Congressional Budget Office
Cost Estimate

May 12, 2022

At a Glance

S. 312, COVID-19 Safer Detention Act of 2021

As reported by the Senate Committee on the Judiciary on June 8, 2021

By Fiscal Year, Millions of Dollars	2022	2022-2026	2022-2031
Direct Spending (Outlays)	0	48	129
Revenues	0	*	-1
Increase or Decrease (-) in the Deficit	0	48	130
Spending Subject to Appropriation (Outlays)	0	-75	-265

Statutory pay-as-you-go procedures apply?	**Yes**	**Mandate Effects**	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2032?	**< $5 billion**	Contains intergovernmental mandate?	**No**
		Contains private-sector mandate?	**No**

* = between zero and -$500,000.

The bill would

- Allow federal prisoners sentenced before November 1, 1987, to apply for compassionate release
- Shorten certain elderly prisoners' sentences by applying credits for good conduct time to eligibility for early release

Estimated budgetary effects would mainly stem from

- Reductions in discretionary spending by the federal Bureau of Prisons because some prisoners would be released earlier than 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 elderly incarcerated prisoners and the number who would be eligible for release from prison
- Projecting whether prisoners would be confined in residential reentry centers or at home, and the difference in costs between those options compared with confinement in federal prisons
- Estimating the number of offenders released under the act who would receive federal benefits

Detailed estimate begins on the next page.

Bill Summary

S. 312 would allow federal inmates sentenced before November 1, 1987, to apply for compassionate release from prison under the same terms as inmates sentenced after that date. The bill also would expedite consideration of prisoners' motions for compassionate release by eliminating a requirement to fully exhaust all administrative means of appealing requests that have been denied by the Bureau of Prisons (BOP) and by allowing motions to be considered by federal courts.

In addition, S. 312 would make more elderly federal prisoners eligible for home confinement under the bureau's Elderly Offender Program, which allows some elderly and terminally ill offenders who have served at least two-thirds of their sentence to complete their sentence at home or in a residential reentry center (RRC) overseen by the BOP. The bill would allow federal courts to grant motions for home confinement if an inmate has waited at least 30 days without receiving a response from the BOP.

Estimated Federal Cost

The estimated budgetary effect of S. 312 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 S. 312

	By Fiscal Year, Millions of Dollars											
	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2022-2026	2022-2031
Increases in Direct Spending												
Estimated Budget Authority	0	8	12	13	14	16	17	16	16	17	48	129
Estimated Outlays	0	8	12	13	14	16	17	16	16	17	48	129
Decreases in Revenues												
Estimated Revenues	0	*	*	*	*	*	*	*	*	*	*	-1
Net Increase in the Deficit From Changes in Direct Spending and Revenues												
Effect on the Deficit	0	8	12	13	14	16	17	16	16	17	48	130
Decreases in Spending Subject to Appropriation												
Estimated Authorization	0	-9	-18	-21	-32	-38	-42	-37	-36	-38	-81	-272
Estimated Outlays	0	-8	-16	-20	-30	-37	-41	-38	-37	-38	-75	-265

Sources: Congressional Budget Office; staff of the Joint Committee on Taxation.
Components may not sum to totals because of rounding; * = between-$500,000 and zero.

Basis of Estimate

For this estimate, CBO assumes that the legislation will be enacted late in fiscal year 2022 and that inmates would be released beginning in 2023. CBO expects that many of them would be eligible for Medicare, Medicaid, Social Security, Supplemental Security Income (SSI), or the Supplemental Nutrition Assistance Program (SNAP) and that some could be eligible for premium tax credits for health insurance purchased through the marketplaces established by the Affordable Care Act (ACA).

CBO also expects that future appropriations for operating the federal prison system would be reduced to reflect savings in the BOP's overall costs to house and monitor prisoners.

Population

There are currently about 156,000 inmates in federal prisons, of whom 11,000 are aged 60 or older. By expanding eligibility for release from prison to certain elderly inmates, CBO estimates that under S. 312 about 1,700 inmates would be released earlier over the next decade than they would under current law.

Extension of Compassionate Release Eligibility to "Old Law" Inmates. S. 312 would expand eligibility for compassionate release to federal inmates sentenced before November 1, 1987. Under current law, inmates sentenced after that date may apply for and receive a compassionate release if the BOP identifies extraordinary or compelling circumstances—such as terminal illness—that could not have been foreseen by the court at the time of sentencing. To qualify for compassionate release, an inmate must be at least 70 years old and have served at least 30 years of a sentence. The First Step Act of 2018 allows "new law" inmates, those sentenced after November 1, 1987, to appeal to a court for release if the BOP denies their request. In fiscal year 2020, about 1,800 prisoners received a compassionate release, largely under court order.

CBO expects that by extending eligibility to old law inmates, S. 312 would result in more people being released each year. According to information from the BOP, about 2,300 old law inmates are currently incarcerated. Using data from the U.S. Sentencing Commission (USSC) about the number of annual applicants and the number granted release, CBO estimates that under S. 312 roughly 800 inmates would be released over the 2022-2031 period and that most of the early releases would occur in 2023. Under current law, CBO expects that most of those inmates would remain incarcerated through at least 2031.

For this estimate, CBO aggregated individual inmates' expected reductions in time served in BOP facilities, across all lengths of sentence, as measured in person-years. For example, time served would be shortened by 1 person-year for an inmate released 12 months earlier than under current law. In total, CBO estimates, the bill's expansion of eligibility for compassionate release would reduce time served by roughly 5,500 person-years over the 2022-2031 period.

The Elderly Offender Program. The Elderly Offender Program allows elderly and terminally ill inmates at BOP facilities to finish their sentences outside a federal prison. To participate, an inmate must be at least 60 years old, must have served at least two-thirds of a sentence for a crime that was neither violent nor a sex offense, must meet certain behavioral requirements, and must not present a substantial risk of engaging in criminal conduct or endangering any person or the public.

Under current law, in any year, federal inmates can earn up to 54 days of good conduct time (GCT) credits that can be applied to shorten their sentences, but those credits cannot be used when calculating eligibility for release under the Elderly Offender Program.

Application of GCT Credits for Confinement Outside of a Federal Prison. S. 312 would allow GCT credits to count against inmates' sentences, reducing the number of years of time-served that would be needed to meet the two-thirds threshold for the Elderly Offender Program. Consequently, more elderly inmates would become eligible for release to an RCC or to home confinement. Using information from the BOP and the USSC, CBO estimates that about 6,000 of the 11,000 elderly inmates in federal prison are serving sentences for the types of crimes that would meet the statutory criteria; of those, about 750 inmates likely meet the behavioral criteria for release in 2023. Thus, CBO expects that less than 7 percent of current elderly inmates meet all requirements other than the need to have served at least two-thirds of their sentence.

CBO estimates that about one-third (or 33 percent) of the inmates who meet the program's statutory and behavioral criteria in any given year have served at least two-thirds of their sentence as defined under current law—about 250 inmates in 2023. If GCT credits were applied, CBO estimates, the share of eligible inmates would increase from 33 percent to 43 percent annually, resulting in 320 releases in that year (or 70 more than under current law). CBO expects that both the number and the proportion of federal inmates who are elderly will increase significantly over the next decade to nearly 20,000 by 2031, despite a projected decline in the overall prison population. Furthermore, CBO expects that the proportion of inmates who will meet BOP's behavioral criteria for release will increase slightly as inmates age. Under S. 312, CBO estimates that 740 inmates would qualify for release in 2031—170 more than under current law. In total, over the 2022-2031 period, CBO estimates that about 900 additional prisoners would be released under the proposal to count GCT credits toward eligibility for early release.

Reduction in Person-Years Served in Federal Prison. Using data from the USSC, CBO estimates that inmates who become elderly while in prison are serving sentences that are, on average, 11 years in length. For this estimate, CBO aggregated the expected reductions in time served in BOP facilities, across all lengths of sentence, in person-years. Under S. 312, CBO estimates that with the application of GCT credits, an inmate serving an 11-year sentence could reach the two-thirds mark about 14 months earlier than would be possible under current law. For all eligible inmates, the changes could shorten time served by 15 percent. In total, CBO estimates, crediting GCT toward eligibility for release would reduce time served by about 1,000 person-years over the 2022-2031 period.

Direct Spending and Revenues

Under current law, federal prisoners do not receive federal benefits while they are incarcerated. By accelerating the release of prisoners—about 1,700 over the next decade—CBO estimates S. 312 would increase the number of beneficiaries for federal programs and thus increase direct spending by $129 million over the 2022-2031 period (see Table 2). The bill also would reduce revenues by $1 million over the same period.

Table 2.
Estimated Increases in Direct Spending Under S. 312

	By Fiscal Year, Millions of Dollars											
	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2022-2026	2022-2031
	Increases in Direct Spending											
Medicaid	0	3	5	5	6	7	7	7	7	7	20	55
Premium Tax Credits	0	1	1	1	1	1	1	1	1	1	5	12
Social Security (*Off-budget*)	*0*	*2*	*3*	*3*	*3*	*3*	*4*	*3*	*4*	*4*	*11*	*29*
Medicare	0	1	2	2	2	2	3	2	2	3	7	20
SSI	0	1	1	1	1	1	1	1	1	1	4	11
SNAP	0	*	*	*	*	*	*	*	*	*	2	4
Total Changes in Outlays	0	8	12	13	14	16	17	16	16	17	48	129
On-budget	*0*	*6*	*9*	*10*	*11*	*12*	*13*	*12*	*12*	*13*	*37*	*100*
Off-budget	*0*	*2*	*3*	*3*	*3*	*3*	*4*	*3*	*4*	*4*	*11*	*29*

For these programs, budget authority is equal to outlays. Components may not sum to totals because of rounding.
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 S. 312, roughly one third of those released from prison would receive Medicaid benefits. Relative to current law, about 35 additional people would receive Medicaid benefits in 2023 and about 140 additional people would receive benefits in 2031. 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 $55 million over the 2022-2031. Of those recipients, about a quarter would qualify on the basis of income (below 138 percent of the federal poverty level) and age (65 or older) and would qualify for standard federal Medicaid matching rates (on average, 59.5 percent nationally). About 45 percent would be eligible under pre-ACA eligibility categories and also would qualify for standard matching rates. Another third 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 three times those, on average, for other Medicaid beneficiaries, mainly because of a greater need for mental health care, a higher rate of substance use disorders, and higher rates of HIV and hepatitis C infection.

Premium Tax Credits. CBO and the staff of the Joint Committee on Taxation (JCT) estimate that, under S. 312, about 10 percent of those released from prison would qualify for premium tax credits purchased through the health insurance marketplaces established by the ACA. Relative to current law, 50 additional people would qualify for premium tax credits in 2023, and about 20 additional people would qualify for tax credits in 2031.[1] As a result, enacting S. 312 would increase spending by about $12 million and decrease revenues by about $1 million over the 2022-2031 period.

Social Security and Medicare. CBO estimates that, under the legislation, roughly one quarter of those released from prison would receive Social Security benefits. Relative to current law, about 130 people would receive Social Security benefits in 2023 and about 210 additional people would receive benefits in 2031. Most people would receive benefits for multiple years over the budget window. As a result, enacting S. 312 would increase Social Security spending by $29 million over the 2022-2031 period (such spending is classified as off-budget). Most prisoners who gained eligibility for Social Security upon release also would become eligible for Medicare. CBO estimates that, under the legislation, about 100 additional people would receive Medicare benefits in 2023 and about 160 additional people would receive benefits in 2031, increasing Medicare outlays by an estimated $20 million over the 2022-2031 period (such spending is classified as on-budget).

Supplemental Security Income. Using data on age distribution, demographic information on the group of people whose SSI benefits are suspended while they are incarcerated, and rules related to payments for people in various living situations, CBO estimates that, under S. 312, roughly one quarter of those released from prison would receive SSI benefits. Most peoples would receive benefits for multiple years over the budget window. Relative to current law, 110 additional people would receive SSI benefits in 2023 and 170 additional people would receive benefits in 2031. CBO estimates that providing those benefits would increase SSI spending by $11 million over the 2022-2031 period.

Supplemental Nutrition Assistance Program. Based on projected eligibility and participation rates after release, CBO estimates that, under S. 312, roughly one quarter of those released from prison would receive SNAP benefits. Most people would receive benefits for multiple years over the budget window. Relative to current law, about 200 additional people would receive SNAP benefits in 2023 and about 200 additional people would receive benefits in 2031. As a result, CBO estimates that enacting the legislation

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.

would increase SNAP spending by approximately $4 million over the 2022-2031 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 all provisions of S. 312 would together reduce time served by roughly 6,500 person-years over the next decade. Because inmates would be released from prison sooner, the BOP's costs for housing and providing care for inmates would be reduced.

Those savings would be partially offset, however, by costs to care for and monitor offenders who have been released to confinement in an RRC or at home. BOP monitors elderly prisoners for three years, on average, after release, mostly under private-sector contracts, although the federal government performs monitoring as well. The costs under S. 312 would depend on the type of confinement, how many former inmates are placed in each type of confinement, and the duration of monitoring.

Using information from the BOP, CBO estimates that the average daily cost to house an elderly, nonviolent inmate in a federal facility is about $120.

For the first year after release, about half of those elderly inmates are placed in RRCs, which provide housing, counseling, and job placement at an average daily cost of about $100. The rest are released to their homes, where daily monitoring (typically by a contractor) costs about $50. Most offenders leave RRCs within a year and end their confinement at home.

On net, CBO estimates, implementing S. 312 would reduce the BOP's costs for housing and monitoring by $265 million over 2022-2031 period. Any reduction in spending for operating the federal prison system would depend on future appropriations actions that reflect that lower cost.

Uncertainty

CBO's estimates of the budgetary consequences of S. 312 are subject to uncertainty in several areas. CBO anticipates that the average age of the prison population will increase over the coming decade, but the number of elderly inmates is difficult to predict. Similarly, CBO does not know how many elderly inmates would meet all of the bill's requirements, particularly the proportion of inmates who would meet the statutory and behavioral criteria for release in each year.

Additionally, the proportion of inmates who would be released to an RCC or home confinement is not certain primarily because the availability of space in RRCs and the costs to the federal government depend in part on the BOP's contracting decisions.

Finally, the extent to which offenders released to home confinement would qualify for and receive certain federal benefits could differ from the averages that CBO used for this estimate. For example, the cost of subsidized health insurance coverage would depend on individual income, employment status, health, family structure, and availability of other insurance coverage.

Pay-As-You-Go Considerations

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures (on-budget costs) are shown in Table 3.

Table 3.
CBO's Estimate of the Statutory Pay-As-You-Go Effects of S. 312, the COVID-19 Safer Detention Act of 2021, as Ordered Reported by the Senate Committee on the Judiciary on June 8, 2021

By Fiscal Year, Millions of Dollars

	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031	2022-2026	2022-2031
					Net Increase in the On-Budget Deficit							
Pay-As-You-Go Effect	0	6	9	10	11	12	13	12	12	13	37	101
Memorandum:												
Changes in Outlays	0	6	9	10	11	12	13	12	12	13	37	100
Changes in Revenues	0	0	0	0	0	0	0	0	0	0	0	-1

Increase in Long-Term Deficits:

CBO estimates that enacting S. 312 would not increase on-budget deficits by more than $5 billion in any of the four consecutive 10-year periods beginning in 2032.

Mandates: None.

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