



The Honorable Mitch McConnell
United States Senate
Washington, DC 20510

The Honorable Charles E. Schumer
United States Senate
Washington, DC 20510

June 25, 2018

Re: Senate should advance sentencing reform legislation

Dear Majority Leader McConnell and Minority Leader Schumer:

Broad bipartisan concerns about the status of the federal criminal justice system have been growing in Washington, DC for many years but legislative action has been in short supply. The Sentencing Project proudly endorsed the last two major criminal justice reform bills – the Fair Sentencing Act (2010) and the Second Chance Act (2008) – but many years have since passed and an overcrowding and staffing crisis at the federal Bureau of Prisons requires immediate attention. The Sentencing Project urges the Senate to move quickly to pass sentencing reform legislation, like the Sentencing Reform and Corrections Act (S. 1917) sponsored by Senators Charles Grassley and Richard Durbin, to help create a safer, more equitable and fairer prison system.

The federal prison system is the largest in the country, and the Department of Justice’s budget proposal for 2018 projected a 2% increase in the prison population.¹ Gone unchecked, the federal government’s harsh sentencing structure has been frequently applied to convictions for nonviolent offenses, and its underfunded system for rehabilitation has exacerbated the fiscal and humanitarian burdens plaguing the prison system.

About half of the federal prison population is serving time for a drug offense, including many people who are in the lower levels of the drug trade, were not caught with weapons or have limited criminal histories. Indeed, 54% of individuals subject to a federal drug mandatory minimum in 2016 were at or below the level of “street-level dealers,” which is defined as selling less than one ounce of drugs.² Further, no weapon was involved in 82% of federal drug cases in 2016.³ In 2012, the average prison term for a federal drug offense was 11.3 years.⁴

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

² United States Sentencing Commission (2017). Mandatory Minimum Penalties for Drug Offenses in the Federal Criminal Justice System. Figure 28, pages 45.

³ 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.

⁴ Ghandnoosh, N. (2017). Federal Prisons at a Crossroads. The Sentencing Project.

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.

The federal prison system currently operates 14 percent above capacity, and at higher rates in high and medium security institutions, 24 percent and 18 percent respectively.⁵ Along with an "inmate to correctional officer" ratio among the highest in the country at 8.9 to 1;⁶ prison safety concerns are at critical levels. Indeed, the rate for some types of assaults in federal prisons has steadily increased since 2014.⁷ Moreover, correctional officer shortages have regularly forced programming and medical staff – like teachers and nurses- to work as officers despite limited training in those security positions.⁸

In order to successfully reform the federal prison system, Congress should adopt policies to reduce the population, invest in correctional and programming staff, and fully fund programming for all incarcerated people. An alternative criminal justice reform proposal, the FIRST STEP Act (S. 2795), falls short of these objectives in two key areas. First, it would divert limited resources for programming by requiring a complex risk assessment process that would primarily benefit people deemed at a low or minimal risk of recidivating. Second, without provisions in the bill to reduce the excessive sentencing produced by mandatory minimums for drug offenses, overcrowding will persist and thereby divert resources from programs to reduce recidivism.

The Sentencing Project is pleased by the growing bipartisan consensus among lawmakers to prioritize change in the nation's criminal justice system. We are encouraged by the leadership of Senators Grassley and Durbin and will continue to endorse their efforts to advance meaningful sentencing and criminal justice reform through Congress. We hope the entire Senate will join them to achieve shared goals of justice, fairness and safety.

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

Sincerely,



Marc Mauer
Executive Director
Cc: United States Senate

⁵ *Program Fact Sheet*, Federal Bureau of Prisons, (2018), available at: https://www.bop.gov/about/statistics/docs/program_fact_sheet_20180328.pdf

⁶ *Ibid.*

⁷ Office of Research, *Adjudicated Assaults recorded in Sentry Chronological Disciplinary Record*, (2018), available at: https://www.bop.gov/resources/research_projects/assaults/archive/2018-Apr-code224-inmates.pdf

⁸ Ivorty, D. & Dickerson, C. (2018, June 17). Safety Concerns Grow as Inmates Are Guarded by Teachers and Secretaries. *The New York Times*.