Fairness for All: Criminal Justice Reforms would Improve Law Enforcement and Public Safety

By Brett Tolman, Paul Cassell and Eric Benson – Washington Times
December 1, 2015

As Congress gets closer to passing federal criminal justice reforms, it is now more important than ever for those who have served in federal law enforcement to weigh in and contribute to a thoughtful analysis of policy proposals that are moving to the House and Senate floors. Otherwise, good policy can too easily fall victim to politics and demagoguery.

As a former U.S. attorney, three former assistant U.S. attorneys and a former federal judge, we hope to focus the discussion on the substance of good policy reforms.

There are deficiencies in the administration of justice in the federal system. The reality is today's federal system is all too often mired in the pursuit of lower-level offenders who are too frequently over-punished by long sentences that do not match the gravity of their crimes. The result is a growing prison population that, ironically, with its rising costs, is becoming a real and immediate threat to public safety. The growing prison budget consumes an ever-increasing percentage of the Department of Justice budget every year, which results in significant reductions in law enforcement resources.

S. 2123, the Sentencing Reform and Corrections Act of 2015, is the result of a very thoughtful analysis of these deficiencies that was informed by at least one former attorney general, and former U.S. attorneys and assistant U.S. attorneys.

In fact, we endorsed this bill because it makes some of the most needed changes to the front and back ends of the federal criminal justice system. And we are not alone. Former Attorney General Michael Mukasey testified in support of this bill last month, and several of our former colleagues, including former Deputy Attorney General Larry Thompson, have joined us in signing a "Policy Statement of Former Federal Prosecutors and Other Government Officials" that describes the need for meaningful federal criminal justice reform and formally endorses S. 2123.

On the front end, S. 2123 more effectively targets mandatory minimum sentences to higher-level drug offenders, helps to preserve the ability of prosecutors to use the Armed Career Criminal Act as a tool in the face of a recent series of Supreme Court decisions that struck down many of its provisions, and provides additional new tools to help law enforcement target violent criminals with enhanced penalties.

The bill provides a more accurate focus on the role of the drug offender instead of drug quantity alone, and increases a judge's ability to utilize limited discretion when determining appropriate sentences. This is the only way to more effectively tie the longer mandatory minimum sentences to higher-level drug offenders and violent criminals.

It not only preserves the five- and 10-year mandatory minimum sentences for drug offenders, but increases the scope of mandatory minimums to include a larger percentage of federal offenders, and expands enhanced penalties to offenders with prior serious violent felony convictions so prosecutors can use the drug laws to target serious violent felons.

Further, the bill preserves the stacking of firearms offenses but avoids the Weldon Angelos-type "outlier" problems that cause malfunctions of the system and other unintended consequences, and extends its reach to include firearms offenders with similar prior state-level convictions so prosecutors can use the gun laws to target serious violent state felons. It also raises the statutory maximum for unlawful possession of firearms.

It is important to note that applying these reforms retroactively will not eliminate all mandatory minimum sentences these offenders are subject to or any additional penalties the judges previously imposed. A drug dealer using a gun will still be potentially subject to a significant mandatory minimum sentence for use of the firearm plus additional time for the underlying drug offense. And since the Department of Justice has committed to a case-by-case review to ensure that any resentencing is done carefully and with transparency, offenders who pose a threat to public safety will not be released early.

On the back end, S. 2123 puts a new focus on rehabilitation and correction, and establishes risk and needs assessment as the cornerstone of more effective recidivism reduction programming, and a more efficient federal prison system.

Its risk reassessment provision is vital. We need to identify dynamic risk factors and indicators of real change in thinking and behavior, make prisoners demonstrate this change, and measure it over time with a standard, objective instrument as they complete their programs. This will be a major advancement for the federal system.

The bill will incentivize prisoners to not only participate in programs and jobs, but to actually reduce their risk of recidivism. Higher-risk prisoners will have to demonstrate substantial risk reduction — in the reassessments — to progress down into lower-risk categories and become eligible to utilize their earned time credits. And lower-risk prisoners will be eligible to spend up to 25 percent of their sentences in home confinement and community supervision, which will produce significant savings. This is remarkable as the most current cost of post-conviction supervision is $3,909 per year, as opposed to $30,621 per year for imprisonment, and $28,999 for residential re-entry centers. This is a much more cost-effective way to supervise lower-risk offenders.

Finally, the types of reforms contained in S. 2123 have proven successful in a number of states across the country. They have proven to increase public safety while reducing costs. In Texas, for example, since similar legislation was enacted in 2007, the state has closed three prisons, saved taxpayers an estimated $2 billion, and enjoys its lowest crime rates since 1968. And it is important to note that if this can be accomplished in the states — which prosecute and imprison a much higher percentage of dangerous, violent criminals such as murderers and rapists — then it is achievable in the federal system.

Congress must pass this legislation because it is good for federal law enforcement and public safety. We deeply believe in notions of fairness in the administration of justice, and this bill will more effectively ensure that justice shall be done.

Brett Tolman is a former U.S. attorney and assistant U.S. attorney. Paul Cassell is a professor of criminal law and a former federal judge, associate deputy attorney general with the Department of Justice, and assistant U.S. attorney. Eric Benson is a former assistant U.S. attorney.

http://m.washingtontimes.com/news/2015/dec/1/brett-tolman-paul-cassell-eric-benson-criminal-jus/?utm_source=RSS_Feed&utm_medium=RSS