

# Danger and Opportunity: Making Public Safety Job One in Pennsylvania's Indeterminate Sentencing System



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### **Background:**

- **Pennsylvania's Sentencing Commission created in 1978.**
- **Purpose of sentencing guidelines to eliminate unwarranted disparity in sentencing.**
- **Prison crowding/capacity not a concern.**
- **Initial version of sentencing guidelines rejected by legislature as being too lenient.**



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### **Pennsylvania's Sentencing System:**

- **Pennsylvania has an indeterminate sentencing system whereby courts impose a minimum and maximum term.**
- **Minimum term cannot exceed  $\frac{1}{2}$  maximum term**
- **Minimum term establishes the earliest date at which an offender is eligible for parole consideration.**
- **Maximum term defines the longest period of confinement and/or parole supervision.**



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### **Pennsylvania's Sentencing Guidelines:**

- **Advisory guidelines address disposition (confinement or sentencing alternatives) and duration (minimum period of confinement)**
- **Primary purpose of guidelines is retribution, but also provide for consideration of deterrence, incapacitation, rehabilitation and restoration**
- **Conviction offense main factor under guidelines; prior convictions and possession/use of deadly weapon also considered**



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### **Pennsylvania's Parole Decision-making:**

- **No right to parole; primary purpose of parole is public safety**
- **Parole authority split between court (maximum less than two years) and PA Board of Probation & Parole (maximum of two years or more)**
- **Prior to 2008, court authorized to parole at any time, notwithstanding minimum term**
- **PBPP prohibited from paroling until minimum term served; internal decisional instrument (LSI-R, Static 99; weighted & un-weighted factors)**



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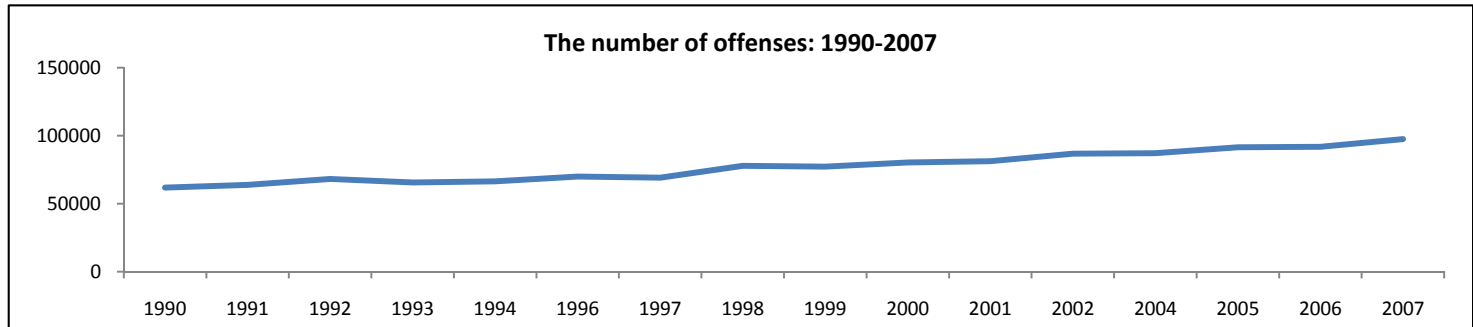
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### **Pennsylvania's Prison System:**

- **County jails (n=@34K) may be used to house offenders with maximum of less than five years; state prisons (n=@51K) may be used to house offenders with maximum of two years or greater**
- **1990: 60% of sentences included incarceration; 2000: 46% of sentences included incarceration; steady at 44% since 2006**
- **Pennsylvania's prison population increased annually between 2000 and 2007 by an average of 3.2%.**
- **Between 2007 and 2008, the change was 9.1%, the highest in the nation and well above the national average of 0.8%.**



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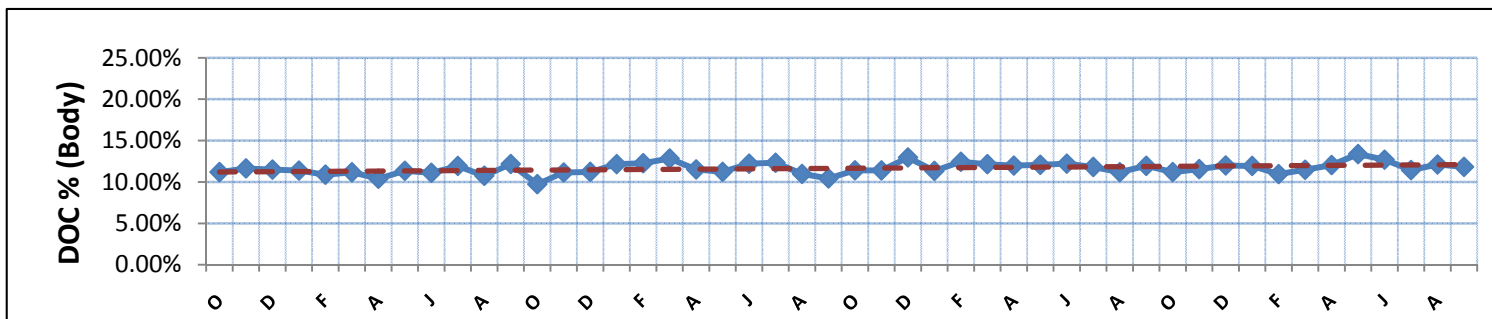
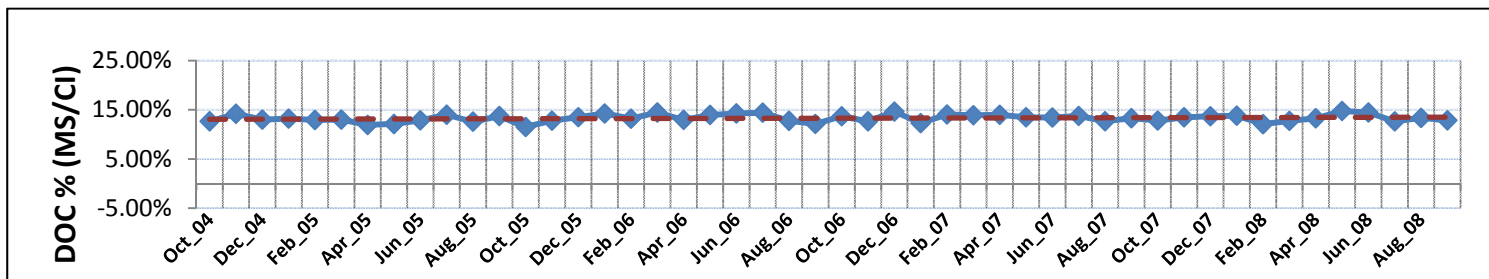
In 1990, 84,559 sentences were reported to the Commission, representing 62,519 separate criminal incidents.

In 2007, 141,145 sentences were reported to the Commission, representing 97,483 separate criminal incidents.

Represents an average annual increase of 3,329 criminal incidents (17 year increase of 56,586 criminal incidents)



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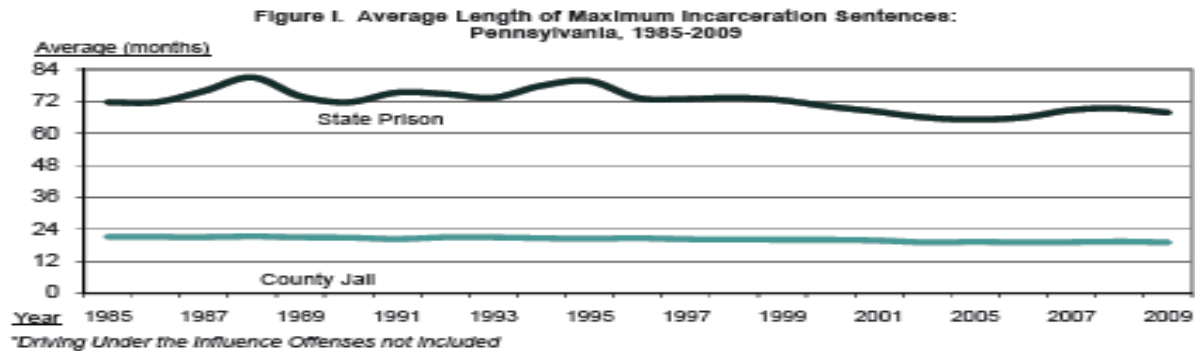
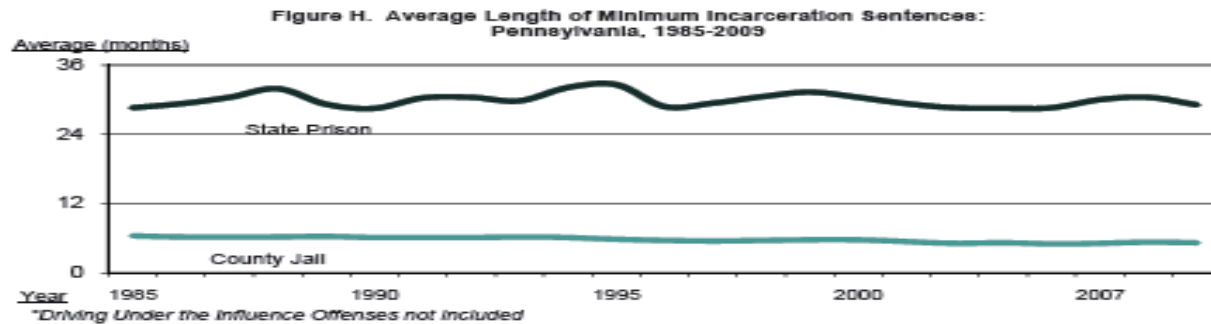


**DOC admissions represent approximately 14% of criminal incidents reported to the Commission, and approximately 12% of the individuals sentenced (2004-2008)**

**An average increase of 3,329 criminal incidents reported each year translates to 466 additional criminal incidents sentenced to DOC**



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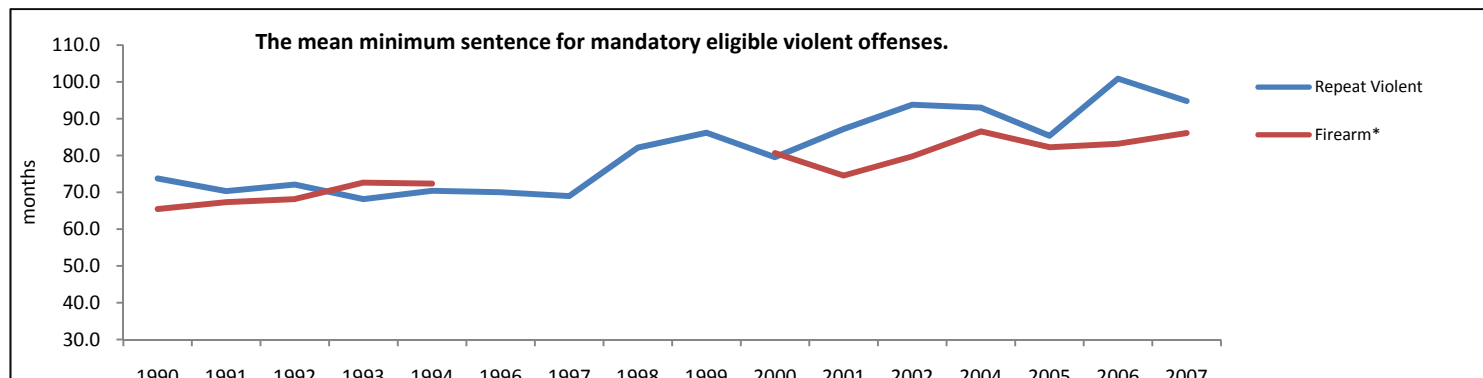
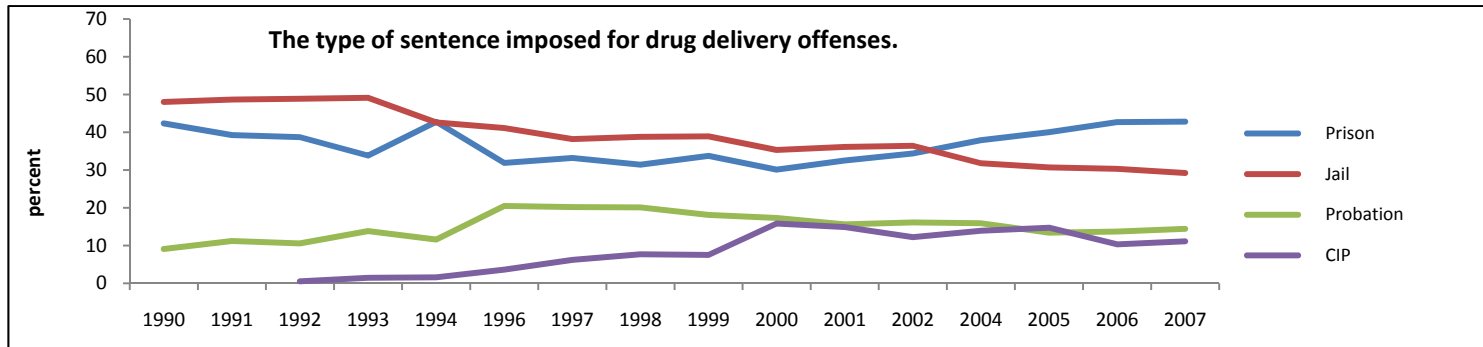
**Average minimum sentence (DOC)**  
1990 = 28.5 mo; 2009 = 29.1 mo

**Average maximum sentence (DOC)**  
1990 = 71.7 mo; 2009 = 67.8 mo

**More less serious offenders with shorter sentences;  
fewer more serious offenders with longer sentences**



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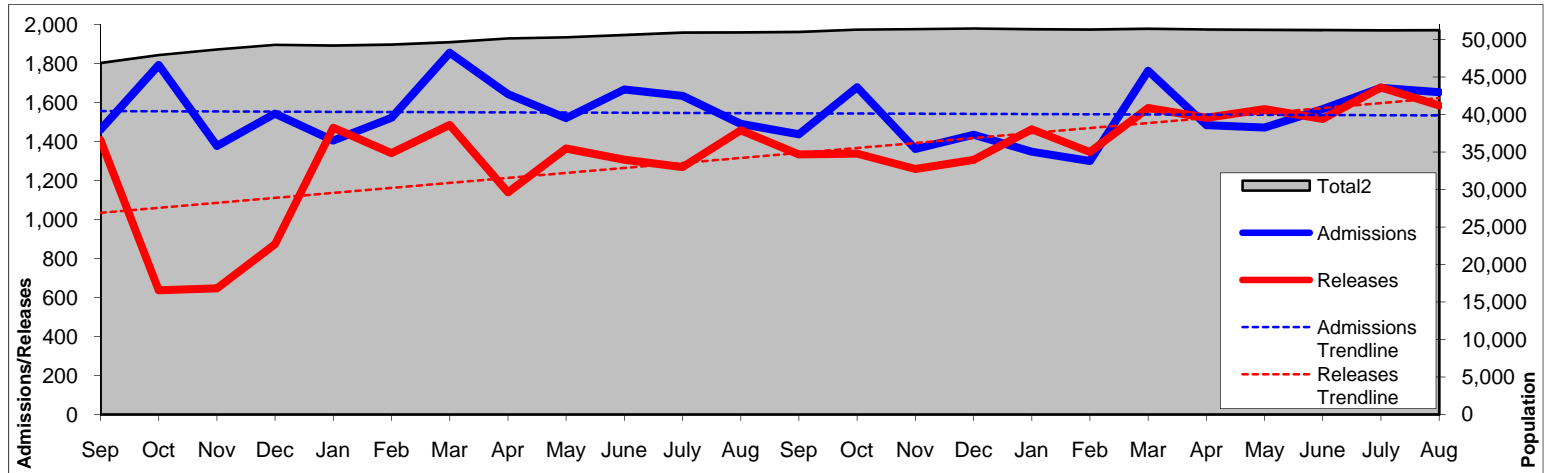


## Impact of guidelines and mandatory minimum sentencing provisions

- Replacement of jail with CIP for targeted drug offenders
- Increases in sentences for targeted violent offenders



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## Parole decision-making (DOC/PBPP 2008-2010)

- Parole moratorium (September/October 2008)
- Admissions (2010 avg) = 1668 /month  
(sentences = 71.5%; parole violations = 28.5%)
- Releases (2010 avg) = 1674/month  
(paroles = 68%; max out = 22%; other = 10%)



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**In Pennsylvania, a perfect storm of events has created a crisis in the corrections system:**

- **High profile murders of police officers by parolees**
- **Record correctional growth and prison overcrowding**
  - **DOC population (Aug 2010) = 51,251**
    - **SCI = 46,558; CCC = 718; Contract = 1,149**
    - **Michigan = 1,158; Virginia = 1026; Counties = 642**
  - **PBPP population (Aug 2010) = 33,062**
    - **Reporting = 26,694; Detainers, etc. = 6,368**
    - **Parole rate (12 mo) = 59%**
- **FY10/11 appropriations (DOC = \$1.86B)(PBPP = \$120.5 M):**



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***“The Chinese use two brush strokes to write the word ‘crisis’ one brush stroke stands for danger; the other for opportunity. In a crisis, be aware of the danger – but recognize the opportunity.”***

***(attributed to John F. Kennedy)***

- **Pennsylvania’s adopted legislation in 2008 to provide an opportunity for the creation of a more sustainable course with a greater focus on public safety.**
- **Additional legislation is under consideration in 2010 to more formally require consideration of risk at sentencing**



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### **Pennsylvania's 2008 Sentencing & Corrections Reforms:**

- **Assign to a single commission in an indeterminate sentencing system the responsibility for developing both sentencing and parole guidelines**
- **Promotes coordinated sentencing and parole policies that may provide 1) bounded discretion, 2) limited retribution, 3) risk-based sentencing and release decisions**
- **Separates policy development from individual application (public process, insulated decisions)**
- **Enhances information, transparency, predictability and resource utilization**



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### **Pennsylvania's 2008 Sentencing & Corrections Reforms:**

- **Development of the following guidelines by Commission:**
  - Resentencing (following revocation of probation, county & state intermediate punishment)**
  - County parole and re-parole**
  - State parole and re-parole**
  - Re-commitment ranges (following revocation of state parole)**
  
- **Data collection, analysis & dissemination expanded to include:**
  - Modification of sentences**
  - Sentences imposed following revocation or re-sentencing**
  - Sentences imposed following appeal and remand for re-sentencing**
  - County parole decisions and time-served**
  - County re-entry programs and plans**
  - State parole decisions**



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### **Pennsylvania's 2008 Reforms... Sentencing guidelines:**

- **Shift from modified deserts model to modified predictive model.**
- **Retribution will continue to inform boundaries of sentencing guidelines**
  - **Seriousness of current crimes**
  - **Seriousness of prior record**
- **Shift consideration of static risk factors from parole to sentencing; incorporate into sentencing guidelines as aggravating/mitigating factors**
- **Dynamic risk/needs used to inform sentencing decision**



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### **Pennsylvania's 2008 Reforms... Sentencing guidelines:**

- **Analysis of current sentencing and time-served patterns**
  - **OGS assignments & sub-categorizations**
  - **PRS (retributive focus/base)**
  - **County data collection (time-served, parole, re-sentencing)**
  
- **Identification of static risk factors for consideration at sentencing/shift from parole**
  
- **Adjustment of sentencing recommendations to promote consideration of risk**
  - **High risk violent offenders (incapacitation)**
  - **Low risk offenders (dispositional or durational departures)**



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### **Pennsylvania's 2008 Reforms... Parole guidelines:**

- **Retain predictive (utilitarian) model; balance concerns of public safety and correctional resources**
- **Development of a dynamic risk assessment tool to be used in parole release decision-making.**
- **Reduced emphasis on static factors known at sentencing.**
- **Continued focus on institutional behavior; dynamic factors (risk); programming and services to address needs; institutional behavior; re-entry/community supervision**



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### **Pennsylvania's 2008 Reforms... Parole guidelines:**

- **Encourage inmates and parolees to abide by conditions and rules;**
- **Encourage inmates and parolees to participate in programming that has been demonstrated to be effective in reducing recidivism, including appropriate drug and alcohol treatment programs;**
- **Prioritize the use of incarceration, rehabilitation and other criminal justice resources for offenders posing the greatest risk to public safety;**
- **Take into account available research related to risk of recidivism, minimizing the threat posed to public safety and factors maximizing success of re-entry.**



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### **Pennsylvania's 2010 Sentencing Legislation:**

- **SB1161, PN2241:**
  - **Commission to adopt empirically-based risk assessment instrument; incorporate into sentencing guidelines**
  - **Determine appropriate candidates for alternative sentences; target incapacitation of serious and violent offenders**
  - **Identify those who require more thorough assessment**
  
- **Other amendments:**
  - **Commission to provide sentencing enhancement for those determined to be sexually violent predators (SVP)**
  - **Permit minimum term of 85% of maximum term for those convicted of sexually violent offenses or murder 3; mandate consecutive term of probation (2 years)**



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