



## HOW FEDERAL SENTENCING WORKS: MANDATORY MINIMUMS, STATUTORY MAXIMUMS, AND SENTENCING GUIDELINES

When Congress creates a criminal law, it usually includes a punishment for that crime. The punishment includes a *statutory maximum* (the highest amount of punishment a person can receive) and sometimes includes a *mandatory minimum* (the lowest amount of punishment a person must receive). In other words, mandatory minimums create a floor, and statutory maximums create a ceiling for punishment. The federal sentencing guidelines are not laws created by Congress. Instead, they are written by the U.S. Sentencing Commission. When a person is sentenced in federal court, the court will consider *both* the punishment allowed in the law *and* by the sentencing guidelines. Keep reading to see how this all works together.

	<b>MANDATORY MINIMUMS</b>	<b>STATUTORY MAXIMUMS</b>	<b>SENTENCING GUIDELINES</b>
<b>CREATED BY</b>	Congress	Congress	U.S. Sentencing Commission
<b>CAN BE AMENDED BY</b>	<b>Only</b> Congress.	<b>Only</b> Congress.	The Commission (typically) or Congress (occasionally). Congress may reject the Commission’s guidelines or amendments by voting against them. Congress may also order the Commission to create or amend guidelines (example: when Congress creates a new crime it may tell the Commission to write a new guideline for that crime).
<b>HOW THEY ARE AMENDED</b>	Congress must pass a new law.	Congress must pass a new law.	The Commission proposes an amendment to the guidelines, which becomes law unless it is rejected by Congress.
<b>WHO MAKES AMENDMENTS RETROACTIVE</b>	<b>Only</b> Congress, but increases to a mandatory minimum cannot be made retroactive.	<b>Only</b> Congress, but increases to a statutory maximum cannot be made retroactive.	The Commission.
<b>MANDATORY OR ADVISORY?</b>	Mandatory – courts must impose them unless an exception applies.	Mandatory – courts may not go above them unless the facts supporting the longer sentence were included in the indictment and proven to a jury.	Advisory – courts must consider the guidelines, but they are only one factor courts consider when imposing a sentence that is “sufficient but not greater than necessary” to fulfill the purposes of punishment.

## **FEDERAL SENTENCING RULES TO REMEMBER:**

### **Rule 1: There are only two exceptions to mandatory minimum sentences:**

1. **The “safety valve.”** This narrow, five-part test only applies to federal drug offenses. If an offender meets all five parts of the test, the judge must sentence the person below the mandatory minimum sentence, using the sentencing guidelines to calculate a new sentence. Read FAMM’s factsheet, *Safety Valves in a Nutshell*, to learn more.
2. **Substantial assistance.** This exception applies to all mandatory minimum sentences. If an offender gives prosecutors information that helps with the investigation or prosecution of other people, the prosecutor may ask the court to give the offender a sentence below the mandatory minimum sentence.

**Rule 2: Unless the safety valve or substantial assistance applies, the mandatory minimum trumps any shorter guideline sentence.** Example: Joe is convicted under a law that requires a 5-year (60-month) mandatory *minimum*. The sentencing guidelines call for a sentencing range of 37-46 months for Joe. Unless Joe qualifies for the safety valve or substantial assistance, the judge **MUST** give Joe a prison sentence of 5 years (60 months). The longer mandatory minimum (60 months) trumps the shorter guideline sentence (37-46 months).

**Rule 3: Unless the safety valve or substantial assistance applies, the mandatory minimum is the bottom, not the top, which the judge must consider.** Example: Sally commits a crime that has a 10-year (120-month) mandatory *minimum* and a 20-year (240 months) statutory *maximum*. Under the sentencing guidelines, she is subject to an advisory range of 151-188 months in prison. The judge must give Sally *at least* the 10-year mandatory minimum sentence, unless she qualifies for the safety valve or substantial assistance. However, the guidelines allow (but do not require) the judge to go *above* the mandatory minimum and give Sally any of the following:

- a sentence between 10 years (120 months – the mandatory minimum) and 151 months
- a sentence within the guideline range of 151-188 months, or
- a sentence above 188 months – as long as this sentence does not go above the statutory maximum of 240 months (unless the facts supporting a sentence longer than that were included in the indictment and proven to a jury).

### **LEGAL DISCLAIMER**

FAMM cannot provide legal advice, representation, referrals, research, or guidance to those who need legal help. Nothing on this form is intended to be legal advice or should be relied on as legal advice. If you or your loved one feel that you need legal advice, you should speak with an attorney.

9/15/12