

At a Glance

S. 601, Prohibiting Punishment of Acquitted Conduct Act of 2021

As reported by the Senate Committee on the Judiciary on July 12, 2021

By Fiscal Year, Millions of Dollars	2023	2023-2027	2023-2032
Direct Spending (Outlays)	*	2	14
Revenues	*	*	*
Increase or Decrease (-) in the Deficit	*	2	14
Spending Subject to Appropriation (Outlays)	*	-7	-60

Statutory pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	< \$5 billion	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

* = between -\$500,000 and \$500,000.

The bill would

- Prohibit federal judges, when setting prison sentences in criminal cases, from considering conduct for which defendants were acquitted, unless consideration of the conduct would reduce the sentence

Estimated budgetary effects would mainly stem from

- Reductions in discretionary spending by the federal Bureau of Prisons because some prisoners would serve sentences that are shorter than they would under current law
- Increases in direct spending for health care, Social Security, and other federal benefits

Areas of significant uncertainty include

- Projecting the number of defendants who would receive lower sentences, and how much shorter those sentences would be
- Estimating the number of defendants affected under the act who would receive federal benefits

Detailed estimate begins on the next page.

Bill Summary

S. 601 would prohibit federal judges, when setting prison sentences in criminal cases, from considering conduct for which defendants were acquitted, unless consideration of the conduct would reduce the sentence. Under current law, there are no limitations on the information federal judges can consider when imposing a sentence in a criminal case. Specifically, under the bill, judges would be barred from considering conduct for which a person was charged and adjudicated not guilty by a federal, state, or tribal court.

Estimated Federal Cost

The estimated budgetary effect of S. 601 is 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.
Estimated Budgetary Effects of S. 601

	By Fiscal Year, Millions of Dollars										2023-2027	2023-2032
	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032		
Increases in Direct Spending												
Estimated Budget Authority	*	*	*	*	1	2	2	2	3	3	2	14
Estimated Outlays	*	*	*	*	1	2	2	2	3	3	2	14
Decreases in Revenues												
Estimated Revenues	*	*	*	*	*	*	*	*	*	*	*	*
Net Increase in the Deficit												
From Changes in Direct Spending and Revenues												
Effect on the Deficit	*	*	*	*	1	2	2	2	3	3	2	14
Decreases in Spending Subject to Appropriation												
Estimated Authorization	*	*	-1	-2	-4	-8	-10	-11	-13	-15	-8	-63
Estimated Outlays	*	*	-1	-2	-4	-7	-9	-11	-12	-14	-7	-60

Sources: Congressional Budget Office; staff of the Joint Committee on Taxation.
Components may not sum to totals because of rounding; * = between-\$500,000 and \$500,000.

Basis of Estimate

For this estimate, CBO assumes that the legislation will be enacted at the end of calendar year 2022 and that defendants' sentences would be affected by the changes beginning in 2023. Under S. 601, CBO estimates that about 300 defendants each year would receive sentences that are shorter than under current law.

CBO also expects that some of those defendants, as a result of serving shorter sentences, would be eligible at an earlier date for Medicare, Medicaid, Social Security, Supplemental Security Income (SSI), or the Supplemental Nutrition Assistance Program (SNAP). Some could also become eligible for premium tax credits for health insurance purchased through the marketplaces established by the Affordable Care Act (ACA).

CBO expects that future appropriations for operating the federal prison system would be reduced to reflect savings in the BOP's overall costs to house and monitor prisoners.

Population

According to data from the U.S. Sentencing Commission (USSC), an average of 1,900 criminal cases went to trial each year from 2015 to 2019.¹ Based on conversations with officials from the Department of Justice (DOJ) and the USSC, CBO estimates that between 15 percent and 20 percent of trials feature defendants who have been acquitted of criminal conduct. In those trials, estimated by CBO to average about 300 each year after enactment, judges would no longer be allowed to consider previously acquitted conduct of the defendant.

Reduction in Person-Years Served in Federal Prison

Over the past 5 years, judges imposed sentences in trial cases averaging about 150 months, according to data provided by the USSC. Based on conversations with agency officials and other experts, CBO assumes that those sentences are, on average, 25 percent longer because at least some judges considered acquitted conduct in addition to conduct for which the defendant had been found guilty. Under that assumption, CBO estimates that, under S. 601, judges would impose sentences that are about 30 months shorter than they would be under current law.

For this estimate, CBO aggregated individual defendants' expected reductions in time served, as measured in person-years, across the 300 defendants estimated to receive lower sentences each year over the next decade. In total, CBO estimates that prohibiting consideration of acquitted conduct would reduce time served by about 1,000 person-years over the 2023-2032 period. Because reductions in person-years are realized at the end of a

1. Due to the effects of the coronavirus pandemic, the number of criminal cases charged and trials held was sharply reduced in 2020 and 2021; therefore, CBO excluded those years from the average number of trials and acquittals when projecting the number of cases that would be affected by S. 601 over the 2023-2032 period.

prisoner’s term in confinement, and most sentences span multiple years, CBO estimates that only about one-quarter of sentence reductions provided for defendants who go to trial over the 2023-2032 period would be realized during that decade.

Direct Spending and Revenues

Under current law, federal prisoners do not receive federal benefits while they are incarcerated. By shortening the amount of time served by defendants in each year, CBO estimates S. 601 would increase the number of beneficiaries for federal programs and thus increase direct spending by \$14 million over the 2023-2032 period (see Table 2). The bill also would reduce revenues by less than \$500,000 over the same period.

Table 2.
Estimated Increases in Direct Spending Under S. 601

	By Fiscal Year, Millions of Dollars										2023-2027	2023-2032
	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032		
Increases in Direct Spending												
Medicaid	*	*	*	*	1	1	1	2	2	2	1	9
Premium Tax Credits	*	*	*	*	*	*	*	*	*	*	*	1
Social Security (Off-budget)	*	*	*	*	*	*	*	*	*	*	*	1
Medicare	*	*	*	*	*	*	*	*	*	*	*	1
SSI	*	*	*	*	*	*	*	*	*	*	*	1
SNAP	*	*	*	*	*	*	*	*	*	*	*	1
Total Changes in Outlays	*	*	*	*	1	2	2	2	3	3	2	14
On-budget	*	*	*	*	1	1	2	2	3	3	2	13
Off-budget	*	*	*	*	*	*	*	*	*	*	*	1

For these programs, budget authority is equal to outlays. Components may not sum to totals because of rounding.
SNAP = Supplemental Nutrition Assistance Program; SSI = Supplemental Security Income; * = between zero and \$500,000.

Medicaid. Using information on the projected age distribution of released inmates and their projected income, CBO estimates that, under S. 601, roughly one third of those released early from prison would receive Medicaid benefits. Relative to current law, about one additional person would receive Medicaid benefits in 2023 and about sixty additional people would receive benefits in 2032. Most people would receive benefits for multiple years over the budget window. As a result, CBO estimates that enacting the legislation would increase Medicaid spending by \$9 million over the 2023-2032. Of those recipients, about 50 percent would be eligible under pre-ACA eligibility categories and would qualify for standard matching rates (on average, 59.5 percent nationally). The other 50 percent would be eligible for the expansion category under the ACA and would qualify for a federal matching rate of 90 percent. Data on per capita health care costs for similar groups indicate that costs for former prisoners would be about three times, on average, of those for other Medicaid

beneficiaries, mainly because of a greater need for mental health care, a higher rate of substance use disorders, and higher rates of HIV and hepatitis C infection.

Premium Tax Credits. CBO and the staff of the Joint Committee on Taxation (JCT) estimate that, under S. 601, about 25 percent of those released from prison would qualify for premium tax credits purchased through the health insurance marketplaces established by the ACA and enroll in that coverage. Relative to current law, on average each year, about 30 additional people would qualify for premium tax credits.² As a result, enacting S. 601 would increase direct spending by about \$1 million and decrease revenues by less than \$500,000 over the 2023-2032 period.

Social Security and Medicare. CBO estimates that, under the legislation, roughly 5 percent of those released from prison would receive Social Security benefits. Relative to current law, about 10 additional people would receive Social Security benefits by 2032. As a result, enacting S. 601 would increase Social Security spending by \$1 million over the 2023-2032 period (such spending is classified as off-budget). Most of the prisoners who gained eligibility for Social Security upon release also would become eligible for Medicare, increasing Medicare outlays by an estimated \$1 million over the 2023-2032 period (such spending is classified as on-budget).

Supplemental Security Income. Using data on the age distribution and demographics of people whose SSI benefits are suspended while they are incarcerated, CBO estimates that, under S. 601, 8 percent of those released from prison would receive SSI benefits. Most people would receive benefits for multiple years over the budget window. Relative to current law, zero additional people would receive SSI benefits in 2023 and about 15 additional people would receive benefits in 2032. CBO estimates that providing those benefits would increase SSI spending by \$1 million over the 2023-2032 period.

Supplemental Nutrition Assistance Program. Based on projected eligibility and participation rates after release, CBO estimates that, under S. 601, fewer than 100 additional people would receive SNAP benefits in each year. Most people would receive benefits for multiple years over the budget window. As a result, CBO estimates that enacting the legislation would increase SNAP spending by approximately \$1 million over the 2023-2032 period. That estimate also 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 receiving SNAP benefits.

2. Those refundable credits reduce overall income tax liability: If they are greater than other tax liabilities, the taxpayer may receive the excess in a refund. Such refunds are classified as outlays in the federal budget. Provisions of the ACA that reduce tax payments are classified as reductions in federal revenues.

Spending Subject to Appropriation

CBO estimates that S. 601 would reduce time served by roughly 1,000 person-years over the 2023-2032 period. Because inmates would serve less time in prison, the BOP's costs for housing and providing care for inmates would be reduced.

Using information from the BOP, CBO estimates that the average daily cost to house an inmate in a federal facility is about \$135 in 2022; CBO adjusted that figure for inflation when estimating effects over the next decade.

In total, CBO estimates, implementing S. 601 would reduce the BOP's costs for housing and monitoring by \$60 million over 2023-2032 period. Any reduction in spending for operating the federal prison system would depend on future appropriations actions that reflect that lower cost.

Uncertainty

CBO's estimates of the budgetary consequences of S. 601 are subject to uncertainty in several areas. Although roughly 15 percent of federal criminal trials result in complete acquittals, many more cases involve defendants who are convicted of some charges and acquitted of others. As a result, there is significant uncertainty surrounding the fraction of cases where judges are able to consider acquitted conduct. Furthermore, in that subset of cases, the extent to which judges consider acquitted conduct when determining sentence length is also uncertain. The effects of the legislation could be greater or smaller than estimated here depending on the decisions of judges in hundreds of individual trials each year.

In addition, the extent to which offenders released from prison would qualify for and receive certain federal benefits could differ from the averages that CBO used for this estimate. For example, the cost of subsidized health insurance coverage would depend on individual income, employment status, health, family structure, and availability of other insurance coverage.

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 (on-budget costs) are shown in Table 3.

Table 3.
CBO’s Estimate of the Statutory Pay-As-You-Go Effects of S. 601, the Prohibiting Punishment of Acquitted Conduct Act of 2021
As reported by the Senate Committee on the Judiciary on July 12, 2021

	By Fiscal Year, Millions of Dollars										2023- 2027	2023- 2032
	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032		
	Net Increase in the On-Budget Deficit											
Pay-As-You-Go Effect	0	0	0	0	1	1	2	2	3	3	1	13
Memorandum:												
Changes in Outlays	0	0	0	0	1	1	2	2	3	3	1	13
Changes in Revenues	0	0	0	0	0	0	0	0	0	0	0	0

Components may not sum to totals because of rounding.

Increase in Long-Term Deficits

CBO estimates that enacting S. 601 would not increase on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2032.

Mandates: None.

Previous CBO Estimate

On March 28, 2022, CBO transmitted a [cost estimate for H.R. 1621](#), the Prohibiting Punishment of Acquitted Conduct Act of 2021, as posted on the website of the Clerk of the House on March 25, 2022. The two bills are similar. However, because of new information about the prison population incorporated into the May 2022 baseline, CBO’s estimate for S. 601 over the 2023-2031 period is lower than that estimated for H.R. 1621. This estimate also includes budgetary effects for 2032, which the estimate for H.R. 1621 did not.

Estimate Prepared By

Federal Costs:

Emily Vreeland (health insurance marketplaces)
Jennifer Gray (Supplemental Nutrition Assistance Program)
Jon Sperl (Bureau of Prisons)
Justin Latus (Supplemental Security Income)
Noah Meyerson (Social Security)
Robert Stewart (Medicaid)
Sarah Sajewski (Medicare)
Staff of the Joint Committee on Taxation (health insurance marketplaces)

Revenues: Staff of the Joint Committee on Taxation

Mandates: Lilia Ledezma

Estimate Reviewed By

Chad Chirico
Chief, Low-Income Health Programs and Prescription Drugs Cost Estimates Unit

Elizabeth Cove Delisle
Chief, Income Security and Education Cost Estimates Unit

Justin Humphrey
Chief, Finance, Housing, and Education Cost Estimates Unit

Paul Masi
Chief, Health Systems and Medicare Cost Estimates Unit

Leo Lex
Deputy Director of Budget Analysis

H. Samuel Papenfuss
Deputy Director of Budget Analysis