

Why I oppose mandatory minimum sentencing laws

By State Representative Greg Vitali, D-Delaware

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“Gregory Vitali votes with the drug dealers and against OUR children!”

This is the kind of disingenuous campaign rhetoric used against legislators who oppose minimum mandatory sentencing laws. Promoted by those eager to appear “tough on crime,” these sentencing laws, regrettably, impede our judicial system’s ability to do justice.

Mandatory minimum sentencing laws enacted by the Pennsylvania legislature require the imposition of a minimum period of incarceration for certain crimes. Judges cannot impose lesser sentences regardless of the individual circumstances of a particular case.

For example, the minimum mandatory sentence for selling drugs within 1,000 feet of a school is two years incarceration. Therefore, the college freshman who sells a small amount of marijuana to his friend at his campus apartment, which happens to be two blocks from a high school, must spend 2 years in prison. The minimum mandatory sentence for homicide by vehicle-driving while intoxicated is 3 years’ incarceration. Therefore, a young man with no prior record who leaves his bachelor party with a blood-alcohol content slightly over the legal limit, slides on a wet road on his way home and crashes, killing his friend in the passenger seat and perhaps seriously injuring himself, must be sentenced to 3 years in jail. The minimum mandatory sentence for committing a crime of violence on public transportation is 5 years. Therefore, the first-time offender who brandishes a toy gun and takes \$50 from a cab driver must be sentenced to five years in jail.

The main problem with mandatory minimum sentences is that they take away the ability of judges to consider the individual circumstances of each case when imposing sentence. These circumstances might include the defendant’s prior record, family history, education, employment status, record of service in the community, the specific facts of the case, the actual injury caused to the victim, and the likelihood the defendant will offend again.

Another problem with mandatory minimums is that they skew our system of justice by shifting power from judges to prosecutors.

Judges are chosen for their impartiality and given long terms to insulate them from politics and the public passions of the moment. They have been given the responsibility to impose just sentences. Prosecutors, on the other hand, are geared to seek conviction and punishment. Minimum mandatory sentences improperly give prosecutors greater power in determining what penalty a defendant will ultimately receive since the prosecutor decides whether or not to pursue a charge which carries a heavy mandatory sentence.

Mandatory minimum sentences also allow prosecutors to use the threat of a long prison term as a tool to coerce guilty pleas. Going to trial is always a risk. Defendants looking at

a stiff mandatory minimum sentence if convicted often can be persuaded to plead guilty to a lesser offense -- even when they are innocent.

Finally, mandatory minimum sentences have added huge costs to Pennsylvania's corrections budget. In 1995, when the legislature passed many mandatory minimum sentencing laws during its special session on crime, the state's corrections budget was \$831 million. Ten years later, it had ballooned to \$1.3 billion – a 62 percent increase! Much of this increase is the result of the expanding prison population caused by mandatory minimum sentencing. This is money that could be much better spent on education, health care, even property tax relief.

A much better approach would be to eliminate mandatory minimum sentencing and rely on the sentencing guidelines already set up by the Pennsylvania Sentencing Commission. These guidelines establish a range of sentences for judges to impose based on the gravity of the offense and the prior record of the defendant. They require a judge to impose a sentence within certain parameters while giving him some digression to consider the particular circumstances of each case.

Mandatory minimums are opposed by many groups, including the U.S. Conference of Catholic Bishops, the National Council of Churches, the NAACP, the ACLU and the American Bar Association. The late Chief Justice William Rehnquist has stated that mandatory minimum sentences are a “good example of the law of unintended consequences...they frustrate the careful calibration of sentences, from one end of the spectrum to the other, which the (federal) sentencing guidelines were intended to accomplish.”

As of now, legislators who oppose mandatory minimums are losing the sound bite war. Come campaign season, “Gregory Vitali votes with the drug dealers and against OUR children!” decisively trumps a well-reasoned explanation of why mandatory minimums are bad policy. That's why many politicians who oppose mandatory minimums nevertheless will not vote against them – they consider such a vote political suicide.

The groups who oppose mandatory minimums must be more vocal in their opposition, particularly groups with a vested interest such as the judges whose role is being impeded, the lawyers who see how mandatory minimums skew the system, and the groups working for justice in our communities.

Only these groups can educate the public about the problems with mandatory minimums, and provide the political cover that legislators need to make changes. Those changes need to be made soon. Our system of justice depends on it.