



## **The Case against Mandatory Minimum Sentences**

Mandatory minimum sentences are set by state legislatures and Congress, not judges. They require automatic, minimum prison terms for certain crimes, and too often, the mandatory minimum sentence is unjust, irrational, or counterproductive.

### **Mandatory minimums do not deter crime and make the public safer.**

- Deterrence assumes that people will: 1) research the criminal code; 2) find the relevant mandatory penalty; and 3) be discouraged from criminal activity because of the penalty.
- In reality, people are not aware of mandatory penalties when they commit a crime. Therefore, increasing the penalty or severity of a punishment is ineffective at deterring people from engaging in criminal activity.<sup>1</sup>
- Research has also made it clear that being caught and punished quickly – not lengthy sentences – deters crime.<sup>2</sup>

### **Mandatory drug sentences do not reduce drug use or addiction.**

- Mandatory minimums have not prevented or slowed the rise of opioid abuse, addiction, or overdoses.
- 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.<sup>3</sup>

### **Mandatory minimums fail to create consistency or uniformity in sentencing – despite that being their objective.**

- Mandatory minimums simply transfer sentencing discretion from judges to prosecutors.
- Prosecutors decide who, when, and how to charge. Prosecutors use mandatory minimums at different rates from jurisdiction to jurisdiction, creating sentencing disparities and inconsistencies.
- Mandatory minimums create a “trial penalty,” where prosecutors charge those who exercise their right to trial by filing charges that carry mandatory prison terms.

### **Mandatory minimums create unwarranted racial disparities in sentencing.**

- A study of federal sentencing patterns shows that Black people are more likely than their white counterparts to be charged and convicted of offenses that carry mandatory sentences.<sup>4</sup>
- Holding other factors constant, researchers found that federal prosecutors are 65% more likely to charge Black defendants with offenses that carry mandatory minimums.<sup>5</sup> This

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<sup>1</sup> National Institute of Justice, “Five Things about Deterrence,” May 2016. <https://www.ncjrs.gov/pdffiles1/nij/247350.pdf>

<sup>2</sup> National Institute of Justice, “Five Things about Deterrence,” May 2016. <https://www.ncjrs.gov/pdffiles1/nij/247350.pdf>

<sup>3</sup> 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>

<sup>4</sup> M. Marit Rehavi and Sonja B. Starr, “Racial Disparity in Federal Criminal Sentence,” 2014. <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2413&context=articles>

<sup>5</sup> M. Marit Rehavi and Sonja B. Starr, “Racial Disparity in Federal Criminal Sentence,” 2014. <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2413&context=articles>

charging decision ultimately results in lengthy sentences for Black defendants and contributes to racial disparities in sentencing.

- Drug-free school zone laws, which often require mandatory prison terms for buying or selling drugs within a certain distance of a school, impact people of color disproportionately.
- Because people of color are more likely to live in cities and dense communities with overlapping school zones, they are hit the hardest by harsh drug-free school zone laws. For example, prior to reforms in 2010, Black and Hispanic people in New Jersey made up 96% of people convicted and incarcerated under the state's school zone law.<sup>6</sup>

**Mandatory minimum sentences are not necessary to ensure sufficient punishment – and actually create unjust, excessive results that make us less safe.**

- Eliminating mandatory minimum sentences does not mean that people will not be punished or imprisoned – it means courts won't have to imprison people indiscriminately, without considering factors that matter.
- Mandatory minimum sentences require courts to send people to prison even if prison is unnecessary to keep the public safe, or keep people in prison past the point at which they pose a danger to others.
- Mandatory minimum sentences deny courts the ability to use more cost-effective alternatives to incarceration, like drug or mental health court programs.
- Mandatory minimum sentences make the public less safe by wasting expensive prison resources on the wrong people – money that can't be spent preventing crime.

**Legislators across the country and the political spectrum have shown that states can successfully reform their sentencing laws and reduce crime and incarceration.**

- Over 30 states have reformed or repealed their mandatory minimum sentences in the past two decades<sup>7</sup> while maintaining public safety.
- In 2017, Louisiana repealed many of its mandatory minimums. In the first six months alone, the state saved \$12 million. The state's prison population has dropped to a level not seen since the 1990s, and the state has reinvested savings into crime-reduction and victim support programs.<sup>8</sup>
- In 2015, Pennsylvania's many mandatory minimum sentences were struck down as unconstitutional. Since this ruling, crime rates have continued to decline, including during the six years (2012-2018) that the state's prison population declined.<sup>9</sup>
- In 2002, Michigan legislators repealed almost all mandatory drug sentences, and the state's crime rate has dropped 27% in the decade following the reform.<sup>10</sup>

<sup>6</sup> Justice Policy Institute, "Disparity by Design: How Drug-free Zone Laws Impact Racial Disparity and Fail to Protect Youth," 2006.

[http://www.justicepolicy.org/uploads/justicepolicy/documents/06-03\\_rep\\_disparitybydesign\\_dp-jj-rd.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/06-03_rep_disparitybydesign_dp-jj-rd.pdf)

<sup>7</sup> State Reforms to Mandatory Minimum Sentencing Law," October 30, 2020. <https://fam.org/wp-content/uploads/Chart-STATE-REFORMS-TO-MANDATORY-MINIMUM-SENTENCING-LAWS-2018.pdf>

<sup>8</sup> Grace Toohey, "Louisiana sees rise in savings, further drop in prison population from 2nd year of justice reforms," July 19, 2019.

[https://www.theadvocate.com/baton\\_rouge/news/crime\\_police/article\\_7759e8a6-aa73-11e9-ad85-470066e75115.html](https://www.theadvocate.com/baton_rouge/news/crime_police/article_7759e8a6-aa73-11e9-ad85-470066e75115.html)

<sup>9</sup> 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>

<sup>10</sup> 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>

