

New Legislation Proposes Mandatory Minimum Sentence Exceptions

Pennsylvania Senator Stewart Greenleaf introduced legislation amending section 7508 of the Crimes Code, Title 18 of the Pennsylvania Consolidated Statutes, relating to mandatory minimum prison sentences for drug dealing, by adding a provision that gives the sentencing judge the discretion to impose a lesser sentence than the mandatory sentence if the judge has a compelling reason to believe that a substantial injustice would occur by applying the mandatory sentence. The judge would not have this discretion if the offender has a prior record score of more than three points; the offender used or possessed a firearm or dangerous weapon in connection with the current offense or any prior conviction; or the offense resulted in death or serious bodily injury.

During the 1980s many states began enacting laws imposing mandatory minimum prison sentences for drug offenses. Lawmakers were led to believe that mandatory prison sentences were necessary to remove drug dealers from the streets and stop the flow of illegal drugs into our communities. The unfortunate reality is that mandatory sentences have been extended from big-time drug dealers to non-violent addicts and we have not slowed the flow of drugs into our communities. Instead, Pennsylvania's state inmate population has increased dramatically and mandatory minimum sentences are a big reason why (Senator Greenleaf Co sponsorship Memorandum, July 5, 2011).

Mandatory minimum laws send nonviolent offenders to prison for lengthy terms, overcrowding prisons and driving up the prison costs. Pennsylvania's Democratic Auditor General supports Senator Greenleaf's bill, estimating that alternative sentencing could save the Commonwealth \$50 million in the 2011-12 budget and \$350 million over four years.

(<http://www.pittsburghlive.com/x/pittsburghrib/news/regional/s720118.html>). The president of Americans for Tax Reform, Grover Norquist, is focused on mandatory minimum sentences as well, saying "The benefits, if any, of mandatory minimum sentences do not justify this burden to the taxpayers. It appears that mandatory minimums have become a sort of poor man's Prohibition: a grossly simplistic and ineffectual government response to a problem that has been around longer than our government itself" (<http://judiciary.house.gov/hearings/pdf/Norquist090714.pdf>).

The push to reform mandatory minimum sentencing laws appears to be a bipartisan priority. Conservative lawmakers are striving to remain true and faithful to the taxpayers' dollars by remaining open to a change that could save millions and create a more fair system. Liberal lawmakers and civil rights groups are pushing for sweeping changes to federal and state crack cocaine mandatory minimum sentencing statutes, which they say disproportionately affect blacks. The average sentence for crack cocaine offenses in 2003 was 3.5 years longer than the average sentence for a powder cocaine offense. As a result, blacks are serving longer sentences in prison for cocaine crimes because of the mandatory minimum sentencing disparity adopted in the 1980s. At the time, Federal drug experts perceived a greater risk of addiction and the level of violence associated with the crack trade warranted a sentencing disparity where the sale of five grams of crack cocaine garners the same five-year prison term as selling 500 grams of powder cocaine (<http://www.humannaturemag.com/index.php?option>).

Injustices invariably happen when we tell judges that they have to impose a particular mandatory sentence. Allowing more discretion in mandatory minimum sentences would place the judge in a position to look at the individual circumstances of a case and determine what penalty should apply to the crime that was committed. Senator Greenleaf's legislation was modeled after a federal law enacted in 1994. Since that time over 63,272 federal drug offenders facing mandatory minimum sentences have received lesser sentences saving the government an estimated \$25,000 per prisoner, per year, for each year shaved off the sentence. Approximately one-third of states already have mandatory minimum sentencing exceptions in place.

If you or someone you know is in criminal trouble and facing a mandatory minimum sentence, or if you have any questions regarding the mandatory minimum exceptions, please contact me for a free consultation at 1-877-LAW-2555.

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