

# **The Rationale for Maintaining Mandatory Minimum Sentences**

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Mandatory minimum sentences are a well-established element of criminal justice policy that provides a standard for applying a penalty in advance. Such sentences emerged in the second half of the 20th century and were intended to combat certain threats, such as a low level of protection of the justice system against drug trafficking and violent crimes, and the inconsistency of court practice. Mandatory minimum sentences established a system in which judges must apply a specific punishment to the convicted criminal for certain crimes, narrowing down judicial discretion. The objective of this essay is to analyze and present arguments in favor of continuing the enforcement of mandatory minimum sentencing laws and their advantages concerning the arguments behind the enforcement of such laws. The current discussion of arguments in favor and against the continued enforcement of mandatory minimum sentencing laws will enable the identification of the strengths related to their enforcement. Therefore, the justifications and demands associated with mandatory minimum sentences will help to create the background for the enforcement of these laws and their continuance at the moment.

## **The Purpose of Mandatory Minimum Sentences**

The introduction of mandatory minimum sentences in the criminal justice system was based on the premise, rooted in crime deterrence theory, that certain types of offenses targeted by lawmakers were especially detrimental to social order and stability, and that certainty and uniformity were paramount in imposing statutory penalties on such conduct. Under this approach, the exercise of broad judicial discretion and the imposition of punitive outcomes that varied widely depending on the crime's jurisdiction would no longer be tolerated in the name of evenhandedness and fairness. The need for fairness in both the appearance and actual practice became a key consideration driving the statutory imposition of mandatory minimum sentences (Ashworth & Kelly, 2021). Therefore, the political and legislative process that birthed statutory mandatory minimum sentences would often align with high-profile crimes that gave rise to public and political pressure for a tougher legal response. Legislators believed that the enactment of mandatory minimum sentences would help deter potential criminals who were planning to commit similar offenses, and would also underscore taking its systemic

commitment to treating like conduct alike in a systematic manner notwithstanding the circumstances or the offender's characteristics.

Moreover, one of the key arguments in favor of remedying the use of mandatory minimum sentences is that they help to constrain judicial discretion, which has been perceived as the source of unequal outcomes for similar instances of criminal behavior. Variable sentencing in common law jurisdictions has long been associated with the idea that the same standard applicable to some crimes could be undermined by differences in interpretation, bias, or particular judicial practices in specific regions. Such variability, however, gives rise to perceptions and to actual inequity in the administration of justice, which mandatory minimum sentences seek to address through statutory penalties prescribed by the legislature. In other words, mandatory minimum penalties are supposed to normalize judicial decision-making so that any person found guilty of the same offense, no matter where in the jurisdiction or before whom, will be subject to similar consequences (Ashworth & Kelly, 2021). Therefore, such self-imposed structural restraint should boost confidence in the consistent application of justice and curb the perception of discretion as capricious or biased. Mandatory minimum sentences thus operate under the guiding premise of furthering punishment according to legislative expectations, contributing to values of fairness and transparency in the legal system

Moreover, legislators have framed the imposition of mandatory minimum sentences as a coherent justice policy measure that furthers the values of public safety and uniformity in justice. The creation of clear statutory sentences was intended to strengthen public assurance that similarly serious crimes would not be punished differently, which ultimately contributes to accountability and order in society. This explanation corresponds to the expectation that punishment will be predictable, stable, and equitable, described as significant for public confidence in the justice system. Although there are concerns that rigid statutory penalties could pose a threat to individual justice, legislators emphasize that mandatory minimum sentences support the broader outcome protecting communities from repeat offenders and limiting the effect of judicial discretion (Wallace, 2020). By giving priority to this goal, legislative actors stress that the legal system bears a responsibility to crime not only for a particular offender but also for sending a regular message about the expected standard of punishment, deterring future crimes and ensuring public safety.

## **Deterrence and Crime Reduction**

The main assertion of measures supporting the need for mandatory minimums is that these are decreasing crime through deterrence, broadly putting mandatory minimums are increasing the costs offenders will incur in committing offences. Supporters have claimed that if offenders know that they will receive a penalty especially if it is certain

and harsh and there are mandatory minimums set by statute for offences, they will not commit certain acts such as drug trafficking and violent crime. Evidence to date has been mixed with some studies showing that mandatory minimums have no deterrent effect on crimes and some are showing that offenders may change the nature of crime rather than decrease the crime rate levels (Tonry, 2019). In spite of this, the fact remains that mandatory minimums were created with the clear intent of delivering a message that certain crimes would attract non-negotiable mandatory minimum sentences with severe penalties that would alter the perceived costs versus benefits associated with committing the specified crimes. The issue of deterrence remains hotly debated and complex due to the fact that crime rates are affected by many social and legal factors making it difficult to directly attribute cause and effect.

Patterns of past behavior associated with the application of mandatory minimum sentences suggest that there were occasions when these laws correlated with significant declines in particular drug trafficking and violent gun crime. In the latter decades of the last century, numerous jurisdictions adopted laws that provided for excessively harsh minimum sentences for the possession of narcotics and their distribution. Empirical evidence was available about the immediate impact of these minimum penalties on the level of criminal behavior - both large-scale and in the form of accompanying offenses. In the same way, the statutes on the mandatory minimum terms for unlawful possession of firearms in certain cities often correlated with the decrease in gun violence committed by criminals, due to the likelihood of prison time for definite and severe periods (Tonry, 2019). The socioeconomic conditions that have prevailed in society suggest that within certain environments, where such a high probability of sanction was known, minimum sentences were perceived as a realistic threat that affected the criminal elite. The subsequent studies are a subject of debate among scholars regarding the duration and the level of 'minimum-signature impact', but these legislative and enforcement examples reflect the reality where mandatory minimum terms could prevent crime.

Nonetheless, the critics would also say that the actual impact of making the mandatory minimum sentence the even more certain element in punishing the criminal offender is restricted by the complexity of the actualities of crime and punishment behavior. They further argued that not all criminals perform actual cost-benefit analysis on every occasion before committing crimes. Hence, the idea that only with certainty of punishment can offenders change their calculus and behavior so dramatically that, when faced with certain and sufficiently harsh punishment, the current criminal activity seems much less attractive, is questionable. They further stressed that the uneven enforcement of the mandatory minimum sentence could sometimes curtail even the certain punishments. This sort of unpredictability detracts from the purpose of the policy (Wallace, 2020). However, it is still possible that the increase in the perceived probability

of the serious punishment could function as the behavioral control instrument for some specific types of crimes, particularly those committed by the offenders who have had previous contact with the criminal justice system. To summarize, although the general purpose of reducing crimes is not applicable to all, the idea that certain and extensively-publicized punishments influence the decision-making process is the underlying justification of the policy.

## **Consistency and Fairness in Sentencing**

One of the key aspects of mandatory minimum sentences across different jurisdictions is their significance to the fairness in the justice system, as they potentially reduce the risk of excessive unfairness when similar crimes receive different sentences. Mandatory minimum statutes impart fixed sentences, limiting the influence of some individual views of judges, which may lead to inconsistency and disparity in sentencing for similar behavior. As a result, defendants who engage in similar crimes are more likely to receive an appropriate response regardless of the geographical location of adjudication, thus ensuring increased uniformity in the system (Ashworth & Kelly, 2021). Such uniformity contributes to the public's perception of the system and justice system stakeholders to the fact that, whether to a victim or a defendant, the sentencing mechanism functions uniformly and consistently in different courts; thus, furthering its predictability. Such positive public perception helps mandatory minimum sentences prevent bias in sentencing based on geography or person and support a core value of the law that asserts the dependence of justice on no other factors than those set forth by the law.

Sentencing results were unpredictably variable across and within jurisdictions for lawful offenders before mandatory minimums were established. Judicial records and found writings suggest that judges enjoyed significant leeway in their choices of sentencing outcomes that would at times sentence allegedly similar offenders, in differing jurisdictions, or even before differing judges in the same jurisdiction, to markedly different sentencing outcomes. These differences gave rise to concern that subjective factors – the presiding judge's personal philosophical outlook, that was decided by community outlook in general, or local custom and practice – would too often determine the length of potentially equally culpable sentences for equally-undesirable criminal behavior. (Wallace, 2020). These disparities did the justice system little service in promoting faith in its considerably unbiased execution of criminal punishment methods. They also left potential wrongdoers and whether continuing or even properly-sentenced punishing results would be received for any given offense. The obvious disparity in defendant treatment obtained legislative response, notable in the establishment of mandatory minimums as a means of securing greater reliability in criminal sentencing results.

Another argument for mandatory minimum sentences is that they serve the purpose of standardization. It prevents conveyance of any bias or socio-economic prejudicial factor in the case. Standardization promotes justice for individuals as all offenders, no matter their race, gender, financial standing, reputation in the local area, etc., are subject to the same sentencing policy. Societal call for equality of justice is especially pertinent as growing evidence confirms that discretionary regimes have been, at times, implemented in a way that scales unfair benefits against certain communities, namely racial minorities and women (Ashworth & Kelly, 2021). The standardization introduced through legislative provisions does not distinguish on the basis of identity of the offender/his or her standing or the court delivering it. Like the intentionality of legislatures, emphasis on high standardization can combat injustice by exhibiting a confidence in the courts' application of similar penalties regardless of "who is sitting before the bench" and producing "broadly applicable norms" that apply to everyone uniformly. In turn, the statements give boost to societal demands for impartial and uniform justice to be delivered, thus enabling affronts to injustice stemming from equality gaps and discrepancies in the past and across systems.

### **Protection of Society and Victims**

The second primary rationale leveraged in support of the imposition of mandatory minimum sentences relates to the positive incapacitation of repeat offenders and violent criminals from society. To this end, statutory minimums are designed to protect potential victims from serious offenders or habitual criminals by ensuring the latter are provided with significant prison terms during which they will be unable to cause others harm or further engage in criminal behavior. In this sense, the mandatory statutory minimum laws act as a method of incapacitating repeat or violent offenders by removing the discretion of the judge in relation to those viewed as ongoing threats to other members of society (Wallace, 2020). In addition, proponents also assert that victims' rights and interests are also served in this context through the legislative imposition of minimum sanctions because there is an expectation that justice will hold defendants to account for serious or violent crimes to a certain degree and the minimum sanction, served in the event of conviction for example, will be viewed as part of ensuring this. Furthermore, it is suggested that this legislative response represents societal expectations that crime will not only be responded to upon its commission, but also expected to be proactively dealt with in relation to the possibility of further victimization through the predictable imposition of fixed sanctions.

Furthermore, the imposition of statutory minimums, and of mandatory minimum sentences in particular, provides comfort to victims and victim's relatives that offenders will serve a certain period of imprisonment. Such reassurance may be of great value to victims, their relatives, and even survivors after they have undergone painful

experiences. Certainty about the length of the sentence contributes to countering worries and anxiety that often accompany the judicial procedure and leading to greater prospects that victims' and their relatives will have a perception of the justice institution as respectful to their rights and sufferings. The guarantee of a minimum punishment enforced by statute contributes to closing the page of the traumatic event and delivering psychological peace to the victims' and offenders' relatives and to all the rest who were affected by the criminal behavior with the knowledge that the offender cannot escape punishment with the help of leniency of the judge or unpredictable decision. In addition legislatively specified minimum punishments might lessen hereinafter fears and worries about the possible consequences of pardoning by the judge or eligibility for parole that will affect the original judicial decision thus adding confidence to the partakers in the judicial activities that the justice institution is utterly capable to protect them (Wallace, 2020). By precisely fitting these provisions legislators demonstrate they are mindful of the welfare of the victims and represent the aims of returning public safety back to normal following the commission of a crime.

Thus, the categorical message that the mandatory minimum sentences send is closely connected with their preventive and expressive function. Legal structures always attempt to reflect the priorities of society and demonstrate that there are things that are absolutely unacceptable, and criminalized behavior has a specific place among them. Mandatory minimums in this sense indicate that there is a moral consensus about what certain behaviors mean — that they undermine basic values or the general public order, and there is the need to display a common understanding about it (Ashworth & Kelly, 2021). Moreover, this message is important for their role in the construction of the social norm. By conveying that certain behaviors are not only authorized but above all unacceptable, the statutory device supporting mandatory minimums has an impact on the community adherence to these bounds over time. It lets citizens know which behaviors are outside the tolerance zone, having a positive impact on the mechanism of crime prevention. In that sense, mandatory minimums do not dispense with the need that certain penalties are significant for illegal behavior. Instead, they put forward the prior reference point, strengthening their preventive and expressive function (Ashworth & Kelly, 2021).

### **Addressing Counterarguments**

Still, certain concerns have been repeatedly voiced about the nature of mandatory minimum sentences and their implementation, including their supposed inflexibility and tendency to deliver legal results insensitive to the specifics of a particular case. Critics insist that the rigid nature of fixed penalties may deliver outcomes perceived as unjust in situations when a statutory sanction is applied to an offender and their acts that do not warrant punishment of this severity, particularly in the presence of significant qualifying

factors that a prison judge or jury is not allowed to consider. The significance of these issues is often emphasized through illustrative instances of an offender receiving an extensive custodial sentence for minor participation in a criminal enterprise, which leads to allegations that the very nature of mandatory minimum sentences negates the ability of individualized sentencing to take into account the degree of offenders' culpability (Wallace, 2020). In these terms, it is unclear whether the provisions governing mandatory minimums can potentially prevent disproportionate punishments that may infringe on the fundamental justice principles. The continuance of such allegations underlines the existing controversy regarding the excess of punishment certainty over the necessity of judicial decision-making in the absence of universal or statutory legal rules.

Notwithstanding the continuing fears regarding the possible Draconian impact of the mandatory minimum laws on the minor offenders, the law sometimes also provides mechanisms to avoid such consequences. In some jurisdictions, laws contain provisions, such as sentencing guidelines or “safety valve” provisions, that permit judges to override the statutory minimum, provided that certain criteria defined by the legislature are satisfied, thereby allowing more room for individualized consideration. These provisions appeared, at least partly, in response to the criticism of the “one-size-fits-all” application of the fixed sentences that ignores the relevant disparity in the degree of culpability and the circumstances in each particular case, especially regarding the so-called minor actors in the larger criminal enterprises. The lessons learned from the American experience in the sentencing reform demonstrate that, although the mandatory minimum still exists, the adoption of these legislative exceptions just illustrates an understanding of the lawmakers of how important the proportionality is in the context of the sentencing policy (Tonry, 2019). Therefore, through these legislative developments, the law just attempts to illustrate the balancing of the importance of certainty and fairness in the sentencing process against the concerns raised by the very existence of the mandatory minimum sentences.

Further, adequate equilibrium between judicial discretion and legislative intent could be a cornerstone for public trust to be sustained in the justice system. Legislative branches provide mandatory minimum sentences for predictable and standard punishment in order to satisfy the public demand about avoidance of arbitrary or favoritism distribution. However, if the role of judges in consideration of particular facts and circumstances is entirely ceased, adapted public perception might envisage the justice system as too inflexible or unmindful of context. Limited judicial discretion along with legislative guides creates the illusion and sense of opportunity to conform justice to particular facts and circumstances of a case without violating the legislative intent (Ashworth & Kelly, 2021). To summarize, overall perception and credibility of the justice system could be achieved

through the combination of principled statutory regimes and sufficient judicial discretion to deliver justice in a proportional manner.

### **Case Studies and Real-World Examples**

Pioneering public policy studies are drawn from recent American experience, providing several cases serving to typify tangible benefits to public safety attributable to sentences operating as mandatory minimums. The American experience of the 1980s and 1990s bore witness to reductions in violence and drug offending in states like New York and Michigan where mandatory penalties for serious crime were implemented, widely publicized and uniformly enforced. Efforts to analyse the subsequent declines in repeat offending and the prevalence of criminal conduct targeted by these statutes have contributed to reports of enhanced public safety and security in the communities enjoying their benefits, and although subsequent analyses have demonstrated the associated difficulty in establishing a cause and effect relationship, advocates point to a consistency in practice with resultant reductions in repeat offenders and enhanced public confidence during periods of reform (Tonry, 2019). Cases like these further illustrate the ability of statutory minimums to act in a dual capacity, more than just a deterrent, but as an aid to preserving the principles of justice and predictability fundamental to the process of adjudicating serious crime.

A relevant example of crime reduction through mandatory minimum sentencing is the prosecution of the “Kingpin” drug trafficking organizations in New York City, as a criminal trend in the last decades of the twentieth century. Forces of law and order specifically targeted the masterminds of these networks for narcotics and drug divestiture, using various statutes demanding long prison terms upon conviction. Significant imprisonment was common for drug offenses requiring mandatory minimum sentencing, as detailed legislation constantly characterized the origins of serious and violent crimes (Tonry, 2019). The predictable, harsh penalty for certain statutes enabled the dismantling of entire criminal syndicates since lord characters were already headed for extended imprisonment, and those considering taking on similar positions were, therefore, destabilized. The presumed dangerously-punitive nature of drug case laws and sentencing also prospects past and present drug trafficking laborers, as potential recruits were allegedly positioned not to become enthralled in the militarized product. In this case, the deterrent effect is one of prohibitive permanence; there was marked reductions in the scope of enterprise narcotics trafficking through formulated as-needed enforcement measures during the timeframe; from a decade wherein prosecution remained a possibility, violent crime was statistically down along with narcotics deals.

Likewise, the use of mandatory minimums in firearm-related offenses has revealed how these laws can support outcomes that are fair and consistent enough to improve public



confidence in the justice system. In jurisdictions where non-discretionary minimums were implemented for unlawful possession of weapons, courts were required to impose the same penalty regardless of the offender's personal circumstances or the opinions of local decision-makers. This statutory consistency restricted the judicial discretion otherwise available in each case, guaranteeing that the same decision would be reached in the cases of all offenders, as predicated on clearly-defined legislative purpose (Wallace, 2020). Victims and the wider public were therefore able to witness penalties being imposed uniformly, which narrowed the opportunity for differential treatment, even in the guise of the "broad discretion" associated with judicial decision-making. Mandatory minimums thus provided transparency where none had previously existed, and demonstrated an effort to support both accountability and the fair distribution of justice.

### **Policy Considerations and Reform Proposals**

On the other hand, contemporary debates on the future of mandatory minimum sentences focus more on reform of this practice than its outright elimination. This position is backed by many current practitioners and scholars who outline certain initiatives aimed at reforming and "recalibrating" this branch of legislation. The core recommendation found in their proposals is to enhance the judges' discretion when applying mandatory minimums while upholding consistency and deterrent objectives. Most procedures recommended involve the regulation of the applicability of these minimums by restricting their effects to very serious crimes or introducing explicit exemptions for relatively more culpable cases. This recommended practice finds support in legislative discussions and procedural analyses, in which proportionate and case-specific aims are underlined as key objectives of recent reforms in sentencing practice (Ashworth & Kelly, 2021) . As the debate on mandatory minimums develops, adjustments aimed at achieving proportionate and case-specific objectives reflect the ideas of balanced punishment certainty and consideration of the individual nature of a case, which highlight a relatively modern understanding of this topic.

Similarly, some targeted reforms to increase judicial review or carve-out exemptions for certain non-violent offenders also have the potential to shift the effectiveness manifestly signaled by mandatory minimums in practice. Judicial discretion in certain contexts may allow for the courts to balance the proportionality of the response to particular cases involving minor actors or low-risk offenders with normative shifts in what constitutes an appropriate and just punishment. Increased avenues for review further seek to address longstanding critiques which have emerged around the rigidity of sentencing statutes, resulting in imposed sentences which may not be warranted in light of mitigating factors that have not been available for consideration in the past (Tonry, 2019). These reforms may ostensibly threaten to introduce some limited randomness, but the potential

reforms could be designed in a way that would protect these anchor goals of uniformity and deterrence through the deliberate targeting of exemptions for narrowly defined groups. The addition of calibrated randomness to statutory schemes provides a means for infusing some measure of equity and responsiveness into sentencing, which could bolster the legitimacy of the justice system without compromising the primary deterrent and consistency objectives underpinning mandatory minimums.

Regardless, the future of mandatory minimum sentences depends on the ability to maintain the necessary balance between the goals of public safety and fairness on a broader level in the justice process. On the one hand, it is evident that such statutes always operate to remove repeat criminals from the public; on the other hand, issues of proportionality and punishment individualization emerge. It is possible to counter those valid concerns with additional reforms, including narrow exceptions and improved review possibilities granted to judges, while mandatory minimums should continue serving their core goals of deterrent and normative functions. It is crucial to continue maintaining the stated balance to secure both public confidence in the justice system as a reliable actor and its ability to achieve principled results in complicated cases. The ability to secure strong safeguards for community safety while remaining flexible enough to respond to the justified claims for fairness and proportionality demands is what will ensure its ongoing relevance (Ashworth & Kelly, 2021).

## **Conclusion**

On the basis of the analysis provided above, it is possible to argue that the continued relevance and validity of the mandatory minimum sentences are grounded in their helpfulness in achieving consistency, deterrence, and public safety. Mandatory minimum laws create general expectations regarding punishment in the society and reduce disparities that were the result of the unauthorized discretion on the part of the judges or variations in the norms and customs in different districts. These laws help reinforce the values fundamental to the law and ensure that the outcomes of punishment and sentencing correspond to the common understanding of injustice in the society. Finally, accomplishment of practical goals, such as incapacitation of habitual or dangerous offenders and assurance of victims' family explain the continued necessity and use of mandatory minimum sentences in the context of criminal law. Therefore, the supportive position on the issue can be based on the argument that the mandatory minimum sentences remain relevant and valid since they could provide expected justified justice, disobeyed society, and autonomous faith in legal institutions.

## References

Ashworth, A., & Kelly, R. (2021). Sentencing and criminal justice. In *books.google.com*. Bloomsbury Publishing.

[https://books.google.com/books?hl=en&lr=&id=hwU0EAAQBAJ&oi=fnd&pg=PR5&dq=purpose+of+mandatory+minimum+sentences+in+criminal+justice&ots=yksWQARLWk&sig=DpPSkb1VS\\_CuIS8XuGRyu-XxJVM](https://books.google.com/books?hl=en&lr=&id=hwU0EAAQBAJ&oi=fnd&pg=PR5&dq=purpose+of+mandatory+minimum+sentences+in+criminal+justice&ots=yksWQARLWk&sig=DpPSkb1VS_CuIS8XuGRyu-XxJVM)

Tonry, M. (2019). Fifty years of American sentencing reform: Nine lessons. *Journals.Uchicago.Edu*, 48. <https://doi.org/10.1086/701798>

Wallace, H. S. (2020). Mandatory minimums and the betrayal of sentencing reform: A legislative Dr. Jekyll and Mr. Hyde. In *The American Court System* (p. 11). taylorfrancis.com. <https://doi.org/10.4324/9781315051482-17>