



December 11, 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:

As you know, we previously expressed our concerns to Congress that the recent discussion drafts FIRST STEP Act have not adequately addressed public safety needs and priorities. We have written on November 15, 2018 and again on December 4, 2018 to support the objectives of the legislation and to articulate the issues and concerns that have prevented law enforcement from supporting the bill in the current form.

In our letter of November 15, 2018, we identified five priority concerns. We are grateful that negotiations have resulted in meaningful changes, but we regret that little progress has been made in several areas of great concern.

While we respect and appreciate the hard work of those drafting the legislation, we continue to believe the current version is a threat to the safety of law enforcement and the communities we protect. Below we seek to detail the specific issues we seek to resolve in the current draft bill. Please know the Law Enforcement Draft which we submitted on December 4, 2018 would resolve all the issues of concern.

November 15, 2018 Requests:

- 1. Exclusion of Gun Crimes:** This should be a comprehensive exception to early release for individuals who use or carry guns during violent crimes or drug trafficking crimes, not merely a partial one. Make no mistake, criminals carry guns during violent crimes and drug trafficking crimes for only one reason: they expect they may use them. There should be zero tolerance and no chance of early release time credits for criminals who create these dangerous scenarios that so often result in gun violence.
- 2. Drug Trafficking:** We thank the drafters for a partial fix that excludes fentanyl traffickers from early release time credits, without a requirement that they be a rare organizer, leader, manager or supervisor of the drug trafficking operation. But, as stated in our prior letter, this exclusion must also apply to all heroin traffickers. We are in the midst of an opioid epidemic in the United States, and allowing heroin or fentanyl traffickers early release time credits is an unacceptable move that will result in more opioid deaths. While not directly stated in our prior letter, we would also strongly prefer that this exclusion also apply to all methamphetamine and cocaine traffickers, especially given that both drugs are again on the rise and are often laced with deadly drugs like fentanyl.
- 3. Supervised Release:** We appreciate that it is the intent of the drafters to limit the supervised release program to low and minimum risk offenders, but we are confused at how this could even be considered a change, given that we and the public have been told repeatedly by the bill's proponents that the entire early release time credit program (whether for supervised release, halfway house placement, or home confinement) would apply only to low and minimum risk offenders in the first place. As we clearly stated in our previous letter, any individual released early due to the bill's time credit programs must be placed only in appropriate prerelease custody options, not supervised release.
- 4. Exclusion of Sex Crimes:** The individual sex crimes we listed in our previous letter have been added to the bill's exclusion list for early release time credits, as we requested. We in law enforcement are grateful for this action and consider it an important improvement to the bill.

5. **“Safety Valve” Sentence Reductions:** While we appreciate the change in language that closes the significant loophole that would have allowed judges to disregard all criminal history for purposes of sentencing, this is not the change we requested. We respectfully restate our request from previous correspondence that 1-point criminal history offenses not be ignored when calculating an offender's criminal history, and that the bill's new safety valve not permit offenders with up to 4 criminal history points (a significant criminal history) to be eligible for reduced sentences. The safety valve has always been meant to apply only to truly low-level, first time offenders, and we believe that spirit of the safety valve must be retained in any expansion.

Juvenile Provision:

The language noted in our previous correspondence must be corrected to clarify that it applies only to Federally prosecuted juveniles.

Omitted Exclusions:

We have attached as Appendix a listing of crimes that appear to have been omitted from the list of excluded offenses yet clearly they represent the nature and type of crime that the drafters have intended to bar from early release.

The Way Forward:

We will continue to work with drafters in good faith to achieve a balance that implements reforms while protecting public safety. We continue to believe that the Law Enforcement Draft of the First Step Act will accomplish that purpose and serve the public well.

Respectfully,

Jonathan F. Thompson, Executive Director
National Sheriffs' Association

Sheriff Grady Judd, President
Major County Sheriffs of America



Chief J. Thomas Manger, President
Major Cities Chiefs Association



Appendix A

Examples of Crimes Eligible for Early Release in Current Draft

- Drive-by shootings 18 U.S.C. § 36
- Bank robbery by force or violence including assault with a dangerous weapon 18 U.S.C. § 2113(c)
- Assisting federal prisoners with jailbreak 18 U.S.C. § 752
- Performing acts of violence on aircraft pilots or other individuals on aircrafts to endanger the safety of the aircraft 18 U.S.C. § 32(a)(6)
- Threatening to assault, kidnap, or murder a federal judge or law enforcement officer 18 U.S.C. § 115(a)(1)(b))
- Bank robbery involving assault or putting the life of a person in jeopardy with a dangerous weapon or device 18 U.S.C. § 2113(d)
- Genocide 18 U.S.C. § 1091
- Trafficking cocaine as a kingpin 18 U.S.C. § 841(b)
- Trafficking heroin, unless also a "manager, leader, organizer, or supervisor" of the drug operation 18 U.S.C. § 841(b)
- Conspiracy or attempt to engage in human trafficking, including trafficking of children 18 U.S.C. § 1594
- Hate crimes 18 U.S.C. § 249
- Destruction of an aircraft, including with an explosive device or substance 18 U.S.C. § 32(a)(1)-(4)

Appendix B
Law Enforcement Draft First Step Act