

Calendar No. 97

117TH CONGRESS
1ST SESSION

S. 601

To amend section 3661 of title 18, United States Code, to prohibit the consideration of acquitted conduct at sentencing.

IN THE SENATE OF THE UNITED STATES

MARCH 4, 2021

Mr. DURBIN (for himself, Mr. GRASSLEY, Mr. LEAHY, Mr. LEE, Mr. BOOKER, Mr. TILLIS, Ms. KLOBUCHAR, and Mr. OSSOFF) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JULY 12, 2021

Reported by Mr. DURBIN, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To amend section 3661 of title 18, United States Code, to prohibit the consideration of acquitted conduct at sentencing.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “~~Prohibiting Punish-~~
5 ~~ment of Acquitted Conduct Act of 2021~~”.

1 **SEC. 2. ACQUITTED CONDUCT AT SENTENCING.**

2 (a) USE OF INFORMATION FOR SENTENCING.—

3 (1) AMENDMENT.—Section 3661 of title 18,
4 United States Code, is amended by inserting “, ex-
5 cept that a court of the United States shall not con-
6 sider, except for purposes of mitigating a sentence,
7 acquitted conduct under this section” before the pe-
8 riod at the end.

9 (2) APPLICABILITY.—The amendment made by
10 paragraph (1) shall apply only to a judgment en-
11 tered on or after the date of enactment of this Act.

12 (b) DEFINITIONS.—Section 3673 of title 18, United
13 States Code, is amended—

14 (1) in the matter preceding paragraph (1), by
15 striking “As” and inserting the following:

16 “(a) As”; and

17 (2) by adding at the end the following:

18 “(b) As used in this chapter, the term ‘acquitted con-
19 duct’ means—

20 “(1) an act—

21 “(A) for which a person was criminally
22 charged and adjudicated not guilty after trial in
23 a Federal, State, or Tribal court; or

24 “(B) in the case of a juvenile, that was
25 charged and for which the juvenile was found

1 not responsible after a juvenile adjudication
 2 hearing; or

3 ~~“(2) any act underlying a criminal charge or ju-~~
 4 ~~venile information dismissed—~~

5 ~~“(A) in a Federal court upon a motion for~~
 6 ~~acquittal under rule 29 of the Federal Rules of~~
 7 ~~Criminal Procedure; or~~

8 ~~“(B) in a State or Tribal court upon a mo-~~
 9 ~~tion for acquittal or an analogous motion under~~
 10 ~~the applicable State or Tribal rule of criminal~~
 11 ~~procedure.”.~~

12 **SECTION 1. SHORT TITLE.**

13 *This Act may be cited as the “Prohibiting Punishment*
 14 *of Acquitted Conduct Act of 2021”.*

15 **SEC. 2. ACQUITTED CONDUCT AT SENTENCING.**

16 *(a) USE OF INFORMATION FOR SENTENCING.—*

17 *(1) AMENDMENT.—Section 3661 of title 18,*
 18 *United States Code, is amended by inserting “, except*
 19 *that a court of the United States shall not consider,*
 20 *except for purposes of mitigating a sentence, acquitted*
 21 *conduct under this section” before the period at the*
 22 *end.*

23 *(2) APPLICABILITY.—The amendment made by*
 24 *paragraph (1) shall apply only to a judgment entered*
 25 *on or after the date of enactment of this Act.*

1 (b) *DEFINITIONS.*—Section 3673 of title 18, United
2 *States Code, is amended—*

3 (1) *in the matter preceding paragraph (1), by*
4 *striking “As” and inserting the following:*

5 “(a) *As*”; and

6 (2) *by adding at the end the following:*

7 “(b) *As used in this chapter, the term ‘acquitted con-*
8 *duct’—*

9 “(1) *means—*

10 “(A) *an act—*

11 “(i) *for which a person was criminally*
12 *charged and adjudicated not guilty after*
13 *trial in a Federal, State, military, or Trib-*
14 *al court; or*

15 “(ii) *in the case of a juvenile, that was*
16 *charged and for which the juvenile was*
17 *found not responsible after a juvenile adju-*
18 *dications hearing; or*

19 “(B) *any act underlying a criminal charge*
20 *or juvenile information dismissed—*

21 “(i) *in a Federal court upon a motion*
22 *for acquittal under rule 29 of the Federal*
23 *Rules of Criminal Procedure; or*

24 “(ii) *in a State, military, or Tribal*
25 *court upon a motion for acquittal or an*

1 *analogous motion under the applicable*
2 *State, military, or Tribal rule of criminal*
3 *procedure; and*

4 “(2) does not include an act for which a person
5 *was criminally charged and convicted.”.*

6 (c) *VICTIMS’ RIGHTS.*—Section 3661 of title 18,
7 *United States Code, as amended by subsection (a) of this*
8 *section, is amended—*

9 (1) *by striking “No limitation” and inserting*
10 *the following:*

11 “(a) *IN GENERAL.*—*Except as described in subsection*
12 *(b), no limitation”;* and

13 (2) *by adding at the end the following:*

14 “(b) *CONSIDERATION OF ACQUITTED CONDUCT.*—*In*
15 *determining an appropriate sentence, a court of the United*
16 *States shall not consider acquitted conduct under this sec-*
17 *tion for the purposes of determining the appropriate sen-*
18 *tencing range pursuant to the United States Sentencing*
19 *Guidelines, or to sentence a person outside of that sen-*
20 *tencing range, except for the purposes of mitigation.*

21 “(c) *VICTIMS’ RIGHTS.*—*Nothing in this section shall*
22 *limit the rights of a victim under section 3771 (commonly*
23 *known as the ‘Crime Victims’ Rights Act’).”.*

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