

Letter from 258 Professors of Criminal Justice, Criminology, Sociology and Law

April 28, 2009

Senator Patrick Leahy
Chairman, Committee on the Judiciary
U.S. Senate

Representative John Conyers, Jr.
Chairman, Committee on the Judiciary
U.S. House of Representatives

Senator Arlen Specter
Ranking Minority Member
Committee on the Judiciary
U.S. Senate

Representative Lamar Smith
Ranking Minority Member
Committee on the Judiciary
U.S. House of Representatives

Dear Senators Leahy and Specter, and Representatives Conyers and Smith:

Over twenty-two years ago, President Reagan signed the Anti-Drug Abuse Act of 1986. It created mandatory minimum sentences for federal drug trafficking offenses in the 1970 Controlled Substances Act. As you recall, Congress intended these long mandatory sentences to encourage the Justice Department to focus on major drug traffickers.

The quantities of drugs that trigger the mandatory sentences in that law are very small relative to the quantities of drugs that are actually imported and distributed by significant drug traffickers. Only five grams of crack cocaine trigger a sentence of at least five years up to forty years. Fifty grams of crack cocaine trigger a sentence of at least ten years up to life imprisonment. Fifty grams is the weight of a candy bar, not the large quantity shipped by major traffickers. More than one third of all federal crack cocaine cases involved less than 25 grams in 2006, according to the U.S. Sentencing Commission's "Report to Congress: Cocaine and Federal Sentencing Policy," May 2007, (table 5-3, pp. 112-114).

Much more appropriate federal cases are the national and international-level cases such as the recently concluded "Operation Xcellerator," which Attorney General Eric Holder said resulted in the seizure of more than 12 metric tons (12,000 kilos or 12,000,000 grams) of cocaine. The low-level crack cases amounted to about 15 percent of all federal cocaine prosecutions for 2006. These minor cases are an enormous commitment of federal investigative, prosecutorial, judicial and correctional resources to what are neighborhood cases. Analyzing all federal cocaine cases, the Commission has found repeatedly that the focus has predominantly been upon the lowest-level offenders – street-level dealers, couriers, lookouts, loaders or users. Thus the small statutory quantities have distracted the Justice Department from focusing on major traffickers.

The current mandatory minimums undermine public safety by providing perverse incentives for federal law enforcement agencies to focus on minor offenders instead of major traffickers who routinely use violence and corrupt public officials. The law has helped drive the increase in the federal prison population from 36,000 in 1986 to over 200,000 today. And the law has been unfairly targeted at people of color. Less than one in four federal drug offenders was white in FY 2007 – the rest were Black, Hispanic, Asian or

Native American.

Judges nominated by the President and confirmed by the United States Senate have the maturity and judgment to determine the appropriate and just punishment for criminal violations. There is nothing inherent or uniquely abhorrent in a drug offense that requires mandatory sentencing, especially when sentencing guidelines provide numerous opportunities to enhance sentences when aggravating factors exist.

As a scholar of criminal justice, criminology, sociology, law or other relevant discipline, I join my colleagues around the nation to urge this Congress to review the 1986 anti-drug sentencing provisions and enact amendments that will eliminate mandatory minimum sentences. Congress should enable federal judges to hand down sentences that follow the Sentencing Reform Act of 1984 that:

- reflect the nature and circumstances of the offense (including its seriousness),
 - reflect the history and characteristics of the defendant,
 - promote respect for the law,
 - provide adequate deterrence to criminal conduct,
 - provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner,
 - avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct, and
 - provide restitution to any victims of the offense
- (18 U.S.C. section 3553(a)).

I find especially repugnant the mandatory sentences for crack cocaine offenses at 5 and 50 grams which have led to thousands of unjustly long sentences and racially disproportionate manner in which they have been applied.

In my opinion, the mandatory minimum sentencing provisions of the 1986 Anti-Drug Abuse Act have fostered injustice, created disrespect for the law, led to ineffective federal law enforcement and should be repealed.

Sincerely yours,

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