



Correcting Corrections in America™

January 2, 2014

The Honorable Patrick Leahy, Chairman
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Chuck Grassley, Ranking Member
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Bob Goodlatte, Chairman
United States House of Representatives
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable John Conyers Jr., Ranking Member
United States House of Representatives
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Sheldon Whitehouse, Chair
United States Senate
Committee on the Judiciary: Subcommittee
on Crime and Terrorism
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable James Sensenbrenner Jr., Chair
United States House of Representatives
Committee on the Judiciary: Subcommittee Crime,
Terrorism, Homeland Security, and Investigations
2138 Rayburn House Office Building
Washington, DC 20515

**RE: S. 1690: Second Chance Reauthorization Act of 2013
H.R. 3465: Second Chance Reauthorization Act of 2013**

Dear Senators and Representatives:

We are asking your judiciary committees (“Committees”) to consider our feedback regarding the proposed legislation promulgated in S.1690 and H.R. 3465, Second Chance Reauthorization Act of 2013 (collectively referred to as the “Bills”). Enactment of the Bills with the recommended modifications would significantly contribute to the reduction of prison costs without compromise of public safety.

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Our unique logo represents the bars of prison, which are not uniform in size, but rather randomly unequal - illustrative of the enormous diversity and inequality existing in our correctional system today. The colors used are the colors that represent us as a nation and they provide a sense of inclusiveness to all. We are all in this together as Americans - advocating needed change to bring sense to the sentencing, custody and release processes for our nation's incarcerated.

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As you know, our federal prison system has been experiencing unsustainable growth both in terms of the cost of incarceration and the number of incarcerated individuals. At nearly 40% over capacity, our federal prisons have been overcrowded for years and are projected to face more overcrowding in the coming years.

Both the judicial and legislative branches of our government have been focused on different initiatives to reform our criminal justice system evidenced by the “Smart on Crime” initiative, S.619, Justice Safety Valve Act of 2013, and S.1410, Smarter Sentencing Act of 2013. In conjunction with these initiatives and others like S. 1783, The Federal Prison Reform Act, there needs to be a clear and practical plan to reduce the prison population already in custody which should include leveraging existing programs the Federal Bureau of Prisons (“BOP”) can better utilize to reduce overcrowding. For example, **minor language changes** in “Sec. 4. Federal Reentry Improvements” of the Second Chance Act Bills could have a material impact on prison costs by reducing the elderly inmate population while improving the reentry of all offenders. We urge the Committees to evaluate our recommendations as a prelude to the markup of the Bills.

Out4Good Ltd. (“Out4Good”) is a nonprofit organization that helps improve the policy and decision-making processes of non-governmental organizations (“NGOs”), educational institutions, businesses, and government policy makers through its collection and analysis of relevant data. As a nationally recognized expert with regard to the policies of the BOP, Out4Good mentors and pairs other NGOs, educational institutions, businesses, and government policy makers in an effort to address the numerous issues that affect the incarcerated.

According to a memorandum by the Office of Inspector General (“OIG Memorandum”) dated December 11, 2013, the growing number of elderly offenders is an ever-increasing challenge for the federal prison budget because older offenders have higher medical costs, which make them roughly two to three times more expensive to incarcerate than their younger counterparts. The OIG Memorandum further stated the population of offenders over the age of 65 increased by 31 percent, from 2,708 in FY 2010, to 3,555 in FY 2013.

While previously employed by the Department of Justice, the undersigned executive director of Out4Good had more than two decades of experience working with the BOP in case management related capacities with firsthand experience placing offenders in the Elderly Offender Program (“EOP”) mandated under the Second Chance Act of 2007 (“Second Chance Act”). The EOP enabled the BOP to transfer eligible non-violent elderly offenders to home detention. While the pilot program was meant to reduce elderly offenders’ period of incarceration and to result in a substantial net reduction of costs to the federal government, the biggest shortcoming of the Second Chance Act was the narrow pool of elderly offenders due to the eligibility restrictions. In fact, during the 2-year pilot program, there were only 71 offenders transferred to home detention.

A minor language change in the Second Chance Act could dramatically increase participation in EOP. Specifically, the Second Chance Act mandates an elderly offender to serve “the greater of 10 years or 75 percent of the term of imprisonment to which the offender was sentenced” in order to qualify for program participation. Though the Bills have increased eligibility by reducing said 75 percent to 66 percent in conjunction with the reduction in the age requirement to 60 years old, the Bills have not significantly widened the pool because offenders serving sentences less than approximately 12 years would be totally excluded from program consideration. In other words, an offender must be serving a sentence of more than 12 years to even be considered for EOP participation. At the minimum, a reduction from 10 years to 5 years or possibly removing the mandatory minimum would have a profound impact in increasing the pool of eligible candidates for consideration.

As an alternative to address this issue and widen the pool of elderly offenders, the Bills should add a clause in Section 4(b)(1)(B)(ii) specifying that “greater” is replaced with “lesser”. Effectively, such a change will have a profound impact on the number of offenders that would qualify for EOP participation. **However, it is important to understand by doing so does not translate to opening the floodgates for every elderly offender's early release. Rather, such a change would allow qualified elderly offenders to be considered for EOP participation sooner. Once eligible, the BOP's Central Office must still conduct a risk assessment to ensure the offender is appropriate for community placement. The approval is processed only after the institution has submitted a release plan to the United States Probation Office of a viable release residence. Moreover, as a condition precedent to being approved, a medical clearance needs to be obtained from the Chief Clinical Officer and the offender needs to be able to demonstrate the ability to pay for medical expenses incurred while on home detention under EOP.**

Out4Good staff have estimated there are approximately 3,000 inmates in the entire BOP who are 60 years old or older and have sentences over 12 years. Some of this population has already been considered and denied EOP placement while many others will be excluded based on a history of violence, detainers and unsuitable release plans. However, reducing or eliminating the 10-year mandatory eligibility will increase the pool of eligible candidates by a conservative estimate of over 5,000 offenders.

The cost savings for the federal government between not having to house an offender and not having to shoulder the offender's medical costs while incarcerated would be significant. BOP data for FY 2011 showed the average cost of incarcerating a prisoner in a BOP medical referral center was \$57,962 compared with \$28,893 for an inmate in the general population. To put this into EOP context, for every 10 offenders from the general population placed in the EOP, there would be net savings of approximately \$300,000 per year and for every 100 offenders, \$3,000,000 per year. For every 10 offenders from a BOP medical referral center, there would be a net savings of approximately \$580,000 per year, and for every 100 offenders, \$5,800,000 per year. Given these scenarios, EOP placement of 10 to 20 percent or 356 to 712 of the 3,555 elderly offenders could offer approximately \$10 to \$20 million for those in the general population, and \$40 million for those at a medical

center, of cost savings to the federal government. Something seldom considered is the frequency of outside medical trips of elderly offenders from secure facilities to visit community medical specialists. These visits are not only costly, but require staff escorts who would be better utilized to provide institutional security and staff support within the institution.

Furthermore, a clause should be added to Section 4(b) of the Bills requiring Good Conduct Time ("GCT") to be credited with the actual time served when determining the EOP eligibility date so elderly offenders may apply for the program sooner than the time served specified under the Second Chance Act. Since GCT is a sentence reduction mechanism to release inmates early to the community, it would be practical to credit it towards program eligibility. This would also expand the program by enabling offenders to apply for the program sooner and consequently result in a substantial net reduction of costs to the federal government.

An additional clause should be added to Section 4(b) of the Bills mandating the BOP to process EOP referrals at least two months in advance of the EOP eligibility date. The current BOP worksheet in the policy is structured such that the application can only be sent for processing once the eligible offender has served 10 years. Based upon the experiences of Out4Good's executive director, the average processing time of referrals to EOP is 3 to 4 months. Additional time is then incurred for the coordination of home detention, which increases costs since beds are a premium in our crowded federal prison facilities. Referrals can be processed in advance of the eligibility date so those approved can be placed in the community immediately upon eligibility. Reducing by several months an offender's incarceration would translate into a material cost savings and also free up much needed bed space. In monetary terms, at approximately \$80 per offender per day, saving 120 days by this simple mandate per offender equates to a cost savings at any given time of approximately \$100,000 at 10 offenders and approximately \$1,000,000 at 100 offenders.

Another method to address the increasing cost of incarceration is to improve the reentry of offenders. Studies show successful reentry reduces the likelihood of recidivism. We need to put a stronger emphasis on rehabilitating our criminals, rather than incarcerating them. A 12-month placement term for reentry should be the norm, not the exception that has been in practice. According to Senator Leahy, "Public safety demands we do all we can to ensure when they are released they are prepared to become productive members of society." Specifically, a clause should be added to Section 4(c) of the Bills that requires the BOP to fully utilize its authority under the Second Chance Act to allow offenders to serve the last 12 months of their sentence in community corrections. According to a Government Accountability Office ("GAO") report dated February 2012, offenders serve an average of less than 4 months in community corrections. Clearly, the BOP has failed to honor the spirit of the statutory increase in reentry placement term under the Second Chance Act. The Bills should have clear language specifying the maximum reentry placement term for offenders, to the extent practicable, in community corrections. The Bills should also contain a provision that part of the millions of dollars in savings from this change should be reinvested in a build out of Residential Reentry Center ("RRC") beds, especially in metropolitan areas, to absorb offenders returning to our communities, and

development of more reentry programs to provide vocational and education training during the reentry placement term.

Further, an additional clause should be added to Section 4(c) of the Bills modifying eligibility for home confinement. According to the Second Chance Act, an offender can be placed “in home confinement for the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months.” The word “shorter” should be stricken, freeing up bed space in our overcrowding prison facilities by placing low risk offenders home sooner which will increase RRC bed space for high risk offenders. The GAO report cites that according to BOP officials, the ability to increase RRC placement terms are limited due to a lack of bed space. Allowing inmates the possibility of home confinement for 6 months or more for a sentence over 60 months will not only yield substantial cost savings, but also free up beds in structured RRC contracts that the BOP can utilize to increase RRC placement terms.

Another methodology to reduce the overcrowding of our prison facilities is to clarify in the Bills that a RRC meets the definition of a penal or correctional institution as defined in 18 USC § 3621(b), and therefore qualifies as a place of imprisonment. As such, the Bills can encourage the BOP to place more non-violent, low risk offenders serving shorter sentences directly in evidenced-based programs at RRCs from the initial designation.

Lastly, the Bills should mandate the BOP to update Program Statement 7310.04: Community Correction Center Utilization and Transfer Procedure which was last updated and released on December 16, 1998. This policy statement provides guidelines to BOP staff regarding the effective use of Community Corrections Centers (“CCC”). The original Second Chance Act has language directly impacting this policy in several areas. However, since its passage more than 6 years ago, the Program Statement has not been updated to incorporate pertinent language from the Second Chance Act.

In conclusion, it is clear our country is at a precipice requiring criminal justice system and prison reform. The unacceptable level of crowding in our prison facilities coupled with the rising costs of incarceration threatens public safety and security. Important steps such as the ones referenced above can be taken to reduce our prison population and recidivism through effective rehabilitation of our prisoners without compromising public safety.

We are eager to assist your Committees in any way with this critically important legislation, and to share our views as other bills are introduced or move through the Committees. We look forward to helping achieve passage of legislation that will bring reform to our overcrowding prison system.

Should you have any questions or would like further information about our recommendations, please do not hesitate to contact me directly at (212) 461-2252.

Very truly yours,
Out4Good Ltd.

A handwritten signature in black ink, appearing to read "Jack Donson", with a long horizontal flourish extending to the right.

Jack T. Donson
Executive Director
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