

# Who Gets Time for Federal Drug Offenses? Data Trends and Opportunities for Reform

Congress created the Charles Colson Task Force on Federal Corrections to develop practical, data-driven policy responses to decades of federal prison population growth. Based on analyses of federal sentencing and corrections data, the Task Force learned that recent prison population growth stems primarily from the length of time people serve in prison for federal drug offenses.<sup>1</sup> As the Task Force finalizes its recommendations, with an eye toward policies to reduce unnecessary incarceration and recidivism, it will be considering the characteristics and sentence lengths of individuals in federal prison for drug offenses.

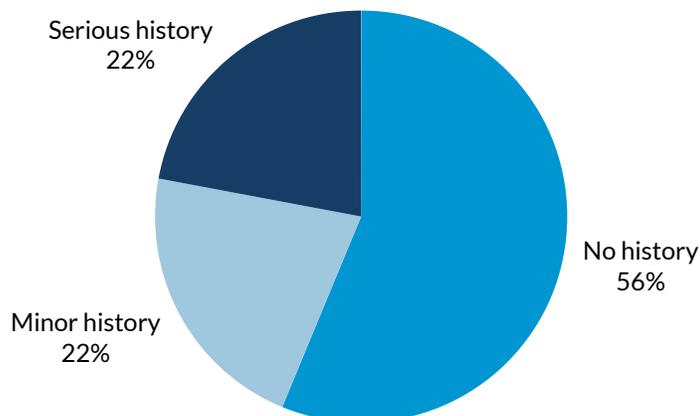
## Many Have Minimal or No Criminal Histories

Almost half (45 percent) of the 95,305 individuals in federal prison for drug offenses are in the lowest two criminal history categories, indicating minimal prior convictions and a low risk of recidivism.<sup>2</sup> In fact, over one-quarter (26 percent) have no prior criminal history.

Further, **over three-quarters of all individuals in federal prison for drug offenses have no serious history of violence before the current offense.** More than half have no violent history, and nearly a quarter have minor histories of violence, such as a simple assault and other crimes that do not typically lead to serious injury (figure 1).

FIGURE 1

### History of Violence among People Imprisoned for Drug Offenses (%)



Source: Urban Institute analysis of FY 1994–FY 2014 BOP and USSC data.

The Charles Colson Task Force on Federal Corrections was created by Congress. This nine-person, bipartisan, blue-ribbon task force is mandated to examine challenges in the federal corrections system and develop practical, data-driven policy responses. The Task Force will meet throughout 2015 to conduct its work and present its findings and recommendations in the beginning of 2016 to Congress, the Department of Justice, and the president. The Urban Institute and the Center for Effective Public Policy provide research and logistical support to the Charles Colson Task Force. This brief was developed by Samuel Taxy and Cybele Kotonias, researchers at the Urban Institute.

## Few Are Convicted of Leading or Violent Roles in Drug Trafficking Crimes

Nearly all people in federal prison for drug offenses (99.4 percent) were convicted of drug trafficking, but the role they played can range from courier or mule to high-level supplier or importer.<sup>3</sup> Overall, many people in federal prison convicted of drug offenses are not leading trafficking organizations or responsible for direct violence:

- More than 75 percent were not sentenced for the use or presence of a weapon during the offense.
- Only 14 percent were sentenced for being a manager, supervisor, leader, or organizer in the offense.
- Less than 14 percent (sentenced since fiscal year [FY] 2011) were sentenced for using violence, making a credible threat to use violence, or directing the use of violence during the offense.

## Long Sentences Are Driven by Mandatory Minimums

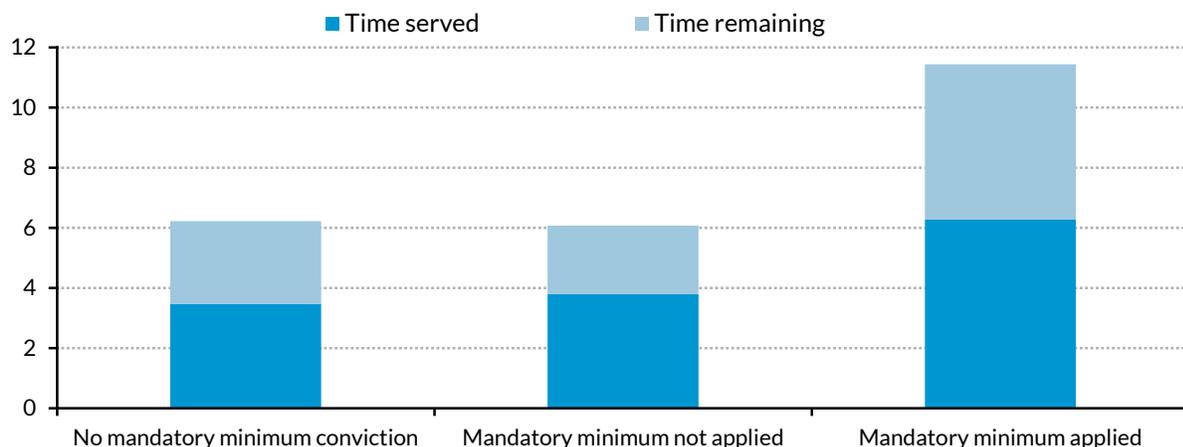
Despite the significant differences among individuals in federal prison for drug offenses, there is one constant: long lengths of stay for people incarcerated on drug trafficking charges. Even taking into account good conduct credits and the recent retroactive reduction in federal drug sentences, **average expected time served for drug offenses is more than nine years.**

Long federal drug sentences are driven both by mandatory minimum penalties and the federal sentencing guidelines. Mandatory minimums even shape sentence length, though indirectly, for individuals not subject to them. The US Sentencing Commission tied the sentencing guidelines for drug trafficking offenses to drug quantities involved in the offense, the same way the mandatory minimum laws do. The Commission aimed to ensure consistency between federal law and the sentencing guidelines and to avoid unwarranted sentencing disparities.

- Seventy-eight percent of individuals in federal prison for drug offenses were convicted of an offense that carries a mandatory minimum penalty. When the penalty is applied at sentencing (in 59 percent of all cases), their average expected time served is 11 years (figure 2).
- Twenty-two percent of individuals in federal prison for drug offenses were not convicted of an offense carrying a mandatory minimum penalty. Their average expected time served is more than six years.

FIGURE 2

### Expected Years Served, by Sentence Type



Source: Urban Institute analysis of FY 1994–FY 2014 BOP and USSC data.

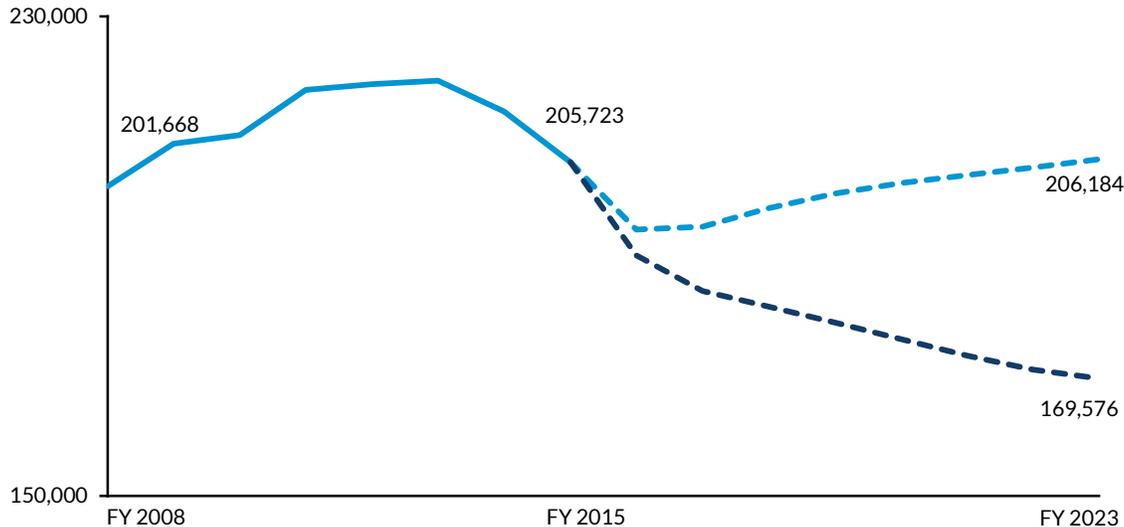
# Continued Population Reductions Require Shorter Drug Sentences

At the end of the FY 2014, individuals serving drug sentences accounted for 49 percent of the total federal prison population. Though recent policy changes have helped reverse upward trends in population size, the Urban Institute's Federal Prison Population Forecaster shows that continuing population declines will require significantly shorter lengths of stay for drug offenses (figure 3).<sup>4</sup> Congressional leaders are considering legislative action that would reduce some mandatory minimum penalties and grant judges greater discretion to sentence individuals to shorter prison stays for drug offenses. While the exact impact of these bills is unknown, lasting reductions in the size of the federal prison population will only come from big cuts in lengths of stay for drug offenses. The Task Force will be considering such reforms as part of its deliberations and expects to build on the efforts under way in Congress.

FIGURE 3

## Federal Prison Population Forecaster

Depicted scenario: Reducing length of stay by 50 percent for drug offenses would bring down the federal prison population 18 percent by September 2023



Source: Urban Institute analysis of FY 1994–FY 2014 BOP and USSC data.

## Notes

1. Samuel Taxy, *Drivers of Growth in the Federal Prison Population* (Washington, DC: Urban Institute, 2015). The large number of prison admissions for federal drug offenses also contributes to the size of the incarcerated population.
2. All analyses, unless otherwise noted, reflect Urban Institute analysis of fiscal year (FY) 1994–2014 BOP and US Sentencing Commission (USSC) data and refer to the standing prison population at FY-end 2014. Analyses of time remaining, including the prison population forecaster, account for the recent prospective and retroactive guideline amendments reducing sentence lengths for drug offenses. Analyses of the composition of the prison population as of FY-end 2014 do not account for the retroactive application of this amendment. For recidivism, see USSC, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines* (Washington, DC: USSC, 2004).
3. USSC, *Mandatory Minimum Penalties in the Federal Criminal Justice System* (Washington, DC: USSC, 2011).
4. Ryan King, Bryce Peterson, Brian Elderbroom, and Samuel A. Taxy, "How to reduce the federal prison population," Urban Institute, October 2015, <http://webapp.urban.org/reducing-federal-mass-incarceration/>.