

## NETWORK Virtual Lobby Day Talking Points - April 2022

### EQUAL Act and Senate Sentencing Package of Three Bills

NETWORK Lobby for Catholic Social Justice

*\*\*For NETWORK community only—not for public distribution\*\**

#### **NETWORK's Build Anew Agenda**

- Emerging from encounter with families and communities across the United States – NETWORK's **Build Anew Agenda** calls on Members of Congress and other elected officials to pass policies that dismantle systemic racism, eliminate the wealth and income gap, improve the wellbeing of our communities, and allow all people to thrive.
  - Think of stories from your own life or your community about people and families experiencing injustices and ways that our federal policies can better uphold human dignity OR
  - Watch site visits from the 2020 Nuns on the Bus tour: [nunsonthebus2020.org](https://nunsonthebus2020.org)  
*\*For sentencing and re-entry, watch site visits with **New Hour for Women and Children** in New York and **Homeboy Industries** in California*
- NETWORK's Build Anew Agenda is based on four cornerstones, inspired by the principles of Catholic Social Justice:
  - Dismantle Systemic Racism
  - Root Our Economy in Solidarity
  - Cultivate Inclusive Community
  - Transform Our Politics

#### **Our Criminal Legal System**

- Starting in the 1980s and including the passage of the 1994 Crime Bill, U.S. federal policies have resulted in over-criminalization, mass incarceration, and police militarization.
- Harsh mandatory sentencing laws and a focus on punishment rather than rehabilitation has taken its toll on already vulnerable segments of the U.S. population, deepening the racial divide and creating a situation of structural poverty for many individuals, families, and communities.
- Extreme sentencing measures such as mandatory minimums and "three strikes" laws have led to the U.S. having the highest percentage of incarcerated people in the world.
  - As of 2018, the U.S. incarceration rate is 655 people in prison or jail for every 100,000 adults ages 18 and older. For the United Kingdom, that rate is 140 people, and Canada is 114 people out of every 100,000 adults 18 and older. (Source: [CNN.com](https://www.cnn.com))
- We cannot continue to tolerate racism in our criminal legal system or the loss of another generation to mass incarceration, or the perpetuation of poverty because of discrimination against formerly incarcerated people. We affirm that every person is made in the image of God and entitled to respect, support, forgiveness, dignity, and equal justice under law.

#### **A note about language:**

We point to the lack of "justice" currently in our system by using the term **criminal legal system** instead of criminal justice system. This better reflects how the legal system *fails to provide true accountability and justice* for Black and brown, undocumented, LGBTQ+, and low-income people, and in reality is often a source of harm for members of these communities.

(Source: [thepraxisproject.org](https://thepraxisproject.org))

When referring to people who are involved with the criminal legal system, use language that recognizes humanity first like "**people who are incarcerated**" or "returning citizen" or "formerly incarcerated person" not terms that dehumanize such as "inmate," "felon," or "prisoner."

(Source: [themarshallproject.org](https://themarshallproject.org))

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### The EQUAL Act (S.79)

- The **Eliminating a Quantifiably Unjust Application of the Law (EQUAL) Act** is bipartisan & bicameral legislation to eliminate the disparity in sentencing for crack and powder cocaine
- The 1986 Anti-Drug Abuse Act created a 100 to 1 disparity between the amount of crack cocaine that triggers a federal mandatory minimum sentence versus powder cocaine, though there is no pharmacological differences between powder and crack cocaine.
- The 2010 Fair Sentencing Act reduced the disparity to be 18 to 1 instead of 100 to 1, and the 2018 First Step Act made the reform retroactive, allowing people incarcerated for crack offenses to apply for resentencing under the new law. (Source: [vox.com](https://www.vox.com))
- From 1991 to 2001, 9 times as many Black people as white people went to federal prison for crack offenses, even though drug use between Black and white people is roughly the same. Black people's sentences for crack were double that for white crack offenders in federal court during that period: 148 months compared to 84 months. (Sources: [app.com](https://www.app.com) and [eji.org](https://www.eji.org))
- In the House, the EQUAL Act was first introduced on March 9, 2021 by Reps. Hakeem Jeffries (D-NY-08), Bobby Scott (D-VA-03), Kelly Armstrong (R-ND-AL), and Don Bacon (R-NE-02), and passed in a 361-66 vote September 28, 2021 (218 Democrats, 143 Republicans voted "yes").
- Senators Cory Booker (D-NJ) and Dick Durbin (D-IL) introduced the EQUAL Act in the Senate on January 28, 2021; it was referred to Senate Judiciary Committee on September 29, 2021.
- Currently the bill has 21 co-sponsors in the Senate: 10 Democrats and 11 Republicans
  1. Sen. Dick Durbin [D-IL]\* (\*original co-sponsor)
  2. Sen. Rob Portman [R-OH]
  3. Sen. Rand Paul [R-KY]
  4. Sen. Thomas Tillis [R-NC]
  5. Sen. Patrick J. Leahy [D-VT]
  6. Sen. Lindsey Graham [R-SC]
  7. Sen. Jon Ossoff [D-GA]
  8. Sen. Lisa Murkowski [R-AK]
  9. Sen. Tammy Baldwin [D-WI]
  10. Sen. Susan M. Collins [R-ME]
  11. Sen. Alex Padilla [D-CA]
  12. Sen. Cynthia M. Lummis [R-WY]
  13. Sen. Shelley Moore Capito [R-WV]
  14. Sen. Christopher A. Coons [D-DE]
  15. Sen. Tim Kaine [D-VA]
  16. Sen. Jerry Moran [R-KS]
  17. Sen. Charles E. Schumer [D-NY]
  18. Sen. Richard Burr, [R-NC]
  19. Sen. Joe Manchin, III [D-WV]
  20. Sen. Roy Blunt [R-MO]
  21. Sen. Edward J. Markey [D-MA]
- The EQUAL Act:
  - 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

#### Ask for your Senator: Will you support the EQUAL Act (S.79) by:

- Signing on as a co-sponsor (if they have not already),
- Inviting colleagues to become co-sponsors, and
- Calling for them to be voted out of Judiciary Committee, and
- Urging your fellow Senators to support passage of the bills.

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## Senate Sentencing ‘Package of Three’

### 1. First Step Implementation Act of 2021 (S.1014)

Introduced on March 25, 2021 by Sen. Dick Durbin (D-IL), the **First Step Implementation Act** would further the goals of the First Step Act of 2018 (FSA), which was a bipartisan law intended to cut unnecessarily long federal sentences and improve conditions in federal prison.

The **First Step Implementation Act** would correct unfairness in implementation and interpretation errors that contravene the spirit of the FSA.

It would:

- Allow courts to apply the First Step Act’s significant sentencing reform provisions to reduce sentences for people who committed their offenses prior to the FSA’s enactment on December 21, 2018;
- Broaden the ‘safety valve’ provision that allows courts to sentence below a mandatory minimum for nonviolent controlled substance offenses, if the court finds the defendant’s criminal history over-represents the seriousness of the defendant’s criminal record and the likelihood of recidivism;
- Allow courts to reduce sentences imposed on juvenile offenders who have served more than 20 years;
- Provide for sealing or expunging records of nonviolent juvenile offenses in some cases; and,
- Require the Attorney General to establish procedures to ensure only accurate criminal records are shared for employment-related purposes.

This bill currently has 9 Senate co-sponsors: 7 Democrats and 2 Republicans (\*original co-sponsor)

- |                                   |                               |                                 |
|-----------------------------------|-------------------------------|---------------------------------|
| 1. Sen. Chuck Grassley [R-IA]*    | 4. Sen. Amy Klobuchar [D-MN]  | 8. Sen. Chris Van Hollen [D-MD] |
| 2. Sen. Patrick J. Leahy [D-VT]   | 5. Sen. Cory A. Booker [D-NJ] | 9. Sen. Roger F. Wicker [R-MS]  |
| 3. Sen. Sheldon Whitehouse [D-RI] | 6. Sen. Jon Ossoff [D-GA]     |                                 |
|                                   | 7. Sen. Tammy Baldwin [D-WI]  |                                 |

### 2. Prohibiting Punishment of Acquitted Conduct Act of 2021 (S.601)

Currently, federal law allows judges to essentially override a jury’s ‘not guilty’ verdict in their sentencing and punish the defendant for something that was acquitted (absolved) by the jury.

Introduced on March 4, 2021 by Sen. Dick Durbin (D-IL), the **Prohibiting Punishment of Acquitted Conduct Act** would end the perverse practice of federal courts considering acquitted or dismissed charges as aggravating factors when imposing sentences for convictions.

In 2014, in a dissent written regarding the 2005 case of Mr. Antwan Ball, Supreme Court Justices Scalia, Thomas, and Ginsburg all agreed that this practice was unacceptable.

The Prohibiting Punishment of Acquitted Conduct Act would:

- Amend U.S. Code: Title 18 Section 3661 of [18 U.S.C. § 3661] to prevent a court from considering, except for purposes of mitigating a sentence, acquitted conduct at sentencing
- Define “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.

This bill currently has 9 Senate co-sponsors: 5 Democrats and 4 Republicans (\*original co-sponsors)

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|----------------------------------|--------------------------------|---------------------------------|
| 1. Sen. Chuck Grassley [R-IA]*   | 4. Sen. Cory A. Booker [D-NJ]* | 7. Sen. Jon Ossoff [D-GA]       |
| 2. Sen. Patrick J. Leahy [D-VT]* | 5. Sen. Thomas Tillis [R-NC]*  | 8. Sen. Tammy Baldwin [D-WI]    |
| 3. Sen. Mike Lee [R-UT]*         | 6. Sen. Amy Klobuchar [D-MN]   | 9. Sen. Susan M. Collins [R-ME] |

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### 3. COVID-19 Safer Detention Act of 2021 (S.312)

We have a moral obligation to ensure people in jails and prisons are not needlessly exposed to COVID-19.

Introduced on February 12, 2021 by Sen. Dick Durbin (D-IL), the **COVID-19 Safer Detention Act** would expand eligibility to additional vulnerable, low-risk prisoners and expedite releases from federal prison during the continued COVID-19 pandemic. It would do this by clarifying and expanding eligibility for the Elderly Home Detention Pilot Program (introduced by the FSA), including explicitly naming COVID-19 vulnerability as a basis for compassionate release.

Specifically, it would:

- Clarify 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 (H.R. 4018, which passed the House by voice vote last Congress);
- Expand 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;
- Clarify 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;
- Subject elderly home detention eligibility decisions to judicial review (based on the First Step Act's compassionate release provision); and
- Provide 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.

This bill currently has 8 Senate co-sponsors: 3 Democrats and 5 Republicans (\*original co-sponsors)

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|------------------------------------|-------------------------------|---------------------------------|
| 1. Sen. Chuck Grassley [R-IA]*     | 3. Sen. Thomas Tillis [R-NC]* | 6. Sen. Cory A. Booker [D-NJ]*  |
| 2. Sen. Sheldon Whitehouse [D-RI]* | 4. Sen. Chris Coons [D-DE]*   | 7. Sen. Roger F. Wicker [R-MS]* |
|                                    | 5. Sen. Kevin Cramer [R-ND]*  | 8. Sen. Roy Blunt [R-MO]        |

**Ask for your Senator(s): Will you support the Senate Sentencing Package of Three: First Step Implementation Act (S.1014), the Prohibiting Punishment of Acquitted Conduct Act (S.601), and the COVID-19 Safer Detention Act (S.312) by:**

- Signing on as a co-sponsor (if they have not already),
- Inviting colleagues to become co-sponsors,
- Calling for them to be voted out of Judiciary Committee, and
- Urging your fellow Senators to support passage of the bills.

*\*Remember, you can always say "I'm not sure of that answer, but I will get back to you after this meeting."*

#### **On Virtual Lobby Day, if you have any questions:**

Call: 202-347-9797 then press 1

Email: [info@networklobby.org](mailto:info@networklobby.org)

Facebook Message: [@NETWORKLobby](https://www.facebook.com/NETWORKLobby)

Twitter D.M.: [@NETWORKLobby](https://twitter.com/NETWORKLobby)