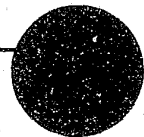


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and Criminal Justice
Committee on the Judiciary
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MANDATORY MINIMUM
SENTENCES

Are They Being Imposed and
Who is Receiving Them?

Statement of Henry R. Wray
Director
Administration of Justice Issues

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MANDATORY MINIMUM SENTENCES: ARE THEY BEING IMPOSED
AND WHO IS RECEIVING THEM?

SUMMARY STATEMENT OF HENRY R. WRAY
DIRECTOR, ADMINISTRATION OF JUSTICE ISSUES
GENERAL GOVERNMENT DIVISION

At the Subcommittee's request, GAO has reviewed certain issues associated with statutes carrying mandatory minimum sentences, as well as the imposition of federal sentencing guidelines. Since enactment of the statutes, 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.

GAO reviewed 900 cases in 8 judicial districts. In 595 of these cases, the offender was convicted of an offense involving drugs and/or firearms carrying a mandatory minimum sentence. In the cases GAO reviewed, 85 percent of the offenders convicted of violating mandatory minimum statutes received at least the statutory minimum sentence. In the remaining 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 granted by the judge. The frequency both with which substantial assistance motions were filed and departures granted varied among the districts.

Several factors can influence whether mandatory minimum charges are brought in specific cases, such as the quality of the evidence and plea bargaining agreements to reduce workload. In addition, district charging practices and policies, including not charging couriers, limiting the amount of drugs on which the prosecution was based, and prosecution thresholds above the mandatory minimum amount of drugs, influenced whether mandatory minimum charges were pursued against certain categories of defendants.

Offenders convicted of offenses carrying mandatory minimum sentences are to be sentenced under the federal sentencing guidelines, unless the guidelines sentence would be lower than the statutory minimum. In the drug cases GAO reviewed the mandatory minimum sentence was higher 5 percent of the time. In approximately 70 percent of the drug cases, the guidelines sentencing range was longer than the mandatory minimum and was the sentence imposed.

Offenders receiving mandatory minimum sentences in the eight districts GAO reviewed had several common characteristics. In all districts the majority were 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.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the results of our work for this subcommittee on mandatory minimum sentences.¹ At your request 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 minimums sentences; and
- race, gender, age, criminal history, and education characteristics of offenders receiving mandatory minimum sentences.

We reviewed 900 selected cases in 8 judicial districts in which defendants were convicted of a federal offense and, according to arrest records, the potential existed for a charge carrying a mandatory minimum sentence. Specifically, we selected cases where the offender was arrested for an offense involving either a mandatory minimum amount of drugs or the presence of a firearm.² In 595 of the cases, the offender was convicted of an offense carrying a mandatory minimum sentence. In the remaining 305 cases the offender was convicted under a statute not carrying a mandatory minimum.

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

²These 900 cases represent all cases that met these criteria during the randomly selected months of February, May, September, and October 1990. The eight judicial districts we selected the cases from were the eastern district of New York (EDNY), the southern district of New York (SDNY), the southern district of Florida (SDFL), the southern district of Texas (SDFX), the central district of California (CDCA), the southern district of California (SDCA), the northern district of Illinois (NDIL), and the district of Nebraska (NEB). 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 all districts nationally.

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. However, with enactment of the Sentencing Reform Act of 1984, Congress made fundamental changes to federal sentencing policy in an attempt to bring more certainty to sentences and to reduce sentencing disparity. The act created the United States Sentencing Commission and required it to develop a system of sentencing guidelines.

In 1984 and subsequent years, growing concern over drug use and associated crime also led Congress to enact mandatory minimum sentences as a way to get tough on drug crimes and as a means of meting out sure and certain punishment. Mandatory minimum sentences were intended to send to those involved in violence and drug activities a different message that convictions under those statutes will result in specific periods of incarceration.

Most Frequently Imposed Mandatory Minimum Sentences

As of December 31, 1991, there were about 100 federal mandatory minimum penalty provisions included under 60 different criminal statutes, dating back to the 18th century. 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 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.

MANDATORY MINIMUM SENTENCES
IMPOSED WHEN WARRANTED BY CONVICTION

Our review of the 595 cases in our sample in which the offender was convicted of violating a statute carrying a mandatory minimum sentence showed that the defendant was generally sentenced to at least the mandatory minimum amount of prison time. The exceptions were cases in which the prosecution filed a motion for a lesser sentence based on the defendant providing substantial assistance in the investigation or prosecution of another party, and the judge agreed to depart from the mandatory minimum sentence.

The substantial assistance motion allows departure from both drug and firearm mandatory minimum sentences.³ The impact of a substantial assistance motion on the length of sentence can be significant 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.

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

³All substantial assistance motions in our sample involved drug offenses.

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 I.1 in the appendix.

DISTRICT POLICIES AND PRACTICES INFLUENCED CHARGING DECISIONS

In 305 of the 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 defendant was 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 I.2 and I.3 in the appendix provide a district breakout of these cases and illustrate the type of charges either dropped/reduced 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 whether to pursue mandatory minimum convictions against certain categories of defendants.

Couriers

The eastern district of New York had a large number of drug cases involving couriers who are 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 did 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; and
- 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.⁴

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.⁵

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

⁴According to a senior prosecutor in the southern district of Texas, DEA's weighing technique relies on a sampling method for the quantity of drugs and the quantity of packaging.

⁵18 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.

communication facility (usually a telephone) with intent to commit a drug offense.⁶ 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 them 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. Attorneys' 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 is 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, it was not possible for us to determine how frequently cases were referred to the states for prosecution.

GUIDELINES SENTENCES VERSUS MANDATORY MINIMUMS

The Sentencing Reform Act of 1984 required the United States 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 profile of offenders, while taking into account the nature of the

⁶The 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. Our sample of defendants were all sentenced prior to the amendment date.

circumstances of the offense and the criminal history of the offender.

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.

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.

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

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 under statutes with a 120-month mandatory minimum, the average sentence was 167 months. Table I.5 in the appendix provides a district breakdown of the offenders in each category and the average sentences.

OFFENDER PROFILES

Offenders receiving mandatory minimum sentences in the eight districts we reviewed had several common 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. Table 1 provides an overview of the offenders in the cases we reviewed. Tables I.6-I.11 in the appendix provide offender data by district.

Table 1: Overview of Offenders^a

Characteristic		Number of Offenders	Percentage of Offenders ^b
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

^aNot all attributes could be determined for all offenders.

^bPercentages do not add due to rounding.

CONCLUSIONS

In summary Mr. Chairman, we found that when an offender was convicted under a statute that carried a mandatory minimum sentence, the judge generally imposed at least that sentence. Offenders in our cases convicted of offenses carrying a mandatory minimum sentence of 60 months received an average of 87 months. For those convicted of 120-month mandatory minimums, the average sentence was 164 months.

The exceptions were cases where the judge granted a departure for substantial assistance. Different district interpretations on

prosecution in individual districts. In some districts we reviewed, the requirements were stringent, in others liberal.

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

All offenders are to be 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 minimums sentences that we reviewed, the guidelines sentencing range was longer than the mandatory minimum and consequently was the sentence imposed.

That concludes my statement Mr. Chairman. We would be happy to respond to any questions.

DISTRICT-SPECIFIC ANALYSIS RESULTSTable I.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 I.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

Table I.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

Table I.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	403 (70%)	142 (25%)	28 (5%)

Table I.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 I.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	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.

Table I.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 (9%)
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 I.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 I.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 (30%)	49 (32%)	41 (26%)	19 (12%)
SDTX	89	3 (3%)	36 (28%)	29 (33%)	18 (20%)	3 (3%)
CDCA	81	3 (4%)	30 (37%)	34 (42%)	12 (15%)	2 (3%)
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	214	211	120	33

Table I.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 I.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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