October 21, 2015

Honorable Charles Grassley
Chairman
Committee on the Judiciary
United States Senate

Honorable Patrick Leahy
Ranking Member
Committee on the Judiciary
United States Senate

Dear Chairman Grassley and Ranking Member Leahy:

On behalf of the National Urban League, we are encouraged that the Senate has finally begun deliberations on the critical need to address the unsustainable and tragic growth in our nation’s federal prison population. Stakeholders from across the political spectrum agree that criminal justice reform is a moral and economic imperative.

The National Urban League’s perspective on criminal justice and corrections reform is based on the extent that proposed reforms begin to address the status quo’s devastating and disproportionate impact of incarceration on people of color, their families and communities. Research shows that African Americans make up 13.2 percent of the U.S. population – but almost 37 percent of the federal prison population. Latinos account for 17.1 percent of the U.S. population – but 35 percent of federal inmates. While rates of drug use and selling are similar across racial lines, people of color are far more likely to be prosecuted and sentenced for drug offenses.

After a comprehensive review of data, the National Research Council, National Academy of Sciences, concluded that “the costs of the current rate of incarceration outweigh the benefits.” The report’s compelling data illustrates the magnitude of incarceration rates, the racial disparities of incarceration, and the societal impacts. For example:

- The U.S. has nearly one-quarter of the world’s prisoners, but only 5 percent of its population.
- Of those incarcerated in 2011, about 60 percent were black or Hispanic.
- Black men under age 35 who did not finish high school are more likely to be behind bars than employed in the labor market.
- Allocations for corrections have outpaced budget increases for nearly all other key government services, including education, transportation, and public assistance.
- Recommends that federal and state policymakers re-examine policies requiring mandatory and long sentences, as well as take steps to improve prison conditions and reduce unnecessary harm to the families and communities of those incarcerated.
- Two of its four key guiding principles on the appropriate role of punishment is (1) Proportionality – that criminal sentences should be proportionate to the seriousness of the crime; and (2) Parsimony – that punishment should not exceed the minimum needed to achieve its legitimate purpose.

With regards to sentencing policy, the National Research Council’s landmark report found that “unless lengthy sentences can be specifically targeted to very high-rate or extremely dangerous offenders, they are an inefficient approach to preventing crime.” To this end, they
urge a reexamination of long sentences, along with mandatory minimum sentences and policies on enforcement of drug laws.

In assessing the impact of the Sentencing Reform and Corrections Act of 2015 (S.2123) on the dramatically disproportionate number of African Americans who are incarcerated under our current system, the National Urban League must first be satisfied that the data supports the sentencing reform proposals outlined in the bill. Unless and until the Senate Judiciary Committee is able to demonstrate the statistics demonstrating that these reforms will help communities of color more than adversely impacting them, the National Urban League must reserve its support until this is addressed as the bill moves forward through the legislative process. Key areas of concern include:

- For the modest expansion of the safety valve, there has not been any data calculation as to how many offenders from communities of color will benefit versus how many will be excluded. The bill has a list of offenses and characteristics that would be excluded from taking advantage of this modest expansion – and those offenses and characteristics that are excluded primarily disadvantage communities of color, which exacerbates existing racial disparities.

- Grave concern that the expansion of the 851 and 924(c) recidivist enhancements to include state priors will result in greater numbers of offenders from communities of color receiving those harsh mandatory minimums and will exacerbate the existing disparity seen in drug mandatory minimum sentencing.

- To what extent will the retroactive application of the Fair Sentencing Act of 2010 exclude anyone who had a previous motion denied? If Congress said in 2010, the 100:1 crack:powder ratio is discriminatory, shouldn’t this reasoning also apply to all offenders who were sentenced under the old unjust law instead of excluding anyone from making their individual argument in front of the judge and letting the judge decide based upon the facts of the case? This provision must be addressed to make the Fair Sentencing Act of 2010 truly retroactive for especially communities of color. Hundreds, if not thousands of offenders had their prior petitions denied for reasons ranging from not being eligible at the time of their earlier motion (but being eligible now) to judges saying that the law did not apply retroactively (which this bill says it fixes).

- With regards to the credits that inmates receive based upon their participation in prison programs, we are extremely concerned that one receives the most sentence reduction for being “low-risk,” but the factors that make an individual “medium” or “high” risk, where one either cannot earn credit or earn a much lower credit, are those static factors that are out of one’s control (socioeconomic and demographic factors like education, age, family upbringing, poverty) and track along racial lines. What evidence is there, in terms of statistics, that these categories will not result in this bill giving predominantly white offenders double the sentence reduction compared to offenders of color who would either be excluded from earning credit entirely due to their priors or receive only half the credit? Our concern is that this will once again exacerbate existing disparities in our system and make the problem worse instead of better, given that white offenders already receive shorter sentences on the front-end anyway and under S. 2123 would receive a bigger reduction on the backend once they are already in prison.

There are key provisions of S.2123 that the National Urban League finds promising, including those provisions pertaining to: parole for juveniles; compassionate release; juvenile
sealing and expungement of their convictions. 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.

The research is clear that the cost of mass incarceration – financial, social and economic – is no longer sustainable. These vital resources could instead be invested in scalable, evidenced-based programs such as the National Urban League’s signature Adult Re-entry program operated through our Urban League Affiliates. The Adult Re-entry program focuses on providing formerly incarcerated adults with the necessary skills and training to successfully re-enter the job market and find a position with livable wages that can potentially lead to a career with an elevated income.

As a historic civil rights and urban advocacy organization dedicated to economic empowerment in historically underserved urban communities, the National Urban League has improved the lives of tens of millions of people nationwide through direct service programs that are implemented locally by its 95 Urban League affiliates in 36 states and the District of Columbia. Our ongoing efforts aim at stemming entry into the prison pipeline in the first place, and providing that vital second chance to those individuals reintegrating into their families, communities and society.

The National Urban League looks forward to Congress surging ahead to enact legislation that truly results in ending the devastating, disproportionate mass incarceration of people of color and its debilitating impact on their families and communities. We stand ready to work with you to move this process along.

Sincerely,

Marc H. Morial
President and CEO
National Urban League


\footnote{Ibid.}