

BERNARD B. KERIK
POLICE COMMISSIONER - CITY OF NEW YORK (RETIRED)

February 16, 2016

The Honorable Tom Cotton
U.S. Senator
United States Senate
124 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Cotton:

I would like to offer comment concerning your recent opposition to the current Sentencing Reform and Corrections Act, and to respond to your public statements that it would be “dangerous for America” and reverse the last “25 years of falling crime rates.”

I ran the two of the largest law enforcement agencies in our country: the NYPD, and New York City Correction Department (including Rikers Island) under Mayor Rudolph W. Giuliani. Together we were directly responsible for some of our nation’s most substantial and historic crime reductions. Unfortunately, I have also seen our federal criminal justice system from the inside as well, which I think makes me uniquely qualified to comment on all aspects of this issue. I strongly disagree with what you are reported to have said, but because I greatly respect your service to our country, I wanted to reach out to you directly.

Some of your statements in recent days strike me as empirically flawed. You said, for example, “Since 1991, the nationwide violent crime rate has dropped 49 percent. Murder rates have dropped 52 percent. Robbery, a 59 percent drop. This astounding reduction in crime was not an accident. It was the result of higher mandatory minimums put in place in the 1980s coupled with vigilant policing strategies pioneered by Rudy Giuliani and other American mayors and law enforcement officials.”

The reality is that the federal mandatory minimum sentences established in the early 1980s, had and has, little if anything to do with the various state and city violent crime and murder statistics in America. It wasn’t until Mayor Giuliani’s 1994 election and the NYPD’s creation of the COMPSTAT policing program, that murder and violent crime began to plummet.

COMPSTAT, short for “computer statistics,” was a data collection and accountability program by which crime statistics were collected daily. That “real time” data was used to assign staffing and resources to high crime areas to address violent and other crime. I used the same accountability model to address inmate-on-inmate violence on Rikers Island beginning in 1995. After averaging 100 – 150 stabbings and slashings per month, we were able to achieve a 93 percent reduction in violence over a five-year period. Mandatory minimums had nothing to do with that reduction in

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violence.

COMPSTAT or similar crime fighting systems or tools were later used in other major police departments around the country, as well as other government agencies in pursuit of efficiencies and management accountability.

Whereas the nation's violent crime rate since 1991 has dropped 49 percent and murder rates have fallen 52 percent, during that same period, New York City experienced reductions of close to 80 percent and 85 percent respectively. Again, federal mandatory minimums had little if anything to do with these reductions.

In fact, New York has seen the most substantial crime reductions in the entire nation, and at the same time, it's state prison population has been reduced by approximately 22 percent since 2000, and the current population at Rikers Island and New York City's jail system is close to 10,000, down from about 22,000 while under my command from 1995 until August 21, 2000.

The theory that federal mandatory minimum prison sentences are necessary to keep our streets safe is simply false. I understand and respect your concerns and would enjoy the opportunity to discuss them with you in person. No one, least of all me, wants violent criminals roaming their communities. We are all better off when crime is low. We can't, however, close our eyes to the fact that many prisoners we send away for 10, 15, or 20-year sentences are going to be released eventually. It is in the interests of everyone to make sure they don't come out worse – harder, tougher, and meaner - than when they went in.

Before I give you a few ideas on how I believe you and Congress could better the system, I must respond to one other thing: your description of the Senate bill as “a criminal leniency bill” instead of a criminal justice reform bill. I must admit it makes for a catchy sound bite, and it's a perfect line to instill fear in your constituents and those colleagues who fear that they may appear like they're being soft on crime. As anyone that's as familiar with our criminal justice system as I am, or who has worked within, or lived within a prison knows all too well, there is nothing lenient about the deprivation of freedom. Nothing.

As for the reductions in the mandatory minimums that could possibly result in a federal prisoner's early release, the bottom line is that a returning inmate is going back to the community from which they came, and they are doing so far worse than when they arrived because the laws established by Congress aren't followed. Those men and women are supposed to be provided with recidivism reducing programs, education, and possible vocational training to assist them with a successful transition back into society, so that they will not have to revert to crime.

There is a reason, as you have stated, that more than half of those released are rearrested within a year, and 77 percent are rearrested within 5 years, but it has nothing to do with mandatory minimums. It is because we send these people to prison demanding that they act like men and women, but treat them like children and animals. They are demeaned, demoralized, and degraded, and we replace whatever societal values they had with institutional ones. The longer anyone sits in prison, their chances for a successful transition back into society diminishes with each passing day.

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There are very few if any real recidivism reducing vocational and adult continuing educational classes or programs, for which Congress puts money in the budget. From personal insight, let me tell you just a few classes that I have known to be available: chess, checkers, and quilting. There are men convicted of real estate fraud that teaches other convicted felons real estate. Worse than that hypocrisy, is that even if everyone of those men eventually qualified to become master realtors, their felony convictions precludes them from ever getting a real estate license. So, their “recidivism-reducing” classes are completely useless.

Being the veteran that you are, and for which I have great admiration, I think you would be appalled at how many of our veterans are treated in prison, especially those who suffered from PTSD, and turned to drugs for help. Many of them are eligible for veterans’ educational assistance but are not afforded college or vocational access while their incarcerated. This is ludicrous. These men are sitting around wasting away, doing absolutely nothing, and could use the benefits they deserve and have earned to help them before they are released.

A congressional bill to change that could be one of the most productive pieces of legislation Congress has ever moved on criminal justice. We give federal prisoners 12 months incentivized good time when they complete a residential drug or alcohol program. Why can’t we offer our veterans the same opportunity if they use their veterans’ educational assistance for some benefit while they’re incarcerated? It’s the least we can do.

In closing, I urge you to reconsider your position on the Sentencing Reform and Corrections Act. Minor reductions in the mandatory minimums will not reverse our nation’s crime reductions. What will however, is the continuing U.S. incarceration rates that surpass China and Russia’s that are creating a permanent underclass of American society that is deprived of civil and Constitutional rights eternally regardless of their crime, and whose ability to return to the American workforce is diminished by 70 – 80 percent.

Let me emphasize that this is only made worse, by our failure to abide by our own laws and provide federal prisoners with real education or recidivism reducing programs that would assist them in successful transitions back into society and lessen their need to revert to a life of crime.

We need to change our conspiracy laws, and add mens rea requirements to federal law, and if we allowed judge’s to judge with common sense and integrity, mandatory minimums would be a non-issue.

Lastly, I say this with the upmost respect, and as the only person in our nation’s history with my background and unparalleled successes and achievements in law enforcement that has ever lived within the walls of a federal prison: You cannot fully understand this issue until you have seen it for yourself.

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I urge you to visit a prison. Go to a minimum-security prison where the inmate classification requires a sentence of ten years or less, and the inhabitants are classified as “non-violent.”

I'm confident you'll meet men that fall into that category of those that could be released under the Sentencing Reform and Corrections Act, but you will also notice something else. There is no fence around the compound, or no locks on the doors. There's no violence... just a bunch of guys sitting around doing nothing, but just wasting away.

According to the U.S. Federal Bureau of Prisons, there are 33,000 minimum-security prisoners in the U.S. prison system. That comes at an annual cost of \$990 million, not counting the hundreds of millions if not billions over the reported cost of incarceration in lost taxes and economic spending, for those that have been removed from, and never return, to the American workforce.

Something is definitely wrong with our criminal justice system, but mandatory minimums are the least of our problems. If you are serious about fixing the United States criminal justice system and keeping our communities safe, the Sentencing Reform and Corrections Act is just the tip of the iceberg.

Again, thank you for your service to our nation, and God Speed.

Sincerely,



BERNARD B. KERIK

c: U.S. Senator Chuck Grassley
U.S. Senator Orin Hatch
U.S. Senator David Purdue
U.S. Senator Jefferson Sessions