

## **Mandatory Minimum Sentencing**

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1.

"As previously noted, various drug offenses carry a mandatory minimum. For such offenses, the mandatory minimum precludes judges from sentencing at a lower guideline range minimum or from granting a downward departure that might otherwise be available, unless one of two statutory provisions applies. First, a judge may impose a sentence below the applicable mandatory minimum if the government (the federal prosecutor) files a motion with the court for such sentencing relief because of the defendant's "substantial assistance" in the investigation or prosecution of another person. The discretion to make such a motion rests solely with the prosecutor. Second, in the absence of a substantial assistance motion, the "safety valve" provision affords relief from any otherwise applicable mandatory minimum sentence for drug offenders who have minimal criminal history (i.e., no more than 1 criminal history point); were not violent, armed, or high-level participants; and provided the government with truthful information regarding the offense. In these cases, the court is directed by statute to impose a sentence pursuant to the sentencing guidelines without regard to a mandatory minimum."

Source:

General Accounting Office, "Federal Drug Offenses: Departures from Sentencing Guidelines and Mandatory Minimum Sentences, Fiscal Years 1999-2001," (Washington, DC: October 2003) GAO-04-105, p. 9-10.

<http://www.gao.gov/new.items/d04105.pdf>

2.

"... the authority once possessed by judges to decide on sentences within broad guidelines has, in the case of mandatory minimums, not been narrowed so much as it has been transferred to prosecutors."

Source:

Caulkins, J., et al., Mandatory Minimum Drug Sentences: Throwing Away the Key or the Taxpayers' Money? (Santa Monica, CA: RAND Corporation, 1997), p. 24.

[http://www.rand.org/pubs/monograph\\_reports/2006/MR827.pdf](http://www.rand.org/pubs/monograph_reports/2006/MR827.pdf)

3.

"Unintended Consequences of Mandatory Minimum Sentences:

- Significant increases in the costs of corrections due to longer prison terms and an increasing prison population;
  
- Removal from consideration of other sentencing options that may prove to be less costly and/or more effective than mandatory incarceration;
  
- Impact on all aspects of the criminal justice system, including pleas or verdicts and offender eligibility for rehabilitation programs and early release;
  
- Limiting the discretion of the sentencing judge."

Source:

Pennsylvania Commission on Sentencing: Report to the House of Representatives, House Resolution 12, Session of 2007, "A Study on the Use and Impact of Mandatory Minimum Sentences," (Harrisburg, PA: October 2009), p. 5.

[http://pcs.la.psu.edu/HR\\_12\\_FINAL\\_REPORT\\_WEB.pdf](http://pcs.la.psu.edu/HR_12_FINAL_REPORT_WEB.pdf)

4.

"Despite their general leveling effect, mandatory minimums can actually increase sentencing disparities in some cases ..."

"Mandatory minimums are also intended to override judicial discretion, which has been perceived as giving rise to unwarranted disparities in sentencing. However, prosecutors can still bring different charges in similar cases ..."

"Lengthy mandatory minimum sentences provide a stick for inducing cooperation in investigating and prosecuting others involved in the drug trade. ... This provision, however, can conflict with the public interest (expressed through special provisions for "kingpins") in meting out the longest sentences to those most heavily involved in the drug trade."

Source:

Caulkins, J., et al., Mandatory Minimum Drug Sentences: Throwing Away the Key or the Taxpayers' Money? (Santa Monica, CA: RAND Corporation, 1997), pp. 16-18.

[http://www.rand.org/pubs/monograph\\_reports/2006/MR827.pdf](http://www.rand.org/pubs/monograph_reports/2006/MR827.pdf)

5.

"Justice Breyer delivered the opinion of the Court in part, concluding that 18 U. S. C. A. §3553(b)(1), which makes the Federal Sentencing Guidelines mandatory, is incompatible with today's Sixth Amendment 'jury trial' holding and therefore must be severed and excised from the Sentencing Reform Act of 1984 (Act). Section 3742(e), which depends upon the Guidelines' mandatory nature, also must be severed and excised. So modified, the Act makes the Guidelines effectively advisory, requiring a sentencing court to consider Guidelines ranges, see §3553(a)(4), but permitting it to tailor the sentence in light of other statutory concerns, see §3553(a)."

Source:

Decision of the United States Supreme Court, United States v. Booker, Case No. 04-104, Argued Oct. 4, 2004, Decided Jan. 12, 2005.

<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=000&invol=...>

6.

"Current data and information continue to support the core findings contained in the 2002 Commission Report, among them: (1) The current quantity-based penalties overstate the relative harmfulness of crack cocaine compared to powder cocaine. (2) The current quantity-based penalties sweep too broadly and apply most often to lower level offenders. (3) The current quantity-based penalties overstate the seriousness of most crack cocaine offenses and fail to provide adequate proportionality. (4) The current severity of crack cocaine penalties mostly impacts minorities.

"Based on these findings, the Commission maintains its consistently held position that the 100-to-1 drug quantity ratio

significantly undermines the various congressional objectives set forth in the Sentencing Reform Act."

Source:

US Sentencing Commission, "Report to Congress: Cocaine and Federal Sentencing Policy," (Washington, DC: May 2007), pp. 7-8.

[http://www.ussc.gov/r\\_Congress/Cocaine2007.pdf](http://www.ussc.gov/r_Congress/Cocaine2007.pdf)

7.

"Under current law, possession of five grams or more of crack cocaine triggers a mandatory minimum sentence of five years in prison; simple possession of any quantity of any other controlled substance (except flunitrazepan) by a first-time offender □ including powder cocaine □ is a misdemeanor offense punishable by a maximum of one year in prison."

Source:

US Sentencing Commission, "Report to Congress: Cocaine and Federal Sentencing Policy," (Washington, DC: May 2007), p. 4.

[http://www.ussc.gov/r\\_Congress/Cocaine2007.pdf](http://www.ussc.gov/r_Congress/Cocaine2007.pdf)

8.

"Because it takes 100 times more powder cocaine than crack cocaine to trigger the same mandatory minimum penalty, this penalty structure is commonly referred to as the '100-to-1 drug quantity ratio.'"

Source:

US Sentencing Commission, "Report to Congress: Cocaine and Federal Sentencing Policy," (Washington, DC: May 2007), p. 3.

[http://www.ussc.gov/r\\_Congress/Cocaine2007.pdf](http://www.ussc.gov/r_Congress/Cocaine2007.pdf)

9.

(2005) In fiscal year 2005, 56.8% of all federal crack cocaine defendants were low-level offenders such as mules or street dealers. Only 8.4% were high-level dealers.

Source:

US Sentencing Commission, "Report to Congress: Cocaine and Federal Sentencing Policy," (Washington, DC: May 2007), p. 19, Figure 2-4.

[http://www.ussc.gov/r\\_Congress/Cocaine2007.pdf](http://www.ussc.gov/r_Congress/Cocaine2007.pdf)

10.

(2005) In fiscal year 2005, 40.4% of all federal powder cocaine defendants were low-level offenders such as mules or street-dealers. Only 12.8% were high-level dealers.

Source:

US Sentencing Commission, "Report to Congress: Cocaine and Federal Sentencing Policy," (Washington, DC: May 2007), p. 19, Figure 2-4.

[http://www.ussc.gov/r\\_Congress/Cocaine2007.pdf](http://www.ussc.gov/r_Congress/Cocaine2007.pdf)

11.

"Most of the judges we interviewed were quite bitter about the operation of the sentencing guidelines. As one of them remarked: "The people who drew up these guidelines never sat in a court and had to look a defendant in the eye while imposing some of these sentences."

Source:

Smith, Alexander, and Polack, Harriet, "Curtailing the Sentencing Power of Trial Judges: The Unintended Consequences", Court Review (Williamsburg, VA: American Judges Association, Summer 1999), p. 6.

<http://aja.ncsc.dni.us/courtrv/cr36-2/CR36-2SmithPol.pdf>

12.

"After eleven years, it should be obvious that the system has failed and that it cannot be fixed -- even by the Supreme Court -- because the criminal justice system has been distorted: the enhanced power of the prosecutor in sentencing has diminished the traditional role of the judge. The result has been even less fairness, and a huge rise in the prison population."

Source:

Smith, Alexander, and Polack, Harriet, "Curtailing the Sentencing Power of Trial Judges: The Unintended Consequences", Court Review (Williamsburg, VA: American Judges Association, Summer 1999), p. 6-7.

<http://aja.ncsc.dni.us/courtrv/cr36-2/CR36-2SmithPol.pdf>

13.

"Similar to federal sentences overall, of the 69,279 drug sentences for which complete departure information was available, we found that most sentences were within guideline ranges (56 percent). Unlike federal sentences overall, from fiscal years 1999 to 2001, federal drug sentences departed downward more frequently due to substantial assistance (28 percent) than other reasons (16 percent), as shown in table 1. Other reasons that drug sentences departed downward included early disposition, that is, fast track, programs initiated by prosecutors; plea agreements; and judges' consideration of mitigating circumstances."

Source:

General Accounting Office, "Federal Drug Offenses: Departures from Sentencing Guidelines and Mandatory Minimum Sentences, Fiscal Years 1999-2001," (Washington, DC: October 2003) GAO-04-105, p. 11.

<http://www.gao.gov/new.items/d04105.pdf>

14.

(2006) "Historically the majority of crack cocaine offenders are black, but the proportion steadily has declined since 1992: 91.4 percent in 1992, 84.7 percent in 2000, and 81.8 percent in 2006. Conversely, the proportion of white crack cocaine offenders has increased steadily from 3.2 percent in 1992 to 5.6 percent in 2002, to 8.8 percent in 2006. For powder cocaine, Hispanic offenders have comprised a growing proportion of cases. In 1992, Hispanics accounted for 39.8 percent of powder cocaine offenders. This proportion increased to over half (50.8%) by 2000 and continued increasing to 57.5 percent in 2006. There has been a corresponding decrease in the proportion of white offenders for powder cocaine, comprising 32.3 percent of offenders in 1992, decreasing by approximately half to 17.8 percent by 2000, and continuing to decrease to 14.3 percent by 2006."

Source:

US Sentencing Commission, "Report to Congress: Cocaine and Federal Sentencing Policy," (Washington, DC: May 2007), p. 15.

[http://www.ussc.gov/r\\_Congress/Cocaine2007.pdf](http://www.ussc.gov/r_Congress/Cocaine2007.pdf)

15.

(2006) "Powder cocaine and crack cocaine offenses together historically have accounted for about half of the federally-sentenced drug trafficking offenders, approximately 11,000 in 2006. In 1992, powder cocaine offenses comprised 74 percent of the 8,972 cocaine offenses and crack cocaine offenses accounted for 26 percent of the cocaine offenses. By 1996, the total number of cocaine offenses decreased slightly to 8,705 and approximately half of cocaine offenses were powder cocaine and half were crack cocaine offenses. This even distribution of types of cocaine has remained consistent through 2006, with 5,744 powder cocaine offenses and 5,397 crack cocaine offenses sentenced in that Fiscal Year."

Source:

US Sentencing Commission, "Report to Congress: Cocaine and Federal Sentencing Policy," (Washington, DC: May 2007), p. 12.

[http://www.ussc.gov/r\\_Congress/Cocaine2007.pdf](http://www.ussc.gov/r_Congress/Cocaine2007.pdf)

16.

"In establishing the mandatory minimum penalties for cocaine, Congress differentiated between the two principal forms of cocaine – cocaine hydrochloride [hereinafter referred to as powder cocaine] and cocaine base [hereinafter referred to as crack cocaine] – and provided significantly higher punishment for crack cocaine offenses.<sup>9</sup> As a result of the 1986 Act, federal law<sup>10</sup> requires a five-year mandatory minimum penalty for a first-time trafficking offense involving five grams or more of crack cocaine, or 500 grams or more of powder cocaine, and a ten-year mandatory minimum penalty for a first-time trafficking offense involving 50 grams or more of crack cocaine, or 5,000 grams or more of powder cocaine. Because it takes 100 times more powder cocaine than crack cocaine to trigger the same mandatory minimum penalty, this penalty structure is commonly referred to as the '100-to-1 drug quantity ratio.'"

Source:

US Sentencing Commission, "Report to Congress: Cocaine and Federal Sentencing Policy," (Washington, DC: May 2007), pp. 2-3.

[http://www.ussc.gov/r\\_Congress/Cocaine2007.pdf](http://www.ussc.gov/r_Congress/Cocaine2007.pdf)

17.

"The study by the [Pennsylvania Sentencing] Commission found that neither length of sentence nor the imposition of a mandatory minimum sentence alone was related to recidivism. In the four recidivism studies conducted as part of this project, the recidivism rates (i.e., arrest for a new crime or technical violation resulting in reincarceration) three years after release were as follows: drug delivery offenders (54%), school zone offenders (57%), repeat violent offenders (54%) and firearms offenders (50%). Younger offenders, those with a greater number of prior arrests and/or convictions, and those sentenced to prison were more likely to recidivate; those sentenced for a drug mandatory were more likely to be re-arrested for a drug offense and those sentenced for a repeat violent offense or firearms mandatory were more likely to be re-arrested for an offense against a person. Consistent with finding of other research on deterrence and recidivism, the certainty of incarceration may be more important than the duration of the confinement."

Source:

Pennsylvania Commission on Sentencing: Report to the House of Representatives, House Resolution 12, Session of 2007, "A Study on the Use and Impact of Mandatory Minimum Sentences," (Harrisburg, PA: October 2009), p. 3.

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18.

"Table 2 presents a bivariate analysis of who received the mandatory sentence. As can be seen in the table, overall, about 82% of the offenders received the two-year mandatory sentence, or longer. Hispanic offenders [96%] were more likely than black offenders [75%] or white offenders [65%] to receive the mandatory sentence."

Source:

Pennsylvania Commission on Sentencing: Report to the House of Representatives, House Resolution 12, Session of 2007, "A Study on the Use and Impact of Mandatory Minimum Sentences," (Harrisburg, PA: October 2009), p. 273.

[http://pcs.la.psu.edu/HR\\_12\\_FINAL\\_REPORT\\_WEB.pdf](http://pcs.la.psu.edu/HR_12_FINAL_REPORT_WEB.pdf)

19.

"Though it is still too early to make a final judgment, RAND found that three strikes and truth-in-sentencing laws have had little significant impact on crime and arrest rates. According to the Uniform Crime Reports, states with neither a three strikes nor a truth-in-sentencing law had the lowest rates of index crimes, whereas index crime rates were highest in states with both types of get-tough laws."

Source:

Turner, Susan, RAND Corporation Criminal Justice Program, Justice Research & Statistics Association, "Impact of Truth-in-Sentencing and Three Strikes Legislation on Crime" Crime and Justice Atlas 2000 (Washington, DC: US Dept. of Justice, June 2000), p. 10.

[http://www.jrsa.org/programs/Crime\\_Atlas\\_2000.pdf](http://www.jrsa.org/programs/Crime_Atlas_2000.pdf)