MANDATORY MINIMUMS AND DRUG LAW

MATERIALS

. 1) Enough lesson handouts for each student (end of lesson).
. 2) Re-useable white board and markers if you want them

TAKEAWAYS

• Students will understand mandatory minimums and how they differ from normal sentencing.
• Studies will gain a basic understanding of the federal drug laws and mandatory minimums.
• Students will have discussed the rationales behind these laws and whether they make sense.
• Students will gain an overview of California’s drug laws, sentencing structures, and medical marijuana policy.
WELCOME

(Time Check: 2 minutes)

Welcome the students to StreetLaw and remind them of its purpose and your names. Tell them that during this lesson they will learn about drug laws and mandatory minimums. Also remind the students that they should not tell you about their individual cases, though they can ask us questions about hypothetical situations.

ACTIVITY 1: MOCK TRIAL

(Time Check: 15-20 minutes)

Summary for Teachers: In this activity, the students will split up into a prosecution and defense team and try to decide the sentence for a drug offender. The objective is to help the students think about what factors judges typically consider when they impose a sentence and then see how mandatory minimums change that analysis. They will also begin considering whether these laws can create unjust results.

Exercise

• Tell the class that they are going to consider the facts of a real drug case and decide what sentence the defendant should receive.

• Read to the class the following facts out to the class:

Atiba Parker was 29 years old when police arrested him for selling crack-cocaine. Atiba had a learning disability and was diagnosed with a serious mental disorder when he was 24. He began using marijuana to cope with the disorder. Atiba has been arrested twice for marijuana, but had never served jail time.

In order to purchase marijuana, Atiba started selling small amounts of crack cocaine. On July 13, a woman working as a confidential informant (CI) asked Atiba to bring crack to her motel room. Atiba sold her .23 grams of crack for $40. The next day the CI phoned again. He sold her .07 grams of crack for $20. When she pleaded for more on July 20, Atiba had nothing and eventually gave her a substance with an undetectable amount of crack cocaine.

A jury convicted Atiba of 2 counts of cocaine and one count of cocaine possession. In total, he was guilty of selling less than 3 grams of crack cocaine.

• Ask the class: What sentence should Atiba receive?
Break the class in half, with one side being prosecutors and the other side acting as defendants. With each side, decide on a fair punishment to recommend. If students are quiet, teachers can ask them to consider key factors such as:

- The amount/cost of drugs sold
- Atiba’s mental health problems
- His prior arrests
- The number of sales

→ Teaching Tip: If time permits, encourage students to think about different variations on punishment, i.e. prison, probation, court-ordered rehabilitation or therapy, etc.

→ Teaching Tip: You may find that students, especially on the prosecution side, are reluctant to punish Atiba. Encourage them to think about their duty to represent the state and enforce their laws.

Come back together, have each side share their recommended sentence and their reasons behind it.

- Ask the class to vote on which sentence they want to adopt.

- Finally, tell the class that this story was based on the real life case of Atiba Parker. Atiba Parker actually got 42 years, because of mandatory minimum laws.¹

- Thank the students for their participation and ideas, and tell them that we’re now going to discuss mandatory minimums and how these laws required someone like Atiba to receive 42 years for selling 3 grams of cocaine.

¹ If students are interested in the exact math, Atiba was sentenced to 20 years for selling .23 grams and 14 years for selling .07 grams. The sentences would run consecutively, giving Atiba a 34-year sentence. In 2009, the government indicted Atiba on the third count of possession of less than .1 grams of crack. They used this conviction to enhance his sentence so that he was treated as a habitual offender, requiring an extra 8-year sentence, for a total of 42 years.)
ACTIVITY 1: MANDATORY MINIMUMS

(Time Check: 10 minutes)

What are mandatory minimums?

• Ask the class to raise their hands if they have heard of mandatory minimum laws. Ask if anyone can tell you how they work.

• Definition: A mandatory minimum is a pre-determined sentence, created by Congress, which the court must give to a person convicted of a crime.
  
  o For example, if I am convicted of trafficking 1kg of heroin, I must receive at least 10 years imprisonment for my first offense.

• Tell the class that typically, judges have discretion in sentences, meaning that judges can consider aggravating and mitigating factors – that is, factors that make a crime more deserving of punishment or less deserving of punishment.
  
  o Ask the class what one aggravating (or especially bad) factor for Atiba was? Examples might include his prior arrests.
  o Ask the class for a mitigating (or sympathetic) factor. Examples might include his learning disability.

• With mandatory minimums, judges do not have the same control over sentences. They may be able to add aggravating factors, but they often cannot make a sentence less than a certain number of years, no matter how sympathetic the defendant is.

Mandatory Minimums and Federal Drugs

• Mandatory minimum sentences are especially common with drug laws, because the federal (or national) law requires very strict punishments for drug use.

• Congress created the current mandatory minimums for federal drug offenses in 1986 and 1988, as part of the so-called War on Drugs, or a policy that focused on stopping drug activity.

• Since the War on Drugs began, over 260,000 people have received mandatory minimums for a federal drug offense.

• Pass out the handout with all the sentences for different drug laws

• Point out the variations for drug laws
For example, if I sell 5 grams of meth, I will get the same sentence as if I sold 100 grams of heroin.

→ Teaching Tip: At this points, students with some background on the topic might point out the disparity between crack and cocaine and call it racist. You can agree that the law was much harsher on minorities than on Caucasian people. Tell the class that Congress recently passed a law called the *Fair Sentencing Act*, which reduced the disparity between from 100:1 to 18:1 (as shown on handout).

**Exception: Safety Valve**

If a defendant meets all five of the following criteria, the judge may sentence them below the mandatory minimum

1. No one was harmed during the offense,
2. The person has little or no history of criminal convictions,
3. The person did not use violence or a gun,
4. The person was not a leader or organizer of the offense, AND
5. The person told the prosecutor all that he knows about the offense.
ACTIVITY THREE: POLICY DEBATE
Time Check (10 minutes)

Ask the class to come up with the best arguments on each side for mandatory minimums.

If time permits, break into groups to discuss, dividing each side into a “pro” or “con”. Otherwise, discuss as a group the various pros and cons of the drug policy.

Suggested Con-arguments

• Mandatory minimums do not really keep criminals from committing crimes.
• They do not target the most violent or dangerous offenders.
• They have a disproportionate impact on those minority groups who already suffer from poverty.
• The don’t allow a judge to impose a just or fair sentence about hearing all the facts in an individual case
• Save money by making sure we spend less on incarcerating nonviolent offenders
• Allows for offenders to receive treatment rather than jail time

Suggested Pro-arguments

• Drug crimes and the violence associated with them can create problems for many neighborhoods. Mandatory sentences will prevent repeat offences and send a strong message to deter criminals.
• Judges have the freedom to impose tougher sentences but will not do so consistently. Therefore the laws need to impose tougher sentences for them.
• Judges may be arbitrary in their sentencing. It might not be fair if two people who commit the same crime get a different sentence, just based on how lenient their judge is.
• We can still have mandatory minimums, but make the minimums less high (e.g. 1 year instead of 5 years).

After discussion, let the class vote on whether they would abolish mandatory minimums.
ACTIVITY 4: CALIFORNIA DRUG LAWS
(Time Check: 10 Minutes)

Tell the class that now we are going to shift gears a bit, and discuss drug policy in California.

→ Teaching Tip: Try to solicit student input and make the lesson interactive (e.g. asking for students to define terms, asking their opinion) wherever possible.

Drug Offenses in California

• Drug Possession – Misdemeanor
  o As of November 2014, possession of most illegal drugs (including heroin and cocaine) is now a misdemeanor instead of a felony. However, this only applies to individuals who have not committed certain violent crimes (like rape or murder).2
    → Remember, this only applies to possession offenses. If a prosecutor finds a person with a large amount of drugs on him or her, that person might still be charged with intent to sell (which is a felony).
  o To be found guilty, prosecutors in the case must prove an individual was in control of the drug at the time of the arrest.
  o The maximum sentence an individual can receive for a misdemeanor drug possession charge in California is one year in jail and a $1,000 fine.
  o Drug related items, regardless of the nature of them, are generally charged as misdemeanor offenses.

• Drug Possession – Felony
  o The following drug-related offenses are charged as felonies:
    1. Drug possession with intent to sell (even when it's marijuana);
    2. Drug trafficking (even if the person is not directly transporting the drugs);
    3. Developing or making drugs.
  o In charges of this nature, prosecutors can legally use wiretapped conversations and testimony from witnesses who report suspicious activity.

Example: Tell the class, police catch Matt with 100 kg of cocaine in his house. He also has a lot of cash. Police has never seen Matt sell drugs before, nor has anybody told them that they bought drugs from Matt. Can the police charge Matt with intent to sell?

Answer: Yes. Prosecutors can infer intent to sell based on a large amount of drugs.

2 http://www.voterguide.sos.ca.gov/en/propositions/47/analysis.htm
• **Drug Trafficking**
  o Drug trafficking is the distribution or sale of illegal substances.
  o An individual can be charged in the state of California with a drug trafficking charge even if he/she is not directly transporting the drugs. If an individual is helping with the sale of drugs or purchasing drugs, one can be charged with a felony charge of conspiracy or aiding and abetting.

**CALIFORNIA FELONY SENTENCING:**

• Unlike federal laws, California judges may have some discretion in sentences. In the majority of cases, the judge takes into consideration the following when setting the penalty for a guilty offense:
  o Base term, or *sentencing range/guidelines* in California for the offense;\(^3\)
  o The presence of *extenuating* circumstances surrounding the offense.

Ask the class what some examples of circumstances might be that would make the sentence worse. Some examples include:
  o Involvement of *children*
  o If somebody was physically harmed or died as a result of the charged
  o Prior criminal history of the defendant.
  o **Guns:** Without going into specifics of gun enhancement laws, tell the class that possessing or using a gun with a judge offense always leads to added years in jail.

It is important to note that there is a “three strikes” law in the state of California. If a defendant has two convicted felonies and then is found guilty for a third charge, that individual could spend 25 years to life in prison.

**Alternative Sentencing**

For non-violent drug offenders, a treatment program is often recommended. This alternative sentencing gives an individual a penalty that does not appear as a felony on his/her record. Alternative sentencing options include:

• **Drug Court** - A nationally recognized program that requires participants to undergo an intensive drug treatment program. Upon completion of the program, the case is dismissed.

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\(^3\) Until the Supreme Court intervened in *Booker v. United States* to eliminate the binding effect of the Sentencing Guidelines, many judges interpreted these guidelines as creating hard floors for a variety of crimes. After *Booker* and the line of cases that followed, the Guidelines cannot fairly be characterized as a source of mandatory minimum sentences, although they continue to tilt heavily toward incarceration.
• **Diversion** - Also known as deferred entry of judgment, a defendant pleads guilty but agrees to participate in education classes. If completed successfully completed, the case is dismissed after 18 months.

• **Proposition 36** - In July 2000, California voters passed **Proposition 36**. This allows first and second time drug offenders to receive substance abuse treatment instead of jail time.

Ask the class what the benefit of alternative sentences might be for people with drug problems

→ *Teaching Tip:* Refer back to Atiba Parker, and ask the class whether he might have benefited from therapy or drug rehab, rather than 42 years in prison.

**Medical Marijuana**

→ *Teaching Tip:* Students may already have background knowledge on medical marijuana, so feel free to let them try to define the law. Also if time permits, this is a good chance to discuss drug legalization in Denver/Seattle.

Patients and their caregivers are permitted to legally use, possess, and grow cannabis (i.e. marijuana) for medical purposes.

To be a legal medical cannabis patient in California, you need a recommendation from a licensed physician. California’s medical cannabis law allows doctors to recommend cannabis for conditions including:

- Arthritis
- Cachexia
- Cancer
- Chronic pain
- HIV or AIDS
- Epilepsy
- Migraine
- Multiple Sclerosis
- Any debilitating illness where the medical use of marijuana has been "deemed appropriate and has been recommended by a physician"

*Voluntary ID:* A state-issued ID card is not required to be a legal patient, but it offers protection from arrest for patients in possession of no more than eight ounces of useable cannabis or cultivating no more than six mature or twelve immature plants.

Patients may cultivate or possess any quantity reasonably necessary for managing their medical condition.
CONCLUSION
(Time Check: 2 minutes)

• Thank the class for their participation and insight into today’s discussion
• Summarize some of the basic takeaways, including:
  o What mandatory minimum laws are
  o Federal drug laws
  o California drugs laws
  o How to think about what a fair sentence is
# Federal Drug Guidelines

## Federal mandatory minimum drug sentences for first convictions

<table>
<thead>
<tr>
<th>Type of drug</th>
<th>Five years no parole*</th>
<th>10 years no parole</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crack cocaine</td>
<td>5 grams (28 grams)</td>
<td>50 grams</td>
</tr>
<tr>
<td>Powder cocaine</td>
<td>500 grams</td>
<td>5 kilos</td>
</tr>
<tr>
<td>Heroin</td>
<td>100 grams</td>
<td>1 kilo</td>
</tr>
<tr>
<td>LSD</td>
<td>1 gram</td>
<td>10 grams</td>
</tr>
<tr>
<td>Marijuana</td>
<td>100 plants or 100 kilos</td>
<td>1000 plants or 1000 kilos</td>
</tr>
<tr>
<td>Methamphetamine</td>
<td>5 grams (pure)/50 grams (mixture)</td>
<td>50 grams (pure)/500 grams (mixture)</td>
</tr>
<tr>
<td>PCP</td>
<td>10 grams (pure)/100 grams (mixture)</td>
<td>100 grams (pure)/1 kilo (mixture)</td>
</tr>
</tbody>
</table>

*There is no parole in the federal system. **Five grams is roughly equal to a single packet of sugar. ***A kilo is equal to 2.2 lbs.

## Other mandatory minimum sentences

<table>
<thead>
<tr>
<th>Offense</th>
<th>Length of sentence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Firearm possessed during drug offense</td>
<td>5 years added to drug sentence</td>
</tr>
<tr>
<td>Armed Career Criminal Act (Felon in possession of a gun with three prior felony convictions)</td>
<td>15 years</td>
</tr>
<tr>
<td>Continuing Criminal Enterprise</td>
<td>20 years</td>
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Mandatory Minimums = Sentences that the judge must impose – The judge can give a defendant more than the minimum, but she cannot give less.