

**The General  
Effect of  
Mandatory  
Minimum  
Prison  
Terms**

**Federal Judicial Center**



# The General Effect of Mandatory Minimum Prison Terms

*A Longitudinal Study of Federal Sentences Imposed*

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Federal Judicial Center  
1992

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*Cite as* B. Meierhoefer, The General Effect of Mandatory Minimum Prison Terms (Federal Judicial Center 1992)



## Contents

I. Introduction .....	1
Description of analyses .....	1
Caution on inferences .....	2
II. Sentencing trends in the offender population .....	3
Average sentence length for all offenders .....	3
Changes in the offender population .....	3
Average sentence length by type of offense .....	6
Offenses with no mandatory minimum behavior .....	6
Mandatory minimum drug behavior—no weapons .....	7
Mandatory minimum weapon behavior .....	7
III. Percentage of offenders sentenced to at least the minimum term .....	9
IV. Effect of offense and offender factors on sentencing mandatory minimum behaviors .....	11
Type of drug .....	11
Amount of drug .....	13
Whether a weapon was involved .....	14
Prior record .....	14
Role in the offense .....	16
Age .....	17
Drug use .....	18
Gender .....	19
Race .....	20
V. Impact of regional and workload differences .....	23
VI. Conclusion .....	25
VII. Statistical Appendix .....	27



# I. Introduction

This research examines sentences that have been imposed by the federal courts from January 1984 through June 1990. Its purpose is to provide an overview of how sentencing has changed during that seven-year period, which saw the proliferation of statutory mandatory minimums and the promulgation of sentencing guidelines. Although there are many mandatory minimum statutes, those with the greatest impact on federal sentencing are for (1) drug trafficking offenses involving large amounts of drugs and (2) possession or use of a firearm during a drug trafficking felony or a crime of violence. This paper focuses on sentences for these two types of criminal behavior.

Congress enacts mandatory minimum prison-term statutes to express its judgment that certain crimes are particularly heinous and that any offender who engages in them should

receive at least the minimum prison term specified. Of interest, therefore, are the sentences imposed for the criminal behavior proscribed by these statutes, regardless of how that behavior was charged and prosecuted.<sup>1</sup>

Although it is not possible to determine underlying offense behaviors with precision, there is a computerized federal sentencing database, the Federal Probation Sentencing and Supervision Information System (FPSSIS), in which many characteristics of offenders and of their underlying offenses have been coded by the probation officers writing the presentence reports. The data reflect probation officers' views of the "total offense behavior," what they, as a result of their investigation, believe to have happened, not just the specific behavior for which the offender was convicted.

1. This research was undertaken as an independent part of the larger research effort on mandatory minimum sentencing conducted by the United States Sentencing Commission. The U.S.S.C. examined sentencing under various statutes of conviction and the effect of charging and plea bargaining practices on sentences imposed.

## Description of analyses

The FPSSIS, developed in 1983, comprises data on 267,178 offenders sentenced between January 1, 1984, and June 30, 1990.<sup>2</sup> The analyses done for this study measure sentencing in two ways. The first measure, applicable to all offenders, is the average prison term imposed (in months).<sup>3</sup> The second measure, applicable only when looking at the sentencing of behaviors that now carry mandatory minimum prison terms, is the proportion of offenders sentenced to at least the minimum now prescribed by statute.

The first set of analyses examines the entire sentenced population (267,178 offenders) and shows the average prison term imposed, changes in offense and offender characteristics over time, and the average prison term for various types of offenses. Offenses were classified according to whether the underlying behavior appeared to fit the statutory definition of an offense that now carries a mandatory minimum

prison term. Offenses that appear to fit are called "mandatory minimum behaviors."

The second set of analyses deals exclusively with the sentencing of mandatory minimum behaviors over time (27,420 cases). Information includes the proportion of these offenders who were sentenced to at least the mandatory minimum prison term prescribed by the 1986 statutes, as well as the relationship between various offense and offender characteristics and the two measures of sentencing.

The unit of time measurement used in this study varies from six-month period to year, depending on the number of cases available for analysis. "Year" is calendar year, but note that 1990 includes only the first six months.

When reviewing data over time, keep in mind that sentences imposed under old law do not involve the same anticipated time served as sentences imposed under the Sentencing Reform Act. For offenders sentenced under the

2. Although the FPSSIS has data through September 1990, the monthly counts for the last three months show the reporting is not complete. These cases were eliminated for this study.

3. The averages include probation sentences as 0 months and life sentences as 999 months.

4. Although it is possible to identify from the FPSSIS which offenders were sentenced under old or new law, analyses were not performed separately for pre- and post-Sentencing Reform Act cases. There is only one year (1988) in which there were ample numbers of both types of sentences for meaningful analysis. Further, the two groups may not be directly comparable since cases still falling under the provisions of the old law in the later years could involve a disproportionate number of fugitives or trials, factors that themselves could influence the sentence imposed.

Act, the sentence served is the sentence imposed, less only 15% good time after the first year. Offenders sentenced under old law and

not subject to mandatory minimum terms were eligible for parole; all old-law offenders were eligible for more liberal good-time laws.<sup>4</sup>

### Caution on inferences

The major point of this study is to see if and how mandatory minimum sentencing statutes have affected sentencing practices. There is a particular interest in noting whether any apparent change in sentencing coincides with changes in laws. The mandatory minimum statutes for drug offenses became effective for offenses committed on or after October 27, 1986. The mandatory five-year add-on for possessing a firearm during a drug felony became effective November 18, 1986. (The add-on has been in effect for crimes of violence since 1984). For discussion purposes, changes in drug offense sentences that occur during 1987 are taken to suggest that the mandatory minimum statutes

may be partially responsible. Similarly, changes that occur during 1988 or 1989 might indicate an effect of the sentencing guidelines.

There is a danger in attributing any change in sentences imposed over time solely to the enactment of new laws; many other changes were also going on (for example, the "war" on drugs, the proliferation of "designer" drugs, and the changing composition of the federal judiciary). The implications from this work should be viewed as interesting questions for more detailed study, rather than conclusive evidence that the laws or the guidelines *caused* whatever changes are observed.

## II. Sentencing Trends in the Offender Population

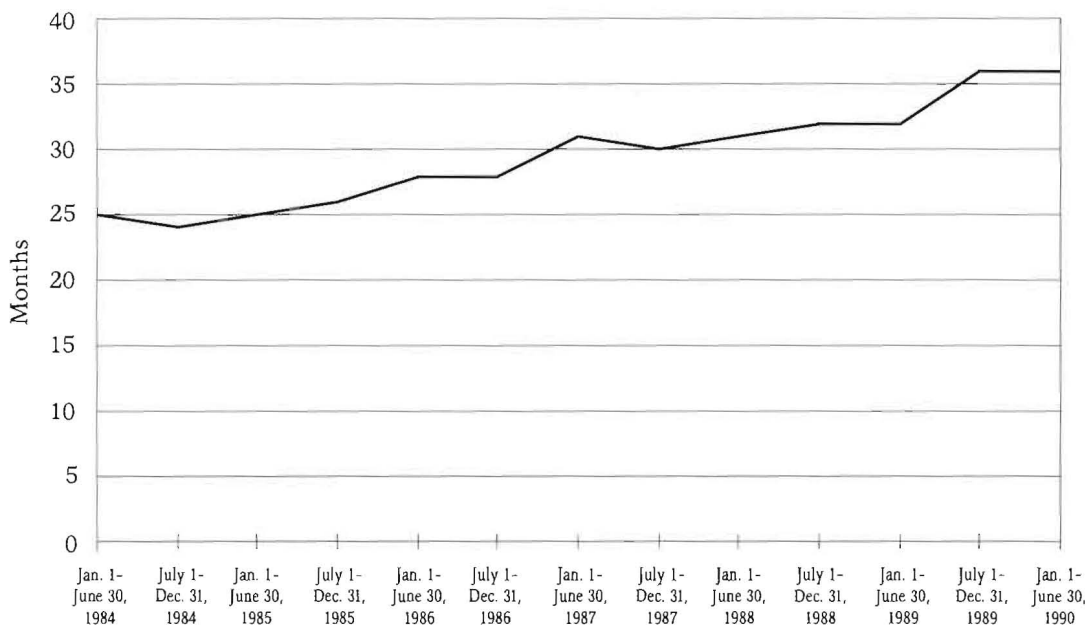
### Average sentence length for all offenders

Across all types of behaviors, the average sentence increased generally from an average of two years in 1984 to three years in 1990 [see Graph 1].<sup>5</sup> The upward trend began in 1985, well before the introduction of mandatory minimum prison terms. The largest single jumps occurred during the first six months of 1987 and the second six months of 1989, which could

reflect an impact of the mandatory minimums and the sentencing guidelines, respectively. However, the overall pattern of generally increasing prison terms, even before enactment of the laws, indicates that other factors—such as a changing offender population or a general “get tough” policy—are also playing a role.

5. For the numbers of offenses and sentenced offenders represented in this and all following graphs, see the Statistical Appendix (Section VII).

**Graph 1. Average Prison Sentence Imposed January 1984–June 1990**



### Changes in the offender population

The major changes in the offender population involve the type of offense committed (see Table 1). Drug offenses constituted 32% of the sentenced population in 1990, up from 20% in 1984. The proportions of property offenses and violent crimes have been declining. Further, the offenses appear to be getting more serious. Offenders involved in mandatory minimum behaviors constitute a small, but increasing, portion of the total number sentenced. As shown in Graph 2a, they were 12% of those

sentenced in the first half of 1984 and 20% of those sentenced in the first half of 1990. Although all types of mandatory minimum behavior rose somewhat during this period, over half the increase is accounted for by offenses involving more than 100 grams of cocaine.

The offender profiles look fairly similar over time. As in the past, the majority are first offenders, male, and white. The proportion of whites has declined by 7% while that of blacks increased by 5%; the proportion of Hispanics

**Table 1. Percentage of Sentenced Offenders by Offense and Offender Characteristics**

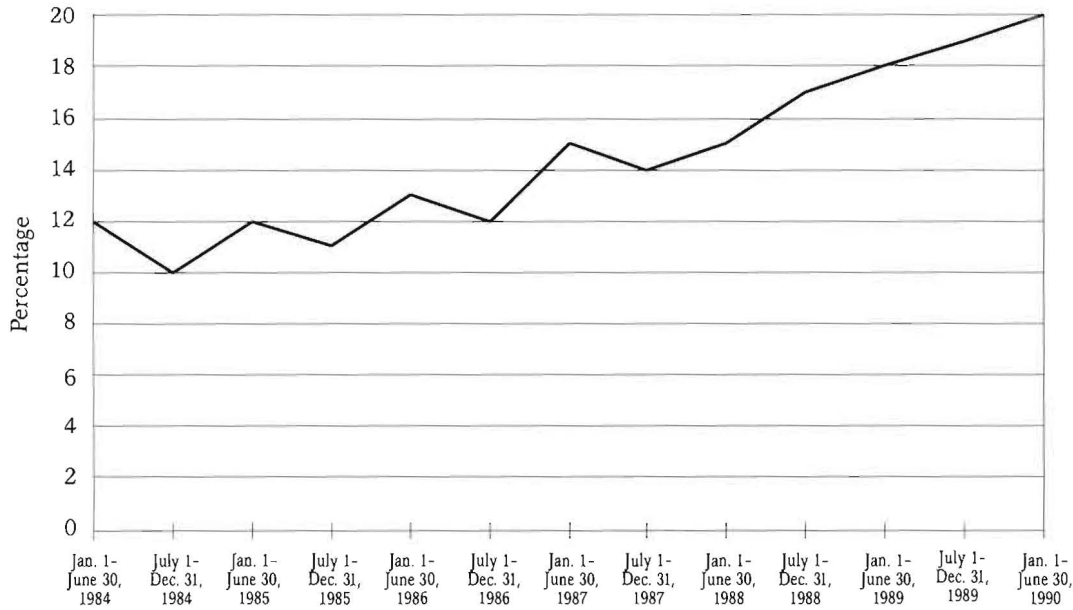
	Jan. 1-June 30, 1984	July 1-Dec. 31, 1984	Jan. 1-June 30, 1985	July 1-Dec. 31, 1985	Jan. 1-June 30, 1986	July 1-Dec. 31, 1986	Jan. 1-June 30, 1987	July 1-Dec. 31, 1987	Jan. 1-June 30, 1988	July 1-Dec. 31, 1988	Jan. 1-June 30, 1989	July 1-Dec. 31, 1989	Jan. 1-June 30, 1990
<b>Offense Type</b>													
Property	64	66	64	64	62	62	60	62	61	61	59	58	56
Drugs	20	19	22	22	24	25	27	26	26	27	29	31	32
Violence	16	15	15	14	13	13	13	13	13	12	12	11	12
<b>Prior Record</b>													
None	57	58	57	57	57	56	56	56	58	58	57	58	57
Misdemeanor	29	28	29	30	29	30	30	29	29	28	29	29	29
Felony	14	14	13	14	14	14	14	14	13	13	14	14	14
<b>Role/Culpability</b>													
Less	17	17	18	17	19	21	20	20	19	19	19	18	17
Equal	63	65	63	64	58	55	57	59	60	61	62	64	65
More	20	18	19	19	23	23	23	22	22	20	19	19	18
<b>Age</b>													
16-26	26	26	26	26	25	26	25	26	26	26	26	27	27
27-35	34	33	34	33	33	34	34	33	33	33	33	33	33
36-45	24	24	24	25	24	24	25	25	25	25	24	24	25
46-75	16	17	16	16	17	16	16	17	17	16	17	16	16
<b>Drug Use</b>													
Yes	16	16	18	19	20	21	23	23	22	23	25	26	27
<b>Gender</b>													
Male	84	83	83	83	83	83	83	83	83	83	84	83	83
<b>Race</b>													
White	60	59	59	59	59	60	58	59	59	55	55	54	53
Black	21	21	22	21	22	22	22	22	23	25	24	25	26
Hispanic	16	17	16	17	16	15	16	16	15	17	17	19	17
Other	3	3	3	3	3	3	3	3	3	3	3	3	3

and others has remained generally constant. Most offenders were viewed as equally culpable (or acting alone) in their offenses, and were most commonly 27-35 years old at sentencing. The most significant change is in the proportion of offenders described as using drugs, which rose from 16% in 1984 to 27% in 1990. Whether this represents more drug use or simply better detection through the increasing use of urinalysis is not known.

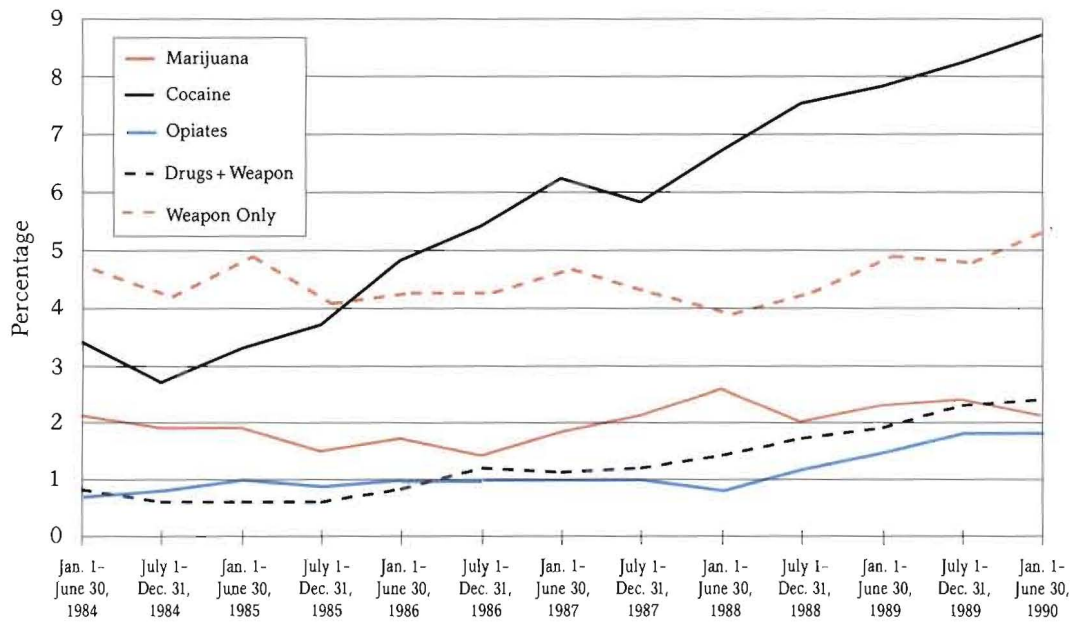
These trends suggest that the generally increasing sentences from 1984 to 1990 stem in

part from a shift in the type and seriousness of the offenses being brought to federal court, helped along by the mandatory minimum terms and their subsequent effect on the sentencing guidelines for drug offenses. Although involved in somewhat more serious offenses, the more recent offenders do not appear to be any more culpable (as reflected by their role in the offense) or any more likely to be recidivists (as reflected by their prior record) than in the past.

**Graph 2a. Percentage of Sentenced Defendants With Mandatory Minimum Offense Behavior**



**Graph 2b. Offenses Grouped by Type Of Mandatory Minimum Behavior**





## Average sentence length by type of offense

Offense behaviors were broken into the following seven categories:

1. Ten-year drug minimum plus five-year weapon minimum.
2. Ten-year drug minimum only.
3. Five-year drug minimum plus five-year weapon minimum.
4. Five-year drug minimum only.
5. Five-year weapon minimum only.
6. Drug offense—no minimum.
7. Non-drug offense—no minimum.

The data in the FPSSIS do not track the specific behaviors for which Congress subsequently enacted mandatory minimum terms. There are three differences between the data and what ideally needs to be known that affect the correct classification of whether the offense involved mandatory minimum behavior:

1. The drug amount data reported to the FPSSIS, and used here to classify offenses as involving mandatory minimum behavior, is the amount of the drug at 100% purity. The drug amount on which the mandatory minimum statutes are based is different: the amount of the mixture containing the drug, regardless of its purity. For example, 200 grams of a sugar and heroin mixture that is 40% pure would qualify for a five-year mandatory minimum because the weight of the mixture exceeds 100 grams. Because, however, it would be reported to the FPSSIS as 80 grams (the weight of the heroin alone), this study does not classify it as mandatory minimum behavior. This means

that opiates, which customarily have a low level of purity, are grossly underclassified as involving "mandatory minimum drug behavior" in this study. Cocaine cases are also underclassified, but not as severely because purity of cocaine is generally higher. Marijuana cases are not affected. (The most common opiate is heroin; opiates also comprise any opiate or opium derivative or any salt, compound, derivative, or preparation that is the chemical equivalent thereof.)

2. The FPSSIS does not distinguish between powder cocaine and crack cocaine. The mandatory minimum amounts for powder cocaine (100 grams and 5 kilograms for the five- and ten-year minimums, respectively) were used for all cases involving cocaine. This means that crack cases, which trigger minimum terms at significantly lower amounts (5 and 10 grams), are severely underestimated in the "mandatory minimum drug behavior" category.

3. There are statutory minimum terms for drugs other than opiates, cocaine, and marijuana, but the FPSSIS does not distinguish among "other" types. They are therefore classified as not involving mandatory minimum drug behavior even though some of them would be eligible.

In all, it is fairly certain that cases classified as involving mandatory minimum drug behavior actually do so, but that a number of drug offenses that actually involve mandatory minimum behavior will not be classified as such.

## Offenses with no mandatory minimum behavior

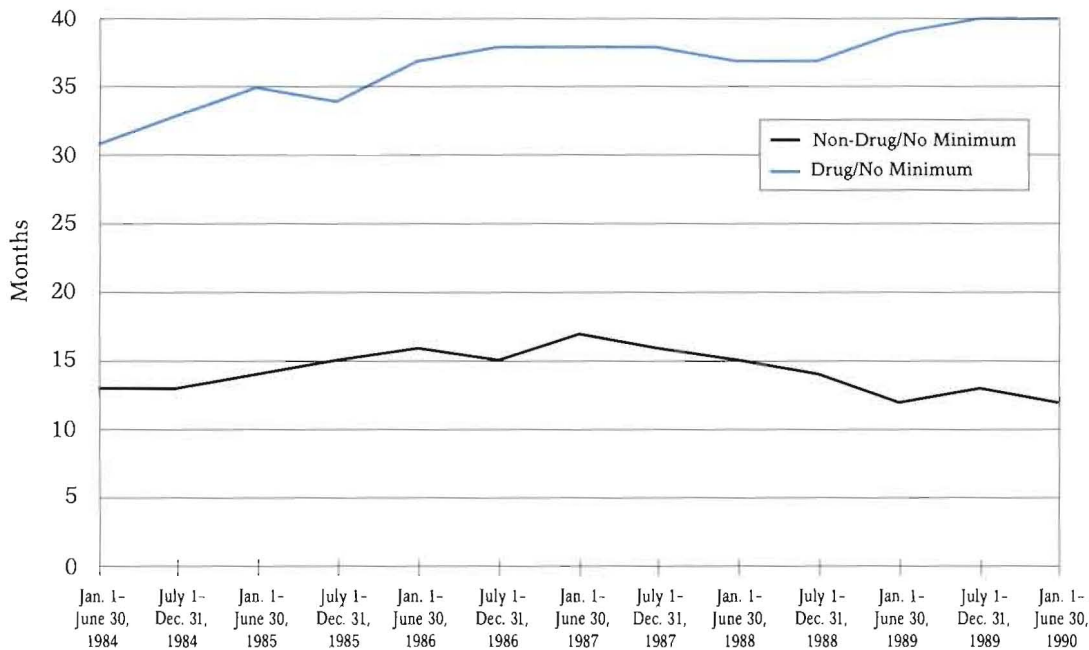
The average sentence for offenses that involve neither a mandatory minimum nor any drug behavior has remained steady (see Graph 3). Over time, this category has accounted for a steadily decreasing proportion of all sentences: 73% in 1984 to 61% in the first half of 1990.

There has been a gradual increase of 29% (from 31 to 40 months) in the average sentence imposed on drug offenders whose conduct would not trigger a mandatory minimum for marijuana, cocaine, opiates, or weapons. The

increase could result from somewhat more serious offenses within this category or simply reflect a more general "get tough" attitude towards drugs. As discussed above, some offenses that actually involved mandatory minimum behavior are classified here; however, there is nothing to suggest that the mandatory minimum statutes contributed to the increase in sentence length as most of the increase occurred in 1986 before the laws could have had an effect.



**Graph 3. Average Sentence Imposed for Offenses Without Mandatory Minimum Behavior**



**Mandatory minimum drug behavior—no weapons**

Marijuana, cocaine, and opiate offenses were classified as involving mandatory minimum drug behavior if they involved the following amounts (see 21 U.S.C. §§ 841(b)(1)(A)-(B), 960(b)(1)-(2)):

1. 100 kilograms of marijuana, 500 grams of cocaine, or 100 grams of an opiate—any of which require a five-year mandatory minimum term.
2. 1,000 kilograms of marijuana, 5 kilograms of cocaine, or 1 kilogram of an opiate—any of which require a ten-year mandatory minimum term.

The average sentence for drug behaviors that now carry a five-year mandatory minimum prison term increased 43%, from 42 months in

1984 to 62 months during the first six months of 1990 (see Graph 4). The average sentence was relatively stable before the second half of 1987, when it jumped by 13 months. It then remained relatively stable again until an 11-month increase in the second half of 1989. The timing of the increases implicates both the mandatory minimum statutes and the sentencing guidelines.

The average term for ten-year drug behaviors increased 74%, from 68 to 118 months during the period studied. The increase began in 1985, and the introduction of minimums and guidelines appears to have magnified this existing trend.

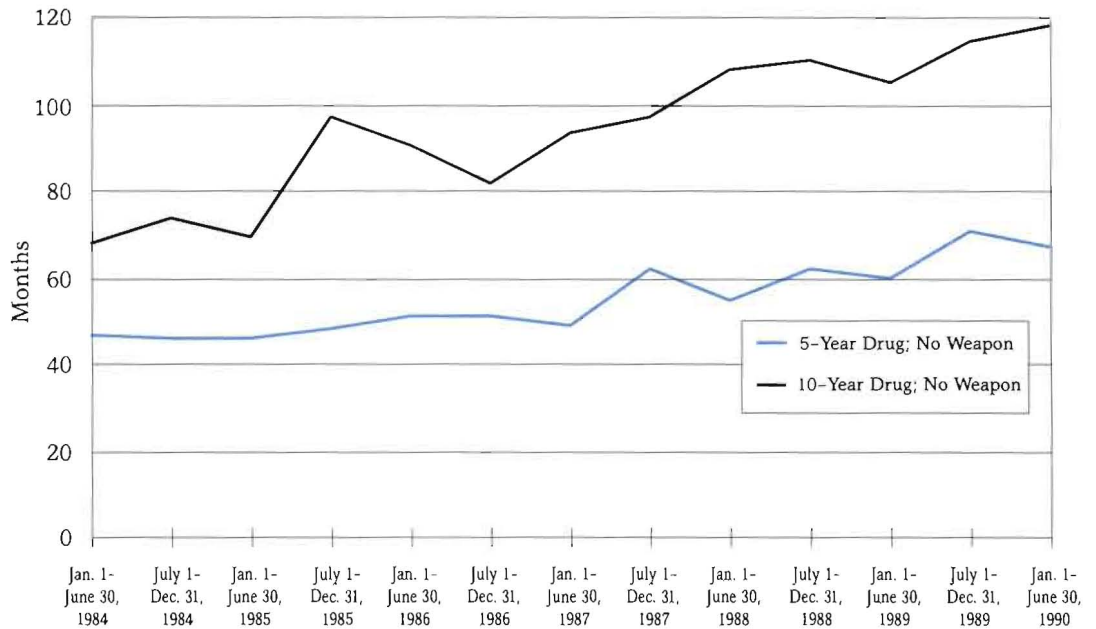
**Mandatory minimum weapon behavior**

18 U.S.C. § 924(c)(1) provides that a five-year prison term must be added to the sentence otherwise imposed for a crime of violence or drug trafficking felony if the offender uses or carries a firearm “during and in relation to” the crime.

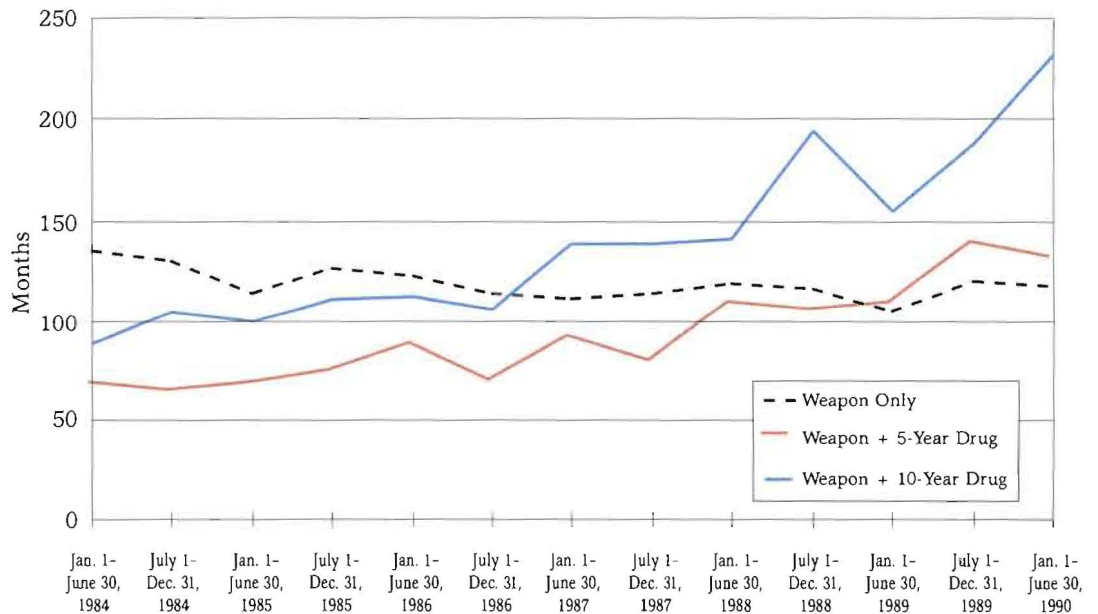
The average sentence imposed for offenses involving behavior that would trigger the five-

year mandatory add-on for weapons, and no other mandatory minimum associated with drug amounts, decreased somewhat (see Graph 5). Since the underlying sentences to which the five years were added are not known, this category of case will not be analyzed further because no total “expected sentence” can be determined.

**Graph 4. Average Sentence Imposed for Offenses With Mandatory Minimum Drug Behavior**



**Graph 5. Average Sentence Imposed for Offenses Involving Weapons**



The sentences for behavior that involved both weapons and a five-year drug behavior almost doubled to 130 months, the result of fairly steady increases over time.

Average sentences for ten-year drug-plus-weapon offenses increased 161% from 89 months to 232 months. The 1986 minimums appear to have contributed, but the large in-

crease (from 1988 on) coincides more closely with guideline implementation. Some of the increase in later years could also stem from later statutory increases in the applicable minimum for offenses involving machine guns, silencers, short-barreled rifles and shotguns, and destructive devices.

### III. Percentage of Offenders Sentenced to at Least the Minimum Term

The analysis in this section involves only offenders with mandatory minimum marijuana, cocaine, or opiate behavior, whether or not a weapon was also involved. A case was scored as having received at least the mandatory minimum prison term if the sentence imposed was equal to or greater than the minimum term now prescribed by statute (for example, 60 months for an offense involving 100 grams or more of heroin; 180 months for an offense involving 5 kilograms of cocaine and a weapon).

All references to the applicable minimum term refer only to the minimum that is applicable for the drug amount and whether a weapon was involved. The length of the minimum term provided by statute, however, also depends on whether death or serious injury resulted from use of the drug, and whether the offender had prior convictions for a drug felony. It is not possible to tell from the FPSSIS whether a victim's injury was sustained from the use of drugs or whether an offender had any prior conviction for a drug felony. The applicable minimum term will be underrepresented for some of those offenders with prior felony convictions (14% of the mandatory minimum drug offenders) and for the less than 0.5% in which serious victim injury was identified.

Ignoring some of the factors that could increase the potentially applicable minimum term leads to a conservative test of whether offenders with mandatory minimum behavior are sentenced to at least the minimum term.<sup>6</sup> Keep in mind, however, that the data relied upon to classify offenses as mandatory minimum behaviors represent the probation officer's view of what occurred. Although probation officers are to include only information that they deem reliable after reviewing the laboratory reports on the contents of confiscated drugs and other information in the prosecutors' and case agents' files, their assessment of the facts may not be the same as what the prosecutor could have

actually proved under the rules of evidence. This may explain why a number of offenders who are classified here as engaging in mandatory minimum behavior received lesser terms (for example, were not charged under mandatory minimum statutes or were allowed to plead guilty to lesser charges).

The proportion of offenders with mandatory minimum drug behavior who actually received at least the prescribed minimum prison term has risen steadily from 27% to 54%, with the largest increase occurring in 1987 (see Graph 6).

Clearly, enactment of the mandatory minimum statutes and promulgation of the sentencing guidelines have led to more offenders being sentenced to the minimums now required. However, as late as the first half of 1990, almost half of the offenders who would appear to be eligible for a minimum term received a lesser sentence.

This highlights that considerable discretion remains in the system, much of which rests with the prosecutor. Prosecutors decide how to charge, what plea bargains are acceptable, and whether to move the court to impose a sentence below any applicable mandatory minimum because of a defendant's "substantial cooperation." The court reviews the acceptability of plea bargains, and may choose to sentence below the minimum if provided the opportunity to do so by the prosecutor. A sentence below a potentially applicable minimum therefore requires the concurrence of the government and the court.

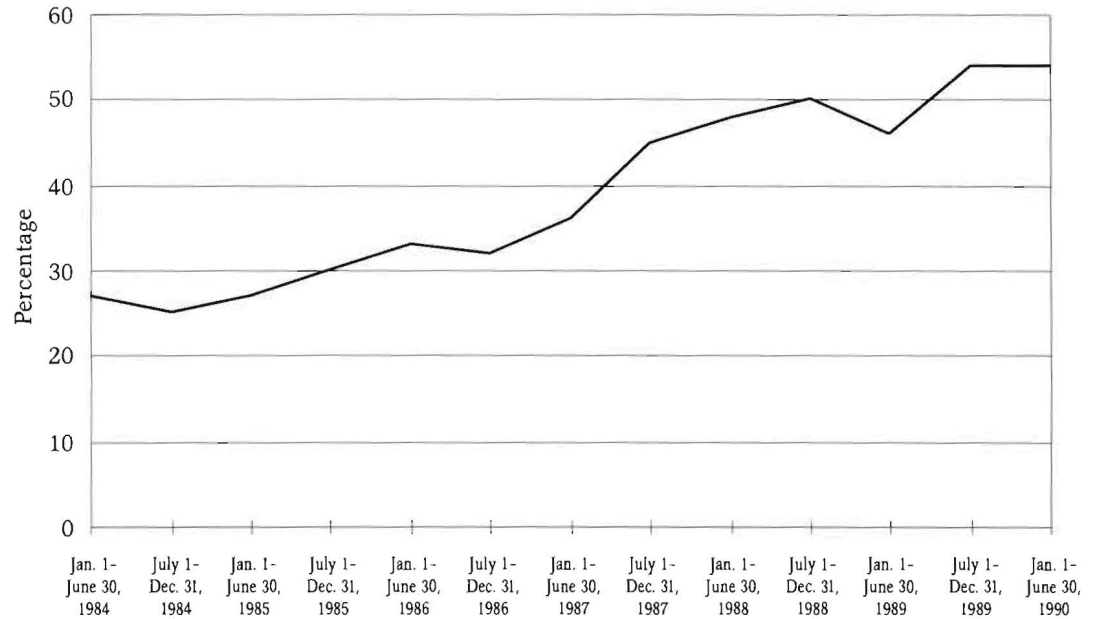
One factor that influences whether at least the minimum term was applied is the length of the minimum itself. Offenders involved in five-year mandatory minimum behavior are more likely to be sentenced to at least five years than offenders involved in ten- or fifteen-year mandatory minimum behavior are to be sentenced to ten or fifteen years (see Graph 7). This could

6. For example, offenders with a five-year mandatory minimum drug amount and a prior conviction for a drug felony are by statute subject to a ten-year mandatory minimum term. In this study, however, the imposition of a five-year sentence would serve to score the case as having received the minimum term.

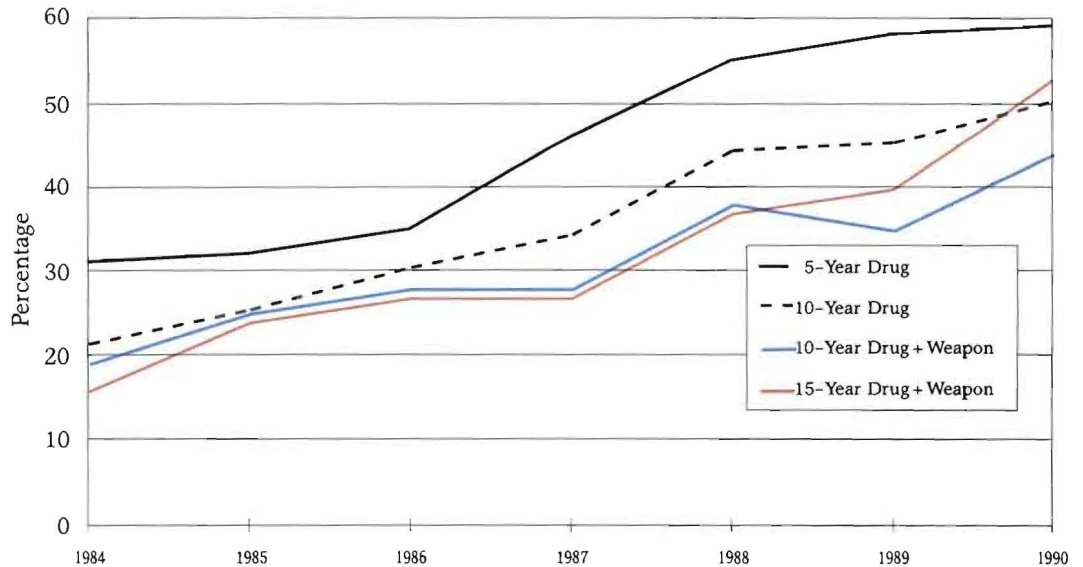
reflect more aggressive demands by the defense for charge bargains when the stakes are higher, and/or a greater probability that pros-

ecutors and judges will agree that longer sentences are not necessary to achieve the sentencing purposes in an individual case.

**Graph 6. Percentage of Defendants with Mandatory Minimum Drug Behavior Sentenced to at Least the Mandatory Minimum Term**



**Graph 7. Percentage of Defendants Receiving at Least the Mandatory Minimum Term—By Length of the Minimum**





## IV. Effect of Offense and Offender Factors on Sentencing Mandatory Minimum Behaviors

The following analyses involve only mandatory minimum drug offenses and explore the impact on sentencing of the following offense and offender factors:

Offense factors: type of drug, amount of drug, and whether a weapon was involved.

Offender factors: prior record, role in the offense, age, drug use, gender, and race.

Text and graphs follow for each of these factors. The graphs depict, over time, (1) the average sentence imposed and (2) the proportion of offenders sentenced to at least the minimum term, *with both measures adjusted* for all of the other factors on the list (see the Statistical Appendix).<sup>7</sup>

### Type of drug

Throughout the period studied, cocaine has been the most common type of drug involved in mandatory minimum behaviors. By 1990, it constituted 70% of these large drug trafficking offenses (see the Statistical Appendix).

Type of drug remains an important factor in sentencing, but the nature of the relationship has shifted over time. The differences among sentences by type of drugs in the early 1980s were due primarily to lower sentences imposed on marijuana offenders as compared to the other two groups; the largest difference now stems from higher sentences for cocaine offenders. At the beginning of the period, a marijuana offender received a sentence that, on average, was 50% less than that of a cocaine offender and 57% less than that of an opiate offender (see Graphs 8a and 8b). By the first half of 1990, the differential between marijuana and opiate offenders dropped to 16%, while that

The graphs therefore reflect the net difference in sentencing attributable to each factor after differences due to all of the other factors on the list have been taken into account.

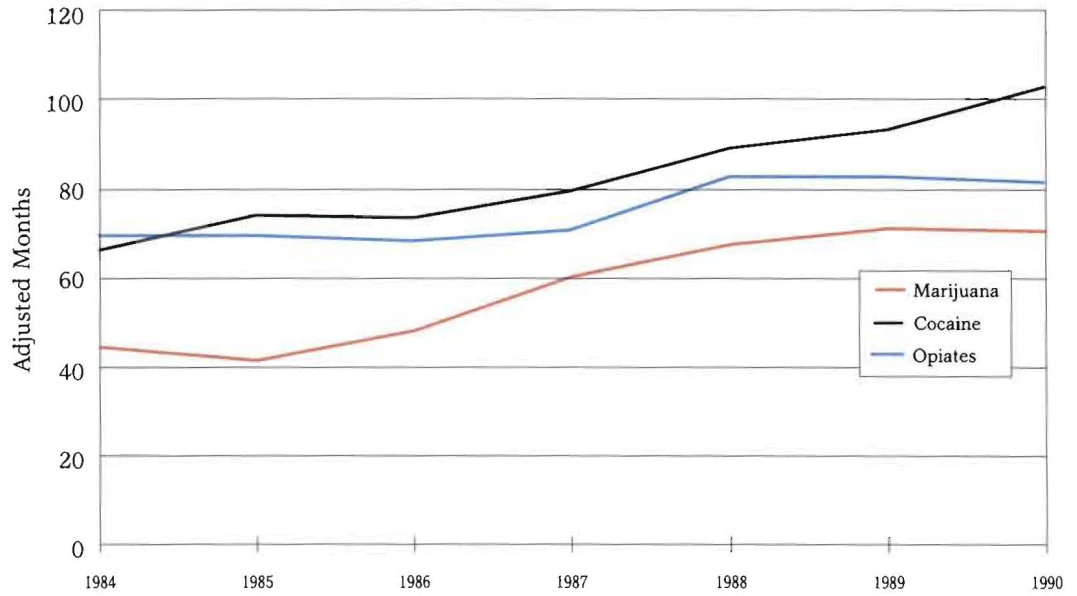
The relationships shown in the graphs do not control for any characteristics not listed above, and it is evident that many other factors are also influential in the sentencing decision. In fact, the factors on the list account for an increasing but surprisingly small amount of the variation in sentencing (see the Statistical Appendix). Over 70% of the variation in the prison term imposed is accounted for by other factors. This large "missing variance" means it is possible that the net sentencing differences presented below could, in fact, be attributed to other factors not included in the model.

between marijuana and cocaine offenders remained about the same. Cocaine and opiate offenders were sentenced fairly similarly until 1989, when opiate sentences leveled off and those for cocaine continued to rise.

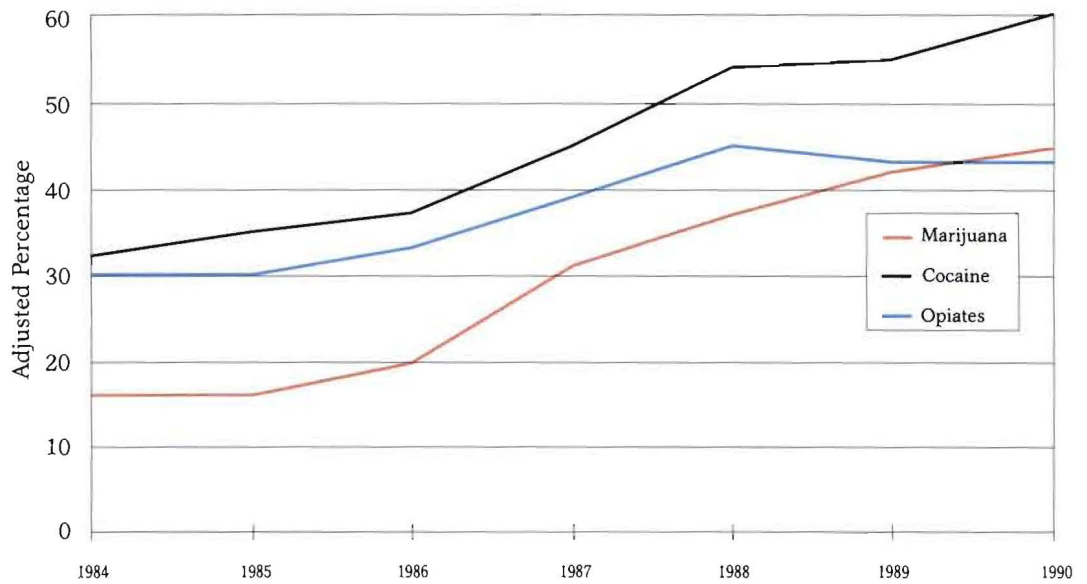
This overall change resulted from large increases over time in the average sentences imposed for marijuana (59% increase) and cocaine (56% increase), while those for opiates climbed a more modest 17%. The sentences for marijuana offenders rose sharply in 1987, suggesting that the mandatory minimum statutes had an impact, and continued to rise in 1988 and 1989, indicating that the sentencing guidelines also contributed. The guidelines appear to have had more impact than the mandatory minimum statutes on the sentencing of opiate and cocaine offenders, as the largest sentence increases occurred after 1987.

7. The two measures of sentencing are subject to different limitations. Average sentences can be unduly influenced by a small number of extreme sentences; thus, differences between two groups would be exaggerated if one group, but not another, contains a few extreme sentences. The proportion sentenced to at least the minimum is not influenced by extremes, but incorporates less information about the distribution of sentences (for example, how many sentences were close to the minimum is not known) and depends on the reliability of the FPSSIS amount and weapons data for its accuracy. Presenting both measures, therefore, provides a check on the results, with similarities in the two measures increasing the confidence that can be placed in the findings.

**Graph 8a. Average Prison Months Imposed**



**Graph 8b. Percentage Sentenced to at Least the Mandatory Minimum Term**



## Amount of drug

The amount of drug involved in the offense is the major determinant of both the mandatory minimum term and the applicable guideline offense level. Graph 9 displays the net difference in average sentence imposed among three levels of drug amount.<sup>8</sup> (Since amount helps determine the mandatory minimum, no graph is presented for the proportion sentenced to at least the minimum term; see Graph 7). The levels comprise the amount of drug classified in base offense levels 26, 32, and 36 in the U.S.S.C.'s Drug Quantity Table [U.S.S.G. § 2D1.1(c)]; the guideline ranges that correspond to these three offense levels for Category I offenders include prison terms of five, ten, and fifteen years, respectively [U.S.S.G. § 5A]. Amounts corresponding to the five-year term are by far the most common.

Drug amount has always been important in sentencing, and is even more important now. In 1984, those at the fifteen-year drug amount level received sentences that, on average, were

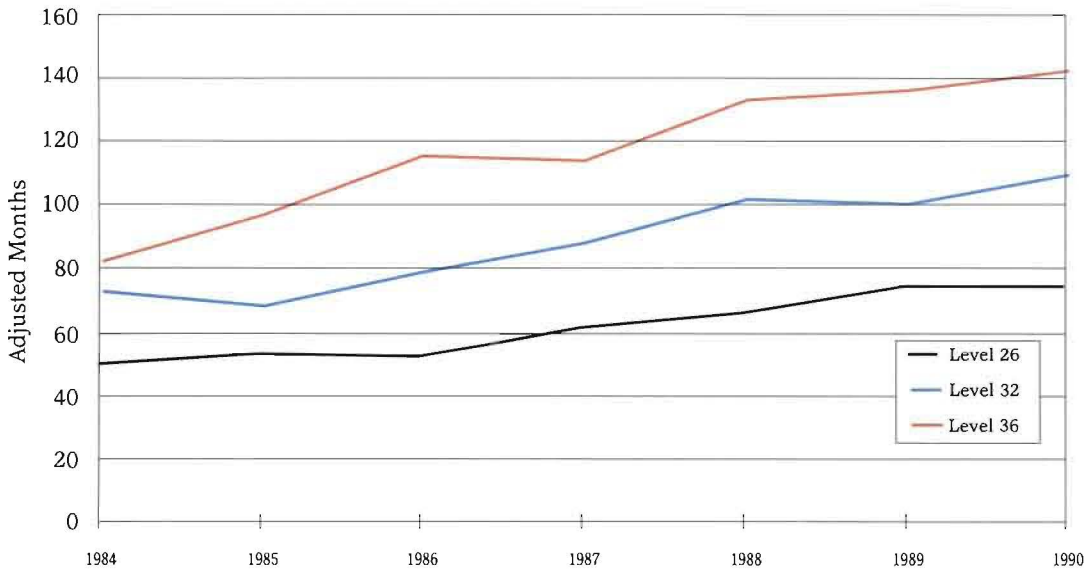
64% higher than those at the five-year level. In 1990, the differential was 91%.

The largest drug offenses experienced the biggest increase, with the average sentence rising 72% from 82 months in 1984 to 141 months in the first half of 1990. Offenders in the middle-amount category were sentenced more similarly to the large-drug-trafficking group at the beginning of the time period than at the end, as their average sentence increased a more modest 49%. The increase in sentences for these two groups began before the mandatory minimum statutes took effect, and has continued to rise steadily.

The sentences of offenders involved with an amount of drugs that would now trigger a five-year minimum remained fairly steady at around 50 months until 1987, and then climbed by 48% to 74 months by 1990. This is the only group for which the increase in average sentence length did not begin until after the mandatory minimum statutes went into effect.

8. Three levels were selected for illustrative purposes. The nine-level breakdown was used when this factor was controlled for to assess the impact of other factors.

**Graph 9. Average Prison Months Imposed**

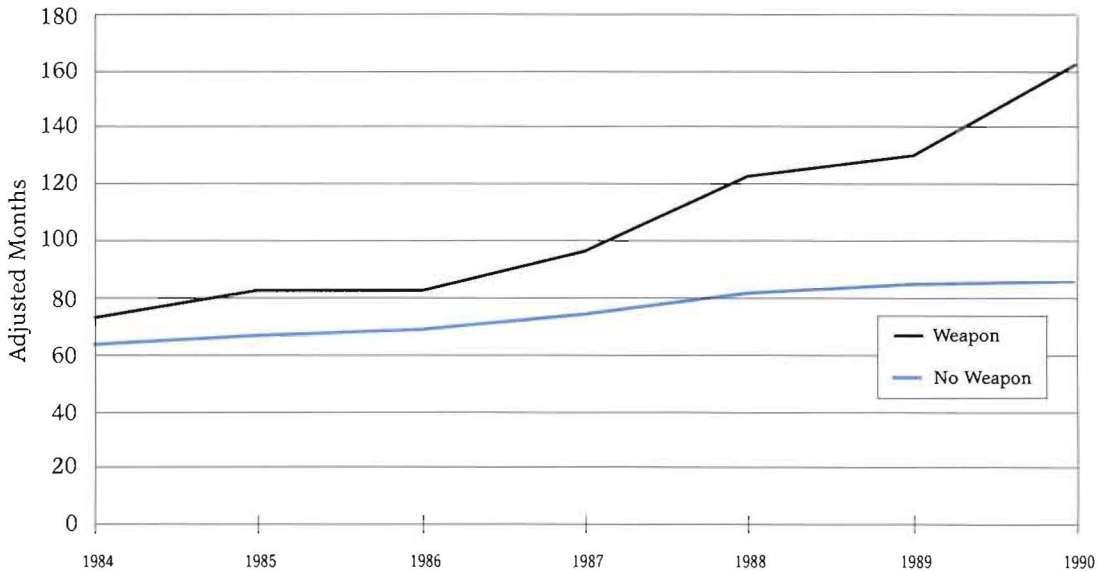


## Whether a weapon was involved

Possession of a firearm during a drug offense is a determinant of the applicable mandatory minimum term and is also a factor under the sentencing guidelines. Graph 10 shows the average sentence imposed for offenses that did and did not involve possession or use of a weapon (see Graph 7 for information on the proportion sentenced to at least the minimum term). The proportion of mandatory minimum drug offenses involving weapons increased slightly, from 11% to 17%, most noticeably in the last two years (see the Statistical Appendix).

Weapons clearly play a more important role in the sentencing decision now than they did before mandatory minimum statutes and the sentencing guidelines. In 1984, possession of a weapon translated to a 14% increase in the average sentence imposed; by the first half of 1990, the difference was 91%. The increasing differentiation began in 1987; since then, the sentences for drug offenses involving weapons have continued to rise sharply while those for other offenders have leveled off.

**Graph 10. Average Prison Months Imposed**



## Prior record

Prior record is a factor considered by both the mandatory minimum statutes and the sentencing guidelines. As is true of the federal offender population generally, the majority of mandatory minimum offenders have no prior record (see the Statistical Appendix).

Offenders who had previously served at least one sentence of more than one year in prison were always much more likely than others to receive a more severe sentence. In 1984, their average sentence was 43% higher than that for first offenders, and they were 88% more likely to be sentenced to at least the minimum term now prescribed.<sup>9</sup> By 1990, the difference in average sentence based on prior record was

even more pronounced, with offenders who had a prior felony receiving a sentence 84% higher than first offenders. However, the gap between the groups as to the proportion receiving at least the minimum term narrowed considerably to 38% as many more first offenders are now sentenced to at least the minimum term.

Offenders with a prior felony conviction posted the largest increase in average sentence, from 86 months in 1984 to 151 months in 1990 (see Graphs 11a and 11b). This resulted from a steady rise that began prior to mandatory minimum statutes and that appears to have been helped along by the guidelines. The 22-month

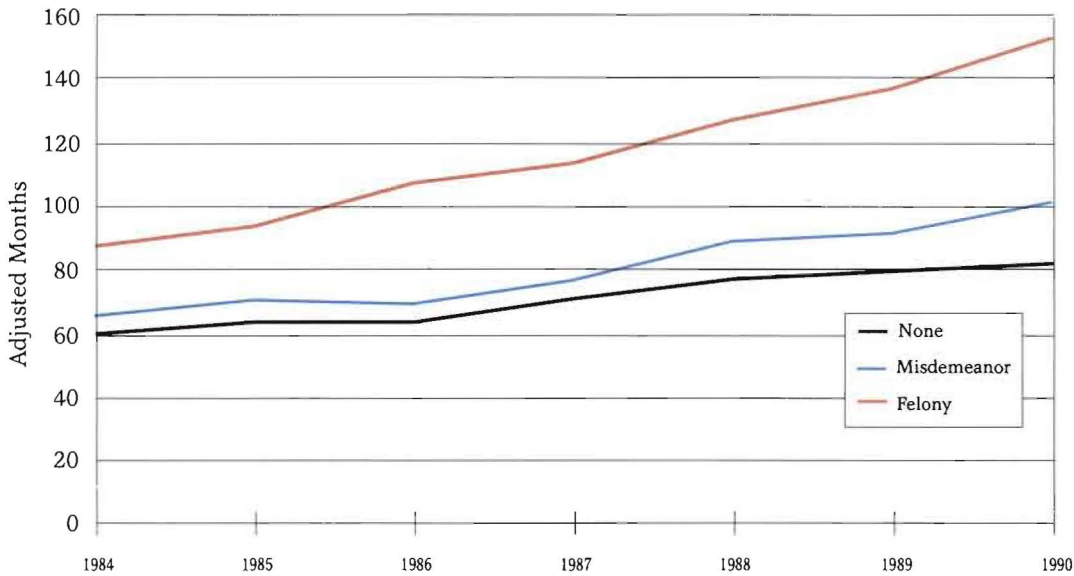
9. Recall, however, that some cases in the "prior felony" category could have been eligible for a higher minimum than the one against which the case was compared if the prior felony involved a drug offense.



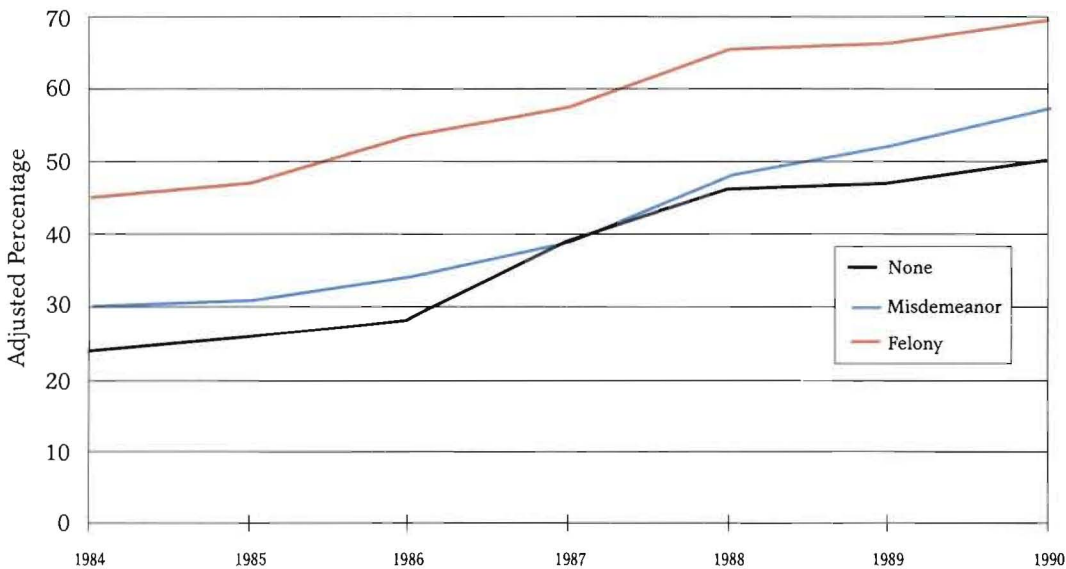
increase for first offenders began in 1987 and appears to have been influenced by both the minimums and the guidelines. The effect of the minimums and the guidelines on the first-

offender group is also reflected by the sharp increases in the proportion of those receiving at least the minimum term in both 1987 and 1988.

**Graph 11a. Average Prison Months Imposed**



**Graph 11b. Percentage Sentenced to at Least the Mandatory Minimum Term**



## Role in the offense

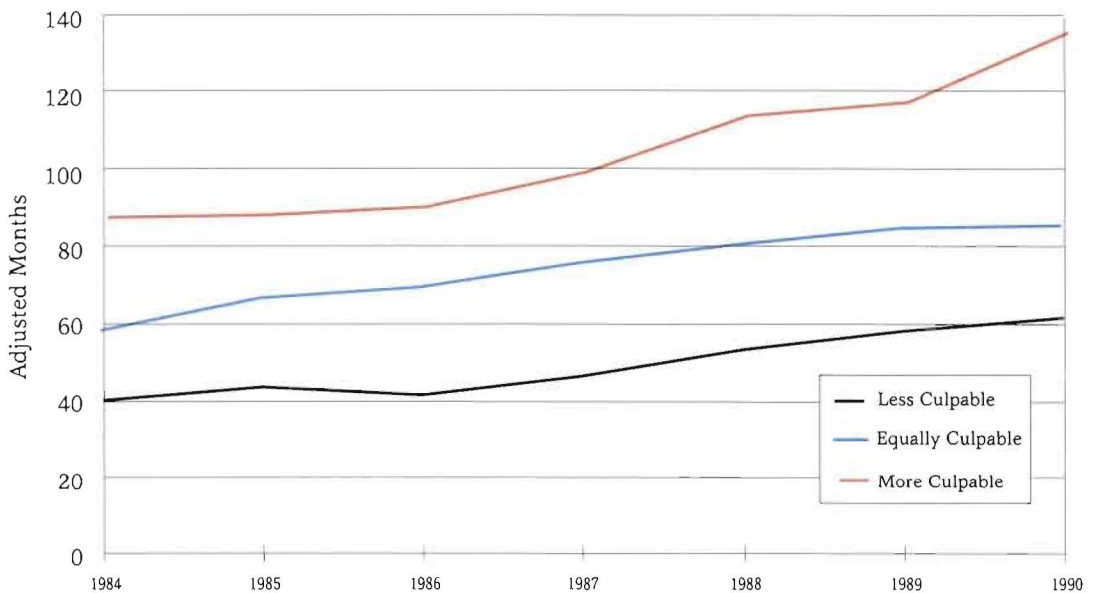
Role in the offense is not considered by mandatory minimum statutes, but is a factor under the sentencing guidelines.

Sentencing has always been affected by an offender's role in the offense, and the extent of its effect has changed little over time. In 1984, minor players received an average sentence 115% lower than that of major players; in 1990, the differential was 119% (see Graphs 12a and 12b). It appears that much of the remaining discretion in the system is being exercised to recognize lesser culpability, an appropriate consideration under the sentencing guidelines.

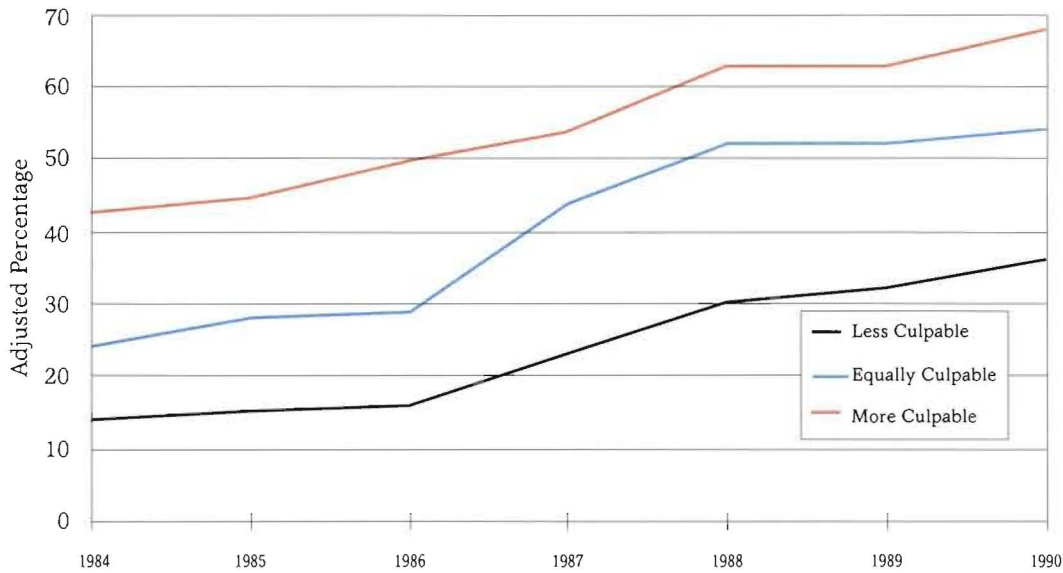
The impact of the minimums on the proportion sentenced to at least the minimum prison

term was greatest for those who were scored as being "equally culpable" or "working alone." On this measure, those with these "middle" roles used to be treated closer to those with more minor roles; they now appear to be treated more like those with more major roles. This may reflect the fact that the mandatory minimum statutes do not take role into account and that the distinction between moderate and significant culpability is not one that leads prosecutors and judges to view an applicable minimum as inappropriate.

**Graph 12a. Average Prison Months Imposed**



**Graph 12b. Percentage Sentenced to at Least the Mandatory Minimum Term**

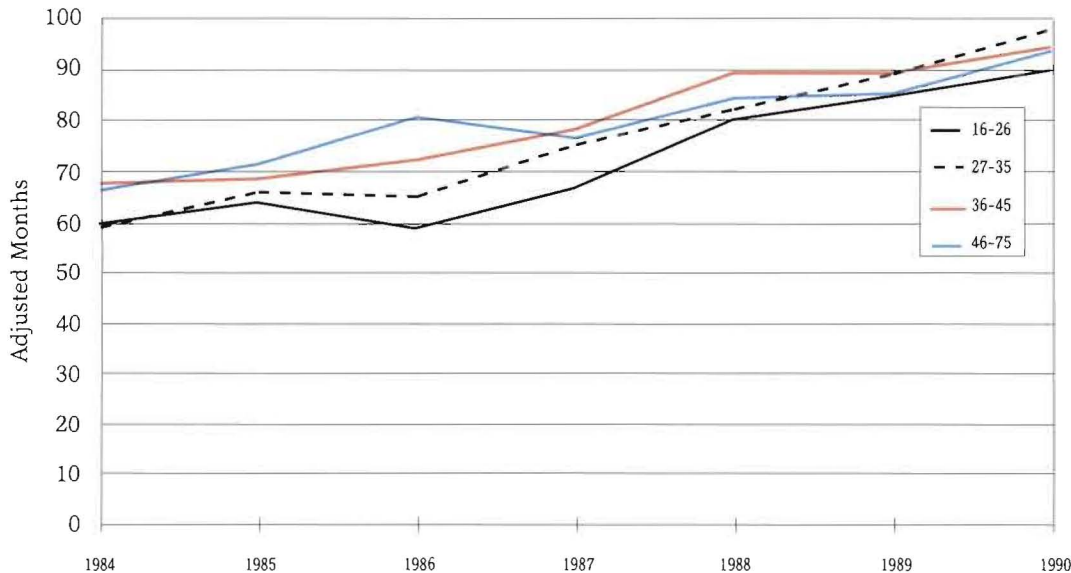


### Age

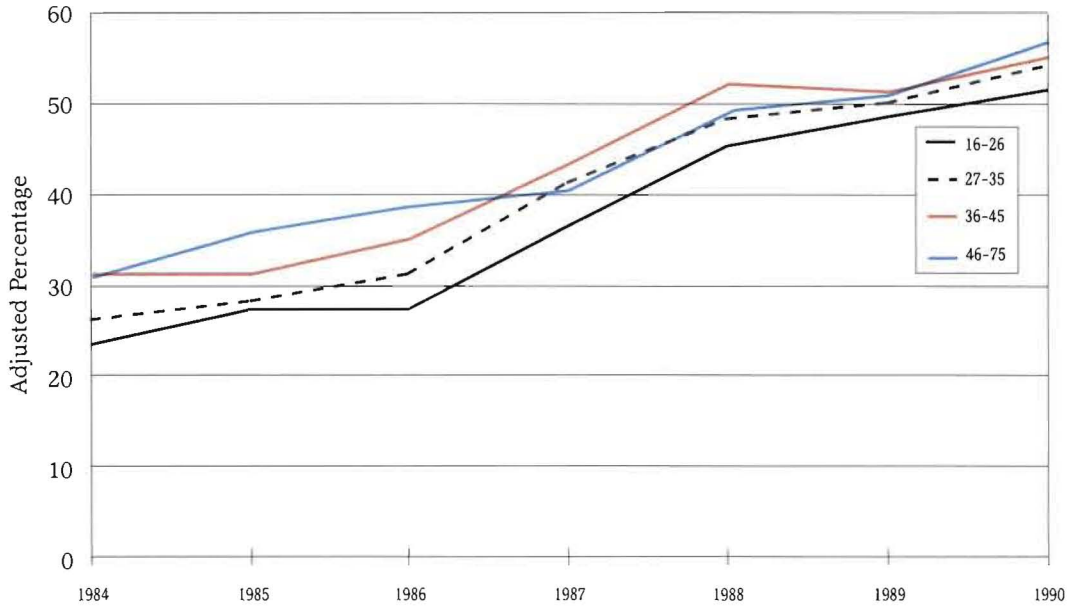
Age is not a factor in either the mandatory minimum statutes or the sentencing guidelines. A past tendency for younger offenders to be treated slightly less severely has disappeared (see the Statistical Appendix). Note also that

among offenders with mandatory minimum behaviors, the proportion of younger offenders is increasing, a trend not found among the federal offender population in general (see Graphs 13a and 13b).

**Graph 13a. Average Prison Months Imposed**



**Graph 13b. Percentage Sentenced to at Least the Mandatory Minimum Term**



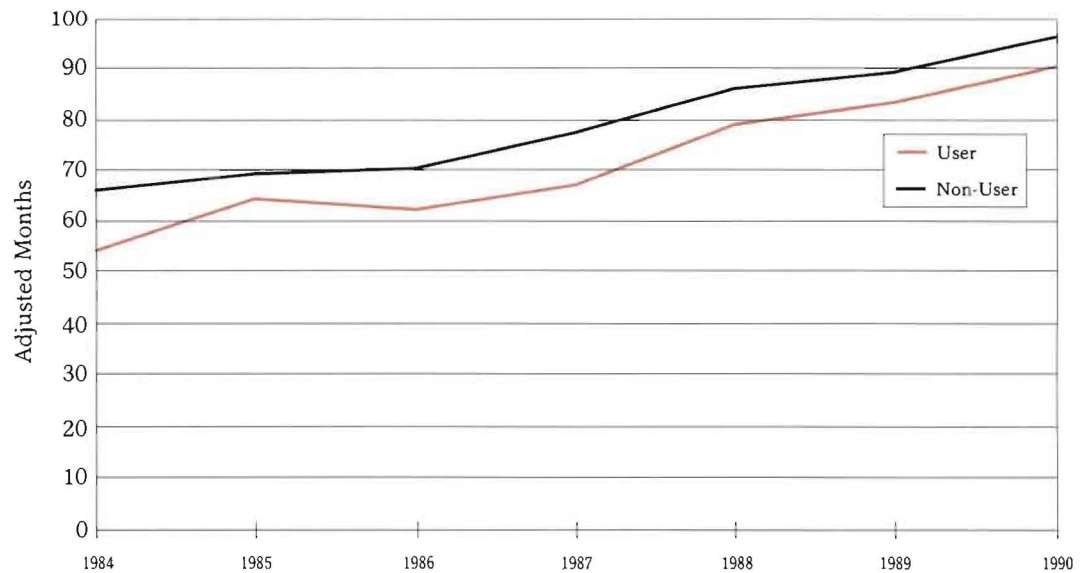
### Drug use

Drug use is not a factor under the mandatory minimum statutes. Under the sentencing guidelines, U.S.S.G. § 5H1.4, p.s., drug dependence is not a reason to sentence below the guidelines.

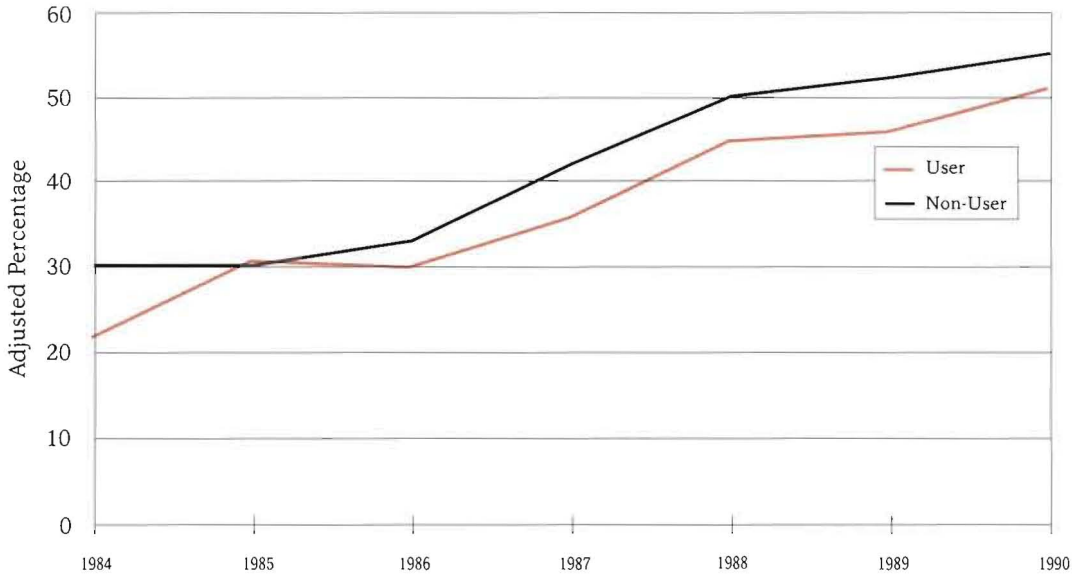
Historically, drug use has been considered by some to be a mitigating culpability factor and by others as an aggravating risk factor. As a result of these competing rationales, drug use, though

it may have played a role in an individual sentencing decision, does not show a strong relationship to sentencing in the aggregate. In 1990, drug users received an average sentence that was 7% lower than that of non-drug users, just slightly less than the difference that has existed since 1984 (see Graphs 14a and 14b).

**Graph 14a. Average Prison Months Imposed**



**Graph 14b. Percentage Sentenced to at Least the Mandatory Minimum Term**



**Gender**

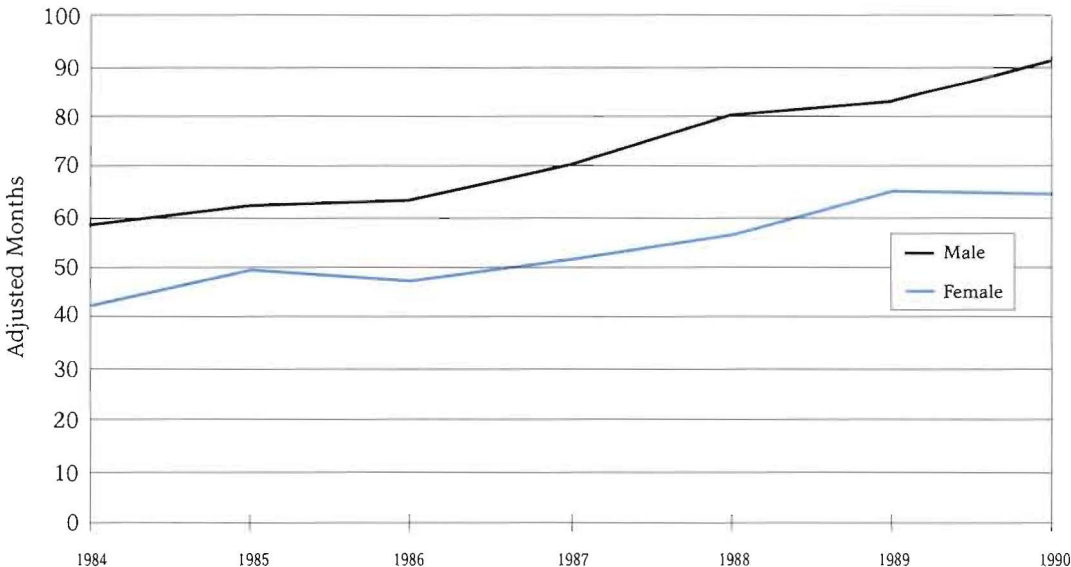
Gender is not a factor under either the mandatory minimum statutes or the sentencing guidelines. According to the guidelines, U.S.S.G. § 5H1.10, p.s., sex is not relevant in the determination of a sentence.

As can be seen in Graphs 15a and 15b, however, gender has always been, and continues to be, related to the sentence imposed.<sup>10</sup> In 1984, women received sentences that were, on average, 38% lower than those for men, and

were 69% less likely to receive a sentence at the now-prescribed minimum term. In 1990, the sentences for women were 42% lower, but women are now only 20% less likely to receive a sentence below the mandatory minimum term. The pattern of sentencing over time indicates that the mandatory minimums have had a somewhat greater influence on the sentencing of females than of males, most probably due to their lower starting point.

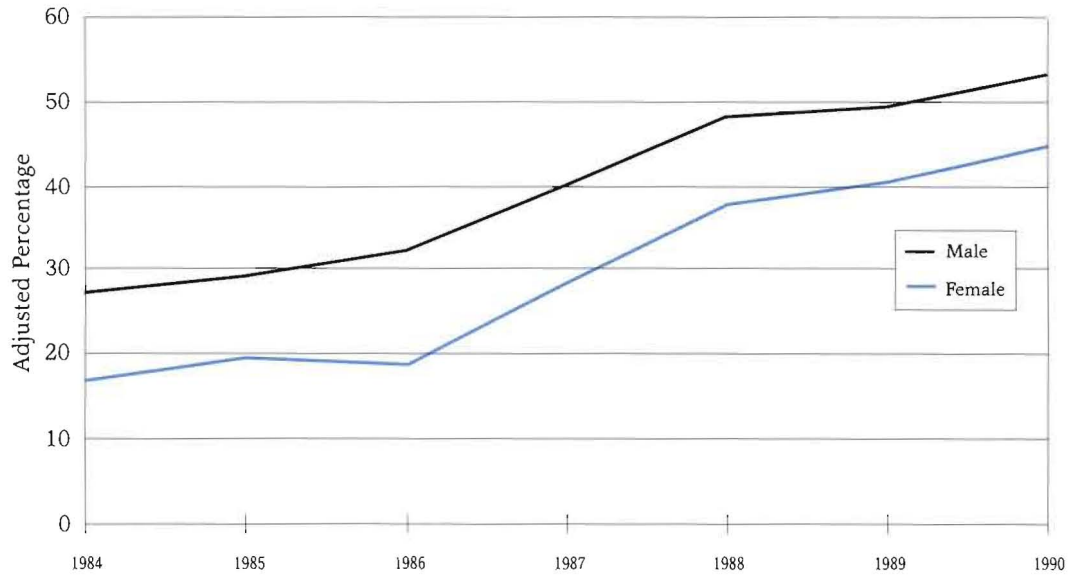
10. As in all these analyses, the gender differences shown here may actually reflect differences based on factors other than those controlled for in these analyses that are related to gender (for example, child care responsibilities).

**Graph 15a. Average Prison Months Imposed**





**Graph 15b. Percentage Sentenced to at Least the Mandatory Minimum Term**



## Race

Race is not a factor under either the mandatory minimum statutes or the sentencing guidelines. U.S.S.G. § 5H1.10, p.s., race and national origin are not relevant in the determination of a sentence.

The proportion of black offenders grew from under 10% in 1984 to 28% of the mandatory minimum drug offenders by 1990; whites now constitute less than a majority of this group (see the Statistical Appendix). This is a much more dramatic shift than found in the federal offender population in general.

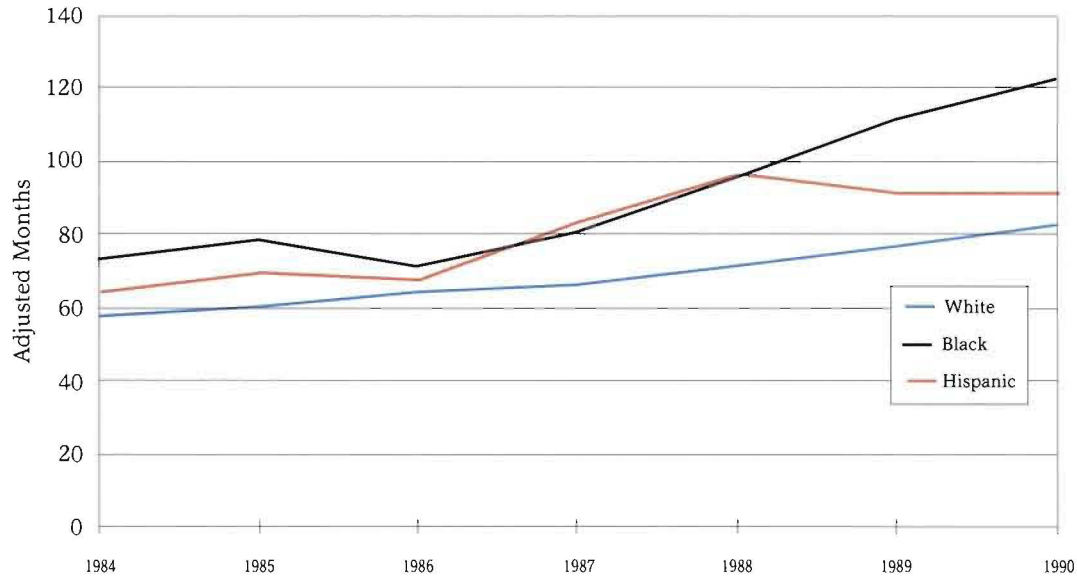
There has always been a tendency for the sentences of whites to be lower than the sentences of non-whites, a difference that, unfortunately, has become larger over time (see Graphs 16a and 16b). In 1984, the average sentence for blacks was 28% higher than that for whites. The difference narrowed to 11% in 1986 and then began a steady increase. By 1990, the average sentence for blacks was 49% higher than that for whites. The sentencing differential between whites and Hispanics began and ended the same period at about the same place (just over 10%); this, however, masks a sharp increase in the average sentence imposed on

Hispanics in 1987 and 1988, followed by a sharp decrease in 1989. The largest differential between whites and Hispanics—35%—was in 1988.

Even more striking is the increasing divergence between whites and non-whites in the proportion sentenced to at least the mandatory minimum prison term. Both black and Hispanic offenders were 12% more likely than whites to be sentenced to at least the minimum in 1984, a difference that virtually disappeared in 1986, then grew noticeably in 1987. The differential was greatest in 1988, with blacks 30% more likely and Hispanics 45% more likely than whites to receive the minimum term. The difference decreased somewhat in 1990 as the proportion of whites receiving the minimum term increased while the proportion of non-whites remained fairly steady. The period ended with black offenders 21% more likely and Hispanic offenders 28% more likely than whites to receive at least the minimum prison term.

The timing of the increased divergence in sentencing based on race implicates the mandatory minimum laws.

**Graph 16a. Average Prison Months Imposed**



**Graph 16b. Percentage Sentenced to at Least the Mandatory Minimum Term**







## V. Impact of Regional and Workload Differences

To assess whether the apparent race effect could be explained by regional and workload differences, regression analyses were done for all mandatory minimum drug cases each year from 1984 through 1990.<sup>11</sup> The analyses grouped various factors into one of four categories: (1) statutory or guideline sentencing factors (drug type, drug amount, weapon, prior record, and role in offense), (2) offender characteristics traditionally associated with sentencing (age, gender, drug use), (3) regional and workload factors, and (4) three race variables to assess the

sentencing of blacks, Hispanics, and "other non-whites" against the sentencing of whites. Each group of variables was entered sequentially to assess how much each added to the ability to predict sentencing outcome.

Table 2A shows, for each year, the amount of the variation in the prison sentence imposed that can be accounted for by each set of factors; Table 2B presents this same information for the dichotomous variable of whether the sentence imposed was to at least the mandatory minimum term.

11. An initial analysis verified there was a statistically significant effect due to changes in the influence of various of these factors over time, including a significant "race by time" interaction based on the "white/non-white" distinction. It was therefore deemed appropriate to compare the separate analyses by year.

**Table 2. The Power of Types of Sentencing Factors to Explain Sentencing Variation**

A. Prison Term Imposed							
	1984	1985	1986	1987	1988	1989	1990
Total variation accounted for	.22	.23	.27	.27	.24	.27	.30
<i>Variation associated with:</i>							
Statutory/guideline factors	.18	.19	.22	.22	.21	.24	.27
Other traditional factors	.02	.01	.02	.01	.01	.01	.01
Regional/workload factors	.02	.02	.03	.03	.01	.01	.01
Racial factors	.00	.00	.00	.01	.01	.02	.02
B. Sentenced to at Least the Minimum Term							
Total variation accounted for	.19	.18	.20	.17	.19	.16	.15
<i>Variation explained by:</i>							
Statutory/guideline factors	.14	.13	.15	.11	.12	.11	.10
Other traditional factors	.02	.01	.01	.01	.01	.01	.01
Regional/workload factors	.03	.04	.03	.03	.04	.02	.03
Racial factors	.00	.00	.00	.01	.02	.01	.01

Note: All the variations above the .00 level are significant at or beyond the .01 level.

There are three things of particular note. First, the "statutory/guideline" factors have always been the most important in determining the sentence imposed, indicating that sentencing was never as "lawless" as it was sometimes portrayed. These factors have become even more important over time as more offenders

are sentenced under the Sentencing Reform Act of 1984. This is not surprising since the sentencing guidelines incorporated these factors and made explicit how they were to be considered in the sentencing process.

Second, the race effect from 1987 onwards does not disappear when the "regional/

workload" factors are added. It can be seen, however, that the additional explanatory power added by "racial," "other traditional," and "regional/workload" factors is small when compared to the impact of "statutory/guideline" factors.

Third, adding the "regional/workload" factors added little to the ability to explain the variation in sentencing. (Compare Table 2 with Statistical Appendix, Section IV.) Part of the reason for the apparently increasing relationship between race and sentencing may well be found during the search for the still-missing variance: that is, it need not necessarily be due to more racism on an individual level, but rather may stem from, for example, changing practices in plea bargaining, sentencing, or giving credit for "substantial cooperation" in districts with traditionally higher proportions of black and Hispanic offenders, or shifting proportions of white, black, and Hispanic of-

fenders in districts with traditionally more severe sentencing practices. It is also possible that there are more problems with proof in the types of offenses committed by whites, or that the attorneys who represent whites tend to raise more evidentiary issues.

It should be noted, however, that explanations such as these do not excuse the adverse impact of these practices on non-whites across the federal system. The trend toward a greater influence of race is particularly disturbing as it coincides with mandatory minimum sentencing statutes, which one would expect to be *more* color-blind than a system that did not narrow judicial discretion. However, considerable discretion, more of which is now in the hands of prosecutors, remains. The search for practices that are contributing to this apparent race effect must be a top priority so that corrective action can be taken.

## VI. Conclusion

Mandatory minimum sentence laws appear to be contributing to increased sentence length, making more emphatic a trend in drug cases that predated their enactment. Mandatory minimum statutes and the guidelines seem also to have narrowed the difference in the sentences imposed for equally serious offenses involving marijuana and opiates, and to have reduced the importance of age and the distinction between leadership and middleman roles in the sentencing decision. In all instances, the narrowing of differences stems from more severe sentencing of the previously advantaged group.

Mandatory minimum sentence laws do not seem to have ensured that all of those involved in the proscribed behaviors receive at least the

minimum term: just under one-half of those who would apparently be eligible received lesser sentences. Further, despite the laws' emphasis on offense behavior, sentences still vary by offender characteristics. As in the past, the least culpable offenders, and offenders who are women, continue to receive less severe sentences than others involved in similar offenses. Further, both black and Hispanic offenders now receive noticeably more severe sentences than their white counterparts.

The latter trend suggests that there may be questions to be considered concerning the impact of shifting discretion affecting sentencing from the court to the prosecutor's office.



## VII. Statistical Appendix

### Section II

#### Number of Prison Sentences in Graphs 1 and 2

	1984	1985	1986	1987	1988	1989	1990
Jan. 1-June 30:	18,443	19,936	21,118	21,191	20,107	21,767	22,997
July 1-Dec. 31:	18,242	19,425	20,732	20,307	21,052	21,861	

#### Number of Offenses in Graph 3

##### A. Not Involving Drugs or Weapons + Violence

	1984	1985	1986	1987	1988	1989	1990
Jan. 1-June 30:	13,307	14,057	14,542	13,616	13,141	13,578	13,995
July 1-Dec.31:	13,443	13,767	14,166	13,357	13,569	13,371	
Total:	73%	71%	69%	65%	65%	62%	61%

##### B. Involving Drugs, but no Minimum Behavior

	1984	1985	1986	1987	1988	1989	1990
Jan. 1-June 30:	2,990	3,570	3,932	4,466	3,886	4,194	4,307
July 1-Dec.31:	2,956	3,579	3,817	4,056	4,007	4,240	
Total:	16%	18%	19%	21%	19%	19%	19%

#### Number of Offenses in Graph 4

##### A. Involving Five-Year Drug Minimum Behavior

	1984	1985	1986	1987	1988	1989	1990
Jan. 1-June 30:	739	830	1,070	1,149	1,252	1,550	1,702
July 1-Dec.31:	667	780	1,044	1,187	1,366	1,583	
Total:	4%	4%	5%	6%	6%	7%	7%

##### B. Involving Ten-Year Drug Minimum Behavior

	1984	1985	1986	1987	1988	1989	1990
Jan. 1-June 30:	406	400	525	745	793	987	1,213
July 1-Dec.31:	313	407	572	615	874	1,141	
Total:	2%	2%	3%	3%	4%	5%	5%

#### Number of Offenses in Graph 5

##### A. Involving Weapons + Violence Minimum Behavior

	1984	1985	1986	1987	1988	1989	1990
Jan. 1-June 30:	847	952	880	972	758	1,035	1,218
July 1-Dec.31:	756	775	880	849	882	1,029	
Total:	4%	4%	4%	4%	4%	5%	5%

##### B. Involving Weapons + Five-Year Drug Minimum Behavior

	1984	1985	1986	1987	1988	1989	1990
Jan. 1-June 30:	110	97	117	168	192	276	326
July 1-Dec.31:	74	83	185	182	220	298	
Total:	1%	< 1%	1%	1%	1%	1%	1%

C. Involving Weapons + Ten-Year Drug Minimum Behavior

	1984	1985	1986	1987	1988	1989	1990
Jan. 1-June 30:	44	27	52	74	80	147	236
July 1-Dec.31:	32	34	66	58	133	199	
Total:	< 1%	< 1%	< 1%	< 1%	1%	1%	1%

**Section III**

Number of Prison Sentences in Graph 6

	1984	1985	1986	1987	1988	1989	1990
Jan. 1-June 30:	1,299	1,354	1,764	2,136	2,317	2,960	3,477
July 1-Dec.31:	1,086	1,304	1,867	2,042	2,593	3,221	

**Section IV**

Both measures of all graphs in this section (8-16) were adjusted as follows. The adjusted means and proportions were determined from an analysis of covariance. The model was:  $X_1$  by YEAR with  $X_{2,9}$

where  $X$  stands for the factors, each in turn analyzed for its main effect and its  $X$  by YEAR effect controlling for the other factors.

**Percentage of Variation in Sentencing Accounted for by the Factors in This Study**

A. Prison Term Imposed

\* The percentages represent the squared multiple correlation that resulted from a regression using all of the factors.

	1984	1985	1986	1987	1988	1989	1990
Total Variation*	20%	20%	24%	24%	23%	26%	29%

B. Sentenced to at Least the Minimum Term

† The percentages are smaller for this dependant variable because the drug amount and weapons factors, both strongly related to the sentence imposed, are weakly related to this measure as they are part of the calculus that determines the applicable minimum term.

	1984	1985	1986	1987	1988	1989	1990
Total Variation†	16%	14%	16%	14%	16%	14%	12%

Number of Offenders by Drug Type in Graph 8

	1984	1985	1986	1987	1988	1989	1990
Marijuana:	785	734	714	905	1,004	1,115	542
Cocaine:	1,273	1,496	2,421	2,779	3,377	4,153	2,402
Opiates:	307	416	480	475	489	875	510
Percentage Cocaine:	54%	56%	67%	67%	69%	68%	70%

Number of Offenders by Three Levels of Drug Amount in Graph 9\*

\*As the factor of "adjusted average prison months" is used to determine what mandatory minimum term appeared applicable in the case, and therefore directly related to the measure of the proportion receiving at least the minimum term, that measure is not presented.

	1984	1985	1986	1987	1988	1989	1990
26:	972	1,143	1,558	1,807	1,887	2,308	1,263
32:	420	438	530	666	878	1,126	626
36:	51	59	120	161	188	262	206
Percentage 26:	67%	70%	71%	69%	64%	62%	60%

Number of Offenders by Weapon in Graph 10\*

	1984	1985	1986	1987	1988	1989	1990
Yes:	268	250	442	506	656	958	578
No:	2,097	2,396	3,173	3,653	4,214	5,185	2,876
Percentage with Weapon:	11%	9%	12%	12%	13%	16%	17%

\*As the factor of "adjusted average prison months" is used to determine what mandatory minimum term appeared applicable in the case, and therefore directly related to the measure of the proportion receiving at least the minimum term, that measure is not presented.

Number of Offenders by Prior Record in Graph 11

	1984	1985	1986	1987	1988	1989	1990
None:	1,407	1,599	2,127	2,461	2,907	3,465	1,860
Misdemeanor:	735	797	1,096	1,249	1,412	1,893	1,097
Felony:	223	250	392	449	551	785	497
Percentage None:	59%	60%	59%	59%	60%	56%	54%

Number of Offenders by Culpability in Graph 12

	1984	1985	1986	1987	1988	1989	1990
Less:	746	823	1,232	1,413	1,573	1,822	984
Equal:	756	859	1,009	1,183	1,564	2,309	1,400
More:	863	964	1,374	1,563	1,733	2,012	1,070
Percentage More:	36%	36%	38%	38%	36%	33%	31%

Number of Offenders by Age Categories in Graph 13

	1984	1985	1986	1987	1988	1989	1990
16-26:	361	470	680	795	1,103	1,468	861
27-35:	934	1,028	1,390	1,586	1,838	2,200	1,249
36-45:	746	803	1,055	1,268	1,339	1,664	935
46-75:	324	345	490	510	590	811	409
Percentage 16-26:	15%	18%	19%	19%	23%	24%	25%

Number of Offenders by Drug Use in Graph 14

	1984	1985	1986	1987	1988	1989	1990
Yes:	409	555	860	1,013	1,269	1,787	1,192
No:	1,956	2,091	2,755	3,146	3,601	4,356	2,262
Percentage Users:	17%	21%	24%	24%	26%	29%	35%

Number of Offenders by Gender in Graph 15

	1984	1985	1986	1987	1988	1989	1990
Male:	2,101	2,344	3,182	3,654	4,230	5,436	3,042
Female:	254	302	433	505	640	707	412
Percentage Male:	89%	89%	88%	88%	87%	88%	88%

Number of Offenders by Race in Graph 16

(443 "other" offenders not included)

	1984	1985	1986	1987	1988	1989	1990
White:	1,394	1,544	2,075	2,309	2,269	2,665	1,431
Black:	185	257	386	511	861	1,308	943
Hispanic:	741	788	1,094	1,284	1,673	2,062	1,029
Percentage black:	8%	10%	11%	12%	18%	22%	28%





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