



FAMM Policy Briefing: Mandatory Minimum Sentences

Mandatory minimum sentencing laws are set by Congress and state lawmakers. These laws require judges to impose automatic, minimum prison terms for certain offenses. As such, they remove a judge's ability to consider the individual person being sentenced, the specifics of the situation, or mitigating factors. Too often, a sentence results that is unjust, irrational, or counterproductive. More than 30 years of evidence has shown that mandatory minimum sentencing laws do not make the public safer. Instead, they create crowded prisons, broken families and communities, weakened trust in the justice system, and bloated corrections budgets, which divert resources away from approaches that would actually improve public safety. Americans need solutions that actually work.

Mandatory minimums do not work. They do not deter crime or make the public safer.

Based on a review of the research literature, the National Research Council concluded in its seminal 2014 report, *The Growth of Incarceration in the United States*, that mandatory minimums have few, if any, deterrent effects.¹ Similarly, studies of mandatory minimums for firearm possession in several states have found these laws to be ineffective at reducing gun possession and violent crime.² More broadly, a 50-state study found no significant relationship between drug sentencing and three key drug epidemic indicators: illicit drug use, drug arrests, and overdose rates.³ These findings are unsurprising given what research has taught us about deterrence. For mandatory minimums or other punitive sentencing laws to prevent crime, people would need to know about them prior to committing a crime. In reality, few people are aware of penalties for particular crimes. Therefore, increasing the severity of punishment does not deter people from engaging in criminal activity.⁴ Instead, it is the certainty of being caught and swiftly punished that deters crime.⁵

¹ National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, D.C.: The National Academies Press, 2014), 347.

<https://nap.nationalacademies.org/read/18613/chapter/15#347>.

² Stephanie Kollmann and Dominique D. Nong, "Combating Gun Violence in Illinois: Evidence-Based Solutions," Bluhm Legal Clinic, October 17, 2013,

http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?filename=3&article=1000&context=jclc_symposium&type=additional ("[T]he evidence indicates, repeatedly, that mandatory minimum sentences will not reduce gun violence. On the contrary, such restrictions are both costly and counterproductive."); Jens Ludwig and Jean Raphael, "Prison Sentence Enhancements: The Case of Project Exile" in *Evaluating Gun Policy: Effects on Crime and Violence*, ed. Philip J. Cook and Jens Ludwig, at 280 (Washington, D.C.: The Brookings Institution) (finding in a 2003 study of Virginia's "Project Exile" that mandatory gun sentence enhancements "demonstrated fairly conclusively that [Project Exile] is a bust. It has no impact. It did not work.").

³ Pew Charitable Trusts, "More Imprisonment Does Not Reduce State Drug Problems," Mar. 8, 2018.

<https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/03/more-imprisonment-does-not-reduce-state-drug-problems>.

⁴ National Institute of Justice, "Five Things About Deterrence," May 2016.

<https://www.ncjrs.gov/pdffiles1/nij/247350.pdf>.

⁵ National Institute of Justice, "Five Things About Deterrence," May 2016.

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Mandatory minimums that require judges to incarcerate someone whom they would not otherwise incarcerate may actually *increase* the chances that the individual will commit additional crimes in the future. A 2021 meta-analysis of the impact of custodial sanctions on reoffending found that incarceration either has no effect on or increases the likelihood that someone will reoffend, in comparison to non-custodial sanctions.⁶ Mandatory minimums can also prevent judges from sentencing people to alternative-to-incarceration programs, which may be better suited to address the individual's risks and needs and thereby prevent reoffending.

Mandatory minimums result in unjust sentences that do not fit the crime. Every individual before the court and every case is unique. One-size-fits-all sentences do not permit judges to consider holistically all of the relevant facts and circumstances, such as the crime and its impact on the community or the individual's criminal record, role, motive, profit from the offense, age, likelihood of rehabilitation, or need for mental health or drug treatment. Mandatory minimums can lead to clearly inequitable results, such as vastly different sentences for two people who possessed almost the same quantity of a drug, simply because one had slightly more than the mandatory minimum threshold, or identical sentences for the ringleader of a crime and someone who played a very minor role in the crime. Mandatory minimums also contribute to the "trial penalty," in which prosecutors punish those who exercise their right to trial by filing charges that carry mandatory prison terms. Not only does the "trial penalty" suppress Sixth Amendment rights, it can mean that minor players in conspiracies receive much longer sentences than ringleaders and "kingpins."

A qualitative study of judges' perceptions of mandatory minimums found that the majority believed "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."⁷ Eliminating mandatory minimum sentences does not mean that people will not be punished or imprisoned. It simply means courts will not have to imprison people indiscriminately, without considering every facet of the case or alternatives to incarceration that may better serve rehabilitative goals.

Mandatory minimums create unwarranted racial disparities in sentencing. A study of federal sentencing patterns found that Black people were given sentences that were, on average, 10 percent longer than the sentences given to comparable white people arrested for the same crimes. Most of this disparity was because of prosecutors' initial charging decisions, particularly the filing of charges carrying mandatory minimum sentences. Holding other factors constant, prosecutors were 65 percent more likely to charge Black people with offenses that carried mandatory minimums compared to their average charging decisions. This initial mandatory minimum charging disparity explained more than half of the Black-white sentence disparities not otherwise explained by pre-charge characteristics.⁸

⁶ Petrich, D.M. et al. (2021). "Custodial Sanctions and Reoffending: A Meta-Analytic Review," *Crime and Justice*, 50. https://www.prisonlegalnews.org/media/publications/Custodial_Sancations_and_Reoffending_-_A_Meta-Analytic_Review_2021.pdf.

⁷ Nir, E., & Liu, S. (2022). "The challenge of imposing just sentences under mandatory minimum statutes: A qualitative study of judicial perceptions." *Criminal Justice Policy Review*, 33(2), 177-205. <https://scholarsphere.psu.edu/resources/b54d8ba6-d618-4a6f-82a9-7a89f732076c>.

⁸ M. Marit ReHAVI and Sonja B. Starr (2014). "Racial Disparity in Federal Criminal Sentence," <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2413&context=articles>.

Mandatory minimums can undermine trust in the criminal legal system, which makes communities less safe. Sentencing policies that create unjust, arbitrary, or racially biased outcomes weaken trust in the criminal legal system and cause people to question the system’s legitimacy.⁹ This loss of trust can in turn make people more likely to break the law¹⁰ and less likely to cooperate with law enforcement.¹¹

Mandatory minimums waste resources that could otherwise be used to prevent crime. As of 2020, states spent an average of \$45,771 to incarcerate a person for a year. Multiplied by large numbers of people subject to mandatory minimums, this expenditure leads to staggering total price tags. For example, Texas recently considered a bill to add a 10-year mandatory minimum for people convicted of using firearms during certain felonies. It would result in an estimated \$55 million in additional costs in the first five years alone, with the annual cost increasing each year.¹² Conversely, eliminating mandatory minimums in Virginia and applying this elimination retroactively would save the state an estimated \$25 million within five years and generate an estimated \$58 million in economic stimulus during that time period.¹³ There is huge potential for cost savings and reinvestment.

A 1997 report from the RAND Corporation found that mandatory minimum drug sentences were not worth the exorbitant cost. The report found that spending \$1 million on drug treatment for heavy users was a far more cost-effective way to reduce cocaine consumption and cocaine-related crime than spending \$1 million on incarceration for mandatory minimum sentences for cocaine offenses. Spending \$1 million on the enforcement and sentencing approach used prior to the adoption of mandatory minimums was also more cost-effective than spending \$1 million on mandatory minimums, though less cost-effective than drug treatment.¹⁴ Researchers also have developed a strong body of evidence in support of programs and interventions that reduce community violence, such as turning vacant lots into parks, youth job programs, and hospital-based violence intervention programs,¹⁵ which have the potential to be far more cost-effective than mandatory minimums for keeping communities safe.

⁹ Roberts, J.V. and Plesnicar, M. M. (2015). *Sentencing, Legitimacy, and Public Opinion*. In: Meško, G., Tankebe, J. (eds) *Trust and Legitimacy in Criminal Justice*. Springer, Cham. https://link.springer.com/chapter/10.1007/978-3-319-09813-5_2.

¹⁰ Walters, G.D. and Bolger, P.C. (2019). “Procedural justice perceptions, legitimacy beliefs, and compliance with the law: a meta-analysis,” *Journal of Experimental Criminology*, 15, 341–372, <https://link.springer.com/article/10.1007/s11292-018-9338-2>.

¹¹ Murphy, K. and Cherney, A. (2012). “Understanding Cooperation With Police in a Diverse Society,” *The British Journal of Criminology*, 52(1):181-201. <https://academic.oup.com/bjc/article-abstract/52/1/181/373099>.

¹² Recidiviz (2023). “Imposing Mandatory Minimums for Gun Crimes in Texas.” https://assets-global.website-files.com/5e7ff048d75a9b3c5df52463/647651bd3ca98febd20e879_TX_2023.05_GMM.pdf.

¹³ Recidiviz (2022). “SB 104: Elimination of Mandatory Minimums.” https://assets-global.website-files.com/5e7ff048d75a9b3c5df52463/635bed9f8fe6c51d6ad65497_VA_2022.01_SB104.pdf.

¹⁴ Jonathan Caulkins et al., “Mandatory Minimum Drug Sentences: Throwing Away the Key or Taxpayers Money,” RAND Corporation, 1997. https://www.rand.org/pubs/monograph_reports/MR827.html.

¹⁵ John Jay College Research Advisory Group on Preventing and Reducing Community Violence (2020). *Reducing Violence Without Police: A Review of Research Evidence*, Research and Evaluation Center, John Jay College of Criminal Justice. <https://johnjayrec.nyc/2020/11/09/av2020/>.

By sending more people to prison and keeping them there longer, mandatory minimums devastate families and contribute to poverty. When someone is incarcerated, their families “do the time” with them. The incarcerated individual can no longer contribute to the household income, which often makes it difficult for their families to meet basic needs, such as food, housing, and utilities.¹⁶ Plus, many family members spend hundreds of dollars a month to visit, call, and email their loved ones and to provide prison commissary funding for toiletries and other essentials.¹⁷ The emotional and psychological toll of the incarcerated individual’s absence from major milestones and day-to-day life is profoundly negative. Children of incarcerated parents experience significantly higher rates of mental health, educational, behavioral, developmental, and relationship problems than their peers.¹⁸ Similarly, incarceration is associated with negative mental and physical health consequences for adult family members.¹⁹

Many states have repealed mandatory minimums and simultaneously reduced crime. For example:

- In 2015, Pennsylvania’s many mandatory minimum sentences were struck down as unconstitutional.²⁰ After that ruling, crime rates continued to decline, and the state’s prison population dramatically declined as well.²¹
- In 2002, Michigan legislators repealed almost all mandatory drug sentences, and the state’s crime rate dropped 27 percent in the decade following the reform.²²
- Looking more broadly at the relationship between criminal justice reform and crime, another study found that 35 states reduced their prison populations and crime rates simultaneously.²³

Mandatory minimums are an expensive failure. They are tough on people, but not tough on crime. Decades of data show that mandatory minimums are neither effective nor cost-effective at preventing crime or keeping communities safe. They create unjust outcomes, decrease trust in the criminal legal system, devastate families, and waste millions of dollars that could otherwise

¹⁶ deVuono-powell, S. et al. (2015). *Who Pays? The True Cost of Incarceration on Families*, Ella Baker Center, Forward Together, Research Action Design, at 18. <http://whopaysreport.org/who-pays-full-report/>.

¹⁷ Lewis, N. and Lockwood, B. (2019). *How Families Cope with the Hidden Costs of Incarceration for the Holidays*, The New York Times. <https://www.nytimes.com/2019/12/17/us/incarceration-holidays-family-costs.html>.

¹⁸ Eddy, J. M., & Poehlmann-Tynan, J. (Eds.). (2019). *Handbook on Children with Incarcerated Parents: Research, Policy, and Practice (2nd ed.)*, at 4. Springer Nature Switzerland AG. <https://doi.org/10.1007/978-3-030-16707-3>.

¹⁹ Sundaresh, R., Yi, Y., and Harvey, T.D. (2021). *Exposure to Family Member Incarceration and Adult Well-being in the United States*, JAMA Netw Open, 4(5).

<https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2780438>. Wildeman, C., Goldman, A.W., and Lee, H.L. (2019). *Health Consequences of Family Member Incarceration for Adults in the Household*, Public Health Reports, 34(Supplement 1), at 15S-21S. <https://journals.sagepub.com/doi/pdf/10.1177/0033354918807974>.

²⁰ *Commonwealth of Pennsylvania v. Hopkins* (2015). Supreme Court of Pennsylvania, No. 98 MAP 2013, <https://caselaw.findlaw.com/court/pa-supreme-court/1706112.html>.

²¹ Pennsylvania Department of Corrections, “Crimelines: The 20 Year Story of Crime & Incarceration.” <https://www.cor.pa.gov/About%20Us/Statistics/Documents/Reports/Crimelines%20Report.pdf>

²² ALEC, “Mandatory Minimum Sentencing Reform Saves States Money and Reduces Crime Rates,” March 2016. <https://www.alec.org/app/uploads/2016/03/2016-March-ALEC-CJR-State-Factor-Mandatory-Minimum-Sentencing-Reform-Saves-States-Money-and-Reduces-Crime-Rates.pdf>.

²³ Adam Gelb and Jacob Denney, “National Prison Rate Continues to Decline Amid Sentencing, Re-entry Reforms,” Pew Charitable Trust, January 16, 2018. <http://www.pewtrusts.org/en/research-and-analysis/articles/2018/01/16/national-prison-rate-continuesto-decline-amid-sentencing-re-entry-reforms>.

be spent on programs and interventions that actually do prevent crime. Communities need policies that work. Mandatory minimums do not.