



Mercy in the Age of Mandatory Minimums

We need to fix the cruel structural issues in our criminal justice sentencing system rather than relying on presidential clemency.

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Recently, we stood in a backyard eating barbecue with a man named Weldon Angelos. He was only a few weeks out of federal prison, having been freed some four decades early from a 55-year sentence for selling a small amount of marijuana while possessing firearms. Weldon was not among the 562 inmates whose sentences were commuted by President Obama, including Wednesday's historic grant of commutation for 214 nonviolent prisoners. Instead, Weldon's release was made possible through a negotiated motion by the government that, alas, cannot be replicated in other cases.

For a dozen years, Weldon had been the poster boy of criminal justice reform for liberals and conservatives alike. His liberation is cause for celebration for those who believed the punishment did not fit the crime. Nonetheless, the Angelos case remains a cautionary tale about both the inherent ruthlessness of "mandatory minimum" terms of imprisonment and the ineffectiveness of the Obama administration's clemency initiative.

Mandatory minimum laws bar the consideration of facts upon which a sentencing judge would normally rely. In Weldon's case, the law compelled a 55-year sentence. It didn't matter that Weldon was a first-time offender with no adult record or that he was the father of three young children. Nor did it matter that he never brandished or used the firearms and never caused or threatened any violence or injury. It was also irrelevant that no other jurisdiction would have imposed a 55-year sentence for the crimes in question, or that Weldon might have received a short prison term, at most, had he been prosecuted in local state court. Nor did it matter that his sentence was longer than those imposed on far more serious criminals, including aircraft hijackers, terrorists, rapists and murderers.

Most of all, it did not matter that the sentencing judge – a conservative Bush appointee known for being tough on crime – believed that the punishment was "unjust, cruel, and irrational." Ultimately, the judge was bound not only by the mandatory minimum statute but also the Supreme Court's jurisprudence, which largely acquiesces to prosecutors' charging decisions while providing almost no check on excessive prison terms.

Absent a doctrinal reversal by the Supreme Court (don't hold your breath), any meaningful safeguard against misapplication of mandatory minimums will have to come in the form of legislation from Congress or from the president through the application of the clemency power.

As for the former, lawmakers are considering several bills that would, among other things: lower some mandatory minimums involving guns and drugs; make retroactive those changes and also a previous reduction in crack cocaine sentencing; expand the so-called "safety valve" exception for nonviolent drug offenders; and allow some inmates who complete rehabilitation programs to be eligible for early release to an alternative form of supervision, such as a halfway house.

These reforms are entirely laudable, but they are also quite modest. Indeed, the Senate bill passed in April expands some mandatory minimum provisions and adds a couple of new ones to the federal code. Moreover, the bill does not reduce the mandatory minimums applied to about half of all drug offenders sentenced each year; it does not change liability-expanding rules that let low-level offenders receive mandatory minimums because of drug crimes committed by co-defendants; and it does not allow judges to sentence below a mandatory minimum term when a defendant suffers from addiction, mental illness or combat-related trauma, for instance, or when a defendant is pressured into drug crime due to threats of violence or domestic abuse.

The positive aspects of the reform bills should be supported all the same. Sadly, legislative efforts appear to be mired in an intramural fight among Republicans, as well as hindered by Democratic intransigence toward another worthy reform, namely, a requirement that law enforcement prove a culpable mental state rather than holding defendants strictly liable. Until lawmakers can agree on a means to prevent draconian sentences, clemency will remain the only remedy for such miscarriages of justice.

Unfortunately, the federal clemency system is also dysfunctional. Weldon's petition for clemency was filed in November 2012 – and it then sat, unresolved one way or another, for three-and-a-half years. The support for the petition was unprecedented, spanning activists, academics and experts from every political camp imaginable. While Weldon is not wealthy and could not afford high-priced lobbyists or attorneys, the facts of his case drove the story onto the pages of leading news outlets. Yet nothing happened. Even when the Obama administration launched the "Clemency Project 2014" and Weldon's case was accepted into that program, he languished in prison as the petition slogged through the seven vertical levels of review any successful clemency case must navigate.

Clemency is meant for cases like Weldon's, where the requirements of the law exceed the imperatives of justice. The fact that a case like his cannot receive clemency from an administration dedicated to expanding the use of this presidential prerogative lays bare the root problem we face – too much process and bureaucracy coursing through a Department of Justice that bears a built-in conflict of interest. The formula for solving the problem is simple: Take the process out of the Justice Department and have the pardon attorney or a clemency board report directly to the president.

It was thrilling to see Weldon free, eating off of a paper plate in the light of a Utah evening. He is just one of many, though, and systemic reform of both mandatory minimums and the clemency process should be an imperative for this and the next administration.

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