

# Free term paper on mandatory sentencing or plea bargaining

[Law](#), [Criminal Justice](#)



The founding fathers of this nation pieced together Constitutional guarantees for the citizens of the land to protect them from anarchy and tyranny. They had just overthrown the yoke of the most vilianous colonial regime in Great Britain. They were also determined that no American citizen should ever be subject to such tyranny especially in the name of the law. Hence, we have our Constitutional Amendments. The Fifth Amendment allows a citizen not to testify in court if the information would be self-incriminating. The Sixth Amendment allows citizens to the right to have their day in court. They are entitled to due process. Somehow, these amendments had failed to foresee the power of State legislatures that would overrun them into oblivion (Human Rights Watch, " An Offer You Can't Refuse").

The 1970s and the crack cocaine trade brought with it a gun violence laced wave of crime. Almost every high school dropout had a gun and was never shy to use it. This created severe law and order problems especially in African American dominated areas that were prone to the crack cocaine market. The police attempted several new approaches including community policing. However, politicians had a different approach. They introduced a minimum mandatory sentence for crack cocaine related cased and threw in a twenty years to life sentence if the defendant was also using a firearm at the time of the crime. Juveniles were also tried as adults with the same minimum mandatory sentence if they had handled or had been in possession of a firearm (McCabe, " Forced to Plead Guilty").

The aftermath of these laws was catastrophic. Drove of African American youth were huddled into penitentiaries with long jail sentences. The society did not feel the sting since the level of crime started to decline steadily.

There was even a sharp dip in violent crime. Hence, more states adopted this form of minimum mandatory sentences. Some states improvised these sentences to fit in as many felonies that can be found. These sentences jailed over ten percent of the American population in the next three decades and created a \$56 billion annual expenditure for the Department of Corrections.

For most of us the American Justice system is what we perceive from court room dramas that are portrayed in popular sitcoms or Hollywood movies. We usually notice the immeasurable odds that a defense attorney faces and yet manages to pull off a spectacular acquittal most of the time. This is however, no more than a fairy tale except in high profile cases. The small time drug users, dealers and gun yielders do not get easy rehabilitation or community service sentences that are handed out by the sweet natured prosecutor as we see in "The Practice" or "Boston Legal".

The reality is that the defense attorney will have no access to the police files or any access to the client. There is no information sharing immediately after the arrest. The prosecutor will offer a plea bargain that entitles the defendant to plead to a lesser set of charges than the one he was arrested for. Should the defendant demand due process as is his Constitutional right, the original charges receive an instant top-up. These top-up charges would all have minimum mandatory sentences attached to them. Hence, when the defendant loses the trial, he would face ten times the sentence than what should have applied for the original crime. The minimum mandatory sentence cannot be revised by the presiding judge. It explicitly removes the authority of the judge and hands it over to the District or Federal Attorney.

Today, most of our prisons house several hundred innocent people as a result of the District Attorney's unquestioned power.

The predicament of innocent people from low-income backgrounds who are wrongly arrested based on unreliable eye-witness testimony or circumstantial evidence is dire. Their only access to any defense is through the offices of the public defender's office. Usually, public defenders are overwhelmed with workloads that they struggle to handle. They also see plea bargains as a viable option. Despite their belief that their client might be innocent, they would usually advise them to take the prosecution's offer of a plea bargain. While they advise their clients, they also bear in mind of what could happen if the offer was turned down. It is no wonder that prosecution misconduct is the primary reason for innocent people to serve jail sentences for crimes that they did not commit. They account for forty percent of wrongful convictions.

Several Judges, both State and Federal have voiced their opposition against the imposition of minimum mandatory sentences and at the restriction that does not allow Judges to reduce meaningless jail sentences. Typically, possession of five grams of any drug will invite a plea bargain of two years. If the plea is turned down, there would be subsequent charges that are added to the original charge at the will and fancy of the prosecutor. Eventually, the new charges would carry sentences between 20 years and life without parole. A plea bargain could still be negotiated with the prosecution however, it would no longer be for two years. It would either be a ten year sentence or even a fifteen year sentence. Ironically, there are cases where there are no drugs involved that make us wonder if we really are the free

citizens of the United States of America (Rakoff, " Why Innocent People Plead Guilty").

A father with two children discharged his registered firearm inside his house aimed at the ceiling to chase out his daughter's drug addict boyfriend who was at the time threatening his family. The first surprise is that there was even a case filed against the man who wanted to keep his family safe. Secondly, it should have been brushed aside as a case of self-defense considering the violent crimes that have been committed by drug addicts in the past. Neither of this happened in this case. The prosecutor offered a five year plea bargain for felony assault. The family turned the offer down. The defendant eventually found himself facing charges from felony firearm assault to attempted murder and was sentenced to twenty years in jail. The presiding Judge agreed with the defendant when he wondered if he was living in a banana republic. This is not a made up story. Unfortunately, this was the account of Mr. Orville Wollard of Polk County. He was sentenced in 2009 (The New York Times Company, " Sentencing Shift Gives New Leverage to Prosecutors").

The prosecution of this nation has a 97% conviction rate. The chance for acquittals is virtually next to none. Incidentally the only other country that has a better rate of conviction is Communist China whose human rights record we have criticized so often. However, our record for incarcerating and destroying innocent lives is no better if not worse. The prosecutors have been made into remorseless assassins who constantly look for targets. They do not discriminate between a sixty five year old or a twenty year old, innocent or guilty; all they seem to care about is their ability to send people

to prison for extended periods of time.

We are presently housing over two million prisoners in penitentiaries across the nation. Of these one in every fourteen is innocent. We have traded the anarchy of the British to the tyranny of the prosecutors. Our legislators have enforced multiple laws especially after a major crime to pacify the American people. However, they never bothered to take any proper initiative towards curbing violent crimes. The correct approach would have involved in increasing the police budget and bringing about strict gun laws to prevent guns reaching young people. However the National Rifles Association has a major clout in the United States and especially over political parties. Hence, we will never see any action taken against the real problem and politicians continue to pull wool over our eyes by creating laws that will eventually harm us or someone we know.

The law does prevent prosecutors from misusing the death penalty to threaten defendants to make them accept plea bargains however, it does not prevent them from adding charges to the original crime after a defendant's refusal for the plea offer (FindLaw, "Plea Bargaining in Federal Courts"). The law professes that every American citizen is entitled to a fair trial and due process. However, the demand to exercise that Constitutional right lands the defendants in unrealistic jail sentences (Cornell University Law School, "Plea bargain"). There are no real safeguards for American citizens in their own land anymore. They have been snatched away by lobby driven politicians who will keep enacting unrealistic laws to pacify the society.

The Obama Administration's Fair Sentencing Act should provide relief if it

ever makes it through the U. S. Congress. It will give the power back to the judges in reducing unrealistic jail sentences. The Obama Administration will also sign a waiver that will reduce the sentences of at least 46, 000 prisoners in the next five years. Attorney General Eric Holder had cautioned Federal prosecutors from adding charges or threatening defendants with stiff penalties. However, the implementation of his caution is yet to be felt in the American Justice system. Until some ordinances favoring Judges to have control over the courtroom are passed, the American citizenry will be held hostage to the draconian discretion for prosecutors. We may never know what circumstance or situation would have us face such a predicament in future. The new Act should hopefully end the reign of terror that the District Attorneys and Federal Attorneys had imposed on the United States (Sullum, " Why prosecutors love mandatory minimums"). The hope for empty courtrooms should fill up once more with juries, judges, audience and witnesses is in the air after three decades of law sponsored anarchy.

## **References**

" An Offer You Can't Refuse". Human Rights Watch. 2013. Web. Accessed on 13 July 2015.

" Forced to Plead Guilty". McCabe, Allison. 2013. Web. Accessed on 13 July 2015.

" Plea bargain". Cornell University Law School. 2011. Web. Accessed on 13 July 2015.

" Plea Bargaining in Federal Courts". FindLaw. 2015. Web. Accessed on 13 July 2015.

" Sentencing Shift Gives New Leverage to Prosecutors". The New York Times

<https://assignbuster.com/free-term-paper-on-mandatory-sentencing-or-plea-bargaining/>

Company. 2011. Web. Accessed on 13 July 2015.

“ Why Innocent People Plead Guilty”. Rakoff, Jed S. 2014. Web. Accessed on 13 July 2015.

“ Why prosecutors love mandatory minimums”. Sullum, Jacob. 2014. Web. Accessed on 13 July 2015.