

STATEMENT

OF

**RICHARD B. ROPER
UNITED STATES ATTORNEY
NORTHERN DISTRICT OF TEXAS**

BEFORE THE

**COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON CRIME, TERRORISM AND HOMELAND SECURITY
UNITED STATES HOUSE OF REPRESENTATIVES**

CONCERNING

**“MANDATORY MINIMUM SENTENCING LAWS – THE ISSUES”
PRESENTED ON
JUNE 26, 2007**

MANDATORY SENTENCING

Since 1984, every Administration and each Congress, whether led by Democrats or Republicans, has supported a mandatory sentencing system consisting of comprehensive and mandatory sentencing guidelines and selective mandatory minimum sentencing statutes. Congress passed the Sentencing Reform Act (hereinafter SRA) in 1984 in an effort to replace the broken and weak system of indeterminate sentencing that had been in place for decades with a stronger, fairer, more uniform, and more honest determinate sentencing system. The Act was intended to usher in certainty and fairness in sentencing, to more effectively fight crime by providing greater deterrence and incapacitation, and to greatly reduce disparities in sentencing that had become commonplace in the federal criminal justice system. The key features of this new mandatory sentencing system, which originated both from the Sentencing Reform Act as well as from other laws enacted around the same time,¹ included the creation of the United States Sentencing Commission, the development and implementation of mandatory federal sentencing guidelines, the abolition of parole, truth-in-sentencing, and the enactment of new statutes imposing mandatory minimum sentences for certain serious crimes – primarily for drug, firearm, and recidivist offenders.

In the more than twenty years since Congress took this important step to reform federal sentencing, the SRA², other crime legislation,³ steps taken by state legislatures to

¹ See U.S. Sentencing Commission, *Special Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System*, p. ii (1991) (“Simultaneous to the development and implementation of the federal sentencing guidelines, Congress enacted a number of statutes imposing mandatory minimum sentences, largely for drug and weapons offenses, and for recidivist offenders.”).

² Pub. L. No. 108-21, 117 Stat. 650, codified at 28 U.S.C. §994(w) and 18 U.S.C. §3553(c).

reform state sentencing laws and practices, improvements in policing, and other important criminal justice reforms, have all transformed our nation's criminal justice system and dramatically reduced crime levels. In recent years, serious crime has seen its lowest levels in more than a generation, and today, overall crime rates in America remain historically low. Research has clearly established that mandatory and tough sentencing laws contributed to the reductions in crime. For example, a 2002 study assessing the deterrent effect of truth-in-sentencing laws found that such laws decreased murders by 16%, aggravated assaults by 12%, robberies by 24%, rapes by 12% and larcenies by 3%. Overall, the study found the net reductions in crime were substantial.⁴ Similarly, various independent estimates found that a significant part of the crime drop over the last 15 years or so resulted from tough incarceration policies.⁵ In the face of the recent uptick in some crimes over the past two years, and a record number of persons being released from prison having completed their mandatory sentences, it is even more important that we recommit to criminal justice policies that have proven effective, including mandatory sentencing policies.

Given the proven results, it should come as no surprise that every Administration and each Congress on a bipartisan basis has also supported mandatory minimum sentencing statutes for the most serious of offenses. Like those of prior administrations, our policy has not been blanket support for mandatory minimums for all crimes, but

3 See Pub. L. 98-473, § 1005(a), 98 Stat. 2138 (1984), amending 18 U.S.C. § 924(c) (applying substantial mandatory sentencing enhancement for the use or carrying of a firearm during a crime of violence); Pub. L. 99-308, § 104(a)(2)(A-E), 100 Stat. 456 (1986), amending 18 U.S.C. § 924(c) (applying mandatory sentencing for use or carrying of a firearm in furtherance of a drug trafficking crime).

4 Joanna Shepherd, *Police, Prosecutors, Criminals and Determinate Sentencing: The Truth about Truth-in-Sentencing Laws*, 45 J.L. & Econ. 509 (2002).

5 Alfred Blumstein and Joel Wallman (Editors), *The Crime Drop in America*, Cambridge Studies in Criminology (2000) (chapters three and four).

rather has recognized that mandatory minimums are critical tools for combating certain serious crimes. The relevant existing criminal code provisions, which incorporate mandatory minimum sentences for selected drug, gun, and child sex crimes, as well as for murder and for certain recidivist offenders, provide investigators, prosecutors, and the courts with a valuable tool in the fight against major drug traffickers, gang violence, predators, and those who use firearms to further violent or drug-trafficking criminal activity.

MANDATORY MIMIMUM SENTENCING STATUTES AND SERIOUS CRIME

Because drugs, gangs, gun crimes, and violence threaten our national safety and domestic security, the perpetrators of these serious offenses must be prosecuted vigorously. In 2005 alone, nearly 370,000 murders, robberies and aggravated assaults were committed with a firearm. To reference an oft-cited and alarming statistic, an American teenager is more likely to die from a gunshot than from all natural causes of death combined.⁶ Mandatory minimum statutes assist in the effective prosecution of these crimes by advancing several important law enforcement interests, while also serving the greater purposes of sentencing by effectively deterring unwanted serious criminal behavior, incapacitating offenders, providing just punishment, and increasing public safety.

⁶ L.A. Fingerhut, *Firearm Mortality Among Children, Youth, and Young Adults 1-34 Years of Age, Trends and Current Status: United States, 1985-90*, Advance Data from Vital and Health Statistics No. 231, Washington, D.C.: National Center for Health Statistics, 1993 (available at www.cdc.gov/nchs/data/ad/ad231.pdf).

Mandatory minimums increase the certainty and predictability of incarceration for certain crimes, thereby ensuring uniform sentencing for similarly-situated offenders. These uniform and predictable sentences, in turn, deter criminal behavior by forewarning the potential offender with certainty that, if apprehended and convicted, he will serve hard time. This is an important distinction because it is so vastly different from many state sentencing systems which provide for wide ranges of possible sentences, as well as parole, good time credits, furlough programs, and commuted sentences. Mandatory minimums also enhance public safety by incapacitating dangerous offenders for substantial periods of time.

In addition to serving these important sentencing goals, mandatory minimum sentences provide an indispensable tool for prosecutors, because the law enables the prosecutor to move for relief from these mandatory sentences if a defendant provides substantial assistance in the investigation or prosecution of another person who has committed an offense. This possibility of relief from a mandatory minimum sentence in exchange for sworn truthful testimony and other forms of substantial assistance against fellow drug traffickers, gang members, or persons committing violent gun crimes allows law enforcement to move up the chain of command – offering incentives for the minor players in exchange for substantial assistance against the leaders. Such cooperation is essential in the effort to combat these serious crimes, particularly in the areas of organized crime and gang activity. Federal prosecutors rely on substantial assistance reductions and the cooperation they bring every day to help prove their cases, and it is no exaggeration to say that without this tool their job would be considerably more difficult.

A. Drug Crimes

In narcotics enforcement, mandatory minimum sentences are reserved principally for serious drug offenders, based on the quantity of narcotics uncovered. Those with prior felony drug convictions or who have operated a continuing criminal enterprise receive more severe sentences. While these mandatory minimum statutes express society's evaluation of the seriousness of the offender's criminal conduct, the current sentencing structure for drug crimes also recognizes congressional and Administration policy of sentencing nonviolent drug offenders who do not have significant criminal histories without regard to the mandatory minimums – what is commonly referred to as the “safety-valve” exception to drug mandatory minimum laws.⁷

While the Department views mandatory minimums as a necessary and effective law enforcement tool, we also recognize the need to apply the provisions appropriately – protecting the rights of the individual defendant and avoiding unnecessarily long sentences. The safety valve provision addresses this by allowing an otherwise serious drug defendant who did not use a firearm or violence, was not a leader or manager in the drug enterprise, and who does not have a serious criminal history, to be sentenced below the statutory mandatory minimum sentence provided that the offense did not result in death or serious bodily injury. To be eligible for the reduced sentence, the defendant must also truthfully tell the government all of the facts known to him about his crime and related conduct.

⁷ See 18 U.S.C. § 3553(f) (directing the court to impose a sentence “without regard to any statutory minimum sentence”).

The safety valve provision has been successful at preventing the mandatory minimum drug provisions from sweeping too broadly. Safety valve provisions are mandatory, not discretionary, and are widely used. According to the Sentencing Commission data for 2006, there were 16,269 drug defendants sentenced in cases where a mandatory minimum was applicable. Of those cases, 6,047, or more than one third, received the benefit of the safety-valve. These statistics demonstrate that the safety valve provisions are being applied regularly by federal judges, allowing greater flexibility in sentencing while maintaining appropriately serious penalties, deterrence, and incapacitation for the serious drug traffickers who use violence, are leaders or managers, or who have significant criminal histories.

B. Gun Violence

In the area of gun violence, mandatory minimums are used primarily for those violent offenders or drug traffickers that use a weapon to further their criminal activity and for felons who continue to possess firearms. Moreover, existing law provides for more severe sentences for repeat offenders – those who repeatedly use, carry, possess, brandish or discharge a firearm or destructive device during and relation to the crime of violence or drug-trafficking crime. The statutes also provide enhanced penalties for the use of particularly deadly or surreptitious weapons such as short-barreled rifles and firearms equipped with silencers.

We fully support Congress' continued commitment to eliminating gun violence, and we believe these mandatory minimum statutes are critical to this effort. Title 18, section 924(c)(1), the provision setting forth mandatory minimum sentences for the use of guns in furtherance of a crime of violence or drug crimes, was passed on a bipartisan basis in an effort to combat the debilitating effects of gun violence on our communities and to address the dangerous combination of drugs and guns. The chief legislative sponsor for this bill was quoted as stating that the provision was designed "to persuade the man who is tempted to commit a Federal felony to leave his gun at home."⁸ The provisions contained therein – and the mandatory penalties to be imposed – reflect the seriousness of using guns to commit crimes of violence or drug-trafficking offenses, appropriately incapacitate dangerous offenders, and as designed, hopefully dissuade offenders from using firearms in furtherance of their criminal activity.

Mandatory minimum laws for gun violence have also spearheaded Department initiatives to combat violent crime. These mandatory minimum laws are a cornerstone of national collaborative efforts to vigorously enforce gun laws, including Project Safe Neighborhoods ("PSN"). PSN began under this Administration's leadership in 2001 and has been a successful model for the development of additional local, state, and federal cooperatives to more effectively fight crimes of violence. The Attorney General has acknowledged that PSN has "laid the foundation for some of the Department's most significant triumphs in the fight against violent crime."⁹

⁸ 114 Cong. Rec. 22231 (1968) (statement of Rep. Poff).

⁹ See <http://www.psn.gov> (last visited June 12, 2007).

Mandatory minimums are particularly useful for strategic law enforcement programs which target resources to problem places and specific crime problems. For example, as the Attorney General discussed recently, the Department's Violent Crime Impact Team ("VCIT") program is a collaborative local, state and federal effort to reduce the number of homicides and other violent crimes committed with firearms in targeted communities. Modeled after PSN's successes, the VCIT initiative employs innovative technology, analytical investigative resources, and an integrated law enforcement team and strategy to identify, arrest, and prosecute this nation's most violent criminals. Since VCIT's unveiling in 2004, the initiative is responsible for the arrest of 9,800 gang members, drug dealers, felons in possession of firearms, and other violent criminals, and the recovery of more than 11,100 firearms. Upon sentencing, these violent criminals face serious and uncompromising mandatory penalties – not only punishment commensurate with the crime but also punishment that reflects the exact message we want to send to those lawless individuals that continually compromise the safety of our cities and neighborhoods.

CONCLUSION

The substantial gains made by our nation in crime control and reducing unwarranted sentencing disparity fuel the continued and widespread understanding that mandatory sentencing systems work. Although the Supreme Court's 2005 decision in *United States v. Booker* dealt our federal mandatory sentencing regime a damaging blow – the Department remains committed to the principles that gave rise to mandatory sentencing in the first place – consistency, fairness, certainty, truth, and greater justice in sentencing. Moreover, the Department continues to believe that a mandatory sentencing

system, complete with mandatory minimum sentences for certain serious offenses, best serves this nation's interests in reducing crime. The mandatory minimum sentences applicable to serious gun violence and drug offenses, coupled with the national initiatives to combine resources to fight drugs and violent crime, have enabled law enforcement to make great strides in successfully controlling these societal harms. Taken as a whole, the Department of Justice believes that the system of mandatory minimums is fair and effective – promoting the interests of public safety while protecting the rights of individuals.