



Testimony of Craig DeRoche
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Before the Senate Judiciary Committee
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Chairman Grassley, Ranking Member Leahy, and distinguished members of the Judiciary Committee, thank you for the opportunity to address you today as you consider significant criminal justice reform legislation.

I am privileged to speak in my capacity as Executive Director of Justice Fellowship, the advocacy arm of the late Chuck Colson's Prison Fellowship. The bipartisan introduction of the Sentencing Reform and Corrections Act of 2015 (S.2123) represents a significant milestone for our organization and the broader faith community which has long been calling for a more restorative approach to crime and punishment.

Despite some recent reductions in the population, the Bureau of Prisons reports an overall overcrowding rate of approximately 30 percent and over a 50 percent overcrowding rate at its highest-security facilities.¹ The Bureau of Prisons' \$7 billion budget continues to take up an increasing proportion of the Department of Justice's obligations.² These are serious challenges that have pushed the need for reform to the forefront, but utilitarian goals of fewer prisoners and lower budgets are not the primary impetus for the thoughtful deliberation that led to this legislation. We are pleased that this reform has been driven by the shared values of proportionate punishment and the need for a constructive prison culture. It is due time we reevaluate how long we punish people against the value of proportionality and essential that we start using our prisons as a means to develop good citizens, not just good prisoners.

The Legacy of Chuck Colson and Prison Fellowship

As many of you know, our founder, the late Chuck Colson went from being President Nixon's Counsel to a federal prisoner as a result of his involvement in the Watergate scandal. Although his power and pride crumbled, Colson's faith in Jesus Christ was strengthened. Upon his release from prison, Colson vowed never to forget the men he met in prison. He kept his promise. In 1976, he founded Prison Fellowship. Today, our organization is the nation's largest prison ministry. We mobilize thousands of volunteers to serve in over 1,400 correctional facilities and reach over 200,000 men and women in prison nationwide. In 2014, our Angel Tree program provided over 330,000 children with a Christmas gift on behalf of their incarcerated parent and

¹ U.S. GOV'T ACCOUNTABILITY OFFICE, BUREAU OF PRISONS, GROWING INMATE CROWDING NEGATIVELY AFFECTS INMATES, STAFF, AND INFRASTRUCTURE 55 (Sept. 2012), *available at* <http://www.gao.gov/assets/650/648123.pdf>.

² DEP'T OF JUSTICE, FEDERAL PRISON SYSTEM, FY 2015 BUDGET REQUEST AT A GLANCE 1, *available at* <http://www.justice.gov/sites/default/files/jmd/legacy/2013/12/21/bop.pdf>.

reminded them how much God cares about them. In the federal system alone, Prison Fellowship delivers ministry programming in 34 facilities and Angel Tree participation includes incarcerated parents in 149 facilities.

Additionally, Prison Fellowship's advocacy team has played a prominent role in passing groundbreaking justice reforms at the state and federal level. This includes working alongside many of you to pass the Religious Freedom Restoration Act, the Fair Sentencing Act, and the Second Chance Act.

When I explain how I joined the ministry, I like to joke that Chuck would do almost anything for prisoners, but so many prisoners struggle with substance abuse and Chuck simply refused to develop an addiction. That's why he called me, a recovering alcoholic, to the ministry. I'm also a recovering politician. At 34, I was the youngest elected Speaker of the Michigan House of Representatives. After two alcohol-related arrests, however, I nearly lost everything, including my family. I had been relying on alcohol as my solution to the problems in my life since the age of 14. When I hit bottom and entered recovery for the third time, that's when I finally found freedom by relying on Christ. Just like Chuck, when I speak about reforming the criminal justice system, I don't speak about what "those people" need. I am one of them, and what we need is justice that restores.

The broad bipartisan support for reforming and reducing certain mandatory sentences for drug offenses and increasing effective prison programming is an encouraging signal. The political left and right are finally retiring sacred political epithets such as being "tough on crime" and "lock 'em up and throw away the key" in order to have a meaningful conversation on how to address the real challenges facing our nation's criminal justice system. 2016 will mark Prison Fellowship's 40th anniversary. It's pleasing to see Chuck's decades of work bearing fruit in such significant terms today.

Proportionate Punishment

Incarceration is a necessary tool to punish people who commit serious crimes and to protect the public. However, certain drug sentences have reached a point of diminishing return. These disproportionate penalties can actually be detrimental to public safety as overcrowded prisons are unable to effectively implement recidivism-reducing programs or control violence. Excessive sentences also take away resources from crime-prevention measures. More importantly, greater-than-warranted punishment disparages human dignity. It is not just a matter of individual injustice; disproportionate sentences rob families and communities of the time and resources that their fathers, spouses, and neighbors would otherwise be able to contribute.

The state laboratories of democracy have found that reducing penalties for drug offenses can lower prison overcrowding and costs, while still maintaining public safety. The Pew Center on the States recently reported that 30 states have cut their imprisonment rates and experienced declines in their crime rates within the last 5 years.³ At least 17 states have eliminated or

³ PEW CENTER ON THE STATES, IMPRISONMENT AND CRIME RATES FELL IN 30 STATES OVER 5 YEARS (2015), available at http://www.pewtrusts.org/~media/assets/2015/09/imprisonment_and_crime_rates_fell_in_30_states_over_5_years.pdf.

reduced mandatory minimum sentencing, and 18 states have expanded their equivalent of a safety valve to broaden their exceptions to mandatory minimum sentencing laws.⁴ For example, in 2002, my home state of Michigan eliminated mandatory minimum sentencing for most drug offenses and applied the change retroactively. Yet between 2003–2012, violent crime rates dropped by 13 percent and property crime rates dropped 24 percent. Even Prof. Steven Levitt of the University of Chicago, who has argued that increased incarceration has reduced crime rates, has recognized that the continued increase of people with drug convictions in prisons may lead to a “crowding out” effect in which space and resources are unavailable for people who have committed more serious offenses, thereby reducing the effectiveness of incarceration to reduce crime.⁵

Of course, the federal system presents unique challenges, as imprisonment for drug crime is almost entirely for distribution rather than mere possession. Nonetheless, very few people in federal prison are “kingpins” or “organizers”. Of the 24,000 people sentenced in 2014 to federal prison for drug crimes, only seven percent played a leadership role in the crime.⁶ In addition, 84 percent did not possess or use guns or weapons.⁷ The primary driver of our federal prison population growth is not the number of people we are admitting, but the increasing time served. According to the Charles Colson Task Force on Federal Corrections, the number of people with drug offenses admitted to the Bureau of Prisons has largely remained constant over the past two decades, but their length of stay has significantly increased.⁸ We must hold people accountable for crime, but we have lost sight of what constitutes proportionate punishment.

The first section of the Sentencing Reform and Corrections Act tackles disproportionate sentences by expanding eligibility for the current federal safety valve to people who have up to four criminal history points, with some exceptions. It also creates a second safety valve that addresses people who played an “enhanced” role in drug crime. This provision is especially important to address inequities among people who have played mid-level roles, who often do not qualify for the existing safety valve and who rarely benefit from the substantial assistance waiver available to more culpable players who have valuable information to trade. Additional sentencing reforms target reducing sentencing enhancements that yield disproportionate outcomes.

⁴ RAM SUBRAMANIAN & RUTH DELANEY, VERA INST. FOR JUSTICE, PLAYBOOK FOR CHANGE? STATES RECONSIDER MANDATORY SENTENCES (Feb. 2014) 8–10, *available at* <http://www.vera.org/sites/default/files/resources/downloads/mandatory-sentences-policy-report-v2b.pdf>.

⁵ Ilyana Kuziemo & Steve Levitt, *An Empirical Analysis of Imprisoning Drug Offenders*, 88 J. PUB. ECON. 2043–2066 (2004).

⁶ U.S. SENTENCING COMM’N, OVERVIEW OF FEDERAL CRIMINAL CASES FISCAL YEAR 2014 5, *available at* http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2015/FY14_Overview_Federal_Criminal_Cases.pdf.

⁷ U.S. SENTENCING COMM’N, 2014 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS (2014) table 39, *available at* <http://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2014/Table39.pdf>.

⁸ URBAN INST., CHARLES COLSON TASK FORCE ON FED. CORR., DRIVERS OF GROWTH IN THE FEDERAL PRISON POPULATION 2 (Mar. 2015), *available at* http://www.colsontaskforce.org/wpcontent/uploads/2015/03/2015.03.09_Drivers-Handout-finalized.pdf.

The Moral Imperative to Apply Sentencing Reforms Retroactively

We applaud that this bill applies some of these new sentencing reforms retroactively. This honors a moral imperative. The Bible calls Christians to, “Remember those in prison, as if you were there yourself. . . .”⁹ Where reforms address men and women who categorically received sentences that were disproportionate and unjust, we should not arbitrarily limit application to those lucky enough to be sentenced after the bill’s passage. What message do we send about respect for human dignity if we acknowledge that we have condoned unwarranted punishment, but are willing to disregard the years of human life that will be wasted unnecessarily behind bars? These are not abstract “prison-bed” years, but men who want to be united with their wives, mothers who want to raise their children, all people with God-given value that have something to contribute to our communities.

Further, in terms of public safety, the U.S. Sentencing Commission has found no significant difference in the recidivism rates of defendants sentenced under the Fair Sentencing Act.¹⁰ Finally, for members on this Committee who do not condone a broad application of the executive’s clemency power, retroactive application alleviates the need for the executive to act.

Fostering a Constructive Prison Culture

While the Sentencing Reform and Corrections Act takes important steps to reform how long we sentence people, the second section of the legislation tackles an equally important question of how we punish and for what purpose. Taxpayers and victims and survivors of crime expect a return on society’s large investment in the criminal justice system. Earning back the public’s trust after committing a crime should not be an easy task, but it must be a realistic and attainable one if we want to increase public safety and maximize the human potential locked within our prisons and jails. Unfortunately, many prisons today teach people how to become good prisoners, not good citizens. Prisons that provide proven programs that address criminogenic needs and instill a culture of individual responsibility and hope can result in a positive fiscal and social return.

Accordingly, we commend the bill’s directive to the Department of Justice to expand recidivism-reduction programming, such as drug rehabilitation, education, skills training, faith-based classes, and work programs, for all federal prisoners, in partnership with non-profit and faith-based organizations. The Bureau of Prisons is directed to use risk and needs assessment tools to assign the most effective amount and type of programming to each prisoner and provides incentives for program participation. The use of risk assessment tools has become widespread throughout the criminal justice system, including use by courts, probation and parole agencies, as well as prison and jail administrators.¹¹ More advanced risk assessment tools incorporate both static and dynamic risk factors in addition to a needs assessment, in order to provide more

⁹ *Hebrews 13:3* (NLT).

¹⁰ U.S. SENTENCING COMM’N, REPORT TO CONGRESS: IMPACT OF THE FAIR SENTENCING ACT OF 2010 10 (2015), available at http://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/drug-topics/201507_RtC_Fair-Sentencing-Act.pdf.

¹¹ Edward J. Latessa & Brian Lovins, *The Role of Offender Risk Assessment: A Policy Maker Guide*, 5 J. EVIDENCED-BASED POLICIES AND PRACTICES 203, 204 (2010).

effective treatment.¹² Through program intervention and ongoing assessment, as proposed in this legislation, participants can show change in risk.¹³

Regardless of someone's risk level, the bill allows all federal prisoners who complete programs to be eligible for incentives developed by the Bureau of Prisons, such as increased telephone or visitation privileges. Prisoners who reach a moderate or low-risk classification may use time credits earned from program completion toward prerelease custody in a residential reentry center, on home confinement, or on community supervision. We believe this appropriately reflects that "earned time credit" should be a privilege secured by regaining the public's trust through programs that demonstrate growing maturity, genuine remorse, and compliance with prison and societal rules. Further, we agree that this privilege must be weighed against the risk to public safety. Additionally, we support that the community, including the faith-based community, must play an active role in prison and reentry program delivery and welcome the legislation's directive to the Department of Justice as a means of strengthening such partnerships.

Faith-based programs and Reducing Recidivism

Many faith-based programs provide the moral incentive to change criminal behavior and provide opportunities to put good citizenship to practice within a community context inside prison. Faith-based programs have proven to reduce the number of disciplinary reports and increase the overall safety of the institutions in which they are housed.¹⁴ Based on the success of some faith-based programs, states have begun to create character- and faith-based prisons and dorms.¹⁵ In fact, states with the largest prison populations, including Georgia,¹⁶ have led the way in providing opportunities for men and women who are incarcerated to learn to live within a pro-social community. The proven record of faith-based programming to instill positive social values and modify deviant behavior makes faith-based programming a viable and cost-effective option for corrections.¹⁷

Religious programs for men and women in prison are among the oldest and most common rehabilitative programs within correctional institutions. There is collective evidence that religious participation can reduce the risks of delinquent behavior, including criminal conduct.¹⁸ A literature review of approximately 40 studies concentrating on the relationship between religion and delinquency determined that most of the studies reported that a decrease in

¹² *Id.* at 213–14.

¹³ Tracy L. Fass et al., *The LSI-R and the Compas: Validation Data on Two Risk-Needs Tools*, CRIM. JUST. AND BEHAV. 1095, 1095–1096 (2008).

¹⁴ E.g., Thomas P. O'Connor & Michael Perryclear, *Prison Religion in Action and Its Influence on Offender Rehabilitation*, 35 J. OFFENDER REHAB. 11 (2002) (finding that disciplinary infractions decreased with increased religious activity).

¹⁵ E.g., FOXNEWS.COM, *Faith Based Prisons Multiply Across the U.S.*, <http://www.foxnews.com/story/2007/10/13/faith-based-prisons-multiply-across-us/> (stating that Texas officials opened a dozen faith-based dorms as a result of the success of the InnerChange Freedom Initiative Program, a faith-based program in a prison outside of Houston).

¹⁶ *Faith and Character*, GA. DEP'T OF CORRECTIONS, <http://www.dcor.state.ga.us/NewsRoom/Publications/FCBI.html> (last visited Mar. 8, 2015).

¹⁷ E.g., Bolko Zimmer, *The Effect of Faith-Based Programs in Reducing Recidivism and Substance Abuse of Ex-Offenders*, 14 J. COMMUNITY CORRECTIONS 7 (2005).

¹⁸ David Evans, et al., *Religion, Social Bonds, and Delinquency*, 17 DEVIANT BEHAVIOR 43 (1996).

delinquency was related to an increase in religious activity.¹⁹ Additionally, the largest and most rigorous literature review to date on studies of religion and crime reviewed 243 studies and, consistent with previous literature reviews, determined an inverse relationship between religion and crime or delinquency.²⁰ In fact, 90 percent of the studies reported a beneficial relationship between religion and crime. Similar to earlier literature reviews, this review also noted that the findings were more pronounced among the studies with stronger methodologies.²¹ Essentially, a majority of the research on religion and crime shows that a faith-based approach can have a direct impact on recidivism.²²

Particular faith-based programs have shown significant reductions in recidivism. A Minnesota Department of Corrections study revealed that an intensive Prison Fellowship program, for example, has shown a 26 percent decrease for re-arrest, 35 percent decrease for reconviction, and a 40 percent decrease for re-incarceration for a new crime.²³ A taxpayer cost savings of \$8,291 per program participant was later calculated.²⁴ Additionally, faith-based programs have begun to adopt holistic approaches by actively addressing criminogenic needs and risks through evidence-based practices, which has increased their overall efficacy in reducing recidivism.²⁵ In our experience, the most successful faith-based programs are ones that do not merely provide periodic worship or religious instruction, but also foster pro-social community within the prison, establish mentoring relationships, include the teaching of practical life skills such as budgeting and parenting, cultivate in-prison leaders, and commit to long-term engagement.

Conclusion

This legislation moves the federal system to a more restorative model that should awaken America to the value of human lives affected by crime and incarceration. Although my remarks have focused on sentencing and prison programming, we are encouraged by the inclusion of so many other important reforms to address juveniles, criminal records, and compassionate release for the terminally ill, among others.

We are grateful to Chairman Grassley, Ranking Member Leahy, and all the senators involved in crafting this legislation for relying on shared values to persevere and find common ground on

¹⁹ Byron Johnson, et al., *Religion and Delinquency: A Systematic Review of the Literature*. 16 J. CONTEMP. CRIM. JUST. 32 (2000). Johnson et al also determined that among the studies with the most rigorous methodologies, there was an increased likelihood that religious activity resulted in decreased delinquency. *Id.*

²⁰ Byron Johnson & Soon Joon Yang, *Religion and Crime: Assessing the Role of the Faith Factor*. Contemporary Issues in Criminological Theory and Research: The Role of Social Institutions (2012) at 117, available at http://www.baylorisr.org/wp-content/uploads/Jang-and-Johnson_Religion-and-Crime1.pdf.

²¹ *Id.*

²² Contra Alexander Volokh, *Do Faith-Based Prisons Work?* 63 ALA. L. REV. 43 (2011) (stating that faith-based programs cannot be effectively measured because of the voluntary nature of these programs and the “self-selection problem”).

²³ Minnesota Department of Corrections, AN OUTCOME EVALUATION OF THE INNERCHANGE FREEDOM INITIATIVE IN MINNESOTA (2012), available at http://www.baylorisr.org/wp-content/uploads/benefits_faith-based_correctional_program.pdf.

²⁴ Grant Duwe & Byron Johnson, *Estimating the Benefits of a Faith-Based Correctional Program*, 2 INT’L J. CRIM. SOCIOLOGY 227 (2013), available at http://www.baylorisr.org/wp-content/uploads/benefits_faith-based_correctional_program.pdf.

²⁵ *Supra* note 23 at 11.

complex issues. We recognize that this one bill does not include every reform we seek; we celebrate, however, that it signifies a watershed moment that will impact tens of thousands of lives and, most critically, has the prospect of being voted through the Senate Judiciary Committee and the full Senate with overwhelming support from both Democrats and Republicans. We urge every member of Congress to support it, and we look forward to helping advance it to President's desk. Thank you.