(Continued)

cocaine to eighteen to one to trigger the five- and ten-year mandatory minimums.

The thinking behind the previous law was that crack is sold in small, relatively inexpensive amounts on the street and that the ease of access to crack leads to individuals becoming addicts who threaten the safety and welfare of communities. The profitability of the "crack trade" leads to street violence between street gangs competing for control of the drug trade. The law was criticized for resulting in the disproportionate arrest and imprisonment of African American gang members for lengthy terms while Caucasian sellers and users of powder cocaine received much less severe prison terms.

The sentencing reform law, as noted, reduces the hundred-to-one ratio to eighteen to one. This means that 28 grams of crack trigger a five-year mandatory minimum and 280 grams of crack trigger a ten-year mandatory minimum. The triggering weights for powder cocaine remain the same. The law also eliminated the previous five-year mandatory minimum for simple possession (without the intent to distribute) of five grams of crack cocaine by first-time offenders. Roughly twelve states continue to punish possession of crack cocaine with the same sentence as a greater amount of powder cocaine.

It is estimated that the new law will reduce sentences for crack-cocaine-related offenses by an average of twenty-seven months in prison and save the government $42 million during the next five years. The act took effect when President Barack Obama signed the law on August 3, 2010. Almost a year later, the new law was applied retroactively to allow thousands of individuals sentenced under the "old law" to petition a court to reduce their sentence. In June 2012, the Supreme Court held that new, more lenient penalty provisions apply to offenders who committed a crack cocaine offense before the law went into effect and are sentenced after the date that the law went into effect. The Court reasoned that sentencing these offenders under the old sentencing scheme would "seriously undermine . . . uniformity and proportionality in sentencing" (*Dorsey v. United States,* 132 S. Ct. 2321, 567 U.S. ___ [2012]).

The following quantities are punishable by five years in prison under federal law:

- 100 grams of heroin
- 500 grams of powder cocaine
- 28 grams of crack cocaine
- 100 kilograms of marijuana

The following quantities are punishable by ten years in prison under federal law:

- 1 kilogram of heroin
- 5 kilograms of powder cocaine
- 280 grams of crack cocaine
- 1,000 kilograms of marijuana

Congress softened the impact of the mandatory minimum drug sentences by providing that a judge may issue a lesser sentence in those instances in which prosecutors certify that a defendant has provided "substantial assistance" in convicting other drug offenders. There also is a safety valve that permits a reduced sentence for defendants determined by the judge to be low-level, nonviolent, first-time offenders.

Prosecutors argue that the mandatory minimum sentences are required to deter individuals from entering into the lucrative drug trade. The threat of a lengthy sentence also is necessary in order to encourage the cooperation of defendants. Prosecutors stress that individuals who are convicted and sentenced were fully aware of the consequences of their criminal actions.

These mandatory minimum laws nevertheless have come under attack by both conservative and liberal politicians, by the American Bar Association, and by the Judicial Conference, which is the organization of federal judges. An estimated twenty-seven states, including Maryland and Connecticut, have recently modified or are considering amending their mandatory minimum narcotics laws. New York also modified the Rockefeller drug laws in 2004 when Governor George Pataki signed the Drug Law Reform Act, and its legislators are contemplating abandoning determinate sentences for drug offenders. This trend is encouraged by studies that indicate that these laws have the following problems:

- *Inflexibility.* They fail to take into account the differences between defendants.
- *Plea Bargaining.* Drug kingpins are able to trade information for reduced sentences.
- *Prosecutorial Discretion.* Some prosecutors who object to the laws charge defendants with the possession of a lesser quantity of drugs to avoid the mandatory sentencing provisions.
- *Increase in Prison Population.* The laws are thought to be responsible for the growth of the state and federal prison population.