

# Virginia State Crime Commission

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## Mandatory Minimum Crimes

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2007

## MANDATORY MINIMUM CRIMES IN VIRGINIA

Under Virginia law, a mandatory minimum sentence is one that must be imposed, and cannot be suspended, by the trial judge if a defendant is found guilty of the offense. Using the statutory authority granted to the Crime Commission, and at the direction of the Chairman, Delegate Dave Albo, staff conducted a study on the various criminal statutes in Virginia that carry a mandatory minimum sentence.

There are currently 36 criminal statutes in the Code of Virginia that contain some type of mandatory minimum sentence. Altogether, they create roughly 82 offenses for which a mandatory minimum sentence is applicable. Of these 82 offenses, 60 are felonies, and 22 are misdemeanors. The sentences vary in range from a mandatory \$250 fine, to life imprisonment. The types of offenses for which mandatory minimum sentences have been specified fall into many different categories: drugs, DUI offenses, firearms, sexual assault, non-DUI related driving offenses, and even trespass.

The enactment of mandatory minimum laws is a comparatively recent phenomenon in Virginia. The first was passed in 1968, with the creation of Virginia's habitual offender laws. Three more were enacted in the 1970's: the use of a firearm in the commission of certain felonies; a second offense of that crime; and the escape from a correctional facility by a felon. The vast majority of mandatory minimum offenses have been created in the last 20 years; dozens have been created since 2000 in a trend that does not currently show any signs of abating.

Typically, most of the mandatory minimum crimes enacted in a year deal with a specific category of offense, reflecting a pressing concern at that time. For instance, in 2003, all of the enacted mandatory minimum punishments involved DUI offenses. In

2007, eight out of the ten mandatory minimum crimes enacted dealt with child pornography and the use of computers to solicit children.

A review of the literature published on the topic of mandatory minimum punishments finds very few universal conclusions. This is to be expected; a mandatory minimum statute that requires a fine to be paid for speeding cannot be fairly compared to a statute requiring a mandatory minimum life sentence for dealing drugs. The differences in penalties, and in the types of offenses involved, prevent generalities from being made. However, most peer-reviewed studies have not established any long-term deterrent effects directly resulting from the passage of a mandatory minimum statute. Some studies have found that the enactment of a mandatory minimum penalty led to a decrease in convictions for that offense, due to plea bargaining—defendants opted to plead to a lesser offense, rather than risk a conviction which would mean a lengthier incarceration. Other studies have found that a decrease in crime rate following the passage of a mandatory minimum sentence was due to other factors than the deterrent impact of the new mandatory minimum punishment. For example, a very detailed study that analyzed the impact of mandatory minimum jail sentences in Arizona for drunk driving found that the decrease in drunk driving arrests following the enactment of the “stiffer penalties,” was more closely correlated with a corresponding public awareness campaign about the new laws and the dangers of drunk driving, rather than the specific deterrent effect of the laws themselves.

This is not to say that there may not be other compelling reasons for a mandatory minimum penalty to be enacted. Such statutes do allow a legislature to register its strong disapproval of a crime, and formally declare that criminals who commit such acts will not be allowed to escape unpunished. In this way, a legislature can indirectly express its understanding and sympathy for the victims of those crimes.

The passage of mandatory minimum sentences can

also provide a tool for prosecutors to induce guilty pleas, via plea bargaining, thus saving time and financial resources of the state. A similar benefit may be that with the “threat” of a mandatory minimum sentence, a defendant may be persuaded to provide cooperation to the prosecutors, either by testifying against co-defendants, or by providing information about other, unrelated criminal cases.

### **Conclusion**

While mandatory minimum laws may provide useful benefits in some situations, they can also lead to unanticipated or even undesirable effects, such as lower conviction rates, or an unjust sentence in an individual case. Trying to determine in advance whether the passage of a mandatory minimum penalty will have mostly positive or negative consequences, or no real impact at all, is extremely difficult. The following general considerations may provide some guidance as to whether or not a particular proposal for a new mandatory minimum punishment will be good policy or not.

**How much jail or prison time are such offenders currently receiving?** If most defendants convicted of the crime are already receiving a lengthier incarceration than what is proposed, then the new mandatory minimum probably will not accomplish much. In fact, it may lead to lighter sentences if judges are “guided” by the mandatory minimum language to sentence all defendants to exactly that amount of time.

**What will be the fiscal impact on jails or prisons?** If the proposed mandatory minimum will lead to much greater periods of incarceration, then the overall impact on state and local budgets must be considered. The increased costs may need to be considered in Virginia’s budget and in future, long-term planning.

**Do Commonwealth’s Attorneys support the proposal?** As the constitutional officers who either will make use of the mandatory minimum statute, or ignore it (by refusing to charge defendants with that statute and substituting a lesser charge), their input must be sought before

the new penalty is enacted. There is little good to be accomplished in passing criminal legislation that is viewed as unnecessary, or worse, a hindrance, by prosecutors.

**Is the proposed mandatory minimum sentence consistent with penalties for related crimes?** If a mandatory minimum sentence is enacted without keeping a broader view on the penalties for similar crimes, it can lead to illogical sentencing schemes. For example, the mandatory minimum penalty for distributing less than ten grams of methamphetamine, third offense, is five years. Yet, the mandatory minimum penalty for manufacturing that same quantity of methamphetamine is only three years. Distributing any amount of an anabolic steroid, even as an accommodation, carries a mandatory minimum sentence of six months. No mandatory minimum penalty exists for distributing heroin, though, unless the quantity is 100 grams or greater. Discrepancies like these arise when mandatory minimum sentences are enacted in a piece-meal fashion, without considering the existing penalties for similar conduct.

**What unforeseen or collateral effects might occur?** Will passage of the mandatory minimum make convictions more difficult for prosecutors to obtain? Will it make victims reluctant to testify (a concern for domestic violence and abuse cases)? Will it make defendants more likely to seek a jury trial, as they may feel they have nothing to lose?

While predicting the long-term consequences of a mandatory minimum statute is difficult, these considerations can provide a useful starting point in determining whether, as a policy, the proposed penalty will benefit, or be detrimental to, the Commonwealth.