

Mandatory Minimums & the Federal Sentencing Guidelines

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1. Basic Data - Mandatory Minimum Sentences

"Statutes carrying mandatory minimum penalties have increased in number, apply to more offense conduct, require longer terms, and are used more often than they were 20 years ago. These changes have occurred amid other systemic changes to the federal criminal justice system, including expanded federalization of criminal law, increased size and changes in the composition of the federal criminal docket, high rates of imposition of sentences of imprisonment, and increasing average sentence lengths. The changes to mandatory minimum penalties and these co-occurring systemic changes have combined to increase the federal prison population significantly."

Source:

"Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System" (Washington, DC: US Sentencing Commission, October 2011), p. 83.

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2.

(Federal Defendants Convicted of Offenses Carrying a Mandatory Minimum Sentence, FY2010, by Offense Type)

"In fiscal year 2010, immigration, drugs, firearms, and fraud offenses accounted for 82.9 percent of the 73,239 cases included in this analysis. More than one-quarter of the cases in which an offender was sentenced in fiscal year 2010 (27.2%, n=19,896) involved a conviction of an offense carrying a mandatory minimum penalty. See Figure 7-1. More than half (53.4, n=10,605) of the 19,896 offenders convicted of an offense carrying a mandatory minimum penalty remained subject to the mandatory minimum penalty at sentencing. See Figure 7-2. This figure represents 14.5 percent of the 73,239 cases included in this analysis.

"In fiscal year 2010, more than three-quarters (77.4%) of the 19,896 defendants convicted of an offense carrying a mandatory minimum penalty were convicted of a drug trafficking offense, and 11.9 percent were convicted of a firearms offense.⁵⁷⁹ Convictions under just four statutes involving drug trafficking and firearms⁵⁸⁰ accounted for the majority of such convictions (71.6%).⁵⁸¹ "

Source:

"Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System" (Washington, DC: US Sentencing Commission, October 2011), pp. 121-122.

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3.

(Federal Inmates Serving Mandatory Minimum Sentences, FY2010) "As of the end of fiscal year 2010, there were 191,757 offenders in BOP custody, of whom 111,460 (58.1%) were convicted of an offense carrying a mandatory minimum penalty. Of the 191,757 offenders in BOP custody, 75,579 (39.4%) were subject to that mandatory minimum penalty at sentencing."

Source:

"Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System" (Washington, DC: US Sentencing Commission, October 2011), p. 140.

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4.

(Type of Drug Involved in Federal Cases Involving The Sentencing Guidelines) "Drug offenses have historically represented the largest portion of the federal caseload. In fiscal year 2009, this trend ended when immigration offenses became the most common type of offense reported to the Commission.⁶²⁵ In fiscal year 2010, drug offenses were 28.0 percent of the reported cases, with 23,964 offenders convicted of a drug offense. More than one-quarter (26.0%, n=6,161) of drug offenses involved marijuana, followed by powder cocaine (5,571, n=23.5%), crack cocaine (20.0%, n=4,751), methamphetamine (17.6%, n=4,169), heroin (6.6%, n=1,561) and other drugs (6.4%, n=1,514)."

Source:

"Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System" (Washington, DC: US Sentencing Commission, October 2011), p. 152.

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5.

(Mandatory Minimum Sentences in the Federal System FY2010, by Drug Type) "Approximately two-thirds (66.1%, n=15,831) of the 23,964 drug offenders in fiscal year 2010 were convicted of an offense carrying a mandatory minimum penalty. More than one-quarter (28.1%, n=4,447) of drug offenses carrying a mandatory minimum penalty involved powder cocaine, followed by crack cocaine (24.7%, n=3,905), methamphetamine (21.9%, n=3,466), marijuana (17.2%, n=2,725), heroin (6.9%, n=1,098) and other drugs (1.1%, n=172). See Figure 8-1.

"The application of mandatory minimum penalties varies greatly by the type of drug involved in the offense. For example, in fiscal year 2010, a mandatory minimum penalty applied in 83.1 percent (n=3,466) of drug cases involving methamphetamine. In contrast, such a penalty applied in less than 45 percent (n=2,725) of marijuana cases. With respect to other drugs (such as PCP and LSD), such a penalty applied in 11.4 percent (n=172) of cases."

Source:

"Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System" (Washington, DC: US Sentencing Commission, October 2011), p. 153.

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6.

(Penalties Imposed in Federal Cases with Mandatory Minimum Sentences, FY2010) "The most frequently reported drug mandatory minimum penalty in fiscal year 2010 was ten years. In fiscal year 2010, almost half of all drug offenders (48.7%, n=7,716) were convicted of an offense carrying a ten-year mandatory minimum penalty. The second most frequently reported drug mandatory minimum penalty was five years (42.4%, n=6,711). Drug offenses involving a conviction of a statute carrying either a mandatory penalty of 20 years (n=692) or one of life (n=153) accounted for a small proportion (5.3%) of all drug offenses involving a conviction of a statute carrying a mandatory minimum penalty."

Source:

"Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System" (Washington, DC: US Sentencing Commission, October 2011), p. 153.

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7.

(Number of Federal Cases Reported to US Sentencing Commission by Type, FY2012) "For the last four years, immigration cases have been the largest single type of federal offenses. This trend continued in fiscal year 2012, where immigration cases accounted for 32.2 percent of all federal cases, despite a decrease of 3,169 cases in the total number of immigration cases reported to the Commission. This decrease is the first since fiscal year 2006 and represents a 10.7 percent decrease in this type of case from the prior fiscal year. Even with this decrease, the number of immigration cases has increased by 97.0 percent over the past decade, and represents a much larger portion of the overall federal case load in fiscal year 2012.

"The number of drug cases has been relatively stable over the last five fiscal years. In fiscal year 2012, drug cases accounted for 30.2 percent of all cases. Firearms cases were 9.8 percent of the caseload in fiscal year 2012, a slight increase from the year before but less than the 10.9 percent of the caseload that these cases represented in fiscal year 2008. The proportion of fraud cases over that period also was relatively stable at 10.5 percent in fiscal year 2012, but has increased slightly from 9.8 percent in fiscal year 2008."

Source:

US Sentencing Commission, "FY 2012 Overview of Federal Criminal Cases" (Washington, DC: USSC, July 2013), pp. 2-3.

http://www.ussc.gov/Research_and_Statistics/Research_Publications/2013/F...

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8.

(Powder Cocaine Offenders Facing Federal Mandatory Minimums FY2010, By Race/Ethnicity) "More than half (54.9%, n=3,054) of all powder cocaine offenders were Hispanic. A similar proportion of Hispanic offenders were convicted of an

offense carrying a mandatory minimum penalty (58.5%, n=2,595) and remained subject to a mandatory minimum penalty at the time of sentencing (55.2%, n=947).

"The sentencing of Black powder cocaine offenders was different. Approximately one quarter of all powder cocaine offenders (26.7%, n=1,486) are Black. Although a comparable proportion of powder cocaine offenders were also convicted of an offense carrying a mandatory minimum penalty (24.5%, n=1,087), the proportion of Black powder cocaine offenders subject to the mandatory minimum at sentencing was higher, at almost one-third (32.4%, n=555). In fact, Black offenders have the highest such rate, while the proportions of all other demographic groups subject to the mandatory minimum decrease relative to their proportion of all powder cocaine cases. The majority of Black powder cocaine offenders (64.7%, n=703) did not qualify for safety valve relief from the mandatory minimum penalty due to their criminal history. ⁶⁴⁹ "

Source:

"Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System" (Washington, DC: US Sentencing Commission, October 2011), pp. 173-174.

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9.

(Crack Cocaine Offenders Facing Mandatory Minimums, By Race) "The overwhelming majority of crack cocaine offenders convicted of an offense carrying a mandatory minimum were male (92.7%, n=3,620)⁶⁵⁸ and were United States citizens (97.2%, n=3,796).⁶⁵⁹ More than three-quarters (78.6%, n=3,728) of all crack cocaine offenders were Black. Black offenders constituted a similar proportion (78.5%, n=3,059) of those crack cocaine offenders convicted of an offense carrying a mandatory minimum penalty. The proportion of Black crack cocaine offenders subject to a mandatory minimum penalty at the time of sentencing (78.7%, n=1,961) was comparable to their proportion in the overall crack cocaine offender population and the population of crack cocaine offenders convicted of an offense carrying a mandatory minimum penalty."

Source:

"Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System" (Washington, DC: US Sentencing Commission, October 2011), p. 191.

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10.

(Methamphetamine Offenders Facing Mandatory Minimums, By Race/Ethnicity and Gender) "The demographic characteristics for methamphetamine offenders convicted of an offense carrying a mandatory minimum penalty differ from those observed for most other major drug types in two ways. First, more than half (51.3%, n=1,776) of methamphetamine offenders convicted of an offense carrying a mandatory minimum penalty are White and another 42.6 percent (n=1,476) are

Hispanic. Black methamphetamine offenders constitute only 2.2 percent (n=77) of the methamphetamine offenders convicted of an offense carrying a mandatory minimum penalty. This is the smallest proportion of Black offenders for any major drug type.⁶⁷⁵ In contrast, Other Race offenders constitute 3.8 percent (n=132) of the methamphetamine offenders convicted of an offense carrying a mandatory minimum penalty, which is the largest proportion of Other Race offenders for any drug type.

"Second, female offenders accounted for 18.1 percent (n=627) of all methamphetamine offenders convicted of an offense carrying a mandatory minimum penalty. Although this not a large percentage, it is higher than both the proportion of female offenders in the overall population of drug offenders convicted of an offense carrying a mandatory minimum penalty (10.2%, n=1,611) and the proportion of female offenders convicted of an offense carrying a mandatory minimum penalty for any other drug type.⁶⁷⁶ "

Source:

"Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System" (Washington, DC: US Sentencing Commission, October 2011), pp. 224-225.

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11.

(Heroin Offenders Facing Mandatory Minimums, By Race/Ethnicity) "Slightly more than half of heroin offenders convicted of an offense carrying a mandatory minimum penalty were Hispanic (61.3%, n=672) and about one-quarter (23.4%, n=256) were Black. These percentages shift slightly when examining heroin offenders subject to the mandatory minimum penalty at sentencing. Approximately half of heroin offenders subject to the mandatory minimum penalty at sentencing were Hispanic (51.7%, n=247) and about one-third (35.8%, n=171) were Black. The shift is primarily attributable to criminal history differences between the two. The proportion of offenders in each criminal history category who were Black increased with the criminal history category. Conversely, the proportion of offenders in each criminal history category who were Hispanic decreased with the increased criminal history category.⁶⁸⁸ "

Source:

"Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System" (Washington, DC: US Sentencing Commission, October 2011), p. 240.

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12.

(Powder Cocaine Offenders by Offender Function) "For powder cocaine offenders, the most common functions for offenders were High Level Supplier/Importer (24.1%), Courier (21.1%) and Wholesaler (20.7%). The least common functions were Grower/Manufacturer (0.0%), Manager (2.0%) and Supervisor (2.1%).⁶⁵⁵ "

Source:

"Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System" (Washington, DC: US Sentencing Commission, October 2011), p. 185.

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13.

(Crack Cocaine Offenders by Offender Function) "For crack cocaine offenders, the most common functions for offenders were Street-Level Dealer (47.0%) and Wholesaler (27.9%). The least common functions were Mule (0.2%), Supervisor (0.5%), High Level Supplier/Importer (0.5%), and Manager (0.7%).⁶⁶⁷

"Over three-quarters (77.8%) of Street-Level Dealer offenders were convicted of an offense carrying a mandatory minimum penalty. Wholesaler offenders were convicted of an offense carrying a mandatory minimum penalty at a rate of 93.5 percent in crack cocaine cases. High-Level Supplier/Importer, Organizer/Leader, Manager, Supervisor, and Mule offenders were convicted of statutes carrying a mandatory minimum penalty in all cases."

Source:

"Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System" (Washington, DC: US Sentencing Commission, October 2011), p. 203.

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14.

(State Mandatory Minimum Sentencing Laws) "Currently, 36 states have instituted mandatory minimum sentences for drug convictions. New York's laws were the earliest and harshest. They were adopted in 1973 at the behest of then-Governor Nelson A. Rockefeller, whose views on criminal punishment had hardened dramatically in the wake of the Attica prison riot in upstate New York in 1970."

Source:

Perlman, Ellen, "Terms of Imprisonment," *Governing*, April 2000.

<http://www.governing.com/topics/public-justice-safety/Terms-Imprisonment...>

15.

(Inconsistent Policies Between Different Federal Attorneys Offices Lead To Unequal Sentencing Practices) "Interviews with prosecutors and defense attorneys in thirteen districts across the country revealed widely divergent practices with respect to charging certain offenses that triggered significant mandatory minimum penalties. These differences were particularly acute with respect to practices regarding filing notice under section 851 of title 21 of the United States Code for drug offenders with prior felony drug convictions, which generally doubles the applicable mandatory minimum sentence. In some districts, the filing was routine. In others, it was more selectively filed, and in one district, it was almost never filed at all. ¹² Our analysis of the data bore out these differences. For example, in six districts, more than 75 percent of eligible defendants received the increased mandatory minimum penalty for a prior conviction, while in eight other districts, none of the eligible drug offenders received the enhanced penalty. ¹³

"Similarly, the Commission's interviews revealed vastly different policies in different districts in the charging of cases under section 924(c) of title 18 of the United States Code for the use or possession of a firearm during a crime of violence or drug trafficking felony. In that statute, different factors trigger successively larger mandatory minimum sentences ranging from five years to life, including successive 25-year sentences for second or subsequent convictions. The Commission found that districts had different policies as to whether and when they would bring charges under this provision and whether and when they would bring multiple charges under the section, which would trigger far steeper mandatory minimum penalties. ¹⁴ The data bears out these geographic variations in how these mandatory minimum penalties are applied. In fiscal year 2012, just 13 districts accounted for 45.8 percent of all cases involving a conviction under section 924(c) even though those districts reported only 27.5 percent of all federal criminal cases that year. In contrast, 35 districts reported 10 or fewer cases with a conviction under that statute.

"When similarly situated offenders receive sentences that differ by years or decades, the criminal justice system is not achieving the principles of fairness and parity that underlie the SRA [Sentencing Reform Act]."

Source:

Statement of Judge Patti B. Saris, Chair, United States Sentencing Commission, For the Hearing on "Reevaluating the Effectiveness of Federal Mandatory Minimum Sentences" Before the Committee on the Judiciary, United States Senate, September 18, 2013, pp. 3-4.

http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimo...

16.

(Relief from Mandatory Minimum Penalties, by Race and Gender) "In fiscal year 2010, more than half (54.4%, n=8,619) of drug offenders convicted of an offense carrying a mandatory minimum penalty received relief from the mandatory minimum penalty. Approximately one quarter (26.1%, n=4,136) of the drug offenders received relief through operation of the safety valve alone. Drug offenders who did not qualify for the safety valve but who provided substantial assistance to the government accounted for 19.3 percent (n=3,062) of all drug offenders convicted of an offense carrying a mandatory minimum penalty. An additional 9.0 percent (n=1,421) of drug offenders received relief from the mandatory minimum penalty by qualifying for application of both the safety valve and substantial assistance provisions. See Figure 8-4.

"The rate at which offenders received relief from the mandatory minimum penalty through these provisions varied by race, gender, and citizenship. ⁶²⁹ For example, White offenders qualified for some form of relief from a mandatory minimum penalty most often, with 63.7 percent (n=2,328) of all White offenders convicted of an offense carrying such a penalty obtaining relief from the penalty. Black offenders qualified for relief from mandatory minimum penalties least often, in 39.4 percent (n=1,890) of cases in which they were convicted of an offense carrying such a penalty.

"Almost three-fourths of all female drug offenders (73.0%, n=1,176) received relief from the mandatory minimum penalty, compared to just over half (52.3%, n=7,443) of male offenders. Non-citizen offenders received relief from the mandatory minimum penalty more often (69.5%, n=3,300) than United States citizens (48.0%, n=5,317)."

Source:

"Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System" (Washington, DC: US Sentencing Commission, October 2011), pp. 158-159.

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17.

(Unintended Consequences of Mandatory Sentencing Laws) "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>

18.

(Unintended Consequences of Mandatory Sentencing Laws) "Mandatory minimum sentence laws appear to be contributing to increased sentence length, making more emphatic a trend in drug cases that predated their enactment. Mandatory minimum statutes and the guidelines seem also to have narrowed the difference in the sentences imposed for equally serious offenses involving marijuana and opiates, and to have reduced the importance of age and the distinction between leadership and middleman roles in the sentencing decision. In all instances, the narrowing of differences stems from more severe sentencing of the previously advantaged group.

"Mandatory minimum sentence laws do not seem to have ensured that all of those involved in the proscribed behaviors receive at least the minimum term: just under one-half of those who would apparently be eligible received lesser sentences. Further, despite the laws' emphasis on offense behavior, sentences still vary by offender characteristics. As in the past, the least culpable offenders, and offenders who are women, continue to receive less severe sentences than others involved in similar offenses. Further, both black and Hispanic offenders now receive noticeably more severe sentences than their white counterparts.

"The latter trend suggests that there may be questions to be considered concerning the impact of shifting discretion affecting sentencing from the court to the prosecutor's office."

Source:

Meierhoefer, B. S., "The General Effect of Mandatory Minimum Prison Terms: A Longitudinal Study of Federal Sentences Imposed" (Washington DC: Federal Judicial Center, 1992), p. 25.

[http://www.fjc.gov/public/pdf.nsf/lookup/geneffmm.pdf/\\$file/geneffmm.pdf](http://www.fjc.gov/public/pdf.nsf/lookup/geneffmm.pdf/$file/geneffmm.pdf)

19.

(Harsher Sentencing for Drug Offenders) "Along with the stepped-up pace of arrests in the 1980s, legislatures throughout the country adopted harsher sentencing laws in regard to drug offenses. The federal system, in particular, led the way with the passage of the Anti-Drug Abuse Act of 1986 and the Anti-Drug Abuse Act of 1988. Among a number of provisions, these laws created a host of severe mandatory minimum sentencing laws for drug offenses and affected the calibration of the federal Sentencing Guidelines, which were being formulated simultaneous to these statutory changes. The result of these developments was to remove discretion from the sentencing judge to consider the range of factors pertaining to the individual and the offense that would normally be an integral aspect of the sentencing process, thereby increasing the number of individuals in federal court exposed to a term of incarceration for a drug offense."

Source:

Mauer, Marc and King, Ryan S., "A 25-Year Quagmire: The War on Drugs and Its Impact on American Society" The Sentencing Project (Washington, DC: September 2007), p. 7.

http://www.sentencingproject.org/doc/publications/dp_25yearquagmire.pdf

20. **Basic Data - Sentencing Guidelines**

(Interaction of Federal Sentencing Guidelines and Mandatory Minimum Sentences) "Congress charged the [US Sentencing] Commission with promulgating guidelines that are 'consistent with all pertinent provisions' of federal law³³⁸ and with providing sentencing ranges that are 'consistent with all pertinent provisions of title 18, United States Code.'³³⁹ To that end, the Commission has incorporated mandatory minimum penalties into the guidelines since their inception, and has continued to incorporate new mandatory minimum penalties as enacted by Congress. 340

"The Commission generally has established guideline ranges that are slightly above the mandatory minimum penalty for offenders convicted of offenses carrying a mandatory minimum penalty, but its methods of incorporating mandatory minimum penalties into the guidelines have varied over time, with the benefit of the Commission's continuing research, experience, and analysis.³⁴¹ The Commission historically has achieved this policy by setting a base offense level for Criminal History Category I offenders that corresponds to the first guidelines range on the sentencing table with a minimum guideline range in excess of the mandatory minimum."

Source:

"Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System" (Washington, DC: US Sentencing Commission, October 2011), p. 53.

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21.

(Offenders Sentenced in Federal Criminal Cases FY2012) "The United States Sentencing Commission ¹ received information on 84,360 federal criminal cases in which the offender was sentenced in fiscal year 2012. ² Among these cases, 84,173 involved an individual offender and 187 involved a corporation or other 'organizational' offender."

Source:

US Sentencing Commission, "FY 2012 Overview of Federal Criminal Cases" (Washington, DC: USSC, July 2013), p. 1.

http://www.ussc.gov/Research_and_Statistics/Research_Publications/2013/F...

http://www.ussc.gov/Research_and_Statistics/Research_Publications/index....

22.

(Federal Criminal Offenses Reported to US Sentencing Commission FY2012, by Type) "The vast majority of federal cases involve an individual defendant. Over the last decade, the number of these cases has generally increased each year; however, in fiscal year 2012 the number of cases reported to the Commission fell by 2,028. This represents a decrease of 2.4 percent from fiscal year 2011.

"For the last decade, cases involving immigration, drugs, fraud, or firearms have been the most common federal criminal cases and make up the vast majority of federal felonies and Class A misdemeanors. In fiscal year 2012, these crimes accounted for 82.7 percent of all cases reported to the Commission."

Source:

US Sentencing Commission, "FY 2012 Overview of Federal Criminal Cases" (Washington, DC: USSC, July 2013), p. 1.

http://www.ussc.gov/Research_and_Statistics/Research_Publications/2013/F...

http://www.ussc.gov/Research_and_Statistics/Research_Publications/index....

23.

(Drug Offense Convictions Reported to US Sentencing Commission, FY2012) "Drug offenses were the second most common federal crime. In fiscal year 2012, 26,560 offenders were convicted of a drug crime, the majority involving the manufacture, sale, or transportation of a drug. ⁵ Of these, 1,451 offenders were convicted of an offense involving simple possession of a drug.

"Offenses involving cocaine, in either powder form or base (crack) form, were the most common drug crimes, accounting for 38.0 percent of the offenders sentenced under the drug guidelines. These cases were almost evenly split between the two forms of the drug until fiscal year 2008. After that year, crack cocaine cases began decreasing steadily from 24.4 percent in fiscal year 2008 to 13.8 percent in fiscal year 2012. After cocaine cases (powder and crack cases combined), marijuana offenses were the next most common, representing 27.6 percent of all drug crimes. In fact, marijuana cases were more prevalent than either crack cocaine or powder cocaine cases individually. Drug offenses involving methamphetamine represented 19.5 percent of all drug crimes. Heroin cases were the least common of the major drug offenses, accounting for 8.6 percent of all drug crimes.

"Most drug offenders were United States citizens, but the percentage of drug offenders who are citizens varied widely depending on the type of drug involved in the offense. For example, 97.8 percent of crack cocaine offenders were United States citizens, while only 51.1 percent of marijuana offenders were United States citizens."

Source:

US Sentencing Commission, "FY 2012 Overview of Federal Criminal Cases" (Washington, DC: USSC, July 2013), pp. 6-7.

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24.

(Federal Drug Offense Convictions Reported to US Sentencing Commission, by Race, FY2012) "The race of drug offenders varied even more widely by the type of drug involved in the offense. More than 45 percent (46.2%) of all drug offenders convicted in federal court were Hispanic, while Black offenders comprised 25.9 percent of all drug offenders and White offenders 25.3 percent of all drug offenders. Yet, in crack cocaine cases, 82.6 percent of those convicted were Black, and in methamphetamine cases 48.1 percent of the offenders were White."

Source:

US Sentencing Commission, "FY 2012 Overview of Federal Criminal Cases" (Washington, DC: USSC, July 2013), p. 7.

http://www.ussc.gov/Research_and_Statistics/Research_Publications/2013/F...

[http://www.ussc.gov/Research_and_Statistics/Research_Publications/index....](http://www.ussc.gov/Research_and_Statistics/Research_Publications/index...)

25.

(Relief From Mandatory Minimum Sentences Reported by US Sentencing Commission, FY2012) "Mandatory minimum sentences enacted by Congress played a large part in determining the sentence for these offenders, either outright or through the impact of these statutes on the structure of the guidelines. In fiscal year 2012, crack cocaine offenders and powder cocaine offenders were convicted of an offense that provided for the imposition of a mandatory minimum sentence at rates of 64.0 and 76.4 percent, respectively. ⁶ Powder cocaine offenders obtained relief from a mandatory minimum sentence at a higher rate (32.3%) through the statutory 'safety valve' exception to such sentences, which requires courts to sentence an offender without regard to any otherwise applicable mandatory minimum punishment when certain conditions are met. ⁷ In contrast, 7.6 percent of crack cocaine offenders obtained this relief.

"This difference is largely due to the differing criminal histories of powder cocaine and crack cocaine trafficking offenders. In fiscal year 2012, 58.3 percent of powder cocaine offenders were assigned to Criminal History Category I (offenders with a criminal history score under the sentencing guidelines of zero or one) while only 21.5 percent of crack cocaine offenders were assigned to that category. Only offenders assigned to Criminal History Category I are eligible to receive the benefit of the safety valve.

"Overall, crack cocaine offenders continue to have, on average, a more serious criminal history than any other category of drug offender. ⁸ Crack cocaine offenders were assigned to the most serious criminal history category (CHC VI) in 26.8 percent of all crack cocaine cases. In contrast, powder cocaine offenders were assigned to CHC VI in only 8.8 percent of cases. By comparison, 14.7 percent of heroin offenders were assigned to CHC VI and 10.3 percent of methamphetamine offenders were assigned to CHC VI. Offenders convicted of marijuana offenses generally had the least serious criminal histories, with 66.2 percent assigned to CHC I and only 3.4 percent to CHC VI. ⁹ "

Source:

US Sentencing Commission, "FY 2012 Overview of Federal Criminal Cases" (Washington, DC: USSC, July 2013), pp. 8-9.

http://www.ussc.gov/Research_and_Statistics/Research_Publications/2013/F...

http://www.ussc.gov/Research_and_Statistics/Research_Publications/index...

26.

(Disposition of Federal Criminal Cases Reported to US Sentencing Commission, FY2012) "The vast majority of convicted defendants plead guilty. In fiscal year 2012, 97.0 percent of all offenders did so, the highest rate since fiscal year 2002.

"When offenders pleaded guilty, 45.9 percent received a sentence below the applicable sentencing guideline range, either at the request of the government, at their own request, or initiated by the court. Approximately 62 percent (62.4%) of these below range sentences were requested by the government, usually because the defendant had provided substantial assistance to the government or had agreed to have his or her case handled as part of an early disposition program.

"In the 3.0 percent of cases in which the offender did not plead guilty, 37.1 percent received a sentence below the guideline range. Only 6.1 percent of these below range sentences were requested by the government.

"Most federal offenders convicted of a felony or Class A misdemeanor received a sentence of incarceration. In fiscal year 2012, 7.1 percent of offenders received a sentence of probation (i.e., where no type of confinement was imposed), a rate that over time has decreased from a high of 14.8 percent in 1993. Another 2.9 percent were sentenced to periods of both probation and some type of confinement, and 2.8 percent were sentenced to a combination of imprisonment and community confinement, such as in a half-way house or through home confinement."

Source:

US Sentencing Commission, "FY 2012 Overview of Federal Criminal Cases" (Washington, DC: USSC, July 2013), pp. 4-5

http://www.ussc.gov/Research_and_Statistics/Research_Publications/2013/F...

http://www.ussc.gov/Research_and_Statistics/Research_Publications/index....

27. **Laws and Policies**

(Prosecutorial Discretion, Sentencing Guidelines, and Mandatory Minimum Sentences) "As indicated above, 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. Though judges are required to impose specified sentences in certain situations, prosecutors are generally not required to charge a count carrying a mandatory minimum if other options are available. Prosecutors may use this flexibility as a bargaining chip in securing cooperation or a guilty plea for a lesser charge."

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

28.

(Downward Departure) "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>

29.

(Sentencing Commission Recommendations to Congress) "If Congress decides to exercise its power to direct sentencing policy by enacting mandatory minimum penalties, the Commission believes that such penalties should (1) not be excessively severe, (2) be narrowly tailored to apply only to those offenders who warrant such punishment, and (3) be applied consistently. Sentencing data and interviews with prosecutors and defense attorneys indicate that mandatory minimum penalties that are considered excessively severe tend to be applied inconsistently."

Source:

"Executive Summary: Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System" United States Sentencing Commission (Washington, DC: October 2011), p. xxx.

http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimo...

30.

(Transferring Drug Prosecutions from State to Federal Jurisdiction) "The prosecution of many drug offenders is discretionary and can be subject to either state or federal jurisdiction. Frequently, state cases are transferred to federal prosecutors in order for the defendant to face stiffer penalties in the federal system. The potential of facing a mandatory minimum or a Guideline range sentence that is significantly longer than what one would face in state court increases the likelihood that a defendant will accept a plea bargain."

Source:

Mauer, Marc and King, Ryan S., "A 25-Year Quagmire: The War on Drugs and Its Impact on American Society" The Sentencing Project (Washington, DC: September 2007), p. 8.

http://www.sentencingproject.org/doc/publications/dp_25yearquagmire.pdf

31.

(Establishment of US Sentencing Guidelines) "Prior to the Sentencing Reform Act, federal judges possessed almost unlimited authority to fashion an appropriate sentence within a broad statutorily prescribed range and 'decided [] the various goals of sentencing, the relevant aggravating and mitigating circumstances, and the way in which these factors would be combined in determining a specific sentence.'²³² Sentences were limited only by statutory minimums and maximums.

Because each judge was 'left to apply his own notions of the purposes of sentencing,' the federal sentencing system exhibited 'an unjustifiably wide range of sentences to offenders convicted of similar crimes.'²³³ Neither party had any meaningful right of appellate review. In addition, the parole system, which applied to only a portion of those sentenced and which permitted the release of prisoners based on inconsistent ideas regarding the potential for rehabilitation, exacerbated the lack of uniformity.²³⁴

"The Sentencing Reform Act, the culmination of lengthy bipartisan efforts, sought to eliminate unwarranted disparity in sentencing and to address the inequalities created by indeterminate sentencing.²³⁵ Congress determined that sentencing should be tailored:

"(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care or other correctional treatment in the most effective manner."²³⁶

"To this end, the Sentencing Reform Act created the Commission as an independent agency within the judicial branch of the federal government²³⁷ and directed it to promulgate guidelines that were required to be used for sentencing within the prescribed statutory maximum."²³⁸ "

Source:

"Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System" (Washington, DC: US Sentencing Commission, October 2011), pp. 37-38.

http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimo...

http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimo...

32.

(US Sentencing Guidelines Post-Booker Decision) "For nearly 20 years, federal judges were required to impose sentences within the applicable guideline range unless the court found the existence of an aggravating or mitigating circumstance not adequately taken into consideration by the Commission in formulating the sentencing guidelines.²⁴⁰ This system changed in 2005, when the Supreme Court held in *United States v. Booker* that the mandatory operation of the guidelines violated the Sixth Amendment right to a jury trial and the associated right to have all 'elements' of the offense proved beyond a reasonable doubt.²⁴¹ The Court remedied the constitutional violation by striking two provisions from the Sentencing Reform Act, thereby rendering the guidelines 'effectively advisory.'²⁴² The Court reasoned that although an advisory guideline system lacked the mandatory features that Congress enacted, it nevertheless 'retains other features that help to further congressional objectives, including providing certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities, and maintaining sufficient flexibility to permit individualized sentences when warranted.'²⁴³ The Court concluded that an advisory guideline system would 'continue to move sentencing in Congress's preferred direction, helping to avoid excessive sentencing disparities while maintaining flexibility sufficient to individualize sentences where necessary.'²⁴⁴

"Booker and its progeny explicitly and repeatedly reinforced the continued importance of the guidelines in the sentencing determination.²⁴⁵ District courts are required to properly calculate and consider the guidelines when sentencing.²⁴⁶ "The district court, in determining the appropriate sentence in a particular case, therefore, must consider the properly calculated guideline range, the grounds for departure provided in the policy statements, and then the factors under 18 U.S.C. § 3553(a)."²⁴⁷ Most circuits agree on the three-step approach reflected in USSG §1B1.1 (Application Instructions), including the consideration of departure provisions in the Guidelines Manual, in determining the sentence to be imposed.²⁴⁸ "

Source:

"Report to Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System" (Washington, DC: US Sentencing Commission, October 2011), pp. 39-40.

http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimo...

http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimo...

33.

"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://www.scribd.com/doc/35882472/Pennsylvania-Mandatory-Sentences-Repo...>

34.

(Mandatory Minimums vs. Sentencing Guidelines) "Despite their general leveling effect, mandatory minimums can actually increase sentencing disparities in some cases. For example, as the US Sentencing Commission (1991, p. 31) points out, the law provides for large sentencing step-ups or "cliffs" over tiny quantity ranges. A first-time offender found to be in possession of 5.1 grams of crack must be sentenced to at least 5 years in prison. But a first-time offender found to be in possession of 5.0 grams of crack misses the mandatory minimum criterion and can be imprisoned for at most one year. Thus, these two very similar offenders draw sentences differing by at least four years. (Of course, any sentencing regime based at least partly on amounts possessed is likely to include such step-ups. But sentencing guidelines allow for smaller and more numerous steps or ranges that may overlap, and they allow other factors to be considered within those ranges.)"

Source:

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

http://www.rand.org/pubs/monograph_reports/2006/MR827.pdf

35.

(US v Booker Supreme Court Opinion) "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=...>

36.

(History) "High levels of drug use and experimentation in the 1960s resulted in numerous long prison sentences under the Boggs Act. ³¹ In 1970, Congress responded to the concerns of prosecutors, wardens, and families of those convicted, repealing virtually all provisions imposing mandatory minimum sentences for drug violations. ³² Congress commented that lengthening prison sentences 'had not shown the expected overall reduction in drug law violations.' ³³ "

Source:

Mascharka, Christopher, "Mandatory Minimum Sentences: Exemplifying the Law of Unintended Consequences," Florida State University Law Review (Tallahassee, FL: Florida State University, Summer 2001) Volume 28, Number 4, p. 939.

<http://www.law.fsu.edu/journals/lawreview/downloads/284/Masharka2.pdf>

37.

(History) "The movement towards the current state of sentencing for federal drug crimes began with the passage of the Sentencing Reform Act of 1984 (SRA). ³⁵ In passing the SRA, a bipartisan Congress fundamentally changed sentencing by rejecting the rehabilitation model of punishment. ³⁶ The Act announced new objectives:

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most

effective manner. ³⁷

"A revolutionary feature of the SRA was its creation of the United States Sentencing Commission, an independent expert panel within the judicial branch charged with refining sentencing. ³⁸ "

Source:

Mascharka, Christopher, "Mandatory Minimum Sentences: Exemplifying the Law of Unintended Consequences," Florida State University Law Review (Tallahassee, FL: Florida State University, Summer 2001) Volume 28, Number 4, p. 939-940.

<http://www.law.fsu.edu/journals/lawreview/downloads/284/Masharka2.pdf>

38.

(History) "Two years after enacting the SRA, Congress passed the Anti-Drug Abuse Act of 1986 (ADAA), ⁴⁸ which incorporated a tiered system of minimum sentences for crack, powder cocaine, and other commonly abused substances based on the quantity of the drugs involved. ⁴⁹ The ADAA was passed in the midst of public paranoia and outcry over the crack epidemic and the fear of AIDS being spread through drug use. ⁵⁰ This political climate led to broad bipartisan support for the ADAA, with the bill passing the House by a 392-16 vote and the Senate on a voice vote. ⁵¹ "

Source:

Mascharka, Christopher, "Mandatory Minimum Sentences: Exemplifying the Law of Unintended Consequences," Florida State University Law Review (Tallahassee, FL: Florida State University, Summer 2001) Volume 28, Number 4, p. 941.

<http://www.law.fsu.edu/journals/lawreview/downloads/284/Masharka2.pdf>

39. **Sociopolitical Research**

(Effect on Recidivism) "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.

<http://www.scribd.com/doc/35882472/Pennsylvania-Mandatory-Sentences-Repo...>

40.

(Effect on Crime and Arrest Rates) "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

41.

(Opinion of Judges) "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>

42. **Crack v Powder Cocaine Sentencing Disparity**

"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/Legislative_and_Public_Affairs/Congressional_Testimo...

43.

(Eliminating the Crack/Powder Cocaine Disparity) "On August 3, 2010, President Obama signed the Fair Sentencing Act of 2010 into law. ¹ This measure eliminated the five-year mandatory minimum prison sentence that previously adhered under federal law upon a conviction for possession of five grams or more of crack cocaine. ² The Act also increased the amount, in weight, of crack that must be implicated for either a five- or a ten-year mandatory minimum sentence to apply upon conviction of any of several federal drug trafficking crimes. ³ "

Source:

Graham, Kyle, "Sorry seems to be the hardest word: The Fair Sentencing Act of 2010, Crack, and Methamphetamine," *University of Richmond Law Review* (Richmond, VA: Richmond School of Law, March 2011) Vol. 45, Issue 3, p. 765.

<http://lawreview.richmond.edu/wp/wp-content/uploads/2011/04/Graham-453.p...>

44.

(Eliminating the Crack/Powder Cocaine Disparity) "The precise terms of the legislation that would address the discrepancy were somewhat more difficult to devise. Eventually, however, it was agreed that (1) the threshold quantity of crack necessary to implicate the five-year mandatory minimum would be increased to twenty-eight grams, or approximately one ounce (effectively creating an 18:1 powder-to-crack ratio); ¹⁴² (2) a similar upward adjustment would be made to the quantity of crack necessary for a defendant to receive a ten-year minimum term; ¹⁴³ (3) the five-year mandatory minimum sentence applicable to mere possession of crack would be abolished; ¹⁴⁴ and (4) more severe penalties would apply to drug crimes involving violence, threats of violence, or other aggravating circumstances. ¹⁴⁵ Retention of some disparity between crack and powder cocaine was essential to passage of the Act, because many members of Congress continued to believe (with some justification) ¹⁴⁶ that given its customary methods of distribution and administration, crack was at least somewhat more powerful, more addictive, and more closely tied to violent crime than powder cocaine was. ¹⁴⁷ To these Senators and Representatives, these differences supported some distinction between powder and crack cocaine—just not a 100:1 discrepancy. ¹⁴⁸ By adopting an 18:1 ratio, instead of equalizing the penalties attached to crack and powder cocaine, the

measure that would be-come the Fair Sentencing Act assuaged these concerns and facilitated its enactment into law."

Source:

Graham, Kyle, "Sorry seems to be the hardest word: The Fair Sentencing Act of 2010, Crack, and Methamphetamine," University of Richmond Law Review (Richmond, VA: Richmond School of Law, March 2011) Vol. 45, Issue 3, pp. 792-793.

<http://lawreview.richmond.edu/wp/wp-content/uploads/2011/04/Graham-453.p...>