



# DUE PROCESS

INSTITUTE

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

The Honorable Mitch McConnell  
United States Senate  
Washington, DC 20510

Dear Majority Leader Schumer and Minority Leader McConnell:

I write on behalf of Due Process Institute, a bipartisan nonprofit that works to honor, preserve, and restore principles of fairness in the criminal legal system. I urge you to schedule consideration of three bipartisan bills, which have passed out of committee, that will improve the fairness and efficiency of federal sentencing and detention policies: the First Step Implementation Act of 2021 (S. 1014), the COVID–19 Safer Detention Act of 2021 (S. 312), and the Prohibiting Punishment of Acquitted Conduct Act of 2021 (S. 601).

In December 2018, Due Process Institute, along with dozens of organizations across the ideological spectrum, supported the First Step Act and tirelessly worked for its passage. This landmark legislation included prison reforms designed to reduce recidivism, modest sentencing reforms, reauthorization of the Second Chance Act, and other provisions designed to enhance public safety while making our criminal legal system more just. Nearly three years later, we are hopeful that Congress will come together in bipartisan fashion to prioritize criminal justice reform legislation *this* year.

The First Step Implementation Act builds on the success of the First Step Act by making modest changes to federal sentencing laws, such as broadening judicial discretion to potentially sentence people below otherwise applicable mandatory minimums; retroactively applying certain sentencing reforms in the First Step Act to people who were sentenced before it was passed; and allowing judges to possibly reduce sentences for some people convicted of crimes they committed as minors.

The COVID–19 Safer Detention Act makes improvements to the compassionate release and home confinement release programs, including providing judicial review of the Bureau of Prisons’ determinations of eligibility for release on elderly home confinement; giving people “good time” credit towards their eligibility for the Elderly Home Detention Pilot Program (as was intended in the First Step Act); and clarifying eligibility for relief under certain other First Step Act reforms to compassionate release and elderly home confinement.

The Prohibiting Punishment of Acquitted Conduct Act makes federal sentencing fairer and vindicates the right to a jury trial by limiting the use of acquitted conduct (charges for which a

defendant was found “not guilty” by a jury) to increase a defendant’s sentence on a separate unrelated offense.

Although these reforms may be modest when weighed against the full scope of the federal criminal legal system, the impact on the beneficiaries of this reforms will be meaningful.

For people awaiting sentencing now, delaying passage of the First Step Implementation Act or the Prohibiting Punishment of Acquitted Conduct Act could lead to their being sentenced under current law thereby unnecessarily receiving a much longer term of imprisonment as a result.

For people currently in prison who will be eligible for release or re-sentencing upon passage of the First Step Implementation Act or the Safer Detention Act, each day that passage is delayed could mean another day needlessly spent in federal prison. For applicants for re-sentencing, this delay will mean that they must wait longer to return to their community and begin supporting their family, reuniting with their children, finding employment, and otherwise rebuilding their lives. For applicants for compassionate release, this delay could mean that they miss the chance to spend their remaining limited time with their loved ones—and instead die in prison.

Our fellow Americans are being left to languish in federal prison long past the point of any arguable penological benefit, and they cannot be helped by outside actors; only the federal government can release them. The sooner Congress passes these bills, the sooner the other branches can begin to execute these reforms. Accordingly, I urge you to prioritize these bills for consideration by the whole Senate.

Sincerely,

Jason Pye  
Director, Rule of Law Initiatives  
Due Process Institute

Cc: The Honorable Dick Durbin  
The Honorable Chuck Grassley