

May 9, 2018

The Honorable Paul Ryan
Speaker of the House
U.S. House of Representatives

The Honorable Nancy Pelosi
Democratic Leader
U.S. House of Representatives

The Honorable Mitch McConnell
Majority Leader
U.S. Senate

The Honorable Chuck Schumer
Democratic Leader
U.S. Senate

The Honorable Bob Goodlatte
Chairman
House Judiciary Committee

The Honorable Jerrold Nadler
Ranking Member
House Judiciary Committee

The Honorable Chuck Grassley
Chairman
Senate Judiciary Committee

The Honorable Diane Feinstein
Ranking Member
Senate Judiciary Committee

Re: H.R. 5682, the FIRST STEP Act

Dear Congressional Leaders,

We write as an informal group of former federal prosecutors and senior government officials to endorse H.R. 5682, the FIRST STEP Act, and urge you to swiftly markup and pass this bill out of your respective committees and chambers.

It is for the sake of public safety that this must be done as soon as possible.

While our experiences vary, we all served in one capacity or another on the front lines of the federal criminal justice system and we all agree that meaningful reforms are needed to increase its efficiency and effectiveness. We also agree that public safety and domestic security will be enhanced by these meaningful reforms.

There are many criminal justice reform bills that have been proposed in the last few years. We applaud all these efforts and the increased focus on improving the federal criminal justice system. However, only H.R. 5682 currently has sufficient consensus and the ability to immediately impact public safety while empowering the Department of Justice to address one of its most significant management and fiscal challenges—the federal prison system. We should not allow these thoughtful reforms to be held up by the lack of sufficient consensus on other pieces of the reform package.

H.R. 5682 is the only bill that was meaningfully informed by former federal prosecutors and drafted specifically to put a renewed focus on rehabilitation and correction, risk and recidivism reduction, and better community reentry. More than any of the other reforms, this is what will increase the safety of our communities and the law enforcement agents and officers who protect them.

This bill has always enjoyed strong bipartisan support—an earlier version passed out of the House Judiciary Committee by voice vote in 2016—and we believe this is the only bill that has enough consensus to pass into law at this time.

These reforms must be implemented as soon as possible, for the federal prison system is inefficient and presents numerous challenges, including consuming an ever-increasing percentage of the Department of Justice’s budget. According to the Statement of the Department of Justice Inspector General before Congress on March 21, 2017, “Examining Systemic Management and Fiscal Challenges within the Department of Justice,” one of the top challenges facing the Department in 2017 is “managing an overcrowded federal prison system in an era of limited budgets and continuing security concerns.” Specifically:

While the inmate population has dropped 3 years in a row, falling to 192,170 at the end of FY 2016, overcrowding remains a challenge. At the end of FY 2016, BOP’s institutions remained 16 percent over rated capacity, and high security institutions were 31 percent over rated capacity. The BOP currently has the largest budget of any Department component other than the FBI, accounting for more than 25 percent of the Department’s discretionary budget in FY 2016. Department spending on the federal prison system impacts its ability to fund other important Department operations, such as its critical law enforcement and national security missions. As such, it is imperative that the Department manage the prison system in the most cost-efficient manner possible.¹

H.R. 5682 will give the Department of Justice and Bureau of Prisons new tools to more effectively manage the prison population, make informed release decisions and reduce recidivism, which will increase public safety and security, including:

- Placing a new focus on rehabilitation and correction, and establishing dynamic risk and needs assessment as the cornerstone of more effective recidivism reduction programming, and a more efficient federal prison system.
- The bill will incentivize prisoners to not only participate in programs and jobs, but to actually reduce their risk of recidivism. In fact, it will effectively transform the federal prison system from risk management to risk reduction.

Its dynamic risk reassessment provision is vital. We need to identify risk factors and indicators of real change in thinking and behavior, make prisoners demonstrate such change, and measure it over time with a standard, objective instrument as they complete their programs and hold prison jobs.

This will be a major advancement for the federal system. Every release decision will be informed by these risk reassessments. For the first time, we will know which prisoners have reduced their risk of recidivism, which have maintained a low risk of recidivism, and which have increased their risk. Higher-risk prisoners will have to demonstrate substantial risk reduction to progress down into lower risk categories and become eligible to utilize their earned time credits, and lower-risk prisoners will be eligible to serve the last quarter or so of their sentences in home confinement, which will produce significant savings. This is remarkable as the current cost of post-conviction supervision

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<https://judiciary.house.gov/wp-content/uploads/2017/03/Horowitz-Testimony-Updated.pdf>

is \$4,392 per year, as opposed to \$34,770 per year for imprisonment, and \$29,280 for residential reentry centers. This is a much more cost-effective way to supervise lower-risk offenders.

H.R. 5682 would free up resources for federal law enforcement efforts to identify, interdict, disrupt, and dismantle transnational criminal organizations, and to focus on the highest levels of violent crime.

Perhaps the most promising aspect of this legislation is that the underlying, evidence-based reform practices have already been proven successful in states such as Texas, Georgia, and South Carolina. Texas spent \$240 million on similar reforms in 2007 and has since closed eight prisons. This has resulted in savings of more than \$3 billion. At the same time, crime rates fell across the state through at least 2014, when crime was at its lowest level since 1968.

We urge Congress to pass this legislation because it is good for federal law enforcement and public safety. At the same time, we also urge Congress to continue to work with the Judiciary and the Executive Branch to identify and study the effects of the front-end policies that have created imbalance in the scales of justice, and develop thoughtful reforms that will address these policies, *mens rea* and overcriminalization concerns, and assist in achieving a more appropriate balance in the federal criminal justice system.

We hope to serve as resources in this process, so we can all—current and former servants of the law—do our part to ensure that justice is done.

Thank you for your consideration.

Respectfully yours,

Michael B. Mukasey
Former Attorney General of the United States
Former Chief United States District Court Judge, Southern District of New York
Former Assistant United States Attorney, Southern District of New York

Larry D. Thompson
Former Deputy Attorney General of the United States
Former Leader of the National Security Coordination Council, United States Department of Justice
Former Head the U.S. Government-wide Corporate Fraud Task Force
Former United States Attorney, Northern District of Georgia
Former Leader of Southeastern Organized Crime Drug Enforcement Task Force

Donald B. Ayer
Former Deputy Attorney General of the United States
Former Principal Deputy Solicitor General of the United States
Former United States Attorney, Eastern District of California
Former Assistant United States Attorney, Northern District of California

Carol Dinkins
Former Deputy Attorney General of the United States
Former Assistant Attorney General for the Environment and Natural Resources Division, United States Department of Justice

Philip B. Heymann
Former Deputy Attorney General of the United States
Former Assistant Attorney General for the Criminal Division, United States Department of Justice

Charles B. Renfrew*
Former Deputy Attorney General of the United States
Former United States District Court Judge, Northern District of California

Louis J. Freeh
Former Director of the Federal Bureau of Investigation
Former United States District Court Judge, Southern District of New York
Former Assistant United States Attorney, Southern District of New York

Charles Fried
Former Solicitor General of the United States
Former Associate Justice of the Supreme Judicial Court of Massachusetts

Francis Keating II
Former Associate Attorney General of the United States
Former United States Attorney, Northern District of Oklahoma

Stuart Gerson
Former Acting Attorney General of the United States
Former Assistant Attorney General for the Civil Division, United States Department of Justice

Peter Keisler
Former Acting Attorney General of the United States
Former Assistant Attorney General for the Civil Division, United States Department of Justice
Former Principal Deputy Associate Attorney General of the United States

Michael R. Bromwich
Former Inspector General, United States Department of Justice
Former Associate Counsel, Office of Independent Counsel: Iran-Contra
Former Assistant United States Attorney, Southern District of New York

Guy Lewis
Former Director of the Executive Office for United States Attorneys
Former United States Attorney, Southern District of Florida

Viet D. Dinh
Former Assistant Attorney General for the Office of Legal Policy, United States Department of Justice

John Dunne
Former Assistant Attorney General for the Civil Rights Division, United States Department of Justice

John Shenefield
Former Assistant Attorney General for the Antitrust Division, United States Department of Justice

Irvin B. Nathan

Former Attorney General of the District of Columbia

Former General Counsel of the United States House of Representatives

Former Principal Associate Deputy Attorney General, United States Department of Justice

Former Deputy Assistant Attorney General for Enforcement in the Criminal Division, United States Department of Justice

Paul Cassell

Former Federal District Court Judge, District of Utah

Former Associate Deputy Attorney General, United States Department of Justice

Former Assistant United States Attorney, District of Utah

Bob Barr

Former Member of Congress (R-GA)

Former United States Attorney, Northern District of Georgia

Former Anti-Drug Coordinator for the United States Department of Justice, Southeastern United States

Brett L. Tolman

Former United States Attorney, District of Utah

Former Member of the Attorney General's Advisory Committee

Former Assistant United States Attorney, District of Utah

Matthew D. Orwig

Former United States Attorney, Eastern District of Texas

Former Assistant United States Attorney, Eastern District of Texas

Kent Alexander

Former United States Attorney, Northern District of Georgia

Lourdes Baird

Former United States District Judge, Central District of California

Former United States Attorney, Central District of California

Donald L. Beckner

Former United States Attorney, Middle District of Louisiana

James Brady

Former United States Attorney, Western District of Michigan

Kenyen Brown

Former United States Attorney, Southern District of Alabama

Wayne Budd

Former United States Attorney, District of Massachusetts

J.A. "Tony" Canales

Former United States Attorney, Southern District of Texas

John E. Clark
Former United States Attorney, Western District of Texas

Robert J. Cleary
Former United States Attorney, District of New Jersey

Michael Cody
Former United States Attorney for the Western District of Tennessee
Former Attorney General of Tennessee

Kendall Coffey
Former United States Attorney, Southern District of Florida

Paul Coggins
Former United States Attorney for the Northern District of Texas

Mike Cotter
Former United States Attorney, District of Montana

William B. Cummings
Former United States Attorney, Eastern District of Virginia

Margaret Curran
Former United States Attorney, District of Rhode Island

Bart Daniel
Former United States Attorney, District of South Carolina

Deborah Daniel
Former United States Attorney, Southern District of Indiana

Richard Deane
Former United States District Judge, Northern District of Georgia
Former United States Attorney, Northern District of Georgia

Donald J. DeGabrielle, Jr.*
Former United States Attorney, Southern District of Texas
Former Assistant United States Attorney, Southern District of Texas
Former Special Agent, Federal Bureau of Investigation

Michael H. Dettmer
Former United States Attorney, Western District of Michigan

W. Thomas Dillard
Former United States Attorney, Eastern District of Tennessee
Former United States Attorney, Northern District of Florida

Edward L. Dowd, Jr.
Former United States Attorney, Eastern District of Missouri

Troy A. Eid
Former United States Attorney, District of Colorado

Lawrence Finder
Former United States Attorney, Southern District of Texas

John Fishwick
Former United States Attorney, Western District of Virginia

Robert B. Fiske, Jr.
Former United States Attorney, Southern District of New York

Barry R. Grissom
Former United States Attorney, District of Kansas

Thomas B. Heffelfinger
Former United States Attorney, District of Minnesota

David Iglesias
Former United States Attorney, District of New Mexico

Scott Lassar
Former United States Attorney, Northern District of Illinois

William Leone
Former United States Attorney, District of Colorado

James McDevitt
Former United States Attorney, Eastern District of Washington

John McKay
Former United States Attorney, Western District of Washington

Michael D. McKay
Former United States Attorney, Western District of Washington

Kenneth J. Mighell
Former United States Attorney, Northern District of Texas
Former Assistant United States Attorney, Northern District of Texas

Jan Paul Miller
Former United States Attorney, Central District of Illinois

Paul Murphy
Former United States Attorney, Southern District of Georgia

Richard J. Pocker
Former United States Attorney, District of Nevada
Former Assistant United States Attorney, District of Nevada

George W. Proctor
Former United States Attorney, Eastern District of Arkansas
Former Chair of the Attorney General's Advisory Committee
Former Federal Immigration Judge
Former Assistant United States Attorney, Territory of Guam and the Commonwealth of the Northern Mariana Islands

James Richmond
Former United States Attorney, Northern District of Indiana

James A. Rolfe
Former United States Attorney, Northern District of Texas

Benito Romano
Former United States Attorney, Southern District of New York

Richard Rossman
Former United States Attorney, Eastern District of Michigan

Kevin Ryan
Former United States Attorney, Northern District of California

Jack Selden
Former United States Attorney, Northern District of Alabama

William Shaheen
Former United States Attorney, District of New Hampshire

Ronald Sim
Former United States Attorney, Western District of Washington

Donald K. Stern
Former United States Attorney, District of Massachusetts

Hebert J. Stern
Former United States District Judge, District of New Jersey
Former United States Attorney, District of New Jersey

Kevin W. Techau
Former United States Attorney, Northern District of Iowa

Lee Thompson
Former United States Attorney, District of Kansas

Stanley A. Twardy, Jr.
Former United States Attorney, District of Connecticut

Anna Wagoner
Former United States Attorney, Middle District of North Carolina

Atlee W. Wampler III
Former United States Attorney, Southern District of Florida

Dan K. Webb
Former United States Attorney, Northern District of Illinois

James J. West
Former United States Attorney, Middle District of Pennsylvania

Mary Jo White
Former United States Attorney, Southern District of New York

Joe D. Whitley
Former Acting Associate Attorney General of the United States
Former United States Attorney, Northern District of Georgia
Former United States Attorney, Middle District of Georgia

Joseph M. Whittle
Former United States Attorney, Western District of Kentucky
Former Chairman, Attorney General's Advisory Committee

William D. Wilmoth
Former United States Attorney, Northern District of West Virginia

Francis Wikstrom
Former United States Attorney, District of Utah

Frank Maxwell Wood
Former United States Attorney, Middle District of Georgia

Wayne Andersen
Former United States District Judge, Northern District of Illinois

William G. Bassler
Former United States District Court Judge, District of New Jersey

Stanley F. Birch, Jr
Former United States Appellate Judge, Eleventh Circuit Court of Appeals

Edward Cahn
Former United States District Court Judge, Eastern District of Pennsylvania

David H. Coar
Former United States District Court Judge, Northern District of Illinois

Nathaniel R. Jones
Former United States Appellate Judge, Sixth Circuit Court of Appeals
Former Assistant United States Attorney, Northern District of Ohio

Stephen Larson
Former United States District Judge, Southern District of California

Robert O'Connor, Jr.
Former United States District Judge, Southern District of Texas

Stephen M. Orlofsky
Former United States District Judge, District of New Jersey

Abraham Sofaer
Former United States District Judge, Southern District of New York

Deanell Tacha
Former United States Appellate Judge, Tenth Circuit Court of Appeals

Alfred Wolin
Former United States District Judge, District of New Jersey

Donald Ziegler
Former United States District Judge, Western District of Pennsylvania

Sam Alba
Former United States Magistrate Judge, District of Utah
Former First Assistant and Chief of the Criminal Division, United States Attorney's Office, District of Utah

Matthew R. Lewis
Former Senior Counsel to the Assistant Attorney General for the Criminal Division, United States Department of Justice

Cono R. Namorato
Former Deputy Assistant Attorney General for the Tax Division, United States Department of Justice

Steven P. Croley
Former General Counsel for the United States Department of Energy
Former Deputy White House Counsel
Former Special Assistant United States Attorney, Eastern District of Michigan

Andrew Bauer
Former Assistant United States Attorney, Southern District of New York

Eric Benson
Former Assistant United States Attorney, District of Utah

Matthew Biben
Former Assistant United States Attorney, Southern District of New York

William Burck
Former Assistant United States Attorney, Southern District of New York

David Callaway
Former Assistant United States Attorney, Northern District of California

Kevin Andrew Chambers
Former Assistant United States Attorney, District of Columbia

Charles E. Clayman
Former Assistant United States Attorney, Eastern District of New York

Joel Cohen
Former Assistant United States Attorney, Eastern District of New York

Nathan Crane
Former Assistant United States Attorney, District of Nevada

Steven Froot
Former Assistant United States Attorney, Southern District of New York

Jeffrey H. Knox
Former Assistant United States Attorney, Eastern District of New York
Former Chief, Department of Justice Criminal Fraud Section

Robert P. LaRusso
Former Assistant United States Attorney, Eastern District of New York

Lori Lightfoot
Former Assistant United States Attorney, Northern District of Illinois

Randy Luskey
Former Assistant United States Attorney, Northern District of California

Richard McKelvie
Former Assistant United States Attorney, District of Utah

Brett Parkinson
Former Assistant United States Attorney, District of Utah

Robert W. Tarun
Former Assistant United States Attorney, Northern District of Illinois

F. Joseph Warin
Former Assistant United States Attorney, District of Columbia

Loren Washburn
Former Assistant United States Attorney, District of Utah

Catherine Amirfar
Former Counselor on International Law to the Legal Adviser, United States Department of State

Robert Steinbuch
Law Professor at University of Arkansas Law School
Former IRS Attorney

**Mr. Renfrew and Mr. DeGabrielle both agreed to sign this letter before they sadly passed away on December 14, 2017, and January 22, 2018.*