

Without objection, it is so ordered.

Mr. GRASSLEY. Madam President, I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LEAHY. Madam President, I ask unanimous consent the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. I yield back all remaining time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Under the previous order, the question is, Will the Senate advise and consent to the nomination of James. B. Comey, Jr., of Connecticut, to be Director of the Federal Bureau of Investigation?

Mr. LEAHY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MERKLEY (When his name was called). Present.

Mr. WYDEN (When his name was called). Present.

Mr. DURBIN. I announce that the Senator from North Dakota (Ms. Heitkamp) is necessarily absent.

Mr. CORNYN. The following Senators are necessarily absent: the Senator from New Jersey (Mr. CHIESA), the Senator from Florida (Mr. RUBIO), and the Senator from Alaska (Mrs. MURKOWSKI).

Further, if present and voting, the Senator from New Jersey (Mr. CHIESA) would have voted "yea."

The PRESIDING OFFICER (Mr. DONNELLY). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 93, nays 1, as follows:

[Rollcall Vote No. 188 Ex.]

YEAS—93

Alexander	Enzi	Markey
Ayotte	Feinstein	McCain
Baldwin	Fischer	McCaskey
Barrasso	Flake	McConnell
Baucus	Franken	Menendez
Begich	Gillibrand	Mikulski
Bennet	Graham	Moran
Blumenthal	Grassley	Murphy
Blunt	Hagan	Murray
Boozman	Harkin	Nelson
Boxer	Hatch	Portman
Brown	Heinrich	Pryor
Burr	Heller	Reed
Cantwell	Hirono	Reid
Cardin	Hoeven	Risch
Carper	Inhofe	Roberts
Casey	Isakson	Rockefeller
Chambliss	Johanns	Sanders
Coats	Johnson (SD)	Schatz
Coburn	Johnson (WI)	Schumer
Cochran	Kaine	Scott
Collins	King	Sessions
Coons	Kirk	Shaheen
Corker	Klobuchar	Shelby
Cornyn	Landrieu	Stabenow
Crapo	Leahy	Tester
Cruz	Lee	Thune
Donnelly	Levin	Toomey
Durbin	Manchin	Udall (CO)

Udall (NM)	Warner	Whitehouse
Vitter	Warren	Wicker

NAYS—1

Paul

ANSWERED "PRESENT"—2

Merkley

Wyden

NOT VOTING—4

Chiesa
Heitkamp

Murkowski
Rubio

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table and the President will be immediately notified of the Senate's action.

LEGISLATIVE SESSION

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, the Senate will now resume legislative session and proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

Mr. SCHUMER. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

JUSTICE SAFETY VALVE ACT

Mr. LEAHY. Mr. President, last week the Department of Justice announced that the total U.S. prison population declined 1.7 percent from 2011 to 2012. I was encouraged to see that sentencing reform at the State level continues to pay dividends by simultaneously reducing prison costs and crime rates.

I am troubled, however, that the entirety of the reduction in the U.S. prison population was attributable to the States. The number of Federal prisoners actually increased by almost 1,500 from 2011 to 2012. While this increase was smaller than in previous years, the Federal Government can no longer afford to continue on the course of ever-increasing prison costs. As of last week, the Federal prison population was over 219,000, with almost half of those men and women imprisoned on drug charges. This year, the Bureau of Prisons budget request was just below \$7 billion.

A major factor driving the increase in the incarceration rate has been the proliferation of Federal mandatory minimum sentences in the last 20 years. This one-size-fits-all approach to sentencing never made us safer, but it has cost us plenty. We must change course. In September, the Judiciary Committee will hold a hearing to examine the effects of Federal mandatory minimum sentences and measures to

reform the system in order to combat injustice in sentencing and the waste of taxpayer dollars.

In March, I joined with Senator PAUL to introduce just such a measure. The Justice Safety Valve Act of 2013 will give judges greater flexibility in sentencing in cases where a mandatory minimum is unnecessary and counter-productive. Since its introduction, the Justice Safety Valve Act has received endorsements from a diverse group that spans the political spectrum, including articles written by George Will, Grover Norquist, David Keene, and the New York Times. I ask unanimous consent that these materials be printed in the RECORD at the conclusion of my remarks.

In addition to driving up our prison population, mandatory minimum penalties can lead to terribly unjust results in individual cases. This is why a large majority of judges oppose mandatory minimum sentences. In a 2010 survey by the U.S. Sentencing Commission of more than 600 Federal district court judges, nearly 70 percent agreed that the existing safety valve provision should be extended to all Federal offenses. That is what our bill does. Judges, who hand down sentences and can see close up when they are appropriate and just, overwhelmingly oppose mandatory minimum sentences.

States, including very conservative States like Texas, that have implemented sentencing reform have saved money and seen their crime rates drop. It is long past time that Congress follow their lead, and a Senate Judiciary Committee hearing on Federal mandatory minimum sentences is an important place to start.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Hill's Congress Blog, Mar. 20, 2013]

PAUL-LEAHY SENTENCING BILL WILL ENSURE
TIME FITS THE CRIME

(By Julie Stewart and Grover Norquist)

Even before the sequester took effect, the Obama administration's Department of Justice was warning that federal prison spending had become "unsustainable" and was forcing cuts in other anti-crime initiatives. Despite such warnings, we have seen little evidence of an administration strategy on how to control these costs. Fortunately, Senators Rand Paul (R-Ky.) and Patrick Leahy (D-Vt) today are stepping in to fill that void with the introduction of bipartisan legislation to restore common sense to our criminal sentencing laws.

The Justice Safety Valve Act of 2013 authorizes federal courts to depart below a statutory mandatory minimum sentence only after finding, among other things, that providing a particular defendant a shorter sentence—say, seven or eight years in prison for a drug offense rather than the 10-year mandatory minimum—will not jeopardize public safety. The bill does not require judges to impose shorter sentences, and for many crimes, the minimum established by Congress will be appropriate. But in cases where the mandatory minimum does not account for the offender's limited role in a crime or other relevant factors, the judge would be allowed to consider those factors and craft a more appropriate sentence.

This common sense bill comes at a critical time. The federal government simply cannot afford to continue to house so many non-violent prisoners for such lengthy sentences. According to a recent Congressional Research Service (CRS) report, the number of inmates under the Bureau of Prisons' (BOP) jurisdiction has increased from approximately 25,000 in FY1980 to nearly 219,000 in FY2012. BOP prisons are operating at 38 percent over capacity, endangering the safety of guards and inmates alike. Last week, the Inspector General for the Department of Justice testified that it's only going to get worse: the BOP projects system-wide crowding to exceed 45 percent over rated capacity through 2018. The economic cost of the prison population boom is staggering. Since FY2000, appropriations for the BOP have increased from just over \$3.5 billion to more than \$6.5 billion.

Locking everyone up costs a lot, but it doesn't always keep us safer. University of Chicago economist and Freakonomics author Steven D. Levitt was perhaps the most influential supporter of pro-prison policies in the 1990s. He later concluded that, as the crime rate continued to drop and the prison population continued to grow, the increase in public safety diminished. "We know that harsher punishments lead to less crime, but we also know that the millionth prisoner we lock up is a lot less dangerous to society than the first guy we lock up," Dr. Levitt recently told *The New York Times*. "In the mid-1990s I concluded that the social benefits approximately equaled the costs of incarceration." Today, Dr. Levitt says, "I think we should be shrinking the prison population by at least one-third."

The head of the U.S. Justice Department's criminal division agrees that spending on federal prisons must be scrutinized. Assistant Attorney General Lanny Breuer recently wrote, "In an era of governmental austerity, maximizing public safety can only be achieved by finding a proper balance of outlays that allows, on the one hand, for sufficient numbers of police, investigative agents, prosecutors and judicial personnel to investigate, apprehend, prosecute and adjudicate those who commit federal crimes. And, on the other hand, a sentencing policy that achieves public safety, correctional goals and justice for victims, the community, and the offender." We are lacking that balance today as skyrocketing corrections spending, driven by increasing reliance on one-size-fits-all mandatory minimum sentencing laws, is now crowding out spending on investigators, police, and prosecutors.

In short, we are skimping on efforts to arrest and prosecute violent criminals so that we can keep nonviolent offenders behind bars for lengthy prison sentences. This is insanity. Passing the Paul-Leahy bill would enable courts to make sure the time fits the crime in every criminal case. While keeping us safe, it would also save money that could be returned to taxpayers or invested in more effective anti-crime strategies, such as putting more police on the street or expanding the use of proven recidivism-reducing programs in our prisons. We can still be tough on crime, but we do not have to be tough on taxpayers.

[From the *New York Times*, June 23, 2013]

NEEDED: A NEW SAFETY VALVE

(By The Editorial Board)

Congress's new bipartisan task force on overcriminalization in the justice system held its first hearing earlier this month. It was a timely meeting: national crime rates are at historic lows, yet the federal prison system is operating at close to 40 percent over capacity.

Representative Karen Bass, a California Democrat, asked a panel of experts about the problem of mandatory minimum sentences, which contribute to prison overcrowding and rising costs. In the 16-year period through fiscal 2011, the annual number of federal inmates increased from 37,091 to 76,216, with mandatory minimum sentences a driving factor. Almost half of them are in for drugs.

The problem starts with federal drug laws that focus heavily on the type and quantity of drugs involved in a crime rather than the role the defendant played. Federal prosecutors then seek mandatory sentences against defendants who are not leaders and managers of drug enterprises. The result is that 93 percent of those convicted of drug trafficking are low-level offenders.

Both the Senate and the House are considering a bipartisan bill to allow federal judges more flexibility in sentencing in the 195 federal crimes that carry mandatory minimums. The bill, called the Justice Safety Valve Act, deserves committee hearings and passage soon.

A 1994 federal sentencing law allows judges to reduce sentences for drug crimes if no one was harmed during the crime and if the offender had little or no criminal history, was not a leader in organizing the crime and used neither violence nor a gun. But that law is far too narrow; all felony convictions are disqualifying for a reduction, as are some minor offenses, like passing a bad check.

The proposed bill would apply to all federal crimes with mandatory minimums, not just drug crimes, so it would include theft of food stamps and miscellaneous other lesser crimes. It would also let judges consider less-lengthy sentences for drug offenders who don't qualify for a reduction under the current law.

The case of Weldon Angelos has long stood for the injustice of mandatory minimums. Mr. Angelos received a 55-year prison sentence in 2004 for selling a few pounds of marijuana while having handguns in his possession, which he did not use or display. In an extraordinary opinion, the federal trial judge said he had no choice but to impose that "cruel, unjust, and irrational" sentence. The Justice Safety Valve Act would give courts more leeway to avoid that one-size-fits-all approach.

[From the *Washington Post*, June 5, 2013]

LEAHY AND PAUL PLAN ON MANDATORY SENTENCING MAKES SENSE

(By George F. Will)

Libertarians believe government should have a compelling reason before it restricts an individual's liberty. Today's liberals believe almost any reason will do, because liberty is less important than equality, fraternity, fighting obesity and many other aspirations. Now, however, one of the most senior and liberal U. S. senators and one of the most junior and libertarian have a proposal that could slow and even repair some of the fraying of society.

Seven-term Democrat Pat Leahy's 38 Senate years have made him Judiciary Committee chairman. Republican Rand Paul is in his third Senate year. They hope to reduce the cruelty, irrationality and cost of the current regime of mandatory minimum sentences for federal crimes.

Such crimes are multiplying at a rate of more than 500 a decade, even though the Constitution explicitly authorizes Congress to criminalize only a few activities that are national in nature (e.g., counterfeiting, treason, crimes on the high seas). The federal government, having failed at core functions, such as fairly administering a rational revenue system, acts like a sheriff with attention-deficit disorder, haphazardly criminal-

izing this and that behavior in order to express righteous alarm about various wrongs that excite attention.

Approximately 80,000 people are sentenced in federal courts each year. There are an estimated 4,500 federal criminal statutes and tens of thousands of regulations backed by criminal penalties, including incarceration. There can be felony penalties for violating arcane regulations that do not give clear notice of behavior that is prescribed or proscribed. This violates the mens rea requirement—people deserve criminal punishment only if they intentionally engage in conduct that is inherently wrong or that they know to be illegal. No wonder that the federal prison population—currently approximately 219,000, about half serving drug sentences—has expanded 51 percent since 2000 and federal prisons are at 138 percent of their supposed capacity.

The Leahy-Paul measure would expand to all federal crimes the discretion federal judges have in many drug cases to impose sentences less than the mandatory minimums. This would, as Leahy says, allow judges—most of whom oppose mandatory minimums—to judge. Paul says mandatory minimum sentences, in the context of the proliferation of federal crimes, undermine federalism, the separation of powers and "the bedrock principle that people should be treated as individuals."

Almost everyone who enters the desensitizing world of U.S. prisons is going to return to society, and many will have been socially handicapped by the experience. Until the 1970s, about 100 per 100,000 Americans were in prison. Today 700 per 100,000 are. America has nearly 5 percent of the world's population but almost 25 percent of its prisoners. African Americans are 13 percent of the nation's population but 37 percent of the prison population, and one in three African American men spends time incarcerated. All this takes a staggering toll on shattered families and disordered neighborhoods.

The House Judiciary Committee has created an Over-Criminalization Task Force. Its members should read "Three Felonies a Day: How the Feds Target the Innocent," by Harvey Silverglate, a libertarian lawyer whose book argues that prosecutors could indict most of us for three felonies a day. And the task force should read the short essay "Ham Sandwich Nation: Due Process When Everything Is a Crime" by Glenn Harlan Reynolds, a professor of law at the University of Tennessee. Given the axiom that a competent prosecutor can persuade a grand jury to indict a ham sandwich, and given the reality of prosecutorial abuse—particularly, compelling plea bargains by overcharging with "kitchen sink" indictments—Reynolds believes "the decision to charge a person criminally should itself undergo some degree of due process scrutiny."

He also suggests banning plea bargains: "An understanding that every criminal charge filed would have to be either backed up in open court or ignominiously dropped would significantly reduce the incentive to overcharge. . . . Our criminal justice system, as presently practiced, is basically a plea-bargain system with actual trials of guilt or innocence a bit of showy froth floating on top."

U.S. prosecutors win more than 90 percent of their cases, 97 percent of those without complete trials. British and Canadian prosecutors win significantly less, and for many offenses, the sentences in those nations are less severe.

Making mandatory minimums less severe would lessen the power of prosecutors to pressure defendants by overcharging them in order to expose them to draconian penalties. The Leahy-Paul measure is a way to begin

reforming a criminal justice system in which justice is a diminishing component.

[From the National Review Online, May 24, 2013]

PRISON-SENTENCE REFORM

(By David Keene)

Some liberal judges back in the 1970s and '80s enraged the public by allowing felons back on the street with little more than a slap on the wrist. In response, Congress and many state legislatures enacted mandatory-minimum-sentencing laws that essentially eliminated the discretion judges had always enjoyed to make the punishment fit the crime. These laws were incredibly popular when first enacted but have created more problems than they've solved.

Undoubtedly, the tough-on-crime sentiment these laws reflected has advanced our welcome, two-decade decline in drug-related and violent crime. But I have come to believe that the wholesale adoption of mandatory minimum sentencing hasn't worked as well as everyone had hoped.

Like many conservatives, I supported many of these laws when they were enacted and still believe that, in some narrow situations, mandatory minimums makes sense. But like other "one-size-fits-all" solutions to complicated problems, they should be reviewed in light of how they work in practice.

Fortunately, Senators Rand Paul (R., Ky.) and Patrick Leahy (D., Vt.) have crafted a smart and modest reform bill that will fine-tune these laws to eliminate many of the unforeseen and, frankly, unfair consequences of their application when the facts demand more flexibility. This bipartisan measure deserves conservative support.

The bill, the Justice Safety Valve Act of 2013, maintains existing federal mandatory-sentencing laws. It enables judges to depart from the minimums in certain cases, however, such as when the mandatory sentence is not necessary to protect public safety and seems blatantly unfair in light of the circumstances of the offense. In so doing, their proposal fulfills the primary objective of criminal-justice policy: protecting public safety, while promoting our constitutional separation of powers and saving taxpayers the expense of unnecessary and counterproductive incarceration.

Many people, conservatives as well as liberals, have come to believe that most mandatory-minimum-sentencing laws should be repealed. These laws give prosecutors nearly unchecked power to determine sentences, even though courts are in a better position to weigh important and relevant facts, such as an offender's culpability and likelihood of reoffending.

Federal mandatory-minimum-sentencing laws are especially problematic. Not only do they transfer power from independent courts to a political executive, they also perpetuate the harmful trend of federalizing criminal activity that can be better prosecuted at the state level.

For years, conservatives have wisely argued that the only government programs, rules, and regulations we should abide are those that can withstand cost-benefit analysis. Mandatory minimum sentences, by definition, fail this basic test because they apply a one-size-fits-all sentence to low-level offenders, even though the punishments were designed for more serious criminals.

Economists who once wholeheartedly supported simple pro-prison policies now believe they have reached the point of diminishing returns. One is University of Chicago economist Steven D. Levitt, best known for the best-selling *Freakonomics*, which he co-authored with Stephen J. Dubner. Levitt recently told the *New York Times*, "In the

mid-1990s I concluded that the social benefits approximately equaled the costs of incarceration," and, today, "I think we should be shrinking the prison population by at least one-third."

In other words, the initial crackdown was a good thing, but we are now suffering the effects of too much of that good thing.

If Levitt's estimate is even close, right now we are wasting tens of billions of dollars locking people up without affecting the crime rate or enhancing public safety. In fact, spending too much on prisons skews state and federal budgetary priorities, taking funds away from things that are proven to drive crime even lower, such as increasing police presence in high-violence areas and providing drug-treatment services to addicts.

The Paul-Leahy bill will help restore needed balance to our anti-crime efforts. Repeat and violent criminals will continue to receive and serve lengthy prison sentences, but in cases involving lower-level offenders, judges will be given the flexibility to impose a shorter sentence when warranted.

The Paul-Leahy bill is a modest fix that will affect only 2 percent of all federal offenders, and even they won't be spared going to prison. They will simply receive slightly shorter sentences that are more in line with their actual offenses.

The bill will improve public safety, save taxpayers billions of dollars, and restore our constitutional separation of powers at the federal level while strengthening federalism. This is a reform conservatives should embrace.

NATIONAL JUDICIAL COLLEGE

Mr. REID. Mr. President, I rise to honor the National Judicial College. Celebrating 50 years of service and education to the Nation's judiciary, the National Judicial College has dedicated itself to the advancement of justice, not only in our Nation, but throughout the world. It is with great pleasure that I recognize the National Judicial College's distinguished history of providing education and higher learning, especially in light of its recent anniversary.

More than 50 years ago, the Joint Committee for the Effective Administration of Justice came together and realized the need for an entity to provide judicial education. By 1963, under the leadership of Supreme Court Justice Tom C. Clark, the National Judicial College opened its doors at the University of Colorado, Boulder.

After attending the first course in Boulder, Judge Thomas Craven, from Reno, NV, enthusiastically brought his experience with the college to trustees of the Max C. Fleischmann Foundation located in Reno. In 1964, with the persistence of Judge Craven and the support of the Fleischmann Foundation, the college moved to the campus of the University of Nevada, Reno, where its permanent academic home still thrives today.

As the first institution to offer programs of its nature to judges nationwide, the National Judicial College has much to celebrate at this 50 year mark. What started out as a course serving 83 judges in 1963 has become a permanent institution that provides 90 courses and

programs serving more than 3,000 judges every year from all 50 States, U.S. territories, and more than 150 countries. Since its inception, the college has awarded more than 95,000 professional judicial education certificates.

These judges come together in the college's own state-of-the-art facility on the campus of University of Nevada, Reno, comprised of 90,000 square feet including an auditorium, classrooms, model courtroom, multimedia room, computer lab, judge's resource room, and discussion areas, all of which are equipped with the latest technology.

The college serves as the one place where judges from across the world can meet to improve the delivery of justice and advance the rule of law through professional study and collegial dialogue. The college's dedicated boards, faculty, and staff deliver innovative programs and services that improve productivity, challenge perceptions of justice, and inspire judicial excellence in the field.

The impact of the National Judicial College is immense. Its unique role in educating and developing our Nation's judiciary has improved the judicial system, and will continue to do so in the future.

I commend the National Judiciary College's dedication to education, innovation, and advancement of justice, and am honored to congratulate the college for 50 years of serving our Nation's judiciary.

MCCARTHY NOMINATION

Mr. HATCH. Mr. President, I rise today to discuss my vote in opposition to the President's nomination of Gina McCarthy as the Administrator of the Environmental Protection Agency. I praise Ms. McCarthy for her extensive experience and expertise in regulating air quality at the Federal level as well as at the State level. Throughout her career she has been able to be an effective regulator under Republican Governors as well as a Democratic President. Even with the opposition she faced during the months leading up to her confirmation, it was always clear to me that Ms. McCarthy would be approved.

My "nay" vote was not against Ms. McCarthy. My vote was against President Obama's overreaching environmental policies and against the EPA. The environmental policies of this administration are clearly a war on fossil fuel and a war on Western jobs.

The President's recent announcement of a Climate Change Action Plan will be implemented by EPA and will have a direct impact on jobs and the pocketbooks of the American people. This plan targets coal-fired powerplants by proposing Federal carbon emission standards that will cost billions of dollars nationwide to implement and will raise the price of electricity for private citizens as well as businesses.