

May 26, 2021

Hon. Richard Durbin
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Hon. Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: Senate Judiciary Committee Markup on Bipartisan Criminal Justice Reform Bills

Dear Chairman Durbin and Ranking Member Grassley:

On behalf of the undersigned groups, we write to thank you for holding this important markup and to express our support for the COVID-19 Safer Detention Act (S. 312), Prohibiting Punishment of Acquitted Conduct Act (S. 601), and First Step Implementation Act (S. 1014). Each bill has strong bipartisan support, especially from the conservative and faith-based communities. We urge the Judiciary Committee to pass the bills.

Passed by a Republican Congress and signed into law by a Republican President, the First Step Act of 2018 is a groundbreaking prison and sentencing reform law that takes a smarter approach to crime and public safety from the decades of overcriminalization and over incarceration. The law restores fairness in our sentencing practices and incentivizes rehabilitation and redemption by providing earned time credits for individuals who successfully participate in evidence-based recidivism reduction programming. The three bills being considered by the Committee this week are natural next steps to the First Step Act that seek to improve existing programs and further restore fairness in our sentencing laws.

The First Step Implementation Act would build upon the major tenets of the First Step Act by strengthening and clarifying the sentencing reforms contained in the Act, restoring judicial discretion, and providing necessary juvenile justice reforms. Importantly, the bill makes the sentencing reforms under the First Step Act retroactive, allowing individuals who were sentenced before the enactment of First Step to make their case before a judge for a reduced sentence. Furthermore, by expanding the safety valve to allow judges to make more individualized determinations of risk of recidivism, the bill moves away from an overreliance on mandatory minimum sentences for drug offenses that constricts judges' discretion and hampers public safety. Lastly, the bill would provide critical second chances and pathways to redemption for individuals sentenced in their youth by allowing for record sealing and creating new resentencing eligibility.

The COVID-19 Safer Detention Act would expand eligibility for compassionate release and elderly home detention and improve the programs within the federal prison system during the pandemic to prevent any further needless loss of life. Two key provisions of the First Step Act were the expansion of the Elderly Home Detention Program under the Second Chance Reauthorization Act and compassionate release under 18 U.S.C. §3582(c), which provided avenues for low-risk and elderly individuals to seek relief by serving the remainder of their sentence on home confinement or have their sentence reduced. The Safer Detention Act would

build on these provisions at a critical moment. Elderly and sick individuals have experienced the adverse effects of the pandemic with over 230 reported deaths in Federal Bureau of Prisons' custody. Yet, many of these individuals are among the least likely to commit new offenses and the most expensive to incarcerate.

Finally, the Prohibiting Punishment of Acquitted Conduct Act would, once and for all, close a loophole in federal sentencing laws that allows for disproportionate punishment. Currently, federal judges may enhance an individual's sentence based on conduct that the defendant has already been acquitted of by a jury. This practice is unjust and a gross violation of constitutional rights guaranteed by the Fifth and Sixth Amendments of the U.S. Constitution. The Prohibiting Punishment of Acquitted Conduct Act would restore fairness and due process in federal sentencing by banning acquitted conduct from being used to lengthen sentences for defendants.

The bills under consideration enjoy broad conservative support and are smart on crime efforts that will maintain public safety, restore judicial discretion, and provide compassion and second chances. We urge all Members of the Senate Judiciary Committee to vote in favor for all three bills.

We thank the Chairman and Ranking Member for their leadership on this issue and for convening this important and timely markup.

Sincerely,

Americans for Prosperity
Americans for Tax Reform
Due Process Institute
FAMM
Faith & Freedom Coalition
FreedomWorks
Justice Action Network
Prison Fellowship
R Street Institute

CC: U.S. Senate Committee on the Judiciary