

Mandatory minimum sentencing is unfair, ineffective, and expensive, says the Common Sense Foundation

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Despite a substantial drop in crime rates during the past decade¹, North Carolina has experienced a dramatic increase in its prison population². This contradictory and unfortunate trend-also present on a national level³-has been driven by the politically popular and viscerally appealing "tough on crime" legislation adopted by the North Carolina General Assembly primarily in the early 1990s. Mandatory sentencing guidelines require judges to give fixed prison terms to "habitual" offenders and those convicted of specific crimes (often drug offenses⁴) instead of allowing judges to consider all the facts of an individual case.

Such an inflexible, heavy-handed approach to dealing with crime has contributed to a boom in the number of low-level offenders sent to prison and increased the length of their sentences⁵. Not only can mandatory sentencing be unfair, excessive punishment that can destroy individual lives and families, but long prison terms may also contribute to recidivism⁶ and thus provide no long-term solutions to crime. The mass incarceration resulting from mandatory sentencing is also expensive, since taxpayers must foot the bill to imprison more offenders for longer periods of time, as well as to build new prison facilities to house the ever-expanding criminal population.

Surprisingly, the public overwhelmingly does not support the severe sentencing practices implemented by its representatives. A 2001 poll reported that the vast majority of Americans agree that mandatory minimum sentencing is not fair (72%) and also favor replacing prison sentences with mandatory drug treatment and probation for people convicted of non-violent drug use (74%). Seventy percent also agree that sentencing laws need change so that fewer non-violent crimes are punishable by prison terms⁷. As this poll indicates, Common Sense Says that North Carolina needs to enact significant sentencing reform.

Structured Sentencing: Ten Years Later

In the early 1990s, legislators and prosecutors in North Carolina sought to remedy the unacceptable "revolving door" practice of releasing some prisoners after they had served only a fraction of their sentences due to extreme prison overcrowding. This effort ultimately led to the Structured Sentencing Act of 1993⁸. A structured sentencing system is by definition any sort of legislatively enacted set of constraints upon judicial discretion in determining criminal sentences. North Carolina's structured sentencing guidelines were designed to keep violent criminals in prison longer by establishing "truth in sentencing," whereby offenders

must serve almost all of the time they are given, providing very little incentive for good behavior.

Since 1992, the state's prison population has steadily escalated from less than 21,000 to nearly 34,000 today⁹, an increase that far outpaces the state's total population growth of 21% in the 1990s¹⁰. And even though Structured Sentencing was intended to reserve prison space primarily for violent offenders, in fact almost half of inmates in 2002 were non-violent criminals¹¹. In 2002, more misdemeanor offenders-most of whom had minimal to no prior records-were admitted to prison than violent criminal offenders¹². This relatively low number of admissions for violent criminals is consistent with the 19% decrease in North Carolina's violent crime rate since 1991¹³, and suggests that despite the much longer sentences that violent offenders now serve, they do not account for the explosion in the prison population. Projections done by the state Sentencing and Policy Advisory Commission indicate that prisoners immediately will fill the three new 1000-bed prisons near completion and estimate that the prison population will hit 41,052 by 2011¹⁴.

While North Carolina's pioneering structured-sentencing reform has become a model for other states¹⁵, there is no consensus among criminologists that "truth in sentencing" reduces crime rates¹⁶, and further a recent Justice Department study shows that America's prison building binge to accommodate long sentences has actually increased the likelihood that criminals will commit crimes after being released from prison¹⁷. Structured sentencing also abolished parole, removing incentive for offenders to rehabilitate while behind bars and making the adjustment after leaving prison more difficult.

Given the problems with North Carolina's current method of sentencing criminals, there are several steps that the state can take to correct this injustice in its criminal justice system.

Repeal the Habitual Felon Law

North Carolina's Habitual Felon Act has been on the books since 1967, but it went virtually unused until the early 1990s¹⁸, when prosecutors and legislators got famously tough on crime. An "habitual felon" is a repeat offender who has committed three or more felonies, each committed after the conviction of the previous felony¹⁹. The assumption underlying this type of criminal classification is that multiple offenders are inveterate criminals who can never hope to become law-abiding citizens-an oversimplification of a complex problem.

Prosecutors decide who to single out for habitual felon status, and their use of the habitual felon law has dramatically escalated over the past decade, and especially within the past three years²⁰. In 1995 there were 171 Habitual Felon convictions; by 2001 the number had skyrocketed to 611²¹. The district attorneys in some counties use the law regularly while in other counties they may not use it at all. Anson, Buncombe, Durham, Richmond, Stanly and Union Counties all receive grant money to fund a prosecutor whose job it is to prosecute habitual felons, providing incentive to prosecute a defendant as an habitual felon²². DWI,

assault, speeding to elude arrest and breaking into a coin machine are examples of misdemeanors that are routinely being raised to felonies, which in turn increases the mandatory minimum punishment²³.

Since structured sentencing by definition limits judicial discretion, the state's Habitual Felon Act is a rudimentary form of structured sentencing and therefore should have been automatically invalidated under North Carolina's more recent structured sentencing guidelines in 1993²⁵. Penalties for repeat offenders instead have been compounded, resulting in over-compensatory punishments grossly out of proportion to the crimes committed. And if structured sentencing was designed to provide consistency in the type of sentences handed down for specific crimes, the habitual felon law does exactly the opposite, as the offender's status as an "habitual felon" determines the sentence more so than the severity of the most recent felony²⁶.

Repealing the habitual felon law is a vital step toward ensuring that the punishment fits the crime, allowing judges, not lawmakers or prosecutors, to determine appropriate sentences. Several other states have repealed their habitual felon laws after enacting structured sentencing systems, including Kansas, Oregon and Washington²⁷.

Reduce Drug Incarcerations

The United States imprisons 100,000 more people *just for drug offenses* than the European Union does *for all offenses*, even though the European Union has 100 million more citizens²⁷. The United States also has more of its citizenry behind bars than any other industrial democracy²⁸; two-thirds of the prison population is African American or Hispanic²⁹. Approximately eighty percent of U.S. inmates are convicted of drug-related offenses³⁰, and drug offenses alone have long been the most frequent type of crime in prison admissions in North Carolina³¹.

In North Carolina, drug offenses accounted for 21% of those admitted to prison in 2002³², and the vast majority were non-trafficking offenses³³. Research indicates that most incarcerated drug offenders are bit players in the drug trade³⁴, and in the South, 82% of drug arrests were for simple possession in 2001³⁵. North Carolina also ranked fifth in the nation in 1996 for its rate of admitting drug offenders, a rate that tripled from a decade earlier³⁶, even though indicators show that drug use is not going up³⁷. A better approach to drug use in North Carolina would be to start treating it as a public health crisis instead of a public enemy.

Address Racism

The only argument from a progressive perspective in favor of mandatory minimum sentencing is that reducing judicial discretion and standardizing sentences eliminates the possibility of racial discrimination in sentencing. While there are of course other factors contributing to racism within the criminal justice system,

North Carolina's current sentencing guidelines have hardly evened out the grossly disproportionate presence of African Americans in prison, or even made strides in this direction. On the contrary, in fact, statistics reveal that the racial make-up of the prison population has become dramatically more imbalanced over the past decade.

Between 1995 and 2002, 74% percent of defendants convicted as habitual felons were African-American³⁸. Almost 70% of the state's drug-crime prisoners last year were black, compared to only 18% who were white³⁹. Drug offenders in North Carolina's state prisons are even more disproportionately black than the total prison population⁴⁰. Although drug-use rates among blacks and whites are similar, blacks make up the vast majority of those incarcerated for drug offenses, both across the country and the state⁴¹. In 1996, black men in North Carolina were imprisoned for using or selling drugs about 27 times as often as white men, even though their relative drug-use rates were similar⁴².

From 1986 and 1996, the incarceration rate for drug offenses by whites in North Carolina declined by 21%-one of only a handful of states that saw such a decline-but the comparable rate for black drug offenders exploded by 501%⁴³. North Carolina also is one of only a few states in which the rate of prison entries for white, youth, drug offenders decreased during the same period, but the black youth incarceration rate for drug offenses shot up by an astronomical 706%⁴⁴.

Provide Rehabilitative, Cost-Effective Alternatives to Harsh Sentencing

Educational and vocational training as well as substance abuse treatment services are vital in order to properly rehabilitate offenders and reduce recidivism. National surveys indicate that 70% of inmates entering state prisons have not graduated from high school and 40% are functionally illiterate⁴⁵. Prisoners accorded the opportunity to acquire knowledge and skills are better equipped to resist a life of crime once outside of prison and become productive members of society. Assisting and treating individuals addicted to drugs will help them stay off drugs and away from crime.

Further, when offenders "pay their debt to society" by going to prison, society pays, too. North Carolina spends as much as \$200,000 more on each criminal incarcerated as an habitual felon than if he or she had been sentenced according to the single offense⁴⁶. The average cost per inmate per day is about \$65, or about \$23,830 per inmate each year⁴⁷. In 2002, North Carolina spent almost \$789 million on its prison population⁴⁸, much more than the state's entire community college budget⁴⁹. A 1997 study found that treating heavy drug users was eight to nine time more cost-effective than long (six- to seven-year) mandatory sentences in reducing drug use, sales, and drug-related crimes, and estimated that treatment reduced drug-related crime as much as 15 times more than mandatory sentences⁵⁰.

This year, the state will spend an initial \$59 million on a private contract to build three new prisons⁵¹, a

project for which the General Assembly found money despite a projected \$2 billion budget shortfall. But because of this budget crisis-despite the proven cost-effectiveness and crime-preventiveness of treatment-the Sentencing Services Program, which finds alternatives to prison to punish nonviolent offenders, was cut by 40% after narrowly avoiding being eliminated completely⁵².

"Smart on Crime" not "Tough on Crime"

Political tough talk produces legislation that satisfies the "lock-em-up" objective, but it does not address the root causes of crime or provide real, long-term solutions. In what could become a small step toward this end, a bill recently has been introduced in the General Assembly that would trim many felony prison terms by several months⁵³. But meanwhile, there is also a proposal to construct three more prisons in addition to the three private prisons that are near completion⁵⁴.

Other southern states have acknowledged the faults of mandatory minimum sentencing. In 2001, Louisiana and Mississippi repealed their mandatory minimum sentencing laws for drug offenses, and Alabama and Georgia also are considering revising their drug laws⁵⁵. But North Carolina legislators' apparent determination to imprison our social problems away is patently unjust, financially devastating, and ultimately ineffective. Instead of hiding behind "tough on crime" rhetoric, state policymakers should adopt a "smart on crime" approach to criminal legislation. This method includes providing educational and rehabilitative services in prison, eradicating racism from the system, providing alternatives to incarceration for nonviolent offenders, and addressing the root causes of crime such as drug abuse, illness and poverty. Such an approach is necessary to constructively and appropriately sentence defendants, reduce prison overcrowding, and minimize financial costs to taxpayers.

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⁴⁰Ibid.

⁴¹Ibid.

⁴²"Punishment and Prejudice: Racial Disparities in the War on Drugs."

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