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Impact of the 1994 and 1997 Revisions to Pennsylvania's Sentencing Guidelines

By Cynthia A. Kempinen, Ph.D.

In 1978 the General Assembly created the Sentencing Commission to establish sentencing guidelines, with the initial set of guidelines becoming effective in 1982. In the early 1990's the Commission undertook a comprehensive, multi-year, multi-method assessment of the guidelines that resulted in a totally revised set of guidelines being implemented in 1994. Several factors influenced the development of these revised guidelines. First, previous research by the Commission had found that, in comparison to other states with guidelines, Pennsylvania's guidelines were more lenient for the violent offender and harsher for the non-violent offender. Second, prison overcrowding, which was primarily caused by the increased incarceration of non-violent offenders, emerged as a serious problem, straining the state budget. Third, there was growing support for drug treatment as a sentencing option for certain non-violent offenders. In addition, the legislature had passed Intermediate Punishment legislation in 1990 to provide judges with an alternative sentencing option that was intended to divert people from incarceration into community based programs, such as electronic monitoring and drug treatment.

The revised guidelines focused on recommending harsher sentences for violent offenders, while recommending Intermediate Punishment alternatives for less serious offenders. Recognizing that Intermediate Punishment encompassed a wide variety of programs, the Commission divided the programs into two categories: Restorative Sanctions [RS], which were least restrictive and Restrictive Intermediate Punishment [RIP], which provided for strict supervision over the offender. In 1997, the guidelines were again amended to provide even harsher sentences for violent offenders and to expand the recommendations for RIP to include certain offenders

Restrictive Intermediate Punishment Project

In 2001 the Pennsylvania Commission on Sentencing received funding from the Pennsylvania Commission on Crime and Delinquency to conduct an evaluation of Restrictive Intermediate Punishment involving substance abuse treatment. This study is being conducted by **Professors John Kramer and Jeffery Ulmer**, who are with the Crime, Law, and Justice Program in the Department of Sociology at Penn State University. The Evaluation consists of two phases: 1) examining the shifts in sentencing from incarceration to RIP programs and 2) conducting a recidivism study of offenders sentenced to RIP treatment programs. This Research Bulletin is based upon a report presenting the findings from Phase I of the study, which was written by **Professor Kramer**, in conjunction with graduate assistant, **Mindy Wilson**. If you are interested in obtaining a copy of the entire report, please contact Cynthia Kempinen at (814) 863-2797 or cak16@psu.edu.

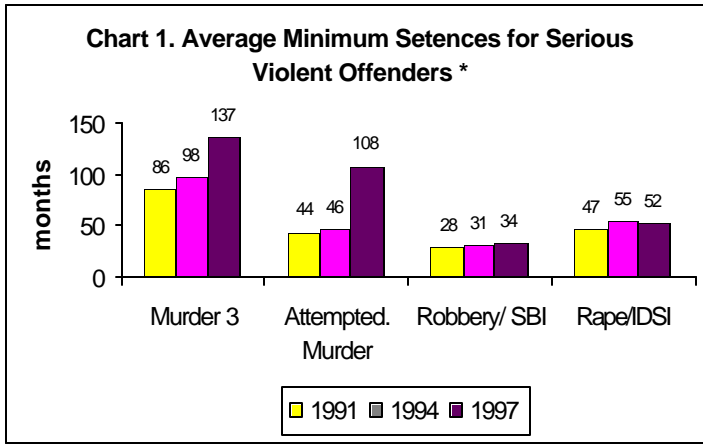
who would otherwise receive state prison sentences.

Study on Shifts in Sentencing

This issue of the Research Bulletin is based upon findings from a study that examined whether the shifts in sentencing

Major Findings

- ◆ A study of the 1994 and 1997 revisions to Pennsylvania's sentencing guidelines found that the recommended changes were implemented in that:
 - > Minimum sentences for most violent offenses increased, particularly for murder 3 and attempted murder.
 - > Offenders convicted of the least serious offenses, such as minor theft, were less likely to be incarcerated.
 - > There was an increase in the percentage of lower level drug dealers sentenced to Restrictive Intermediate Punishment Programs in lieu of incarceration.
- ◆ Judges in counties that received funding for Intermediate Punishment Programs were more likely than those in counties without funding to sentence offenders to these alternative programs.



* These include only offenders with a prior record score of zero and no mandatory sentence imposed.

occurred as recommended by the revisions to the 1994 and 1997 sentencing guidelines. In examining the shifts in sentencing, three major changes were examined: 1) the increased severity of sentences for the serious, violent offender, 2) non-confinement for the least serious offenders, and 3) the use of Restrictive Intermediate Punishment programs for offenders targeted for diversion from incarceration.

The study utilized data from the Pennsylvania Commission on Sentencing for the years 1991 through 2000. As the guidelines apply to the date the offense was committed, there can be multiple versions of the guidelines reflected in one data year. Thus, rather than comparing sentences from year to year, the study compared sentences imposed under the 1991 guidelines, the 1994 guidelines, and the 1997 guidelines.

Increased Penalties for Serious Violent Offenders

One impetus behind the comprehensive review of the sentencing guidelines was a Commission study that revealed Pennsylvania's guidelines, in comparison to other states, to be more lenient for violent offenders and more harsh for non-violent offenders.¹ In addition, district attorneys had provided feedback to the Commission that the guidelines were not severe enough for violent offenders. Thus, a major focus of the revisions to the guidelines was to increase the minimum sentence recommended for violent offenders.

Chart 1 shows the average minimum sentence imposed for the major violent offenses under the 1991, 1994, and 1997 guidelines: murder 3, attempted murder, robbery involving serious bodily injury, and rape/involuntary deviate sexual intercourse [IDSI]. Overall, while the sentences imposed for these offenses increased, it should be noted that for rape and IDSI the sentences increased only under the 1994 guidelines, with a slight decrease occurring under the 1997 guidelines. The increase in sentence severity is most pronounced for murder 3 and attempted murder. For murder 3, the average minimum sentence was 86 months under the 1991 guidelines and increased to 98 months and 137 months under the 1994 and 1997 guidelines, respectively. For attempted murder the average minimum sentence more than doubled under the 1997 guidelines. The

¹ Kramer, John H., Lubitz, Robin L., & Kempinen, Cynthia A. (1989). Sentencing Guidelines: A Quantitative Comparison of Sentencing Policies in Minnesota, Pennsylvania, and Washington. *Justice Quarterly*, Vol. 6, No. 4, 565-586.

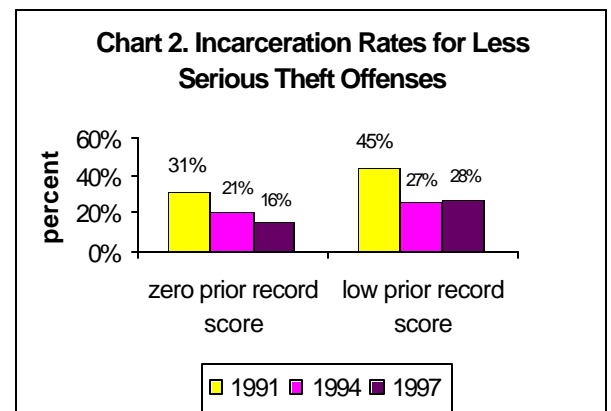
fact that the increases were particularly pronounced under the 1997 guidelines reflects, in large part, the legislative change to the statutory maximums for these offenses during the 1995 Special Session on Crime, which allowed the Commission to provide for greater increases in the sentence recommendations for those offenses.

Non-Confinement for Least Serious Offenders

Act 193 of 1990, which created Intermediate Punishment as an alternative to incarceration, also directed the Commission to identify offenders for these alternative sentences. In response to this mandate the Commission established, in 1991, presumptive non-confinement for the least serious offenders who had no prior record or only one previous misdemeanor. In 1994, the Commission expanded the recommendations for non-confinement to include offenders who had slightly more serious offenses and prior records. However, as a result of criticism that the guidelines were too restrictive of judges' discretion, the 1997 revisions reverted back to allowing incarceration for some of these offenders, though the ranges were narrower than those under the 1991 guidelines.

Chart 2 provides the incarceration rates under the 1991, 1994, and the 1997 guidelines, for the least serious theft offenders [e.g., involving \$200 or less] who had no prior record or a minimal prior record. These theft offenders represent the majority of offenders who were recommended for non-confinement, though the findings are similar when all offenses are examined.

For these theft offenders who had a zero prior record score [which includes offenders with one prior misdemeanor conviction], the likelihood of incarceration declined under both the 1994 and 1997 guidelines. About 31% of these offenders were incarcerated under the 1991 guidelines, compared to 21% and 16% who were incarcerated under the 1994 and 1997 guidelines, respectively. The incarceration rate for offenders who had a low prior record score of 1 or 2 declined from 45% under the 1991 guidelines to 27% under the 1994 guidelines. The incarceration rate stayed virtually the same [28%], however, under the 1997 guidelines, most likely reflecting the change back to allowing incarceration for these offenders.



Restrictive Intermediate Punishment for Mid-Range Offenders

A third goal of the Commission in revising the guidelines was to reduce the reliance on incarceration for the 'mid-range' offenses, particularly drug delivery involving small and medium amounts of drugs. The 1994 changes focused on diverting offenders from county jail, and the 1997 changes expanded the recommendations to divert certain offenders from state prison. The primary focus of these changes was to recommend Restrictive Intermediate Punishment [RIP] programs that would provide comprehensive, clinically prescribed treatment for drug and/or alcohol dependent offenders. The guidelines required that these offenders undergo an assessment for substance abuse, and if assessed to be dependent, treatment would be the only RIP program alternative available to the judge. The judge, however, still had the option of imposing incarceration.

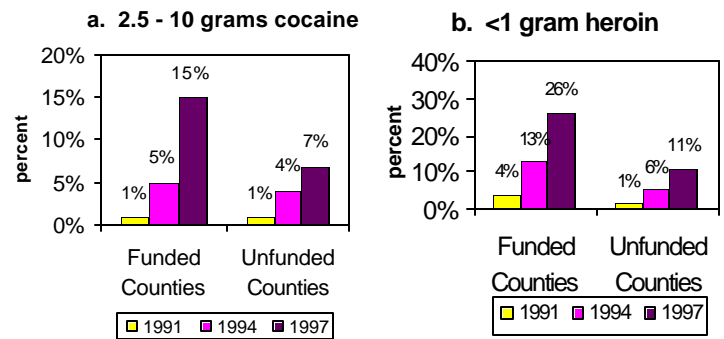
In 1994, the legislature created a funding stream of \$5.3 million for Intermediate Punishment programs, and in 1997 appropriated a separate allocation of \$10 million for Restrictive Intermediate Punishment programs involving substance abuse treatment. The money is awarded to counties based upon a competitive application process, with 22 counties currently receiving full funding [which increased to \$13 million in 2001/2002] for RIP treatment programs.

Charts 3a-3b show the percentage of drug delivery offenders at Level 3 of the guidelines receiving RIP by county funding status. Level 3 represents those offenders for whom the guidelines recommend county jail but allow for RIP in lieu of incarceration for eligible offenders. The major offenders targeted for RIP programs at Level 3 are those convicted of drug delivery involving small to medium amounts of drugs and who had no prior record or a less serious prior record.

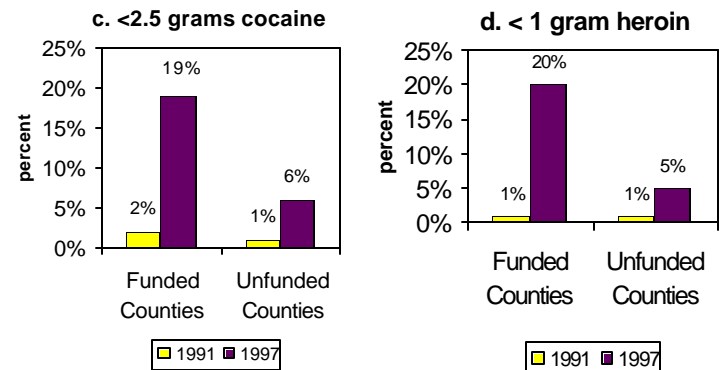
Overall, the percentage of drug offenders sentenced to an RIP program increased under both the 1994 and 1997 guidelines, but this increase was particularly pronounced in counties that received funding for the treatment programs. Under the 1997 guidelines, the percentage of offenders sentenced to an RIP program in the funded counties was twice that of offenders in unfunded counties for drug delivery offenses involving 2.5-10 grams of cocaine [15% vs. 7%] and < 1 gram of heroin [26% vs. 11%].²

Charts 3c-3d show the percentage of drug delivery offenders at Level 4 of the guidelines by county funding status. Level 4 represents those offenders for whom the guidelines recommend state prison but, under the 1997 guidelines, allowed eligible offenders to be sentenced to RIP programs in lieu of incarceration. Most of these offenders were con-

Charts 3a-3b. Percentage of Drug Offenders at Level 3 [less serious prior record] Sentenced to RIP Programs.



Charts 3c-3d. Percentage of Drug Offenders at Level 4 [more serious prior record] Sentenced to RIP Programs.



victed of drug delivery involving a small or medium amount of drugs but have a more serious prior record.

Again, while there was an overall increase in offenders receiving sentences to RIP programs, there was a dramatic difference depending upon whether the county had received funding for these programs. In funded counties, 19% of the offenders convicted of drug delivery involving <2.5 grams of cocaine received sentences involving RIP programs, compared to 6% in the unfunded counties. About 20% of the offenders convicted of drug delivery involving <1 gram of heroin were sentenced to RIP programs in funded counties, compared to 5% in unfunded counties.

While these findings support the use of RIP programs for offenders convicted of drug delivery offenses involving smaller amounts, it should be noted that judges were less likely to utilize these alternatives for offenders involved in dealing larger quantities of drugs. For both heroin [involving 1-50 grams] and cocaine [involving 10-50 grams], incarceration was clearly the preferred sentencing option, with about 4% of the offenders sentenced to RIP programs. Further, there were no major differences in counties that had received funding versus those that had not for these offenders.

Finally, one of concerns about the implementation of RIP was that it would 'widen the net' and be used as an alternative to probation rather than a diversion from incarceration. The findings, however, indicated that this was not the case and that, overall, the rate of offenders sentenced to probation remained relatively stable.

² This category includes methamphetamine and PCP but, for ease of discussion, is referenced as cocaine, which was the predominant drug.

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The Pennsylvania Commission on Sentencing is an agency of the General Assembly located on the University Park campus of 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.

(continued from page 3)

Conclusion

The focus of this study was to examine whether changes in the 1994 and 1997 sentencing guideline recommendations resulted in changes in sentencing practices. Three major policy changes were examined: 1) increasing the severity of sentences for violent offenders, 2) recommending presumptive non-confinement for the least serious offender, and 3) establishing Restrictive Intermediate Punishment programs as an alternative to incarceration. In all three areas significant shifts in sentencing occurred in accordance with the recommendations.

It appeared that funding provided an important stimulus to diverting offenders from incarceration to community based Intermediate Punishment sentences. In 1991 the guidelines first proposed non-confinement for the least serious offenders in response to the Intermediate Punishment legislation passed in 1990. However, incarceration rates remained quite high under the 1991 guidelines. In 1994 the legislature first allocated \$5.3 million for Intermediate Punishment programs and, under the 1994 guidelines, there was a major decrease in the incarceration rate for offenders targeted for these alternative programs. In addition, the Commission conducted extensive training during the implementation of the 1994 guideline revisions, which encouraged the utilization of Intermediate Punishment for

appropriate offenders.

In 1998, the legislature provided for an additional allocation of \$10 million specifically for the implementation of Restrictive Intermediate Punishment programs involving substance abuse treatment, which was increased to \$13 million in 2001. This study found that counties with RIP funding were much more likely than those without funding to experience a decline in incarceration sentences and a corresponding increase in the imposition of sentences to RIP programs.

These findings reinforce the impact of carefully articulated, rational sentencing policy as a means to reduce reliance on incarceration for non-violent offenders and to reserve the use of scarce prison space for the violent offenders who present the greatest threat to society. The successful implementation of these policy changes involved the coordinated efforts of several agencies including the Pennsylvania Commission on Sentencing, the Pennsylvania Commission on Crime and Delinquency, the Department of Corrections, and the Department of Health as well as organizations such as the District Attorneys Association and the County Chief Adult Probation and Parole Officers Association of Pennsylvania. The next crucial policy issue is whether drug treatment is an effective alternative to incarceration. The next phase of this research project will address that issue.