

# Criminal Justice Reform LEGISLATIVE UPDATE

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## Introduction

While national news headlines have focused on the ongoing, but so far unsuccessful, effort to reach a compromise on police reform legislation, Congress has begun to consider other criminal justice reform legislation across a spectrum of topics. There are several pieces of legislation Congress is actively considering that could move forward later in the year or early in 2022.

As part of our Criminal Justice Initiative, JCPA is producing this legislative update to inform the Jewish community relations field about Congressional criminal justice legislative efforts that JCPA supports, and action needed if appropriate.

## Pretrial Reform

Legislative and administrative actions to move away from money bail as a condition of pretrial release and otherwise to provide for counsel and other services for indigent persons charged with crimes. While no action has yet been taken on the legislation, the sponsorship by the Chairs of the House and Senate Judiciary Committees suggests action may be possible sometime later this year.

**[Pretrial Integrity and Safety Act of 2021 \(HR 2152\)](#)** - This legislation would provide grants to States, localities, and Native American Tribes to reform their criminal justice system to encourage the replacement of the use of payment of secured money bail as a condition of pretrial release in criminal cases. Action is expected in fall 2021.

**[Smarter Pretrial Detention for Drug Charges Act of 2021 \(S. 309\)](#)** - This bill would remove the

presumption of pretrial detention for an individual who is charged with a federal drug offense for which the maximum term of imprisonment is 10 years or more. The bill is sponsored by Senators Durbin (D-IL) and Lee (R-Utah), and awaits consideration in the Senate Judiciary Committee, which Senator Durbin chairs.

**[Access to Justice Office, Department of Justice - Reestablished in May 2021 by Presidential memorandum](#)**, along with a White House Legal Aid Interagency Roundtable. “This Nation was founded on the ideal of equal justice under the law. Everyone in this country should be able to vindicate their rights and avail themselves of the protections that our laws afford on equal footing. Whether we realize this ideal hinges on the extent to which everyone in the United States has meaningful access to our legal system. Legal services are crucial to the fair and effective administration of our laws and public programs, and the stability of our society.” The purpose of these initiatives is to provide active support for counsel and other pretrial defense services for those charged with crimes but unable to afford counsel and other services.

## Marijuana/Drug Policy

**[Marijuana Opportunity, Reinvestment and Expungement Act \(“MORE”\) Act \(H.R. 3617\)](#)** - This bill passed the House of Representatives in 2020 but did not receive consideration in the Senate. Advocates aim to get the bill passed by the House again in 2021. A separate drug policy bill has been introduced in the Senate. Key provisions of the MORE Act:

- End the criminalization of cannabis at the federal level both going forward and retroactively. Cannabis arrests, charges, and convictions would be automatically

expunged at no cost to the individual. These provisions would be limited to federal law, permitting individual states to continue to criminalize cannabis.

- Impose a 5% tax on the retail sales of cannabis to go to the Opportunity Trust Fund. The measure was amended to start at 5% and increase the tax to 8% over three years. Note that the MORE Act itself would not authorize sales of cannabis, and this tax would be on any sales that are authorized by a state government.
- Create the Office of Cannabis Justice to oversee the social equity provisions.
- Ensure the federal government could not discriminate against people because of cannabis use, including earned benefits or immigrants at risk of deportation.
- Open the door to research, better banking and tax laws, and help fuel economic growth as states are looking for financial resources.

**[Drug Policy Act \(H.R. 4020\)](#)** - This bill would end criminal penalties on small amounts of drug possession and recast the issue in healthcare terms — rather than involving the criminal justice system — by placing the Department of Health and Human Services (HHS) in charge of drug policies, and establishing within HHS a Commission on Substance Use, Health and Safety. It would also expunge criminal records and eliminate the consequences of drug arrests including convictions, voting rights, denial of employment and public benefits. While the Biden Administration has not endorsed this specific bill, the Administration’s Director of the National Institute on Drug Abuse (an arm of the National Institutes of Health) recently released an article, “[Addiction Should Be Treated, Not Penalized](#),” arguing that “war on drugs” policies have been racist in their implementation and effects and drug addiction is a medical disorder requiring appropriate treatment. The article concludes that society must take a public health approach to drug addiction.

## Sentencing Reform

Most likely to move forward are three sentencing-related bills already approved in bipartisan votes by the Senate Judiciary Committee, where they were

introduced jointly by the Chair and Ranking Republican, Senators Dick Durbin (D-IL) and Chuck Grassley (R-IA). The bills now await consideration by the full Senate and need at least 10 Republican Senators to vote for them. Each bill is short by a handful of those votes. Accordingly, advocates are seeking further Republican Senate support and pushing the Senate leadership to maintain the schedule to move these bills no later than October. JCPA encourages JCRCs and our national list of supporters to contact Senators over the coming few weeks, perhaps especially in mid and late August when they are likely to be home during the Senate recess period. The bills are:

**[First Step implementation \(S. 1014\)](#)** - The First Step Implementation Act would retroactively apply major sentencing reforms from the First Step Act of 2018 and provide judges in future cases increased discretion to give sentences below mandatory minimums. The bill would also implement major reforms for people sentenced as youth, including the opportunity to have lengthy sentences reconsidered.

**[Covid Safer Detention Act \(S. 312\)](#)** - The Covid Safer Detention Act would make clarifications and technical improvements to the federal Elderly Home Detention Pilot program and compassionate release process. The bill would provide eligibility in these programs to additional vulnerable, low-risk incarcerated people and expedite releases from federal prison through these programs during the COVID 19 pandemic. It is intended to be to expand the number of people who can benefit from earlier release from federal prisons during the pandemic.

**[Prohibiting Punishment of Acquitted Conduct Act \(S. 601\)](#)** - The Prohibiting Punishment of Acquitted Conduct Act would end the practice of judges increasing sentences based on conduct for which a person has been acquitted. This practice is unfortunately common, even though it appears to “convict” a person for a crime for which that person was already acquitted. The bill would also allow a prior acquittal to be used as mitigation in sentencing for some other conviction.

In addition, the House Judiciary Committee passed the EQUAL Act, though its chances of passage in the Senate are considerably lower than the three bills listed above due to Senator Grassley's opposition.

**[Eliminating a Quantifiably Unjust Application of the Law \(EQUAL\) Act \(S. 79/H.R. 1693\)](#)** - This bill would eliminate the disparity in sentencing between crack and powder cocaine. The original disparity in the 1994 Crime Act (100 to 1) was reduced by the Sentencing Reform Act of 2014 (to 18 to 1) and the reduction was made retroactive by the First Step Act of 2018. The EQUAL Act would make the elimination of the sentencing disparity retroactive, allowing sentences to be reduced accordingly and for those incarcerated beyond the newly reduced sentence levels to be released. The House Judiciary Committee approved on July 21 EQUAL Act in July, and the bill now awaits consideration by the full House.

## **Reentry and Collateral Consequences**

**Funding the Second Chance Act and Labor Department Reentry Programs** - In the House Appropriations Committee bills, funding is included at levels above prior years (\$125 million for Second Chance and \$150 million for Labor Department reentry programs), which is positive. However, we expect final action by Congress to be very problematic, with a continuing resolution to fund at prior year levels more likely to be the outcome for the fiscal year beginning October 1.

## **Additional Legislation**

### *COVID-19 Decarceration*

Through a quirk in the CARES Act, compassionate release was authorized only through the period covered by the COVID-19 declaration of emergency. In a departure from the intent of the CARES Act, the Justice Department's Office of Legal Counsel under the Trump Administration issue an opinion stating that when the emergency ends, the individuals released will be required to return to prison, regardless of how long the compassionate release has been or whether they

have committed any acts that suggest the need for them to return to prison. The Biden Administration Justice Department, despite strong lobbying by various advocacy groups (led by the ACLU and NAACP), has stated that it will adhere to the Trump Justice Department's memo. Since the emergency remains in effect, we are undertaking further advocacy efforts to reverse the outcome, perhaps using a different legal theory or approach.

### *School-to-Prison Pipeline*

**[Counseling Not Criminalization in Schools Act \(S. 2125/H.R. 4011\)](#)** - This bill would remove federal funding for police in schools and fund to help schools hire counselors, social workers, and other support personnel instead of police.

**[Ending Punitive, Unfair, School-based Harm that is Overt and Unresponsive to Trauma \(Ending PUSHOUT\) Act \(H.R.2248\)](#)** - The purpose of this bill is to provide funding for programs to lift up black teenage girls with a variety of positive programs, expecting to result in far fewer black girls encountering the criminal justice system.

### *Police Demilitarization*

The Section 1033 program allows the Defense Department to share its surplus equipment with state and local police forces, outfitting police with mine-resistant armored tanks, grenade launchers, and military-grade assault rifles. The House-passed version of the George Floyd Justice in Policing includes moderate reform that would limit the transfer of military equipment. Given the deadlock in the Senate policing negotiations, advocates and lawmakers are also pursuing reform through the National Defense Authorization Act and the related Defense appropriations, must-pass legislation that may provide an opportunity for reform. JCPA and many other civil rights groups strongly prefer a full repeal of the 1033 program, however, moderate reform is more politically feasible.

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