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## VI. Sentencing

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## VI. SENTENCING

In this age of soaring crime rates, deadbolts and security systems, public attention has been focused on the government's ability to deal with crime. Criminals are arrested for their wrongdoings and many either plead guilty or are subsequently found guilty and incarcerated. The issue of incarceration involves both the length of time the defendant is initially sentenced as well as how much of that initial sentence the defendant actually serves. The following two articles by Fred Bernstein and James Wootton deal with the subjects of initial sentencing and actual time served.

Federal courts utilize the Sentencing Guidelines and Mandatory Minimum Sentence Requirements to determine the length of the initial incarceration. While judges had many opportunities to make downward departures under the Guidelines, judges had very few similar opportunities under mandatory minimums. This recently changed with the enactment of section 80001 of the Violent Crime Control and Law Enforcement Act of 1994.

Codified at 18 U.S.C. § 3553(f), the new "safety valve" provision gives federal judges the opportunity to impose sentences without regard to statutory minimum requirements when five conditions are met. To be eligible, the defendant: (1) must not have more than one criminal history point; (2) must not have used violence or credible threats of violence or possessed a firearm or other dangerous weapon in the commission of the offense; (3) must not have caused death or serious bodily harm to any person in the commission of the offense; (4) must not have been the organizer, leader, manager, or supervisor of others, and must not have been engaged in a continuing course of conduct; and (5) must have provided to the government, at the time of sentencing, all information and evidence the defendant has concerning the offense or offenses. Fred Bernstein's article describes the effects of statutory minimum requirements on the federal judiciary and argues in support of the new safety valve provision.

Once an initial sentence has been imposed, an ensuing issue is the length of the sentence that the criminal will actually serve. Currently, very few jurisdictions have any requirements on the percentage of the sentence that must be served. Only the federal level and a few states require that criminals serve at least eighty-five percent of the imposed sentences. The aim of these "truth in sentencing" statutes is to keep criminals incarcerated longer in order to reduce crime and financial losses. A recent initiative is the Truth in Sentencing Act of 1993, H.R. 3584. This bill would encourage each state to adopt truth in sentencing laws and would provide incentives to do so. Mr. Wootton's article details the social and economic impacts of the early release of recidivist criminals and calls for the adoption of truth in sentencing laws by states.