

District of Columbia Corrections Information Council



Section 22 of Corrections Oversight Improvement Omnibus Amendment Act

May 8, 2023

INTRODUCTION

On January 12, 2023, the District of Columbia Council passed and signed the Corrections Oversight Improvement Omnibus Amendment Act of 2022.¹ Section 22 of the Act is “First Step Act parity in earned time credits.”² Section 22 extends sentence reduction benefits of the First Step Act (FSA) to DC Code offenders. The bill is currently under congressional review, and it is projected to become law on May 11, 2023.

SECTION 22

Section 22 of the Corrections Oversight Improvement Omnibus Amendment Act reads as follows:

a) Any person who has been convicted of a felony offense under District law and successfully completes evidence-based recidivism reduction programming or productive activities, except for those persons determined to be ineligible by the Department of Correction or Bureau of Prisons because of their conviction for a District offense analogous to an ineligible federal offense, shall earn time credits as follows:

- (1) A person shall earn 10 days of time credits for every 30 days of successful participation in evidence-based recidivism reduction programming or productive activities, as defined in 18 U.S.C. § 3635, while in the custody of the Department of Corrections or Bureau of Prisons; and
- (2) “A person determined by the Department of Corrections or Bureau of Prisons to be at a minimum or low risk for recidivating, who, over 2 consecutive assessments, has not increased their risk of recidivism, 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,

(b) Notwithstanding any other provision of law, time credits earned under this section shall be applied to a person's minimum term of imprisonment to determine the date of eligibility for release on parole and to the person's maximum term of imprisonment to determine the date when release on parole becomes mandatory.

(c) This section shall apply as of December 21, 2018.³

DC CODE OFFENDERS IN THE FEDERAL SYSTEM

The District of Columbia was given sovereignty in 1974 - with limitations on its ability to raise revenue.⁴ For example, compared to other municipalities, DC has a large population of nonresident commuters whose employment income is untaxed. Twenty-three percent of DC is

¹ D.C. ACT 24-754. Corrections Oversight Improvement Omnibus Amendment Act of 2022, 70 DCR 635 (Jan. 12, 2023), https://lms.dccouncil.gov/downloads/LIMS/46551/Signed_Act/B24-0076-Signed_Act.pdf.

² *Id.* at 20.

³ *Id.* at 20-21.

⁴ Bouker, Jon, “The DC Revitalization Act: History, Provisions, and Promises”, Arent Fox LLP, 85-87 (Jul. 2, 2016), <https://www.brookings.edu/wp-content/uploads/2016/07/appendix-1.pdf>.

also comprised of federal land that cannot be taxed.⁵ By the 1990s, the city was under budget because of such limitations.⁶ The federal government passed the Revitalization Act in 1997, which gave the federal government control over some city functions to ease the budget shortfall.⁷ One provision of the Act required the federal Bureau of Prisons (BOP) to take custody of DC Code offenders.⁸

Even though DC Code offenders are housed in federal institutions, they are not considered federal prisoners. They are a unique subset of the vast federal population, and they are scattered throughout approximately 105 federal institutions nationwide.⁹ As a result of their unique status, federal laws like the First Step Act (FSA) do not apply to residents within the BOP who are convicted under the DC Criminal Code.

HOW SECTION 22 RELATES TO THE FSA

The FSA is a federal law containing criminal justice reforms that apply to those convicted under federal laws, not local laws. Section 22 of the Corrections Oversight Improvement Omnibus Amendment Act is a local Act that applies FSA benefits to DC Code offenders, which allows incarcerated individuals to earn time off their sentence for completing specified programming - if they are not excluded based on their conviction. Under this section, federal offenders can complete certain programs to remove 10 days from their sentence for every 30 days of programming completed. Also, the BOP developed a recidivism risk assessment, called the Prisoner Assessment Tool Targeting Estimated Risks and Needs (PATTERN), which provides opportunities for inmates to periodically reduce their risk scores.¹⁰ An incarcerated resident whose recidivism risk does not increase after two consecutive assessments would earn an additional credit of five days, for a total of 15 days off their sentence for every 30 days of programming.

An incarcerated resident is excluded from these benefits if they committed a felony that is analogous to one of the crimes on the list of ineligible federal offenses, which includes murder, assault with intent to commit murder, robberies, burglaries, carjackings, and unlawful possession of a firearm by a person with three or more convictions for a violent felony.¹¹ If they are eligible, the legislation is applied retroactively to December 21, 2018, which means that any programs in

⁵ *Id.* at 86

⁶ *Id.*

⁷ National Capital Revitalization and Self-Government Improvement Act of 1997, H. R. 1963, 105th Cong. (1997), available at <https://www.congress.gov/bill/105th-congress/house-bill/1963>.

⁸ *Id.* at 95.

⁹ Number subject to fluctuations based upon BOP designations.

¹⁰ Required by the First Step Act, 18 U.S.C. Sec.101 § 3632 (Dec. 21, 2018) available at https://www.bop.gov/resources/fsa/time_credits_disqualifying_offenses.jsp; *see also* Federal Bureau of Prisons, First Step Act, Pattern Risk Assessment, April 14, 2023, available at <https://www.bop.gov/inmates/fsa/pattern.jsp>.

¹¹ § 3632(d)(4)(D) ; *see also* Federal Bureau of Prisons, First Step Act, Disqualifying Offenses, April 27, 2023, available at https://www.bop.gov/resources/fsa/time_credits_disqualifying_offenses.jsp.

which a resident participated since that date are included in the calculation of their total good time credits.

HOW SECTION 22 COMPARES TO THE SECOND LOOK ACT

Two distinctions between Section 22 and the Second Look Amendment Act of 2019 are application and impact. Section 22 applies to anyone who completes certain programming and is not disqualified based on their offense.¹² Second Look applies to people who committed a crime when they were 24 years-old or younger and served at least 15 years of their sentence.¹³ Section 22 is impactful because it allows eligible DC Code offenders to receive good time credits that shorten their length of incarceration by participating in specific designated programming.¹⁴ Second Look is impactful because it permits a sentence modification hearing with a judge, which may result in immediate release.¹⁵

In practice, Section 22 may not have a widespread impact on DC Code offenders. The list of ineligible offenses contains many of the offenses for which federally incarcerated DC residents are convicted, such as murder and assault. Therefore, the list of disqualifying offenses would prevent most DC Code offenders from receiving the benefits of Section 22.¹⁶ The Second Look Act allows an individual to petition the court for a hearing, but hearing eligibility is not contingent upon prior crimes.

PROS AND CONS

Under the Corrections Oversight Improvement Omnibus Amendment Act of 2022, eligible DC Code offenders may complete programming and receive credits to shorten their sentences.¹⁷ It incentivizes participation in rehabilitative programming.¹⁸ However, the legislation does leave many DC Code offenders unaffected because of their crimes.¹⁹

Some people will benefit from this criminal justice reform, and the legislation parallels current federal efforts to decrease recidivism. The Corrections Information Council (CIC) is actively communicating with BOP leadership to provide awareness of the impending legislation, while discussing the acknowledgment and good-faith application of local legislation at the federal level.

¹² 70 DCR 635, available at https://lms.dccouncil.gov/downloads/LIMS/46551/Signed_Act/B24-0076-Signed_Act.pdf;

¹³ See D.C. Code § 24-403.03. <https://code.dccouncil.gov/us/dc/council/code/sections/24-403.03.html#:~:text=%C2%A7%2024%E2%80%93403.03.-,Modification%20of%20an%20imposed%20term%20of%20imprisonment%20for%20violations%20of,before%2025%20years%20of%20age>.

¹⁴ See 70 DCR 635, available at https://lms.dccouncil.gov/downloads/LIMS/46551/Signed_Act/B24-0076-Signed_Act.pdf.

¹⁵ See § 24-403.03 (e)(1).

¹⁶ § 3632; see also Disqualifying Offenses, available at https://www.bop.gov/resources/fsa/time_credits_disqualifying_offenses.jsp

¹⁷ See 70 DCR 635, available at https://lms.dccouncil.gov/downloads/LIMS/46551/Signed_Act/B24-0076-Signed_Act.pdf;

¹⁸ See *Id.*

¹⁹ § 3632; see also Disqualifying Offenses, available at https://www.bop.gov/resources/fsa/time_credits_disqualifying_offenses.jsp