



The Honorable Mitch McConnell
United States Senate
Washington, DC 20510

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

December 14, 2018

Re: Pass the First Step Act without Cotton - Kennedy amendments

Dear Majority Leader McConnell and Minority Leader Schumer:

Thank you for moving forward on consideration of the First Step Act in the U.S. Senate. The Sentencing Project urges Congress to move quickly to pass the First Step Act to help create a safer, more equitable and fairer justice system. We write today to urge the Senate to oppose amendment #4109 (Kennedy-Cotton Div. I – III), introduced by Senators Tom Cotton and John Kennedy, and designed to derail the legislation and weaken its rehabilitation incentive program.

Div. I of the amendment would require the Bureau of Prisons (BOP) to notify victims of the release date for the person in custody associated with their offense. It would also require BOP to make rearrest data and criminal records for all released prisoners publicly available. A mandatory notification requirement would risk retraumatizing victims. Current law permits a victim to decide whether or not they wish to receive a notification of release. Mandating notification to victims could trigger a traumatic experience for a victim who has already moved on. In addition, broad tracking and publication of past and future criminal convictions for all people in federal prisons would be exceedingly burdensome, violate privacy standards, and thereby compromise the reentry process. If victims or other interested parties want this information for legitimate reasons, they may obtain it under current law.

Div. II of the amendment would require prison wardens be responsible for victim notifications of release, and solicit and review victim statements prior to a person's transition to community corrections. This added responsibility on prison wardens is burdensome for a system already operating with overcrowding and staffing shortages; and it fails to account for current law that already permits victims to receive notification of release and submit statements before release.

Div. III of the amendment creates new exclusions to the earned-time credit program for people who successfully participate in rehabilitative programming in federal prisons. The earned time credits are not time off a person's sentence, instead they allow an individual to transition earlier to community corrections which includes half-way houses, supervised release and home confinement. The only people qualified to use earned-time credits must be classified as low or minimum risk to recidivate, or determined by the warden to not be a danger to public safety, and they must have successfully completed many hours of rehabilitative programming. Many exceptions and exclusions to earned time credits are already in place in the First Step Act and the addition of this new list is excessive and unnecessary.

The First Step Act could bring important long-awaited change to the federal prison system. The amendments proposed by Senators Cotton and Kennedy highlight a limited understanding of BOP policy and law regarding victims' rights. The Sentencing Project urges senators to oppose all three of these amendments to the First Step Act.

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

Sincerely,

A handwritten signature in black ink that reads "Marc Mauer". The signature is written in a cursive, slightly slanted style.

Marc Mauer
Executive Director

Cc: U.S. Senate