

CONGRESSIONAL HEARING ON "CRIMINAL JUSTICE REFORM AND EFFORTS TO REDUCE  
RECIDIVISM."  
BEFORE THE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

Testimony of the Honorable Alexander Williams, Jr.  
Retired United States District Judge  
For the District of Maryland

Chairman Trey Gowdy and  
Ranking Member Elijah E. Cummings:  
Members of the Committee

June 28, 2017

Let me preface my remarks by expressing how grateful I am for this privilege of providing brief comments and testimony regarding the very important issues of criminal justice reform and efforts to reduce recidivism. I am Alexander Williams, Jr, a retired United States District Judge for the District of Maryland. Just prior to my nearly 20 years on the federal bench as a trial judge, I served as the two-time elected States Attorney for Prince George's County, Maryland. I teach criminal procedure and have had a long time passion for criminal justice. Presently, I am the founder and the CEO of the Judge Alexander Williams, Jr. Center for Education, Justice and Ethics, a policy center at the University of Maryland, College Park. I am confident when I say that a significant number of elected and public officials understand the importance of criminal justice reform, the need to reduce recidivism, and the challenges we face as a nation to address massive incarceration and racial disparities.

My comments for criminal justice reform fall into three general areas: (1) reviewing the exercise of discretion; (2) reviewing mandatory-minimum sentencing penalties; and (3) removing the unnecessary barriers imposed on returning citizens and those with records. Before addressing the three points, let me make a couple of observations which if addressed would undergird much of the proposals for criminal justice reform.

First, we must repair police community relationships. More police officers are being indicted for unjustified and inappropriate shootings and for use of excessive force, and there is a deep division around the country and a wide distrust of the police and of law enforcement in general. What is needed is to assemble a broad spectrum and gathering of the appropriate stakeholders (community leaders, law enforcement, legislators, business community, social scientist and others to develop a uniform paradigm or strategy (i.e. body cameras, more training, more community policing, etc.)) to bridge the gap between the community and the police or at least reduce the real and perceived distrust.

Second, Pre-trial detention of minor offenders is a real problem. When these persons charged with minor offenses are not released or provided reasonable bail which they can meet, there is a real threat of loss of their job, loss of their house, and break-up of their family. What often happens is that in order to avoid spending time in jail, these defendants plead guilty. Periodic reviews of bail and pre-trial release policies would help. I would like to see magistrates and

judges provided with the full panoply of release options, including the use of monetary requirements or bail, pretrial release, and other creative monitoring which reduces the detention of minor defendants.

Closely related to this observation is my belief that there are too many individuals serving time for low level and non-violent offenses. There has to be alternatives to incarceration for some minor defendants. Alternative sentences or referrals away from the criminal justice system must be developed and proposed for minor offenses, for those using and abusing drugs, and for women convicted of minor offenses and who are heads of households. These individuals should also be candidates for pardons.

Those observations aside, here are my three points:

**(1) Need for a review and for a better use of Discretion.**

Discretion, of course, is the hallmark of criminal justice. Discretion is administered and exercised by police officers, judicial officials, prosecutors, grand and petit jurors, medical examiners, correctional officials, probation and parole officials, and executive officials (through granting pardons, clemency and commuting sentences), just to name a few. Discretion commences and continues with decisions such as who to investigate, whether to arrest, what charges to file, who gets bond or who is to be released, whether a minor is to be charged as an adult, whether the family car should be forfeited for drugs found in a car driven by a minor, what plea bargaining is offered, and other decisions by judges and others exercising their discretion. Justice often varies depending on the nature of discretion employed and exercised. For me, the issue comes down to whether or should we and how can we attain reasonable uniformity, consistency, fairness, and how we can curb or employ better standards for the exercise of discretion. Every point of the criminal justice system where discretion is used should be carefully reviewed, data collected and policies implemented to make sure there is consistency and that a meaningful effort is being made to address racial profiling, selective enforcement, and the disproportionate impact of the criminal justice system on minorities. The Justice Department and Congress must take the lead in this area and establish the model for the states to follow.

**(2) Need for a review of mandatory-minimum penalties.**

Mandatory-minimum penalties have contributed to the problem of massive incarceration. Legislation imposing harsh drug penalties, long sentencing guidelines, mandatory minimum sentences, and life sentences--even applying and imposing these sentences for those under 18 and without balancing other concerns and considerations should be reviewed. In a landmark case entitled *Miller vs Alabama* 567 U.S.460 (2012) the Supreme Court recognized that youth were different from adults when it comes to sentencing and held that mandatory life without parole sentences for juveniles convicted of murder violated the 8<sup>th</sup> amendment's ban on cruel and unusual punishments.

The debate surrounding mandatory minimum sentences remain. While there are plausible arguments that repeated drug traffickers and those running criminal organizations and

enterprises, and certain white collar and identity fraud crimes, warrant stiff and substantial sentences in order to deter, protect the community and limit recidivism, studies have revealed the Comprehensive Crime Control Act, the Career Offender Statutes (where previous convictions of various offenses trigger mandatory career offender status and penalties under 18 USC Section 924 ©)), and enhanced penalty statutes too often single out low level drug offenders and disproportionately affect racial minorities.

A significant offshoot of the issue of mandatory minimum sentences has been the legislative enactments and sentencing policies which have shifted judicial discretion over to prosecutors who are invested with the decision to charge outside of the statutory minimum, and reward those defendants who cooperate and/or provide substantial assistance. Prosecutors have the unfettered charging authority and are able to extract pleas from defendants-- some of whom wanted trials but simply are not able to risk the chances of being convicted and getting a long prison sentence under mandatory minimum sentences. Mandatory-minimum penalties have also watered down and prevented judges from taking into consideration the uniqueness or special circumstances of the individual being sentenced before him/her.

Recommendation: (1) Review legislative enactments as to mandatory minimum sentences and pare them back where appropriate; (2) Give judges more discretion to take into consideration [where appropriate] the unique circumstances and background of the individual being sentenced; (3) refer non violent drug offenders and users to drug treatment and drug counseling in lieu of incarceration; (4) encourage the President and Governors to utilize their pardon and clemency authority to reduce the prison population.

### **(3) Review and address the collateral consequences and discriminatory practices and barriers imposed upon returning citizens and those with records.**

The bottom line with respect to the returning citizens is to cut back on recidivism: that is to make sure that they have a successful reentry and are not re-incarcerated. Clearly there are circumstances where collateral consequences are appropriate. For example, it cannot be reasonably disputed that those convicted of child abuse or elderly offenses must be carefully screened and limited [where necessary] from employment opportunities interacting with children or elderly. Moreover, financial institutions must be alerted of potential employees having convictions for embezzlement; yet there are other unnecessary barriers preventing the successful reintegration and transition of returning citizens. My general view is that reducing recidivism can be best achieved by removing some of the discriminatory and unreasonable practices which prevent or limit access to health care, housing, education, and employment. There are other questions which may be considered with a review of collateral consequences. Do those returning to the community require more extensive or shorter periods to be on supervised release? Is it necessary in every instance for a convicted person who is applying for some kind of vocational license or to get a Pell grant, or for admission to an institution of higher learning, to disclose a twenty-year-old or any conviction for that matter which has very little, if any, relevance or relationship to the specific license or position sought? Do safety considerations require permanent mandatory disqualifications? In other words, at what point

will the need to disclose a criminal record be outweighed by the collateral consequences imposed on someone for something which happened years ago?

The Federal Government should set the national standard for employing returning citizens, and providing them with access to services and resources to assist them with in making a successful transition with the end product being reduction of recidivism and the increase in public safety.

Recommendation: (a) Revisit the collateral consequences and other systemic barriers which unnecessarily prevent the successful reentry of returning citizens; (b) Appropriate more money for transitional homes and for transitional programs for returning citizens who need places to stay and programs available in order to obtain the support necessary for a successful reentry. There are an insufficient number of (not warming spots for sleeping and eating for the night) but transitional homes which provide a meaningful and non-punitive structure and passionate and caring staff to address issues such as: the trauma which many inmates have carried for years, life skills, mental counseling, mental wellness, behavior modification, job interviewing, resume writing, GED, computer skills, etc.

Again, I thank the committee for inviting me to testify as a witness and present my reflections.