



**National
Urban League**

Marc H. Morial
President and CEO

80 Pine Street, 9th Floor
New York, NY 10005

Phone 212 558 5300
Efax 646 568 2185

www.nul.org
presidentoffice@nul.org

**Empowering Communities.
Changing Lives.**

February 14, 2018

Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate

Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate

Dear Chairman Grassley and Ranking Member Feinstein:

As President and CEO of the National Urban League, and on behalf of its 88 affiliates representing 300 communities in 36 states and the District of Columbia, we are encouraged that the Senate Judiciary Committee will begin the process of addressing the critical need to end the unsustainable and tragic growth in our nation's federal prison population by taking up the bipartisan *Sentencing Reform and Corrections Act* (S.1917). Stakeholders from across the political spectrum agree that criminal justice reform is a moral and economic imperative.

Sentencing reform is critical to communities of color. According to the Bureau of Prisons, African Americans comprise 37.9 percent of its current prison population,¹ yet comprise 13.3 percent of the total U.S. population². Communities of color have especially suffered disproportionately under the failed policies of the war on drugs, particularly from the imposition of harsh mandatory minimum sentences. According to the U.S. Sentencing Commission's recent report³ Black offenders accounted for 29.7 percent of offenders convicted of an offense carrying a mandatory minimum penalty; for Hispanic offenders, 40.4 percent. The report also found that Black offenders convicted of an offense carrying a mandatory minimum penalty continued to receive the least relief from those sentences compared to Hispanics, Whites and other races.⁴ Upon completion of their sentences, the formerly incarcerated must then overcome "collateral consequences"⁵ of their past incarceration that include road blocks to accessing employment, education, housing, public benefits and restoring their right to vote.

While the *Sentencing Reform and Corrections Act* fails to eliminate any mandatory minimum sentences for drug offenses and creates new mandatory minimums for other offenses, it will at least begin to reduce some of the harshest mandatory minimums for certain low-level offenses. For example, the bill would:

- Reduce the mandatory minimum life without parole sentence to a mandatory minimum of 25 years for a third drug offense and make it retroactive, except for those with a prior "serious violent felony" conviction.
- Reduce the mandatory minimum 20-year sentence to a mandatory minimum of 15 years for a second drug offense and make it retroactive, except for those with a prior "serious violent felony" conviction.

- Under certain criteria, expand the drug “safety valve” exception so that nonviolent drug offenders can receive sentences below the mandatory minimum term; however this provision is *not* retroactive.
- Under certain criteria, creates an additional safety valve exception for drug offenders facing a 10-year mandatory minimum sentence so that the person can receive the 5-year mandatory minimum prison term instead; however, this provision is also *not* retroactive.
- Makes the *Fair Sentencing Act of 2010* retroactive for crack cocaine offenders sentenced before August 3, 2010.

In addition, the bill would allow for compassionate release of certain individuals with no record of violence who are older than 60, as well as terminally ill offenders and those in nursing homes who have served a large portion of their sentences. The *Sentencing Reform and Corrections Act* also offers important improvements for juveniles, including sealing and expungement of records for nonviolent juveniles, and limitations on the use of solitary confinement in federal prison. With respect to juvenile solitary confinement, the National Urban League urges that the committee go further and completely eliminate the use of solitary confinement for juveniles housed in federal prison. And while the bill takes a positive step for juveniles convicted as adults and sentenced to life without parole by making them eligible to seek parole after serving 20 years of their sentence, we find that 20 years is still too excessive a length of time.

While the *Sentencing Reform and Corrections Act* begins to take some positive steps towards addressing our nation's mass incarceration crisis, the National Urban League has serious concerns that certain provisions would once again move our criminal justice system in the wrong direction. These include:

- The bill's application of the 15-year and 25-year mandatory minimum drug sentences for repeat drug offenders to a new group of people who previously would not have received them; that is, those who have broadly-defined “serious violent felony” prior convictions. *This would be the first time that a Federal drug mandatory minimum will be triggered by a criminal record absent of drug-trafficking offenses.*
- Mandates that a judge must enhance by up to 5 years the sentence of someone whose drug offense involved fentanyl.
- Failing to reduce or eliminate the mandatory minimum 5- and 10-year prison terms of approximately one half of all federal drug offenders sentenced annually.

The *Sentencing Reform and Corrections Act* recognizes the challenges faced by the incarcerated as they prepare to return to society after serving their sentence by expanding prerelease and re-entry programs and creating an earned time credit system for early release. However, we have serious concerns as to what extent racial minorities will truly have access to these programs, given the bill's extensive criteria for eligibility. We cannot ignore the historic and current racial disparities that are prevalent throughout our country's criminal justice system where racial minorities are more likely than white Americans to be arrested; once arrested, they are more likely to be convicted; and once convicted, they are more likely to face stiff sentences.⁶ Of additional concern is whether these efforts will receive the necessary funding from Congress to make them effective.

Given the extreme racial disparities that occur in our nation's criminal justice system, we recommend that the *Sentencing Reform and Corrections Act* include a provision that requires *racial impact statements* before any new criminal justice policy is adopted. Racial impact statements serve as "a tool for lawmakers to evaluate potential disparities of proposed sentencing legislation prior to adoption and implementation."⁷ States are leading the way, such as New Jersey, Arkansas, Vermont, Iowa, Connecticut, and Oregon through their adoption of racial impact statement legislation.⁸

The National Urban League is pleased that the *Sentencing Reform and Corrections Act* includes the *National Criminal Justice Commission Act*, a bill that we support. The legislation would undertake a long overdue comprehensive review of the criminal justice system and recommend further reforms to the President.

For its part, the National Urban League has been serving the formerly incarcerated for more than fifty years. Through our signature Adult Re-entry Program, the National Urban League affords enrolled participants the opportunity to earn industry-recognized credentials, learn employment-focused skills, and form positive relationships with their communities. We offer workforce development, targeted training, mentoring, and support services through the help of our Urban League Affiliates.

On behalf of the National Urban League, I look forward to working with you to improve the *Sentencing Reform and Corrections Act* as it moves forward throughout the legislative process.

Sincerely,



Marc H. Morial
President and CEO
National Urban League

¹Federal Bureau of Prisons, "Offenses," Last Updated January 27, 2018. Accessed at https://www.bop.gov/about/statistics/statistics_inmate_race.jsp

²U.S. Census Bureau, QuickFacts United States, Accessed at <https://www.census.gov/quickfacts/fact/table/US/PST045217>

³United States Sentencing Commission, "An Overview of Mandatory Minimum Penalties in the Federal Criminal Justice System," July 2017, p.36. Accessed at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170711_Mand-Min.pdf

⁴Ibid. p.7.

⁵The National Inventory of Collateral Consequences of Conviction (NICCC): Accessed at http://www.americanbar.org/content/dam/aba/events/criminal_justice/annual14_Barriers_Reentry.authcheckdam.pdf; and www.abacollateralconsequences.org

⁶The Sentencing Project, "Shadow Report to the United Nations on Racial Disparities in the United States Criminal Justice System," August 31, 2013, Accessed at <https://www.sentencingproject.org/publications/shadow-report-to-the-united-nations-human-rights-committee-regarding-racial-disparities-in-the-united-states-criminal-justice-system/>

⁷Top Trends in State Criminal Justice Reform, 2017, Accessed at <https://www.sentencingproject.org/publications/top-trends-state-criminal-justice-reform-2017/>; see also, "Racial Impact Statements, Changing Policies To Address Disparities," by Marc Maurer, Accessed at <https://www.sentencingproject.org/wp-content/uploads/2016/01/ABA-Racial-Impact-Statements.pdf>; and *Transforming Prisons, Restoring Lives*

Final Recommendations of the Charles Colson Task Force on Federal Corrections, January 2016, p. 25, Accessed at <https://www.urban.org/sites/default/files/publication/77101/2000589-Transforming-Prisons-Restoring-Lives.pdf>

⁸Ibid.