



RESEARCH AND ADVOCACY FOR REFORM

The Honorable Paul D. Ryan
U.S. House of Representatives
Washington, DC 20515

The Honorable Mitch McConnell
U.S. Senate
Washington, DC 20510

The Honorable Nancy Pelosi
U.S. House of Representatives
Washington, DC 20515

The Honorable Charles E. Schumer
U.S. Senate
Washington, DC 20510

May 21, 2018

Re: FIRST STEP Act, H.R. 5682, falls far short of meaningful criminal justice reform

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

As Congress prepares to consider the FIRST STEP Act, I write to express The Sentencing Project's significant concerns regarding the bill's deficiencies in addressing the overcrowding, staffing and programming crisis within the Bureau of Prisons (BOP). Reform of the federal prison and sentencing system is long overdue and The Sentencing Project has been at the forefront of promoting comprehensive recommendations to ensure a more humane, fair and proportional system for more than two decades.

Unfortunately, H.R. 5683 falls short of these objectives in two key areas. First, it would divert limited resources for programming by requiring a complex risk assessment process that would primarily benefit people deemed at a low or minimal risk of recidivating. Second, without provisions in the bill to reduce the excessive sentencing produced by mandatory minimums for drug offenses, overcrowding will persist and thereby divert resources from programs to reduce recidivism.

The federal prison system currently operates at 14 percent above capacity, and at higher rates at high and medium security institutions, 24 percent and 18 percent respectively.¹ Along with an "inmate to correctional officer" ratio among the highest in the country at 8.9 to 1;² prison safety concerns are at critical levels. Indeed, the rate for some types of assaults in federal prisons has steadily increased since 2014.³ In order to successfully reform the federal prison system, including improving conditions of confinement in areas such as medical and mental health care, and to comprehensively rehabilitate instead of warehouse the people confined within, Congress

¹ *Program Fact Sheet*, Federal Bureau of Prisons, (2018), available at: https://www.bop.gov/about/statistics/docs/program_fact_sheet_20180328.pdf

² *Ibid.*

³ Office of Research, *Adjudicated Assaults recorded in Sentry Chronological Disciplinary Record*, (2018), available at: https://www.bop.gov/resources/research_projects/assaults/archive/2018-Apr-code224-inmates.pdf

should adopt policies to reduce the population, invest in correctional and programming staff, and fully fund programming for all incarcerated people.

H.R. 5682 would authorize only \$50 million per year to carry out the bill's mandates to create a risk assessment tool to determine earned time credit eligibility, and expand programming and community corrections capacity. While The Sentencing Project supports the bill sponsors' stated intentions to reform prisons, their promises of change ring hollow. For example, the bill excludes thousands of people in prison from benefiting from the programming incentives that allow for earlier transition into community corrections. By doing so it conflicts with research that demonstrates that prison programming and associated incentives are most cost-effective when provided to the highest risk groups.

Current authorization levels will only scratch the surface in overcoming the huge deficit of programming at the BOP. Indeed, the waiting list for the BOP's literacy program alone is 16,000.⁴ Moreover, because of overcrowding and staff shortages, many programming staff are regularly required to augment correctional officer duties, resulting in fewer programming opportunities.⁵ This staffing shortage may partly explain why the number of people completing their GED dropped by 59 percent between FY2016 and FY2017.⁶ Congress must take more determined and thoughtful steps to change this dire situation.

The Sentencing Project is pleased by the growing bipartisan consensus among lawmakers to prioritize change in the nation's criminal justice system. We will continue to be a part of this conversation and look forward to strengthening effective bipartisan reforms to achieve shared goals of justice, fairness and safety.

For questions, please contact Kara Gotsch, The Sentencing Project's Director of Strategic Initiatives, at kgotsch@sentencingproject.org or 202-628-0871.

Sincerely,



Marc Mauer
Executive Director

Cc: U.S. House of Representatives and Senate Judiciary Committee

⁴ *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>

⁵ Johnson, K. (2018, Feb. 13). As federal prisons run low on guards, nurses and cooks are filling in. *USA Today*, available at: <https://www.usatoday.com/story/news/politics/2018/02/13/ill-equipped-and-inexperienced-hundreds-civilian-staffers-assigned-guard-duties-federal-prison-secur/316616002/>

⁶ Program Fact Sheet, (2018)