

EARLY RELEASE

Under the

FIRST STEP ACT

and the Naked Truth

By Kelly Patrick Riggs



FREEBIRD PUBLISHERS

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Change is hard at first, messy in the middle and positive at the end. –Charmayne L. Bracey

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Overview of Chapters

Chapter 1



WHAT IS IN THE NEW LAW

This law has something for all federal prisoners in the system. Every federal prisoner, in each situation should take the time to understand this new law to the best of your ability.

Chapter 2



WHAT IS RETROACTIVE

What I believe to be the most important provisions of the First Step Act are the ones that get a prisoner closer to his or her family sooner. Meaning the two changes that are retroactive.

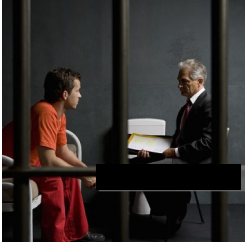
Chapter 3



QUALIFIED STATE PRISONERS

The First Step Act is designed to, and predominantly does, provide relief to federal prisoners only. This does not mean that qualified state prisoners will not benefit.

Chapter 4



SHOULD I HIRE A LAWYER

YES! This new law can be, as all others, complicated and it contains an ugly down side.

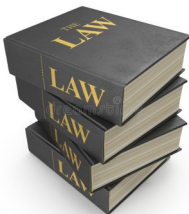
Chapter 5



WHAT IF I CAN NOT AFFORD A LAWYER

I don't like to suggest that anyone should represent themselves in court, not even a lawyer.

Chapter 6



FILING IN PRO SE

If you have no other choice but to file in 'pro-se', I would file a motion asking for the appointment of counsel.

Getting Started

Introduction

My name is KELLY PATRICK RIGGS, a federal prisoner. and the author of the 'Post Conviction Relief' series, made available by Freebird Publishers, and an advocate who assists underprivileged prisoners. I am writing this short publication to answer several very good questions involving 'The First Step Act'. I provide this information more as a warning than anything else. My main concern is for those who may have a real claim under the new law yet miss out on relief because their claim was mishandled.

Everyone who is or knows a federal prisoner has, most likely, heard about The First Step Act.

Everyone who is or knows a federal prisoner has, most likely, heard about The First Step Act. As you know it is a long awaited 'First Step' to prison reform that was signed into law on December 21, 2018, by the President, Donald Trump. This is the first meaningful effort to provide relief to all prisoners currently confined by The Federal Bureau of Prisons. To say the least the possibilities under this law will be the subject of discussions and controversies for the next two years. My primary goal, however, is to answer the most important question of all, "what do I have coming now", and "how do I get it". This is not a comprehensive analysis, this is a brief view of what is happening now.



CHAPTER 1

WHAT IS IN THE NEW LAW

This law has something for every federal prisoner in the system. I don't care if you're new or if you have been in for a while like I have, everyone gets something. I suggest that every federal prisoner, in every situation, take the time to understand this new law to the best of their ability. The new law is full of articles containing benefits that will affect federal prisoners, and many state prisoners, there are of course exclusions so read this new law. This is what I have found in the law by the numbers:

TITLE I- Recidivism Reduction.

Section 101. "Risk and needs assessment program". The risk and needs assessment program of 'The First Step Act' requires that within 210 days of the Act becoming law, the Attorney General is required to develop a "Risk and Needs Assessment System". This system will estimate, or guess at, each prisoners individual "Recidivism Risk", and help the B.O.P. staff decide which programs individual prisoners should participate in.

SUBSECTION A. Goes on to say that inmates can receive incentives for

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participating in Recidivism Reduction Programs. Some of the 'Potential'
Incentives include:

- ⇒ increased phone privileges;
- ⇒ additional visitation time;
- ⇒ close to home transfers;
- ⇒ increased commissary limits;
- ⇒ increased access to e-mail system;
- ⇒ 'CONSIDERATION' for preferred housing;
- ⇒ other incentives solicited from prisoners.

The incentives listed in subsection A are discretionary with the exception of the additional phone minutes. The text of the bill specifically provides that, "A prisoner who is successfully participated in an evidence-based recidivism reduction program shall receive" the extra phone minutes.

SUBSECTION B. Allows that a prisoner can accumulate time credits that can be applied toward more halfway house or home confinement time. Prisoners who qualify, under the act, and who successfully complete recidivism reduction programming or "Productive Activities" are eligible to receive time credits that add to the time that a prisoner spends in pre-release custody. i.e. Halfway House or on home confinement. There are many prisoners who will be determined by the B.O.P. to be ineligible, so check for yourself.

SUBSECTION C. The First Step Act allows time credits to apply towards up to one year of supervised release. The Act provides that, "The Director of the Bureau of Prisons may transfer the prisoner to begin any such term of supervised release at an earlier date, not to exceed 12 months, based on the application of time credits under section 3632."

Again, the new law contains a mountain of exclusions. If you think you will qualify for the additional time credits, I recommend that you read the new law.

SECTION 102. Contains the implementation requirements that congress has laid upon the Bureau of Prisons through the First Step Act.

SUBSECTION A. Provides the B.O.P. with 180 days to implement risk and needs assessment. 180 days after the system has been developed, the B.O.P. is required to implement the system for each prisoner by conducting an

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initial assessment. The Act specifically provides that it does not matter how long a prisoner's sentence is: every prisoner will be assessed.

SUBSECTION B. Provides a two-year phase-in period. The B.O.P. will be required to start assigning prisoners to appropriate evidence-based recidivism reduction programs based on the assessments. The assessments and the placements will start at the same time.

During the phase in period prisoners with the most immediate release dates will be given priority for participation in the programs that offer the additional "time credits".

SUBSECTION C. Provides the B.O.P. with the authority to expand any existing evidence-based recidivism reduction programs immediately. The B.O.P. is also permitted to offer additional incentives and rewards such as were listed in section 101(A), and "time credits".

SUBSECTION F. The First Step Act requires that federal prisoners be awarded 54 days of good time for each year of the sentence that was imposed. The new law also changes the way that prorated good conduct time is credited. Under the First Step Act, "credit for the last year of imprisonment shall be credited on the first day of the last year of the term of imprisonment."

SUBSECTION G. Provides that qualifying prisoners who earn credits for participation in evidence-based recidivism reduction programs may be transferred to pre-release custody or supervised release. The supervised release, the prisoner is transferred to, cannot be for longer than 12 months. There is no 12-month limitation on how long a prisoner can remain on home confinement or in a halfway house through the use of time credits.

SUBSECTION H. Provides that prisoners who are sent to home confinement are subject to 24-hour electronic monitoring. This is authorized by the current federal law. Under this condition of confinement, the prisoner can only leave their home with permission for certain allowed activities such as work or community service.

All prisoners placed on home confinement will remain on home confinement until they have completed a minimum of 85% of the imposed sentence.

SUBSECTION I. Authorizes the B.O.P. to transfer a prisoner to begin their term of supervised release earlier based on the application of earned time credits. Properly used, this section of The First Step Act would be a significant change to how the B.O.P. currently operates.

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SUBSECTION J. Directs the B.O.P. to work with probation and pre-trial services. Because of the potentially sharp increase in the number of federal prisoners serving their sentences on home confinement, The First Step Act directs the B.O.P. to work with probation to allocate resources effectively. Probation will be specifically required to offer assistance to any prisoner it can who is in pre-release custody.

SUBSECTION K. Requires the Director of the Bureau of Prisons to ensure that there is sufficient pre-release custody capacity "to accommodate all eligible prisoners". This provision alone helps incarcerated prisoners by depriving the B.O.P. of its favorite excuse; claiming the lack of space in halfway houses. This part of The First Step Act will help many prisoners transition into their communities effectively by providing adequate time to re-integrate.

SECTION 104. Appropriates \$75 million dollars annually from 2019-2023 to carry out the provisions of The First Step Act. The Act specifies that 80% of the funding are to be used to implement the risk and needs assessment system and not to be allocated to the B.O.P.'s general fund.

SECTION 105. Specifies that nothing in The First Step Act may be read to create an authority to place a prisoner into pre-release custody unless sentenced for a federal crime.

SECTION 106. Provides that the B.O.P. cannot discriminate against any faith-based program, during its evaluation of the use or implementation of the proposed program, under The First Step Act.

SECTION 107. The First Step Act establishes an independent review committee to assist the Attorney General in developing the risk and needs assessment tool. The committee is directed to conduct a review of existing tools used by the Bureau, develop recommendations regarding programming for prisoners, and conduct research on the effectiveness of programs used by the B.O.P. the committee will dissolve 30 days after the B.O.P. rolls out its own risk and needs assessment tool.

TITLE II - B.O.P. SECURE FIREARMS STORAGE

This provision is of no use to prisoners in my opinion, so I see no need to include its text here. Again, I suggest you read The First Step Act.

TITLE III - RESTRAINT ON PREGNANT PRISONERS.

SECTION 301. The First Step Act limits the conditions in which a pregnant and postpartum prisoner may be restrained, nearly to a point of

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prohibition. The Act also provides that even when restraints are used, the B.O.P. must not use anything more than the "least restrictive means" necessary to restrain females during and after pregnancy.

TITLE IV - SENTENCING REFORM

SECTION 401. This section of the Act effectively reduces and restricts enhanced sentencing for prior drug felonies. This section was not made retroactive which means that, if you were sentenced before December 21, 2018, it is of no benefit to you. If however, you were or if you are due to be sentenced on or after December 21, 2018, please read this title of the Act in its entirety for your own benefit.

SECTION 402. Broadening of existing safety valve. Just as the previous section, this one is not retroactive. Again, if you were sentenced before December 21, 2018, it's of no benefit to you and won't be listed here.

SECTION 403. Clarification of section 18 U.S.C.: 924(c). The First Step Act makes clear congress' intentions concerning application of 18 U.S.C.: 924(c) enhanced penalties for using a firearm during certain crimes based on a defendant's prior convictions.

The First Step Act makes clear that the enhanced mandatory minimums for using a firearm during certain crimes only apply when the qualifying prior conviction was already final at the time of the new offense. In the past years, since the enactment of 18 U.S.C.: 924(c), the government had almost always sought to apply 924(c) to a defendant who was convicted of multiple counts on the same day. The government would often go so far as to apply the enhancements to defendants who had no prior convictions under the section, to reach the higher mandatory minimum penalties on each count of conviction. Had this section of the Act been made retroactive it would have affected hundreds of federal and state prisoners who were sentenced under the federal law. What's most important to consider is what the supreme court said about "substantive rules for which retroactive application is appropriate." See *WELCH V. UNITED STATES*, 136 S. Ct. 1257 (2016).

If you look back to the Supreme Court's decision in *JOHNSON V. UNITED STATES*, 135 S. Ct. 2551 (2015), you will discover that the high court did not declare that the invalidation of 18 U.S.C.: 924(e)'s residual clause was retroactive. The decision to make it retroactive was not made because it was already retroactive. That is why the A.E.D.P.A.'s one-year limitation was set on the date of Johnson and not that of Welch. Thus, if The First Step

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Act's clarification on the intent of congress, in 18 U.S.C.: 924(c), is a substantive change just as the Johnson fix was, then retroactivity should be assumed. Read the Head notes from Welch that follow:

Head note [14] "Cases in which the constitution deprives the government of the power to impose the challenged punishment represent the clearest instance of substantive rules for which retroactive application is appropriate. Although the U.S. Supreme Court has put great emphasis on substantive decisions that place certain conduct, classes of persons [i.e. first-time offenders], or punishments beyond the legislative power of Congress, the court has also recognized that some substantive decisions do not impose such restrictions."

Head note [15] "Neither Bousley nor any other case from the U.S. Supreme Court treats statutory interpretation cases as a special class of decisions that are substantive under Teague because they implement the intent of Congress. Instead, decisions that interpret a statute are substantive if and when they meet the normal criteria for a substantive rule: when they alter the range of conduct or the class of persons that the law punishes."

Head note [16] " The separation of powers prohibits a court from imposing criminal punishment beyond what Congress meant to enact. It is only Congress, and not the courts, which can make conduct criminal. But a court likewise is prohibited from imposing criminal punishment beyond what Congress in fact has enacted by a valid law. In either case a court lacks the power to exact a penalty that has not been authorized by any valid criminal statute."

In the event you decide to challenge the retroactivity of The First Step Act's clarification of 18 U.S.C.: 924(c) keep in mind that you will be held to the standards set out in 28 U.S.C.: 2255 and the A.E.D.P.A.

SECTION 404. Application of the Fair Sentencing Act. Prior to 2010 a disparity [difference] existed in the way crack cocaine convictions were punished as compared to powder cocaine. The Fair Sentencing Act was enacted during the Obama administration in an effort to bring about equality for people of color. The F.S.A. changed the disparity between how crack cocaine offenses and powder cocaine offenses were punished since the difference overwhelmingly prejudiced minorities. The Fair Sentencing Act however, did not apply retroactively, Thus only affected future defendant.

The First Step Act now makes The Fair Sentencing Act retroactive.

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Prisoners who are currently incarcerated under federal sentences, who's sentencing range would be lowered under today's applicable drug-quantity sentencing guidelines, for crack cocaine, and that was imposed prior to 2010, will be allowed to file a motion to request a reduction of their sentence. The new sentence could be imposed as though the new guideline had been in effect on the day they were originally sentenced.

IMPORTANT: you will only get one shot at this reduction. If you do it wrong and get denied, the court is not obligated or authorized to revisit the issue.

Please read this publication in its entirety before you file.

SECTION 405.

Simply states that all money saved by this act shall be re-invested in recidivism reduction programs in the B.O.P. This section could serve as a definition of a "Spurious Provision".

TITLE V. SECOND CHANCE ACT REAUTHORIZATION

Nothing new except proving additional federal grants to state systems.

TITLE VI. MISCELLANEOUS CRIMINAL JUSTICE

Much of title VI is old news with few changes. This is a list of the section headings. if you see something that interests you please read the entire First Step Act.

SECTION 601. Placement of Prisoners Close to Family.

SECTION 602. Home Confinement For Low Risk Prisoners.

SECTION 603. Elderly Offender Home Detention and Compassionate Release Reform.

This section should be read in full by anyone who is 60 years of age or older and has served 2/3 of their sentence, or who is terminally ill.

SECTION 604. This section requires the B.O.P. to help prisoners in obtaining identification before the prisoner leaves prison or the halfway house.

SECTION 605. This section effects the prison factories known as "UNICOR". In a nut shell it requires a worker to forfeit 15% of their income to be placed into a release fund. The money may then be used by the prisoner "to assist the inmate with costs associated with release from prison". [great in theory].

SECTION 606. Requirement of De-escalation training.

SECTION 607. Evidence Based Treatment for Opioid and Heroin Abuse.

SECTION 608. Pilot Programs.

Of no benefit to prisoners unless you intend to take an active role in assisting other prisoners by facilitating rehabilitation.

SECTION 609. Ensuring Supervision of Released Sexually Dangerous Persons.

Simply clarifies the duties of probation officers in applicable cases.

SECTION 610. Data Collection.

This section involves developing meaningful statistics upon which congress may continue its fight against mass incarceration.

SECTION 611. Healthcare Products.

This section requires the B.O.P. to supply tampons or sanitary napkins to female prisoner, free of charge, rather than requiring female prisoners to purchase them in prison commissaries.

SECTION 612. Adult and Juvenile Collaboration Programs.

This section requires the Attorney General to provide more funding to state programs.

SECTION 613. Juvenile Solitary Confinement.

This section restricts the use of Juvenile solitary confinement.



CHAPTER 2

WHAT IS RETROACTIVE

YES, what I believe to be the most important provisions of the First Step Act are the ones that get a prisoner closer to his or her family sooner. Meaning the two changes that are retroactive.

The first of the two is Section 102(f), fixing the "54 day" problem with good conduct time credits. This change in the sentence computation of federal prisoners was made retroactive and will be applied automatically. This means you don't have to file anything to receive the benefit under this Section. This change in sentence computation will be performed by the B.O.P. Designation and Sentence Computation Center (D.S.C.C.) in Grand Prairie, Texas. This correction to sentence computation, throughout the system, won't be difficult. It's a simple change in the computer system which will, most likely, show up during your next team meeting. The last word we received from the Warden at Seagoville F.C.I. is that, the prison had not yet received any guidance from the central office. The D.S.C.C. has also said that it was waiting for guidance from the Department of Justice. The next concern is whether the partial government shutdown will affect

the timely processing of sentence calculations.

Keep in mind that the B.O.P. is aware that it faces liability if it holds prisoners beyond their sentence. According to the D.S.C.C., it doesn't expect to start recalculating release dates until mid to late January. Rest assured that those who are due immediate release will be processed first.

The second is Section 404 which made retroactive The Fair Sentencing Act of 2010. That means anyone who was sentenced under the 100 to 1 guideline for crack cocaine, that was effective before August 3, 2010, is due relief under certain circumstances. Section 404 of The First Step Act of 2018 provides:

"A court that imposed a sentence for a covered offense may, on motion of the defendant, the Director of The Bureau of Prisons, the attorney for the government, or the court, impose a reduced sentence as if section 2 and 3 of the Fair Sentencing Act of 2010 (Public Law 111 220; 124 stat. 2372) were in effect at the time the covered offense was committed.

As you can see the change, in section 404 is retroactive but it's not automatically applicable like the good time days fix. Section 404 relief will only be considered after the filing of a motion.



CHAPTER 3

SHOULD I HIRE A LAWYER

YES!! This new law can be, as all others, complicated and it contains an ugly down side. The worst of it is that The First Step Act specifically states:

"No court shall entertain a motion made under this section to reduce a sentence if the sentence was previously imposed or previously reduced in accordance with the amendments made by Section 2 and 3 of The Fair Sentencing Act of 2010 (Public Law 111 220; 124 Stat. 2372) or if a previous motion made under this Section to reduce the sentence was, after the date of enactment of this Act, denied after a complete review of the motion on the merits."

As I have said many times before, "There is no replacement for competent counsel." But also, there are many people out there; jail house lawyers, hustlers, paralegals, and even professional lawyers who have no idea how to file for relief under The First Step Act. In most cases the deficiency is nothing serious, it's just a failure to have read, and

understand, the new law.

When you hire someone to file a motion for you, especially as important as this one can be, you need to be confident that the person you hire knows what they are doing. You must ask what kind of motion they intend to file. In reading The First Step Act you discover that, Section 404 of the Act is the statutory vehicle under which to ask for a sentence reduction based on the retroactive application of The Fair Sentencing Act of 2010.

The First Step Act provides no authorization to file for relief under any other statutory or procedural basis or rule. You MAY NOT file for relief under:

18 U.S.C.: 3582(c)(1)(B);

18 U.S.C.: 3582(c)(2);

18 U.S.C.: 3742;

28 U.S.C.: 2241;

28 U.S.C.: 2255; or

Federal Rules of Civil Procedure, Rule 60(b).



CHAPTER 4

WHAT IF I CAN'T AFFORD A LAWYER?

I don't like to suggest that anyone should represent themselves in court, not even a lawyer. In my own experience I was forced, by a Chief District Judge in Birmingham Alabama, to represent myself in a federal criminal case. As a result, I continue to suffer the effects of imprisonment today. Unfortunately, there are times when you have no choice. If this is one of those times for you, I suggest that:

You read the full section of the law that you plan to rely on. I'm sure by now you have been exposed to a copy of the highlights of The First Step Act, that's not good enough get a full copy;

If you're going to pay a jailhouse lawyer, question him or her just like I suggested you question a lawyer;

Read a good book on writing motions. i.e. Post-Conviction Relief: Advancing Your Claim, "The Art of Convincing Judges", and I'm sure there are many others; and

This is the important one in my opinion. Ask the court to appoint counsel as opposed to asking for relief. If you're asking for counsel that's the

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question before the court, so if you're denied you still have hope to file under the Act later.

Contrary to popular belief, many judges agree with what The First Step Act stands for. In the last six years I have read the correspondence from judges who seemed to be personally troubled because they were unable to provide relief under one law or another. This Act, however, gives the court a great deal of latitude to grant relief under The Fair Sentencing Act of 2010. Also know that many prosecutors will be trying to keep people in prison regardless of what is just. So, lets backdoor the prosecutor.



CHAPTER 5

FILING IN PRO SE

If you have no other choice but to file in 'pro-se', I would file a motion asking for the appointment of counsel. A simple title could be:

MOTION FOR THE APPOINTMENT OF COUNSEL FOR FILING FOR RELIEF UNDER THE FIRST STEP ACT

Although you're only asking for counsel, it would be a good idea to show the court that you are eligible for the relief you're asking for under the Act. You may start your motion like this:

"Mr. John Doe, respectfully moves this court to appoint counsel to assist him in filing for relief under the provisions of Section 404 of The First Step Act of 2018. The Act now makes The Fair Sentencing Act of 2010 retroactively applicable and authorizes this court to reduce a "sentence as if section 2 and 3 of The Fair Sentencing Act of 2010 (Public Law 111 220; 124 Stat. 2372) were in effect at the time the covered offense was committed.

It's because Mr. Doe is eligible for relief, coupled with his ignorance of

the new law, that he moves for the appointment of counsel. This court is authorized by 18 U.S.C.: 3006A to appoint counsel to assist in reaching the ends of justice.

Wherefore, Mr. Doe moves this court to grant this motion and appoint counsel in an effort to preserve precious judicial resources."

Again, these are simply suggestions, if in the event you are refused counsel you will need to supplement your filing to include your case history and explain why and how you are eligible under The First Step Act of 2018.

CONCLUSION

My name is KELLY PATRICK RIGGS, a federal prisoner. and the author of the *Post Conviction Relief* series, published by Freebird Publishers, and an advocate who assists underprivileged prisoners. I am writing this short publication to answer several very good questions involving *The First Step Act*. I provide this information more as a warning than anything else. My main concern is for those who may have a real claim under the new law yet miss out on relief because their claim was mishandled.

Post-Conviction Relief: Secrets Exposed

Post-Conviction Relief: The Appeal

Post-Conviction Relief: Advancing Your Claim

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