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# Federal Mandatory Minimum Sentencing Statutes: A List of Citations with Captions, Introductory Comments, and Bibliography

August 14, 1999

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RL30281

**CRS REPORT**
Prepared for Members and
Committees of Congress

**ABSTRACT**

This is a list of citations to the federal mandatory minimum sentencing statutes, accompanied by a brief description of their varieties, history, and relationship to sentencing guidelines, as well as a discussion of some of the constitutional challenges they have faced. It is a revision of a list entitled *Federal Mandatory Minimum Sentencing Statutes* dated June 6, 1992; some of the commentary draws upon an earlier report, *Mandatory Sentencing and the Requirements of the Eighth Amendment After Harmelin v. Michigan*, CRS Report 91-749 (Oct. 18, 1991). An abbreviated version of the introductory comments is available without citations or footnotes under the title *Federal Mandatory Minimum Sentencing Statutes: Introductory Comments to a List with Captions*, CRS Report RS30206 (1999); *Federal Mandatory Minimum Sentencing Statutes: An Overview of Legislation in the 106th Congress* CRS Report RS20307 (1999) contains a sketch of related legislative developments

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August 14, 1999

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## SUMMARY

Federal mandatory minimum sentencing statutes (mandatory minimums) demand that execution or incarceration follow criminal conviction. They cover drug dealing, murdering federal officials, and using a gun to commit a federal crime. They circumscribe judicial sentencing discretion, although they impose no limitations upon prosecutorial discretion or upon the President's power to pardon. They have been criticized as unthinkingly harsh and incompatible with a rational sentencing guideline system; yet they have also been embraced as hallmarks of truth in sentencing and a certain means of incapacitating the criminally dangerous.

There are several varieties of mandatory minimums: the "not less than" statute, the flat sentence statute, the piggy-back statute, and the guideline constructed mandatory minimum. The Eighth Amendment cruel and unusual punishment clause condemns statutes that impose a mandatory minimum penalty of death or a penalty that is grossly disproportionate to the offense. Few federal mandatory minimums are imperiled under this standard and fewer still are susceptible to constitutional attack on the grounds of separation of powers, equal protection, ex post facto, or double jeopardy.

## Contents

Introduction . . . . . 1
Types of Mandatory Minimums . . . . . 2
History . . . . . 6
Mandatory Minimums and the Sentencing Guidelines . . . . . 11
Constitutional Boundaries . . . . . 14
Cruel and Unusual Punishment . . . . . 14
Proportionality . . . . . 14
Individualized consideration . . . . . 16
*Harmelin* . . . . . 18
After *Harmelin* . . . . . 20
Separation of powers . . . . . 22
Crack and Equal Protection . . . . . 22
Recidivism, Ex Post Facto and Double Jeopardy . . . . . 24
The List . . . . . 25

List of Federal Mandatory Minimum
Sentencing Statutes . . . . . 26
Imprisonment for not less than
a specified term of years or life . . . . . 26
Death or imprisonment for
any term of years or for life . . . . . 28
Death or imprisonment for life . . . . . 29
Imprisonment for any term of years or for life . . . . . 29
Imprisonment for life . . . . . 31
Imprisonment for not more than some multiple
of the sentence for a predicate offense . . . . . 31
Imprisonment for not more than 40 years . . . . . 31
Imprisonment for not more than 35 years . . . . . 31
Imprisonment for not more than 30 years . . . . . 31
Imprisonment for not more than 25 years . . . . . 32
Imprisonment for not more than 20 years . . . . . 32
Imprisonment for not more than 15 years . . . . . 34
Imprisonment for not more than 12 years . . . . . 35
Imprisonment for not more than 10 years . . . . . 35
Imprisonment for not more than 8 years . . . . . 40
Imprisonment for not more than 7 years . . . . . 40
Imprisonment for not more than 6 years . . . . . 40
Imprisonment for not more than 5 years . . . . . 41

Bibliography . . . . . 48

# Federal Mandatory Minimum Sentencing Statutes: A List of Citations with Captions, Introductory Comments, and Bibliography

## Introduction

Federal mandatory minimum sentencing statutes (mandatory minimums) demand that execution or incarceration follow criminal conviction. They currently cover drug dealing, murdering federal officials, and using a gun to commit a federal crime. They have been a feature of federal sentencing since the dawn of the Republic. They circumscribe judicial sentencing discretion,[1] although they impose no limitations upon prosecutorial discretion or upon the President's power to pardon.[2] They have been criticized as unthinkingly harsh and incompatible with a rational sentencing guideline system; yet they have also been embraced as hallmarks of truth in sentence and a certain means of incapacitating the criminally dangerous. This is an inventory of federal mandatory minimums, accompanied by a brief description of their varieties, history, and relationship to sentencing guidelines, as well as a discussion of some of the constitutional challenges they have faced.[3]

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[1] Commentators have defined mandatory minimums in a number of ways, *see e.g.*, *Determinate Sentencing and Judicial Participation in Democratic Punishment*, 108 HARVARD LAW REVIEW 947 (1995)("mandatory minimums require judges to impose a specified minimum prison term if an offense meets certain statutory criteria"); Lowenthal, *Mandatory Sentencing Laws: Undermining the Effectiveness of Determinate Sentencing Reform*, 81 CALIFORNIA LAW REVIEW 61, 64 (1993) ("mandatory sentencing statutes generally provide that when a specified circumstance exists in connection with the commission of a crime (1) the court must sentence the defendant to prison and (2) the duration of the defendant's incarceration will be substantially longer than it would have been in the absence of the circumstance"); Bernstein, *Discretion Redux—Mandatory Minimums, Federal Judges, and the `Safety Valve' Provision of the 1994 Crime Act*, 20 UNIVERSITY OF DAYTON LAW REVIEW 765, 768 (1995)(ellipse in the original)("[m]andatory minimums, which are most commonly applied in drug cases, are statutory provisions calling for a sentence of `no less than . . .' for a given offense (adjusted for criminal record)").

The definition used here — *i.e.*, any statute that effectively requires a federal judge, at a minimum, to sentence a convicted defendant to a term of imprisonment is a mandatory minimum — is designed to avoid exclusion of any provisions that should arguably be listed.

[2] *E.g.*, 18 U.S.C. 3553(e)("*Upon motion of the Government*, the court shall have the authority to impose a sentence below a level established by statute as minimum sentence so as to reflect a defendant's substantial assistance in the investigation or prosecution of another person who has committed an offense. . .")(emphasis added).

[3] It is a revision of a list entitled *Federal Mandatory Minimum Sentencing Statutes* dated June 6, 1992; some of the commentary draws upon an earlier report, *Mandatory Sentencing and the Requirements of the Eighth Amendment After Harmelin v. Michigan*, CRS REP. 91-

## Types of Mandatory Minimums

Mandatory minimum statutes come in many stripes, including some whose status might be disputed. The most widely recognized are those that demand that offenders be sentenced to imprisonment for "not less than" a designated term of imprisonment.[4] Some are triggered by the nature of the offense,[5] others by the criminal record of the offender.[6] A few members of this "not less than" category are less "mandatory" than others, because Congress has provided a partial escape hatch or safety valve. For example, several of the drug-related mandatory minimums are subject to a "safety valve" that may render their minimum penalties less than mandatory for small time, first time offenders.[7] A handful of the other "not-less-

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749A (Oct. 18, 1991).

The introductory commentary appears, without footnotes, inventory or appendices as a separate report, *Federal Mandatory Minim Sentencing Statutes: Introductory Comments to a List with Captions*, CRS REP. ( 1999); *Federal Mandatory Minimum Statutes: An Overview of Legislation in the 106th Congress*, CRS REP. RS is an overview of several related legislative initiatives.

[4] *E.g.,* 18 U.S.C. 924(c)(1)(A)(". . . any person who, during and in relation to any crime of violence or drug trafficking crime . . . for which the person may be prosecuted in a court of the United States uses or carries a firearm . . . shall in addition to the punishment provided for such crime . . . (i) be sentenced to a term of imprisonment of not less than 5 years . . .").

[5] *E.g.*, 18 U.S.C. 844(f)(1)("Whoever maliciously damages or destroys . . . by means of fire or an explosive any . . . personal or real property . . . owned or possessed by . . . the United States . . . shall be imprisoned for not less than 5 years and not more than 20 years . . .").

[6] *E.g.*, 18 U.S.C. 2252(b)(1)("Whoever violates . . . paragraphs (1), (2), or (3) of subsection (a) [relating to commercial activities with respect child pornography] shall be . . . imprisoned not more than 15 years, but if such person has a prior conviction under this chapter . . . such person shall be . . . imprisoned not less than 5 years nor more than 30 years").

[7] "Notwithstanding any other provision of law, in the case of an offense under section 401, 404, or 406 of the Controlled Substances Act (21 U.S.C. 841, 844, 846) or section 1010 or 1013 of the Controlled Substances Import and Export Act (21 U.S.C. 960, 963), the court shall impose a sentence pursuant to guidelines promulgated by the United States Sentencing Commission under section 994 of title 28 without regard to any statutory minimum sentence, if the court finds at sentencing, after the Government has been afforded the opportunity to make a recommendation, that—

"(1) the defendant does not have more than 1 criminal history point, as determined under the sentencing guidelines;

"(2) the defendant did not use violence or credible threats of violence or possess a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;

"(3) the offense did not result in death or serious bodily injury to any person;

"(4) the defendant was not an organizer, leader, manager, or supervisor of others in the offense, as determined under the sentencing guidelines and was not engaged in a continuing criminal enterprise, as defined in section 408 of the Controlled Substances Act; and

"(5) not later than the time of the sentencing hearing, the defendant has truthfully provided to the Government all information and evidence the defendant has concerning the offense or offenses that were part of the same course of conduct or of a common scheme or plan, but the fact that the defendant has no relevant or useful other information to provide or that the Government is already aware of the information shall not preclude a determination

than" statutes permit the court to sentence an offender to a fine rather than to a mandatory term of imprisonment.[8]

A second generally recognized category of mandatory minimums consists of the flat or single sentence statutes, the vast majority of which call for life imprisonment.[9] Closely related are the capital punishment statutes that require imposition of either the death penalty or imprisonment for life.[10]

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by the court that the defendant has complied with this requirement," 18 U.S.C. 3553(f).

18 U.S.C. 3553(e) authorizes the federal courts "to impose a sentence below a level established by statute as [a] minimum sentence," but only upon the motion of the Government. The "safety value" in 18 U.S.C. 3553(f) supplies a similar, limited escape from the dictates of selected mandatory minimum statutes in favor of sentencing under the sentencing guidelines. The safety value is available without prosecutorial approval, *United States v. Espinosa*, 172 F.3d 795 (11th Cir. 1999), but some may consider the benefit simply a move from an explicit mandatory minimum to a lower mandatory minimum dictated by operation of the sentencing guidelines.

[8] *E.g.*,, 2 U.S.C. 390 ("Every person who, having been subpenaed as a witness under this chapter [relating to Congressional contested elections] to give testimony or to produce documents, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the contested election case, shall be deemed guilty of a misdemeanor punishable by fine of not more than $1,000 nor less than $100 or imprisoned for not less than one month nor more than twelve months, or both").

Although these might seem beyond the definition used to construct this list (statutes that require a judge to impose a sentence of imprisonment at a minimum), they are included because the United States Sentencing Commission included within its definition of mandatory minimums, United States Sentencing Commission, *Special Report to the Congress: Mandatory Minimum Penalties in the Federal Criminal Justice System (Commission Report)*, 4-5 (1991)("Under some statutes, a mandatory prison term is only required when the court otherwise determines to impose a sentence of imprisonment"); *id*. "Appendix A: Statutes Requiring Minimum Terms of Imprisonment" (listing with an * statutes that "require a minimum period of imprisonment only when the court imposes a term of imprisonment" rather than exercising its discretion to impose only a fine).

[9] *E.g.,* 18 U.S.C. 1651 ("Whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States *shall be imprisoned for life*")(emphasis added).

[10] *E.g.*, 18 U.S.C. 1201(a)("Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person . . . if death of any person results, shall be punished by death or life imprisonment").

Most observers would include within this category capital crimes made punishable by death, life imprisonment, *or imprisonment for any term of years*, the suggestion that a sentence of imprisonment for zero years is a sentence "any term of years" being inconsistent with the intent of Congress given the seriousness of the offense to which the sentence attaches. A sentencing court therefore has no discretion but to impose a sentence of imprisonment at a minimum.

The "piggyback" statutes make up a third class. The piggyback statutes are not themselves mandatory minimums but sentence offenders by reference to underlying statute with mandatory minimums or otherwise.[11]

The final and least obvious group is comprised of statutes whose violation results in the imposition of a mandatory minimum term of imprisonment by operation of law, or more precisely by operation of the Sentencing Reform Act and the sentencing guidelines issued in its name.[12]

Most federal criminal laws do not mention a mandatory minimum sentence, they simply establish a maximum fine and a maximum term of imprisonment and indicate that subject to those maximum levels the court may sentence an offender to either a fine or a term of imprisonment or both.[13] The sentencing guidelines convert many of these simple-maximum-fine\maximum-term-of-imprisonment\or-both statutes into what might reasonably be considered mandatory minimum sentencing statutes.

The federal sentencing guidelines are designed to eliminate unwarranted sentencing disparity. They establish a scorecard system that presents sentencing courts with a narrow range within which the sentence to be imposed must fall.[14] The

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[11] *E.g.*, 18 U.S.C. 2 ("Whoever commit an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal").

[12] The Sentencing Commission does not consider these mandatory minimums, *Commission Report*, at 4 (footnote 3 of the Commission's *Report* in brackets)("`Mandatory minimums,' `mandatory minimum sentencing provisions,' and related terms refer to statutory provisions requiring the imposition of at least a specified minimum sentence when criteria specified in the relevant statute have been met. [Consistent with the intent of the statutory directive for this Report, only minimums required by statute are considered to be `mandatory minimums. Not included in the definitions (and in fact contrasted with mandatory minimums in a later chapter of this Report) are sentences required by the federal sentencing guidelines . . .]").

[13] *E.g.*, 18 U.S.C. 81 ("Whoever, within the special maritime and territorial jurisdiction of the United States, willfully and maliciously sets fire to or burns, or attempts to set fire to or burn any building, structure or vessel, any machinery or building materials or supplies, military or naval stores, munitions of war, or any structural aids or appliances for navigation or shipping, *shall be fined under this title or imprisoned not more than five years, or both*")(emphasis added).

[14] Under the system, an applicable sentencing guideline has been designated for each of more frequently prosecuted federal crimes. The guideline begins by assigning a base offense level. For example, the guideline for theft offenses, U.S.S.G. §2B1.1, has a base offense level of 4. Offense level adjustments are available to accommodate the aggravating and mitigating circumstances associated with a particular case. The theft guideline, for instance, has offense level increases for the amount of money involved, the amount of planning that went into the offense, and the nature of the property taken among other things. The final offense level dictates a band of six sentence ranges; the final range is determined by the offender's criminal history. The sentencing range for theft at the base offense level (4) for a first time offender is 0-6; that is, absent a departure a sentencing court might impose sentence of imprisonment at any term up to six months or simply impose a fine. The sentencing range for an offense level of 4 in the case of an offender with more than 4 prior felony convictions is 6-12; that is absent a departure, a sentence court must impose a sentence of incarceration set between six and twelve months.

bottom of the applicable range for most crimes calls for imprisonment. Constraints on the option of probation make a sentence other than incarceration even more rare.[15] A court may depart from the sentence the guidelines dictate if the case before it involves mitigating or aggravating factors overlooked in the guidelines, 18 U.S.C. 3553. Such departures are expected to occur only "highly infrequent[ly]," U.S.S.G. *Introduction*, ch.1 Pt.A at 7; *Koon v. United States*, 518 U.S. 81, 96 (1996).[16]

Under the current guidelines and absent grounds for departure, federal courts must impose a sentence of imprisonment following conviction for any crime carrying

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[15] "Prior to the [Sentencing Reform Act], the prison to probation ratio in federal criminal sentencing was about sixty to forty. Congress said nothing in the statute about abolishing or even drastically curtailing probation. . . . The Commission, however, drafted guidelines containing a presumptive sentence of imprisonment for every felony in the United States Code. Near the bottom of the scale of crimes, it established several ranges in which a court could select either prison or probation. . . . The result is that the incidence of probation since the guidelines has been cut by more than half (15.5%)," Freed, *Federal Sentencing in the Wake of Guidelines: Unacceptable Limits on the Discretion of Sentencers*, 101 YALE LAW JOURNAL 1681, 1706-707 (1992). The current incidence of probation is 11% according to the most recently available statistics, *United States Sentencing Commission, 1998 Sourcebook of Federal Sentencing Statistics*, Figure D.

[16] In *Koon*, the Supreme Court held that the sentencing court in deciding whether to imposed a sentence below the applicable sentencing guideline range (a downward departure) might properly have considered impact of federal prosecution for conduct that had previously resulted in an acquittal in state court as well as the possibility that the police officer defendants might be at extraordinary risk of abuse if imprisoned, 518 U.S. at 111-12.

The frequency of these departures and thus the extent of judicial discretion remaining under the guidelines is somewhat difficult to gauge. The most recent Sentencing Commission statistics indicate that federal judges grant a downward departure from the applicable sentencing guideline range in about one out of every ten cases (13.6%); in more than a third (38%) of these the departure was as a consequence of administrative action rather than at the unbridled discretion of the court, *i.e.,* a plea bargain or future deportation of the defendant; moreover, a majority of the cases ordering a downward departure and appealed were reversed; and finally, there is no indication how many, if any, of the departures resulted in a sentence other than imprisonment, *United States Sentencing Commission, 1998 Sourcebook of Federal Sentencing Statistics*, Figure G; Tables 25, 31 & 56 (1999). All of which suggests that where the guidelines call for a term of imprisonment judicial discretion is rarely exercised to the contrary. On the other hand, it is probable still too soon to know whether *Koon* will encourage a wider exercise of judicial sentencing discretion, *Id.* at 18; *cf.,* Stith & Cabranes, *Judging Under the Federal Sentencing Guidelines*, 91 NORTHWESTERN UNIVERSITY LAW REVIEW 1247, 1278-279 (1997).

a maximum of fifteen years or higher.[17] They will enjoy no greater discretion in most ten year felony cases[18] or in many five year felony cases.[19]

## History

Mandatory minimums have been with us from the beginning. In fact, the history of our criminal sentencing practices is the story of increased reliance upon discretion in order to mute the law's severity in individual cases,[20] followed by increased limitations on sentencing discretion in order to curb the resulting arbitrary and discriminatory disparities in punishment.[21] It is a saga in which "competing theories of mandatory and discretionary sentencing have been in varying degrees of ascendancy or decline," *Harmelin v. Michigan*, 501 U.S. 957, 999 (Kennedy, J. concurring).

Severity and a want of discretion marked the early criminal law. The sentence which followed a felony conviction was death; except in rare instances no other punishment could be imposed. Over time the courts were given some discretion over

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[17] For example, carjacking (18 U.S.C. 2119) and robbery within a federal enclave (18 U.S.C. 2111) are both punishable by imprisonment for not more than fifteen years. Even without considering possible aggravating factors under the applicable guideline (which provides for no mitigating factors), the sentence imposed on a first time offender convicted of carjacking must be imprisonment for 41 months at least and for a first offender convicted of robbery imprisonment for 33 months at least, U.S.S.G. §2B3.1, ch.5A (sentencing table). Here and elsewhere, an offender with a more extensive criminal history will ordinarily be sentenced at a higher sentencing range.

[18] A first time offender convicted of assaulting a federal employee (18 U.S.C. 111) must be sentenced to at least 24 months in prison if the employee is injured and at least 30 months if the offender is armed with a dangerous weapon, U.S.S.G. §2A2.2, ch.5A (sentencing table). A first time offender convicted of the theft of federal property (18 U.S.C. 641) worth at least $2,000 and involving more than a minimum of planning must be sentenced to at least 4 months, U.S.S.G. §2B1.1, ch.5A (sentencing table).

[19] A mail fraud conviction (18 U.S.C. 1341) of a first time offender involving more than $2,000 and more than minimal planning calls for a sentence of at least 4 months and at least 10 months if offense involved "sophisticated means," U.S.S.G. §2F1.1, ch.5A (sentencing table). First time offenders under both perjury (18 U.S.C. 1621) and obstruction of administrative or Congressional proceedings (18 U.S.C. 1505) are subject to a term of imprisonment of at least 10 months, U.S.S.G. §§2J1,.2, 2J1.3, ch.5A (sentencing table).

[20] Blackstone, COMMENTARIES ON THE LAWS OF ENGLAND (1765); Chitty, A PRACTICAL TREATISE ON CRIMINAL LAW (3d Amer. ed. 1836); Stephen, HISTORY OF THE CRIMINAL LAW OF ENGLAND (1883); Rubin, THE LAW OF CRIMINAL CORRECTION (2d ed. 1973).

[21] Frankel, CRIMINAL SENTENCES: LAW WITHOUT ORDER (1973); Frankel, *Lawlessness in Sentencing*, 41 UNIVERSITY OF CINCINNATI LAW REVIEW 1 (1972); O'Donnell, Churgin & Curtis, TOWARD A JUST AND EFFECTIVE SENTENCING SYSTEM: AGENDA FOR LEGISLATIVE REFORM (1977); Stith & Cabranes, FEAR OF JUDGING (1998).

sentencing, but the choices were hardly lenient; and corporal punishment and banishment were common.[22]

Yet even early on there were efforts to ease the law's severity. Both the accused and the convicted could be pardoned at the King's will.[23] While Parliament regularly increased the number of crimes, it often replaced common law capital offenses with statutory crimes defined as misdemeanors or subject to the benefit of clergy. The result was the same in either case, a reduced number of capital offenses.[24] In our own country, state legislatures drastically curtailed the number of capital offenses soon after the Revolution.[25]

When the first Congress assembled, it enacted several mandatory minimums, each of them a capital offense,[26] The nineteenth century, however, witnessed the appearance of a host of discretionary schemes designed to ease the harshness of

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[22] Blackstone's summary on the eve of the Revolutionary War marks the evolution of English sentencing law to that point: ". . . [T]he court must pronounce that judgment, which the law hath annexed to the crime . . . . Of these some are capital, which extend to the life of the offender, and consist generally in being hanged by the neck till dead; though in very atrocious crimes other circumstances of terror, pain, or disgrace are superadded: as, in treasons of all kinds, being drawn or dragged to the place of execution; in high treason affecting the king's person or government, embowelling alive, beheading, and quartering; and in murder, a public dissection. And, in case of any treason committed by a female, the judgment is to be burned alive. But the humanity of the English nation has authorized, by a tacit consent, an almost general mitigation of such part of these judgments as savour of torture or cruelty: a sledge or hurdle being usually allowed to such traitors as are condemned to be drawn; and there being very few instances (and those accidental or by negligence) of any person's being embowelled or burned, till previously deprived of sensation by strangling. Some punishments consist in exile or banishment, by abjuration of the realm, or transportation to the American colonies; others in loss of liberty, by perpetual or temporary imprisonment. Some extent to confiscation, by forfeiture of lands, or movables, or both, or of the profits of lands for life: others induce a disability, of holding offices or employments, being heirs, executors, and the like. Some, though rarely, occasion a mutilation or dismembering, by cutting off the hand or ears: others fix a lasting stigma on the offender by slitting the nostrils, or branding the hand or face. Some are merely pecuniary, by stated or discretionary fines: and lastly there are others, that consist principally in their ignominy, though most of them are mixed with some degree of corporal pain; and theses are inflicted chiefly for crimes, which arise from indigence, or which render even opulence disgraceful. Such as whipping, hard labour in the house of correction, the pillory, the stocks, and the ducking stool." 4 Blackstone, COMMENTARIES ON THE LAWS OF ENGLAND 369-70 (1769).

[23] ID. at 390; Kobil, *The Quality of Mercy Strained: Wresting the Pardoning Power From the King*, 69 TEXAS LAW REVIEW 569, 583-89 (1991).

[24] Hall, THEFT, LAW AND SOCIETY, 114-32 (1952); Rubin, *supra* note 2 at 180.

[25] 1 Blumstein, Cohen, Martin & Tonry, RESEARCH ON SENTENCING: THE SEARCH FOR REFORM, 58 (1983); Rothman, THE DISCOVERY OF THE ASYLUM: SOCIAL ORDER AND DISORDER IN THE NEW REPUBLIC, 61 (rev.ed. 1990).

[26] The Act of April 30, 1790 declared that "persons . . . adjudged guilty of treason against the United States . . . shall suffer death," 1 Stat. 112; the same sentence awaited those who committed murder within the exclusive jurisdiction of the United States, 1 Stat. 113, or engaged in piracy, 1 Stat. 113-14, or counterfeiting, 1 Stat. 115.

criminal law in individual cases. The courts could suspend sentence and were vested with broad authority in the selection of those sentences they chose to impose.[27] Probation and parole were born and became prominent.[28]

By late in the century at the federal level, the number of mandatory capital offenses had been reduced,[29] and while the number of mandatory minimums had increased,[30] most federal criminal statutes merely established a maximum penalty and left to the discretion of the courts sentences to imposed within the maximum. The 1909 federal criminal code revision eliminated most mandatory minimums;[31] soon

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[27] Rubin, *supra* note 2 at 180-84.

[28] Zalman, *The Rise and Fall of the Indeterminate Sentence*, 24 WAYNE LAW REVIEW 45 (1977); Lindsay, *Indeterminate Sentence and Parole System*, 16 JOURNAL OF CRIMINAL LAW & CRIMINOLOGY 9 (1925); Rubin, THE LAW OF CRIMINAL CORRECTION, 205-208, 619-22 (2d ed. 1973).

[29] Even treason, at the discretion of the court, was made punishable by imprisonment at hard labor for not less than five years rather than by death, Rev.Stat. §5332; and the penalty for forgery or counterfeiting of U.S. securities was reduced from death to imprisonment for not more than fifteen years, Rev.Stat. §5414.

[30] Mail robbery, for instance, became punishable by imprisonment at hard labor for not less than five years and not more than ten years; by imprisonment for life for a 2d offense or if the custodian of the mail were wounded or his life placed in jeopardy by the use of dangerous weapons, Rev.Stat. §5472.

[31] As the Joint Committee on Revision of the Laws explained: "The committee has also adopted a uniform method of fixing in all offenses not punishable by death the maximum punishment only, leaving the minimum to the discretion of the trial judge.

"The criminal law necessarily subjects to its corrective discipline all who violate its provisions. The weak and the vicious, the first offender and the atrocious criminal, the mere technical transgressor and the expert in crime are alike guilty of the same offense. In the one case the utmost severity of punishment can scarcely provide the protection to which society is entitled; in the other anything except as nominal punishment may effectually prevent the reclamation of the offender.

"The argument most frequently urged against leaving the minimum punishments to the discretion of the trial judge is that it affords parties convicted of crime of a heinous character an opportunity to obtain immunity because of the weakness or dishonesty of judges. It has been well said by a distinguished authority upon this subject that —

> Instances of the former are, and the latter none is believed by use every have existed. The purity of our judiciary is one of things which calumny has as yet left untouched.

"This recommendation will be found to be in accordance with the humane spirit of advanced criminal jurisprudence. The early English statutes were proverbially cruel; the gravest crimes and the most trivial offenses alike invoked the penalty of death. Our own crimes act of 1790 reflected this barbarous spirit and denounced the death penalty for thirteen distinct offenses, but this spirit of vindictive retribution has entirely disappeared. We have abolished the punishment of death in all except three cases—treason, murder, and rape—and have provided that even in these cases it may be modified to imprisonment for life; and as humane judges in England availed themselves of the most technical irregularities in pleadings and proceedings as an excuse for discharging prisoners from the cruel rigors of the common law, so jurors here often refuse to convict for offenses attended with extenuating

thereafter federal prisoners were made eligible for parole after service of a third of their sentences (after fifteen years in the case of prisoners with life sentences);[32] and federal courts soon thereafter received the authority to suspend the imposition or execution of sentence and impose probation.[33] The 1948 federal criminal code revision took much the same tack as its predecessor: it eliminated many, but not all, of the "not-less-than" mandatory minimums and continued in place most of the "flat" sentence mandatory minimums.[34]

By mid-twentieth century, a well respected commentator could observe that "[t]he individualization of penal dispositions, principally through the institutions of the indeterminate sentence, probation, and parole, is a development whose value few would contest."[35] The contest was joined soon thereafter.[36]

Driven by concerns that broad discretion had led to rootless sentencing, unjustifiable in its leniency in some instances and in its severity in others, legislative bodies moved to curtail discretionary sentencing on several fronts. Determinate sentencing,[37] sentencing guidelines[38] and mandatory minimum sentences[39] became

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circumstances rather than submit the offender to what in their judgment is the cruel requirement of a law demanding a minimum punishment," S.Rep.No.10, 60th Cong., 1st Sess. 14 (1908).

[32] Act of June 25, 1910, §1 36 Stat. 819, and Act of Jan. 23, 1913, 37 Stat. 650.

[33] Act of March 4, 1925, 43 Stat. 1259.

[34] "The minimum punishment provisions were omitted because of the court's power, under 3651 of this title, to suspend sentence whenever the crime or offense is not punishable by death or life imprisonment, and, also, to conform with policy adopted by the codifiers of the 1909 Criminal Code," H.R.Rep. 304, 80th Cong., 1st Sess. *Reviser's Notes* A16 (1947).

[35] Kadish, *Legal Norm and Discretion in the Police and Sentencing Process*, 75 HARVARD LAW REVIEW 904, 915 (1962).

[36] Davis, DISCRETIONARY JUSTICE: A PRELIMINARY INQUIRY (1969); Packer, THE LIMITS OF THE CRIMINAL SANCTION (1968); Frankel, CRIMINAL SENTENCES: LAW WITHOUT ORDER (1973).

[37] A determinate sentence is a sentence for a fixed period of time, a flat sentence; an indeterminate sentence is one whose duration is specifically fixed but is determined by prison and/or parole authorities, BLACK'S LAW DICTIONARY 1363 (6th ed. 1990); *see generally*, *Indeterminate Sentencing: An Analysis of Sentencing in America*, 70 SOUTHERN CALIFORNIA LAW REVIEW 1717 (1997); Gardner, *The Determinate Sentencing Movement and The Eighth Amendment: Excessive Punishment Before and After Rummel v. Estelle*, 1980 DUKE LAW JOURNAL 1103, 1104-105; *Do Judicial "Scarlet Letters" Violate the Cruel and Unusual Punishments Clause of the Eighth Amendment?*, 16 HASTINGS CONSTITUTIONAL LAW QUARTERLY 115, 118-19 (1988) (contrasting 7 indeterminate sentencing structure states with 9 determinate sentence states).

[38] Robinson, *A Sentencing System for the 21st Century?*, 66 TEXAS LAW REVIEW 1, 24-5 (1987). Sentencing guidelines do not necessarily circumscribe judicial sentencing discretion; the guidelines may simply be advisory. In whatever form, guidelines are or have been authorized for almost half of the states: Ark.Code Ann. §§16-90-801 to 16-90-804; Del.Code Ann. tit.11, §§6580, 6581; Fla.Stat.Ann. §§921.001 to 921.242; Iowa Code Ann. §901.5; Kan.Stat.Ann. §§21-4701 to 21-4728; La.Rev.Stat.Ann. §§15:321 to 15:326 (repealed);

more prevalent. Parole and probation were abolished or greatly restricted in several jurisdictions.[40]

The Sentencing Reform Act of 1984 brought this trend to the federal criminal justice system.[41] It repealed the authority of the federal courts to suspend criminal sentences, formerly 18 U.S.C. 3651 (1982 ed.). It abolished federal parole, formerly 18 U.S.C. 4201 to 4218 (1982 ed.). It created a sentencing guideline system, applicable within the statutory maximum and minimum penalties established by Congress, that tightly confined the sentencing discretion of federal judges, 28 U.S.C. 991 to 998. The armed career criminal, three strikes, and several of the other prominent drug and gun related mandatory minimums followed in the ensuing years.[42]

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Md.Ann. Code art.27, §643C; Mass.Gen.Laws Ann. ch.221E, §§1-4; Mich.Comp. Laws Ann. §§769.31 -739.34; Minn.Stat.Ann. ch.244 App.; Mo.Ann.Stat. §558.019; N.M.Stat. Ann. §§31-18A-1 to 31-18A-9; N.C.Gen.Stat. §§164-35 to 164-47; Ohio Rev.Code Ann. §§181.21 to 181.56; Okla.Stat.Ann. tit. 22 §§1501-1516; Ore.Rev.Stat. §§137.667 to 137.671; Pa.Stat.Ann. tit. 42, §§2151-2155; S.C.Code §§24-26-10 to 24-26-50; Tenn.Code Ann. §§40-35-101 to 40-35-504; Utah Code Ann. §§63-25a-301 to 63-25a-306; Va.Code §§17.1-800 to 17.1-806; Wash.Rev. Code Ann. §§9.94A.310 to 9.94A.420; Wis.Stat.Ann. §§973.01 to 973.07 (repealed).

[39] *Do Judicial "Scarlet Letters" Violate the Cruel and Unusual Punishments Clause of the Eighth Amendment*, 16 HASTINGS CONSTITUTIONAL LAW QUARTERLY 115, 119 n.32 (1988) (listing 33 states with mandatory minimum sentencing structures).

[40] *See e.g.*, Alaska Stat.§§12.55.125 to 12.55.185; Cal.Pen.Code §1170; Colo.Rev.Stat. §§16-11-304, 18-1-105; Ind.Code Ann. §35-50-6-1; Minn.Stat.Ann. §244.05; N.M.Stat.Ann. §§31-18-15, 31-21-10. Note that some of the jurisdictions that have abolished parole as a discretionary means of reducing an offender's term of imprisonment authorize "reentry parole" or terms of "supervised release" under which the offender is subject to supervision after service of his or her full term of imprisonment.

[41] The Sentence Reform Act is chapter II, 98 Stat. 1987, of the Comprehensive Crime Control Act of 1984, 98 Stat. 1976, enacted as title II of Public Law 98-473, 98 Stat. 1837 (1984).

[42] The mandatory minimum applicable when a firearm is used during the course of a federal crime of violence, 18 U.S.C. 924(c), originated in the same legislation as the Sentence Reform Act, Pub.L. 98-473, 98 Stat. 2138 (1984). The armed career criminal provisions, 18 U.S.C. 924(e), first surfaced in the Firearms Owners Protection Act, Pub.L. 99-308, 100 Stat. 458 (1986); the mandatory minimums for drug trafficking, 21 U.S.C. 841(b), in the Anti-Drug Abuse Act of 1986, Pub.L. 99-570, 100 Stat. 3207-2; the mandatory minimums for crack possession, 21 U.S.C. 844, in the Anti-Drug Abuse Act of 1988, Pub.L. 100-690, 102 Stat. 4370; and the three strikes provisions, 18 U.S.C. 3559(c), in the Violent Crime Control and Law Enforcement Act of 1994, Pub.L. 103-322, 108 Stat. 1982.

The drug kingpin mandatory minimum, 21 U.S.C. 848, enacted as part of the original Controlled Substances Act in 1970, Pub.L. 91-513, 84 Stat. 1265 (1970), and most of the mandatory minimums cited in the appendix predate their more well known fellows.

The safety valve feature of 18 U.S.C. 3553(f) available to nonviolent, first-time drug offenders and passed in 1994, Pub.L. 103-322, 108 Stat. 1985, might be seen as a break in the trend towards greater use of mandatory minimums even though it does not enhance federal judicial sentencing discretion.

## Mandatory Minimums and the Sentencing Guidelines

Even though the guidelines work to reduce judicial sentencing discretion and in fact might be characterized as creating a host of new members of the species of mandatory minimums, the not-less-than mandatory minimums have been criticized as incompatible with the federal sentencing guidelines. Perhaps most prominent among its critics was the Sentencing Commission itself. Its report, after sketching the arguments traditionally offered in support of mandatory minimums,[43] observed that:

- only 4 of the 60 mandatory minimums were regularly prosecuted;[44]

- mandatory minimums induce new sentencing disparities;[45]

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[43] "Retribution or `Just Deserts.' Perhaps the most commonly-voiced goal of mandatory minimum penalties is the `justness' of long prison terms for particular serious offenses. . . . Deterrence. By requiring the imposition of substantial penalties for targeted offenses, mandatory minimums are intended both to discourage the individual sentenced . . . from further involvement in crime . . . and, by example discourage other potential lawbreakers . . . . Incapacitation, Especially of the Serious Offender. Mandating increased sentence severity aims to protect the public by incapacitating offenders . . . . Disparity. Indeterminate sentencing systems permit substantial latitude in setting the sentence, which in turn can mean that defendants convicted of the same offense are sentenced to widely disparate sentences. Inducement of Cooperation. Because they provide specific lengthy sentences, mandatory minimums encourage offenders to assist in the investigation of criminal conduct by others [in order to take advantage of the escape hatch 18 U.S.C. 3553(e) supplies to those who cooperate with authorities]. . . . Inducement of Pleas . . . [P]rosecutors express the view that mandatory minimum sentences can be valuable tools in obtaining guilty pleas. . ." *Commission Report* 13-4.

[44] *Commission Report* at ii, 11 ("four statutes account for approximately 94 percent of the cases . . . 21 U.S.C. 841 [illicit drug trafficking], 21 U.S.C. 844 [illicit drug possession], 21 U.S.C. 960 [drug smuggling], and 18 U.S.C. 924(c)[armed career criminals]").

[45] *Commission Report* at ii. ("[The] lack of uniform application creates unwarranted disparity in sentencing and compromises the potential for the guidelines sentencing system to reduce disparity"). *But see*, Stith & Cabranes, FEAR OF JUDGING, 106 1998)("Our analysis suggests four major conclusions: 1. Inter-judge sentence variation was not as rampant or as `shameful' in the federal courts under the pre-Guidelines regime as Congress apparently believed . . . . 2. No thorough empirical study has demonstrated a *reduction* in the total amount of disparity under the Guidelines. 3. While reduction of inter-judge disparity is a worthwhile goal . . . it is a complex goal, and a myopic focus on this objective can result in a system that too often ignores other, equally important goals of a just sentencing system. . . . 4. Important sources of disparity remain in the Guidelines regime"); Farabee, *Disparate Departures Under the Federal Sentencing Guidelines: A Tale of Two Districts*, 30 CONNECTICUT LAW REVIEW 569 (1998)(discussing sentencing disparity under the guidelines between two adjacent federal court districts); Payne, *Does Inter-Judge Disparity Really Matter? An Analysis of the Effects of Sentencing Reforms in Three Federal District Courts*, 17 INTERNATIONAL REVIEW OF LAW AND ECONOMICS 337 (1997) (suggesting that inter-judge disparity exists the guidelines notwithstanding).

- due to plea bargaining, 35% of the defendants who might have been charged and sentenced under mandatory minimums were not;[46]

- "disparate application of mandatory minimum sentences . . . appears to be related to race;"[47]

- mandatory minimums lack the capacity to consider the range of aggravating and mitigating circumstances that may attend the same offense and as a consequence produce unwarranted sentencing uniformity;[48]

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[46] *Commission Report* at iii ("Since the charging and plea negotiation processes are neither open to public review nor generally reviewable by the courts, the honesty and truth in sentencing intended by the guidelines system is compromised"). "There are two basic responses to this critique. First, prosecutors undoubtedly do, through charging decisions and plea bargains, sometimes seek, or agree to, lower than the maximum possible sentences. They have always done that. With respect to charging decisions, the Guidelines themselves do not even attempt to limit the historical practice. Indeed, it is difficult to imagine a system which could eliminate prosecutorial charging discretion. Nonetheless, the Justice Department recognized at the outset . . . that unrestrained pre-indictment bargaining over charges would undermine the Guidelines . . . . Therefore, it issued internal directives that prosecutors are to charge the most serious readily provable offense consistent with the nature of the defendant's conduct. . . . As for plea bargains after indictment, the primary justification of the relevant conduct guideline is to ensure that prosecutors cannot manipulate sentences by dismissing courts. As long as the judge knows all the facts, the precise charge of which a defendant is convicted is usually of little consequence except to set the statutory maximum sentence . . . . Thus, in order to really control sentences through plea bargaining, a prosecutor must be willing to hide facts from the court. . . . The truth is that most prosecutors, most of the time, play the sentencing game straight down the middle. To achieve plea bargains, they will give defendants the benefit of close class on the provability of certain facts, or on the applicability of certain enhancements to the undoubted facts of a given case. But they will not lie and they will not conceal evidence. The consequence is that prosecutors, too, have had their discretion restrained by the Guidelines," Bowman, *The Quality of Mercy Must Be Restrained, and Other Lessons in Learning to Love the Federal Sentencing Guidelines*, 1996 WISCONSIN LAW REVIEW 679, 727-28.

[47] *Commission Report* at iii. The disparate impact of the federal sentencing practices, including mandatory minimums, has been the subject to extensive debate; *see e.g.*, Wallace, *Federal Cocaine Sentencing: Legal Issues*, CRS REP. 97-743A (May 4, 1999); *A "Second Look" at Crack Cocaine Sentencing Policies: One More Try for Federal Equal Protection*, 34 AMERICAN CRIMINAL LAW REVIEW 1211 (1997); Sklansky, *Cocaine, Race, and Equal Protection*, 47 STANFORD LAW REVIEW 1283 (1995).

[48] *Commission Report* at 26 ("sentencing guidelines look to an array of indicators to determine offense seriousness, including the offense of conviction, any relevant quantity determinant (*e.g.*, the amount of drugs in a trafficking offense, dollar loss in fraud offense), weapon use, victim injury or death, the defendant's role in the offense, and whether the defendant accepted responsibility for the offense or, on the other hand, obstructed justice. Mandatory minimums, in contrast, typically look to only one (or sometimes two) measurements of offense seriousness. . . . Thus, for example, whether the defendant was a peripheral participant or the drug ring's kingpin, whether the defendant used a weapon, whether the defendant accepted responsibility or, on the other hand, obstructed justice, have no bearing on the mandatory minimum to which each defendant is exposed"). These arguments would seem to be most persuasive in the case of flat sentence mandatory

- uneven application deprives mandatory minimums of their potential to deter;[49]

- mandatory minimums breed disparity by transferring judicial discretion to the prosecution;[50]

- in contrast to the calibrated approach of the guidelines, mandatory minimums create cliffs where minuscule factual differences can have enormous sentencing consequences;[51]

- the amendment process of the sentencing guidelines makes them perpetually self-correcting, while mandatory minimums are single-shot efforts at crime control;[52] and

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minimums; in other instances the range between the mandatory minimum and the statutory maximum would seem to provide ample room for the type of distinctions just mentioned.

[49] *Commission Report* at iii ("While mandatory minimum sentences may increase severity, the data suggest that uneven application may dramatically reduce certainty. The consequences of this bifurcated pattern is likely to thwart the deterrent value of mandatory minimums"). Proponents might suggest that incapacitation and the prospect of minimal punishment were always the principal objectives. Deterrence is at best challenging to judge; the fact that not all possible cases receive mandatory minimum treatment is not reason to abandon incapacitation for those that are unsnarled; and the result is one more properly laid to the door of prosecutorial discretion than to mandatory minimums.

[50] *Commission Report* at iii ("Since the power to determine the charge of conviction rests exclusively with the prosecution for 85 percent of the cases that do not proceed to trial, mandatory minimums transfer sentencing power from the court to the prosecution. To the extent that prosecutorial discretion is exercised with preference to some and not to others, and to the extent that some are convicted of conduct carrying a mandatory minimum penalty while others who engage in the same or similar conduct are not so convicted, disparity is reintroduced"). This presumes that unwarranted disparity existed before the guidelines, that the guidelines have reduced or eliminated it, and that mandatory minimums returned it to the system. Three propositions upon which there is no consensus. Even if one accepts all three, the question remains whether disparity, produced by plea agreements that make possible the conviction of other wrongdoers, is unwarranted or appropriately laid to the door of mandatory minimums.

[51] *Commission Report* at 29 ("The `Cliff' Effect of Mandatory Minimums. Related to the proportionality problems posed in mandatory minimums already described are the sharp differences in sentence between defendants who fall just below the threshold of a mandatory minimum compared with those whose criminal conduct just meets the criteria of the mandatory minimum penalty. Just as mandatory minimums fail to distinguish among defendants whose conduct and prior records in fact differ markedly, they distinguish far too greatly among defendants who have committed offense conduct of highly comparable seriousness"). Critics might suggest that such cliffs are natural, necessary, and frequently occurring in the law (e.g., the age of majority, alcohol- blood levels, statutes of limitations) or that few cliffs are as high as the one that stands between a crime committed the day before the effective date of the guidelines and one committed the day after.

[52] *Commission Report* at iv. Critics might note that the perpetual need for self-correction neither inspires great confidence nor dilutes the prospect of disparity.

- the most efficient and effective way for Congress to exercise its powers to direct sentencing policy is through the established process of sentencing guidelines, permitting the sophistication of the guidelines structure to work, rather than through mandatory minimums.[53]

The Commission's report was quickly followed by a Department of Justice study that concluded that a substantial number of those sentenced under federal mandatory minimums were nonviolent, first-time, lower level drug offenders.[54]

Congress responded with the safety valve provisions of 18 U.S.C. 3553(f) under which the court may disregard various drug mandatory minimums and sentence an offender within the applicable sentencing guideline range as long as the offender was a low level, nonviolent participant with no prior criminal record who has cooperated fully with the government.

## Constitutional Boundaries

Defendants sentenced to mandatory minimum terms of imprisonment have challenged them on a number of constitutional grounds ranging from cruel and unusual punishment through ex post facto and double jeopardy to equal protection and due process. Each constitutional provision defines outer boundaries that a mandatory minimum must be crafted to honor; none confine legislative prerogatives in any substantial way.

### Cruel and Unusual Punishment

Mandatory minimums implicate considerations under the Eighth Amendment's cruel and unusual punishments clause.[55] The clause bars mandatory capital punishment statutes, *Woodson v. North Carolina*, 428 U.S. 280 (1976). And although the case law is somewhat uncertain, it seems to condemn punishment that is "grossly disproportionate" to the misconduct for which it is imposed, *Harmelin v. Michigan*, 501 U.S. 957 (1992).

**Proportionality:** During the first century of its existence, there was little recourse to the Amendment's protection,[56] and the early cases involved its

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[53] *Commission Report* at iv.

[54] *United States Department of Justice: An Analysis of Non-Violent Drug Offenders with Minimal Criminal Histories*, *reprinted in*, 54 CRIMINAL LAW REPORTER 2101 (1994).

[55] The Eighth Amendment to the United States Constitution states in its entirety, "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

[56] In *Pervear* v. *Massachusetts*, 72 U.S. (5 Wall.) 475 (1866), the Court held that the clause applied to the federal government and not the states; the first substantive cruel and unusual punishment case apparently did not arrive before the Supreme Court until *Wilkerson* v. *Utah*, 99 U.S. 130 (1878), Mulligan, *Cruel and Unusual Punishment: The Proportionality Rule*,

proscriptions against particular kinds of punishment rather than of punishments of a particular degree of severity.[57] In *O'Neil v. Vermont*, 144 U.S. 323 (1892), however, three dissenting justices expressed the view that the cruel and unusual punishments clause's prohibitions extended to "all punishments which by their excessive length or severity are greatly disproportionate to the offences charged."[58]

The views of the *O'Neil* dissenters gained further credence after they were quoted in *Weems, supra* when the Court invalidated a territorial sentencing scheme which it found both disproportionate in degree and cruel in nature.[59]

Perhaps because of the unusual nature of the penalties involved, the proportionality doctrine suggested in *Weems* lay dormant for over sixty years.[60] It

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47 FORDHAM LAW REVIEW 639, 642 (1979).

[57] See *Wilkerson* v. *Utah*, 99 U.S. 130 (1878) (challenging execution of the death penalty by firing squad); *In re Kemmler*, 136 U.S. 436 (1889) (challenging execution of the death penalty by electrocution).

[58] 144 U.S. at 339-40 (Field, J.)(dissenting); see also, 144 U.S. at 371 (Harlan with Brewer, JJ.)(dissenting) ("The judgment before us by which the defendant is confined at hard labor. . . for the term of. . . fifty-four years. . . inflicts punishment, which, in view of the character of the offences committed must be deemed cruel and unusual"). O'Neil, a mail order liquor dealer licensed in New York, was convicted for filling mail orders sent to Vermont where he had no license. The majority opinion disposed of the case on jurisdictional grounds and did not reach the Eighth Amendment question.

[59] Weems was convicted of falsifying public documents for which he was sentenced to fifteen years imprisonment and "accessories" which meant that while imprisoned he would "carry a chain at the ankle, hanging from the wrists, . . . [would] be employed at hard and painful labor, and receive no assistance whatsoever from without the institution" and that after release he would forever continue under a form of civil death during which he could not vote or hold public office or receive a pension, could not hold or dispose of property, and would be subject to lifelong probation. 217 U.S. at 364.

The Court pointed out that the sentence was more severe than might be imposed for some degrees of homicide, for misprision of treason, inciting rebellion, conspiracy to destroy the government, robbery, larceny, or forgery. 217 U.S. at 380.

From the Court's perspective the legislation establishing the sentencing scheme had "no fellow in American legislation. . . . It is cruel in its excess of imprisonment and that which accompanies and follows imprisonment. It is unusual in its character. Its punishments come under the condemnation of the bill of rights, both on account of their degree and kind." 217 U.S. at 377.

[60] There are a few cases in the interim in which the Court may have applied the proportionality doctrine, sub silentio, because it found no infirmity in the sentences challenged, see e.g., *Graham* v. *West Virginia*, 224 U.S. 616 (1912); *Badders* v. *United States*, 240 U.S. 391 (1916). Statements in *Trop* that might be thought to confirm the doctrine's existence are dicta suggesting the Court's awareness, although not necessarily its endorsement, of the doctrine, *Trop* v. *Dulles*, 356 U.S. 86, 99-100 (1958) ("Since wartime desertion is punishable by death, there can be no argument that the penalty of denationalization is excessive in relation to the gravity of the crime . . . . Fines, imprisonment and even execution may be imposed depending upon the enormity of the crime.").

reappeared in the capital punishment cases following *Furman v. Georgia*, 408 U.S. 238 (1972).[61]

When the capital punishment statutes enacted in response to *Furman* came before the Court, one of the threshold questions was whether capital punishment was a per se violation of the cruel and unusual punishments clause. For a plurality of the Court that question could only be answered by determining whether capital punishment was of necessity "grossly out of proportion to the severity of [any] crime," *Gregg v. Georgia*, 428 U.S. 153, 173 (1976). "[W]hen a life has been taken deliberately by the offender, [the Court could not] say that the punishment is invariably disproportionate to the crime." 428 U.S. at 187.

In *Coker v. Georgia*, a plurality of the Court found "that death is indeed a disproportionate penalty for the crime of raping an adult woman," 433 U.S. 583, 597 (1977). It did so after considering the general repudiation of the death penalty in such cases by the legislatures of other jurisdictions; the infrequency with which juries in Georgia had been willing to impose the death penalty for rape of adult woman; and the comparative severity Georgia used to punish other equally or more serious crimes.

The Court employed much the same method of analysis in later capital punishment cases which raised the proportionality doctrine.[62]

Initial efforts to carry the proportionality doctrine to noncapital cases proved unsuccessful. Shortly after *Coker*, a petitioner, convicted under a recidivist statute which called for an automatic life sentence upon a third felony conviction, sought to persuade the Court that the Eighth Amendment precluded such a sentence based upon a comparative analysis of the severity of the treatment of recidivism in other jurisdictions, *Rummel v. Estelle*, 445 U.S. 263 (1980). The majority of the Court was not persuaded. The proportionality doctrine had only been employed in capital punishment cases and *Weems*, it noted. Both involved punishments, different in nature, from those in *Rummel*, 445 U.S. at 445 U.S. 272-74.

Moreover, the petitioner had failed to convincingly establish any objective criteria to evidence gross disproportionality. Without some objectively identifiable "bright light" marking disproportionality, the Court feared application of the

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[61] In *Furman*, the Court found that the Eighth Amendment's cruel and unusual punishments clause, made binding upon the states by the due process clause of the Fourteenth Amendment, precluded imposition of the death penalty at the unguided discretion of the judge or jury.

[62] In *Enmund* v. *Florida*, 458 U.S. 782 (1982), the Court held that the death penalty was a disproportionate punishment for a felony murder in which the defendant neither killed nor intended to kill and whose culpability was limited to participation in the predicate felony. On the other hand, defendants who were major participants in the predicate felony and who acted with at least reckless indifference to the risk to human life thereby created might be sentenced to death without breaching the proportionality doctrine, *Tison* v. *Arizona*, 481 U.S. 137 (1982). In both instances, the Court examined the practices in other jurisdictions and the seriousness of the defendant's conduct.

proportionality doctrine would constitute subjective policy making, a task more appropriately left to the legislative bodies, 445 U.S. at 275.[63]

Any thoughts that the proportionality doctrine might have been abandoned were dashed almost immediately by *Solem v. Helm*, 463 U.S. 277 (1983). *Solem* declared that imposition of a mandatory term of life imprisonment under a state recidivist statute constituted cruel and unusual punishment. The "objective criteria" which guided a proportionality analysis included, "(i) the gravity of the offense and the harshness of the penalty; (ii) the sentences imposed on the other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions," 463 U.S. at 292.[64]

**Individualized consideration:** *Furman* found that the Eighth Amendment's cruel and unusual punishments clause, made binding upon the states by the due process clause of the Fourteenth Amendment, precluded imposition of the death penalty at the unguided discretion of the judge or jury.

The states initially travelled one of two paths to avoid the problems of unguided discretion identified in *Furman*. Some eliminated discretion; others provided guidance. The second approach passed constitutional muster, *Gregg v. Georgia*, 428 U.S. 153 (1976); the first did not, *Woodson v. North Carolina*, 428 U.S. 280 (1976).

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[63] See also *Hutto* v. *Davis*, 454 U.S. 370, 372-73 (1982), which summarized *Rummel* as follows:

> Like the respondent in this case, Rummel argued that the length of his imprisonment was so "grossly disproportionate" to the crime for which he was sentenced that it violated the ban on cruel and unusual punishment of the Eighth and Fourteenth Amendments. In rejecting that argument, we distinguished between punishments -- such as the death penalty -- which by their very nature differ from all other forms of conventionally accepted punishments, and punishments which differ from others only in duration. This distinction was based upon two factors. First, this "Court's Eighth Amendment judgments should neither be nor appear to be merely the subjective views of individual Justices." And second, the excessiveness of one prison term as compared to another is invariably a subjective determination, there being no clear way to make "any constitutional distinction between one term of years and a shorter or longer term of years." Thus, we concluded that "one could argue without fear of contradiction by any decision of this Court that for crimes concededly classified and classifiable as felonies, . . . the length of the sentence actually imposed is purely a matter of legislative prerogative." Accordingly, we held that Rummel's life sentence did not violate the constitutional ban on cruel and unusual punishment.

[64] Rummel with prior two nonviolent felony convictions was sentenced to life imprisonment for obtaining $120 under false pretenses. Helms, the *Solem* defendant with six prior nonviolent felony convictions was sentenced to life imprisonment for uttering a $100 "no account" check. The Court distinguished *Solem* from *Rummel* on at least two grounds. Solem was ineligible for parole, while Rummel enjoyed the advantage of a fairly liberal early release scheme; in *Solem* the life sentence without possibility of parole was imposed as a matter of judicial discretion, while the life sentence in *Rummel* was required as a matter of legislative policy, 463 U.S. at 300-303.

Mandatory capital punishment offended the Eighth Amendment on three grounds, *Woodson* declared. It was contrary to the evolving standards of decency which mark the threshold of the Amendment's protection, 428 U.S. at 288-301. It failed to address the objections of *Furman* to imposition of the death penalty at the *unguided* discretion of the judge or jury, 428 U.S. at 302. And it failed to permit consideration of individual characteristics of the crime and offender:

> A process that accords no significance to relevant facets of the character and record of the individual offender or the circumstances of the particular offense excludes from consideration in fixing the ultimate punishment of death the possibility of compassionate or mitigating factors stemming from the diverse frailties of humankind. It treats all persons convicted of a designated offense not as uniquely individual human beings, but as members of a faceless, undifferentiated mass to be subjected to the blind infliction of the penalty of death. . . .
>
> Consideration of both the offender and the offense in order to arrive at a just and appropriate sentence has been viewed as a progressive and humanizing development. While the prevailing practice of individualizing sentencing determinations generally reflects simply enlightened policy rather than a constitutional imperative, we believe that in capital cases the fundamental respect for humanity underlying the Eighth Amendment, requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death. 428 U.S. at 304 (citations omitted).[65]

The Court regularly and consistently recognized the individual considerations requirement in subsequent capital punishment cases.[66] Although the language cited above and other dicta[67] would seem to apply with similar force in noncapital cases, the Court emphasized that the doctrine was limited to capital cases.[68]

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[65] *Woodson's* rejection of mandatory capital punishment seemed to lose none of its force because two members of the five justice majority considered all capital punishment — discretionary or mandatory, guided or unguided — contrary to the demands of the Eighth Amendment. The two justices in question, Brennan and Marshall, subsequently joined in a majority opinion holding a Nevada mandatory death penalty statute unconstitutional for failure to adhere to the individualized capital sentencing doctrine, *Sumner* v. *Shuman*, 483 U.S. 66 (1987).

[66] See e.g., *Roberts* v. *Louisiana*, 431 U.S. 633 (1977); *Lockett* v. *Ohio*, 438 U.S. 586 (1978); *Eddings* v. *Oklahoma*, 455 U.S. 104 (1982); *Skipper* v. *South Carolina*, 477 U.S. 1 (1986); *Hitchcock* v. *Dugger*, 481 U.S. 393 (1987); *Sumner* v. *Shuman*, 483 U.S.66 (1987).

[67] "The futility of attempting to solve the problems of mandatory death penalty statutes by narrowing the scope of the capital offense stems from our society's rejection of the belief that every offense in a like legal category calls for an identical punishment without regard to the past life and habits of a particular offender," *Roberts* v. *Louisiana*, 428 U.S. at 333; *Sumner* v. *Shuman*, 483 U.S. at 75 n.3.

[68] "We recognize that, in noncapital cases, the established practice of individualized sentences rests not on constitutional commands, but on public policy enacted into statutes," *Lockett* v.

***Harmelin*:** Harmelin, a first time offender, was convicted of possession of 672 grams of cocaine, enough for possibly as many as 65,000 individual doses. Under the laws of the State of Michigan, the conviction carried with it a mandatory sentence of life imprisonment without the possibility of parole.

Harmelin contended that the sentence violated both the individual consideration and proportionality doctrines of the Eighth Amendment. A majority of the Court rejected the individual considerations argument and a plurality refused to accept the proportionality assertion.

The Court noted that in its opinions "[t]he penalty of death differs from all other forms of criminal punishment. . . . in its total irrevocability," inter alia, 501 U.S. at 995, quoting *Furman v. Georgia*, 408 U.S. at 306 (Stewart, J.)(concurring). In view of the differences, the majority saw no reason "to extend this so-called individualized capital-sentencing doctrine to an individualized mandatory life in prison without parole sentencing doctrine." 501 U.S. at 995 (citations omitted).

The proportionality question proved somewhat more difficult. Justice Scalia and Chief Justice Rehnquist simply refused to recognize an Eighth Amendment proportionality requirement, at least in noncapital cases, 501 U.S. at 994. For three other justices, Kennedy, O'Connor and Souter, a sentence which satisfies the first of the *Solem* tests, seriousness of the offense, need not survive or even face comparisons with sentences for other crimes in the same jurisdiction and for the same crime in other jurisdictions, 501 U.S. at 1004.

More precisely, the plurality emphasized that "the Eighth Amendment does not require strict proportionality between crime and sentence. Rather, it forbids only extreme sentences that are grossly disproportionate to the crime," 501 U.S. at 1001.[69]

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*Ohio*, 438 U.S. at 604-605;

[69] Four principles dictate a high proportionality threshold for a plurality of the Court:

> The first. . . is that the fixing of prison terms for specific crimes involves a substantive penological judgment that, as a general matter, is properly within the province of legislatures, not courts. . . . The efficacy of any sentencing system cannot be assessed absent agreement on the purposes and objectives of the penal system. And the responsibility for making these fundamental choices and implementing them lies with the legislature. . . .
>
> The second principle is that the Eighth Amendment does not mandate adoption of any one penological theory. The principles which have guided criminal sentencing. . . have varied with the times. The federal and state criminal systems have accorded different weights at different times to the penological goals of retribution, deterrence, incapacitation, and rehabilitation. And competing theories of mandatory and discretionary sentencing have been in varying degrees of ascendancy or decline since the beginning of the Republic.
>
> Third, marked divergences both in underlying theories of sentencing and in the length of prescribed prison terms are the inevitable, often beneficial, result of the federal structure. . . . State sentencing schemes may embody different penological assumptions, making interstate comparison of sentences a difficult and imperfect enterprise. And even assuming identical philosophies, differing attitudes and perceptions of local conditions may yield different, yet rational, conclusions regarding the appropriate length of prison

In the case of Harmelin, the sentence was not grossly disproportionate because of the severity of his crime, i.e., "the pernicious effects of the drug epidemic in this country. . . demonstrate that the. . . legislature could with reason conclude that the threat posed to the individual and society by possession of this large an amount of cocaine — in terms of violence, crime, and social displacement — is momentous enough to warrant the deterrence and retribution of a life sentence without parole," 501 U.S. at 1003.

The plurality opinion also contains several useful observations about the constitutionality of mandatory sentences per se.

> It is beyond question that the legislature `has the power to define criminal punishments without giving the courts any sentencing discretion,' *Chapman v. United States*, [500 U.S. 453, 467 (1991)]. Since the beginning of the Republic, Congress and the States have enacted mandatory sentencing schemes. To set aside petitioner's mandatory sentence would require rejection not of the judgment of a single jurist, as in *Solem*, but rather the collective wisdom of the Michigan Legislature and, as a consequence, the Michigan citizenry. We have never invalidated a penalty mandated by a legislature based only on the length of sentence, and, especially with a crime as severe as this one, we should do so only in the most extreme circumstance.
>
> In asserting the constitutionality of this mandatory sentence, I offer no judgment on its wisdom. Mandatory sentencing schemes can be criticized for depriving judges of the power to exercise individual discretion when remorse and acknowledgment of guilt, or other extenuating facts, present what might seem a compelling case for departure from the maximum. On the other hand, broad and unreviewed discretion exercised by sentencing judges leads to the perception that no clear standards are being applied, and that the rule of law is imperiled by sentences imposed for no discernible reason other than the subjective reactions of the sentencing judge. The debate illustrates that, as noted at the outset, arguments for and against particular sentencing schemes are for legislatures to resolve. 501 U.S. at 1006-1007.

**After *Harmelin*:** Since *Harmelin*, the lower federal courts have regularly and uniformly rejected Eighth Amendment challenges to mandatory minimums in most of their variant forms including:

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terms for particular crimes. Thus, the circumstance that a State has the most severe punishment for a particular crime does not by itself render the punishment grossly disproportionate. . . Absent a constitutionally imposed uniformity inimical to traditional notions of federalism, some State will always bear the distinction of treating particular offenders more severely than any other State.

The fourth principle. . . is that proportionality review by federal courts should be informed by objective factors to the maximum possible extent. . . . [O]ur decisions recognize that we lack clear objective standards to distinguish between sentences for different terms of years. . . . Although no penalty is per se constitutional, the relative lack of objective standards concerning terms of imprisonment has meant that outside the context of capital punishment, successful challenges to the proportionality of particular sentences are exceedingly rare. 501 U.S. at 998-1001 (citations omitted).

- the piggyback mandatory minimums of 18 U.S.C. 924(c);[70]

- the death-resulting, death penalty or mandatory imprisonment for life, 18 U.S.C. 34;[71]

- the armed career criminal mandatory minimum, 18 U.S.C. 924(e);[72]

- the three strikes, recidivist mandatory minimum, 18 U.S.C. 3559(c);[73]

- the mandatory minimum for drug dealer by repeat offenders, 21 U.S.C. 841(b);[74] and

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[70] *United States v. Gonzales*, 121 F.3d 928 (5th Cir. 1997); *United States v. Harris*, 154 F.3d 1082, 1084 (9th Cir. 1998); *United States v. Arrington*, 159 F.3d 1069, 1073 (7th Cir. 1998)(upholding a sentence of imprisonment for 83 years: 18 years on underlying robbery counts and "the imposition of mandated consecutive terms (of 5-20-20-20 years) on the four §924(c) counts"). *Arrington* arose prior to the amendment that increased mandatory minimum for subsequent counts/convictions from 20 to 25 years: ". . . [A]ny person who, during and in relation to any [federal] crime of violence or drug trafficking . . . uses or carries a firearm . . . shall, in addition to the punishment provided for such crime . . . be sentenced to a term of imprisonment of not less than 5 years . . . . In the case of a second or subsequent conviction under this subsection, the person shall . . . be sentenced to a term of imprisonment of not less than 25 years . . . . Notwithstanding any other provision of law . . . no term of imprisonment imposed on a person under this subsection shall run concurrently . . . ." 18 U.S.C. 924(c).

[71] *United States v. Torres*, 140 F.3d 392, 405-406 (2d Cir. 1998)("Whoever is convicted of any crime prohibited by this chapter, which has resulted in the death of any person, shall be subject also to the death penalty or to imprisonment for life," 18 U.S.C. 34).

[72] *United States v. Cardoza*, 129 F.3d 6, 18-9 (1st Cir. 1997)("In the case of a person who violates section 922(g)(firearm possession by a felon) . . . and has three previous convictions . . . for a violent felony or a serious drug offense . . . shall be . . . imprisoned not less than fifteen years. . . ." 18 U.S.C. 924(e)).

[73] *United States v. Washington*, 109 F.3d 335, 337-38 (7th Cir. 1997); *United States v. Farmer*, 73 F.3d 836, 840 (8th Cir. 1996)("Notwithstanding any other provisions of law, a person who is convicted in a court of the United States of a serious violent felony shall be sentenced to life imprisonment if . . . the person has been convicted . . . on separate occasions in a court of the United States or of a State of . . . 2 or more serious violent felonies; or . . . one or more serious violent felonies and one or more serious drug offense. . . ." 18 U.S.C. 3559(c)).

[74] *United States v. Prior*, 107 F.3d 654, 658-60 (8th Cir. 1997)(". . .[A]ny person who violates subsection (a)[possession with an intent to distribute] . . . In the case of . . . (viii) . . . 500 grams or more of a mixture of methamphetamine . . . If [the] person commits a violation . . . after two or more prior convictions for a felony drug offense . . . such person shall be sentenced to a mandatory term of life imprisonment without release . . . ." 21 U.S.C. 841(b)(1)((A)); *United States v. Jackson*, 59 F.3d 1421, 1424 (2d Cir. 1995)(". . .[A]ny person who violates subsection (a)[possession with in intent to distribute] . . . In the case of . . . (iii) . . . 50 grams or more of a mixture . . . which contains cocaine base. . . shall be sentenced to a term of imprisonment which may not be less than 10 years. . . ." 21 U.S.C. 841(b)(1)((A)").

An appellate court overturned the decision of one federal court that found application of the crack mandatory minimum to minor drug-addicted participants in a law enforcement

- the drug kingpin, one sentence mandatory minimum, 21 U.S.C. 848(b).[75]

## Separation of powers

While "it remains a basic principle of our constitutional scheme that one branch of the Government may not intrude upon the central prerogatives of another," *Loving v. United States*, 517 U.S. 748, 757 (1996), the Supreme Court has observed that "Congress has the power to define criminal punishments without giving the courts any sentencing discretion, *United States v. Chapman*, 500 U.S. 453, 467 (1991). Thus, the lower federal courts have regularly upheld mandatory minimum statutes when challenged on separation of powers grounds,[76] and the Supreme Court has denied any separation of powers infirmity in the federal sentencing guideline system which might be thought to produce its own form of mandatory minimums, *Mistretta v. United States*, 488 U.S. 361 (1989).[77]

## Crack and Equal Protection

The equal protection objections to the mandatory minimums that attach to the sale and possession of cocaine base (crack), 21 U.S.C. 841, 844, flow from the disparate treatment afforded the two forms of cocaine. The penalties for possession with intent to distribute 50 grams of crack are the same as those for possession with intent to distribute 5000 grams of cocaine powder, 21 U.S.C. 841(b)(1)(A)(ii), (iii). The 100:1 ratio between the two continues through the federal sentencing structure with one exception. There is no mandatory minimum for simple possession of powder cocaine, but simple possession of 5 grams or more of crack is punishable by imprisonment for not less than 5 years, 21 U.S.C. 844. The sentencing difference has a racially disparate impact that invites equal protection analysis.

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induced transaction cruel and unusual, *United States v. Walls*, 841 F.Supp. 24, 31-3 (D.D.C. 1994), *remanded for resentencing*, 70 F.3d 1323 (D.C.Cir. 1995).

[75] *United States v. Jackson*, 59 F.3d 1421, 1424 (2d Cir. 1995)("Any person who engages in a continuing criminal enterprise shall be imprisoned for life . . . if . . . such person is the . . . leader of the enterprise . . . and the violation . . . involved at least 300 times the quantity of a substance described in subsection 841(b)(1)(B)[relating to trafficking in various amounts of different controlled substances]," 21 U.S.C. 848(b)).

[76] *United States v. Kaluna*, 152 F.3d 1069, 1072-73 (9th Cir. 1998); *United States v. Rasco*, 123 F.3d 222, 226-27 (5th Cir. 1997); *United States v. Washington*, 109 F.3d 335, 338 (7th Cir. 1997); *United States v. Prior*, 107 F.3d 654, 660 (8th Cir. 1997).

[77] Mistretta, sentenced under the guidelines to 18 months imprisonment for conspiracy to distribute cocaine, argued that the guidelines constituted an unconstitutional delegation of Congress's legislative authority and that the service of judges upon the Commission constituted extrajudicial service at odds with the separation of powers doctrine. The Court rejected both arguments concluding "that in creating the Sentencing Commission . . . Congress neither delegated excessive legislative power nor upset the constitutionally mandated balance of powers among the coordinate Branches," 488 U.S. at 412.

The Fifth Amendment due process clause embodies an equal protection component confining federal action in the manner that the Fourteenth Amendment equal protection clause confines state action, *United States v. Armstrong*, 517 U.S. 456, 464 (1996).[78] Statutes are subject to strict scrutiny under the equal protection clause . . . when they contain express racial classifications [as well as] when, though race neutral on their face, they are motivated by a racial purpose or object, *Miller v. Johnson*, 515 U.S. 900, 913 (1995). Although insufficient on its own, a racially adverse impact is one factor to be considered in the determination of whether a facially neutral statute is racially motivated, *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 264 (1977). A statute will survive strict scrutiny only if narrowly tailored to serve a compelling governmental interest, *Miller v. Johnson*, 515 U.S. at 920. A statutory classification that is not racially motivated or similarly suspect and thus not subject to strict scrutiny will pass constitutionally muster if it is based on some rational justification, *Heller v. Doe*, 509 U.S. 312, 320 (1993).

One federal court concluded that the disparate penalties had a disparate racial impact, was subject to, and could not withstand equal protection strict scrutiny, *United States v. Clary*, 846 F.Supp. 768 (E.D.Mo. 1994). The decision was overturned on appeal under an analysis that rejected, as have other courts, strict scrutiny in favor a rational basis standard, *United States v. Clary*, 34 F.3d 709 (8th Cir. 1994).[79]

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[78] "No person shall . . . be deprived of life, liberty, or property, without due process of law . . . ." U.S.Const. Amend.V. " . . . [N]or shall any State . . . deny to any person within its jurisdiction the equal protection of the laws." U.S.Const. Amend. XIV, §1.

The exercise of prosecutorial discretion on the basis of race offends equal protection, 571 U.S. at 464-65. In *Armstrong*, the defendant sought discovery in order to determine whether racial factors influenced the decision of which crack defendants should be try in federal court and which to be left to the less severe jeopardy of state law. The Court held that in order to be entitled to discovery, a defendant must show that similarly situated offenders of other races were not prosecuted. *Id.*

[79] Each of the federal circuits has rejected equal protection challenges to the 100:1 cocaine sentencing scheme: *United States v. Singleterry*, 29 F.3d 733, 740-41 (1st Cir. 1994); *United States v. Moore*, 54 F.3d 92, 96-9 (2d Cir. 1995); *United States v. Frazier*, 981 F.2d 92, 95 (3d Cir. 1992); *United States v. Perkins*, 108 F.3d 512, 518-19 (4th Cir. 1997); *United States v. McKinney*, 53 F.3d 664, 678 (5th Cir. 1995); *United States v. Washington*, 127 F.3d 510, 516-18 (6th Cir. 1997); *United States v. Jones*, 54 F.3d 1234, 1293-294 (7th Cir. 1995); *United States v. Carter*, 91 F.3d 1196, 1198-199 (8th Cir. 1996); *United States v. Jackson*, 84 F.3d 1154, 1161 (9th Cir. 1996); *United States v. Williams*, 45 F.3d 1481, 1485-486 (10th Cir. 1995); *United States v. Matthews*, 168 F.3d 1234, 1250-251 (11th Cir. 1999); *United States v. Johnson*, 40 F.3d 436, 439-41 (D.C.Cir. 1994).

The Minnesota Supreme Court has held that a 10:3 crack/powder sentencing ratio found in state law fails to satisfy the rational basis standard of the Minnesota equal protection clause, *State v. Russell*, 477 N.W. 886 (Minn. 1991). *See generally*, Wallace, *Federal Cocaine Sentencing: Legal Issues*, CRS REP. 97-743 (May 4, 1999).

## Recidivism, Ex Post Facto and Double Jeopardy

Double jeopardy bans trying a defendant twice for the same offense[80] and ex post facto bars retroactive criminal statutes.[81] More precisely, the double jeopardy clause "protects against successive prosecutions for the same offense after acquittal or conviction and against multiple criminal punishments for the same offense," *Monge v. California*, 118 U.S. at 2250. The ex post facto clauses, on the other hand, preclude laws that "retroactively alter the definition of crimes or [retroactively] increase the punishment for criminal acts," *California Dept. of Corrections v. Morales*, 514 U.S. 499, 504 (1995).

Some argue that recidivist mandatory minimums offend both the double jeopardy and ex post facto clauses. They are contrary to double jeopardy, it is said, because by using a first conviction to justify an increased penalty for a second conviction they are in effect punishing the first offense twice. They contravene ex post facto proscription when they are used to sentence a defendant whose first conviction predates the recidivist statute, or so it is contended. The courts have rejected both arguments.

As the Supreme Court explained when it rejected the double jeopardy challenge to the California "three strikes" statute:

> Historically, we have found double jeopardy protections inapplicable to sentencing proceedings, because the determinations at issue do not place a defendant in jeopardy for an "offense," see *e.g., Nichols v. United States*, 511 U.S. 738, 747 (1994)(noting that repeat-offender laws "penaliz[e] only the last offense committed by the defendant"). Nor have sentence enhancements bene construed as additional punishment for the previous offense; rather, they act to increase a sentence "because of the manner in which [the defendant] committed the crime of conviction." An enhanced sentence imposed on a persistent offender thus "is not to be viewed as either a new jeopardy or additional penalty for the earlier crimes" but as "a stiffened penalty for the latest crime which is considered to be an aggravated offense because a repetitive one." *Monge v. California*, 118 S.Ct. at 2250-251 (some citations omitted).

Courts confronted with ex post facto challenges to recidivists statutes have similarly focused upon the "latest crime" and not upon the first.[82]

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[80] ". . .[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb. . . ." U.S.Const. Amend.V; the double jeopardy clause is binding on the states through the due process clause of the Fourteenth Amendment, *Monge v. California*, 118 S.Ct. 2246, 2250 (1998).

[81] "No . . . ex post facto Law shall be passed . . . ." U.S.Const. Art.I, §9. "No State shall . . . pass any . . . ex post facto Law . . ." U.S.Const. Art.I, §10.

[82] *Gryger v. Burke*, 334 U.S. 728, 732 (1948)("Nor do we think the fact that one of the convictions that entered into the calculations by which petitioner became a fourth offender occurred before the Act was passed, makes the Act invalidly retroactive. . . ."); *United States v. Kaluna*, 152 F.3d 1069, 1073 J(9th Cir. 1998); *United States v. Rasco*, 123 F.3d 222, 227 (5th Cir. 1997); *United States v. Washington*, 109 F.3d 335, 337-38 (7th Cir. 1997); *United*

## The List

The list that follows begins with the "not-less-than" mandatory minimums. Within that group, the citations to statutes that permit the courts to impose a fine rather than the designated minimum term of imprisonment are marked with a single + sign; the citations to statutes that might be disregarded by virtue of the safety valve in 18 U.S.C. 3553(f) are marked with a double ++ sign.

The remainder of the list consists of statutes that have no "not-less-than" language. First come the statutes that give the court no choice but impose a sentence of imprisonment or death. Then come the flat life imprisonment statutes, followed by piggyback statutes. The statutes defining crimes punishable by imprisonment for not more than 40, 35, 30 or 25 years are listed because Congress has declared by statute that they are beyond the reach of probation, 18 U.S.C. 3561 (*i.e.*, only a sentence of imprisonment may be imposed). The list ends with the 20, 15, 12, 10, 8, 7, 6 and 5 maximum statutes made mandatory in the eyes of some by operation of the sentencing guidelines.

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*States v. Farmer*, 78 F.3d 836, 839-41 (8th Cir. 1996).

## LIST OF FEDERAL MANDATORY MINIMUM SENTENCING STATUTES

**Imprisonment for not less than a specified term of years or life**

*18 U.S.C. 33* (destruction of commercial motor vehicles or their facilities involving high-level radioactive waste: any term of years but not less than 30 years)
*18 U.S.C. 225* (continuing financial crimes enterprise: imprisonment for not less than 10 years and "may be life")
*18 U.S.C. 844(h)* (use of fire or explosives to commit a federal felony or possession of explosives during the commission of a federal felony: imprisonment for 10 years for 1st offense, 20 for the second and any subsequent offense)
*18 U.S.C. 844(f)*(burning or bombing federal property: imprisonment for not less than 5 years nor more than 20 years; not less than 7 nor more than 40 years imprisonment if the offense involves personal injury or a substantial risk of personal injury; if death results, death or imprisonment for not less than 20 years or life)

*18 U.S.C. 844(i)*(burning or bombing property affecting interstate commerce: imprisonment for not less than 5 years nor more than 20 years; not less than 7 nor more than 40 years imprisonment if the offense involves personal injury or a substantial risk of personal injury; if death results, death or imprisonment for not less than 20 years or life)
*18 U.S.C. 844(o)* (transfer of explosives knowing they will be used to commit a crime of violence or drug trafficking offense: imprisonment for 10 years)
*18 U.S.C. 924(c)(1)* (use of or possession of a firearm during the commission of a crime of violence or drug trafficking: imprisonment for not less 5 years generally; imprisonment for not less than 7 years if the firearm is brandished; imprisonment for not less than 10 if the firearm is discharged or involves a short-barreled rifle or shotgun; imprisonment for not less than 25 years for second or subsequent offenses; imprisonment for not less than 30 years for a machinegun or silencer; life imprisonment for second or subsequent machinegun or silencer offense)

*18 U.S.C. 924(e)(1)* (possession of firearm by a three time violent felon or serious drug dealer: not less than 15 years imprisonment)
*18 U.S.C. 929* (use of armor piercing ammunition during the commission of a crime of violence or drug trafficking: not less than 5 years)
*18 U.S.C. 1121(b)* (killing a state law enforcement officer by a federal prisoner or while transferring a prisoner interstate: not less than 20 years and may be punishable by death or life imprisonment)
*18 U.S.C. 1122* (selling HIV infected blood: not less than 1 nor more than 10 years)
*18 U.S.C. 1658(b)* (causing a shipwreck for plunder or preventing escape from a shipwreck: imprisonment for not less than 10 years)
*18 U.S.C. 1661* (robbery ashore by pirates: imprisonment for life)
+*18 U.S.C. 1917* (interfering with civil service examinations: imprisonment for not less than 10 days nor more than 1 year *or* a fine of not less than $100 or both)(+ imprisonment at the discretion of the court)
*18 U.S.C. 2113(e)* (killing or hostage taking during the course of robbing a federally insured bank: not less than 10 years; death or life imprisonment if death results)
*18 U.S.C. 2251* (sexual exploitation of children: imprisonment for not less than 10 nor more than 20 years; upon a 2d conviction, imprisonment for not less than 15 nor more than 30 years; upon a 3d conviction, imprisonment for not less than 30 years nor more than life; where death results, death or imprisonment for any term of years or life)

*18 U.S.C. 2251A* (buying or selling children for purposes of sexual exploitation: imprisonment for not less than 20 years or life)
*18 U.S.C. 2252(b)* (2d and subsequent offense of trafficking in material related to sexual exploitation of children: imprisonment for not less than 5 nor more than 30 years)
*18 U.S.C. 2252A* (2d and subsequent offense of trafficking by computer in material related to sexual exploitation of children: imprisonment for not less than 5 nor more than 30 years)
*18 U.S.C. 2257* (2d and subsequent violation of the recordkeeping requirements concerning sexual exploitation of children: imprisonment for not less than 2 nor more than 5 years)
*18 U.S.C. 2381* (treason: death or imprisonment for not less than 5 years)
*18 U.S.C. 3559(c)* (3 strikes: an offender convicted of a serious violent felony after have been convicted for 2 or more serious violent felonies or serious drug offenses must be sentenced to life imprisonment)
++*21 U.S.C. 841(b)(1)(A)* (drug trafficker where the offender has 2 or more prior convictions for violation of 21 U.S.C. 849(drug dealing at a truck stop), 859 (dealing to minors), 860 (dealing near a school), 861 (using minors to deal: mandatory life imprisonment)
++*21 U.S.C. 841(b)(1)(A)* (drug trafficking in very substantial amounts of controlled substances (e.g., a kilogram or more of heroin: imprisonment for not less than 10 years nor more than life; imprisonment for not less than 20 years nor more than life if the offender has a prior felony drug conviction or if death or serious bodily injury results)

++*21 U.S.C. 841(b)(1)(B)* (drug trafficking in substantial amounts of controlled substances (e.g., 100 grams of heroin: imprisonment for not less than 5 nor more than 40 years; imprisonment for not less than 20 years nor more than life if death or serious bodily injury results; imprisonment for not less than 10 years nor more than life if the offender has a prior drug felony conviction)
++*21 U.S.C. 841(b)(1)(C)* (drug trafficking in schedule I or II controlled substances or 1 gram of flunitrazepam: imprisonment for not less than 20 years nor more than life if death or serious bodily injury results; imprisonment for not less than 10 years nor more than life if the offender has a prior drug felony conviction; imprisonment for life if the offender has a prior drug felony conviction and death or serious bodily injury results)
++*21 U.S.C. 844* (simple possession of a controlled substance: imprisonment for not less than 5 nor more than 20 years for possession of cocaine base (crack); imprisoned not less than 90 days nor more than 3 years if the offender has 2 or more prior drug convictions; imprisonment for not less than 15 days nor more than 2 years if the offender has a prior drug conviction)

*21 U.S.C. 848(a)* (drug kingpin - continuing criminal enterprise violations: imprisonment for not less than 30 years more than life for previous offenders, not less than 20 years nor more than life otherwise)
*21 U.S.C. 848(b)* (drug kingpin violations involving large enterprises: life imprisonment)
*21 U.S.C. 848(e)(1)* (killing in furtherance of a serious drug trafficking violations or killing a law enforcement official in furtherance of a controlled substance violation: death, life imprisonment, or imprisonment for a term of years not less than 20 years)
*21 U.S.C. 859* (distribution of controlled substances to those under 21 years of age): imprisonment for not more than twice the otherwise applicable maximum term, but not less than the greater of the otherwise applicable minimum term or 1 year imprisonment; three times the otherwise applicable maximum term for 2d offenders)
*21 U.S.C. 860* (distribution of controlled substances near schools and colleges): imprisonment for not more than twice the otherwise applicable maximum term, but not less than the greater of the otherwise applicable minimum term or 1 year imprisonment; three times the otherwise applicable maximum term but not less than the greater of the otherwise applicable minimum term or 3 years imprisonment for 2d offenders)

*21 U.S.C. 861* (distribution to a pregnant person or use of those under 21 years of age to distribute controlled substances): imprisonment for not more than twice the otherwise applicable maximum term, but not less than the greater of the otherwise applicable minimum term or 1 year imprisonment; three times the otherwise applicable maximum term)
++*21 U.S.C. 846* (attempts and conspiracies to violate any of the offenses in the Controlled Substances Act carry the same sentences as the underlying offenses)
++*21 U.S.C. 960(b)(1)* (illicit drug importing/exporting of very substantial amounts of controlled substances (e.g., a kilogram or more of heroin: imprisonment for not less than 10 years nor more than life; imprisonment for not less than 20 years nor more than life if the offender has a prior felony drug conviction or if death or serious bodily injury results)
++*21 U.S.C. 960(b)(2)* (illicit drug importing/exporting of substantial amounts of controlled substances (e.g., 100 grams of heroin: imprisonment for not less than 5 nor more than 40 years; imprisonment for not less than 20 years nor more than life if death or serious bodily injury results; imprisonment for not less than 10 years nor more than life if the offender has a prior drug felony conviction)
++*21 U.S.C. 960(b)(3)* (illicit drug importing/exporting of schedule I or II controlled substances or 1 gram of flunitrazepam: imprisonment for not more than 20 years, but not less than 20 years nor more than life if death or serious bodily injury results; imprisonment for not more than 30 years if the offender has a prior drug felony conviction; imprisonment for life if the offender has a prior drug felony conviction and death or serious bodily injury results)
*21 U.S.C. 962* (violation of the drug import/export law by an offender with a prior conviction for violation of those provisions is punishable by imprisonment for twice the term otherwise authorized)
++*21 U.S.C. 963* (attempt or conspiracy to commit any of the drug import/export offenses are subject to the same penalties as the underlying offense)

*2 U.S.C. 192* (contempt of Congress: imprisonment for not less than 1 nor more than 12 months)
+*2 U.S.C. 390* (contempt of Congress in a contested election case: imprisonment for not less than 1 nor more than 12 months *or* a fine of not less than $100 nor more than $1000) (+ imprisonment at the discretion of the court)
+*7 U.S.C. 13a* (failure to comply with certain Commodities Futures Exchange Commission cease and desist orders: a fine of not more than $500,000 *or* imprisonment for not less than 6 months nor more than 1 year or both) (+ imprisonment at the discretion of the court)
+*7 U.S.C. 13b* (failure to comply with certain Commodities Futures Exchange Commission cease and desist orders: a fine of not more than the higher of $100,000 or 3 times the monetary gain, *or* imprisonment for not less than 6 months nor more than 1 year or both) (+ imprisonment at the discretion of the court)

*+7 U.S.C. 195* (failure to comply with certain orders of the Secretary under the Packers and Stockyards Act: a fine of not less than $500 nor more than $10,000, *or* imprisonment for not less than 6 months nor more than 5 years or both) (+ imprisonment at the discretion of the court)
*7 U.S.C. 2023* (2d conviction for fraudulent use of a food stamp access device worth between $100 and $5,000: imprisonment for not less than 6 months nor more than 5 years)
*8 U.S.C. 1534* (disclosure of classified information by a special attorney in immigration removal cases: imprisonment for not less than 10 nor more than 25 years)
*+12 U.S.C. 617* (price fixing by officers of corporations organized to do foreign banking: a fine of not less than $1,000 nor more than $5,000 *or* imprisonment for not less than 1 nor more than 5 years, "or both in the discretion of the court") (+ imprisonment at the discretion of the court)
*12 U.S.C. 630* (embezzlement by officers of corporations organized to do foreign banking: imprisonment for not less than 2 nor more than 10 years)
*+15 U.S.C. 8* (trusts in restraint of import trade: a fine of not less than $100 nor more than $5000 and "imprisonment, in the discretion of the court, for a term not less than three months nor exceeding twelve months") (+ imprisonment at the discretion of the court)
*15 U.S.C. 1245* (possession of a ballistic knife during the commission of a federal crime of violence: imprisoned not less than five years and not more than ten years, or both)

*+16 U.S.C. 414* (trespassing for hunting purposes on a national military park: a fine of not more than $1000 *or* imprisonment for not less than 5 nor more than 30 days or both) (+ imprisonment at the discretion of the court)
*19 U.S.C. 283* (failure to pay duty on saloon stores: not less than 3 months nor more than 2 years imprisonment)
*+21 U.S.C. 212* (offenses involving the practice of pharmacy in the consular districts of China: a fine of not less than $50 nor more than $100 *or* imprisonment for not less than 1 month nor more than 60 days, or both) (+ imprisonment at the discretion of the court)
*21 U.S.C. 622* (bribery of a meat inspector: not less than 1 nor more than 3 years imprisonment)

*22 U.S.C. 4221* (perjury before consular officers: imprisonment for not less than 1 nor more than 3 years)
*+33 U.S.C. 410* (violation of floating timber regulations: a fine of not less than $500 nor more than $2,500 *or* imprisonment for not less than 30 days nor more than 1 year, or both "in the discretion of the court") (+ imprisonment at the discretion of the court)
*+33 U.S.C. 411* (certain navigable waters offenses: a fine of not more than $2,500 *or* imprisonment for not less than 30 days nor more than 1 year, or both "in the discretion of the court") (+ imprisonment at the discretion of the court)
*+33 U.S.C. 441* (deposit of refuse in various harbors: a fine of not less than $250 nor more than $2,500 *or* imprisonment for not less than 30 days nor more than 1 year, or both "as the judge before whom conviction is obtained shall decide") (+ imprisonment at the discretion of the court)
*33 U.S.C. 447* (bribery of harbor employees: not less than 6 months nor more than 1 year imprisonment)
*46 U.S.C. App. 1228* (violations of the Merchant Marine Act: a fine or "imprisonment for not less than one year or more than five years, or by both fine and imprisonment")
*47 U.S.C. 13* (refuse to afford telegraph service: a fine of not more than $1000 and imprisonment for not less than 6 moths)
*47 U.S.C. 220* (false entries in communication common carrier records: a fine of not less than $1,000 nor more than $5000 *or* imprisonment for not less than 1 nor more than 3 years)

**Death or imprisonment for any term of years or for life**

*18 U.S.C. 36* (drive-by shooting constituting 1st degree murder)
*18 U.S.C. 37* (violence at international airports where death results)
*18 U.S.C. 175* (development or possession of biological weapons)
*18 U.S.C. 241* (conspiracy against civil rights where death results)
*18 U.S.C. 242* (deprivation civil rights under color of law where death results)
*18 U.S.C. 245* (discriminatory obstruction of enjoyment federal protected activities where death results)
*18 U.S.C. 247* (obstruction of the exercise of religious beliefs where death results)
*18 U.S.C. 351* (conspiracy to kill or kidnap a Member of Congress if death results)
*18 U.S.C. 351* (kidnapping a Member of Congress if death results)
*18 U.S.C. 794* (espionage)
*18 U.S.C. 844(d)* (use of fire or explosives unlawfully where death results)
*18 U.S.C. 924(j)(1)* (murder while in possession of a firearm during the commission of a crime of violence or drug trafficking)
*18 U.S.C. 1512* (tampering with a federal witness or informant involving murder)

*18 U.S.C. 1513* (retaliating against a federal witness or informant involving murder)
*18 U.S.C. 1751* (kidnapping the President where death results)
*18 U.S.C. 1751* (conspiracy to kill or kidnap the President where death results)
*18 U.S.C. 2119* (carjacking where death results)
*18 U.S.C. 2280* (violence against maritime navigation where death results)
*18 U.S.C. 2281* (violence against maritime fixed platform where death results)
*18 U.S.C. 2332* (terrorist murder of an American outside the U.S.)
*18 U.S.C. 2332a* (use of weapons of mass destruction where death results)
*18 U.S.C. 2332b* (acts of terrorism transcending national boundaries where death results)
*18 U.S.C. 2332c* (use of chemical weapons where death results)
*18 U.S.C. 2340A* (torture where death results)
*18 U.S.C. 2441* (war crimes where death results)
*8 U.S.C. 1324 (1)* (bringing in or harboring aliens where death results)

**Death or imprisonment for life**

*18 U.S.C. 34* (destruction of aircraft, commercial motor vehicles or their facilities where death results)
*18 U.S.C. 115* (kidnapping with death resulting of the member of the family of a federal official or employee to obstruct or retaliate)
*18 U.S.C. 115* (1st degree murder of the member of the family of a federal official or employee to obstruct or retaliate)
*18 U.S.C. 351* (1st degree murder of a Member of Congress)
*18 U.S.C. 930(c)* (1st degree murder while in possession of a firearm in a federal building)
*18 U.S.C. 1091* (genocide where death results)
*18 U.S.C. 1111* (1st degree murder within the special maritime and territorial jurisdiction of the U.S.)
*18 U.S.C. 1114* (1st degree murder of a federal officer or employee)
*18 U.S.C. 1116* (1st degree murder of a foreign dignitary)
*18 U.S.C. 1118* (murder by a federal prisoner)
*18 U.S.C. 1119* (1st degree murder of an American by an American overseas)
*18 U.S.C. 1120* (1st degree murder by an escaped federal prisoner)
*18 U.S.C. 1121* (1st degree murder of one assisting in a federal criminal investigation)
*18 U.S.C. 1201* (kidnapping where death results)
*18 U.S.C. 1203* (hostage taking where death results)
*18 U.S.C. 1503* (1st degree murder committed to obstruction of federal judicial proceedings)
*18 U.S.C. 1716* (mailing injurious articles with intent to injury or damage property where death results)
*18 U.S.C. 1751* (1st degree murder of the President)
*18 U.S.C. 1958* (use of interstate facilities in furtherance of a murder-for-hire where death results)
*18 U.S.C. 1959* (murder in aid of racketeering activity)
*18 U.S.C. 1992* (attempting to wrecking trains where death results)
*18 U.S.C. 2241* (aggravated sexual assault of a child under 12 years of age in the special maritime and territorial jurisdiction of the U.S.)
*18 U.S.C. 3559* (federal violent felony or violation of 18 U.S.C. 2422 (coercing or enticing interstate travel for sexual purposes), 2423(transporting minors for sexual purposes), or 2251(sexual exploitation of children) resulting in the death of a child under 14 years of age)

*15 U.S.C. 1825(a)(2)(C)* (1st degree murder of those enforcing the Horse Protection Act)
*21 U.S.C. 461* (1st degree murder of a poultry inspector)
*21 U.S.C. 675* (1st degree murder of a meat inspector)
*49 U.S.C. 46502* (air piracy where death results)

**Imprisonment for any term of years or life**

*18 U.S.C. 36* (drive-by shooting constituting murder other than 1st degree murder)
*18 U.S.C. 43* (animal enterprise terrorism where death results)
*18 U.S.C. 115* (kidnapping or conspiring to kidnap the member of the family of a federal official or employee to obstruct or retaliate)
*18 U.S.C. 115* (2d degree murder of the member of the family of a federal official or employee to obstruct or retaliate)

*18 U.S.C. 115* (conspiracy to murder the member of the family of a federal
official or employee to obstruct or retaliate)
*18 U.S.C. 241* (conspiracy against civil rights involving attempts to kill, or kidnap, attempted kidnapping, sexual assault or attempted sexual assault)
*18 U.S.C. 242* (deprivation of rights under color of law involving attempts to kill, or kidnap, attempted kidnapping, sexual assault or attempted sexual assault)

*18 U.S.C. 245* (discriminatory obstruction of enjoyment federal protected activities involving attempts to kill, or kidnap, attempted kidnapping, sexual assault or attempted sexual assault)
*18 U.S.C. 248* (interference with access to clinic entrances where death results)
*18 U.S.C. 351(c),(d)* (attempt or conspiracy to kill or kidnap a Member of Congress)
*18 U.S.C. 351(b)* (kidnapping a Member of Congress)
*18 U.S.C. 351(a)* (2d degree murder of a Member of Congress)
*18 U.S.C. 831* (prohibited transactions in nuclear material where death or serious bodily injury results)
*18 U.S.C. 924(o)* (conspiracy to violate 18 U.S.C. 924(c)(use of or possession of a machinegun or firearm equipped with a silencer during the commission of a crime of violence or drug trafficking))
*18 U.S.C. 930(c)* (2d degree murder while in possession of a firearm in a federal building)
*18 U.S.C. 956* (conspiracy to murder of kidnap in a foreign country)

*18 U.S.C. 1111* (2d degree murder within the special maritime and territorial jurisdiction of the U.S.)
*18 U.S.C. 1114* (2d degree murder of a federal officer or employee)
*18 U.S.C. 1116* (2d degree murder of a foreign dignitary)
*18 U.S.C. 1117* (conspiracy to commit murder in violation of 18 U.S.C. 1111 (within the special maritime and territorial jurisdiction of the U.S.), 1114 (of a federal officer or employee), 1116 (of a foreign dignitary), or 1119 (of an American by an American overseas)
*18 U.S.C. 1119* (2d degree murder of an American by an American overseas)
*18 U.S.C. 1120* (2d degree murder by an escaped federal prisoner)
*18 U.S.C. 1121* (2d degree murder of one assisting in a federal criminal investigation)
*18 U.S.C. 1201* (kidnapping or conspiracy to kidnap)
*18 U.S.C. 1203* (hostage taking)
*18 U.S.C. 1347* (health care fraud resulting in death)
*18 U.S.C. 1365* (tampering with consumer products where death results)
*18 U.S.C. 1503* (2d degree murder committed to obstruction of federal judicial proceedings)
*18 U.S.C. 1751* (2d degree murder of the President)
*18 U.S.C. 1751* (kidnapping the President)
*18 U.S.C. 1751* (attempting to kill or kidnap the President)
*18 U.S.C. 1751* (conspiracy to kill or kidnap the President)
*18 U.S.C. 1751* (aggravated assault of the President)

*18 U.S.C. 1864* (booby traps on federal lands where death results)
*18 U.S.C. 1952* (Travel Act violations (interstate travel in aid of racketeering enterprises where death results)
*18 U.S.C. 1959* (kidnapping in aid of racketeering activity)
*18 U.S.C. 2118* (robbery or burglary involving controlled substances where death results)
*18 U.S.C. 2261* (interstate domestic violence if death results)
*18 U.S.C. 2261A* (interstate stalking if death results)
*18 U.S.C. 2262* (interstate violation of protection order if death results)
*18 U.S.C. 2272* (destruction of vessel by owner)
*18 U.S.C. 2332* (terrorist conspiracy to murder an American outside the U.S.)
*18 U.S.C. 2332a* (use of weapons of mass destruction)
*18 U.S.C. 2332b* (acts of terrorism transcending national boundaries involving a kidnapping)
*18 U.S.C. 2441* (war crimes)

*15 U.S.C. 1825(a)(2)(C)* (2d degree murder of those enforcing the Horse Protection Act)
*21 U.S.C. 461* (2d degree murder of a poultry inspector)
*21 U.S.C. 675* (2d degree murder of a meat inspector)
*42 U.S.C. 2000e-13* (killing EEOC personnel)
*42 U.S.C. 2272* (atomic energy violations to injure the U.S. or aid a foreign nation)
*42 U.S.C. 2274* (communication of restricted data)
*42 U.S.C. 2275* (receipt of restricted data)

*42 U.S.C. 2276* (tampering with restricted data)
*42 U.S.C. 3631* (housing discrimination where death results)
*49 U.S.C. 46504* (interference with flight crew involving a dangerous weapon)

**Imprisonment for life**

*18 U.S.C. 1651* (piracy)
*18 U.S.C. 1652* (piracy)
*18 U.S.C. 1653* (piracy)
*18 U.S.C. 1655* (seaman laying violent hands upon a commander)
*18 U.S.C. 1963* (racketeer and corrupt influenced organization (RICO) offenses where the predicate offense)

**Imprisonment for not more than some multiple of the sentence for a predicate offense**

*18 U.S.C. 2* (aiding and abetting any of the offenses listed — offenders are treated as principals in the predicate offense)
*18 U.S.C. 3* (accessory after the fact — not more than 15 years with respect to crimes punishable by death or life imprisonment; not more than half of the maximum for any other offense)
*18 U.S.C. 373* (solicitation to commit a crime of violence — not more than 20 years with respect to crimes punishable by death or life imprisonment; not more than half of the maximum for any other offense)
*18 U.S.C. 1503* (obstruction of federal judicial proceedings involving the use of physical force is punishable with a maximum penalty no less than that for the offense that is the subject of the proceeding obstructed)
*18 U.S.C. 2247* (doubles the otherwise applicable maximum penalties for sexual abuse violations if the offender has a prior sex offense conviction)
*18 U.S.C. 2426* (doubles the otherwise applicable maximum penalties for Mann Act (transportation for illegal sexual activity) violations if the offender has a prior sex offense conviction)
*21 U.S.C. 846* (attempts or conspiracies to violate any provision of the Controlled Substance Act is subject to the same penalties as the completed offense)
*21 U.S.C. 849* (the maximum penalties for the underlying offense double for drug dealing at a truck stop; they are triple for a 2d or subsequent conviction)
*21 U.S.C. 860(c)* (use of one under 21 years of age to distribution of controlled substances near schools and colleges: imprisonment for not more than three times the otherwise applicable sentence)
*21 U.S.C. 963* (attempts or conspiracies to violate any provision of the Controlled Substance import and Export Act is subject to the same penalties as the completed offense)

**Imprisonment for not more than 40 years**

*18 U.S.C. 247* (obstruction of the exercise of religious beliefs where injury results)
*18 U.S.C. 1864* (booby traps on federal lands where serious bodily injury results)

**Imprisonment for not more than 35 years**

*18 U.S.C. 956* (conspiracy to maim in a foreign country)
*18 U.S.C. 2332b* (acts of terrorism transcending national boundaries in form of maiming)

**Imprisonment for not more than 30 years**

*18 U.S.C. 656* (embezzlement of more than $1000 from a federally insured bank)
*18 U.S.C. 657* (embezzlement of more than $1000 from a federally insured credit union)
*18 U.S.C. 1005* (false entries in the records of federally insured banks)
*18 U.S.C. 1006* (false entries in the records of federally insured credit unions)
*18 U.S.C. 1007* (false statements in an FDIC transaction)
*18 U.S.C. 1014* (false statements in loan or credit applications in which the U.S. has an interest)
*18 U.S.C. 1341* (mail fraud affecting a financial institution)[+]
*18 U.S.C. 1343* (wire fraud affecting a financial institution)[+]

*18 U.S.C. 1344* (bank fraud)[+]

[+] under 18 U.S.C. 2326 the penalties for violation of 18 U.S.C. 1028, 1029, 1341, 1342, 1343, or 1344 may be increased by not more than 5 years if they involve telemarketing or not more than 10 years if the victim or target of the fraud is over 55 years of age

*18 U.S.C. 1959* (maiming in aid of racketeering activity)
*18 U.S.C. 2153* (sabotage)
*18 U.S.C. 2154* (production of defective war material)
*18 U.S.C. 2332b* (acts of terrorism transcending national boundaries in form of assault with a dangerous weapon or assault resulting in serious bodily injury)
*21 U.S.C. 841(b)(1)(C)*(drug trafficking in schedule I or II controlled substances or 1 gram of flunitrazepam if the offender has a prior drug felony conviction

*22 U.S.C. 2197* (false statements concerning insurance or investments of the Overseas Private Investment Corporation)
*33 U.S.C. 1319* (second and subsequent conviction for certain water pollution offenses that place another in danger of death or serious bodily injury)

**Imprisonment for not more than 25 years**

*18 U.S.C. 81* (arson within the special maritime and territorial jurisdiction of the United States of a dwelling or otherwise jeopardizing human life)
*18 U.S.C. 474* (possession of plates for counterfeiting obligations or securities (Class B felony)
*18 U.S.C. 474A* (deterrents to counterfeiting obligations or securities (Class B felony)
*18 U.S.C. 514* (production or possession of fictitious U.S. obligations or securities (Class B felony)
*18 U.S.C. 753* (rescue to prevent execution of federal prisoner)
*18 U.S.C. 956* (conspiracy to damage property in a foreign country)
*18 U.S.C. 1028* (fraud in connection with identification documents to facilitate international terrorism)
*18 U.S.C. 1425* (unlawful procurement of naturalization for profit or by a previously deported alien to facilitate international terrorism)
*18 U.S.C. 1426* (reproduction of naturalization papers for profit or by a previously deported alien to facilitate international terrorism)
*18 U.S.C. 1427* (sale of naturalization papers to facilitate international terrorism)
*18 U.S.C. 2113(d)* (assault with a dangerous during the course of robbing a federally insured bank)
*18 U.S.C. 2114* (a second conviction for (or use of a dangerous weapon, or causing injury during the course of) the armed robbery of U.S. property)
*18 U.S.C. 2118* (robbery or burglary involving controlled substances while armed with a dangerous weapon)
*18 U.S.C. 2119* (carjacking where serious bodily injury results)
*18 U.S.C. 2332b* (acts of terrorism transcending national boundaries resulting in real or personal property damage or destruction)

**Imprisonment for not more 20 years**

*18 U.S.C. 32(a), (b)* (destruction of aircraft or their facilities)
*18 U.S.C. 33* (destruction of commercial motor vehicles or their facilities)
*18 U.S.C. 37* (violence at international airports)
*18 U.S.C. 113(a)(1)* (assault with intent to murder within the special maritime and territorial jurisdiction of the United States)
*18 U.S.C. 114* (maiming within the special maritime and territorial jurisdiction of the United States)
*18 U.S.C. 115* (attempting kidnap the member of the family of a federal official or employee to obstruct or retaliate)
*18 U.S.C. 115* (attempted murder of the member of the family of a federal official or employee to obstruct or retaliate)
*18 U.S.C. 247* (obstruction of the exercise of religious beliefs where injury results or if the offenses involves the use, attempted use or threatened use of a dangerous weapon

*18 U.S.C. 373* (solicitation to commit a crime of violence — not more than 20 years with respect to crimes punishable by death or life imprisonment; not more than half of the maximum for any other offense)
*18 U.S.C. 470* (counterfeiting U.S. currency outside the U.S.)

*18 U.S.C. 831* (prohibited transactions in nuclear material)
*18 U.S.C. 844(d)* (use of fire or explosives unlawfully where personal injury results)
*18 U.S.C. 844(h)* (conspiracy to use of fire or explosives to commit a federal felony or possession of explosives during the commission of a federal felony)
*18 U.S.C. 875* (interstate transmission of kidnapping ransom demand or extortion demand based on a threat to kidnap or injure)
*18 U.S.C. 876* (mailing a kidnapping ransom demand or extortion demand based on a threat to kidnap or injure)
*18 U.S.C. 877* (mailing (from outside the U.S.) a kidnapping ransom demand or extortion demand based on a threat to kidnap or injure)

*18 U.S.C. 878* (extortionate threats to assault, kill or kidnap foreign dignitaries)
*18 U.S.C. 892* (loansharking)
*18 U.S.C. 893* (financing loansharking)
*18 U.S.C. 894* (loansharking collecting)
*18 U.S.C. 924(o)* (conspiracy to violate 18 U.S.C. 924(c)(use of or possession of a firearm during the commission of a crime of violence or drug trafficking))
*18 U.S.C. 930(c)* (attempted murder while in possession of a firearm in a federal building)
*18 U.S.C. 1028* (fraud in connection with identification documents to facilitate drug trafficking, in connection with a crime of violence, or by an offender with a prior conviction)
*18 U.S.C. 1029* (2d fraud conviction in connection with computer credit access devices)
*18 U.S.C. 1030* (2d fraud conviction in connection with computers involving restricted data)
*18 U.S.C. 1091* (genocide)
*18 U.S.C. 1113* (attempted murder within the special maritime and territorial jurisdiction of the U.S.)
*18 U.S.C. 1114* (attempted murder of a federal officer or employee)
*18 U.S.C. 1116* (attempted murder of a foreign dignitary)
*18 U.S.C. 1119* (attempted murder of an American by an American overseas)
*18 U.S.C. 1168* (embezzlement from Indian gaming establishments involving more than $1000)
*18 U.S.C. 1201* (attempted kidnapping)
*18 U.S.C. 1347* (health care fraud resulting in serious bodily injury)
*18 U.S.C. 1363* (property destruction within the special maritime and territorial jurisdiction of the U.S. a life is jeopardized or the property is a dwelling)
*18 U.S.C. 1364* (bombing or burning property in order to obstruct exportation into foreign commerce)
*18 U.S.C. 1365* (tampering with consumer products where serious bodily injury results)
*18 U.S.C. 1425* (unlawful procurement of naturalization for profit or by a previously deported alien to facilitate drug trafficking)
*18 U.S.C. 1426* (reproduction of naturalization papers for profit or by a previously deported alien to facilitate drug trafficking)

*18 U.S.C. 1427* (sale of naturalization papers to facilitate drug trafficking)
*18 U.S.C. 1503* (attempted killing in order obstruction of federal judicial proceedings or obstruction of the trial of a Class A felony (punishable death, life imprisonment, or imprisonment for any term of years) or Class B felony (punishable by imprisonment for not more than 25 years))
*18 U.S.C. 1512* (tampering with a federal witness or informant involving attempted murder)
*18 U.S.C. 1513* (retaliating against a federal witness or informant involving attempted murder)
*18 U.S.C. 1541* (issuance of passports or visas without authority to facilitate international terrorism)*
*18 U.S.C. 1542* (false statement in application for a passport to facilitate international terrorism)*
*18 U.S.C. 1543* (forgery or false use of a passport to facilitate international terrorism)*
*18 U.S.C. 1544* (misuse of a passport to facilitate international terrorism)*
* "Notwithstanding any other provision of this title, the maximum term of imprisonment that may be imposed for any offense under this chapter [18 U.S.C. 1541, 1542, 1543, 1544] . . . if committed to facilitate an act of international terrorism . . . is 20 years," 18 U.S.C. 1547.

*18 U.S.C. 1716* (mailing injurious articles with the intent to cause damage or personal injury)
*18 U.S.C. 1791* (providing contraband (narcotic drugs) in federal prisons)
*18 U.S.C. 1864* (booby traps on federal lands in aid of drug violations, resulting in bodily injury, damage in excess of $10,000, or for any second and subsequent violation (regardless of injury or damage)
*18 U.S.C. 1951* (Hobbs Act violations (interference with commerce by threats or violence))
*18 U.S.C. 1952* (Travel Act violations (interstate travel in aid of racketeering enterprises)
*18 U.S.C. 1956* (laundering monetary instruments)

*18 U.S.C. 1958* (use of interstate facilities in furtherance of a murder-for-hire where personal injury results)
18 *U.S.C. 1959* (assault with a deadly weapon or assaulting resulting in serious bodily injury in aid of racketeering activity)
*18 U.S.C. 1963* (racketeer and corrupt influenced organization (RICO) offenses)
*18 U.S.C. 1991* (entering a train with the intent to commit a murder or robbery)
*18 U.S.C. 1992* (wrecking or attempting to wrecking trains)

*18 U.S.C. 2113* (robbery of a federally insured bank)
*18 U.S.C. 2118* (robbery or burglary involving drugs or conspiracy to commit those offenses)
*18 U.S.C. 2242* (sexual abuse in the special maritime and territorial jurisdiction of the U.S.)
*18 U.S.C. 2244* (aggravated abusive sexual contact of a child under 12 years of age within the special maritime and territorial jurisdiction of the U.S.)
*18 U.S.C. 2260* (2d conviction for overseas production of child pornography for importation into the U.S.)
*18 U.S.C. 2261* (interstate domestic violence resulting in permanent disfigurement or life threatening injury)
*18 U.S.C. 2261A* (interstate stalking resulting in permanent disfigurement or life threatening injury)
*18 U.S.C. 2262* (interstate violation of protection order resulting in permanent disfigurement or life threatening injury)
*18 U.S.C. 2275* (setting fire to a vessel)
*18 U.S.C. 2280* (violence against maritime navigation)
*18 U.S.C. 2281* (violence against maritime fixed platform)
*18 U.S.C. 2320* (2d and subsequent convictions for trafficking in counterfeit goods or services)
*18 U.S.C. 2332* (terrorist attempt to murder an American outside the U.S.)
*18 U.S.C. 2384* (seditious conspiracy)
*18 U.S.C. 2388* (interfering with armed forces during war)
*21 U.S.C. 841(b)(1)(C)*(drug trafficking in schedule I or II controlled substances or 1 gram of flunitrazepam)
*21 U.S.C. 841(b)(7)* (distribution of a controlled substance with the intent to commit rape or some other crime of violence)
*21 U.S.C. 841(d)* (possession of listed chemicals in anticipation of manufacture of a controlled substance)
*21 U.S.C. 841(e)* (2d conviction for setting boobytraps on federal property in furtherance of illegal drug activity)
*21 U.S.C. 843* (distribution of drug manufacturing paraphernalia with intent to facilitate the manufacture of methamphetamine if the offender has a prior felony drug conviction)
*21 U.S.C. 856* (establishing illicit drug manufacturing operations)
*21 U.S.C. 960(d)* (importing/exporting listed chemicals in anticipation of manufacture of a controlled substance)

*7 U.S.C. 2024* (food stamp fraud if $5,000 or more is involved)
*8 U.S.C. 1324 (1)* (bringing in or harboring aliens in manner causing serious bodily injury or jeopardizing life)
*8 U.S.C. 1326* (unlawful reentry into the United States by a criminal offender previously deported for an aggravated felony)
*19 U.S.C. 1590* (aviation smuggling of controlled substances)
*26 U.S.C. 5685* (penalty for violation of revenue laws governing machineguns)
*29 U.S.C. 522* (extortionate picketing)
*42 U.S.C. 2273* (violation of atomic energy regulations with the intent to injure the U.S. or aid a foreign nation)
*47 U.S.C. 606* (interference with defense priority communications with the intent to injure the U.S. or aid a foreign nation)
*49 U.S.C. 46502* (air piracy)
*49 U.S.C. 46504* (interference with flight crew)
*50 U.S.C. 167k* (national defense-helium gas offenses)

**Imprisonment for not more than 15 years**

*18 U.S.C. 3* (accessory after the fact — not more than 15 years with respect to crimes punishable by death or life imprisonment; not more than half of the maximum for any other offense)
*18 U.S.C. 201* (bribery of federal officials and witnesses)
*18 U.S.C. 342* (operating a common carrier while under the influence of drugs or alcohol)
*18 U.S.C. 471* (counterfeiting U.S. obligations or securities)
*18 U.S.C. 472* (uttering counterfeit obligations or securities)
*18 U.S.C. 485* (counterfeiting coins or bars)
*18 U.S.C. 487* (making or possessing counterfeit dies for U.S. coins)
*18 U.S.C. 521* (criminal street gang offenses)

*18 U.S.C. 1028* (fraud in connection with identification documents)[+]

[+] under 18 U.S.C. 2326 the penalties for violation of 18 U.S.C. 1028, 1029, 1341, 1342, 1343, or 1344 may be increased by not more than 5 years if they involve telemarketing or not more than 10 years if the victim or target fraud is over 55 years of age

*18 U.S.C. 1029* (serious fraud in connection with computer credit access devices)[+]

*18 U.S.C. 1033(a)* (false statements in the regulation of the insurance industry jeopardizing the soundness of an insurer)

*18 U.S.C. 1033(b)* (embezzlement in the insurance industry jeopardizing the soundness of an insurer)

*18 U.S.C. 1033(c)* ("cooking the books" a regulated insurance business jeopardizing the soundness of an insurer)

*18 U.S.C. 1158* (second and subsequent conviction for counterfeiting Indian Arts and Crafts Board trade-mark)

*18 U.S.C. 1159* (second and subsequent conviction for misrepresentation of Indian produced goods and products)

*18 U.S.C. 1425* (3d or subsequent conviction for unlawful procurement of naturalization for profit or by a previously deported alien)

*18 U.S.C. 1426* (3d or subsequent conviction for reproduction of naturalization papers for profit or by a previously deported alien)

*18 U.S.C. 1427* (3d or subsequent conviction for sale of naturalization papers)

*18 U.S.C. 1541* (3d or subsequent conviction for issuance of passports or visas without authority)

*18 U.S.C. 1541* (issuance of passports or visas without authority to facilitate a drug trafficking crime)*

*18 U.S.C. 1542* (3d or subsequent conviction for false statement in application for a passport)

*18 U.S.C. 1542* (false statement in application for a passport to facilitate a drug trafficking crime)*

*18 U.S.C. 1543* (3d or subsequent conviction for forgery or false use of a passport)

*18 U.S.C. 1543* (forgery or false use of a passport to facilitate a drug trafficking crime)*

*18 U.S.C. 1544* (3d or subsequent conviction for misuse of a passport)

*18 U.S.C. 1544* (misuse of a passport to facilitate a drug trafficking crime)*

*"Notwithstanding any other provision of this title, the maximum term of imprisonment that may be imposed for any offense under this chapter [18 U.S.C. 1541, 1542, 1543, 1544] . . . if committed to facilitate a drug trafficking crime. . . is 15 years," 18 U.S.C. 1547.

*18 U.S.C. 1831* (economic espionage)

*18 U.S.C. 2111* (robbery within the special maritime and territorial jurisdiction of the U.S.)

*18 U.S.C. 2112* (robbery of the personal property of the U.S.)

*18 U.S.C. 2119* (carjacking)

*18 U.S.C. 2243* (sexual abuse of a minor under 12 years of age in the special maritime and territorial jurisdiction of the U.S.)

*18 U.S.C. 2252* (trafficking in material related to sexual exploitation of children)

*18 U.S.C. 2252A* (trafficking by computer in material related to sexual exploitation of children)

*18 U.S.C. 2322* (chop shops)

*18 U.S.C. 2422* (use of the mails to coerce or entice a minor to engage in commercial sexual activities)

*18 U.S.C. 2423* (transportation of minors for sexual purposes or travel with the intent to engage in sexual activities with a minor)

*19 U.S.C. 1586* (unlawful unloading or transshipment rendering a vessel subject to forfeiture)

*33 U.S.C. 1319* (water pollution placing another in danger of death or serious bodily injury)

*42 U.S.C. 6928* (hazardous waste violations placing another in danger of death or serious bodily injury)

*42 U.S.C. 6992d* (medical waste violations placing another in danger of death or serious bodily injury)

*42 U.S.C. 7413* (air pollution violations placing another in danger of death or serious bodily injury))

*49 U.S.C. 46505* (carrying a weapon or explosive on an aircraft with reckless disregard for human life)

*49 U.S.C. 60123* (damaging or destroying pipeline facilities)

**Imprisonment for not more than 12 years**

*33 U.S.C. 1319* (second and subsequent conviction for certain water pollution offenses)

**Imprisonment for not more than 10 years**

*18 U.S.C. 43* (animal enterprise terrorism involving serious bodily injury)

*18 U.S.C. 111* (assault with a dangerous weapon or inflicting bodily injury upon federal officials or employees)
*18 U.S.C. 112* (assault with a dangerous weapon or inflicting bodily injury upon foreign dignitaries)
*18 U.S.C. 113(a)(2)* (assault with intent to commit a felony other than murder or sexual abuse within the special maritime and territorial jurisdiction of the United States)
*18 U.S.C. 113(a)(3)* (assault with a dangerous weapon and the intent to commit bodily harm within the special maritime and territorial jurisdiction of the United States)
*18 U.S.C. 113(a)(6)* (assault resulting in serious bodily injury within the special maritime and territorial jurisdiction of the United States)
*18 U.S.C. 115* (assault with a dangerous weapon or inflicting bodily injury upon the member of the family of a federal official or employee to obstruct or retaliate)

*18 U.S.C. 241* (conspiracy against civil rights)
*18 U.S.C. 242* (deprivation civil rights under color of law)
*18 U.S.C. 245* (discriminatory obstruction of enjoyment federal protected activities through the use, attempted or threatened use of a dangerous weapon)
*18 U.S.C. 248* (interference with access to clinic entrances where bodily injury results)
*18 U.S.C. 286* (conspiracy to defraud the United States with respect to claims)
*18 U.S.C. 332* (debasement of coins)
*18 U.S.C. 351(e)* (assault upon a Member of Congress with a dangerous weapon or when personal injury results)
*18 U.S.C. 351(a)* (voluntary manslaughter committed against a Member of Congress)
*18 U.S.C. 473* (dealing in counterfeit obligations or securities)
*18 U.S.C. 476* (taking impressions of tools used for obligations or securities)
*18 U.S.C. 477* (possessing or selling impressions of tools used for obligations or securities)
*18 U.S.C. 494* (forging contractors bonds, bids or public records)

*18 U.S.C. 495* (forging contracts, deeds or powers of attorney to defraud the U.S.)
*18 U.S.C. 497* (forging letters patent)
*18 U.S.C. 508* (forging or counterfeiting government transportation requests)
*18 U.S.C. 509* (possession of plates to counterfeiting government transportation requests)
*18 U.S.C. 510* (forging endorsements on Treasury checks)
*18 U.S.C. 513* (counterfeiting or forging state or private securities)
*18 U.S.C. 552* (importing obscene material depicting violence or for profit)
*18 U.S.C. 553* (importing or exporting stolen vehicles, vessels or planes)

*18 U.S.C. 641* (theft of public property valued at more than $1000)
*18 U.S.C. 642* (theft of tools and materials for counterfeiting)
*18 U.S.C. 643* (failing to account for public money involving more than $1000)
*18 U.S.C. 644* (banker receiving unauthorized deposit of public money involving more than $100)
*18 U.S.C. 645* (theft by court officers involving more than $1000)
*18 U.S.C. 646* (court officers failing to deposit registry money involving more than $1000)
*18 U.S.C. 647* (receipt of a loan from a court officer out of court funds involving more than $1000)
*18 U.S.C. 648* (theft of public property by custodians involving more than $1000)
*18 U.S.C. 649* (failing to deposit public money involving more than $1000)
*18 U.S.C. 650* (depositories failing to safeguard deposits of public money involving more than $1000)
*18 U.S.C. 653* (disbursing officer misusing public funds involving more than $1000)
*18 U.S.C. 654* (theft by public employee involving more than $1000)
*18 U.S.C. 659* (theft by interstate or foreign carriers involving more than $1000)
*18 U.S.C. 660* (employee theft from a common carrier)
*18 U.S.C. 666* (theft or bribery concerning programs receiving federal funds, in the case of theft involving more than $5000)
*18 U.S.C. 668* (theft of major art work)
*18 U.S.C. 757* (escape by prisoners of war or enemy aliens)
*18 U.S.C. 792* (harboring espionage offenders)
*18 U.S.C. 793* (gathering, transmitting or losing defense information)
*18 U.S.C. 798* (disclosure of classified information)
*18 U.S.C. 831* (conspiracy involving prohibited transactions in nuclear material)

*18 U.S.C. 844(a)* (explosives offenses)
*18 U.S.C. 844(d)* (transportation or receipt explosives intended cause personal injury or property destruction)
*18 U.S.C. 844(e)* (use of the mails or telephone for bomb hoax or bomb threat)
*18 U.S.C. 844(k)* (theft of explosives from interstate commerce)
*18 U.S.C. 844(l)* (theft of explosives from a licensed dealer)
*18 U.S.C. 915* (fraudulently impersonating foreign diplomatic personnel)
*18 U.S.C. 924(a)(2)* (violations of 18 U.S.C. 922(a)(6)(false statement to acquire a firearm), (d)(transfer of a firearm to an ineligible possessor), (g)(unlawful possession of a firearm), (h)(receipt of a firearm in interstate commerce while employed by one eligible to possess a firearm), (i)(interstate transportation of a stolen firearm), or (j)(possession of a stolen firearm), or (o)(unlawful transfer of a machinegun)
*18 U.S.C. 924(a)(6),(b)* (unlawful transfer of a handgun to a juvenile knowing it will used in a crime of violence)
*18 U.S.C. 924(g)* (interstate travel to acquire a firearm in aid of a crime of violence, drug trafficking, or a RICO violations)
*18 U.S.C. 924(h)* (transfer of a firearm knowing it will to used to commit a crime of violence or serious drug trafficking)
*18 U.S.C. 924(i)* (violation of 18 U.S.C. 922(u)(theft of a firearm from a dealer))
*18 U.S.C. 924(j)(2)* (voluntary manslaughter committed while in possession of a firearm during the commission of a crime of violence or drug trafficking)
*18 U.S.C. 924(k)* (smuggling a firearm into the U.S. in aid of a crime of violence or drug trafficking)
*18 U.S.C. 924(l)* (theft of a firearm that has moved in interstate commerce)
*18 U.S.C. 924(m)* (theft of a firearm from a dealer)
*18 U.S.C. 924(n)*(interstate travel to unlawfully acquire a firearm)

*U.S.C. 930(c)* (voluntary manslaughter while in possession of a firearm in a federal building)
*18 U.S.C. 951* (failure of foreign agents to register)
*18 U.S.C. 952* (disclosure of the diplomatic codes and correspondence of the U.S.)
*18 U.S.C. 954* (false statements influencing foreign government)
*18 U.S.C. 957* (possession of property in aid of a foreign government)
*18 U.S.C. 963, 965, 966* (departure of armed vessel in violation of neutrality laws)
*18 U.S.C. 964* (delivery of armed vessel in violation of neutrality laws)
*18 U.S.C. 1022* (false certification concerning material for the military)
*18 U.S.C. 1023* (fraud in connection with deliveries for military services)

*18 U.S.C. 1029* (fraud in connection with computer credit access devices)
*18 U.S.C. 1030(c)(1)(A)* (fraud in connection with computers involving restricted data)
*18 U.S.C. 1030(c)(2)(C), (3)(B)* (2d computer fraud conviction)
*18 U.S.C. 1031* (major fraud against the U.S.)
*18 U.S.C. 1033(a)* (false statements in the regulation of the insurance industry)
*18 U.S.C. 1033(b)* (embezzlement in the insurance industry)
*18 U.S.C. 1033(c)* ("cooking the books" a regulated insurance business)
*18 U.S.C. 1033(d)* (obstructing regulation of the insurance industry)
*18 U.S.C. 1112* (voluntary manslaughter within the special maritime and territorial jurisdiction of the U.S.)
*18 U.S.C. 1114* (voluntary manslaughter of a federal officer or employee)
*18 U.S.C. 1115* (loss of life through misconduct or neglect of ship officers)
*18 U.S.C. 1116* (voluntary manslaughter of a foreign dignitary)
*18 U.S.C. 1119* (voluntary manslaughter of an American by an American overseas)
*18 U.S.C. 1120* (voluntary manslaughter by an escaped federal prisoner)
*18 U.S.C. 1167* (theft from Indian gaming establishments involving more than $1000)
*18 U.S.C. 1202* (possession of ransom money)
*18 U.S.C. 1347* (health care fraud)

*18 U.S.C. 1361* (destruction of government property involving more than $1000)
*18 U.S.C. 1362* (destruction of communications lines, stations or systems)
*18 U.S.C. 1365* (tampering with consumer products or conspiring or attempting to do so)
*18 U.S.C. 1366* (property destruction or attempted destruction of an energy facility involving or threatening more than $100,000 or more in damage)
*18 U.S.C. 1367* (interference with the operation of a communications or weather satellite)
*18 U.S.C. 1425* (unlawful procurement of naturalization for profit or by a previously deported alien)
*18 U.S.C. 1426* (reproduction of naturalization papers for profit or by a previously deported alien)

*18 U.S.C. 1427* (sale of naturalization papers)
*18 U.S.C. 1470* (transfer of obscene material to minors)

*18 U.S.C. 1503* (obstruction of federal judicial proceedings)
*18 U.S.C. 1512* (tampering with a federal witness or informant)
*18 U.S.C. 1513* (retaliating against a federal witness or informant)
*18 U.S.C. 1541* (issuance of passports or visas without authority)
*18 U.S.C. 1542* (false statement in application for a passport)
*18 U.S.C. 1543* (forgery or false use of a passport)
*18 U.S.C. 1544* (misuse of a passport)
*18 U.S.C. 1545* (safe conduct violations)
*18 U.S.C. 1581* (peonage)
*18 U.S.C. 1583* (enticement into slavery)
*18 U.S.C. 1584* (sale into involuntary servitude)
*18 U.S.C. 1588* (transportation of slaves from the U.S.)

*18 U.S.C. 1654* (arming or serving on privateers)
*18 U.S.C. 1656* (conversion or surrender of vessel)
*18 U.S.C. 1658* (plunder of distressed vessel)
*18 U.S.C. 1659* (attack to plunder vessel)
*18 U.S.C. 1660* (receipt of private property)
*18 U.S.C. 1704* (stealing post office keys)
*18 U.S.C. 1711* (theft of postal funds involving more than $1000)
*18 U.S.C. 1717* (mailing seditious letters)
*18 U.S.C. 1751* (voluntary manslaughter of the President)
*18 U.S.C. 1751* (assault upon the President)
*18 U.S.C. 1791* (providing contraband (a firearm or schedule I or II controlled substance in federal prisons)

*18 U.S.C. 1792* (mutiny or riots in federal prisons)
*18 U.S.C. 1832* (theft of trade secrets)
*18 U.S.C. 1902* (disclosure of crop information by federal employees)
*18 U.S.C. 1957* (engaging in monetary transactions in property derived from unlawful activity)
*18 U.S.C. 1958* (use of interstate facilities in furtherance of a murder-for-hire)
*18 U.S.C. 1959* (attempt or conspiracy to commit murder or kidnapping in aid of racketeering activity)
*18 U.S.C. 2073* (false entries in crop reports)
*18 U.S.C. 2113(b)* (theft of $1,000 from a federally insured bank)
*18 U.S.C. 2114* (assault of custodian of U.S. property with intent to rob)
*18 U.S.C. 2114* (receipt of U.S. property stolen in a robbery)
*18 U.S.C. 2117* (breaking and entering common carrier facilities)
*18 U.S.C. 2118* (conspiracy to commit a robbery or burglary involving controlled substances)
*18 U.S.C. 2155* (destruction of national defense material)
*18 U.S.C. 2156* (production of defective national defense material)
*18 U.S.C. 2193* (revolt or mutiny by seamen)
*18 U.S.C. 2231* (assault with a dangerous weapon upon a federal officer conducting a search or seizure)

*18 U.S.C. 2244* (aggravated abusive sexual contact within the special maritime and territorial jurisdiction of the U.S.)
*18 U.S.C. 2260* (overseas production of child pornography for importation into the U.S.)
*18 U.S.C. 2261* (interstate domestic violence involving the use of a dangerous weapon or resulting in serious bodily injury)
*18 U.S.C. 2261A* (interstate stalking involving the use of a dangerous weapon or resulting in serious bodily injury)
*18 U.S.C. 2262* (interstate violation of protection order involving the use of a dangerous weapon or resulting in serious bodily injury)
*18 U.S.C. 2271* (conspiracy to destroy vessel for fraudulent purposes)
*18 U.S.C. 2273* (destruction of vessel for fraudulent purposes other than by an owner)
*18 U.S.C. 2274* (destruction of vessel for fraudulent purposes by person in charge)

*18 U.S.C. 2312* (interstate transportation of stolen vehicles)
*18 U.S.C. 2313* (receipt of stolen vehicle transported interstate)
*18 U.S.C. 2314* (interstate transportation of stolen property)

*18 U.S.C. 2315* (receipt of stolen property transported interstate)
*18 U.S.C. 2319* (2d or subsequent conviction for copyright infringement involving more than $2500)
*18 U.S.C. 2319A* (2d and subsequent convictions for unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances)
*18 U.S.C. 2320* (trafficking in counterfeit goods or services)
*18 U.S.C. 2321* (trafficking in motor vehicles or their parts where the identifications numbers have been tampered with)

*18 U.S.C. 2332* (voluntary manslaughter committed by terrorist against an American outside the U.S.)
*18 U.S.C. 2332* (physical violence outside the U.S. by a terrorist with the intent to cause or resulting in serious bodily injury of an American)
*18 U.S.C. 2332b* (threatening to commit acts of terrorism transcending national boundaries)
*18 U.S.C. 2332d* (financial transaction with countries that support terrorism)
*18 U.S.C. 2333A* (providing material support for terrorists)
*18 U.S.C. 2333B* (providing material support for terrorist organizations)
*18 U.S.C. 2383* (inciting rebellion on insurrection)
*18 U.S.C. 2388* (harboring an offender who has interfered with armed forces during war)
*18 U.S.C. 2421* (interstate or foreign transportation for sexual purposes)
*18 U.S.C. 2422* (coercing or enticing another to travel interstate or foreign commerce sexual purposes)
*18 U.S.C. 2424* (filing factual statement about alien for immoral purposes)
*21 U.S.C. 841(b)(1)(D)* (drug trafficking in schedule III controlled substances or less than 50 kilograms of marijuana if the offender has a prior felony drug conviction)
*21 U.S.C. 841(d)* (offenses involving listed chemicals other than possession in anticipation of manufacture of a controlled substance)
*21 U.S.C. 841(e)* (setting boobytraps on federal property in furtherance of illegal drug activity)
*21 U.S.C. 843* (distribution of drug manufacturing paraphernalia with intent to facilitate the manufacture of methamphetamine)
*21 U.S.C. 854* (investment of illicit drug profits)
*21 U.S.C. 858* (endangering human life when illegally making a controlled substance)
*21 U.S.C. 960(d)* (importing/exporting listed chemicals other than possession in anticipation of manufacture of a controlled substance)

*7 U.S.C. 1379i* (counterfeiting wheat marketing certificates)
*7 U.S.C. 2146* (use of a dangerous weapon to interfere with animal transportation inspectors)
*8 U.S.C. 1253* (failure to comply with an immigration removal order if the alien is a member of the class described in 8 U.S.C.1227(1)(E)(),(2)(),(3)(), or (4)()
*8 U.S.C. 1324 (1)* (bringing in or harboring aliens for profit)
*8 U.S.C. 1326* (unlawful reentry into the United States by a previously deported criminal offender)
*8 U.S.C. 1327* (assisting unlawful entry of aliens (previously convicted of an aggravated felony) into the United States)
*8 U.S.C. 1328* (importation of alien for immoral purposes)
*12 U.S.C. 95* (violation of emergency limitations and restrictions on business of members of the federal reserve system)
*12 U.S.C. 1141j* (speculation by officers or employees of the Farm Credit Administration)

*15 U.S.C. 158* (false or fraudulent statements by China Trade Act corporate personnel)
*15 U.S.C. 645* (misrepresentations concerning small business status)
*15 U.S.C. 1245* (possession of ballistic knives within the special maritime and territorial jurisdiction of the U.S.)
*15 U.S.C. 1644* (fraudulent use of a credit card involving $1,000 or more)
*15 U.S.C. 1693n* (fraudulent electronic fund transfer offenses)
*15 U.S.C. 1825(a)(2)(C)* (assault with a dangerous weapon in obstruction of enforcement of the Horse Protection Act)
*15 U.S.C. 1825(a)(2)(C)* (voluntary manslaughter committed against those enforcing the Horse Protection Act)
*16 U.S.C. 773g* (assault with a dangerous weapon, causing injury, or instilling a fear of imminent bodily injury committed upon an officer enforcing the Northern Pacific Halibut Act)
*16 U.S.C. 973e* (assault with a dangerous weapon, causing injury, or instilling a fear of imminent bodily injury committed upon an officer enforcing the Southern Pacific Tuna Act)
*16 U.S.C. 1859* (assault with a dangerous weapon, causing injury, or instilling a fear of imminent bodily injury committed upon an officer enforcing the National Fisheries Management Program)
*16 U.S.C. 2438* (obstruction of those responsible for implementing the Antarctic Marine Living Resources Convention)

*16 U.S.C. 3373* (false labelling of illegally taken fish or wildlife transported in interstate or foreign commerce)

*16 U.S.C. 5010* (obstruction of those responsible for implementing the North Pacific Anadromous Stocks Convention)
*16 U.S.C. 5508* (obstruction of those responsible for implementing the Agreement on Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas)
*21 U.S.C. 333* (prescription drug marketing violations)
*21 U.S.C. 333* (unlawful distribution of human growth hormone to an individual under 18 years of age)
*21 U.S.C. 461* (assaulting a poultry inspector with dangerous weapon)
*21 U.S.C. 675* (assaulting a meat inspector with dangerous weapon)
*21 U.S.C. 1041* (assaulting an egg inspector with dangerous weapon)
*22 U.S.C. 287c* (violation of economic sanctions imposed on Southern Rhodesia)
*22 U.S.C. 2712* (violation of regulations concerning military and security training of foreign governments)
*22 U.S.C. 2778* (arms import and export control violations)
*22 U.S.C. 2780* (exports to countries supporting terrorism)
*26 U.S.C. 5685* (penalty for violation of revenue laws governing explosives and firearms)
*26 U.S.C. 5871* (violations concerning machine guns, destructive devices, and certain other firearms)
*30 U.S.C. 1463* (obstruction of those responsible for implementing the agreements on deep seabed hard mineral mining)
*31 U.S.C. 5322* (smurfing, false statements or money laundering concerning reports required for large financial transactions)
*31 U.S.C. 5324* (smurfing in connection with another federal crime)
*33 U.S.C. 1908* (water pollution (Antarctic))
*41 U.S.C. 54* (kickbacks on public contracts)
*42 U.S.C. 261* (smuggling illicit drugs into public health service hospitals)
*42 U.S.C. 289g-2* (unlawful transactions involving human fetal tissue)
*42 U.S.C. 1320d-6* (wrongful disclosure of individual identifiable health information acquired with intent to sell)

*42 U.S.C. 2272* (atomic energy violations)
*42 U.S.C. 2284* (sabotage of nuclear facilities or fuel)
*42 U.S.C. 3631* (use of intimidate and violence in housing discrimination)
*42 U.S.C. 9152* (use of a dangerous weapon or causing a federal employee bodily injury or fear of bodily injury during the course of an ocean thermal energy conversion offense)
*42 U.S.C. 14072* (second and subsequent conviction for failure to register as a sexual offender)
*43 U.S.C. 1350* (offenses associated with regulation of activities on outer continental shelf lands)
*49 U.S.C. 1155* (concealment of part of an aircraft involved in an accident)
*49 U.S.C. 46314* (entering aircraft or airport area in violation of security requirements with intent to commit a felony)
*49 U.S.C. 46505* (carrying a weapon or explosive on an aircraft)
*49 U.S.C. 80501* (damaging property being transported in commerce)

*50 U.S.C. 192* (unlawful interference with the confiscation of a forfeitable vessel)
*50 U.S.C. 783* (communication of classified information)
*50 U.S.C. 1705* (International Emergency Economic Powers Act offenses)
*50 U.S.C. App. 2410* (violation of national defense export regulations)

**Imprisonment for not more than 8 years**

*21 U.S.C. 843* (distribution by a registrant outside normal course of business, obtaining controlled substances by fraud, unlawful possession of manufacturing paraphernalia, or use of communications facilities to facilitate drug trafficking)

**Imprisonment for not more 7 years**

*18 U.S.C. 930(c)* (attempted manslaughter while in possession of a firearm in a federal building)
*18 U.S.C. 1113* (attempted manslaughter within the special maritime and territorial jurisdiction of the U.S.)
*18 U.S.C. 1114* (attempted manslaughter of a federal officer or employee)
*18 U.S.C. 1116* (attempted manslaughter of a foreign dignitary)
*18 U.S.C. 1119* (attempted manslaughter of an American by an American overseas)
*18 U.S.C. 1582* (vessels for the slave trade)
*18 U.S.C. 1585* (capturing, holding, transporting or selling slaves)
*18 U.S.C. 2382* (misprision of treason)

**Imprisonment for not more 6 years**

*18 U.S.C. 351(a)* (involuntary manslaughter committed against a Member of Congress)
*18 U.S.C. 372* (conspiracy to impede a federal officer)
*18 U.S.C. 924(j)(2)* (involuntary manslaughter committed while in possession of a firearm during the commission of a crime of violence or drug trafficking)18 *U.S.C. 930(c)* (involuntary manslaughter while in possession of a firearm in a federal building)
*18 U.S.C. 955* (unlawful financial transaction with foreign governments)
*18 U.S.C. 1112* (involuntary manslaughter within the special maritime and territorial jurisdiction of the U.S.)
*18 U.S.C. 1114* (involuntary manslaughter of a federal officer or employee)
*18 U.S.C. 1116* (involuntary manslaughter of a foreign dignitary)
*18 U.S.C. 1119* (involuntary manslaughter of an American by an American overseas)
*18 U.S.C. 1120* (involuntary manslaughter by an escaped federal prisoner)
*18 U.S.C. 1503* (involuntary manslaughter committed in order to obstruction of federal judicial proceedings)
*18 U.S.C. 1512* (tampering with a federal witness or informant involving involuntary manslaughter)
*18 U.S.C. 1513* (retaliating against a federal witness or informant involving involuntary manslaughter)
*18 U.S.C. 1751* (involuntary manslaughter of the President)
*18 U.S.C. 2319* (2d or subsequent conviction for copyright infringement)
*21 U.S.C. 841(b)(2)*(drug trafficking in schedule IV controlled substances if the offender has a prior felony drug conviction)

*15 U.S.C. 1825(a)(2)(C)* (involuntary manslaughter committed against those enforcing the Horse Protection Act)
*33 U.S.C. 1319* (water pollution)

**Imprisonment for not more 5 years**

*18 U.S.C. 32(c)* (threats to destroy aircraft or their facilities)
*18 U.S.C. 35* (bomb scares involving aircraft, commercial motor vehicles, trains or shipping)
*18 U.S.C. 81* (arson within the special maritime and territorial jurisdiction of the United States)
*18 U.S.C. 113(a)(6)* (assault resulting in substantial bodily injury to a minor under 16 years of age within the special maritime and territorial jurisdiction of the United States)
*18 U.S.C. 116* (female genital mutilation)
*18 U.S.C. 152* (concealing bankruptcy assets)
*18 U.S.C. 153* (embezzlement by a bankruptcy trustee)
*18 U.S.C. 216* (willful conflicts of interest violations of 18 U.S.C. 204(practice before various federal courts by Members of Congress), 205(activities of federal employees involving claims against the United States), 207(revolving door), 208(acts involving a personal financial interest), 209(salary of government officials and employees payable only by the United States)

*18 U.S.C. 224* (bribery in sporting contests)
*18 U.S.C. 231* (instructing in the use of explosives for use in civil disorders)
*18 U.S.C. 285* (taking papers relating to claims against the United States)
*18 U.S.C. 287* (false or fraudulent claims against the United States)
*18 U.S.C. 289* (false claims for federal pensions)
*18 U.S.C. 331* (mutilation, diminution and falsification of coins)
*18 U.S.C. 334* (unlawful issuance of federal reserve or national bank notes)
*18 U.S.C. 335* (circulation of the obligations of expired federal corporations)
*18 U.S.C. 371* (conspiracy to defraud the United States or to commit a federal felony)
*18 U.S.C. 443* (war contract offenses)
*18 U.S.C. 478* (forging or counterfeiting foreign obligations)
*18 U.S.C. 481* (possession of plates for counterfeit foreign obligations or securities)
*18 U.S.C. 484* (connecting parts of different notes)
*18 U.S.C. 486* (uttering coins of gold, silver or other metal)
*18 U.S.C. 488* (making or possessing counterfeit dies for foreign coins)
*18 U.S.C. 493* (counterfeiting bonds and obligations of certain lending agencies)

*18 U.S.C. 499* (forging military, naval or official passes)

*18 U.S.C. 500* (forging or counterfeiting money orders)
*18 U.S.C. 501* (counterfeiting postal stamps)
*18 U.S.C. 502* (counterfeiting foreign postage stamps)
*18 U.S.C. 503* (forging or counterfeiting postmarking stamps)
*18 U.S.C. 505* (forging or counterfeiting judicial documents)
*18 U.S.C. 506* (forging or counterfeiting agency seals)
*18 U.S.C. 511* (altering or removing car identification numbers)
*18 U.S.C. 545* (smuggling goods into the United States)
*18 U.S.C. 592* (stationing troops at the polls)
*18 U.S.C. 593* (interference by the armed forces with elections)

*18 U.S.C. 608* (use of force or fraud against absent uniformed or overseas voters)
*18 U.S.C. 609* (use of military authority to uniformed voters)
*18 U.S.C. 655* (theft by bank examiner involving more than $1000)
*18 U.S.C. 658* (theft of property mortgaged or pledged to farm credit agencies involving more than $1000)
*18 U.S.C. 661* (theft within the special maritime or territorial jurisdiction of the United States involving more than $1000)
*18 U.S.C. 663* (solicitation in the name of the United States with the intent to steal)
*18 U.S.C. 667* (theft of livestock worth more than $10,000)
*18 U.S.C. 669* (theft or embezzlement in connection with health care in amounts in excess of $100)

*18 U.S.C. 751* (escape by prisoners in custody of federal institutions or officers)
*18 U.S.C. 752* (instigation or assisting escape of federal prisoner)
*18 U.S.C. 755* (officer permitting escape of federal prisoner)
*18 U.S.C. 756* (escape of internee of belligerent nation)
*18 U.S.C. 844* (possession of a bomb in an airport or federal building)
*18 U.S.C. 871* (threats against the President)
*18 U.S.C. 874* (kickbacks from public works employees)
*18 U.S.C. 875* (interstate transmission of a threat to kidnap or inflict personal injury)
*18 U.S.C. 876* (mailing a threat to kidnap or inflict personal injury)
*18 U.S.C. 877* (mailing a threat to kidnap or inflict personal injury from outside the U.S.)

*18 U.S.C. 914* (impersonating U.S. creditor)
*18 U.S.C. 924(a)(1)* (violations of 18 U.S.C. 922(a)(4)(unlawful transportation of a machinegun or short-barreled shotgun or short-barreled rifle), (f)(unlawful transportation of a firearm by a common carrier), (k)(transportation of a firearm with an altered serial number), (r)(assembling foreign parts of a semiautomatic firearm whose importation is banned), (v)(possession of a semiautomatic assault weapon), or (w)(possession of a large capacity ammunition feeding device))
*18 U.S.C. 924(f)* (possession of firearms undetectable with x-ray equipment)
*18 U.S.C. 930(b)* (possession of a firearm in a federal building with intent it be used in the commission of a crime)
*18 U.S.C. 970* (protection of property occupied by foreign governments)
*18 U.S.C. 1001* (false statement on a matter within the jurisdiction of a federal agency)
*18 U.S.C. 1002* (possession of false papers to defraud the United States)
*18 U.S.C. 1003* (fraudulent claims against the United States involving more than $1000)
*18 U.S.C. 1004* (false certification of checks)
*18 U.S.C. 1015* (false statements concerning naturalization, citizenship or alien registry)
*18 U.S.C. 1017* (fraudulent use of government seals)
*18 U.S.C. 1020* (false statements concerning highway projects)
*18 U.S.C. 1021* (false certification of title records)
*18 U.S.C. 1025* (fraud on the high seas involving more than $1000)
*18 U.S.C. 1027* (false statements to facilitate a theft concerning ERISA)

*18 U.S.C. 1030* (computer fraud)
*18 U.S.C. 1032* (concealment of the assets of a troubled financial institution)
*18 U.S.C. 1033(e)* (insurance industry fraud)
*18 U.S.C. 1035* (false statements relating to health care matters)
*18 U.S.C. 1071* (harboring a fugitive sought for a serious federal crime)

*18 U.S.C. 1073* (flight to avoid prosecution or giving testimony)
*18 U.S.C. 1074* (flight to avoid prosecution for damaging property)
*18 U.S.C. 1154* (second and subsequent conviction for dispensing intoxicants in Indian Country)
*18 U.S.C. 1155* (dispensing intoxicants at an Indian school)
*18 U.S.C. 1156* (second and subsequent conviction for possession of intoxicants in Indian Country)

*18 U.S.C. 1158* (counterfeiting Indian Arts and Crafts Board trade-mark)
*18 U.S.C. 1159* (misrepresentation of Indian produced goods and products)
*18 U.S.C. 1163* (theft from Indian tribal organizations involving more than $1000)
*18 U.S.C. 1168* (embezzlement from Indian gaming establishments involving $1000 or less)
*18 U.S.C. 1170* (second and subsequent conviction for illegal trafficking in Native American human remains and cultural items)
*18 U.S.C. 1302* (second and subsequent conviction for mailing illegal lottery tickets)
*18 U.S.C. 1341* (mail fraud)[+]
*18 U.S.C. 1342* (use of a fictitious name or address for mail fraud purposes)[+]
*18 U.S.C. 1343* (wire fraud)[+]

[+] under 18 U.S.C. 2326 the penalties for violation of 18 U.S.C. 1028, 1029, 1341, 1342, 1343, or 1344 may be increased by not more than 5 years if they involve telemarketing or not more than 10 years if the victim or target fraud is over 55 years of age

*18 U.S.C. 1363* (property destruction within the special maritime and territorial jurisdiction of the U.S.
*18 U.S.C. 1365* (threatening to tamper with consumer products or false reporting that they have been tampered with)
*18 U.S.C. 1366* (property destruction or attempted destruction of an energy facility involving or threatening more than $5000 or more in damage)
*18 U.S.C. 1421* (failure of court officers to keep immigration accounts)
*18 U.S.C. 1422* (unlawful fees in naturalization proceedings)
*18 U.S.C. 1423* (misuse of evidence of citizenship by previously deported alien)
*18 U.S.C. 1424* (misuse of naturalization papers by previously deported alien)
*18 U.S.C. 1428* (failure to surrender canceled naturalization certificate)
*18 U.S.C. 1429* (neglect or refusal to answer immigration subpoena)
*18 U.S.C. 1461* (mailing obscene material depicting violence or for a profit)
*18 U.S.C. 1462* (importing obscene material depicting violence or for a profit)
*18 U.S.C. 1463* (mailing indecent matter depicting violence or for a profit on wrappers)
*18 U.S.C. 1465* (transporting obscene material depicting violence or for a profit)
*18 U.S.C. 1466* (engaging in the business of selling obscene matter)
*18 U.S.C. 1505* (obstruction of federal administrative or Congressional proceedings)
*18 U.S.C. 1506* (theft or alteration of court records)
*18 U.S.C. 1510* (obstructing a criminal investigation)
*18 U.S.C. 1511* (obstructing state law enforcement to facilitate gambling business)
*18 U.S.C. 1516* (obstructing a federal audit)
*18 U.S.C. 1517* (obstructing examination of a financial institution)
*18 U.S.C. 1518* (obstructing criminal investigation of health care offenses)
*18 U.S.C. 1546* (fraud in connection with visas, permits and other documents for a profit or by a previously deported alien)
*18 U.S.C. 1621* (perjury)
*18 U.S.C. 1622* (subornation of perjury)
*18 U.S.C. 1623* (false declarations before the grand jury)

*18 U.S.C. 1702* (obstruction of correspondence)
*18 U.S.C. 1708* (stealing mail)
*18 U.S.C. 1709* (theft of mail by postal personnel)
*18 U.S.C. 1791* (providing contraband (ammunition, escape equipment or marijuana or a schedule III controlled substance in federal prisons)
*18 U.S.C. 1855* (timber set afire on public lands)
*18 U.S.C. 1920* (nepotism in appointment of a receiver or trustee)
*18 U.S.C. 1953* (transportation of wagering paraphernalia for purposes of commercial gambling)
*18 U.S.C. 1955* (financing or operating an illegal gambling business)
*18 U.S.C. 1959* (threat to commit murder, kidnapping or maiming in aid of racketeering activity)
*18 U.S.C. 1960* (illegal money transmitting business)

*18 U.S.C. 2072* (false crop reports)
*18 U.S.C. 2101* (interstate travel to riot)
*18 U.S.C. 2115* (robbery of a post office)
*18 U.S.C. 2152* (trespassing on fortifications, harbor defenses, or defensive sea areas)
*18 U.S.C. 2191* (cruelty to seamen)
*18 U.S.C. 2192* (inciting seamen to revolt or mutiny)
*18 U.S.C. 2197* (misuse of federal seamen's certificate, license or document)
*18 U.S.C. 2232* (destruction of property to avoid federal seizure)
*18 U.S.C. 2252(b)* (attempted sexual exploitation)
*18 U.S.C. 2252A* (attempting to traffick by computer in material related to sexual exploitation of children)

*18 U.S.C. 2261* (interstate domestic violence)
*18 U.S.C. 2261A* (interstate stalking)
*18 U.S.C. 2262* (interstate violation of protection order)
*18 U.S.C. 2276* (breaking and entering on the high seas to commit a felony)
*18 U.S.C. 2280* (threat to commit violence against maritime navigation)
*18 U.S.C. 2281* (threat to commit violence against maritime fixed platform)
*18 U.S.C. 2316* (interstate transportation of stolen livestock)
*18 U.S.C. 2317* (receipt stolen livestock transported interstate)
*18 U.S.C. 2318* (trafficking in counterfeit phonograph labels and copies of audiovisual works)
*18 U.S.C. 2319* (copyright infringement involving more than $2500)
*18 U.S.C. 2310A* (unauthorized fixation of and trafficking in sound recordings and music videos of live musical performances)
*18 U.S.C. 2344* (trafficking in contraband cigarettes)
*18 U.S.C. 2385* (advocating overthrow of the government)
*18 U.S.C. 2386* (registration of civilian military organizations and similar groups)
*18 U.S.C. 2387* (activities affecting armed forces)
*18 U.S.C. 2389* (recruiting for service against the U.S.)
*18 U.S.C. 2425* (use of interstate facilities to transmit information about a minor)
*18 U.S.C. 2511* (wiretapping)
*18 U.S.C. 2512* (possession of an interception device for profit)
*21 U.S.C. 841(b)(1)(D)*(drug trafficking in schedule III controlled substances or less than 50 kilograms of marijuana)
*21 U.S.C. 841(g)* (unlawful distribution or possession of listed chemicals)
*21 U.S.C. 861(d)* (use of those under 21 years of age to distribute controlled substances to those under 21 years of age: imprisonment for not more than 5 years in addition to any sentence otherwise imposed)
*21 U.S.C. 841(b)(1)(D)*(illicit drug importing/exporting of schedule III, IV, or V controlled substances or less than 50 kilograms of marijuana)

*7. U.S.C. 13* (commodities frauds or embezzlement)
*7 U.S.C. 87c* (grain standards offenses)
*7 U.S.C. 2024* (food stamp fraud)
*8 U.S.C. 1160* (falsification of an application for immigration status adjustment for profit or by a previously deported alien)
*8 U.S.C. 1306(d)* (counterfeiting alien certifications or registration cards)
*8 U.S.C. 1324(1)* (bringing in or harboring aliens generally)
*8 U.S.C. 1324c(e)* (false applications for immigration benefits)
*8 U.S.C. 1325(c)* (marriage fraud in immigration cases)
*8 U.S.C. 1325(d)* (immigration-related entrepreneurship fraud)

*12 U.S.C. 92a(h)* (loans of trust funds to officers and employees)
*12 U.S.C. 378(b)* (securities dealers engaging in banking business)
*12 U.S.C. 617* (bank related commodities violations: "shall be liable to a fine of not less than $1000 and not exceeding $5000 or imprisonment not less than one year and not exceeding five years, or both, in the discretion of the court")
*12 U.S.C. 631* (misrepresentation of liability of the United States on bonds or obligations of certain financial institutions)
*12 U.S.C. 1141j* (disclosure of confidential agricultural marketing information or predicting future cotton prices in government publications)
*12 U.S.C. 1467a* (violations of restrictions on savings and loan holding company with the intent to defraud)

*12 U.S.C. 1709-2* (equity skimming)
*12 U.S.C. 1715z-19* (equity skimming)
*12 U.S.C. 1785* (violation of conviction disqualifications with respect to credit union activities)
*12 U.S.C. 1786* (violation of credit union-related cease and desist orders)
*12 U.S.C. 1818* (unlawful participation in the affairs of an insured depository institution)
*12 U.S.C. 1829* (unauthorized participation by a convicted individual in the affairs of an insured depository institution)
*12 U.S.C. 1847* (loans of trust funds to officers and employees)
*12 U.S.C. 1957* (violation of financial recordkeeping regulations in furtherance of a felony)
*12 U.S.C. 3111* (violation (with the intent to defraud) federal banking regulations concerning foreign bank participation in domestic markets)

*13 U.S.C. 211* (receiving or securing compensation for appointment of census employees)
*13 U.S.C. 213* (false statements by census employees or officers)
*13 U.S.C. 214* (wrongful disclosure of information by census employees or officers)
*15 U.S.C. 77x* (securities violations)
*15 U.S.C. 77yyy* (trust indentures violations)
*15 U.S.C. 78dd* (prohibited foreign trade practices by domestic concerns)
*15 U.S.C. 78ff* (prohibited foreign trade practices by issuers)
*15 U.S.C. 78jjj* (securities investor protection offenses)
*15 U.S.C. 79z-3* (public utility holding company offenses)
*15 U.S.C. 80a-48* (investment company offenses)
*15 U.S.C. 80b-17* (investment adviser offenses)
*15 U.S.C. 645* (concealment of property mortgaged, pledged to, or held by the Small Business Administration)
*15 U.S.C. 714m* (false statements, embezzlement or fraud associated with the Commodity Credit Corporation)
*15 U.S.C. 1242* (interstate distribution of switchblade knives)
*15 U.S.C. 1243* (possession of switchblade knives within the special maritime and territorial jurisdiction of the U.S.)
*15 U.S.C. 1717* (interstate land sales offenses)

*15 U.S.C. 5408* (sales and recordkeeping offenses involving fasteners)
*16 U.S.C. 470ee* (second and subsequent archaeological resources protection offense)
*16 U.S.C. 831t* (false statements or conspiracy to defraud the Tennessee Valley Authority)
*19 U.S.C. 1436* (violations of vessel arrival, reporting and entry requirements)
*19 U.S.C. 1464* (failure to deliver sealed vessels or vehicles to customs authorities)
*19 U.S.C. 1590* (aviation smuggling)
*19 U.S.C. 1629* (false statements to foreign customs agents stationed in the U.S.)
*20 U.S.C. 1097* (fraud in connection with financial aid to students)
*20 U.S.C. 9007* (disclosure of confidential information gathered for national education statistical purposes)
*21 U.S.C. 333* (unlawful distribution of human growth hormone)

*22 U.S.C. 286f* (unlawful disclosure of International Monetary Fund information)
*22 U.S.C. 447* (Neutrality Act violations)
*22 U.S.C. 618* (false statements in registration of foreign propagandists)
*22 U.S.C. 1631n* (violation of rules with respect to international claims concerning Bulgarian, Hungarian and Rumanian property)
*22 U.S.C. 3144* (unlawful disclosure of foreign direct investment and international financing data)
*22 U.S.C. 4199* (failure of consular officers to give security)
*22 U.S.C. 4217* (embezzlement by American diplomatic personnel)
*26 U.S.C. 5601* (offenses concerning the taxation of distilled spirits)
*26 U.S.C. 5602* (tax fraud by a distiller)
*26 U.S.C. 5603* (fraudulent noncompliance with regulations applying to the taxation of distilled spirits)
*26 U.S.C. 5604* (failure to comply with requirements concerning the marks, brands and containers for distilled spirits)

*26 U.S.C. 5607* (penalty for unlawful use or concealment of denatured distilled spirits)
*26 U.S.C. 5608* (penalty for fraudulent claims concerning the exportation of distilled spirits)
*26 U.S.C. 5661* (penalty for violation of laws and regulations governing wine)
*26 U.S.C. 5671* (penalty for violation of laws and regulations governing beer production involving the loss of more than $2000 in revenue)
*26 U.S.C. 5762* (fraudulent conduct with respect to tobacco products)
*26 U.S.C. 7201* (tax evasion)

*26 U.S.C. 7202* (failure to collect or pay tax)
*26 U.S.C. 7203* (failure to file a return)
*26 U.S.C. 7208* (counterfeiting tax stamps)
*26 U.S.C. 7213* (unlawful disclosure of tax return information)
*26 U.S.C. 7214* (unlawful acts by revenue agents)
*26 U.S.C. 7217* (executive branch influence over audits and other IRS investigations)
*26 U.S.C. 7232* (failure to register with respect to fuel taxes)
*26 U.S.C. 9012* (unlawful payments, false statements, or kickbacks concerning the Presidential Election Campaign funds)
*26 U.S.C. 9042* (unlawful payments, false statements, or kickbacks concerning the Presidential Primary Matching Payment Account Act)
*29 U.S.C. 186* (labor relations bribery)
*29 U.S.C. 501(c)* (embezzlement of labor organization funds)
*29 U.S.C. 1111* (violation of restrictions on convicted of certain offenses from holding office in a labor organization)
*30 U.S.C. 195* (fraud concerning mineral leases on public lands)
*30 U.S.C. 820* (second or subsequent conviction of a mine operator for health and safety violations)
*31 U.S.C. 5111* (violation of regulations governing the minting of coins and medals)
*31 U.S.C. 5324* (structuring monetary transactions to evade reporting requirements (smurfing))

*33 U.S.C. 682* (malicious injury to certain dams or similar works)
*33 U.S.C. 931* (false statements with respect to longshore and harbor workers' compensation)
*33 U.S.C. 990* (frauds directed against the St.Lawrence Seaway Corporation)
*33 U.S.C. 1321* (water pollution (oil))
*33 U.S.C. 1415* (water pollution (ocean dumping))
*38 U.S.C. 6101* (misappropriation of veterans' benefits)
*40 U.S.C. 13m* (causing more than $100 damage to public property on the grounds of the Supreme Court)
*40 U.S.C. 193h* (violation or attempted violation of firearms and explosives prohibitions applicable on the Capitol grounds)
*40 U.S.C. 193s* (causing more than $100 damage to public property on the grounds of the Smithsonian Institution)
*40 U.S.C. 883* (larceny, embezzlement or conversion of the property of the Pennsylvania Avenue Development Corporation)

*41 U.S.C. 423* (acquiring or disclosing confidential procurement information)
*42 U.S.C. 261* (escape or attempted escape from public health service hospitals)
*42 U.S.C. 274e* (unlawful purchase of organic transplants)
*42 U.S.C. 290cc-32* (false statements relating to homelessness assistance)
*42 U.S.C. 300d-20* (false statements relating to trauma care assistance)
*42 U.S.C. 300e-17* (false statements relating to health maintenance organizations)
*42 U.S.C. 300i-1* (tampering with a public water supply)
*42 U.S.C. 300j-23* (interstate commerce in lead-lined drinking water coolers)
*42 U.S.C. 300w-8* (false statements relating to preventive health and health services block grants)
*42 U.S.C. 300x-56* (false statements relating to mental health and substance abuse block grants)
*42 U.S.C. 300ee-19* (false statements relating to AIDS formula grants)

*42 U.S.C. 408* (false statement in old age claims)
*42 U.S.C. 707* (false statement relating to maternal and child health services block grants)
*42 U.S.C. 1306* (disclosure of confidential Social Security Administration information)
*42 U.S.C. 1307* (social security fraud)
*42 U.S.C. 1320a-7b* (false statements concerning Medicare)
*42 U.S.C. 1320d-6* (wrongful disclosure of individual identifiable health information acquired under false pretenses)
*42 U.S.C. 1383a* (fraud in connection with supplemental security income for the blind, aged and disabled)
*42 U.S.C. 1395ss* (fraud with respect to medicare supplemental insurance)
*42 U.S.C. 1484* (equity skimming (insurance of loans for housing for domestic farm labor)
*42 U.S.C. 1485* (equity skimming (farm housing)
*42 U.S.C. 1760(g)* (theft in connection with the school lunch program)
*42 U.S.C. 1761* (fraud in connection with summer food programs)
*42 U.S.C. 1973i* (voting rights offenses)
*42 U.S.C. 1973j* (election offenses)
*42 U.S.C. 1973aa-3* (use of force or fraud to deny voting rights)

*42 U.S.C. 1973bb* (enforcement of the 26th Amendment (18 year old voting rights)
*42 U.S.C. 1973gg-10* (threats made in respect with registering to vote)
*42 U.S.C. 2273* (violation of atomic energy safety regulations)
*42 U.S.C. 3220* (fraud and theft concerning public works and economic development)
*42 U.S.C. 3537a* (advance disclosure of HUD funding decisions)
*42 U.S.C. 3795* (fraud or theft of funds associated with the Office of Justice Programs)
*42 U.S.C. 6928* (hazardous waste violations)
*42 U.S.C. 6992d* (medical waste violations)

*42 U.S.C. 7413* (air pollution)
*42 U.S.C. 9603* (hazardous substance release violations)
*42 U.S.C. 9612* (false statements for compensation due to the release of hazardous substances)
*42 U.S.C. 11045* (second and subsequent conviction for failure to provide community right to know notices)
*46 U.S.C. 3102* (violation of immersion suit regulations)
*46 U.S.C. 10908* (sending unseaworthy vessel to sea)
*46 U.S.C. 31306* (false statement with respect to instruments transferring an interest in a vessel)
*46 U.S.C. App. 808* (unlawful transfer of a vessel)
*46 U.S.C. App. 835* (restrictions on transfer of shipping facilities during war or national emergency)
*47 U.S.C. 553* (second and subsequent conviction for unauthorized reception of cable service)
*47 U.S.C. 605* (second and subsequent conviction for unauthorized publication or use of communications)

*49 U.S.C. 5124* (tampering with hazardous materials labels or markings on conveyances)
*49 U.S.C. 46306* (registration violations involving aircraft in aid of another felony)
*49 U.S.C. 46308* (interference with air navigation)
*49 U.S.C. 46310* (reporting and recordkeeping violations with respect to air commerce and safety)
*49 U.S.C. 46312* (unlawfully transporting hazardous material by air)
*49 U.S.C. 46315* (light violations involving transporting controlled substances by air)
*49 U.S.C. 465075* (false information or threats concerning air piracy)
*49 U.S.C. 47126* (false statements with respect to Department of Transportation projects)
*49 U.S.C. 60123* (pipeline safety offenses)
*49 U.S.C. 80116* (false statements with respect to bills of lading)
*50 U.S.C. 421* (passing on the identities of U.S. intelligence agents or sources)
*50 U.S.C. 855* (offenses involving the registration of foreign espionage agents)
*50 U.S.C. 1809* (Foreign Intelligence Surveillance Act offenses (wiretaps))
*50 U.S.C. 1827* (Foreign Intelligence Surveillance Act offenses (physical searches)
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