

September 18, 2013

The Honorable Jim Sensenbrenner
Chairman, Subcommittee on Crime, Terrorism, Homeland Security, and Investigations
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Louie Gohmert
Vice Chairman, Subcommittee on Crime, Terrorism, Homeland Security, and Investigations
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Robert C. "Bobby" Scott
Ranking Member, Subcommittee on Crime, Terrorism, Homeland Security, and Investigations
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

RE: Hearing on Oversight of the Federal Bureau of Prisons

Dear Chairman Sensenbrenner, Vice Chairman Gohmert, and Ranking Member Scott:

We are writing to express our support for actions that can be taken by the Federal Bureau of Prisons (BOP) to reduce unnecessarily lengthy incarceration and costs in the federal prison system. Several of our organizations are dedicated to promoting a fair and just criminal justice system and have been engaged in research and advocacy at the federal and state levels for several decades. We welcome this opportunity to draw on our extensive experiences to share lessons on how to achieve effective reform. Given limited resources, we urge the BOP to prioritize evidence-based policies and programs that would reduce the population and cost of the federal corrections system without compromising public safety.

Introduction

A report by the Congressional Research Service (CRS) found that the number of people confined under the BOP's jurisdiction grew from about 25,000 in 1980 to nearly 219,000 in 2012 – an increase, on average, of about 6,100 individuals each year.¹ Despite disproportionate investment

¹ Congressional Research Service, "The Federal Prison Population Buildup: Overview, Policy Changes, Issues, and Options," by Nathan James (R42937; Jan. 22, 2013).

in prison capacity in recent decades, our federal system remains severely overcrowded. Funding for BOP now makes up a quarter of the Department of Justice (DOJ) budget.

As Attorney General Eric Holder said recently to a gathering of the American Bar Association, “Widespread incarceration at the federal, state, and local levels is both ineffective and unsustainable. It imposes a significant economic burden – totaling \$80 billion in 2010 alone – and it comes with human and moral costs that are impossible to calculate.”

We now have a generation of evidence-based reforms throughout the country that have reduced prison populations and costs at the state level without adverse impacts on public safety. BOP can replicate this success using its existing authority by adopting the practices described below.

Residential Drug Abuse Treatment Program

The BOP can and should expand the use of its Residential Drug Abuse Treatment Program (RDAP). Congress mandated that the BOP make available substance abuse treatment for each person in BOP custody with a “treatable condition of substance addiction or abuse” and created an incentive for people convicted of nonviolent offenses to complete the program by authorizing a reduction of incarceration of up to one year. However, the full cost-saving benefits of RDAP are not currently being realized. For example, according to a Government Accountability Office (GAO) report that assessed the program, from 2009 to 2011 only 19% of those who qualified for a 12-month sentence reduction after completing the program received the maximum sentence reduction. On average, eligible RDAP graduates received only an eight-month reduction.²

BOP also has an opportunity to significantly expand the eligible pool benefiting from a sentence reduction and further increase savings and reduce overcrowding. For example, BOP should revise its definition of “violent offender” to exclude people whose offense involved mere possession of a firearm, rather than actual violence. Moreover, because BOP policy requires completion of RDAP in a community corrections facility, those with detainers are barred from residential placement and cannot benefit from RDAP’s sentence reduction. Many of those disqualified are low-level undocumented immigrants. According to BOP estimates, changing BOP policy to allow completion of RDAP by this population alone would save \$25 million each year because of reduced time in prison.³ We are encouraged that the BOP is considering this policy change and urge you to support participation by undocumented immigrants.

Compassionate Release

Unless one of several rare exceptions applies, a court may not revisit a sentence once a conviction is finalized.⁴ One of those exceptions is when the BOP Director asks the court to

² Government Accountability Office, *Eligibility and Capacity Impact Use of Flexibilities to Reduce Inmates’ Time in Prison 13-14* (2012), available at <http://www.gao.gov/products/GAO-12-320> (hereinafter “GAO Report”).

³ GAO Report at 35.

⁴ See 18 U.S.C. § 3582.

reduce a sentence because “extraordinary and compelling” reasons warrant such a reduction.⁵ For many years, the Bureau limited “extraordinary and compelling circumstances” to those cases where the prisoner had a terminal illness with a life expectancy of one year or less or had a profoundly debilitating medical condition.⁶ However, the U. S. Sentencing Commission promulgated a guideline in 2007 that delineated additional circumstances a court could take into account, including “the death or incapacitation of the inmate’s only family member capable of caring for the inmate’s minor child or children or any other reason determined by the Director.”⁷ This summer, BOP set forth additional guidelines, expanding eligibility to the parents of minor children contemplated by the Commission and extending eligibility to certain other prisoners, including revised criteria for elderly inmates who did not commit violent crimes and who have served significant portions of their sentences.⁸

We are heartened by the expanded grounds announced by the BOP, but concerned that, until now, the sentence reduction authority has been rarely invoked. We urge the Bureau to take full advantage of the new guidelines to identify and bring to the court’s attention all worthy cases that meet the outlined criteria.

Community Confinement

The BOP is obligated by law to ensure people in federal prison have an opportunity to spend a portion of time at the end of their sentences “(not to exceed 12 months) under conditions that will afford [them] a reasonable opportunity” to prepare to return to society.⁹ The statute provides that the BOP may transfer eligible people to contract residential re-entry centers (RRCs), also called halfway houses, and, up to the lesser of 6 months or ten percent of the term of imprisonment, in home confinement for up to the one-year total that Congress provides in the Second Chance Act.¹⁰

The Second Chance Act sponsors understood the role that halfway houses play in the management of the federal prison population and explicitly rejected the Bureau’s alteration of policies in 2002 and 2005 limiting halfway house use, and expanded the law’s guarantee of consideration for pre-release programming from six to 12 months. The Second Chance Act specifically amended the law governing RRC transfers to instruct the BOP to ensure that placement in community corrections be “of sufficient duration to provide the greatest likelihood of successful reintegration into the community.”¹¹ Stays in RRCs alone in 2010 averaged only 95 days and people released to RRCs and home detention averaged only 4.5 months.¹² Although the

⁵ See 18 U.S.C. § 3582(c)(1)(A).

⁶ GAO Report at 25.

⁷ See U.S.S.G. § 1B1.13, app. note A.

⁸ BOP Program Statement No. 5050.49

⁹ 18 U.S.C. § 3624(c)(1).

¹⁰ Second Chance Act of 2007, Pub. L. No. 110-199, § 251 (2008).

¹¹ 18 U.S.C. § 3624(c)(6).

¹² GAO Report at 17, Tbl. 2.

BOP has begun to give staff more discretion about how much time people must serve in halfway houses, who should be placed in a halfway house, and who may be placed directly on home confinement, much more needs to be done to ensure that people benefit from the full 12-month reentry period. While the BOP cites high costs and lack of space, the 2012 GAO report notes that the BOP failed to clarify the cost of RRC beds and home detention services and that it provided “no road map” as to how to secure this information.

The limited use of RRCs and home detention is an area where the BOP can improve the implementation of Second Chance Act directives. We urge you to ascertain up-to-date costs and savings possible under the program; to ask the BOP why its use of halfway houses and home detention has been so sparing; and determine what the BOP might need to implement the directives in the Second Chance Act.

Conclusion

Federal prison populations and costs cannot truly be addressed without Congressional action to reduce the number of people entering federal prison each year. For example, the U.S. Sentencing Commission concluded that certain mandatory minimum penalties, which apply too broadly, are excessively severe, and are applied inconsistently, have led to an explosion in the federal prison population and spending on federal prisons.¹³ Nevertheless, the Administrative changes described above would both save money and promote successful reentry, increasing public safety. We urge you to use your influence to promote these policies.

Sincerely,

Drug Policy Alliance

Families Against Mandatory Minimums (FAMM)

The Leadership Conference on Civil and Human Rights

National African American Drug Policy Coalition, Inc.

Open Society Policy Center

The Sentencing Project

United Methodist Church, General Board of Church and Society

cc: Members of the U.S. House of Representatives Subcommittee on Crime, Terrorism, Homeland Security, and Investigations

¹³ U.S. Sentencing Commission, Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System 367-69 (2011), available at http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Mandatory_Minimum_Penalties/20111031_RtC_Mandatory_Minimum.cfm.