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Trends in the Sentencing of Megan's Law Offenses

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This edition of the Research Bulletin provides information on the sentencing of Megan's Law offenses from 1990-2006. These analyses were conducted as part of a larger research project on the Effectiveness of Sentencing, which is being undertaken by the Commission on Sentencing. This multi-phase, multi-year project is examining two major issues: 1) sentencing patterns over time, and 2) the impact that sentence type and sentence length have on recidivism. While the project will be examining various types of offenses, Phase I is focusing on Megan's Law offenses for three reasons:

1) these offenses have been the focus of recent legislation; 2) the Commission has been involved in the federally funded Sex Offender Management Team Project, which is working toward identifying and implementing components of a comprehensive and consistent sex offender management system in PA; and 3) this focus allows staff to determine the type of information that is available from other agencies and from the Commission's new SGS WEB database using one category of crime.

Throughout the project, the Commission will be working in collabo-

Sentencing Effectiveness Project

The Sentencing Effectiveness Project is a multi-phase, multi-year research project that is focusing on whether the type of sentence an offender receives impacts recidivism. Several people have contributed significantly to this phase of the project, including **Leigh A. Tinik**, the Commission's research associate, along with **Stacy Hoskins Haynes** and **Carrie E. Williamson**, who are graduate students in the Crime, Law, and Justice Program at the Pennsylvania State University. **Dr. R. Barry Ruback**, who is a professor of Crime, Law, and Justice in the Department of Sociology at Penn State University serves as the Commission's faculty researcher, and project advisor, as part of the research partnership the Commission has with the University.

MAJOR FINDINGS

- ◆ Megan's Law offenses represented about 1.3% of all Non-DUI offenses. Rape, Involuntary Deviate Sexual Intercourse [IDSI], Aggravated Indecent Assault, and Indecent Assault of Minors represented about 88% of all Megan's Law offenses.
- ◆ There was an increase in the number of both DUI and Non-DUI offenses from 1990-2006. For Megan's Law offenses, there was more fluctuation in the number of offenses depending upon the year. Furthermore, there were several new sex offenses and new subcategorizations of sex offenses over the years, which most likely resulted in a shift of convictions from Rape and IDSI to these offenses.
- ◆ On average, a higher percentage of Megan's Law offenders were incarcerated [84%] compared to all types of offenders [50%].
- ◆ Among all offenses, there was an increase in the percentage of offenders receiving a non-incarceration sentence from 1991 to 2006, some of which represents the shift from jail to intermediate punishment. However, there was also an increase in probation from 38% in 1991 to 49% in 2006. Among Megan's Law Offenses, about 90% of the offenders convicted of Rape and IDSI received prison throughout the time period, while for offenders convicted of Indecent Assault of Minors, and particularly Aggravated Indecent Assault, there was an increase in the percentage receiving a prison sentence from 1991 to 2006.
- ◆ Among all offenses, the minimum sentence lengths remained fairly stable over the years for both prison [average of 30 months] and jail [average of 6 months]. The average minimum sentence for Megan's Law offenses was higher for both prison [54 months] and jail sentences [11 months], though there was a bit more fluctuation throughout the years.
- ◆ Conformity to the Sentencing Guidelines averaged 88% for all offenses, and 80% for Megan's Law offenses.
- ◆ The overall conformity rate for Non-DUI offenses with a prior record of zero increased with each edition of the guidelines [1991, 1994, 1995, and 2005]. Among Megan's Law offenses, the greatest change in conformity was for Aggravated Indecent Assault, which saw a consistent increase with each edition of the guidelines. This offense also had the greatest change in sentence recommendations under the various editions.
- ◆ It appears that while the width of the guideline recommendation does influence conformity rate, the appropriateness of the guideline recommendation for the offenses is also an important factor in impacting conformity.

ration with several state agencies including the Board of Probation and Parole, the Department of Corrections, the State Police, and the Sexual Offenders Assessment Board.

Sentencing Trends in Megan's Law Offenses. The purpose behind looking at sentencing trends was to answer the following four questions:

1. How many Megan's Law convictions have there been from 1990-2006?
2. What is the type and length of sentence imposed for Megan's Law convictions?
3. Have there been changes in the sentencing of Megan's Law offenses?
3. Have there been changes in the conformity rate for Megan's Law offenses over time and with respect to four different editions of the Sentencing Guidelines?

Methodology. In examining the trends in sentencing, we used the years 1990 through 2006. Three years were not included because of missing information [1995 data was an abbreviated data set] or data entry was not finalized [2002 and 2003]. When we started to look at specific offenses, there were too few in 1990 to conduct meaningful analysis. Thus, to keep the discussion consistent, we removed 1990 from the analysis relevant to the sentence imposed.

In selecting the Megan's Law offenses, we included only those offenses that we were certain fell under the Megan's Law statute. This decision resulted in removing three offenses that could have potentially been a Megan's Law offense, but for which we did not have sufficient information to

make the determination that a minor was involved as required by statute [Incest, Kidnapping, and Obscene Materials].

The Commission collects information on every conviction of offense and compiles the information by the most serious offense in a criminal incident as well as by the most serious offense per judicial proceeding. While we utilized all three methods in our analysis of the data, we decided to use the most serious offense per incident as our unit of analysis for this report, as this method is most frequently utilized by the Commission. Further, the most serious offense per judicial proceeding was not included in the Commission's data set until 1996, which would reduce our ability to examine sentencing trends prior to that date.

During the time period being used for the analyses, there were four editions of the Sentencing Guidelines that were applicable [1991, 1994, 1997, and 2005], depending upon the date of the offense. Thus, managing the data to accommodate not only guideline policy changes [e.g., changes in offense gravity scores, sub-categorization of offenses], but also the introduction of new offenses [e.g., Sexual Assault] was quite complex and challenging. In fact, this was the first time the Commission has undertaken an analysis that spanned such a large time period. Additionally, there were three different data importation systems used during the time period examined, and while each one improved upon the quality of the data received, there were unique nuances to each that needed to be addressed in order to have the data be most comparable across years. The time devoted to this phase of the project, however, has laid much of the groundwork for future phases examining different types of offenses.

Frequency of Megan's Law Offenses. Table 1 shows the number of convictions for Megan's Law offenses from 1990-2006. In order to provide context, the number for *all* offenses reported to

Table 1. The Number of Megan's Law Convictions by Offense: 1990-2006

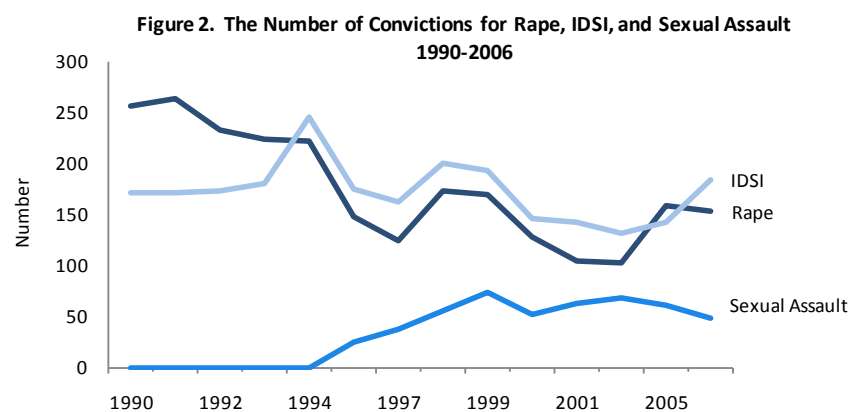
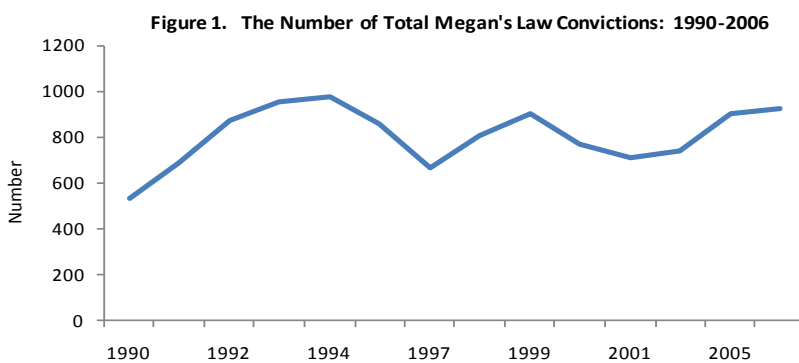
	1990	1991	1992	1993	1994	1996	1997	1998	1999	2000	2001	2004	2005	2006
All Offenses														
Non-DUI Offenses	48516	49871	54525	52760	52707	55251	54099	61756	60882	63171	63397	69876	72349	72851
DUI Offenses	13242	13956	13662	12772	13676	14721	15036	16017	16296	17066	17866	17292	19143	18939
Megan's Law Offenses	539	694	880	957	982	862	672	809	906	776	713	748	910	932
Rape [18 3121]														
Completed	258	265	234	224	222	147	124	173	169	128	104	97	122	118
Inchoate	41	40	55	33	18	19	19	21	13	17	15	23	15	15
Child < 13 yrs. Completed	-	-	-	-	-	-	-	-	-	-	-	5	37	35
Child < 13 yrs. Inchoate	-	-	-	-	-	-	-	-	-	-	-	-	6	2
IDSI [18 3123]														
Completed	172	172	173	180	246	176	163	200	194	147	143	126	123	144
Inchoate	27	30	17	18	12	7	7	14	8	11	9	16	18	17
Child < 13 yrs. Completed	-	-	-	-	-	-	-	-	-	-	-	6	20	41
Child < 13 yrs. Inchoate	-	-	-	-	-	-	-	-	-	-	-	1	4	2
Indecent Assault of Minor [18 3126]	22	114	248	347	309	288	171	205	267	215	163	167	199	159
Aggravated Indecent Assault [18 3125]	3	55	120	133	150	175	119	116	141	136	118	135	111	139
Agg. Ind. Asslt - child	-	-	-	-	-	-	-	-	-	-	-	2	15	18
Agg. Ind. Asslt - child, inchoate	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Sexual Assault [18 3124.1]	-	-	-	-	-	25	38	56	73	52	63	68	61	48
Luring a Child into a Motor Vehicle [18 2910]	2	4	12	9	6	11	10	11	8	13	10	6	14	15
Prostitution-promoting minors [18 5902]	-	1	-	-	-	-	1	-	-	4	4	-	1	3
Sexual Abuse of Children [18 6312] [child pornography]														
Taking photo; F2	10	10	15	10	12	7	11	3	10	16	23	13	18	17
Dissemination of photo; F3	4	3	6	3	7	1	1	2	6	8	14	14	27	29
Possess photo; F3	-	-	-	-	-	6	8	8	13	21	36	35	76	65
Possess/disseminate photo - 2nd offense; F2	-	-	-	-	-	-	-	-	-	-	-	-	2	6
Sexual Exploitation [18 6320]	-	-	-	-	-	-	-	-	-	-	-	-	2	-
Institutional Sexual Assault [18 3124]	-	-	-	-	-	-	-	-	1	4	3	10	17	10
Unlaw. Contact/Commun. w/ Minor [18 6318]														
F1	-	-	-	-	-	-	-	-	1	1	-	6	3	23
F2	-	-	-	-	-	-	-	-	1	2	5	1	9	16
F3	-	-	-	-	-	-	-	-	-	-	1	6	3	1
M1	-	-	-	-	-	-	-	-	1	1	2	11	7	9

the Commission is also presented. In any comparison of Megan's Law offenses with these other offenses, we are referencing all Non-DUI [driving under the influence offenses], unless specifically stated otherwise. Since DUI offenses represent the largest single category of offenses, to include them would inappropriately skew the sentencing information.

In the discussion of Megan's Law offenses, it is important to be aware of the fact that there were several new offenses [e.g., Sexual Assault] or new subcategorizations of offenses [e.g., Rape of a child under age 13] that were added between 1990 and 2006. Thus, any type of fluctuation in the reporting or sentencing of these offenses may reflect a shift in the conviction of offenses under new or revised statutes.

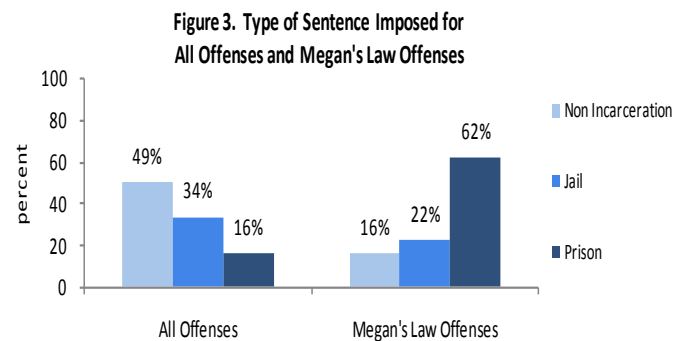
Table 1 indicates that Megan's Law offenses represent a small portion [1.3%] of all convictions. The total number of Megan's Law convictions ranged from 539 in 1990 to 932 in 2006. The four offenses that are most frequent, and were in statute during the entire time period examined, are Indecent Assault of Minors, Rape, Involuntary Deviate Sexual Intercourse [IDSI], and Aggravated Indecent Assault. Overall, these four offenses represent 88% of the Megan's Law offenses. Thus, when looking at individual offenses, our focus is on these four offenses.

Overall, there has been an increase in the reporting of convictions for both DUI and Non-DUI offenses from 1990 [Total N=61,758] to 2006 [Total N=91,790]. While there has been a similar trend for Megan's Law offenses, Figure 1 shows that there has been quite a bit of fluctuation in the number of offenses over the years, and the overall increase is slight for these offenses. In fact, for some of the individual offenses, there has been an actual decrease in the number of convictions. Figure 2 shows that for Rape and IDSI there was an



overall decrease in the number of these offenses over the time period examined. However, since this decrease started in 1996, at least some of the decrease is most likely attributable to a shift in convictions to the new offense of sexual assault, which was enacted in 1995.

Type of Sentence Imposed. Figure 3 provides the average percentage of offenders receiving prison, jail, or non-incarceration from 1991-2006 for all offenses compared to Megan's Law Offenses. On average, for offenders convicted of all offenses, about half of the offenders received a non-incarceration sentence [49%], with the other half being incarcerated in either prison [16%] or jail [34%]. In comparison, Megan's Law offenders were much more likely to be incarcerated in either prison [62%] or jail [22%], with a small percentage [16%] receiving a non-incarceration sentence.



There were some changes over time, however, in the type of sentence imposed. During the early 1990's, the majority of offenders received some type of incarceration sentence [i.e., prison or jail], while starting in 1996 offenders were more likely to receive a non-incarceration sentence [Figure 4]. Some of the shift from jail to non-incarceration can be attributed to the introduction of intermediate punishment as a sentencing option in 1991, which was intended to divert eligible offenders from jail into community programs. Since funding was not available for these programs until 1994, and until 1997 for specific substance abuse programs, it was not until the mid to late 1990's that these programs accommodated more than a few hundred offenders. However, intermediate punishment does not explain the entire shift, as there was also an increase in probation sentences from 38% in 1991 to 49% in 2006.

For Megan's Law offenses, there was some fluctuation in the type of sentence imposed, though the majority of offenders convicted of these offenses received prison throughout 1991-2006. Overall, about 90% of offenders convicted of Rape or IDSI received prison and there has not been much variation over the years [Figure 5]. However, for offenders convicted of Indecent Assault of Minors and, particularly Aggravated Indecent Assault, there has been an increase in the percent receiving a prison sentence. For Aggravated Indecent Assault, the percent receiving prison in 1991 was 26%, while in 2006 it was 74%.

Figure 4. Type of Sentence Imposed: All Non-DUI Offenses
1991-2006

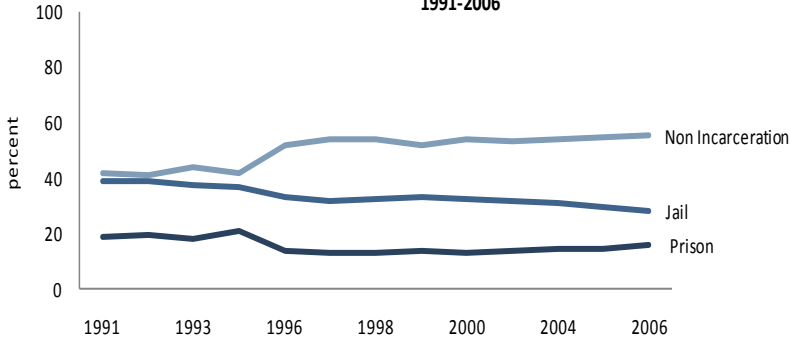
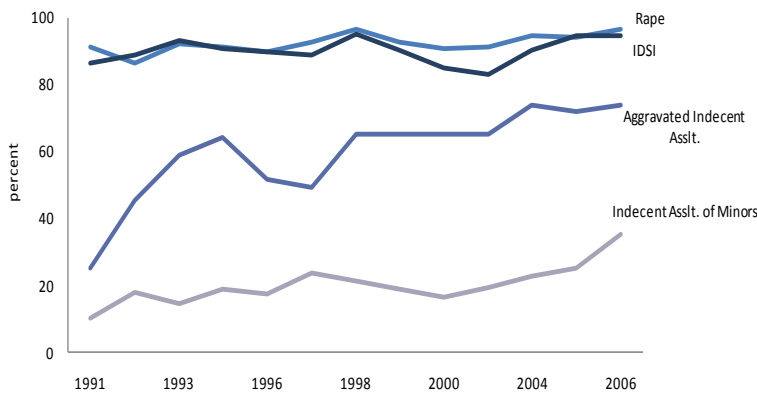


Figure 5. The Percent of Offenders Receiving Prison: 1991-2006



Length of Sentence Imposed. Table 2 shows the average minimum incarceration lengths [prison and jail combined] for all offenses and for the four Megan's Law offenses examined. The average minimum incarceration sentence is much longer for Megan's Law offenses [average of 42 months] compared to all offenses [average of 14 months], though this does vary depending upon the offense. As Megan's Law offenses were more likely to receive prison, we also examined the trends for prison and jail separately. Overall, the average minimum for prison sentences was 54 months for Megan's Law offenses and 30 months when looking at all offenses. For jail sentences, the average minimum sentence was 11 months for Megan's Law offenses, compared to 6 months when looking at all offenses.

With respect to trends in sentence length, the average length of incarceration has remained relatively stable throughout the years across all offenses. For Megan's Law offenses there has been more fluctuation, with a general increase for some of the offenses. Between 1991 and 2006, the average sentence increased 16 months for Rape, 10 months for IDSI, and 21 months for Aggravated Indecent Assault.

Table 2. Average Minimum Incarceration Sentence [months]*

	1991	1992	1993	1994	1996	1997	1998	1999	2000	2001	2004	2005	2006	91-06
All Non-DUI Offenses	14.4	14.6	14.2	16.1	12.9	13.1	13.3	13.7	13.2	12.6	12.7	13.1	13.5	13.6
All Megan's Law Offenses	46.6	41.4	41.1	46.6	37.5	41.8	45.4	42.6	40.2	39.0	38.9	40.0	43.3	41.9
Rape	60.7	58.5	62.7	70.1	64.8	70.3	68.8	70.9	73.3	67.7	78.0	73.0	76.8	68.9
IDSI	55.8	59.7	59.0	64.2	61.5	62.6	62.6	64.1	62.0	63.0	60.3	64.2	66.2	61.9
Agg. Indecent Assault	14.0	25.5	27.4	30.2	21.5	21.6	28.0	29.3	27.3	28.1	26.6	29.6	34.7	26.4
Indecent Asslt/Minors	8.1	8.4	9.7	10.6	8.1	10.1	10.3	8.7	9.1	10.0	9.7	8.9	10.2	9.4

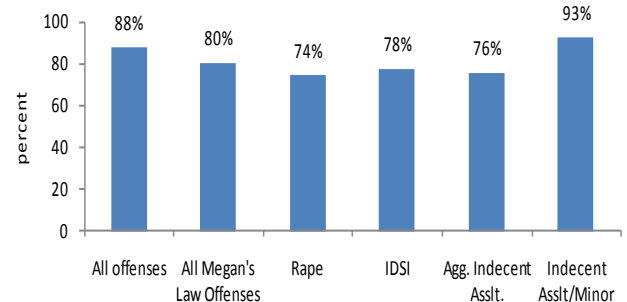
* Incarceration combines prison and jail sentences.

However, the increase was not consistent, and there was fluctuation in the minimum sentence from year to year. Further, it should be noted that the number incarcerated for Aggravated Indecent Assault is quite small in 1991 [n=43] and more than doubles in 1992 [n=103], the year in which the greatest change in sentence length is seen [12 months]. The average sentence for Indecent Assault of Minors remained fairly similar throughout the years.

Conformity to the Sentencing Guidelines. In addition to looking at the trends in the number and type of sentence imposed, we also examined the conformity to the sentencing guidelines by year and by guideline edition. Overall, conformity [combining standard, mitigated, aggravated ranges] to the sentencing guidelines is relatively stable and high, averaging about 88% for all offenses during the time period examined [Figure 6]. Conformity for the Megan's Law offenses was somewhat lower, but still averaging about 80% during this time period. Among specific Megan's Law offenses, Rape had the lowest conformity rate [averaging 74%], while Indecent Assault of a Minor had the highest [93%].

Guideline Edition. During the time period examined [1991-2006], there were four guideline editions in effect [1991, 1994, 1997, and 2005], which provided for different sentencing guideline recommendations for some of the offenses. The guideline recommendation is based upon both the current offense and prior record. Thus, in order to examine the conformity rate with respect to the guideline recommendation for specific offenses, we used only offenses with no prior record. Further, as neither guideline edition nor offense date [which determines the guideline edition in effect] is available until 1996, infor-

Figure 6. Average Conformity Rate: 1991-2006
[standard, aggravated, mitigated ranges] *



* Based on sentences reporting type of disposition, about 82% of Megan's Law offenses are disposed of through a plea.

Table 3. The Percentage of Offenses Conforming to the Sentencing Guidelines by Guideline Edition [1996-2006 offenses; PRS=0]

	1991 Guidelines	1994 Guidelines	1997 Guidelines	2005 Guidelines
All (Non-DUI) Offenses	<i>N=6688</i>	<i>N=65183</i>	<i>N=196662</i>	<i>N=27912</i>
Conformed	84.6	91.0	94.0	95.5
Departure Above	6.4	7.4	5.2	3.7
Departure Below	8.9	1.6	0.9	0.8
Megan's Law Offenses	<i>N=383</i>	<i>N=1178</i>	<i>N=3089</i>	<i>N=166</i>
Conformed	81.5	79.6	84.5	83.1
Departure Above	5.2	13.4	5.4	6.0
Departure Below	13.3	7.0	10.1	10.8
Rape	<i>N=68</i>	<i>N=162</i>	<i>N=352</i>	<i>N=25</i>
<i>Guideline Recommendation *</i>	<i>27-75 mos.</i>	<i>30-72 mos.</i>	<i>36-78 mos.</i>	<i>36-78 mos.</i>
Conformed	85.3	71.0	78.1	52.0
Departure Above	5.9	18.5	13.4	36.0
Departure Below	8.8	10.5	8.5	12.0
IDSI	<i>N=107</i>	<i>N=260</i>	<i>N=536</i>	<i>N=11</i>
<i>Guideline Recommendation *</i>	<i>27-75 mos.</i>	<i>30-72 mos.</i>	<i>36-78 mos.</i>	<i>36-78 mos.</i>
Conformed	72.9	78.1	74.8	72.7
Departure Above	13.1	10.4	7.8	18.2
Departure Below	14.0	11.5	17.4	9.1
Indecent Assault Minor	<i>N=135</i>	<i>N=381</i>	<i>N=779</i>	<i>N=36</i>
<i>Guideline Recommendation *</i>	<i>0-18 mos.</i>	<i>0-9 mos.</i>	<i>0-12 mos.</i>	<i>0-12 mos.</i>
Conformed	98.5	86.1	97.0	94.4
Departure Above	1.5	13.9	2.9	5.6
Departure Below				
Aggravated Indecent Assault	<i>N=64</i>	<i>N=234</i>	<i>N=528</i>	<i>N=29</i>
<i>Guideline Recommendation *</i>	<i>18-60 mos.</i>	<i>2-26 mos.</i>	<i>10-48 mos.</i>	<i>10-48 mos.</i>
Conformed	60.9	75.0	85.6	89.7
Departure Above		15.1	2.6	
Departure Below	39.1	9.9	11.7	10.3

* The Guideline Recommendation represents the lower end of the mitigated range to the upper end of the aggravated range when Prior Record Score=0.

mation provided relevant to guideline edition for these offenses is based upon convictions from 1996-2006.

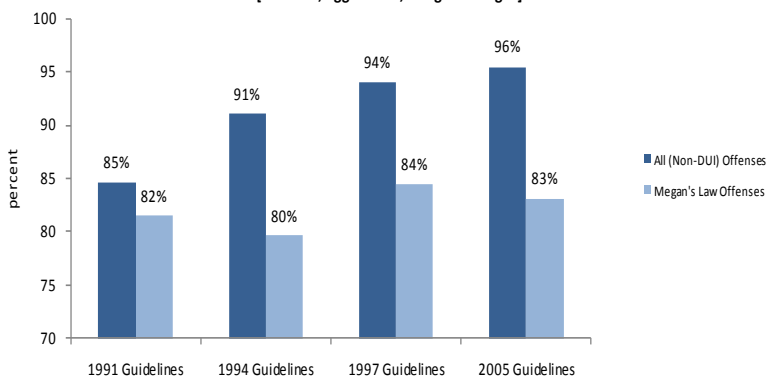
Table 3 shows the conformity rate [standard, mitigated, aggravated ranges] for all offenses and Megan's Law offenses, as well as for Rape, IDSI, Aggravated Indecent Assault, and Indecent Assault of a Minor. For the individual offenses, the guideline recommendation under each edition of the guidelines is also provided.

Overall, the conformity rate for all offenses [with a prior record of zero] increased with each edition of the guidelines [Figure 7]. Under the 1991 guidelines, the conformity rate was 85%, while under the 2005 guidelines the conformity rate was 96%. However, it is important to note that the serious cases, which generally have lower conformity rates, often take longer to go through the system, and

thus, were most likely underrepresented under the 2005 guidelines. For the Megan's Law offenses the overall rate of conformity did not change much with respect to the guideline edition, though further analysis examining also the aggravated and mitigated ranges indicated that the conformity rate to the standard range did decrease. Sentences imposed both above and below the standard range were both responsible for the decrease in the standard range compliance.

It should be noted that the number of convictions under the 2005 guidelines was too small to include in any meaningful analysis, and thus was not included when looking at the individual offenses [Figure 8]. As the guideline ranges were widest under the 1991 guidelines for all four offenses, one would expect that the compliance rate would be highest under that edition of the guidelines. While Rape and Indecent Assault of Minors did have the highest conformity rate under the 1991 guidelines, this was not the case for IDSI and Aggravated Indecent Assault. For both Rape and Indecent Assault of Minors, the lowest conformity rate and highest departure above the guidelines, occurred under the 1994 guidelines. For both of these offenses the upper limit of the guideline range was lowest under the 1994 guidelines, and when the upper limit was raised under the 1997 guidelines, the conformity rate increased and the departure above the guidelines decreased. IDSI offenses, which had the same guideline recommendations as Rape throughout the guideline editions, had the most stable conformity rate [ranging from 73% under the 1991 guidelines to 78% under the 1994 guidelines].

Figure 7. Conformity Rate by Guideline Edition for All Offenses and Megan's Law Offenses [standard, aggravated, mitigated ranges]



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The Pennsylvania Commission on Sentencing is an agency of the General Assembly affiliated with The Pennsylvania State University. The Commission was created in 1979 for the primary purpose of creating a consistent and rational statewide sentencing policy to promote fairer and more uniform sentencing practices.

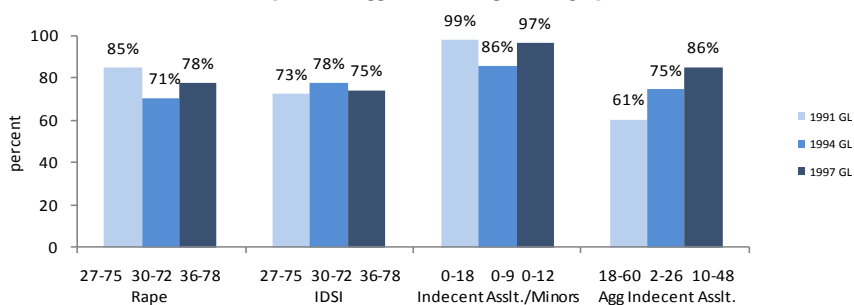
The most change in conformity was for Aggravated Indecent Assault, which saw a consistent increase in conformity with each guideline edition [61%, 75%, and 86% respectively]. This offense also had the greatest change in sentence recommendation under the various editions. The 1991 guidelines had the most severe recommendation, 18-60 months, and there was a 39% departure below the guidelines. When the guideline recommendation was reduced to 2-26 months under the 1994 guidelines, the departure rate below the guidelines was reduced to 10%, but the departure rate *above* the guidelines increased from 0% to 15%. Under the 1997 guidelines, the recommendation became 10-48 months, and while the departures below

increased slightly to 12%, the departures above were reduced to 3%, and the conformity was the highest [86%].

Overall, in looking at these four offenses, it appears that while the width of the guideline range does influence the conformity rate, this is clearly not the only factor. The appropriateness of the guideline recommendation for the offense is also an important factor in impacting the conformity, independent of the width of the guideline range.

Next Stage: Recidivism Study. As indicated in the beginning of this Research Bulletin, the purpose behind the Sentencing Effectiveness Project is not only to examine the trends in sentencing, but also to look at how various types and lengths of sentences may impact recidivism. In doing the recidivism study, we will be using two samples: a release environment cohort [a common release year], and a sentencing environment cohort [a common sentencing year]. Upon completion of that study, the Commission will be providing those results in a future edition of the Research Bulletin.

Figure 8. Conformity Rate by Guideline Edition for Specific Megan's Law Offenses
[standard, aggravated, mitigated ranges]



Trends in the Sentencing of Megan's Law Offenses. If you would like a copy of the report on the *Trends in the Sentencing Of Megan's Law Offenses*, please visit the Commission on Sentencing's website: <http://pasentencing> [under research] or contact the Commission at 814.863.2797.