

Organizations Oppose FY 2013 Funding for Federal Prison Expansion

April 17, 2012

The Honorable Barbara Mikulski
Subcommittee on Commerce, Justice, Science
and Related Agencies
Senate Committee on Appropriations
142 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Kay Bailey Hutchison
Subcommittee on Commerce, Justice,
Science and Related Agencies
Senate Committee on Appropriations
125 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairwoman Mikulski and Ranking Member Hutchison:

Our diverse organizations are concerned about the increasing budget expenditures for the Federal Bureau of Prisons (BOP). President Barack Obama's FY 2013 budget request for the federal prison system totals \$6.9 billion, an increase of \$278 million over the FY 2012 enacted budget for the Bureau.¹ The undersigned organizations oppose appropriating any new funds for the expansion of federal prison capacity or contracting new private prison beds as is now being proposed by the Obama Administration. We do support the allocation of new funds to expand programming opportunities for people in prison, such as the \$13 million requested for the Residential Drug Abuse Program which could lead to significant cost savings due to the sentence reduction incentive associated with the program. Moreover, we believe that numerous administrative and legislative options are available that could more effectively address the federal prison population crisis and save taxpayers money.

A record 217,000 people are currently confined within BOP-operated facilities or in privately managed or community-based institutions and jails. The population is projected to increase to approximately 229,300 by the close of FY 2013.² 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. Overcrowding plagues the federal system, operating at 38 percent over rated capacity, but we cannot build ourselves out of this crisis. Disproportionate investment in prison expansion has diminished attention to viable and fiscally sound alternatives to prison and weakened the concept that prison should be the sanction of last resort.

It is critical that the crisis of the surging, unsustainable federal prison population be addressed, lest it "engulf the Justice Department's budgetary resources."³ Congress must courageously embrace the challenge to change the course of unrestrained incarceration, with its concomitant human and fiscal costs, and your Committee must weigh the efficacy of current policies and spending against the less costly and more effective alternatives we recommend in this letter.

¹ U.S. DEP'T OF JUSTICE, FY 2012 BUDGET AND PERFORMANCE SUMMARY: FEDERAL PRISON SYSTEM (2012), at <http://www.justice.gov/jmd/2013summary/pdf/fy13-bop-bud-summary.pdf> (hereinafter "DOJ Budget Summary").

² DOJ Budget Summary.

³ Commerce, Justice, Science, and Related Agencies Appropriations Act, 2012, H.R. 2596, 112th Cong. (2012).

BOP should better utilize existing authority to cut cost while protecting safety

In the FY 2012 Appropriations report language, the Senate Appropriations Committee called on the Justice Department and BOP to maximize cost savings and sentence reduction opportunities where they have a neutral or positive impact on public safety.⁴ The Senate Appropriations Committee urged the BOP to use its operational discretion under 18 U.S.C. § 3624 to, among other things, maximize the reentry time people spend in residential reentry centers as well as home confinement; use its direct designation authority under 18 U.S.C. § 3621(b) robustly; expand the criteria for and use of “compassionate release” under 18 U.S.C. § 3582(c)(1)(A); and expand the use of the Residential Drug Abuse Program by removing barriers to full use of the program.⁵

Before this Committee endorses the BOP’s request to Congress for FY 2013, the agency should be asked to demonstrate that it has maximized cost savings and sentence reduction opportunities. The Bureau has not done so in the current budget justification. We urge this Committee to require the Department of Justice and BOP to adopt the practices described below. None of these recommendations require new authority and all would provide offsets for other spending that better meets public safety.

Residential Drug Abuse Treatment Program

The Department can and should expand the use of the BOPs’ Residential Drug Abuse Treatment Program (RDAP). Congress mandated that the BOP make available substance abuse treatment for each person in BOP custody with a “treatable condition of substance addiction or abuse” and created an incentive for people convicted of nonviolent offenses to complete the program by authorizing a reduction of incarceration of up to one year. However, the full cost-saving benefits of RDAP are not currently being realized. For example, according to a recent GAO report that assessed the program, over the last three years (2009-2011) only 19% of those who qualified for a 12-month sentence reduction after completing the program received the maximum sentence reduction. On average, eligible RDAP graduates received only an eight-month reduction.⁶ While we support the BOP’s 2013 budget request to “enhance” RDAP and allow eligible graduates to benefit from the full 12-month reduction by ensuring timely placement in the program, we also believe that the BOP can change its own policy in candidate placement by prioritizing RDAP slots for those who are eligible for a sentence reduction.

BOP also has an opportunity to significantly expand the eligible pool benefiting from a sentence reduction and further increase savings and reduce overcrowding. For example, BOP should revise its definition of “violent offender” to exclude people whose offense involved possession of a firearm, rather than actual violence. Moreover, because BOP policy requires completion of RDAP in a community corrections facility, those with detainers are barred from residential placement and cannot benefit from RDAP’s sentence reduction. Many of those disqualified are low-level undocumented immigrants. Changing BOP policy to allow completion

⁴ S. REP. NO. 112-78, at 62 (2012).

⁵ *Id.* at 62.

⁶ GOVERNMENT ACCOUNTABILITY OFFICE, ELIGIBILITY AND CAPACITY IMPACT USE OF FLEXIBILITIES TO REDUCE INMATES’ TIME IN PRISON 13-14 (2012), available at <http://www.gao.gov/products/GAO-12-320> (hereinafter “GAO Report”).

of RDAP by this population alone would save \$25 million each year because of reduced time in prison, according to BOP estimates.⁷ We are encouraged that the BOP is considering this policy change and urge the Committee to support participation by undocumented immigrants.

Compassionate Release

Unless one of several rare exceptions applies, a court may not revisit a sentence once a conviction is finalized.⁸ One of those exceptions is when the Director of the BOP asks the court to reduce a sentence because “extraordinary and compelling” reasons warrant such a reduction.⁹ The Bureau has interpreted “extraordinary and compelling circumstances” as limited to those cases where the prisoner has a terminal illness with a life expectancy of 1 year or less or has a profoundly debilitating medical condition.¹⁰ In 2007, following a period of public comment, the U. S. Sentencing Commission promulgated a guideline that delineated circumstances a court considering a motion from the BOP could account for.¹¹ Among the circumstances that could be considered sufficient to warrant a motion were not only terminal illness or severe and permanent medical condition, but also “the death or incapacitation of the inmate’s only family member capable of caring for the inmate’s minor child or children or any other reason determined by the Director.”¹²

The current sentence reduction authority is rarely invoked and only, as far as we can tell, in cases of impending death or complete debilitation.¹³ We are encouraged that the President’s budget proposal includes a commitment to “expand compassionate release criteria to people with medical conditions that have served at least 67 percent of their sentence [for non-violent offenses and no sex offenses].”¹⁴ We hope this Committee will request that the Department make clear that the authority can and should be used in cases where the prisoner has served less than 67 percent of the sentence and clarify as well the contours of “medical conditions.” Additionally, we ask that the Committee urge the Department to look beyond medical conditions and instruct that the BOP bring motions before the sentencing judge in all cases where the petitioner’s circumstances meet the criteria laid out in U.S.S.G. § 1B1.13.

Community Confinement

The BOP is obligated by law to ensure people in federal prison have an opportunity to spend a portion of time at the end of their sentences “(not to exceed 12 months) under conditions that will afford [them] a reasonable opportunity” to prepare to return to society.¹⁵ The statute provides that the BOP may transfer eligible people to contract residential re-entry centers (RRCs), also called halfway houses, and, up to the lesser of 6 months or ten percent of the term of imprisonment, in home confinement for up to the one-year total that Congress directs in the Second Chance Act.¹⁶

⁷ GAO Report at 35.

⁸ See 18 U.S.C. § 3582.

⁹ See 18 U.S.C. § 3582(c)(1)(A).

¹⁰ GAO Report at 25.

¹¹ See U.S.S.G. § 1B1.13.

¹² See U.S.S.G. § 1B1.13, app. note A.

¹³ See GAO Report, pp. 26 (only 55 cases between 2009 and 2011 granted).

¹⁴ DOJ Budget Summary.

¹⁵ 18 U.S.C. § 3624(c)(1).

¹⁶ Second Chance Act of 2007, Pub. L. No. 110-199, § 251 (2008).

The Second Chance Act sponsors understood the role that halfway houses play in the management of the federal prison population and explicitly rejected the Bureau's alteration of policies in 2002 and 2005 limiting halfway house use, and expanded the law's guarantee of consideration for pre-release programming from six to 12 months. The Second Chance Act specifically amended the law governing RRC transfers to instruct the BOP to ensure that placement in community corrections be "of sufficient duration to provide the greatest likelihood of successful reintegration into the community."¹⁷ Stays in RRCs alone in 2010 averaged only 95 days and people released to RRCS and home detention averaged 4.5 months.¹⁸ Although the BOP has started to give staff more discretion about how much time people must serve in halfway houses, who should be placed in a halfway house, and who may be placed directly on home confinement, much more needs to be done to ensure that people benefit from the full 12-month reentry period. While the BOP cites high costs and lack of space, the 2012 GAO report points out that the BOP failed to clarify the cost of RRC beds and home detention services and that it provided "no road map" as to how to secure this information.

The limited use of RRCs and home detention is an area where the BOP can improve the implementation of the Second Chance Act directives. Doing so will both save money and promote successful reentry and public safety. We urge the Committee to request the status of the annual reports obliged by the Second Chance Act on the implementation of community corrections¹⁹; to ascertain up-to-date costs and savings possible under the program; to ask the BOP why its use of halfway houses and home detention has been so sparing; and determine what the BOP might need to implement the directives in the Second Chance Act.

Administrative changes in these three areas would both save money and promote successful reentry and public safety. We urge the Committee to use its influence to promote these effective proposals.

Congress should take legislative action to address prison crowding crisis

Recent testimony by the new BOP Director Charles Samuels stated that given the influx of prisoners entering the federal prison system each year, even the allocation of new resources to open at least 3 new facilities in the next year will not alter the currently dangerous overcrowded conditions within federal prisons.²⁰ Indeed, in recent testimony before the House Appropriations Subcommittee on CJS, Director Samuels singled out the excessive sentences and increasing prosecutions for drug offenses as the primary contributor to the continued population growth. He stated, "Drug offenders comprise the largest single offender group admitted to Federal prison and sentences for drug offenses are much longer than those for most other offense categories."²¹

¹⁷ 18 U.S.C. § 3624(c)(6).

¹⁸ GAO Report at 17, Tbl. 2.

¹⁹ 18 U.S.C. § 3624(c)(5).

²⁰ Public Hearing, U.S. Sentencing Commission 32-33 (Feb. 16, 2012) (statement of Charles E. Samuels, Director of the Federal Bureau of Prisons), *available at* http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20120215-16/Hearing_Transcript_20120216.pdf.

²¹ *Hearing on Federal Bureau of Prisons FY 2013 Budget Request Before the House Comm. on Appropriations, Subcomm. on Commerce, Justice, Science, and Related Agencies*, 112th Cong. 3 (March 6, 2012) (statement of

Administrative changes alone will not slow unsustainable prison population growth. Congress must also act to reduce the population. We urge this Committee to use its influence to urge those members of Congress who oversee the authorization of federal sentencing policy to implement modest and innovative reforms that follow the lead of many state lawmakers seeking to reduce corrections systems while maintaining public safety.

Time Credits for Good Behavior

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. This decision results in unnecessary increases in prison sentences at significant cost. 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, is sound, and would be effective at enhancing rehabilitation efforts and limiting overcrowding.

Home Confinement for Elderly Prisoners

The average cost of confining elderly people is between two and three times that of younger people.²² 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. Congress should reauthorize and expand the provision of the Second Chance Act that included a pilot program to allow for the home confinement of elderly people.

Proportionality in Drug Sentencing

The excessive mandatory minimum sentences associated with drug offenses have led to an overrepresentation of people convicted of drug offenses in the federal criminal justice system. Restoring federal judicial discretion in drug cases by eliminating mandatory minimum sentences would allow defendants to receive punishments more proportional to the offense they committed and that better account for culpability.

A recent report by the U.S. Sentencing Commission on mandatory minimum sentences concluded that certain mandatory minimum penalties apply too broadly, are excessively severe, and are applied inconsistently in the federal system.²³ The Commission found that partly as a result of the increase in mandatory minimums, the federal prison population and spending on

Charles E. Samuels, Director of the Federal Bureau of Prisons), *available at* http://appropriations.house.gov/UploadedFiles/03.06.12_CJS_-_DOJ_-_Charles_Samuels_-_Testimony.pdf.

²² 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>.

²³ U.S. SENTENCING COMMISSION, *REPORT TO THE CONGRESS: MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM 367-69* (2011), *available at* http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Mandatory_Minimum_Penalties/20111031_RtC_Mandatory_Minimum.cfm.

federal prisons has exploded. We encourage the Committee to consider the Commission's criticism of mandatory minimums, and support the elimination of mandatory minimum sentences for drug offenses.

We urge you to consider the numerous opportunities to limit spending on the federal prison system. Continuing to fund the expansion of this system is counterproductive and will not increase public safety. We believe this Committee should support legislation that upholds these principles and we look forward to working with you during the FY 2013 appropriations process.

Sincerely,

AdvoCare, Hancock, MD
African American Ministers In Action (AAMLC).
American Civil Liberties Union
American Humanist Association
Blacks in Law Enforcement of America
Citiwide Harm Reduction, New York, NY
Colorado Criminal Justice Reform Coalition
Common Sense Legislative Group
Council on Illicit Drugs of the National Association for Public Health Policy
Desiree Alliance
Disciples Justice Action Network
Drug Policy Alliance
Drug Policy Forum of Hawaii
Drug Policy Forum of Texas
Fellowship of Reconciliation
Healing Communities Prison Ministry and Reentry Project
Legal Services for Prisoners with Children, CA
Maryland Citizens United for Rehabilitation of Errants (CURE)
Middle Ground Prison Reform, AZ
NAACP
National Association on Alcohol, Drugs and Disability
National Association of Criminal Defense Lawyers
National Association of Social Workers
A New PATH (Parents for Addiction Treatment & Healing)
November Coalition Foundation
Ohio Council of Behavioral Health & Family Services Providers
Open Society Policy Center
St. Leonard's Ministries, Chicago, IL
Safe Streets Arts Foundation
The Sentencing Project
StoptheDrugWar.org
Treatment Communities of America
United Church of Christ, Justice & Witness Ministries
United Methodist Church, General Board of Church and Society
The Women's ReEntry Network, Tucson, AZ