THE SENTENCING PROJECT

How Mandatory Minimums Perpetuate Mass Incarceration and What to Do About It

Eliminating mandatory minimum sentencing laws is essential to creating a more just and equitable criminal justice system. Widespread evidence shows that mandatory minimum sentences produce substantial harm with no overall benefit to crime control.[1] Determined by lawmakers rather than judges, these sentences represent a uniquely American approach to sentencing that has accelerated prison growth. They constrain judicial discretion, deepen racial disparities in the criminal legal system, and cause far-reaching harm to individuals, families, and communities.[2]

Despite building bipartisan agreement that such sentences are a policy failure, mandatory minimum sentences continue to be promoted as a tool to combat crime, even as the public signals waning support. This fact sheet identifies the main issues associated with mandatory minimum sentences. It documents the modest progress toward ending them, as well as efforts to reinstate them, and offers solutions to hasten change that will aid in ending mass incarceration.

Overview

Mandatory minimums are legal provisions in each state and the federal government that require a specific minimum prison term for certain crimes, regardless of individual circumstances.[3] A range of criminal legal experts from ideologically diverse backgrounds[4] maintain that mandatory minimums are an overly harsh, disproportionate punishment.[5]

As crime rose in the 1980s and early 1990s, federal and state lawmakers scrambled to calm public concern.[6] With some support from academics, community leaders from areas with rising crime, corrections, law enforcement, and the legal community, politicians built on growing momentum to end indeterminate sentences, consisting of a range of years with no set minimum, and instead opted for longer, determinate sentences upon conviction with a long, minimum term. By 1995, all 50 states and the federal government constrained judges' discretion in sentencing by mandating minimum imprisonment terms for a wide variety of offenses.[7] These policies encompassed:

- Mandatory prison sentences for many drug-related crimes and longer, mandatory minimum sentences for violent crimes and repeat (i.e., habitual) offenses;
- "Three strikes" laws that lengthened sentences, requiring minimum sentences of 25 years to life imprisonment for some, usually serious, offenses;[8] and
- "Truth-in-sentencing" laws, which required people to serve most of their sentences, typically 85%, before eligibility for release.[9]

Problems with Mandatory Minimums

Prosecutors hold the power

A deterrence rationale underpinned mandatory minimum sentences: individuals were expected to refrain from committing new crimes if sentences were lengthened, and such sentences would also "send a message" to those considering criminal acts. The laws were professed to target violent crime, but their broad authority resulted in far more drug and other nonviolent convictions than violent convictions. The use of mandatory minimums effectively vests prosecutors with powerful sentencing discretion. The prosecutor controls the decision to charge a person with a mandatory-eligible crime

and, in some states, the decision to apply the mandatory minimum to an eligible charge.[10] Rather than eliminate discretion in sentencing, mandatory minimums therefore moved this power from judges to prosecutors. The threat of mandatory minimums also encourages defendants to plead to a different crime to avoid a stiff, mandatory sentence.

Racial and ethnic disparities flourish

Studies show that Black people receive mandatory minimum sentences more frequently than whites.[11] A 2019 study found that people of color in New York made up 91% of arrests for crimes that carry mandatory minimums, whereas whites made up only 7%.[12] At the federal level, a 2017 United States Sentencing Commission report on drug sentences revealed that Black people were the most likely to have been sentenced under a mandatory minimum than any other group, and that, despite equal rates of using drugs,[13] Black and Hispanic individuals comprised the majority of persons convicted of drug-related offenses (which are the most common federal offenses subject to mandatory minimums).[14]

The racial disparity associated with the sentencing of crack and powder cocaine offenses in the federal system after Congress passed the draconian Anti-Drug Abuse Act of 1986 is well known. The law created a quantity-based 100:1 disparity between federal crack cocaine and powder cocaine offenses, imposing the same five and ten-year mandatory minimum penalties for selling five and 50 grams of crack cocaine as for 100 times the amount of powder cocaine. In 1986, before the law passed, the average federal drug sentence for African Americans was 11% higher than for whites but within four years, this average was 49% higher.[15] A 2007 analysis by the United States Sentencing Commission showed that 82% of people convicted of crack-related offenses were Black, a stunning difference compared to whites (9%).[16] This injustice was reduced, but not eliminated through the Fair Sentencing Act in 2010 which lowered the disparity to 18:1 from 100:1.

Prison conditions worsen

In addition to their profound racial differences, mandatory minimum sentences have contributed to prison overcrowding, which exacerbates extremely unsanitary and dangerous living conditions. Overcrowded prisons create resource deficits for rehabilitation, mental and behavioral health needs, and education needs. Eliminating mandatory minimums would allow the reallocation of resources that could instead go toward funding these services and programs, which have known community safety benefits.[17]

State and Federal Reforms Underway

After decades of lengthening prison terms to discourage engagement in crime, the failure of this approach is abundantly clear, and some jurisdictions are reversing course. A few notable reforms in recent years include:

- Almost half of all states, as well as the federal government, have reduced or eliminated some mandatory minimums related to drug offenses.[18]
- Colorado, Iowa, and Washington now forbid mandatory minimums for youth who are transferred to the adult system.[19]
- Mississippi scaled back its truth-in-sentencing law so that certain nonviolent offenses committed by someone without a criminal history could be reviewed after serving one fourth of their sentence instead of the previous mandate of needing to serve 85% of their sentence.[20]

While states have yet to address the overuse of mandatory minimum sentences for violent offenses, the limits put on harsh penalties for nonviolent and drug offenses is encouraging. But even here, reform of mandatory minimums has been too sporadic and insufficient to meaningfully pull the prison population back to its pre-mass incarceration levels. Reforms should be strengthened so they point the way toward a new paradigm of sentencing

that allows individualized assessments, that includes regular review, and earned release as soon as possible.

Support for Misguided Policies Remains

We are now beyond the 50th year of the uniquely American reliance on mass incarceration.[21] Experts agree that this has come about by politics, not crime, and many of the policies are related to mandatory minimum sentences.[22] From perpetuating racial disparities, hindering rehabilitation, and straining resources, these policies have had significant negative consequences for individuals, families, and communities.

While inroads have been made to reverse or reform mandatory minimum laws in select states, we are nowhere near an end to the "get tough" politics that brought them about. Old rhetoric tends to resurface when crime worries rise. In 2022, the Tennessee legislature passed a new truth-in-sentencing law,[23] which requires individu-als to serve 100% of their sentence upon conviction for eight separate felonies. The law is expected to increase the prison population considerably.[24]

A successful push in California for two new mandatory minimums followed another highly televised crime by Stanford University student Brock Turner in 2016.[25] Be-cause the sexual assault did not fall neatly in the state definition of rape, the two new laws expanded the defi-nition of rape and prohibited the use of probation in a wider range of crimes of a sexual nature. The case exem-plifies the understandable emotional public outcry for immediate action. It is important to remember, though, that the burden of such quickly developed laws is likely to fall disproportionately on non-white individuals, un-like this defendant, perpetuating the crisis of punitive-ness toward Black and Brown communities.[26]

To address the current opioid crisis, federal legislators passed the HALT Fentanyl Act in 2025.[27] It automatically classifies all fentanyl-related drugs as Schedule I drugs, regardless of their psychoactive im-pact or potential for harm, creating a lower threshold for conviction and triggering a mandatory minimum at sentencing. Schedule I is reserved for drugs with a high potential for abuse and no medical use; fentanyl is currently a Schedule II drug.[28] Under the HALT Act, anyone convicted of distributing or importing specific amounts of substances "structurally related to fentanyl" is subject to mandatory minimum sentences.[29] This legislation represents a doubling down on failed drug policies that prioritize prisons over treatment and will once again overwhelmingly harm communities of color.

Moving Forward

The evidence from 35 years of mandatory minimum sentencing shows that long and harsh sentences are not effective for community safety. Prosecutors should avoid charging crimes that trigger mandatory minimums, particularly those related to drug offenses. Despite the temptation to stiffen penalties to address crime, lawmakers can turn instead to approaches that include prevention and early interventions, and more opportunities for diversion from prison.[30] The Sentencing Project supports the elimination of mandatory minimum sentences entirely as well as making the changes retroactive for persons already serving these sentences.

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Endnotes

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[15] McCurdy, J. & Vagins, D. J. (2006). *Cracks in the system: Twenty years of unjust federal crack cocaine law.* ACLU.

[16] United States Sentencing Commission (2007). *Report to Congress: Cocaine and federal sentencing policy.*

[17] Komar, L. & Porter, N. (2023) *Ending mass incarceration: Social interventions that work.* The Sentencing Project; Lamb, M. (2018). A return to rehabilitation. Mandatory minimum sentencing in an era of mass incarceration. *Journal of Legislation, 41*(4), 126-150.

[18] These states include Arkansas, Connecticut, Delaware, Florida, Georgia, Iowa, Hawaii, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, and South Carolina. For a list of the reforms, see https://famm.org/wp-content/uploads/Recent-State-Reforms.pdf.

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[21] Nellis, A. (2023). *50 years and a wake up: Ending the mass incarceration crisis in America.* The Sentencing Project.

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[26] Ehrett, J. (2017). Public choice and the mandatory minimum temptation. *Yale Law & Policy Review*, *35*(2), 603–611. http://www.jstor.org/stable/26601911

[27] HALT Fentanyl Act, H.R. 171 (118th Congress). https://www.congress.gov/bill/118th-congress/house-bill/171

[28] Fentanyl-related substances are temporarily classified as Schedule I, and absent that temporary scheduling, are also criminalized under the Federal Analogue Act, if prosecutors prove that a given analogue meets specific criteria related to chemical structure and psychoactive effects.

[29] The mandatory sentences are five years for 10 grams or more, 10 years for 100 grams or more, and, if death or serious bodily injury results from the substance, the sentence would rise to at least 20 years.

[30] Komar, L & Porter, N. (2023). See note 17; Mendel, R. (2023) *Effective alternatives to youth incarceration.* The Sentencing Project.

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The Sentencing Project advocates for effective and humane responses to crime that minimize imprisonment and criminalization of youth and adults by promoting racial, ethnic, economic, and gender justice.