



Date: March 25, 2019
To: Mayor and Members of the City Council
From: Patrick H. West, City Manager *T.H.W.*
Subject: **The First Step Act of 2018**

Introduction

On December 21, 2018, President Donald Trump signed into law Senate Bill 756 "The First Step Act of 2018" (S. 756). This legislation makes several revisions to federal sentencing laws and, as the name implies, is intended as a starting point for federal prison reform. Below is a summary of S. 756 pertaining to the City of Long Beach (City). Attached for additional information is a memo from the City's federal legislative lobbyist, Dentons.

Background

Federal prison populations have increased at unprecedented rates since 1980. By 2015, the United States prison population rose from 25,000 to over 205,000. According to Dentons, overpopulated federal prisons impede on the Federal Bureau of Prisons' ability to safely operate and maintain facilities. There has also been a lack of recidivism reduction programs to help formerly incarcerated individuals effectively reenter society. These factors have been known to increase the likelihood of recidivism.

S. 756 The First Step Act of 2018

S. 756 makes several changes to federal sentencing. Most notably, the "three strikes" penalty for drug felonies has been reduced from life in prison to 25 years. Sentencing guidelines have also been amended to consider both the severity of the present crime and the convict's criminal history with a point system that favors shorter criminal histories. According to the Congressional Budget Office, the newly amended sentences will result in a cumulative 53,000 years decrease for federal inmates over the next 10 years.

Recidivism reduction is a focus point of S. 756. The United States Department of Justice (DOJ) has until the end of 2020 to develop an assessment system to determine likelihood of recidivism for every incarcerated individual. The system has been allotted \$75 million and must be developed in collaboration with nonprofit and other private organizations along with higher education institutions and posted publicly online. An individual's assessment will determine priority for participating in recidivism reduction programs.

S. 756 sets forth the expectations that our nation's policy makers expect recidivism reduction programs to be woven into a participation-based federal incentive program. Participation in these programs can earn inmates' bonuses such as increased visitation privileges and sentence reductions of up to 10 days for every 30 days of active program participation. Any cost savings discovered from reductions in recidivism are required to recycle back into federal recidivism reduction programs.

S. 756 also reinstates The Second Chance Act with \$20 million each year through 2021 to fund local recidivism reduction programs. Nonprofit organizations can apply for federal grants to assist State and local inmates with reentering society. This measure also classifies the reentry court program under the Adult and Juvenile Offender State and Local Demonstration projects.

Under S. 756, The Fair Sentencing Act applies retroactively for prisoners convicted prior to August 3, 2010. The Fair Sentencing Act, which passed in 2010, increased possession amounts for crack cocaine about 5-fold, to trigger mandatory 5-year and 10-year sentences. These changes decreased the disparity in sentencing between crack cocaine and powder cocaine from 100 to 1 ratio to an 18 to 1 ratio. Prisoners will be able to petition the court to reduce their sentence according to the new guidelines.

S. 756 makes several additional changes:

- Requires the Bureau of Prisoners to place inmates as close to their primary residence as possible; no more than 500 miles.
- Requires the Department of Justice to report to Congress on its ability to treat heroin and opioid abuse through programming.
- An expanded amount of information must be collected by the National Prisoners Statistics Program including the quantity of inmates that are veterans, pregnant, and their education levels.

Long Beach Impacts

While S. 756 significantly reforms the criminal justice system at the federal level, no direct impact to the City is anticipated. The few federal court cases that come through Long Beach are managed by federal agents and do not involve local resources. The nature of reducing federal indictments may cause certain criminal acts to fall under the responsibility of the State Department of Justice; as a result, State Departments of Justice may face an increase in caseload.

The City will continue to monitor federal prison sentencing reform and provide pertinent updates. If you have questions or comments, please contact Diana Tang, Manager of Government Affairs, at (562) 570-6506.

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MEMORANDUM

To: Diana Tang
From: John R. Russell, IV
Date: January 2, 2019
Subject: S. 756 The First Step Act of 2018

Since the early 1980s, there has been an unprecedented increase in the federal prison population. The total number of inmates under the Bureau of Prisons' jurisdiction increased from approximately 25,000 in 1980 to over 205,000 in 2015. During that time, the federal prison population increased, on average, by approximately 5,900 inmates each year.

The growth in the federal prison population can be detrimental to the bureau's ability to safely operate their facilities and maintain the federal prison infrastructure. The Government Accountability Office (GAO) reports that the growing number of federal inmates has resulted in an increased use of double and triple bunking, waiting lists for education and drug treatment programs, limited meaningful work opportunities, and increased inmate-to-staff ratios. These factors can contribute to increased inmate misconduct, which, not only negatively affects the safety and security of both inmates and staff, but, also makes recidivism more likely once inmates are released.

Many groups, on both the left and right, have called on Congress to help former inmates get a second chance to become contributing members of society and avoid subsequent incarceration. In particular, many believe that the current system does not effectively allow released inmates to successfully reenter society, citing the lack of risk reevaluation within the prison system to effectively ensure all inmates are given access to recidivism reduction programs that meet their needs.

Recent Action

Earlier this year, the House passed the Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person (FIRST STEP) Act (HR 5682; see House Action Reports Supplement to the Legislative Week of May 21, 2018) which required the Justice Department to develop an evidence-based prisoner risk and needs assessment system to evaluate prisoners' recidivism risk and earn time in prerelease custody at the end of their term. The measure, which authorized \$50 million for each of the next five years to carry out the program, passed by a 360-59 vote under suspension of the rules.

However, critics representing a broad range of groups — including the American Civil Liberties Union and the Koch brothers-backed Right on Crime — complained that the House measure did not also address sentencing reform and have called on lawmakers to address both issues in one measure. Earlier this month, key senators announced an agreement on such a measure. President Donald Trump announced he supported the agreement, in large part due to the backing of key advisers, including son-

in-law Jared Kushner, and encouraged Senate Majority Leader Mitch McConnell, R-Ky., to bring the measure up for a vote.

Member Concerns

Supporters say the bill represents an opportunity to help fix a criminal justice system that disproportionately affects low-income Americans, the addicted and people of color. They say the bill will only apply to "low-level, non-violent" offenders and that there are adequate safeguards to protect the public. Proponents say similar reforms have worked on the state level and it's time to help federal inmates better integrate into society once they leave prison, reduce prison overcrowding and save taxpayer money.

Opponents say the bill allows violent and high-level drug offenders out of prison early and makes it far too easy to earn an early release from prison. Instead of early release, opponents say, it merely provides incentives for inmates to participate in any program that will lessen their prison time. Moreover, those opposed say the categories of those eligible for early release are still too numerous and that activities that make a prisoner eligible for time credits are defined so vaguely that most inmates won't have to participate in new programs to achieve new time credits.

SUMMARY:

This bill revises federal sentencing laws, including reducing the "three strikes" penalty for drug felonies from life behind bars to 25 years and retroactively limiting the disparity in sentencing guidelines between crack and powder cocaine offenses.

It requires the Justice Department to develop an evidence-based prisoner risk and needs assessment system to evaluate prisoners' recidivism risk so they can earn time in prerelease custody at the end of their term. The measure also generally prohibits restraining pregnant prisoners and expands the information required to be collected by the National Prisoner Statistics Program.

The bill, which does not cover state jails and prisons, would through reductions in sentencing, shave the equivalent of 53,000 years off the sentences of federal inmates over the next 10 years, according to the Congressional Budget Office.

Sentencing Changes

The bill reduces the "three-strike" penalty to 25 years from life in prison, reduces the disparity between sentencing for crack and powder cocaine retroactively, eases mandatory minimum sentencing, and expands the existing safety valve to include offenders with up to four criminal history "points."

Federal sentencing guidelines take into account both the severity of the crime and the criminal history of the convicted individual. Repeat offenders are given longer prison sentences than people convicted of fewer prior criminal acts. To achieve this, points are assigned for every prior conviction. Generally one point is given for a misdemeanor, two for violent offenses with sentences of at least 60 days and three points for sentences of more than 13 months. All the points are added up to determine a defendant's criminal history category. The offense level and criminal history are applied to a sentencing table to determine the range of sentences applied to the offense.

Mandatory Minimums Modifications

The measure reduces the severity of some minimum prison sentences. Specifically, the mandatory minimum sentences for serious violence or weighty drug charges would decrease by five years to 15 years.

The federal "three strikes" rule, which prescribes a life sentence for three or more convictions that includes drug trafficking, would instead trigger a 25-year sentence but would also be expanded to apply when one of the crimes is a serious violent felony.

Serious drug felonies that now result in an automatic 20-year minimum sentence would be reduced to 15 years. And an automatic trigger that adds 25 years if a defendant was convicted of two or more violent or trafficking charges while holding a gun would now apply only to people with prior records of similar offenses.

The shortened mandatory sentences would not apply retroactively.

Safety Valve

In federal sentencing guidelines, defendants are eligible for sentences below the statutory minimum for certain nonviolent, non-managerial drug offenders with little or no criminal history, known as a "safety valve." Current law applies this safety valve for defendants with no more than one prior criminal point, i.e. generally a minor misdemeanor.

The measure expands the existing safety valve to include offenders with up to four criminal history points, excluding one-point offenses. However, offenders with three-point felony convictions (sentences of more than 13 months) or prior two-point violent offenses (violent offenses with sentences of at least 60 days) will not be eligible for safety valve unless there is a judicial finding that the prior offenses substantially overstate the defendant's criminal history and danger of recidivism.

Under the measure, a judge may not apply the safety valve unless the defendant has "fully cooperated" with law enforcement and has not used or threatened to use violence, caused death or serious bodily injury, or was an organizer, leader, manager or supervisor of others in connection with the offense.

Cocaine Sentencing Changes

In 2010, Congress passed the Fair Sentencing Act (PL 111-220) which reduced the disparity between powder and crack cocaine sentencing guidelines from a 100 to 1 ratio to an 18-to-1 ratio. It also increased, to 28 grams, from the previous 5 grams, the amount of crack cocaine possession that would trigger a mandatory five-year prison sentence. It also increased, to 280 grams, from 50 grams, the amount of crack cocaine that would trigger a 10-year minimum prison sentence. The measure also eliminated the five-year mandatory minimum prison term for a first-time possession of crack cocaine.

The bill applies the law retroactively, permitting prisoners convicted before Aug. 3, 2010 (when the Fair Sentencing Act became law) to petition a court to reduce his or her sentence to the more recent lower terms.

Firearm Conviction

The bill clarifies that the enhanced mandatory minimum sentence for using a firearm during a crime of violence or a drug crime is limited to offenders who have previously been convicted and served a sentence for such an offense. Previously, courts have interpreted the law as also applying to first-time

offenders instead of repeat offenders, which in some cases brought decades-long sentences for charges brought on a single indictment.

Assessment System

The bill requires the Justice Department to develop, within two years of enactment, a risk and needs assessment system to determine the recidivism risk of each prisoner. The system, which will initially be conducted as part of the prisoner intake process, must classify each prisoner as having minimum, low, medium, or high risk for recidivism. In developing the system, the department must work with nonprofit organizations and other private groups as well as colleges and universities to best develop the system. It must also be posted publically online.

The measure authorizes \$75 million to carry out the system for each of fiscal years 2019 through 2023.

The system must consider each prisoner's risk of violent or serious misconduct and use that information to determine which recidivism reduction programs are appropriate for each prisoner and assign each prisoner to those programs. Prisoners would be periodically reassigned to different programs, and must be assessed at least once a year. Under the measure, medium and high risk prisoners will be given priority for participating in the program and low and minimum risk prisoners will have access to "productive" activities.

The system would also be used to provide guidance on housing inmates, including grouping together individuals with similar risk assignments.

Finally, the bill expresses the sense of Congress that any savings associated with reductions in recidivism should be reinvested in evidence-based recidivism reduction programs.

Incentives

The bill requires the system to provide incentives and rewards for prisoners to participate in and complete evidence-based recidivism reduction programs.

Such inducements include phone and visitation privileges, placement closer to a prisoner's release residence, increased commissary spending limits, extended access to email, and transfers to preferred housing units within the prison.

Prisoners may also receive time credit of up to 10 days for every 30 days of programming that he or she successfully completes. Low and minimum risk inmates may receive an additional five credits for each 30 days of programming completed. These time credits could be used for pre-release custody at the end of a prisoner's term.

Inmates serving sentences for a second or subsequent federal offense and those with 13 or more criminal history points are not eligible for these time credits. In addition, those serving sentences for certain offenses are excluded, including crimes of terrorism, kidnaping of children and carjacking that results in death (see below).

Prerelease Custody

Under the bill, when a prisoner earns time credits for prerelease custody, the inmate may be released into home confinement or a residential reentry center.

All inmates in these programs must be subject to 24-hour monitoring, may not commit any acts of violence, and be offered mentoring services.

Training Programs

The measure requires the Justice Department to develop training programs for prison officers to manage the risk and needs assessment system.

The training must include how to use the system in an appropriate and consistent manner, as well as continuing education. Each employee must demonstrate competence in administering the system at least twice a year.

Exclusions

The bill identifies a number of crimes that would be excluded from earning time off credits, including sex trafficking of children, sexual abuse of a child, child pornography offenses, recruitment of child soldiers, arson, domestic assault by a habitual offender, carjacking resulting in serious bodily injury, prisoner escape, and other high level offenses.

Additionally, prisoners subject to a final order of removal as undocumented immigrants, who were convicted of fentanyl or heroin offenses involving five to ten year mandatory minimums who were leaders in the offense, or who brandished or discharged a firearms while committing a crime are not eligible for time credits.

Report

Beginning two years after enactment and then annually for the next five years, the Justice Department must submit a report to Congress on the implementation of the system.

The report must include the activities and accomplishments of carrying out the system, the types and effectiveness of the program, and recidivism rates among those who have been released from federal prison — comparing those who have and have not used the system.

Return to Society

The measure expands the use of products produced by federal prison industry programs in order to provide more meaningful employment and training opportunities to inmates.

The bill also expands the compassionate elderly release program to permit prisoners aged 60 years or older (instead of the current 65 years) or prisoners who are terminally ill to request for a compassionate release if he or she meets certain eligibility requirements.

Second Chance Act

The measure reauthorizes the Second Chance Act programs at \$20 million each year through FY 2021 for numerous grant programs for states and localities to improve treatment of inmates and help them prepare for their release into society.

The measure permits nonprofit organizations to receive grants for programs promoting family-based substance abuse treatment and career training. It repeals several provisions calling for studies that have been completed and removes support for programs for which other funding sources have been identified.

It also consolidates the reentry court program into the Adult and Juvenile Offender State and Local Demonstration projects.

Restraints on Pregnant Prisoners

The measure generally prohibits restraints to be placed on pregnant prisoners. Under the measure, the prohibition will begin when the pregnancy is confirmed by a healthcare professional and end at the conclusion of postpartum recovery.

The prohibition would not apply if a corrections official determines that the prisoners is an immediate and credible flight risk that cannot be prevented by other means, poses an immediate and serious threat to herself, or if a health care professional determines that the use of restraints is appropriate for her medical safety.

If restraints are used in these excepted instances, only the least restrictive restraints necessary to prevent harm or flight risk may be used.

Law Enforcement Firearms in Prison

Although the Law Enforcement Officers Safety Act (PL 108-277) allows certain law enforcement officers, including correctional officers, to carry concealed firearms for self-protection and to carry firearms while off-duty, it does not permit correctional officers to store their personal firearms in a secure locker at the correctional facility in which they work.

In February 2013, Correctional Officer Lieutenant Osvaldo Albarati was shot and killed as he drove home from the Metropolitan Detention Center in Guaynabo, Puerto Rico. Nearly two years later, inmates incarcerated in the prison were convicted of planning and financing the murder; the inmates also are believed to have alerted the shooters when Albarati left the prison.

The bill allows law enforcement officers employed by the Bureau of Prisons to store firearms in a secure storage area outside of the secure perimeter of a prison or in an approved lock box within the officers' vehicles.

It also allows them to carry concealed firearms on the premises of a prison outside of the secure perimeter.

Other Provisions

The bill also does the following:

- **Location** — Requires the Bureau of Prisons to place a prisoner in a facility as close as practicable to a prisoner's primary residence, but no more than 500 miles away. In designating the facility, the bureau must take into account the prisoner's programmatic needs, health, court recommendations and security concerns.

- **De-escalation Training** — Requires the Justice Department to incorporate de-escalation programs into training for Bureau of Prisons employees. The training must assist employees in identify and responding to incidents that involve the unique needs of individuals who have a mental illness or cognitive deficit.
- **Opioids** — Requires the Justice Department to report to Congress on its ability to treat heroin and opioid abuse through evidence-based programs, including medication-assisted treatment. The report must consider medication-assisted treatment as a strategy to assist in treatment where appropriate and plans to expand access to evidence-based treatment for heroin and opioid abuse for prisoners.
- **Enhanced Statistics** — expands the information required to be collected by the National Prisoner Statistics Program to include the number of prisoners who are veterans, the number of prisoners who have been placed in solitary confinement, the number of female prisoners known to be pregnant, the number being treated with medication, and the education level of the prison populations.
- **Faith-based Mentoring** — Requires the Justice Department to establish five pilot programs in at least 20 facilities that pair youth with volunteers from faith-based or community organizations to mentor prisoners.

CBO Cost Estimate

The Congressional Budget Office (CBO) estimates the bill would cost \$352 million over the next ten years.

Under current law, prisoners generally are ineligible to receive benefits from several federal programs, including Medicare, Medicaid, and the health insurance marketplaces. By accelerating the release of prisoners, CBO estimates that the legislation would increase the number of people receiving benefits from those programs. As a result, CBO and JCT estimate that enacting the legislation would increase direct spending by \$346 million and reduce revenues by \$6 million over the 2019-2028 period.

AMENDMENTS: None permitted.

COMMENTARY: S. 756 The First Step Act of 2018 is the law of the land.