

## **Literature Review Related to Mandatory Minimum Sentences and Effect of Incarceration on Crime Rate**

Analyses on the impact of mandatory minimums were not readily found. However, there were many articles on mandatory minimums that stated the pros and cons of the policy. Below is a summary of key tenets from those who support and those who oppose mandatory minimum sentences.

### Support Mandatory Minimum Sentences

- Offers crime control – acts as deterrent
- Reduces sentencing disparity – provides uniformity and predictability in sentencing
- Incapacitates dangerous offenders longer - keeps community safer
- Collateral benefit – cooperation by lower level offenders in providing critical information for investigation

### Oppose Mandatory Minimum Sentences

- Excessively severe sentences
- Arbitrary – based solely on the offense and ignore offender characteristics
- Contributes to the increased average length of sentence since their adoption (federal)
- Increases corrections populations/spending
- Decreases judicial discretion – increases prosecutorial discretion
- Increases disproportionality
- Undermines the integrity of plea bargaining and of the sentencing process

Many of the articles reviewed made mention of an impact on the incarceration rate. I decided to review studies that looked at what may be behind the decades-long decrease in the crime rate.

**The Economist. (2017, Nov 7). *Locking up more people does not reduce crime: But it has a heavy social cost.* Retrieved from <https://www.economist.com/democracy-in-america/2017/11/07/locking-up-more-people-does-not-reduce-crime>**

Economist David Roodman, with the Open Philanthropy Project, conducted replication and analysis of studies on the impact of locking up people in the US. “The five word summary of his work might be: America has a sentencing problem.”

Roodman’s main findings:

1. The deterrence effect of long sentences is very small. “Studies of the three strikes law in California and mandatory minimum sentencing laws across the states suggest increasing sentences by 10% cuts crime by 1%.”
2. Tougher sentencing does reduce crime while individuals are incarcerated.
3. The effect of reduced crime while individuals are incarcerated is matched by increased criminal activity after release.

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**Roeder, Dr. O., Eisen, L-B., and Bowling, J. (2015). *What caused the crime decline?* New York: Brennan Center for Justice at New York University School of Law.**

This study has three central findings:

1. "Increased incarceration at today's levels has a negligible crime control benefit." In the past 24 years, increased incarceration has had little effect on the decrease in violent crime. Many large states (CA, MI, NJ, NY, TX) have reduced their prison populations while the crime rate decreased.
2. "One policing approach that helps police gather data used to identify crime patterns and target resources, a technique called CompStat, played a role in bringing down crime in cities." Analysis of 50 of the most populous cities showed that CompStat-style programs were responsible for 5 to 15 percent decrease in crime in those cities. An increased number of police officer also played a role in the decrease.
3. "Certain social, economic, and environmental factors also played a role in the crime drop." The aging population, decreased alcohol consumption and changes in crime also contributed to the drop.

"This report finds that incarceration in the U.S. has reached a level where it no longer provides a meaningful crime reduction benefit." (p7)

"More incarceration does not lead to *less* crime." (p10)

"Public and political pressure to effectively fight crime and improve public safety has been used to justify mass incarceration despite the economic, human, and moral toll. However, as this report finds, during the past two decades the approach of using incarceration as a one-size fits all punishment for crime has passed the point of diminishing returns to actually reduce crime." (p79)

"This report demonstrates that when other variables are controlled for, increasing incarceration had a minimal effect on reducing property crime in the j1990s and no effect on violent crime. In the 2000s, increased incarceration had no effect on violent crime and accounted for less than one-hundredth of the decade's property crime drop." (p79)

**Raphael, S. and Stoll M. (2014). *A New Approach to Reducing Incarceration While Maintaining Low Rates of Crime*. Washington DC: The Hamilton Project at the Brookings Institution. Retrieved from [http://www.hamiltonproject.org/assets/legacy/files/downloads\\_and\\_links/v5 THP RaphaelStoll DispatchPaper.pdf](http://www.hamiltonproject.org/assets/legacy/files/downloads_and_links/v5_THP_RaphaelStoll_DispatchPaper.pdf)**

"However, the fact that incarceration on average reduces crime does not imply that recent increases in incarceration have generated substantial reductions in crime. In fact, there is ample research documenting that the crime-fighting benefits of incarceration are much smaller at high incarceration rates than they are at low incarceration rates. Moreover, several states have recently enacted policies that have substantially reduced their state prison population totals, with little to no impact in crime rates." (p5).

"We propose that states introduce a greater degree of discretion into their sentencing and parole practices through two specific reforms: (1) reduce the scope and severity of truth-in-sentencing laws

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that mandate that inmates serve minimum proportions of their sentences, and (2) rework and in many instances abandon mandatory minimum sentences.” (p6)

“The crime-reduction gains from higher incarceration rates depend critically on the incarceration rate itself. When the incarceration rate is low, marginal gains from increasing the incarceration rate are higher. This follows from the fact that when prisons are used sparingly, incarceration is reserved for the highest-risk and most-serious offenders.” “In other words, the crime-fighting benefits of incarceration diminish with the scale of the prison population.” (p9)

The rise of mass incarceration was caused by drastic sentencing changes across the state:

1. Generally, judges have less discretion now than in the past regarding which individuals are sent to prison and effective sentence lengths.
2. Release decisions are more constrained by administrative rules and the parole board’s role in release decisions has been greatly reduced.
3. Reforms meant to increase uniformity in sentencing of similar offenses have been implemented.
4. Sentences have become more structured through targeted legislation at specific offenders/offenses.
5. Sentencing practices have become more punitive.

“Similar to truth-in-sentencing provisions, mandatory minimum sentences and repeat-offender laws often tie the hands of criminal justice actors (judges and parole boards, in particular) and greatly increase the bargaining power of prosecutors in criminal proceedings.” (p 16)

Questions to ask of mandatory minimum sentence laws. A ‘yes’ to any of these questions may be indicative of a law that is either unnecessary, indefensibly harsh, and/or not cost-effective.

- Does the law already allow for the incarceration of those convicted of the offense?
- Does the mandatory minimum create horizontal inequity in sentencing for individuals convicted of similar crimes?
- Are the sentences disproportionate to the offense?
- Does the law result in a prison sentence for low-risk offenders?

**Aos, S. (2003). *The criminal justice system in Washington state: Incarceration rates, taxpayer costs, crime rates, and prison economics* (Doc No. 03-01-1202). Olympia: Washington State Institute for Public Policy.**

The report cited findings by William Spelman. He concluded that for every ten percent increase in the state incarceration rate there is a two-to-four percent reduction in the crime rate. WSIPP tested the conclusion and found it to be true in Washington. (p6)

“Thus, the latest statistical evidence confirms that by influencing the incarceration rate, policymakers do have an effect on the crime rate.” (p6)

“Therefore, an increase in the incarceration rate today avoids considerably fewer crimes than it did just a decade or two ago.”(p7)

“Looking back to 1980, there was a substantial net benefit to taxpayers and crime victims to expand the prison system, especially for violent offenders. As incarceration rates were increased over the ensuing

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two decades, however, diminishing returns began to erode the benefits of continued prison expansion.” (p7)

“Today, incarcerating more violent and high-volume property offenders continues to generate more benefits than costs, although diminishing returns has reduced significantly the net advantage of increasing incarceration rates for these offenders.” (p7)

**National Research Council. (2014). *The growth of incarceration in the United States: Exploring causes and consequences*. Committee on Causes and Consequences of High Rates of Incarceration, J. Travis, B. Western, and S. Redburn, Editors. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.**

“Mandatory minimum sentence and three strikes laws have little or no effect on crime rates, shift sentencing power from judges to prosecutors, often result in the imposition of sentences that practitioners believe to be unjustly severe, and for those reason foster widespread circumvention.” (p83)

Deterrence has been the rationale behind mandatory minimum sentences for the past 30 years. “The overwhelming weight of the evidence, however, shows that they have few if any deterrent effects.” “...existing knowledge is too fragmentary or that estimated effects are so small or contingent on particular circumstances as to have no practical relevance for policy making.” (p83)

“Unlike many other Western countries, the United States responded to escalating crime rates by enacting highly punitive policies and laws and turning away from rehabilitation and reintegration.” (p129)

“Evidence is limited on the crime prevention effects of most of the policies that contributed to the post-1973 increase in incarceration rates. Nevertheless, the evidence base demonstrates that lengthy prison sentences are ineffective as a crime control measure.... Also, because recidivism rates decline markedly with age and prisoners necessarily age as they serve their prison sentence, lengthy prison sentences are an inefficient approach to preventing crime by incapacitation unless they are specifically targeted at very high-rate or extremely dangerous offenders. For these reasons, statutes mandating lengthy prison sentences cannot be justified on the basis for their effectiveness in preventing crime.”(p155-156)