

December 13, 2018

The Honorable Mitch McConnell
317 Russell Senate Office Bld.
Washington, DC 20510

The Honorable Charles Schumer
322 Hart Senate Office Bld.
Washington, DC 20510

The Honorable Paul Ryan
1233 Longworth House Office Bld.
Washington, DC 20515

The Honorable Nancy Pelosi^[SEP]
235 Cannon House Office Bld.
Washington, DC 20515

Dear Majority Leader McConnell, Minority Leader Schumer, Speaker Ryan, and Minority Leader Pelosi:

As state policymakers, we are writing to voice our support for the First Step Act (H.R.5682/S.3649), introduced by Representatives Collins (GA) and Jeffries (NY) and amended to include sentencing reforms by Senators Grassley (IA) and Durbin (IL). We urge you to advance this legislation to the President's desk before the end of session.

The federal prison system currently holds more than 180,000 incarcerated men and women, making it larger than any single state prison system in the country. The demand for rehabilitative programming in the federal prison system far exceeds capacity. For example, approximately 16,000 prisoners are on a waitlist for basic literacy programming.¹ This means men and women incarcerated at the federal level aren't getting sufficient reentry preparation in prison and as a result, our states are less safe. Many of our state departments of corrections are seeing great reductions in recidivism by investing in robust rehabilitative programming and establishing innovative partnerships with non-profits and other organizations delivering classes and services.² The states have also led the way in implementing risk assessment tools to identify prisoners' needs and customize programming accordingly. We applaud the First Step Act's requirement to implement this best practice. The legislation also requires periodic reassessments to monitor prisoners' progress, perhaps providing even greater accountability for recidivism reduction than many state policies.

The federal prison system offers much less opportunity for prisoners to transition to community corrections before the end of their sentence compared to most states. This is due to multiple policies, including having very limited time credits awarded for good behavior and only one

¹ FY 2019 Performance Budget: Congressional Submission, United States Department of Justice Federal Prison System. Available at <https://www.justice.gov/jmd/page/file/1034421/download>

² Drake, Elizabeth K., Steve Aos, and Marna G. Miller (2009), "Evidence-Based Public Policy Options to Reduce Crime and Criminal Justice Costs: Implications in Washington State." Washington State Institute for Public Policy, *Victims and Offenders*, 4:170–196. (http://www.wsipp.wa.gov/ReportFile/1033/Wsipp_Evidence-Based-Public-Policy-Options-to-Reduce-Crime-and-Criminal-Justice-Costs-Implications-in-Washington-State_Full-Report.pdf); Duwe, G., & M. King. (2013). "Can Faith-Based Correctional Programs Work? An Outcome Evaluation of the InnerChange Freedom Initiative in Minnesota." *International Journal of Offender Therapy and Comparative Criminology* 57(7): 813–841 (<https://whatworks.csgjusticecenter.org/evaluation/duwe-king-2013>).

program qualifying for earned time credit. Current law states that federal prisoners can earn up to 54 days off their sentences each year for good behavior. An ambiguity in how to calculate this credit has resulted in federal prisoners only receiving a maximum of 47 days each year. The First Step Act clarifies that the calculation should be a maximum of 54 days per year, still well below the amount of time offered by almost all states. In fact, of the more than 35 jurisdictions with codified earned time and good time policies, Prison Fellowship found that the federal system ranked second lowest in the country in terms of the maximum amount of time possible to earn off one's prison sentence.³ Many states, such as Arkansas, make time credits available to all prisoners except prisoners serving life sentences.⁴ The First Step Act is a far more measured approach, only allowing those who test as low-risk to qualify for earned time and providing a lengthy list of excluded offenses on top of the risk assessment requirement. Finally, those who do qualify for earned time credit will not be released early, but rather, will move to pre-release custody. This means correctional supervision will continue at a residential reentry center or on home confinement.

In our experience, this gradual transition to the community can improve outcomes, as opposed to releasing people directly to the streets. Further, the Bureau of Prisons (BOP) population exceeds its facility capacity by 14 to 25 percent. Increasing the transition time for prisoners to move to community corrections before the end of their sentence can help relieve this overcrowding, making it easier to run effective programs and to keep prison officials and prisoners safe.

We are pleased to see that all prisoners will be assigned programming and have access to incentives for program completion such as increased phone and visitation privileges, increased commissary products and spending limits, moving to a facility closer to home (where security concerns do not prohibit such a transfer), and other incentives suggested by prisoners and approved by the BOP Director. While prisoners not testing as low-risk will not be eligible to move to pre-release custody, these other incentives are important alternatives to motivate high-risk incarcerated men and women to participate in the programs that will help set them on a new course to live as good citizens inside prison, and for the vast majority who will one day be released, as good neighbors in our communities.

Additionally, we applaud the sentencing reform additions, which will restore more proportional sentencing enhancements and allow for greater judicial flexibility in certain limited cases. These changes permit defendants to be sentenced in a manner that is more consistent with their culpability and role in drug crime. A movement to reevaluate sentence structures and increase alternatives to incarceration have already been tested with great success in states such as Texas, Georgia, Ohio, Kentucky, Mississippi, North Carolina, and Oklahoma, among others. Texas, which is often cited as a pioneer state in this effort, experienced significant reductions in crime while avoiding more than \$2 billion in taxpayer costs that would have been incurred had Texas simply constructed more than 17,000 prison beds that a 2007 projection indicated would be

³ Prison Fellowship (2018). "Earned Time and Good Time Credits: Comparing Maximum Reductions Available." (https://www.prisonfellowship.org/wp-content/uploads/2018/04/GoodTimeChartUS_Apr27_v7.pdf?_ga=2.141500340.747471462.1542233045-489883889.1528730652&_gac=1.178398480.1540664790.EA1aIQobChMI4eDbwJ-n3gIV0VqGCh0CVwNOEAAAYASAAEgJH-fD_BwE).

⁴ AR Code §12-29-201.

needed. The number of parolees convicted of a new crime declined 21.6 percent from 2006 to 2008, despite an increase in the number of parolees⁵ and ten years later, Texas has closed eight adult facilities and the crime rate is the lowest it has been in decades. Contrary to some skeptics, these state reforms have not been a political liability, but rather, have bolstered our credibility with constituents, who understand the failings of the status quo.

Each year about 40,000 federal prisoners are released, but about half will be arrested again within eight years. We owe it to the communities most affected by crime and incarceration to hold people accountable, while embracing a smart on rehabilitation approach. Savings from the First Step Act reforms will be reinvested in local law enforcement efforts and recidivism-reduction programs. This reinvestment will advance our mutual success in improving public safety.

We believe the reforms proposed in the First Step Act will improve the effectiveness of our federal prisons and thus, public safety in all states across the country. The First Step Act is a significant step to align the federal system with the success already experienced in the laboratories of democracy. We urge the swift passage of this legislation by the Senate and the House.

Sincerely,

[Signatures located on following pages.]

⁵ Texas Legislative Budget Board. Statewide Criminal Justice Recidivism and Revocation Rates. Years 2007 and 2009. Available at http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/Statewide%20Criminal%20Justice%20Recidivism%20and%20Revocation%20Rates2007.pdf and http://www.lbb.state.tx.us/Documents/Publications/Policy_Report/Statewide%20Criminal%20Justice%20Recidivism%20and%20Revocation%20Rates2009.pdf.

Representative Alex Andrade
Florida

Senator Dennis Baxley
Florida

Senator Rob Bradley
Florida

Senator Jeff Brandes
Florida

Senator Doug Broxon
Florida

Representative Cord Byrd
Florida

Former Representative Dean Cannon
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Former Representative Steve Crisafulli
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Representative Byron Donalds
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Representative Jason Fischer
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Former Senator Andy Gardiner
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Former Senator Mike Haridopolis
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Kevin Calvey, former Oklahoma state
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