

2018

## A First Step Towards Sentencing Reform

Jeffrey Bellin

*William & Mary Law School*, [jbellen@wm.edu](mailto:jbellen@wm.edu)

---

### Repository Citation

Bellin, Jeffrey, "A First Step Towards Sentencing Reform" (2018). *Popular Media*. 435.

[https://scholarship.law.wm.edu/popular\\_media/435](https://scholarship.law.wm.edu/popular_media/435)

Copyright c 2018 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.

[https://scholarship.law.wm.edu/popular\\_media](https://scholarship.law.wm.edu/popular_media)

# A first step toward sentencing reform

BY JEFFREY BELLIN, OPINION CONTRIBUTOR — 08/22/18 08:30 AM EDT

10

THE VIEWS EXPRESSED BY CONTRIBUTORS ARE THEIR OWN AND NOT THE VIEW OF THE HILL

42

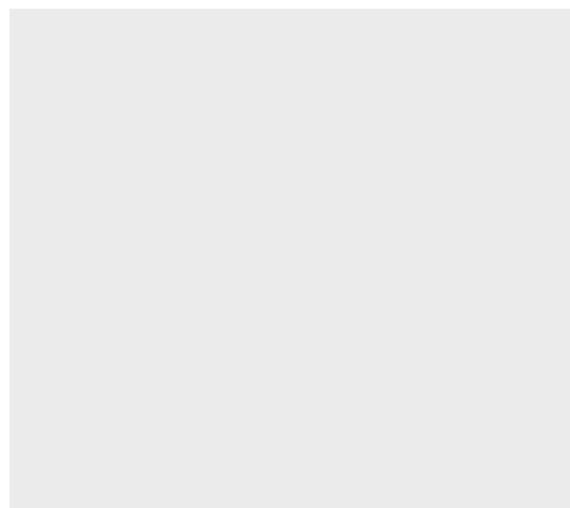


© Getty

Congress is currently considering the FIRST STEP Act – a bill passed by the House of Representatives in May to help federal prisoners reintegrate into society upon release. Reformers, disappointed with the Act’s narrow scope, recently cheered word that the Senate, with President Trump’s blessing, may add a handful of bipartisan reforms slightly easing some mandatory minimum sentences to the bill.

The modest sentencing reforms under consideration are hardly transformative, but they are a positive “first step” and nothing that should worry proponents of “law and order.” In fact, Congress could repeal all mandatory-minimum sentences tomorrow and it would simply free federal judges to impose punishments that fit the crimes. And while there may be plenty to

get excited about in the world of judicial sentencing, little of that excitement can be found at the federal level.



The federal criminal justice system is best understood as a massive bureaucracy dedicated to enforcing drug, weapons, and immigration laws. Drug offenders make up 50 percent of the federal prison population; illegal weapons possession adds another 17 percent; and immigration contributes another 8 percent. Despite this narrow scope, federal prosecutors have been busy. In 1980, there were 28,640 federal prisoners. By 2015,

there were 205,723 (the number fell to 185,617 in 2017).

The good news is that since less than 8 percent of federal prisoners are characterized as violent offenders, the federal system should be the easiest place to reduce the financial costs and human toll of the country's enormous prison population. Indeed, the federal system is due for an overhaul as it is showing signs of strain from too-severe sentencing laws.

Long mandatory sentences don't just fill prisons (often with sick, aging prisoners), they jeopardize the very purpose of the system: justice. Most generally, severe sentences ratchet up the pressure on defendants to admit guilt and plead guilty to get a deal – whether or not they are actually guilty. The “trial penalty” – the difference between the sentence after pleading guilty and the sentence after trial – has ballooned in federal court, often due to mandatory minimums. As a result, trials are disappearing. In 1980, 20 percent of federal convictions came from trials; now the figure is less than 3 percent - the rest (97 percent) are guilty pleas.

At the ground level, mandatory sentences create ugly distortions in a system that strives to do justice. In one recent case, Joseph Tigano III spent seven years in jail awaiting trial. Surprisingly, the delay wasn't due to neglect. Everyone (except Tigano) knew conviction was certain along with a 20-year mandatory prison sentence. So rather than try the case, the defense lawyer, prosecutor and judge tried to convince Tigano to plead guilty and get a sentence consistent with his crime. It didn't work and, after seven years, Tigano got his trial: he was convicted and sentenced to 20 years in federal prison – for growing marijuana.

Weldon Angelos received a mandatory 55 years in prison for selling marijuana to a federal informant. Judge Paul Cassell, who later resigned from the bench, described being haunted by the sentence: “That wasn’t the right thing to do. The system forced me to do it.” And most recently, Alice Johnson attracted public sympathy for the mandatory life prison term she received after being convicted in 1997 as a member of a cocaine drug ring.

All three defendants are out now. At Kim Kardashian’s urging, President Trump commuted Johnson’s sentence. A judge freed Angelos after 13 years in prison in a proceeding shrouded in mystery. And an appeals court threw out Tigano’s conviction, calling the seven-year delay a “flagrant” violation of his speedy trial right.

These results may seem like justice, but they happened despite the system not because of it. Quasi-legal proceedings, reality-TV star-sponsored commutations, and unconstitutional pre-trial delays are not signs of a healthy system. The rational solution in each instance was to give the Senate-confirmed judge who originally presided over these cases the discretion to fashion a sentence that fit the crime.

Proponents of federal mandatory minimum sentences argue that harsh sentences are needed to obtain cooperation from low-level drug dealers. They are certainly right that these laws help fill federal prisons (while drug dealing remains prevalent). But sentences need not be mandatory or extreme to have this effect. And there are always arguments to support severe sentences. Add up all the compelling arguments and you get mass incarceration. With a legal system bursting at the seams and over 2 million people locked up, a heavy burden rests on those resisting reform. The arguments against the exceedingly modest reforms in the FIRST STEP Act don’t come close to meeting this burden.

*Jeffrey Bellin is a professor at William & Mary Law School and former federal prosecutor.*