



August 14, 2018

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

The Honorable Chuck Schumer
Senate Minority Leader
322 Hart Senate Office Building
Washington, DC 20510

**Formerly Incarcerated Advocates, Leaders and Families Call for Comprehensive, Bipartisan,
Justice System Reform**

Dear Majority Leader McConnell and Leader Schumer:

On behalf of the 184,039 people who are currently serving time in federal prisons and the over 70 million people living with a conviction history in the United States, we urge you, as leaders in the U.S. Senate, to draw upon the bipartisan momentum that exists today for sentencing and prison reform and advance comprehensive criminal justice legislation this Congress. As those who have experienced the U.S. prison system firsthand, we know that meaningful reform includes both sentencing and prison reform – one cannot function fully or effectively without the other. We are encouraged to see several proposals before Congress that, although none are perfect, in their entirety reflect widespread bipartisan support and interest in overhauling our broken criminal justice system. It is imperative that Congress seize upon this rare, bipartisan opportunity and momentum to advance meaningful, comprehensive reform that both reduces recidivism through back end reforms and dismantles the front-end drivers of mass incarceration in this country.

As you consider how best to move forward with existing justice reform proposals, it is important to remember that while reforms to address back end drivers of our prison system are needed, in our opinion they cannot function as a substitute for front end sentencing reform. Only front-end reforms have the power to significantly stem the tide of incarceration, reduce the exorbitant cost of the prison system, restore judicial discretion, mitigate disparate impacts on communities of color, and give redress to those inside who are serving unreasonably long sentences that are disproportionate to the severity of the offense. Mandatory minimums alone contribute heavily to the dangerous and expensive problem of overcrowding in prisons across this country. In fact, one study found that time served was the largest

contributor to growth in the prison population between 1998 and 2010.ⁱ It is for this reason that our continued progress toward meeting the economic and societal challenges posed by the current system and creating a fair and more just system depends on a comprehensive approach to reform. Any approach that does not include sentencing reform will, unfortunately, be insufficient to meet the challenges we face. We are concerned that one proposal currently before congress, the FIRST STEP Act (H.R.5682/S.2795), neglects to address these sentencing issues and is therefore missing a critical component of any meaningful reform of our federal criminal justice system. Although the bill addresses some of the problems plaguing the federal prison system,ⁱⁱ implementation of these positive reforms will rely upon funding provided by Congress, as well as the Attorney General’s full commitment to implementing the reforms. Moreover, we remain concerned that the FIRST STEP Act misses the opportunity before us today to make meaningful, substantial reforms and may even cause unanticipated harm to communities that are justice-impacted.ⁱⁱⁱ As people who have experienced the U.S. prison system firsthand, we would caution passage of the FIRST STEP Act without first making significant improvements to the legislation, such as:

- Adding meaningful sentencing reform measures like the ones described below;
- Eliminating the deeply flawed and likely discriminatory risk assessment system for determining time credits;
- Eliminating the exclusions list, especially the immigration-related exclusions;
- Narrowing the discretion vested in the Office of the Attorney General, including removing his authority to privatize certain public functions;
- Making the earned time credits *real* time off a sentence;
- Directing incentives towards prisoners with “high” and “medium” risk of recidivating, including providing them with equal if not greater opportunity to participate in rehabilitative programs and to cash in on earned time credits as prisoners deemed “low risk;”
- Providing guarantees that funding will appropriated at a level necessary for implementation of the reforms; and
- Confirming the human and fiscal impact of the legislation through an analysis from the Congressional Budget Office and U.S. Sentencing Commission before moving forward with the legislation.

At the same time, another proposal before Congress, the Sentencing Reform and Corrections Act (SRCA, S. 1917), includes a combination of sentencing and prison pieces that are critical to achieving meaningful change for those who are incarcerated. Although the bill is not perfect, it would make significant improvements to the federal prison system^{iv} and includes several front-end sentencing provisions that are fundamental to any meaningful reform of our federal criminal justice system, including:

- Reducing and restricting enhanced sentencing for prior drug felonies (i.e. reducing the “three-strikes” mandatory life provision to 25 years and the “two strikes” mandatory 20 year provision to 15 years);^v
- Broadening the existing safety valve to increase judicial discretion regarding the sentencing of individuals for low-level drug offenses;^{vi}

- Limiting the application of the 10-year mandatory minimum penalty;^{vii}
- Clarifying 18 U.S.C. § 924(c) (regarding second and subsequent convictions for certain offenses involving possession of a firearm);^{viii}
- Making the Fair Sentencing Act of 2010 retroactive and applying many of the sentencing provisions of the bill retroactively;^{ix}
- Making parole available for juveniles who committed an offense prior to the age of 18;^x and
- Ensuring that the changes to law remain retroactive where applicable under SRCA (i.e. allowing individuals to be resentenced and benefit from the change in the law.

Were SRCA enacted, roughly 7,000 prisoners would be impacted by the retroactive provisions, 2,469 prisoners would be impacted by the prospective provisions, and an astonishing 75,133 prisoners would be eligible for the recidivism reduction programming and productive activities.^{xi} Moreover, the Congressional Budget Office determined that a previous iteration of the bill, S. 2123, would decrease the cost of incarceration and would reduce Department of Justice discretionary costs by \$318 million over a five-year period and \$722 million over a ten-year period.^{xii} Passing this legislation could do a great deal to reunite families, reintroduce citizens into the workforce, and ease our bloated and expensive prison system. From the perspective of those who served time within the prison system, any legislation that moves forward, must – *at the very least* – have sentencing reform provisions similar to those within SRCA described above.

This Congress, under your leadership, is in a unique position to significantly improve our criminal justice system, to break the cycle of mass incarceration and ease the hardships that thousands are enduring, while also implementing a more just and fiscally responsible system for future generations. It is absolutely critical to those impacted by our criminal justice system that any legislation that advances has a meaningful impact on those entering *and* those currently within the prison system. We call upon you, in your leadership capacity, to seize upon the recent, bipartisan momentum in support of these issues and pass legislation that includes both prison and sentencing reforms. Republicans and Democrats alike, as well as libertarians, faith-based groups, justice-impacted people, and civil rights advocates, all have been calling for more than a first step. The time is now to pass comprehensive, bipartisan criminal justice reform. Congress must not pass up this opportunity to do something truly meaningful.

If you have any questions, please feel free to Andrea James, Executive Director, The National Council for Incarcerated and Formerly Incarcerated Women and Girls at ajames@thecouncil.us. Thank you for your consideration, and we look forward to working with you in the future on this critical issue.

Sincerely,

1. Adrian Bernard, *New Destiny Ministries*
2. Andrea James, *The National Council For Incarcerated and Formerly Incarcerated Women and Girls*
3. Anisah A. Sabur, *Women in Prison Project NY; NYS Coalition for Women Prisoners*
4. Anthony Dixon, *When People Work*
5. Brandi Williams
6. Brittany Stonesifer, *Legal Services for Prisoners with Children*

7. Cammie Carl, *Village of Hope Seattle/Black Prisoners' Caucus*
8. Carol Soto, *Youth Arts New York*
9. Carole Eady, *Women on the Rise Telling HerStory (WORTH)*
10. Chanel Rhymes, *National Council For Incarcerated and Formerly Incarcerated Women and Girls*
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12. D'Marria Monday, *National Council For Incarcerated and Formerly Incarcerated Women and Girls*
13. Danny Roberts, *Project AIM (Aid to Incarcerated Mothers)*
14. Dawn Harrington, *Free Hearts*
15. Donna Hylton, *A Little Piece Of Light, INC*
16. Eddie Ellis, *One by 1 Inc.*
17. Edith Alexander, *Boston Municipal Court/Roxbury Division*
18. Ellen Barry, *Restorative Justice for Oakland Youth, Founder, Legal Services for Prisoners with Children; MacArthur Fellow (1998); Soros Justice Fellow (1997)*
19. Evie Litwok, *Witness to Mass Incarceration*
20. Gail T. Smith, *Children and Families of the Incarcerated*
21. Gillian Van De Cruize, *National Council For Incarcerated and Formerly Incarcerated Women and Girls*
22. Gina Clayton, *Essie Justice Group*
23. Jane Byrne, *National Council For Incarcerated and Formerly Incarcerated Women and Girls*
24. Jawharrah Bahar, *Free Hearts*
25. Jessica Means, *Numbers 2 Names*
26. Joli Sparkman Bayron, *Bethany House Ministries*
27. Julia Arroyo, *Young Women's Freedom Center*
28. Justine Moore, *National Council For Incarcerated and Formerly Incarcerated Women and Girls*
29. Kathy Boudin, *Release Aging People from Prison; National Council For Incarcerated and Formerly Incarcerated Women and Girls*
30. Kathy Morse, *CloseRosies PAC Co-Founder, participant in "Rikers: An American Jail" from Bill Moyers*
31. Keith Boone, *Starting Over*
32. Kiet Bordley
33. Kristie Puckett, *All of Us None Charlotte Chapter*
34. LaTonya Tate, *National Council For Incarcerated and Formerly Incarcerated Women and Girls*
35. Laura Whitehorn, *Release Aging People in Prison/RAPP (rappcampaign.com)*
36. Liana Williams
37. Lillie A. Estes, *ALO Community Strategy*
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39. Margaret Drew, *UMass Law*
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43. Meghann Perry, *Families for Justice as Healing; National Council For Incarcerated and Formerly Incarcerated Women and Girls*
44. Mimi Tarrasch, *Family @ Children's Services*
45. Michelle Woodson, Esq., *Think Dignity*
46. Mujahid Farid, *Release Aging People in Prison (RAPP); Rise & Shine Community Services, Inc.*
47. Noe Gudino, *All of Us or None*
48. Norma Boothe-Dixon, *CNC Care Center*

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51. Patricia Williams, *National Council For Incarcerated and Formerly Incarcerated Women and Girls; CAN-DO Foundation*
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53. Phyllis Hardy, *National Council For Incarcerated and Formerly Incarcerated Women and Girls/New Reentry Council, Nash Edgecomb, Wilson Counties, N.C., and New Reentry Council for North Carolina*
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55. Robin McGinty, PhD candidate *The Graduate Center/CUNY*
56. Roy Waterman, *The Jewish Council for Public Affairs*
57. Sabina Crocette, Policy Manager *Legal Services for Prisoners with Children*
58. Shajuanda Tate, *FEPPS.org*
59. Shanita Horton, *FAMM*
60. Sharae Sanchez
61. Sheila Maiben, *Lynn Shelter Association Board*
62. Sheri Costa, *A. L. Costa Community Development Center*
63. Shonda Baker
64. Stacey Borden, *National Council For Incarcerated and Formerly Incarcerated Women and Girls*
65. Starlene Patterson, *National Council For Incarcerated and Formerly Incarcerated Women and Girls*
66. Susan Mason, *What's Next Washington*
67. Susan Rosenberg
68. Susanna Mage
69. Teresa Hodge, *Mission: Launch, Inc.*
70. Theresa Williams-Godfrey, *Women on the Rise*
71. Tiawana Brown, *Beauty after the Bars*
72. Tiheba Bain, *National Council For Incarcerated and Formerly Incarcerated Women and Girls*
73. Tonja Honsey, *American Indian Prison Project; MN Prison Doula Project*
74. Tracy Wardy, *Can-Do Clemency and National Council For Incarcerated and Formerly Incarcerated Women and Girls*
75. Victoria B. Williams, *Families for Justice as Healing*
76. Virginia Douglas, *National Council For Incarcerated and Formerly Incarcerated Women and Girls*
77. Vivian Nixon, *College and Community Fellowship*
78. Vonunette Allen, *Maryland Justice Project*
79. Vonya Quarles, *Starting Over, Inc.*
80. Wendy Golenbock, *The Prison Consultants*

ⁱ See LaVigne, Nancy & Samuels, Julie. "The Growth & Increasing Cost of the Federal Prison System: Drivers and Potential Solutions." *Urban Institute*. December 11, 2012. Pg. 5.

<https://www.urban.org/research/publication/growth-increasing-cost-federal-prison-system-drivers-and-potential-solutions>.

ⁱⁱ See, e.g., prohibitions on the shackling of pregnant women, a retroactive "good time" fix, reforms to the federal compassionate and elderly release programs, and an audit of the program several years after its implementation.

ⁱⁱⁱ See "Vote No on First Step Act." *The Leadership Conference on Civil and Human Rights*. May 21, 2018.

http://civilrightsdocs.info/pdf/policy/letters/2018/Short_Oppose%20FIRST%20STEP%20Act_5.21.18_FINAL.pdf

^{iv} See, e.g., facilitates smooth transition to life after release by establishing a recidivism reduction program; expands prerelease and reentry programs; creates an earned time credit system for early release; establishes an option of

prerelease custody for certain prisoners; limits the use of solitary confinement for juveniles; and includes of a compassionate release provision.

^v Sentencing Reform and Corrections Act of 2017, S. 1917, 115th Cong. § 101 (2017).

^{vi} S. 1917 § 102.

^{vii} S. 1917 § 103.

^{viii} S. 1917 § 104.

^{ix} S. 1917 § 105.

^x See generally Sentencing Reform and Corrections Act of 2017, S. 1917, 115th Cong. (2017).

<https://www.congress.gov/bill/115th-congress/senate-bill/1917/text>.

^{xi} See “Impact Assessment for CBO.” *U.S. Sentencing Commission*. Mar. 19, 2018.

https://www.ussc.gov/sites/default/files/pdf/research-and-publications/prison-and-sentencing-impact-assessments/March_2018_Impact_Analysis_for_CBO.pdf.

^{xii} See “S. 2123 Sentencing Reform and Corrections Act of 2015.” *Congressional Budget Office*. May 17, 2016.

<https://www.cbo.gov/sites/default/files/114th-congress-2015-2016/costestimate/s2123-r.pdf>.