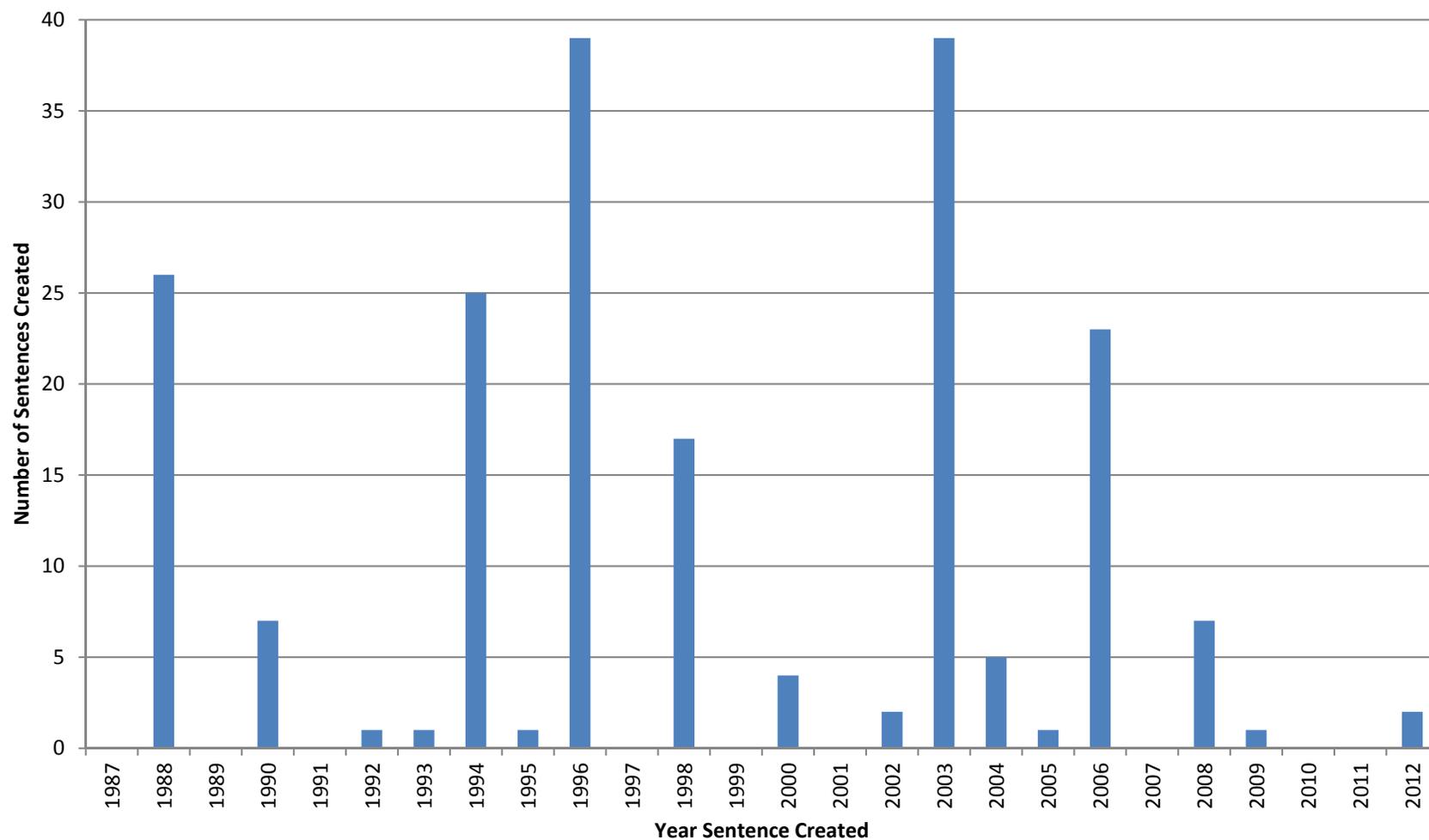




## Mandatory Minimum Sentences Created, Increased, or Expanded By Congress, 1987-2012





## METHODOLOGY

### **What this Graph Depicts**

This graph depicts the number of times federal mandatory minimum sentences were created, increased, or expanded by Congress each year between 1987 and 2012. As of August 2012, there were 201 such new sentences or increases or expansions of existing sentences.

### **How Mandatory Minimums Were Counted**

FAMM performed extensive analysis of the legislative history of mandatory minimum sentencing laws to arrive at the data for this graph. Each statute currently carrying a mandatory minimum sentence was broken down and studied. A mandatory minimum sentence was counted as being created, increased, or expanded:

- (1) the first time Congress created, increased, or expanded it,
- (2) any time Congress subsequently increased the length of an existing mandatory minimum or rewrote a statute and included the mandatory minimum sentence again (e.g., the redrafting of 18 U.S.C. § 924 in 1998),
- (3) any time Congress amended the statute to create a new substantive offense or to expand the scope of conduct to which the mandatory sentence applied (e.g., attempt and conspiracy; adding the use of computers or the intent to transmit to certain child pornography offenses; adding public housing as a protected area in which enhanced drug trafficking sentences applied under 21 U.S.C. § 860).

### **When Mandatory Minimums Were Not Counted**

Mandatory minimums were not counted for purposes of this chart when Congress amended statutes to make a clarification, technical correction, or other alteration that did not change or expand the substantive offense (e.g., defining jurisdictional nexus using language like “in interstate commerce”).

Additionally, certain mandatory sentences were counted only once, though they applied to multiple substantive offenses. For example, there are five mandatory minimum sentences under 21 U.S.C. § 841(b)(1)(A), ranging from five years to life imprisonment. Each of these five sentences apply to each of 10 possible drug quantities and each of six substantive offenses (manufacturing, distributing, or possessing with intent to distribute, each of which can be committed with or without death or serious bodily injury resulting). Because of the high number of possible combinations of substantive offenses, various drug types, and their resulting mandatory minimum sentences, 21 U.S.C. § 841(b)(1)(A) was counted as creating ten mandatory minimum sentences: five



mandatory sentences created in 1986 and 1988, three new substantive offenses created by the addition of 1,000+ marijuana plants and two methamphetamine drug weights in 1988, and two additional mandatory minimums when the two triggering quantities of methamphetamine were reduced in 1998. Additionally, the graph does not count each of the dozens of Schedule I or II controlled substances individually, though each substance can trigger multiple mandatory penalties, depending on the conduct involved and the number of the offender's prior convictions. Thus, given the vast number of possible combinations of substantive crimes with the mandatory sentences under 21 U.S.C. §§ 841 and 960, *this graph under-represents the number of possible mandatory minimum sentences created by Congress for drug offenders.*

Additionally, whenever a statute was amended to add attempt or conspiracy as substantive crimes, those crimes were counted only once each, even if they applied to multiple existing substantive offenses. 21 U.S.C. § 846, for example, created attempt and conspiracy offenses for violations of 21 U.S.C. § 841 and other drug trafficking statutes but was only counted as creating two new mandatory minimum sentences. The 1994 addition of attempt and conspiracy as substantive violations of 18 U.S.C. § 2252 was only counted as creating two mandatory minimums, though § 2252 has four subsections carrying substantive offenses. In this respect, the above graph again under-represents the number of possible mandatory minimum sentences created by Congress.

However, where a statute can be more clearly broken down into subsections and/or substantive offenses and mandatory minimums can more easily be counted individually, they are. For example, there are four subsections in 18 U.S.C. § 2251. In 2003, Congress increased mandatory minimums under this statute for first offenders, offenders with one prior sex offense, and offenders with two or more prior sex offenses. These three new mandatory minimum sentences (of 15, 25, and 35 years, respectively) were counted four times – once for each of the four subsections to which they applied – resulting in 12 new mandatory minimum sentences that were added to the total count for 2003. Similar principles were applied to other sex crime and child pornography statutes, which include multiple subsections/substantive offenses and multiple mandatory minimums, depending on the number of prior convictions.



### CONCLUSIONS FROM THE DATA

- (1) Congress is significantly more likely to create or expand a mandatory minimum sentence in an election year than in a non-election year. Since 1987, there has been only one election year (2010) in which Congress did not create or expand any mandatory minimum sentences.
- (2) Republican Congresses have created or expanded almost twice as many mandatory minimum sentences (133) as Democratic Congresses (68) since 1987.
- (3) Including all presidents, more mandatory minimums have been created or expanded under Republican presidents (111) than Democratic ones (90) since 1987. However, President William J. Clinton presided over the creation or expansion of more mandatory minimums (87) than President George W. Bush (77).
- (4) The creation and expansion of mandatory minimums corresponds to periods in which certain crimes or crime rates received notable or extensive media attention and created fear or panic among Congress and the general public. For example, mandatory minimum drug sentences were created in the late 1980s and justified partly by now-debunked (but highly publicized) fears surrounding abuse of crack cocaine. Many mandatory minimums for child pornography and sex offenses were created in 2003 (when the abductions, rapes, and murders of several young female victims dominated headlines for months) and 2006 (the 25th anniversary of the abduction and death of Adam Walsh, who was the inspiration for the Adam Walsh Child Protection and Safety Act, a law that was vigorously lobbied for by the victim’s father and host of the TV show *America’s Most Wanted* and by victims’ rights groups nationwide).

### DISTRIBUTION OF DATA BASED ON POLITICAL PARTIES OF CONGRESS AND PRESIDENT

Number of MMs Created	Congress	Years Congress in Session	Majority Party of House of Representatives	Majority Party of Senate	Party of President
26	100th	1987-1989	Democrat	Democrat	Republican (Reagan)
7	101st	1989-1991	Democrat	Democrat	Republican (Bush I)
1	102nd	1991-1993	Democrat	Democrat	Republican (Bush I)
26	103rd	1993-1995	Democrat	Democrat	Democrat (Clinton)
40	104th	1995-1997	Republican	Republican	Democrat (Clinton)
17	105th	1997-1999	Republican	Republican	Democrat (Clinton)



4	106th	1999-2001	Republican	Republican	Democrat (Clinton)
2	107th	2001-2003	Republican	Republican*	Republican (Bush II)
44	108th	2003-2005	Republican	Republican	Republican (Bush II)
24	109th	2005-2007	Republican	Republican	Republican (Bush II)
7	110th	2007-2009	Democrat	Democrat	Republican (Bush II)
1	111th	2009-2011	Democrat	Democrat	Democrat (Obama)
2	112th	2011-2013	Republican	Democrat	Democrat (Obama)

\* The majority in this Senate changed hands multiple times. See [http://www.senate.gov/pagelayout/history/one\\_item\\_and\\_teasers/partydiv.htm](http://www.senate.gov/pagelayout/history/one_item_and_teasers/partydiv.htm).

8/6/12