



Poor Results, Good Intentions

The Case for Reform of Florida's Mandatory Minimum Statutes

Greg Newburn

In 1999 the Florida Legislature established mandatory minimum sentences for drug trafficking.¹ “Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, in excess of” a

minimum quantity of various illegal drugs, is guilty of “trafficking” in those drugs. The 1999 bill established minimum sentences that escalated based on the quantity involved in the offense.

Sixteen years later, the evidence is clear.

Florida's mandatory minimum drug laws have not achieved their intended purposes, but have led to substantial negative unintended consequences. Given an inmate population hovering around 100,000, a corrections budget consistently over \$2 billion, and a state prison system described by its own guards as a "ticking time bomb,"² Florida lawmakers should reform Florida's outdated and ineffective drug laws by restoring some discretion in low-level drug sentencing.

A Failed Public Policy

Proper analysis judges public policy not by its intentions, but by its results. By that standard, Florida's mandatory minimums have failed. Mandatory minimums were intended to deter drug trafficking, drug abuse, and drug overdoses, but have accomplished none of those objectives.

For instance, the sponsor of the 1999 bill that established mandatory minimums said the new sentences were intended to apply only to "major players"³ in the drug trade, the kind of offender "who's growing three barns full of marijuana, or bringing in a boatload of cocaine."⁴ Harsh sentences were designed to deter what others described as "multi-billion dollar organizations" that "make the American Mafia look like schoolchildren,"⁵ with trafficking threshold weights "drawn very tight" to distinguish between bona fide drug traffickers and

"somebody that's merely using."⁶

Unfortunately, the 1999 bill established absurdly low threshold weights for some drugs, particularly opioids like Oxycodone and hydrocodone. Those low trafficking thresholds have subjected thousands of low-level drug offenders to harsh mandatory minimum prison sentences. Florida's Office of Program Policy Analysis and Government Accountability (OPPAGA) found most offenders sentenced to prison in FY 2010-

11 for opioid trafficking either possessed illegally or sold amounts of pills equivalent to one or two prescriptions, between 30 and 90 pills.⁷ A quarter of offenders sentenced to prison for hydrocodone trafficking that year were caught with fewer than 15 pills.⁸

Moreover, most of these offenders did not have significant criminal histories. Approximately 74 percent had never previously been admitted to prison.⁹ Further, per

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OPPAGA:

Half had either never been on probation or had been on probation solely for drug possession, and 81 percent did not have a prior history of offenses involving selling or trafficking drugs. Most (84 percent) had no current or past violent offenses . . . [and] tended to have substance abuse problems and were at low risk for recidivism.¹⁰

In 2014, Florida took a modest step toward correcting the low threshold problem when it passed SB 360, which

raised trafficking thresholds for Oxycodone and hydrocodone and recalibrated some mandatory sentences for trafficking in those drugs.¹¹ However, current threshold weights are still far too low to meaningfully distinguish between users and kingpins anticipated by the law. In fact, drug users are commonly also low-level dealers themselves. About 70 percent of state inmates incarcerated for drug trafficking

These mandatory sentencing laws succeeded in sending low-level addicts to prison for decades, but a Florida Senate report found no evidence that the laws had a general deterrent effect.¹⁵ Prison admissions data supports that conclusion. By FY 2011, drug admissions to Florida prisons were twice what they were in 1996.¹⁶ Opioid trafficking admissions quadrupled between FY 2006-07 and FY 2010-11.¹⁷

Florida Attorney General Pam Bondi reported a 14-fold increase in prison commitments for the lowest threshold opioid trafficking crime between FY 2000-01 and FY 2010-11.¹⁸

Meanwhile, mandatory minimums failed to deter drug abuse. Florida's cocaine-related death rate increased 33 percent between 1999 and 2015.¹⁹ Heroin-related deaths fell, then rebounded to a rate 204 percent higher than in 1999.²⁰ Between 2003 and 2009, Oxycodone

overdoses increased 246 percent.²¹ Florida's overall drug-induced death rate increased nearly 150 percent between 1999 and 2015.²²

In the 16 years since Florida adopted mandatory minimums to catch kingpins, reduce drug trafficking prison admissions, and reduce drug overdoses, Florida has instead caught thousands of low-level drug addicts, increased drug trafficking prison admissions, and suffered more drug overdoses. This is the definition of public policy failure. It is also consistent with 40

reported using drugs in the month before their offense, 42 percent reported using at the time of their offense, and 25 percent reported committing their offense to get money for drugs.¹² Nevertheless, current law requires a three-year mandatory minimum for simple possession of as few as 14 Percocet tablets,¹³ and a 25-year mandatory minimum for possession of less than 200 Percocet tablets, the same sentence one would receive for importing just under 30 kilograms of pure heroin.¹⁴



years of evidence on mandatory minimum drug laws.²³

This failure comes at a steep cost to public safety. In 2011 Florida TaxWatch found that Florida spends nearly \$100 million annually incarcerating drug offenders serving mandatory minimums.²⁴ Recent evidence suggests that number is even higher today. Given the opportunity costs of that spending – every dollar spent on unnecessary incarceration cannot be spent in other needed areas, such as hiring more police officers, pay raises for corrections officers and first responders, and testing more rape kits – Florida’s failing mandatory minimum drug laws come with tangible public safety costs.

Improving Florida’s criminal justice system should start with fixing its mandatory minimum drug laws. And that should begin with passing a safety valve for drug offenses.

What are Safety Valves?

A safety valve is an exception to a mandatory minimum sentencing law that authorizes a court to give an offender less time in prison than the otherwise required minimum.²⁵ Some safety valve laws give judges wide discretion to avoid mandatory minimums. Others authorize sentencing courts to depart from the minimum only if the offender meets certain special requirements.²⁶

Safety valves do not eliminate mandatory minimums, but they do allow sentencing

courts to make common sense distinctions between dangerous offenders – for whom prison is a necessary and appropriate sanction – and offenders for whom public safety might be better protected through alternatives to prison. These distinctions will reserve expensive prison space for offenders who represent a threat to public safety, ease problems related to prison understaffing, and free up resources to fight crime. The federal government and many states already have safety valves in statutes. Their experiences are instructive.

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Federal Safety Valve

In 1986 the federal government adopted harsh mandatory minimums for certain drug trafficking crimes. As a result, many first-time, low-level, and nonviolent drug offenders received mandatory minimums disproportionate to their crimes.²⁷ Led by Senator

Strom Thurmond in the Senate, and with the support of key Republicans in the House, Congress passed a safety valve to its drug trafficking laws in 1994. As of 2015 more than 97,000 federal drug offenders had received lower sentences under the federal safety valve, saving taxpayers hundreds of millions of dollars. Over this same period, the nation’s crime rate dropped to generational lows.²⁸

Florida

Florida has several safety valves already in place. For instance, Florida law requires courts to sentence defendants

designated as “habitual felony offenders,” “habitual violent felony offenders,” and “violent career criminals” to mandatory minimums.²⁹ However, if the court finds the mandatory minimum “is not necessary for the protection of the public,” then the mandatory minimum does not apply.³⁰ These safety valves have been in Florida statutes since 1995. During that time Florida’s violent crime and property crime have fallen approximately 57 percent.³¹

Florida law also imposes a four-year mandatory minimum for certain hit-and-run offenses.³² The same statute, however, allows sentencing courts to depart from the minimum if the court finds that the mandatory minimum “would constitute or result in an injustice.”³³

In 2014, Florida passed a safety valve to its 10-20-Life gun sentencing law, allowing a court to depart from the mandatory minimum for aggravated assault committed with a firearm if it made certain findings.³⁴ This provision was repealed in 2016 when the Legislature repealed the mandatory minimum for aggravated assault.³⁵

Georgia

In 2013, facing a corrections budget crisis, Georgia passed a safety valve to its mandatory minimum drug trafficking sentencing laws as part of a larger criminal justice reform package.³⁶ According to Georgia’s Council on Criminal Justice Reform, “There is mounting evidence that the reforms enacted to date are improving the effectiveness of Georgia’s criminal justice system and producing benefits for taxpayers as well as offenders and their families.”³⁷ Georgia’s prison population was reduced about 5.5 percent between 2012

and 2015. Further, Georgia has avoided spending \$264 million on new prison capacity,³⁸ and crime has fallen about 10 percent since 2013.³⁹

South Carolina

In 2010, South Carolina passed the “Omnibus Crime Reduction and Sentencing Reform Act of 2010.” Among other reforms, the legislation removed the 10-year mandatory minimum sentence for Drug-Free School Zone violations, allowed the possibility of probation for certain second and third drug possession convictions, and eliminated mandatory minimum sentences for first convictions of simple drug possession. Since those reforms were adopted, South Carolina has closed six prisons, saved nearly \$500 million,⁴⁰ and crime has fallen 16 percent.⁴¹

Mississippi

In 2014 Mississippi passed a safety valve to its drug trafficking statute. The new law allows sentencing courts to depart from mandatory sentences up to 25% of the statutory minimum under certain circumstances. Since 2014 Mississippi’s prison population has fallen, and the state’s violent crime rate and property crime rate have fallen, as well.

Other State Safety Valves

Several other states have safety valves in their statutes, all with similar results. New York allows courts to depart from certain gun mandatory minimums.⁴² Connecticut gives courts discretion to depart from certain drug mandatory minimums.⁴³ Sentencing courts in Maine are authorized to impose sentences below the mandatory

minimums for drug trafficking offenses if they find imposing the minimum would “result in a substantial injustice to the defendant,” and “would not have an adverse effect on public safety,” among other findings.⁴⁴ Virginia adopted a drug safety valve that mirrors federal law.⁴⁵ Minnesota has saved tens of millions in unnecessary prison costs using a safety valve for certain firearm-related offenses.⁴⁶ Montana and Oregon also have broad safety valves that allow courts to depart from mandatory minimums for a variety of crimes.

The American Legislative Exchange Council (ALEC) recently developed the Justice Safety Valve Act,⁴⁷ a model safety valve that provides sentencing courts with discretion to depart from mandatory sentences for nonviolent offenders who meet specified criteria. In 2015, Oklahoma, Maryland, and North Dakota all adopted some version of the ALEC model language. (In 2016, Maryland repealed most of its mandatory minimum drug laws.)

Conclusion and Recommendations for Florida

Protecting public safety is inarguably an essential function of government. And few would contend that Florida has failed at that core mission. But while governments are obligated to keep their citizens safe, they are also obligated to provide public services as efficiently as possible. That principle is

especially important for public safety, where waste and inefficiency manifest themselves not only in bloated budgets and higher taxes, but in broken families and victims of crime.

The evidence supporting safety valves is overwhelming. Many states have used them to avoid unnecessary and costly incarceration. Those states have reduced prison populations, closed unnecessary prisons, saved hundreds of millions of dollars, and, most importantly, continued to reduce their crime rates. Florida’s nearest neighbors – Georgia, Mississippi, South Carolina, and Alabama – have all embraced drug sentencing discretion in one form or another, and provided

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models that reduce crime and eliminate unnecessary corrections spending. Florida should follow their lead.

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