

March 27, 2015

The Honorable Chuck Grassley
U.S. Senate
135 Hart Senate Office Building
Washington, DC 20510

The Honorable Patrick Leahy
U.S. Senate
437 Russell Senate Office Building
Washington, DC 20510

The Honorable Bob Goodlatte
U.S. House of Representatives
2309 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers
U.S. House of Representatives
2426 Rayburn House Office Building
Washington, DC 20515

RE: S. 502/H.R. 920, Smarter Sentencing Act of 2015 (SSA)

Dear Chairmen Grassley and Goodlatte and Ranking Members Leahy and Conyers:

We, the below-signed criminal justice reform, victim, civil rights, and human rights advocates, write to express our support for the Smarter Sentencing Act (SSA, S. 502/H.R. 920) and respectfully urge you to bring this important, cost-saving legislation up for consideration in the Senate and House Judiciary Committees. We appreciate your leadership on the important criminal justice issues facing the country today and are grateful for your concern for and interest in improving the federal criminal justice system.

There is unprecedented bipartisan support from Members of Congress, conservative and progressive organizations, and the public for reforms to the federal criminal justice system. Almost a dozen bills have been introduced in both houses of Congress to address everything from better rehabilitation in prison to fairer crack cocaine sentencing laws to expungement of criminal records to authorizing funding for juvenile justice programs. Many of these reforms are worthy of consideration, but reforming mandatory minimum sentences for federal drug offenders is essential to solving our problems in the federal criminal justice system.

The federal prison population has increased from approximately 25,000 in FY 1980 to over 209,000 today. The Bureau of Prisons' (BOP) budget has also doubled over the past decade, reaching its current level of \$7.2 billion in the President's FY 2016 budget request, approximately 25 percent of the Department of Justice's overall budget. Indeed, in 2014, the BOP's budget grew at almost twice the rate of the rest of the Department of Justice's budget components. Federal prisons are now at 128 percent of their capacity, with even higher overcrowding in medium- and high-security facilities. This overcrowding undermines staff and inmate safety, as well as prisoner rehabilitation.

Numerous studies have determined that mandatory minimum drug sentences are a primary cause of federal prison growth and must be reformed if we are to create a prison system that is fair, cost-effective, rehabilitative, and protects the public. Recent data from the Urban Institute show that the number of federal drug offenders has doubled since 1994, and federal drug offenders now compose almost half of the federal prison population. Drug offenders are the largest group of federal offenders sentenced each year, and of the more than 22,000 sentenced in FY 2013, 60

percent faced mandatory minimum prison sentences of five, 10, 20 years, or life without parole in federal prison. One in four of those offenders did not receive the mandatory minimum sentence because they met the strict criteria of the drug “safety valve” at 18 U.S.C. § 3553(f), but far too many low-level, nonviolent drug offenders continue to receive mandatory minimum sentences that Congress intended for major and serious drug dealers and kingpins.

Mandatory minimum drug sentencing reform is essential to reducing the Justice Department’s prison costs and preserving important public safety funding. According to the Congressional Budget Office, passage of the SSA would produce \$3 billion in savings over 10 years. The Department of Justice’s analysis of the SSA found that it would save \$24 billion over 20 years, including costs taxpayers would not have to pay to build new prisons and hire thousands of additional correctional officers. These savings could be used to increase rehabilitative programming in prisons, fund top law enforcement priorities, ensure the continued hiring of prosecutors and officers, and bolster services for victims.

Current mandatory minimum drug sentences are too long, too expensive, and not contributing to enhanced public safety. While the SSA changes mandatory minimum sentences for drug traffickers, it is incorrect to conclude that all drug sellers and traffickers are therefore major and serious dealers and kingpins and violent criminals. Last year, only eight federal offenders were convicted under the Continuing Criminal Enterprise statute, which applies lengthy mandatory minimum sentences to high-earning and large-quantity drug kingpins and importers. Of the 22,000 federal drug offenders sentenced last year, only seven percent played a leadership role in the crime; half had little or no prior criminal record; 84 percent did not possess or use guns or weapons.

The person most likely to receive a mandatory minimum sentence is a street-level dealer, not a high-level supplier or importer: 68% of street-level drug sellers convicted in FY 2010 received no relief from the mandatory minimum sentence, through either the safety valve or by providing substantial assistance. These dealers are the assembly line employees of the drug trade, easily and immediately replaced once they are arrested. The U.S. Sentencing Commission and other experts have found little incapacitative or deterrent value in giving these offenders lengthy mandatory minimum prison terms.

Mandatory minimum drug sentences are also too often applied to low-level, nonviolent people whose involvement in the offense is driven by addiction, mental illness, or both. For example:

In Iowa, Mandy Martinson left an abusive relationship and became addicted to methamphetamine as she struggled to cope with that trauma. She later dated a drug dealer who stored drugs in her home, along with his handguns. She used drugs, counted money from sales, and accompanied her boyfriend when he picked up drugs to sell. Both were arrested. Prior to her sentencing, Mandy was released to the community, where she obtained and successfully completed drug treatment. She nonetheless received a 15-year mandatory minimum sentence¹ for her minor involvement and the handguns found in the

¹ Mandy Martinson received a 10-year mandatory minimum sentence based on the quantity of methamphetamine and marijuana found in her home, plus an additional five-year mandatory minimum sentence under 18 U.S.C. § 924(c) for possession of the handguns. At Ms. Martinson’s trial, her boyfriend testified against her, claiming that her

home. Because of her boyfriend's guns, Mandy could not benefit from the drug safety valve at 18 U.S.C. § 3553(f). Because she lacked any valuable information about the drug conspiracy, she could not receive a sentence below the mandatory minimum term by providing prosecutors with substantial assistance under 18 U.S.C. § 3553(e). Mandy, a first-time offender, college graduate, home owner, and dental hygienist, would have received a mandatory minimum sentence of seven years in prison and would be home with her family today if the SSA had been in effect when she was sentenced. Instead, she'll serve 15 years in prison, at a cost of \$430,000 to taxpayers.

Ms. Martinson's story shows why the SSA would not endanger the public. If anything, the SSA is a modest reform. It does not eliminate any mandatory minimum drug sentences, but merely reduces them for non-importation offenses. Most drug offenders will still go to prison for at least two, five, 10, or 25 years. Offenses that involve death or serious bodily injury will still carry 20-year mandatory minimum sentences. Prosecutors will still have mandatory minimum sentences and other sentencing enhancements to use in the plea bargaining process.

Furthermore, the SSA changes only the minimum punishment a person can receive, not the maximum – courts will still have the power to sentence particularly dangerous people to up to 40 years or life without parole in prison if the crime merits it. As Ms. Martinson's case illustrates, drug offenders who possess or use guns will still get longer sentences under the sentencing guidelines or face consecutive 5-, 7-, 10-, or 15-year mandatory minimum sentences under 18 U.S.C. § 924(c) or the Armed Career Criminal Act. Drug offenders who traffic or manufacture large quantities of drugs will still get longer sentences under the sentencing guidelines or the Continuing Criminal Enterprise statute. Courts are not reluctant to give longer sentences to drug offenders who play leadership roles: in FY 2010, according to the U.S. Sentencing Commission, 70% of leaders and organizers were given enhanced guideline sentences for their roles. Drug offenders with extensive criminal records will still fail to benefit from the drug safety valve and can be sentenced to lengthy terms as career offenders. The SSA preserves lengthy sentencing enhancements and statutory maximum sentences for narcoterrorism.

Ms. Martinson's case is also an example of why drug quantity is a poor proxy for culpability and does not guarantee that the attendant mandatory minimum sentence is just or warranted. A drug courier, for example, may transport a large quantity of drugs, but may do so only once, for small profit, and under coercion from a person far more involved in the drug trade. Street-level drug sellers are held accountable for not just the grams and ounces they have sold, or are arrested with, but also for the pounds and kilograms of drugs of others involved in the drug conspiracy. Girlfriends like Ms. Martinson whose roles are limited to using drugs, counting money, or

assistance made him a more efficient drug dealer and that he'd given her one of the guns. According to Ms. Martinson, the gun was her boyfriend's. The sentencing judge, Judge James E. Gritzner, was appointed by President George W. Bush and confirmed by the U.S. Senate with bipartisan support in 2002. He concluded at sentencing that "evidence demonstrated that [Ms. Martinson] was involved due to her drug dependency and her relationship with [her boyfriend] and that she was largely subject to his direction and control . . . Even Ms. Martinson's possession of the firearm was at the direction of [her boyfriend] and was facilitated by [her boyfriend]." Ms. Martinson's story illustrates why the SSA has won the support of the National Task Force to End Sexual and Domestic Violence Against Women – mandatory minimum sentences apply indiscriminately, including to victims of abuse. Ms. Martinson's boyfriend received a sentence shorter than Ms. Martinson's, despite his more culpable role, and has already been released.

answering phone calls are held accountable for all the drugs manufactured or distributed by their far more culpable boyfriends. Basing sentences on drug type and quantity alone ignores other more important determinants of a person's likelihood of rehabilitation or recidivism. These factors include age, work and family history, addiction, mental health, amenability to treatment, criminal record, education, motive for the offense, profit from the crime, harm to victims and the community, and pre-sentencing remorse and rehabilitation.

The SSA enhances fairness and strengthens families. The SSA's shorter minimum sentences will make it easier for families to stay together and for offenders to reenter society successfully. The bill makes the fairer sentences unanimously created by Congress in the Fair Sentencing Act of 2010 retroactively applicable to 8,000 prisoners, most of whom are African American. The SSA broadens the drug safety valve so that minor criminal records do not disqualify people from receiving appropriate sentences, and it addresses overcriminalization by requiring compilations of all statutes and regulations that carry criminal penalties.

Hundreds of groups on the left and right, including law enforcement, civil rights, victim advocacy, and faith groups, agree with the sponsors of the bipartisan SSA that current mandatory minimum drug sentences are too long, too expensive, and apply too often to the wrong people. According to a poll from the Pew Research Center, 63 percent of Americans think reforming mandatory minimum drug sentences is a positive development. More than 30 states across the country have reduced or eliminated their mandatory minimum drug sentences and still see crime declining. The SSA, similarly, protects public safety by using limited resources more wisely.

We hope you will give the Smarter Sentencing Act the consideration and passage through committee that it deserves, and do so soon. Thank you for your leadership and for considering our views, and please contact us if we can be of assistance.

Sincerely,

Aleph Institute
American Civil Liberties Union
Association of Prosecuting Attorneys
BOOM!Health (NY)
Brennan Center for Justice
Broken No More
Cabrini Green Legal Aid (IL)
Center for Living and Learning (CA)
Charles Hamilton Houston Institute for Race & Justice at Harvard Law School
Colorado Criminal Justice Reform Coalition
The Constitution Project
The Daniel Institute
Delaware Center for Justice
Drug Policy Alliance
Drug Policy Forum of Hawai'i
Drug Policy Forum of Texas
Ella Baker Center for Human Rights (CA, WA)

Families Against Mandatory Minimums
Families for Justice as Healing
Friends Committee on National Legislation
GRASP
Heartland Alliance for Human Needs & Human Rights
Heartland Alliance's National Initiatives on Poverty and Economic Opportunity
Human Rights Defense Center
Justice Strategies
Law Enforcement Against Prohibition
Lawyers' Committee for Civil Rights Under Law
Leadership Conference on Civil and Human Rights
Legal Action Center
Life for Pot
Marijuana Policy Project
NAACP
National Alliance for Medication Assisted Recovery, Delaware Chapter
National Association of Criminal Defense Lawyers
National Coalition Against Domestic Violence
National Council of La Raza
National Council on Alcoholism and Drug Abuse – St. Louis Area
National Domestic Violence Hotline
National H.I.R.E. Network
National Latin@ Network, Casa de Esperanza
National Legal Aid & Defender Association
National Organization for Women
National Resource Center on Domestic Violence
National Urban League
A New PATH (Parents for Addiction Treatment & Healing) (CA)
North Carolina Harm Reduction Coalition
The November Coalition
Peace Alliance
Prison Policy Initiative
Protect Families First (RI)
Public Justice Center (MD)
Remove Intoxicated Drivers
Safe Streets Arts Foundation (DC)
The Sentencing Project
Southern Harm Reduction and Drug Policy Network
Southwest Key Programs
StoptheDrugWar.org
Student Peace Alliance
Union for Reform Judaism
U.S. Dream Academy