

THE FIRST STEP ACT OF 2018: Earned Time Credits

Sentencing Resource Counsel for the Federal Public and Community Defenders (updated Nov. 2019)

Important Dates

- **January 2020:** BOP to post full list of approved programs on www.bop.gov
- **January 15, 2020:** BOP to complete initial risk and needs assessment for each prisoner and "begin" to assign programming
- **January 15, 2022:** BOP must provide evidence-based recidivism reduction programs or productive activities for all inmates.

See 18 U.S.C. § 3621(h); Dep't of Just, *The First Step Act of 2018: Risk and Needs Assessment System*, at 71.

Incentives

- 1) Phone & visitation privileges
- 2) Transfer closer to home
- 3) Additional rewards developed by BOP (commissary, email, preferred housing units, etc.)
- 4) Earned Time Credits (ETCs)

See 18 U.S.C. § 3632(d)(1) – (4)

Acquiring "Earned Time Credits" (ETCs)

All eligible persons: earn **10 days** of ETCs for "every 30 days of successful participation in evidence-based recidivism reduction programming or productive activities"

Persons in min/low risk categories who, "over 2 consecutive assessments"* have not increased their risk category shall earn "an **additional 5 days** of time credits for every 30 days of successful participation in evidence-based recidivism reduction programming or productive activities"

*Persons who "successfully participate" in programming shall receive reassessments "not less often than annually." Persons in medium/high risk categories who are less than 5 years from release shall receive "more frequent" reassessments.

See 18 U.S.C. § 3632(d)(4), (5)

Using "Earned Time Credits" (ETCs)

ETCs can be used when accumulated credits are equal to remainder of prison term.

For prerelease custody (home confinement or RRC):

- (1) Min/Low risk for last 2 reassessments; or
- (2) Warden approval after determining (a) no danger to society; (b) good-faith effort to lower recidivism risk through programming; and (c) unlikely to recidivate

For supervised released (not to exceed 12 months):

- (1) Min/Low risk for last reassessment; or
- (2) Warden approval after determining (a) no danger to society; (b) good-faith effort to lower recidivism risk through programming; and (c) unlikely to recidivate

See 18 U.S.C. § 3624(g)

Ineligible for ETCs

If "serving a sentence for a conviction" under any of the following:

- 18 U.S.C. § 32
- 18 U.S.C. § 33
- 18 U.S.C. § 36
- 18 U.S.C. § 81
- 18 U.S.C. § 111(b)
- 18 U.S.C. § 113(a)(1), (7), (8)
- 18 U.S.C. § 115, except threats
- 18 U.S.C. § 116
- 18 U.S.C. § 117
- Ch. 10 (biological weapons)
- Ch. 11B (chemical weapons)
- 18 U.S.C. § 351
- 18 U.S.C. § 521
- 18 U.S.C. § 2118(c)
- 18 U.S.C. § 2119
- Ch. 105 (sabotage) except § 2152
- Ch. 109A (sex abuse)
- 18 U.S.C. § 2250
- 18 U.S.C. § 2251
- 18 U.S.C. § 2251A
- 18 U.S.C. § 2252
- 18 U.S.C. § 2252A
- 18 U.S.C. § 2260
- 18 U.S.C. § 2283
- 18 U.S.C. § 2284
- 18 U.S.C. § 2291 if sub. risk of death/SBI
- Ch. 113B (terrorism)
- 18 U.S.C. § 2340A
- 18 U.S.C. § 2381
- 18 U.S.C. § 2382
- 18 U.S.C. § 2442
- 18 U.S.C. § 3559(c)(2)(F) if +1 year imprisonment and if certain prior convictions
- 42 U.S.C. § 2077(b)
- 42 U.S.C. § 2122
- 42 U.S.C. § 2131
- 42 U.S.C. § 2274
- 42 U.S.C. § 2275
- 42 U.S.C. § 2284
- 49 U.S.C. § 60123(b) if sub. risk of death/SBI
- 21 U.S.C. § 841(b)(1)(A-C) if death/SBI resulted
- 8 U.S.C. § 1326(b)(1), (2)
- 8 U.S.C. § 1327
- 8 U.S.C. § 1328
- 50 U.S.C. § 4611 et seq.
- 50 U.S.C. § 1705
- 50 U.S.C. § 3121
- 21 U.S.C. §§ 841(b)(1)(A)-(B) or 960(b)(1)-(2) if for fentanyl/analogue

Court-found ineligibilities:

- 21 U.S.C. §§ 841(b)(1)(A)-(B) or 960(b)(1)-(2) if heroin and court finds role enhancement
- 21 U.S.C. §§ 841(b)(1)(A)-(B) or 960(b)(1)-(2) if meth and court finds role enhancement
- 21 U.S.C. §§ 841(b)(1)(A)-(B) or 960(b)(1)-(2) for any drug if court finds offense involved fentanyl/analogue and role enhancement

Deportable persons: ineligible to apply time credits if subject to a final order of removal under any provision of the INA

See 18 U.S.C. § 3632(d)(4)(D)-(E)