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Mandatory Minimums Require a Much-Needed Facelift

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[Mandatory Minimums Require a Much-Needed Facelift](#)
March 20, 2022 by [zaynahzaman](#) [comments \(0\)](#)

A PEAK INTO A BROKEN SYSTEM

[Hamedah Hassan was an overall upstanding member of our society until she became a victim of her extenuating circumstances.](#) When Hamedah was 21 years old, she made a brave choice to flee from an extremely abusive relationship with her two children. At the time, Hamedah's only option was to seek refuge at her cousin's house. However, Hamedah's cousin was dealing crack cocaine and soon roped her into running errands for his drug business. After two years of being involved in the drug business, Hamedah decided to return to her hometown as she wanted to earn an honest living for herself and her children. Shortly after returning to her hometown, Hamedah was arrested. Despite having a clean record, a single offense—likely caused by desperation—resulted in a sentence of 27 years in prison for Hamedah. This was the minimum term under the mandatory minimum sentencing guidelines for crack cocaine-related convictions. She will not be part of her children's lives for nearly three decades. Hamedah appealed her sentence to the highest courts to no avail. She is one of many victims paying the harsh price of the mandatory minimum penalty.

Anyone who has ever designed something knows the futility of attempting a one-size-fits-all approach; even one-size-fits-all clothing is at best *fits* most! If the one-size-fits-all model doesn't work for something as minor as clothing, then why do we apply this model to our criminal justice system? Mandatory minimums force the justice system to apply a one-size-fits-all sentencing approach and disregard the circumstances of individual defendants which then results in flawed and unfair sentencing practices, racial disparity, and overcrowding caused by mass incarceration. Reform must be sought, and mandatory minimums should be reimagined to where it only applies to extremely violent and inhumane crimes.

(UN)FAIR SENTENCING?



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Congress enacted mandatory minimums in 1986 to achieve uniformity and fairness in the sentencing process but it resulted in quite the opposite. There are mainly three ways mandatory minimums contribute to a less fair criminal justice system. First, mandatory minimums remove judicial discretion to consider the defendant's circumstances, which consolidates more power in the hands of prosecutors, and in turn contributes to the mass incarceration crisis. Second, mandatory minimums often lead to unnecessarily long sentences for low-level offenses that result in unfair sentencing and the overcrowding of prisons. Third, mandatory minimums directly contribute to racial disparity in sentencing practices and the criminal justice system.

[Mandatory minimums arguably promote deterrence and incapacitation with more certainty compared to other sentencing methods because they eliminate judicial discretion.](#) The method thus diminishes the judge's ability to choose from the different types of punishments. Judges are often perceived as "too lenient" and if he doesn't hand out a "long enough" sentence it won't promote adequate deterrence or incapacitation for persistent criminals. Mandatory minimums require courts to hand out specific prison terms for certain crimes. In theory, this seems

straightforward, but while the criminal justice system limits judicial discretion, it does nothing to curb prosecutorial discretion in charging decisions. This model creates a disparity in the bargaining process, rendering it more favorable for the prosecutor and increasing the likelihood of defendant coercion.

Prosecutors use mandatory minimums as a leveraging tool to prevent cases from going to trial and pushing for a quick guilty plea. Prosecutors often threaten to charge a defendant with a crime that will trigger a mandatory minimum with a much harsher sentence. These tactics coerce defendants to take a plea deal to avoid harsher sentences even if the defendants are innocent. Consequently, [plea deals are on the rise](#). In fact, [95% of all convictions are from guilty pleas. One in forty felony cases makes it to trial in the modern era, compared to the one in twelve felony cases during the 1970s, according to nine states' published records](#). This number is even steeper for federal cases. The rise in guilty pleas has resulted in higher conviction rates that contribute to mass incarceration.

NEGATIVE IMPACTS OF MANDATORY MINIMUMS



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Mandatory minimum requirements lead to longer-term sentences for low-level crimes and are a key factor in increasing mass incarceration, which also results in overcrowding of prisons. [Although various sources claim fewer people are being convicted under mandatory minimum penalties, 55.7% of all inmates were in custody for nonviolent crimes as a result of mandatory minimum sentencing in 2016](#). Two-thirds of these convictions were for low-level drug-related offenses and the second and third largest categories of convictions under mandatory minimums were for offenses related to pornography and firearms. Thus, a significant number of those incarcerated are serving particularly harsh sentences, especially for low-level crimes. [The average length of a sentence for offenders who were subjected to a mandatory minimum penalty](#)

was 138 months, compared to 28 months which was the average for offenders not convicted of any offense carrying a mandatory minimum penalty. The United States already has one of the highest incarceration rates in the world with approximately 2.3 million people in prison. The issue of mass incarceration has been exacerbated by mandatory minimum requirements, resulting in the continued overpopulation of the U.S. prison system.



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Mandatory minimums also directly contribute to racial disparities present in the criminal justice system. Latinx people make up 41.5% of offenders who are sentenced under the mandatory minimum penalty while 28.9% are Black Americans, 27.2% are White Americans and 2.4% are from other races in sentences for cocaine-related offenses. Data shows that offenses involving possession of crack cocaine receive a much higher sentence compared to offenses involving possession of cocaine at both federal and state levels, even if the amount of drug possessed was the same. This discrepancy is a result of Congress's inaccurate assumption that crack cocaine is more dangerous. Historically, the War on Drugs has been viewed through a racial lens in the United States, and crack cocaine is a drug that was erroneously associated with the Black community, whereas powder cocaine usage was often associated with the White community.

When crack cocaine usage increased in the 1980s there was a huge uproar in White communities which created a “war on drugs” and pushed for policy changes as crack cocaine was viewed to be extremely problematic and dangerous. Concurrently the use of powder cocaine also increased during the 1980s, however, it did not face the same level of scrutiny. Powder cocaine was viewed to be “upscale” as it was used by wealthy White Americans. This distinction of “crack cocaine” and “powder cocaine” based on racial and economic classification is critical when reviewing legislative responses because it highlights the social control minorities are often subjected to.

Both crack cocaine and powder cocaine are merely two versions of the same drug. However, an offender convicted of an offense involving just five grams of crack cocaine was subject to the same five-year mandatory minimum federal prison sentence as someone convicted of an offense involving 500 grams of powder cocaine. This 100:1 ratio is significant as the majority of people arrested for crack possession are Black Americans. According to data, by 2004, Black Americans who committed non-violent drug crimes faced virtually the same amount of prison time (58.7 months) as White Americans who committed violent crimes (61.7 months). In 2018, 85% of the total 30,000 people sentenced for crack cocaine crimes were Black Americans. Racial disparity in cocaine sentencing is simply one area out of the many areas of sentencing where offenders have a disadvantage due to their race and thus, constitutes another flaw in the mandatory minimum penalty that requires reform.

REFORMS



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While there have been initiatives to reform mandatory minimums, there is much more work to be done. [President Obama’s Fair Sentencing Act attempted to tackle racial disparity caused by](#)

[mandatory minimums and reduced the disparity between the amount of crack cocaine and powder cocaine needed to trigger certain federal criminal penalties from a 100:1 weight ratio to an 18:1 weight ratio and eliminated the 5-year mandatory minimum for simple possession of crack cocaine.](#)

[Non-profit organizations such as the American Civil Liberties Union \(“ACLU”\) and Drug Policy Alliance have taken several steps to encourage further reform.](#) The ACLU testified in front of the United States Sentencing Commission—a committee created by Congress to create more uniformity across sentencing guidelines—to advocate for the abolition of mandatory minimums. Accordingly, the ACLU urged the commission to review and take additional steps, independent of Congress, to mitigate the damage caused by existing mandatory minimum policies. The [Drug Policy Reform Alliance is also pushing for change through the launch of their campaign which advocates the passage of the Community Safety and Fair Sentencing Act.](#) This legislation would allow the judges to leave mandatory minimums in the past and offer judges more discretion in handing out sentences that fit the crimes, as opposed to handing out “one-size-fits-all” sentences. While some changes attempt to eliminate the disparities created by mandatory minimums, there is still much to be done to eliminate the disparities in sentencing entirely.

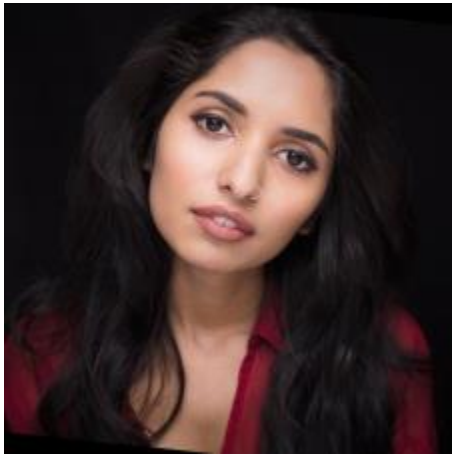
CONCLUSION

Mass incarceration still continues under mandatory minimums for non-violent crimes. It continues to create disparity in the bargaining process by giving prosecutors unfair leverage and exacerbating mass incarceration, overcrowding, and racial disparities. To tackle the issues caused by mandatory minimums, Congress should repeal mandatory minimums for non-violent offenses such as drug offenses and reserve such sentences only for violent offenses. Congress should also look to reduce maximum sentences and allow judges more discretion when it comes to sentencing based on a case-by-case basis and abolish the one-size-fits-all sentencing model. Reforms do not happen overnight, but a good place for the justice system to start is to review Hamedah’s case and bring her justice.

[The judge who presided over Hamedah’s case stated, “My hands are tied, based upon the fact that the sentencing guidelines mandate the 20-year sentence in this case.” This was the result despite her being a first-time offender with a clean record.](#) Even though Hamedah’s 27-year sentence was reduced to 18 years after she wrote a letter to President Obama, her rights of freedom from arbitrary confinement were curtailed by this excessive sentence. Change begins with one person: if we can bring Hamedah’s story of injustice to light, perhaps we can spread more awareness to the issues surrounding mandatory minimums and begin to correct the decades of wrongs created by mandatory minimum sentencing in our country.



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Written by [zaynahzaman](#)