

REPEAL MANDATORY MINIMUMS

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As part of an effort to remedy the [District's alarming incarceration rate](#),¹ DC Justice Lab recommends repealing all mandatory minimum statutes in Washington, D.C. **Abolishing mandatory minimums is supported by the majority of voters.** According to the ACLU, [72% of Americans](#) would be more likely to vote for an elected official who supports eliminating mandatory minimum laws.²

While lower maximum sentences, reduced sentencing enhancements, second look legislation, and expanded diversion opportunities are all important elements of decarceration, DC Justice Lab further recommends **abolishing all sentencing minimums in the D.C. Code.** (See Appendix.)

We are not alone in asking for this. The American Bar Association,³ the American Law Institute,⁴ and the District's Criminal Code Reform Commission⁵ have all recommended that mandatory minimums be eliminated. The American Bar Association has been outspoken on its opposition to mandatory sentencing minimums since 1968 and contends that banning mandatory minimums is the biggest step in order to correct the over-incarceration crisis. Congruently, the American Law Institute argues that there is nothing more egregious in criminal law than the sentencing power bestowed on prosecutors by mandatory minimum sentencing guidelines.⁶

Mandatory minimum laws are statutes that require judges to sentence a person to a predetermined minimum period of incarceration for a specific crime. In the D.C. Code, there are three types of mandatory sentences:

¹ Washington, D.C. has an incarceration rate of 1,153 per 100,000 people. See *District of Columbia Profile*, The Prison Policy Initiative (2018) (available at <https://www.prisonpolicy.org/profiles/DC.html>).

² See *91 Percent of Americans Support Criminal Justice Reform, ACLU Polling Finds*, Am. Civil Liberties Union (Nov. 16, 2017) (available at <https://www.aclu.org/press-releases/91-percent-americans-support-criminal-justice-reform-aclu-polling-finds>).

³ Mary Price, *Mandatory Minimums in the Federal System*, Human Rights Mag. (Jan. 1, 2004) (available at https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/human_rights_vol31_2004/winter2004/irr_hr_winter04_mandatory/) *Federal Sentencing Reform*, American Bar Ass'n (available at https://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/criminal_justice_system_improvements/federalsentencingreform/) (last visited Oct. 1, 2020).

⁴ See Am. Law Inst., *Model Penal Code: Sentencing, Proposed Final Draft* (2017).

⁵ D.C. Criminal Code Reform Comm'n, *Advisory Group Memorandum #32* (March 20, 2020) (available at <https://ccrc.dc.gov/sites/default/files/dc/sites/ccrc/publication/attachments/Advisory-Group-Memo-32-Supplemental-Materials-to-the-First-Draft-of-Report-52.pdf>).

⁶ See Am. Law Inst., *Model Penal Code: Sentencing, Proposed Final Draft*, 288 (2017).

- First, there are statutes that require a minimum sentence be imposed, but allow the court to suspend execution of that sentence while the person completes a period of supervised or unsupervised probation.⁷
- Second, there are statutes that require that a minimum sentence be imposed and served, without suspension.⁸
- Third, the District’s carjacking statute⁹ requires that a minimum sentence be imposed and served, without suspension, “[n]otwithstanding any other provision of law” including the District’s Youth Rehabilitation Act.¹⁰

Mandatory minimum statutes serve as ineffective deterrents, exacerbate existing racial disparities in the criminal justice system, contribute to mass incarceration, and precipitate wrongful convictions.

From a utilitarian perspective, **mandatory minimums are not effective**. They do not serve the goal of preventing and deterring crime. Possible offenders are far more likely to think twice if the likelihood of punishment—as opposed to the severity of punishment—is increased. As Marc Mauer (former Executive Director of the Sentencing Project) wrote, “merely extending the amount of punishment that will be imposed, when most offenders do not believe they will be apprehended, does little to add to any deterrent effect.”¹¹ In fact, Families Against Mandatory Minimums has reported that unnecessary prison sentences actually increase the likelihood of recidivism. Data collected by shows that when comparing offenders who were incarcerated and those that remained in the community, there was a 7% increase in recidivism for those sent to prison.¹²

In the context of racial justice, **mandatory minimums amplify the disparities** that infect the entire system.



⁷ An example of a “statutory minimum” or a “soft minimum” appears in D.C. Code § 23-1327, which requires “not less than” 90 days for failure to appear in court.

⁸ An example of a “hard minimum” appears in D.C. Code § 22-4503, which specifies “A person sentenced to a mandatory-minimum term of imprisonment under paragraph (1) of this subsection shall not be released from prison or granted probation or suspension of sentence prior to serving the mandatory-minimum sentence.”

⁹ D.C. Code § 22-2803.

¹⁰ The Youth Rehabilitation Act allows judges to adjust sentences for young offenders due to the recognition that youth are developmentally different from adults. D.C. Code § 24-903. The District of Columbia Court of Appeals held that, unlike other minimums, the mandatory minimum for carjacking may not be suspended for a Youth Rehabilitation Act sentence. *Peterson v. United States*, 997 A.2d 682 (D.C. 2010); *Holloway v. United States*, 951 A.2d 59, 64 (D.C. 2008).

¹¹ Marc Mauer, *The Impact of Mandatory Minimum Penalties in Federal Sentencing*, 94 *Judicature* 6, 7 (2010).

¹² See Paul Gendreau et al., *The Effects of Prison Sentences on Recidivism* (1999) (available at <https://www.prisonpolicy.org/scans/e199912.htm>).

According to the most recent U.S. Sentencing Commission Report, people of color are more likely to be convicted of an offense carrying a mandatory minimum sentence than white offenders. The report found that Black people remained subject to the mandatory minimum penalty at sentencing in 65.1% of their cases, compared to only 53.5% of cases for white people. In 2015, per the United States Sentencing Commission, Hispanic people accounted for 41.5% of those convicted of a mandatory minimum penalty, compared to only 27% of white people.¹³

Mandatory minimums also have contributed to mass incarceration. Since Congress passed mandatory minimum statutes in the 1980s, the U.S. prison population has grown from 24,000 prisoners to over 218,000 prisoners.¹⁴ Prosecutors can (and do) use the threat of long prison sentences to coerce defendants into accepting plea deals instead of taking their cases to trial.¹⁵ In fact, since mandatory minimums were created, the number of federal cases resolved at trial has gone from 20% to fewer than 3%.¹⁶ This is especially concerning in D.C., where the prosecutor is federally appointed rather than elected by and accountable to residents.

Judicial discretion in sentencing is critical even for the most serious offenses. For instance, [Zephaniah Trevino](#) is a 16-year-old girl from Texas who was charged with capital murder and aggravated robbery after her sex trafficker killed the man with whom she was forced to perform sexual acts. If convicted, the mandatory minimum sentence is life in prison without the possibility of parole. [Chrystul Kizer](#) is a 17-year-old girl from Wisconsin who faces a mandatory life sentence for killing a man who sexually abused her. [Cyntoia Brown](#) is a 16-year-old girl who killed her sex trafficker and was sentenced to life. Her sentence was commuted by the Governor of Tennessee after she served 15 years. In each case, the public outcry was limited to advocating for a well-funded defense team to fight for an acquittal or for clemency. The judiciary has no ability to convict and sentence to community-based rehabilitation. These are just three examples that highlight the need for discretion at the time of sentencing.

¹³ See U.S. Sentencing Comm'n, *Quick Facts on Mandatory Minimum Sentencing* (2015) (available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick_Facts_Mand_Mins_FY15.pdf).

¹⁴ See Families Against Mandatory Minimums, *Mandatory Minimums: What They Are, Why They Matter, and How You Can Get Involved* (available at <https://famm.org/wp-content/uploads/Mandatory-Minimums.pdf>).

¹⁵ See Jamie Fellner, Human Rights Watch, *How U.S. Federal Prosecutors Force Drug Defendants to Plead Guilty* (2013), (available at <https://www.hrw.org/report/2013/12/05/offer-you-cant-refuse/how-us-federal-prosecutors-force-drug-defendants-plead>); see also Jeffrey D. Stein, *How to Make an Innocent Client Plead Guilty*, WASHINGTON POST (Jan. 12, 2018) (available at https://www.washingtonpost.com/opinions/why-innocent-people-plead-guilty/2018/01/12/e05d262c-b805-11e7-a908-a3470754bbb9_story.html); Carrie Johnson, *Report: Threat Of Mandatory Minimums Used To Coerce Guilty Pleas*, NPR (December 5, 2013) (available at <https://www.npr.org/sections/thetwo-way/2013/12/05/248893775/report-threat-of-mandatory-minimums-used-to-coerce-guilty-pleas>).

¹⁶ See Sandeep Dhaliwal, *How Mandatory Minimums Are Weaponized*, N.Y. Times (July 1, 2020) (available at <https://www.nytimes.com/2020/07/01/opinion/mandatory-minimum-sentences-protest.html>).



The District’s sentencing scheme is already uniquely rigid and provides few opportunities for sentencing review without the added consequences of mandatory minimums. Defendants are not eligible for parole in the same way as other states.¹⁷ And, the District has no governor with authority to pardon or commute a sentence.

D.C. Code § 24-403.01(a) directs a judge to impose a sentence that “(1) reflects the seriousness of the offense and the criminal history of the offender; (2) provides for just punishment and affords adequate deterrence to potential criminal conduct of the offender and others; and (3) provides the offender with needed educational or vocational training, medical care, and other correctional treatment.” Mandatory sentencing statutes conflict with this mandate and must be repealed.

Appendix: D.C. Code Statutes Requiring Amendment

- § 6-601.08
- § 7-2507.06
- § 22-401
- § 22-722
- § 22-801
- § 22-1403
- § 22-1510
- § 22-1804a
- § 22-2104
- § 22-2101
- § 22-2201
- § 22-2501
- § 22-2708
- § 22-2709
- § 22-2716
- § 22-2801
- § 22-2803
- § 22-3212
- § 22-3215
- § 22-3303
- § 22-3312.04
- § 22-3318
- § 22-4502
- § 22-4503
- § 22-4504
- § 23-1327
- § 23-1328
- § 24-112
- § 24-403
- § 24-403.01
- § 24-403.01a
- § 24-408
- § 24-906.02
- § 26-907
- § 31-5201
- § 32-213
- § 32-221
- § 38-1403
- § 48-.904.03a
- § 50-1401.02
- § 50-2201.05
- § 50-2206.13
- § 50-2206.15
- § 50-2206.17
- § 50-2206.18
- § 50-2206.36
- § 50-2206.57

¹⁷ The District of Columbia Self Government Improvement and Revitalization Act abolished the D.C. Board of Parole on August 5, 2000, and transferred the function of parole supervision and parole revocation to the Court Services and Offender Supervision Agency (CSOSA) and the United States Parole Commission (USPC). *See* D.C. Code § 24-1201 et. seq.