



AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

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December 11, 2013

The Honorable Patrick J. Leahy
Chairman
Judiciary Committee
U.S. Senate
Washington, DC 20510

Dear Chairman Leahy:

On behalf of the more than 37,000 federal correctional workers who work at the 119 Federal Bureau of Prisons (BOP) institutions, I am writing to express our strong support for the *Smarter Sentencing Act of 2013 (S. 1410)*, which the Senate Judiciary Committee is scheduled to mark up on December 12, 2013.

This important legislation, which was introduced on July 31, 2013, by Senators Dick Durbin (D-IL) and Mike Lee (R-UT), would address some of the causes for the explosive growth in the BOP prison population by helping to reduce lengthy sentences for those convicted of non-violent drug offenses.

As you know, nearly 219,000 prison inmates are confined in BOP prisons today, up from 25,000 in 1980, 58,000 in 1990, and 145,000 in 2000. It is expected there will be about 224,000 inmates incarcerated in BOP prisons by the end of FY 2014.

This explosive growth in the BOP inmate population is the direct result of Congress approving stricter anti-drug enforcement laws with mandatory minimum sentences in the 1980s, including the Anti-Drug Abuse Act of 1986 (P.L. 99-570) and the Anti-Drug Abuse Act of 1988 (P.L. 100-690). Of the 219,000 inmates in BOP prisons, 51% are serving sentences for drug-related offenses. The average sentence length for inmates in BOP custody is over 9 years.

The number of federal correctional workers who work in BOP prisons, however, is failing to keep pace with the tremendous growth in the BOP prison inmate population. The BOP system is staffed at about an 89% level, as contrasted with the 95% staffing levels in the mid-1990s. This 89% staffing level is *below* the 90% staffing level that BOP believes to be the minimum staffing level for maintaining the safety and security of BOP prisons.

Prison inmate overcrowding also is an increasing problem at BOP prisons, despite the activation of several new prisons over the past few years. The BOP system today is overcrowded by 37%, up from 31.7% in 2000. Inmate overcrowding is of special concern at higher security prisons, with 54% overcrowding at high security prisons and 44% overcrowding at medium security prisons.



These serious correctional worker understaffing and prison inmate overcrowding problems are resulting in significant increases in inmate assaults against correctional workers. Illustrations of this dangerous reality include the brutal stabbing murders of Correctional Officer Jose Rivera on June 20, 2008 at the United States Penitentiary in Atwater, CA and Correctional Officer Eric Williams on February 25, 2013 at the United States Penitentiary in Canaan, PA. An additional illustration is the murder of Lieutenant Osvaldo Albarati on February 26, 2013 while driving home from the Metropolitan Detention Center in Guaynabo, Puerto Rico.

BOP has performed a rigorous analysis of the effects of prison inmate overcrowding and correctional worker understaffing on inmate-on-worker rates of violence - and found that increases in both the inmate-to-worker ratio and the rate of overcrowding at an institution are directly related to increases in the rate of serious inmate assaults on correctional workers. An increase of one in a BOP prison's inmate-to-worker ratio increases the prison's annual serious assault rate by about 4.5 per 5,000 inmates.

These statistics demonstrate the need to move away from the "tough on crime" laws of the 1980s and focus more on "smart on crime" policies. The *Smarter Sentencing Act of 2013 (S. 1410)* does just that by taking an incremental approach to modernizing drug sentencing policy. The legislation would:

- Modestly expand the existing federal "safety valve" with regard to mandatory minimum sentences and certain non-violent drug offenses.

The "safety valve" has been effective in allowing federal judges to appropriately sentence certain non-violent drug offenders below existing mandatory minimum sentences. However, this "safety valve" only applies to a narrow subset of cases – defendants that do not have more than one criminal history point.

S. 1410 would broaden the "safety valve's" eligibility criteria. The bill provides that a federal judge can impose a sentence for certain non-violent drug offenses below existing mandatory minimum sentences if he or she finds the "criminal history category for the defendant is not higher than category II." Category II includes 2 or 3 criminal history points.

- Retroactively apply the mandatory minimum sentencing reforms of the Fair Sentencing Act of 2010 (P.L. 111-220) to non-violent drug offenses that were committed before August 3, 2010, the date the President signed that bill into law.

The Fair Sentencing Act of 2010 (P.L. 111-220) reduced the disparity between the amount of crack cocaine and powder cocaine that is needed to trigger federal mandatory minimum sentences from a 100-to-1 weight ratio to an 18-to-1 weight ratio. The 2010 federal law also eliminated mandatory minimum sentences for simple possession of an illegal drug, narcotic, or chemical.

S. 1410 provides that a federal judge who imposed a drug offense sentence under the pre-Fair Sentencing Act of 2010 regime, may – on a motion of the sentenced inmate or the BOP Director – impose a reduced sentence as if the 2010 federal law was in effect at the time the inmate committed the drug offense.

- Reduce the 5-, 10-, and 20-year mandatory minimum sentence “floors” for federal non-violent drug offenses to 2-, 5-, and 10-year terms, respectively.

The Controlled Substances Act and the Controlled Substances Export and Import Act provide that non-violent drug offenders shall be sentenced to a term of imprisonment of not less than the *minimum* mandatory minimum sentence (or “floor”) and not more than the *maximum* mandatory minimum sentence (or “ceiling”). For example, a person who knowingly distributes 500 grams of powder cocaine “shall be sentenced to a term of imprisonment which may not be less than 5 years and not more than 40 years.”

S. 1410 reduces the *minimum* mandatory minimum sentences (or “floors”) for non-violent drug offenses, allowing a federal judge more discretion than he or she has now to decide the appropriate sentence in individual cases. The bill does not lower the *maximum* mandatory minimum sentences (or “ceilings”). In the above example, a person who knowingly distributes 500 grams of powder cocaine shall be sentenced to a term of imprisonment which may not be less than 2 years – lowered from 5 years – and not more than 40 years.

In conclusion, AFGE strongly supports the *Smarter Sentencing Act of 2013 (S. 1410)* because it would help stem the explosive growth in the BOP prison inmate population – thereby making BOP prisons safer and more secure places to work. Please feel free to contact Alan Kadrofske in the AFGE Legislative Department (202-639-4000; kadroa@afge.org) if you or your staff have any questions or comments.

Sincerely,



Beth Moten
Legislative and Political Director