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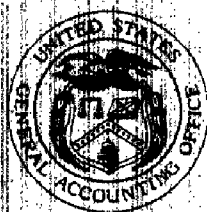
United States General Accounting Office

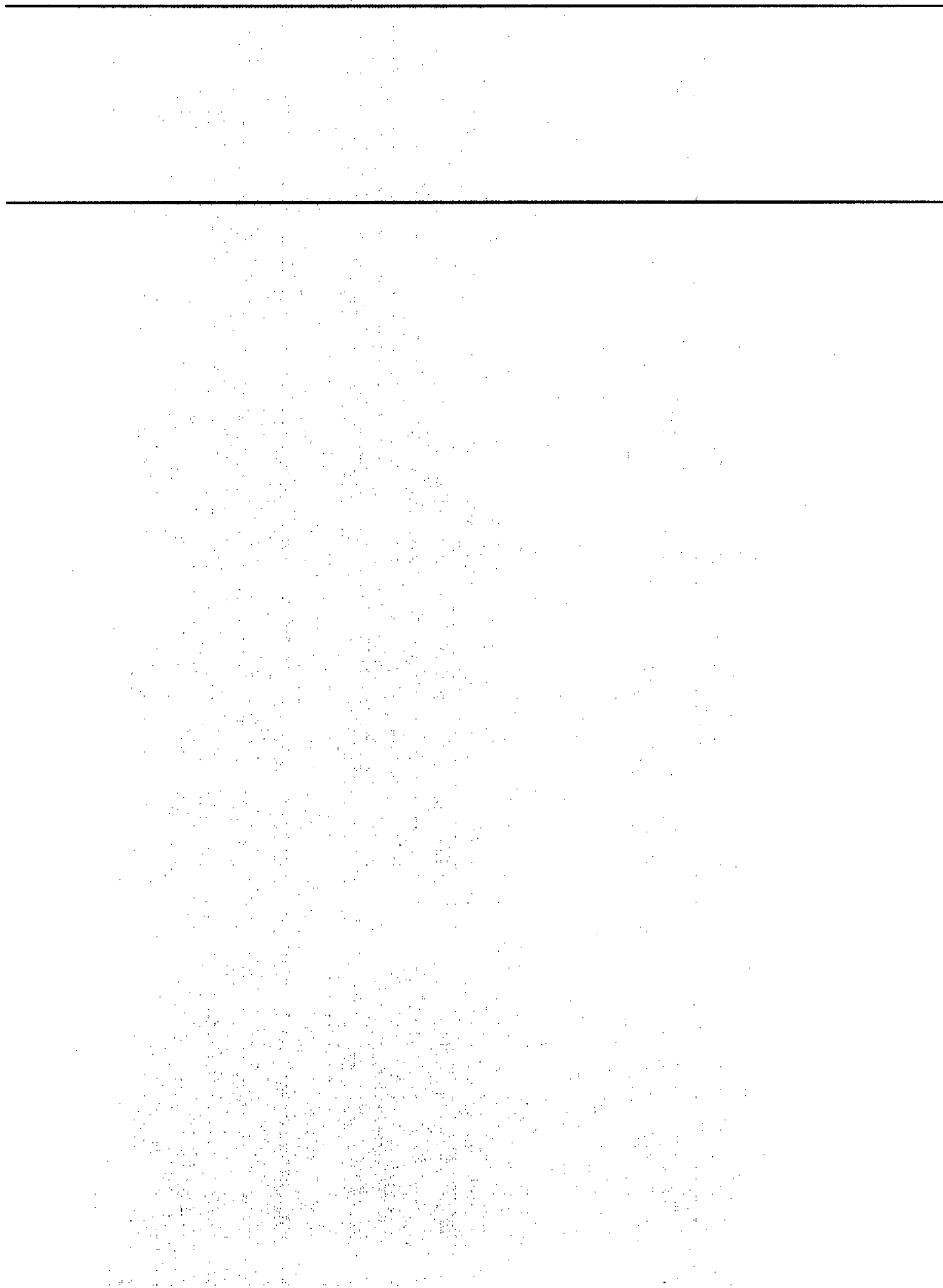
Report to the Chairman, Subcommittee
on Crime and Criminal Justice
Committee on the Judiciary, House of
Representatives

November 1993

MANDATORY MINIMUM SENTENCES

Are They Being Imposed and Who Is Receiving Them?







United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-254324

November 4, 1993

The Honorable Charles E. Schumer
Chairman, Subcommittee on Crime
and Criminal Justice
Committee on the Judiciary
House of Representatives

Dear Mr. Chairman:

At your request, we have reviewed certain issues associated with changes made to federal sentencing policies during the 1980s. These changes, many of which were made in response to growing concern over drug trafficking and firearms offenses, included the development of federal sentencing guidelines and the enactment of statutes carrying mandatory minimum sentences.¹

Since enactment of the changes, questions have been raised about mandatory minimum sentences, including whether they are being imposed where required, who is receiving them, and their relationship to the sentencing guidelines. This report addresses these and related questions.

Results in Brief

Our review of 595 cases in which offenders were convicted of violating a statute carrying a mandatory minimum sentence showed that 85 percent of the time the defendants were sentenced to at least the mandatory minimum amount of prison time. In these cases offenders convicted of offenses carrying a mandatory minimum sentence of 60 months received an average of 87 months. For those convicted of offenses carrying 120-month mandatory minimums, the average sentence was 167 months.

In the remaining 15 percent of the cases, the sentence imposed was less than the mandatory minimum as a result of a "substantial assistance" motion being filed by the prosecution and a corresponding departure being granted by the judge. The law permits such sentences below the mandatory minimum if the defendant provides substantial assistance in the investigation or prosecution of another party. How prosecutors viewed substantial assistance varied in the districts we reviewed, as did the number of departures. In some districts, the requirements were stringent, in others liberal.

¹Mandatory minimum sentences are those for which a minimum period of incarceration is specified by statute. Judges are required to impose upon defendants convicted under statutes containing mandatory minimum provisions a period of imprisonment not less than the minimum number of years specified. These defendants cannot receive probation or suspended sentences.

We identified several district prosecutorial policies and practices that influenced whether charges carrying a mandatory minimum sentence were pursued against certain categories of offenders. These included a policy not to charge certain types of drug couriers in one district and district prosecutive thresholds for certain drugs that were higher than the mandatory minimum threshold.

All offenders are sentenced under the federal sentencing guidelines. In those cases where the maximum guidelines sentence would be lower than the statutory minimum, the mandatory minimum becomes the guidelines sentence and is the sentence to be imposed. This happened 5 percent of the time for the drug cases we reviewed. In approximately 70 percent of the drug cases carrying mandatory minimum sentences that we reviewed, the guidelines sentencing range was longer than the mandatory minimum and consequently was the sentence imposed.

We also looked at certain characteristics of offenders receiving mandatory minimum sentences in the eight districts we reviewed. In all districts they were most frequently male and between the ages of 21 and 40. In four districts the majority were first-time offenders, although in one district almost 80 percent were repeat offenders. In five districts Hispanics were most frequently represented, in two districts blacks, in one district whites. Most offenders had less than a high school education.

Background

Traditionally, Congress has established in statute broad sentencing ranges for specific crimes. Judges then imposed a sentence within the statutory range. Judges had wide discretion to sentence in accordance with their own theories of justice and rehabilitation. Considerable sentencing disparity existed under this system—that is, there were wide variations in the sentences imposed on similar offenders for similar criminal behavior.

Faced with this, a perception that crime was increasing, and growing public demands for harsher, more certain punishment, Congress enacted the Comprehensive Crime Control Act of 1984, which included the Sentencing Reform Act.² The Crime Control Act made fundamental changes to federal sentencing policy in an attempt to bring more certainty to the sentences received and time served by persons convicted of violating federal laws.

²Public Law 98-473, dated October 12, 1984.

Federal Sentencing Guidelines

The Sentencing Reform Act created the United States Sentencing Commission and required the Commission to develop a system of federal sentencing guidelines. Under the act, the guidelines must take into account both an offender's criminal history and the offense for which the offender was being sentenced. The act stipulated that offenders would serve the full prison sentence imposed by the court less any credit of up to 54 days a year for satisfactory behavior.

By requiring judges to sentence according to the guidelines, Congress significantly narrowed judicial sentencing discretion. Under the guidelines, there is now a more direct link between the crime committed and the sentence imposed. The statute permits judges to depart from the guidelines under certain circumstances, but it purposely limits the use of judicial departures to these special circumstances.

Most Frequently Imposed Mandatory Minimum Sentences

In 1984 Congress enacted two mandatory minimum penalties relating to the criminal use of firearms. Additional mandatory minimums were imposed under the Anti-Drug Abuse Acts of 1986 and 1988.³ The most common mandatory minimum sentences are imposed on the basis of the amount of drugs involved in a crime or the presence of a firearm in violent or drug-related crimes.

As of December 31, 1991, there were about 100 federal mandatory minimum penalty provisions included under 60 different criminal statutes. However, four recently enacted statutes dealing with drugs and firearms account for more than 90 percent of all mandatory minimum convictions. These four statutes encompass the following offenses:

- Manufacturing or distributing controlled substances: conviction under 21 U.S.C. 841 carries minimum sentences of 5, 10, 20 years, or life imprisonment, depending upon the quantity of drugs involved, whether death or serious bodily injury occurred, and whether the offender has previous convictions under this or other statutes.
- Possessing a mixture containing a cocaine base: conviction under 21 U.S.C. 844 carries a sentence of not less than 5 or more than 20 years for amounts exceeding 5 grams if this is the offender's first conviction under the statute, and for lesser amounts if the offender has previous convictions under the statute.
- Importing/exporting controlled substances: conviction under 21 U.S.C. 960 carries minimum sentences of not less than 5, 10, 20 years, or life

³Public Law 99-570 dated October 27, 1986, and Public Law 100-690 dated November 18, 1988.

imprisonment, depending upon the quantity of drugs involved, whether death or serious bodily injury occurred, and whether the offender has previous convictions under this or other statutes.

- Using or carrying a firearm during certain drug or violent crimes: conviction under 18 U.S.C. 924(c) carries a mandatory minimum sentence of 5, 10, 20, 30 years, or life imprisonment, depending upon the type of firearm involved and whether the offender has previous convictions under this statute.

Objectives, Scope, and Methodology

The House Judiciary Subcommittee on Crime and Criminal Justice requested that we analyze mandatory minimum sentences for drug and firearm violations to determine how they were being imposed and who was receiving them. Specifically, we reviewed

- whether offenders convicted of crimes carrying a mandatory minimum sentence received that sentence;
- how local prosecutorial practices influenced mandatory minimum charging decisions;
- the relationship between the federal sentencing guidelines and mandatory minimum sentences; and
- race, gender, age, criminal history, and education characteristics of offenders receiving mandatory minimum sentences.

To meet these objectives, we reviewed 900 selected case files at the U.S. Probation offices in 8 judicial districts. In each case, the offender was arrested for an offense involving either a mandatory minimum amount of drugs and/or the presence of a firearm and was ultimately convicted of a federal offense. For these cases, we determined how the defendant was charged; if potential charges were dropped; if a plea bargain was involved and, when possible, what the plea agreement was for; the statute of conviction; and the sentence imposed.

In 595 of the 900 cases, the offenders were ultimately convicted of a mandatory minimum offense. From these case files, we also collected information on each offender's race, gender, age, criminal history, and role in the offense.

The districts from which we selected cases—New York, eastern; New York, southern; Florida, southern; Texas, southern; Illinois, northern; the district of Nebraska; California, central; and California, southern—were selected judgmentally based on the size and type of their criminal

caseload. We analyzed all cases involving drugs and/or firearms in these eight districts for 4 randomly selected months in calendar year 1990. Appendix I provides a detailed discussion of our selection criteria and sampling methodology.

We supplemented information obtained from our case review with discussions with federal district judges; senior officials at the United States Attorney's Offices; local Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), Bureau of Alcohol, Tobacco and Firearms (ATF), and Customs officials; district probation office officials; public defenders; local prosecutors; a public interest group; officials of the U.S. Sentencing Commission; the Federal Judicial Conference; and officials of the Executive Office of the U.S. Attorney, Bureau of Prisons, and the Probation Division of the Administration Office of the U.S. Courts.

The results of our work apply only to those cases we reviewed. They are not generalizable to other cases in the eight districts, nor to other districts or cases nationally. We did our work between May 1990 and April 1993 in accordance with generally accepted government auditing standards.

Mandatory Minimum Sentences Imposed When Warranted by Conviction

Our review of the 595 cases in our sample in which the offenders were convicted of violating a statute carrying a mandatory minimum sentence showed that the defendants were generally sentenced to at least the minimum amount of prison time. The exceptions were in cases where the prosecution filed a substantial assistance motion and the judge agreed to depart from the mandatory minimum sentence. A substantial assistance motion allows departure from both drug and firearm mandatory minimum sentences.⁴ The motion can have a significant impact on the length of sentence because it eliminates any statutory or guideline sentencing requirements. However, judges are not required to sentence below the mandatory minimum if a substantial assistance motion is filed.

In every district, prosecutors filed motions for substantial assistance, allowing judges to sentence below the mandatory minimum. All 104 of the substantial assistance motions in the cases we reviewed were part of plea bargaining agreements. In 91 of these cases, the sentence imposed was below the mandatory minimum.⁵

⁴All substantial assistance motions in our sample involved drug offenses.

⁵Sixty-nine percent (412) of the offenders in our sample who were convicted under a mandatory minimum statute pled guilty.

Views on Substantial Assistance Motions Differed

How prosecutors viewed substantial assistance varied in the districts we reviewed, as did the number of departures granted. According to prosecutors in the southern district of New York, they are “generous” with substantial assistance motions. Conversely, motions for substantial assistance occur less frequently in the central district of California. In this district, a substantial assistance motion requires the defendant’s full cooperation, willingness to testify before a grand jury or any other trial jury, provision of information leading to other significant offenders, and admission of culpability in the offense.

In most of our cases, judges were receptive to motions for substantial assistance. In seven out of eight districts, judges departed from the mandatory minimum sentence for most or all defendants who received a substantial assistance motion. In contrast, in the northern district of Illinois, judges did not depart from a mandatory minimum for 8 out of 17, or almost half, of the defendants for whom substantial assistance motions were filed. District-specific results on substantial assistance are detailed in table II.1 in appendix II.

District Policies and Practices Affect Charging Decisions

In 305 of 900 cases we reviewed, the defendants were not convicted of charges carrying mandatory minimums. In 198 of the 305 cases, charges carrying mandatory sentences were originally filed but later dropped, and the defendants were convicted under a statute without a mandatory minimum provision. In the remaining 107 cases, no mandatory minimum charge was ever brought. Most of the charges dropped, reduced, or never filed were drug charges. Tables II.2 and II.3 in appendix II provide a district breakout of these cases and illustrate the types of charges either dropped or never filed.

Prosecutors consider many factors in making charging decisions. On the basis of the information in the case files we reviewed, we were unable to determine for individual cases why a mandatory minimum charge was dropped, reduced, or never brought. According to Justice officials, key concerns that may result in mandatory minimum charges not being pursued in specific cases include the quality of the evidence, district workload, and the relationship of the particular case to the prosecution of other more important cases. We did identify several district charging policies and practices that influenced decisions about whether to pursue mandatory minimum convictions against certain categories of defendants.

Couriers

In the eastern district of New York a large number of cases involved couriers who were apprehended at J.F.K International Airport with drug amounts that indicated a mandatory minimum violation. However, the district's general policy was to charge couriers under a statute that does not carry a mandatory minimum sentence.

According to district prosecutors there were three reasons why they generally did not charge these couriers under mandatory minimum statutes:

- Resources are limited, i.e., with the number of drug courier cases in the eastern district of New York, if prosecutors were to charge them with mandatory minimum drug amounts and increase the number of cases going to trial, the court would be overwhelmed.
- Most couriers have limited culpability.
- Judges in the district generally disliked sentencing such low-level offenders to mandatory minimums.

"Limiting Proof"

In the southern district of Texas we found that some plea agreements included the practice of "limiting proof" or limiting the evidence to be considered in prosecuting a case. This often had the effect of reducing the amount of drugs on which the sentence is based. According to a senior prosecutor in the district, limiting proof was originally used to avoid mandatory minimums because of the belief that the sentences were too severe. Prosecutors also limited proof to expedite case disposition and to account for their lack of confidence in the technique used to determine drug amounts.

In October 1991, the U.S. Attorney's office in the southern district of Texas eliminated the practice of limiting proof as a means of avoiding mandatory minimum sentences. Other practices aimed at avoiding or reducing mandatory minimum charges—such as dividing the "load" between codefendants in order to reduce the criminal exposure of each, dismissing the mandatory minimum gun count to secure a plea, or refraining from seeking an enhancement that is readily provable—were also eliminated.⁶

⁶18 U.S.C. 924(c) is an example of a statute that operates as an enhancement. If a conviction is obtained for both the underlying offense and section 924(c), the 924(c) penalty must be made consecutive to the sentence for the underlying offense.

Alternative Charges Brought

Prosecutors in the central and southern districts of California stated that they sometimes avoided drug mandatory minimums by charging defendants under 21 U.S.C. 843(b) for use of a communication facility (usually a telephone) with intent to commit a drug offense.⁷ For example, in some instances the charge was used for low-level defendants in cases where higher level defendants had been convicted. According to prosecutors, this expedited the prosecution of the lower level defendants and allowed prosecutors to focus on more significant cases.

Prosecutive Thresholds

Prosecutive guidelines generally govern the types, level, and severity of cases a U.S. Attorney's office will prosecute or decline to prosecute. We found that some U.S. Attorney's offices had declination policies that established drug thresholds for prosecution that exceeded mandatory minimum amounts. Accordingly, they have declined to prosecute cases involving a mandatory minimum amount of drugs. In addition, federal investigators told us that some cases involving a mandatory minimum amount of drugs may not have been referred for federal prosecution if the agent knew the amount of drugs involved was below the threshold for prosecution in a particular district.

Five of the eight districts we reviewed had established prosecutive guidelines based on specific drug amounts. Of these five districts, three had declination policies with drug thresholds for some drugs that were higher than the mandatory minimum threshold drug amounts. Prosecutors in some districts said that their case acceptance policies were based primarily on resource considerations. Prosecutors said that the acceptance criteria were viewed as guidelines and were adhered to only generally. If a case was not prosecuted at the federal level, it may have been prosecuted in state court. However, available data generally did not indicate how frequently cases were referred to the states for prosecution.

Guidelines Sentences Versus Mandatory Minimums

The Sentencing Reform Act of 1984 required the Sentencing Commission to develop sentencing guidelines that apply to defendants convicted of offenses occurring on or after November 1, 1987. Under the statute, all sentencing decisions for convicted felons must comply with the sentencing guidelines. The guidelines required that sentencing should be neutral as to race, gender, creed, national origin, and socioeconomic

⁷The relevant sentencing guideline was amended as of November 1, 1990, to take into account the severity of the underlying drug offense committed, thus exposing the defendant to a higher sentence. All of the defendants in our sample were sentenced prior to the amendment date.

profile of offenders, while taking into account the nature of the circumstances of the offense and the criminal history of the offender.

Mandatory Minimums Enacted in Response to Drugs and Violent Crime

When faced with growing public concerns over drug-related and other violent crimes in the 1980s, Congress enacted mandatory minimum sentences as a way to get tough on drug crimes and as a means of meting out sure and certain punishment. The enactment of mandatory minimum sentences was intended to send a message to those involved in violence and drug activities—whether they were kingpins or couriers—that convictions under those statutes would result in specific periods of incarceration. Mandatory minimums further reduced judicial discretion in sentencing offenders by setting a “floor” on the sentence the judge must impose under the guidelines.

Guidelines Sentencing

Under the guidelines the judge determines an offender’s sentence by using a sentencing table or grid. (See fig. 1.) The left side of the grid consists of 43 offense levels, with the least serious crimes falling within the lower offense levels and the most serious crimes at the high end. For example, failing to register for military service is an offense level 6, while transmitting top secret national defense information to a foreign government is an offense level 42.

Figure 1: Sentencing Guidelines Table (Sentencing Ranges in Months)

Offense Level	Criminal History Category					
	I	II	III	IV	V	VI
1	0-6	0-6	0-6	0-6	0-6	0-6
2	0-6	0-6	0-6	0-6	0-6	1-7
3	0-6	0-6	0-6	0-6	2-8	3-9
4	0-6	0-6	0-6	2-8	4-10	6-12
5	0-6	0-6	1-7	4-10	6-12	9-15
6	0-6	1-7	2-8	6-12	9-15	12-18
7	1-7	2-8	4-10	8-14	12-18	15-21
8	2-8	4-10	6-12	10-16	15-21	18-24
9	4-10	6-12	8-14	12-18	18-24	21-27
10	6-12	8-14	10-16	15-21	21-27	24-30
11	8-14	10-16	12-18	18-24	24-30	27-33
12	10-16	12-18	15-21	21-27	27-33	30-37
13	12-18	15-21	18-24	24-30	30-37	33-41
14	15-21	18-24	21-27	27-33	33-41	37-46
15	18-24	21-27	24-30	30-37	37-46	41-51
16	21-27	24-30	27-33	33-41	41-51	46-57
17	24-30	27-33	30-37	37-46	46-57	51-63
18	27-33	30-37	33-41	41-51	51-63	57-71
19	30-37	33-41	37-46	46-57	57-71	63-78
20	33-41	37-46	41-51	51-63	63-78	70-87
21	37-46	41-51	46-57	57-71	70-87	77-96
22	41-51	46-57	51-63	63-78	77-96	84-105
23	46-57	51-63	57-71	70-87	84-105	92-115
24	51-63	57-71	63-78	77-96	92-115	100-125
25	57-71	63-78	70-87	84-105	100-125	110-137
26	63-78	70-87	78-97	92-115	110-137	120-150
27	70-87	78-97	87-108	100-125	120-150	130-162
28	78-97	87-108	97-121	110-137	130-162	140-175
29	87-108	97-121	108-135	121-151	140-175	151-188
30	97-121	108-135	121-151	135-168	151-188	168-210
31	108-135	121-151	135-168	151-188	168-210	188-235
32	121-151	135-168	151-188	168-210	188-235	210-262
33	135-168	151-188	168-210	188-235	210-262	235-293
34	151-188	168-210	188-235	210-262	235-293	262-327
35	168-210	188-235	210-262	235-293	262-327	292-365
36	188-235	210-262	235-293	262-327	292-365	324-405
37	210-262	235-293	262-327	292-365	324-405	360-life
38	235-293	262-327	292-365	324-405	360-life	360-life
39	262-327	292-365	324-405	360-life	360-life	360-life
40	292-365	324-405	360-life	360-life	360-life	360-life
41	324-405	360-life	360-life	360-life	360-life	360-life
42	360-life	360-life	360-life	360-life	360-life	360-life
43	life	life	life	life	life	life

The top of the grid consists of six criminal history categories, with category I being the least severe and category VI the most severe. Placement in one of these categories is to be determined by such factors as number of prior convictions. For example, if an offender is sentenced for crimes of violence or drug offenses and has had two or more prior felony convictions of this nature, the offender is to be considered a career offender and placed in category VI, the highest criminal history category.

The intersection of an offender's offense level and criminal history category determines his/her placement within a "cell" or sentencing category on the grid and, thus, the potential sentence. For example, an offender convicted of robbery (base offense level 20) with a criminal history score that equates to category II could receive a prison sentence ranging from 37 to 46 months. The sentencing judge determines the exact number of months within the range to which the offender is sentenced. Only in limited circumstances do the guidelines allow judges to depart from the specific sentencing ranges.

Mandatory Minimums

While the Commission was compiling data and calculating guidelines, Congress enacted additional statutes requiring mandatory minimum sentences for certain drug and firearms violations. The Commission used mandatory minimums to "anchor" the guidelines for drug offenses. Where Congress enacted a mandatory minimum for a specific drug amount, the Commission set the guidelines for similar offenses at a base offense level that reflected the minimum sentence established in the statute. For example, a 5-year mandatory minimum sentence for the distribution of at least 100 grams of heroin is in the sentencing range at offense level 26, and the 10-year mandatory minimum sentence for the distribution of at least 1 kilogram (1,000 grams) of heroin is at offense level 32. (See fig. 1.)

When a defendant is convicted under a statute that carries a mandatory minimum sentence that exceeds the guidelines sentencing range (after any adjustments, e.g., for role in offense), the mandatory minimum becomes the sentence to be imposed.

Offenders convicted and sentenced under 18 U.S.C. 924, using or carrying a firearm during a violent crime or drug trafficking crime, are generally sentenced to an additional 5 years beyond the sentence for the underlying offense. This increases to 15 years if they have three previous convictions for a violent felony or serious drug offense. There are no sentencing guidelines base offense levels for these circumstances.

Of the 595 cases we reviewed, 573 were for drug-related offenses. In 402 of the cases (70 percent), the minimum guidelines sentence was higher than the statutory minimum. In 142 (25 percent) of the cases, the guidelines sentencing range included the mandatory minimum. In only 5 percent of the cases (29) was the mandatory minimum higher than the maximum guidelines sentence. This finding also varied by district; district-specific results are provided in table II.4 in appendix II.

Drug offenders convicted under statutes carrying a 60-month mandatory minimum who did not receive a substantial assistance departure were sentenced to an average of 81 months. For those convicted of a 120-month mandatory minimum, the average sentence was 167 months. Table II.5 in appendix II provides a district breakdown of the offenders in each category and the average sentence.

Offender Profiles

Offenders receiving mandatory minimum sentences in the eight districts we reviewed had several characteristics. In all districts they were most frequently male and between the ages of 21 and 40. In four districts the majority were first-time offenders, although in one district almost 80 percent were repeat offenders. In five districts Hispanics were most frequently represented, in two districts blacks, in one district whites. Most offenders had less than a high school education. As with other findings in this report, in many cases this profile varied by district. The high Hispanic and black representation among those receiving mandatory minimum sentences may reflect the ethnic makeup of or transient population in the districts. For instance, the southern district of California has a high proportion of Hispanics in the general population. Table 1 provides an overview of the offenders in the cases we reviewed. Tables II.6-II.11 in the appendix provide offender data by district.

Table 1: Overview of Offenders

Characteristic		Number of offenders	Percentage of offenders ^a
Gender:	Male	516	87
	Female	78	13
Race:	Black	144	24
	White	120	20
	Hispanic	316	53
	Other	14	2
Age:	< 21	17	3
	21 - 30	214	36
	31 - 40	211	35
	41 - 50	120	20
	> 50	33	6
Education:	< High school	301	51
	High school	122	21
	> High school	164	28
History of substance abuse:	Drugs	145	24
	Alcohol	53	9

Note: Not all attributes could be determined for all offenders.

^aPercentages do not add due to rounding.

Copies of this report will be made available to the Department of Justice, the Sentencing Commission, the Judicial Conference, the Administrative Office of the U.S. Courts, and other interested parties. It will also be made available to others upon request.

Major contributors to this report are listed in appendix III. If you have any questions, please contact me on (202) 512-5156.

Sincerely yours,



Henry R. Wray
Director, Administration of
Justice Issues

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Abbreviations

ATF	Bureau of Alcohol, Tobacco and Firearms
CDCA	Central District of California
DEA	Drug Enforcement Administration
EDNY	Eastern District of New York
FBI	Federal Bureau of Investigation
NDIL	Northern District of Illinois
NEB	District of Nebraska
SDCA	Southern District of California
SDFL	Southern District of Florida
SDNY	Southern District of New York
SDTX	Southern District of Texas

Case File Sampling and Analysis

Our case file analysis was completed in eight districts—eastern district of New York (EDNY), southern district of New York (SDNY), southern district of Florida (SDFL), southern district of Texas (SDTX), northern district of Illinois (NDIL), district of Nebraska (NEB), central district of California (CDCA), and southern district of California (SDCA). Except for the district of Nebraska and the northern district of Illinois, the districts are in locations designated as high-intensity drug trafficking areas by the Office of National Drug Control Policy and have large criminal caseloads.

Nebraska was selected as a contrast district as it had fewer controlled substance cases. The northern district of Illinois was selected to provide data for the request from the House Select Committee on Narcotics Abuse and Control concerning disparities in sentencing convicted drug traffickers between the federal system and the Illinois system.

The results of our case file review are not generalizable to other cases in the districts or to other cases nationally.

Case File Selection

Using the Administrative Office of the U.S. Courts' Master Criminal File for 1990, we identified 23,121 defendants convicted of controlled substance and/or firearms offenses, including bank robbery and homicide. Of this total 5,927 (25.6 percent) were from the 8 districts included in our review.¹

From this universe, we selected 4 months—February, May, September, and October 1990—1 randomly from each calendar quarter. There is nothing to indicate that local sentencing practices for these months were different from any other months during the year or that these cases were different from those in any other period.

Using the Master Criminal File for these 4 months, we obtained and screened the probation file of each defendant with a filing offense code for drugs, firearms, homicide, and bank robbery—a total of 1,468 defendants. We focused on these filing offense codes because they provided us the opportunity to identify defendants associated with drugs and/or firearms whose offenses had the potential for mandatory minimum sentences upon conviction. We included bank robbery and homicide cases in order to detect offenses that may have involved a firearm in the commission but may not have in charging and/or conviction.

¹We did not assess the reliability of the Administrative Office of the U.S. Courts' Master Criminal File that we used in our initial selection of cases.

In our screening of files we excluded defendants for whom charges were filed prior to November 1, 1987, because they did not come under sentencing guidelines. Although we were not specifically reviewing sentencing guidelines cases, we selected defendants after this date to ensure consistent data.

We also excluded cases that did not involve the potential for a charge carrying a drug- or firearm-related mandatory minimum sentence. These were mainly cases in which the drug amount involved was insufficient to trigger a mandatory minimum sentence. We also excluded cases that involved no drugs or firearms (such as unarmed bank robbery); cases that the local probation office forwarded to another office, thus shifting the responsibility for that defendant to the new office; and cases that the local probation offices were unable to locate. Since we were reviewing all defendants who met our criteria for specific periods, we did not have any cases to substitute when we dropped a case. Table I.1 shows for each district the number of cases identified, reviewed, and excluded.

Table I.1: Number of Defendants' Cases Reviewed and Dropped

District	Total number of defendants	Number defendants' cases dropped	Number defendants' cases reviewed
EDNY	224	25	199 (89%)
SDNY	163	59	104 (64%)
SDFL	281	121	160 (57%)
SDTX	331	185	146 (44%)
CDCA	170	74	96 (56%)
SDCA	186	68	118 (63%)
NDIL	85	27	58 (68%)
NEB	28	9	19 (68%)
Total	1,468	568	900 (61%)

Case File Analysis

For each of the 900 cases selected for analysis, we recorded information from the defendant's probation file relying primarily on the presentence investigation report; appropriate investigators' reports; charging documents (indictments, informations, superseding indictments, and superseding informations); the judgment and commitment order; and the sentencing statement of reasons.

Using a standardized data collection instrument, we collected data on selected events and decisions that occurred in the case, including the offense characteristics, the offense(s) charged, the offense(s) of

conviction, the sentencing guideline calculations including ranges, and the actual sentence. We recorded data on race, gender, age, educational level, prior criminal record, charging and conviction statutes, plea bargaining, and sentencing.

Other than the presentence investigation report, the only documents used to complete each case analysis were the initial charging document and the final charging document. These enabled us to follow what charges were dropped and/or added during the process.

Upon completion and verification, each data collection instrument was sent to an independent contractor for keypunching. Since the database is large and professionally keypunched, we selected a random sample of keypunched cases to project an estimated error rate, using the GAO-approved random number generator for personal computers.

Transcription errors were identified, recorded, and corrected each time an individual character on the computer listing did not agree with its counterpart. In order to determine the acceptability of the keypunching results, a transaction error rate was calculated. In no instance did an error rate exceed 1 percent.

District-Specific Analysis Results

The following tables provide the district-by-district breakdown of our results referenced in the body of this report.

Table II.1: Substantial Assistance Motions and Departures

District	Defendants convicted under mandatory minimum statutes	Substantial assistance motions filed	Offenders sentenced below the mandatory minimum
EDNY	74	14	14
SDNY	79	17	17
SDFL	155	15	14
SDTX	89	14	11
CDCA	81	8	8
SDCA	52	15	14
NDIL	54	17	9
NEB	11	4	4
Total	595	104	91

Table II.2: Mandatory Minimum Charges Not Pursued

District	Number of defendants (total)	Defendants with mandatory minimum charges not filed	Defendants with mandatory minimum charges dropped or reduced
EDNY	125	72	53
SDNY	25	7	18
SDFL	5	1	4
SDTX	57	7	50
CDCA	15	7	8
SDCA	66	11	55
NDIL	4	0	4
NEB	8	2	6
Overall	305	107	198

Appendix II
District-Specific Analysis Results

Table II.3: Mandatory Minimum Charges Dropped/Reduced or Not Filed, by Offense Type

District	Drug charges		Firearms charges ^a	
	Dropped/reduced	Not filed	Dropped/reduced	Not filed
EDNY	50	68	3	4
SDNY	17	6	1	1
SDFL	4	1	0	0
SDTX	43	1	7	6
CDCA	5	0	3	7
SDCA	50	8	5	3
NDIL	4	0	0	0
NEB	4	2	2	0
Overall	177	86	21	21

Note: An offender may have had more than one charge dropped/reduced or not filed.

^aEight offenders with firearms charges dropped/reduced also had drug charges dropped/reduced.

Table II.4: Guidelines Versus Mandatory Minimum Sentences

Drug offenses only

District	Total offenders (number)	Minimum guidelines sentence more than mandatory minimum	Guidelines sentence range included mandatory minimum	Maximum guidelines sentence less than mandatory minimum
EDNY	70	46 (66%)	18 (26%)	6 (9%)
SDNY	77	61 (79%)	14 (18%)	2 (3%)
SDFL	155	102 (66%)	46 (30%)	7 (5%)
SDTX	86	60 (70%)	21 (24%)	5 (6%)
CDCA	74	57 (77%)	14 (19%)	3 (4%)
SDCA	49	34 (69%)	11 (22%)	4 (8%)
NDIL	52	36 (69%)	15 (29%)	1 (2%)
NEB	10	6 (60%)	3 (30%)	1 (10%)
Overall	573	402 (70%)	142 (25%)	29 (5%)

**Appendix II
District-Specific Analysis Results**

Table II.5: Average Sentences for Mandatory Minimum Drug Defendants With No Departure for Substantial Assistance

District	60-month mandatory minimum convictions		120-month mandatory minimum convictions	
	Offenders (number)	Average sentence imposed (months)	Offenders (number)	Average sentence imposed (months)
EDNY	41	87	15	130
SDNY	38	83	22	160
SDFL	75	68	58	179
SDTX	49	86	21	167
CDCA	17	86	47	162
SDCA	18	85	16	165
NDIL	25	86	10	177
NEB	2	101	4	190
Overall	265	81	193	167

Table II.6: District Analysis of Offenders by Racial Category

District	Total number of offenders	White offenders	Black offenders	Hispanic offenders	Other ^a
EDNY	74	13	20	34	7
SDNY	79 ^b	4	28	43	3
SDFL	155	25	28	102	0
SDTX	89	16	6	67	0
CDCA	81	15	37	26	3
SDCA	52	28	3	21	0
NDIL	54	15	16	23	0
NEB	11	4	6	0	1
Overall	595	120	144	316	14

^aOther = Native American, Asian, and all others.

^bFor one defendant we could not determine the race.

Appendix II
District-Specific Analysis Results

Table II.7: District Analysis of Offenders by Gender

District	Total number of offenders	Male offenders	Female offenders
EDNY	74	68 (92%)	6 (8%)
SDNY	79	73 (92%)	6 (8%)
SDFL	155	125 (81%)	30 (19%)
SDTX ^a	89	81 (91%)	7 (9%)
CDCA	81	65 (80%)	16 (20%)
SDCA	52	47 (90%)	5 (10%)
NDIL	54	46 (85%)	8 (15%)
NEB	11	11 (100%)	0 (0%)
Overall	595	516 (87%)	78 (13%)

^aGender could not be determined for one offender.

Table II.8: Offender Criminal History

District	Total offenders	First-time offenders	Repeat offenders		
			Drugs	Gun	Other
EDNY	74	55	5	7	7
SDNY	79	56	14	4	5
SDFL	155	123	21	8	3
SDTX	89	44	20	3	22
CDCA	81	41	13	9	18
SDCA	52	16	11	2	23
NDIL	54	27	17	7	3
NEB	11	3	2	1	5
Overall	595	365	103	41	86

Table II.9: Offender Age

District	Total offenders (number)	Age				
		<21	21-30	31-40	41-50	>50
EDNY	74	1 (1%)	26 (35%)	34 (46%)	9 (12%)	4 (5%)
SDNY	79	5 (6%)	35 (44%)	25 (32%)	12 (15%)	2 (3%)
SDFL	155	3 (2%)	43 (28%)	49 (32%)	41 (26%)	19 (12%)
SDTX	89	3 (3%)	36 (40%)	29 (33%)	18 (20%)	3 (3%)
CDCA	81	3 (4%)	30 (37%)	34 (42%)	12 (15%)	2 (2%)
SDCA	52	0	21 (40%)	15 (29%)	14 (27%)	2 (4%)
NDIL	54	2 (4%)	16 (30%)	22 (41%)	13 (24%)	1 (2%)
NEB	11	0	7 (64%)	3 (27%)	1 (9%)	0
Overall	595	17 (3%)	214 (36%)	211 (35%)	120 (20%)	33 (6%)

Appendix II
District-Specific Analysis Results

Table II.10: Offender Education Level

District	Offenders (number)	<High school	High school graduate	>High school	Don't know
EDNY	74	36 (49%)	11 (15%)	27 (36%)	0 (0%)
SDNY	79	50 (63%)	11 (14%)	16 (20%)	2 (3%)
SDFL	155	68 (44%)	36 (23%)	50 (32%)	1 (1%)
SDTX	89	54 (61%)	15 (17%)	19 (21%)	1 (1%)
CDCA	81	37 (46%)	21 (26%)	23 (28%)	0 (0%)
SDCA	52	27 (52%)	8 (15%)	14 (27%)	3 (6%)
NDIL	54	26 (48%)	14 (26%)	13 (24%)	1 (2%)
NEB	11	3 (27%)	6 (55%)	2 (18%)	0 (0%)
Overall	595	301 (51%)	122 (21%)	164 (28%)	8 (1%)

**Table II.11: Offenders With Indications
of Substance Abuse**

District	Offenders (total)	Offenders with indications of drug abuse	Offenders with indications of alcohol abuse
EDNY	74	15	5
SDNY	79	31	4
SDFL	155	15	6
SDTX	89	14	7
CDCA	81	29	8
SDCA	52	19	11
NDIL	54	16	9
NEB	11	6	3
Overall	595	145	53

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