

# DRUG WAR FACTS

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## Mandatory Minimums

1. Mandatory minimums have not actually reduced sentencing discretion. Control has merely been transferred from judges to prosecutors.

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

2. "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.*

3. "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," GAO-04-105, October 2003, pp. 9-10, from the web at [www.gao.gov/cgi-bin/getrpt?GAO-04-105](http://www.gao.gov/cgi-bin/getrpt?GAO-04-105), last accessed Nov. 1, 2003.*

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

*Source: General Accounting Office, "Federal Drug Offenses: Departures from Sentencing Guidelines and Mandatory Minimum Sentences, Fiscal Years 1999-2001," GAO-04-105, October 2003, p. 11, from the web at [www.gao.gov/cgi-bin/getrpt?GAO-04-105](http://www.gao.gov/cgi-bin/getrpt?GAO-04-105), last accessed Nov. 1, 2003.*

5. Prosecutors, not judges, have the discretion to decide whether to reduce a charge, whether to accept or deny a plea bargain, whether to reward or deny a defendant's "substantial assistance" or cooperation in the prosecution of someone else, and ultimately, to determine what the final sentence will be.

*Source: Caulkins, J., et al., Mandatory Minimum Drug Sentences:*

*Throwing Away the Key or the Taxpayers' Money? (Santa Monica, CA: RAND Corporation, 1997), pp. 16-18.*

6. "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, "Curtailling the Sentencing Power of Trial Judges: The Unintended Consequences", Court Review (Williamsburg, VA: American Judges Association, Summer 1999), p. 6-7.*

7. "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, "Curtailling the Sentencing Power of Trial Judges: The Unintended Consequences", Court Review (Williamsburg, VA: American Judges Association, Summer 1999), p. 6.*

8. Fifty-five percent (55%) of all federal drug defendants are low-level offenders, such as mules or street-dealers. Only 11% are classified as high-level dealers.

*Source: US Sentencing Commission, Special Report to Congress: Cocaine and Federal Sentencing Policy (Washington DC: US Sentencing Commission, February 1995), Table 18.*

9. According to the U.S. Sentencing Commission, only 5.5% of federal crack defendants are considered high-level crack dealers.

*Source: US Sentencing Commission, Special Report to Congress: Cocaine and Federal Sentencing Policy (Washington DC: US Sentencing Commission, February 1995), Table 18.*

10. "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.*

11. Since the enactment of mandatory minimum sentencing for drug users, the Federal Bureau of Prisons budget increased by more than 1,350%, from \$220 million in 1986 to about \$3.19 billion in 1997.

*Source: Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics (Washington, DC: US Government Printing Office, 1997), p. 20; Office of National Drug Control Policy, Executive Office of the White House, National Drug Control Strategy, 1997: Budget Summary (Washington DC: US Government Printing Office, 1997), p. 111.*

12. The ONDCP in its 2000 annual report detailed administration requests for major increases in funding to the Federal Bureau of Prisons for drug-related prison construction. These include an extra \$420 Million in fiscal year 2001, and advanced appropriations of \$467 Million in 2002, and an additional \$316 Million in 2003 - all drug-related.

*Source: Bureau of Justice Statistics, Sourcebook of Criminal Justice Statistics (Washington, DC: US Government Printing Office, 1997), p. 20; Office of National Drug Control Policy, Executive Office of the White House, National Drug Control Strategy, 1997: Budget Summary (Washington DC: US Government Printing Office, 1997), p. 111; Office of National Drug Control Policy, Executive Office of the White House, National Drug Control Strategy: Annual Report 2000 (Washington, DC: US Government Printing Office, 2000), p. 96.*

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