



February 12, 2018

The Honorable Chuck Grassley  
U.S. Senate  
135 Hart Senate Office Building  
Washington, DC 20510

The Honorable Dianne Feinstein  
U.S. Senate  
331 Hart Senate Office Building  
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Feinstein:

We write to thank you for your leadership in advancing a bipartisan sentencing and prison reform bill, the Sentencing Reform and Corrections Act (SRCA, S. 1917). This important legislation reduces some of the lengthiest and most expensive mandatory minimum sentences for drug trafficking and gun possession offenses, and it addresses a grave injustice by making the Fair Sentencing Act of 2010 retroactive. These reforms will benefit thousands of prisoners and their families, and we appreciate your commitment to bringing SRCA up for a vote in 2018.

Members of Congress should support a bill that addresses both sentencing reform and prison reform because the best rehabilitation and reentry begins with a right-sized sentence. Putting someone in prison for 10 years when five years would be sufficient keeps a person disconnected from the job market, his family, and a rapidly changing world five years longer than necessary. Excessive sentences increase the odds that families will fall apart, job skills will atrophy, and a prisoner will not have the connections or technological knowledge he will need to compete in the job market. If we are truly committed to reducing recidivism, we will give people reasonable sentences that make it easier for them to come home, not harder. Rehabilitative programming cannot make up for lost time, lost spouses and children, lost knowledge, and lost hope.

FAMM favors the important and long overdue sentencing reforms included in your bill, including provisions to:

- Reduce the mandatory minimum life without parole sentence to a mandatory minimum 25-year sentence for a third drug offense, and reduce the mandatory minimum 20-year sentence to a mandatory minimum 15-year sentence for a second drug offense;
- Expand the existing drug “safety valve” so that more nonviolent drug offenders can receive sentences below the mandatory minimum term where appropriate;
- Create an additional safety valve exception for less culpable, nonviolent drug offenders facing 10-year mandatory minimum sentences;
- Make the Fair Sentencing Act (FSA) of 2010 retroactive, allowing crack cocaine offenders sentenced before August 3, 2010, to seek sentences in line with the FSA’s reforms to the 100-to-one disparity between crack and powder cocaine mandatory minimum sentences; and
- Fix the 924(c) “stacking” problem by clarifying that the 25-year mandatory minimum sentence for a second or subsequent offense of possessing guns in the course of drug trafficking offenses or crimes of violence under 18 U.S.C. section 924(c) only applies

when the prior 924(c) conviction is already final prior to the commission of the new 924(c) offense.

Though we support these reforms, we feel compelled to acknowledge how modest they are. Unlike bills passed in many states across the country, S. 1917 does not repeal a single mandatory minimum sentence. The bill actually expands the scope of some mandatory minimum sentences and creates other new ones. The SRCA's retroactivity provisions are narrow and require court review and approval before prisoners can benefit from them.

The SRCA does not address the conspiracy liability rules that punish low-level offenders for everything their higher-level co-conspirators did. The bill's safety valve expansions do not distinguish between gun possession and gun use by drug offenders. The SRCA would not, for example, produce a fairer sentence for a person like Mandy Martinson, an Iowan who received a 15-year mandatory minimum sentence as a first-time offender and methamphetamine addict because she counted money for a boyfriend who was selling drugs and kept guns in her home. The SRCA is anything but a get-out-of-jail-free card, either for people in prison now or for future generations sentenced under its provisions. But its reforms are a step in the right direction, if only a first step.

FAMM supports the spirit of prison reforms included in the SRCA. We support prison reforms that give prisoners real incentives for completing meaningful, evidence-based programs that reduce recidivism. We regularly correspond with 40,000 federal prisoners, and in a survey last year, they confirmed what we have heard anecdotally for years: meaningful jobs, job training, education, and access to computer technology are virtually absent from federal prisons; drug and mental health treatment is lacking; and most programming is not taught by qualified staff. Prisoners need and want meaningful incentives and rigorous programs to rehabilitate themselves, but the Bureau of Prisons (BOP) offers little of either. More programs, jobs, job training, computer classes, degree programs, cognitive behavioral therapy, drug treatment, and qualified staff to provide them are needed, and they will cost money. And prisoners – just like the rest of us – need a good reason to do the hard work of improving themselves. Prison reform is worth it if it incentivizes participation in programs that reduce recidivism.

Unfortunately, the prison reform component of SRCA falls short. It is unlikely to reduce recidivism or save money because of three major flaws that should be fixed before the committee approves the bill:

1. **The bill's incentives are not real and meaningful.** The SRCA offers as incentives earned time credits that are not real time off the sentence, but more time in a halfway house, home confinement, or community supervision. Prisoners already cannot receive all of the halfway house time they are permitted under the Second Chance Act, and recent halfway house closures have further reduced halfway house stays to just a couple of months. The BOP has a long history of under-utilizing home confinement. Community supervision time cannot make up the difference, because it is capped, limited to low-risk prisoners, and contingent on having enough resources at U.S. Probation.  
**Recommendation: Make earned time credits real sentence reductions.** These are the only real and meaningful incentives that will inspire prisoners to rehabilitate themselves.



The BOP's residential drug abuse program (RDAP) has a 5,000-person waiting list because its incentive is so desirable: a one-year sentence reduction for those who complete the demanding program. Incentives work, but only if they are real. We recommend that any prisoner returning home someday should be eligible to earn 5 days of credits for every 30 days of programming completed, capped at 60 days per year and vesting at the end of each year of the sentence served. If only one in nine federal prisoners earned the full 60 days of credits in a single year, it would **save \$105 million** – money that can make prison reform self-funded and self-sustaining.

2. **The bill excludes many people from earning time credits** for completing rehabilitative programs, including many higher-risk prisoners who, evidence shows, need programs and incentives the most. This will not reduce recidivism. It also limits the ability of prison reform to generate cost-savings and pay for itself.

**Recommendation: Let every prisoner coming home someday earn time credits** for completing programming. Anyone coming home could be our neighbor, and if we do not want him to reoffend, we should motivate him to reduce his risk of committing another crime. If categories of prisoners must be excluded from earning time credits, we recommend excluding only those serving life sentences or those convicted of premeditated murder or terrorism offenses.

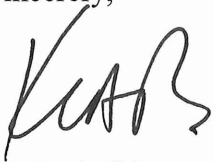
3. **The bill's process for redeeming credits is too burdensome and bureaucratic.** The bill would not let people actually use their earned time credits unless they first get approval from the warden, BOP director, court, and prosecutor. This process is lengthy, burdens already overworked courts and prosecutors, and will prevent many prisoners from enjoying their earned credits – which will further diminish the meaningfulness of the incentive, reduce program participation, and increase prison stays and costs.

**Recommendation: Cut the red tape for redeeming credits.** The bill's bureaucratic barriers to redeeming earned time credits are unnecessary, counterproductive, and maddening. Making time credits real time off that vests at the end of each year of the sentence allows the BOP to simply adjust the sentence automatically, as it currently does with good time credits for good behavior. This saves court, prosecutor, and BOP resources for the far more pressing tasks of fighting crime and rehabilitating prisoners.

As our overview makes clear, we see the SRCA as a compromise bill that makes valuable progress. Contrary to the self-interested claims of some prosecutors who do not want to give up the draconian sentences they have used unchallenged for decades, the SRCA's sentencing reforms are not going to release violent and dangerous offenders without accountability, or create a new crime wave. Rather, the bill recognizes that even the best-intentioned laws can misfire, and that Congress should not just correct the law, but also create opportunities to repair the harm it has already caused.

Thank you again for bringing the comprehensive S. 1917 up for a committee vote. We urge you to make every effort to preserve its sentencing reforms, strengthen its prison reforms, and pass it as soon as possible. Please do not hesitate to contact us if you have any questions or if we can provide any assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'KAR', with a stylized flourish at the end.

Kevin A. Ring  
President, FAMM

cc: Members of the U.S. Senate Judiciary Committee