

New York Should Abolish Mandatory Minimums

To end mass incarceration in New York, we must eliminate mandatory minimums. Mandatory minimum sentencing is a holdover from New York's "tough-on-crime" policies that people across the political spectrum have since rejected as both morally and fiscally unsustainable. These legislative schemes intentionally restrict judges' discretion in sentencing for certain crimes. Mandatory minimum sentences require lengthy, overly punitive sentences that do not make New Yorkers safer.

Mandatory minimum sentences do not promote public safety

Of the more than 30,000 people incarcerated in New York State prisons, 51 percent are incarcerated on mandatory minimum sentences.¹ More than 5,000 people are serving a maximum sentence of life in prison, or what some advocates have come to call "death by incarceration" because these sentenced people will die in prison unless the Parole Board releases them.² Mandatory minimum sentences are supposed to deter crime, but they do not because most people do not know about the penalties they face for committing certain criminal offenses, so increasing punishment does not produce a deterrent effect.³

The repercussions of mandatory minimum sentences are significant. Research shows that removing large numbers of people to prison may increase crime because it weakens communities: families lose providers, children lose parents, and people lose current and potential intimate partners.⁴ Throughout New York, communities have long suffered these consequences from our mandatory minimum sentencing scheme, which does not serve any valid public safety purpose.

Further, prison can be a crime-creating environment. Researchers have found that prison can be "criminogenic"—that the prison environment, separation from the community, or the process of return from prison to home is so destabilizing that it increases the likelihood of continued encounters with the criminal legal system.⁵

Mandatory minimums sentences fuel mass incarceration

Mandatory minimums simply send a political message of being tough on crime and have the practical impact of creating a severe power imbalance in plea bargaining. When someone is charged with a mandatory minimum offense, judges are stripped of their usual discretion to consider a person's individual circumstances. Instead, the law requires judges to impose minimum prison terms based solely on the charges that a prosecutor brings. This practice makes prosecutors, rather than judges, the decision-makers in sentencing and can lead to coercive pleas.⁶

Abolishing mandatory minimums would restore judges' power as neutral and ultimate decision-makers who can consider the appropriateness of incarceration in each case.

All offenses should be considered for non-carceral sentences, which would reduce the prison population and allow for real solutions in our communities

Although abolishing mandatory minimums would be a significant move to promote public safety and fairness in the criminal legal system, the legislature can also effectively reduce the prison population and safeguard public safety by allowing judges to impose sentences that do not involve incarceration for all offenses.

Alternative to incarceration programs (ATI) are community-based programs that a person may participate in instead of being sentenced to incarceration. ATIs provide support so that participants can safely engage in treatment and reparative programming in the community. If New York were to abolish mandatory minimums for nonviolent drug and property

offenses, this could decarcerate the state's prisons by about 700 people.⁷ However, ATI programs can, and do, serve people charged with violent offenses, which could affect more than 15,000 people.⁸ Research shows that people convicted of violent offenses are not “inherently violent” and can succeed in the community without negatively impacting public safety.⁹ Restricting who should be considered for non-carceral sentences based on conviction history or violence is not rooted in data or evidence.

Recommendations

1. **Decarcerate** New York State prisons by abolishing mandatory minimum sentences.
2. **Allow** all offenses to be considered for non-carceral sentences.
3. **Invest** in community-based alternatives to incarceration, violence interruption, and restorative justice programs that effectively prevent harm and hold people accountable in the community for the harm they cause without the use of incarceration.

About

Fact sheet written by Mariam Gaye. For more information about this report, contact Jullian Harris-Calvin, director, Greater Justice New York, at jharriscalvin@vera.org. The Vera Institute of Justice is powered by hundreds of advocates, researchers, and community organizers working to transform the criminal legal and immigration systems until they're fair for all. Founded in 1961 to advocate for alternatives to money bail in New York City, Vera is now a national organization that partners with impacted communities and government leaders for change. We develop just, antiracist solutions so that money doesn't determine freedom; fewer people are in jails, prisons, and immigration detention; and everyone is treated with dignity. Vera's headquarters is in Brooklyn, New York, with offices in Washington, DC, New Orleans, and Los Angeles. For more information, visit vera.org.

Endnotes

¹ To calculate these statistics, Vera conducted a quantitative analysis of prison sentences using monthly scrapes of the New York Department of Corrections and Community Supervision (DOCCS) Inmate Lookup Data from June 4, 2021. DOCCS, “Inmate Lookup,” database, <http://nysdoccslookup.doccs.ny.gov/>, accessed February 14, 2022.

² Ibid.

³ Daniel S. Nagin, “Deterrence in the Twenty-First Century: A Review of the Evidence,” *Crime and Justice in America 1975–2025*, 42, no. 1 (2013), 199–263.

⁴ Todd R. Clear, Natasha A. Frost, Michael Carr, et. al, *Predicting Crime through Incarceration: The Impact of Rates of Prison Cycling on Rates of Crime in Communities* (Washington, DC: National Institute of Justice, 2014), <https://perma.cc/J6BT-G32W>; and Todd R. Clear, “The Effects of High Prison Rate on Communities,” *Crime and Justice* 37, no. 1 (2008), 97–132.

⁵ Don Stemen, *The Prison Paradox: More Incarceration Will Not Make Us Safer* (New York: Vera Institute of Justice, 2017), <https://perma.cc/J6NH-HL3L>.

⁶ Jed S. Rakoff, “Why Innocent People Plead Guilty,” *New York Review of Books*, November 20, 2014, <https://perma.cc/7TKF-FJ5Q>. See also Ram Subramanian, Léon Digard, Melvin Washington II, and Stephanie Sorage, *In the Shadows: A Review of the Research on Plea Bargaining* (New York: Vera Institute of Justice, 2020), <https://perma.cc/22PK-YVSB>.

⁷ This number is based on Vera's quantitative analysis of the number of people serving mandatory minimum sentences for nonviolent drug and property prison sentences as of June 2020 using monthly scrapes of the DOCCS Inmate Lookup Data from June 4, 2021. DOCCS, “Inmate Lookup,” database, <http://nysdoccslookup.doccs.ny.gov/>, accessed February 14, 2022.

⁸ Ibid.

⁹ Alexi Jones, “Reforms without Results: Why States Should Stop Excluding Violent Offenses from Criminal Justice Reforms,” Prison Policy Initiative, April 2020, <https://perma.cc/ZH2B-ZMED>.