



LAW ENFORCEMENT LEADERS

To Reduce Crime & Incarceration

The Honorable Charles E. Schumer
United States Senate
Washington, D.C. 20510

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

October 8, 2021

RE: Law Enforcement Leaders Urge Passage of First Step Implementation Act (S. 1014), COVID-19 Safer Detention Act (S. 312), and Prohibiting Punishment of Acquitted Conduct Act (S. 601)

Dear Majority Leader Schumer and Minority Leader McConnell,

We represent a national coalition including over 200 current and former law enforcement officials from across the political spectrum, dedicated to protecting public safety and reducing mass incarceration. We write to expand on our past endorsements (see attached below) and express renewed support for three bipartisan bills as they are currently drafted — the **First Step Implementation Act of 2021 (S.1014)**, **COVID-19 Safer Detention Act of 2021 (S. 312)**, and **Prohibiting Punishment of Acquitted Conduct Act of 2021 (S. 601)**.

First and foremost, these pieces of legislation make modest reforms—narrow in scope and carefully designed to ensure that no one who poses a threat to public safety receives relief. As members of law enforcement, we are deeply concerned with the recent rise in violent crime that has taken place across the country. However, there is no reason to believe that these bills will have any impact on local crime rates, which are linked to a broad range of factors unrelated to federal sentencing reform, such as disruptions to violence prevention services caused by the COVID-19 pandemic.¹

Beginning with the Prohibiting Punishment of Acquitted Conduct Act, this reform would strengthen fairness and procedural justice in the federal criminal justice system.² If enacted, the bill would prohibit federal courts from considering evidence from previous acquittals at sentencing. It is critical that defendants are only punished for conduct for which they have been found guilty. To allow the consideration of acquitted conduct at sentencing is to undermine Constitutional guarantees to due process and a jury trial, and ultimately erode public trust in the federal judiciary.

Next, the First Step Implementation Act would build upon criminal justice reforms accomplished under the Trump Administration by strengthening judicial discretion in sentencing, ensuring that some previously enacted sentencing reforms are applied retroactively, and allowing for sentence reductions for individuals who committed crimes as youths (after serving 20 years of their sentence), among other provisions. This latter provision, for example, is consistent with extensive scientific research, demonstrating that young people continue to develop cognitively until at least 25 years old and tend to age out of crime over time.³ Preliminary estimates from the United States Sentencing Commission (USSC) suggest that a relatively small group of individuals would be eligible for sentence reduction consideration under this provision.

For its part, the COVID-19 Safer Detention Act, which also enjoys bipartisan support, remains an essential piece of legislation as the COVID-19 pandemic continues to endanger individuals who

work and live in correctional facilities. Recognizing the threat posed by COVID-19 and its multiple strains (including the “delta,” “delta plus,” and “mu” strains), the bill would, among other provisions, expand the availability of compassionate release and Elderly Home Detention for low-risk, nonviolent individuals in carceral settings—where social distancing is nearly impossible, vaccination rates among correctional staff and incarcerated people remain insufficient (65 percent among federally incarcerated people and 54 percent among BOP staff), and COVID-19 outbreaks persist.⁴

For the reasons stated here and attached below, we urge you to vote in favor of the First Step Implementation, COVID-19 Safer Detention, and Prohibiting Punishment of Acquitted Conduct Acts so that, together, we can continue to reduce unnecessary incarceration without threatening public safety.

Sincerely,



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Retired Police Superintendent
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cc: Members of the U.S. Senate

¹ “Crime Trends in Context,” *Council on Criminal Justice*, August 16, 2021, <https://counciloncj.org/meeting-bulletin-2/>.

² This letter serves as our first endorsement of the Prohibiting Punishment of Acquitted Conduct Act (S. 601).

³ *What Are the Implications of Adolescent Brain Development for Juvenile Justice?*, Coalition for Juvenile Justice, 2006, 3, https://www.juvjustice.org/sites/default/files/resource-files/resource_134.pdf; Tony Cox, “Brain Maturity Extends Well Beyond Teen Years,” *NPR*, October 10, 2011, <https://www.npr.org/templates/story/story.php?storyId=141164708>; Dana Goldstein, “Too Old to Commit Crime?,” *The Marshall Project*, March 20, 2015, <https://www.themarshallproject.org/2015/03/20/too-old-to-commit-crime>; Kim Steven Hunt and Billy Easley, *The Effects of Aging on Recidivism Among Federal Offenders*, United States Sentencing Commission, 2017, https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171207_Recidivism-Age.pdf.

⁴ “COVID Behind Bars Data Project,” *UCLA Law*, accessed September 30, 2021, <https://uclacovidbehindbars.org/>; Richard Halstead, “New COVID-19 outbreak reported at San Quentin State Prison,” *The Mercury News*, August 21, 2021, <https://www.mercurynews.com/2021/08/21/new-covid-19-outbreak-reported-at-san-quentin-state-prison/>; Matthias Gafni, “State’s largest ongoing prison COVID outbreak linked to staff,” *San Francisco Chronicle*, September 24, 2021, <https://www.sfchronicle.com/bayarea/article/State-s-largest-ongoing-prison-COVID-outbreak-16483174.php>.



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Hon. Chuck Grassley
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May 17, 2021

RE: Law Enforcement Leaders Support for the First Step Implementation Act of 2021 (S.1014)

Dear Senators Schumer, McConnell, Durbin, and Grassley:

We write on behalf of Law Enforcement Leaders to Reduce Crime & Incarceration to express our support for S.1014, the First Step Implementation Act of 2021 (“the Act”). Our national coalition includes over 200 current and former law enforcement officials from across the political spectrum, dedicated to protecting public safety and reducing arrests, prosecutions, and incarceration.

The bipartisan First Step Implementation Act would recalibrate excessive adult and juvenile sentences, improve opportunities for people returning home from prison, and build on the success of the First Step Act of 2018, which we also proudly supported.¹

This new legislation would extend the First Step Act in two ways. First, it would ensure that some existing sentencing reforms are applied retroactively. Second, it would take additional steps toward restoring judicial discretion in sentencing. Mandatory minimum penalties, common in drug cases, amount to a rigid, one-size-fits-all solution to criminal offending and often lead to lengthy prison sentences with questionable deterrent effect.² The Act acknowledges this problem and, in cases involving adult nonviolent drug offenders, would allow judges to impose a reduced sentence after having considered a defendant’s criminal history and likelihood of recidivism.³

The Act also contains new provisions targeting the juvenile justice system. For one, it would allow judges to reduce the sentences of people who received lengthy prison terms while still under the age of eighteen — once they have served more than 20 years. This novel provision aligns with extensive research on youth cognitive development. Studies show that as adolescents mature, they tend to age out of crime, undermining the public safety rationale for lengthy imprisonment in some cases.⁴

If passed, the legislation would also help improve reentry outcomes for juveniles leaving prison. The Act would ensure the sealing of criminal records for juveniles who have committed nonviolent offenses — provided that they have fulfilled the terms of their community supervision, have not been convicted of additional crimes, and are not currently engaged in criminal court or juvenile delinquency proceedings. Additionally, the Act would require the Attorney General to establish procedures ensuring that only accurate federal criminal records are shared with employers — a provision that would benefit adults and juveniles alike.

Together, the Act's reentry provisions could cut recidivism by reducing barriers to employment and improving the financial security of individuals with criminal justice involvement — important goals, considering that one in five Americans have a criminal record.⁵ Given that formerly imprisoned individuals experience an approximate 52 percent drop in average annual earnings and those with felony and misdemeanor convictions (without incarceration) experience a 22 and 16 percent loss, respectively, the Act could potentially help thousands become self-sufficient and contribute meaningfully to their communities.⁶

Our criminal justice system works better when judges can exercise discretion, and individuals with criminal convictions are given a chance to find gainful employment and start anew in their communities. The First Step Implementation Act works to achieve these aims, and we urge the Senate to pass this bipartisan legislation and continue to support it in the House.

Respectfully yours,



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¹ First Step Act, S. 756, 115th Congress (2018)(enacted); *Law Enforcement Leaders to Reduce Crime & Incarceration to Senator Mitch McConnell et al.*, Letter, July 13, 2018, <http://lawenforceldrs.wpengine.com/wp-content/uploads/2018/07/LEL-Cover-Letter-for-SRCA-2017.pdf>; *Briefing Memo: First Step Act & Sentencing Reform*, Law Enforcement Leaders to Reduce Crime & Incarceration, 2018, <http://lawenforcementleaders.org/wp-content/uploads/2018/11/LEL-Briefing-Memo.pdf>; See article from Law Enforcement Leaders' Executive Director Ronal Serpas and member Peter Newsham, Peter Newsham and Ronal Serpas, "Too many Americans go to prison but Congress can fix this problem," *The Hill*, September 17, 2018, <https://thehill.com/opinion/criminal-justice/397507-too-many-americans-go-to-prison-but-congress-can-fix-this-problem>.

² Jonathan P. Caulkins, *Are Mandatory Minimum Drug Sentences Cost-Effective?*, RAND Corporation, 1997, https://www.rand.org/pubs/research_briefs/RB6003.html; Marc Mauer, *Long-Term Sentences: Time to Reconsider the Scale of Punishment*, The Sentencing Project, 2018, 121, <https://www.sentencingproject.org/publications/long-term-sentences-time-reconsider-scale-punishment/>.

³ One study finds that approximately 39 percent of state and federal prison populations (approximately 576,000 people) are incarcerated with "little public safety rationale." Lauren-Brooke Eisen et al., *How Many Americans Are Unnecessarily Incarcerated?*, Brennan Center for Justice, 2016, 7, 9, <https://www.brennancenter.org/our-work/research-reports/how-many-americans-are-unnecessarily-incarcerated>.

⁴ *Juvenile Justice Reform Principles*, Law Enforcement Leaders to Reduce Crime & Incarceration, 2021, http://lawenforcementleaders.org/wp-content/uploads/2021/04/2021.4.27_LEL-Juvenile-Justice-Reform-Brief.pdf; *Sentencing Reform Principles*, Law Enforcement Leaders to Reduce Crime & Incarceration, 2021, http://lawenforcementleaders.org/wp-content/uploads/2021/04/2021.4.27_LEL-Sentencing-Reform-Brief.pdf; Marc Mauer, *Long-Term Sentences: Time to Reconsider the Scale of Punishment*, The Sentencing Project, 2018, 122, <https://www.sentencingproject.org/publications/long-term->

[sentences-time-reconsider-scale-punishment/](#); “From Juvenile Delinquency to Young Adult Offending,” National Institute of Justice, March 10, 2014, <https://nij.ojp.gov/topics/articles/juvenile-delinquency-young-adult-offending#age>.

⁵ Terry-Ann Craigie, Ames Grawert, and Cameron Kimble, *Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality*, Brennan Center for Justice, 2020, 15, <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal>.

⁶ Craigie, Grawert, and Kimble, *supra* note 6, at 15.



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August 7, 2020

RE: Law Enforcement Leaders Support for the COVID-19 Safer Detention Act of 2020 (S. 4034)

Dear Senators Grassley, Durbin, Cramer, Tillis, Coons, Wicker, and Whitehouse:

We write on behalf of Law Enforcement Leaders to Reduce Crime & Incarceration, a national coalition of over 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. In support of our commitment to protecting and improving public safety, we urge Congress to address the unique and deadly challenges posed by the COVID-19 pandemic by enacting the COVID-19 Safer Detention Act, S. 4034. This proposed bipartisan legislation, which has been sponsored by Senators Grassley and Durbin, would expand the availability of compassionate release and Elderly Home Detention for low-risk, nonviolent individuals who could otherwise be at risk of severe COVID-19 complications while incarcerated.

A recent study showed that people in prison are 550 percent more likely to contract COVID-19, and 300 percent more likely to die from the disease.¹ Federal prisons currently house approximately 160,000 individuals, of whom nearly 20 percent are aged 51 and older.² Statistical analyses have found that the COVID-19 mortality rate is approximately 2.9 percent for those aged 50 to 64, making it more than 25 times as deadly as the seasonal flu — and the mortality rate climbs to 10.4 percent for those aged 65 to 74, and to 20.8 percent for those aged 75 to 84.³ For elderly and

vulnerable incarcerated individuals, jails and prisons further heighten the existing risks of infection and complications from the disease.⁴ Additionally, estimates indicate that approximately 40 percent of all inmates suffer from a chronic health condition, an aggravating factor for COVID-19 complications.⁵

As of today, there have been more than 10,800 documented cases of COVID-19 in federal prisons.⁶ Further delays to adequate protections for vulnerable incarcerated people will exacerbate the severe risks these susceptible individuals face, as well as the dangers to the broader federal prison population, correctional officers, and surrounding communities.⁷ Additionally, holding vulnerable, elderly offenders in federal prisons as the COVID-19 pandemic continues does little to promote public safety. Research shows that people are increasingly unlikely to recidivate as they age, and recidivism rates are particularly low among elderly individuals.⁸

Although the First Step Act streamlined the compassionate release application process, providing for more time-sensitive and efficient review, the number of people who have procured compassionate release has been quite limited.⁹ Only 3.1 percent of compassionate release requests have been granted since the First Step Act's enactment in December 2018.¹⁰ Moreover, as of June 2020, between the start of the pandemic and the introduction of the COVID-19 Safer Detention Act, only approximately 500 individuals were granted compassionate release, and nearly all such releases resulted from court orders over objections posed by the Department of Justice or the Bureau of Prisons.¹¹

The COVID-19 Safer Detention Act would improve the compassionate release application process and help prevent suitable recipients from being excluded or denied. The legislation would permit COVID-19 vulnerability to serve as a justification for compassionate release and allow people to seek judicial review of their application 10 days after requesting relief from the BOP rather than the current 30-day waiting period. In addition to expediting and increasing access to compassionate release, the COVID-19 Safer Detention Act would enlarge the Elderly Home Detention Pilot Program as an alternative to traditional incarceration. Program eligibility would be expanded to include nonviolent individuals who have completed more than 50 percent of their sentence as well as elderly individuals convicted for nonviolent D.C. Code violations who are in BOP custody.

Federal prisons are hotspots for COVID-19 infections and complications, with tens of thousands of vulnerable people at risk. Through research and our experience in law enforcement, we know that vulnerable and elderly individuals present minimal safety risks to our communities. The COVID-19 Safer Detention Act would expand eligibility to vulnerable, low-risk prisoners for expedited releases from federal prison during the COVID-19 pandemic. Lowering the number of people incarcerated during the pandemic will in turn reduce the risks facing the general prison population and correctional officers by encouraging greater social distancing in facilities and implementation of the

CDC guidelines.¹² We urge Congress to act on this critical issue by enacting the COVID-19 Safer Detention Act immediately before more lives are needlessly lost to the pandemic.

Respectfully yours,



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¹ Brendan Saloner, et al., *COVID-19 Cases and Deaths in Federal and State Prisons*, *Journal of the American Medical Association*, 2020, <https://jamanetwork.com/journals/jama/fullarticle/2768249>.

² Federal Bureau of Prisons, "BOP Statistics: Average Inmate Age," accessed July 2, 2020, https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp.

³ Holly Secon, "The Coronavirus Death Rate in the US Is Almost 50 Times Higher than That of the Flu. See How They Compare by Age Bracket," *Business Insider*, June 23, 2020, <https://www.businessinsider.com/coronavirus-death-rate-us-compared-to-flu-by-age-2020-6>.

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- ⁴ David Cloud, *On Life Support: Public Health in the Age of Mass Incarceration*, Vera Institute of Justice, 2014, 12, <https://www.vera.org/publications/on-life-support-public-health-in-the-age-of-mass-incarceration>.
- ⁵ Laura M. Maruschak and Marcus Berzofsky, *Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12*, Bureau of Justice Statistics, 2015, 1, <https://www.bjs.gov/content/pub/pdf/mpsfj1112.pdf>.
- ⁶ Federal Bureau of Prisons, “COVID-19 Coronavirus,” accessed August 6, 2020, <https://www.bop.gov/coronavirus/>.
- ⁷ Lauren-Brooke Eisen, *How Coronavirus Could Affect U.S. Jails and Prisons*, Brennan Center for Justice, 2020, <https://www.brennancenter.org/our-work/analysis-opinion/how-coronavirus-could-affect-us-jails-and-prisons>.
- ⁸ Marc Mauer, *Long-Term Sentences: Time to Reconsider the Scale of Punishment*, The Sentencing Project, 2018, <https://www.sentencingproject.org/publications/long-term-sentences-time-reconsider-scale-punishment/>; Lauren-Brooke Eisen, et al., *How Many Americans Are Unnecessarily Incarcerated?*, Brennan Center for Justice, 2016, <https://www.brennancenter.org/our-work/research-reports/how-many-americans-are-unnecessarily-incarcerated>.
- ⁹ “How the First Step Act Changed Compassionate Release,” accessed July 1, 2020, <https://compassionaterelease.com/first-step-act-compassionate-release/>.
- ¹⁰ Durbin, Grassley Introduce New, Bipartisan Legislation To Reform Elderly Home Detention And Compassionate Release Amid COVID-19 Pandemic, 2020, <https://www.durbin.senate.gov/newsroom/press-releases/durbin-grassley-introduce-new-bipartisan-legislation-to-reform-elderly-home-detention-and-compassionate-release-amid-covid-19-pandemic>.
- ¹¹ Ibid.
- ¹² Centers for Disease Control and Prevention, “Coronavirus Disease 2019 (COVID-19): Guidance for Correctional and Detention Facilities,” 2020, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.