

**CONNECTICUT GENERAL ASSEMBLY
LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE**

The Legislative Program Review and Investigations Committee is a joint, bipartisan, statutory committee of the Connecticut General Assembly. It was established in 1972 to evaluate the efficiency, effectiveness, and statutory compliance of selected state agencies and programs, recommending remedies where needed. In 1975, the General Assembly expanded the committee's function to include investigations, and during the 1977 session added responsibility for "sunset" (automatic program termination) performance reviews. The committee was given authority to raise and report bills in 1985.

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LEGISLATIVE PROGRAM REVIEW
& INVESTIGATIONS COMMITTEE

Mandatory Minimum Sentences

DECEMBER 2005

Mandatory Minimum Sentences

DIGEST

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Mandatory Minimum Sentences

Crime and its punishment is a public policy concern the state legislature has a key role in defining. It is a judicial function to ensure the criminal laws are implemented fairly and in accordance with the law. If an arrested person is found guilty, it is a judicial function to set out the punishment for the individual on a case-by-case basis, guided by the statutory parameters set out by the legislature.

The four traditional goals of punishment are: deterrence, incapacitation (incarceration), retribution, and rehabilitation. Over the years, the political and public views have changed on how these goals are balanced and which ones to promote. These changing views affect the legislature's decisions on sentencing and impact the discretion that a judge has in his or her sentencing decisions.

Mandatory minimum sentences, first established in Connecticut in 1969 and expanded throughout the 1980s and 1990s, exemplify a shift in public policy away from other individual offender characteristics and circumstances toward imposing a specific amount of imprisonment based on the crime committed and the defendant's criminal history. A mandatory minimum sentence requires a judge to impose a statutorily fixed sentence on individual offenders convicted of certain crimes, regardless of other mitigating factors.

Based on legislator statements during debates on mandatory minimum sentence bills, the legislative purpose was multifaceted: reduce crime (and drug use); control judicial discretion over certain sentencing decisions; increase the prison sentences for serious and violent offenders; and send a message to the public and potential criminals that the legislature was taking action. In recent years, legislators have noted the impact of plea bargaining on the actual use of mandatory minimum sentencing laws whereby these sentencing laws become a plea bargaining tool as opposed to a certainty.

It should be noted that only certain crimes have absolute mandatory minimum sentences attached to them. In practice, because of a prosecutor's unilateral authority and discretion to charge an arrested person with a crime and the prevalence of plea bargaining, relatively few defendants are ever actually incarcerated under a mandatory minimum penalty. Further, in 2001, the legislature provided judges with the discretion to deviate from the mandatory minimum penalty for certain drug sale offenses based on "good cause." This type of sentence is called presumptive sentencing.

The issue of mandatory minimum sentencing generates strong political and public reactions for and against such laws. Proponents of mandatory minimum sentencing penalties believe the laws:

- are an effective deterrent against certain serious offenses such as drug and weapon crimes and sexual assault offenses;
- protect against possible disparities in sentencing;

- keep convicted offenders incarcerated for longer periods of time (which keeps these individuals off the streets, preventing new crimes); and
- aid prosecutors and police who use the possibility of lengthy prison terms to persuade lower-level offenders to testify against higher-level offenders and to convince offenders to plead guilty for a negotiated sentence.

Opponents of mandatory minimum sentences, on the other hand, argue there is no evidence that tougher sentences deter offenders from committing the specified serious offenses like drug sales. Instead, they say that over the past 15 years, the prison populations in Connecticut and nationally have increased at a dramatic rate because of the longer mandatory sentences and time-served requirements. Accordingly, this has required larger increases in state prison budgets. Opponents contend:

- minority defendants are disproportionately incarcerated compared to Caucasian defendants under the mandatory minimum sentencing laws;
- sentencing disparity is inherent in the mandatory minimum sentencing law for the sale of the illegal drugs cocaine and “crack;”³ and
- many offenders sentenced under the mandatory minimum sentencing laws are by and large nonviolent and were not the intended targets of the sentencing policy. They also point out the serious and violent offenders who were the intended targets of mandatory minimum sentencing, absent such laws, typically receive long prison terms anyway.

Judges support appropriate and fair penalties for serious and violent offenders that are based on the nature and severity of the crime, the offender’s characteristics and criminal history, and any mitigating or aggravating factors. However, in general, judges object to the abolition of their discretion as the neutral arbiter of justice under mandatory minimum sentencing laws, and the shifting of that discretion to the prosecutors through their authority to charge a defendant with a crime and to negotiate a plea and/or a sentence.

Scope of Study

Public Act 04-234 directed the Legislative Program Review and Investigations Committee to study mandatory minimum sentencing laws. The committee adopted a scope of study on April 11, 2005. As required by the public act, the study focused on:

- evaluating the actual versus intended impact of the mandatory minimum sentencing laws on the overall criminal sentencing policy of the state;
- determining any impact of the state’s mandatory minimum sentencing laws on the demand for prison beds; and
- estimating the costs of mandatory minimum sentences and any proposed sentencing changes.

³ Cocaine in a freebase form is commonly referred to as “crack.”

Methodology

A variety of sources and methods were used to gather information and data for this study. Relevant statutes, case law, court rules, and Judicial Branch administrative policies were reviewed. Public policy and academic research on mandatory minimum sentencing, other criminal sentencing models and reforms, and plea bargaining were examined. Various research reports on the use and impact of mandatory minimum sentencing laws on national and state levels were also reviewed.

Committee staff conducted interviews with key personnel from the Judicial Branch, Division of Criminal Justice and various state's attorney's offices, and the Office of the Chief Public Defender and public defenders assigned to the state's judicial districts. National experts on criminal sentencing and mandatory minimum penalties were also consulted.

The program review staff observed the pre-trial conference process, during which cases are negotiated with judicial oversight, in a sample of courts throughout the state. Judges, state's attorneys, public defenders, and private defense attorneys were interviewed. Program review staff specifically focused on how the mandatory minimum sentencing laws impact plea bargaining and a defendant's decision to proceed to trial.

From June through August 2005, program review staff observed pre-trial proceedings in five Judicial District (JD) courts [Hartford, New Britain, New Haven, New London, and Waterbury] and eight Geographical Area (GA) courts [Bridgeport (GA 2), Hartford (GA 14), Manchester (GA 12), New Britain (GA 15), New Haven (GA 23), Norwich (GA 21), Rockville (GA 19), and Waterbury (GA 4).]⁴ This phase of the study was organized through the administrative judge for the Superior Court for adult criminal matters and with the consent of the judges, state's attorneys, and public defenders for each JD and GA court.

The program review committee analyzed all criminal cases (dockets) for which the defendant was arrested and/or convicted of an offense subject to a mandatory minimum penalty and was disposed of between January 1, 2000, and July 31, 2005. Data on drug sales (e.g., type and weight of confiscated drugs, location, and time of offense) were collected and analyzed for a random sample of drug sale cases disposed of between July 1, 2004, and July 31, 2005, in which the defendants were charged with drug sale crimes subject to mandatory minimum penalties. The program review committee also conducted a mapping analysis of the "drug-free" zones in a representative sample of Connecticut municipalities. Finally, sentencing and time-served data from the Department of Correction (DOC) were analyzed.

Report Organization

⁴ The Superior Court for adult criminal matters is divided into 13 Judicial District and 20 Geographical Area courts. JD courts, commonly referred to as Part A, adjudicate and dispose of the most serious and complex criminal cases, typically capital and class A felonies. GA courts, or Part B, handle all other criminal and motor vehicle cases. Each JD and GA court is presided over by a Superior Court judge.

This report is divided into seven chapters. Chapter I outlines Connecticut's mandatory minimum sentencing laws. Chapter II describes the plea bargaining and criminal case disposition and sentencing processes, and Chapter III outlines the major sentencing reforms in the state including mandatory minimum sentencing. The following three chapters answer the specific study questions required by Public Act 04-234. Chapter IV presents the analysis of the actual versus intended impact of the mandatory minimum sentencing laws. The analysis includes the types of mandatory minimum penalty crimes for which persons are arrested, charged, and convicted and the sentences imposed for convictions of mandatory minimum penalty offenses or other offenses. The committee's analysis of the type and weight of confiscated drugs and the mapping of "drug-free" zones are also included. Chapter V determines the impact of mandatory minimum sentences on prison resources by analyzing sentencing and time-served data for those inmates serving mandatory minimum sentences. Chapter VI calculates the estimated costs associated with mandatory minimum sentences. Finally, the committee's findings and recommendations are presented in Chapter VII.

Agency Response

It is the policy of the Legislative Program Review and Investigations Committee to provide agencies included in the scope of a review with the opportunity to comment on the committee findings and recommendations before the final report is published. Written responses to this report were solicited from the Judicial Branch, the Office of the Chief State's Attorney, and the Office of the Chief Public Defender. The responses submitted by the Judicial Branch and Office of the Chief Public Defender are presented in Appendix F. The Office of the Chief State's Attorney declined to submit a response.

Mandatory Minimum Sentences

A comprehensive framework of state laws guides the criminal justice process in Connecticut. The laws defining conduct that is criminal and designating the range of penalties for the crimes are generally found in the state's statutory penal code (C.G.S. §53a *et seq.*). There are also a series of state laws specifying the functions of each of the actors (e.g., judge, prosecutor, defense counsel) in the criminal justice system, the criminal case disposition and sentencing procedures, and the rights of criminal defendants. Since the focus of this study was mandatory minimum sentences, the emphasis was on the state's sentencing laws and procedures.

Criminal sentencing is complex. The penal code authorizes several types of sentencing options that a judge may impose upon a convicted offender including prison, probation, conditional discharge, special parole, diversionary or alternative sanction, or a fine. Certain categories of offenders (e.g., youth, mentally ill, drug-dependent) are eligible in some instances to be diverted from the criminal justice system into the state-administered mental health or substance abuse treatment system, thereby avoiding a criminal record and punishment. A single sentencing option or a combination of options may be imposed, and a sentence may be subject to certain penalty enhancements, restrictions, exemptions, and offender eligibility criteria. A person may be convicted of more than one crime and, therefore, receive multiple sentences, which may consist of various penalty options. Multiple sentences can run concurrently (at the same time) or consecutively (one after another). State law establishes time-served requirements for court-imposed sentences, but also authorizes early release programs such as parole. An offender is often under the jurisdiction of more than one criminal justice agency (e.g., Department of Correction, Board of Pardons and Paroles, or Court Support Services Division (CSSD) throughout the duration of a single sentence.

Mandatory minimum penalty laws are only part of the fabric of the state's criminal sentencing policy. It is, therefore, necessary to understand criminal sentencing policies and procedures in Connecticut to have a context for reviewing the mandatory minimum and enhanced penalty laws. A brief overview of the sentencing guidelines set forth in the penal code is presented below, and a detailed summary is provided in Appendix A.

Overview of Penal Code Sentences

The penal code authorizes several sentences that a judge may impose upon a person convicted of a criminal offense including:

- imprisonment in a state correctional facility;
- probation supervision;
- conditional or unconditional discharge;
- special parole;

- diversionary or alternative sanction;
- fine;
- financial restitution; and
- community service.

The primary sentencing model in Connecticut is determinate sentencing. For any felony or misdemeanor offense committed on or after July 1, 1981, the penal code calls for a fixed (or definite) prison term rather than a sentence framed by a minimum and maximum term. In theory, a judge has unilateral discretion in the type and length of any determinate sentence imposed. However, in practice, a judge is constrained by statutory sentencing ranges based on the offense type, class, and degree as well as other sentencing requirements and enhancements. For example, the sentencing range for a class B felony is no less than one year but no more than 20 years in prison and/or not more than five years on probation. In selecting, calculating, and imposing the specific type and length of a sentence, a judge may consider the circumstances of the crime, the defendant's criminal history, aggravating and mitigating factors set forth in pre-sentencing reports and other documents, and the attitude of the victim (or victim's family), but the fixed prison term or period of community supervision (e.g., probation) cannot be less than the minimum or more than the maximum term specified by the penal code. As stated above, a sentence can be composed of various penalty options.

The sentencing laws provide for penalties based on the offense type, classification, and degree. The elements are described below.

Offense type. The basic types of offenses are felonies (punishable by more than a year in prison) and misdemeanors (punishable by no more than a year in prison.) There are also violations and infractions, which are the least serious offenses typically punishable by a fine.

Offense class. The offense class is a statutory ranking system denoting the severity of the crime based on specific or special circumstances of the offense. The most common circumstances include: the victim's age or physical or mental status; the offender's age or physical or mental status; total value of property damaged or stolen; type and amount of illegal drug manufactured, sold, or possessed; location of the offense; whether a weapon was used and the type of weapon; and severity of the injury to the victim. All felony offenses are classified as class A, B, C, or D and misdemeanor offenses as class A, B, or C with class A being the most serious. The penal code defines two other offense classes: capital and unclassified. A capital offense is punishable by a death sentence or life in prison without the possibility of release. Unclassified felony and misdemeanor crimes are not specifically classified as class A, B, C, or D; the penalties are identified within the statutory offense definition.

Offense degree. The degree of offense is the third way in which the crime severity, circumstances, and criminal responsibility of the defendant are defined for use in charging a defendant with a crime and, upon conviction, imposing a penalty. Crimes are ranked based on the specific circumstances of the crime as first, second, third, fourth, fifth, or sixth degree with first degree being the most serious.

The primary difference between offense class and degree is that offense degree is used to charge a defendant whereas the classification is used to determine the appropriate penalty based on the statutory sentencing options and ranges. Both are used during the plea bargaining process, which is discussed in the next chapter of this report, to negotiate a guilty plea and sentence recommendation.

Incarceration sentencing ranges. Table A-1 in Appendix A provides a list of the sentencing guidelines for periods of incarceration for felony and misdemeanor offenses under the determinate sentencing framework. With some specific exemptions, the minimum and maximum sentencing guidelines for felonies and misdemeanors are:

- **capital felony:** execution or life without possibility of release;
- **class A felony:** prison term of not less than 10 years nor more than 25 years;
- **class B felony:** prison term of not less than 1 year nor more than 20 years;
- **class C felony:** prison term of not less than 1 year nor more than 10 years;
- **class D felony:** prison term of not less than 1 year nor more than 5 years;
- **class A misdemeanor:** prison term not to exceed 1 year;
- **class B misdemeanor:** prison term not to exceed 6 months; and
- **class C misdemeanor:** prison term not to exceed 3 months.

Mandatory Minimum Sentences

Connecticut has adopted two versions of mandatory minimum sentences: “traditional” mandatory minimum sentences and presumptive sentences. The difference is that a judge may exercise his or her discretion to depart from a mandatory minimum prison term under presumptive sentencing (with an on-the-record articulation of why), whereas under a “traditional” mandatory minimum sentence there is no opportunity for discretion. In addition, there are enhanced penalty options for the general sentencing guidelines and mandatory minimum sentences. These sentencing schemes are discussed below.

In general, Connecticut’s mandatory minimum sentencing laws require a judge to impose, at a minimum, a statutorily set prison term that cannot be suspended in part or in total for certain criminal offenses. However, depending on the charges for which the defendant is convicted, a judge has discretion to impose a sentence *greater* than the mandatory minimum sentence. A judge may also impose a post-incarceration supervision sanction such as a period of special parole or probation.

Table I-1 lists the specific criminal offenses covered by the law. Currently, crimes subject to a mandatory minimum penalty include murder, kidnapping, various types of assault and sexual assault, burglary, weapon use or possession, and driving under the influence of alcohol or drugs (DUI).

Table I-1. Offenses with Mandatory Minimum Sentences

<i>CGS</i>	<i>Offense</i>	<i>Mandatory Minimum</i>
Class A Felony		
53a-54a	Murder (other than a capital or felony)	25 years
53a-54c	Felony murder	25 years
53a-70(a)(1)*	Forcible sexual assault in the first degree of victim under 16	5 years and the prison term plus a period of special parole must equal at least 10 years**
	Forcible sexual assault in the first degree of victim under 10	10 years
53a-70(a)(2)*	Sexual assault in the first degree of victim under 13 if offender is more than 2 years older	10 years and the prison term plus a period of special parole^ must equal at least 10 years
53a-70a*	Aggravated sexual assault	5 years and at least 5 years special parole
	Aggravated sexual assault of victim under 16 (as per 53a-70(a)(1))	20 years if deadly weapon used in crime and at least 5 years special parole
53a-92	Kidnapping in the first degree	1 year pursuant to <i>State v. Jenkins</i> (1986)
53a-92a*	Kidnapping in the first degree with firearm	1 year
53a-28 53a-29	All other class A felonies other than those listed above and except arson in the first degree <ul style="list-style-type: none"> • Assault in the first degree of a pregnant woman resulting in termination of pregnancy (53a-59c)** • Employing a minor in an obscene performance (53a-196a) 	10 years
Class B Felony		
53a-55a*	Manslaughter in the first degree with firearm	5 years
53a-59*	Assault in the first degree	5 years if deadly weapon or dangerous instrument used 10 years if victim under age 10 or is a witness
53a-59a	Assault in the first degree on elderly, blind, disabled, pregnant, or mentally retarded person**	5 years
53a-70*	Sexual assault in the first degree	2 years 10 years if victim under age 10 Prison term and period of special parole must equal 10 years
53a-70a*	Aggravated sexual assault in the first degree	5 years and at least 5 years special parole
53a-71	Sexual assault in the second degree of victim under age 16	9 months
53a-72b*	Sexual assault in the third degree with firearm of victim under age 16	2 years and a period of special parole which together total 10 years

Table I-1. Offenses with Mandatory Minimum Sentences

<i>CGS</i>	<i>Offense</i>	<i>Mandatory Minimum</i>
53a-94*	Kidnapping in the second degree	1 year pursuant to <i>State v. Jenkins</i> (1986), but penal code requires 3 years
53a-94a*	Kidnapping in the second degree with firearm	1 year pursuant to <i>State v. Jenkins</i> (1986), but penal code requires 3 years
53a-101	Burglary in the first degree armed with deadly weapon, explosive, or dangerous instrument	5 years
53a-134*	Robbery in the first degree armed with deadly weapon	5 years
53a-301	Computer crime in furtherance of terrorism directed toward public safety agency	5 years
Class C Felony		
53a-56a*	Manslaughter in the second degree with firearm	1 year
53a-71	Sexual assault in the second degree	9 months
53a-72b*	Sexual assault in the third degree with firearm	2 years and a period of special parole which together total 10 years
53a-102a	Burglary in the second degree with firearm	1 year
53a-123	Larceny in the second degree if property "taken" from elderly, blind, disabled, pregnant, or mentally retarded person**	2 years pursuant to CGS §53a-60b
53a-165aa	Hindering prosecution in the first degree	5 years
53a-303	Contamination of public water or food for terrorism	5 years
53-202b	Sale, transfer, distribution, or transport of assault weapon	2 years 6 years if sale to minor under 18
Class D Felony		
14-223(b)	Subsequent conviction for increasing speed in attempt to allude police officer after being signaled to stop if both convictions involve death or serious physical injury	1 year
29-34	Illegal sale or transfer of handgun to minor under 21	1 year
53a-60a	Assault in the second degree with firearm	1 year
53a-60b	Assault or larceny in the second degree of elderly, blind, disabled, pregnant, or mentally retarded person**	2 years
53a-60c	Assault in the second degree with firearm of elderly, blind, disabled, pregnant, or mentally retarded person**	3 years
53a-103a	Burglary in the third degree with firearm	1 year
53a-216	Criminal use of firearm or electronic defense weapon during commission of felony	5 years
53a-217	Criminal possession of firearm or electronic defense weapon	2 years

Table I-1. Offenses with Mandatory Minimum Sentences		
CGS	Offense	Mandatory Minimum
53-202c	Possession of an assault weapon	1 year
Class A Misdemeanor		
53a-61	Assault in the third degree with deadly weapon	1 year
53a-61a	Assault in the third degree of elderly, blind, disabled, pregnant, or mentally retarded person**	1 year
Unclassified Offenses		
14-36	Driving without a license or learner's permit 3 rd or subsequent conviction^^	90 days
14-215(c)	Driving during license suspension for DWI and DWI related offenses: 3 rd or subsequent conviction^^	90 days
14-227a(g)	Operating a motor vehicle under the influence of alcohol or drugs (DWI): (1) Second conviction within 10 years (2) Third and subsequent convictions within 10 years	120 days 1 year
15-133	Operating a vessel (boat) under the influence of alcohol or drugs (DWI): (1) Second conviction within 10 years (2) Third and subsequent convictions within 10 years	120 days 1 year
21a-278a(a) 21a-278a(c)	Sale of drugs (under 21a-277 or 21a-278) by non-drug-dependent to minor under 18 who is at least 2 years younger than defendant Hiring, using, persuading, coercing a minor under 18 to sell drugs	2 years in addition & consecutive to sentence for underlying offense of 21a-277 or 21a-278 3 years in addition & consecutive to sentence for underlying offense of 21a-277 or 21a-278
<p>*Crimes also subject to persistent dangerous felony offender provision.</p> <p>**In any prosecution for an offense based on the victim being pregnant or mentally retarded, it is an affirmative defense that the defendant at the time the crime was committed did not know the victim was pregnant or mentally retarded.</p> <p>^Special parole is a period of post-incarceration parole supervision imposed by a judge. Special parole differs from traditional discretionary parole in two ways: (1) discretionary parole is granted by the Board of Pardons and Paroles and is not within the jurisdiction of the sentencing judge; and (2) discretionary parole is an early release of an inmate from a court-imposed prison term whereas special parole is a period of parole supervision in addition to a prison term. An inmate can be released on discretionary parole under his or her prison term and then transition into a period of special parole after completing that prison term. The Department of Correction is responsible for supervising parolees released on discretionary parole and special parole.</p> <p>^^Mandatory minimum penalties effective October 1, 2005.</p> <p>NOTE: Offenders convicted after October 1, 1998 of a nonviolent or violent sexual assault offense or sexual assault offense against a minor must register as a sex offender with the Department of Public Safety (Megan's Law) and, beginning in 1994, submit a blood sample for analysis and inclusion in the department's DNA data bank.</p> <p>Source: Connecticut General Statutes</p>		

The mandatory minimum sentences for selling drugs to a minor (C.G.S. §21a-278a(a)), using a minor to sell drugs (C.G.S. §21a-278a(c)), and criminal use during a crime or possession of a firearm or electronic defense weapon (C.G.S. §53a-216 and §53a-217) function like a sentence enhancement in that the mandatory minimum penalty is in addition to the sentence imposed for the underlying felony crime. The mandatory minimum sentence is served consecutively after the sentence for the underlying crime. Thus, a person convicted for the first time of selling drugs (C.G.S. §21a-277(a)) to a minor under 18, is subject to a sentence of up to 15 years for the underlying drug sale crime plus two additional years under the mandatory minimum penalty enhancement. The offender is also subject to a fine of up to \$50,000. (The state's drug laws are detailed in Appendix B.)

Another mandatory minimum penalty enhancement is the addition of an extended period of special parole. Special parole is a mandatory period of parole supervision imposed by a judge at sentencing rather than a period of parole granted at the discretion of the Board of Pardons and Paroles (BPP). Special parole enhancements are a required part of the mandatory minimum sentence for all sexual assault offenses except sexual assault in the second degree.

Case law. In the late 1980s, the Connecticut Supreme Court decided three different cases that directly impacted certain mandatory minimum statutes. No subsequent legislative action has been taken in response to these cases.

The penal code identifies the sentence for arson murder (C.G.S. §53a-54d) as life imprisonment without the possibility of release. Arson murder is an unclassified felony. The Connecticut penal code prohibits the suspension of any part of a sentence for class A felonies, but does not prohibit the suspension of a sentence for an unclassified felony. In 1985, the Connecticut Supreme Court held a judge may suspend any portion of the life sentence for arson murder because it is an unclassified felony rather than a class A felony.⁵

In 1986, the Connecticut Supreme Court ruled that the mandatory minimum penalties set for kidnapping in the first degree (C.G.S. §53a-92) and kidnapping in the first degree with a firearm (C.G.S. §53a-92a) -- both class A felonies -- did not apply because they established higher penalties than those provided for more serious crimes. Specifically, the Supreme Court held that the sentence scheme set in the statutes violated the equal protection clause to the United States Constitution because it established higher penalties for less serious crimes.⁶ Therefore, these two class A felonies are subject to a one-year mandatory minimum sentence rather than a 10-year sentence.

Finally, since the Supreme Court found the mandatory minimum life sentence for arson murder could be suspended, it reasoned so too could the sentence for arson in the first degree (C.G.S. §53a-111).⁷ Accordingly, all or part of the 10-year mandatory minimum sentence for arson in the first degree may be suspended and is, therefore, not a mandatory minimum sentence.

Presumptive Sentences

⁵ *State v. Dupree*, 196 Conn 655 (1985)

⁶ *State v. Jenkins*, 198 Conn. 671 (1986)

⁷ *State v. O'Neil*, 200 Conn .268 (1986)

A presumptive sentence means that upon conviction for a certain offense a specific mandatory minimum penalty is the “presumptive” sentence to be imposed unless a judge finds circumstances exist to impose a *more lenient* sentence. Generally, the penal code defines the mitigating circumstances (or “good cause”) under which a judge may depart from the presumptive mandatory minimum penalty, and the burden of proof is on the defendant to show good cause for sentencing departure. Table I-2 lists the offenses subject to presumptive sentencing laws including DUI, sale of illegal drugs, and carrying a handgun without a permit.

When imposing a sentence other than the presumptive minimum sentence, a judge must state, at the time of sentencing and for the court record, his or her justification for departing from the presumptive minimum penalty and imposing the alternative sentence.

Table I-2. Offenses with Presumptive Sentences		
Unclassified Offenses		
<i>CGS</i>	<i>Offense</i>	<i>Presumptive Sentence</i>
14-215(c)	Driving during license suspension for DWI and DWI related offenses: First conviction	30 days unless mitigating circumstances as determined by a judge
14-227a(g)*	Operating a motor vehicle under the influence of alcohol or drugs (DWI): First conviction	48 hours if not sentenced to community service
15-133	Operating a vessel (boat) under the influence of alcohol or drugs (DWI): First conviction	48 hours if not sentenced to community service
21a-267(c)	Use, possession, or delivery of drug paraphernalia by non-student near school	1 year in addition & consecutive to sentence imposed for underlying violation of subsection (a) possession or (b) delivery except upon showing of good cause & crime was nonviolent as determined by judge
21a-278(a)	Illegal manufacture or sale of the following drugs by non-drug-dependent person: <ul style="list-style-type: none"> • 1 oz or more of heroin, methadone, • ½ oz or more of cocaine or cocaine in free-base form (“crack”)** • 5 milligrams or more of substance containing lysergic acid diethylamide (LSD) 	5 years to a maximum of life except if at time of crime: (1) defendant was under 18; (2) defendant’s mental capacity was significantly impaired but not so impaired as to constitute a defense to prosecution; or (3) upon showing of good cause & crime was nonviolent as determined by judge
21a-278(b)	Illegal manufacture or sale of the following drugs by non-drug-dependent person: <ul style="list-style-type: none"> • any narcotic substance, hallucinogenic substance other than marijuana, or amphetamine • 1 kilogram or more of cannabis-type substance 	5 years for first offense or 10 years for subsequent offenses except if at time of crime: (1) defendant was under 18; (2) defendant’s mental capacity was significantly impaired but not so impaired as to constitute a defense to prosecution; or (3) upon showing of good cause & crime was nonviolent as determined by judge
21a-278a(b)	Sale of drugs (under 21a-277 or 21a-278) by non-drug-dependent person in, at, or within	3 years in addition & consecutive to sentence for underlying offense of 21a-277 or 21a-278 except

Table I-2. Offenses with Presumptive Sentences		
Unclassified Offenses		
CGS	Offense	Presumptive Sentence
	1,500 feet of school, public housing, or day care center	upon showing of good cause & crime was nonviolent as determined by judge
21a-279(d)	Possession of any quantity of the following drugs in, at, or within 1,500 feet of licensed day care center or school by non-student: <ul style="list-style-type: none"> • subsec. (a): any narcotic • subsec. (b): hallucinogenic other than marijuana or 4 ounces or more of cannabis-type substance • subsec. (c): less than 4 ounces of cannabis-type substance or any controlled substance other than a narcotic or hallucinogenic other than marijuana 	2 years in addition to & consecutive to sentence for underlying offense of 21a-279(a), (b), or (c) except upon showing of good cause & crime was nonviolent as determined by judge
29-37(b)	Carrying handgun without permit (29-35a)	1 year unless mitigating circumstances as determined by a judge
<p>*Crime also subject to persistent dangerous felony offender provision. **P.A. 05-248 equalized the amounts for cocaine and “crack” cocaine. Prior to the change, the law set the amounts as at least 1 ounce for cocaine and at least ½ gram for “crack” cocaine. Source: Connecticut General Statutes</p>		

Enhanced Penalties

A penalty enhancement authorizes a judge to *increase* the authorized prison term for an offense based on specific aggravating factors. The penal code establishes the additional period of incarceration (the enhancement) that may be added to the sentence for the underlying felony for which a person is convicted. As shown in Table I-3, enhanced penalties are authorized for persons committing a crime while released on bail for a prior offense and persons convicted of carjacking, terrorism, or committing a class A, B, or C felony with a firearm or assault rifle.

Persistent offender. Connecticut sentencing law also authorizes enhanced penalties for a person convicted as a persistent offender, which is defined as a serious, habitual offender. Under Connecticut’s penal code there are nine categories of persistent offenders based on the types of serious crimes. (Appendix C provides a detailed listing of the persistent offender categories and the statutory criteria under which a penalty enhancement is authorized.) The nine persistent offender categories are:

- dangerous felony offender;
- dangerous sexual offender;
- serious felony offender;
- serious sexual offender;
- larceny offender;
- felony offender;

- offender of crimes involving bigotry or bias;
- offender of crimes involving assault, stalking, trespass, threatening, or criminal violation of a protective order or restraining order; and
- DUI felony offender.

There are two criteria to be sentenced as a persistent offender under any category: (1) a defendant must have previously been convicted of a specific offense and incarcerated for more than a year (or in some categories sentenced to death) in a Connecticut, other state, or federal correctional institution; and (2) the defendant’s history and character and the nature and circumstances of the crime indicate an extended period of incarceration and lifetime supervision best serves the “public interest.”

Table I-3. Penalty Enhancements		
<i>CGS</i>	<i>Offense</i>	<i>Penalty Enhancement</i>
53a-40b	Crime (except a violation of a condition of bail release) committed while on bail for a prior offense	In addition to the sentence for the underlying offense, not more than 10 years for a new felony and not more than 1 year for a new misdemeanor
53a-136a	Robbery by taking an occupied motor vehicle (carjacking)	3 years in addition and consecutive to any term of imprisonment for the felony offense
53-202j	Committing Class A, B, or C felony with assault rifle	8 years in addition and consecutive to any term of imprisonment for the felony offense
53-202k	Committing Class A, B, or C felony with firearm	5 years in addition and consecutive to any term of imprisonment for the felony offense
53a-300	Act of terrorism involving use or threatened physical force or violence intended to intimidate the civilian population or government	Impose the sentence for the next most serious degree of felony for which the defendant is convicted
53a-40 53a-40a 53a-40d	Persistent Offender	Refer to Appendix C for a detailed list of the state’s persistent offender categories and enhanced penalties
Source: Connecticut General Statutes		

Criminal Case Disposition Process

This chapter outlines the criminal case disposition process. The process from arraignment to trial and sentencing is not altered for cases in which the defendant is charged with a crime subject to a mandatory minimum penalty. It is the same as that for all other criminal cases with the exception of cases in which a sentence of life imprisonment or death is being sought. In those cases, extra procedural safeguards are required. With that said, mandatory minimum sentences do impact the plea bargaining process, which is the primary means of disposing of cases.

Only a very small percentage of criminal cases (less than 5 percent) proceed to trial. Most cases are resolved through plea bargaining. The Superior Court for adult criminal matters relies heavily on plea bargaining rather than trials to efficiently and effectively administer the court's docket (caseload and schedule). It is, therefore, important to understand the concept and process of plea bargaining, especially in evaluating the impact of the state's mandatory minimum sentencing laws.

Plea Bargaining Overview

In Connecticut and nationally, the primary objective of plea bargaining is to ensure the criminal trial system, which is expensive and time consuming, is seldom used. The benefits of a disposition without trial vary and include the efficient management of workloads, a means for prosecutors and judges to guard against appeals, and a means for defendants to avoid the uncertainty of a trial and elude the most severe allowable sentence. The most common criticisms of plea bargaining are that most cases are settled by "deals" and dangerous criminals often beat the system and go free or receive lenient sentences. Defendants who refuse to negotiate and insist on a trial (a constitutional right) receive more severe sentences than those who plead guilty. Finally, some argue plea bargaining in effect discriminates against poor and minority defendants because they receive unduly harsh penalties.

Definition. Plea bargaining is not really a single decision point or action. It can be viewed as a continuing process of testing the evidence of a crime that begins immediately after arrest at arraignment and can lead to a number of different outcomes: a dismissal; a plea to one or more charges; a plea to the top charge (most serious offense) or a lesser charge (less serious offense); or a trial. Plea bargaining is a system of negotiation and a series of decisions, over a period of time, between the prosecutor, the defense counsel, and a judge aimed at reaching a mutually acceptable disposition of the case. It is often difficult to distinguish plea bargaining from the general prosecutorial process.⁸

Plea bargaining is based primarily on the prosecutor's unilateral authority and discretion to charge a defendant with a crime, reduce the arrest charges, dismiss or drop multiple arrest

⁸ Walker, Samuel, *Taming the System: The Control of Discretion in Criminal Justice 1950-1990*. Oxford University Press (1993)

charges, make a sentencing recommendation to a judge, or offer some other benefit to the defendant (e.g., witness protection). A judge, however, must agree to the results of the plea bargain before accepting the defendant's plea. The defendant, obviously, must also voluntarily and knowingly agree to the plea bargain.

As stated, plea bargaining involves at least the prosecutor, defense attorney, judge, and a defendant. In recent years, in Connecticut, the victim, the victim's family, or victims' rights advocates have been given a voice as well. In some jurisdictions, police officers have a significant role especially if they work closely with the prosecutors to investigate certain types of crimes and/or focus on certain geographical areas.

Categories of plea bargain. Plea negotiations fall into two general categories: "charge" bargaining and "sentence" bargaining. It is often difficult to differentiate between the types of plea bargains since they are interdependent and have similar outcomes for the system and the defendant.

A *charge bargain* occurs when the state's attorney negotiates for a defendant to plead guilty to a lesser charge. The "top charge," which is often the most serious crime the defendant is alleged to have committed, is reduced, and a lesser charge is substituted. Defendants are often suspected of having committed several crimes as part of the same transaction or over a period of time (e.g., a string of burglaries). The state's attorney has complete discretion as to the number of charges to file. The prosecutor also has discretion to file additional charges with enhanced penalties against defendants who qualify as habitual criminals (e.g., persistent offenders). For example, a person arrested for robbery can be charged with the robbery (the "top charge") and several lesser offenses including larceny from and an assault on the victim and perhaps possession and use of a firearm or dangerous weapon. Under a charge bargain, the robbery defendant can plead guilty to the lesser charge of larceny and the robbery, assault, and weapons charges may be dismissed or not prosecuted (*nolle prosequi*⁹).

Often times, therefore, the result of plea bargaining is that the offense for which a defendant is arrested is different than that for which he or she is subsequently convicted. This is primarily the result of the state's attorney's discretion to investigate, charge, and negotiate a criminal case and the defense attorney's ability to provide mitigating information and negotiate the best possible outcome on behalf of his or her client.

Most plea bargaining, however, is really *sentence bargaining*. When the evidence is strong and the question of the defendant's guilt is not an issue, the only remaining issue is the sentence. The most straightforward sentence bargain is an agreement about a sentence recommendation by the state's attorney and a commitment from a judge. In some cases, an understanding is reached regarding the appropriate sentence and then a formal charge is selected that will result in that sentence -- in other words, the crime is made to fit the punishment

The most common way of negating mandatory minimum sentences is through sentencing bargaining. Once the sentence is agreed upon, the parties determine the charge that will result in the sentence. For example, a guilty plea to a risk of injury to a minor charge (not subject to a

⁹ *Nolle prosequi* is a formal court motion by the state's attorney stating the case will not be prosecuted any further.

mandatory minimum penalty) precludes the nine-month mandatory minimum sentence for conviction of sexual assault in the second degree. The prosecutor agreeing not to seek an increased sentence under any of the enhanced penalty laws is also a form of sentencing bargaining.

Rules. In Connecticut, the process of plea bargaining is not authorized -- or specifically prohibited -- or governed by state law. The rules of the court, found in the *Connecticut Practice Book*, establish some broad procedures for negotiated case disposition without a trial. For the most part, the day-to-day plea bargaining process has evolved through informal agreements and cooperation between prosecutors, defense attorneys and public defenders, judges and, of course, defendants, who all benefit from negotiated pleas. The process of plea bargaining, therefore, is heavily influenced by the working relationships between individual prosecutors, defense attorneys, and judges, as well as geographical differences.

In general, the rules of the court encourage the prosecutor and defense attorney to attempt to reach a plea bargain. The state's attorney is required to provide the defense attorney with "reasonable opportunity for consultation." The defense counsel must obtain the defendant's consent to negotiate, to agree to a negotiated disposition, or to proceed to trial. The state's attorney, however, cannot directly negotiate with the defendant unless the defense counsel approves or the defendant waives the right to be represented by an attorney.

There are rules regarding the judge's acceptance of a negotiated plea and the ability of a defendant to withdraw a plea under certain circumstances. These rules are discussed below.

Case Disposition

Once a person is arrested, one of the first decisions for a prosecutor is whether to charge the defendant with a crime and prosecute the case or dismiss the charges and release the defendant. State's attorneys have broad discretionary power over which cases to prosecute, what charges to bring, what sentences to recommend, and the extent to which plea bargaining is used. State's attorneys have the unilateral power to "deal" (negotiate a plea and sentence) to dispose of a case.

Once the state's attorney charges a defendant with a crime, his or her guilt or innocence is determined either through a trial or disposition without trial. The Superior Court judge is the neutral arbiter responsible for managing the case disposition process, overseeing plea negotiations, and presiding at trials and other court proceedings in accordance with the federal and state constitutions, state law, and court rules. The judge also has primary responsibility for sentencing in accordance with the state penal code.

Any person charged with a crime is entitled to be represented by a defense attorney. Defendants may hire a private attorney or, if indigent, be appointed a state public defender at no cost. Defendants may also represent themselves without the assistance of legal counsel.

Figure II-1 shows the basic case disposition process from arrest to sentencing. Plea bargaining can take place throughout case disposition from arraignment to trial, but stops once a judge or jury renders a verdict. The process can vary geographically and between individual

judges and prosecutors, but the following description is based on procedures set forth in state law and the rules of the court as well as the day-to-day administration of those laws by judges and prosecutors to move cases toward disposition through either dismissal, plea bargaining, or trial.

All persons enter the criminal justice system through an arrest for a crime. Most arrested persons are released from custody on bail while awaiting the disposition of the charges against them. Those who are ineligible for bail or financially unable to post bail are detained in local police lock-ups until arraignment and then in state custody pending disposition of their cases or until they post bond.¹⁰

Arraignment. Arraignment is the first court proceeding for the defendant and is held on the next court date (excluding weekends and holidays) following arrest. Arraignment serves three purposes. First, a judge formally advises the defendant of his or her rights.¹¹ Second, a judge determines if there is probable cause to charge the defendant with a crime. Finally, if there is probable cause to charge the defendant with a crime and the defendant has not previously posted bond and been released by the arresting police agency or a bail commissioner, a judge sets bail.

A defendant can plead guilty as part of a negotiated agreement at arraignment. At this early phase in the process, this usually occurs in low-level cases in which the defendant's guilt is not an issue and the sentence does not involve incarceration or a lengthy period of probation. The benefit to the defendant in pleading guilty at arraignment is in disposing of the case and eliminating further court proceedings. Typically, a judge immediately imposes the sentence, which is most often a fine, unconditional discharge, a diversionary program, or restitution.

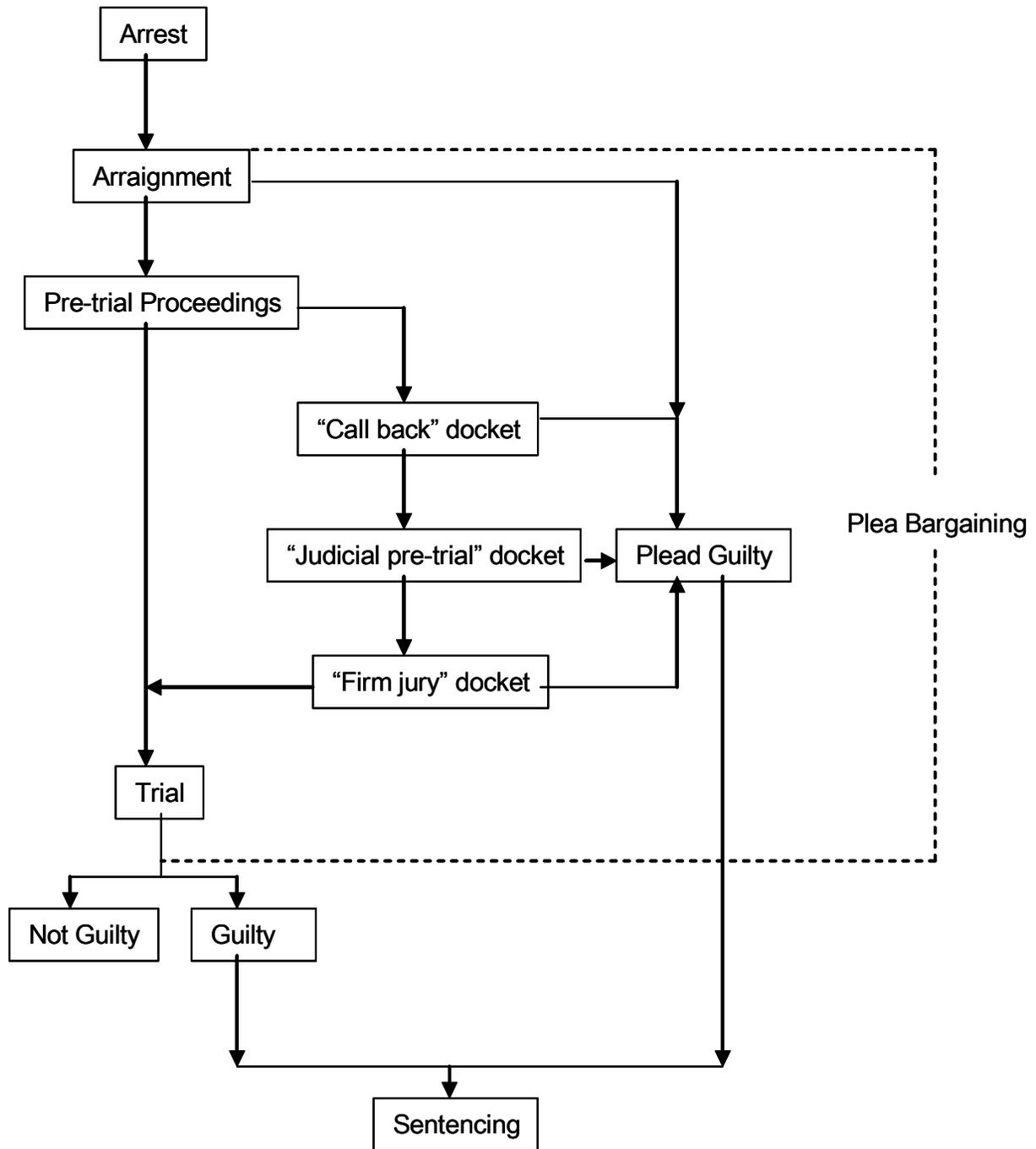
Pre-trial proceedings. After arraignment, if the charges are not dismissed or the defendant has not pled guilty, a case moves through a series of pre-trial proceedings for which the defendant is generally required to appear in court. As shown in Figure II-1, these proceedings are commonly referred to throughout the state's courts as the "call back" docket, the "judicial pre-trial" docket, and the "firm jury" docket. The same judges may not oversee a case as it moves from docket to docket.

The primary purpose of the pre-trial process is to resolve a case through a negotiated plea and sentence as quickly as possible. However, there are reasons for continuing a case during the pre-trial phase including:

¹⁰ For a detailed description of the state's bail system and process refer to the Legislative Program Review and Investigations Committee report on *Bail Services in Connecticut* (2003).

¹¹ A defendant has the right to: (1) be represented by counsel and if unable to afford counsel advised of the procedures through which the services of an attorney will be provided; (2) refuse to make any statement and to be informed any statement made may be used against him or her; and (3) refuse to be questioned and be informed he or she may consult with an attorney prior to questioning or have an attorney present during questioning.

Figure II-1. Criminal Case Disposition Process



- allowing the prosecutor to complete the investigation and determine which charges to file;
- monitoring the defendant's compliance with the conditions of bail release; and
- resolving factual, evidentiary, and procedural issues of the case.

To manage the cases during the pre-trial phase, judges move cases through the different dockets, which are informally used to allow cases to “age.”

During the early pre-trial proceedings when a case is on the “call back” docket, a judge typically does not oversee the plea negotiations between a prosecutor and defense attorney. Unresolved cases on the “call back” docket are continued three or four times, over the course of several months, before being assigned to the “judicial pre-trial” docket.

The longer a case remains unresolved the more likely it is the state's attorney and defense counsel will engage in more substantive discussions, overseen by a judge, about the facts of the case, the defendant, and a possible plea agreement. These cases are assigned to the “judicial pre-trial” docket. At scheduled court dates, judges hold pre-trial conferences in their chambers to discuss the cases. The conferences are informal, and the discussions are not part of the court record. Defendants are not present during the conferences. Like the “call back” dockets, cases can “age” on the “judicial pre-trial” docket for several months as plea offers are made by the prosecutors and counter-offers by defense counsel.

Barriers to negotiation. The pre-trial process can be more difficult in cases where the defendant is charged with an offense subject to a mandatory minimum sentence. These defendants, wanting to elude the most severe sentence, are often reluctant to agree to a plea bargain involving a mandatory minimum penalty. If the prosecutor refuses to substitute another charge not subject to a mandatory minimum penalty, some defendants choose to proceed to trial, which could expose them to an even longer prison term, but could also result in a not guilty verdict.

The process can be made even more difficult in sexual assault cases because of the sex offender registration requirement. Offenders often want to avoid being convicted of a sexual assault offense to evade the state's sex offender registration requirements.¹² A defendant may decline a plea bargain offer and proceed to trial. By going to trial, the defendant risks being found guilty and sentenced to an even harsher sentence than the negotiated sentence, but he or

¹² Connecticut's sex offender registry law -- commonly referred to as Megan's Law -- requires persons convicted or found not guilty by reason of mental disease or defect of a criminal sexual offense against a victim who is a minor, a nonviolent sexual offense, a violent sexual offense, or a felony committed for sexual purposes to register as a sex offender with the Department of Public Safety (the state police) when they are released into the community and they must continue to register even if they move out of state. With few exceptions, offenders convicted of crimes against minors or nonviolent sexual assault must register for 10 years. An offender must register for life if he or she has been convicted of a violent sexual assault or has been convicted of an offense requiring 10-year registration and he or she has a prior conviction for one of those offenses.

she may be found not guilty of the sexual assault charge and thereby avoid any sentence and the requirement to register as a sex offender.

In some cases, the plea negotiation process is made more difficult because of the administrative driver's license suspension requirement for a DUI conviction. Upon conviction for DUI, the state Department of Motor Vehicles must suspend the offender's driver's license for a set period of time (e.g., a year). A DUI defendant, wanting to avoid having his or her driver's license suspended, may decline a plea bargain offer and proceed to trial in the hope of being found not guilty and thereby retaining the driver's license.

As discussed in Chapter I, there is a presumptive penalty for the first DUI conviction and increasingly longer mandatory minimum penalties for the second and third or subsequent DUI convictions. Multiple DUI offenders are dealt with more harshly under the mandatory minimum sentencing laws. This too impacts the plea bargaining process in that offenders are reluctant to accumulate convictions.

Finally, some defendants are incarcerated during the pre-trial phase. Often, this influences a defendant's decision to accept a plea bargain offered by a state's attorney especially if the sentence recommendation takes into account the time the defendant has already served in prison. However, if facing a long prison term regardless of any possible plea bargain, a defendant may not readily accept a deal and proceed to trial.

Pleading. As stated, at any point during the pre-trial phase, a defendant can agree to plead guilty and accept the negotiated sentence. Once a plea agreement is reached, the conditions of the plea agreement must be disclosed to a judge for the court record or, upon a showing of good cause, privately in the judge's chambers (*in camera*) at the time the defendant's plea is offered. Prior to accepting the plea, a judge must "canvas" the defendant during which he or she advises the defendant of his or her rights to: plead not guilty; be tried by a jury or judge; have assistance of counsel; confront the witnesses against him or her; and not be compelled to incriminate him or herself. A judge must then determine whether the defendant is voluntarily entering his or her plea and fully understands:

- the nature of the charges against him or her;
- the mandatory minimum sentence, if any, that can be imposed;
- the sentence for certain offenses that cannot be suspended;
- the maximum possible sentence on the charge including the maximum sentence based on concurrent sentences from several different charges;
- any possible penalty enhancements authorized by state law based on previous convictions; and
- other consequences of the conviction (e.g., deportation).

A judge cannot accept a defendant's negotiated plea if it is the result of force or threats or promises apart from the plea agreement. Also, a judge cannot accept a negotiated plea of guilty unless there is a factual basis for the plea, which is presented by the prosecution.

However, once a judge finds the defendant knowingly and voluntarily entered a guilty plea and the sentence has been agreed to, he or she may impose the sentence. In some cases, sentencing is postponed, as discussed below.

Withdrawing a plea. A defendant may withdraw his or her plea at any time prior to sentencing based on one of the following grounds:

- plea was accepted without compliance with court rules;
- plea was involuntary or was entered without knowledge of the nature of the charge or sentence that could be imposed;
- sentence exceeds that specified by the accepted plea agreement or judge has continued the case for sentencing based on new information or transfer to another judge;
- plea resulted from the denial of the right to counsel;
- no factual basis for the plea; or
- plea either was not entered by a person authorized to act for a corporate defendant or was not subsequently ratified by a corporate defendant.

After withdrawing the negotiated plea, the defendant pleads not guilty and prosecution proceeds unless the state's attorney declines to prosecute (*nolled*) or a judge dismisses the case¹³. The judge vacating the plea agreement cannot preside over trial or other proceedings on the case unless the defendant waives the judge's removal.

Trial. If a plea agreement is not reached, over a period of time, after several pre-trial conferences and proceedings, the case is then assigned to a judge for trial and placed on the "firm jury" docket. Judicial oversight of the plea negotiation process continues. Plea bargaining can continue up to and throughout the trial, but stops once a judge or jury renders a verdict. At this stage, a judge also begins to hear any pre-trial motions filed by the state or defense associated with the trial, the results of which can impact plea negotiations.

The trial process is regulated by statute and court rules, which are not discussed in this report. A trial is an adversarial proceeding between a prosecutor and a defense attorney with a judge as the neutral arbiter, which is a shift from the plea bargaining process that relies on a measure of cooperation between all three parties. The burden of proof is on the state's attorney to show beyond a reasonable doubt that the defendant is guilty. The goal of the defense counsel is to discredit the prosecution's case and to create reasonable doubt about the defendant's alleged guilt. It is the responsibility of the judge or jury to determine guilt.

¹³ The following are grounds for a judge to dismiss a criminal case: (1) defects in the prosecution including grand jury proceedings; (2) defects in the information including failure to charge an offense; (3) statute of limitations; (4) absence of jurisdiction of the court over the defendant or subject matter; (5) insufficient evidence or cause to justify prosecution; (6) previous prosecution barring present prosecution; (7) denial of a speedy trial; (8) law defining the offense is unconstitutional or otherwise invalid; and (9) any other grounds.

Case processing standards. Judges follow administrative case processing standards for timely case disposition, as opposed to statutory guidelines. Table II-1 lists the time guidelines for disposing of a case through a negotiated plea or to final disposition with or without trial.

Table II-1. Criminal Court Case Processing Standards		
<i>Offense Type & Class</i>	<i>Number of Days from Arraignment to Plea</i>	<i>Number of Days to Disposition</i>
Misdemeanors	60	120 (4 months)
Class D & Unclassified Felonies	90	270 (9 months)
Class B & C Felonies	90	365 (12 months)
Class A & Capital Felonies	90	548 (18 months)
Source: Judicial Branch		

Sentencing. Defendants found guilty after trial are sentenced in accordance with the penal code by the trial judge. As discussed in Chapter I, if the offense for which the defendant is found guilty requires a mandatory minimum penalty, the judge must follow that sentence. Beyond that, though, Connecticut’s penal code establishes penalty options and ranges for criminal offenses to guide judges. In day-to-day practice, there are generally accepted penalties for crimes that ensure uniformity, consistency, and fairness in sentencing. Referred to as the “going rate,” these sentence options and lengths are also the basis for negotiating a plea bargain. The “going rate” does vary by judicial district.

Sentence postponement. A sentence can be imposed at the time the defendant pleads guilty in accordance with a plea bargain. A judge can, however, postpone sentencing for several reasons. First, if a case involves a victim, sentencing is postponed pending notification of the victim or the victim’s family who have a state constitutional right to make a statement at sentencing. Even under a negotiated plea and sentence, a judge considers the victim’s statement when imposing a sentence.

Second, a judge can request a pre-sentence investigation (PSI) report on the defendant by the Court Support Services Division (adult probation). The PSI report provides information on the defendant’s personal and criminal history, medical and psychological status, education and employment record, and other information relevant to the sentencing decision. The PSI often includes recommendations and/or referrals to alternative incarceration sentence options such as residential treatment or community-based supervision programs.

Third, sentencing can be postponed for reasons such as allowing the defendant to resolve personal issues especially if he or she is going to be incarcerated or to allow the defendant to locate and reserve placement in residential programs.

Finally, judges often grant defendants the right to argue for a lesser sentence than the negotiated sentence. Defendants are allowed to present mitigating factors that may persuade a judge to depart from the negotiated sentence and impose a lesser penalty. This option is not used when the defendant has pled guilty to or is found guilty of an offense subject to a mandatory minimum penalty unless the law allows for presumption.

Sentence Administration

Important to any discussion of mandatory minimum sentencing is how the sentences are, in fact, administered once imposed by a judge. Like the case disposition process, the administration of a mandatory minimum sentence is no different from any other prison sentence.

Sentence calculation. As stated, criminal sentences can be complex. Since a person may be arrested for and convicted of more than one offense and serve multiple sentences composed of various sentencing options, the calculation of the actual amount of time a person is to be incarcerated or under supervision can be complicated. The penal code, therefore, establishes rules to calculate a sentence.

Defendants who are ineligible for or are unable to post bond are incarcerated until the disposition of the pending criminal charges. If the defendant pleads or is found guilty and sentenced to a prison term, he or she is credited for the time incarcerated in pre-trial status. In some cases, the defendant is sentenced to “time already served,” meaning he or she has been incarcerated in pre-trial status for a period that meets or exceeds the sentence imposed by a judge.

Multiple sentences are served concurrently (at the same time) or consecutively (one after another). Under concurrent sentences, the prison terms are merged and the discharge date from prison is calculated based on the longest prison term. Under consecutive sentences, the prison terms are added to calculate an aggregate term and the discharge date is based on the total term -- commonly referred to as the “effective” sentence. In most cases the judge orders the way in which sentences will be served, but for some offenses the penal code specifies multiple sentences are to be served consecutively. A sentence begins when a convicted offender is transferred to Department of Correction custody.

When a prison sentence is vacated (cancelled or rescinded) and a new sentence is imposed on a convicted offender for the same offense or an offense based on the same act, the new sentence is calculated from the date the offender was transferred to DOC custody under the vacated original sentence.

Sentence calculation is only interrupted and stopped if a convicted offender escapes from prison. It resumes when the offender is returned to custody. In many cases, the defendant is subsequently convicted of and sentenced for escape, which is a crime.

Time served. In most cases, the court-imposed sentence is different from the actual time served in prison. Actual time served in prison, which is often less than the court-imposed sentence, is not within the jurisdiction of the state’s attorney or the sentencing judge, but instead is driven by statutory parole eligibility and time-served standards and DOC administrative early release policies.

Since 1993, all convicted offenders are required to serve 100 percent of the court-imposed sentence either in prison or under an early release, community-based supervision program (e.g., parole, transitional supervision). All offenders, except those convicted of a capital offense, are eligible for parole. Most are required to serve at least 50 percent of the court-

ordered prison term to be eligible for release on parole. Offenders convicted of serious, violent offenses¹⁴ are required to serve at least 85 percent of their sentences to be eligible for parole.

Since 1999, the Board of Pardons and Paroles may disregard the mandatory minimum penalty portion of a prison sentence in calculating parole eligibility. The parole board calculates eligibility, using the 50 percent or 85 percent time-served standards, on the total “effective” sentence.

Since July 2004, the parole board has been required to reassess the suitability of all parole-eligible inmates for parole release at the 75 percent time-served mark of a sentence. For many inmates serving a sentence including a mandatory minimum penalty, the 75 percent mark is at or past the mandatory minimum term of the total prison sentence.

Once released on parole by the parole board, an offender is required to serve the remaining portion of the sentence under community-based parole supervision by the Department of Correction.¹⁵

DOC has discretionary early release authority for inmates serving two years or less and administers early release programs such as transitional supervision (TS), halfway houses, and re-entry furloughs.

¹⁴ The Board of Pardons and Paroles has identified 33 “serious, violent” offenses under the 85 percent time-served standard.

¹⁵ In 2003, as part of the state budget, the Board of Parole, a separate state agency with consolidated discretionary release and supervision authority, and the Board of Pardons were placed within the Department of Correction. Under an informal agreement, the three agencies continued to operate as they had prior to the merge. In 2004, however, P.A. 04-234 merged the Board of Parole and the Board of Pardons into the new Board of Pardons and Paroles and gave it discretionary release decision-making authority independent of DOC, although the board remains within DOC for administrative purposes only. Meanwhile, the Department of Correction retained parole supervision authority over all released inmates.

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Sentencing Reforms

The primary object of the state's criminal justice policy generally is to reduce the frequency and severity of crimes thereby providing public safety. The four goals of criminal sentencing are: deterrence, incapacitation, retribution, and rehabilitation. Attempts to improve public safety through criminal justice policy go hand-in-hand with sentencing reform. This chapter provides an overview of the development of the state's mandatory minimum sentencing policy in the context of the other relevant sentencing and criminal justice policies.

Since the late 1970s, most sentencing reforms in Connecticut have intended to curb the crime rate through sentencing initiatives including mandatory minimum penalty laws. Changes in sentencing policies have also been prompted by a variety of other factors including:

- dissatisfaction with the rehabilitative goals of correction;
- dissatisfaction with the outcomes of both indeterminate and determinate sentencing;
- disparities in sentencing practices;
- a reduction in the actual amount of time served of a prison sentence;
- prison overcrowding; and
- concerns about the levels and types of correctional resources expended to implement sentencing laws.

During the same period, Connecticut recognized in some cases the traditional punishment options of incarceration or community supervision (e.g., probation, parole) may not be in the best interest of the ultimate goal of public safety. Diverting a defendant from the criminal justice system to medically supervised treatment for serious mental illness or severe drug addiction or a structured education program focusing on the consequences of certain criminal behavior were deemed to be more appropriate and effective. So while it was adopting "tough on crime" policies, Connecticut also enacted a parallel system intended to divert certain offenders from the criminal justice system and to provide alternatives to incarceration to some "jail bound" offenders. The state's diversionary and alternative sanction policies have taken root as an acceptable criminal justice system response to a criminal conviction.

Finally, an understanding of the history and impact of any sentencing model or reform including mandatory minimum penalty laws must take into account the significant role that plea bargaining plays. As discussed in Chapter II, an important factor in sentencing is prosecutorial plea bargaining. Under a plea agreement, the sentence is determined, or at least critically affected, by negotiations between the prosecutor and defense attorney. As a result, prosecutors, defense attorneys, and judges may use plea bargaining to reduce, or at least impact, the number of offenders affected by mandatory minimum penalty laws.

Determinate Sentencing

Since the 1800s, indeterminate sentencing was the criminal sentencing model in use in Connecticut and nationally. Under an indeterminate sentence, a convicted offender received a sentence with a minimum and maximum term set by a judge (refer to Appendix A). Correction or parole authorities were then responsible for determining when an offender had been sufficiently punished and/or rehabilitated and was, therefore, ready for release. Offenders were generally eligible for parole release after completing the minimum term less any “good time” credits earned while in prison. Since many inmates were paroled at their first eligibility date, the minimum term minus “good time” became the de facto sentence length.

By the late 1970s, the indeterminate sentencing model was under attack. The broad discretion conferred on judges and correction and parole authorities under the sentencing scheme, it was argued, resulted in arbitrary sentences and racial discrimination, and it had failed to control crime. The principal criticism was the absolute discretion of an indeterminate sentencing system. It was impossible to determine a “correct” or “fair” sentence for a type of crime. Simply, judges were criticized for sentencing offenders to overly short prison terms and correction or parole authorities for releasing them too early.

In 1981, based on recommendations by the state Sentencing Commission,¹⁶ Connecticut adopted the determinate sentencing model. The commission reported the goal of the new structure was to provide “just and consistent penalties based upon prior criminal record and the conviction offense.” Determinate sentencing laws were intended to result in more uniformity and consistency in sentencing, which could potentially make it easier to predict sentencing outcomes and correctional costs, and to hold judges accountable.

The determinate sentencing model has legislatively established sentencing ranges. In general, the guidelines are based on two criteria to impose the type and length of punishment: (1) the seriousness of the crime; and (2) the defendant’s prior criminal history. Under the determinate sentencing model, a judge imposes a single fixed term of imprisonment (commonly called a “flat” sentence), but retains discretion to consider a wide range of penalties (e.g., probation, mandatory treatment, fines) within the statutorily defined limits in effect for each class of offense.

Other policy reforms. Under the new sentencing model, three significant reforms also took place. First, the role of the parole board, implicit in an indeterminate sentencing system, was abolished under the new sentencing framework. The parole board maintained its

¹⁶ In 1979, the General Assembly established a Sentencing Commission (Special Act 79-96) to recommend sentencing policies and practices to meet the goals of retribution, deterrence, incapacitation, and rehabilitation of convicted offenders. The commission was required to develop sentencing guideline ranges taking into consideration various factors such as: (1) prior sentencing trends for felony offenses; (2) the nature and degree of harm caused by each offense; (3) the importance of prior criminal convictions in imposing a sentence; (4) any policy adopted by the chief state’s attorney governing the exercise of prosecutorial discretion; (5) the statewide crime rate; (6) the deterrent effect of a particular sentence; (7) the necessity to avoid prison overcrowding; and (8) public opinion on the gravity of offense. The commission was also charged with measuring the success of sentencing and correctional policies in meeting the state’s overall sentencing goals and promoting greater public understanding of the criminal sentencing process.

discretionary release authority for offenders convicted of crimes committed prior to July 1981 and serving indeterminate sentences, but not for determinate sentences. Introduced along with the restructuring of the parole system was an early release program called Supervised Home Release (SHR), which transferred discretionary early release authority to the Department of Correction.¹⁷

Second, the amount of “good time” credits that could be earned for sentences over five years was reduced, thereby increasing the time served by about 20 percent. Good time credit was reduced from 15 days to 12 days per month of the sentence.

Third, the General Assembly began to establish mandatory minimum sentences for certain offenses, increase existing mandatory minimum penalties, and enact enhanced penalties under the first in a series of persistent offender provisions. The state’s mandatory minimum sentencing policy is discussed in greater detail below.

The *cumulative* impact of these sentencing reforms was a sizeable increase in the prison population. In the early 1980s, the incarcerated population in Connecticut was already at design capacity levels, and the correctional system could not accommodate the influx of inmates. The state experienced its first prison overcrowding crisis, which it responded to by beginning a long-term prison expansion project that ultimately added over 10,000 new prison beds by the early-1990s (at a cost of over \$1 billion).

By 1984, the Sentencing Commission reported to the legislature the new determinate sentencing law had not produced its intended effects and had instead contributed to the growing prison overcrowding problem. According to the commission, the percentage of inmates in prison for serious felonies remained constant, but the number (and percentage) of inmates confined for less serious, nonviolent and even misdemeanor offenses had increased significantly. In addition, the average sentence length and time served for less serious felonies had also dramatically increased.

The commission concluded that judges were imposing sentences that were somewhat higher than the previous customary minimums because of their inability to balance the offender’s criminal history and correctional needs by imposing a minimum term with the victim’s and the public’s demands for punishment by imposing a maximum term. This increased time served. Overall, sentence lengths increased by about 25 percent. The total impact on the correctional system became clearer when the increased sentence lengths were multiplied by the thousands of offenders sentenced to prison each year.

¹⁷ The SHR program, initially created as a replacement for parole, quickly became a mechanism for dealing with prison overcrowding. By the early 1990s, most inmates were being released after serving about 10 percent of their court-imposed sentence. Recidivism among the inmate population skyrocketed. In 1990, the General Assembly established a three-year phase-out of SHR and transferred discretionary early release authority over determinate sentences from DOC to the parole board, thereby reestablishing parole.

Mandatory Minimum Sentences

Most mandatory minimum penalties were established throughout the 1980s and 1990s; however, Connecticut had enacted mandatory minimum sentences for a few serious, violent offenses as far back as 1969. During the 1980s, the political and social climate was driven by a heightened sense of crime. The mandatory minimum sentencing policy was a symbol of the state's attempt to be tougher on criminals and part of the new determinate sentencing framework.

During this time, the public had lost confidence in the criminal justice system. The media focused on high profile crimes involving violence, drugs, and weapons and crimes against special status victims (e.g., children, elderly, physically disabled, mentally retarded, and pregnant). The "crack epidemic" and the violent, weapon, and gang-related offenses associated with the drug were rampant in urban areas throughout the state. Prisons were seriously overcrowded and convicted offenders were cycling in and out of prison under a mismanaged SHR program; most served only a few weeks or months before being released.¹⁸ And, despite the determinate sentencing reform, judges were still not publicly trusted to impose appropriately harsh sentences. It was in this climate that mandatory minimum sentences were viewed as a legitimate weapon in controlling crime and drug use.

Since incapacitation was the primary correctional goal and mandatory minimum penalties are premised on an incapacitation rationale, state legislators looked to these laws as a way to reduce crime by ensuring offenders convicted of certain serious -- and often high profile -- offenses served specific terms in prison.

These laws were further intended to counter the drastic reduction in the average time served in prison on court-imposed sentences that occurred under the SHR program. The correction department had quickly used the supervised home release program as a mechanism to control prison overcrowding and, as a result, most inmates were serving only about 10 percent of their court-imposed sentences before being released. Because of the high number of released inmates, the department was unable to adequately provide community-based supervision to the thousands of convicted felons being released early from prison. Mandatory minimum sentencing laws were seen as a solution to the highly publicized failure of SHR.

Finally, the mandatory minimum sentencing laws offered a symbol of action during a time when the public was anxious about crime and was losing confidence in the criminal justice system. They sent a strong message to the public that their fears were noted and were being acted on by elected officials. There is consensus among criminal justice researchers that throughout the country the mandatory minimum sentencing laws enhanced "tough on crime" platforms of elected officials and criminal justice administrators without significantly impacting the outcomes of the criminal justice process.

Drug laws. In Connecticut and nationally, mandatory minimum penalties for drug crimes were first hailed as an effective weapon in the war against drugs and as a means to control

¹⁸ Refer to the Legislative Program Review and Investigation Committee reports on *Board of Parole and Parole Services* (1993) and *Factors Impacting Prison Overcrowding* (2000) and the Prison and Jail Overcrowding Commission (PJOC) annual reports (1989 through 1995).

the other violent, property, and weapon crimes associated with the drug trade. In recent years, however, these laws have been condemned as ineffective in reducing drug use or drug crime and as inherently unfair. They have become the prime example for all that is believed to be wrong with the mandatory minimum sentencing policy. There is consensus in the legislative debate that mandatory minimum sentencing laws were a “stopgap way of dealing with concerns about truth in sentencing.”¹⁹

A brief history of their development in Connecticut is used as an example of the issues surrounding the overall mandatory minimum sentencing policy. (Appendix B contains a summary of Connecticut’s drug sale and possession laws including the statutory penalty guidelines and mandatory minimum sentences. It should be noted, however, only drug sale²⁰ crimes carry mandatory minimum penalties.)

The first mandatory minimum penalty for the sale of illegal drugs (C.G.S. §21a-278) was enacted in the 1970s. The intent of the law, as previously stated, was to curb the use of illegal drugs and to punish more severely persons who were trafficking in the drug trade for profit. These persons were the non-drug-dependent offenders in possession of amounts of drugs deemed to be more than necessary for personal use. Law enforcement officials and prosecutors were supposed to use the law to target the drug “kingpin.”

In the mid-1980s, at the height of the nation’s long-standing war on drugs, the “crack epidemic” hit. Cocaine in a free-base form, commonly referred to as “crack,” was widely introduced throughout the United States. Crack has been called the “equal opportunity” drug because it is cheap (it has a street value significantly less than powdered cocaine), fast acting, extremely addictive, and only a small amount is needed for personal use. For these and other reasons, crack became a popular drug within urban areas and among lower income populations. By the late-1980s, the “crack epidemic” was being cited for a rise in drug-related violent and weapon offenses and organized gang activity, and for fueling a host of drug-related social and medical issues such as babies born addicted to the drug. Representative Michael Lawlor, Judiciary Committee co-chairperson, explained that at this time, “out of frustration, we [the legislature] adopted mandatory minimum [penalties] for certain crimes and persons sentenced to mandatory minimums were not eligible for early release.”²¹

Because of the problems resulting from the previously adopted determinate sentencing and correction policies, the “tough on crime” political message, and the continued use of illegal drugs especially “crack,” there was a heightened sense of political urgency. In describing the climate at that time, Representative Lawlor stated, “People [in the legislative, judicial, and

¹⁹ House of Representatives debate on SB 1160 An Act Concerning Mandatory Minimum Sentences (May 16, 2001 and May 23, 2001).

²⁰ Drug sale” is defined as any form of delivery including barter, exchange or gift, or offer therefor. For the purposes of this study, sale also includes manufacture, distribution, dispensing, or administration of an illegal drug.

²¹ House of Representatives debate on SB 1160 An Act Concerning Mandatory Minimum Sentences (May 23, 2001).

executive branches] really became transfixed with this crisis that had occurred in our state, in large part owing to the marketing of “crack” cocaine.”²²

In response, in 1987, the General Assembly held a special legislative session to consider a number of bills to address the “crack war” through criminal justice, sentencing, and drug treatment initiatives. One of the new initiatives (Public Act 87-373) amended the existing law that defines the sale of illegal drugs by a non-drug-dependent person (C.G.S. §21a-278(a)) by adding “crack” to the list of drugs that would subject a person convicted of the offense to a mandatory minimum penalty

Elected officials from urban areas were particularly concerned with continuing to send a strong message to their constituencies that the illegal drug trade and use would not be tolerated; Connecticut was going to be very tough on drug crime especially in its cities.

By the end of the 1980s, Connecticut was well on its way to completing the prison expansion project, and thousands of new prison beds had been added. Since prison overcrowding was no longer (at least publicly) a pressing priority, it was argued serious and violent drug offenders could be incarcerated and required to serve longer periods. The mandatory minimum penalties were, therefore, established for drug sale and other serious, violent crimes such as sexual assault and weapon violations. The severity of the mandatory minimum penalty for a drug sale crime was based on three criteria: (1) type and weight of the drug; (2) offender’s drug dependency status; and (3) involvement of children in the offense.

First, the type and weight of the drug is specified in the drug sale laws. Certain illegal drugs have been identified as more dangerous and serious based on characteristics such as their addictive properties. Different weight thresholds are used for charging a person with the sale of various narcotics. For example, prior to 2005, a person had to be charged with and convicted of selling at least one ounce of powder cocaine or at least one-half gram of “crack” cocaine (C.G.S. §21a-278(a)) to receive a mandatory minimum sentence. The statutory distinction was based on the fact that “crack” was cheaper than cocaine, fast acting, extremely addictive, and only a small amount was needed for personal use. Therefore, anything more than a very small amount of “crack” was deemed to be sufficient for the purposes of selling, whereas a person could possess a larger amount of cocaine for personal use. As Representative Lawlor described, “. . . for reasons which are not really clear today”²³ the threshold amount for “crack” cocaine was set at at least one-half gram versus the threshold amount of at least one ounce for cocaine. (As discussed below, effective July 2005, the threshold amount for both substances is one-half ounce.)

Second, state drug laws recognize persons who are addicted often sell drugs or commit other crimes to get money to buy drugs for their personal use. They are often not in the drug trafficking business. Therefore, at the same time the legislature was enacting mandatory minimum penalties, it also began to establish alternative sentencing options and treatment

²² House of Representatives debate on HB6635 An Act Concerning the Illegal Sale or Possession with Intent to Sell of Cocaine (May 10, 2005).

²³ House of Representatives debate on HB6635 An Act Concerning the Illegal Sale or Possession with Intent to Sell of Cocaine (May 10, 2005).

programs for drug-dependent offenders, who were viewed as less of a criminal threat and more in need of treatment rather than punishment.

Third, the General Assembly intended to send a strong message that it was attempting to protect children from drugs by enacting mandatory minimum penalties for drug crimes involving children. It created mandatory minimum penalty enhancements for:

- selling drugs to a minor under 18 (C.G.S. §21a-278a(a));
- using, hiring, persuading, or otherwise coercing a minor under 18 to sell drugs (C.G.S. §21a-278a(c)); and
- selling drugs within 1,500 feet of a school, day care center, or public housing (C.G.S. §21a-267(c), §21a-278a(b), and §21a-279(d)).²⁴

Representative Robert Farr, Judiciary Committee ranking member, stated mandatory minimum sentencing laws were important “... in part [to] send messages ... it was important for us as a society to say we wanted to send a message that we were going to be tough on [drug crimes].”²⁵

However, over the past 20 years, for various reasons, mandatory minimum sentencing laws for drug crimes have come under attack. Despite the proliferation of mandatory minimum penalties for drug crimes and a drastic increase in the number of persons incarcerated for drug crimes, there has been no demonstrable reduction in drug trafficking or use. The rehabilitative and treatment model has become more widely supported as evidence of its effectiveness mounts. It is also argued mandatory minimum penalties for drug crimes unintentionally resulted in inequities in plea bargaining and sentencing between Caucasian and minority offenders because the statutory threshold disparity between the quantities of cocaine and “crack” required for charging and conviction is unfair and unintentionally targets minority drug offenders. It is further argued mandatory minimum sentences are a significant factor in the state’s persistent prison overcrowding problem.

There have been three significant changes to the state’s mandatory minimum sentencing laws for drug crimes. The first occurred in 2001, when then-Governor John Rowland introduced a bill to give judges the authority to depart from the mandatory minimum penalty for a drug sale conviction if the crime did not involve violence or a weapon. During the Senate debate on the provision, it was explained:

the intent of this bill [SB 1160] is to provide a judge in the sentencing phase of a criminal trial with the tools he needs to fashion a sentence which is tailored to the precise circumstances in

²⁴ Initially, the distance was set at 1,000 feet of a school, but in 1992 it was increased to 1,500 feet. Public housing and day care centers were added (in 1992 and 1994 respectively) to schools as areas where mandatory minimum penalty enhancements were applicable. These areas were intended to be “drug-free” zones in which children live, play, and are educated.

²⁵ House of Representatives debate on HB6635 An Act Concerning the Illegal Sale or Possession with Intent to Sell of Cocaine (May 5, 2005).

the case before him. One of the difficulties with mandatory minimum sentences is that a judge is precluded by virtue of the mandatory minimum from creating a sentence which fits the crime, which is one of the hallmarks of the principles of justice of our system. I think what this amendment does is, in keeping with the intent of that underlying bill and the underlying purpose of the bill that's before us, adds to those tools that the judge has, an ability to fashion a sentence that meets the crime. And for that reason, regardless of one's philosophical view as to whether or not mandatory minimums contribute or don't contribute to a particular outcome, this bill is important and this amendment enhances the importance of the bill by giving the judge back the discretion to fashion a sentence that meets the crime and that's a very important step for the Legislature to take today ...²⁶

This law (Public Act 01-99) is important because it shifted the sentencing policy for drug crimes from mandatory minimum sentences to presumptive sentences, except for the sale of drugs to a minor and using a minor to sell drugs. A defendant, however, may only use this provision once. A second drug sale conviction requires imposition of the mandatory minimum penalty.

The second change, earlier in 1999 (Public Act 99-196), amended the “Truth-in-Sentencing” parole eligibility standards that had been adopted in 1995. (This sentencing reform is discussed below.) Under the original statutory language, the mandatory minimum penalty overrode the new requirement for serious, violent offenders to serve 85 percent of their sentences to be eligible for parole. As explained during the Senate debate by Senator Donald Williams, the 1999 bill was intended to: “correct something that I believe is unintentional in our statutes. In statute [C.G.S. §54-125a(b)(3)] actually permits a person who has been convicted of an offense for which there is a mandatory minimum sentence to get out earlier than someone who is convicted of a [crime] that did not contain a mandatory minimum sentence.”²⁷

Now the parole board technically no longer factors in the mandatory minimum term of a total aggregate sentence when calculating parole eligibility. This policy change allows the parole board to determine which inmates are released and how long they must serve prior to release without consideration of the mandatory minimum sentence. However, in many cases, offenders convicted of crimes subject to a mandatory minimum sentence actually receive prison terms longer than the mandatory minimum penalty. Parole eligibility on lengthy sentences often results in the inmate serving the mandatory minimum term before release, but this is a function of sentence and parole eligibility calculation, not sentencing policy.

²⁶ Senator William Aniskovich during Senate debate on HB 1160 An Act Concerning Mandatory Minimum Sentences (May 16, 2001).

²⁷ Senate debate on HB6648 An Act Concerning Parole (June 2, 1999).

Most recently, during the 2005 session, the General Assembly after a lengthy debate passed a bill to equalize the statutory threshold amount of cocaine and “crack” that results in a mandatory minimum penalty. Governor Rell vetoed the bill (Public Act 05-83). In her veto message, the governor stated the bill proposed a dramatic shift in the state’s public policy regarding the illegal possession, use, and sale of drugs which is to impose harsh penalties in order to curb the use of “crack” and the violence associated with the drug. The governor further found enactment of the bill “would signal a significant departure from this policy” and send an “inappropriate message that the enforcement of our drug laws, especially with respect to “crack,” is being eased.” The state legislature and the governor subsequently compromised (Public Act 05-248) and the amount of cocaine and “crack” was equalized at one-half ounce.

During the legislative debate, it was acknowledged equalizing the threshold amounts of powdered cocaine and “crack” was a symbolic rather than a substantive change. There are very few persons actually convicted under the drug sale law (C.G.S. §21a-278(a)) because the mandatory minimum sentence is five years to a maximum of life in prison. Under the existing sentencing laws, disposing of any case that subjects a person to a life sentence requires a probable cause hearing. In practice, state’s attorneys avoid the probable cause hearing requirement by charging offenders under a subsection of the same law (C.G.S. §21a-278(b)) that carries a five-year mandatory minimum penalty for the first offense and a 10-year mandatory minimum penalty for subsequent offenses. This law does not specify a threshold for cocaine or “crack;” a person can be charged for sale of “any narcotic substance.” Simply, the same disposition and sentence can be achieved without the extra procedural requirements.

During the legislative debate on this issue, Representative Lawlor explained the rationale behind the proposed change in the threshold amounts for cocaine and “crack:”

... in recent years we have come to learn the painful truth, that number one, this is an extremely expensive policy decision to send more and more people to prison. And number two, that we don’t actually seem to get any results from sending non-violent drug offenders to prison. Not long ago, ... this legislature addressed another unintended consequence of policy decisions we made in the late 1980s and early 1990s, and we made it possible for judges to depart from minimum mandatory sentences for offenders who were charged with either possession or distribution of drugs ... because all of us acknowledged that we are all troubled by the racial disparities we see today in our prison system, and they continue. [And] I think it’s important to point out what that disparity is. Drug abuse is a serious problem in our state, ... we respond to it in a variety of ways. There’s no evidence that by sending people to prison for lengthy amounts of time for small amounts of “crack” that we are making any headway at all in solving that problem. But there’s clear evidence that we are

aggravating racial disparities in our criminal justice system by establishing public policies like the one we seek to change today.²⁸

Other Sentencing Reforms

In the 1990s, the General Assembly enacted a series of sentencing reforms addressing the problems in the criminal justice system (for which mandatory minimum sentencing laws were originally adopted as a stopgap measure.) “Truth in sentencing” was the philosophy behind many of the new reforms. Their overall purpose was to restore credibility to the criminal justice system by reducing the discrepancy between the court-imposed sentence and the actual time served in prison. The reform also responded to the public’s perception that harsher sentences reduce crime, especially violent crime. By restricting or eliminating provisions for early release or sentence reduction, “truth in sentencing” reforms required offenders to serve more of their prison terms. These reforms, however, did not necessarily call for longer court-imposed sentences. A brief overview of the reforms follows.

Alternative sanctions. In 1990, the Office of Alternative Sanctions (OAS) was established in the Judicial Branch, to focus the state’s efforts at developing alternative punishment options to prison for certain types of offenders. OAS was given the overall responsibility to oversee and coordinate implementation of a network of alternative incarceration sanctions to ease prison overcrowding and court backlogs and to more successfully supervise offenders in the community thus providing public safety. Since the late 1980s, Connecticut had been developing a range of community-based sanctions that included any punishment option more restrictive than probation, but less punitive than incarceration. OAS has since been reorganized into the Court Support Services Division (CSSD), which has continued to develop, administer, contract for, and evaluate a statewide network of alternative incarceration programs. Since its inception, the state’s alternative sanction policy has broadened to create alternative sentencing options including, but not limited to: in- and out-patient substance abuse and mental health treatment and services; women’s and children’s programs; specialized population programs (e.g., sex offenders, Latinos); halfway houses and transitional housing; and educational and vocational programs.

Discretionary parole. After the supervised home release program was statutorily eliminated and phased out in 1993, discretionary parole authority for determinate sentences greater than two years was reinstated within the Board of Parole. The board was made a separate state agency consolidating discretionary release and parolee supervision authority. DOC retained early release and supervision authority over inmates sentenced to two years or less. It administered the Transitional Supervision (TS) program for those inmates.

Time-served requirements. As part of the restructuring of parole, the legislature enacted time-served standards for parole eligibility. First, a 50 percent time-served standard for early release eligibility was phased in for all sentenced inmates. This meant all inmates had to serve at least half of their sentences in prison to be eligible for release to parole or transitional

²⁸ House of Representatives debate on HB 6635 An Act Concerning the Illegal Sale or Possession with Intent to Sell of Cocaine (May 5, 2005).

supervision, which is a DOC community supervision program. Initially set at 25 percent in 1995, the standard was increased over the next two years to 40 percent and then 50 percent.

Second, all offenders who committed a crime on or after October 1, 1994, are required to serve the full term of their court-imposed sentences *either* in prison or on parole or DOC community supervision. This was a significant change to the sentencing laws and established, for the first time, a 100 percent time-served standard.

“Truth-In-Sentencing.” In 1994, the United States Congress enacted the Violent Crime Control and Law Enforcement Act to ensure that time served was commensurate with the court-imposed sentence and to incarcerate violent juvenile and adult offenders. To ensure compliance, Congress provided funding to states that required serious, violent offenders to serve at least 85 percent of their sentences prior to release. The federal funding was to be used to add prison beds by building new and/or expanding existing prison facilities.

In 1995, Congress established the Violent Offender Incarceration and Truth-in-Sentencing (VOI/TIS) program to provide \$10 billion over a four-year period to state and local authorities to defer the costs associated with compliance with the law, including putting more offenders in prison and the associated correctional construction costs. The VOI/TIS program required state legislatures to enact laws requiring violent offenders to serve at least 85 percent, or an average of 85 percent, of their sentences prior to release. The VOI/TIS program did not require legislative action, only assurances by states that violent offenders would serve a substantial portion of their sentences prior to release.

Connecticut adopted the sentencing standards in 1995, thereby establishing a third time-served requirement by mandating serious, violent offenders serve 85 percent of their sentences to be eligible for parole.

“Good time.” The new parole and time-served laws were silent with respect to the awarding of “good time” credits, which were not repealed. A 1994 attorney general opinion requested by the Department of Correction, however, interpreted the new law as eliminating the effect of “good time” on reducing a sentence. It stated, although there is no specific record of legislative intent, the legislature intended to eliminate “good time.”

In 1999, the Connecticut Supreme Court agreed with the attorney general’s opinion.²⁹ The effect of that ruling is an inmate must serve between 50 and 85 percent of his or her court-imposed sentence to be eligible for any early release program and 100 percent of their sentence incarcerated or under community supervision. By 2000, this was one of the toughest sentencing reform laws adopted in the United States. To date, the legislature has not acted to respond to the court’s decision.

Crime initiatives. Also during the mid-1990s, the legislature enacted a series of anti-crime provisions, which increased maximum and mandatory minimum sentences (especially for offenses involving or against children and violent sexual assault offenses), limited offender eligibility for alternative sentence options and programs, expanded persistent offender statutes,

²⁹ *Valez v. Commissioner of Correction*, 738 A.2nd 604, 250 Conn. 536 (1999)

and toughened other criminal statutes. In addition, a number of changes were made to restrict eligibility for alternative sentencing programs for sexual assault offenses and offenses involving the “use, attempted use, or threatened use” of physical force.

Enhanced Penalties

The persistent offender laws are based on deterrence and incapacitation theories. It is assumed offenders with a prior felony conviction (or “strike”) will be deterred from re-offending because of the harsher punishments mandated for a subsequent similar conviction. For offenders convicted of a second or third offense, a lengthy period of incarceration is used to protect the public since these habitual offenders are considered unlikely to be rehabilitated or reformed.

Connecticut enacted its first persistent offender law (Public Act 69-828) in 1969 for persons with prior serious felony convictions. The persistent offender laws classify a prior homicide, sexual assault, robbery, or assault as a “strike” against a habitual offender. During recent years, other prior felony offenses including larceny, crimes involving bigotry or bias, crimes involving assault, stalking, trespass, threatening, harassment, or criminal violation of a protective or restraining order, and driving under the influence of alcohol or drugs have been classified as a “strike” against a persistent offender. (Refer to Appendix C.)

What is the actual versus intended impact of mandatory minimum sentences on the system?

The intended purpose of the state's mandatory minimum sentencing laws is multifaceted: reduce crime (and drug use); control judicial discretion over certain sentencing decisions; increase the prison sentences for serious and violent offenders; and send a message to the public and offenders that Connecticut's elected officials were taking action against crime. *The mandatory minimum sentencing laws have achieved, to some extent, the intended purposes, but the actual impact is mitigated by criminal justice practices.*

There is no direct evidence to suggest that the state's mandatory minimum sentencing laws reduced the crime rate. In Connecticut, the number of arrests each year, which is the traditional measure of crime, has been steadily decreasing for almost 30 years. There is consensus among criminal justice researchers and administrators that this decline is the cumulative effect of many factors including socioeconomic changes in the population, a general downward trend in reported property crime, increased resources for the criminal justice system, and improved law enforcement techniques as well as changes in the state's crime and sentencing policies. Mandatory minimum sentencing laws are only a part of the overall sentencing framework and the crime policy in Connecticut. Therefore, a direct correlation between the adoption and administration of mandatory minimum sentencing laws and a declining crime rate cannot be made.

Based on data and information from the Division of State Police, there has been no appreciable decline in drug trafficking, which includes the manufacture, sale, and possession of illegal drugs, in Connecticut. Department of Mental Health and Addiction Services data on drug use suggest there has been no sustained decline in actual drug use among Connecticut residents. However, the number of persons seeking and receiving drug treatment has increased over the past 20 years.

In theory, mandatory minimum sentencing laws control judicial discretion over certain sentencing decisions, but judges, prosecutors, and defense attorneys typically engage in plea negotiations in an attempt to resolve almost all criminal cases without trial. There is no prohibition against plea bargaining mandatory minimum penalty offenses. The case disposition process, either through plea bargaining or trial, is the same for mandatory minimum penalty cases as it is for any criminal case.

Mandatory minimum sentencing laws can only be as mandatory as prosecutors and judges choose to make them. Judges and prosecutors (and defense attorneys) generally in effect circumvent these laws. So while in theory mandatory minimum sentencing laws eliminate judicial discretion, in the administration of these laws, judges appear to have sufficient discretion to impose what they believe to be fair and appropriate sentences.

Most mandatory minimum penalty offenses result in a negotiated disposition whereby the defendant pleads guilty to a lesser charge or other offense not subject to a mandatory minimum penalty. In those cases, judges have discretion to impose any sentence within the statutory sentencing guidelines. For serious and violent offenses judges often impose sentences greater than the mandatory minimum penalty. As intended, serious, violent offenders are receiving increased prison terms. For drug sale and other offenses where judges have presumptive sentencing authority, they often exercise their discretion to impose less than the mandatory minimum sentence. Absent mandatory minimum sentencing laws, however, there is no evidence to suggest these sentencing trends would differ.

It appears mandatory minimum sentencing laws have served as symbols of legislative action on crime. Many legislators interviewed by program review staff believe adopting mandatory minimum sentencing laws is an effective way to convey a public message about crime and punishment while not adversely impacting the administration of justice. Many legislators recognize mandatory minimum sentencing laws are not strictly applied and that judges and prosecutors routinely engage in plea bargaining.

To determine the actual versus intended impact of the mandatory minimum sentencing laws on the overall criminal sentencing policy of the state as required by Public Act 04-234, the program review committee analyzed the crime rate and the outcomes of the criminal justice system's application of Connecticut's mandatory minimum sentencing laws. The detailed analyses are presented below.

Crime Rate

Currently, there is no accurate method to draw a correlation between the imposition of mandatory minimum penalties and any change in the state's crime rate. Mandatory minimum sentencing laws are, at best, one of many factors that impact the crime rate.

While there is no single method to accurately measure the overall crime rate in Connecticut, various data sources are used to track aspects of crime, which allow conclusions about the trends to be drawn.

The number of reported crimes and arrests made by the state and local law enforcement agencies are used to calculate the state's crime rate.³⁰ The crime rate is based on seven index crimes, which were selected to represent the overall volume and rate of crime.³¹ The index crimes are categorized as:

- **violent crimes:** murder, aggravated sexual assault (rape), robbery, and aggravated assault;³² and

³⁰ The Department of Public Safety Division of State Police collect and analyze the data. The division publishes an annual report on crime, *Crime in Connecticut*.

³¹ The Federal Bureau of Investigation (FBI) has been tracking nationwide crime counts since 1930, and the Connecticut Division of State Police began submitting crime data in 1977. The FBI defined the seven index crimes. The FBI publishes an annual report on crime in the United States, the *Uniform Crime Report*.

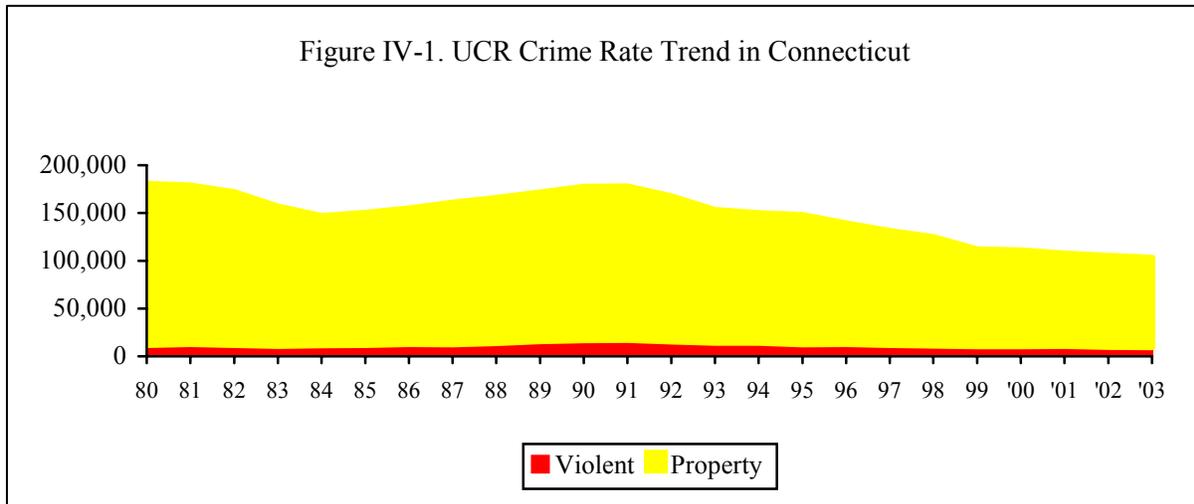
³² The FBI subsequently added arson as a violent index crime, but it is not included in this analysis.

- **property crimes:** burglary, larceny-theft, and motor vehicle theft.

These data have limitations that should be considered when measuring the crime rate. Reported crime data do not include unreported and undetected crimes; currently, there is no estimate of unreported and undetected crime in the state. Arrest data do not include unsolved crimes; if the crime is reported, but the offender is not arrested, the case is not counted. An offender may be arrested for more than one crime, but only the most serious charge is reported. Since a person may be arrested more than once during a particular period (e.g., a year), the number of arrests does not reflect the number of persons arrested.

Given these data limitations, the crime rate in Connecticut is most likely underestimated. However, the following provides the most accurate analysis of the trends in the crime rate in Connecticut.

Reported crime index. Figure IV-1 shows the crime index rate trend in Connecticut. Since 1980, the overall crime rate has been steadily declining. As shown in the graphic, there was an increase in both violent and property crime during the late 1980s, which is attributed to the introduction of cocaine in a free-base form and the resulting national “crack epidemic.” An increase in violent and weapon offenses is often associated with the trafficking of “crack.” However, beginning in the early 1990s, the overall index crime rate continued to decline and is at its lowest point in 2003.

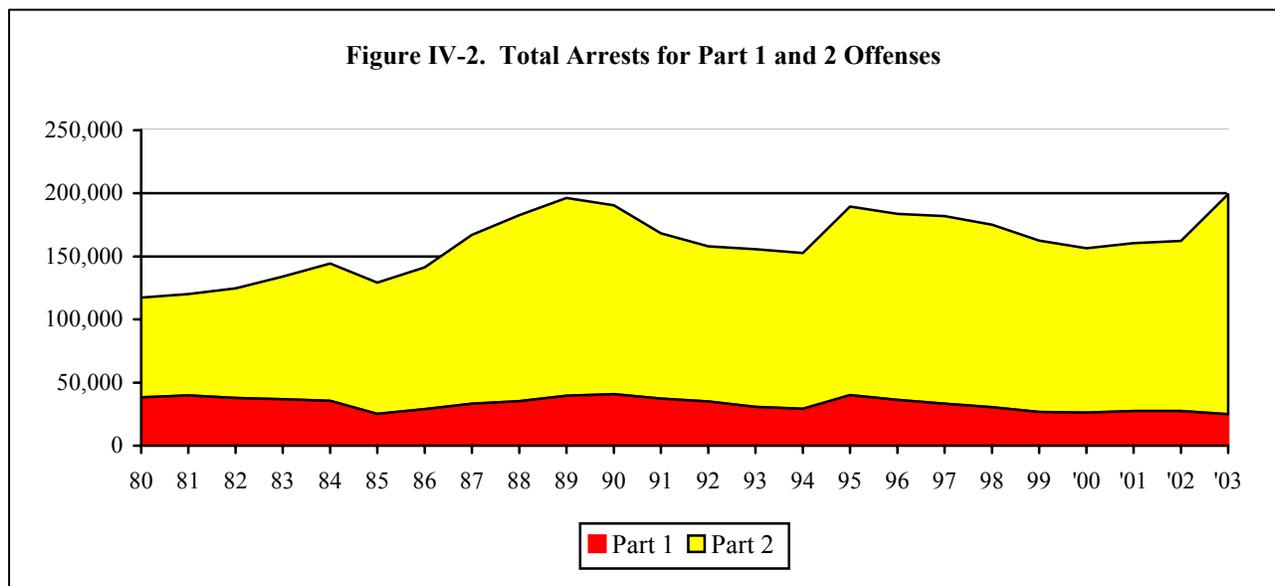


Arrest rate. In addition to tracking the total number of index crime arrests, the state police track the number of arrests for all other crimes in Connecticut. These data provide a broader analysis of all types of crimes based on arrests than the index crime rate.

However, only the most serious offense (“top charge”) for which a person is arrested is counted. Crimes are grouped as a Part 1 or Part 2 crime. Part 1 crimes include the violent and property index crimes including arson. Part 2 offenses include all other crimes such as drug sale

and possession, firearm and weapon violations, driving while under the influence of alcohol or drugs (DUI), simple assault, domestic violence, and disorderly conduct.

As shown in Figure IV-2, since 1980, the arrest rate in Connecticut does not track the consistent decline in the index crime rate shown in Figure IV-1. While the overall arrest rate fluctuates, the trend in arrests for Part 1 (index crimes) remains comparatively consistent. (Arrest data for 2004 and 2005 are not yet available.)

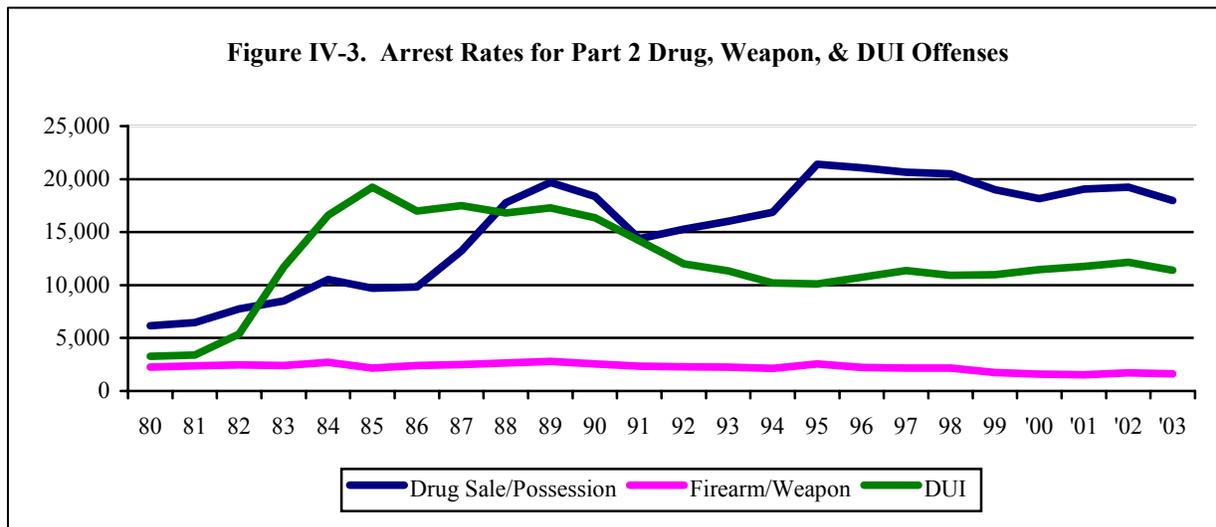


Part 2 offenses show the most variation and that is driven, in part, by shifting priorities in law enforcement practices and the state’s criminal justice policy. As noted, Part 2 crimes include the sale and possession of illegal drugs, DUI and other motor vehicle violations, weapon violations, and domestic violence crimes, all the focus of a great deal of political and public attention and criminal justice enforcement during the past 20 years.

For example, the overall and Part 2 arrest rates reached their highest peaks during the late 1980s, as law enforcement and other criminal justice system resources were focused on the trafficking and use of “crack” and the violent and weapon offenses associated with the drug. Arrest rates spiked again in the mid-1990s, when Congress provided funding to increase the number of local police officers throughout the country. The federal funds were used by states to hire, train, and deploy thousands of new police officers. More police officers, naturally, result in more arrests.

The following graphic (Figure IV-3) illustrates the trend in arrests for three Part 2 offenses subject to mandatory minimum penalties: drug sale; firearm and weapon violations; and driving while under the influence of alcohol or drugs. As discussed in Chapter I, only specific violations within these crime types are subject to mandatory minimum penalties; the possession of illegal drugs does not carry a mandatory minimum penalty nor do most firearm permit violations. The data do not identify the arrests by statute so the total number of arrests subject to

mandatory minimum penalties cannot be determined from those that do not. In general, however, these data give an overview of the number of arrests for these specific crime types.



As shown, the total number of arrests for firearm and weapon violations has remained steady. DUI arrests increased dramatically in the mid-1980s, but then declined and eventually leveled off in the mid-1990s. For the reasons discussed above, there were spikes in the number of drug arrests in the late 1980s and mid-1990s, but overall arrests for the sale and possession of drugs have been steadily increasing since 1980.

Mandatory Minimum Penalty Case Sample

The program review committee analyzed the outcomes of the criminal justice system’s application of Connecticut’s mandatory minimum sentencing laws. To conduct the analysis, a sample of 127,922 criminal cases was selected based on two criteria. First, although the offense for which a person is arrested is often different than that for which he or she is subsequently convicted, the sample only included cases in which defendants were arrested and/or convicted for crimes subject to mandatory minimum sentences.

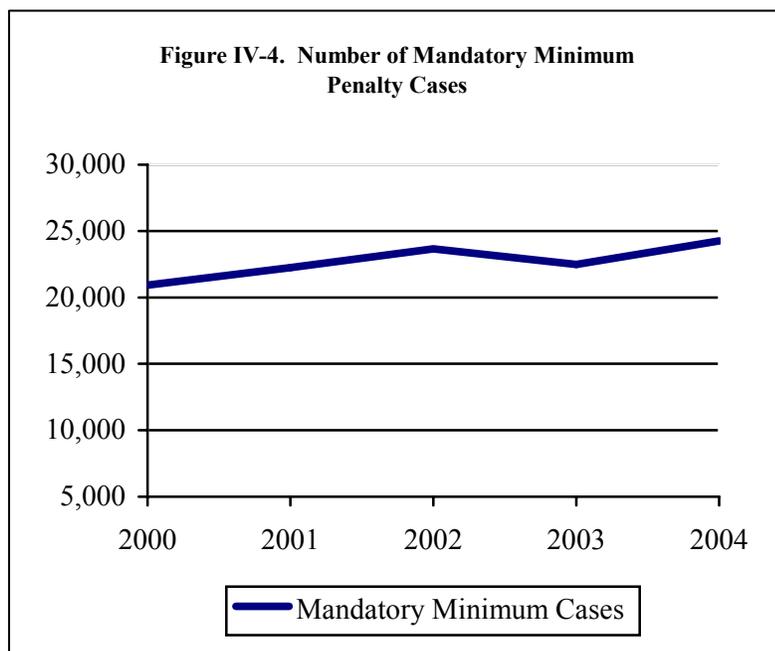
Second, since the focus of the study was on mandatory minimum sentencing, rather than the arrest date, the disposition (i.e., the outcome of the arrest) date was used as the starting point. To ensure all cases had an outcome -- either guilty dispositions and sentences or not guilty dispositions -- no pending (open) cases were included. Thus, the sample contained cases disposed of between January 1, 2000 and July 31, 2005. However, only cases disposed of between January 1 and December 31, 2004 were analyzed because they represented full year data.

The Judicial Branch’s Division of Court Operations provided data about the cases in the sample, including defendant demographics (i.e., age, race, and gender), the dates of arrest and disposition, the arrest and conviction charge, the disposition, and the sentence.

The Judicial Branch’s existing automated information system is case-based and does not link individual defendants with case dockets. Therefore, the case sample is case-based (using docket numbers), not defendant-based. It tracks sentencing trends as they relate to specific crimes rather than the offenders.

Since a person may be arrested more than once during a specific period, he or she may be associated with several dockets. If convicted, a defendant may receive multiple sentences under different docket numbers or a single sentence from combining separate cases into a single docket number. So while a docket number is unique to a specific case, it is difficult to accurately link all dockets to a specific defendant without another unique offender-based identification number.

Overview of Mandatory Minimum Penalty Cases



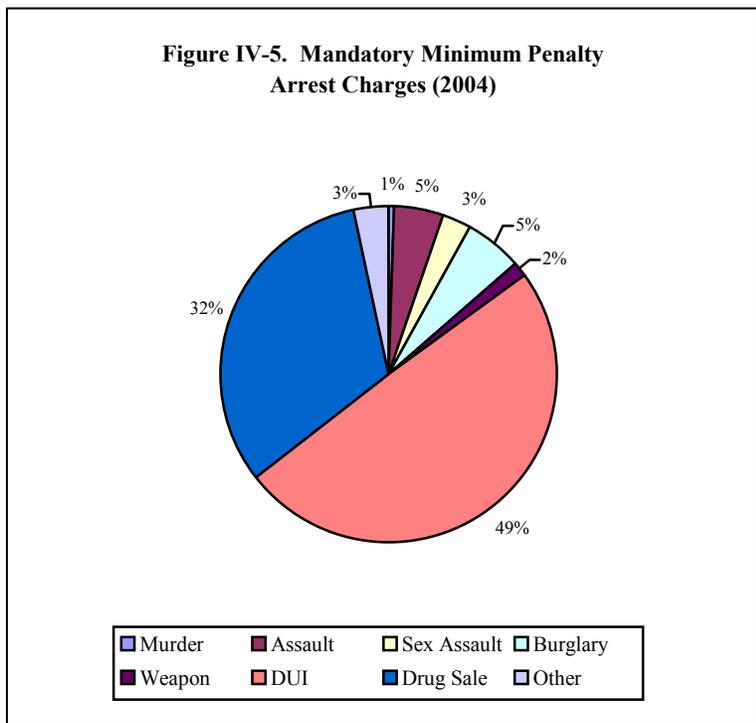
Between January 1, 2000 and June 30, 2005, there were 127,922 cases in which a defendant was arrested for and/or convicted of a crime subject to a mandatory minimum penalty. Figure IV-4 shows the total number of mandatory minimum penalty cases has remained consistent over the past five years, averaging 22,700 cases a year. During the same five-year period, the Superior Court added an average of 129,000 new criminal cases per year to its docket. The mandatory minimum penalty cases represent only 17 percent of new criminal cases added each year.

Mandatory minimum arrest charges. Table IV-1 lists the number of arrest charges in the sample by crime subject to mandatory minimum penalties including those with presumptive sentencing criteria (e.g., drug sales). The charges were grouped by types of offenses. As stated, a person may be charged with more than one offense per case. The total number of charges will not equal the total number of dockets. The sample includes over 166,000 arrest charges, which includes all types of criminal offenses.

The database contained no arrest charges for the following mandatory minimum penalty offenses: (1) assault in the first degree of a pregnant woman resulting in termination of the pregnancy; (2) contamination of public water or food supplies for terrorism purposes; (3) the sale, transfer, distribution, or transport of an assault weapon; and (4) possession of an assault weapon.

Table IV-1. Arrest Charges for Mandatory Minimum Penalty Crimes						
MM Crime	2000	2001	2002	2003	2004	AVG.
Murder/Manslaughter	252	196	221	194	195	211
Assault	1,162	1,322	1,301	1,419	1,358	1,312
Sexual Assault	795	816	801	803	806	804
Kidnapping	176	144	148	169	173	162
Robbery	350	339	311	357	342	339
Burglary/Larceny	1,379	1,552	1,526	1,522	1,564	1,508
Firearm/Weapon	341	380	449	334	436	388
MV/DUI	12,486	13,135	14,054	13,015	14,244	13,386
Drug Sale	7,366	7,958	8,503	8,348	9,296	8,294
Other Crimes*	0	2	5	4	7	4
TOTAL	24,307	25,844	27,319	26,165	28,421	26,411

*Other crimes include: (1) hindering prosecution; (2) computer crime for terrorism purposes; and (3) employing a minor in an obscene performance.
NOTE: Data for 2005 is not included because it only covered the six-month period from January 1 through June 30.
Source of data: Judicial Branch

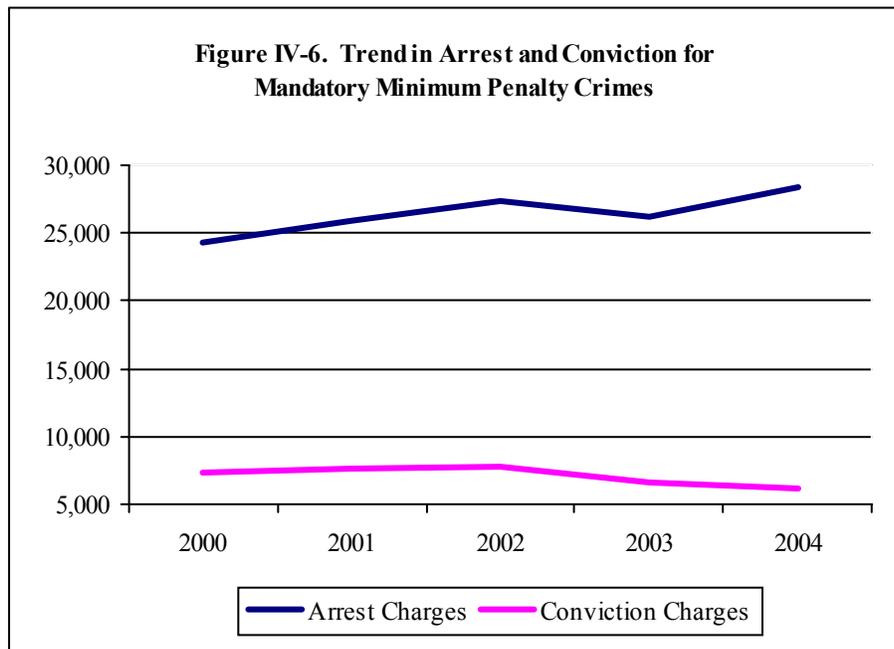


The rate of charges for each crime group remained fairly consistent over the five-year period. As shown in Figure IV-5, in 2004, about half (49 percent) of the mandatory minimum penalty charges were for driving under the influence of alcohol or drugs and related motor vehicle offenses such as driving under a license that was suspended for a prior DUI conviction. When combined with the drug sale charges, these two arrest charge categories accounted for an overwhelming majority (81 percent) of mandatory minimum penalty arrest charges. The remaining offenses, which were predominantly serious violent crimes, represented less than 20

percent of all arrest charges.

Mandatory minimum conviction charges. As discussed in Chapter II, a criminal case can result in one of several dispositions. The most common are: guilty (as part of a plea bargain or after a trial); not guilty; “nolle” (not prosecuted); or dismissal (charges dropped). Because a defendant may be arrested for and charged with more than one crime, a single case may have

several different dispositions. For example, a defendant may plead guilty to one charge and have another charge “nolled.”



The following analysis includes only the total number of mandatory minimum penalty conviction charges for which the defendant pled or was found guilty. As shown in Figure IV-6, since 2002, the number of mandatory minimum penalty charges with a guilty verdict dramatically dropped from the total number of mandatory minimum penalty arrest charges. Overall, only 30 percent of mandatory minimum

penalty arrest charges resulted in a conviction for an offense subject to a mandatory minimum penalty. In contrast to this situation, previous research and data analysis by the program review committee has shown more than half the statewide total number of arrests result in guilty convictions.³³

As the trend line shows, the overall rate of conviction for mandatory minimum penalty offenses dropped during 2003 and 2004. However, in 2004, the trend in arrests spiked.

Offender Profile

To more closely examine the sentencing trends and the actual impact of mandatory minimum penalties, the committee specifically examined:

- types of mandatory minimum penalty crimes for which persons were arrested;
- differences, if any, in the types of mandatory minimum penalty crimes for which persons were arrested and subsequently convicted;
- prison terms imposed by judges for convictions of mandatory minimum penalty crimes; and
- differences, if any, in the court-imposed prison terms for persons arrested for and convicted of mandatory minimum penalty crimes versus persons arrested

³³ Refer to the Legislative Program Review and Investigations Committee report on *Factors Impacting Prison Overcrowding* (December 2000).

for mandatory minimum penalty crimes, but subsequently convicted of crimes not subject to mandatory minimum penalties.

To conduct the analysis, a sample of 33,150 cases was selected from the original database in which the primary charge against a defendant was a mandatory minimum penalty offense. For most of the cases in the sample, the crime subject to a mandatory minimum penalty was the primary charge against the defendant. Based on this, and since analyzing multiple charges is difficult, the following analysis is based on the primary charge data.

The majority of the defendants arrested for mandatory minimum offenses (86 percent) were male. The offenders ranged in age from 15 to 82 years. The average age of the offenders arrested for mandatory minimum crimes was 32.

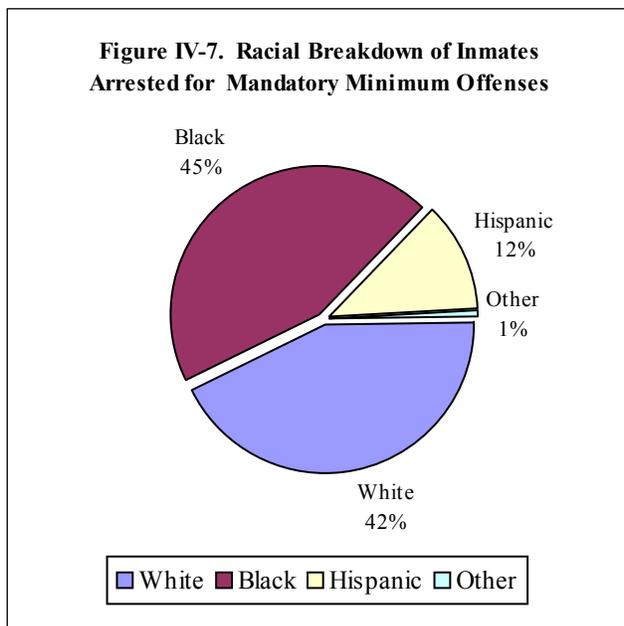


Figure IV-7 shows the racial and ethnic breakdown of the offenders arrested for mandatory minimum crimes. More than 40 percent of the offenders were Caucasian. Minority offenders represented 57 percent of the sample; 45 percent were African American, and 12 percent were Hispanic³⁴. Less than 1 percent were identified as another racial or ethnic group (e.g., American Indian, Asian).

The racial and ethnic breakdown was consistent among male and female offenders. The demographic breakdown of the offenders arrested for mandatory minimum crimes was consistent with prior analyses of persons arrested for any crime in Connecticut.³⁵

The racial and ethnic breakdown among convicted offenders was also consistent with that shown in Figure IV-7. Fifty-six percent of the convicted offenders were identified as belonging to a minority group: 43 percent were African American, 11 percent Hispanic, and 2 percent another racial or ethnic group. Almost 45 percent of convicted offenders were Caucasian.

³⁴ Hispanic is an ethnicity not a race. The criminal justice system records Hispanic as a race. Therefore, for the purposes of this study, Hispanic is a separate racial category from Caucasian (white) and African American (black). Race and ethnicity data is self-reported by arrested persons. A person may report him or herself as Hispanic, Caucasian, or African American. Therefore, throughout the analysis, the actual number (and percentage) of persons arrested, convicted, and sentenced for mandatory minimum offenses within the Hispanic category may be underrepresented.

³⁵ Refer to the Legislative Program Review and Investigations Committee reports on *Factors Impacting Prison Overcrowding* (2000), *Recidivism in Connecticut* (2001), and *Pre-trial Diversion and Alternative Sanctions* (2004).

The racial and ethnic breakdown by offense category is presented in Table IV-2. (The other racial category was not included because it represented less than 1 percent of the total.) Half of the offenders arrested for assault and property crimes subject to mandatory minimum penalties and over 70 percent of the persons charged with motor vehicle crimes carrying mandatory minimum penalties were Caucasian. Caucasian offenders represented 60 percent of the persons arrested for other offenses.

In comparison, half of the offenders arrested for drug sale crimes and weapon offenses were African American. Weapons are a common part of drug trafficking and often people arrested for a drug sale are also charged with possession or use of a weapon. Almost half of the persons arrested for homicide were African American.

Table IV-2. Racial & Ethnic Breakdown of Arrestees by Offense Category			
<i>Offense Category</i>	<i>Caucasian</i>	<i>African American</i>	<i>Hispanic</i>
Homicide	36%	47%	15%
Assault	50%	36%	11%
Property	51%	37%	10%
Drug	36%	50%	13%
Weapon	35%	54%	11%
MV	71%	15%	6%
Other	60%	20%	13%

NOTE: Percentages may not total 100 percent due to missing race and ethnicity data.
Source of data: Judicial Branch

As shown in the table, Hispanic offenders represented 15 percent or less of the persons arrested for mandatory minimum offenses within any offense category. The largest percentage (15 percent) of Hispanic offenders were arrested and charged with homicide.

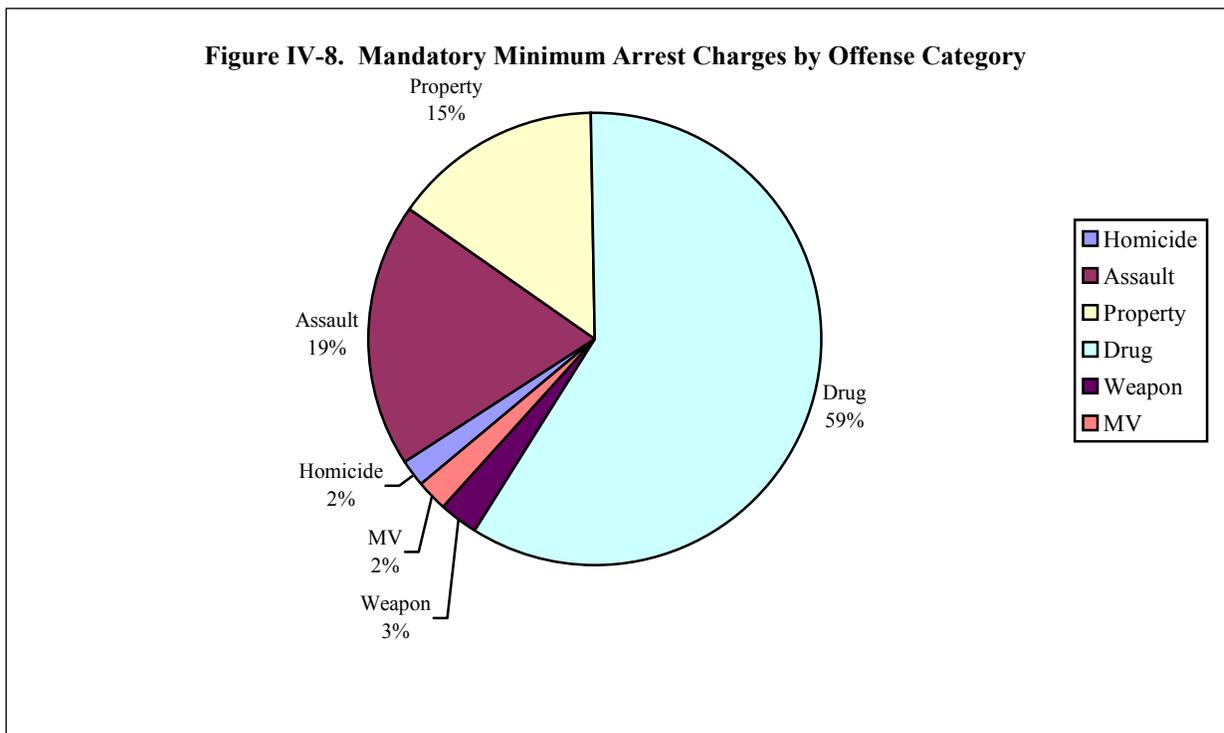
Mandatory Minimum Sentence Arrest Offenses

The 53 mandatory minimum penalty offenses were grouped for analysis purposes into seven offense categories.³⁶ (Refer to Chapter I for a listing of the mandatory minimum offenses and penalties.) These severity offense categories were used for analysis purposes throughout the study. They are as follows:

³⁶ To conduct the analysis of the mandatory minimum arrests, convictions, and penalties, program review staff ranked all the criminal offenses defined by the penal code and other statutes (e.g., consumer protection, motor vehicle, and insurance) in terms of severity. The severity ranking is based on a three-step process. First, offenses resulting in the death of a person (e.g., murder and manslaughter) were ranked as the most serious of all crimes. Second, all other offenses, not resulting in the death of another person, were ranked based on the offense type: felony; misdemeanor; and infraction. Felonies were ranked the most serious offenses, followed by misdemeanors, and then infractions. Third, offenses within the felony and misdemeanor categories were ranked by offense class (i.e., class A, B, C, and D) and degree (first, second, third, fourth, etc). Class A offenses were ranked the most serious followed by class, B, C, and D. The offenses within a crime type and class were then ranked based on the crime severity indicated by the degree. For example, all class B felonies involving physical violence were ranked as more serious than class B property crimes and “victimless” crimes. Unclassified crimes were ranked based on the statutory offense definition and punishment.

- **homicide:** murder and manslaughter;
- **assault:** assault, sexual assault, robbery, and kidnapping;
- **property:** burglary and larceny;
- **drug:** possession and sale;
- **weapon:** use, possession, and sale;
- **motor vehicle:** driving under the influence of alcohol or drugs (DUI), increasing speed to elude a police officer after being signaled to stop (if death or serious injury to another is involved), and driving during license suspension for a prior DUI conviction; and
- **other offenses:** including employing a minor in an obscene performance, hindering prosecution, and crimes for terrorist purposes.

Figure IV-8 shows the breakdown of arrest charges by offense category for the 33,150 cases. Almost 60 percent of the charges were for drug sale crimes subject to mandatory minimum penalties. About 20 percent were assault charges and 15 percent were property charges. Less than 10 percent of the charges were for homicide, weapon, and motor vehicle offenses combined.



Most (88 percent) of the drug sale arrests were for the following three offenses:

- illegal manufacture or sale by a non-drug-dependent person of any amount of narcotic, hallucinogenic (other than marijuana), or amphetamine substances or at least 1 kilogram of cannabis-type substance (C.G.S. §21a-278(b));
- sale of drug (under C.G.S. §§21a-277 or 21a-278) by a non-drug-dependent person within 1,500 feet of a school, day care center, or public housing (“drug-free” zone) (C.G.S. §21a-278a(b)); and
- possession of any quantity of narcotic, hallucinogenic (other than marijuana), or cannabis-type substances (C.G.S. §21a-279(d)).

There was a wide distribution of assault charges, with varying offense classes and degrees of severity, including assault, sexual assault, and kidnapping. There were, however, no charges for robbery in the first degree with a deadly weapon (C.G.S. §53a-134). The most frequently charged offenses in the assault category were:

- 23 percent for assault in the first degree (C.G.S. §53a-59);
- 17 percent for assault in the third degree of a special status victim (statutorily defined as an elderly, blind, disabled, pregnant, or mentally retarded person) (C.G.S. §53a-61a);
- 15 percent for forcible sexual assault in the first degree of a victim under 16 or sexual assault in the first degree of a victim under 13 if the offender is more than two years older (C.G.S. §53a-70(a)(1) and (2)); and
- 13 percent for sexual assault in the second degree of a victim under 16 (C.G.S. §53a-71).

The most frequently charged mandatory minimum penalty crimes in the other offense categories are listed below:

- **homicide:** 88 percent for murder (C.G.S. §53a-54a);
 - **property:** 89 percent for larceny in the second degree from a special status victim (C.G.S. §53a-123);
 - **weapon:** 74 percent for criminal possession of a firearm or electronic defense weapon (C.G.S. §53a-217) and 22 percent for criminal use of a firearm or electronic defense weapon during the commission of a felony (C.G.S. §53a-216);
 - **motor vehicle:** 51 percent for driving during license suspension for prior DUI or DUI-related offenses (C.G.S. §14-215(c)), 28 percent for increasing speed to elude police after being signaled to stop (C.G.S. §14-223(b)), and 21 percent for DUI offenses; and
 - **other crimes:** 73 percent for employing a minor in an obscene performance (C.G.S. §53a-196), and 27 percent for hindering prosecution (C.G.S. §53a-165aa).
-

Mandatory Minimum Sentence Conviction Charges

After arrest, a person is charged with a crime by the state’s attorney. The prosecution charge may be different than the arrest charge. As discussed, most criminal cases are disposed of through plea bargaining during which the prosecutor, defense attorney, and judge engage in negotiation over the charges pending against a defendant and the recommended sentence. Plea bargaining can lead to a number of different outcomes: a dismissal, a plea to one or more charges; a plea to the primary charge (most serious offense) or a lesser charge; or a trial. Most often a defendant will plead to the primary charge, but receive a lesser sentence, or plead to a lesser charge. In cases in which a defendant is charged with a crime subject to a mandatory minimum penalty, the incentive to plead guilty is a reduction of the charge to a crime that is not subject to a mandatory minimum penalty.

Overall, the ultimate disposition for 67 percent of the mandatory minimum arrest charges was not guilty, which includes not guilty after a trial, “nolled” by the prosecutor, and dismissed by the prosecutor or judge. The majority (84 percent) of the not guilty dispositions were “nolled.” It should be noted that defendants found not guilty of the primary charge may have pled or been found guilty of other (lesser) charges for which they were arrested, but that information was not specifically analyzed.

Only 34 percent of the primary arrest charges resulted in convictions (guilty). Table IV-3 shows the percentage of defendants charged with mandatory minimum penalty crimes convicted of the same charges or convicted of lesser charges. The data are broken down by offense categories.

Table IV-3. Conviction for Mandatory Minimum Crimes for Same or Lesser Charges		
<i>Offense Category</i>	<i>% Convicted of Same Charge</i>	<i>% Convicted of Lesser Charge</i>
Homicide	38%	62%
Assault	20%	80%
Property	50%	50%
Drug	10%	90%
Weapon	57%	43%
MV	87%	13%
Other	0	100%
Source of data: Judicial Branch		

In a majority of the cases analyzed, offenders arrested for mandatory minimum penalty crimes of homicide, assault, drug sale, and other crimes typically pled to or were found guilty after a trial of lesser charges. Persons charged with murder were convicted of manslaughter charges. Those charged with assaults were convicted of less serious assault charges (e.g., assault in the first degree was reduced to assault in the second or third degree). Persons charged with drug sale crimes were convicted of other drug sale crimes not subject to mandatory minimum penalties or drug possession.

In comparison, however, persons arrested for property, weapon, and motor vehicle offenses subject to mandatory minimum penalties typically pled or were found guilty after a trial of the same charges. In these cases, state's attorneys did not typically lower the mandatory minimum arrest charges. It appears plea bargaining did, however, often result in the lowering or dismissal of other charges pending against the defendants in exchange for the defendant agreeing to the plea bargain with the mandatory minimum charges.

As shown in the table, most (87 percent) persons charged with DUI, driving under license suspension for prior DUI convictions, and increasing speed to elude police after being signaled to stop that resulted in the death or serious injury to another person were convicted of those charges. In most cases, since the sentences for these crimes are relatively short and the crimes are politically and publicly high-profile offenses, the state's attorneys and judges interviewed stated they generally do not agree to plea bargains that result in reduced sentences.

Mandatory Minimum Sentences

Connecticut has adopted two versions of mandatory minimum sentences: "traditional" mandatory minimum sentences and presumptive sentences. The difference is that a judge may exercise his or her discretion to depart from a mandatory minimum prison term under presumptive sentencing whereas under a "traditional" mandatory minimum sentence there is no opportunity for judicial discretion. All mandatory minimum and presumptive sentences require a period of incarceration. The following is an analysis of the sentences imposed in cases in which defendants were charged with mandatory minimum offenses.

Table IV-4 lists the average sentence imposed upon a conviction for a mandatory minimum offense and the average sentence imposed when a defendant was convicted of a lesser or different offense other than the mandatory minimum crime for which he or she was originally charged. The table lists the most frequently charged mandatory minimum offenses within each crime category. In addition, the statutory mandatory minimum penalty for each offense is provided for comparison purposes.

As shown, when defendants were convicted of the mandatory minimum offenses for which they were originally charged, a sentence equal to or greater than the mandatory minimum was generally imposed. However, for convictions for drug sale offenses subject to presumptive penalties, the sentences imposed were slightly less than the mandatory minimum. It can be concluded, therefore, that in some cases judges are using their presumptive sentencing authority to depart from the mandatory minimum penalties.

For convictions of lesser or different offenses other than the mandatory minimum crimes originally charged, the sentences imposed are much less than the mandatory minimum penalties that the defendants could have received. This is most likely a result of plea bargaining.

A more detailed analysis of mandatory minimum sentences and the amount of time actually served in prison by convicted offenders is presented in Chapter V.

In addition to a prison term, a judge may impose a period of probation. Almost all (95 percent) of the persons convicted of offenses, whether they were the original mandatory

minimum offense or different offenses, were also sentenced to probation. The probationary periods ranged from one year to 25 years. The most frequently imposed probationary terms were 3 years and 5 years.

Table IV-4. Average Sentences Imposed for Mandatory Minimum and Lesser Offenses			
	<i>Mandatory Minimum</i>	<i>Average sentence for conviction of mandatory minimum offense</i>	<i>Average sentence for conviction of lesser or different offense</i>
Homicide			
53a-54a	25 years	32 years	11 years
Assault			
53a-59	5 years if weapon used 10 years if minor victim	5 years	2.7 years
53a-61a	1 year	1 year	2 months
53a-70(a)(1)	5 years	9.5 years	2.7 years
53a-70(a)(2)	10 years	10 years	3 years
53a-71	9 months	2 years	1 year
Property			
53a-123	2 years	2 year	6 months
Drug			
21a-278(b)* 1 st conviction subsequent convictions	5 years 10 years	5 years	2 years
21a-278a(b)*	3 years	2.7 years	2 years
21a-279(d)*	2 years	7 months	1 year
Weapon			
53a-217	2 years	2.7 years	1.5 years
53a-216	5 years	-	5.9 years
MV			
14-227a(g): 2 nd conviction	120 days	142 days	1 day
14-227a(g): 3 rd or more convictions	1 year	1.5 years	-
14-215(c)*	30 days	45 days	9 days
14-223(b)	1 year	60 days	-
* Subject to presumptive sentencing. NOTE: C.G.S. §§21a-278a(b) and 21a-279(d) function like a sentencing enhancement. The mandatory minimum penalty is in addition to the sentence imposed for the underlying drug sale offense. Source of data: Judicial Branch			

Drug Types and Weight Analysis

Connecticut’s drug sale laws establish mandatory minimum penalties based on three factors: (1) type and weight of certain drugs; (2) proximity of drug sale to “drug-free” zones; and (3) offender drug-dependency status. These factors are examined below.

State drug sale laws treat non-drug-dependent persons and drug-dependent persons differently. As stated, non-drug-dependent offenders are characterized as being in the drug

trafficking business for profit whereas drug-dependent persons, who are addicted, often sell drugs or commit other crimes to buy drugs for their personal use. State sentencing laws have established alternative sentencing options and treatment programs for drug-dependent offenders.

Drug dependency may be stipulated to by the prosecuting and defense attorneys during plea negotiations or substantiated through substance abuse treatment evaluation. No data were available, however, to determine the impact of this factor on mandatory minimum conviction and sentencing trends.

Certain illegal drugs are identified as more dangerous and serious based on characteristics such as their addictive properties. As discussed in Chapter I, the statutory penalties for the sale of those drugs in certain quantities is, therefore, more severe.

Over the past 20 years, the mandatory minimum penalty laws for certain drug sale crimes have increasingly been criticized for several reasons. Opponents argue the statutory drug type and weight thresholds are not based on actual drug use trends and impact all offenders, not just the drug traffickers. They contend the laws result in disproportionate and unduly harsh sentencing of drug sale offenders, particularly minority offenders.

To examine the impact of the drug type and weight threshold, a random sample of 300 drug sale arrests in which the defendant was subject to a mandatory minimum penalty was reviewed. The program review committee collected data on and analyzed:

- types and weight of illegal drugs confiscated;
- location, date, and time of the drug sale offenses; and
- complainant's and/or victim's age and relationship to the arrested person.

Sample. The random sample of 300 mandatory minimum penalty drug sale cases was selected from the original database used for the mandatory minimum sentencing trend analysis presented above. The cases were disposed of in the following judicial districts including Part A and Part B courts: Ansonia/Milford; Danbury; Fairfield; Hartford; Middlesex; New Britain; New London; Stamford; Tolland; and Waterbury.³⁷

Data on the confiscated drug type and weight were not available in an automated format. The program review staff collected the data from state's attorney prosecution case files. Due to the Division of Criminal Justice's record-retention practices, those files were only available for the past 18 months. It is state's attorney practice to maintain case files for about one year after disposition after which the files are archived. Therefore, only drug sale cases disposed (closed) between July 1, 2004 and July 31, 2005 were reviewed.

³⁷ The New Haven and Windham judicial districts (Part A and B courts) and the Norwalk, Enfield, and Manchester geographical area courts failed to provide timely access to drug sale case files for inclusion in this report. Additionally, some cases in other courts were not available for various reasons including their referral to the Community Court for disposition.

Data. In most cases, the drug type and weight data were retrieved from the incident reports filed by the arresting police departments, which are part of the state's attorney case files. The police typically conduct field drug tests on confiscated substances to determine the type and weight of the drug. While accurate in identifying the type of drug, the police reports at times only estimate the weight of the drug by providing a description of its packaging. For example, police reports commonly report a "glassine bag" of heroin, a "small, plastic baggie" of "crack" cocaine, a "ziplock bag" of marijuana, or a specific number of pills were confiscated rather than listing the actual weight of the drugs. All available weight data were converted to grams for analysis purposes.

In some cases, the prosecutor's file also contained a scientific drug test report filed by the Connecticut Toxicology Laboratory. These results tend to be more accurate than police field tests. Laboratory drug tests are usually only conducted when large amounts of drugs are confiscated or the police field test is inconclusive. Laboratory testing data were not available for all sample cases.

Drug type. Illegal drugs most frequently confiscated in the random sample of cases were "crack" cocaine (41 percent), marijuana (26 percent), and heroin (16 percent). To a lesser extent (17 percent combined total), cocaine, prescription medications such as Oxycontin, Xanax, and Percocet, hallucinogenic substances such as "mushrooms," and other illegal substances were confiscated.

Persons arrested for drug sale crimes were often charged with possessing more than one type of drug and the paraphernalia used to manufacture, package, and/or use drugs.

Drug weight. As stated, drug weight data were not available in all cases. However, drug weight thresholds are primarily an issue in mandatory minimum penalty cases involving cocaine and "crack." The following analysis focuses on these two drugs.

During the time period covered by the cases in the program review sample, the state mandatory minimum penalty for the sale of at least 1 ounce of cocaine or at least one-half (0.5) gram of "crack," which is cocaine in a free-base form, was at least 5 years up to a maximum of life (60 years). Effective August 1, 2005, Public Act 05-248 equalized the weight threshold amounts for cocaine and "crack" at one-half (0.5) ounce or more.

Table IV-5 shows the percentage of drug arrest cases in the sample involving confiscated cocaine or "crack" by weight threshold groups. The groups are: (1) less than 0.5 grams (0.01 ounces), (2) equal to 0.5 grams, (3) more than 0.5 grams, but less than 28.3 grams (1 ounce); (4) equal to 28.3 grams; and (5) more than 28.3 grams.

As shown, most confiscated cocaine (86 percent) weighed less than the statutory weight threshold of 1 ounce (28.3 grams). The average amount of cocaine confiscated in the drug sale arrest cases was about 3 grams (0.1 ounces). More than 1 ounce of cocaine was confiscated in only 14 percent of the cases involving that drug.

Table IV-5. Weight Ranges of Confiscated Cocaine and “Crack”					
<i>Drug Type</i>	<i>Less than 0.5 grams</i>	<i>Equal to 0.5 grams</i>	<i>More than 0.5 grams but less than 28.3 grams*</i>	<i>Equal to 28.3 grams</i>	<i>More than 28.3 grams</i>
Cocaine	0	0	86%	0	14%
“Crack”	20%	0	71%	0	9%
*Converts to 1 ounce. Source of data: Judicial Branch					

In comparison, most confiscated “crack” (80 percent) weighed more than the statutory weight threshold of 0.5 grams: 71 percent weighed between 0.5 and 28.3 grams and 9 percent weighed more than 28.3 grams (1 ounce). In only 20 percent of the cases, the confiscated “crack” weighed less than 0.5 grams.

Since the drug sale cases under review occurred prior to the statutory change in weight thresholds, this means that in the majority of cases involving the sale of cocaine, the defendants were not subject to the most serious mandatory minimum penalty of at least five years [up to a maximum of 60 years] based on one ounce or more (C.G.S. §21a-278(a)). They were instead subject to a lesser mandatory minimum penalty of five years for the first offense or 10 years for subsequent drug sale offenses, which authorizes a mandatory minimum penalty for the sale of any narcotic substance, hallucinogenic substance other than marijuana, or amphetamine (C.G.S. §21a-278(b)).

However, in the majority of cases involving the sale of “crack,” most defendants were subject to the most serious mandatory minimum penalty of at least 5 years [up to a maximum of 60 years] (C.G.S. §21a-278(a)). Only 20 percent of the cases were chargeable under the lesser mandatory minimum penalty law.

Based on the data analyzed above, the equalization of the drug weight thresholds adopted in Public Act 05-248 could result in an overall increase in the number of persons charged with the sale of cocaine that meets or exceeds the weight threshold. This change, however, could have little impact on the numbers of persons charged with the sale of “crack” that meets or exceeds the weight threshold.

The average amount of marijuana confiscated was 53.9 grams (1.9 ounces) and the average amount of confiscated heroin was 12.9 grams (0.4 ounces). For both of these drugs, there were several arrest cases in which large quantities of the drugs (e.g., 4.2 ounces, 8.4 ounces, 25.5 ounces) were confiscated. In most cases involving heroin, the quantities ranged between 1.9 grams (0.06 ounces) and 7 grams (0.2 ounces).

Drug Arrest Location and Time

All of the reviewed cases involved persons arrested for mandatory minimum penalty drug sale offenses. In almost all cases (95 percent), the persons were subject to penalty enhancements because the drug crime occurred in “drug-free” zones within 1,500 feet of a school, day care

center, or housing project. The program review committee analysis pertaining to the location, time, and other circumstances surrounding drug crime arrests is presented below.

- There was no pattern to the date of the drug arrests. Drug arrests were not more likely to occur during the traditional school year (September through June) than other months (July through August).
- Most drug crime arrests (78 percent) occurred between 4:00 p.m. and 12:00 a.m. About 12 percent occurred during the traditional school hours of 7:00 a.m. to 4:00 p.m., and 10 percent occurred between 12:00 a.m. and 6:00 a.m.
- In the majority of the sample drug cases the illegal drug activity occurred in a housing project in which the arrestee lived or a private residence in a “drug-free” zone. This is consistent with drug crime research that shows persons arrested for drug crimes tend to offend in the vicinity of their residences.
- Persons arrested subsequent to a traffic stop or “buy and bust” investigations³⁸ reported residing in the area of the drug crime.
- In less than 10 percent of the cases, a person who did not report residing at an address in the area was arrested for a drug sale. Most lived within the judicial district area of the arrest (e.g., residing in Manchester, but arrested for selling drugs in Hartford) and only two persons resided in another state.
- The data show frequent proximity of drug selling to school zones, but no arrests occurred in a day care center zone.
- In only three cases were persons identified by the police as students arrested on school grounds. In one case, a police officer observed a group of students sitting outside the school smoking marijuana. In two cases, school officials called police to the school in response to information that students were selling drugs on school property.
- Except for those three cases in which students were arrested, all arrests occurring in “drug-free” school zones were not linked in any way by the police to the school, a school activity, or students. The arrests simply occurred within “drug-free” school zones.
- None of the drug sale arrests directly involved a victim who reported the crime to the police, and no victims were reported by police as part of drug sale cases.
- In only one case was the arrest directly initiated in response to a citizen complaint. In a few cases the drug arrests were the result of increased police patrol in specific areas in response to general citizen complaints about illegal drug activity.
- All arrests reviewed were attributed to routine police patrol or drug investigations. The most common reasons for the drug arrests were: observation of the illegal activity by officers during routine police patrol and

³⁸ A “buy and bust” investigation typically involves an undercover police officer buying drugs from a suspected drug dealer. The drugs purchased by the officer and the marked money paid to the dealer are used as probable cause for the subsequent arrest of the person selling drugs.

motor vehicle operation stops; “buy and bust” investigations; and the service of arrest and/or search warrants ordered as part of investigations conducted by municipal and state narcotic task forces.

- About 40 percent of the drug arrests were made after police observed a person(s) selling drugs from a car. The police then followed and eventually stopped the car either based on their observation of illegal drug activity and/or motor vehicle violations (e.g., speeding, reckless driving, or running a red light).
- Often times, persons other than the target of the investigation or warrant were arrested as a result of evidence of their participation in the illegal drug activity. During traffic stops, the arrest reports indicated persons other than the driver were often arrested once the police discovered they possessed illegal drugs or weapons.

“Drug-Free” Zone Mapping

As discussed, at the height of the national “crack epidemic,” in the mid-1980s, Connecticut like many other states established mandatory minimum penalties for drug sale in proximity to areas in which children live, play, and are educated. These “drug-free” zones are statutorily defined as the area within 1,500 feet of a school, day care center, and public housing.

The state drug laws provide a three-year mandatory minimum sentence for the sale of drugs by a non-drug-dependent person within a drug-free zone (C.G.S. §21a-278a(b)) and a two-year mandatory minimum sentence for possession of drugs by a non-student within a drug-free zone (C.G.S. §21a-279(d)). The mandatory minimum penalties function like sentence enhancements in that these three or two year sentences are in addition to the mandatory minimum penalty imposed for the underlying felony drug sale crime.

Mapping. The program review committee examined how the “drug-free,” enhanced penalty zone provisions work in practice. The basic steps of the analysis were to:

- select a representative sample of municipalities;
- map out the “drug-free” zones within each municipality using the statutory definition of within 1,500 feet of all identified schools, day care centers, and public housing; and
- map drug sale and possession offense locations based on arrests made by the Division of State Police within each municipality during a one-year period (July 1, 2004 through July 31, 2005).

The program review committee selected 12 municipalities to represent four categories of cities and towns in Connecticut.³⁹ The categories used and municipalities selected were:

- **urban:** Bridgeport, Hartford, and New Haven;
- **suburban with urban-like qualities:** Danbury, Manchester, New Britain, and Norwich;
- **suburban:** Glastonbury, Madison, and Westport; and
- **rural:** Canaan and Durham.

The mandatory minimum sentencing laws are silent as to how the 1,500 feet distance is measured to define a “drug-free” zone. There are two options: (1) measure from the center point of the property; and (2) measure from the perimeter property lines. Obviously, the second option would result in a larger “drug-free” zone in that it would include the total property of a school, day care center, or public house project and the 1,500 feet distance from the boundaries. This distance measurement option significantly impacts the “drug-free” zones around public housing projects in urban areas, which tend to be geographically large, often times covering several blocks in all directions.

It is not clear which method municipal police departments and state prosecutors use to measure “drug-free” zones. “Drug-free” zone areas tend not to be marked or identified by signs or other identifiers.

For the purposes of this mapping analysis, the “drug-free” zones were measured as 1,500 feet from a center point of the school, day care, or public housing project property.⁴⁰ Clearly, this minimizes the amount of area within the “drug-free” zones.

The schools, day care centers, and public housing in the selected municipalities were then mapped to identify the “drug-free” zones.⁴¹ The “drug-free” zones are indicated on the maps of the 12 selected municipalities by shaded circles. The maps for each municipality are presented in Appendix D.

Drug arrest data. Most (87 percent) of drug crime arrests are made by municipal police. The Division of State Police Statewide Narcotics Task Force coordinates many drug investigations statewide especially in larger municipalities. Drug crime arrest data, however, were not readily available from local police departments

³⁹ The category definitions developed by the Office of Legislative Research for the state’s redistricting plan were used for this analysis. Population ranges were used to define the categories.

⁴⁰ Staff did not have the data necessary to map a buffer around the school, day care center, and public house property parcels.

⁴¹ The state Department of Education provided the addresses for schools, the Department of Public Health provided day care center addresses, and the Department of Economic and Community Development (DECD) provided public housing addresses. The DECD provided incomplete address data for certain public housing projects in Bridgeport, Hartford, New Britain, and New Haven. Those housing projects are not included in the maps.

The arrest data used for this analysis was provided by the Department of Public Safety's Division of State Police. These data include the geographical location of drug sale and possession incidents occurring in the selected 12 municipalities between July 1, 2004 and July 31, 2005.⁴² The drug sale and possession incidents are shown by the points on the maps and represent all drug sale and possession arrests made by the state police. For the past several years, on an annual basis, the Division of State Police has made about 13 percent of all drug arrests statewide. While the sample does not include all drug arrests made in the selected municipalities, it does provide a representative sample.

Conclusions. The program review committee drew several conclusions from its review of the maps. The conclusions are supported by and consistent with available research on drug crime and sentencing laws. The committee conclusions are presented below.

- Particularly in larger municipalities, “drug-free” zones tend to overlap. In many municipalities, the total “drug-free” zone area is irregularly shaped.
- Drug sellers and users and others (e.g., students, parents, municipal officials) are unlikely to be able to identify whether they are actually in a “drug-free” zone.
- Larger municipalities, particularly urban areas, have many more schools often in less space than suburban and rural towns.
- Rural municipalities tend not to have public housing and the “drug-free” zone areas account for a low percentage of total area. The “drug-free” zones cluster around schools.
- Despite minimizing the area of the “drug-free” zones due to data limitations, a significant percentage of the total geographical areas of urban and “urban-like” suburban municipalities are “drug-free” zones. Almost the total geographical areas of Bridgeport, Hartford, and New Haven are within “drug-free” zones.
- “Drug-free” zones in suburban municipalities tend to cluster in or near the downtown areas.
- “Drug-free” zones tend to be located along major highways and roads and many of the drug crime arrests made by state police occurred on a state highway.
- Almost all drug crime arrests made by the state police in urban and “urban-like” suburban municipalities were within “drug-free” zones and subject to mandatory minimum penalty enhancements.
- Almost all drug crime arrests made by the state police in suburban and rural municipalities were outside “drug-free” zones.

⁴² The Division of State Police provided the latitude and longitude coordinates, derived from an InterGraph Map program, for each arrest location.

What is the impact of mandatory minimum sentences on prison resources?

Mandatory minimum sentencing laws do not per se have an impact on prison resources. While overall 37 percent of the sentenced inmate population is serving a mandatory minimum penalty term, given the seriousness of the offenses currently subject to mandatory minimum penalties, absent these laws, most if not all of these offenders would have been incarcerated anyway and many are serving more time in prison than the mandatory minimum sentences.

Offenders convicted of serious and violent offenses subject to mandatory minimum penalties often receive sentences greater than the mandatory minimum sentence. For other offenses carrying mandatory minimum penalties, many inmates serve prison terms less than or equal to the mandatory minimum penalty. In either case, the mandatory minimum term has no direct impact on the use of prison resources.

Additionally, many inmates are serving multiple sentences. Not all of the sentences include mandatory minimum penalty terms.

Almost all inmates, except those convicted of murder and aggravated sexual assault in the first degree, are eligible for parole or other DOC early release programs. Many inmates serving mandatory minimum sentences are paroled or released early by DOC. They tend to serve most of their sentences prior to release. This is the function of the parole eligibility and early release laws and parole board and DOC release policies rather than a requirement of mandatory minimum sentencing laws.

A detailed analysis of the impact of the state's mandatory minimum sentencing laws on the demand for prison beds is presented below. This chapter contains the analyses of the number (and percentage) of the inmate population serving mandatory minimum sentences and the actual time served of the mandatory minimum sentences prior to inmates being discharged from prison either on an early release program or after the completion of the sentence.

Inmate Sample

To examine the number of inmates serving prison terms that include mandatory minimum penalties and the actual amount of time served in prison on those sentences, the program review committee obtained Department of Correction data on the inmates serving prison sentences that included at least one offense subject to a mandatory minimum penalty. Due to limitations with the department's automated inmate information system, inmates in prison on July 1, 2001 were selected.

For this representative sample of inmates, DOC provided data on:

- inmate age, gender, and race;
- mandatory minimum offenses for which they were convicted;
- court-imposed sentences;
- actual time served on their sentences; and
- if released early from prison, the type of community supervision program.

When interpreting sentencing and DOC inmate data, it is important to note a person may be arrested more than once and charged with more than one crime per arrest. Subsequently, an inmate may be convicted of multiple offenses involving several cases and sentenced to multiple prison terms. For DOC inmate management purposes, the sentences are combined for an aggregate term (called the “effective” sentence).

The following analysis identified the specific mandatory minimum sentences for each inmate in the sample and does not include data on other non-mandatory minimum sentences imposed for the same or other cases the inmates may have been serving. If the inmates were serving multiple sentences, therefore, they may have actually served longer prison terms than the mandatory minimum sentences being analyzed.

Inmate Population Profile

On July 1, 2001, there were 5,269 inmates in prison serving a mandatory minimum sentence. This represents 37 percent of the total sentenced inmate populations (or 30 percent of the total accused and sentenced inmate population).

Demographics. The vast majority of the inmates serving mandatory minimum sentences (95 percent) were male; only about 5 percent were female. The inmates ranged in age from 15 to 82. The average age of a sentenced inmate serving a mandatory minimum prison term was 32.

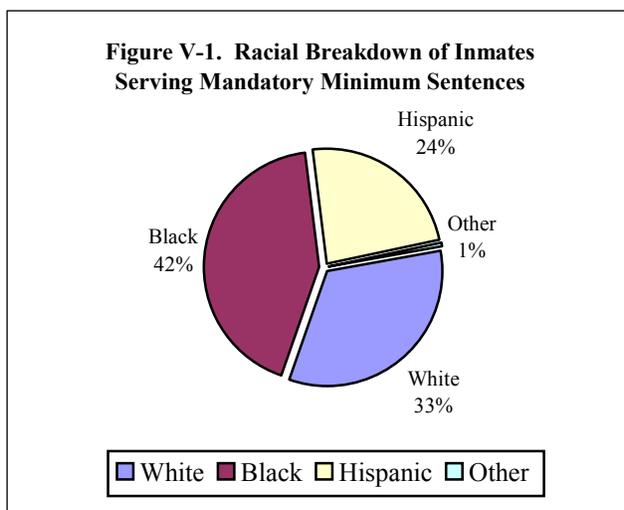
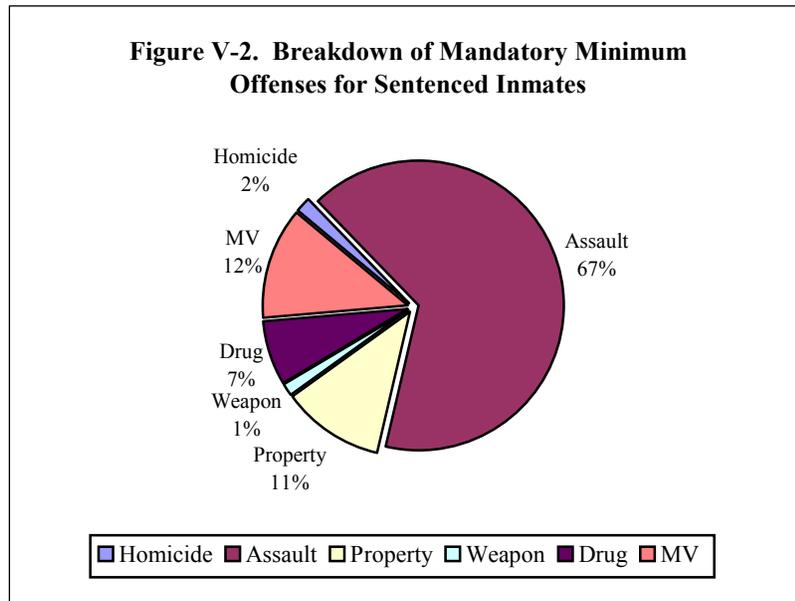


Figure V-1 shows the racial and ethnic breakdown of the sentenced inmates serving mandatory minimum sentences. Two-thirds (66 percent) of the inmates were African American or Hispanic, 33 percent were Caucasian, and about 1 percent were identified as another racial or ethnic group (e.g., American Indian, Asian).

The demographic breakdown of the inmates serving mandatory minimum sentences is consistent with prior analyses of the DOC inmate population conducted by the program review committee.⁴³

Mandatory Minimum Offenses

The offense categories used in Chapter IV were also used to analyze the DOC inmate



offense data. The offenses for which the inmates were convicted and sentenced to prison were categorized as: homicide; assault; property; weapon; drug; and motor vehicle offenses.⁴⁴ Figure V-2 illustrates the breakdown by offense category.

As shown in the graphic, about two-thirds of the inmates were serving mandatory minimum sentences for assault offenses. Almost half (46 percent) of those were convicted of assault in the third degree and assault in the third degree with a

deadly weapon. About 20 percent were in prison serving a mandatory minimum sentence for sexual assault, most convicted of forcible sexual assault in the first degree of a victim under 16 and sexual assault in the second degree.

Twelve percent of the inmates were serving a mandatory minimum sentence for the motor vehicle offenses of driving under the influence of alcohol or drugs (DUI) and driving under a suspended driver’s license that was suspended for a prior DUI. Only 7 percent of the inmates were serving mandatory minimum sentence for drug sale offenses.

Mandatory Minimum Sentences

Table V-1 shows the average sentence imposed on convicted inmates, broken down by the mandatory minimum offense categories. Also shown are the minimum and maximum terms imposed for each category.

⁴³ Refer to the Legislative Program Review and Investigations Committee reports on *Factors Impacting Prison Overcrowding* (2000) and *Recidivism in Connecticut* (2001).

⁴⁴ None of the inmates in the sample were serving a mandatory minimum sentence for offenses in the “other” category, which was defined in Chapter IV. Therefore, that category was not included in this analysis.

The mandatory minimum penalties for the specific offenses differ, but are within a close range within each offense category. In some cases, the sentence data for specific offenses is discussed separately below.

For example, a first conviction for DUI is subject to a two-day presumptive penalty. A judge may require a person perform community service in lieu of two days in prison. About 20 percent of the inmates convicted of motor vehicle offenses were sentenced to the two-day mandatory minimum. A second conviction carries a 120-day mandatory minimum penalty, and a third or subsequent conviction is subject to a mandatory minimum penalty of a year in prison. More than a third (35 percent) of the inmates convicted of motor vehicle offenses were sentenced to 120 days, but less than a year. Ten percent were incarcerated for a year or more.

<i>Offense Category</i>	<i>Minimum Term</i>	<i>Maximum Term</i>	<i>Average Term Imposed</i>
Homicide*	2.5 years	122 years	73 years
Assault	5 days	51 years	4.6 years
Property	61 days	29 years	3.6 years
Drug	30 days	20 years	7.4 years
Weapon	1.4 years	5 years	2.8 years
MV	2 days	6 years	11 months

*The inmates in the sample sentenced to multiple life sentences or the death penalty were excluded from this analysis.
Source of data: Department of Correction

To more closely examine whether the inmates were sentenced to the statutory mandatory minimum or more than the mandatory minimum penalties, the sentence data for the specific offenses was further analyzed. Table V-2, on page 65, shows each of the offenses subject to a mandatory minimum for which inmates were sentenced to prison. Some offenses are not included because no inmates were incarcerated for those crimes on July 1, 2001. Also, the mandatory minimum penalties that function like sentencing enhancements were not included because the data do not differentiate the underlying sentence from the sentencing enhancement.

Table V-3 shows each of the offenses subject to presumptive sentencing for which inmates were sentenced to prison. Again, some offenses are not included because no inmates were incarcerated for those crimes on July 1, 2001, and the presumptive sentencing penalties that function like sentencing enhancements were also not included.

	<i># Sentenced Inmates</i>	<i>Mandatory Minimum</i>	<i>% Sentenced to Less Than MM</i>	<i>% Sentenced to MM</i>	<i>% Sentenced to More Than MM</i>
Drug Sale					
21a-278(a)	33	5 years (to life)	42%	24%	33*
21a-278(b)	27	5 years :1 st offense 10 years: 2 nd offense	7%	4% 15%	45% to between 5-10 years 29% to more than 10 years

Motor Vehicle					
14-215(c)	19	30 days	5%	5%	90%
14-227a(g): 1 st conviction	351	2 days	0	23%	77%
*Maximum sentence imposed was 20 years. Source of data: Department of Correction					
Table V-2. Sentence Terms for Inmates Sentenced to Mandatory Minimum Penalties					
	<i># Sentenced Inmates</i>	<i>Mandatory Minimum</i>	<i>% Sentenced to Less Than MM</i>	<i>% Sentenced to MM</i>	<i>% Sentenced to More Than MM</i>
Homicide					
53a-54a	38	25 years	0	0	100%
53a-54c	10	25 years	0	0	100%
53a-55a	16	5 years	0	0	100%
55a-56a	4	1 year	0	0	100%
Assault					
53a-59	257	5 years if weapon used 10 years if minor victim	31%	19% (5 years) 28% (5-10 years) 8% (10 years)	14%
53a-59a	8	5 years	25%	25%	50%
53a-60a	9	1 year	0	11%	89%
53a-60b	14	2 years	0	29%	71%
53a-61	1,121	1 year	42%	46%	12%
53a-61a	27	1 year	0	85%	15%
53a-70	280	2 years 10 years if minor victim	2%	1% (2 yrs) 68% (2-10 yrs) 6% (10 yrs)	23%
53a-70a	7	5 years	0	0	100%
53a-71	247	9 months	0	0	100%
53a-92	17	1 year	0	0	100%
53a-92a	5	1 year	0	0	100%
53a-94	12	1 year	0	0	100%
53a-94a	2	1 year	0	0	100%
53a-134	484	5 years	27%	20%	53%
53a-196a	1	10 years	100%	0	0
Property					
53a-101	56	5 years	41%	7%	52%
53a-102a	1	1 year	0	0	100%
53a-103a	1	1 year	0	100%	0
53a-123	374	2 years	33%	17%	50%
Weapon					
29-34	1	1 year	0	0	100%
53a-216	1	5 years	0	100%	0
Motor Vehicle					
14-227a(g): 2 nd conviction	10	120 days	0	0	100%
14-227a(g):	3	1 year	0	0	100%

3+ convictions

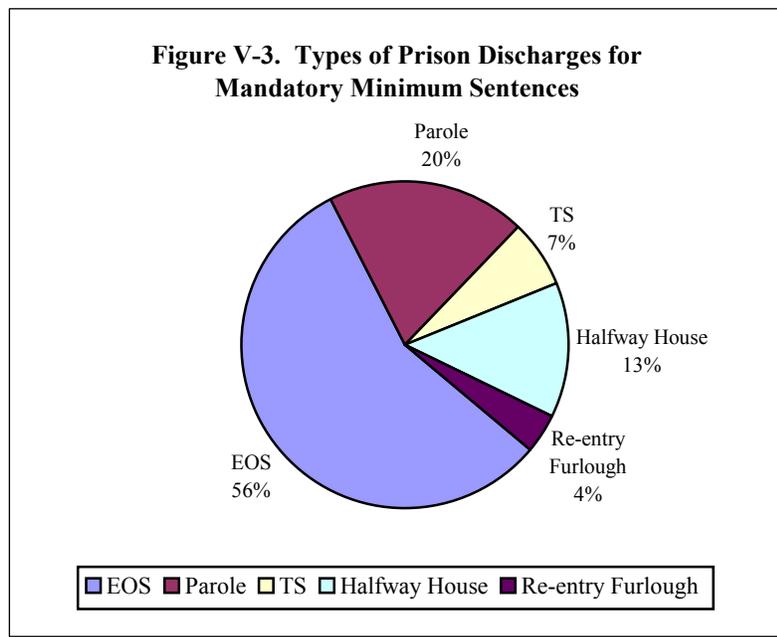
NOTE: Sentences less than the mandatory minimum penalty are most likely due to data errors in calculating multiple sentences and applying “good time” credits. Most sentences less than the mandatory minimum penalty were close to those terms.
Source of data: Department of Correction

For crimes subject to presumptive sentencing penalties, judges are authorized to depart from the mandatory minimum penalty for “good cause” or other statutorily defined mitigating circumstances and impose a lesser penalty. In most cases, the mandatory minimum penalty term or a greater penalty was imposed. Notably, judges did frequently depart (42 percent) from the mandatory minimum term for a conviction for the sale of certain drugs by a non-drug-dependent person (C.G.S. §21a-278(a)). It should be noted this law was recently changed by Public Act 05-248, which equalized the weight threshold for cocaine and “crack” at one-half ounce. As stated, prior to the change, the statutory weight threshold for cocaine was at least one ounce and at least one-half gram for “crack.” The underlying basis for the change was that the different weight thresholds for two drugs that are chemically the same was unfair and had resulted in disparate sentences especially for minority offenders. It could be concluded judges were responding to the issue by using their presumptive sentencing authority even before the legislature amended the law.

Time Served

A purpose of the state’s mandatory minimum sentencing laws was to set specific minimum terms of incarceration for certain crimes. Under these laws, upon conviction, a judge is required to impose at least the mandatory minimum penalty, but can impose a greater term. The underlying concept is that the offender serves at least the mandatory minimum penalty term prior to any early release from prison.

However, other state sentencing laws authorizing early release options such as parole and transitional supervision do not exclude most offenders sentenced to mandatory minimum



penalties. Inmates serving mandatory minimum sentences are also not excluded from other DOC early release program including halfway houses and re-entry furloughs. (Appendix E summarizes parole, transitional supervision, and the two other DOC early release programs.) As a result, offenders serving mandatory minimum penalties can serve less than the required sentence.

Figure V-3 shows that more than half (56 percent) of the inmates served all of their mandatory minimum sentence in

prison with no early release, which is referred to as the end of sentence (EOS) date in the figure. Twenty percent were released from prison on parole, and 24 percent were released into one of three DOC early release programs: transitional supervision (TS), halfway house, or re-entry furlough.

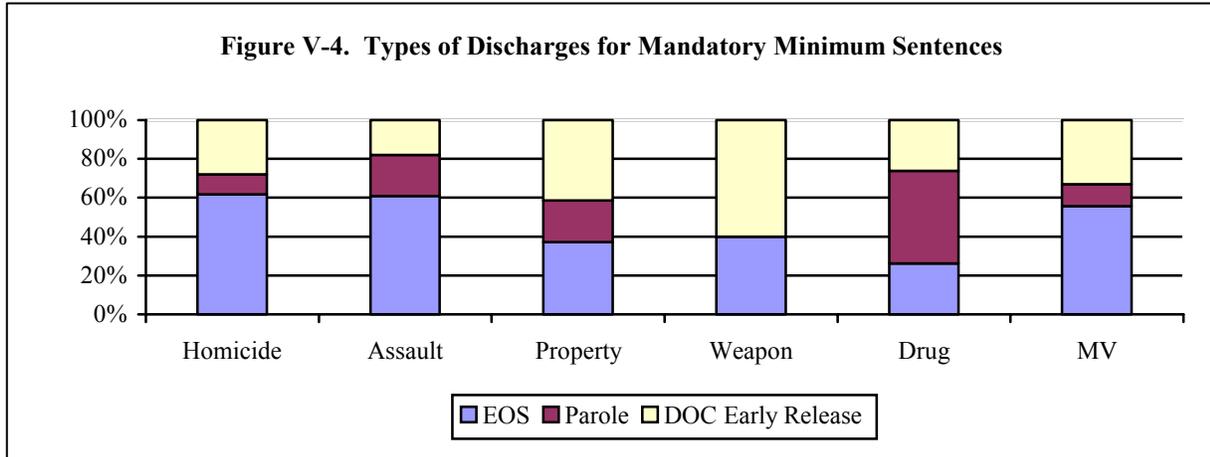


Figure V-4 shows the types of discharges from prison by offense categories. Most inmates sentenced to mandatory minimum penalties for a homicide, assault, or motor vehicle offense (at least 60 percent in each group) were discharged after serving 100 percent of the court-imposed sentence. They were not granted parole or early release under a DOC program.

Inmates who were convicted of property, weapon, and drug crimes and sentenced to mandatory minimum penalties were more often released early from prison. Drug offenders were more often paroled, and weapon offenders were released on transition supervision or transferred to a halfway house.

Table V-4. Average Time Served on Mandatory Minimum Sentences	
<i>Offense Category</i>	<i>Average Time Served</i>
Homicide	52%
Assault	91%
Property	81%
Drug	83%
Weapon	50%
MV	95%
Source of data: Department of Correction	

The average time served of mandatory minimum sentences prior to early release is shown in Table V-4. Persons convicted of murder are not eligible for parole. The homicide category, therefore, only includes persons convicted of manslaughter. As shown in the table, on average, inmates convicted of manslaughter served 52 percent of the total court-imposed sentence prior to early release. Since 1995, persons convicted of “serious, violent” offenses were required to serve 85 percent of their sentences prior to being paroled. It can be concluded most of these inmates were

convicted and incarcerated prior to the effective date of the statutory time-served standard and were, therefore, eligible for parole after serving at least 50 percent of their sentences.

On average, inmates serving mandatory minimum sentences for assault, property, drug, and motor vehicle offenses served most of the court-imposed sentence prior to being paroled or released by DOC. Only persons convicted of weapon offenses were released early from prison are at first eligibility (50 percent of the court-imposed sentence).

What are the costs associated with mandatory minimum sentencing?

The daily incarceration and community supervision costs for an inmate serving a mandatory minimum sentence are the same as that for any other inmate serving a non-mandatory minimum sentence. As discussed in Chapter V, mandatory minimum sentencing laws are not driving the overall use of prison resources. *These laws, therefore, are not driving the costs of prison resources.*⁴⁵

The criminal justice costs associated with the arrest, prosecution, and case disposition phases of mandatory minimum penalty cases would be incurred by the state regardless of these sentencing laws.

The final area of analysis of the costs associated with mandatory minimum sentences is provided below. The following is an analysis of the direct costs associated with the penalty phase of the state's mandatory minimum sentencing laws including the cost of incarceration and community supervision (e.g., parole and probation) that can be directly attributed to the imposition of mandatory minimum penalties. The costs, if any, of any proposed sentencing changes will be discussed in Chapter VII.

Case Disposition Costs

In addition to penalty costs, there are other state costs associated with the arrest and disposition phases of criminal cases. State criminal justice agencies typically do not calculate these costs. There is no reliable estimate of the cost to arrest an offender, which may include routine patrol, an investigation, or obtaining and serving warrants. The Division of Criminal Justice cannot provide an average cost to prosecute a case nor can the Judicial Branch provide the average cost of case disposition. These costs, therefore, could not be factored into the following analysis. However, these costs occur regardless of whether a crime carries a mandatory minimum penalty. Given that the offenses currently subject to mandatory minimum penalties would be crimes regardless of these sentencing laws, the prosecution and disposition costs are not then specific to the mandatory minimum sentencing laws.

While there is currently no estimate of costs to dispose of a case through trial, it can be concluded a negotiated disposition (plea bargain) is less costly than a trial. Given that mandatory minimum sentences are an effective prosecutorial tool to negotiate pleas and sentences, they may be a factor in controlling state costs associated with the disposition of criminal cases.

There is also the direct cost of crime to victims and the broader social costs of crime. The victim's cost includes the value of lost or destroyed property, medical bills, missed work, and pain and suffering. The social costs of crime that are not directly attributed to the state

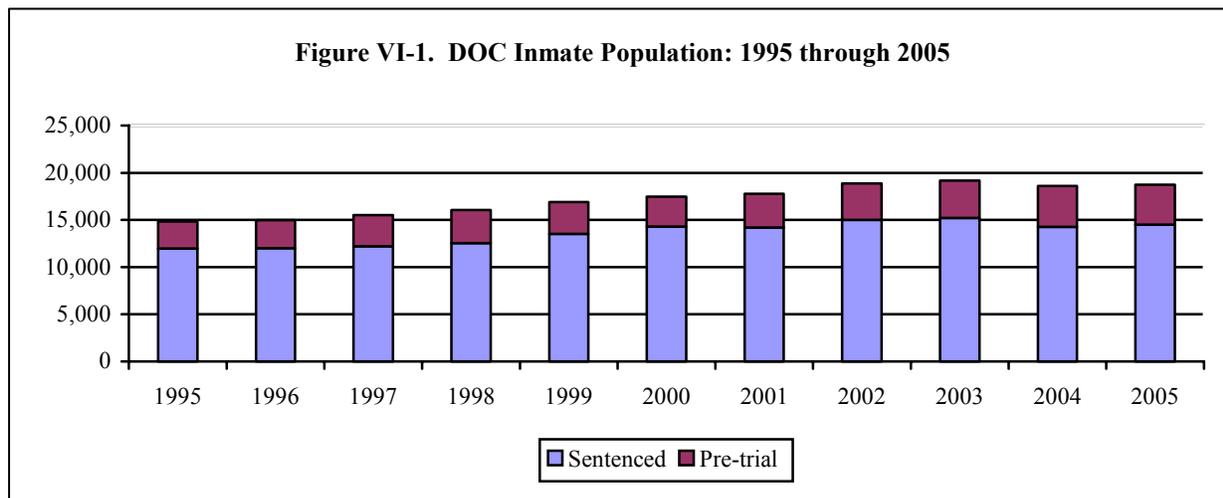
⁴⁵ The Department of Correction is currently managing a \$28.5 million deficit, which represents more than 5 percent of its FY 05 total appropriation of \$548.5 million. The deficiency is occurring in three areas: (1) personal services (e.g., staff overtime costs); (2) other expenses (e.g., community supervision operations and Worker's Compensation); and (3) inmate medical services.

criminal justice system are increased insurance premiums, destroyed property, decrease in property values, and an impact on the public’s overall sense of safety. Research shows that it is difficult to put a dollar value on some of the factors attributed to the total cost of crime to victims and society. These costs are also not specific to the mandatory minimum sentencing laws and would occur absent these laws. An analysis of the costs to victims or the broader social costs of crime is, therefore, not included in this report.

Penalty Phase Cost Analysis

Inmate population. A common criticism of a mandatory minimum sentencing policy is that it is a significant factor contributing to prison overcrowding and the corresponding increases in state prison budgets. There is no doubt Connecticut, like most other states, has experienced dramatic increases in the incarcerated offender population over the past 25 years. In fact, despite a prison expansion project that added about 10,000 prison beds, Connecticut’s prison system has operated at or over capacity for much of the past 20 years.

Figure VI-1 tracks the growth in the Connecticut pre-trial and sentenced inmate population. The sentenced inmate population appears to have slightly decreased (by 5 percent from 2003) over the past two years. To date, the decrease has been attributed to a shift in criminal justice policy for increased support of alternative to incarceration and community release options for offenders and not any significant change in sentencing policy or trends.



The sentenced incarcerated population has averaged 14,578 inmates per year since 2000. As discussed in Chapter V, there are approximately 5,300 inmates on any given day serving a sentence that includes a mandatory minimum penalty, which represents 37 percent of the total sentenced population. Pre-trial inmates are not included because they have not yet been convicted or sentenced.

Incarceration costs. The daily state cost to incarcerate inmates serving mandatory minimum sentences is the same as that for all other inmates. It is the length of the sentence and

the facility to which the inmate is transferred⁴⁶ that impact the total incarceration cost per inmate. The average daily cost of incarceration is \$104 per day.⁴⁷

On any given day, 5,300 inmates are in prison serving sentences that include a mandatory minimum penalty term. Using the department-wide average daily cost of incarceration, it costs \$551,200 per day to incarcerate inmates serving mandatory minimum sentences. Prior to November 2005, the average daily incarceration cost was \$508,800.

The annual cost of incarceration associated with mandatory minimum sentences is \$201.1 million. Prior to November 2005, it was \$185.7 million. The DOC annual budget is \$548.5 million and the costs associated mandatory minimum sentences represents 37 percent of the total budget.

Table VI-1 shows the potential incarceration costs for the statutory mandatory minimum penalties for certain offenses. The average daily cost of incarceration used in this analysis is \$96 because DOC increased to \$104 the average cost per day effective November 1, 2005, and the sentences under review were imposed well before this date. The potential costs are calculated based on the offender serving 100 percent of the mandatory minimum penalty authorized by statute.

As shown, it costs \$876,000 to incarcerate a person convicted of murder and sentenced to the mandatory minimum penalty of 25 years. However, judges generally impose sentences greater than the mandatory minimum for murder. The sentencing analysis showed most convicted murderers are sentenced to about 40 years, which increases the potential incarceration costs to \$1.4 million per offender.

The potential costs to incarcerate a person convicted of selling more than one-half gram of “crack,” prior to July 2005, ranged from \$175,200 for a five-year mandatory minimum penalty or up to \$2.1 million for the maximum penalty of 60 years (life).

The potential incarceration costs associated with DUI mandatory minimum sentences are:

- \$192 for a two day sentence for a first conviction;
- \$11,520 for a 120 day sentence for a second conviction; and
- \$35,040 for a one year sentence for a third and subsequent convictions.

Community supervision costs. As discussed in Chapter V, most inmates sentenced to mandatory minimum penalties do not served 100 percent of the sentence due to parole and other

⁴⁶ The Department of Correction operates 20 prisons and jails throughout the state. The facilities are rated by security levels (minimum to maximum), have different staffing needs, and offer various programs and services. The average daily incarceration costs for each prison vary depending on these factors.

⁴⁷ Effective June 14, 2004, for the purposes of implementing Public Act 04-234, the Department of Correction set the average daily cost of incarceration at \$96. Effective November 1, 2005, the average daily cost of incarceration was increased to \$104.

early release options. Since most inmates convicted of mandatory minimum offenses serve more than 80 percent of their sentences prior to any early release program, the estimated costs are close to that of the potential costs. Table VI-1, on page 73, also shows the estimated incarceration costs based on the average time served in prison for certain offenses subject to a mandatory minimum penalty.

Many inmates are paroled and/or are sentenced to a period of post-incarceration probation supervision. The costs for parole and probation supervision are much less than incarceration costs. In 2000, the Board of Parole calculated the average daily cost of parole supervision at \$11 per day per parolee or about \$4,000 per year. The Department of Correction was unable to update the cost estimate.⁴⁸

Table VI-2. Estimated Parole Costs	
<i>Parole Period</i>	<i>Estimated Costs (\$11 per day)</i>
6 months	\$1,980
1 year	\$4,015
2 years	\$8,030
5 years	\$20,075
Source of data: Board of Pardons & Paroles	

day per probationer or about \$831 per year.⁴⁹

Table VI-2 shows the estimated costs of parole for various periods. Since inmates can be paroled at any point after serving at least 50 percent of their sentences, the lengths of the parole periods vary.

The Court Support Services Division provided a current estimate of the cost of probation. It estimated it costs about \$2 per (The 2005 cost estimate is the same as that provided in 2000.)

Table VI-3. Estimated Probation Costs	
<i>Probation Period</i>	<i>Estimated Costs (\$2 per day)</i>
1 years	\$730
3 year	\$2,190
5 years	\$3,650
10 years	\$7,300
25 years	\$18,250
Source of data: Court Support Services Division	

As stated in Chapter IV, most offenders in the sample were sentenced to a period of probation in addition to the prison terms. The probationary periods ranged from one year to 25 years. The most frequently imposed probationary terms were 3 years and 5 years. Table VI-3 shows the estimated costs of probation for various periods.

⁴⁸In 2003, as a result of the merger of the Board of Parole into the Department of Correction and the subsequent passage of Public Act 04-234 that clarified the department's parole responsibilities, parole supervision responsibilities were transferred from the parole board to the department. The department assumed operational control in October 2004.

⁴⁹ The average daily cost for probation supervision is calculated based on the costs for: probation officer and supervisory and administrative staff salaries; building expenses; community-based programs; staff training and development; and other administrative services and contracts. Fringe benefits, indirect CCSD expenditures (e.g., information management and technology services), and other statewide allocations by DAS and OPM were not included.

Table VI-1. Costs of Incarceration for Selected Mandatory Minimum Penalty Offenses

<i>Offense</i>	<i>Mandatory Minimum Penalty</i>	<i>Potential Incarceration Costs (\$96 per day)</i>	<i>Average Time Served on Sentence</i>	<i>Estimated Incarceration Costs (\$96 per day)</i>
Murder	25 years	\$876,000	40 years	\$1,401,600
Manslaughter	5 years	\$175,200	3 years	\$105,120
Forcible sexual assault	10 years	\$350,400	38.5 years	\$1,349,040
Aggravated sexual assault	20 years	\$700,800	14 years	\$490,560
Sexual Assault second degree of victim under 16	9 months	\$25,920	8.5 months	\$24,480
Assault second degree with firearm of special status victim	3 years	\$105,120	2.8 years	\$98,112
Kidnapping second degree	1 year	\$35,040	8 months	\$23,040
Burglary first degree with weapon	5 years	\$175,200	4 years	\$140,160
Larceny second degree of special status victim	2 years	\$70,080	1.6 years	\$56,064
DUI 1 st offense	1 st offense: 2 days 2 nd offense: 120 days 3 rd offense: 1 years	\$192 \$11,520 \$35,040	2 days 90 days 8 months	\$192 \$8,640 \$23,040
Driving under license suspension	30 days	\$2,880	27 days	\$2,592
Sale of certain drugs by non-drug-dependent person (21a-278(a))	5 years to Max of 60 years (life)	\$175,200 to \$2,102,400	3 years 39 years	\$105,120 \$1,366,560
Sale of any drug by non-drug-dependent person (21-278(b))	1 st offense: 5 years 2 nd offense: 10 years	\$175,200 \$350,400	3 years 6.5 years	\$105,120 \$227,760
Source of data: Judicial Branch and Department of Correction				

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Findings and Recommendations

The program review committee findings and recommendations relating to mandatory minimum sentencing laws are presented below.

Legislative Purpose of Mandatory Minimum Sentencing

The overarching crime policy of the state is to protect the public by preventing, or at least reducing, crime. One main process to accomplish this goal is to punish persons convicted of crimes. The traditional goals of sentencing are: punishment, deterrence, incapacitation, and rehabilitation. Convicted offenders are punished through different sentencing options defined by state laws, imposed by judges, and administered by state criminal justice agencies.

Mandatory minimum sentencing laws are only one component of the existing criminal sentencing framework. Given the comprehensive list of criminal offenses in the penal code, only a small number of serious and/or violent offenses (e.g., murder, assault, sexual assault, firearm and weapon violations, drug sale, and driving under the influence of alcohol or drugs) are subject to mandatory minimum penalties.

The state's crime policy and sentencing goals have not changed. What has changed, however, are the sentencing policies intended to achieve those goals. While crime and its punishment have always been a public policy concern, since the 1980s, the legislature has assumed an increased role in dictating the specific terms of sentencing. As discussed, for a variety of reasons, Connecticut, like most states, initiated what has become almost a 30-year "experiment" in sentencing policy reform. Without changing the overall state crime policy or sentencing goals, various sentencing reforms were enacted to achieve, at times, different outcomes.

Some reforms were intended to correct perceived flaws in the criminal process by: reducing disparity in sentences; increasing accountability, uniformity, and fairness in sentencing decisions made by judges (and early release decisions made by the parole board and the Department of Correction); and increasing the proportionality of sentences. These sentencing reforms (e.g., determinate sentencing and "truth-in-sentencing") curtailed, and in some cases eliminated, the discretion of judges and parole boards in an attempt to achieve more consistent, uniform, and fair sentences. Sentencing decisions were more closely linked to the criminal charges, and the discretion formerly vested in judges (and the parole board) shifted to prosecutors. There is consensus in national sentencing research that, ironically, increasing prosecutors' control over sentencing outcomes undermined the uniformity in sentencing decisions the reforms were intended to achieve.

Other sentencing reforms were intended to increase the severity of punishment as well as predictability, such as mandatory minimum sentencing and persistent offender laws. At the same time, sentencing reforms that created a system of diversion from prosecution and alternative to incarceration sanctions for certain offenders were also established. The most recent sentencing

reform enacted in Connecticut is the offender re-entry strategy, which is intended to improve community re-entry supervision and programs to achieve an overall reduction in recidivism among offenders thereby controlling prison overcrowding.

Mandatory minimum sentencing laws were specifically intended to deter offenders and thereby reduce crime (and curb drug use). There is no direct evidence to suggest that the state's mandatory minimum sentencing laws reduced the crime rate (or drug use). Criminal justice research and sentencing experts agree decline in arrests in Connecticut is the cumulative effect of many factors, not any one sentencing policy.

The political and public debate on crime has, for many years, stressed a "get tough" approach that focused on the sentencing goals of retribution and incapacitation rather than rehabilitation. Only recently has the crime debate shifted to also recognize most offenders are in or will be returning to the community and that the state's criminal justice policies and resources should be focused on reducing recidivism among offenders through more effective community re-entry strategies.

No matter the intended focus of a sentencing reform, however, the political debate on crime directly impacts the criminal justice system's administration of the sentencing laws and the allocation of state criminal justice resources. For most of the past 25 years, the crime debate and administration of sentencing laws have driven the appropriation of limited state criminal justice resources. In general, as a result of the "get tough" message, there was increased demand for prison bed resources. As the system experienced dramatic growth in the inmate population, the Department of Correction budget also dramatically increased. In response, the parallel system developed to administer the alternatives to incarceration, diversion, and community supervision sentencing laws, which were often viewed as "soft on crime," was forced to compete for limited criminal justice resources and has generally been underfunded.

Mandatory minimum sentencing policy is a compelling symbol of the "tough on crime" political message and "crime of the week" political pressures. The laws were enacted in large part to send strong messages that violent crime and drug use, particularly when children are the victims of these crimes, will not be tolerated in Connecticut. This is a powerful argument, especially since no one can dispute public safety is enhanced by having criminal penalties.

The dilemma is that many elected officials who enact mandatory sentencing laws support them for symbolic reasons, while the public officials who administer mandatory sentencing laws often oppose them for procedural reasons. The severity of mandatory minimum sentencing laws is often cited as the reasons prosecutors and judges are reluctant to impose the penalties. Mandatory minimum sentencing laws are based on the severity of the offense and the offender's criminal history and specifically do not take into account individual offender characteristics and circumstances.

Acknowledging the state's sentencing policy may have resulted in "unintended consequences" such as unduly harsh sentences for drug sale crimes and racial disparity in criminal sentencing and that the policy has not directly contributed to reducing the crime rate and drug use, the General Assembly significantly amended the mandatory minimum sentencing

laws. First, in 1999, the state's statutory parole eligibility law was amended. Under current parole board statutes, a convicted offender sentenced to a mandatory minimum sentence is no longer required to serve that term to be eligible for parole release. Second, in 2001, judges were given discretion to depart from the mandatory minimum penalties for drug sale crimes for certain mitigating factors. This change enacted the presumptive sentencing reform.

In recent years, Connecticut has begun to shift its policy to more effective and less costly criminal justice strategies intended to reduce recidivism, maintain the prison population at or under bed capacity, and provide more diversionary and alternative sanction options to a greater percentage of the offender population.

Administration of Mandatory Minimum Sentencing Laws

Mandatory minimum sentencing laws can only be as mandatory as police, prosecutors, and judges choose to make them. *In Connecticut, state's attorneys and judges (and defense attorneys) generally in effect circumvent the state's mandatory minimum sentencing laws and, in fact, relatively few offenders are actually convicted of offenses subject to mandatory minimum penalties.* These entities generally find mandatory sentencing laws too inflexible and take steps to avoid what they consider unduly harsh and unjust sentences. *However, mandatory minimum penalties are used effectively and efficiently as a prosecutorial tool to negotiate pleas and sentences.*

State's attorneys use mandatory minimum penalties to influence a defendant's decision to accept a plea bargain. If a defendant agrees to a plea bargain, a state's attorney usually "comes off" of a mandatory minimum sentence by substituting another charge and recommending a lesser sentence, which is then imposed by a judge. If a defendant rejects a plea bargain, however, a state's attorney will "stick" on the criminal charge carrying a mandatory minimum penalty, and it is then necessary for the defendant to either proceed to trial or continue to negotiate. In either case, the state's attorney's original offer to "come off" the mandatory minimum penalty is withdrawn, and the defendant is now subject to at least the mandatory minimum sentence or even a greater prison term. Typically, defendants try to avoid the unpredictability of a trial and elude the most severe allowable sentence by plea bargaining, which strengthens the prosecutor's power to deal.

Geographical differences and the working relationship between a judge, state's attorney, and defense counsel are the most significant factors in how the mandatory minimum sentencing laws are applied. Based on interviews with judges, prosecutors, and defense attorneys and the program review staff observation of the pre-trial process, in some judicial districts in Connecticut, the mandatory sentencing laws are almost never used to charge a defendant, while in others the state's attorneys routinely charge under the laws, especially for certain types of crimes such as drug sale or sexual assault.

There is consensus among the judges, state's attorneys, and defense attorneys interviewed that their individual working relationships impact the use of mandatory minimum sentencing laws. A good working relationship allows them to openly discuss the offense and the defendant and to negotiate what they view as an appropriate sentence. A difficult working relationship,

however, often makes it difficult to negotiate cases subject to a mandatory minimum penalty especially if the state's attorney "sticks on" the charge and the judge disagrees with the decision and/or sentence. In that case, a judge, with no authority over the state's attorney's decision to charge, also has little influence during the plea bargaining process. This clash of authorities can further strain an already difficult working relationship.

Judges interviewed believe, in theory, a mandatory minimum sentencing policy unjustly removes their discretion and improperly shifts that discretion to the prosecutor. However, in practice, most judges stated they have sufficient authority and discretion to work with prosecutors to circumvent the mandatory minimum penalties when they believe the penalties are inappropriate and/or too harsh.

Judges believe presumptive sentencing, in theory, can be a workable compromise between mandatory minimum sentencing and discretionary determinate sentencing policies. Under a presumptive sentencing law, a judge has discretion to depart from a statutory mandatory minimum sentence for certain mitigating circumstance.

Connecticut shifted its sentencing policy for drug sale offenses from mandatory minimum to presumptive sentencing in 2001. However, for two reasons, judges interviewed stated it would be uncommon for them to use the presumptive authority to depart from the mandatory minimum penalty for a drug sale offense. First, because of plea bargaining, few defendants are convicted and sentenced to the mandatory minimum penalty. For those that are, judges do not typically depart from the mandatory minimum because it is found either through the plea negotiation or a trial to be the appropriate sentence for the crime and the offender.

Second, interviewed judges stated they are reluctant to depart from mandatory minimum sentences even when they have the statutory authority to do so because of the political stigma and potential impact during the legislative reappointment process. Judges do not want to be labeled as "soft on crime," which they believe would be the backlash to using their discretion under a presumptive sentencing law even though it is statutorily authorized. However, as shown in Chapter IV, particularly for drug sale offenses, judges tend to depart from the mandatory minimum penalties and impose lesser sentences. It appears from the data, despite their concerns judges are using their presumptive sentencing authority.

If the state's mandatory minimum sentencing policy was amended to presumptive sentencing, most judges interviewed believe the mitigating criteria should be legislatively defined as it is with the drug sale offenses. The statutory criteria would provide guidance for judicial discretion in departing from the mandatory minimum penalty. It would shield judges from any political backlash from using their discretion.

Based on the aforementioned and the data analysis, the impact of the actual application of mandatory minimum sentencing laws on the criminal justice system and the crime rate is negligible. However, the indirect impact of these laws on the plea bargaining process is considerable. About one-third of offenders arrested for crime carrying mandatory minimum penalties are actually convicted and sentenced to mandatory penalties. Most persons arrested for mandatory minimum penalty offenses are either not convicted or convicted of lesser crimes. For

those that are convicted, the statutory parole eligibility criteria and the parole board's parole eligibility calculation process potentially minimizes the requirement for inmates to serve the mandatory minimum sentence, which is directly contrary to the original intent of the laws. However, many inmates convicted of mandatory minimum penalty crimes receive sentences greater than the mandatory minimum term and inmates serving mandatory minimum prison terms tend to serve most of their sentences prior to being parole or released early by the Department of Correction. Given that, many inmates do in fact serve the mandatory minimum sentence terms.

Public Perception of Mandatory Minimum Sentencing Laws

In recent years, mandatory minimum sentencing laws have come under increasing attack. It is argued the laws have not achieved the intended goals of reducing crime, curbing drug use, and ensuring serious and violent offender are incarcerated for longer periods. *Overall, the program review committee found mandatory minimum sentencing laws have achieved, to some extent, most of the intended purposes.*

Opponents further argue mandatory minimum sentencing laws have resulted in serious, but unintended consequences: racial and ethnic inequities in the criminal case disposition and sentencing process; unduly harsh sentences; and prison overcrowding. It is doubted that mandatory minimum penalties have any significant deterrent effects on criminal behavior.

Plea bargaining has the biggest impact on the criminal case disposition and sentencing process. As stated, mandatory minimum sentencing laws are an effective and efficient tool in plea bargaining. As shown in Chapter IV, most persons arrested for mandatory minimum penalty offenses are convicted of lesser offenses not subject to mandatory minimum penalties. Absent these laws, however, prosecutors would still have the authority to charge defendants with crimes and to recommend sentences within the broad statutory sentencing ranges. Reducing the charge and/or sentence would still be sufficient incentive for defendants to agree to negotiated pleas. Therefore, there is no evidence to suggest the criminal case disposition process or outcomes would be different.

As stated, mandatory minimum sentencing laws are not driving the use of prison resources. They are only a component of the state's sentencing framework. Prison overcrowding is caused by several factors⁵⁰ and, at most, the mandatory minimum sentencing laws only contribute to the cumulative effect of these factors.

Sentencing is a public policy concern. Sentencing options and ranges are set out in state laws. Sentences that are within the statutory guidelines, therefore, must be considered fair. However, political and public opinions about crime and its punishment can change. Sentences that were once viewed as fair and appropriate may eventually be perceived as unfair or unduly harsh.

⁵⁰ Refer to the Legislative Program Review and Investigations Committee report on *Factors Impacting Prison Overcrowding* (2000).

Based on national and state polling, the public's perception of basic mandatory minimum sentencing is at odds with both the legislative intent and the criminal justice system's application of the laws. Polling data⁵¹ show Connecticut residents are increasingly supportive of relaxing mandatory minimum sentences and investing in more alternatives to incarceration options to address criminal justice issues such as prison overcrowding. Residents want violent offenders in prison, but acknowledge not all offenders should be incarcerated. This suggests a shift in public opinion from the "tough on crime" attitude of the 1980s and 1990s to a more comprehensive and cost-effective approach to crime. *However, change in the state's sentencing laws to lessen the punishments for certain crimes is a matter of public policy for the General Assembly to determine.*

Racial and ethnic disparity is a complex problem in the criminal justice system. The Commission on Racial and Ethnic Disparity in the Criminal Justice System⁵² reported, for example, that African American and Latino/Hispanic defendants were more likely to be charged with felonies and the charges were more likely to be associated with mandatory minimum sentences. The commission reported Caucasian offenders have a lower incarceration rate than African American or Latino/Hispanic offenders. This rate is significantly below the national average for incarceration rates, and Connecticut ranks the highest in the United States in its level of disparity in the incarceration rates of Caucasian, African American, and Latino/Hispanic offenders.

The program review committee found the racial and ethnic breakdowns among persons arrested for mandatory minimum penalty offenses and inmates in prison serving mandatory minimum sentences was consistent with prior analyses of the racial and ethnic composition of the general arrestee and inmate populations. While minority persons are consistently overrepresented among the different categories and types of offender populations, they were not more so among persons arrested for mandatory minimum offenses or sentenced to mandatory minimum penalties.

Racial and ethnic disparity is a term that is often used interchangeably with overrepresentation, underrepresentation, and discrimination. The commission reported, "misuse of these terms can fuel emotionally and politically charged dialogue in negative ways," and that "neither overrepresentation, underrepresentation, nor disparity necessarily imply discrimination."

There is not one identified cause or predictor of racial and ethnic disparity, overrepresentation, underrepresentation, or discrimination. They are often caused by various socioeconomic and cultural issues and can be the unintended consequences of the state's criminal justice, social, and economic policies.

Impacting disparity, overrepresentation, underrepresentation and discrimination in sentencing rates will take a coordinated and comprehensive effort by the criminal justice system

⁵¹ University of Connecticut poll of a sample of Connecticut residents conducted in 2004.

⁵² The Commission on Racial and Ethnic Disparity in the Criminal Justice System within the Judicial Branch was statutorily created in 2000 (P.A. 00-154), to compile research about and make recommendations addressing racial and ethnic disparity in Connecticut's adult criminal justice and juvenile justice systems. The commission's first report was published in 2002 and it released its second (covering 2003-2004) in January 2005.

and other government-administered systems (e.g., education, housing, and employment). With that said, however, any change that relaxes the mandatory minimum sentencing laws such as presumptive sentencing may be viewed by the public and opponents of the laws as a positive step.

Sentencing Task Force

The General Assembly shall establish the Connecticut Sentencing Task Force to review the state's crime and sentencing policies and laws in the interest of creating a more just, effective, and efficient system of criminal sentencing.

To accomplish its mandate, the sentencing task force shall, but not be limited to:

- **identify overarching state crime and sentencing goals and policies;**
- **define current sentencing models including sentencing guidelines, criteria, exemptions, and enhancements;**
- **analyze sentencing trends by offense types and offender characteristics;**
- **review the actual versus intended impact of sentencing policies;**
- **determine the direct and indirect costs associated with sentencing policies; and**
- **make recommendations to amend the state's crime and sentencing policies.**

The Connecticut Sentencing Task Force shall be composed of the following members:

- **House and Senate chairpersons of the Judiciary Committee, who shall serve as co-chairpersons of the task force, and the ranking members;**
- **two Superior Court judges from different judicial districts, each of whom has been a judge for at least 10 years and has at least five years experience in Part A criminal courts, appointed by the chief court administrator;**
- **two state's attorneys with at least 10 years experience and with at least five years experience in Part A criminal courts, appointed by the chief state's attorney;**
- **two public defenders with at least 10 years experience and with at least five years experience in Part A criminal courts, appointed by the chief public defender;**
- **two private defense attorneys with at least 15 years experience in criminal law, with one attorney recommended by the criminal section of the Connecticut Bar Association and the other recommended by the Connecticut Criminal Defense Lawyers Association;**

- the executive director the Judicial Branch’s Court Support Services Division or his or her designee;
- the commissioner of the Department of Correction or his or her designee;
- the chairperson of the Board of Pardons and Paroles or his or her designee;
- the commissioner of the Department of Mental Health and Addiction Services or his or her designee;
- the undersecretary of the Office of Policy and Management’s Division of Criminal Justice Policy and Planning;
- an assistant attorney general from the criminal justice section of the Office of the Attorney General appointed by the attorney general;
- three chiefs of police representing police departments with jurisdiction in urban, suburban, and rural municipalities respectively; and
- six legislators appointed as follows: one each by the speaker of the house, the senate president pro tempore, the majority leader of the house, the minority leader of the house, the majority leader of the senate, and the minority leader of the senate.

The Connecticut Sentencing Task Force shall take effect July 1, 2006 and submit a report on its findings and recommendations to the Judiciary Committee by December 1, 2008. The task force shall terminate at the conclusion of its work.

The Division of Criminal Justice Policy and Planning,⁵³ within the Office of Policy and Management, shall assist the Connecticut Sentencing Task Force by providing the necessary criminal justice data, analyses, and technical assistance necessary for the task force to meet its mandate and reporting requirement. Executive and judicial branch criminal justice agencies shall also provide data and technical assistance as requested by the sentencing task force.

Overall, during the past 25 years, despite a disjointed approach to developing and implementing sentencing reform, Connecticut has enacted a sentencing framework that includes the elements often recommended by criminal justice researchers and national sentencing experts. However, the underlying concepts of some sentencing reforms appear to conflict, while other reforms appear to be complementary. Evaluations of the Connecticut criminal justice system found the administration of several key sentencing policies such as mandatory minimum penalties have resulted or have been perceived as resulting in unintended outcomes.

⁵³ Public Act 05-249 created the Division of Criminal Justice, within the Office of Policy and Management, to promote a “more effective and cohesive” criminal justice system. The division, which takes effect July 1, 2006, is specifically required to conduct in-depth analyses of the criminal justice system to determine the long range needs of and identify critical problems in the criminal justice system. It is further required to recommend strategies and plans to address these issues. To this end, the division is further required to collect and analyze a variety of criminal justice data including sentencing data.

It has been more than 25 years since Connecticut has comprehensively reviewed its sentencing policy and laws. In 1979 (Special Act 79-96), the legislature created a sentencing commission to establish sentencing policies and practices for the state criminal justice system that ensured the sentencing goals of punishment, deterrence, incapacitation, and rehabilitation would be accomplished. The commission was responsible for recommending sentencing options, guidelines, and ranges.

After submitting its recommendations in a final report (March 12, 1980), the sentencing commission was charged with evaluating the impact of the recommended sentencing reform, which was a shift from indeterminate to determinate sentencing. In 1984, at the conclusion of its review, the commission was terminated.

Many states and the federal government have permanent sentencing commissions. The United States Sentencing Commission, which develops the sentencing matrix used in the federal criminal court system, is the most familiar model. However, the composition and responsibilities of the commissions vary. Many are required to conduct on-going analyses of sentencing trends to ensure laws are and can be administered in accordance with state sentence policy, rather than setting nondiscretionary sentencing requirements like the United States Sentencing Commission. Some commissions also provide information and rationale for any changes to a state's overall sentencing policy, penal codes, and sentencing laws.

The recommended sentencing task force is similar to the 1980 Connecticut Sentencing Commission in that it is not a permanent entity. It is given an 18-month timeframe in which to complete its work, and would terminate in 2008.

Other options. Much of the evidence presented in the program review committee report could be viewed as supporting the repeal of the mandatory minimum sentencing laws. For opponents of these laws, this may appear to be a more satisfactory -- and logical -- conclusion to the issues frequently linked to mandatory minimum sentencing.

The evidence can also be seen as grounds for expanding presumptive sentencing authority to all offenses currently subject to mandatory minimum sentencing laws. Expanding presumptive sentencing would give limited discretion to judges to depart from mandatory minimum penalties under certain mitigating circumstances, which could be defined statutorily. This is obviously a less drastic approach than outright repeal of the laws, and one that would most likely also be supported by opponents of mandatory minimum sentencing laws.

Under either option, Connecticut's existing criminal sentencing laws are sufficient to achieve the same sentences for the offenses currently subject to mandatory minimum penalties and to maintain general criminal sentencing patterns. Trends to date presented in this report suggest judges would not interpret the repeal of mandatory minimum sentencing laws or expansion of presumptive sentencing to impose lesser sentences for criminal convictions, especially those serious violent offenses currently subject to mandatory minimum penalties. Furthermore, it is unlikely state's attorneys would significantly alter prosecutorial procedures and tactics.

Repealing mandatory minimum sentencing laws may hinder the efficiency of the existing process of plea bargaining since state's attorneys would no longer have the options of offering to reduce a mandatory minimum penalty charge in exchange for a negotiated plea and sentence. The state's attorneys' unilateral authority to charge a defendant with a crime and make sentencing recommendations would not be amended in any way. Therefore, the impact would, at the most, lengthen the time it now takes for the parties to reach an agreement on plea bargains, but again the state's attorney's authority to charge would most likely compensate for any lag in the process that may occur.

At this time, there are two reasons why the program review committee believed these were not the best options to address the issues surrounding mandatory minimum sentencing laws. First, mandatory minimum sentencing is only a small part of the overall sentencing framework in Connecticut. It is simplistic to conclude repealing the state's mandatory minimum sentencing laws or even expanding presumptive sentencing authority would result in any appreciable changes to the trends in criminal charges and sentences and incarceration rates or any real changes to the broad systemic and socioeconomic issues that ultimately result in unduly harsh sentences, overrepresentation of minorities in the system, and prison overcrowding. Most likely there would be no long term change in all phases of the criminal justice process.

Racial and ethnic disparity, unduly harsh sentences, and prison overcrowding are complex problems in the criminal justice system. There is not one identifiable cause or predictor of racial and ethnic disparity or of any sentencing trends. They are often caused by various political, socioeconomic, and cultural issues and can be the unintended consequences of the state's criminal justice, social, and economic policies. Impacting -- or reversing -- these trends will take a coordinated and comprehensive effort by the criminal justice system and other government-administered systems (e.g., education, housing, and employment).

Even though selected changes to relax the mandatory minimum sentencing laws such as repeal or expansion of presumptive sentencing may be viewed by the public and the laws' opponents as a positive step, the program review committee believed its recommendation for a comprehensive review of all crime and sentencing policies by the sentencing task force was the best action to take at this time. The sentencing task force can examine all the factors directly causing and perceived to be causing all the sentencing problems identified in Connecticut.

Second, as stated, mandatory minimum sentencing policy is a compelling symbol of the "tough on crime" political message and the "crime of the week" political pressures. The laws were enacted in large part to send strong messages that violent crime, drug use (particularly when children are involved) and drunk driving will not be tolerated in Connecticut. This is a powerful political argument from a public relations point of view for continuing these laws.

Selected legislators interviewed indicated they support the laws because it is effective for them to respond on the record to constituent concerns about crime. Legislators familiar with criminal justice issues recognize the flaws in the sentencing policy. At the same time, they acknowledge that judges and prosecutors (and defense attorneys) have the discretion and means to circumvent the mandatory minimum sentencing laws in many cases to achieve fair and appropriate sentences.

In general, changes to reduce prison time and provide lesser sanctions through alternative penalty options are often viewed as being “soft on crime.” Therefore, the state’s elected officials are reluctant to take actions such as repealing the mandatory minimum penalties. While there seems to be growing public acceptance based on national poll results that other alternative sanctions strategies are as or more effective than prison, broad political acceptance has yet to be achieved. Changes to the state’s sentencing policies will not be successful without a shift in the current political climate.

The program review committee’s recommendation will allow time for elected officials and the public to consider the benefits of certain sentencing policy changes. In addition, any potential changes to the mandatory minimum sentencing laws should be made within the context of the overall state sentencing framework.

Fiscal Impact Assessment

As the history of sentencing reform in Connecticut shows, the legislative agenda on crime and sentencing will always be subject to change. The recommended sentencing task force is a temporary entity, terminating in December 2008 at the conclusion of its work. The General Assembly, therefore, must continue to be fully informed of any implications of sentencing and crime legislation under consideration and the potential for fiscal and administrative impacts that may have to be addressed in the future.

Sentencing reform and criminal justice strategies have costs associated with them. In the past, it appears sentencing reforms have been enacted without regard for fiscal considerations and constraints. The state budget crises created an urgent need to reassess state sentencing and criminal justice policies in light of limited resources and other state priorities (e.g., health care, education, transportation infrastructure). The fiscal consequences of the actual impact of sentencing and criminal justice policies must be considered as well as the public message and the intended impacts.

A fiscal impact assessment shall be required on the likely effects of any proposed legislation on prisons, jails, probation, parole, court resources and dockets, and on public safety and victim’s rights. The fiscal impact assessment shall be conducted by the General Assembly’s Office of Fiscal Analysis (OFA) and the Office of Legislative Research (OLR).

The legislature has already realized the need for similar information and currently requires a fiscal analysis and bill summary for all proposed legislation. In preparing the fiscal impact assessment, OLR and OFA shall review, but not be limited to, the following data:

- rates of arrest;
- rates of prosecution;
- sentencing trends by type of offense and length;
- incarceration rates and prison capacity;
- rates of prison admission and discharge;

- rates of offenders sentenced to probation or any other alternative sentencing option or sanction;
- computation of time served in prison;
- parole eligibility criteria;
- bail, probation, alternative sanction, and parole caseloads;
- capacity of community-based services and programs;
- rate of pre-trial defendants released on bail or incarcerated pending disposition of their criminal cases; and
- any other information necessary for analysis (e.g., offender demographics).

Appendix A
Connecticut Penal Code

Criminal Sentencing

To provide a context for a discussion of mandatory minimum sentences and enhanced penalties, this appendix summarizes Connecticut's criminal sentencing framework established by the penal code, which are the state's laws defining criminal offenses and their penalties. Non-custodial penalties such as fines, community service, restitution, and unconditional discharge will not be discussed.

Criminal Offenses

There are many different categories of crimes, and some offenses can be placed in more than one category. In general, criminal offenses are categorized as:

- *violent crimes* -- crimes against a person such as murder, manslaughter, assault, sexual assault, robbery, arson, and kidnapping;
- *property crimes* -- crimes involving the theft or destruction of property such as arson, burglary, larceny, forgery, and auto theft;
- *public order crimes* -- crimes against public decency, order, and justice such as driving while under the influence of alcohol or drugs, stalking, harassment, disorderly conduct, trespass, perjury, and risk of injury;
- *"morals" crimes* -- include prostitution, solicitation, bigamy, and bribery;
- *"victimless" crimes* -- involve a willful and private exchange of illegal goods or services such as possession and sale of illegal drugs, gambling, and prostitution;
- *white-collar and corporate crimes* -- generally nonviolent offenses committed for financial gain by means of deception by persons using their special skills and opportunities such as environmental pollution, manufacture or sale of unsafe products, price fixing, forgery, tax fraud, and deceptive advertising;
- *organized crimes* -- unlawful acts by members of highly organized and disciplined associations engaged in supplying illegal goods and services such as gambling, prostitution, loan sharking, narcotics, and labor racketeering;
- *hate crimes* -- crimes committed against a person, property, or society motivated by bias or bigotry against a race, religion, an ethnic or national group, or a sexual-orientation group; and
- other categories such as *occupational crimes*, *offenses against the government*, and *offenses by the government*.

The penal code classifies the specific crimes within a category according to the degree or severity of the offense by identifying the type, classification, and degree of offense. Each denotes a specific aspect of the crime used in charging an offender with an offense and in imposing a penalty upon conviction of a crime.

Offense type. Crimes are identified as felonies or misdemeanors. A felony is a relatively serious criminal offense for which a convicted person may be sentenced to more than a year of incarceration or to death. A misdemeanor is any lesser offense not defined as a felony and is punishable by no more than a year of incarceration. Persons convicted of either a felony or misdemeanor offense are also subject to other types of penalties such as probation, conditional and unconditional discharge, fine, and restitution.

There is a third type of crime: violation or infraction. A violation or infraction is a breach of a state or local law, such as driving and motor vehicle offenses (e.g., speeding), loitering, creating a public disturbance, and public intoxication. These offenses are generally less serious than a misdemeanor and are nonviolent. A person charged with a violation or infraction is issued a summons and generally not arrested and taken into custody. If guilty of the violation or infraction, he or she is not subject to any penalty other than a fine.⁵⁴

Only certain felony and misdemeanor offenses are subject to mandatory minimum sentences and other sentencing enhancements. For this reason, violations and infractions will not be included for analysis in this study.

Offense class. The offense classification is a ranking system denoting the severity of the crime based on specific or special circumstances of the crime. The most common circumstances include:

- the victim's age (e.g., elderly or a minor);
- the victim's physical or mental status (e.g., blind, physically disabled, pregnant, or mentally retarded);
- the offender's age or status (e.g., more than two years older than the victim, not-drug-dependant);
- the total value of property damaged or stolen;
- the type or amount of illegal drug possessed, sold, or manufactured;
- the location of the offense (e.g., proximity to a school, day care, or public housing);
- whether a weapon was used and the type of weapon used during commission of the underlying offense; and
- the severity of the injury to the victim.

All felony offense types are classified as class A, B, C, or D and misdemeanor offenses as class A, B, or C. Class A is the most serious ranking and class D the least (or class C for misdemeanors). As will be discussed later in this section, Connecticut's penal code sets the penalty guidelines based on this crime classification unless a specific penalty is established (e.g., capital felony, unclassified felony, mandatory minimum sentence).

⁵⁴ There is a process whereby a person charged with a violation or infraction may plead not guilty and request a hearing to dispose of the case rather than admit guilty and pay the fine. The defendant, if found guilty after a hearing, is subject to a fine plus any court costs.

The penal code defines two other offense classes: capital and unclassified. A capital offense is punishable by a death sentence or life in prison without the possibility of release (e.g., parole) -- meaning the defendant's natural life. A capital felony is: murder of a peace officer, kidnap victim, sexual assault victim, multiple victims, or a victim under 16; murder for financial gain; murder committed by a defendant with a prior murder conviction or serving a life sentence; and murder committed during the commission of another felony offense.

Unclassified felony and misdemeanor crimes are not specifically classified as class A, B, C, or D within the penal code, but have the penalties identified within the statutory offense definition rather than the sentencing guidelines. In some cases, as will be discussed, the unclassified crime statutes have been challenged and the penalty is, therefore, based on case law. Unclassified felony crimes include: arson murder; possession, sale, manufacture, or distribution of illegal drugs; and certain firearm and weapon violations (e.g., carrying a pistol without a permit, illegally altering firearm identifications, illegally possessing a weapon in a motor vehicle).

Offense degree. The degree of the offense is the third way in which the severity, circumstances of the crime, and culpability of the defendant are defined for use in charging a defendant with a crime and, upon conviction, imposing a penalty. Crimes are ranked based on the specific circumstances of the crime as first, second, third, fourth, fifth, or sixth degree with the first degree denoting the most serious crime.

The penal code generally identifies the defendant's culpability in terms of whether he or she intentionally, knowingly, recklessly, or negligently committed a crime. Each carries a different legal standard (C.G.S. §53a-3).

- A person acts *intentionally* with respect to a crime when his or her conscious objective is to cause such result or to engage in such conduct.
- A person acts *knowingly* when he or she is aware that his or her conduct is of a criminal nature or that such circumstance exists.
- A person acts *recklessly* with respect to a crime when he or she is aware of and consciously disregards a substantial and unjustifiable risk that will occur as a result of his or her conduct or that such circumstance exists.
- A person act with *criminal negligence* when he or she fails to perceive a substantial and unjustifiable risk will occur as a result of his or her conduct or that such circumstance exists.

Severity for many crimes is determined based on the victim's injury, the amount of force used, and/or the weapon involved in commission of the crime. The Connecticut penal code defines different standards for injuries and weapons.

While the offense classification and degree do not necessarily correspond, that is an offense in the first degree is not necessarily a class A felony, the offense degree is defined based on many of the same factors (e.g., victim's age or physical or mental status, offender age or status, involvement of a weapon and type of weapon, value of property damaged or stolen, type

and weight of illegal drug, or severity of the victim's injury). The primary difference between offense classification and degree is offense degree is used to charge a defendant whereas the classification is used to determine the appropriate penalty based on the statutory sentencing guidelines as discussed below. Both are used during the plea bargaining process, which is summarized in Chapter III, to negotiate a guilty plea and sentence recommendation.

Criminal Sentence Guidelines

The penal code authorizes several sentences that a judge may impose upon a person convicted of a criminal offense including:

- imprisonment in a state correctional facility;
- probation supervision;
- conditional or unconditional discharge;
- fine;
- special parole;
- financial restitution;
- community service; and
- a diversionary and alternative incarceration sanction.⁵⁵

Criminal sentencing is complex. A single sentencing option or a combination of options may be imposed and a sentence may be subject to certain sentencing enhancements, restrictions, exemptions, and offender eligibility criteria. An offender is often under the jurisdiction of more than one criminal justice agency (e.g., Department of Correction, Board of Pardons and Paroles, or Court Support Services Division) throughout the duration of a single sentence. Therefore, although the focus of this study is on mandatory minimum sentences, it is necessary to understand Connecticut's criminal sentencing framework to have a context for reviewing the mandatory minimum and enhanced penalty sentencing schemes. As stated, only those sentence options under which an offender can be incarcerated will be examined.

Determinate sentences. The primary sentencing model in Connecticut is determinate sentencing. For any felony or misdemeanor offense committed on or after July 1, 1981,⁵⁶ the penal code calls for a fixed (or definite) prison term rather than a sentence framed by minimum and maximum terms.

⁵⁵ For a detailed description of the state's alternative incarceration sentencing options refer to the Legislative Program Review and Investigations Committee's report on *Pre-trial Diversion and Alternative Sanctions* (December 2004).

⁵⁶ Felony offenses committed prior to July 1, 1981 were subject to an indefinite sentence for which a judge imposed a sentence of minimum and maximum prison terms and the Board of Parole determined the actual parole release date, which was generally the minimum term less any "good time" credits earned while in prison. In 1981, Connecticut shifted from an indeterminate sentencing model to determinate (or fixed) sentencing. An overview of sentencing reform in Connecticut is presented in Chapter III.

In theory, a judge has unilateral discretion in imposing a determinate sentence. However, in practice, a judge is constrained by statutory guidelines that establish the sentencing range based on the offense type, class, and degree and other sentencing requirements and enhancements. In selecting, calculating, and imposing the type and length of a sentence, a judge may consider the circumstances of the crime, the defendant’s criminal history, aggravating and mitigating factors set forth in pre-sentencing reports and other documents, and the attitude of the victim, but the fixed prison term or community supervision (e.g., probation) sentence cannot be less than minimum term or more than the maximum term specified by the statutory sentencing ranges.

Table A-1 lists the determinate sentencing guidelines for periods of incarceration for felonies and misdemeanors.

Table A-1. Statutory Felony and Misdemeanor Determinate Sentencing	
<i>Offense</i>	<i>Sentence Guideline</i>
FELONY	
Capital felony	Execution or life without possibility of release*
Class A felony: Murder	Prison term not less than 25 years nor more than life**
Class A felony	Prison term not less than 10 years^ nor more than 25 years
Class B felony: Manslaughter in the first degree with a firearm	Prison term not less than 5 years nor more than 40 years
Class B felony	Prison term not less than 1 year nor more than 20 years
Class B felony of: (1) Assault in the first degree with intent to cause serious physical injury to another person or causes serious physical injury to another person or third person with a deadly weapon or dangerous instrument; (2) assault in the first degree on a victim at least 60 years old or who is blind, physically disabled, pregnant, or mentally retarded; (3) Aggravated sexual assault in the first degree; (4) Kidnapping in the second degree with a firearm; (5) Burglary in the first degree with explosives, deadly weapon, or dangerous instrument; and (6) Robbery in the first degree with a deadly weapon	Prison term not less than 5 years nor more than 20 years
Class C felony	Prison term not less than 1 year nor more than 10 years
Class C felony of: Manslaughter in the second degree with a firearm	Prison term not less than 3 years nor more than 10 years
Class D felony	Prison term not less than 1 year nor more than 5 years
Class D felony of: (1) Assault in the second degree on a victim 60 years or older or who is blind, physically disabled, pregnant, or mentally retarded; or (2) Criminal possession of a firearm or electronic defense weapon	Prison term not less than 2 years nor more than 5 years
Class D felony of: Assault in the second degree with a firearm on a victim 60 years or older or who is blind, physically disabled, pregnant, or mentally retarded	Prison term not less than 3 years nor more than 5 years

Table A-1. Statutory Felony and Misdemeanor Determinate Sentencing	
<i>Offense</i>	<i>Sentence Guideline</i>
Class D felony of: Criminal use of a firearm or electronic defense weapon	Prison term of 5 years
Unclassified felony	Sentence specified in statute defining the crime
MISDEMEANOR	
Class A misdemeanor	Prison term not to exceed 1 year
Class B misdemeanor	Prison term not to exceed 6 months
Class C misdemeanor	Prison term not to exceed 3 months
Unclassified misdemeanor	Sentence specified in statute defining the crime
<p>* A sentence of life imprisonment without the possibility of release is authorized only for offenses committed on or after October 1, 1985 and is statutorily defined as the natural life of the defendant.</p> <p>** A sentence of life imprisonment is statutorily defined as 60 years.</p> <p>^The minimum 10-year sentence for a class A felony cannot be suspended or reduced and offenders are ineligible for probation in lieu of a prison sentence, but can be sentenced to a period of probation following a prison term.</p> <p>NOTE: In any prosecution for an offense based on the victim being pregnant or mentally retarded, it is an affirmative defense that the defendant did not know the victim was pregnant or mentally retarded.</p> <p>Source: Connecticut General Statutes Title 53a</p>	

Currently, in most cases, convicted persons are no longer sentenced under the state's indeterminate sentencing guidelines, which apply only to crimes committed prior to July 1, 1981. However, there are still inmates serving "old" indeterminate prison sentences.

Probation. Probation is a non-custodial sentence of conditional liberty in which an offender is legally subject to the authority and under the supervision of the Judicial Branch. An offender may be sentenced to a period of probation supervision in lieu of or in addition to a period of incarceration if a judge finds:

- the present or extended incarceration of the defendant is not necessary for public safety;
- the defendant is in need of guidance, training, or assistance that can be effectively administered through probation supervision; and
- the sentence of probation is not inconsistent with the "ends of justice."

Persons convicted of a capital offense are ineligible for probation. Persons convicted of a class A felony are ineligible for probation in lieu of a prison term, but can be sentenced to a period of probation following a prison term.

Under a probation sentence, the judge has two options: suspended the entire prison term (suspended sentence) or suspend a specific period of the prison term (reduced sentence). A *suspended sentence* commonly refers to a sentence in which the total prison term is withheld (or postponed) contingent on the defendant's compliance with and successful completion of court-order supervision and/or other release conditions (e.g., financial restitution, community service, substance abuse treatment, anger management counseling). The offender is not incarcerated and

is immediately transferred to the custody of the Judicial Branch’s Court Support Services Division, which administers the adult probation supervision program. An example of a suspended sentence is: one year incarceration suspended and three years probation.

A *split* (or reduced) *sentence* refers to a sentence in which only part of the total prison term is withheld contingent on the defendant’s compliance with and successful completion of court-order supervision and/or other release conditions. The offender is incarcerated for the non-suspended prison term and is immediately transferred to the custody of the Department of Correction to begin serving the prison term. Upon discharge from prison, the offender is transferred to CSSD for probation supervision. An example of a split sentence is: five years incarceration suspended after three years plus three years probation. In this case, the offender would be incarcerated for three years and under probation supervision for three years upon his or her release from prison. (After a year and a half in prison the offender would be eligible for parole.⁵⁷ If granted parole by the Board of Pardons and Paroles, he or she would be placed in the community under the supervision of DOC for the remaining 18 months of the prison term.)

The statutory sentencing guidelines for probation sentences are listed in Table A-2.

Table A-2. Statutory Felony and Misdemeanor Probation Sentence Guidelines	
<i>Offense</i>	<i>Probation Sentence</i>
Class A felony and certain class B, C, and D felonies involving: (1) injury or risk of injury to a child under age 16; (2) child pornography; and (3) sexual assault	Not less than 10 years nor more than 35 years
All other felony offenses (except class A)	Not more than 5 years
Class A misdemeanor	Not more than 3 years
Class B misdemeanor	Not more than 2 years
Class C misdemeanor	Not more than 1 year
Unclassified misdemeanor	Not more than 1 year if sentence guideline is 3 months or less imprisonment Not more than 2 years if sentence guideline is more than 3 months imprisonment
Source: Connecticut General Statutes Title 53a	

When ordering probation, a judge may impose certain release conditions that require the offender:

- be employed;
- participate in an educational or vocational training course;
- undergo medical, psychiatric, or sex offender treatment;
- refrain from contact with the victim and/or co-defendant of the crime;
- reside at a specific residence or halfway house;

⁵⁷ If convicted of a “serious, violent” offense, the offender is required to serve at least 85 percent of the court-imposed sentence to be eligible for parole.

- refrain from committing a new crime; and
- comply with any other condition necessary for supervision (e.g., electronic monitoring, curfew, random drug testing).

Noncompliance with the probation conditions⁵⁸ or an arrest for a new crime can result in the reinstatement of the suspended prison term thereby requiring the defendant be incarcerated. A judge can reinstate the suspended sentence in total or in part after a hearing or admission of the violation by the defendant. The suspended prison term serves as incentive for the offender to comply with the release conditions and successfully complete the period of probation.

A judge may, after a hearing and upon a showing of good cause, terminate probation supervision and release the offender from custody at any time during the length of the sentence except for persons convicted of and sentenced for a number of sexual assault offenses.

Conditional discharge is similar to probation, but it subjects the offender to a lesser standard for release and community supervision. To impose a sentence of conditional discharge, a judge must find: (1) the present or extended incarceration of the defendant is not necessary for public safety; and (2) probation supervision is not appropriate. The sentencing guidelines for conditional supervision are the same as those for probation (see Table A-2).

Special parole. Special parole is another post-incarceration, community supervision sentencing option for offenders sentenced to more than two years. It functions much like discretionary parole except that it is mandatory and imposed by a judge at sentencing rather than granted at the discretion of the Board of Pardons and Paroles.

An offender sentenced to more than two years incarceration can also be sentenced to a period of special parole of not less than one year nor more than 10 years. A period of special parole exceeding 10 years can be imposed upon conviction for: risk of injury to a child involving sexual contact; sexual assault in the first degree; aggravated sexual assault in the first degree; sexual assault in a spousal or cohabitating relationship; sexual assault in the second degree; sexual assault in the third degree; and sexual assault in the third degree with a firearm. Offenders sentenced as persistent dangerous felony or persistent serious felony offenders can also be sentenced to more than 10 years of special parole.

If a parolee violates a condition of release, the board can revoke parole or special parole and the parolee is returned to prison. The board can re-parole the offender at any time during the remaining period of the prison term or special parole or can require the offender remain in prison.

⁵⁸ A violation of probation (VOP) can be technical or a criminal offense. A technical VOP is misbehavior by an offender under supervision that is not by itself a criminal offense and generally does not result in arrest such as failing to report for a scheduled office visit, missing a curfew, lack of employment, or testing positive for drug or alcohol use. CSSD has several sanction options including incarceration to respond to a technical violation. A VOP is a criminal offense (felony or misdemeanor) when the offender violates any condition of probation or commits a new crime. Upon the motion of a probation officer, a judge issues an arrest warrant for the offender. Conviction for a VOP can result in imposition of the full sentence for the original offense, modification of the original conditions of probation, extension of probation supervision, revocation of the original sentence and imposition of a new sentence.

Appendix B
Connecticut Drug Laws

Connecticut Drug Laws

Existing law makes it illegal for persons of any age to possess, sell, distribute, manufacture, or transport controlled substances and narcotic or hallucinogenic drugs, the most common of which are heroin, powdered cocaine and cocaine in a free-base form (“crack”), and marijuana. However, the *use* of a controlled drug or substance is not expressly prohibited. Sanctions or penalties imposed for violation of the drug laws include incarceration, fines, alternative incarceration sanctions, and mandatory treatment programs.

The state’s drug laws are contained in Chapter 420b of Title 21a of the Connecticut General Statutes, relating to consumer protection, and are based on the federal Controlled Substances Act (21 USC 801 *et seq.*). Although the laws specify criminal sanctions, they are not part of the penal code. Drug crimes are, therefore, unclassified felonies and misdemeanors.

Illegal drugs. Controlled drugs are statutorily defined as those:

- containing any quantity of a substance listed in the federal Controlled Substance Act;
- designated as a depressant or stimulant drug pursuant to federal food and drug laws; or
- designated by the state commissioner of consumer protection as having a stimulant, depressant, or hallucinogenic effect and a tendency to promote abuse or dependency.

The drugs are statutorily classified as amphetamine, barbiturate, cocaine (powdered or free-base), cannabis, hallucinogenic, morphine, or stimulant and depressant types. Narcotic substances include morphine, opium, opiates, cocaine, cocoa and salts, and derivatives having similar physiological effects and potential for abuse.

Drug crimes and penalties. Table B-1 lists the existing state laws regarding the possession and sale of illegal and controlled substances and the penalties for those crimes. As shown and discussed in Chapter I of this report, some drug crimes carry mandatory minimum penalties while others have set penalties, which can be suspended or reduced in accordance with the sentencing rules set forth in the penal code.

Table B-1. Connecticut Drug Laws			
CGS	Offense	Sentence Guideline	Mandatory Minimum
DRUG POSSESSION			
21a-267(a)	Possession with intent to use drug paraphernalia*	Imprisoned for not more than 3 months (class C misdemeanor)	
21a-267(b)	Deliver or possess or manufacture with intent to deliver drug paraphernalia	Imprisoned for not more than 1 year (class A misdemeanor)	
21a-267(c)	Violation of subsec. (a) or (b) within 1,500 feet of a school by a non-student		1 year in addition and consecutive to prison term for underlying offense
21a-279(a)	Possess any quantity of any narcotic	1 st offense: imprisoned not more than 7 years and/or fined not more than \$50,000 2 nd offense: imprisoned not more than 15 years and/or fined not more than \$100,000 3 rd and subsequent offenses: imprisoned not more than 25 years and/or fined not more than \$250,000	
21a-279(b)	Possess any quantity of hallucinogenic other than marijuana or 4 ounces or more of cannabis-type substance	1 st offense: imprisoned not more than 5 years and/or fined not more than \$2,000 2 nd and subsequent offenses: imprisoned not more than 10 years and/or fined not more than \$5,000	
21a-279(c)	Possess any quantity of any controlled substance other than narcotic, hallucinogenic other than marijuana, or less than 4 ounces of cannabis-type substance	1 st offense: imprisoned not more than 1 year and/or fined not more than \$1,000 2 nd and subsequent offenses: imprisoned not more than 5 years and/or fined not more than \$3,000	
21a-279(d)	Violation of subsec. (a), (b), or (c) within 1,500 feet of school or day care by non-student	Alternative sentence for subsec. (a) & (b) and for subsequent offense under subsec. (c): indeterminate prison term not to exceed 3 years with conditional early release by DOC commissioner	2 years in addition and consecutive to prison term for underlying offense of subsec. (a), (b), or (c)

Table B-1. Connecticut Drug Laws			
CGS	Offense	Sentence Guideline	Mandatory Minimum
DRUG POSSESSION			
DRUG SALE**			
21a-277(a)	Sale of any hallucinogenic or narcotic substance other than marijuana	1 st offense: imprisoned for not more than 15 years and/or fined not more than \$50,000 2 nd offense: imprisoned for not more than 30 years and/or fined \$100,000 3 rd and subsequent offenses: imprisoned for not more than 30 years and/or fined not more than \$250,000	
21a-277(b)	Sale of any controlled substance except a hallucinogenic or narcotic other than marijuana	1 st offense: imprisoned for not more than 7 years and/or fined not more than \$25,000 2 nd and subsequent offenses: imprisoned for not more than 15 years and/or fined not more than \$100,000 Alternative sentence for subsec. (a) & (b): indeterminate prison term not to exceed 3 years with conditional early release by DOC commissioner	
21a-278(a)	Illegal manufacture or sale of the following drugs by non-drug-dependent person: <ul style="list-style-type: none"> • 1 oz or more of heroin, methadone, • ½ oz or more of cocaine or cocaine in free-base form (“crack”) • 5 milligrams or more of substance containing lysergic acid diethylamide (LSD) 		5 years (to a maximum of life) except if at time of crime (1) defendant was under 18; (2) defendant’s mental capacity was significantly impaired but not so impaired as to constitute a defense to prosecution; or (3) upon showing of good cause & crime was nonviolent as determined by judge
21a-278(b)	Illegal manufacture or sale of the following drugs by non-drug-dependent person: <ul style="list-style-type: none"> • any narcotic substance, hallucinogenic substance other than marijuana, or amphetamine • 1 kilogram or more 		5 years for first offense or 10 years for subsequent offenses except if at time of crime (1) defendant was under 18; (2) defendant’s mental capacity was significantly impaired but not so impaired as to constitute a defense to prosecution; or (3) upon showing of good cause &

Table B-1. Connecticut Drug Laws

<i>CGS</i>	<i>Offense</i>	<i>Sentence Guideline</i>	<i>Mandatory Minimum</i>
DRUG POSSESSION			
	of cannabis-type substance		crime was nonviolent as determined by judge
21a-278a(a)	Sale of drugs (under 21a-277 or 21a-278) by non-drug-dependant person to a minor under 18 who is at least 2 years younger		2 years in addition & consecutive to sentence for underlying offense of 21a-277 or 21a-278
21a-278a(b)	Sale of drugs (under 21a-277 or 21a-278) by non-drug-dependent in, or, or within 1,500 feet of school, public housing, or day care center		3 years in addition & consecutive to sentence for underlying offense of 21a-277 or 21a-278 except upon showing of good cause & crime was nonviolent as determined by judge
21a-278a(c)	Employ, hire, use, persuade, induce, entice, or coerce a minor under 18 to sell drugs (under 21a-277 or 21a-278)		3 years in addition & consecutive to sentence for underlying offense of 21a-277 or 21a-278
OTHER OFFENSES			
21a-268	Misrepresentation of substance as controlled substance	Imprisoned not more than 1 year or more than 5 years (class D felony)	
<p>*"Drug paraphernalia" refers to equipment, products, and materials used, tended for use, or designed for use in planting, cultivating, growing, harvesting, manufacturing, compounding, producing, processing, testing, packaging, storing, concealing, ingesting, inhaling, or otherwise introducing into the human body any controlled substance.</p> <p>**"Drug sale" is defined as any form of delivery including barter, exchange or gift, or offer therefore. For the purposes of this study sale also includes manufacture, distribution, dispensing, or administration.</p> <p>Source: Connecticut General Statutes</p>			

Appendix C
Connecticut Persistent Offender Laws

Persistent Offender Laws

Table C-1. Persistent Offender Sentencing Criteria and Guidelines			
<i>Category</i>	<i>Currently Convicted of:</i>	<i>Prior Conviction & Incarceration of a year or more* for:</i>	<i>Penalty Enhancement</i>
Persistent Dangerous Felony Offender	Manslaughter Arson Kidnapping Robbery in the first or second degree Assault in the first degree Sexual assault in the first or third degree Aggravated sexual assault in the first degree Sexual assault in the third degree with firearm	Manslaughter Arson Kidnapping Robbery in the first or second degree Assault in the first degree Murder Sexual assault in the first or third degree Aggravated sexual assault in the first degree Sexual assault in the third degree with a firearm Attempt to commit of any of the above listed crimes In any other state, any crime of which the elements are substantially the same as the above listed crimes	Not more than 40 years or life imprisonment
Persistent Dangerous Sexual Offender	Sexual assault in the first or third degree Aggravated sexual assault in the first degree Sexual assault in the third degree with firearm	Sexual assault in the first or third degree Aggravated sexual assault in the first degree Sexual assault in the third degree with firearm Attempt to commit any of the above listed crimes In any other state, any crime of which the elements are substantially the same as the above listed crimes	Prison term plus period of special parole that equal life (60 years)
Persistent Serious Felony Offender	A felony offense except those listed under Persistent Dangerous Felony Offender	Any felony offense except those listed under Persistent Dangerous Felony Offender	Sentence based on the next most serious degree of felony
Persistent Serious Sexual Offender	Person not qualified as Persistent Dangerous Sexual Offender and convicted of: Risk of injury to child under 16** Sexual assault in the first degree Aggravated sexual assault in the first degree Sexual assault in a spousal or cohabitating relationship Sexual assault in the second degree Sexual assault in the third degree Sexual assault in the third degree with	Risk of injury to child under 16** Sexual assault in the first degree Aggravated sexual assault in the first degree Sexual assault in a spousal or cohabitating relationship Sexual assault in the second degree Sexual assault in the third degree Sexual assault in the third degree with firearm	Prison term plus period of special parole that equal maximum sentence for next most serious degree of felony

Table C-1. Persistent Offender Sentencing Criteria and Guidelines

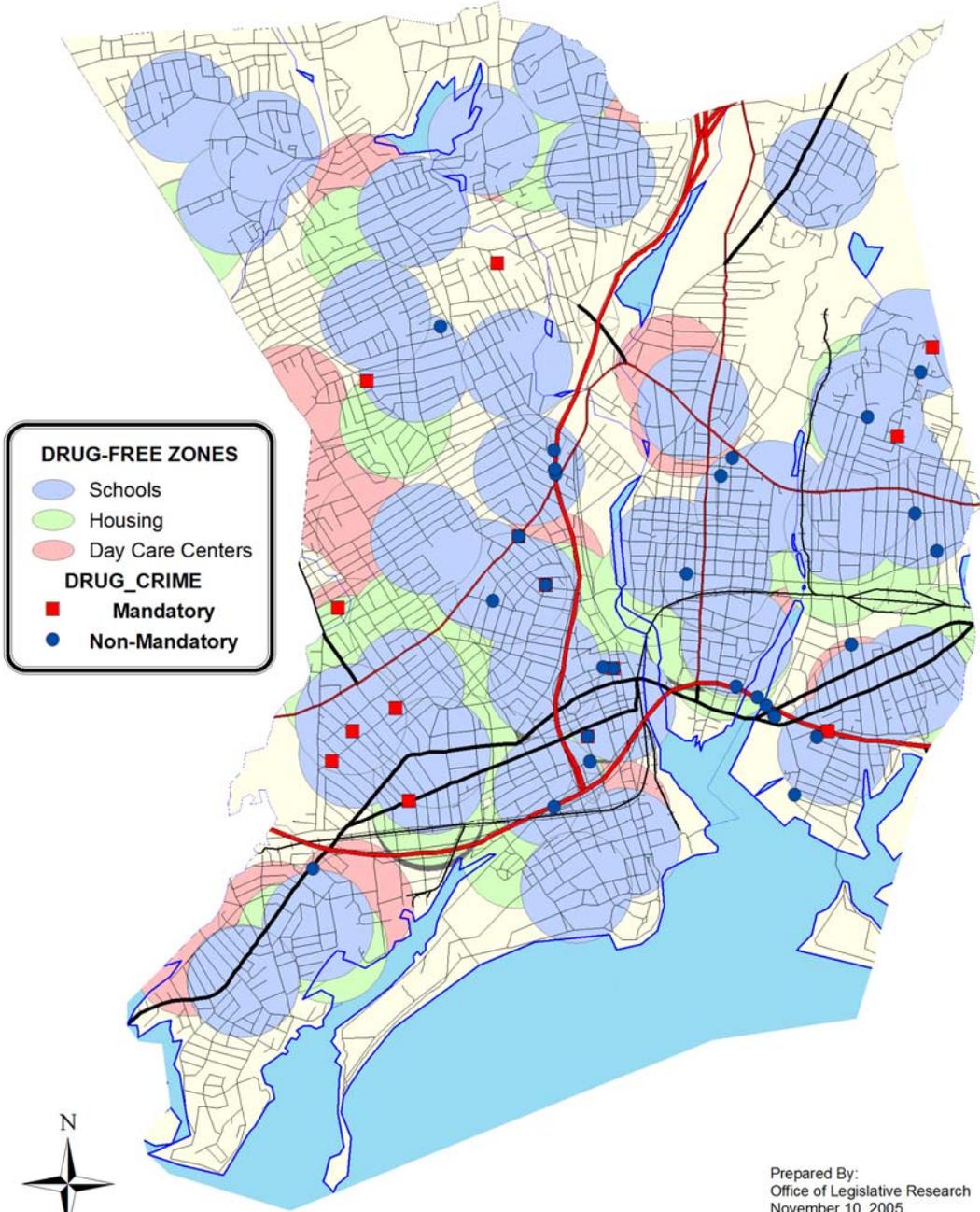
<i>Category</i>	<i>Currently Convicted of:</i>	<i>Prior Conviction & Incarceration of a year or more* for:</i>	<i>Penalty Enhancement</i>
	firearm		
Persistent Larceny Offender	Larceny in the third, fourth, fifth, or sixth degree	Twice convicted of larceny in separate cases	Sentence based on class D felony (not less than 1 year or more than 5 years)
Persistent Felony Offender	Any felony other than class D felony	Twice convicted of a felony other than a class D felony in separate cases	Sentence based on the next most serious degree of felony provided sentence is not less than 3 years and not suspended or reduced
Persistent Offender of crimes involving bigotry or bias	Deprivation of rights, desecration of property, or cross burning Deprivation of civil rights by person wearing mask or hood Intimidation based on bigotry or bias in the first, second, or third degree	Deprivation of rights, desecration of property, or cross burning Deprivation of civil rights by person wearing mask or hood Intimidation based on bigotry or bias in the first, second, or third degree	Sentence based on the next most serious degree of felony or misdemeanor except if the crime is a class A misdemeanor the sentence is based on a class D felony
Persistent Offender of crimes involving assault, stalking, trespass, threatening, harassment, criminal violation of a protective order or restraining order	Assault in the third degree (class A misdemeanor) Stalking in the second degree (class A misdemeanor) Threatening in the second degree (class A misdemeanor) Harassment in the second degree (class C misdemeanor) Criminal violation of a protective order (class D felony) Criminal violation of a restraining order (class A misdemeanor) Criminal trespass in the first or second degree (class A or B misdemeanor)	Within the preceding 5 years, convicted or released from incarceration for a conviction (whichever is later) of: Capital felony Class A felony Class B felony except promoting prostitution in the first degree or larceny in the first degree Class C felony except promoting prostitution in the second degree, bribery of a juror, or bribe receiving by a juror Assault in the first degree (class D felony) Assault in the second degree with firearm (class D felony) Assault on a victim who is elderly, blind, disabled, pregnant, or mentally retarded (class D felony) Assault with a firearm on a victim who is elderly, blind, disabled, pregnant, or mentally retarded (class D felony) Sexual assault in the third degree (class C or D felony) Sexual assault in the third degree with firearm (class B or C felony) Unlawful restraint in the first degree (class D felony) Burglary in the third degree (class D felony)	Sentence based on the next most serious degree of felony or misdemeanor except if the crime is a class A misdemeanor the sentence is based on a class D felony

Table C-1. Persistent Offender Sentencing Criteria and Guidelines

<i>Category</i>	<i>Currently Convicted of:</i>	<i>Prior Conviction & Incarceration of a year or more* for:</i>	<i>Penalty Enhancement</i>
		Reckless burning (class D felony) Robbery in the third degree (class D felony) Criminal use of a firearm or electronic defense weapon (class D felony) Assault in the third degree (class A misdemeanor) Stalking in the second degree (class A misdemeanor) Threatening in the second degree (class A misdemeanor) Harassment in the second degree (class C misdemeanor) Criminal violation of a protective order (class D felony) Criminal violation of a restraining order (class A misdemeanor) Criminal trespass in the first degree (class A misdemeanor) Criminal trespass in the second degree (class B misdemeanor)	
Persistent operating while under the influence felony offender	Manslaughter in the second degree with motor vehicle (class C felony) Assault in the second degree with motor vehicle (class D felony) Operating a motor vehicle while under the influence of alcohol or drugs (DUI)	Prior to the commission of the current crime and within the preceding 10 years convicted of: Manslaughter in the second degree with motor vehicle (class C felony) Assault in the second degree with motor vehicle (class D felony) Operating a motor vehicle while under the influence of alcohol or drugs (DUI) In any other state, any crime of which the elements are substantially the same as the above listed crimes	Sentence based on the next most serious degree of felony
<p>*Conviction and incarceration in a Connecticut, other state, or federal correctional institution. **Risk of injury to a minor (CGS 53-21(a)(2)) involves contact with the intimate parts of a child under 16 or to subject a child under 16 to contact the intimate parts of the offender in a sexual or indecent manner likely to impair the health or morals of the child. Source: Connecticut General Statute</p>			

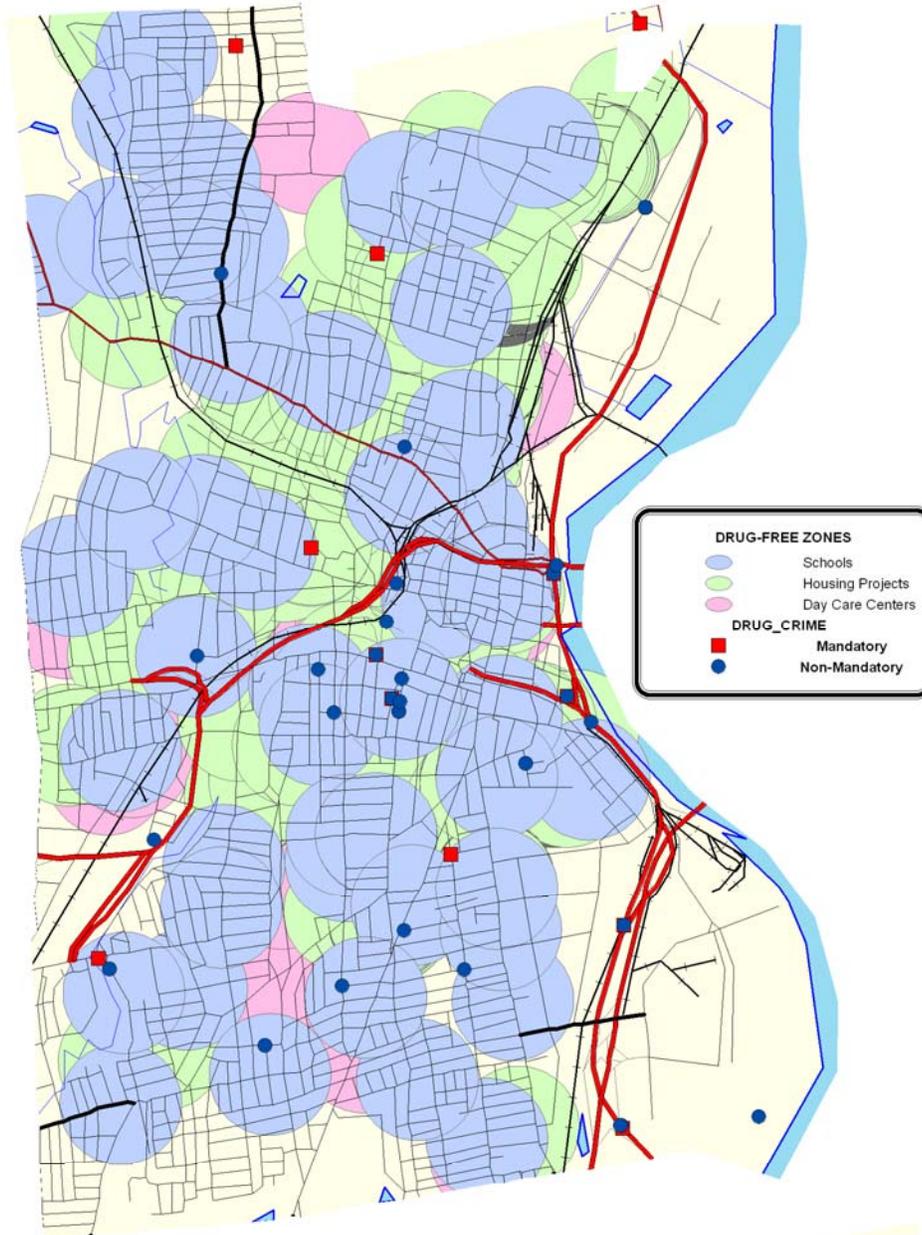
Appendix D
“Drug-free” Zone Maps

BRIDGEPORT Drug-Free Zones



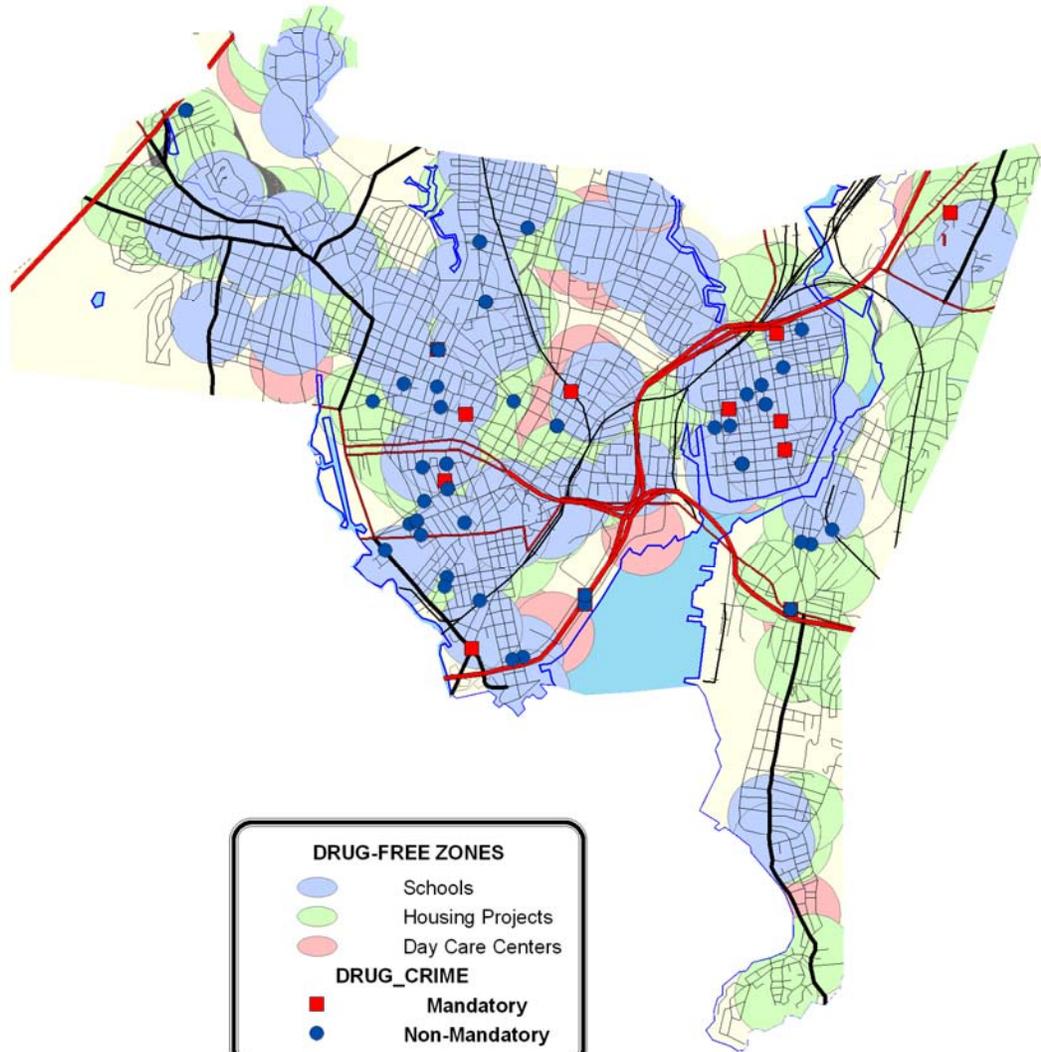
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November 10, 2005

HARTFORD Drug-Free Zones



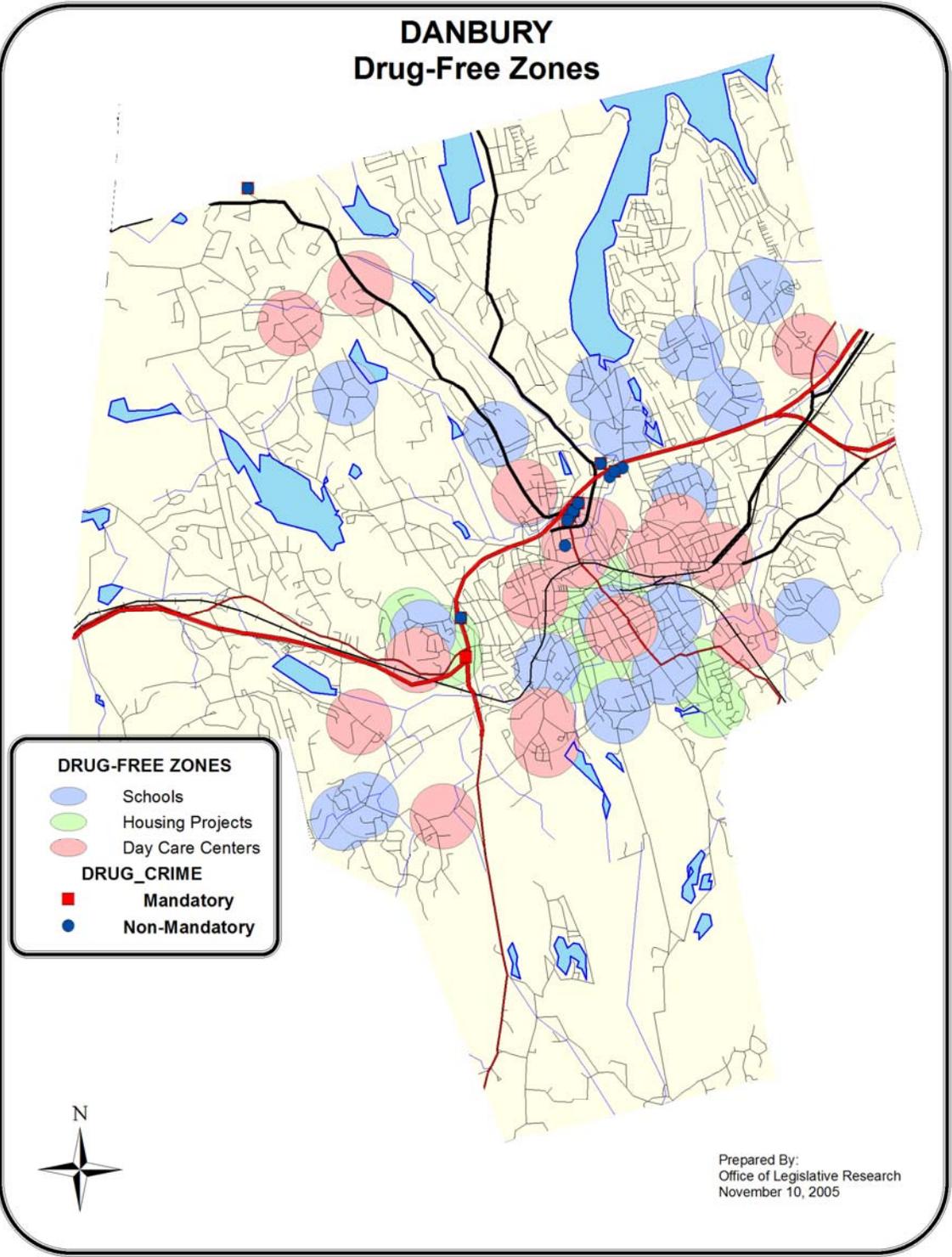
Prepared By:
Office of Legislative Research
November 14, 2005

NEW HAVEN Drug-Free Zones

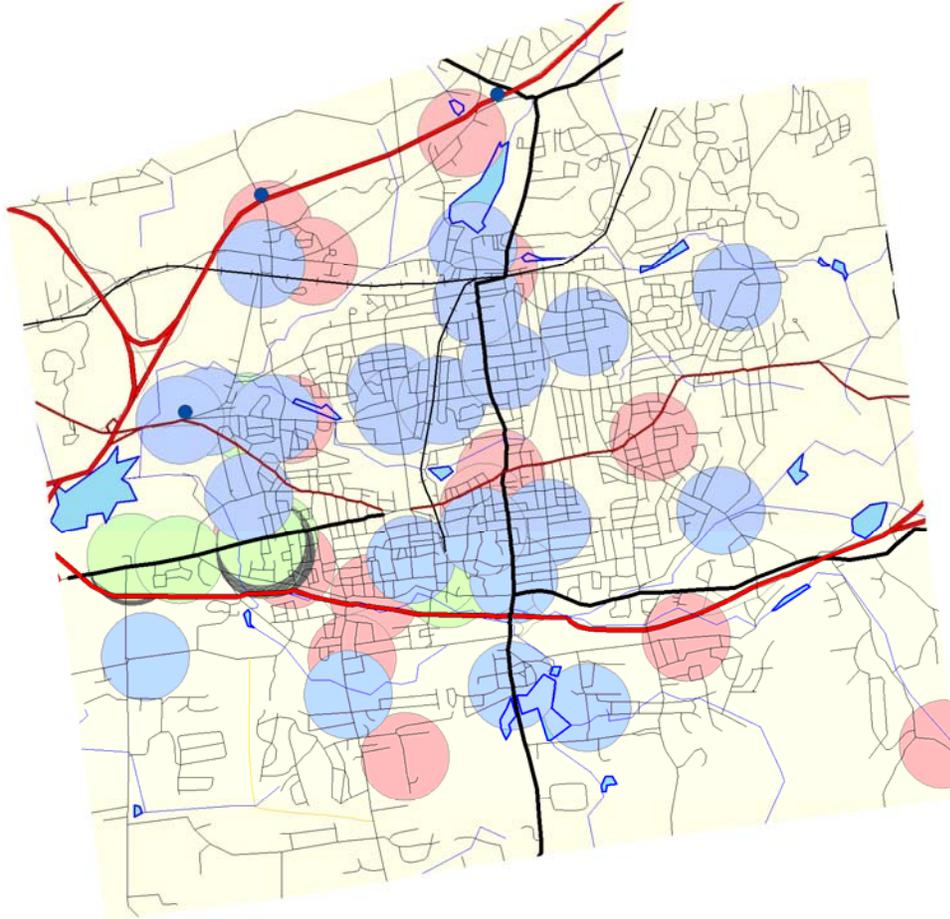


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DANBURY Drug-Free Zones



MANCHESTER Drug-Free Zones



DRUG-FREE ZONES

- Schools
- Housing
- Day Care Center

DRUG_CRIME

- Mandatory
- Non-Mandatory

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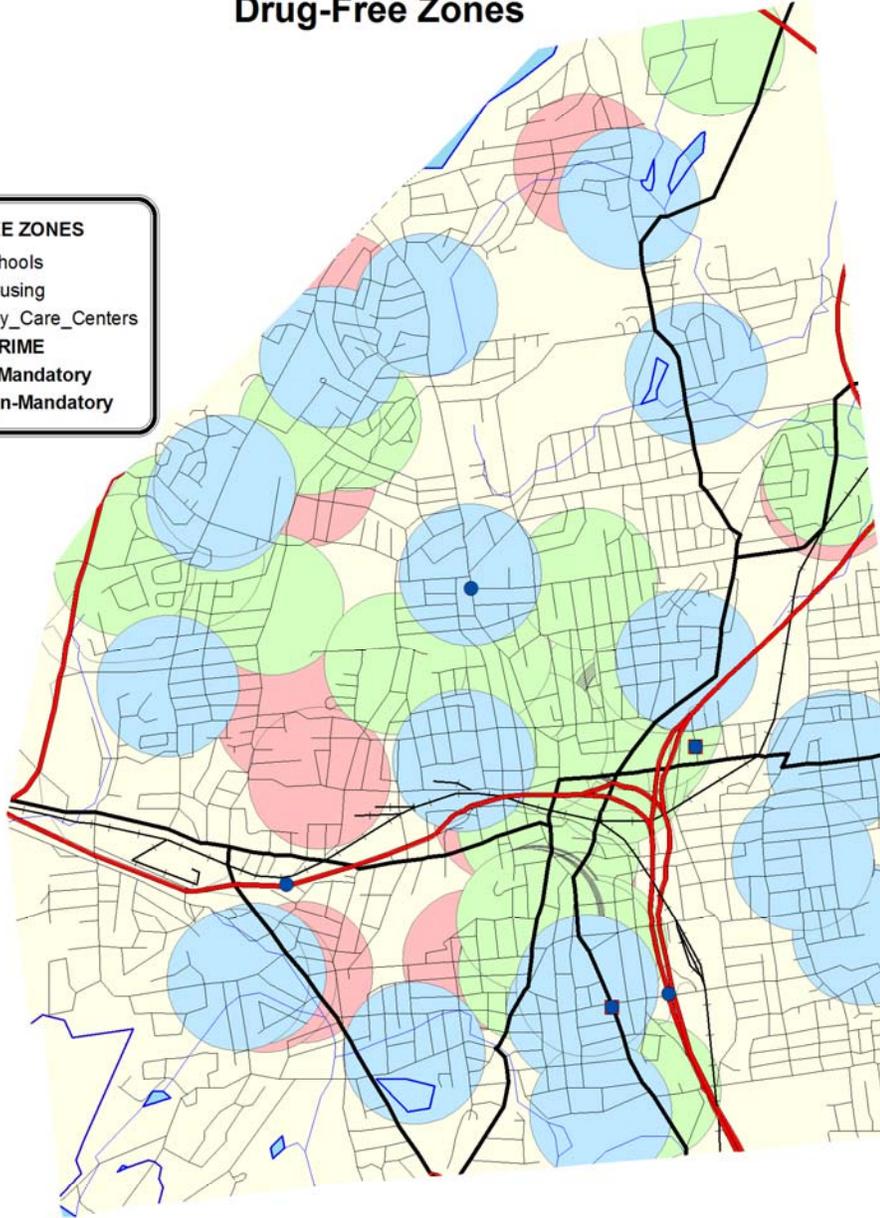
NEW BRITAIN Drug-Free Zones

DRUG-FREE ZONES

- Schools
- Housing
- Day_Care_Centers

DRUG_CRIME

- Mandatory
- Non-Mandatory



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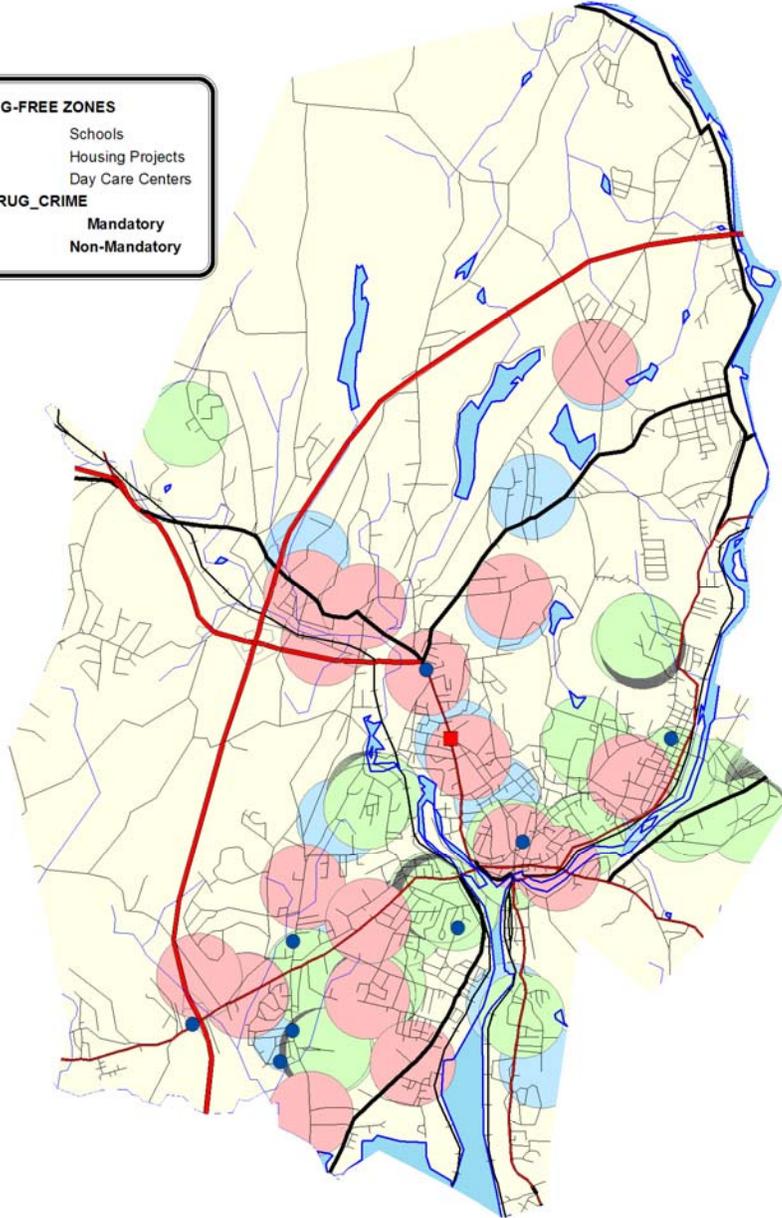
NORWICH Drug-Free Zones

DRUG-FREE ZONES

- Schools
- Housing Projects
- Day Care Centers

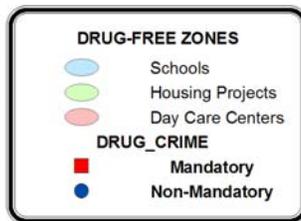
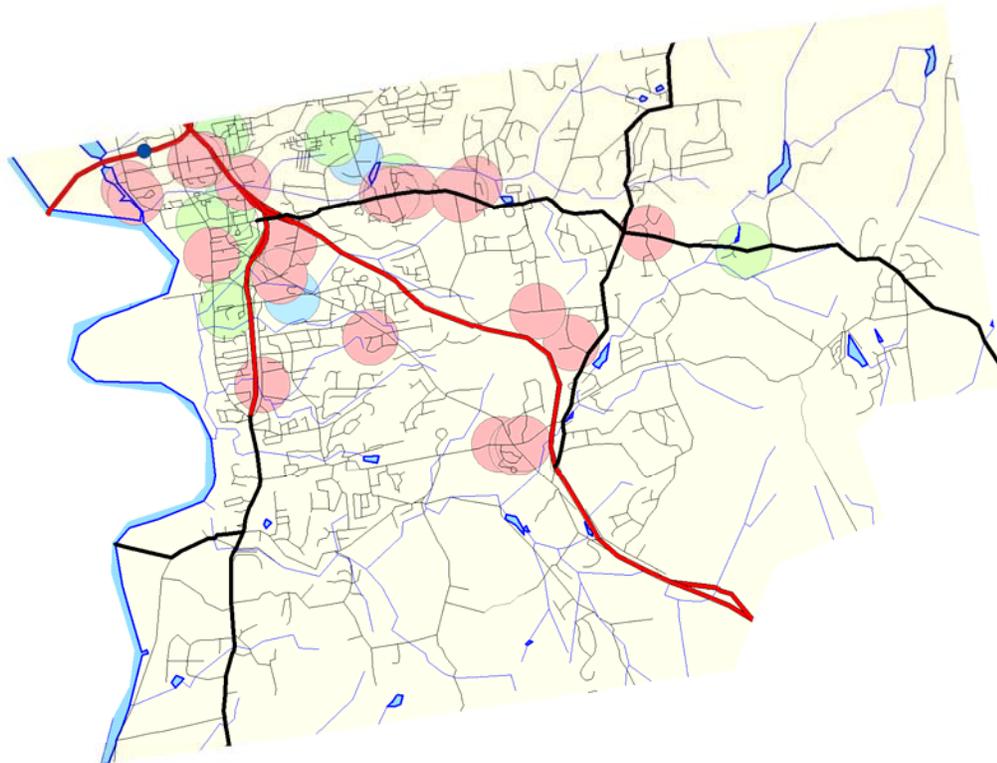
DRUG_CRIME

- Mandatory
- Non-Mandatory



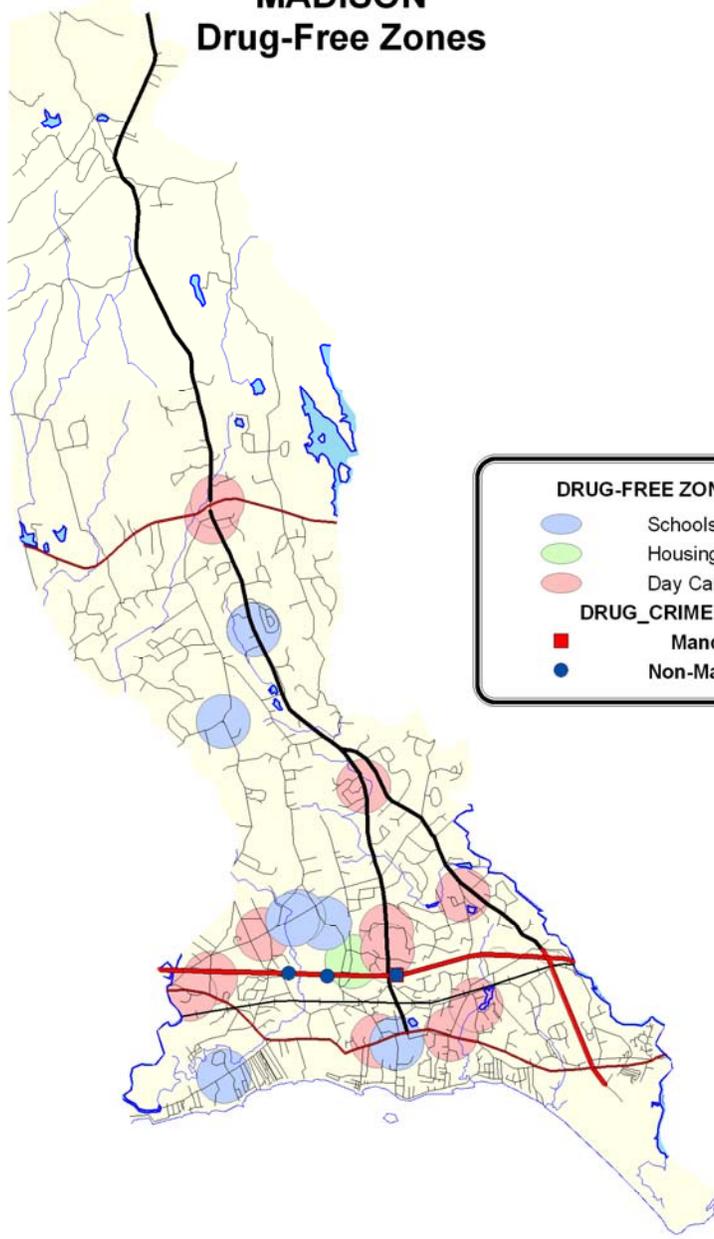
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GLASTONBURY Drug-Free Zones



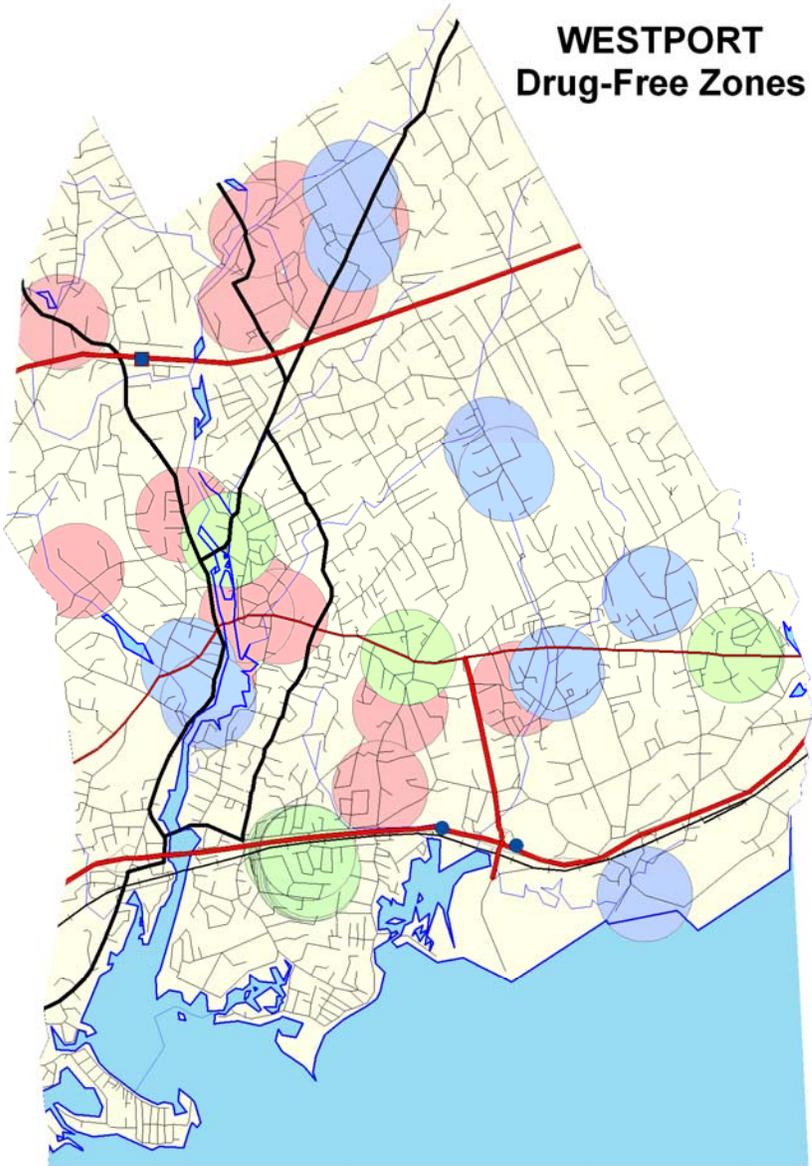
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MADISON Drug-Free Zones



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WESTPORT Drug-Free Zones



DRUG-FREE ZONES

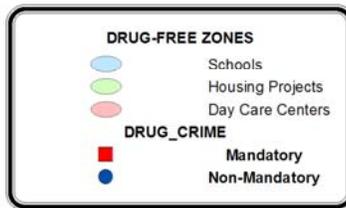
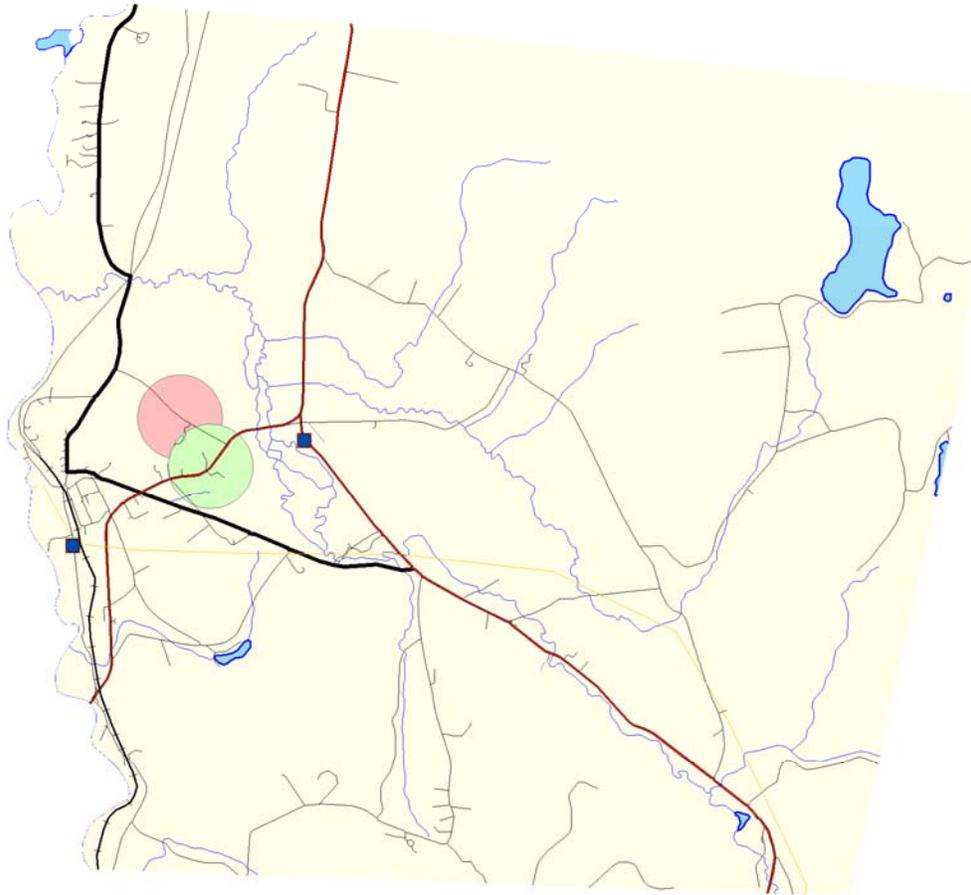
- Schools
- Housing Projects
- Day Care Centers

DRUG_CRIME

- Mandatory
- Non-Mandatory

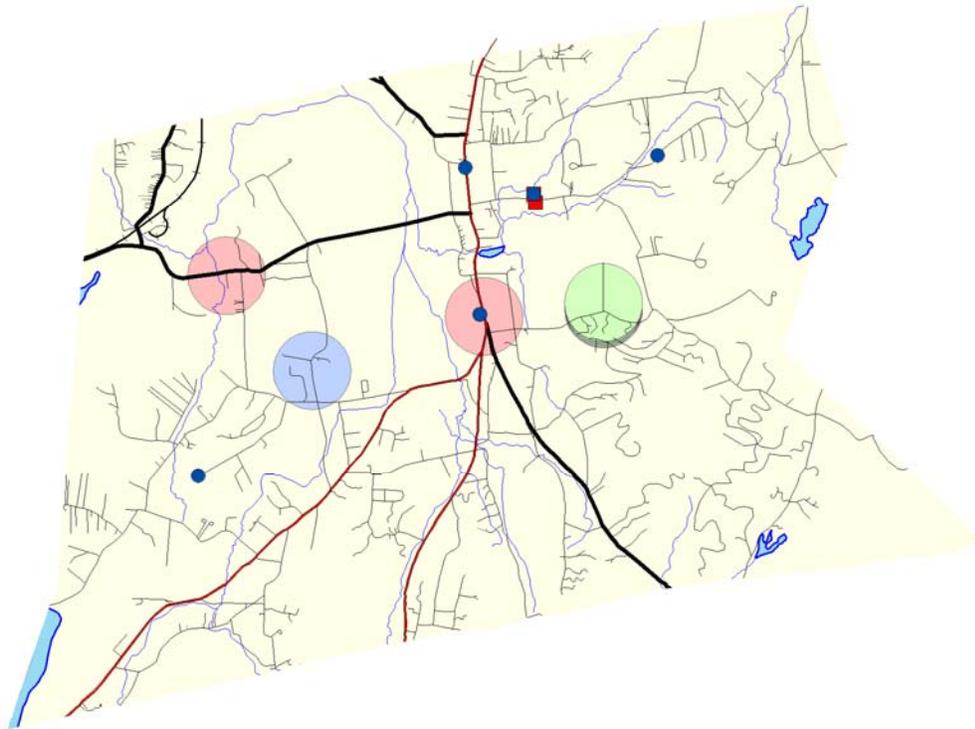
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CANAAN Drug-Free Zones



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November 14, 2005

DURHAM Drug-Free Zones



DRUG-FREE ZONES	
	Schools
	Housing Projects
	Day Care Centers
DRUG_CRIME	
	Mandatory
	Non-Mandatory



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Appendix E

DOC Early Release Programs

Parole and DOC Early Release Programs

State law allows for inmates to be released early from prison on parole or other early release programs administered by DOC including transitional supervision and halfway house placements.

Parole

The Board of Pardons and Paroles has discretionary release authority over inmates sentenced to more than two years, except that offenders convicted of capital and other violent offenses (e.g., sexual assault in the first degree) are ineligible for parole. There are two statutory parole eligibility standards:

- offenders are required to serve at least 50 percent of their sentences; and
- offenders convicted of “serious, violent” offenses are required to serve at least 85 percent of their sentences.

Since 1999 (Public Act 99-196), the Board of Pardons and Paroles technically no longer factors the mandatory minimum term of a total aggregate sentence in calculating parole eligibility. The parole board determines which inmates are released and how long they must serve prior to release without consideration of the mandatory minimum sentence imposed by a judge. However, since many of the offenses subject to a mandatory minimum penalty are categorized as “serious, violent” offenses under parole board policy, offenders convicted of those crimes are required to serve 85 percent of their sentences to be eligible for parole. In many cases, the 85 percent time-served mark is at or past the mandatory minimum term of the total prison sentence.

DOC Early Release Program

Transitional supervision. The Department of Correction has discretionary release authority over inmates sentenced to two years or less and currently administers the transitional supervision (TS) program to grant early releases and supervises inmates in the community. The TS program is similar to parole in that inmates are required to serve 50 percent of their sentences to be eligible for release to community supervision.

Halfway house. DOC also grants early release to all inmates serving a sentence of any length through its community release to a halfway house program and re-entry furloughs. The correction commissioner is authorized to release any inmate to a variety of community treatment programs, halfway houses, or to approved community or private residences for educational or

employment purposes.⁵⁹ DOC policy allows for the early release from prison to these programs of inmates within 18 months of their discharge dates or voted-to-parole dates.⁶⁰

Re-entry furlough. Re-entry furloughs are authorized to assist inmates transitioning to the community. DOC can grant up to a 30-day furlough. Re-entry furloughs are typically granted near or at the end of sentences.

⁵⁹ Effective July 2004 (Public Act 04-234), the Board of Pardons and Paroles chairperson was also authorized to release inmates within 18 months of their parole release date to community-based residential program and residences or approved community residences. To date, the chairperson has not used this authority.

⁶⁰ In March 2005, in response to a high profile incident, DOC issued a directive requiring all inmates to serve at least 50 percent of their sentence to be eligible for community release to a halfway house. The department requested an opinion from the Office of the Attorney General as to whether it was statutorily required to impose this time-served standard for community release. In October 2005, the attorney general issued an opinion that the department was not required to impose a 50 percent time-served standard for the community release program.

Appendix F
Agency Response

