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To: Criminal Procedure and Sentencing Subcommittee

Re: Mandatory Minimum Sentences in Connecticut

Date: October 18, 2022

Introduction

This memorandum provides an overview of mandatory minimum sentences (mandatory minimums) prescribed in the Connecticut General Statutes (general statutes). The memo is organized in two parts. The first sections describe, list and categorize the various mandatory minimums based on the cited materials and the research of Gwenyth Ross, Alex Tsarkov and Louise Nadeau. The last two sections on National Momentum and Sentencing Without Mandatory Minimums are based on the research of Gwenyth Ross and Alex Tsarkov. This memorandum is provided as a resource for the Criminal Procedure and Sentencing Subcommittee and is not intended as legal advice or a legal opinion.

A statutory mandatory minimum sentence provides a minimum sentence that must be imposed by a judge. If there is no statutory exception to the mandatory minimum, the judge must impose at least the mandatory minimum sentence, although the judge may have discretion to impose a higher sentence within the prescribed penalty range.

Background

Connecticut began using mandatory minimum sentences in 1969 and their use was expanded in the 1980s and 1990s. The expansion is thought to be the result of efforts to deter crime and drug use, but may also be a result of the move to determinate sentencing in 1981. With respect to crime and drug use, policymakers hoped the minimum terms of incarceration would keep individuals convicted of serious offenses or drug offenses off the streets longer.¹ When prison populations rose and crime decreased in the early 2000s, reforms of mandatory minimums began in the form of presumptive sentencing² for some drug offenses and exemptions from minimums for drug-dependent people.³ In 2015, Public Act 15-2 (June Special Session) eliminated mandatory minimums for low-level drug offenses.

¹ Mandatory Minimum Sentences, Dec. 2005, Connecticut General Assembly Legislative Program Review and Investigations Committee.

https://www.cga.ct.gov/2005/pridata/studies/mandatory_minimum_sentences_final_report.htm

² Presumptive sentencing means that there is a predetermined sentencing range for an offense, but a judge can depart from the guideline when there is good cause to do so is shown.

³ Reforming Mandatory Minimum Sentences in Connecticut, Rep. Michael Lawlor, Federal Sentencing Reporter, Feb 2002 <https://www.jstor.org/stable/10.1525/fsr.2002.15.1.10?seq=1>

Determinate sentencing

Prior to July 1, 1981, Connecticut used a system of indeterminate sentences as provided in Section 53a-35 of the general statutes. The indeterminate sentencing system was used since the 1800s.⁴ Since July 1, 1981, felony imprisonment sentences have been imposed pursuant to the definite sentences in Section 53a-35a, which provides that the term shall be fixed by the court as follows:

(1)	(A) For a capital felony committed prior to April 25, 2012, under the provisions of section 53a-54b in effect prior to April 25, 2012, a term of life imprisonment without the possibility of release unless a sentence of death is imposed in accordance with section 53a-46a, or (B) for the class A felony of murder with special circumstances committed on or after April 25, 2012, under the provisions of section 53a-54b in effect on or after April 25, 2012, a term of life imprisonment without the possibility of release
(2)	For the class A felony of murder, a term not less than twenty-five years nor more than life
(3)	For the class A felony of aggravated sexual assault of a minor under section 53a-70c, a term not less than twenty-five years or more than fifty years
(4)	For a class A felony other than an offense specified in subdivision (2) or (3) of this section, a term not less than ten years nor more than twenty-five years
(5)	For the class B felony of manslaughter in the first degree with a firearm under section 53a-55a, a term not less than five years nor more than forty years
(6)	For a class B felony other than manslaughter in the first degree with a firearm under section 53a-55a, a term not less than one year nor more than twenty years
(7)	For a class C felony, a term not less than one year nor more than ten years
(8)	For a class D felony, a term not more than five years
(9)	For a class E felony, a term not more than three years
(10)	For an unclassified felony, a term in accordance with the sentence specified in the section of the general statutes that defines or provides the penalty for the crime

Standard mandatory minimum language

Although mandatory minimum provisions vary, they are phrased in substantially the following form:

(c) Home invasion is a class A felony and **any person found guilty under this section shall be sentenced to a term of imprisonment of which ten years may not be suspended or reduced by the court.** (CGS § 53a-100aa(c))(emphasis added)

Statutory mandatory minimums in the general statutes

This memo includes tables that list the mandatory minimums in the general statutes. The tables are based on a search of the 2021 general statutes, as amended by the 2022 Supplement to the

⁴ Mandatory Minimum Sentences, Dec. 2005, Connecticut General Assembly Legislative Program Review and Investigations Committee.

general statutes and the 2022 regular session public and special acts. As of this writing, we identified over 80 sections of the general statutes and over 90 offenses with mandatory minimums. These offenses range from Class A misdemeanors with 48-hour minimum sentences to Class A felonies with mandatory life without release. Mandatory minimums remain a significant aspect of sentencing, especially for high-classification felonies, weapons-related offenses, high-level drug-related offenses, and operating under the influence-related offenses. Although exceptions are made and judicial discretion is allowed for some offenses, most minimum sentences are truly mandatory: a court cannot decrease the statutory mandatory minimum sentence. This memo describes mandatory minimum sentence laws in Connecticut, including the relevant offenses, mandatory minimum sentence lengths, and any possibilities for judicial discretion.

Class A Felonies

In general, Class A felonies may not be reduced or suspended. This makes Class A felonies without higher mandatory minimums default to a 10-year minimum sentence of imprisonment.⁵ There are higher mandatory minimums of 20, 25, and 50 years, as well as life without possibility of release. The exception is arson, for which there is no mandatory minimum pursuant to *State v. O'Neill*.⁶ Sexual assault in the first degree has a 10-year required sentence including special parole, but only a five-year mandatory minimum prison sentence. Below, Table 1 lists Class A felonies and their respective mandatory minimums sentences.

Table 1: Class A Felonies with Mandatory Minimums

Offense (CGS §)	Mandatory Minimum Sentence
Aggravated sexual assault of a minor (53a-70c)	1st offense: 25 years; Subsequent offense: 50 years
Assault of pregnant woman resulting in termination of pregnancy (53a-59c)	10 years
Commercial sexual abuse of a minor (53a-83b(c), as amended by PA 21-103, § 5)	10 years, if victim is under age 15
Employing a minor in an obscene performance (53a-196a)	10 years
Felony murder (53a-54c)	25 years
Home invasion (53a-100aa)	10 years
Kidnapping 1st degree (53a-92)	10 years

⁵ CGS § 53a-28, 53a-29, and 53a-35a (See Table under Determinate Sentencing above)

⁶ 200 Conn. 268 (1986).

Kidnapping 1st degree with a firearm (53a-92a)	10 years
Murder (53a-54a)	25 years
Murder with special circumstances (53a-54b)	Life imprisonment without possibility of release
Sexual assault 1st degree (53a-70(b)(2))	5 or 10 years with mandatory 10 years combined imprisonment and special parole 10 years for victim under age 10
Aggravated sexual assault 1st degree (53a-70a(b)(2))	10 years; 20 years, if victim is under age 16
Trafficking in persons (53a-192a, as amended by PA 21-103, § 3)	10 years

Class B, C, and D Felonies and Class A Misdemeanors (excluding weapon possession and transfer offenses, high-level drug-related offenses, and operating under the influence-related offenses).

There are offenses below Class A felonies that have mandatory minimums ranging from Class B felonies to Class A misdemeanors. Unlike Class A felonies, these offenses do not have mandatory minimums on account of their class, but are determined independently within the statute for the offense. There are no mandatory minimums for Class E felonies, which class was created in 2013⁷, or misdemeanors below Class A.

Class B felonies have mandatory minimums ranging from nine months to 10 years. Class C felonies have mandatory minimums ranging from nine months to five years (although one requires 10 years of combined imprisonment and special parole). Class D felonies have mandatory minimums ranging from one year to five years. Class A misdemeanors have mandatory minimums of one year. One-year statutory sentences for misdemeanors are designated as sentences for 364 days under Section 53a-36a of the general statutes.

Below, Tables 2 through 5 list offenses and their respective mandatory minimums by class. Unclassified offenses are listed in Table 6. Weapon offenses, high-level drug-related offenses, and operating under the influence-related offenses, are listed in Tables 7 through 9.

⁷ See Public Act 13-258, An Act Concerning the Recommendations of the Connecticut Sentencing Commission Regarding Unclassified Felonies.

Table 2: Class B Felonies with Mandatory Minimums

Offense (CGS §)	Mandatory Minimum Sentence
Aggravated sexual assault 1st degree with victim age 16 or older (53a-70a(b)(1))	5 years
Sexual assault 2nd degree (53a-71)	9 months
Assault 1st degree (53a-59)	5 years when committed with deadly weapon or dangerous instrument; 10 years if victim is under age 10 or a witness
Assault of an elderly, blind, disabled, or pregnant person or person with intellectual disability 1st degree (53a-59a)	5 years
Burglary 1st degree (53a-101)	5 years if armed with explosive, deadly weapon or dangerous instrument
Computer crime in furtherance of terrorist purposes (53a-301)	5 years if directed against a public agency charged with public safety
Enticing a minor (53a-90a)	1st offense if victim under age 13: 5 years; Subsequent offense if victim under age 13: 10 years
Importing child pornography (53a-196c)	5 years
Injury or risk of injury to a minor (53-21)	5 years if involving contact with intimate parts of a minor under age 13
Kidnapping 2nd degree (53a-94)	3 years
Kidnapping 2nd degree with a firearm (53a-94a)	3 years
Manslaughter 1st degree with a firearm (53a-55a)	5 years
Possessing child pornography 1st degree (53a-196d)	5 years
Promoting prostitution 1st degree (53a-86)	9 months if victim under age 18
Robbery 1st degree (53a-134)	5 years when armed with a deadly weapon
Sexual assault 1st degree (53a-70(b)(1))	2 years; 10 years if victim under age 10
Sexual assault 3 rd degree with a firearm with victim under age 16 (53a-72b)	2 years with mandatory 10 years combined imprisonment and special parole

Table 3: Class C Felonies with Mandatory Minimums

Offense (CGS §)	Mandatory Minimum Sentence
Assault 2nd degree with a firearm resulting in serious physical injury (53a-60)	1 year
Burglary 2nd degree with a firearm (53a-102a)	1 year
Contaminating a public water supply or food supply for terrorist purposes (53a-303)	5 years
Hindering prosecution 1st degree (53a-165aa)	5 years
Increasing speed to elude police after signaled to stop (14-223(b))	1 year, if a prior offense and the subsequent offense result in death or serious injury to another
Manslaughter 2nd degree with a firearm (53a-56a)	1 year
Possessing child pornography 2nd degree (53a-196e)	2 years
Sexual assault 2nd degree with victim age 16 or older (53a-71)	9 months
Sexual assault 3rd degree with a firearm with victim age 16 or older (53a-72b)	2 years with 10 years combined imprisonment and special parole
Stealing a firearm (53a-212)	2 years

Table 4: Class D Felonies with Mandatory Minimums

Offense (CGS §)	Mandatory Minimum Sentence
Assault 2nd degree with a firearm (53a-60a)	1 year
Assault of an elderly, blind, disabled, or pregnant person or person with intellectual disability 2nd degree (53a-60b)	2 years
Assault of an elderly, blind, disabled, or pregnant person or person with intellectual disability 2nd degree with a firearm (53a-60c)	3 years
Burglary 3rd degree with a firearm (53a-103a)	1 year

Possessing child pornography 3rd degree (53a-196f)	1 year
Refusing to stop boat when ordered by officer in law enforcement vessel (15-154(d)(e))	1 year, if a prior offense and the subsequent offense result in death or serious injury to another

Table 5: Class A Misdemeanors with Mandatory Minimums

Offense (CGS §)	Mandatory Minimum Sentence
Assault 3rd degree, when committed with criminal negligence and causing physical injury to another with deadly weapon, dangerous instrument, or electronic defense weapon (53a-61)	1 year (Designated as 364 days under 53a-36a)
Assault of an elderly, blind, disabled, or pregnant person or person with intellectual disability 3rd (53a-61a)	1 year (Designated as 364 days under 53a-36a)

Table 6: Unclassified Offenses with Mandatory Minimums

Offense (CGS §)	Mandatory Minimum Sentence
Operating a motor vehicle without license (14-36, or while refused, suspended or revoked under 14-215(a), after two or more prior violations (14-36(i)(2)(B)).	3rd and subsequent offense: 90 days
Operating a motor vehicle with a revoked, suspended, or refused license or registration (14-215(b)(2)(B), after two or more prior violations of 14-36 or 14-215(a))	3rd and subsequent offense: 90 days
Operating a motor vehicle with license suspended for driving under the influence or violating interlock ignition device or court orders (14-215(c)(1), (2) and (3))	30 days: unless mitigating circumstances; Second offense: 120 days, unless mitigating circumstances; Third or subsequent offense: One year, unless mitigating circumstances
Persistent felony offenders (53a-40(o))	Court may impose next highest degree of felony; Minimum sentence 3 years

Categories of Interest

Not included in the tables above are three categories of offenses that were identified with particularly high rates of mandatory minimums or that have historical or political significance. These include weapons offenses, operating under the influence offenses, and drug offenses. Many offenses involving the possession, carrying, transfer, or use of firearms have mandatory minimums. Weapons-related offenses are also of special political interest due to community concern over gun violence. The legislature imposed many of these weapons-related mandatory minimums over the past decade.⁸

Operating under the influence-related offenses were identified due to a high number of offenses with mandatory minimums, although the statutes sometimes afford judges discretion to depart from the mandatory minimum for these offenses. First-time driving or boating under the influence offenders are often diverted to pretrial alcohol education programs and therefore avoid prosecution. Additionally, the court can fully suspend some first-time-offender sentences in favor of community service.

Finally, drug-related offenses are of special interest for historical reasons given the role of mandatory minimums in the war on drugs. Some of the most significant reforms of mandatory minimums have involved drug-related offenses, including decriminalizing possession of small amounts of marijuana in 2011⁹ and eliminating mandatory minimums for drug possession in school zones in 2015.¹⁰ Below, Tables 7 through 9 list offenses and their respective mandatory minimums by category of interest.

Table 7: Weapon Possession and Transfer Offenses with Mandatory Minimums

Offense (CGS §)	Mandatory Minimum Sentence
(Illegal sale, delivery or transfer of a pistol or revolver to person prohibited from possessing under 53a-217c, or in violation of section procedures (29-33(i))	2 years
Illegal sale, delivery or transfer of pistol or revolver knowing it is stolen or identification mark altered (29-33(i))	3 years
False statement re purchase, sale, delivery or other transfer of pistol or revolver (29-34(a))	2 years

⁸ See e.g., CT Public Act 13-3, An Act Concerning Gun Violence Prevention and Children’s Safety; Public Act 19-6, An Act Concerning Ghost Guns

⁹ CT Public Act 11-71

¹⁰ CT Public Act 15-2, June Special Session

Transfer pistol or revolver to person under age 21 except for permitted temporary use (29-34(b))	2 years
Altering identification mark of firearm (29-36(b))	2 years
Manufacture, sale or transfer of firearm without serial number (29-36a(h))	2 years
Carrying a handgun without having obtained a permit (29-35)(pursuant to 29-37(b))	1 year absent any mitigating circumstances
Criminal possession of a pistol or revolver (53a-217c)	2 years
Criminal possession of firearm, ammunition, or electronic defense weapon (53a-217)	2 years
Distributing, transporting, or importing into the state, keeping for sale, offering or exposing for sale, or giving a banned assault weapon (53-202b(a))	2 years
Transfer, sell or give assault weapon to minor in violation of 53-202b(a)(53a-202(b))	6 years
Firearms trafficking (53-202aa)	3 years
Manufacture of firearm from polymer plastic that is not detectible as security exemplar as defined in 18 USC 922(p) (53-206i)	2 years
Purchase, receive or transfer unfinished frame or lower receiver unless exception applies (53-206j(h))	2 years
Violate Section 53-206j knowing frame or receiver is stolen or identification mark altered (53-206j(h))	3 years
Criminal use of firearm or electronic defense weapon (53a-216)	5 years
Purchase firearm with intent to illegally transfer 'straw man transfer' (29-37j(a))	2 years

Solicit, employ or assist person to commit straw man purchase (29-37j(b))	1 year 2 years, if prohibited from purchasing or otherwise receiving or possessing the firearm
Straw man transfer or purchase violation if convicted of felony within prior five-year period (29-37j(c))	3 years
Possessing a banned weapon (53-202c)	1 year, except for first-time offenders who possess a weapon that was legally owned before 2013 or 1993, depending on the weapon

Table 8: Operating Under the Influence-Related Offenses with Mandatory Minimums

Offense (CGS §)	Mandatory Minimum Sentence
Boating during license suspension for boating under the influence (15-156(d)(1) and (d)(2))	30 days absent mitigating circumstances
Boating under the influence (15-133)	1st offense: 48 hours. Option to order six month suspended sentence with 100 hours community service; 2nd offense: 120 days; Subsequent offense: 1 year
Driving during license suspension for driving under the influence (DUI), DUI related offenses, or for violating ignition interlock restrictions or related court orders (14-215(c))	30 days absent any mitigating circumstances
DUI (14-227a)	1st offense: 48 hours. Option to order six month suspended sentence with 100 hours community service; 2nd offense: 120 days; Subsequent offense: 1 year
DUI while operating a school bus, student transportation vehicle, or vehicle designed to carry children (14-227n)	With no child passengers: 30 days; With child passengers: 120 days
DUI with a child passenger (14-227m)	1st offense: 30 days; 2nd offense: 180 days; Subsequent offense: 2 years

Table 9: Drug-related Offenses with Mandatory Minimums

Manufacturing, distributing, selling, etc. heroin, methadone, cocaine, or LSD as a non-drug-dependent person (21a-278)	5 years, unless suspended as shown in Table 11.
Manufacturing, distributing, selling, etc. narcotics, hallucinogens, amphetamine-type substance, or over a kg. of cannabis-type substance as a non-drug-dependent person (21a-278)	10 years, unless suspended as shown in Table 11.
Sale of drugs to minor by non-drug-dependent person at least 18 years old and 2 years older (21a-278a(a))	2 years
Sale of drugs near school, public housing project, or day care center (21a-278a(b))	3 years, unless departure under 21a-283a
Use of minor to sell drugs (21a-278a(c))	3 years

Enhanced Penalties

There are statutory enhanced penalties for persistent offenders, carjacking, acts of terrorism, and use of a firearm or assault weapon during the commission of a Class A, B, or C felony. These either upgrade the sentence to the next degree or add to the base sentence and are often mandatory. For example, if an individual is convicted of carjacking under Section 53a-136a of the general statutes, the individual will receive a mandatory three-year sentence in addition to any sentence for the underlying robbery. With respect to an enhanced penalty, if the sentence enhancement causes a person who commits a Class B felony to be sentenced for a Class A felony, the person would be subject to the 10-year mandatory minimum sentence for the Class A felony.

Table 10: Enhanced penalties with Mandatory Minimums

Use, possession or delivery of drug paraphernalia other than cannabis (21a-267(c))	1 year, by non-student with intent to commit violation at or near elementary or secondary school (Reduction may be allowed under 21a-283a)
Commission of Class A, B, or C felony with assault weapon (53-202j)	8 years, in addition, and consecutive, to the term of imprisonment for conviction of such felony

Commission of Class A, B, or C felony with firearm other than assault weapon (53-202k)	5 years, in addition, and consecutive, to the term of imprisonment for conviction of such felony
Robbery of occupied motor vehicle (53a-136a)	3 years additional and consecutive to term of imprisonment for offense
Act of terrorism, enhanced sentence (53a-300)	Imprisonment sentence for next more serious degree of felony (becomes minimum mandatory if enhanced to Class A felony)
Persistent felony offenders (53a-40(o))	Court may impose next highest degree of felony; Minimum sentence 3 years

Judicial Discretion to Depart from or Suspend Mandatory Minimums

The laws establishing mandatory minimum sentences eliminate judicial discretion, but by using certain procedures under certain circumstances, judges can depart from some of these mandatory minimums. For some offenses, the presence of mitigating circumstances can eliminate the mandatory minimum, allowing the judge to evaluate the specific circumstances of the case. In the case of arson murder, the mandatory sentence can be suspended pursuant to court decision on the grounds that there is no statutory provision prohibiting suspension of a sentence for an unclassified felony.¹¹

Operating under the influence can be replaced by a sentence that can be fully suspended for first-time offenders. Some other offenses can be suspended under certain conditions such as when a person who was a minor or mentally impaired at the time of the offense. Finally, some offenses allow the judge to depart from the mandatory minimum for good cause shown. Table 11 lists offenses which permit judicial discretion and the mechanisms allowed for each offense.

Table 11: Offenses Where Judicial Discretion is Permitted

Offense (CGS §)	Mechanism(s) for Judicial Discretion
Arson murder (53a-54d)	May be suspended
Carrying a handgun without having obtained a permit (29-35)(pursuant to 29-37(b))	No mandatory minimum in the presence of mitigating circumstances
Driving or boating during license suspension for driving or boating under the influence (14-215(c); 15-156, respectively)	No mandatory minimum in the presence of mitigating circumstances

¹¹ *State v. Dupree*, 196 Conn. 655 (1985)

Driving or boating under the influence (14-227a; 15-133, respectively)	See Table 8 above
Manufacturing, distributing, selling, etc. hallucinogens, amphetamine-type substance, or over a kg of cannabis-type substance as a non-drug-dependent person (21a-278)	May be suspended if person was under age 18 or significantly mentally impaired or when good cause is shown and no threats, physical force, or weapons were involved
Manufacturing, distributing, selling, etc. heroin, methadone, cocaine, or LSD as a non-drug-dependent person (21a-278)	May be suspended if person was under age 18 or significantly mentally impaired or when good cause is shown and no threats, physical force, or weapons were involved
Possessing a banned weapon (53-202c)	1 year, except some first-time violations

National Momentum

Like in Connecticut, movement away from the use of some mandatory minimums is happening in other states and at the federal level. As early as 1994, the United States Code included exceptions for drug-related federal minimums in 18 U.S.C. § 3553(f), and in 2013, the United States Attorney General instructed prosecutors not to seek a drug charge with a minimum mandatory unless the defendant was violent, was a leader, had ties to criminal organizations, or was a repeat offender.¹²

In Minnesota and New York, the additional mandatory minimum for use of a firearm during certain crimes can be reduced at the court's discretion. Oregon enacted broader judicial discretion, allowing the court to give a lesser sentence than the mandatory minimum when there is a compelling reason to do so in many crimes including some violent crimes. Montana offers exceptions to mandatory minimums for all offenses in certain circumstances, including age, mental capacity, and duress.¹³

In other attempts, in 2021, the Virginia Senate passed a bill that would have eliminated all mandatory minimums. It was not reconciled with the House's version that would have also eliminated some mandatory minimums.¹⁴ Also in 2021, a bill in New Jersey that would have eliminated mandatory minimums for non-violent offenses passed in both the House and Senate but was vetoed by the Governor.¹⁵ In 2011, the Washington D.C. Criminal Code Reform Commission

¹² Department Policy on Charging Mandatory Minimum Sentences and Recidivist Enhancements in Certain Drug Cases, Office of the Attorney General <https://big.assets.huffingtonpost.com/HolderMandatoryMinimumsMemo.pdf>

¹³ Turning off the Spigot How Sentencing Safety Valves can Help States Protect Public Safety and Save Money, Molly M. Gill, Federal Sentencing Reporter, Vol. 25, No. 5, June 2013, pp. 349-358 <https://www.jstor.org/stable/10.1525/fsr.2013.25.5.349>

¹⁴ HB 2331; SB 1443, Virginia's Legislative Information System <https://lis.virginia.gov/cgi-bin/legp604.exe?211+sum+HB2331> <https://lis.virginia.gov/cgi-bin/legp604.exe?211+sum+SB1443>

¹⁵ Bill S3456, New Jersey Legislature <https://www.njleg.state.nj.us/bill-search/2020/S3456>

submitted to the D.C. Council the “Revised Criminal Code Act of 2021” which includes the elimination of all mandatory minimums. The City Council is expected to vote on the proposal in the Fall of 2022.^{16,17} Interestingly, the 2017 Model Penal Code rules out mandatory minimums by omission, always allowing judges the option of giving probation or suspended sentences.¹⁸

There has also been national movement away from mandatory minimums specifically for juveniles through legislation and litigation. Since at least 1995 in Montana¹⁹ and since 2005 in Washington,²⁰ mandatory minimums have not applied to offenders under the age of 18. More states have recently codified similar protections. In 2021, Maryland passed the Juvenile Restoration Act, which authorized courts to impose a sentence less than the mandatory minimum when sentencing a minor convicted as an adult.²¹ In 2020, Virginia passed a similar bill allowing courts to depart from any mandatory minimum and suspend any portion of a sentence for juveniles tried as adults.²² In 2017, Nevada passed a bill allowing courts to reduce any mandatory minimum period of incarceration by up to 35 percent for juveniles convicted as adults. In 2014, the Iowa Supreme Court ruled that mandatory minimum sentences without individualized sentencing hearings are unconstitutional when applied to juveniles.²³ In 2017, the Washington Supreme Court held that courts must have absolute discretion to depart below minimum sentences and sentencing enhancements when sentencing juveniles in adult court.²⁴

Sentencing Without Mandatory Minimums

When judicial discretion is allowed, judges often prescribe sentences within guidelines. The Minnesota Sentencing Guidelines Commission reported that in 2019, 73.7% of cases had no departure from the presumptive sentence. Among cases with departures, 94% were downward.²⁵ The United States Sentencing Commission found that in 2012, 52.4% of sentences were within the guideline range, and only 17.8% of sentences were non-government sponsored deviations (i.e. not part of an early disposition or substantial assistance program). 96% of all departures were

¹⁶ 2021 Revised Criminal Code Act Overview, Criminal Code Reform Commission

<https://ccrc.dc.gov/page/overview>

¹⁷ Washington D.C. Bill 24-416- Revised Criminal Code Act of 2021 <https://lims.dccouncil.us/Legislation/B24-0416>

¹⁸ Model Penal Code: Sentencing—Workable Limits on Mass Punishment, Kevin R. Reitz et al., Crime and Justice, 2019 <https://doi.org/10.1086/701796>

¹⁹ 46-18-222, Montana Code Annotated 1995 <https://leg.mt.gov/bills/1995/mca/46/18/46-18-222.htm>

²⁰ Washington 2005 c 437 § 2 <https://lawfilesext.leg.wa.gov/biennium/2005-06/Pdf/Bills/Session%20Laws/House/1187.SL.pdf?cite=2005%20c%20437%20%A7%202>

²¹ SB 494, Maryland General Assembly

<https://mgaleg.maryland.gov/mgaweb/Legislation/Details/SB0494?ys=2021RS>

²² HB 744, Virginia’s Legislative Information System <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB744>

²³ State v. Lyle 854 N.W.2d 378 (Iowa 2014)

²⁴ State v. Houston-Sconiers 191 Wn. App. 436 (Wash. Ct. App. 2015)

²⁵ 2021 Report to the Legislature, Minnesota Guidelines Sentencing Commission https://mn.gov/sentencing-guidelines/assets/2021MinnSentencingGuidelinesCommReportLegislature_tcm30-463260.pdf

downward.²⁶ An earlier United States Sentencing Commission report showed that from 2003-2005, 69.4 to 72.2% of sentences were within guidelines, depending on the year. It also showed that the most common reason for departure was substantial assistance,²⁷ where defendants help investigation or prosecution efforts against other individuals, accounting for departure in 14.4 to 15.9% of sentences,²⁸. Overall, it seems that judges most often sentence within guidelines but are far more likely to depart downwards than upwards when they do depart.

²⁶ National Comparison of Sentence Imposed and Position Relative to the Guideline Range, U.S. Sentencing Commission https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2012/TableN_0.pdf

²⁷ When defendants help investigation or prosecution efforts against other individuals, courts often depart from sentencing guidelines. This is known as a substantial assistance departure.

²⁸ Departures and Sentences Within the Guideline Range (Pre-Booker), U.S. Sentencing Commission <https://www.ussc.gov/departures-and-sentences-within-guideline-range-pre-booker>