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Special Report to the Congress:

Mandatory Minimum Penalties in the Federal Criminal Justice System*



United States Sentencing Commission
August 1991

(*As directed by section 1703 of Public Law 101-647)

DRAFT 5/23/95

Dear Senator Gramm,

At an appropriations hearing earlier this spring, you asked the Attorney General for information on the use of the safety valve exemption from mandatory minimum sentences. Enacted as part of the Violent Crime Control and Law Enforcement Act and codified at 18 USC § 3553(f), the safety valve permits judges to apply the sentencing guidelines rather than the statutory minimum penalties in cases of certain first-time, non-violent drug offenders.

In order to apply the safety valve, a judge must find the following: 1) the defendant does not have more than one criminal history point under the sentencing guidelines; 2) the defendant did not use or threaten violence or possess a firearm or other dangerous weapon in connection with the offense; 3) the offense did not result in death or serious bodily injury; 4) the defendant was not an organizer, leader, manager, or supervisor of others, and was not engaged in a continuing criminal enterprise; 5) the defendant has truthfully, by the time of the sentencing hearing, provided all information and evidence to the government concerning the offense.

The Department does not collect data on the use of the safety valve. According to United States Sentencing Commission data, however, the safety valve was applied to 149 cases during the first quarter of its implementation (September 23, 1994 to December 23, 1994). The Commission projects that there will be about 600 defendants sentenced under the safety valve during its first year in effect. Approximately 3.6% of all drug defendants are expected to benefit from the safety valve. Based on the Commission data, the safety valve has resulted in an average reduction in a defendant's sentence of 25%. For a defendant subject to a five-year mandatory minimum, the median sentence has been 46 months; for a defendant facing a ten-year mandatory minimum, the median has been 87 months. We have attached a fact sheet on the safety valve prepared by the Commission.

As you requested, we have summarized the facts of several cases.

1. Southern District of Florida. The defendant arrived at Miami International Airport from Bogota, Colombia. Customs agents found 1.59 kilograms of heroin hidden in his suitcase. The defendant was paid \$10,000 to bring the suitcase with drugs from Bogota to Miami. A legal

resident since 1992, he had no known arrests or convictions. The defendant pleaded guilty to an indictment charging him with importing heroin. Based on the quantity of drugs, he faced a ten-year mandatory minimum sentence (120 months). Under the guidelines, after a three-level reduction for acceptance of responsibility, the defendant's offense level was 29. This corresponds to a sentencing range of 87-108 months. The judge found that the defendant met the criteria of the safety valve and sentenced him to 87 months.

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a minor participant and a two-level reduction for acceptance of responsibility, the defendant's offense level was 30. This corresponds to a sentencing range of 97-121 months. The judge found that he met the criteria of the safety valve and sentenced him to 97 months.

We hope that this information is helpful. Please let us know if we can provide additional assistance.

Sincerely,

Kent Markus

Attachment

TESTIMONY OF RICHARD P. CONABOY, CHAIRMAN
UNITED STATES SENTENCING COMMISSION
BEFORE THE HOUSE SUBCOMMITTEE ON APPROPRIATIONS
FOR THE DEPARTMENTS OF COMMERCE, JUSTICE, STATE,
THE JUDICIARY, AND RELATED AGENCIES

March 30, 1995

INTRODUCTION

Mr. Chairman, members of the Committee, I appreciate this opportunity to present testimony on behalf of the United States Sentencing Commission's Fiscal Year 1996 appropriation request. In the six months since taking on the duties as Chairman, I have come to better understand and appreciate the historic work of the Commission and its continuing, multifaceted mission. Our main goal, however, remains the same: to enhance the ability of the criminal justice system to combat crime through an effective, fair sentencing system.

This agency has set a high standard for doing a timely and thorough job, whether the task was developing guidelines, conducting research studies, training those involved in sentencing, or providing specialized information and advice to Congress. Over a period of only a few years, the Commission has established a comprehensive set of sentencing guidelines in an attempt to achieve the objectives Congress outlined in the Sentencing Reform Act of providing certain, fair, and markedly more uniform punishment for similar offenders.

With my appointment as Chairman and the filling of three additional vacancies on the Commission, we have a full complement of voting Commissioners for the first time since 1991. Now operating at full strength, the Commission is committed to effective crime control through the federal sentencing guidelines system. To do so, we must have the resources to carry out the Commission's daily work and continue its long range research projects. The Commission firmly believes that the development of the federal guidelines system

In addition, last September the Commission promulgated a new guideline to implement the "safety valve" provision of the crime bill. This provision allows certain nonviolent, low level drug defendants with little or no criminal history to receive the full benefit of applicable mitigating adjustments under the guidelines and sentences below mandatory minimum penalty levels if they meet prescribed criteria. Our early data indicate that this limited provision is working well and can be expected to result in a modest average sentence reduction of 25 percent for less than four percent of all drug defendants.

Over the past three years, the Commission has organized and sponsored conferences and public hearings aimed at better informing federal and state criminal justice practitioners, the academic and research community, and legislators about important criminal justice issues. In 1993, the Commission held its first in a series of symposia on crime and punishment, bringing together experts and policymakers to share information and exchange ideas about the problems of drug abuse and violence. As a followup to that conference, the Commission, in collaboration with the School of Criminology and Criminal Justice at Florida State University, established a task force to further examine the complex relationship between drugs and violence. The task force, composed of federal agency representatives, criminal justice professionals, policymakers, and academicians from a number of disciplines, is completing several original research projects and papers, and will provide a report summarizing its findings in early 1996.

Current Efforts and Continuing Responsibilities

In continuing to meet its statutory responsibilities, the Commission focuses on the following areas:

- amending the sentencing guidelines and policy statements to implement new legislation; making refinements in light of court decisions and advancements of knowledge through criminal justice research;
- monitoring the application of the guidelines and evaluating the extent to which the guidelines have achieved the goals set out by Congress;
- conducting sentencing research, education, and information dissemination activities; and,

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United States Sentencing Commission Fact Sheet: (March 21, 1995) Application of the Mandatory Minimum Safety Valve

History of the legislation

Congress created a "safety valve" to permit judges to apply the sentencing guidelines rather than the statutory mandatory minimum penalties in cases of certain first-time, non-violent, drug offenders. It became effective September 23, 1994. (Title VIII of the Violent Crime Control and Law Enforcement Act of 1994; codified at 18 U.S.C. 3553(f).)

The guideline range for some offenders who receive mitigating adjustments for having a limited role in the offense or accepting responsibility for their crime is lower than the mandatory minimum. Before the safety valve, the mandatory minimum statutes "trumped" the guidelines in these cases. Any first-time offender whose crime involved the amount of drugs listed in the statutes received the minimum term — either five or ten years imprisonment — regardless of what mitigating factors were present in the case.

The safety valve applies to a select group of non-violent first-time offenders.

- ✓ About 600 defendants will be sentenced under the safety valve this year.
- ✓ 3.6% of all drug defendants are expected to benefit from the safety valve.

Defendants qualify for the safety valve only if they: 1) are without significant criminal history, 2) did not use or threaten violence or possess a firearm, 3) did not cause death or serious bodily injury, 4) were not an organizer, leader, manager or supervisor, and 5) they provide all the information they have about the offense to the Government. Sentencing Commission data show that in the first quarter of its implementation, the safety valve was applied to 149 cases. This leads to a projection of about 600 cases this year. (There do not appear to be significant seasonal fluctuations in numbers of cases sentenced.)

Offenders sentenced under the safety valve are imprisoned for lengthy terms.

- ✓ The safety valve results in an average reduction in a person's sentence of 25%.
- ✓ The median sentence for persons subject to a five-year mandatory minimum is 46 months.
- ✓ The median sentence for persons subject to a ten-year mandatory minimum is 87 months.

Persons who would receive mandatory minimums but for the safety valve still receive lengthy imprisonment under the guidelines. Courts are sentencing safety valve defendants within the applicable guideline range; none have so far received an additional mitigating departure below the range.

EXAMPLES OF SAFETY VALVE CASES

1. Southern District of Florida. The defendant arrived at Miami International Airport from Bogota, Colombia. Customs agents found 1.59 kilograms of heroin hidden in his suitcase. The defendant was paid \$10,000 to bring the suitcase with drugs from Bogota to Miami. A legal resident since 1992, he had no known arrests or convictions. The defendant pleaded guilty to an indictment charging him with importing heroin. Based on the quantity of drugs, he faced a ten-year mandatory minimum sentence (120 months). Under the guidelines, after a three-level reduction for acceptance of responsibility, the defendant's offense level was 29. This corresponds to a sentencing range of 87-108 months. The judge found that the defendant met the criteria of the safety valve and sentenced him to 87 months.
2. Eastern District of Virginia. On several occasions, the defendant sold crack cocaine to an undercover police officer. The sales totalled 130.5 grams. The defendant pleaded guilty to an information charging him with conspiracy to distribute in excess of 50 grams of cocaine base. Based on the quantity of drugs, he faced a ten-year mandatory minimum sentence. Under the guidelines, after a downward adjustment of three levels, the defendant's offense level was 29. This corresponds to a sentencing range of 87-108 months. The judge found that the defendant met the criteria of the safety valve and sentenced him to 87 months.
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For your information, we have summarized the facts of several case.

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for acceptance of responsibility, the defendant's offense level was 30. This corresponds to a sentencing range of 97-121 months. The judge found that he met the criteria of the safety valve and sentenced him to 97 months.

We hope that this information is helpful. Please let us know if we can provide additional assistance.

Sincerely,

Kent Markus

Attachment

Date: Tuesday, May 23, 1995 11:55 am
From: CRM04 (SAMUELS)
Subject: safety valve - Gramm letter

Andy/Dennis --

Attached is the draft response to Sen Gramm re: the safety valve. At the hearing, he asked how frequently the safety valve had been used and wanted to hear about some actual cases. Gramm did not ask about our overall experience/assessment of the safety valve or whether it should be amended. We believe it would be premature to draw any firm conclusions at this time. ←

For your information, based on conversations with several USAOs with experience with the safety valve, there have been some problems. We did not mention them to Gramm in the letter; at this stage, we do not know how widespread they are. We have appealed one safety valve case in the 10th circuit. Another request for authorization to appeal is pending in the Solicitor's Office.

The 5th condition -- providing complete and truthful info to the government -- seems to be the most problematic. Judges have found that the defendant meets this condition even when the prosecutor disagrees.

In at least one district, "the government" has been interpreted by the judge to include probation officers (in another district, the judges have specifically found that probation officers, as officers of the court, are not the "government" for purposes of this provision).

Also for your information, the Sentencing Commission has proposed guideline amendments dealing with the safety valve so that in some cases there will be an additional two-level reduction. Thus, the average reduction in sentence, now 25%, is likely to be greater in the future (after the amendments take effect on November 1). You should also be aware that the Department did not object to this provision.

Julie

Date: Tuesday, May 23, 1995 10:44 am
From: CRM04 (SAMUELS)
Subject: safety valve

Dennis --

Here's where I am. I'm waiting for a few more comments from within Crim. Any thoughts?

Julie

PS. I propose sending Andy the following e-mail to go with the letter:

"Attached is the draft response to Sen Gramm re safety valve.

Gramm did not ask about our overall experience/assessment of the safety valve or whether it should be amended. We believe it would be premature to draw any firm conclusions at this time.

For your information, based on conversations with several USAOs with experience with the safety valve, there have been some problems. The 5th condition -- providing complete and truthful info to the government -- seems to be the most problematic. Judges have found that the defendant meets this condition even when the prosecutor disagrees.

In at least one district, "the government" has been interpreted by the judge to include probation officers (in another district, the judges have specifically found that probation officers, as officers of the court, are not the "government" for purposes of this provision).

The US Attorneys have requested (or plan to request) that we appeal the application of the safety valve in several cases.

Also for your information, the Sentencing Commission has proposed guideline amendments dealing with the safety valve so that in some cases there will be an additional two-level reduction. Thus, the average reduction in sentence, now 25%, is likely to be greater in the future (after the amendments take effect on November 1). You should also be aware that the Department did not object to this provision."

↓
→ UC

— Random

→ 1) Sentencing Guidelines Info

→ 2) Random

3) Case Files

~~Are U.S. Attys~~

→ What are U.S. Attys telling you?

— Quantity Threshold?

— Sent. Commission

2 level adjustment reduction