

**MEMO**



JUL 05 2011

*Senate of Pennsylvania*

June 30, 2011

**TO:** ALL SENATORS  
**FROM:** Stewart J. Greenleaf  
**SUBJECT:** Cosponsorship – **Mandatory minimum sentence exception**

I am introducing legislation amending section 7508 of the Crimes Code, Title 18 of the Pennsylvania Consolidated Statutes, relating to mandatory minimum prison sentences for drug dealing, by adding a provision that gives the sentencing judge the discretion to impose a lesser sentence than the mandatory sentence if the judge has a compelling reason to believe that a substantial injustice would occur by applying the mandatory sentence. The judge would not have this discretion if the offender has a prior record score of more than three points under the sentencing guidelines; the offender used or possessed a firearm or other dangerous weapon in connection with the current offense or any prior conviction; or the offense resulted in death or serious bodily injury.

During the 1980's and 1990's, many states enacted laws imposing mandatory minimum prison sentences for drug offenses. These laws were enacted with good intentions. Lawmakers across the country were lead to believe that mandatory prison sentences were necessary to remove drug dealers from the streets and in turn stop the flow of illegal drugs into our communities. Pennsylvania was no exception and I was part of this movement. During a 1988 Senate floor debate I said: "In order to deal with this [drug trafficking] we have to try to provide some deterrents. This bill is more about deterrents than punishment because it establishes if you do sell to a minor or if you are a big-time dealer [these are] the kind of people we all want to get off the street and be imprisoned without a chance for probation."

However, since that time dozens of mandatory minimum sentences have been passed for drug dealing and other offenses. Mandatory sentences have been extended from applying to "big-time dealers" to many smaller fish who deal drugs to support their own addiction. Unfortunately, we have not slowed the flow of drugs into our communities. For every dealer we have sent to prison, there has been someone else to take his place. We have, however, put a lot of people behind bars. At least two-thirds of our inmates have drug addiction issues. Pennsylvania's state inmate population increased from 8,000 in 1980 to 51,000 today and mandatory minimum sentences are a big reason why.

In its October 2009 report on mandatory minimum sentencing, the Pennsylvania Commission on Sentencing noted the effect that mandatory minimum sentences have on the increased prison population. The sentencing commission said that "Mandatory minimum sentences alone are not the reason for the increase in the correctional population, but they are a driver of other criminal justice policies and practices, including sentencing guidelines. Aside from the prosecutorial leverage and guideline enhancements . . . , mandatory sentencing provisions also contribute to increased severity in the sentencing guidelines out of concerns for proportionality, and to reduced use of sentencing programs due to ineligibility."

The sentencing commission concluded that "Addressing the growth in the state prison population, particularly involving drug-related offenders, requires systematic change, beginning with adjustments to both the sentencing guidelines and the mandatory sentencing provisions, including expanded eligibility and use of sentencing programs."

Mandatory minimum sentences put the judge in a position of sentencing an offender based on a statutorily set mandatory sentence instead of looking at the individual circumstances of a case and determining what penalty should apply to the crime that was committed. While a mandatory sentence may be necessary in certain cases, I believe that it would not only be the just thing to do but also fiscally prudent to provide judges with some discretion in mandatory minimum sentencing cases. For those reasons, I am proposing a safety valve for the cases where circumstances indicate that the mandatory minimum sentence would be unjust.

My proposal is modeled after a federal law enacted in 1994. Since that time over 63,272 federal drug offenders facing mandatory minimum sentences have received the benefit of the safety valve saving the federal government an estimated \$25,000 per prisoner, per year for each year shaved off of the sentence. About one-third of the states have some type of safety valve. In some cases the provisions giving the judge discretion apply to all types of crimes where mandatory sentences apply and in other cases they are limited to certain types of offenses such as drug offenses. Most of the states do not give the judge discretion if the crime involved a weapon or serious injury.

In my legislation, I have begun by giving the judge discretion in drug trafficking cases. However, I have not given the judge discretion when the offender's prior record score under the sentencing guidelines is above three points because it is likely in those cases that the offense involved violence or the offender had a long list of prior offenses. To further emphasize that point, I have included specific provisions denying the judge discretion in cases where the crime involved the use of a firearm or other dangerous weapon or for where the offense resulted in a death or serious bodily injury.

I believe that this legislation is a balanced approach in addressing the proliferation of mandatory minimum sentences and prison overcrowding.

*If you would like to cosponsor this legislation, please contact Pat Snively of my office by e-mailing her at [psnively@pasen.gov](mailto:psnively@pasen.gov).*