

CORRECTING A FAILED EXPERIMENT: THE CASE FOR S. 819

Mandatory minimums do not deter crime

- Dozens of studies have confirmed the basic idea that “mandatory minimum sentencing is unlikely to have a material deterrent effect” on crime.¹ The overwhelming weight of the evidence suggests the certainty of being punished, not the severity of punishment, is the relevant factor in crime deterrence.² Mandatory minimums undermine certainty of punishment by earmarking scarce resources for incarceration of low-level offenders instead of, e.g., hiring more police officers and prosecutors.³

Mandatory minimums do not deter drug trafficking and are less efficient than alternatives

- In drug cases, criminologists have found that “the best estimate of the incapacitation effect is zero,”⁴ because “a drug dealer sent away is replaced by a new one because an opportunity has opened up.”⁵
- Treatment of heavy users and conventional enforcement against higher level drug dealers are more cost effective than mandatory minimums at reducing drug-related crime and use of controlled substances.⁶
- In part because of its long reliance on a failed drug control strategy, Massachusetts is in the middle of an unprecedented opioid epidemic. Fighting opioid abuse requires new strategies, not more of the same.

Individualized sentencing avoids arbitrary and unjust outcomes

- Weight-based mandatory minimums create “cliff effects,” in which virtually identical behavior yields vastly different results. For instance, distributing 17.9 grams of cocaine carries no mandatory minimum, while distributing 18 grams of cocaine carries a mandatory two-year sentence.
- By tying sentences only to weights distributed, current laws ignore important distinctions among defendants, such as their role in an offense, profit, age, need for treatment, or criminal history. Individualized sentencing solves this problem by allowing judges to consider all relevant circumstances, not one specific variable, and impose a sentence tailored to that defendant and that offense.

Mandatory minimums are not limited to drug traffickers and violent criminals

- Opponents of sentencing reform claim mandatory minimums are reserved for drug traffickers, while drug users are sent to treatment. The truth is there is often no distinction between these groups.
- One national survey found 70% of state inmates serving prison sentences for drug trafficking reported using drugs in the month before their arrest. 42% were using drugs at the time of their offense. And one out of four reported selling drugs to earn money to buy more drugs.⁷
- Mandatory minimums are routinely applied to drug users who also engage in low-level drug dealing.⁸

Many states have reduced crime without mandatory minimum drug sentencing laws

- Texas has never had mandatory minimum drug laws, and is currently enjoying a near 50-year crime low. Texas’ 2015 drug-induced death rate was nearly three times lower than the Massachusetts rate.
- New York, Michigan, Maryland, and Rhode Island have all repealed mandatory minimum drug laws. Each has had success reducing crime and corrections costs. Louisiana recently joined this growing list.
- A recent study by the Pew Charitable Trusts found no statistically significant relationship between states’ drug offender imprisonment rates and rates of illicit drug use, overdose deaths, and arrests.⁹

- ¹Daniel S. Nagin, “Deterrence in the Twenty-first Century: A Review of the Evidence.” *Heinz College Research*, (2013). For a comprehensive review of the available evidence on mandatory minimums and crime deterrence, see United States Sentencing Commission, “2011 Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System.” Available at: <http://www.ussc.gov/research/congressional-reports/2011-report-congress-mandatory-minimum-penalties-federal-criminal-justice-system>. <http://www.ussc.gov/research/congressional-reports/2011-report-congress-mandatory-minimum-penalties-federal-criminal-justice-system>.
- ²National Institute of Justice. “Five Things About Deterrence.” Available at: <https://nij.gov/five-things/pages/deterrence.aspx>. <https://nij.gov/five-things/pages/deterrence.aspx>.
- ³Hiring more police officers is a much more effective (and cost-effective) method of crime control than reliance on mandatory minimums. See Paul Heaton, “Hidden in Plain Sight: What Cost-of-Crime Research Can Tell Us About Investing in Police.” *RAND Corporation*, 2010.
- ⁴Anne Morrison Piehl and John J. DiLulio, “Does Prison Pay?” *The Brookings Review*, Winter 1995.
- ⁵James Q. Wilson, “What To Do About Crime?” *Commentary*, September 1, 1994.
- ⁶See, e.g., Jonathan P. Caulkins, “Are Mandatory Minimum Drug Sentences Cost-Effective?” *RAND Corporation*, 1997.
- ⁷Sevigny, E. L. & Caulkins, J. P., “Kingpins or Mules: An Analysis of Drug Offenders Incarcerated in Federal and State Prisons,” *Criminology and Public Policy* (2004).
- ⁸See, e.g., Commonwealth vs. Scypio Denton, 477 Mass. 248 (2017). Opinion available at: <http://sociallaw.com/services/slip-opinions/slip-opinion-details/commonwealth-vs.-scypio-denton>
- ⁹Pew Charitable Trusts. “Pew Analysis Finds No Relationship Between Drug Imprisonment and Drug Problems,” 2017. Available at: <http://www.pewtrusts.org/en/research-and-analysis/speeches-and-testimony/2017/06/pew-analysis-finds-no-relationship-between-drug-imprisonment-and-drug-problems>.