



Department of Justice

**STATEMENT OF
SALLY QUILLIAN YATES
DEPUTY ATTORNEY GENERAL**

**BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

**AT A HEARING CONCERNING
S. 2123, THE "SENTENCING REFORM AND CORRECTIONS ACT OF 2015"**

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Mr. Chairman, Senator Leahy, distinguished Members of the Committee – thank you for holding this hearing on Federal sentencing and corrections policy and for allowing the Administration to share our views on this very important topic. It is an honor to be here to discuss an issue that is important to our country, our system of justice, and about which I personally feel very strongly.

I joined the Department of Justice in 1989 as a line AUSA in the U.S. Attorney’s office in Atlanta, and it has been my privilege to represent the people of the United States for over 27 years now. My perspective on sentencing policy is informed by my years of experience as an AUSA in the trenches, as a U.S. Attorney responsible for a district of over 6 million people, and now as the Deputy Attorney General.

As a career prosecutor, I have devoted my professional life to enforcing the law and keeping our communities safe. The fundamental responsibility of all prosecutors is not simply to win convictions or send people to prison. Our responsibility is to seek justice. And I believe that justice now requires that we recalibrate our approach to our sentencing laws.

For three decades, well-intentioned prosecutors have used the tools Congress gave them, including stiff mandatory minimum sentences, to prosecute drug cases. While the stated congressional purpose of those laws was to focus on the newly emerging South American drug cartels and the leaders of drug organizations who were responsible for large quantities of drugs, as we look back, it has become clear that these harsh sentencing laws cast too broad a net. This has come with real costs, both in dollars and cents but even more importantly, in the impact on our communities and the public's confidence in our criminal justice system.

An unprecedented bi-partisan coalition has come together to arrive at a sentencing proposal that adjusts our laws so that the Department of Justice has the tools it needs to protect society from the most serious criminals, while ensuring that our criminal justice system operates in a manner that is fair, effective, and worthy of the public's trust. This bi-partisan bill recalibrates some of our sentencing laws, invigorates recidivism-reduction programs and provides added protections to juveniles, all designed to make our communities safer and our system more just. The Department of Justice believes that reform is not only appropriate but necessary, and applauds the broad and impressive bipartisan efforts that went into this bill.

There are many facets to the debate surrounding sentencing reform. I know that for many of you, and for many Americans, one of the most important questions is whether we can reform sentencing policy without endangering the safety of our communities. As the official responsible for day-to-day operations of the Department of Justice, keeping America safe is my solemn responsibility. And I believe that sentencing reform will enhance our ability to keep the American people safe.

To understand why, it is helpful to step back and understand the costs of the current system – the fiscal costs and the human costs.

We have seen an explosion in the Federal prison population since the 1980's. While the country's population has only grown by about a third, our Federal prison population has grown by almost 800 percent, due in large part to the influx of drug defendants. Today, nearly half of all Federal inmates are in Federal prison for drug-related offenses. Under the current sentencing regime, our mandatory minimum laws do not calibrate a defendant's sentence to match the threat that he or she poses to our safety. At its core, one of the basic problems with our mandatory minimum system is that it's based almost exclusively on one factor – drug quantity. And so, we have a hard time distinguishing the cartel leader who needs to be in prison for a long time from the low level distributor who doesn't. As a result, we have some defendants serving far more time in prison than necessary to punish and deter. This comes with great costs – costs to operate our prisons system, costs to our families and communities, and costs to the public's confidence in the fairness of their system of justice.

From a dollar and cents standpoint, the Department's prison and detention costs have increased by almost three billion dollars in the past decade and now account for roughly one third of the Department's budget. Our mandatory minimum drug laws sweep broadly, and result in many prisoners serving long sentences. Every dollar that we spend imprisoning a non-violent drug offender for longer than necessary is a dollar that could be spent investigating emerging threats, from hackers to home-grown terrorists or to support State and local law enforcement, victims of crime, and crucial programs for prevention, intervention, and reentry.

This is not to say that every sentence is longer than necessary, nor that every sentence should be lowered. But we need an approach that is more carefully tailored, so we that we can focus our resources where they are needed most. Sentencing reform is critical to ensuring the Department and our State and local law enforcement partners have both strong laws and sufficient resources to combat drug and violent crime. Reform will enhance public safety. The reforms being considered in this bill do not reduce statutory maximums, and drug offenders will still receive significant sentences. Moreover, kingpins, drug organization leaders, violent criminals, as well as those who possess a firearm or dangerous weapon, will still receive enhanced penalties. But sentencing reform should permit a certain type of defendant – a low-level, non-violent drug defendant – to demonstrate to the sentencing judge that he or she should not be subject to the most onerous sentences. These modest revisions will help ensure that, in those cases, the punishment more closely matches the crime. In the long run, this should result in a lower Federal prison population, which will allow the Department to reallocate funds to other pressing needs.

But in addition to the fiscal costs, there are human costs to our current system as well. We all know the toll that illegal drugs have taken on our society. The Justice Department aggressively pursues high-level drug traffickers because we know how these substances harm those with substance use disorders. We recognize the many lives ruined by the drug trade – from rural villages in Colombia and Mexico to the streets of Oakland and Newark.

But the harms of drug addiction are not necessarily solved by locking up, for as long as possible, everyone who touches the drugs. Take for example the case of one defendant whose record I recently reviewed. This particular defendant, who only had a 6th grade education, was a

veteran of the Army, who was honorably discharged. He was convicted of selling crack on the street, in a case that may not even be a Federal case today. Although this defendant didn't possess a gun or have any history of violence, he was sentenced to mandatory life in prison because he had two prior State convictions for selling cocaine, one of which involved just one ounce of cocaine. Life in prison is simply too high a price to pay for these three small-time drug sales.

Importantly, the costs aren't just born by defendants. Too many children, over 2.7 million in the United States, have a parent behind bars. Approximately one in nine African-American children has a mother or father in prison. This cuts deeply into our society, and we must not pass this legacy to the next generation.

Similarly, when we impose longer-than-necessary prison sentences under the guise of public safety, we undermine the public's confidence in the fairness of the criminal justice system. It's not enough to have a system of justice that holds wrongdoers accountable. The system must also mete out punishment in a manner that is fair, reasonable, and tailored to the facts and circumstances of the crime. If it does not, then we risk losing the community's faith in the institutions we represent. In the long run, that loss of faith could prove more costly to our nation's future than any dollars and cents spent on the criminal justice system.

In looking for solutions, I am encouraged by the great innovations occurring at the State level. As Deputy Attorney General, I have had the opportunity to learn more about a wide variety of exciting programs, from drug courts to recidivism reduction programs. These efforts have been part of a broader shift away from thinking of incarceration as the only answer to crime. Across the country, States as varied as Texas, Ohio, North Carolina, and my home State

of Georgia, have confronted exploding prison costs by enacting bold criminal justice reforms. Most importantly, these reforms have demonstrated that sentencing reform is compatible with lower crime rates. I am encouraged to see that ideas that have worked well on the State level – including expanded reentry programming to reduce prison sentences – have been included in the proposed legislation.

And these new, more focused approaches to combating crime will enhance, not undercut, our ability to enforce the law and protect the public. For example, one of the most common concerns raised is that long sentences for low-level drug defendants is the only way to secure their cooperation against the worst criminals. Not only is this inconsistent with my personal experience as a prosecutor, it is inconsistent with the data that we have gathered since the Justice Department readjusted its drug charging policy two years ago. As you most likely know, as part of the Smart on Crime Initiative, the Department directed Federal prosecutors not to charge certain drug offenses triggering mandatory minimum sentences in cases involving lower-level, non-violent drug offenders. Since that time, the Department's charging of mandatory minimum drug offenses have decreased by approximately twenty percent. Although some feared that defendants would stop pleading guilty and stop cooperating, our experience has shown otherwise. In fact, defendants are pleading guilty at the same rates as they were before we instituted Smart on Crime. Similarly, the rates of cooperation have remained the same or even ticked up slightly.

But to make lasting changes, it is Congress that must establish a new sense of proportionality to our sentencing laws. As a society, we must balance our need for deterrence and our desire for retribution with our decency, our humanity, and our sense of fairness. We

need an approach that is more carefully tailored, so that we can better distinguish between those who pose a more serious threat to our society and those who do not.

Back when I was a line prosecutor, I faced questions of balance and proportionality on a daily basis. In every case I prosecuted, there was a time when the AUSA was called upon to make a recommendation to the judge about the sentence to be imposed. Congress has laid out the factors a court is to consider in fashioning the appropriate sentence at Section 3553(a) of Title 18 in the United States Code. These considerations, known as the 3553(a) factors, loom large at every sentencing hearing. They require reflection on the nature and circumstances of the offense, the history and characteristics of the defendant, the need for specific and general deterrence, and a range of other issues.

But it is the opening sentence of Section 3553(a) that establishes the overarching principle: that the court shall impose a sentence “sufficient, but not greater than necessary,” to comply with the stated purposes of sentencing. Sufficient, but not greater than necessary. That phrase should guide us as we consider modification to America’s sentencing laws. We must punish, but no more so than is necessary to achieve our goals. Anything beyond that is a disservice to the principles of justice and to our system of laws. There is a balance we must strike, and I believe the proposed Sentencing Reform and Corrections Act is a good step to striking that balance. The country that we love and that we have a duty to defend deserves nothing less.

Thank you again for inviting me to speak here today. With that, I am happy to take your questions.