

New York Needs a “Justice Safety Valve” S.5712 (Sen. Salazar)

What is mandatory minimum sentencing?

Many criminal offenses have statutorily mandated minimum sentences – meaning a judge **must** impose a sentence with a fixed minimum period of imprisonment, regardless of mitigating factors. Furthermore, the law subjects any person convicted of a felony who has a prior felony conviction that is less than ten years old to increased and mandatory periods of incarceration. Sentences are further enhanced when the prior conviction was for a statutorily violent offense, regardless of whether actual violence was used .

What is wrong with mandatory minimums?

Mandatory minimums lead to over-incarceration. Mitigating factors, no matter how compelling, cannot be used to justify a sentence below the statutory minimum, constraining both prosecutors and judges. This leads to more people serving longer periods of incarceration regardless of circumstances which, in turn, costs taxpayers more money. Studies have shown that mandatory minimums are ineffective in reducing the recidivism rate.

What can New York do?

New York should adopt a **Justice Safety Valve**. This bill would give prosecutors and judges the ability to recommend and impose sentences below statutory mandatory minimums after considering mitigating circumstances. A sentence below the mandatory minimum could be imposed by giving due regard to the nature of the crime, history and character of the defendant, chances of successful rehabilitation, and if the imposition of the mandatory minimum would result in *substantial injustice* and is *not necessary for the protection of the public*. Giving judges and prosecutors **greater flexibility** in sentencing promotes fairness and justice (by aligning punishments more closely with the specific circumstances of the case) and the goals of sentencing (which are to impose a sentence that is sufficient, but not greater than necessary, to address certain objectives such as the need for deterrence, public safety, and educational, medical or other treatment for the defendant). This bill strikes a balance between the absolute repeal of mandatory minimum sentencing laws and the inflexible applications of such laws. A **Justice Safety Valve** would also help address mass incarceration by removing from prisons those who pose little or no threat to public safety.

Mass incarceration is one of this country’s most significant social, economic, and political issues. New York currently houses about **48,000 prisoners**, with the annual cost per inmate over **\$69,000**, saying nothing of the societal cost. Communities of color are disproportionately impacted, with **African-Americans and Latinos accounting for 73% of New York’s prison population**. Mass incarceration causes, and perpetuates, problems like poverty, unemployment, and the break-up of families.

Who Might a Judge Consider Eligible Under the Justice Safety Valve?

A person, just under 10 years after his release from incarceration for a violent offense, is arrested for selling or possessing with the intent to sell a small quantity of a narcotic drug under Penal Law §§ 220.39(1) or 220.16(1). These are Class B drug felonies and carry a **minimum sentence of 6 years** for violent predicate felons under Penal Law § 70.70—regardless of the amount of narcotics in the current case, the fact that the person has stayed out of trouble for nearly ten years, whether or not actual violence was used in the prior offense, or any other mitigating circumstances.

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