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TESTIMONY OF HILARY O. SHELTON

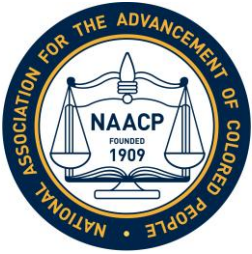
*Director, NAACP Washington Bureau &
Senior Vice President for Policy and Advocacy*

**Before the Committee on the Judiciary
United States Senate**

On

**S. 2123, Sentencing Reform and
Corrections Act of 2015**

Monday, October 19, 2015



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Good afternoon, Chairman Grassley, Ranking Member Leahy, and members of this esteemed Committee. Thank you so very much for inviting me here to discuss sentencing reform. I appreciate the opportunity to provide you with the thoughts and opinions of the NAACP on this very important issue.

Founded more than 105 years ago, in February of 1909, the National Association for the Advancement of Colored People, the NAACP, is our nation's oldest, largest, and most widely-recognized grassroots-based civil rights organization. We currently have more than 1,200 active membership units across the nation, with members in every one of the 50 states as well as units on overseas military bases. In addition to our community based adult units, we also have youth and college units in hundreds of communities and schools across the country as well as units in prisons.

My name is Hilary Shelton, and I am the Director of the NAACP Washington Bureau and the Senior Vice President for Policy and Advocacy. I have served as the Director of the NAACP Washington Bureau, our Association's federal legislative and public policy advocacy arm, for over 17 years.

As I prepare to discuss our thoughts on this specific legislation, let me begin by talking about the problems and challenges. Our nation's criminal justice system, of which sentencing policy is an integral part, is not working. While the overall rates of murders, robberies, drug use, and

violence may fluctuate, crime continues to plague our nation. Furthermore, racial disparities and racism remain prevalent in our nation's criminal justice system.

Despite the fact that Americans are being incarcerated at such high rates, we are not seeing an equivalent drop in crime, as a matter of fact crime rates have been low throughout the nation for years until the recent spike in some major cities. Too many people are being locked up for too long for non-violent offenses, and they are not getting the support they need to become productive members of society either in prison or once they are released. Unacceptably high recidivism rates are a clear indicator that incarceration is not the rehabilitating factor it is meant to be. Lastly, the racial disparities which exist among people who come in contact with our criminal justice system has lead whole communities, as well as many, many others throughout our nation, to lose faith that the system is fair, unbiased, and who are convinced that justice is not blind when it comes to race or ethnicity.

The criminal justice system is broken, and as a result too many people's lives, families, neighborhoods, and communities, are shattered. Too many people are incarcerated, and one of the main reasons is our flawed sentencing policies.

The United States is the world's leader in incarceration, with 2.2 million people currently in our nation's prisons or jails. This represents a 500% increase of prisoners over the past 30 years¹. Approximately 1 in every 110 adults is locked up in America today². The federal prison population has grown almost 800% since 1980, when there were only about 25,000 inmates. Today, there are more than 205,000 people in federal prison³ alone.

Recidivism rates are also astronomical and unacceptable. Not only are too many people being incarcerated, but clearly the result of incarceration under the current system is not reform. We need to ensure that educational and job training programs are readily available. Within three years of release, about two-thirds (67.8 percent) of released prisoners were rearrested. Within five years of release, more than three-quarters (76.6 percent) of released prisoners were rearrested⁴. In one Utah study, offenders receiving educational services (without regard to any specific program of instruction) have shown as high as a 27% reduction in recidivism when compared to non-participating offenders⁵.

¹ The Sentencing Project. Found at www.sentencingproject.org

² The Pew Center on the States, *Time Served: The High Cost, Low Return if Longer Prison Terms*, June, 2012

³ James, Nathan , *The Federal Prison Population Buildup: Overview, Policy Changes, Issues and Options*. Congressional Research Service

⁴ National Institute of Justice, <http://www.nij.gov/topics/corrections/recidivism/pages/welcome.aspx>

⁵ Utah Department of Education, <http://www.schools.utah.gov/adulted/Corrections.aspx>

Too many of those who are incarcerated are in prison or jail for non-violent offenses, and this fact, along with the astronomical growth of our overall prison population, can be directly tied to changes which began in the 1980's in our nation's sentencing laws. In 2014, in comparison to the 53% in state prisons, violent offenders represented only 7% of the federal prison population⁶.

The impact of these numbers on people, families, neighborhoods, communities, and on our nation is also as multi-faceted as it is problematic. Incarceration reduces former inmates' earnings by 40% and limits their future economic mobility⁷. In 2010, 2.7 million American children, or 1-in-28 (3.6%), had an incarcerated parent; just 25 years ago, the number was 1-in-125⁸. The cost to our nation in budgetary terms is also unacceptable: this is money which could be used instead on a whole host of very necessary and proven effective programs, including education, health care, transportation, job training, job creation, research, development, or even ex-offender reintegration programs.

The rapid increase in incarceration is especially disturbing to the NAACP, since more than 60% of the men and women currently incarcerated today are racial and ethnic minorities. For African American males in their thirties, 1 in every 10 is in prison or jail on any given day⁹. Despite making up just 13% of the overall American population, African Americans comprised 30% of offenders convicted of an offense carrying a mandatory minimum¹⁰ in 2014. In 2010, African Americans offenders accounted for 27.3% of all drug offenders, 30.3% convicted of a statute carrying a mandatory minimum penalty, and 40.4% subject to a mandatory minimum penalty at sentencing¹¹.

The question as to why racial and ethnic minorities are over-represented among those who are incarcerated is as complicated as it is important. The NAACP is committed to reducing not only the overall number of those incarcerated, but also the disparity of those who are put into prison or jail.

Thus, the NAACP was extremely pleased with the introduction of S. 2123, the *Sentencing Reform and Corrections Act of 2015*. Not only does this legislation address some of the more prominent flaws in our sentencing policies today, but by its very bipartisan nature the

⁶ DrugWarFacts.org/cms/Prisons_andDrugs#sthash.agnt1d7.dpuf

⁷ The Pew Charitable Trust, *Collateral Costs: Incarceration's Effect on Economic Mobility*, September, 2010

⁸ Ibid

⁹ The Sentencing Project

¹⁰ United States Sentencing Commission, 2014 Datafile, USSCFY14.

¹¹ United States Sentencing Commission, *Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System*, pp.252-261

legislation speaks to the overwhelming severity of the problem, and the acknowledgement, by all, that something must be done.

Specific elements of the legislation which are supported by the NAACP include:

- A reformed and targeted set of mandatory minimum sentences for prior drug felons, including the three-strikes-you're-out law;
- A broadening of the existing safety valve;
- The creation of a second safety valve;
- The retroactive application of the *Fair Sentencing Act*;
- The promotion of successful reentry;
- Juvenile record sealing and expungement;
- A prohibition on solitary confinement for juveniles, with a very few, limited, exceptions; and
- A requirement that the Attorney General establish and enforce procedures for individuals who undergo background checks for employment to challenge the accuracy of their federal criminal records.

The NAACP feels that S. 2123, the *Sentencing Reform and Corrections Act of 2015* is a good start, of which we are especially encouraged by the bi-partisan nature of the bill. Yet more can, and should be done to reform the criminal justice system, and the sentencing policies, of our nation. Racial discrimination remains prevalent in our nation's criminal justice system, and we must aggressively address it head on. Thus, S. 2123 must be seen as a beginning, albeit a strong beginning, not the full cure or the end of the ills which are pervasive in our system.

The NAACP looks forward to working with this committee and with other like-minded law makers and interested parties to enact additional sentencing reforms, including:

- The elimination of all mandatory minimum sentences, and an increase in judicial discretion;
- The increased use of evidence-based sentencing alternatives, including drug, Veteran, and mental health courts;
- A concentration on using prison space for career or violent criminals;
- Reducing recidivism through educational and job training opportunities for prisoners while they are incarcerated (this includes restoring Pell grant eligibility to prisoners);
- In depth reports to Congress by the Department of Justice on the extent to which reforms have addressed both over-incarceration and racial disparities.

Racial discrimination is a serious problem in our nation's criminal justice system, and not just in sentencing policies. Thus, I would strongly encourage this committee to review law enforcement policies as well as sentencing policies if we are going to have a genuine reform of our nation's criminal justice system, and one of which we can be proud and which will inspire trust and confidence among all communities. Specific policies supported by the NAACP include:

- Enactment of the *End Racial Profiling Act*, S. 1056 as introduced by Senator Cardin, MD. / H.R. 1933 by Congressman John Conyers, MI.
- Full funding for all law enforcement officers at every level (local, state, and federal) to be fully equipped with mobile cameras, including body-worn cameras, cameras mounted on police equipment such as guns, Tasers, and dashboards, and other similar equipment, along with carefully crafted policy safeguards to ensure they are used for positive purposes for both law enforcement and civilians;
- The establishment of independent, fully funded civilian review boards to ensure that civilian complaints are addressed;
- The establishment and proliferation of uniform, national, performance-based standards on the acceptable use of force to ensure that incidents of misconduct will be minimized through appropriate management, training and oversight protocols
- A review of prosecutors nation-wide, to help determine if and where prosecutorial misconduct exists and if and when race plays a part in a prosecutor's decisions;
- Enactment of legislation such as the Youth Promise Act (H.R. 2197, as introduced by Congressman Robert "Bobby" Scott, VA / S.1170 as introduced by Senator Bob Casey, PA), which uses research-based programs to prevent crime by young people before it occurs; and
- Additional funding and even an expansion of the provisions in the Second Chance Act, which is intended to prepare and help ex-offenders reenter society and has had a number of successes in reducing recidivism rates.

Chairman Grassley, Ranking Member Leahy, let me conclude by saying that the NAACP is again pleased by the bi-partisan nature of S. 2123 and by the positive steps it is taking to correct some of the most glaring problems in our criminal justice system today. To reinforce the positive aspects of the legislation, I would like to share with you but one anecdote of an individual who will be helped by this legislation.

Mr. Alton Mills has served 22 years of a mandatory life sentence for acting as a street-level courier in a crack cocaine conspiracy. The conspiracy's leaders made thousands of dollars per week between 1991 and 1993. Mr. Mills was paid just \$300 per week for his part. At his 1994 sentencing, the federal prosecutor conceded that "the thrust of the evidence against Mills was that Mills did whatever [the drug ring's leader] told him to do." Prior to his federal life

sentence, Mr. Mills had never spent a single day in prison. He received a mandatory life sentence only because the prosecutor filed a notice pursuant to 21 U.S.C. § 851. Per the 851 enhancement, the prosecutor contended Mr. Mills' two prior probation sentences for simple crack possession – involving less than 5 grams on each occasion – warranted a mandatory lifetime of imprisonment. The 851 enhancement statute was enacted to ensure similarly dangerous recidivists receive similarly harsh penalties for similarly serious drug crimes. That did not happen in this case. Mr. Mills' sentence is particularly harsh because every person above him in the drug conspiracy – including the multi-kilogram cocaine suppliers and three supervising leaders – will be released from prison by 2020. Unable to apply his discretion at the 1994 sentencing, federal judge Marvin Aspen called the sentence “farcical” and “cruel and unusual.” With no avenues for legislative or judicial relief, Mr. Mills only hope is clemency. S. 2123 would render Mr. Mills eligible to petition for a reduction in his sentence which would lead to his release from prison in the near future.

Mr. Mills' case is but one example of the problems with our current sentencing policies. The NAACP is pleased to work with this committee and to produce and enact legislation to abate, and eventually end the racial injustices that plague our criminal justice system today.

I thank the committee again for inviting me here today and I stand ready to answer your questions.