

116TH CONGRESS
2D SESSION

H. R. 7194

To eliminate mandatory minimum sentences for all drug offenses.

IN THE HOUSE OF REPRESENTATIVES

JUNE 11, 2020

Ms. WATERS (for herself, Ms. SCHAKOWSKY, Ms. LEE of California, Ms. NORTON, Mr. POCAN, and Mr. KHANNA) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To eliminate mandatory minimum sentences for all drug offenses.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Mandatory Minimum
5 Reform Act of 2020”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) Mandatory minimum sentences are statu-
9 torily prescribed terms of imprisonment that auto-

1 matically attach upon conviction of certain criminal
2 conduct, often pertaining to drug offenses. Absent
3 very narrow criteria for relief, a sentencing judge is
4 powerless to mandate a term of imprisonment below
5 the mandatory minimum. Mandatory minimum sen-
6 tences for drug offenses rely solely upon the weight
7 of the substance as a proxy for the defendant's role
8 and degree of involvement.

9 (2) In the Anti-Drug Abuse Act of 1986, and
10 at the height of the public concern over crack co-
11 caine, Congress acted hastily, without sufficient
12 hearings, and enacted hard line penalties that tar-
13 getted low-level drug offenders. These penalties in-
14 cluded new, long mandatory minimum sentences for
15 such offenders.

16 (3) According to the Bureau of Prisons, in
17 1986, when the new drug law containing lengthy
18 mandatory minimum sentences passed, the prison
19 population was 36,000. Today, the Federal prison
20 population is over 177,000 up over 390 percent in
21 33 years.

22 (4) According to the Bureau of Prisons, the av-
23 erage cost to keep one prisoner in Federal prison for
24 the fiscal year of 2017 was \$36,299.25, which
25 equates to \$99.45 per day.

1 (5) Annual spending on the Federal prison sys-
2 tem rose by over 600 percent, from roughly
3 \$966,000,000 to more than \$6.9 billion in inflation-
4 adjusted dollars, between 1980 and 2015.

5 (6) According to the U.S. Sentencing Commis-
6 sion, 69,425 offenders were sentenced in fiscal year
7 2018. Of those, 18,964 offenders were sentenced for
8 a drug trafficking offense; with over half (58.4 per-
9 cent) of all drug trafficking offenders convicted of
10 an offense carrying a mandatory minimum penalty.

11 (7) According to the U.S. Sentencing Commis-
12 sion, drug offenders released from prison in 1986
13 who had been sentenced before the adoption of man-
14 datory sentences and sentencing guidelines had
15 served an average of 22 months in prison. In fiscal
16 year 2018, the average sentence for drug trafficking
17 offenders subject to a mandatory minimum penalty
18 was more than 10 years (131 months; 62 months
19 with relief).

20 (8) In fiscal year 2016, many of those offenders
21 convicted of an offense carrying a mandatory min-
22 imum sentence were nonviolent or low-level offend-
23 ers. According to the U.S. Sentencing Commission,
24 only 28.7 percent of convictions for drug trafficking
25 offenses carrying a mandatory minimum penalty in-

1 volved the use of a weapon, violence, or threats of
2 violence. Only 11.7 percent of offenders convicted of
3 such offenses played a leadership role.

4 (9) Mandatory minimum sentences have histori-
5 cally been shown to have a disproportionate impact
6 on African Americans. The United States Sen-
7 tencing Commission, in a 15-year overview of the
8 Federal sentencing system, concluded that “manda-
9 tory penalty statutes are used inconsistently” and
10 disproportionately affect African-American defend-
11 ants. According to another United States Sentencing
12 Commission report, in fiscal year 2016, of the 8,342
13 offenders who were subject to a Federal mandatory
14 minimum penalty at sentencing, Black offenders
15 were the largest group, representing 35.5 percent,
16 followed by White offenders, who represented 31.1
17 percent, and Hispanic offenders, who represented
18 30.9 percent.

19 (10) According to the U.S. Sentencing Commis-
20 sion, between 1994 and 2003, the average time
21 served by African Americans for a drug offense in-
22 creased by 62 percent, compared to a 17-percent in-
23 crease among White drug defendants.

24 (11) According to the Substance Abuse and
25 Mental Health Services Administration, surveys have

1 documented that drug use is roughly consistent
2 across racial and ethnic groups. While there is less
3 data available regarding drug sellers, research from
4 the Office of National Drug Control Policy and the
5 National Institute of Justice has found that drug
6 users generally buy drugs from someone of their own
7 racial or ethnic background. But, according to the
8 U.S. Sentencing Commission, about 73 percent of all
9 drug offenders sentenced in 2018 were African
10 American and Hispanic, many of whom are low-level
11 offenders.

12 (12) As a result of Federal prosecutors' focus
13 on low-level drug offenders, the overwhelming major-
14 ity of individuals subject to the heightened crack co-
15 caine penalties are African American. According to
16 the U.S. Sentencing Commission, in fiscal year
17 2016, of those offenders sentenced on Federal crack
18 cocaine charges, only 5.5 percent were White, while
19 82.6 percent and 11.4 percent were African Amer-
20 ican and Hispanic, respectively.

21 (13) According to the U.S. Census, African
22 Americans comprise 13.3 percent of the U.S. popu-
23 lation, but according to the U.S. Sentencing Com-
24 mission, in fiscal year 2018 African Americans made
25 up 24.9 percent of all drug trafficking offenders.

1 (14) According to the U.S. Sentencing Commis-
2 sion, in fiscal year 2016, about 34.6 percent of
3 women entering Federal prison did so for a drug of-
4 fense. Linking drug quantity with punishment sever-
5 ity has had a particularly profound impact on
6 women, who are historically more likely to play pe-
7 ripheral roles in a drug enterprise than men. How-
8 ever, because prosecutors can attach drug quantities
9 to an individual regardless of the level of a defend-
10 ant's participation in the charged offense, women
11 have been exposed to increasingly punitive sentences.

12 (15) Low-level and mid-level drug offenders can
13 be adequately prosecuted by the States and punished
14 or supervised in treatment as appropriate.

15 (16) Congress has an obligation to taxpayers to
16 use sentencing policies that are cost-effective and in-
17 crease public safety, in addition to establishing a
18 criminal justice system that is fair, efficient, and
19 provides just sentences for offenders. Mandatory
20 sentences have not been conclusively shown to re-
21 duce recidivism or deter crime.

22 (17) The limited resources in the Federal crimi-
23 nal justice system should be used to protect society
24 by incapacitating dangerous and violent offenders
25 who pose a threat to public safety.

1 (18) The Federal judiciary has the expertise
2 and is in the best position to sentence each offender
3 and determine who should be sent to Federal prisons
4 and the amount of time each offender should serve.

5 **SEC. 3. APPROVAL OF CERTAIN PROSECUTIONS BY ATTOR-**
6 **NEY GENERAL.**

7 A Federal prosecution for an offense under the Con-
8 trolled Substances Act, the Controlled Substances Import
9 and Export Act, or for any conspiracy to commit such an
10 offense, where the offense involves the illegal distribution
11 or possession of a controlled substance in an amount less
12 than that amount specified as a minimum for an offense
13 under section 401(b)(1)(A) of the Controlled Substances
14 Act (21 U.S.C. 841(b)(1)(A)) or, in the case of any sub-
15 stance containing cocaine or cocaine base, in an amount
16 less than 500 grams, shall not be commenced without the
17 prior written approval of the Attorney General.

18 **SEC. 4. MODIFICATION OF CERTAIN SENTENCING PROVI-**
19 **SIONS.**

20 (a) SECTION 404.—Section 404(a) of the Controlled
21 Substances Act (21 U.S.C. 844(a)) is amended—

22 (1) by striking “not less than 15 days but”;

23 (2) by striking “not less than 90 days but”;

24 and

1 (3) by striking the sentence beginning “The im-
2 position or execution of a minimum sentence”.

3 (b) SECTION 401.—Section 401(b) of the Controlled
4 Substances Act (21 U.S.C. 841(b)) is amended—

5 (1) in paragraph (1)(A)—

6 (A) by striking “which may not be less
7 than 10 years and or more than” and inserting
8 “for any term of years or for”;

9 (B) by striking “and if death or serious
10 bodily injury results from the use of such sub-
11 stance shall not be less than 20 years or more
12 than life”;

13 (C) by striking “which may not be less
14 than 20 years and not more than life imprison-
15 ment and if death or serious bodily injury re-
16 sults from the use of such substance shall be
17 sentenced to imprisonment for any term of
18 years or for life imprisonment” and inserting
19 “for any term of years or for life”;

20 (D) by striking the sentence beginning “If
21 any person commits a violation of this subpara-
22 graph”; and

23 (E) by striking the sentence beginning
24 “Notwithstanding any other provision of law”

1 and the sentence beginning “No person sen-
2 tenced”;

3 (2) in paragraph (1)(B)—

4 (A) by striking “which may not be less
5 than 5 years and” and inserting “for”;

6 (B) by striking “not less than 20 years or
7 more than,” and inserting “for any term or
8 years or for”;

9 (C) by striking “which may not be less
10 than 10 years and not more than” and insert-
11 ing “for any term of years or for”;

12 (D) by inserting “imprisonment for any
13 term of years or for” after “if death or serious
14 bodily injury results from the use of such sub-
15 stance shall be sentenced to”; and

16 (E) by striking the sentence beginning
17 “Notwithstanding any other provision of law”
18 and the sentence beginning “No person sen-
19 tenced”; and

20 (3) in paragraph (1)(C), by striking “of not less
21 than twenty years or more than life” and inserting
22 “for any term of years or to life imprisonment”.

23 (c) SECTION 1010.—Section 1010(b) of the Con-
24 trolled Substances Import and Export Act (21 U.S.C.
25 960(b)) is amended—

1 (1) in paragraph (1)—

2 (A) by striking “of not less than 10 years
3 and not more than” and inserting “for any
4 term of years or for”;

5 (B) by striking “and if death” the first
6 place it appears and all that follows through
7 “20 years and not more than life” the first
8 place it appears;

9 (C) by striking “of not less than 20 years
10 and not more than life imprisonment” and in-
11 serting “for any term of years or for life”;

12 (D) by striking “and if death or serious
13 bodily injury results from the use of such sub-
14 stance shall be sentenced to life imprisonment”;
15 and

16 (E) by striking the sentence beginning
17 “Notwithstanding any other provision of law”
18 and the sentence beginning “No person sen-
19 tenced”;

20 (2) in paragraph (2)—

21 (A) by striking “not less than 5 years
22 and”;

23 (B) by striking “of not less than twenty
24 years and not more than” and inserting “for
25 any term of years or for”;

1 (C) by striking “of not less than 10 years
2 and not more than” and inserting “for any
3 term of years or to”;

4 (D) by striking “and if death or serious
5 bodily injury results from the use of such sub-
6 stance shall be sentenced to life imprisonment”;
7 and

8 (E) by striking the sentence beginning
9 “Notwithstanding any other provision of law”
10 and the sentence beginning “No person sen-
11 tenced”; and

12 (3) in paragraph (3), by striking “of not less
13 than twenty years and not more than life” and in-
14 serting “for any term or years or for life”.

15 (d) SECTION 418.—Section 418 of the Controlled
16 Substances Act (21 U.S.C. 859) is amended by striking
17 the sentence beginning “Except to the extent” each place
18 it appears and by striking the sentence beginning “The
19 mandatory minimum”.

20 (e) SECTION 419.—Section 419 of the Controlled
21 Substances Act (21 U.S.C. 860) is amended—

22 (1) by striking the sentence beginning “Except
23 to the extent” each place it appears and by striking
24 the sentence beginning “The mandatory minimum”;
25 and

1 (2) by striking subsection (d).

2 (f) SECTION 420.—Section 420 of the Controlled
3 Substances Act (21 U.S.C. 861) is amended—

4 (1) in each of subsections (b) and (c), by strik-
5 ing the sentence beginning “Except to the extent”;

6 (2) by striking subsection (e); and

7 (3) in subsection (f), by striking “, (c), and (e)”
8 and inserting “and (e)”.

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