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Comparing the Anti-Drug Abuse Act of 1986 to the Boggs Act of 1951 and the Narcotic Control Act of 1956 in Levels of Severity

Norah Khadraoui

The first mandatory minimums for narcotics were the Boggs Act of 1951 and the Narcotic Control Act of 1956 created due to increasing drug abuse rates. In 1970 Congress repealed the laws stating that they were too harsh and ineffective. Sixteen years later the Anti-Drug Abuse Act of 1986, a new mandatory minimum, was passed. I conducted a content analysis comparing the severity of sentencing from the aforementioned laws to establish if Congress repeated the same policy. I ran a chi-square test for homogeneity and found that the laws were dissimilar in severity. My results showed that the laws of the 1980s were more severe compared to the 1950s, which supports that Congress overlooked its prior findings concerning mandatory minimums and repeated the ineffectiveness of previous laws on a larger scale. This research supplements the larger body of work that indicates that the Anti-Drug Abuse Act is inadequate.

Keywords: The Boggs Act of 1951, The Narcotic Control Act of 1956, The Anti-Drug Abuse Act of 1986, mandatory minimums

INTRODUCTION

Congress has the power to pass sentencing laws that can, directly and indirectly, impact the American people. This makes it incredibly important that Congress put careful consideration into its sentencing policy as it affects millions of people. The following is an in-depth analysis to if Congress repeated the same sentencing policy with three narcotics-related mandatory minimum laws and if Congress repeated the same mistakes of the past.

LITERATURE REVIEW

I. The Emergence of Drug Mandatory Minimums

Over the course of American history, federal drug enforcement and criminalization have increased in severity. Before the 20th century, there was no federal regulation of highly addictive opium and it was distributed freely, especially to soldiers. After drug abuse and addiction became more rampant, the effects triggered the federal government to become involved. In response to these escalating rates in drug abuse, the Narcotic Drugs Import and Export Act created the Federal Narcotics Control Board (FNCB) which

oversaw the import and export of drugs.¹ Rising drug abuse was also the cause of the emergence of drug-related mandatory minimums with the ideology that tougher penalties will deter drug trafficking.²

Mandatory minimums are statutory requirements made by Congress that a person convicted of a specific offense, involving a certain drug and quantity, will receive a minimum sentence requirement no matter the circumstances. In the mid 20th century, the Senate Special Committee to Investigate Organized Crime in Interstate Commerce revealed a growing trend in American society to Congress—drug addiction and trafficking among young people. Champion for drug-related mandatory minimums, Federal Bureau of Narcotics Commissioner—Harry J. Anslinger—argued that soft-hearted judges were to blame for the high addiction rates and that young addicts needed longer sentences rather than rehabilitation because he believed drug addiction was a contagious disease akin to smallpox.³ During the mid 20th century, little was understood about drug addiction as compared to today; it was not surprising that Anslinger’s ideas were popular, especially among Congress members, to show their constituents that they were “tough on crime.”

The Boggs Act of 1951—an amendment to the Narcotic Drugs Import and Export Act and the first codified mandatory minimum sentences for the possession or sale of narcotics—passed easily in Congress. The intent of mandatory minimums such as the Boggs Act was to discourage drug use, lower judicial discretion, and discourage drug trafficking to promote a safer, drug-free environment. A first offense for the Boggs Act carried a minimum of 2-5 years in prison, a second offense carried prison terms of 5-10 years, a third offense carried a sentence of 10-15 years. The Boggs Act most notably made no distinction between

drug users and drug traffickers for purposes of sentencing. Four years after the enactment of the Boggs Act, a Senate subcommittee concluded in a published report that drug addiction is contagious and addicts should be confined to prevent it from spreading to others.⁴ The solution became a compulsory treatment where the addict would be put in isolation, usually in prisons. Throughout the 1950s, the Boggs Act was amended to allow a life sentence or death penalty for those who committed a third offense.⁵ This led to a nationwide movement where states started to impose their own mandatory minimums nicknamed “Little Boggs Acts.”⁶ The Narcotic Control Act of 1956, another amendment to the Narcotic Drugs Import and Export Act, increased penalties for drug offenses and established the death penalty as punishment for selling heroin to youths while lowering chances of parole. Despite this, reports in the 1950s found that the U.S. drug addiction rates were higher than any other Western nation.⁷

II. The Repeal of Drug Mandatory Minimums

In the 1960s, support for severe punishment of drug offenses waned. A more medical—rather than punitive—approach was favored with organizations such as the American Bar Association (ABA) speaking out against strict punishment. In 1963, the Presidential Commission on Narcotic and Drug Abuse issued a report, under President Kennedy’s request, recommended more funds for narcotic research, less strict punishment for drug offenses, and the dismantling of the Federal Bureau of Narcotics which was created in the 1930s.⁸

The government heeded the recommendations as well as created the Bureau of Drug Abuse Control

1 Thomas M. Quinn, “The Evolution of Federal Drug Control Legislation,” *Catholic University Law Review* 22, no.3 (1973): 588.

2 *Ibid.*, 602.

3 Molly M. Gill, “Correcting Course: Lessons from the 1970 Repeal of Mandatory Minimums,” *Federal Sentencing Reporter* 21, no.1 (2008): 57.

4 Gill, “Correcting Course,” 57.

5 Henry S. Wallace, “Mandatory Minimums and the Betrayal of Sentencing Reform: A Legislative Dr. Jekyll and Mr. Hyde,” *Journal of Correctional Philosophy and Practice* 57, no.3 (1993): 9.

6 *Ibid.*

7 Gill, “Correcting Course,” 57.

8 Lisa N. Sacco, “Drug Enforcement in the United States: History, Policy, and Trends,” *Congressional Research Service*, (2014): 57.

within the Department of Health, Education, and Welfare.⁹ President Kennedy then began to use his pardoning power to provide commutations to drug offenders who he believed to have had an excessive sentence and were not eligible for parole under the Narcotic Control Act.¹⁰ Then in 1969, President Nixon stepped into office and called for changes in federal drug control laws. Nixon's appointees, as well as Congress, began criticizing the effectiveness of mandatory minimums. Mandatory minimums were criticized for treating casual violators as severely as kingpins, increasing prosecutorial power, and interfering with judicial discretion and the judges' role of making individualized sentences. This led to the Controlled Substances Act of 1970, which repealed mandatory minimums and created a comprehensive system of scheduling drugs for federal drug control which had bipartisan support including then-Congressman George H.W. Bush.¹¹ Congressman Bush argued that mandatory minimums were not a useful tool and reducing the sentences could lower the drug crime rate because the courts would be able to make more equitable actions. The Controlled Substances Act of 1984 had three goals: to rehabilitate drug addicts rather than punish, provide better tools to law enforcement when investigating drug trafficking, and to make the sentences fit the crime. This act also established the Federal Sentencing Guidelines, a nonmandatory guide for judges towards a sentence based on two factors: the offense level and criminal history.¹²

III. The Resurgence of Drug Mandatory Minimums

In the 1970s, marijuana, heroin, and cocaine use rose to the point where the Nixon administration determined that 1.3% of the population was addicted to drugs. This led to Nixon's famous declaration

⁹ *Ibid.*, 5.

¹⁰ Gill, "Correcting Course," 57.

¹¹ Quinn, "The Evolution," 165.

¹² Refer to Appendix I for more information about the Federal Sentencing Guidelines

¹³ Deborah Small, "The War on Drugs Is a War on Racial Justice", *Social Research* 68, no. 3 (2001): 898.

¹⁴ Matthew C. Lamb, "A Return To Rehabilitation: Mandatory Minimum Sentencing in an Era Of Mass Incarceration", *Journal of Legislation* 41, no. 1 (2015): 126.

¹⁵ Sacco, "Drug Enforcement", 9.

¹⁶ See Appendix II for Exceptions to Mandatory Minimums

of the War on Drugs in 1971—a federal campaign whose stated aim was to reduce the drug abuse rates. However, there is debate if curbing drug abuse was the intention or if the War on Drugs was for political gain.¹³ This War on Drugs later proved to have disastrous effects on minority communities, especially in black communities, in particular with the rise of the crack epidemic in the 1980s. Crack cocaine was revolutionary as it was cheaper than powder cocaine and more easily transported. As a result, it grew rampant in major cities. The catalyst was the death of Len Bias, a basketball star from the University of Maryland who died of a crack overdose that shook the country. Congress wasted no time responding to headlines regarding this healthy young man's death. The House Judiciary Committee drafted and passed the Anti-Drug Abuse Act of 1986, a new mandatory minimum in less than one week. This resurgence of mandatory minimums also stemmed from concerns about the amount of judicial discretion in sentencing.¹⁴ The Anti-Drug Abuse Act established two factors for mandatory minimum terms: drug quantity and type.¹⁵ It also made harsher penalties for crack cocaine and triggered even more mandatory minimums to be passed shortly afterward. These minimums are still in place today with little exceptions.¹⁶

IV. A Gap In The Way We Understand Mandatory Minimums

There has been a lack of acknowledgment by Congress that the use of mandatory minimums to lower drug abuse rates has been tried—with the Boggs Act of 1951 and Narcotic Control Act of 1956—and failed to be effective in curbing drug use. This lack of acknowledgment as evidenced by Vice President Henry Wallace in his article, "Mandatory Minimums and the Betrayal of Sentencing Reform: A Legislative Dr.

Jekyll and Mr. Hyde” when stating, “there was not a word of acknowledgment of the momentousness of the undertaking—not a word explaining why the lessons of the failure of the Boggs Acts were now being ignored.”¹⁷ Researchers, such as Molly M. Gill—a lawyer, advocate, expert on sentencing law and policy, and Vice President of Policy for Families Against Mandatory Minimums (FAMM)—have pointed out the similarities between the Boggs Act, Narcotic Control Act, and the Anti-Drug Abuse Act. However, research has yet to be conducted to determine if these laws are as similar as they may seem. By identifying the similarities between the mandatory minimum laws of the 1950s and the laws of the present with the Anti-Drug Abuse Act of 1986, it can be determined whether or not Congress is repeating the same mistake they committed in the past and if the Anti-Drug Abuse Act is effective.

METHOD

For the purposes of focusing on narcotic mandatory minimums, I analyzed Subtitles A, B, and G of the Anti-Drug Abuse Act, which all revolve around narcotics-related mandatory sentencing. To compare the Anti-Drug Abuse Act with the laws of the 1950s, I used the following amendments to the Narcotic Drugs Import and Export Act: the Boggs Act and specifically Title I and II of the Narcotic Control Act of 1956 as they pertain to narcotics-related mandatory sentencing. I conducted a conventional mixed method content analysis with three categories of low, medium, and high severity sentences. The maximum sentence present in the laws is “life.” Since a life sentence is not a set number, the second longest sentence, which was 40 years, will be used for the purpose of calculating the range of years for each category. I calculated the median, first quartile, and third quartile range of the span of years that the laws had had which was from 0 years to 40 years. The median was at 20 years, the first quartile was at 10 years, and the third quartile was at 30 years. Thus, the year range for low severity is 0 years to 10 years, medium severity is 10 to 30 years, and high severity is 30 years to life. If a sentence overlaps with multiple categories, then the sentence was

counted for every category it fell into. A single sentence range could count up to three times.

I chose a content analysis because content analyses commonly compare different bodies of texts and the coding categories are derived directly from the text data. I started coding by reading the specified sections of the laws three times to achieve a sense of the whole law and then highlighting the sentences that capture one of the three levels of severity. After compartmentalizing the contents of the laws into the three categories, I began to compare the similarities of the laws. Mixed method research would fit best for this because I needed the explorative categories and interpretive aspects of a qualitative method; I also needed the quantitative methods in order to evaluate the relationship between the laws. I needed to quantify how much of each category is present in the laws in order to compare their similarities using the chi-square test for homogeneity. Using a chi-square test, I was able to test the three categorical variables from the different laws and determine whether frequency counts were distributed identically across the laws. I conducted the chi-square test using a chi-square test calculator from the website Socscistatistics, a statistical resource for social scientists.

RESULTS

The Boggs Act had six sentences total for the transportation, concealment, or sale of any narcotic drugs. To determine the number of offenses the offender has committed, the prosecution not only takes into account the previous violations from this Act but also section 2557 (b) (1) of the Internal Revenue Code which outlines the same offense for the Boggs Act. Offenders found guilty of section 2557 (b) (1) of the Internal Revenue Code before being charged with the Boggs Act could be charged by the prosecution for violating the Boggs Act as a second offense and vice versa for the Internal Revenue Code. The relationship between the Boggs Act and the Internal Revenue Code explains why the sentences were repeated to show the penalties for violating the Boggs Act and then the Internal Revenue Code. The first offense and second offense penalties are considered low severity, and the third or subsequent offense is medium severity.

¹⁷ Wallace, “Mandatory Minimums,” 10.

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Table 1: Boggs Act

Low Severity	Medium Severity	High Severity
2-5	10-20	N/A
5-10	10-20	
2-5		
5-10		

Table 1 displays the mandatory minimum ranges. For example, “2-5” stands for not less than 2 years or more than 5 years. The Boggs Act has 6 total sentences with 4 low severity and 2 medium severity.

The Narcotic Control Act has 15 sentences total with 9 low severity, 11 medium severity, and 6 high severity. Table 2 below is the Narcotic Control Act sentences broken down by severity and section.

As for the Anti-Drug Abuse Act, it had a total of 27 sentences with 10 low severity, 18 medium severity, and 20 high severity. Table 3 is the Anti-Drug Abuse Act broken down by severity and section.

I combined the Boggs Act and Narcotic Control Act because they are both amendments to the Narcotic

Table 2: Narcotic Control Act

Low Severity	Medium Severity	High Severity
Title I violations of laws relating to narcotic drugs and marihuana*	Title I violations of laws relating to narcotic drugs and marihuana	Title I violations of laws relating to narcotic drugs and marihuana
2-10	5-20	10-40
5-20	10-40	10-40
5-20	5-20	10-40
Not more than 5	10-40	
	10-40	
Importation etc. of narcotic drugs	Importation etc. of narcotic drugs	Importation etc. of narcotic drugs
5-20	5-20	10-40
5-20	10-40	10-40
	5-20	
	10-40	
Unlawful possessions of narcotic drugs and marihuana on vessels	Unlawful possessions of narcotic drugs and marihuana on vessels	Unlawful possessions of narcotic drugs and marihuana on vessels
Not more than 5		
5-20	5-20	10-40
	10-40	
Title II amendments to title 18 of USC addition of new chapter-narcotics	Title II amendments to title 18 of USC addition of new chapter-narcotics	Title II amendments to title 18 of USC addition of new chapter-narcotics
2-5	N/A	N/A

*In the Narcotic Control Act marijuana is spelled marihuana

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Table 3: Anti-Drug Abuse Act

Low Severity	Medium Severity	High Severity
Subtitle A Narcotics Penalties and Enforcement short title	Subtitle A Narcotics Penalties and Enforcement short title	Subtitle A Narcotics Penalties and Enforcement short title
5-40	10-life	10-life
Not more 20	20-life	20-life
Not more than 30	20-life	20-life
	5-40	Life
	20-life	5-40
	10-life	20-life
	Not more 20	10-life
	20-life	Life
	Not more than 30	20-life
		Life
Simple possession	Simple possession	Simple possession
Not more than 1 year	N/A	N/A
15 days to 2 years		
90 days to 3 years		
Subtitle G controlled substances import and export short title	Subtitle G controlled substances import and export short title	Subtitle G controlled substances import and export short title
5-40	10-life	10-life
Not more 20	20-life	20-life
Not more than 30	20-life	20-life
	5-40	20-life
	20-life	Life
	10-life	5-40
	Not more 20	20-life
	20-life	10-life
	Not more than 30	Life
		20-life
		Life

COMPARING THE ANTI-DRUG ABUSE ACT, THE BOGGS ACT AND THE NARCOTIC CONTROL ACT

Drugs Import and Export Act to become one population of data and the other population for the statistical test was the Anti-Drug Abuse Act. The amendments of the Narcotic Drugs Import and Export Act has 13 low severity, 13 medium severity, and 6 high severity sentences. After being put into the chi-square test calculator from socscistatistics, the results came out to be statistically significant regarding the severity of the sentences. This means that the frequency counts of the severity of the sentences are not distributed identically across the laws. The p-value came to .03962 with the standard of statistical significance being at a p-value less than .05. With the current p-value, the null hypothesis that the laws are similar is rejected. Instead, the alternate hypothesis that the laws are dissimilar is accepted. This p-value also indicates that the chi-square statistic (the difference between the observed counts and the counts if there were no relationship in the population) overall of 6.4569, concerning the deviation of severities in sentences between the Boggs and Narcotics Control Act and the Anti-Drug Abuse Act, is statistically different.

Within the chi square test it can be observed that the differences between the chi square statistic for low and high severity between the Boggs and Narcotic Control Act and the Anti-Drug Abuse Act is very large, whereas the chi square statistic for medium severity is closer

together. These conclusions suggest that Congress has changed its sentencing policy at the extremes of the spectrum making their sentences more severe. As shown, there has been a general shift for the sentences to become more severe: with a jump from 6 high severity sentences in the 1950s to 20 in the 1980s, and the number of low severity sentences significantly decreasing from the 13 in the 1950s to 9 in the 1980s. Given this shift of more high severity sentences and less low severity, the results are evidence that the laws have become more severe. Federal sentencing laws should be carefully considered before implementation because it directly affects the lives of hundreds of thousands of people in the federal court system, but in order to appear “tough on crime,” Congress implemented harsher mandatory minimum penalties. The Narcotic Drugs Import and Export Act amendments were repealed by Congress because they deemed them as unsuccessful because of the harsh penalties, but the Anti-Drug Abuse Act is even more severe. Congress repealing the acts provides evidence that the Anti-Drug Abuse Act is ineffective. However, this conclusion comes with limitations because a firm conclusion that the Anti-Drug Abuse Act is ineffective cannot be reached with this evidence alone. Yet, it can be used as a supplement to the large body of work that argues the Anti-Drug Abuse Act is ineffective to lower drug abuse rates.

Table 4: Chi-Square Test Results

	Low Severity	Medium Severity	High Severity	Raw Totals
Boggs Act and Narcotic Control Act	13 (1.88)	13 (0.02)	6 (1.95)	32
Anti-Drug Abuse Act	9 (1.28)	18 (0.01)	20 (1.33)	47
Column Totals	22	31	26	79 (Grand Total)
		Chi square statistic: 6.4569		p-value .03962

*The numbers in the parentheses is the chi square statistic for each cell

DISCUSSION

This research reveals that the Anti-Drug Abuse Act, like its predecessors, is unsuccessful in lowering the drug abuse rates. However, this conclusion comes with limitations because a firm conclusion that the Anti-Drug Abuse Act is inadequate cannot be reached with the results of this research alone. Nevertheless, it can be used as a supplement to the large body of work that also argues that the Anti-Drug Abuse is ineffectual to lower drug abuse rates. Congress itself admitted in the 1970s that the method of mandatory minimums was not working to accomplish all its goals; yet, in the 1980s, it returned to the same methods with more severity.¹⁸ My results showed that the laws became more severe; thus, Congress essentially disregarded its prior findings concerning mandatory minimums and repeated their mistake with even higher stakes. The Anti-Drug Abuse Act created a lot of negative effects that still impact American society today. The following is an analysis of the effects of the Anti-Drug Abuse Act.

I. Effects of the Anti Drug Abuse Act

The Anti-Drug Abuse Act of 1986, still in effect today, created racial sentencing disparities with unfairly disparate sentences. One of the ways it exacerbates racial disparities is through its harsher penalties for crack cocaine than powder cocaine. Although powder cocaine and crack cocaine have little differences chemically, penalties for crack are 100 times more severe than for powder creating a 100:1 ratio between the severity of the sentence for crack cocaine to powder.¹⁹ This created large racial disparities within federal sentencing because Black offenders were more likely to use or buy crack cocaine than Whites and Whites were more

likely to use or buy powder cocaine.²⁰ Although the Fair Sentencing Act lowered the 100:1 ratio, the difference is still quite large to around 18:1.²¹ The difference between the average sentence imposed on Black offenders versus White offenders increased from 28% in 1984 to 49% in 1990.²² Deborah Small, who published an article for The Johns Hopkins University Press, drew parallels to the crack disparity to the Jim Crow Era due to the racial injustices it stimulated. Even with determining the drug quantity, there were issues within the Anti Drug Abuse Act. Police officers would measure the drug quantity based on the entire weight of the substance, not the amount of drugs itself. For example, if there were 10 grams of sugar and 5 grams of powder cocaine, the defendant would be prosecuted as if there were 15 grams of powder cocaine, further emphasizing the ineffectiveness of the Anti-Drug Abuse Act by giving unjustified longer sentences.²³

There has been debate whether mandatory minimums deter crime. The National Association of Assistant Attorneys (NAAUSA) believes that they do. As seen in their letter to the Senate Judiciary Committee in 2014, Robert Mueller, former FBI Director and current head of the Special Counsel investigation of Russian interference in the 2016 United States elections, would agree with the NAAUSA in his “Mandatory Minimum Sentencing” article. According to the Pew Charitable Trusts, serious crime has been declining for the past two decades but many criminologists concluded that incarceration has reached a tipping point where additional incarceration will not have an effect on the crime rates.²⁴

There has been an unsustainable rising population of prison inmates in the United States partly due to mandatory minimums (including for non-drug related offenses) with the 90,000 increase of federal prisoners from 1980 to 2015²⁵ and half of all federal in-

18 Quinn, “The Evolution,” 165.

19 William W. Schwarzer, “Sentencing Guidelines and Mandatory Minimums: Mixing Apples and Oranges,” *Southern California Law Review*, (1992): 409.

20 Marvin D. Free, “The Impact of Federal Sentencing Reforms on African Americans,” *Journal of Black Studies* 28, no. 2 (1997): 270.

21 Charles Doyle, “Mandatory Minimum Sentencing of Federal Drug Offenses,” *Congressional Research Service*, (2018): 4.

22 Schwarzer, “Sentencing Guidelines,” 407.

23 Barbara Meierhoefer and Paul J. Hofer, “The Consequences of Mandatory Minimum Prison Terms: A Summary of Recent Findings,” *Federal Judicial Center* 7, no. 1 (1994): 1.

24 Susan K. Urahn, “Time Served The High Cost, Low Return of Longer Prison Terms,” *Pew Center On The States*, (2012): 1.

25 “Federal Drug Sentencing Laws Bring High Cost, Low Return,” *The Pew Charitable Trusts*, (2015): 1.

mates are drug offenders (49.8%) in 2017 according to the United States Sentencing Commission (USSC).²⁶ Around 44.7% of those federal inmates were charged with a mandatory minimum. When charged with mandatory minimum laws the number of years was more than double than drug offenses without the mandatory minimum (7.8 years versus 3.5 years), and 52.8% of people who were sentenced with a mandatory minimum drug offense were sentenced to 10 years or more.²⁷ Today, probation has all but disappeared as a sanction for drug offenders and drug offenders are one of the single greatest contributors to the growth of the federal prison population.²⁸ What also worsen the growing mass incarceration rate is that federal drug sentencing laws failed to reduce recidivism with nearly one-third of the drug offenders commit new crimes or violate their probation post-release returning back to prison. It has also proven to be very expensive, 1 in 4 dollars spent by the US Justice Department is for the federal prison system around 6.7 billion per year.²⁹ It does not help that illegal drug prices have declined while illegal drug use has increased in response.³⁰ Mandatory minimums are claimed to target high-level drug dealers, but those sentenced for relatively minor roles represented the biggest share of federal drug offenders, and nearly a fifth of federal drug offenders were street dealers in 2015.³¹

There is also the concern that mandatory minimums violate separation of powers because Congress removes some judicial power when forcing judges to enforce these sentences.³² The courts and Congress differ in opinion about mandatory minimums, the courts tend to be against mandatory minimums and Congress tends to be in favor of mandatory minimums. The reason that may be true is that the courts have first-hand interactions with the defendants, less politically motivated, and goes through the mitigat-

ing/ aggravating factors whereas Congress does not and often go by stereotypes about drug dealers mainly focusing on deterrence and incapacitation.³³

The Anti-Drug Abuse Act appears to be more harm than good. It has increased racial disparities during sentencing and created a costly trend of inmates going into prisons that leaves a gaping hole in their communities and families, encouraging the cycle of poverty, crime, and drug use. This is further evidence on the ineffectiveness of the Anti-Drug Abuse Act that my research supports. The Anti-Drug Abuse Act has repeated the same mistakes of its predecessors, the Boggs Act and Narcotic Control Act, and has arguably worsened their negative effects on a larger scale.

II. Possible Alternatives to Mandatory Minimums/ Reform

One of the most prevalent answers to mandatory minimum reform is to expand the federal safety valve which allows defendants to be given a shorter sentence than the mandatory minimum based on a set of criteria. The authors of “Sense and Sensibility in Mandatory Minimum Sentencing,” both of whom are law professors, argue that mandatory minimum reform should be approached not with the intention of repealing them but to make more plausible minimal changes by expanding the federal safety valve that today is limited. This can be done by adjusting the wording of 18 U.S.C. § 3553 Imposition of Sentence or 28 U.S.C. § 994 Duties of Commission.³⁴ These adjustments would retain that no one is harmed by the defendant’s actions but also it could apply to first-time low-level drug offenders and previous disqualifiers like the use of a firearm. It would also still provide sufficient incentive for defendants to work with law enforcement. Gill in “Turning off the Spigot: How Sentencing Safety

26 Report At A Glance: Overview of Mandatory Minimum Penalties in the Federal Criminal Justice System, United States Sentencing Commission, (2017): 1.

27 Ibid.

28 “Federal Drug Sentencing Laws Bring High Cost, Low Return,” 1.

29 Ibid.

30 Ibid.

31 Ibid.

32 Refer to Appendix III for more information on the Constitutional Debate On Mandatory Minimums

33 Marc Mill and Daniel J. Freed, “Editors’ Observations: The Chasm between the Judiciary and Congress over Mandatory Minimum Sentences,” *Federal Sentencing Reporter* 6, no.2 (1993): 61.

34 Paul G. Cassell and Erik Luna, “Sense and Sensibility in Mandatory Minimum Sentencing,” (*Federal Sentencing Reporter*, (2011): 222.

Valves Can Help States Protect Public Safety and Save Money” proposes that the safety valve should also be expanded where the court could depart of the mandatory minimum if they find that substantial injustice would occur if the mandatory minimum is applied.³⁵ Also, that a safety valve can be tailored in two ways: policymakers can choose the offense and/or offenders that will be eligible for safety valve relief, and standard for invocation where the judge can lift the minimum if the minimum is not “necessary to ensure public safety” or will cause a “substantial injustice.”³⁶

Another alternative to mandatory minimums would be the Federal Sentencing Guidelines. The USSC themselves in their 2017 mandatory minimums report stated: “a strong and effective Federal Sentencing Guidelines system best serves the purposes of the Sentencing Reform Act.”³⁷ Building upon this a report by the Federal Judicial Center which stated that the Federal Sentencing Guidelines could bring the benefits of mandatory minimums at a lower cost with fewer negative effects.³⁸ One of the main differences between the Federal Sentencing Guidelines and mandatory minimums is that due to the Supreme Court case *United States v. Booker* the sentences that the guidelines provide are not mandatory for the judges to sentence it allows for more judicial discretion to take place. Again in “Sense and Sensibility in Mandatory Minimum Sentencing” the authors stated that “almost everyone (including guidelines skeptics) would agree that using the guidelines to ameliorate the worst cases of excessive mandatory sentencing would be an improvement over the current status quo.”³⁹ Additionally, the report by the Federal Judicial Center also stated that the guidelines are more proportional than mandatory minimums because it accounts for a prior record, this could be due to the “sentencing cliff” phenomena that have been occurring with mandatory minimums where there are great differences between sentence length for relatively small differences in be-

havior.⁴⁰ The guidelines also take into account many more factors than mandatory minimums maintaining some flexibility to permit individualized sentences warranted by mitigating or aggravating factors, essentially allowing for more judicial discretion. Judges are also permitted in extraordinary circumstances to depart either upward or downward from the guideline range. The purposes of both laws are similar which was to create an egalitarian form of drug sentencing so that there would not be extreme differences between judges as to how long they sentence a drug offender for the same crime regardless of race or class, but there has been a debate if restricting this judicial discretion is beneficial. With the research paper “Mandatory Sentencing and Racial Disparity: Assessing the Role of Prosecutors and the Effects of Booker,” published by the Yale Law Journal, the authors found that the expansion of judicial discretion post *U.S. v. Booker* did not increase racial disparity and that forcing sentencing laws to be more rigid exacerbates the problem of racial disparity and leads to less equitable administration.⁴¹

III. Further Research and Limitations

The limitation to the current study’s finding is that the research only examined the two amendments of the Narcotic Drugs Import and Export Act and the Anti-Drug Abuse Act. Further research could expand beyond these laws to more thoroughly capture the severities between the narcotics-related mandatory minimums of the 50s to the 80s. If the scope was expanded, research could better assess if there are harsher penalties between the mandatory minimums of the 50s and the 80s, which were both largely passed due to public hysteria. Also, the research did not account for the change throughout time and public opinion surrounding drug abuse. Future research could expand the number of laws examined as well as examine the

35 Molly M. Gill, “Turning off the Spigot: How Sentencing Safety Valves Can Help States Protect Public Safety and Save Money,” *Federal Sentencing Reporter* 23, no. 3 (2013): 353.

36 *Ibid.*, 354.

37 *Report At A Glance*, 2.

38 Barbara S. Vincent and Paul J. Hofer, “The Consequences of Mandatory Minimum Prison Terms: A Summary of Recent Findings,” *Federal Sentencing Reporter* 7, no. 1 (1994): 1.

39 Cassell, “Sense and Sensibility,” 221.

40 Vincent and Hofer, “The Consequences,” 29.

41 Sonja B. Starr and Marit M. Rehavi, “Mandatory Sentencing and Racial Disparity: Assessing the Role of Prosecutors and the Effects of

motivations behind the passage each law and if the intentions were similar as well.

Another suggestion for further research is to change the scope from the federal level to the state level. The majority of the US inmate populations are at State Prisons having a total of about 1.3 million people in 2019 compared to the 221,000 in Federal Prisons.⁴² The majority of drug offenders are charged at the state level. Out of the state inmate population, around 15% of them are drug offenders.⁴³ As mentioned previously after the passing of Boggs Act “Little Boggs Acts” were passed throughout the states and a similar trend occurred in response to the Anti-Drug Abuse Act as well so politicians can maintain a “tough on crime” image. Further research could look into these “Little Boggs Acts” and compare them to the mandatory minimums that sprung up around different states immediately following the Anti-Drug Abuse Act. By examining mandatory minimums on a state level research can account for even more people impacted by these laws, since state prisons hold the majority of drug offenders in the US.

APPENDIX

I. Federal Sentencing Guidelines

The Federal Sentencing Guidelines, although similar to mandatory minimums, are very different. The guidelines have a series of requirements from the Drug Quantity Table that if fulfilled a defendant would be placed into a certain base level number, the guideline has 43 offense levels, the higher the level, the longer the sentence forming the vertical axis of the Guidelines chart. The horizontal axis of the chart is the criminal history category from I-VI, a defendant can receive one criminal history point for prior sentences less than 60 days; 1-3 points for a sentence for a violent offense not relating to the current charged offense; 2 points for prior sentences exceeding 60 days or if the offender commits the charged offense while

on probation, parole, supervised release, imprisonment, work release, or escaped status; 3 points for prior sentences exceeding 1 year and 1 month.⁴⁴

II. Exceptions to Mandatory Minimums

There are some exceptions that a defendant can potentially fulfill that he/she would be able to be sentenced to fewer years: if the prosecutors decide not to prosecute, the President pardon the defendant or commute his/her sentence, or a statutory safety valve set by the prosecutor.⁴⁵ The safety valve provides an incentive for defendants to work with the government in exchange for a reduced sentence. There are five requirements for the safety valve:

- The defendant may not have no more than one criminal history point (The Sentencing Guidelines assign criminal history points based on a defendant’s past criminal record)
- The defendant has not used a dangerous weapon during the offense
- The defendant is not an organizer or leader in the drug enterprise
- The defendant provided the government with all the information and evidence they know including for other crimes (providing “substantial assistance”)
- The offense must not have ended in a serious injury or death.⁴⁶

One of the requirements of “substantial assistance” is problematic because there is not a uniform standard of what that is, rather it is under the discretion of the prosecutor. The issue with this safety valve is that most of the convicted drug offenders with the mandatory minimums are low-level drug dealers who likely wouldn’t be able to provide substantial assistance, disqualifying them from the safety valve. Even with the safety valve the majority of drug offenders with mandatory minimums are low-level offenders and had little or no prior criminal record according to the United States Sentencing Commission (USSC).

Booker,” *Yale Law Journal* 123, no.1 (2013): 78.

42 Wendy Sawyer and Peter Wagner, “Mass Incarceration: The Whole Pie 2019,” *Prison Policy Initiative*, (2019).

43 Sawyer and Wagner, “Mass Incarceration,” (2019).

44 “2018 GUIDELINES MANUAL,” *United States Sentencing Commission*, (2018).

45 Doyle, “Mandatory Minimum Sentencing,” 1.

46 Doyle, “Mandatory Minimum Sentencing,” 1.

I. Constitutional Debate on Mandatory Minimums

Mandatory minimums have been argued to violate the right of due process, cruel and unusual punishment clauses, federalism as well as the equal protection clause of the 14th amendment because of its racial disparities. On the other hand, mandatory minimums could fall under legislative authority with the necessary and proper clause, treaty power, territorial and maritime jurisdiction, and the commerce clause. This constitutionality debate thus far has been on the side that mandatory minimums are constitutional through a series of different court cases that Senior Specialist in American Public Law Charles Doyle did examine in his research and stated, “By and large, courts have also found no impediment to imposition of mandatory minimum sentences under the Due Process, Equal Protection, or Cruel and Unusual Punishment Clauses, or the separation-of-powers doctrine”.⁴⁷

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⁴⁷ Doyle, “Mandatory Minimum Sentencing,” 1.

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