New York State Justice Task Force

Recommendations for Reforms Relating to Mandatory Minimum Sentences

September 2025

I. Introduction

In April 2023, Hon. Rowan D. Wilson was confirmed as Chief Judge of the State of New York and chose to continue the work of the New York State Justice Task Force (the "Task Force"), which was formed in May 2009 by then-Chief Judge Jonathan Lippman to identify practices that may contribute to wrongful convictions in the state and to consider measures to reduce—and, ideally, to eliminate—such convictions. The Task Force's mission was later expanded in 2016 by then-Chief Judge Janet DiFiore to make recommendations for judicial and legislative reforms to promote fairness, effectiveness, and efficiency in the criminal justice system; to eradicate harms caused by wrongful convictions; and to further public safety. The Task Force's expanded mission continues under Chief Judge Wilson's leadership.

The Task Force is chaired by Hon. Carmen Beauchamp Ciparick (Ret.) and Hon. Deborah A. Kaplan. The Task Force's members represent a broad cross-section of the criminal justice community in New York State, consisting of judges, prosecutors, defense attorneys, law enforcement officials, victim advocates, and other stakeholders who are committed to investigating and building consensus around some of the most important and difficult issues in our criminal justice system.

Since its inception, the Task Force has studied and provided recommendations on a number of issues, including expanding the state's DNA databank; granting post-conviction access to DNA testing; utilizing electronic recordings of custodial interrogations; implementing best practices in identification procedures; granting greater access to forensic case file materials; reforming criminal discovery; using root-cause analysis to prevent wrongful convictions; addressing attorney misconduct; providing meaningful bail reform; ensuring fair representation in the jury selection process; and implementing "second look" reform to enable courts to review and reevaluate an incarcerated person's sentence. Davis Polk has served as counsel to the Task Force since 2009.

II. Executive Summary

Since 2019, the Task Force has been examining racial disparities in the criminal justice system at all key stages of proceedings—from arrest through sentencing—with a goal of proposing broad reforms to effectively address these disparities and ensure a more just system for all New Yorkers.

In recognition of the complexity and breadth of the issues, the Task Force's recommendations to mitigate racial bias in the criminal justice system have been issued on a rolling basis. The Task Force's recent prior recommendations include the following:

- Recommendation on a Criminal Case Dispositions Working Group (February 2021);
- Recommendations Regarding Criminal Case Disposition Data (June 2021);
- Recommendations Regarding the Issuances of Criminal Summonses (October 2021);

- Recommendations Regarding Reforms to Jury Selection in New York (August 2022); and
- Recommendations on Second Look Sentencing Reform (January 2024).

In this report, the Task Force turns its attention to potential reforms to New York's criminal statutes providing for mandatory minimum sentences. After much deliberation and analysis, the Task Force concluded that mandatory minimum sentences are, with respect to most types of offenses, unnecessarily punitive and fail to allow courts to exercise discretion to account for specific characteristics of a defendant and circumstances of a crime in sentencing. Further, the Task Force found that mandatory minimums have a disproportionately negative impact on defendants of color.[1] The Task Force also determined that eliminating statutory plea restrictions would provide greater flexibility in plea bargaining. Moreover, the Task Force recommended enactment of "safety valve" legislation, which would be a statutory mechanism allowing courts to deviate from an otherwise applicable mandatory minimum sentence if certain requirements are met, to offer alternative relief to the harms caused by mandatory minimum sentences. As a result, the Task Force concluded that the elimination of most mandatory minimums would promote greater fairness in the criminal justice system and also have the benefit of reducing the overall prison population.

The Task Force also considered whether, in the absence of mandatory minimums for most offenses, guidance should be developed to assist courts in making sentencing determinations. Specifically, the Task Force considered whether sentencing guidelines akin to the Federal Sentencing Guidelines should be formulated but ultimately concluded that such guidelines would not adequately provide for the consideration of individual circumstances in a sentencing. Instead, the Task Force voted in favor of recommending legislation requiring judges to consider certain factors in making sentencing determinations (when the sentence to be imposed is not one that has been agreed upon by the parties) and requiring the Appellate Division to explain its reasoning when determining that a sentence is excessive. In addition, the Task Force ultimately determined that statewide sentencing data be gathered, compiled, and made available to assist in sentencing decisions, and that a statewide sentencing commission be established to oversee the collection, analysis, and distribution of such data, along with other responsibilities related to sentencing policy.

[1] Vera Inst. of Just., *New York Should Abolish Mandatory Minimums* 1-2 (Feb. 2022), https://vera-institute.files.svdcdn.com/production/downloads/publications/new-york-should-abolish-mandatory-minimums_2022-03-08-160009_smuc.pdf.

As explained in greater detail below, the Task Force recommends:

(1) the elimination of all mandatory minimum sentences, except for certain enumerated offenses, including, but not limited to, intentional killing, felony sex offenses, and felony crimes of terrorism;

(2) the repeal of statutory restrictions on pleas, without disturbing the requirement that any plea agreement still have the consent of both parties and the court;

(3) the enactment of safety valve legislation in the event that all or some offenses remain subject to mandatory minimum sentences, providing a mechanism for courts to sentence an offender to less time than an applicable mandatory minimum sentence would require in the interest of justice if certain criteria are met;

(4) the enactment of legislation requiring judges to consider certain factors in making sentencing determinations (except where the sentence to be imposed is agreed upon by the parties);

(5) that sentencing data be gathered, compiled, and made available to all parties to assist the courts in making sentencing decisions;

(6) the establishment of a statewide sentencing commission responsible for overseeing the collection, analysis, and distribution of statewide sentencing data; providing training to judges in collaboration with the New York State Judicial Institute; and recommending legislative changes to, and serving as a research center for, sentencing policy; and

(7) the enactment of legislation requiring the Appellate Division to explain on the record the basis for determining that a sentence is excessive.

III. Background

A. History of Mandatory Minimum Laws

Mandatory minimum sentencing laws require courts to impose sentences of no less than specifically predefined lengths, typically based on the charge and the defendant's criminal history. All 50 states have statutory frameworks that include mandatory minimums in some form.[2] In New York, mandatory minimum sentences were introduced in 1973 through enactment of the Rockefeller Drug Laws,[3] which dictated harsh, mandatory minimum

[2] *See* Fact Sheet, "How Mandatory Minimums Perpetuate Mass Incarceration and What to Do About It," The Sentencing Project (Feb. 14, 2024), https://www.sentencingproject.org/fact-sheet/how-mandatory-minimums-perpetuate-mass-incarceration-and-what-to-do-about-it/.

[3] *See generally* 1973 N.Y. Laws 1040-65 (since amended).

prison terms for felony drug charges,[4] including 15 years to life for possession of four ounces of narcotics.[5]

Signed into law by then-Governor Nelson Rockefeller, the sentences required by these statutes were intended to have a deterrent effect to address significant issues relating to drug addiction and crime.[6] As local police departments increased street-level enforcement in the 1980s—following changing political attitudes toward crime and the revival of New York City's fiscal stability—the statute's true impact emerged.[7] The laws ultimately resulted in higher rates of incarceration with the percentage of inmates incarcerated for drug offenses increasing dramatically, from about 11% in 1980 to over 44% by 1999.[8]

That sobering trend persists. In 2022, the Vera Institute of Justice estimated that just over half of New York's prison sentences resulted from mandatory minimum sentencing laws.[9] A similar percentage of felony convictions in New York City cases disposed of in 2019 involved charges with mandatory prison time.[10] Many of those defendants charged with offenses carrying a mandatory minimum sentence were convicted of low-level, nonviolent offenses, often with no prior criminal records.[11] The statistics are only exacerbated when criminal history and severity of offenses are taken into account. Mandatory minimum sentences have a particularly pronounced effect on defendants convicted of a felony (regardless of whether it was violent or nonviolent) who had a prior felony conviction

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[4] Fred Butcher, Amanda B. Cissner & Michael Rempel, Ctr. for Just. Innovation, *Felony Sentencing in New York City: Mandatory Minimums, Mass Incarceration, and Race* 2 (Dec. 2022), https://www.innovatingjustice.org/sites/default/files/media/document/2023/Felony_Sentencing_Minimums_Race_02172023.pdf.

[5] Madison Gray, *New York's Rockefeller Drug Laws*, Time Magazine (Apr. 2, 2009), https://time.com/archive/6914297/new-yorks-rockefeller-drug-laws/.

[6] NYCLU, *Legislative Memo: NYCLU Strongly Supports Reform of Rockefeller Drug Laws* (Mar. 5, 2007), https://www.nyclu.org/resources/policy/legislations/legislative-memo-nyclu-strongly-supports-reform-rockefeller-drug-laws.

[7] Mason B. Williams, *How the Rockefeller Laws Hit the Streets: Drug Policing and the Politics of State Competence in New York City, 1973-1989*, 4 Mod. Am. Hist. 67, 70 (Mar. 2, 2021), https://www.cambridge.org/core/journals/modern-american-history/article/how-the-rockefeller-laws-hit-the-streets-drug-policing-and-the-politics-of-state-competence-in-new-york-city-19731989/EFF4D46EFF8F8839D2BEFF226797E461.

[8] NYCLU, *supra* note 6 (noting rise in proportion of people incarcerated for drug offenses since the 1980s).

[9] Vera Inst. of Just., *supra* note 1, at 1 ("Of the more than 30,000 people incarcerated in New York State prisons, 51 percent are incarcerated on mandatory minimum sentences.").

[10] Butcher et al., *supra* note 4, at 9 (noting 33% of felony arrests and 50% of felony convictions involved charges with mandated prison time).

[11] Drug Policy Alliance, "Rockefeller Drug Laws Quick Facts" (last updated Feb. 2009), https://www.openphilanthropy.org/files/Grants/Close_Rikers/RockefellerDrugLawQuickFacts.pdf.

within the past 10 years.[12] As of 2019, nearly 25% of people arrested for felonies in New York City had a predicate felony offense.[13]

B. Racial Disparities in Mandatory Minimums

Nearly 90% of individuals charged with an offense carrying a mandatory minimum sentence were people of color.[14] The result, therefore, has been that Black or Hispanic individuals have been overwhelmingly and disproportionately impacted by these laws, despite often having no prior criminal records, or being charged with only nonviolent and low-level drug offenses.[15]

For example, Black individuals without a prior criminal history made up 51% of felony arrests but 58% of felony arrests with mandatory minimum exposures, and 53% of felony convictions but 59% of felony convictions for charges carrying a mandatory minimum sentence.[16]

The disparity is even more pronounced once criminal history is considered. Because Black individuals are statistically more likely to have a prior criminal history than white individuals (for example, in 2019 in New York City, 27% of Black, 23% of Hispanic, and 17% of white individuals had a prior felony conviction, either violent or nonviolent), prior felony conviction status also results in racial disparity (for example, in 2019 in New York City, 64% of individuals charged with a felony who had a prior violent felony conviction were Black, 30% were Hispanic, and 5% were white).[17]

C. Reform Efforts

Recognizing these negative consequences, New York and several other states have endeavored to reform mandatory minimum laws.[18] Most states that have instituted reforms have taken a piecemeal approach rather than eliminating mandatory minimums entirely,

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[12] Butcher et al., *supra* note 4, at 6.

[13] *Id*. at 5.

[14] Drug Policy Alliance, *supra* note 11, at 1; Butcher et al., *supra* note 4, at 9.

[15] Butcher et al., *supra* note 4, at 5.

[16] *Id.* at 9.

[17] *Id.* at 7, 14.

[18] New York State Bar Association, *Report and Recommendations of the New York State Bar Association Task Force on Modernization of Criminal Practice* 48 (June 2023), https://nysba.org/wp-content/uploads/2023/06/final-report-Task-Force-on-Modernization-of-Criminal-Practice-June-2023.pdf; *see also* New Jersey Criminal Sentencing & Disposition Commission, March 2023 Report 6 (Mar. 2023), https://pub.njleg.gov/publications/reports/CSDC%20Third%20Report.pdf; Virginia State Crime Commission, Mandatory Minimum Sentences, 2020 Annual Report 111-12 (2020), https://vscc.virginia.gov/2021/VSCC%202020%20Annual%20Report%20Mandatory%20Minimum%20Sentences.pdf.

such as by eliminating mandatory minimums for specific types of offenders[19] or specific types of offenses, particularly nonviolent drug offenses.[20] Indeed, almost half of all states, as well as the federal government, have reduced or eliminated mandatory minimum sentences for low-level, nonviolent drug offenses.[21]

In 2004, three decades after the Rockefeller Drug Laws were enacted, New York reduced the longest mandatory minimums from 15 to eight years.[22] More comprehensive reform efforts were undertaken in 2009, when the New York State Legislature repealed mandatory minimum sentences for most drug crimes and increased diversion options for many drug and property offenses.[23]

There have been no legislative changes since that time; however, over the past few years, there have been several proposals put forward by members of New York's Legislature, including:

(1) Senate Bill S5712 (2019), the "Justice Safety Valve Act," introduced during the 2019-2020 legislative session, proposed amending the current Penal Law to require the prosecutor and court to consent to depart from the mandatory minimum if, when giving due regard to the nature of the crime, history, and character of the defendant and their chances of successful rehabilitation, the court finds that an imposition of the mandatory minimum (i) would result in substantial injustice, and (ii) was unnecessary for public protection.

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[19] For example, Colorado, Iowa, and Washington eliminated mandatory minimums for youth transferred to the adult criminal system. *See* The Sentencing Project, *supra* note 2. In Delaware, mandatory minimum sentences were eliminated for first-time offenders of burglary in the second degree. *See* HB 19, 146th Gen. Assem. (2011) (enacted). And, in South Carolina, mandatory minimums were eliminated for first-time offenders convicted of simple drug possession, but remain in place for second time offenders who drive on public highways with a suspended or revoked license, among other exceptions. *See* S. 1154, 118th Sess. (2010) (enacted).

[20] For example, in California, mandatory prison sentences were eliminated for all nonviolent drug offenses, *see* S.B. 73, 2021 Leg., Reg. Sess. (2021) (enacted), while Connecticut eliminated a mandatory minimum sentence for the crime of drug possession in school zones. *See* S.B. 952, 2015 Leg., Gen. Assemb. (2015) (enacted).

[21] The Sentencing Project, *supra* note 2; *see also* Vera Inst. of Just., "As Federal Support for Curbing Mandatory Minimums Grows, New Report Examines State-Level Reforms and Their Impact," (Feb. 12, 2014), https://www.vera.org/newsroom/as-federal-support-for-curbing-mandatory-minimums-grows-new-report-examines-state-level-reforms-and-their-impact.

[22] *See* 2004 N.Y. Laws 738 (since amended); Michael Cooper, *New York State Votes to Reduce Drug Sentences*, N.Y. Times (Dec. 8, 2004), https://www.nytimes.com/2004/12/08/nyregion/new-york-state-votes-to-reduce-drug-sentences.html.

[23] *See* 2009 N.Y. Laws 56 (since amended); *see also* Jim Parsons et al., *A Natural Experiment in Reform: Analyzing Drug Policy Change in New York City, Final Report*, U.S. Dep't of Just. (Jan. 2015), https://web.archive.org/web/20250320180453/https://www.ojp.gov/pdffiles1/nij/grants/248524.pdf.

(2) Senate Bill S6471A/A2036A (2023), introduced during the 2023-2024 legislative session, proposed to eliminate two- and three-strike laws and create a presumption against incarceration by requiring a hearing before imprisonment of any length. Doing so would allow judges to freely consider individual factors on a case-by-case basis.

(3) Senate Bill S1209 (2025), introduced during the 2025-2026 legislative session, the "Marvin Mayfield Act," proposed to eliminate mandatory minimum sentences, including New York's two- and three-strike laws allowing judges to consider the individual factors in a case. This legislation would also create a presumption against incarceration, requiring a hearing before any period of incarceration can be imposed.

In the meantime, New York continues to statutorily require mandatory minimum sentences in many instances, including for those with a prior felony conviction within the past 10 years or those charged with a violent felony absent such a criminal history, regardless of mitigating or circumstantial factors.[24]

IV. The Task Force's Deliberations

A. Deliberations Regarding Mandatory Minimums

With the above issues in mind, the Task Force examined the current legislative framework for mandatory minimums in New York, as well as possible reforms. The Task Force's examination of these issues was informed by the assistance of a Task Force subcommittee, chaired by Hon. Barry Kamins (Ret.) and Hon. William C. Donnino (Ret.) (the "Mandatory Minimums Subcommittee"), which focused specifically on studying reforms relating to mandatory minimum sentences.

The Mandatory Minimums Subcommittee, which included over a dozen members of the Task Force representing all stakeholders in our criminal justice system, met six times over 10 months. The Subcommittee reviewed extensive materials from both New York and other jurisdictions; heard from experts from across the country; and evaluated New York state data compiled by the New York State Division of Criminal Justice Services ("DCJS"). Among the materials reviewed and considered were a 50-state survey outlining state reforms relating to mandatory minimums; the Report and Recommendations of the New York State Bar Association Task Force on Modernization of Criminal Practice; and Senate Bills S5712 (2019) and S6471A (2023) (referenced above and discussed further below). In April 2024, the Subcommittee reported its findings and proposals to the full Task Force.

The Task Force deliberated on a quarterly basis over the course of a year. Informed by data presented by DCJS and consideration of the materials reviewed by the Subcommittee, the Task Force ultimately voted on proposed recommendations.

[24] Butcher et al., *supra* note 4, at 3, 47.

The Task Force discussed the impact that mandatory minimums—and their potential repeal—may have on racial disparities, including the extent to which mandatory minimums may impact a defendant's decision to agree to a plea prior to trial. In particular, the Task Force considered the substantial difference between the sentence offered prior to trial in connection with a potential plea deal and the sentence a defendant receives after a trial. Some members urged the Task Force to consider that, because courts do not have discretion to impose a sentence below a mandatory minimum, defendants are less likely to exercise their right to trial if offered a plea to a felony permitting a lesser sentence than the top count. Other members expressed a view that mandatory minimums provide consistency and predictability in sentencing, raising concerns that removing mandatory minimums could, absent any other guidance, result in widespread disparities in sentences.

The Task Force also discussed whether mandatory minimums should remain for certain particularly egregious offenses, as well as the possibility of allowing courts and prosecutors to recommend sentences below the mandatory minimum, while still maintaining mandatory minimums in the law. For example, for certain violent offenses, the Task Force considered maintaining mandatory minimum laws but allowing courts to deviate from those minimums if certain requirements are met (also known as "safety valve" relief).[25]

B. Deliberations Regarding Sentencing Guidance in the Absence of Mandatory Minimums

In light of the concerns expressed regarding the possibility that eliminating mandatory minimums could lead to wide disparities in sentences, the Task Force also considered whether, if mandatory minimums were eliminated, additional guidance should be provided to aid courts in making sentencing determinations. The Task Force established a separate subcommittee, co-chaired by Hon. Deborah Kaplan, Hon. Dineen A. Riviezzo, and Hon. Barry Kamins (Ret.) (the "Sentencing Commission Subcommittee"), to assist it in consideration of these issues, including consideration of whether sentencing guidelines and/or a statewide sentencing commission should be established. The Sentencing Commission Subcommittee comprised a broad cross-section of Task Force members representing all major stakeholders and met five times over a six-month period.

The Sentencing Commission Subcommittee was keenly aware of the historical context relevant to its deliberations, particularly relating to sentencing commissions that had been tasked with promulgating sentencing guidelines. At least three sentencing commissions

[25] In light of the U.S. Supreme Court's decision in *Erlinger v. United States*, 602 U.S. 821 (2024), decided on June 21, 2024, the Task Force determined not to make recommendations surrounding predicate felony offender designations and the availability of diversion for predicate violent felony drug offenders. In *Erlinger*, the Court held that the Fifth and Sixth Amendments require a unanimous jury to make a determination beyond a reasonable doubt that a defendant's past offenses were committed on separate occasions for purposes of the Armed Career Criminal Act—a statute that increases the penalty for being a felon in possession of a firearm where the defendant has three or more qualifying convictions for offenses committed on different occasions. In the absence of appellate guidance, New York trial courts are sharply divided on the impact of *Erlinger* on sentencing recidivists. *Compare People v. Jackson*, 86 Misc.3d 411, 415 (N.Y. Sup. Ct., Queens Cty., Jan. 16, 2025) *with People v. Oaks*, 86 Misc.3d 615, 619 (N.Y. Sup. Ct., Erie Cty. Jan. 31, 2025).

were established in New York through various means over the past 50 years to review the state's sentencing structure and recommend potential reforms, including through implementing guidelines. In 1983, the Legislature established a sentencing commission that developed and proposed sentencing guidelines, which ultimately failed to reach a legislative vote.[26] In 2007, then-Governor Eliot Spitzer established another sentencing commission through an executive order to "conduct a comprehensive review of New York's current sentencing structure."[27] Yet another was created through the Chief Judge's administrative powers in 2010, charged with "comprehensively evaluating sentencing laws and practices and recommending reforms that will improve the quality and effectiveness of statewide sentencing policy."[28] Both of these later commissions issued reports on possible sentencing reforms without promulgating guidelines.[29]

With this background, the Subcommittee undertook an extensive review of materials, including a 50-state survey regarding sentencing commissions nationwide, including, among other elements, their mandates, compositions, and responsibilities. The Sentencing Commission Subcommittee also heard from multiple experts in the field, including leading academics on sentencing policy, members of state sentencing commissions, and sitting federal judges. These speakers discussed their experiences with sentencing commissions (including New York State's history with sentencing commissions), as well as federal and state sentencing guidelines and other alternative methods of providing sentencing-related guidance to courts. Some speakers endorsed advisory sentencing guidelines to provide a helpful rubric to courts in making sentencing decisions. These speakers explained that guidelines can reduce sentencing disparities by limiting discretion (and thus implicit biases) and providing a reasonable range to promote uniformity so that similar crimes carry similar penalties. Other speakers, however, criticized guidelines (both mandatory and advisory) for being overly restrictive and cumbersome to effectively utilize. These speakers also raised a concern that guidelines in any form can fail to account for individualized circumstances in sentencing, cautioning that adopting guidelines may be counterproductive to the goal of minimizing racial disparities. In July 2025, the Subcommittee reported its findings and proposals to the Task Force for its consideration.

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[26] *See* New York State Commission on Sentencing Reform, *The Future of Sentencing in New York State: A Preliminary Proposal for Reform* 10 (Oct. 15, 2007), https://www.criminaljustice.ny.gov/legalservices/sentencingreform/2007prelimsentencingreformrpt.pdf.

[27] *See* Executive Order No. 10, Establishing the New York State Commission on Sentencing (Mar. 5, 2007), https://www.criminaljustice.ny.gov/legalservices/eo10sentencingreform.htm.

[28] New York State Permanent Commission on Sentencing, "Overview," https://ww2.nycourts.gov/Ip/sentencing/index.shtml.

[29] *See* New York State Commission on Sentencing Reform, *The Future of Sentencing in New York States: Recommendations for Reform* (Jan. 30, 2009), https://www.criminaljustice.ny.gov/pio/csr_report2-2009.pdf; New York State Permanent Commission on Sentencing, *A Proposal for 'Fully Determinate' Sentencing for New York State* (Dec. 2014), https://ww2.nycourts.gov/sites/default/files/document/files/2018-12/Determinate%20Sentencing%20Report%20Final%20Delivered.pdf.

The Task Force debated the utility of sentencing guidelines. Members expressed concerns that adopting mandatory guidelines would pose the same concerns as mandatory minimums, which the Task Force voted to largely eliminate, as they would similarly bind judges to a particular sentence range without allowing judicial discretion to consider individual circumstances. There was broad consensus that if guidelines were created at all then they should be advisory rather than mandatory, which is in line with the current approach of the Federal Sentencing Guidelines. Some members felt strongly that advisory guidelines should be put in place to promote consistency in sentencing by providing resources to judges without constraining their ability to tailor sentences to individual cases. Still, several members were skeptical that advisory guidelines, which could be ignored, would be effective or utilized as a resource by judges; and others remained concerned that even advisory guidelines could result in judges defaulting to the advisory range, thereby inadvertently creating the same problem eliminating mandatory minimums was intended to resolve.

Alternatively, the Task Force considered whether legislation should be recommended that would require courts to consider specific factors (including those relating to the individual circumstances of both the defendant and the offense) in determining an appropriate sentence, rather than mandating or advising a particular sentence range. The Task Force discussed that, in the federal system, courts are guided by statutorily enumerated factors, specifically 18 U.S.C. § 3553(a).[30] Other members also raised that New York's Criminal Procedure Law contains general guidance for the goals of sentencing[31] and more specific

[30] 18 U.S.C. § 3553(a) requires the court "in determining the particular sentence to be imposed, [to] consider":

> (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
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> (2) the need for the sentence imposed—(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
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> (3) the kinds of sentences available;
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> (4) the kinds of sentence and the sentencing range established . . .
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> (5) any pertinent policy statement . . .
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> (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
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> (7) the need to provide restitution to any victims of the offense.

[31] *See* CPL 1.05: "General purposes. The general purposes of the provisions of this chapter are:

> (1) To proscribe conduct which unjustifiably and inexcusably causes or threatens substantial harm to individual or public interests;

guidance for sentences for particular offenses.[32] Members expressed the view that providing specific factors to be considered—ultimately determined by the Legislature—would provide some guidance to courts without suppressing judicial discretion in determining the length of a sentence. The promulgation of such standards would also help promote consistency by ensuring judges take the same core considerations into account in evaluating an appropriate sentence.

In addition, central to the Task Force's discussion was the importance of data collection and distribution in providing guidance to judges. The Task Force investigated the types of sentencing data already collected by different New York state agencies, including DCJS and the Office of Court Administration ("OCA"), and whether the collection of additional data would be beneficial. The Task Force recognized that DCJS and OCA currently collect a wide variety of sentencing data that is made publicly available, thus already largely providing what the Task Force viewed as a critical service. The Task Force discussed the importance of such data in evaluating sentencing trends, especially as it relates to racial disparities, and whether making data regarding sentences imposed across the state available to judges could assist courts in rendering appropriate sentences. In addition, Task Force members discussed making all data available to the public, emphasizing the importance of transparency, which benefits all stakeholders, including defendants, victims, and the public at large.

After discussing the types of sentencing-related guidance that could be recommended to assist courts, the Task Force next considered whether a sentencing commission could assist in implementing any of these potential recommendations. Although sentencing commissions are often created to promulgate sentencing guidelines, Task Force members focused their discussion largely on the potential benefits of constituting a commission that would serve other functions—and most significantly one that would collect, analyze, and distribute sentencing-related data. The Task Force further considered the composition of such a commission and the relevant interest groups that should be represented.

> (2) To give fair warning of the nature of the conduct proscribed and of the sentences authorized upon conviction;
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> (3) To define the act or omission and the accompanying mental state which constitute each offense;
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> (4) To differentiate on reasonable grounds between serious and minor offenses and to prescribe proportionate penalties therefor;
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> (5) To provide for an appropriate public response to particular offenses, including consideration of the consequences of the offense for the victim, including the victim`s family, and the community; and
>
> (6) To insure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized, the rehabilitation of those convicted, the promotion of their successful and productive reentry and reintegration into society, and their confinement when required in the interests of public protection."

[32] *See, e.g.*, CPL 65.00 (Sentence of probation), CPL 65.05 (Sentence of conditional discharge).

Finally, the Task Force considered the need to develop appellate caselaw on why a sentence may be considered "excessive."[33] The Task Force discussed ways in which to establish such caselaw, which could provide further guidance to practitioners and trial courts making initial sentencing determinations.

V. Recommendations Regarding Mandatory Minimums and Sentencing Guidance[34]

After careful study and discussion, the 24 voting members of the Task Force achieved consensus on many of the issues it considered. A substantial majority of the Task Force endorsed the recommendation to eliminate mandatory minimum sentences except for certain serious offenses. The Task Force also voted by a wide margin to recommend repealing statutory restrictions on pleas in situations in which both the court and parties consent. To the extent that mandatory minimum sentences were not eliminated, a substantial majority of the Task Force also voted to recommend enacting safety valve legislation which would allow courts to impose a sentence lower than the mandatory minimum if certain conditions are met.

The Task Force further recommended that sentencing guidelines not be enacted. The Task Force also voted by a wide margin to recommend enacting sentencing factors to be considered by courts in rendering sentencing decisions. The Task Force voted by a wide margin to recommend that specified sentencing data be collected, analyzed, and distributed to provide another resource for judges and the public, and that a sentencing commission be created to oversee the collection, analysis, and distribution of that data, in addition to being responsible for providing training to judges, recommending legislative changes to sentencing policy, and serving as a research center for policy reform. Finally, the Task Force voted to recommend requiring the Appellate Division to explain the reasons for an excessive sentence determination.

A. Recommendation Regarding the Elimination of Mandatory Minimum Sentences

Some members of the Task Force favored eliminating mandatory minimums entirely, believing that they lead to unnecessarily long sentences and do not allow for judicial discretion based on individual circumstances. Other members cautioned that, if such a recommendation were made, judges would be left without any guidance on an appropriate sentence range, which would be of particular concern in relation to especially egregious offenses. Though some members expressed a view that carveouts for certain offenses could create disparities in charging or plea decisions, many members felt that the nature of more egregious offenses (such as violent felony offenses) warrants a minimum sentence. The

[33] *See, e.g.*, *People v. Brisman*, 43 N.Y.3d 322, 327 (2025) (recounting the history of the Appellate Division's inherent power to reduce an unduly harsh or severe sentence).

[34] Several recommendations received considerable debate, reflecting deeply held and sharp differences of opinion on such issues. The fact that a given recommendation was approved does not mean that every Task Force member voted in favor of it.

Task Force also discussed forms of guidance for judges to avoid sentencing disparities in the absence of mandatory minimums (the findings regarding which are further described below in Sections D, E, and F).

Accordingly, the Task Force recommends eliminating all mandatory minimum sentences, except for certain enumerated offenses, such as: (1) intentional killing; (2) felony sex offenses; and (3) felony crimes of terrorism.

B. Recommendation Regarding Statutory Plea Restrictions

The Task Force debated the topic of statutory plea restrictions at great length, particularly given that the vast majority of cases are resolved through plea bargaining, with 96% of indictments in New York resolved through pleas in 2023.[35]

The Task Force recognized the necessary role of plea agreements in our criminal justice system, while also recognizing that some of the current statutorily mandated plea restrictions impose minimum charge requirements that prevent the parties from agreeing to a lesser sentence.

Statutory plea restrictions are governed by CPL 220.10, which outlines the minimum charge required for a plea of guilty for a particular offense. Specifically, CPL 220.10(5) restricts defendants from being able to plead down certain categories of charged offenses below minimum classes of offenses.[36] Thus, once a defendant has been charged with one of these categories of offenses, a minimum sentence is effectively imposed even if there is a plea, and even if a court does not agree with the sentence required as a result of the offense charged on a guilty plea.[37]

Many Task Force members expressed a view that the issue outlined above could be alleviated by repealing the CPL 220.10(5) statutory restrictions on pleas.

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[35] *See* Division of Criminal Justice Services, *Criminal Justice Case Processing Arrest through Disposition, New York State, January-December 2023* Table 11 (May 2024), https://www.criminaljustice.ny.gov/crimnet/ojsa/dar/dar-4q-2023-newyorkstate.pdf.

[36] The full text of CPL 220.10 can be found at: https://codes.findlaw.com/ny/criminal-procedure-law/cpl-sect-220-10/.

[37] *See Report of the Advisory Committee on Criminal Law and Procedure to the Chief Administrative Judge of the Courts of the State of New York* 12 (Jan. 2024), https://www.nycourts.gov/LegacyPDFS/IP/judiciaryslegislative/pdfs/DRAFT%20CPL%20Annual%20Report%202024%20Updated%204.4.2024.pdf ("For example, a defendant pleading guilty with a predicate felony conviction to a Class D non-violent felony (other than a narcotics crime), must receive a minimum indeterminate sentence of 2-4 years, even if the prosecutor, defendant and court believe a lower sentence is appropriate. In such circumstances, under current law, the court is powerless to accept a plea with a promised sentence of less than the statutory 2-4 year minimum term.").

By an overwhelming majority vote, the Task Force recommends the repeal of statutory restrictions, such as those contained in CPL 220.10(5), other than maintaining the requirement of consent of the parties and the court.[38]

C. Recommendations Regarding Safety Valve Legislation

A "safety valve" is a statutory mechanism that allows courts to deviate from an otherwise applicable mandatory minimum sentence if certain requirements under the statute are met. For example, under the federal safety valve, the court may sentence a defendant below the otherwise mandatory minimum sentence (generally by applying the federal sentencing guidelines)[39] when five requirements are met: (1) no one was harmed during the offense, (2) the person has little or no history of criminal convictions, (3) the person did not use violence or a gun, (4) the person was not a leader or organizer of the offense, and (5) the person told the prosecutor all that the person knows about the offense.[40]

The Task Force discussed whether safety valve legislation could provide an alternative solution in the event some or all current mandatory minimum sentencing laws remain in place, and ultimately recommended that some form of safety valve legislation be enacted.

1. Safety valve legislation should be enacted in the event mandatory minimums are in effect.

By an overwhelming majority vote, the Task Force recommends that, in the event that mandatory minimum requirements remain in effect, safety valve legislation be enacted, which would provide a mechanism for courts to sentence an offender to less time than an applicable mandatory minimum would require if the person or offense meets certain criteria.

2. Safety valve relief should be available for some or all offenses with a mandatory minimum sentence.

The question of whether safety valve relief should apply to all or only certain offenses received considerable debate. Task Force members were cognizant of the fact that the

[38] CPL 220.10(3) and (4) provide that defendants can plead to lesser included offenses or subsets of offenses charged, as relevant, upon the consent of the court and the people. The repeal of CPL 220.10(5) would not impact the requirements under those subsections, which would also apply to the offenses currently covered by CPL 220.10(5) once that subsection is repealed. It is also worth noting that the Unified Court System, on the recommendation of the Chief Administrative Judge's Advisory Committee on Criminal Law and Procedure, proposed similar reforms to CPL 220.10. *See* UCS 2025-23, Memorandum in Support, https://www.nycourts.gov/LegacyPDFS/advisory-groups/criminal-law-procedure/23-BillMemo-TS.pdf. Under that proposal, CPL 220.10(5) would be amended to allow courts to accept pleas below current statutory plea reduction thresholds with the consent of the prosecutor and defendant and impose upon predicate felony offenders any sentence authorized for offenders without such predicate convictions. *Id.*

[39] *See* "Safety Valves in a Nutshell," Families Against Mandatory Minimums (April 2018), https://famm.org/wp-content/uploads/2018/04/FS-Safety-valves-in-a-nutshell.pdf.

[40] *Id.*

impact of carveouts to a safety valve release would depend on what mandatory minimums the Legislature ultimately determines should remain in effect, if any. For example, if the Legislature implements the Task Force's recommendation to eliminate mandatory minimums for all but certain enumerated offenses, and the Task Force recommends carving out those same enumerated offenses from safety valve relief, then the practical effect would be no safety valve relief at all. Other members were in favor of safety valve relief for all offenses with mandatory minimum sentences, expressing the view that carving out certain offenses would prevent mitigating circumstances from being considered, such as a defendant who commits murder after suffering domestic abuse. Other members argued that certain offenses are so grievous they would not warrant safety valve relief under any circumstances.

Many Task Force members were in favor of making a high-level recommendation that the most serious offenses should be carved out from receiving safety valve relief but believed that the details regarding which specific offenses to disqualify should be left up to the Legislature.

Ultimately, the Task Force could not reach consensus on this issue, and the vote was equally divided between recommending that safety valve relief be available for any offense for which a mandatory minimum sentence is required (with no carve outs for specific offenses), and recommending that it be available for any offense for which a mandatory minimum sentence is required, except for certain enumerated offenses, such as: intentional killing, felony sex offenses, and felony crimes of terrorism.

3. Safety valve relief should require the consent of the sentencing court only.

The Task Force considered whether safety valve relief should require consent of the court only, or if prosecutorial consent should also be required. While a notable minority advocated that prosecutors' consent be required (in large part due to concerns regarding the potential for increased litigation and appeals), ultimately the majority of the Task Force believed that court approval was sufficient, consistent with the federal system, and that the risk of increased appeals is low given that most defendants appeal their sentences.

By an overwhelming majority vote, the Task Force recommends that safety valve relief require the consent of the sentencing court only.

4. A court should use an interest of justice standard when determining whether safety valve relief is appropriate.

The Task Force discussed the standard a court should apply to determine whether safety valve relief is appropriate, in particular considering either an "interest of justice" standard

(applied in other aspects of New York law) or a "substantial injustice" standard (proposed as part of the Justice Safety Valve Act).

Under New York caselaw, the "interest of justice" standard is understood with reference to CPL 210.40, which includes relevant factors for courts to consider when deciding motions to dismiss an indictment "in furtherance of justice."[41] CPL 210.40's factors include: (a) the seriousness and circumstances of the offense; (b) the extent of harm caused by the offense; (c) the evidence of guilt, whether admissible or inadmissible at trial; (d) the history, character and condition of the defendant; (e) any exceptionally serious misconduct of law enforcement personnel in the investigation, arrest, and prosecution of the defendant; (f) the purpose and effect of imposing upon the defendant a sentence authorized for the offense; (g) the impact of a dismissal upon the confidence of the public in the criminal justice system; (h) the impact of a dismissal on the safety of the community; (i) where the court deems it appropriate, the attitude of the complainant or victim with respect to the motion; and (j) any other relevant fact indicating that a judgment of conviction would serve no useful purpose.[42] Under the proposed Justice Safety Valve Act (referenced above in Section III), on the other hand, the "substantial injustice" standard requires considering the nature of the crime, history of the defendant, and chances of rehabilitation.[43]

The Task Force discussed the possibility of using the "substantial injustice" standard proposed in the Justice Safety Valve Act, but most Task Force members favored utilizing an "interest of justice" standard because it is already a well-established concept under New York law, with sensible factors for consideration that have been discussed at length with significant appellate authority.

By an overwhelming majority vote, the Task Force recommends that a court evaluate whether safety valve relief is appropriate using an interest of justice standard.

D. Recommendation Regarding Whether New York Should Adopt Sentencing Guidelines

The Task Force debated the merits and risks of imposing mandatory or advisory sentencing guidelines. Some members felt that guidelines help avoid significant disparity and lack of predictability in sentences across the state, which provide a sense of certainty to victims of crimes and their families, and to defendants regarding potential outcomes. However, after considering the negative consequences of guidelines in other states and the federal system,

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[41] *See People v. Clayton*, 41 A.D.2d 204, 206-07 (2d Dep't 1973) (explaining the procedure under CPL 210.40 to consider whether dismissal would be in the "interest of justice"); *see also People v. Tyler*, 46 N.Y.2d 264, 266 (1978) (referring to the factors enumerated in CPL 210.40 as "interest-of-justice considerations").

[42] *See* CPL 210.40(1).

[43] *See* New York City Bar Association, *New York State Legislative Agenda* 6 (2020), https://www.nycbar.org/wp-content/uploads/2023/05/2020625-2020NYSlegislativeAgenda.pdf#:~:text=regard%20to%20the%20nature%20of%20the%20crime%2C,necessary%20for%20the%20protection%20of%20the%20public.

as articulated by various speakers and reported by the Sentencing Commission Subcommittee, the Task Force overwhelmingly opposed mandatory sentencing guidelines. The Task Force concluded that mandatory guidelines would be overly restrictive and fail to accurately account for individual circumstances in sentencing, thus potentially leading to the very same issues posed by mandatory minimums.

The Task Force also discussed whether to recommend the adoption of advisory sentencing guidelines. A notable minority of members expressed support for recommending advisory sentencing guidelines to promote consistency in sentencing, and some sense of predictability for defendants and victims, while still preserving judicial discretion. These members expressed concern that failing to provide courts with any specific guidance on appropriate sentence ranges for different offenses could ultimately lead to significant disparities in sentencing. These members felt that nonbinding, advisory guidelines could serve as a resource for judges without constraining their ability to tailor sentences to individual cases by setting a baseline, noting that the federal system utilizes such an approach.

The majority of members opposed implementing advisory guidelines. These members raised concerns that providing an advisory sentencing range would risk creating a default range, leading to the restrictive consequences posed by mandatory minimums and potentially reinforcing racial disparities. Members also expressed that there are better ways to provide guidance for sentencing courts than adopting guidelines, such as disseminating sentencing data, which could establish consistency in sentencing over the long term.

By a majority vote, the Task Force recommends that legislation should not be enacted to adopt mandatory or advisory sentencing guidelines in New York.

E. Recommendations Regarding Sentencing Factors for Judges to Consider in Imposing Sentences

The Task Force spent considerable time discussing alternatives to sentencing guidelines that would provide courts with additional guidance to promote consistency without constricting them as mandatory minimums previously have done. Specifically, the Task Force deliberated over whether the Legislature should provide factors for the court to consider in determining a sentence. The Task Force also discussed how courts should consider such factors, including whether such consideration should be affirmatively made part of the record.

1. Courts should consider certain sentencing factors in making sentencing determinations.

The Task Force discussed the benefit of providing statutory guidance that would require courts to consider specific factors in determining an appropriate sentence, rather than mandating or advising a particular sentence range. Members expressed that this would provide guidance to courts while preserving discretion, and also encourage consistency since the same core considerations would be evaluated in determining an appropriate sentence. The Task Force also considered whether such factors should be utilized in every

situation, recognizing that in the case of a plea bargain, for example, the court may still impose the sentence but is largely effectuating an independent agreement between the parties.

The Task Force discussed whether to reference any specific statute or model in its recommendation, such as the factors enumerated in New York's existing criminal law in the context of conditional discharges, probation, and incarceration,[44] or the factors found in federal legislation, 18 U.S.C. § 3553(a). However, several members expressed concern that highlighting a particular model could be limiting, and ultimately the Task Force determined not to refer to any particular model in its recommendation.

The Task Force unanimously recommends that legislation be enacted requiring judges to consider certain factors in making sentencing determinations, to be determined by the Legislature, except when the sentence to be imposed is agreed upon by the parties.

2. Courts should articulate their consideration of such sentencing factors on the record.

The Task Force discussed whether the prior recommendation that a court "consider" certain factors in sentencing is sufficient, or whether courts should specifically make such considerations part of the record. Members broadly agreed that reforms should increase transparency in sentencing and that requiring judges to state their reasoning publicly promotes accountability and clarity in the judicial process. Members further discussed that such transparency benefits not only defendants, but also victims and their families. Members also noted that explaining sentences on the record would help educate the public at large, especially for high-profile criminal cases, and provide finality in the criminal process.

By a nearly unanimous vote, the Task Force recommends enacting legislation that requires courts to articulate on the record their consideration of the sentencing factors established by the Legislature, along with their reasoning for the sentence imposed, except in cases where the sentence to be imposed results from an agreement between the parties.

F. Recommendations Regarding the Gathering, Compilation, and Distribution of Sentencing Data

The collection, analysis, and distribution of sentencing data was a key topic for the Task Force's consideration. The Task Force extensively discussed the types of data that should be collected, as well as what information would be most helpful for courts to have in making sentencing decisions.

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[44] *See, e.g.*, CPL 65.05(1)(a) ("Except as otherwise required by section 60.05, the court may impose a sentence of conditional discharge for an offense if the court, having regard to the nature and circumstances of the offense and to the history, character and condition of the defendant, is of the opinion that neither the public interest nor the ends of justice would be served by a sentence of imprisonment and that probation supervision is not appropriate.").

The Task Force recognized that much of this data is already being collected (and analyzed or distributed in different ways) by both DCJS and OCA.

For example, these agencies collect a wide breadth of data from arrest to sentencing, including:

- demographic information of an arrestee, including sex, race, ethnicity, age (both at the time of the crime and the time of arrest);
- court and county specific data;
- data showing the top charge at arrest, arraignment, and conviction;
- whether the proceeding was on indictment, or a Superior Court Information ("SCI") (indicating a plea);
- pretrial release decisions made by judges upon arraignment (including release on recognizance, bail, or nonmonetary conditions, and remand to custody); and
- disposition (e.g., transfer to another court, guilty plea, Adjournment in Contemplation of Dismissal ("ACD"), dismissal).

1. Sentencing data should be gathered, compiled, and distributed.

The Task Force discussed how the above-referenced information could provide an important resource to judges in rendering sentencing decisions. There was broad consensus that access to data about sentencing trends is critical, serving an important role in future sentencing reforms.

The Task Force unanimously recommends that sentencing data be gathered, compiled, and distributed.

2. Sentencing data collected, analyzed, and distributed should include data already being collected by state agencies, as well as additional data.

Although the Task Force acknowledged that much data is already being collected, it considered additional data that should be collected and made available. The Task Force specifically discussed the importance of data showing the average and median sentences for each offense, or the geographical differences and disparities for sentences of the same offense. Members noted that DCJS recently launched a public dashboard that provides new data on the average and median felony sentences at the county level. DCJS also now maintains data on recidivism rates and individual defendant characteristics at the time of

parole determinations. The Task Force discussed the importance of this granular data and how additional sentencing data could be helpful.

The Task Force's most extensive discussion centered around whether data should be collected denoting the time actually served on a sentence. A notable minority of members raised concerns that the amount of time a defendant ultimately serves is an individualized metric that depends on factors outside the purview of the sentencing judge. Thus, these members felt it would be difficult to elicit trends from such data or to rely on it as probative of the time that would be served by a future defendant. The Task Force also debated whether including such information could distort the public's view about the length of sentences since certain contributing factors (such as whether a defendant receives merit time) depend on individual circumstances. The vast majority of Task Force members, however, emphasized the critical importance of promoting transparency by providing any available data, including data relating to time served. Task Force members also articulated the significance of being able to provide victims and their families with the most realistic idea of a defendant's true sentence length based on data.

In addition to data being collected, the Task Force discussed that it should be collated and analyzed to make it more accessible. Members specifically noted that it would be useful for whichever agency ultimately becomes responsible for such data, *see infra* at 23, to publish an annual report summarizing key trends. Members also emphasized that any agency tasked with these new responsibilities would require funding to ensure that the data could be effectively presented.

By an overwhelming majority vote, the Task Force recommends that statewide sentencing data to be gathered, compiled, and made available to assist in sentencing decisions, include but not be limited to data regarding:

(1) sentences for felonies;

(2) average and median sentences for each offense;

(3) the geographical differences (by region and counties) and disparity (by race and other relevant characteristics of the defendant) for sentences of the same offense;

(4) the time actually served on a sentence imposed (i.e., sentence, less good time, merit time, time deductions, and any other adjustments to sentence length); and

(5) sentences agreed upon by the parties, sentences imposed by the judge after verdict, and sentences imposed by the judge after a plea where the sentence is left to the court's discretion.

3. Sentencing data collected, analyzed, and distributed should include information to identify the sentencing analytics of specific judges.

The Task Force discussed whether information should be made publicly available as it relates to the identity of individual judges.

On the one hand, the Task Force discussed potential unintended consequences of revealing a judge's individual sentencing trends, including forum shopping and the targeting of judges. Members also noted that if the goal of publishing such data is to ensure judicial accountability in sentencing, then that is already addressed through the appellate process. The Task Force discussed whether such data would provide the full context for a specific judge's sentencing practices because other variables, such as the types of cases generally on a court's docket, may skew overall sentencing outcomes. The Task Force further discussed that even anonymizing identities might not be sufficiently protective because in lower-population upstate jurisdictions an individual judge could still be easily identified.

On the other hand, the Task Force discussed the importance of ensuring transparency to the public and accountability. In response to safety concerns which may result from the publication of judges' identities, some members expressed their views that harassment of judges usually arises from individual grievances related to specific cases, rather than general trends in their sentencing determinations. Members also raised the view that courtroom proceedings—including sentencings—are open to the public, so the data on sentencing outcomes for specific judges is already publicly available. Given the prior recommendations providing greater judicial discretion in sentencing, *see supra* at 18-19, members raised the importance of ensuring accountability by making such data available.

By a majority vote, the Task Force recommends that the statewide sentencing data made available include information that would identify the sentencing analytics of specific judges.

G. Recommendations Regarding a State Sentencing Commission

The Task Force spent considerable time discussing the utility of creating a sentencing commission and what its responsibilities would be, particularly in light of its prior recommendations that New York should not adopt sentencing guidelines, but that sentencing data should be collected, analyzed, and distributed.

From its research and review of all 50 states, the Task Force observed that 19 states currently have sentencing commissions, all of which are statutorily prescribed. While most of these sentencing commissions promulgate sentencing guidelines, several also serve other functions. For example, Connecticut and Illinois rely on their state sentencing commissions primarily for the purpose of data collection and reporting without promulgating guidelines.[45] At least five other states—Alabama, Massachusetts, Maryland, Minnesota, and Pennsylvania—task their commissions with collecting and reporting

[45] Conn. Gen. Stat. § 54-300 (b), (d) (2023); 730 Ill. Unified Code of Corrections 5/5-8-8 (b), (d).

sentencing data in addition to maintaining guidelines.[46] Others—such as the District of Columbia, Kansas, Maryland, Minnesota, and New Mexico—also rely on their sentencing commissions for training, research, and recommending legislative reforms.[47]

1. The responsibilities of a sentencing commission.

The Task Force deliberated over the role of a potential sentencing commission. Given the prior recommendations endorsing the collection, analysis, and distribution of data, and not the promulgation of sentencing guidelines, the Task Force discussed whether a commission was necessary. Some members questioned whether a commission was advantageous at all given potential bureaucratic delays in beginning its work, and whether the responsibilities should be added to that of an existing state agency. The Task Force also discussed potential additional responsibilities of a sentencing commission, such as providing training or proposing legislative reforms, in order to promote greater fairness in sentencing.

By a majority vote, the Task Force recommends that a sentencing commission be established, and its responsibilities include:

(1) oversight of the collection, analysis, and distribution of available sentencing data, as specified in the above recommendations;

(2) provision of training of judges in collaboration with the New York State Judicial Institute;

(3) recommendation of legislative changes to sentencing policy;

(4) serving as a research center for sentencing policy; and

(5) any other responsibilities that the Legislature determines to promote additional fairness in the sentencing process.

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[46] *See* John Speir, Lynda Flynt, and Bennet Wright, *The Alabama Sentencing Commission: Data Analysis and Simulation Enhancement Congressional Grant* 1-2 (2008) https://www.ojp.gov/pdffiles1/nij/grants/225390.pdf; *see also Learn about the Massachusetts Sentencing Commission*, Mass.gov, https://www.mass.gov/info-details/learn-about-the-massachusetts-sentencing-commission (last visited July 2, 2025); Maryland State Commission on Criminal Sentencing Policy, *2024 Annual Report* 42 (Jan. 31, 2025), https://www.msccsp.org/Files/Reports/ar2024.pdf; Minnesota Sentencing Guidelines Commission, *2023 Sentencing Practices Report: Summary Statistics for Felony Cases* 48 (Apr. 22, 2025), https://mn.gov/sentencing-guidelines/assets/2023_MSGC_Annual_Summary_Statistics_tcm30-680133.pdf; 18 PA Cons. Stat. § 3025 (2024).

[47] *See District of Columbia Sentencing Commission*, https://scdc.dc.gov/page/scdc-mission-statement; Kan. Sent'g Comm'n, *About Us: Goals & Objectives*, https://www.sentencing.ks.gov/about-us/goals-objectives; Md. Code Ann., Crim. Proc. §§ 6-209-13 (West 2025); Minn. Sent'g Guidelines Comm'n, *About MSGC*, https://mn.gov/sentencing-guidelines/about/; N.M. Sent'g Comm'n, *About the Commission*, https://nmsc.unm.edu/about.html.

2. The composition of a sentencing commission.

In terms of membership, the Task Force observed that statutes creating sentencing commissions in other states generally require the appointment of members with certain qualifications or expertise, such as sentencing judges, members of the criminal bar, and representatives from victim advocacy groups. Many statutes also contemplate the involvement of legislative leaders or other political appointees. The Task Force discussed the need to include a representative cross-section of constituencies on any commission. In particular, the Task Force emphasized the need to ensure representation by formerly incarcerated individuals, who the Task Force believed would provide especially relevant perspectives.

In a nearly unanimous vote, the Task Force recommends that a statewide sentencing commission include appointees who are:

(1) former or active judges;[48]

(2) appointees of the state legislature;

(3) members of the defense bar;

(4) members of the bar currently serving as prosecutors;

[48] The Task Force discussed the constitutional implications of active judges serving on such a commission. The New York State Constitution permits active judges to "hold any other public office or trust" so long as that office is "in relation to the administration of the courts." *See* N.Y. Const. art. VI, § 20(b)(1). Whether an office is "in relation to the administration of the courts" depends, at least in part, on the appointing authority, particularly whether it is the judicial branch or a different branch of government. *See, e.g.*, *Soares v. State*, 68 Misc.3d 249, 282 (N.Y. Sup. Ct., Albany Cty. 2020) (relying on *People v. Hall*, 169 N.Y. 184 (1901)); *In re Richardson*, 247 N.Y. 401, 410 (1928) (rejecting statute allowing governor to appoint sitting justice to perform executive acts relating to removal of a public officer). Service has been permitted in other contexts where the appointment is made by the Chief Judge. For example, the New York State Ethics Commission requires that "[t]wo members shall be State-paid judges or justices of a court or courts of the Unified Court System" and that they be "appointed by the Chief Judge of the State of New York, upon consultation with the Administrative Board of the Courts." *See* New York State Ethics Commission for the Unified Court System, 2020 Commission Report, Appendix A, Section 40.1(b), https://www.nycourts.gov/LegacyPDFS/ip/ethics/20_Ethics_Commission-Report.pdf. Notably, however, the Constitution itself contemplates active judges being appointed by the governor, requiring that "[o]f the members appointed by the governor" to the Commission on Judicial Conduct "one shall be a judge or justice of the unified court system." *See* N.Y. Const. art. VI, § 22. The Advisory Committee on Judicial Ethics has also issued opinions on the subject, finding that the appointment of an active judge by another branch of government is appropriate if service is concerned with "the improvement of the law." *See, e.g.*, Opinion 99-88 (Sept. 14, 1999), https://www.nycourts.gov/ipjudicialethicsopinions/99-88.htm (permitting family court judge to serve on the Governor's Task Force on School Violence); Opinion 96-137 (Dec. 12, 1996), https://www.nycourts.gov/ipjudicialethicsopinions/96-137.htm (permitting elected judge to serve on the governor's advisory council on women's issues, gender bias committee, and DCJS's advisory council). The Task Force makes its recommendation as to the service of active judges on a sentencing commission to the extent such service is constitutional but takes no position on the matter.

(5) members of the academic community with a background in criminal justice research;

(6) representatives of a victim advocacy group;

(7) formerly incarcerated individuals or representatives of an advocacy group for formerly incarcerated individuals; and

(8) health clinicians or social workers.

H. Recommendation Regarding Excessive Sentences

It is well established that intermediate appellate courts in New York have "broad, plenary power" to reduce a sentence without any deference to a sentencing court.[49] This power is not only statutorily prescribed through the appellate courts' interest of justice powers,[50] but also enshrined in the constitutional reforms of 1959.[51] The Appellate Division's power to review sentences is, therefore, part of the foundational fabric of New York's criminal laws, allowing them to modify any sentence they determine to be "harsh and excessive."[52]

Against this backdrop, the Task Force discussed the importance of preserving that power by developing a body of caselaw that defines a "harsh and excessive" sentence. The Appellate Division routinely exercises its interest of justice jurisdiction to reduce sentences deemed to be excessive and, although it sometimes provides reasons for reducing sentences,[53] more often than not no reasoning is given for such reductions. The Task Force discussed that greater reasoning would be helpful to clarify the Appellate Division's excessive sentence determinations. Members also raised that this gap in the criminal justice system deprives practitioners and defendants of any cognizable legal standard when arguing for or against such claims, and also fails to provide sentencing courts with proper guidance when imposing the sentence in the first place. The Task Force discussed the benefits of providing this guidance, which would serve as an additional resource for

[49] *See Brisman*, 43 N.Y.3d at 327 (2025) (citing *People v. Delgado*, 80 N.Y.2d 780, 780 (1992)).

[50] CPL 470.15(6)(b).

[51] *See People v. Pollenz*, 67 N.Y.2d 264, 269 (1986); *see also* N.Y. Const. art. 6, § 4(k).

[52] *See People v. Suitte*, 90 A.D.2d 80, 85-86 (2d Dep't 1982) ("Appellate review of sentences obviously is a useful means of diminishing sentencing disparity and ensuring the imposition of fair sentences . . . The power to substitute discretion helps us to meet recommended sentence review standards by making any disposition the sentencing court could have made, except an increased sentence. Without the substitution power, our ability to rectify sentencing disparities, reach extraordinary situations, and effectively set sentencing policy through the development of sentencing criteria, would be sorely handicapped." (citations omitted)).

[53] "The Appellate Division may reduce a sentence in the interest of justice by taking into account a defendant's age, physical and mental health, his or her cooperation with authorities, remorse and expressed regret, and the emotional and professional toll the conviction may have taken on the defendant . . . A sentence may also be vacated in the interest of justice due to health problems of a person dependent on the defendant for care." 34B N.Y. Jur. 2d Criminal Law: Procedure § 3694 (listing cases).

sentencing courts in the absence of mandatory minimum sentences. It could also help reduce—and ultimately eliminate—sentencing disparities by better defining why sentences are harsh or excessive.

The Task Force also debated whether requiring the Appellate Division to articulate its reasoning for an excessive sentence would have a chilling effect and result in fewer instances of excessive sentence findings. Members also considered whether such a requirement would have the unintended effect of creating a new avenue for appeal. While the Court of Appeals ordinarily lacks jurisdiction to review excessive sentence determinations,[54] members raised whether requiring an explanation by the Appellate Division creates a reviewable "question of law." The Task Force discussed whether that would impede the Appellate Division's discretion in finding a sentence excessive in the first place.

By a majority vote, the Task Force recommends that legislation be enacted to require the Appellate Division to explain on the record the basis for determining that a sentence is excessive.

[54] *See People v. Thompson*, 60 N.Y.2d 513, 521 (1983) ("It is well settled that any question as to whether an otherwise lawful sentence is harsh or severe in a particular case involves a type of discretion not reviewable by the Court of Appeals.").