

September 17, 2013

VIA ELECTRONIC MAIL

The Honorable Richard J. "Dick" Durbin
United States Senate
711 Hart Senate Office Building
Washington, DC 20510-1304

The Honorable Michael S. "Mike" Lee
United States Senate
316 Hart Senate Office Building
Washington, DC 20510-4404

RE: The Smarter Sentencing Act

Dear Senators Durbin and Lee:

As former judges, prosecutors and law enforcement officials, we write to express our support for the reforms to federal sentencing contained in the Smarter Sentencing Act (S.1410). Your bill represents an important step in promoting public safety and addressing the consequences of federal mandatory minimum sentences on the explosive growth in incarceration costs and the fairness of sentences for nonviolent drug offenders.

Law enforcement has made great progress in curbing violent crime. At the federal level, we need to address the parts of our sentencing policies that are not working. Over the past three decades, what we spend on federal incarceration has increased by more than 1100 percent. Despite this massive investment, federal prisons are nearly 40 percent over capacity, with the ratio of prisoners to prison guards rising. As a nation, we are expending enormous amounts of money and still failing to keep pace with the growing prison population, with drug offenders comprising nearly half of this population.

In addition to being fiscally imprudent, maintaining the status quo in federal sentencing policy threatens public safety. Overcrowding threatens the safety of prison guards and inmates in federal prisons. Perhaps most important, spending on incarceration in this economy has started to jeopardize funding for some of our most important priorities, like crime prevention, law enforcement, and reducing recidivism. This includes possible reductions in the number of federal investigators and prosecutors. The Bureau of Prisons currently accounts for about 25 percent of the Department of Justice's budget and this is projected to increase. With more resources going to incarcerate nonviolent offenders, and fewer resources spent to investigate and prosecute violent crimes and support state and local law enforcement efforts, public safety will be at risk. Law enforcement will continue to maximize its resources to keep our communities safe. But Congress created our sentencing scheme and needs to act to help solve these problems.

The Smarter Sentencing Act reflects these concerns and embodies measured, bipartisan reforms. Its modest expansion of the current "safety valve," coupled with the reduction of some mandatory minimums for non-violent drug offenses—while maintaining statutory maximums—allows courts to make individualized assessments in nonviolent drug cases. This maintains consistency in sentencing for drug-related offenses, but allows for discretion to give less lengthy sentences, where appropriate. This approach is a step toward controlling the growth of incarceration costs, while maintaining public safety

and helping to ensure that prison sentences are appropriate for each offender. The bill does not repeal any mandatory minimums or affect the sentences for any violent offenses, but helps focus limited resources on the most serious offenders.

The bill also promotes fairness and consistency by acknowledging the numerous federal prisoners who are serving sentences imposed prior to the Fair Sentencing Act of 2010's reduction of the crack/powder cocaine sentencing disparity. The Smarter Sentencing Act would allow certain inmates sentenced under the old regime to petition courts and prosecutors for a review of their sentences and possible sentence reductions under current law. This not only addresses what is now widely recognized as an unjust disparity in sentences, but estimates also show that it could save more than \$1 billion in incarceration costs.

We appreciate your leadership in seeking bipartisan solutions to address the widely acknowledged problems with over-incarceration, to which mandatory minimum sentences have contributed. We are pleased to extend our help as you work with your colleagues in both the Senate and House to pursue reform in federal sentencing.

Signatories as of September 17, 2013:

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Former Judge, United States District Court, Northern District of Illinois.

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