

**The Senate Committee on the Judiciary**  
**Full Committee Hearing**  
**“Reevaluating the Effectiveness of Federal Mandatory  
Minimum Sentences”**

September 18, 2013  
10:00 am  
Dirksen Senate Office Bldg  
Room 226

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Our Founding Fathers believed that “[i]t is impossible for any general law to foresee and provide for all cases that may arise; and therefore an inflexible adherence to it, in every instance, might frequently be the cause of very great injustice.”<sup>1</sup> Mandatory minimum sentences frequently cause such very great injustice by preventing judges from exercising their discretion under the circumstances of each case to impose sentences that are tailored to fit the crime. As the late Chief Justice William Rehnquist once commented, by taking away that flexibility, mandatory minimum sentences are “a good example of the law of unintended consequences.”<sup>2</sup>

Stephanie Yvette George is just one example of the frequently harsh and unjustifiable application of mandatory minimum sentences to low-level, non-violent drug offenders. Stephanie is one of the more than 219,000 federal inmates that Attorney General Holder recently acknowledged are behind bars and is one of the half of that number that is serving time for a drug-related crime. Stephanie’s case is a particularly poignant illustration of the unjust

consequences that can result from a mandatory minimum sentencing regime. Stephanie is serving a **life sentence** for her minor involvement in a drug conspiracy, a sentence with which her sentencing judge disagreed but which he had no choice to impose under the mandatory provisions of the Controlled Substances Act.<sup>3</sup>

### **Stephanie George's Case**

Stephanie George received a life sentence almost 16 years ago based on her two prior state drug convictions involving a total of approximately \$160 of crack cocaine and her low-level, non-violent involvement in her former boyfriend's drug activities, for which the large amount of drugs and money possessed by him were attributed to Stephanie.

Although Stephanie once faced a promising future, even managing to graduate from high school and obtain certification as a hairdresser as a teenage single mother, Stephanie soon entered into the first of a series of relationships with men who sold crack cocaine. She had two more children, both of whom were fathered by men who sold drugs and who were not present in their children's lives.

Stephanie did not make enough money as a hairdresser to support her children. As she has acknowledged, "I was a 26 yr. old mother struggling to make ends meet who made the most ill fated decision of my life to involve myself with individuals that sold drugs & [with] a lifestyle unhealthy for everyone . . . involved."<sup>4</sup> She took messages for her boyfriends and handled their money and drugs. They also used her home to store drugs, believing that police were less likely to target a mother with children.

Stephanie George did not, however, go unnoticed or unpunished. During a two month period at the end of 1993, Stephanie was charged with state felony drug offenses for possessing a

bag with cocaine residue and for selling a small amount of powder and crack cocaine to a confidential informant totaling approximately \$160. She was charged with multiple felonies and pleaded guilty to those offenses. Stephanie was sentenced to a total of only nine months in state custody for those crimes, to run concurrent with a year's probation, which she served in county jail with work release.

Unfortunately, after her release, Stephanie – through her relationship with a former boyfriend, the father of her middle child, Michael Dickey – became entangled in the drug conspiracy for which she is serving her life sentence. Dickey was an admitted drug dealer who conspired to control the Florida Panhandle drug trade. He stored money and drugs at Stephanie's house, where officers discovered Stephanie doing someone's hair in the kitchen. Dickey was in the living room with marijuana, a large amount of cash on his person, and keys to a safe. In the safe in the attic, officers found approximately one-half of a kilogram of cocaine and \$13,710 in cash.

Afraid of a lifetime away from her children, and initially reluctant to take responsibility for her crime, Stephanie elected to go to trial. She was found guilty based on the testimony of cooperating witnesses, most of whom had been charged with the same drug conspiracy. Their testimony established that Stephanie was (in the words of her sentencing judge), “a girlfriend and bag holder and money holder.”<sup>5</sup> Notably, Stephanie George is not alone in choosing to go to trial rather than plead guilty when faced with a mandatory minimum sentence. The Sentencing Commission reported that, in 2010, the longer the mandatory minimum penalty an offender faced, the less likely that that offender was to plead guilty.<sup>6</sup>

## Stephanie's Life Sentence

Stephanie George exemplifies what some have called the “girlfriend problem,” wherein women become entangled in their significant others’ drug activities for which, ironically, they receive harsher sentences because of their lack of knowledge and information about the drug conspiracy with which they could otherwise have bargained for a reduced sentence.<sup>7</sup> Stephanie received the longest sentence by far of any of her co-defendants: **life in prison.**

As Stephanie George discovered, mandatory minimum provisions are triggered by a number of aggravating factors “without regard to the possibility that mitigating circumstances surrounding the offense or the offender may justify a lower sentence.”<sup>8</sup> For those sentences to be fair or reasonable in every case, “the factors triggering the mandatory minimum penalty must **always** warrant the prescribed mandatory minimum penalty, regardless of the individualized circumstances of the offense or the offender.”<sup>9</sup> Stephanie’s circumstances decidedly did not warrant a life sentence. In fact, Stephanie’s sentencing judge, the Honorable Roger Vinson of the U.S. District Court for the Northern District of Florida, repeatedly opined that she did not deserve a life sentence, but the mandatory minimum regime gave him no other option. Although he believed that “[t]here’s no question Ms. George deserves to be punished,” he stated that “the thing that troubles me about this case and Ms. George, is that I don’t think she warrants a life sentence.”<sup>10</sup> As Judge Vinson explained,

Well, I have examined the case law as carefully as I can, Ms. George, and it appears that you are facing a mandatory life sentence and I don’t really have any choice in the matter, as has been explained to you. **If there was some way I could find to give you something less than life I sure would do it, but I can’t. Unfortunately, my hands are tied.**

\* \* \*

. . . **I wish I had another alternative.**<sup>11</sup>

On May 5, 1997, Judge Vinson sentenced Stephanie George to life in prison under a mandatory minimum provision that imposed a life sentence based on the amount of drugs attributed to the conspiracy and her prior state felony drug convictions.<sup>12</sup> Stephanie's case is striking because she received a life sentence for her relatively minor involvement in the crime and after serving only nine months in county jail, with work release. And as Judge Vinson made it clear: "but for the statutory enhancement I would not impose a life sentence . . . in my judgment [your crime] does not warrant a life sentence. Nevertheless, I am required by law to impose such a sentence . . . ." <sup>13</sup>

As Chairman Patrick Leahy has described Stephanie, "she was simply caught up in the dragnet because her boyfriend dealt drugs, and yet, she has been sentenced to life in prison."<sup>14</sup> Shockingly, although Stephanie received a life sentence, Dickey, the drug kingpin and the owner of the money and the drugs found in Stephanie's home, was released from prison **6 years ago**, in 2007. Similarly, of the admitted drug dealers who testified against Stephanie, all but one have been released and the remaining incarcerated co-conspirator is due to be released soon.

### **Stephanie's Clemency Petition**

Stephanie has already served almost 16 years of her life sentence. The hapless 26 year-old single mother of three is now a 43 year-old grandmother. The structure of the mandatory minimum laws in this country is such that Stephanie has **no hope** of release from prison during her lifetime but through the possible exercise of the President's pardon power under Article II, Section 2 of the United States Constitution.

In March 2012, Stephanie petitioned President Obama for clemency, seeking commutation of her sentence to time served. Stephanie George deserves clemency. She has accepted responsibility for her crime and has been rehabilitated during her time in prison through faith, counseling, education, and hard work.

In addition to Stephanie's personal growth and transformation, the disproportionate and unduly severe nature of her life sentence warrants clemency. Congress considers a sentence of ten years or more to be appropriate for drug kingpins, "the masterminds who are really running these operations."<sup>15</sup> But Stephanie George was not a kingpin; she was a non-violent, low-level offender who was mixed up with the wrong kind of man, the very circumstances under which many women like Stephanie have become peripherally involved in the drug trafficking activities of those with whom they have personal relationships.<sup>16</sup>

Stephanie's petition for commutation of her sentence was supported by her family and members of her community who are willing to provide her with employment and other support. Even Judge Vinson has since expressed his support for clemency for Stephanie. But Stephanie still sits in federal prison, hoping, praying, and waiting for a favorable decision on her clemency petition, from a President who has many, many more urgent matters commanding his attention.

### **Contemplated Reforms**

At the August 12, 2013, Annual Meeting of the American Bar Association's House of Delegates, Attorney General Holder announced a significant change in the Department of Justice's charging policy: low-level, non-violent drug offenders will no longer be charged with offenses like Stephanie's for which draconian mandatory minimum sentences attach.<sup>17</sup> As the Attorney General also recognized, there is a growing groundswell of support for similar (and more permanent) reforms in Congress, with proposed legislation to reform this country's

mandatory sentences sponsored by Senators Durbin, Leahy, Lee, and Paul. We commend those Senators for their efforts, as such legislative reform offers enormous promise for the Stephanie Georges of the future who may become ensnared in their romantic partners' drug activities. If those reforms are enacted, those women would be spared having to pay for their foolish youthful mistakes by spending the rest of their lives behind bars. As Stephanie has explained, as a "struggling young mother," she made terrible mistakes for which she has had to pay with "the loss of everything."<sup>18</sup>

But those laudable changes, while necessary to fix our broken sentencing system, will come too late to help Stephanie George herself. Stephanie, a vibrant and intelligent woman, remains in a Florida prison, working hard at her prison job, taking business courses, and trying to keep busy with knitting and exercise. She receives occasional visits from her family, but because trips to prison are expensive for them, primarily keeps up with her mother, sister, children, and grandchildren through frequent calls home.

She waits, and she hopes, perhaps in vain.

Stephanie will die in prison if her petition for clemency is not granted. Stephanie George is just one of many in this country who have suffered from an unjust mandatory minimum sentencing regime and who will continue to suffer needlessly unless reforms are enacted. We urge the Congress to exercise its legislative power to prevent such future harms, as we continue to urge the President to exercise his unique Executive Pardon Power to commute the life sentence of Stephanie George to time served, so she can be returned to her children and her new grandchildren, a free woman again after 16 years of imprisonment.

Thank you for the opportunity to present this testimony. We stand ready to provide any assistance to the Committee as may be requested of us.

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<sup>1</sup> Address by James Iredell, North Carolina Ratifying Convention (July 28, 1788), *reprinted in* 4 The Founder’s Constitution 17 (R. Kurland & R. Lerner ed. 1987).

<sup>2</sup> William H. Rehnquist, Luncheon Address (June 18, 1993), *reprinted in* Barbara S. Vincent & Paul J. Hofer, “The Consequences of Mandatory Minimum Prison Terms: A Summary of Recent Findings,” Fed. Jud. Ctr. (1994).

<sup>3</sup> *See* 21 U.S.C. § 841(b)(1)(A)(iii).

<sup>4</sup> Stephanie George’s Supplemental Statement in Support of her Petition for Clemency.

<sup>5</sup> Case No. 3:96-cr-78, George Sentencing Tr. at 13 (N.D. Fla. May 5, 1997).

<sup>6</sup> U.S. Sentencing Commission, Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System, at 155-56 (Oct. 2011).

<sup>7</sup> *See generally* Nekima Levy-Pounds, *Beaten by the System and Down for the Count: Why Poor Women of Color and Children Don’t Stand a Chance Against U.S. Drug-Sentencing Policy*, 3 Univ. of St. Thomas L.J. 462 (2006).

<sup>8</sup> U.S. Sentencing Commission, Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System, *supra*, at 346.

<sup>99</sup> *Id.*

<sup>10</sup> George Sentencing Tr. at 13.

<sup>11</sup> *Id.* at 11-12 (emphasis added).

<sup>12</sup> 21 U.S.C. § 841(b)(1)(A)(iii).

<sup>13</sup> George Sentencing Tr. at 13.

<sup>14</sup> *See* Senate Judiciary Committee Hearing Documents and Transcripts: 112th Congress, Questions for the Record—Jeffrey Sedgwick, *available at* <http://www.judiciary.senate.gov/resources/transcripts/upload/080112QFRs-Sedgwick.pdf> (Question 2 posed by Sen. Leahy to Jeffrey Sedgwick).

<sup>15</sup> U.S. Sentencing Commission, Report to Congress, Cocaine and Federal Sentencing Policy, at 6-7 (May 2002) (internal quotation marks omitted) (quoting 132 Cong. Rec. 27,193-94 (daily ed. Sept. 30, 1986 (Remarks by Sen. Byrd)). Congress envisioned a ten-year sentence for drug kingpins who were first time offenders and a five-year sentence for first-time “middle level dealers.” *Id.*

<sup>16</sup> *See* Nekima Levy-Pounds, *From the Frying Pan into the Fire: How Poor Women of Color and Children are Affected by Sentencing Guidelines and Mandatory Minimums*, 47 Santa Clara L. Rev. 285, 311 & n.139 (2007); Lenora Lapidus et al., *Caught in the Net: The Impact of Drug Policies on Women and Families*, Am. Civil Liberties Union, Break the Chains, & the Brennan Ctr. for Justice, at 1, 16-18 (Mar. 15, 2005); Joe Rigert, *Drug Sentences Often Stacked Against Women*, Star Tribune, Dec. 14, 1997 at 01A.

<sup>17</sup> *See* Attorney General’s Remarks, *available at* <http://www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-130812.html> (last visited Sept. 15, 2013).

<sup>18</sup> Stephanie George’s Supplemental Statement in Support of her Petition for Clemency.





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## PUBLIC CORRECTIONAL POLICY ON SENTENCING

1994-1

### **Introduction:**

Changes in U.S. sentencing policies have been a major cause of an unprecedented increase in the prison population. The sentencing process should attempt to control crime as much as possible, at the lowest cost to taxpayers and in the least restrictive environment consistent with public safety. There should be a balanced consideration of all sentencing objectives.

Sentencing policy today takes many forms. In some venues, legislatures have taken authority over that policy, leaving little discretion in the sentencing of individual offenders to the judiciary. Under these circumstances "sentencing" discretion is shifted to the prosecutors and takes the form of plea bargaining and charge selection. In others, judges and parole boards retain wide discretion on a case-by-case basis. In still others, sentencing commissions have been given responsibility for defining how offenders are punished. Regardless of the form, sentencing policy directly affects what the correctional practitioner does on a daily basis, and to the extent that this policy fails in fairness and rationality, then correctional practice is adversely affected.

As implementors of sentencing policies, corrections professionals have a unique vantage point from which to provide input on their effectiveness and consequences. If corrections does not voice its collective experience on this matter, then sentencing practices nationwide will fail to be as soundly based as they should be in this important public policy area.

### **Policy Statement:**

The American Correctional Association actively promotes the development of sentencing policies that should:

- A. Be based on the principle of proportionality. The sentence imposed should be commensurate with the seriousness of the crime and the harm done;
- B. Be impartial with regard to race, ethnicity and economic status as to the discretion exercised in sentencing;

- C. Include a broad range of options for custody, supervision and rehabilitation of offenders;
- D. Be purpose-driven. Policies must be based on clearly articulated purposes. They should be grounded in knowledge of the relative effectiveness of the various sanctions imposed in attempts to achieve these purposes;
- E. Encourage the evaluation of sentencing policy on an ongoing basis. The various sanctions should be monitored to determine their relative effectiveness based on the purpose(s) they are intended to have. Likewise, monitoring should take place to ensure that the sanctions are not applied based on race, ethnicity or economic status;
- F. Recognize that the criminal sentence must be based on multiple criteria, including the harm done to the victim, past criminal history, the need to protect the public and the opportunity to provide programs for offenders as a means of reducing the risk for future crime;
- G. Provide the framework to guide and control discretion according to established criteria and within appropriate limits and allow for recognition of individual needs;
- H. Have as a major purpose restorative justice — righting the harm done to the victim and the community. The restorative focus should be both process and substantively oriented. The victim or his or her representative should be included in the “justice” process. The sentencing procedure should address the needs of the victim, including his or her need to be heard and, as much as possible, to be and feel restored to whole again;
- I. Promote the use of community-based programs whenever consistent with public safety; and
- J. Be linked to the resources needed to implement the policy. The consequential cost of various sanctions should be assessed. Sentencing policy should not be enacted without the benefit of a fiscal-impact analysis. Resource allocations should be linked to sentencing policy so as to ensure adequate funding of all sanctions, including total confinement and the broad range of intermediate sanction and community-based programs needed to implement those policies.

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This Public Correctional Policy was unanimously ratified by the American Correctional Association Delegate Assembly at the Congress of Correction in St. Louis, Aug. 10, 1994. It was reviewed and amended Jan. 20, 1999, at the Winter Conference in Nashville, Tenn. It was reviewed and amended at the Winter Conference in New Orleans, Jan. 14, 2004. It was reviewed and amended at the Winter Conference in Kissimmee, Fla., Jan. 14, 2009.



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## SUPPORTING THE ELIMINATION OF MANDATORY MINIMUM SENTENCES AND THE ENACTMENT OF "SAFETY VALVE" LEGISLATION

**WHEREAS**, mandatory minimum sentences are a major contributor to prison and jail crowding and corrections budget growth; and

**WHEREAS**, a "safety valve" is a statutory provision, enacted by a legislature, that permits judges to sentence offenders below an applicable mandatory minimum sentence if certain conditions are met or certain facts and circumstances warrant such a sentence; and

**WHEREAS**, the Justice Safety Valve Act would create a "safety valve" provision that would apply to all federal mandatory minimum sentences and permit judges to sentence below the mandatory minimum term if doing so would not endanger the public and other facts and circumstances justified it; and

**WHEREAS**, model legislative language for state legislatures has been proposed to create a "safety valve" provision at the state level that would apply to many mandatory minimum sentences and permit judges to sentence below the mandatory minimum term if doing so would not endanger the public and certain other qualifications were met; and

**WHEREAS**, the use of statutory "safety valves" helps to reduce both prison and jail crowding and corrections costs, in turn making prisons safer and more rehabilitative, preserving limited resources for the most violent and dangerous offenders, and ensuring continued funding of other important law enforcement and crime reduction programs; and now

**THEREFORE BE IT RESOLVED**, the American Correctional Association supports the elimination of mandatory minimum sentencing policies; and now

**THEREFORE BE IT FURTHER RESOLVED** that the American Correctional Association supports enactment by state legislatures and the U.S. Congress of "safety valve" provisions.

September 17, 2013

VIA ELECTRONIC MAIL

The Honorable Richard J. "Dick" Durbin  
United States Senate  
711 Hart Senate Office Building  
Washington, DC 20510-1304

The Honorable Michael S. "Mike" Lee  
United States Senate  
316 Hart Senate Office Building  
Washington, DC 20510-4404

RE: The Smarter Sentencing Act

Dear Senators Durbin and Lee:

As former judges, prosecutors and law enforcement officials, we write to express our support for the reforms to federal sentencing contained in the Smarter Sentencing Act (S.1410). Your bill represents an important step in promoting public safety and addressing the consequences of federal mandatory minimum sentences on the explosive growth in incarceration costs and the fairness of sentences for nonviolent drug offenders.

Law enforcement has made great progress in curbing violent crime. At the federal level, we need to address the parts of our sentencing policies that are not working. Over the past three decades, what we spend on federal incarceration has increased by more than 1100 percent. Despite this massive investment, federal prisons are nearly 40 percent over capacity, with the ratio of prisoners to prison guards rising. As a nation, we are expending enormous amounts of money and still failing to keep pace with the growing prison population, with drug offenders comprising nearly half of this population.

In addition to being fiscally imprudent, maintaining the status quo in federal sentencing policy threatens public safety. Overcrowding threatens the safety of prison guards and inmates in federal prisons. Perhaps most important, spending on incarceration in this economy has started to jeopardize funding for some of our most important priorities, like crime prevention, law enforcement, and reducing recidivism. This includes possible reductions in the number of federal investigators and prosecutors. The Bureau of Prisons currently accounts for about 25 percent of the Department of Justice's budget and this is projected to increase. With more resources going to incarcerate nonviolent offenders, and fewer resources spent to investigate and prosecute violent crimes and support state and local law enforcement efforts, public safety will be at risk. Law enforcement will continue to maximize its resources to keep our communities safe. But Congress created our sentencing scheme and needs to act to help solve these problems.

The Smarter Sentencing Act reflects these concerns and embodies measured, bipartisan reforms. Its modest expansion of the current "safety valve," coupled with the reduction of some mandatory minimums for non-violent drug offenses—while maintaining statutory maximums—allows courts to make individualized assessments in nonviolent drug cases. This maintains consistency in sentencing for drug-related offenses, but allows for discretion to give less lengthy sentences, where appropriate. This approach is a step toward controlling the growth of incarceration costs, while maintaining public safety

and helping to ensure that prison sentences are appropriate for each offender. The bill does not repeal any mandatory minimums or affect the sentences for any violent offenses, but helps focus limited resources on the most serious offenders.

The bill also promotes fairness and consistency by acknowledging the numerous federal prisoners who are serving sentences imposed prior to the Fair Sentencing Act of 2010's reduction of the crack/powder cocaine sentencing disparity. The Smarter Sentencing Act would allow certain inmates sentenced under the old regime to petition courts and prosecutors for a review of their sentences and possible sentence reductions under current law. This not only addresses what is now widely recognized as an unjust disparity in sentences, but estimates also show that it could save more than \$1 billion in incarceration costs.

We appreciate your leadership in seeking bipartisan solutions to address the widely acknowledged problems with over-incarceration, to which mandatory minimum sentences have contributed. We are pleased to extend our help as you work with your colleagues in both the Senate and House to pursue reform in federal sentencing.

*Signatories as of September 17, 2013:*

**Lee Altschuler**

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**The Honorable David H. Coar (Ret.)**

Former Judge, United States District Court, Northern District of Illinois.

**Vincent J. Connelly**

Former Assistant United States Attorney, Northern District of Illinois.

**Richard S. Berne**

Former Assistant United States Attorney, Eastern District of New York; former Assistant United States Attorney, Northern District of California.

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**A. Bates Butler III**

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**Arthur L. Burnett, Sr.**

Former Magistrate Judge, United States District Court, District of Columbia; former Assistant United States Attorney, District of Columbia; former Trial Attorney, United States Department of Justice, Criminal Division.

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Former Assistant United States Attorney, Northern District of Illinois.

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Former Ex-Officio Member, United States Sentencing Commission; former Deputy Assistant Attorney General, Criminal Division, United States Department of Justice; former Associate Counsel, Office of Independent Counsel for Iran/Contra.

**Donald E. Santarelli**

Former Administrator, Law Enforcement Assistance Administration, United States Department of Justice; former Associate Deputy Attorney General, United States Department of Justice.

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