



## SAFETY VALVES IN A NUTSHELL

### What is a mandatory minimum?

A mandatory minimum is a sentence, created by Congress or a state legislature, which the court **must** give to a person convicted of a crime, no matter what the unique circumstances of the offender or the offense are. While there are mandatory minimums for many crimes, they most often apply to gun and drug crimes and are based on only the type and weight of the drug involved or the possession or presence of a gun.

**Example:** A person is convicted of selling 5 grams of crack cocaine. The mandatory sentence is 5 years in prison without parole. The court **must** give this sentence, even if it is too harsh for the offender, his role in the offense, or the nature of the crime.

### What is a safety valve?

A “safety valve” is one of the only ways out of a mandatory minimum sentence. Safety valves are laws created by Congress or a state legislature that let courts give an offender less time in prison than the mandatory minimum requires, but only if the offender or his offense meets certain special requirements.

### Is there a federal safety valve?

Yes. It was created in 1994, when Congress realized that many first-time, low-level, and nonviolent drug offenders were receiving mandatory minimums that did not fit them or their crimes. FAMM and its members played a key role in getting Congress to create the safety valve.

### How does the federal safety valve work?

The federal safety valve is a strict, five-part test. If all five requirements in the law are met, the court must sentence a person below the mandatory minimum, generally by using the federal sentencing guidelines to create a sentence that fits the offender and his crime.

**Example:** A person is convicted of selling five grams of crack cocaine. The federal mandatory minimum sentence for this offense is five years. The federal safety valve requires the court to sentence an offender *below* this mandatory minimum only if all five of the criteria below are met:

- (1) no one was harmed during the offense,
- (2) the offender has little or no history of criminal convictions,
- (3) the offender did not use violence or a gun,
- (4) the offender was not a leader or organizer of the offense, AND
- (5) the offender told the prosecutor all that they know about the offense.

If – and only if – the offender meets all five criteria, the court must sentence him below the mandatory minimum of five years to a term the court feels is appropriate, using the federal sentencing guidelines – for example, to three years instead of five.



### **How many people have benefitted from the federal safety valve?**

Since 1995, over 68,000 federal drug offenders facing mandatory minimums have received the benefit of the safety valve and received shorter sentences. This has saved the federal government about \$26,000 per prisoner, per year, for each year shaved off the sentence.

### **Do states also have safety valves?**

Yes, some states do. The federal safety valve only applies to people charged and sentenced in federal courts. Those charged and sentenced in state courts must look to their state's laws. Many states have mandatory minimum sentences, and a few of those states also have their own unique safety valves. While other states may also have safety valves, we know that the following states contain safety valves in their laws:

- Montana (for all crimes);
- Maine (for drug trafficking crimes);
- Oregon (for gun crimes);
- Connecticut (for drug crimes);
- Minnesota (for gun crimes).

**Example:** Montana has mandatory minimums for, among other crimes, aggravated assault, many sex offenses, robbery, kidnapping, and drug crimes. In these cases, Montana's safety valve allows courts to give sentences below the mandatory minimum if the offender was a minor, had a significantly impaired mental capacity, committed the crime under unusual or substantial duress, was an accomplice who played a minor role, or when the crime did not involve a weapon or serious injury to the victim.

**Example:** Minnesota has a five-year mandatory minimum sentence for being a felon in possession of a weapon. Courts may sentence these offenders below the mandatory minimum (including giving them probation instead of prison time) whenever the court finds "substantial and compelling reasons to do so." In 2007, 32.9% of all offenders going to prison for this offense received the benefit of the safety valve. On average, their sentences were 21 months shorter than the mandatory minimum. This saved Minnesota over \$2.8 million in prison costs.

### **What are the benefits of safety valves?**

Safety valves have many benefits. Safety valves

1. Give courts flexibility to prevent unjust sentences. Safety valves allow courts – in very narrow circumstances – to sentence a person below the mandatory minimum if the mandatory minimum is too lengthy or doesn't fit the offender or the crime.
2. Protect public safety. Safety valves don't mean that people get off without any prison time, just that they don't get any *more* prison time than they deserve. Safety valves thus help
  - Prevent prison overcrowding,



- Avoid the need to release violent offenders early to make room for nonviolent offenders entering the system, and
  - Save scarce prison space and resources for those who are a real threat to the community.
3. Save taxpayers money. When courts sentence people below the mandatory minimum, people spend less time in prison than they otherwise would be required to, which costs taxpayers less in corrections costs.

**Example:** It costs taxpayers over \$26,000 to put one person in federal prison for one year. A person who receives a 10-year mandatory minimum will cost taxpayers about \$260,000. If a person receives the benefit of the safety valve and is sentenced to five years in prison, this costs only about \$130,000. Taxpayers save almost \$130,000 in corrections costs. These savings can be spent, for example, on improving schools, roads, or health care, increased funding to law enforcement, or on tax cuts.

### **How could the current federal safety valve be improved?**

First, it should be expanded to apply to all crimes that carry mandatory minimums. The federal safety valve currently applies only to certain types of drug offenders. It does not apply to mandatory minimums for all of the federal drug offenses or for any other federal crimes, such as gun possession offenses, which can carry sentences of 5, 10, or 15 years or more in prison. Second, the safety valve should be expanded to apply whenever justice demands it. The current safety valve is very strict – many nonviolent, low-level offenders fail to meet all the requirements of the five-part test (see above) but still do not deserve the full mandatory minimum term in prison. For example, in 2009:

- 63% of all federal drug offenders had little or no criminal history,
- Over 83% did not have or use any weapons,
- Only 5.9% were considered leaders, managers, or supervisors of others, BUT
- Only about 22% of all drug offenders received the benefit of the safety valve.

One way to expand the federal safety valve is to replace the current five-part test with a standard that is not as strict. Congress should rewrite the federal safety valve so that courts are allowed to give a sentence below the mandatory minimum whenever the mandatory minimum is longer than necessary to provide a just punishment, deter crime, protect the public, or rehabilitate the offender.

### **How can we help expand or create more safety valves for mandatory minimums?**

Only Congress and state legislatures can create or expand safety valves, and they will only do it if the public tells them to! You can help us pass, change, and improve these laws by writing to your legislators, educating your friends and neighbors, and by donating to FAMM.

### **Where can I learn more?**

Visit us online at [www.famm.org](http://www.famm.org). You can also find us on Twitter and Facebook!