



DUE PROCESS INSTITUTE

The Due Process Institute Endorses The Prohibiting Punishment of Acquitted Conduct Act of 2019 (S. 2566)

“Acquitted conduct sentencing” is a practice that allows federal judges to sentence defendants based on charges for which a jury found them to be not guilty. It is a flagrant violation of numerous due process rights enumerated in the Constitution. Jurists across the ideological spectrum—from the late Justice Scalia to Justice Ginsburg—have condemned the practice for many years, but the Supreme Court has repeatedly failed to accept an appeal that would review the constitutionality of the practice. Abolishing acquitted conduct sentencing is a top priority of the Due Process Institute and we urge legislators on both sides of the aisle to bring this unfair and unconstitutional practice to an end before more Americans are sentenced to decades in a prison cell on the basis of unproven allegations that juries have heard and purposefully rejected.

The bipartisan *Prohibiting Punishment of Acquitted Conduct Act of 2019* introduced by **Senators Chuck Grassley (R-IA), Dick Durbin (D-IL), Patrick Leahy (D-VT), Thom Tillis (R-NC), Cory Booker (D-NJ) and Mike Lee (R-UT)** provides a necessary and simple legislative remedy by:

- Amending 18 U.S.C. § 3661 to preclude a court of the United States from considering, except for purposes of mitigating a sentence, acquitted conduct at sentencing; and
 - Defining “acquitted conduct” to include acts for which a person was criminally charged and adjudicated not guilty after trial in a federal, state, tribal, or juvenile court, or acts underlying a criminal charge or juvenile information dismissed upon a motion for acquittal.
- **Acquitted conduct sentencing punishes defendants for charges the government failed to prove to a jury.** The presumption of innocence until guilt is proven beyond a reasonable doubt is fundamental to the American criminal justice system. Yet, acquitted conduct sentencing undermines this core presumption—incentivizing prosecutors to pursue flimsy criminal charges at trial and allowing judges to sentence individuals to prison for years on unproven allegations.
 - **Acquitted conduct sentencing disregards jury acquittals, thus ignoring the jury’s historic and democratic role in our criminal justice system.** A not guilty verdict should be insulated from judicial override in order to retain the Constitution’s intentional and crucial independent procedural checks on government power.

Every defendant deserves an individualized judicial determination of appropriate punishment for crimes which he or she has been duly convicted. But judges should not ignore a jury’s findings to punish defendants for conduct the government alleged but could not prove beyond a reasonable doubt. **This bipartisan bill is a much-needed restoration of core procedural due process rights in the criminal legal system and we urge legislators on both sides of the aisle to immediately support this crucial effort.**

For more information, contact Shana O’Toole (Shana@idueprocess.org) and Joe Luppino-Esposito (JoeLE@idueprocess.org). #JuriesDecide Campaign

The Due Process Institute is a bipartisan nonprofit that works to preserve principles of fairness in the criminal legal system.