

Mandatory Minimum Penalties in the Federal Criminal Justice System

The United States Sentencing Commission on several occasions has examined statutory mandatory minimum penalties in the federal system. Most recently, the Commission completed a six-publication series studying the application and impact of statutory mandatory minimum penalties. This series built upon the Commission's 2011 *Mandatory Minimum Report*, in which the Commission assessed the impact of mandatory minimum penalties and provided several recommendations to Congress.^{1,2}



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Drug Offenders and Enhanced Recidivist Penalties

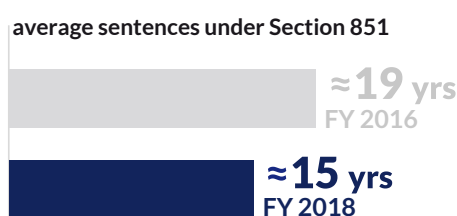
21 U.S.C. § 841
Manufacture, Distribution, Dispensation, or Possession

21 U.S.C. § 846
Attempt and Conspiracy

21 U.S.C. § 851
Establishing Prior Convictions

21 U.S.C. § 960
Importation or Exportation

Nearly half of drug trafficking offenders faced a drug conviction carrying a mandatory minimum penalty.³ Historically, enhanced penalties for repeat drug offenders were applied inconsistently but their impact has recently narrowed.^{4,5}

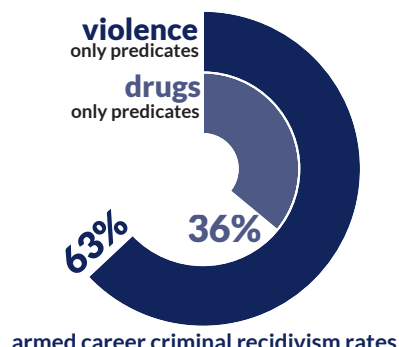
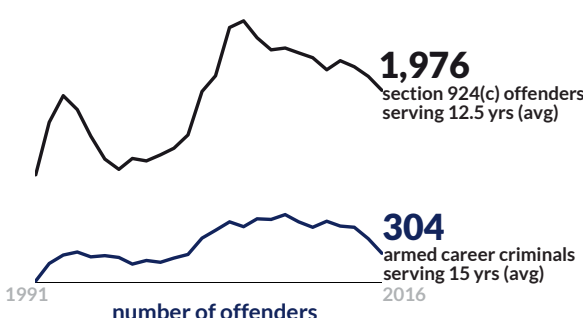


Firearms Offenders and the Armed Career Criminal Act

18 U.S.C. § 924(c)
Possessing/Using a Firearm in Furtherance of Drug Trafficking or a Crime of Violence

18 U.S.C. § 924(e)
Armed Career Criminal Act

While fewer offenders were convicted under section 924(c) and the Armed Career Criminal Act in recent years, they serve very long sentences, on average.⁶ Recidivism rates of armed career criminals show substantial differences depending on whether the offender was previously convicted of a violent offense.⁷

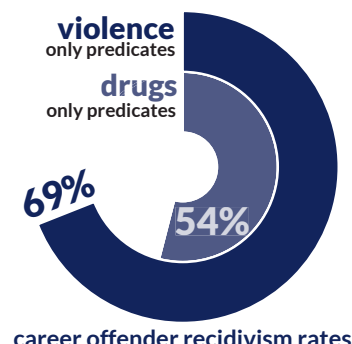
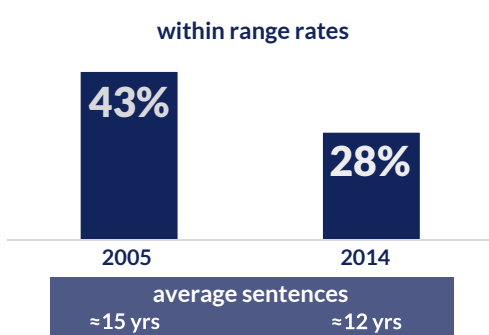


Career Offenders

28 U.S.C. § 994(h)
Career Offender Directive [to set guideline at or near the statutory maximum penalty]

USSG §§4B1.1, 4B1.2
Career Offender Guideline

Career offenders receive lengthy average sentences, but increasingly receive sentences below the guideline range.⁸ Career offenders who qualified on the basis of drug trafficking offenses alone recidivated at a lower rate than violent career offenders.

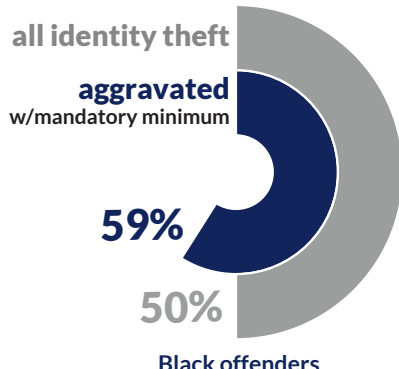
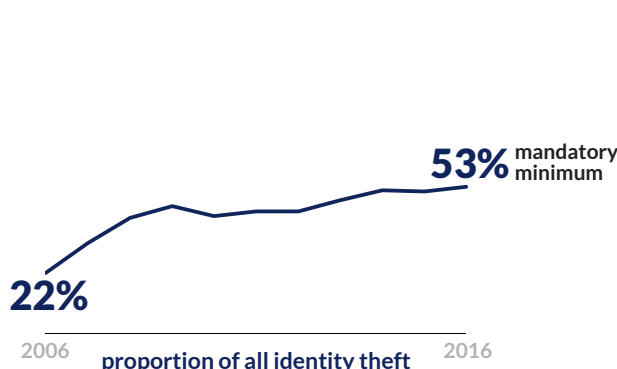


The Commission recommended in 2016 the career offender directive be amended to differentiate between different criminal records, and is best focused on those offenders who have committed at least one "crime of violence."

Identity Theft Offenders

18 U.S.C. § 1028A
Aggravated Identity Theft

A growing proportion of identity theft offenders were convicted of aggravated identity theft (carrying a 2-year mandatory minimum).⁹ The aggravated identity theft mandatory minimum penalty impacted Black offenders more than any other racial group.



Sex Offenders

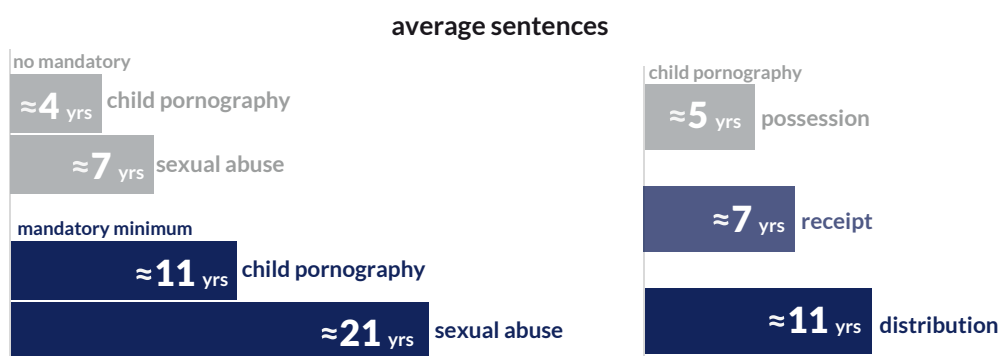
Child Pornography

Primarily set forth in Chapter 110 of Title 18

Sexual Abuse

Primarily set forth in Chapters 109A and 117 of Title 18

Most sexual abuse offenders convicted of an offense carrying a mandatory minimum penalty faced 15 years, minimum, while most child pornography offenders faced 5 years, minimum. Sexual abuse sentences were substantially longer in cases with a mandatory minimum penalty. Similarly, child pornography sentences varied depending on the nature of the offense.¹⁰



¹ U.S. SENTENCING COMM'N, 2011 MANDATORY MINIMUM REPORT (2011). In 2011, the Commission recommended that, if Congress must enact mandatory minimum penalties, such penalties: 1) should not be excessively severe; 2) should be narrowly tailored; and 3) should be applied consistently.
² U.S. SENTENCING COMM'N, MANDATORY MINIMUM OVERVIEW REPORT (2017) This and subsequent reports used fiscal year 2016 data.
³ U.S. SENTENCING COMM'N, DRUG MANDATORY MINIMUM REPORT (2017)
⁴ U.S. SENTENCING COMM'N, 851 MANDATORY MINIMUM REPORT (2018)
⁵ U.S. SENTENCING COMM'N, FIRST STEP ACT REPORT (2020). On average, sentences for offenders for whom the 851 applied at sentencing were eight months shorter in Year One after the First Step Act of 2018 compared to fiscal year 2018.
⁶ U.S. SENTENCING COMM'N, FIREARMS MANDATORY MINIMUM REPORT (2018)
⁷ U.S. SENTENCING COMM'N, ARMED CAREER CRIMINAL REPORT (2021)
⁸ U.S. SENTENCING COMM'N, REPORT TO CONGRESS ON CAREER OFFENDERS (2016)
⁹ U.S. SENTENCING COMM'N, IDENTITY THEFT MANDATORY MINIMUM REPORT (2018)
¹⁰ U.S. SENTENCING COMM'N, SEX OFFENSES MANDATORY MINIMUM REPORT (2019)