

Massachusetts Department of Correction
Luis S. Spencer, Commissioner

MANDATORY MINIMUM DRUG SENTENCES: ONE YEAR AFTER THE GOVERNOR'S CRIME BILL

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by
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March 2014

Acknowledgments

Special recognition needs to be made to Deputy Director Hollie Matthews, Research Analyst Nick Cannata, Research Assistant Melanie Arenson, and Legal Counsel Charles Anderson for their assistance in this publication.

***Authors Note:** The views expressed herein are those of the author and do not necessarily reflect those of the Massachusetts Department of Correction.*

Introduction

On August 2, 2012, Massachusetts Governor Deval Patrick signed into law new legislation: Chapter 192 of the Acts of 2012 (“Chapter 192”), colloquially known as the Governor’s Crime Bill. The central aim of this legislation was to reduce the number of non-violent drug offenders incarcerated by reducing the lengthy mandatory minimum sentences for low-level drug offenders while concurrently implementing more punitive sentencing practices for habitual high-risk violent offenders. Supporters of the bill argued that the warehousing of non-violent drug offenders was doing little to protect the welfare of Massachusetts communities and failed to address the more central issue blighting these offenders—substance abuse. By their very nature, correctional institutions are often challenged to treat and manage the unique needs of substance abusers due to shrinking state budgets, the reallocation of government and community resources, and a lack of intensive case management upon an offender’s release from prison.

Instead of imposing more punitive sentences for low-level drug offenders that continue to adversely compound existing economic, social, and political challenges, the law attempts to alleviate the rising and costly rate of incarceration by taking steps to ensure that only the most recalcitrant and violent criminals occupy prison beds. The law contains a provision which eliminates parole eligibility for certain three-time violent offenders, keeping the most violent high-risk offenders off the street. Comparatively, instead of serving lengthy mandatory prison sentences, a low-level drug offender would now have an opportunity for an earlier release by obtaining more earned good time subsequently reducing their mandatory minimum sentence.

Mandatory Minimum Sentencing

A court cannot impose a sentence whose terms are less than the minimum provided in the statute (referred to as the “statutory minimum”); but the imposed minimum can typically be reduced by earning good time, shortening the parole eligibility period, and inmates may also receive probation, furloughs¹, or work release during the period of the statutory minimum. In contrast, inmates serving sentences on a governing² drug offense who are required to serve a “mandatory” minimum sentence cannot reduce their parole eligibility period below the statutory minimum, and cannot receive probation, furloughs, release for work, education, or program-related activities during the mandatory minimum term.

Under Massachusetts law requiring state prison sentences to contain a minimum and maximum sentence (called “indeterminate” sentences), judges may impose sentences with only a one day difference between the minimum and maximum sentence (e.g. 2 years to 2 years and one day). The common practice of imposing these particular sentence terms for mandatory governing drug offenses precludes the possibility of parole as an inmate is parole-eligible only after serving the minimum sentence, but would be released the very next day. This brief will illustrate the impact of the legislation on the offenders with a mandatory minimum sentence on a governing drug offense in the Massachusetts Department of Correction (MADOC) criminally sentenced jurisdiction population one year following enactment of Chapter 192.

Comparing August 6, 2012 and August 5, 2013 Snapshots

On August 6, 2012, the MADOC criminally sentenced jurisdiction population totaled 10,651 inmates with 1,569 serving a mandatory sentence on a governing drug offense. Of the 1,569 inmates that had a mandatory governing drug offense, nineteen did not receive indeterminate sentences, as they were given determinate sentences (maximum term only) as habitual offenders. These nineteen were not included in this analysis making the total 1,550, representing 15% of the total criminally sentenced jurisdiction population.

Comparatively, on August 5, 2013, the criminally sentenced jurisdiction population totaled 9,876 inmates with 1,089 of those inmates serving a mandatory sentence on a governing drug offense.³ Of the 1,089 inmates that were identified as having a mandatory governing drug offense, fourteen did not receive indeterminate sentences as they were given determinate sentences as habitual offenders. These fourteen were not included in this analysis due to having a maximum sentence only making the total 1,075 and representing 11% of the total criminally sentenced jurisdiction population.

It is important to note that the reduction of offenders who are currently serving a mandatory minimum sentence on a governing drug offense can be attributed to a number of factors. The first of these include that Chapter 192 made its lowered mandatory minimums applicable to those inmates serving one of the governing drug offenses on August 2, 2012, which resulted in the release of certain low-level drug offenders. Second, an overlapping offender cohort was also released during the year following the new legislation as a result of the Hinton drug lab

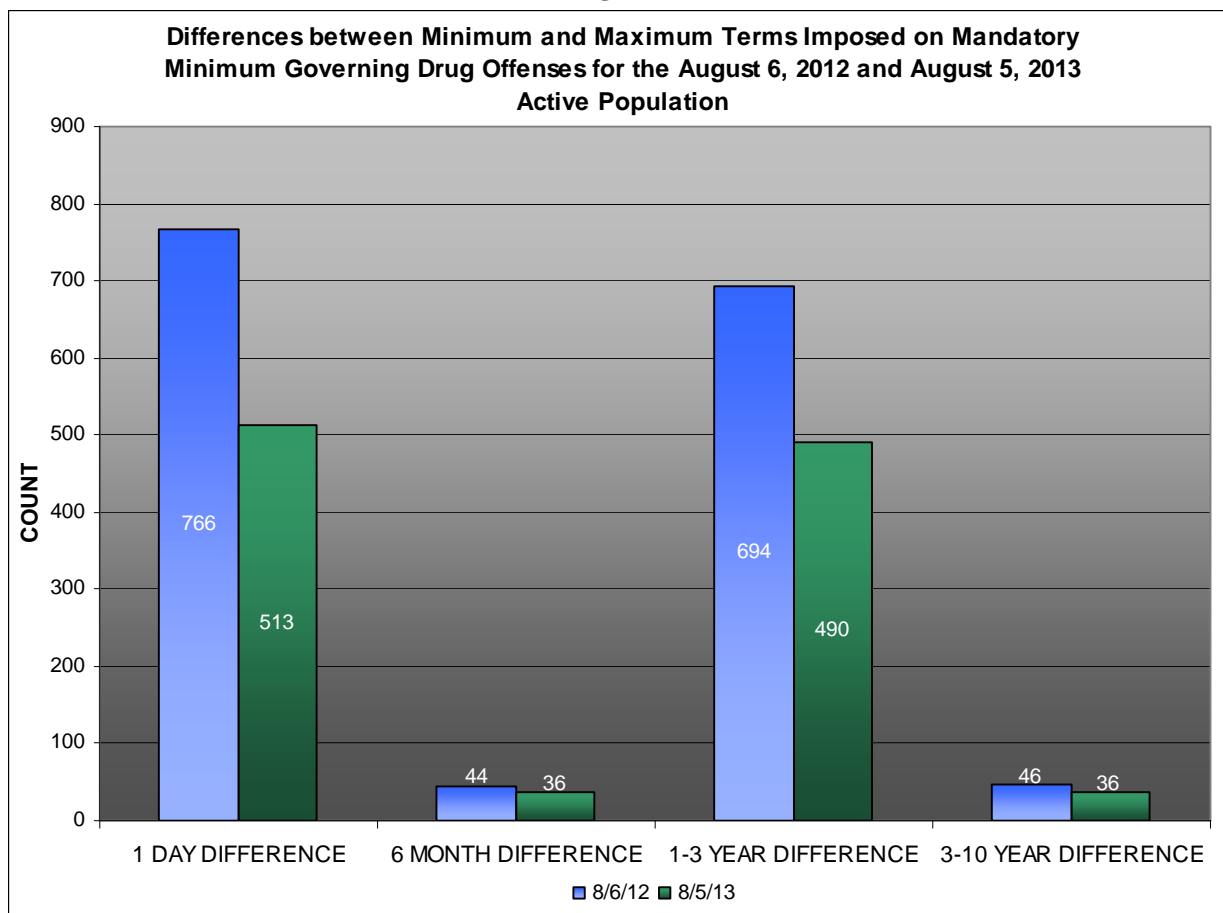
¹ The Massachusetts furlough program was eliminated in 1988.

² Individuals may be incarcerated for multiple offenses. The “governing” offense is the offense that carries the longest maximum sentence.

³ Many of these inmates are serving concurrent sentences for drug and/or non-drug offenses.

investigation with most of these releases occurring between September and November 2012. Third, the number of offenders who are being sentenced to the MADOC pursuant to mandatory governing drug sentences has decreased steadily over the past six years. These factors taken together contribute to a 30% decrease ($n = 475$) among this sub-population as well as the overall 7% reduction of the criminally sentenced jurisdiction population. The following section will discuss the influence of the legislation by comparing the sentence differences of active offenders serving a mandatory minimum sentence on a governing drug offense on August 6, 2012 and August 5, 2013.

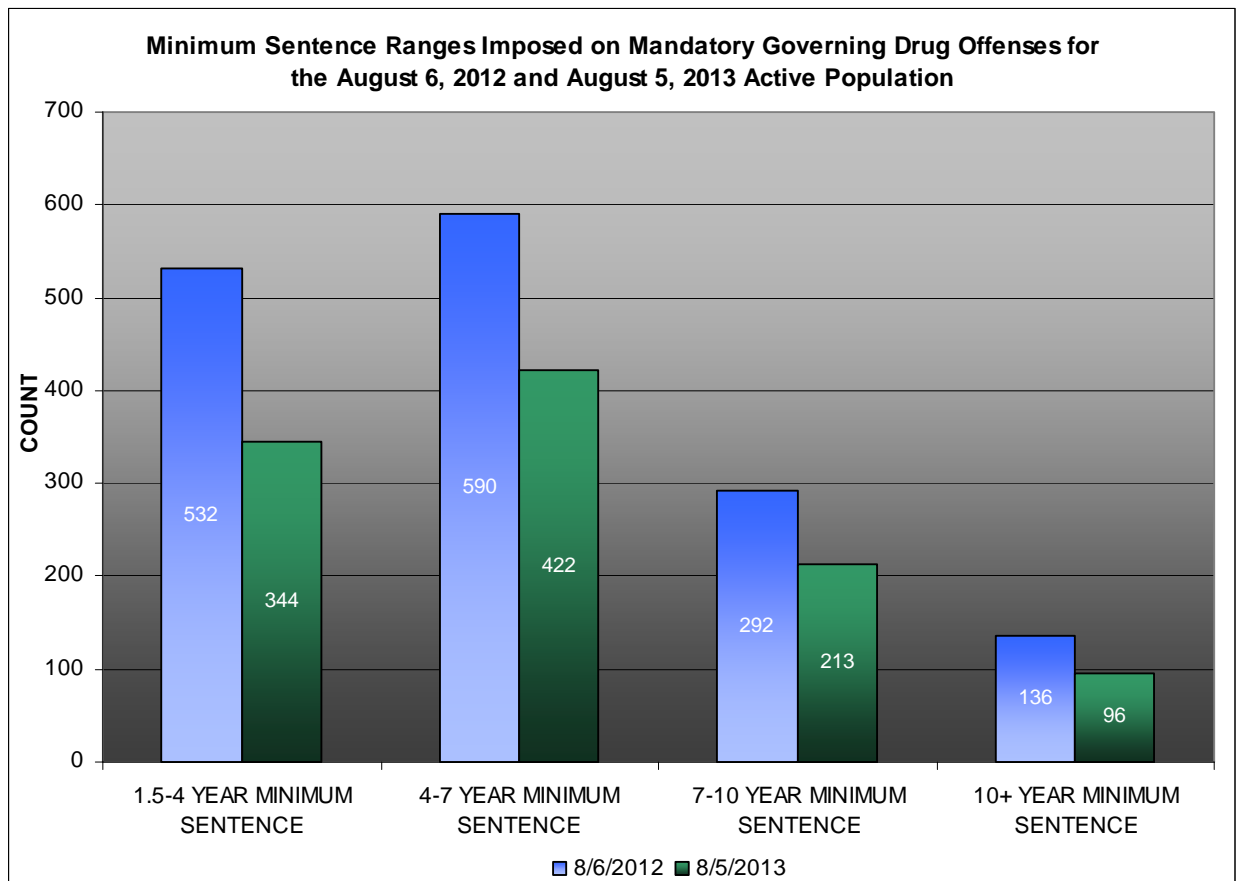
Figure 1



- On August 5, 2013, the difference between mandatory minimum and maximum terms of imposed sentences ranged from a one-day difference between the minimum and the maximum sentence to a 10 year difference. Offenders with a one-day difference between their mandatory minimum and maximum terms decreased in number by 33% in 2013 compared to 2012. Though the number of one-day differences has decreased, approximately half of offenders had a one-day difference between their mandatory minimum and maximum terms: 49% in 2012 and 48% in 2013. Similarly, the number of offenders serving a mandatory minimum sentence with a 1-3 year difference between their minimum and maximum terms (46% in 2013) decreased by 29% while the percentage of mandatory drug offenders falling into this category remained steady at 45% for both years.

- Ninety-seven percent of offenders in the cohort had a difference of three years or less between their minimum and maximum terms ($n = 1,039$), which was proportionally similar to the active population on August 6, 2012 (97%) but decreased in the number of offenders by 31% between August 2012 and August 2013.
- In total, offenders with a mandatory minimum sentence on a governing drug offense in the active population decreased by 31% between August 2012 and August 2013.

Figure 2



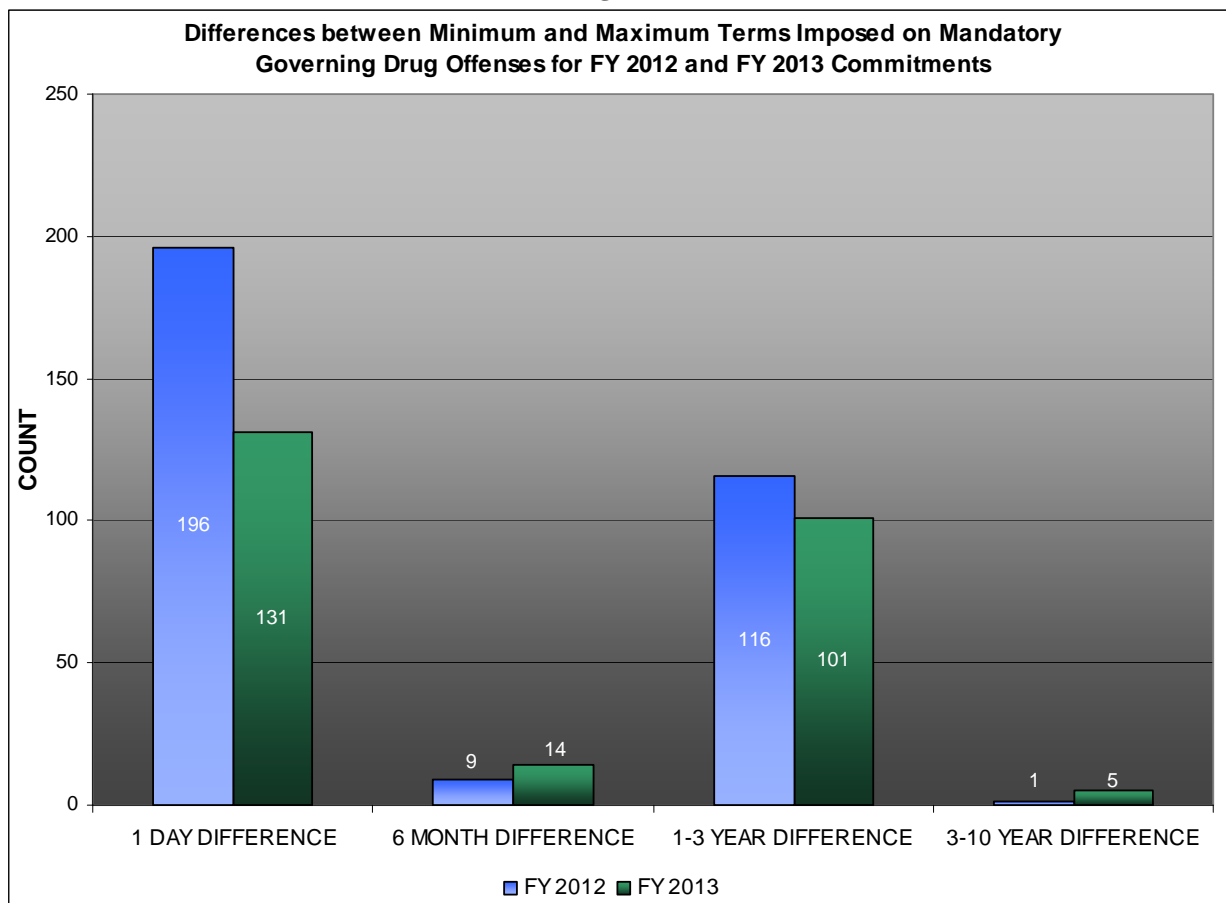
- Offenders serving a minimum sentence⁴ between 1.5-4 years (32%) decreased by 35% between August 2012 and August 2013.
- Offenders serving a minimum sentence between 4-7 years (39%) decreased by 29% between August 2012 and August 2013.
- Offenders serving a minimum sentence of seven 7 years or more (29%) decreased by 28% between August 2012 and August 2013.
- Overall, decreases among this cohort were consistent, reducing in number but maintaining proportion.

⁴ Some minimum terms may exceed the mandatory minimum term required by statute.

Fiscal Year 2012 and 2013 Commitment Comparisons

During fiscal year (FY) 2012, 2,886 offenders were committed to the MADOC with 330 serving a mandatory minimum sentence on a governing drug offense (11% of the total FY 2012 new court commitments). Of the 330 offenders, eight were habitual offenders and given determinate sentences only. These eight were excluded from analysis due to not receiving a minimum sentence, making the FY 2012 total 322. In FY 2013, 2,507 offenders were committed to the MADOC with 257 of those committed serving a sentence on mandatory minimum governing drug offense (10% of the total FY 2013 new court commitments); a 22% drop compared to FY 2012. Six offenders were habitual offenders and excluded from analysis due to not receiving indeterminate sentences and given maximum term sentences only, making the FY 2013 total 251. The following section will discuss the sentence differences between FY 2012 and FY 2013 admissions by comparing new court commitments⁵ that were committed on a governing drug offense and serving a mandatory minimum sentence.

Figure 3

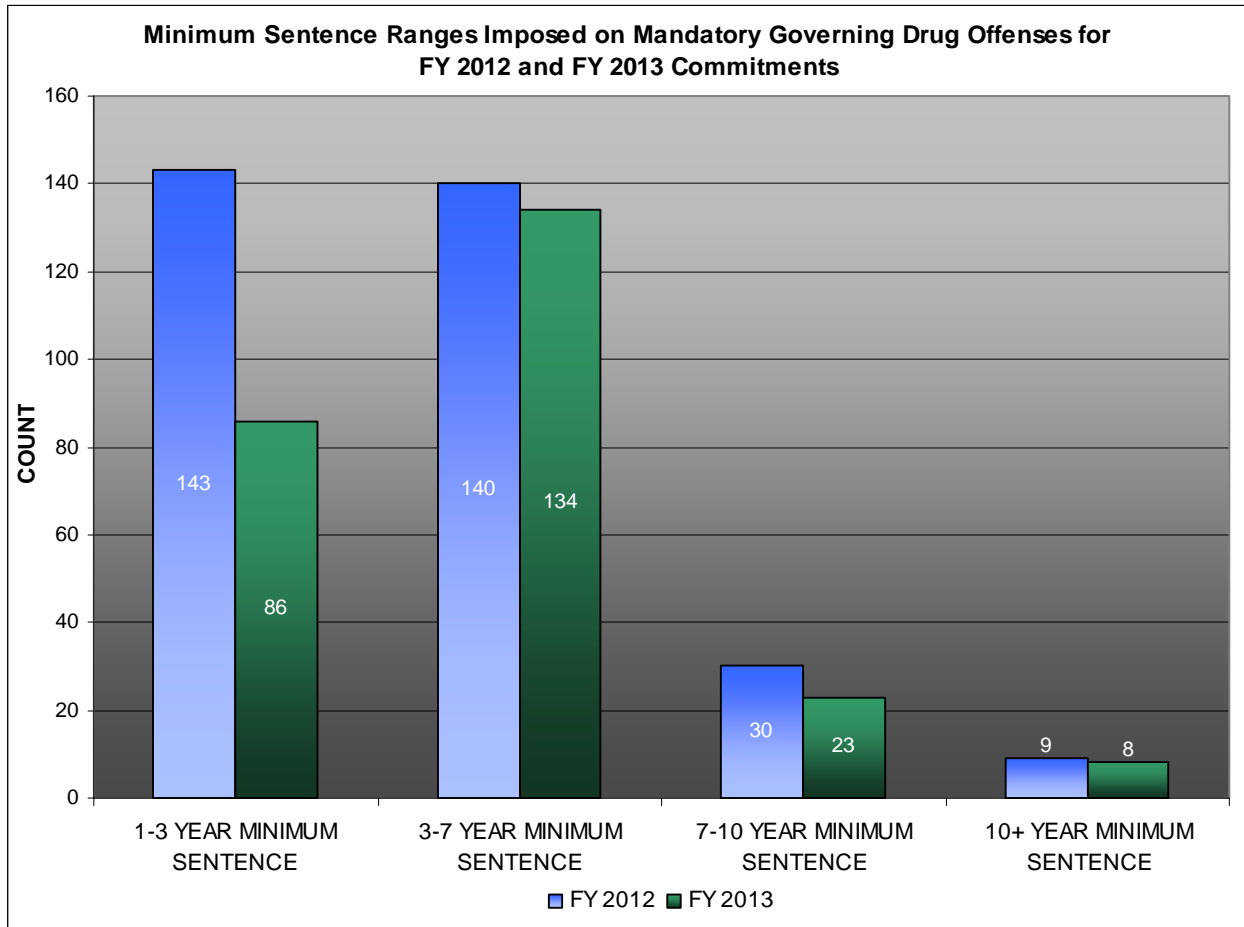


- Commitments that had a one-day difference between their minimum and maximum terms (52%) decreased by 33%.
- Commitments that had a six month difference or less between their minimum and maximum terms ($n = 145$, 58%) decreased by 29%.

⁵ For this section, only new court commitments were included in the analysis.

- Ninety-eight percent of this FY 2013 commitment cohort had a difference of three years or less between their minimum and maximum terms ($n = 246$).

Figure 4



- Commitments that had a minimum sentence between 1-3 years (34%) decreased by 40%.
- Commitments that had a minimum sentence between 3-7 years (53%) decreased by 4%.
- Commitments that had a minimum sentence of 7 years or more (12%) decreased by 21%.

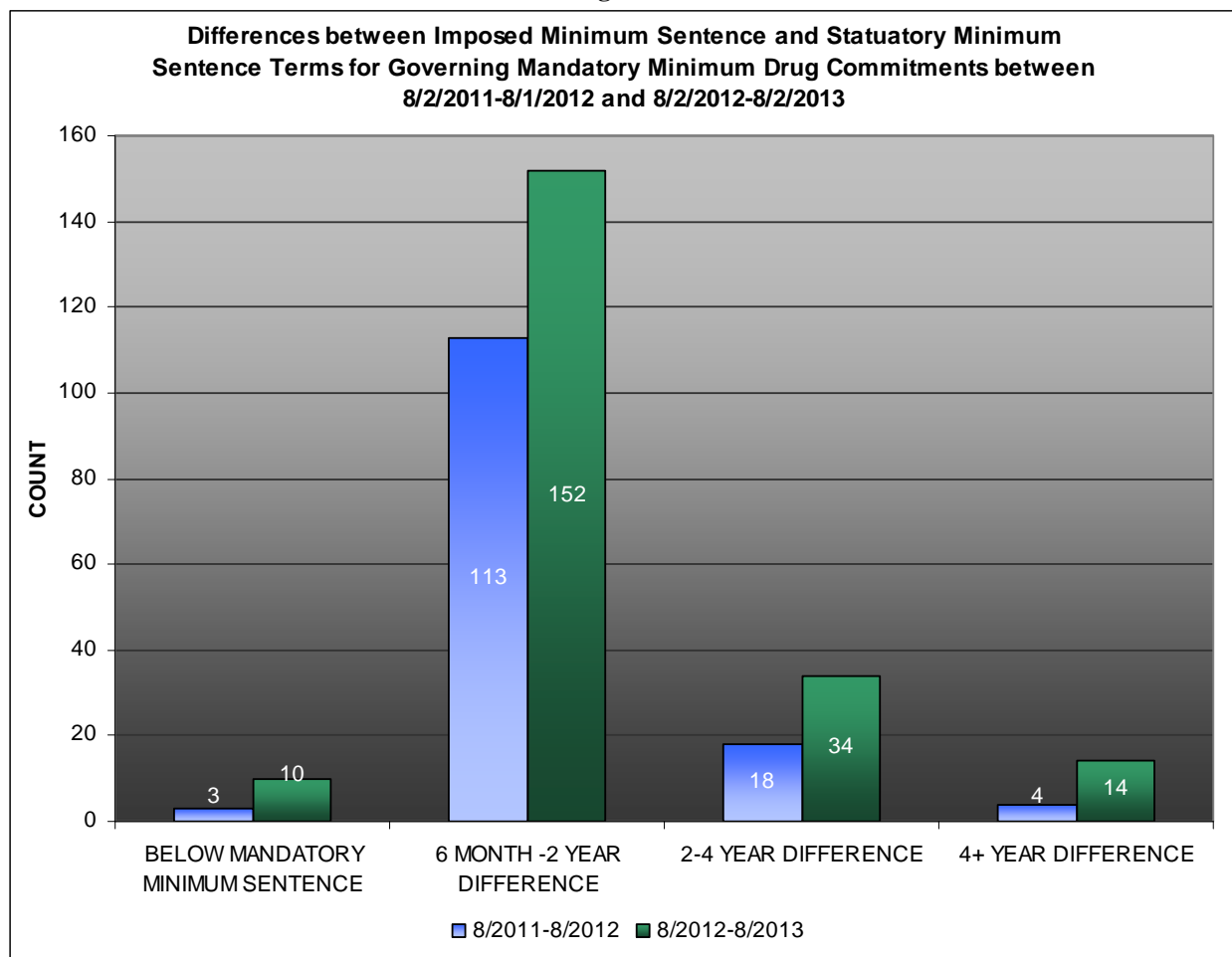
Differences in Imposed Minimum Sentences and Statutory Minimum Sentences Before and After Enactment

Between August 2, 2011 and August 1, 2012, there were 349 offenders committed⁶ to the MADOC on a governing drug offense. Of the 349, there were eleven offenders who did not have an indeterminate sentence and were given determinate sentences as habitual offenders. These eleven were not included in this analysis due to having a maximum sentence only, making the total 338. Comparatively, between August 2, 2012 and August 2, 2013, there were 247 offenders

⁶ For this section, new court commitments and offenders admitted on a From and After sentence were included in the analysis.

committed to the MADOC on a governing drug offense. Of the 247, there were ten offenders who did not have an indeterminate sentence and were given determinate sentences as habitual offenders. These ten were not included in this analysis due to having a maximum sentence only, making the total 237. The following section will discuss the differences between the imposed minimum sentence and the statutory minimum sentence for offenders committed before and after enactment of the legislation.

Figure 5



Between August 2, 2011 and August 1, 2012, 138 of the 349 offenders had differences between their imposed minimum term and statutory minimum sentence term (40%). In comparison, between August 2, 2012 and August 2, 2013, 210 out of 247 offenders had differences between their imposed minimum and statutory minimum sentence (85%); a 52% increase ($n = 72$) when comparing the year preceding and the year immediately following enactment of the legislation. Prior to the implementation of the bill, judges were typically imposing the mandatory minimum sentence associated with the particular governing drug offense. However, in the year following the enactment of the legislation and the subsequent reduction of many mandatory drug sentences, there was a discernable increase in the number of sentence differences between mandatory minimum and imposed minimum sentences. These differences were largely observed in cocaine trafficking offenses which suggests that judges are imposing more minimum terms on drug sentences after enactment of the legislation that were similar to the mandatory minimum terms for drug sentences prior to enactment (i.e. old mandatory minimum drug sentences) on cocaine trafficking offenses. This could partially explain why greater differences were being observed in

FY 2013 between the new reduced mandatory minimum sentences and imposed minimum sentences.

- Between August 2011 and August 2012, 82% of offenders who had a difference between their imposed minimum and statutory minimum sentence had a minimum sentence imposed that was 6 months-2 years longer than the statutory minimum sentence. Comparatively, between August 2012 and August 2013 there was a ten percentage point drop in proportion (72%) but a 35% increase in the number of offenders who were committed on a mandatory minimum governing drug offense with an imposed minimum sentence that was 6 months-2 years longer than the statutory minimum.
- Offenders who were committed on a governing drug offense with an imposed minimum sentence that was 2-4 years longer than the statutory minimum increased by 89%. Additionally, there was 118% increase in the number of offenders who were committed with an imposed minimum sentence 2 years or more than the statutory minimum; from 22 admissions between August 2, 2011 and August 1, 2012 to 48 admissions between August 2, 2012 and August 2, 2013.

Conclusion

The mass incarceration of low-level drug offenders only adds to the fiscally exorbitant problem of overcrowding and mass imprisonment. The punitive approaches to combating substance abuse have only exacerbated the economic and social costs of incarceration. Fortunately, Governor Patrick's bill has shown some promise in reducing some of debilitating collateral consequences associated with incarceration. The enactment of the legislation—in conjunction with other political, economic, and social changes that have occurred in recent years—contribute to the 31% reduction in the active population and the 22% reduction in commitments for those serving a mandatory minimum sentence on a governing drug offense. Additionally, realizing the negative collateral impact incarceration has on offenders and the community, many other states have begun implementing sweeping legislative changes that reduces mandatory minimum sentences for low-level drug offenders which include client-based sentencing practices and the use of problem solving courts in lieu of traditional courts.

As an alternative to traditional courts, problem solving courts have been integral in directing substance abusers away from punitive outcomes and becoming mired in the criminal justice system. Problem solving courts also known as diversion courts have been extremely effective in addressing substance abuse as a problem and reducing the ancillary consequences of a criminal record. Diversion participants can avoid having a criminal sentence and a criminal record by engaging in community-based treatment. The benefits of diversion courts are manifold and include reducing incarceration rates, reducing recidivism rates, and addressing substance abuse as a public health problem. These courts give judges more discretion in more therapeutic sentence practices to address the unique needs of offenders while promoting positive behavioral change. Recent studies suggest that problem solving courts have been instrumental in producing favorable outcomes for the both the offender and the community.⁷

⁷ Bureau for Justice Assistance: Center for Program Evaluation and Performance Measurement. (2013). *What are Problem Solving Courts?* Retrieved from <https://www.bja.gov/evaluation/programadjudication/problem-solving-courts.htm>

The criminalization of drug addiction continues to create obstacles for many low-level drug offenders in securing the necessary treatment for successful recovery and rehabilitation. When community-based therapeutic options are available, individuals can report substance abuse without fear of being arrested and will likely be more inclined to seek the treatment and support they need. Incarceration as a strategy for combating substance and drug abuse is not a viable solution—the social and economic costs of such an approach are staggering. The enactment of the legislation is proving to be an important and concerted effort in addressing substance abuse as a public health problem and reducing the interdiction of many low-level substance abusers who need treatment instead of a prison sentence.