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Mandatory Sentencing in Delaware, 1981-1991

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Preface

In this century mandatory sentencing laws have periodically served state and federal government as a means of highlighting, and punishing specific types of crimes. It was hoped that meting out mandatory sentences would reduce the occurrence of the targeted crimes. Crimes like murder, rape, robbery and weapons used during the commission of a crime have been long standing targets for mandatory sentences. Recently, as a result of the escalating illicit drug problem, mandatory sentencing laws targeting drug trafficking have been adopted by federal and state governments.

This study, which provides an extensive review of all current Delaware Mandatory sentencing laws, shows a complex picture. First, there are many more mandatory sentencing laws "on the books" than is generally known — 184 sections with more than 222 mandatory sentencing provisions. The great majority of these laws lay dormant in disuse. Also, mandatory laws are nothing new: the oldest currently active law discovered during the writing of this study dates back to 1852. Moreover, where mandatory sentences are actively applied, there is often a combined effect of increased arrests and increased time served which leads to significant increases in prison populations — and thus tax payers' costs. Fourth, there is no clear evidence that these remarkable efforts obtain a systemic reduction in the occurrence of the targeted crimes. The only saving argument is that extended incarceration does deter the sentenced individuals from committing more crimes.

To say that certain criminal acts should not be targeted for special attention is unrealistic and unfair. At the very least, mandatory sentences serve the social role of recognizing particularly troublesome, abhorrent, and anti-social behavior as events that need to be addressed. However, to argue that mandatory sentencing should be or can be the primary tool to cure our most urgent and frightening social problems is off the mark. Mandatory sentencing may address our short-term frustrations but it has not proven in the long term to be an efficacious nor an equitable solution.

A positive outcome of this study would be a re-focusing of ideas and resources toward new programs that utilize the framework of Delaware's Sentencing Accountability (SENTAC) and Truth in Sentencing Acts. Already under these guidelines, criminals sentenced for violent crimes are serving significantly longer terms of incarceration. Likewise, offender accountability is increasing as the Judiciary and the Department of Correction incrementally institute a set of hierarchical sanctions, surveillance, and programs. We have become much more capable as a State to monitor offenders as they "flow down" through the SENTAC hierarchy. These experiences provide feasible alternatives to mandatory sentencing and for the efficient use of our scarce resources.

Executive Summary

This report examines the use and the effects of mandatory sentencing in Delaware over the past decade. In the most general sense, a mandatory sentence as prescribed in a Delaware statute directs the court to sentence an offender upon conviction to a minimum term of incarceration.

Mandatory sentences in Delaware law are found in criminal statutes, in specific sentencing statutes, and throughout the administrative and regulatory titles of the Delaware Code. This survey of Delaware statutes covers all the titles in the Delaware Code and traces the earliest account of an active mandatory sentencing statute back to the year 1852. In total, 184 statutes containing mandatory sentencing provisions are identified in this study, of which 47 were used from 1981 to 1991. Most mandatory sentencing provisions that have received little if any application are located in administrative and regulatory chapters of the Delaware Code. The mandatory sentencing provisions which are most often used are found in the Traffic Code, the Criminal Code and the Controlled Substances Act.

In the structure and application of Delaware mandatory sentences one finds five types of mandatory statutes that differ in definition, application, discretion granted to the court, and resource impact:

1. Mandatory Criminal Statutes: the statute proscribing the crime also establishes the penalty.
2. Mandatory Sentencing Statutes: in this case the sentencing statute determines the length of the mandatory sentence. Since Truth in Sentencing took effect on June 30, 1990, the Criminal Code's sentencing statute (section 4205(b)) has set the minimum terms of imprisonment at 15 years for class A felonies and 2 years for class B felonies.
3. Mandatory Repeat Offender Statutes: these apply only upon a repeat or subsequent offense. In certain instances these statutes contain language to the effect that *the minimum mandatory term of imprisonment shall be 3 years notwithstanding section 4205(b) of Title 11* which overrides the requirements of a mandatory sentencing statute.
4. Habitual Criminal Mandatory Sentencing Statutes: (a) The Criminal Code's Habitual Criminal statute requires life imprisonment without probation, parole, substitution, good time, or any other reductions. (b) The Drug Control Act's section 4763 enhances the minimum mandatory terms for prior narcotic/non-narcotic offenders. (c) The Traffic Code's section 2810 calls for a one year minimum mandatory term for habitual traffic offenders who drive after the Court orders their driving privilege revoked.
5. Mandatory Time and Fine: their provisions require incarceration and the payment of a fine.

Since the great majority of the mandatory sentencing statutes found in the Delaware Code are not used, this study focuses on the 18 mandatory statutes which are used most often. These 18 mandatory statutes account for over 95 percent of all mandatory sentenced admissions to the

Department of Correction. The pattern, extent, and trends of use of mandatory sentences were compiled by using the Department of Correction's computerized admissions and sentencing information system. Sentencing orders issued by the courts do not always clearly identify the specific section or subsection of the Delaware Code which an offender violated, making it difficult to identify the exact rationale of many sentences. Some idea, however, of the extent of mandatory sentencing provision usage is estimated by examining the pattern of sentence lengths for statutes containing mandatory sentencing language.

As expected, sentences are longer for defendants sentenced at or above the minimum mandatory terms. On average, Criminal Code (Title 11) sentenced admissions are 13.7 years longer for those sentenced above the minimum mandatory term. Sentenced admissions for Drug Control Act (a part of Title 16) statutes, as well as Traffic Code (Title 21), follow the expected pattern: On average, drug offense admissions for criminals sentenced within the minimum mandatory range are 4.4 years longer than those sentenced below the minimum range. In Title 21 we find the largest admission contributors to this study, and sentenced admissions which fall within the minimum mandatory range 97.2 percent of the time and are, on average, a month longer than those below the minimum mandatory range.

Mandatory Sentencing Overview

This section provides an overview of some of the issues and impacts related to mandatory sentencing. It provides the reader with background information to be considered when reading the later sections of this report and when pondering the history and application of these mandatory sentencing statutes.

A mandatory sentence requires a minimum term of incarceration following conviction. Thus, by definition, it is not possible to suspend a mandatory sentence for a non-incarcerative alternative punishment. In many situations mandatory sentencing statutes limit or deny access to traditional means of reducing the actual time served such as 'good' or earned time credits, furlough, early release, and/or parole.

The Attractiveness of Mandatory Penalties

Mandatory sentencing is enticingly straight forward and delivers a tough social message: If you do the crime; you will do the time. Moreover, mandatory sentencing satisfies a need for **certainty** and **efficiency** in government. Justice under mandatory sentencing appears simple, swift, and sure and it implies no plea bargaining and no deals. The purposes of mandatory sentencing are to provide tough and certain punishment, and to heighten the potential for specific and general deterrence.

Specific deterrence is achieved when offenders are incarcerated: an offender cannot commit crimes in our State while incarcerated. The longer the criminal is locked up, the longer we are protected. Moreover, after enduring the enhanced punishment meted by a mandatory sentence an offender should tend to avoid future criminal behavior.

General deterrence works when we learn from the consequences of others' actions. Therefore, under *general deterrence* those who might be entertaining plans to commit a crime punishable by a mandatory sentence would recognize the certainty of the penalty and be deterred from committing the crime. General deterrence is not based on a one-to-one relationship where the offender and the punishment are directly linked. Therefore, it requires a very public means of communicating if the certainty of punishment message is to deter potential offenders.

To get the general message across proponents of mandatory sentencing sometimes use the mass media to make the public aware of the enhanced punishment. In Delaware to support the three year mandatory minimum for drug trafficking¹ billboards on Interstate 95 proclaimed: "If you do hard drugs you will do hard time." While in Michigan, to support a new two year mandatory for possession of a firearm during the commission of a felony, the Wayne County prosecutor

¹See section on *Special Mandatories* for a more detailed discussion of this mandatory penalty.

"launched a major publicity campaign, promising on billboards and bumper stickers that 'One with a Gun Gets You Two.'"²

Sometimes, passing "get tough" criminal laws can get a little out of hand. For instance, between 1977 and 1988 the California "Legislature made more than 150 changes in the penalties for various crimes. Most of these piecemeal changes came about as legislators, responding to public outcry over high-profile crimes, made sentences tougher." California's sentencing system is described as "chaotic" and "so complex that it is often compared to the Internal Revenue Service Code."³

The Delaware prison population is made up of a significant proportion of convicts incarcerated under minimum mandatory sentences. On June 30, 1992, the prison population (sentences greater than one year) was 2,604. Of this population 29 percent consisted of offenders sentenced for only two of the States' minimum mandatory statutes: habitual offenders with life sentences (400), and drug trafficking (360).

The goal of specific deterrence in this example is abundantly clear: With 400 lifers⁴ locked up until they die and 360 drug traffickers locked up for an average of 43 months (3.6 years) Delaware keeps a significant number of offenders off the streets. Yet general deterrence and its purported impact on future crimes is nebulous. Homicides have remained relatively stable over the past decade (which is a promising sign). Yet, the number of reported forcible rapes has steadily increased over the past decade. Moreover, there is no evidence that the number of drug crimes or other social ills due to illicit drug use have decreased due to Delaware's mandatory drug trafficking law, whose penalties have been publicly advertised and discussed.

Another attractive feature of mandatory sentences is that they provide elected officials with the opportunity to make powerful policy statements. "Calling and voting for mandatory penalties, as many state and federal officials repeatedly have done in recent years, is a demonstration that officials are 'tough on crime.'"⁵

The Changing Roles of Mandatory Sentencing

Mandatory sentencing is a special type of sentencing that enhances the *normal* sentencing process. Mandatory sentencing statutes by being different can purport to have a deterrence effect. As they are **tougher** and the punishment is more **certain** than the normal means of sentencing.

Today, there are two major types of sentencing systems or philosophies being used in the United States — indeterminate sentencing and structured sentencing. These types of sentencing systems

²Tonry, Michael. 1992. "Mandatory Penalties," in *Crime and Justice: A Review of Research*, v. 16, edited by Michael Tonry. Chicago: University of Chicago Press, p. 264.

³Pristin, Terry. "Bill to Revamp Sentencing Laws Put Off as Too Costly," *Los Angeles Times*, June 15, 1988.

⁴Lifers are primarily murder and sex offenders.

⁵Tonry, p. 244.

and their relationships vis-à-vis mandatory sentencing produce very different conclusions about mandatory sentencing.

Indeterminate Sentencing

The first indeterminate sentencing system became law in Ohio in 1885.⁶ Following Ohio's lead, indeterminate sentencing was gradually adopted by all states and remained the nation's sentencing system through the 1970s. Indeterminate sentencing encourages "individualized" sentencing where rehabilitation of the offender is a key determinant for release from incarceration. Generally, a judge issuing an indeterminate sentence sets the term of incarceration at the maximum allowed by law. The actual time served is later determined by the parole board which, in its own judgment of the offenders' rehabilitation, determines the date of release and hence, the actual time served. Uncertainty abounds under indeterminate sentencing. Similar offenders with similar offenses can have significant variations in time served, varying from very short to very long sentences.

Although indeterminate sentencing is one of the *norms* for sentencing, mandatory sentences are frequently found sprinkled throughout the states' criminal statutes and sentencing laws. In many cases mandatory sentences are passed in the legislatures for the specific purpose of curtailing the decision making authority of the parole boards. Sometimes, they are enacted as a response to a particularly heinous and highly publicized crime.

Whereas, a key characteristic of indeterminate sentencing is uncertainty, mandatory sentencing provides a radical departure. One of the aims of mandatory statutes is to introduce certainty of punishment to sentencing. Moreover, time served under a mandatory sentence is often more severe than the time served under indeterminate sentencing.

In Delaware, for offenders convicted up to 1990, a parole release date can be established after a minimum of one-third of the sentence has been served. In addition to a one-third term parole date, time served is further reduced by a complex system of meritorious good-time credits. With the merit and good-time credits combined, it is not uncommon for offenders under Delaware's indeterminate system to serve no more than one-fifth or one-fourth of their sentence. Ironically, criminals incarcerated for the most serious offenses accrue the largest percentage decreases in actual time served.⁷ Indeterminate sentencing was replaced in Delaware by the Truth in Sentencing Act of 1990, which ushered in determinate sentencing.

Structured Sentencing

Structured sentencing is also referred to, sometimes interchangeably, as determinate, fixed, or *truth in sentencing*.

In the 1980s as a response to dissatisfaction with the mixture of indeterminate and minimum mandatory laws, the federal and many state governments began to implement structured

⁶Frost, Martin. 1982. "Sentencing Disparity: An Overview of Research and Issues," in *Sentencing Reform: Experiments in Reducing Disparity*, edited by Martin Frost. Beverly Hills: SAGE Publications, p. 17.

⁷O'Connell, John P. 1989. *Impact of Truth in Sentencing on Jail and Prison Populations*. Dover: Delaware Statistical Analysis Center.

sentencing systems. These sentencing systems sought to establish sentencing schemes that "would increase sentencing effectiveness by requiring sentences that are more certain, less disparate, and more appropriately punitive."⁸

In the federal sentencing system, the dissatisfaction with sentencing disparity found in the then indeterminate sentencing system lead Congress to grant the US Sentencing Commission a "mandate ... to produce a guideline system that would produce fair sentences and sharply curtail the unwarranted disparity ... that Congress found 'shameful.'"⁹ Underlying this concern of Congress' was the perception that criminal sentencing was comparable to a "lottery," with extremely wide variations in sentences for the same crime, circumstance, and criminal history.¹⁰

Dissatisfaction with indeterminate sentencing was not confined solely to the Federal Government. In a 1987 comparative sentencing study, the State of Virginia reviewed 19 purpose statements from state and federal structured sentencing guidelines.¹¹ This study found that all structured sentencing guidelines stress a commitment to achieve sentencing that is fair, and proportionate in the sense that similar crimes would receive similar punishments.

In most states where structured sentencing guidelines were initiated the indeterminate sentencing system's parole boards were abolished; thereby, restoring sentencing discretion to the judiciary. In some ways, structured sentencing emulates mandatory sentencing. It ensures that sentences become more certain, and that time served be *fixed* by the courts. For instance, Delaware's 1990 Truth in Sentencing Act requires that all felony A and B crimes result in *at least* 75 percent of the sentence being served in either jail or prison (a Level V setting).

The contrast between structured sentencing and mandatory sentencing; therefore, is not as stark as when mandatory sentencing is compared to indeterminate sentencing. Certainty of punishment, the cornerstone of mandatory sentencing, is also achieved under structured sentencing, thus diminishing one of the attractive characteristics of mandatory sentencing. This leaves severity of punishment as the remaining distinctive characteristic of mandatory sentencing. Time served for violent offenses has actually increased under Delaware's SENTAC and Truth in Sentencing Acts further diminishing the difference between mandatory sentences and structured sentencing.

The Erosion of the Adversarial System of Justice

Unfortunately, mandatory penalties undermine structured sentencing systems by introducing disparity and shifting sentencing discretion away from the judiciary. William W. Wilkins Jr., the chairman of the US Sentencing Commission stated, "The commission's research shows that

⁸US Sentencing Commission, p. 7.

⁹US Sentencing Commission, p. 16.

¹⁰US General Accounting Office. 1992. *Sentencing Guidelines: Central Questions Remain Unanswered*. Washington, DC.: General Accounting Office, p. 2.

¹¹Judicial Sentencing Guidelines Committee of Virginia. 1987. *Profiles of Sentencing Guidelines Systems*. Richmond: Judicial Sentencing Guidelines Committee of Virginia.

increased reliance on mandatory minimum sentencing statutes may reintroduce much of the disparity that Congress created the Sentencing Commission to reduce."¹²

A common complaint against mandatories is that they place charging and sentencing discretion in the hands of prosecutors and thereby reduce judicial discretion. This is perceived as detracting from the adversarial system of justice. Therefore, it is not surprising that the US Sentencing Commission study on mandatory minimums found that defense attorneys held very unfavorable opinions about mandatory sentencing and that Federal judges held a more unfavorable than favorable opinion. It is surprising, however, that United States Attorneys were evenly divided as to the value of mandatory minimum sentences.¹³

Mandatory sentences, may tilt the advantage to the prosecutors in the adversarial process, but they also focus the scrutiny of the criminal justice system and the public on the prosecutor's methods of using the mandatory sentencing laws.

Consider the scenario where a prosecutor strictly applies a mandatory minimum law to each applicable case. On face value, this approach seems appropriate and straightforward. Taking this path, however, opens the prosecutor to being criticized for failing to use prosecutorial discretion. For example, in Delaware, the State prosecutors strictly enforced the minimum mandatory drug trafficking law (16 Del. C., § 4753A) and were publicly criticized for doing so.

One attorney in public testimony summarized this criticism: "the Legislature, I believe, when they called this law the *trafficking* law, had in mind what we all think of when we think of traffickers. They didn't have in vision the people who need 5 grams of crack cocaine a day to keep themselves functioning because they are so addicted to it. They had in mind traffickers. What has filled our prisons then, isn't this law and isn't what the legislature intended, but rather our own present Attorney General's enforcement. His use or misuse of the laws ... "¹⁴

Mandatory sentencing is a no win proposition for prosecutors. Consider the case where the prosecutors do not charge a suspect with a mandatory sentencing statute when it is possible for them to do so. In this scenario, the prosecutor is criticized for being too lenient on crime and disrespectful of the intent of the mandatory sentencing statute and/or the legislature. Even more damaging is the criticism that discretionary application of a mandatory law indicates the use of these laws to intimidate defendants to "rat on their buddies" and plead to a less serious charge. An example of this type of criticism is found in the US Sentencing Commission's report: "Approximately 40 percent of the defendants determined to exhibit behavior warranting mandatory minimum terms were sentenced below those indicated terms."¹⁵

Movement of sentencing discretion from the judiciary to law enforcement completes this discussion of sentencing discretion. When a policy of strict prosecutorial compliance is in force, sentencing discretion in a practical sense is put in the hands of law enforcement. That is to say, if

¹²*Criminal Justice Newsletter*, Vol. 22, No. 17, Sept. 3, 1991, p. 1.

¹³See, US Sentencing Commission, chapter 6.

¹⁴SENTAC, public hearing proceeding, June 8, 1992, Georgetown, Delaware.

¹⁵US Sentencing Commission, p. 61.

the police arrest for a mandatory offense, the prosecutor may rubber stamp the police's action and charge the suspect with a mandatory crime. If this scenario holds, the sentencing discretion is not really in the hands of the court or the prosecutor, but in the hands of the arresting officer. When this happens, the checks and balances on police powers are eroded and punishment is determined at arrest.

Discretion may also be in the hands of the arresting officers when they deem that a mandatory penalty law is unjust and they, therefore, do not arrest for the mandatory penalty offense. The reaction of the Boston police to Massachusetts' Bartley-Fox Amendment, which required a one year mandatory minimum for anyone convicted of unlawful possession of a firearm, serves to illustrate this point: "Police altered their behavior in a variety of ways aimed at limiting the law's reach; they became more selective about whom to frisk; the absolute number of reports of gun incidents taking place out-of-doors decreased, which meant a concomitant decrease in arrests, and the number of weapons seized without arrest increased by 120 percent from 1974 to 1976."¹⁶

Mandatory Penalties and Prison Populations

The Delaware prison population is made up of a significant proportion of convicts incarcerated under minimum mandatory sentences. On June 30, 1992, the prison population (sentences greater than one year) was 2,604. Of this population 29 percent consisted of offenders sentenced for only two minimum mandatory statutes: habitual offenders with life sentences (400), and drug trafficking (360). As a recent Delaware study shows, the implementation of the enhancements to the 1982 minimum mandatory drug trafficking law (reducing the illicit drug possession threshold from 15 to 5 grams) will cause the prison population to increase by more than 300 prisoners over a four year period.¹⁷

Mandatory penalties require longer prison terms than laws proscribing similar crimes. Hence, when they are used they increase the prison populations through longer lengths of stay. The table *Mandatory Minimum Admissions, 1981-1991: Sentence Length Comparisons*, shown below, presents sentence length comparisons for selected mandatory minimum sections. Although not representing every mandatory sentencing provision in Delaware, this table accounts for 93.6 percent of the mandatory admissions to jail and prison between 1981 and 1991.

As expected, sentences are longer for defendants sentenced at or above the minimum mandatory terms. On average, Criminal Code (Title 11) sentenced admissions are 13.7 years longer for those sentenced above the minimum mandatory term. Also, they comprise 33.8 percent (975 offenders between 1981 and 1991) of the offenders who were sentenced for crimes subject to mandatory sentencing provisions.

The reader should keep in mind that not all offenders meet the requirements for a given mandatory sentencing provision. For example, manslaughter from 1981 through 1991 fell under the purview of section 4214 of the Criminal Code, which requires life imprisonment upon

¹⁶Tonry, p. 259.

¹⁷O'Connell, John P., and Jorge Rodríguez-Labarca. 1992. *Impact of the Drug Trafficking Law on the Delaware Criminal Justice System*. Dover: Delaware Statistical Analysis Center.

conviction for habitual criminals. The fact that no manslaughter admissions were identified for life terms is an indication that no one convicted of manslaughter during the period was found to have been an habitual criminal as per section 4214.

Mandatory Minimum Admissions, 1981-1991: Sentence Length ¹⁸ Comparisons.						
Title and Section	Below Mandatory Term		Above Mandatory Term		Frequency of Use	Difference in Years ¹⁹
	Number	Average Sentence	Number	Average Sentence		
Title 11	1,912	5.7	975	19.4	33.8%	13.7
613, Assault 1st degree	235	6.5	1	23.5	0.4%	17.0
632, Manslaughter	107	13.5	.	.	0.0%	
635, Murder 2nd degree	.	.	66	41.7	100.0%	
636, Murder 1st degree	6	17	107	42.3	94.7%	25.3
763, Rape 2nd degree	140	10.6	.	.	0.0%	
764, Rape 1st degree	44	5.4	72	43.8	62.1%	38.4
766, Sodomy 1st degree	.	.	2	36.1	100.0%	
773, Unlawful Sexual Int 3rd	203	6.5	1	51.5	0.5%	45.0
774, Unlawful Sexual Int 2nd	.	.	9	45.3	100.0%	
775, Unlawful Sexual Int 1st	.	.	34	45.8	100.0%	
783, Kidnapping 1st degree	.	.	17	41.3	100.0%	
825, Burglary 2nd degree	766	4.3	4	34.6	0.5%	30.3
831, Robbery 2nd degree	321	3.1	201	3.5	38.5%	0.4
832, Robbery 1st degree	34	1.8	441	10.7	92.8%	8.9
1447, Possession of a Weapon	56	7.4	20	6.1	26.3%	-1.3
Title 16	783	1.4	592	5.8	43.1%	4.4
4751, P W I D	728	1.4	172	8.1	19.1%	6.7
4753A, Drug Trafficking	55	1.3	420	4.9	88.4%	3.6
Title 21	234	0.1	8,175	0.2	97.2%	0.1
2756, Reckless Driving	70	0.1	1,426	0.2	95.3%	0.2
4177, Driving Under the Influence	164	0.1	6,749	0.2	97.6%	0.1

Sentenced admissions for Drug Control Act (a part of Title 16) statutes, as well as Traffic Code (Title 21), follow the expected pattern: On average, drug offense admissions for criminals sentenced within the minimum mandatory range are 4.4 years longer than those sentenced below the minimum range. In Title 21 we find the largest admission contributors to this study, and sentenced admissions which fall within the minimum mandatory range 97.2 percent of the time and are, on average, a month longer than those below the minimum mandatory range.

¹⁸Sentence lengths are in years.

¹⁹Difference in years between sentences below and above mandatory terms.

Types of Mandatory Sentences in Delaware

Mandatory sentencing conjures up fixed terms of imprisonment without hope of parole or early release and courts that are not allowed any discretion in sentencing. Mandatory sentencing in Delaware is more than merely fixed terms without benefit of parole and courts which must sentence "by the book." In the structure and application of mandatory sentences of the State one finds five types of mandatory statutes that differ in definition, application, discretion granted to the court, and resource impact.

The five types of mandatory sentences follow:

I. Mandatory *Criminal* Statutes

In this case, the statute proscribing the crime establishes the penalty in the statute itself, thereby vitiating the term of imprisonment called for in the Criminal Code sentencing statute (§ 4205(b)). Specific examples of *Mandatory Criminal Statutes* include these Title 11 statutes: sections 831, robbery in the second degree; 630, vehicular homicide in the second degree; 630A, vehicular homicide in the first degree; and 636, murder in first degree (penalty for which is section 4209). In each case, the statute defining the crime is a presumptive sentencing statute calling for a mandatory sentence.

Mandatory sentences are seen as simple and straightforward. However, the application of Mandatory Criminal Statutes is often very complex: Vehicular homicide in the second degree (11 Del. C. § 630) is an example of a criminal statute with an embedded mandatory sentencing provision. In this statute, subsection (b) prescribes a "1 year minimum sentence {that} shall not be subject to suspension, and {that} no person convicted under this section shall be eligible for probation, parole, furlough, work release or supervised custody during the first year of such sentence."

The application of the one year mandatory sentence for vehicular homicide in the second degree is not universal for all offenses proscribed by section 630. Subsection (b) limits the mandatory sentence to convictions under 630(a)(2). Therefore, the mandatory term can only be imposed in cases where a motor vehicle was operated under the influence of alcohol or drugs and the negligent operation of the vehicle resulted in the death of another person. The application of this mandatory one year term is further restricted by the recent addition of 630(c), which excludes the use of the mandatory sentence on juveniles. Furthermore, subsection (b) requires that the mandatory provisions of this statute be applied notwithstanding the Criminal Code's sentencing statute for class E felonies — section 4205(b)(5).

II. Mandatory *Sentencing* Statutes

In this case, the sentencing statute determines the mandatory sentence. The more serious the crime, the longer the sentence prescribed by the sentencing statute.

Prior to 1990, the Criminal Code's sentencing statute, except for class A felonies which required life sentences, did not contain mandatory provisions. Before 1990, those convicted of a class B felony could be sentenced from 3 to 30 years, the sentencing range for class C felonies was from 2 to 20 years, and for class D felonies up to 10 years, and so on. Each of these sentences could be suspended and a Level I (unsupervised probation) through Level IV (home confinement, halfway house, or residential treatment) commitment imposed.

Since the Truth in Sentencing Act took effect on June 30, 1990, the Criminal Code's sentencing statute (§ 4205(b)) has set the minimum terms of imprisonment at not less than 15 years for felony As and not less than 2 years for felony Bs. What makes class A and B felonies explicitly mandatory is the revamping to the indeterminate language in 4205(b) by 4205(d) which states that the mandatory minimum terms are not subject to suspension ("minimum sentence ... required by subsection (b) of this section, such section shall not be subject to suspension by the Court"). And, by subsections 4205(f), 4205(g), 4205(j) which mandate that all Level V sentences must be served under a Level V institutional setting and that no Level V incarceration pursuant to section 4205 is subject to parole. Those convicted of class A felonies who are sentenced to terms other than life imprisonment, and those convicted of any class B felony can earn up to 90 days in meritorious credits (good time) per year.

III. Mandatory Repeat Offender Sentencing Statutes

In some cases, a mandatory sentencing statute takes effect only upon a repeat or subsequent offense. These statutes contain provisions for second/subsequent violations of the offenses proscribed by same or "like" statutes. In certain instances these statutes contain language to the effect that *the minimum mandatory term of imprisonment shall be 3 years notwithstanding section 4205(b) of Title 11*.

Robbery in the first degree (11 Del. C. § 832) is a good example of this type of (embedded) *Mandatory Repeat Offender Sentencing Statute*: "A person convicted of robbery in the first degree for *a second or subsequent offense* shall receive a minimum sentence of 4 years at Level V notwithstanding the provisions of sections 4205(b)(2) and 4215 of this Title." (Emphasis added to original). In the Traffic Code, second/subsequent offenders must be sentenced to 30, 60, or 90 days minimum mandatory terms for violations of a variety of traffic offenses.

IV. Habitual Criminal Mandatory Sentencing Statutes

The *Habitual Criminal Mandatory Sentencing Statutes* can be found in the Criminal Code (Title 11), the Uniform Controlled Substances Act (Chapter 47 of Title 16), and in the Traffic Code (Title 21).

In the Criminal Code, section 4214 requires life imprisonment with no probation, parole, substitution, good time, or any other reductions for subsequent violations of Criminal Code felonies, for heinous felonies enumerated in 4214(b), and for certain felonies (specifically

enumerated in 4214(b)) which are found in the Uniform Controlled Substances Act. Under this section life imprisonment can be given to persons who have been previously convicted three times of felonies.²⁰

In the Uniform Controlled Substances Act, 16 Del. C § 4763 increases the minimum mandatory terms to seven and 15 years for habitual offenders who have been previously convicted of narcotic related felonies. The narcotic related offenses enhanced by 4763(a)(3) are subject to a 30 year minimum mandatory term of imprisonment not "subject to suspension, and no person shall be eligible for probation or parole" for 15 years. Subsection (a)(2) — subject to subsection (a)(3) — enhances minimum mandatory terms for repeat violators of the following Uniform Controlled Substances Act sections:

4752, manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance which is not a narcotic drug, 3 year minimum mandatory;

4751, manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance which is a narcotic drug, 5 year minimum mandatory;

4761(2), distribution of non narcotic drugs to minors, 7 year minimum mandatory;

and, 4761(1), distribution of narcotic drugs to minors, 10 year minimum mandatory.

Habitual Traffic offenders who drive after the Court has ordered their driving privilege revoked must be sentenced to a one year minimum mandatory term.

V. Mandatory Time and Fine

These are mandatory statutes whose provisions require incarceration and the payment of a fine. This type of mandatory has the highest frequency of use and can be found most often in the Traffic Code, as well as in the administrative statutes relating to agriculture, alcoholic liquors, banking, conservation, courts and criminal procedure, domestic relations, elections, military and civil defense, and sports and amusements statutes, among others. This type of mandatory most often carries shorter sentences and small fines.

An example of a Mandatory Time and Fine is driving with a suspended license (21 Del. C. § 2756). This statute requires the offender be imprisoned not less than 30 days and not more than six months and to pay a fine of \$100 to \$500. An example of an administrative statute requiring incarceration and payment of a fine is 15 Del. C. § 5122 which proscribes the disclosure by election officials of an individual's vote and metes a minimum mandatory term of two years and payment of a fine up to \$500.

A common variation of the "Time and Fine" mandatory statutes frequently found in Titles 21 and 16 is that which provides for mandatory terms of incarceration in lieu of payment of fines.

²⁰See section of this report dealing with *Special Mandatories* for a complete discussion of the structure of this statute and of the enumerated Habitual Criminal felonies.

For instance: 16 Del. C. § 1706 provides punishment for persons who dump refuse from fowl or poultry dressings. Whoever violates section 1706 "shall be fined not less than \$10 nor more than \$50, with cost of suit, or imprisoned until the same be paid or until discharged by law."

Special Mandatory Statutes

The statutes explored in this *Special Mandatory* section are driving under the influence of alcohol and/or drugs, drug trafficking, possession of a deadly weapon during the commission of a felony, and the habitual criminal statute. These statutes are of special interest to policy makers, as well as operational personnel, since they have a definite impact on the case loads of the public defender, the prosecutors, the courts and DOC populations. Their impact on the Delaware criminal justice system comes about as the police, the courts and DOC enforce, apply and interpret these mandatory statutes.

Driving under the influence of alcohol and/or drugs (DUI), 21 Del. C. § 4177, is the mandatory statute that contributed the largest number of sentenced admissions to DOC from 1981 through 1991. Sentenced admissions for DUI increased from 36 in 1981 to 870 in 1985. Since 1985 DUI sentenced admissions have averaged 865 per annum. The dramatic increase in the DUI sentenced admissions patterns can be attributed to enhanced law enforcement beginning in 1982 and to the revision to section 4177(d) which put "teeth" in the law and made the second/subsequent offender's sentence a minimum mandatory term of 60 days.

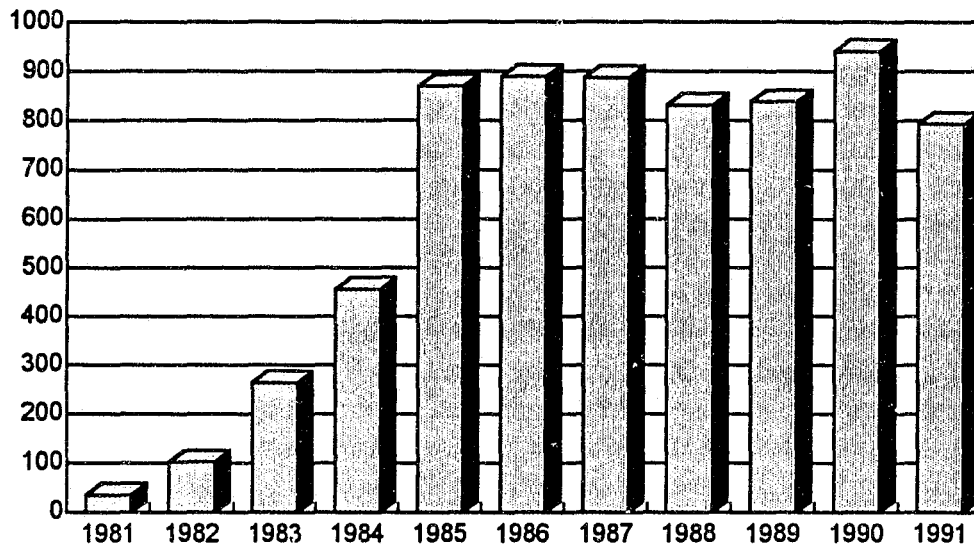
Drug trafficking, 16 Del. C. § 4753A, is a mandatory statute which has received a lot of attention within the criminal justice system and from the press. Frequently the debate centers on a revision to section 4753A which was made in July of 1989. On July 13, 1989, SB 142 lowered the weight ranges (thresholds used to determine whether the trafficker is sentenced to 3, 5 or 15 years) for drug trafficking. The lowered weight ranges have had the effect of increasing the pressure on DOC sentenced beds while there was no noticeable decrease in illegal drug activity in the State.

Possession of a deadly weapon during the commission of a felony (weapons mandatory, 11 Del. C. § 1447), has been the subject of considerable controversy. The source of the controversy lies in the fact that this mandatory requires the court to sentence the offender to a mandatory weapons sentence which is to be served after *the other* felony sentence. In short, the law provides solely for one other felony and the weapons mandatory. For example, a robbery sentence has to be served before the weapons mandatory. But, there is no provision for a kidnapping sentence, a robbery sentence and a concomitant weapons mandatory. It was argued that serving the mandatory weapons sentence after the other felony sentence(s) rendered, de facto, all the sentences mandatory. The discussion that ensued and the court actions which settled this dispute affected the status of 210 convicts.

The habitual criminal statute ("lifer" statute), 11 Del. C. § 4214, on face value does not seem to contribute that many sentenced admissions to DOC per year. In fact, about one lifer is admitted to prison each month. But they spend the remainder of their lives in custody and their sentences are not subject to parole. Hence, the lifer population continues to grow as a proportion of the total DOC population.

Driving Under the Influence of Alcohol and/or Drugs

Sentenced Admissions



21 Delaware Code § 4177

Statutory history

61 Del. Laws, c. 473, effective July 11, 1978, rewrote the statute proscribing driving under the influence of alcohol and/or drugs (DUI) — 21 Del. C. § 4177. Henceforth, the minimum mandatory ranges for DUI offenses have been: If incarceration is imposed by the court a term not less than 60 days and not more than 6 months is required by subsection (d)(1) for first time offenders. For second/subsequent offenders, subsection (d)(2) requires the court to impose a sentence of not less than 60 days and not more than 18 months (in addition to requiring the payment of fines).

63 Del. Laws, c 13, §13, effective February 19, 1983, struck the former DUI statute and replaced it with the present law. While retaining the same sentencing provisions for first and second/subsequent offenders, the new statute contains provisions which put "teeth" in the DUI law. Where the law had previously required the court to either fine or incarcerate first offenders, it now required offenders "to complete a course of instruction and/or rehabilitation program" and still left the court the option to incarcerate and to order the defendant to pay fines. The language in subsection (d)(2) relating to second/subsequent offenders sentencing was kept: "For each subsequent like offense occurring within 5 years from the former offense, be fined not less than \$500 nor more than \$2,000 and imprisoned not less than 60 days nor more than 18 months."

Admissions pattern

As the graph above shows, sentenced admissions to Level V for DUI in the early 1980s increased dramatically. In 1981, 36 DUIs were admitted to Level V. By 1983, when the new provisions

requiring DUI school and/or rehabilitation programs were written into the law, admissions to Level V had increased to 264. In 1984, 456 DUIs were admitted to Level V. From 1984 to 1985 DUI admissions increased 91 percent to 870. Since 1985 DUI sentenced admissions have averaged 865 annually.

Why the increase in admissions from 36 per year in 1981 to 870 in 1985? The increase was due to several factors, among them were an increased awareness of the DUI problem brought about by groups like MADD, the new provisions added to the DUI statute regarding DUI school and/or rehabilitation programs, and a substantial federal grant to Delaware police which enabled heightened levels of DUI enforcement. The heightened police enforcement increased the pool of eligible second/repeat offenders to the point that sentenced admissions to Level V for DUI have been averaging 865 per year since 1985.

Impact on DOC Population

In 1976 there were 1,560 DUI arrests in Delaware. Five years later, in 1981, there were 4,370 DUI arrests. From 1981 to 1982 DUI arrests increased by 72 percent to 6,055: this increase coincides with the federal grant that Delaware police received for enhanced DUI enforcement. Increased law enforcement and the new mandatory provisions of the DUI statute have helped to maintain DUI arrests at an annual average of 6,475 since 1982.

The criminal justice system is arrest driven and in the case of DUI one can clearly see that the enhanced policing led to increased admissions to DOC at the detained and sentenced levels. From 1981 to 1982 the DUI population in custody increased by 429 percent, from 7 to 37. From 1982 to 1983 the DUI population increased by 127 percent, from 37 to 84.

As the table *DUI Annual Arrests and Population Summaries on December 31st 1981/1991* shows, the great majority of the incarcerated DUI population has been sentenced to jail terms (less than one year). Finding most of the DUIs in jail rather than prison is consistent with the intent of the DUI statutes and with police practices.

DUI Annual Arrests and Population Summaries on December 31 st , 1981/1991											
	'81	'82	'83	'84	'85	'86	'87	'88	'89	'90	'91
DUI Arrests	4370	6055	6080	6245	6649	6236	6391	6502	6431	7383	6778
DUI Population	7	37	84	80	117	133	174	107	109	131	130
Detained	0	2	0	3	9	5	6	2	6	5	4
Jail	7	28	75	69	96	115	155	90	88	110	115
Prison	0	7	9	8	12	13	13	15	15	16	11

Sentencing Practices

Driving under the influence of alcohol and/or drugs is the mandatory law that contributes the largest number of admissions to Level V. From 1981 to 1991, 6,913 DUIs were admitted to

Level V for an average stay just shy of three months. Over the period the maximum time sentenced for DUI was to seven and a half years. The shortest sentence was for one day.

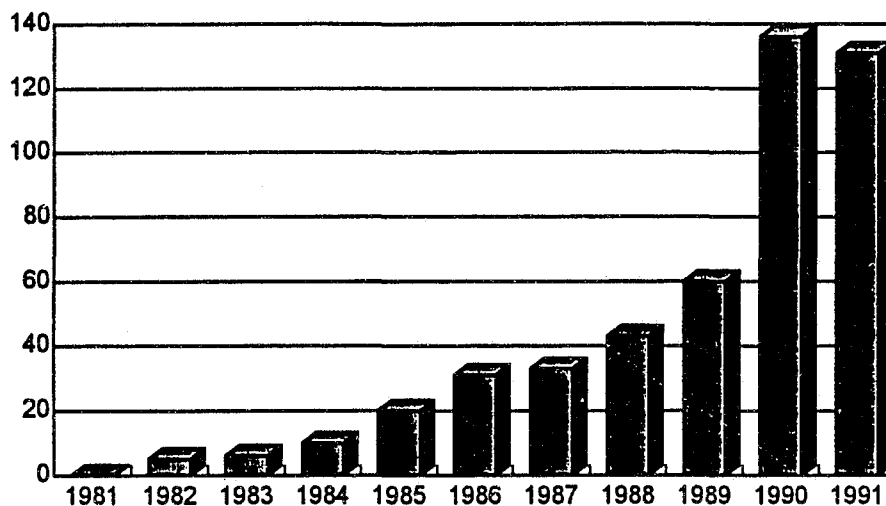
As shown in the table below, 216 DUIs were admitted to Level V with terms of imprisonment that are outside the mandatory ranges set forth in the mandatory DUI law. There were 176 sentenced admissions to terms below the minimum mandatory term for either first or second/subsequent offenders. Their average sentence length was 26.1 days, with a minimum sentence length of one day; while the average number of sentences per offender was 1.2 and the maximum number of sentences was six per offender. The 40 DUI offenders sentenced above the maximum statutory range — 18 months for a second DUI offense — averaged 3.4 sentences per offender with one offender maxing-out with 20 sentences. On average this group of DUI offenders received sentences of 2.6 years. The maximum sentence was 7.5 years.

Sentencing Practices 1981 — 1991: Driving Under the Influence of Alcohol and/or Drugs						
Ranges	Sentence Characteristics			Sentence Length Statistics		
	Admissions	Avg. # of Sentences	Max. # of Sentences	Minimum	Average	Maximum
Less than 60 days	176	1.2	6	1	26.1	57
60 days to 6 months	6355	1.1	40	60 days	2.3	6
60 days to 18 mos.	6688	1.2	40	60 days	2.7	18
More than 18 months	40	3.4	20	1.5 years	2.6	7.5

Due to data limitations, one cannot say with certainty if the 6,688 DUI offenders sentenced within the statutory sentencing ranges were sentenced for either first or second/subsequent offenses. Therefore, admission numbers as represented in this chart will not add up to the total number of Level V admissions for this section. As there is an overlap in the statutory sentencing ranges, double counting will occur if admissions were to be totaled. However, common wisdom holds that the vast majority of these DUIs were second/subsequent offenders because second/subsequent offenders are required by section 4177(d)(2) to be incarcerated for a minimum term of 60 days should they violate the DUI statute within 5 years of the first offense. Therefore, those that appear to have been repeat offenders (i.e., sentenced within the "60 days to 18 months" range) averaged 1.2 sentenced charges per offender. The maximum number of sentences for this group was 40 sentences, with an average sentence length of 2.7 months.

Drug Trafficking

Sentenced Admissions



16 Delaware Code § 4753A

Statutory History

The Governor signed 63 Del. Laws, c. 134, on July 9, 1981, thereby enacting Delaware's drug trafficking statute, 16 Del. C. § 4753A. Since its inception, the minimum mandatory sentences prescribed by subsection (a) are three, five and fifteen years, for given weights of various controlled substances. In addition to minimum mandatory terms, subsection (a) calls for the imposition of fines to increase proportionately as the length of the term increases. As per subsection (b), the minimum mandatory ranges are not subject to suspension, parole, good time, work release, supervised custody, or furlough prior to serving the expiration of the minimum mandatory term. According to subsection (c), those who render substantial assistance to the authorities may have their sentences reduced or suspended by the court after conviction, upon a motion filed by the Attorney General on their behalf. Subsection (d) strengthens subsection (b) by stating that "a year shall mean 365 days without any reductions for good time."

63 Del. Laws, c. 359, effective July 8, 1982, expanded the list of proscribed trafficking offenses from the original marijuana, cocaine, and morphine/opium/heroin ("illegal drugs") in subsection (a) to include methamphetamines.

64 Del. Laws, c. 87, effective June 29, 1983, adds amphetamines and phencyclidine (PCP) to the list of proscribed trafficking offenses.

65 Del. Laws, c. 317, effective June 27, 1986, adds lysergic acid diethyl amide (LSD) and designer drugs to the trafficking offenses proscribed in subsection (a).

65 Del. Laws, c. 485, effective July 9, 1986, lowered the weight ranges for marijuana in subsection (a)(1) from 50, 1,000 and 5,000 pounds to 5, 100, and 500 pounds respectively, and lowered the fines for trafficking in those weights of marijuana.

67 Del. Laws, c. 115 (SB 142), effective July 13, 1989, made changes to the weight ranges found throughout subsection (a) — with the exception for subsection (a)(1), the sole changes to which were discussed in the preceding paragraph. The weight ranges were lowered from 15-99 grams to 5-49 grams, 100-249 grams to 50-99 grams, and from 250 grams and over to 100 grams and over for cocaine, methamphetamines, amphetamines, and PCP.

SB 142 changed the weight ranges for illegal drugs (morphine/opium/heroin) from 8-19 grams to 5-14 grams, and 20-49 grams to 15-50 grams. The upper range for illegal drugs, 50 grams and over, was not changed by SB 142.

67 Del. Laws, c. 130 (TIS), reenacted subsection (a) without changes.

67 Del. Laws, c. 427, effective July 23, 1990, adds subsection (e) which makes it clear that drug trafficking is a 'per se' drug possession statute. Subsection (e) requires the State to prove that the defendant was in possession and "that in fact the substance was that which is alleged and that the substance in fact weighed a certain amount." The actual selling of the drug is not included as an element of the offense, merely its possession and weight.

Recent Developments

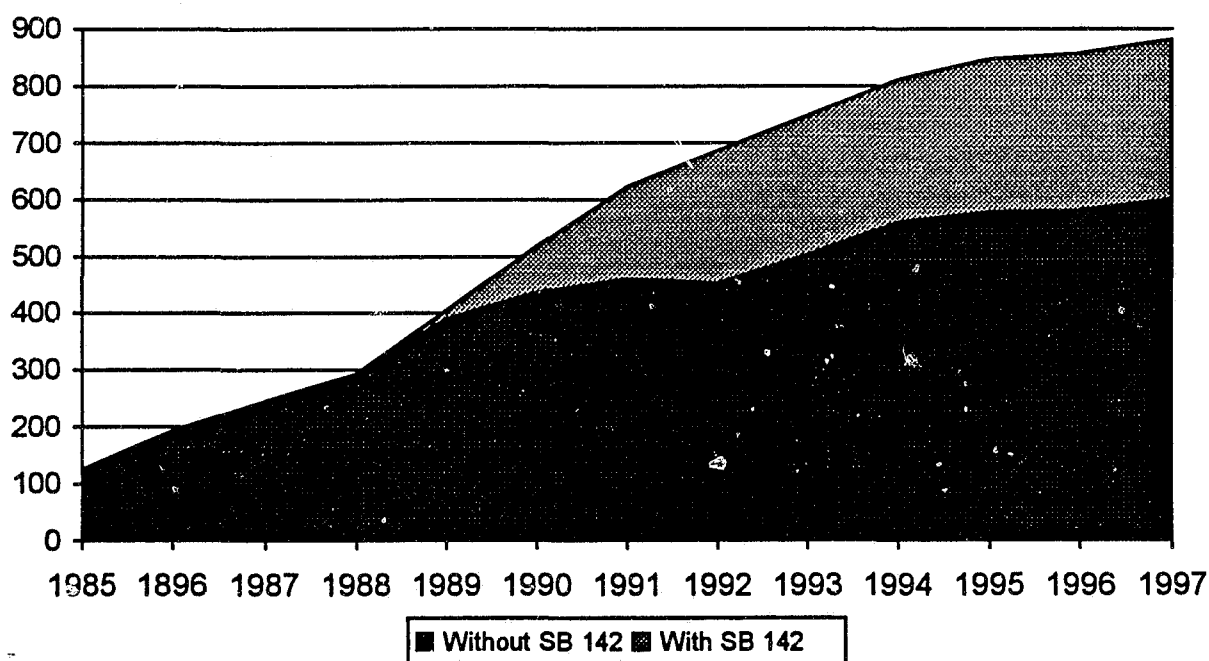
In March, 1992, the legislature empowered the Attorney General to review three year mandatory drug trafficking sentences and has allowed inmates who meet the criteria set forth by the Attorney General to apply to the Superior Court for sentence review. The Superior Court is to review these inmates' sentences and "to bring their sentences in line with current policy, if appropriate." (Senate Joint Resolution No. 21, signed by the Governor on July 10, 1992.)

Impact of the Drug Trafficking Law on the Delaware Criminal Justice System, March 1992, found that SB 142 had significant fiscal and volume impacts on the criminal justice system. Whereas SB 142 was intended to reduce drug trafficking in Delaware through reduced weight ranges coupled with existing harsh minimum mandatory terms of imprisonment, the report reflected no reduction in drug trafficking. Drug arrests for possession and trafficking increased. That caused an accompanying increase in detained admissions for drugs, leading to a coincident increase in prosecutorial/defense/court case loads. The ultimate effect was increased three year mandatory sentenced drug trafficking offender demand for DOC beds.

As the graph *Sentenced Drug Population: With and Without SB 142* shows, during the third quarter of 1988, 284 sentenced drug offender beds were needed. For the first full quarter of SB 142 (third quarter 1989), an extra eight beds were required by SB 142 offenders for a total of 385 sentenced drug offender beds. The following year, third quarter 1990, SB 142 offenders needed

60 beds for a total sentenced drug offender bed demand of 495. It is estimated that during the third quarter of 1992, an additional 222 sentenced beds will be occupied by SB 142 offenders and that 674 beds will be needed to house the State's sentenced drug offenders. The cost of housing an inmate in a Level V setting for one year in Delaware in 1991 was \$21,874.82 (Bureau of Prisons). Readers who are interested in a detailed account of these impacts are invited to peruse the report which is available by calling SAC.

Sentenced Drug Population: With and Without SB 142



Sentencing Practices

Fifty five offenders were sentenced below the mandatory minimum term of three years under section 4753A from 1982 (when the first admissions for drug trafficking occurred) through December 1991. Its quite possible that all rendered substantial assistance to the authorities. Hence, sentences below the lowest mandatory minimum term for drug trafficking (three years) do not indicate that the courts are ignoring the minimum mandatory ranges set forth for this offense by the legislature. The shortest sentence lengths were one day in the pre-TIS period and 65 days in the post-TIS period.

Sentencing Practices July 8, 1982 — June 29, 1990:						
Drug Trafficking						
Ranges	Sentence Characteristics			Sentence Length Statistics		
	Admissions	Avg. # of Sentences	Max. # of Sentences	Minimum	Average	Maximum
Less than 3 years	35	1.1	2	1 day	1.4 years	2.9
3 to 30 years	272	1.6	23	3	4.7	30
5 to 30 years	82	2.3	23	5	8.4	30
15 to 30 years	10	4.6	23	15	19.3	30
More than 30 years	2	3.5	5	33	33	33
Life as Habitual	1	6	6	38.6	38.6	38.6

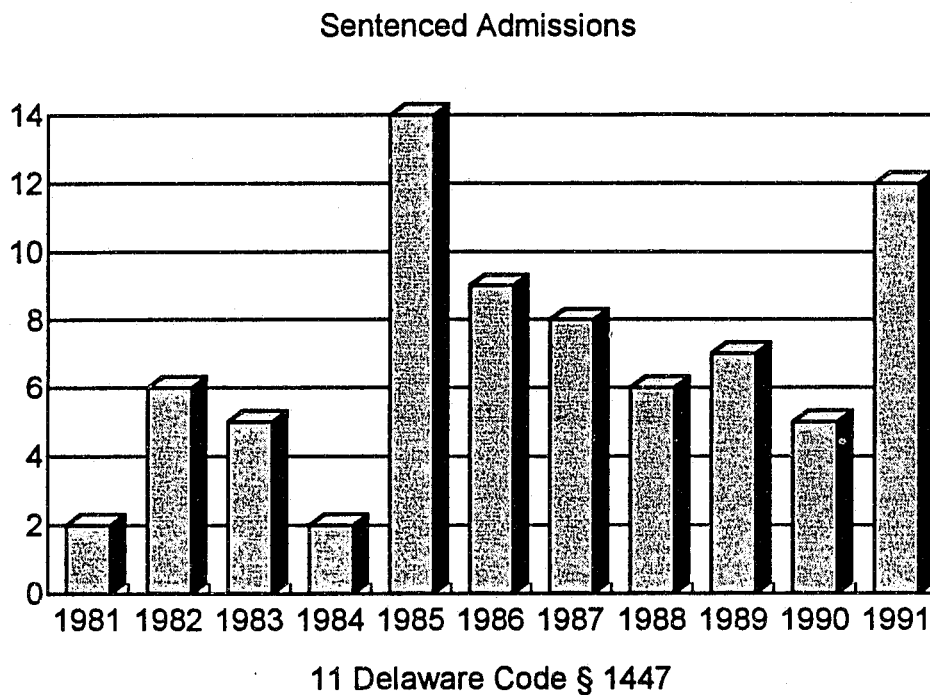
While TIS lowered the maximum term for drug trafficking from 30 to 20 years, the average sentence length of those sentenced to the minimum term has not changed significantly. In the pre—TIS period 272 offenders were admitted for terms consistent with the mandatory ranges. They averaged sentence lengths of 4.7 years. In the post—TIS period 143 drug traffickers were sentenced within the mandatory ranges for an average of 4.2 years. Unfortunately, due to data limitations one cannot distinguish among the three minimum mandatory ranges found in section 4753A for the purposes of this study.

Sentencing Practices June 30, 1990 — December 31, 1991:						
Drug Trafficking						
Ranges	Sentence Characteristics			Sentence Length Statistics		
	Admissions	Avg. # of Sentences	Max. # of Sentences	Minimum	Average	Maximum
Less than 3 years	20	1.1	2	2.1 months	1.2 years	2.9
3 to 20 years	143	1.4	7	3	4.2	20
5 to 20 years	31	1.9	5	5	8.2	20
15 to 20 years	4	1.5	2	15	16.8	20
More than 20 years	1	4	4	35	35	35
Life as Habitual	1	1	1	42	42	42

Two drug traffickers were sentenced to life terms during the 1981/1991 period, whose sentences (adjusted for life expectancy of 73 years) were 38.6 and 42 years, respectively.

Three drug traffickers were sentenced "above" the maximum range for this section. Their sentences ranged from 33 to 35 years. All had multiple sentences. Given the structure of DOC data and the fact that they had multiple sentences, the longer than expected sentences are probably due to additional charges at sentencing.

Possession of a Deadly Weapon During the Commission of a Felony



Statutory History

58 Del. Laws, c. 497, § 1, effective July 1, 1973, enacted possession of a deadly weapon during the commission of a felony (weapons mandatory). As enacted, Title 11 section 1447(b) required the court to sentence in accordance with sections 1447(a) and 4205 of the Criminal Code. "The minimum sentence of imprisonment required" was not subject to suspension and no person convicted for this offense was eligible for probation or parole during the first five years of their sentence. At this point the weapons mandatory required an unspecified mandatory sentence of "up to 5 years."

This was quickly addressed by 59 Del. Laws, c. 203, § 34, also effective July 1, 1973, which struck subsection (b) and replaced it with language that explicitly fixed the minimum mandatory term at five years and removed from the former any reference to the Criminal Code's sentencing statute, section 4205. The (then) new subsection 1447(b), carried forward the language requiring the court not to suspend sentences for this offense, and rendered persons convicted under this section ineligible for probation or parole during the mandatory minimum term of imprisonment.

Effective January 31, 1976, 60 Del. Laws, c. 306, § 1, inserts the current subsection (c). Hence, from February 1976, no weapon mandatory sentence could run concurrently with any other sentence. The second sentence of subsection (c) reads:

"In any instance where a person is convicted of a felony, together with a conviction for the possession of a deadly weapon during the commission of such felony, such person shall serve the sentence for the felony itself before beginning the sentence imposed for possession of a deadly weapon during such felony."

This sentence has been the cause of much controversy, and as we shall note below, it has also caused a number of court rulings and other opinions interpreting its meaning.

On July 21, 1982, 63 Del. Laws, c. 412, § 1, amended subsection (b) to read: "Any sentence imposed for a violation of this section shall not be subject to suspension and no person convicted for a violation of this section shall be eligible for parole or probation during the period of the sentence imposed."

In effect, 63 Del. Laws, c. 412, struck the minimum mandatory term of 5 years from section 1447(b). Yet, persons convicted for violating this section were still not subject to suspension. And, those convicted under this section were ineligible for probation or parole for the duration of their sentence. Furthermore, since subsection (c) remained standing, sentences could not be served concurrently and weapon mandatory sentences had to be served after any other felony sentence.

From July 21, 1982, through TIS' effective date of June 30, 1990, a *likely* minimum mandatory term would have been three years, as per the then current Title 11 sentencing statute. The sentencing statute for class B felonies —section 4205(b)— fixed the minimum term of imprisonment at three years from 1973 through June 1990.

TIS re-enacts possession of a deadly weapon during the commission of a felony without change, except for sentence length. Since June 30, 1990, the weapons mandatory has carried a minimum mandatory sentence of two years by section 4205(b). All minimum mandatory terms of imprisonment for this section must be served after the sentence for *the other {one} felony* has been served, as per section 1447(c). Sentences under this section are not subject to suspension, probation or parole, as per Title 11 sections 1447(b), 4204 and 4205.

DOC Operational Procedures

The creation of laws is within the purview of the legislative and the executive branches of government. The judiciary, through its interpretation of legislative acts and through its power to review the constitutionality of such acts creates case law. The Commissioner of Correction creates administrative regulations, by the power granted his office by section 6517 of the Criminal Code, to apply and operationally interpret the law.

In Burgan, Judge Balick upheld (on March, 17, 1992) a DOC administrative regulation vis-à-vis an opinion issued by the Attorney General relating to DOC's application of the weapons mandatory sentencing law. The Attorney General's opinion caused DOC to adopt an addendum to their administrative regulation concerning the calculation of release dates. The Attorney General opined that DOC's administrative regulation violated section 1447(c). Effective October

1, 1990, DOC retroactively adopted the addendum and recalculated release dates for inmates affected by it.

The addendum affected the status of 210 convicts causing those that had been released from Level V to be returned to prison. On March 17, 1992, Judge Balick ruled that the original administrative regulation was not in violation of subsection (c), and that retroactive application of the addendum was in violation of the ex post facto constitutional clause. Judge Balick also issued a writ of mandamus directing DOC to reinstate Mr. Burgan's status in accordance with the original regulation. After Burgan, DOC reinstated affected inmates to their former status.

The statute proscribing possession of a deadly weapon during the commission of a felony does not provide for all the possible sentencing and/or administrative scenarios. For instance, among a host of possible sentences, there can be one underlying felony offense and the weapons mandatory (section 1447) sentence; one underlying felony, some number of misdemeanors, and the weapons mandatory sentence; one underlying felony, any number of other felonies (and any number of misdemeanors) and the weapons mandatory sentence. Subsection (c) provides solely for sentences consisting of one weapon mandatory and one underlying felony.

Given all the possible sentencing combinations, what does DOC actually do? An example serves to illustrate:

A sentence totaling 11 years consisting of a Robbery 1st, Burglary 2nd, a Weapons sentence, and a Conspiracy 2nd. Of the 11 years total the court orders 4 years to be mandatory: 2 years for the robbery, and 2 years for the weapons. (The underlying felony for the weapon is the burglary. It cannot be the robbery as that would violate the double jeopardy rule.) First, DOC calculates the conditional release date²¹ on the full 11 years, that date would fall 3 years, 3 months and 27 days from the effective date. Second, DOC calculates the mandatory sentence release date, which would occur 4 years from the effective date. Third, since the mandatory date is later than the conditional release date no meritorious credits are deducted from this convict's sentence. The earliest possible release date for this person would be exactly four years from the effective date.

Sentencing Practices

Six convicts were admitted for possession of a deadly weapon during the commission of a felony while the five year minimum mandatory term of imprisonment for weapons was in effect (through July 20, 1982). The shortest sentence length was just shy of ten months, and the maximum sentence was for 16.6 years. Only the shortest sentence, 9.8 months, was not consistent with the minimum mandatory term then in effect. The sentence lengths are shown in the table below.

²¹The conditional release date, or parole date, is calculated as a possible release date by DOC. The conditional release date is not necessarily the date a convict will be released.

Sentencing Practices 1981 — July 20, 1982:						
Possession of a Deadly Weapon During the Commission of a Felony						
Ranges	Sentence Characteristics			Sentence Length Statistics		
	Admissions	Avg. # of Sentences	Max. # of Sentences	Minimum	Average	Maximum
Less than 5 years	1	1	1	9.8 ms.	299 days	0.8 yr.
5 to 30 years	5	3.2	7	5 yrs.	10.4	16.6
More than 30 years	0	—	—	—	—	—

From July 21, 1982, through June 29, 1990, there was no statutorily prescribed minimum mandatory term for this section. However, the then current sentencing statute —11 Del. C. § 4205(b)(2)— prescribed "from 3 to 30 years" as the term of imprisonment for class B felonies. Forty nine weapon mandatory admissions fell within the prescribed range. Those sentence lengths averaged 8.3 years and reached a maximum of 21 years. Five sentences fell below the prescribed range: The minimum sentence length for this group was 29 days, the average was 1.2 years, while the maximum was 2.8 years. As the table below shows, no admissions occurred for terms above the prescribed range.

Sentencing Practices July 21, 1982 — June 29, 1990:						
Possession of a Deadly Weapon During the Commission of a Felony						
Ranges	Sentence Characteristics			Sentence Length Statistics		
	Admissions	Avg. # of Sentences	Max. # of Sentences	Minimum	Average	Maximum
Less than 3 years	5	2.2	4	29 days	1.2 years	2.8
3 to 30 years	49	3.0	9	3 years	8.3	21
More than 30 years	0	—	—	—	—	—

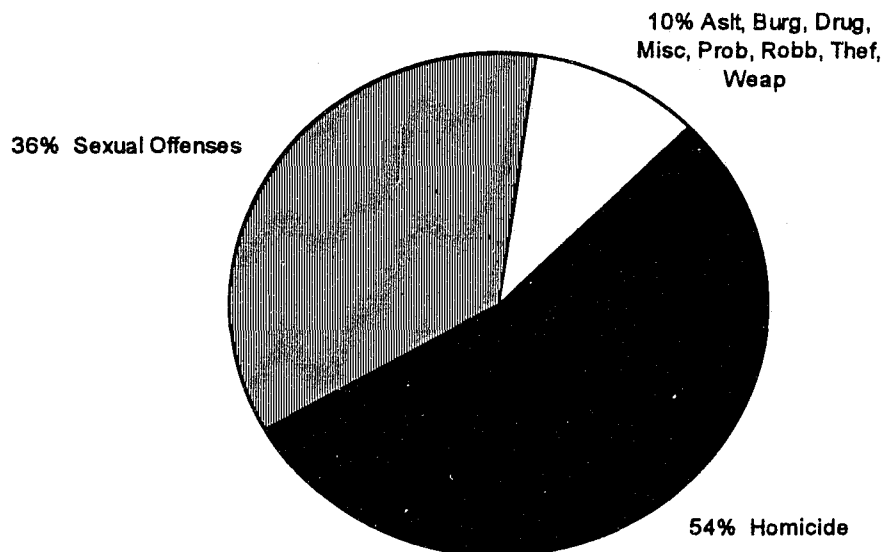
During the post-TIS period, after June 29, 1990, there were 16 recorded admissions for weapons to Level V. Of these, only one was below the statutorily required minimum mandatory term of two years, that sentence was for one year. As the table below shows, 15 admissions were registered for weapons after TIS within the minimum mandatory ranges. The average sentence length for these individuals was 4.7 years and the maximum was 20 years. There were no admissions for terms over the prescribed maximum term for class B felonies.

Sentencing Practices June 30, 1990 — 1991:						
Possession of a Deadly Weapon During the Commission of a Felony						
Ranges	Sentence Characteristics			Sentence Length Statistics		
	Admissions	Avg. # of Sentences	Max. # of Sentences	Minimum	Average	Maximum
Less than two years	1	1	1	1 year	1	1
2 to 20 years	15	1.5	6	2	4.7	20
More than 20 years	0	—	—	—	—	—

Due to data limitations this discussion has been confined to those admissions to Level V for which section 1447 was entered as the leading charge. There have been 233 admissions to Level V for possession of a deadly weapon during the commission of a felony since 1976 for which the weapons mandatory was the leading charge. It is believed that there are many more cases where the weapons mandatory was superseded by another serious felony (murder, rape) and thus was not entered as the leading charge into the DOC information system.

Life Sentences

DISTRIBUTION OF LIFERS BY CRIME TYPES ON 12/31/91



Statutory History

There are four key sections in the Criminal Code that relate to life sentences: sections 4204, authorized disposition of convicted offenders; 4205, sentences for felonies; 4209, punishment for first-degree murder; and 4214, the habitual criminal statute.

The habitual criminal statute, 11 Del. C. § 4214, contains two subsections that can be referred to as the *may* and *shall* clauses: The *may* clause states that upon the third conviction for a felony *not* on the "habitual crimes list," an offender who has been three times convicted of a felony, is declared an habitual criminal and *may* in the court's discretion be sentenced to life imprisonment. The *shall* clause states that when a criminal has been two times convicted of a felony on "the habitual crimes list" he is declared an habitual criminal and *shall* be sentenced to life imprisonment upon the third felony conviction.

The "habitual crimes list," as referenced in this paper, is found in section 4214(b). The enumeration found in 4214(b) is the list referred to in the *may* and *shall* clauses. An ancillary list is found in subsection (c). The difference between the two habitual crime enumerations is that the second list is to be used when sentencing upon conviction for specified felonies committed in Delaware prior to July 1, 1973. Also, the second list in conjunction with the first is to be used in determining habitual criminal status for any person convicted under the laws of another state, the

United States, or the territories of the United States. If a convicted felon has had a prior conviction for a felony equivalent to any of the enumerated habitual felonies he is subject to the provisions of sections 4214 and 4215 of the Criminal Code.

The four key sections related to life sentences have undergone revisions that modified the language (and sometimes the section's catch-line) with the core concepts usually remaining constant. The changes affecting these sections, as they relate to life sentences, follow:

59 Del. Laws, c. 284, § 2, effective March 29, 1974, struck and replaced murder in the first degree's sentencing statute (11 Del. C. § 4209). The new subsection (a) fixed the penalty for first-degree murder at death, and provided for life incarceration without benefit of parole in the event that the death penalty was found unconstitutional. The change in section 4209 to note here is that since March 29, 1974, first-degree murder life sentences have not been eligible for parole.

59 Del. Laws, c. 547, § 19, effective July 26, 1974, rewrites the list of habitual crimes in 4214(b). The rewrite reflects the division of the kidnapping, rape, and sodomy statutes into two degrees of severity, e.g., rape in the first degree and rape in the second degree. (Both degrees of severity continue to be included in the habitual crimes list.)

59 Del. Laws, c. 547, § 20, effective July 26, 1974, adds to the habitual criminal statute the current 4214(c). This subsection, as noted above, provides for habitual criminals previously convicted in other jurisdictions of the United States and its territories.

65 Del. Laws, c. 159, § 1, effective July 12, 1985, expands the list of habitual crimes to include the following drug offenses: sections 4751—manufacture, delivery, or possession with intent to manufacture or deliver a narcotic drug; 4752—manufacture, delivery or possession with intent to manufacture or deliver a non-narcotic, controlled substance; 4752A—unlawful delivery or attempt to deliver a non controlled substance; and 4753A—trafficking in marijuana, cocaine, illegal drugs or methamphetamines.

66 Del. Laws, c. 269, § 7, effective June 15, 1988, expands the enumeration of habitual crimes to reflect the revision/rewording/re-sectioning from "rape" statutes to "unlawful sexual intercourse" statutes. The habitual crimes list was expanded to include the following Criminal Code sections: 771, unlawful sexual penetration in the second degree; 772, unlawful sexual penetration in the first degree; 773, unlawful sexual intercourse in the third degree; 774, unlawful sexual intercourse in the second degree; and, 775, unlawful sexual intercourse in the first degree.

67 Del. Laws, c. 130, § 6 —TIS—, effective for all crimes committed after June 29, 1990, rewrote 11 Del. C. § 4204(b) changing punishment for class A felonies from *shall* be sentenced to life to *may* be sentenced to life. Life imprisonment *may* be imposed for all types of A felonies, except for murder in the first degree where section 4209 applies. This language is consistent with changes to section 4205(b)(1) which was struck and replaced by TIS. The post-TIS sentencing statute for class A felonies, § 4205(b)(1), fixes the term of incarceration for said felonies at "not less than 15 years up to life" to be served at Level V, except for first degree murder where section 4209 applies.

67 Del. Laws, c. 350, § 37 —TIS' Omnibus Amendment— effective for all crimes committed after June 29, 1990, adds language to subsections (a) and (b) of the habitual criminal statute prohibiting suspension of sentences by the court. The new language also requires sentences to be served in their "entirety a full custodial Level V institutional setting without the benefit of probation" or parole. Sentences imposed pursuant to subsection (a), the *may* clause, are also subject to the provisions of Title 11 sections 4205(h), 4217, 4381 and 4382. Sentences imposed pursuant to subsection (b), the *shall* clause, cannot be reduced by good time or any other reduction.

Most revisions to the habitual criminal statute were caused by changes to existing statutes like splitting a single crime into multiple degrees ('rape' into 'first degree rape' and 'second degree rape,' 1974) or the renaming of a crime ('rape' to 'unlawful sexual intercourse,' 1988). The most significant change was the inclusion of the drug laws in 1985.

Sentencing Practices

The study of lifers presented here is based on population snapshots taken each December 31st from 1981 through 1991. In June, 1981, the lifer population was 177. In ten years it had grown to 383, an increase of 116 percent. If this rate of growth continues, the lifer population will be 568 in the year 2000.

There is little indication that the increase seen in the lifer population was either the result of statutory changes or in judicial discretion to sentence offenders to life. The increase in the lifer population can be attributed to a steady flow of serious offenders that meet the statutory requirements for life sentences.

The arithmetic of the lifer population is simple: Admissions will continue to exceed releases by about 21 per year. What is changing is the mix of the crimes in the lifer population. The proportion of murders in the lifer population is declining while the proportion of other crimes, particularly sex offenders, is increasing. As the table below shows, in 1981, 64.2 percent of lifers were in for homicide, while 28.5 percent were incarcerated for sexual offenses. By 1991, homicide lifers had decreased to 55.8 percent, and lifer sexual offenders had increased to 35.7 percent. The percentage of lifers in the total prison population has been as low as 13.9 percent and as high as 16.7 percent. The proportionate growth of the lifer population, as a percentage of the total prison population, has been a slow but steady 0.15 percent per year.

Most lifers are serving multiple charges; the statute listed in the DOC information system is the "lead" charge. The table below, *Lifer Population Summary December 31st, 1981/1991*, provides lifer population counts at year-end for convicts whose lead charges have been grouped into homicides, sexual offenses, and all other crimes. A statute by statute (lead charge) breakdown of the lifer population is found in the subsequent table, *Lifer Population Detail December 31st, 1981/1991*.

Lifer Population Summary December 31 st 1981/1991											
Crime groups	'81	'82	'83	'84	'85	'86	'87	'88	'89	'90	'91
Homicide	124	128	136	145	162	174	194	200	202	209	217
Sexual offenses	55	65	68	77	87	96	106	113	126	133	139
All other	14	19	22	19	16	18	25	32	36	37	33
Total Population	193	212	226	241	265	288	325	345	364	379	389
Homicide	64.2	60.4	60.2	60.2	61.1	60.4	59.7	58.0	55.5	55.1	55.8
Sexual offenses	28.5	30.7	30.1	32.0	32.8	33.3	32.6	32.8	34.6	35.1	35.7
All other	7.3	9.0	9.7	7.9	6.0	6.3	7.7	9.3	9.9	9.8	8.5
Percent Mix	100	100	100	100	100	100	100	100	100	100	100
Percentages may not add up to 100 due to rounding.											

Since admissions exceed releases, the lifer population will grow. To stop or reverse the growth one must decrease admissions and/or increase releases. There is little reason to believe that either of these options will occur in the foreseeable future. As long as there is a large amount of violent crime, lifer admissions will continue their steady increase. In 1991, the average Delaware lifer was 36 years old and had served 96 months (8 years). The average lifer is many years away from release.

Lifer Population Detail December 31 st , 1981-1991											
Statutory Offenses	'81	'82	'83	'84	'85	'86	'87	'88	'89	'90	'91
612 Assault 2 nd		1	1	1				1	1	1	1
613 Assault 1 st		1	1					1	1	1	2
632 Manslaughter	1	1	1		1						
635 Murder 2 nd	50	54	60	63	68	70	77	82	84	84	80
636 Murder 1 st	73	73	75	82	93	104	117	118	118	125	137
763 Rape 2 nd	1	1	1	1	1	1	1	1	1	1	
764 Rape 1 st	54	63	66	75	85	93	97	95	96	95	91
766 Sodomy 1 st		1	1	1	1	1	1	1			
769 U S Contact 1 st										1	1
770 U S Penetration 3 rd											1
773 U S Interc 3 rd									1	1	1
774 U S Interc 2 nd							3	7	8	7	8
775 U S Interc 1 st						1	4	9	20	28	37
782 Unlaw Imperson		1	1	1	1	1					
783 Kidnapping 2 nd									1	1	1
783A Kidnapping 1 st	9	9	11	12	10	11	16	20	17	17	15
824 Burglary 3 rd											1
825 Burglary 2 nd						1	1	1	2	2	4
831 Robbery 2 nd			1						1	2	2
832 Robbery 1 st	3	5	6	5	5	4	5	5	5	5	5
851 Rec Stolen Prop						1	1	1	1	1	1
1444 Poss Dest Weapon											1
4214 Habitual Criminal	2	2	1				1	1	3	3	1
4352 Parole Violation							1	2	4	3	3
4753 Trafficking										1	2
Total Population	193	212	226	241	265	288	325	345	364	379	389

Significant Level V Admissions

After developing a taxonomy of Delaware mandatory sentencing statutes, 47 sections in five Delaware Code (Del. C.) Titles were identified as contributing to Level V admissions. Of these 47 sections, 27 contributed 99 percent of mandatory admissions to Level V from 1981 to 1991. Thirteen of the 27 sections, accounting for 92.1 percent of Level V admissions from 1981 to 1991 will be analyzed in greater detail in this section of the report. The 13 sections are as follows:

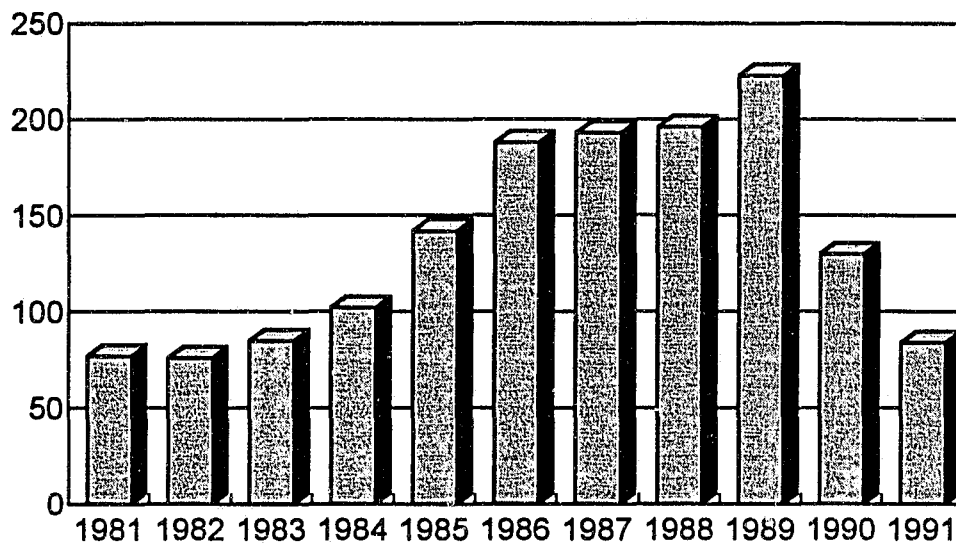
Title	Section	Short Description	1981-1991
21	4177	Driving under the influence of alcohol and/or drugs*	6913
21	2756	Driving with a suspended license	1496
16	4751	Possession with intent to deliver narcotics	900
11	825	Burglary in the second degree	770
11	831	Robbery in the second degree	522
11	832	Robbery in the first degree	475
16	4753A	Drug trafficking*	475
11	613	Assault in the first degree	236
11	773	Unlawful sexual intercourse in the third degree	204
11	763	Rape in the second degree	140
11	764	Rape in the first degree	116
11	636	Murder in the first degree	113
11	632	Manslaughter	107

Each section's analysis contains an admission to Level V graph, legal history pertaining to the section's mandatory nature, narrative describing sentence lengths and ranges, and tables containing the sentence lengths and ranges. The discussion on sentence lengths and ranges includes, where relevant, the prescribed sentencing ranges, whether those sentencing ranges are mandatory or not. Special attention is given to the mandatory ranges, and they are highlighted in the tables.

*These sections are presented under a separate chapter on *Special Mandatory Statutes*. A fuller exploration is made in that chapter of the following statutes: driving under the influence of alcohol/drugs, drug trafficking, possession of a deadly weapon during the commission of a felony, and the habitual criminal statute. These statutes are of special interest to policy makers and operational personnel, not only because of their mandatory provisions, but also because of their impact on DOC populations and resources.

Driving With a Suspended License

Sentenced Admissions



21 Delaware Code § 2756

Statutory history

The former driving with a suspended or revoked license statute (21 Del. C. 1953, § 2746) required the court to sentence offenders to mandatory imprisonment for first and subsequent offenses. The current statute, 21 Del. Code § 2756(a), requires imprisonment for first and second offenses, in addition to the payment of fines. For the first offense, the sentence is imprisonment of not less than 30 days nor more than six months and payment of a fine. For the second and subsequent offenses, section 2756(a) requires imprisonment of not less than 60 days nor more than one year in addition to the payment of fines. Section 2756(b) qualifies as not subject to suspension the fines for the first offense, the period of imprisonment for a subsequent offense, and the minimum periods of incarceration, if the suspension or revocation of a license resulted from "a violation of a criminal statute dealing with injury or death caused to another person by the person's driving or operation of the vehicle and driving under the influence was an element of such offense."

Sentencing practices

Driving with a suspended or revoked license is the mandatory section that had the second largest number of Level V admissions from 1981 to 1991: There were 1,496 admissions for this section. These traffic offenders were sentenced on average to 85 day terms, almost three months. The longest sentence for driving with a suspended or revoked license was for four years, while the shortest sentence was for one day.

As shown on the table below: 88 driving with a suspended or revoked license offenders were admitted to DOC for sentences which lay outside the required sentencing boundaries. The majority of them were sentenced below the minimum mandatory term for first offenders. Seventy defendants were sentenced to terms under 30 days: their average sentence length was 7.5 days and they averaged 1.4 sentences per defendant. Eighteen defendants were sentenced to terms over one year — the maximum term for a second offense. These defendants had an average of 3.3 sentences, and their average sentence length was 1.9 years. The maximum sentence length for driving with a suspended or revoked license was four years.

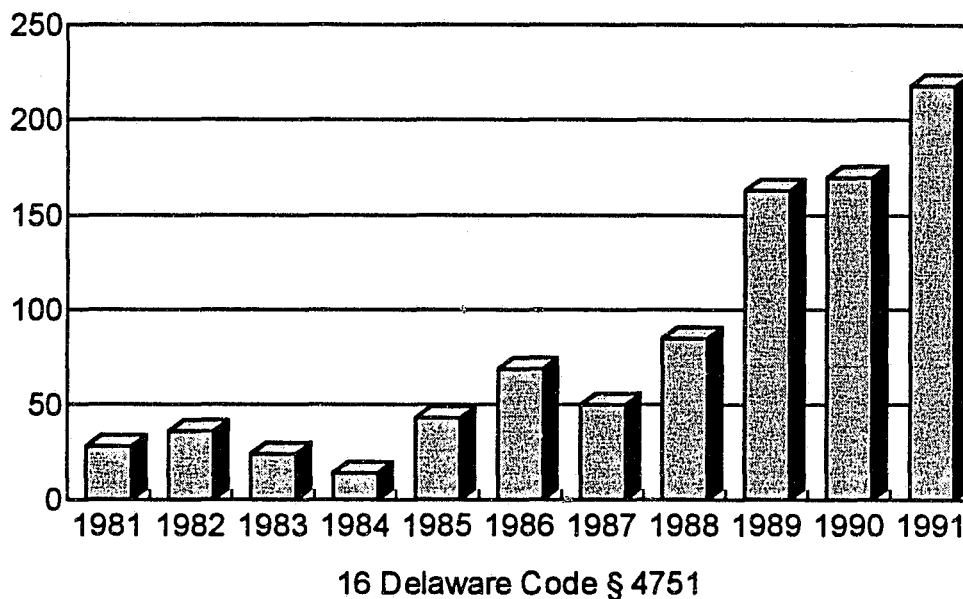
Sentencing Practices 1981 — 1991:						
Driving With a Suspended or Revoked License						
Ranges	Sentence Characteristics			Sentence Length Statistics		
	Admissions	Avg. # of Sentences	Max. # of Sentences	Minimum	Average	Maximum
Less than 30 days	70	1.4	10	1 day	7.5	30
30 days to 6 months	1343	1.3	20	30 days	2.4	6
60 days to 1 year	1182	1.3	20	60 days	3	12
More than 1 year	18	3.3	6	1.1 years	1.9	4

1,408 offenders were sentenced within the statutory ranges for violations of section 2756 from 1981 through 1991, the majority of which appear to have been sentenced for ranges consistent with the penalty for first offenders. This *first offense* group (30 days to 6 months) consists of 1,343 offenders who were sentenced on average to 2.4 months in jail. This group averaged 1.3 sentences per offender. The 1,182 offenders sentenced within the range for second offenders (60 days to 1 year) were admitted on average to three months in jail. They averaged 1.3 sentences per defendant.

Given data limitations, one cannot accurately discern between those sentenced for first or second/subsequent offenses. Also, as a result of overlapping in the terms for first and second/subsequent offenders, the admissions column in the above table will not sum to 1,496.

Possession With Intent to Deliver Narcotics

Sentenced Admissions



Mandatory history

From July 8, 1980, until June 29, 1990, Prohibited Acts A, 16 Del. C. § 4751, called for imprisonment of not more than 25 years for the manufacture, delivery, possession or possession with intent to manufacture or deliver narcotics (PWID). If the defendant was a non-addict, the term of imprisonment required was a minimum of 30 years without parole. If death occurred due to the use or consumption of a narcotic substance, the term of imprisonment was life without the possibility of parole for 45 years. Effective June 30, 1985, PWID of Schedule III, IV or V narcotics was an unclassified felony with a sentence length of not more than 15 years. Mandatory terms for second/subsequent PWID offenses remained unchanged from July 8, 1980, through June 29, 1990. For PWID offenders with prior narcotics offenses committed in Delaware, the enhanced minimum mandatory term was five to 30 years. Defendants with prior non-Delaware narcotics convictions were required to be sentenced, by 16 Del. C. §§ 4763(2) and 4763(3), to a minimum mandatory term of 30 to 99 years, 15 years of which were not subject to suspension, probation or parole.

On June 30, 1990, the former 16 Del. C. § 4751 was stricken and replaced by the present statute which classifies the simple PWID offense as a felony C, the case in which a death occurs as a felony B, and specifies special minimum terms in case a non-addict commits either.

Currently simple PWID, a felony C, carries no minimum term of imprisonment. PWID resulting in death, a class B felony, requires the court to sentence to (at least) a minimum

mandatory term of two years. Enhanced penalties are required by section 4751(c) for non-addicts violating this section: section 4751(c)(1) requires a mandatory minimum sentence of six years for a first PWID offense, and section 4751(c)(2), requires a mandatory minimum sentence of 12 years for second or subsequent offenses by non-addicts. The last sentence in section 4751 stipulates that the court cannot suspend minimum mandatory PWID sentences. 16 Del. C. § 4763(a) enhances the minimum mandatory sentences for defendants with previous convictions. For defendants with previous Delaware narcotics convictions the minimum mandatory sentence is enhanced to five years. For defendants with previous non-Delaware narcotics convictions the minimum mandatory sentence is increased to 30 years, 15 years of which are not subject to suspension, parole, or probation.

Since July 12, 1985, section 4751 has been included in the habitual criminal statute, which requires a mandatory life term upon conviction.

Sentencing practices

As shown in the tables below, in the pre-TIS period 77 percent of all PWID admissions to Level V, were sentenced for simple PWID offenses. In fact, 464 PWIDs were admitted to terms "not more than 25 years:" the maximum sentence in this range was 22.8 years. There were two defendants sentenced to terms over 25 years prior to TIS' effective date.

From 1981 through June 29, 1985, there were 69 PWID admissions for *simple PWID*, i.e., term under five years, with an average sentence length of 1.6 years. For the same sentencing range, from June 30, 1985, through June 29, 1990, the average sentence length was the same, 1.6 years, even though there were 348 more admissions than before. It appears that the sentencing practices for simple PWID remained fairly constant from 1981 through June 1990.

Sentencing Practices 1981 — June 29, 1985:						
Possession With Intent to Deliver						
Ranges	Sentence Characteristics			Sentence Length Statistics		
	Admissions	Avg. # of Sentences	Maximum	Minimum	Average	Maximum
All 4751 Level V admits	113	2.1	20	4 days	4.5 years	33
Simple PWID - < 5 yrs.	69	1.6	20	4 days	1.6 years	4.0
2 nd convict'n- > 5 yrs. ²²	44	2.8	10	5 years	9	33

²²This sentencing range includes the following mandatory sentences: 5 to 30 years for second/subsequent Delaware narcotics convictions; 15 to 99 years for second/subsequent non-Delaware narcotics conviction; 30 years fixed term for PWID committed by non-addicts; and life without parole for 45 years for PWID resulting in death. Non-addict and PWID resulting in death are included here because their required sentences are greater than 5 years. Anecdotal evidence points to non-application of non-addict PWID and few PWIDs resulting in death.

Sentencing Practices June 30, 1985 — June 29, 1990: Possession With Intent to Deliver						
Ranges	Sentence Characteristics			Sentence Length Statistics		
	Admissions	Avg. # of Sentences	Maximum	Minimum	Average	Maximum
All 4751 Level V admits	461	1.5	10	2 days	2.8 years	25.9
Simple PWID- < 5 yrs. ²³	375	1.4	10	2 days	1.6 years	4.9
2 nd convict'n- > 5 yrs. ²⁴	86	1.9	7	5	8.1	25.9
Life as Habitual	0	—	—	—	—	—

Sentencing Practices June 30, 1990 — 1991: Possession With Intent to Deliver						
Ranges	Sentence Characteristics			Sentence Length Statistics		
	Admissions	Avg. # of Sentences	Maximum	Minimum	Average	Maximum
All 4751 Level V admits	326	1.2	7	2 days	1.8 years	20
Simple PWID- < 5 yrs. ²⁵	283	1.8	4	2 days	1 year	4.2
2 nd convict'n- > 5 yrs. ²⁶	43	1.3	7	5 years	7	20
Life as Habitual	0	—	—	—	—	—

Our analysis has found that 326 admissions for PWID occurred from June 30, 1990, through 1991. The average sentence length for this period was 1.8 years, while the maximum sentence was to 20 years. Two hundred eighty-three (283) PWID offenders were admitted for "simple PWID" (sentences under 5 years), with an average sentence length of one year.

²³'Simple PWID -- < 5 years' includes: terms not more than 25 years for simple PWID, § 4751(a), and not more than 15 years for PWID narcotics in Schedules III, IV, or V, § 4751(b). Included in this group are actual sentences less than 5 years.

²⁴Counted in this sentencing range are the following mandatory sentences: 5 to 30 years for second/subsequent Delaware narcotics convictions; 15 to 99 years for second/subsequent non-Delaware narcotics conviction; 30 years fixed term for PWID committed by addicts; and life without parole for a minimum of 45 years. Anecdotal evidence points to non-application of non-addict PWID and few if any PWIDs resulting in death. However, non-addict and PWID resulting in death are included here because their required sentences are greater than 5 years.

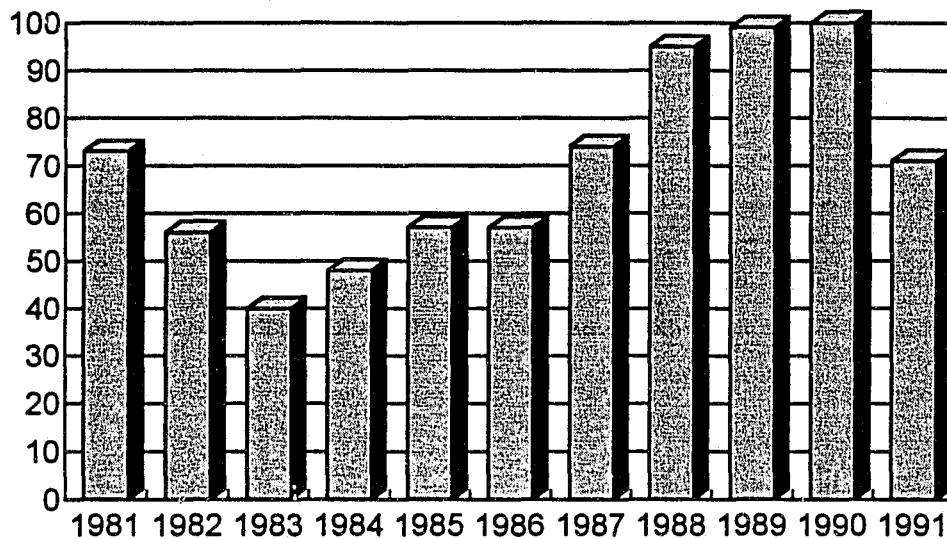
²⁵'Simple PWID -- < 5 years' includes all § 4751 admissions for terms under 5 years, as present data limitations do not allow differentiation among the offenses proscribed by § 4751 and the enhancements for second or subsequent convictions found in § 4763.

²⁶Counted in this sentencing range are the following mandatory ranges: 5 to 10 years for second or subsequent Delaware narcotics conviction; 15 to 99 years for second/subsequent non-Delaware narcotics conviction; 30 years fixed term for PWID committed by addicts; and life without parole for a minimum of 45 years. Anecdotal evidence points to non-application of non-addict PWID and few if any PWIDs resulting in death. Non-addict and PWID resulting in death are included here because their required sentences are greater than 5 years.

From 1981 to 1985 the average sentence length for all PWID admissions was 4.5 years. From 1985 through TIS the average sentence length fell to 2.8 years. Also, it is noteworthy that after the passage of TIS it fell to 1.8 years. The decrease from the earliest period to the five years preceding TIS could be attributed to the increase in usage of the drug trafficking law: Police charging practices and prosecutorial practices changed as the drug trafficking law became more familiar. After June 30, 1990, we see TIS's intended effect.

Burglary in the Second Degree

Sentenced Admissions



11 Delaware Code § 825

Statutory history

From 1981 to June 29, 1990, second degree burglary was classified as a felony C and as such had a sentencing range of two to 20 years. TIS reclassified 11 Del. C. § 825 as a felony D. As do other class D felonies, it currently has a sentencing range of "not more than eight years."

From 1981 through 1991 burglary in the second degree was included in the habitual criminal statute, 11 Del. C. § 4214, which requires a mandatory life term upon conviction.

Sentencing practices

As the following table shows, during the pre-TIS period 153 burglary second admissions fell outside the (then) effective sentencing range for class C felonies: two to twenty years. One hundred forty-four (144) offenders were admitted to Level V with sentences below the minimum range. Their average sentence was 11 months. Nine offenders were admitted for terms over 20 years, with an average sentence length of 31.3 years. The maximum sentence length for burglary second admissions in this period was 50.8 years. Five hundred nine (509) burglary second admissions in this period fell within the appropriate sentencing range: their average sentence length was 5.2 years.

Before June 30, 1990, there were two mandatory second-degree burglary lifer admissions averaging 31.8 years. The reader should note that the Statistical Analysis Center uses actuarial tables to determine life expectancy and that life admissions' expected sentence lengths are adjusted accordingly.

During the post-TIS period, only three burglars were admitted for sentences outside the appropriate sentencing range; i.e., for more than eight years. Their sentences averaged 15.2 years. One hundred one (101) burglars were admitted for sentences "not more than eight years." These burglars' average sentence length was two years and they averaged 1.4 sentences per defendant.

Pre — Truth in Sentencing Practices: Second Degree Burglary						
Ranges	Sentence Characteristics			Sentence Length Statistics		
	Admissions	Avg. # of Sentences	Max. # of Sentences	Minimum	Average	Maximum
Less than 2 years	144	1.9	20	4 days	11 months	1.9 years
2 to 20 years	509	3	17	2 years	5.2	20
More than 20 years	9	9.9	20	21	31.3	50.8
Life as Habitual	2	2	2	22.9	31.8	40.6

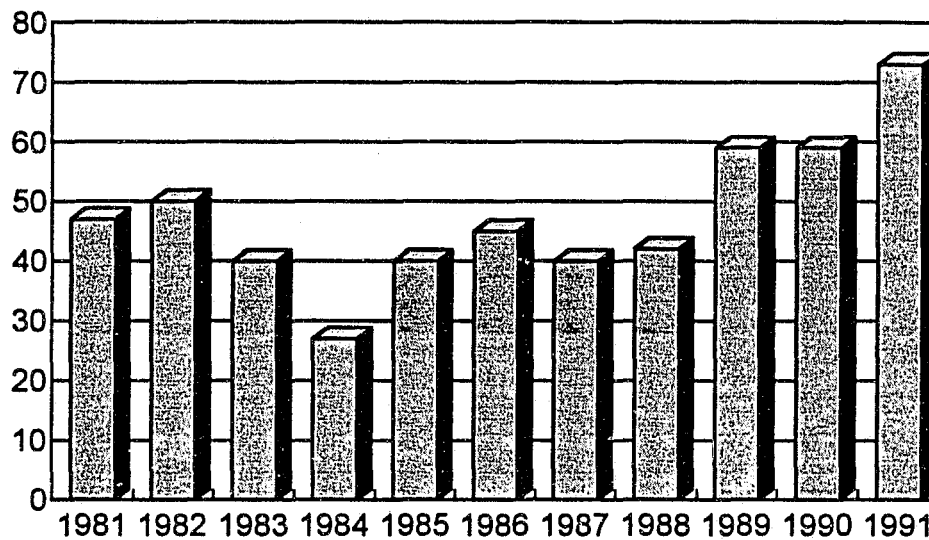
During the post-TIS period, there were two mandatory lifer admissions, whose sentence lengths, after being adjusted for life expectancy, were 36.7 years and 38.1 years, respectively.

Post — Truth in Sentencing Practices: Second Degree Burglary						
Ranges	Sentence Characteristics			Sentence Length Statistics		
	Admissions	Avg. # of Sentences	Max. # of Sentences	Minimum	Average	Maximum
Up to 8 years	101	1.4	4	4 days	2 years	8
More than 8 years	3	1.5	2	8.5 years	15.2	22
Life as Habitual	2	1.5	2	36.7	37.4	38.1

From 1981 through 1991 there were 770 admissions to SENTAC's Accountability Level V. Four of these admissions were for mandatory life terms.

Robbery in the Second Degree

Sentenced Admissions



11 Delaware Code § 831

Statutory history

On July 10, 1986, robbery in the second degree, 11 Del. C. § 831(b), became a mandatory sentencing statute. On that date, a one year minimum mandatory term was added to this section as an enhancement. The enhancement pertained to robberies committed against persons 65 years and older by a criminal convicted of second degree robbery who had been previously convicted of a felony or misdemeanor, in the prior five years and where the victim was injured. The mandatory term in effect after July 1986 was not subject to suspension, parole, probation, or any other reduction. Five years later, on July 9, 1991, 68 Del. Laws, c. 129, § 4, struck the mandatory provisions found in Title 11 section 831(b).

Sentencing practices

Since TIS merely downgraded the seriousness of this felony, from a D felony to an E felony, neither of which is mandatory, a discussion of sentencing practices in terms of pre-TIS nor post-TIS is unwarranted for second degree robbery.

The table *Sentencing Practices 1981 — July 9, 1986* shows admissions and sentencing statistics prior to the enactment of the mandatory enhancement. During this period, there were 231 admissions to Level V for second degree robbery, 222 of which were for terms consistent with the sentencing ranges then in effect. This admissions cohort had average sentences of 3.5 years. Nine were admitted to terms above the appropriate sentencing range for average sentences of 15.2 years with a maximum of 23.5 years.

As shown in the table below, *Sentencing Practices July 10, 1986 — July 9, 1991*, 258 robbers were admitted to Level V while the mandatory enhancement for second/subsequent robbery second offenders was in effect. Of these robbers, 255 were sentenced to terms consistent with the ranges for felony Ds, felony Es, and habitual offenders. Even though 196 were admitted for terms which minimums were consistent with the mandatory enhancement, data limitations do not allow us to say exactly how many were actually admitted for the mandatory enhancement. Yet, given the rather special conditions required by the mandatory enhancement provisions, one would expect very few, if any, actual admissions for this particular mandatory enhancement. However, there were 2 mandatory life admissions during this period.

Sentencing Practices 1981 — July 9, 1986 : Second Degree Robbery						
Ranges	Sentence Characteristics			Sentence Length Statistics		
	Admissions	Avg. # of Sentences	Max. # of Sentences	Minimum	Average	Maximum
Up to 10 years	222	2.0	20	2 days	3.5 years	10
More than 10 years	9	4.3	10	10.5 years	15.2	23.5
Life as Habitual	0	—	—	—	—	—

Sentencing Practices July 10, 1986 — July 9, 1991: Second Degree Robbery						
Ranges	Sentence Characteristics			Sentence Length Statistics		
	Admissions	Avg. # of Sentences	Max. # of Sentences	Minimum	Average	Maximum
Up to 10 years	253	1.6	16	3 days	2.4 years	10
1-10 yr. enhancement	196	1.7	16	1 year	2.9	10
More than 10 years	3	4	5	12	12	12
Life as Habitual	2	1.5	2	39	42.2	45.4

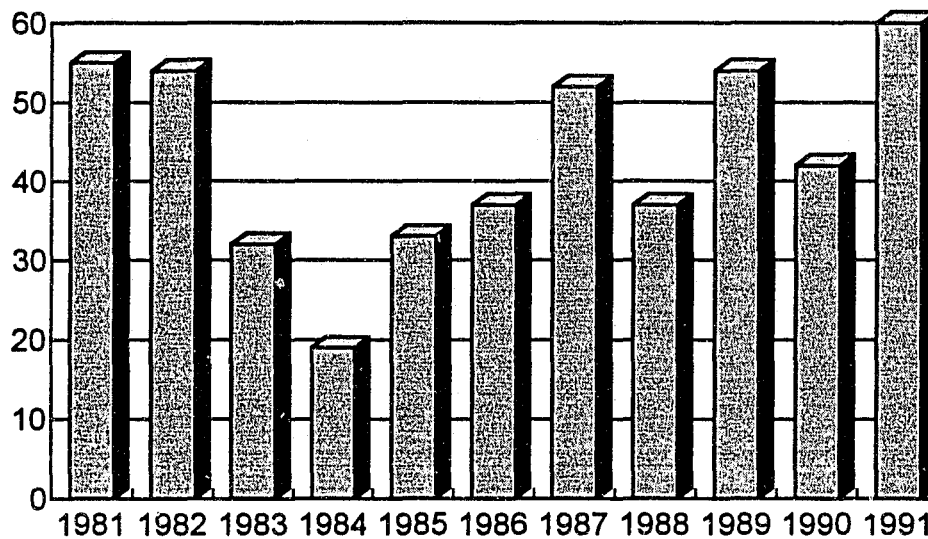
Sentencing Practices July 10, 1991 — December 31, 1991: Second Degree Robbery						
Ranges	Sentence Characteristics			Sentence Length Statistics		
	Admissions	Avg. # of Sentences	Max. # of Sentences	Minimum	Average	Maximum
Up to 5 years	32	1.1	3	29 days	1.4 years	3
More than 5 years	1	1	1	10 years	10	10
Life as Habitual	0	—	—	—	—	—

As shown in the table above, 32 admissions in the post-enhancement period were within appropriate sentencing range; i.e., up to 5 years. Only one admission for 10 years exceeded the sentencing range. During this period there were no mandatory admissions.

There appears to have been 196 mandatory enhancement admissions when the enhancement was in effect. There were two robbery second mandatory lifer admissions from 1981 to 1991.

Robbery in the First Degree

Sentenced Admissions



11 Delaware Code § 832

Statutory history

Mandatory sentences for robbery in the first degree have been in effect since July 9, 1975. For first offenders, the minimum mandatory term for robbery, by 11 Del. C. §§ 832(c) and 4205(b)(2), was three years, which were not subject to suspension, probation or parole. The mandatory minimum for first offenders has been two years, per 11 Del. C. § 4205(b)(2), since June 30, 1990 (TIS' effective date).

Effective July 9, 1975, the minimum mandatory term of incarceration found in section 832(b) was 10 years for second or subsequent offenders. TIS struck the mandatory provisions relating to second or subsequent convictions replacing them with the current section 832(b). Which section requires "a minimum mandatory sentence of 4 years at Level V notwithstanding the provisions of §§ 4205(b)(2) and 4215."

Since the Criminal Code revision, first-degree robbery has been included in the habitual criminal statute, which requires life imprisonment for habitual criminals upon conviction.

Sentencing practices

From 1981 through 1991, 33 robbers were sentenced to terms below the mandatory minimum terms. The shortest sentence length was 15 days. Conversely, 34 offenders were sentenced to terms above the maximum term allowed by § 4205(b)(2). The longest sentence was 53 years.

Most robbery first sentences fall within the mandatory ranges for first or second/subsequent offenders and the habitual criminal statute. In the pre-TIS period 336 offenders were sentenced to terms consistent with the minimum mandatory term for first offenders, i.e., three years. Their sentence lengths averaged 8.9 years with 2.5 sentences per offender. After TIS the average sentence length for those sentenced within the mandatory range for first offenders (two to 20 years) was 4.3 years. One hundred thirty-two (132) robbers were sentenced within the mandatory range for second/subsequent offenders in the pre-TIS period. Their average sentence length was 15.3 years. During the post-TIS period, 31 were sentenced consistent with the range for second/subsequent offenders (four to 20 years). Their average sentence length was 6.6 years. Due to data limitations, a distinction between those sentenced for first or second/subsequent offenses cannot be made at this point.

During the pre-TIS period, there were five life sentence admissions for first degree robbery. After adjustments for life expectancy, the sentence lengths for lifers ranged from 37 to 50.6 years, and averaged 42.5 years. No lifers were admitted for robbery in the first degree during the post-TIS period.

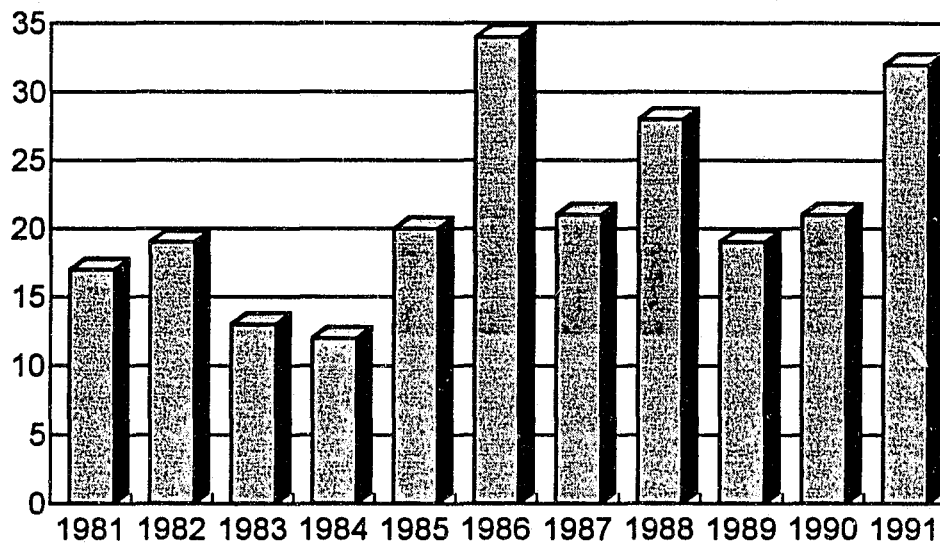
Pre — Truth in Sentencing Practices: First Degree Robbery						
Ranges	Sentence Characteristics			Sentence Length Statistics		
	Admissions	Avg. # of Sentences	Max. # of Sentences	Minimum	Average	Maximum
Less than 3 years	23	1.6	4	15 days	1.2 years	2.4
3 to 30 years — 1st	336	2.5	16	3 years	8.9	29.9
10-30 years — 2nd	132	3.3	16	10	15.3	29.9
More than 30 years	25	5.2	14	30	37.7	53.0
Life as Habitual	5	3.8	10	37.0	42.5	50.6

Truth in Sentencing Practices: First Degree Robbery						
Ranges	Sentence Characteristics			Sentence Length Statistics		
	Admissions	Avg. # of Sentences	Max. # of Sentences	Minimum	Average	Maximum
Less than 2 years	10	1.3	2	3 months	9 months	1.8 years
2 to 20 years — 1st	67	1.8	6	2 years	4.3	15.0
4 to 20 years — 2nd	31	2.1	6	4.0	6.6	15.0
More than 20 years	9	7.9	14	22.5	33.3	51
Life as Habitual	0	—	—	—	—	—

From 1981 through 1991 there were 475 robbery in the first degree admissions to Level V. Four hundred three admissions (403) were consistent with the mandatory ranges for first and second/subsequent offenders. Five robbers were admitted for mandatory life terms.

Assault in the First Degree

Sentenced Admissions



11 Delaware Code § 613

Statutory history

As did most class B felonies, assault in the first degree carried a term of incarceration of three years to 30 years, by 11 Del. C. § 4205(b)(2), from 1973 until June 29, 1990. TIS reclassified assault in the first degree. As a felony C, section 613 currently carries no minimum of any kind for the first offense.

From 1981 to 1991, section 613 was included under the habitual criminal statute. That statute requires a life term for habitual offenders who are convicted of assault, among other felonies.

Sentencing practices

Before TIS, 133 offenders were admitted for sentences consistent with the ranges then in effect for class B felonies: three to 30 years. Their average sentence length was 9.2 years, and the average number of sentences per offender was 1.8. During the same period, 59 individuals were admitted to Level V for terms outside the sentencing range, fifty seven of whom were admitted to terms under three years, with a minimum sentence length of one day, and an average of 1.3 years. The two admitted to terms over thirty years, but not life, were sentenced to 35 and 51.8 years respectively. During the pre-TIS period, one offender was admitted to Level V for a life term.

After June 30, 1990, the maximum term for class C felonies changed to ten years. Since that date, there have been 41 first degree assault admissions consistent with the TIS sentencing

range. For this group the average sentence length has been 2.3 years with a minimum of 62 days and a maximum of 7.5 years. The average number of sentences per defendant was 1.2.

During the post-TIS period, there were no admissions to life terms for assault in the first degree.

Pre — Truth in Sentencing Practices: First Degree Assault						
Ranges	Sentence Characteristics			Sentence Length Statistics		
	Admissions	Avg. # of Sentences	Max. # of Sentences	Minimum	Average	Maximum
Less than 3 years	57	1.4	13	1 day	1.3 years	2.9
3 to 30 years	133	1.8	9	3	9.2	30
More than 30 years	2	3.5	5	35	43.4	51.8
Life as Habitual	1	2	2	23.5	23.5	23.5

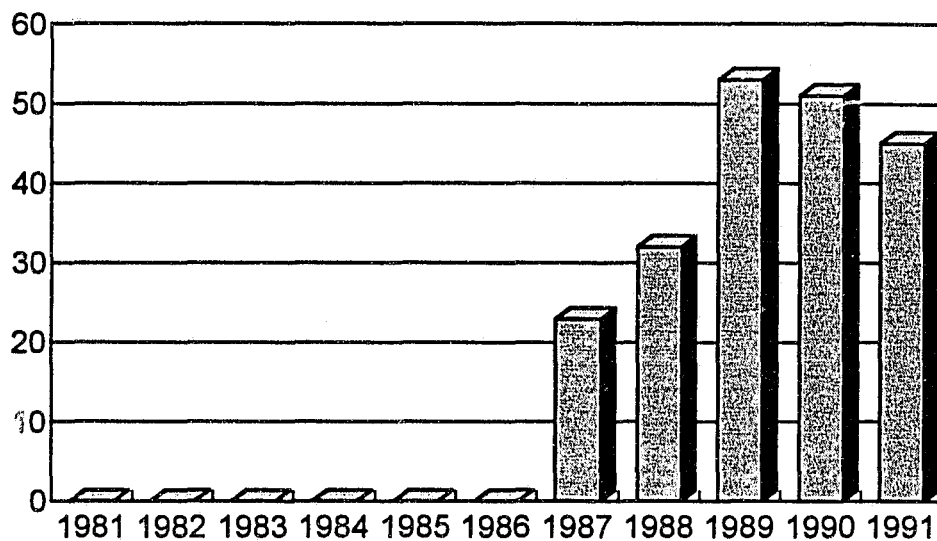
Truth in Sentencing Practices: First Degree Assault						
Ranges	Sentence Characteristics			Sentence Length Statistics		
	Admissions	Avg. # of Sentences	Max. # of Sentences	Minimum	Average	Maximum
Less than 10 years	41	1.2	3	2 months	2.3 years	7.5
More than 10 years	2	2	2	11.5	23.3	35
Life as Habitual	0	—	—	—	—	—

In the post-TIS period two offenders were admitted for first degree assault to terms exceeding the maximum of ten years for class C felonies. These two were admitted for 11.5 years and 35 years, respectively. Both had two sentences passed on them, so we are assuming that the leading charge was first degree assault.

From 1981 through 1991, 236 convicts were admitted to Level V for first degree assault convictions. There was one admission to a mandatory life term.

Unlawful Sexual Intercourse in the Third Degree

Sentenced Admissions



11 Delaware Code § 773

Statutory history

Unlawful sexual intercourse in the third degree was classified as a felony B when it was inserted into the Criminal Code on July 9, 1986. As a felony B, its sentencing range was from three to 30 years, by 11 Del. C. § 4205(b)(2). TIS reclassified section 773 to a felony C. It currently carries no minimum term of any kind for the first offense.

On June 15, 1988, unlawful sexual intercourse in the third degree was included in the habitual criminal statute. That statute requires a life term for habitual offenders upon conviction.

Sentencing practices

During the pre-TIS period (before June 30, 1990) there were 193 admissions to Level V for section 773. Ninety nine (99) of these admissions were for terms consistent with those then in effect for class B felonies. Their average sentence length was 8.4 years. Thirty-five (35) admissions were outside the prescribed range. One admission was for a mandatory life term. After adjusting for life expectancy, the lifer was expected to be incarcerated for 51.5 years.

During the TIS period 69 offenders were admitted for violating this section, 64 of whom were admitted for terms consistent with the sentencing range prescribed in the Criminal Code for C class felonies. Their average sentence length was 2.8 years. Five admissions were recorded

for sentences above the maximum range. There were no mandatory admissions in the post-TIS period.

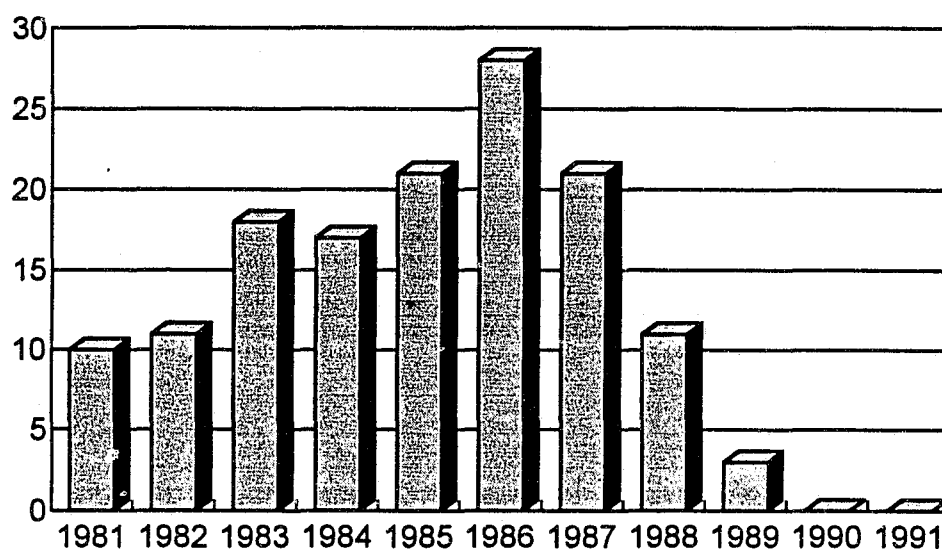
Sentencing Practices July 6, 1986 — June 29, 1990: Unlawful Sexual Intercourse in the Third Degree						
Ranges	Sentence Characteristics			Sentence Length Statistics		
	Admissions	Avg. # of Sentences	Max. # of Sentences	Minimum	Average	Maximum
Less than 3 years	31	1.1	2	57 days	1.4 years	2.5
3 to 30 years	99	1.8	8	3 years	8.4	30
More than 30 years	4	3	4	34.6	40.2	54
Life as Habitual	1	3	3	51.5	51.5	51.5

Truth in Sentencing Practices: Unlawful Sexual Intercourse in the Third Degree						
Ranges	Sentence Characteristics			Sentence Length Statistics		
	Admissions	Avg. # of Sentences	Max. # of Sentences	Minimum	Average	Maximum
Up to 10 years	64	1.3	4	29 days	2.8 years	9
More than 10 years	5	2.4	4	15	21.8	35
Life as Habitual	0	—	—	—	—	—

From July 6, 1986, through 1991, 204 offenders were admitted to Level V for violations of this section. Only one was admitted for a mandatory life term.

Rape in the Second Degree

Sentenced Admissions



11 Delaware Code § 763

Statutory history

Rape in the second degree was a felony B from July 26, 1974, through July 9, 1986, when it was stricken from the Criminal Code. As a felony B it carried a term of imprisonment from three to 30 years.

Rape in the second degree, 11 Del. C. § 763, was included in the habitual criminal law throughout its existence. As such it required the Court to sentence the rapist to a mandatory life term upon conviction.

Sentencing practices

From 1981 through 1989 (when the last admissions for this section were recorded) there were 140 sentenced rape in the second degree admissions. Eighty percent (or 112) were admitted to terms consistent with those then in effect for class B felonies — see table below. This cohort was sentenced on average to ten year terms of incarceration. Twenty rapists were admitted for terms less than three years; for an average sentence length of 1.5 years. Eight were sentenced to terms over thirty years; for average sentences of 41.5 years.

There were no mandatory life sentence admissions throughout the period.

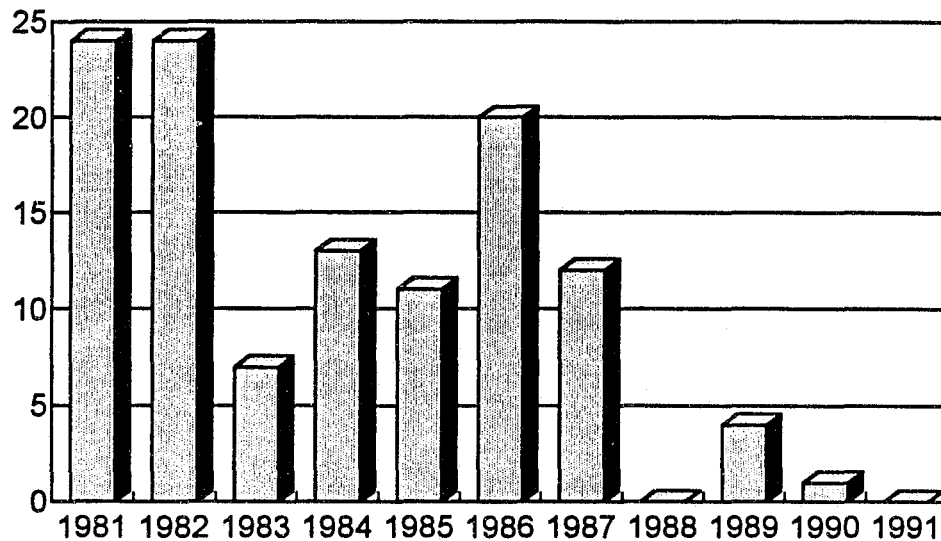
Sentencing Practices 1981 — 1989:

Rape in the Second Degree

Ranges	Sentence Characteristics			Sentence Length Statistics		
	Admissions	Avg. # of Sentences	Max. # of Sentences	Minimum	Average	Maximum
Less than 3 years	20	1.2	2	3 months	1.5	2.5
3 to 30 years	112	1.7	6	3	10	30
More than 30 years	8	2.9	5	30.6	41.5	48.3
Life as Habitual	0	—	—	—	—	—

Rape in the First Degree

Sentenced Admissions



11 Delaware Code § 764

Statutory history

Rape in the first degree was inserted into the Criminal Code on July 26, 1974, as a felony A. Section 764 carried a mandatory life term — by section 4205(b)(1) — since it was a class A felony. 11 Del. C. § 4209A, effective July 7, 1982, fixed the minimum mandatory term of imprisonment for first degree rape at "20 years without benefit of probation or parole or any other reduction."

Why would the legislature pass a law fixing a minimum mandatory term of 20 years for an offense which carried life imprisonment as the penalty for its violation? Because until the passage of TIS, life sentences for class A felonies, although mandatory and not subject to suspension, were subject to parole. Although life sentences were not eligible for parole for the first 45 years of the sentence, the practice of paroling before the 45 year mark must have been so prevalent that legislative action was required to curb it. Or attitudes toward rape changed in this State such that sentencing practices, like those described below, were no longer tolerable to the legislature.

65 Del. Laws, c. 494, § 3, effective July 9, 1986, substituted "first degree rape" for "unlawful sexual intercourse in the first degree" in section 4209A. Effective June 15, 1988, the words "rape or" were inserted before "unlawful sexual intercourse." From then on section 4209A required a minimum mandatory term of 20 years for convictions of "rape or unlawful sexual

intercourse in the first degree." Section 4209A was stricken effective July 17, 1989, for all offenses committed after June 29, 1990.

First degree rape was stricken from the Criminal Code on July 9, 1986. Throughout its existence the sentencing range for it, as per section 4205(b)(1), was life. First degree rape carried a minimum mandatory term of 20 years from July 7, 1982, through July 9, 1986, and then again from June 15, 1988, through June 29, 1990. The habitual criminal statute applied to section 764 from July 26, 1974, through June 14, 1988.

Sentencing practices

As shown in the table *Sentencing Practices 1981 — July 21, 1982* below, 28 rapists were admitted to Level V for sentences inconsistent with section 4205; i.e., less than life. The average sentence length for this group was 2.8 years. Thirteen lifers were admitted prior to section 4209A's effective date. After adjustment for life expectancy, the lifers were sentenced, on average, to 48.9 years.

Sentencing Practices 1981 — July 21, 1982:						
Rape in the First Degree						
Ranges	Sentence Characteristics			Sentence Length Statistics		
	Admissions	Avg. # of Sentences	Max. # of Sentences	Minimum	Average	Maximum
Less than life	28	1.7	6	29 days	2.8 years	20
Life sentence	13	4.5	17	36 years	48.9	53.7

After section 4209A was introduced, see table *Sentencing Practices July 22, 1982 — July 9, 1986* below, 13 rapists were admitted to Level V for sentences below the 20 year mandatory minimum. The average sentence length for this group was 10.2 years, ranging anywhere from two years through 17.3 years. Two rapists were sentenced within the minimum mandatory range: their sentences were 20 and 31.3 years. Thirty six offenders were sentenced to mandatory life terms during this period. After adjusting for life expectancy, their average sentence length was 45.5 years.

Sentencing Practices July 22, 1982 — July 9, 1986:						
Rape in the First Degree						
Ranges	Sentence Characteristics			Sentence Length Statistics		
	Admissions	Avg. # of Sentences	Max. # of Sentences	Minimum	Average	Maximum
Less than 20 years	13	1.5	3	2 years	10.2	17.3
20 years to life	2	3	5	20	25.7	31.3
Life sentence	36	3.3	15	31.3	45.5	55

While there was no "mandatory minimum" for first-degree rape first offenders from July 10, 1986, through June 14, 1988, all but two admissions for this section were for mandatory life terms. As shown in the table below: The average sentence length for the 17 lifers admitted during this period, after accounting for life expectancy, was 42.5 years. The two rapists not admitted for life terms were sentenced to terms of ten and twelve years.

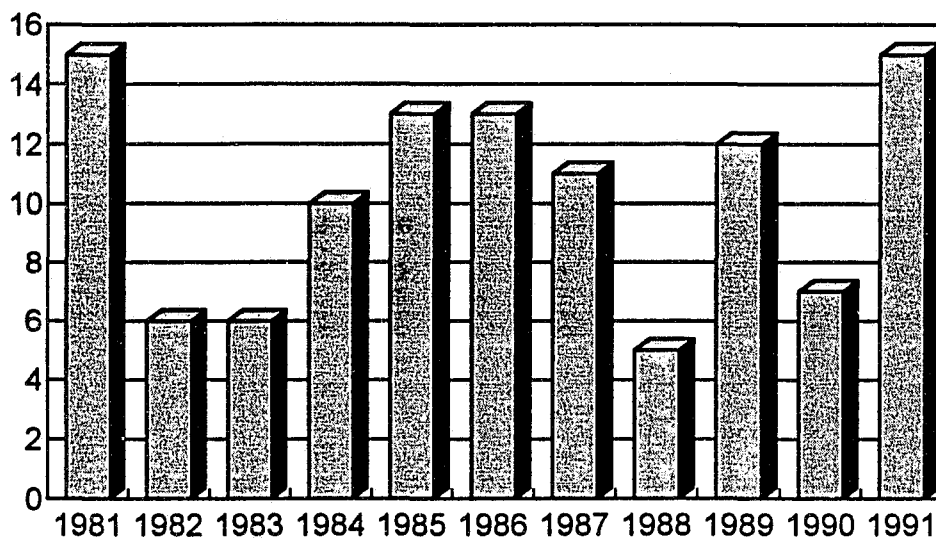
Sentencing Practices July 10, 1986 — June 14, 1988:						
Rape in the First Degree						
Ranges	Sentence Characteristics			Sentence Length Statistics		
	Admissions	Avg. # of Sentences	Max. # of Sentences	Minimum	Average	Maximum
Less than life	2	1	1	10 years	11	12
Life sentence	17	3	7	23.1 years	42.5	54.51

Sentencing Practices June 15, 1988 — June 29, 1990:						
Rape in the First Degree						
Ranges	Sentence Characteristics			Sentence Length Statistics		
	Admissions	Avg. # of Sentences	Max. # of Sentences	Minimum	Average	Maximum
Less than 20 years	1	1	1	2 years	2	2
20 years to life	0	—	—	—	—	—
Life sentence	4	4.8	11	15.7	26.6	38.1

As shown in the table above, there were five rape in the first degree admissions from June 15, 1988, through 1990. One rapist was admitted for two years at Level V. His sentence lies outside the mandatory ranges then in effect for this section. However, the offense could have been committed prior to June 14, 1988, when there was no "mandatory minimum" for first offenders. In that case, the two year sentence would have been tenuously permissible. This scenario seems plausible when one considers that the offender was sentenced in November, 1989. There were no mandatory 20-year-minimum admissions during this period. Four rapists were admitted for mandatory life terms; whose terms, when adjusted for life expectancy, averaged 26.6 years.

Murder in the First Degree

Sentenced Admissions



11 Delaware Code § 636

Statutory history

Murder in the first degree, 11 Del. C. § 636, is punishable by section 4209. Since May 14, 1977, section 4209(a) has provided punishment by "death or imprisonment for the remainder of {their} natural life without benefit of probation or parole or any other reduction" for those convicted of murder in the first degree.

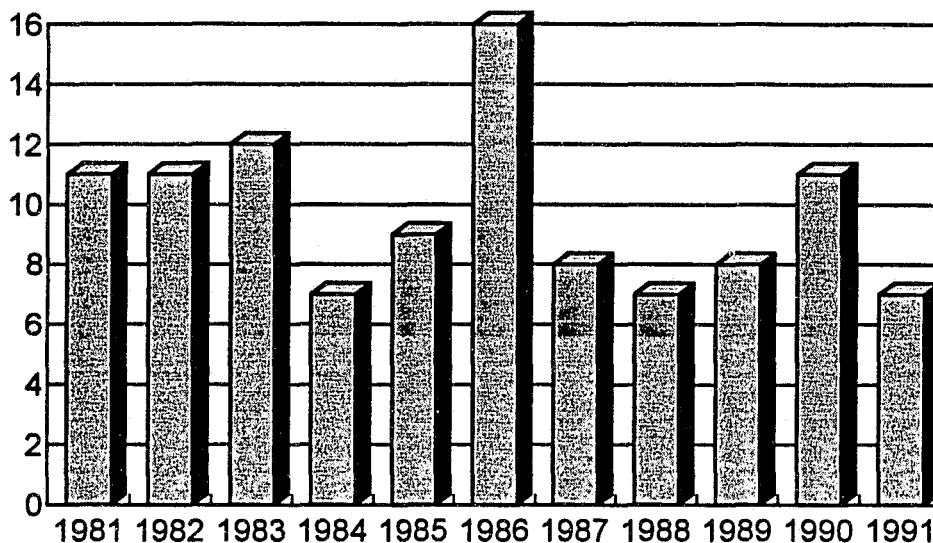
Sentencing practices

From 1981 through 1991, 113 criminals were admitted to Level V for first degree murder convictions. Six offenders were admitted to terms below the mandatory sentencing range. The six had sentences ranging from six months to 37.2 years, and averaging 17 years. One hundred three (103) murderers were admitted for life sentences: they averaged 3.9 sentences per individual and their sentences averaged 41.9 years ranging from 1.7 to 55.7 years (sentences adjusted for life expectancy). Four were admitted for death sentences. If never executed, the four are expected to be incarcerated, on average, for 51.7 years.

Sentencing Practices 1981 — 1991:						
Murder in the First Degree						
Ranges	Sentence Characteristics			Sentence Length Statistics		
	Admissions	Avg. # of Sentences	Max. # of Sentences	Minimum	Average	Maximum
Less than life	6	1.7	2	6 months	17 years	37.2
Life sentence	103	3.9	33	1.7 years	41.9	55.7
Death sentence	4	4.5	7	48.8 years	51.7	54.3

Manslaughter

Sentenced Admissions



11 Delaware Code § 632

Statutory history

Manslaughter, 11 Del. C. § 632, a class B felony, carried a minimum term of imprisonment of three years by section 4205(b), from 1981 until June, 30, 1990. TIS reclassified manslaughter as a felony C thus no minimum term of imprisonment is specified for it. Throughout the period, section 632 falls under the purview of section 4214, which requires life imprisonment upon conviction for habitual criminals.

Sentencing practices

Eighty eight (88) criminals were admitted to Level V for manslaughter sentences consistent with the then effective range for felony Bs. As shown in the table below, their sentences averaged 13.9 years. Below the prescribed three year minimum, six were admitted for sentences ranging from six months to 2.8 years and averaging 1.9 years. Over the prescribed range, four were admitted for sentences ranging from 30.5 to 52.9 years — these sentences were adjusted for life expectancy.

From 1981 through June 29, 1990, there were no mandatory habitual criminal lifer admissions.

During the post-TIS period (after June 29, 1990) nine offenders were admitted for violations of section 632. All were sentenced consistent with the TIS range for class D felonies. Their

average sentence length was 5.3 years. Sentences ranged in this period from 4.5 months through 10 years.

There were no mandatory lifer admissions from June 30, 1990, through 1991.

Sentencing Practices 1981 — June 29, 1990:						
Manslaughter						
Ranges	Sentence Characteristics			Sentence Length Statistics		
	Admissions	Avg. # of Sentences	Max. # of Sentences	Minimum	Average	Maximum
Less than 3 years	6	1.2	2	6 months	1.9	2.8
3 to 30 years	88	1.7	12	3	13.9	30
More than 30 years	4	2	2	30.5	42.5	52.9
Life as Habitual	0	—	—	—	—	—

Sentencing Practices June 30, 1990 — 1991:						
Manslaughter						
Ranges	Sentence Characteristics			Sentence Length Statistics		
	Admissions	Avg. # of Sentences	Max. # of Sentences	Minimum	Average	Maximum
Less than 10 years	9	1.4	20	4.5 mos.	5.3 years	10
More than 10 years	0	—	—	—	—	—
Life as Habitual	0	—	—	—	—	—

Methodology

In addition to literature searches and the actual drafting of the report, there were two distinct parts to this research project: the identification of mandatory provisions, and the sentenced admissions analysis. The Delaware Code Annotated was used to identify currently active mandatory sentencing provisions. The derivation of the provisions and the history of the statutes in which they are found were traced through careful examination of the Delaware Laws.

After the sections containing mandatory sentencing provisions were identified, the DOC databases were searched for admission records for those sections. 1981-1991 admission records for the original sentenced admission were kept. Records which reflected movement within the system for a particular individual, e.g., transfer to another institution or the hospital, were discarded. The pattern, extent, and trends of use of mandatory sentences were analyzed using these DOC admissions and sentencing data.

Sentencing orders issued by the courts do not always clearly identify the specific section or subsection of the Delaware Code which an offender violated, making it difficult to identify the exact rationale of many sentences. Some idea, however, of the extent of mandatory sentencing provision usage is estimated by examining the pattern of sentence lengths for statutes containing mandatory sentencing language.

The assignment of an admission to a particular time period was based on the sentence date. For example, if a criminal was sentenced on July 1991, then he would be included in the post-TIS²⁷ period.

²⁷From June 30, 1990, onwards.

Appendix

This appendix contains a list of Delaware Code sections which contain mandatory minimum sentencing provisions. The numbers which accompany most entries correspond to footnotes in the *Notes* section (at the end of the list).

Title and Section Description			Mandatory Minimum	
3	503	false or untrue analysis by the state chemist, um	Indeterminate	1
3	1304	illegal sales or shipments of nursery stock, um	1 month	2
3	3102	sales of milk or cream in violation of standard measurement, um	10 days	2
3	3107	unlawful sales of milk or sales of milk or cream under bogus trade names, um	30 days	2
3	3120(a)	violations of milk or cream butterfat content regulations, um	10 days	2
3	6308	violations of poultry vaccination requirements, um	5 days	2
3	7338	second offense, violations of cattle disease regulations, um	10 days	1
3	8713(a)	bribe taking by meat or poultry inspector, um	1 year	3
3	8713(a)	bribing a meat or poultry inspector, um	1 year	3
3	10046	aiding or abetting in an unlicensed harness race, um	Indeterminate	3
4	901	alcohol offenses carrying penalty of imprisonment, um	3 months	
4	902	alcohol offenses carrying penalty of \$500 to \$1,000 or imprisonment, um	3 months	1
4	903	alcohol offenses carrying penalty of \$100 or imprisonment, um	30 days fixed	1
4	904(a)	unlawful sale or delivery of alcohol to any person under 21, um	30 days fixed	1
4	904(b)	first offense, person under 21 making false statements to obtain alcohol, um	30 days fixed	1
4	904(b)	second offense, person under 21 making false statements to obtain alcohol, um	60 days fixed	1
4	904(c)	first offense, buying or giving alcohol to a person under 21, um	30 days fixed	1
4	904(c)	second offense, buying or giving alcohol to a person under 21, um	60 days fixed	1
4	905(a)	unlicensed manufacture of alcohol or possession of a still or mash, um	6 months	2
4	906(a)	unlawful transportation or shipment of alcohol, um	30 days	2
4	907	interference with a.b.c. officer or inspector performing his duties, um	1 month fixed	1
4	910	violations of provisions of title 4 or a.b.c. regulations, um	Indeterminate	2
5	123	bank officer willfully making false statement or entry in the books, um	Indeterminate	2
7	764	taking, capturing, or killing muskrats by nailing or destroying their dens, um	1 day per dollar defaulted	1
7	5306	violations of archaeological site regulations, um	30 days fixed	2
7	103(e)	first offense, violation of dnrec's deer rules or regulations, um	30 days	2
7	103(e)	second offense, violation of dnrec's deer rules or regulations, um	60 days	2
7	103(f)(3)	unlawful hunting, pursuing, or taking of deer, um	6 months	2
7	715(c)	unlawfully starting a fire or causing a fire in any woodlot or forest, um	30 days	2

Title and Section Description			Mandatory Minimum	
7	747(a)	bald eagle, disturbing, destroying or damaging eagle's nest or aerie, um	50 days fixed	2
7	747(b)	same -- shooting, killing, or removing eggs or eaglets from nest or aerie, um	100 days fixed	2
7	747(c)	same -- bartering, trading, or possession of eagle, eggs or eaglets, um	100 days fixed	2
7	1707(c)	unlawful confinement of a dog, um	30 days fixed	1
9	9406(d)	clerk of peace failing or neglecting to deposit public moneys, um	Indeterminate	2
10	7109	contempt under injunctions and abatelements chapter of title 10, um	3 months	2
11	613	third felony offense, first degree assault, fc	life	4
11	630(b)	second degree DUI vehicular homicide, fe	1 year	5
11	630A(b)	first degree vehicular homicide, fe	2 years	5
11	632	third felony offense, manslaughter, fc	life	4
11	635	second degree murder, fb	10 years	5
11	635	third felony offense, second degree murder, fb	life	4
11	636	first offense, first degree murder, fa	life or death	6
11	636	third felony offense, first degree murder, fa	life	4
11	763	third felony offense, second degree rape, fb	life	4
11	764	third felony offense, first degree rape, fa	life	4
11	766	third felony offense, first degree sodomy, fb	life	4
11	771	third felony offense, second degree unlawful sexual penetration, fd	life	4
11	772	third felony offense, first degree unlawful sexual penetration, fc	life	4
11	773	third felony offense, third degree unlawful sexual intercourse, fc	life	4
11	774	second degree unlawful sexual intercourse, , fb	10 years	5
11	774	third felony offense, second degree unlawful sexual intercourse, fb	life	4
11	775(b)	first degree unlawful sexual intercourse, fa	2 years	
11	775	third felony offense, first degree unlawful sexual intercourse, fa	life	4
11	783	third felony offense, second degree kidnapping, fc	life	4
11	783A	first degree kidnapping, fb	2 years	
11	783A	third felony offense, first degree kidnapping, fb	life	4
11	803	third felony offense, first degree arson, fc	life	4
11	825	third felony offense, second degree burglary, fd	life	4
11	826	third felony offense, first degree burglary, fc	life	4
11	831(b)	second degree robbery, fe	1 year	5

Title and Section		Description	Mandatory Minimum	
11	832(b)	first degree robbery, fb	2 years	
11	832(b)	second or subsequent offense, first degree robbery, fb	4 years	5
11	832	third felony offense, first degree robbery, fb	life	4
11	859(b)	larceny of livestock, fg	indeterminate	7
11	1108	sexual exploitation of a child, fb	2 years	
11	1108	second or subsequent offense, sexual exploitation of a child, fb	life	8
11	1109	second offense, unlawfully dealing in child pornography, fb	2 years	
11	1253	escape after conviction, injury results, fb	2 years	
11	1254(a)	assault in a detention facility causing physical injury, fd	2 years	5
11	1254(b)	assault in a detention facility causing serious physical injury, fb	3 years	6
11	1339(c)	adulteration causing death, fa	15 years	
11	1361(b)	second offense, selling, delivering, or providing obscene materials, fg	9 months	3
11	1361(b)	same -- to persons under the age of 18, fe	9 months	3
11	1447(a)	possession of a deadly weapon during commission of a felony, fb	2 years	
11	1449(b)	wearing body armor during the commission of a felony, fb	3 years	5
11	1504	racketeering, fb	2 years	3
11	6562	furnishing contraband to prisoners, um	Indeterminate	2
11	6564	unlawful incarceration by a private detective, um	6 months	1
15	2302	wrongful registration or assault/riot near registration place, um	30 days	2
15	2303(a)	fraudulent entries, alterations, or loss of voter registration records by registrar, um	Indeterminate	2
15	2303(b)	same -- by others, um	Indeterminate	2
15	2307(a)	unauthorized entering of voter registration area, um	30 days	2
15	2307(b)	entering registration area to interfere with voter registration, um	90 days	2
15	3162	inspector's refusal or failure to return registration records, um	Indeterminate	2
15	3163	receiving illegal or refusing legal votes, um	Indeterminate	13
15	3167	bribery at primary elections, um	1 month	2
15	5114(2)	improper conduct by printer of ballots and ballot envelopes, um	1 year	2
15	5116	tampering with voting machines, um	1 year	2
15	5117(a)	entering of voting room on election day other than to vote, um	30 days	2
15	5117(b)	entering voting room on election day to disrupt the election, um	1 year	9
15	5119(b)	revealing how a disabled person voted after assisting him to vote, um	1 year	3

Title and Section		Description	Mandatory Minimum	
15	5121(a)	removal or destruction of voting supplies, equipment or voting machines, um	6 months	
15	5121(b)	same -- inducing or attempting to induce a person to, um	6 months	
15	5122	unlawful disclosure of an individual's vote by an election official, um	2 years	3
15	5128	fraudulent voting, um	30 days	2
15	5142	administering unauthorized oath or affirmation as condition of voting, um	10 days fixed	3
15	5143(b)	general assembly candidate making written pledge to vote in certain way, um	1 month	2
15	5301	bringing armed soldiers into State to interfere with elections, uf	1 year	3
15	5302	abetting or counseling military interference with elections, uf	1 year	3
16	307	neglected privy well, um	Indeterminate	1
16	308	slaughterhouse use as a nuisance, um	Indeterminate	1
16	309	placing offensive matters in public, um	Indeterminate	1
16	1706	unlawful dumping of refuse from dressing of fowls and poultry, um	Indeterminate	13
16	2113	violations of mattress, pillow or bedding regulations, um	10 days fixed	1
16	2508(a)	threaten or coerce to obtain withholding of maintenance medical treatment, um	30 days fixed	2
16	3312(a)	second offense, adulteration or misbranding of food, um	1 year fixed	2
16	3324(b)	second offense, violations of detention or embargo of article, um	1 year fixed	2
16	3508	refusing access for inspection of a cannery, um	Indeterminate	1
16	4511	violations of cold food storage regulations, um	60 days	2
16	4751(a)	second offense, manufacture, delivery, pwimd narcotic drug, fc	15 years	10
16	4751(a)	third felony offense, same, fc	life	4
16	4751(b)	same -- death results, fb	2 years	3
16	4751(b)	second offense, same -- death results, fb	15 years	10
16	4751(b)	third felony offense, same -- death results, fb	life	4
16	4751(c)	same -- by a non-addict, fb or fc	6 years	5
16	4751(c)	second offense, same -- by a non-addict, fb or fc	12 or 15 years	11
16	4751(c)	third felony offense, same -- by non addict, fb or fc	life	4
16	4752	second offense, manufacture, delivery, pwimd non narcotic drug, fe	3 years	10
16	4752	third felony offense, manufacture, delivery, pwimd non narcotic drug, fc	life	4
16	4752A(c)	third felony offense, unlawful attempt or delivery of non controlled substance, fd	life	4
16	4752A(c)	unlawful delivery of a non controlled substance, fd	by type of drug	
16	4753A	trafficking in marijuana, cocaine, LSD or illegal drugs, fb	3, 5, or 15 yrs.	3

Title and Section		Description	Mandatory Minimum	
16	4753A	third felony offense, trafficking in marijuana, cocaine, LSD or illegal drugs, fb	life	4
16	4761(a)(1)	first offense, distribution of narcotics to minors under 16, fc	1 year	5
16	4761(a)(1)	first offense, distribution of narcotics to minors under 14, fc	2 years	5
16	4761(a)(1)	second offense, distribution of narcotics to minors, fc	15 years	10
16	4761(a)(1)	second offense, distribution of narcotics to minors under 16, fc	15 years	10
16	4761(a)(1)	second offense, distribution of narcotics to minors under 14, fc	15 years	10
16	4761(a)(2)	first offense, distribution of non narcotics to minors under 16, fc	6 months	5
16	4761(a)(2)	first offense, distribution of non narcotics to minors under 14, fc	1 year	5
16	4761(a)(2)	second offense, distribution of non narcotics to minors, fc	7 years	12
16	4761(a)(2)	second offense, distribution of non narcotics to minors under 16, fc	7 years	12
16	4761(a)(2)	second offense, distribution of non narcotics to minors under 14, fc	7 years	12
16	7103(a)(2)	loading explosive materials within 100 yards of passenger tracks, um	6 months fixed	2
16	7112(4)	explosives violations resulting in death, uf	Indeterminate	
17	510(d)	violating speed and weight limits on private structures, um	10 days	2
17	515(b)	maintaining an unfenced junkyard within 75 feet of a highway, um	10 days	2
18	1514	insurance commissioner's failure to perform his duties, uf	Indeterminate	3
18	6138(b)	misrepresenting the condition of fraternal aid society, um	30 days	2
18	6143(a)	same -- to obtain any compensation or commission, um	30 days	2
20	3128	violating proclamation of state of emergency, um	Indeterminate	
20	3129(b)	destroying property or injuring persons during state of emergency, uf	3 years	5
20	3502(d)	communist's failure to register with the state police, uf	2 years	2
21	702	second offense, failure to answer summons, um	2 days	2
21	2102(b)	second offense, new resident's failure to register vehicle, um	15 days	2
21	2116(a)	vehicle registration violations, um	30 days	2
21	2116(a)	second offense, same, um	90 days	2
21	2118(r)(1)	uninsured motor vehicle, um	10 days	2
21	2118(r)(1)	second offense, same, um	30 days	2
21	2133(a)	second offense, driving with invalid/expired temporary plate, um	10 days	2
21	2134(g)	second offense, misrepresentation to obtain handicapped person's plate, um	10 days	2
21	2135(h)	second offense, same -- to obtain disabled person's parking permit, um	10 days	2
21	2174	second offense, taxicab regulation violations, um	10 days	2

Title and Section		Description	Mandatory Minimum	
21	2315	making false statements to obtain title to vehicle, um	60 days	2
21	2351(a)	title and liens violations, um	30 days	2
21	2510(a)	failure to endorse and deliver title upon transfer, um	30 days	2
21	2511(a)	title transfer provisions violations, um	30 days	2
21	2511(a)	second offense, same, um	90 days	2
21	2623	second offense, violating uniform commercial driver license act, um	10 days	2
21	2704(b)	second offense, new resident driving without Delaware license, um	10 days	2
21	2756(a)	driving with a suspended or revoked license, um	30 days	3
21	2756(a)	second offense, same, um	60 days	3
21	2757(a)	second offense, driver license violations, um	10 days	2
21	2810	habitual traffic offender driving after judgment prohibited, um	1 year	5
21	2814	additional penalty for habitual traffic offenders, um	30 days	3
21	3108(a)	second offense, non driver identification card violations, um	10 days	2
21	4103(b)	failure to stop at command of police, um	60 days	2
21	4103(b)	second offense, failure to stop at command of police, um	60 days	3
21	4123(b)	truck driver following another vehicle too closely, um	10 days	2
21	4123(b)	second offense, same, um	10 days	2
21	4126(b)	second offense, unlawful use of controlled-access highways, um	10 days	2
21	4128(b)	evasion of Delaware memorial bridge toll, um	10 days	2
21	4166(i)	overtaking and passing stopped school bus, um	30 days	2
21	4166(i)	second offense, same, um	60 days	3
21	4169(c)	second offense, speed limit violations, um	10 days	2
21	4172(d)	drag racing, um	10 days	2
21	4172(d)	second offense, same, um	10 days	2
21	4172A(c)	malicious mischief by motor vehicle, um	10 days	2
21	4172A(c)	second offense, same, um	10 days	2
21	4175(b)	reckless driving, um	10 days	2
21	4175(b)	second offense, same, um	30 days	2
21	4176(c)	second offense, careless or inattentive driving, um	10 days	2
21	4177(d)(1)(2)	driving under the influence of alcohol or drugs, um	60 days	2
21	4177(d)(1)(2)	second offense, same, um	60 days	3

Title and Section Description			Mandatory Minimum	
21	4202(b)	failing to stop at accident involving injury or death, um	30 days	2
21	4205(a)	second offense, rules of the road or accident report violations, um	10 days	2
21	4315(a)	second offense, equipment requirement violations, um	10 days	2
21	4318(b)	minimum bumper height violations, um	10 days	2
21	4318(b)	second offense, same, um	15 days	2
21	4414(a)	willful abandonment of a motor vehicle, um	2 days	2
21	4709(a)	motor carrier safety violations, um	60 days	2
21	6306(a)	used vehicle sales violations, um	30 days	2
21	6702(b)	second offense, driving vehicle without the consent of its owner, um	30 days	3
21	6704	receiving or transferring stolen vehicle, uf	1 year	2
21	6705(g)	buy, sell, possess or remove, or falsify vehicle identification number, um	30 days	2
21	6705(g)	willfully buy, sell, or possess, or remove or falsify vehicle identification number, uf	1 year	2
21	6707(a)	vehicle theft, unauthorized use and damage violations, um	30 days	2
21	6707(a)	second offense, same, um	90 days	2
21	6811(b)	possession of an ohv with an altered or defaced vehicle identification number, um	30 days	2
23	1701	dredgings, removal beyond the limits of the State, um	30 days	2
23	1703	master or pilot engaged in towing any vessel with dredgings beyond State, um	30 days	2
23	1708	removing sand from beach areas, um	5 days	2
23	2102	boat speed limit violations on noxentown or silver lake, n.c. county, um	10 days	2
23	2304(c)	operating a boat or vessel operator within 1 year of refusal to submit to a chemical test, um	30 days fixed	2
23	2305(1)	operating a vessel or boat while under the influence of alcohol and/or drugs, um	60 days	2
23	2305(2)	second offense, same, um	60 days	3
24	714(c)	practicing chiropractic without a license, um	1 months	2
24	714(c)	second offense, same, um	6 months	3
24	1766(b)	unlawful abortion, uf	2 years	3
24	1178	practicing dentistry without registration or a valid certificate, um	1 month	2
24	1178	second offense, same, um	6 months	3
24	1180	second or subsequent violations of sections 1172, 1173, 1177, or 1179 of title 24, um	10 days	2
24	2318	violations of pawnbroker or junk dealer regulations, um	1 month	1

Title and Section		Description	Mandatory Minimum	
24	2589(2)	unlawful substitution of prescription drugs, um	1 months	2
24	3116(c)	practicing funeral services without a license, um	1 months	2
24	3116(c)	second offense, same, um	6 months	2
24	3123	violation of funeral regulations, um	6 months	2
25	7005(d)	unlawful offering for rent of a mobile home, um	30 days fixed	2
28	346(a)	aiding or abetting in an unlicensed horse race, um	Indeterminate	9
28	425	aiding or abetting in an unlicensed horse race in kent county, um	Indeterminate	9
28	705(c)	influencing the result of a horse race or a harness horse race, um	1 year	2
28	903(c)	violation of shooting gallery regulations, um	1 month	1
29	901(a)	altering or hiding bills or acts, pending or passed by the general assembly, uf	1 year	2
29	2111	violation of the governor's powers during extreme fire hazards, um	30 days	2
29	4880	aiding in the conduct of any unlicensed jai-alai meet, um	2 years fixed	2
29	8228(a)	second offense, hazardous materials transportation act, driver violating, um	60 days	2
29	8229(c)	second offense, same -- violations by a shipper, carrier or consignee, um	60 days	2
30	2303(b)	unlicensed nonresident junk dealer, um	3 months	1
30	5128(b)	motor fuel tax, refusal to report or making a false report, um	30 days	2
31	354(b)	failure to comply with order to give up a foster child, um	Indeterminate	2
31	604(d)	misuse of food stamps, um	10 days	2
31	604(d)	second offense, same, um	30 days	2
31	1103	selling or bartering food, clothing or goods obtained from a welfare agency, um	30 days	2

Notes:

- 1 Term of imprisonment required on failure to pay fine.
- 2 Court required to impose term of imprisonment, payment of a fine, or both.
- 3 Minimum term of imprisonment and payment of fines are required.
- 4 Life imprisonment required by the Habitual Criminal statute, 11 Del. C. 4214.
- 5 The minimum mandatory term is an enhancement.
- 6 Punishment for first degree murder by 11 Del. C. 4209.
- 7 Mandatory sentencing provisions are still in effect, though no minimum is.

- 8 Punishment for second/subsequent sexual exploitation of a child by 11 Del. C. 1110.
- 9 The Court is required to sentence to the minimum term of imprisonment or fine the convict.
- 10 Minimum term of imprisonment by 16 Del. C. 4763(a)(3) for a previous narcotics conviction.
- 11 Minimum term of imprisonment by 16 Del. C. 4751(c)(2) or 4763(a)(3).
- 12 Minimum term of imprisonment by 16 Del. C. 4763(a)(2) for a previous controlled substance conviction.
- 13 Imprisonment to last until fine is paid or discharged by law.