

## Myths vs. Facts on the Cotton-Kennedy-Toomey-Kyl-Barrasso amendments to First Step

### *Informing Victims, Tracking Effectiveness, Excluding Sex Offenders & Violent Felons from Early Release*

#### **Amendment I: Excluding child molesters and other violent felons from early release**

*Myth:* “Virtually any offender could be classified under that language and thus would be fully excluded from earning time credits in any situation.”

*Facts:* This is false. According to the U.S. Sentencing Commission, even with the additional exclusions in this Amendment, 62% of federal prisoners would still be eligible for the time credits. And unlike the House-passed version of First Step, the credits can be used not just for “prerelease custody” but also for “supervised release.”

It is true that the ninth exclusion for other violent felonies applies to many federal prisoners. That is because, despite the claims of the bill’s proponents, many violent felons are still eligible for the credits. Amendment I would fix this while still allowing the vast majority of federal prisoners to qualify for time credits.

According to the United States Sentencing Commission, there are 1,466 sex offenders convicted under 18 U.S.C. § 2422(b) that will be eligible for the credits unless this amendment is passed.

Cotton-Kennedy Amendment I encompasses all of the exclusions that were in the Cruz amendment. Despite what proponents claimed, the Cruz amendment is not included in the final First Step Act.

The Wall Street Journal editorial page, which supports this bill: “[Cotton’s] colleagues will be hard-pressed to vote down adding carjacking and assault to the list.”

#### **Amendment II: Notifying victims before an offender is allowed to transfer out of prison early**

*Myth:* This is “harmful for victims” and “redundant.”

*Facts:* First, major victims’ rights groups like Force 100 and Arizona Voice for Crime Victims have endorsed this amendment because they recognize it is necessary and helpful to victims.

Second, this amendment requires notification before an offender is released under the time credits into prerelease custody or supervised release – a process that does not exist today. It is true that victims are already notified of court proceedings, but there are no court proceedings before sex offenders convicted under 18 U.S.C. § 2422(b) are released into prerelease custody or supervised release under the First Step Act.

By allowing the victim the chance to make a statement to the warden, this amendment can ensure that victims can inform the Bureau of Prisons if their offender has tried to contact or threaten them while in prison.

#### **Amendment III: Tracking the effectiveness of the anti-recidivism programs**

*Myth:* This is “redundant” because other entities like the Sentencing Commission already track some measures of recidivism.

*Facts:* Neither the bill nor current law requires tracking rearrests of violent felons and child molesters in early prerelease custody or supervised release. General recidivism statistics, or recommendations from an “independent” review committee (which sunsets after two years and doesn’t provide long-term data tracking) are insufficient to truly evaluate whether the time credit system protects public safety as the proponents claim. “Evidence-based” programs are mentioned 54 times in the bill. Why would the proponents oppose collecting objective data to measure the effectiveness of these “evidence-based” programs? The WSJ editorial page agrees: “The public has the right to know how prisoners act once they’re released under this bill.”