

Mandatory Minimum Sentencing

OUR POSITION:

Bravehearts recognises the pros and cons of mandatory minimum sentencing, advocating for a balanced policy.

- **Mandatory minimum sentences aim to protect the public, ensure proportional punishment, and signal societal condemnation of serious sexual offenses.**
- **Research shows incarceration provides short-term incapacitation but longer mandatory sentences do not reliably reduce sexual reoffending after release.**
- **Mandatory minimum sentences can produce disproportionate outcomes, reduce judicial discretion, increase prison populations, and create collateral social and fiscal costs.**
- **Evidence supports a risk-based, individualised approach.**
- **A balanced policy maximises public safety while promoting proportional justice and rehabilitation, rather than applying a one-size-fits-all mandatory minimum framework.**

Background

Mandatory minimum sentencing requires judges to impose legislatively-prescribed minimum prison terms for specified crimes or offender categories. In the context of sex offenses, mandatory minimum sentencing regimes have been a popular response to what is often seen as inadequate and inconsistent sentencing for particular sex crimes (especially those involving children or repeat offenders) to guarantee custodial time.

However, this approach to sentencing is more complex.

While proponents argue mandatory minimum sentencing advances public safety and fairness by ensuring appropriate, predictable punishment for serious sexual crimes; critics argue mandatory minimum sentencing produces unjustly severe outcomes, weak or mixed public-safety benefits, and harmful systemic consequences (e.g., increased incarceration, racial disparities, and reduced judicial discretion). Research provides limited support for mandatory minimum sentences, particularly regarding their stated goals of deterrence and recidivism reduction.

Sentencing of Sex Offences in Australia

Research indicates a notable gap between judicial sentencing of sex offenders and community expectations. Studies and reports suggest that the sentences handed down by judges, particularly for sexual assault and child sexual abuse, are often perceived as less severe than what the public considers appropriate (Moritz, Pearson & Mitchell, 2024, Queensland Sentencing Advisory Council, 2024). For example, analyses have shown that average prison terms for serious sexual offences fall below statutory maximums, prompting public concern. In a recent report, the Queensland Sentencing Advisory Council (2024), found that penalties imposed for rape are not adequate, particularly when the victim survivor is a child

Factors such as offender character, remorse, and mitigating circumstances influence judicial decisions, but these considerations often contrast with the public's preference for more punitive measures. However, a study by the National Jury Sentencing Study (Warner et.al., 2021) found that the public's intuitive views of sentencing factors are generally well-aligned with judicial sentencing practice, challenging the perception that the public is particularly punitive towards sex offenders.

Nevertheless, high-profile cases highlighting perceived leniency, such as sentences reduced due to the offender's gender identity or other mitigating factors, have intensified calls for reform. There is some evidence that suggests judicial sentencing in this area does not consistently reflect community values, particularly regarding sentence severity, contributing to public dissatisfaction and ongoing debate about reform.

Pros: Arguments for Mandatory Minimum Sentencing

Certainty and Consistency in Sentencing

By establishing clear sentencing thresholds, mandatory minimum sentencing can simplify the legal process, reducing the complexity of sentencing decisions (LegalClarity, 2025). This can lead to more efficient court proceedings and reduce the potential for prolonged legal battles over sentencing outcomes.

Mandatory minimum sentencing aims to standardise sentencing, reducing disparities that may arise from judicial discretion (Albonetti, 2011). By establishing clear guidelines, mandatory minimum sentencing seeks to ensure that individuals convicted of similar offenses receive comparable sentences, promoting fairness and consistency in the justice system. This predictability can also aid in the planning and allocation of resources within the correctional system.

Proponents claim fixed minimum sentencing prevents unduly lenient sentences that might undermine public confidence in the justice system (i.e., they promote arguably consistent baseline punishment for especially harmful offenses) (Nir & Liu, 2021). This is particularly important in cases where public opinion demands stringent penalties, and there is concern that judicial discretion might lead to under-punishment of severe crimes.

Incapacitation and public safety

Mandatory minimum sentences ensure that individuals convicted of serious sex offenses are incarcerated for a specified minimum period, thereby removing them from society and reducing the immediate risk to potential victims (United States Sentencing Commission, 2022). This approach is particularly pertinent for repeat offenders or those committing violent crimes, where the risk of reoffending is high. By guaranteeing a minimum term, mandatory minimum sentencing aims to prevent further offenses during incarceration.

Political and victim-centred appeal

Imposing mandatory minimum sentences serves as a clear societal statement that certain crimes, especially those involving sexual violence, are intolerable. This symbolic denunciation reinforces the severity of the offense and can contribute to public confidence in the justice system. It underscores

the commitment of the political and legal system to uphold societal norms and protect vulnerable populations.

For victims and advocacy groups, mandatory minimum sentences can provide a sense of justice and reassurance that offenders will be held accountable for their actions. It reflects a commitment to victim rights and societal protection.

Cons: Arguments Against Mandatory Minimum Sentencing

Disproportionate and sometimes inflexible outcomes

The rigidity of mandatory minimum sentences removes judicial discretion, potentially leading to sentences that do not align with the individual circumstances of the offense or the offender (Albonetti, 2011). This can result in disproportionately harsh penalties for offenders who may have lower levels of culpability, undermining the principle of proportionality in sentencing (Tonry, 2021).

Limited deterrence and recidivism impact

While incarceration can serve immediate purposes such as incapacitation (keeping offenders away from potential victims) and symbolic denunciation, research and best-practice guidelines indicate that a one-size-fits-all approach is often ineffective and can sometimes be counterproductive. Evidence supports a graduated, individualised approach that considers risk level, treatment needs, and social context (Berger & Scheidegger, 2022). Over-reliance on incarceration can be costly, socially harmful, and less effective in preventing future sexual offending than targeted, evidence-based alternatives.

Empirical studies have questioned the effectiveness of mandatory minimum sentences in deterring crime. Research indicates that while the certainty of being caught can be a significant deterrent, the severity of punishment, as mandated by mandatory minimum sentences, does not have a substantial additional deterrent effect (National Institute of Justice, 2016). This suggests that mandatory minimum sentences may not effectively prevent the commission of sex offenses.

Longer sentences mandated by mandatory minimum sentences do not necessarily correlate with a decrease in recidivism rates (Berger & Scheidegger, 2022; Tonry, 2012). Offenders often reoffend at similar rates regardless of sentence length, indicating that factors other than incarceration duration play a more significant role in preventing reoffending. This challenges the assumption that longer sentences lead to lower recidivism.

Collateral consequences

Mandatory minimum sentences can exacerbate existing disparities in the criminal justice system. Research has shown that mandatory minimum sentences disproportionately affect racial and ethnic minorities, as well as individuals from lower socioeconomic backgrounds, leading to unequal treatment under the law (Australian Law Reform Commission, 2017; Bessant, 2001).

The imposition of mandatory minimum sentences can have long-term negative effects on offenders' families and communities (Tobin-Tyler & Brockmann, 2017). These consequences, related to

incarceration generally, include economic hardship, family disruption, and social stigma, which can hinder the reintegration of offenders into society and perpetuate cycles of disadvantage.

Contributes to Prison Population Growth and Costs

Mandatory minimum sentences can lead to an increase in the incarcerated population, contributing to overcrowding in correctional facilities. This growth places additional strain on the criminal justice system, leading to higher costs and potentially impacting the quality of rehabilitation programs available to inmates (Raphael & Tahamont, 2017).

Resources allocated to incarcerating individuals under mandatory minimum sentences could potentially be better utilised in rehabilitative programs, education, or community-based interventions that address the root causes of criminal behaviour and reduce the likelihood of reoffending.

Bravehearts Position

Mandatory minimum sentences for sex offenses are often proposed with the goal of protecting the public, ensuring punishment proportional to harm, and signalling societal condemnation of serious sexual crimes. Research indicates that incarceration does provide immediate incapacitation, which can prevent further offending while the individual is in custody. However, the empirical evidence suggests that longer mandatory minimum sentences do not consistently reduce sexual reoffending after release and may produce disproportionate or inflexible outcomes for certain offenders.

Given these findings, a blanket approach mandating fixed minimum sentences for all sex offenses may not be the most effective or just policy. Evidence supports a more nuanced, individualised strategy: high-risk offenders may require incarceration combined with specialised treatment, while lower-risk individuals could benefit more from community-based supervision and evidence-based interventions that address underlying offending behaviours. Such an approach balances public safety, proportional justice, and rehabilitation, while also mitigating unintended consequences such as increased prison populations, fiscal costs, and social disruption.

Policy decisions regarding sex offenses should be guided by risk assessment, evidence-based interventions, and proportional sentencing, rather than by a one-size-fits-all mandatory minimum framework

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