**A Resolution for Informational Briefing by the Province III Synod on May 2, 2022**

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**Resolution #D008
Resolution to Address the Issue of Mass Incarceration**

Resolved, the House of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ concurring, That this 80th General Convention of The Episcopal Church (TEC) urge Congress and the states: (i). to eliminate incarceration for lower-level crimes; (ii). to pass legislation that would make default prison sentences — which are often excessively long — proportional to the specific crimes committed; and (iii) to use the power of their purses to encourage these changes; and be it further

Resolved, That the 80th General Convention of TEC again urge Congress to initiate studies to examine racial and gender disparities in sentencing, including racial and gender disparities in prosecutors’ exercise of discretion in seeking sentencing enhancements under three-strikes, Section 851 federal drug enhancements, and other habitual offender laws and disparate racial and gender effects of drug policies such as mandatory minimum sentences and school zone drug enhancements; and be it further

Resolved, That the 80th General Convention again urge state and federal governments to adopt legislation whereby all arrests and/or convictions for non- violent summary or misdemeanor offenses committed more than ten years ago are automatically sealed from access by prospective employers, landlords, and all others except law enforcement, noting that the young and people of color are disproportionately affected by this form of discrimination; and be it further

Resolved, That this 80th General Convention direct, consistent with established policies and procedures, that the Executive Council refer this Resolution to the Office of Government Relations, so that it may take all actions necessary to accomplish the intentions and purposes of this Resolution.

**Explanation:**

For years, Congress had attempted to pass criminal justice reform legislation, such as the Sentencing Reform and Corrections Act (SRCA) introduced in 2015 by Senators Chuck Grassley (R-Iowa) and Dick Durbin (D-Ill.). But the SRCA failed to pass in 2016 despite overwhelming bipartisan support, thanks to opposition from Sen. Tom Cotton (R-Ark.) and then-Senator Jeff Sessions (R-Ala.).

That all changed in December of 2018 when the Senate finally passed, and President Trump signed, the FIRST STEP Act — a modest bill that, despite some initial setbacks, includes key parts of the SRCA. That makes it the first major reduction to federal drug sentences.

The FIRST STEP Act is consequential because it includes provisions for meaningful sentencing reform, which would reduce the number and amount of people in prison and is part of the starting point of any serious legislation for criminal justice reform. Sentencing laws played a central role in the rise of mass incarceration in recent decades. The federal prison population, in particular, has risen by more than 700 percent since 1980, and federal prison spending has increased by nearly 600 percent. That growth has disproportionally affected African Americans, Native Americans, and Latinos.

Federal mandatory minimum sentences were a catalyst for the recent surge of unnecessarily harsh prison sentences. More than two-thirds of federal prisoners serving a life sentence or a virtual life sentence have been convicted of non- violent crimes.

But research continues to show that long prison sentences are often ineffective. One study found that overly harsh sentences have done little to reduce crime. In fact, in some cases, longer prison stays can actually increase the likelihood of people returning to criminal activity. These sentences disproportionately impact people of color and low-income communities.

The FIRST STEP Act shortens mandatory minimum sentences for nonviolent drug offenses. It also eases a federal “three strikes” rule — which currently imposes a life sentence for three or more convictions — and issues a 25-year sentence instead. Most consequentially, it expands the “drug safety-valve,” which would give judges more discretion to deviate from mandatory minimums when sentencing for nonviolent drug offenses.

In an overdue change, the bill also makes the Fair Sentencing Act retroactive. Passed in 2010, the Fair Sentencing Act has helped reduce the sentencing disparity between crack and powder cocaine offenses — a disparity that has hurt racial minorities. The FIRST STEP Act will now apply the Fair Sentencing Act to 3,000 people who were convicted of crack offenses before the law went into effect.

Beyond sentencing reform, the FIRST STEP Act includes provisions that will improve conditions for current prisoners and address several laws that increased racial disparities in the federal prison system. The bill will require federal prisons to offer programs to reduce recidivism; ban the shackling of pregnant women; and expand the cap on “good time credit” — or small sentence reductions based on good behavior — from around 47 to 54 days per year. That “good time” amendment will benefit as many 85 percent of federal prisoners.

The FIRST STEP Act changes the conversation on mass incarceration

The FIRST STEP Act is a critical win in the fight to reduce mass incarceration. While the bill is hardly a panacea, it’s the largest step the federal government has taken to reduce the number of people in federal custody. (The federal government remains the nation’s leading incarcerator, and more people are under the custody of the federal Bureau of Prisons than any single state system.)

The FIRST STEP Act marks progress for criminal justice reform, but it has some notable shortcomings. It will leave significant mandatory minimum sentences in place. In addition, two of the bill’s key sentencing provisions are not retroactive, which minimizes their overall impact.

One step is to eliminate incarceration for lower-level crimes, such as minor marijuana trafficking and immigration crimes. The default sentences for those crimes should be alternatives to incarceration, such as treatment, community service, or probation. Second, lawmakers should also pass legislation that would make default prison sentences — which are often excessively long — proportional to the specific crimes committed. If Congress and every state enacted this pair of reforms, the national prison population would be safely reduced by 40 percent. Third, Congress can use the power of the purse to encourage these changes. Washington spends a significant amount of money supporting state criminal justice systems: Those dollars could be used to reward policies that reduce rather than entrench mass incarceration.

Ultimately, the FIRST STEP Act is one step in the right direction for reducing mass incarceration in the United States. It has elevated criminal justice reform as a rare space for bipartisan consensus and cooperation in a fractured national political environment. With an awareness of that consensus, we should push for the bigger next steps that will move us toward ending mass incarceration.