**McKnight, Peter. “Mandatory sentencing: Feds should quit while they’re behind” . *The Globe and Mail,* April 14, 2015.**

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Assume you inherit a gun and ammunition from your favourite relative, but you’re not clear about licensing requirements and you thereby run afoul of the law. That’s it, it’s off to jail for you, for at least three years.

Or assume that you have obtained a licence, and you store your gun and ammo safely, but you misunderstand where your licence allows you to keep them. You’re also headed to the big house for at least 36 months.

A bit draconian isn’t it? After all, while you technically broke the law, your level of blameworthiness was low, and your actions didn’t place anyone’s health or welfare in jeopardy. Hence you’d think that a reasonable judge would impose a small fine, or perhaps a requirement that you demonstrate adequate knowledge of the law, but certainly not three years in the hoosegow.

But that’s just it: The law, as it currently stands – or as it stood until the Supreme Court of Canada declared it unconstitutional on Tuesday – mandated that judges sentence all offenders like you to at least three years’ imprisonment. So the law didn’t just effectively tie you up; it tied judges’ hands as well.

Welcome to the wonderful world of mandatory minimum sentences, sentences that remove from judges their discretion to fashion appropriate sentences by requiring that they impose a minimum period of imprisonment on all who break the law.

Mandatory sentences are as old as the Criminal Code itself, as the very first Code, enacted in 1892, included six offences with minimum jail terms. The succeeding century saw that number increase, but not markedly. Indeed, in the last two decades, more mandatory sentences have been added to the Code than were added in the previous one hundred years. There are now about 60 offences which provide for minimum sentences, with more to come in the near future.

So what happened? Politics – and politicians – happened, that’s what. In an effort to appear ever tougher on crime, politicians began one-upping each other by proposing more and more mandatory sentences, and the one-upmanship reached its apogee – or more accurately, its nadir – with the current federal government’s unbridled enthusiasm for all things mandatory.

Never mind that mandatory sentences don’t work and are, in fact, counterproductive. Many studies have confirmed that mandatory sentences have little effect on crime rates, and the data on gun crimes is instructive.

According to Statistics Canada, gun homicide rates peaked in 1975 and have been declining ever since, though there were brief periods of increase in the early 1990s, and again from 2011 to 2012. This makes one wonder, first why the feds implemented the (now unconstitutional) three-year mandatory sentence in 2008 and, second, what good it has done.

One need not, however, wonder what bad it has done, for that’s obvious. In what should come as a surprise to no one, Canada’s incarceration rate is creeping ever higher, with aboriginals and other minorities paying the highest price.

According to Correctional Investigator Howard Sapers, non-Caucasians now make up some 40 per cent of federal inmates, with aboriginals alone accounting for more than 20 per cent – and female aboriginals accounting for more than 33 per cent of the federal female prison population.

But it’s not just aboriginals, or other inmates, who ought to be concerned. Rather, increasing incarceration rates inevitably results in increasing costs – and those increases are dramatic. According to Public Safety Canada, between 2002-2003 and 2011-2012, expenditures on federal corrections increased by a whopping 72.1 per cent – from $1.58-billion to $2.72-billion.

All of this is, of course, a predictable result of removing from judges the discretion to fashion appropriate sentences and applying a one-size-fits-all approach to criminal justice. So it’s fortunate indeed that the Supreme Court declared the law unconstitutional on the grounds that the mandatory sentence amounted to cruel and unusual (grossly disproportionate) punishment.

The court did emphasize that the law could be written more narrowly, in such a way that the mandatory sentence could pass constitutional muster. But why bother? Given the lack of salutary effects, and the very real damaging effects of mandatory sentences, the feds really ought to quit while they’re behind.

And given Tuesday’s judgment, it’s virtually certain that the court will invalidate other mandatory sentences, including those for drug crimes. Instead of rewriting failed policy, then, the feds would be better off proposing measures that actually work, both for their welfare and for ours.