

By Mr. **LEE** (for himself, Mr. **DURBIN**, Mr. **CRUZ**, Mr. **LEAHY**, Mr. **FLAKE**, Mr. **BOOKER**, Mr. **PAUL**, Mr. **WHITEHOUSE**, and Mr. **COONS**):

S. 502. A bill to focus limited Federal resources on the most serious offenders; to the Committee on the Judiciary.

Mr. BOOKER. Mr. President, I rise today to speak about the Smarter Sentencing Act, which I believe is a very critical piece of legislation.

I am pleased to be an original cosponsor of this legislation in this Congress, and I thank the bipartisan coalition of Senators who have come together, led by Senator *Mike Lee* from Utah and Senator *Dick Durbin* from Illinois. Their leadership on this issue has been absolutely critical.

The Smarter Sentencing Act has essential front-end reforms. These are reforms for when a person gets to the point of incarceration. What they actually do is combat injustices in the Federal sentencing program. They address a real plague in our country; that is, mass incarceration.

Think about this: We are the land of the free. We are a nation that believes in liberty and justice. But we are singular in humanity for an awful distinction: We have 5 percent of the globe's population but we incarcerate 25 percent of the globe's incarcerated people. That is unacceptable unless you believe for some reason that Americans have a higher proclivity for crime, unless you believe we have something in our water that makes us more likely

to do wrong, and that is not the case.

The challenge is that we have seen in the past three decades a profound over-incarceration driven by a drug war that has created unfortunate negative consequences to our society. I thank Members of Congress for stepping up in this Congress to speak to this issue. It is un-American that we should hold the largest amount of incarcerated people per population than any other country. It goes against the very strains of our society dedicated to liberty, dedicated to keeping government focused on what it should be doing, not overreaching, not becoming overly aggressive, not surrendering or taking the liberty unnecessarily of other Americans.

I would like to talk for a few minutes about this broken system. What is broken in our criminal justice system? Well, when about three-quarters of our Federal prisoners are actually nonviolent offenders--I am actually one of those people who believe that if you do a violent crime, you should pay a very hefty price for that, that we as a society should have a place where we take stern action against people who promulgate violence, who undermine civil society. But as we look at this mass-incarceration problem where 25 percent of the globe's prison population is in our country, we realize that three-quarters of those people in the Federal prison system are nonviolent offenders.

This is not our history. This is not our tradition. Over the course of all of our Nation's history, we did not have this problem. It has really been the last 30 years where we have witnessed the explosion in the U.S. Federal prison population. In those 30 years alone--think about this--in the last 30 years alone, the prison population at the Federal level has expanded by nearly 800 percent. That is a massive and unacceptable increase, especially when you realize this was driven by the incarceration of nonviolent offenders.

This expansion of our prison population had a harmful effect when those people were released because once someone has a nonviolent felony offense, it is hard to get a job, it is hard to get business licenses, and they cannot get Pell grants. Often those people get

caught up and go back to being involved in the drug war. So what happens is that two out of three of those people get rearrested within 3 years.

We are paying for this broken system, this revolving door of arresting nonviolent offenders, releasing them, and bringing them back into our system. It is plaguing the Federal budget and, frankly, State budgets all around our country. Each year more than one-quarter of a trillion dollars is being spent on this broken criminal justice system--money that could be used to empower people to succeed, to repair our infrastructure, or, how about this, it could stay in taxpayers' pockets.

What makes this system worse is that it undermines our American ideals. As I look across the way from the Capitol Building where I stand now and see the Supreme Court, written above the Supreme Court building, at the top, is this ideal of equal justice under law. The ideal that everyone will be treated equally under the law. But this broken criminal justice system has disproportionately impacted certain Americans and not others, which undermines America's core values of fairness and equal treatment for all.

More than 60 percent of our prison system is comprised of racial and ethnic minorities. The painful reality is that if somehow African Americans or Latinos used drugs at different levels than Whites, that might explain the disparate impact. If they dealt drugs at different levels, yes, that might explain it. But that is not the case. African Americans engage in drug offenses at a lower rate than Whites but are incarcerated at a rate 10 times that of Whites.

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What is alarming about the mass incarceration is that people are actually not committing more and more crimes. The National Research Council recently released a report confirming what numerous other studies have actually shown: Incarceration rates are actually not tied to crime rates. We have seen incarceration rates going up and up, but now crime rates are coming down.

What is perpetuating this explosion of our prison population? It is the war on drugs that has created over the last 30 years alone an over-criminalization of nonviolent individuals, which stacked our prison population full of Americans, disproportionately minority and disproportionately poor.

Please understand that the people paying the highest price for this are the poor in our country. The New York Times yesterday published an article detailing how our jails have become warehouses made up primarily of people too poor to pay bail or to hire lawyers or too ill with mental health or drug problems to adequately care for themselves. If you look at our prison population, you will see that poverty, race, mental illness--those are the folks who are being disproportionately incarcerated.

If we follow our core ideals of fairness, democracy, and justice--then we know that mass incarceration is not who we are. That is not right. That the times demand that we examine this broken system and do those commonsense things that are needed to make our justice system just, to work first and foremost for our safety, to not be a gross waste of taxpayer dollars, and to make sure basic ideas of fairness are fulfilled.

This is not just speculation. And what is so powerful about this moment in time, even though all I have said so far is compelling enough, is that we as Federal actors--the 100 Senators here, the 435 Congress men and women, the President and the Vice President--don't need to figure out a way forward, make it up, design legislation based on our own ideas. We actually only have to look at the pathway forward by looking at Governors and legislatures in the States. They are so burdened by the costs of this unruly system, a system that is now plaguing--the Federal Bureau of Prisons is plaguing our country with its cost. What the States are doing to bear that cost is they are finding pragmatic, commonsense, bipartisan ways to move forward.

In fact, what gets me excited as a Democrat is that we just have to look at the red States and what the red States are doing to

reduce their prison populations. Let me give an example. States such as Texas, Georgia, and North Carolina are leading on this issue, and the Federal Government should follow.

Texas is a State known for law and order, and known for being tough on crime. Yet Texans realize that being smart on crime means saving taxpayer dollars, using that money efficiently and effectively, lowering crime, and guess what, hey, we can also lower our prison population and empower people to be successful in life and not slip down that slope back toward recidivism. They have made tremendous strides in Texas in adopting policies that are designed to reduce their prison population and lower recidivism.

In 2007, Texas boasted the fourth largest incarceration rate in the country. Faced with a budget projection that estimated by 2012 the State would need an additional 17,000 prison beds--think about that for a second. They saw that they were going to need to build more prisons, house 17,000 more prison beds, and it was going to cost them \$2 billion in Texas. The State's legislature said: Enough of this madness. Enough of this craziness.

They enacted bold reforms that would act as a model for us in the Federal legislature. As a result, they passed this broad-based legislation. Texas was able to stabilize their prison population and avert that budgetary disaster.

Texas State Representative Jerry Madden, a Republican, noted in a recent hearing before the House Judiciary Subcommittee on Crime, Terrorism, Homeland Security and Investigations that the crime rate is now at 1968 levels. They were able to close three prisons and six juvenile facilities, and remarkably the Texas prison system is now operating at a 96-percent capacity. Commonsense reforms.

Georgia is another State. They have made remarkable progress. They are showing that reducing the prison population can lead to dividends for taxpayers, and can lower crime. In fact, over the past 5 years, in terms of the racial disparities in incarceration, Georgia has reduced the number of Black men incarcerated in the State by

20 percent. And they haven't seen crime go up--quite the contrary. They have seen it go down.

These States are proving that they don't have to lock up more people to create that safety we desire. States such as New Jersey, Texas, California, Virginia, Hawaii, Wyoming, Massachusetts, Kentucky, Connecticut, Rhode Island, Colorado, New York, South Carolina, Alaska, and Georgia have all seen drops in crime rates as they have been implementing commonsense criminal justice reform.

So let's be clear. I am advocating for the Smarter Sentencing Act, but we should also be moving for bold, broad-based criminal justice reforms, copying the successes of red States with Republican Governors. We should be looking at their innovations and following their commonsense solutions and mirroring their success at the Federal level.

I am speaking of reforms at the front end when people get arrested; reforms behind the wall--inside the prison system to address what goes on in prison and helping these people, and reforms on the back end when they come out of prison, to ensure they stay out of prison.

Front-end reforms going on around our country are exciting, such as sentencing reform. What about radical ideas such as letting judges make decisions about sentencing and stop trying to legislate it? Judges are the experts. They know of the brutality of a person's circumstances. They can design sentences.

These policy initiatives should address the entire system. Behind-the-wall efforts should focus on initiatives to change the way prisoners experience life behind bars. To get treatment and job training so they don't commit future crimes. This is commonsense stuff. We shouldn't send people to prison and have them become criminalized or undermine their ability to be successful adults when they come out.

We should also focus on that back end, this idea that we need

reentry policies to help people get jobs, reconnect with their families, and become strong, full-fledged American citizens. I am speaking of things such as parole reform.

To move forward we need to think big. This is what I will be advocating for. We can tackle this by taking a systemic approach. We must look at a broad-based reform agenda.

I love the fact that we have conservatives and liberals united on this issue--Republicans and Democrats, red Staters and blue Staters. Criminal justice reform is not a partisan issue, it is an American issue.

In 2010, Senators on both sides of the aisle came together to improve our justice system by passing the Fair Sentencing Act, which the President signed into law. This was a bipartisan piece of legislation that reduced the sentencing disparities between crack and powder cocaine--drugs that are pharmacologically indistinguishable. They changed it from 100 to 1 to 18 to 1, and I thank Senators **DURBIN**, **GRASSLEY**, **LEAHY**, and **GRAHAM** for their leadership on this issue.

Last year I joined with Senator *Rand Paul* from Kentucky. I don't know how many sentences are used by people that contain the names *Cory Booker* and *Rand Paul* in them, but we agree on this issue. We have common ground, and we introduced the REDEEM Act. This legislation aims to keep juveniles out of the criminal justice system. We looked to stop acts that many other countries consider torture, such as taking juveniles and routinely putting them into solitary confinement where they are traumatized and often come out of those circumstances more likely to do harm to themselves or others. We are going to reintroduce that bill this year.

Just last month I sat on a criminal justice reform panel right here in the Halls of the Senate, hosted by Van Jones on the left and Newt Gingrich on the right. In the last few months I have talked to Grover Norquist, I have

talked to the Koch brothers' representative, their chief counsel, and I have talked to conservative think tanks and Christian evangelicals. All of us agree on this issue. This chorus of voices, this coalition, this courageous commitment to our country's ideals lets us know that whether you consider yourself a liberal or a conservative, whether you consider yourself moderate leaning, left or right, this is an area we can agree on. It will save taxpayer money, uphold our ideals of liberty and freedom, create safer communities, and empower individuals to be successful.

Today I am excited to have joined with Senators **LEE, DURBIN, LEAHY**, and **CRUZ** to support the Smarter Sentencing Act. We need to have this conversation about reducing Federal mandatory minimums. In fact, I love that the Urban Institute has stated that mandatory minimums for drug offenses is the single largest factor in the growth of the Federal prison population.

Let me repeat that. Mandatory minimums for drug offenses are the single largest factor in the growth of the Federal prison population. A key factor in that 800-percent growth in the last 30 years has been driven by nonviolent drug offenders and mandatory minimums.

This bill also would do other things. It would expand the Federal safety valve, giving judges greater discretion and allowing them to hand out their sentences. Those people who believe in separation of powers, let the judiciary have more space to hand down fairer sentences and not shackle them with laws made by legislators who don't know the particulars of a case. Many Federal judges have spoken out about mandatory minimums being unnecessarily restrictive for them in doing their job.

The bill would also make the Fair Sentencing Act retroactive, which would allow persons convicted under the old crack-powder cocaine disparity to now receive a fairer sentence. With the crack-cocaine law changed in 2010, an individual arrested today would receive a lesser sentence. So making this law retroactive to impact

people sentenced for crack cocaine offenses prior to 2010 is only fair.

This bill could save a lot of money--hundreds of millions of dollars. It would give us some freedom not only to return some toward debt relief for this country--Lord knows we need to focus on that--but also to invest in other programs many people on both sides of the aisle support, such as reentry programs to help people stay out of prison and get back to a productive lifestyle. If enacted into law as the bill is currently scored, it would save \$3 billion over the next decade alone. This is critically important.

So this is a call to the conscience of the Congress. Every single day we pledge allegiance to our flag. That is not something anybody in this Chamber does as sort of a routine, perfunctory salute. We say those words because they mean something, and we end with this ideal that is a light to all of humanity--this ideal of liberty and justice for all.

If we mean those words, then that, across the board, is what we should be pursuing in this body. We know in our country States are doing things to further uphold these ideals, that they are making commonsense reforms that are keeping people safe and lowering crime, commonsense reforms that are saving taxpayer dollars and relieving the burden on taxpayers and budgets, that they are passing reforms that liberate people from the shackles of an imprisonment that is unnecessary, that is directly addressing the painful disparities of race and poverty, and that it is empowering Americans, our brothers and sisters. In all of our holy texts it talks about the dignity of all people, whether they are behind bars or on our streets, the dignity of worth that empowers people to be successful, to have life and liberty and to pursue their happiness.

So I say I support reforming our criminal justice system. More importantly, I say let's support our ideals. Let's be a nation of liberty and justice for all. Let's follow the lead of courageous governors and legislatures and let's make this Nation even better than it is today. I urge all Senators to promptly pass the Smarter

Sentencing Act through the Senate.