

Statement of Grover G. Norquist
President, Americans for Tax Reform
Subcommittee on Crime, Terrorism, and Homeland Security
House Committee on the Judiciary
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Mr. Chairman, my name is Grover Norquist and I am the President of Americans for Tax Reform. Thank you for inviting me to testify today on the subject of mandatory minimum sentences.

Americans for Tax Reform is dedicated to reducing the influence of government in our lives. The first and most important way that ATR works toward this end is by reducing the burden of taxation on all taxpayers, but for years ATR has also fought the creeping federal regulatory burden and otherwise sought to promote individuals' control of their own lives rather than government.

We tend to view each and every federal program skeptically. We want to know if its benefits are worth the cost both in terms of money - that is, the taxes that are necessary to subsidize the program - and in terms of freedom - that is, is this an activity that free people should be doing for themselves or is this something only the government can do?

Taking the second consideration first, I think maintaining public safety and order is a legitimate function of government. But while fighting crime might be a responsibility of the state, my skepticism about government action extends even to popular-sounding anti-crime initiatives. I think it goes without saying that the Justice Department is no less interested in accumulating power than are the IRS, EPA or FDA. As a result, I don't think every law purportedly designed to protect us from terrorists or homegrown criminals is justifiable. Indeed, I have spoken out in the past against major provisions of the Patriot Act and against the use of secret evidence.

Against this backdrop, I would like to share my thoughts on mandatory minimum sentencing laws. I recognize that these laws might not constitute a government program *per se*, but their use certainly constitutes government policy.

To begin with, their pedigree makes them highly suspect. As with so many other federal programs, mandatory minimums were hatched by the Left, later embraced by the Right, and have been maintained by a bipartisan majority.

The Left's support for mandatory minimums was well-intentioned if ill-conceived. Their goal was to eliminate disparities in sentencing and thereby make the criminal justice

system fairer. The idea that one judge might give two drug traffickers completely different sentences was questionable on its face. But what made it intolerable was that the disparity too often seemed to be a product of the color of the defendant's face. The Left's answer was to eliminate judicial discretion and force all judges to give the same sentence.

Conservatives later saw virtue in mandatory minimums not only as a tool for stopping a few errant liberal judges from handing down light sentences, but as a means to increase sentences across the board. Thus, the minimums established by Congress- especially in the 1980s during the height of the crack cocaine scare - were not really minimums at all, but rather uniformly tough sentences.

We should know by now to beware of easy solutions. As H.L. Mencken said, "There is always an easy solution to every human problem – neat, plausible, and wrong." Today, a generation later, it is increasingly clear that adoption of mandatory minimums, while a neat and plausible response to sentencing disparities, was the wrong solution.

First, the discretion exercised by judges was not extinguished but simply transferred to prosecutors. Prosecutors now have control over sentencing through their charging decisions. Unsurprisingly, politically-appointed and elected prosecutors are no less foolproof than judges. Both sides of the political aisle can point to examples of abuse in prosecutorial discretion, including, most recently, the decision to seek lengthy prison sentences for the Texas border agents. President Bush fixed that error before he left office by granting commutations to both men, but it would be preferable to have judges with the authority to review and check prosecutorial decisions.

The biggest problem from the perspective of the taxpayer, however, is that mandatory minimum sentencing policies have proven prohibitively expensive. In 2008, American taxpayers spent over \$5.4 billion on federal prisons¹, a 925 percent increase since 1982.² This explosion in costs is driven by the expanded use of prison sentences for drug crimes and longer sentences required by mandatory minimums. Drug offenders are the largest category of offenders entering federal prisons each year. One third of all individuals sentenced in federal courts each year are drug offenders. And these convicts are getting long sentences. In 2008, more than two-thirds of all drug offenders receive a mandatory minimum sentence, with most receiving a ten-year minimum.

¹ U.S. DEP'T OF JUSTICE, FY 2009 BUDGET AND PERFORMANCE SUMMARY, FEDERAL PRISON SYSTEM, *available at* http://www.usdoj.gov/jmd/2009summary/html/127_bop.htm (last visited June 8, 2009).

² BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, JUSTICE EXPENDITURE AND EMPLOYMENT IN THE UNITED STATES, 2003 (Apr. 2006), at 3, *available at* <http://www.ojp.usdoj.gov/bjs/pub/pdf/jeeus03.pdf> (last visited July 2, 2009).

The jump in corrections costs at the state level has been equally dramatic. State corrections spending has ballooned from \$6 billion in 1982 to over \$50 billion in 2008. These skyrocketing costs are hitting states at a time when they are already being forced to cut back due to the bad economy.

The benefits, if any, of mandatory minimum sentences do not justify this burden to taxpayers. Illegal drug use rates are relatively stable, not shrinking. It appears that mandatory minimums have become a sort of poor man's Prohibition: a grossly simplistic and ineffectual government response to a problem that has been around longer than our government itself.

Yet all is not lost. Center-right governors like Rick Perry of Texas are trying new approaches. A couple of years ago, Texas started sending low-level, first-time felony drug users to mandatory drug treatment rather than prison. Before Governor Perry, it was Republican Governor – John Engler of Michigan – who signed into law the first major repeal of state mandatory minimum sentences. Engler's action saved Michigan taxpayers \$40 million in prison costs without jeopardizing public safety.

In closing, I want to note that questioning the wisdom of mandatory minimums has nothing to do with being soft on crime. I believe in strong and swift punishment when appropriate. I support the death penalty for murderers. But the government has a responsibility to use taxpayer money wisely. Viewed through the skeptical eye I train on all other government programs, I have concluded that mandatory minimum sentencing policies are not worth the high cost to America's taxpayers.