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Model Legislation

Public Safety and Elections

Minimum-Mandatory Sentencing Act

Summary

This Act would establish minimum, mandatory incarceration sentences for drug offenses. The severity of the penalties would be based solely on the type and amount of drug and whether it is a repeat offense. There would be no distinction between possession and manufacture, sale, or distribution. The minimum, mandatory sentence for a first offense involving small amounts of a schedule I or II drug would be three days incarceration.

The Act would also require that an estimate be made of the cost of additional prison construction entailed by enforcement of the Act, and would authorize a referendum on a bond issue to cover that expected cost. The effective date of the sentencing component of the Act would be tied to approval of the bond issue.

Model Legislation

{Title, enacting clause, etc.}

Section 1. {Title.} This Act shall be known and may be cited as the Minimum, Mandatory Sentencing Act.

Section 2. {Definitions.} As used in this Act:

(A) "Bond" means the bonds authorized to be issued, or issued, under this Act.

(B) "Cost" means the expenses incurred in connection with the acquisition, construction, and development of any property, the execution of any necessary agreement or franchise, the procurement of engineering, inspection, planning, legal, financial, or other professional services, the issuance of bonds and any interest thereon, and the administrative, operating, and other expenses incident to acquiring additional correctional facility space to house inmates who, in the absence of this Act, would not have been incarcerated.

(C) "Distribution" means to transfer or attempt to transfer a substance from one person to another.

(D) "Fund" means the Correctional Facilities Construction Fund.

(E) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly or by extraction from other substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging or labeling or relabeling of its containers.

(F) "Possession" means (insert definition).

Section 3. {Manufacture, distribution, or possession of controlled substances.} Except as authorized by law, it is unlawful for any person knowingly or intentionally to manufacture, distribute, or possess any controlled substance as defined by [cite state controlled substance act].

(A) In addition to any other sentence authorized by law, persons convicted of a violation of this section involving any amount of a schedule I or II controlled substance as defined by [cite state controlled substance act] or more than 50 grams of marijuana shall be subject to the following penalties:

(1) For persons for whom this is the first controlled substance conviction:

(a) if the quantity for which the person is convicted is less than 5 grams of cocaine, 3 grams of heroin, 200 grams of marijuana, etc., a mandatory term of incarceration in a state correctional facility of not less than three days and not more than three years and a fine of up to $15,000.

(b) if the quantity for which the person is convicted is more than 5 grams but less than 28 grams of cocaine, more than 3 grams but less than 14 grams of heroin, more than 200 grams but less than 5 kilograms of marijuana, etc., a mandatory term of incarceration in a state correctional facility of not less than three years and not more than five years and a fine of up to $50,000.

(c) if the quantity for which the person is convicted is more than 28 grams but less than
Section 7. {Voter referendum.}

Not less than 25 percent of the amount in the Fund shall be allocated for county correctional facilities. The bonds maybe appropriated for those purposes by the legislature. Not less than 25 percent of the proceeds from the sale of the bonds shall be deposited in the "Correctional Facilities Construction Bonds," and shall recite that they are known as "Correctional Facilities Construction Bonds," and shall recite that they are authorized to be issued in the aggregate amount specified in Section 5.

A) The bonds authorized under this Act shall be serial bonds, term bonds, or a combination thereof, and shall be direct obligations of the state of [insert state], shall be known as "Correctional Facilities Construction Bonds," and shall recite that they are issued for the purposes set forth in Section 5.

B) The proceeds from the sale of the bonds shall be deposited in the "Correctional Facilities Construction Fund." The moneys in the fund are specifically dedicated and shall be applied to the cost of the purposes set forth in Section 5, and all such monies shall be appropriated for those purposes by the legislature. Not less than 25 percent of the amount in the Fund shall be allocated for county correctional facilities. The bonds maybe issued notwithstanding that the legislature shall not have then adopted an act making specific appropriation of the monies in the fund.

(C) [Bond prices, terms and interest rates, bond issuing, refunding and refinancing procedures, and fund investment and management procedures].

Section 7. {Voter referendum.}

Section 6 of this Act shall be submitted to the people for approval at the general election to be held on [insert date].

Section 7. {Voter referendum.}

Section 10. {Effective date.} Sections 5, 6, and 7 of this Act shall take effect immediately upon enactment, and the remainder of the Act shall take effect on the 60th day after passage of the Correctional Facilities Construction referendum required under Section 7.
This bill limits judicial discretion in sentencing and perpetuates the “War on Drugs” that has helped America become the country with the highest incarceration rate in the world. Longer sentences have done nothing to significantly “deter” demand for and use of drugs and trafficking (addiction counseling, social intervention and other rehabilitative measures have proven more successful), but the sentencing policies have drastically increased the number of persons incarcerated. Longer prison sentences, it should be noted, increase the profits of the Corrections Corporation of America, a member of the Executive Committee of ALEC’s Public Safety & Elections Task Force.