

SHEILA JACKSON LEE
18TH DISTRICT, TEXAS

WASHINGTON OFFICE:
2160 Rayburn House Office Building
Washington, DC 20515
(202) 225-3816

DISTRICT OFFICE:
1919 SMITH STREET, SUITE 1180
THE GEORGE "MICKEY" LELAND FEDERAL BUILDING
HOUSTON, TX 77002
(713) 655-0050

ACRES HOME OFFICE:
6719 WEST MONTGOMERY, SUITE 204
HOUSTON, TX 77019
(713) 691-4882

HEIGHTS OFFICE:
420 WEST 19TH STREET
HOUSTON, TX 77008
(713) 961-4070

FIFTH WARD OFFICE:
4300 LYONS AVENUE, SUITE 200
HOUSTON, TX 77020
(713) 227-7740

Congress of the United States
House of Representatives
Washington, DC 20515

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CONGRESSWOMAN SHEILA JACKSON LEE OF TEXAS

**CHAIRWOMAN OF THE SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY**

**STATEMENT IN SUPPORT OF H.R. 5430, THE “PROHIBITING
PUNISHMENT OF ACQUITTED CONDUCT ACT OF 2023”**

BEFORE THE COMMITTEE ON THE JUDICIARY

NOVEMBER 2, 2023

- With this Committee’s consideration of H.R. 5430, the “Prohibiting Punishment of Acquitted Conduct Act 2023,” we are providing a solution to a long-identified problem within our criminal justice system.

- This bill provides necessary reform to current federal sentencing practice that allows judges to sentence defendants based on conduct for which a jury found them not guilty.
- The Sixth Amendment to the Constitution provides that anyone accused of a crime shall enjoy the right to a speedy and public jury trial, while the Fifth Amendment provides that no person shall be deprived of life, liberty, or property, without due process of law.
- Together these provisions mean that the Government is bound to prove each and every element of an offense for which a defendant is charged beyond a reasonable doubt during a jury trial, or that a defendant must admit each element to support a plea of guilty.
- Notwithstanding this constitutional obligation, federal judges routinely nullify not guilty verdicts rendered by juries and sentence defendants to significantly higher penalties based on acquitted conduct.
- In its current form, 18 USC § 3661 prohibits any limitation of the conduct a judge may consider when sentencing a defendant, even when a jury has determined that there was insufficient evidence to prove the defendant committed a charged offense.

- Additionally, under the concept of “relevant conduct,” the Sentencing Guidelines allow judges to consider a range of conduct, including dismissed charges, uncharged conduct, and acquitted conduct.
- The fact-finding made by judges at sentencing is based on a lower evidentiary standard than at trial – that is by a preponderance of the law – which many scholars define as a 50% chance that a claim is true.
- The reform proposed in this bill ensures that judges punish defendants based on facts proven beyond a reasonable doubt – the higher evidentiary standard of proof required during jury trials, which some scholars attach a value of 90 to 95% surety.
- As the Chairman previously stated, Justice Ginsberg, a moderate-liberal who became more liberal in later years, joined Justice Thomas, and Justice Scalia, a staunch conservative, in his dissent in *Jones v. United States*, lamenting the failure of the Court to determine if the Sixth Amendment is violated when judges impose sentences based solely on judge-found facts.
- Justice Scalia’s often-quoted dissent was issued nearly a decade ago.

- Yet nothing has been done about this unjust, undemocratic practice, which diminishes the sanctity of the jury trial, the public check on the government's power, and the overall integrity of the criminal justice system.
- H.R. 5430 would restore fairness to jury trials by amending Section 3661 to ban consideration of acquitted conduct at sentencing unless the conduct is considered for mitigation purposes.
- While I wish we were doing more today to advance substantive criminal justice reform, I support this modest bill that addresses an acute need while restoring the basic propositions of due process and the right to trial by jury.
- I commend Ranking Member Steve Cohen and Representative Kelly Armstrong for their work on this bipartisan bill.
- I ask my colleagues to support this bill and to continue to work together on additional measures to make our justice system more equitable and more transparent.