

SAFETY VALVES IN A NUTSHELL

Q1: What is a mandatory minimum?

A: A mandatory minimum is a pre-determined sentence, created by Congress or a state legislature, which the court **must** give to a person convicted of a crime. A mandatory minimum sentence applies automatically, no matter what the unique circumstances of the offender or the offense are. There are mandatory minimums for many crimes, but they most often apply to gun and drug crimes. Mandatory minimums are triggered by only a few facts – usually just the type and weight of the drug involved or the possession or presence of a gun.

Example: A person is convicted of selling 28 grams of crack cocaine. The mandatory sentence is five years in prison without parole. The court **must** give this sentence, even if it is too harsh for the person, his role in the offense, or the nature of the crime.

Q2: What is a safety valve?

A: A “safety valve” is one of the only ways out of receiving a mandatory minimum sentence. Safety valves are laws created by Congress or a state legislature that allow courts to give an offender less time in prison than the mandatory minimum requires – but only if the person or his offense meets certain special requirements.

Q3: Is there a federal safety valve?

A: Yes. It was created in 1994, when Congress realized that many first-time, low-level, and nonviolent drug offenders were receiving mandatory minimums that did not fit them or their crimes. FAMM and its members played a key role in getting Congress to create the safety valve.

Q4: How does the federal safety valve work?

A: The federal safety valve is a strict, five-part test. If – and only if – all five requirements in the law are met, the court must sentence a person below the mandatory minimum, generally by using the federal sentencing guidelines to create a sentence that fits the offender and his crime.

Example: A person is convicted of selling 28 grams of crack cocaine. The federal mandatory minimum sentence for this offense is five years. However, the person meets all five requirements of the federal safety valve:

- (1) no one was harmed during the offense,
- (2) the person has little or no history of criminal convictions,
- (3) the person did not use violence or a gun,
- (4) the person was not a leader or organizer of the offense, AND
- (5) the person told the prosecutor all that he knows about the offense.

The court will use the sentencing guidelines and give the person a sentence below the mandatory minimum – for example, three years in prison instead of five.

Q5: How many people have benefitted from the federal safety valve?

A: Each year, about one quarter of federal drug offenders receive the benefit of the safety valve. Since 1995, almost 80,000 federal drug offenders facing mandatory minimums have received the safety valve and received shorter, fairer, more reasonable sentences. This has saved the federal government about \$28,000 per prisoner, per year, for each year shaved off the sentence.

Q6: Do states also have safety valves?

A: Yes, some states do. The federal safety valve only applies to people charged and sentenced in federal courts. Those charged and sentenced in state courts must look to their state's laws. Many states have mandatory minimum sentences, and a few of those states also have their own unique safety valves. While other states may also have safety valves, we know that the following states contain safety valves in their laws:

- Montana (for all crimes);
- Maine (for drug trafficking crimes);
- Oregon (for a variety of crimes, including kidnapping, second degree manslaughter, and repeat property offenders);
- Connecticut (for drug crimes);
- Minnesota (for certain crimes involving the use of a gun or dangerous weapon).

Example: Among other crimes, Montana has mandatory minimums for aggravated assault, many sex offenses, robbery, kidnapping, and drug crimes. In these cases, Montana's safety valve allows courts to give sentences below the mandatory minimum if the offender was a minor, had a significantly impaired mental capacity, committed the crime under unusual or substantial duress, was an accomplice who played a minor role, or when the crime did not involve a weapon or serious injury to the victim.

Example: Minnesota has one-, three-, and five-year consecutive mandatory minimum sentences for using or displaying a gun or dangerous weapon while committing certain offenses, including many violent offenses (murder, assault, robbery, sex offenses) and drug crimes. Courts may sentence some of these offenders below the mandatory minimums (or give them probation instead of prison time) whenever the court finds "substantial and compelling reasons to do so." In 2010, 48% of Minnesota offenders subject to these mandatory minimums received the safety valve. On average, their sentences were 38 months shorter than those of people who received the mandatory minimum, saving Minnesota almost 1,200 prison beds and \$37.5 million in prison costs.

Q7: What are the benefits of safety valves?

A: Safety valves have many benefits. Safety valves

1. **Protect public safety.** Safety valves don't mean that people get off without any prison time, just that they don't get any *more* prison time than they deserve. Safety valves thus help prevent prison overcrowding and save scarce prison space and resources for people who are a real threat to the community.

2. **Give courts flexibility to punish enough – but not too much.** Safety valves allow courts – in narrow circumstances – to sentence a person below the mandatory minimum if that sentence is too lengthy, unjust or unreasonable, or doesn't fit the offender or the crime.

Example: The safety valve allows the court to avoid unreasonable outcomes, such as a first-time drug courier getting the same sentence as a major drug kingpin.

2. **Save taxpayers money.** When courts sentence people below the mandatory minimum, people spend less time in prison than they otherwise would be required to, which costs taxpayers less in corrections costs.

Example: It costs taxpayers over \$28,000 to put one person in federal prison for one year. A person who receives a 10-year mandatory minimum will cost taxpayers about \$280,000. If a person receives the benefit of the safety valve and is sentenced to five years in prison, this costs only about \$140,000. Taxpayers save almost \$140,000 in corrections costs. These savings can be spent, for example, on reducing the national deficit; improving schools, roads, or health care; increased funding to law enforcement; or tax cuts.

Q8: How could the current federal safety valve be improved?

A: First, it should be expanded to apply to all crimes that carry mandatory minimums. The federal safety valve currently applies only to certain types of drug offenders. It does not apply to mandatory minimums for all of the federal drug offenses or for any other federal crimes, such as gun possession offenses (which can carry mandatory sentences of five, 10, or 15 years or more in prison, even for some first-time offenders).

Second, the safety valve should be expanded to apply whenever justice demands it. The current safety valve is very strict – many nonviolent, low-level offenders fail to meet all the requirements of the five-part test (see above) but still do not deserve the full mandatory minimum term in prison. For example, in 2011:

- More than half of all federal drug offenders had little or no criminal history,
- Almost 85% did not have or use any weapons,
- Only 6% were considered leaders, managers, or supervisors of others, BUT
- Only about 23% of all drug offenders received the benefit of the safety valve.

One way to expand the federal safety valve is to replace the current narrow five-part test with a broader standard. Congress should rewrite the federal safety valve so that courts are allowed to give a sentence below the mandatory minimum whenever the mandatory minimum is longer than



necessary to provide a just punishment, deter crime, protect the public, or rehabilitate the offender. These are guiding principles for judges in every case, under 18 U.S.C. § 3553(a).

Q9: How can we help expand or create more safety valves for mandatory minimums?

A: Only Congress and state legislatures can create or expand safety valves, and they will only do it if the public tells them to! You can help us pass, change, and improve these laws by writing to your legislators, educating your friends and neighbors, and by donating to FAMM.

Q10: Where can I learn more?

A: Visit us online at www.famm.org. You can also find us on Twitter and Facebook!

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