



Families Against Mandatory Minimums

Mandatory sentencing was once America's law-and-order panacea. Here's why it's not working.

A confidential informant approached **Joseph Settembrino**, 18, about selling LSD. Between jobs and needing money for a car payment, Settembrino negotiated to sell LSD to two friends. Though he had never been in trouble with the law, Settembrino received a 10-year federal mandatory sentence.

Brenda Valencia's aunt didn't have a driver's license, so Valencia gave her ride. Unfortunately, it was to a house where the aunt sold seven kilos of cocaine. Though Valencia knew nothing of the sale, a cocaine dealer cooperating with the prosecution for a lower sentence testified that she did. She received a 10-year mandatory sentence, plus two years because her aunt had carried a concealed weapon. The sentencing judge said, "This case is the perfect example of why the minimum mandatory sentences and the sentencing guidelines are not only absurd, but an insult to justice. This young lady does not need to be sentenced to 151 months without parole; however, the law is the law, and we're all bound to obey it. But it's absolutely ridiculous to impose this sentence in this case, considering the degree of participation that this defendant had in the crime."

On a tip from a confidential informant, police raided **Lance Marrow's** apartment, found drugs and arrested both Marrow and his roommate. The bags containing crack and powder cocaine residue belonged to the roommate; only a dollar bill with powder cocaine on it was Lance's. Lance did not know that drugs were in his apartment. Convinced of his innocence, Lance went to trial, where, at the age of 50, he was convicted and sentenced under New York's Rockefeller drug laws to a mandatory state term of 15 years to life.

Settembrino, Valencia, Marrow and tens of thousands of low-level, non-violent drug offenders have learned a hard lesson about federal and state mandatory sentencing laws: judges have no discretion to fit the punishment to the crime or the individual. Indeed, most people know nothing about mandatory sentencing laws until they are personally affected.

What are mandatory sentences?

The American justice system traditionally permits judges to weigh all the facts of a case when determining an offender's sentence. But in the 1970s and 1980s, the U.S. Congress and many state legislatures passed laws that force judges to give fixed prison terms to those convicted of specific crimes, most often drug offenses. Members of Congress and state legislators believed these harsh, inflexible sentences would catch those at the top of the drug trade and deter others from entering it.

Instead, this heavy-handed response to the nation's drug problem filled prisons with low-level offenders, resulting in over-capacity prison populations and higher costs for taxpayers. Mandatory sentencing laws disproportionately affect people of color and, because of their severity, destroy families. Two decades after the enactment of mandatory sentences, these laws have failed to deter people from using or selling drugs: drugs are cheaper, purer and more easily obtainable than ever before.

On these pages you'll learn about federal and state sentencing laws and the six major problems that arise with mandatory sentences for drugs and other offenses:

- 1. Judges can't consider the facts of each case.**
- 2. The type and weight of a drug primarily determines sentence length.**
- 3. They remove checks and balances.**
- 4. They encourage and reward those who inform on others.**
- 5. Conspiracy laws make those at the top of the drug trade and low-level offenders equally culpable.**
- 6. Low-level offenders often get longer sentences than high-level dealers.**

Understanding mandatory sentencing laws

Federal sentences

There are two types of federal sentencing laws: **mandatory minimum sentencing laws**, enacted by Congress, and the **sentencing guidelines**, enacted by the United States Sentencing Commission.

Mandatory minimum sentences have existed at various times in U.S. history, but the current laws FAMM is fighting were mostly enacted in a 1986 anti-drug bill. Members of Congress believed that stiff penalties would deter people from engaging in illegal drug activity and would incapacitate for long periods those who sold drugs. Many of these penalties are mandatory – that is, judges may not impose a penalty less than the number of years chosen by Congress. The most common mandatory sentences are for five and 10 years, and are based on the weight of the drug or the presence of a firearm. These laws prevent judges from considering other relevant factors, such as the defendant’s role in the offense or likelihood of committing a future offense.

The sentencing guideline system started in 1987. Congress established the sentencing commission and directed it to write guidelines to combat unjustified sentencing disparity from judge to judge across the country. The guidelines require the sentencing judge to consider various facts about the crime and the defendant. Consideration of these facts leads to a “guideline range,” for example: 18 to 24 months. While judges must generally impose a sentence within the range, they have discretion to choose a sentence anywhere within the range, and in unusual cases they may choose a sentence above or below the range if they explain their reasons for doing so.

Mandatory minimum sentencing laws and sentencing guidelines are both ways to limit judicial discretion, but the guidelines are clearly preferable. Unlike blunt mandatory minimums which take account of only the quantity of drugs sold, guidelines permit a judge to consider many relevant facts. Also, the mandatory minimums are “one-size-fits-all,” while the guidelines allow for upward or downward departures in unusual cases. Unfortunately, the mandatory sentencing laws supersede or “trump” the sentencing guidelines. At sentencing, judges must determine if the defendant was convicted of a quantity of drugs that triggers a mandatory minimum penalty and if so, impose that sentence regardless of the sentencing guidelines.

There are only two ways to avoid a mandatory minimum sentence. First, the defendant may provide “substantial assistance” to the government by turning in other defendants. Second, some defendants qualify for the “safety valve” that Congress passed in 1994 to address (at FAMM’s urging) the excessive sentences served by non-violent drug offenders. If the judge finds the defendant is a low-level, non-violent, first-time offender who qualifies for the safety valve, the defendant may be sentenced

under the sentencing guidelines instead of the mandatory minimum sentence law. Although the safety valve is a step in the right direction, the criteria for eligibility is very narrow so thousands of nonviolent drug defendants are still sent to prison for decades under mandatory minimum sentencing laws.

State sentences

The federal government is not the only villain in sentencing policy. Most states also have mandatory sentencing laws.

State mandatory sentencing laws carry the same onerous characteristic of federal laws: they send offenders to prison for defined periods of time without considering all the facts of a case. Like federal laws, drug type and weight usually determine the sentence. In addition, many states have set automatic prison terms for those who sell drugs within 1,000 feet of a school.

Michigan and New York have some of the toughest penalties in the nation. Though in 1998, Michigan rolled back the infamous “650-lifer law” which mandated life in prison with-

Mandatory sentences “trumped” the guidelines in 60 percent of the cases where the defendant was eligible for a downward adjustment at sentencing for playing a minor or minimal role in the offense. They also trumped the guidelines in 38 percent of the cases where defendants had no prior record or a negligible criminal history.

out parole for offenders convicted of intent to deliver 650 grams or more of heroin or cocaine, Michigan still retains mandatory sentences of 10, 20, or more years for low-level drug sales and a consecutive sentencing law that allows charges to be “stacked” against an offender. New York’s Rockefeller drug laws require automatic 15-years to life sentences for some first-time drug offenders. Efforts are underway in both states to reform these laws.

Prison costs and crowding are forcing some states to reconsider mandatory drug sentencing. Louisiana has dropped mandatory sentencing for a wide variety of non-violent offenses, including drugs. Indiana eliminated mandatory 20-year sentences for cocaine sales. Connecticut granted judges limited discretion in sentencing non-violent drug offenders.

Prosecutors retain a number of options that can affect whether a sentence is tried in a state or federal court. When federal drug laws mandate longer sentences than state laws, prosecutors often opt for federal prosecution.

Not all state mandatory laws deal with drugs. Project Exile adds mandatory sentences to felons possessing a gun, those convicted of possessing both guns and drugs, and those brandishing or using a gun on school grounds.

The human faces of mandatory sentences

The facts and figures about mandatory sentencing laws are cold and stark, their problems manifold. These stories of imprisoned men and women, mothers and fathers, sons and daughters illustrate these problems and add reality to the effects of mandatory sentences on offenders, their families and the nation.

1. Judges can't consider the facts of each case.

In federal and state cases where factors trigger mandatory sentencing laws, a judge must impose at least the mandatory sentence. The judge cannot consider the facts of each case and must disregard such factors as a person's role in the offense or likelihood of rehabilitation. Prior convictions can significantly increase the mandatory sentence. Federal mandatory sentences are doubled for certain repeat offenders. Gun possession, even if not used in a crime, mandates automatic sentences for people with previous felony convictions. In many states, habitual offender laws, like California's "three-strikes law," force judges to send non-violent criminals and drug addicts to prison for decades even if cheaper and more effective options like substance abuse treatment are needed.



GREGORY MAYS

Date of birth: 1961

Federal sentence: 20 years

Offense: Cocaine conspiracy

Prior convictions: Sale of cocaine and marijuana

Date of sentencing: 1991

An old acquaintance of Gregory's, Victor, became a confidential informant to avoid a prison term. Gregory repeatedly rebuffed Victor's efforts to make a cocaine deal but, when another friend got involved, finally signed on. At the time of his arrest, he had medical bills of \$27,000 for a son with health problems. Because Gregory had prior drug convictions, his 10-year mandatory sentence was automatically doubled to 20 years. Said Northern District of California Judge Thelton E. Henderson at sentencing, "This is the first time since the sentencing guidelines have been imposed that I find myself having to impose a 20-year mandatory minimum. And while my opposition to it has been academic thus far, I find that I join the long list of judges who are appalled at what they have had to do, and I'm appalled by what I feel I'm required to do now... Nothing would delight me more than to have the appellate court send you back here and say that something is wrong with the sentence."

Did you know?

There are two million prisoners in the U.S.

Two-thirds of the two million prisoners in the U.S. are African American or Hispanic.

Women are the fastest-growing sector of the prison population.

More than 1.5 million children have a parent in prison.

Some 80 percent of the men and women behind bars – some 1.4 million individuals – are seriously involved with drug and alcohol abuse.

Mandatory sentencing laws apply almost exclusively to drug offenders.

Drug defendants comprise around 60 percent of the federal prison population, up from 38 percent in 1986 when mandatory sentencing laws were passed.

A 1998 RAND study found that mandatory sentences are the least cost-effective means of reducing drug use and sales.

The average cost of incarcerating an individual for a year is \$22,000.



MIKE MAHONEY

Date of birth: 1955
Federal sentence: 15 years
Offense: Felon in possession of a firearm (ACCA)
Prior convictions: Methamphetamine sales (three within a month)
Date of sentencing: 1994

In 1979 Mike Mahoney was heavily addicted to amphetamines and sold them to support his habit. After three sales to an undercover agent within a month, he was arrested, pled guilty and served 22 months in a Texas jail. He was released in 1981, completed his probation in 1990, and moved to Tennessee. From 1991 until his arrest, he was the sole owner of a restaurant/pool hall in Jackson, Tenn. Because he carried a large amount of cash at closing time, he bought two revolvers from a pawnshop for personal protection in 1993. He mistakenly believed that because his convictions had occurred more than 10 years ago, he could legally buy a gun. (He had been permitted to have a liquor license 10 years after his offenses.) Federal agents reviewing the pawnshop’s records discovered Mike’s purchase, and U.S. District Judge James D. Todd was forced to give him 15 years because he was a felon in possession of a firearm with three prior drug felony convictions. Said Judge Todd at sentencing: “It doesn’t matter how compelling your circumstances may be, it doesn’t matter how long ago those convictions were, and it doesn’t matter how good your record has been since those prior convictions. [Federal law] requires in your case that you receive a sentence of 15 years. [I]t seems to me that this sentence is just completely out of proportion to the defendant’s conduct in this case...[I]t just seems to me this is not what Congress had in mind.”



MICHAELENE SEXTON

Date of birth: 1951
Massachusetts sentence: 10 years
Offense: Cocaine
Prior Offenses: None
Date of sentencing: 1999

Michaelene Sexton sold cocaine to support her own addiction. Police learned of her drug activities after two of her friends were arrested on separate offenses and became confidential informants. Police searched Michaelene’s home and arrested her. She went on the lam before sentencing but then turned herself in. One friend/informant received no penalty, the other six months rehabilitation. When Judge Judd J. Carhart sentenced Michaelene, a single mother of three, he criticized mandatory sentencing: “Ten years is an awful long time. When I look at this case compared to crimes of violence, I wonder.”

2. The type and weight of a drug primarily determines sentence length.

Mandatory minimum drug penalties are based primarily on the type of drug and its weight. When members of Congress enacted mandatory sentencing laws in 1986, they identified specific drugs that would carry minimum prison penalties. For each of those drugs they established a quantity, or weight, that would trigger the five-year and 10-year mandatory prison sentences.

Federal mandatory drug sentences (for first offenders)

| Type of drug | 5-year sentence* | 10-year sentence* |
|-----------------|-----------------------------|-----------------------------|
| LSD | 1 gram ** | 10 grams |
| Marijuana | 100 plants or 100 kilos *** | 1,000 plants or 1,000 kilos |
| Crack cocaine | 5 grams | 50 grams |
| Powder cocaine | 500 grams | 5 kilos |
| Heroin | 100 grams | 1 kilo |
| Methamphetamine | 5 grams | 50 grams |
| PCP | 10 grams | 100 grams |

* There is no parole in the federal system.
** A gram is roughly equal to a single packet of sweetener.
*** A kilo is equal to 2.2 lb.

LANANDO SHANNON

Date of birth: 1970
Federal sentence: 10 years
Offense: Crack
Prior convictions: None
Date of sentencing: 1993

Lanando Shannon, back from serving in the Persian Gulf War, got a job as a maintenance worker. He was befriended by his job trainer, who was also a confidential informant. The informant introduced him to his pregnant girlfriend and claimed he needed money to support his family. He convinced Shannon to find crack and to sell it to an officer posing as the informant’s cousin. Shannon sold the officer 14 grams, enough to qualify for the five-year mandatory sentence. But the order to arrest Shannon came only after the informant convinced Shannon to make a second sale – which Shannon had sworn would be his last – of 74 grams, which triggered a 10-year mandatory sentence.

Judges speak out



EDWARD JENKINS

Date of birth: 1967

Federal sentence: 10 years

Offense: Possession with intent to distribute cocaine

Prior convictions: Misdemeanor “obstruction without violence” for shouting at a police officer in 1992

Date of sentencing: 1997

Edward Jenkins worked as a truck driver but had big debts, mainly for child support. He accepted \$2,000 to take a package of cocaine from Ft. Lauderdale to Montgomery, where the recipient had set up a deal to sell the cocaine to a buyer who was cooperating with law enforcement. Edward tried to deliver the package, but the recipient became suspicious about the buyer and refused. The recipient then asked Edward to keep the package. When Edward returned the package to his car, law enforcement agents arrested him. He never knew the specific amount of the cocaine – but it was enough to give him a mandatory 10-year sentence.



DUANE C. EDWARDS

Date of birth: 1969

Federal sentence: 10 years

Offense: Crack cocaine

Prior convictions: None

Date of sentencing: 1995

Duane Edwards spent four years in the military, including serving in Iraq during the Gulf War. After Duane and a friend sold crack to an undercover police officer, officers searched the car and found more crack – enough to trigger a 10-year mandatory sentence. Although the co-defendant had made four sales to the undercover officers, Duane was involved only once – when the arrest was made.

3. They remove checks and balances.

In the absence of judicial discretion, control over sentencing shifts to prosecutors who decide whether an offender gets charged in a way to trigger a mandatory sentence, whether the case goes to state or federal court, and whether the defendant has provided enough information, i.e., cooperation or “substantial assistance” to warrant a reduced sentence. Law enforcement techniques may also have an impact on sentence length. When an undercover agent sets up an offender, that agent may manipulate the transaction to increase the amount of drugs involved and/or the number of transactions. Such manipulation in turn can expose defendants to multiple charges and longer sentences. In some states, defendants must serve each mandatory sentence consecutively. When a prosecutor brings multiple charges, the result can be decades in prison.

“Statutory mandatory minimum sentences create injustice because the sentence is determined without looking at the particular defendant.... It can make no difference whether he is a lifetime criminal or a first-time offender. Indeed, under this sledgehammer approach, it could make no difference if the day before making this one slip in an otherwise unblemished life the defendant had rescued 15 children from a burning building or had won the Congressional Medal of Honor while defending his country.”

—J. Spencer Letts, U.S. District Judge,
Central District of California

“We must remember we are not widgets or robots, but human beings. Defendants should be sentenced within the spectrum of what most judges would consider fair and reasonable.”

—Leon Higginbotham, Judge, 3rd Circuit Court of Appeals

“I think that a lot of people do not understand what is going on until, all of a sudden, they are caught up in the system; and they find out that people have been mouthing all kinds of slogans, and when the slogans all come down to rest, they sometimes come to rest very hard on the shoulders of the individual.”

—David Doty, U.S. District Judge, Minnesota

“...I continue to believe that sentence of 10 years' imprisonment under the circumstances of this case is unconscionable and patently unjust....[the defendant] will be sacrificed on the altar of Congress' obsession with punishing crimes involving narcotics. This obsession is, in part, understandable, for narcotics pose a serious threat to the welfare of this country and its citizens. However, at the same time, mandatory minimum sentences – almost by definition – prevent the Court from passing judgment in a manner properly tailored to a defendant's particular circumstances.”

—Paul A. Magnuson, U.S. District Judge, Minnesota

“As a consequence of the mandatory sentences, we (judges) know that justice is not always done...[Y]ou cannot dispense equal justice by playing a numbers game. Judgment and discretion and common sense are essential.”

—Joyce Hens Green, U.S. District Judge, District of Columbia

“We need to deal with the drug problem in a much more discretionary, compassionate way. We need treatment, not just punishment and imprisonment.”

—Stanley Sporkin, U.S. District Judge, District of Columbia



MICHAEL PRIKAKIS

Date of birth: 1961
Federal sentence: 46¹/₂ years
Offense: Three counts of cocaine sale and three counts of possession of a firearm during a drug-trafficking offense.
Prior convictions: None
Date of sentencing: 1991

The prosecutor’s decisions ultimately determined the sentence of Michael Prikakis, who sold cocaine to undercover officers three times within a seven-day period. First, the police or prosecutors determined when to arrest Michael. Rather than arresting Michael after the first sale, they made two more purchases from him. Second, the prosecutor charged Michael with three separate counts of selling cocaine, resulting in three separate counts of possession of a firearm, not just one charge for the whole offense, because there was a legally registered pistol in his car. Arrested after one sale, Michael would have received a mandated six-year sentence; after two sales, a mandated 26 years; and after the three sales, 46¹/₂ years. In most cases, the offenses would be treated as one and Michael sentence would have been six years. Said Judge Roger Vinson at Michael sentencing: “...I don’t think the court can be silent as I impose a sentence that clearly to me is totally unwarranted, is certainly cruel and unusual, constitutes to me a violation of due process by the way it was brought about, and in every respect cannot be viewed as something that the people of this country are going to have faith in. If this is the kind of punishments that have to be meted out without any discretion of the courts, if I’m here simply as a machine to impose a sentence in accordance with some statutory mandate, then our system has gone far awry.”



BRENDA PEARSON

Date of birth: 1953
Michigan sentence: 50-200 years
Offense: 10 counts of delivery of cocaine
Prior convictions: None
Date of sentencing: 1995

Brenda Pearson and a friend were both heroin addicts. When the friend moved from New York City to Michigan, she had trouble finding personal supply and asked Brenda to send her heroin by mail. Over a year, Brenda bought small amounts of heroin on the street and sent them to her friend. Neither New York state nor federal law enforcement authorities chose to prosecute, concluding Brenda was not a true dealer but a user sharing drugs with a friend. A Michigan state prosecutor, however, extradited Brenda to Michigan and insisted she plead guilty to 10 separate counts of distribution. Michigan law requires each count to be served consecutively. The friend who turned Brenda in received 2-20 years.



JOHN REED

Date of birth: 1965
Indiana sentence: 30 years
Offense: Cocaine conspiracy
Prior convictions: None
Date of sentencing: 1991

John Reed became involved in an Indiana cocaine conspiracy. His job was to travel to Florida, pay for the cocaine, and sometimes deliver it to Indianapolis. While on a trip, one of the ring’s organizers sold cocaine to an undercover officer. The organizers not only implicated John but exaggerated his role in the offense. Because the organizers were arrested first, John had no defense against their accusations that he was one of them. John’s wife and father had accompanied him to Florida on his last trip, and prosecutors threatened them with 30-year sentences if John did not accept a plea bargain. His father had to serve one year of home detention and probation; his wife was placed on probation. One of the actual organizers received five years incarceration, the other five years probation.

4. They encourage and reward those who inform on others.

As the only way to lower a mandatory sentence, offenders are encouraged to trade information for freedom. Federal and state laws reward those willing to provide prosecutors with “substantial assistance” that divulges the names of persons involved in the crime and details about the crime. This system encourages offenders to lie about others in order to avoid lengthy sentences. Those with a minimal role usually have little or no information to offer and end up serving the mandated sentence.

ERIC MARSH

Date of birth: 1956
New York sentence: 15 years to life under the Rockefeller Drug Laws
Offense: Cocaine sale
Prior convictions: None
Date of sentencing: 1992

Eric Marsh, a habitual cocaine user, was with his friends Donald and David, who were arrested while selling just over two ounces of cocaine to an undercover police officer. To avoid mandatory 15-year sentences, the “friends” plea bargained and agreed to help convict Eric, who they said was in on the deal. Though there was limited evidence against Eric, he was convicted and given a mandated 15-year sentence. In exchange for their testimonies against Eric, Donald received three years to life and David got lifetime probation.



ALGERNON LUNDY

Date of birth: 1964
Federal sentence: Life plus 5 years
Offense: Conspiracy to distribute crack cocaine
Prior convictions: None
Date of sentencing: 1992

Algernon Lundy, a Alabama businessman for 15 years and a father, had never been in trouble with the law and maintains his innocence. Prosecutors said his cleaning service business was a cover for a massive crack distribution ring and that he was the organizer and his friends Ronald and Alvin were his deputies. No drugs or cash were found or seized, no specific drug activity recorded, no controlled buys conducted and no drug source or drug customers identified. Algernon was convicted of an 18-month involvement in a crack conspiracy almost entirely on the testimony of Ronald. The sentencing judge indicated he was bound by mandatory laws to impose the life sentence. After the trial, Ronald wrote the judge that he had been threatened and manipulated into falsely testifying against Algernon in exchange for a lower sentence. The courts, however, have ruled that Algernon should remain in prison for life. Ronald is serving a 20-year sentence; the third co-defendant remains at large.



MAFFETT POUND

Date of birth: 1939
Federal sentence: 20 years
Offense: Continuing criminal enterprise (CCE)
Prior Offenses: None
Date of sentencing: 1990

For years Maffett Pound and several of his friends sold marijuana at cost among themselves. Whoever could find a supplier would buy the marijuana and sell it to the other friends. In 1989 Memphis police arrested one of the friends, who then became an informant. This friend set up another friend, who in turn informed on a third friend. All three named Maffett as a source of marijuana. When police failed to make a controlled buy from Maffett, more than 20 state and federal officers entered Maffett’s home, where they found a tenth of a gram of marijuana and arrested Maffett and his wife. Maffett received a sentence more suitable for a high-level dealer: 20 years based on his involvement over the years with an estimated 300 pounds of marijuana. His wife was sentenced to 63 months. In addition, the couple had to forfeit the recreational park they had developed into a \$1 million asset, along with other assets. Because the “friends” informed on the Pounds, they were never prosecuted or tried.

5. Conspiracy laws make those at the top of the drug trade and low-level offenders equally culpable.

Conspiracy is an agreement between two or more persons to work together to commit an unlawful or criminal act. A conspiracy may be ongoing. Participants may drop out, and others join in. The members do not need to know each other or the part others play, and they do not need to know all the details of the plan or operation. They know, however, the purpose of the conspiracy and agree to participate in it. The agreement need not be formal; participation in itself constitutes agreement. Once found guilty of a drug conspiracy, a defendant can be sentenced based solely on a quantity of drugs distributed by other conspirators so long as she played some role, for example, as a lookout, order taker, or go-between. The law requires that before she can be sentenced based on those other amounts, however, those amounts must have been both “reasonably foreseeable” to her and “within the scope of her agreement.” Sentencing rules about foreseeability and scope set real limits on the broad reach of conspiracy law. Because those rules are complex and can be difficult to apply, mistakes are made – mistakes that can mean even longer sentences than the defendant otherwise would have received. For example, even low-level participants – those who may have distributed only a small amount of drugs or been only tangentially involved (for example, through a girlfriend or boyfriend) – have been known to receive sentences mistakenly based on all the drugs distributed by members of the conspiracy, even amounts distributed before they agreed to join the conspiracy. In addition, in many states, drug defendants are routinely charged and sentenced separately with delivery and with conspiracy to deliver, thus potentially (sometimes) doubling mandatory sentences for the same quantity of drugs.

“This type of statute does not render justice. This type of statute denies the judges of this court, and of all courts, the right to bring their conscience, experience, discretion and sense of what is just into the sentencing procedure, and it in effect makes a judge a computer, automatically imposing sentence without regard to what is right and just. It violates the rights of the judiciary and of the defendants, and jeopardizes the judicial system.”

—Franklin Billings, U.S. District Judge, Vermont



TODD PENNA

Date of birth: 1967
Federal sentence: 10 years
Offense: Marijuana cultivation conspiracy
Prior convictions: Driving violation
Date of sentencing: 2000

Todd Penna agreed to put his name on the deed of a house where marijuana was to be grown. Though his co-defendant had several other such houses in northern California, Todd was involved with only one house. Todd pled guilty on this charge when arrested, which should have resulted in a five-year mandatory sentence, but the prosecutor believed that Todd was also involved at two other houses. This led to a trial in which Todd's co-defendants testified against him to lower their own sentences. The jury convicted Todd, and he was sentenced to 10 years.



MONICA BOGUILLE

Date of Birth: 1973
Federal sentence: 10 years
Offense: Crack cocaine conspiracy
Prior Offenses: None
Date of Sentencing: 1994

When Monica Boguille was in high school, she began dating a man she had known since grammar school who sold crack. They began living together and had a child. Monica never used or sold drugs. She knew about what was going on in her house and occasionally would count her boyfriend's money for him or store his cocaine. At 20, Monica was arrested along with her boyfriend and the others involved in his conspiracy. The government labeled Monica the least culpable participant in the offense, but it made no difference because the judge was forced to give her the mandatory sentence. Two of her co-defendants were crack suppliers and heavily involved in the drug ring; one had even been a violent gang member. By cooperating with the government, these co-defendants were able to reduce their sentences so that they are serving about the same amount of time in prison as Monica.

“These unwise sentencing policies which put men and women in prison for years not only ruin lives of prisoners and often their family members, but also drain the American taxpayers of funds which can be measured in billions of dollars.”

—Myron Bright, Judge, 8th Circuit Court of Appeals



RONALD MILLER

Date of birth:
Federal sentence: 10 years
Offense: Possession of cocaine with intent to distribute
Prior convictions: None
Date of sentencing: 1993

Ron Miller had been general manager of a company for 24 years when his best friend asked him for help. The friend needed money badly and wanted Ron to let him use his company's name for a shipment of cocaine being sent to the United States. Ron agreed, then changed his mind and begged the friend not to proceed with the deal. When Ron returned from an international business trip, the imported cocaine had arrived. Though he knew he should report the transaction to police, he felt he could not do it. He never knew the amount of cocaine involved and never sought any compensation. Nonetheless, the judge was obliged to give him 10 years based on the amount of cocaine. The judge pointed out that he frequently sees individuals, such as Ron, who because of their minor involvement have no information that could result in a reduced sentence. “I am satisfied that Mr. Miller was unable to supply the kind of information which the government feels authorizes it to make such a motion (to reduce the sentence). Again, it is something of a vicious circle because the reason he does not have that information is because of his minor involvement.”

6. Low-level offenders often get longer sentences than high-level dealers.

Congress established mandatory sentences with the intention of locking up high-level drug traffickers. But only 11 percent of those incarcerated in federal prisons on drug charges fit that definition, according to the U.S. Sentencing Commission. The rest are low-level offenders. A provision of the law allows offenders to receive lesser sentences by providing “substantial assistance” with the case, either by setting up others or telling on others. Such cooperation is the only way offenders can reduce mandatory sentences. Unfortunately, high-level traffickers, who know the workings of a drug organization, have much information to share, but low-level participants have little or no knowledge of value. The result? Low-level defendants frequently serve longer sentences than those at the top of the drug trade.



LAMONT H. GARRISON

Date of birth: 1973
Federal sentence: 19 years
Offense: Powder and crack cocaine conspiracy
Prior Offenses: None
Date of sentencing: 1998



LAWRENCE B. GARRISON

Date of birth: 1973
Federal sentence: 15 years
Offense: Powder and crack cocaine conspiracy
Prior Offenses: None
Date of sentencing: 1998

“I resent the fact that the Congress has forced me and put me in a position where I have to send a young man like you to jail for 10 years for a crime which doesn’t deserve more than three or four... Because I know what 10 years in jail is going to do to you... This 10-year mandatory minimum is awful. It’s just terrible. And I must say that I can’t just blame the Congress for doing it. They do it for political reasons. It looks good when some candidate stands up and says ‘I voted for a 10-year mandatory minimum.’ I wish that candidate could come into this courtroom and sit here and have to sentence this you man to 10 years in jail. They wouldn’t find it easy.”

—Alan H. Nevas, U.S. District Judge, Connecticut

Tito, the proprietor of a Maryland auto body shop, was facing a hefty prison term as a major player in a large, 20-per-son powder and crack cocaine operation. To reduce his sentence, he implicated others, including twins Lamont and Lawrence Garrison, who were only months away from college graduation. Soon other conspirators seeking leniency were repeating Tito’s charges that the twins bought cocaine for 10 weeks in 1996. The twins claimed their dealings with Tito related to the extensive work they were having done on their grandmother’s car. Nothing – no drugs, paraphernalia, or evidence of drugs either in their home or on their person – tied the Garrisons to the conspiracy, only the testimony of those seeking to reduce their looming prison sentences. Sure of their innocence, the twins went to trial. To their surprise, and that of their family and friends, the jury convicted them. Tito, who was heavily involved in the drug operation, gained tremendously from implicating the twins: he received only a three-year sentence.



LISA HANNA

Date of birth: 1963

Federal sentence: 19 years, seven months

Offense: Methamphetamine conspiracy

Prior Offenses: Three misdemeanors – DUI, possession of drug paraphernalia and possession of marijuana

Date of sentencing: 2000

In 1992, seven months before Lisa Hanna was to graduate from law school, her son died of a seizure. He was nine and suffered from cerebral palsy. Lisa spiraled downward, married an abusive man, and within five years developed a methamphetamine addiction. To sustain her addiction, she and a friend began a limited arrangement in which Lisa would provide the friend with meth to sell to his associates. When her husband learned about the operation, he took it over and expanded it. Lisa never profited from the sales, and, in fact, went into debt to maintain her habit. In 1998, she was treated for a recurrent and severe major depressive disorder, passed the Indiana bar exam, and left her husband. When the conspiracy was busted,

her estranged husband reduced his sentence by portraying her as the most culpable member of the conspiracy. Facing a longer sentence, Lisa entered a plea bargain for a 19-year sentence, the longest of anyone in the conspiracy. The original partner received nine years and two months, half her sentence; her estranged husband, seven years and three months; and the 12 other conspirators sentences ranged from two years and nine months to seven years and three months.



SUZAN PENKWITZ

Date of birth: 1967

Federal sentence: 6 years, 6 months

Offense: Heroin

Prior Offenses: None

Date of sentencing: 1997

Suzan Penkwitz met Jenny only months earlier, soon after Suzan’s abusive husband evicted her and fled with their young son. Jenny suggested that Suzan join her for a day trip to Mexico. On the way home, they were stopped at the border and searched. A secret compartment that contained heroin was found in the car’s gas tank, and the women were arrested. Suzan knew nothing about drug operation that Jenny and several other new friends were involved in. At first, Jenny told officers that Suzan knew nothing about the drugs. However, after intensive interrogation, Jenny implicated Suzan in exchange for a reduced sentence. There was no other evidence against Suzan – no fingerprints on or near the drugs, nothing on her person or in her apartment, no unexplained cash transactions, no past record of arrests, and no other witnesses who could testify that she was a drug smuggler. At the sentencing, the judge said that Suzan obviously didn’t know about the drugs, but the law mandated the sentence of six years, six months. Jenny’s testimony against Suzan resulted in a sentence reduction from 14 years to 27 months, four years less than Suzan.

There's more...

Cases can illustrate more than one problem with mandatory sentencing, as these cases show.



DENESE CALIXTE

Date of birth: 1945
Federal sentence: 10 years
Offense: Crack cocaine conspiracy
Prior convictions: None
Date of sentencing: 1996

To support her seven children, Denese Calixte picked fruit. When she fell from a ladder while picking, she could no longer work and struggled to support her family. A neighborhood drug dealer offered Denese \$200 to store his supply of crack cocaine (kept in a pill bottle or cigar tube) in her home at night. Denese agreed, and when police raided her home, they found the drugs. Although she explained that the drugs were not hers, she was charged anyway and convicted of possession with intent to deliver crack cocaine. A Haitian immigrant, Denise will be deported upon completing her sentence.



CHRISTINE TAYLOR

Date of birth: 1970
Federal sentence: 19 years, seven months
Offense: Conspiracy and attempt to manufacture methamphetamine
Prior convictions: Possession of methamphetamine and heroin, misdemeanor theft
Date of sentencing: 1990

Christine Taylor was 19 when she and her 35-year-old boyfriend went from their home in Texas to Alabama to buy chemicals to make methamphetamine. The boyfriend assured her that the purchase was legal because the chemicals were unmixed. Two weeks later, at her boyfriend's insistence, Christine returned to the same chemical company for another purchase. Meanwhile, the chemical company had contacted the Drug Enforcement Agency because it believed that a number of new accounts opened under false names were drug-related. Christine and her boyfriend were both arrested when he arrived in Alabama to drive her back to Texas. Though Christine used methamphetamine, she was never involved in its manufacture. She simply made two purchases that she had been told were legal. The boyfriend received a 30-year sentence.



GEORGE RODRIGUEZ

Date of birth: 1965
Federal sentence: 20 years
Offense: Cocaine
Prior convictions: Cocaine possession
Date of sentencing: 1998

George Rodriguez was convicted of making two cocaine purchases from members of a Florida distribution ring. Four years after the offense, and well after the other defendants had been busted, George was arrested. More than a decade earlier – at 21 – he had been arrested, that time for simple possession of less than a gram of cocaine for his personal use. He had received a \$50 fine and six months probation. However, the earlier charge required that the mandatory sentence be doubled from 10 to 20 years.

“I spent years in the legislature, including years as the chairman of the Criminal Justice Committee, and I fought consistently against mandatory minimum sentences because I think that sometimes they have an effect that is awesomely terrible.”

—Brian Duff, U.S. District Judge, Northern Illinois



BOBBY JARRELL

Date of birth: 1938
Federal sentence: 10 years
Offense: Conspiracy to possess with intent to distribute marijuana
Prior convictions: None
Date of sentencing: 1996

In 1996, police traced several hundred pounds of marijuana found in a dumpster in Iowa to a recently busted marijuana ring in Maryland. Facing stiff punishment, the ring's two leaders cooperated with the government by testifying against trucker Bobby Jarrell. Bobby swore the two had hired him to transport pottery, which he dumped when he realized it contained marijuana. The leaders said that Bobby had made deliveries for them for several years. The ringleaders netted more than \$7 million from their drug operations and led extravagant lifestyles. A father and grandfather, Bobby earned \$100 a day trucking and led a simple lifestyle. Nonetheless, the jury convicted Bobby, and he was given a mandatory 10-year sentence. One of the ring leaders served less than three years; the other only one year and one month in community confinement.

SALLY SMITH

Date of birth: 1956

Michigan sentence: Life without parole

Offense: Conspiracy to possess with intent to deliver over 650 grams of cocaine

Prior convictions: Three misdemeanors (marijuana possession, in park after hours, absconding bond)

Date of sentencing: 1993

Sally Smith's conspiracy conviction was based on two phone calls she allegedly made to collect funds for her boyfriend, Robert, and two receipts she signed for a cash exchange. The prosecution claimed that Sally received free access to cocaine and a lavish lifestyle for her complicity in the conspiracy. In reality, Sally had a violent 17-year relationship with Robert. She was often severely beaten and abused, and she feared for her life and those of family members. She worked, but was absent often because of her beatings, until Robert insisted she stay home. While he had wealth, she had an old Buick. Upon Robert's arrest on cocaine conspiracy, Sally fled but was arrested six months later. When she and Robert were out on bond, they reunited and fled together. Six months later they were arrested at a Michigan motel. At Sally's trial, the prosecutor suppressed evidence about the beatings and insisted that they were not severe enough to destroy her free will. Robert and Sally received identical sentences under Michigan's mandatory sentencing laws. Two codefendants received life probation; two others were not prosecuted.

MELQUIDIA CRUZ



Date of birth: 1968

Massachusetts sentence: 10 years

Offense: Trafficking cocaine

Prior convictions: None

Date of sentencing: 1997

In 1994, when Melquidia Cruz was on welfare and struggling to support her three small children, she began dating Jaime. Though he treated her well, she learned too late that he made his money selling cocaine with his friend Carlos. On five occasions a confidential informant called Jaime at Melquidia's apartment to request drugs. Jaime would get them from Carlos, and then he would deliver them to the informant in a car outside Melquidia's. Jaime sold the informant from 1/16th to four ounces of cocaine, for a total of \$3,600. After the informant arranged another buy, police obtained a search warrant and raided the apartment. They found cocaine and some drug paraphernalia, and arrested Jaime, Carlos and Melquidia. Melquidia was never accused of selling drugs herself. Her only involvement was answering phone calls from the informant. The government said – and she denied – that she relayed messages about drugs.



DONOVAN H. JONES

Date of birth: 1961

Federal sentence: 20 years

Offense: Crack cocaine conspiracy

Prior convictions: None

Date of sentencing: 1992

Donovan Jones pled not guilty to the cocaine conspiracy. He was never intercepted on wiretaps. No search warrant was ever executed against him; no assets or drugs were ever seized from him. The only evidence against him came from co-defendants who pled guilty and testified against him in exchange for reduced sentences. Most of the alleged conspirators received much shorter sentences – one only 4 1/2 months; yet the case against them was much worse than against Jones. A documented alien resident, he will be deported upon release to Jamaica, where he holds citizenship.



JILL BEDENBAUGH

Date of birth: 1966

Florida sentence: 7 years

Offense: Cocaine

Prior convictions: Possession of cocaine

Date of sentencing: 2000

Although Jill Bedenbaugh worked full time as a travel agent and part time as a bartender, she was a cocaine addict. A friend, Adem, confided that he sold drugs, and she began buying small quantities of ecstasy and GHB from him. Adem repeatedly asked Jill if she knew someone who could provide him with cocaine. She finally called Aaron, her friend and occasional cocaine supplier. Jill was present for a few small transactions the two made but didn't want to be involved in a larger transaction. Nonetheless, the two men made the deal on their own. A few days later Jill learned that Aaron had been arrested and Adem had been working as a confidential informant in order to reduce his previous drug charges. In addition to her seven-year sentence, she was fined \$100,000. Aaron was placed on probation for five years; the group's supplier received less than two years in county jail and work release. The whereabouts of Adem are unknown.

What is FAMM?

Families Against Mandatory Minimums (FAMM) is a national nonprofit organization founded in 1991 to challenge inflexible and excessive penalties required by mandatory sentencing laws. FAMM promotes sentencing policies that give judges the discretion to distinguish between defendants and sentence them according to their role in the offense, seriousness of the offense and potential for rehabilitation. FAMM's 24,000 members include prisoners and their families, attorneys, judges, criminal justice experts and concerned citizens.

FAMM's Goals

Restore judicial discretion so the punishment fits the crime. Judges – not law-makers, prosecutors, or law enforcement officers – should determine appropriate sentences. Their training, experience and neutrality place judges in the best position to weigh the many factors that should affect a sentence.

Replace mandatory sentencing laws with flexible sentencing guidelines. Federal and many state sentencing guideline systems provide judges with a range of sentences for offenses. Guidelines allow judges to consider all facts of the case, yet prevent wildly disparate sentences for similar offenses.

Strengthen and expand prevention and treatment programs to provide more cost-effective punishments. A 1997 RAND study found that treatment of heavy drug users was eight-to-nine times more cost-effective than long (six to seven-year) mandatory sentences in reducing drug use, sales and drug-related crime.



Families Against Mandatory Minimums

1612 K Street NW, Suite 1400

Washington, DC 20006

Tel: (202) 822-6700

Fax: (202) 822-6704

Email: famm@famm.org

Website: <http://www.famm.org>

Printed on recycled paper