



RESEARCH AND ADVOCACY FOR REFORM

The Honorable Charles Grassley
United States Senate
Committee on the Judiciary
Washington, DC 20510

The Honorable Dianne Feinstein
United States Senate
Committee on the Judiciary
Washington, DC 20510

February 6, 2018

RE: Support for the Sentencing Reform and Corrections Act, S. 1917

Dear Chairman Grassley and Ranking Member Feinstein:

As the Judiciary Committee prepares to consider the Sentencing Reform and Corrections Act this month, The Sentencing Project writes to offer its endorsement of the bill's passage. The federal prison system is the largest in the country, and the Department of Justice's budget proposal for 2018 projects a 2% increase in the prison population.¹ Gone unchecked, the federal government's harsh sentencing structure frequently applied to convictions for nonviolent offenses and its underfunded system for rehabilitation exacerbates the fiscal and humanitarian burdens plaguing the prison system. The Sentencing Reform and Corrections Act would take important steps to address this crisis and help create a more equitable and proportionate criminal justice system with no adverse impact on public safety.

About half of the federal prison population is serving time for a drug offense,² including many people who are in the lower levels of the drug trade, were not caught with weapons or have limited criminal histories. Indeed, 48% of individuals receiving a federal drug sentence in 2009 were at or below the level of "street-level dealers," which is defined as selling less than one ounce of drugs.³ Further, no weapon was involved in 82% of federal drug cases in 2016.⁴ In 2012, the average prison term for a federal drug offense was 11.3 years.⁵

These findings demonstrate the need for a more balanced sentencing response to drug crime that better accounts for defendants' culpability and the seriousness of their behavior. The Sentencing Reform and Corrections Act seeks to strike that balance by allowing judges greater flexibility in sentencing below a mandatory minimum in low-level cases and curbing outsized sentences for nonviolent and non-serious drug crimes. Importantly, several of the bill's provisions will allow some current prisoners to petition for retroactive relief.

Unfortunately, the legislation does not eliminate mandatory minimums for drug offenses, which are largely responsible for the 700% increase in the federal prison system since 1980,⁶ and even creates new mandatory minimums for other offenses. We are also very concerned by a new provision that creates a

¹ Reinhard, B. (2017, June 8). Federal Prison Population Expected to Grow Under Trump. *The Wall Street Journal*.

² The Sentencing Project (2017). *Trends in U.S. Corrections*.

³ United States Sentencing Commission (2011). 2011 *Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System*. Figure D-2, pages 165-7.

⁴ United States Sentencing Commission (2017). 2016 *Sourcebook of Federal Sentencing Statistics*. Table 39: Weapon Involvement of Drug Offenders in Each Drug Type, Fiscal Year 2016.

⁵ Ghandnoosh, N. (2017). *Federal Prisons at a Crossroads*. The Sentencing Project.

⁶ Ghandnoosh, N. (2017). *Federal Prisons at a Crossroads*. The Sentencing Project.

five-year sentencing enhancement for trafficking of heroin laced with fentanyl despite evidence that the addition of this lethal substance is added outside of the United States and sellers on the street are usually unaware of its presence. These provisions contradict the spirit and overall intention of this otherwise promising criminal justice reform.

Finally, efforts to reduce prison sentences and downsize the prison population have taken root across the country but have not harmed public safety. In 2014, the U.S. Sentencing Commission found that individuals who had served reduced federal drug sentences following a 2007 reform did not have higher recidivism rates than their counterparts who had served longer sentences.⁷ And, while New Jersey, New York, and California have been national leaders in reducing their prison populations by over 25%, the states have often outperformed the nationwide crime drop.⁸

We congratulate the Committee for its thoughtful and collaborative work to advance this bipartisan criminal justice reform package. We urge you and your colleagues to support its passage through committee.

For questions, please contact Kara Gotsch, The Sentencing Project's Director of Strategic Initiatives, at kgotsch@sentencingproject.org or 202-628-0871.

Sincerely,

A handwritten signature in black ink that reads "Marc Mauer". The signature is written in a cursive, slightly slanted style.

Marc Mauer
Executive Director

⁷ United States Sentencing Commission (2014). *Recidivism Among Offenders Receiving Retroactive Sentence Reductions: The 2007 Crack Cocaine Amendment*.

⁸ Mauer, M. & Ghandnoosh, N. (2015). *Fewer Prisoners, Less Crime: A Tale of Three States*. The Sentencing Project.