Mandatory Minimum Sentencing Reform

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Each year in Massachusetts, hundreds of people receive fixed and often lengthy prison sentences for nonviolent, low-level drug offenses. These sentences are known as “mandatory minimums” because a judge must impose a fixed prison sentence established by law, regardless of the facts of the case. Mandatory minimums regarding drug cases are “one size fits all” sentences based solely on the quantity of drugs involved in the offense. The judges are prohibited from considering any other factors, such as the defendant’s role in the offense, prior criminal history, or need for drug treatment. Governor Deval Patrick proposed a bill to repeal mandatory minimum sentences for drug trafficking unless a person has both a prior conviction for the same offense and wielded or used a firearm during its commission.

■ The Bill
Final Draft H00040: “An Act Relative to Criminal Sentencing”

■ Elevator Speech
Hello Representative DeLeo. It is fortunate that we caught up with you because there is something we would like to discuss. You must agree that our community is better off when the most violent offenders are the ones populating our prisons, affording law-abiding citizens a sense of security. And surely you agree that we are better off when our prisons are equipped to house prisoners at the rate they are incarcerated. However, existing mandatory minimum legislation can send harmless, one-time drug offenders to jail instead of their more dangerous counterparts. This means that prison space is scarcely available, often leaving more violent offenders free to roam the streets and endanger us and our families – your constituents. Thankfully, Governor Patrick’s new bill, H00040: An Act Relative to Criminal Sentencing, can begin to correct these problems. This bill would repeal mandatory minimums for certain offenses. Thus, it would lower the rate of incarceration, both reducing prison costs and ensuring that the limited prison space we have
is reserved for the most violent and threatening offenders. Plus, it would restore judicial sentencing discretion, which will expand offender opportunities for probation, parole, and even drug rehabilitation. These options would only ease offender reintroduction back into our society. The best part is that you can make a difference by acting in support of H00040 when it goes to the House floor for a vote, and encouraging your colleagues to do the same.

**Op-Ed Piece**

There have been numerous stories over the past few months focusing on the need for an overhaul in the criminal sentencing system in the United States, especially in Massachusetts. The focus has been centered on the mandatory minimums, primarily regarding drug offenders. The United States not only has the highest rate of incarceration in the world, but also houses one-fourth of all the prisoners in the world. Why is this the case?

Prisons throughout the country are seriously overcrowded, and in Massachusetts we are no different. There are over 25,000 inmates serving time throughout the state. However, it is interesting to note that drug offenders serving mandatory minimums make up over one-quarter of the prison population. The Massachusetts Sentencing Commission reports that over 30% of those state prisoners either had no prior criminal record or they had only a few convictions for minor offenses. So, in short, the prisons are filling up at an alarming rate because so many low-level drug offenders are serving the mandatory minimum sentences, even if it is their first offense. And guess who is left paying for the intake of these inmates? Yup, you guessed it, the taxpayers of the Commonwealth. We are left to pay the enormous costs of our failed policies to the amount of $45,917.05 a year for a state prisoner according to the Massachusetts Department of Corrections.

Personally, I believe that putting criminals behind bars is something we should strive for as a society, even if there is an economic cost to it. However, upon seeing the statistics, our money isn’t being spent effectively. For example, one of the more controversial and less efficient sentences occurs when someone gets busted for selling drugs within a “school zone”. This law places a mandatory minimum for those who are caught selling any type or quantity of drug within 1,000 feet of a school to jail for two years. This law sends more than 300 people alone to jail every year, regardless if they were caught dealing to children, the actual original intent of the law. If the drug bust occurred outside of a “school zone” and it was the person’s first offense, it would normally result in probation and not two years in a cell.

Not only that, the “school zone” law creates an urban effect, because those busted for selling drugs are more likely to violate this rule if they live in a densely populated area. This factor has added to the major discrepancy of the racial makeup of those serving the mandatory sentences. The numbers are startling, one in every 54 Hispanic men and one in every 15 Black men ages 18 and over are currently behind bars. Conversely, only one in every 106 White men ages 18 and over are behind bars. Many argue that this “urban effect” is a contributing factor as to why there are so many more minorities in jail.

To make matters worse, those who finish their mandatory minimum sentence who actually have a drug addiction problem are then thrown back onto the street where they are more likely to commit the same act again, instead of being released into a rehab facility. No rehabilitation back into society takes place for this particular offender, leaving the rest of us asking the same question, “If my tax money goes to keeping this person in jail, why can’t it also go to keeping him out?” In fact, according to the Association for Behavioral Healthcare, the average cost of a drug treatment program is $10,000 a person; that number is $35,000 less than it costs to keep him locked up. This just creates a perpetual cycle and nothing has been done to end it. Clearly, something needs to change because the way it stands now, justice is not being served and tax money can be better spent on programs that have to be placed on the back burner due to lack of funding.

Ask your senators and representatives to support the overhaul of our Commonwealth’s mandatory minimum sentencing, Bill H40.

**Excerpts from Campaign Journals**

**Carl**

For our bill, H40, the first event we had was a meeting in Senator Creem’s Office with her Chief of Staff, Richard Powell. Senator Creem was not available; however, her aides were very useful and informative. In our meeting, Mr. Powell told us how the last time this matter was taken up for a vote before the state legislature, no one voted solely on party lines, but instead by their philosophical ideals. He also reaffirmed how much of a supporter Senator Creem is of the proposed reduction of the mandatory minimums. In our meeting, it kind of felt like both sides was “preaching to the choir”. For example, there were times where we would finish each other’s sentences when we were talking about the lack of rehabilitation back into society. I felt that
we could have spent our time more wisely with either the new members of the House and with other members who were on the fence, not firmly cemented in their decision on the issue.

Brett

*After a meeting with Keith MacFarland, aide to Representative Eugene O’Flaherty*

Although our bill is an important piece of legislation that is being examined, I feel that it isn’t currently being acted upon and that it is being overshadowed by other proposals and legislation. I felt after meeting with Mr. MacFarland that this was somewhat the reason for the hearing for our bill occurring later in the coming weeks/months. Since the bill was not directly being considered, I feel that the only thing that could have worked better was if an appointment was made ahead to meet with Representative Eugene O’Flaherty himself. Nevertheless though, I felt we made a connection with Keith after talking with him. We stressed to him that our Bill H40 should be reviewed at an earlier time and weighted as a priority. He gave us all his business card and told us to attend the upcoming hearings. He also added that he would advocate our position on the Bill to Representative Eugene O’Flaherty and pass on our message when he was available.

Jesse

*From a meeting with Richard Powell, Senator Creem’s Chief of Staff*

He also pointed out that the competing factions on the bill are divided more along philosophical than party lines. Those who oppose the bill think it is needlessly “soft on crime,” which sends a message of complacency toward crime and weakens general deterrence, while those who support it think it is one measure in an ongoing effort to get “smart on crime.” Finally, Richard explained that without rehabilitative efforts, getting “tough on crime” means nothing because it does not reduce the chances of an individual recidivating upon release.

■ Update (August 2011)

An Act Relative to the Commercial Exploitation of People is currently in the Joint Committee on the Judiciary. A hearing is scheduled for September.

For more information

Families Against Mandatory Minimums Massachusetts Project: www.FAMM.org