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The First Step Act: Filling the Gap in Missouri

By Christopher Doyle-Lohse*

On December 21, 2018, President Donald Trump signed into law the Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act of 2018, also known as the First Step Act.¹ The First Step Act strives to reform the federal prison system within the United States by: providing relief to current inmates who have been harshly punished under mandatory minimum sentences; promoting compassionate sentencing going forward; and aiming to reduce recidivism.

Although hailed as a historic attempt to move the country in the right direction, many still feel the First Step Act does not do enough to address America's criminal justice system because it fails to remedy the mass incarceration problem in the U.S. As one critic described it, "[t]o call the First Step Act limited would be an understatement. The legislation could make a crucial material difference to the lives of thousands of incarcerated people — something that should not be dismissed — but it would hardly make a dent in America's mass incarceration problem."² According to a 2019 report from the Bureau of Justice Statistics (BJS), 1,489,363 people were held in prisons and jails throughout America at the end of 2017.³ Inmates in federal prisons only accounted for 183,058—less than thirteen percent—of the total imprisoned population.⁴ With the vast majority of inmates incarcerated in state prisons, states will have to fill the gap in order for real criminal justice reform to happen. This is exponentially true for the *Show Me* state. According to a May 2018 report, based on 2016 data, Missouri had the eighth highest rate of incarceration and "the second fastest growing female prison population in the country."⁵ Furthermore, this is only

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¹ Pub. L. No. 115-391 (2018).

² Natasha Lennard, *The First Step Act Is Not Sweeping Criminal Justice Reform — and the Risk Is That It Becomes the Only Step*, *The Intercept* (Dec. 19, 2018), <https://theintercept.com/2018/12/19/first-step-act-criminal-justice-reform-bill/>.

³ Jennifer Bronson & E. Ann Carson, Dep't of Justice: Bureau of Justice Statistics, *Prisoners in 2017*, (2019), <https://www.bjs.gov/content/pub/pdf/p17.pdf>.

⁴ *Id.*

⁵ Emily Stahly, *Criminal Justice Reform in Missouri*, 63 *St. Louis U. L.J.* 607 (2019); citing Meghan Grasso, et al., *50-State Report on Public Safety: Examine Drivers of Corrections*

compounded by the fact that Missouri Department of Correction's facilities have been operating at 105% capacity and "long-term prison population forecast additional growth of five percent by [fiscal year] 2021."⁶

Since the First Step Act was enacted, thus far, forty-one people in Missouri have been granted reduced sentences under the new law.⁷ According to the U.S. Sentencing Commission, this includes seventeen people from the Eastern District of Missouri and twenty-four from the Western District.⁸ Striving to build on the progress of the First Step Act, Missouri legislators attempted to pass the State's own First Step Act.⁹ Missouri House Committee Bill 2 sought to decrease state prison rates by "improve[ing] sentencing laws so that the punishments are fairer and fit the individuals and the crimes."¹⁰ Unfortunately, House Committee Bill 2 was dropped from the legislative calendar on May 9, 2019.¹¹ Despite the state legislature's failure to adopt and pass House Committee Bill 2, some progress has been made to fill in the gaps. For example, in late May of this year, Missouri legislators passed and the governor signed House Bill 192, which eliminated minimum prison terms for nonviolent criminal offenses and provided "eligib[ility] for parole, conditional release, or other early release

Costs, Council Of St. Governments: Just. Ctr, <https://50statespublicsafety.us/part-3/strategy-1/#interactive-1> [<https://perma.cc/837N-MVXJ>] (last visited Sept. 9, 2019).

⁶ Justice Reinvestment in Missouri: Policy Framework, Council Of St. Governments: Just. Ctr, May 2018, <https://perma.cc/55MU-3V9X>.

⁷ U.S. Sentencing Commission, First Step Act of 2018 Resentencing Provisions Retroactivity Data Report, (Aug. 2019), <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/first-step-act/20190903-First-Step-Act-Retro.pdf>

⁸ *Id.*

⁹ Mike Lear, *Sweeping Criminal Justice Reform Package Prepared For Consideration*, The Missouri Times, (Apr. 1, 2019), <https://themissouritimes.com/58889/sweeping-criminal-justice-reform-package-prepared-for-consideration/>.

¹⁰ Christina Mascarenas, *First Man Freed From Prison Under First Step Act Calls For Missouri Reforms*, *Missourian*, (Mar. 25, 2019), https://www.columbiamissourian.com/news/state_news/first-man-freed-from-prison-under-first-step-act-calls/article_1c504fb6-4f4e-11e9-b5fe-af20b7fa0b1e.html.

¹¹ Missouri House: House Committee Bill 2, <https://house.mo.gov/BillContent.aspx?bill=HCB2&year=2019&code=R&style=new> (last visited Sept. 12, 2019).

by the department of corrections”¹² In addition, the legislation ended the practice of issuing warrants and jailing individuals for failure to pay fines assessed by state municipal or circuit judges.¹³ Instead, judges may now use their discretion to provide payment installment plans “under such terms and conditions as he or she may deem appropriate.”¹⁴

With Missouri’s prison population continuing to increase, the question that must be asked is whether Missouri legislators are doing enough to sufficiently address the growing prison population problem. The answer to this question is clearly no. While attempts to decrease state prison rates have been made, very little of these attempts have actually addressed one of the major issues: the high percentage of people sent back to prison for technical violations. Data published by the Missouri Department of Corrections indicates that revocations account for more than half of prison admissions. “Of the more than 9,500 people entering prison due to revocations [for 2016], half were admitted due to a technical violation of supervision conditions (missed appointment(s) with a supervision officer, not attending or participating in treatment, failed drug test, etc.).”¹⁵ The high number of revocations is intimately tied to another major issue Missouri legislators have failed to adequately address – mental health and substance abuse treatment. In fact, “80 percent of people who were revoked for technical violations had substance addiction or mental health needs.”¹⁶ Although Missouri has much more to do in order to fill the gap when it comes to addressing criminal justice and prison reform, there is a ray of light at the end of the tunnel. In late 2018, Missouri Governor Mike Parsons signed a bill into law that expanded drug treatment courts to every county within the state with the goal of reducing recidivism rates, which includes revocations, by providing treatment to people before they reoffend.¹⁷

¹² Missouri General Assembly, *Senate Substitute For Senate Committee Substitute For House Committee Substitute For House Bill No. 192*, <https://www.house.mo.gov/billtracking/bills191/hlrbillspdf/0761S.08F.pdf>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Justice Reinvestment in Missouri: Policy Framework, Council Of St. Governments: Just. Ctr, May 2018, <https://perma.cc/55MU-3V9X>.

¹⁶ *Id.*

¹⁷ Celisa Calacal, Missouri Governor Parson Signs Drug Treatment Court Bill Into Law, KCUR, (Oct. 24, 2018), <https://www.kcur.org/post/missouri-governor-parson-signs-drug-treatment-court-bill-law#stream/0>.

Legislation like the bill Governor Parsons signed into law is a better equipped to tackle mass incarceration in the U.S. because it helps fill in the legislative gap by addressing some of the underlying reasons people are sent to prison.

Although the First Step Act is a move in the right direction, it should by no means be seen as a panacea to mass incarceration. In order to really advance criminal justice reform, states must do more to address their higher prison populations, which include doing more to prevent the underlying causes of imprisonment.

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