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May 23, 2011

Honorable Kent Conrad, Chair  
Committee on the Budget

Honorable Jeff Sessions, Ranking Member  
Committee on the Budget

Honorable Daniel K. Inouye, Chair  
Committee on Appropriations

Honorable Thad Cochran, Ranking Member  
Committee on Appropriations

Honorable Patrick J. Leahy, Chair  
Committee on the Judiciary

Honorable Charles E. Grassley, Ranking Member  
Committee on the Judiciary

**American Bar Association Calls for Budget Scrutiny and Revision of Costly, Ineffective Federal Criminal Justice Policies**

Dear Chairs Conrad, Inouye, Leahy and Ranking Members Sessions, Cochran, and Grassley:

In the debate over addressing the country's finances, many are rethinking the country's approach to criminal justice and corrections spending. The American Bar Association, with nearly 400,000 members, urges you to consider substituting many costly federal criminal justice policies Congress has established over the past few decades with *less costly and more effective alternatives*. A growing number of states have done so on a bipartisan basis, in the name of fiscal responsibility, accountability and public safety. These state successes offer ideas for what can also be done on at the federal level.

The federal government wastes precious taxpayer dollars when it incarcerates nonviolent offenders whose actions would be better addressed through alternatives that will hold them equally accountable at a substantially lower cost to taxpayers. Being sentenced to prison is always one option, but there should be others. We must expand and make broader use of proven alternatives to prison, especially for low-level and nonviolent offenders.

In 1980, the federal prison system housed 24,000 people at a cost of \$333 million. Since then, the federal prison population has exploded, now housing 210,000 people at an annual cost of \$6 billion – an increase of 700% in population and 1700% in spending. The most significant source feeding this growth is the increased incarceration of nonviolent drug offenders.

Experience at the state-level has demonstrated legislators can make changes that safeguard the public and save money. Examples of successful bipartisan state-level reforms include:

- In Texas, requiring all drug possession offenders with less than a gram of drugs to be sentenced to probation instead of jail time;

- In Oklahoma, expanding eligibility for community sentencing and increase the use of parole for nonviolent offenders;
- In Kentucky, strengthening parole eligibility for certain low-level felony offenses and make individuals who complete drug treatment or education programs eligible to receive an earned discharge credit of 90 days;
- In Mississippi, reducing time-served for certain categories of nonviolent offenders; and
- In South Carolina, removing mandatory minimums for first-time offenders.

Reforms similar to these being implemented in a variety of states, and *these changes have led to the first overall decline in state prison populations since 1980.*

These reforms should serve as a model for the federal criminal justice system. Alongside many legal, criminal justice, civil rights and faith-based organizations, the ABA urges you and other policy leaders in the Senate to support the following criminal justice reforms designed to increase public safety while reducing the federal deficit.

- **Expand Use of Probation and Expungement of Criminal Convictions for Low-Level Offenders**  
Congress should enact legislation to allow, but not require, judges to sentence certain first-time drug offenders to probation instead of incarceration.
- **Institute Review Process to Accelerate Supervised Release Eligibility**  
Federal prisoners leaving custody often spend part of their sentence on supervised release. Congress should authorize expedited consideration of prisoner eligibility for supervised release. This policy will reduce overcrowding and costs, while also creating additional incentives for inmates to engage in service, education and vocational activities.
- **Make Retroactive Congressional Reforms to Crack Cocaine Sentencing**  
Congress should pass legislation to extend the application of the Fair Sentencing Act of 2010 to people whose conduct was committed prior to enactment of the new law. If both the statute and guideline changes were made retroactive, U.S. Sentencing Commission estimates that as many as 24,000 people would be eligible to apply for and potentially receive relief over a 30-year period. Within the first year of retroactive implementation, as many as 7,000 people could be eligible for early release, generating a cost savings of over \$200 million in the first year alone.
- **Enhance Elderly Nonviolent Offender Early Release Programs**  
Housing elderly prisoners can cost two and three times that of younger prisoners. At the same time, aging is linked to a diminishing risk of recidivism. Incarcerating elderly, nonviolent inmates who no longer pose a threat 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 elderly inmates, and Congress, for example, could

reauthorize and expand the provision of the Second Chance Act that included a pilot program to allow for the early release of elderly prisoners.

- **Expand Time Credits for Good Behavior**

The federal prison system's method of calculating earned credit reduces a prisoner's sentence to a maximum credit of 47 days per year – below the 54 days intended. This results in unnecessary, costly increases in prison sentences. By clarifying the statutory language, Congress could save an estimated \$41 million in the first year alone. Congress should also quickly implement a Department of Justice proposal creating a new good time credit that can be earned for successful participation in recidivism-reducing programs, such as education or occupational programming.

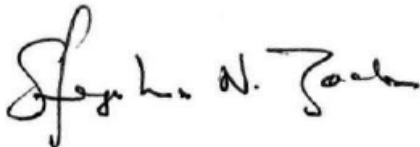
- **Restore Proportionality to Drug Sentencing**

The excessive mandatory minimum sentences associated with drug offenses have led to an overrepresentation of low-level and nonviolent drug offenders in the federal criminal justice system. Restoring federal judicial discretion in drug cases by eliminating mandatory minimum sentences would not ignore culpability but would ensure that defendants receive punishments that are proportional to the offense they committed.

There is a growing recognition that our criminal justice system – like other government systems – must be based on what actually works, meet clear performance measures and withstand fiscal scrutiny of cost-benefit analysis.

Policy makers can replace unnecessary and excessive prison sentences with proven alternatives that hold people accountable while, at the same time, saving taxpayer dollars. The American Bar Association looks forward to working with you to advance these important principles. If you need additional information, please do not hesitate to contact Tom Susman (202-662-1765; [Thomas.Susman@americanbar.org](mailto:Thomas.Susman@americanbar.org)) or Bruce Nicholson (202- 662-1769; [Bruce.Nicholson@americanbar.org](mailto:Bruce.Nicholson@americanbar.org)) in the ABA's Governmental Affairs Office.

Sincerely,



Stephen N. Zack  
President  
American Bar Association

cc: Members of the Budget, Appropriations and Judiciary Committees