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

October 4, 2021

Via email

RE: Prioritize Federal Criminal Sentencing Reform Bills

Dear Majority Leader Schumer and Leader McConnell:

I write on behalf of Human Rights Watch, an international organization that monitors human rights violations in over 100 countries, including the United States, to urge the US Senate to quickly consider and pass three important federal sentencing reform bills: the COVID-19 Safer Detention Act of 2021 (S. 312); the First Step Implementation Act of 2021 (S. 1014); and the Prohibiting Punishment of Acquitted Conduct Act of 2021 (S. 601). While Congress still needs to implement much more comprehensive reforms, these bills together will advance the progress that has been made so far and directly impact the lives of many who have been harmed by disproportionate and excessive federal criminal sentencing law and policy.

The Covid-19 Safer Detention Act of 2021. For years, Human Rights Watch and other groups have urged Congress to streamline and reform the process for obtaining “compassionate release” which allows people in federal custody to request a reduced sentence for “extraordinary and compelling” reasons, including advanced age, medical incapacity, or compelling family circumstances.¹ Covid-19 has only heightened the need for these changes.² More than 200 federal prisoners with pre-existing medical conditions that made them more vulnerable to Covid-19 have died as a result of the virus; more than half of them were over 60 years old.³ The Covid Safer Detention

¹ Human Rights Watch and Families Against Mandatory Minimums, *The Answer is No: Too Little Compassionate Release in US Federal Prisons*, November 2012,

<https://www.hrw.org/sites/default/files/reports/us112ForUploadSm.pdf> “Letter to Senate in support of bill reforming compassionate release,” joint letter available at Human Rights Watch, March 20, 2018, <https://www.hrw.org/news/2018/03/20/letter-senate-support-bill-reforming-compassionate-release>; Human Rights Watch, *Old Behind Bars: the Aging Prison Population in the United States*, January 2012, https://www.hrw.org/sites/default/files/reports/usprisons0112webwcover_0_0.pdf;

² Multiple authors, “Incarcerated and infected: How the Virus Tore Through the U.S. Prison System,” *New York Times*, April 10, 2021, <https://www.nytimes.com/interactive/2021/04/10/us/covid-prison-outbreak.html?searchResultPosition=15> (inside US prisons, the Covid-19 infection rate is 34 per 100, more than three times that of the general population which is 9 per 100).

³ “Durbin, Grassley Introduce Bipartisan Legislation To Reform Elderly Home Detention And Compassionate Release Amid Covid-19 Pandemic,” *Press Release*, February 10, 2021, <https://www.grassley.senate.gov/news/news-releases/durbin-grassley-introduce-bipartisan-legislation->

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Act would expand compassionate release provisions to people whose offense was committed before November 1987 and to those who are at higher risk of contracting Covid-19 because of their age or underlying health conditions. It would also expand a current pilot home detention program that allows people who are 60 years old or older, or terminally ill, to be released to home confinement after considering public safety factors and the need for the sentence imposed.

The First Step Implementation Act (FSIA) would build upon modest reforms made by the 2018 First Step Act (FSA) by making some provisions of the FSA retroactive. These provisions allowed for a reduction in mandatory minimum sentences for drug offenses considered non-violent and limited the types of prior offenses that could be used for enhancement. The FSIA would also expand the ability of courts to impose a sentence below a mandatory minimum in drug cases if the court finds the defendant's criminal history overrepresents the seriousness of their criminal record or the person is considered not likely to commit other crimes. Additionally, in line with advances in science showing the diminished criminal culpability of children,⁴ it would allow courts to reduce sentences imposed on people convicted of committing offenses considered non-violent before they turned 18 who have served more than 20 years of their sentence, and enable these individuals to petition for their records be sealed, or expunged altogether, if the crimes for which they were convicted occurred before they turned 15. While we urge Congress to enact further reforms to a criminal legal system that continues to permit excessively harsh, disproportionate sentencing, including mandatory minimums, in many more cases than those addressed by this bill, we support these relatively limited changes by the FSIA because they provide some relief and further protection to those involved in crimes committed when they were children and will make more people deserving of early release eligible.

The Prohibiting Punishment of Acquitted Conduct Act would end the practice of allowing judges to consider conduct of which people were acquitted at trial or which was dismissed when determining a person's sentence. This practice has been allowed for years and it is long past time for Congress to pass a bill to end it.

Human Rights Watch urges you to support these three bills when they come before the full Senate for consideration and oppose any amendments that substantially change their scope or content. If you have any questions, please feel free to contact me at pitterl@hrw.org.

Sincerely,



Laura Pitter
Deputy Director, US Program
Human Rights Watch

[to-reform-elderly-home-detention-and-compassionate-release-amid-covid-19-pandemic](#) (accessed October 21, 2021).

⁴ "Need to Treat Children Differently from Adults in the Federal Criminal Justice System," Joint Letter, Human Rights Watch, June 10, 2019, <https://www.hrw.org/news/2019/06/10/need-treat-children-differently-adults-federal-criminal-justice-system>.

