

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a serif font, centered between two horizontal blue bars.

NEW YORK
CITY BAR

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January 21, 2016

President Paulette Brown
American Bar Association
321 North Clark Street
Chicago, IL 60654
abapresident@americanbar.org

Re: ABA Lobby Day, Washington, D.C.

Dear Ms. Brown:

As I make plans to attend the American Bar Association's mid-year meeting next month in San Diego, another upcoming event comes to mind: ABA Lobby Day.

Please consider including sentencing and criminal justice reform as part of the agenda for this year's Lobby Day. In light of growing bipartisan recognition of the lasting social and economic ills stemming from mass incarceration and the increasing momentum for change—coming from the public, the media, and all levels of government—this topic is ripe for in-depth consideration and concerted action by the ABA's members.

Last September, the New York City Bar Association (“City Bar”) published a report, “Mass Incarceration: Seizing the Moment for Reform,” in which we discussed our nation's disproportionate use of incarceration to address social problems and incarceration's lasting detrimental effects.¹ The United States has the highest rate of incarceration in the world: although we comprise 5% of the world's population, we incarcerate 25% of the world's prisoners. This adds up to 2.3 million people behind bars. While there is no doubt that incarceration is appropriate to protect society from those who commit violent offenses, it has become an overused remedy to address a host of social problems—including non-violent offenses, offenses committed by people suffering from mental illness or substance abuse addictions, and youthful offenders.

Furthermore, our nation's massive and reflective use of incarceration has a particularly devastating effect on African-American and Latino young men and their families and communities, with approximately one in every 35 African-American men and one in 88 Latino

¹ The report can be accessed here:
http://www2.nycbar.org/pdf/report/uploads/Mass_Incarceration_Seizing_the_Moment_for_Reform-20150928.pdf.

men currently in prison (in contrast to one in 214 white men). And, perhaps not surprisingly, these levels of incarceration are shockingly expensive, both in terms of the costs of imprisonment itself as well as the lasting social costs for individuals who emerge from prison uneducated, stigmatized, estranged from society and unable to secure employment.

The City Bar's report urges federal and state leaders to make reduction of mass incarceration a top priority and makes the following specific recommendations:

- Repealing mandatory minimum sentencing provisions, or at least reducing the length of the terms and the range of offenses to which they apply;
- Reducing substantially the sentences recommended by the sentencing guidelines and similar laws for non-violent offenses;
- Expanding alternatives to prison, including drug programs, mental health programs and job training programs and, in cases of incarceration, expanding rehabilitative services including access to higher education, vocational training, substance abuse and mental health services both during and after incarceration;
- Eliminating or reducing financial conditions of pretrial release, which disproportionately affect poorer communities and defendants, and in light of evidence that incarceration (even at the pretrial stage) can have terrible downstream repercussions on individuals and their families and communities;
- Providing opportunities for individuals with misdemeanor and non-violent felony convictions to seal those records to prevent employer discrimination; and
- Raising the age of juvenile jurisdiction in New York State from 16 to 18 years old.

And, last month, the City Bar sent a letter to Congressional leaders in support of the Sentencing Reform Act (S. 2123; H.R. 3713) which, if enacted, would make significant progress toward the goals of reducing mass incarceration and promoting fairness and justice.² While not a perfect solution (indeed, we requested that certain modifications be considered), the Act would reduce prison overcrowding which, in turn, would reduce the nearly \$7 billion annual cost of the federal prison system—funds that could be better used toward programs to aid victims and other socially productive purposes. The Act would also undo some of the harms caused by our current system's disparate treatment of racial minorities.

Among other things, the Act would (1) substantially reduce mandatory minimum sentence enhancements for drug offenders with prior felony convictions; (2) focus the 10-year mandatory minimum sentence for drug offenses on those who have higher-level roles or pose a greater risk to public safety, and reduce mandatory minimums for low-level non-violent offenders; (3) expand "safety valve" eligibility under 18 U.S.C. § 3553(f); (4) permit current federal prisoners to seek retroactive relief under the Fair Sentencing Act of 2010; (5) mandate recidivism-reduction programs, and authorize pre-release custody for lower-risk prisoners who complete

² The letter can be accessed here: <http://www2.nycbar.org/pdf/report/uploads/20073012-TheSentencingReformandCorrectionsActof2015FEDCOUR12.8.15.pdf>.

those programs, and (6) provide for the sealing and expungement of juvenile delinquency records.³

We believe that the United States is at a critical juncture in the debate about mass incarceration and criminal justice reform. This urgent issue demands the legal community's focused attention and efforts to bring about much-needed change.

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Debra L. Raskin". The signature is fluid and cursive, with the first name "Debra" being the most prominent part.

Debra L. Raskin

³ While some lawmakers have raised the issue of whether mens rea reform must accompany any overarching criminal justice reforms, we believe the issue of mens rea can and should be addressed separately, and should not hold up passage of this crucial bill.