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## United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

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March 22, 2010

The Honorable William K. Sessions III  
United States Sentencing Commission  
One Columbus Circle, N.E.  
Suite 2-500, South Lobby  
Washington, D.C. 20002-8002  
Attention: Public Affairs

Dear Chairman Sessions:

I write to share my views in response to the Sentencing Commission's Request for Public Comment on the January 21, 2010, Proposed Amendments, Policy Statements and Official Commentary to the Sentencing Guidelines. I would like to comment on two of the proposed changes which address issues that are core concerns of the Senate Judiciary Committee – public corruption and juvenile justice. Combating public corruption and reforming the juvenile justice system are among my highest priorities.

### Public Corruption and Alternatives to Incarceration

Congress should strengthen criminal corruption laws to enable federal investigators and prosecutors to bring those who undermine the public trust to justice. Corruption victimizes every American by chipping away at the foundations of our democracy. That is why I introduced the Public Corruption Prosecution Improvements Act. The bipartisan legislation, which the Senate Judiciary Committee approved last year, underscores the need to give the law enforcement community the tools and resources it needs to enforce our laws. Judges must also have the tools they need to adequately punish individuals convicted of public corruption offenses.

Part B of the Proposed Amendment on Alternatives to Incarceration expands Zones B and C in the Sentencing Table in Chapter Five of the Guidelines. This has the effect of increasing the number of offenders who are eligible to receive a non-incarceration sentence. While I applaud the Commission's commitment to exploring alternatives to incarceration, I agree with the suggestion that public corruption offenses, including violations of 18 U.S.C. §§ 201 (bribery and gratuities), 641 (public property theft), 666 (federal program theft), 1001 (false statements), 287 (criminal false claims) and 41 U.S.C. § 51 (kickbacks), should be exempt from these proposed zone changes. Giving judges the maximum flexibility to send individuals convicted of public corruption to prison appropriately reflects the severity of these crimes, and provides a proper deterrent to potential criminals.

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Youth as a Specific Offender Characteristic

As a former prosecutor, I know well the importance of holding criminals accountable for their crimes with strong sentences. But when we are talking about children, we must also think about how best to help them become responsible, contributing members of society as adults. Troubling evidence suggests that locking up young people in adult prison can make them more likely to commit additional crimes upon their release. I am also disturbed that children from minority communities continue to be overrepresented in the juvenile justice system. My concerns led me to introduce the Juvenile Justice and Delinquency Prevention Reauthorization Act of 2009, which sets out new Federal policy and standards for the administration of juvenile justice. When enacted, that legislation will push the law forward in key ways to better serve our communities and our children.

The Commission has asked for feedback whether judges should consider youth as relevant in determining whether departure from a Guidelines sentence is appropriate. Consistent with the juvenile justice reforms I have proposed, the youth of a defendant should be available as a potential reason to impose a downward departure, reflecting the view that younger offenders may be less accountable for their actions. I would also welcome changes in the sentencing regime that would allow judges to consider lack of guidance as a youth as a mitigating factor at sentencing.

Thank you for your attention to these matters. Please do not hesitate to contact me if the Commission has further questions or would like more information.

Sincerely,

  
PATRICK LEAHY  
Chairman