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Written Testimony of

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United States Senate

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Chairman Leahy, Ranking Member Grassley, members of the Committee, thank you for inviting me to testify today on behalf of the National District Attorneys Association (NDAA), the oldest and largest organization representing over 39,000 district attorneys, State’s attorneys, Commonwealth attorneys, and county and city prosecutors with the responsibility for prosecuting 95% of criminal violations in all 50 states in America.

To begin I would like to acknowledge and thank Ranking Member Grassley for your statement on the Senate floor this week regarding the importance of federal mandatory minimum sentences. Like you, Senator Grassley, NDAA listened carefully to recent policy announcements made by Attorney General Eric Holder and NDAA is likewise supportive of some of the priorities he set for the Department of Justice, including coordinating directly with state, local and tribal enforcement and prosecutors in order to maximize federal resources in criminal

prosecutions. In addition, General Holder talked about something that NDAA has made a priority for years and that is providing support for survivors of sexual assault and domestic violence. It is the goal of every prosecutor to keep our communities safe, help and heal victims of crime and ensure that those charged with a crime receive the full benefit of each constitutional right and a vigorous defense (we do have an adversarial system in the United States) and they go to work each day with the singular purpose of doing justice in each case – not charging those who are innocent – and charging and prosecuting those who engage in acts that have been deemed a crime by state legislatures.

What America's 40,000 prosecutors do not agree with is General Holder's repeated statements that the criminal justice system is broken (or "in crisis" is the current popular phrase). The truth is crime is down significantly in the United States, in many states at record lows. I spoke with Willie Meggs yesterday, the long elected State's Attorney in Tallahassee, Florida, who told me that crime in Florida is the lowest it has been in 42 years, and many prosecutors echo the same statistics in their respective states. Across the country, homicides are down 50% over the past 30 years – isn't this a statistic we can all be proud of? In addition, the crimes of rape, robbery, assault, burglary - nearly every category of crime - is likewise down 30% to 40%.

Prosecutors have many tools to choose from in doing their part to drive down crime and keep communities safe and one of those important tools has been mandatory minimum sentences. While Federal mandatory minimum sentences sometimes result in outcomes that seem harsh, the vast majority of those cases are the result of a defendant that rejected plea negotiations, went to trial, and then received the sentence he or she said would be mandatory if convicted by a jury or

judge. In addition, mandatory sentences have been extremely helpful to state and local prosecutors as leverage to secure cooperation from defendants and witnesses and solve other crimes or, in a drug distribution case, “move up the chain” and prosecute those at higher levels of sophisticated trafficking organizations; it is a tool that has been used sparingly but effectively by state and local prosecutors.

I submit that prosecutors across the country collectively shook their heads when General Holder directed his United States Attorneys to no longer prosecute or send to prison those who are first time offenders or those who have committed low level drug offenses. US Attorneys have never, to my knowledge, prosecuted low level offenses and, unless it is a serious case and often must involve a firearm, first time offenders do not go to prison. The prosecutors I know in America look at every available alternative before recommending that a person be sentenced to prison and, as such, are incensed by General Holder’s repetitive statements that America’s prisons are full of low-level drug offenders and non-violent offenders and first time offenders. That is a myth that must be dispelled if we are going to work together to try and make a great criminal justice system even better. Unless it is a murder or rape or violent offense, it is difficult to be sentenced to prison in state courts across America. The prosecutors I know look at probation, treatment programs, diversion, plea in abeyance, Drug Courts, supervised probation and work with Judges and defense counsel to look at every alternative *but* prison. It is only in those instances where someone has committed a terribly serious crime or, after repeated attempts to stop the person from reoffending - sometimes literally six and seven violations of probation - that an offender is sentenced to prison. And the reality is, together with other tools like mandatory

minimum sentences, it has worked. So for anyone to say that our prisons are full of low-level, first time, minor drug offenders simply could not be further from the truth.

Prosecutors will tell you that it is a very small percentage of offenders that commit the vast majority of crimes, people who insist no matter what we do to change their behavior, commit crime after crime. Is it not appropriate, after all attempts have failed, or in the event the person commits a very serious offense, to sentence them to longer prison terms which has inarguably resulted in lower crime rates and safer communities?

A prosecutor told me the other day, after reading General Holder's statements, "to me, I see this as we are three touchdowns ahead and many are now saying we should take out some of our best players – and mandatory minimum sentences are one of our best players". Why now, with crime at record lows are sweeping changes being suggested? Why now, as we are getting even smarter on crime with programs like Drug Courts, 24/7 and Project Hope as carrots would we take away one of the most effective sticks?

NDAA continues to be willing to work with Congress and the Department of Justice, as we did when we worked together to address the crack/powder sentencing disparity with the Fair Sentencing Act, and on several other Congressional initiatives that have been proposed over the years; but if this is solely about money, that the number of people we incarcerated in America is too expensive, then I know I speak for Police Chiefs, Sheriffs, law enforcement officers at every level and prosecutors in saying that crime will go back up and we may very well be back to the

“catch and release” days of old, which many would tell you didn’t really save money at all when the costs of investigations and prosecutions of those that reoffend are analyzed.

Chairman Leahy, Ranking Member Grassley, members of the Committee, I appreciate the opportunity to testify before you on this important matter and will answer any questions you might have.