

SENTENCES
THAT FIT.
JUSTICE
THAT WORKS.

The logo for FAMM (Family Action for Mandatory Minimums) consists of the letters "FAMM" in a bold, white, sans-serif font, centered within a solid orange square.

Mandatory Minimums in North Carolina

The Case for Reform

Daniel Landsman
FAMM

Agenda

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1. Explain the four main goals of mandatory minimum sentencing.
2. Review the ability of mandatory minimums to satisfy these goals.
3. Review the success of sentencing reform at the state level.
4. Policy recommendations.

A Brief History of FAMM

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- Founded in 1991 by directly impacted family members.
- Protect public safety and promote efficiency in the criminal justice system by advocating for individualized, proportional criminal sentencing laws.
- Not against prisons or punishments; simply believe that sentences should fit the individual crime and offender - judges in best position to decide proper punishment.

1. Florida (1979)
2. North Carolina (1979)
3. New York - Rockefeller Drug Laws (1972)
4. Michigan - 650-Lifer (1978)
5. Federal System (1986)

The Case *For* Mandatory Minimums

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- Deterrence
- Incapacitation
- Uniformity and Consistency
- Securing Cooperation

The theory: harsh, mandatory penalties will deter would-be criminals from entering the drug trade, and incapacitate those who choose to deal drugs in North Carolina.

The (hoped for) result: Fewer drug dealers, less heroin, cocaine, and other drugs on the street, fewer drug abusers, and less drug-related crime (e.g., property crime to support drug habits, violent crime associated with the illegal drug trade).

“The greatest gap between knowledge and policy in American sentencing concerns mandatory penalties. Experienced practitioners, policy analysts, and researchers have long agreed **that mandatory penalties in all their forms . . . are a bad idea.**” (Tonry, 2009)

1. American Law Institute in the Model Penal Code (1962)
2. American Bar Association
3. Federal Courts Study Committee (1990)
4. U.S. Sentencing Commission (1991)

Deterrence



The theory behind the general deterrence of mandatory penalties is that a would-be criminal will:

- Research the criminal code;
- Find the relevant penalty;
- Be afraid of penalty and stay on the straight and narrow.

1. The certainty of being caught is a vastly more powerful deterrent than the punishment;
2. Sending an individual convicted of a crime to prison isn't a very effective way to deter crime;
3. Police deter crime by increasing the perception that criminals will be caught and punished; and
4. Increasing the severity of punishment does little to deter crime.

Incapacitation

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The theory behind mandatory minimums to incapacitate drug dealers is simply that when a drug dealer is put away, he can't deal drugs anymore.

While plausible, this theory does not hold up to scrutiny.

“The best estimate of the incapacitation effect [of mandatory minimum drug laws] is zero” (Piehl & Dilulio, 1995)

“A drug dealer sent away is replaced by a new one because an opportunity has opened up.” (Wilson, 1994).

Whack-A-Mole Enforcement

FAMM

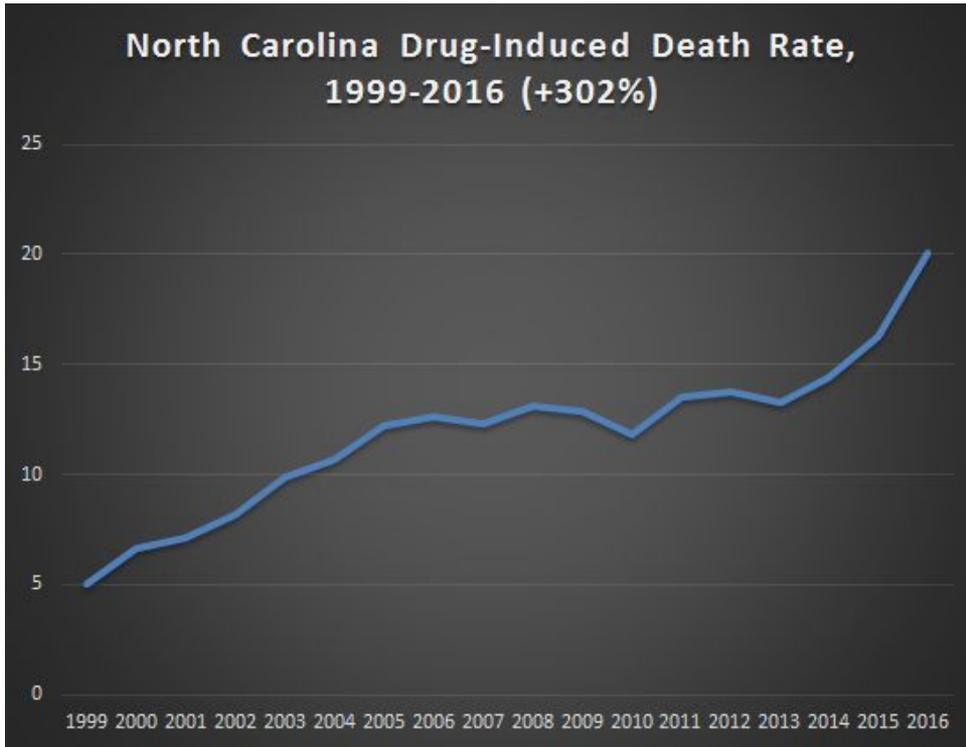
1. Pay for police to arrest drug dealer 1;
2. Pay for incarceration of drug dealer 1;
3. Pay for police to arrest drug dealer 2 who took the place of drug dealer 1;
4. Pay for incarceration of drug dealer 2;
5. Pay for police to arrest drug dealer 3 who took the place of drug dealer 2; and so on and so on.



More money, more crime.

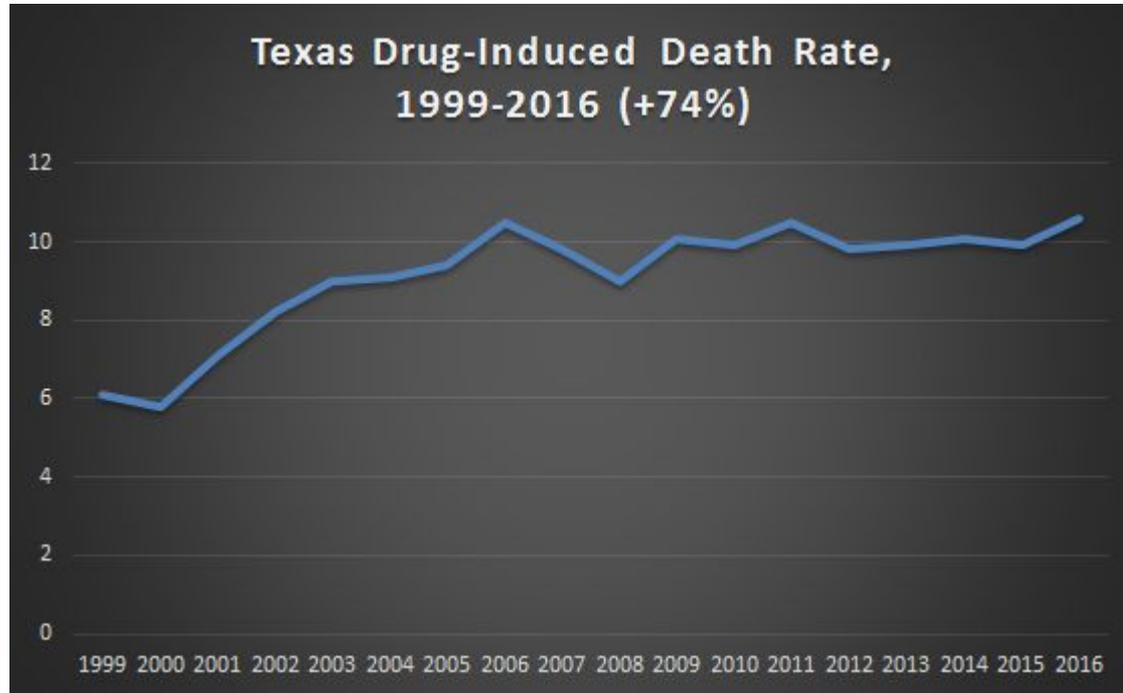
North Carolina Drug-Induced Deaths

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Texas Drug-Induced Deaths

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Uniformity and Consistency

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Mandatory Minimums Fail to Achieve Uniformity and Consistency.

- Mandatory minimums transfer sentencing discretion from judges to prosecutors;
- Prosecutorial discretion creates sentencing disparities as results vary by jurisdiction.
- Result is “troubling punishment differentials among offenders with similar culpability,” and “wide disparities between cases that are comparable in every way except how they were handled.” (Tonry, 2009)

Uniformity and Consistency

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Mandatory Minimums Actually Undermine Uniformity and Consistency.

- “Cliff effects”
 - Virtually identical behavior yields wildly disparate outcomes
 - 3.9 grams of heroin vs. 4.0 grams of heroin - What justifies the difference between 10-13 months of intermediate sanctions and 70 months of prison?
- “Tariff Effects”
 - Over reliance on one variable (e.g., drug weight) creates “equal punishment among those who are not equal”
 - Drug courier vs Drug Kingpin.

Securing Cooperation from Defendants.



1. Should prosecutors have this much power?
2. Right to a fair trial.
3. Plea rates remain stable across changes to mandatory minimums:
4. Without mandatory minimums, defendants still face all the pressures involving pleading guilty to avoid a lengthy, costly trial.
5. Texas and other states with no mandatory minimums have no problems arresting and prosecuting drug traffickers.

State Reforms to Mandatory Minimums

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Legislators across the country and across the political spectrum have begun to realize that mandatory minimum drug laws are ineffective, comparatively inefficient, and counterproductive to public safety. States have begun to:

- Reduce scope of mandatory minimums;
- Restore discretion to courts; and
- Repeal mandatory minimums.

35 States have reformed or repeal mandatory minimums in the last 15 years.

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- South Carolina - repealed a number of mandatory minimums;
- Louisiana - Full repeal
- Georgia - safety valve;
- Mississippi - safety valve
- New York - full repeal;
- Michigan - full repeal;
- Virginia - safety valve;
- Maryland - repeal and retroactive safety valve;

Policy Recommendations

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- Repeal mandatory minimums
 - Repeal mandatory minimums and treat drug trafficking the way nearly all other crimes are treated in North Carolina.
 - New York, Michigan, Maryland, Louisiana, South Carolina, Rhode Island, and Iowa have all repeal all or some of their mandatory minimum sentences and have not sacrificed their public safety in doing so.

Policy Recommendations

The logo for FAMM (Federal Alcohol Modeling Methodology) is located in the top right corner. It consists of the letters "FAMM" in a bold, white, sans-serif font, set against a solid orange rectangular background.

- Safety Valve
 - Best option short of a full repeal is a broad safety valve that allows courts to depart from mandatory minimums.
 - Georgia, Mississippi, Virginia, Oklahoma, and Alabama all allow judges to depart from certain mandatory minimums in the interest of public safety and effective justice.
 - The American Legislative Exchange Council (ALEC) has included a safety valve bill among their model legislation.

Policy Recommendations

The logo for FAMM (Family Advocates for the Mentally Ill) is located in the top right corner. It consists of the letters "FAMM" in a bold, white, sans-serif font, set against a solid orange rectangular background.

- **Retroactivity**
 - Over 30 years of mandatory minimums in North Carolina means there are inevitably a number of individuals serving wasteful and unjust sentences.
 - Retroactivity allows the state to immediately correct harmful disparities and free up prison space for higher risk offenders.
 - States such as Iowa and Maryland have passed retroactive reforms and have not sacrificed public safety in the process.
 - Retroactive changes to federal sentencing guidelines have not resulted in dangerous recidivism among federal offenders.

Questions?

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Daniel Landsman
Director of Federal Legislative Affairs
FAMM

Data point resources

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North Carolina and Texas drug-induced death statistics – “CDC Wonder,” Centers for Disease Control and Prevention.

<https://wonder.cdc.gov/controller/saved/D77/D40F403>

New York Crime Decrease – “Index Crimes Reported to Police by Region: 2008-2017,” New York State Division of Criminal Justice Services. May, 2018.

<http://www.criminaljustice.ny.gov/crimnet/ojsa/indexcrimes/Regions.pdf>

“Quick facts: New York,” United States Census Bureau,” July 1, 2017 <https://www.census.gov/quickfacts/fact/table/ny/PST045217>

New York Prison Population Decrease – “Department of Corrections and Community Supervision,” New York State Department of Corrections and Community Supervision, July 1, 2018. <http://www.doccs.ny.gov/FactSheets/PDF/currentfactsheet.pdf>

Michigan crime decrease – “Uniform Crime Reporting Statistics,” Federal Bureau of Investigations.

<https://www.ucrdatatool.gov/Search/Crime/State/RunCrimeTrendsInOneVar.cfm>

Virginia crime decrease – “Uniform Crime Reporting Statistics,” Federal Bureau of Investigations. <https://www.ucrdatatool.gov/Search/Crime/State/StatebyState.cfm>

Georgia crime decrease and savings – Boggs, M.P, and Miller, C.A. “Report of the Georgia Council on Criminal Justice Reform.” Georgia Council on Criminal Justice Reform. February 2018.

https://dcs.georgia.gov/sites/dcs.georgia.gov/files/related_files/site_page/2017-2018%20Report%20of%20the%20GA%20Council%20on%20Criminal%20Justice%20Reform.pdf

South Carolina crime decrease – “National Imprisonment and Crime Rates Continue to Fall” Pew Charitable Trusts. December 2016.

http://www.pewtrusts.org/-/media/assets/2017/03/pspp_national_imprisonment_and_crime_rates_fall.pdf

South Carolina prison closures and savings – “Data Trends: South Carolina Criminal Justice Reform” Pew Charitable Trusts. September 2017.

<http://www.pewtrusts.org/-/media/data-visualizations/infographics/2017/data-trends-south-carolina-criminal-justice-reform.pdf>

Louisiana prison population and savings – Toohey, Grace “Louisiana sees large drops in prison population a year after historic criminal justice reforms,” *The Advocate*. June 28, 2018 https://www.theadvocate.com/baton_rouge/news/crime_police/article_a5c01e10-7ad9-11e8-856e-ebf326bf26bc.html