



Mandatory Minimum Sentences

January 5, 2021



Overview

- Study Findings
- Policy Options



Study Findings

- A mandatory minimum sentence must be imposed by the court and time served in full by the defendant.
 - Sentences vary greatly by offense.
 - Sentences range from 2 days to life imprisonment.
- Research on the effectiveness of mandatory minimum sentences is inconclusive.



Study Findings

Proponents of Mandatory Minimum Sentences

- Deter crime
- Eliminate inequities in sentencing
- Guarantee a minimum punishment
- Induce cooperation with prosecutors

Opponents of Mandatory Minimum Sentences

- Do not deter crime
- Have not eliminated sentencing disparities
- Inflict a burden on a defendant's right to trial
- Distort sentences for classes of crimes and may foster circumvention by judges, prosecutors, and juries



Study Findings

- 224 distinct offenses in 34 Virginia Code sections that require a mandatory minimum (MM) sentence:
 - 162 felony offenses
 - 62 misdemeanor offenses

Source: Virginia Criminal Sentencing Commission, *VCCs Excel Version* spreadsheet. Count of offenses by Crime Commission staff based on list of offenses provided in *VCCs Excel Version*, retrieved from http://www.vcsc.virginia.gov/codes_qbe.html.

Note: Offenses requiring a mandatory minimum sentence under § 18.2-67.5:2, § 18.2-67.5:3, or § 19.2-297.1 are not included in the count.



Study Findings

162 Felony MM Offenses

Felony Offense Category	Number of Offenses
Driving While Intoxicated	58
Narcotics	44
Obscenity- Child pornography	21
Weapon violations	10
Traffic- Operator's License	6
Rape	6
Assault	5
Murder	3
All Other Offenses	9
Total Felony MM Offenses	162

Source: Virginia Criminal Sentencing Commission, *VCCs Excel Version* spreadsheet. Count of offenses by Crime Commission staff based on list of offenses provided in *VCCs Excel Version*, retrieved from http://www.vcsc.virginia.gov/codes_qbe.html. Note: Offenses requiring a mandatory minimum sentence under § 18.2-67.5:2, § 18.2-67.5:3, or § 19.2-297.1 are not included in the count.



Study Findings

62 Misdemeanor MM Offenses

<u>Misdemeanor Offense Category</u>	<u>Number of Offenses</u>
Driving While Intoxicated	52
Assault	3
Agriculture, Horticulture, and Food	2
Traffic- Operator's License	2
Protective Orders	2
Alcohol	1
Total Misdemeanor MM Offenses	62

Source: Virginia Criminal Sentencing Commission, *VCCs Excel Version* spreadsheet. Count of offenses by Crime Commission staff based on list of offenses provided in *VCCs Excel Version*, retrieved from http://www.vcsc.virginia.gov/codes_qbe.html. Note: Offenses requiring a mandatory minimum sentence under § 18.2-67.5:2, § 18.2-67.5:3, or § 19.2-297.1 are not included in the count.



Study Findings

- **Charge and Conviction Data:**
 - Staff requested the total number of charges filed and convictions for offenses requiring a mandatory minimum sentence in Virginia's Circuit, General District, and Juvenile & Domestic Relations District Court for FY16-FY20.¹

¹ Important notes, caveats, and limitations of the Virginia Criminal Sentencing Commission staff analysis of data from the Supreme Court of Virginia's Case Management Systems (CMS) for the Circuit Court, General District Court, and Juvenile & Domestic Relations (JDR) Court (adult defendants only): In order to avoid duplication, when analyzing Circuit Court CMS data, appeals from district courts were excluded. Circuit Court data do not include cases from Fairfax or Alexandria as clerks in those jurisdictions do not participate in the statewide Case Management System. Charge and conviction data exclude attempted and conspired felonies, as mandatory minimum penalties do not apply in such cases. Charges are based on the fiscal year filed. Convictions are based on the fiscal year the case was concluded. Figures include ordinance violations to the extent possible. Cases were selected for inclusion in the analysis based on information entered by court clerks into the CMS data systems.



Study Findings

- Mandatory minimum offenses comprised a very small proportion of the total charges and convictions in Virginia courts over the past 5 years.

TOTAL Charges Filed, FY16-FY20	4,903,574
Offense Did NOT Require MM	96%
Offense Required MM	4%
TOTAL Convictions, FY16-FY20	2,423,935
Offense Did NOT Require MM	97%
Offense Required MM	3%

Source: Virginia Criminal Sentencing Commission staff analysis of data from the Supreme Court of Virginia's Case Management Systems (CMS) for the Circuit Court, General District Court, and Juvenile & Domestic Relations (JDR) Court (adult defendants only). The total number of charges and convictions exclude infractions. See footnote 1 on slide 8 for additional important notes, caveats, and limitations.



Study Findings

Top 5 Mandatory Minimum Offense Charges Per Year

Rank	Description	MM	Average Charges per Year
1	<i>Driving w/ license revoked- 3rd or sub. in 10 years</i> <i>Repealed as of 7/1/2020</i>	10D	5,572
2	Simple assault on law enforcement, court, DOC, fire/medical	6M	4,002
3	DWI, First conviction, blood alcohol level .15 to .20	5D	3,551
4	Firearm use in commission of felony - first offense	3Y	2,839
5	Convicted felon (non-violent w/in 10 yr.) - possess firearm	2Y	1,944

TOTAL AVERAGE NUMBER OF MM CHARGES FILED PER YEAR, FY16-FY20 34,800

Source: Virginia Criminal Sentencing Commission staff analysis of data from the Supreme Court of Virginia's Case Management Systems (CMS) for the Circuit Court, General District Court, and Juvenile & Domestic Relations (JDR) Court (adult defendants only). See footnote 1 on slide 8 for additional important notes, caveats, and limitations.



Study Findings

Top 5 Mandatory Minimum Offense Convictions Per Year

Rank	Description	MM	Average Convictions per Year
1	<i>Driving w/ license revoked- 3rd or sub. within 10 years Repealed as of 7/1/2020</i>	10D	3,078
2	DWI, First conviction, blood alcohol level .15 to .20	5D	2,624
3	DWI, Second conviction within less than 5 years	20D	943
4	DWI, First conviction, blood alcohol level > .20	10D	919
5	DWI, Second conviction within 5 to 10 years	10D	828
TOTAL AVERAGE NUMBER OF MM CONVICTIONS PER YEAR, FY16-FY20			13,959

Source: Virginia Criminal Sentencing Commission staff analysis of data from the Supreme Court of Virginia's Case Management Systems (CMS) for the Circuit Court, General District Court, and Juvenile & Domestic Relations (JDR) Court (adult defendants only). See footnote 1 on slide 8 for additional important notes, caveats, and limitations.



Study Findings

- An analysis of State Responsible (SR) inmates confined as of June 30, 2019, by the Virginia Department of Corrections found that:
 - Black inmates, on average, have more mandatory minimum sentences than White inmates.
 - Male inmates have more mandatory minimum sentences than female inmates.
 - Mandatory minimum sentences are not implemented consistently.

Source: Virginia Department of Corrections, Research – Statistical Analysis & Forecast Unit. (December 2020). *Disparities in sentencing among inmates with mandatory minimum sentences*. Analysis is based upon sentencing information for inmates in the SR Confined Population on June 30, 2019.



Study Findings

Sentence Type of SR Inmates

Sentence Type	Number of Inmates	% Total
Only Non-Mandatory Minimum Sentences	21,547	62%
Mandatory Minimum & Non-Mandatory Minimum Sentences	9,491	27%
Only Mandatory Minimum Sentences	1,499	4%
Life Sentence, Death Sentence or Three Strikes	2,182	6%
TOTAL NUMBER OF SR INMATES	34,719	100%

Source: Virginia Department of Corrections, Research – Statistical Analysis & Forecast Unit. (December 2020). *Offense Information of SR Inmates Serving Mandatory Minimum Sentences*. Analysis is based upon sentencing information for inmates in the SR Confined Population on June 30, 2019.



Study Findings

Top 5 Offenses Committed by SR Inmates with Only Mandatory Minimum Sentences

Rank	Description	# of Offenses	% Total
1	Drug Distribution	489	12%
2	License Revoked - Habitual Offender drive w/out license	384	10%
3	Convicted felon (non-violent w/in 10 yr.) - possess firearm	298	7%
4	Firearm use in commission of felony – first offense	271	7%
5	Simple assault on law enforcement, court, DOC, fire/medical	269	7%
TOTAL OFFENSES		4,001	

Source: Virginia Department of Corrections, Research – Statistical Analysis & Forecast Unit. (December 2020). *Offense Information of SR Inmates Serving Mandatory Minimum Sentences*. Analysis is based upon sentencing information for inmates in the SR Confined Population on June 30, 2019. Note: As inmates can be convicted of multiple, differing offenses, the offenses listed in this table may or may not be the most serious offense for these inmates.



Policy Options

- **Option 1:** Should any mandatory minimum sentences be eliminated? If so, for which offenses?
- **Option 2:** If any mandatory minimum sentences are eliminated, should offenders be eligible for resentencing?
- **Option 3:** Should courts have the discretion to allow mandatory minimum sentences to be served concurrently with other offenses?



Policy Option 1

- **Option 1:** Should any mandatory minimum sentences be eliminated?
- If so, for which offenses?
 - Certain felony offenses
 - Certain misdemeanor offenses
 - Certain categories of offenses



Policy Option 2

- **Option 2:** If any mandatory minimum sentences are eliminated, should offenders be eligible for resentencing?
 - Benefits: equitable relief
 - Challenges: logistics and resources for resentencing
 - Other states approaches vary



Policy Option 2

- Resentencing process includes:
 - Petition filed with sentencing circuit court;
 - Commonwealth's Attorney may object;
 - The court may dismiss the petition without a hearing; and,
 - If the court does not dismiss the petition, a hearing will be held on the matter.



Policy Option 3

- **Option 3:** Should courts have the discretion to allow mandatory minimum sentences to be served concurrently with other offenses?
 - Concurrent sentence: individual serves multiple sentences at the same time.
 - Consecutive sentence: individual serves multiple sentences one after another.



Policy Option 3

- Statutory and case law vary on whether mandatory minimum sentences can be served concurrently.
- Codifying this will grant courts explicit authority to allow mandatory minimum sentences to be served concurrently.



Discussion