

## ***Summary of Impact Estimates: Policy Changes and Proposed Legislation Regarding Mandatory Minimums***

In recent months, Attorney General Eric Holder has issued new policies regarding the application of mandatory minimum penalties in drug trafficking cases. He also vowed to work with Congress to enact legislation reforming mandatory minimum statutes, specifically citing the proposed “Justice Safety Valve Act” and the “Smarter Sentencing Act.” The Federal Public and Community Defenders used data from the U. S. Sentencing Commission to estimate the number of offenders who might benefit annually from the proposals. Key differences among the proposals are 1) whether they apply to all mandatory penalties, or only those applicable to drug trafficking offenses, and 2) whether they also direct changes to the sentencing guidelines.

### **Impact of the Holder Memo**

- The U. S. Sentencing Commission reports just over 25,000 defendants sentenced under the drug trafficking guidelines in FY2012; 15,509 of these were convicted under drug statutes carrying a minimum term of imprisonment.
- The best available estimate is that **530 drug defendants** a year will benefit from reduced sentences due to the changes directed by the Holder Memo regarding the charging of drug quantity. It is not possible to estimate the impact of changes regarding motions under 21 U.S.C. § 851. The precise effect of the charging changes will depend on how the memorandum is interpreted and implemented by United States Attorneys and Assistant U. S. Attorneys.

### **Impact of the Justice Safety Valve Act**

- Of the 84,173 defendants reported by the Commission in FY2012, over 20,000 were convicted under statutes carrying a mandatory minimum term of imprisonment, and over half of these did not receive any relief from the mandatory penalty through the currently existing safety valve or motions for waiver of the mandatory penalty due to the defendant’s substantial assistance.
- The best available estimate is that **3,107 defendants** would have received lower sentences in FY2012 if the Justice Safety Act had been in effect. The statutory penalty is currently higher than the *top* of the otherwise applicable guideline range for 1,086 of these defendants, and higher than the *bottom* of the range for an additional 1,264. An additional 757 defendants received downward departures or variance to the statutory minimum.

### **Impact of the Smarter Sentencing Act**

- This legislation would 1) expand the current safety valve for drug trafficking offenders, and 2) lower the statutory penalties applicable to various types and quantities of drugs. It also directs the Commission to amend the guidelines consistent with provisions in the proposal.
- The best available estimate is that the safety valve expansion would lower sentences for between **479 and 2,180 defendants** a year, depending on the Commission’s response to the directive.
- The statutory penalty reductions are likely to lower sentences for **about 2,359 defendants** a year, without any amendment of the sentencing guidelines.
- If the Commission amends the Drug Quantity Table in the sentencing guidelines consistent with the current linkage between the statutes and the guidelines, sentences for **over 25,000 offenders** would be reduced each year, providing other factors remain similar to today.

*Details of the analyses on which these estimates are based can be found in memoranda by Paul J. Hofer, J.D. Ph.D., Policy Analyst for the Federal Public and Community Defenders, available at: [www.fd.org](http://www.fd.org)*