



National Association of Assistant United States Attorneys

Safeguarding Justice for All Americans

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The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Chuck Schumer
Minority Leader
United States Senate
Washington, D.C. 20510

Re: FIRST STEP Act (S. 3649)

Dear Leader McConnell and Leader Schumer:

The National Association of Assistant United States Attorneys (NAAUSA), on behalf of our nation's federal prosecutors, urges you to refrain from supporting the FIRST STEP Act (S. 3649). At a minimum, the legislation should receive a hearing before it receives further consideration by the Senate.* While Assistant United States Attorneys remain supportive of pilot-tested and validated prison reentry programs that reduce recidivism and assure public safety, we believe the FIRST STEP Act will subject the public to more crime, not less.

The FIRST STEP Act's proponents claim the bill is modeled after successful state criminal justice reforms. Yet, the federal prison system is already far superior to state prison systems, when compared by recidivism and the likelihood of the prisoner's return to crime. While 24 percent of federal prisoners are rearrested for a new crime within five years of release, as many as 77 percent of state inmates are rearrested within the same period of time.

Further, proponents of the FIRST STEP Act claim the bill will "incentivize" inmate participation in prison education and skill training. Yet, according to the federal Bureau of Prisons (BOP), virtually all federal inmates already participate in education and training programs. Most important, the legislation does not promise any meaningful change in inmate behavior or increase in participation in reentry programs. What is certain is that the FIRST STEP Act establishes an unprecedented framework for broad leniency, including significant reductions to the sentences of dangerous, violent offenders, upsetting the sentences imposed by federal judges under federal sentencing law and guidelines.

* The House version of this bill (H.R. 5682) was rushed to passage without the benefit of any hearing on the bill's merits or costs.

The FIRST STEP Act would grant reduced sentences and early release to hardened drug traffickers, especially repeat offenders who traffic in the largest amounts. For example, a repeat trafficker with a lengthy criminal history, moving enough fentanyl to kill hundreds of thousands of people, would be sentenced to a 20-year mandatory minimum sentence under current law. Under the FIRST STEP Act, that same trafficker could be released from prison in as little as 7 years, 10 months, without having to change anything about his behavior or program participation.

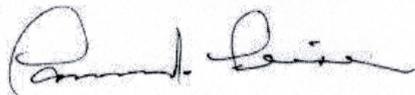
The FIRST STEP Act also allows early release (and the reduction of up to one-third of the underlying sentence) for numerous serious, violent crimes, sex crimes, gun crimes, and immigration crimes. For example, the FIRST STEP Act would allow early release of criminals convicted of: assaulting a law enforcement officer, even with a dangerous weapon (18 U.S.C. § 111(a)); assault resulting in serious bodily injury against a spouse, intimate partner, or even a child (18 U.S.C. § 113(a)(7)); first-time convictions (and many repeat convictions) for carrying a gun during a crime of violence or drug trafficking (18 U.S.C. § 924(c)(1)(C)); and trafficking fentanyl, heroin or methamphetamine. Shockingly, more than 90 percent of fentanyl, heroin and methamphetamine traffickers are eligible for early release under the bill (21 U.S.C. § 841). These are but a few of the countless examples of crimes that are eligible for significant, early release under the legislation. The FIRST STEP Act grants sentencing reductions to virtually every offender in federal prison, regardless of what crime they committed, (unless serving a life sentence), through a new, added system of “good conduct credits” that reduce the length of an inmate’s sentence. Moreover, the sentencing reductions occur retroactively, granting early release to thousands of violent criminals, sex offenders, drug traffickers, and even illegal aliens.

The true purpose and primary effect of the FIRST STEP Act will be to reduce the consequences for serious criminals when they break the law, including criminals who commit heinous acts of violence, drug trafficking, and sex crimes. The bill attempts to bury most of those changes underneath misleading, shiny objects that sound innocuous and can be used to demonize opponents of criminal leniency. For example, proponents regularly point to a provision in the bill (section 301) that prohibits BOP from using restraints on pregnant inmates, except where necessary to prevent the inmate from escaping or harming herself. That approach is already enshrined in BOP policy, and BOP consistently applies it toward pregnant inmates. In other words, section 301 would only codify current BOP policy. Proponents also regularly point to the FIRST STEP Act’s requirement that DOJ and BOP establish a “risk and needs assessment system” to evaluate all inmates for placement and rehabilitation purposes. But BOP already maintains and applies a comprehensive prisoner assessment system of all federal prisoners, whose success is validated by the more favorable recidivism rates of federal inmates compared to state inmates.

FIRST STEP proponents say this bill preserves public safety, is tough on crime, and is supported by law enforcement. The National Association of Assistant United States Attorneys believes none of these representations are true. In fact, we believe this bill will adversely affect the ability of federal prosecutors and our federal, state and local law enforcement colleagues to preserve public safety and protect the public from harm.

Therefore, we urge you, on behalf of our nation's federal prosecutors, to refrain from supporting this flawed and dangerous bill.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Lawrence J. Leiser". The signature is written in a cursive style with a large initial "L" and "J".

Lawrence J. Leiser
President

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BEN CARNES

November 15, 2018

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

Dear Leader McConnell:

The Federal Law Enforcement Officers Association (FLEOA), representing more than 27,000 federal officers and agents in 65 federal agencies, has recently received a draft copy of the latest First Step Act alleged revisions and was surprised to see not much has changed in the proposed bill.

FLEOA has withheld reasserting its opposition of the proposed First Step Act after assurances from Congress and the White House that a "new and better" iteration would be offered. That has not happened and many of the issues identified by a law enforcement coalition of organizations remain unresolved.

We believe many of the provisions would still allow drug traffickers (other than "an organizer, leader, manager") many criminals using firearms ("only after a prior conviction") and criminal illegal aliens (excluding only those who reentered "subsequent to conviction for three or more misdemeanors involving drugs, crime against persons or an aggravated felony") access to early release programs.

We also feel that the individuals that would be able to access early release programs cited in the bill text would further endanger our members and society as a whole, which is something we know Congress, the Administration, and the Justice Department would not intend. This would include individuals who are sex traffickers of children, unregistered sex offenders, and criminals who use dangerous weapons to assault federal agents.

The simple truth is the proposed bill misses the target of true white collar non-violent offenders and "low level" drug dealers, of which are few in federal prison.

Our federal agents and officers already risk their lives arresting violent criminals and drug dealers, and our fractured judicial system results in those criminals pleading to reduced charges, shorter sentences, and early releases.

Many of the sentencing reductions offered in the proposed First Step Act have already been instituted by previous Sentencing Commission decisions and sentencing reform legislation. These give individuals several options to reduce their sentences, most of which rely on the individual to cooperate with law enforcement and be accountable for their actions.

That is the form and function any proposed sentencing reforms should take – with a holistic approach of criminal law reforms and correction reforms.

We know that as a Congress and Administration that has prioritized the law enforcement community, moving a bill that would allow hardened criminals back

into the communities of America through halfway houses is ill conceived, expensive, and will overwhelm already scarce resources.

We also know that an immediate release of thousands of prisoners, as has happened in the past, will overwhelm already over extended Probation and Parole officers and the Court System.

One provision that we support is the allowance of Federal Correction Officers to carry weapons to and from work ("allows employees to carry concealed firearms on the premises outside of the secure perimeter of the institution.").

If the goal is to create a better and fairer justice system, which all agree is a goal to work towards, then we need a holistic approach to criminals that focuses on returning productive citizens to the streets of America vs. better criminals. Unfortunately, we feel the First Step Act fails to meet this goal.

Sincerely,

Nathan R. Catura

Nathan R. Catura
National President
Federal Law Enforcement Officers Association



November 15, 2018

The Honorable Mitch McConnell
Majority Leader, United States Senate

The Honorable Charles Schumer
Minority Leader, United States Senate

The Honorable Charles Grassley
Chairman, Committee on the Judiciary
United States Senate

The Honorable Diane Feinstein
Ranking Member, Committee on the Judiciary
United States Senate

Dear Senator McConnell, Senator Schumer, Senator Grassley, and Senator Feinstein:

The current draft of the First Step legislation remains troubling to the leaders of law enforcement. Sheriffs are elected solely to protect our communities, and Police Chiefs have taken an oath to protect the public. We feel unless the changes recommended below are enacted, this legislation creates a high-risk path for dangerous criminals with gun crime histories to early release from prison. This amounts to a social experiment with the safety of our communities and the lives of Sheriffs, deputies and police officers in the balance. Please know that we did not come to this conclusion lightly. We have been working diligently with the Administration to correct these inequities. It is our hope the Senate will listen to the nation's elected Sheriffs and the Chiefs of Police of our nation's most populous cities.

While we note several issues of concern for Sheriffs and Chiefs, we recommend the changes set forth below for the most serious of these:

(1) Fix the gun crime exclusion on p.13 (exception number xi) by removing "after a prior conviction under section 924(c) has become final, or after a prior conviction under State law that would have been an offense under section 924(c) had the offense occurred in Federal jurisdiction has become final, unless the prisoner did not have a meaningful opportunity to participate in the recidivism reduction programming described in this title for one of the prior convictions." This would ensure that individuals convicted of serious gun crimes related to drug trafficking or violent crime do not receive early release.

(2) For the fentanyl exclusions on pp. 20-22 (xlix and l), remove the requirement that the offender be an organizer, leader, manager, or supervisor of the operation, as that only covers a minuscule portion (less than 10%) of federal fentanyl traffickers. Additionally, add heroin trafficking to this exclusion, as many fentanyl traffickers are actually poly-drug traffickers who are trafficking in heroin laced with fentanyl but who are convicted primarily of heroin trafficking.

(3) Remove supervised release as an option for applying time credits under the bill. Time credits should only be used for prerelease custody where the offender is appropriately monitored, such as a halfway house or home confinement, with the option to return to prison for any violation of prerelease custody conditions.

(4) Broaden (xxiii) (pp.15-16) to all sections of 18 USC 2244 (prison rape, other abusive sexual conduct), instead of limiting it only to abusive sexual contact involving young children; broaden (xxvi) (p.16) to all convictions under paragraphs (1)-(6) of [2252A\(a\)](#), relating to child pornography, rather than limiting it only to second or subsequent convictions.

(5) Fix “safety valve” reductions (Section 402) (pp. 64-66). Reductions to repeat offenders with significant criminal histories including up to four (4) criminal history points should not be eligible for reduced sentences below the mandatory minimum. Furthermore, many criminal history points, including someone with a prior felony drug trafficking conviction, would not count towards the four-point assessment of the bill’s suggested “safety valve” language.

In addition to the sheriffs anticipated participation by Sheriffs and Chiefs in the a Criminal Justice Commission, we urge Congress to consider the addition of a provision in the bill for Medicaid expansion to cover inmates while in custody. This would allow law enforcement funds to be used for law enforcement purposes instead, which would improve officer safety, reduce crime, and likely increase availability of recidivism reduction programming in prisons.

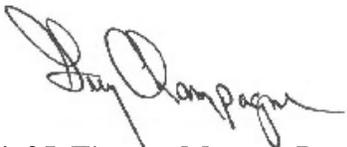
In its current form, we oppose this legislation. However, if these changes can be made to address our concerns, we stand ready to work further with the Senate and the Administration.

Sincerely,

Sheriff John Layton, President
National Sheriffs’ Association



Sheriff Greg Champagne, Past President.
Chair, Legal Affairs Committee, NSA



Chief J. Thomas Manger, President
Major Cities Chiefs Association



Sheriff Grady Judd, President
Major County Sheriffs of America



Sheriff Mike Bouchard, Govt. Affairs
Major County Sheriffs of America



November 13, 2018

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Chuck Schumer
Minority Leader
United States Senate
Washington, D.C. 20510

Re: Prison and Sentencing Legislation

Dear Leader McConnell and Leader Schumer:

As representatives of national associations representing federal, state and local law enforcement personnel, we urge the Senate to reject the latest version of prison and sentencing legislation unveiled by proponents. Our review of the bill reflects no improvements that would reduce our multiple and serious concerns about its deadly and destructive impact upon public safety and our capacity to deter and prosecute crime throughout the country. While a few serious offenders are excluded from one section of the bill, the bill still offers early release to the same offenders - including fentanyl traffickers, violent criminals, and sex offenders – in other sections.

While we support true second chances that bring about the productive return of prisoners to their communities, we also know that many offenders that will benefit from provisions of this legislation have long criminal histories that far exceed the "second chance" that this legislation is designed to provide. By ignoring that fact alone, this legislation falls far short of those goals and is little more than a sentence leniency measure. The legislation is based upon state prison programs with track records that have failed to produce any significant reduction in recidivism rates and that are less successful than current education and job training programs already being used in our federal prisons.

The bill will threaten public safety and erode truth-in-sentencing, reduce the sentences of incarcerated violent felons, and endanger the safety of law-abiding citizens and faithful law enforcement officers. While the legislation is focused solely upon offenders, we encourage you to also consider the victims of the crimes that these offenders are committing even after their release from incarceration in the many instances where rehabilitation programs are failing. Our citizens expect and deserve laws that protect them from becoming victims of those who have demonstrated they cannot live within the law.

The legislation's expansion and retroactivity of "good time" credit (for good behavior) to the majority of the 180,000 offenders in federal prison will trigger the immediate release of an estimated 4,000 federal offenders, most of whom have been convicted of serious federal felonies, including the trafficking of deadly drugs like heroin and fentanyl. There is no exclusion for violent offenders, sex offenders, or gang members from this instant release. The release of such a significant number of federal prisoners at one time, regardless of their security classification by the federal Bureau of Prisons, will have serious consequences upon public safety and the capacity of law enforcement to effectively respond. The releases will involve twice as many federal prisoners as those whose sentences were selectively commuted by President Obama throughout the entirety of his presidency.

The bill provides significant early release benefits to *all* federal offenders, with the greatest benefits given to high-recidivism offenders -- most notably, drug traffickers, the most serious of whom also receive reduced mandatory minimum sentences under the bill. Virtually all BOP inmates already participate in activities that would qualify them for the bill's time credit program. In other words, virtually all BOP inmates eligible for time credits would receive credits without having to change anything about their current behavior or program participation. Further, the bill provides a blanket reduction in sentences to the most serious drug traffickers (repeat traffickers with a high risk of recidivism), which will likely create more crime in our communities and impose a greater resource burden on law enforcement. With drug poisonings claiming over 72,000 American lives last year, the drug traffickers responsible for those deaths should not be given the consideration this legislation proposes to provide to offenders. This legislation is simply too lenient on offenders who commit crimes that result in such tragedy.

Since the bill does not require BOP inmates to change anything about their current behavior or program participation to receive time credits, it will incentivize and result in offenders actually spending *less* time in recidivism reduction programming, and will let the worst drug traffickers out of prison even earlier. This will make our streets and neighborhoods more dangerous, because it will allow early release without improving offender rehabilitation. Moreover, it will reduce mandatory minimum sentences for the most serious drug traffickers regardless of their significant and/or violent criminal histories.

As representatives of federal, state and local law enforcement personnel with front-line responsibility for public safety, we remain supportive of pilot-tested and validated criminal justice initiatives that reduce recidivism and assure public safety. Smart recidivism reduction strategies should reduce crime, not increase it. You should not put our communities at risk by rushing this legislation through Congress without thoroughly analyzing all of its provisions to ensure that it will not result in serious, unintended consequences that further jeopardize public safety.

Thank you for your leadership and your consideration of our concerns.

Sincerely yours,

John A. Costanzo
President
Association of Federal Narcotics Agents

Lawrence J. Leiser
President
National Association of Assistant United States Attorneys

William J. Johnson
Executive Director
National Association of Police Organizations, Inc.

Bob Bushman
President
National Narcotics Officers' Associations' Coalition



Sheriff Grady Judd

Polk County

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November 16, 2018

President Donald J. Trump
The White House
1600 Pennsylvania Ave. NW
Washington, D.C. 20500

Dear Mr. President,

I write this letter as one grateful Sheriff who appreciates your tough on crime promise. You have proven over and over your strong support and respect for law enforcement across this nation during a time when we have been publicly beaten down simply for standing in the gap between good and evil. After hearing your endorsement of the First Step Act, alluding to full law enforcement support or neutrality, of which I am neither, I now am convinced you are not being provided with accurate information about this proposed legislation.

In its current form, the First Step Act is not tough on crime regardless of what you are told. This legislation does ***not*** protect law-abiding citizens, and it does nothing to protect law enforcement officers who risk their lives daily.

During the discussions I have had with your advisors concerning the drafting of the First Step language, I asked a few simple questions. First, how does this legislation reduce future crime? Second, how does this legislation protect the citizens from future victimization from these early released criminals? Third, how does this legislation make law enforcement safer while they are protecting our communities?

I'm still waiting for satisfactory answers. I've heard ***none***.

However, the First Step Act allows for the release of convicted felons into our communities, before completion of their prison sentences, which would allow them to continue their criminal conduct. This includes felons sentenced to federal prison for possession of a firearm during the commission of their crimes! Also, this legislation does away with the crime-reducing minimum mandatory sentences.

Mr. President, the First Step Act ignores those who comply with the law and the victims of crimes while rewarding incarcerated criminals who commit felonies against the community. It will also lessen accountability for future felons who victimize the innocent.

Please understand I support preparing inmates to return to society as useful citizens, and I believe that is your ultimate goal. However, that is ***not*** the case with this expansive legislation.

I want you to know clearly why I – and an overwhelming number of my colleagues – are adamantly opposed to this legislation in its current form which contains catastrophic deficiencies. I urge you to personally speak with the elected Sheriffs who will provide you the straight truth about what’s happening in our communities rather than the biased, filtered agenda you’re being provided which I truly do not believe comports with your tough on crime position.

Thank you for your time and your continued support of law enforcement.

Most Respectfully,

A handwritten signature in cursive script that reads "Grady Judd". The signature is written in dark ink and is positioned above the printed name.

Grady Judd
Sheriff

cc: Senator Mitch McConnell
Senator Marco Rubio
Senator Tom Cotton
Governor Rick Scott