

## **PRUDENCE SHOULD GUIDE CRIMINAL SENTENCING**

**Submitted Testimony of the Commonwealth Foundation**

**PENNSYLVANIA SENATE JUDICIARY COMMITTEE**

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The Commonwealth Foundation would like to thank Chairman Greenleaf, Chairman Leach, and members of the Senate Judiciary Committee for the opportunity to submit testimony on the inefficacy of mandatory minimum sentences in Pennsylvania.

### **A Brief History of Mandatory Minimums**

In an effort to stem the tide of crime in the 1970s, many states passed mandatory minimum sentencing laws. Such laws require judges to ignore mitigating factors in a case and impose fixed prison terms on people convicted of certain crimes—usually involving the use of guns or drugs. The Pennsylvania General Assembly first passed its own slate of mandatory minimums in the early 1980s. These laws dealt with violent offenses. Laws covering drug and sex offenses were added subsequently over the next 20 years.

A series of relatively recent U.S. Supreme Court and Pennsylvania state court decisions have invalidated many of the commonwealth's mandatory minimum sentencing laws:

- *Alleyne v. United States* – The U.S. Supreme Court ruled in 2013 that any “element” of a crime that triggers a mandatory minimum sentence must be proven before a jury beyond a reasonable doubt. This ruling effectively invalidated many of Pennsylvania's mandatory minimums.
- *Commonwealth v. Newman* – In 2014, the Pennsylvania Superior Court ruled mandatory minimums unconstitutional for certain drug crimes committed in the vicinity of a firearm.
- *Commonwealth of Pennsylvania v. Hopkins* – This 2015 Pennsylvania Supreme Court decision found Pennsylvania's Drug Free School Zones Act unconstitutional.

As a result of these decisions, Pennsylvania's judges are no longer required to impose mandatory sentences for certain crimes.

### **Are Mandatory Minimum Sentences Necessary?**

The evidence suggests a one-size-fits-all approach to criminal sentencing does not reduce crime. A meta-analysis conducted by two professors for the journal *Crime and Delinquency* found mandatory sentencing ineffective at reducing the frequency of gun violence.

The Brennan Center for Justice at NYU School of Law reported similar findings in 2015: “Increased incarceration has had little effect on the drop in violent crime in the past 24 years. In fact, large states such as California, Michigan, New Jersey, New York, and Texas have all reduced their prison populations while crime has continued to fall.”

Michigan repealed its minimums for drug offenses in 2002. During the next ten years, violent crime dropped by 13 percent and property crime fell by 24 percent. In 2010, South Carolina eliminated the 10-year mandatory minimum sentence for certain drug offenses. This allowed the state to close two minimum-security prisons, saving millions of dollars while seeing a reduction in the crime rate.

Supporters of mandatory minimums will sometimes justify harsh sentences because they believe incarceration is critical to reducing recidivism. But a 2012 paper authored by two crime experts at Carnegie Mellon University disputes this notion. In their paper, the researchers conclude that “there is little evidence in our data that incarceration impacts re-arrest.”

Likewise, a 2009 report from the Pennsylvania Commission on Sentencing found, “Neither length of sentence nor the imposition of the mandatory sentence per se was a predictor of recidivism...”

To summarize, The Sentencing Project finds “...both crime and imprisonment can be simultaneously reduced if policy-makers reconsider their overreliance on severity based policies such as long prison sentences.” A better alternative would focus on increasing the certainty of punishment rather than the severity.

Another frequent defense of mandatory minimums comes from prosecutors who consider it a necessary bargaining chip to get cooperation from low-level offenders. However, this claim is generally overstated. Cooperation in mandatory minimums cases is comparable to the average rate in all federal cases, according to a paper by law professors Erik Luna and Paul G. Cassell in the *Cardozo Law Review*.

Overall, mandatory minimums have been ineffective at reducing crime, have little impact on recidivism, and do not increase the likelihood of cooperation from low-level offenders.

Additionally, mandatory minimums are largely redundant. Pennsylvania judges already follow voluntary sentencing guidelines more than 90 percent of the time. And in cases where sentences fall below the guidelines, which happens about 7 percent of the time, it’s usually at the request of a prosecutor.

While purported benefits of mandatory minimums have not materialized, the consequences are very real.

### **The Consequences of Mandatory Minimums**

Mandatory minimums create an indefinite number of problems, only some of which are easily discerned. One such problem is the disproportionate impact these sentences have on minorities, which leads to the racial disparities seen inside the criminal justice system.

According to professors Sonja B. Starr and M. Marit Rehavi, cases where judges have the least discretion—i.e., those cases where mandatory minimum sentences apply—are driving the racial disparities in federal sentencing.

Pennsylvania lawmakers should refuse to re-impose mandatory minimums to avoid exacerbating the racial disparities already present inside Pennsylvania’s prison system. Such disparities can undermine confidence in the criminal justice system and cause irreparable social harms—like the disintegration of the family—which have and will continue to have devastating effects on the commonwealth’s communities.

The costs of imposing mandatory minimums also present a problem. Keeping people in prison longer than necessary inevitably increases corrections’ costs. In Pennsylvania, corrections is the third largest expense in the General Fund budget. If mandatory minimums were restored, this expense could swell by tens of millions of dollars.

An analysis of House Bill 741, which would restore some mandatory minimums, finds the sentencing changes could add anywhere from \$47 million to \$85 million in additional costs annually.

### **Conclusion**

Well-intentioned efforts to get “tough on crime” through mandatory minimums have caused too many harmful consequences. These sentences do little to deter crime, cause irreparable harm to the social fabric, and add unnecessary costs to an already expensive corrections system.

A better way forward involves the path set out by Justice Reinvestment Initiative Working Group. The group’s recommendations apply an evidenced-based approach to crime reduction, which focuses on keeping people out of prison and ensuring they have a smooth transition back into society. That should be the ultimate goal of any criminal justice reform effort.