



Office of the Attorney General
Washington, D. C. 20530

February 14, 2018

The Honorable Charles Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This letter presents the views of the Department of Justice on S. 1917, the “Sentencing Reform and Corrections Act of 2017.” S. 1917 presents issues of very great importance to the public safety of the United States and will impact a number of cases.

The legislation would reduce sentences for a highly dangerous cohort of criminals, including repeat dangerous drug traffickers and those who use firearms, and would apply retroactively to many dangerous felons, regardless of citizenship or immigration status. In my opinion, if passed in its current form, this legislation would be a grave error.

Overview

We are in the midst of the largest drug crisis in our nation’s history. Sixty-four thousand Americans died of drug overdoses in 2016; in 2017, it appears the death toll was even higher. Meanwhile, the average federal sentence for drug trafficking declined by nearly 20 percent from 2009-2016. The murder rate skyrocketed by a combined 20 percent in 2015 and 2016. Violent crime increased by nearly seven percent over the same period—the two largest such increases in a quarter of a century—reversing long-term downward trends. At the same time, the federal prison population, which includes some of the most dangerous criminals in America, has dropped to its lowest level since 2004, declining more than 16 percent since 2013.

Please know that this Department of Justice, and the entire United States law enforcement community, is determined to reduce the homicide rate in America, reduce the violent crime rate in America, and reduce opioid overdose deaths in America. This is not mere talk, but our firm intent to carry out President Trump's Executive Order to us – reduce crime in America. At this very moment, our Federal investigators and prosecutors are presenting charges against violent gang members, cartel leaders, and pill mill doctors who are responsible for thousands of deaths. We are resolutely focused on purveyors of deadly illicit drugs like fentanyl and criminals with guns.

Summary of Specific Concerns

While the administration has not had the opportunity to engage in the formal process for reviewing legislation and thus will not be able to provide a detailed analysis of its objections at this time, we can provide the following preliminary comments:

- The bill weakens penalties for repeat, serious drug traffickers, including those who used a gun and those with significant criminal histories, and would reduce the sentences of and potentially allow for the early release of many dangerous felons in prison now, including heroin traffickers, firearms felons, and those who are members of violent drug cartels and gangs like MS-13.
- As it relates to armed drug dealers and other violent criminals, this bill would allow judges to retroactively reduce sentences for dangerous firearms offenders. In so doing, it risks putting the very worst criminals back into our communities and eviscerates the lawful results of either structured plea agreements or trials that likely involved the testimony of cooperating defendants and victims.
- Retroactive application of the law is not only unwise, but it adversely impacts limited prosecutorial resources in combatting current problems such as rising violent crime, transnational criminal organizations like MS-13, and the opioid epidemic. Collateral litigation over retroactive application of our laws could paralyze U.S. Attorney's Offices for months if not years, not to mention clog up the courts' dockets. The Department's prosecutors should be devoting their time to investigating and trying current cases instead of re-litigating cases that were lawfully closed years earlier.
- When combining the bill's limitation on application of the ten-year mandatory minimum with the reductions in sentences provided for under Title II, a serious drug trafficking offender originally facing a ten-year mandatory sentence could easily have that sentence reduced to just over two years.

The Department stands ready to work with the Committee to address these and other concerns.

I would strongly urge the Senate to consider carefully the potential ramifications of this legislation in its current form. In recent years, convicted drug traffickers and other violent criminals have received significant sentencing breaks from the federal courts and the United States Sentencing Commission. Passing this legislation to further reduce sentences for drug traffickers in the midst of the worst drug crisis in our nation's history would make it more difficult to achieve our goals and have potentially dire consequences. In addition, as you know, the Administration supports helping former inmates who have served lawfully imposed sentences and have demonstrated a commitment to a better life, and is working closely with Congress to achieve a responsible reform along these lines. Respectfully, this legislation runs counter to this serious Administration-wide effort.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Sessions", written over a large, stylized flourish.

Jeff Sessions
Attorney General

cc: Hon. Dianne Feinstein