Federal Criminal Justice Reform in 2018

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Deliberations about criminal justice reform are gaining momentum in Congress in 2018. As state actions over the last decade have lowered prison populations and stabilized corrections budgets, Congress is considering where on the federal level it’s feasible to follow suit.

State Action

State legislation on the front end of the prison system has focused on adjusting mandatory minimum sentences, drug penalty thresholds and felony thresholds. The goal is to preserve expensive prison space for the most dangerous offenders, while redirecting others to diversion programs, community supervision or treatment. States have also considered the back end, aiming in part to reduce recidivism rates by providing offenders with educational and job-training services and skills they need to be successful after release. Given that related costs to families, states and the federal government reach, by some estimates, $182 billion dollars annually, it’s no surprise that legislatures in nearly every state have passed laws to reduce prison populations and spending in recent years.

Federal Action

While congressional action is difficult to predict, recent developments in the House, Senate and administration may be poised to coalesce around substantive criminal justice reform this year. There are numerous bills introduced so far in the 115th Congress on this issue, but certain bipartisan legislation appears more likely to move forward.

House Legislation. Former ranking member of the House Judiciary Committee’s Subcommittee on Crime, Terrorism, and Homeland Security Representative Bobby Scott (D-Va.) introduced HR 4261, the SAFE Justice Act, in November 2017. With 15 bipartisan cosponsors and referral to the subcommittee, the bill was the culmination of the House Judiciary Committee’s Over-Criminalization Task Force, led by Representative Scott and subcommittee Chairman Jim Sensenbrenner (R-Wis.). The legislation is touted as a state-tested framework

Did You Know?

• The United States’ prison population has reached 2.2 million people, and has increased 500 percent over the past 40 years without a corresponding increase in crime.
• The United States incarcerates more people per capita than any other nation.
• Nearly two-thirds of inmates in America’s jails are awaiting trial.
for reducing the size and expense of the prison system and federal criminal code. The sponsors point to the federal imprisonment rate's 15 percent increase compared to the 4 percent decrease at the state level over the past decade. They even highlight certain states in their initiatives, noting a total of 32 states that reduced both their crime and imprisonment rates over the past five years.

Specifically, HR 4261 aims to address crime prevention, sentencing alternatives, the growing prison population and reentry. The comprehensive bill starts at the beginning of the prison life cycle, allocating resources to evidence-based crime prevention and community policing while using transparency measures and outcome performance tracking to curtail overcriminalization—or overly expansive criminal codes—in the federal criminal justice system. For those facing criminal allegations, the bill emphasizes probation and problem-solving courts as alternatives to harsher sentencing. It also establishes a system of tiered performance incentives designed to reduce the number of probation supervisees who are ultimately sent to prison in each judicial district.

Should the accused face prison time, the bill would reserve mandatory minimum sentences for drug trafficking leaders and allow for increased exceptions to mandatory minimums where appropriate. Low-risk geriatric and terminally ill inmates would also receive increased flexibility. For offenders who have served their time, the bill uses an expanded system of credits earned for time served and evidence-based prison programming to improve post-prison integration. The bill also emphasizes a system of immediate sanctions for violating, or credits for complying with, supervision conditions after release.

■ Senate Legislation. Senate Judiciary Committee Chairman Chuck Grassley's (R-Iowa) criminal justice reform bill, S. 1917, the Sentencing Reform and Corrections Act of 2017, also focuses on both the front and back ends of the prison system but differs its approach in several ways. First, S. 1917 would shift the application of mandatory minimums rather than focus mainly on reducing them. On the one hand, the bill would increase judicial discretion in sentencing firearm offenders, nonviolent offenders or those with broader criminal histories. It would reduce enhanced penalties for specified nonviolent repeat drug offenders and end the mandatory life sentence for three-time drug offenders. On the other hand, it would allow enhanced penalties to apply to previously convicted violent offenders and drug felons, and apply new mandatory minimums for crimes related to interstate domestic violence violations or weapons sales to blacklisted countries. It also would allow adding five years to sentences involving fentanyl-laced heroin trafficking.

Similar to HR 4261, the bill provides for reforms on the back end via prerelease prison programming, but S. 1917 would also use evidence-based and individualized risk assessments to assign inmates to certain programs. This would incorporate opportunities for early release or home confinement and span education, job training and drug rehabilitation. For juveniles, the bill would limit solitary confinement, increase opportunities for parole, and provide for sealing and expungement of criminal records. The bill also contains compassionate release allowances for terminally ill or elderly inmates.

The bill takes a broader aim at reform by redirecting savings accrued from the act to establish the National Criminal Justice Commission, tasked with undertaking a comprehensive review of the criminal justice system. The bill was passed out of the Senate Judiciary Committee on Feb. 16, and awaits consideration on the full Senate floor.

■ Administration's Actions. The Trump administration has also indicated an interest in reforming the criminal justice system. President Trump, White House Chief of Staff John Kelly, Senior Adviser Jared Kushner and Attorney General Jeff Sessions met with criminal justice reform advocates in mid-January to discuss recidivism rate reduction and effective re-entry procedures. The president said he’d like to employ “job training, mentoring and drug addiction treatment” to assist recently released offenders in becoming productive members of society. The administration has hosted roundtable discussions with federal and state officials, prison reform experts and others over the past six months, including at the Camp David presidential retreat in early January.

Between far-reaching legislation in both the House and Senate, and clear interest from the administration, there’s reason to believe comprehensive criminal justice reform on the federal level may occur. Only time will tell whether we can expect significant changes to materialize this year, or whether competing priorities will delay federal remedies. As the United States continues to set records for the size and cost of our prison populations, reform will remain a top priority for lawmakers.