

## **Mandatory Minimum Sentencing**

**Introduction:** *Mandatory minimum sentencing laws set minimum sentences for certain crimes that judges cannot lower. There has been a great deal of debate about these laws. As a result of increasing crime rates and a crack cocaine epidemic fueling urban gang wars in the mid- 1980s, Congress acted to mandate minimum sentences for federal drug offenders and life time sentences for three time drug or violent felony convictions. In addition, these criminal justice reforms treated crack and powder cocaine offenses differently. As a result of these actions the Bureau of Justice Statistics reports that the number of incarcerations in the United States in 2013 is five times higher than in 1980.*

*In September of 2015, the United States Senate introduced a piece of legislation that would reduce or eliminate minimum sentencing for nonviolent federal drug offenders. The name of the bill is the Sentencing Reform and Corrections Act. This piece of legislation could result in a significant number of prisoners reducing the amount of time they will serve on their current convictions. The legislation also includes provisions that would help prisoners transition back into society. The legislation gained bipartisan support by emphasizing the cost of incarceration and also emphasizing the disproportionate number of African Americans who are incarcerated.*

*Advocates for reform, including President Barack Obama, believe that there is little evidence to suggest that stricter mandatory penalties discourage people from breaking the law. In addition, they believe that the disproportionate number of minorities in federal prisons is a result of racial bias and a disparity between the amount of time given to crack versus powder cocaine offenders.*

*Opponents of reform contend that the stricter sentencing and mandatory minimums have saved lives and reduced violent crime. They claim that the cost of incarceration pales in comparison to both the social and actual cost of increased crime and drug use. In addition, they believe that the disproportionate number of federal prisoners who are either black or Hispanic has little to do with racial bias and more to do with direct consequences of criminal behavior. **Interactively read the side of the debate that you have been assigned.***

### **POLICY VIEWS AGAINST MANDATORY MINIMUM PENALTIES**

#### **1. Contribution to Excessive Uniformity and Unwarranted Disparity**

One of the policy views advanced against mandatory minimum penalties is that they result in excessive uniformity by requiring similar sentences for dissimilar offenders. For example, “one of the [principal] flaws of mandatory minimums is that they apply one-size-fits-all sentences to defendants who are not equally culpable.”<sup>483</sup>

In the American Bar Association’s view, “[t]reating unlike offenders identically is as much a blow to rational sentencing policy as is treating similar offenders differently.”<sup>485</sup>

Many believe that mandatory minimum penalties result in arbitrary and disparate sentences because they rely on certain specified triggering facts to the exclusion of all others.<sup>486</sup> “[W]henever a mandatory minimum penalty based on a single fact requires a sentence above the otherwise applicable guideline range, or limits a judge’s use of that range, or prevents a departure or variance in a case warranting a below-range sentence, unwarranted disparity has been created.”<sup>487</sup> For example, so-called “sentencing cliffs” occur when an offender’s “conduct just barely brings him within the terms of the mandatory minimum.”<sup>488</sup> In such a case, the offender is subject to a significantly higher sentence than an offender whose conduct fell just outside the scope of the mandatory minimum penalty, even though his or her conduct was only marginally different.<sup>489</sup> For example, a defendant convicted of trafficking 100 grams of heroin would be

subject to the five-year mandatory minimum penalty while one who sold only 99 grams of the drug would not, meaning that these defendants are subject to substantially different sentences despite nearly identical conduct.<sup>490</sup>

## ***2. Excessive Severity and Disproportionality***

Many view current federal mandatory minimum penalties as producing sentences that are excessively harsh relative to the gravity of the offense committed, in part because “all sentences for a mandatory minimum offense must be at the floor or above regardless of the circumstances of the crime.”<sup>493</sup> According to the Judicial Conference of the United States, mandatory minimum penalties end up sweeping broadly because a severe penalty that might be appropriate for the most egregious of offenders will likewise be required for the least culpable violator . . . . The ramification for this less culpable offender can be quite stark, as such an offender will often be serving a sentence that is greatly disproportionate to his or her conduct.<sup>494</sup>

## ***3. Contribution to Growth in Prison Population***

Mandatory minimums have produced exponential growth in the federal prison population since the 1980s, and the federal Bureau of Prison’s overcapacity “has real & detrimental consequences for the safety of prisoners and guards, effective prisoner reentry, and ultimately, public safety.”<sup>503</sup> For this reason, the Department of Justice suggests “some reforms of existing mandatory minimum sentencing statutes are needed. . . to eliminate excess severity in current statutory sentencing laws and to help address the unsustainable growth in the federal prison population.”<sup>504</sup>

## ***4. Unequal Distribution Across Demographic Groups***

Some express concerns that mandatory minimum penalties unfairly impact racial minorities and the economically disadvantaged.<sup>540</sup> This may be attributed in part to the fact that the most frequently applied mandatory minimum penalties are for drug offenses, which according to some disproportionately impacts certain racial or ethnic groups.<sup>541</sup> While acknowledging that this disproportionate impact may be more a function of law enforcement priorities rather than sentencing policy, some assert that mandatory minimum penalties nevertheless are being applied most frequently to a population that is not necessarily representative of all persons violating such laws.<sup>542</sup> They argue that this perceived uneven application creates perceptions of unfairness that undermine the public’s acceptance of the criminal justice system.<sup>543</sup>

## ***5. Ineffectiveness as a Deterrent or as a Law Enforcement Tool to Induce Pleas and Cooperation***

Some scholars counter the claims made by proponents of mandatory minimum penalties that these penalties serve as an effective deterrent to crime.<sup>527</sup> They note that the research conducted by social scientists and public policy analysts has found little evidence to support the argument that mandatory minimums prevent crime. <sup>528</sup> In fact, many assert it is an increase in the *certainty* of punishment through the prosecution of more offenders that is the more cost-effective deterrent compared to the *severity* of punishment that mandatory minimum penalties or longer sentences provide.<sup>529</sup> Some also dispute the claims that mandatory minimum penalties are a useful law enforcement tool for the investigation and prosecution of criminals by inducing pleas and cooperation. The American Bar Association has raised a threshold question of whether inducing cooperation is a legitimate sentencing goal.<sup>530</sup> Beyond that threshold question, many observe that the exchange of reduced sentences for information results in “inverted sentencing,” in which offenders with valuable information – kingpins, organizers, and other highly culpable defendants – can avoid mandatory minimum penalties through charge-bargaining and substantial assistance motions while low-level offenders cannot because they lack such valuable information.<sup>531</sup>