



The Honorable Mitch McConnell
United States Senate
Washington, DC 20510

The Honorable Paul D. Ryan
United States House of Representatives
Washington, DC 20515

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

The Honorable Nancy Pelosi
United States House of Representatives
Washington, DC 20515

November 28, 2018

Re: Pass the First Step Act (S.3649)

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

Broad bipartisan concerns about the status of the federal criminal justice system have been growing in Washington, DC for many years. The Sentencing Project endorsed the last two major criminal justice reform laws passed by Congress – the Fair Sentencing Act (2010) and the Second Chance Act (2008) – but many years have since passed and an overcrowding and staffing crisis at the federal Bureau of Prisons requires immediate attention. The Sentencing Project urges Congress to move quickly to pass the sentencing reform measures in the First Step Act, as introduced by Senators Charles Grassley and Richard Durbin, to help create a safer, more equitable and fairer justice system.

The federal prison system is the largest in the country. Gone unchecked, the federal government’s harsh sentencing structure has been frequently applied to convictions for nonviolent offenses, and its underfunded system for rehabilitation has exacerbated the fiscal and humanitarian burdens plaguing the prison system.

About half of the federal prison population is serving time for a drug offense, including many people who are in the lower levels of the drug trade, were not caught with weapons or have limited criminal histories. Indeed, 54% of individuals subject to a federal drug mandatory minimum in 2016 were at or below the level of “street-level dealers,” which is defined as selling less than one ounce of drugs.¹ Further, no weapon was involved in 82% of federal drug cases in 2016.²

These findings demonstrate the need for a more balanced sentencing response to drug crime that better accounts for defendants’ culpability and the seriousness of their behavior. The sentencing provisions in the First Step Act, while modest, will address the imbalance by allowing judges greater flexibility in sentencing below a mandatory minimum in low-level cases and by curbing outsized sentences for

¹ United States Sentencing Commission (2017). Mandatory Minimum Penalties for Drug Offenses in the Federal Criminal Justice System. Figure 28, pages 45.

² United States Sentencing Commission (2017). 2016 Sourcebook of Federal Sentencing Statistics. Table 39: Weapon Involvement of Drug Offenders in Each Drug Type, Fiscal Year 2016.

nonviolent and non-serious drug crimes. Unfortunately, most people in prison will be excluded from seeking relief from the excesses of these mandatory minimum sentences, except those serving sentences for crack cocaine prior to passage of the Fair Sentencing Act. The Sentencing Project believes excluding people currently serving sentences that would be amended by the bill's reforms to enhancements for prior drug offenses and 924(c) stacking contradicts the spirit of this well-intentioned bill and is a cruel and misguided outcome of negotiations.

Despite these shortcomings, we hope the Senate will vote soon to pass S. 3649 and that the House will quickly follow in its approval to advance progress towards the bipartisan 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,

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. Congress