

# United States Senate

WASHINGTON, DC 20510

December 16, 2015

Dear Colleague:

We want to provide a copy of a recent letter from 40 former senior federal law enforcement officials, including two former Attorneys General, five former DEA Administrators, and seven former Assistant Directors of the FBI in opposition to S. 2123, the Sentencing Reform and Corrections Act of 2015.

In their letter, the law enforcement officials spell out in detail important concerns with S. 2123, including that it will:

reduce penalties for armed career criminals, reduce penalties for serial armed violent criminals (like carjackers, bank robbers and kidnappers), reduce penalties for repeat high-level drug traffickers and weaken the tools used by federal prosecutors to dismantle drug trafficking organizations. Worse, the bill will apply those changes retroactively to thousands of armed career criminals, serial armed violent offenders and repeat drug traffickers already in prison, making them eligible for early release.

These concerns are shared by the major professional organizations representing federal and other law enforcement officers and personnel that oppose S. 2123, including the National Association of Assistant United States Attorneys, the Federal Law Enforcement Officers Association, the FBI Agents Association, the National Immigration and Customs Enforcement Council of the American Federation of Government Employees, and the National Narcotic Officers' Associations' Coalition. We would also note that the National Organization for Victim Assistance opposes this bill.

We encourage you to read this letter in its entirety and carefully consider the concerns of those who serve and who have served on the front lines of our criminal justice system. Should you have any questions about these matters, please do not hesitate to contact our offices. As the officials note in their letter, "[n]ow is not the time to deny law enforcement authorities the essential tools they need to fight crime and terrorism here at home."

Sincerely,



Jeff Sessions



Tom Cotton



David Vitter



Orrin Hatch



David Perdue

December 10, 2015

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
Washington, DC 20510

The Honorable Harry Reid  
Minority Leader  
United States Senate  
Washington, DC 20510

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

Dear Leaders McConnell and Reid:

As you determine whether to bring the above-referenced sentencing and corrections legislation before the Senate for full consideration, we write to express our serious concerns over the significant risks to public safety that such legislation will create. The bill will prospectively and retroactively release significant numbers of dangerous criminals from federal prison and realign our sentencing structure in profound ways. Its application of lighter penalties retroactively to already-convicted and sentenced prisoners will turn the finality of thousands of judicial decisions on their head, undermine public expectations about justice and cost millions of dollars. These consequences are undeniably harmful to the interests of public safety and justice. Now is not the time to deny law enforcement authorities the essential tools they need to fight crime and terrorism here at home.

We, the undersigned, are former government officials who were responsible for the preservation of public safety and the pursuit of justice. We know firsthand the value of tough, mandatory minimum sentences. We especially recognize the value of penalties established against drug trafficking, as well as those by the Armed Career Criminal Act on felons in possession of a firearm. While we believe in the hope of rehabilitation, we also believe our current determinate sentencing structure strikes the right balance between Congressional direction in the establishment of sentencing levels and the preservation of public safety.

Our system of justice is not broken. Mandatory minimums and proactive law enforcement measures have caused a dramatic reduction in crime over the past 25 years, an achievement we cannot afford to give back. As FBI Director James Comey recently noted, "... [W]e have hit historic lows for violent crime recently, and if we let it slide back, we will need to explain to those who come after us what we did or didn't do to let that happen." We share that outlook and oppose proposals that erase those hard-fought gains and compromise public safety through lighter penalties for drug trafficking, including those in violation of gun crime statutes.

The reduction of mandatory minimums and the retroactivity provisions of the Sentencing Reform and Corrections Act cause us the greatest concern. The bill will reduce penalties for armed career criminals, reduce penalties for serial armed violent criminals (like

carjackers, bank robbers and kidnappers), reduce penalties for repeat high-level drug traffickers and weaken the tools used by federal prosecutors to dismantle drug trafficking organizations. Worse, the bill will apply those changes retroactively to thousands of armed career criminals, serial armed violent offenders and repeat drug traffickers already in prison, making them eligible for early release.

The retroactive application of the major provisions of the bill will benefit dangerous criminals who have violated clearly established laws, have already pled guilty or been convicted by juries, have been sentenced by judges, appealed their cases to our appellate courts and received the full measure of due process afforded by our Constitution. There are legitimate concerns, based upon our own experience, whether the thousands of likely motions for retroactive application will receive the rigorous scrutiny they deserve, whether by the Justice Department, law enforcement, or the courts, recognizing that the underlying events transpired years and even decades ago in cases that were likely pled, amid potential state and federal charges that were not pursued.

Our concerns are compounded by federal initiatives that already have dramatically recalibrated our sentencing structure. Changes by the U.S. Sentencing Commission in the federal sentencing guidelines have already resulted in early release orders for over 24,000 convicted drug dealers, many without regard to their histories of violence, ties to gangs or drug cartels, or the quantity of drugs distributed. And the most recent retroactive reduction of guidelines established last year by the U.S. Sentencing Commission will cause the release of approximately 46,000 additional criminals from federal prison, including early release of over 14,000 over the next year.

Unfortunately, the risk of recidivism by drug traffickers is high. According to the U.S. Sentencing Commission, the recidivism rate for crack cocaine traffickers whose sentences were retroactively reduced by the 2007 crack cocaine amendment was 43.3%; the recidivism rate of crack cocaine traffickers who served their full sentence prior to 2007 was 47.8%. Recidivism climbed steadily during the five-year monitoring period of both offender populations. Even more alarming, a recent Bureau of Justice Statistics study of drug offenders released from state prison in 30 states found overall recidivism rates among offenders at nearly 77 percent. This is not the time to lose sight of these perils. We are in the midst of a raging heroin and opioid epidemic, a national nightmare that *Time* magazine has described as “the worst addiction crisis the country has ever seen.” Heroin addiction is spawned by heroin traffickers -- the same population that will receive lighter penalties under the bill and will receive earlier releases.

The legislation also will make it harder for federal agents and prosecutors to build cases against the leaders of narcotics organizations and gangs, leaders who direct violent and socially destructive organizations that harm people throughout the United States. We know from experience the value of current mandatory minimum penalties as an essential tool to encourage cooperation to break down drug conspiracies, large criminal organizations and violent gangs. The significant expansion of the safety valve under the bill will turn it into a gaping hole, and the creation of a second safety valve under the bill will significantly undercut the 10-year mandatory minimum for drug trafficking crimes. While we recognize

the value of judicial discretion, the latitude made available by the bill will undermine the original purpose of the safety valve. The safety valve was created to allow first-time drug traffickers to avoid a mandatory minimum sentence if they met specified criteria and agreed to disclose all related information known to them. Expansion of the safety valve and the creation of an additional safety valve will allow many defendants, who could otherwise provide substantial assistance, to avoid that outcome. This will discourage, rather than encourage, cooperation, an activity that the Supreme Court has rightly recognized as a “deeply rooted social obligation”. *Roberts v. United States*, 445 U.S. 552, 553-54, 557-58 (1980).

This is not the time for Congress to disrupt a sentencing regime that strikes the right balance between all interests and has contributed to significant gains in reducing crime. We urge Congress to await the results of the significant federal sentencing initiatives that are already underway and to rigorously assess their impact before opening the doors of our federal prisons further through proposals like the Sentencing Reform and Corrections Act.

Sincerely yours,

John Ashcroft  
Former United States Attorney General  
Former United States Senator  
Former Governor of Missouri

William Barr  
Former United States Attorney General

Rudolph W. Giuliani  
Former Associate Attorney General, U.S. Department of Justice  
Former United States Attorney, Southern District of New York  
Former Mayor, New York City

William Bradford Reynolds  
Former United States Assistant Attorney General  
Former Counselor to the United States Attorney General

Samuel K. Skinner  
Former United States Attorney, Northern District of Illinois  
Former Vice Chairman, President’s Commission on Organized Crime  
Former White House Chief of Staff

William J. Bennett  
Former Director of the White House Office of National Drug Control Policy

John P. Walters  
Former Director of the White House Office of National Drug Control Policy

William G. Otis  
Former Special Counsel to the President  
Former Counselor to the Administrator, U.S. Drug Enforcement Administration

Peter Bensinger  
Former Administrator, U.S. Drug Enforcement Administration

Michele M. Leonhart  
Former Administrator, U.S. Drug Enforcement Administration

Karen Tandy  
Former Administrator, U.S. Drug Enforcement Administration

John C. "Jack" Lawn  
Former Administrator, U.S. Drug Enforcement Administration

Robert C. Bonner  
Former Administrator, U.S. Drug Enforcement Administration  
Former Commissioner, U.S. Customs and Border Protection  
Former U.S. District Judge, Central District of California

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