

## STATISTICAL OVERVIEW OF MANDATORY MINIMUM PENALTIES

### A. INTRODUCTION

The statutory directive requires the Commission to provide a detailed empirical research study of the effect of mandatory minimum penalties under Federal law. As part of that study, this chapter provides a statistical overview of the application of mandatory minimum penalties for all offenses. First, this chapter provides a description of the methodology used for the analyses in this report. Second, this chapter presents general comparisons between offenders in the overall federal population, offenders convicted of an offense under a statute carrying a mandatory minimum penalty, offenders who obtained relief from application of a mandatory minimum penalty, and offenders who remained subject to a mandatory minimum penalty at the time of sentencing. Third, this chapter presents data about sentencing outcomes involving the application of mandatory minimum penalties. Discussion of the four types of offenses carrying mandatory minimum penalties are presented in Chapters 8 through 11 of this report.

The statutory directive also directs the Commission to provide an assessment of the impact of mandatory minimum sentencing provisions on the federal prison population. Part E of this chapter provides an overall assessment of the prison impact of statutes carrying mandatory minimum penalties, while the prison impact of specific types of offenses carrying mandatory minimum penalties are discussed in Chapters 8 through 11 of this report. Finally, this chapter sets forth findings with respect to the overall application of mandatory minimum penalties.

### B. METHODOLOGY

The majority of data analyzed in this report is taken from the Commission's fiscal year 2010 data file.<sup>570</sup> In fiscal year 2010, the Commission received sentencing information on 83,946 individual offenders.<sup>571</sup> The Commission received sufficient documentation for analysis in 72,878 cases.<sup>572</sup> These 72,878 cases were used in the analysis. In addition, the Commission, despite the lack of full documentation, included another 254 cases in which the sole statute of conviction was 18 U.S.C. § 924(c) and 107 cases in which the only statute of conviction was

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<sup>570</sup> Some of the analyses in this report also use the Commission's data files from fiscal years 1991 through 2009. The same methodology applied to selecting cases for analysis in all years.

<sup>571</sup> Sentencing courts are required to send five sentencing documents to the Commission, *see supra* note 5.

<sup>572</sup> The Commission excluded 11,068 cases because those cases lacked the complete documentation needed for all the analyses performed. In 8,148 of those cases, the majority of which were immigration cases from border districts, the court waived the presentence investigation report. As a result, those cases lacked the documentation needed for the analysis, including guideline application and demographic information. The Commission excluded other cases in which the statement of reasons form and the presentence investigation report contained conflicting information concerning guideline application because the Commission could not ascertain how the Chapter 2 guideline was applied. Finally, the Commission excluded other cases lacking documentation concerning the statutes of conviction because the Commission could not determine whether those cases involved a conviction of an offense carrying a mandatory minimum penalty.

18 U.S.C. § 1028A,<sup>573</sup> bringing the total number of cases used in the analysis to 73,239 (which is 87.2% of all cases reported to the Commission in fiscal year 2010). Because the analysis for this report was limited to these cases, the numbers reported in this report differ from those reported in the Commission's *2010 Sourcebook of Federal Sentencing Statistics*, which involves a larger dataset.

For the analyses discussed in this report, an offender was considered to have been convicted of an offense carrying a mandatory minimum penalty if any statute of conviction in the case contained a provision requiring imposition of a minimum term of imprisonment. This determination was made regardless of whether the offender was ultimately sentenced without regard to the mandatory minimum penalty through operation of the statutory safety valve provision or through a substantial assistance motion made by the government. In fiscal year 2010, 27.2 percent of all cases (19,896 of 73,239 cases) involved a conviction of an offense carrying a mandatory minimum penalty.

The Commission also obtained court documentation on the reduction of sentences for substantial assistance to the government after sentencing pursuant to Federal Rule of Criminal Procedure 35(b).<sup>574</sup> In fiscal year 2010, the Commission received information on 2,006 offenders who received relief under Rule 35(b) from application of a mandatory minimum penalty. These 2,006 cases were added to the 73,239 cases in which the offender was initially sentenced in fiscal year 2010 for the purpose of the trend analyses presented in this report<sup>575</sup> about rates at which offenders obtained relief from the imposition of a mandatory term of imprisonment.<sup>576</sup>

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<sup>573</sup> The respective guideline provisions applicable to those offenses provide that the guideline sentence is the mandatory minimum penalty prescribed in the statute, and further provide that Chapters Three and Four of the *Guidelines Manual* do not apply to the offense. See USSG §§2B1.6 (Aggravated Identity Theft); 2K2.4 (Use of Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes). Thus, the Commission can determine the relevant guideline application information in those cases based solely on the statute of conviction.

<sup>574</sup> Rule 35(b) authorizes the court to reduce a sentence below the applicable mandatory minimum term upon the government's motion when the defendant provides substantial assistance post-sentencing. Because a defendant may be sentenced and subsequently resentenced pursuant to Rule 35(b) in different fiscal years, the Commission maintains a separate data file to collect resentencing data. This data is contained in the Commission's 2010 Resentencing data file.

<sup>575</sup> See, e.g., Figure 7-9.

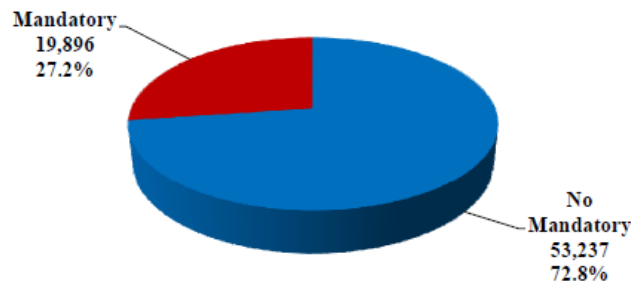
<sup>576</sup> As noted above, the Commission maintains a separate data file to collect resentencing data because an offender may be sentenced and subsequently resentenced in different fiscal years. The Commission included the offenders who received relief under Rule 35(b) during fiscal year 2010 in the analysis performed for this report to provide more complete information about the number of offenders who received relief from a mandatory minimum penalty by any provisions, whether at the time of sentencing or afterwards. The Commission recognizes that inclusion of these offenders in fiscal year 2010 data may be over or under inclusive of the relief that eventually may be obtained by all offenders sentenced in that fiscal year. The Commission concluded that reporting only on offenders who received relief from a mandatory minimum penalty pursuant to section 3553(e) would under-represent the number of offenders who received such relief, because in some districts, the practice is to file substantial assistance motions after the original sentencing.

The analysis of sentencing trends in this report relies exclusively on Commission data.<sup>577</sup> Except where otherwise noted, the Commission collected all the data reported in this report.<sup>578</sup> For the prison impact analysis presented throughout this report, the Commission obtained prisoner data from the BOP to compare to Commission data. By merging the two datasets, the Commission was able to create snapshots of the federal prison population at different points in time.

### C. STATISTICAL OVERVIEW

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.

**Figure 7 - 1**  
**Offenders Convicted of an Offense Carrying a Mandatory Minimum Penalty**  
**Fiscal Year 2010**



SOURCE: U.S. Sentencing Commission, 2010 Datafile, USSCFY10

<sup>577</sup> The 1991 Commission Report also included data about sentencing trends which relied on alternative sources of data for much of the trend analysis presented. Those sources included the Federal Probation Sentencing and Supervision Information System of the Administrative Office of the United States Courts and the Federal Judicial Center. The Commission relied on these alternate sources in 1991 because portions of the periods reported preceded the Commission's existence.

<sup>578</sup> The Commission collects sentencing data based on the offenses for which the offender was actually convicted and the determinations made by the court at sentencing. Accordingly, the Commission cannot determine using available data whether any charged counts were dismissed without a conviction, nor can it readily determine whether the government exercised its discretion *not* to charge an offender with additional offenses that could have been supported by the facts of the case.

**Figure 7 - 2**  
**Offenders Relieved of an Offense Carrying a Mandatory Minimum Penalty**  
**Fiscal Year 2010**



SOURCE: U.S. Sentencing Commission, 2010 Datafile, USSCFY10

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.<sup>579</sup> Convictions under just four statutes involving drug trafficking and firearms<sup>580</sup> accounted for the majority of such convictions (71.6%).<sup>581</sup> Other statutes carrying mandatory minimum sentencing provisions involved child pornography, aggravated identity theft, and violent offenses.

### 1. *Demographic Characteristics*

Table 7-1 presents the demographic characteristics of all 73,239 offenders included in this analysis. The table also compares this information to the demographic characteristics of the 19,896 offenders convicted of an offense carrying a mandatory minimum penalty and to the 10,605 offenders who remained subject to a mandatory minimum penalty at sentencing.

As shown in Table 7-1, Hispanic offenders are the largest portion of the federal offender population, slightly less than half of all offenders (48.3%, n=35,064). White offenders are the next largest group, at 27.4 percent (n=19,935), followed by Black offenders (20.7%, n=15,041) and Other Race offenders (3.6%, n=2,581).<sup>582</sup> Slightly more than half of all offenders (55.9%,

<sup>579</sup> See Table D-2 (Mandatory Minimum Status in Each Primary Offense Category (Fiscal Year 2010)) in Appendix D of this Report.

<sup>580</sup> 21 U.S.C. §§ 841, 844, 960; 18 U.S.C. § 924(c).

<sup>581</sup> See Table D-3 (Number of Convictions and Mean Sentence for Mandatory Minimum Statutes (Fiscal Year 2010)) in Appendix D.

<sup>582</sup> The Commission obtains data on the race and ethnicity of the offender from the presentence report. The “Other Race” category includes offenders of Native American, Alaskan Native, and Asian or Pacific Islander origin. In fiscal year 2010, there were 2,581 offenders identified as “Other” race offenders: 1,360 (52.7%) were of Asian/Pacific Islander origin, 1,050 (40.7%) were Native American/Alaskan Native, and 171 (6.6%) were of other origin.

n=40,893) are United States citizens. The great majority of offenders are men (87.9%, n=64,377).

Hispanic offenders also account for the largest group of offenders (38.3%, n=7,601) convicted of an offense carrying a mandatory minimum penalty. Blacks are the next largest group, at 31.5 percent (n=6,261), followed by White offenders (27.4%, n=5,447) and Other Race offenders (2.7%, n=543). United States citizens account for 73.6 percent (n=14,639) of those offenders convicted of an offense carrying a mandatory minimum penalty. More than 90 percent (90.3%, n=17,975) of the offenders were men.

Hispanic offenders also account for the largest group of offenders (45.7%, n=4,237) who are convicted of an offense carrying a mandatory minimum penalty but are relieved of the penalty at sentencing. This is mainly due to the large number of Hispanic offenders who are relieved due to safety valve, which is discussed in more detail later in this chapter. United States citizens account for over 60 percent (63.5%, n=5,897) of offenders who are relieved of a mandatory minimum penalty and males are a large percentage of the same group (86.4%, n=8,032).

As discussed above, some offenders convicted of an offense carrying a mandatory minimum penalty are not subject to such a punishment at sentencing because they have received relief as a result of either substantial assistance or the safety valve. Of all offenders convicted of an offense carrying a mandatory minimum punishment and who remained subject to that penalty at sentencing, 38.5 percent were Black (n=4,076), 31.8 percent were Hispanic (n=3,364), and 27.5 percent (n=2,913) were White. In addition, 82.5 percent (n=8,742) of all such offenders were United States citizens, and 93.8 percent were men (n=9,943).

As seen from this data, although Hispanic offenders comprise the largest proportion of offenders convicted of an offense carrying a mandatory minimum penalty, Black offenders are represented more heavily in both the populations of offenders convicted of an offense carrying a mandatory minimum penalty and offenders subject to a mandatory minimum penalty at sentencing compared to their proportion in the offender population. Similarly, United States citizen offenders and male offenders each constitute a greater proportion of the populations of offenders convicted of an offense carrying a mandatory minimum penalty and those subject to a mandatory minimum penalty than their respective portions of the overall offender population. The Commission's analysis of this data suggests that these outcomes may be associated with the type of offense associated with certain demographic groups. Additional analysis of these differences will be discussed in more detail later in this report in the chapters discussing those offenses.<sup>583</sup> These chapters also include additional analysis concerning offenders who obtained relief from the mandatory minimum penalty.

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<sup>583</sup> See *infra* Chapters 8–11.

**Table 7-1  
Demographic Characteristics of Offenders  
Fiscal Year 2010**

	All Offenders	Convicted of a Statute Carrying a Mandatory Minimum Penalty	Relieved of Application of Mandatory Minimum Penalty	Subject to a Mandatory Minimum Penalty at Sentencing
<b>Total (# of offenders)</b>	<b>73,239</b>	<b>19,896</b>	<b>9,291</b>	<b>10,605</b>
<b>Race of Offender (Percent)</b>				
White	27.4	27.4	27.3	27.5
Black	20.7	31.5	23.6	38.5
Hispanic	48.3	38.3	45.7	31.8
Other	3.6	2.7	3.4	2.1
<b>Citizenship of Offender (Percent)</b>				
United States Citizen	55.9	73.6	63.5	82.5
Non-Citizen	44.1	26.4	36.5	17.5
<b>Gender of Offender (Percent)</b>				
Male	87.9	90.3	86.4	93.8
Female	12.1	9.7	13.6	6.2

2. *Criminal History*

Table 7-2 provides an overview of the criminal history categories for all offenders, offenders convicted of an offense carrying a mandatory minimum penalty, offenders relieved from a mandatory minimum penalty, and offenders subject to a mandatory minimum penalty at sentencing. As shown in that table, the criminal history of the offenders convicted of an offense carrying a mandatory minimum penalty closely mirrors that of the overall offender population. However, the criminal history of those offenders who remained subject to a mandatory minimum penalty at sentencing has a different composition, with higher percentages of offenders in the more serious criminal history categories. Thus, offenders in Criminal History Category I were more likely to be relieved of the mandatory minimum penalty than offenders in higher criminal history categories, and offenders in higher criminal history categories were less likely to be relieved.

More offenders were assigned to Criminal History Category I than any other criminal history category in all three groups. Those offenders appeared at a slightly higher rate in the population of offenders convicted of an offense carrying a mandatory minimum penalty (49.0%, n=9,702) as compared to the population of all offenders (43.9%, n=32,141). However, the portion of offenders in Criminal History Category I dropped to 31.9 percent (n=3,361) of those

offenders subject to a mandatory minimum penalty at sentencing,<sup>584</sup> most likely because some Criminal History Category I offenders were drug offenders who obtained relief from application of the mandatory minimum penalty due to the safety valve. By contrast, offenders in Criminal History Category VI, the highest category, represented 14.0 percent (n=2,784) of the population of offenders convicted of an offense carrying a mandatory minimum penalty but 19.1 percent (n=2,013) of the population of offenders subject to a mandatory minimum penalty at sentencing.

**Table 7-2  
Criminal History of Offenders  
Fiscal Year 2010**

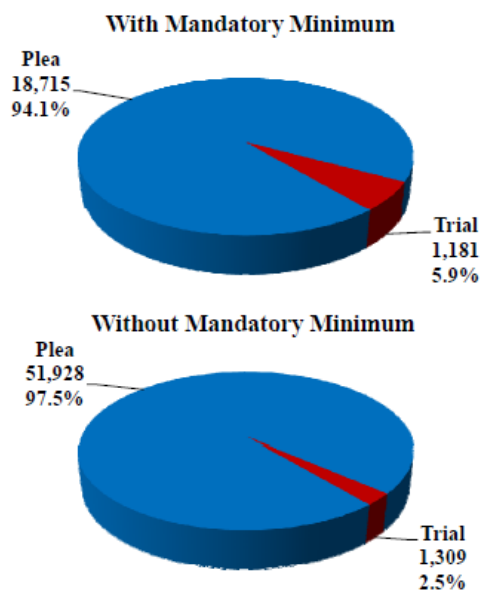
	All Offenders	Convicted of a Statute Carrying a Mandatory Minimum Penalty	Relieved of Application of Mandatory Minimum Penalty	Subject to a Mandatory Minimum Penalty at Sentencing
<b>Total (# of offenders)</b>	<b>73,239</b>	<b>19,896</b>	<b>9,291</b>	<b>10,605</b>
<b>Criminal History Category (Percent)</b>				
I	43.9	49.0	68.3	31.9
II	12.4	11.2	7.6	14.4
III	16.6	13.5	8.8	17.7
IV	10.5	7.7	4.4	10.6
V	6.1	4.6	2.6	6.3
VI	10.4	14.0	8.3	19.1

### 3. *Guilty Pleas and Trials*

Offenders convicted of an offense carrying a mandatory minimum penalty plead guilty at a slightly lower rate than offenders who were not convicted of an offense carrying a mandatory minimum penalty. Of the 19,896 offenders convicted of an offense carrying a mandatory minimum penalty in fiscal year 2010, 94.1 percent (n=18,715) pled guilty and 5.9 percent (n=1,181) were convicted after a trial. By comparison, of the offenders convicted of offenses not carrying any mandatory minimum penalty, 97.5 percent (n=51,928) pled guilty and 2.5 percent (n=1,309) were convicted after a trial. See Figure 7-3.

<sup>584</sup> Of these 3,361 offenders in Criminal History Category I who remained subject to a mandatory minimum penalty at the time of sentencing, 56.1% (n=1,885) were drug offenders, 18.3% (n=615) were child pornography offenders, 10.4% (n=350) were firearms offenders convicted of a violation of 18 U.S.C § 924(c), 8.5% (n=286) were identity theft offenders convicted of a violation of 18 U.S.C § 1028A, and 6.7% (n=225) were sexual abuse offenders.

**Figure 7-3  
Plea and Trial Rates by Mandatory Minimum Status  
Fiscal Year 2010**

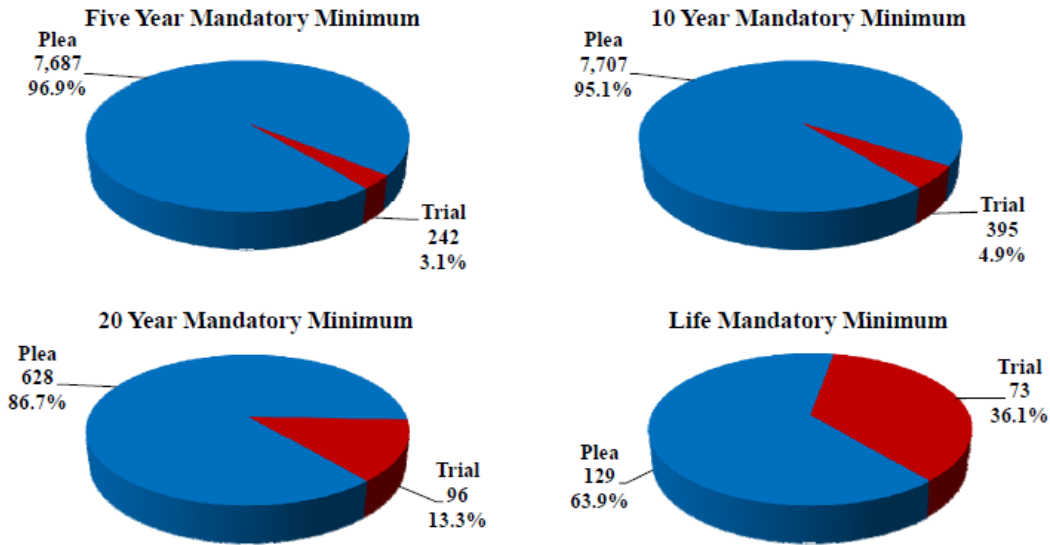


SOURCE: U.S. Sentencing Commission, 2010 Datafile, USSCFY10

As illustrated in Figure 7-4, there is a diminishing effect on the guilty plea rate as the term of imprisonment required by mandatory minimum sentencing provisions increases. That is, the longer the mandatory minimum penalty an offender faces, the less likely he or she is to plead guilty. In fiscal year 2010, 96.9 percent (n=7,687) of offenders convicted of an offense carrying a five-year mandatory minimum penalty pled guilty. This compares to 95.1 percent (n=7,707) of offenders convicted of an offense carrying a ten-year mandatory minimum penalty, 85.8 percent (n=166) of offenders convicted of an offense carrying a 15-year mandatory minimum penalty, 86.7 percent (n=628) of offenders convicted of an offense carrying a 20-year mandatory minimum penalty, and 63.9 percent (n=129) of offenders convicted of an offense carrying a mandatory minimum penalty of life. See Figure 7-4.



**Figure 7-4**  
**Plea and Trial Rates of Offenders by Length of Mandatory Minimum Penalty**  
**Fiscal Year 2010**

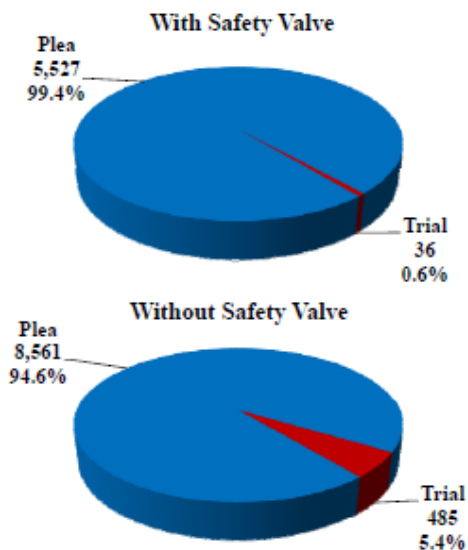


SOURCE: U.S. Sentencing Commission, 2010 Datafile, USSCFY10

Many of the offenders convicted of an offense carrying a five- or ten-year mandatory minimum penalty were eligible to be sentenced without regard to the mandatory minimum penalty by operation of the statutory safety valve.<sup>585</sup> Offenders who were eligible for safety valve relief pled guilty at a higher rate (99.4%, n=5,527) than those offenders who were not eligible for safety valve relief (94.6%, n=8,561). See Figure 7-5.

<sup>585</sup> Drug offenders convicted of an offense carrying a 20-year mandatory minimum penalty are generally ineligible for the safety valve because they have a prior felony drug conviction, see 21 U.S.C. §§ 841, 960. In those instances in which a prior felony drug conviction may be too old to be scored under the criminal history rules in Chapter 4 of the *Guidelines Manual*, a drug offender convicted of an offense carrying a 20-year mandatory minimum penalty might qualify for the safety valve.

**Figure 7-5**  
**Plea and Trial Rates for Offenders with a Five or Ten Year Mandatory Minimum Penalty**  
**By Safety Valve Status**  
**Fiscal Year 2010**



SOURCE: U.S. Sentencing Commission, 2010 DataFile, USSCFY10

#### 4. *Geographic Variations*

Commission data reveals geographic differences in the rates at which mandatory minimum penalty provisions apply, much of which is related to differences in caseloads around the country.<sup>586</sup> More than half (55.4%, n=11,015) of the 19,896 cases involving mandatory minimum penalties were brought in the district courts in four circuits. Of the 19,896 cases in fiscal year 2010 that involved a conviction of an offense carrying a mandatory minimum penalty, 3,178 (16.0%) were in the Fifth Circuit, 3,066 (15.4%) were in the Ninth Circuit, 2,401 (12.0%) were in the Fourth Circuit, and 2,370 (11.9%) were from district courts in the Eleventh Circuit. By way of comparison, 61.2 percent of all federal criminal cases in fiscal year 2010 came from the district courts in those four circuits.<sup>587</sup>

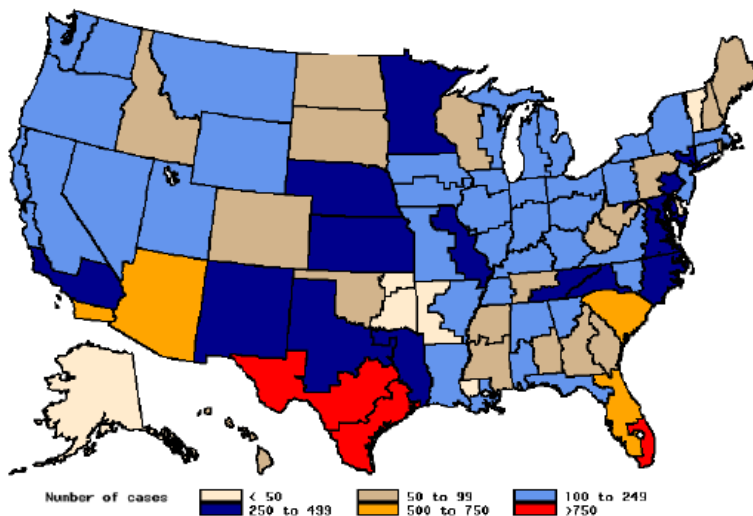
When viewed at the district level, only three districts reported more than 750 cases involving a conviction of an offense carrying a mandatory minimum penalty: Southern Texas (5.7%, n=1,129), Western Texas (5.3%, n=1,061), and Southern Florida (3.9%, n=776). An additional four districts reported at least 500 cases involving a conviction of an offense carrying a mandatory minimum penalty: Southern California (3.6%, n=710), Middle Florida (3.3%, n=649), Arizona (2.7%, n=540), and South Carolina (2.5%, n=502). Thus, those seven districts

<sup>586</sup> See Table D-1 (Mandatory Minimum Status of Cases in Each Circuit and District (Fiscal Year 2010)) in Appendix D.

<sup>587</sup> See *id.*

accounted for 27.0 percent (n=5,367) of the 19,896 cases involving a conviction of an offense carrying a mandatory minimum penalty in fiscal year 2010. By way of comparison, 38.1 percent of all federal criminal cases in fiscal year 2010 came from those seven districts. The majority of the 94 districts (69 or 73.4%) reported fewer than 250 cases involving convictions under a statute carrying a mandatory minimum penalty.<sup>588</sup> See Figure 7-6.

**Figure 7-6**  
**Number of Offenders Convicted of an Offense Carrying a Mandatory Minimum Penalty**  
**By District**  
**Fiscal Year 2010**



SOURCE: U.S. Sentencing Commission, 2010 Datafile, USSCFY10

Cases involving a conviction of an offense carrying a mandatory minimum penalty comprised varying percentages of the districts' criminal case docket. In ten districts, more than 50 percent of the cases involved convictions of an offense carrying a mandatory minimum penalty. These districts were: Puerto Rico (62.9%, n=491), Southern Indiana (55.8%, n=182), Minnesota (54.3%, n=261), Southern Iowa (54.2%, n=227), Western Virginia (53.7%, n=191), Hawaii (51.9%, n=82), Central Illinois (51.9%, n=191), Eastern Tennessee (51.4%, n=420), Western North Carolina (50.5%, n=251), and Eastern North Carolina (50.1%, n=350).<sup>589</sup> In contrast, in 12 other districts, less than 20 percent of all cases involved convictions under a statute carrying a mandatory minimum penalty. These districts were: New Mexico (9.1%, n=333), Arizona (11.0%, n=540), Southern Texas (13.7%, n=1,129), Colorado (14.3%, n=72), Northern Mariana Islands (14.8%, n=4), Western Texas (16.1%, n=1,061), Middle Pennsylvania (16.9%, n=82), South Dakota (17.8%, n=71), Utah (17.9%, n=143), Western Arkansas (18.0%, n=46), Western Oklahoma (18.4%, n=52), and Nevada (19.7%, n=116).<sup>590</sup> See Figure 7-7A.

<sup>588</sup> See *id.*

<sup>589</sup> *Id.*

<sup>590</sup> *Id.*

Much of the variation in rates of application may be attributed to differences in the composition of the caseloads in those districts. For example, in the ten districts applying mandatory minimums at the highest rates, drug and firearms offenses made up a significant portion of these districts' caseload (49.4% of the cases involved drugs and 17.4% involved firearms).<sup>591</sup> In the 12 districts reporting the lowest application rates, more than half of the cases in those courts were immigration offenses (60.5%) and less than one-third were drug or firearms offenses (23.6% and 4.2%, respectively).<sup>592</sup>

Figure 7-7B illustrates how immigration offenses affect the proportion of cases involving a mandatory minimum penalty in certain districts. Immigration offenses comprise a significant proportion of certain districts' criminal dockets, but the most common immigration offenses rarely carry mandatory minimum penalties.<sup>593</sup> Excluding immigration offenses from the analysis can present a better picture of where mandatory minimum penalties are most frequently used.

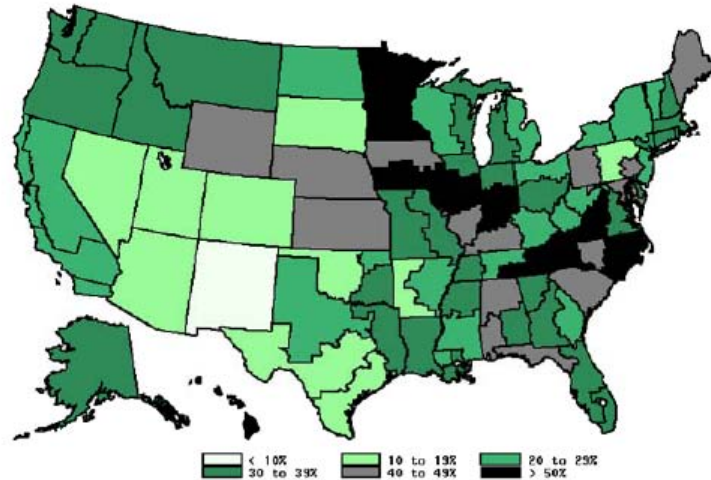
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<sup>591</sup> See Commission, 2010 Datafile, USSCFY10.

<sup>592</sup> *Id.*

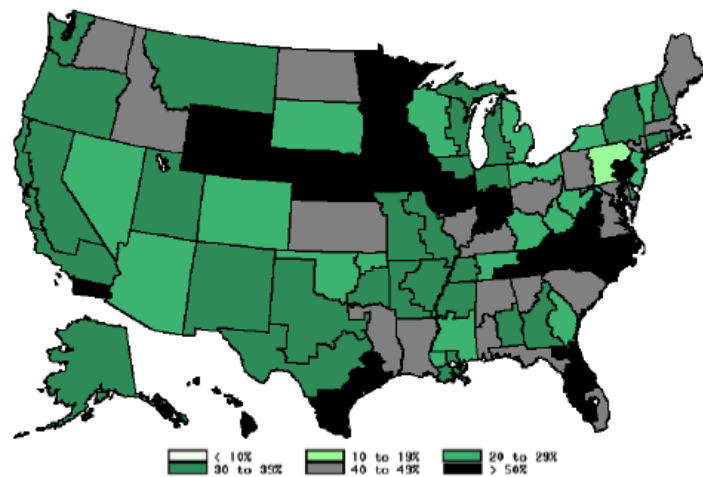
<sup>593</sup> For example, in fiscal year 2010, USSG §2L1.2 (Unlawfully Entering or Remaining in the United States) was the primary guideline in 26.6% (n=19,910) of all federal criminal cases, making it the second-most commonly applied primary guideline. See U.S. SENT'G COMM'N, 2010 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS, at Table 17. Only one, rarely-used statutory offense to which §2L1.2 applies carries a mandatory minimum penalty. See 8 U.S.C. § 1326(b)(3) (establishing ten-year mandatory minimum penalty for illegal reentry of an alien removed on national security grounds); see also Table D-3 (Number of Convictions and Mean Sentence for Mandatory Minimum Statutes) in Appendix D (reporting zero convictions of an offense under section 1326(b)(3) in fiscal year 2010). Immigration offenses referenced to other guidelines carry mandatory minimum penalties, though offenders are less frequently convicted of them than illegal reentry and other immigration offenses. See 8 U.S.C. § 1324(a)(2)(B) (establishing three- and five-year mandatory minimum penalties for bringing in or harboring an alien with the intent or reason to believe that the alien will commit a felony or for the purpose of commercial advantage or financial gain). Only 150 offenders were convicted of an offense under section 1324(a)(2)(B) in fiscal year 2010. Additionally, in fiscal year 2010, a small number (n=86) of immigration offenders also were convicted of committing aggravated identity theft in violation of 18 U.S.C. § 1028A, which carries a two-year mandatory penalty. See *infra* Chapter 11.

**Figure 7-7A**  
**Distribution of Offenders Convicted of an Offense Carrying a Mandatory Minimum**  
**Penalty By District**  
**Fiscal Year 2010**



SOURCE: U.S. Sentencing Commission, 2010 Datafile, USSCFY10

**Figure 7-7B**  
**Distribution of Offenders Convicted of an Offense Carrying a Mandatory Minimum**  
**Penalty By District - Immigration Offenders Excluded**  
**Fiscal Year 2010**



SOURCE: U.S. Sentencing Commission, 2010 Datafile, USSCFY10

Figure 7-7A shows the mandatory minimum distribution<sup>594</sup> in all cases for districts within the United States. Figure 7-7B shows the same distribution with immigration cases excluded. Notably, many of the border districts demonstrated higher application rates of mandatory

<sup>594</sup> The percentages shown are the percentages of the overall caseload for each district involving offenders convicted of an offense carrying a mandatory minimum penalty.

minimums in the non-immigration caseload. Nevertheless, geographic variation in application rates is present.

##### 5. *Relief from the Mandatory Minimum Penalty*

In fiscal year 2010, almost half (46.7%, n=9,292) of the offenders convicted of an offense carrying a mandatory minimum penalty were relieved from the application of such a penalty at sentencing because of substantial assistance or the safety valve. *See* Figure 7-8. Rates of relief from the mandatory minimum penalty vary by offense type: 54.4 percent of drug offenders, 4.2 percent of sex offenders, and 15.4 percent of identity theft offenders convicted of an offense carrying a mandatory minimum received relief from the mandatory minimum penalty. Among firearm offenders, 24.3 percent of offenders convicted of an offense under 18 U.S.C. § 924(c) and 17.4 percent of offenders who qualified as armed career criminals pursuant to the Armed Career Criminal Act, 18 U.S.C. § 924(e), received relief from the mandatory minimum penalty.<sup>595</sup>

There were demographic differences in the rates of relief for offenders convicted of an offense carrying a mandatory minimum penalty, as Figure 7-8 shows. Black offenders received relief least often, and were therefore subject to the mandatory minimum penalty at the highest rate (65.1%, n=4,076). This is due, in large part, to Black offenders qualifying for relief under the safety valve at the lowest rate of any other racial group (11.1%, n=695). Much of this difference can be attributable to the fact that Black offenders who commit drug offenses often do not qualify for the safety valve either because of their criminal history<sup>596</sup> or the involvement of a dangerous weapon in connection with the offense.<sup>597</sup> The converse is true for Other Race offenders who received relief from mandatory minimum penalties most often, and so were subject to such penalties at the lowest rate (41.1%, n=223). These offenders qualified for the safety valve at the highest rate (36.6%, n=199).

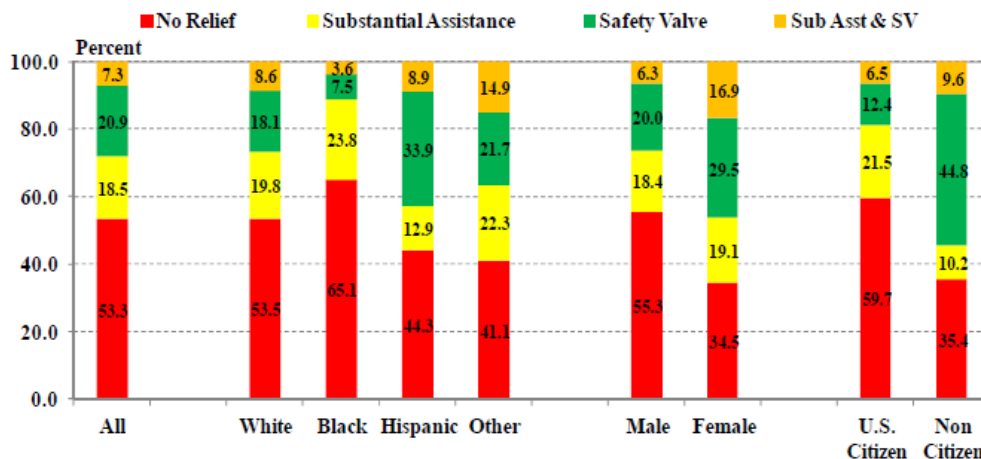
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<sup>595</sup> *See infra* Chapters 8–11.

<sup>596</sup> In fiscal year 2010, 76.1% (n=4,738) of Black offenders who were convicted of an offense carrying a mandatory minimum penalty were in Criminal History Categories II – VI, which would disqualify them from consideration for the safety valve. By contrast, 47.6% (n=2,582) of White offenders, 33.6% (n=2,544) of Hispanic offenders, and 41.8% (n=226) of Other Race offenders were in Criminal History Categories II – VI.

<sup>597</sup> In fiscal year 2010, 20.4% (n=1,277) of Black offenders convicted of an offense carrying a mandatory minimum penalty were convicted of a firearm offense under 18 U.S.C. § 924(c). This compares to 8.4% (n=458) of White offenders, 6.3% (n=480) of Hispanic offenders, and 12.5% (n=68) of Other Race offenders. In addition, 15.6% (n=952) of Black offenders convicted of an offense carrying a mandatory minimum penalty received an enhancement under USSG §2D1.1(b)(1) for weapon involvement. This compares to 8.7% (n=464) of White offenders, 11.3% (n=845) of Hispanic offenders, and 8.5% (n=45) of Other Race offenders.

**Figure 7-8**  
**Percent of Offenders Convicted of an Offense Carrying a Mandatory Minimum Penalty**  
**Who Were Relieved of the Penalty**  
**Fiscal Year 2010**

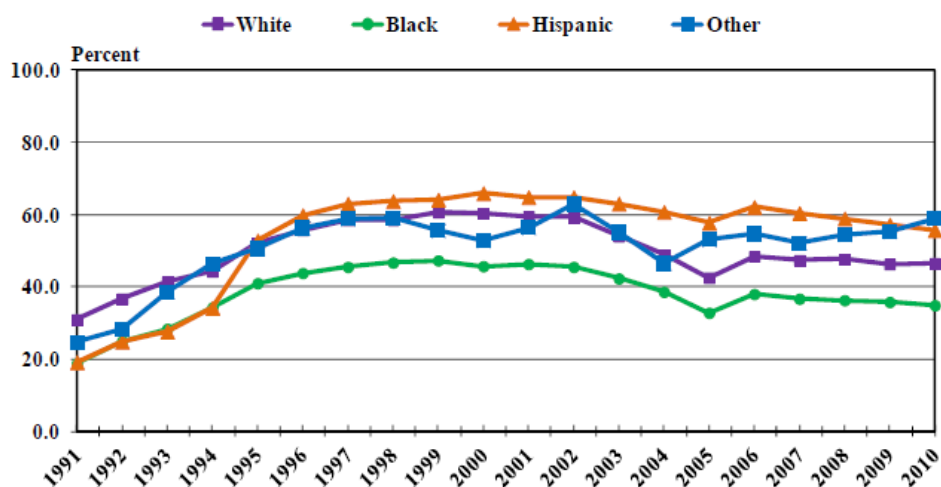


SOURCE: U.S. Sentencing Commission, 2010 Datafile, USSCFY10

In light of the demographic differences noted in fiscal year 2010 between the rates of relief for offenders convicted of an offense carrying a mandatory minimum penalty, the Commission conducted further analysis. The analysis was designed to ascertain how often each demographic group received relief from applicable mandatory minimum penalties, pursuant to either a substantial assistance motion or the safety valve provision, from fiscal year 1991 through fiscal year 2010. As can be seen on Figure 7-9, prior to the enactment of the safety valve (in 1994), Black and Hispanic offenders received relief from the mandatory minimum penalty at comparable rates. For example, in fiscal year 1994, 34.3 percent of Black offenders and 34.2 percent of Hispanic offenders received relief from the mandatory minimum penalty. White offenders received relief in 44.2 percent of cases. However, after enactment of the safety valve provision, the rate at which Hispanic, White, and Other Race offenders obtained relief from a mandatory minimum penalty increased appreciably while the rate for Black offenders did not.

Hispanic offenders received relief from applicable mandatory minimum penalties at the highest rates, with rates of 65.9 percent in fiscal year 2000, 57.7 percent in fiscal year 2005, and 55.7 percent in fiscal year 2010. Other Race offenders had the next highest rates (52.8% in fiscal year 2000, 53.1% in fiscal year 2005 and 58.9% in fiscal year 2010). Black offenders consistently had the lowest rates (45.7% in fiscal year 2000, 32.8 percent in fiscal year 2005, and 34.9% in fiscal year 2010). White offenders received relief at 60.3 percent in fiscal year 2000, 42.5 percent in fiscal year 2005, and 46.5 percent in fiscal year 2010.

**Figure 7-9**  
**Relief From Mandatory Minimum Penalty by Race of Offender**  
**Fiscal Years 1991 - 2010**



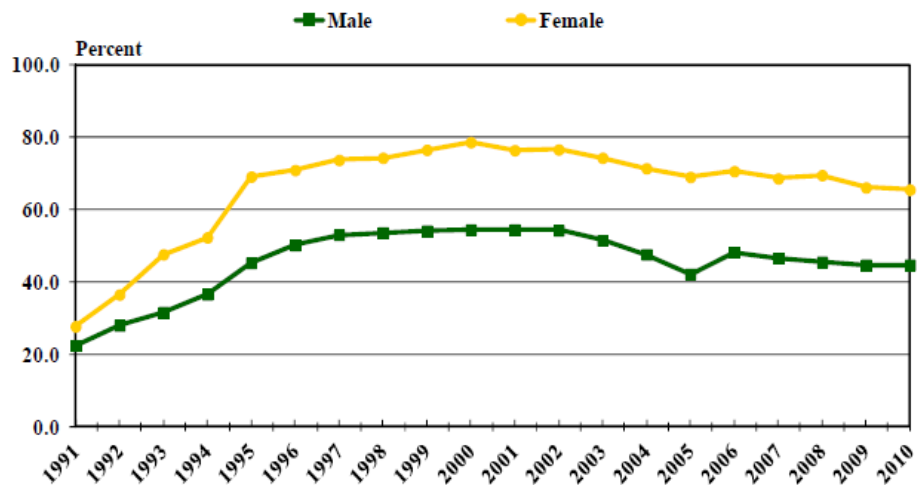
SOURCE: U.S. Sentencing Commission, 1991 through 2010 Datafiles, USSCFY91- USSCFY10.

In fiscal year 2010, slightly less than two-thirds of female offenders (65.5%, n=1,259) obtained relief from the mandatory minimum penalty at sentencing compared to less than half of male offenders (44.7%, n=8,032). Not only did female offenders qualify for the safety valve at a higher rate than male offenders (46.4%, n=892 compared to 26.3%, n=4,723), but female offenders also received relief by providing substantial assistance to the government at a higher rate (36.0%, n=692) than male offenders (24.7%, n=4,439). *See* Figure 7-8.

The Commission also examined the trends for relief from the mandatory minimum by gender from fiscal years 1991 through 2010. Female offenders consistently received relief from the mandatory minimum penalty at a higher rate than male offenders, varying from 27.7 percent in fiscal year 1991 to 65.5 percent in 2010, with the highest rate of relief reported in fiscal year 2000 at 78.6 percent. Male offenders had rates of 22.4 percent in fiscal year 1991 to 44.7 percent in fiscal year 2010. The highest rate of relief reported for male offenders was 54.4 percent in fiscal years 2000 and 2001. *See* Figure 7-10.



**Figure 7-10**  
**Relief From Mandatory Minimum Penalty by Gender of Offenders**  
**Fiscal Years 1991 - 2010**



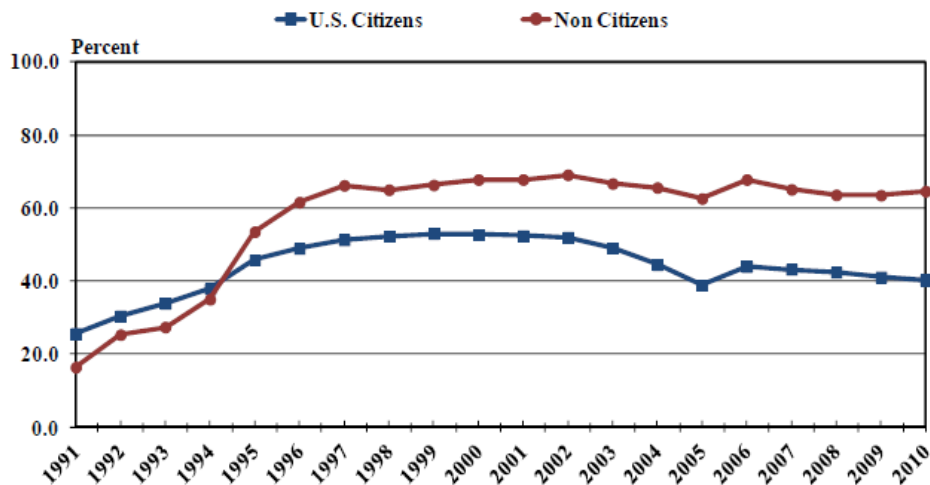
SOURCE: U.S. Sentencing Commission, 1991 through 2010 Datafiles, USSCFY91- USSCFY10.

In fiscal year 2010, United States citizen offenders convicted of an offense carrying a mandatory minimum penalty remained subject to the mandatory penalty at sentencing in more than half of the cases (59.7%, n=8,741) because they did not qualify for substantial assistance or safety valve relief. Although United States citizen offenders provided substantial assistance to the government at a higher rate (28.0%, n=4,090) than non-citizen offenders (19.8%, n=1,040), the majority of non-citizen offenders (54.4%, n=2,858) qualified for relief from the mandatory minimum penalty under the safety valve. In contrast, only 18.9 percent (n=2,756) of United States citizen offenders were eligible for relief from the mandatory minimum penalty under the safety valve. *See supra* Figure 7-8.

The Commission observed a similar trend after the advent of the safety valve in 1994. Non-citizen offenders qualified for relief from the mandatory minimum penalty more frequently than United States citizens. *See* Figure 7-11. This is largely because non-citizens often have lower criminal history scores as most do not have prior convictions in the United States. As a result, non-citizens are eligible to receive relief pursuant to the safety valve at higher rates than United States citizens.<sup>598</sup>

<sup>598</sup> Non-citizen offenders tend to have less substantial criminal histories, when compared to U.S. citizen offenders, because criminal history calculations under Chapter 4 of the *Guidelines Manual* exclude sentences resulting from foreign convictions. *See* USSG §4A1.2(h). Foreign convictions are excluded because of uncertainty regarding whether the offender received adequate due process. Furthermore, it may be uncertain whether the defendant in fact has any such convictions because “[i]t is often difficult to obtain the foreign defendant’s criminal history from the foreign jurisdiction.” *See* Michael Edmond O’Neill et al., *Past as Prologue: Reconciling Recidivism and Culpability*, 73 *FORDHAM L. REV.* 245, 253 n.49 (2004). A court, however, may consider prior foreign convictions in determining the adequacy of the defendant’s criminal history category, *see* USSG §4A1.2(h).

**Figure 7-11**  
**Relief From Mandatory Minimum Penalty by Citizenship of Offenders**  
**Fiscal Years 1991 - 2010**



SOURCE: U.S. Sentencing Commission, 1991 through 2010 Datafiles, USSCFY91- USSCFY10.

## D. SENTENCING OUTCOMES

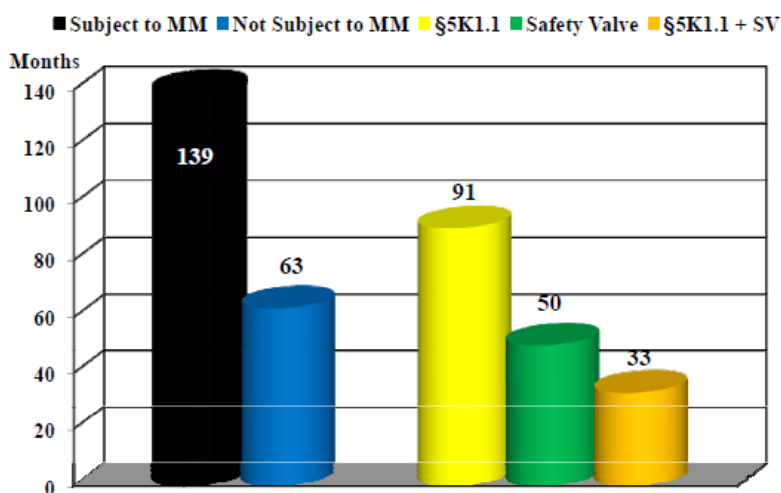
### 1. Average Sentence Length

In considering the effect of mandatory minimum penalties on sentencing outcomes, the Commission compared the average length of sentences imposed for all offenders, offenders convicted of an offense carrying a mandatory minimum, offenders relieved from application of a mandatory minimum because of substantial assistance and/or the safety valve, and offenders who remained subject to the mandatory minimum at sentencing. In fiscal year 2010, the average sentence length for all offenders was 48 months of imprisonment.<sup>599</sup> Offenders who were convicted of an offense carrying a mandatory minimum penalty and remained subject to that penalty received an average sentence of 139 months. Offenders who were convicted of an offense carrying a mandatory minimum penalty but received relief from the mandatory penalty because of substantial assistance or the safety valve received an average sentence of 63 months.

<sup>599</sup> The average sentence lengths reported here are less than those reported in Chapter 4 because the average sentence lengths reported here are for all offenders, regardless of the type of sentence imposed. *See supra* note 423 and accompanying text. Offenders who did not receive a sentence of imprisonment are counted as having received a sentence of zero months of imprisonment. In contrast, the average sentence lengths reported in Chapter 4 are the average sentences only for offenders who received a sentence of imprisonment and, therefore, offenders who did not receive a sentence of imprisonment are excluded from the average sentences reported there. Note that the average sentence lengths reported here also differ from the average sentences reported in the Commission's 2010 Sourcebook because cases lacking certain documentation were excluded from the analyses conducted for this report. *See supra* note 572 and accompanying text (explaining the data methodology used for this report).

The form of statutory relief received by offenders convicted of an offense carrying a mandatory minimum penalty was correlated with the average sentence imposed. Offenders who were relieved from application of a mandatory penalty by providing substantial assistance to the government received longer average sentences, at 91 months, than offenders who received relief under the safety valve provision (average sentence of 50 months). The offenders who qualified for relief under both mechanisms had the lowest average sentences, at 33 months. See Figure 7-12.

**Figure 7-12**  
**Average Sentence Length for Offenders Convicted of an Offense**  
**Carrying a Mandatory Minimum Penalty**  
**Fiscal Year 2010**



SOURCE: U.S. Sentencing Commission, 2010 Datafile, USSCFY10

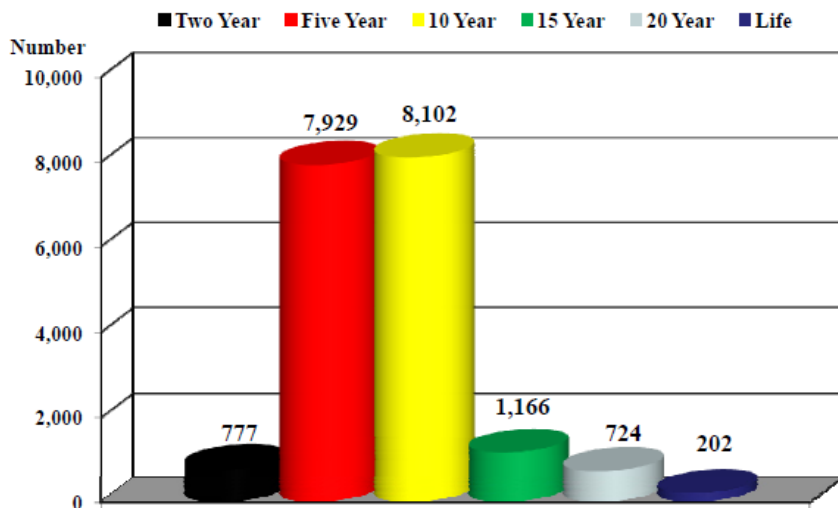
These differences may be attributable to the fact that offenders who qualify for safety valve relief are generally less culpable than other offenders and, therefore, would normally receive lower sentences on average. For example, to qualify for safety valve relief, offenders must not have possessed a dangerous weapon in connection with the offense and must not have received an aggravating role adjustment under the guidelines (for being an organizer, leader, manager, or supervisor in any criminal activity).<sup>600</sup> Of the offenders who qualified for relief from a mandatory penalty in fiscal year 2010 by providing substantial assistance to the government (n=5,131), 10.9 percent (n=557) were also convicted of a firearms crime, 13.6 percent (n=697) received a sentence enhancement for possessing a weapon, and 9.8 percent (n=503) received an aggravating role adjustment.

To some extent, the average sentences noted above are also attributable to the length of the applicable mandatory minimum penalty involved in the case. Of the 19,896 offenders convicted of an offense carrying a mandatory minimum penalty in fiscal year 2010, 51.2 percent (n=10,194) were convicted of an offense carrying a mandatory minimum penalty of ten years, 15 years, 20 years, or life imprisonment. Less than 40 percent (39.8%, n=7,929) were offenders

<sup>600</sup> See USSG §§5C1.2, 3B1.1.

convicted of an offense carrying a mandatory minimum penalty of five years of imprisonment. The remaining offenders (8.9%, n=1,773) were convicted of an offense that carried a mandatory minimum penalty of another length. See Figure 7-13.

**Figure 7-13**  
**Number of Offenders in Selected Mandatory Minimum Penalty Categories**  
**Fiscal Year 2010**



SOURCE: U.S. Sentencing Commission, 2010 Datafile, USSCFY10

The Commission compared the average length of sentences imposed for offenders by race, citizenship, and gender. Table 7-3 shows the results of that comparison. Among all offenders sentenced in fiscal year 2010, Black offenders received the highest average sentence (76 months). White offenders (49 months) had the second highest, followed by Other Race offenders (45 months) and Hispanic offenders (35 months). The same relationship occurs for offenders who were convicted of a statute carrying a mandatory minimum penalty. Black offenders had an average sentence of 127 months, followed by White offenders (102 months), Other Race offenders (93 months) and Hispanic offenders (87 months). For offenders who were convicted of a statute carrying a mandatory minimum penalty but were relieved of the application of the penalty at sentencing, Black offenders also had the highest average sentence (81 months), followed by Hispanic offenders (59 months), White offenders (57 months) and Other Race offenders (56 months). Finally, for offenders who were subject to a mandatory minimum penalty at sentencing, Black offenders had the highest average sentence (152 months), followed by Other Race offenders (147 months), White offenders (141 months) and Hispanic offenders (123 months).

United States citizens have higher sentences than non-citizens in all four instances (all offenders, offenders convicted of a statute carrying a mandatory minimum penalty, offenders relieved of a mandatory minimum penalty, and offenders subject to a mandatory minimum penalty at sentencing). Male offenders also have higher sentences than female offenders in all four instances.

**Table 7-3**  
**Average Sentence by Demographic Characteristics of Offenders**  
**Fiscal Year 2010**

	All Offenders	Convicted of a Statute Carrying a Mandatory Minimum Penalty	Relieved of Application of Mandatory Minimum Penalty	Subject to a Mandatory Minimum Penalty at Sentencing
<b>Total (# of offenders)</b>	<b>73,239</b>	<b>19,896</b>	<b>9,291</b>	<b>10,605</b>
<b>Race of Offender (Months)</b>				
White	49	102	57	141
Black	76	127	81	152
Hispanic	35	87	59	123
Other	45	93	56	147
<b>Citizenship of Offender (Months)</b>				
United States Citizen	62	112	68	143
Non-Citizen	30	80	56	125
<b>Gender of Offender (Months)</b>				
Male	51	108	66	142
Female	25	62	45	94

More in-depth analyses of the impact of mandatory minimum penalties on average sentence length are addressed by specific offense type in Chapters 8 through 11 of this report.

## 2. *Sentences Relative to the Applicable Guideline Range*

The Commission compared the position of the sentence relative to the applicable guideline range for all offenders, offenders convicted of an offense carrying a mandatory minimum, offenders relieved from application of a mandatory minimum because of substantial assistance and/or the safety valve, and offenders who remained subject to the mandatory minimum at sentencing. Table 7-4 compares the position of sentences relative to the guideline range for these offender groups.

As shown in Table 7-4, approximately one-quarter (24.5%, n=2,595) of offenders<sup>601</sup> who remained subject to a mandatory minimum penalty at sentencing received a non-government sponsored departure or variance, a higher rate than for offenders generally and for those offenders convicted of an offense carrying a mandatory minimum penalty. Of offenders who

<sup>601</sup> Of these 2,595 offenders, 32.8% (n=850) were sentenced at the applicable mandatory minimum penalty.

remained subject to the mandatory minimum penalty at sentencing, 37.0 percent (n=3,924) received a sentence at the mandatory minimum penalty. Of offenders who were relieved from the application of the mandatory minimum penalty, no offenders received a sentence at or above the mandatory minimum penalty. More in-depth analyses of the impact of mandatory minimum penalties on sentences relative to the applicable guideline range are addressed by specific offense type in Chapters 8 through 11 of this report.

**Table 7-4  
Position Relative to the Guideline Range of Offenders  
Fiscal Year 2010**

	All Offenders	Convicted of a Statute Carrying a Mandatory Minimum Penalty	Relieved of Application of Mandatory Minimum Penalty	Subject to a Mandatory Minimum Penalty at Sentencing
<b>Total (# of offenders)</b>	<b>73,239</b>	<b>19,896</b>	<b>9,291</b>	<b>10,605</b>
<b>Sentence Relative to the Guideline Range (Percent)</b>				
Within Range	52.7	45.8	22.6	66.1
Above Range	2.0	1.4	0.3	2.5
Substantial Assistance §5K1.1	12.5	25.8	55.2	0.0
Other Government Sponsored (no §5K1.1)	13.9	7.4	8.0	7.0
Other Below Range	18.9	19.5	13.9	24.5

**E. PRISON IMPACT**

1. *Introduction*

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.

As already noted,<sup>602</sup> the federal prison population has grown steadily over the past 20 years although the proportion of those offenders convicted under an offense carrying a mandatory minimum penalty has remained relatively stable. Similarly, the proportion of offenders who were subject to a mandatory minimum penalty at sentencing has remained relatively stable. The Commission conducted additional analysis to study the impact of

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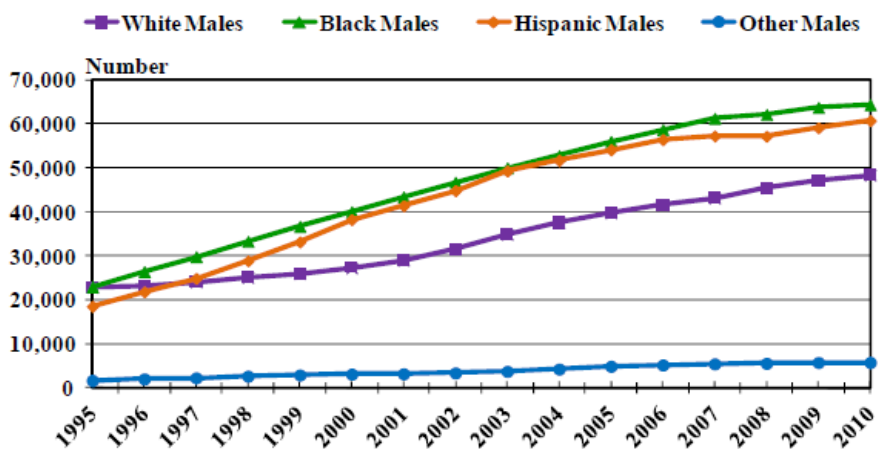
<sup>602</sup> See *supra* Chapter 4.

mandatory minimum penalties on different demographic groups. This analysis examined male and female offenders separately and then examined the racial groups for each gender in the prison population.

## 2. Male Offenders

The number of Black male offenders has exceeded the number of any other race in prison for all years studied. At the end of fiscal year 1995, 34.8 percent (n=22,991) of the male federal prison population were Black. White male offenders made up 34.5 percent (n=22,804), Hispanic offenders were 28.1% (n=18,565), and Other Race offenders were 2.6 percent (n=1,728). The number of Black male offenders in the prison population has grown steadily since fiscal year 1995. At the end of fiscal year 2010, there were 64,295 (35.9%) Black male offenders in the federal prison population, compared to 48,325 (27.0%) White male offenders, 60,726 (33.9%) Hispanic male offenders, and 5,810 (3.2%) Other Race male offenders. See Figure 7-14.

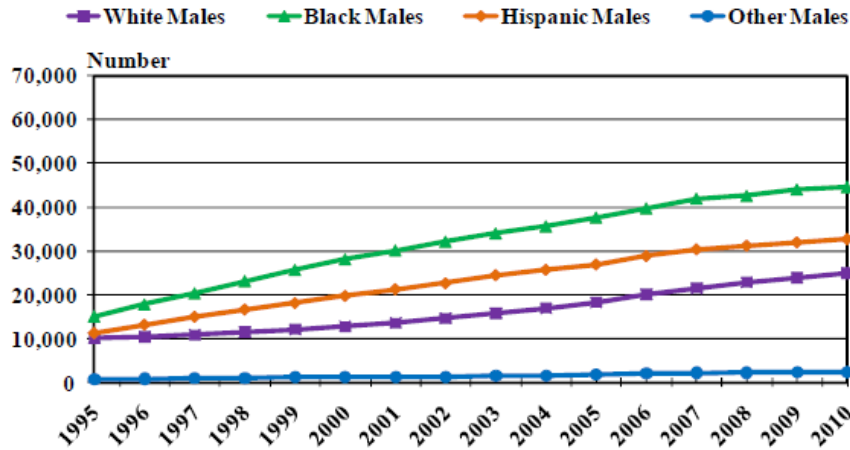
**Figure 7-14**  
**Number of Offenders in Prison by Race for Male Offenders**  
**1995 - 2010**



SOURCE: U.S. Sentencing Commission, and Bureau of Prisons Combined 1995 through 2010 Datafiles, USSCBOP.

Similar trends can be seen regarding male offenders in prison convicted of an offense carrying a mandatory minimum penalty. At the end of fiscal year 1995, the number of Black male offenders (n=15,076, 40.7%) convicted of an offense carrying a mandatory minimum penalty exceeded those of any other racial group (White (n=10,063, 27.2%), Hispanic (n=11,255, 30.4%), and Other Race (n=642, 1.7%)). This trend continued through 2010, when the number of Black male offenders convicted of an offense carrying a mandatory minimum penalty grew to 44,587 (42.6%), almost twice the number of White male offenders (n=24,962, 23.9%). See Figure 7-15. At the end of fiscal year 2010, the number of Hispanic male offenders convicted of an offense carrying a mandatory minimum penalty increased to 32,738 (31.3%) and the number of Other Race offenders was 2,337 (2.2%).

**Figure 7-15**  
**Number of Offenders in Prison Convicted of an Offense Carrying**  
**A Mandatory Minimum Penalty**  
**By Race for Male Offenders**  
**1995 - 2010**

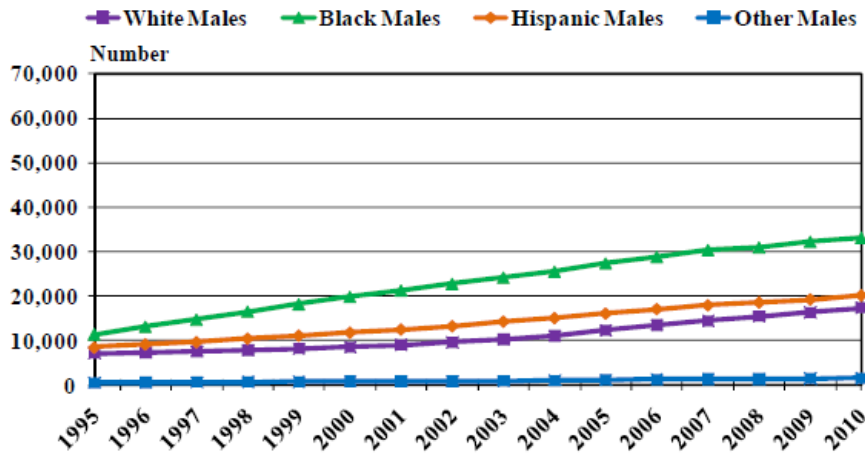


SOURCE: U.S. Sentencing Commission, and Bureau of Prisons Combined 1995 through 2010 Datafiles, USSCBOP.

Finally, similar trends can be seen in the federal prison population for male offenders who remained subject to a statute carrying a mandatory minimum penalty at sentencing. For fiscal years 1995 through 2010, the numbers of Black and Hispanic offenders subject to a mandatory minimum penalty at sentencing exceeded the numbers of White and Other Race male offenders. At the end of fiscal year 1995, there were 11,408 (41.5%) Black male offenders, 8,522 (31.0%) Hispanic male offenders, 7,107 (25.8%) White male offenders and 472 (1.7%) Other Race offenders subject to a statute carrying a mandatory minimum penalty. At the end of fiscal year 2010, the number of male offenders in each group had grown to 17,342 (24.0%) White, 33,188 (46.0%) Black, 20,126 (27.9%) Hispanic, and 1,511 (2.1%) Other Race offenders. See Figure 7-16.



**Figure 7-16**  
**Number of Offenders in Prison Subject to an Offense Carrying**  
**A Mandatory Minimum Penalty at Sentencing**  
**By Race for Male Offenders**  
**1995 - 2010**

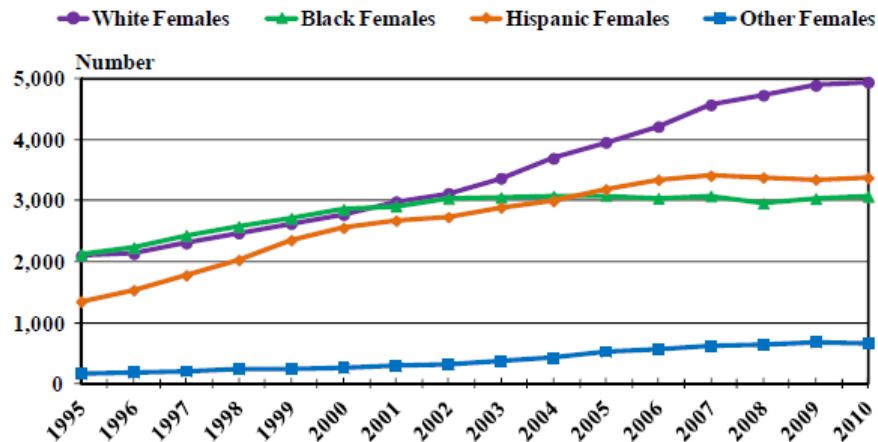


SOURCE: U.S. Sentencing Commission, and Bureau of Prisons Combined 1995 through 2010 Datafiles, USSCBOP.

### 3. *Female Offenders*

The trends in the prison population for female offenders are different than those for male offenders. At the end of fiscal year 1995, Black female offenders outnumbered any other racial group, accounting for 2,115 offenders (36.9% of all female offenders in prison), (compared to White females (n=2,096, 36.6%), Hispanic females (n=1,348, 23.5%); Other Race females (n=167, 2.9%)). However, by 2001, White females again became the largest group of female offenders in the federal prison system, as demonstrated in Figure 7-17. As of fiscal year 2010, the number of White female offenders had grown to 4,939 (41.0%). Hispanic female offenders made up the second largest racial group in the prison population at 3,373 (28.0%), followed by Black female offenders (n=3,069, 25.5%) and Other Race female offenders (n=668, 5.5%). See Figure 7-17.

**Figure 7-17**  
**Number of Offenders in Prison by Race for Female Offenders**  
**1995 - 2010**

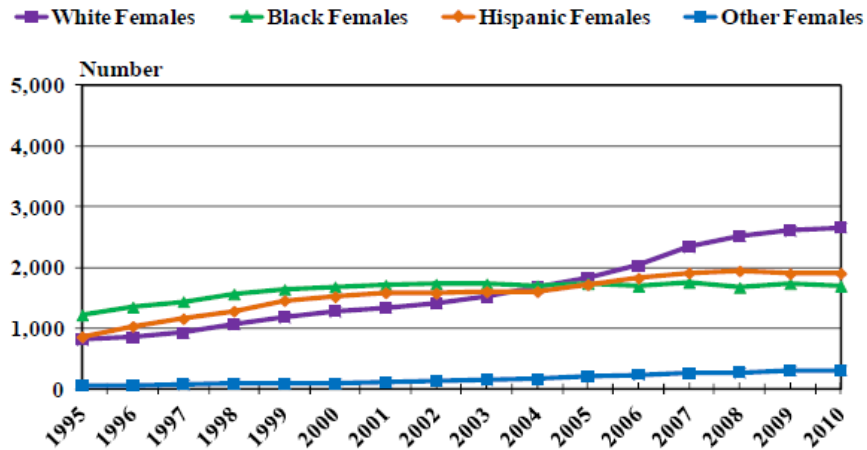


SOURCE: U.S. Sentencing Commission, and Bureau of Prisons Combined 1995 through 2010 Datafiles, USSCBOP.

Similar trends can be seen with respect to female offenders in prison convicted of an offense carrying a mandatory minimum penalty. At the end of fiscal year 1995, Black (n=1,218, 41.1%) and Hispanic (n=862, 29.1%) female offenders convicted of an offense carrying a mandatory minimum penalty outnumbered both White and (n=813, 27.5%) and Other Race (n=68, 2.3%) female offenders. This trend continued until 2004, when the number of White females convicted of an offense carrying a mandatory minimum penalty first exceeded the number of Hispanic females. The following year, the number of White female offenders (n=1,831, 33.3%) convicted of an offense carrying a mandatory minimum penalty also exceeded the number of similarly situated Black female offenders (n=1,736, 31.6%).<sup>603</sup> By the end of fiscal year 2006, the number of Hispanic female offenders convicted of an offense carrying a mandatory minimum penalty surpassed the number of their Black female counterparts. By the end of 2010, there were 2,657 (40.5%) White female offenders in the federal prison population convicted of an offense carrying a mandatory minimum penalty, compared to 1,905 (29.0%) Hispanic, 1,692 (25.8%) Black, and 313 Other Race (4.8%) female offenders convicted of such a statute. See Figure 7-18.

<sup>603</sup> The increase in White female offenders is mainly due to their involvement in methamphetamine offenses. Of the 4,939 White female offenders in prison on September 30, 2010, 1,843 (37.3%) were convicted of a methamphetamine offense. By comparison, on September 30, 1995, 276 of the 2,096 (13.2%) of White females in prison were convicted of a methamphetamine offense.

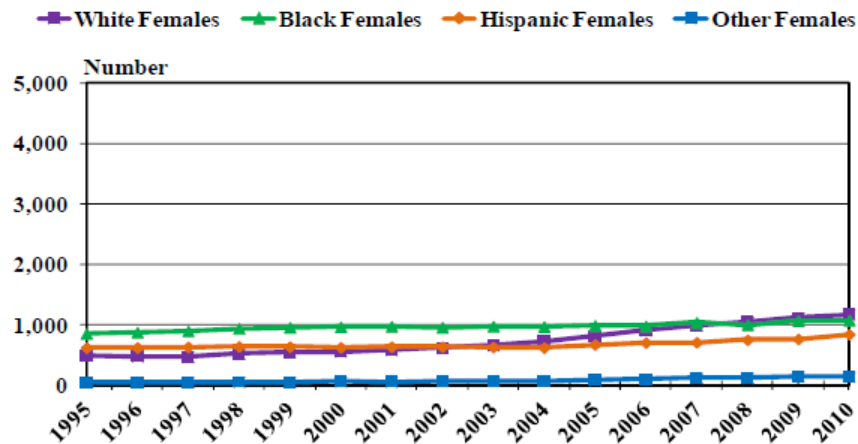
**Figure 7-18**  
**Number of Offenders in Prison Convicted of an Offense Carrying**  
**A Mandatory Minimum Penalty**  
**By Race for Female Offenders**  
**1995 - 2010**



SOURCE: U.S. Sentencing Commission, and Bureau of Prisons Combined 1995 through 2010 Datafiles, USSCBOP.

A slightly different trend was observed for female offenders in each racial group who remained subject to a mandatory minimum penalty at sentencing. At the end of fiscal year 1995, Black (n=854, 42.5%) and Hispanic (n=622, 31.0%) female offenders subject to a statute carrying a mandatory minimum penalty exceeded the number of White (n=489, 24.3%) and Other Race (n=45, 2.2%) female offenders. The Commission observed the same trend through 2003, when the number of White female offenders subject to a statute carrying a mandatory minimum penalty exceeded the number of similarly situated Hispanic female offenders. By the end of 2008, White female offenders subject to a statute carrying a mandatory minimum penalty were the largest racial group of female offenders subject to such a penalty at sentencing. This trend continued through 2010, when there were 1,171 (36.3%) White, 1,074 (33.3%) Black, 842 (26.1%) Hispanic, and 140 (4.4%) Other Race female offenders subject to a statute carrying a mandatory minimum penalty in the federal prison population. *See* Figure 7-19.

**Figure 7-19**  
**Number of Offenders in Prison Subject to an Offense Carrying**  
**A Mandatory Minimum Penalty at Sentencing**  
**By Race for Female Offenders**  
**1995 - 2010**



SOURCE: U.S. Sentencing Commission, and Bureau of Prisons Combined 1995 through 2010 Datafiles, USSCBOP.

## F. SUMMARY

With respect to mandatory minimum penalties generally, the Commission analysis demonstrate the following:

### *Offenses and Offenders*

- More than one-quarter of the 73,239 offenders sentenced in the federal courts in fiscal year 2010 (27.2%, n=19,896) included in this analysis were convicted of an offense carrying a mandatory minimum penalty.
- Over three-quarters (77.4%) of convictions of an offense carrying a mandatory minimum penalty were for drug trafficking offenses.
- Hispanic offenders accounted for the largest group (38.3%) of offenders convicted of an offense carrying a mandatory minimum penalty, followed by Black offenders at 31.5 percent, White offenders at 27.4 percent, and Other Race offenders at 2.7 percent.
- More than 90 percent (90.3%) of the offenders convicted of an offense carrying a mandatory minimum penalty were men.
- United States citizens accounted for 73.6 percent of all offenders convicted of an offense carrying a mandatory minimum penalty.

- Seven out of 94 districts accounted for 27.0 percent (n=5,367) of the 19,896 cases involving a conviction of an offense carrying a mandatory minimum penalty in fiscal year 2010.

### *Application and Relief*

- Offenders convicted of an offense carrying a mandatory minimum penalty pled guilty at a slightly lower rate (94.1%) than offenders who were not convicted of an offense carrying a mandatory minimum penalty (97.5%). Furthermore, offenders facing longer mandatory minimum penalties were less likely to plead guilty.
- Offenders convicted of an offense carrying a mandatory minimum penalty but who were eligible for the statutory safety valve relief pled guilty at a rate (99.4%) higher than for both offenders convicted of an offense not carrying a mandatory minimum penalty (97.5%) and offenders who were not eligible for safety valve relief (94.6%).
- Almost half (46.7%) of offenders convicted of an offense carrying a mandatory minimum penalty were relieved from the application of such a penalty at sentencing because they provided substantial assistance to the government or qualified for the safety valve provision, or both.
  - Black offenders received relief from a mandatory minimum penalty least often (in 34.9% of their cases), compared to White (46.5%), Hispanic (55.7%) and Other Race (58.9%) offenders. Black offenders qualified for relief under the safety valve at the lowest rate of any other racial group (11.1%), compared to White (26.7%), Hispanic (42.8%) and Other Race (36.6%), either because of their criminal history or the involvement of a dangerous weapon in connection with the offense.
  - Prior to the enactment of the safety valve (in fiscal year 1994), Black and Hispanic offenders received relief from the mandatory minimum penalty at comparable rates (34.3% and 34.2%, respectively), although lower than Other Race (46.4%) and White (44.2%) offenders. After enactment of the safety valve provision, the rate at which Hispanic, White, and Other Race offenders obtained relief from a mandatory minimum penalty increased appreciably, while the rate for Black offenders did not.
  - Female offenders obtained relief from a mandatory minimum penalty at sentencing more often than male offenders (65.5% compared to 44.7%). Not only did female offenders qualify for the safety valve at a higher rate than male offenders (46.4% compared to 26.3%), but female offenders also received relief by providing substantial assistance to the government at a higher rate (36.0%) than male offenders (24.7%).
  - Non-citizens received relief from mandatory minimum penalties at sentencing more often than United States citizens (64.6% compared to 40.3%). Although

United States citizen offenders provided substantial assistance to the government at a higher rate (28.0%) than non-citizen offenders (19.8%), the majority of non-citizen offenders (54.4%) qualified for relief from the mandatory minimum penalty under the safety valve, compared to United States citizens at 18.9 percent.

### *Sentencing*

- Only 14.5 percent of all federal offenders were subject to a mandatory minimum penalty at sentencing.
  - Black offenders convicted of an offense carrying a mandatory minimum penalty remained subject to a mandatory minimum penalty at sentencing at the highest rate of any racial group, in 65.1 percent of their cases, followed by White (53.5%), Hispanic (44.3%), and Other Race (41.1%).
  - Male offenders convicted of an offense carrying a mandatory minimum penalty remained subject to the mandatory minimum penalty at sentencing more often than female offenders (55.3% compared to 34.5%).
  - United States citizens convicted of an offense carrying a mandatory minimum penalty remained subject to the mandatory minimum penalty at sentencing more often than non-citizens (59.7% compared to 35.4%).
- Receiving relief from an applicable mandatory minimum sentence made a significant difference in the sentence ultimately imposed. Offenders who were convicted of an offense carrying a mandatory minimum penalty and remained subject to that penalty at sentencing received an average sentence of 139 months, compared to 63 months for those offenders who received relief from a mandatory penalty.
  - Offenders who received relief from a mandatory minimum penalty by providing substantial assistance to the government received longer average sentences than offenders who received relief under the safety valve provision.

### *Prison Impact*

- 75,579 (39.4%) of the 191,757 offenders in BOP custody as of September 30, 2010, were subject to a mandatory minimum penalty at sentencing.
- Although the number of offenders in BOP custody who were subject to a mandatory minimum penalty at sentencing has grown steadily over the past 20 years, the proportion of such offenders in BOP custody has remained relatively stable.