

**COMMENTS OF THE SECTION ON  
CRIMINAL LAW AND INDIVIDUAL RIGHTS  
OF THE DISTRICT OF COLUMBIA BAR**

**to the  
Committee on the Judiciary  
Council of the District of Columbia**

**REGARDING**

**"THE DISTRICT OF COLUMBIA NONVIOLENT OFFENSES  
MANDATORY-MINIMUM SENTENCES AMENDMENT ACT OF 1994"**

October 31, 1994

Laurie B. Davis  
Steven P. Hollman  
Niki Kuckes, Co-Chair  
Jennifer P. Lyman  
William J. Mertens  
Steven F. Reich  
\*Charles Rust-Tierney, Co-Chair  
\*Nkechi Taifa, Steering Committee Member  
Joseph B. Tulman  
Members of the Steering Committee Section on  
Criminal Law and Individual Rights

\*represents principal author

**STANDARD DISCLAIMER**

"The views expressed herein represent only those of the Section on Criminal Law and Individual Rights of the District of Columbia Bar and not those of the D.C. Bar or of its Board of Governors."

## SYNOPSIS OF COMMENTS

The Section on Criminal Law and Individual Rights of the District of Columbia Bar is pleased to provide testimony in support of the "District of Columbia Nonviolent Offenses Mandatory-Minimum Sentences Amendment Act of 1994" introduced by Councilmembers William Lightfoot and Harry Thomas. This legislation, in pertinent part, would repeal Section 401(c) of the District of Columbia Uniform Controlled Substances Act of 1981 (D.C. Law 4-29; D.C. Code Sec. 33-541(c)). The bill is limited in its scope. It applies only to nonviolent drug offenses, leaving intact mandatory sentences for offenses involving firearms.

The Section believes that abolition of mandatory minimum sentences for nonviolent drug offenders is proper because such mandatory minimums are ineffectual, fail to provide the certainty and uniformity in punishment that they purport to provide, cause disparity in sentencing, are extremely costly, and their imposition may, in some instances, actually endanger the public. After extensive study and analysis, the American Bar Association has taken a very similar position with respect to mandatory minimum sentences on the national level.

We hope that this Council takes one of the critical steps needed to make the District's criminal justice system rational and cost-effective -- the repeal of mandatory minimum sentences for nonviolent drug offenses.

The Section on Criminal Law and Individual Rights of the District of Columbia Bar ("Section") is composed of over 600 criminal justice and civil rights practitioners, legal educators and other members of the District of Columbia Bar who have an interest in criminal law and individual rights. The views expressed herein represent only those of the Section on Criminal Law and Individual Rights of the District of Columbia Bar, and not those of the District of Columbia Bar or its Board of Governors.

We are pleased to provide testimony in support of the "District of Columbia Nonviolent Offenses Mandatory-Minimum Sentences Amendment Act of 1994" introduced by Councilmembers William Lightfoot and Harry Thomas. This legislation, in pertinent part, would repeal Section 401(c) of the District of Columbia Uniform Controlled Substances Act of 1981 (D.C. Law 4-29; D.C. Code Sec. 33-541(c)). The bill is limited in its scope. It applies only to nonviolent drug offenses, leaving intact mandatory sentences for offenses involving firearms.

We commend this Committee for its prudent decision to take a look at the subject of mandatory minimum sentences for nonviolent drug offenses -- sentences which are having a profound, adverse effect on the functioning of the criminal justice system in the District of Columbia. The adverse effects of mandatory minimum sentencing have been widely acknowledged by many of those who are directly involved in the criminal justice system: defense attorneys, corrections officers, judges and some prosecutors. Our Section believes that abolition of mandatory minimum sentences for nonviolent drug offenders is proper because such mandatory minimums are ineffectual, fail to provide for certainty and uniformity in punishment that they purport to provide, cause disparity in sentencing, are extremely costly, and their imposition may, in some instances, actually endanger the public. After extensive study and analysis, the American Bar Association has taken a very similar

position with respect to mandatory minimum sentences on the national level. We hope that this Council takes one of the critical steps needed to make the District's criminal justice system rational and cost-effective -- the repeal of mandatory minimum sentences for non-violent drug offenses.

Mandatory minimum sentencing laws for nonviolent drug offenders are ineffective and detrimental: they crowd prisons with non-violent offenders who could be more constructively sanctioned and treated in the community, and they have, at least on the federal level, been shown to

have a racially  
disparate impact.  
Because judges  
are barred from  
considering a n y

... mandatory minimums are ineffectual, fail to provide for certainty and uniformity in punishment that they purport to provide, cause disparity in sentencing, are extremely costly, and their imposition may, in some instances, actually endanger the public.

mitigating factors when imposing such sentences, mandatory minimum provisions in many instances force courts to impose lengthy sentences which are unreasonably harsh. Such sentences often do not take into account the role of the defendant in the offense or other factors historically found relevant to sentencing.

Mandatory minimum drug sentences produce an inflexibility and rigidity in the imposition of punishment. Those of us who work daily in the criminal justice system -- defense attorneys, prosecutors, judges, correctional officers and others -- know only too well that criminal offenders cannot be lumped together into one all-encompassing category for criminal punishment purposes. While rules can and should be established that will generally determine the severity of the sanction or sanctions to be imposed on an offender, there will always be some offenders who simply do not fit these general rules. To insist nonetheless that a statutorily mandated penalty be imposed on such

offenders, regardless of the circumstances and regardless of the consequences, is to insist that the unjustness of a sentence in particular circumstances be ignored. In short, a justice system in which mandatory minimums for nonviolent offenses play a central role simply cannot live up to its name.

This brings us to our second concern about statutes providing for mandatory minimum sentences for drug offenses. They simply do not accomplish what they purport to accomplish, and they actually aggravate the very problem of disparity in sentencing that they are designed to alleviate. One of the superficial attractions of mandatory minimums is that they will supposedly create certainty and uniformity in the punishment of certain types of offenders. Individuals contemplating the commission of a crime will know in advance that if they commit the crime and are convicted, they will spend a statutorily mandated amount of time in prison. Such certainty in the penalty to be imposed for criminal conduct is supposed to deter the conduct from ever occurring in the first place.

In practice, however, statutes providing for mandatory minimum sentences are not realizing this objective. In a federal study completed in 1991, the United States Sentencing Commission reported that 40% of the defendants whose criminal conduct fell within the proscriptions of mandatory minimum statutes received sentences less than the statutorily mandated penalty. Charging decisions by U.S. Attorneys account for a majority of these differences. Federal judges, including some in this jurisdiction, note that discretion has not been eliminated, but merely transferred from the judicial to the executive branch.

There is also considerable evidence that mandatory minimum provisions, especially those involving drug offenses, have resulted in racially and ethnically disparate sentencing. Studies by both the United States Sentencing Commission and the Federal Judicial Center have revealed that white defendants whose criminal conduct falls within the scope of mandatory minimum statutes are much

more likely than African-American defendants and Hispanic defendants to avoid application of mandatory minimum penalties. The Section is unaware of any studies in the District on this specific issue. Hence, these findings may or may not be mirrored in the demographics of drug enforcement in the District of Columbia. However, the racial effects of mandatory minimums on the national level are not only disconcerting but alarming.

Another concern of the Section about mandatory minimums for nonviolent drug offenses that we wish to highlight is their costs. We have already alluded to some of these costs. Whenever an unjust sentence is imposed in a case, there is a cost -- not only a cost to the individual who will serve the sentence but to the society in which inappropriate and unreasonable sentences are meted out. Because of mandatory minimum sentences, many drug offenders who previously would have served sentences in the community or received more extensive drug treatment as part of their sentence, are now being incarcerated in prison. The average cost in the District of Columbia of keeping just one of these individuals in prison is, on average, \$22,000 a year. What this means, of course, is that none of this money can be used for health care, education, or any of the other programs and services provided by the District; nor can the money be used to reduce the District's deficit. And these figures do not include the millions of additional taxpayer dollars that the District government has expended and, in the absence of sentencing reform, will expend in the future to build prisons to house the ever-increasing number of prisoners, many of whom are serving mandatory minimum sentences for nonviolent drug offenses.

The average cost in the District of Columbia of keeping just one ... individual in prison is, on average, \$22,000 a year.

The financial blow to District taxpayers caused by mandatory minimums for drug offenses

might be shrugged off as the unavoidable cost of having a criminal punishment system were it not for the fact that effective punishments that are cheaper than incarceration can be constructed for many of the offenders subject now to mandatory minimum drug sentencing provisions.

There are other costs of mandatory minimum sentences for nonviolent crimes that should not be ignored. There is the human toll that attends unnecessary incarceration or incarceration for an unnecessarily lengthy period of time. The debilitating effects on offenders of unnecessary and/or lengthy incarceration, and the emotional suffering of their families from whom they will be separated for years cannot and should not be cavalierly dismissed.

In addition, the programs that might facilitate the successful reintegration of at least some prisoners into the community, such as substance-abuse treatment programs, are increasingly unavailable for the burgeoning number of inmates with these program needs.

Finally, another cost of mandatory minimum sentencing provisions, particularly when applied to nonviolent offenders, may be endangerment of the public's safety. Studies have shown that the recidivism rates of prisoners after their release from prison are higher than the recidivism rates of offenders with matching crimes and backgrounds who are punished in the community. See e.g., John Petersilia, Susan Turner, & Joyce Peterson, Prison v. Probation in California: Implications for Crime and Offender Recidivism (The RAND Corporation 1986). The reason for the higher recidivism rates of released prisoners is not yet clear. The higher recidivism rates may be due to solidification of antisocial attitudes while incarcerated. Or they may be due to the fact that ex-prisoners are rejected by society upon their release from prison and sometimes turn to a life of crime to meet their needs. Whatever the reason for the higher recidivism rates of released prisoners uncovered in these studies, they counsel us to critically examine claims that mandatory minimums somehow enhance public safety

and to take great care to ensure that the criminal justice policies we adopt do not exacerbate the very problems they are designed to redress.

It is important to recognize that this proposed amendment will not open the floodgates allowing hordes of prisoners to be unconditionally released. It will merely allow the court the flexibility to fashion a sentence tailored to the particular circumstances of the nonviolent offender and the offense he or she has committed. Such discretion may result in incarceration for some and much needed treatment for others.

Let us then capsulize for you the views of the Section about this legislation. Statutes providing for mandatory minimum sentences for nonviolent drug offenses often produce sentences that are unjust. They are ineffectual in providing the certainty and uniformity in punishment that they purport to provide. Mandatory minimum sentences, at least on the federal level, cause disparity in sentencing, and African Americans and Hispanics disproportionately feel the impact of this disparity. Mandatory minimum sentences for nonviolent drug offenses are extremely costly, and their imposition may in some instances actually endanger the public. With mandatory minimum sentences for nonviolent drug offenses being unjust, ineffective, and enormously costly, the City Council is to be commended for its efforts to revise the misdirected course of having them in our criminal justice system.

On behalf of the Section on Criminal Law and Individual Rights, we therefore strongly urge the members of this Committee and other members of the Council to vote in favor of the District of Columbia Nonviolent Offenses Mandatory-Minimum Sentences Amendment Act of 1994.