



September 27, 2021

The Honorable Charles Schumer
Senate Majority Leader
S-221, The United States Capitol
Washington, DC 20510

The Honorable Mitch McConnell
Senate Minority Leader
S-230, The United States Capitol
Washington, DC 20510

Dear Majority Leader Schumer and Leader McConnell:

The American Civil Liberties Union (ACLU), on behalf of its 3 million members, supporters, and activists, writes to express our support for the *First Step Implementation Act of 2021* (S. 1014), *Prohibiting Punishment of Acquitted Conduct Act of 2021* (S. 601), and the *COVID-19 Safer Detention Act of 2021* (S. 312). All three of these bills have passed out of the Senate Judiciary Committee with bipartisan support and currently await consideration before the full Senate. The ACLU is dedicated to protecting the principles of freedom and equality set forth in the Constitution and in our nation's civil rights laws. While stronger, more expansive changes are needed in federal sentencing, these three bipartisan bills will make meaningful improvements.

The ***First Step Implementation Act of 2021*** further improves the successful *First Step Act (FSA) of 2018* by allowing courts to apply the FSA's sentencing reform provisions to people sentenced before the FSA was enacted. Retroactive application of new sentencing laws will ensure the same crime is sentenced the same way in all cases, as no one should be excluded from reforms because of the date on which their sentence was imposed. Additionally, this bill would allow courts the option to conduct an individualized review of a person's criminal record in nonviolent drug cases to determine whether a mandatory sentence is necessary. It would also allow juveniles who have served more than 20 years the opportunity to petition the court to ask for a reduced sentence. For each of these reforms, relief is not guaranteed, and petitioners would be subject to the judicial review process. While the ACLU supports the elimination of all mandatory minimum sentencing statutes, this bipartisan bill is a modest step toward alleviating the current mass incarceration crisis.

The ***Prohibiting Punishment of Acquitted Conduct Act of 2021*** would end the unfair practice of courts increasing sentences based on conduct for which the accused has been acquitted by a jury. Current federal law allows a judge to enhance the sentence of an individual on the basis of previously acquitted charges, disregarding the 5th Amendment's Due Process Clause. This legislation would correct this unjust flaw in federal sentencing law. It would ensure that judges cannot consider acquitted or dismissed charges in their sentencing decisions, while requiring judges to protect victims' rights.

Lastly, the ***COVID-19 Safer Detention Act of 2021*** was introduced to target the new challenges presented by the COVID-19 pandemic and address the urgent need to reduce the density of prisons and jails. This legislation allows COVID-19 vulnerability to be considered a basis for compassionate release and expands the eligibility criteria to include those convicted of nonviolent offenses who have served at least half of their prison sentence. By



reducing the number of elderly and nonviolent incarcerated individuals, critical steps can be made to protect our prison and jail populations from COVID-19 and the highly contagious Delta variant, which continues to spread in our correctional systems. Additionally, this bill would clarify that the percentage of time required for the Elderly Home Detention Pilot program should be calculated based on the individual's sentence and include "good time" credits earned through good behavior, as well as reduce the judicial review process for elderly home detention and compassionate release from 30 days to 10 days. Not only will these provisions help protect the prison population and save lives, but they will also reduce the costs of our prison system.

We urge you to support these three bills when they come before the full Senate for consideration and oppose any amendments that substantially change the scope or content. This legislation—taken together—will provide a foundation for Congress to make meaningful changes to our flawed criminal legal system. If you have any questions, feel free to contact me at aahmad@aclu.org.

Sincerely,

A handwritten signature in black ink that reads "Aamra S. Ahmad".

Aamra S. Ahmad
Senior Policy Counsel | Justice Division
American Civil Liberties Union