

July 30, 2013

The Honorable Patrick J. Leahy
Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

**RE: Criminal Justice and Civil and Human Rights Advocates Support of the Bipartisan
“Smarter Sentencing Act of 2013” Sponsored by Senators Durbin and Lee.**

We, the undersigned criminal justice, civil rights and human rights advocacy organizations, are writing to express our support for Senators Durbin and Lee’s Smarter Sentencing Act (SSA) of 2013, a bill that will address some of the causes for the unsustainable and unnecessary growth in the federal prison population by helping to reduce lengthy sentences for certain people convicted of non-violent offenses.

In 1980, the federal prison population was approximately 25,000 people, but since then it has grown by an alarming rate of 790 percent. Currently, the Federal Bureau of Prisons (BOP) has custody of more than 219,000 people. The agency’s facilities are operating at almost 40 percent over capacity. The President’s FY 2013 budget request for BOP was \$6.9 billion, accounting for more than 25 percent of the Department of Justice’s (DOJ) entire budget.

Recently, several reports have concluded that mandatory minimum sentences are a major contributor to the growing federal prison population.¹ Research by the Urban Institute found that increases in expected time served, specifically for drug offenses, contributed to half of the prison population growth between 1998 and 2010.² A 2013 report by the Congressional Research Service (CRS) found that the increase in the amount of time people were expected to serve was partially the result of people receiving longer sentences and partially the result of them being required to serve approximately 85 percent of their sentences after Congress eliminated parole for federal prisoners.³ The increased time served by drug offenders accounted for almost one-third of the total federal prison population growth between 1998 and 2010.⁴ In addition, drug offenders continued to make up 42 percent of the BOP population despite increases in the number of immigration and weapon offenders during the same time period.⁵

These statistics illustrate the need to move away from the “tough on crime” laws and focus more on “smart on crime” policies. This bipartisan bill introduced by Senators Durbin and Lee does just that by taking an incremental approach to modernizing drug sentencing policy. The

¹ Nancy LaVigne, Julie Samuels, Urban Institute *The Growth & Increasing Cost of the Federal Prison System: Drivers and Potential Solutions* pgs.1-2 (2012) (hereinafter LaVigne Urban Institute Report).

² LaVigne Urban Institute Report at 5

³ Nathan James, Congressional Research Service, *The Federal Prison Population Buildup: Overview, Policy Changes, Issues, and Options* pg. 8 (January 22, 2013) (hereinafter CRS report)

⁴ Kamala Mallik-Kane, Barbara Parthasarathy, William Adams, *Examining Growth in the Federal Prison Population, 1998 to 2010* pg. 3 (2012)

⁵ *Id.*

legislation would:

- *Expand the existing federal “safety valve”:* The safety valve is one of the only means for a judge to sentence below a mandatory minimum in appropriate cases. This bill would make more non-violent drug offenders eligible for the safety valve, thus allowing judges to use more discretion to determine sentences.
- *Increase judicial discretion for certain drug sentences:* The legislation would lower certain drug mandatory minimums, which will also give judges more discretion to decide the appropriate sentence in individual cases.
- *Apply the Fair Sentencing Act to those currently serving sentences for drug offenses:* The bill would allow individuals to petition courts for a review of their case based on the Fair Sentencing Act which was enacted in 2010. The bipartisan Act reduced the sentencing disparity that existed between crack and powder cocaine offenses. However, some individuals are still serving sentences that Congress has determined to be unjust and racially disparate. In 2007 and 2011, federal courts successfully reviewed some crack cocaine sentences based on changes to the Sentencing Guidelines. This legislation would allow individuals to have their sentence reviewed by courts to determine if they deserve a sentence consistent with current law.

The Smarter Sentencing Act is a much needed first step to creating a fairer criminal justice system, while also addressing the serious safety and budgetary problems that exist in BOP.

Sincerely,

American Civil Liberties Union
Drug Policy Alliance
Families Against Mandatory Minimums
Justice Fellowship
Lawyers Committee for Civil Rights under the Law
NAACP
NAACP Legal Defense Fund
National Association of Criminal Defense Lawyers
The Sentencing Project