



POLICY BRIEF: FIRST STEP Act and Sentencing Reform and Corrections Act

What You Need to Know

JustLeadershipUSA (JLUSA) **continues to oppose** the FIRST STEP Act (S. 3649). The recent introduction of a new bill that includes sentencing reform provisions from the Sentencing Reform and Corrections Act does not rectify or address the numerous harmful provisions still included in the bill. We urge members of the Senate to rigorously review and reject components of this compromise bill because of the negative impacts it will have, driven in large part by its **harmful policies** that will lead to **devastating unintended consequences**. This country's criminal legal system harms people of all racial and ethnic backgrounds and economic classes, and it disproportionately harms Black and brown people and immigrants. This bill does not meaningfully address or eradicate that harm, and it is not proportionate to the strength and sacrifice of the directly impacted people who have built a movement to do just that.

The fact that this bill may yet become law represents the short-sighted manner in which criminal justice reform is often debated: we are forced to choose between an incremental step or the unacceptable status quo. We demand a third option. **We demand that elected officials reckon with the legacy and reality of the US criminal legal system and pass bold, transformative reforms that will truly move us closer to our goal of #halfby2030.** This legislation, that includes [electronic monitoring](#), [risk assessment instruments](#), and charge-based exclusions, will never allow us to reach this goal.

Michelle Alexander unequivocally stated in her [New York Times Op-Ed](#), that e-carceration and risk assessment instruments would usher in the newest era of Jim Crow practices. The First Step Act opens the door wide open for the federal government to use these tools to expand mass supervision into communities across the country. JLUSA believes that creating a carceral system reliant on the utilization of electronic monitoring and risk assessments will inflict further harm on directly impacted people.

A century ago, Southern legislators created Jim Crow laws to contain and control Black people in the wake of slavery. In the 1960s [after years of nationwide resistance against oppression](#), Civil Rights leaders succeeded in securing the Civil Rights Act of 1964 and Voting Rights Acts of 1965 to curb structural and institutional racism impacting Black and brown people. Not a year later however the Law Enforcement Assistance Act of 1965 was passed and the Moynihan Report published which provided the rationale for over-policing and perpetuated racist stereotypes of Black criminality. The criminal legal system quickly became the means to contain and control the same communities that Jim Crow had oppressed for nearly a century. The "War on Drugs" quickly followed as justification to begin incarcerating thousands and then millions of people creating the mass incarceration crisis we face today. The Law Enforcement Assistance Act, the War on Drugs and the Omnibus Crime Bill were all [bipartisan](#) measures intended to reduce crime but [instead created](#) far reaching harmful policies plaguing communities, namely Black and brown, across this country.

Now, after years of directly impacted leaders demanding an end to mass incarceration and gaining wide popular support toward that end, we are again seeing a new form of control with the increasing trend toward e-carceration and risk assessments as the solution to our mass incarceration problem. We must not fall prey to this same trap again and mutation of the carceral system.

How We Got Here & Next Steps

The FSA passed in the US House of Representatives on May 22, 2018 with more than 2/3 of Representatives supporting the bill. The bill stalled in the Senate for many months due to opposition from both Republicans and Democrats. Now, after months of lobbying the Senate is poised to pass a compromise bill that includes the First Step Act along with sentencing reform provisions. The President has also signaled his support for the legislation. As supporters of the legislation continue their campaign urging the Senate to pass legislation and send the President a bill, JLUSA will remain opposed to any type of compromise that preserves harmful provisions.

We acknowledge that this new version of the First Step Act contains reforms that will help reunite loved ones with their families and improve opportunities for some incarcerated people to leave prison sooner; however some of the good proposals contained in the bill could simply be enacted with an executive order. President Trump would not need the passage of a bill to stop shackling women during pregnancy, provide compassionate release or establish good time. We must not fool ourselves in thinking, and it is a misrepresentation, to say as President Trump has, that this is “a nice first step.” This legislation sets in motion dangerous precedents with ramifications that will endure for years. For these reasons we will continue to oppose enactment of this legislation as long as it contains potential for long-term harm. We urge you to call your US Senator and Representative and **tell them to vote NO on this version of a compromise bill that includes the harmful provisions listed below.** You can learn who that is and get their contact information from www.govtrack.us/congress/member.

FIRST STEP Act

Good Policies

- Prohibition on shackling pregnant women in prison
- Increase in annual cap on earned good-time credits-

Harmful Policies

- Creation of a **risk assessment instrument** that will rely on racially biased factors to determine who is eligible for in-prison programs or “release”
- **Reversal of needs/programming alignment**: people deemed “medium” or “high” risk - the people most in need of direct services - would be ineligible for credits leading to early “release”
- **Unaccountable private partnerships**: prison wardens would be allowed, or even encouraged, to enter into programming contracts with private, for-profit businesses who are not accountable to incarcerated people, their families, or taxpayers
- Reliance on **electronic monitoring**, which will not only invade a person’s privacy, but that of our families as the carceral state expands into our homes and communities and lowers the threshold for re-incarceration, as a “release” mechanism for the select few deemed eligible for release
- Directs funding to law enforcement instead of community reinvestment: Allows for cost savings accrued from the bill to be used by law enforcement for innovative technologies and information sharing capabilities

Sentencing Reform and Corrections Act

Good Policies

- Limit on use of mandatory-minimum sentences currently authorized under 18 USC § 924(c)
- Retroactively-applied cutbacks on use of mandatory-minimum sentences, and elimination of life-without-parole sentences, currently authorized under 21 USC §§ 841 and 851
- Retroactive application of the 2010 Fair Sentencing Act, which addressed the racially charged sentencing disparities related to crack and powder cocaine charges
- Clarification and strengthening of provisions in 18 USC § 3553(f) that are meant to ensure that people with low-level drug-offense charges do not face mandatory-minimum sentences

Harmful Consequences

- **Narrow application** of all SRCA provisions would leave far too many people behind that deserve early release.
- Even where mandatory-minimum sentences are reduced, these provisions **do little to wholly eradicate these harmful, misguided, and racialized tools** for most people.
- Some reforms determine sentencing eligibility based on data from the criminal justice system - **data that is tainted by decades of racial bias, disproportionate prosecution, and over-policing of communities** of color, working class people, and people living in poverty.

In a [USA Today OpEd](#) Jared Kushner writes that First Step Act policies would ‘lead to reductions in the costs associated with corrections operations in general.’ The most recent estimate from the Congressional Budget Office says the [policy changes in the bill would lead to savings of \\$729 million over the next 10 years](#). What Kushner doesn’t say is that these policies would shift incarceration costs from the government to directly impacted people who would be forced to pay the cost of their electronic monitoring devices - a requirement of their “early release.” [Electronic monitoring devices cost up to \\$25 a day](#) and can cost a person more per month than what they would pay in rent. We cannot allow the federal government to reduce the size of its prison population and justify cost savings at the expense of the very people they supposedly say they want to help.

The total number of people impacted by the First Step Act and its sentencing reform provisions would be minimal in comparison to the total number of people incarcerated and supervised by the Federal Bureau of Prisons. The legislations would [affect less than 3 percent of the 181,000 people currently incarcerated in federal prisons](#). Specifically:

- Fixing the stacking provision (924c) which currently gives often absurdly lengthy sentences to people who are not true repeat gun offenders would [only affect approximately 61 people per year](#).
- Fixing the 851 Enhancement Provisions that give mandatory 20-year and life without parole sentences to drug offenders with prior drug convictions would [affect approximately 60 people per year](#).
- Making the Fair Sentencing Act Crack/Cocaine Provisions Retroactive could [affect up to 3100 people but a sentence reduction is not guaranteed](#). The reforms included in the bill would only allow a person to petition for a sentence reduction but courts are not required to grant the petition.
- Exempting certain individuals with low level drug offenses from severe mandatory minimums (known as the safety valve) would [affect approximately 2200 people enabling them to receive shorter sentences](#).

Proposed Changes

As the Senate and House continue their deliberations on these policies, it is crucial that directly impacted leaders raise their voices to highlight both the explicit and the unintended harm that could result from these bills. In order to protect against that harm, JLUSA urges adoption of the following policies :

1. [Make expanded in-prison programming available to all incarcerated people](#), regardless of their charge, and eliminate provisions in the FSA that would exclude people with violent offenses or higher risk assessment scores.
2. [Eliminate the FSA’s introduction of a risk assessment instrument](#), altogether, and demand, instead, use of a human-centered and individualized needs assessment for incarcerated people.
3. [Create a real release mechanism](#) that allows people to return home, to their families and communities, without an electronic shackle and the dangerous, long-lasting harm and stigma that come with that.
4. Introduce proposals that would [limit the ability of prison wardens to engage in private partnerships](#) that are immune from accountability and allow for-profit actors to drive revenue off of incarcerated people and families.
5. [Eliminate all mandatory-minimum sentences](#), especially ones that heavily rely on a person’s offense record or that could be driven solely by a prosecutor’s discretion.
6. [Make all baked-in SRCA components retroactive](#) so that, even with their limited reach, they offer sentencing relief to as many people as possible.