

118TH CONGRESS
1ST SESSION

S. 2788

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

SEPTEMBER 13, 2023

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

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 2023”.

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

7 (a) USE OF INFORMATION FOR SENTENCING.—

8 (1) AMENDMENT.—Section 3661 of title 18,
9 United States Code, is amended by inserting “, ex-

1 cept that a court of the United States shall not con-
2 sider, except for purposes of mitigating a sentence,
3 acquitted conduct under this section” before the pe-
4 riod at the end.

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

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

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

12 “(a) As”; and

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

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

16 “(1) an act—

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

20 “(B) in the case of a juvenile, that was
21 charged and for which the juvenile was found
22 not responsible after a juvenile adjudication
23 hearing; or

24 “(2) any act underlying a criminal charge or ju-
25 venile information dismissed—

1 “(A) in a Federal court upon a motion for
2 acquittal under rule 29 of the Federal Rules of
3 Criminal Procedure; or

4 “(B) in a State or Tribal court upon a mo-
5 tion for acquittal or an analogous motion under
6 the applicable State or Tribal rule of criminal
7 procedure.”.

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