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Sentencing Reform

January 10, 2014 – Volume 24, Issue 2

Are mandatory sentences too harsh?

By [Sarah Glazer](#)



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Pro/Con

Should mandatory sentences be abolished?

Pro



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Judges should have discretion to craft fair and effective sentences — informed and limited by sensible legislative ranges, detailed guidelines and meaningful appellate review. Ensuring judges have such discretion fosters sound sentencing outcomes, respects our commitment to checks and balances and is better than a system skewed by mandatory minimums.

A neutral judge should balance competing sentencing goals like retribution, deterrence, incapacitation and rehabilitation consistent with broad legislative direction. Selection of judges is often controversial partly because we recognize the breadth of judicial authority and demand its fair and independent exercise.

Sound legislative sentencing ranges are often broad because offenses are committed differently and offenders are as diverse as the human condition. Mandating precise punishments before crimes occur requires ignoring pertinent circumstances about an offense and about an offender's characteristics. Mandatory minimums are one-size-fits-all dictates that can result in unfair sentences.

Some claim mandatory minimums ensure serious offenses result in a minimum punishment in all cases. But that never happens: Prosecutors use charging and bargaining discretion to deploy or avoid mandatory minimums as they see fit.

When prosecutors threaten a severe mandatory penalty (or offer relief from one), the incentive to plead guilty can be overwhelming, even for those with viable defenses. Although usually seeking justice, prosecutors can lose perspective. Is a 20-year sentence more appropriate than 10 years just because a drug defendant refused to plead guilty quickly or cooperate? Who should make that decision —

Con



William Otis

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We can have more crime or less. Whether it's the one or the other depends on what we do — on whether we decide to keep the sentencing system that's been working for a generation or return to what we know fails.

It is often said that the criminal justice system is broken and needs "reform," consisting of abolishing or watering down mandatory minimum sentencing and, generally, putting fewer criminals in jail for shorter terms.

In the short run, that would save on prison expenses. But its long-run effects will overwhelm any savings. We know because we've tried it. In the 1960s and '70s we had the same fashionable de-emphasis on incarceration and optimism about rehabilitation and "community based programs." For our trouble we got a crime wave. From 1960 through 1980, violent crime increased 370 percent, and property crime increased 310 percent.

President Ronald Reagan and bipartisan congressional majorities responded by creating a more serious sentencing system under which judges, while retaining considerable discretion, no longer had free rein. Mandatory minimum sentences for more serious or repeat offenses were part of the answer.

We got something for our trouble there, too. In the last 20 years, as incarceration has grown significantly, the crime rate has plummeted. Over that time, violent crime has fallen by half, and serious property crime by almost as much. We are now safer than at any time since the baby boomers were children. We have also experienced huge fiscal savings — millions of dollars that people who did not become crime victims did not have to spend for recovery and healing.

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prosecutors whose sentencing judgments are usually off the record, or judges whose decisions are made in open court? Severe mandatory minimums greatly enhance prosecutorial power and largely remove the judge as a check on potential governmental excesses. Although constitutional, prosecutors neither need nor deserve such extra leverage.

Few dispute the virtues of a sentencing system built around guided judicial discretion with meaningful appellate review to police unreasonably lenient or harsh sentences. The debate over mandatory minimums is about when and how often prosecutors can trump the operation of such a system. No sentencing structure can always guarantee the indisputably "right" result. But we should strive for greater fairness and effectiveness through nuanced sentencing guidelines and appellate review. Mandatory minimums within such a system are a tool of prosecutorial power masquerading as an instrument of justice.

It's true the federal prison population has increased substantially, to more than 200,000 inmates. But the great majority are not there for low-level or harmless pot offenses. They are there for major trafficking, and not just for pot but for very dangerous drugs such as methamphetamine, PCP and heroin. Many others are there for weapons trafficking, explosives, arson, extortion, fraud and sex offenses. Many offenses could be considered "nonviolent," but they inflict grave injury nonetheless.

We wisely give judges substantial discretion, but they should not have 100 percent discretion 100 percent of the time. Congress should be able to draw the line on extreme sentencing outcomes.

Complacency about our present success against crime is not the way to go. Congress should keep the sentencing rules that have helped keep the rest of us safe.

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Document APA Citation

Glazer, S. (2014, January 10). Sentencing reform. *CQ Researcher*, 24, 25-48. Retrieved from <http://library.cqpress.com/>

Document ID: cqresrre2014011006**Document URL:** <http://library.cqpress.com/cqresearcher/cqresrre2014011006>

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