

January 30, 2003

Chairman Orrin Hatch
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Senator Patrick J. Leahy
United States Senate
Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Hatch and Senator Leahy:

The undersigned organizations write to express our objection to certain sentencing provisions in the PROTECT Act (S. 151) and the Identity Theft Penalty Enhancement Act (S. 153). The PROTECT Act would extend existing mandatory minimum sentences to a new category of repeat offenders and the Identity Theft Penalty Enhancement Act would create new mandatory consecutive sentences. If evidence indicates that existing penalties for the offenses at issue are too lenient, we urge the Committee to issue *general* directives to the U.S. Sentencing Commission instead of enacting mandatory minimum sentences.

Chief Justice William Rehnquist has called mandatory sentencing "a good example of the law of unintended consequences," and several Members of this Committee have expressed reservations about mandatory minimum sentences. The Judicial Conferences of all 12 federal circuits have urged the repeal of mandatory minimum sentences, after concluding that they are unfair and ineffective. And numerous studies, including those by the Department of Justice and the U.S. Sentencing Commission, indicate that mandatory minimum sentencing is not an effective instrument for deterring crime.

While most criticism of mandatory minimum sentences has focused on the federal drug statutes, the reasons for rejecting mandatory minimums apply without regard to offense type. Mandatory minimum sentencing deprives judges of the ability to fashion sentences that suit the particular offense and offender. Despite their flaws, the Sentencing Guidelines are better able to take into account the range of factors that are relevant to the sentencing decision.

The Sentencing Guidelines also are better able to exclude factors that give rise to unwarranted sentencing disparities. In transferring sentencing discretion from judges to prosecutors, mandatory minimum sentences transfer the sentencing decision from open courtroom to closed

prosecutor's office. Consequently, there are inadequate guarantees that statutorily prohibited factors such as race, age and gender do not influence the ultimate sentence. Even when the charging — and, in effect, sentencing — decision is free from taint, such closed-door decisions can undermine the appearance of equal justice.

While the Sentencing Guidelines are easily fine tuned based upon sentencing data and comments from judges, the Department of Justice, practitioners and others, history shows that mandatory minimums are less amenable to change. This fact, combined with the problems highlighted above, suggests that a general directive to the Sentencing Commission would be the more prudent course. General directives to the Sentencing Commission could better accomplish the goals of this legislation — without undermining the uniformity and fairness that Congress sought by enacting the Sentencing Reform Act.

Lawrence S. Goldman
President
National Association of Criminal Defense Lawyers

Julie Stewart
President
Families Against Mandatory Minimums

Laura W. Murphy
Executive Director
ACLU Washington National Office

cc: Members of the Senate Judiciary Committee