Make the Time Fit the Crime: The Case to End Mandatory Minimums

By Jonathan T. Helton

***Resolved: The United States Federal Government should significantly reform its policies regarding convicted prisoners under federal jurisdiction***

This case ends mandatory minimums for drug offenses. Mandatory minimums require that people convicted of the same crime (related to drug possession or distribution) serve the same number of years. It makes sense on its face, but it creates more problems than it solves. Under mandatory minimums, judges have limited ability to change sentences in the light of evidence that suggests they should be changed. No two crimes are alike, so judge discretion is important. In fact, the current system may benefit high-level drug dealers, since they have information and can rat on low-level offenders who have committed fewer damaging crimes but don’t have a ton of information to trade for a lower sentence. Furthermore, mandatory minimums don’t deter drug use, and they increase crime, prison overcrowding, and racial disparities.

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Make the Time Fit the Crime: The Case Against Mandatory Minimums

Should a jail sentence be determined by evidence and the situation, or a blanket, one-size-fits-all law? Right now, federal criminal law relies on the latter. Mandatory minimums force judges to ignore case-specific facts, which overcrowds prisons and harms the administration of justice. That’s why my partner and I are affirming: that the United States Federal Government should significantly reform its policies regarding convicted prisoners under federal jurisdiction

OBSERVATION 1. DEFINITIONS

Mandatory minimums

James Cullen 2018 (Research and Program Associate at the Brennan Center for Justice at NYU School of Law. He works in the Justice Program and does research on mass incarceration.) “Sentencing Laws and How They Contribute to Mass Incarceration” 5 October 2018 <https://www.brennancenter.org/our-work/analysis-opinion/sentencing-laws-and-how-they-contribute-mass-incarceration> (accessed July 24, 2021)

Simply put, anyone convicted of a crime under a “mandatory minimum” gets at least that sentence. The goal of these laws when they were developed was to promote uniformity; it doesn’t matter how strict or lenient your judge is, as the law and the law alone determines the sentence you receive.

OBSERVATION 2. INHERENCY, or the conditions of the Status Quo. One key FACT:

Federal mandatory minimum sentences

Congress has enacted mandatory minimum sentences, mostly on drug offenses

Leadership Conference on Civil & Human Rights 2018. (non-profit legislative advocacy organization) “Sentencing and Mandatory Minimums” 28 Mar 2018 <https://civilrights.org/resource/sentencing-and-mandatory-minimums/> (accessed 5 Aug 2021)

Mandatory minimum sentencing laws require judges to administer prison terms of a particular length for people convicted of certain federal and state crimes. At the federal level, most mandatory minimum sentences apply to drug offenses, but Congress has also enacted them for other crimes, including certain gun and economic offenses.

OBSERVATION 3. The Plan, implemented by Congress and the President

1. Abolish mandatory minimums for drug offenses

2. Any laws in conflict are amended or superseded.

3. Enforcement through the Department of Justice and federal courts

4. Funding from existing budgets of existing agencies and General Federal Revenues.

5. Plan takes effect 7 days after an Affirmative ballot

6. All Affirmative speeches may clarify.

OBSERVATION 4. ADVANTAGES

ADVANTAGE 1. Fairer sentencing

A. Federal judges agree with our plan because mandatory minimums are too harsh for nonviolent offenders

James Cullen 2018 (Research and Program Associate at Brennan Center for Justice at NYU School of Law.) “Sentencing Laws and How They Contribute to Mass Incarceration” 5 October 2018 <https://www.brennancenter.org/our-work/analysis-opinion/sentencing-laws-and-how-they-contribute-mass-incarceration> (accessed July 24, 2021)

Interestingly, federal judges have come to [dislike mandatory minimums](https://www.npr.org/2017/06/01/531004316/a-federal-judge-says-mandatory-minimum-sentences-often-dont-fit-the-crime), especially in drug cases. Mandatory minimums often apply to [nonviolent drug offenders](https://www.vox.com/2015/9/3/9254545/mandatory-minimums-mass-incarceration), forcing judges to harshly punish those who pose the least physical danger to communities. While the goal of mandatory minimums may have been fairness, they’ve instead caused an imbalance in the courtroom that has helped [drive mass incarceration](https://www.brennancenter.org/blog/mandatory-minimum-sentences-time-end-counterproductive-policy).

B. Repeal gives judges flexibility to allow the punishment to fit the crime

Families Against Mandatory Minimums copyright 2021 (FAMM’s mission is to create a more fair and effective justice system that respects our American values of individual accountability and dignity while keeping our communities safe.) “Current Repeal Legislation” <https://famm.org/our-work/u-s-congress/repeal/> (accessed July 24, 2021)

One way to reform mandatory minimum sentences is simply to get rid of them — to strike them out of the federal code, or “repeal” them. Repealing mandatory minimum sentences would not give judges full and unfettered discretion to sentence however they wanted to — without mandatory minimums, federal judges would still have to do what they do in all federal criminal cases, which is apply the federal sentencing guidelines to determine the person’s sentence. The federal sentencing guidelines are written by a panel of criminal justice experts and give judges instruction on how to sentence. However, guidelines also provide greater flexibility to take all the facts into consideration and impose a sentence that fits. FAMM supports repealing federal mandatory minimum sentences.

ADVANTAGE 2. Reduces prison population

A. The Link: Mandatory minimums are the main driver of growth in federal prison population

Julie Samuels, Nancy La Vigne, and Chelsea Thomson 2019 (Samuels - senior fellow in the Justice Policy Center at the Urban Institute. La Vigne is vice president of justice policy at the Urban Institute. Thomson is director of center operations in the Justice Policy Center at the Urban Institute, where she provides research and operational support, and is the project director for the Justice Reinvestment Initiative) “Next Steps in Federal Corrections Reform” May 2019 <https://www.urban.org/sites/default/files/publication/100230/next_steps_in_federal_corrections_reform_1.pdf> (accessed July 25, 2021)

Through its analysis, the Task Force concluded that long drug sentences, driven by mandatory minimum penalties, were largely responsible for the growth of the federal prison population and its associated harms. In developing its recommendations, the Task Force was informed by research evidence showing that lengthy sentences do not improve public safety (a finding that was reaffirmed in a recent US Sentencing Commission recidivism study (USSC 2017)) and that it can be more beneficial to provide high-risk people with intensive programming or supervision than people assessed as low or moderate risk (Andrews and Bonta 2002; Andrews et al. 1990; Lipsey and Wilson 2007; Lowenkamp and Latessa 2002).

B. The Impact: Violence and lack of medical care

American Civil Liberties Union copyright 2021 (non-profit civil rights advocacy group) “OVERCROWDING AND OTHER THREATS TO HEALTH AND SAFETY” <https://www.aclu.org/issues/prisoners-rights/cruel-inhuman-and-degrading-conditions/overcrowding-and-other-threats-health> (accessed July 11, 2021)

Prison overcrowding leads to increased violence, the inability to provide necessary medical care and other essential services, and degrading practices like requiring prisoners to sleep on the floor. Many prisons and jails expose prisoners to dangerous environmental conditions like extreme heat or cold, contaminated food, and a lack of basic sanitation.

ADVANTAGE 3. Reverses racism

A. Mandatory minimums create racial disparity

Human Rights Watch 2016 (human rights advocacy grouip; 450 people of 70-plus nationalities who are country experts, lawyers, journalists.) “US: Repeal Mandatory Federal Drug Sentences” 2 February 2016 [https://www.hrw.org/news/2016/02/02/us-repeal-mandatory-federal-drug-sentences#](https://www.hrw.org/news/2016/02/02/us-repeal-mandatory-federal-drug-sentences) (accessed July 24, 2021)

Human Rights Watch recommended the elimination of all drug-related mandatory minimums 16 years ago in its [report](https://www.hrw.org/reports/2000/usa/), “Punishment and Prejudice: Racial Disparities in the War on Drugs.” Judges should be able to exercise their informed judgment in crafting proportionate and effective sentences for drug offenders. Mandatory minimums make this impossible. They force judges to sentence offenders without adequate regard to the particular circumstances of their case, often resulting in disproportionate sentences for relatively minor crimes. Enforcement of US drug laws disproportionately affects racial minorities, and mandatory minimums greatly compound the impact of that broader disparity.

B. Repeal reduces racial disparity and discrimination in sentencing

Catherine Reese Neely 2021 (J.D. Candidate 2022, Univ. of Mississippi School of Law) “MANDATORY MINIMUMS: EQUAL BUT UNEQUAL” January 2021 <https://poseidon01.ssrn.com/delivery.php?ID=493006020002124026070016084108065122023021026063030057104022115027083003029093122081096098051127025111014071068097079010113121108084075058076083127119070092026004106052019066001115113016114117020118094096090104081102098074113097064092125105103119119103&EXT=pdf&INDEX=TRUE> (accessed July 26, 2021)

If mandatory minimum sentencing was eliminated for drug offenses, then the racial gap could potentially dissipate over time. Judicial discretion is favorable in this respect for a few reasons. Unlike mandatory sentencing, judicial decisions are appealable. Under mandatory minimum sentencing, an offender is less likely to win an appeal because the sentencing derives from statutory guidelines. In contrast, an offender is more likely to overturn a sentence on appeal if they can demonstrate that the sentencing term is deplorable. Also, prior convictions would have less of an effect on sentencing if a judge could consider the time elapsed since that conviction, the nature of that conviction, and the likelihood to reoffend. All of these factors curb the probability of further discriminatory practice in sentencing.

2A Evidence: Repeal Mandatory Minimums

DEFINITIONS & BACKGROUND

1970s reforms

Charles Doyle 2018 (Senior Specialist in American Public Law with the Congressional Research Service) “Mandatory Minimum Sentencing of Federal Drug Offenses” 11 January 2018 <https://fas.org/sgp/crs/misc/R45074.pdf> (accessed July 26, 2021)

Federal mandatory minimum sentencing statutes have existed since the dawn of the Republic. When the first Congress assembled, it enacted several mandatory minimums, each of them a capital offense. The drug mandatory minimums are of more recent origins. The first arrived in 1914, when Congress established a mandatory minimum of five years for the manufacture of opium for smoking purposes. Shortly after mid-century, Congress began adding to the number of drug-related mandatory minimums. Prior to enactment of the Controlled Substances Act and the Controlled Substances Import and Export Act in 1970, federal law included mandatory minimums for violations of the narcotics or marijuana tax regimes; smuggling narcotics or marijuana; distributing heroin to a child; possession of narcotics aboard a U.S. vessel; and violations of federal drug laws using communications facilities. The 1970s legislation eliminated them all. Left in their place were only the mandatory minimums in the continuing criminal enterprise (drug kingpin) section.

1984 Sentencing Reform Act + 1986 Anti-Drug Abuse Act

Charles Doyle 2018 (Senior Specialist in American Public Law with the Congressional Research Service) “Mandatory Minimum Sentencing of Federal Drug Offenses” 11 January 2018 <https://fas.org/sgp/crs/misc/R45074.pdf> (accessed July 26, 2021)

Then, in 1984, Congress enacted the Sentencing Reform Act that created the United States Sentencing Commission and authorized it to promulgate then binding sentencing guidelines. In many instances, the resulting Guidelines operated essentially, but briefly, to establish a mandatory minimum term of imprisonment where none had existed before. Soon thereafter, Congress began to repopulate federal drug laws with mandatory minimums, the bulk of which Congress inserted using the Anti-Drug Abuse Act of 1986. The 1986 legislation, however, included substantial assistance provisions which allow the courts to disregard the mandatory minimums in the case of cooperative defendants. In addition, shortly thereafter, Congress instructed the Sentencing Commission to provide it with a detailed report on federal mandatory minimum statutes.

INHERENCY

Substantial growth in people sentenced under the guidelines

Charles Doyle 2018 (Senior Specialist in American Public Law with the Congressional Research Service) “Mandatory Minimum Sentencing of Federal Drug Offenses” 11 January 2018 <https://fas.org/sgp/crs/misc/R45074.pdf> (accessed July 26, 2021)

The hate crime legislation enacted in 2009 directed the U.S. Sentencing Commission to submit a second report on federal mandatory minimums. The Commission presented its second report in October 2011. A number of things had changed between the first and second Commission reports. Sentencing under the Guidelines had been in place for only a relatively short period of time when the first report was written. By the time of the second report, the number of defendants sentenced by federal courts had grown to almost three times the number sentenced under the Guidelines when the Commission wrote its first report. The judicial landscape has changed as well. When the Commission issued its first report, the Guidelines were considered binding upon sentencing judges. After the Supreme Court’s Booker decision and its progeny, the Guidelines became but the first step in the sentencing process. In addition, the Fair Sentencing Act, passed in 2010, reduced the powder cocaine-crack cocaine ratio from 100 to 10 to roughly 18 to 1.

A/T “Safety valve policy solves” - Restrictions on the existing safety valve

Charles Doyle 2018 (Senior Specialist in American Public Law with the Congressional Research Service) “Mandatory Minimum Sentencing of Federal Drug Offenses” 11 January 2018 <https://fas.org/sgp/crs/misc/R45074.pdf> (accessed July 26, 2021)

The safety valve is not available to avoid the mandatory minimum sentences that attend other offenses, even those closely related to the covered offenses. Section 860 (21 U.S.C. § 860), which outlaws violations of Section 841 near schools, playgrounds, or public housing facilities and sets the penalties for violation at twice what they would be under Section 841, is not covered. Those charged with a violation of Section 860 are not eligible for relief under the safety valve provisions. In addition, safety valve relief is not available to those convicted under the Maritime Drug Law Enforcement Act, even though the act proscribes conduct closely related to the smuggling and trafficking activities punished under Sections 960 and 963 (21 U.S.C. §§ 960, 963).

A/T “Safety valve solves” - Five conditions of the safety valve

Charles Doyle 2018 (Senior Specialist in American Public Law with the Congressional Research Service) “Mandatory Minimum Sentencing of Federal Drug Offenses” 11 January 2018 <https://fas.org/sgp/crs/misc/R45074.pdf> (accessed July 26, 2021)

For the convictions to which the safety valve does apply, the defendant must convince the sentencing court by a preponderance of the evidence that he satisfies each of the safety valve’s five requirements. He may not have more than one criminal history point. He may not have used violence or a dangerous weapon in connection with the offense. He may not have been an organizer or leader of the drug enterprise. He must have provided the government with all the information and evidence at his disposal. Finally, the offense may not have resulted in serious injury or death.

Breakdown of prisoners in the federal justice system. 50% of prisoners are drug offenders

Prof. Jeffrey Bellin 2018 (He is a professor at William & Mary Law School and former federal prosecutor.) “A first step toward sentencing reform” 22 August 2018 <https://thehill.com/blogs/congress-blog/judicial/402968-a-first-step-toward-sentencing-reform> (accessed July 25, 2021)

The federal criminal justice system is best understood as a massive bureaucracy dedicated to enforcing drug, weapons, and immigration laws. Drug offenders make up 50 percent of the federal prison population; illegal weapons possession adds another 17 percent; and immigration contributes another 8 percent. Despite this narrow scope, federal prosecutors have been busy. In 1980, there were 28,640 federal prisoners. By 2015, there were 205,723 (the number fell to 185,617 in 2017).

First Step did not do enough

Kara Gotsch 2019 (As Deputy Director, Gotsch oversees The Sentencing Project’s federal advocacy work and develops special projects and partnerships to advance the organizational mission of reducing mass incarceration. Gotsch returned to The Sentencing Project in 2016 after serving as its Director of Advocacy from 2005-2012, when she helped lead the multi-year effort to reform the notorious 100-to-1 crack cocaine sentencing disparity that resulted in the 2010 passage of the Fair Sentencing Act. Her sentencing reform advocacy was honored in 2011 by Congresswoman Maxine Waters.) “One Year After the First Step Act: Mixed Outcomes” 17 December 2019 <https://www.sentencingproject.org/publications/one-year-after-the-first-step-act/> (accessed July 26, 2021)

The First Step Act has a broad constituency of supporters that stretches from the White House to prison corridors. Many years of advocacy, negotiations and compromise resulted in its passage in 2018, and it has undoubtedly helped many people. However, it will not provide the systemic change necessary to undue the harm caused by decades of mass incarceration at the federal level fueled by mandatory minimums and federal prosecutors’ focus on extreme punishments for street-level crime. It is long overdue to take the next steps on the road to reform.

2016: 55% of federal prisoners were in jail with a mandatory minimum

Marc Mauer 2018 (He is the former executive director of The Sentencing Project and one of the country’s leading experts on sentencing policy, race and the criminal justice system. He has directed programs on criminal justice policy reform for 40 years) “Long-Term Sentences: Time to Reconsider the Scale of Punishment” 5 November 2018 <https://www.sentencingproject.org/publications/long-term-sentences-time-reconsider-scale-punishment/> (accessed July 25, 2021)

At the federal level, the prison population expanded from 20,000 in 1980 to 189,000 by 2016. The combined effect of the surge in drug prosecutions and the expansion of mandatory minimum sentences was a key factor in this growth. As of 2016, 55% of the federal prison population had been sentenced under a mandatory provision.

A/T “Prison population declining” – Biden is reversing the trend. Now it’s increasing again (July ’21)

Samantha Michaels 2021 (journalist) 21 July 2021 “Biden Said He’d Cut Incarceration in Half. So Far, the Federal Prison Population Is Growing.” <https://www.motherjones.com/crime-justice/2021/07/biden-said-hed-cut-incarceration-in-half-so-far-the-federal-prison-population-is-growing/> (accessed 22 July 2021)

During his campaign, President Joe Biden pledged repeatedly to reduce the country’s prison population, which, because of racist policing and sentencing laws, is disproportionately composed of people of color. At one point, he said his administration could cut the number of incarcerated people by [more than half](https://www.buzzfeednews.com/article/katherinemiller/joe-biden-incarceration-prison-population-cut-aclu), largely by investing in alternatives to prisons. Later he said he didn’t want to be bound by a percentage, but he reiterated that he hoped to drastically lower the number of people locked up. But six months into his term, those promises are ringing hollow. The number of people in federal prisons [is growing](https://sentencing.typepad.com/sentencing_law_and_policy/2021/07/federal-prison-population-starting-to-grow-again-as-we-approach-six-months-into-biden-administration.html). And Biden’s legal team recently announced that thousands of people who were released early from federal prisons last year to slow the spread of the coronavirus could be forced to return again after the pandemic ends.

HARMS / SIGNIFICANCE

Unjust: Big sentencing disparity created by mandatory minimums. 5x longer in prison for similar offenses

Catherine Reese Neely 2021 (J.D. Candidate 2022, University of Mississippi School of Law) “MANDATORY MINIMUMS: EQUAL BUT UNEQUAL” January 2021 <https://poseidon01.ssrn.com/delivery.php?ID=493006020002124026070016084108065122023021026063030057104022115027083003029093122081096098051127025111014071068097079010113121108084075058076083127119070092026004106052019066001115113016114117020118094096090104081102098074113097064092125105103119119103&EXT=pdf&INDEX=TRUE> (accessed July 26, 2021)

First, mandatory minimums impose harsh, lengthy prison sentences that frequently target unintended offenders. Congress enacted mandatory minimums with the intent of dismantling the illegal drug market by intercepting drug cartels and high-level dealers and importers. Because mandatory minimums focus solely on drug weight and type, offenders with varying degrees of culpability are subject to the same punishment. Low-level dealers and addicts receive an equal—or greater—prison sentence than someone much higher up in the drug ring. It is simply unconscionable for a non-violent addict to be treated equally to a violent, career drug dealer because, at the time of arrest, they possess the same drug and quantity. On average, offenders subject to mandatory minimums are sentenced to one hundred and thirty-eight (138) months; offenders who are not subject to mandatory minimums are sentenced to twenty-eight (28) months (based on data from 2015). This discrepancy is ludicrous

Incentivizes unjust plea bargaining outcomes

Prof. Jeffrey Bellin 2018 (professor at William & Mary Law School and former federal prosecutor.) “A first step toward sentencing reform” 22 August 2018 <https://thehill.com/blogs/congress-blog/judicial/402968-a-first-step-toward-sentencing-reform> (accessed July 25, 2021)

Long mandatory sentences don’t just fill prisons (often with sick, aging prisoners), they jeopardize the very purpose of the system: justice. Most generally, severe sentences ratchet up the pressure on defendants to admit guilt and plead guilty to get a deal – whether or not they are actually guilty. The “trial penalty” – the difference between the sentence after pleading guilty and the sentence after trial – has ballooned in federal court, often due to mandatory minimums. As a result, trials are disappearing. In 1980, 20 percent of federal convictions came from trials; now the figure is less than 3 percent - the rest (97 percent) are guilty pleas.

Mandatory minimums entail a longer sentence

Catherine Reese Neely 2021 (J.D. Candidate 2022, University of Mississippi School of Law) “MANDATORY MINIMUMS: EQUAL BUT UNEQUAL” January 2021 <https://poseidon01.ssrn.com/delivery.php?ID=493006020002124026070016084108065122023021026063030057104022115027083003029093122081096098051127025111014071068097079010113121108084075058076083127119070092026004106052019066001115113016114117020118094096090104081102098074113097064092125105103119119103&EXT=pdf&INDEX=TRUE> (accessed July 26, 2021)

Mandatory minimums impose harsh, lengthy prison sentences. Drug offenders subject to mandatory minimums are punished and sentenced over twice the amount of time as other drug offenders. In 2017, the average sentence was ninety-four months (94) for drug offenders subject to a mandatory minimum at sentencing, whereas drug offenders not subject to a mandatory minimum received forty-two months (42)

Cost of keeping people in prison for a year

Catherine Reese Neely 2021 (J.D. Candidate 2022, University of Mississippi School of Law) “MANDATORY MINIMUMS: EQUAL BUT UNEQUAL” January 2021 <https://poseidon01.ssrn.com/delivery.php?ID=493006020002124026070016084108065122023021026063030057104022115027083003029093122081096098051127025111014071068097079010113121108084075058076083127119070092026004106052019066001115113016114117020118094096090104081102098074113097064092125105103119119103&EXT=pdf&INDEX=TRUE> (accessed July 26, 2021)

Sixth, mandatory minimums contribute significantly to mass incarceration in the federal prison system. Ending the war on drugs will not solve mass incarceration; however, it is an important step toward that goal. Abolishing only ten-year mandatory minimums “would affect 7,300 defendants every year.” Mass incarceration is expensive for the American people. American taxpayers spend approximately thirty-six thousand, two hundred and ninety-nine dollars and twenty-five cents ($36,299.25) per year per individual incarcerated in federal prison. Nearly one in three federal prisoners is there for a drug offense—any effort to drastically affect mass incarceration should begin with addressing drug offenses and mandatory minimum sentencing.

Would save a substantial amount of money

Catherine Reese Neely 2021 (J.D. Candidate 2022, University of Mississippi School of Law) “MANDATORY MINIMUMS: EQUAL BUT UNEQUAL” January 2021 <https://poseidon01.ssrn.com/delivery.php?ID=493006020002124026070016084108065122023021026063030057104022115027083003029093122081096098051127025111014071068097079010113121108084075058076083127119070092026004106052019066001115113016114117020118094096090104081102098074113097064092125105103119119103&EXT=pdf&INDEX=TRUE> (accessed July 26, 2021)

Abolishing mandatory minimum sentencing drastically affects mass incarceration and the associated costs. The United States government could significantly reduce federal prison mass incarceration and save an exorbitant amount of money by eliminating mandatory minimum sentencing for drug offenders.

Federal judge: 80 of mandatory minimums are unfair

Mark Bennett 2017 (Federal judge from Iowa’s Northern District) “A Federal Judge Says Mandatory Minimum Sentences Often Don't Fit The Crime” 1 June 2017 <https://www.npr.org/2017/06/01/531004316/a-federal-judge-says-mandatory-minimum-sentences-often-dont-fit-the-crime> (accessed July 26, 2021)

So the fact that I have a personal disagreement with not all mandatory minimums - some are justified - but in my judgment, about 80 percent of them are unfair, so I thought I could do more staying in the system. I respect the judges who have said they can no longer do it and decide to resign, but I'm not there yet.

Federal judge: they create “unwarranted uniformity”

Mark Bennett 2017 (Federal judge from Iowa’s Northern District) “A Federal Judge Says Mandatory Minimum Sentences Often Don't Fit The Crime” 1 June 2017 <https://www.npr.org/2017/06/01/531004316/a-federal-judge-says-mandatory-minimum-sentences-often-dont-fit-the-crime> (accessed July 26, 2021)

Yeah. Well, I think just the opposite is true. Mandatory minimums support unwarranted uniformity by treating everyone alike even though their situations are dramatically different. So, for example, you have a low-level non-violent drug offender. One is selling methamphetamine for profit, and one is using methamphetamine and maybe trading it to other drug addicts to support their addiction.

Survey of 41 judges: Majority find fault with mandatory minimums

Dr. Esther Nir and Dr. Siyu Liu 2021 (Nir is an Associate Professor in the Department of Criminal Justice. She received her Juris Doctor from Fordham Law School and her Ph.D. in Criminal Justice from Rutgers University. She served as a prosecutor in Queens County, New York for over 13 years. Liu graduated from Peking University with bachelor’s degrees in Biomedical English and in Psychology. She obtained her master’s degree in Criminology and Criminal Justice in 2010 and a doctoral degree of the same field in 2014 from the School of Criminal Justice from University at Albany (SUNY).) “The Challenge of Imposing Just Sentences Under Mandatory Minimum Statutes: A Qualitative Study of Judicial Perceptions” 8 July 2021 <https://journals.sagepub.com/doi/full/10.1177/08874034211030555?casa_token=KY8fwCfBsG0AAAAA%3AA65ruvjGNSgS5ThNzILh0UXuVUjHFKj4m6yfBry5yxcb0GqEog87IAjqvsQRFs-M5oIkeK4zI6qmhQ> (accessed July 26, 2021)

Mandatory minimums limit judicial discretion in many jurisdictions in the United States, often compelling judges to impose harsh incarcerative terms. Using qualitative interviews with 41 criminal term judges presiding in a state in the United States, we explore how mandatory minimums influence the judicial sentencing function. We find that judges vary in their approaches to sentencing and that their approaches correspond with their perceptions of mandatory minimum statutes. While our respondents consider case-level, systemic, and pragmatic factors, the majority of judges are focused on the case level and perceive that mandatory minimums often strip away the flexibility they need to craft appropriate sentences in individual cases, leading to punishments that are unduly harsh, and sometimes preventing the imposition of promising alternatives to incarceration. Some judges experience moral dilemmas and guilt feelings during this process. In contrast, judges who highlight pragmatic factors (e.g., public perceptions) are more receptive to statutory restrictions.

Forces judges to ignore relevant facts

Molly M. Gill 2009 (She is the director of Special and Legal Projects for Families Against Mandatory Minimums, a nonpartisan nonprofit organization created in 1991 to repeal mandatory minimum sentences at the state and federal level.) “Let’s Abolish Mandatory Minimums: The Punishment Must Fit the Crime” 1 April 2009 <https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/human_rights_vol36_2009/spring2009/lets_abolish_mandatory_minimums_the_punishment_must_fit_the_crime/> (accessed July 24, 2021)

Mandatory minimums are tied to charges, so the same sentence applies every time a conviction is won, even if the actual crimes are unique. Judges must ignore important circumstances of the crime--Was a victim harmed? Was a gun used?--and look only to the charged crime of which the defendant is convicted. Because prosecutors decide what that charge will be, they also decide what the minimum sentence will be.

Uniformity undermines individual justice

Molly M. Gill 2009 (She is the director of Special and Legal Projects for Families Against Mandatory Minimums, a nonpartisan nonprofit organization created in 1991 to repeal mandatory minimum sentences at the state and federal level.) “Let’s Abolish Mandatory Minimums: The Punishment Must Fit the Crime” 1 April 2009 <https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/human_rights_vol36_2009/spring2009/lets_abolish_mandatory_minimums_the_punishment_must_fit_the_crime/> (accessed July 24, 2021)

First, they result in cruel, inhumane, and degrading punishments. Lengthy mandatory minimum sentences are cruel, inhumane, and degrading because they obliterate individualized justice, the bedrock of any fair sentencing system. Instead of considering all the circumstances of the crime and the individual offender, the court must impose a lengthy predetermined sentence created by a legislature that knows nothing about the particulars of the offense or the defendant. Offenders go to sentencing hearings justifiably expecting to be treated like individuals. Mandatory minimums replace the individual in the sentencing equation with one or two factors--drug type and weight, or whether the crime is a third strike--that are poor substitutes for blameworthiness. They fail to account for the nature of the crime or the offender’s mental state, criminal history, or role in the offense, essential factors in determining how much punishment is deserved. The inevitable result is cruel, inhumane, degrading, and undeserved overpunishment.

Punishes low-level offenders and dealers alike

Catherine Reese Neely 2021 (J.D. Candidate 2022, University of Mississippi School of Law) “MANDATORY MINIMUMS: EQUAL BUT UNEQUAL” January 2021 <https://poseidon01.ssrn.com/delivery.php?ID=493006020002124026070016084108065122023021026063030057104022115027083003029093122081096098051127025111014071068097079010113121108084075058076083127119070092026004106052019066001115113016114117020118094096090104081102098074113097064092125105103119119103&EXT=pdf&INDEX=TRUE> (accessed July 26, 2021)

First, mandatory minimums impose harsh, lengthy prison sentences that frequently target unintended offenders. Congress enacted mandatory minimums with the intent of dismantling the illegal drug market by intercepting drug cartels and high-level dealers and importers. Because mandatory minimums focus solely on drug weight and type, offenders with varying degrees of culpability are subject to the same punishment. Low-level dealers and addicts receive an equal—or greater—prison sentence than someone much higher up in the drug ring. It is simply unconscionable for a non-violent addict to be treated equally to a violent, career drug dealer because, at the time of arrest, they possess the same drug and quantity. On average, offenders subject to mandatory minimums are sentenced to one hundred and thirty-eight (138) months; offenders who are not subject to mandatory minimums are sentenced to twenty-eight (28) months (based on data from 2015). This discrepancy is ludicrous.

Creates significant racial disparities

Jesselyn McCurdy and Sakira Cook 2021 (McCurdy: Managing Director of Government Affairs. Cook: Senior Director, Justice Program at The Leadership Conference on Civil and Human Rights. Statement to the United States House of Representatives, Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security) “Undoing the Damage of the War on Drugs: A Renewed Call for Sentencing Reform” 17 June 2021 <https://civilrights.org/resource/undoing-the-damage-of-the-war-on-drugs-a-renewed-call-for-sentencing-reform-june-17-2021/> (accessed July 25, 2021)

Mandatory minimums also eliminate judicial discretion, preventing judges from tailoring punishment to a particular defendant by taking into account an individual’s background and the circumstances of his or her offenses when determining his or her sentence. Mandatory minimums instead place more power in the hands of prosecutors and their charging decisions, which is particularly concerning given that prosecutors are more likely to charge Black people with a crime that carries a mandatory minimum than a White person. Mass incarceration as a whole has had a markedly disproportionate impact on communities of color. Today, BOP reports that 38 percent of its current prison population is Black and 30.2 percent is Hispanic, an enormous disparity given that both groups represent only about one third of the nation’s population combined. These disparities are also reflected in mandatory minimum penalties. In a 2017 review of mandatory minimum sentencing policies, the U.S. Sentencing Commission found that Black people in BOP [Bureau of Prisons] custody were more likely to have been convicted of an offense carrying a mandatory minimum penalty than any other group. Hispanic and Black people accounted for a majority of those convicted with an offense carrying a drug mandatory minimum, despite the fact that White and Black people use illicit substances at roughly the same rate, and Hispanic people use such substances at a lower rate. The study also showed that Black people were the least likely to receive relief from mandatory minimum sentences compared to White and Hispanic people. Finally, the review found racial disparities in convictions of a federal offense subject to a mandatory minimum penalty: 73.2 percent of Black people convicted of a federal offense received a mandatory minimum sentence, compared to 70 percent of White people and 46.9 percent of Hispanic people. It is clear that mandatory minimums create stark racial disparities in federal sentencing.

Racism’s economic costs

Joseph Losavio 2020 (He is a specialist on cities, infrastructure, and urban services at the World Economic Forum.) “WHAT RACISM COSTS US ALL” Fall 2020 <https://www.imf.org/external/pubs/ft/fandd/2020/09/the-economic-cost-of-racism-losavio.htm> (accessed July 26, 2021)

Systemic racism is a global problem. It is real, and there is a robust moral argument for addressing it. However, one factor that is often ignored in this critical conversation is the broader economic dimension. Because it prevents people from making the most of their economic potential, systemic racism carries significant economic costs. A less racist society can be an economically stronger one.

Allows kingpin drug dealers to escape with lighter sentences

Molly M. Gill 2009 (She is the director of Special and Legal Projects for Families Against Mandatory Minimums, a nonpartisan nonprofit organization created in 1991 to repeal mandatory minimum sentences at the state and federal level.) “Let’s Abolish Mandatory Minimums: The Punishment Must Fit the Crime” 1 April 2009 <https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/human_rights_vol36_2009/spring2009/lets_abolish_mandatory_minimums_the_punishment_must_fit_the_crime/> (accessed July 24, 2021)

Disproportionate mandatory sentences have become the rule rather than the exception, especially in large drug conspiracies. This is particularly problematic because mandatory drug sentences are triggered by the weight and type of the drug involved, and drug weights are poor indicators of culpability. In the federal system, just 50 grams of crack cocaine--about the weight of a candy bar, hardly a kingpin quantity--will trigger a ten-year mandatory prison sentence, even for a first-time, nonviolent offender. In drug conspiracies, so-called “relevant conduct” rules make all coconspirators equally liable for all the drugs involved, making it impossible for judges to distinguish between major dealers and street-level sellers, or between kingpins and their girlfriends. Better-informed, big-time players can also agree to plead guilty and trade their knowledge for a sentence below the mandatory minimum, whereas their less knowledgeable underlings cannot. Paradoxically, the small fish frequently get the harshest sentences.

Racial disparities in sentencing policy

Julie Samuels, Nancy La Vigne, and Chelsea Thomson 2019 (Samuels is a senior fellow in the Justice Policy Center at the Urban Institute with extensive knowledge of the federal criminal justice system. La Vigne is vice president of justice policy at the Urban Institute. Thomson is director of center operations in the Justice Policy Center at the Urban Institute, where she provides research and operational support. As a researcher, Thomson focuses on criminal justice reform and is the project director for the Justice Reinvestment Initiative.) “Next Steps in Federal Corrections Reform” May 2019 <https://www.urban.org/sites/default/files/publication/100230/next_steps_in_federal_corrections_reform_1.pdf> (accessed July 25, 2021)

Mandatory minimums almost doubled the time served for those they affected at sentencing, resulting in, on average, an 11-year sentence for people convicted and sentenced for drug offenses with mandatory minimum penalties versus a 6-year sentence for drug offenses not subject to a mandatory minimum (CCTF 2016). People of color, especially black men, have been particularly affected by certain mandatory minimums (USSC 2011). Crimes involving crack cocaine are punished more harshly than those involving powder cocaine, and black people are much more likely to be convicted of crimes involving crack. Congress lessened this disparity with the Fair Sentencing Act of 2010, which resulted in a substantial reduction in federal prosecutions for crack offenses. But the effects of the old law persisted because the original Fair Sentencing Act was not applied retroactively.

Judges agree: Racism exists in the U.S. justice system

Anna-Leigh Firth 2020 (communications and marketing specialist with the National Judicial College, the only educational institution in the United States that teaches courtroom skills to judges of all types from all over the country, Indian Country and abroad) “Most judges believe the criminal justice system suffers from racism” 14 July 2020 <https://www.judges.org/news-and-info/most-judges-believe-the-criminal-justice-system-suffers-from-racism/> (accessed July 24, 2021)

The majority of judges believe that racism is systemic in the United States’ criminal justice system, according to the NJC’s monthly survey of its alumni. In the survey, emailed the first week of July, 65 percent of the 634 judges who responded answered yes to the question, “Do you believe that systemic racism exists in the criminal justice system?” “Of course it does,” commented one judge anonymously. “The data doesn’t (sic) lie. The burden on us judges is to, first, acknowledge the problem and then to work diligently to eradicate the problem.”

Racism example: New Jersey

Elizabeth Weill-Greenberg 2021 (She has also written for The Nation, The Washington Blade, and TruthOut. She writes on prison conditions, the sex offender registry, wrongful convictions, and extreme sentences for young people. She graduated from Rutgers with a BA and earned her MS in journalism from Northwestern University.) “‘IT TEARS FAMILIES APART’: LAWMAKERS NATIONWIDE ARE MOVING TO END MANDATORY SENTENCING” 15 April 2021 <https://theappeal.org/it-tears-families-apart-lawmakers-nationwide-are-moving-to-end-mandatory-sentencing/> (accessed July 24, 2021)

In New Jersey, a Black person is more than 12 times more likely to be imprisoned than a white person, according to a [2016 report by the Sentencing Project](https://www.sentencingproject.org/news/new-jersey-leader-criminal-justice-reform-racial-disparity/)—the highest racial disparity rate in the nation. Eliminating mandatory minimums for certain nonviolent offenses will help reduce this disparity, according to the [state’s sentencing commission’s 2019 annual report](https://www.njleg.state.nj.us/OPI/Reports_to_the_Legislature/criminal_sentencing_disposition_ar2019.pdf). The commission did not include data on the number of people serving a mandatory minimum sentence broken down by race, but it cited a [National Academy of Sciences 2014 report](https://www.nap.edu/read/18613/chapter/5) that concluded racial disparities are “partly caused and substantially exacerbated” by mandatory minimums.

Racism example: Oregon

Elizabeth Weill-Greenberg 2021 (journalist; has also written for The Nation, The Washington Blade, and TruthOut; MS in journalism from Northwestern Univ.) “‘IT TEARS FAMILIES APART’: LAWMAKERS NATIONWIDE ARE MOVING TO END MANDATORY SENTENCING” 15 April 2021 <https://theappeal.org/it-tears-families-apart-lawmakers-nationwide-are-moving-to-end-mandatory-sentencing/> (accessed July 24, 2021)

But a [report released last month](https://www.oregon.gov/cjc/CJC%20Document%20Library/M11%20Final%20Draft.pdf) by the state’s Criminal Justice Commission shows that between 2013 and 2018, a Black male in Oregon was more than four times likelier than a white male to be indicted for a Measure 11 offense. Black women were more than three times more likely than white women to be indicted for a Measure 11 offense.

No public safety benefits

Jesselyn McCurdy and Sakira Cook 2021 (McCurdy: Managing Director of Government Affairs. Cook: Senior Director, Justice Program at The Leadership Conference on Civil and Human Rights. Statement to the United States House of Representatives, Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security) “Undoing the Damage of the War on Drugs: A Renewed Call for Sentencing Reform” 17 June 2021 <https://civilrights.org/resource/undoing-the-damage-of-the-war-on-drugs-a-renewed-call-for-sentencing-reform-june-17-2021/> (accessed July 25, 2021)

Yet, despite the dramatic uptick in incarceration, there is no indication that these sentences deter crime, protect public safety, or decrease drug use or trafficking. Increasing the severity of punishment has little impact on crime deterrence, and studies of federal drug laws show no significant relationship between drug imprisonment rates and drug use or recidivism. The punishment-based approach to the War on Drugs, with its dramatic increase in the use of mandatory minimums — and corresponding increase in incarceration — has produced lasting harm in communities across the country while having little effect on actual drug use or crime. Unfortunately, the myth that punishment and harsh mandatory minimums will reduce drug use and crime persists in real and consequential ways: just this past April, Congress extended the temporary “class wide” emergency scheduling of fentanyl-related substances, which will exacerbate untenable federal sentencing trends and give rise to harsh mandatory minimum penalties for offenses involving fentanyl analogues. Statistics about the growth in mass incarceration due to mandatory minimums, combined with data showing they have no positive effect on public safety, illustrate the harmful impact of these sentences on prison growth and the need to turn away from such antiquated “tough on crime” policies.

Siphons funding from more effective policies

The American Conservative Union Foundation copyright 2021 (ACUF is one of the nation’s oldest organizations representing grassroots conservatives throughout the United States) “Fair Sentencing/Mandatory Minimums” <https://conservativejusticereform.org/issue/fair-sentencing-mandatory-minimums/> (accessed July 25, 2021)

Like any government agency, our prisons have limited resources to delegate. Money spent on housing and care for long-term inmates takes resources away from successful anti-recidivism programs, such as mental health services, vocational training, and drug treatment programs. Mandatory minimums unnecessarily divert crucial rehabilitation resources to long-term housing of inmates who might otherwise serve shorter sentences.

Mandatory minimums are not cost-effective compared to other interventions

Prof. Jonathan Caulkins 1997 (drug policy researcher and H. Guyford Stever Professor of Operations Research and Public Policy at Heinz College at Carnegie Mellon Univ.) “Are Mandatory Minimum Drug Sentences Cost-Effective?” 1997 <https://www.rand.org/pubs/research_briefs/RB6003.html> (accessed July 24, 2021)

Those bars show the results of spending a million dollars on additional enforcement against a representative sample of drug dealers. As shown by the first bar, if that money were used to extend to federal mandatory minimum lengths the sentences of dealers who would have been arrested anyway, U.S. cocaine consumption would be reduced by almost 13 kilograms. If, however, the money were used to arrest, confiscate the assets of, prosecute, and incarcerate more dealers (for prison terms of conventional length), cocaine consumption would be reduced by over 27 kilograms. As a point of comparison, spending the million dollars to treat heavy users would reduce cocaine consumption by a little over 100 kilograms (rightmost bar).A picture containing bar chart

Description automatically generated

Mandatory minimums are only useful against high-level dealers. But they undermine the ability to punish such dealers.

Prof. Jonathan Caulkins 1997 (American drug policy researcher and H. Guyford Stever Professor of Operations Research and Public Policy at Heinz College at Carnegie Mellon Univ.) “Are Mandatory Minimum Drug Sentences Cost-Effective?” 1997 <https://www.rand.org/pubs/research_briefs/RB6003.html> (accessed July 24, 2021)

Long sentences for serious crimes have intuitive appeal. They respond to deeply held beliefs about punishment for evil actions, and in many cases they ensure that, by removing a criminal from the streets, further crimes that would have been committed will not be. But in the case of black-market crimes like drug dealing, a jailed supplier is often replaced by another supplier. Limited cocaine control resources can, however, be profitably directed toward other important objectives—reducing cocaine consumption and the violence and theft that accompany the cocaine market. If those are the goals, more can be achieved by spending additional money arresting, prosecuting, and sentencing dealers to standard prison terms than by spending it sentencing fewer dealers to longer, mandatory terms. The DPRC researchers found an exception in the case of the highest-level dealers, where sentences of mandatory minimum length appear to be the most cost-effective approach. However, it is difficult to identify those dealers solely by quantity of drug possessed. It might be easier to identify them if, in passing sentence, the criminal justice system could consider additional factors, e.g., evidence regarding a dealer's position in the distribution hierarchy. Such factors, ignored by mandatory minimums, can be taken into account by judges working under discretionary sentencing.

SOLVENCY

State-level trends prove plan works

Greg Newburn and Sal Nuzzo 2019 (Newburn is FAMM’s Director of State Policy. Nuzzo is the vice president of policy for the James Madison Institute ; formerly in policy consulting roles with MGT of America and Evergreen Solutions) “Mandatory Minimums, Crime, and Drug Abuse: Lessons Learned and Paths Ahead” February 2019 <https://www.jamesmadison.org/mandatory-minimums-crime-and-drug-abuse-lessons-learned-and-paths-ahead/> (accessed July 26, 2021)

In fact, dozens of states nationwide have reformed or repealed mandatory minimum laws over the past 15 years. Georgia, Alabama, and Mississippi all have exceptions to mandatory minimum drug trafficking laws. Texas has never used mandatory minimum drug laws, and, like Florida, is currently enjoying a near 50-year crime low. (Florida’s drug overdose death rate was 62 percent higher than Texas’ between 1999 and 2017.) Louisiana repealed its mandatory minimum drug laws in 2017, with the support of the state’s prosecuting attorneys.

Examples of success: New York and Michigan

Greg Newburn and Sal Nuzzo 2019 (Newburn is FAMM’s Director of State Policy. Nuzzo is the vice president of policy for the James Madison Institute ; formerly in policy consulting roles with MGT of America and Evergreen Solutions) “Mandatory Minimums, Crime, and Drug Abuse: Lessons Learned and Paths Ahead” February 2019 <https://www.jamesmadison.org/mandatory-minimums-crime-and-drug-abuse-lessons-learned-and-paths-ahead/> (accessed July 26, 2021)

After repealing mandatory minimum drug laws, New York and Michigan are currently enjoying generational crime lows, and have simultaneously reduced their prison populations. The dozens of other states that traveled a similar path all reached a similar destination.

Example of success: Florida. Crime dropped after state mandatory minimum drug sentences were repealed

Greg Newburn and Sal Nuzzo 2019 (Newburn is FAMM’s Director of State Policy. Nuzzo is the vice president of policy for the James Madison Institute ; formerly in policy consulting roles with MGT of America and Evergreen Solutions) “Mandatory Minimums, Crime, and Drug Abuse: Lessons Learned and Paths Ahead” February 2019 <https://www.jamesmadison.org/mandatory-minimums-crime-and-drug-abuse-lessons-learned-and-paths-ahead/> (accessed July 26, 2021)

Safe Streets also repealed “most minimum mandatory sentences located in the Florida Statutes.” Three-, five- and 10-year drug trafficking sentences were repealed. The legislature also eliminated mandatory minimums for purchase or possession of drugs near schools, and eliminated drug possession or purchase from the list of offenses for which a defendant could be sentenced as a habitual offender.

**[END QUOTE. They go on later in the article to say quote:]**

Safe Streets should not be credited for all of that success, however. Florida’s crime drop was consistent with a similar national decline, and the legislature passed another crime bill in 1995 that increased the incidence of prison and required prisoners to serve 85 percent of a sentence before release. Whatever the cause of Florida’s crime drop, though, it cannot be disputed that repealing “most minimum mandatory sentences located in the Florida Statutes” did not cause Florida’s crime rate to rise. In fact, between FY 1993-94 and FY 1998-99, the number of prison admissions with mandatory sentences fell 56 percent.

Advocacy: Mandatory minimum sentencing is all cost and no benefit

<https://jscholarship.library.jhu.edu/bitstream/handle/1774.2/45499/Leah%20Shirley.pdf?sequence=1> (accessed 6 Aug 2021)

The return on investment for mandatory minimum sentencing is little to none, with the high cost to tax payers, and the rate of drug use increasing in the United States, the data continues to compound and prove the dangerous impact of mandatory sentencing. From overcrowded prisons, to an increasingly addicted population it is clear that mandatory sentencing for drug offenses is an archaic, discriminatory and dangerous approach to solving drug use and abuse in the United States.

Mandatory minimums do more harm than good

The American Conservative Union Foundation copyright 2021 (ACUF is one of the nation’s oldest organizations representing grassroots conservatives throughout the United States) “Fair Sentencing/Mandatory Minimums” <https://conservativejusticereform.org/issue/fair-sentencing-mandatory-minimums/> (accessed July 25, 2021)

Not only do mandatory minimums contribute to prison overcrowding and skyrocketing costs borne by taxpayers on the back end, they also fail to deter crime on the front end. Mandatory minimums perversely undermine public safety by consuming resources law enforcement could otherwise spend targeting violent criminals. Any value mandatory minimums provide in sentencing uniformity is greatly outweighed by the cost imposed on taxpayers, families, communities, and victims.

DISADVANTAGE RESPONSES

A/T “Low-level users won’t cooperate” – There are other ways

Prof. Jeffrey Bellin 2018 (He is a professor at William & Mary Law School and former federal prosecutor.) “A first step toward sentencing reform” 22 August 2018 <https://thehill.com/blogs/congress-blog/judicial/402968-a-first-step-toward-sentencing-reform> (accessed July 25, 2021)

Proponents of federal mandatory minimum sentences argue that harsh sentences are needed to obtain cooperation from low-level drug dealers. They are certainly right that these laws help fill federal prisons (while drug dealing remains prevalent). But sentences need not be mandatory or extreme to have this effect. And there are always arguments to support severe sentences. Add up all the compelling arguments and you get mass incarceration. With a legal system bursting at the seams and over 2 million people locked up, a heavy burden rests on those resisting reform. The arguments against the exceedingly modest reforms in the FIRST STEP Act don’t come close to meeting this burden.

A/T “Deterrence” -- Imprisonment does not impact drug crime

The Pew Charitable Trusts 2018 (They are driven by the power of knowledge to solve today’s most challenging problems. Pew applies a rigorous, analytical approach to improve public policy, inform the public, and invigorate civic life.) “More Imprisonment Does Not Reduce State Drug Problems” 8 March 2018 <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/more-imprisonment-does-not-reduce-state-drug-problems> (accessed July 25, 2021)

As the U.S. confronts a growing epidemic of opioid misuse, policymakers and public health officials need a clear understanding of whether, how, and to what degree imprisonment for drug offenses affects the nature and extent of the nation’s drug problems. To explore this question, The Pew Charitable Trusts examined publicly available 2014 data from federal and state law enforcement, corrections, and health agencies. The analysis found no statistically significant relationship between state drug imprisonment rates and three indicators of state drug problems: self-reported drug use, drug overdose deaths, and drug arrests.

A/T “Deterrence” – Drug dealers are easily replaced

The Pew Charitable Trusts 2018 (They are driven by the power of knowledge to solve today’s most challenging problems. Pew applies a rigorous, analytical approach to improve public policy, inform the public, and invigorate civic life.) “More Imprisonment Does Not Reduce State Drug Problems” 8 March 2018 <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/more-imprisonment-does-not-reduce-state-drug-problems> (accessed July 25, 2021)

The absence of any relationship between states’ rates of drug imprisonment and drug problems suggests that expanding imprisonment is not likely to be an effective national drug control and prevention strategy. The state-level analysis reaffirms the findings of previous research demonstrating that imprisonment rates have scant association with the nature and extent of the harm arising from illicit drug use. For example, a 2014 National Research Council report found that mandatory minimum sentences for drug and other offenders “have few, if any, deterrent effects.” The finding was based, in part, on decades of observation that when street-level drug dealers are apprehended and incarcerated they are quickly and easily replaced.

A/T “Deterrence” – Prison creates more crime

Catherine Reese Neely 2021 (J.D. Candidate 2022, University of Mississippi School of Law) “MANDATORY MINIMUMS: EQUAL BUT UNEQUAL” January 2021 <https://poseidon01.ssrn.com/delivery.php?ID=493006020002124026070016084108065122023021026063030057104022115027083003029093122081096098051127025111014071068097079010113121108084075058076083127119070092026004106052019066001115113016114117020118094096090104081102098074113097064092125105103119119103&EXT=pdf&INDEX=TRUE> (accessed July 26, 2021)

Fifth, mandatory minimums do not adequately address public safety concerns, recidivism, or deterrence. Little to no evidence supports the contention that longer prison terms for nonviolent offenders increases public safety. In fact, an abundance of evidence proves that prison is inherently criminogenic and not rehabilitative. As a result, recidivism rates are actually higher the longer someone spends in prison. Harsher sentences are not necessarily correlated with deterrence. Most drug offenders do not believe they will be caught, which is a critical component of deterrence.

A/T “More drug abuse” – Sentencing doesn’t deter drug use – Walker & Mezuk Study

Lauryn Saxe Walker and Briana Mezuk 2018 (Walker: Department of Health Behavior and Policy, Virginia Commonwealth University School of Medicine. Mezuk: Department of Epidemiology, University of Michigan School of Public Health, Institute for Social Research, University of Michigan, and Division of Epidemiology, Department of Family Medicine and Population Health, Virginia Commonwealth University School of Medicine) “Mandatory minimum sentencing policies and cocaine use in the U.S., 1985–2013” 29 November 2018 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6267913/> (accessed July 25, 2021)

The ADAA set different mandatory minimum sentencing guidelines to deter the use of cocaine base more than powder cocaine. Based on our results, it can be concluded that these differential sentences are not associated with differing drug use behavior. Our study does not propose to identify other explanations for changes in drug use patterns, such as substitution, availability, purity or cost, and therefore, we cannot rule out that these occurred. Instead, this study narrowly focuses on mandatory sentencing laws to determine whether or not drug use patterns are consistent with those expected to occur if harsher sentences deterred use. Here, we find no evidence that sentencing policies deterred cocaine base use. These findings are consistent with prior research that has found that incarceration rates are unrelated to drug use behavior and that effectiveness of a deterrence tends to hinge on certainty and immediacy of punishment rather than severity.

A/T “More crime” – Turn: Less crime. Example of Rhode Island

Catherine Reese Neely 2021 (J.D. Candidate 2022, University of Mississippi School of Law) “MANDATORY MINIMUMS: EQUAL BUT UNEQUAL” January 2021 <https://poseidon01.ssrn.com/delivery.php?ID=493006020002124026070016084108065122023021026063030057104022115027083003029093122081096098051127025111014071068097079010113121108084075058076083127119070092026004106052019066001115113016114117020118094096090104081102098074113097064092125105103119119103&EXT=pdf&INDEX=TRUE> (accessed July 26, 2021)

Longer prison sentences do not correlate with public safety for non-violent drug offenders. For example, in 2009, Rhode Island eliminated its mandatory minimum sentencing law for drug offenses. Afterwards, “Rhode Island’s prison population decreased, but more importantly, its violent crime rate decreased as well.” Research indicates that “prison can cause inmates to commit more crimes upon release[,] partly because low-level offenders find themselves surrounded by more serious and violent offenders in prison[,] and partly because they have trouble finding employment and reintegrating into society upon release.”

A/T “Biased judges” – Racial disparities did not change after *Booker*

Prof. Sonja Starr and Prof. M. Marit Rehavi 2013 (Starr is a Professor at the University of Michigan Law School. Rehavi is an Assistant Professor of Economics at the University of British Columbia and a Fellow of the Canadian Institute for Advanced Research) “Mandatory Sentencing and Racial Disparity: Assessing the Role of Prosecutors and the Effects of Booker” October 2013 <https://www.yalelawjournal.org/article/mandatory-sentencing-and-racial-disparity-assessing-the-role-of-prosecutors-and-the-effects-of-booker> (accessed July 27, 2021)

In contrast, we use a dataset that traces cases from arrest to sentencing, allowing us to assess Booker’s effects on disparities in charging, plea-bargaining, and fact-finding, as well as sentencing. We disentangle background trends by using a rigorous regression discontinuity-style design. Contrary to other studies (and in particular, the dramatic recent claims of the U.S. Sentencing Commission), we find no evidence that racial disparity has increased since Booker, much less because of Booker. Unexplained racial disparity remains persistent, but does not appear to have increased following the expansion of judicial discretion.

No harm to reducing mandatory minimums: Offenders either got excessive sentences or pose no safety risk upon release

Marc Mauer 2018 (He is the former executive director of The Sentencing Project and one of the country’s leading experts on sentencing policy, race and the criminal justice system. He has directed programs on criminal justice policy reform for 40 years) “Long-Term Sentences: Time to Reconsider the Scale of Punishment” 5 November 2018 <https://www.sentencingproject.org/publications/long-term-sentences-time-reconsider-scale-punishment/> (accessed July 25, 2021)

One measure of the impact of mandatory minimum sentencing can be seen in the range of cases in which President Obama issued sentence commutations, particularly during his last years in office. A total of 1,715 individuals convicted of a drug offense received such commutations, almost all of whom had been sentenced under mandatory provisions of drug law generally requiring decades of incarceration. Nearly a third were sentenced to life without parole for a repeat drug offense. These cases were subject to review by the White House and Department of Justice, and most were not the “low level, non-violent offenders” who are generally the focus of policymaker attention. A quarter of this group had a prior conviction for a violent offense, and eighty-six percent had a “significant” criminal history. These individuals were released despite their “significant” criminal history, a gesture which recognizes the transformation that many individuals undergo in prison but also demonstrates that a substantial number of inmates do not pose an unreasonable public safety risk upon release.

A/T “Biased judges” – Racial disparities have decreased since *Booker* + flaws in Sentencing Commission report

The Federal Defenders of New York 2018 (It began as a division of the Legal Aid Society after the Supreme Court's decision in Gideon v. Wainwright. In 2005, it became an independent, non-profit corporation dedicated solely to defending poor people accused of federal crimes.) “FEDERAL DEFENDER FACT SHEET, JANUARY 2018” <https://blog.federaldefendersny.org/wp-content/uploads/2018/01/Fact-Sheet-USSC-Report-on-Racial-Disparity-Is-Flawed-and-Being-Misused-January-2018-final-1.pdf> (accessed July 27, 2021)

In fact, the sentencing gap between White and Black defendants has decreased significantly since Booker was decided 12 years ago. The claim that increased judicial discretion has led to increased disparity is based on a controversial statistical model, which has been sharply criticized by credible outside researchers. The criticisms include the Commission’s failure to account for: (1) the impact of mandatory minimums, which constrain judicial discretion and disparately prevent reductions in sentence for black defendants, (2) racial disparities in prosecutors’ charging and bargaining decisions, and (3) the adverse racial impact of unsound rules in the Sentencing Guidelines. These failures in methodology have been repeatedly noted, but the Commission has not adequately addressed the criticisms, adapted its model, or properly tested its robustness and limits.

A/T “Biased judges” – Less bias before the 1984 crime reforms

The Federal Defenders of New York 2018 (It began as a division of the Legal Aid Society after the Supreme Court's decision in Gideon v. Wainwright. In 2005, it became an independent, non-profit corporation dedicated solely to defending poor people accused of federal crimes.) “FEDERAL DEFENDER FACT SHEET, JANUARY 2018” <https://blog.federaldefendersny.org/wp-content/uploads/2018/01/Fact-Sheet-USSC-Report-on-Racial-Disparity-Is-Flawed-and-Being-Misused-January-2018-final-1.pdf> (accessed July 27, 2021)

As shown in Figure 2, which first appeared in the Commission’s Fifteen Year Review covering the years 1984- 2002, there was little difference in average prison terms among races when judges had complete discretion before 1988 (and when sentences were far lower overall), but a large gap appeared immediately upon implementation of mandatory guidelines and mandatory minimums. Sentences for offenses disproportionately charged against African Americans were radically increased by these laws and guidelines, even though the increases did not advance the purposes of sentencing. This resulted in severe adverse impact discrimination.

Chart, line chart

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