

Comments of Retired District Court Judge Bob Wefald

When I was Attorney General the state's inmate population was at the end of 1981 – 326, 1982 – 365, 1983 – 411 and 1984 – 434. As of January 30th, 2014, Leann Bertsch, Director, Department of Corrections and Rehabilitation, reports that the inmate count was 1569. Measured against the 434 inmates at the end of 1984, over 29 years that's an increase of 361.5% in the inmate population.

Kevin C. Iverson, Manager, North Dakota Census Office, North Dakota Department of Commerce reports that on July 1st, 1984 our state's population was 680,498, and that the estimated population on July 1st, 2013 was 723,393. In 29 years that is an increase in our state's population of about 6.3%.

Thus, in the 29 years our state population has grown by less than 7% our inmate population has grown by more than 360%.

Leann Bertsch reports that in addition to the January 30th inmate population of 1569 there was a probation/parole count of less than 6000. She also reports that these numbers do not include the Sexually Dangerous Inmates at the State Hospital as they are under control of Department of Human Services.

I believe much of this larger number of inmates is in some way drug related. I believe our state's mandatory minimum sentences for repeated drug use and the use of weapons also contributes to this large increase in the number of inmates over the past 29 years.

If you are concerned about these numbers then you should draft a bill for the next Legislature repealing mandatory minimum sentences for repeat drug offenders and for offenders who have a weapon in the commission of a crime. I would recommend that such a bill include a grant of power to return inmates on these mandatory minimum sentences to the district court for resentencing or allow the Department of Corrections and Rehabilitation to consider them for parole.

The only mandatory minimum sentences I support are for repeat drunk drivers, especially felony drunk drivers, as they have to be taken off the highways and dried out. Mandatory in patient treatment would be an appropriate alternative.

My views on mandatory sentencing are more fully set forth in my Letter to the Editor of *The Bismarck Tribune* which was published on January 1st, 2014, which is submitted with these brief comments.

Letter to the Editor written by Bob Wefald and published in *The Bismarck Tribune* on January 1, 2014:

George Will's recent column (Dec. 26), "Sentencing with sledgehammer justice" was right on the money. The results of federal sentencing guidelines filled with mandatory minimum prison sentences have proven the injustice of "cookie cutter justice."

While it may be in human nature to want an "equal punishment" imposed for every "equal crime," this is wishful thinking.

I can tell you as a retired judge that every criminal defendant and every crime committed by that defendant are unique. It is the job of the judge to consider all of the circumstances and impose a sentence that fits the particular crime that was committed by each unique defendant.

Make the judges do their job and exercise their best judgment as to what is the proper punishment to impose.

What the federal sentencing guidelines do is take power away from the courts in abrogation of our system of checks and balances on which governing of our democracy was so wisely based.

It is the job of the legislative branch to enact laws. It is the job of the executive branch to enforce them and it is the job of the courts to apply them to each unique crime and every unique defendant.

Before the voters gave me the power to judge, part of my law practice was to defend people in federal court. In those cases in which my clients were convicted, I know the federal judges in every case were in a much better position to impose a proper punishment than if they were forced to follow the many variations of the sentencing guidelines.

The result was not justice, rather it was cookie-cutter justice.

It is also unfair to impose a greater punishment on defendants who exercise their right to a trial as opposed to those who plead guilty without a trial. That is exactly what happens when the credit for "acceptance of responsibility" reduces the sentences of those who avoid trials for their crimes.

Although North Dakota has only a few crimes for which mandatory minimum sentences are required by the law, I found in even those few crimes — such as repeat drug offenses and the use of a “weapon” during the commission of a crime — mandatory minimum sentences were unnecessary. Each state district court judge was capable and obligated to impose an appropriate sentence. We have too many people sitting in prison on five- and 20-year mandatory minimum sentences when different treatment options may be a better use of resources and a better way to treat drug-addicted criminals.

The only mandatory minimum sentences in North Dakota that I find to be useful and appropriate are those for repeat drunken driving offenders. I believe anyone who had consumed alcohol and driven a motor vehicle can be arrested once for DUI. Anyone who is arrested twice or more for DUI has a real problem and needs to be taken off the roadways of North Dakota and properly treated until that person will not commit the crime of DUI again.

It did not bother me as a judge to impose mandatory minimum sentences in those cases where it was required because I was obligated to follow the law. But in every case, I know I could have imposed a more just and appropriate sentence.

It would be fine with me if the Legislature would repeal — and I think it should repeal — every mandatory minimum sentence, making it retroactive so that those prisoners currently serving mandatory minimum sentences could be resentenced to a proper and just sentence for the crimes they committed.