that upon release many of them would receive benefits from such federal programs as Medicare, Medicaid, and the health insurance marketplaces established under the Affordable Care Act (ACA); Social Security; Supplemental Security Income (SSI); and the Supplemental Nutrition Assistance Program (SNAP). As a result, CBO and the staff of the Joint Committee on Taxation (JCT) estimate that enacting the legislation would increase direct spending by \$214 million and reduce revenues by \$4 million over the 2019-2028 period.

Because enacting the legislation would affect direct spending and revenues, pay-as-you-go procedures apply.

CBO estimates that enacting H.R. 5682 would not increase net direct spending by more than \$2.5 billion or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2029.

H.R. 5682 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

## ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary effects of H.R. 5682 are shown in Table 1. The costs of the legislation fall within budget functions 550 (health), 570 (Medicare), 600 (income security), 650 (Social Security), and 750 (administration of justice).

**TABLE 1. SUMMARY OF BUDGETARY EFFECTS OF H.R. 5682**

	By Fiscal Year, in Millions of Dollars												2019-	2019-
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2023	2028	
<b>INCREASES OR DECREASES (-) IN SPENDING SUBJECT TO APPROPRIATION</b>														
Estimated Authorization Level	0	20	19	18	16	-13	-67	-73	-79	-87	-95	60	-342	
Estimated Outlays	0	0	9	13	16	-13	-47	-63	-74	-87	-95	25	-342	
<b>INCREASES IN DIRECT SPENDING</b>														
Estimated Outlays <sup>a</sup>	0	13	15	16	17	18	20	23	28	30	34	77	214	
On-budget	0	11	13	14	15	16	18	21	25	27	31	67	191	
Off-budget	0	2	2	2	2	2	2	2	3	3	3	10	23	
<b>DECREASES IN REVENUES</b>														
Estimated Revenues	0	*	*	*	*	*	*	*	-1	-1	-1	-1	-4	
<b>NET INCREASE IN THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND REVENUES</b>														
Effect on the Deficit	0	13	15	16	17	18	20	23	29	31	35	78	218	
On-budget	0	11	13	14	15	16	18	21	26	28	32	68	195	
Off-budget	0	2	2	2	2	2	2	2	3	3	3	10	23	

Components may not sum to totals because of rounding; \* = between -\$500,000 and zero.

a. Budget authority is equal to outlays.

## BASIS OF ESTIMATE

For this estimate, CBO assumes that H.R. 5682 will be enacted near the end of 2018, that the authorized amounts will be appropriated each year, and that future appropriations for federal corrections and other activities will be reduced in conjunction with the estimated reductions in the prison population attributable to the legislation's changes to credits for good conduct time.

**Good Conduct Time Credits.** Under current law, the BOP awards what are called good conduct time (GCT) credits of up to 47 days for each year of a court-imposed sentence to inmates who demonstrate good behavior. Those credits are deducted from a sentence to allow an inmate's early release. H.R. 5682 would amend current law to clarify that an inmate can earn up to 54 days of GCT for each year of a sentence. If enacted, H.R. 5682 would increase the maximum credit an inmate could earn by 7 days for each year of a sentence; for current inmates the change would be applied retroactively. (For example, an inmate serving a 10-year sentence who earned the maximum would be released 70 days earlier under the act than under current law.) Because the change would result in the early release of many current inmates and reduce the amount of time newly convicted offenders are expected to serve in a federal prison, CBO expects that, relative to current law, implementing H.R. 5682 would reduce the federal prison population overall, as discussed below.

**Prison Population and Related Costs.** As a result of early release from the GCT provision, CBO expects that H.R. 5682 would reduce the federal prison population and DOJ's costs to operate the system; such spending is subject to the availability of appropriated funds. Currently, the federal corrections system oversees about 184,000 inmates whose sentences range from less than one year to life. The legislation also would increase mandatory spending for federal entitlement programs. As long as they otherwise met program criteria, people released under the new legislation could be eligible for federal programs, including Medicare, Medicaid, and Social Security. (Generally, prisoners are not eligible for entitlement programs during incarceration.)

For this estimate, CBO assumes that the federal prison population and the composition of sentences among prisoners (that is, the number of prisoners serving a certain length of sentence as a share of all prisoners) will remain roughly at the levels observed in recent years. CBO also assumes that the number of inmates admitted into and released from the federal prison system will be roughly the same in each year over the 2019-2028 period.

Costs and savings under the act were calculated using person-years derived from the number of inmates estimated to be eligible for release in any year. When an inmate is released early, the prison space that person would have occupied (and the associated costs) would be "reduced" for that year and for all other years in which that person otherwise would have been incarcerated. For example, the BOP's costs to oversee 184,000 inmates in 2018 is equivalent to its costs for 184,000 person-years. The cost to the BOP for each person-year increases with inflation and CBO estimates those costs will average about \$13,000 over the 2019-2028 period. That amount includes the cost of medical services, food, and clothing. For this estimate, CBO aggregated individual inmates' expected reductions in time served. For example, if each of 52 inmates received an additional 7 days of GCT under H.R. 5682, each one would be released 7 days earlier as a result, and the overall reduction would be 1 person-year.

Although the act would require new programs to be developed to curtail recidivism, CBO expects that in the near term the rate of return to federal prison among the affected population would be the same as the current rate. Using information from a USSC report, CBO estimates that between 17 percent and 39 percent of offenders who would be eligible for retroactive GCT credits under the legislation would return to a federal prison.<sup>1</sup> Affected inmates would be reincarcerated earlier under the act, and any associated prison costs also would be incurred earlier. The estimates for the legislation's costs and savings were calculated net of those estimated shifts in prison costs resulting from estimated changes in the timing of reincarceration over the 2019-2028 period.

**Bureau of Prisons Staffing.** As the prison population decreases, the hiring of new corrections staff could slow, depending on the BOP's decisions about the desired ratio of inmates to staff. The bureau currently employs about 37,500 people. If the BOP chose to maintain the existing ratio, then cost reductions under the act would be greater because fewer staff would be needed to oversee a smaller prison population. If the BOP kept current staffing levels, little or no reduction in staffing costs would be realized. According to the BOP, in recent years the inmate-to-staff ratio in BOP facilities has been about 4-to-1.

### **Spending Subject to Appropriation**

CBO estimates that implementing H.R. 5682 would reduce the amount of time served by inmates, leading to a reduction in the federal prison population and prison operating costs. CBO estimates that implementing the GCT provision would reduce the number of prisoners by about 32,400 person-years over the 2019-2028 period. (That is roughly equivalent to reducing the federal prison population by 32,400 inmates in one year.) In addition, the legislation would authorize the appropriation of funds for DOJ and the BOP to implement a risk assessment system and expand programs to reduce recidivism. On net, CBO estimates, enacting H.R. 5682 would reduce discretionary costs by \$342 million over the 2019-2028 period (see Table 2).

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1. U.S. Sentencing Commission, *The Past Predicts the Future: Criminal History and Recidivism of Federal Offenders* (March 2017), <https://go.usa.gov/xUza3>.

**TABLE 2. SPENDING SUBJECT TO APPROPRIATION UNDER H.R. 5682**

	By Fiscal Year, in Millions of Dollars												2019-	2019-
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2023	2028	
<b>INCREASES OR DECREASES (-) IN SPENDING SUBJECT TO APPROPRIATION</b>														
<b>Risk Assessment System and Recidivism Reduction Programming</b>														
Authorization Level	0	50	50	50	50	50	0	0	0	0	0	250	250	
Estimated Outlays	0	30	40	45	50	50	20	10	5	0	0	215	250	
<b>Good Conduct Time</b>														
Estimated Authorization Level	0	-32	-33	-34	-36	-38	-41	-44	-48	-52	-56	-174	-414	
Estimated Outlays	0	-32	-33	-34	-36	-38	-41	-44	-48	-52	-56	-174	-414	
<b>Reduced Prison Staffing</b>														
Estimated Authorization Level	0	0	0	0	0	-26	-29	-32	-35	-38	-43	-26	-203	
Estimated Outlays	0	0	0	0	0	-26	-29	-32	-35	-38	-43	-26	-203	
<b>Other Costs</b>														
Estimated Authorization Level	0	2	2	2	2	2	2	3	3	3	4	10	25	
Estimated Outlays	0	2	2	2	2	2	2	3	3	3	4	10	25	
<b>Total Changes</b>														
Estimated Authorization Level	0	20	19	18	16	-13	-67	-73	-79	-87	-95	60	-342	
Estimated Outlays	0	0	9	13	16	-13	-47	-63	-74	-87	-95	25	-342	

Components may not sum to totals because of rounding.

**Risk Assessment System and Recidivism Reduction Programming.** Title I would require DOJ and the BOP to implement an offender risk and needs assessment system and provide programs to prisoners to reduce recidivism and promote successful reentry into society. The system would require each prisoner to undergo a risk assessment upon entering prison that would identify programs for which that person would be eligible. H.R. 5682 would authorize an annual appropriation of \$50 million over the 2019-2023 period for those activities. Based on historical spending patterns for similar activities, CBO estimates that implementing those provisions would cost \$250 million over the 2019-2028 period.

**Good Conduct Time.** The GCT provision of H.R. 5682 would be applied retroactively to current inmates. (To be eligible, a federal inmate must be serving more than one year but less than a life sentence.) Using information from the USSC, CBO estimates that retroactively applying the GCT provision would cause a reduction of about 2,650 person-years each year over the 2019-2028 period.

CBO expects that future offenders also would serve less time in prison as a result of the GCT provision. Using information from the BOP and the Government Accountability Office, CBO estimates that about 85 percent of eligible inmates currently earn the maximum in GCT credits. On that basis and on the basis of recent trends in the federal prison population, CBO estimates that, on average, 33,000 offenders entering the federal prison system annually over the 2019-2028 period would earn the full amount. Future inmates serving longer sentences would be released toward the end of that 10-year window but would accrue relatively more GCT credits because of their longer sentences. As a result, CBO estimates that the number of person-years for future offenders would decline by an average of about 660 annually over the 2020-2028 period.

In total, CBO estimates that implementing the GCT provision would reduce the BOP's costs to operate the prison system by \$414 million over the 2019-2028 period.

**Reduced Prison Staffing.** CBO estimates that implementing H.R. 5682 would reduce the prison population relative to that under current law and thus could reduce the number of staff required to operate the prison system. According to the BOP, in recent years the inmate-to-staff ratio in BOP facilities has been about 4-to-1. For this estimate, CBO expects that the BOP would choose to maintain that ratio and would reduce the number of prison staff in accordance with reductions in the number of inmates. The Council of Prison Locals C-33, a union representing federal prison workers, advocates for the 3.5-to-1 ratio that existed in the mid-1990s.

In 2018, the BOP received an appropriation of \$7.1 billion for the salaries and expenses of about 37,500 employees, with average costs of about \$110,000 per employee. CBO expects that the reduction in inmates under H.R. 5682 would lead to a modest reduction in prison staff that would occur primarily through attrition. As a result, CBO estimates that DOJ's costs would not change until a few years after enactment. Starting in 2023, the BOP would employ, on average, about 240 fewer staff over the 2023-2028 period, reducing DOJ's costs by about \$34 million annually and \$203 million over the 2023-2028 period. If the BOP chose the 3.5-to-1 ratio that existed in the mid-1990s (as some stakeholders advocate) the savings would be less.

**Other Costs.** CBO estimates that implementing other provisions of H.R. 5682 would cost \$25 million over the 2019-2028 period.

*Time Credits for Prerelease Custody.* Under H.R. 5682, successful completion of a recidivism reduction program would allow participating inmates to earn credits that would allow them to serve part of their sentence in prerelease custody rather than in

federal prison.<sup>2</sup> (Time credits under that program would be distinct from GCT credits awarded for good behavior.) On the basis of the act's deadline for implementing the program, CBO expects the BOP would begin awarding time credits to eligible inmates in 2022 and applying those credits in 2024.

According to the BOP, there is no available bed space in existing residential reentry centers and the bureau does not have the authority to build new ones; therefore, CBO does not expect that time credits would be used to move additional inmates into residential reentry centers. Using information from the BOP, CBO expects that a limited number of qualifying low-risk inmates could be moved directly from prison into home confinement under the supervision of a private contractor or the U.S. Probation and Pretrial Services System, which is part of the federal judiciary. Resulting changes in federal costs would depend on which entities take responsibility for such inmates. Whereas the cost to house an inmate in a BOP prison is about \$34 per day, the daily cost to monitor an inmate in home confinement ranges from \$16 (for monitoring by the judiciary) to \$40 (for monitoring by private contractors). If the BOP moves relatively more inmates into home confinement monitored by private contractors, that shift would result in increased costs to the BOP. If the BOP moves relatively more inmates into home confinement monitored by the judiciary, that shift would result in savings for the BOP but increased costs for the judiciary for additional staff and resources, resulting in no significant net change in costs to the federal government, in CBO's estimation.

CBO expects that private contractors' capacity to monitor additional inmates in home confinement would be lower in the initial years of the program but would grow over time. Under the time credits program, CBO estimates that, on average, about 1,200 inmates would be transferred 120 days early from a federal prison into privately contracted home confinement in each year. In total, CBO estimates that the use of those time credits would cost about \$5 million over the 2024-2028 period.

*Other Activities.* H.R. 5682 would direct the BOP and the Administrative Office of the U.S. Courts to submit various reports to the Congress. The legislation also would require the Bureau of Justice Statistics to expand its annual data reporting and would direct DOJ to implement new auditor certification procedures under the Prison Rape Elimination Act. Based on the costs of similar tasks, CBO estimates that those activities would cost about \$2 million annually.

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2. Prerelease custody is a period spent under the supervision of the federal government outside of a federal prison, including time spent in a residential reentry center or in home confinement, before an official release from prison.

## Direct Spending and Revenues

Under current law prisoners generally are ineligible to receive benefits from several federal programs, including Medicare, Medicaid, and the health insurance marketplaces; Social Security; SSI; and SNAP. By accelerating the release of prisoners, CBO estimates that the legislation would increase the number of people receiving benefits from those programs, resulting in an increase in direct spending totaling \$214 million over the 2019-2028 period (see Table 3). CBO calculated that change in costs in person-years, or the costs associated with providing benefits for one additional person for one year. Revenues also would decline by \$4 million because of effects on the health insurance marketplaces established under the ACA.

**TABLE 3. DIRECT SPENDING UNDER H.R. 5682**

	By Fiscal Year, in Millions of Dollars												
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2019-2023	2019-2028
<b>INCREASES IN DIRECT SPENDING OUTLAYS<sup>a</sup></b>													
Medicaid	0	7	8	8	9	10	11	13	15	17	19	42	117
Health Insurance Marketplaces	0	1	1	2	2	2	2	3	3	3	4	6	23
Social Security (Off-budget)	0	2	2	2	2	2	2	2	3	3	3	10	23
Medicare	0	1	1	1	1	1	2	2	2	2	2	5	15
Supplemental Security Income	0	2	2	2	2	2	2	2	3	3	4	10	24
Supplemental Nutrition Assistance Program	0	0	1	1	1	1	1	1	2	2	2	4	12
Total Changes in Outlays	0	13	15	16	17	18	20	23	28	30	34	77	214
On-budget	0	11	13	14	15	16	18	21	25	27	31	67	191
Off-budget	0	2	2	2	2	2	2	2	3	3	3	10	23

Components may not sum to totals because of rounding.

a. Budget authority is equal to outlays for all programs.

**Medicaid.** Based on research regarding the postincarceration income of felons, CBO estimates that about half of the prisoners released under H.R. 5682 would have incomes below 138 percent of the federal poverty line, the upper income eligibility threshold for adults made newly eligible for Medicaid under the ACA. Of those who would qualify for Medicaid and choose to enroll, a little less than half would be eligible under pre-ACA

eligibility categories and qualify for the standard federal Medicaid matching rates (which average 57 percent nationally), and a little more than half would be eligible for the new eligibility category under the ACA and qualify for federal matching rates that are 94 percent in 2018, 93 percent in 2019, and 90 percent in the following years. CBO also expects that health care costs for former prisoners would be about three times higher than for the average Medicaid adult beneficiary based on an analysis of Medicaid per capita costs for similar populations. According to a review of studies regarding prisoners' health status, prisoners have higher mental health care needs, more substance abuse disorders, and higher rates of HIV and Hepatitis C infection than the general adult Medicaid population. CBO estimates that Medicaid spending for those former prisoners would total \$117 million over the 2019-2028 period.

**Health Insurance Marketplaces.** Using information on the age, employment status, and postincarceration income of felons, CBO and JCT estimate that about 10 percent of the prisoners released under the act would obtain subsidized insurance through a health insurance marketplace. Using information on the marital status and children of felons, CBO and JCT estimate that about 75 percent of those would be single adults enrolling in their own plan and about 25 percent would be added to a plan their family members were already enrolled in. Accordingly, CBO and JCT estimate that the act would increase premium assistance tax credits provided through health insurance marketplaces by about \$26 million over the 2019-2028 period. That increase in subsidies reflects a \$23 million increase in outlays and a \$4 million decrease in revenues.<sup>3</sup>

**Social Security and Medicare.** Based on administrative data from the Social Security Administration, CBO estimates that about 4 percent of prisoners would receive Social Security benefits if they were not incarcerated. CBO applied that share to the estimated reduction in prisoners and estimates that enacting H.R. 5682 would increase Social Security spending by \$23 million over the 2019-2028 period (that spending would be classified as off-budget). Most prisoners who gained eligibility for Social Security under this proposal also would become eligible for Medicare benefits, at an estimated cost of \$15 million over the 2019-2028 period.

**Supplemental Security Income.** Using data from the Social Security Administration on SSI beneficiaries whose benefits were suspended because they were incarcerated, CBO estimates that 9 percent of prisoners released under the legislation would receive SSI benefits, at an estimated cost of \$24 million over the 2019-2028 period.

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3. The subsidies for health insurance premiums are structured as refundable tax credits; following the usual procedures for such credits, CBO and JCT classify the portions that exceed taxpayers' income tax liabilities as outlays, and the portions that reduce tax payments as reductions in revenues. All cost-sharing subsidies are classified as outlays.

**Supplemental Nutrition Assistance Program.** Using information on the postincarceration income of felons, CBO estimates that 20 percent of the prisoners released under the act would receive SNAP benefits, at an estimated cost of \$12 million over the 2019-2028 period. That estimate accounts for the fact that most states have taken the option under current law to modify or opt out of the ban on drug felons from receiving SNAP benefits.

**PAY-AS-YOU-GO CONSIDERATIONS**

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in Table 4. The act would increase direct spending for Social Security by \$23 million over the 2019-2028 period. Because spending for Social Security is classified as off-budget, those outlays are not subject to pay-as-you-go procedures.

**TABLE 4. CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 5682, THE FIRST STEP ACT, AS PASSED BY THE HOUSE OF REPRESENTATIVES ON MAY 22, 2018**

	By Fiscal Year, in Millions of Dollars											2018-	2018-
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2023	2028
<b>NET INCREASE IN THE ON-BUDGET DEFICIT</b>													
Statutory Pay-As-You-Go Effect	0	11	13	14	15	16	18	21	26	28	32	68	195
<b>Memorandum:</b>													
Changes in Outlays	0	11	13	14	15	16	18	21	25	27	31	67	191
Changes in Revenues	0	0	0	0	0	0	0	0	-1	-1	-1	-1	-4

**INCREASE IN LONG-TERM DIRECT SPENDING AND DEFICITS**

CBO estimates that enacting H.R. 5682 would not increase net direct spending by more than \$2.5 billion or on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2029.

## **MANDATES**

H.R. 5682 contains no intergovernmental or private-sector mandates as defined in UMRA. Although CBO estimates the legislation would increase Medicaid spending by the states, it would not impose an intergovernmental mandate as defined in UMRA because the states have significant flexibility in administering Medicaid to offset those costs while continuing to provide required services.

Under the legislation, federal prisons that are privately owned and operated would be subject to certain requirements that are imposed generally on BOP facilities. Those requirements include implementing the risk assessment system, providing certain notifications to prisoners, and collecting and reporting data. These duties are not mandates as defined in UMRA because they arise as part of the private entities' voluntary contract with the federal government.

## **PREVIOUS ESTIMATE**

On August 10, 2018, CBO transmitted a cost estimate for S. 1917, the Sentencing Reform and Corrections Act of 2017, as ordered reported by the Senate Committee on the Judiciary on February 15, 2018. CBO estimates that enacting S. 1917 would lead to a net reduction in discretionary costs of \$387 million, would increase direct spending by \$242 million, and would reduce revenues by \$4 million over the 2019-2028 period. The two pieces of legislation are different; however, CBO used similar approaches to estimate the budgetary effects associated with a reduction in the federal prison population.

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