December 9, 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

Dear Chairman Leahy and Ranking Member Grassley:

We understand that the Judiciary Committee may soon consider pending legislation to address federal sentencing and corrections policy. I write on behalf of the American Bar Association to express our support for S. 1410, the Smarter Sentencing Act (SSA) of 2013, a bill that 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 persons convicted of nonviolent offenses. We think it is critical that this legislation be included in any criminal justice reform package that is approved by the Committee.

In 1980, the federal prison population was approximately 25,000 people; since then it has grown by an alarming rate of 790 percent. Currently, the Federal Bureau of Prisons (BOP) has custody of more than 219,000 in its facilities, which are operating at almost 40 percent over capacity. The President’s FY 2013 budget request for BOP was $6.9 billion, accounting for more than 25 percent of the entire budget of the Department of Justice (DOJ). According to a November 2013 report by the Urban Institute, the Smarter Sentencing Act, if enacted, 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 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 concluded that the increase in the amount of time people were expected to serve was partially the result of their receiving longer sentences and partially the result of their being required to serve approximately 85 percent of their sentences after Congress eliminated parole

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1 Nancy LaVigne, Julie Samuels, & Samuel Taxy, *Stemming the Tide: Strategies to Reduce the Growth and Cut the Cost of the Federal Prison System* 3-5 (Urban Institute 2013). The report concludes that over 10 years, reduced mandatory minimums would account for $2.5 billion, FSA retroactivity for $229 million, and expanded safety valve for $544 million in savings.
3 LaVigne 2012 Urban Institute Report at 5
for federal prisoners. The increased time served by drug offenders accounted for almost one-third of the total federal prison population growth between 1998 and 2010. Currently, persons convicted of drug offenses make up 50 percent of the BOP population.

These statistics illustrate the need to move away from rote “tough on crime” laws of the 1980s and to focus more on evidence-based “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 allowing a judge to sentence below a mandatory minimum in appropriate cases. This bill would make more nonviolent 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 persons to petition courts for a review of their case based on the Fair Sentencing Act enacted in 2010. While that statute reduced the sentencing disparity that existed between crack and powder cocaine offenses, 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 sentences reviewed by courts to determine if they deserve sentences 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 urge you to support this legislation when the bill is marked up by the Senate Judiciary Committee.

Sincerely,

Thomas M. Susman

cc: Members of the Committee

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