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Impact of Changes in the Delaware Drug Trafficking Law

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STATE OF DELAWARE
EXECUTIVE DEPARTMENT
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IMPACT OF CHANGES IN DELAWARE'S DRUG TRAFFICKING LAW
JANUARY 1990 REPORT

Beginning in July 1989, Senate Bill No. 142 changed the thresholds for the amount of illegal drugs necessary for being convicted of drug trafficking under Delaware Title 16 Section 4753A. Conviction under this statute requires a mandatory sentence. Illicit drugs affected by this change include cocaine, heroin, methamphetamine, amphetamine, and phencyclidine (PCP). Marijuana, although a part of Title 16 Section 4753 is not affected by Senate Bill No. 142. A mandatory sentence in Delaware is served as "flat time". That is, the full term must be served; there is no reduction in the sentence for parole or good time credits. The table below shows the change in the ranges for weights of drugs as they relate to the different mandatory sentence.

RANGES FOR MANDATORY SENTENCES
and AMOUNT OF DRUGS

3 Year Mandatory Sentence		
	<u>Old Law</u>	<u>New Law</u>
C.A.M.P.	15 to 100 grams	5 to 50 grams
Heroin	8 to 20 grams	5 to 15 grams

5 Year Mandatory Sentence		
	<u>Old Law</u>	<u>New Law</u>
C.A.M.P.	100 to 250 grams	50 to 100 grams
Heroin	20 to 50 grams	15 to 50 grams

15 Year Mandatory Sentence		
	<u>Old Law</u>	<u>New Law</u>
C.A.M.P.	250+ grams	100+ grams
Heroin	50+ grams	50+ grams

Notes C.A.M.P means cocaine, amphetamine, methamphetamine, and phencyclidine(PCP). A "market dose" of cocaine is considered to be .25 of a gram. It takes 20 or more doses to exceed the 5 gram threshold.

CHANGING DRUG TRAFFICKING ARREST PATTERNS

Delaware State Police data show that drug trafficking arrests have increased by 21 percent when the first ten months of 1988 are compared with the first ten months of 1989. The primary reasons for this increase are increased law enforcement efforts and the impact of the new drug trafficking law that reduced the threshold amount of an illicit drug needed for a drug trafficking arrest.

When drug trafficking arrests for the first six months of 1988 and 1989 are compared, they are shown to have increased by 14 percent -- from 65 to 74 arrests. This 14 percent increase is probably due to the increased size of the State Police drug unit and the increased drug enforcement effort by most law enforcement agencies in the state.

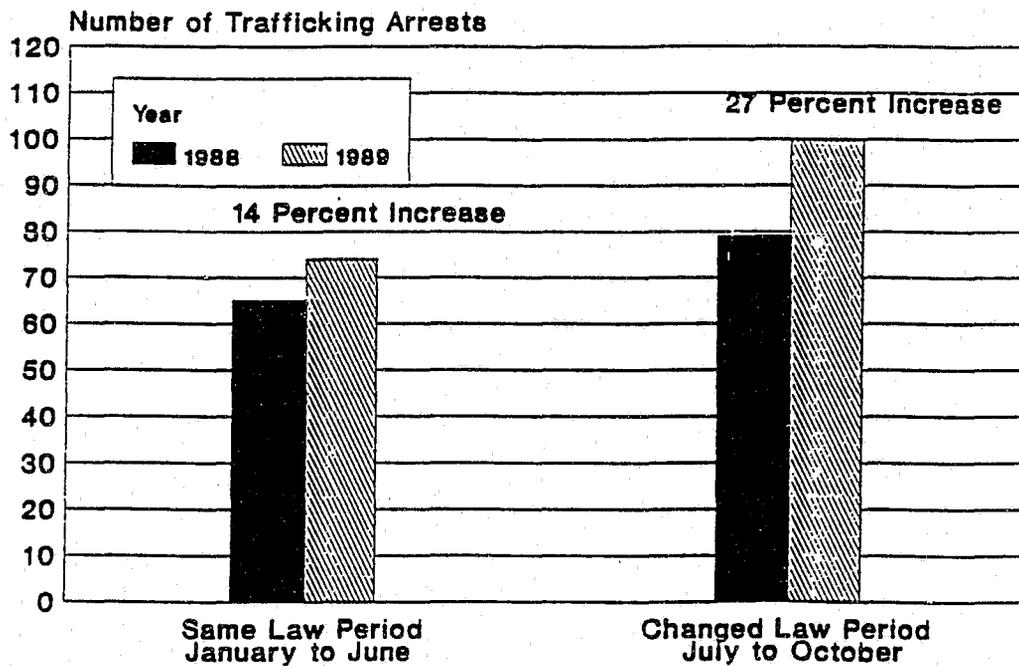
When the July to October period for 1988 and 1989 are compared, it is found that drug trafficking arrests have increased by 27 percent -- from 79 to 100 arrests.

The 1989 July through October period includes the combined effects of the increased law enforcement effort and the impact of the lower threshold for the amount of illicit drugs necessary to make a drug trafficking arrest (from 15 to 5 grams). Of the 27 percent increase, it appears as though the impact of increased law enforcement efforts and the lower illicit drug threshold are nearly equal. Assuming that the 14 percent increase due to increased law effort noticed in the first six months of 1989 carries forward into the next four months, then the increase due to the new law would be 13 percent.

The graph on the following page entitled "Impact on SB 142 on Drug Trafficking Arrests" provides a visual summary of this change.

It is important to know how much and why drug trafficking numbers are increasing, however, it is also important to understand what impact of increased arrests have on the operations of the judicial system and the Department of Corrections. These impacts are reviewed in the following sections.

Impact of SB 142 on Drug Trafficking Arrests 1988 Versus 1989



Data Source: Delaware State Police

IMPACT ON COURTS, PROSECUTION, and PUBLIC DEFENSE

The table on the following page entitled "Impact of Senate Bill 142 -- Number of Persons" shows the number of persons that had illicit drug exhibits "logged in" at the Medical Examiner's office that qualify for a drug trafficking offense under the old and new law. These data have been provided through a joint project of the Medical Examiner Office and the Statistical Analysis Center. The analysis is based on the Medical Examiner cases logged in between July 1, 1989 and October 31, 1989.

Between July and October 1989, 38 persons would have fallen under the drug trafficking statute under the old law. Under the new law, 101 fall under drug trafficking statute; an increase of 63 persons or 166 percent.

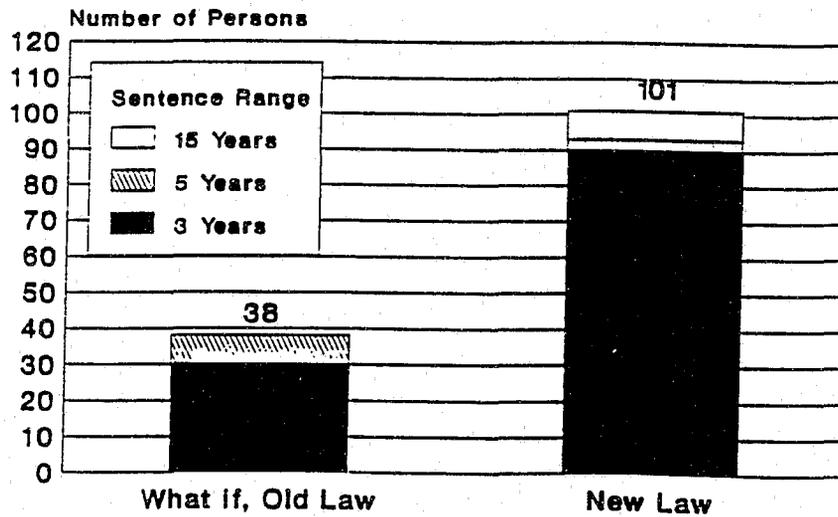
The reduction of the threshold from 15 to 5 grams for trafficking of illicit drugs increases the number of persons in the 3 year mandatory sentence range from 30 to 90 persons. The number of persons in the 15 year mandatory range increases from 0 to 8. The reason for the increase of the 15 year sentences is that the illicit drug possession threshold was decreased from 250+ grams to 100+ grams under the new law.

A workload increase is expected for the courts, prosecution, and the Public Defender because of the change in the drug trafficking law. The judicial process will have about 63 more persons to handle from the July to October period than would be expected without the change in the law. On an annual bases, if all remain constant, the number of additional persons that need to be handled for drug trafficking charges in the judicial system is 189. Prior to the new law these cases would probably be handled under different charges. Some would have been handled as possession with the intent to deliver -- with a prior drug conviction (these cases have a three year mandatory sentence). Other cases would have been handled as possession with the intent to deliver -- no prior drug conviction (some of these cases received a Level V sentence of about 1 to 2 years). And still, other cases would be handled as drug possession and possibly as a diversionary first time possession (4764) (It is unlikely that these cases would receive a Level V sentence).

Because the Attorney General has announced that drug trafficking cases will not be plea bargained under the new law, conventional wisdom indicates that many of these persons may be going to trial. If this is the case, then even the process relating to the "old" drug trafficking cases may be affected. If so, then the workload for the judicial process would be based on the full 101 persons (303 on an annual bases) identified in the first four months under new law and not just the 63 new persons.

Currently, the disposition of these cases in terms of crime charged at indictment, and type of trial or plea bargain is not known. The Attorney General's office, however, is working with the Statistical Analysis Center to identify and track these cases. As this information becomes available, it will be provided in an updated report.

**Impact of Senate Bill 142
Number of Persons
July through October 1989**



Sentence Range	What if, Old Law	New Law
15 Years	0	8
5 Years	8	3
3 Years	30	90

Medical Examiner Cases

IMPACT ON PRISON BEDS

In 1995, the full impact of SB 142 would be realized in the prison system. At that time, it is estimated that 716 additional beds would be needed in the prison system to accommodate the impact of the new law.

Using the assumption that each of the persons identified in the Medical Examiner's data is convicted and sentenced to a mandatory term related to the weight of the drugs, the first four months of experience show that 63 additional persons would be sentenced under the new law. Not all of these additional persons, however, would require additional prison bed space because some of them would have also served time under the old law.

Using case processing estimates from the Attorney General's office, it is calculated that 19 out the 63 additional persons would have served some time at Level V which would have required 35 beds. The remainder would have served time at sentencing levels lower than Level V. These cases need to be removed from the estimate for the bed impact of the new drug law.

Eight of the 19 who would have served time under the old law, would have served a 3 year mandatory sentence because they had a prior conviction for a drug offense (Title 16 Section 4764 priors do not count as criminal history) and were convicted under possession of a illicit drug with the intent to deliver (Title 16, Section 4751). Eleven of the 19 who would have served Level V time under the old law would have plead to a lesser charge and been sentenced to between 1 and 2 years. On average, they would have actually served about 1 year.

Even when the 19 persons who would have served at least some time at Level V under other drug statutes under the old law are subtracted, 370 instead of 405 beds would be needed to house the trafficking offenders which 239 more beds than would be needed under the old law. See the graph on the next page entitled "Impact of Senate Bill 142 -- Bed Impact" for a summary of the estimated impact of the first four months under the new law.

Extrapolating the first four months of experience under the new law to a full year, it is found that 153 additional persons would be serving a mandatory sentence under the new law in the first year. The prison population would increase by 153 persons per year until 1995, when the full impact of 716 beds would be realized. The average time served would be about 4.7 years.

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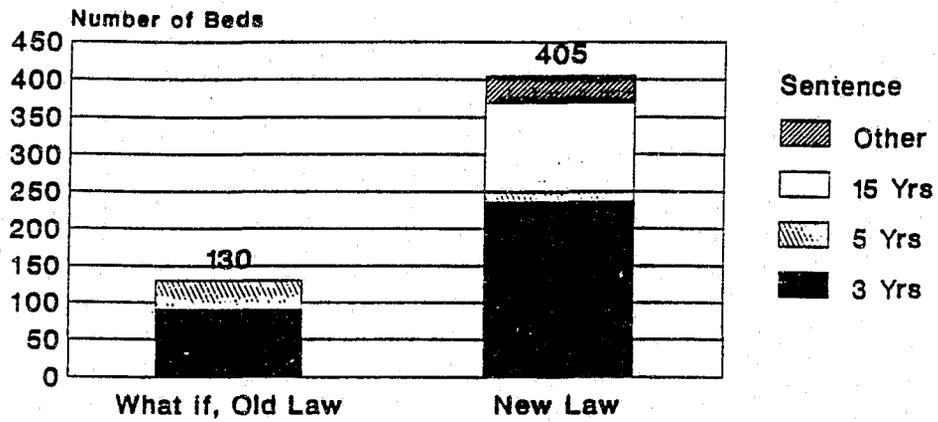
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**Impact of Senate Bill 142
Bed Impact
July through October 1989**



Other means that the persons would have been sentenced under another drug statute under the old law.

ADDITIONAL ANALYSIS IN THE WORKS

Case Processing

As was mention in the section IMPACT ON COURTS, PROSECUTION, and PUBLIC DEFENSE, the cases identified in the Medical Examiner's records are be tracked through the Attorney General's office to determine the crime for which the individual is indicted and whether or not the case is scheduled for and has gone to trial.

Deterrent Effect

One of the theories related to the lower threshold and harsher penalties for drug trafficking, is that drug dealers will become aware of the 5 gram threshold and begin to transport and market smaller quantities of illicit drugs. It is hypothesized that a bulge of cases just under 5 grams will be created by the deterrent effect and the number of trafficking arrests and systems impacts would decrease.

Pattern of the Illicit Drug Market

It is impossible to know the actual structure of the illicit drug market, however drug arrests and Medical Examiner analyses provide the most descriptive profile for the types and weights drugs being distributed. Additional analysis is being conducted in an attempt to provide a periodic display of illicit drug patterns. This information would be helpful for making "quick" estimates relating to new initiatives relating to illicit drug laws and programs.

TECHNICAL NOTES:

An exact relationship between arrest, Medical Examiner's results, and the charge at indictment does not exist. Some of the July Medical Examiner cases are actually June arrests and some July arrests will not appear at the Medical Examiner's office until some months later. Moreover, some of the trafficking arrests are not supported by a finding of the correct weight or even an illicit drug. These cases are indicted with a less serious offense or the charges are dropped. Then again, a nontrafficking drug arrest may result in a drug weight of 5 grams and, later, be indicted as drug trafficking. It also has to be determined how many of the cases are processed in the federal court rather than the state courts.

It has also been discovered, that in some of the multiple persons cases not all defendants are charged with drug trafficking because of different levels of culpability. Furthermore, July was not particularly high in terms of the number of drug cases received and processed by the Medical Examiner's office. The implementation of the new drug trafficking law may have contributed to this low number.

Because these data difficulties have offsetting bias, it is unknown what the impact on this report's outcomes will be. From a general view, however, things appear remarkable simple. For example, the 100 case filings in Medical Examiner's Office in the first four months following the implementation is very close to the number of drug trafficking arrests (101) in the same period. This may indicate that where is not a perfect match, when the data is closely scrutinized, over time things may average out.