

**ASSESSING THE IMPACT OF CHANGES
TO PENNSYLVANIA'S SENTENCING GUIDELINES**

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Sentencing decisions in Pennsylvania are governed by a set of legislatively-approved guidelines. The Pennsylvania Commission on Sentencing (PCS) is responsible for developing the guidelines, subject to legislative approval. During 1994, the Commission on Sentencing adopted revised guidelines which recommended harsher sentences for certain serious/violent offenders while providing community-based sentencing alternatives for certain non-violent offenders who could benefit from interventions such as treatment for drug and/or alcohol abuse. It was expected that the 1994 revisions would help slow the growth in the state's prison population by sentencing offenders convicted of certain drug delivery offenses and selected felony theft offenses to county jails, rather than to state prisons. To accommodate the shift of these offenders to county jails, the revised guidelines also provide for intermediate punishment sentences, instead of jail incarceration, for less serious drug and theft offenders.

This report presents the results of an analysis of the impact of the 1994 revisions to Pennsylvania's sentencing guidelines. Preliminary indications are that most of the expected impacts have been realized. The intended shifts from prison to jail incarceration, and from jail incarceration to community-based alternatives, have occurred. [However, it does not appear that certain serious/violent offenders targeted for harsher sentences are being sentenced any differently since the revisions took effect.] It is estimated that through the end of 1996, the guideline revisions resulted in over 2,000 fewer sentences to state prison.

Structure of the Guidelines

The sentencing guidelines establish a presumptive or expected sentencing range for each possible offense, taking into account the offender's current offense and prior record. The court is expected to impose a sentence within the presumptive range; sentences outside the guidelines must be justified by a written statement of reasons for the departure. Sentences to incarceration in Pennsylvania consist of a minimum and maximum term. The guidelines specify a range within which the court is expected to set the minimum sentence. The maximum term is then set at the discretion of the court, but may not exceed the limit for the particular offense as established by statute. Pennsylvania law also states that the minimum may not exceed half of the imposed maximum sentence. A typical minimum/maximum sentence might be 5 to 10 years. Sentences to incarceration are served in a county jail or the state correctional system, depending on the length of sentence.¹ The vast

majority of inmates in the state system are confined in prison settings, although the state also operates a number of halfway houses and group homes as well as a motivational boot camp. Since 1990, Pennsylvania has also provided for "intermediate punishment" sentences in lieu of incarceration for some less serious offenders. Intermediate punishment sentences may involve a combination of intensive probation supervision, house arrest, residential substance abuse programs, and other restrictive sanctions.

Rationale for Sentencing Guidelines

Pennsylvania's sentencing guidelines seek to promote equity and proportionality in sentencing. Equity refers to the principle that Alike offenders should be treated alike. Prior to the implementation of guidelines in Pennsylvania, offenders in rural counties often received harsher sentences for the same offenses than offenders in urban counties. Proportionality refers to the principle that more serious offenses should result in more serious sanctions. Under Pennsylvania's guideline system, each offense is assigned an AOffense Gravity Score (OGS) reflecting its seriousness. The current guidelines classify all offenses into fourteen OGS categories. The guidelines also take into account an offender's APrior Record Score (PRS). The PRS has eight categories which are based on the number and seriousness of prior convictions.

The standard sentence recommendation takes into account both the seriousness of the offense and the length and seriousness of the offender's prior record. Higher OGS offenses call for longer sentences than lower-ranked offenses. Within a given OGS category, the recommended sentence length increases as the PRS increases. For each combination of OGS and PRS, the guidelines recommend a Astandard sentencing range (e.g., 60 to 78 months), and an aggravated and mitigated range (e.g., up to 12 months more or less than the standard range). This system promotes proportionality while preserving a degree of judicial discretion to allow the court to consider the particular circumstances of an offense. During 1995, over 85% of all sentences reported to the PCS conformed to the guidelines (fell within the standard, aggravated, or mitigated range).

Guideline Revisions Affect Correctional Policies

Pennsylvania's guidelines are revised from time to time to take account of new laws, perceived problems or inequities, or to better utilize existing correctional resources such as jail and prison space. The guidelines were revised in 1994 in order to provide for the use of alternative Aintermediate punishments for less serious

offenders and to provide for harsher sentences for violent offenders. The 1994 revisions call for certain drug delivery and felony theft offenders to receive county jail sentences, rather than state prison sentences. The revisions also allow some drug possession and misdemeanor theft offenders to receive intermediate punishment sentences, in lieu of county jail sentences. Although many county jails and state prisons offer substance abuse treatment and counseling, more treatment options generally are available in the community.

This report examines the impact of the 1994 revisions to Pennsylvania's sentencing guidelines. Several data sources are used to explore whether the revisions are having the intended impacts. First, Sentencing Commission data for calendar years 1994 and 1996 are analyzed to compare statewide sentencing practices before and after the 1994 revisions took effect. Recent trends in criminal arrests and state prison admissions are also examined. Estimates of the impact of the guideline revisions are calculated and compared to actual changes in the state's correctional system.

Analysis of Statewide Sentencing Data

The 1994 guideline revisions were effective for offenses committed on or after August 12, 1994. Since criminal court cases often may take six months to a year to proceed from arrest to sentencing, the full impact of the 1994 changes could not be reliably assessed until the 1996 sentencing data were available. Only a handful of the sentences reported to the Pennsylvania Commission on Sentencing (PCS) during 1994 were subject to the revised guidelines. During 1995, the PCS received data on approximately 52,000 non-DUI sentences, and about 59% of those cases were controlled by the revised guidelines. Based on preliminary analysis of 1996 sentencing data, the PCS estimates that 88% of the 1996 cases were controlled by the revised guidelines.

The analysis which follows compares sentencing patterns before and after implementation of the 1994 revisions, by focusing on nine offense categories for which some shift in sentencing practices was expected following the revisions. These nine offenses account for about half of all non-DUI cases reported to the PCS in a typical year. The pre-revision sentencing patterns are based on 26,295 cases processed during 1994. The post-revision cases were processed during 1995 (N= 13,814) and 1996 (N=19,428) and were subject to the revised guidelines. This analysis does not control for factors such as prior record, degree of offender's involvement (e.g., accomplice versus principle actor), or other offense circumstances which may also have affected sentencing outcomes.

Shifts from Prison to Jail and Intermediate Punishment

The comparisons of sentencing outcomes from 1994 and 1995/96 are made within nine offense categories which were affected by the 1994 guideline revisions. The first comparisons consider two offense categories, both involving the delivery of drugs, for which a shift from prison to jail or intermediate punishment (IP) sentences was expected.² In 1994, 34% of offenders sentenced for delivery of less than 2.5 grams of heroin, cocaine, methamphetamine, or PCP were sentenced to state prison (DOC), 50% received county jail sentences, 2% of the offenders were placed in IP programs, and 14% received probation (see Figure 1A). During 1995, 24% of the offenders sentenced for this same offense³ were sentenced to DOC, 53% to county jail, 6% to IP, and 17% to probation. The sentence distributions for 1996 were almost identical to those for 1995. Thus, it appears that for this crime, the expected shift of offenders from the state prison system into other correctional settings occurred.

The next offense comparison involves the delivery of larger quantities (2.5 to 100 grams) of the same types of drugs.⁴ In this category, an even greater shift in sentences from DOC to county jail was observed (Figure 1B). The percentage of sentences to DOC fell from 72% in 1994 to 54% in 1996, while the proportion receiving county jail terms increased from 21% to 38%. There was little change in the percentage sentenced to probation or IP.

The next comparisons involve two categories of felony theft. As with the drug delivery comparisons, proportionately fewer offenders were sentenced to prison, and more were sentenced to jail in 1995/96 compared to 1994. For felony retail theft (Figure 1C), the percentage of sentences to prison fell drastically, from 23% in 1994 to 6% by 1996, while sentences to jail increased by a net 8%. The proportion of offenders sentenced to probation and to IP also increased. For other types of felony theft (Figure 1D), the proportion of prison sentences declined by a net 10% from 1994 to 1996, jail sentences increased by a net 9%, and the percentages sentenced to probation and IP were relatively unchanged.

Shifts from Jail to Intermediate Punishment

There are three offense categories in which shifts from county jail sentences to IP sentences were expected as a result of the 1994 sentencing guideline revisions. As seen in Figure 2A, a substantial shift in the

expected direction occurred in sentences for delivery of less than one pound of marijuana. The percentage of offenders receiving jail sentences for this offense declined from 66% in 1994 to 41% in 1995, and the percentages sentenced to probation and to IP increased substantially. From 1995 to 1996, the percentages sentenced to prison and jail remained steady, but the proportion sentenced to IP more than doubled. By contrast, there was little discernible change in the sentencing patterns for drug possession (Figure 2B), and only a modest shift from jail to probation and IP sentences for misdemeanor theft (Figure 2C).

Shifts from Jail to Prison

Under the revised guidelines, more severe punishment was recommended for certain violent offenses, such as robbery in which the victim suffers bodily injury or the burglary of an occupied structure. However, comparisons of 1994 and 1995/96 sentences for these two offense categories show slight changes in the opposite direction (Figures 3A and 3B). That is, proportionately fewer convicted offenders received prison sentences for these offenses in 1996, compared to 1994. It is important to note that most offenders convicted of these two offenses were sentenced to incarceration in the DOC or the county jail, both before and after implementation of the 1994 revisions. It is also possible that offenders are receiving longer sentences for these offenses under the revised guidelines.

Revisions Had Immediate Impact, IP Option Still Developing

An examination of Figures 1A through 3B shows that sentencing patterns for 1995 and 1996 cases subject to the revised guidelines were very similar within all of the offense categories, suggesting that the new guidelines were adopted fairly rapidly. This assumption is reinforced by the observation that 89% of the post-revision sentences from 1995 conformed to the guidelines--slightly higher than in previous years. Another interesting observation is that the percentage of cases sentenced to intermediate punishment (IP) increased from 1995 to 1996 for every offense category. This increase may reflect the fact that during this period, counties were expanding the number of available IP slots to accommodate more offenders. For most of the offense categories, the increase in IP sentences was offset by reductions in probation sentences, rather than by reductions in jail sentences.

Trends in State Prison Admissions

The 1994 revisions were expected to result in net reductions in the number of offenders committed to the

Department of Corrections (DOC) for certain categories of offenses, all other factors being equal. And in fact, the number of new court commitments received in the DOC for all offenses fell by 15% from 1994 to 1996. (Court commitments are inmates sentenced for new offenses, as opposed to parole violators who are returned to prison for failure to adjust on parole.) Considering the general offense categories in which sentencing shifts were expected, the reductions in court commitments were greatest for theft (-39%), drug offenses (-20%), burglary (-12%) and robbery (-12%). However, it would be overly simplistic to attribute these declines entirely to the guideline revisions. This analysis did not follow offenders longitudinally from sentencing to incarceration, and it is possible that some offenders who received state sentences with maximum sentences of less than five years were allowed to serve their terms in county jails.

Another factor which complicates this analysis is the general downtrend in Pennsylvania's crime rate in recent years. For the period from 1993 to 1995, considering only arrests of adults, the number of statewide robbery arrests fell by 8%, burglary arrests fell by 12%, and theft arrests by 3%. Arrests of adults for drug offenses rose by 11% from 1993 to 1995, but have fallen since, declining by 12% from 1995 to 1996. The declining arrest rates mean that fewer offenders are exposed to the risk of conviction and incarceration, which might contribute to a decline in prison commitments independent of any impact of the guideline revisions.

Estimating the Impact of the Revisions

Keeping in mind the data limitations described above, it is possible to estimate the impact of the guideline revisions on correctional admissions using 1994, 1995 and 1996 sentencing data. This impact analysis is based on 26,295 cases from 1994 sentenced under the previous guidelines, and on 13,814 cases from 1995 and 19,428 cases from 1996 sentenced under the revised guidelines. The analysis covers the nine offense categories shown in Figures 1A through 3B. For each of the nine offenses, 1994 sentencing patterns are applied to the 1995 and 1996 data to simulate how the 1995/96 cases would have been sentenced had the 1994 guideline revisions not been adopted.

Table 1 illustrates the simulation methodology using the data underlying Figure 1A, which covers offenses involving the delivery of less than 2.5 grams of drugs. In 1995/96, there were 4,835 sentences for this offense reported to the PCS which were governed by the revised guidelines, and distributed as shown in Column C of the table. The model assumes that if the guideline revisions had not been adopted, these sentences would

likely have followed the same percentage distribution as the actual 1994 cases which pre-date the revisions (shown in Column B). Applying the actual 1994 percentages to the 4,835 cases from 1995/96 produces the figures in Column D. Finally, the actual 1995/96 figures for each sentencing option are subtracted from the simulated 1995/96 sentence numbers, yielding the estimated impact of the revisions in Column E. Specifically, the model estimates that the 1994 revisions resulted in 509 fewer sentences to prison for this particular offense, 158 additional sentences to jail, 215 more sentences to intermediate punishment (IP), and 136 more sentences to probation, given the actual number of offenders sentenced for delivery of less than 2.5 grams of drugs in 1995/96.

Table 1				
Estimated Impact on Sentences for Delivery of Less Than 2.5 Grams of Drugs				
A	B	C	D	E
	Actual 1994 Sentence Distribution	Actual 1995/96 Sentences (N=4,835)	1994 Distribution Applied to N=4,835 1995/96 Sentences	Estimated Impact (C - D)
Prison	34%	1,142	1,651	-509
Jail	50%	2,553	2,395	+158
IP	2%	307	92	+215
Probation	14%	833	697	+136

This simulation process was then repeated for all nine offense categories, and the estimated impacts were aggregated. **Overall, the model estimates that the guideline revisions resulted in 2,032 fewer sentences to prison in 1995/96; 261 additional sentences to jail; 1,329 more to IP; and 441 more to probation.** This simulation model, although simple, has several advantages. The estimated impacts should be relatively unaffected by potential confounding factors such as declining crime rates, since they are based on the actual number of cases sentenced in 1995/96. Note that the net sum of the changes (impacts) in Column E of Table 1 is zero; the model assumes that diversions from one correctional alternative appear as increases in other alternatives. The model is reinforced by the historically high rates (over 80%) of conformity to the sentencing guidelines, which promote confidence in the assumption that 1994 sentencing practices would have continued to apply had the revisions not been adopted.

Comparison of Impact Estimates to Correctional Admissions

Separate impact estimates on sentences to prison were computed for the four targeted drug offenses

combined, and for the three targeted theft offenses combined. These offense-specific estimates were then compared to actual prison admission trends for similar offenses. The data are shown in Table 2. Using 1994 as the base year, Column E of the table shows the combined 1995/96 net reduction in prison commitments through the end of 1996. Column F shows the model impact estimates. Considering both 1995 and 1996 sentences, the guideline revisions resulted in a total of 969 fewer prison sentences for drug offenses, and for 969 fewer prison sentences for theft offenses.

For both offense categories, the simulation model projected greater reductions in prison sentences than were actually realized through lower prison admissions. However, the number of prison sentences for these offenses is historically much higher than the number of prison admissions. In 1994, for example, the PCS recorded 1,526 prison sentences for all theft offenses combined, compared to only 387 actual DOC admissions for theft. And there were 3,840 sentences to prison for drug offenses reported to the PCS in 1994, but only 2,222 admissions to the DOC for drug offenses. The patterns are similar for the years 1990 through 1993. Some of this discrepancy may occur because the PCS records data on sentences imposed, rather than on individuals sentenced. If one person was convicted and sentenced to prison for separate incidents of both robbery and theft during the same year, that would appear as two sentences to prison in the PCS data, but would result in only one actual admission to prison. And since robbery is the more serious offense, the DOC would record this hypothetical case as an admission for robbery.

Table 2					
Trends in Admissions of Court Commitments to State Prison, 1994 to 1996 for Drug and Theft Offenses					
A	B	C	D	E	F
	1994	1995	1996	Net Reduction from 1994 to 1995/96 (C - B) + (D - B)	Estimated Impact of Guideline Revisions
Drug Offenses	2,222	1,998	1,770	-676	-969
Theft Offenses	387	262	236	-276	-969

The large discrepancy between prison sentences and prison admissions also suggests that a substantial portion of offenders who receive a state sentence actually serve their confinement in a county jail. According to recent PCS data, the average maximum state prison sentence for theft is between 30 and 48 months (depending

on the grading of the offense), or within the range where the court may permit the sentence to be served in a county jail (i.e., greater than two but less than five years). The average maximum prison sentence for drug offenses is greater than five years, so a smaller proportion of state drug sentences would be eligible for county jail confinement.

Summary

A key objective of the 1994 revisions to Pennsylvania's sentencing guidelines was to remove certain nonviolent offenders from the state prison system and place them in county jails and community-based alternatives. In several offense categories, a large reduction in the percentage of cases sentenced to state prison occurred subsequent to the adoption of the revisions. However, the intended shift from jail incarceration to restrictive community-based alternatives for other offense categories was less pronounced. A substantial shift was observed in one of the three relevant offense categories (delivery of less than one pound of marijuana), with much smaller shifts observed in the other categories. For all three of these offense categories, the percentage of intermediate punishment sentences increased steadily from 1994 to 1996. The guideline revisions were also intended to increase the likelihood of a prison, as opposed to a jail, sentence, for certain more serious offenses. However, a slightly smaller percentage of offenders were sentenced to prison for these offenses in 1995/96 than in 1994.

There are many possible reasons why some expected shifts in sentencing practices were not realized. Sentencing outcomes are usually based on a number of factors such as the offender's prior record, the use of a weapon or other circumstances which can trigger mandatory sentences to incarceration, the degree of harm caused to the victim, or the presence of aggravating or mitigating circumstances. In addition, offenders with current or past convictions for certain violent offenses are precluded by statute from being considered for intermediate punishment sentences. Any of these factors, which were not included in our analysis, could influence the actual observed sentencing patterns. An initial shortage of intermediate punishment program slots also may have limited counties' ability to impose these alternative sentences in all appropriate cases.

Endnotes

1. Offenders with maximum sentences 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 institution or

county jail. Shorter sentences must be served in a county jail.

2. The totals shown for Intermediate Punishment (IP) sentences include sentences to Restrictive Intermediate Punishment (RIP). Restrictive intermediate punishments are programs that provide for the strict supervision of offenders either by housing the offender full or part time, or by significantly restricting the offender=s movement and monitoring the offender=s compliance with the program (e.g., through electronic monitoring).

3. The 1994 revisions to the sentencing guidelines changed the demarcation points for categorizing drug offenses according to the weight of the drug in question. The lowest weight category was changed from A less than 2 grams≅ to A less than 2.5 grams.≅ Thus, the 1994/1996 sentencing comparisons in Figure 1A are not exactly comparable in terms of the crimes involved. For each year, however, the lowest weight categories as defined by the relevant guidelines are compared.

4. For the 1994 (pre-revisions) cases, this category was A 2 to 100 grams.≅ The 1996 (post-revision) cases used in this comparison include offenses in which the weight of drugs involved was >2.5 to 100 grams.≅