

PREPARING FOR THE VIRTUAL LOBBY DAY: SENTENCING REFORM POLICY BRIEFING

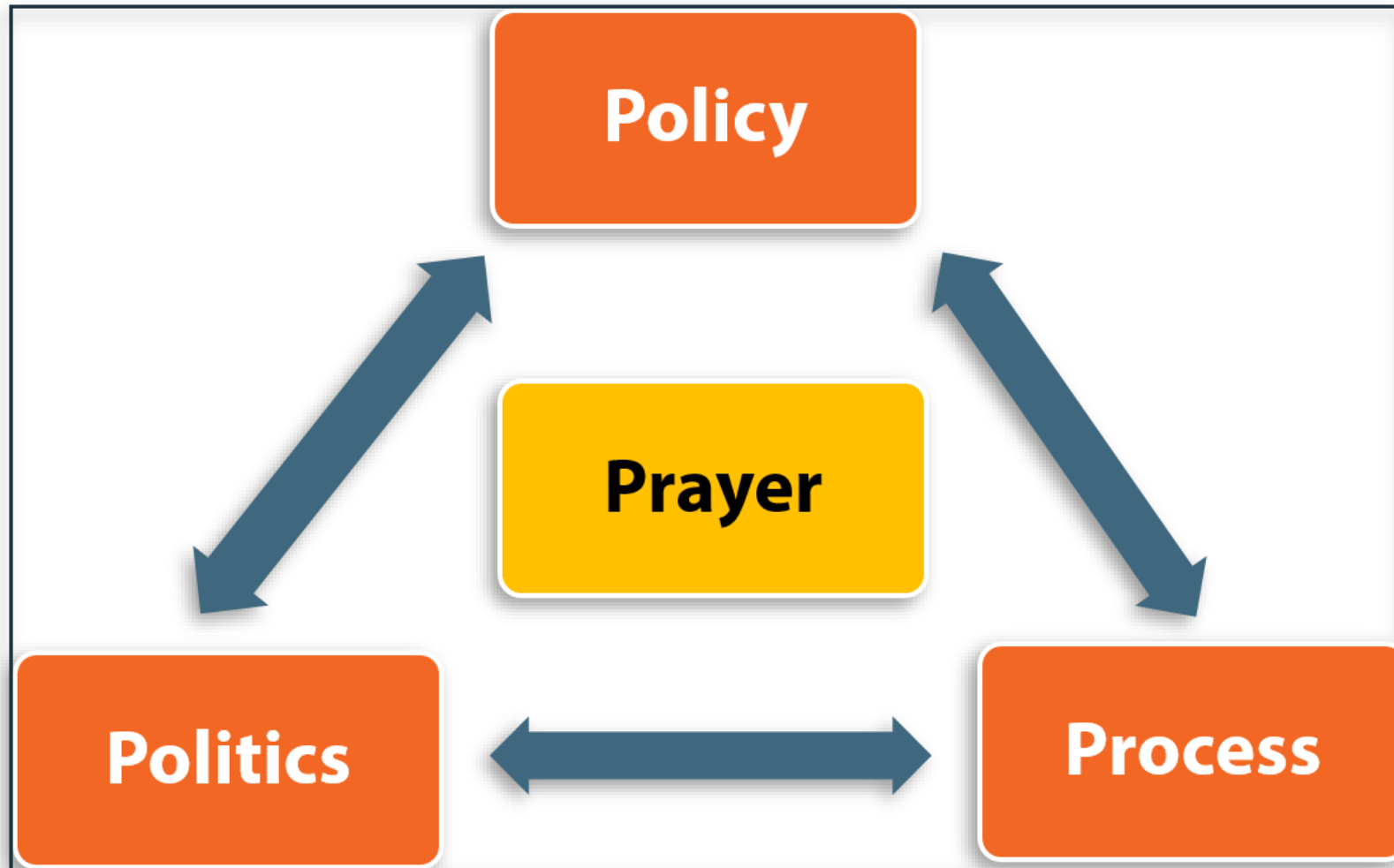
Meg Olson, Grassroots Mobilization Director
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NETWORK Advocates Training

Virtual Lobby Day

- ☀ Virtual Lobby Day with Hill Staff on May 17 and May 18
- ☀ You will be meeting with your Senators about 4 Sentencing Reform Bills:
 - Eliminating a Quantifiably Unjust Application of the Law (EQUAL) Act, S. 79
 - First Step Implementation Act (S. 1014)
 - Prohibiting Punishment of Acquitted Conduct Act (S. 601)
 - Covid-19 Safer Detention Act (S. 312)
- ☀ After this policy briefing, you will go into break-out rooms, organized by states, and begin prepping for the visit!

The 3 “4 P’s” Analysis



Analysis: Policy

Sentencing Reform is Needed

☀ **Root Causes of Mass Incarceration**

- Since Nixon's 1971 War on Drugs and the introduction of the 1994 Crime Bill, 1 in 3 Black boys are going to prison during their lifetime, vs. 1 in 17 white boys
- 300k people in state and federal prisons for drug violations today, up from less than 25,000 in 1980
- 45% of those in federal prison are incarcerated for a drug offense
- Average time spent incarcerated for federal drug offenses jumped 153% between 1988 and 2012



Analysis: Policy

Sentencing Reform is Needed

- ☀ Today, almost half of the people in federal prison are incarcerated for a drug offense—and two-thirds of those are people of color
- ☀ As of 2018, the U.S. incarceration rate is 655 people in prison or jail per every 100,000 adults age 18+ (vs. 140 in the U.K. and 114 in Canada)
- ☀ Since 2018, the average federal drug sentence for Black people was 49% longer than for white people



Analysis: Policy

Sentencing Reform is Needed



- ☀ Harsh mandatory sentencing laws and a focus on punishment rather than rehabilitation and redemption has taken its toll on vulnerable communities
- ☀ In 2019, 81% of individuals convicted of offenses related to crack cocaine were Black (even though they represent about one-third of users)
- ☀ Despite previous legislation, there are still 9,000 people serving time for federal crack cocaine use—and 1500 new sentences issued each year (*Prison Fellowship*)

Analysis: Policy

Sentencing Reform is Needed

☀ **Far Reaching Consequences**

- People who've been imprisoned for drug felonies face many barriers to re-entry and legal discrimination in employment, education, and social services
- People who've been imprisoned for drug felonies earn about half as much as those untouched by the criminal justice system (Brennan Center)
- Since the War on Drugs began in 1971, Black communities have lost \$11 billion in property values



Analysis: Policy

The US Senate is considering these sentencing reform bills...

The Eliminating a Quantifiably Unjust Application of the Law (EQUAL) Act (S. 79)

- Eliminates the disparity in sentencing for cocaine offenses
- Applies to pending cases and provides for retroactivity—though it does not guarantee resentencing
- Repeals sections of the Controlled Substance Act and the Controlled Substance Import and Export Act
 - *Currently still in Judiciary Committee*

Analysis: Policy

The US Senate is considering these sentencing reform bills...

The First Step Implementation Act (S. 1014)

- Allows courts to apply the FSA's sentencing reform provisions to reduce sentences imposed prior to the enactment of the FSA
- Allows courts to sentence below a mandatory minimum for nonviolent controlled offenses, if the court finds the defendant's criminal history over-represents the seriousness of the defendant's criminal history and likelihood of recidivism
- Allows courts to reduce sentences imposed on juvenile offenders who have served more than 20 years

Analysis: Policy

The US Senate is considering these sentencing reform bills...

The First Step Implementation Act (S. 1014)

- Provides for the sealing or expungement of records of nonviolent offenses
- Requires the Attorney General to establish procedures ensuring that only accurate criminal records are shared for employment purposes
 - *Awaiting package bill introduction and floor vote*

Analysis: Policy

The US Senate is considering these sentencing reform bills...

The Prohibiting Punishment of Acquitted Conduct Act (S. 601)

- Amends 18 U.S.C. § 3661 to preclude a court of the United States from considering, except for purposes of mitigating a sentence, acquitted conduct at sentencing
- Defines “acquitted conduct” to include acts for which a person was criminally charged and adjudicated not guilty after trial in a Federal, State, Tribal, or Juvenile court, or acts underlying a criminal charge or juvenile information dismissed upon a motion for acquittal.
 - *Awaiting package bill introduction and floor vote*

Analysis: Policy

The US Senate is considering these sentencing reform bills...

The Covid-19 Safer Detention Act (S. 312)

- Clarifies that the percentage of time served, required for the Elderly Home Detention Pilot Program, should be calculated based on an inmate's sentence, including reductions for good time credits
- Expands the eligibility criteria for the Elderly Home Detention Pilot Program to include nonviolent offenders who have served at least two-thirds of their term of imprisonment
- Clarifies that elderly nonviolent D.C. Code offenders in BOP custody are eligible for the Elderly Home Detention Pilot Program and that federal prisoners sentenced before November 1, 1987 are eligible for compassionate release

Analysis: Policy

The US Senate is considering these sentencing reform bills...

The Covid-19 Safer Detention Act (S. 312)

- Subjects elderly home detention eligibility decisions to judicial review
- Provides that, during the period of the pandemic, COVID-19 vulnerability is a basis for compassionate release and shortening the period prisoners must wait for judicial review for elderly home detention and compassionate release from 30 to 10 days
 - *Awaiting package bill introduction and floor vote*

Analysis: Politics

Political Factors

Bi-partisan and bi-cameral

- Co-Sponsor Strategy: Each one, reach one

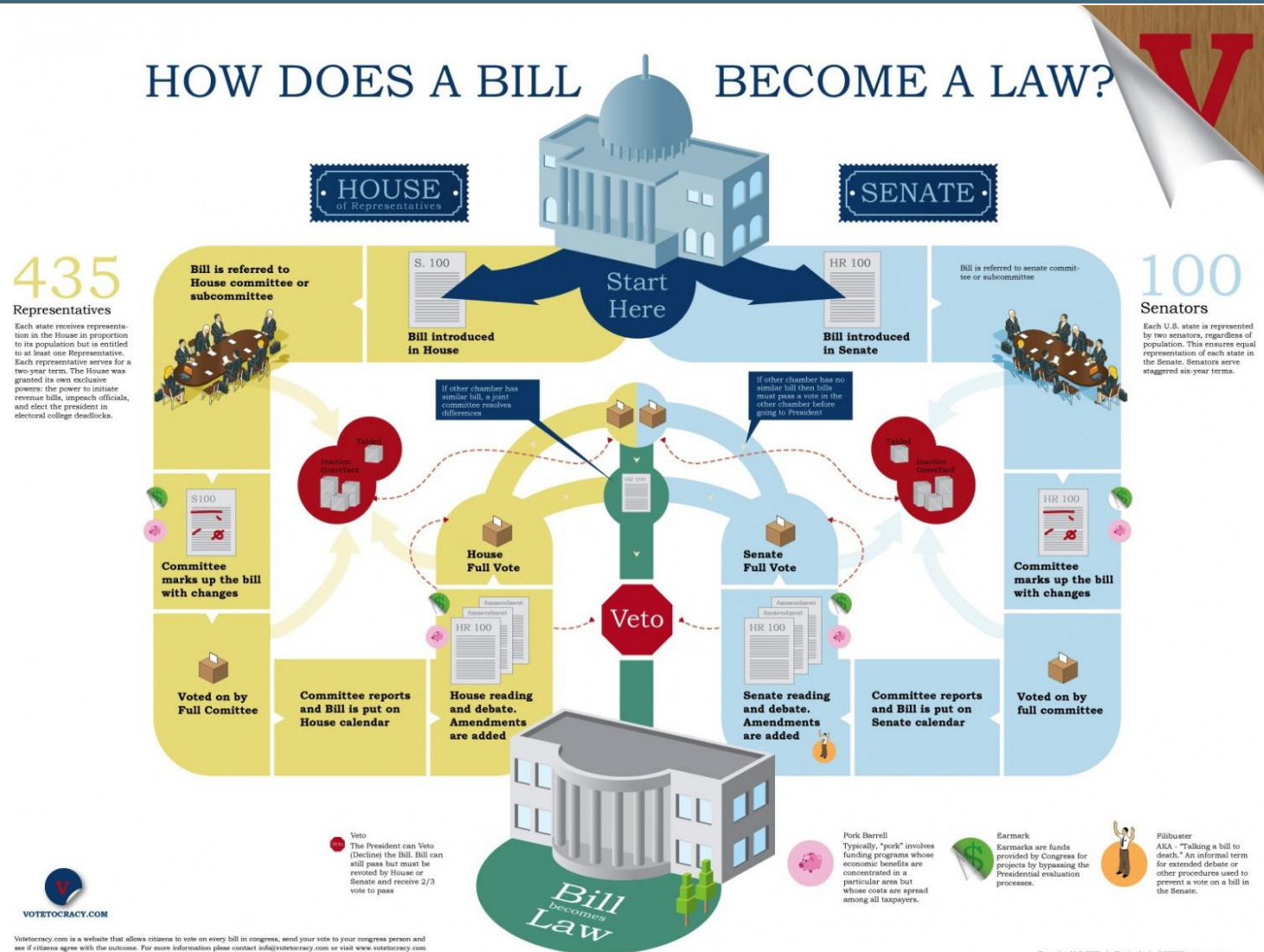
Incremental Reform vs. “Soft on Crime”

Midterm Elections/Voter Concerns

- GOP Voters: 58% immigration, 14% Economy, 4% Schools, 4% Crime

Analysis: Process

HOW DOES A BILL BECOME A LAW?



Analysis: Process

The EQUAL Act, S. 79

- Introduced in the House on March 9, 2021, passed on Sept. 28, 2021 with overwhelming support
 - Reps. Hakeem Jeffries (D-NY), Bobby Scott (D-VA), Kelly Armstrong (R-AL), and Don Bacon (R-NE)
- Introduced in the Senate on Jan. 28, 2021, referred to Senate Judiciary Committee on Sept. 29, 2021
 - Senators Cory Booker (D-NJ) and Dick Durbin (D-IL)
- Currently 21 Senate co-sponsors: 10 Democrats, 11 Republicans

Analysis: Process

- ☀ **The First Step Implementation Act, (S. 1014)**
 - Introduced in the Senate on March 25, 2021, by Sen. Dick Durbin (D-IL)
 - Currently 9 co-sponsors in the Senate: 7 Democrats and 2 Republicans
- ☀ **The Prohibiting Punishment of Acquitted Conduct Act (S. 601)**
 - Introduced on March 4, 2021 by Sen. Dick Durbin (D-IL)
 - Currently 9 co-sponsors in the Senate: 5 Democrats and 4 Republicans
- ☀ **The Covid-19 Safer Detention Act (S. 312)**
 - Introduced on Feb. 13, 2021 by Sen. Dick Durbin (D-IL)
 - Currently 8 co-sponsors in the Senate: 3 Democrats and 5 Republicans

Analysis: Process



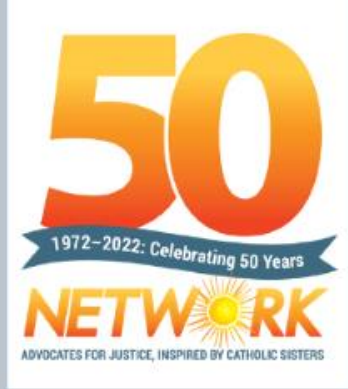
Process Challenges

- Currently Prioritized Legislation and Issues
 - Ukraine/Russia Conflict
 - Competes Act
 - Covid Supplemental Legislation
 - Budget Reconciliation
- Legislative Calendar Time is “Prime Real Estate”
- Mid-term Elections, Political Influencers
- Holidays, Recesses, Unfortunate Events

Analysis: Process

Ask Members To:

- Sign on as co-sponsors
- Invite colleagues to become co-sponsors
- Ask for committee/floor vote
- Vote YES for the bill when the time comes



Questions?

Thank you!