

April 4, 2022

The Honorable Dick Durbin
Chair
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

The Honorable Chuck Grassley
Ranking Member
Committee on the Judiciary
U.S. Senate
Washington, D.C. 20510

Dear Chair Durbin and Ranking Member Grassley:

We are writing to express our strong opposition to S. 3951, the PROTECT Act of 2022. In addition to creating a new 5-year federal mandatory minimum prison sentence for possession of child pornography, the bill would overturn the Supreme Court's decision in *United States v. Booker* and make certain federal sentencing guidelines mandatory. The bill would signal a return to failed policies of the past and threaten to undo all the progress you have made together to restore discretion and proportionality to federal sentencing.

Requiring that courts adhere to the federal sentencing guidelines in certain cases would have the effect of establishing scores of new mandatory minimum sentences, including for crimes that do not involve any violence. It would also sow confusion and undermine the sentencing system as a whole by making different guidelines and even different applications of the same guideline subject to different constitutional requirements.

From 1987 through 2004, mandatory sentencing rules caused the federal prison population to skyrocket by 290 percent. Only after the Supreme Court held that mandatory sentencing guidelines were unconstitutional in *Booker* did the explosive growth of BOP prison populations finally begin to slow. In the nine years following *Booker*, the prison population grew by only 21.9 percent more before hitting its peak in 2013.¹

Proponents of this legislation have failed to provide any evidence that the millions that would be required to be spent on additional incarceration would have any impact on public safety. Indeed, we believe the bill will undermine public safety by separating families for years longer than necessary and diverting taxpayer resources from evidence-informed programs and personnel that have been proven to improve community safety and health.

We urge you to oppose S. 3951. Thank you for your consideration of our views and please do not hesitate to reach out if you have any questions.

¹ See https://www.bop.gov/about/statistics/population_statistics.jsp#pop_report_cont

Sincerely,

American Civil Liberties Union
CAN-DO Foundation
Fair and Just Prosecution
FAMM
Federal Public and Community Defenders
The Justice Roundtable
Justice Strategies
Leadership Conference for Civil and Human Rights
National Association of Criminal Defense Lawyers