

The Honorable Donald J. Trump
1600 Pennsylvania Ave. NW
Washington, DC 20500

August 22, 2018

Dear Mr. President:

We write to thank you for your support of the *Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person (FIRST STEP) Act*, H.R. 5682. Without the support of you and your White House, the FIRST STEP Act may not have passed the U.S. House of Representatives.

Achieving Today Where Past Policymakers Have Failed

Over the past several years, policymakers on both sides of the political aisle and in both chambers have spoken of the need to fix our criminal justice system. Indeed, your predecessor made an effort – albeit a half-hearted one – towards the end of his Administration. No one, however, has been able to actually *achieve* anything of substance since enactment of the *Second Chance Act* a decade ago.

Yet today, we are on the brink of passing historic legislation that will improve public safety, reduce costs and enhance human dignity. And that is a testament to your leadership and the hard work of your White House team.

Conservatives Support Criminal Justice and Prison Reforms

The conservative vision for criminal justice reform focuses on three key areas:

- Making our communities safer again;
- Using taxpayer dollars more wisely; and
- Recognizing that each human life has value and is entitled to basic dignity.

With these as our guide stars, conservatives have pursued criminal justice reforms at the state level for more than a decade, beginning in Texas in 2007. The principles refined in Texas have been applied in other Republican strongholds such as Georgia, South Carolina, and Mississippi and in more than thirty other states.¹ Since 2010, jurisdictions that have implemented reforms like those first developed in Texas have reported savings or averted costs of \$1.1 billion.²

¹ It should be noted that since FY2010, Congress has encouraged our approach through an annual appropriation for the “Justice Reinvestment Initiative” administered by the Bureau of Justice Assistance.

² Samantha Harvell, Jeremy Welsh-Loveman, and Hanna Love, *Reforming Sentencing and Corrections Policy: The Experience of Justice Reinvestment Initiative States*, Urban Institute, December 2016 https://www.urban.org/sites/default/files/publication/86691/reforming_sentencing_and_corrections_policy_final.pdf

Moreover, between 2008 and 2016, thirty-five states saw reductions in crime and imprisonment rates, twenty-one of which saw double digit declines.³

We point out the successes in the states because many of the same principles are included in the FIRST STEP Act and have been proven to cut crime while reducing spending.

Beyond the fiscal implications, criminal justice reform resonates with people of faith. As you know from your recent meeting with urban pastors, prison and justice reforms have taken on a deeper meaning for those who believe in second chances and redemption. The FIRST STEP Act supports these concepts by encouraging those who have made mistakes to use their time in prison to reform themselves. Ninety-five percent of all federal inmates will eventually return home. When they do, we want them to be better versions of themselves.

The Importance of Sentencing Reforms

As you know, the Senate is considering adding sentencing reforms to the FIRST STEP Act. The sentencing reforms under consideration are designed to ensure that each punishment fits the crime and that taxpayer dollars are not wasted locking up people who pose no threat to public safety. In fact, smarter sentencing laws such as those offered under the proposed changes to the FIRST STEP Act refocus resources on those who most threaten our communities. In doing so, we must ensure that we are sending the right people to our prisons for the right amount of time, with the resources available to rehabilitate those capable of change.

Going Forward

Mr. President, you have already done more than your predecessor was able to legislatively by taking the reins on justice reform and supporting the FIRST STEP Act through its passage in the House. Now, you have the opportunity to guide this bipartisan legislation through the Senate, helping to define your legacy and to enhance public safety by holding offenders accountable, allowing them to participate in programs that will reduce their risk of reoffending.

We are now in a critical moment. The FIRST STEP Act is awaiting action in the Senate. It is unlikely that the bill will move forward without the addition of very modest sentencing reforms. We are aware that there are some in your administration and elsewhere who are working against this domestic policy priority of your White House. We would like to correct the record on several of these public statements:

³ Adam Gelb and Jacob Denney, "National Prison Rate Continues to Decline Amid Sentencing, Re-Entry Reforms," The Pew Charitable Trusts, January 16, 2018 <http://www.pewtrusts.org/en/research-and-analysis/articles/2018/01/16/national-prison-rate-continues-to-decline-amid-sentencing-re-entry-reforms>

1. Recidivism Can't Be Fixed, So Why Even Try?

In 2007, Texas became the first state to launch comprehensive, evidence-based prison reform. Today, more than 30 states have implemented similar reforms, including Georgia and South Carolina. As measured by reconviction, Texas has a recidivism rate of 21 percent among prisoners released in 2013.⁴ South Carolina's recidivism rate among prisoners released in 2013, as measured by reconviction, is 23.1 percent.⁵ Georgia's recidivism rate among prisoners released in 2014, as measured by reconviction, is 27.3 percent.⁶

The Pew Charitable Trusts released a report finding that the recidivism rate among prisoners released in 2012 declined by 23 percent⁷:

Among prisoners released in 2005, 48 percent returned to prison by the end of 2008. By comparison, among those released in those states in 2012, 37 percent had at least one new prison admission by the end of 2015. That translates into a drop of 23 percent. The states included in the analysis accounted for about two-thirds of those released from state prisons nationwide each year.

Because the data are limited to prisoners released in 2005, the data released by the Bureau of Justice Statistics masks lower recidivism rates in later years. The Pew Charitable Trust's analysis puts recidivism into perspective, showing that the criminal justice reform efforts in the states have seen success.

2. Impact of Good Time and Earned Time Credits

Critics of the legislation also argue that the earned time credits and good time credits available under the FIRST STEP Act would erode existing truth-in-sentencing laws⁸ and allow offenders to serve too little time of their prison sentence, threatening public safety.

a. Good Time Credits

The only portion of the FIRST STEP Act that would affect the amount of time offenders spend in BOP custody is the restoration of congressional intent to good time credits. More than three decades ago, Congress authorized a standard reduction in prison sentences for good behavior.

⁴ Texas Legislative Budget Board, Statewide Criminal and Juvenile Justice Recidivism and Revocation Rates, January 2017 http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/3138_Stwide_Crim_Just_Recid_Revoc.pdf

⁵ South Carolina Department of Corrections, South Carolina Department of Corrections Recidivism Rates of Inmates Released during FY2009 - FY2013, Accessed August 20, 2018 <http://www.doc.sc.gov/research/SpecialReports/RecidivismRatesOfInmatesReleasedDuringFY2009-FY2013.pdf>

⁶ Georgia Council on Criminal Justice Reform, *Report of the Georgia Council on Criminal Justice Reform*, February 2018 https://gov.georgia.gov/sites/gov.georgia.gov/files/related_files/press_release/2017-2018%20Report%20of%20the%20GA%20Council%20on%20Criminal%20Justice%20Reform.pdf

⁷ The Pew Charitable Trusts, "The Changing State of Recidivism: Fewer People Going Back to Prison," August 1, 2018 <http://www.pewtrusts.org/en/research-and-analysis/articles/2018/08/01/the-changing-state-of-recidivism-fewer-people-going-back-to-prison>

⁸ Truth-in-sentencing policy historically requires that inmates serve no less than 85 percent of their full sentence in Bureau of Prisons (BOP) custody.

Specifically, the governing statute grants 54 days of “good time credit” (approximately 15 percent of the sentence) for each year of incarceration. However, the Bureau of Prisons calculates good time credit to equate to 47 days per year, or approximately 13 percent.

No one truly believes that the additional seven days of good time credit Congress already authorized makes any difference in whether someone will re-offend or not.

The individuals who would qualify for these reductions are model prisoners who have “displayed exemplary compliance with institutional disciplinary regulations,” as determined by BOP itself. They are offenders who pose the absolute least threat to society and have the least chance of reoffending.

b. Earned Time Credits

The FIRST STEP Act envisions a system where prisoners can work their way down to low security classifications. To encourage self-improvement, the bill would authorize “earned time credits.” These credits would allow the lowest risk offenders more time in halfway houses or home confinement. Regardless of where prisoners serve their sentences – be it at a BOP prison, in a halfway house, or on home confinement, they remain in the custody of the government.

Instead of threatening public safety, such a change would likely enhance public safety by giving those least-likely to offend ample time to reintegrate properly into society. The time spent in transitional housing allows for offenders to access further educational opportunities, secure permanent housing, and find jobs.⁹

3. Limited Changes to Current Sentencing Laws

It is sound policy to ensure that the sentences handed down by judges for individuals to serve are appropriate for the crime committed. Although the FIRST STEP Act, as passed by the House, did not contain any sentencing provisions, adding such language to the bill in the Senate is seen as a key to passage. Critics of sentencing reform argue that mandatory minimum sentences were critical to the decline in violent crime rates that began in the early 1990s.

Mr. President, there is little evidence to back up this claim. University of Texas at Austin law professor William Spelman has estimated that incarceration is responsible for 27 to 35 percent of the decline in violent crime.¹⁰ Taking this at face value, Mr. Spelman’s estimate means that 65 to 73 percent of the decrease in violent crime came from other factors.

⁹ Studies have pointed to post-incarceration employment as the number one predictor of recidivism, proving the case for the necessity of aiding prisoner reentry into society. Indianapolis-Marion County City-County Council, “Re-Entry Policy Study Commission Report,” July 2013 <http://www.indy.gov/eGov/Council/Committees/Documents/RE-ENTRY/Re-entry%20Policy%20Report.pdf>

¹⁰ William Spelman, “The Limited Importance of Prison Expansion,” Cambridge University Press, 2005 <https://www.cambridge.org/core/books/the-crime-drop-in-america/the-limited-importance-of-prison-expansion/DF333F3C8D58F74E542A0E35709A8132>

The available literature illustrates that while broad sentencing increases likely provided some public safety benefit when originally enacted, they reached a point of diminishing returns. The National Research Council of the National Academies noted, “[T]hree reports of panels convened by the National Research Council have reviewed the research literature on the deterrent effect of such laws and have concluded that the evidence is insufficient to justify the conclusion that these harsher punishments yield measurable public safety benefits.”¹¹ The amendments that have been suggested do not do away with mandatory minimum sentences, rather they allow deviation from the prescribed scheme in very limited circumstances.

4. Impact on Illegal Immigrants

Critics have complained that because the FIRST STEP Act places an emphasis on home confinement for prisoners at minimal risk or low-risk of reoffending that deportable immigrants in the prison system would be placed into home confinement. This is flatly untrue.

Although deportable immigrants in the federal prison system will be offered the opportunity to take part in programming under the FIRST STEP Act, they cannot earn time credits for placement in pre-release custody, including home confinement.¹² Additionally, if a deportable immigrant is subject to a detainer¹³ filed by Immigration and Customs Enforcement, he or she would not be eligible for placement in home confinement and would be transferred into ICE custody.

A separate regulation, BOP Program Statement 7310.04, makes it clear that "detainee inmates" – that is, a prisoner subject to a detainer – are not eligible for and are excluded from placement in “community corrections centers,” i.e., halfway houses.¹⁴ Other limitations, including a limitation on “[i]nmates who are assigned a 'Deportable Alien' Public Safety Factor,” also apply under BOP Program Statement 7320.01, CN-2, which excludes inmates with public safety factors from placement in home confinement.¹⁵

¹¹ National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, The National Academies Press, 2014 http://johnjay.jjay.cuny.edu/nrc/NAS_report_on_incarceration.pdf

¹² Taylor Millard, “No, The House-Passed FIRST STEP Act Won’t Release Criminal Aliens from Prison,” June 17, 2018 <https://hotair.com/archives/2018/06/17/no-house-passed-first-step-act-wont-release-criminal-aliens-prison/>

¹³ Detainers are defined in BOP Program Statement 5800.15 as: “A formal request from a Federal, state, or local jurisdiction for an inmate’s custody upon completion of a term of imprisonment.” This definition includes requests for criminal and non-criminal charges (e.g., material witnesses, deportation, probation/parole violator warrants, child support, etc.).” A federal agency such as ICE would be given priority over state or local detainers. U.S. Department of Justice Federal Bureau of Prisons, “Program Statement 5800.15,” September 23, 2016 https://www.bop.gov/policy/progstat/5800_015_CN-01.pdf

¹⁴ U.S. Department of Justice Federal Bureau of Prisons, “Program Statement 7310.04,” December 16, 1998 https://www.bop.gov/policy/progstat/7310_004.pdf

¹⁵ U.S. Department of Justice Federal Bureau of Prisons, “Program Statement 7320.01,” December 15, 2017 https://www.bop.gov/policy/progstat/7320_001_CN-2.pdf

Conclusion

Put concisely, there is little substance behind any of the claims made against the FIRST STEP Act and the potential sentencing reforms currently under discussion. When one digs slightly beneath the surface, it is clear to see that data and facts back up the policy presented for consideration in the Senate.

Criminal justice reform has been a winning issue for conservatives on the state level. The FIRST STEP Act is your opportunity to lead Republicans to a win on the federal level by implementing conservative reforms that have proven themselves effective at cutting recidivism and improving safety in our neighborhoods.

Mr. President, the time for fixing our broken system is now, and conservatives are fully behind you.

Sincerely,

Jim DeMint
Former United States Senator

Mike Huckabee
Former Arkansas Governor

Jason Chaffetz
Former United States Congressman

Bob Ehrlich
Former Maryland Governor

Mark Holden
Freedom Partners Chamber of Commerce

Adam Brandon
FreedomWorks

Deborah J. Daniels
Former U.S. Attorney
Former U.S. Assistant Attorney General

Tim Chapman
Heritage Action

David Safavian
American Conservative Union

Pat Nolan
*American Conservative Union Foundation**

John Malcolm
*The Heritage Foundation**

Craig DeRoche
Prison Fellowship

Grover Norquist
Americans for Tax Reform

Brent Gardner
Americans for Prosperity

Ken Blackwell
Former Ohio Secretary of State

Derek Cohen
Right on Crime

Bernie Kerik
Former New York Police Commissioner

Jerry Madden
Former Chairman, Texas House Committee on Corrections

L. Brent Bozell, III
*Media Research Center**

Donald J. Devine
Former Dir. Of USOPM (Pres. Reagan Admin.)
The Fund for American Studies

Rebecca Hagelin
Council for National Policy

Ralph Reed
Faith & Freedom Coalition

Brett Tolman
Former US Attorney
Former Chief Counsel for Crime & Terrorism, US Senate Judiciary Committee

Tom Giovanetti
Institute for Policy Innovation

Robert Alt
*The Buckeye Institute**

Dominic Calabro
Florida TaxWatch

Daniel Erspamer
Pelican Institute

Stacy Hock
Investor & Philanthropist

Doug Deason
Deason Foundation

Kevin Roberts
Texas Public Policy Foundation

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