

## **The FIRST STEP Act (H.R. 5682): Good for Families, Prisoners, and Public Safety**

**What is the FIRST STEP Act:** The FIRST STEP Act is a prison reform bill passed by the House of Representatives in May 2018. The bill is now in the U.S. Senate where members of the Senate judiciary committee and Senate leadership are currently in negotiations with the White House to add several sentencing reform provisions to the bill and hold a vote on it after the midterm elections this November.

**Why FAMM supports the FIRST STEP Act:** The bill would, if passed in its current form, bring some immediate relief to virtually all federal prisoners and their families. While the bill is not perfect, it does include reforms FAMM has advocated for decades – reforms that keep families together, fund rehabilitative programs, and bring people home from prison sooner. If the Senate is able to agree on sentencing reform provisions, the FIRST STEP Act would be a major victory for criminal justice reform at the federal level. **As passed by the House, the FIRST STEP Act would:**

**Place prisoners within 500 driving miles of their families.** The FIRST STEP Act would require the BOP to place people in prisons no more than 500 driving miles from home unless security designation, programming or health care needs, or bed space limits prevent it.

- Maintaining family ties is proven to reduce recidivism and make the public safer, yet about 1 in 4 federal prisoners are incarcerated more than 500 miles from home.

**Bring more than 178,000 federal prisoners home to their families sooner.** The FIRST STEP Act would give all federal prisoners except those serving life sentences an additional 7 days off for each year of the sentence imposed, if the prisoner displays good behavior.

- Congress allows prisoners to earn 54 days per year of “good time credit,” but for decades a mistake in the statute has meant prisoners actually earn only 47 days per year.
- The FIRST STEP Act corrects this statutory mistake not just going forward, but also retroactively.
- Increased good time credit generates millions in cost savings that can be reinvested in better programming, qualified staff, and more halfway houses and home confinement.

**Require greater use of home confinement.** The FIRST STEP Act would require the Bureau of Prisons (BOP) to put low-risk, low-needs people in home confinement for the maximum amount of time allowed (up to 6 months or 10 percent of the person’s sentence, whichever is less).

- Some people leaving prison do not need the services of a halfway house and can go straight to home confinement to live with their families while they reenter society.
- Historically, the BOP has not fully utilized home confinement.

**Fund and incentivize rehabilitative programming.** The FIRST STEP Act would allow all prisoners to receive some incentives for doing rehabilitative programs that reduce their recidivism.

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- Currently, the BOP lacks sufficient rehabilitative programming for all prisoners, including job training, education, and mental health and drug treatment.
- The FIRST STEP Act authorizes \$250 million in funding over 5 years for rehabilitative programming and requires the BOP to expand programming within 3 years.
- Medium- and high-risk prisoners get priority for placement in rehabilitative programs.
- Incentives include earned time credits (for a limited number of lower-risk prisoners), more commissary spending options, more phone minutes and visitation, or transfer to a different prison or housing unit.

**Improve accountability in the BOP’s use of compassionate release.** The FIRST STEP Act includes the GRACE Act, a provision that would hold the BOP accountable for a timely review of compassionate release requests from prisoners who are elderly, terminally ill, or facing other “extraordinary and compelling circumstances.”

- The bill would hold the BOP accountable by
  - o Allowing prisoners to appeal denials of compassionate release to federal courts after all other BOP remedies have been exhausted or at least 30 days have passed since the request was submitted;
  - o Requiring annual data reporting on the BOP’s use of compassionate release;
  - o Creating an expedited timeline for BOP consideration of compassionate release requests from terminally ill prisoners;
  - o Permitting family members, lawyers, and BOP staff to help prisoners file compassionate release requests;
  - o Requiring better notice to BOP staff and prisoners of when compassionate release is available and how to ask for it.

**Sentencing reform in the Senate:** Earlier this year, stalled negotiations in the Senate received new life after President Trump and the White House signaled a willingness to sign a criminal justice reform bill including both prison AND sentencing reform. Based on current reports, the senate is considering the four main sentencing reform provision from S. 1917, the Sentencing Reform and Corrections Act (SRCA). **The proposed SRCA provisions would:**

**Fix 18 USC 924(c) “stacking”:** Section 924(c) currently gives often absurdly lengthy sentences to people who are not true repeat offenders due to “stacking” of multiple 924(c) charges in one proceeding to trigger the 25-year mandatory minimum for a second or subsequent 924(c) offense. **The proposed fix:**

- Clarify that the 25-year mandatory minimum sentence for a second or subsequent offense of possessing guns in the course of drug trafficking offenses or crimes of violence under 18 USC 924(c) only applies when the prior 924(c) conviction is already final prior to the commission of the new 924(c) offense.

**Reduce mandatory minimums for repeat drug offenders:** Current law gives mandatory 20-year and life without parole sentences to drug offenders with prior drug convictions. These sentences are excessive, can be triggered even if the prior “felony drug convictions” are for possession – not trafficking, and are applied inconsistently across prosecutors and jurisdiction.

**The proposed fix:**

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- Reduces the mandatory minimum life without parole sentence to a mandatory minimum 25-year sentence for a third drug offense under 21 USC 841 and 851.
- Reduces the mandatory minimum 20-year sentence to a mandatory minimum 15-year sentence for a second drug offenses under 21 USC 841 and 851.

**Make the Fair Sentencing Act retroactive:** In 2010, Congress passed the Fair Sentencing Act (FSA) which reduced the weight disparity between crack and powder cocaine from 100:1 to 18:1. This compromise bill was applied only prospectively and thousands are still serving sentences that have been repudiated as unfair and racially discriminatory. **The proposed fix:**

- The proposed fix would make the FSA retroactive, allowing crack cocaine offenders sentenced before August 3, 2010, to petition courts for sentences in line with the FSA's reforms to the 100:1 disparity between crack and powder cocaine mandatory minimum penalties. There are several important factors to know about the retroactivity process proposed:
  - o Courts are not required to grant petitions for an FSA sentence;
  - o Courts can reject sentence reductions if they find the person poses a threat to the public; and
  - o Prosecutors get a chance to argue against a sentence reduction.

**Expand existing safety valve and create new safety valve:** One of the only exceptions to mandatory minimum drug sentences, the "safety valve" is so narrow that many low-level offenders with minimal criminal records are excluded from relief. In 1994, Congress created the "safety valve" (18 U.S.C. § 3553(f)) to help ensure that mandatory minimum drug sentences were focused on higher-level drug traffickers, not those playing minor roles in a drug conspiracy. The safety valve is a strict five-part test, all parts of which must be met for the person to qualify for a sentence below the applicable mandatory minimum: 1) The person did not have more than one criminal history point; 2) The person did not play a leadership role in the offense; 3) The person did not possess or use a gun in relation to the offense; 4) The offense did not result in death or serious bodily injury to any other person; and 5) The person plead guilty and confesses their role in the offense. **The proposed fix:**

- **Expand** the existing drug "safety valve" exception at 18 U.S.C. § 3559(f) so that drug offenders can receive sentences below the mandatory minimum term if:
  - o Based on the federal sentencing guidelines, they do not have more than 4 criminal history points (excluding any 1-point prior offenses), or a prior 3-point offense, or a prior 2-point violent offense,<sup>1</sup> OR
  - o The court determines that the person does not have a prior serious violent felony or serious drug felony conviction and that the criminal history score substantially over-represents the seriousness of the defendant's criminal record or the likelihood that he will commit more crimes; AND
  - o They were not a leader, organizer, manager, or supervisor in the offense; AND

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<sup>1</sup> The term "violent offense" means either a state or federal "crime of violence," as defined in 18 U.S.C. § 16, that is punishable by imprisonment. Section 16 defines a crime of violence as an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another.

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- They did not use or possess a gun; AND
- They pled guilty; AND
- No death or serious bodily injury resulted to any person.
- **Create** an additional safety valve exception for drug offenders facing 10-year mandatory minimum sentences so that the person can receive the 5-year mandatory minimum prison term instead if:
  - They do not have a prior conviction for a “serious drug felony” or a “serious violent felony”; AND
  - They were not a leader, organizer, manager, or supervisor in the offense; AND
  - They did not act as an importer or exporter, high-level distributor or supplier, wholesaler, or manufacturer, unless the person was a minor or minimal participant, as defined in the sentencing guidelines; AND
  - They did not use or possess a gun; AND
  - They pled guilty; AND
  - No death or serious bodily injury resulted to any person; AND
  - They did not sell drugs to or with a person under age 18.