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**October 23, 2023**

**Chairman Dick Durbin**

Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, DC 20510

**Ranking Member Lindsey Graham**

Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, DC 20510

**Re: Safer Supervision Act of 2023 (S. 2681)**

Dear Chairman Durbin, Ranking Member Graham, and Members of the Committee:

On behalf of the National Association of Assistant United States Attorneys (NAAUSA)—representing the interests of over 6,000 Assistant U.S. Attorneys working in the 94 U.S. Attorney Offices—I write to express our concerns with S. 2681, the Safer Supervision Act of 2023, and request an opportunity to meet to discuss improvements to the legislation.

In its current form, the Safer Supervision Act will significantly overburden U.S. Attorney Offices and undermine the purpose of supervised release, making the public less safe as a result.

NAAUSA fully affirms the congressional finding that “[f]ederal probation officers report significant caseloads that can exceed 100 cases per office... and this can create a difficult burden for the officers and limit their ability to provide appropriate supervision of those who need it.” Unfortunately, this legislation does not alleviate this strain on the federal criminal justice system, it merely shifts it from probation officers to U.S. Attorney Offices.

Section 3 requires that the Administrative Office of the U.S. Courts provide notice to all defendants who have served 50 percent of their term of supervised release that they may seek early termination of supervised release. The bill then creates a presumption against the government for granting early termination so long as the defendant has complied with de minimis standards. The burden is on the government to prove the early termination will not jeopardize public safety, rather than requiring the defendant to show they are worthy of early termination.

Further, the legislation invites evidentiary proceedings relating to any request for termination of supervised release. This essentially creates a mini-trial for every termination request. Since these defendants are already outside Bureau of Prisons custody, this proceeding will require extensive information gathering by federal law enforcement officials.

Taken together, these provisions encourage every defendant—regardless of the merits of their case—to seek early termination, demand an evidentiary proceeding, and burdens the government with investigating the case to demonstrate why early termination is acceptable or not. If passed into law, U.S. Attorney Offices would be inundated with early termination requests.

As is, U.S. Attorney Offices are struggling with a staffing and retention crisis that makes it difficult to handle ever-increasing federal caseloads. The burdens imposed on U.S. Attorney Offices by Congress and the Executive Branch continue to grow without comparable increases in resources and personnel to maximize public safety.

Most recently, U.S. Sentencing Commission voted along partisan lines to make two amendments

related to zero-point offenders and status point offenders retroactive.<sup>1</sup> This decision will allow 11,495 status point offenders and 12,574 zero-point offenders to seek a sentencing adjustment.<sup>2</sup> This decision was made mere months after the Commission approved a novel expansion to the substantive criteria for compassionate release.<sup>3</sup> Congress has not acted to rescind or minimize the impact of these amendments, despite overwhelming testimony before the Commission expressing concern about the resource burden these amendments impose on the federal court system and U.S. Attorney's offices.<sup>4</sup>

Congress and the Executive Branch cannot continue demanding more of AUSAs who are already struggling to meet rising workloads, onboard new staff, and effectively achieve justice for new victims.

Additionally, the presumption in favor of defendants who meet de minimis early termination standards runs contrary to the well-recognized purpose of supervised release, to require defendants prove they will not return to a life of crime while transitioning from incarceration back into society.

Congress mandates supervised release for certain severe offenses, such as domestic violence, kidnapping of a minor, drug trafficking, and sex offenses.<sup>5</sup> Nonetheless, courts almost always impose supervised release following incarceration, whether or not it is required by statute.<sup>6</sup> This is because supervised release allows the court to “establish behavioral expectation for defendants, provide [the government] tools to keep informed and bring about improvements in a defendant’s conduct and condition... and work with defendants to facilitate their reintegration into the community as law-abiding and productive members of society.”<sup>7</sup>

Recognizing the benefits of supervised released, early termination of supervised release has long been reserved for “exceptionally good behavior by the defendant.”<sup>8</sup>

The Safer Supervision Act undermines the purposes of supervised release by switching early termination from an opportunity for defendants to prove their exceptionally good behavior to a burden on the government to prove negative impacts on public safety.

In its current form, the Safer Supervision Act would impose an unmanageable burden on U.S. Attorney Offices. Still, NAAUSA supports the bill’s provision offering law enforcement availability pay for federal probation and pretrial services officers. NAAUSA applauds Congress for acknowledging the urgent need to improve working condition in U.S. Probation and Pretrial Service Offices to ensure the federal government can recruit and retain the necessary personnel for this important mission.

We simply urge Congress to understand that these resource and personnel constraints on not

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<sup>1</sup> [Retroactivity Amendment \(effective November 1, 2023\) | United States Sentencing Commission \(ussc.gov\)](#)

<sup>2</sup> [Analysis of the Impact of 2023 Criminal History Amendment \(Parts A and B\) if Made Retroactive \(ussc.gov\)](#)

<sup>3</sup> [Adopted Amendments \(effective November 1, 2023\) | United States Sentencing Commission \(ussc.gov\)](#)

<sup>4</sup> *See* [Public Comment on Possible Retroactive Application of Parts A and B of the 2023 Criminal History Amendment \(ussc.gov\)](#).

<sup>5</sup> [Supervised Release Primer \(ussc.gov\)](#)

<sup>6</sup> *Id.*

<sup>7</sup> [overview of probation and supervised release conditions 0.pdf \(uscourts.gov\)](#)

<sup>8</sup> *United States v. Lussier*, 104 F.3d 32 (2d Cir. 1997).

unique to Probation and Pretrial Service Offices and legislation that alleviates a burden in one area, only to impose a burden in another does, does not lead to safer outcomes for the American people overall.

**We understand the safe and efficient reentry of defendants back into society is of critical concern for members of the committee. We therefore request an opportunity to meet and discuss ways to improve this legislation.** Please contact NAAUSA's Washington Representative Natalia Castro ([ncastro@shawbransford.com](mailto:ncastro@shawbransford.com)) to schedule a meeting to discuss this issue.

Sincerely,



**Steven Wasserman**

NAAUSA President