

Mandatory Minimum Sentences

- On February 28, 2008, Canada passed Bill C-2, the *Tackling Violent Crime Act*, which introduced more mandatory minimum sentences (MMS). We now have a reverse onus dangerous offender provision, new mandatory minimum sentences for gun crimes, and increased impaired driving offences.
- Prior to the passage of Bill C-2, Canada already had approximately 45 mandatory minimum sentences¹; more mandatory minimum sentences will mean that people who are ensnared in the prison system are likely to be kept there for longer periods of time.
- In the United States, mandatory minimum sentences have been utilized for much of the past few decades. The Supreme Court in the United States found mandatory guidelines breached constitutional rights.² This combined with skyrocketing rates of imprisonment of the most dispossessed mean that many states are now revisiting such initiatives because they recognize that mandatory minimum sentences do not protect society, rehabilitate individuals, or generally contribute to the well being of others.³
- Supporters of mandatory minimum sentences often argue that they are of value because:
 - They deter or prevent the particular individual who is sentenced from committing future offences, especially while s/he is incarcerated (i.e. specific diversion);
 - They deter others from committing similar offences by making an example of those who are convicted of certain offences (i.e., general deterrence); and,
 - 3. Public attitudes are such that the Canadian electorate would not stand for people being held accountable for criminal convictions in other ways than prison.
- Imprisonment is far more expensive and the most ineffective means of addressing social problems. Accordingly, funding incarceration means that resources are cut from social services, educational services, and employment opportunities. According to a recent U.S. report entitled, *One in 100: Behind Bars in America 2008*, in the 20 years between 1987 and 2007, there was a 127 percent increase in costs of prison

¹ Department of Justice Canada, *Criminal Code* (9 January, 2008).

² *Blakely v. Washington*, 452 U.S. 296 (2004) at 313.

³ The Pew Charitable Trusts, *One in 100: Behind Bars in America 2008* (Washington: The Pew Charitable Trusts, 28 February 2008).

while the increase in higher education was a mere 21 percent.⁴

- It costs anywhere from \$141.78 (using the most conservative estimates) to \$259.05, per day, to keep one person in prison in Canada.⁵ If even just half of the ten billion dollars currently spent on policing, prosecuting and imprisoning people⁶ was invested in social assistance, housing, health, education and other community resources, the resulting resources would benefit whole communities, not merely those who are criminalized as a result of their attempts to survive increasingly inhospitable communities.
- The cost of community options such as probation and parole range anywhere from \$5.00 - \$25.00 a day.⁷
- There is no persuasive evidence to support the notion that mandatory minimum sentencing laws deter others.⁸
- Based on the disparate racial impacts that mandatory minimum penalties have had on racialized populations in the United States, they will also likely exacerbate the over- incarceration of Aboriginal people in Canada.
- States, such as Michigan and the Northern Territories in Australia, are retreating from this criminal law strategy in light of their negative experience with its consequences. Some of the negative impacts of mandatory minimum sentences include unfairness, wrongful convictions and skyrocketing incarceration rates for African Americans⁹, and women¹⁰ in particular, without any discernible deterrent benefit.
- The Royal Commission on Aboriginal Peoples and many provincial reports, such as the Report of the Commission on Systemic Racism in the Ontario Criminal Justice System, have identified that we already have a problem of systemic racism in the enforcement of our criminal law. Mandatory minimum sentences only reinforce this trend by further targeting the African Canadian community and generating a false impression that gun violence can be curbed by such punitive responses.

⁴ The Pew Charitable Trusts, *One in 100: Behind Bars in America 2008* (Washington: The Pew Charitable Trusts, 28 February 2008) at 15.

⁵ "Statistics for 2004/2005" Prison Justice (July 2007), online: Prison Justice <www.prisonjustice.ca>

⁶ Ibid.

⁷ Ibid.

⁸ Anthony N. Doob and Cheryl Marie Webster (2003). "Sentence severity and crime: Accepting the null hypothesis" in Michael Tonry ed. *Crime and Justice: A Review of Research*, Volume 30. (Chicago: University of Chicago Press) 143.

⁹ Department of Justice Canada, *Mandatory Minimum Penalties: Their Effects on Crime, Sentencing Disparities, and Justice System Expenditures* by Thomas Gabor & Nicole Crutcher (Ottawa, Department of Justice Canada, 2002).at 22.

¹⁰ Nekima Levy-Pounds, "From the Frying Pan into the Fire: How Poor Women of Color and Children are Affected by Sentencing Guidelines and Mandatory Minimums" (2007) 47 Santa Clara L.R. 285.

References

- Anthony N. Doob and Cheryl Marie Webster (2003). "Sentence severity and crime: Accepting the null hypothesis" in Michael Tonry ed. *Crime and Justice: A review of Research*, Volume 30. (Chicago: University of Chicago Press) 143.
- Blakely v. Washington, 452 U.S. 296 (2004) at 313.
- Canadian Sentencing Commission, *Sentencing Reform: A Canadian Approach* (Ottawa: Supply and Services Canada, 1987).
- C. Meredith, B. Steinke, and S. Palmer, *Research on the Application of Section 85 of the Criminal Code of Canada*, WD1994-20e (Ottawa : Department of Justice Canada,1994).
- Department of Justice Canada, *Criminal Code* (9 January, 2008).
- Department of Justice Canada, *Mandatory Minimum Penalties: Their Effects on Crime, Sentencing Disparities, and Justice System Expenditures* by Thomas Gabor & Nicole Crutcher (Ottawa, Department of Justice Canada, 2002).
- Judith A. Green, *Positive Trends in State-level Sentencing and Corrections Policy*. (Washington, D.C.: Families Against Mandatory Minimums, 2003).
- Julian V. Roberts, *Mandatory Sentences of Imprisonment in Common law Jurisdictions: Some Representative Model* (Ottawa: Department of Justice, 2005).
- Julian V. Roberts, "Public opinion and mandatory sentencing" (2003) *Criminal Justice and Behaviour* 20. 1.
- J.V. Roberts and D. P. Cole, *Making sense of sentencing* (Toronto: University of Toronto Press, 1999).
- "Mandatory Minimum Sentences" (2001) 39 Osgoode Hall L. J.
- N. Crutcher, "Mandatory minimum penalties of imprisonment: An Historical Analysis" (2001) 44(3) *Criminal Law Q.* 279.
- Nekima Levy-Pounds, "From the Frying Pan into the Fire: How Poor Women of Color and Children are Affected by Sentencing Guidelines and Mandatory Minimums" (2007) 47 Santa Clara L.R. 285

Ryan S. King and Marc Mauer, *Aging Behind Bars: "Three Strikes" Seven Years Later* (Washington, D.C.: The Sentencing Project, 2001).

"Statistics for 2004/2005" *Prison Justice* (July 2007), online: *Prison Justice* <www.prisonjustice.ca>

The Pew Charitable Trusts, *One in 100: Behind Bars in America 2008* (Washington: The Pew Charitable Trusts, 28 February 2008) at 15

Thomas Gabor (2001). Mandatory minimum sentences: A utilitarian perspective. *Canadian Journal of Criminology*, 43: 3 85-405.