



LAW ENFORCEMENT LEADERS

To Reduce Crime & Incarceration

Hon. Lindsey Graham
United States Senate
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Hon. Patrick J. Leahy
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Hon. Rob Portman
United States Senate
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Hon. Dianne Feinstein
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Hon. Chuck Grassley
United States Senate
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Hon. Christopher A. Coons
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Hon. John Cornyn
United States Senate
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Hon. Richard J. Durbin
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Hon. Joni Ernst
United States Senate
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Hon. Sheldon Whitehouse
United States Senate
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Hon. Thom Tillis
United States Senate
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Hon. Mike Crapo
United States Senate
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Hon. Mike Lee
United States Senate
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Hon. Richard Blumenthal
United States Senate
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December 3, 2019

RE: Law Enforcement Leaders Support for the RE-ENTER Act of 2019 (S. 2931)

Dear Chairman Graham, Ranking Member Feinstein, and Senators Cornyn, Whitehouse, Lee, Leahy, Grassley, Durbin, Tillis, Blumenthal, Portman, Coons, Ernst, and Crapo:

We write to you today on behalf of Law Enforcement Leaders to Reduce Crime & Incarceration, a national coalition of nearly 200 current and former law enforcement officials from all 50 states, across the political spectrum. We have dedicated our careers to fighting crime and keeping our communities safe. With our principal goals of public safety and reducing crime in mind, we now write in support of The Recognizing Education, Employment, New skills, and Treatment to Enable Reintegration Act of 2019 (the “RE-ENTER Act”), S. 2931, a bipartisan bill sponsored by Senators Cornyn, Whitehouse, Lee, Leahy, Grassley, Durbin, Tillis, Blumenthal, Portman, Coons, Ernst, and

Crapo. The RE-ENTER Act seeks to provide a means for individuals convicted of a federal offense to apply for a federal certificate of rehabilitation to acknowledge that the individual has demonstrated a commitment to a law-abiding future and to help with successful reentry.

Based on our experience in law enforcement, we have personally seen many reentering individuals re-offend and go back to prison. Although there are of course varying causes for this, we have observed first hand that many of those who seek to reenter society successfully are faced with seemingly insurmountable barriers, such as limitations on employment, student aid, public benefits, housing, and bars to occupational licensing, to name a few.ⁱ This complex web of collateral consequences can make reentry so difficult that some individuals quickly return to crime due to lack of other opportunities.ⁱⁱ As the U.S. Civil Rights Commission recently observed: “Research strongly suggests that relieving some formerly incarcerated individuals from the burdens of certain collateral consequences cultivates successful reintegration into society, helps reduce recidivism, and promotes public safety.”ⁱⁱⁱ

However, individuals who have been convicted federally have no statutory mechanism by which to obtain meaningful relief from the collateral consequences of conviction even after completing their sentence.^{iv} Congress can and should do better.

The RE-ENTER Act would provide individuals a uniform mechanism to apply for relief from some of the collateral consequences of federal convictions. The procedure outlined in the bill is highly individualized and calls for a federal district judge to make the determination with input from the probation officer, prosecutor, defense attorney, and any victims involved in the case.^v Given that the process of applying for relief ensures such a fact-intensive determination, the statute encourages rehabilitation while also having built-in safeguards to protect public safety. The bill also encourages public safety by giving current and formerly incarcerated individuals incentives to work towards improvement: if achieved, a certificate of rehabilitation would restore certain rights and could be presented to employers to demonstrate the individual’s successful rehabilitation.

Although the relief offered by the RE-ENTER Act is limited, it is a step in the right direction that could help thousands of individuals per year as they work to reenter society. In 2018, almost 70,000 people were sentenced in the federal courts, about 90 percent of whom received prison time.^{vi} Of the tens of thousands of people sentenced each year in the federal system, nearly all of them will eventually be released from prison.^{vii} Indeed, approximately 50,000 individuals are released from federal prison each year.^{viii}

When these individuals attempt to reenter society, however, they face a wide range of collateral consequences. It is currently estimated that there are over 44,000 laws in the United States that prescribe collateral consequences for those with a criminal conviction.^{ix} While certain collateral consequences may make sense to the extent that they are tied to public safety, it is in all of our interest to provide reentering citizens with a path forward, not relegating them to permanent punishment as a result of collateral consequences.^x

To reduce recidivism and keep our communities safe, we should support those who are reentering society by providing them with a viable path forward. By providing a real incentive to the thousands of federal defendants who return to their communities each year to work toward full rehabilitation, this bill would promote public safety while saving communities money on the costs of crime and future incarceration. For these reasons, we respectfully urge the Committee on the Judiciary and the United States Senate to swiftly pass the RE-ENTER Act, S. 2931.

Respectfully yours,



Ronal W. Serpas
Executive Director
Law Enforcement Leaders to
Reduce Crime & Incarceration
Former Police Superintendent
New Orleans, Louisiana



Taryn A. Merkl
Senior Counsel
Law Enforcement Leaders to
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Former Assistant U.S. Attorney
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ⁱ See generally U.S. COMM’N ON CIV. RTS., COLLATERAL CONSEQUENCES: THE CROSSROADS OF PUNISHMENT, REDEMPTION, AND THE EFFECTS ON COMMUNITIES at 12–18 (2019), <https://www.usccr.gov/pubs/2019/06-13-Collateral-Consequences.pdf?eType=EmailBlastContent&cId=d37030a2-bfe6-4784-866a-7db61d64f357> (discussing the thousands of collateral consequences returning inmates face and the connection between collateral consequences and recidivism).

ⁱⁱ John G. Malcolm, *The Problem with the Proliferation of Collateral Consequences*, 19 FEDERALIST SOC’Y REV. 70, 75 (2018) (observing that “[l]ike the criminal conviction itself, civil sanctions carry real consequences that can be as injurious as they are demoralizing” (internal quotation marks omitted)).

ⁱⁱⁱ U.S. COMM’N ON CIV. RTS., *supra* note i at 6 & n.40 (citing Steven D. Bell, *The Long Shadow: Decreasing Barriers to Employment, Housing, and Civic Participation for People with Criminal Records Will Improve Public Safety and Strengthen the Economy*, 42 W. ST. L. REV. 1, 10-11 (2014)); see also Tanya N. Whittle, *Felony Collateral Sanctions Effects on Recidivism: A Literature Review*, 29 CRIM. JUST. POL’Y REV. 505-24 (2016), <http://journals.sagepub.com/doi/pdf/10.1177/0887403415623328> (collecting sources); U.S. Dep’t of Justice, *Second Chances Vital to Criminal Justice Reform* (July 30, 2015), <http://www.justice.gov/opa/blog/second-chances-vital-criminal-justice-reform> (observing that “participation in pro-social behaviors like employment, education and civic engagement — the very things that people with criminal records are often barred from participating in — actually reduce recidivism”).

^{iv} Although expungement and federal clemency are theoretically available to persons seeking relief from a federal conviction, expungement is generally only granted in unusual or extreme circumstances and federal clemency is exceedingly rare when compared to the number of federal convictions per year. See *Doe v. United States*, 168 F. Supp. 3d 427, 441 (E.D.N.Y. 2016) (concluding, in the context of a motion to expunge a conviction, that although the court had jurisdiction to consider expungement, full “expungement ‘should be reserved for the unusual or extreme case’” (quoting *U.S. v. Schnitzer*, 567 F.2d 536, 539 (2d Cir. 1977))). See also U.S. Dep’t of Justice, Office of the Pardon Attorney, Clemency Statistics, <https://www.justice.gov/pardon/clemency-statistics> (providing federal clemency rates). On the state level, at least fifteen states and the District of Columbia offer partial relief from some of the collateral consequences of conviction by statute, but the approaches taken by the states differ in their scope, breadth and

implementation. *See* ARIZ. REV. STAT. §§ 13-905 *et seq.*; ARK. CODE ANN. § 17-1-103; CAL. PENAL CODE §§ 4852.01 *et seq.*; CONN. GEN. STAT. §§ 54-130a & 54-130e; D.C. CODE § 24-1304; GA. CODE ANN. § 42-2-5.2; 730 ILL. COMP. STAT. ANN. §§ 5/5-5.5-5-5/5-5.5-50; MD. CODE ANN. CORR. SERVS. § 7-104; NEV. REV. STAT. §§ 176A.850, 213.035 & 213.155; N.J. STAT. ANN. §§ 2A:168A-1–2A:168A-16; N.Y. CORRECT. LAW §§ 700–06; N.C. GEN. STAT. §§ 15A-1731 *et seq.*; OHIO REV. CODE ANN. § 2961.22; R.I. GEN. LAWS §§ 13-8.2-1 *et seq.*; TENN. CODE ANN. § 40-29-107; VT. STAT. ANN. tit. 13, §§ 8010 *et seq.*; *see generally* Margaret Love & April Frazier, *Certificates of Rehabilitation and Other Forms of Relief from the Collateral Consequences of Conviction: A Survey of State Laws* (American Bar Association 2006), <http://wnyschoolofrealestate.org/certificate%20of%20relief%20facts2.pdf> (discussing differences in state laws in effect as of 2006).

^v In *Doe*, *supra* note iv, former United States District Judge John Gleeson devised a novel solution in a case where he was faced with an expungement application: he issued the defendant a federal certificate of rehabilitation — which certificate is believed to be the first of its kind. In deciding to issue the certificate, Judge Gleeson thoroughly considered the defendant’s offense conduct, personal circumstances, history, efforts to rehabilitate, and extreme difficulty that she had securing steady and regular employment. *See Doe*, 168 F. Supp. 3d at 433–37.

^{vi} U.S. SENTENCING COMM’N, STATISTICAL INFORMATION PACKET, FISCAL YEAR 2018, SECOND CIRCUIT at 1 (Figure A), <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/state-district-circuit/2018/2c18.pdf>; *see generally* U.S. SENTENCING COMM’N, 2018 FEDERAL SENTENCING STATISTICS, <https://www.ussc.gov/research/data-reports/geography/2018-federal-sentencing-statistics>.

^{vii} GLENN R. SCHMITT & HYUN J. KONFRST, U.S. SENTENCING COMM’N, LIFE SENTENCES IN THE FEDERAL SYSTEM 1 (2015), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20150226_Life_Sentences.pdf (discussing the rarity of life sentences in the federal system and observing that “[v]irtually all offenders convicted of a federal crime are released from prison eventually and return to society or, in the case of illegal aliens, are deported to their country of origin”).

^{viii} U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2017 (April 2019), <https://www.bjs.gov/content/pub/pdf/p17.pdf> (detailing that in 2016, 626,019 individuals were released from prison including 52,035 who were released from federal custody, and that in 2017, 622,377 individuals were released from prison including 49,461 who were released from federal custody).

^{ix} *National Inventory of Collateral Consequences of Conviction*, CSG JUSTICE CENTER, <https://niccc.csjusticecenter.org/>.

^x Malcolm, *supra* note ii at 39 (“[I]t is not in anyone’s best interest to consign ex-offenders to a permanent second class status. Doing so will only lead to wasted lives, ruined families, and more crime.”).