

# **THE DANGEROUS MYTHS OF DRUG SENTENCING “REFORM”**

**NATIONAL ASSOCIATION OF ASSISTANT UNITED STATES ATTORNEYS**



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## Preface

The National Association of Assistant United States Attorneys is a professional association comprised of career federal prosecutors and federal civil attorneys who work for the Department of Justice in 94 United States Attorneys' Offices throughout the United States. We are proud to work under our nation's dedicated United States Attorneys and the Department of Justice. Our United States Attorneys and the Department of Justice expect us to perform our jobs professionally and in full accord with the law, and we respect them for setting this standard.

Consistent with that standard, NAAUSA has prepared this paper to inform the public discourse about our current federal drug sentencing system and the most dangerous myths of drug sentencing "reform." We do not seek to criticize the goals or the intentions of anyone who seeks to improve our nation's criminal justice system. Nonetheless, we believe that the current federal sentencing system and its penalties for drug trafficking represent a far better approach toward equal justice under the law than the alternatives currently under consideration by the Congress.

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## THE DANGEROUS MYTHS OF DRUG SENTENCING “REFORM”

### Introduction

Congress is considering legislation that would dramatically change how we sentence drug traffickers in our federal courts. These legislative proposals, including one euphemistically named the “Smarter Sentencing Act” (SSA), would slash federal minimum sentences for trafficking in all dangerous drugs by at least half and would make thousands of federal prisoners convicted of serious drug trafficking crimes eligible for early release without regard to their criminal history, violent background, or ties to gangs, drug trafficking organizations, or even international drug trafficking cartels.

Proponents also gloss over the significant changes in federal sentencing guidelines that have already and will continue to result in the early release of thousands of convicted drug traffickers. These sentencing reductions and early prisoner releases have occurred and will continue to occur regardless of whether Congress enacts the SSA or other sentence reduction proposals. The impact of these early releases is certain to inflict greater strains upon law enforcement efforts to preserve safety and dismantle gangs and drug trafficking organizations. If the Smarter Sentencing Act or similar proposals are enacted, they will only aggravate and compound these harms. Congress will have made our country less safe and contributed toward the reversal of a 20-year period of reduced crime in our nation.

It is critical that Congress avoid this path and understand the mistruths propounded by advocates of sentencing “reform” through the following six myths:

***Myth One: Our prison population is exploding because of the incarceration of recreational drug users or low-level drug offenders.***

**Fact: Our federal prison population is not exploding, and those who are serving prison sentences for drug crimes are incarcerated because of drug trafficking crimes, not recreational drug use.**

***Myth Two: The federal prison population is a product of mandatory minimum sentences for drug traffickers.***

**Fact: The majority of drug traffickers sentenced in federal court are not being sentenced pursuant to mandatory minimum sentences.**

***Myth Three: Only violent drug dealers deserve lengthy prison sentences.***

**Fact:** It is well-established drug trafficking is inherently violent and that all drug dealing is dangerous taking the lives of thousands of Americans, destroying families, and undermining the moral fabric of our communities, regardless of whether any individual offender engages in an act of violence during the commission of a drug offense.

***Myth Four: Federal mandatory minimum sentences are arbitrary; their reduction will result in greater fairness and do little to disturb public safety.***

**Fact:** Slashing federal mandatory minimum sentences will undermine the ability of law enforcement officials to dismantle drug trafficking organizations.

***Myth Five: Minimum sentences for drug dealers should be reduced because drug sentences have a disparate impact on minorities.***

**Fact:** High-level drug trafficking is not committed by any group that mirrors the nation's demographics in terms of age, gender, or race and prosecutions can't be expected to parallel those demographics.

***Myth Six: Reducing the sentences for drug dealers will reduce our taxes.***

**Fact:** It's easier to quantify the costs of incarceration than the value of public safety.

The remainder of this paper is devoted to debunking these myths and misunderstandings about the federal drug sentencing.

## **The Dangerous Myths**

***Myth One: Our prison population is exploding because of the incarceration of recreational drug users or low-level drug offenders.***

**Fact: Our federal prison population is not exploding, and those who are serving prison sentences for drug crimes are incarcerated because of drug trafficking crimes, not recreational drug use.**

Our prison population is not exploding. Last year the federal prison population, at approximately 220,000 prisoners, began to decline.<sup>1</sup> This reduction is a result of a number of factors including action by the United States Sentencing Commission promulgating sentencing guideline amendments making thousands of drug traffickers eligible for early release and lowering the penalties faced by drug traffickers convicted after promulgation and by a reduced emphasis on federal prosecution of drug traffickers.<sup>2</sup> The amendments to the sentencing guidelines made retroactive by the Sentencing Commission have already resulted in the early release of thousands of convicted crack cocaine traffickers and have set in motion a process that ultimately will reduce the sentences of tens of thousands of other convicted drug traffickers. Restated, changes already promulgated by the Sentencing Commission have already reduced sentences applicable to drug traffickers without the need for further action by Congress.

In 2007 the Sentencing Commission unilaterally promulgated sentencing guideline amendment 706 and, further, made that amendment retroactive thus making thousands of already convicted crack cocaine traffickers eligible for sentence reductions and early release. As a result, 16,511 crack cocaine traffickers received sentence reductions and early release.<sup>3</sup>

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<sup>1</sup> E. Ann Carson and Daniela Golinelli, "Prisoners in 2012, Trends in Admissions and Releases, 1991-2012", Bureau of Justice Statistics, December 2013 (revised September 2, 2014). <http://www.bjs.gov/content/pub/pdf/p12tar9112.pdf>.

<sup>2</sup> As reported by the Sentencing Commission, "[t]here were 9.6% fewer drug trafficking offenders [sentenced] in fiscal year 2013 than in fiscal year 2012." U.S. Sentencing Commission, Quick Facts on Drug Trafficking Offenses, [http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick\\_Facts\\_Drug\\_Trafficking\\_2013.pdf](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick_Facts_Drug_Trafficking_2013.pdf)

<sup>3</sup> United States Sentencing Commission, Recidivism Among Offenders Receiving Retroactive Sentence Reductions: The 2007 Crack Cocaine Amendment, at 2. [www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20140527\\_Recidivism\\_2007\\_Crack\\_Cocaine\\_Amendment.pdf](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-projects-and-surveys/miscellaneous/20140527_Recidivism_2007_Crack_Cocaine_Amendment.pdf)

In 2010, the Fair Sentencing Act of 2010 increased the quantities of crack cocaine necessary to trigger the mandatory minimum sentences applicable to crack cocaine traffickers. The Sentencing Commission then promulgated an amendment paralleling this reduction and then, unilaterally, made those reductions retroactive to previously convicted crack dealers. As a result, through 2014, the sentences of over 7,700 convicted crack cocaine traffickers have been reduced.<sup>4</sup>

Most recently, in 2014 the U.S. Sentencing Commission unilaterally promulgated amendment 782, a broad, retroactive, across-the-board guideline reduction applicable regardless the substance trafficked—that is, it was equally applicable to heroin, methamphetamine, cocaine and marijuana traffickers—and regardless of the offender’s criminal history, violent background, or ties to gangs, drug trafficking organizations or even international drug trafficking cartels.<sup>5</sup> The Sentencing Commission estimated this amendment alone would result in an average sentence reduction of 18 percent for over 46,276 current federal inmates, including approximately 8,000 who, the Commission estimated, will be released en mass in November 2015 and another 8000 in 2016.<sup>6</sup>

In summary, these retroactive guideline reductions have and will continue to trigger the early release of tens of thousands of previously convicted drug traffickers and through their

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<sup>4</sup> U.S. Sentencing Commission, Final Crack Retroactivity Data Report, Fair Sentencing Act, May 2014.

[www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/fair-sentencing-act/Final USSC Crack Retro Data Report FSA.pdf](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/fair-sentencing-act/Final%20USSC%20Crack%20Retro%20Data%20Report%20FSA.pdf)

<sup>5</sup> U.S. Sentencing Commission amendment 782, which became effective on November 1, 2014, reduced by two levels the offense levels assigned to drug quantities. Amendment 788, approved by the Commission on July 18, 2014, gave retroactive effect to Amendment 782 and required that federal courts not release any offender whose term of imprisonment was reduced retroactively until November 1, 2015, the effective date of the amendment. U.S. Sentencing Commission, Data on Retroactive Application of the 2014 Drug Guidelines Amendment (June 2015).

<http://www.ussc.gov/sites/default/files/pdf/research-and-publications/retroactivity-analyses/drug-guidelines-amendment/20150624-Drug-Retro-Analysis.pdf>

[http://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20140718 RFP Amendments Retroactivity.pdf](http://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20140718_RFP_Amendments_Retroactivity.pdf).

<sup>6</sup> U.S. Sentencing Commission, Office of Research and Data, Memorandum to Chair Saris, Re: *Summary of Key Data Regarding Retroactive Application of the 2014 Drug Guidelines Amendment*, July 25, 2014. <http://thenasc.org/images/20140725-Drug-Retro-Analysis.pdf>

future application will result in significantly lighter sentences for drug traffickers convicted in the future.

These facts contradict calls to dramatically lower federal prison costs through relaxation in the sentences of drug offenders.

Moreover, those serving terms of imprisonment in federal prisons were not convicted of recreational drug use. While drug offenders accounted for a large percentage of the federal prison population in 2013 and 2014, virtually all of those were convicted of major drug trafficking crimes, including the trafficking and sale of significant amounts of dangerous drugs like heroin, methamphetamine, cocaine, crack cocaine, and oxycodone.<sup>7</sup> Despite claims and insinuations to the contrary, only a tiny fraction of defendants convicted in the federal court system were convicted of possession of drugs for personal use. U.S. Sentencing Commission data reveals that only 0.9 percent of defendants sentenced for drug offenses in federal court in 2014 were sentenced for simple drug possession<sup>8</sup> and many of those charges were the result of plea bargaining.

It is significant too that the percentage of federal prisoners serving sentences for drug trafficking is higher than for state prisoners. This stems from the somewhat obvious fact that federal criminal jurisdiction over murders, rapes, and robberies (crimes that are largely intrastate), is limited and those crimes are, for the most part, prosecuted in state courts. Large scale drug trafficking (activity that is inherently interstate and international in nature) is proportionately more often investigated and prosecuted in the federal system. As a result, the federal system focuses on, and the federal prisons house, many of the most dangerous and serious drug traffickers—offenders that are often violent, repeat offenders involved in high level, large scale trafficking.

***Myth Two: The federal prison population is a product of mandatory minimum sentences for drug traffickers.***

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<sup>7</sup> U.S. Sentencing Commission, Quick Facts on Drug Trafficking Offenses, Source: FY2003-FY2013 Datafiles

[http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick\\_Facts\\_Drug\\_Trafficking\\_2013.pdf](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick_Facts_Drug_Trafficking_2013.pdf)

<sup>8</sup>2014 Sourcebook of Federal Sentencing Statistics, Table 33, Primary Drug Type of Offenders Sentenced Under Drug Guidelines, Fiscal Year 2014

<http://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2014/Table33.pdf>

**Fact: The majority of drug traffickers sentenced in federal court are not being sentenced pursuant to mandatory minimum sentences.**

Although, as noted above, drug trafficking offenses are among the most serious prosecuted in federal court, drug offenders make up only about 50 percent of the federal prison population. Thus, about half of the federal prison population is incarcerated for offenses other than drug crimes. Even among those convicted of drug offenses, only about 30% were subject to a mandatory minimum sentence at the time of their sentencing hearings.<sup>9</sup> This relatively low percentage is a result of two factors. First, it is not easy to trigger application of a federal mandatory minimum sentence. For example, to trigger the quantity-based ten year minimum penalty for heroin trafficking, the offense has to involve at least a kilogram of heroin.<sup>10</sup> That quantity provides approximately 10,000 individual doses and can have a street value of \$100,000 or more. Since only offenses involving substantial quantities trigger application of mandatory minimum penalties, in 2013 for example, only 63.7% of the drug trafficking defendants were convicted of an offense carrying minimum mandatory penalties.

More important is the second point: the majority of those convicted of offenses carrying mandatory minimum penalties received relief from and were not subject to application of those mandatory sentences at sentencing. As explained by the Sentencing Commission, "... less than half of the [drug offenders] (41.3%) remained subject to that penalty at sentencing."<sup>11</sup> This statistic demonstrates that the federal drug penalty structure is working as designed and those involved in drug trafficking are cooperating with law enforcement officials after arrest. In other words, a significant majority (58.7%) of drug traffickers earned a sentence reduction and relief from application of minimum mandatory penalties through the safety valve<sup>12</sup> or through substantial assistance motions,<sup>13</sup> both of which require that the offender provide information to law enforcement authorities about their criminal activity and others involved with them. Drug trafficking is highly profitable but inherently secretive organized criminal activity and compelling drug traffickers to provide inside information about the scope, participants, and inner workings of that activity is central to the ability of law enforcement to disrupt and dismantle drug trafficking organizations.

Thus, the remaining relatively small percentage of the overall federal prison population subject to mandatory minimum penalties (estimated by the Sentencing Commission in 2010 to

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<sup>9</sup> 2013 Quick Facts/Drug Trafficking Offenses and 2014 Sourcebook of Federal Sentencing Statistics.

<sup>10</sup> 21 U.S.C. § 841(b)(1)(A).

<sup>11</sup> United States Sentencing Commission, 2013 Quick Facts/Drug Trafficking Offenses, [http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick\\_Facts\\_Drug\\_Trafficking\\_2013.pdf](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick_Facts_Drug_Trafficking_2013.pdf)

<sup>12</sup> 18 U.S.C. § 3553(f)

<sup>13</sup> 18 U.S.C. § 3553(e)



be approximately 14.5%<sup>14</sup>) and convicted of drug offenses, trafficked in quantities sufficient to trigger mandatory minimum penalties but was ineligible for relief under the provisions mentioned above.

As noted above, many of those defendants likely could have avoided mandatory minimum sentencing by telling the truth to prosecutors through cooperation or safety valve-related opportunities, designed to apprehend drug traffickers polluting their communities.<sup>15</sup> Cooperation with law enforcement officers, as the Supreme Court has recognized, is a “deeply rooted social obligation” and the refusal to cooperate is “a badge of irresponsible citizenship”.<sup>16</sup>

***Myth Three: Only violent drug dealers deserve lengthy prison sentences.***

**Fact: It is well-established that drug trafficking is inherently violent and that all drug dealing is dangerous, taking the lives of thousands of Americans, destroying families, and undermining the moral fabric of our communities, regardless of whether any individual offender engages in an act of violence during the commission of a drug offense.**

Promoters of sentencing reform like to call drug trafficking crimes “nonviolent drug offenses.” This euphemism masks two realities: drug trafficking is inherently violent and it is extremely harmful to our nation.

Drug trafficking is inherently and necessarily violent from top to bottom. Street level traffickers deal with a clientele desperate to obtain their product whether it is heroin, methamphetamine, crack cocaine, cocaine, or prescription pills. Traffickers unwilling or unable to protect with violence that product and the large sums of generated from the sale of that product, quickly find themselves out of business or worse. Those further up the distribution chain (i.e., those dealing with quantities of illicit drugs worth hundreds of thousands, and even millions of dollars or the cash proceeds from the sale of those drugs) have an even greater need and incentive to engage in violence to protect their interests. And their violent acts aren’t pretty: they range from beheadings to drive-by shootings which often result in the death or maiming of innocent bystanders, including children.

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<sup>14</sup> United States Sentencing Commission, Quick Facts Mandatory Minimum Penalties, [http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick\\_Facts\\_Mandatory\\_Minimum\\_Penalties.pdf](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick_Facts_Mandatory_Minimum_Penalties.pdf)

<sup>15</sup> 18 U.S.C. § 3553(f); 18 U.S.C. § 3553(e).

<sup>16</sup> *Roberts v. United States*, 445 U.S.552, 558 (1980).

Even if illicit drug trafficking could be conducted without violence, the underlying conduct—placing highly addictive and dangerous drugs on the street—is extremely harmful to our nation. We are in the midst of one of the worst drug epidemics in our history. Fatalities through overdoses of illegal drugs are skyrocketing: There has been “a 5-fold increase in the total number of [heroin] deaths” from 2001 to 2013.<sup>17</sup> In real numbers, in 2013 alone over 8,000 people died from heroin overdoses and nearly 5,000 died from cocaine overdoses.<sup>18</sup> Perhaps even more shocking, death rates from prescription opioid pain reliever (OPR) overdoses quadrupled during 1999–2010.<sup>19</sup>

The prescription pill problem is so pervasive and deadly that the June 15, 2015, cover story for *Time*, in its feature coverage about opioid pain relievers, was entitled: “*They’re the most powerful painkillers ever invented. And they’re creating the worst addiction crisis America has ever seen.*”<sup>20</sup>

And while the number of deaths attributed to these substances is shocking, it is only the tip of a pyramid of harm to our nation: the pain of addiction, the crime generated, the lost productivity, and the costs to the health care system are immeasurable.

The families of victims of the drug trade are too often the silent voices of opposition against the violence of the drug trade. They know the poison that the drug trade pours into their communities. They know the street violence that the drug trade spawns, even at their own door steps. They know the fundamental mistruth that lies in characterizing drug-trafficking as “non-violent.” The venality of the underlying crime of drug trafficking is not diminished, even when the underlying acts associated with the crime did not directly involve so-called “traditional” acts of violence.

Behind the sentimental appeal of the circumstances of some defendants serving long mandatory sentences is the “rest of the story.” In nearly every instance, the defendant has been convicted multiple times before and could have avoided a longer sentence, as mandated by statute or the sentencing guidelines, by cooperating with law enforcement officials attempting to identify their supplier(s) and others involved in the criminal activity. Instead they elected not to assist law enforcement and instead protected fellow coconspirators and maintained their ties to the trafficking network.

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<sup>17</sup> National Institute on Drug Abuse, Overdose Rates (revised Feb. 2015)

<http://www.drugabuse.gov/related-topics/trends-statistics/overdose-death-rates>

<sup>18</sup> *Id.*

<sup>19</sup> Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report, Increases in Heroin Overdose Deaths – 28 States, 2010-2012

<http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6339a1.htm>

<sup>20</sup> <http://time.com/magazine/#3908648/why-america-cant-kick-its-painkiller-problem/>

***Myth Four: Federal mandatory minimum sentences are arbitrary; their reduction will result in greater fairness and do little to disturb public safety.***

**Fact: Slashing federal mandatory minimum sentences will undermine the ability of law enforcement officials to dismantle drug trafficking organizations.**

Slashing minimum mandatory penalties will threaten the prosecution of many of the most dangerous and high level criminals involved in drug trafficking by undermining the cooperation incentive that the current sentencing structure creates. Many defendants possess critical information about drug trafficking operations and conspiracies. If they cooperate and provide substantial assistance, they may be entitled to reductions in their sentences. However, many drug trafficking defendants will be less inclined to cooperate and share information if their minimum sentencing exposure is substantially reduced. Significant investigative information will be lost in individual cases that, collectively, will seriously undermine the federal capacity to destroy major drug trafficking rings in America. Experienced law enforcement officials know that the significance and utility of cooperation is not based upon the total number of defendants who cooperate, but *which* defendants cooperate and the quality of the information these defendants can provide. Mandatory minimum sentences often encourage defendants in possession of the most valuable information to cooperate.

One of the key reasons law enforcement has been successful in dismantling large and violent drug gangs operating in the United States over the last 25 years has been through the cooperation of drug traffickers who have faced the potential of long statutorily mandated prison sentences—prison sentences that could only be reduced by providing key information to law enforcement. As noted above, the current sentencing scheme has been extremely effective in incentivizing drug traffickers to provide information and testimony against their co-conspirators in order to avoid being subjected to long mandatory minimum prison sentences. In 2013, 48.5% of defendants facing mandatory minimums were relieved of the application of those statutory penalties because they provided information to law enforcement.<sup>21</sup> Many of those remaining defendants were at or near the top of their organization or refused to cooperate, or both.

The current system does two vital things justly and efficiently: it incarcerates the worst of the worst drug traffickers for long periods of time, and it persuades those who do not otherwise want to cooperate by providing information to law enforcement to do so. The cooperation generated by federal mandatory minimums has repeatedly solved and prevented numerous drug trafficking crimes, as well as numerous violent and other serious crimes throughout the country. Law enforcement professionals know through experience that many

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<sup>21</sup>United States Sentencing Commission, [2013 Quick Facts/Drug Trafficking Offenses](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick_Facts_Drug_Trafficking_2013.pdf), [http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick\\_Facts\\_Drug\\_Trafficking\\_2013.pdf](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick_Facts_Drug_Trafficking_2013.pdf)

of those apprehended for drug trafficking offenses also have useful information about other criminal activities that can assist investigators in solving non drug-related offenses.

***Myth Five: Minimum sentences for drug dealers should be reduced because drug sentences have a disparate impact on minorities.***

**Fact: High-level drug trafficking is not committed by any group that mirrors the nation's demographics in terms of age, gender, or race and prosecutions can't be expected to parallel those demographics.**

Young and middle-age minority males are convicted and incarcerated at a higher rate than their relative numbers in the general population. That said, there is no evidence that there is any racial, gender, or age bias in the enactment or enforcement by federal authorities of our nation's drug laws. Drug trafficking is an inherently violent, harmful and serious criminal activity and those who engage in it should be held responsible.

Moreover, and perhaps more importantly, the neighborhoods and communities in which many minorities live are disproportionately victimized by the devastating effects of drug crime, through addiction, gun violence, property crime, and open air drug markets. These conditions have attracted federal efforts to prosecute large-scale drug trading and to relieve the destruction caused by drug trafficking. Short-sighted proposals to relax our nation's drug laws, like the Smarter Sentencing Act, will do nothing more than release dangerous drug dealers back to the communities on which they prey. With recidivism rates for convicted offenders at nearly 77 percent, according to the Bureau of Justice Statistics,<sup>22</sup> it is highly likely that many of these offenders will revert back to drug dealing once released from prison with the predictable increase in crime.

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<sup>22</sup> Bureau of Justice Statistics, Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010, April 22, 2014. <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4986>

***Myth Six: Reducing the sentences for drug dealers will reduce our taxes.***

**Fact: It's easier to quantify the costs of incarceration than the value of public safety.**

The true measure of success in law enforcement efforts, whether it involves drug offenses or other crimes, is the crime rate, which remains at historic, low levels. We risk rolling back the clock and elevating the crime rate once again by employing shorter sentencing periods for the most serious drug traffickers and career offenders. This will result in the early release of dangerous drug offenders back on our streets, including those who use guns and violence. Proposal to relax our nation's drug laws also will remove the incentive which exists to offenders under the current scheme to offer assistance to law enforcement in investigations of high-level drug traffickers.

Since the enactment of the current minimum mandatory penalty scheme, violent crime has been more than cut in half across the country. The [FBI reports](#)<sup>23</sup> that the rate of violent crime—murder, rape, robbery and aggravated assault—per 100,000 people was cut from 758.2 in 1991 to 367 in 2013. Gains in the reduction of property crime have been comparable: the property crime rate—including burglary, larceny and motor vehicle theft—was cut from a rate of 5,140 in 1991 to 2730 in 2013. In short, while some complain of over incarceration, putting, and keeping, criminals in prison pays societal dividends to good and honest citizens: thousands of lives have been saved and millions and millions of dollars in property crimes have been avoided.

In addition, the costs associated with the incarceration of high-level drug traffickers are insubstantial compared to the magnitude of their crimes and consequences. Drug traffickers commit not only violent crimes themselves, but also spawn a wide range of crimes by addicts desperate for their product. Further, federal spending on prisons constitutes a very small percentage of overall federal spending. While those expenditures have done much to protect our communities, they are not the structural causes of debt and deficit problems. If the sentences for drug dealers are reduced further, massive debt and deficit challenges will remain, but the impact on crime rates will be inflammatory.

Promises of taxpayer savings through federal sentencing reductions are illusory in other respects. According to the Congressional Budget Office ("CBO"), the Smarter Sentencing Act will increase federal spending on entitlement and benefit programs by \$1 billion and reduce revenues by \$42 million over ten years. The CBO expects that many of the individuals released early would receive certain federal benefits sooner than they otherwise would be eligible to receive them. Additionally, there are the substantial and incalculable costs from the higher

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<sup>23</sup> Federal Bureau of Investigation Crime Statistics, <https://www.fbi.gov/stats-services/crimestats/>

crime rates that will inevitably flow from the return of numerous federal drug traffickers to our communities at a significantly faster rate and the non-prosecution of many more. The CBO projections do not take into account the additional costs of re-investigating, re-capturing and re-prosecuting the drug-dealing offenders who, as recidivism rates demonstrate, will commit new crimes. Nor do the CBO projections encompass the untold human suffering created by the increase in addiction, or the spread of crime generated by addicts desperate to feed their habits.

## **Conclusion**

The current federal sentencing system and its penalties for drug trafficking represent a far better approach toward justice under law than the alternatives currently under consideration by the Congress.