



June 21, 2018

The Honorable Mitch McConnell
Senate Majority Leader
317 Russell Senate Office Building
Washington, DC 20510

The Honorable Charles E. Schumer
Senate Minority Leader
322 Hart Senate Office Building
Washington, D.C. 20510

Cc: The U.S. Senate

Civil Rights Advocates Call for Comprehensive, Bipartisan, Justice System Reform

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States, we urge you to draw upon the bipartisan momentum that exists today for sentencing and prison reform and advance comprehensive criminal justice legislation this Congress. We know that meaningful reform includes both sentencing and prison reform – one cannot function fully or effectively without the other. We are encouraged to see several proposals before Congress that, although none are perfect, in their entirety reflect widespread bipartisan support and interest in overhauling our broken criminal justice system. It is imperative that Congress seize upon this rare, bipartisan opportunity and momentum to advance meaningful, comprehensive reform that both reduces recidivism through back end reforms and dismantles the front-end drivers of mass incarceration in this country.

Over-incarceration has a devastating impact on those who become ensnared in the criminal justice system, particularly for low-income communities and communities of color, and it has failed to produce a proportional increase in public safety. The United States has the highest rate of incarceration in the world, and federal incarceration has become one of our nation's biggest expenditures. The Bureau of Prison budget is projected to reach 30 percent of the Department of Justice budget by 2020.¹ Despite this growing budget, under current conditions, the system is over capacity, jeopardizing the safety of staff and those who are incarcerated. The nation must confront the societal and budgetary costs of our growing federal prison population. In order to have a criminal justice system that is fair, targeted, and cost-effective, the entire system must be reformed – both in terms of reducing the number of individuals entering our prisons, as well as with respect to providing opportunities for recidivism reduction programming, improving services for drug treatment, and offering incentives for lawful behavior in prison and upon release.

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As you consider how best to move forward with existing justice reform proposals, it is important to remember that while reforms to address back end drivers of our prison system are needed, in our view they cannot function as a substitute for front end sentencing reform. Only front-end reforms have the power to significantly stem the tide of incarceration, reduce the exorbitant cost of the prison system, restore judicial discretion, mitigate disparate impacts on communities of color, and give redress to those inside who are serving unreasonably long sentences that are disproportionate to the severity of the offense. Mandatory minimums alone contribute heavily to the dangerous and expensive problem of overcrowding in prisons across this country. In fact, one study found that time served was the largest contributor to growth in the prison population between 1998 and 2010.² It is for this reason that our continued progress toward meeting the economic and societal challenges posed by the current system and creating a fair and more just system depends on a comprehensive approach to reform. Any approach that does not include sentencing reform will, unfortunately, be insufficient to meet the challenges we face. The Sentencing Reform and Corrections Act (SRCA, S. 1917), is a carefully negotiated compromise, and while not perfect, includes a combination of sentencing and prison reforms that are critical to achieving meaningful change for those who are incarcerated. The bill would make significant improvements to the federal prison system³ and includes several front-end sentencing provisions that are fundamental to any meaningful reform of our federal criminal justice system, including:

- Reducing and restricting enhanced sentencing for prior drug felonies (i.e. reducing the “three-strikes” mandatory life provision to 25 years and the “two strikes” mandatory 25-year provision to 15 years);⁴
- Broadening the existing safety valve to increase judicial discretion regarding the sentencing of individuals for low-level drug offenses;⁵
- Limiting the application of the 10-year mandatory minimum penalty;⁶
- Clarifying 18 U.S.C. § 924(c) (regarding second and subsequent convictions for certain offenses involving possession of a firearm);⁷
- Making the Fair Sentencing Act of 2010 retroactive and applying many of the sentencing provisions of the bill retroactively;⁸
- Making parole available for juveniles who committed an offense prior to the age of 18;⁹ and
- Making several of these provisions retroactive, allowing individuals to be resentenced and benefit from the change in the law.

Were SRCA enacted, roughly 7,000 people would be impacted by the retroactive provisions, and 2,469 people would be impacted by the prospective provisions.¹⁰ Moreover, the Congressional Budget Office determined that a previous iteration of the bill, S. 2123, would decrease the cost of incarceration and would reduce Department of Justice discretionary costs by \$318 million over a five-year period and \$722 million over a 10-year period.¹¹ Passing this legislation could do a great deal to reunite families, reintroduce citizens into the workforce, and ease our bloated and expensive prison system. Any legislation that moves forward, must – *at the very least* – have sentencing reform provisions similar to those within SRCA described above.

SRCA was carefully negotiated with the input of community stakeholders, and has enjoyed wide bipartisan support in Congress, as well as the support of civil rights advocates, fiscal conservatives, and religious groups. This broad coalition recognizes that even though SRCA involves a great deal of



compromise, to fully address the problems facing the criminal justice system today we need to both reduce recidivism through back end reforms and dismantle the front end drivers of incarceration. A bipartisan group of senators reintroduced SRCA on October 4, 2017, and the Senate Judiciary Committee reported the bill to the floor on February 15, 2018, where it is waiting for a vote. On May 22, the House of Representatives passed a back-end only bill, the FIRST STEP Act, which does not include sentencing provisions and won't effectively address problems in that part of the system. The sentencing provisions in SRCA represent a bipartisan consensus that took years to negotiate, and it would be a mistake for the Senate to retreat from that deal now.

Finally, we are concerned that one proposal currently before congress, the FIRST STEP Act (H.R.5682/S.2795), fails to address these sentencing issues and is therefore missing a critical component of any meaningful reform of our federal criminal justice system. Although the bill addresses some of the problems plaguing the federal prison system,¹² implementation of these positive reforms will rely upon funding provided by Congress, as well as the Attorney General's full commitment to implementing the reforms. Moreover, we remain concerned that the FIRST STEP Act misses the opportunity before us today to make real, substantial reforms and may even cause unanticipated harm to communities that are justice-impacted.¹³ As such, we would caution against passage of the FIRST STEP Act without first making significant improvements to the legislation, such as:

- Adding meaningful sentencing reform measures like the ones described above;
- Eliminating the deeply flawed and likely discriminatory risk assessment system for determining time credits;
- Eliminating the exclusions list, especially the immigration-related exclusions;
- Narrowing the discretion vested in the Office of the Attorney General, including removing his authority to privatize certain public functions;
- Making the earned time credits *real* time off a sentence;
- Directing incentives towards people who are incarcerated with "high" and "medium" risk of recidivating, including providing them with equal if not greater opportunity to participate in rehabilitative programs and to cash in on earned time credits as people deemed "low risk;"
- Providing guarantees that funding will be appropriated at a level necessary for implementation of the reforms; and
- Confirming the human and fiscal impact of the legislation through an analysis from the Congressional Budget Office and U.S. Sentencing Commission before moving forward with the legislation.

This Congress is in a unique position to significantly improve our criminal justice system, to break the cycle of mass incarceration, and to ease the hardships that thousands are enduring, while also implementing a more just and fiscally responsible system for future generations. It is absolutely critical to civil rights advocates and to those impacted by our criminal justice system that any legislation that advances has a meaningful impact on those entering *and* those currently within the prison system. We call upon you to seize upon the recent, bipartisan momentum in support of these issues and pass legislation that includes both prison and sentencing reforms. Republicans and Democrats alike, as well as libertarians, faith-based groups, justice-impacted people, and civil rights advocates, all have been calling for more than a first step. The time is now to pass comprehensive, bipartisan criminal justice reform. Congress must not pass up this opportunity to do something truly meaningful.



If you have any questions, please feel free to Sakira Cook, Senior Counsel, at (202) 263-2894 or cook@civilrights.org. Thank you for your consideration, and we look forward to working with you in the future on this critical issue.

Sincerely,

Vanita Gupta
President & CEO
The Leadership Conference on Civil and Human Rights

¹ See LaVigne, Nancy & Samuels, Julie. “The Growth & Increasing Cost of the Federal Prison System: Drivers and Potential Solutions.” *Urban Institute*. December 11, 2012. Pg. 2.

² See LaVigne, Nancy & Samuels, Julie. “The Growth & Increasing Cost of the Federal Prison System: Drivers and Potential Solutions.” *Urban Institute*. December 11, 2012. Pg. 5.
<https://www.urban.org/research/publication/growth-increasing-cost-federal-prison-system-drivers-and-potential-solutions>.

³ See, e.g., facilitates smooth transition to life after release by establishing a recidivism reduction program; expands prerelease and reentry programs; creates an earned time credit system for early release; establishes an option of prerelease custody for certain people who are incarcerated; limits the use of solitary confinement for juveniles; and includes of a compassionate release provision.

⁴ Sentencing Reform and Corrections Act of 2017, S. 1917, 115th Cong. § 101 (2017).

⁵ S. 1917 § 102.

⁶ S. 1917 § 103.

⁷ S. 1917 § 104.

⁸ S. 1917 § 105.

⁹ See generally Sentencing Reform and Corrections Act of 2017, S. 1917, 115th Cong. (2017).
<https://www.congress.gov/bill/115th-congress/senate-bill/1917/text>.

¹⁰ See “Impact Assessment for CBO.” *U.S. Sentencing Commission*. Mar. 19, 2018.
https://www.ussc.gov/sites/default/files/pdf/research-and-publications/prison-and-sentencing-impact-assessments/March_2018_Impact_Analysis_for_CBO.pdf.

¹¹ See “S. 2123 Sentencing Reform and Corrections Act of 2015.” *Congressional Budget Office*. May 17, 2016.
<https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/s2123-r.pdf>.

¹² See, e.g., prohibitions on the shackling of pregnant women, a retroactive “good time” fix, reforms to the federal compassionate and elderly release programs, and an audit of the program several years after its implementation.

¹³ See “Vote No on First Step Act.” *The Leadership Conference on Civil and Human Rights*. May 21, 2018.
http://civilrightsdocs.info/pdf/policy/letters/2018/Short_Oppose%20FIRST%20STEP%20Act_5.21.18_FINAL.pdf