



National Institute of Justice

R e s e a r c h i n A c t i o n

Jeremy Travis, Director

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Highlights

Mandatory sentencing enhancements, including the widely discussed three-strikes laws enacted in a number of jurisdictions, are aimed at deterring known and potentially violent offenders and incapacitating convicted criminals through long-term incarceration.

Studies have described a number of consequences of earlier mandatory sentencing laws, including the following:

- Arrest rates, indictments, plea bargains, and convictions decline after mandatory sentencing laws go into effect, while early dismissals, early diversions, trial rates, and sentencing delays increase.
- The net probability that offenders will be imprisoned is unaffected (after all variables are taken into account).
- For those imprisoned, the length of sentence increases.
- Studies of sentencing practices in the Federal courts find no compelling evidence that judges are unfairly applying mandatory minimum sentences to racial and ethnic minorities. However, African Americans receive longer sentences than whites in the Federal courts, according to one study, because they constitute the majority of those convicted of trafficking in

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Key Legislative Issues in Criminal Justice: Mandatory Sentencing

by Dale Parent, Terence Dunworth, Douglas McDonald, and William Rhodes

By 1994 all 50 States had enacted one or more mandatory sentencing laws,¹ and Congress had enacted numerous mandatory sentencing laws for Federal offenders. Furthermore, many State officials have recently considered proposals to enhance sentencing for adults and juveniles convicted of violent crimes, usually by mandating longer prison terms for violent offenders who have a record of serious crimes. Three-strikes laws (and, in some jurisdictions, two-strikes laws) are the most prominent examples of such sentencing enhancements.

Three-strikes laws impose longer prison terms than earlier mandatory minimum sentencing laws. For example, California's three-strikes law requires that offenders who are convicted of a violent crime, and who have had two prior convictions, serve a minimum of 25 years; the law also doubles prison terms for offenders convicted of a second violent felony.² Three-strikes laws vary in breadth. For example, some stipulate that both of the prior convictions and the current offense be violent felonies; others require only that the prior felonies be violent. Some three-strikes laws count only prior adult violent felony convictions, while others permit consideration of juvenile adjudications for violent crimes.

A second frequently mentioned mandatory sentencing enhancement is "truth-in-sentencing," provisions for which are in the Violent Crime Control and Law Enforcement Act of 1994. States that wish to qualify for Federal aid under the Act are required to amend their laws so that imprisoned offenders serve at least 85 percent of their sentences.

Rationale for mandatory sentencing

Mandatory sentences are based on two goals—deterrence and incapacitation. The primary purposes of modest mandatory prison terms (e.g., 3 years for armed robbery) are *specific deterrence*, which applies to already sanctioned offenders, and *general deterrence*, which aims to deter prospective offenders. If the law successfully increases the imprisonment rate, the effects of incapacitation also will grow because fewer offenders will be free to victimize the population at large. The intent of three-strikes (and even two-strikes) is to incapacitate selected violent offenders for very long terms—25 years or even life. They have no specific deterrent effect if those confined will never be released, but their general deterrent effect could, in theory, be substantial.

Highlights

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crack cocaine, a crime Congress chose to punish severely.

Three-strikes laws are costly. A study of California's statute projected that the law would:

- Increase the prison population in California over the next quarter-century by a factor of three.
- Increase costs during the same period by \$5.5 billion per year, on average, for a cumulative additional cost of \$137.5 billion.
- Reduce serious crimes by 28 percent, at a total correctional cost of approximately \$16,300 per crime averted.

An alternative to mandatory minimum sentencing provisions, which would protect sentencing policy, preserve legislative control, and still toughen sentences for repeat violent offenders, is the use of presumptive sentences.

Other possibilities include:

- Directing mandatory sentencing laws at only a few especially serious crimes and requiring "sunset" provisions.
- Subjecting long mandatory sentences to periodic administrative review to determine the advisability of continued confinement.
- Including a funding plan in sentencing legislation to ensure awareness of and responsibility for long-term costs.
- Developing policy that makes more effective and systematic use of intermediate sanctions.

By passing mandatory sentencing laws, legislators convey the message that certain crimes are deemed especially grave and that people who commit them deserve, and may expect, harsh sanctions. These laws are a rapid and visible response to public outcries following heinous or well-publicized crimes. The high long-term costs of mandatory sentencing are deferred because the difficult funding choices implicit in this policy can be delayed or even avoided.

Impact of mandatory sentencing laws

Mandatory sentencing has had significant consequences that deserve close attention, among them its impact on crime and the operations of the criminal justice system. The possible differential consequences for certain groups of people also bear examination.

Crime. Evaluations of mandatory sentencing have focused on two types of crimes—those committed with handguns and those related to drugs (the offenses most commonly subjected to mandatory minimum penalties in State and Federal courts). An evaluation of the Massachusetts law that imposed mandatory jail terms for possession of an unlicensed handgun concluded that the law was an effective deterrent of gun crime,³ at least in the short term.

However, studies of similar laws in Michigan⁴ and Florida⁵ found no evidence that crimes committed with firearms had been prevented. An evaluation of mandatory gun-use sentencing enhancements in six large cities (Detroit, Jacksonville, Tampa, Miami, Philadelphia, and Pittsburgh) indicated that the laws deterred homicide but not other violent crimes.⁶ An assessment of New York's Rockefeller drug laws was unable to support the claim for their efficacy as

a deterrent to drug crime in New York City.⁷ None of the studies examined the incapacitation effects of these laws.

The criminal justice system. The criminal courts rely on a high rate of guilty pleas to speed case processing and thus avoid logjams. Officials can offer inducements to defendants to obtain these pleas. If only in the short term, mandatory sentencing laws may disrupt established plea-bargaining patterns by preventing a prosecutor from offering a short prison term (less than the new minimum) in exchange for a guilty plea. However, unless policymakers enact long-term mandatory sentences that apply to many related categories of crimes, prosecutors usually can shift strategies and bargain on charges rather than on sentences.

The findings of research on the impact of mandatory sentencing laws on the criminal justice system have been summarized by a prominent scholar.⁸ He found that officials make earlier and more selective arrest, charging, and diversion decisions; they also tend to bargain less and to bring more cases to trial. Specifically, he found that:

- Criminal justice officials and practitioners (police, lawyers, and judges) exercise discretion to avoid application of laws they consider unduly harsh.
- Arrest rates for target crimes decline soon after mandatory sentencing laws take effect.
- Dismissal and diversion rates increase at early stages of case processing after mandatory sentencing laws take effect.
- For defendants whose cases are not dismissed, plea-bargain rates decline and trial rates increase.
- For convicted defendants, sentencing delays increase.

- Enactment of mandatory sentencing laws has little impact on the probability that offenders will be imprisoned (when the effects of declining arrests, indictments, and convictions are taken into account).

- Sentences become longer and more severe.

The research review concluded that mandatory sentencing laws:

- Do not achieve certainty and predictability because officials circumvent them if they believe the results are unduly harsh.

- Are redundant with respect to proscribing probation for serious cases because such cases generally are sentenced to imprisonment anyway.

- Are arbitrary for minor cases.

- May occasionally result in an unduly harsh punishment for a marginal offender.⁹

Racial and ethnic minorities. One issue that has received considerable attention in recent years is whether racial or ethnic minorities are treated unfairly in the courts' application of mandatory minimum sentences. The question cannot be answered simply by comparing the proportion of minority offenders sentenced before and after introduction of, or changes in, mandatory sentencing laws. If, for example, it is objectively determined that minorities are more likely than the general population to commit offenses that carry mandatory sentences, an equitable application of the law would result in an increase in the proportion of imprisoned minorities—and probably in the lengths of their average sentences.

About the Key Legislative Issues Series

In 1995 the National Institute of Justice (NIJ) contracted with Abt Associates Inc. to interview legislators and policymakers throughout the country to identify important criminal justice topics being considered by State legislatures and to determine the information they need to help them make more informed decisions. Altogether, 89 legislators, legislative staff members, and other criminal justice policymakers (e.g., sentencing commission members) were interviewed in 23 States. The interviews were conducted during the opening weeks of the 1995 State legislative sessions.

The sites and the respondents were chosen to reflect the diversity of the States. Some of the factors taken into consideration were geographic size and region, urban/rural mix, and existence (or nonexistence) of a sentencing commission in the State government. The respondents selected included the chairpersons of relevant legislative committees (such as the criminal justice, judiciary, and corrections committees), a representative from the governor's staff, and an official with the executive branch (such as the commissioner of corrections or the sentencing commission chairperson). Other people whom they suggested were also interviewed, and, as might be expected, legislators frequently referred the interviewers to their staff.

These policymakers identified four topics as important items on their legislative agendas:

- Sentencing commissions.
- Intermediate sanctions.
- Mandatory sentencing, including three-strikes laws.
- Transferring serious juvenile offenders to adult courts.

State policymakers expressed a strong desire for more timely and useful information about research findings on important criminal justice policy issues they were addressing. However, they voiced reservations about gleaming useful information from technical research reports.

Reviews and summaries of the research literature on the four key topics identified present the information in a way that is more accessible to policymakers. Of the four reports, this one summarizes what is known about mandatory sentencing and its impact on crime and the operation of the criminal justice system. Particular attention is paid to the impact on racial and ethnic minorities and to three-strikes laws.

Titles in the series

The Impact of Sentencing Guidelines (NCJ 161837)

Intermediate Sanctions (NCJ 161838)

Mandatory Sentencing (NCJ 161839)

Transferring Serious Juvenile Offenders to Adult Courts (NCJ 161840)

These summary reports have been published in NIJ's Research in Action series. Copies can be obtained from the National Criminal Justice Reference Service (NCJRS), Box 6000, Rockville, MD 20849-6000; telephone 800-851-3420; or e-mail askncjrs@ncjrs.org. The reports can also be viewed and downloaded from the NCJRS World Wide Web site, the Justice Information Center (<http://www.ncjrs.org>), or through the NCJRS Bulletin Board System (direct dial through computer modem: 301-738-8895; telnet to ncjrsbbs.ncjrs.org or gopher to ncjrs.org:71).

Consequently, the central question is whether criminal justice officials' discretionary choices in the application of mandatory sentencing laws are made in a racially neutral manner.

Results of particular studies are relevant. In one study involving cases of Federal offenders sentenced for crimes subject to mandatory minimums, the researcher examined whether sentencing severity varied by amount and type of drugs involved in the current crime, weapons, offense record, role in offense, history of drug use, age, gender, and race.¹⁰ She found sentencing differences associated with the offender's race, even after accounting for differences associated with these other characteristics. However, the magnitude of this difference was small.

The U.S. Sentencing Commission expanded this study and found significant differences in the proportion of whites (54 percent), Hispanics (57 percent), and African Americans (68 percent) who received mandatory minimum sentences for the most serious offense charged against them.¹¹ A reanalysis of the U.S. Sentencing Commission data drew different conclusions, however.¹² The reanalysis showed that when legally relevant case-processing factors were considered, a defendant's race/ethnicity was unrelated to the sentence. Also examined in the reanalysis was why more than 40 percent of the cases apparently eligible for mandatory sentences did not receive them. Reasonable explanations include evidentiary problems and instances in which defendants provided substantial assistance to prosecutors in preparing cases against others.

In an analysis of the Federal sentencing guidelines, other researchers found

that African Americans received longer sentences than whites, not because of differential treatment by judges but because they constituted the large majority of those convicted of trafficking in crack cocaine—a crime Congress had singled out for especially harsh mandatory penalties.¹³ This pattern can be seen as constituting a “disparity in results” and, partly for this reason, the U.S. Sentencing Commission recommended to Congress that it eliminate the legal distinction between crack and regular cocaine for purposes of sentencing (a recommendation Congress rejected).

Three-strikes laws. The recent wave of three-strikes laws has not yet been evaluated, but the costs and benefits of California's three-strikes law have been simulated.¹⁴ Assuming that the law would produce incapacitation effects but not deterrent effects, the researchers projected it would:

- Triple California's prison population over the next 25 years, creating a prison population about equal in size to that of the entire U.S. prison population in 1980.
- Cost an average of \$5.5 billion more each year for the next 25 years than the previous law, for a cumulative additional cost of \$137.5 billion.
- Reduce serious crime by 28 percent, at a total correctional cost of about \$16,300 for each crime averted.

The researchers found that California's three-strikes law would avert crimes inefficiently because many offenders would be confined for long periods after their criminal activity became negligible because of the effects of aging. They calculated that if the law were limited to offenders whose current crime and both of the

two prior offenses were violent, serious crime could be cut 18 percent, at a total correctional cost of \$12,000 per averted crime.

The effects on future California budgets of funding the three-strikes law were estimated. In their calculations, the researchers assumed that health and welfare costs would not increase (an assumption they labeled as unlikely) and that educational spending for grades K–12 would increase only as a direct result of foreseeable demographic changes. They found that corrections would consume 18 percent of State spending by the year 2002—double the 1994 percentage. Together, corrections, health and welfare, and K–12 education would consume 99 percent of the State's budget by 2002, leaving just 1 percent to fund everything else.

Future issues

In the interviews conducted for this review of mandatory sentencing, State policymakers expressed the need to respond to the public's fear of crime and call for tougher sanctions, but also recognized the need to rein in spiraling costs of corrections. If the costs of government are cut, spending more on prisons means spending less on other public purposes. The fiscal analysis of California's three-strikes law, for example, has implications for that State's future.

In a major study of sentencing policy, Michael Tonry of the University of Minnesota suggested that States consider the following options:¹⁵

- Pursue presumptive rather than mandatory sentences.

Presumptive sentences, which are developed by sentencing commissions

and set forth as guidelines, can shift overall sentencing patterns in ways acceptable to policymakers. For example, they can seek to imprison more violent offenders and fewer property offenders. A sentencing commission can help maintain sentencing policy while still preserving ultimate legislative control. Presumptive sentences have generally achieved their intended goals, and research shows high rates of conformity to the sentences by judges.

In the rare instance in which a presumptive sentence is inappropriate (i.e., either too harsh or too lenient, given the facts of the case), judges can depart from the guidelines by providing in writing reasons that can be reviewed by higher courts. If legislatures so instruct sentencing commissions, they can craft the guidelines to control future costs and, at the same time, toughen sentences for repeat violent offenders.

- Include sunset provisions to require periodic reconsideration of the propriety of the laws, if mandatory sentencing laws are enacted.
- Limit the duration and scope of mandatory sentencing laws.

Crime is, quite literally, an activity of young men. As the study of the California law emphasized, extremely long mandatory sentences (e.g., 25 years to life) are inefficient because they confine offenders for long periods (at great cost) after they would have “aged out” of crime. Sentencing could be mandated for only a few especially serious crimes. If such laws are aimed at repeat serious offenders, they could include a requirement that only particularly serious prior and current convictions trigger them.

- Conduct some form of periodic administrative review to determine if continued confinement of the offender is required, in the event mandatory sentences are imposed.

- Closely link sentencing and fiscal policy decisions to enhance the legislative process.

Legislatures could ensure that they know the financial impact of proposed sentencing legislation and, where substantial long-term costs will be incurred, a funding plan might be a required provision of the enabling law. This would prevent today’s legislature from avoiding the fiscal implications of its sentencing policies.

Cultivating alternative sanctions

Legislatures also may want to develop policy that makes more effective and systematic use of intermediate sanctions, if the twin objectives of punishment and lower correctional costs are to be achieved. Such policy might specify goals for each particular sanction, locate each category of intermediate sanctions along the continuum between standard probation and total confinement, and define target populations for each category. For example, it could specify which confined offenders will be considered for early release, which sanctions should enhance standard probation, and which offenders need treatment or services.

In addition, States may want to develop a financial structure to steer development of intermediate sanctions in intended directions. This could be a variant of current community corrections acts, for which a central State agency sets standards for local programs and administers performance-

based financial aid to local governments. For intermediate sanctions, the State could provide greater support to jurisdictions whose program met or exceeded the performance objectives specified by the agency.

Finally, States that make greater use of intermediate sanctions may want to develop policies that govern their use in individual cases. Examples are the development of presumptive guidelines for nonconfinement as well as confinement sanctions. Such policies could be designed to ensure that overall use of nonconfinement sanctions is consistent with goals established by the legislature and broad principles that govern sentencing generally (e.g., proportionality, uniformity, and neutrality). In particular, guidelines could limit additive use of sanctions (imposing two or three nonconfinement sanctions on a particular offender) and control revocation decisions in order to minimize needless confinement for minor rule violations.

Notes

1. Tonry, M., *Sentencing Matters*, Oxford, England: Oxford University Press, 1995.
2. In mid-1996 the California Supreme Court ruled the State’s three-strikes law an undue intrusion on judges’ sentencing discretion. State legislative leaders immediately announced plans to introduce legislation that would reinstate the law.
3. Pierce, G.L., and W.J. Bowers, “The Bartley-Fox Gun Law’s Short-Term Impact on Crime in Boston,” *Annals of the American Academy of Political and Social Science* 455 (1981):120–132.
4. Loftin, C., M. Heumann, and D. McDowall, “Mandatory Sentencing and Firearms Violence: Evaluating an Alternative to Gun Control,” *Law and Society Review* 17 (1983):287–318.
5. Loftin, C., and D. McDowall, “The Deterrent Effects of the Florida Felony Firearm Law,” *Journal of Criminal Law and Criminology* 75 (1984):250–259.

6. McDowall, D., C. Loftin, and B. Wiersema, "A Comparative Study of the Preventive Effects of Mandatory Sentencing Laws for Gun Crimes," *Journal of Criminal Law and Criminology* 83, 2 (Summer 1992):378-394.

7. Joint Committee on New York Drug Law Evaluation, *The Nation's Toughest Drug Law: Evaluating the New York Experience*, a project of the Association of the Bar of the City of New York, the City of New York and the Drug Abuse Council, Inc., Washington, D.C.: U.S. Government Printing Office, 1978.

8. Tonry, M., *Sentencing Reform Impacts*, Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 1987.

9. Ibid.

10. Meierhoefer, B.S., *General Effect of Mandatory Minimum Prison Terms*, Washington, D.C.: Federal Judicial Center, 1992; Meierhoefer, B.S., "Role of Offense and Offender Characteristics in Federal Sentencing," *Southern California Law Review* 66, 1 (November 1992):367-404; and Meierhoefer, B.S., *General Effect of Mandatory Minimum Prison Terms: A Longitudinal Study of Federal Sentences Im-*

posed, Washington, D.C.: Federal Judicial Center, 1992.

11. U.S. Sentencing Commission, *Federal Sentencing Guidelines: A Report on the Operation of the Guidelines System and Short-Term Impacts on Disparity in Sentencing, Use of Incarceration, and Prosecutorial Discretion and Plea Bargaining*, Washington, D.C.: U.S. Sentencing Commission, 1991.

12. Langan, P., "Federal Prosecutor Application of Mandatory Sentencing Laws: Racially Disparate? Widely Evaded?" Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, 1992.

13. McDonald, D.C., and K.E. Carlson, *Sentencing in the Courts: Does Race Matter? The Transition to Sentencing Guidelines, 1986-90*, Washington, D.C.: U.S. Department of Justice, Bureau of Justice Statistics, 1993.

14. Greenwood, P.W., et al., *Three Strikes and You're Out: Estimated Benefits and Costs of California's New Mandatory-Sentencing Law*, Santa Monica, California: RAND Corporation, 1994.

15. Tonry, *Sentencing Matters*.

Dale Parent, associate; Terence Dunworth, Ph.D., senior associate; Douglas McDonald, Ph.D., senior associate; and William Rhodes, Ph.D., senior scientist, are with Abt Associates Inc. This study, sponsored by the National Institute of Justice, was prepared under contract 94-IJ-CX-C007.

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