

One Year After the First Step Act: Mixed Outcomes

Congress passed and President Donald Trump signed the First Step Act one year ago on December 21, 2018, to limit mandatory minimums for low-level drug offenses, provide retroactive sentence reductions to people imprisoned under the 100 to 1 crack cocaine disparity, and expand rehabilitation in federal prisons. Implementation of the new law has been mixed.

While sentence reductions have been approved by judges, the Department of Justice (DOJ) has attempted to block hundreds of eligible beneficiaries. There has also been a problematic rollout of the risk and needs assessment tool to determine earned-time credit eligibility and limited programming for rehabilitation.

Since 2013, the federal prison population has declined by almost 43,000 people because of reductions to the federal sentencing guidelines for drug offenses promulgated by the U.S. Sentencing Commission and changes to mandatory minimum sentences for crack cocaine offenses enacted by Congress in 2010. Full implementation and robust funding for the First Step Act can contribute to further reducing the federal prison population, but Congress and the Department of Justice have more work to do to end overcrowding, ensure fairness in sentencing and improve prison conditions.

On the one-year anniversary of the First Step Act, The Sentencing Project applauds the bill's achievements but cautions that additional reforms are necessary if we are to see a substantial long-term population reduction.

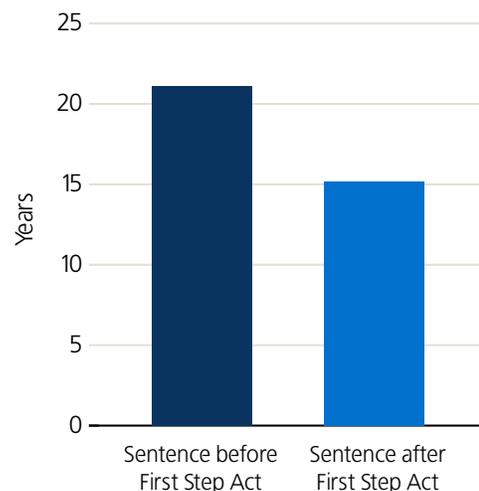
THE FIRST STEP ACT'S ACCOMPLISHMENTS THUS FAR INCLUDE:

- Retroactive application of the Fair Sentencing Act, which reduced the 100 to 1 crack cocaine sentencing disparity in 2010, has benefited

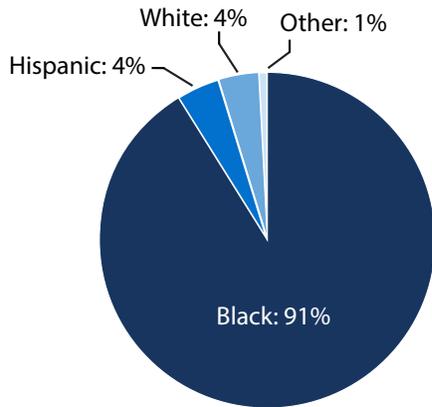
over 2,000 people with sentence reductions that average nearly 6 years. African Americans comprise 91% of those receiving reductions.

- 342 people have been approved for the elderly home confinement pilot program.
- 107 people have received "compassionate release" sentence reductions.
- Expansion of good-time credits implemented in July led to the release of approximately 3,000 in federal prisons; one-third, however, were transferred to the custody of other jurisdictions because of existing detainers.

Average Sentence Reduction Due to Crack Cocaine Resentencing Provision of the First Step Act



Demographic Characteristics of People Resentenced Under the First Step Act Retroactivity Provision



CONTINUED BIPARTISAN INTEREST IN CRIMINAL JUSTICE REFORM SHOULD ADVANCE THESE NEXT STEPS IN 2020:

- First Step Act’s authorization of \$75 million per year – approximately \$400 per prisoner – falls far short of what is necessary to address the rehabilitative needs of people in prison. In July, the DOJ released data that dramatically highlighted the deficit in federal prison programming. Among the 223,000 people released from BOP custody from 2009 to 2015, 49% had not completed any programming while in custody and 57% of people in need of drug treatment had received no services. Congress must substantially increase appropriations levels for federal prison programming in order to ensure the needs of people in prison are met and that the benefits of the earned-time credit program are fully realized.

- Bipartisan retroactive sentencing provisions left out of the First Step Act could reduce incarceration for an additional 4,000 people.
- The opioid crisis has triggered a return to the War on Drugs and increased interest at DOJ and in Congress to expose more people to harsh mandatory minimum sentences for low-level cases involving fentanyl analogues. Congress should instead end mandatory minimums for drug offenses and fund public health approaches to curb overdoses and substance use disorders.
- The Second Look Act provides an appropriate next step in criminal justice reform by creating a review process for excessive federal sentences that considers age and reduced likelihood of recidivism in release decisions.

The First Step Act has a broad constituency of supporters that stretches from the White House to prison corridors. Many years of advocacy, negotiations and compromise resulted in its passage in 2018, and it has undoubtedly helped many people. However, it will not provide the systemic change necessary to undue the harm caused by decades of mass incarceration at the federal level fueled by mandatory minimums and federal prosecutors’ focus on extreme punishments for street-level crime. It is long overdue to take the next steps on the road to reform.