



COMMITTEE ON CRIMINAL LAW  
of the  
JUDICIAL CONFERENCE OF THE UNITED STATES  
Gerald R. Ford Federal Building  
110 Michigan Street, N.W., Room 602  
Grand Rapids, MI 49503

Honorable Paul J. Barbadoro  
Honorable Raymond W. Gruender  
Honorable Judith C. Herrera  
Honorable Ellen Segal Huvelle  
Honorable Sterling Johnson, Jr.  
Honorable C. Darnell Jones II  
Honorable Irene M. Keeley  
Honorable William T. Lawrence  
Honorable Ricardo S. Martinez  
Honorable Franklin L. Noel  
Honorable Margaret Casey Rodgers  
Honorable Keith Starrett

TELEPHONE  
(616) 456-2021

FACSIMILE  
(616) 456-2538

**Honorable Robert Holmes Bell, Chair**

September 17, 2013

Honorable Patrick J. Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

As Chair of the Criminal Law Committee of the Judicial Conference of the United States, I am pleased that the Senate Judiciary Committee plans to convene a hearing on September 18, 2013, entitled "Reevaluating the Effectiveness of Federal Mandatory Minimum Sentences." For 60 years, the Judicial Conference has consistently and vigorously opposed mandatory minimums and has supported measures for their repeal or to ameliorate their effects.<sup>1</sup> In anticipation of this upcoming hearing, I am writing to reiterate the Conference's long-standing opposition to mandatory minimum sentences and to express our strong support for legislation such as the "Justice Safety Valve Act of 2013" that would help avoid the fiscal and social costs associated with mandatory minimum sentences.

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<sup>1</sup> JCUS-SEP 53, p. 29; JCUS-SEP 61, pp. 98-99; JCUS-MAR 62, pp. 20-21; JCUS-MAR 65, p. 20; JCUS-SEP 67, pp. 79-80; JCUS-OCT 71, p. 40; JCUS-APR 76, p. 10; JCUS-SEP 81, p. 90; JCUS-MAR 90, p. 16; JCUS-SEP 90, p. 62; JCUS-SEP 91, pp. 45,56; JCUS-MAR 93, p. 13; JCUS-SEP 93, p. 46; JCUS-SEP 95, p. 47; JCUS-MAR 09, pp. 16-17.

The Conference has had considerable company in its opposition to mandatory minimum sentences. As Judge William W. Wilkins testified, “It is important to note this developing consensus because we occasionally hear the comment that criticisms of mandatory minimums should be dismissed as coming from judges who are unhappy about limits on their discretion . . . . [T]he spectrum of viewpoints represented by those who have concerns about mandatory minimums is far broader than the federal judiciary. It includes representatives of virtually all sectors in the criminal justice system.”<sup>2</sup>

Judges routinely perform tasks in which the individual judge has no or very little discretion. “In fact, much of a judge’s daily activity is consumed with executing ‘mandatory’ tasks, using a decision-making process that is ‘mandated’ by some other entity. Thus, a judge must adjudicate a civil case, according to the prescribed standards, whether or not the judge agrees with the policy judgment made by Congress that gave rise to the cause of action or to the recognized defenses. A judge must instruct a jury as to what the applicable statute and precedent require, regardless of the judge’s possible disagreement with some of these instructions. Myriad other examples abound.”<sup>3</sup> But the Judicial Conference does not advocate for the repeal of these legislatively mandated tasks.

This belies the claim that judges are motivated by a parochial desire to increase their own power in sentencing. Rather, the Conference’s opposition to mandatory minimums derives from a recognition, gained through years of experience, that they are wasteful of taxpayer dollars, produce unjust results, are incompatible with the concept of guideline sentencing, and could undermine confidence in the judicial system.

Part I of this letter describes some of the well-known objections to mandatory minimums. In part II, we discuss the Conference’s support of interim legislative measures to reduce the effects of statutory minimums. There is a range of ways to address their unjust and unintended effects, from outright repeal to taking incremental steps. The Judicial Conference is supportive of Congress’s efforts to make a thoughtful and thorough assessment of this continuing problem.

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<sup>2</sup> See, e.g., *Federal Mandatory Minimum Sentencing: Hearing Before the Subcomm. on Crime and Criminal Justice of the H. Comm. on the Judiciary*, 103rd Cong. 66 (July 28, 1993) [hereinafter *1993 Hearing*] (statement of Judge William W. Wilkins, Jr., Chairman, United States Sentencing Commission).

<sup>3</sup> *Mandatory Minimums and Unintended Consequences: Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Security of the H. Comm. on the Judiciary*, 111th Cong. 39 (July 14, 2009) [hereinafter *2009 Hearing*] (statement of Chief Judge Julie E. Carnes, Chair, Committee on Criminal Law, Judicial Conference of the United States).

## I. The Failure of Mandatory Minimum Sentences

Though mandatory minimums have been criticized on numerous grounds,<sup>4</sup> there are three objections that we wish to highlight. First, statutory minimums cost taxpayers excessively in the form of unnecessary prison and supervised release costs. Second, they are inherently rigid and often lead to inconsistent and disproportionately severe sentences. Finally, they impair the efforts of the Sentencing Commission to fashion Guidelines in accordance with the principles of the Sentencing Reform Act, including the careful calibration of sentences proportionate to severity of the offense and the research-based development of a rational and coherent set of punishments.

### A. Mandatory Minimum Sentences Unnecessarily Increase the Cost of Prison and Community Supervision

Mandatory minimums have a significant impact on correctional costs. As the Sentencing Commission stated in its 2011 report to Congress, a proliferation of mandatory minimum penalties has occurred over the past 20 years. Between 1991 and 2011, the number of mandatory minimum penalties doubled, from 98 to 195.<sup>5</sup> There are approximately 195,000 more inmates incarcerated in federal prisons today than there were in 1980, a nearly 790 percent increase in the federal prison population.<sup>6</sup> This growth “is the result of several changes to the federal criminal justice system, including expanding the use of mandatory minimum penalties; the federal government taking jurisdiction in more criminal cases; and eliminating parole for federal inmates.”<sup>7</sup>

Longer prison sentences also mean longer terms of supervised release. Legislation ameliorating the effects of mandatory minimums can save taxpayer dollars, not only through a reduction in the prison population, but by lowering supervised release caseloads. It has been suggested that “persons who serve the longer terms of imprisonment that have resulted from mandatory minimum sentences and the sentencing guidelines may present greater problems in

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<sup>4</sup> See, e.g., U.S. Sentencing Commission, *Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System* (October 2011), at 90-103, available at: [http://www.ussc.gov/Legislative\\_and\\_Public\\_Affairs/Congressional\\_Testimony\\_and\\_Reports/Mandatory\\_Minimum\\_Penalties/20111031\\_RtC\\_PDF/Chapter\\_05.pdf](http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Mandatory_Minimum_Penalties/20111031_RtC_PDF/Chapter_05.pdf). (reviewing policy views against mandatory minimum penalties, including that: they are applied inconsistently; they transfer discretion from judges to prosecutors; they are ineffective as a deterrent or as a law enforcement tool to induce pleas and cooperation; they are indicative of the “overfederalization” of criminal justice policy and as upsetting the proper allocation of responsibility between the states and federal government; and they unfairly impact racial minorities and the economically disadvantaged).

<sup>5</sup> U.S. Sentencing Commission, *Report to the Congress*, *supra* note 4, at 71.

<sup>6</sup> Congressional Research Service, *The Federal Prison Population Buildup: Overview, Policy Changes, Issues, and Options* (January 2013), at 51, available at: <http://www.fas.org/sgp/crs/misc/R42937.pdf>.

<sup>7</sup> *Id.* See also U.S. Sentencing Commission, *Report to the Congress*, *supra* note 4, at 63 (“Statutes carrying mandatory minimum penalties have increased in number, apply to more offense conduct, require longer terms, and are used more often than they were 20 years ago. These changes have occurred amid other systemic changes to the federal criminal justice system . . . that also have had an impact on the size of the federal prison population. Those include expanded federalization of criminal law, increased size and changes in the composition of the federal criminal docket, high rates of imposition of sentences of imprisonment, and increasing average sentence lengths. [T]he changes to mandatory minimum penalties and these co-occurring systemic changes have combined to increase the federal prison population significantly.”).

supervision simply by virtue of the longer periods of incarceration.”<sup>8</sup> In a 2010 report, the Sentencing Commission noted that the average term of supervised release for an offender subject to a mandatory minimum was 52 months, which compared to 35 months for an offender who was not subject to a mandatory minimum—a difference of 17 months.<sup>9</sup> Based on fiscal year 2012 cost data, the cost of supervising an offender for one month is approximately \$279.<sup>10</sup> Should the prison population be reduced due to legislation reducing the impact of mandatory minimums, the federal probation and pretrial services system could also play a role in reducing system-wide costs through the effective and efficient supervision of offenders in the community.<sup>11</sup>

## **B. Mandatory Minimum Sentences Cause Disproportionality in Sentencing**

Mandatory minimum statutes are structurally flawed and often result in disproportionately severe sentences. As past chairs of the Judicial Conference’s Criminal Law Committee have testified, there is an inherent difficulty in crafting a statutory minimum that can truly apply to every case. Unlike the Sentencing Guidelines, applied by judges on a case-by-case basis, allowing a consideration of multiple factors that relate to the culpability and dangerousness of the offender, mandatory minimum statutes typically identify one aggravating factor, and then pin the prescribed enhanced sentence to it. Such an approach means that any offender who is convicted of the particular statute, but whose conduct has been extenuated in ways not taken into account, will necessarily be given a sentence that is excessive. This reduces proportionality and creates unwarranted uniformity in treatment of disparate offenders. In short, as two former Criminal Law Committee chairs have put it, mandatory minimum penalties “mean one-size-fits-all injustice”<sup>12</sup> and are “blunt and inflexible tool[s].”<sup>13</sup>

<sup>8</sup> See David Adair, *Revocation of Supervised Release - A Judicial Function*, 6 FEDERAL SENTENCING REPORTER 190, 191 (1994).

<sup>9</sup> U.S. Sentencing Commission, *Federal Offenders Sentenced to Supervised Release* (July 2010), at 51-52, available at: [http://www.ussc.gov/Research/Research\\_Publications/Supervised\\_Release/20100722\\_Supervised\\_Release.pdf](http://www.ussc.gov/Research/Research_Publications/Supervised_Release/20100722_Supervised_Release.pdf).

<sup>10</sup> Memorandum from Matthew G. Rowland, Assistant Director, Office of Probation and Pretrial Services, Administrative Office of the U.S. Courts (hereinafter “AO”), “Costs of Incarceration and Supervision,” (May 17, 2013) (on file with the AO).

<sup>11</sup> 1993 Hearing, *supra* note 2, at 110 (statement of Judge Vincent L. Broderick) (“There are a variety of alternative sanctions that can be safely managed in the community, ranging from low security residential correctional alternatives and home detention with electronic monitoring, to community supervision of offenders who are required to provide restitution, to submit urine tests for the detection of drug use, to perform compensatory service, and to pay fines. I have had the great privilege, these past three years, of exercising judicial supervision over the Federal Pretrial Services Officers and Probation Officers. They constitute an extremely talented and dedicated body of men and women who can effectively control convicted criminals outside of penal facilities.”).

<sup>12</sup> *Mandatory Minimum Sentencing Laws - The Issues: Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Security of the H. Comm. on the Judiciary*, 110th Cong. 46 (June 26, 2007) [hereinafter 2007 Hearing] (statement of Judge Paul Cassell, Chair, Committee on Criminal Law, Judicial Conference of the United States) (“Mandatory minimum sentences mean one-size-fits-all injustice. Each offender who comes before a federal judge for sentencing deserves to have their individual facts and circumstances considered in determining a just sentence. Yet mandatory minimum sentences require judges to put blinders on to the unique facts and circumstances of particular cases.”).

<sup>13</sup> 2009 Hearing, *supra* note 3, at 42 (statement of Chief Judge Julie E. Carnes). See also 1993 Hearing, *supra* note 2, at 67 (statement of Judge William W. Wilkins, Jr.) (“[Mandatory minimums] treat similarly offenders who can be quite different with respect to the seriousness of their conduct or their danger to society. This happens because mandatory minimums generally take account of only one or two out of an array of potentially important

Mandatory minimum sentences typically are adopted to express opprobrium for a certain crime or in reaction to a particular case where the sentence seemed too lenient. And in some cases, of course, the mandatory penalty will seem appropriate and reasonable. When that happens, judges are not concerned that the sentence was also called for by a mandatory sentencing provision because the sentence is fair. Unfortunately, however, given the severity of many of the mandatory sentences that are most frequently utilized in our system, judges are often required to impose a mandatory sentence in which the minimum term seems greatly disproportionate to the particular crime the judge has just examined and terribly cruel to the human being standing before the judge for sentencing.

This is frequently the case with drug distribution cases, where the only considerations are the type and amount of drugs.<sup>14</sup> Former Criminal Law Committee Chair Judge Vincent Broderick testified two decades ago that mandatory minimums for drug distribution offenses are often unfair and result in sentences disproportionate to the level of culpability because they are based on the amount of drugs involved,<sup>15</sup> they are based on the weight of drugs regardless of purity,<sup>16</sup> they apply conspiracy principles to drug sentences,<sup>17</sup> and the most culpable offenders are able to avoid mandatory minimums by cooperating with prosecutors because they have more knowledge of the drug conspiracy than lower-level offenders.<sup>18</sup>

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offense or offender-related facts.”); U.S. Sentencing Commission, *Report to the Congress*, *supra* note 4, at 346 (“For . . . a sentence to be reasonable in every case, the factors triggering the mandatory minimum penalty must *always* warrant the prescribed mandatory minimum penalty, regardless of the individualized circumstances of the offense or the offender. This cannot necessarily be said for all cases subject to certain mandatory minimum penalties.”) (emphasis in original).

<sup>14</sup> In its recent report to Congress, the Sentencing Commission reported, based on fiscal year 2010 data, that over three-quarters (77.4%) of convictions of an offense carrying a mandatory minimum penalty were for drug trafficking offenses. U.S. Sentencing Commission, *Report to the Congress*, *supra* note 4, at 146.

<sup>15</sup> *1993 Hearing*, *supra* note 2, at 106 (statement of Judge Vincent L. Broderick) (“Use of the amounts of drugs by weight in setting mandatory minimum sentences raises issues of fairness because the amount of drugs in the offense is more often than not totally unrelated to the role of the offender in the drug enterprise. Individuals operating at the top levels of drug enterprises routinely insulate themselves from possession of the drugs and participation in the smuggling or transfer functions of the business. It is the participants at the lower levels – those that transport, sell, or possess the drugs – that are caught with large quantities. These individuals make up the endless supply of low paid mules, runners, and street traders, many of them aliens.”).

<sup>16</sup> *Id.* (“The weight of inert substances used to dilute the drugs or the weight of a carrier medium (the paper or sugar cube that contains LSD or the weight of a suitcase in which drugs have been ingeniously imbedded in the construction materials of the suitcase) is added to the total weight of the drug to determine whether a mandatory sentence applies. A defendant in possession of a quantity of pure heroin may face a lighter sentence than another defendant in possession of a smaller quantity of heroin of substantially less purity, but more weight because of the diluting substance. Since the relation of the carrier medium to the drug increases as the drug is diluted in movement to the retail level, the unfairness of imposing automatic sentences based on amount without regard to role in the offense is compounded by failure to take purity into account.”).

<sup>17</sup> *Id.* (“Another significant factor of unwarranted unfairness in mandatory minimum sentencing is the application of conspiracy principles to quantity-driven drug crimes . . . [A]ccomplices with minor roles may be held accountable for the foreseeable acts of other conspirators in furtherance of the conspiracy. A low-level conspirator is subject to the same penalty as the kingpin . . . despite the fact that [he or she] ha[s] little knowledge of the nature [or amount of the drugs involved].”).

<sup>18</sup> *Id.* 107 (“Who is in a position to give such ‘substantial assistance’? Not the mule who knows nothing more about the distribution scheme than his own role, and not the street-level distributor. The highly culpable defendant managing or operating a drug trafficking enterprise has more information with which to bargain. Low-level offenders, peripherally involved with less responsibility and knowledge, do not have much information to offer . . . There are few federal judges engaged in criminal sentencing who have not had the disheartening experience

In her congressional testimony four years ago, Chief Judge Julie Carnes (my predecessor as Chair of the Criminal Law Committee) provided a specific example of how disproportionately severe sentences may result from the mandatory minimum structure governing drug-related offenses.<sup>19</sup> Title 21 U.S.C. § 841(b)(1)(A) provides that, when a defendant has been convicted of a drug distribution offense involving a quantity of drugs that would trigger a mandatory minimum sentence of 10 years imprisonment—e.g., 5 kilograms of cocaine—the defendant’s 10-year mandatory sentence shall be doubled to a 20-year sentence if he has been previously convicted of a drug distribution-type offense. Now, if the defendant is a drug kingpin running a long-standing, well-organized, and extensive drug operation who has been previously convicted of another serious drug offense, a 20-year sentence may be just. The amount of drugs may be a valid indicator of market share, and thus culpability, for leaders of drug manufacturing, importing, or distributing organizations. But, kingpins are, by definition, few in number, and they are not the drug defendant that judges see most frequently in federal court.

Instead of a drug kingpin, assume that the defendant is a low-level participant who is one of several individuals hired to provide the manual labor used to offload a large drug shipment arriving in a boat. The quantity of drugs in the boat will easily qualify for a 10-year mandatory sentence. This is so even though in cases of employees of these organizations or others on the periphery of the crime, the amount of drugs with which they are involved is often merely fortuitous. A courier, unloader, or watchman may receive a fixed fee for his work, and not be fully aware of the type or amount of drugs involved. A low-level member of a conspiracy may have little awareness and no control over the actions of other members. Further, assume that the low-level defendant has one prior conviction for distributing a small quantity of marijuana, for which he served no time in prison. Finally, assume that since his one marijuana conviction, he has led a law-abiding life until he lost his job and made the poor decision to offload this drug shipment in order to help support his wife and children. This defendant will now be subject to a 20-year mandatory minimum sentence. It is difficult to defend the proportionality of this type of sentence, which is not unusual in the federal criminal justice system.<sup>20</sup>

### **C. Mandatory Minimum Sentences are Incompatible with the Sentencing Reform Act**

Mandatory minimum statutes are incompatible with guideline sentencing and impair the efforts of the Sentencing Commission to fashion Sentencing Guidelines in accordance with the principles of the Sentencing Reform Act. In 1984, Congress passed the Sentencing Reform Act after years of consideration and debate. The Act created the Sentencing Commission and charged it with the responsibility to create a comprehensive system of guideline sentencing.

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of seeing major players in crimes before them immunize themselves from the mandatory minimum sentences by blowing the whistle on their minions, while the low-level offenders find themselves sentenced to the mandatory minimum prison term so skillfully avoided by the kingpins.”)

<sup>19</sup> 2009 Hearing, *supra* note 3, at 43 (statement of Chief Judge Julie E. Carnes).

<sup>20</sup> See, e.g., *United States v. Leitch*, No. 11-CR-00609(JG), 2013 WL 753445, at \*2 (E.D.N.Y. Feb. 28, 2013) (“[M]any low-level drug trafficking defendants are receiving the harsh mandatory minimum sentences that Congress explicitly created only for the leaders and managers of drug operations.”).

But mandatory minimum sentences have severely hampered the Commission in its task of establishing fair, certain, rational, and proportional Guidelines. They deny the Commission the opportunity to bring to bear the expertise of its members and staff upon the development of sentencing policy. Since the Commission has embodied within its Guidelines the mandatory minimum sentences,<sup>21</sup> the Guidelines have been skewed out of shape and upward by the inclusion of sentence ranges which have not been empirically constructed.<sup>22</sup> Consideration of mandatory minimums in setting Guidelines' base offense levels normally eliminates any relevance of the aggravating and mitigating factors that the Commission has determined should be considered in the establishment of the sentencing range for certain offenses and offenders.

As the Commission explained in its 1991 report to Congress on mandatory minimums, the simultaneous existence of mandatory sentences and Sentencing Guidelines skews the "finely calibrated . . . smooth continuum" of the Guidelines, and prevents the Commission from maintaining system-wide proportionality in the sentencing ranges for all federal crimes.<sup>23</sup> The Commission concluded that the two systems are "structurally and functionally at odds."<sup>24</sup> Similarly, in 1993, Chief Justice William Rehnquist stated that "one of the best arguments against any more mandatory minimums, and perhaps against some of those that we already have, is that they frustrate the careful calibration of sentences, from one end of the spectrum to the other, which the Sentencing Guidelines were intended to accomplish."<sup>25</sup> Likewise, Senator Orrin Hatch has expressed grave doubts about the ability to reconcile the federal sentencing guidelines and mandatory minimum sentences.<sup>26</sup>

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<sup>21</sup> The Sentencing Commission has taken the position that minimum sentences mandated by statute require the Sentencing Guidelines faithfully to reflect that mandate. The Commission has accordingly reflected those mandatory minimums at or near the lowest point of the Sentencing Guideline ranges. The Criminal Law Committee has expressed its concerns to the Commission about the subversion of the Sentencing Guideline scheme caused by mandatory minimum sentences. The Committee believes that setting the Sentencing Guidelines' base offense levels irrespective of mandatory minimum penalties is the best approach to harmonizing what are essentially two competing approaches to criminal sentencing. *See, e.g.*, Letter from Judge Sim Lake, Chair, Committee on Criminal Law, Judicial Conference of the United States, to members of the U.S. Sentencing Commission (Mar. 8, 2004) (on file with the AO); Letter from Judge Paul Cassell, Chair, Committee on Criminal Law, Judicial Conference of the United States, to Judge Ricardo Hinojosa, Chair, U.S. Sentencing Commission (Mar. 16, 2007) (on file with the AO); *see also U.S. v. Leitch, supra* note 20, at \*2 ("[T]he Commission can fix this problem by delinking the Guidelines ranges from the mandatory minimum sentences and crafting lower ranges based on empirical data, expertise, and more than 25 years of application experience demonstrating that the current ranges are not the 'heartlands' the Commission hoped they would become.").

<sup>22</sup> 1993 Hearing, *supra* note 2, at 108 (statement of Judge Vincent L. Broderick) ("This superimposition of mandatory minimum sentences within the Guidelines structure has skewed the Guidelines upward . . . As a consequence, offenders committing crimes not subject to mandatory minimums serve sentences that are more severe than they would be were there no mandatory minimums. Thus mandatory minimum penalties have hindered the development of proportionality in the Guidelines, and are unfair not only with respect to offenders who are subject to them, but with respect to others as well.").

<sup>23</sup> U.S. Sentencing Commission, *Special Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System* (August 1991), available at: [http://www.ussc.gov/Legislative\\_and\\_Public\\_Affairs/Congressional\\_Testimony\\_and\\_Reports/Mandatory\\_Minimum\\_Penalties/199108\\_RtC\\_Mandatory\\_Minimum.htm](http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Mandatory_Minimum_Penalties/199108_RtC_Mandatory_Minimum.htm)

<sup>24</sup> *Id.*

<sup>25</sup> Chief Justice William H. Rehnquist, *Luncheon Address* (June 18, 1993), in U.S. Sentencing Commission, *Proceedings of the Inaugural Symposium on Crime and Punishment in the United States* 286 (1993).

<sup>26</sup> Hon. Orrin G. Hatch, *The Role of Congress in Sentencing: The United States Sentencing Commission, Mandatory Minimum Sentences, and the Search for a Certain and Effective Sentencing System*, 28 WAKE FOREST L. REV. 185, 194 (1993).

## II. Solutions to Ameliorate the Effects of Mandatory Minimum Statutes

Today, the Conference endorsed seeking legislation “such as the ‘Justice Safety Valve Act of 2013,’ . . . that is designed to restore judges’ sentencing discretion and avoid the costs associated with mandatory minimum sentences.”<sup>27</sup> Though it favors the repeal of all mandatory minimum penalties, the Conference also supports steps that reduce the negative effects of these statutory provisions.

The Judicial Conference historically has supported legislative measures short of outright repeal of mandatory minimum statutes. In 1991, for instance, it approved a proposed statutory amendment that would provide district judges with authority to impose a sentence below a mandatory minimum when a defendant has limited involvement in an offense.<sup>28</sup> The Conference noted that “[w]hile the judiciary’s overriding goal is to persuade Congress to repeal mandatory minimum sentences, for the short term, a safety valve of some sort is needed to ameliorate some of the harshest results of mandatory minimums.”<sup>29</sup> In 1993, the Conference considered the Controlled Substances Minimum Penalty–Sentencing Guideline Reconciliation Act of 1993, legislation presented by the Chairman of the Sentencing Commission that attempted to reconcile mandatory minimum sentences with the Sentencing Guidelines.<sup>30</sup> The Criminal Law Committee believed that, although the proposed legislation would not have solved all of the problems associated with mandatory minimum sentences, it addressed the essential incompatibility of mandatory minimums and Sentencing Guidelines and represented a promising approach.<sup>31</sup> On recommendation of the Committee, the Conference endorsed the concept.<sup>32</sup>

## Conclusion

The Conference supports Congress’s efforts to review and ameliorate the deleterious and unwanted consequences spawned by mandatory minimum sentencing provisions. The good intentions of their proponents notwithstanding,<sup>33</sup> mandatory minimum sentencing statutes have created what the late Chief Justice Rehnquist aptly identified as “unintended consequences.”<sup>34</sup> Far from benign, these unintended consequences waste valuable taxpayer dollars, create tremendous

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<sup>27</sup> JCUS-SEP 13, p. \_\_.

<sup>28</sup> JCUS-SEP 91, p. 56. The proposed legislation for drug offenses would have required the Commission to use mandatory minimum penalties only in establishing base offense levels, and would otherwise permit the guidelines through downward adjustments or departures to provide for sentences below the mandatory minimum penalties. See *1993 Hearing, supra* note 2, at 70 (statement of Judge William W. Wilkins, Jr.).

<sup>29</sup> JCUS-SEP 91, p. 56.

<sup>30</sup> JCUS-SEP 93, p. 46.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *2009 Hearing, supra* note 3, at 37 (statement of Chief Judge Julie E. Carnes) (“I start by attributing no ill will or bad purpose to any Congressional member who has promoted or supported particular mandatory minimums sentences. To the contrary, many of these statutes were enacted out of a sincere belief that certain types of criminal activity were undermining the order and safety that any civilized society must maintain and out of a desire to create an effective weapon that could be wielded against those who refuse to comply with these laws.”).

<sup>34</sup> Chief Justice William H. Rehnquist, *Luncheon Address, supra* note 25 (suggesting that federal mandatory minimum sentencing statutes are “perhaps a good example of the law of unintended consequences”).



Honorable Patrick J. Leahy

Page 9

injustice in the sentencing, undermine guideline sentencing, and ultimately could foster disrespect for the criminal justice system. We hope that Congress will act swiftly to reform federal mandatory minimum sentencing.

If we may be of further assistance to you in this or any other matter, please do not hesitate to contact the Office of Legislative Affairs, Administrative Office of the United States Courts, at 202-502-1700.

Sincerely,



Robert Holmes Bell

Identical letter sent to: Honorable Charles E. Grassley