

# **Report to the Pennsylvania House of Representatives**

**House Resolution 613  
Session of 2004**



**February 8, 2005**

**The Pennsylvania Commission on Sentencing**  
An agency of the General Assembly located on the  
University Park campus of The Pennsylvania State University

# *HR 613 - Mandatory Minimum Sentencing in Pennsylvania*

## *EXECUTIVE SUMMARY*

In response to House Resolution 613, adopted March 31, 2004, the Pennsylvania Commission on Sentencing, under the direction and oversight of the House Judiciary Committee, began a study of the use and impact of mandatory minimum sentences for crimes involving firearms, crimes of violence (2-3 strikes), and drug trafficking crimes in the Commonwealth. Activities completed as of the end of the 2003/2004 Session include the following:

- Review of legislative history and floor debates preceding passage of identified mandatory minimum sentencing statutes to determine purposes of legislation.
- A comprehensive review of the research literature involving mandatory minimum sentencing to inform data collection efforts and provide a framework within which to interpret future study results.
- Pilot testing of data collection instrument/procedures and detailed examination of court records of mandatory eligible cases based on conviction offenses in five counties (Allegheny, Lancaster, Montgomery, Philadelphia, and Cumberland).
- In-depth interviews with district attorneys, public defenders, and judges in five counties (Allegheny, Lancaster, Montgomery, Philadelphia, and Cumberland) in order to obtain an overview of how and under what circumstances mandatory minimum sentences are imposed.
- Development of a preliminary recidivism study, based on sentences imposed in 1996, to test the impact of specific deterrence relating to the mandatory sentencing provisions.
- Analyses of the Pennsylvania Commission on Sentencing 1996 data to determine the frequency in the imposition of certain mandatory sentences based on conviction offenses.
- Development and mailing of a statewide survey of district attorneys and public defenders to obtain descriptive and evaluative information on the use and processing of mandatory sentencing statutes across the state.

Further activities recommended but not completed:

- Statewide data collection effort to track all mandatory eligible cases from charging through to trial and sentencing, and analysis to determine impact of court determinations and plea negotiations on the application of mandatory sentencing provisions.
- In-depth interviews with district attorneys, public defenders, and judges in additional Pennsylvania counties to obtain information on how and under what circumstances mandatory minimum sentences are imposed, and to further investigate issues such as: the frequency and outcomes of Carroll Hearings relating to the applicability of drug mandatories; and transfer of cases to federal court.
- Analysis of Pennsylvania Commission on Sentencing 2004 data to determine the frequency in the imposition of mandatory sentences based on the conviction offenses.

- Completion of recidivism study to measure the impact of mandatory sentencing provisions on specific deterrence.
- To the degree possible, measure the impact of mandatory sentencing provisions on general deterrence, incapacitation, and retribution, through studies of time served, crime rates, and other outcomes.

By identifying issues related to the use and impact of mandatory minimum sentences in Pennsylvania, by testing methods for gathering and analyzing relevant data, and by suggesting future research activities, the Commission hopes that based on this report the Judiciary Committee and the House of Representatives is better positioned to determine the need for and scope of future research on this important area of criminal justice legislation.

## *Background and Project Overview*

### **Background on Mandatory Minimum Sentences in Pennsylvania**

In 1982, the Pennsylvania General Assembly passed mandatory minimum sentencing statutes for certain violent offenders - repeat offenders, those who visibly possess a firearm while committing an offense or while on public transportation - and for offenders convicted of "driving under the influence." 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. 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 the House of Representatives provides some insight as to the purposes for enactment of several of the mandatory sentencing provisions.

#### Comments during floor debate on the drug trafficking mandates:

... in order to deal with this we have to try to provide some deterrents. This bill is more about deterrents than punishment because it establishes if you do sell to a minor or if you are a big-time dealer -- ... (these are) the kind of people we all want to get off the street and be imprisoned without a chance for probation. (Senator Greenleaf, Legislative Journal, Senate, 2/23/1988, p. 1784)

I probably will vote for this today, not because I specifically believe this is going to be the answer to a problem, but because maybe by voting for this and maybe by implementing this into law we will have a better data base at a future time to go back and see what works and what does not work. (Senator Fumo, Legislative Journal, Senate, 2/23/1988, p. 1785)

We are going to have to do something to make a young man, a fourteen-year-old, a fifteen-year-old, a sixteen-year-old or an eighteen-year-old figure that it is not important for him to go and sell drugs to make \$300 a night because he can have a decent job and look up and be somebody. (Senator Jones, Legislative Journal, Senate, 2/23/1988, p. 1787)

It is time to get some of these drug dealers off the roads. (Senator Bell, Legislative Journal, Senate, 3/21/1988, p. 1937)

#### Comments during floor debate on the 'Three Strikes' mandatory:

... there is a very small number of violent criminals who are committing the vast majority of the violent crimes in Pennsylvania and in this nation. This legislation would address that problem. ... We must get them off the street so that they can no longer victimize and commit violent crimes against our citizens. (Senator Greenleaf, Legislative Journal, Senate, 9/18/1995, SS1, p. 253-254)

The whole structure of this bill is aimed at incarcerating those, incapacitating those who are in their peak crime years, and who are likely to commit crimes of violence, who if they are on the street are likely to victimize us. (Senator Heckler, Legislative Journal, Senate, 9/19/1995, SS1, p. 255)

It (this bill) is one that I believe sends a very strong and clear signal to violent criminals, adult criminals who are repeat offenders, that if you continue to violate Pennsylvania's law, you run the risk of going to jail for a long time. (Senator Fisher, Legislative Journal, Senate, 9/19/1995, SS1, p. 262)

And until we are willing to seriously and successfully take the measures that prevent or reduce crime by attacking its causes, then we must, at least, remove the incorrigible, dangerous, violent criminal until he no longer poses a threat to the lives and livelihoods of responsible law-abiding citizens. (Senator O'Pake, Legislative Journal, Senate, 9/19/1995, SS1, p. 263)

... what it (the bill) does is carves out 10 very specific areas of violent criminal behavior, and we say to the people of Pennsylvania that if individuals are going to commit these violent offenses repeatedly, that they are going to be subject to mandatory minimums which will lock them up well into their sixties, perhaps into their seventies, and very likely for the rest of their lives. (Representative Piccola, Legislative Journal, House, 10/3/1995, SS1, p. 402)

These comments, offered during floor debate, are consistent with some long-held sentencing rationales which "...provide the legal linkage between criminal conduct and criminal sentencing. Not only do they express the ways in which a culture regards crime in general, but they provide official justifications for treating particular conduct by particular offenders in particular ways."<sup>1</sup> Three rationales appear to dominate the discussion of the mandatory sentencing provisions above: deterrence, incapacitation, and retribution. General deterrence discourages "...the general public from recourse to crime" by "intimidating the community with the fear of punishment," while special or specific deterrence discourages "... individual offenders from repeating the same or other criminal acts."<sup>2</sup> Incapacitation renders offenders "physically incapable of committing crime;"<sup>3</sup> in the case of mandatories through incarceration. Retribution involves "...the notion that inflicting punishment on willful offenders will restore some abstract balance of right and wrong to the social order."<sup>4</sup> Or more simply, it is holding an offender accountable for criminal conduct. 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? and/or are mandatory sentencing provisions appropriately punishing targeted offenders?

### **House Resolution 613 (P.N. 3480) and Project Overview**

House Resolution 613, adopted March 31, 2004, empowers the House Judiciary Committee to direct and oversee a study conducted by the Pennsylvania Commission on Sentencing on the use and impact of mandatory minimum sentences (a copy of the House Resolution is provided in Appendix A). Specifically, the Resolution asks that the House Judiciary Committee utilize

"...the experience, knowledge and services of the Pennsylvania Commission on Sentencing to study the use and impact of mandatory minimum sentences on the criminal justice system in this Commonwealth;.. that the Judiciary Committee, with regard to all matters related to this study, provide direction and oversight to the Pennsylvania Commission on Sentencing as it assists the committee with this undertaking;.. (and) that the Pennsylvania Commission on Sentencing report

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<sup>1</sup> Campbell, Arthur W. *Law of Sentencing, 2<sup>nd</sup> Edition*, p.17.

<sup>2</sup> Id., p. 25.

<sup>3</sup> Id., p. 28.

<sup>4</sup> Id., p. 34.

to the House of Representatives through the Judiciary Committee on its activities, findings and recommendations.”

Subsequent to the adoption of HR 613 on March 31, 2004, representatives of the Commission met with House Judiciary Committee Chairman Dennis O’Brien, with Judiciary Committee staff, and with the prime sponsor of HR 613, Rep. Robert Godshall. As a result of these discussions, the following framework for the study was established.

#### Project Staff & Oversight

A tenure-track faculty member, Associate Professor Eric Silver of The Pennsylvania State University’s Department of Sociology/Crime, Law, and Justice, was selected as Principal Investigator for the study. The Sentencing Commission’s Deputy Director/Research Director, Dr. Cynthia Kempinen, would serve as co-Principal Investigator. Five law students from Dickinson, Duquesne, and Villanova law schools were hired to work full-time throughout the summer and part-time during the fall of 2004. In addition, a doctoral student in Penn State’s Crime, Law, and Justice program was hired to help coordinate the court record data collection and assist with project data analysis.

To facilitate Judiciary Committee oversight of this project, and to ensure appropriate support and advice, an Advisory Committee was established to meet with the project team as needed. The Majority and Minority Chairs of the House Judiciary Committee served as ex officio members.

#### Project Activities

The study period was limited to the remainder of the 2004 Legislative session, approximately six months. A definitive study of the use and impact of mandatory sentencing throughout the Commonwealth would have required a large scale *statewide* data collection effort aimed at: (1) tracking all mandatory eligible cases from the charging phase through to trial and sentencing; (2) interviewing key decision makers (District Attorneys, Defenders, and Judges) regarding the handling of these cases, and their perceptions of the use and effectiveness of mandatory minimum statutes more generally; (3) comparing the recidivism rates of cases sentenced under mandatory statutes to those eligible for a mandatory but not so sentenced; and (4) examining other measures of effectiveness, including the role that mandatory sentences play in plea bargaining and in leveraging cooperation from defendants. To be definitive, such a study would have to be conducted throughout the entire state.

This preliminary study focused on a small subset of counties in the Commonwealth (Allegheny, Lancaster, Montgomery, Philadelphia, and Cumberland) in order to begin to develop a snapshot of the use and impact of mandatory minimum sentencing in these counties, and in doing so develop the framework for future research. In addition, the study included the development and mailing of a survey of district attorneys and public defenders across the state and a statistical examination of 1996 Sentencing Commission data bearing on these issues.

In addition to gathering preliminary data in response to HR 613, the study was designed to pilot test data collection procedures that could be used in a larger, more definitive study covering the entire Commonwealth during the 2005/2006 Legislative Session, if such a definitive study is deemed warranted.

#### Data Collection.

The scope of this preliminary study was limited to the collection of information on mandatory minimum sentences related to firearms, crimes of violence (three strikes), and drug trafficking. The study consisted

of several interrelated data collection efforts, each of which was designed to provide an important look into the use of mandatory minimum sentences. The main components of this study were:

- Comprehensive Literature Review: A comprehensive review of the research literature on the use of mandatory minimum sentences was conducted in order to inform the data collection effort and provide a framework within which to interpret the study results. Twenty-one studies of mandatory minimum sentencing practices throughout the United States were found and reviewed. The studies were conducted between 1982 and 2003 with the bulk appearing in print beginning in the mid 1990s. Consistent with the rationales expressed during floor debates in the General Assembly, the research indicated that the primary goals of mandatory minimum sentencing are deterrence, incapacitation, and uniformity in sentencing. Other ‘use and impact’ factors identified in research of mandatory minimum sentencing statutes included: prosecutorial discretion and plea negotiation; implementation rates; factors related to implementation; impact on sentencing and time served; and effects on crime.
- Interviews with District Attorneys, Judges, and Public Defenders from Five Counties: Interviews with key decision makers in five counties (Allegheny, Lancaster, Montgomery, Philadelphia, and Cumberland) were conducted in order to obtain an overview of how and under what circumstances mandatory minimum sentences are imposed. In-depth interviews were conducted with 4 District Attorneys, 4 Judges, and 7 Public Defenders across the 5 target counties. Interviews took place during the summer and early fall of 2004. Informed consent was obtained from each person interviewed, as required by Penn State’s Institutional Review Board. In addition, each interviewee was promised that their identities would not under any circumstances be revealed in the reporting of data.
- Statewide Mail Survey of District Attorneys and Public Defenders: A statewide mail survey of district attorneys and public defenders was conducted to obtain descriptive and evaluative information on the use of mandatory sentencing statutes across the state, including information on the processing of mandatory sentencing cases across the state. A total of 66 responses were received, representing a 49% response rate.<sup>5</sup> An equal number of surveys were received back from district attorneys and public defenders [33 each], representing 47 different counties, with 18 counties having both the district attorney and public defender responding. The respondent’s county was not coded; however, 38% of the respondents indicated that their county classification size was within the 1-4 grouping [larger counties] while 63% responded that their county classification size was within the 5-8 grouping [smaller counties].
- Examination of Mandatory Implementation Rates: Using 1996 data from the Sentencing Commission, the percentage of mandatory-eligible offenses (and offenders) that received a sentence equal to or greater than the mandatory minimum was estimated for the following based on conviction offense: 1) drug trafficking, 2) repeat violent offenses, and 3) violent offenses committed with a firearm. This was done to address three major questions. First, how often are mandatory sentences imposed for individual offenses compared to individual people? Second, does the method being used to determine the imposition of the mandatory sentence impact the findings concerning the frequency of mandatory sentences? Third, does the imposition of the mandatory vary depending upon the offense?

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<sup>5</sup> Approval to send out this survey from Penn State University’s Institutional Review Board was received on September 28, 2004. The surveys were mailed on September 29, 2004 and asked that they be returned by October 15, 2004. A follow-up letter was mailed on October 18, 2004 to those who had not yet responded. The cut-off date for inclusion in the analysis was November 4, 2004.

The Sentencing Commission collects information on all conviction offenses, and traditionally, the Commission's Annual Report has reported on the 'most serious offense in a transaction' in an attempt to present the most accurate picture of sentencing trends in light of the sentencing guidelines.<sup>6</sup> Many of the researchers utilizing the Commission's data for their studies have also used 'most serious offense per transaction' when analyzing sentencing issues. However, for some purposes, such as a recidivism study, the 'most serious offense in a judicial proceeding' is used as this best approximates an individual. Thus, one issue examined is whether there were differences in the imposition of the mandatory sentence when looking at 1) all conviction offenses, 2) the most serious offense in a transaction, and 3) the most serious offense in a judicial proceeding. The 1996 data set was used so as to provide consistency with the data set used for the recidivism study.

- Court Record Examination of Mandatory Eligible Cases and Micro-Level Interviews with District Attorneys: Using Sentencing Commission data from first quarter of 2004, cases with mandatory eligible conviction charges were identified for detailed record review in the five targeted counties. The purpose of this review was to examine the process by which mandatory eligible cases were or were not sentenced under a mandatory, and to document the offense and conviction charges and sentences they ultimately received. To better understand the process by which mandatory eligible cases were or were not sentenced under a mandatory, specific cases were selected and brought to a member of the District Attorney's office for further discussion. The purpose of these discussions was to provide more detailed information about the process by which mandatory sentences are applied than could be gleaned from the court files.

The five law school students received via mail a list of cases that were eligible for prosecution under one of the following mandatory sentencing laws: Drug Trafficking (18 Pa. C.S. §7508), Drugs to Minors (18 Pa. C.S. §6314), Drugs in School Zones (18 Pa. C.S. §6317), Violent Repeat Offender (42 Pa. C.S. §9714), and Violent Offenses with Firearms (42 Pa. C.S. §9712). The students completed a detailed questionnaire about each case. These questionnaires included information on: offense details (including eligibility and application of mandatory sentence), sentencing/penalty outcomes, and victim characteristics for ten charging and ten conviction offenses. Additional information was collected, including: county, offender and case identifying information, offender characteristics, courtroom personnel, prior convictions, prior adjudications, and bail. Students also had the opportunity to "flag" unusual cases for follow-up discussion during interviews with district attorneys. The primary source of data for these questionnaires were court docket files, but students also had the option of collecting relevant information from computerized courtroom files, probation files and interviews with district attorneys.

- Examination of Recidivism Rates: Using data from the Sentencing Commission, the recidivism rates of a sample of offenders sentenced under a mandatory statute in 1996 were compared to similar cases that were not sentenced under a mandatory. The purpose of this examination was to determine if being sentenced under a mandatory was related to a reduction in recidivism, testing the impact of specific deterrence. For the study sample, mandatory-eligible offenders were selected and defined the 'mandatory group' as those offenders receiving a minimum sentence that was consistent with that required by the mandatory statute. Those offenders who received a sentence lower than that required by the mandatory statute comprised the 'comparison group'.

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<sup>6</sup> Until 1997, the Sentencing Guidelines utilized the concept of 'most serious offense in a transaction' for the application of the prior record score and sentencing enhancements. Transaction was defined as 'crimes, which were committed by an offender at a single time or in temporally continuous actions that are part of the same episode, event, or incident, or which are conspiracy and the object offense.'

The sample consisted of offenders who were sentenced during 1996 [under the 1994 guidelines] to allow for a sufficient tracking period. For the recidivism measure, information obtained from the state police – whether the offender was re-arrested for a new crime – was used.

### *Summary of Activities (May – November 2004)*

#### **Activities (May 2004)**

- A tenure-track faculty member of The Pennsylvania State University's Department of Sociology/Crime, Law & Justice (CLJ), has been selected to serve as principle investigator. The Commission's Deputy Director/Research Director will serve as co-investigator.
- Six students have been identified, representing four Pennsylvania universities. Five law school students (Dickinson, Duquesne and Villanova) will be employed full-time throughout the summer engaged in data collection and interviews in the targeted counties. A Sociology/CLJ graduate student will be employed to provide programming, data management and project management support. A Project Staff listing is attached. The Commission has obtained funding under another grant to support the graduate student, and there is no cost associated with Commission staff. However, in order to complete work on the survey and research on the use and impact of mandatories in other jurisdictions, the proposed ½ time law school student has been upgraded to full-time. Therefore, the personnel costs of the project cover the tenure-track faculty member and five law school students.
- An Orientation for all students was conducted in State College May 26-28, 2004. Video-conference sites established by the Commission at Duquesne, Villanova and the Legislative Office for Research Liaison (LORL) will be used for regular meetings and project coordination.
- Commission staff has obtained data and is preparing data sets on sentences imposed in the targeted counties during the first four months of 2004. Copies of these lists will be provided to the District Attorneys offices for identification of missing cases. A data entry program has been developed, and will include a feature for flagging cases for which subsequent interviews will be conducted.
- A meeting was held with representatives of the Pennsylvania District Attorneys Association to discuss the project and to solicit support in the counties being targeted.
- Two of the law school students assigned to smaller counties will be assisting with the development and administration of the survey and the review of mandatory sentencing practices in other jurisdictions and relevant research on mandatory sentencing.

#### **Activities (June 2004)**

- Example cases were selected from the 2004 PCS data to have the law students beta test the data entry program in their respective counties.
- Questions were developed for the 'macro interview' instrument, which was designed to obtain information concerning the processing of 'mandatory eligible' cases in the five counties included in the study. The law students will be using this interview instrument in their interviews with judges, district attorneys, and defense attorneys.
- On June 7 and June 17, videoconference meetings were held with the law students to discuss issues any problems that arose in relation to the beta testing of the data entry program. The data entry program was revised in response to these problems and to suggestions that were made

- On June 18, 2004, the project received approval from Penn State University's Institutional Review Board, which ensures that the research is in compliance with the regulations concerning human subjects research.
- The first meeting of the Advisory Committee was held on June 21 at the Penn State Downtown Center in Harrisburg. The following individuals attended:
  - Victim Advocate Mary Achilles
  - PCS Executive Director Mark Bergstrom
  - District Attorney Bruce Castor (guest of Rep. Godshall)
  - Villanova Law Professor Steve Chanenson (PCS member)(via video-conference)
  - Rep. Frank Derrmody
  - Rep. Will Gabig
  - Rep. Robert Godshall
  - Judge Edward Guido
  - PCS Deputy Director Cynthia Kempinen (via video-conference)
  - Attorney John Kerrigan (PACDL)
  - Judiciary Committee (D) Counsel Beryl Kuhr
  - Rep. Kathy Manderino
  - District Attorney Ted McKnight (PCS member)
  - Rep. Mark McNaughton
  - Judiciary Committee (R) Counsel Mike Schwoyer
  - PSU Professor Eric Silver (Principle Investigator)(via video-conference)
- The following handouts were provided during the Advisory Committee meeting:
  - HR 613
  - Summary of current mandatory sentencing statutes
  - Copies of the mandatory sentencing statutes that will be the focus of the project (drug trafficking; drug-free school zones; firearms; two/three strikes)
  - Guideline Sentence Form and listing of mandatory sentences reported in 2000
  - Case Coding Form developed for the project
  - Consent Form and Interview Format developed for the project.
  - Philadelphia Daily News articles on firearm mandatory case from 1999 (distributed by Rep. Godshall)
  - A project summary containing background information on the development of the project was mailed to all members in advance of the meeting.
- The following issues were discussed during the Advisory Committee meeting:
  - Review of handouts and activities to date
  - Some general issues of interest identified by staff in preliminary interviews include: cost effectiveness of mandatories; recidivism rates of those subject to the mandatories as compared to those who are not; review of mandatories in other jurisdictions; impact of federal mandatories.
  - It was suggested that the scope of the project needs to be broadened to consider the impact of mandatories on the criminal justice system, such as prison populations, expenditures, etc.. However, this must be considered in the context of the short time-frame. A report is due to the House Judiciary Committee by the end of the year, so the project must be viewed as preliminary with the focus rather narrow. Depending on the findings, a subsequent study may be warranted during the 2005/2006Session.

- It was suggested that this preliminary study may provide the Judiciary Committee and the Commission with better information on when and how mandatory sentences are used.
  - Additional areas of inquiry relating to mandatorics include: age of offender/victim; relationship between victim/offender; impact of media coverage; impact of ‘personal use’ and consecutive mandatorics in the application of and sentences imposed for drug offenses; the use of the mandatory as leverage in the prosecution of cases.
  - It was suggested that the study should address the two common reasons identified for enacting mandatorics... equalization of sentences and public safety... have mandatorics equalized sentences for similar behaviors, and have mandatorics increased public safety?
- A luncheon meeting with the law students was held on June 22 in State College. At this meeting, students were provided with the initial round of cases that were being used as part of the study sample, and the following procedures were reviewed: the macro interview and consent form protocol, the procedure for conducting and transcribing interviews, the transmission of data to the PCS. Computers purchased for this project were also provided to the students.
  - On June 29 a videoconference meeting was held with the law students to review issues that arose during the data entry of the actual study cases. In response to issues that arose, some final changes to the program are being made and a final version is to be distributed in early July.

#### **Activities (July 2004)**

- On July 13, 2004 a videoconference was held with the law students to review issues relevant to the data collection process and interviews being conducted with district attorneys. The students indicated that about 35 cases a week could be coded, which helped to determine how many more cases could be sent to the students and to provide an estimate of the overall sample size for the study. The students were going to next arrange for the macro interviews with the public defender’s office and judges who sentenced mandatory cases in their respective counties.
- On July 27, 2004 a videoconference was held with the law students to review the data entry, the research on mandatory sentencing in other states, the mandatory sentencing survey to be developed and distributed to district attorneys [and perhaps public defenders and select judges statewide]. Since Philadelphia and Allegheny counties had the heaviest caseloads, there was discussion about sending two of the law students from the other counties to assist in those counties. Students were encouraged to arrange interviews for the ‘flagged cases’ [e.g., cases which appeared similar but some get mandatory sentences while others do not] as August was a busy vacation month for the judiciary.
- Additional mandatory eligible cases that had been sentenced during the time frame used for sample selection [January through April 2004] but received after that time period were sent to the students. Due to the volume of cases received from Allegheny and Philadelphia, cases were randomly selected from the mandatory eligible cases.
- Mandatory eligible cases were identified from the PCS 1996 data to be used for the recidivism study sample. The year 1996 was used to allow for an adequate tracking period, while still allowing for the best identification of mandatory eligible cases. These cases will have the missing state identification numbers (SID’s) obtained using the JNET OTN/SID feature and then sent to the state police to receive criminal history and re-arrest information. The proposed recidivism study was submitted to Penn State’s Institutional Review Board as a project modification, and approval for this modification was received July 30, 2004.

### **Activities (August 2004)**

- For the recidivism study criminal history records from the state police are being used to obtain re-arrest information. In order to access the criminal history records, the SIDs [state identification numbers] are needed. While the Commission collects this information on the Guideline Sentence Form, many are missing this identification number. A large percentage of the missing SIDs were located via JNET.
- On August 13, 2004 a file was sent to the state police requesting the criminal history records for the recidivism study sample. On August 23, we received the criminal history records from the state police. They were also able to locate some additional SIDS that we were unable to locate via JNET.
- The data collection in the five counties is almost complete. Additional cases were sent to Philadelphia and Allegheny. Two students were placed in Allegheny county to assist in the data collection. In Philadelphia many of the cases are on appeal and thus unavailable. An attempt is being made to see about obtaining the necessary information on those cases.
- A videoconference was held on August 26, 2004 to review: 1) the status of the data collection, 2) the interviews with the judges, district attorneys, and defense, and 3) the research on the mandatory sentencing statutes in other states.
- One of the law students drafted an article for the district attorneys association newsletter that describes the purpose and process of the mandatory sentencing project.
- The draft of the statewide survey of district attorneys on mandatory sentencing was completed.
- Preliminary analysis is being conducted on the initial sample cases from the five counties.

### **Activities (September 2004)**

- An Advisory Committee Meeting was held on September 8, 2004 with the following individuals in attendance:
  - PCS Executive Director Mark Bergstrom
  - Villanova Law Professor Steve Chanenson (PCS member)(via teleconference)
  - Gerald Everett, representing Rep. Harold James
  - PCS Deputy Director Cynthia Kempinen (via teleconference)
  - Attorney John Kerringan (PACDL)
  - Judiciary Committee (D) Counsel Beryl Kuhr
  - Rep. Harold James
  - Chief Public Defender Michael Machen (Allegheny County)
  - Rep. Kathy Manderino
  - District Attorney Ted McKnight (PCS member)
  - Judiciary Committee (R) Counsel Mike Schwoyer
  - PSU Professor Eric Silver (Principle Investigator)(via teleconference)
  - Rep. Katie True
  - Judge Chris R. Wogan (Philadelphia Court of Common Pleas)
- During the meeting, an update was provided on the various phases of the project, including: 1) data collection in the five counties, 2) interviews with judges, district attorneys, and public defenders in the five counties, 3) the recidivism study, 4) the statewide survey of district attorneys and public defenders, 5) the states' research on mandatory statutes, and 6) the issue of analyzing the number of

mandatory eligible cases that receive the mandatory sentence. A brief review of previous research was discussed, which indicated that very little is known about the processing of mandatory sentencing cases. The committee provided input and feedback on the draft of the statewide survey of district attorneys and public defenders.

- The next Advisory Committee Meeting will be held in the capitol complex on Monday, November 8, 2004 beginning at 11:00 a.m.; lunch will be provided. Details regarding the meeting location, and a preliminary draft report of the Mandatory Sentencing Project, will be mailed to committee members in advance of the meeting.
- For the recidivism study, re-arrest information from the criminal history records was entered into the database. On September 9, 2004 a file was sent to Department of Corrections to obtain release date information for the offenders in the study.
- The statewide survey of district attorneys and public defenders was submitted to the Institutional Review Board at Penn State University on September 17, 2004 and was approved on September 30, 2004. The surveys were sent out on September 30, 2004, and respondents were asked to return the surveys by October 15, 2004. A data entry program is being developed to enter the results of the survey.
- A videoconference was held on September 23, 2004 with the law students to get updates on the status of: 1) data collection, 2) interviews, and 3) research on states' statutes.
- The data collection in the five counties was completed. The interviews with district attorneys, public defenders and judges are almost completed.
- Research on the states' mandatory sentencing statutes was going slower than originally anticipated, and three of the law students are currently assisting in this research.
- To determine how many mandatory eligible cases actually receive the mandatory sentence, analysis was conducted using the 1996 data set, as this was the year being used for the recidivism study. Analysis is being conducted in three ways: 1) looking at all offenses, 2) looking at the most serious offense in a transaction, and 3) looking at the most serious offense in a judicial proceeding.

#### **Activities (October/November)**

- On October 6, 2004 the Department of Corrections sent a data file that contained the information needed to compute the release date of offenders in the recidivism study. This information was necessary to determine the exposure time during the tracking period. The exposure time is being computed individually for each offender in the sample to take into consideration incarceration time due to parole revocations.
- The analysis to determine the number of mandatory eligible offenders who received a sentence consistent with that required by statute was completed. The analysis used the 1996 data set, as this was the year being used for the recidivism study. Analysis was conducted in three ways: 1) looking at all offenses, 2) looking at the most serious offense in a transaction, and 3) looking at the most serious offense in a judicial proceeding.
- A preliminary report was sent to the Advisory Committee on November 1, 2004. The report included: 1) a review of the literature on mandatory sentencing, 2) a summary of the interviews with the district attorneys, public defenders, and judges in the five counties, 3) some results from the data

collection in the five counties, 4) a report on the number of mandatory eligible offenders who received the mandatory sentence, 5) preliminary findings on the recidivism study, 5) an update on the statewide survey of district attorneys, and public defenders, and 6) an annotated bibliography of mandatory sentencing studies.

- An Advisory Committee Meeting was held on November 8, 2004 to discuss the preliminary report.
- A summary of the preliminary findings from the statewide survey was completed.

### *Closing Comments*

House Resolution 613 set forth an ambitious mission within a short time-frame: “to study the use and impact of mandatory minimum sentences on the criminal justice system in the Commonwealth.” The Pennsylvania Commission on Sentencing, at the direction of the House Judiciary Committee and with the support and oversight of an Advisory Committee appointed by the Chairman of the Judiciary Committee, began this task in May 2004 and concluded work with the close of the 2003/2004 Session of the General Assembly in November 2004. The efforts completed to date may best be characterized as a preliminary investigation of mandatory sentencing in Pennsylvania, laying the groundwork for a future statewide, comprehensive study. For this reason, no findings or recommendations regarding mandatory sentencing legislation are included in this report. Rather, based on this work, and discussions during and subsequent to the HR 613 project, the following recommendations regarding future research activities are provided:

- Statewide data collection effort to track all mandatory eligible cases from charging through to trial and sentencing, and analysis to determine impact of court determinations and plea negotiations on the application of mandatory sentencing provisions.
- In-depth interviews with district attorneys, public defenders, and judges in additional Pennsylvania counties to obtain information on how and under what circumstances mandatory minimum sentences are imposed, and to further investigate issues such as: the frequency and outcomes of Carroll Hearings relating to the applicability of drug mandatories; and transfer of cases to federal court.
- Analysis of Pennsylvania Commission on Sentencing 2004 data to determine the frequency in the imposition of mandatory sentences based on the conviction offenses.
- Completion of recidivism study to measure the impact of mandatory sentencing provisions on specific deterrence.
- To the degree possible, measure the impact of mandatory sentencing provisions on general deterrence, incapacitation and retribution, through studies of time served, crime rates, and other outcomes.

By identifying issues related to the use and impact of mandatory minimum sentences in Pennsylvania, by testing methods for gathering and analyzing relevant data, and by suggesting future research activities, the Commission hopes that based on this report the Judiciary Committee and the House of Representatives is better positioned to determine the need for and scope of future research on this important area of criminal justice legislation.