May 21, 2018

Vote “No” on The FIRST STEP Act

Dear Representative,

On behalf of The Leadership Conference on Civil and Human Rights, and the 108 undersigned organizations, we write to urge you to vote NO on The FIRST STEP Act (H.R.5682). While well intentioned, this bill takes a misguided approach to reforming our federal justice system. Without question, we appreciate the inclusion of some promising provisions to address some of the problems in the federal prison system,1 however, the Bureau of Prisons (BOP) already has broad authority to make the majority of these changes through administrative action. In sum, this bill falls short on its promise to “meaningfully” tackle the problems in the federal justice system – racial disparities, draconian mandatory minimum sentences, persistent overcrowding, lack of rehabilitation, and the exorbitant costs of incarceration. Decisions we make now through this bill could have deep implications for our ability to impact the abiding and deepening harms that lead to mass incarceration.

As such, we continue to have several, grave concerns with The FIRST STEP Act, including:

- **The Dangerous “Risk Assessment System”:** The Act purports to offer people in prison the chance to “earn time credits” towards early release to pre-release custody—but by building and placing a “risk and needs assessment” algorithm in the hands of the Attorney General – one not required to be designed or tailored for the individuals it is meant to judge – we risk embedding deep racial and class bias into decisions that heavily impact the lives and futures of federal prisoners and their families.

Researchers have shown that risk assessment tools applied in sentencing decisions in Florida – meant to predict recidivism – were twice as likely to be wrong when evaluating Black people as White people.2 One of the first independent studies analyzing the use of risk assessment in pretrial showed that decisionmakers using risk assessment tools – in this case, Kentucky judges – ignored their results over time, while also overseeing an increase in failures-to-appear at court and an increase in pretrial arrests.3 A further recent analysis showed that risk assessment tools are as accurate as a prediction made by a random human selected over the Internet.4

We cannot introduce algorithmic risk assessment into the assignment of housing and release decisions or rehabilitative opportunities without sufficient transparency, independent testing for decarceral and anti-racist results prior to implementation, and regular effective oversight for not just what the tool purports to predict, but how decisionmakers in our prison system use it. The Act uses “risk assessments” in an untested manner.5 It fails to ensure transparency, independent testing, or analysis of the proposed risk assessment system or its results prior to its adoption or

---

1. 

2. 

3. 

4. 

5. 

---
implementation. And again, it doesn’t require the tool to be designed or tailored for the individuals it is meant to judge.

Without these things, and in the hands of the nation’s most prominent proponent of a punishing, rather than a rehabilitative criminal justice system, “risk assessments” will further embed racism into the meting out of resources that could change prisoners’ lives – like access to treatment, work, and most importantly, the ability to earn time off of a sentence.

- **The Overbroad List of Exclusions**: The majority of people in prison will eventually be released. Categorically excluding entire groups of people from receiving early-release credits\(^6\) will undermine efforts to reduce prison overcrowding and improve public safety since such exclusions weaken the incentive to participate in recidivism-reduction programming. Furthermore, many of these exclusions, *such as those based on immigration-related offenses*,\(^7\) could have a disproportionate impact on people of color.\(^8\)

- **The Overbroad Discretion Provided to Attorney General Sessions**: The bill gives broad authority to the Attorney General and would rely upon implementation by this administration.\(^9\) Despite assurances to the contrary, this administration has failed to take any active steps to improve the justice system, has dismantled existing protections, and has shown outright hostility to people of color and other historically marginalized communities.\(^10\) Furthermore, Attorney General Jeff Sessions is a well-known, longtime opponent of sentencing and prison reform. It would be unwise and harmful to vest so much discretion in an Attorney General so hostile to meaningful justice reform.

- **The Misplaced Incentive System**: Effectively reducing recidivism requires targeting those most likely to reoffend with rehabilitative programming. Yet, under this bill, only “minimum” and “low-risk” prisoners would be able to redeem their earned time credits,\(^11\) and they would earn more credits than prisoners categorized as “medium” or “high-risk.”\(^12\) Given that time credits would also be subject to denial by the BOP warden\(^13\) and they are not real time off of a sentence but rather a flawed mechanism\(^14\) to transition into a decreasing number of halfway houses\(^15\) or to home confinement that is rarely used by BOP,\(^16\) the bill is unlikely to provide the incentives that would meaningfully reduce recidivism.

- **Allows for the privatization of certain public functions and allows private entities to profit from incarceration.** The bill retains a provision that in order to expand programming and productive activities, the Attorney General shall develop policies for wardens of each BOP facility to enter into partnerships with private entities and industry-sponsored organizations.\(^17\)

- **The Absence of Appropriations for Implementation**: The resources needed to expand programming authorized under the bill have not been – and may never be – appropriated. In fact, Congress could decide today, absent this legislation, that prison programming should be funded and increase the BOP’s budget by $50 million a year for the next five years. **Instead, the FY19 BOP budget calls for a reduction.**\(^18\) Furthermore, the recidivism reduction programming that currently exists in the federal prison system is grossly underfunded and not enough to serve those currently incarcerated. Therefore, without any guarantees that the necessary funding will be
appropriated, this bill is an empty promise.

- **The Undetermined Human and Fiscal Impact:** It is unclear what the fiscal impact of this bill will be, given that the Congressional Budget Office has not released a score for the bill. Moreover, it is unclear what the human impact of this bill will be, given that neither the BOP nor the U.S. Sentencing Commission has produced updated estimates on the number of people projected to be impacted by the legislation. Proponents argue that at least 4,000 people will be impacted by the good time fix alone; however, relying on that number is misleading because it is based upon data that is over a decade old. No hearings have been held and there is no CBO score available in order to explore these questions further.

- **The Omission of Sentencing Reform:** Sentencing reform and prison reform are both important, but one will not work without the other. Meaningful reform requires both. Furthermore, advancing prison reform as a stand-alone will undermine longstanding, bipartisan efforts in the Senate to advance a comprehensive justice reform package that includes sentencing reform.

Last week, we were joined by over 70 civil rights organizations in opposing this well-intentioned, but misguided legislation at the House Judiciary Committee markup. Many of our concerns were also shared by the American Federation of Government Employees representing 33,000 federal correctional workers in the Bureau of Prisons, as well as Representatives Lewis, Jackson Lee, and Senators Durbin, Booker, and Harris in a recent Dear Colleague letter. While we appreciate the inclination to support legislation that endeavors to reform our prison system, we believe that this particular bill would do more harm than good and would have unintended consequences that ripple into the future.

Finally, if presented with one choice, “to take what we can get now,” then we must ensure that “what we get” will not perpetuate the existing harms of mass incarceration or give false hope to the men and women languishing in prison and the communities we represent. Our communities are being demonized and criminalized so we must stand firm to resist the lure of a compromise that is ultimately a false promise that may never be realized and isn’t in their best interests.

**For the foregoing reasons, we urge you to vote “No” on the FIRST STEP Act and The Leadership Conference will include your position on the bill in our voting scorecard for the 115th Congress.** If you have any questions, please feel free to contact Sakira Cook, Senior Counsel at The Leadership Conference on Civil and Human Rights, at (202) 263-2894 or cook@civilrights.org.

Sincerely,

The Leadership Conference on Civil and Human Rights
334 East 92nd Street Tenant Association
A. Philip Randolph Institute
African American Ministers In Action
American Civil Liberties Union
American Humanist Association
Arkansas United Community Coalition
Asian Americans Advancing Justice - AAJC
Asian Pacific American Labor Alliance
Association of University Centers on Disabilities (AUCD)
Autistic Self Advocacy Network
Autistic Women & Nonbinary Network
Bazelon Center for Mental Health Law
Bend the Arc Jewish Action
Black Alliance for Just Immigration
Brennan Center for Justice at NYU School of Law
Buried Alive Project
Campaign for Youth Justice
Casa de Esperanza: National Latin@ Network for Healthy Families and Communities
Center for Community Change Action
Center for Community Self-Help
Center for Law and Social Policy (CLASP)
Center for Popular Democracy
Center for Responsible Lending
Coalition for Humane Immigrant Rights (CHIRLA)
Coalition of Black Trade Unionists
Coalition on Human Needs
CURE (Citizens United for Rehabilitation of Errants)
Defending Rights & Dissent
Demos
Disability Rights Education & Defense Fund
Drug Policy Alliance (DPA)
Equal Justice Society
Equal Rights Advocates
Equality California
Equity Matters
Evangelical Lutheran Church in America
Faith Action Network - Washington State
Faith in Public Life
Government Information Watch
Harm Reduction Coalition
Hip Hop Caucus
Hispanic Federation
Human Rights Watch
Immigrant Legal Resource Center
Indivisible
Japanese American Citizens League
Jewish Council for Public Affairs (JCPA)
Justice Strategies
Juvenile Law Center
LatinoJustice PRLDEF
Law Enforcement Action Partnership
Let's Start, Inc.
Mommieactivist and Sons
MomsRising
NAACP
NAACP Legal Defense and Educational Fund, Inc.
National Action Network's Washington Bureau
National Alliance to End Sexual Violence
National Association of Human Rights Workers
National Association of Social Worker
National Bar Association (NBA)
National Black Justice Coalition
National Center for Lesbian Rights
National Coalition Against Domestic Violence
National Coalition on Black Civic Participation
National Council of Churches
National Disability Rights Network
National Education Association
National Employment Law Project
National Hispanic Media Coalition
National Immigrant Justice Center
National Immigration Law Center
National Immigration Project of the National Lawyers Guild
National Juvenile Justice Network
National LGBTQ Task Force Action Fund
National Organization for Women
National Organization of Black Law Enforcement Executives (NOBLE)
NETWORK Lobby for Catholic Social Justice
Pennsylvania Immigration and Citizenship Coalition
People For the American Way (PFAW)
PFLAG National
Prison Policy Initiative
Safer Foundation
Sargent Shriver National Center on Poverty Law
Service Employees International Union (SEIU)
Sikh American Legal Defense and Education Fund (SALDEF)
Southeast Asia Resource Action Center (SEARAC)
Southern Poverty Law Center (SPLC)
SparkAction
Students for Sensible Drug Policy
The Center for Media Justice
The Daniel Initiative
The Decarceration Collective
The National Council for Incarcerated and Formerly Incarcerated Women and Girls
The United Church of Christ
The United Methodist Church - General Board of Church and Society
Truah: The Rabbinic Call for Human Rights
UndocuBlack Network
UnidosUS
Union for Reform Judaism
United Church of Christ, Local Church Ministries
United Church of Christ, Justice and Witness Ministries
United We Dream
V-Day and One Billion Rising
Washington Lawyers’ Committee for Civil Rights & Urban Affairs
We Belong Together
Woodhull Freedom Foundation
World Without Genocide

1 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.
5 When risk and needs assessment evaluations are adopted, they are typically used by states to identify programming for people in prison, rather than to award time credits. See, e.g., Tex. Gov’t Code § 498.002 (classifying inmates’ “time-earning category” based on factors other than risk assessment); R.I. Gen. Laws § 42-56-24 (determining amount of sentence credit based on factors other than risk assessment); Okla. Stat. § 57-138 (same); N.C. Gen. Stat. § 15A-1340.18 (same); Ohio Rev. Code Ann. § 2967.193 (same).
9 See, e.g., The FIRST STEP Act, H.R. 5682, 115th Cong. § 3632(g) (2018) (“the Attorney General shall monitor and assess the use of the [risk and needs assessment] System”). See also The FIRST STEP Act, H.R. 5682, 115th Cong. SEC. 102 (h)(5) (2018) (“the Attorney General shall develop policies for the warden of each prison of the Bureau of Prisons to enter into partnerships”). See also The FIRST STEP Act, H.R. 5682, 115th Cong. § 3632(a) (“In carrying out this subsection, the Attorney General may use existing risk and needs assessment tools, as


17 *See* Dear Colleague Letter from Senator Durbin, Senator Harris, Senator Booker, Representative Jackson Lee, and Representative Lewis. Pg. 3. May 17, 2018. [https://www.politico.com/f/?id=00000163-6f9d-dbc0-a56b-efdd053a0001](https://www.politico.com/f/?id=00000163-6f9d-dbc0-a56b-efdd053a0001).


22 *See* Dear Colleague Letter from Senator Durbin, Senator Harris, Senator Booker, Representative Jackson Lee, and Representative Lewis. May 17, 2018. [https://www.politico.com/f/?id=00000163-6f9d-dbc0-a56b-efdd053a0001](https://www.politico.com/f/?id=00000163-6f9d-dbc0-a56b-efdd053a0001).