



The Honorable Richard Durbin
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Charles Grassley
Committee on the Judiciary
United States Senate
Washington, DC 20510

May 27, 2021

RE: Support for Committee passage of criminal justice reform legislation - S. 312, S. 1014, and S. 601

Dear Chairman Durbin and Ranking Member Grassley:

The Judiciary Committee's continued support for building fairness and equity in the federal justice system is essential as the country confronts the public health crisis and racial injustice that overwhelm it. The Justice Roundtable and the thirty-seven undersigned organizations urge the advancement of the three bills before the Committee today – **the COVID-19 Safer Detention Act of 2021 (S. 312), the First Step Implementation Act of 2021 (S. 1014), and the Prohibiting Punishment of Acquitted Conduct Act of 2021 (S. 601)** – and oppose any amendments during mark-up.

Although narrow in scope, all three bipartisan measures would bring about sensible and much-needed changes to federal sentencing. While our organizations strongly believe that broader reforms are needed, these bills would address discrete flaws that produce unjust and disparate sentences, create needless bureaucratic red tape, and endanger the lives of vulnerable incarcerated persons. Passing these bills is critical to ensuring that federal sentencing laws and related authorities function as intended, by correcting implementation and interpretation errors that violate the spirit of the First Step Act (FSA). The bills also build upon the foundation of that law by creating a path for sentencing relief and reentry for juveniles serving extreme sentences.

The COVID-19 Safer Detention Act would streamline compassionate release and home detention processes, removing bureaucratic obstacles that serve no purpose and endanger lives. While conceived as a package of reforms to maximize the availability and effectiveness of these mechanisms during the pandemic, these changes make sense beyond the exigencies of any health crisis. Moreover, while the growing availability of vaccinations offers hope for significantly reduced infection rates for the general population, the urgent need to reduce the density of prisons and jails continues. Health experts have noted that the unique characteristics of jails and prisons mean that the risk of outbreaks will persist even as the non-incarcerated public begins to resume pre-pandemic activities. The authorities in question do not apply automatically but require individual case-by-case determinations. The pandemic has exposed serious flaws in our

correctional systems but has also established the feasibility and safety of prison population reductions. The COVID-19 Safer Detention Act would clarify and strengthen these vital and life-saving mechanisms.

No less essential is the First Step Implementation Act, which would help fulfill the purposes of the First Step Act to rectify unjust applications of sentencing statutes and create appropriate paths to reentry. We strongly support any efforts to address extreme sentences that serve no public safety goal. As attitudes, informed by recidivism data, about incarcerated individuals evolve, policymakers must be willing to provide reasonable opportunities to shorten sentences that are no longer appropriate. The First Step Implementation Act authorizes, but does not mandate, modest relief from extreme sentences for those sentenced to consecutive (“stacked”) gun enhancements and long mandatory minimum sentences for repeat drug offenses before the FSA corrected these injustices; and those who have served 20 years for an offense committed when they were juveniles.

Finally, the Prohibiting Punishment of Acquitted Conduct Act would correct an indefensible and widely criticized feature of federal sentencing procedure. Current federal law allows judges to override a jury’s not guilty verdict by sentencing a defendant for the very conduct they were acquitted of by the jury at trial. This is because the law requires a jury to meet the standard of “beyond a reasonable doubt” in order to convict, but allows a judge to impose sentencing enhancements based on the less demanding standard of “preponderance of the evidence.” Permitting sentencing based on acquitted conduct undermines the constitutional right to trial and subverts the critical function of jury trials in our legal system. This bill would end this unfair and unjust practice and prevent judges from sentencing defendants based on acquitted conduct.

All three bills address shortcomings in the federal sentencing regime and further the purposes of the First Step Act to enhance the rationality and fairness of federal sentencing and provide hope for those whose continued incarceration serves no public safety interest. We thank you for co-sponsoring these bills and for your continued efforts to find common ground to ameliorate draconian laws that ignore evolving attitudes and research about criminal justice and the human potential for change. We urge Members of the Committee to vote for these important bills and reject any amendments.

If you have any questions, please feel free to contact Nkechi Taifa (nkechi@thetaifagroup.com), Kara Gotsch (kgotsch@sentencingproject.org), and Aamra Ahmad (aahmad@aclu.org).

Sincerely,

American Civil Liberties Union
The Bail Project
Braxton Institute
Brennan Center for Justice at NYU School of Law
Center for Employment Opportunities
CAN-DO Foundation
Church of Scientology National Affairs Office
Drug Policy Alliance

FAMM
Federal Public and Community Defenders
Health in Justice Action Lab
Human Rights for Kids and the Campaign for the Fair Sentencing of Youth
Innocence Project
International CURE
Just Future Project
JustLeadership USA
The Leadership Conference on Civil and Human Rights
Legal Action Center
Legal Services for Prisoners with Children (LSPC)
Life for Pot
National Association of Criminal Defense Lawyers
National Association of Social Workers
National Council of Churches
National HIRE Network
NETWORK Lobby for Catholic Social Justice
Project On Government Oversight (POGO)
Parent Watch
Safer Foundation
Sentencing Project
StoptheDrugWar.org
Students for Sensible Drug Policy
The Taifa Group
Tzedek Association
Vera Institute of Justice
Voice of the Experienced (VOTE)
Washington Office on Latin America
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