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Anotonio "Moe" Maestas and Lisa Torracco
Co-Chairs of the Criminal Justice reform Committee

Dear Co-Chairs:

I understand you are studying the costs of mandatory sentencing, and as a former Chief Public Defender who was also a training director, a district defender, and a line trial and appellate attorney, and as a current Supreme Court appointee to the Public Defender Commission, I have three issues with regard to mandatory sentencing:

- 1) At the misdemeanor level, for both domestic violence and driving while intoxicated (DWI) convictions, the "costs" of conviction have steadily risen for the last twenty years, often for very good reasons. The resources have not. There is now a serious gap between the services offered to the accused and the consequences, many of which are mandatory. Each crime carries separate burdens. With domestic violence the indigent defendant usually has no place to bond out to and the stay in jail almost always affects the family unit negatively with the loss of the defendant's job. This loss of job both (a) fuels one of the greatest causes of domestic violence (fights over lack of resources), and (b) becomes a disincentive to report the violence in the first place. I do not quarrel with the decisions already made, but more resources are required to get the job done, and extremely speedy hearings should be made mandatory. If the consequences of conviction include mandatory incarceration, then judicial review must also be mandatory.
- 2) Consistent with the above, I strongly endorse requiring a real fiscal impact assessment for any new "reform" which carries a mandatory penalty. As with the example above, sometimes mandatory consequences actually undermine law enforcement goals, an irony which becomes very apparent in the day-to-day practice. The discipline of considering fiscal impacts *before* enactment may also result in legislation that more accurately achieves legislative and societal goals.
- 3) Because crime impacts one class of people, the indigent, like a wrecking ball, both as these crimes are committed often against the same persons, and as punishments further destroy the safety nets of the families whom we are on the one hand trying to "protect" and on the other hand trying to "control" I believe mandatory sentencing should be transformed into a

concept of mandatory intervention: i.e. what is the maximum impact we can create for the least expenditure of state resources which will do the least damage to the infrastructure of the affected community, whether that be a neighborhood, a larger family unit or a small nuclear family? I remember when Judge Kaufman, then on the Santa Fe bench, was reluctant to send a client of mine to prison because *he had sent family relatives there*. Judge Kaufman knew that the young man he was sentencing would be welcomed as a new soldier for that particular family in prison. In acting tough, the judge would be making it easy on this particular family to continue in a family tradition that used our systems of justice for their own ends. Mandatory prison or jail sentences put a straight jacket on creative intervention.

It is not that there should be no consequences – absolutely there must be consequences, and to some extent known ones, including the judicious use of prison and jail. But we should be looking to **diminish** criminal behavior, to **break-up** cynical patterns of poverty, revenge and depression, to **improve the efficacy of our interventions**.

I am certain there are no new ideas here, but perhaps the expression of them from my accumulated hours of dealing with families and courts and systems of justice may be of assistance.

Respectfully,

Hugh W. Dangler
19 years of public defender practice and experience
200 felony clients per trial practice year
Well over 1000 sentencing hearings in the First and Second
Judicial Districts