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# Limiting Judges with Minimum Sentences in America



## A Report for the Ohio Criminal Justice Recodification Committee

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# Overview

Beginning with the 1986 passage of the Anti-Drug Abuse Act targeting the crack cocaine epidemic sweeping American cities, Congress and state legislatures have mandated long-term prison sentences for almost all drug crimes to deter the spread of drug trafficking and addiction. Federal drug sentences begin at a minimum of five years in prison without parole, and judges have no discretion to issue lower sentences.

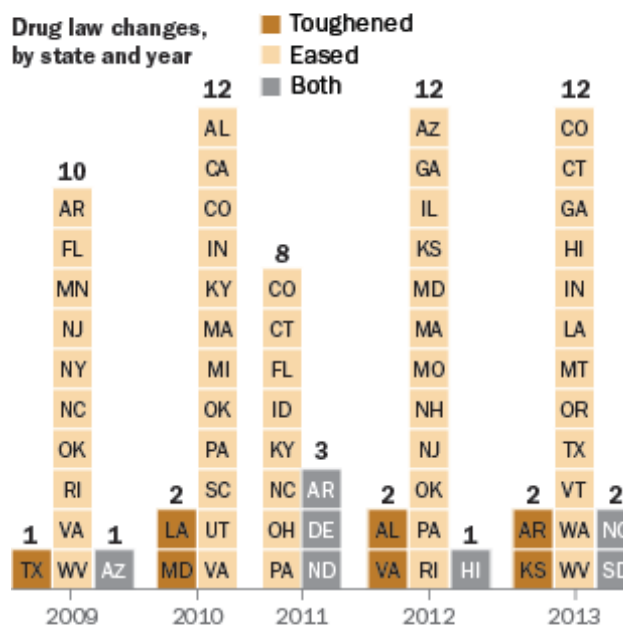
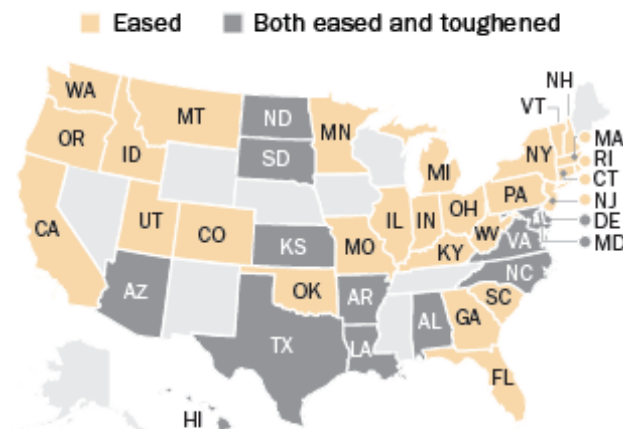
Drug offenders form 60% of the federal prison population, up from 38% in 1986 when mandatory sentencing laws were passed<sup>1</sup>, and more than 200,000 American college students have lost their financial aid eligibility due to prison time from mandatory minimum sentences<sup>2</sup>. In 2010, more than 25% of 73,239 federal convictions required a mandatory minimum sentence<sup>3</sup>.

Mandatory minimum sentencing distorts the legal system because prosecutors use unrealistically long sentences to pressure drug criminals to plead guilty<sup>4</sup>.

Recently the trend of greater punishments has gone into reverse, with 67% of Americans saying that treatment, not prosecution, should be how the United States handles illegal drug users, according to a Pew Study<sup>5</sup>. The Supreme Court ruled that mandatory death penalties are unconstitutional because they fail to take into account the character of the defendant and his or her record<sup>6</sup>.

After decades of tough sentencing laws in the “War

## Changes to State Drug Laws, 2009-2013



Source: Pew Research Center analysis of data from National Conference of State Legislatures and Vera Institute of Justice  
PEW RESEARCH CENTER

<sup>1</sup> [Mandatory Sentencing Was Once America's Law-And-Order Panacea. Here's Why It's Not Working](#), Families Against Mandatory Minimums  
<sup>2</sup> [Capricious Mandatory Minimum Sentencing Hurting America's Future](#), Ecominoes, March 2014  
<sup>3</sup> [Cruel and Unusual: U.S. Sentencing Practices in a Global Context](#), University of San Francisco School of Law, May 2012  
<sup>4</sup> [The Out Of Control War On Drugs: How Sentencing Rules Force Defendants To Plead Guilty](#), Forbes, December 2013  
<sup>5</sup> [Feds May Be Rethinking the Drug War, But States Have Been Leading the Way](#), Pew Center, April 2014  
<sup>6</sup> [Cruel and Unusual: U.S. Sentencing Practices in a Global Context](#), University of San Francisco School of Law, May 2012

on Drugs”, in 2013 Attorney General Eric Holder announced that the federal government would no longer require mandatory minimums in all cases, and would release some nonviolent elderly prisoners<sup>7,8</sup>.

States have gone even further. Between 2009 and 2013, 40 states took some action to ease their drug laws<sup>9</sup>. As a result 31 states have seen prison rates decline from 447 to 413 per 100,000 people<sup>10</sup>.

## Recommendation

Mandatory minimums do not serve the traditionally accepted goals of punishment. All theories of retribution require that punishment be proportionate to the gravity of the offense, and any decent retributive theory demands an upper sentencing limit. The notion of proportionality between crime and punishment expresses a common principle of justice, a limitation on government power that has been recognized throughout history and across cultures, and a precept “deeply rooted and frequently repeated in common-law jurisprudence.”<sup>11</sup>

Mandatory minimums may not fulfill consequentialist goals either, by failing to provide effective, efficient deterrence or meaningful incapacitation. Clarity and certainty of punishment are not synonymous with deterrence, which requires that a defendant not only know the rule, but also believe that the costs outweigh the benefits from violating the law and then apply this understanding to decision-making at the time of the crime. Most offenders neither perceive this balance of costs and benefits nor follow the rational actor model.<sup>12</sup>

Mandatory minimums generate arbitrary outcomes as well. They can have a “cliff effect” by drawing seemingly trivial lines that carry huge consequences. Mandatory minimums effectively transfer sentencing authority from trial judges to prosecutors, who may pre-set punishment through creative investigative and charging practices, like stacking charges, producing troubling punishment differentials among offenders with similar culpability.<sup>13</sup>

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<sup>7</sup> [Holder Announces Federal Drug-Sentencing Changes Already in Many States](#), The Pew Charitable Trusts, August 2013

<sup>8</sup> [Attorney General Eric Holder Delivers Remarks at the Annual Meeting of the American Bar Association's House of Delegates](#), The United States Department of Justice, August 2013

<sup>9</sup> [Trends in Sentencing and Corrections: State Legislation](#), National Conference of State Legislatures, August 2013.

<sup>10</sup> [Feds May Be Rethinking the Drug War, But States Have Been Leading the Way](#), Pew Center, April 2014

<sup>11</sup> [Mandatory Minimum Sentencing](#), Cato Institute

<sup>12</sup> [Mandatory Minimum Sentencing](#), Cato Institute

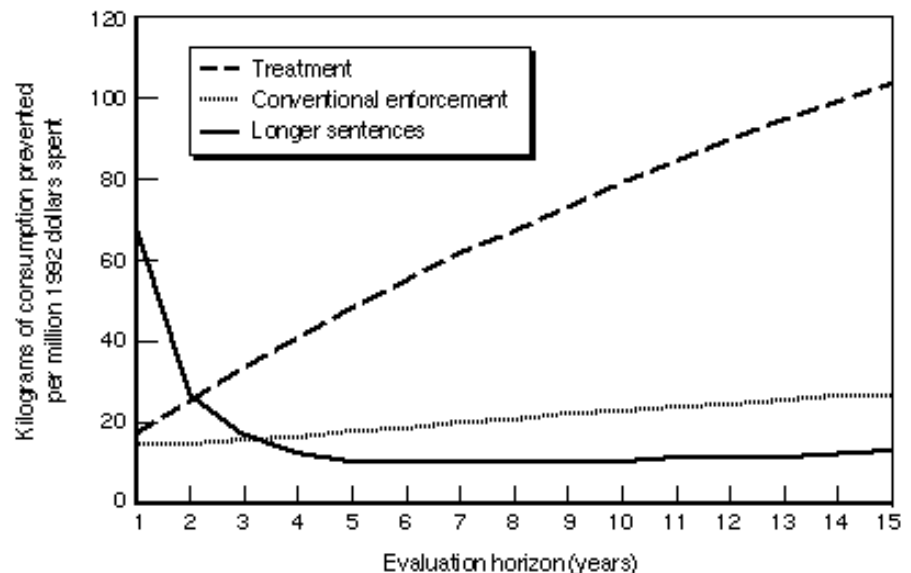
<sup>13</sup> [Mandatory Minimum Sentencing](#), Cato Institute

# Unintended Consequences

Minimum sentencing laws set a lower limit for penalties that are oftentimes more harmful than helpful and leave courts with no discretion. Guiding courtrooms towards consistent sentencing is a good goal, but the execution can go too far because district attorneys gain favor with their communities by being tough on crime.

This creates unintended consequences:

- Protecting a community by locking up its criminals must be balanced against a system that should better correct and reintegrate offenders into the community. Reformation should be the goal of criminal penalties.
- Longer sentences for nonviolent crimes needlessly destroy families and minority communities, with propagation effects as children grow up without fathers and minorities are further stereotyped by criminal misdeeds they want to put in the past but can't. A greater percentage of American black men are imprisoned than in South Africa at the height of Apartheid<sup>14</sup>.
- Laws that require mandatory minimum sentences create a Soviet-style bureaucracy where power is taken away from judges to make smart decisions on a case-by-case basis. They transfer sentencing authority from trial judges to prosecutors, who may effectively assign punishments through creative charges that trigger minimums, a "cliff effect" that gives similar crimes very different sentences<sup>15</sup>.
- Mandatory minimum sentences are the least cost-effective way to reduce drug crime, compared to conventional police enforcement or treatment centers<sup>16</sup>.
- Every new politician, wishing to prove his or her value, wants to contribute to sentencing laws, leading to a ratcheting up effect as they get tougher and tougher, to absurd levels.



<sup>14</sup> [Major Progress for Fixing Cruel Drug War Prison Sentences](#), Alternet, January 2014

<sup>15</sup> [Mandatory Minimum Sentencing Provisions Under Federal Law](#), CATO Institute, May 2010

<sup>16</sup> [Are Mandatory Minimum Drug Sentences Cost-Effective?](#) Rand Corporation, 1997

- There are diminishing returns to the value of sentencing a criminal to jail for longer times, for justice, for correction, and for rehabilitation. A study found that a 10% increase in incarceration only resulted in reduced recidivism rates of 0.1% to 4%<sup>17</sup>. Another study showed that reducing sentences did not lead to more crime<sup>18</sup>.
- The long jail times that result as a consequence of minimum sentencing can create such a powerful threat that prosecutors can use them to coerce accused defendants into accepting plea bargains.
- They punish low-level offenders as much or even more than those at the top of the drug trade<sup>19</sup>.

As a result, some newsworthy cases of injustice have embarrassed US states and the federal government, drawing attention to less notable but similarly unfair sentencing that is ubiquitous across America.

More than half of the 219,000 federal prisoners are serving time for drug offenses<sup>20</sup>. Some former federal judges regret their rulings. In 2002, a man in Utah got 55 years in federal prison for three marijuana sales<sup>21</sup>, which the judge openly regrets. U.S. District Judge John Gleeson, who came to early success as a prosecutor, says “Mandatory minimums, to some degree, sometimes entirely, take judging out of the mix. That's a bad thing for our system.”

In 2008, a man firing warning shots to guard his daughter from abuse<sup>22</sup>, and in 2013 a woman firing warning shots against an abusive husband<sup>23</sup> were each sentenced to 20 years because of mandatory minimum sentences in Florida.

A woman in Iowa who was simply the girlfriend of a gun-owning drug dealer was sentenced to 15 years in federal prison, 3 years longer than the boyfriend got<sup>24,25</sup>.

A pregnant woman in Alabama with no prior convictions was sent to prison for 30 years in 1990 for dealing drugs for a month as the helper to her boyfriend<sup>26</sup>.

A single mom faced 3 years in prison in 2014 for the honest mistake of carrying a handgun across state lines, which she voluntarily reported to a police officer when pulled over for an unsafe lane change, because of New Jersey mandatory minimum laws<sup>27</sup>. She was only released with a governor's pardon<sup>28</sup>.

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<sup>17</sup> [Mandatory Minimum Sentences: Handcuffing the Prisoner or the Judge?](#) American Judges Association Annual Educational Conference, October 2014

<sup>18</sup> [Fewer Prisoners, Less Crime: A Tale of Three States](#), The Sentencing Project, July 2014.

<sup>19</sup> [Mandatory Sentencing Was Once America's Law-And-Order Panacea. Here's Why It's Not Working](#), Families Against Mandatory Minimums

<sup>20</sup> [Major Progress for Fixing Cruel Drug War Prison Sentences](#), Alternet, January 2014

<sup>21</sup> [Former Federal Judge Regrets 55-Year Marijuana Sentence](#), ABC News Nightline, February 2015

<sup>22</sup> [Mandatory Minimum Sentencing: Injustice Served?](#) CBS News, October 2014

<sup>23</sup> [Fla. Mom Gets 20 Years for Firing Warning Shots](#), CBS News, July 2013

<sup>24</sup> [Mandy Martinson](#), Families Against Mandatory Minimums (FAMM)

<sup>25</sup> [Widower's Lament: Change Sentencing Laws](#), The Des Moines Register, May 2015

<sup>26</sup> [The Long, Slow Push to Prison Sentencing Reform](#), MSNBC, April 2014

<sup>27</sup> [Single Mom Faces Mandatory Minimum Three Years In Prison For Apparent Inadvertent Gun Violation](#), ThinkProgress, July 2014.

<sup>28</sup> [Gov. Christie Grants Pardon to Pistol-Packing PA](#). Mother Shaneen Allen, NJ.com, April 2015

An Illinois cancer survivor who purchased marijuana by ground mail from California was given 12 years in February 2014<sup>29</sup>.

A 17 year-old student with special needs was given prison time after being pressured by an undercover police officer to sell marijuana<sup>30</sup>.

A college student in Alabama was sentenced to life in prison for being present at a drug transaction<sup>31</sup>.

A single mother in Florida was sentenced to life after allowing her boyfriend to store cocaine at her house<sup>32</sup>, and only released with a commutation from President Obama.

Clearly judges need to be given more discretion in how sentences are given. What follows is a study of state, federal, and foreign laws relating to minimum sentencing, showing the wide variety of ways that differing courts handle these issues.

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<sup>29</sup> [David Camic: Sentencing reform needed in Illinois](#), The State Journal-Register, May 2015

<sup>30</sup> [Parents of Autistic Teen Entrapped by Cops Sue School District](#), Drug Policy Alliance, October 2013

<sup>31</sup> [Clarence Aaron](#), Families Against Mandatory Minimums

<sup>32</sup> [Stephanie George](#), Families Against Mandatory Minimums

# US States

At least 16 of the 24 states with three-strikes laws since the 1990s have since given judges more discretion to narrow crimes that count as a strike or to reduce minimum sentences<sup>33</sup>. Prisoners released in 2009 had spent nine months more time in jail than prisoners released in 1990, costing states more than \$10 billion, more than half of which for non-violent offenders<sup>34</sup>.

## Alabama

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In 2006, the Alabama Sentencing Commission called for reform on mandatory minimums<sup>35</sup>.

## Arkansas

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In 2011, a new bill in Arkansas reduced mandatory minimum penalties for drug possession and drug distribution<sup>36,37</sup>.

## California

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Proposition 36, passed by voters in 2012, modified California's "three strikes" law, which requires a life sentence for a third offense, even if it was minor. Retroactively now the third offense must be serious<sup>38</sup>. Prisoner releases reduce overcrowding and will save the state \$70-\$100 million annually.

## Colorado

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Colorado S 96 (2011): removes the requirement that drug possession transforms an offender into a habitual offender, which triggers mandatory minimums<sup>39</sup>.

## Connecticut

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Connecticut lawmakers in 2001 allowed courts to relax mandatory minimum sentencing laws for sale or possession of drugs if there is "good cause"<sup>40,41</sup>.

A review of mandatory minimum sentences in Connecticut was published by the state in 2005<sup>42</sup>.

## Delaware

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A 2011 Delaware law, HB 19 (2011), eliminated mandatory minimum sentences for some first-time drug offenders and reduced minimum prison sentences for drug felonies<sup>43,44</sup>.

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<sup>33</sup> [National Conference of State Legislatures](#), E-Bulletin, October 2010

<sup>34</sup> [Rethinking 'Tough on Crime'](#), The Crime Report, June 2012

<sup>35</sup> [Addressing the Crisis: Charting the Course for Reform](#), Alabama Sentencing Commission

<sup>36</sup> [Arkansas Sentencing Commission](#)

<sup>37</sup> [Sentencing Standards Grid - Offense Seriousness Rankings and Related Material](#), Arkansas Sentencing Commission, December 2011

<sup>38</sup> [Prop. 36 Passes; Will Modify California Three Strikes Law](#), NBC Bay Area, November 2012

<sup>39</sup> [Playbook for Change? States Reconsider Mandatory Sentences](#), Vera Institute of Justice, April 2014

<sup>40</sup> [Malloy proposes "Second-Chance" Measures to Reform Connecticut Criminal Justice](#), New Haven Register, February 2015

<sup>41</sup> [Playbook for Change? States Reconsider Mandatory Sentences](#), Vera Institute of Justice, April 2014

<sup>42</sup> [Mandatory Minimum Sentences](#), 2005



## Florida

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In Florida, a conviction for aggravated assault involving a firearm means an automatic 20 years<sup>45</sup>. It doesn't matter whether the defendant is a first-time offender or whether any victim was injured. Florida's first mandatory minimum sentencing laws were enacted in 1979 as a response to the Miami Drug Wars, but then took off in the 1990s<sup>46</sup>.

## Georgia

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Georgia's 2012 prison reform law, HB 1176, reduced the mandatory sentence for possession of very small amounts of drugs<sup>47</sup>. In 2013, Georgia law HB 349 gave judges the leeway to reduce sentences below mandatory minimums for trafficking, sex offenders, kidnapping, and repeat offenders<sup>48,49</sup>.

## Hawaii

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Hawaii SB 68 (2013) <sup>50</sup>allows courts to waive mandatory minimums for drug offenses, except when the drugs are dangerous, involve children, or the offender is habitual.

## Indiana

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Indiana HB 1006 (2013 reduces the size of the school zone for drug offenses that trigger mandatory minimums<sup>51</sup>.

## Iowa

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In 2014, the Iowa Supreme Court strikes down juvenile mandatory sentencing laws as unconstitutional<sup>52</sup>. Those serving mandatory sentences had higher recidivism rates than offenders who were waived, according to an Iowa study<sup>53</sup>.

## Kentucky

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Kentucky's 2011 law, HB 463, reduces the school zones that trigger mandatory drug sentences<sup>54</sup>.

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<sup>43</sup> [House Approves Overhaul of Delaware Drug Laws](#), Newark Post, March 2011

<sup>44</sup> [Playbook for Change? States Reconsider Mandatory Sentences](#), Vera Institute of Justice, April 2014

<sup>45</sup> [Mandatory minimum sentencing: Injustice served?](#) CBS News, October 2014

<sup>46</sup> [Mandatory Minimum Sentences: Handcuffing the Prisoner or the Judge?](#) American Judges Association Annual Educational Conference, October 2014

<sup>47</sup> [Governor to Sign Sweeping Justice Reform Bill](#), AJC.com, May 2012

<sup>48</sup> [HB 349 Signed into Law in 2013](#), Black Law Offices, May 2013

<sup>49</sup> [Playbook for Change? States Reconsider Mandatory Sentences](#), Vera Institute of Justice, April 2014

<sup>50</sup> *ibid*

<sup>51</sup> *ibid*

<sup>52</sup> [Iowa Supreme Court Strikes Down Mandatory Minimum Sentences for Children](#), Equal Justice Initiative, August 2014

<sup>53</sup> [Final Report: Outcomes of Mandatory Minimum Sentences for Drug Traffickers](#), Iowa Department of Human Rights and Division of Criminal and Juvenile Justice Planning, October 2011

<sup>54</sup> *ibid*

## Louisiana

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In 2012, Louisiana HB 1068 allowed prosecutors to waive mandatory minimum prison terms for non-violent, non-sex offenses<sup>55,56</sup>. Louisiana has the highest incarceration rate in the country, with 868 of every 100,000 of its citizens in prison, according to a study giving statistics and arguing for reform in 2013<sup>57</sup>.

## Maine

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Maine LD 856 reduced the mandatory minimum sentence for murder from 25 to 20 years in 2003, and allowed courts to ignore mandatory prison sentences if they would be a “substantial injustice”<sup>58</sup>.

## Massachusetts

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Massachusetts H 3818 (2012) reduced mandatory minimum sentences for some drug offenses and increased the threshold for trafficking offenses<sup>59</sup>. In 2010, the state made non-violent drug offenders serving mandatory minimums eligible for parole after serving half of their sentences<sup>60</sup>.

The Massachusetts Sentencing Commission published a survey of sentencing practices in Massachusetts in 2012<sup>61</sup>.

## Michigan

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In 2002, Michigan laws PA 665, PA 666, and PA 670 eliminated mandatory minimums for drug penalties, increased the quantity threshold for drug offenses, eliminated lifetime probation, and removed mandatory consecutive sentencing<sup>62</sup>.

In 2010, the state further loosened parole eligibility to drug offenders.

## Minnesota

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Minnesota SF 802 (2009) permitted courts to ignore mandatory minimums in drug cases<sup>63</sup>.

## Missouri

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Missouri SB 628 (2012) reduced the quantity of drugs that trigger a mandatory minimum sentence<sup>64</sup>.

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<sup>55</sup> [Louisiana Legislature Takes Steps Toward Reducing Incarceration for Nonviolent Crimes](#), The Times-Picayune, June 2012

<sup>56</sup> [Playbook for Change? States Reconsider Mandatory Sentences](#), Vera Institute of Justice, April 2014

<sup>57</sup> [Smart on Sentencing, Smart on Crime: An Argument for Reforming Louisiana’s Determinate Sentencing Laws](#), Reason Foundation, Pelican Institute for Public Policy, and Texas Public Policy Foundation, October 2013

<sup>58</sup> [Maine OUI/DUI Fines & Penalties](#), Driving Laws Published by Nolo

<sup>59</sup> [MA Becomes Latest State to Enact 3-Strikes Law](#), Experienced Criminal Lawyers, August 2012

<sup>60</sup> [Massachusetts Approves Some Drug Sentencing Reforms](#), StopTheDrugWar.org, August 2010

<sup>61</sup> [Survey of Sentencing Practices FY 2011](#), Massachusetts Sentencing Commission

<sup>62</sup> [FAMM’s guide to the Michigan sentencing reforms](#), Families Against Mandatory Minimums, 2014

<sup>63</sup> [Model Legislation for State Sentencing Reform](#), The Sentencing Project, December 2011

<sup>64</sup> [Recent State-Level Reforms to Mandatory Minimum Laws](#), Families Against Mandatory Minimums, June 2013

## **Nevada**

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Nevada repealed mandatory sentencing enhancements in 2007<sup>65</sup> and expanded “good time” eligibility for certain offenses. Nevada law AB 239 (2009) redefines what makes an offender a “habitual criminal”, a trigger for mandatory sentencing<sup>66,67</sup>.

## **New Hampshire**

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In 2015 New Hampshire is considering removing mandatory minimum laws for nonviolent offenders<sup>68</sup>.

## **New Jersey**

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New Jersey SB 1866 and A 2762 (2010) allowed judges to ignore mandatory minimum sentences for defendants convicted of drug-free “school zone” violations<sup>69,70</sup>.

## **New Mexico**

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In 2002, New Mexico passed HB 26, which repealed the mandatory requirement for prosecutors to charge defendants with a prior drug conviction as habitual offenders<sup>71</sup>.

## **New York**

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New York law S 56-B (2009) repealed most mandatory minimum sentences for drug offenses<sup>72</sup>, whose impact was studied in a state report in 2014.<sup>73</sup>

## **North Dakota**

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North Dakota HB 1364 (2001) repeals mandatory minimums for first-time drug offenders<sup>74</sup>.

## **Ohio**

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A new 2011 law in Ohio, HB 86, repealed mandatory minimum sentences for certain drug offenders<sup>75,76</sup>.

Ohio also imposes mandatory prison terms in some felony cases. Such cases include aggravated murder, murder, rape or attempted rape of a child under the age of 13, some sexual offenses, possession of a firearm during felony, and others. In such cases, a court must impose a specific penalty or penalty range.

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<sup>65</sup> *ibid*

<sup>66</sup> [Summary of Selected 2009 Legislation Relating to Courts, Judicial Procedure and Criminal Justice, Nevada Lawyer Magazine, October 2012](#)

<sup>67</sup> [Playbook for Change? States Reconsider Mandatory Sentences](#), Vera Institute of Justice, April 2014

<sup>68</sup> [N.H. House Finance Committee Looks to Pull Back Mandatory Minimum Sentences for Nonviolent Offenders, Concord Monitor, March 2015](#)

<sup>69</sup> [Winning Drug Free Zone Reform in New Jersey](#), Drug Policy Alliance.

<sup>70</sup> [Playbook for Change? States Reconsider Mandatory Sentences](#), Vera Institute of Justice, April 2014

<sup>71</sup> [State of the States: Drug Policy Reforms: 1996-2002](#), Drug Policy Alliance, September 2003

<sup>72</sup> [A Quick Guide to Rockefeller Drug Law Reform 2009](#), New York State Association of Criminal Defense Lawyers, 2009

<sup>73</sup> [2009 Drug Law Changes, 2014 Update](#), Division of Criminal Justice Services, May 2014

<sup>74</sup> [Playbook for Change? States Reconsider Mandatory Sentences](#), Vera Institute of Justice, April 2014

<sup>75</sup> [Enacted House Bill 86 Felony Sentencing & Juvenile Justice](#), Enactment News, July 2011

<sup>76</sup> [Playbook for Change? States Reconsider Mandatory Sentences](#), Vera Institute of Justice, April 2014

For example, someone convicted of aggravated murder must serve at least 20 years in prison before becoming eligible for parole; while someone who uses, displays, or brandishes a firearm during the commission of certain crimes faces a mandatory minimum of three years in prison.<sup>77</sup>

## Chapter 2929: PENALTIES AND SENTENCING

### 2929.01 Penalties and sentencing general definitions.

(T) "Mandatory jail term" means the term in a jail that a sentencing court is required to impose pursuant to division (G) of section 1547.99 of the Revised Code, division (E) of section 2903.06 or division (D) of section 2903.08 of the Revised Code, division (E) or (G) of section 2929.24 of the Revised Code, division (B) of section 4510.14 of the Revised Code, or division (G) of section 4511.19 of the Revised Code or pursuant to any other provision of the Revised Code that requires a term in a jail for a misdemeanor conviction.

## Oklahoma

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Oklahoma's Justice Safety Valve Act in 2015 allows judges to ignore mandatory minimum sentencing that would post an injustice to the defendant<sup>78</sup>.

## Oregon

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Prisons are overfunded in Oregon, largely because of mandatory minimum sentencing that voters approved, for example passing Measure 11 in 1994. Now the state Department of Corrections is \$700 million per year, the state's largest expenditure except for schools and human services.

## Pennsylvania

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A Pennsylvania Superior Court found in 2014 that mandatory minimum sentencing for drug laws involving firearms is unconstitutional<sup>79</sup>.

## Rhode Island

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Rhode Island's SB 39AA (2009) repealed all mandatory minimum sentencing laws for drug offenses<sup>80,81</sup>.

## South Carolina

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S 1154, a 2010 South Carolina law removed a 10-year mandatory minimum sentence for school zone violations in drug offenses, restored the possibility of probation for drug possession convictions, and eliminated mandatory minimum sentences for first convictions of simple drug possession<sup>82,83</sup>.

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<sup>77</sup> [Ohio Felony Crimes by Class and Sentences](#), NOLO

<sup>78</sup> [Oklahoma Governor Signs Bill to Give Judges More Discretion in Sentencing](#), The Oklahoman, May 2015.

<sup>79</sup> [Pennsylvania Superior Court Declares Mandatory Minimum Sentences Unconstitutional for Drug-Related Gun Charges](#), The Times Herald, August 2014

<sup>80</sup> [Criminal Justice Trends: Key Legislative Changes in Sentencing Policy, 2001–2010](#), Vera Institute of Justice, September 2010

<sup>81</sup> [Playbook for Change? States Reconsider Mandatory Sentences](#), Vera Institute of Justice, April 2014

<sup>82</sup> [What Florida Can \(And Should!\) Learn From South Carolina](#), Families Against Mandatory Minimums, March 2015

<sup>83</sup> [Playbook for Change? States Reconsider Mandatory Sentences](#), Vera Institute of Justice, April 2014

# US Federal Government

From our nation's founding, judges had discretion over sentencing, until the United States Sentencing Commission was created in 1984 to create guidelines<sup>84</sup>. Then in 1986 the Anti-Drug Abuse Act and Armed Career Criminal Act created severe mandatory minimums for drug and weapon offenses. These were partly motivated by skewed racial perceptions of crime. White respondents in a 2010 survey overestimated by 30% the percent of burglaries, drug sales, and juvenile crimes committed by African Americans<sup>85</sup>. In fiscal year 2010, 49% of drug offenders were assigned a ten-year mandatory minimum sentence. Another 42.4% were assigned a mandatory 5-year sentence<sup>86</sup>.

These were criticized by the US Sentencing commission as early as 1991, whose report indicated that all defense lawyers, and nearly half of prosecutors had objections to mandatory minimums<sup>87</sup>.

This began two decades of prison overcrowding and overpunishment. Between 1980 and 2010, state incarceration rates for drug crimes increased ten times, and the federal population of drug offenders grew by a factor of twenty<sup>88</sup>. Some 79% of prisoners serving life without parole were sentenced for nonviolent drug crimes<sup>89</sup>.

Studies have shown that mandatory penalties have either no deterrent to crime or short-term effects only<sup>90</sup>, and do nothing to reduce drug dealing activity<sup>91</sup>. Mandatory minimums worsen disparities between white and minority offender punishments, compared to when judges have discretion<sup>92</sup>.

This began to be alleviated after the Supreme Court's 2005 decision in *Booker v. United States*, which permitted federal judges the freedom to set sentences regardless of mandatory minimums<sup>93</sup>. Presently 25% percent of offenders receiving sentences below the minimum, but with minorities receiving much higher sentences<sup>94</sup>. Families Against Mandatory Minimums has compiled a complete list of all federal mandatory minimum sentencing laws<sup>95</sup>.

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<sup>84</sup> [Reconsidering Mandatory Minimum Sentences: The Arguments for and Against Potential Reforms](#), Heritage Foundation, February 2014.

<sup>85</sup> [Race and Punishment: Racial Perceptions of Crime and Support for Punitive Policies](#), The Sentencing Project, September 2014.

<sup>86</sup> [Mandatory Minimums & the Federal Sentencing Guidelines](#), DrugWarFacts.org

<sup>87</sup> [Drug Laws and Snitching: A Primer](#), Frontline.

<sup>88</sup> [The Nation's Shame: The Injustice of Mandatory Minimums](#), Rolling Stone, October 2014

<sup>89</sup> [A Living Death: Life without Parole for Nonviolent Offenses](#), American Civil Liberties Union, November 2013

<sup>90</sup> [The Consequences of Mandatory Minimum Prison Terms: A Summary of Recent Findings](#), Federal Judicial Center, Federal Judicial Center, 1994.

<sup>91</sup> [Population Growth in U.S. Prisons, 1980-1996](#), Alfred Blumstein & Allen J. Beck, Crime & Just. 17, 57 (1999),

<sup>92</sup> [Racial Disparities under the Federal Sentencing Guidelines: The Role of Judicial Discretion and Mandatory Minimums](#), Northwestern University, 2012

<sup>93</sup> [Judges Use 'Booker' Ruling for Sentencing Flexibility](#), National Public Radio, May 2005

<sup>94</sup> [Mandatory Minimum Penalties: Conclusions and Recommendations](#), 2011

<sup>95</sup> [Federal Mandatory Minimums](#), Families Against Mandatory Minimums, August 2013

According to the Congressional Research Service, mandatory minimums have significantly contributed to overcrowding and racial disparities in the Bureau of Prisons (BOP), which operates at 36% overcapacity<sup>96</sup>. More than half of federal prisoners are serving time for a drug law violation<sup>97</sup>.

Then in 2014 the Senate Judiciary Committee passed the Smarter Sentencing Act, which was introduced to Congress in February 2015<sup>98</sup>. The new law would give federal judges more discretion in ignoring mandatory minimums for non-violent drug offenders<sup>99</sup>. This is needed because of current laws such as the Armed Career Criminal Act (ACCA, 18 U.S.C. § 924(e)), which assigns a 15-year mandatory minimum sentence for gun owner with three prior convictions for drug trafficking or violent felonies, even if these are very old, nonviolent, minor, resulted from a drug addiction, or resulted in no prison time<sup>100</sup>.

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<sup>96</sup> [The Federal Prison Population Buildup: Overview, Policy Changes, Issues, and Options](#), Congressional Research Service, 2014

<sup>97</sup> [Major Progress for Fixing Cruel Drug War Prison Sentences](#), Alternet, January 2014

<sup>98</sup> [U.S. House and Senate Reintroduce an \\*Even Smarter\\* Smarter Sentencing Act](#), Families Against Mandatory Minimums, February 2015.

<sup>99</sup> [Lee, Durbin Introduce Smarter Sentencing Act of 2015](#), Press Release

<sup>100</sup> [Gun Mandatory Minimum Sentences](#), Families Against Mandatory Minimums

# Foreign Countries

## Australia

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Mandatory sentencing laws in Australia were introduced in the later 1990s for home burglars, and more recently include in 2011 a mandatory life sentence for murdering a police officer. A complete study was produced by the NSW Parliamentary Research Service<sup>101</sup>.

## Canada

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The British Columbia Civil Liberties Union produced a report on mandatory minimum sentences in Canada in 2014<sup>102</sup>.

## Sweden

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Sweden's criminal justice minimizes short-term prison sentences wherever possible by using community-based measures, with only 15% sent to prison and the remainder given parole, suspended sentence, or fines<sup>103</sup>. This reform that has been so effective that Sweden has been closing prisons<sup>104</sup>.

## Global

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Some 137 countries (81%) have a mandatory minimum sentence requirement, but 31 allow this to be lowered, and more allow other forms of mitigation<sup>105</sup>.

A report by the Law Library of Congress compares sentencing guidelines in Australia, England and Wales, India, South Africa, and Uganda<sup>106</sup>.

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<sup>101</sup> [Mandatory Sentencing Laws](#), NSW Parliamentary Research Service, January 2014

<sup>102</sup> <https://bccla.org/wp-content/uploads/2014/09/Mandatory-Minimum-Sentencing.pdf>

<sup>103</sup> [The Swedish Prison System](#), Ministry of Justice

<sup>104</sup> [Why is Sweden Closing its Prisons?](#) The Guardian, December 2013

<sup>105</sup> [Cruel and Unusual: U.S. Sentencing Practices in a Global Context](#), University of San Francisco School of Law, May 2012

<sup>106</sup> [Sentencing Guidelines in Australia, England and Wales, India, South Africa, and Uganda](#), The Law Library of Congress, April 2014