An Enhanced Case Processing Analysis
of
Drug Selling Arrestees

An Addendum to
The Minimum Mandatory Drug Sentencing Reform Act Study
House Bill 181

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An Addendum to HB 181 – The Minimum Mandatory Drug Sentencing Reform Act Study

As a part of the report *An Analysis of the Minimum Mandatory Drug Sentencing Reform Act – House Bill 181, May 31, 2005*, an analysis of the illicit drug sales arrest outcomes had been prepared (page 5). This report was prepared in response to legislative requests. The intent was to provide contextual information regarding the types of charges filed against persons arrested for selling illicit drugs, the judicial disposition of these charges and the types of sentences provided for these charges. Key questions being asked were what kind of sentences do drug dealers receive? How many were sentenced to jail or prison? How many of the drug dealers receive a minimum mandatory term?

At a recent Sentencing Accountability Commission meeting, the committee requested that the drug sales arrests and the resulting outcomes be viewed from the perspective of a "case" rather than by each charge within a case. It is not uncommon for a drug dealer to be charged with more than one type of drug sales at the time of arrest. For instance, a drug dealer may be arrested for drug trafficking as well as possession with the intent to deliver (PWITD) and convicted only on the PWITD, the less serious crime. It was felt that the charge-based analysis obscured this pattern because in that analysis the drug trafficking is shown as a nol-prossed, when in fact the case was resolved as a PWITD.

For this enhanced analysis of drug sellers, cases involving at least one of the three drug-selling statutes are tracked from the point of arrest to conviction and sentencing. For this analysis the progress of all cases for drug sellers arrested in the fourth quarter of 2003 (October to December) are tracked through the criminal justice system.

The three most commonly used Delaware drug-selling statutes are:

(1) **Title 16 §4753A Drug Trafficking**, which is a Felony B, is a per se possession minimum mandatory law that has increasing penalties associated with the weight of drugs possessed. For cocaine the association between weight of drugs and minimum terms are:

First tier drug trafficking 10 to 50 grams	…	minimum term 2 years,
Second tier drug trafficking 50 to 100 grams	…	minimum term 4 years,
Third tier drug trafficking 100 grams plus	…	minimum term 8 years.

With the implementation of HB 210 in June 30, 2003, part of the "mandatory" was removed from drug trafficking because HB 210 allows that during the last six months of the term the offender may be "flowed down" from Level V to Level IV, thereby reducing the actual Level V term to 18 months.

(2) **Title 16 §4751 Possession with the Intent to Deliver** (PWITD narcotic) is a Felony C. As a "violent" Felony C, the presumptive SENTAC sentence is Level V for up to 30 months. §4751 is subject to minimum mandatory terms under Title 16 §4763(a) for repeat drug sales convictions: five years for heroin or three years for non-heroin cases.

(3**) Title 16 §4752 Possession with the Intent to Deliver** (PWITD-Non-narcotic), is a Felony E. As a "violent" Felony E, the presumptive SENTAC sentence is a probation term or up to 15 months at Level V. §4752 is subject to minimum mandatory terms under Title 16 §4763(a) for repeat drug sales convictions: five years for heroin or three years for non-heroin cases.

When invoked on a repeat drug sales conviction 16 §4763 (a) the term is shortened by six months at Level V with the last six months of the term being served at Level IV.

SUMMARY OF FINDINGS: DRUG SELLER CASES

In the fourth quarter of 2003 (October 1 through December 31), there were 492 persons arrested in Delaware for at least one drug selling charge. These 492 persons had a total of 740 drug-selling charges included in their cases, about 1.5 drug selling charges per case. In 96 (19.5 percent) of these cases drug trafficking was the most serious charge. In 236 (48 percent) of the cases, PWITD-narcotic was the most serious charge and for the remaining 160 (32.5 percent) cases, PWITD- non-narcotic was the most serious charge.

On average, persons arrested for drug sales have a substantial criminal history. Drug traffickers have been arrested in Delaware an average of 10 times. PWITD-narcotic offenders have been arrested an average of 13 times, and PWITD-non-narcotic offenders have been arrested an average of just over 8 times.

Thirty-five percent (171 of the 492) of the persons arrested for drug sales were convicted of a drug sales charge, even if for a lesser charge. For example, a drug trafficking arrest may result in a conviction for the less serious crime PWITD-narcotics. In addition to the 35 percent the drug sales arrestees that were sentenced of a drug sales charge, and 39 percent (190 of the 492) were convicted, but for a non-drug sales charge(s) within the case. Twenty-seven percent (131 of the 492) were not convicted for any charge within the case. Of these 131 persons, 21 had a case that is still pending. It is interesting to note that only about 5 percent (24 of the 492) of the persons arrested for drug sales charges are convicted of a minimum mandatory drug term.

About 12 percent of the persons arrested for drug sales were sentenced to prison for a term exceeding a year (this includes those sentenced to minimum mandatory terms). Another 8 percent were sentenced to jail for a term of one year or less.
About 6 percent of persons arrested for drug sales were sentenced to "special Level V terms." Of these, 9 were sentenced to Level V treatment in prison where the programs last between 6 to 14 months, and 13 others were sentenced to the DOC boot camp, which lasts for 6 months and is followed by intensive probation supervision. Seventeen percent of the persons arrested for drug sales were sentenced to Level IV. Almost half (48 percent) of the persons arrested for drug sales were sentenced to probation Levels I, II or III, and 3.6 percent received fines or a drug court diversion.

DETAILED FINDINGS: DRUG SELLER CASES

There are 5 tables in this analysis providing detailed information regarding the criminal justice system consequences for being arrested for selling illicit drugs.

Table 1, below, shows the conviction pattern for each of the drug selling statutes: drug trafficking, PWITD narcotic, and PWITD non-narcotic. Almost twice as many trafficking cases end up being convicted for a drug sales statute (even if for a lesser included charge) than PWITD non-narcotic (49 percent versus 25 percent). Sentencing for a minimum mandatory term is also much more likely if someone is arrested for drug trafficking. Almost 18 percent of persons arrested for drug trafficking are sentenced to a minimum mandatory sentence, which is much higher than the PWITD narcotic offenders, which have about a 3 percent chance of receiving a minimum mandatory term. None of the 160 PWITD non-narcotic arrestees received a minimum mandatory sentence.

Table 1
2003 4th Quarter Drug Sales Arrests
Summary of Individual-Based Case Outcomes

Lead Drug Sales Charge	Individuals Arrested for Drug Sales			Individuals Convicted for a Drug Sales Charge	Individuals Convicted on Other Charges in the Case	Individuals With No Conviction for any Charge in the Case	Individuals Sentenced to a Mandatory
	Number	Col. %					
Drug Trafficking	96	19.51%	Number	47	27	22	17 of 96
			Row Percent	48.96%	28.13%	22.92%	17.71%
PWITD Narcotic	236	47.97%	Number	85	101	50	7 of 236
			Row Percent	36.02%	42.80%	21.19%	2.97%
PWITD Non-Narcotic	160	32.52%	Number	39	62	59	0 of 160
			Row Percent	24.38%	38.75%	36.88%	0.00%
Totals	492	100.00%	Number	171	190	131	24 of 492
			Row Percent	34.76%	38.62%	26.63%	4.88%

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Table 2, below, provides a summary of the arrest history for each type of drug selling statute. Offenders sentenced to minimum mandatory terms tend to have lengthier criminal histories than offenders sentenced to other types of convictions or for those not convicted. For instance, the average drug trafficker who is sentenced to a minimum mandatory term has 15 prior arrests, while the average drug trafficking arrestee has 10 prior arrests. The average PWITD narcotic offender that receives a minimum mandatory term has been arrested on average 21 times, while the average PWITD narcotic offender has 13 prior arrests.

Table 2
2003 4th Quarter Drug Sales Arrests
Arrest History for Individual-Based Case Outcomes

Lead Drug Sales Charge		Individuals Arrested for Drug Sales	Individuals Convicted for a Drug Sales Charge	Individuals Convicted on Other Charges in the Case	Individuals With No Conviction for any Charge in the Case	Individuals Sentenced to a Mandatory
		Number				
Drug Trafficking	Number	96	47	27	22	17
	Avg. Num. Arrests	10.0	12.0	9.2	9.0	15.1
PWITD Narcotic	Number	236	85	101	50	7
	Avg. Num. Arrests	13.0	13.0	15.0	14.0	21.4
PWITD Non-Narcotic	Number	160	39	62	59	0
	Avg. Num. Arrests	8.4	9.7	9.3	7.9	--
Totals	Number	492	171	190	131	24
	Avg. Num. Arrests	10.9	12.0	12.3	10.4	16.9

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Table 3, on the next page, shows the types of crimes persons arrested for drug sales were convicted. For instance, of the 96 persons arrested for drug trafficking:

- 49 percent were convicted for a drug trafficking charge or a lesser-included PWITD charge,
- 28 percent were convicted for a non-drug sales charge, such as drug possession (felony and misdemeanor) and non drug felony and misdemeanors, and
- 23 percent were not convicted of any charge in the case.

Table 3
2003 4th Quarter Drug Sales Arrests
Detailed Summary of Individual-Based Case Outcomes

		Counts by Most Serious Drug Sales Conviction								*Hierarchical Counts for Non- Drug Sales Convictions*								*No Final Disposition or Not Guilty*				
		Individuals Convicted of Drug Sales		Drug Trafficking		PWITD Narc.		PWITD Non-Narc.		Individuals Convicted of Other Charges		Weapon X-Feet of: school or parks	Maint. Veh/Dwell	Non-Drug Felony	Misd. Drug Poss.	Other Non-Felony		Individuals with No Conviction		Not Guilty ** Diversion*** Pending		Case Pending
Lead Drug Sales Charge	Individuals Arrested for Drug Sales	N	Row %	Total	Mand	Total	Mand	Total	Mand	N	Row %							N	Row %			
Drug Trafficking	96	47	49.0%	18	(16)*	21	(2)	8	(0)	27	28.1%	2	3	8	7	5	2	22	22.9%	16	2	4
PWITD Narcotic	236	85	36.0%			83	(7)	2	(0)	101	42.8%	4	28	18	14	25	12	50	21.2%	31	9	10
PWITD Non-Narcotic	160	39	24.4%					39	(0)	62	38.8%	2	7	12	5	20	16	59	36.9%	40	12	7
Totals	492	171	34.8%	18	(15)	104	(9)	49	(0)	190	38.6%	8	38	38	26	50	30	131	26.6%	87	23	21

* Two drug trafficking sentences that are shown as "not" drug minimum mandatory sentences are explained as follows. One defendant received a life sentence pursuant to 11 4214b, and was not regarded as a "drug mandatory", and one sentencing order order had a confusing reference in the notes field and it could not be determined that it was a minimum mandatory term.

** Not Guilty in cases where all charges are nolle prosequi, dismissed, or found not guilty.

*** The case was deferred as a drug court diversion agreement and is still an active drug court case.

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Table 4, below, shows the sentencing outcomes for each type of drug selling arrest. For instance, 74 of 96 drug trafficking arrestees were convicted of at least one charge within the case: a 77 percent conviction rate, and of these:

- 27 percent were sentenced to a prison term of greater than one year,
- 6.8 percent were sentenced to a jail term of one year or less,
- 9.5 percent were sentenced to a special Level V term of treatment or boot camp,
- 18.9 percent were sentenced to Level IV,
- 36.5 percent were sentenced to Levels I through III, and
- 1.4 percent were convicted but are still awaiting sentencing.

Table 4

Summary of Individual-Based Sentence Outcomes
for 2003 4th Quarter Drug Sales Arrests

492 Individuals with Drug Trafficking or Possession With Intent to Deliver Charges at Arrest
361 (73 percent) were Convicted for at Least One Charge in the Case

				Defendant Counts by Highest Sentence Level								
Lead Drug Sales Charge at Arrest	Number of Arrestees	Number of Arrestees Convicted	Percent Convicted	LV Prison, >1 yr.	LV Jail, 1 yr. or less	LV Treatment	LV Boot Camp	Juvenile LV Indefinite	Level IV	Level III, II, or I Prob.	Fine or Other	Unknown or Awaiting
Drug Trafficking	96	74	77.1%	20	5	1	6	0	14	27	0	1
PWITD Narcotic	236	186	78.8%	21	18	7	4	12	29	83	6	6
PWITD Non-Narcotic	160	101	63.1%	1	6	1	3	1	19	62	7	1
Totals	492	361	73.4%	42	29	9	13	13	62	172	13	8

			Percent of Defendants by Highest Sentence Level								
Lead Drug Sales Charge at Arrest	Number of Arrestees Convicted	Row Totals	LV Prison, >1 yr.	LV Jail, 1 yr. or less	LV Treatment	LV Boot Camp	Juvenile LV Indefinite	Level IV	Level III, II, or I Prob.	Fine or Other	Unknown or Awaiting
Drug Trafficking	74	100%	27.0%	6.8%	1.4%	8.1%	0.0%	18.9%	36.5%	0.0%	1.4%
PWITD Narcotic	186	100%	11.3%	9.7%	3.8%	2.2%	6.5%	15.6%	44.6%	3.2%	3.2%
PWITD Non-Narcotic	101	100%	1.0%	5.9%	1.0%	3.0%	1.0%	18.8%	61.4%	6.9%	1.0%
Totals	361	100%	11.6%	8.0%	2.5%	3.6%	3.6%	17.2%	47.6%	3.6%	2.2%

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Table 5, on the following page, provides a detailed summary of the most serious original arrest charge and the resulting statute of conviction. In addition, the sentencing pattern for each statute of conviction is also provided.

Using drug trafficking cases as an example, it is shown that of the 96 persons arrested for drug trafficking, 74 persons were convicted of drug trafficking or another charge. In some cases, the drug trafficking charge is pled to a lesser-included PWITD charge. In other cases, the offender was arrested for drug trafficking as well as a PWITD charge and in some of cases the drug trafficking charge is nol-prossed and the person is convicted of the PWITD charge. Of the 74 convictions associated with drug trafficking arrests, 18 were convicted of drug trafficking and 29 were convicted of the lesser PWITD drug selling charges.

The remaining "drug trafficking convictions" are spread across many different statutes. In most of these cases, the statute of conviction is for a secondary charge in the drug trafficking case where the drug trafficking charge was nol-prossed. For instance, two of the drug trafficking arrestees were convicted of weapon charges, three others for possession of illicit drugs within "x" feet of a school or park and seven others for non-drug felony charges that were part of their case. In addition, five others were convicted of a misdemeanor drug possession charge and two others were convicted for other simple misdemeanors or violations.

When a drug trafficking arrestee's case is pled to a non-drug trafficking or PWITD narcotic charge, the probability of serving jail or prison time decreases dramatically. Except in a very few cases, once the drug trafficking charge is nol-prossed most of convictions result in either a Level IV or other probation term.

Table 5

Detailed Individual-Based Sentence Outcomes for 2003 4th Quarter Drug Sales Arrests

492 Individuals with Drug Trafficking or Possession With Intent to Deliver Charges at Arrest
361 (73 percent) with a Conviction for Any Charge in Drug Sales Cases

			Defendant Counts by Highest Sentence Level								
Lead Drug Sales Charge at Arrest	Lead Conviction Charge Category	Conviction Category Count	LV Prison, >1 yr.	LV Jail, 1 yr. or less	LV Treatment	LV Boot Camp	Juvenile LV Indefinite	Level IV	Level III, II, or I Prob.	Fine or Other	Unknown or Awaiting
Drug Trafficking: 96 Individuals Arrested …	Trafficking	18	13			5					
	PWITD Narc.	21	6	1		1		4	8		1
	PWITD Non-Narc.	8		1				4	3		
	Weapon	2						1	1		
	X-Feet of	3			1			1	1		
	Maint. Veh/Dwell.	8		2				1	5		
	Other Felony	7	1					2	4		
	Misd. Drug Poss.	5		1				1	3		
	Other Non-Felony	2							2		
	Sub-Totals	74	20	5	1	6	0	14	27	0	1
PWITD Narcotic 236 Individuals Arrested …	PWITD Narc.	83	13	8	1	4	9	16	27		5
	PWITD Non-Narc.	2		1				1			
	Weapon	4	1	1					2		
	X-Feet of	28	5	3	3		1	6	9		1
	Maint. Veh/Dwell.	18	1	3	1			4	9		
	Other Felony	14	1		2		1	1	9		
	Misd. Drug Poss.	25		2			1	1	20	1	
	Other Non-Felony	12							7	5	
	Sub-Totals	186	21	18	7	4	12	29	83	6	6
PWITD Non-Narcotic 160 Individuals Arrested …	PWITD Non-Narc.	39	1	3		3	1	16	14		1
	Weapon	2							2		
	X-Feet of	6		1	1			1	3		
	Maint. Veh/Dwell.	12		2				1	9		
	Other Felony	5						1	4		
	Misd. Drug Poss.	21							20	1	
	Other Non-Felony	16							10	6	
	Sub-Totals	101	1	6	1	3	1	19	62	7	1
Totals		361	42	29	9	13	13	62	172	13	8

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