

February 11, 2003

Re: Amend or oppose the PROTECT Act (S. 151)

Dear Senator:

The undersigned organizations write to express our objection to certain sentencing provisions in the PROTECT Act (S. 151), which may come before the full Senate for a vote this week. Specifically, **Section 12** would extend **mandatory minimum sentences** to a new category of offenders and **Section 6(c)** would require specific changes to the U.S. Sentencing Guidelines in a manner that is inconsistent with the statutory role of the Sentencing Commission.

With regard to both provisions, a better approach would be the enactment of general directives to the United States Sentencing Commission, instructing that agency to assure appropriate sentences for the conduct in question. We urge that you oppose this legislation or seek to amend it with general directives to the Sentencing Commission.

Chief Justice William Rehnquist has called mandatory sentencing “a good example of the law of unintended consequences,” and many Members of Congress, from both sides of the aisle, have expressed reservations about mandatory minimum sentences. The Judicial Conferences of all 12 federal circuits have urged the repeal of mandatory minimum sentences, after concluding that they are unfair and ineffective. And numerous studies, including those by the Department of Justice and the U.S. Sentencing Commission, indicate that mandatory minimum sentencing is not an effective instrument for deterring crime.

While most criticism of mandatory minimum sentences has focused on the federal drug statutes, the reasons for rejecting mandatory minimums apply without regard to offense type. Mandatory minimum sentencing deprives judges of the ability to fashion sentences that suit the particular offense and offender. Despite their flaws, the Sentencing Guidelines are better able to take into account the range of factors that are relevant to the sentencing decision.

The Sentencing Guidelines also are better able to exclude factors that give rise to unwarranted sentencing disparities. In transferring sentencing discretion from judges to prosecutors, mandatory minimum sentences transfer the sentencing decision from open courtroom to closed prosecutor’s office. Consequently, there are inadequate guarantees that statutorily prohibited factors such as race, age and gender do not influence the ultimate sentence. Even when the charging — and, in effect, sentencing — decision is free from taint, such closed-door decisions can undermine the appearance of equal justice.

In the past, Congress has successfully relied upon general directives to the Sentencing Commission — provisions which instruct that agency to review and, if necessary, increase the applicable Guideline sentences. There is no reason to depart from that practice for the offenses covered by the PROTECT Act. On the contrary, general directives to the Sentencing Commission would better accomplish the goals of this legislation — without undermining the

uniformity and fairness that Congress sought in establishing the U.S. Sentencing Commission and enacting the Sentencing Guidelines.

Thank you for considering our views on the PROTECT Act. Please contact Kyle O'Dowd at NACDL (202-872-8600, ext. 226) or Julie Stewart at FAMM (202-822-6700) if you have any questions.

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cc: Full Senate