

Sentencing history repeating?

According to philosopher George Santayana, “Those who cannot remember the past are condemned to repeat it.” Most people are not aware that the mandatory sentences we fight today are not the nation’s first experiment with these laws. Federal mandatory minimum prison sentences for drug offenses were repealed in 1970 and signs indicate it’s time for them to be repealed again.

The first repeal was directed at the “Boggs Acts,” named after Rep. Hale Boggs (D-La.) who championed the passage of stiff five- and ten-year federal mandatory sentences for drug offenders in 1951. Five years later, the sentences were increased and the federal Boggs Acts became so popular that they were mimicked by “Little Boggs Acts” in the states, some specifying prison terms as long as 10-to-40 years.

By the 1960s, mandatory minimums were under attack because they were unduly severe and inflexible, interfered with the judiciary’s role in individualized sentencing, treated low-level offenders the same as “hardened criminals,” and did not lead to reduction in drug law violations. Treatment of drug addiction as a medical and psychological problem gained acceptance. In 1963, the Presidential Commission on Narcotic and Drug Abuse recommended the relaxation of mandatory minimums and support for local treatment centers.

In 1970, 19 years after their passage, Congress repealed virtually all mandatory minimums for drug offenses as part of the 1970 Comprehensive Drug Abuse and Control Act. Four years later the repeal was made retroactive. The repeal was supported by Republi-



This bill offers our first opportunity to deal with the changing drug abuse problem in a flexible and comprehensive manner...I support the bill and urge my colleagues to do so.

—FORMER REPRESENTATIVE HALE BOGGS (D-LA.), ORIGINAL SPONSOR OF THE “BOGGS ACT” MANDATORY MINIMUMS

cans and Democrats.

Among those supporting the repeal was Texas freshman Congressman George H.W. Bush who said, “Contrary to what one might imagine, this bill will result in better justice and more appropriate sentences... Federal judges are almost unanimously opposed to mandatory minimums, because they remove a great deal of the court’s discretion...As a result [of repealing mandatory minimums], we will undoubtedly have more equitable action by the courts, with actually more convictions where they are called for, and fewer disproportionate sentences.

These penal reforms have been a long time coming.” Those words sound as fresh today as they did when they were uttered 37 years ago.

Everything old is new again

By the mid 1980s, members of Congress forgot the lessons of the Boggs Acts and re-introduced harsh mandatory minimum prison terms for drug offenders. Despite a decline in drug use between 1978-1986, and without any acknowledgment of the enormous impact of the legislation on the criminal justice system, the 1986 Anti-Drug Abuse Act was overwhelmingly approved. Only 16 Congressmen voted against the bill, which passed the Senate by voice vote. President Reagan signed the bill into law on October 27, 1986, one week before election day.

The new law established the bulk of drug-related mandatory minimums that exist today, including the five- and 10-year mandatory sentences for drug distribution or importation. In 1988, the Omnibus Anti-Drug Abuse Act created a mandatory minimum of five years for simple possession of more than five grams of crack cocaine. It also doubled the existing 10-year mandatory minimum for continuing criminal enterprise (CCE) and added drug conspiracy penalties.

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“Ma Pekin” put family in FAMM

For seven years, **Joann Jordan** and members of the Cedar Rapids FAMM chapter have supported each other through the ups and downs of incarceration, separation and for many, life after prison. **Read more about Joann on page 18.**



Debating repeal in 1970

The Drug Abuse Prevention and Control Act of 1970 repealed most drug mandatory minimums. It was the subject of lively debate in the Senate and House of Representatives, with many members voicing their opinions. Then as now, bipartisan Congressional support was the key ingredient for broad sentencing reform.

“This is primarily a law enforcement bill ... [The Boggs Act] did not seem to dam up the flow of narcotics or the fast spreading abuse of drugs.”

—Former Senator Jacob Javits (R-N.Y.)

“Quite apart from the basic irrationality of mandatory sentences which do not give the judge any area for discretion, the mandatory sentence often makes for extraordinary contradictions.”

—Former Senator Thomas J. Dodd (D-Conn.)

“What is most important about this penalty structure is that it is credible in that the penalties fit the crimes and the persons who commit the crimes. By being credible, this law will be enforceable, which is not the case today with existing law.”

—Former Rep. Lowell P. Weicker, Jr. (R-Conn.)

“It is clear that today’s federal penalties for drug violations are inconsistent, illogical and unduly severe in some cases. This bill would revamp the entire penalty scheme, substituting a new and flexible system of penalties which will enable courts to truly tailor the punishment in any given case to fit the crime. Current penalties have little or no deterrent value, as illustrated by the alarming increase in drug related arrests over the past decade. In addition, several federal offenses have been invalidated by the courts. This new penalty scheme is realistic and affordable.”

—Former Representative J. Glenn Beall, Jr. (R-Md.)

“The purpose (of the repeal) is to deal comprehensively with the menace of drug abuse in the United States through providing authority for increased efforts in drug abuse prevention and rehabilitation of users, more effective means for law enforcement aspects of drug abuse prevention and control, and an overall balanced scheme of criminal penalties for offenses involving drugs.”

—Former Representative Ray J. Madden (D-Ind.)

“Everyone is interested in the revised penalties included in this bill. Upon inspection some say enforcement has been weakened. Others say just the opposite. The idea of the changes was to create more flexibility in the handling of the first offenders and those who might actually be salvaged, while bearing down with great intensity upon the pusher and the peddler. It is the opinion of most law enforcement people that the harsh mandatory sentences in the narcotics law have been a hindrance rather than an aid to enforcement. This bill avoids the mandatory minimum, particularly in first offense cases.”

—Former Representative William Lee Springer (R-Ill.)

“As a former prosecutor, I recognize the extreme difficulty in attempting to dispense justice in sentencing individuals who have been convicted of violations where a minimum penalty is required. I believe removing the minimum penalty provision will afford our courts greater latitude to the end that greater justice will be served better and so that the needs of our people, particularly those who have gone astray, will also be best served.”

—Former Representative David E. Satterfield (D-Va.)



History repeating

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Déjà vu in 2007

Fast forward 21 years to 2007: State and federal prisons are bursting with low-level drug offenders, sentences are harsh and rigid, the courts have no sentencing discretion under mandatory minimums, low-level drug offenders are sentenced like kingpins, and drugs are as available and cheaper than they've ever been. Sound familiar?

These conditions mirror those of 1970, when the earlier set of mandatory minimum drug laws was repealed, as does the political make-up of the Congress and White House. In 1970, when support was mounting in Congress for the repeal of mandatory minimums, the Congress was controlled by Democrats, as it is today, and the President was a Republican, Richard Nixon. Today's President, George W. Bush,



President Ronald Reagan made mandatory minimums federal law in 1986.

can even point to his father's support for the repeal of the Boggs Act in 1979.

What will it take to repeal current drug mandatory minimum sentences? Bipartisan support – not just in Congress but around the country. That support has been growing in the past few years but it will become broader when

more policy makers understand that public safety is not compromised by making sentences individualized, sufficient but not greater than necessary, and conducive to successful rehabilitation and reentry. Those basic tenets of American justice can only be achieved with the repeal of mandatory minimums.

A conservative message

The sentencing reform message is conservative. Federal judges appointed by both Republican and Democratic presidents have already spoken out

against mandatory minimum sentencing laws. So have the U.S. Sentencing Commission, Federal Judicial Center, U.S. Courts Study Committee, and American Psychological Association, among others. A handful of Republicans in Congress have voiced strong opposition to mandatory minimums, as have many Democrats. Bills to repeal state mandatory minimums are being considered in Maryland, Delaware and elsewhere.

As Supreme Court Justice Anthony Kennedy eloquently noted, "I can accept neither the necessity nor the wisdom of federal mandatory minimum sentences. In too many cases mandatory minimum sentences are unwise and unjust. . . The legislative branch has the obligation to determine whether a policy is wise. It is a grave mistake to retain a policy just because a court finds it constitutional.

Courts may conclude the legislature is permitted to choose long sentences, but that does not mean long sentences are wise or just."

The movement for serious sentencing reform is well underway. With a lot of pressure history will repeat itself. An injustice of the magnitude of mandatory minimums can only last so long.



President Richard Nixon and Congressman George H.W. Bush in 1970

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