



U.S. Commission on Civil Rights Supports Sentencing Reform Legislation

The U.S. Commission on Civil Rights, by majority vote, supports certain sentencing reduction provisions in the bipartisan Sentencing Reform and Corrections Act of 2017, recently introduced in the Senate.¹ The bill proposes to reduce mandatory minimum sentences for particular nonviolent offenses and to return discretion to judges on sentencing in more cases. It moves sentencing levels down in many cases so that low-level crimes are adequately but not excessively punished. It also makes retroactive sentencing reductions in crimes involving crack cocaine, which, prior to the enactment of the Fair Sentencing Act of 2010, were punished with extreme sentences compared with crimes involving powder cocaine. The fair administration of justice requires criminal penalties to be proportional to the offense committed and for similar crimes to be subject to similar punishments. In addition, fair administration depends on public faith in the American justice system; this bipartisan bill takes important steps to restore the basis for that faith by addressing longstanding inequity.

The Sentencing Reform and Corrections Act contains necessary and important steps towards more equitable punishments in the federal system, advancing the fair administration of justice by better fitting punishment to crime. If enacted, it would help reduce the outsize U.S. prison population without jeopardizing public safety. It stands in contrast to the change in charging policy announced by the United States Department of Justice in May.² The Department of Justice's policy regarding mandatory minimum sentences will result in lengthier, harsher prison sentences and additional taxpayer costs for both actual imprisonment and post-incarceration integration unless it is changed or checked by Congress through sentencing reform. In the last thirty years, the federal prison population alone has nearly tripled.³ Currently, our nation has over 2 million people behind bars in state and federal prisons.⁴ Significantly, this alarming trend was propelled by criminal justice policies and not an increase in crime.⁵ The

¹ Specifically, the Commission supports Sections 101, 102, 103 and 105 of Title I. The Commission takes no position on other provisions of the proposed act. Sentencing Reform and Corrections Act of 2017, S. 1917, 115th Congress, available at <https://www.congress.gov/bill/115th-congress/senate-bill/1917/text>.

² Jeff Sessions, Attorney General, Department Charging and Sentencing Policy, May 10, 2017, available at <https://www.justice.gov/opa/press-release/file/965896/download>.

³ U.S. Sentencing Commission, 2011 Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System, p. 348, <https://www.ussc.gov/research/congressional-reports/2011-report-congress-mandatory-minimum-penalties-federal-criminal-justice-system>.

⁴ Bureau of Justice Statistics, U.S. Department of Justice, Correctional Populations in the United States, 2015

⁵ See Sonja B. Starr and M. Marit Rehavi, Racial Disparity in Federal Criminal Sentences, *Journal of Political Economy*, 2014, available at <http://repository.law.umich.edu/cgi/viewcontent.cgi?article=2413&context=articles>; Report of the Sentencing Project to the United Nations Human Rights Committee Regarding Racial Disparities in the United States Criminal Justice System, August 2013, available at https://www.ushrnetwork.org/sites/ushrnetwork.org/files/02_page_8-33_race_and_cjs_sentencing_project.pdf.

cornerstone of these policies were the harsh sentencing and mandatory minimums propagated under the so-called “war on drugs.”⁶

The application of harsher penalties and mandatory minimum sentences historically falls hardest on communities of color. Although facially race-neutral, these policies have been applied in a racially disparate manner, raising concerns regarding legitimacy and fairness of our nation’s criminal justice system.⁷ Use of mandatory minimum sentencing contributed to high incarceration rates for African-American and Latino men, despite comparable rates of drug use across communities of all races.⁸ Devastating, community-wide impacts of these policies include one in nine children of color having a parent in prison.⁹

National and international bodies have noted racially disparate treatment throughout the American criminal justice system, including in the application of mandatory minimum sentences.¹⁰ Perhaps the most notable and egregious example of the racial disparities can be found in the different mandatory minimum sentences provided for offenses involving crack versus powder cocaine. A bipartisan consensus in Congress passed the Fair Sentencing Act in 2010, reducing disparities between mandatory minimum sentences for different drugs, in part “because the public had come to understand sentences embodying the 100-to-1 ratio as reflecting unjustified race-based differences.”¹¹ These changes should be made retroactive as the Sentencing Reform and Corrections Act of 2017 proposes in order to reduce excessive punishments for those already sentenced.

After decades of steep growth, the federal prison population dropped when prosecutors were encouraged not to charge offenses with mandatory minimum sentences, and crime rates continued to fall.¹² Many of the nation’s prosecutors have stated their view that increases in sentencing will lead to increases in prison populations, with the attendant negative community

⁶ *Id.*

⁷ *Id.*

⁸ See, e.g. results from the 2013 National Survey on Drug Use and Health: Summary of National Findings, U.S. Department of Health and Human Services, September 2014, available at <https://www.samhsa.gov/data/sites/default/files/NSDUHresultsPDFWHTML2013/Web/NSDUHresults2013.htm#2.7>.

⁹ David Murphey and P. Mae Cooper, Parents Behind Bars: What Happens to Their Children?, Child Trends, October 2015, available at <https://childtrends-ciw49tixgw5l1bab.stackpathdns.com/wp-content/uploads/2015/10/2015-42ParentsBehindBars.pdf>.

¹⁰ Discriminatory Impact of Mandatory Minimum Sentencing in the Federal Criminal Justice System of the United States of America, Written testimony submitted to the Inter-American Commission on Human Rights, March 3, 2006, available at <https://opensocietypolicycenter.org/wp-content/uploads/FINAL-Oggletree-Testimony.pdf>; Charles Colson Task Force on Federal Corrections, Transforming Prisons, Restoring Lives, January 2016, available at <http://www.urban.org/sites/default/files/publication/77101/2000589-Transforming-Prisons-Restoring-Lives.pdf>; Report of the Sentencing Project, note 5 above.

¹¹ *Dorsey v. United States*, 567 U.S. 260, 268 (2012).

¹² See U.S. Imprisonment Rate Continues to Drop Amid Falling Crime Rates, Pew Charitable Trusts, March 14, 2014, available at <http://www.pewtrusts.org/en/about/news-room/press-releases/2014/03/14/us-imprisonment-rate-continues-to-drop-amid-falling-crime-rates>; An Overview of Mandatory Minimum Penalties in the Federal Criminal Justice System, United States Sentencing Commission, July 2017, available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20170711_Mand-Min.pdf.

effects, without an increase in public safety or a decrease in crime.¹³ Reductions in mandatory minimums, by contrast, allow for proportional and fair sentencing in more cases, reducing these negative effects.

Chair Catherine E. Lhamon said, “The sentencing reduction provisions in this legislation are necessary to hew closer to the fair administration of justice in our country, and ensure that the criminal justice system does not more harshly judge marginalized communities without basis. I urge Congress to take swift action to correct these injustices.”

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The U.S. Commission on Civil Rights is the only independent, bipartisan federal agency charged with advising the President and Congress on civil rights matters and issuing an annual federal civil rights enforcement report. For information about the Commission, please visit <http://www.usccr.gov> and follow us on [Twitter](#) and [Facebook](#).

¹³ In an open letter from 30 state and local prosecutors regarding the new Department of Justice policy, prosecutors stated, “There is no empirical evidence to suggest that increases in sentences, particularly for low-level offenses, decrease the crime rate. Instead, we know that in many instances contact with the justice system exacerbates the likelihood of future criminal conduct and that the deterrent effect of long-term prison sentences is questionable at best.” Open Letter from State and Local Prosecutors, May 2017, available at <https://justiceroundtable.org/wp-content/uploads/2017/05/Open-Letter-from-State-and-Local-Prosecutors-2017.05.18.pdf>; see also Greg Glod and Joe Luppino-Esposito, Examining the Myths of Federal Sentencing Reform, Texas Public Policy Foundation, March 2016, available at <https://www.texaspolicy.com/library/doclib/2016-03-PP03-MythsFedPrisonReform-CEJ-GregGlodJoeLuppinoEsposito.pdf>.