

January 19, 2016

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
Washington, D.C. 20510

The Honorable Harry Reid  
Democratic Leader  
United States Senate  
Washington, D.C. 20510

**Re: S. 2123, the Sentencing Reform and Corrections Act of 2015**

Dear Leaders McConnell and Reid:

As you consider bringing S. 2123 to the Senate floor, we write in response to a recent letter—dated December 10, 2015—that was addressed to you and signed by 40 former federal law enforcement officials expressing their concerns with this legislation. We feel the need to contribute to a thoughtful analysis of key provisions their letter neglected to mention, which are vital to your deliberation.

We, the undersigned, are former federal prosecutors and senior government officials who have served on the front lines of our criminal justice system. Our purpose is to focus the discussion on the substance of the bill's proposed improvements to federal sentencing and corrections policies. Otherwise, good policy reforms could easily fall victim to politics and fear.

First, we thank the 40 signers of the December 10 letter. We agree with almost all of what they stated about our system of justice because we all have one thing in common: at one time or another we all served as senior Department of Justice officials, United States Attorneys, Assistant United States Attorneys, or other government officials including judges. We all deeply believe in notions of fairness in the administration of justice, and many of us pursued successful prosecutions and argued for appropriate and substantial punishments in federal courts.

Further, many of the signers—going back approximately 30 years—were architects of the current sentencing regime that aimed to strike the right balance between all interests and did contribute to a dramatic reduction in crime and historic lows for violent crime. They successfully protected the public and deserve to be acknowledged and validated for their service.

Second, S. 2123 will only improve on their work—by amending just a few sentencing policies that produced unintended consequences and created imbalance in the scales of justice. The bill is the result of a very thoughtful analysis of these deficiencies that was informed by at least one former Attorney General and a handful of former U.S. Attorneys and Assistant U.S. Attorneys. It makes modest, reasonable changes to the sentencing regime they put in place, including:

- It not only preserves the 5 and 10-year mandatory minimum sentences for drug offenders, but more effectively targets them to high-level drug traffickers by providing a more accurate focus on the role of the drug offender instead of drug quantity alone, and increases a judge's ability to utilize limited discretion when determining appropriate sentences. This is the only way to more effectively tie the longer mandatory minimum sentences to high-level drug traffickers and violent criminals.

- It helps to preserve the ability of federal prosecutors to use the Armed Career Criminal Act as a tool in the face of a recent series of Supreme Court decisions that struck down many of its provisions.
- It preserves the stacking of firearms offenses but avoids the Weldon Angelos-type “outlier” problems that cause malfunctions of the system and other unintended consequences.

Third, S. 2123 actually gives federal prosecutors new tools to target violent criminals with enhanced penalties, including:

- It increases the scope of mandatory minimum sentences to include a larger percentage of federal offenders, and expands enhanced penalties to offenders with prior serious violent felony convictions so federal prosecutors can use the drug laws to target serious violent felons.
- It extends the reach of the stacking of firearms provision to include firearms offenders with similar prior state-level convictions so prosecutors can use the gun laws to target serious violent state felons.
- It raises the statutory maximum for unlawful possession of firearms.

Finally, the Corrections Act—Title II of S. 2123—will give the Department of Justice and Bureau of Prisons new tools to reduce recidivism, which will only increase public safety, including:

- It puts a new focus on rehabilitation and correction, and establishes risk and needs assessment as the cornerstone of more effective recidivism reduction programming, and a more efficient federal prison system.
- The bill will incentivize prisoners to not only participate in programs and jobs, but to actually reduce their risk of recidivism. In fact, it will effectively transform the federal prison system from risk management to risk reduction.
- Its risk reassessment provision is vital. We need to identify dynamic risk factors and indicators of real change in thinking and behavior, make prisoners demonstrate this change, and measure it over time with a standard, objective instrument as they complete their programs. This will be a major advancement for the federal system.
- Through these risk reassessments, higher-risk prisoners will have to demonstrate substantial risk reduction to progress down into lower risk categories and become eligible to utilize their earned time credits.
- And lower-risk prisoners will be eligible to spend up to 25% of their sentences in home confinement and community supervision, which will produce significant savings. This is remarkable as the most current cost of post-conviction supervision is \$3,909 per year, as opposed to \$30,621 per year for imprisonment, and \$28,999 for residential reentry centers. This is a much more cost-effective way to supervise lower-risk offenders.

In conclusion, we endorse this bill because it makes some of the most needed improvements to the front and back ends of the federal criminal justice system. And it is important to note that applying these reforms retroactively will not eliminate all mandatory minimum sentences these offenders are subject to, or any additional penalties the judges previously imposed. A drug dealer using a gun will still be subject to a significant mandatory minimum sentence for use of the firearm plus additional time for the underlying drug offense. And since the Department of Justice has committed to a case-by-case review to ensure that any resentencing is done carefully and with complete transparency, offenders who pose a threat to public safety will not be released early.

As FBI Director James Comey recently noted before the Senate Judiciary Committee, when asked about S. 2123:

*As you know, we don't take positions on legislation, but because I spent my career as a prosecutor, it's an area of interest of mine. I actually read the bill and my reaction was it's reasonable, the things that are discussed in there are reasonable. I have found mandatory minimums... to be an important part of making some of the most important cases I was involved with. But I think that the reform as I understand it seems reasonable to me.*

...

*Given the recidivism rate, which is one of the things that's exciting about the legislation Senator Grassley talked about, trying to get us doing a better job of reducing recidivism...*

We urge Congress to pass this legislation because it is good for federal law enforcement and public safety. It will more effectively ensure that justice shall be done. Thank you for your consideration.

Respectfully yours,

Michael B. Mukasey  
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