

At a Glance

H.R. 5430, Prohibiting Punishment of Acquitted Conduct

As ordered reported by the House Committee on the Judiciary on November 2, 2023

By Fiscal Year, Millions of Dollars	2024	2024-2029	2024-2034
Direct Spending (Outlays)	0	*	9
Revenues	0	*	*
Increase or Decrease (-) in the Deficit	0	*	9
Spending Subject to Appropriation (Outlays)	0	-5	-42

Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2035? < \$2.5 billion	Statutory pay-as-you-go procedures apply?	Yes
	Mandate Effects	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2035? < \$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
- Estimating the number of defendants affected under the act who would receive federal benefits

Detailed estimate begins on the next page.

See also

[CBO's Cost Estimates Explained](#), [CBO Describes Its Cost-Estimating Process](#), [Glossary](#)

Bill Summary

H.R. 5430 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 H.R. 5430 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 H.R. 5430

	By Fiscal Year, Millions of Dollars											2024-2029	2024-2034
	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034		
Increases in Direct Spending													
Estimated Budget Authority	0	*	*	*	*	*	*	1	2	3	3	*	9
Estimated Outlays	0	*	*	*	*	*	*	1	2	3	3	*	9
Decreases in Revenues													
Estimated Revenues	0	*	*	*	*	*	*	*	*	*	*	*	*
Net Increase in the Deficit From Changes in Direct Spending and Revenues													
Effect on the Deficit	0	*	*	*	*	*	*	1	2	3	3	*	9
Decreases in Spending Subject to Appropriation													
Estimated Authorization	*	*	*	-1	-2	-3	-4	-6	-7	-9	-12	-6	-44
Estimated Outlays	*	*	*	-1	-2	-3	-4	-6	-6	-9	-11	-5	-42

Sources: Congressional Budget Office; staff of the Joint Committee on Taxation.
* = between -\$500,000 and \$500,000.

Basis of Estimate

For this estimate, CBO assumes that the legislation will be enacted near the middle of fiscal year 2024 and that defendants' sentences would be affected by the changes beginning in the

last quarter of fiscal year 2024. Under H.R. 5430, 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 Federal Bureau of Prison's (BOP) overall costs to house and monitor prisoners.

Population

Using historical data from the U.S. Sentencing Commission (USSC), CBO estimates that approximately 1,800 criminal cases will go to trial each year over the 2024-2034 period. 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, about 300 each year, on average. In those trials, judges would no longer be allowed to consider previously acquitted conduct of the defendant.

Reduction in Person-Years Served in Prison

Over the past five 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. Using that assumption, CBO estimates that under H.R. 5430, 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 judges from considering acquitted conduct would reduce time served by about 750 person-years over the 2024-2034 period. Because reductions in person-years are realized at the end of a prisoner's term in confinement, and most sentences span multiple years, CBO estimates that only about one-fifth of sentence reductions provided for defendants who go to trial over the 2024-2034 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 H.R. 5430 would increase the number of beneficiaries for federal programs and



thus increase direct spending by \$9 million over the 2024-2034 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 H.R. 5430

	By Fiscal Year, Millions of Dollars											2024-2029	2024-2034
	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034		
Medicaid	0	*	*	*	*	*	*	1	1	1	1	*	4
Premium Tax Credits	0	*	*	*	*	*	*	*	1	*	*	*	1
Social Security (Off-Budget)	0	*	*	*	*	*	*	*	*	1	*	*	1
Medicare	0	*	*	*	*	*	*	*	*	*	1	*	1
SSI	0	*	*	*	*	*	*	*	*	*	1	*	1
SNAP	0	*	*	*	*	*	*	*	*	1	*	*	1
Total													
Increases	0	*	*	*	*	*	*	1	2	3	3	*	9
<i>On-Budget</i>	0	*	*	*	*	*	*	1	2	2	3	*	8
<i>Off-Budget</i>	0	*	*	*	*	*	*	*	*	1	*	*	1

For these programs, budget authority is equal to outlays.

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 H.R. 5430, roughly one-third of those released early from prison would receive Medicaid benefits. Relative to current law, about two additional people would receive Medicaid benefits in 2026 and about forty-nine additional people would receive benefits in 2034. 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 \$4 million over the 2024-2034 period. Of those recipients, about 33 percent would be eligible under pre-ACA eligibility categories and would qualify for standard matching rates (on average, 58.8 percent nationally). The other 67 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 250 percent higher, on average, than the average cost for Medicaid adults, mainly because of higher rates of mental health conditions, substance use disorders, and HIV and hepatitis C infection.

Premium Tax Credits. CBO and the staff of the Joint Committee on Taxation estimate that, under the legislation, roughly 25 percent of those released would enroll in coverage through

the health insurance marketplaces and receive a premium tax credit towards that coverage.¹ Relative to current law, about 50 additional people would receive premium tax credits by 2034. As a result, enacting H.R. 5430 would increase direct spending by \$1 million and decrease revenues by less than \$500,000 over the 2024-2034 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 8 additional people would receive Social Security benefits by 2034. As a result, enacting H.R. 5430 would increase Social Security spending by \$1 million over the 2024-2034 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 \$1 million over the 2024-2034 period (such spending is classified as on-budget).

Supplemental Security Income. Based on projected eligibility data on the age distribution and demographics of people whose SSI benefits are suspended while they are incarcerated, CBO estimates that, under H.R. 5430, 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, no additional people would receive SSI benefits in 2025 and about 15 additional people would receive benefits in 2034. CBO estimates that providing those benefits would increase SSI spending by \$1 million over the 2024-2034 period.

Supplemental Nutrition Assistance Program. Based on projected eligibility and participation rates after release, CBO estimates that, under H.R. 5430, 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 \$1 million over the 2024-2034 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.

Spending Subject to Appropriation

CBO estimates that H.R. 5430 would reduce time served by roughly 750 person-years over the 2024-2034 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 \$125 in 2024. After accounting for anticipated inflation, CBO estimates that implementing H.R. 5430 would reduce the BOP's costs for housing and

1. 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.

Increase in Long-Term Net Direct Spending and Deficits

CBO estimates that enacting H.R. 5430 would not increase net direct spending by more than \$2.5 billion in any of the four consecutive 10-year periods beginning in 2035.

CBO estimates that enacting H.R. 5430 would not increase on-budget deficits by more than \$5 billion in any of the four consecutive 10-year periods beginning in 2035.

Mandates

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

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