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The Fifth Anniversary of the Landmark First Step Act

Senate Judiciary Committee

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Chairman Durbin, Ranking Member Graham, and Members of the Committee. My name is Charlie Smith, and I am the elected State's Attorney for Frederick County, MD and the current President of the National District Attorneys Association (NDAA). NDAA is the oldest and largest national, non-partisan, and non-profit organization representing over 6000 state and local prosecutors in the country. As part of our mission to serve as the voice of America's prosecutors, we provide training, technical assistance, and resources to prosecutors across the country.

NDAA recognizes the vital role that prosecutors play in the safety of local communities, including evaluating and making ongoing improvements to our criminal justice system that promote fairness, efficiency and justice. I appreciate the opportunity to talk about NDAA's efforts towards realizing the goals of the First Step Act.

Background

Prosecutors are, and should be, at the forefront of continuously improving our criminal justice system. We must support public safety and enforcement of the law while promoting accountability, rehabilitation and alternatives to incarceration.

Tasked with the constitutional duty of protecting the communities we serve from bad actors while seeking justice for victims of crime and protecting the innocent, our members are acutely aware of the need for reforms to our criminal justice system.

The First Step Act, supported by NDAA, was a bipartisan effort to address front-end sentencing reform and back-end prison reform and struck an appropriate balance between addressing the needs of the current Federal prison population while ensuring criminals are penalized appropriately.

The legislation included much needed prison reform provisions that provide the Bureau of Prisons (BOP) with the guidance and resources to assist in lowering recidivism rates for low-risk prisoners.

- Federal Bureau of Prisons (BOP) was tasked to develop a risk and needs assessment to measure recidivism and needs of incarcerated individuals; each individual is now placed into programming based on the results of the needs assessment.
- Ability to earn good time credit for participation in programming.
- Reauthorization of the Second Chance Act program—expanded reentry and recidivism reduction programming.
- Sentencing reform--reduced certain mandatory minimum sentences from 20 to 15 years, and from life in prison sentence down to 20 years (based on quantities of drugs that triggered certain mandatory minimums).

The FSA provided meaningful sentencing reform, where the truly dangerous are locked up for an appropriate period of time and those with addiction or mental health issues have the chance for treatment and rehabilitation.

First Step Act Implementation

One of the great things about this Act is its proven effectiveness for low-risk or non-violent offenders while ensuring the public is protected from high-risk and violent criminals.

Only one year after the First Step Act was signed into law, all inmates within the Bureau of Prisons (BOP) received a [risk and needs assessment](#) through the use of a tool deployed by BOP known as the Prisoner Assessment Tool Targeting Estimated Risk and Need (PATTERN). This tool was intended to calculate the risk of recidivism of inmates as required by the FSA.

PATTERN has evolved over time to improve its effectiveness, fairness,

and transparency thanks to coordination between the Independent Review Committee (IRC) and the Department of Justice (DOJ). PATTERN now incorporates “infraction free” periods of time for an inmate, psychological treatment programs, and removes the criteria of age of first arrest/conviction and voluntary surrender.

Adjustments made to [good time credit](#) allowed eligible inmates to earn time credits for participating and completing assigned evidenced-based recidivism reduction programs. According to DOJ, over 3,000 inmates were released by 2019 as a result of these modifications.

The legislation incorporated sentencing reforms by making the Fair Sentencing Act of 2010 retroactive. Prior to 2010, an offense involving 5 grams of crack cocaine was punished as severely as 500 grams of powder. The Fair Sentencing Act of 2010 reduced this 100:1 disparity to 18:1 but only for convictions after the law went into effect. Previously convicted individuals continued to serve sentences under the outdated laws.

The new FSA sentencing reforms implemented authorized pre-2010 incarcerated individuals for crack cocaine offenses to apply for reduced prison terms. In [2020](#), the DOJ reported that nearly 2,500 individuals were ordered for sentence reductions.

BOP Policies were updated to expand the use of home confinement for low-risk individuals and pilot programs for the elderly and terminally ill inmates. Additionally, the Department’s drug treatment strategy has enrolled thousands of inmates in the Residential Drug Abuse Program (RDAP). Lastly, the Medication Assisted Treatment (MAT) program is available to qualified inmates within 15 months of release.

The First Step Act is not just a “feel good” act that sounds good in theory. The data suggests recidivism rates have dropped substantially compared to inmates who don’t participate in this type of rehabilitative service or reentry programming. According to BOP’s published data, the recidivism rate for all people released under the FSA is [12.4%](#) which is

considerably lower than the [46.2%](#) recidivism rate for those released prior to the FSA.

These statistics support transparency and accountability. Prosecutors want to be transparent in what we do and improve not only the lives of inmates but society as a whole.

State Impact

Thanks to the reauthorization of The Second Chance Act (originally passed by Congress in 2008) under the FSA, grant-funded initiatives and programs designed to continue to reduce recidivism and improve the reentry process remained intact.

The Second Chance Act allows non-profit organizations to be eligible grant recipients for programs centered on career training and substance use disorder treatment, and established partnerships between federal prisons and faith-based or community-based organizations around recidivism-reducing programming.

From 2009 to 2023, the [Bureau of Justice Assistance](#) (BJA) awarded more than 1,100 Second Chance Act grants, amounting to more than \$600 million. Through Fiscal Year 2022, these grants have been administered to 845 state and local agencies across the U.S. states and territories, with over 400,000 participants served.

In Senator Graham's home state of South Carolina, the [Department of Probation, Parole, and Pardon Services](#) created a leadership academy in four counties to promote coordination and information sharing among supervisors and managers. Officers were trained on effective practices; grant funds were disbursed toward community-based substance use disorder treatment services to offset costs to participants; and risk and need assessment results were used to modify caseloads and guide officers' decisions about interventions. As a result, revocations decreased from 34% to 19% in a five-year period from Fiscal Year 2010 to Fiscal Year 2015.

The [New Jersey Administrative Office of the Courts](#) used grant funds toward a Risk-Based Supervision (RBS) pilot program in three counties, using a standardized risk assessment to evaluate the needs of people on probation and modify supervision practices and services based on findings. Probation officer caseloads were adjusted to focus more resources on individuals assessed as high risk. Pilot participants were less likely to be rearrested or to violate their parole conditions within 210 days of the start of the program. The rearrest rate was 11% (compared to 18% in the control group), and the frequency of violating parole conditions was 7% (compared to 21% in the control group).

[The Santa Maria Hostel](#) in Harris County, Texas, provides treatment for substance use disorders, supportive housing, and mentoring services to formerly incarcerated women. Second Chance Act grant funds were used to hire recovery coaches to provide one-on-one support to women in its Path to Recovery program to assist with attaining their reentry goals, as well as connect the women to housing, education, and employment services.

These success stories highlight that commonsense federal legislation that improves our criminal justice also inspires states to mirror efforts at the local level.

Legislation

NDAA strongly supports reasonable and balanced approaches to improving our criminal justice system, having endorsed nearly a dozen pieces of legislation in this Congress that better the system. I would like to highlight five bills sponsored or cosponsored by members of this Committee:

- The **Due Process Continuity of Care Act (S. 971)** permits incarcerated individuals to remain eligible for Medicaid and other federal benefits prior to conviction. This bill is aimed at ensuring pretrial detainees receiving substance use treatment can continue such treatment, reducing the rates of overdose and recidivism post-detainment.
- The **EQUAL Act (S. 524)** eliminates the Federal disparity between drug offenses involving crack cocaine and powder cocaine. To date, over 40 states have enacted laws that reduce this disparity to 1:1.
- The **Federal Prison Oversight Act (S. 1401)** creates a federal oversight and inspection structure for the Bureau of Prisons (BOP) and requires periodic inspections by the Inspector General. This legislation only applies to federal facilities, both government- and privately-run, and does not apply to state, local, or tribal facilities that contract with BOP to house federal prisoners.
- The **Reentry Act (S. 1165)** allows Medicaid-eligible individuals to resume receiving Medicaid benefits 30 days prior to release from prison.
- The **Safer Supervision Act (S. 2681)** ensures that courts impose supervised release based on the individual facts of the case and promotes positive incentives through improvements to the existing early termination process. The bill requires key public safety findings before any individual can be granted early termination and expressly incorporates victims' rights into those proceedings.

These pending improvements to the system build off of commonsense and bipartisan reforms enacted by the First Step Act. NDAA thanks

members of this Committee for sponsoring these initiatives.

NDAA remains a strong supporter of continual improvement of our criminal justice system and outcomes, and the data and metrics collected over the past five years clearly demonstrate the effectiveness the First Step Act has had on rehabilitation and lowering recidivism rates.

I appreciate the opportunity to speak to you about these important and complex issues. NDAA stands ready to assist as we look for ways to improve the criminal justice system and implement it on a bipartisan basis without jeopardizing public safety and our communities.