

117TH CONGRESS  
2D SESSION

# S. 5040

To amend title 18, United States Code, to provide appropriate standards for the inclusion of a term of supervised release after imprisonment, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 2022

Mr. COONS (for himself, Mr. CORNYN, Mr. DURBIN, Mr. LEE, Mr. BOOKER, Mr. BLUNT, Mr. CRAMER, and Mr. WICKER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend title 18, United States Code, to provide appropriate standards for the inclusion of a term of supervised release after imprisonment, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Safer Supervision Act  
5 of 2022”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Over 110,000 people were on Federal super-  
9 vised release as of June 2021.

1           (2) The Supreme Court of the United States  
2 explained in *Johnson v. United States* that “Super-  
3 vised release departed from the parole system it re-  
4 placed by giving district courts the freedom to pro-  
5 vide postrelease supervision for those, and only  
6 those, who needed it. . . . Congress aimed, then, to  
7 use the district courts’ discretionary judgment to al-  
8 locate supervision to those releasees who needed it  
9 most.”.

10           (3) Federal probation officers report significant  
11 caseloads that can exceed 100 cases per officer. This  
12 can create a difficult burden for the officers and  
13 limit their ability to provide appropriate supervision  
14 to those who need it.

15           (4) The potential for early termination or other  
16 modifications of supervision, when consistent with  
17 public safety, can not only reduce burdens and save  
18 valuable judicial resources, but also create positive  
19 incentives for compliance and rehabilitation con-  
20 sistent with the purposes of supervision. In the 12-  
21 month period ending in June 2021, early termi-  
22 nations were 23 percent of successful supervised re-  
23 lease closures.

24           (5) The Administrative Office of the United  
25 States Courts has explained that “excessive correc-

1 tional intervention for low-risk defendants may in-  
2 crease the probability of recidivism by disrupting  
3 prosocial activities and exposing defendants to anti-  
4 social associates.”.

5 (6) Supervised release is and should remain an  
6 important tool for the Federal courts to use, as ap-  
7 propriate, to, among other items, protect the public  
8 from further crimes, deter future criminal conduct,  
9 and help the defendant become a contributing mem-  
10 ber of society by recovering from substance use dis-  
11 order, participating in rehabilitation and training  
12 programs, and providing restitution to victims,  
13 among other outcomes.

14 (7) Better tailoring when and how supervised  
15 release is imposed, encouraging early termination  
16 when appropriate, and expanding judicial discretion  
17 on certain revocations will reduce burdens on law en-  
18 forcement officers and taxpayers, encourage compli-  
19 ance and improve public safety, and better assist de-  
20 fendants in their pursuit of rehabilitation and re-  
21 integration, to the benefit of themselves, victims,  
22 and communities.

1 **SEC. 3. INCLUSION OF A TERM OF SUPERVISED RELEASE**  
2 **AFTER IMPRISONMENT.**

3 Section 3583 of title 18, United States Code, is  
4 amended—

5 (1) in subsection (a)—

6 (A) by striking “The court” and inserting  
7 the following:

8 “(1) IN GENERAL.—The court”; and

9 (B) by adding at the end the following:

10 “(2) INDIVIDUALIZED ASSESSMENT.—When de-  
11 termining whether to include a term of supervised  
12 release as part of the sentence, and except to the ex-  
13 tent that a term of supervised release is required by  
14 statute as described in paragraph (1), the court  
15 shall—

16 “(A) make an individualized assessment  
17 under the factors set forth in subsections (c)  
18 and (d) as to—

19 “(i) whether such a term is appro-  
20 priate; and

21 “(ii) the appropriate length and condi-  
22 tions of such a term; and

23 “(B) provide the reasons of the court for  
24 imposing or not imposing such a term on the  
25 record.”;

1           (2) in subsection (d), in the fifth sentence, by  
2 striking “shall also” and inserting “may also”;

3           (3) in subsection (e)—

4                 (A) by redesignating paragraphs (1)  
5 through (4) as subparagraphs (A) through (D),  
6 respectively, and adjusting the margins accord-  
7 ingly;

8                 (B) by striking “The court may,” and in-  
9 serting the following:

10                 “(1) IN GENERAL.—Subject to paragraph (2),  
11 the court may,”;

12                 (C) in subparagraph (A), as so redesign-  
13 ated, by striking “after the expiration of one  
14 year of supervised release”;

15                 (D) in subparagraph (C), as so redesign-  
16 ated, by striking “this paragraph” and insert-  
17 ing “this subparagraph”;

18                 (E) in subparagraph (D), as so redesign-  
19 ated, by striking “this paragraph” and insert-  
20 ing “this subparagraph”; and

21                 (F) by adding at the end the following:

22                 “(2) TERMINATION OF SUPERVISED RE-  
23 LEASE.—For purposes of the termination of super-  
24 vised release under paragraph (1)(A)—

1           “(A) after a defendant has served 50 per-  
2 cent of the term of supervised release imposed  
3 on the defendant, the Administrative Office of  
4 the United States Courts shall provide notice to  
5 a defendant, defendant’s counsel, and any local  
6 Federal Public Defender Organization or Com-  
7 munity Defender Organization of the oppor-  
8 tunity to seek early termination of supervised  
9 release under paragraph (1)(A) and the process  
10 for doing so;

11           “(B) there shall be a presumption of early  
12 termination of supervised release for a defend-  
13 ant under supervision if—

14           “(i)(I) for a defendant serving a term  
15 of supervised release imposed in connection  
16 with a conviction for an offense described  
17 in subsection (a) of section 16, the defend-  
18 ant has served 66.6 percent of the term of  
19 supervised release imposed on the defend-  
20 ant; or

21           “(II) for a defendant other than a de-  
22 fendant described in subclause (I), the de-  
23 fendant has served 50 percent of the term  
24 of supervised release imposed on the de-  
25 fendant;

1           “(ii) the defendant has demonstrated  
2           good conduct and compliance while on su-  
3           pervised release; and

4           “(iii) the early termination will not  
5           jeopardize public safety;

6           “(C) the Government shall have an oppor-  
7           tunity to object to a request for termination of  
8           supervised release and to present evidence,  
9           which the defendant shall have the opportunity  
10          to rebut, in any proceeding relating to such re-  
11          quest; and

12          “(D) crime victims’ rights under section  
13          3771 shall apply to any proceeding relating to  
14          a request for early termination of supervised re-  
15          lease.

16          “(3) PUBLIC SAFETY.—In assessing whether  
17          early termination will not jeopardize public safety  
18          under this subsection, the court shall consider the  
19          nature of the offense committed by the defendant,  
20          the defendant’s criminal history, the defendant’s  
21          record while incarcerated (including good behavior  
22          and violations of prison rules), the defendant’s ef-  
23          forts to reintegrate into the community and to avoid  
24          recidivism, any statements or information provided

1 by victims of the offense, and other factors the court  
2 may find relevant to public safety.

3 “(4) ASSISTANCE OF COUNSEL.—The court  
4 may appoint a Federal public defender, a community  
5 defender, or other counsel qualified to be appointed  
6 under section 3006A to assist a defendant seeking  
7 early termination of supervised release under para-  
8 graph (1)(A) or modification of conditions under  
9 paragraph (1)(B).

10 “(5) RULE OF CONSTRUCTION.—Paragraph  
11 (2)(B) shall not be construed to limit the discretion  
12 of a court under paragraph (1).”;

13 (4) in subsection (g)—

14 (A) in the subsection heading, by striking  
15 “POSSESSION OF CONTROLLED SUBSTANCE OR  
16 FIREARM OR FOR REFUSAL TO COMPLY WITH  
17 DRUG TESTING” and inserting “DISTRIBUTION  
18 OF A CONTROLLED SUBSTANCE OR POSSES-  
19 SION OF A FIREARM”;

20 (B) by amending paragraph (1) to read as  
21 follows:

22 “(1)(A) possesses a controlled substance with  
23 the intent to distribute; or



1 “(B) possesses a controlled substance, the pos-  
2 session of which may be punished by imprisonment  
3 for a term exceeding 1 year;”;

4 (C) in paragraph (2), by inserting “or” at  
5 the end;

6 (D) by amending paragraph (3) to read as  
7 follows:

8 “(3) willfully refuses to comply with drug test-  
9 ing imposed as a condition of supervised release;”;

10 (E) by striking paragraph (4); and

11 (F) in the matter following paragraph (4),  
12 by striking “subsection (e)(3)” and inserting  
13 “subsection (e)(1)(C)”; and

14 (5) in subsection (k), in the second sentence, by  
15 striking “subsection (e)(3)” and inserting “sub-  
16 section (e)(1)(C)”.

17 **SEC. 4. LAW ENFORCEMENT AVAILABILITY PAY FOR PRO-**  
18 **BATION AND PRETRIAL SERVICES OFFICERS.**

19 Not later than 180 days after the date of enactment  
20 of this Act, the Director of the Administrative Office of  
21 the United States Courts, in consultation with the Direc-  
22 tor of the Office of Personnel Management, shall submit  
23 to the Committee on the Judiciary of the Senate and the  
24 Committee on the Judiciary of the House of Representa-  
25 tives a report containing a legislative proposal, and consid-

1 erations for implementation of the proposal, that would  
2 provide law enforcement availability pay to Federal proba-  
3 tion officers and pre-trial services officers that is equal  
4 to that provided to criminal investigators under section  
5 5545a of title 5, United States Code.

6 **SEC. 5. GAO REPORT.**

7 (a) INITIATION OF STUDY.—Not later than 1 year  
8 after the date of enactment of this Act, the Comptroller  
9 General of the United States shall initiate a study on Fed-  
10 eral post-release supervision and reentry services.

11 (b) REPORT.—The Comptroller General of the  
12 United States shall submit to Congress a report regarding  
13 the study under subsection (a), which shall include find-  
14 ings and potential recommendations related to—

15 (1) the number of individuals that have been  
16 placed on Federal probation or supervised release  
17 since 2019;

18 (2) the process for transitioning an individual  
19 from the custody of the Bureau of Prisons to the Of-  
20 fice of Probation and Pretrial Services or the cus-  
21 tody of the United States Marshals Service;

22 (3) a review of Federal programs or funding  
23 sources that aim to assist individuals from the cus-  
24 tody of the Bureau of Prisons with reentry, includ-  
25 ing—

1           (A) ongoing mental health and substance  
2           use counseling, housing, medical care, edu-  
3           cation, and job placement; and

4           (B) any changes in such programs or fund-  
5           ing since 2019; and

6           (4) a workforce assessment of judicial districts,  
7           including an analysis of—

8           (A) during 2020 and 2021, the number of  
9           officers, officer caseloads, and overtime hours  
10          worked, reported, or accrued; and

11          (B) the system for tracking overtime hours  
12          worked by officers of the Office of Probation  
13          and Pretrial Services.

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