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Bill walks back tough-on-crime policies

Employing an increasingly endangered species known as “bipartisan compromise,” the U.S. Senate this week passed legislation designed, if not to take a bite out of criminal justice reform, to nibble at its edges, meaningfully but cautiously.



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have brought prison overcrowding to crisis levels.

The need to reform the way we put people in jail first hit home for me when I defended a client who was accused of domestic violence. This client was very well-educated and came from a great family, but suffered from mental illness: bipolar disorder and schizophrenia. He was put in jail, and we asked the court to have him declared incompetent for the sentencing part of the case.

The court ordered him to be evaluated by a psychiatrist while in custody, but my client spent over a month in jail before he was seen by a doctor. He then had to spend another three weeks in jail while waiting for the evaluation report to be prepared. It was then that I realized that our justice system is not able to handle people with mental illnesses, but unfortunately, our jails are filled with people who suffer from such conditions.

Because it impacts only federal prisoners, the First Step Act will apply to only about 181,000 members of the total U.S. inmate population, which currently stands at 2.1 million. That's a

small but significant number, but even more significant is the bill's diverse array of supporters, which include President Donald Trump, the American Civil Liberties Union, the Koch brothers, and an host of organizations that rarely find themselves on the same side of any issue. In broad strokes, those on the left support social justice aspects of criminal justice reform, and those on the right support the fiscal aspects of reducing overincarceration and recidivism. So, while it takes a less than bold approach, this bill does offer something for everyone.

With the First Step Act, mandatory minimum sentences, criticized for their hamstringing of judicial discretion to factor the unique circumstances of a case into sentencing, are not done away with, but reduced, in cases of serious violent or drug offenses, from 20 years to 15. Third strike crimes are reduced from life without parole to a minimum 25-year term, which cuts the elderly -- the most expensive prisoners to maintain and the least likely to reoffend -- from the prison population.

The bill also improves some unfair and just plain abhorrent practices in the criminal justice system. It eliminates the shackling of female inmates during childbirth -- an unnecessary practice that borders on barbaric, and takes the 2010 Fair Sentencing Act a step further. The 2010 law, which reduced (but did not eliminate) the disparity between sentences for crack and powder cocaine is now retroactive. That means that, much like California's Prop. 47 allowed for people with past criminal records to apply for resentencing when certain nonviolent felonies were reduced to misdemeanors, federal prisoners serving sentenced for crack cocaine before the 2010 law can apply to have a sentence that is only 18 times longer than one for powdered cocaine, instead of one that is 100 times longer. And the federal resentencing process will likely be simpler for lawyers to navigate than California's, which widely varied from county to county.

Though the First Step Act requires that a third-striker does a minimum of 25 years no matter what, it will allow other inmates (as long as they were not sentenced for trafficking guns or Fentanyl) to earn credits toward supervised release by completing educational programs designed to reduce recidivism, or by having clean disciplinary records.

The current version of the First Step Act is the result of cautious compromise, but is still cause for optimism. Even though it's not as groundbreaking as some of California's moves toward reform, this bill opens the door for more comprehensive legislation to follow. While arguments that the bill doesn't go far enough have teeth, it's far better to start with a narrow, but carefully crafted law that will garner broad-based support and withstand legal challenges than a sweeping law with a shaky foundation and no support on the ground.

The entire justice system, and not just the federal system, is in dire need of re-evaluation. Let's be thankful that the First Step Act passed, but let's also hope there are second, third, and many more steps to follow.

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