



# UNITED STATES SENATE

## **DURBIN, GRASSLEY INTRODUCE BIPARTISAN CRIMINAL JUSTICE REFORM BILL**

WASHINGTON – U.S. Senators Dick Durbin (D-IL) and Chuck Grassley (R-IA), the lead sponsors of the landmark *First Step Act*, today introduced the bipartisan *Prohibiting Punishment of Acquitted Conduct Act of 2019*, which would end the unjust practice of judges increasing sentences based on conduct for which a defendant has been acquitted by a jury.

**“Under our Constitution, defendants can only be convicted of a crime if a jury of their peers finds they are guilty beyond a reasonable doubt. However, federal law inexplicably allows judges to override a jury verdict of ‘not guilty’ by sentencing defendants for acquitted conduct. This practice is inconsistent with the Constitution’s guarantees of due process and the right to a jury trial, and our bipartisan bill would make it clear that this unjust practice is prohibited under federal law,”** Durbin said.

**“If any American is acquitted of charges by a jury of their peers, then some sentencing judge shouldn’t be able to find them guilty anyway and add to their punishment. A bedrock principle of our criminal justice system is that defendants are innocent until proven guilty. The use of acquitted conduct in sentencing punishes people for what they haven’t been convicted of. That’s not acceptable and it’s not American. Back in 2014, Justices Scalia, Thomas and Ginsburg all agreed, but weren’t able to hear the case and stop the practice. With this bill we will finally prohibit under federal law what many already find patently unconstitutional,”** Grassley said.

Along with Durbin and Grassley, the legislation is also cosponsored by Senators Patrick Leahy (D-VT), Thom Tillis (R-NC), Cory Booker (D-NJ), and Mike Lee (R-UT).

Our criminal justice system rests on the Fifth and Sixth Amendment guarantees of due process and the right to a jury trial for the criminally accused. These principles require the government to prove a defendant’s guilt beyond a reasonable doubt to a jury. Under the Constitution, defendants may be convicted only for conduct proven beyond a reasonable doubt. However, at sentencing, courts may enhance sentences if they find, by a preponderance of the evidence, that a defendant committed other crimes. The difference in those standards of proof means that a sentencing court can effectively nullify a jury’s verdict by considering acquitted conduct.

One prominent example of this unjust practice is the 2005 case of Antwan Ball, who, along with his co-defendants, was convicted of distributing a few grams of crack cocaine, but acquitted of conspiring to distribute drugs. Despite this, the sentencing judge held Mr. Ball responsible for the conspiracy, nearly quadrupling his sentence to 19 years. Mr. Ball asked the Supreme Court to consider his case, but the Court denied the petition for the writ of certiorari. Justice Scalia wrote a blistering dissent, joined by Justices Ginsburg and Thomas, noting that “not only did no jury convict these defendants of the offense the sentencing judge thought them guilty of, but a jury acquitted them of that offense.” Scalia decried the practice, writing that, “this has gone on long enough.”

The *Prohibiting Punishment of Acquitted Conduct Act* would end this practice 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.

The *Prohibiting Punishment of Acquitted Conduct Act* is endorsed by the following organizations: #Cut50; ALEC Action; Aleph Institute; American Bar Association; American Civil Liberties Union; American Conservative Union; Americans for Prosperity; Americans for Tax Reform; Digital Liberty; Drug Policy Alliance; Due Process Institute; Fair Trials; Faith and Freedom Coalition; Families Against Mandatory Minimums (FAMM); Federal Public and Community Defenders; Freedomworks; Innocence Project; Koch Industries; National Association of Criminal Defense Lawyers; National Legal Aid and Defender Association; Prison Fellowship; R Street Institute; Right on Crime; The Sentencing Project; Texas Public Policy Foundation; and Tzedek Association.