A LAW ENFORCEMENT RESPONSE TO CERTAIN CRITICISMS OF THE COMPREHENSIVE DRUG REFORM ACT

Department of Law and Public Safety
Division of Criminal Justice

September 17, 1990

Pal

A LAW ENFORCEMENT RESPONSE TO CERTAIN CRITICISMS OF THE COMPREHENSIVE DRUG REFORM ACT

TABLE OF CONTENTS

PAGE

1. Introduction.....1

2. The Offense-Oriented Nature of the Comprehensive Drug Reform Act.....2

3. The Absence of Adequate Treatment and Correctional Opportunities 16

4. The Effect of "Mandatory" Terms of Imprisonment and Plea Bargaining.....21

5. The Purpose of Drug-Free School Zones.....38

6. The Utility of Mandatory Non-Incarcerative Penalties.....46

   a. Legislative Condemnation of Drug Use.....46

   b. Revocation or Postponement of Driving Privileges.....55

   c. The DEDR Penalty.....60

Appendix.....65

A LAW ENFORCEMENT RESPONSE TO CERTAIN CRITICISMS OF THE COMPREHENSIVE DRUG REFORM ACT

1. Introduction

In January, Chief Justice Wilentz convened the 1990 Judicial Conference Task Force on Drugs and the Courts, and charged the Task Force with the responsibility to "develop a comprehensive approach to drug case processing, supervision of pretrial defendants and the adjudication of drug offenses, including imprisonment or its alternatives." It is not clear to this point whether the Supreme Court intends ultimately to recommend specific new drug policies to the Legislature,[1] or whether the mission of the Task Force is limited to developing and enhancing judicial procedures so as to best effectuate the policies already established by the Legislature.

It is clear, however, that throughout the course of the 1990 Judicial Conference on Drugs and the Courts, a number of criticisms have been leveled against the Comprehensive Drug Reform Act, which was unanimously adopted by the Legislature in 1987. L. 1987, cc. 101 and 106. An early draft report of the Sentencing Subcommittee claimed, for example, that "the sentencing structure and philosophy of the CDRA is ineffective for dealing with drug offenders." Although the criticisms seem to have moderated during the process of editing and refining the

---

[1] R. 1:35-1b(3) provides that the President of the Senate, the Speaker of the General Assembly, the majority and minority leaders and assistant leaders, and the chairpersons of the Senate and Assembly Judiciary Committees are automatically included as members of each annual Judicial Conference.

various committee and subcommittee reports, these documents still contain explicit challenges to several of the most basic drug enforcement policies adopted by the Legislature, as well as the means chosen to effectuate those policies.[2]

These written criticisms require a frank response, and the Judicial Conference emerges as a logical and appropriate forum for a productive dialogue. Even if the Task Force were to delete from its Final Report any mention of these criticisms or recommendations for statutory revisions, the concerns already expressed by members of this committee and its subcommittees would still exist, and should be addressed in a thoughtful and comprehensive fashion. Indeed, a proper respect for the opinions of these concerned professionals requires that the law enforcement community declare the many reasons for its continuing strong support for the general policies and sentencing provisions of New Jersey's recently enacted drug laws.

2. <u>The Offense-Oriented Nature of the Comprehensive Drug Reform Act</u>.

The sentencing features of the Comprehensive Drug Reform Act

---

2 In the final Report of the Post Adjudication and Community Involvement Committee, which was presented to the Task Force on July 19, the focus of the Comprehensive Drug Reform Act is said to be "problematic" and "overly narrow," "complicating [the] inherent difficulty" in crafting an appropriate sentence. The Report speaks of the need "to restore a sense of balance to the system of sentencing of drug offenders," and concludes that the "sentencing of drug offenders needs to be redirected to reflect human realities."

have been criticized as being too rigid and inflexible, unduly curtailing the ability of a judge to tailor the sentence to the circumstances and needs of the individual case. Accordingly, the critics complain, judges are forced to treat all drug offenders alike, without regard to individual circumstances and a defendant's need for or amenability to rehabilitation. The act, in other words, is said to be too punitive, focusing too much on the nature and severity of the offense, rather than on the individual qualities and characteristics of the defendant.

The Comprehensive Drug Reform Act does indeed embrace the philosophy of New Jersey's penal code that sentencing courts should focus principally on the offense, rather than the offender. See State v. Hodge, 95 N.J. 369, 376 (1984) (punishment under Title 2C must fit the crime, not the criminal). The single most important feature of the act was to transfer criminal drug offenses from the health code (Title 24) into the Code of Criminal Justice. The determinate sentencing features of the penal code which were adopted in 1979 are premised on a legislative determination that general deterrence is the principal goal of a rational sentencing scheme. This was best expressed in the declaration of policy and legislative findings which is part of the Comprehensive Drug Reform Act.

Specifically, the Legislature declared that:

> By enactment of the "New Jersey Code of Criminal Justice," N.J.S. 2C:1-1 et seq., the Legislature recognized the need for the comprehensive reevaluation, revision, consolidation and codification of our

> criminal laws and the need to ensure a uniform, consistent and predictable system for the sentencing of convicted offenders, focusing principally on the seriousness and degree of dangerousness inherent in a particular offense. In enacting the sentencing provisions of the penal code, the Legislature recognized that the imposition of a uniform, consistent and predictable sentence for a given offense is an essential prerequisite to any rational deterrent scheme designed ultimately to reduce the incidence of crime. [N.J.S.A. 2C:35-1.1a]

In other words, this entire sentencing approach is based on the notion that we punish an offender not so much in the hope of modifying his or her own future behavior (so-called special deterrence or rehabilitation),[3] but rather principally for the purpose of discouraging others from committing similar unlawful acts. This is done, in theory, by demonstrating to the general public, including all would-be offenders, that such acts will upon conviction result in certain predictable, unpleasant consequences.

While this approach may seem harsh to those accustomed to individualized sentencing, the Legislature's recent focus on general deterrence is not only consistent with New Jersey's overall penal code sentencing philosophy, but is an appropriate and in fact necessary response to the nature and scope of the

---

[3] This is not to suggest that rehabilitation has in any way been rejected as a legitimate sentencing objective. To the contrary, the Legislature in enacting the Comprehensive Drug Reform Act made clear its intention "to facilitate where feasible the rehabilitation of drug dependent persons." N.J.S.A. 2C:35-1.1c.

current drug epidemic. Unlike so-called index crimes[4] such as thefts, burglaries, rapes, robberies, arsons and murders, drug offenses are only rarely reported to (or detected by) police. In reality, many of the hundreds of thousands of resident drug offenders in New Jersey commit several separate offenses (involving the sale, purchase or use of drugs) each day, so that the number of separate drug offenses actually committed each year in New Jersey, if they could somehow be counted, would likely number in the tens of millions. For this reason, and despite impressive drug arrest statistics in recent years, it is evident that on any given day, New Jersey law enforcement officers can only hope to detect, arrest and bring before the courts a tiny fraction of the total number of drug offenders. (That is why the number of arrests can climb dramatically, reflecting enhanced law enforcement efforts, at the same time that drug use is actually declining.)

In the circumstances, the criminal justice system must do more than merely process the comparatively small number of drug offenders who come before the courts. Although presently

---

[4] The term index offense, as used in the Uniform Crime Reporting System, refers to homicides (murder and manslaughter), rape, robbery, burglary, larceny-theft, motor vehicle theft and arson. The number of reported index offenses within a given jurisdiction is used to calculate crime rates and trends. Non-index offenses, including prostitution and commercialized vice, drug abuse violations and gambling, are not used in calculating crimes rates precisely because the number of arrests for these types of offenses is determined by proactive law enforcement efforts and does not necessarily reflect the actual number of offenses committed within any given jurisdiction or time period.

burdened well beyond their optimum capacity, it is highly unlikely that the courts could have much beneficial impact on the epidemic by focusing only on defendants at bar, even assuming for the purposes of argument that the courts could somehow cure the drug dependencies of all convicted defendants or could somehow convince all convicted drug dealers to refrain from committing further offenses. Rather, given the scope and nature of the epidemic, the Legislature recognized that a rational statewide drug policy requires that the coercive force of the criminal justice system be used constructively to influence far more people, numbering in the millions, than could ever be arrested, adjudicated and sentenced. General deterrence is simply the term used to describe these efforts to influence the general population, as opposed to the far smaller population of apprehended drug felons.

The New Jersey Legislature recognized, of course, that any form of deterrence necessarily assumes that those who are to be influenced are capable of making rational decisions and have the ability to project future consequences. See note 5, infra (discussing the so-called "risk equation"). The Legislature also understood full well that it would prove to be extremely difficult to deter addicts (or to successfully treat them, for that matter), precisely because drug dependent people are driven by their cravings and are unable to think clearly while under the influence of psychotropic substances.

It is thus critical to note that the Legislature's intended

goal of general deterrence is not directed at addicts, who, by definition, have already engaged in a persistent pattern of unlawful conduct (i.e., purchasing and regularly ingesting illicit substances). Indeed, the goal of general deterrence would have already failed with respect to any drug dependent person, and for this reason, the Legislature provided an alternative sentencing provision, codified at N.J.S.A. 2C:35-14 and discussed infra, to address the problems and rehabilitative needs of addicts. This does not mean, of course, that general deterrence is ineffective. Rather, the whole point of general deterrence is to discourage drug abuse and sales in the hope of preventing people, and especially young people, from first becoming addicts!

In the circumstances, it is clear that the Legislature did not fail to acknowledge "the role of substance abuse and addiction as instigating factors," as claimed in the Final Report of the Post Adjudication and Community Involvement Committee. To the contrary, it was the Legislature's apt recognition of the horrors and self-sustaining nature of addiction, especially in light of the "crack" epidemic which emerged in the summer of 1986, which all but compelled it to impose stern punishment against all drug offenders in the hope of reducing the number of future drug abusers and, eventually, the number of addicts.

The approach chosen by the Legislature, moreover, is based upon a recognition that, almost by definition, the risk of actually being apprehended on the occasion of committing any

given drug offense is quite small. Hence, those who are arrested must receive stern (some would say harsh) punishment, precisely so as to set an example to others and to account for the fact that most offenders do not expect to get caught.[5]

Given the Legislature's dominant goal of general deterrence, one must in assessing the act's effectiveness consider whether recent law enforcement, prosecutorial and correctional efforts directed against drug offenders have at least helped to change public attitudes about the seriousness of drug offenses, and ultimately, to change widely held tolerant attitudes about drug use. In the circumstances, it is hard to see how anyone can yet have concluded that the act has been "ineffective." For one thing, recent surveys show that drug use has markedly declined. According to the most recent survey of New Jersey High School students, for example, since 1986, there has been a continuing

---

[5] The ability of the criminal justice system to influence would-be offenders, the so-called "risk equation," depends upon the interplay of two distinct factors: the risk of being apprehended on the one hand, and the certainty, swiftness and severity of punishment following apprehension on the other hand. Where the risk of apprehension is low (or more to the point, where it is widely perceived to be low), the certainty, swiftness and severity of punishment must be enhanced in order to achieve the required deterrent effect. (See also discussion infra, concerning the complex relationship between the swiftness and certainty of punishment in determining the deterrent effect). The New Jersey law enforcement community continues to do all that it can to make drug offenders wary by increasing the likelihood of detection, especially with respect to open and notorious drug offenses and offenses occurring on or near school property. Those efforts, representing only one side of the equation, will have been largely wasted, however, if the sentencing provisions of the Comprehensive Drug Reform Act are not aggressively enforced.

appreciable decline in marijuana use, considering lifetime prevalence (49.0 percent in 1986 to 32.1 percent in 1989), annual prevalence (40.0 percent to 23.9 percent) and monthly prevalence (21.3 percent to 11.8 percent). The use of cocaine also decreased substantially between 1986 and 1989. Significant decreases were found in the proportion of students reporting cocaine use at some time in their lives (19.2 percent to 9.4 percent), in the past year (14.9 percent to 6.0 percent) and in the past month (7.4 percent to 2.2 percent). Similarly, the 1989 survey shows significant decreases in the proportion of students who report "regular" use of marijuana or cocaine, that is, use on ten or more occasions in the past year.

Although enhanced law enforcement efforts are surely not entirely responsible for these recent trends, these empirical studies in no way can be used to demonstrate that law enforcement efforts in New Jersey have failed. Nor can one look to escalating drug arrest rates in New Jersey as evidence of the ineffectiveness of this deterrent scheme. As noted above, these arrest statistics only reflect enhanced and better coordinated law enforcement efforts. Given the frightening scope of the current drug epidemic, and the proactive nature of street-level drug enforcement, arrest rates can and probably will remain at or near current record levels despite the fact that the number of drug offenders and especially so-called "casual users" is declining.

Furthermore, criminal justice actors, including judges,

prosecutors, defense lawyers, police and probation and parole officers are not in a very good position to know whether a penal law is having a significant deterrent effect. By definition, these criminal justice professionals only come into contact with adult defendants and juvenile delinquents, and thus have little or no dealings with those citizens who might have used or distributed drugs, but who decided not to, in part, because of fear of getting into trouble with the law. Obviously, those for whom the deterrent thrust of the law has proven to be a positive influence choose not to commit offenses, do not enter the juvenile or adult criminal justice systems and thus entirely escape the attention of criminal justice professionals. One cannot fairly judge a complex deterrent scheme by looking only at its failures, and it is a mistake simply to ignore law abiding citizens altogether and focus only on law-breakers in deciding whether the Comprehensive Drug Reform Act is working.

According to the most recent survey of New Jersey high school students, conducted in the Fall of 1989, three out of every four (73.6 percent) indicated that the fear of getting into trouble with the law would prevent their use of an illicit substance. The fear of getting into trouble with the law emerged as the second most commonly cited "preventive factor," second only to fear of physical harm (81.8 percent). Indeed, more students indicated that fear of getting into trouble with the law would prevent their use of marijuana or other drugs than indicated that parental disapproval (63.9 percent) or disapproval

of friends (56.9 percent) would prevent their use of illicit drugs. This shows that there is a substantial population which is amenable to deterrence.

In the circumstances, as the Legislature aptly recognized when it reformed New Jersey's drug laws, it would be unconscionably bad policy (and inhumane as well) to fail to take full advantage of this key "preventive factor." Indeed, the failure by our criminal justice system to impose appropriate, stern punishment would be tantamount to "enabling" -- an all-too-common phenomenon whereby parents, school officials, employers, co-workers or friends tolerate, condone or acquiesce in another's self-destructive behavior by failing to take steps, including painful ones, which are available and necessary to discourage that behavior.

In judging the act, it is also important to recognize that the law, as implemented, has been the subject of scathing criticisms coming from many different directions. While some argue that the law is too punitive, the law is far more often criticized by rank and file police officers, and especially by private citizen groups, for being far too lenient. These critics argue, for example, that too many offenses are designated as third degree crimes, for which there is a presumption of non-imprisonment for first offenders. Furthermore, prosecutors are routinely scolded by citizen groups, especially in crime-ridden urban centers, for offering unduly lenient plea bargains, which

routinely[6] allow defendants to escape the purported harshness of the law's so-called "mandatory" sentencing provisions. In the circumstances, criticized as it is from both sides, this law as applied in practice may well approach a delicate, pragmatic and appropriate balance, mindful of Franklin's famous aphorism that laws that are too lenient are seldom obeyed, too severe seldom enforced.

Finally, the criticisms of the Comprehensive Drug Reform Act must be put in historical perspective. The act itself was an explicit legislative response to sentencing practices under the predecessor drug law. The Legislature unambiguously declared, for example, that under the predecessor drug law, there were "inadequate sentencing guidelines with which consistently to identify the most serious offenders and offenses and to guard against sentencing disparity and the resulting depreciation of the deterrent thrust of the law." N.J.S.A. 2C:35-1.1d.

The immediate predecessor law, which was adopted in 1970 and codified in the Title 24 health code, was designed to provide judges with a remarkably wide latitude of discretion in tailoring sentences to meet the particular circumstances and needs of individual defendants. See State v. Staten, 62 N.J. 435, 439 (1973) ("With the enactment of the [1970 law], the Legislature has shown a desire to give the sentencing judge greater

---

[6] As discussed below, all twenty-one county prosecutors have adopted a policy which authorizes and encourages defendants to plead guilty to a drug-free school zone charge, for example, in exchange for a reduced sentence.

flexibility than he had under the old law.").[7]

In fact, that law provided virtually no guidance to judges as to the two keys issues which arise in every sentencing proceeding: 1) whether to impose a custodial term, and 2) if so, for how long.[8] Rather, Title 24 merely provided, for example, that in cases involving the possession with intent to distribute or distribution of more than one ounce of heroin or cocaine, the court could impose any sentence ranging from unsupervised probation to life imprisonment. See N.J.S.A. 24:21-19 (repealed). If the defendant was a repeat offender or had

---

[7] It is interesting to note that New Jersey's "Uniform Narcotic Drug Law" was amended in 1951 to provide for minimum as well as maximum terms of imprisonment for both first time and repeat offenders. L. 1951, c. 56 (N.J.S.A. 24:18-47). In 1952, the law was again amended to prohibit suspended sentences or probation for repeat offenders. L. 1952, c. 267 (N.J.S.A. 2A:168-1). This was based upon the recommendations of a legislative commission that "second and third offenders should receive mandatory sentences with no probation, parole or suspension of sentence permitted." Report of the Study and Recommendations of the Legislative Commission to Study Narcotics (1952) at p.9.

When the Controlled Dangerous Substances Act was adopted in 1970, in contrast, the Legislature eschewed mandatory minimum terms of imprisonment for either first offenders or subsequent offenders. See State v. Staten, supra, 62 N.J. at 439. It is thus apparent that the philosophical approach taken in the 1987 Comprehensive Drug Reform Act is not really new, and is merely a repudiation of sentencing "reforms" which were developed in the late 1960's.

[8] Under Title 24, courts were still required to consider the aggravating and mitigating factors enumerated in N.J.S.A. 2C:44-1. Those sentencing provisions of the penal code which depended upon degree classifications (i.e., e.g. sentencing ranges, presumptive terms and the presumption of imprisonment for first and second degree offenders), however, were inapplicable, precisely because defendants sentenced under Title 24 were not convicted of crimes of any recognized "degree." See State v. Sobel, 183 N.J. Super. 40 (Law Div. 1984).

distributed to a minor, he or she could receive any sentence ranging from unsupervised probation to a term of "double life imprisonment," see N.J.S.A. 24:21-29 and 24:21-26 (repealed) -- a curious concept which does not appear to have been used during the 17 years during which the Title 24 Controlled Dangerous Substances Act was in effect.

Needless to say, such a wide latitude of discretion invites sentencing disparity and it is interesting to note in this vein that in State v. Sainz, 107 N.J. 283 (1987), the New Jersey Supreme Court observed that the sentencing process under Title 24 was "somewhat unruly." 107 N.J. at 289 n.3. The Court further observed that, "With the passage of the Comprehensive Drug Reform Act of 1986. . . the CDS sentencing process would be made more rational." Id.

Furthermore, the predecessor law was not nearly as "tough" in practice as one might have suspected given the potential for a life term of imprisonment -- a punishment otherwise reserved for first degree murderers convicted under Title 2A.[9] Of those drug

---

[9] Interestingly enough, some judges have complained, if only privately, that the Comprehensive Drug Reform Act actually prevents them from imposing sufficiently lengthy terms of imprisonment, especially in cases involving drug distributors convicted of second and third degree crimes. Whereas a person convicted of distributing one ounce of cocaine, for example, would have been subject to life imprisonment under Title 24, he or she is now only subject to a maximum term of ten years, with a maximum (and discretionary) term of parole ineligibility of five years. See N.J.S.A. 2C:35-5b.(2) and 2C:43-6b. Similarly, a less prolific cocaine dealer who was subject to up to twelve years imprisonment under N.J.S.A. 24:21-19b.(1) is now subject to a maximum of five years imprisonment, and if a first offender, is entitled to a presumption of non-imprisonment. See N.J.S.A. 2C:35-5b(3) and 2C:44-1e.

defendants who were sentenced during the last six months of 1985 who were eligible for life imprisonment, less than one-half (45 percent) were sentenced to a state prison term (i.e., imprisonment for more than one year). One-fifth of those convicted of what was then the most serious drug trafficking offense were sentenced to a completely non-custodial, probationary sentence, and during the last half of 1985, not one of the more than 150 life-eligible candidates was actually sentenced to a life term.

Clearly, sentencing practices under Title 24 could not be squared with the public's desire to incapacitate predatory drug offenders. Having thus decided to "get tough" with drug dealers in response to the public's demand for action following the stunning emergence and proliferation of "crack" cocaine in the summer of 1986, it is hard to imagine how the Legislature could have done anything other than to re-instate minimum terms of imprisonment, especially since then-existing law already authorized, at least in theory, the toughest known sentence (other than the death penalty), namely, life imprisonment.

The effect of the Comprehensive Drug Reform Act was to

The principal and intended effect of the Comprehensive Drug Reform Act, of course, was not to reduce a defendant's maximum theoretical penal exposure, but rather to re-establish minimum permissible terms. Furthermore, the Legislature created an entirely new offense -- "leader of narcotics trafficking network" (N.J.S.A. 2C:35-3) -- so as not only to ensure stern punishment for so-called "kingpins," but also so as to blunt any public outcry that the "tough" new law eliminated the possibility that a drug profiteer could be sentenced to a life term of imprisonment.

provide precise statutory guidance to courts and to flatly reject the hoary notion that drug offenses are "victimless" crimes. It is also interesting to note that the approach taken in the Comprehensive Drug Reform Act was consistent with a recent, nationwide trend toward the enactment of objective, determinate sentencing schemes. Consider, for example, the extremely inflexible federal sentencing guidelines -- which have also been subject to scathing criticism from some members of the federal judiciary -- which were promulgated by the United States Sentencing Commission pursuant to the federal Sentencing Reform Act of 1984. 18 U.S.C. Sec. 3551 et seq. and 28 U.S.C. Sec. 991-998. For a thorough discussion of the 1984 Act and the history of federal sentencing practices, see Minstretta v. United States, ___ U.S. ___, 109 S.Ct. 647 (1989) (upholding the federal sentencing guidelines).

In the circumstances, and given broad popular support for the notion that drug dealers should be treated sternly, it seems unlikely that the Legislature today would so soon abandon the Comprehensive Drug Reform Act's approach and resurrect a system which features broad judicial sentencing discretion.

3. The Absence of Adequate Treatment and Correctional Opportunities

The Comprehensive Drug Reform Act and the law enforcement community's aggressive drug enforcement efforts have, without question, exacerbated the problem of overcrowded prisons and

jails. It should be noted, however, that the citizens of New Jersey have time and again made clear their desire to toughen the State's drug laws, despite the immediate and long term fiscal implications associated with that decision. The Comprehensive Drug Reform Act, for example, could not take effect until the Legislature had approved a bill calling for a public referendum to authorize the sale of $198 million in bonds to pay for new prison construction. L. 1987, c. 106, § 26. That Referendum was eventually approved by the voters on November 3, 1987 by a margin of 824,570 to 546,790. Similarly, New Jersey voters on November 7, 1989, approved by a margin of 982,237 to 642,810 a bond issue which included an additional $35 million for correctional facilities.

Recent enforcement efforts have also overburdened treatment facilities and have outpaced the State's current capacity to deal humanely with substance abusing offenders. According to the New Jersey Department of Health, more than one-quarter of all referrals for drug treatment come from courts and criminal and juvenile justice agencies. This statistic underscores the importance of law enforcement's contribution to the goal of providing treatment to addicts.

Law enforcement officers, of course, do not directly provide counseling or treatment to drug users. The law enforcement community, however, helps to identify drug dependent offenders and those offenders who are at risk of becoming drug dependent so that the courts and appropriate substance abuse professionals can

provide the necessary evaluation, treatment and monitoring services. An arrest is often the beginning of a long and difficult process leading to rehabilitation. Very few drug users "volunteer" for treatment in the true sense of the word. More often, participation in a rehabilitation program is the result of coercion and pressure brought by family, friends, school officials, employers or by the criminal justice system. Many addicts vigorously deny that they have a problem and resist efforts by others to help them. It is only after treatment that recovering addicts often express their gratitude for having been forced initially to participate in rehabilitation.

Most law enforcement professionals have long since come to realize that the "war" on drugs cannot be won without enhancing rehabilitation resources and opportunities, especially in state prison and county jail facilities. Indeed, since a large percentage of all crimes are committed by persons who are under the influence of mood-altering drugs or who are committing property offenses in order to support their habits, and given the fact that almost all drug offenders sentenced to prison will eventually be released into the community, it is important, from a public safety perspective, to make certain that treatment resources are made available to address these offenders' drug dependency.[10]

---

[10] The Legislature also made clear that with respect to drug distributors convicted of certain serious offenses, the difficult process of rehabilitation must be done in a secure setting, so as not only to protect public safety, but also so as to assuage public outrage directed against drug dealers,

Despite criticisms that the determinate sentencing features of the Comprehensive Drug Reform Act require that all offenders charged with a given drug offense be treated alike, in reality, a key provision of the act, N.J.S.A. 2C:35-14, allows courts even in drug-free school zone cases to sentence drug dependent offenders to rehabilitative treatment instead of prison, provided that the prosecutor consents. The New Jersey Legislature thus embraced the notion that stern punishment need not be inconsistent with compassion or rehabilitation.

Unfortunately, and for many reasons which are simply beyond the purview or control of a criminal statute, N.J.S.A. 2C:35-14 is greatly underutilized. As the critics of the law quite correctly point out, there are simply inadequate out-patient and residential rehabilitation resources presently available to take full advantage of this "offender-oriented" sentencing provision, especially with respect to indigents. The key point, however, is that the Comprehensive Drug Reform Act itself need not be amended in response to these criticisms, since N.J.S.A. 2C:35-14

---

including those who distribute to support their own drug habits. (From a parent's perspective, it hardly matters that a child was offered drugs by an addict, rather than a profiteer). In the face of such highly addictive substances as "crack," moreover, it may actually be inhumane, let alone woefully ineffective, for a judge to sentence a drug dependent distributor to any form of rehabilitative treatment other than that provided in a secure, controlled environment, where access to drugs can not only be monitored through after-the-fact urine testing, but can also be prevented in the first place. In the circumstances, given the high probability of relapse and recidivism, and considering the public's demand that courts deal sternly with drug dealers, the Legislature can hardly be faulted for requiring in certain cases that these offenders be committed to residential treatment facilities.

currently provides adequate legal tools with which prosecutors, defense counsel and sentencing courts can readily differentiate between drug profiteers on the one hand, and addicts who sell drugs to support their own habits on the other.

Indeed, it would be pointless to change radically the focus of the Comprehensive Drug Reform Act before adequate facilities and resources are available. Were the act to be amended to focus principally on rehabilitation, rather than general deterrence, for example, judges would still have no place to send defendants in desperate need of secure treatment and counseling. If, on the other hand, more treatment resources were made available, then N.J.S.A. 2C:35-14 would become a more viable option, and its increased usage and availability would doubtless blunt many of the claims that the act is too punitive.

In the circumstances, it is clear that the solution to this problem lies not in amending the Comprehensive Drug Reform Act, but rather in enhancing the availability of meaningful outpatient, residential and correction-based rehabilitation opportunities. In this vein, the Department of Law and Public Safety is currently working with the Departments of Corrections and Health, the Governor's Office, Congressman Hughes and others to develop a comprehensive correctional initiative to address the needs of adult and juvenile offenders. Ultimately, similar initiatives must be undertaken across the State, funded with assistance from the federal government, if we are to have any chance of achieving the Legislature's goal to deal

compassionately with addicts.

4. The Effect of "Mandatory" Terms of Imprisonment and Plea Bargaining

Some critics have claimed that the Comprehensive Drug Reform Act's mandatory sentencing features are largely responsible for the current backlog of criminal cases.[11] The plea bargaining provisions codified at N.J.S.A. 2C:35-12, moreover, are said to permit prosecutors to exercise too much discretion, giving them virtual control of the sentencing process. Because each prosecutor can establish his own plea bargaining office policy, it is said that the act "institutionalizes" sentencing disparity between counties.

In responding to these challenges, it should be understood that case processing backlogs and prison and county jail overcrowding statistics are extremely important, but they do not by themselves tell us whether the Comprehensive Drug Reform Act is achieving or failing to achieve its intended deterrent effect. While prosecutors no less than judges have a responsibility to make certain that the criminal justice system works efficiently,

---

[11] The current backlog is substantial and disturbing. According to the 1988-1989 Annual Report of the New Jersey Judiciary, the courts disposed of a record 45,872 cases last year, whereas 53,213 were filed. Thus, for the third consecutive year, filings have exceeded dispositions. At present, 12,400 indictments are already beyond the four-month time goal set by the Supreme Court for disposition, and six thousand of these cases are already one year old from the date of indictment. In addition, the backlog of cases awaiting indictment for more than two months is 17,378 -- nearly double the number of such cases only two years ago. Judiciary Annual Report at 6-7.

the ultimate goal established by the Legislature is not simply to move cases swiftly for the sake of expediency; the speedy disposition of drug cases, rather, is only a means for achieving an end (reducing the use and sale of controlled substances), not an end unto itself.

Needless to say, however, general deterrence cannot be achieved if the threat of swift punishment is not credible, and it is therefore imperative that the Attorney General and prosecutors continue to work with the courts and public defenders to reduce the current criminal case backlog. In fact, New Jersey is the only state in the nation to use the lion's share of its federal Anti-Drug Abuse Act formula grant monies, which are administered by the Attorney General, to staff drug courts with additional assistant prosecutors, public defenders, court support staff and probation officers, notwithstanding that many if not all states have experienced an explosion of drug cases, resulting in overburdened court dockets.

It is often said that a rational and effective criminal justice system is one which affords "swift, certain" punishment. The New Jersey Legislature in adopting the Comprehensive Drug Reform Act understood full well that the sentencing goals of "swiftness" and "certainty" often work at cross purposes. If, for example, a sentencing scheme is too tough and inflexible, defendants have no incentive to plead guilty, and many will conclude that they might as well take their chances on a jury trial. As more defendants demand trials, the criminal case

backlog increases, slowing the pace of the administration of justice. The resulting delay between an arrest and the ability of the system to impose final punishment only serves to undermine the deterrent thrust of the law. In this way, ironically, a law which is too stern and certain in its application may provide less deterrence than a law which results in comparatively shorter terms of imprisonment, but which sentences are imposed more quickly after an arrest.[12]

---

[12] In his testimony before the "Pashman-Belsole" Commission, established by the Chief Justice to examine ways to deal with the current drug case backlog, Judge Burrell Ives Humphreys (now the Assignment Judge in Essex County) suggested that New Jersey's drug laws should be rewritten so that distribution cases involving smaller amounts of drugs should be designated as disorderly persons offenses, but should include a mandatory minimum term of six months imprisonment in county jail, subject to wavier by the prosecutor. According to Judge Humphreys, cases could be moved far more expeditiously in municipal courts (especially if heard by Superior Court judges sitting as municipal courts), since defendants would not be entitled to indictment by grand jury or, more importantly, a jury trial.

In fact, the Legislature in adopting the Comprehensive Drug Reform Act used this exact same reasoning when it technically "decriminalized" simple possession of marijuana under 50 grams. See now the disorderly persons offense defined at N.J.S.A. 2C:35-10a.(4). Cf., N.J.S.A. 24:21-20a.(4) (repealed) (making possession of over 25 grams of marijuana an indictable crime).

Judge Humphrey's suggestion poses certain practical problems, and it is by no means certain that defendants facing a maximum penal exposure of only six months incarceration would thereby be induced to plead guilty. Nor is it clear that this approach would adequately assuage the public's zeal to "get tough" with drug dealers. It is interesting, however, that Judge Humphreys' proposal is not too different in concept from actual sentencing practices under current law, since defendants charged with drug-free school zone violations, for example, are often allowed to plead guilty as part of a negotiated agreement in which the prosecutor recommends that they be sentenced to a county jail term as a condition of probation. See N.J.S.A. 2C:45-1c.

The point is simply that Judge Humphreys' proposal is

With this in mind, the New Jersey Legislature adopted a drug law which, in reality, (and contrary to popular belief), does not "mandate" lengthy terms of imprisonment and parole ineligibility. Rather, all such so-called "mandatory minimum terms" under the Comprehensive Drug Reform Act are expressly subject to waiver by the prosecutor pursuant to N.J.S.A. 2C:35-12. That provision further guarantees that the State will receive the benefits of any negotiated bargain which results in a retraxit guilty plea accepted by the court. This key feature recognizes that a plea agreement is essentially a form of contract in which both sides give up important rights. See Bordenkircher v. Hayes, 434 U.S. 357, 364 (1978) ("Plea bargaining flows from the 'mutuality of advantage' to defendants and prosecutors, each with his own reasons for wanting to avoid trial"). Accord, State v. Taylor, 80 N.J. 353, 361 (1979). The Legislature thus made clear as a matter of policy that the State, no less than the defendant, is entitled to the benefits of its bargain.[13]

---

based on the astute observation that a short, swiftly imposed jail sentence is probably a better deterrent, and is actually "tougher" as a practical matter, than a longer State Prison term which is imposed only after inordinate delay. This notion is hardly novel, and is nicely captured in the old adage that justice delayed is justice denied.

[13] A defendant's reasonable expectations are protected by the requirements of due process, and thus do not require a statutory basis for enforcement. See Santobello v. New York, 404 U.S. 257, 263 (1971) (when a guilty plea rests in any significant degree on a promise or agreement of the prosecutor so that it can be said to be part of the inducement or consideration, due process requires that such promise be fulfilled). It is well-established that a defendant, for example, cannot be sentenced to a greater term of imprisonment than that contemplated by his plea agreement, since this would violate his understanding of the

It is critical to note that this key feature was intended to encourage both prosecutor and defendant to engage in plea bargaining in recognition that the criminal justice system would collapse if every defendant charged with a serious drug offense demanded and actually received a jury trial. It is true that N.J.S.A. 2C:35-12 was promoted, in large part, as a way of encouraging low-level drug defendants to turn state's evidence so as to reach more culpable (and better insulated) upper-echelon drug traffickers. This was not the sole intended benefit of this sentencing scheme, however. This feature was also designed to provide a much needed "safety valve" to make certain that defendants would have a practical incentive to plead guilty, notwithstanding the harshness of the Comprehensive Drug Reform Act, as compared, that is, to sentencing practices under New Jersey's predecessor drug law.

The Legislature in this way consciously sought to avoid the case-processing crisis occasioned by New York's much-maligned "Rockefeller law," which not only had prescribed mandatory terms of imprisonment, but had also expressly prohibited plea bargaining.[14] The New Jersey act's declaration of policy and

---

plea. See e.g., State v. Kovack, 91 N.J. 476, 483 (1982). N.J.S.A. 2C:35-12 is merely designed to afford the State reciprocal protection, and thus enable prosecutors to engage confidently in plea bargaining.

[14] The so-called "Rockefeller law" was enacted as Chapters 276, 277, 278, 676 and 1051 of the 1973 Laws of the State of New York. During the 1960's, the general policy of the State of New York had been to invoke criminal penalties mostly against higher-level traffickers. The 1973 law radically revised this approach and reclassified most drug crimes as far more serious offenses

legislative findings provides in this regard that "our criminal laws and sentencing practices must be reexamined and amended so as to minimize pretrial delay, thereby to ensure the prompt disposition of all drug-related criminal charges and the imposition of fair and certain punishment." N.J.S.A. 2C:35-1.1c.[15] This objective was included in the declaration of policy

---

than they had been before. The law not only prescribed mandatory terms of imprisonment, but prohibited plea bargaining, forbidding persons charged with certain offenses from pleading guilty to a lesser charge.

An evaluation of the law sponsored by the New York City Bar Association and Drug Abuse Council concluded that, contrary to the New York Legislature's intention, the "criminal justice process as a whole did not increase the threat to the offender." Final Report of the Joint Committee on New York Drug Law Evaluation: "The Nation's Toughest Drug Law: Evaluating the New York Experience," (1978), Executive Summary at 13. The Report attributed the "disappointing results" of the 1973 law to a number of factors, including most notably that the time required to process drug cases lengthened dramatically. Between 1973 and 1976, for example, the time required to dispose of drug cases nearly doubled, although there was no similar increase for other felony cases. Id. at 17. (This demonstrates that it was something in the nature of drug cases, not an increase in the volume of all criminal cases, which was responsible for the marked lengthening in disposition times). The Report concluded that one notable reason for the slow-down was that demands for trials rose sharply -- a direct result, the study concluded, of the 1973 law's "combination of mandatory prison sentences and restrictions on plea bargaining." Id.

[15] As noted, the New Jersey Legislature in considering the Comprehensive Drug Reform Act was keenly aware of the New York State experience in adopting a "tough" drug law, and took to heart the sobering conclusion of the Joint Committee which had evaluated the effects of the Rockefeller law:

> Whatever hope there is that statutes like the 1973 revision can deter anti-social behavior must rest upon swift and sure enforcement and a dramatic increase in the odds that violators will in fact be punished. Until New York's criminal justice process is reformed so that it can do its work with reasonable speed and reasonable certainty,

precisely so as to justify plea bargaining even in cases where a defendant does not provide useful information about his or her superiors in a drug trafficking conspiracy or otherwise cooperate with a law enforcement investigation.

In the circumstances, the assertion that the Comprehensive Drug Reform Act's mandatory sentencing features, such as the drug-free school zone provision, have unduly burdened the courts by removing the incentive for defendants to plead guilty is simply wrong as a matter of legislative intent. In fact, the offense defined at N.J.S.A. 2C:35-7 was designated as a mere third degree crime, despite the severity of its waivable three-year parole disqualifier, precisely so that prosecutors could fashion an enticing plea offer which would recommend a comparatively short custodial sentence, that is, one "within the range of ordinary or extended sentences authorized by law," as required by N.J.S.A. 2C:35-12.[16]

> the Legislature does not in reality have serious policy options to choose from. Without implementation there is no policy; there are only words. [Executive Summary, supra, at 25].

[16] At the time the Comprehensive Drug Reform was being drafted, the courts had not yet definitively resolved the issue as to whether the presumption of imprisonment which applies to persons convicted of first and second degree crimes, see N.J.S.A. 2C:44-1d., is satisfied by a county jail term imposed as a condition of probation. See State v. Kreidler, 211 N.J. Super. 276 (App. Div. 1982), State v. Whidby, 204 N.J. Super. 312 (App. Div. 1985) and State v. Jones, 197 N.J. Super. 604 (App. Div. 1984). See now State v. O'Connor, 105 N.J. 409, 419-421 (1987) (resolving the issue, holding that the presumption is not satisfied by a term of imprisonment imposed as a condition of probation; ordinarily, the sentence must be served in a State correctional facility). The drafters feared that if the

More importantly, those who claim that, whatever the Legislature's intent, the mandatory sentencing provisions of the new law have removed the incentive for defendants to plead guilty are also incorrect as a matter of current practice. A few statistics amply illustrate this point. According to the Computerized Criminal History System (CCH), in 1989, 80.2 percent of all convictions in drug-free school zone cases were as a result of guilty pleas, notwithstanding that a conviction under N.J.S.A. 2C:35-7 would ordinarily carry a mandatory term of 3 years imprisonment without possibility of parole. The remaining 19.8 percent of drug-free school zone convictions in 1989 were a result of trials. In that same year, a similar percentage (80.8 percent) of non-drug-free school zone distribution convictions resulted from guilty pleas.

Calculating the plea rate based only on those cases reaching final disposition does not consider the manner of disposition for those cases still pending. For this reason, the Division of

---

presumption of imprisonment were applicable, sentencing courts would be obliged to reject guilty pleas which were based upon a negotiated recommendation that the defendant be sentenced to a county jail term, thus effectively eliminating that option and the incentive in many cases to plead guilty. Cf. State v. Garcia, 236 N.J. Super. 573 (Law Div. 1989) (prosecutor under the Comprehensive Drug Reform Act is not permitted to relax the general sentencing guidelines of the Code of Criminal Justice); State v. Witte, 232 N.J. Super. 64 (App. Div. 1989) (presumption of imprisonment can only be overcome under exceptional circumstances where imprisonment is not only a serious injustice, but where the injustice is such as to override the need to deter others). The Legislature neatly avoided this potential problem (while leaving the general sentencing provisions of the code intact) by simply designating the drug-free school zone offense as a third-degree crime.

Criminal Justice conducted a small but detailed evaluation of drug case dispositions, which consisted of comparing the manner of disposing school zone distribution with non-school zone distribution cases. A sample of 800 school zone and non-school zone distribution arrest incidents, which occurred in Essex and Camden Counties during January and July, 1988, was extracted through the CCH system. Each of the 800 cases was traced through Promis/Gavel to identify both the manner of disposition and the number of days elapsing between the arrest incident and the date of disposition.

Within each of the two counties examined, little difference was observed in the time elapsed from arrest to disposition for school zone as opposed to non-school zone cases. Likewise, the rate of guilty pleas was roughly equal for the two types of cases within each county. Interestingly, the school zone cases were somewhat more likely to result in pleas than non-school zone distribution cases (79.0% vs. 67.0% in Camden, and 61.5% vs. 57.0% in Essex). The key difference appears to be between the counties with respect to the overall movement of drug distribution cases, rather than within each county with respect to handling school zone cases. (Detailed tables are included in Appendix A.)

It is especially noteworthy that in 1986, well before the Comprehensive Drug Reform Act was adopted, only 66.8 percent of all those convicted in drug distribution cases throughout the State pleaded guilty, whereas 33.2 percent of those convicted

were found guilty following a trial. (Recall that in 1989, more than 80 percent of drug distribution convictions, including those in drug-free school zone cases, involved guilty pleas). In other words, a significantly greater percentage of drug distribution convictions are the result of guilty pleas today, as compared to before the Comprehensive Drug Reform Act was adopted. In fact, according to the CCH system, in 1989, 673 drug distribution-type cases (including drug-free school zone violations) were disposed of by a trial, as compared to 635 in 1988 and 618 in 1987. But in 1986, before the act took effect, 909 drug distribution-type cases were tried in New Jersey courts.

Once again, this is hardly surprising, since the Comprehensive Drug Reform Act was intricately crafted precisely to provide prosecutors leverage with which to encourage guilty pleas so that guilty defendants might still avoid the harshness of a full term of parole ineligibility. Ironically, therefore, were the act to be amended to eliminate these so-called "mandatory" minimum terms, the problem of backlogged court calendars would likely be exacerbated, not alleviated, especially since most judges would be under intense pressure and scrutiny, given current public attitudes, to mete out "tough" sentences.[17]

---

[17] It is important to bear in mind that Title 24 sentencing practices were widely viewed, at least by law enforcement, as being comparatively "lenient." If the Legislature were to resurrect the Title 24 sentencing approach, and judges were generally to impose sentences more severe than those imposed under the former law, one could logically expect that plea disposition rates would eventually be lower than was true under Title 24. This is an especially sobering prospect when one considers that there were 21,017 arrests in New Jersey

The Comprehensive Drug Reform Act was drafted so as to encourage prosecutors to offer defendants an attractive option (avoiding the full term of an otherwise prescribed period of parole ineligibility) in exchange either for cooperation or else simply in exchange for agreeing to plead guilty, thereby sparing prosecutors and the entire criminal justice system the expense and burdens of trial. These plea bargains, in other words, are offered not as an expression of prosecutorial "leniency," but rather as a device for making certain that some measure of punishment is imposed against all offenders as swiftly as possible.

It is now well-settled, of course, that "there is nothing unholy in honest plea bargaining." State v. Dent, 51 N.J. 428, 438 (1968). In fact, plea bargaining "has become firmly institutionalized in this State as a legitimate, respectable and pragmatic tool in the efficient and fair administration of criminal justice." State v. Taylor, supra, 80 N.J. at 361. The New Jersey Supreme Court minced no words, and proved to be quite prophetic, in stating that plea bargaining is a "needed response to an ever-burgeoning caseload." Id.

Even so, it is no secret that the Legislature and the general public are skeptical about the plea bargaining process, which is viewed, at best, as an accommodation to the harsh realities of a less than ideal world. See Bordenkircher v.

---

in 1989 for drug distribution-type offenses, as compared to only 8,491 such arrests in 1985. Uniform Crime Reports, 1989.

Hayes, supra, 434 U.S. at 363. The Legislature assumed and expects that prosecutors, as professional advocates in an adversarial process, will be willing to waive "mandatory" terms under the Comprehensive Drug Reform Act only as a practical means of making certain that the "optimum" quantum of punishment (considering both the length of imprisonment and the swiftness in the execution of sentence) is imposed in each case. This result is ensured, moreover, because N.J.S.A. 2C:35-12 further guarantees that the State's bargained-for sentence will in fact be imposed.[18] See note 13 and corresponding text, supra. In this way, the Legislature may have found the only means possible to achieve what would ordinarily appear to be two competing if not irreconcilable objectives: to "toughen" drug sentences (as measured by an increased percentage of defendants sentenced to incarceration as well as longer median terms of imprisonment) and at the same time increase the percentage of convictions achieved by guilty pleas.

Unlike prosecutors, sentencing judges are not in a position to induce guilty defendants to plead guilty and thus achieve the

---

[18] It is critical to note, however, that even under the Comprehensive Drug Reform Act, the prosecutor and defendant can only recommend a negotiated disposition to the court, which is free and even duty-bound to reject the proffered agreement if it finds that the interests of justice would not be served by effectuating the plea. See R. 3:9-3. Accord, "Official Commentary to the Comprehensive Drug Reform Act," 9 Crim. Just.Q. at 161. Cf. State v. Barboza, 115 N.J. 415 (1989) (court must either accept plea agreement in full or reject it in its entirety).

benefits of this intricate system of rewards and threats.[19] For one thing, judges are not permitted to participate actively in the plea bargaining process, and are certainly not permitted unilaterally to make a plea offer. See R. 3:9-3. See also State v. Warren, 115 N.J. 433, 441 (1989) (court rules make clear that a judge can take "no part" in any plea negotiations between the prosecutor and the defendant). Furthermore, New Jersey law presently forbids a sentencing judge from considering whether the defendant has forced the State to expend time and resources in a trial. See e.g., N.J.S.A. 2C:44-1c.(1) ("A plea of guilty by a defendant or a failure to so plead shall not be considered in withholding or imposing a sentence of imprisonment").

In the circumstances, any significant revisions to the Comprehensive Drug Reform Act could have profound negative consequences. If, for example, a mandatory term of imprisonment were not subject to waiver at the prosecutor's option, defendants would have no incentive to plead guilty, and, given the enormous volume of drug cases, the resulting trial demands would soon overwhelm the system. The same would likely be true if the

---

[19] It should be noted that under current law and court practice, it must be presumed that all defendants who plead guilty are, in fact, guilty. It is well-settled that a court may not accept a retraxit guilty plea unless the plea is both voluntarily made and based upon an adequate factual basis establishing the defendant's guilt. See R. 3:9-2. Once again, the Comprehensive Drug Reform Act is simply designed to preserve the right of a speedy trial for all by encouraging the guilty voluntarily to waive that right to trial in exchange for a reduced sentence. See Bordenkircher v. Hayes, supra, 434 U.S. at 363.

Legislature were simply to eliminate mandatory terms.[20] Moreover, if the Comprehensive Drug Reform Act were to be amended so as to permit judges unilaterally to extend leniency,[21] this would necessarily occur at sentencing, after conviction and without regard to whether the defendant had pleaded guilty or had been found guilty after a trial. Defendants under such a scheme

---

20 It is doubtful that the penal code sentencing provisions of general applicability could be used to ensure both stern punishment and a satisfactorily high percentage of dispositions by guilty plea. The same criterion (degree of offense) which for all practical purposes determines the likelihood of a custodial term also dictates the length of any such term. Consequently, the penal code, absent specialized "mandatory minimum" sentencing provisions such as those in chapter 35, tends to discourage the imposition of short terms of imprisonment, at least against first offenders. Rather, those offenders who are most likely to receive any custodial sentence at all (those convicted of crimes of the first or second degree) are also likely to be sentenced to a substantial State Prison term.

This result is, of course, inconsistent with the concept of imposing comparatively short but certain custodial terms, as recommended by Judge Humphreys, see note 12, supra, and in line with current sentencing practices with respect to drug-free school zone cases. Furthermore, the Legislature would doubtless be pressured to amend the current drug amount thresholds so as to designate more drug distribution offenses as crimes of the first and second degree, precisely in order to reduce the number of drug dealers who might benefit from the presumption of non-imprisonment set forth at N.J.S.A. 2C:44-1e. The point is simply that while such a scheme might well lead to long terms of imprisonment for at least certain drug distributors, it could not guarantee the imprisonment of all drug dealers, and certainly would not provide any of these defendants with any particular incentives to plead guilty.

21 "Leniency" has never been the sole province of the judicial branch. In fact, the New Jersey Constitution makes it clear that the power to grant pardons and to offer clemency is an executive branch prerogative, which is not even subject to judicial review. N.J. Constitution, Art. 5, §2, par. 1 (1947); See also State v. Butler, 32 N.J. 166 (1960), cert. den. 362 U.S. 984 (1960) (Governor has the power to commute a death sentence, but the Supreme Court has no comparable power).

would be well advised to take their chances on an acquittal at trial, confident that even if convicted, they would still be able (and perhaps even entitled) to invoke whatever criteria may be established for judicial lenity and thereby avoid a lengthy term of imprisonment and parole ineligibility.

The end result of any such scheme would be comparatively short sentences, imposed only after inordinate delay. Eventually, rank and file police officers would come to believe (as many believed when Title 24 was in effect) that the State's drug laws are simply not worth enforcing, especially given the substantial dangers posed to police in street-level enforcement operations. While the resulting decrease in drug arrests would serve to alleviate somewhat the court backlog, drug offenders' perceived risk of apprehension would diminish, further undermining the deterrent threat of the law.

In sum, the provisions of the Comprehensive Drug Reform Act are intricately interwoven, designed to provide the executive branch with the tools needed to keep the entire criminal justice system from collapsing under the weight of the increased volume of serious drug cases.[22] It is, of course, incumbent upon the

---

[22] With respect to the criticism that the Comprehensive Drug Reform Act has "institutionalized" disparity between counties, obviously, some variation among counties in the exercise of initial charging, screening, downgrading, plea bargaining and sentencing discretion is inevitable given marked county-to-county differences in crime rates, resources and community-wide attitudes, not to mention differences in caseloads and the average time required to dispose of cases.

To the extent that certain county prosecutors had, at first, adopted an inflexible "no plea bargaining" policy, the Comprehensive Drug Reform Act, and especially the drug-free

Attorney General and each county prosecutor, mindful of the "Rockefeller law" experience, to use those tools in a consistent, carefully thought out manner so as to achieve a delicate and pragmatic balance between the need for stern, uniform punishment on the one hand, and the need to encourage guilty defendants to give up their right to trial on the other hand. Prosecutors, in other words, have both the statutory authority and the responsibility to make certain that New Jersey's drug laws are, in practice, tough enough to be worth enforcing, but not so tough that the system cannot afford to enforce them.

Finally, and for all of the foregoing reasons, it is simply incorrect to suggest that the Comprehensive Drug Reform Act has caused the current criminal case backlog. Rather, the real reason for the backlog is readily apparent -- an unprecedented increase in the number of drug arrests. While the Comprehensive Drug Reform Act was indeed designed to provide drug enforcement incentives to the law enforcement community, it has been our "zero tolerance"[23] enforcement strategy, as set forth in the

---

school zone provision, may well be partly responsible for the case processing backlog, since defendants in those counties would indeed have had no practical recourse other than to demand a jury trial. The County Prosecutors Association has since developed plea bargaining guidelines. Consequently, at present, there are not 21 different plea bargaining schemes, and in fact, there is likely to be far less disparity (both county-to-county and judge-to-judge) under the current system than was true under predecessor law. See N.J.S.A. 2C:35-1.1d.

[23] The phrase "zero tolerance" was first coined by the United States Customs Service to describe a policy, since modified, of seizing pleasure craft if any detectable amount of illicit drugs are found aboard. In New Jersey, this concept is embodied in a "mandatory arrest" policy, prescribed in SNAP

Attorney General's Statewide Narcotics Action Plan (SNAP), not the law itself, which has produced a dramatic increase in drug arrests. See SNAP Directive 2.1 (making drug enforcement the highest priority of all state, county and local law enforcement agencies).

According to the Uniform Crime Reports, in 1986, the New Jersey law enforcement community made 40,690 drug arrests, including 9,661 arrests involving manufacturing, distribution or possession with intent to distribute. In 1989, New Jersey law enforcement officers made a total of 69,163 arrests, including 21,017 distribution-type arrests. This represents a remarkable 118 percent increase in the number of indictable drug distribution cases.

One need not look much beyond these numbers to figure out why the courts have become congested and unable to swiftly process any criminal cases. Since it is neither feasible nor sound policy for police to abandon or in anyway retreat from New Jersey's aggressive "mandatory arrest" drug enforcement

---

Directives 6.10 (adults) and 5.8 (juveniles), which provides that no drug offense, regardless of the quantity of illicit drug involved, can be considered to be too trivial to warrant an arrest.

It is important to note that this policy is "new" only with respect to drug users, who are less likely to burden court calendars or prisons. According to Uniform Crime Reports in 1989, 70 percent of all drug arrests in New Jersey involved the use or simple possession of controlled substances. The CCH system reveals that in 1989, one-half of all simple possession cases (49.5 percent), were disposed of by means of conditional discharge or pretrial intervention. Of those remaining cases which led to a conviction, 93.8 percent were a result of guilty pleas, and only 5.9 percent of convictions were as a result of trial.

policy, it is evident that prosecutors, judges and defense counsel must continue to find new ways to streamline the system and provide necessary additional adjudication, prosecution, defense, correctional and probation resources. (As noted above, it is especially important that we provide greater opportunities and incentives for defendants to seek secure treatment in lieu of traditional incarceration). In sum, because the Comprehensive Drug Reform Act actually encourages swift, negotiated dispositions by increasing a prosecutor's leverage in the plea bargaining process, and given the unrelenting high volume of drug distribution arrests, any tinkering with the basic features of the act could unwittingly lead to a case processing disaster.

5. The Purpose of Drug-Free School Zones

Some critics of the Comprehensive Drug Reform Act claim that the drug-free school zone offense defined at N.J.S.A. 2C:35-7 fails to provide a rational basis for imposing enhanced punishment against street-level drug distributors. This is said to be especially true with respect to drug offenses which occur in the State's urban centers, where, given high population density and the great number of schools, most territory happens to be located within a protected zone.

Initially, it should be noted that some of these criticisms of the Drug-Free School Zone Act appear to be premised on the unfounded notion, discussed in the preceding section, that this law and its "mandatory" sentencing provisions are either intended or have the effect of discouraging defendants from pleading

guilty, and thus directly contributes to the current criminal case backlog. As noted above, in reality, the "mandatory" sentencing provisions of N.J.S.A. 2C:35-7 serve to facilitate, not hinder, the swift disposition of indictable drug cases.

The New Jersey Legislature in adopting the Comprehensive Drug Reform Act was, of course, keenly aware that while the drug epidemic affects every segment of our society and that no one is immune, the problem is nonetheless most acute in the State's urban centers. There, open and notorious drug trafficking is rampant; some streetcorners have become open drug marketplaces and in many inner-city neighborhoods, law abiding citizens are virtual prisoners within their own homes, unable to venture out without fear of becoming the victims of mindless crime, or caught in the crossfire of rival drug gangs engaged in the all-too-common "turf wars" associated with the illicit drug trade.

The Legislature fully realized and intended that the especially stern punishment afforded to drug-free school zone violators would apply to a large percentage of urban drug predators. It is thus incorrect to state, as some have suggested, that the Legislature somehow failed to anticipate the broad applicability of this key provision in more densely populated areas.[24] The late Senator Graves, the prime sponsor of

---

[24] The Legislature was also keenly aware that the problem of court congestion, and resulting speedy trial delays, is most acute in the State's urban counties. The Legislature thus recognized that the goal of ensuring swift prosecutions (by encouraging defendants to plead guilty) is especially important in counties with comparatively heavy drug caseloads. See discussion in the preceding section. In other words, the

the Drug-Free School Zone Act, for example, openly boasted at hearings of the Senate Law, Public Safety and Defense Committee of his estimate that no less than 85 percent of the City of Paterson[25] would be situated within a school zone.

In other words, this law was intended, in part, to afford additional protection to and thus directly benefit law abiding residents of crime-ridden urban neighborhoods, and this fact has not been lost on the residents of these neighborhoods. Consequently, any attempt to revise the law to establish smaller school zones (or even to abolish them altogether), is not only unwarranted, but probably infeasible as well. It would be prove to be extremely difficult, if not impossible, for the Legislature to take a given parcel of land out of the perceived protection of an existing drug-free school zone, for much the same reason that it would be politically difficult to remove working street lights from a crime-plagued neighborhood. Indeed, the Legislature is under public pressure to expand, rather than to diminish, the number and dimensions of special drug-free zones. There are currently pending in the Legislature, for example, a number of bills which would create "drug-free block zones," "drug-free park and recreation centers zones," "drug-free housing projects zones"

Legislature fully intended that a large percentage of drug distribution cases in urban counties would be school zone violations -- a reflection of geography and demographics -- as a means, in part, to help to facilitate the prompt disposition of these cases.

[25] Senator Graves, until his untimely death early this year, also served as the Mayor of Paterson.

and "drug-free youth organization facility zones."

While some critics have dismissed the Drug-Free School Zone Act as some sort of public relations gimmick,[26] it is clear that the Legislature has succeeded in its efforts to marshal public opinion and to enhance public awareness about the State's drug epidemic, especially in its urban neighborhoods. By itself, this would have been a legitimate if not compelling legislative accomplishment.

On a more practical enforcement level, the drug-free school zone provision is designed to displace drug trafficking activities, and especially open and notorious drug dealing, by making it prohibitively risky for drug distributors to operate in these special zones. In this way, the Legislature sought to provide further deterrence, not only directly by means of imposing longer terms of imprisonment, but also by providing incentives for law enforcement agencies to dedicate additional patrol and investigative resources to these key areas, thereby increasing the risk of apprehension. See SNAP Directives 5.1 et seq.

In adopting the Comprehensive Drug Reform Act, the

---

26 Public awareness efforts, including most notably the posting of "Drug-Free School Zone Signs," see SNAP Guideline 5.1, have been extremely effective in attracting public attention and heightening awareness of the new law and the reasons for establishing safe havens around schoolyards. These signs are intended not only to warn off would-be distributors (in fact, it is irrelevant in a prosecution under N.J.S.A. 2C:35-7 that the actor was unaware of his or her proximity to a school), but also to galvanize community attitudes against drug abuse and to encourage law-abiding citizens to report drug-free school zone violations. See SNAP Guideline 5.8.

Legislature made clear the policy of this State "to afford special protection to children from the perils of drug trafficking, to ensure that all schools and areas adjacent to schools are kept free from drug distribution activities, and to provide especially stern punishment for those drug offenders who operate on or near schools . . ." N.J.S.A. 2C:35-1.1c.

The Legislature's goal was to make certain that schools and the areas around them become safe havens for law abiding children, not convenient marketplaces or sanctuaries for drug dealers or users. The Legislature hoped to provide children with an environment conducive to education, one free from drugs and in which drug trafficking activities would not be tolerated. Needless to say, children should not be able to look out their classroom window and see a drug deal taking place. They should not be able to find used "crack" vials littered around school playgrounds and surrounding neighborhoods, and they should not be propositioned to buy or use drugs while walking to school or while in school buildings. Thus, as an absolute enforcement priority, the Legislature intended that the State's law enforcement community, working closely with professional educators, would do everything possible to keep innocent children as far away from the drug culture and its attendant violence for as much of the day as possible. The Legislature also assumed that by aggressively enforcing this key provision, the law enforcement community could help to give educators and school-based substance awareness coordinators a better chance to do

their jobs[27] and to provide children with the skills and information needed to resist the temptation to use drugs.

The Drug-Free School Zone Act, in other words, is designed not to protect children directly, but rather indirectly by protecting the sanctity of the educational environment. (The Comprehensive Drug Reform Act includes other features designed to protect children directly from drug dealers, notably, N.J.S.A. 2C:35-8, which mandates enhanced, doubled punishment, including doubled minimum terms of parole ineligibility, where the court determines at sentencing that the offense involved distribution to a minor). The New Jersey Legislature made clear, for example, that it makes no difference for the purposes of imposing punishment under N.J.S.A. 2C:35-7 that a child was not directly involved in the drug offense, or even that no children were present. The Legislature understood full well that children congregate in large numbers before, during and after school sessions, see "Official Commentary to the Comprehensive Drug Reform Act, supra, 9 Crim. Just. Q. at 157, and are "readily subject to the illicit activities of those who ply narcotics to the victims of drug abuse and addiction." See United State v. Nieves, 608 F. Supp. 1147, 1149 (D.C.N.Y. 1985). The Legislature

---

[27] New Jersey was among the first states to adopt legislation mandating that instructional programs on the nature of drugs, alcohol and controlled dangerous substances be provided in each public school in each grade from kindergarten through 12. See N.J.S.A. 18A:40A-1 et. seq. (effective January 13, 1988). This law is perhaps the single most important component of a comprehensive, multi-disciplinary legislative scheme to address the State's drug problem.

also recognized that children are often drawn into drug rings as participants themselves, aiding the sale and distribution of controlled substances to others, including their schoolmates. Id. See also N.J.S.A. 2C:35-6 (providing especially stern punishment for any adult who uses or employs a juvenile in a drug distribution scheme). The court in Nieves thus concluded, "It is difficult to imagine a more rational way of keeping drug traffickers out of areas where children are more likely to come into contact with them than to subject them to a risk of stiffer penalties for doing business near school property." Id. at 1149-1150.

For all of these reasons, and although certainly no claim can be made that the law has been completely successful in displacing drug trafficking activities from the areas adjacent to schools,[28] New Jersey's Drug-Free School Zone Act, like its

---

[28] See United States v. Agilar, supra, 779 F.2d 123, 125-126 (2d Cir. 1985), cert. den. 475 U.S. 1068 (1986), upholding the federal drug-free school zone provision against constitutional attack and observing that the means chosen by Congress to deal with the problem need not "score a notable success in every application of the statute." "Congress," the court further observed, "is entitled to add higher penalties [against drug-free school zone offenders] in the hope of providing further deterrence, whether or not much success is thereby achieved." 779 F.2d at 126.

It is difficult at present to develop empirical information to demonstrate the extent to which the drug-free school zone provision has displaced drug trafficking activities. One cannot rely solely upon arrest data, for example, given the proactive nature of drug enforcement. Indeed, the large number of drug-free school zone arrests reflects more than anything the dedication of patrol and investigative resources pursuant to SNAP Directive 5.9, which requires a visible police presence within school zones at appropriate times.

Anecdotal information suggests, however, that many drug dealers have indeed taken note of the new law and have at least

federal counterpart, 21 U.S.C. Sec. 845a., has easily survived claims that the law somehow violates the constitutional guarantees of due process, equal protection or freedom from cruel and unusual punishment. See e.g. State v. Ogar, 229 N.J. Super. 459 (App. Div. 1989); State v. Rodriguez, 225 N.J. Super. 466 (Law Div. 1988); State v. Morales, 224 N.J. Super. 72 (Law Div. 1987).

It is especially noteworthy, and consistent with the larger goals established in the Comprehensive Drug Reform Act, that this tough penal provision was intended, in large part, to express the State's policy that law enforcement, by itself, is not the answer to the drug problem. Rather, this provision demonstrates the Legislature's recognition that schools, not courtrooms or prison cells, will emerge as the principal medium for teaching an entire generation of children the skills and motivation to resist the temptation to use drugs. The Legislature nonetheless demonstrated how the law enforcement community can help to support long-range educational efforts designed to reduce the future demand for drugs, not only through instructional programs

---

attempted either to be more discreet or else to move their operations out of a school zone. In at least one case in New Jersey, a drug suspect was overheard on a wiretap to explain to a coconspirator that a contemplated drug transaction should not take place at a given location because of its proximity to a school. So too, police detectives report that it is not uncommon that the targets of undercover operations are more careful to select the site of "controlled buys" so as to stay out of drug-free school zones. In Broward County Florida, moreover, the Sheriff's Office reports of at least one instance where drug dealers were caught in the act of using a measuring tape in an attempt to determine the proximity of their operations to a neighborhood school.

such as D.A.R.E., but also by making certain, as the law enforcement community's single highest priority, that schools and schoolyards are kept free of drugs, or at least open and notorious drug trafficking activities. See SNAP Directives 5.1 et seq.

New Jersey was the first state to embrace this philosophy and to adopt and aggressively enforce a comprehensive drug-free school zone law. According to the National Association of Chiefs of Police, 42 states have since followed New Jersey's lead by enacting drug-free school zone laws. More importantly, New Jersey's Drug-Free School Zone Act, given its philosophical emphasis on protecting the educational environment, has been remarkably successful in encouraging the law enforcement and education professional communities to work together in addressing the State's substance abuse problem.[29]

6. The Utility of Mandatory Non-Incarcerative Penalties

a. Legislative Condemnation of Drug Use.

Many of the most important features of the Comprehensive

---

[29] Pursuant to an Attorney General Executive Directive and rules and regulations promulgated by the State Board of Education, N.J.A.C. 6:3-6.1 et seq., model agreements between local law enforcement and school officials have been signed or are in the process of being signed in every community across the State. These memoranda of understanding facilitate cooperation and help to make certain that the law enforcement community, while aggressive in pursuing school-based drug offenders, at all times recognizes and respects the rights of law-abiding children and educators.

Drug Reform Act take advantage of innovative alternatives to imprisonment. The Legislature recognized that it would be pointless, given the current state of prison and jail overcrowding, to depend entirely upon imprisonment to achieve the required deterrent effect. The New Jersey Legislature instead sought to ensure that drug users as well as dealers would remain accountable through the imposition of non-incarcerative sanctions which do not exacerbate, and are not impeded by, the current state of prison and jail overcrowding.

Critics of the Comprehensive Drug Reform Act contend that these mandatory sentencing features (the revocation or postponement of driving privileges required by N.J.S.A. 2C:35-16, and the "DEDR" penalties required to be imposed pursuant to N.J.S.A. 2C:35-15), are also too inflexible and punitive. The mandatory six months minimum loss of driving privileges, for example, is said to result too often in hardships, and the DEDR penalty, the amount of which is determined solely by the degree of the offense involved, rather than the defendant's ability to pay, is not only said to be unfair and disproportionate in its application, but has seriously overburdened probation departments, forcing them to divert scarce resources so that persons who were hired to be social workers are instead forced to function as collection agents.

In responding to these criticisms, it is first necessary briefly to examine the basic philosophy of the Comprehensive Drug Reform Act with respect to the handling of less serious drug

offenders, since it was the Legislature's clearly expressed objective to make certain that the principle of general deterrence apply to drug users no less than to major drug traffickers. See N.J.S.A. 2C:35-1.1b. and c. In fact, there is some evidence to suggest that drug users (at least those who are not yet drug dependent) are more amenable to deterrence than are drug profiteers, who are motivated principally by greed and who can pass on to consumers the costs associated with the risk of arrest and imprisonment in the form of a "risk premium." As it turns out, the mandatory driver's license revocation and DEDR penalty provisions are among the most vital, cost-effective sentencing features of the New Jersey Legislature's comprehensive response to the current epidemic.

The Legislature in adopting the Comprehensive Drug Reform Act recognized that the drug problem cannot be solved simply by attempting to cut off supply. So long as enormous profits can be made, drug importers and local dealers are prepared to take whatever risks are necessary, and ultimately will be able to evade interdiction efforts enough to reach and exploit the marketplace. So too, competition among drug traffickers, who are unable to resort to legitimate means for resolving their disputes, will inevitably result in rampant street violence, as profiteers seek to protect their markets and "turf" by means of force and intimidation. For all of these reasons, New Jersey's legislatively established drug enforcement strategy recognizes the importance of reducing the demand for illicit drugs.

The New Jersey Legislature made clear, however, that the task of reducing the demand for drugs is not the sole province of educators, community activists and treatment professionals; rather, the law enforcement community and the criminal courts must also make a major contribution to that all-important effort. The Legislature intended, in other words, that law enforcement activities, especially those undertaken by local police officers assigned to uniformed patrol, should not be limited solely to traditional "supply oriented" or "interdiction" drug enforcement tactics. The Legislature recognized that the concept of deterrence, the keystone of our penal system, must become an integral part of "prevention" strategies designed to reduce the public's appetite for illicit substances.

As noted above, in a 1986 survey of New Jersey high school students, 69.6 percent indicated that the fear of getting into trouble with the law would prevent their use of illicit drugs. This fear emerged as one of the most commonly cited "preventive factors" (second only to "fear of physical harm") which influenced young people in their decision to experiment with, or conversely, to abstain from the use of drugs. The Legislature sought to provide statutory tools so that local police departments could take better advantage of this key preventive factor. By vigorously enforcing tough yet realistic drug laws, the New Jersey Legislature hoped that police could effectively alter the "risk equation," see note 5, supra, and thereby help to deter the use as well as the sale of illicit drugs.

This concept is hardly a novel one in this State. Indeed, the New Jersey Legislature has long recognized that aggressively enforced penal laws can help to change attitudes and perceptions about substance abuse. This very approach has, for example, been used in recent years to address the problem of drunk driving. New Jersey and a number of other states responded to the drunk driving problem by enacting tough laws[30] (which, notably, feature mandatory sentencing provisions), while at the same time, state and local police departments across the country responded to the challenge by adopting innovative, aggressive and well-publicized enforcement tactics, such as sobriety checkpoints and the placement of troopers in turnpike toll booths. As a result of these initiatives, it has become clear to all citizens that drunk drivers face not only a greater risk of being apprehended, but also the certainty upon apprehension of stern punishment.

Although drunk driving remains a critical concern in New Jersey and every state throughout the country, these law enforcement and legislative initiatives have had a significant impact on this particular substance abuse problem. It is now clear, for example, that drunk driving will not be tolerated. New terms, such as "designated driver," have become a part of our

---

30 Unlike many states, New Jersey's drunk driving laws do not depend upon the fiction of lengthy potential terms of imprisonment, especially for first and even second offenders. Rather, the New Jersey Legislature has opted for mandatory sanctions which can be imposed by municipal court judges without a jury trial. See N.J.S.A. 39:4-50. See also State v. Hamm, ___ N.J. ___ (1990) and State v. Graff, ___ N.J. ___ (1990). This is reminiscent, of course, of Judge Humphreys' proposal, discussed in note 12, supra.

vocabulary, and the vast majority of New Jerseyans now find it unacceptable or even unthinkable to drink and drive. The aggressive and highly publicized enforcement of tough drunk driving laws became the model which the Legislature used in designing many of the sentencing features in New Jersey's Comprehensive Drug Reform Act.

In sum, New Jersey's legislative approach to the drug problem recognizes that the law enforcement community can and must play a key supporting role in altering tolerant attitudes about drug abuse and in convincing citizens to lead a drug-free lifestyle. For this reason, so-called recreational or casual users have become a special focus of law enforcement attention in this State. Casual users, who can quit at any time but choose not to, are believed to account for a large percentage of the profits now enjoyed by drug traffickers. These occasional users, in other words, are morally responsible for much of the violence, tragedy and suffering associated with the nation's drug epidemic, since it is their money which helps to sustain and fuel international and domestic drug trafficking networks.

Accordingly, the New Jersey Legislature has repudiated the notion that possessory offenses are somehow "minor" or "victimless crimes," or that drug users are "only hurting themselves." Instead, the Legislature sought to transform these users' moral culpability into legal accountability through the imposition of stern, cost-effective and realistically enforceable penalties and sanctions. The concept of "user accountability," a

fundamental theme of the President's National Drug Control Strategy, has thus become a key component of New Jersey's comprehensive drug enforcement efforts.

Not all agree, however, that the full coercive force of the criminal (or even quasi-criminal) law should be directed against drug users. In a draft report of the "Subcommittee on Establishing Early Judicial Supervision and Control Over Arrestees," a subcommittee of the Judicial Conference Pretrial Population Committee, the majority concluded that, "a disproportionate amount of precious law enforcement and court resources are being applied to the arrest of offenders who are being charged with possession of small amounts of drugs."[31] The majority of this subcommittee suggested that "possession of trace amounts of narcotic drugs should be established under law as [a] citation offense," that is, "akin to a serious traffic violation."

No one can quarrel with this subcommittee's suggestion that it would be prudent to devote an appropriate level of law enforcement resources to handle "larger cases," and in fact, the Statewide Narcotics Task Force and the twenty-one countywide narcotics task forces were established to do just that. See SNAP

---

[31] Actually, according to Uniform Crime Reports, the percentage of drug arrests for simple possession and use has been steadily declining. In 1989, for example, 69.6 percent of all drug arrests involved simple possession (as opposed to manufacturing, distribution or possession with intent to distribute). In 1985, however, 78.7 percent of all drug arrests were for simple possession or use. The absolute number of simple possession arrests, however, has markedly increased, from 31,431 in 1985 to 48,146 in 1989 -- a 53.2 percent increase.

Directives 4.1 et seq. It would be a grievous mistake, however, for the entire New Jersey law enforcement community to focus exclusively on major or even street-level drug traffickers.[32] (Indeed, it is hard to see how local patrol officers, who constitute the vast majority of law enforcement personnel, could meaningfully contribute to an enforcement scheme which focused only on apprehending major traffickers). For one thing, drug dealers, once apprehended and taken off the street, are replaced almost instantly from among the countless thousands of would-be profiteers who seek the opportunity to share in the spoils of this unimaginably lucrative trade. As the law enforcement community has come to learn from the experience of several earlier "wars" against drugs, any drug enforcement scheme which focuses entirely on supply interruption is unlikely to have any significant, lasting impact on drug use, price or availability, and such an approach mostly serves to burden court calendars and flood jails and prisons. The New Jersey Legislature was thus exactly correct when it declared that, "In order to be effective, the battle against drug abuse and drug-related crime must be waged aggressively at every level along the drug distribution

---

[32] A recent study by the Rand Corporation Drug Policy Research Center concluded that a heavy police crackdown on street-level dealers in Washington, D.C. holds little promise of driving them out of business because these offenders have already made a calculation of the high risk of being arrested and jailed. The report suggested, however, that a crackdown on the middle class or affluent customers who patronize these dealers by buying drugs on the street holds some promise on cutting back on demand in these "easy access markets," making these markets less attractive to the sellers.

chain." N.J.S.A. 2C:35-1.1c. (emphasis added).

Although the subcommittee majority was careful to point out that it did not condone the possession or use of any amount of illicit drugs, its recommendations, if adopted, would trivialize drug use offenses. The Legislature, of course, eschewed that approach, particularly with respect to especially dangerous substances such as "crack" cocaine (which is typically purchased by users in very small quantities).[33]

Were New Jersey's drug laws to be rewritten so as to eliminate the "criminal process" -- the goal expressly sought by the majority of the Subcommittee, judges and court support staff would have little or no opportunity to discover the nature and extent of the violator's drug problem. This is especially ironic given the criticism that the Comprehensive Drug Reform Act fails to recognize the importance of rehabilitation and individualized treatment as a major sentencing objective. If, as it turned out, an offender is truly a "recreational" user, then stern punishment, coupled with having to participate in a somewhat intimidating judicial process, would not only further the goal of general deterrence, but might well also serve to get his or her attention and discourage future violations -- an objective sometimes called "special deterrence." If, on the other hand,

---

[33] It is interesting to note that the Comprehensive Drug Reform Act was amended in 1988 to create a new disorderly persons offense for failing voluntarily to turn over illicit drugs to the nearest law enforcement officer. L. 1988, c. 44 (N.J.S.A. 2C:35-10c.). This new offense was created, in part, so as to provide an appropriate municipal court downgrade option in so-called "one-pill" or "trace amount" cases.

the violator was drug dependent, or in danger of becoming so, than a court in a mere non-criminal "citation" scheme would, for all practical purposes, lose this important opportunity to use the coercive tools at the judiciary's disposal (either conditions of pretrial release or final post-conviction sanctions) to intervene and to order the person to participate in meaningful rehabilitation.

b. Revocation or Postponement of Driving Privileges

N.J.S.A. 2C:35-16 provides for the mandatory forfeiture or postponement of driving privileges of all persons convicted of or adjudicated delinquent for any drug offense. Preliminary results from the most recent survey of New Jersey high school students (conducted in the Fall of 1989) appear to confirm that the risks posed by this sanction are having a significant impact on young, would-be drug offenders, providing them with one additional reason or excuse[34] to say no to drugs. Preliminary findings from the 1989 survey, for example, show that 41 percent of the students surveyed reported that the risk of losing or delaying their driving privileges "strongly influenced" their decision to

---

[34] Many children who are inclined to say no to drugs are pressured by their peers to experiment with illicit substances. The New Jersey mandatory driver's license postponement provision provides these children with one more argument to use in explaining to would-be dealers (including friends and classmates) the reasons for their decision not to use drugs. When this occurs, it cannot be said that the law or the risks posed by the law "caused" the child to refrain from drug use. Even so, the Legislature recognized its responsibility to provide every possible reason, incentive and rationalization for young people to stay drug-free.

use illicit drugs. 18.4 percent reported that this risk influenced them "a little," and 24.4 percent reported that this risk made "no difference." The remaining 16.5 percent reported that they "didn't know" that they would lose or delay their driving privileges under New Jersey law.

Obviously, it is difficult to interpret these results without some historical basis for comparison. It is also impossible to conclude from the survey that the new law (or the perceived risks associated with the aggressive enforcement of this law) "caused" any student to refrain from illicit drug use. Clearly, this risk is but one factor in a complicated decision-making process. Even so, on a purely non-scientific level of inquiry, it is noteworthy that 4 out of every 10 high school students surveyed said that this risk was significant (that is, strongly influenced their decision to use an illicit drug), and that far fewer -- only one out of four -- reported that this risk made no difference to them. In the circumstances, it appears that it is well worth having such a law in place as a means of providing an additional reason and incentive for citizens to say no to drugs.

It is interesting to note, moreover, that this sanction, as applied to drug offenders, is hardly a new one in New Jersey. N.J.S.A. 2A:170-8, until it was repealed in 1970 by the Title 24 Controlled Dangerous Substances Act,[35] mandated that a convicted

---

[35] The replacement provision in the 1970 law permitted, but did not require, the court at sentencing to forfeit the defendant's driving privileges for up to two years. See N.J.S.A.

drug user lose his or her driving privileges for one year (or until the Director of Motor Vehicles determined that the offender was no longer a drug user). See State v. Smith, 58 N.J. 202 (1971). The New Jersey Supreme Court, in upholding this provision against constitutional attack in a case where the defendant's marijuana use was unconnected with the operation of an automobile, stated:

> In fixing a penalty for violation of its penal code, the Legislature may properly consider the elements of punishment, deterrence and rehabilitation. In our judgment, imposition of temporary forfeiture of a driver's license on a narcotics user had a reasonable relation to all three of those goals. For example, the aim to deter drug users from driving on the highways obviously is a sensible one . . . . The fact that barring a convicted marijuana user from the driver's seat for a period may be a novel penalty, does not make it arbitrary or unusual punishment. A contrary view would stand in the way of reasonable innovations in penology. [State v. Smith, supra, 58 N.J. at 213].

Obviously, this sanction, besides its deterrent effect, is also intended to protect the public by making certain that convicted illicit substance abusers are kept off the State's highways. See Atkinson v. Parsekian, 37 N.J. 143, 155 (1962); State v. Zolta, 217 N.J. Super. 209, 213 (App. Div. 1987). As the court noted in Sylkox v. Dearden, 30 N.J. Super. 325, 330 (App. Div. 154), the suspension of driving privileges is "a

---

24:21-20c (repealed). In practice, this discretionary sanction was only rarely imposed. The new law, in contrast, has resulted in the revocation of 16,996 driver's license in 1989 alone, according to the Division of Motor Vehicles.

measure for the prospective safety and protection of the traveling public in the nature of an auxiliary remedial sanction."[36]

Although the suspension of driving privileges is not painless (and is not meant to be otherwise), the courts have consistently held that this sanction "clearly [has] a place in the inventory of rehabilitative measures available to the judicial system." State v. John Galletley, No. A-2186-86T4 (App. Div., December 7, 1987) (slip opinion at 4). See also Fosgate v. Strelecki, 103 N.J. Super. 435 (App. Div. 1968) (license suspension is rehabilitative as well as punitive), aff'd 53 N.J. 55 (1968).

For all of these reasons, the suggestion by the Post Adjudication and Community Involvement Committee that license suspension under the Comprehensive Drug Reform Act should be "subject to the judge's discretion . . . in hardship cases or other special circumstances" is inappropriate and would seriously undermine the deterrent impact of this vital, cost-effective sanction. While it is true, almost by definition, that the mandatory revocation of driving privileges poses a greater hardship upon those whose livelihood depends upon their ability to drive, it is also true that the deterrent impact upon these

---

[36] The criticism that N.J.S.A. 2C:35-16 inappropriately interferes with the ability of convicted drug dependent offenders to commute to and from outpatient rehabilitation facilities is especially difficult to reconcile with the well-established legislative policy that such offenders should be denied driving privileges if for no other reason than to safeguard the motoring public.

individuals is proportionately greater. In other words, those for whom the temporary loss of driving privileges would be especially painful should be those who have the greatest incentive to obey the law and refrain from illicit drug use. The Legislature has given fair warning: if you value your privilege to drive in this State, do not violate its drugs laws.

In the circumstances, it is clear that those for whom this sanction would have the greatest deterrent impact would be those very persons who would be most likely to seek and receive a judicial exemption from this form of punishment. Hence, were the law to be amended to permit judges to waive this sanction in "hardship" cases, the Legislature would be sending exactly the wrong message to the public, that is, that those who depend upon their driver's licenses need not be too wary of being convicted for illicit drug use.

Finally, in responding to the criticism that N.J.S.A. 2C:35-16 is currently too inflexible and is thus unfair in certain "hardship" cases, it is important to bear in mind that this sanction is mandatory only where the defendant is convicted; the suspension of driving privileges is discretionary where the defendant is granted a conditional discharge pursuant to N.J.S.A. 2C:36A-1 or admitted to pretrial intervention pursuant to N.J.S.A. 2C:43-12.[37] Compare the "DEDR" penalty, which is

---

[37] Admittedly, the Legislature's decision to allow judges to forego suspending the driver's licenses of persons admitted to a diversion program somewhat diminishes the certainty of punishment, especially given the significant percentage of persons charged with drug use or simple possession who are

imposed as a condition of admission to conditional discharge or pretrial intervention. See State v. Balu, 234 N.J. Super. 331 (App. Div. 1989) (affirming the constitutionality of this practice). Hence, as a practical matter, defendants who are subject to the so-called "mechanically applied" suspension of driving privileges are those who are ineligible for either of these diversion programs, presumably by reason of having been charged with an especially serious drug crime, having been previously convicted of an offense or having previously taken advantage of conditional discharge or PTI. In the circumstances, one would be hard-pressed to argue that these offenders have not been given fair and ample warning.

c. The DEDR Penalty.

The mandatory DEDR penalty is designed to serve two important, distinct purposes. Obviously, the cash penalty is a straightforward form of punishment, intended to prevent drug use and sales by (literally) increasing the costs associated with the

---

allowed to take advantage of this rehabilitative option. See note 23, supra. The Legislature recognized, however, that precisely because driver's licenses are so important to so many offenders, were the law otherwise, these offenders would be strongly inclined to forego applying for conditional discharge or PTI and would instead contest the charges at trial, which might overwhelm Superior and especially municipal courts. In other words, despite criticism that the Legislature ignored "human realities," this statutory scheme is actually a carefully balanced one, designed to have the greatest possible deterrent effect in light of the inherent constraints of limited judicial resources.

decision to engage in this type of unlawful conduct. Besides its immediate deterrent effect, the monies collected from the assessment of DEDR penalties are dedicated to fund the Governor's Alliance to Prevent Alcoholism and Drug Abuse -- a statewide network of community-based, grassroots drug education, prevention and treatment initiatives. L. 1988, c. 51. This provision thus allows the law enforcement community, by aggressively enforcing the Comprehensive Drug Reform Act, to make a significant, tangible contribution to efforts to reduce the demand for drugs by providing a stable funding base for these essential community-based programs. To date, more than $15 million in DEDR penalties have been collected, and based on the most recent quarterly collections, New Jersey can expect to bring in approximately $9 million per year to help to pay for these essential demand reduction programs.

Even so, the Legislature must come to recognize, as the critics of the Comprehensive Drug Reform Act correctly point out, that some defendants, and especially juveniles residing in urban neighborhoods, are simply unable to pay the entire amount of their DEDR penalty assessments, even when given an opportunity to do so over time and in installments. It is also true that many probation departments have been forced to divert scarce resources to engage in cost-ineffective collection efforts. Many judges justifiably complain that the mandatory nature of these cash penalties, which range from $500 to $3,000 and are imposed without regard to the defendant's ability to pay, can undermine

the authority of the judiciary by requiring courts to impose payment orders which they know will go unheeded.

Most disturbing of all, the law as presently written provides little or no real punishment with respect to a large population of less serious drug offenders who (appropriately enough) are not likely to be sentenced to a State Prison or even county jail term. Indeed, indigent offenders who are unable to pay their DEDR penalty assessments are also unlikely to own or have legal access to automobiles or to possess (or bother to apply for) driver's licenses. In other words, two of the three[38] mandatory, non-incarcerative sanctions featured in the Comprehensive Drug Reform Act are not particularly well suited to function as a deterrent with respect to certain groups of citizens, including the urban poor, who, ironically, are among those who are most at risk to use illicit substances.

Two years ago, the Division of Criminal Justice suggested that the Comprehensive Drug Reform Act be amended so as to authorize courts to order truly indigent defendants to perform community or "reformative"[39] service in lieu of paying their DEDR

---

38 The Comprehensive Drug Reform also mandates that persons convicted of simple use or possession occurring within a drug-free school zone must, unless sentenced to a term of incarceration, be ordered to perform at least 100 hours of community service. N.J.S.A. 2C:35-10.

39 The Division of Criminal Justice recognized that a large number of drug offenders would be difficult to place in traditional community service programs and might overwhelm the current system. Accordingly, the Division proposed a new concept: "reformative service." The term "reformative" service would include participation in GED equivalency and job training programs, attendance at Alcoholics Anonymous and Narcotics

penalties entirely in cash. In essence, the Division of Criminal Justice has proposed that indigent offenders (adult and juvenile) should be credited for work actually performed, or for beneficial activities actually engaged in, at some reasonable hourly or daily rate.

Since this idea was first proposed by the Division of Criminal Justice, there have been a number of meetings with representatives from the Administrative Office of the Courts, and efforts are now underway to work out the necessary details of such a proposed legislative initiative to make certain that this option would only be used as a means of last resort where other collection efforts have failed or are likely to fail, so as to guarantee that the total amount of DEDR penalty assessments collected for use by the Governor's Council on Alcoholism and Drug Abuse will not be reduced.

In sum, such a statutory revision would not undermine either of the legislative purposes for imposing a DEDR penalty. If properly drafted and implemented, such a revision would not reduce DEDR revenues, since the only persons who would be excused from cash payment would be those who could not pay in any event, even if given an opportunity to do so in installments. As to the goal of deterrence, such a scheme would at least ensure the imposition of an alternative sanction which, though hardly

---

Anonymous, Outward Bound and other self-reliance programs and similar activities designed to address a defendant's drug dependency or otherwise to enhance his or her vocational, educational or social skills.

"punitive" in a traditional sense, would nonetheless impose limitations on the defendant's liberty by ordering him or her to undertake activities, however beneficial, which the individual would not have undertaken on his or her own initiative.

Indeed, this approach would serve further to demonstrate that the goal of rehabilitation need not necessarily conflict with the concept of strict punishment. It would also confirm that giving a drug offender his "just deserts" can be an act of compassion, even if the offender doesn't necessarily agree with that assessment at the time of sentencing.

APPENDIX A

APPENDIX A

COMPARISON OF THE METHOD OF DISPOSITION FOR DISTRIBUTION OFFENSES* 1/7/88

TYPE OF DISPOSITION	ESSEX NUMBER	ESSEX PERCENT	CAMDEN NUMBER	CAMDEN PERCENT
PENDING	11	11.0%	0	0.0%
FUGITIVE	6	6.0%	4	4.0%
PTI/DIVERSION	1	1.0%	1	1.0%
DISPOSED AT SENTENCE	3	3.0%	1	1.0%
DOWNGRADE/REMAND	4	4.0%	8	8.0%
NO BILL	1	1.0%	2	2.0%
DISMISSED	11	11.0%	15	15.0%
JURY TRIAL	3	3.0%	3	3.0%
PLEA	60	60.0%	66	66.0%
	100		100	

COMPARISON OF THE METHOD OF DISPOSITION FOR DISTRIBUTION OFFENSES* 7/7/88

TYPE OF DISPOSITION	ESSEX NUMBER	ESSEX PERCENT	CAMDEN NUMBER	CAMDEN PERCENT
PENDING	22	22.0%	1	1.0%
FUGITIVE	8	8.0%	1	1.0%
PTI/DIVERSION	1	1.0%	3	3.0%
DISPOSED AT SENTENCE	2	2.0%	0	0.0%
DOWNGRADE/REMAND	4	4.0%	11	11.0%
NO BILL	1	1.0%	0	0.0%
DEFENDANT DECEASED			1	1.0%
DISMISSED	7	7.0%	15	15.0%
JURY TRIAL	1	1.0%	0	0.0%
PLEA	54	54.0%	68	68.0%
	100		100	

* DATA COLLECTED FOR THE FIRST 100 ARRESTS FROM THE DATES INDICATED FOR WHICH DISTRIBUTION WAS CHARGED AND NO SCHOOL ZONE CHARGE WAS INCLUDED.

COMPARISON OF ESSEX AND CAMDEN COUNTIES
DISPOSITION OF SCHOOL ZONE ARRESTS
ARRESTS FROM 1/7/88*

NUMBER OF DAYS FROM ARREST TO DISPOSITION	ESSEX NUMBER	ESSEX CUMULATIVE %	CAMDEN NUMBER	CAMDEN CUMULATIVE %
LESS THAN/= 90 DAYS	1	1.0%	22	22.0%
GREATER THAN 90, LESS THAN = 180	6	7.0%	33	55.0%
GREATER THAN 190, LESS THAN = 270	21	28.0%	24	79.0%
GREATER THAN 270, LESS THAN = 360	14	42.0%	7	86.0%
GREATER THAN 360, LESS THAN = 450	9	51.0%	5	91.0%
GREATER THAN 450, LESS THAN = 540	12	63.0%	0	91.0%
GREATER THAN 540, LESS THAN = 630	3	66.0%	1	92.0%
GREATER THAN 630, LESS THAN = 720	6	72.0%	1	93.0%
GREATER THAN 720, LESS THAN = 810	6	78.0%	0	93.0%
GREATER THAN 810, LESS THAN = 900	2	80.0%	0	93.0%
PENDING	13	93.0%	0	93.0%
FUGITIVE	7	100.0%	7	100.0%
TOTAL	100		100	
MEDIAN NUMBER OF DAYS FROM ARREST TO DISPOSITION				
ALL PLEAS	358		137	
PLEAS TO OFFENSE CHARGED	394		167	
PLEA TO OTHER DRUG OFFENSE	345		122	
JURY TRIAL	469		378 **	
ALL EXCEPT FUGITIVE	420		136	

* DATA COLLECTED FOR THE FIRST 100 ARRESTS FROM THE DATES INDICATED FOR WHICH A SCHOOL ZONE CHARGE WAS INCLUDED.

** THERE WERE TWO TRIALS.

COMPARISON OF ESSEX AND CAMDEN COUNTIES
DISPOSITION OF SCHOOL ZONE ARRESTS
ARRESTS FROM 7/7/88*

NUMBER OF DAYS FROM ARREST TO DISPOSITION	ESSEX NUMBER	ESSEX CUMULATIVE %	CAMDEN NUMBER	CAMDEN CUMULATIVE %
LESS THAN/= 90 DAYS	10	10.0%	40	40.0%
GREATER THAN 90, LESS THAN = 180	14	24.0%	28	68.0%
GREATER THAN 190, LESS THAN = 270	20	44.0%	14	82.0%
GREATER THAN 270, LESS THAN = 360	7	51.0%	8	90.0%
GREATER THAN 360, LESS THAN = 450	10	61.0%	3	93.0%
GREATER THAN 450, LESS THAN = 540	7	68.0%	0	93.0%
GREATER THAN 540, LESS THAN = 630	4	72.0%	0	93.0%
GREATER THAN 630, LESS THAN = 720	4	76.0%	0	93.0%
GREATER THAN 720, LESS THAN = 810	0	76.0%	0	93.0%
GREATER THAN 810, LESS THAN = 900	0	76.0%	0	93.0%
PENDING	12	88.0%	1	94.0%
FUGITIVE	12	100.0%	6	100.0%
TOTAL	100		100	
MEDIAN NUMBER OF DAYS FROM ARREST TO DISPOSITION				
ALL PLEAS	231		103	
PLEAS TO OFFENSE CHARGED	363		111	
PLEA TO OTHER DRUG OFFENSE	194		67	
JURY TRIAL	577		226 **	
ALL EXCEPT FUGITIVE	271		111	

* DATA COLLECTED FOR THE FIRST 100 ARRESTS FROM THE DATES INDICATED FOR WHICH A SCHOOL ZONE CHARGE WAS INCLUDED.

** THERE WERE TWO TRIALS.

COMPARISON OF ESSEX AND CAMDEN COUNTIES
DISPOSITION OF DISTRIBUTION ARRESTS
ARRESTS FROM 1/7/88*

NUMBER OF DAYS FROM ARREST TO DISPOSITION	ESSEX NUMBER	ESSEX CUMULATIVE %	CAMDEN NUMBER	CAMDEN CUMULATIVE %
LESS THAN/= 90 DAYS	8	8.0%	30	30.0%
GREATER THAN 90, LESS THAN = 180	15	23.0%	45	75.0%
GREATER THAN 190, LESS THAN = 270	14	37.0%	8	83.0%
GREATER THAN 270, LESS THAN = 360	13	50.0%	7	90.0%
GREATER THAN 360, LESS THAN = 450	6	56.0%	4	94.0%
GREATER THAN 450, LESS THAN = 540	11	67.0%	0	94.0%
GREATER THAN 540, LESS THAN = 630	3	70.0%	0	94.0%
GREATER THAN 630, LESS THAN = 720	7	77.0%	2	96.0%
GREATER THAN 720, LESS THAN = 810	4	81.0%	0	96.0%
GREATER THAN 810, LESS THAN = 900	2	83.0%	0	96.0%
PENDING	11	94.0%	0	96.0%
FUGITIVE	6	100.0%	4	100.0%
TOTAL	100		100	

MEDIAN NUMBER OF DAYS FROM ARREST TO DISPOSITION		
ALL PLEAS	287	124
PLEAS TO OFFENSE CHARGED	279	121
PLEA TO OTHER DRUG OFFENSE	415	123
JURY TRIAL	163	444 **
ALL EXCEPT FUGITIVE	320	120

* DATA COLLECTED FOR THE FIRST 100 ARRESTS FROM THE DATES INDICATED FOR WHICH A SCHOOL ZONE CHARGE WAS INCLUDED.

** THERE WERE TWO TRIALS.

COMPARISON OF ESSEX AND CAMDEN COUNTIES
DISPOSITION OF DISTRIBUTION ARRESTS
ARRESTS FROM 7/7/88*

NUMBER OF DAYS FROM ARREST TO DISPOSITION	ESSEX NUMBER	ESSEX CUMULATIVE %	CAMDEN NUMBER	CAMDEN CUMULATIVE %
LESS THAN/= 90 DAYS	14	14.0%	52	52.0%
GREATER THAN 90, LESS THAN = 180	8	22.0%	23	75.0%
GREATER THAN 190, LESS THAN = 270	19	41.0%	12	87.0%
GREATER THAN 270, LESS THAN = 360	13	54.0%	4	91.0%
GREATER THAN 360, LESS THAN = 450	9	63.0%	4	95.0%
GREATER THAN 450, LESS THAN = 540	1	64.0%	1	96.0%
GREATER THAN 540, LESS THAN = 630	2	66.0%	2	98.0%
GREATER THAN 630, LESS THAN = 720	4	70.0%	0	98.0%
GREATER THAN 720, LESS THAN = 810	0	70.0%	0	98.0%
GREATER THAN 810, LESS THAN = 900	0	70.0%	0	98.0%
PENDING	22	92.0%	1	99.0%
FUGITIVE	8	100.0%	1	100.0%
TOTAL	100		100	

MEDIAN NUMBER OF DAYS FROM ARREST TO DISPOSITION				
ALL PLEAS	216		35	
PLEAS TO OFFENSE CHARGED	212		81	
PLEA TO OTHER DRUG OFFENSE	220		143	
JURY TRIAL	205	**	—	***
ALL EXCEPT FUGITIVE	314		82	

* DATA COLLECTED FOR THE FIRST 100 ARRESTS FROM THE DATES INDICATED FOR WHICH A SCHOOL ZONE CHARGE WAS NOT INCLUDED.

** ONE JURY TRIAL

*** NO JURY TRIALS.

COMPARISON OF SCHOOL ZONE AND DISTRIBUTION ARRESTS*
IN ESSEX COUNTY

TYPE OF DISPOSITION	SCHOOL ZONE 1/7/88 NUMBER	SCHOOL ZONE 1/7/88 PERCENT	DISTRIBUTION 1/7/88 NUMBER	DISTRIBUTION 1/7/88 PERCENT
PENDING	13	13.0%	11	11.0%
FUGITIVE	7	7.0%	6	6.0%
PTI/DIVERSION	1	1.0%	1	1.0%
DISPOSED AT SENTENCE	0	0.0%	3	3.0%
DOWNGRADE/REMAND	0	0.0%	4	4.0%
NO BILL	2	2.0%	1	1.0%
DISMISSED	9	9.0%	11	11.0%
JURY TRIAL	7	7.0%	3	3.0%
PLEA	61	61.0%	60	60.0%
	100		100	

* DATA COLLECTED FOR THE FIRST 100 ARRESTS FROM THE DATES INDICATED FOR WHICH A SCHOOL ZONE CHARGE WAS INCLUDED.

COMPARISON OF SCHOOL ZONE AND DISTRIBUTION ARRESTS**
IN ESSEX COUNTY

TYPE OF DISPOSITION	SCHOOL ZONE 7/7/88 NUMBER	SCHOOL ZONE 7/7/88 PERCENT	DISTRIBUTION 7/7/88 NUMBER	DISTRIBUTION 7/7/88 PERCENT
PENDING	12	12.0%	22	22.0%
FUGITIVE	12	12.0%	8	8.0%
PTI/DIVERSION	0	0.0%	1	1.0%
DISPOSED AT SENTENCE	1	1.0%	2	2.0%
DOWNGRADE/REMAND	1	1.0%	4	4.0%
NO BILL	1	1.0%	1	1.0%
DISMISSED	8	8.0%	7	7.0%
JURY TRIAL	3	3.0%	1	1.0%
PLEA	62	62.0%	54	54.0%
	100		100	

** DATA COLLECTED FOR THE FIRST 100 ARRESTS FROM THE DATES INDICATED FOR WHICH A SCHOOL ZONE CHARGE WAS INCLUDED.

COMPARISON OF DISPOSITION RATES FOR SCHOOL ZONE AND DISTRIBUTION ARRESTS ESSEX COUNTY ARRESTS FROM 1/7/88*

NUMBER OF DAYS FROM ARREST TO DISPOSITION	SCHOOL ZONE NUMBER	SCHOOL ZONE CUMULATIVE %	DISTRIBUTION NUMBER	DISTRIBUTION CUMULATIVE %
LESS THAN/= 90 DAYS	1	1.0%	8	8.0%
GREATER THAN 90, LESS THAN = 180	6	7.0%	15	23.0%
GREATER THAN 190, LESS THAN = 270	21	28.0%	14	37.0%
GREATER THAN 270, LESS THAN = 360	14	42.0%	13	50.0%
GREATER THAN 360, LESS THAN = 450	9	51.0%	6	56.0%
GREATER THAN 450, LESS THAN = 540	12	63.0%	11	67.0%
GREATER THAN 540, LESS THAN = 630	3	66.0%	3	70.0%
GREATER THAN 630, LESS THAN = 720	6	72.0%	7	77.0%
GREATER THAN 720, LESS THAN = 810	6	78.0%	4	81.0%
GREATER THAN 810, LESS THAN = 900	2	80.0%	2	83.0%
PENDING	13	93.0%	11	94.0%
FUGITIVE	7	100.0%	6	100.0%
TOTAL	100		100	

MEDIAN NUMBER OF DAYS FROM ARREST TO DISPOSITION		
ALL PLEAS	358	287
PLEAS TO OFFENSE CHARGED	394	279
PLEAS TO OTHER DRUG OFFENSE	345	415
JURY TRIAL	469	163
ALL EXCEPT FUGITIVE	420	320

* DATA COLLECTED FOR THE FIRST 100 ARRESTS FOR EACH CHARGE.

COMPARISON OF DISPOSITION RATES FOR
SCHOOL ZONE AND DISTRIBUTION ARRESTS*
ESSEX COUNTY ARRESTS FROM 7/7/88**

NUMBER OF DAYS FROM ARREST TO DISPOSITION	SCHOOL ZONE NUMBER	SCHOOL ZONE CUMULATIVE %	DISTRIBUTION NUMBER	DISTRIBUTION CUMULATIVE %
LESS THAN/= 90 DAYS	10	10.0%	14	14.0%
GREATER THAN 90, LESS THAN = 180	14	24.0%	8	22.0%
GREATER THAN 190, LESS THAN = 270	20	44.0%	19	41.0%
GREATER THAN 270, LESS THAN = 360	7	51.0%	13	54.0%
GREATER THAN 360, LESS THAN = 450	10	61.0%	9	63.0%
GREATER THAN 450, LESS THAN = 540	7	68.0%	1	64.0%
GREATER THAN 540, LESS THAN = 630	4	72.0%	2	66.0%
GREATER THAN 630, LESS THAN = 720	4	76.0%	4	70.0%
GREATER THAN 720, LESS THAN = 810	0	76.0%	0	70.0%
GREATER THAN 810, LESS THAN = 900	0	76.0%	0	70.0%
PENDING	12	88.0%	22	92.0%
FUGITIVE	12	100.0%	8	100.0%
TOTAL	100		100	

MEDIAN NUMBER OF DAYS FROM ARREST TO DISPOSITION		
ALL PLEAS	231	216
PLEAS TO OFFENSE CHARGED	363	212
PLEA TO OTHER DRUG OFFENSE	194	220
JURY TRIAL	577	205***
ALL EXCEPT FUGITIVES	271	314

* DATA PROVIDED FOR DISPOSITIONS RESULTING FROM PLEAS OR TRIALS.

** DATA COLLECTED FOR THE FIRST 100 ARRESTS FOR EACH CHARGE.

*** THERE WAS ONLY ONE JURY TRIAL.

SCHOOL ZONE CASES DISPOSED IN ESSEX COUNTY

TYPE OF DISPOSITION	ARRESTS* 1/7/88 NUMBER	ARRESTS* 1/7/88 PERCENT	ARRESTS 7/7/88 NUMBER	ARRESTS 7/7/88 PERCENT
PENDING	13	13.0%	12	12.0%
FUGITIVE	7	7.0%	12	12.0%
PTI/DIVERSION	1	1.0%	0	0.0%
DISPOSED AT SENTENCE	0	0.0%	1	1.0%
DOWNGRADE/REMAND	0	0.0%	1	1.0%
NO BILL	2	2.0%	1	1.0%
DISMISSED	9	9.0%	8	8.0%
JURY TRIAL	7	7.0%	3	3.0%
PLEA	61	61.0%	62	62.0%
	100		100	

* DATA COLLECTED FOR THE FIRST 100 ARRESTS FROM THE DATES INDICATED FOR WHICH A SCHOOL ZONE CHARGE WAS INCLUDED.

DISTRIBUTION CASES DISPOSED IN ESSEX COUNTY

TYPE OF DISPOSITION	ARRESTS** 1/7/88 NUMBER	ARRESTS** 1/7/88 PERCENT	ARRESTS 7/7/88 NUMBER	ARRESTS 7/7/88 PERCENT
PENDING	11	11.0%	22	22.0%
FUGITIVE	6	6.0%	8	8.0%
PTI/DIVERSION	1	1.0%	1	1.0%
DISPOSED AT SENTENCE	3	3.0%	2	2.0%
DOWNGRADE/REMAND	4	4.0%	4	4.0%
NO BILL	1	1.0%	1	1.0%
DISMISSED	11	11.0%	7	7.0%
JURY TRIAL	3	3.0%	1	1.0%
PLEA	60	60.0%	54	54.0%
	100		100	

** DATA COLLECTED FOR THE FIRST 100 ARRESTS FROM THE DATES INDICATED FOR WHICH DISTRIBUTION WAS CHARGED AND NO SCHOOL ZONE CHARGE WAS INCLUDED.

COMPARISON OF SCHOOL ZONE AND DISTRIBUTION ARRESTS*
IN CAMDEN COUNTY

TYPE OF DISPOSITION	SCHOOL ZONE 1/7/88 NUMBER	SCHOOL ZONE 1/7/88 PERCENT	DISTRIBUTION 1/7/88 NUMBER	DISTRIBUTION 1/7/88 PERCENT
PENDING	0	0.0%	0	0.0%
FUGITIVE	7	7.0%	4	4.0%
PTI/DIVERSION	0	0.0%	1	1.0%
DISPOSED AT SENTENCE	0	0.0%	1	1.0%
DOWNGRADE/REMAND	3	3.0%	8	8.0%
NO BILL	1	1.0%	2	2.0%
DISMISSED	9	9.0%	15	15.0%
JURY TRIAL	2	2.0%	3	3.0%
PLEA	78	78.0%	66	66.0%
	100		100	

COMPARISON OF SCHOOL ZONE AND DISTRIBUTION ARRESTS*
IN CAMDEN COUNTY

TYPE OF DISPOSITION	SCHOOL ZONE 7/7/88 NUMBER	SCHOOL ZONE 7/7/88 PERCENT	DISTRIBUTION 7/7/88 NUMBER	DISTRIBUTION 7/7/88 PERCENT
PENDING	1	1.0%	1	1.0%
FUGITIVE	6	6.0%	1	1.0%
PTI/DIVERSION	0	0.0%	3	3.0%
DISPOSED AT SENTENCE	0	0.0%	0	0.0%
DOWNGRADE/REMAND	2	2.0%	11	11.0%
NO BILL	0	0.0%	0	0.0%
DEFENDANT DECEASED			1	1.0%
DISMISSED	7	7.0%	15	15.0%
JURY TRIAL	4	4.0%	0	0.0%
PLEA	80	80.0%	68	68.0%
	100		100	

* DATA COLLECTED FOR THE FIRST 100 ARRESTS FOR EACH CHARGE AND TIME PERIOD INDICATED.

COMPARISON OF DISPOSITION RATES FOR SCHOOL ZONE AND DISTRIBUTION ARRESTS CAMDEN COUNTY ARRESTS FROM 1/7/88*

NUMBER OF DAYS FROM ARREST TO DISPOSITION	SCHOOL ZONE NUMBER	SCHOOL ZONE CUMULATIVE %	DISTRIBUTION NUMBER	DISTRIBUTION CUMULATIVE %
LESS THAN/= 90 DAYS	22	22.0%	30	30.0%
GREATER THAN 90, LESS THAN = 180	33	55.0%	45	75.0%
GREATER THAN 190, LESS THAN = 270	24	79.0%	8	83.0%
GREATER THAN 270, LESS THAN = 360	7	86.0%	7	90.0%
GREATER THAN 360, LESS THAN = 450	5	91.0%	4	94.0%
GREATER THAN 450, LESS THAN = 540	0	91.0%	0	94.0%
GREATER THAN 540, LESS THAN = 630	1	92.0%	0	94.0%
GREATER THAN 630, LESS THAN = 720	1	93.0%	2	96.0%
GREATER THAN 720, LESS THAN = 810	0	93.0%	0	96.0%
GREATER THAN 810, LESS THAN = 900	0	93.0%	0	96.0%
PENDING	0		0	
FUGITIVE	7		4	
TOTAL	100		100	
MEDIAN NUMBER OF DAYS FROM ARREST TO DISPOSITION				
ALL PLEAS	137		124	
PLEAS TO OFFENSE CHARGED	167		121	
PLEA TO OTHER DRUG OFFENSE	122		123	
JURY TRIAL	378 **		444	
ALL EXCEPT FUGITIVE	136		120	

* DATA COLLECTED FOR THE FIRST 100 ARRESTS FOR EACH CHARGE.

** THERE WERE TWO JURY TRIALS.

COMPARISON OF DISPOSITION RATES FOR
SCHOOL ZONE AND DISTRIBUTION ARRESTS*
CAMDEN COUNTY ARRESTS FROM 7/7/88**

NUMBER OF DAYS FROM ARREST TO DISPOSITION	SCHOOL ZONE NUMBER	SCHOOL ZONE CUMULATIVE %	DISTRIBUTION NUMBER	DISTRIBUTION CUMULATIVE %
LESS THAN/= 90 DAYS	40	40.0%	52	52.0%
GREATER THAN 90, LESS THAN = 180	28	68.0%	23	75.0%
GREATER THAN 190, LESS THAN = 270	14	82.0%	12	87.0%
GREATER THAN 270, LESS THAN = 360	8	90.0%	4	91.0%
GREATER THAN 360, LESS THAN = 450	3	93.0%	4	95.0%
GREATER THAN 450, LESS THAN = 540	0	93.0%	1	96.0%
GREATER THAN 540, LESS THAN = 630	0	93.0%	2	98.0%
GREATER THAN 630, LESS THAN = 720	0	93.0%	0	98.0%
GREATER THAN 720, LESS THAN = 810	0	93.0%	0	98.0%
GREATER THAN 810, LESS THAN = 900	0	93.0%	0	98.0%
PENDING	1	94.0%	1	99.0%
FUGITIVE	6	100.0%	1	100.0%
TOTAL	100		100	
MEDIAN NUMBER OF DAYS FROM ARREST TO DISPOSITION				
ALL PLEAS	103		35	
PLEAS TO OFFENSE CHARGED	111		81	
PLEA TO OTHER DRUG OFFENSE	67		143	
JURY TRIAL	226		— ***	
ALL EXCEPT FUGITIVE	111		82	

* DATA COLLECTED FOR THE FIRST 100 ARRESTS FOR EACH CHARGE.

** THERE WERE NO JURY TRIALS.

SCHOOL ZONE CASES DISPOSED IN CAMDEN COUNTY

TYPE OF DISPOSITION	ARRESTS* 1/7/88 NUMBER	ARRESTS* 1/7/88 PERCENT	ARRESTS 7/7/88 NUMBER	ARRESTS 7/7/88 PERCENT
PENDING	0	0.0%	1	1.0%
FUGITIVE	7	7.0%	6	6.0%
PTI/DIVERSION	0	0.0%	0	0.0%
DISPOSED AT SENTENCE	0	0.0%	0	0.0%
DOWNGRADE/REMAND	3	3.0%	2	2.0%
NO BILL	1	1.0%	0	0.0%
DISMISSED	9	9.0%	7	7.0%
JURY TRIAL	2	2.0%	4	4.0%
PLEA	78	78.0%	80	80.0%
	100		100	

* DATA COLLECTED FOR THE FIRST 100 ARRESTS FROM THE DATES INDICATED FOR WHICH A SCHOOL ZONE CHARGE WAS INCLUDED.

DISTRIBUTION CASES DISPOSED IN CAMDEN COUNTY

TYPE OF DISPOSITION	ARRESTS** 1/7/88 NUMBER	ARRESTS** 1/7/88 PERCENT	ARRESTS 7/7/88 NUMBER	ARRESTS 7/7/88 PERCENT
PENDING	0	0.0%	1	1.0%
FUGITIVE	4	4.0%	1	1.0%
PTI/DIVERSION	1	1.0%	3	3.0%
DISPOSED AT SENTENCE	1	1.0%	0	0.0%
DOWNGRADE/REMAND	8	8.0%	11	11.0%
NO BILL	2	2.0%	0	0.0%
DEFENDANT DECEASED			1	1.0%
DISMISSED	15	15.0%	15	15.0%
JURY TRIAL	3	3.0%	0	0.0%
PLEA	66	66.0%	68	68.0%
	100		100	

** DATA COLLECTED FOR THE FIRST 100 ARRESTS FROM THE DATES INDICATED FOR WHICH DISTRIBUTION WAS CHARGED AND NO SCHOOL ZONE CHARGE WAS INCLUDED.