



Federal Drug Mandatory Minimum Penalties

*Mandatory Minimum Penalties for Drug Offenses
in the Federal Criminal Justice System*

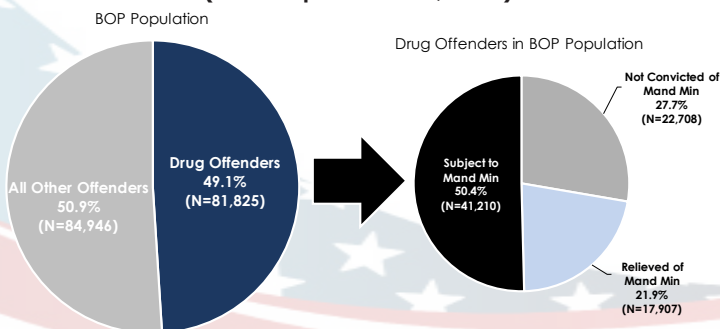
Overview

In October 2017, the Commission issued a new report, *Mandatory Minimum Penalties for Drug Offenses in the Federal Criminal Justice System*, highlighting recent developments in the charging of drug offenses carrying a statutory mandatory minimum penalty and providing updated sentencing data regarding the use and impact of these penalties. This publication is the second in a series of new reports building on the Commission's 2011 *Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System*.¹ Below are some key findings of the report.

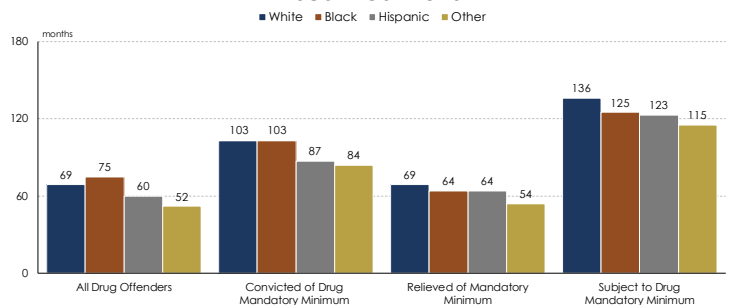
Highlights

- In fiscal year 2016, mandatory minimums were used less often in federal drug offenses (44.7% vs. 66.1% in fiscal year 2010) but continued to result in long sentences for drug offenders. The average sentence for drug offenders convicted of an offense carrying a mandatory minimum was 94 months of imprisonment, more than double the average sentence for offenders whose drug offense did not carry a mandatory minimum (42 months).
- Mandatory minimum penalties continued to have a significant impact on the size and composition of the federal prison population. Half (49.8%) of all federal inmates² are drug offenders and three-quarters (72.3%) of those offenders were convicted of a drug offense carrying a mandatory minimum (see *chart below*).
- More than half (52.8%) of offenders convicted of a drug offense carrying a mandatory minimum faced a statutory minimum penalty of ten years or greater.

Drug Offenders in the BOP Population (as of September 30, 2016)



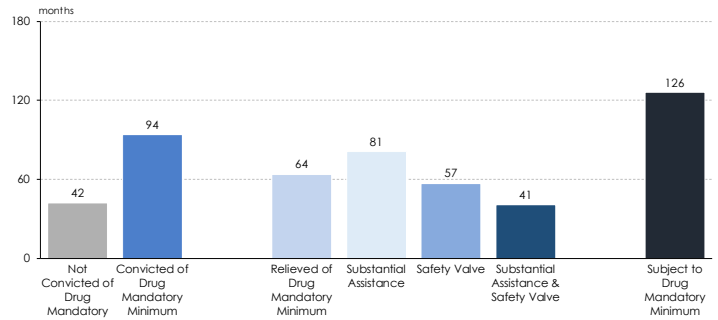
Average Sentence for Drug Offenders by Race Fiscal Year 2016



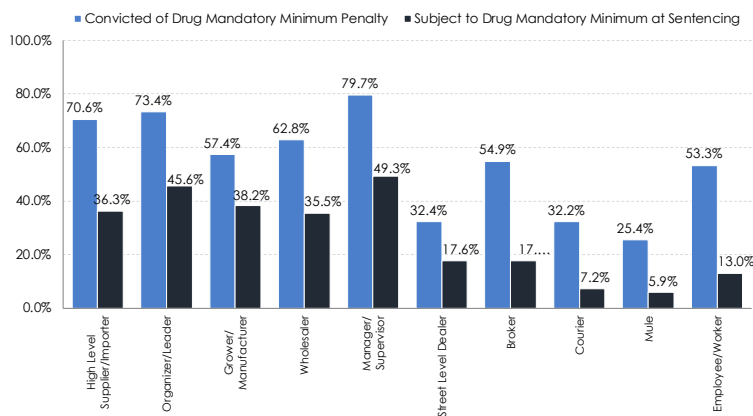
- In fiscal year 2016, Black and White offenders convicted of a drug offense carrying a mandatory minimum remained subject to the mandatory minimum at different rates (64.6% vs. 50.8%). This difference of 13.8% has narrowed, however, since fiscal year 2010 (59.5% vs. 35.3%).
- While Black drug offenders remained subject to a mandatory minimum at the highest rate, White drug offenders received or shared the longest average sentence (see *chart above*) across all categories involving a mandatory minimum in fiscal year 2016, representing a shift from fiscal year 2010.
- Many of the offenders (45.9%) convicted of a drug offense carrying a mandatory minimum had little or no criminal history (Criminal History Category I). More than one-third (37.7%) received no criminal history points under the federal sentencing guidelines.
- Although likely due in part to an older age at release from prison, drug offenders convicted of an offense carrying a mandatory minimum were less likely to recidivate than drug offenders not convicted of such an offense.

- Statutory relief plays a significant role in the application and impact of mandatory minimums. Half (51.6%) of drug offenders were relieved of the mandatory minimum through the application of the statutory safety valve³ and/or for providing substantial assistance to the government.⁴
- Statutory relief appears to provide a significant incentive for drug offenders to cooperate with the government. Drug offenders convicted of an offense carrying a mandatory minimum were twice as likely to provide substantial assistance than drug offenders not convicted of such an offense. The proportion of drug offenders who cooperated increased as the length of the mandatory minimum they faced increased.

Average Sentence by Type of Relief
Fiscal Year 2016



Mandatory Minimum Status by Offender Function
Fiscal Year 2016 Sample Data



- However, neither the safety valve nor the substantial assistance provisions fully ameliorate the impact of mandatory minimums on sentence length. Statutory relief resulted in shorter average sentences (see chart above) but those average sentences remained longer than for drug offenders not convicted of an offense carrying a mandatory minimum.
- Drug mandatory minimums applied across all drug trafficking functions but the rate at which drug offenders remained subject to the mandatory minimum tended to decrease with an offender's culpability (see chart to the left). Still, a significant proportion of offenders at all function levels remained subject to a mandatory minimum at sentencing and received lengthy sentences.

U.S. Sentencing Commission's 2011 Recommendations

The Commission's recent reports build on the Commission's previous reports and publications—particularly, its 2011 report. In the 2011 report, the Commission explained that it "stands ready to work with Congress on measures that can be taken to enhance the strength and effectiveness of the current guidelines system and address the problems with certain mandatory minimum penalties." The Commission also made the following recommendations:

- A strong and effective federal sentencing guidelines system best serves the purposes of the Sentencing Reform Act.⁵
- If Congress decides to exercise its power to direct federal sentencing policy by enacting mandatory minimum penalties, 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.
- Congress should request prison impact analyses from the Commission as early as possible in its legislative process whenever it considers enacting or amending mandatory minimum penalties.

Endnotes

1. See U.S. SENTENCING COMM'N, REPORT TO THE CONGRESS: MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM, (Oct. 2011) and U.S. SENTENCING COMM'N, SPECIAL REPORT TO THE CONGRESS: MANDATORY MINIMUM PENALTIES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM (AS DIRECTED BY SECTION 1703 OF PUBLIC LAW 101-647) (Aug. 1991).

2. In custody as of Sept. 30, 2016.

3. 18 U.S.C. § 3553(f)

4. 18 U.S.C. § 3553(e) and USSG § 5K1.1.

5. Title II, Comprehensive Crime Control Act of 1984, Pub. L. No. 98-473 (1984).

SOURCE: U.S. Sentencing Commission 1991 through 2016 Datafiles, and Bureau of Prisons Combined 1995 through 2016 Datafiles, USSCFY91 – USSCFY16 and USSCBOP.

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