

April 12, 2021

The Hon. Richard Durbin  
U.S. Senate  
711 Hart Senate Building  
Washington, D.C. 20510

The Hon. Chuck Grassley  
U.S. Senate  
135 Hart Senate Office Building  
Washington, D.C. 20510

Dear Chairman Durbin and Ranking Member Grassley:

We are writing to urge you to advance the Smarter Sentencing Act of 2021, a bipartisan bill that promotes more effective and just criminal sentencing without reducing public safety.

Advancing this reasonable reform this year is both warranted and necessary. As conservative or faith-based groups, we are deeply concerned about the federal prison system's size and cost, which have grown enormously since 1980.<sup>1</sup> Federal prisoner costs now consume about 29 percent of the Department of Justice's budget.<sup>2</sup> As of 2019, federal prisons operate at nearly 110 percent of their capacity, a condition that makes prisons less safe, less rehabilitative and more likely to promote recidivism.<sup>3</sup> Instead of returning police power to the states, we are expanding the federal criminal justice system, in both its reach and costs. Requiring disproportionately long prison terms for drug crimes has fueled this growth. Nearly half of all federal inmates—more than 73,000 people—are incarcerated for drug offenses.<sup>4</sup>

Crime is undeniably serious and demands accountability. But just punishments must be proportionate to the harm caused, and should also restore victims, individuals who commit crime and communities. Our limited criminal justice dollars are used most effectively when they translate into real gains for public safety in the forms of personal transformation and rehabilitation.

The Smarter Sentencing Act (SSA) is a modest, incremental approach that impacts only nonviolent drug offenses and does not repeal any mandatory minimum sentences. The SSA simply reduces the length of mandatory minimum sentences for nonviolent drug offenses by half. Over time, this will reduce prison growth and costs to manageable levels. In fact, the Congressional Budget Office estimated that this provision would save taxpayers \$4 billion over 10 years when analyzing the 2014 iteration of the SSA.<sup>5</sup> Similar to the First Step Act signed into law by President Donald Trump, the SSA would also apply retroactively, providing immediate savings for taxpayers and capacity relief for federal prisons. Longer mandatory minimum terms would remain for drug offenses that result in serious bodily harm or death.

The SSA also directs the United States Sentencing Commission to promulgate new sentencing guidelines that will, among other things, minimize the possibility that federal prisons will run over capacity as well as reduce and prevent racial disparities in federal sentencing. Finally, the SSA will require the attorney

general to collect and publish an index of all existing federal offenses that could be enforced with a criminal penalty. Knowing how many crimes are on the books is necessary to fight against overcriminalization and restore trust in the criminal justice system.

A recent poll from the PEW Research Center revealed that 46 percent of Americans think that addressing issues in the criminal justice system should be the top priority for national leaders this year.<sup>6</sup> Nationwide, states have been listening to public opinion and implementing reforms that recognize that penalties that don't fit the crime can actually be harmful: prolonged incarceration destroys family unity, increases reliance on public assistance, hinders reintegration into society, and stunts the economic growth of individuals and families. In short, states and the public are getting smart on crime, and the federal government should, too.<sup>7</sup>

The need for this legislation's moderate but positive improvements is urgent, and we respectfully ask you to advance the Smarter Sentencing Act as soon as possible. Thank you for considering our views.

Sincerely,

R Street Institute  
Americans for Tax Reform  
Digital Liberty  
FreedomWorks  
Prison Fellowship  
Taxpayers Protection Alliance

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<sup>1</sup> E. Ann Carson PhD, *Prisoners in 2019*, Bureau of Justice Statistics, United States Department of Justice, October 2020. <https://www.bjs.gov/content/pub/pdf/p19.pdf>.

<sup>2</sup> *U.S. Department of Justice FY 2021 Budget Summary*, United States Department of Justice, March 12, 2020. <https://www.justice.gov/doj/page/file/1246841/download>.

<sup>3</sup> E. Ann Carson PhD, *Prisoners in 2019*. <https://www.bjs.gov/content/pub/pdf/p19.pdf>.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Congressional Budget Office Cost Estimate of S. 1410: Smarter Sentencing Act of 2014*, Congressional Budget Office, Sept. 11, 2014. <https://www.cbo.gov/sites/default/files/113th-congress-2013-2014/costestimate/s141000.pdf>.

<sup>6</sup> "Economy and COVID-19 Top the Public's Policy Agenda for 2021," Pew Research Center, Jan. 28, 2021. <https://www.pewresearch.org/politics/2021/01/28/economy-and-covid-19-top-the-publics-policy-agenda-for-2021/>.

<sup>7</sup> "33 States Reform Criminal Justice Policies through Justice Reinvestment," Pew Research Center, July 11, 2018. <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2018/07/35-states-reform-criminal-justice-policies-through-justice-reinvestment>