



The Honorable Mitch McConnell
United States Senate
Washington, DC 20510

The Honorable Paul D. Ryan
United States House of Representatives
Washington, DC 20515

The Honorable Charles E. Schumer
United States Senate
Washington, DC 20510

The Honorable Nancy Pelosi
United States House of Representatives
Washington, DC 20515

December 5, 2018

Re: National Criminal Justice Reform Coalition Urges Passage of the First Step Act (S.3649)

Dear Majority Leader McConnell, Speaker Ryan and Minority Leaders Schumer and Pelosi:

We, the undersigned organizations affiliated with the Justice Roundtable, write to express our support for passage of the revised First Step Act (S. 3649) as introduced by Senators Charles Grassley and Richard Durbin. We support the legislation's incorporation of modest sentencing reform provisions that will increase proportionality in certain cases and help reduce some of the most extreme punishments in the federal system. We urge that this bill be brought to the Senate floor and that Congress pass the legislation, without revision, before the end of the year.

The Justice Roundtable is a long-standing coalition that seeks an end to mass incarceration and harsh punishment, the elimination of racial disparities, and the creation of a fairer justice system that prioritizes human dignity and eradication of the root causes of crime.¹ We ask that

¹ The Justice Roundtable's Law Enforcement Reform Working Group sought to shine a light on abuses of federally funded drug task forces in 2003 in the wake of the Tulia, Texas fiasco, as a first step toward reigning in abuses from the flawed War on Drugs. Its Reentry Working Group was instrumental in the passage of the 2008 Second Chance Act, as a first step toward dismantling the collateral consequences of a criminal conviction. The Roundtable's Sentencing Reform Working Group played a leading role in the passage of the 2010 Fair Sentencing Act, as

Congress pass S.3649 as an important step towards the elimination of harsh punishment and the creation of a more equitable criminal justice system.

This First Step Act only scratches the surface of achieving our objectives. However, these incremental changes can help thousands of people return home sooner and gain the assistance they need to improve their lives. As such, we applaud these First Step Act provisions, and oppose any attempts to weaken them:

- **Expansion of the safety valve:** Allows judges to sentence below a drug mandatory minimum in low-level cases.
- **Retroactive application of the Fair Sentencing Act:** People in prison under the 100-to-1 crack and powder cocaine sentencing disparity could petition for sentence reductions.
- **Reduced sentencing enhancements for prior drug offenses:** Among the country's most extreme sentences for drug offenses, these prospective changes to enhancements for second and third drug convictions would reduce a mandatory minimum of 20 years to 15 years, and reduce mandatory life without parole to 25 years.
- **Elimination of 924(c) "stacking":** Requires that the mandatory enhancements for repeat gun use or possession offenses apply only to final convictions so they cannot be applied to conduct within the same indictment.
- **Good time credit fix:** Updates the good-time credit law by allowing people in prison to earn up to 54 days of credit per year, rather than 47 days.
- **Increased Compassionate Release Opportunities:** Expands who would qualify for compassionate release and expedites federal prisons' processing of compassionate release applications.
- **Prohibition on shackling:** Ends shackling of pregnant prisoners throughout their pregnancies, including during labor and delivery.
- **Effective end of juvenile solitary confinement:** Significantly restricts juvenile solitary confinement in the federal system.
- **Improved drug treatment services:** Requires evidence-based treatment programs for opioids and heroin in federal prisons.
- **500 Mile Requirement:** Subject to security, requires that Incarcerated individuals be placed in facilities that are within 500 miles of their homes.

Although many of the non-sentencing provisions within the bill are either already policy subject to Department of Justice (DOJ) enforcement or could be achieved via executive order, legislative enactment would ensure DOJ and Bureau of Prisons accountability. Only congressional action will allow the critical sentencing reforms to take effect.

a first step toward retroactive application of the bill and parity between crack and powder cocaine sentences. Its Commutations and Pardons Working Group worked hard to increase the number of sentences commuted during the last Administration, as a first step toward reform of egregiously lengthy sentences.

While we support the bill's passage, the undersigned remain concerned with certain aspects of the legislation. Notwithstanding required consultation with a nonpartisan Independent Review Committee, significant problems are associated with risk assessment tools as prescribed in the bill, including historical issues with racial and other demographic disparities. We are also concerned that the bill may lead to unintended consequences, such as perpetual surveillance due to a rise in electronic monitoring and the shifting of the costs of incarceration from the government to directly impacted people. Moreover, many of the people most in need of services, deemed medium or high risk, are excluded from credits leading to early transition from secure confinement. Also, immigrants are excluded from many of the bill's benefits based simply on immigration status; the bill maintains an immigration exclusion for illegal reentry, and upholds a bar on noncitizens from applying time credits if they have a final order of removal.

The bill also authorizes funding for faith-based services as an evidence-based recidivism reduction program, and we are concerned with the possibility of the unconstitutional use of taxpayer dollars to provide religious programs and activities pursuant to that section. The bill also continues to allow for the privatization of certain public functions and allows private entities to profit from incarceration. Moreover, the omission of retroactive application of several prospective sentencing reforms is incongruous with notions of fairness. Many thousands of people in federal prison serving unjust sentences deserve relief. It is cruel – particularly for those people who will otherwise die in prison - to exclude them from these reforms.

Finally, the \$75 million annual authorization to expand and improve rehabilitative programming and to carry out other measures in the bill, while critical, is insufficient to fully address the institutional need, given overcrowding and staffing shortages. It is essential that the administration propose in its budget and Congress appropriate the full \$75 million, and also ensure significant increases in funding for the Bureau of Prisons to surmount these deficits.

Despite our concerns, we support the bill's fruitful aspects and will continue to advance yet another "first step" in the continuing struggle to bring justice to the federal criminal legal system.

If you have any questions or desire additional information, please feel free to contact chairs of the Justice Roundtable's Sentencing Reform Working Group:

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Organizational signees:

Aging People in Prison Human Rights Campaign
American Correctional Association
American Psychological Association

Braxton Institute
CAN-DO Foundation
Community Family Life Services
CURE
FedCURE
Friends Committee on National Legislation
Health in Justice Action Lab at Northeastern University
Interfaith Action for Human Rights
Life for Pot
National Association for the Advancement of Colored People
National Association of Criminal Defense Lawyers
Parent Watch
Safer Foundation
StoptheDrugWar.org
Student for a Sensible Drug Policy
The Sentencing Project
Washington Office on Latin America