

# WASHINGTON **Examiner**

## **Why criminal justice reform is closer than ever — yet still so far away**

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November 27, 2018

President Trump’s enthusiastic endorsement of a bipartisan criminal-justice reform deal seemed to put the legislation on a glide-path to passage in the lame-duck Congress.

But Republican opposition in the Senate hasn’t melted away — and that means the bill will likely be pushed into the new Congress, where it’ll face a new round of hurdles that could leave the long-sought deal in tatters.

“If this bill got to the floor, it would pass, but there is just too much standing in the way and too little time,” Mike Tanner, a CATO Institute senior fellow, told the *Washington Examiner*.

Bipartisan factions of lawmakers and now two presidents have worked for years to pass a criminal justice reform. Success has never been closer now that Trump as well as key Democrats and Republicans are on board in both chambers.

That list of supporters doesn’t, however, include Senate Majority Leader Mitch McConnell, R-Ky., who reportedly told President Trump last week there is not enough time in the post-election “lame duck” session to take up the bill.

Congress must come to agreement on several must-pass items between now and the end of the year, including a spending package that incorporates wall funding and a bill reauthorizing farm programs and food stamps.

“We’ll whip it and see where the vote count is,” McConnell told reporters this month about reform bill, “and then see how it stacks up against our other priorities going in here to the end of the session.”

McConnell is eager to avoid a fight over the legislation, which has drawn strenuous opposition from Sen. Tom Cotton, R-Ark., and other conservatives.

The First Step Act couples sentencing reforms with new programs aimed at helping inmates avoid recidivism. The bill would give judges an expanded federal “safety valve” to override and reduce federal minimum sentencing in certain cases and would apply retroactively the 2010 Fair Sentencing Act that eliminates the disparity in sentencing for those convicted of selling crack and powder cocaine.

Other reforms in the bill would eliminate the use of restraints on pregnant woman and would prevent inmates from being imprisoned more than 500 miles from home.

The bill expands the use of credit accumulated for good behavior, including for some drug dealers.

“Astonishingly, the bill goes soft on some of the worst crimes — trafficking heroin and fentanyl — by allowing most traffickers to spend up to a third of their sentence at home, where many of them will no doubt return to dealing drugs,” Cotton wrote in a USA Today opinion piece.

The bill provides an exception for “organizers, leaders, managers, or supervisors,” of those convicted of fentanyl and heroin offenses.

Proponents of the bill are unlikely to win over Cotton, but they are hoping to change McConnell’s mind and push the legislation over the finish line before the 115th Congress ends and Republicans lose control of the House majority to the Democrats and likely Speaker Nancy Pelosi, D-Calif.

Both chambers would essentially have to start over in a new Congress and while they could simply re-introduce and pass the bipartisan deal now on the table, House Democrats are all but certain to demand more expansive reforms on sentencing, which would be far less palatable to the GOP-led Senate.

Senate Judiciary Committee Chairman Chuck Grassley, R-Iowa, warned of the potentially dire 2019 scenario in a tweet urging his GOP colleagues to get on board with the bill and pass it this year.

“GOP colleagues: NOW is time to pass crim justice reform unless your argument is that you prefer to work w Speaker Nancy Pelosi to pass a bill? Pres Trump has golden opportunity to pass historic bipartisan bill that Pres Obama couldn’t,” Grassley tweeted this month.

Before lawmakers left for the Thanksgiving holiday, a dozen Senate legislators were co-sponsors of the bill and Judiciary staff say more have signed on. They believe McConnell will bring the bill to the floor this year if a filibuster-proof 60 senators pledge to back it.

“We expect a whip count when senators return from Thanksgiving,” Judiciary Committee spokesman Taylor Foy told the *Washington Examiner*. “There’s plenty of time for it to get done this year.”