

**POLICY STATEMENT OF
FORMER FEDERAL PROSECUTORS
AND OTHER GOVERNMENT OFFICIALS**

October 19, 2015

**The Need for Meaningful Federal Criminal Justice Reform
&
Endorsement of the Sentencing Reform and Corrections Act of 2015**

We are a diverse group of former federal prosecutors, judges, Department of Justice and other government officials who deeply believe in notions of fairness in the administration of justice. Our backgrounds, experiences, ethnicities, and political preferences vary greatly. However, we are united with a common concern: the need for meaningful, thoughtful criminal justice reforms.

While employed by the federal government, we were team players – rarely called upon to weigh-in on congressional inquiries regarding criminal statutes, sentencing issues, or other criminal justice reforms. Appropriately, the Department of Justice, as an institution, advised Congress on its positions. Now, however, we lend our collective voices based upon our individual experiences to the debates and efforts to accomplish appropriate, meaningful criminal justice reforms. It is our intention to highlight areas of concern and to engage at all levels necessary to assist in achieving such reforms.

While our experiences vary, we agree that the dramatic increase over the past several decades in the U.S. prison population presents unprecedented and significant challenges to the federal criminal justice system. The burgeoning population of the federal prison system has put immense strain on both the human and financial capital of the Department of Justice, diverting scarce resources away from the highest levels of criminal conduct. Instead of focusing on the most significant threats, vast amounts of money are spent prosecuting and incarcerating low-level offenders. Moreover, most of these low-level offenders are not rehabilitated during their incarceration and too often return to prison, increasing the costs to the federal system. The result is a prison population that, with its rising costs, is becoming a real and immediate threat to public safety.

Department heads and congressional leaders have become painfully aware that the growing prison population presents numerous challenges, including consuming an ever-increasing percentage of the Department of Justice's budget. According to the Statement of the Department of Justice's Inspector General before Congress on February 25, 2015, concerning the Department of Justice's budget request:

The Department continues to face two interrelated crises in the federal prison system. First, despite a decrease in the total number of federal inmates in FY 2014, the Department projects that the costs of the federal prison system will continue to increase. Second, federal prisons remain significantly overcrowded and therefore face a number of important safety and security issues.

The costs to operate the federal prison system continue to grow, resulting in less funding being available for the Department's other critical law enforcement missions. . . . For example, in FY 2000, the budget for the BOP totaled \$3.8 billion and accounted for about 18 percent of the Department's discretionary budget. In comparison, in FY 2015, the BOP's enacted budget totaled \$6.9 billion and accounted for about 25 percent of the Department's discretionary budget. During this same period, the rate of growth in the BOP's budget was almost twice the rate of growth of the rest of the Department. The BOP currently has more employees than any other Department component, including the FBI, and has the second largest budget of any Department component, trailing only the FBI.

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Given this crisis in the prison system, the Department needs to better utilize programs that can assist in prison population management

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In its FY 2014 Agency Financial Report, the Department once again identified prison overcrowding as a programmatic material weakness, as it has done in every such report since FY 2006. Yet, the federal prisons remain only slightly less crowded today than they were in FY 2006. As of October 2014, federal prisons operated at 30 percent overcapacity (as compared to 36 percent overcapacity in FY 2006), with 52 percent overcrowding at higher security facilities and 39 percent at medium security facilities. Overcrowding in the federal prison system has prevented the BOP from reducing its inmate-to-correctional officer ratio, which according to the Congressional Research Service has remained at approximately 10-to-1 for more than a decade – greater than the ratio found in the 5 largest state prison facilities.¹

Further, according to the Department's official viewpoint as of May 2015:

At the same time it focuses on prison costs, the Department must continue its efforts to ensure the safety and security of staff and inmates in federal prison and detention facilities. Prison overcrowding presents the most significant threat to the safety and security of BOP staff and inmates. . . . The Department's FY 2014-2018 strategic plan includes an outcome goal to reduce system-wide crowding in federal prisons to 15 percent by FY 2018. However, as of June 2014, the BOP's Long Range Capacity Plan projects prison overcrowding to be 38 percent by FY 2018, higher than it is today. To reach the long-term outcome goal in the strategic plan, without expending additional funds to build more federal prison space or to contract for additional non-federal bed space, the Department would have to achieve a net reduction of about 23,400 federal prisoners from the June 2014

¹ <https://oig.justice.gov/testimony/t150225.pdf>. See also <https://oig.justice.gov/testimony/t150507.pdf>.

*prison population, based on the existing bed space available within the federal prison facilities.*²

In order to address these issues, the federal criminal justice system needs to be reformed in two meaningful ways: first, on the front end, through a thoughtful editing and redrafting of current federal criminal laws and sentencing policies; second, on the back end, through attentive implementation of corrections policy reforms designed to enhance public safety by improving the effectiveness and efficiency of the federal prison system in order to reduce risk and recidivism, control corrections spending, and manage the prison population.

Focusing on sentencing reforms is not enough. The issues associated with risk and recidivism reduction must also be addressed in order to offset the out of control incarceration costs plaguing the federal system. In fact, increases in public safety will only come from recidivism reduction. The Department of Justice has recognized the need for such reforms.³

According to the Department's official viewpoint as of May 2015:

*The Department also has indicated its support for programs that provide alternatives to incarceration, coupled with treatment and supervision, in an attempt to reduce recidivism. In an August 2013 speech, the Attorney General identified state-sponsored initiatives that he said served as effective alternatives to incarceration by providing offenders the treatment and supervision designed to reduce recidivism while also reducing states' prison populations. The Attorney General also instructed all U.S. Attorneys' Offices (USAOs) to designate a Prevention and Reentry Coordinator in their respective Districts to expand on existing programs that promote the implementation of the Smart on Crime initiative.*⁴

As such, Congress should take quick and decisive action to address the growing cost of the federal prison system and ensure that the Department of Justice can continue to run our prisons safely and securely without compromising the scope or quality of the Department's many other critical law enforcement missions.

The Senate and House of Representatives should, therefore, move swiftly to markup and pass into law S. 2123, the Sentencing Reform and Corrections Act of 2015 (SRACA), a bill to reform sentencing laws and correctional institutions. This bill enjoys broad bipartisan support.⁵ Its key provisions will begin to address the issue of overcrowding in our federal prisons while making our communities safer and saving millions of dollars a year.

First, on the front end, S. 2123:

² <https://oig.justice.gov/challenges/2014.htm#1>.

³ <http://www.justice.gov/criminal/foia/docs/2014annual-letter-final-072814.pdf>. "Various efforts to reduce reoffending have yielded promising results, and legislators, prosecutors, courts, and probation offices around the country are focusing more and more on effective prisoner reentry."

⁴ <https://oig.justice.gov/challenges/2014.htm#1>.

⁵ SRACA was introduced by Senate Judiciary Committee Chairman Chuck Grassley (R-IA) for himself and Senators Dirk Durbin (D-IL), John Cornyn (R-TX), Sheldon Whitehouse (D-RI), Mike Lee (R-UT), Charles Schumer (D-NY), Lindsey Graham (R-SC), Patrick Leahy (D-VT), and Cory Booker (D-NJ).

- Reforms and targets enhanced mandatory minimum sentences for prior drug felons;
- Broadens the existing safety valve;
- Creates a second safety valve that preserves but targets the 10-year mandatory minimum sentence to certain drug offenders who performed an enhanced role in the offense or otherwise served as an importer, exporter, high-level distributor or supplier, wholesaler or manufacturer;
- Clarifies and reduces the enhanced mandatory minimum sentence for certain firearms offenses but expands its application to include similar prior state-level convictions in which the offender carried, brandished, or used a firearm;
- Raises the statutory maximum for unlawful possession of a firearm and creates an overlapping range by reducing the enhanced mandatory minimum for armed career criminals;
- Applies the Fair Sentencing Act and certain sentencing reforms retroactively;
- Creates new mandatory minimum sentences for interstate domestic violence and for certain export control offenses; and
- Provides for a report and inventory of all federal criminal offenses.

Second, on the back end, S. 2123:

- Requires the Bureau of Prisons to make statistically validated recidivism reduction programming available to all eligible prisoners within six years;
- Incentivizes eligible prisoners to complete these programs by allowing them to earn time credits of up to 5-10 days for each period of 30 days of programming they successfully complete;
- Requires the Attorney General to develop a risk and needs assessment system that will determine the recidivism risk level of all federal prisoners, classify them as having a low, moderate or high risk of recidivism, and identify their programmatic needs and appropriate recidivism reduction programming to reduce their risk;
- Provides that this risk and needs assessment system must periodically reassess, look for and measure indicators of change such that higher-risk prisoners have a meaningful opportunity to progress to lower risk levels and classifications through changes in dynamic risk factors;
- Allows eligible lower-risk prisoners to serve an amount of time equal to the credits they have earned in prerelease custody – halfway houses, home confinement, and/or community supervision;
- Promotes successful reentry;
- Creates a system whereby juveniles convicted as adults and sentenced to life in federal prison will be eligible to seek parole after they have served 20 years of their sentence;
- Permits nonviolent juveniles who are tried as juveniles in federal court to obtain sealing or expungement of their convictions in certain circumstances;
- Imposes limits on the use of solitary confinement for juveniles in federal prison; and
- Improves the accuracy of federal criminal records.

Perhaps the most promising aspect of this legislation is that the underlying, evidence-based reform practices have already been proven successful in states such as Texas, Rhode

Island, Ohio, and North and South Carolina. In Texas, for example, similar legislation led to the closure of a prison for the first time in the state's history, and in the two years after the legislation was enacted in 2007, Texas saved over \$443 million. To date, the state has saved taxpayers an estimated \$3 billion and Texas has its lowest crime rates since 1968. Since 2008, when the legislation was enacted in Rhode Island, the state has seen a nine percent decline in its prison population and a seven percent decrease in the crime rate. One reason for the reduction in crime is that inmates that are better prepared to re-enter communities are at a lower risk for recidivism.

We hope to serve as resources in this process, so we can all – current and former servants of the law – do our part to ensure that justice shall be done.

Respectfully,

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