



THE
AMERICAN
CONSERVATIVE
UNION

March 9, 2020

The Honorable Steven Haugaard
Speaker
South Dakota House of Representatives
State Capitol Building
500 East Capitol Avenue
Pierre, SD 57501

The Honorable Erin Healy
Minority Whip
South Dakota House of Representatives
State Capitol Building
500 East Capitol Avenue
Pierre, SD 57501

The Honorable Spencer Gosch
Speaker pro Tempore
South Dakota House of Representatives
State Capitol Building
500 East Capitol Avenue
Pierre, SD 57501

The Honorable Oren Lesmeister
Minority Whip
South Dakota House of Representatives
State Capitol Building
500 East Capitol Avenue
Pierre, SD 57501

Dear Representatives:

Senate Bill 6 amends § 22-6-11 to require those convicted of certain low-level, non-violent, Class 5 or 6 felonies to cooperate with law enforcement in order to benefit from the presumptive sentence of probation. On paper, this proposed legislation sounds good. However, it raises questions regarding implementation, while rolling back a key reform that has reduced corrections spending and incarceration rates.

As ACU's General Counsel, I testified in opposition to SB 6 in front of the House Judiciary Committee earlier this. Drawing from testimony and its expertise in criminal law and policy, the Committee wisely rejected SB 6 in by bipartisan vote. We urge you to honor the findings of the Committee, preserve the reforms passed in the 2013 *Public Safety Improvement Act (PSIA)*, and vote no on SB 6.

We are certainly supportive of prosecutors working to target senior managers of drug conspiracies. While requiring the cooperation of low-level drug users sounds good in principle, SB 6 raises questions about what constitutes meaningful cooperation and who ultimately decides whether that standard has been met.

More importantly, the cooperation requirement misses the larger issue. Whether they cooperate or not, it makes little sense to incarcerate low-level drug users. In our view, prisons are for people we are afraid of and who pose a danger to society, not for those we are simply mad at. Locking up non-violent drug users doesn't make South Dakota communities any safer. It doesn't help the offender get clean. And it doesn't benefit the taxpayers, who are left with the bill.

The Department of Corrections estimates that SB 6 would cost South Dakota taxpayers an additional \$1 million per year in operational expenses. In addition, the passage of SB 6 would likely require the state to build a new women's prison, meaning multi-millions of dollars in new spending of taxpayer money for capital costs. All of this new spending will have to come from either cuts to more effective programs or tax increases. This is a false choice. The better position is to stand by the PSIA reforms made in 2013. The

PSIA reforms are working to reduce incarceration and free up resources to pay for programs proven to reduce recidivism. By cutting the re-offense rate, PSIA is making communities in South Dakota safer, and we do not see the value proposition in rolling those benefits back.

Since passing the PSIA, South Dakota's prison budget and population has significantly decreased. The prison population in South Dakota was 6% lower than projections calculated for 2018. This means that taxpayers saved over \$57 million dollars in incarceration costs. These savings have freed up time and resources for law enforcement to focus on violent offenders while offering evidence-based treatment programs for South Dakotans in need. Such improvements to the criminal justice system are vital to a high performing criminal justice system, and should be lauded, not undermined.

As you know, President Trump has championed criminal justice reform, even going so far as to make it a key part of his re-election campaign. His approach has been to ensure that taxpayer resources are leveraged to reduce recidivism while safely lowering incarceration rates. This approach is working at the federal level. And it has been working in South Dakota as well. We urge you to stay the course.

Should you have any questions about this matter, please feel free to contact me at: (202) 347-9388 or dsafavian@conservative.org.

Respectfully,



David H. Safavian
General Counsel
The American Conservative Union

CC: House Republicans
House Democrats