



September 28, 2021

The Honorable Charles Schumer  
Majority Leader  
United States Senate  
Washington, D.C., 20510

The Honorable Mitch McConnell  
Minority Leader  
United States Senate  
Washington, D.C., 20510

Dear Majority Leader Schumer and Minority Leader McConnell:

I am writing on behalf of FAMM and of the thousands of families with loved ones in the federal Bureau of Prisons (BOP) who are our members. We urge you to take up and pass a package of criminal justice reform bills, which includes, at least, the COVID-19 Safer Detention Act of 2021 (S. 312), Prohibiting Punishment of Acquitted Conduct Act of 2021 (S. 601), and First Step Implementation Act of 2021 (S. 1014). All three bills have been approved by the Judiciary Committee and await a floor vote.

The elderly are the fastest growing segment of the prison population, despite much lower rates of recidivism and much higher costs associated with their incarceration. The COVID-19 Safer Detention Act (S. 312) would make desperately needed clarifications to the compassionate release and Elderly Home Detention Pilot programs to address this issue. Many provisions address gaps in existing programs. For example, the bill would clarify that so-called “old law” prisoners sentenced before November 1987 are eligible for compassionate release consideration.

We frequently hear from families who have incarcerated loved ones who are in their 70s or 80s but have very little hope for review of their cases simply because of the date they were sentenced. This group has a high need for compassionate release, and S. 312 would finally permit their consideration. To address the persistent urgency of the pandemic, the COVID-19 Safer Detention Act would also temporarily cut red tape and expedite compassionate release reviews, ensuring vulnerable people remain safe during the continued threat of new surges. For the most vulnerable people in BOP custody, every day could mean the difference between life and death.

FAMM has long decried the use of acquitted conduct at sentencing and has repeatedly urged the United States Sentencing Commission to abandon its use. The Fifth and Sixth Amendments require the government to prove a defendant’s guilt beyond a reasonable doubt, but current sentencing law allows judges to “veto” a not guilty verdict by punishing defendants for conduct of which they have been acquitted by a jury of their peers. The Prohibiting Punishment of Acquitted Conduct Act (S. 601) would prevent unjust results and bring our sentencing laws into line with the meaning and intention of the Fifth and Sixth Amendments.

Current practice reduces public trust in our judicial system. Frequently, members tell us that they cannot understand why sentencing rules direct judges to consider actions that a jury has studied and rejected. Damage can begin as early as during plea negotiations, when the possibility of serious punishment for acquitted conduct can lead to more charges being brought, which pressure defendants to plead guilty because even an acquittal might result in a harsher sentence. FAMM members consistently report that acquitted conduct contributes to their lack of trust in the criminal justice system. S. 601 would help restore that faith, while making federal sentencing more fair and effective.

The First Step Act was landmark legislation that made our justice system fairer and reunited thousands of families. Despite its success, some goals of the First Step Act remain unmet. Because three of the Act's sentencing reforms were not made retroactive, too many people are still in prison now, serving sentences that Congress overwhelmingly decided are unjust and excessive. The First Step Implementation Act (S. 1014) would allow courts to individually review cases and provide new sentences in line with the reforms in the First Step Act. Similar retroactive reviews, such as retroactive Fair Sentencing Act case reviews, are done carefully and individually to ensure that reduced sentences are meted out safely.

Many FAMM members currently serving sentences that are no longer on the books have been waiting since the passage of the First Step Act to have an opportunity to have their sentences reconsidered. People who shared their stories to illustrate the unfairness and irrationality of the application of 18 U.S.C. § 924(c) "stacking" and 21 U.S.C. § 851 sentencing enhancements continue to serve those unfair and irrational sentences. No one should get stuck with an unjust sentence based on something as arbitrary as the day they went to court. S. 1014 gives people the chance, but not the guarantee, of getting a fair sentence.

We are grateful to Judiciary Committee, Chairman Dick Durbin, and Ranking Member Chuck Grassley for working together to move these bills through committee. These are commonsense bills with bipartisan support. We now urge you to advance them through the full Senate without amendments that would reduce their impact.

Thank you for considering our views on this matter. If you have any questions or would like additional information, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink that reads "Kevin A. Ring". The signature is written in a cursive, slightly slanted style.

Kevin A. Ring  
President