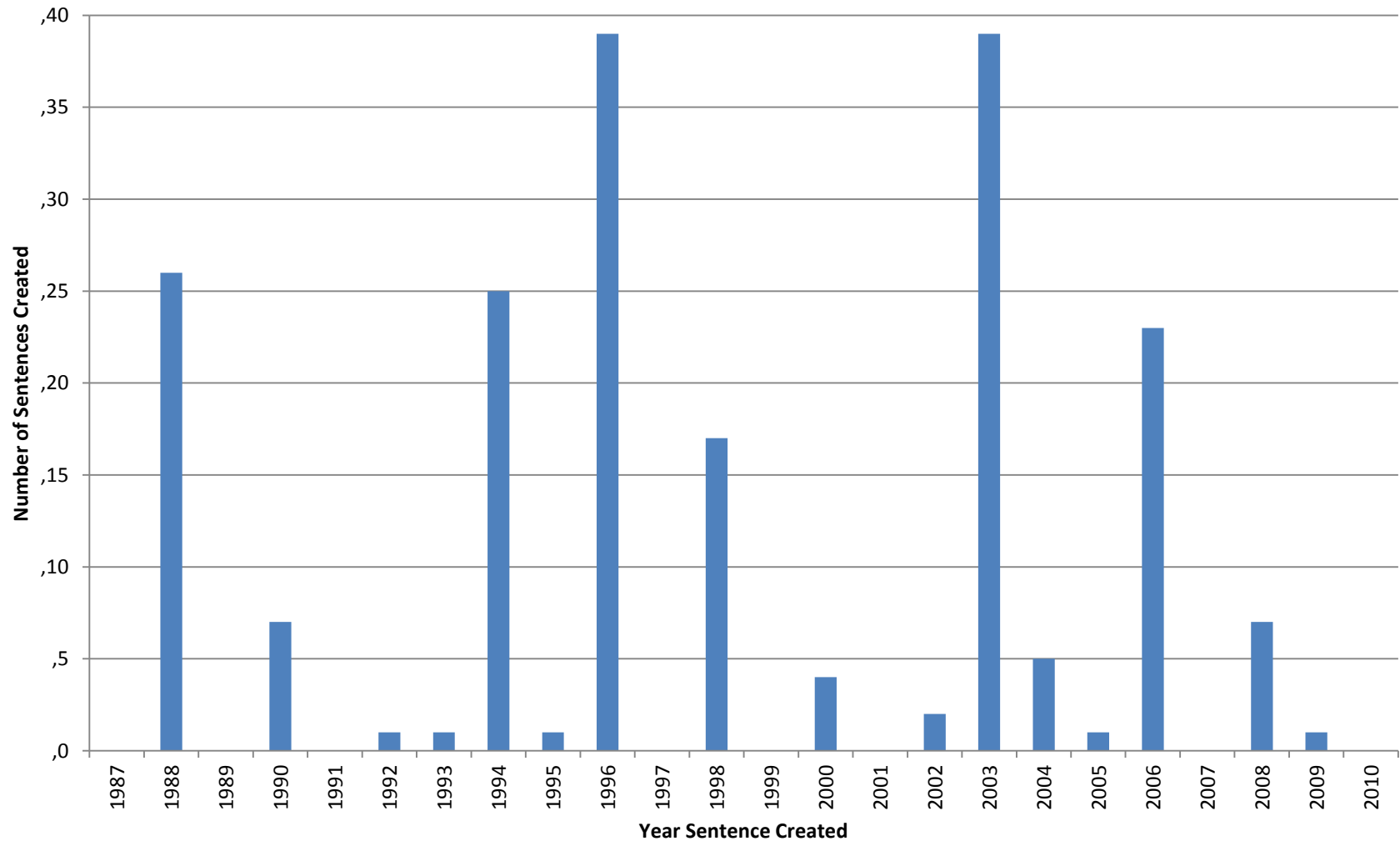


Mandatory Minimum Sentences Created or Expanded By Congress, 1987-2010





METHODOLOGY

What this Graph Depicts

This graph depicts the number of federal mandatory minimum sentences created or expanded by Congress each year between 1987 and 2010.

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 or expanded:

- (1) the first time Congress created or expanded it,
- (2) any time Congress subsequently increased 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 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 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”; expanding the list of prior offenses that could be used to trigger the mandatory sentence).

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. 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 (131) 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 (88) 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 received notable or extensive media attention and created fear or panic among Congress and the general public. For example, mandatory minimum



Families Against Mandatory Minimums

drug sentences were created in the late 1980s and almost solely justified by now-debunked 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) |

* The majority in this Senate changed hands multiple times. See http://www.senate.gov/pagelayout/history/one_item_and_teasers/partydiv.htm.