

STATEMENT OF SENATOR CHARLES E. GRASSLEY
“REEVALUATING THE EFFECTIVENESS OF MANDATORY MINIMUM SENTENCES”
SENATE JUDICIARY COMMITTEE
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Mr. Chairman, thank you for holding this hearing on the important topic of mandatory minimum sentences. I believe there is quite a bit of misunderstanding concerning this topic. Prior to 1984, federal judges had almost limitless discretion in sentencing within a broad range. Sentences imposed depended much more on which judge was giving the sentence than the nature of the offense or the criminal history of the offender. Parole and excessive judicial discretion led to unwarranted disparities in sentencing. And so in 1984, Congress adopted truth in sentencing and abolished parole.

Sentencing guidelines were established. They considered the nature of the criminal offense and the criminal history of the offender. Those guidelines were normally binding on any federal judge in the country. So no longer would sentences turn on which judge a criminal appeared before. The guidelines eliminated other disparities as well. Judges could not consider factors that often led to wealthier defendants receiving shorter sentences for similar crimes than less wealthy defendants. Racial bias in sentencing, conscious or unconscious, also was addressed through mandatory guidelines. Lengthier sentences protected victim interests and reduced the chances that other innocent people would become victims. The legislation was passed by wide bipartisan majorities. Congress, separate from the sentencing guidelines, also increased the number of mandatory minimum sentences, although they have existed since 1790.

Since then, due in part to tougher federal criminal penalties, elimination of parole, increased numbers of inmates, better police practices, and other factors, crime rates have dropped significantly. However, the Supreme Court undermined the excellent sentencing legislation that Congress passed. First, the Court created from whole cloth a novel interpretation of the Sixth Amendment. Second, the Court in a 2005 case called Booker unnecessarily extended that line of cases to mandatory sentencing guidelines and held them unconstitutional. Third, rather than then strike down the guidelines, the Court rewrote them. In a particularly egregious example of judicial activism, they overrode congressional intent and made the guidelines advisory. It was only because the guidelines were clearly intended to be mandatory that Congress ever passed them in the first place.

Following Booker, Congress now has only one available tool to make sure that sentences are not too lenient and do not reflect unwarranted disparity. That is mandatory minimum sentences. Under the current state of the law, if Congress, reflecting the will of the American people, is to have any effect on sentences imposed – protecting victims, deterring crime, punishing appropriately -- mandatory minimum sentences are our only option. Otherwise, judges will be able to exercise effectively unbridled discretion, with all the disparities and excessive leniency that existed before 1984.

Some people think that cost is a reason to do away with mandatory minimums. I see that for the first time in five years, the Obama Administration has finally found one area of federal spending that it wants to cut: prisons. Perhaps in an era of voluntary guidelines, the first place to

think about cutting spending on sentencing would be to abolish the Sentencing Commission. Private parties can analyze its data and issue reports just as well. And taxpayers won't have to fund an entity that favors retroactive leniency at every opportunity.

The sentencing disparities that exist today are not due to mandatory minimum sentences, which existed both before Booker and after. In fact, Congress has reduced mandatory minimum sentences since Booker. Rather, the disparities are due primarily to the Supreme Court's Booker decision that made the sentencing guidelines advisory. Sentences imposed now turn on which judge the offender appears before. The quality of the lawyer and the other factors that produced disparity before the Sentencing Reform Act are now creeping back into sentencing.

The Sentencing Commission in December issued a report that compared sentences of African-American and White males at the time the guidelines were still mandatory to today, when they are advisory only. For cases overall, when the guidelines were mandatory, African-American males served 11.5% longer sentences than white males. Now that the guidelines are advisory, African-American men serve 19.5% longer sentences than white males. In firearms case, African-American men received sentences that were 6% longer than white men when the guidelines were mandatory. Today, African-American men receive sentences 10% longer than whites for these crimes. For drug trafficking, African-American men received sentences that were 9% longer than white men in 2005, but since the guidelines were made advisory, they now receive sentences that are 13% longer.

As the Sentencing Commission concluded, "although sentence length for both Black male and female offenders and White male and female offenders have decreased over time, White offenders' sentence length has decreased more than Black offenders' sentence length." We should certainly continue to examine federal sentencing policy. We may decide that the length of some mandatory minimum sentences should be adjusted up or down.

But there are two areas in which we ought to consider adding new mandatory minimum sentences because federal judges are departing downward from the guidelines excessively. These are financial crimes and child pornography possession. We should consider imposing mandatory minimum sentences for these offenses, both to reduce racial disparities and to give prosecutors additional tools to combat these serious crimes.

Mandatory minimum sentences are not as inflexible as they are often characterized. According to the Sentencing Commission, almost half of all offenders convicted of an offense carrying a mandatory minimum sentence are not given such a sentence. We hear over and over that mandatory minimum sentences are one size fits all or that they are unfair. We hear that low level and first time offenders always receive harsh sentences. That's just not so. The safety valve provision requires judges not to impose mandatory minimum sentences for first time, low-level, nonviolent drug offenders, who have provided all information to the authorities. Mandatory minimum sentences are not imposed on many other offenders because they provide substantial assistance to the government in prosecuting more serious criminals.

The combination of mandatory minimum sentences and a reduction for substantial assistance provides investigative leads against bigger fish. It is a benefit of mandatory minimum sentences that is not always appreciated. Were we to meaningfully cut back on mandatory minimums, we would lose the ability to bring prosecutions against a large number of major criminals.

I have serious concerns with legislation that would eliminate mandatory minimum sentences, either wholesale or for a class of drug offenses. Two of the bills before the Committee would eliminate or cut in half mandatory minimum sentences for manufacture, distribution, importation, or exportation of such drugs as heroin, cocaine, PCP, LSD, and methamphetamine. I see the toll that meth is taking in Iowa. I do not want to see more harm done because Congress decides to weaken penalties for serious offenses involving this drug. I do not want to see more quantities of these drugs manufactured or distributed because the penalties for particular quantities are lowered.

Finally, I believe that the issue of mandatory minimum sentences is erroneously connected to the issue of federalism. Issues of the clarity of the drafting of federal criminal statutes, what conduct should be subject to federal criminal penalties, and whether the offense sets forth the intent associated with the crime are all important issues bearing on federal power and the number of criminal defendants and prisoners. However, there is no connection between those issues and mandatory minimum sentences. I look forward to today's hearing.