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November 17, 2015

The Honorable Robert W. Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Re: H.R. 3713 (the Sentencing Reform Act of 2015)

Dear Chairman Goodlatte and Ranking Member Conyers:

On behalf of the American Bar Association (ABA), I write to express our support for H.R. 3713, the Sentencing Reform Act of 2015, and to urge members of the House Judiciary Committee to promptly approve the bill without weakening amendments.

We strongly commend Chairman Goodlatte and Ranking Member Conyers for leading bipartisan negotiations that have resulted in a worthy reform consensus on complex and difficult sentencing and corrections issues. While H.R. 3713 is a compromise that does not go as far as the ABA would prefer in overhauling federal sentencing policy, it takes a number of important steps forward to reduce reliance on mandatory minimum sentences for low-level drug offenders and to improve fairness and the achievement of justice in the federal system.

Over the last 30 years, the United States has come to rely on its criminal justice system and lengthy prison terms more than any other nation. With just 5% of the world's population, the U.S. holds nearly a quarter of the world's prisoners, including one-third of all women incarcerated worldwide.

The federal prison population has increased nearly 800% since 1980 and more than doubled since 1994, with spending up 1700% over that period, and federal prisons are currently operating at 123% of capacity. This is due in significant degree to the proliferation of mandatory minimum sentences. Nearly half of all federal prisoners are serving sentences for nonviolent drug crimes.

Experience has shown that mandatory minimums have not only contributed to the vast increase in the nation's incarceration rate, but have exacerbated the levels of racial disparity in the criminal justice and correctional systems. African Americans and Latinos make up about three-quarters of the federal prison population while representing only

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about one-third of the nation's population. The U.S. Sentencing Commission has reported that mandatory minimum sentences are imposed on people of color at similarly disproportionate rates. This bill offers substantive revisions to the federal sentencing system that will help reduce our reliance on lengthy prison terms for low-level offenses, lessen the disparate impact of federal sentencing policies on African Americans and Latinos, and change direction away from policies that are unsustainable.

The ABA supports provisions in H.R. 3713 to narrow the applicability of some drug-related mandatory minimums and reduce others; to expand "safety-valve" authority; and to apply certain reductions retroactively, including those enacted in the Fair Sentencing Act of 2010, in qualified cases. Enactment will help focus prosecutorial and correctional resources on offenders who commit serious crimes that pose the greatest risk to public safety and will permit more sentencing flexibility for low-level, nonviolent offenders whose role and culpability will now receive more careful and balanced consideration by sentencing judges. We believe that H.R. 3713 will, overall, create a more just sentencing system than the one currently in place.

The ABA also supports a provision, included in separate legislation that may be considered by the Committee, to establish a "default *mens rea*" standard to apply to new criminal statutory or regulatory provisions that impose penalties that include imprisonment. The Judiciary Committee established a bipartisan Task Force on Over-Criminalization that held a series of hearings on this subject during the previous Congress highlighting the problems related to enactment of crimes that do not specify a standard or requirement for the element of criminal intent. We support enactment of a default *mens rea* standard that would apply prospectively to enactment or promulgation of any criminal statute or regulation that is silent on such a standard. We further support authorization for a comprehensive inventory of federal criminal statutory and regulatory law.

We commend the bipartisan sponsors of the Sentencing Reform Act of 2015 for proposing significant and positive sentencing and corrections reforms. We urge members of the Judiciary Committee to support H.R. 3713 so that it may soon be considered by the full House of Representatives and enacted into law.

Sincerely,

A handwritten signature in black ink, appearing to read "Paulette Brown", with a long, sweeping underline that extends to the right.

Paulette Brown

cc: Members of the House Committee on the Judiciary