

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 IN FAVOR OF MANDATORY MINIMUM PENALTIES

1. Promotion of Uniformity in Sentencing and Avoidance of Unwarranted Disparity

Some view mandatory minimum penalties as promoting uniformity and reducing unwarranted disparities because such penalties require courts to impose similar sentences for similar offenses.⁴⁵⁹...Congress enacted many mandatory minimum penalties, together with the then-mandatory guidelines system, as part of its effort in the 1980s to narrow judicial sentencing discretion and curb what it viewed as unduly disparate and lenient sentences.⁴⁶¹ ...The Department of Justice has observed that sentencing disparities increased under the advisory guidelines system because for “offenses for which there are no mandatory minimums, sentencing decisions have become largely unconstrained as a matter of law.”⁴⁶² According to the Department of Justice, “this has led to greater variation in sentencing,” which “in turn undermines the goals of sentencing to treat like offenders alike, eliminate unwarranted disparities in sentencing, and promote deterrence through predictability in sentence.”⁴⁶³

2. Protection of the Public through Certainty in Punishment, Deterrence, and Incapacitation

Another policy rationale in favor of mandatory minimum penalties is that they protect the public. For example, the Department of Justice believes that, working hand-in-hand with the

advisory guideline system, “mandatory minimum statutes remain important to promote the goals of sentencing and public safety.”⁴⁶⁶ Indeed, law enforcement officials have historically urged the enactment of mandatory minimum penalties.⁴⁶⁷ According to those who hold this view, mandatory minimum penalties deter crime by posing certain, predictable, and generally severe punishment.⁴⁶⁸ Because mandatory minimum penalties require a certain term of incarceration, they are viewed as “an effective means of alerting would-be offenders to the consequences of certain illegal conduct.”⁴⁶⁹

According to the Department of Justice, sentencing reforms in the 1980s, including the enactment and enhancement of many mandatory minimum penalties, helped reduce crime rates.⁴⁷⁰ Furthermore, some scholars believe that the severity of mandatory minimum penalties increases their deterrent effect by raising the “cost” of committing crime to would-be offenders.⁴⁷²

In addition to their deterrent effect, some policymakers assert that mandatory minimum penalties reduce crime by incapacitating criminals and protecting the public from their potential future offenses.⁴⁷³ For example, law enforcement officers have reported to the Commission that incapacitation through mandatory minimum penalties has reduced methamphetamine- and firearm-related crime.⁴⁷⁴

3. Retribution

Some view mandatory minimum penalties as an important means of expressing society’s disdain for an offense. Congressman Asa Hutchinson argued that the “strongest justification” for mandatory minimum penalties is that they give society the “means of expressing its outrage toward certain offenses that are so harmful to the public.”⁴⁷⁶ Dr. Mulhausen similarly testified that some mandatory minimum penalties can be justified solely by reference to retributive goals: “While utilitarian principles of deterrence and incapacitation can add additional support, some crimes are so heinous that legislatures have a moral responsibility to establish sentencing floors that do not involve probation or fines.”⁴⁷⁷

4. Effective Law Enforcement Tool that Induces Pleas and Cooperation

Many in the law enforcement community view mandatory minimum penalties as an important investigative tool. The threat of a mandatory minimum penalty gives law enforcement leverage over defendants, who may be encouraged to cooperate in exchange for lesser charges or safety valve and substantial-assistance benefits.⁴⁷⁸ Commissioner Raymond Kelly of the New York Police Department testified that the potential application of more severe penalties in federal court “has convinced a number of suspects to give up information.”⁴⁷⁹ Similarly, the Department of Justice views mandatory minimum penalties as an “essential” and “critical tool” in obtaining “cooperation from members of violent street gangs and drug distribution networks.”⁴⁸⁰