

Updates Regarding Mandatory Minimum Sentencing

By Adam J. Sheppard

A “mandatory minimum” refers to the minimum term of imprisonment that a judge must impose by virtue of a statute; that is, several statutes do not accord a judge discretion to impose a sentence below that which Congress prescribed. Mandatory minimums have long been controversial, primarily because they (a) tie a judge’s hands; (b) are not tailored to an individual case or the individual; and (c) have significantly contributed to America’s mass incarceration epidemic. The following is a look at some of the numbers on mass incarceration:

- **2.2 million:** The number of prisoners in the U.S. -- which has quadrupled from only 500,000 in 1980.
- **25 percent:** The share of the world’s prisoners that are in the U.S., *even though we’re only home to 5 percent of the world’s population.*
- **60 percent:** The share of U.S. prisoners that are either African American or Latino. “About one in every 35 African American men, one in every 88 Latino men is serving time right now,” President Obama said in an interview from 2015. “Among white men, that number is one in 214.”
- **\$80 billion:** The amount the U.S. spends each year to keep people incarcerated in America. By comparison, if \$80 billion were available for use elsewhere, the U.S. could (a) provide universal preschool for every 3-4 year old in America; (b) double the salary of every high school teacher in America; (c) finance new roads, bridges, and airports; and (d) eliminate tuition at every one of the country’s public colleges and universities.

See <https://www.whitehouse.gov/blog/2015/07/15/president-obama-our-criminal-justice-system-isnt-smart-it-should-be> (last visited 2/24/17).

Federal Government’s Approach

Former Attorney General Eric Holder and President Obama had strongly advocated for reforming mandatory minimum sentences for non-violent drug offenders. The issue has gained bi-partisan support. In 2015, Senators Mike Lee (R-UT) and Richard Durbin (D-IL) and Representatives Raul Labrador (R-ID) and Bobby Scott (D-VA) co-sponsored the Smarter Sentencing Act (S.502 / H.R. 920). The bill is still pending. If passed, the bill will reduce certain 20-year, 10-year, and 5-year mandatory minimum drug sentences to 10, 5, and 2 years, respectively. Additionally, the bill will slightly expand a defendant’s eligibility for “safety valve” relief in drug cases. (The “safety valve” provision, 18 U.S.C. § 3553(f), allows a defendant with no more than one prior criminal point to escape a mandatory minimum sentence if other conditions are present). Currently, the drug safety valve applies only to offenders who have no more than one criminal history point. The proposed amended safety-value would allow drug offenders who have three or fewer criminal history points to qualify for safety-valve relief.

Despite bi-partisan support for sentencing reform in Congress, early signs suggest that the current administration does not support sentencing reform. Attorney General Jefferson Beauregard Sessions III said this of the Smarter Sentencing Act:

“The Senate bill would drastically reduce mandatory minimum drug sentences for all drug traffickers, even those who are armed and traffic in dangerous drugs like heroin, and provide for the early release of dangerous drug felons currently incarcerated in federal prison.”

Families Against Mandatory Minimums (“FAMM”) characterized that statement as “false.” FAMM noted that the bill “does not reduce all mandatory minimum drug sentences[,] and it allows but does not require courts to release some prisoners early.” See <http://famm.org/justifact/jeff-sessions/>.

At the State Level

Many states, including Illinois, are implementing their own criminal justice reforms. Pursuant to an executive order from Governor Rauner, The Illinois State Commission on Criminal Justice and Sentencing Reform presented 27 suggested reforms in December. The Commission recommended providing judges greater discretion to impose probation for certain offenses and amending certain mandatory sentences or sentencing enhancements. See http://www.icjia.org/cjreform2015/pdf/CJSR_Final_Report_Dec_2016.pdf. In January, 2017, the Massachusetts Sentencing Commission voted to recommend abolition of mandatory minimum sentences for all crimes except murder. <http://commonwealthmagazine.org/criminal-justice/sentencing-commission-backs-repeal-of-mandatory-minimums/>. On February 21, 2017, the Florida Senate Criminal Justice Committee voted unanimously for SB 290, which would end minimum mandatory sentences for certain nonviolent drug offenses. See <http://www.miamiherald.com/news/politics->

government/state-politics/article134127879.html. Nearly half of all states have taken part in similar policy reviews pursuant to a federally-funded program known as the Justice Reinvestment Initiative (implemented by the Office of Justice Programs). See <https://www.bja.gov/programs/justicereinvestment/index.html>.

Summary

Reform of mandatory minimum laws is a crucial component in addressing America's mass incarceration problem. Several states have already implemented such reforms. On a national level, whether there is truly enough bi-partisan support for repeal of mandatory minimums remains to be seen. Until that time, activists and practitioners must continue to diligently challenge mandatory minimum sentencing schemes.

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