



August 1, 2012

The Honorable Patrick J. Leahy
Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Charles E. Grassley
Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

AMERICAN CIVIL
LIBERTIES UNION
WASHINGTON
LEGISLATIVE OFFICE
915 15th STREET, NW, 6TH FL
WASHINGTON, DC 20005
T/202.544.1681
F/202.546.0738
WWW.ACLU.ORG

**RE: Senate Judiciary Committee Hearing on “Rising Prison Costs:
Restricting Budgets and Crime Prevention Options”**

Dear Chairman Leahy and Ranking Member Grassley:

On behalf of the American Civil Liberties Union (ACLU), a non-partisan organization with more than a half million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to the principles of individual liberty and justice embodied in the U.S. Constitution, we offer this statement for the record of the August 1, hearing on, “Rising Prison Costs: Restricting Budgets and Crime Prevention Options.” This hearing is an important first step in addressing our country’s current incarceration crisis.

For years, the ACLU has been at the forefront of the fight against overincarceration due to its devastating impact on those who become ensnared in the criminal justice system, its failure to produce a proportional increase in public safety, and its disproportionate effect on poor communities of color.

The U.S. prison population has expanded at an unprecedented rate over the last 40 years. With more than 2.3 million people behind bars, we house 25 percent of the world’s prison population but only account for 5 percent of its total population. Approximately 1 in 100 American adults is currently behind bars, and about 1 in 33 is either in prison, jail or on parole or probation.

A record 218,000 people are confined within Federal Bureau of Prisons (BOP) operated facilities or in privately managed or community-based institutions and jails. This population is projected to increase to approximately 229,300 by the close of FY 2013. Indeed, over the last 30 years the population of the federal prison system has increased exponentially, nearly 800 percent, largely due to the overrepresentation of those convicted of drug offenses, many of whom are low-level and non-violent.

LAURA W. MURPHY
DIRECTOR

NATIONAL OFFICE
125 BROAD STREET, 18TH FL.
NEW YORK, NY 10004-2400
T/212.549.2500

OFFICERS AND DIRECTORS
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

ROBERT REMAR
TREASURER

In conjunction with this massive increase in prison population, we have also witnessed skyrocketing prison expenditures. In the last 30 years, the cost to maintain the federal prison population has grown by 1700 percent and shows no signs of abating. In fact, President Barack Obama's FY 2013 budget request for the BOP totals \$6.9 billion, which is an increase of \$278 million over the FY 2012 enacted budget for the Bureau.

Ballooning incarceration rates and corrections spending is not unique to the BOP. Notably, corrections is the second fastest-growing category of state budgets, behind only Medicaid. Despite this bleak reality, a number of states have already demonstrated that bipartisan criminal justice reform can reduce the prison population, cut corrections expenditures and maintain public safety.

For example, in 2006, Kansas' prison population was estimated to increase by 26 percent in ten years and cost the state approximately \$500 million in additional prison construction and operating expenses.¹ In response to these alarming projections, the Kansas legislature passed a set of bipartisan criminal justice reform bills in 2007. At the center of this package was legislation that provides financial incentives to counties committing to cut the number of individuals returning to prison for probation and parole violations by at least 20% and expanding the use of earned credit programs for individuals convicted of nonviolent offenses. Thus far, two-thirds of all Kansas county agencies have surpassed the goal of a 20% reduction in individuals sent to prison for parole or probation violations, and this reduction is projected to save \$80.2 million in additional prison costs by 2012.²

In 2010, South Carolina passed the Omnibus Crime Reduction and Sentencing Reform Act (SRA) by unanimous consent in the state Senate and nearly unanimous support in the House of Representatives. The SRA was designed to address a prison population that had increased nearly 270 percent over 25 years and a corrections budget that had increased over 500 percent in 15 years. Key features of the SRA include ending mandatory minimum sentences for simple drug possession, eliminating the crack-cocaine sentencing disparity, creating a medical parole program for terminally ill or ailing prisoners to apply for parole, mandating that people convicted of nonviolent offenses be released to mandatory supervision 180 days before their release date after serving at least two years in prison, and creating an earned credit program for probation giving individuals up to 20 days off of their supervision period for every 30 days of time on probation without violations or arrests. The SRA is projected to reduce the state's prison population by 1,786 prisoners by 2014 and save South Carolina \$241 million by 2014, including \$175 million in construction costs and \$66 million in operating costs saved from avoided prison construction.³

Last year in Ohio, a Republican majority legislature passed a measure that is projected to save \$1 billion over the next four years by – among other things – increasing the amount of time a

¹ Council of State Governments, Justice Center, *Policy Options to Increase Public Safety & Manage the Growth of the Prison Population*, March 2007, Available at <http://justicereinvestment.org/files/KS%20Policy%20Impact%20Chart%20Final%20LetterSize.pdf>.

² American Civil Liberties Union, *SMART REFORM IS POSSIBLE: States Reducing Incarceration Rates and Costs While Protecting Communities*, August 2011, Available at http://www.aclu.org/files/assets/smartreformispossible_web.pdf#page=26

³ *Id.*

prisoner can earn towards early release, eliminating the crack-cocaine sentencing disparity, removing mandatory minimum sentences for certain low-level drug offenses, and increasing the use of diversion programs for low-level drug offenders.

Just as a multitude of states have worked in a bipartisan manner to curb overincarceration, it is critical that the expansion of the federal prison population be addressed, lest it “engulf the Justice Department’s budgetary resources.”⁴ The ACLU applauds the Committee’s decision to take a serious look at rising prison costs, and while we believe adequate grounds exist right now to implement substantive reform, we also recognize the value in conducting a comprehensive review in an attempt to achieve bipartisan consensus on the best course for true reform.

Accordingly, we urge passage of S. 306, the National Criminal Justice Commission Act of 2011 (NCJCA), which was introduced by Senator Jim Webb (VA) and has the bipartisan support of 30 Senators. The measure would create a bipartisan commission tasked with examining the nation’s criminal justice system and offering reform recommendations in a number of important areas including sentencing policy, rates of incarceration, law enforcement, crime prevention, corrections, and re-entry.

In addition to passage of the NCJCA, the ACLU also urges the Committee to take modest legislative action – following the lead of many states – to address the prison crowding crisis while maintaining public safety. Specifically, we endorse offset proposals offered in the President’s budget request that would adjust the method of calculating good time credits for federal prisoners. Under the BOP’s interpretation of current law, the good time allocation only reduces a federal prison sentence to a maximum credit of 47 days per year, which is 7 days less than the 54 days intended. The Administration’s legislative proposal to increase good time credits by 7 days, coupled with its proposal to adopt time credits that can be earned for successful participation in recidivism-reducing programs, such as education or occupational programming, would be effective at enhancing rehabilitation efforts and limiting overcrowding.

Additionally, the Committee should pass legislation to expand the use of home confinement for elderly prisoners. The average cost of confining elderly people is between two and three times that of younger people.⁵ At the same time, aging is correlated with diminishing risk of recidivism. Incarcerating elderly, nonviolent people who no longer pose a threat to the community wastes enormous sums of federal resources and these costs will continue to rise as the elderly prison population grows. Forty-one states have already embraced some version of a limited early release program for the elderly and Congress should follow suit.

Addressing mass incarceration and restoring fairness to the criminal justice system will require the continued commitment of lawmakers, judges, law enforcement, advocates and concerned citizens who recognize that the system is in need of reform. While attitudes towards crime have been politically divisive in the past, the current climate has narrowed these gaps by revealing the waste and ineffectiveness of overincarceration. The movement for reform represents an

⁴ Commerce, Justice, Science, and Related Agencies Appropriations Act, 2012, H.R. 2596, 112th Cong. (2012).

⁵ Anno, B.J., Graham, C., Lawrence, J.E., & Shansky, R. (2004). *Correctional Healthcare: Addressing the needs of elderly, chronically ill, and terminally ill inmates*. Washington, DC: U.S. Department of Justice, National Institute of Corrections. Available at <http://static.nicic.gov/Library/018735.pdf>.

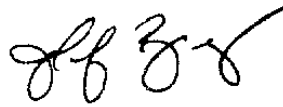
important opportunity for both parties to work together in support of evidence-based policy that is targeted, just, and cost-effective. Far from compromising public safety, these reforms will strengthen our communities and preserve the core constitutional values that protect us all. As Assistant Attorney General Lanny Breuer explained in a July 23, 2012 annual report to the U.S. Sentencing Commission, “Maximizing public safety can be achieved without maximizing prison spending.”⁶

If you have any additional questions about this issue, please feel free to contact Jennifer Bellamy, Legislative Counsel, at jbellamy@dcaclu.org or at (202) 715-0828.

Sincerely,



Laura W. Murphy,
Director
Washington Legislative Office



Jennifer Bellamy
Legislative Counsel

⁶ Lanny A. Breuer and Jonathan J. Wroblewski, *2012 Annual Report to the U.S. Sentencing Commission*, U.S. Department of Justice, Criminal Division, July 23, 2012, Available at <http://www.justice.gov/criminal/foia/docs/2012-annual-letter-to-the-us-sentencing-commission.pdf>.