



**Pennsylvania
Commission
On
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The Research Bulletin is published twice a year to provide sentencing-related research findings to professionals working in the criminal justice system. Inquiries should be directed to Dr. Kempinen at 814.863.2797 or cak16@psu.edu.

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A Multi-Method Study of Mandatory Minimum Sentences in Pennsylvania

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In October 2009 the Pennsylvania Commission on Sentencing released a 480 page report, *"A Study on the Use and Impact of Mandatory Minimum Sentences"*. This report was in response to House Resolution 12 of 2007, which directed the Sentencing Commission to study the use and impact of mandatory sentencing. This resulted in a two-year project in which the Commission adopted a multi-method approach that included the following three phases:

Phase I: Documentation of the utilization of mandatory sentences. During the first phase, we examined the extent to which mandatory sentences were imposed, and reported, to the Pennsylvania Commission on Sentencing. We also examined trends in the sentences imposed for mandatory eligible offenders from 1990-2007.

Phase II: Processing of mandatory sentencing cases. During the second phase, we examined how mandatory cases were processed statewide, and the utilization of the plea negotiation process in mandatory eligible cases. First, we conducted a statewide survey of judges, district attorneys, and public defenders to obtain a better understanding of how cases are processed in their respective counties. Second, we conducted a study utilizing data from the Administrative Office of the Pennsylvania Courts, as well as Commission on Sentencing data, to determine how often mandatory eligible offenders received a charge reduction that resulted in the offender no longer being

Major Findings

- About 34% of mandatory-eligible charges did not result in conviction for a mandatory eligible offense.
- Overall, about 45% of the mandatory eligible offenses received a mandatory sentence.
- Of those receiving a mandatory minimum sentence, about 54% were reported as such to the Sentencing Commission.
- A poll of the public found that 49% could not name an offense that had a mandatory sentence.
- A survey of offenders found that they were able to differentiate between offenses with and without mandatory provisions.
- Offense seriousness, prior convictions, and type of disposition [trial vs. plea] were found to be the strongest, most consistent predictors of the imposition of the mandatory.
- Age and prior arrests were found to be the strongest and most consistent predictors of recidivism. Neither length of sentence nor the imposition of the mandatory per se were related to recidivism.



eligible for the mandatory minimum sentence. Third, we contracted with the Geographic Information Analysis Core within the Population Research Institute at Penn State University to provide maps of school zones in the major municipality in each of Pennsylvania’s 67 counties. This allowed us to determine what percentage of a municipality is covered by the drug-free school zone mandatory provision.

Phase III: Effectiveness of mandatory sentences. During the third phase, we focused on whether mandatory sentences are effective, particularly with respect to lowering recidivism. This phase included three surveys: 1) a survey of legislative members about the intended purposes of mandatory sentencing, 2) a poll of Pennsylvania citizens to assess the public’s awareness of mandatory sentencing statutes, and 3) a survey of offenders to determine the extent of their knowledge about sentencing. We also conducted four recidivism studies of mandatory eligible offenders: drug delivery offenders, school zone offenders, repeat violent offenders, and firearms offenders.

Legislative History of Mandatory Minimum Sentences in Pennsylvania

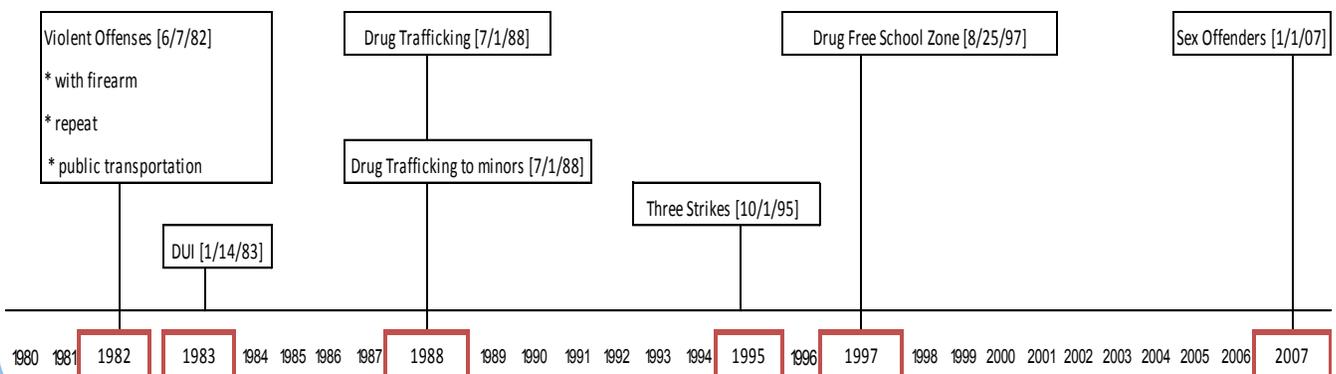
In 1982, the Pennsylvania General Assembly passed the first mandatory statutes with mandatory minimum sentencing for certain violent offenders: 1) repeat offenders, 2) those who visibly possessed a firearm while committing an offense, and 3) those who committed offenses while on public transportation [Chart 1]. In 1983, mandatory sentences for offenders convicted of ‘driving under the influence’ became effective, and in

1988, additional mandatory statutes were enacted for drug delivery offenders, with the length of the minimum sentence dependent upon the type and quantity of drug involved. During the 1995 Special Session on Crime, the General Assembly passed Pennsylvania’s version of ‘Three Strikes,’ which increased the mandatory sentences for repeat violent offenders. In 2007 mandatory minimums became effective for certain (Megan’s Law) sex offenses. Most of the mandatory sentencing statutes require prosecutorial notice prior to sentencing, and if the prosecutor does not give notice to sentence under the mandatory, the judge is not bound to impose the mandatory minimum sentence.

A review of the Legislative journals of the Senate of Pennsylvania and House of Representatives indicates that three rationales appear to dominate the discussion of the mandatory sentencing provisions: deterrence (preventing offenders as well as the public from committing future crime), incapacitation (removing offenders from the community to reduce their ability to commit crime), and retribution (providing punishment for the offender that is proportional to the offense).

If these are in fact the purposes underlying the mandatory minimum sentencing provisions in Pennsylvania, then any study of the impact of such sentences should be measured against these standards: Are mandatory sentencing provisions deterring criminal behavior? Are mandatory sentencing provisions incapacitating targeted offenders? Are mandatory sentencing provisions appropriately punishing targeted offenders?

Chart 1. Timeline for Major Mandatory Sentencing Statutes

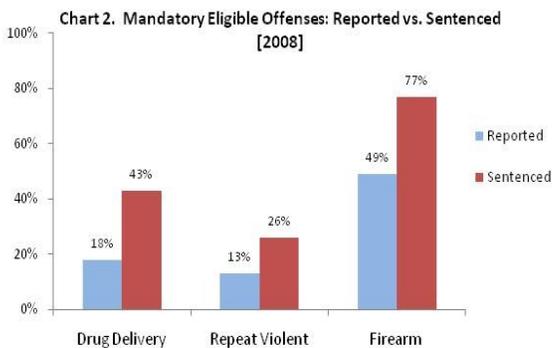




Phase I: Documentation of Mandatory Sentences

Frequency. For the first phase of the project, we examined the extent to which mandatory minimum sentences were imposed for three major types of offenders: drug trafficking offenders, repeat violent offenders, and firearms offenders. In determining the frequency of mandatory sentencing, we compared how often eligible offenders *received* a mandatory minimum sentence to how often these offenders had their sentences *reported* as mandatory sentences to the Sentencing Commission.

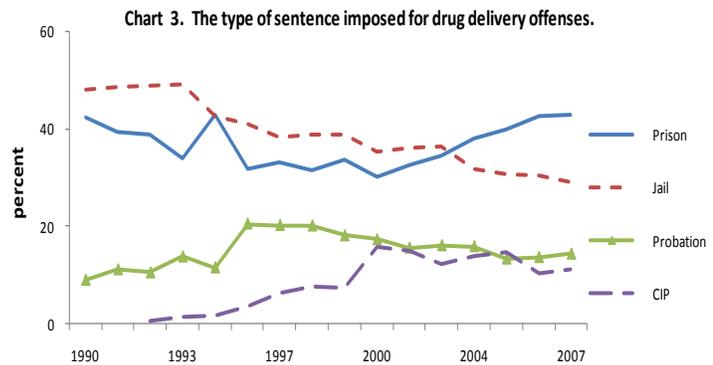
Overall, about 45% of the mandatory-eligible offenses received a mandatory sentence, though this did vary by offense type. For example, Chart 2 shows that during 2008, mandatory sentences were more likely to be imposed for firearms offenses [77%] than for drug delivery offenses [43%] or repeat violent offenses [26%].



Of those receiving a mandatory minimum sentence, about 54% were reported as such to the Sentencing Commission. This issue is important as the Commission’s Annual Reports, and research conducted by academics using the Commission’s data, have been based on *reported* mandatory sentences. Failure to report to the Sentencing Commission that a sentence is imposed under a mandatory statute undermines the accuracy and

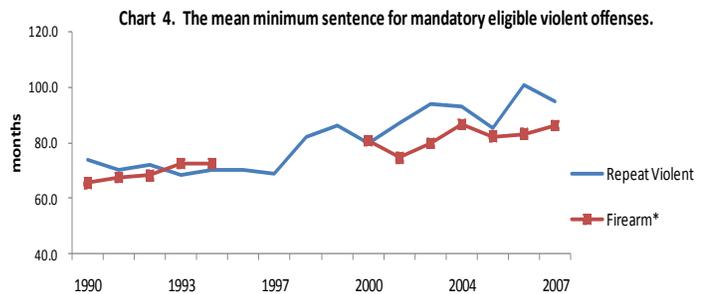
reliability of mandatory minimum sentences. Thus, for the purposes of our study, we used sentence length to determine the application of the mandatory sentencing provision.

Trends. We also looked at whether there had been changes in the sentencing of mandatory eligible offenders from 1990-2007. Chart 3 shows that most offenders convicted of drug delivery offenses were sentenced to prison or jail. However, there was a decrease in the percentage of offenders going to jail from 1990 [48%]



to 2007 [29%]. A large part of this reduction is most likely attributed to the introduction of intermediate punishment in 1992, as this sentencing alternative was intended to divert low level drug dealers with substance abuse problems from jail to community based treatment.

In looking at the sentencing of violent offenders, we examined those offenders who were potentially mandatory eligible under the firearm or repeat violent offenders statutes. Over 90% of these violent offenders were sentenced to state prison, and Chart 4 shows that there was a general increase in the length of sentence for both repeat violent and firearms offenders.



*Firearm information not available for 1996-1999.



Phase II: Processing of Mandatory Cases

Survey of Judges, District Attorneys, Public Defenders. For Phase II, we developed a survey to obtain information from Pennsylvania's judges, district attorneys, and public defenders about how mandatory eligible cases were actually processed in their counties. We asked questions about the charging of cases, the processing of mandatory eligible cases, the conviction and sentencing of mandatory cases, the utilization of alternatives such as Boot Camp and Intermediate Punishment, the current circumstances of school zone cases, and the extent to which respondents thought the public and offenders were knowledgeable about mandatory sentencing. The response rate was highest for district attorneys [43%], followed by public defenders [33%], and judges [24%].

Overall, there was agreement among judges, district attorneys, and public defenders that most [70%] of the mandatory eligible cases involve some type of plea agreement. The type of plea agreement was more likely to involve the dropping of charges than a reduction in the severity of charges or a minimum sentence less than that required by the mandatory statute. District attorneys indicated that the major reasons for accepting a plea were: lack of evidence, defendant provided information on other cases, law enforcement input, and, in drug cases, the amount of drugs involved. The majority of judges, district attorneys, and public defenders felt that offenders receiving a mandatory sentence for drug trafficking offenses have some type of substance abuse problem.

Specific to school zone cases, district attorneys were more likely than judges or public defenders to indicate that the mandatory statute was invoked when applicable. Further, they indicated that they were more likely to invoke the mandatory when children were present, though they did not appear to make distinctions with respect to distance [1,000 feet or less] or location [school building vs. school property].

All three groups indicated that the majority of both the public and first time offenders were unaware of mandatory minimum laws, but that repeat offenders were more likely to know about these laws. Of the mandatory minimum statutes, however, they thought both offenders and the public were most likely to know about the DUI mandatory.

Study on Charge Reduction for Mandatory Eligible Offenders. In addition to the survey, we also conducted a study to determine how often mandatory eligible offenders received a charge reduction that resulted in the offender no longer being eligible for the mandatory sentence. We utilized data from the Administrative Office of the Pennsylvania Courts as well as the Commission on Sentencing data for 2006-2007. Charge reductions were measured as a reduction in the number of charges or the severity of the charge.

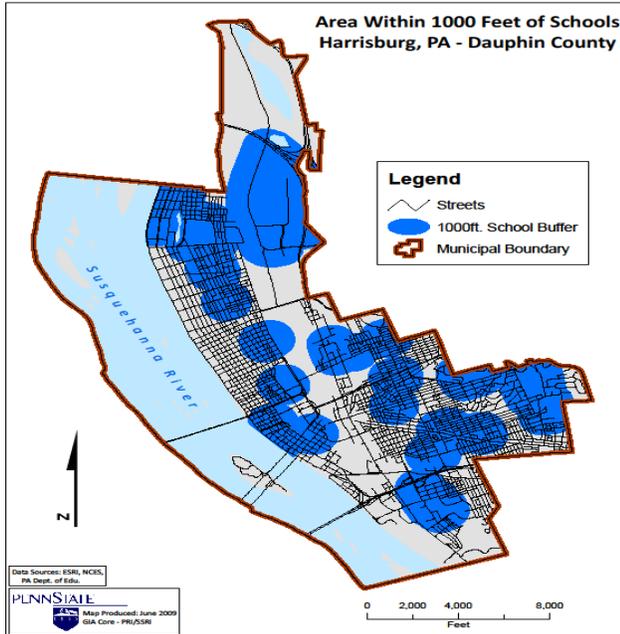
Overall, 34% of the offenders received a charge reduction that resulted in the offender becoming ineligible for the mandatory. Firearms offenders [63%] were more likely than repeat violent offenders [39%] or drug delivery offenders [26%] to have a charge reduction. Consistent with the survey findings, most charge reductions involved the dropping of charges rather than a reduction in the severity of the charge for all three offender groups.

GIS Mapping of school zones. The drug-free school zone statute mandates that a person convicted of drug delivery shall receive a two year minimum sentence if the delivery occurred: "within 1,000 feet of the real property on which is located a public, private or parochial school, or a college or university or within 250 of the real property on which is located a recreation center or playground or on a school bus" [18 Pa. C.S.§6317].

In order to help determine the extent to which the school zone law is applicable, the Commission contracted with the Geographic Information Analysis Core within the Population Research Institute at Penn State University to provide a series of maps showing school zone coverage. A map of each county was provided that showed the percentage of the major municipality that was within 1,000 feet of a school. Overall, the statewide average was 18.7%, ranging from .5% in Elk County to 39.4% in Wyoming County. For the two most populous counties, Philadelphia and Allegheny Counties, the percentages were 29.5% and 22.8% respectively. This coverage presents a conservative estimate as it does not include the actual property owned by schools,



MAP A



recreation centers, playgrounds, or school buses. Thus, for ten of the municipalities, additional maps showing 1,000 feet from school property were also provided. [See Map A as an example of school zone mapping].

Phase III: Effectiveness of mandatory sentences.

Purposes of Sentencing—Legislative Survey. In order to determine whether mandatory minimum sentencing laws have been effective, we first wanted to determine the objectives of the various mandatory statutes. Thus, we conducted a survey of the Legislature to obtain information concerning their perspective on the mandatory minimum sentencing statutes in Pennsylvania. By knowing the objectives of the various mandatory sentencing statutes, we would be in a better position to address whether those objectives are being accomplished. It should be noted, however, that the response rate was low, with only 18 legislators [7%] responding, and thus, findings from the survey must be viewed with caution.

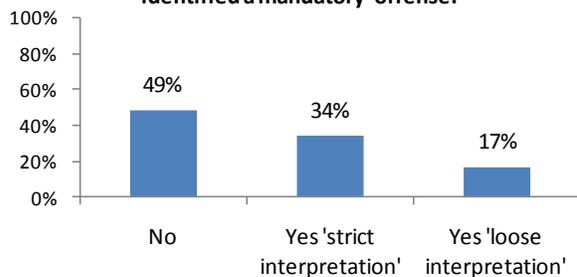
Overall, the legislators indicated that they were supportive of mandatory sentencing statutes. Further, they viewed all of the seven commonly cited purposes of sentencing [i.e., incapacitation, retribution, specific deterrence, general deterrence,

moral outrage, restoration, and rehabilitation] to be important, though they viewed rehabilitation as least important. While there was only slight variation in the responses concerning the importance of the various purposes, they did indicate that incapacitation was the most important purpose in sentencing repeat violent offenders, rehabilitation was most important for driving under the influence, and specific deterrence was most important for repeat violent offenders and drug offenses

Public Knowledge Poll. One purpose of mandatory sentencing is to deter people from committing crime, which is best accomplished when people are aware that there are offenses subject to mandatory sentencing. In order to obtain information on the public’s knowledge of mandatory sentencing, the Commission submitted two questions to the Center for Survey Research at Penn State Harrisburg to be included as part of their annual Penn State Poll of the public. The first question addressed the general issue of whether Pennsylvania citizens know that Pennsylvania law requires offenders sentenced to prison to serve the minimum sentence imposed before being considered for release. The second question was more specific to mandatory sentencing and asked if they could name a crime that requires a mandatory minimum sentence.

About 29% of the public answered correctly that an offender sentenced to state prison could not be released before serving the minimum sentence. Chart 5 shows that the percentage of the public who could correctly name a mandatory eligible offense ranged from 34% [using a ‘strict’ interpretation] to 54% [using a ‘loose’ interpretation].

Chart 5. The percentage of the public who identified a mandatory offense.





Of those who correctly named a ‘mandatory eligible offense’, the most frequent offenses identified were: sex offenses involving minors [28%], firearms offenses [28%], driving under the influence [23%], and drug trafficking [13%].

Offender Survey. We also conducted a survey of offenders sentenced to prison, with the help of the PA Department of Corrections [DOC]. The survey was designed to obtain information about offenders’ knowledge of sentencing, their criminal history, and circumstances surrounding their current offense. Surveys were provided to 1,000 offenders upon admission to the DOC, and we had a 24% response rate [N=243].

About a third of the offenders were currently in prison for a drug offense and most had been previously incarcerated. Over half had been under the influence of drugs and/or alcohol at the time of their offense. Most offenders said they had at least thought about the possibility that they would be arrested prior to committing their current offense, but most did not think about what type of sentence they would likely receive if caught. After arrest, however, most offenders thought a great deal about their sentence, and most said the sentence they received was higher than what they expected.

About 22% of the offenders correctly indicated that an offender could not be released prior to the expiration of the minimum sentence imposed. Overall, offenders could correctly identify the offenses that had mandatory sentencing provisions compared to those that did not [Chart 6]. They

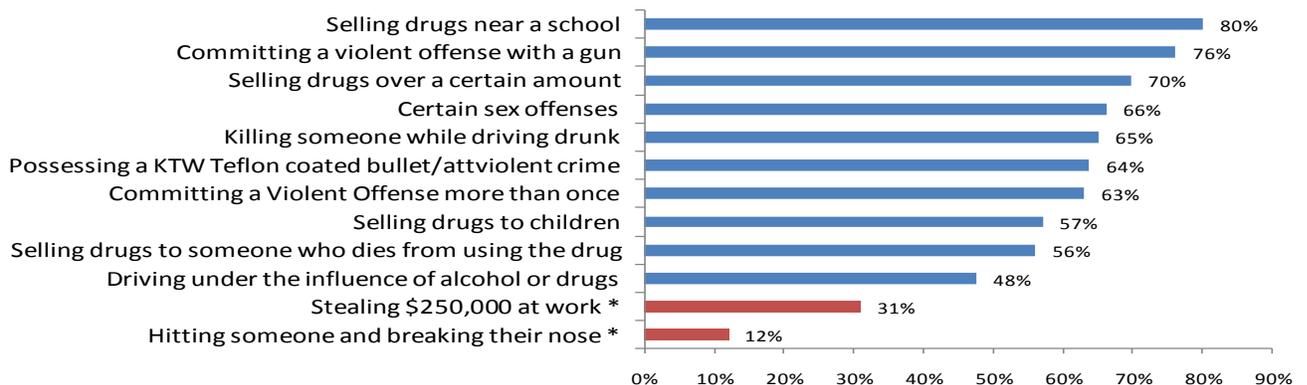
were most likely to identify ‘selling drugs near a school’ [80%], ‘committing a violent offense with a gun’ [76%], and ‘selling drugs over a certain amount’ [70%] as mandatory eligible offenses. Most offenders also knew the two offenses that did not carry a mandatory sentence, and were least likely to indicate that ‘hitting someone and breaking their nose’ [12%] and ‘stealing \$250,000 at work’ [31%] had mandatory sentences.

Recidivism Studies.

A major focus of the project was to determine the impact that mandatory sentencing has on public safety. Toward that end, we conducted four recidivism studies to determine the impact that length of sentence has on offender recidivism for the following offenders: drug delivery, school zone, repeat violent, and firearms.

To allow for a large enough sample and a three year tracking period, different samples involving different years needed to be developed for each group: 1) the drug delivery sample consisted of offenders who were sentenced during 2000; 2) the school zone sample consisted of offenders sentenced during 1999-2002; 3) the repeat violent sample consisted of offenders sentenced during 1990-1994; and 4) the firearms sample consisted of offenders sentenced during 1990-1994.

Chart 6. Percentage of inmates identifying crimes with mandatory minimum sentences.



* not a mandatory offense



Table 1. Factors that predict: 1) the imposition of the mandatory minimum sentence and 2) offender recidivism.

PREDICTOR VARIABLES	IMPOSITION			RECIDIVISM			
	Drug Delivery	Repeat Firearm	Repeat Violent	Drug Delivery	Repeat Firearm	Repeat Violent	School Zone
Sentencing Guideline Variables							
Offense seriousness	Yes	Yes	Yes	Yes	Yes	Yes	
Prior convictions	Yes	Yes	Yes	Yes			Yes
Sentence							
Type of sentence	NA	NA	NA	Yes		Yes	Yes
Sentence Length	NA	NA	NA				
Additional Legal Variables							
Number of current	Yes			Yes			
Disposition type	Yes	Yes	Yes				
Number of prior arrests		Yes		Yes	Yes	Yes	Yes
Extra Legal Variables							
Age				Yes	Yes	Yes	Yes
Gender			Yes		Yes		
Race	Yes	Yes		Yes			
County	Yes	Yes				Yes	

NA - Not applicable

a new crime, the drug delivery and school zone offenders were most likely to have a new charge involving a drug offense [47% and 46%, respectively], while the repeat violent and firearms offenders were most likely to have a new charge involving a personal offense [43% and 41%, respectively].

The two consistent, and strong, predictors of recidivism across all four studies were age and prior arrests [Table 3]. Younger offenders were more likely than older offenders to recidivate, and offenders with a greater number of prior arrests were more likely than those with fewer prior arrests to recidivate.

Who Receives the Mandatory Sentence? Prior to the recidivism analysis, we first conducted analyses to determine what factors were related to the imposition of the mandatory sentence for each of our samples [excluding school zone, as there were too few offenders who did not receive the mandatory to conduct this analysis]. We found offense seriousness, prior convictions, and type of disposition [i.e., trial vs. plea] to be the strongest and most consistent predictors of the imposition of the mandatory sentence [Table 3]. In general, offenders who had prior convictions, and/or were convicted via a trial were more likely to receive the mandatory sentence. For repeat violent offenders and firearms offenders, those convicted of more serious offenses were more likely to receive the mandatory sentence. For drug delivery offenders, those convicted of dealing in smaller quantities of drugs were more likely to receive the mandatory than those convicted of dealing in larger quantities of drugs.

What factors are related to recidivism? For our recidivism studies, we defined recidivism as either an arrest for a new crime or a return to prison for a technical violation, as the percentage of offenders returning to prison for technical violations ranged from 10% [drug delivery offenders] to 30% [repeat violent offenders]. The overall recidivism rates were as follows: drug delivery offenders [54%], school zone offenders [57%], repeat violent offenders [54%] and firearms offenders [50%]. Of those arrested for

Current offense, prior convictions, and type of sentence were predictors of recidivism in three of the studies. Drug offenders were more likely to recidivate if they were convicted of dealing in smaller rather than larger quantities of drugs, repeat violent offenders convicted of a sex offense were less likely than those convicted of other violent offenses to recidivate, and firearms offenders convicted of robbery were more likely than offenders convicted of other types of violent offenders to recidivate. For three of the studies [drug delivery, school zone, and firearms], offenders who had prior convictions were more likely than those without prior convictions to recidivate. For three of the studies [drug delivery, school zone, and repeat violent offenders], offenders sentenced to prison were more likely to recidivate than those not sentenced to prison. Neither length of sentence, nor the imposition of the mandatory sentence per se, was a predictor of recidivism in any of the studies.



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Pennsylvania Commission on Sentencing

The Pennsylvania Commission on Sentencing is an agency of the General Assembly affiliated with The Pennsylvania State University.

The Commission was created in 1978 for the primary purpose of creating a consistent and rational statewide sentencing policy to promote fairer and more uniform sentencing practices.

Recommendations

The Commission’s recommendations included specific suggestions for the General Assembly, the Criminal Procedural Rules Committee, and its own future research and actions. Most notably, the Commission recommended that the General Assembly*:

- ◆ Repeal the Drug-Free School Zone mandatory legislation, which is irregularly applied and overbroad geographically, in favor of the existing guidelines-based youth and school sentencing enhancement.
- ◆ Allow sentencing courts to use existing authorized sentencing options, including State Intermediate Punishment (alternative to traditional prison) and County Intermediate Punishment (alternative to traditional jail), to satisfy lower-level drug trafficking mandatory minimum sentences.
- ◆ Distinguish between those mandatory sentencing provisions that apply automatically based on conviction and those that require ‘prosecutorial notice,’ by referring to the latter as ‘sentencing

enhancement upon prosecutorial notice’.

- ◆ Increase the threshold for the application of the drug trafficking mandatory for the lowest category of cocaine from 2 to 5 grams.
- ◆ Amend the definition of ‘previous conviction’ to require a conviction on the previous offense prior to the occurrence of the current offense to eliminate the stacking of previous convictions in the sentencing of multiple offenses during one judicial proceeding.
- ◆ Link drug trafficking mandatory penalties to the aggregate weight of compounds and mixtures in the judicial proceeding.
- ◆ Reduce the amount of mandatory fines.

* Note that not all of the recommendations were adopted unanimously by the Commission on Sentencing. A record of the final vote for each recommendation is provided in the August 2009 Commission Meeting minutes. (<http://pcs.la.psu.edu/Meetings/Feb2010Mtg/Aug%202009%20Minutes.pdf>)

The entire report, *A Study on the Use and Impact of Mandatory Minimum Sentences*, can be found on the Pennsylvania Commission on Sentencing’s website at <http://pcs.la.psu.edu/index.html>.