

**SUMMARY OF SENTENCING POLICIES AND PRACTICES
FOR DRUG OFFENSES:**

**A COMPARISON OF POLICIES
IN THIRTEEN STATES AND
UNDER THE FEDERAL SENTENCING GUIDELINES**

Minnesota Sentencing Guidelines Commission
Staff Report
May, 1992

LIST OF JURISDICTIONS INCLUDED IN THE SUMMARY

The Federal Sentencing Guidelines

Oregon

Florida

Pennsylvania

Iowa

South Carolina

Kansas

Tennessee

Louisiana

Texas

Michigan

Washington

New York

Wisconsin

SUMMARY OF SENTENCING POLICIES FOR DRUG OFFENDERS

FEDERAL SYSTEM - Federal Guidelines (1992)

STATUTORY PROVISIONS

Section 841: Manufacture/Distribute/Possess with Intent

- (1) (A) Minimum term of 10 years to life
- (i) 1 kilogram or more containing heroin
 - (ii) 5 kilograms or more containing cocaine, ecgonine
 - (iii) 50 grams or more containing cocaine base
 - (iv) 100 grams or more PCP or 1 Kilogram of mixture containing PCP
 - (v) 10 grams or more containing LSD
 - (vi) 400 grams or more N-phenyl-N-[1-(2-phenylethyl)4-piperidiny] propanamide
 - (vii) 1,000 kilograms or more containing marijuana or 1,000 or more marijuana plants
 - (viii) 100 grams or more methamphetamine or 1 kilogram or more of mixture containing methamphetamine.

If death or serious bodily injury results, minimum of 20 years

Second felony drug offense: Minimum of 20 years, life if death or serious bodily injury results

Subsequent felony drug offense: Life without release

Minimum term of supervised release: 5 years/10 years if second offense

(B) Minimum 5 years to 40 years

- (i) 100 grams or more of a mixture or substance containing heroin
- (ii) 500 grams or more containing cocaine, ecgonine
- (iii) 5 grams or more containing cocaine base
- (iv) 10 grams or more PCP or 100 grams of mixture containing PCP
- (v) 1 grams or more containing LSD
- (vi) 40 grams or more N-phenyl-N-[1-(2-phenylethyl)4-piperidiny] propanamide
- (vii) 100 kilograms or more containing marijuana or 1,000 or more marijuana plants
- (viii) 10 grams or more methamphetamine or 100 grams or more of mixture containing methamphetamine.

If death or serious bodily injury results, minimum of 20 years to life

Second or Subs. felony drug offense: Minimum of 10 years, life if death/serious bodily injury

Minimum term of supervised release: 4 years/8 years if second offense

(C) Controlled substances in schedule I or II (except in (A), (B), and (D)) - Not more than 20 years

If death or serious bodily injury results minimum sentence of 20 years.

Second or Subs.: Not more than 30 years, min. life if death or serious bodily injury occur.

Minimum term of supervised release: 3 years/6 years if second or subsequent

(D) Less than 50 kilograms of marijuana - Not more than 5 years

Second or Subsequent conviction: not more than 10 years

Minimum term of supervised release: 2 years/4 years if second or subsequent

(2) Schedule IV - Not more than 3 years

Second or Subsequent: Not more than 6 years

Minimum term of supervised release: 1 year/2 years if second or subsequent

(3) Schedule V - Not more than 1 year

Second or Subsequent: Not more than 2 years

(4) Small Amount of Marijuana - See Section 844

844. Simple Possession

Certain Cocaine Base Cases:

First time offender & over 5 grams or Min. 5 years/Max. 20 years/Min. Fine \$1,000

Second time offender & over 3 grams

Third time offender & over 1 gram

Else:

Min. 15 days/Max. 2 years/Min. Fine \$2,500

First time offender: Up to 1 year/Min. Fine \$1,000

Second time offender: Min. 15 days/Max. 2 years/Min. Fine \$2,500

Subsequent offender: Min. 90 days/Max. 3 years/Min. Fine \$5,000

FEDERAL GUIDELINES

(c) DRUG QUANTITY TABLE

Controlled Substances and Quantity*	Base Offense Level	Guideline Sentence History=0 or 1
(1) • 300 KG or more of Heroin (or the equivalent amount of other Schedule I or II Opiates); • 1500 KG or more of Cocaine (or the equivalent amount of other Schedule I or II Stimulants); • 15 KG or more of Cocaine Base; • 300 KG or more of PCP, or 30 KG or more of Pure PCP; • 300 KG or more of Methamphetamine, or 30 KG or more of Pure Methamphetamine; • 3 KG or more of LSD (or the equivalent amount of other Schedule I or II Hallucinogens); • 120 KG or more of Fentanyl; • 30 KG or more of a Fentanyl Analogue; • 300,000 KG or more of Marihuana; • 60,000 KG or more of Hashish; • 6,000 KG or more of Hashish Oil.	Level 42	360 mo. - Life
(2) • At least 100 KG but less than 300 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates); • At least 500 KG but less than 1500 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants); • At least 5 KG but less than 15 KG of Cocaine Base; • At least 100 KG but less than 300 KG of PCP, or at least 10 KG but less than 30 KG of Pure PCP; • At least 100 KG but less than 300 KG of Methamphetamine, or at least 10 KG but less than 30 KG of Pure Methamphetamine; • At least 1 KG but less than 3 KG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens); • At least 40 KG but less than 120 KG of Fentanyl; • At least 10 KG but less than 30 KG of a Fentanyl Analogue; • At least 100,000 KG but less than 300,000 KG of Marihuana; • At least 20,000 KG but less than 60,000 KG of Hashish; • At least 2,000 KG but less than 6,000 KG of Hashish Oil.	Level 40	292-365 mo.
(3) • At least 30 KG but less than 100 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates); • At least 150 KG but less than 500 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants); • At least 1.5 KG but less than 5 KG of Cocaine Base; • At least 30 KG but less than 100 KG of PCP, or at least 3 KG but less than 10 KG of Pure PCP; • At least 30 KG but less than 100 KG of Methamphetamine, or at least 3 KG but less than 10 KG of Pure Methamphetamine; • At least 300 G but less than 1 KG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens); • At least 12 KG but less than 40 KG of Fentanyl; • At least 3 KG but less than 10 KG of a Fentanyl Analogue; • At least 30,000 KG but less than 100,000 KG of Marihuana; • At least 6,000 KG but less than 20,000 KG of Hashish; • At least 600 KG but less than 2,000 KG of Hashish Oil.	Level 38	235-293

Controlled Substances and Quantity*

Base Offense Level

Guideline
Sentence
History 0/1

- | | | |
|--|----------|-------------|
| <p>(4) • At least 10 KG but less than 30 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates);</p> <ul style="list-style-type: none"> • At least 50 KG but less than 150 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants); • At least 500 G but less than 1.5 KG of Cocaine Base; • At least 10 KG but less than 30 KG of PCP, or at least 1 KG but less than 3 KG of Pure PCP; • At least 10 KG but less than 30 KG of Methamphetamine, or at least 1 KG but less than 3 KG of Pure Methamphetamine; • At least 100 G but less than 300 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens); • At least 4 KG but less than 12 KG of Fentanyl; • At least 1 KG but less than 3 KG of a Fentanyl Analogue; • At least 10,000 KG but less than 30,000 KG of Marihuana; • At least 2,000 KG but less than 6,000 KG of Hashish; • At least 200 KG but less than 600 KG of Hashish Oil. | Level 36 | 188-235 mo. |
| <p>(5) • At least 3 KG but less than 10 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates);</p> <ul style="list-style-type: none"> • At least 15 KG but less than 50 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants); • At least 150 G but less than 500 G of Cocaine Base; • At least 3 KG but less than 10 KG of PCP, or at least 300 G but less than 1 KG of Pure PCP; • At least 3 KG but less than 10 KG of Methamphetamine, or at least 300 G but less than 1 KG of Pure Methamphetamine; • At least 30 G but less than 100 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens); • At least 1.2 KG but less than 4 KG of Fentanyl; • At least 300 G but less than 1 KG of a Fentanyl Analogue; • At least 3,000 KG but less than 10,000 KG of Marihuana; • At least 600 KG but less than 2,000 KG of Hashish; • At least 60 KG but less than 200 KG of Hashish Oil. | Level 34 | 151-188 mo. |
| <p>(6) • At least 1 KG but less than 3 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates);</p> <ul style="list-style-type: none"> • At least 5 KG but less than 15 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants); • At least 50 G but less than 150 G of Cocaine Base; • At least 1 KG but less than 3 KG of PCP, or at least 100 G but less than 300 G of Pure PCP; • At least 1 KG but less than 3 KG of Methamphetamine, or at least 100 G but less than 300 G of Pure Methamphetamine; • At least 10 G but less than 30 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens); • At least 400 G but less than 1.2 KG of Fentanyl; • At least 100 G but less than 300 G of a Fentanyl Analogue; • At least 1,000 KG but less than 3,000 KG of Marihuana; • At least 200 KG but less than 600 KG of Hashish; • At least 20 KG but less than 60 KG of Hashish Oil. | Level 32 | 121-151 mo. |

Controlled Substances and Quantity*

Base Offense Level

Guideline
Sentence
History 0/1

- | | | |
|--|----------|------------|
| <p>(7) • At least 700 G but less than 1 KG of Heroin (or the equivalent amount of other Schedule I or II Opiates);</p> <ul style="list-style-type: none"> • At least 3.5 KG but less than 5 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants); • At least 35 G but less than 50 G of Cocaine Base; • At least 700 G but less than 1 KG of PCP, or at least 70 G but less than 100 G of Pure PCP; • At least 700 G but less than 1 KG of Methamphetamine, or at least 70 G but less than 100 G of Pure Methamphetamine; • At least 7 G but less than 10 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens); • At least 280 G but less than 400 G of Fentanyl; • At least 70 G but less than 100 G of a Fentanyl Analogue; • At least 700 KG but less than 1,000 KG of Marihuana; • At least 140 KG but less than 200 KG of Hashish; • At least 14 KG but less than 20 KG of Hashish Oil. | Level 30 | 97-121 mo. |
| <p>(8) • At least 400 G but less than 700 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);</p> <ul style="list-style-type: none"> • At least 2 KG but less than 3.5 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants); • At least 20 G but less than 35 G of Cocaine Base; • At least 400 G but less than 700 G of PCP, or at least 40 G but less than 70 G of Pure PCP; • At least 400 G but less than 700 G of Methamphetamine, or at least 40 G but less than 70 G of Pure Methamphetamine; • At least 4 G but less than 7 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens); • At least 160 G but less than 280 G of Fentanyl; • At least 40 G but less than 70 G of a Fentanyl Analogue; • At least 400 KG but less than 700 KG of Marihuana; • At least 80 KG but less than 140 KG of Hashish; • At least 8 KG but less than 14 KG of Hashish Oil. | Level 28 | 78-97 mo. |
| <p>(9) • At least 100 G but less than 400 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);</p> <ul style="list-style-type: none"> • At least 500 G but less than 2 KG of Cocaine (or the equivalent amount of other Schedule I or II Stimulants); • At least 5 G but less than 20 G of Cocaine Base; • At least 100 G but less than 400 G of PCP, or at least 10 G but less than 40 G of Pure PCP; • At least 100 G but less than 400 G of Methamphetamine, or at least 10 G but less than 40 G of Pure Methamphetamine; • At least 1 G but less than 4 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens); • At least 40 G but less than 160 G of Fentanyl; • At least 10 G but less than 40 G of a Fentanyl Analogue; • At least 100 KG but less than 400 KG of Marihuana; • At least 20 KG but less than 80 KG of Hashish; • At least 2 KG but less than 8 KG of Hashish Oil. | Level 26 | 63-78 mo. |

Controlled Substances and Quantity*

Base Offense Level

Guideline
Sentence (0/1)

- | | | |
|---|----------|-----------|
| <p>(10) • At least 80 G but less than 100 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);</p> <ul style="list-style-type: none"> • At least 400 G but less than 500 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants); • At least 4 G but less than 5 G of Cocaine Base; • At least 80 G but less than 100 G of PCP, or at least 8 G but less than 10 G of Pure PCP; • At least 80 G but less than 100 G of Methamphetamine, or at least 8 G but less than 10 G of Pure Methamphetamine; • At least 800 MG but less than 1 G of LSD (or the equivalent amount of other Schedule I or II Hallucinogens); • At least 32 G but less than 40 G of Fentanyl; • At least 8 G but less than 10 G of a Fentanyl Analogue; • At least 80 KG but less than 100 KG of Marihuana; • At least 16 KG but less than 20 KG of Hashish; • At least 1.6 KG but less than 2 KG of Hashish Oil. | Level 24 | 51-63 mo. |
| <p>(11) • At least 60 G but less than 80 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);</p> <ul style="list-style-type: none"> • At least 300 G but less than 400 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants); • At least 3 G but less than 4 G of Cocaine Base; • At least 60 G but less than 80 G of PCP, or at least 6 G but less than 8 G of Pure PCP; • At least 60 G but less than 80 G of Methamphetamine, or at least 6 G but less than 8 G of Pure Methamphetamine; • At least 600 MG but less than 800 MG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens); • At least 24 G but less than 32 G of Fentanyl; • At least 6 G but less than 8 G of a Fentanyl Analogue; • At least 60 KG but less than 80 KG of Marihuana; • At least 12 KG but less than 16 KG of Hashish; • At least 1.2 KG but less than 1.6 KG of Hashish Oil. | Level 22 | 41-51 mo. |
| <p>(12) • At least 40 G but less than 60 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);</p> <ul style="list-style-type: none"> • At least 200 G but less than 300 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants); • At least 2 G but less than 3 G of Cocaine Base; • At least 40 G but less than 60 G of PCP, or at least 4 G but less than 6 G of Pure PCP; • At least 40 G but less than 60 G of Methamphetamine, or at least 4 G but less than 6 G of Pure Methamphetamine; • At least 400 MG but less than 600 MG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens); • At least 16 G but less than 24 G of Fentanyl; • At least 4 G but less than 6 G of a Fentanyl Analogue; • At least 40 KG but less than 60 KG of Marihuana; • At least 8 KG but less than 12 KG of Hashish; • At least 800 G but less than 1.2 KG of Hashish Oil; • 20 KG or more of Schedule I or II Depressants or Schedule III substances. | Level 20 | 33-41 mo. |

Controlled Substances and Quantity*

Base Offense Level

Guideline
Sentence
History=0,1

- | | | |
|--|----------|-----------|
| <p>(13) • At least 20 G but less than 40 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);</p> <ul style="list-style-type: none"> • At least 100 G but less than 200 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants); • At least 1 G but less than 2 G of Cocaine Base; • At least 20 G but less than 40 G of PCP, or at least 2 G but less than 4 G of Pure PCP; • At least 20 G but less than 40 G of Methamphetamine, or at least 2 G but less than 4 G of Pure Methamphetamine; • At least 200 MG but less than 400 MG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens); • At least 8 G but less than 16 G of Fentanyl; • At least 2 G but less than 4 G of a Fentanyl Analogue; • At least 20 KG but less than 40 KG of Marihuana; • At least 5 KG but less than 8 KG of Hashish; • At least 500 G but less than 800 G of Hashish Oil; • At least 10 KG but less than 20 KG of Schedule I or II Depressants or Schedule III substances. | Level 18 | 27-33 mo. |
| <p>(14) • At least 10 G but less than 20 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);</p> <ul style="list-style-type: none"> • At least 50 G but less than 100 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants); • At least 500 MG but less than 1 G of Cocaine Base; • At least 10 G but less than 20 G of PCP, or at least 1 G but less than 2 G of Pure PCP; • At least 10 G but less than 20 G of Methamphetamine, or at least 1 G but less than 2 G of Pure Methamphetamine; • At least 100 MG but less than 200 MG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens); • At least 4 G but less than 8 G of Fentanyl; • At least 1 G but less than 2 G of a Fentanyl Analogue; • At least 10 KG but less than 20 KG of Marihuana; • At least 2 KG but less than 5 KG of Hashish; • At least 200 G but less than 500 G of Hashish Oil; • At least 5 KG but less than 10 KG of Schedule I or II Depressants or Schedule III substances. | Level 16 | 21-27 mo. |
| <p>(15) • At least 5 G but less than 10 G of Heroin (or the equivalent amount of other Schedule I or II Opiates);</p> <ul style="list-style-type: none"> • At least 25 G but less than 50 G of Cocaine (or the equivalent amount of other Schedule I or II Stimulants); • At least 250 MG but less than 500 MG of Cocaine Base; • At least 5 G but less than 10 G of PCP, or at least 500 MG but less than 1 G of Pure PCP; • At least 5 G but less than 10 G of Methamphetamine, or at least 500 MG but less than 1 G of Pure Methamphetamine; • At least 50 MG but less than 100 MG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens); • At least 2 G but less than 4 G of Fentanyl; • At least 500 MG but less than 1 G of a Fentanyl Analogue; • At least 5 KG but less than 10 KG of Marihuana; • At least 1 KG but less than 2 KG of Hashish; • At least 100 G but less than 200 G of Hashish Oil; • At least 2.5 KG but less than 5 KG of Schedule I or II Depressants or Schedule III substances. | Level 14 | 15-21 mo. |

Controlled Substances and Quantity*

Base Offense Level

Guideline
Sentence
History 0,1

<p>(16) • Less than 5 G Heroin (or the equivalent amount of other Schedule I or II Opiates); • Less than 25 G Cocaine (or the equivalent amount of other Schedule I or II Stimulants); • Less than 250 MG of Cocaine Base; • Less than 5 G of PCP, or less than 500 MG of Pure PCP; • Less than 5 G of Methamphetamine, or less than 500 MG of Pure Methamphetamine; • Less than 50 MG of LSD (or the equivalent amount of other Schedule I or II Hallucinogens); • Less than 2 G of Fentanyl; • Less than 500 MG of a Fentanyl Analogue; • At least 2.5 KG but less than 5 KG of Marihuana; • At least 500 G but less than 1 KG of Hashish; • At least 50 G but less than 100 G of Hashish Oil; • At least 1.25 KG but less than 2.5 KG of Schedule I or II Depressants or Schedule III substances; • 20 KG or more of Schedule IV substances.</p>	<p>Level 12</p>	<p>10-16 mo. Split Sent. Available</p>
<p>(17) • At least 1 KG but less than 2.5 KG of Marihuana; • At least 200 G but less than 500 G of Hashish; • At least 20 G but less than 50 G of Hashish Oil; • At least 500 G but less than 1.25 KG of Schedule I or II Depressants or Schedule III substances; • At least 8 KG but less than 20 KG of Schedule IV substances.</p>	<p>Level 10</p>	<p>6-12 mo. Split Sent. & Prob. with time avail.</p>
<p>(18) • At least 250 G but less than 1 KG of Marihuana; • At least 50 G but less than 200 G of Hashish; • At least 5 G but less than 20 G of Hashish Oil; • At least 125 G but less than 500 G of Schedule I or II Depressants or Schedule III substances; • At least 2 KG but less than 8 KG of Schedule IV substances; • 20 KG or more of Schedule V substances.</p>	<p>Level 8</p>	<p>2-8 mo. Split Sent. & Prob. with time in jail available</p>
<p>(19) • Less than 250 G of Marihuana; • Less than 50 G of Hashish; • Less than 5 G of Hashish Oil; • Less than 125 G of Schedule I or II Depressants or Schedule III substances; • Less than 2 KG of Schedule IV substances; • Less than 20 KG of Schedule V substances.</p>	<p>Level 6</p>	<p>0-6 mo. Straight Probation Avail,</p>

* Unless otherwise specified, the weight of a controlled substance set forth in the table refers to the entire weight of any mixture or substance containing a detectable amount of the controlled substance. If a mixture or substance contains more than one controlled substance, the weight of the entire mixture or substance is assigned to the controlled substance that results in the greater offense level. In the case of a mixture or substance containing PCP or methamphetamine, use the offense level determined by the entire weight of the mixture or substance or the offense level determined by the weight of the pure PCP or methamphetamine, whichever is greater.

In the case of an offense involving marihuana plants, if the offense involved (A) 50 or more marihuana plants, treat each plant as equivalent to 1 KG of marihuana; (B) fewer than 50 marihuana plants, treat each plant as equivalent to 100 G of marihuana. *Provided*, however, that if the actual weight of the marihuana is greater, use the actual weight of the marihuana.

2. UNLAWFUL POSSESSION

§2D2.1. Unlawful Possession

(a) Base Offense Level:

- (1) 8, if the substance is heroin or any Schedule I or II opiate, an analogue of these, or cocaine base; or
- (2) 6, if the substance is cocaine, LSD, or PCP; or
- (3) 4, if the substance is any other controlled substance.

2-8 mo. Prob w/time
& split sent. avail.

0-6 mo. Straight
Probation available

(b) Cross Reference

- (1) If the defendant is convicted of possession of more than 5 grams of a mixture or substance containing cocaine base, apply §2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking) as if the defendant had been convicted of possession of that mixture or substance with intent to distribute.

Commentary

Statutory Provision: 21 U.S.C. § 844(a). For additional statutory provision(s), see Appendix A (Statutory Index).

Background: Mandatory minimum penalties for several categories of cases, ranging from fifteen days' to five years' imprisonment, are set forth in 21 U.S.C. § 844(a). When a mandatory minimum penalty exceeds the guideline range, the mandatory minimum becomes the guideline sentence. §5G1.1(b).

Section 2D2.1(b)(1) provides a cross reference to §2D1.1 for possession of more than five grams of a mixture or substance containing cocaine base, an offense subject to an enhanced penalty under Section 6371 of the Anti-Drug Abuse Act of 1988. Other cases for which enhanced penalties are provided under Section 6371 of the Anti-Drug Abuse Act of 1988 (e.g., for a person with one prior conviction, possession of more than three grams of a mixture or substance containing cocaine base; for a person with two or more prior convictions, possession of more than one gram of a mixture or substance containing cocaine base) are to be sentenced in accordance with §5G1.1(b).

Historical Note: Effective November 1, 1987. Amended effective January 15, 1988 (see Appendix C, amendment 24); November 1, 1989 (see Appendix C, amendment 304); November 1, 1990 (see Appendix C, amendment 321).

§2D2.2. Acquiring a Controlled Substance by Forgery, Fraud, Deception, or Subterfuge

(a) Base Offense Level: 8

Commentary

Statutory Provision: 21 U.S.C. § 843(a)(3).

Historical Note: Effective November 1, 1987.

Background: Offenses under 21 U.S.C. §§ 841 and 960 receive identical punishment based upon the quantity of the controlled substance involved, the defendant's criminal history, and whether death or serious bodily injury resulted from the offense.

The base offense levels in §2D1.1 are either provided directly by the Anti-Drug Abuse Act of 1986 or are proportional to the levels established by statute, and apply to all unlawful trafficking. Levels 32 and 26 in the Drug Quantity Table are the distinctions provided by the Anti-Drug Abuse Act; however, further refinement of drug amounts is essential to provide a logical sentencing structure for drug offenses. To determine these finer distinctions, the Commission consulted numerous experts and practitioners, including authorities at the Drug Enforcement Administration, chemists, attorneys, probation officers, and members of the Organized Crime Drug Enforcement Task Forces, who also advocate the necessity of these distinctions.

The base offense levels at levels 26 and 32 establish guideline ranges with a lower limit as close to the statutory minimum as possible; e.g., level 32 ranges from 121 to 151 months, where the statutory minimum is ten years or 120 months.

Specific Offense Characteristic (b)(2) is mandated by Section 6453 of the Anti-Drug Abuse Act of 1988.

Frequently, a term of supervised release to follow imprisonment is required by statute for offenses covered by this guideline. Guidelines for the imposition, duration, and conditions of supervised release are set forth in Chapter Five, Part D (Supervised Release).

Historical Note: Effective November 1, 1987. Amended effective January 15, 1988 (see Appendix C, amendments 19, 20, and 21); November 1, 1989 (see Appendix C, amendments 123-134, 302, and 303); November 1, 1990 (see Appendix C, amendment 318).

§2D1.2. Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals

(a) Base Offense Level (Apply the greatest):

- (1) 2 plus the offense level from §2D1.1 applicable to the quantity of controlled substances directly involving a protected location or an underage or pregnant individual; or
- (2) 1 plus the offense level from §2D1.1 applicable to the total quantity of controlled substances involved in the offense; or
- (3) 26, if the offense involved a person less than eighteen years of age; or
- (4) 13, otherwise.

Commentary

Statutory Provisions: 21 U.S.C. §§ 845, 845a, 845b.

Application Note:

1. Where only part of the relevant offense conduct directly involved a protected location or an underage or pregnant individual, subsections (a)(1) and (a)(2) may result in different offense

SENTENCING TABLE

(in months of imprisonment)

Criminal History Category (Criminal History Points)

Offense Level		I	II	III	IV	V	VI
		(0 or 1)	(2 or 3)	(4, 5, 6)	(7, 8, 9)	(10, 11, 12)	(13 or more)
A	1	0-6	0-6	0-6	0-6	0-6	0-6
	2	0-6	0-6	0-6	0-6	0-6	1-7
	3	0-6	0-6	0-6	0-6	2-8	3-9
	4	0-6	0-6	0-6	2-8	4-10	6-12
	5	0-6	0-6	1-7	4-10	6-12	9-15
	6	0-6	1-7	2-8	6-12	9-15	12-18
B	7	1-7	2-8	4-10	8-14	12-18	15-21
	8	2-8	4-10	6-12	10-16	15-21	18-24
	9	4-10	6-12	8-14	12-18	18-24	21-27
	10	6-12	8-14	10-16	15-21	21-27	24-30
	11	8-14	10-16	12-18	18-24	24-30	27-33
	12	10-16	12-18	15-21	21-27	27-33	30-37
C	13	12-18	15-21	18-24	24-30	30-37	33-41
	14	15-21	18-24	21-27	27-33	33-41	37-46
	15	18-24	21-27	24-30	30-37	37-46	41-51
	16	21-27	24-30	27-33	33-41	41-51	46-57
	17	24-30	27-33	30-37	37-46	46-57	51-63
	18	27-33	30-37	33-41	41-51	51-63	57-71
	19	30-37	33-41	37-46	46-57	57-71	63-78
	20	33-41	37-46	41-51	51-63	63-78	70-87
	21	37-46	41-51	46-57	57-71	70-87	77-96
	22	41-51	46-57	51-63	63-78	77-96	84-105
	23	46-57	51-63	57-71	70-87	84-105	92-115
	24	51-63	57-71	63-78	77-96	92-115	100-125
	25	57-71	63-78	70-87	84-105	100-125	110-137
	26	63-78	70-87	78-97	92-115	110-137	120-150
	27	70-87	78-97	87-108	100-125	120-150	130-162
	28	78-97	87-108	97-121	110-137	130-162	140-175
	29	87-108	97-121	108-135	121-151	140-175	151-188
	30	97-121	108-135	121-151	135-168	151-188	168-210
	31	108-135	121-151	135-168	151-188	168-210	188-235
	32	121-151	135-168	151-188	168-210	188-235	210-262
	33	135-168	151-188	168-210	188-235	210-262	235-293
	34	151-188	168-210	188-235	210-262	235-293	262-327
	35	168-210	188-235	210-262	235-293	262-327	292-365
	36	188-235	210-262	235-293	262-327	292-365	324-405
	37	210-262	235-293	262-327	292-365	324-405	360-life
	38	235-293	262-327	292-365	324-405	360-life	360-life
	39	262-327	292-365	324-405	360-life	360-life	360-life
	40	292-365	324-405	360-life	360-life	360-life	360-life
	41	324-405	360-life	360-life	360-life	360-life	360-life
	42	360-life	360-life	360-life	360-life	360-life	360-life
	43	life	life	life	life	life	life

KEY

A—Probation available (*see* §5B1.1(a)(1))

B—Probation with conditions of confinement available (*see* §5B1.1(a)(2))

C—New “split sentence” available (*see* §§5C1.1(c)(3), (d)(2))

FISCAL YEAR 1990 GUIDELINE SENTENCES

NATIONAL DATA

CASES RECEIVED BY USSC (by sentencing month)												
TOTAL	Oct 89	Nov 89	Dec 89	Jan 90	Feb 90	Mar 90	Apr 90	May 90	Jun 90	Jul 90	Aug 90	Sep 90
29,011	2,246	2,347	2,338	2,640	2,421	2,561	2,437	2,672	2,485	2,513	2,259	2,092

DEMOGRAPHIC INFORMATION ON SENTENCED DEFENDANTS								MODE OF CONVICTION ²		
GENDER	TOTAL ¹ N (Col %)	RACE				Average Age	Average Monthly Income	TOTAL	Number	Col %
		White	Black	Hispanic	Other					
TOTAL (Row%)	25,330 (100.0)	11,887 (46.9)	7,190 (28.4)	5,552 (21.9)	721 (2.8)	33.8	\$ 861	26,585	100.0	
MALE	21,283 (83.9)	9,938	5,788	4,950	597	33.7	\$ 901	23,161	87.1	
FEMALE	4,067 (16.1)	1,929	1,402	602	134	33.0	\$ 655	3,424	12.9	

PRIMARY OFFENSE	TOTAL CASES ³ N (Row%)	CASES INVOLVING PRISON									
		Total Receiving Prison N (Row%)	TYPE OF SENTENCE			Average Months Prison ⁴	LENGTH OF PRISON TERM				
			Prison + Supervised Release N (Row%)	Prison Only N (Row%)	New Split Sentence N (Row%)		PRISON TERM ORDERED (months) ⁵				
							1-12	13-24	25-36	37-60	Over 60
TOTAL	25,940 (100.0)	19,981 (77.0)	18,578 (71.8)	734 (2.8)	648 (2.5)	61	5,088	3,475	1,938	3,138	6,233
Robbery	1,059 (100.0)	1,045 (98.7)	1,010 (95.4)	13 (1.2)	22 (2.1)	99	8	48	107	317	564
Larceny	1,637 (100.0)	672 (41.1)	583 (35.6)	57 (3.5)	32 (2.0)	16	384	177	61	36	12
Embezzlement	1,125 (100.0)	281 (25.0)	220 (19.6)	9 (0.8)	52 (4.6)	11	205	52	19	3	1
Fraud	2,693 (100.0)	1,471 (54.6)	1,233 (45.8)	124 (4.6)	114 (4.2)	15	850	378	113	83	19
Drug Offenses ⁶	11,520 (100.0)	10,879 (94.4)	10,590 (91.9)	91 (0.8)	198 (1.7)	83	942	1,517	1,163	2,124	5,124
Simple Possess.	689 (100.0)	279 (40.5)	223 (32.4)	50 (7.3)	6 (0.9)	11	257	3	5	5	5
Counterfeiting	895 (100.0)	517 (57.8)	455 (50.8)	38 (4.3)	24 (2.7)	15	296	150	66	27	5
Firearms	1,675 (100.0)	1,371 (81.9)	1,242 (74.2)	66 (3.9)	63 (3.8)	46	450	382	122	200	213
Immigration	1,613 (100.0)	1,350 (83.7)	1,172 (72.7)	169 (10.5)	9 (0.6)	10	987	276	41	8	4
Other	3,034 (100.0)	2,098 (69.1)	1,850 (61.0)	117 (3.9)	128 (4.3)	40	709	492	271	333	286

PRIMARY OFFENSE	CASES INVOLVING PROBATION			OTHER CASES N (Row%)	CASES INVOLVING FINES AND RESTITUTION				
	Total Receiving Probation N (Row%)	TYPE OF SENTENCE			Total Receiving Fines and Restitution N (Row%)	TYPE OF SENTENCE			Average Dollar Amount ⁷ \$ (N)
		Probation Only N (Row%)	Probation + Confinement N (Row%)			Fine Only	Restitution Only	Both	
TOTAL	5,878 (22.7)	3,973 (15.3)	1,905 (7.3)	101 (0.4)	8,972 (34.6)	5,051	3,238	683	\$ 25,533 (8,559)
Robbery	13 (1.2)	7 (0.7)	6 (0.6)	1 (0.1)	467 (44.1)	33	415	19	\$ 10,537 (452)
Larceny	936 (57.2)	731 (44.7)	205 (12.5)	29 (1.8)	1,169 (71.4)	518	514	137	\$ 19,611 (1,137)
Embezzlement	839 (74.6)	544 (48.4)	295 (26.2)	5 (0.4)	809 (71.9)	209	506	94	\$ 36,622 (769)
Fraud	1,202 (44.6)	804 (29.9)	398 (14.8)	20 (0.7)	1,661 (61.7)	430	1,010	221	\$ 60,758 (1,562)
Drug Offenses ⁶	633 (5.5)	333 (2.9)	300 (2.6)	8 (0.1)	2,160 (18.8)	1,939	178	43	\$ 19,810 (2,076)
Simple Possess.	397 (57.6)	338 (49.2)	58 (8.4)	13 (1.9)	323 (46.9)	300	12	11	\$ 1,243 (315)
Counterfeiting	374 (41.8)	220 (24.6)	154 (17.2)	4 (0.5)	457 (51.1)	151	256	50	\$ 8,172 (434)
Firearms	302 (18.0)	174 (10.4)	126 (7.6)	2 (0.1)	450 (26.9)	400	40	10	\$ 3,887 (428)
Immigration	259 (16.1)	155 (9.6)	104 (6.5)	4 (0.3)	211 (13.1)	195	13	3	\$ 2,704 (204)
Other	923 (30.4)	666 (22.0)	257 (8.5)	15 (0.5)	1,285 (41.7)	876	294	95	\$ 17,880 (1,182)

Footnotes and a complete description of all variables in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, FY1990 Data File, MONFY90

FISCAL YEAR 1990 GUIDELINE SENTENCES

Minnesota

CASES RECEIVED BY USSC (by sentencing month)												
TOTAL	Oct 89	Nov 89	Dec 89	Jan 90	Feb 90	Mar 90	Apr 90	May 90	Jun 90	Jul 90	Aug 90	Sep 90
321	18	15	30	15	21	34	44	40	32	25	30	17

DEMOGRAPHIC INFORMATION ON SENTENCED DEFENDANTS								MODE OF CONVICTION ²		
GENDER	TOTAL ¹ N (Col %)	RACE				Average Age	Average Monthly Income	TOTAL	Number	Col %
		White	Black	Hispanic	Other					
TOTAL (Row%)	306 (100.0)	188 (61.4)	98 (32.0)	10 (3.3)	10 (3.3)	32.5	\$ 813	308	100.0	
MALE	256 (83.7)	160	78	10	8	32.6	\$ 836	251	81.5	
FEMALE	50 (16.3)	28	20	0	2	31.9	\$ 692	57	18.5	

PRIMARY OFFENSE	TOTAL CASES ³ N (Row%)	CASES INVOLVING PRISON									
		Total Receiving Prison N (Row%)	TYPE OF SENTENCE			Average Months Prison ⁴	LENGTH OF PRISON TERM				
			Prison + Supervised Release N (Row%)	Prison Only N (Row%)	New Split Sentence N (Row%)		PRISON TERM ORDERED (months) ⁵				
					1-12 13-24 25-36 37-60 Over 60						
TOTAL	300 (100.0)	255 (85.0)	244 (81.3)	9 (3.0)	2 (0.7)	71	48	55	25	43	80
Robbery	14 (100.0)	14 (100.0)	14 (100.0)	0 (0.0)	0 (0.0)	116	1	2	1	2	8
Larceny	9 (100.0)	7 (77.8)	7 (77.8)	0 (0.0)	0 (0.0)	11	5	2	0	0	0
Embezzlement	15 (100.0)	2 (13.3)	2 (13.3)	0 (0.0)	0 (0.0)	6	2	0	0	0	0
Fraud	42 (100.0)	32 (76.2)	28 (66.7)	4 (9.5)	0 (0.0)	15	17	6	2	3	0
Drug Offenses ⁶	142 (100.0)	141 (99.3)	138 (97.2)	3 (2.1)	0 (0.0)	96	6	24	17	29	65
Simple Possess.	4 (100.0)	1 (25.0)	1 (25.0)	0 (0.0)	0 (0.0)	6	1	0	0	0	0
Counterfeiting	10 (100.0)	7 (70.0)	7 (70.0)	0 (0.0)	0 (0.0)	15	3	3	1	0	0
Firearms	24 (100.0)	23 (95.8)	22 (91.7)	0 (0.0)	1 (4.2)	43	4	10	2	4	3
Immigration	0 (100.0)	0 (-)	0 (-)	0 (-)	0 (-)	--	0	0	0	0	0
Other	40 (100.0)	28 (70.0)	25 (62.5)	2 (5.0)	1 (2.5)	37	9	8	2	5	4

PRIMARY OFFENSE	CASES INVOLVING PROBATION			OTHER CASES N (Row%)	CASES INVOLVING FINES AND RESTITUTION				
	Total Receiving Probation N (Row%)	TYPE OF SENTENCE			Total Receiving Fines and Restitution N (Row%)	TYPE OF SENTENCE			Average Dollar Amount ⁷ \$ (N)
		Probation Only N (Row%)	Probation + Confinement N (Row%)			Fine Only	Restitution Only	Both	
TOTAL	45 (15.0)	30 (10.0)	15 (5.0)	0 (0.0)	83 (21.0)	24	33	6	\$ 19,650 (60)
Robbery	0 (0.0)	0 (0.0)	0 (0.0)	0 (0.0)	3 (21.4)	0	3	0	\$ 1,627 (3)
Larceny	2 (22.2)	2 (22.2)	0 (0.0)	0 (0.0)	3 (33.3)	0	2	1	\$ 1,866 (3)
Embezzlement	13 (86.7)	9 (60.0)	4 (26.7)	0 (0.0)	11 (73.3)	0	10	1	\$ 4,680 (11)
Fraud	10 (23.8)	6 (14.3)	4 (9.5)	0 (0.0)	20 (47.6)	4	13	3	\$ 19,737 (18)
Drug Offenses ⁶	1 (0.7)	0 (0.0)	1 (0.7)	0 (0.0)	9 (6.3)	9	0	0	\$ 75,072 (9)
Simple Possess.	3 (75.0)	3 (75.0)	0 (0.0)	0 (0.0)	1 (25.0)	1	0	0	\$ 1,000 (1)
Counterfeiting	3 (30.0)	1 (10.0)	2 (20.0)	0 (0.0)	4 (40.0)	0	4	0	\$ 542 (4)
Firearms	1 (4.2)	0 (0.0)	1 (4.2)	0 (0.0)	0 (0.0)	0	0	0	-- (0)
Immigration	0 (-)	0 (-)	0 (-)	0 (-)	0 (-)	0	0	0	-- (0)
Other	12 (30.0)	9 (22.5)	3 (7.5)	0 (0.0)	12 (30.0)	10	1	1	\$ 7,543 (11)

Footnotes and a complete description of all variables in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, FY1990 Data File, MONFY90

GUIDELINE RANGE	PRIMARY OFFENSE CATEGORY									
	Drugs (Importation & Distribution)		Drugs (Simple Possession)		Drugs (Communication Facility)		Auto Theft		Forgery/Counterfeiting	
	N	%	N	%	N	%	N	%	N	%
0-6	117	1.4	323	70.2	12	6.8	6	5.0	148	22.7
1-7	9	0.1	12	2.6	0	0.0	8	6.6	81	12.4
2-8	68	0.8	15	3.3	14	7.9	9	7.4	58	8.9
3-9	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
4-10	21	0.3	4	0.9	4	2.3	13	10.7	58	8.9
6-12	268	3.3	24	5.2	69	39.0	12	9.9	52	8.0
8-14	81	1.0	0	0.0	13	7.3	9	7.4	35	5.4
9-15	2	0.0	3	0.7	1	0.6	1	0.8	6	0.9
10-16	291	3.5	10	2.2	19	10.7	14	11.6	30	4.6
12-18	75	0.9	7	1.5	3	1.7	6	5.0	48	7.4
15-21	380	4.6	22	4.8	9	5.1	7	5.8	27	4.1
18-24	80	1.0	2	0.4	2	1.1	5	4.1	26	4.0
21-27	418	5.1	21	4.6	6	3.4	10	8.3	16	2.5
24-30	95	1.2	2	0.4	6	3.4	7	5.8	26	4.0
27-33	370	4.5	7	1.5	2	1.1	2	1.7	11	1.7
30-37	70	0.9	1	0.2	1	0.6	5	4.1	11	1.7
33-41	401	4.9	2	0.4	0	0.0	3	2.5	8	1.2
37-46	100	1.2	0	0.0	1	0.6	3	2.5	2	0.3
41-51	367	4.5	1	0.2	1	0.6	1	0.8	2	0.3
46-57	79	1.0	0	0.0	0	0.0	0	0.0	3	0.5
51-63	795	9.7	0	0.0	1	0.6	0	0.0	1	0.2
57-71	137	1.7	1	0.2	0	0.0	0	0.0	1	0.2
63-78	672	8.2	1	0.2	1	0.6	0	0.0	2	0.3
70-87	130	1.6	0	0.0	1	0.6	0	0.0	0	0.0
77-96	46	0.6	0	0.0	0	0.0	0	0.0	0	0.0
78-97	451	5.5	0	0.0	1	0.6	0	0.0	0	0.0
84-105	12	0.1	0	0.0	0	0.0	0	0.0	0	0.0
87-108	83	1.0	0	0.0	0	0.0	0	0.0	0	0.0
92-115	62	0.8	0	0.0	1	0.6	0	0.0	0	0.0
97-121	421	5.1	0	0.0	2	1.1	0	0.0	0	0.0
100-125	10	0.1	0	0.0	0	0.0	0	0.0	0	0.0
108-135	79	1.0	0	0.0	0	0.0	0	0.0	0	0.0
110-137	31	0.4	0	0.0	1	0.6	0	0.0	0	0.0
120-150	13	0.2	0	0.0	0	0.0	0	0.0	0	0.0
121-151	442	5.4	0	0.0	5	2.8	0	0.0	0	0.0
130-162	11	0.1	0	0.0	0	0.0	0	0.0	0	0.0
135-168	129	1.6	0	0.0	0	0.0	0	0.0	0	0.0
140-175	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
151-188	370	4.5	1	0.2	0	0.0	0	0.0	0	0.0
168-210	160	2.0	0	0.0	1	0.6	0	0.0	0	0.0
188-235	216	2.6	0	0.0	0	0.0	0	0.0	0	0.0
210-262	151	1.8	0	0.0	0	0.0	0	0.0	0	0.0
235-293	140	1.7	1	0.2	0	0.0	0	0.0	0	0.0
262-327	108	1.3	0	0.0	0	0.0	0	0.0	0	0.0
292-365	85	1.0	0	0.0	0	0.0	0	0.0	0	0.0
324-405	29	0.4	0	0.0	0	0.0	0	0.0	0	0.0
360-life	117	1.4	0	0.0	0	0.0	0	0.0	0	0.0
life	12	0.1	0	0.0	0	0.0	0	0.0	0	0.0
TOTAL	8,204	100.0	460	100.0	177	100.0	121	100.0	652	100.0

Table S

GUIDELINE DEPARTURE RATE BY PRIMARY OFFENSE CATEGORY*
(October 1, 1989 through September 30, 1990)

PRIMARY OFFENSE	TOTAL	DEPARTURE RATE (Based on 25% Random Sample)							
		Sentenced Within Guideline Range		Departure for Substantial Assistance		Other Downward Departure		Upward Departure	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
TOTAL	6,575	5,477	83.3	487	7.4	460	7.0	151	2.3
Homicide	19	15	79.0	0	0.0	3	15.8	1	5.3
Kidnapping	15	13	86.7	1	6.7	0	0.0	1	6.7
Robbery	277	240	86.6	8	2.9	21	7.6	8	2.9
Assault	63	47	74.6	0	0.0	15	23.8	1	1.6
Burglary/B&E	21	18	85.7	0	0.0	2	9.5	1	4.8
Larceny	425	389	91.5	15	3.5	12	2.8	9	2.1
Embezzlement	267	237	88.8	6	2.3	22	8.2	2	0.8
Tax Offenses	34	29	85.3	2	5.9	2	5.9	1	2.9
Fraud	697	621	89.1	29	4.2	31	4.4	16	2.3
Drug Offenses									
-Importation and Distribution	2,817	2,179	77.4	356	12.6	259	9.2	23	0.8
-Simple Possession	207	195	94.2	1	0.5	2	1.0	9	4.4
-Communication Facility	82	58	70.7	8	9.8	9	11.0	7	8.5
Auto Theft	36	33	91.7	3	8.3	0	0.0	0	0.0
Forgery/Counterfeiting	207	183	88.4	16	7.7	6	2.9	2	1.0
Sex Offenses	47	38	80.9	2	4.3	5	10.6	2	4.3
Bribery	25	19	76.0	3	12.0	3	12.0	0	0.0
Escape	93	77	82.8	4	4.3	9	9.7	3	3.2
Firearms	421	363	86.2	9	2.1	20	4.8	29	6.9
Immigration	400	362	90.5	6	1.5	9	2.3	23	5.8
Extortion/Racketeering	78	62	79.5	4	5.1	8	10.3	4	5.1
Gambling/Lottery	28	26	92.9	1	3.6	1	3.6	0	0.0
Money Laundering	23	18	78.3	2	8.7	3	13.0	0	0.0
Other	293	255	87.0	11	3.8	18	6.1	9	3.1

*Of the 7,364 cases in the sample, 72 cases involving mixed law counts (both guideline and pre-guideline) were excluded. In addition, 717 cases were excluded due to one or both of the following conditions: missing or not applicable departure information (174) or missing primary offense category (575). Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, 1990 Departure Study Data File.

Table T

**REASONS MOST FREQUENTLY GIVEN FOR DEPARTURES
BY PRIMARY OFFENSE CATEGORIES* (Based on 25% Random Sample)**
(October 1, 1989 through September 30, 1990)

DRUG IMPORTATION AND DISTRIBUTION					
REASONS FOR UPWARD DEPARTURES			REASONS FOR DOWNWARD DEPARTURES		
Number of Cases Involving Upward Departures = 23			Number of Cases Involving Downward Departures = 588		
REASON	Number	Percent of Departure Cases	REASON	Number	Percent of Departure Cases
Adequacy of criminal history	9	39.1	Substantial assistance	356	60.5
Mule/Role in the offense	3	13.0	Pursuant to a plea agreement	75	12.8
Drug amount	3	13.0	Mule/Role in the offense	35	6.0
Guidelines do not reflect the seriousness of the offense	2	8.7	Further demonstration of acceptance of responsibility	26	4.4
			Cooperation without motion	21	3.6
			Adequacy of criminal history	16	2.7
			Family ties and responsibilities	14	2.4
			Adequate to meet the purposes of sentencing	14	2.4
			To put defendant's sentence in line with co-defendants'	12	2.0
			Physical condition	12	2.0
			Age	11	1.9
			Deterrence	11	1.9
			Cooperation (motion unknown)	11	1.9
			No reason given	10	1.7
			Rehabilitation	9	1.5
			Factors not incorporated in guideline	9	1.5
			Drug amount	9	1.5
			No prior record/first offender	6	1.0
			Mental and emotional conditions	5	0.9
			Diminished capacity	4	0.7
			Coercion and duress	4	0.7
			Nature/Seriousness of the offense	3	0.5
			Punishment	3	0.5
			Guidelines too high	2	0.3
			Incapacitation	2	0.3
			General aggravating or mitigating circumstance	2	0.3
			Death	2	0.3
			First felony conviction	2	0.3
			Military record	2	0.3
			Community ties	2	0.3

*Based on 990 downward and 156 upward departure cases for which Reports on the Sentencing Hearing were available or reasons for departure were obtained through a telephone call to the field. Information on reasons was unavailable in 43 cases involving downward departures and six cases involving upward departures. Courts often provided more than one reason for departure; consequently, the percentage across all reasons for departure adds up to more than 100 percent. Only reasons given in two or more cases are included in each table. Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, 1990 Departure Study Data File.

FLORIDA

A. Illegal Acts - Felony Degrees - Statutory Maximums

1. Sale, Purchase, Manufacture, Deliver, Possess with Intent / Import

Schedule I non-Hallucinogens, Second Degree Felony 15 years / \$10,000
Cocaine, Opiates, PCP

Schedule I Hallucinogens, Third Degree Felony 5 years / \$5,000
Amphetamine, Schedule III & IV

Schedule V First Degree Misd. 1 year / \$1,000

2. Sale to a Minor / Use Minor - Imposition of sentence shall not be suspended or deferred, nor shall the person so convicted be placed on probation

Schedule I non-Hallucinogens, First Degree Felony 30 years / \$10,000
Cocaine, Opiates, PCP

Schedule I Hallucinogens, Second Degree Felony 15 years / \$10,000
Amphetamine, Schedule III & IV

3. Sale in or within 1,000 ft. of School

Schedule I non-Hallucinogens, First Degree Felony 30 years / \$10,000 -
Cocaine, Opiates, PCP Minimum=3 years, and not eligible for parole, control release, or
gain time prior to serving minimum

Schedule I Hallucinogens, Second Degree Felony 15 years / \$10,000
Amphetamine, Schedule III & IV

Other Controlled Substances "Shall be sentenced to " 100 hours
Community Service and \$500 Fine

4. Sale in Public Housing Zone

Schedule I non-Hallucinogens, First Degree Felony 30 years / \$10,000 -
Cocaine, Opiates, PCP Not eligible for parole, control release or gain time

Schedule I Hallucinogens, Second Degree Felony 15 years / \$10,000
Amphetamine, Schedule III & IV

Other Controlled Substances "Shall be sentenced to " 100 hours
Community Service and \$500 Fine

5. Possession or Constructive Possession

All Drugs Third Degree Felony 5 years / \$5,000

Small Amt. MJ. (20 grams or less) First Degree Misd. 1 year / \$1,000

6. Fraudulent Procurement Third Degree Felony 5 years / \$5,000

B. Trafficking, Conspiracy to engage in trafficking - sells, purchases, imports, actual or constructive possession

1. Mandatory Minimum - "adjudication of guilt or imposition of sentence shall not be suspended, deferred, withheld, nor shall such person be eligible for parole prior to serving the mandatory minimum term of imprisonment."

- eligible for gain time but not provisional credits

2. Commits a First Degree Felony if drug amounts as follows:

Drug / Amount	Mandatory Minimum
MJ / 100-2,000 Lbs	3 years / \$25,000
MJ / 2,000-10,000 Lbs	5 years / \$50,000
MJ / 10,000 Lbs or more	15 years / \$200,000
Cocaine / 28 - 200 Grams	3 years / \$50,000
Cocaine / 200 - 400 Grams	5 years / \$100,000
Cocaine / 400 Grams - 150 Kilos	15 years / \$250,000
Cocaine / 150 Kilos or more	punishable by life imprisonment without parole
Opium/Morphine/Heroin / 4 - 14 Grams	3 years / \$50,000
Opium/Morphine/Heroin / 14 - 28 Grams	10 years / \$100,000
Opium/Morphine/Heroin / 28 Gr. - 30 Kilos	25 years / \$250,000
Opium/Morphine/Heroin / 30 Kilos or more	punishable by life imprisonment without parole
PCP / 28 - 200 Grams	3 years / \$50,000
PCP / 200 - 400 Grams	5 years / \$100,000
PCP / 400 Grams or more	15 years / \$250,000
Methaqualone / 200 Grams - 5 Kilos	3 years / \$50,000
Methaqualone / 5 - 25 Kilos	5 years / \$100,000
Methaqualone / Over 25 Kilos	15 years / \$250,000
Amphetamine / 14 - 28 Grams	3 years / \$50,000
Amphetamine / 28 - 200 Grams	5 years / \$100,000
Amphetamine / 200 Grams or more	15 years / \$250,000

3. Commits a Capital Felony if Drug Amounts as follows:

Cocaine - Over 150 Kilograms

Opium/Morphine/Heroin - over 30 kilograms

- and:

- Intentionally kills or counsels, commands, induces, procures, or causes the intentional killing of an individual or

- Is determined to have had a highly culpable mental state (represented by a reckless disregard for human life implicit in knowingly engaging in criminal activities known to carry a grave risk of death) which may be taken into account when making a capital sentencing judgement when the defendant's conduct causes its natural, though not inevitable lethal results

Sentence

- Shall be punishable by life imprisonment and shall serve at least 25 years before becoming eligible for parole or;

- Death if: Court finds aggravating circumstances

4. Informants

- Prosecutor may move the sentencing Court to reduce or suspend the sentence of any person who is convicted of a violation of this section and who provides substantial assistance in the identification, arrest, or conviction of any of his accomplices, accessories, coconspirators, or principals or of any other person engaged in the trafficking in controlled substances.

C. Sentencing Guidelines (see attached grid and score sheet)

- Establish presumptive sentences
- Departures require written reasons
- If mandatory minimum is greater than the presumptive sentence, the mandatory minimum is the presumptive sentence
- Offenders receive points for both the characteristics of their offense, and their criminal history. These points are combined into one seriousness level. There are separate grids for each crime category.

FLORIDA SENTENCING GUIDELINES DRUG GRID

IF SINGLE OFFENSE, NO CRIMINAL HISTORY	POINTS	RECOMMENDED RANGE	PERMITTED RANGE
Second and Third Degree Felonies, including sale and possession of cocaine (less than 28 grams)	42-75	any nonstate prison sanction	any nonstate prison sanction
Second time sale of cocaine if still on custody status	76-113	community control or 12-30 months incarceration	any nonstate prison sanction or community control or 1-3.5 years incarceration
	114-133	3 (2.5-3.5)	community control or 1-4.5 years incarceration
First Degree Felonies Drug Trafficking Offenses (if mand min greater than presumptive, mandatory min is presumptive) includes sale and possession of more than 28 gr. cocaine	134-147	4 (3.5-4.5)	2.5-5.5
	148-162	5 (4.5-5.5)	3.5-7
	163-184	6 (5.5-7)	4.5-9
	185-208	8 (7-9)	5.5-12
	209-244	10 (9-12)	7-17
	245-304	15 (12-17)	9-22
	305-364	20 (17-22)	12-27
	365-424	25 (22-27)	17-40
	425-483	30 (27-40)	22-Life
	484+	Life	27-Life

NOTE: Numbers in grid are years unless otherwise indicated. Sentences from either the recommended or permitted ranges are not departures.

Any person sentenced for a felony offense whose presumptive sentence is any nonstate prison sanction may be sentenced to community control or a term of incarceration not to exceed 22 months. Such sentence is not a departure and is not subject to appeal.

D. Other Sentencing Provisions

1. Repeat Offenders

a) Habitual Offender - Offender has 2 or more priors, current offense is within 5 years of last prior
"The Court shall sentence the habitual felony offender as follows:"

First Degree Felony	Life
Second Degree Felony	30 year Maximum
Third Degree Felony	10 year Maximum

- Court can decide that imposition of this sentence is not necessary for public safety
- If sentenced under this provision not eligible for parole, only eligible for incentive gain time

b) Continuing Criminal Enterprise

Definition - Any person who commits 3 or more drug offenses in concert with 5 or more persons with respect to whom such person occupies a position of organizer, a supervisory position, or a position of management and who obtains assets or resources from these acts.

Mandatory Minimum - 25 years and a fine of \$500,000 - imposition of sentence may not be suspended, deferred or withheld, and such person not eligible for parole or control release prior to serving the mandatory minimum

2. Sentence Reductions

a) "Gain Time"

- "Normal Gain Time" 10 Days for each month of sentence imposed - not discretionary
- "Incentive Gain Time" - may grant up to 20 days for each month in which a prisoner works diligently, participates in training, uses time constructively, or otherwise engages in positive activities
- "Meritorious Gain Time" - from 1-60 days may be granted to an inmate who performs some outstanding deed or service
- One time award of 60 additional days to an inmate who completes G.E.D. or vocational certificate
- Gain time may be forfeited for rules violations

b) "Provisional Credits"

- When inmate population of correctional system reaches 98% of legal capacity or Chairman of Control Release Authority certifies that the authority is unable to maintain the state prison system below 97.5 % of capacity
- Secretary of Corrections may grant up to 60 days provisional credits equally to inmates earning incentive credits except:
 - If sentenced for drug trafficking, capital offense, certain serious person offenses or any other offense with a mandatory minimum and has not yet served the mandatory portion minus any jail credit
 - If sentenced as a habitual offender

3. Release from Prison

a) "Control Release"

- Parole Commission has authority to establish a system of uniform criteria for the determination of the number and types of inmates who must be released when inmate population reaches 97.5 % of lawful capacity
- No inmate has a right to control release; following are ineligible
 - If sentenced for drug trafficking, capital offense, certain serious person offenses or any other offense with a mandatory minimum and has not yet served the mandatory portion minus any jail credit

- If sentenced as a habitual offender
- Method of release for most offenders sentenced under the Guidelines, rather than with a mandatory minimum sentence

b) Parole

- System of release for those ineligible for control release
- No parole before completion of parole ineligible part of sentence

3. Probation

- Available for any felony offense unless otherwise specified

4. Community Control Programs

- a form of intensive supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads.
- Alternative available for any state prison sentence of two years or less and such use is not a departure from the Guidelines

5. Drug Punishment Program

- Purpose - For eligible drug offenders who are not managing their drug abuse problem effectively within available community programs under traditional probation supervision and who would not currently require relocation to prison if a more secure probation alternative were available

- Eligibility

1. Is convicted on the current offense or has had adjudication withheld for felony possession or purchase of a controlled substance and has been convicted of or had adjudication withheld for at least one but not more than two felony drug offenses and;

2. Is believed by the court to have engaged in criminal activity due to drug abuse or has voluntarily admitted to drug abuse and requested treatment and;

3. Is charged with or has been found guilty of a violation of probation or community control arising directly from confirmed or suspected drug abuse or is a felony drug abuser and has at least 18 months to serve if placed on probation and;

4. Has experienced difficulty in, or is not amenable to, participating in a community drug abuse treatment program and requires a more restrictive treatment setting or an appropriate community drug abuse treatment program is currently unavailable

- Program Components

- Phase I - Intensive Residential Treatment - in a designated modified treatment community secure residential institution (up to 6 months)

- Phase II - Graduated Reentry - employment experience and work transition in a community reentry residential setting (up to 3 months)

- Phase III - Supervised Outpatient - Supervised community outpatient treatment (up to 9 months)

E. Sentencing Practices (see attached tables)

1. Trends in prison admissions, releases, populations, time served and crime rate 1980-1989

YEAR	PRISON ADMISSIONS	PRISON RELEASES	PRISON POPULATION	TIME SERVED IN YEARS	CRIME RATE PER 100,000
1980	10,169	7,765	20,270	2.0	8,402.0
1989	43,940	38,771	39,999	0.9	8,804.5
% CHANGE 1980-1989	+332%	+399%	+108%	-55%	+5%

- Drug crimes as percentage of prison admissions increased from 8.9% to 35.6% from 1980-1989

2. Prison Drug Crime Admissions By Type of Drug Offense (see attached table)

- Cocaine offenses made up 93.4% of drug admissions in 1989

3. Average percent of sentence served for all inmates released from state prisons in July 1990 - 32.5

4. Drug Trafficking Admissions to state prisons with mandatory minimum sentences in F.Y. 1990 - 1,022

5. Result of high admissions combined with increasingly early release:

- "... until recently, Florida did not provide for any follow-up supervision or services upon release. That meant that Florida's prisoners, including the estimated 15,000 inmates sentenced for drug crimes, spent less than a year in prison and then received minimal post-release supervision or services. Despite nearly half a billion dollars spent for prison construction programs, Florida today has the highest rate of prison admissions and the shortest length of stay of any prison sentence in the country. Furthermore, its already high crime rate has not been reduced, but has increased slightly."

(From: Austin, James "The Consequences of escalating the use of imprisonment: The Case Study of Florida," *Focus*, National Council on Crime and Delinquency, June, 1991.)

**Effect of Mandatory Minimum Sentencing on Length of Time Served in Prison,
Percent of Sentences Served, and Cost of Incarceration per Inmate
(Prison population as of June 1990)**

TYPE OF OFFENSE (Total Prison Population = 42,733)	3 YEAR SENTENCE			10 YEAR SENTENCE			25 YEAR SENTENCE		
	Years Served	% Sent Served	Cost of Prison	Years Served	% Sent Served	Cost of Prison	Years Served	% Sent Served	Cost of Prison
No Mandatory Min. (All Offenses) (30,946 in population)	0.9	30.7%	\$13,419	3.1	30.75	\$51,757	7.7	30.7%	\$162,920
Drug Trafficking Mandatory Minimum (2,333 in population)	1.4	46.0%	\$21,528	4.6	46.0%	\$83,152	11.5	46.0%	\$294,643
Sell Drugs 1,000 Ft. of School Mandatory Min. (111 in population)	3.0	100%	\$49,742	5.2	51.5%	\$98,843	9.8	39.0%	\$230,429
Drug Continuing Enterprise Mand. Min. (no admissions as of end of F. Y. 1990)	N/A	N/A	N/A	N/A	N/A	N/A	25.0	100%	\$1,268,390

Source: Florida Department of Corrections, "Mandatory Minimum Sentencing in Florida: Past Trends and Future Implications"

TABLE 1
TRENDS IN FLORIDA'S PRISON ADMISSIONS, RELEASES
STATUS POPULATION AND CRIME RATES FOR CALENDAR YEARS 1980 TO 1989

Calendar Year	Prison Admissions		Prison Releases		Prison Population		LOS In Years	Crime Rate Per 100,000
	Number	Percent Change	Number	Percent Change	Number	Percent Change		
1980	10,169	+14.2%	7,765	-17.1%	20,270	+5.6%	2.0	8,402.0
1981	12,097	+19.0%	8,224	+5.9%	23,277	+14.8%	1.9	8,032.5
1982	14,526	+20.1%	9,363	+13.8%	27,824	+19.5%	1.9	7,465.2
1983	13,507	-7.0%	14,508	+55.0%	26,260	-5.6%	1.9	7,218.1
1984	12,700	-6.0%	11,449	-21.1%	26,914	+2.5%	2.1	6,821.2
1985	15,873	+25.0%	13,666	+19.4%	28,606	+6.3%	1.8	7,574.2
1986	19,881	+25.3%	14,876	+8.9%	32,238	+12.7%	1.6	8,228.4
1987	26,512	+33.4%	25,939	+74.4%	32,466	+0.7%	1.2	8,503.2
1988	35,053	+32.2%	32,638	+25.8%	34,732	+7.0%	1.0	8,937.6
1989	43,940	+25.4%	38,771	+18.8%	39,999	+15.2%	0.9	8,804.5
%Change in 1980s		+332%	+399%		+108%		-55%	+5%

FIGURE 1
TEN HIGHEST RATES OF ADMISSIONS TO PRISON

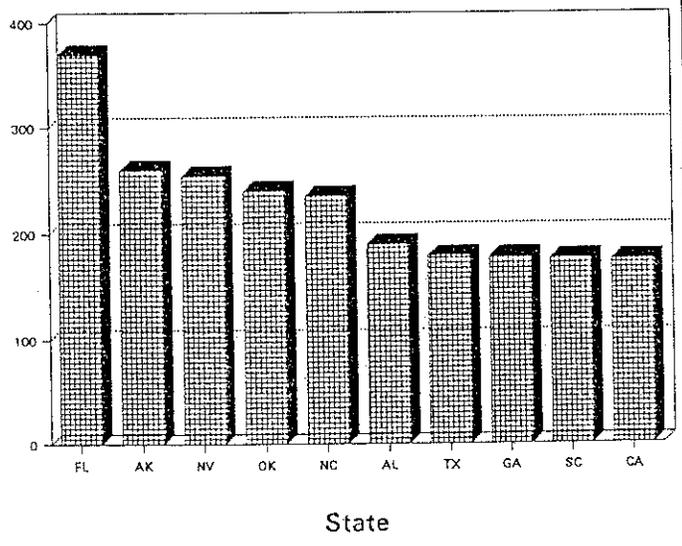


TABLE 2
FLORIDA'S PRISON BED CONSTRUCTION AND OPERATING COSTS IN THE 1980s

Calendar Year	Prison Beds Appropriated	Construction Costs	Additional Operating Costs
1980	73	\$13,113,761	\$1,031,694
1981	332	\$9,451,700	\$4,692,090
1982	2,096	\$27,223,963	\$29,622,349
1983	1,747	\$30,419,000	\$24,690,002
1984	416	\$23,630,600	\$5,879,245
1985	20	\$1,100,000	\$282,656
1986	2,742	\$30,800,000	\$38,752,138
1987	4,158	\$77,431,900	\$58,764,182
1988	4,085	\$57,203,500	\$57,732,488
1989	9,368	\$118,781,079	\$132,396,070
Total	25,037	\$389,155,503	\$353,842,914

Most notably, the state has been under a federal court consent decree for many years that prohibits the crowding of its prison system. Specifically, the state's prison population cannot exceed its rated bed capacity. Although the state added over 25,000 prison beds at a cost of nearly \$400 million during the decade (see Table 2), this dramatic building program was insufficient to meet the crunching avalanche of new prison admissions. Consequently, in order to meet the court's mandate of not overcrowding its facilities, the state launched the nation's most ambitious early release program to date for purposes of lowering the inmates' LOS.

Specifically, Florida's early release program, operated by the Florida Department of Corrections (DOC), has the authority via the consent decree to award an unlimited amount of extra good-time credits to prisoners for the sole purpose of reducing an inmate's LOS. As a result, with the exception of prisoners sentenced to mandatory prison terms, the vast majority of Florida's inmates are now being released early. During FY 1989-1990, prison sentences were reduced by an average of 361 days through the early release program.

Obviously, the early release program has been very successful in terms of controlling Florida's prison population growth. Referring back to Table 1, one can see that the prison population increased by 108 percent, which is far below the rate of increase for prison admissions. Again this growth pattern was accomplished by awarding inmates substantial sums of early release credits which reduced the average length-of-stay from two years in 1980, to less than one year by 1989.

IMPACT ON CRIME RATES

Based on the tenets of incapacitation and deterrence, a doubling of the prison population and a quadrupling of prison admissions at a cost of nearly \$750 million should produce some relief in crime rates. But the Florida experience indi-

TABLE 3

TRENDS IN FLORIDA PRISON AND DRUG ADMISSIONS IN THE 1980s

Calendar Year	All Crimes	Drugs	Percent Drugs
1980	8,829	785	8.9%
1981	10,845	1,020	9.4%
1982	13,754	1,547	11.2%
1983	12,799	1,641	12.8%
1984	11,833	1,623	13.7%
1985	15,046	2,364	15.7%
1986	19,074	3,707	19.4%
1987	25,669	6,813	26.5%
1988	34,053	10,532	30.9%
1989	42,485	15,111	35.6%
% Change	+381%	+1,825%	

MALE OFFENDERS			
Calendar Year	All Crimes	Drugs	Percent Drugs
1980	8,377	724	8.6%
1981	10,261	943	9.2%
1982	12,937	1,459	11.3%
1983	11,998	1,526	12.7%
1984	11,105	1,532	13.8%
1985	13,991	2,140	15.3%
1986	17,731	3,397	19.2%
1987	23,687	6,164	26.0%
1988	31,105	9,328	30.0%
1989	38,499	13,157	34.2%
% Change	+360%	+1,717%	

FEMALE OFFENDERS			
Calendar	All Crimes	Drugs	Percent Drugs
1980	452	61	13.5%
1981	584	77	13.2%
1982	817	88	10.8%
1983	801	115	14.4%
1984	728	91	12.5%
1985	1,055	224	21.2%
1986	1,343	310	23.1%
1987	1,982	649	32.7%
1988	2,948	1,204	40.8%
1989	3,986	1,954	49.0%
% Change	+782%	+3,103%	

cates otherwise. At the beginning of the decade Florida's incarceration rate was 183 per 100,000 persons, which was well above the national average of 115 per 100,000.⁵ By 1989, the rate had increased to 311 per 100,000 persons compared to the national rate of 255.⁶ But despite this impressive and unprecedented increase in the use of imprisonment, the crime rate (reported serious crimes to the police, excluding

all drug crimes, per 100,000 population) has not been reduced. Reported crime declined from 1980 - 1984 as prison admissions and prison population grew moderately, and then began to increase steadily thereafter as the use of imprisonment accelerated. Over the course of the decade, the crime rate actually increased by 5 percent.

THE IMPACT OF THE WAR ON DRUGS ON PRISON ADMISSIONS

Drug offenses were among the major causes of growth in Florida's admission rates which ultimately strained the state's prison system. Table 3 shows that drug admissions increased by 1,825 percent over the decade compared to an overall prison admission increase of 381 percent. Here again, the largest gains were posted between 1985 and 1989. For female drug offenders the increase was even greater with a 3,103 percent increase. In total, over 35 percent of all prison admissions were for drug offenses while the national average in 1986 was approximately 16 percent.

What kinds of drug crimes are these offenders committing? Table 4 shows that in 1989 cocaine crimes represent 93.4 percent of drug crime admissions, with cocaine sale (45.5 percent) and cocaine possession (38.7 percent) accounting for 84.2 percent of drug admissions. Table 5 shows what types of sentence lengths (not lengths of stay) these inmates receive. For drug possession the average sentence is 26 months, while drug sale is 36 months, and drug trafficking 83 months. Despite these sentence lengths for drug offenders, the actual amount of time served has been reduced substantially due to early release. As shown in Table 6, prisoners are now serving only 32.5 percent of their prison terms.

It is interesting to note that both the Florida and other dated national data contradict Langan's conclusion. In both instances one can see that the "war on drugs" has had a clear impact on prison admissions. After 1974 the proportion of prison admissions for drug offenses averaged 8 percent. However, since 1984 the figure has doubled to 16 percent. Many states are reporting proportions well above the 20 percent range, and these statistics do not account for dramatic increases in parole and probation violations for detected drug use or drug arrests.

TABLE 4
SPECIFIC TYPE OF DRUG OFFENSE FOR FLORIDA PRISON ADMISSIONS
CALENDAR YEAR 1989

Drug Offense	Number of Admissions	Percent Total Drugs
Cocaine-Sale	6,843	45.5%
Cocaine-Possession	5,828	38.7%
Cocaine-Trafficking	1,386	9.2%
Marijuana-Sale	294	2.0%
Marijuana-Possession	196	1.3%
Obtain Substance by Fraud	64	.4%
Marijuana-Trafficking	53	.4%
Sell/Purchase Cocaine 1,000 ft. School	44	.3%
Drug Abuse Fraudulent Material	39	.3%
Opium-Trafficking	38	.3%
Constructive Possession	33	.2%
Heroin-Possession	28	.2%
Sell/Purchase Drugs 1,000 ft. School	22	.1%
Other Drug Offenses	175	1.2%
Total Drug Admissions	15,043	100.0%

TABLE 5
AVERAGE SENTENCE LENGTH (MONTHS)
FOR PRISON ADMISSIONS DURING CALENDAR YEAR 1989
DRUGS VERSUS NON-DRUGS AND TYPE OF DRUG

	Drugs	Non-Drugs	Drug Possession	Drug Sale	Drug Trafficking
January	33	56	23	28	79
February	32	58	25	33	62
March	35	62	25	34	75
April	34	62	25	34	84
May	36	63	26	33	84
June	34	64	26	34	75
July	38	66	26	38	92
August	37	66	27	36	92
September	37	64	28	37	86
October	39	62	27	41	89
November	39	64	28	42	80
December	42	66	28	42	96
Average for 1989	37	63	26	36	83
Number of Admissions	15,042	27,296	6,291	7,271	1,480

TABLE 6
AVERAGE PERCENT OF
SENTENCE SERVED
FOR ALL INMATES RELEASED

	Percent of Time Served
January 1987	52.8
January 1988	40.6
January 1989	34.1
January 1990	32.8
July 1990	32.5

THE GROWING USE OF MANDATORY PRISON TERMS

Along with the rise in prison admissions for drug crimes, there has been an equally dramatic increase in the application of mandatory prison sentences since 1980 (Bales and Dees, forthcoming). Since 1988, seven mandatory sentencing bills were enacted that were designed to increase the inmate's length of stay by requiring a specific period of imprisonment before release could be granted. These laws have provisions that prohibit

inmates from receiving good-time credits and require a specific period of imprisonment before release. As shown in Table 7, there has been a steady increase in the use of mandatory minimum sentences throughout the decade due to bills introduced prior to 1988. However, there was a very dramatic increase in 1989-90 largely due to a habitual felony law.

As these sentences are increasingly imposed, a greater proportion of the daily prison population will be serving longer mandatory prison terms. Their presence in the prison population will increase because inmates sentenced under non-mandatory terms are eligible for early release and will spend a very short period of incarceration.⁷ The FDOC now estimates that even if the number of persons sentenced to prison for mandatory prison terms levels off during the next ten years, the number of inmates serving such sentences will increase from 14,725 to 21,305.⁸ In effect these inmates will continue to "stack up" in the prison system over time.

Other possible implications of the widespread use of mandatory minimums cited by the FDOC researchers are the need for new management control mechanisms for handling a larger long-term inmate population, inequity in sentencing by demographic and geographical areas, inequity in the application of habitual offender sentencing laws, and a projected increase in judicial workloads as a result of the number of appeals from offenders sentenced under such laws.

THE RISK TO PUBLIC SAFETY

This early release policy has resulted in a number of unfortunate incidents. The most publicized was that of Charles Street, who had been convicted of a violent crime and also had a violent criminal history. However, due to the early release program, he was released from prison a year ahead of schedule and subsequently murdered two Miami police officers.

Another case involved two brothers, Robert and Harry Lebo, who were originally convicted of "molesting a crawfish trap" and who both subsequently violated

TABLE 7
FLORIDA PRISON ADMISSIONS WITH MANDATORY MINIMUM SENTENCES
DURING FISCAL YEARS 1979-80 TO 1989-90⁸

	1979-80	1980-81	1981-82	1982-83	1983-84	1984-85	1985-86	1986-87	1987-88	1988-89	1989-90
Capital Offenses	84	70	117	106	116	142	189	183	169	156	179
Firearm in Commission Felony	590	718	1,032	1,093	834	705	888	976	895	1,087	1,260
Drug Trafficking	4	25	179	333	548	597	679	1,007	1,066	1,086	1,022
Habitual Felony Offender	21	18	25	55	59	66	76	33	41	290	1,804
Habitual Violent Felony	0	0	0	0	0	0	0	0	0	28	142
Sell Drugs 1,000 Feet School	0	0	0	0	0	0	0	0	0	0	144
Violence C.J. Officer	0	0	0	0	0	0	0	0	0	0	5
Total Mandatories	699	831	1,353	1,587	1,557	1,510	1,822	2,199	2,171	2,647	4,556
Annual Change		+132	+522	+234	-30	-47	+322	-367	-28	+476	+1,909
Annual Percent Change		+18.9%	+62.8%	+17.3%	-1.9%	-3.0%	+21.3%	-21.2%	-1.3%	+21.9%	+72.1%
Total Admissions	8,067	9,296	12,341	13,313	11,550	13,513	16,353	22,213	29,616	38,975	43,159

Table 2: The Effect of Mandatory Minimum Sentencing on the Length of Time Served in Prison, Percent of Sentence Served, and Cost of Incarceration Per Inmate

	3 Year Sentence			10 Year Sentence			25 Year Sentence		
	Years Served	% Sent Served	Cost of Prison	Years Served	% Sent Served	Cost of Prison	Years Served	% Sent Served	Cost of Prison
No Mandatory	0.9	30.7%	\$13,419	3.1	30.7%	\$51,757	7.7	30.7%	\$ 162,920
Capital Offenses	n/a	n/a	n/a	n/a	n/a	n/a	25.0	100.0	1,268,390
Firearm In Commission Felony	3.0	100.0	49,742	5.8	58.4	111,378	12.3	49.2	327,958
Drug Trafficking	1.4	46.0	21,528	4.6	46.0	83,152	11.5	46.0	294,643
Habitual Offender	2.3	75.3	36,942	7.5	75.3	157,142	18.8	75.3	694,690
Habitual Violent Offender	3.0	100.0	49,742	7.5	75.3	157,142	19.3	77.2	731,611
Sell Drugs 1,000 Ft School	3.0	100.0	49,742	5.2	51.5	96,843	9.8	39.0	230,429
Drug Continuing Enterprise	n/a	n/a	n/a	n/a	n/a	n/a	25.0	100.0	1,268,390
Semi-Automatic Firearm	n/a	n/a	n/a	8.6	86.2	190,463	13.2	52.9	368,090
Violence C.J. Officer	3.0	100.0	49,742	10.0	100.0	237,274	15.0	60.0	457,429
Firearm From Law Officer	3.0	100.0	49,742	3.1	30.7	51,757	7.7	30.7	162,920
Sell Drugs 200 Ft Public	2.3	77.2	36,942	7.7	77.2	162,920	19.3	77.2	731,611

NOTE: See note 9 for a detailed description of how the figures in this table were derived.

SUMMARY OF SENTENCING POLICIES FOR DRUG OFFENDERS

IOWA - INDETERMINATE SENTENCING SYSTEM. CODE OF IOWA, 1991

Iowa has an indeterminate sentencing system with mandatory minimums. For most drug offenses, judge is required to pronounce the mandatory minimum term only if the court decides to sentence the offender to prison.

Offenders receive a reduction in sentence of 1 day for each day of good conduct. In addition, offenders incarcerated in prison can earn up to 5 additional days per month if they satisfactorily participate in prison employment, education or treatment programs. However, drug sale offenders (except for marijuana) generally must serve at least 1/3 of the maximum allowed by law before they are eligible for parole.

Possession offenses are not considered felonies. They are serious misdemeanors and carry a maximum penalty of 1 year/\$1,000, regardless of the amount possessed. Possession of marijuana carries a maximum penalty of 6 months in jail/\$1,000.

Statutory Provisions

204.401 Manufacture/Deliver or Possess with intent (amounts may be aggregated)

Class B Felony - (Except for marijuana, not eligible for parole until serve 16.7 years. Max. 50 years/ max fine of \$1,000,000)

- More than 1 kilogram containing heroin
- More than 5 kilograms cocaine or ecgonine
- More than 50 grams cocaine base
- More than 100 grams PCP or 1 kilogram of mixture containing PCP
- More than 10 grams of mixture containing LSD
- More than 1,000 kilograms of mixture containing marijuana

Class B Felony - (Except for marijuana, not eligible for parole until serve 8.3 years. Max. 25 years/min fine \$5,000 max. fine \$100,000)

- More than 100 grams but less than 1 kilogram of mixture containing heroin
- More than 500 grams but less than 5 kilograms cocaine/ecgonine
- More than 5 grams but not more than 50 grams of mixture containing cocaine base
- More than 10 grams but not more than 100 grams PCP or more than 100 grams but not more than 1 kilogram of a mixture containing PCP.
- Not more than 10 grams LSD
- More than 100 kilograms but not more than 1,000 kilograms marijuana

Class C Felony - (Except for marijuana, not eligible for parole until serve 3.3 years. Max. 10 years/Fine \$1,000 - \$50,000)

- 100 grams or less of a mixture containing heroin
- 500 grams or less of a mixture containing cocaine/ecgonine
- 5 grams or less of mixture containing cocaine base
- 10 grams or less PCP or 100 grams or less of mixture containing PCP
- More than 50 kilograms but not more than 100 kilograms of marijuana
- Any other controlled substance, counterfeit substance, or simulated controlled substance classified in schedule I, II, or III.

Class D Felony - Max. 5 years/Fine \$1,000 - \$5,000/May instead serve up to 1 year in county jail
Less than 50 kilograms marijuana

Aggravated Misdemeanor - Max. 2 years (if over 1 year, sentence is indeterminate)
Any other controlled substances, counterfeit substances, or simulated controlled substances
classified in Schedule IV or V

Possession of firearm

Up to twice the term otherwise imposed by law. Except for marijuana, offender must serve at least 1/3 of the maximum sentence before eligible for release.

Possession of offensive weapon

Up to three times the term otherwise imposed by law

204.401 Possession

Serious Misdemeanor (Max. 1 year/Max. Fine \$1,000). If the substance is marijuana, the punishment shall be imprisonment in the county jail for not more than 6 months or by a fine of not more than \$1,000. All or any part of the sentence may be suspended.

204.401A Distribution w/in 1,000 feet of school

May, at judge's discretion, be sentenced up to an additional term of confinement of five years.

204.403 Fraudulent Procurement

Serious Misdemeanor (Max. 1 year/Max. Fine \$1,000)

204.406 Distribution to Person Under 18

Schedule I or II narcotic or cocaine

Schedule I, II or II Non-narc.
Schedule IV or V

Class B Felony - Min. 5 yrs/ Max. 25 years
Min. of 10 years if in school zone. Judge
may sentence to less than min. if there are
mitigating circumstances.

Class C Felony - Max. 10 year
Aggravated Misdemeanor (Max. 2 years/
Max. Fine \$5,000)

Second or Subsequent Offense

An offender who is convicted of committing a second or subsequent offense (other than simple possession) may be punished by imprisonment for a period not to exceed 3 times the term otherwise authorized.

Habitual Offender Law - Minimum Sentence

A Class C or D felony offender who has two prior felony convictions - not eligible for parole till after 3 years.

**IOWA: Sentencing Practices
for Drug Offenders Fiscal Year 1991**

Statutory Offense Description/Statutory Maximums	Sentencing Data		
	Offense	Total #	Prison
<p><u>Class B Felony - (Except for marijuana, not eligible for parole until serve 16.7 years. Max. 50 years/ max fine of \$1,000,000).</u></p> <p><u>Manufacture/Deliver or Possess with intent (amounts may be aggregated)</u> More than 1 kilogram containing heroin More than 5 kilograms cocaine or ecgonine More than 50 grams cocaine base More than 100 grams PCP or 1 kilogram of mixture containing PCP More than 10 grams of mixture containing LSD More than 1,000 kilograms of mixture containing marijuana</p> <p><u>Class B Felony - (Except for marijuana, not eligible for parole until serve 8.3 years. Max. 25 years/min fine \$5,000 max. fine \$100,000)</u></p> <p><u>Manufacture/Deliver or Possess with intent (amounts may be aggregated)</u> More than 100 grams but less than 1 kilogram of mixture containing heroin More than 500 grams but less than 5 kilograms cocaine/ecgonine More than 5 grams but not more than 50 grams of mixture containing cocaine base More than 10 grams but not more than 100 grams PCP or more than 100 grams but not more than 1 kilogram of a mixture containing PCP. Not more than 10 grams LSD More than 100 kilograms but not more than 1,000 kilograms marijuana</p>	<p>Manufacture/Poss. w/Intent</p>	<p>9</p>	<p>78 %</p>

Statutory Offense Description/Statutory Maximums	Sentencing Data		
	Offense	Total #	Prison
<u>Class C Felony - (Except for marijuana, not eligible for parole until serve 3.3 years. Max. 10 years/Fine \$1,000 - \$50,000)</u> <u>Manufacture/Deliver or Possess with intent (amounts may be aggregated)</u> 100 grams or less of a mixture containing heroin 500 grams or less of a mixture containing cocaine/ecgonine 5 grams or less of mixture containing cocaine base 10 grams or less PCP or 100 grams of less of mixture containing PCP More than 50 kilograms but not more than 100 kilograms of marijuana Other Sched. I,II or III cont. subst., counterfeit subst., or sim. cont. subst.	<u>Manufacture/Deliver or Possess with Intent:</u>		
	Narcotics	233	56 %
	Simulated Controlled Substance	156	57 %
	Other Class C Drug Offense	4	75 %
<u>Class D Felony - Max. 5 years/Fine \$1,000 - \$5,000/May instead serve up to 1 year in county jail</u>	<u>Del/Poss with Intent</u>		
	Marijuana (less than 50 kgs.)	103	20 %
	Del. Non-Narc.	39	31 %
	Del Cont. Subst.- Undefined	115	23 %
	Other Class D	6	50 %
<u>Aggravated Misdemeanor - Max. 2 years (if over 1 year, sentence is indeterminate)</u> Manufacture/Deliver any other controlled substance, or simulated or counterfeit substance	<u>Mfg./Poss with Intent a Sched. IV or V Drug</u>	2	-
<u>Serious Misdemeanor (Max. 1 Year)</u> Possession offenses	<u>Possession:</u>		
	Marijuana	764	-
	Non-Narc Sched. 1-3	62	-
	Undefined drug type	1156	2 %

Source: Data from the Iowa Criminal and Juvenile Justice Planning and Statistical Analysis Center.

Presumption of Imprisonment-not granted probation, assignment to community correctional services or suspension of sentence if:

Possess with intent to sell, sell, distribute to minors (under 18) or;

Amounts greater than or equal to:

LSD	200 Dosage Units
Mushrooms-Psilocin/Psilocybin	100 Grams
Mescaline	10 Grams
Peyote	100 Grams
Marijuana	1500 Grams/50 Plants

4. Possess, possess with intent, sale, distribution of Schedule V

	FELONY CLASS	DRUG SEVERITY LEVEL	STAT MAX/FINE
	A Misdemeanor		Maximum=1 year / \$2,500
Deliver to Minor	D	IV	Minimum=1-3/Maximum=5-10 / \$10,000

Presumption of Imprisonment-not granted probation, assignment to community correctional services or suspension of sentence if:

Possess with intent to sell, sell, distribute to minors (under 18) or;

Amounts greater than or equal to specified amounts

5. Sale of Simulated Controlled Substance

	Class A Misdemeanor	Maximum=1 year / \$2,500
Deliver to Minor	Class E Felony	Minimum=1/Maximum=2-5 / \$10,000

B. Other Sentencing Provisions

1. Presumptive Sentence - Class D and E Felonies

No prior felony conviction	Presumptive disposition-Probation
Prior Felony Conviction Or; Drug Offense Or; Aggravating Circumstances	Presumptive disposition-Assignment to Community Correctional Services Program

C. Sentencing Practices - Sentencing Guidelines

1. Current Sentencing Practices - Offenders released in F.Y. 1991 served an average of 18 months

- Drug Types
 - Opium, Narcotics, etc. - 171 (Statutes make no distinction between sale and possession)
 - Other Drugs - 21 (Sale or Second or subsequent possession)
- Almost no distinction by drug type in time served

2. Looking at all drug offenders sentenced, 70% have no prior record

3. Projections for time served after Guidelines implementation - 17 months

KANSAS SENTENCING GUIDELINES GRID - DRUG OFFENSES ONLY

	A	B	C	D	E	F	G	H	I
Severity Level	3+ Per.	2 Per.	1 Per. & 1 Other	1 Per.	3+ Other	2 Other	1 Other	2+ Misd.	No Record
I	216	207	198	189	180	176	171	167	162
II	87	81	76	71	65	62	60	57	54
III	54	49	44	38	33	27	24	21	17
III*								21	17
IV	44	38	33	27	22	19	17	14	12

Shaded area indicates presumptive probation

* Severity Level III - presumptive prison for sale offenses, presumptive probation for possession offenses

- Adoption of Guidelines currently being debated in Legislature

- Senate has reduced times in the grid by 20% for the drug grid and severity levels I-V of the other grid

- Guidelines Commission Recommendation was for a system with no "Good Time" - rather, sentences could be increased up to 20% for "Bad Time". Senate has amended proposal to institute a 20% good time policy.

- Projections - Presumptive sentence for all Sale Offenses (except less than 500 Grams MJ.) will be prison. Average time served will be 17 months since most drug offenders have no prior record.

LOUISIANA

A. Illegal Acts - Sentencing Guidelines Severity Levels - Statutory Maximums

1. Sale, Manufacture, Distribution

	SEVERITY LEVEL	Statutory Maximum
Schedule I Narcotic	0	Life / \$15,000 - Without benefit of probation or suspension of sentence
Other Schedule I	2	Minimum=5/Maximum=30 / \$15,000
Sch. II Narc./Amphet./Cocaine	2	Minimum=5/Maximum=30 / \$15,000
Other Schedule II, III, IV	3	Maximum=10 years / \$15,000
Schedule V	4	Maximum=5 years / \$5,000
Marijuana	4	Minimum=5/Maximum=30 / \$15,000

2. Possession

Schedule I Narcotic	6	Minimum=4/Maximum=10 / \$5,000 - Without benefit of probation or suspension
Other Schedule I	7	Maximum=10 years / \$5,000
<u>Cocaine/Amphetamine - Adjudication of guilt or imposition of sentence shall not be suspended, deferred or withheld nor shall such person be eligible for probation or parole prior to serving the minimum sentence if:</u>		
28-200 Grams	3	Min=5/Max=30 / Min=\$50,000/Max=\$150,000
200-400 Grams	2	Min=10/Max=30 / Min=\$100,000/Max=\$350,000
400 or more Grams	1	Min=15/Max=30 / Min=\$250,000/Max=\$600,000 (Proposal to Change to Life as Mand. Min.)
Schedule II Narcotic (including less than 28 Gr. cocaine and amphetamine)	7	Maximum=5 years / \$5,000

Other Sch. II, III, IV	8	Maximum=5 years / \$5,000
SEVERITY LEVEL		
Schedule V	9	Maximum=5 years / \$5,000

Marijuana - Adjudication of guilt or imposition of sentence shall not be suspended, deferred or withheld nor shall such person be eligible for probation or parole prior to serving the minimum sentence if:

60-2,000 lbs	4	Min=5/Max=15 / Min=\$25,000/Max=\$50,000
2,000-10,000 lbs	3	Min=10/Max=40 / Min=\$50,000/Max=\$200,000
Over 10,000 lbs	2	Min=25/Max=40/Min=\$200,000/Max=\$500,000
Marijuana - First Offense	Misdemeanor	Maximum=6 months/ \$500
Second Offense	9	Maximum=5 years/ \$2,000
Third Offense	9	Maximum=20

3. Distribution to Minor\Student	Statutory Maximums and Fines Doubled
4. Soliciting Minors To Distribute	Statutory Maximums and Fines Doubled
Cocaine	Minimum=20/Maximum=Double - Without benefit of probation, parole or suspension of sentence
5. Sale or Possession in or within 1,000 ft. of School - Without benefit of parole, probation or suspension of sentence	
First Offense	Maximum Fine and not less than 1/2 stat. max. imprisonment (provided in no case shall the term of imprisonment be less than the minimum term provided for offenses not in school zone)
Second or Subsequent	Maximum Fine and Maximum term of Imprisonment otherwise applicable
6. Fraudulent Procurement	Maximum=5 years / \$5,000

7. Sentencing Guidelines Severity Levels for Other Offenses

Severity Level

Possession With Intent - Statutory Maximums same as for Sale, Severity Levels Differ

Schedule I Narcotic	0
Other Schedule I	3
Schedule II Narcotic	3
Other Schedule II,III,IV	4
Schedule V	5
Marijuana	5

Distribution of Drugs to Child

Schedule I Narcotic	0
Other Schedule I	2
Schedule II Narcotic	2
Other Schedule II,III,IV	3
Schedule V	4
Marijuana	3

B. Other Sentencing Provisions

1. Second or Subsequent Offenses Statutory Maximums and Fines Doubled

2. Conditional discharge for possession

- Only first time offenders eligible
- Judge may place on probation before conviction if in best interests of public and defendant
- Terms to include at least 100 hours community service
- Available only once to a defendant

3. Boot Camps

- Eligible if Sentence is 7 years or less and under 40
- 3-6 months in length

C. Sentencing Guidelines

1. Effective January 1, 1992

2. Presumptive Sentence

- Grid Divided into 3 Ranges - Imprisonment, Discretionary, and Intermediate Sanctions
In Discretionary Range disposition is optional unless offense governed by a mandatory minimum. Judge may sentence offender to prison or to intermediate sanctions. If a prison sentence is imposed, Judge pronounces fixed sentence and parole almost nonexistent.

- Sentence outside of range is a departure and reasons must be supplied.

- Mandatory Minimums - Imprisonment mandatory and if duration greater than presumptive sentence, presumptive is the mandatory minimum

- Release Policies

- Good Time equals one-half of Pronounced
- Mandatory Minimum sentences do receive good time reduction

3. Intermediate Sanctions

- A range of sanction units is designated for nonimprisonment sentences and may include some confinement in prison or a local jail

- Exchange rates between types of Intermediate Sanctions are specified

3. Estimating Time To Serve

- Prediction is that typical imprisonment sentence will fall at the midpoint of the range on the Grid

- Most offenders will earn all or most of the allowed good time so estimate that average time served will be one half of midpoint of range or one half of mandatory minimum

- Estimated Time To Serve for Cocaine Sales (less than 28 Grams) is 30 Months (5 Year Mandatory Minimum)

- Life - When a Life sentence is mandated, it must be imposed and there is no parole or other release

§403. Tables for Determining Designated Sentence

§403.A. Sentencing Guidelines Grid

	A	B	C	D	E	F	G
* DIST SCH I NARCOTIC P.W.I. SCH I NARCOTIC	LIFE	LIFE	LIFE	LIFE	LIFE	LIFE	LIFE
POSS 400+ GR COCAINE	360-330	300-270	240-210	180-150	126-96	102-72	90-60
DIST SCH I DIST SCH II NARCOTIC (cocaine) POSS 200-400 GR COCAINE	240-210	180-150	126-96	108-84	84-72	72-60	60-36
DIST SCH II, II, IV POS 28-200 GR COC P.W.I. SCH I, II NARCOTIC	144-120	108-84	84-72	66-54	60-48	54-36	48-24
DIST SCH V, MJ P.W.I. SCH II, III, IV	120-96	84-66	72-54	42-30	36-24	30-18	(9-6)
P.W.I. SCH V, MJ	72-60	66-54	46-36	36-24	30-18	(9-6)	(8-5)
POSS SCH I NARCOTIC	60-48	30-24	24-18	(10-7)	(9-6)	(8-5)	(7-4)
POSS SCH I, SCH II NARCOTIC (cocaine lt 28 gr)	48-36	24-18	(10-7)	(9-6)	(8-5)	(7-4)	(5-3)
POSS SCH II, III, IV	36-24	(10-7)	(9-6)	(8-5)	(7-4)	(5-3)	(3-2)
POSS SCH V POSS MJ 2nd+ time	24-18	(9-6)	(8-5)	(7-4)	(5-3)	(3-2)	(2-1)

----- - Reverse dotted line

----- - Heavy Dashed Line

* Most frequently occurring offenses for each level are listed.

§403.B. Diagram of Sanction Zones in the Designated Sentence Range Grid

Incarceration	Example		
Sanction	84-72	→	Designated Sentence Range in Months of Incarceration
Zone			



Discretionary			
Sanction	30-18	→	Designated Sentence Range in Months of Incarceration (If Incarceration selected by the court)
Zone			
	150-100	→	Designated Sentence Range in Sanction Units (If Intermediate Sanction selected by the court)



Intermediate	(9-6)	→	Designated Sentence Range in Months of Incarceration (imposed in case of revocation)
Sanction			
Zone			
	135-90	→	Designated Sentence Range in Sanction Units

§403.C. Intermediate Sanction Exchange Rate Table

<u>Sanction</u>	<u>Duration</u>	<u>Sanction Unit Value</u>
Prison	1 Month	16
Jail	1 Month	16
Shock Incarceration*	1 Week	4
Work Release**	1 Week	4
Halfway House**	1 Week	4
Periodic Incarceration	7 Days	4
Home Incarceration**	1 Month	3
Intensive Supervision*	1 Month	3
Day Reporting	1 Month	3
Treatment--Residential	1 Month	3
Treatment--Nonresidential	15 Hours	3
such as:		
Drug Counseling		
Alcohol Counseling		
Parenting Counseling (child abuse/neglect cases)		
Aggressive Behavior Therapy		
Probation (Supervised with Standard Conditions)	1 Month	2
Community Service (Successfully Completed)	20 Hours	1
Rehabilitative Efforts (Successfully Completed)	20 Hours	1
such as:		
Adult Education		
Literacy Program		
GED Program		
Vo-Tech Training Program		
High School or College Courses		
Budgeting Courses		
Loss of Privilege (No violations)	90 Days	1
Drug Monitoring (Drug Free)	90 Days	1
Unsupervised Probation	1 Month	1
Economic Sanction	Amount of Average Monthly Income	10

* Only available under the provisions of R.S. 15:574.4, 574.5

** May require approval of appropriate correctional officials

5. Possession

Schedule I or II Narcotic	<u>Mandatory Minimums</u>
650 grams	"shall be imprisoned for life"
225-650 grams	"not less than 20 nor more than 30 years"
50-225 grams	"not less than 10 nor more than 20 years"
25-50 grams	"not less than 1 year nor more than 4, and up to \$25,000, or may placed on probation for life"

Special Sentencing Provisions for Schedule I and II Narcotics cited for sale offenses applicable for above possession offenses as well

Schedule I or II Narcotic less than 25 grams	4 years/\$25,000 or both
Other Schedule I, II III or IV	2 years/\$2,000 or both
LSD, Hallucinogens, Schedule V	(Misdemeanor) - 1 year/\$1,000 or both
MJ.	(Misdemeanor) - 1 year/\$1,000 or both
6. Possession of an official prescription form	(Felony) - 1 year/\$2,000
7. Possession prescription form-not official	(Misdemeanor) - 1 year/\$1,000
8. Delivery to Minors (Deliverer is 18 or over and 3 years older than minor)	
Schedule I or II Narcotic, less than 50 grams	not less than 1 year nor more than 40 years
Other Controlled Substances	Statutory Maximums Doubled
9. Delivery to a Minor who is a student on or within 500 ft. of school property	
Schedule I or II Narcotic, less than 50 grams	not less than 2 years nor more than 60 years and a fine not more than \$75,000 - court may depart from mandatory minimum
10. Possession with intent to deliver to a Minor who is a student on or within 500 ft. of school property	
Schedule I or II Narcotic, less than 50 grams	not less than 2 years nor more than 40 years and a fine not more than \$75,000 - court may depart from mandatory minimum
11. Possession on school Property	
Statutory Maximums and Fines Doubled	
12. Use of Controlled Dangerous Substances	
Schedule I or II Narcotic	Misdemeanor - 1 year/\$2,000
Schedule I,II,III, or IV	Misdemeanor - 1 year/\$1,000
Hallucinogens	Misdemeanor - 6 months/\$500
MJ.	Misdemeanor - 90 days/\$100

B. Other Sentencing Provisions

1. Second Or Subsequent Offenses (has a true prior drug offense)

Schedule I or II Narcotic
Sale or Possession of
50 grams or more

"shall be imprisoned for life and shall not be eligible for probation, suspension of sentence, or parole during the mandatory term"

Other Sale and Possession Offenses Statutory Maximums and Fines Doubled

Delivery/Possession with Intent to deliver to Minor on or near School Grounds - less than 50 grams of a Schedule I or II Narcotic

- not less than 5 years not more than double stat max
- fine can be tripled
- court may depart from mandatory minimum

2. Probation Without Judgment of Guilt

- Only first time offenders Eligible
- Possession offenses (only less than 25 grams of a Narcotic)
- Only once per offender

3. Provision forbidding dismissal or reduction of charges if charged with sale or possession of 225 grams or more of a Schedule I or II Narcotic, if magistrate finds probable cause, unless dismissal with prejudice.

4. Recruiting or inducing minor to commit a drug felony by someone 17 or older

Schedule I or II Narcotic, 650 or more grams Life - court may depart from mandatory minimum

Other Offenses except MJ. "by imprisonment for not less than one half of the maximum term of imprisonment for an adult
- Court may depart from mandatory minimum

C. Sentencing Guidelines

1. Description

- Guidelines establish presumptive minimum sentences for some felony offenses. Generally offenses with statutory mandatory minimums are not covered
- Sentence pronounced is a minimum sentence. Judges may depart from the minimum sentence if they state reasons for doing so.
- Guidelines ranges include possible periods of incarceration for felony offenses of less than 1 year that are to be served in local jails either in combination with probation or as the entire sentence.

2. Parole System

- **Mandatory Minimum Offenses**
 - Offenders must serve the minimum before becoming eligible for parole, no "Good Time". Some offenses with mandatory minimums allow the judge to depart dispositionally and place the offender on probation. Some offenders serving "life" sentences are eligible for parole after 10 years if the sentencing or successor judge does not file written objections. Those sentenced under the Drug Life provisions or for first degree murder are not eligible for parole.
- **Non-mandatory sentences**
 - Offenders are eligible for parole after serving the minimum pronounced sentence minus deductions for "disciplinary credits. Offenders receive 5 days "disciplinary credit" for each month served and may earn up to 2 additional days per month for exceptionally good behavior.
 - Offenders who receive all the disciplinary credits they are eligible for will serve 80% of their minimum sentence before being eligible for parole

3. SAI - Special Alternative Incarceration (Shock Incarceration/Boot Camp)

- Alternative to State Prison for offenders 25 years old and under
- **Phases**
 - I - Prison Camp
 - 90 Days
 - Strict military-type discipline, hard labor, physical training and drill coupled with programming in areas such as education, group counseling, substance abuse, and stress management
 - II - Intensive Probation
 - At Least 120 Days
 - III - Regular Probation

**MICHIGAN SENTENCING GRID - DRUG OFFENSES ONLY
GUIDELINES OFFENSES ONLY (NOT MANDATORY MINIMUM OFFENSES)**

OFFENSE	PRIOR RECORD LEVEL			
	A (no priors)	B	C	D
Schedule I or II Narcotic Sale/Manufacture/Possess With Intent Less Than 50 Grams	12-30	12-36	12-60	24-96
Attempts	0-9	0-12	0-24	12-40
Schedule I or II Narcotic Possession 25-50 Grams	12-24	12-30	12-30	24-32
Other Schedule I, II, or III Sale/Manufacture/Possess With Intent	0-6	0-9	0-12	12-36
Schedule IV Sale/Manufacture/Possess With Intent	0-6	0-6	0-12	6-30
Schedule I or II Narcotic Possession Less than 25 Grams	0-9	0-12	0-12	12-32
Marijuana Sale/Manufacture/Possess With Intent	0-3	0-6	0-9	6-24
Fraudulent Procurement	0-6	0-6	0-12	6-30
Schedule V Sale/Manufacture/Possess With Intent	0-3	0-6	0-6	0-12
Other Schedule I, II, III, or IV Possession	0-3	0-6	0-6	0-12

NOTE: Sentences for Sale or Possession of Schedule I or II Narcotics (including Cocaine) in amounts greater than 50 Grams are governed by the mandatory minimums as indicated in section A.

**MICHIGAN SENTENCING DISPOSITIONS - DRUG OFFENSES ONLY (SENTENCED 10/01/88- 12/31/91)
GUIDELINES OFFENSES ONLY (NOT MANDATORY MINIMUM OFFENSES)**

STAT MAX	OFFENSES INCLUDED	CASES	DISPOSITION				MEAN PRIS TERM	80% = E.R.D*
			PROB	JAIL	PROB WITH JAIL	PRIS		
240	Schedule I or II Narcotic - Sale/Man/Possess With Intent Less Than 50 Grams	3696	1158 31.3%	169 4.6%	302 8.2%	1997 54.0%**	33	26.4
120	Create/Deliver Counterfeit Schedule I or II Narcotic	24	7 29.2	4 16.7%	3 12.5%	9 37.5%	25	20
84	Other Schedule I, II, or III Sale/Man/Possess With Intent	171	30 17.5%	8 4.7%	86 50.3%	43 25.1%	28	22.4
60	1) Create/Deliver Counterfeit Other Sch. I, II, or III 2) Attempted Offenses Rows 1 and 2 3) Furnish Con. Sub. to Prisoners	907	222 24.5%	110 12.1%	179 19.7%	378 41.7%	18	14.4
48	1) Sch.I or II Narcotic - Possession 25-50 Gr. 2) Sale, etc. Sch. IV or MJ 3) Sch. I or II Narcotic - Poss. less than 25 Grams 4) Fraudulent Procurement	5431	2465 45.4%	476 8.8%	1343 24.7%	1028 18.9%	18	14.4
42	Attempted Sale, etc. Other Schedule I, II or III	41	19 46.3%	7 17.1%	13 31.7%	1 2.4%	24	19.2
24	1) Attempt Sale, etc Schedule IV, MJ 2) Sale/Man/Possess With Intent Schedule V 3) Attempted Possession Schedule I or II 4) Possession Other Schedule I, II, III, or IV 5) Attempted Fraudulent Procurement	1,649	822 49.8%	269 16.3%	413 25.0%	107 6.5%	11	8.8
	TOTAL ALL DRUG OFFENSES	11,9463	4725 39.6%	1045 8.7%	2341 19.6%	3580 30.0%	26	20.8

NOTE: Sentences for Sale or Possession of Schedule I or II Narcotics (including Cocaine) in amounts greater than 50 Grams are governed by the mandatory minimums as indicated in section A.

* - E.R.D. Earliest Possible Release Date = 80% of Minimum Sentence

** - %'s not add to 100 because is an "other/none" category

**MICHIGAN DEPARTURES FROM GUIDELINES - DRUG OFFENSES ONLY (SENTENCED 10/01/88- 12/31/91)
GUIDELINES OFFENSES ONLY (NOT MANDATORY MINIMUM OFFENSES)**

STAT MAX	OFFENSES INCLUDED	CASES	SENTENCE		
			WITHIN GUIDELINES	AGGRAVATED	MITIGATED
240	Schedule I or II Narcotic - Sale/Man/Possess With Intent Less Than 50 Grams	3696	2088 56.5%	100 2.7%	1508 40.8%
120	Create/Deliver Counterfeit Schedule I or II Narcotic	24	20 83.3	2 8.3%	2 8.3%
84	Other Schedule I, II, or III Sale/Man/Possess With Intent	171	141 82.5%	20 11.7	10 5.8%
60	1) Create/Deliver Counterfeit Other Sch. I, II, or III 2) Attempted Offenses Rows 1 and 2 3) Furnish Con. Sub. to Prisoners	907	781 86.1%	114 12.6%	12 1.3%
48	1) Sch. I or II Narcotic - Possession 25-50 Gr. 2) Sale, etc. Sch. IV or MJ 3) Sch. I or II Narcotic - Poss. less than 25 Grams 4) Fraudulent Procurement	5431	4635 85.3%	396 7.3%	400 7.4%
42	Attempted Sale, etc. Other Schedule I, II or III	41	37 90.2%	3 7.3%	1 2.4%
24	1) Attempt Sale, etc Schedule IV, MJ 2) Sale/Man/Possess With Intent Schedule V 3) Attempted Possession Schedule I or II 4) Possession Other Schedule I, II, III, or IV 5) Attempted Fraudulent Procurement	1,649	1526 92.5%	116 7.0%	7 0.4%
	TOTAL ALL DRUG OFFENSES	11,9463	9250 77.5	753 6.3%	1940 16.2%

NOTE: Sentences for Sale or Possession of Schedule I or II Narcotics (including Cocaine) in amounts greater than 50 Grams are governed by the mandatory minimums as indicated in section A.

**MICHIGAN - OFFENDERS SENTENCED IN 1991
 SENTENCED TO PRISON FOR DRUG OFFENSES
 WITH MINIMUM SENTENCES OF 10 YEARS OR MORE
 (Includes Mandatory Minimum Offenses and may include others as well)**

OFFENSES	MINIMUM TERMS					
	10	15	20	25	25+	LIFE
Sale Schedule I or II Narcotics	130	13	14			19
Possession Schedule I or II Narcotics	16	3	5			7
TOTAL	146	16	19			25

SUMMARY OF SENTENCING POLICIES FOR DRUG OFFENDERS

NEW YORK - INDETERMINATE SENTENCING SYSTEM 1991 STATUTES

Different minimum and maximum terms (ranges) are set forth for first time offenders, second time offenders and "Persistent Felony Offenders". The persistent felony offender provision requires that in addition to at least two prior offenses, there must be a finding by court that "the history and character of the defendant and the nature and circumstances of his criminal conduct indicate that extended incarceration and life-time supervision will best serve the public interest". The mandatory terms for second time offenders can be replaced by lifetime probation for drug offenders in return for defendant's material assistance in connection with a drug felony.

Drug offenders sentenced to prison (except Felony Class A-I) are eligible for a shock incarceration program. The offenders in this program usually serve 8 months (2 months in pre-program time and 6 months in a boot camp program). In November 1990, 72% of the offenders in the boot camp program were drug offenders (746 of 1,040 offenders).

STATUTORY PROVISIONS

220.03 Criminal Possession of a Controlled Substance VII

Any amount of any controlled substance

Class A Misdemeanor (Definite sentence of up to one year.)

220.06 Criminal Possession of a Controlled Substance in the fifth degree

1. A controlled substance with the intent to sell
2. aggregate weight of one-half ounce or more containing a narcotic preparation
3. 50 milligrams or more PCP
4. 1/4 ounce or more concentrated cannabis (hashish)
5. 500 milligrams or more of cocaine

Class D Felony:

First Time Offender: Definite or Intermittent term up to 1 year permitted. If prison sentence pronounced, Min. 1 - 2 1/3 years and Max. 3 - 7 years (minimum cannot be more than 1/3 of the maximum imposed)

Second Time Offender: Min. 2 and Max. 4 - 7 years (minimum must be half of the maximum)

Persistent Felony Offender: Min. 15 - 25 years and Max. Life sentence

220.09 Criminal Possession of a Controlled Substance in the fourth degree

1. 1/8 ounce or more of narcotic drug
2. 1/2 ounce or more methamphetamine
3. 2 ounces or more containing a narcotic preparation
4. 1 gram or more of a stimulant
5. 1 milligrams or more of LSD
6. 25 milligrams or more hallucinogen

7. one gram or more of a hallucinogenic substance
8. 10 ounces or more of a dangerous depressant
9. 2 pounds or more of a depressant
10. aggregate weight of 1 ounce or more containing concentrated cannabis
11. 250 milligrams or more PCP
12. 260 milligrams methadone
13. 50 milligrams or more of PCP with intent to sell and has previously been convicted of an offense defined in this chapter.

Class C Felony:

First Time Offender: Definite term up to 1 year permitted. If prison sentence pronounced, Min. 1 year and Max. 3 - 15 years (minimum cannot be more than 1/3 of the maximum imposed)

Second Time Offender: Min. 3 - 5 and Max. 6 - 15 years (minimum must be half of the maximum pronounced)

Persistent Felony Offender: Min. 15 - 25 years and Max. Life sentence

220.16

Criminal Possession of a Controlled Substance in the Third Degree

1. narcotic drug with intent to sell it
2. stimulant hallucinogen, hallucinogenic substance, LSD with intent to sell if previously been convicted of a drug offense.
3. 1 gram or more of a stimulant with intent to sell it
4. 1 milligram or more LSD with intent to sell
5. 25 milligrams or more hallucinogen with intent to sell
6. 1 gram or more of a hallucinogenic substance with intent to sell it
7. aggregate weight of 1/8 ounce or more containing methamphetamine
8. 5 grams or more of a stimulant
9. 5 milligrams or more of LSD
10. 125 milligrams of a hallucinogen
11. 5 grams or more of a hallucinogenic substance
12. aggregate weight of 1/2 ounce or more containing a narcotic drug
13. 1,250 milligrams PCP

Class B Felony:

First Time Offender: Min. 1 year and Max. 3 - 25 years (minimum cannot be more than 1/3 of the maximum imposed)

Second Time Offender: Min. 3 1/2 - 8 1/3 years and Max. 9 - 25 years (minimum must be half of the maximum pronounced)

Persistent Felony Offender: Min. 15 - 25 years and Max. Life sentence

220.18

Criminal Possession of a Controlled Substance in the Second Degree

1. aggregate weight of 2 ounces or more containing a narcotic drug
2. aggregate weight of 2 ounces or more containing methamphetamine
3. 10 grams or more of a stimulant
4. 25 milligrams or more of LSD
5. 625 milligrams of hallucinogen
6. 25 grams or more of a hallucinogenic substance
7. 2,880 milligrams or more of methadone

Class A-II Felony:

First Time Offender: Min. 3 - 8 1/3 and Max. is Life.

Second Time Offender: Min. 6 - 12 1/2 years and Max. is Life.

Persistent Felony Offender: Min. 15 - 25 years and Max. Life sentence

220.18 **Criminal Possession of a Controlled Substance in the First Degree**

1. aggregate weight of four ounces or more containing a narcotic drug
2. 5,760 milligrams or more of methadone

Class A-I Felony:

Min. 15 - 25 years and Max. Life sentence

220.31 **Criminal Sale of a Controlled Substance in the Fifth Degree**

Any controlled substance

Class D Felony:

First Time Offender: Definite or Intermittent term up to 1 year permitted. If prison sentence pronounced, Min. 1 - 2 1/3 years and Max. 3 - 7 years (minimum cannot be more than 1/3 of the maximum imposed)

Second Time Offender: Min. 2 and Max. 4 - 7 years (minimum must be half of the maximum)

Persistent Felony Offender: Min. 15 - 25 years and Max. Life sentence

220.34 **Criminal Sale of a Controlled Substance in the Fourth Degree**

1. a narcotic preparation
2. 10 ounces or more of a dangerous depressant or 2 pounds or more
3. concentrated cannabis
4. 50 milligrams or more PCP
5. methadone
6. PCP if prior drug offense
7. Sale to person under 19 on school grounds

Class C Felony:

First Time Offender: Definite term up to 1 year permitted. If prison sentence pronounced, Min. 1 year and Max. 3 - 15 years (minimum cannot be more than 1/3 of the maximum imposed)

Second Time Offender: Min. 3 - 5 and Max. 6 - 15 years (minimum must be half of the maximum pronounced)

Persistent Felony Offender: Min. 15 - 25 years and Max. Life sentence

220.39 **Criminal Sale of a Controlled Substance in the Third Degree**

1. a narcotic drug
2. a stimulant, hallucinogen, hallucinogenic substance or LSD if previous drug conviction
3. 1 gram or more of a stimulant
4. 1 milligram or more LSD
5. 25 milligrams or more of a hallucinogen
6. 1 gram or more of a hallucinogenic substance

7. aggregate weight of 1/8 ounce methamphetamine
8. 250 milligrams or more of PCP
9. a narcotic preparation to a person less than 21 years old

Class B Felony:

First Time Offender: Min. 1 year and Max 3 - 25 years (minimum cannot be more than 1/3 of the maximum imposed)

Second Time Offender: Min. 3 1/2 - 8 1/3 years and Max. 9 - 25 years (minimum must be half of the maximum pronounced)

Persistent Felony Offender: Min. 15 - 25 years and Max. Life sentence

220.41

Criminal Sale of a Controlled Substance in the Second Degree

1. aggregate weight of 1/2 ounce or more containing a narcotic drug
2. aggregate weight of 1/2 ounce or more containing methamphetamine
3. 5 grams or more of a stimulant
4. 5 milligrams or more of LSD
5. 125 milligrams or more of a hallucinogen
6. 5 grams or more of a hallucinogenic substance
7. 360 milligrams or more of methadone

Class A-II Felony:

First Time Offender: Min. 3 - 8 1/3 and Max. is Life.

Second Time Offender: Min. 6 - 12 1/2 years and Max. is Life.

Persistent Felony Offender: Min. 15 - 25 years and Max. Life sentence

220.43

Criminal Sale of a Controlled Substance in the First Degree

1. aggregate weight of 2 or more ounces containing a narcotic drug
2. 2,880 milligrams or more of methadone

Class A-I Felony:

Min. 15 - 25 years and Max. Life sentence

220.44

Criminal Sale of a controlled Substance in or Near School Grounds

Violation of Section 220.34, subd. 1 through 6 or 220.39, subd. 1 through 8 when person sold to is under 19 years old and sale takes place upon school grounds.

Class B Felony:

First Time Offender: Min. 1 year and Max. 3 - 25 years (minimum cannot be more than 1/3 of the maximum imposed)

Second Time Offender: Min. 3 1/2 - 8 1/3 years and Max. 9 - 25 years (minimum must be half of the maximum pronounced)

Persistent Felony Offender: Min. 15 - 25 years and Max. Life sentence

221.10 **Criminal Possession of Marijuana in the Fifth Degree**

More than 25 grams (7/8 ounce)

Class B misdemeanor (Definite sentence of up to three months)

221.15 **Criminal Possession of Marijuana in the Fourth Degree**

More than 2 ounces

Class A misdemeanor (Definite sentence of up to 1 year)

221.20 **Criminal Possession of Marijuana in the Third Degree**

More than 8 ounces

Class E Felony:

First Time Offender: Definite or Intermittent term up to 1 year permitted. If prison sentence pronounced, Min. 1 - 1 1/3 years and Max. 3 - 4 years (minimum cannot be more than 1/3 of the maximum imposed)

Second Time Offender: Min. 1 1/2 - 2 and Max. 3 - 4 years (minimum must be half of the maximum pronounced)

Persistent Felony Offender: Min. 15 - 25 years and Max. Life sentence

221.25 **Criminal Possession of Marijuana in the Second Degree**

More than 16 ounces

Class D Felony:

First Time Offender: Definite or Intermittent term up to 1 year permitted. If prison sentence pronounced, Min. 1 - 2 1/3 years and Max. 3 - 7 years (minimum cannot be more than 1/3 of the maximum imposed)

Second Time Offender: Min. 2 and Max. 4 - 7 years (minimum must be half of the maximum)

Persistent Felony Offender: Min. 15 - 25 years and Max. Life sentence

221.30 **Criminal Possession of Marijuana in the First Degree**

More than 10 pounds

Class C Felony:

First Time Offender: Definite term up to 1 year permitted. If prison sentence pronounced, Min. 1 year and Max. 3 - 15 years (minimum cannot be more than 1/3 of the maximum imposed)

Second Time Offender: Min. 3 - 5 and Max. 6 - 15 years (minimum must be half of the maximum pronounced)

Persistent Felony Offender: Min. 15 - 25 years and Max. Life sentence

221.35

Criminal Sale of Marijuana in the Fifth Degree

Sell without consideration 1 cigarette or 2 grams or less

Class B misdemeanor (Definite term of up to 3 months)

221.40

Criminal Sale of Marijuana in the Fourth Degree

Any quantity without consideration except 1 cigarette or 2 grams or less

Class A misdemeanor (Definite term of up to 1 year)

221.45

Criminal Sale of Marijuana in the Third Degree

More than 25 grams (7/8 ounce)

Class E Felony:

First Time Offender: Definite or Intermittent term up to 1 year permitted. If prison sentence pronounced, Min. 1 - 1 1/3 years and Max. 3 - 4 years (minimum cannot be more than 1/3 of the maximum imposed)

Second Time Offender: Min. 1 1/2 - 2 and Max. 3 - 4 years (minimum must be half of the maximum pronounced)

Persistent Felony Offender: Min. 15 - 25 years and Max. Life sentence

221.50

Criminal Sale of Marijuana in the Second Degree

More than 4 ounces or any quantity sold to a person who was less than 18 years of age

Class D Felony:

First Time Offender: Definite or Intermittent term up to 1 year permitted. If prison sentence pronounced, Min. 1 - 2 1/3 years and Max. 3 - 7 years (minimum cannot be more than 1/3 of the maximum imposed)

Second Time Offender: Min. 2 and Max. 4 - 7 years (minimum must be half of the maximum)

Persistent Felony Offender: Min. 15 - 25 years and Max. Life sentence

221.30

Criminal Sale of Marijuana in the First Degree

More than 16 ounces

Class C Felony:

First Time Offender: Definite term up to 1 year permitted. If prison sentence pronounced, Min. 1 year and Max. 3 - 15 years (minimum cannot be more than 1/3 of the maximum)

Second Time Offender: Min. 3 - 5 and Max. 6 - 15 years (minimum must be half of the maximum pronounced)

Persistent Felony Offender: Min. 15 - 25 years and Max. Life sentence

**New York: Incarceration Rates for Drug Offenses
Offenders Sentenced in 1990**

Fel. Class	Offense Description	Statutory Penalties	Sentencing Practices			
			Offense	Number	Prison	Jail
A-I	Criminal Sale First Degree 1. agg. weight of 2 or more oz. containing narcotic drug 2. 2,880 mgs. or more of methadone	Min. 15 - 25 years and Max. Life sentence	Sale	315	94 %	2 %
			Poss.	448	96 %	1 %
			Total	763	95 %	2 %
A-II	Criminal Possession First Degree 1. agg. weight of 4 oz. or more containing a narcotic drug 2. 5,760 mgs. or more of methadone	First Time Offender: Min. 3 - 8 1/3 and Max. is Life. Second Time Offender: Min. 6 - 12 1/2 years and Max. is Life. Persistent Felony Offender: Min. 15 - 25 years and Max. Life sentence	(The available data does not distinguish between Class A-I and Class A-II. However, data on admissions to prison indicate that approximately 80% are Class A-II.)			
	Criminal Sale Second Degree 1. agg. weight of 1/2 ounce or more containing a narcotic 2. agg. weight of 1/2 ounce or more containing meth. 3. 5 gms or more of a stimulant 4. 5 mgs. or more of LSD 5. 125 mgs. or more of a hall. 6. 5 gms or more of a hall. subst. 7. 360 mgs. or more of methadone					
	Criminal Possession Second Deg. 1. agg. weight of 2 oz. or more containing a narcotic drug 2. agg. weight of 2 oz. or more containing meth. 3. 10 gms or more of a stimulant 4. 25 mgs. or more of LSD 5. 625 mgs. of hallucinogen 6. 25 gms or more of a hall. substance 7. 2,880 mgs. or more of methadone					

Fel. Class	Offense Description	Statutory Penalties	Sentencing Practices			
			Offense	Number	Prison	Jail
B	<p>Criminal Sale Third Degree a narcotic drug a stimulant, hall., hall. subst. or LSD, if prev. drug conv.</p> <ol style="list-style-type: none"> 1 gram or more of a stimulant 1 milligram or more LSD 25 mgs. or more of a hallucinogen 1 gram or more of a hall. substance agg. weight of 1/8 ounce methamph. 250 mgs. or more of PCP a narcotic prep. to a person under 21 	<p>First Time Offender: Min. 1 year and Max. 3 - 25 years (minimum cannot be more than 1/3 of the maximum imposed)</p> <p>Second Time Offender: Min. 3 1/2 - 8 1/3 years and Max. 9 - 25 years (minimum must be half of the maximum pronounced)</p> <p>Persistent Felony Offender: Min. 15 - 25 years and Max. Life sentence</p>	Sale Poss.	3251	81 %	9 %
	Total			1092	79 %	11 %
	<p>Criminal Possession of Third Deg.</p> <ol style="list-style-type: none"> 1. narcotic drug with intent to sell it 2. stimulant hallucinogen, hall. substance, LSD with intent to sell if previously been convicted of a drug offense. 3. 1 gram or more stimulant with intent 4. 1 milligram or more LSD w/intent 5. 25 mgs. or more hall. with intent to sell 6. 1 gram or more of a hallucinogenic substance w/intent 7. agg. weight of 1/8 ounce or more containing meth. 8. 5 gms or more of a stimulant 9. 5 mgs. or more of LSD 10. 125 mgs. of a hallucinogen 11. 5 gms or more of a hall. substance 12. agg. weight of 1/2 ounce or more containing a narcotic 13. 1,250 mgs. PCP 		4343	81 %	10 %	

Fel. Class	Offense Description	Statutory Penalties	Sentencing Practices			
			Offense	Number	Prison	Jail
C	<p>Criminal Sale Fourth Degree 1. a narcotic preparation 2. 10 oz. or more of a dangerous depressant or 2 + pounds concentrated cannabis 3. 50 mgs. or more PCP 4. methadone 5. PCP if prior drug offense 6. Sale to under 19 on school grounds</p>	<p>First Time Offender: Definite term up to 1 year permitted. If prison sentence pronounced, Min. 1 year and Max. 3 - 15 years (minimum cannot be more than 1/3 of the maximum imposed)</p> <p>Second Time Offender: Min. 3 - 5 and Max. 6 - 15 years (minimum must be half of the maximum pronounced)</p> <p>Persistent Felony Offender: Min. 15 - 25 years and Max. Life sentence</p>	Sale Poss. Total	9064 2597 11661	27 % 23 % 26 %	62 % 57 % 61 %
	<p>Criminal Possession Fourth Deg. 1. 1/8 ounce or more of narc. drug 2. 1/2 ounce or more meth. 3. 2 oz. or more containing a narc. prep. 4. 1 gram or more of a stimulant 5. 1 mgs. or more of LSD 6. 25 mgs. or more hallucinogen 7. one gram or more of a hall. subs. 8. 10 oz. or more dangerous depressant 9. 2 pounds or more of a depressant 10. agg. weight 1 oz. or more contains conc. cannabis 11. 250 mgs. or more PCP 12. 260 mgs. methadone 13. 50 mgs. or more of PCP w/intent and previous drug off.</p>					
	<p>Possess Marijuana First Degree More than 16 oz.</p>					
	<p>Sale of Marijuana in the First Degree More than 10 pounds</p>					

Fel. Class	Offense Description	Statutory Penalties	Sentencing Practices			
			Offense	Number	Prison	Jail
D	<u>Criminal Sale Fifth Degree</u> Any controlled substance	<p>First Time Offender: Definite or Intermittent term up to 1 year permitted. If prison sentence pronounced, Min. 1 - 2 1/3 years and Max. 3 - 7 years (minimum cannot be more than 1/3 of the maximum imposed)</p> <p>Second Time Offender: Min. 2 and Max. 4 - 7 years (minimum must be half of the maximum pronounced)</p> <p>Persistent Felony Offender: Min. 15 - 25 years and Max. Life sentence</p>	Sale Poss. Total	3281	83 %	11 %
				2794	44 %	34 %
				6075	65 %	47 %
E	<u>Criminal Possession Fifth Deg.</u> 1. A controlled substance with the intent to sell 2. agg. weight of 1/2 oz. or more containing a narcotic 3. 50 mgs. or more PCP 4. 1/4 ounce or more concentrated cannabis (hashish) 5. 500 mgs. or more of cocaine	<p>First Time Off.: Definite or Intermittent term up to 1 year permitted. If prison, Min. 1 - 1 1/3 years and Max. 3 - 4 years (min. cannot be more than 1/3 max.)</p> <p>Second Time Offender: Min. 1 1/2 - 2 and Max. 3 - 4 years (minimum must be half of the maximum pronounced)</p> <p>Persistent Felony Offender: Min. 15 - 25 years and Max. Life sentence</p>	Sale Poss. Total	722	83 %	11 %
				1043	47 %	30 %
				1765	62 %	22 %
	<u>Possession of Marij. Second Deg.</u> More than 16 oz.					
	<u>Sale of Marijuana in the Second Degree</u> More than 4 oz. or any quantity sold to a person under 18					
	<u>Possess Marijuana Third Deg.</u> More than 8 oz.					
	<u>Sale of Marijuana in the Third Degree</u> More than 25 gms (7/8 ounce)					

Fel. Class	Offense Description	Statutory Penalties	Sentencing Practices			
			Offense	Number	Prison	Jail
A Misd.	<u>Criminal Possession of Controlled Substance VII</u> Any amount of any controlled substance	Definite sentence of up to one year.	Sale Poss.	1313	-	Not Avail.
	<u>Possess of Marijuana Fourth Deg.</u> More than 2 oz.			15143	-	
	<u>Sale of Marijuana in the Fourth Degree</u> Any quantity w/out consideration except 1 cig. or 2 gms or less			16456	-	
B Misd.	<u>Possession of Marijuana Fifth Deg.</u> More than 25 gms (7/8 ounce)	Definite sentence of up to three months	Sale Poss.	220	-	Not Avail.
	<u>Sale of Marijuana in the Fifth Degree</u> Sell without consideration 1 cigarette or 2 gms or less			2967	-	
				3187	-	

Source: State of New York, Division of Criminal Justice Services, Bureau of Statistical Services

**New York: Minimum Time to Parole Eligibility
Drug Offenders Sentenced to Prison in 1990**

Fel. Class	Offense Description	Statutory Penalties	Min. Time to Parole Eligibility (Months)			
			Offense	Num.	Mean	Median
A-I	Criminal Sale First Degree 1. agg. weight of 2 or more oz. containing a narcotic 2. 2,880 mgs. or more of methadone Criminal Possession First Degree 1. agg. weight of four oz. or more containing a narcotic 2. 5,760 mgs. or more of methadone	Min. 15 - 25 years and Max. Life sentence	First Off.	95	193 mo.	180 mo.
	Criminal Sale Second Degree 1. agg. weight of 1/2 oz. or more containing narcotic 2. agg. weight of 1/2 ounce or more containing meth. 3. 5 gms or more of a stimulant 4. 5 mgs. or more of LSD 5. 125 mgs. or more of a hall. 6. 5 gms or more of a hall. subst. 7. 360 mgs. or more of methadone Criminal Possession Second Deg. 1. agg. weight of 2 oz. or more containing a narcotic 2. agg. weight of 2 oz. or more containing meth. 3. 10 gms or more of a stimulant 4. 25 mgs. or more of LSD 5. 625 mgs. of hallucinogen 6. 25 gms or more of a hall. substance 7. 2,880 mgs. or more of methadone	First Time Offender: Min. 3 - 8 1/3 and Max. is Life. Second Time Offender: Min. 6 - 12 1/2 years and Max. is Life. Persistent Felony Offender: Min. 15 - 25 years and Max. Life sentence	First Off. Second Off.	673 72	54 mo. 86 mo.	48 mo. 72 mo.

Fel. Class	Offense Description	Statutory Penalties	Min. Time to Parole Eligibility (Months)			
			Offense	Num.	Mean	Median
B	<p>Criminal Sale Third Degree</p> <ol style="list-style-type: none"> 1. a narcotic drug 2. a stimulant, hall., hall. subst. or LSD, if prev. off 3. 1 gram or more of a stimulant 4. 1 milligram or more LSD 5. 25 mgs. or more of a hallucinogen 6. 1 gram or more of a hall. substance 7. agg. weight of 1/8 ounce methamph. 8. 250 mgs. or more of PCP 9. a narcotic prep. to a person under 21 	<p>First Time Offender: Min. 1 year and Max. 3 - 25 years (minimum cannot be more than 1/3 of the maximum imposed)</p> <p>Second Time Offender: Min. 3 1/2 - 8 1/3 years and Max. 9 - 25 years (minimum must be half of the maximum pronounced)</p> <p>Persistent Felony Offender: Min. 15 - 25 years and Max. Life sentence</p>	First Off. Second Off.	2086 580	19 mo. 65 mo.	12 mo. 54 mo.
	<p>Criminal Possession Third Deg.</p> <ol style="list-style-type: none"> 1. narcotic drug with intent to sell it 2. stimulant hallucinogen, hall. substance, LSD with intent to sell if previous drug conviction 3. 1 gram or more stimulant with intent 4. 1 milligram or more LSD w/intent 5. 25 mgs. or more hall. with intent to sell 6. 1 gram or more of a hall. substance with intent 7. agg. weight of 1/8 ounce or more containing meth. 8. 5 gms or more of a stimulant 9. 5 mgs. or more of LSD 10. 125 mgs. of a hallucinogen 11. 5 gms or more of a hall. substance 12. agg. weight of 1/2 oz. or more containing narcotic 13. 1,250 milligrams PCP 					

Fel. Class	Offense Description	Statutory Penalties	Min. Time to Parole Eligibility (Months)		
			Offense	Num.	Mean
C	<p><u>Criminal Sale Fourth Degree</u> 1. a narcotic preparation 2. 10 oz. or more of a dangerous depressant or 2 + pounds concentrated cannabis 3. 50 mgs. or more PCP 4. methadone 5. PCP if prior drug offense 6. Sale to under 19 on school grounds</p>	<p>First Time Offender: Definite term up to 1 year permitted, if prison sentence pronounced, Min. 1 year and Max. 3 - 15 years (minimum cannot be more than 1/3 of the maximum imposed)</p> <p>Second Time Offender: Min. 3 - 5 and Max. 6 - 15 years (minimum must be half of the maximum pronounced)</p> <p>Persistent Felony Offender: Min. 15 - 25 years and Max. Life sentence</p>	<p>1234 1226</p>	<p>17 mo. 38 mo.</p>	<p>12 mo. 36 mo.</p>
	<p><u>Criminal Possession Fourth Deg.</u> 1. 1/8 ounce or more of narc. drug 2. 1/2 ounce or more meth. 3. 2 oz. or more containing a narc. prep. 4. 1 gram or more of a stimulant 5. 1 mgs. or more of LSD 6. 25 mgs. or more hallucinogen 7. one gram or more of a hall. subs. 8. 10 oz. or more dangerous depressant 9. 2 pounds or more of a depressant 10. agg. weight of 1 oz. hashish 11. 250 mgs. or more PCP 12. 260 mgs. methadone 13. 50 mgs. or more of PCP w/intent & prev. drug conv.</p>				
	<p><u>Possess Marijuana First Degree</u> More than 16 oz.</p>				
	<p><u>Sale of Marijuana in the First Degree</u> More than 10 pounds</p>				

Fel. Class	Offense Description	Statutory Penalties	Min. Time to Parole Eligibility (Months)			
			Offense	Num.	Mean	Median
D	<u>Criminal Sale Fifth Degree</u> Any controlled substance	<p>First Time Offender: Definite or intermittent term up to 1 year permitted. If prison sentence pronounced, Min. 1 - 2 1/3 years and Max. 3 - 7 years (minimum cannot be more than 1/3 of the max.)</p> <p>Second Time Offender: Min. 2 and Max. 4 - 7 years (minimum must be half of the maximum pronounced)</p> <p>Persistent Felony Offender: Min. 15 - 25 years and Max. Life sentence</p>	First Off.	330	16 mo.	12 mo.
	<u>Criminal Possession Fifth Deg.</u> 1. A controlled substance with the intent to sell 2. agg. weight of 1/2 oz. or more containing a narc. 3. 50 mgs. or more PCP 4. 1/4 ounce or more concentrated cannabis (hashish) 5. 500 mgs. or more of cocaine		Second Off.	3319	26 mo.	24 mo.
	<u>Possession of Marij. Second Deg.</u> More than 16 oz.					
	<u>Sale of Marijuana in the Second Degree</u> More than 4 oz. or any quantity sold to a person under 18					
E	<u>Possess Marijuana Third Deg.</u> More than 8 oz.	<p>First Time Offender: Definite or intermittent term up to 1 year permitted. If prison sentence pronounced, Min. 1 - 1 1/3 years and Max. 3 - 4 years (minimum cannot be more than 1/3 of the maximum imposed)</p> <p>Second Time Offender: Min. 1 1/2 - 2 and Max. 3 - 4 years (minimum must be half of the maximum pronounced)</p> <p>Persistent Felony Offender: Min. 15 - 25 years and Max. Life sentence</p>	First Off.	57	13 mo.	12 mo.
	<u>Sale of Marijuana in the Third Degree</u> More than 25 gms (7/8 ounce)		Second Off.	1112	19 mo.	18 mo.

Source: State of New York, Department of Corrections. *Drug Offenders Committed to State Prison, 1991.*

New York
Distribution of Cases by Drug Type
Drug Offenders Sentenced to Prison in 1990

Felony Class	Cocaine	Crack	Opiates	Marijuana	Other Drugs	Total
A-I	90% (80)	6.7% (6)	3% (3)	-	-	100% (89)
A-II	90% (644)	5% (36)	4% (31)	(2)	(2)	100% (715)
B	46% (1183)	38% (987)	14% (354)	(7)	1% (19)	100% (2550)
C	38% (897)	45% (1066)	17% (393)	(14)	(5)	100% (2375)
D	32% (1139)	45% (1570)	22% (773)	(11)	1% (30)	100% (3523)
E	28% (322)	50% (568)	16% (183)	1% (11)	4% (50)	100% (1134)
All Classes	41% (4265)	41% (4233)	17% (1737)	(45)	1% (106)	100% (10386)

Source: State of New York, Department of Corrections. *Drug Offenders Committed to State Prison. 1991.*

Information on the type of drug is not available for all cases. Information on specific drugs is available only for offenders admitted to prison in 1990.

SUMMARY OF SENTENCING POLICIES FOR DRUG OFFENDERS

OREGON 1992 - SENTENCING GUIDELINES

Oregon's felony sentencing guidelines were developed by the Oregon Criminal Justice Council and are effective for felony crimes committed on or after November 1, 1989. The guidelines are based on a grid structure with the presumptive sentence being based on the severity level of the offense of conviction and the offender's criminal record. The offender is assigned a criminal history category (e.g., Minor Misdemeanor or No Criminal Record; Repeat (2-3) Felony Non-Person Offender; Multiple (3+) Felony Person Offender). A prison term is presumed for offenders at higher severity levels as more serious criminal records. For non-prison cases, there are presumptive punishment units and maximum presumptive jail terms. The guidelines are designed to represent the usual case. The court may depart if the circumstances of the case warrant a more severe or more lenient sentence.

Generally, the statutes place offenses into felony classes (e.g., Class A, B, C...etc.). The guidelines assign felonies to 11 crime seriousness categories. For drug offenses, however, the severity level is specified in the statute.

Not all drug possessions or sales are felonies. Sale of less than 1 ounce of marijuana (or distribution for no remuneration of less than 5 oz. of marijuana), Sale of Schedule IV and V controlled substances and Possession of Schedule II, IV, or V drugs (and less than 1 ounce of marijuana) are not felonies.

STATUTORY PROVISIONS:

The following is a summary of the statutory provision regarding controlled substance offenses (from 1991).

475.991 Unlawful Delivery of Imitation Controlled Substance
Class A Misdemeanor - Max. 1 year

475.992 Manufacture/Deliver a Controlled Substance (or counterfeit substance):

Schedule I	Class A Felony - Max. 20 years - Max. Fine \$100,000
Schedule II or Marijuana	Class B Felony - Max. 10 years- Max. Fine \$100,000
Schedule III	Class C Felony - Max. 5 years - Max. Fine \$100,000
Marij. Less than 1 oz.	Class A Misd. - Max. 1 year - Max. Fine 2,500
Schedule IV	Class B Misd. - Max. 6 months - Max. Fine \$1,000
Schedule V	Class C Misd. - Max. 30 days - Max. Fine \$500
Marij. Less than 5 oz. - No remuneration	Guilty of a Violation-not a crime-Max. fine \$250

Possess a Controlled Substance:

Schedule I	Class B Felony - Max. 10 years - Max. Fine \$100,000
Schedule II	Class C Felony - Max. 5 years - Max. Fine \$100,000
Schedule III	Class A Misd. - Max. 1 year - Max. Fine \$1,000
Schedule IV	Class C Misd. - Max. 30 days - Max. Fine \$500
Schedule V	A Violation - not a crime - Max. fine \$250

Marij. Less than 1 oz.

A Violation - not a crime - Max. fine \$250

Category 8 if the offense involves the delivery or manufacture of a controlled substance and involves substantial quantities:

- 5 or more grams heroin*
- 10 or more grams cocaine*
- 100 grams or more hashish*
- 150 grams or more marijuana*
- 200 or more user units of LSD*
- 60 grams or more psilocybin or psilocin*

Category 8 if involves a Commercial Drug Offense (At least 3 of these factors):

- 1. Heroin, cocaine, hashish, marijuana, methamphetamine, LSD, psilocybin or psilocin and was for consideration.*
- 2. The offender was in possession of \$300 or more in cash.*
- 3. Unlawfully in possession of a firearm, or used a dangerous weapon*
- 4. Offender was in possession of materials being used for the packaging of controlled substances (e.g., scales, wrapping or foil).*
- 5. In possession of drug transaction records or customer lists.*
- 6. In possession of stolen property*
- 7. Modification of structures by painting, wiring, plumbing or lighting to facilitate a controlled substance offense.*
- 8. In possession of manufacturing paraphernalia (including recipes, precursor chemicals, lab equipment, lighting, ventilating or power generating equipment).*
- 9. Using public lands for the manufacture of controlled substances.*
- 10. Offender had constructed fortifications or had taken security measures with the potential of injuring persons.*
- 11. Possession of controlled substances in an amount greater than:*
 - 3 grams or more of mixture containing heroin.*
 - 8 grams or more of mixture containing cocaine.*
 - 8 grams or more of mixture containing methamphetamine.*
 - 8 grams or more containing hashish.*
 - 110 grams or more containing marijuana*
 - 20 or more user units of a substance containing LSD*
 - 10 grams or more containing psilocybin/psilocin*

Category 6 if:

- 1. Violation constitutes delivery of heroin, cocaine, or methamphetamine and is for consideration.*
- 2. The violation constitutes possession of:*
 - 5 grams or more of a mixture or substance containing heroin*
 - 10 grams or more containing cocaine*
 - 10 grams or more methamphetamine*
 - 100 grams or more hashish*
 - 150 grams or more marijuana*
 - 200 or more user units of LSD*
 - 60 grams or more psilocybin or psilocin*

Category 4

Other offenses involving delivery or manufacture of controlled substances

Category 1
Other offenses involving possession of a controlled substance

475.994 **Fraudulent Procurement**

Class A Misdemeanor - Max. 1 year - Max. Fine \$2,500

475.995 **Penalties for Distribution to Minors**

Schedule I or II	Class A Felony - Max. 20 years - Max. Fine \$100,000
Marijuana (sold to person under 18 but offender is at least 3 years younger than defendant)	Class A Felony - Max. 20 years - Max. Fine \$100,000
Schedule III	Class B Felony - Max. 10 years - Max. Fine \$100,000
Schedule IV	Class A Misd. - Max. 1 year - Max. Fine \$2,500
Schedule V	Class B Misd. - Max. 6 months - Max. Fine \$1,000

475.999 **Manufacture or Delivery of Controlled Substance to Minor or Student within 1,000 feet of school**

Sched. I, II, or III Class A Felony - Max. 20 years - Max. Fine \$100,000

Category 8

Less than 5 grams MJ in a public place w/in 1,000 feet of a school	Class C misdemeanor - Max. 30 days -
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Possess less than one ounce of MJ in a public place within 1,000 feet of a school

Class C misdemeanor - Max. 30 days - Max Fine \$250

Oregon Crime Seriousness Category for Felony Offenses
and the Presumptive Sentence at two of
Criminal History Scale Categories

Crime Seriousness Category	Offense Title/Description	Presumptive Sentence Based on Criminal History Category	
		Minor Misd. or No Crim. Record	Mult. (4+) Felony Non Person
8	<p>Manufacture/Delivery Sale of: 5 or more grams heroin 10 or more grams cocaine 100 grams or more hashish 150 grams or more marijuana 200 or more user units of LSD 60 grams or more psilocybin or psilocin</p> <p>Commercial Drug Offense (See Statutory Definition)</p> <p>Manufacture or Delivery of Controlled Substance to Minor or Student within 1,000 ft of school</p>	<p>Prison: 16-18 mo.</p>	<p>Prison: 25-26 mo.</p>
6	<p>Delivery of heroin, cocaine, or methamphetamine for consideration.</p> <p>Possession of: 5 grams containing heroin 10 grams or more cocaine 10 grams or more methamph. 100 grams or more hashish 150 grams or more marijuana 200 or more user units of LSD 60 grams or more psilocybin or psilocin</p>	<p>Probation: Maximum Custody Units = 180 Max. Jail Days = 90</p>	<p>Prison: 10 - 12 mo.</p>
4	<p>Other offenses involving delivery or manufacture of controlled substances</p>	<p>Probation: Max. Custody Units = 120 Max. Jail Days = 60</p>	<p>Probation: Max. Custody Units = 120 Max. Jail Days = 60</p>
1	<p>Other offenses involving possession of a controlled substance</p>	<p>Probation: Max. Custody Units = 90 Max. Jail Days = 30</p>	<p>Probation: Max. Custody Units = 90 Max. Jail Days = 30</p>

SENTENCING GUIDELINES GRID

OREGON

- APPENDIX 1 -

		CRIMINAL HISTORY SCALE									
		MULTIPLE (3+) FELONY PERSON OFFENDER	REPEAT (2) FELONY PERSON OFFENDER	SINGLE (1) FELONY PERSON w/ FELONY OFFENDER	SINGLE (1) FELONY PERSON OFFENDER	MULTIPLE (4+) FELONY NON-FELONY PERSON OFFENDER	REPEAT (2-3) FELONY NON-FELONY OFFENDER	SIGNIFICANT MINOR CRIMINAL RECORD	MINOR CRIMINAL RECORD	MINOR MISDEMEANOR OR NO CRIMINAL RECORD	
CRIME SERIOUSNESS SCALE		A	B	C	D	E	F	G	H	I	
	MURDER	11	225-269	196-224	178-194	149-177	149-177	135-148	129-134	122-128	120-121
	MANSLAUGHTER I, ASSAULT I, RAPE I, ARSON I	10	121-130	116-120	111-115	91-110	81-90	71-80	66-70	61-65	58-60
	RAPE I, ASSAULT I, KIDNAPPING II, ARSON I, BURGLARY I, ROBBERY I	9	66-72	61-65	56-60	51-55	46-50	41-45	39-40	37-38	34-36
	MANSLAUGHTER II, SEXUAL ABUSE I, ASSAULT II, RAPE II, USING CHILD IN DISPLAY OF SEXUAL CONDUCT, DRUGS-MINORS, CULT/MANUF/DEL, COMP. PROSTITUTION, NEG. HOMICIDE	8	41-45	35-40	29-34	27-28	25-26	23-24	21-22	19-20	16-18
	EXTORTION, COERCION, SUPPLYING CONTRABAND, ESCAPE I	7	31-36	25-30	21-24	19-20	16-18	180-90	180-90	180-90	180-90
	ROBBERY II, ASSAULT III, RAPE III, BRIBE RECEIVING, INTIMIDATION, PROPERTY CRIMES (more than \$50,000), DRUG POSSESSION	6	25-30	19-24	15-18	13-14	10-12	180-90	180-90	180-90	180-90
	ROBBERY III, THEFT BY RECEIVING, TRAFFICKING STOLEN VEHICLES, PROPERTY CRIMES (\$10,000-\$49,999)	5	15-16	13-14	11-12	9-10	6-8	180-90	120-60	120-60	120-60
	FTA I, CUSTODIAL INTERFERENCE II, PROPERTY CRIMES (\$5,000-\$9,999), DRUGS-CULT/MANUF/DEL	4	10-10	8-9	120-60	120-60	120-60	120-60	120-60	120-60	120-60
	ABANDON CHILD, ABUSE OF CORPSE, CRIMINAL NONSUPPORT, PROPERTY CRIMES (\$1,000-\$4,999)	3	120-60	120-60	120-60	120-60	120-60	120-60	90-30	90-30	90-30
	DEALING CHILD PORNOGRAPHY, VIOLATION OF WILDLIFE LAWS, WELFARE FRAUD, PROPERTY CRIMES (less than \$1,000)	2	90-30	90-30	90-30	90-30	90-30	90-30	90-30	90-30	90-30
ALTERING FIREARM ID, HABITUAL OFFENDER VIOLATION, BIGAMY, PARAMILITARY ACTIVITY, DRUGS-POSSESSION	1	90-30	90-30	90-30	90-30	90-30	90-30	90-30	90-30	90-30	

- In white blocks, numbers are presumptive prison sentences expressed as a range of months.
- In gray blocks, upper number is the maximum number of custody units which may be imposed; lower number is the maximum number of jail days which may be imposed.

**Oregon
Sentencing Practices for Drug Offenders: 1991**

Offense	Number	Prison		Jail		Total Incarceration
		Percent	Time*	Percent	Time	
Drugs- Delivery/Mfg.	1,717	12 %	11 mo.	54 %	44 days	66 %
Drugs-Possession	1,559	4 %	6 mo.	60 %	54 days	64 %
All Drug Offenses	3,276	8 %	10 mo.	48 %	30 days	56 %

* Oregon estimated time to be served by subtracting 10% from the pronounced prison sentence.

Source: Oregon Criminal Justice Council, *Second Year Report on Implementation of Sentencing Guidelines: 1991*.

Departure Data on Drug Offenders

In 163 (4.9%) of the 3,276 drug offense cases, the offender received an upward dispositional departure. In 39 (1.2%) of the drug offense cases, the offender received a downward durational departure.

In 29 (11%) of the delivery/manufacture cases where the offender received an executed prison sentence, the offender received an upward durational departure.

(Source: Oregon Criminal Justice Council, *Second Year Report on Implementation of Sentencing Guidelines: 1991*).

PENNSYLVANIA

A. Illegal Acts - Statutory Maximums

(numbers in () are clauses of PA statute 780-113 subsection a.)

1. Manufacture, Deliver, Possess with intent to deliver a controlled or counterfeit substance (30)

Schedule I or II Narcotic Phencyclidine, Methamphetamine, Cocaine, Over 1,000 lbs MJ.	15 years/\$250,000 or both
Other Schedule I, II or III	10 years/\$100,000 or both
Schedule IV	5 years/\$15,000 or both
Schedule V (Misdemeanor)	3 years/\$10,000 or both
	1 year/\$5,000 or both

2. Possession of controlled or counterfeit substance (16)

All Drugs (Misdemeanor)	1 year/\$5,000 or both
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3. Possession, Possession with intent to distribute but not sell, or distribution of a small amount of MJ (31) (small amount of MJ. = 30 grams or 8 grams of hash)

Misdemeanor	30 days/\$5,000 or both
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4. Fraudulent Procurement of a controlled substance (12)

Schedule I or II Narcotic Phencyclidine, Methamphetamine, Cocaine, Over 1,000 lbs MJ.	15 years/\$250,000 or both
Other Schedule I, II or III	10 years/\$100,000 or both
Schedule IV	5 years/\$15,000 or both
Schedule V (Misdemeanor)	3 years/\$10,000 or both
	1 year/\$5,000 or both

5. Noncontrolled Substance with stimulant effect-sell, manufacture, possess w/ intent to distribute (35 i)

Felony	5 years/\$5,000 or both
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6. Distribute noncontrolled substance with representation that it is a controlled substance (35 ii)

Felony	5 years/\$5,000 or both
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7. Manufacture, deliver, possess with intent to deliver a designer drug (36)

Felony	15 years/\$250,000 or both
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8. Distribution to Minor (under 18 by someone over 21 and at least 4 years older) (780-114)

Statutory Maximum is doubled

B. Other Sentencing Provisions

1. Conviction of manufacture, of amphetamine/methamphetamine (780-113 (k))

"Shall be sentenced to at least two years total confinement without probation, parole or work release, notwithstanding....."

2. Drivers License Suspension for possession, sale, delivery etc. any controlled substance (780-113 (m))

1st offense	90 days
2nd offense	1 year
3 and more offenses	2 years (Multiple suspensions served consecutively)

3. Second or Subsequent Sale (780-115) Statutory Maximum is Doubled (for true priors)

4. Probation Without Verdict (780-116)

- Only first time offenders eligible
- If Convicted of Sale, not eligible unless can prove is a drug abuser

5. Disposition in lieu of trial or criminal punishment (780-118)

Treatment in lieu of Prosecution

- At request of person charged with nonviolent crime
- If Court appointed physician certifies as drug dependent or abuser and that for treatment and rehabilitation it would be preferable for criminal charges to be held in abeyance
- Government Attorney has discretion to accept or reject the recommendation

Treatment in lieu of criminal punishment

- Requested after conviction
- If Court appointed physician certifies that for treatment and rehabilitation it would be preferable to receive suspended sentence and probation conditioned on treatment in lieu of criminal punishment
- Court has discretion to accept or reject the recommendation
- Available to any person only once

C. Sentencing Guidelines

1. Basic Structure

- Combination of a guidelines system with a parole system
- Cover both felonies and misdemeanors
- Guidelines specify a range of presumptive minimum sentences based on offense severity and criminal history. Judge pronounces a minimum and a maximum sentence - maximum must be at least twice the minimum, but is not specified in the guidelines.
- The guidelines specify a "standard range" as well as a mitigated and aggravated range. Judges may sentence either within one of these ranges or may depart and sentence above the aggravated range or below the mitigated range. Judges must state reasons on the record for sentencing

within the mitigated or aggravated ranges or outside of those ranges. Only sentences outside of the aggravated or mitigated ranges are considered departures.

- Incarceration is presumptive when the minimum of a range on the sentencing guidelines grid is greater than 0 and "Intermediate Punishment" is not recommended. Judges may depart from the presumptive disposition and place an offender on probation unless it is an offense with a mandatory sentence (drug trafficking and sales to minors among others) Generally, minimum sentences of less than 12 months are served in county jails and sentences of a year or more are served in state prisons.

- Offenders incarcerated are eligible for parole after serving their minimum sentence. There is no "good time"

2. Intermediate Punishment

- Appropriate when sentencing range begins with 0 or IP is specified in the range

- Intended to replace short term incarceration sentences in county jails, not intended for defendants who would ordinarily be placed on probation.

-Options include:

a) Noncustodial programs which involve close supervision, but not housing of the offender in a facility , including, but not limited to:

intensive probation supervision, victim restitution or mediation, alcohol or drug outpatient treatment, house arrest and electronic monitoring, psychiatric counseling, and community service;

b) Residential inpatient drug and alcohol programs;

c) Individualized services which evaluate and treat offenders, including psychological and medical services, education, vocational training, drug and alcohol screening and counseling, individual and family counseling and transportation subsidies;

d) Partial confinement programs, such as work release, work camps and halfway facilities

-Persons convicted of mandatory drug offenses (drug trafficking and sales to minors or in school zones) are not eligible

3. "Motivational Boot Camps"

- Description:

"Alternative program of incarceration intended to help alleviate prison overcrowding while protecting public safety. The boot camp program will provide substance abuse treatment; educational, vocational, and counseling programs; rigorous physical activity; and work responsibilities on public projects

-Eligibility

a) Sentenced to a term of confinement in state prison

b) Serving a minimum sentence of two years or less

c) Serving a maximum sentence of five years or less

d) Certain violent offenses excluded (some homicides, rapes, robberies)

- Guidelines specify some ranges which recommend boot camp eligibility. If the sentencing range does not recommend boot camp eligibility, judge may depart and identify offender as eligible

- Program is 6 months in length. Therefore, Guidelines Commission strongly recommends against the court identifying persons with less than a 12 month minimum sentence as eligible since jail credit and processing/diagnostic intake may amount to more than 6 months.

- Defendants identified as eligible by sentencing judge must apply to the Department of Corrections which makes the final determination on participation. Therefore, the Guidelines Commission states "It is important that the court not sentence a defendant to state incarceration with the assumption that the defendant may be admitted to the boot camp program.

- Planned capacity - 200 inmates accepted every 6 months

4. Fines

- Fines and restitution may be added to any sentence

- Shall be considered by the court and shall be of an amount at least sufficient to exhaust the assets utilized in, and the proceeds obtained by the defendant from drug offenses when the amounts of drugs are more than 2 grams of Schedule I, or II narcotics, PCP, cocaine, methamphetamine, or more than 1,000 pounds of marijuana

5. Aggravating Circumstances

- Guidelines specify several aggravating factors the Court should consider when determining whether the case should be sentenced from the aggravated range

- One of these factors specifically relates to "crack" cocaine - "The drug was of an exceptional purity such as cocaine in 'crack' form;"

6. Enhancement for offenses involving youth and weapons

Weapons

- At least 12 months and up to 24 months shall be added to the guidelines ranges when a deadly weapon was possessed in the crime

Youth

- Applicable for distribution to a minor or deliver or possess with intent to deliver in school zone

- At least 12 months and up to 36 months shall be added to the guidelines ranges

- May be added in addition to the deadly weapon enhancement where applicable

7. Sentences to Drug Treatment

- Certain Offenders may be sentenced to inpatient treatment when:

- a) Has serious substance abuse problem and would benefit from treatment; and

- b) Sentence Range Chart shows a mitigated range with a bottom limit of 6 months confinement or less

- Court may impose a sentence for any length of time, up to the statutory maximum if it is served in whole or in part in inpatient treatment

- Such a sentence is defined to be within the mitigated range of the guidelines

8. Severity Levels and Sentence Ranges specified for drug offenses separate from other offenses

PENNSYLVANIA GUIDELINES RANGES FOR CONTROLLED SUBSTANCE OFFENSES

OFFENSE GRAVITY SCORE	HIS. SCORE	STANDARD RANGE	AGGRAVATED RANGE	MITIGATED RANGE
A	0	30-42	42-48	24-30*
Schedule I or II Narcotics	1	39-51	51-57	33-39
More than 100 Grams	2	48-60	60-66	42-48
Distribution	3	57-69	69-75	51-57
	4	60-72	72-78	54-60
	5	79-87	87-90	73-79
	6	84-90	90	78-84
B	0	18-30*	30-36	12-28*
Schedule I or II Narcotics	1	27-39	39-45	21-27*
2 Grams - 100 Grams	2	36-48	48-54	30-36
Distribution	3	45-57	57-63	39-45
	4	54-66	66-72	48-54
	5	63-75	75-81	57-63
	6	72-84	84-90	66-72
C	0	7-18*	18-24*	3-9
Schedule I or II Narcotics	1	15-27*	27-33	9-15*
Less than 2 Grams	2	24-36*	36-42	18-24*
Distribution	3	33-45	45-51	27-33
	4	42-54	54-60	36-42
	5	51-63	63-69	45-51
	6	60-72	72-78	54-60
D	0	27-39	39-45	21-27*
PCP, Cocaine, Methamphetamine	1	33-45	45-51	27-33
More than 100 Grams	2	39-51	51-57	33-39
Distribution	3	45-57	57-60	39-45
	4	51-60	60	45-51
	5	57-60	60	51-57
	6	60	60	54-60
E	0	15-27*	27-33	9-15*
PCP, Cocaine, Methamphetamine	1	21-33*	33-39	15-21*
2 - 100 Grams	2	27-39	39-45	21-27*
Distribution	3	33-45	45-51	27-33
	4	39-51	51-57	33-39
	5	45-57	57-60	39-45
	6	51-60	60	45-51
F	0	6-15*	15-21*	3-6
PCP, Cocaine, Methamphetamine	1	9-21*	21-27*	6-9
Less than 2 Grams	2	15-27*	27-33	9-15*
Distribution	3	21-33*	33-39	15-21*
	4	27-39	39-45	21-27*
	5	33-45	45-51	27-33
	6	39-51	51-57	33-39
G	0	12-18*	18-24*	6-12*
Marijuana	1	15-21*	21-27*	9-15*
More than 110 Pounds	2	18-24*	24-30*	12-18*
Distribution	3	21-28*	28-30	15-21*
	4	24-30*	30	18-24*
	5	27-30	30	21-27*
	6	30	30	30
H	0	6-12*	12-18*	3-6
Marijuana	1	9-15*	15-21*	5-9
1 Pound-110 Pounds	2	12-18*	18-24*	6-12*
Distribution	3	15-21*	21-27*	9-15*
	4	18-24*	24-30*	12-18*
	5	21-27*	27-30	15-21*
	6	24-30*	30	18-24*

I	0	3-6	6-12*	1-3
Marijuana	1	3-9	9-15*	2-3
Less than 1 Pound	2	7-12*	12-18*	3-7
Distribution	3	9-15*	15-21*	3-9
	4	12-18*	18-24*	6-12*
	5	15-21*	21-27*	9-15*
	6	18-24*	24-30*	12-18*
J	0	6-12*	12-18*	3-6
Schedule I, II, and III Distribution	1	9-15*	15-21*	3-9
Offenses not Listed Above	2	12-18*	18-24*	7-12*
	3	15-21*	21-28*	9-15*
All Other Drug Offenses With	4	18-24*	24-30*	12-18*
Statutory Limit ¹ of 2.5 Years	5	21-27*	27-30*	15-21*
	6	24-30*	30	18-24*
K	0	4-10	10-18*	0-4
Schedule IV Distribution	1	5-12*	12-18*	1-5
	2	6-15*	15-18*	2-6
All Other Drug Offenses With	3	7-18*	18*	3-7
Statutory Limit ¹ of 1.5 Years	4	8-18*	18*	4-8
	5	9-18*	18*	5-9
	6	10-18*	18*	6-10
L	0	2-8	8-12*	0-2
All Drug Offenses With	1	3-10	10-12*	0-3
Statutory Limit ¹ of 1 Year	2	4-12*	12*	1-4
	3	5-12*	12*	2-5
	4	6-12*	12*	3-6
	5	7-12*	12*	4-7
	6	8-12*	12*	5-8
M	0	0-6	6	0
Schedule V Distribution	1	1-6	6	0-1
	2	2-6	6	0-2
Other Drug Offenses With	3	3-6	6	0-3
Statutory Limit ¹ of 6 Months	4	4-6	6	1-4
	5	4-6	6	2-5
	6	6	6	3-6
N	0	0-IP	IP-6	0
Possession of Schedule I-V Drugs	1	0-IP	IP-6	0
	2	1-6	6	IP-1
	3	2-6	6	IP-2
	4	3-6	6	IP-3
	5	4-6	6	IP-4
	6	5-6	6	IP-5

* Indicates Eligibility for Boot Camp
IP Indicates Intermediate Punishment

¹ Statutory limit is defined as the longest minimum sentence permitted by law (one half statutory maximum)

D. Sentencing Practices (Drug Offenses Only)

1. Incarceration Rate - Drug Cases Sentenced in 1990

	Number	Probation		County Jail		State Prison		Total Incarceration		Other	
		N	%	N	%	N	%	N	%	N	%
Felonies	7338	765	10.4	3567	48.6	2957	40.3	6524	89	49	.7
Misdemeanors	4185	2109	50.4	1563	37.3	102	2.4	1665	40	411	9.8

2. Sentence Durations - Average Pronounced Minimum and Maximum Sentences and Mean Length of Probation

	Probation		County Jail		State Prison		All Incarcerations	
	Mean		Min	Max	Min	Max	Min	Max
Felonies	36.9		8.2	23.7	25.0	62.6	16.0	41.5
Misdemeanors	10.4		3.0	11.7	2.4	8.4	3.3	12.3

3. Sentence Durations - Average Time Served (Parole Board Estimate - Average time served = 117% of minimum sentence)

	County Jail	State Prison	All Incarcerations
Felonies	9.6	29.3	18.7
Misdemeanors	3.5	2.8	3.9

4. Departures From the Guidelines - Drug Offenses Sentenced in 1990

	Number	OVERALL CONFORMITY			Outside The Guidelines (%)	
		Within The Guidelines (%)			Above	Below
		Standard	Aggravated	Mitigated		
Felonies	7724	45	2	26	2	24
Misdemeanors	4178	83	1	12	0	4

DISPOSITIONAL AND DURATIONAL DEPARTURES

	Number	%Conform	Departure Rates		
			%Dispositional	%Durational	
				Above	Below
Felonies	7224	74	10	2	14
Misdemeanors	4178	96	3	0	1

5. Mandatory Sentences - Drug Delivery to Minors and Drug Trafficking Offenses

Number	Jail	Prison	Jail		Prison	
			Minimum	Maximum	Minimum	Maximum
908	15%	85%	13.4	28.8	28.2	65.8
Time Served (117 % of Minimum)			15.7		33.0	

6. Sentencing Practices by Drug Type and Amount - See the Attached Tables from *Sentencing in Pennsylvania 1990: 1990-1991 Annual Report of The Pennsylvania Commission on Sentencing*
This Report states:

- "Drug Trafficking offenses produced the most frequent departures below the guidelines. Furthermore, the mitigated range was often used for these offenses. This seems to indicate reluctance on the part of judges to sentence at the levels recommended by the guidelines for drug trafficking offenses"

- "Overall the incarceration rate for drug offenders was 71% (including both county jail and state prison) but was considerably higher for 'drug dealing offenses'."

PENNSYLVANIA DRUG CASES SENTENCED IN 1990
ESTIMATED TIME SERVED BY DRUG TYPE AND AMOUNT
117 % of Average Minimum Sentence

OFFENSE	TOTAL		COUNTY JAIL				STATE PRISON				ALL INCARCERATIONS			
	#	%	#	%	Min.	117%	#	%	Min.	117%	#	%	Min	117%
Dealing in Narcotics	546		222	40	10.1	11.8	273	50	30.8	36.0	495	90	21.5	25.2
More than 100 Gr.	7		1	14	48.0	56.2	6	86	32.0	37.4	7	100	34.2	40.1
2 Gr. - 100 Gr.	85		17	20	11.9	13.9	63	74	36.0	42.1	80	94	30.8	36.0
Less Than 2 Gr.	454		204	45	9.7	11.4	45	204	29.1	34.0	408	90	19.4	22.7
Dealing in Cocaine, Methamphetamine, PCP	5493		2617	48	8.9	10.4	2443	45	24.9	29.1	5060	92	16.6	19.5
More than 100 Gr.	227		27	12	13.0	15.2	186	82	42.2	49.4	213	94	38.5	45.0
2 Gr. - 100 Gr.	2143		622	29	11.9	13.9	1414	66	24.8	29.0	2036	95	20.9	24.4
Less Than 2 Gr.	3123		1968	63	7.8	9.1	843	27	21.3	24.9	2811	90	11.8	13.9
Dealing in Marijuana	836		529	63	4.4	5.1	126	15	15.7	18.4	655	78	6.6	7.7
More than 110 Lbs.	3		2	67	8.0	9.4	1	33	18.0	21	3	100	11.3	13.3
1 Lb. - 110 Lbs.	87		50	57	8.2	9.6	28	32	23.0	26.9	78	90	13.5	15.8
Less than 1 Lb.	746		477	64	4.0	4.7	97	13	13.5	15.8	574	77	5.6	6.5
Other Drug Offenses	3660		1493	40	3.7	4.3	139	4	11.3	13.2	1632	44	4.3	5.1
2.5 Yr. Statutory Limit	239		126	53	8.0	9.4	47	20	18.0	21.1	173	72	10.7	12.5
1.5 Yr. Statutory Limit	196		77	39	5.7	6.8	28	14	12.6	14.7	105	54	7.5	8.8
1 Year Statutory Limit	1		0				0				0			
6 Month Statutory Limit	3224		1290	40	3.1	3.6	64	2	6.2	7.3	1354	42	3.2	3.8
Small Amount of MJ	797		207	26	1.2	1.4	8	1	1.0	1.1	215	27	1.2	1.4
TOTAL	11332		5099	45	6.6	7.7	2947	26	24.4	28.5	8046	71	13.1	15.3

PENNSYLVANIA COMMISSION ON SENTENCING

TABLE 16
Sentences Imposed for Drug Offenses

OFFENSE	PROBATION			COUNTY JAIL			STATE PRISON		
	NUMBER	%	LENGTH	%	MIN	MAX	%	MIN	MAX
Dealing in Narcotics									
More than 100 g.	7	0%	---	14%	48.0	96.0	86%	32.0	78.0
2 g. to 100 g.	85	6%	62.4	20%	11.9	27.9	74%	36.0	83.7
less than 2 g.	454	10%	37.8	45%	9.7	25.4	45%	29.1	75.2
Subtotal	546	10%	40.2	40%	10.1	25.9	50%	30.8	77.2
Dealing in Cocaine, Meth., PCP									
More than 100 g.	227	6%	78.9	12%	13.0	28.2	82%	42.2	95.0
2 g. to 100 g.	2143	5%	45.0	29%	11.9	28.1	66%	24.8	61.2
less than 2 g.	3123	10%	36.0	63%	7.8	23.3	27%	21.3	57.2
Subtotal	5,493	8%	39.6	48%	8.9	24.5	45%	24.9	62.4
Dealing in Marijuana									
More than 110 lbs.	3	0%	---	67%	8.0	23.0	33%	18.0	48.0
1 lb. to 110 lbs.	87	10%	30.6	57%	8.2	22.0	32%	23.0	54.4
less than 1 lb.	746	23%	28.8	64%	4.0	19.1	13%	13.5	38.0
Subtotal	836	22%	28.9	63%	4.4	19.4	15%	15.7	41.7
Other Drug Offenses									
2.5 year statutory limit	239	28%	35.0	53%	8.0	21.8	20%	18.0	48.5
1.5 year statutory limit	196	46%	15.4	39%	5.7	19.1	14%	12.6	32.5
1 year statutory limit	1	100%	24.0	0%	---	---	0%	---	---
6 month statutory limit	3,224	58%	10.5	40%	3.1	12.2	2%	6.2	13.9
Subtotal	3,660	56%	11.6	40%	3.7	13.4	4%	11.3	28.7
Small Amount of Marijuana	797	73%	2.0	26%	1.2	4.3	1%	1.0	1.0
TOTAL	11,332	29%	14.9	45%	6.6	20.3	26%	24.4	61.1

TABLE 5

Conformity to the Guidelines: Drug Offenses Only

OFFENSE	TOTAL	WITHIN THE GUIDELINES			OUTSIDE	
		STANDARD	AGGRAVATED	MITIGATED	ABOVE	BELOW
Dealing in Narcotics						
More than 100 g.	7	57%	0%	14%	0%	29%
2 g. to 100 g.	84	42%	7%	10%	5%	37%
Less than 2 g.	453	38%	3%	23%	2%	34%
Subtotal	544	39%	4%	21%	2%	34%
Dealing in Cocaine, Meth., PCP						
More than 100 g.	227	58%	3%	9%	10%	21%
2 g. to 100 g.	2,139	38%	2%	35%	2%	23%
Less than 2 g.	3,121	49%	2%	24%	2%	24%
Subtotal	5,487	45%	2%	28%	2%	23%
Dealing In Marijuana						
More than 110 lbs.	3	33%	0%	0%	0%	67%
1 lb. to 110 lbs.	87	63%	3%	13%	3%	17%
Less than 1 lb.	745	52%	4%	18%	1%	25%
Subtotal	835	53%	4%	18%	1%	24%
Other Drug Offenses						
2.5 year statutory limit	239	36%	2%	24%	0%	38%
1.5 year statutory limit	196	34%	2%	46%	1%	18%
1 year statutory limit	1	0%	0%	100%	0%	0%
6 month statutory limit	3,219	80%	1%	14%	0%	4%
Subtotal	3,655	75%	1%	17%	0%	7%
Small Amount of Marijuana	797	100%	0%	0%	0%	0%
TOTAL	11,318	59%	2%	21%	1%	17%

Notes: Statutory Limit is defined as the longest minimum sentence permitted by law.
 Percentages may not equal 100% due to rounding.

SUMMARY OF SENTENCING POLICIES FOR DRUG OFFENDERS

**SOUTH CAROLINA
1991**

South Carolina has a parole system. Mandatory minimums are only true minimums if the statute states that parole or probation shall not be granted. The offender can earn credit off the prison time (e.g., for work) unless the statute specifies flat time.

Drug offenders (except those convicted of trafficking) may generally receive parole and earn credit off of their prison sentences. Not all drug offenders are eligible for probation. Generally first time drug offenders may receive probationary sentences. In addition to general manufacture/sale/distribution offenses, South Carolina also has "Trafficking" offenses based on the amount possessed or sold.

§ 44-53-370 (a), (b) Manufacture, Distribute, Possess with Intent

Schedule I or II Narcotic, or LSD

First Offense	Felony Offense in all Cases Maximum 15 years/Max. Fine \$25,000
Second Offense	Min. 5 years/Max. 30 years/Max. Fine \$50,000
Third or Subsequent Offense	Min. 15 years/Max. 30 years/Max. Fine \$50,000

("Except in the case of a first offense, the sentence shall not be suspended and probations shall not be granted.")

Any Other Schedule I, II or III Controlled Substance

First Offense	First offense is Misd/Subseq. are felonies Misdemeanor: Max. 5 years/Max. Fine \$5,000
Second Offense	Felony: Max. 10 years/Max. Fine \$10,000
Third or Subsequent Offense	Felony: Min. 5 years/Max. 20 years/Max. Fine \$20,000

("Except in the case of a first offense, the sentence shall not be suspended and probations shall not be granted.")

Schedule IV Substance

First Offense	Misdemeanor Offense in all Cases Max. 3 years/Max. Fine \$3,000
Second or Subsequent Offense	"The sentence shall be twice that for the first offense."

Schedule V Substance

First Offense	Misdemeanor in all Cases Max. 1 year/Max. Fine \$1,000
Second or Subsequent Offense	"The sentence shall be twice that for the first offense."

Prima Facie Guilt of Manufacture/Distribution/Possession with Intent - Felony

Possession of:
More than 10 grains cocaine

More than 100 milligrams of alpha or beta-eucaine
 More than 4 grains of morphine
 More than 2 grains of heroin
 More than 100 milligrams of isonipecaine
 More than 50 micrograms of LSD
 More than 28 grams/1 ounce of marijuana
 More than 10 grams of hashish

§ 44-53-370 (c). Possession

Schedule I or II Narcotic, or LSD

First Offense

Second Offense

Third or Subsequent Offense

First Offense is a Misd./Subseq are Felonies

Misdemeanor: Max. 2 years/Max. Fine \$5,000

Felony: Max. 3 years/Max. Fine \$5,000

Felony: Max. 4 years/Max. Fine \$10,000

Any other Schedule I through V Cont. Substance

First Offense

Second or Subsequent Offense

Misdemeanor

Max. 6 months/Max. Fine \$1,000

Max. 1 year/Max. Fine \$2,000

Small Amount of Marijuana/Hashish

(1 oz. or less Marij/10 gr. or less Hashish)

Misdemeanor

First Offense

Second or Subsequent Offense

(Conditional Discharge may be granted. Pretrial intervention program is permitted.)

Max. 30 days/Max. Fine \$200

Max. 1 year/Min. Fine \$200 and Max. Fine \$1,000

(First time offenders may receive conditional discharge (stay of adjudication) except for Schedule I or II narcotics.)

§ 44-53-370 (e). Penalties Based on Amount for Sale, Distribution, Constructive Possession

(No part of the mandatory minimum sentence "may be suspended nor probation granted.")

"Trafficking in Marijuana"

10 pounds or more and less than 100 pounds

First Offense

Second Offense

Third or Subsequent Offense

Min. 1 year/Max. 10 years/Fine of \$10,000

Min. 5 years/Max. 20 years/Fine of \$15,000

Mandatory 25 years and Fine of \$25,000

100 pounds or more but less than 2,000 pounds or 100 to 1,000 plants

All

Mandatory 25 years and Fine of \$25,000

2,000 or more and less than 10,000 pounds or more than 1,000 but less than 10,000 plants

All

Mandatory 25 years and Fine of \$50,000

10,000 or more pounds or more than 10,000 plants

All

Mandatory 25 years and Fine of \$200,000

"Trafficking in Cocaine"

10 grams or more
First Offense Min. 3 year/Max. 10 years/Fine of \$25,000
Second Offense Min. 5 years/Max. 30 years/Fine of \$50,000
Third or Subsequent Offense Min. 25 years/Max. 30 years/Fine of \$150,000

28 grams or more
First Offense Min. 7 years/Max. 25 years/Fine of \$50,000
Second Offense Min. 7 years/Max. 30 years/Fine of \$50,000
Third or Subsequent Offense Min. 25 years/Max 30 years/Fine of \$50,000

100 grams or more but less than 200 grams
All Mandatory 25 years and Fine of \$50,000

200 grams or more but less than 400 grams
All Mandatory 25 years and Fine of \$100,000

400 grams or more
All Min. 25 years/Max. 30 years/Fine of \$200,000

"Trafficking in Illegal Drugs" (Morphine, Opium, Heroin)

4 grams or more
First Offense Min. 7 years/Max. 25 years/Fine of \$50,000
Second or Subsequent Offense Min. 25 years/Fine of \$100,000

14 grams or more
All Min. 25 years/Fine of \$200,000

28 grams or more
All Min. 25 years/Max. 40 years/Fine of \$200,000

"Trafficking in Methaqualone"

15 grams or more but less than 150 grams
First Offense Min. 1 year/Max. 10 years/Fine of \$10,000
Second or Subsequent Offense Min. 25 years/Fine of \$25,000

150 grams but less than 1,500 grams
All Mandatory 25 years/Fine of \$25,000

1,500 grams but less than 15 kilograms
All Mandatory 25 years/Fine \$50,000

15 kilograms or more
All Min. 25 years/Max. 30 years/Fine of \$200,00

§ 44-53-375 Possession, Distribution, and Manufacture of Ice, Crank and Crack Cocaine

(Except for first offense of possession of less than 1 gram, the sentences may not be suspended and probation may not be granted.)

Possess less than 1 gram

First Offense	Misdemeanor: Min. 2 years/Max. 5 years/Min. Fine \$5,000
Second Offense	Felony: Min. 4 years/Max. 7 years/Min. Fine \$10,000
Third or Subsequent Offense	Felony: Min. 10 years/Max. 15 years/Min. Fine \$15,000

(For a first time offender, the court may, upon approval of the solicitor, require as part of any sentence that the offender enter and successfully complete a drug treatment and rehabilitation program).

Manufacture/Distribution/Possession of more than 1 gram

First Offense	Min. 15 years/Max. 20 years/Min. Fine \$25,000
Second Offense	Min. 25 years/Max. 30 years/Min. Fine \$50,000
Third or Subsequent	Min. 30 years/Max. 40 years/Min. Fine \$100,000.

Possession/Sale/Distribution of 100 grams or more

All	Mandatory 25 years and a Fine of \$50,000
-----	---

§ 44-53-440 Distribution to persons under eighteen

<u>Schedule I or II Narcotic or LSD or Crack</u>	Felony: Max. 20 years/Max. Fine \$30,000
--	--

("Sentence may not be suspended and probation may not be granted.")

<u>Other Schedule I through V Controlled Substance</u>	Misdemeanor: Max. 10 years/Max. Fine \$10,000.
--	--

§ 44-53-445 Distribution of Controlled Substance Within Proximity of School (includes distribution, purchase, sale, possession with intent within 1/2 mile radius school grounds)

Distribution/Possession with Intent

Crack Cocaine	Min. 10 years/Max. 15 years/Min. Fine \$10,000
Other Controlled Substances	Max. 10 years/Max. Fine \$10,000

Purchase

All Substances	Max. one year/Max. Fine \$1,000
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**South Carolina
Drug Offenders Entering Prison
Between July 1, 1990 and June 30, 1991
Major Drug Involved**

Type of Drug	Number Admitted	Percent of Drug Admissions	Average Time to Serve (in years)
Opiates (e.g., Heroin)	38	2.0 %	6.4
Cocaine	1,758	75.7 %	6.0
Cannabis - Marijuana	359	15.5 %	2.5
Hallucinogens	11	0.4 %	3.8
Stimulants - Amphetamines	5	0.2 %	.8
Depressants	3	0.1 %	.7
Other (includes synthetic narcotics)	147	6.3 %	4.6
All Drug Types	2,321	100.0%	5.3

Source: South Carolina Department of Corrections

No data is available on offenders who receive probationary sentences.

**South Carolina
Drug Offenders Entering Prison
Between July 1, 1990 and June 30, 1991
Time to be Served (in years) by Major Drug Involved**

Type of Drug	All Offense Types	Distribution	Manufacture	Import/ Trafficking	Possession	Sale	Other
Opiates (e.g., Heroin)	6.4	-	-	-	3.2	10.9	6.4
Cocaine	6.0	-	-	11.6	3.6	8.4	-
Cannabis - Marijuana	2.5	-	2.0	6.8	1.9	2.6	.5
Hallucinogens	3.8	2.4	-	-	5.1	3.0	-
Stimulants - Amphetamines	0.8	-	-	-	.8	-	1.0
Depressants	0.7	-	-	-	.8	.5	-
Other (includes synthetic narcotics)	4.6	2.8	-	20.5	4.0	2.0	4.3
All Drug Types	5.3	2.8	2.0	10.9	3.3	7.6	4.2

Source: South Carolina Department of Corrections

TENNESSEE

A. Illegal Acts - Statutory Maximums

1. Sale, Manufacture, Deliver, Possession With Intent

Following Drug Amounts	Class A Felony	Minimum=15/Maximum=60 / \$500,000
Heroin/Morphine	150 Grams	
Hydromorphone/LSD/Pentazocine	50 Grams	
Cocaine	300 Grams	
Phencyclidine	300 Grams	
Amphetamine	1000 Grams	
Peyote	10,000 Grams	
Other Schedule I or II	2000 Grams	
MJ.	Over 700 Lbs.	
Hash	Over 150 Lbs	

Following Drug Amounts	Class B Felony	Minimum=8/Maximum=30 / \$200,000
Heroin/Morphine	15 Grams	
Hydromorphone/LSD/Pentazocine	5 Grams	
Cocaine	26 Grams	
Phencyclidine	30 Grams	
Amphetamine	100 Grams	
Peyote	1,000 Grams	
Other Schedule I or II	200 Grams	
MJ.	Over 70 Lbs.	
Hash	Over 15 Lbs.	

Any Amount		
Schedule I	Class B Felony	Minimum=8/Maximum=30 / \$100,000
Cocaine	Class B Felony	Minimum=8/Maximum=30 / \$100,000
Other Schedule II	Class C Felony	Minimum=3/Maximum=15 / \$100,000
Schedule III	Class D Felony	Minimum=2/Maximum=12 / \$50,000
Schedule IV	Class D Felony	Minimum=2/Maximum=12 / \$50,000
Schedule V	Class E Felony	Minimum=1/Maximum=6 / \$5,000
MJ. 1/2 oz.-10 lbs.	Class E Felony	Minimum=1/Maximum=6 / \$5,000
MJ. 10-70 lbs.	Class D Felony	Minimum=2/Maximum=12 / \$50,000
Schedule VII	Class E Felony	Minimum=1/Maximum=6 / \$1,000

2. Sale to a Minor - Under 12

Schedule I-V One Felony Class Higher

3. Simple Possession or Casual Exchange

All Controlled Substances
(including small amt. of MJ.-under 1/2 oz.) Class A Misdemeanor Maximum=1 year/\$2,500

To Minor by someone at least 2 years older Felony punishable as sale offenses

Has 2 prior possession convictions Class E Felony Minimum=1/Maximum=6/\$3,000

B. Sentencing Provisions - Sentencing Guidelines

Criminal History Classifications

Especially Mitigated Offender	No Prior Record and Court finds mitigating but no enhancement factors
Standard Offender	Not in one of the other categories
Multiple Offender	Has 2-4 prior felonies within the same class as the current offense or a higher class or the next 2 lower classes <u>or</u> ; Current offense is a Class A or B Felony and has a prior Class A
Persistent Offender	Has 5 or more prior felonies within the same class as the current offense or a higher class or the next 2 lower classes <u>or</u> ; Current offense is a Class A or B Felony and has 2 prior Class A Felonies or 3 prior Class A or B Felonies
Career Offender	Current Offense = Class A, B or C and has 6 or more prior Class A, B, or C Felonies <u>or</u> ; Current Offense = Class A or B and has 3 or more Class A priors or 4 or more Class A or B Priors <u>or</u> ; Current Offense = Class D or E and has 6 or more prior felonies

Presumptive Sentence

- Judge must impose determinate sentence within range specified in cell. The presumptive sentence is the minimum in the range.
- If there are no enhancement or mitigating factors, then the court must impose the minimum sentence within the appropriate range.
- Should there be enhancement but no mitigating factors, then the court may set the sentence above the minimum in that range but still within the range.
- Should there be enhancement and mitigating factors, the court must start at the minimum sentence in the range, enhance the sentence within the range as appropriate for the enhancement factors, and then reduce the sentence within the range as appropriate for the mitigating factors.
- An especially mitigated or standard offender convicted of a Class C, D, or E Felony is presumed to be a favorable candidate for alternative sentencing options in the absence of contrary evidence.
- If minimum sentence is 1 year or less, but in the court's opinion, the offense merits a lesser sentence, the offender may be sentenced to a local jail or work house for a lesser period.
- If sentence pronounced is 8 years or less, offender can at discretion of court, be placed on probation unless the offense is a Class A Drug Felony or a Class B Drug Felony for which drug amount levels are specified.
- An offender placed on probation may be required to serve up to 1 year in a local jail or work house.

TENNESSEE SENTENCING GUIDELINES GRID
Sentencing Ranges
% of Sentence to Serve till Eligible for Release
Release Eligibility Dates

Felony Class	Mitigated	Standard Range I	Multiple Range II	Persistent Range III	Career
A 15-60 YRS R.E.D. % R.E.D. YRS	13.5 20% (2.7)	15-25 30% (4.5-7.5)	25-40 35% (8.8-14)	40-60 45% (18-27)	60 60% (36)
B 8-30 YRS R.E.D. % R.E.D. YRS	7.2 20% (1.4)	8-12 30% (2.4-3.6)	12-20 35% (4.2-7)	20-30 45% (9-13.5)	30 60% (18)
C 3-15 YRS R.E.D. % R.E.D. YRS	2.7 20% (.5)	3-6 30% (.9-1.8)	6-10 35% (2.1-3.5)	10-15 45% (4.5-6.8)	15 60% (9)
D 2-12 YRS R.E.D. % R.E.D. YRS	1.8 20% (.4)	2-4 30% (.6-1.2)	4-8 35% (1.4-2.8)	8-12 45% (3.6-5.4)	12 60% (7.2)
E 1-6 YRS R.E.D. % R.E.D. YRS	.9 20% (.2)	1-2 30% (.3-.6)	2-4 35% (.7-1.4)	4-6 45% (1.8-2.7)	6 60% (3.6)

 - Alternative Sentencing, including Probation, available if sentence 8 years or less

 - Alternative forms of punishment encouraged

R.E.D. % = Percent of sentence must serve before eligible for parole

R.E.D. YRS = Number of years must serve till eligible for parole

- Offender must serve designated percentage of sentence before eligible for parole release. Release eligibility date may be deferred for violations of rules of the Department of Corrections while imprisoned. After release, remainder of sentence is served on supervised probation. The District Attorney General may file a petition with the sentencing court requesting denial of parole based on threat to public safety as indicated by two prior person or felony drug sale convictions.

C. Sentencing Practices

1. Good Time

- 8 days per month
- Also can get 8 days per month Program Credit
- Good Time reduces time till release eligibility date, must serve 70% of time till release eligibility date

2. "Safety Valve"

- Special release program to control overcrowding
- Up to Governor to specify when it should be activated
- List compiled of those who would be eligible for parole with a 40 % reduction in sentence. They go before the parole board which determines whether they should be released. Not all who are eligible are released under the safety valve
 - 1991 Releases
 - 178 - Sentence Expired
 - 800 - No Safety Valve
 - 260 - Safety Valve Release
- Drug Offenders are among those most likely to get safety valve release
- Those given safety valve release in 1991 served an average of 24 % of their pronounced sentence

3. Time served till release for drug offenders by drug type and amount: no information available since those released till now were sentenced under the old drug statutes and pre guidelines.

4. Number and type of drug cases - see attached table

5. Imprisonment Rates - see attached table

**TENNESSEE
1990 Felony Drug Convictions***

Drug Type	Number of Cases	Percent
Marijuana	723	20.7
Cocaine	1611	46.1
Crack	765	21.9
Dilaudid	43	1.2
LSD	23	.7
PCP	2	.1
Heroin	5	.2
Quaaludes	4	.1
Morphine	22	.6
Diazepam	67	1.9
Methamphetamine	15	.4
Other	174	5.0
Unknown	36	1.0
TOTAL	3491	

Drug Type	Type of Sentence - Percent				
	Probation- No Jail	Probation and Jail	Local Jail Only	State Prison Only	Other
Marijuana	34.0	35.3	15.9	13.7	1.0
Cocaine	14.9	15.8	35.8	32.4	1.1
Crack	11.1	15.0	51.1	21.7	1.0
LSD	39.1	8.7	0	52.2	0
PCP	100.0	0	0	0	0
Heroin	0	0	0	100.0	0
Methamphetamine	28.5	35.7	14.3	21.4	0
Other	35.5	19.0	23.5	19.1	2.2
Unknown	41.6	8.3	0	50.0	0
TOTAL	20.5	19.8	33.2	25.4	1.1

*Information from an In-depth study conducted by Tennessee Sentencing Commission (weighted study, percentages may not add to 100% because of weighting and rounding)

SUMMARY OF SENTENCING POLICIES FOR DRUG OFFENDERS

TEXAS - INDETERMINATE SYSTEM WITH SOME MANDATORY MINIMUMS

Texas divides controlled substances into four penalty groups. Group 1 includes narcotics, opium, cocaine, LSD, methamphetamine, and PCP. Group 2 includes other hallucinogens and tetrahydrocannabinol (other than marijuana). Group 3 includes stimulants and barbiturates. Group 4 includes mixtures containing relatively smaller amounts of narcotics but which also include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer on the mixture valuable medicinal qualities other than those possessed by the narcotic drug alone. Marijuana is dealt with separately. The fines listed below are statutory maximums

Except for the habitual offender provision, prison is discretionary. This minimum is supposed to be pronounced if the offender is sentenced to prison but the offender is eligible to receive good time credit off of the sentence. Overall offenders, on average, serve about 17% of the pronounced sentence. Drug offenders probably serve somewhat less than the 17%.

SENTENCING PRACTICES

Information is not available on offenders receiving non-prison sentences. In 1991, 12,404 drug offenders entered prison. Approximately 55% of offenders who receive prison sentences commit possession offenses. The average sentence pronounced for drug offenders in 1991 was 8.3 years. Assuming that offenders will serve 17%, the average prison sentence for drug offenders becomes 1.4 years. (Source: Texas Criminal Justice Policy Council)

STATUTORY PROVISIONS

Manufacture or Delivery of Substance in Penalty Group 1 (e.g., narcotics, opium, cocaine, LSD, methamphetamine, and PCP). (TX Health and Safety Code, § 481.112)

- | | |
|--|-----------------------|
| 1) Less than 28 Grams | 5-99 years/\$20,000 |
| 2) Greater than or equal to 28 grams, less than 200 grams | 5-99 years/\$50,000 |
| 3) Greater than or equal to 200 grams, less than 400 grams | 10-99 years/\$100,000 |
| 4) 400 grams or more | 15-99 years/\$100,000 |

Manufacture or Delivery of Substance in Penalty Group 2 (e.g., other hallucinogens and tetrahydrocannabinol (other than marijuana). TX Health and Safety Code, § 481.113

- | | |
|---|---------------------------------------|
| 1) Less than 28 Grams | 2-20 years/\$10,000 (Felony 2nd Deg.) |
| 2) Greater than or equal to 28 grams, less than 400 grams | 5-99 years/\$50,000 |
| 3) 400 grams or more | 10-99 years/\$100,000 |

Manufacture or Delivery of Substance in Penalty Group 3 or 4 (e.g., stimulants and barbiturates). TX Health and Safety Code, § 481.114

- | | |
|--|---|
| 1) Less than 200 Grams | 2-10 years/\$10,000 or up to 1 year in community corrections facility (Felony 3rd Deg.) |
| 2) Greater than or equal to 200 grams, less than 400 grams | 5-99 years/\$50,000 |
| 3) 400 grams or more | 10-99 years/\$100,000 |

Possession of Substance in Penalty Group 1 (e.g., narcotics, opium, cocaine, LSD, methamphetamine, and PCP). (TX Health and Safety Code, § 481.115)

Less than 28 Grams	2-20 years/\$10,000 (Felony 2nd Deg.)
Greater than or equal to 28 grams, less than 400 grams	5-99 years/\$50,000
400 grams or more	10-99 years/\$100,000

Possession of Substance in Penalty Group 2 (e.g., other hallucinogens and tetrahydrocannabinol (other than marijuana). TX Health and Safety Code, § 481.116)

Less than 200 Grams	2-10 years/\$10,000 or up to 1 year in community corrections facility (Felony 3rd Deg.)
Greater than or equal to 200 grams, less than 400 grams	5-99 years/\$50,000
400 grams or more	10-99 years/\$100,000

Possession of Substance in Penalty Group 3 (e.g., stimulants and barbiturates). TX Health and Safety Code, § 481.117

Less than 200 Grams	Class A Misdemeanor (Max. 1 year/\$3,000)
Greater than or equal to 200 grams, less than 400 grams	5-99 years/\$50,000
400 grams or more	10-99 years/\$100,000

Possession of Substance in Penalty Group 4 (e.g., mixtures containing relative smaller amounts of narcotics but which also include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer on the mixture valuable medicinal qualities other than those possessed by the narcotic drug alone). TX Health and Safety Code, § 481.118

Less than 200 Grams	Class B Misdemeanor (Max. 180 days/\$1,500)
Greater than or equal to 200 grams, less than 400 grams	5-99 years/\$50,000
400 grams or more	10-99 years/\$100,000

Substance Not in any Penalty Group (excluding marijuana). TX Health and Safety Code § 481.119

Sale	Class A Misdemeanor (Max. 1 year/\$3,000)
Possession	Class B Misdemeanor (Max. 180 days/\$1,500)

Manufacture or Delivery of Marijuana. TX Health and Safety Code, § 481.120

1/4 ounce or less for no consideration	Class B Misdemeanor (Max. 180 days/\$1,500)
1/4 ounce or less for consideration	Class A Misdemeanor (Max. 1 year/\$3,000)
More than 1/4 ounce but less than 4 ounces	2-10 years/\$10,000 or up to 1 year in community corrections facility (Felony 3rd Deg.)
More than 4 ounces but less than 5 pounds	2-20 years/\$10,000 (Felony 2nd Deg.)
More than 5 pounds but less than 50 pounds	5-99 years/\$20,000 (Felony 1st Deg.)
More than 50 pounds but less than 200	5-99 years/\$50,000
More than 200 pounds but less than 2,000	10-99 years/\$100,000
More than 2,000 pounds	15-99 years/\$100,000

Possession of Marijuana. TX Health and Safety Code, § 481.121

2 ounces or less	Class B Misdemeanor (Max. 180 days/\$1,500)
More than 2 ounces by less than 4 ounces	Class A Misdemeanor (Max. 1 year/\$3,000)
More than 4 ounces but less than 5 pounds	2-10 years/\$10,000 or up to 1 year in community corrections facility (Felony 3rd Deg.)
More than 5 pounds but less than 50 pounds	2-20 years/\$10,000 (Felony 2nd Deg.)
More than 50 pounds but less than 200	5-99 years/\$50,000
More than 200 pounds but less than 2,000	10-99 years/\$100,000
More than 2,000 pounds	15-99 years/\$100,000

Delivery of a Controlled Substance or Marijuana to a Minor. TX Health and Safety Code, § 481.122

Delivery to someone who is 17 or younger or an elementary/secondary student, or delivery to someone that the offender knows intends to deliver the controlled substance or marijuana to someone under 17 (or an elementary/secondary student).	5-99 year/\$20,00 (Felony 1st Deg.)
--	-------------------------------------

Provision does not apply if offender under 21 and distributes less than 1/4 ounce of marijuana for no consideration.

Repeat Offenders. TX Health and Safety Code § 481.107

For offenses above the minimum threshold, there are mandatory minimum prison terms ranging from 10 to 20 years, depending on the amount of drug possessed or sold. Texas also has a more general habitual felony offender law. Under this provision an offense moves up a degree if the offender has a prior felony. If an offender is convicted of a felony and has two prior felony offenses there is a life sentence.

SUMMARY OF SENTENCING POLICIES FOR DRUG OFFENDERS

WASHINGTON STATE - SENTENCING GUIDELINES SYSTEM 1991

Washington has a sentencing guideline system somewhat similar to that in Minnesota. The presumptive sentence is determined using a grid which takes into account the offense seriousness level and offender score. The offender score is a function of the offender's criminal history and the number of current offenses for which the offender is being sentenced. The court may depart from the presumptive sentence.

STATUTORY PROVISIONS

Primary Drug Statute: 69.50.401

- (a) **Manufacture, deliver or possess with the intent to manufacture or deliver a controlled substance. (See 69.50.410 regarding selling Schedule I controlled substances for profit.)**
- | | | |
|-------|----------------------------|--|
| (i) | Schedule I or II Narcotics | |
| | Less than 2 kilograms | 10 years/\$25,000 |
| | 2 or more kilograms | 10 years/\$100,00 for first 2 kilograms
and up to \$50,000 for each additional kilogram |
| (ii) | Other Schedule I, II, III | 5 yrs/\$10,000 |
| (iii) | Schedule IV | 5 yrs/\$10,000 |
| (iv) | Schedule V | 5 yrs/\$10,000 |
- (b) **Create, deliver or possess a counterfeit substance**
- | | | |
|-------|----------------------------|-------------------|
| (i) | Schedule I or II Narcotics | 10 years/\$25,000 |
| (ii) | Other Schedule I, II, III | 5 yrs/\$10,000 |
| (iii) | Schedule IV | 5 yrs/\$10,000 |
| (iv) | Schedule V | 5 yrs/\$10,000 |
- (c) **Negotiate the distribution of a controlled substance but deliver another substance**
- 5 years/\$10,000
- (d) **Possession of a controlled substance**
- 5 years/\$10,000
- (e) **Possession of 40 grams or less of marijuana**
- Misdemeanor (Max. 90 days/Max. Fine \$1,000)
- (f) **Involve a person under the age of 18 in the manufacture, sale or delivering of a controlled substance.**
- Class C felony (Max. 5 years/Max. Fine \$10,000)

Forged Prescriptions 69.50.403

2 yrs/\$2,000

Distribution to persons under the age of 18: 69.50.406

(Statutory maximum is twice that which would otherwise apply)

- (a) Distribute Schedule I or II narcotic to minor
 - Less than 2 kilograms 20 years/\$25,000
 - 2 or more kilograms 20 years/\$100,00 for first 2 kilograms and up to \$50,000 for each additional kilogram
- (b) Other Schedule I, II, III
Schedule IV, V -- to a person under
18 and at least 3 years the offender's junior 10 yrs/\$10,000

(When drugs have been sold or transferred to a minor, the parents/guardians have cause of action against the person(s) distributing the drugs so as to recover damages, including cost of treatment.)

Second or Subsequent 69.50.408

Punishable by up to twice the maximum otherwise allowed. Does not apply to simple possession.

Selling for Profit (Schedule I/Heroin) 69.50.410

- (1) Schedule I
 - First offense Up to 5 years
 - Second offense Mandatory 5 years
- (3) Heroin
 - First offense Mandatory 2 years
 - Second offense Mandatory 10 years

Amount of fine shall be calculated to at least eliminate any and all proceeds or profits directly or indirectly gained by such person as a result of sales of controlled substances.

Controlled Substance Homicide 6.50.415

Delivering a controlled substance which subsequently causes death

Class B Felony (Max. 10 years/Max. Fine \$20,000)

Additional Fines 69.50.430

Those who violate these controlled substance provisions shall be fined \$1,000 in addition to any other fine

or penalty, unless the court finds the person to be indigent. For a second or subsequent offense, the mandatory fine is \$2,000.

School bus, school grounds, school bus stop (or within 1,000 feet -- it is an affirmative defense if the conduct took place entirely within a private residence and no minors were present and it was not a Sched. I/Heroin sold for profit

Manufacture, sale, delivering or possession with intent: Up to twice the fine and imprisonment authorized by 69.50.401

**WASHINGTON GUIDELINES OFFENSE SERIOUSNESS RANKINGS FOR FELONY DRUG OFFENSES
AND PRESUMPTIVE SENTENCE AT OFFENDER SCORE ZERO**

Level	Offense Description	Pres. Sentence Based on Offender Score	
		Score = 0	Score = 9+
10	Distribute a Sched. I or II narcotic to a minor	Prison: 51-68 months	Prison: 149-198 months
9	Dist. other Sched. I- V cont. substances to a minor at least 3 years younger than offender	Prison: 31-41 months	Prison: 129-171 months
8	Manufacture/Deliver or Possess with Intent Heroin Cocaine Methamphetamine	Prison: 21-27 months	Prison: 108-144 months
7	Involve a person under the age of 18 if mfg., sale or delivery of a cont. subst.	Prison: 15-20 months	Prison: 87-116 months
6	Manufacture/Deliver or Possess with Intent Other Sched I or II Narcotic	Prison: 12+ -14 mos.	Prison: 77-102 months
4	Manufacture/Deliver or Possess with Intent Other (Non-Marijuana)	Nonprison: 3-9 months	Prison: 63-84 months
3	Manufacture/Deliver or Possess with Intent Marijuana Negotiate the distribution of a controlled substance but deliver another substance.	Nonprison: 1-3 months	Prison: 51-68 months
2	Create/Deliver/Possess counterfeit substance Possession of: Heroin Sched. I or II narcotic PCP	Nonprison: 0-90 days	Prison: 43-57 months
1	Possession of Other Controlled Substances Forged Prescriptions	Nonprison: 0-60 days	Prison: 22-29 months

Sentencing Grid For Crimes Sentenced During Fiscal Year 1991

The following table shows the low and high ends of the fiscal year 1991 presumptive sentencing range (in months) for each combination of offense seriousness level and offender score. The table reflects major revisions in the table from the previous year: the grid was expanded to 15 seriousness levels; new levels XI and XII were added which have no direct relationship to old levels; and old levels XII, XIII, XIV became the new levels XIII, XIV and XV. The seriousness levels of all ranked felonies is given on page 45. If an offense does not appear on that list, it is an unranked felony with a presumptive sentence shown in the last row of this table. The number of offenders in each of the following cells is shown in the table on page 11.

The offender score is a function of the offender's criminal history and the number of current offenses for which the offender is being sentenced. The offender score is more than just a single count of prior and other current offenses. Complete scoring rules are given in RCW 9.94A.360.

Sentences of over one year are served at a State prison or other correctional facility. Sentences of one year or less are served at a county jail or other facility. The shaded area in the table below indicates offenses with a presumptive nonprison sentence.

The presumptive sentences below may be modified to account for attempts (75% of the tabled range), deadly weapon usage (12 to 24 months added for certain offenses), protected zone enhancements (24 months added for certain drug offenses committed in certain areas), and certain drug offenses committed in a correctional facility (12 to 18 months added).

	0	1	2	3	4	5	6	7	8	9 or more
XV										
XIV	240 - 320	250 - 333	261 - 347	271 - 361	281 - 374	291 - 388	312 - 416	338 - 450	370 - 493	411 - 548
XIII	123 - 164	134 - 178	144 - 192	154 - 205	165 - 219	175 - 233	195 - 260	216 - 288	257 - 342	298 - 397
XII	93 - 123	102 - 136	111 - 147	120 - 160	129 - 171	138 - 184	162 - 216	178 - 236	209 - 277	240 - 318
XI	78 - 102	86 - 114	95 - 125	102 - 136	111 - 147	120 - 158	146 - 194	159 - 211	185 - 245	210 - 280
X	51 - 68	57 - 75	62 - 82	67 - 89	72 - 96	77 - 102	98 - 130	108 - 144	129 - 171	149 - 198
IX	31 - 41	36 - 48	41 - 54	46 - 61	51 - 68	57 - 75	77 - 102	87 - 116	108 - 144	129 - 171
VIII	21 - 27	26 - 34	31 - 41	36 - 48	41 - 54	46 - 61	67 - 89	77 - 102	87 - 116	108 - 144
VII	15 - 20	21 - 27	26 - 34	31 - 41	36 - 48	41 - 54	57 - 75	67 - 89	77 - 102	87 - 116
VI	12+ - 14	15 - 20	21 - 27	26 - 34	31 - 41	36 - 48	46 - 61	57 - 75	67 - 89	77 - 102
V	6 - 12	12+ - 14	13 - 17	15 - 20	22 - 29	33 - 43	41 - 54	51 - 68	62 - 82	72 - 96
IV	3 - 9	6 - 12	12+ - 14	13 - 17	15 - 20	22 - 29	33 - 43	43 - 57	53 - 70	63 - 84
III	1 - 3	3 - 8	4 - 12	5 - 12	12+ - 16	17 - 22	22 - 29	33 - 43	43 - 57	51 - 68
II	0 - 90 days	2 - 5	3 - 9	4 - 12	12+ - 14	14 - 18	17 - 22	22 - 29	33 - 43	43 - 57
I	0 - 60 days	0 - 90 days	2 - 5	2 - 6	3 - 6	4 - 12	12+ - 14	14 - 18	17 - 22	22 - 29
UNRANKED	0 - 12	0 - 12	0 - 12	0 - 12	0 - 12	0 - 12	0 - 12	0 - 12	0 - 12	0 - 12

**WASHINGTON: SENTENCING PRACTICES FOR DRUG OFFENDERS
 IMPRISONMENT RATES FOR DRUG OFFENDERS
 (Offenders Sentenced July 1, 1990 - June 30, 1991)**

Offense Title/Description	Prison	Non-Prison	Total
Mfg./Del./Possess w-Intent			
Heroin or Cocaine	94.3% (1,170)	5.7% (71)	100% (1,241)
Heroin or Cocaine in a School Zone	96.8% (61)	3.2% (2)	100% (63)
Sched I/II Narcotic	84.7% (111)	15.3% (20)	100% (111)
Methamphetamine	64.6% (42)	35.4% (23)	100% (65)
Meth. in a School Zone	100% (1)	-	100% (1)
Other - Except MJ	31.4% (22)	68.6% (48)	100% (70)
Marijuana	6.1% (38)	93.9% (580)	100% (618)
Marijuana in a School Zone	50% (6)	50% (6)	100% (12)
Imitation Cont. Subst.	-	100% (20)	100% (20)
Possession			
Sched. I or II	9.8% (210)	90.2% (1,925)	100% (2,135)
PCP	-	100% (1)	100% (1)
Other - Except PCP	1.2% (6)	98.8% (475)	100% (481)

Source: Washington Sentencing Guidelines Commission. *A Statistical Summary of Adult Felony Sentences, Fiscal Year 1991*

**WASHINGTON: SENTENCING PRACTICES FOR DRUG OFFENDERS
 AVERAGE PRISON/NON-PRISON DURATIONS (IN MONTHS)
 (Offenders Sentenced July 1, 1990 - June 30, 1991)**

Offense Title/Description	Durations (in months)	
	Prison	Non-Prison
Mfg./Del./Possess w-Intent		
Heroin or Cocaine	35	8
Heroin or Cocaine in a School Zone	62	6
Sched I/II Narcotic	19	8
Methamphetamine	32	3
Meth. in a School Zone	45	-
Other - Except MJ	20	4
Marijuana	21	2
Marijuana in a School Zone	29	2
Imitation Cont. Subst.	-	3
Possession		
Sched. I or II	17	2
PCP	-	Less than 1
Other - Except PCP	31	1

Source: Washington Sentencing Guidelines Commission. *A Statistical Summary of Adult Felony Sentences, Fiscal Year 1991*

WISCONSIN

A. Illegal Acts - Statutory Maximums

1. Sale, Manufacture, Deliver, Possession with Intent

Schedule I or II Narcotic	15 years / \$25,000
Other Schedule II, II or III	5 Years / \$15,000
Schedule IV	3 Years / \$10,000
Schedule V	1 Year / \$5,000
Cocaine	
Less than 10 Grams	5 years / Min=\$1,000/Max=\$200,000
10 - 25 Grams	Min=6 months/Max=5 years / Min=\$1,000/Max=\$250,000
25 - 100 Grams	Min=1 year/Max=15 years / Min=\$1,000/Max=\$500,000
100 - 400 Grams	Min=3 years/Max=15 years / Min=\$1,000/Max=\$500,000
400 - 800 Grams	Min=5 years/Max=15 years / Min=\$1,000/Max=\$500,000
Over 800 Grams	Min=10 years/Max=30 years / Min=\$25,000/ Max=\$1,000,000
Crack	
Less than 3 Grams	Min=1 year/Max=15 years / ?
3-10 Grams	Min=3 years/Max=15 years / ?
10-40 Grams	Min=5 years/Max=30 years / ?
Over 40 Grams	Min=10 years/Max=30 years / ?
Heroin	
Less than 3 Grams	15 years / Min=\$1,000/Max=\$200,000
3 - 10 Grams	Min=6 months/Max=15 years / Min=\$1,000/Max=\$250,000
10 - 50 Grams	Min=1 year/Max=15 years / Min=\$1,000/Max=\$500,000
50 - 200 Grams	Min=3 years/Max=15 years / Min=\$1,000/Max=\$500,000
200 - 400 Grams	Min=5 years/Max=15 years / Min=\$1,000/Max=\$500,000
Over 400 Grams	Min=10 years/Max=30 years / Min=\$1,000/ Max=\$1,000,000
Amphetamine/PCP	
Less than 3 Grams	5 years / Min=\$1,000/Max=\$200,000
3 - 10 Grams	Min=6 months/Max=5 years / Min=\$1,000/Max=\$250,000
10 - 50 Grams	Min=1 year/Max=15 years / Min=\$1,000/Max=\$500,000
50 - 200 Grams	Min=3 years/Max=15 years / Min=\$1,000/Max=\$500,000
200 - 400 Grams	Min=5 years/Max=15 years / Min=\$1,000/Max=\$500,000
Over 400 Grams	Min=10 years/Max=30 years / Min=\$1,000/ Max=\$1,000,000
LSD	
Less than 1 Gram	5 years / Min=\$1,000/Max=\$200,000
1 - 5 Grams	Min=6 months/Max=5 years / Min=\$1,000/Max=\$250,000
Over 5 Grams	Min=1 year/Max=15 years / Min=\$1,000/Max=\$500,000
Psilocin/Psilocybin (Mushrooms)	
Less than 100 Grams	5 years / Min=\$1,000/Max=\$200,000
100 - 500 Grams	Min=6 months/Max=5 years / Min=\$1,000/Max=\$250,000
Over 500 Grams	Min=1 year/Max=15 years / Min=\$1,000/Max=\$500,000

Marijuana		
Less than 500 Grams	3 years	/ Min=\$500/Max=\$25,000
500 -2,500 Grams	Min=3 months/Max=5 years	/ Min=\$1,000/Max=\$50,000
Over 2,500 Grams	Min=1 year/Max=10 years	/ Min=\$1,000/Max=\$100,000

2. Create, Deliver, Possess with Intent a Counterfeit Substance

Schedule I or II Narcotic	15 Years / \$25,000
Other Schedule I, II, or III	5 Years / \$15,000
Schedule IV	3 Years / \$10,000
Schedule V	1 Year / \$5,000

3. Possession, Attempt to Possess

Schedule I or II Narcotic	
First Offense	1 Year / \$5,000
Second or Subsequent	2 Years / \$10,000
Heroin	1 Year / \$5,000
Other Narcotic	Misd.
Cocaine	1 Year / Min=\$250/ Max=\$5,000
LSD/PCP/Amphet/Psilocybin	1 Year / \$5,000
Marijuana	6 Months / \$1,000

4. Sale to Minors - (by someone 18 or older to someone at least 3 years younger)
 Statutory Maximums Doubled, Maximum Fines Doubled for Heroin, Cocaine, PCP, LSD, Amphetamine, Psilocybin, Marijuana

5. Distribution in School, Community-Youth Center, and Park-Pool Zones

Cocaine/Heroin/PCP/LSD/Amphet/ Psilocybin/Marijuana	Statutory Maximum increased by 5 years
Schedule I or II (including above)	"The Court shall sentence the person to at least 3 years in prison, but otherwise the penalties for the crime apply. The Court shall not place the person on probation. The person is not eligible for parole until he or she has served at least 3 years, with no modification of the calculation under 302.11(1)."
Marijuana - Less than 25 Grams	"The Court shall sentence the person to at least 1 year in prison, but otherwise the penalties for the crime apply. The Court shall not place the person on probation. The person is not eligible for parole until he or she has served at least 1 year, with no modification of the calculation under 302.11(1)."

6. Possession/Attempted Possession in School, Community-Youth Center, and Park-Pool Zones

Schedule I or II - The Court shall impose both of the following:

- 100 hours of Community Service
- Revocation of driver's License for at least 6 months but not more than 2 years

7. Delivery Simulated Controlled Substance 1 Year / \$5,000

B. Other Sentencing Provisions

1. Drug Abuse Program Improvement Surcharge - 50% of any fine imposed, also to be imposed

2. Conditional Discharge for Possession or Attempted Possession as First Offense

Probation before adjudication possible if not previously convicted of any drug offense

3. Treatment Option

- When convicted of Possession, Court may allow offender to enter treatment before sentencing
- If successfully complete treatment, offender may be released from sentence

4. Second or Subsequent Offenses

- Statutory Maximums and Maximum Fines Doubled
- Applicable Minimum periods of imprisonment and fines are doubled

C. Sentencing Guidelines and Practices

1. Wisconsin has Sentencing Guidelines, but they have been suspended for drug offenses because drug statutes have been amended so often in recent years. The Commission is currently doing an in-depth drug study, information will be available in late summer or early fall, and the Guidelines for drug offenses will then be revamped. No information on sentencing practices is currently available

2. Sentencing

- When Statute specifies a minimum term of imprisonment (as some of the drug statutes that specify punishments by drug type and amount) incarceration is mandatory but is not necessarily served in state prison, it can be served in a county jail. Release practices described below still apply so there is no mandatory minimum time offenders must serve.

- Wisconsin has a parole system. Judge pronounces a specific sentence up to the statutory maximum. If no minimum term specified, may place offender on probation. If minimum specified, must pronounce at least the minimum.

3. Release Practices

- "Mandatory Release" - after serve 2/3 of sentence, unless violate prison rules. (similar to good time)

- Parole - Eligible after serve one third of sentence

- Drug Offenders released in 1990
 - 43% were paroled
 - 44% were released at mandatory release date
 - Rest served their full sentence

4. New Alternative Program - "Intensive Sanctions"

- Designed as an alternative to incarceration to relieve prison overcrowding for non-violent offenders
- Program has a variety of phases and offenders may be placed under a variety of types of supervision including one of the state prisons, a local jail, a half-way house, and under house arrest
- Offenders can be placed in the program by either the Court or through Department of Corrections administrative transfer
 - Court can place offender in program at time of sentencing or as an alternative for probation or parole revocation. Some drug offenders may enter the program this way.
 - Department of Corrections current position is that drug sellers will not be eligible for the program, those convicted of drug possession offenses will be eligible
- Program begins July 1, 1992