



November 15, 2018

The Honorable Mitch McConnell
Majority Leader, United States Senate

The Honorable Charles Schumer
Minority Leader, United States Senate

The Honorable Charles Grassley
Chairman, Committee on the Judiciary
United States Senate

The Honorable Diane Feinstein
Ranking Member, Committee on the Judiciary
United States Senate

Dear Senator McConnell, Senator Schumer, Senator Grassley, and Senator Feinstein:

The current draft of the First Step legislation remains troubling to the leaders of law enforcement. Sheriffs are elected solely to protect our communities, and Police Chiefs have taken an oath to protect the public. We feel unless the changes recommended below are enacted, this legislation creates a high-risk path for dangerous criminals with gun crime histories to early release from prison. This amounts to a social experiment with the safety of our communities and the lives of Sheriffs, deputies and police officers in the balance. Please know that we did not come to this conclusion lightly. We have been working diligently with the Administration to correct these inequities. It is our hope the Senate will listen to the nation's elected Sheriffs and the Chiefs of Police of our nation's most populous cities.

While we note several issues of concern for Sheriffs and Chiefs, we recommend the changes set forth below for the most serious of these:

(1) Fix the gun crime exclusion on p.13 (exception number xi) by removing "after a prior conviction under section 924(c) has become final, or after a prior conviction under State law that would have been an offense under section 924(c) had the offense occurred in Federal jurisdiction has become final, unless the prisoner did not have a meaningful opportunity to participate in the recidivism reduction programming described in this title for one of the prior convictions." This would ensure that individuals convicted of serious gun crimes related to drug trafficking or violent crime do not receive early release.

(2) For the fentanyl exclusions on pp. 20-22 (xlix and l), remove the requirement that the offender be an organizer, leader, manager, or supervisor of the operation, as that only covers a minuscule portion (less than 10%) of federal fentanyl traffickers. Additionally, add heroin trafficking to this exclusion, as many fentanyl traffickers are actually poly-drug traffickers who are trafficking in heroin laced with fentanyl but who are convicted primarily of heroin trafficking.

(3) Remove supervised release as an option for applying time credits under the bill. Time credits should only be used for prerelease custody where the offender is appropriately monitored, such as a halfway house or home confinement, with the option to return to prison for any violation of prerelease custody conditions.

(4) Broaden (xxiii) (pp.15-16) to all sections of 18 USC 2244 (prison rape, other abusive sexual conduct), instead of limiting it only to abusive sexual contact involving young children; broaden (xxvi) (p.16) to all convictions under paragraphs (1)-(6) of [2252A\(a\)](#), relating to child pornography, rather than limiting it only to second or subsequent convictions.

(5) Fix “safety valve” reductions (Section 402) (pp. 64-66). Reductions to repeat offenders with significant criminal histories including up to four (4) criminal history points should not be eligible for reduced sentences below the mandatory minimum. Furthermore, many criminal history points, including someone with a prior felony drug trafficking conviction, would not count towards the four-point assessment of the bill’s suggested “safety valve” language.

In addition to the sheriffs' anticipated participation by Sheriffs and Chiefs in the a Criminal Justice Commission, we urge Congress to consider the addition of a provision in the bill for Medicaid expansion to cover inmates while in custody. This would allow law enforcement funds to be used for law enforcement purposes instead, which would improve officer safety, reduce crime, and likely increase availability of recidivism reduction programming in prisons.

In its current form, we oppose this legislation. However, if these changes can be made to address our concerns, we stand ready to work further with the Senate and the Administration.

Sincerely,

Sheriff John Layton, President
National Sheriffs' Association



Sheriff Greg Champagne, Past President
Chair, Legal Affairs Committee, NSA



Chief J. Thomas Manger, President
Major Cities Chiefs Association



Sheriff Grady Judd, President
Major County Sheriffs of America



Sheriff Mike Bouchard, Govt. Affairs
Major County Sheriffs of America

