



## Citizens United for Rehabilitation of Errants



## Federal Prison Chapter

*A National Effort to Reduce Crime  
Through Federal Criminal Justice Reform*

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28 June 2007

Washington, DC

## FedCURE Report: Hearing on Mandatory Minimum Sentencing Laws – The Issues

Tuesday, 26 June 2007

9:30 am – 12:00 pm

2141 Rayburn House Office Building

Hosted by Representative Bobby Scott, Chairman of the Subcommittee on Crime,  
Terrorism, & Homeland Security

Daniel Groh-Wargo, of Kimmitt, Senter, Coates, & Weinfurter, Inc., Washington, DC,  
attend the summit on behalf of FedCURE and filed this report.

### Witnesses:

The Honorable Paul G. Cassell, Judge, Judicial Conference of the United States, Washington, DC

Richard Roper III, U.S. Attorney, Northern District of Texas, Dallas, Texas

The Honorable Ricardo H. Hinojosa, Chairman, United States Sentencing Commission,  
Washington, DC

Marc Mauer, Executive Director, The Sentencing Project, Washington, DC

T. J. Bonner, President, National Border Patrol Council (AFGE), Campo, CA

Serena Nunn, Ann Arbor, MI

### Report:

The morning began with Chairman Scott describing a court case that was the impetus for the hearing, in which two U.S. border patrol agents on the Mexican border were sentenced to 11 and 12 years in prison, respectively, for discharging their firearms at a suspected drug smuggler while in the line of duty. While noting that the decision was still undergoing the appeal process, Chairman Scott commented on the seemingly ludicrous situation the case created, whereby a combination of overzealous prosecution and the illogical application of mandatory minimum sentencing laws had lead to the long-term incarceration of two officers who had potentially done nothing but correctly follow protocol.

From there, Chairman Scott presented an argument against standing minimum mandatory sentencing laws, citing statistics showing the measures to be counterproductive for recidivism and cost to the federal government, while also unfairly targeting minorities and first-time offenders. He also noted that such laws transfer

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decisions on the duration of inmate incarceration from parole hearings, which consider prisoner behavior and rehabilitation, to the trial itself, where only the seriousness of the crime is considered.

Ranking Member Forbes responded by giving a counterargument, emphasizing the benefits of mandatory minimum sentencing as a deterrent and damper on recidivism, and extolling the reduction of bias and unfairness in sentencing with the creation of a universal standard. He implied a correlation between the fall in the national crime rate and the implementation of mandatory minimum sentencing and asserted that those laws facilitated the dismantling of hierarchical crime networks by increasing plea bargains. He added that reform might be needed, but not elimination of the system.

Commissioner Hinojosa was the first witness to testify. His testimony centered on the racial disparity in incarceration that results from crack cocaine offenses and the strict minimum drug sentences. He cited numerous studies that demonstrated that the old guidelines were fairer than the new sentencing system.

Next, Judge Cassell explained that the Judicial Conference opposed minimum mandatory sentencing laws because their “one size fits all” nature removes judicial discretion and forces judges to issue bizarre sentences. He gave a personal example, describing a day when he issued a 55-year sentence to a marijuana dealer who possessed, but never used, a gun, and gave a 22-year sentence to a murderer who had beaten an old lady to death. He went on to argue that the \$1.3 million that would be used to jail the marijuana dealer would have better uses in the criminal justice system.

Mr. Roper’s testimony spoke to his personal experience on the effectiveness of the mandatory minimums. He stated that the sentencing laws helped his district in the infiltration of gun-smuggling networks and drug gangs and led to a fifty-percent reduction in crime in the Dallas area. It was his opinion that mandatory minimum sentencing laws, when combined with prevention and rehabilitation programs, were a powerful instrument against organized crime.

Mr. Mauer attacked what he saw as the “false premises” of mandatory minimums. He said that the consistency of the sentencing laws are overblown, with one-third of those convicted pleading to a lower sentence. Additionally, he cited studies finding that there was no improved deterrent effect with the current laws, because criminals respond to the certainty, not severity, of punishment. He recommended the expansion of the current “safety valve” in drug convictions as a first step to weakening the arbitrariness of mandatory minimums.

Mr. Bonner was concerned mainly with the abovementioned case of the incarcerated border patrol agents and spent most of his time on the questionable behavior of the prosecutor in that trial, and not the subjection of the convicted criminals to mandatory minimum sentences. The Subcommittee members were quick to point out that the case was still on appeal.

Ms. Nunn’s testimony centered on her personal experience with the sentencing laws, having been convicted on cocaine charges with her boyfriend and given a 15-year sentence despite her limited criminal involvement and prior clean record. The irrationality of her sentencing eventually led it to be commuted by President Clinton, and Ms. Nunn has become a poster child for the wrongheaded use of mandatory minimum

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sentences. She also emphasized how her long sentence made it more difficult for her to transition back into society.

The question and answer session, moderated by both Chairman Scott and Ranking Member Forbes, touched on many issues both directly and indirectly applicable to the subject of the hearing. Some important points:

Mandatory minimum sentencing laws are directly leading to the marked expansion of the U.S. prison population. The U.S. has the highest rate of incarceration in the world and that rate is increasing.

The “safety valve” that was put into place to reduce the likelihood of arbitrary sentences only applies to drug cases, and any case must meet five (unstated) requirements to qualify.

Mandatory minimum sentences are biased against crack cocaine, per the intention of the War on Drugs of the 1980s, however there is no indication that communities of crack users and dealers are moving to powder to avoid longer sentences.

The sentencing laws have made it easier to move up the “food chain” in criminal organizations, yet the low-level dealers who are often subject to the sentences are easily replaced.

Mandatory minimum sentences take discretion from the judge, a disinterested party, and give it to the prosecutor, who has an interest in one side of the case.

The sentencing guidelines that were replaced by mandatory minimums took more factors into account when prescribing sentence duration. Nevertheless, in cities like New Orleans, misused judicial discretion allowed a culture of corruption and disparate sentences before the new laws came into effect.

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