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The Justice Analyst



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MANDATORY SENTENCES IN PENNSYLVANIA

INTRODUCTION

During the past decade, legislators at both the federal and state levels enacted many mandatory minimum sentences to address mounting public concern about crime and violence. Mandatory minimum sentences were intended to: increase uniformity in sentencing, increase the certainty of incarceration to enhance deterrence, and reduce crime through the incapacitation of serious offenders. By the end of the 1980s, all fifty states had enacted some version of mandatory minimum sentencing laws.

Mandatory sentences have fallen short of their objectives. Their application is far from uniform, certain crimes are not susceptible to deterrence and crime rates did not noticeably decline after mandatory sentences were enacted. These inflexible sentences have also produced several costly and unintended consequences. For example, more nonviolent offenders have been incarcerated and the proportion of prisoners incarcerated for violent offenses has decreased. In addition, minority offenders have been disproportionately affected by mandatory minimum sentences. These sentencing policies have also created an enormous financial burden within the state budget.

MANDATORY MINIMUM SENTENCES DEFINED

A mandatory minimum sentence as prescribed by Pennsylvania statute directs the court to sentence an offender, upon conviction of a designated crime, to a set minimum term of incarceration. Judges may not suspend a mandatory minimum sentence for a non-incarceration alternative nor may they use early release mechanisms. Mandatory minimum sentences in Pennsylvania are found in criminal statutes and in specific sentencing statutes. The most frequently used mandatory sentencing

The PCCD's *Justice Analyst* series is designed to summarize the results of policy analysis in the areas of criminal and juvenile justice for the benefit of state and local policymakers and the general public. This issue focuses on the impact of mandatory minimum incarceration sentencing laws on the Commonwealth's criminal justice system. This research was supported in part by funding provided by the Edna McConnell Clark Foundation. The PCCD wishes to acknowledge the contributions of the Pennsylvania Commission on Sentencing and the Pennsylvania Department of Corrections, who provided technical assistance and access to their respective data bases in support of this project.

James Thomas
Executive Director

provisions are found in the Vehicle Code, the Criminal Code, and the Controlled Substance Act.

Prosecutors in Pennsylvania maintain the discretion to seek mandatory penalties, which reportedly are often used to induce guilty pleas as part of the plea/charge bargaining process. Under Pennsylvania's mandatory statutes, the defendant need not be given notice that the Commonwealth intends to seek a mandatory sentence for an offense until after conviction. The current study revealed that 45% of defendants who received mandatory minimum sentences to incarceration exercised their right to trial, compared to only 10% of defendants who received non-mandatory sentences.

PENNSYLVANIA'S MANDATORY SENTENCES

Before 1979, Pennsylvania had only two mandatory minimum sentences, both of which were applicable to the crime of murder. During the 1980s, following the lead of the federal government and numerous states, Pennsylvania enacted a series of mandatory sentences bringing the current total to seventeen. Some offenses targeted for mandatory sentences are:

offenses involving the use of firearms, crimes committed by repeat offenders, offenses against children and the elderly, and crimes committed on public transportation. Table 1 contains a summary of Pennsylvania's mandatory minimum sentencing statutes.

Pennsylvania implemented a well-publicized mandatory minimum sentencing law in 1982. Act 54 of 1982 mandated a five year minimum sentence for certain crimes in cases in which the offender possessed a firearm. Also in 1982, Pennsylvania passed a new law setting criminal penalties for Driving Under the Influence (DUI).¹

In 1988, the legislature enacted mandatory minimum sentences for drug convictions. These laws set a range of one to eight years minimum incarceration depending on the type and amount of drug involved. As of May 1994, 61% of all Pennsylvania prisoners serving mandatory sentences were convicted drug offenders. Most of the drug mandatory minimum sentences were designed to target drug traffickers. However, with the threshold amount for some drugs set as low as two grams the distinction between users and traffickers has become somewhat blurred.

**TABLE 1
PENNSYLVANIA'S MANDATORY MINIMUM SENTENCES**

YEAR ENACTED	DESCRIPTION	SENTENCE LENGTH
1973	First Degree Murder	Death or Life Imprisonment
1978	Second Degree Murder	Life Imprisonment
1982	Possession of a firearm while committing or attempting to commit; 3rd degree murder, voluntary manslaughter, rape, involuntary deviate sexual intercourse, Felony I robbery, aggravated assault or kidnapping.	5 years
1982	Committing or attempting to commit any of the above crimes on or near public transportation.	5 years
1982	A second or subsequent conviction within 7 years for any of the above crimes.	5 years
1982	Conviction for 3rd degree murder if previously convicted of murder or voluntary manslaughter.	Life Imprisonment
1983	Crimes committed by a person under 60 years of age against a person 60 years of age or older.	Aggravated Assault: 2 years Rape: 5 years Theft by Deception: 1 year
1983	Crimes committed against persons under 16 years of age.	Aggravated Assault: 2 years Rape: 5 years I.D.S.I.: 5 years
1983	Driving under the influence of alcohol or a controlled substance (DUI).	1st Offense: 48 hours, or A.R.D. 2nd Offense: 30 days 3rd Offense: 90 days 4th Offense: 1 year
1983	Driving while license suspended or revoked as a result of a DUI conviction.	90 days
1983	Homicide by vehicle while DUI.	3 years
1984	Teflon or armor-piercing bullets prohibited while committing or attempting a crime of violence.	5 years
1988	Committing or attempting to commit 3rd degree murder, voluntary manslaughter, rape, involuntary deviate sexual intercourse, Felony I robbery, aggravated assault or kidnapping while impersonating a law enforcement official.	3 years
1988	Delivery or possession with intent to deliver drugs to minor.	1 year.
1988	Promotion of habitual use of drugs by minors or engaging a minor in drug trafficking within 1000 feet of a school.	2 years in addition to the 1 year above
1988	Manufacture of methamphetamine.	2 years
1988	Trafficking in marijuana (2 lbs+ or 10+ live plants).	1 to 5 years for first conviction; 2 to 5 years for subsequent conviction*
1988	Trafficking in schedule I or II narcotics (2+ grams).	2 to 5 years for first conviction; 3 to 7 years for subsequent conviction*
1988	Trafficking in cocaine (2+ grams).	1 to 4 years for first conviction; 3 to 7 years for subsequent conviction*
1988	Trafficking in methamphetamine/phencyclidine (5+ grams).	3 to 5 years for first conviction; 5 to 8 years for subsequent conviction*
1988	Trafficking in amphetamine (5+ grams).	2.5 years for first conviction; 5 years for subsequent conviction
1988	Trafficking in methaqualone (50+ tablets).	1 to 2.5 years for first conviction; 3 to 5 years for subsequent conviction*

* The exact mandated sentence length varies according to the amount of drug involved in the offense. For example, the mandated sentence for possession of cocaine, first offense, is 1 year if the amount of cocaine involved is from 2 up to 10 grams; 3 years for amounts between 10 up to 100 grams; and 4 years for amounts in excess of 100 grams.

IMPACT OF MANDATORY MINIMUM SENTENCES ON PRISON CROWDING

The Pennsylvania prison population reached a then record high of 26,798 inmates at the end of May 1994. Of this population, an estimated 1,985 inmates were serving mandatory minimum sentences of three years or more. Figure 1 shows the increase in the number of mandatory minimum sentences imposed between 1985 and

1992. Although there are slight yearly increases in the number of sentences between 1985 and 1988, the implementation of mandatory minimum sentences for drug offenders dramatically increased the proportion of offenders receiving such sentences from 1989 onwards. As public support grew for the "war on drugs" there followed an increase in law enforcement resources resulting in both increased arrests and convictions. Figure 2 shows the growth

in the number of inmates serving terms for drug mandatory minimum sentences compared to other types of mandatories.

Although the number of mandatory minimum sentences may seem relatively insignificant when compared to the total prison population, the length of individual sentences becomes one of the key factors in prison crowding. While the average minimum prison

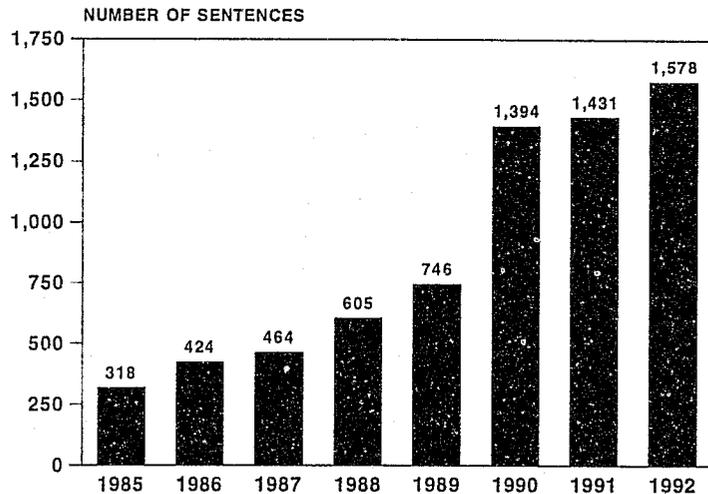
sentence in 1992 was 30.4 months, the average mandatory minimum sentence was 50.4 months. The average minimum prison sentence for all drug offenses in 1992 was 26.2 months, compared to 33.5 months for drug offenses carrying mandatory minimum sentences. The average mandatory minimum sentences for specific drug offenses are often significantly longer. For example, the average minimum sentence for all convictions involving 2 to 100 grams of methamphetamine is 27.8 months while the required mandatory minimum sentence for that amount and drug is 48 months.²

A second issue surrounding the length of mandatory sentences is the place of incarceration. Because the mandated sentence length is often one year or more, these offenders are subject to a designated place of confinement under the Rules of Criminal Proceedings 42 Pa. C.S.A. 9762. This statute specifies that inmates serving a maximum sentence of five years or more must serve their sentence in a state institution. Maximum sentences of at least two years but less than five years may be served in either a state correctional institution or a county jail. Since most county jails are presently struggling with crowding issues of their own, it has become accepted practice for many courts in Pennsylvania to sentence an offender whose maximum sentence is two years or more to a state correctional facility. The cumulative effect of sentences that mandate a minimum sentence of one year or more³ has been an increase in the number of offenders serving sentences in state correctional institutions. Although only a small portion of Pennsylvania inmates are incarcerated under mandatory minimum sentences, they have a significant impact on the state prison population due to the mandated sentence length.

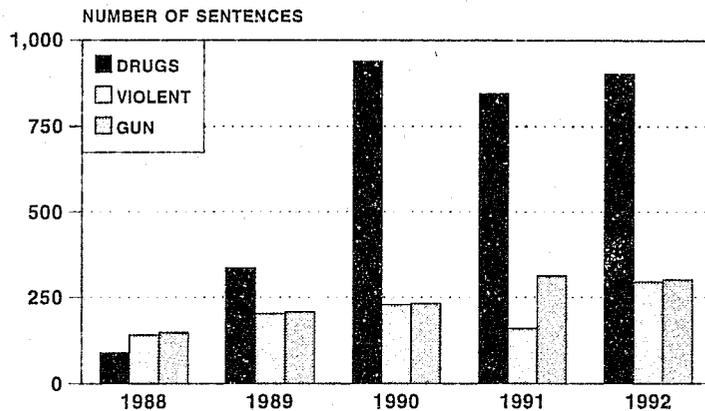
CHANGING CHARACTERISTICS OF THE STATE PRISON POPULATION

Pennsylvania's state prison population more than tripled (up 216%) between 1980 and 1993. However, this increase did not occur across the board. The growth was much greater for drug offenders (up 1333%) than for

**FIGURE 1
MANDATORY SENTENCES IMPOSED IN PENNSYLVANIA
1985-1992**



**FIGURE 2
MANDATORY SENTENCES IMPOSED BY TYPE
1988-1992**



DRUGS	90	337	940	845	903
VIOLENT	140	202	228	159	296
GUN	147	207	232	313	303

offenders sentenced for violent crimes (up 173%). This differential rate of growth has greatly affected the composition of the state prison population. In 1980, violent offenders comprised over half (55%) of the inmate population. By 1993 that proportion had fallen to 47%. Conversely, drug offenders comprised only 4% of the inmate population in 1980, but by 1993 they accounted for 17% of state prisoners.

The number of prisoners sentenced for drug offenses has increased dramatically since 1988, when drug mandatory minimum sentences were enacted. From 1990 to 1993, an average of 1,982 sentenced drug offenders were received per year (compared to an average of 342 per year from 1980 to 1988). **More drug offenders (7,927) were received in Pennsylvania state prisons from 1990 to 1993 than offenders sentenced for all violent index offenses combined (7,615 inmates received for murder, manslaughter, rape, robbery and aggravated assault).** The current study revealed that 68% of those receiving mandatory minimum incarceration sentences for drug offenses had no prior felony convictions. This fact suggests that they are not the most serious or chronic offenders in the system and thus are not the most appropriate targets of mandatory sentences.

RACIAL DISTRIBUTION OF MANDATORY SENTENCES

One of the claims made in support of mandatory minimum sentences is that they reduce racial disparity. However, recent research has produced contrary findings. In 1992, the Federal Judiciary Center reported that in federal cases where mandatory minimum sentences were applicable, blacks and Hispanics were 20 to 30 percent more likely than whites to receive a mandatory sentence (Meirhoefer, 1992). This finding reinforces an earlier conclusion reached by the U.S. Sentencing Commission (1991) that the disparate application of mandatory minimums appears to be related to the race of the defendant.

Historically, white offenders have received the majority of sentences imposed in Pennsylvania. However,

recent data indicate that blacks and Hispanics now account for the majority of mandatory minimum sentences imposed (see Figure 3). This disparity is even more significant when the racial distribution of mandatory drug sentences is examined. For the year 1992 alone, minority defendants accounted for 45% of the total sentences received; however, 79% of the mandatory drug sentences were received by minorities.

The overrepresentation of minorities receiving drug mandatories may be partly attributable to law enforcement practices and the locations of drug activity, both of which make non-whites more vulnerable to arrest than whites. Police presence is often greater in non-white areas because crime rates have historically been higher there. In addition, drug activity in these areas tends to be in outdoor arenas which makes it easier for police surveillance and arrest (Blumstein, 1993).

The racial disparity in mandatory sentencing, particularly involving blacks and Hispanics, is even more prominent when the distribution of mandatory sentences received is examined. Table 2 compares the racial distribution of adult and juvenile sentences.⁴ **Blacks account for only 37% of the total number of adult sentences, but for over half (54%) of the mandatory minimum sentences received by adults.** The disproportionate impact of mandatory minimum sentences on juveniles is even more noticeable. Blacks account for 43% of all juveniles sentenced in criminal court, but for 68% of the mandatory minimum sentences received by juveniles in adult courts. Table 2 also shows that Hispanic adults and juveniles are overrepresented among those receiving mandatory minimum sentences (and particularly drug mandatory sentences).

DETERRENT VALUE OF MANDATORY SENTENCES

One of the arguments in support of mandatory minimum sentences is that they help deter crime by ensuring certain punishment for offenders who are apprehended and convicted. Deterrent effects are often difficult to discern, but

there is evidence that Pennsylvania's mandatory minimum sentencing laws covering gun-related crime may have had a short-term impact on criminal activity. Act 54 of 1982 required that offenders convicted of certain offenses (including robbery and aggravated assault) be sentenced to a minimum of five years incarceration if the offender visibly possessed a firearm. An analysis of the impact of Act 54 conducted by the PCCD suggested that this law reduced the incidence of robberies and aggravated assaults committed with firearms.⁵ The study concluded that there may have been a shift in the type of weapons used in assaults and robberies after 1982. Specifically, gun-related robberies declined relative to strong arm robberies and aggravated assaults committed with knives and other weapons increased relative to gun-related assaults.

While the data used in the current study of mandatory minimum sentences do not address the deterrence issue, a simple examination of Pennsylvania arrest data reveals little evidence of a deterrent effect on drug offenses. For the period from 1980 to 1988 an average of 17,134 drug arrests were made per year. From 1989 to 1993 an average of 30,300 drug arrests were made annually. The same pattern holds if we consider only arrests for the sale of drugs, a crime specifically targeted by the mandatory minimum sentencing laws. Thus, the arrest data provide little support for the hypothesis that tough sentencing laws would effect a reduction in drug offending.

Blumstein (1993:7) suggests that drug sales offenses are not likely to be deterred by tough sentencing laws "as long as there remain willing sellers" to take the place of those who are removed from the street. "As long as the market demand persists and there is a continued supply of sellers there should be little effect on drug transactions." Blumstein (1993:9) concludes that "the appropriate response and strategy in dealing with the drug problem must be focused on demand reduction...through treatment and prevention."

CONCLUSION

Mandatory minimum sentences have resulted in longer average minimum terms of incarceration for drug offenders, have contributed to higher populations in the state correctional system and have not reduced racial disparity in sentencing. The increased use of mandatory sentences has assured that more drug offenders will do state time, but annual arrests for drug offenses continue to rise. During the 1990s, the state prison system has received more inmates sentenced for drug offenses than for all violent index offenses combined.

As Pennsylvania nears the end of a decade of unprecedented prison construction, projections indicate that if current sentencing policies continue the state prison system will have a capacity shortfall of 6,000 to 9,000 beds by the year 2000. The five new state correctional facilities dedicated in the year 1993 will cost state taxpayers approximately \$50 million dollars per year in debt service payments alone over the next twenty years, plus an additional \$200 million dollars in annual operating costs. Between 1982 and 1992, the state general fund spending on corrections grew from \$126 million to over \$435 million, an increase of 245%. Even more alarming is the estimate that by the year 2000, Pennsylvania taxpayers will be spending over \$1 billion dollars a year to incarcerate state offenders. Thus, incarceration is expensive.

Apparently, Pennsylvania cannot continue indefinitely on its current path. A sensible and rational adjustment to current mandatory sentencing policy requires a review of this strategy's impact on prison crowding. The Governor's Commission on Corrections Planning estimates that if mandatory minimum sentences (except for murder) were not in effect and offenders currently serving such sentences had been sentenced under the new sentencing guidelines there would be 1,514 fewer prisoners in the state prison system. Drug mandatory minimum sentences alone account for about 1,000 of these inmates.

FIGURE 3
PENNSYLVANIA OFFENDERS SENTENCED BY RACE
1985-1992 (COMBINED)

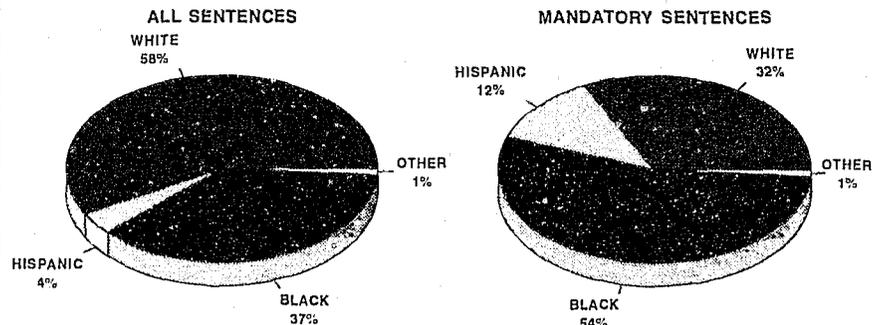


TABLE 2
DISTRIBUTION OF ADULT AND JUVENILE SENTENCES BY RACE 1985-1992 (COMBINED)

RACE	ALL SENTENCES	MANDATORY SENTENCES	MAND. DRUG SENTENCES
	ADULTS		
WHITE	58%	32%	29%
BLACK	37%	54%	50%
HISPANIC	4%	12%	19%
OTHER	1%	1%	2%
	JUVENILES*		
WHITE	48%	21%	28%
BLACK	43%	68%	42%
HISPANIC	8%	10%	29%
OTHER	1%	1%	2%

* Juveniles refers to inmates in the state correctional system who were under 18 years of age at the time of the offense who were waived to criminal court for trial and sentencing.

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Eliminating mandatory minimum sentences does not translate into permitting violent criminals to go unpunished. If mandatories were repealed and corresponding adjustments made to the sentencing guidelines, the most serious offenders could still receive sentences as long as the current mandatory minimum terms. Moreover, judges would have discretion to take individual circumstances into consideration. While repealing mandatories alone would not end the current prison crowding problem it would significantly relieve the pressure to construct additional correctional facilities.

are repealed, efforts can be made to avoid implementation of additional mandatory statutes. The impact of proposed mandatory minimum sentences could be evaluated through fiscal impact statements. The introduction of new mandatory sentencing legislation should be accompanied by a projection of the impact of the proposed statute on both the prison and jail populations and on state and county budgets. This approach may encourage long term planning regarding criminal justice issues.

that same statute to become invalid after a set period of time without any action from the legislature. This approach would make mandatory minimum sentences less of a "political bombshell" for the legislature and at the same time minimize the cumulative long-term effects of such legislation (Blumstein, 1993a).

Currently 40 states are under court-ordered mandates to reduce prison overcrowding. Pennsylvania is not yet among those states. However, if policymakers fail to consider the cumulative effects of mandatory minimum sentences, Pennsylvania may run out of cells, money, and choices.

Regardless of whether existing mandatory minimum sentencing laws

are repealed, efforts can be made to avoid implementation of additional mandatory statutes. The impact of proposed mandatory minimum sentences could be evaluated through fiscal impact statements. The introduction of new mandatory sentencing legislation should be accompanied by a projection of the impact of the proposed statute on both the prison and jail populations and on state and county budgets. This approach may encourage long term planning regarding criminal justice issues.

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1 Mandatory minimum sentences for DUI offenses are not included in the analyses contained in this article.
2 Mandatory minimum sentences are not imposed in every instance which meets the stated legal requirements. The Commonwealth (prosecution) must ask the court to apply the relevant mandatory sentence, and this is not done for every eligible conviction.
3 A minimum sentence of one year or more implies a corresponding maximum sentence of at least two years, since Pennsylvania law requires that the minimum sentence not exceed half the maximum term.
4 Juvenile sentences refers to juveniles who are waived to criminal court and subsequently convicted and sentenced as adults.
5 A complete description of this study appeared in the October 1986 issue of PCCD's *Justice Analyst*, Vol. 1, No. 1.