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August 30, 2010

The Honorable William K. Sessions
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 in response to the Sentencing Commission's Request for Public Comment on possible priority policy issues for the amendment cycle ending May 1, 2011. Several of the proposed policy priorities address issues that are core concerns of the Senate Judiciary Committee, and I am pleased that the Commission has identified them for review.

Priority 2: Study of Statutory Mandatory Minimum Penalties

I am particularly interested in the Commission's ongoing, legislatively mandated study of mandatory minimum sentences, which I worked to include with last year's hate crimes law. I am concerned that the creation of mandatory minimum penalties too often ties the hands of judges and prosecutors and can result in unjust sentences. I also worry that mandatory minimum penalties undermine the integrity and consistency of the sentencing guidelines system. It was not a surprise to me to learn that, according to the Commission's 2010 survey of Federal district court judges, more than 60 percent of Federal judges agree that mandatory minimum sentences are inappropriately harsh. In addition to the social cost imposed by mandatory minimums, the economic impact of over-incarceration on state and Federal budgets is significant. I applaud the Commission for its continued attention to this important issue, and I look forward to reviewing its upcoming report to Congress on statutory minimum penalties, including a review of the operation of the "safety valve" provision in 18 U.S.C. § 3553(e).

Priority 11: Alternatives to Incarceration

I support the Commission's decision to prioritize the study of alternatives to incarceration. There are currently more than two million people in jail or prison, and more than 13 million people spend some time in jail or prison each year. The problems of prison overcrowding, the high cost of prisoner care, and the growing number of mentally ill people in the prison system all point to the ongoing need to ensure that prison resources are allocated effectively. Incarceration can be a critically important deterrent in serious fraud, corruption, and other white collar cases, and is essential for violent offenders. The Federal sentencing system should ensure that scarce prison resources are available to house these serious criminal offenders by providing for the increased use of restitution, community service, and other alternative sentences in cases of nonviolent and less serious offenders.

Bolstering alternatives to incarceration also has a positive effect on public safety. Most offenders will at some point return to our communities. Punishments other than incarceration place serious demands on offenders and often provide intensive court and community supervision, as well as the services needed to allow offenders to become productive members of society. This supervision helps reduce recidivism and rehabilitate offenders. Alternatives such as drug and mental health courts have been proven to address the underlying causes of crime and help prevent recidivism.

In 2008, Congress passed the Second Chance Act to give Federal, state and local government's additional tools to help inmates more successfully reintegrate into their communities upon release. Coupled with incarceration alternatives, reentry programs take an important step toward reducing the nationwide recidivism rate of 66 percent and decreasing the annual nationwide \$8.2 billion dollar cost of incarceration.

Alternatives to incarceration can bolster community relationships by allowing nonviolent offenders to remain with their spouses and children and to stay in their neighborhoods and jobs. This allows them to earn money, support their families, repair harms suffered by victims, pay taxes, and contribute to their communities. I highly encourage the Commission to continue to study this issue and to encourage the use of cost-effective, recidivism-reducing sentencing options.

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Priority 12: Sentencing Guidelines for Environmental Crimes

I was pleased to see that the Commission has identified as a possible policy priority a multi-year review of the sentencing guidelines as they pertain to environmental crimes. On June 9, 2010, I introduced the Environmental Crimes Enforcement Act, which would direct the Commission to ensure that the sentences in environmental cases reflect the seriousness of these offenses. The devastating BP Deepwater Horizon Oil Rig spill made clear that environmental crimes can threaten the lives and livelihoods of hardworking Americans and destroy precious natural resources and habitats. The sentences that environmental criminals receive must reflect this reality.

All too often, corporations treat fines and monetary penalties as merely a cost of doing business to be factored against profits. Criminal penalties for environmental crimes such as Clean Water Act violations are not as severe as for other white-collar crimes, despite the widespread harm such crimes can cause. To deter criminal behavior by corporations, it is important to have laws resulting in prison time. Raising criminal sentences, as appropriate, can have a real deterrent effect. I encourage the Commission to prioritize the review of the sentencing guidelines as they pertain to environmental crimes.

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

Sincerely,

A handwritten signature in black ink that reads "Patrick Leahy". The signature is written in a cursive, flowing style.

PATRICK LEAHY
Chairman