

December 11, 2013

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

RE: Criminal Justice and Civil and Human Rights Advocates Support of the Bipartisan S. 1410 “Smarter Sentencing Act of 2013” Sponsored by Senators Durbin and Lee.

We, the undersigned criminal justice, civil rights and human rights advocacy organizations, are writing to express our support for Senators Durbin and Lee’s S. 1410, Smarter Sentencing Act (SSA) of 2013. This bill will address some of the causes for the unsustainable and unnecessary growth in the federal prison population by helping to reduce lengthy sentences for certain people convicted of non-violent offenses. We think it is important that this legislation be included in any criminal justice reform bill that is marked up by the Senate Judiciary Committee.

In 1980, the federal prison population was approximately 25,000 people, but since then it has grown by an alarming rate of 790 percent. Currently, the Federal Bureau of Prisons (BOP) has custody of almost 219,000 people. The agency’s facilities are operating at almost 40 percent over capacity. The President’s FY 2014 budget request for BOP was \$6.9 billion, accounting for more than 25 percent of the Department of Justice’s (DOJ) entire budget. According to a November 2013 report by the Urban Institute, if enacted, the Smarter Sentencing Act could save taxpayers more than 3 billion dollars over 10 years.¹

Recently, several reports have concluded that mandatory minimum sentences are a major contributor to the growing federal prison population.² Research by the Urban Institute also found that increases in expected time served, specifically for drug offenses, contributed to half of the prison population growth between 1998 and 2010.³ A 2013 report by the Congressional Research Service (CRS) concluded that the increase in the amount of time people were expected to serve was the result of people receiving longer sentences and people being required to serve approximately 85 percent of their sentences after Congress eliminated parole for federal prisoners.⁴ The increased time served by drug offenders accounted for almost one-third of the

¹ Nancy LaVigne, Julie Samuels, Samuel Taxy, Urban Institute, *Stemming the Tide: Strategies to Reduce the Growth and Cut the Cost of the Federal Prison System*, pg. 3-5 (2013). The report concludes that reduction in mandatory minimums would account for \$2.5 billion, FSA retroactivity would account for \$229 million and expanded safety valve accounts for \$544 million in savings all over 10 years.

² Nancy LaVigne, Julie Samuels, Urban Institute *The Growth & Increasing Cost of the Federal Prison System: Drivers and Potential Solutions* pgs.1-2 (2012) (hereinafter LaVigne Urban Institute Report).

³ LaVigne Urban Institute Report at 5

⁴ Nathan James, Congressional Research Service, *The Federal Prison Population Buildup: Overview, Policy Changes, Issues, and Options* pg. 8 (January 22, 2013) (hereinafter CRS report)

total federal prison population growth between 1998 and 2010.⁵ Currently, people convicted of drug offenses make up 50 percent of the BOP population.⁶

These statistics illustrate the need to move away from the “tough on crime” laws and focus more on “smart on crime” policies. This bipartisan bill introduced by Senators Durbin and Lee does just that by taking an incremental approach to modernizing drug sentencing policy. The legislation would:

- *Expand the existing federal “safety valve”:* The safety valve is one of the only means for a judge to sentence below a mandatory minimum in appropriate cases. This bill would make more non-violent drug offenders eligible for the safety valve, thus allowing judges to use more discretion to determine sentences.
- *Reduce mandatory minimum sentences for drug offenses:* The bill would lower existing mandatory minimum sentences for certain drug offenses, which would help alleviate the growth of prison costs and overcrowding.
- *Apply the Fair Sentencing Act to those currently serving sentences for drug offenses:* The bill would allow individuals to petition courts for a review of their case based on the Fair Sentencing Act, which was enacted in 2010. The bipartisan Act reduced the sentencing disparity that existed between crack and powder cocaine offenses. However, some individuals are still serving sentences that Congress has determined to be unjust and racially disparate. In 2007 and 2011, federal courts successfully reviewed some crack cocaine sentences based on changes to the Sentencing Guidelines. This legislation would allow individuals to have their sentence reviewed by courts to determine if they deserve a sentence consistent with current law.

The Smarter Sentencing Act is a much needed first step to creating a fairer criminal justice system, while also addressing the serious safety and budgetary problems that exist in BOP. We encourage you to support this legislation when the bill is marked up by the Senate Judiciary Committee.

Sincerely,

American Civil Liberties Union
AdvoCare
American Friends Service Committee
American Probation and Parole Association
Blacks in Law Enforcement in America
Campaign for Youth Justice
Charles Hamilton Houston Institute for Race & Justice at Harvard Law School

⁵ Kamala Mallik-Kane, Barbara Parthasarathy, William Adams, *Examining Growth in the Federal Prison Population*, 1998 to 2010 pg. 3 (2012)

⁶ Federal Bureau of Prisons Website, *Quick Facts*, <http://www.bop.gov/news/quick.jsp>, (December 4, 2013)

Church of Scientology National Affairs Office
Constitution Project
Correctional Education Association
Disciples Justice Action Network
Drug Policy Alliance
Ella Baker Center for Human Rights
Eric E. Sterling (President, The Criminal Justice Policy Foundation, for identification only.)
Families Against Mandatory Minimums
Friends Committee on National Legislation
Healing Communities USA
Human Rights Watch
Innocence Project
International CURE
Justice Fellowship
Justice Strategies
Lawyers Committee for Civil Rights under the Law
Leadership Conference on Civil and Human Rights
NAACP
NAACP Legal Defense Fund, Inc.
National Advocacy Center of the Sisters of the Good Shepherd
National African American Drug Policy Coalition, Inc
National Association of Criminal Defense Lawyers
National Association of Evangelicals
National Association of Federal Defenders
National Legal Aid & Defender Association
National Organization for Women
National Urban League
Open Society Policy Center
Prison Action Network
Prison Policy Initiative
Public Justice Center
Samuel DeWitt Proctor Conference
Sargent Shriver National Center on Poverty Law
St. Leonard's Ministries
StoptheDrugWar.org
The Sentencing Project
Union for Reform Judaism
Unitarian Universalist Association
United Methodist Church, General Board of Church and Society

cc: Senate Judiciary Committee