

115TH CONGRESS
1ST SESSION

H. R. 3800

To eliminate mandatory minimum sentences for all drug offenses.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 14, 2017

Ms. MAXINE WATERS of California (for herself, Ms. NORTON, Mr. POCAN, Ms. LEE, and Mr. ELLISON) 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 2017”.

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 187,000 prisoners, up over 400
21 percent in 31 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 2015 was \$31,977.65, which
25 equates to \$87.61 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, between 1995 and 2010, over 400,000 drug of-
7 fenders were sentenced under Federal law; of these,
8 almost 250,000 (61 percent) received mandatory
9 minimum sentences.

10 (7) According to the U.S. Sentencing Commis-
11 sion, drug offenders released from prison in 1986
12 who had been sentenced before the adoption of man-
13 datory sentences and sentencing guidelines had
14 served an average of 22 months in prison. In fiscal
15 year 2016, the average sentence for drug offenders
16 subject to a mandatory minimum penalty at sen-
17 tencing was more than 10 years (with relief, 64
18 months).

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

1 olence. Only 11.7 percent of offenders convicted of
2 such offenses played a leadership role.

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

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

23 (11) According to the Substance Abuse and
24 Mental Health Services Administration, surveys have
25 documented that drug use is roughly consistent

1 across racial and ethnic groups. While there is less
2 data available regarding drug sellers, research from
3 the Office of National Drug Control Policy and the
4 National Institute of Justice has found that drug
5 users generally buy drugs from someone of their own
6 racial or ethnic background. But, according to the
7 U.S. Sentencing Commission, about 74.4 percent of
8 all drug offenders sentenced in 2016 were African
9 American and Hispanic, many of whom are low-level
10 offenders.

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

20 (13) According to the U.S. Census, African
21 Americans comprise 13.3 percent of the U.S. popu-
22 lation, but according to the U.S. Sentencing Com-
23 mission, in fiscal year 2016, African Americans
24 made up about 23.6 percent of all Federal drug con-
25 victions.

1 (14) According to the Bureau of Justice Statis-
2 tics of the Department of Justice, by 2003, African
3 Americans, on average, now serve almost as much
4 time in Federal prison for a drug offense (58.7
5 months) as Whites do for a violent offense (61.7
6 months).

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

18 (16) Low-level and mid-level drug offenders can
19 be adequately prosecuted by the States and punished
20 or supervised in treatment as appropriate.

21 (17) Congress has an obligation to taxpayers to
22 use sentencing policies that are cost-effective and in-
23 crease public safety, in addition to establishing a
24 criminal justice system that is fair, efficient, and
25 provides just sentences for offenders. Mandatory

1 sentences have not been conclusively shown to re-
2 duce recidivism or deter crime.

3 (18) The limited resources in the Federal crimi-
4 nal justice system should be used to protect society
5 by incapacitating dangerous and violent offenders
6 who pose a threat to public safety.

7 (19) The Federal judiciary has the expertise
8 and is in the best position to sentence each offender
9 and determine who should be sent to Federal prisons
10 and the amount of time each offender should serve.

11 **SEC. 3. APPROVAL OF CERTAIN PROSECUTIONS BY ATTOR-**
12 **NEY GENERAL.**

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

1 **SEC. 4. MODIFICATION OF CERTAIN SENTENCING PROVI-**
2 **SIONS.**

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

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

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

7 and

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

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

12 (1) in paragraph (1)(A)—

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

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

20 (C) by striking “which may not be less
21 than 20 years and not more than life imprison-
22 ment and if death or serious bodily injury re-
23 sults from the use of such substance shall be
24 sentenced to imprisonment for any term of
25 years or for life imprisonment” and inserting
26 “for any term of years or for life”;

1 (D) by striking the sentence beginning “If
2 any person commits a violation of this subpara-
3 graph”; and

4 (E) by striking the sentence beginning
5 “Notwithstanding any other provision of law”
6 and the sentence beginning “No person sen-
7 tenced”;

8 (2) in paragraph (1)(B)—

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

11 (B) by striking “not less than 20 years or
12 more than,” and inserting “for any term or
13 years or for”;

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

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

21 (E) by striking the sentence beginning
22 “Notwithstanding any other provision of law”
23 and the sentence beginning “No person sen-
24 tenced”; and

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

4 (c) SECTION 1010.—Section 1010(b) of the Con-
5 trolled Substances Import and Export Act (21 U.S.C.
6 960(b)) is amended—

7 (1) in paragraph (1)—

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

11 (B) by striking “and if death” the first
12 place it appears and all that follows through
13 “20 years and not more than life” the first
14 place it appears;

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

18 (D) by striking “and if death or serious
19 bodily injury results from the use of such sub-
20 stance shall be sentenced to life imprisonment”;
21 and

22 (E) by striking the sentence beginning
23 “Notwithstanding any other provision of law”
24 and the sentence beginning “No person sen-
25 tenced”;

1 (2) in paragraph (2)—

2 (A) by striking “not less than 5 years
3 and”;

4 (B) by striking “of not less than twenty
5 years and not more than” and inserting “for
6 any term of years or for”;

7 (C) by striking “of not less than 10 years
8 and not more than” and inserting “for any
9 term of years or to”;

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

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

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

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

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

3 (1) by striking the sentence beginning “Except
4 to the extent” each place it appears and by striking
5 the sentence beginning “The mandatory minimum”;
6 and

7 (2) by striking subsection (d).

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

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

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

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

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