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Office of Justice Systems Analysis

RESEARCH NOTE

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THE PROCESSING OF WEAPONS OFFENSES IN NEW YORK STATE

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New York State law provides stiff penalties for illegal use or possession of firearms and other dangerous weapons. These provisions have the potential to enhance the State's ability to apprehend, prosecute, and sanction dangerous, violent criminals. Currently, however, cases involving weapons offenses are generally not yielding more severe processing outcomes than other types of offenses at similar class levels. For those cases where prison is not mandatory, few receive sentences to prison. Current sentencing practices suggest that it is possible to impose more severe penalties under existing statutes. Increased severity would undoubtedly affect the already stressed correctional system.

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The Processing of Weapons Offenses in New York State

Introduction

Elected officials and the public alike have become increasingly concerned with the level of violence that is present on America's streets today. Even more alarming is the fact that an increasing proportion of these violent acts involve firearms. Reported violent crime rose 31 percent in New York State between 1983 and 1990. Statewide, 27 percent of the violent crimes in 1990 involved guns - up from 23 percent in 1985.¹

Officials have responded to these trends by developing programs that address some of the concerns surrounding gun violence. Gun buy-back programs have been started in many major cities in the nation. In New York City, Mayor Dinkins announced the launching of "Operation Gun Lock" on April 13 of this year. This program seeks to achieve felony convictions for firearm possession violators with previous convictions for these same types of violations, and to ensure that they receive the longest possible incarceration sentences. A higher felony conviction rate for first time firearms violators is also a goal of the program. These goals are to be achieved by having criminal justice officials work closely with each other to develop strong cases for prosecution.

Governor Cuomo released a white paper, A Strategy for Action Against Gun-Related Violence, in June of this year. The report calls for greater cooperation among the states to stop illegal firearm trafficking, increased enforcement efforts - including the expansion of the "Operation Gun Lock" concept statewide, legislative proposals in gun-related areas, and the development of prevention, education, and public health strategies for dealing with this problem. The plan also calls for the Division of Criminal Justice Services to work with the Office of Court Administration to develop a means of analyzing the enforcement of the current gun laws. This research note begins to address the last proposal by providing information about the current enforcement outcomes flowing from weapons offenses.

There are two objectives motivating this report. The first is to understand the punishment likely to flow from an arrest event in which the top arrest charge is a weapons offense (all offenses contained in Penal Law 265) and how this differs from punishment for non-weapon offenses. The second is to determine if the presence of secondary weapons arrest charges has an effect on the disposition of non-weapons arrests.

The top charge analysis will look at the certainty and severity of punishment for weapons arrests compared with other crimes at the same classification level. The primary outcome measures to be compared will be: the total conviction rate, the felony conviction rate, and the likelihood of incarceration - both prison and jail. Length of incarcerative

¹ A Strategy for Action Against Gun-Related Violence, New York State Division of Criminal Justice Services, (June, 1992), p. 3.

sentence will also be examined especially as it relates to range of incarcerative sentences available. The secondary charge analysis will use similar outcome measures and will focus on the differences between events with and without secondary weapons arrest charges.

The Computerized Criminal History system maintained by the Division of Criminal Justice Services is the primary source for the data used in this report. Adult arrests resulting in a final disposition in 1990 form the pool of available cases.

Top Arrest Charge - A Comparison of Dispositions

Overall Conviction Rate - The total conviction rates for weapons offenses are about the same as other non-weapons charges at the same class and VFO level for those without prior felony convictions (see Table 1). Weapons arrests at the D felony level have a different pattern. VFO weapons offenses have higher total conviction rates than VFO non-weapons arrests. The opposite is true for straight D felonies; non VFO weapons offenses have lower conviction rates than non VFO, non-weapons offenses. Drug charges have the highest overall conviction rates at all class levels. Among persons with prior felony convictions, the overall conviction rates for weapons arrests are lower than non-weapons arrests. Drug arrests continue to have the highest overall conviction rates within class. There is little variation in the total conviction rate among weapons offenses. Arrests for criminal possession of weapon 1st have a lower overall conviction rate than the other weapons offenses.

Felony Conviction Rate - Weapons arrests at the class C or D felony level generally have higher felony conviction rates than either drugs or other non-weapons offenses at the same class level despite having the same or lower overall conviction levels. Class B weapons offenses, taken as a single group, have higher felony conviction rates than other class B violent felonies but lower rates than class B drug arrests. Arrests for criminal use of a firearm have the highest felony conviction rate among weapons arrests. Criminal possession of a weapon 1st has the lowest felony conviction rate despite being a B violent felony offense.

Expected Days Incarcerated - Table 2 presents charge specific information about the relative certainty and severity of sanctions for weapons arrests compared to other arrest charges. It should be noted that none of the non-weapons charges have underlying weapons charges in the arrest event, though for many offenses there is an element of a weapon or injury implied in the arrest charge. "Expected days incarcerated" has been used to rank the arrest charges in the table. This measure summarizes the combined effects of the conviction rate (given arrest), the level of conviction, the incarceration rate (given conviction) and the sentence length (given incarceration). The measure is computed as the average number of days sentenced to incarceration given arrest. Weapons charges are shaded in the table.

Table 1
Selected Arrests Resulting in Conviction and Incarceration (a)
 (Adult Arrests Disposed in New York State in 1990)

Offenders without Prior Felony Convictions

Offenders with Prior Felony Convictions

Percentage of Disposed Arrests:

Percentage of Disposed Arrests:

Top Arrest Charge Law Title or Group	Class/ Cat.	N of Arrests	Convicted Convicted	Convicted Felony	Convicted < Felony	Incaro. Jail/Pris	Class/ Cat.	N of Arrests	Convicted Convicted	Convicted Felony	Convicted < Felony	Incaro. Jail/Pris
PL 265 Arrests:												
Crim. Poss. Weap. 1st	B VFO	106	42.5	27.4	15.1	20.8	B VFO	28				
Crim. Use Firearm 1st	B VFO	258	55.0	46.1	8.9	39.9	B VFO	83				
Crim. Poss. Weap. 2nd	C VFO	1,111	50.3	32.8	17.6	23.0	C VFO	257	47.1	33.5	13.6	38.9
Crim. Use Firearm 2nd	C VFO	192	57.8	37.5	20.3	23.4	C VFO	35				
Crim. Poss. Weap. 3rd as	D VFO	2,618	57.1	37.4	19.7	22.1	D VFO	515	46.4	36.3	10.1	40.4
Crim. Poss. Weap. 3rd as	D FEL	2,122	55.0	31.2	23.8	23.9	D FEL	577	56.2	30.7	25.5	41.8
Crim. Poss. Weap. 4th	A MISD	4,200	51.9	1.0	51.0	12.1	A MISD	624	56.4	1.3	55.1	25.0
Non Weapon/Non Drug Arrests:												
B Violent Felony	B VFO	9,497	51.5	35.3	16.2	34.7	B VFO	3,588	55.5	40.0	15.6	48.7
B Nonviolent Felony	B FEL	181	55.3	24.3	30.9	29.3	B FEL	45				
C Violent Felony	C VFO	12,915	54.4	25.1	29.3	28.2	C VFO	4,157	59.4	32.1	27.2	48.5
C Nonviolent Felony	C FEL	1,077	64.4	27.0	37.4	27.3	C FEL	223	61.9	24.7	37.2	44.4
D Violent Felony	D VFO	15,821	41.4	5.1	36.3	13.8	D VFO	3,342	49.4	9.2	40.3	30.0
D Nonviolent Felony	D FEL	24,573	67.6	15.9	51.7	28.0	D FEL	7,264	71.8	23.2	48.6	52.9
A Misdemeanor	A MISD	111,969	55.2	0.2	55.0	16.4	A MISD	20,931	67.5	0.3	67.1	35.5
Drug Arrests:												
B Felony Drug	B FEL	26,412	76.2	54.6	21.6	54.0	B FEL	12,244	73.6	51.2	22.4	63.7
C Felony Drug	C FEL	1,812	72.4	35.9	36.4	33.2	C FEL	445	71.5	37.5	33.9	56.2
D Felony Drug	D FEL	4,915	75.0	22.0	53.1	35.6	D FEL	1,768	72.7	21.6	51.1	52.8
A Misdemeanor Drug	A MISD	29,647	76.6	0.4	76.2	30.8	A MISD	9,481	76.4	0.6	75.9	39.7

(a) Attempts are excluded from this table, as are all charges or groups which appeared as the top charge in fewer than 100 arrests statewide.

Table 2
Relative Severity of Sanctions for Selected Arrests [a]
Ranked According to Expected Days Incarcerated Given Arrest
(Adult Arrests Disposed in New York State in 1990)

Offenders without Prior Felony Convictions

Percentage of Disposed Arrests:

Top Arrest Charge Law Title	Class/ Cat.	N of Arrests	Convicted	Convicted Felony	Incarc. Jail/Pris	Expected Days Inc.
Murder 2nd	A-I	330	71.8	69.4	67.6	2,526
Poss. Cntrl. Subs. 1st	A-I	840	53.9	49.1	44.4	535
Crim. Use Firearm 1st	B VFO	258	55.0	46.1	39.9	271
Rape 1st	B VFO	1,010	45.1	29.4	30.2	254
Robbery 1st - Weapon	B VFO	1,687	56.0	40.4	39.8	244
Assault 1st - Injury	C VFO	131	66.4	42.0	45.0	222
Poss. Cntrl. Subs. 2nd	A-II	534	63.1	50.6	44.4	184
Robbery 1st - Injury	B VFO	770	48.7	33.9	32.1	181
Sale Cntrl. Subs. 3rd	B FEL	18,640	78.9	62.9	59.9	146
Crim. Use Firearm 2nd	C VFO	192	57.8	37.5	23.4	106
Assault 1st - Weapon	C VFO	376	46.5	28.5	25.0	101
Burglary 1st - Weapon	B VFO	277	57.0	22.4	30.3	97
Burglary 1st - Injury	B VFO	289	52.9	18.0	25.3	93
Burglary 2nd - Weapon	C VFO	1,417	65.0	24.4	31.8	80
Robbery 2nd - Weapon	C VFO	2,291	52.3	25.0	28.6	78
Burglary 2nd - Dwelling	C VFO	3,159	63.8	27.0	30.2	76
Robbery 2nd - Aided	C VFO	3,744	49.5	24.6	26.9	74
Poss. Cntrl. Subs. 3rd	B FEL	6,895	70.2	32.9	39.5	74
Crim. Poss. Weap. 2nd	C VFO	1,111	50.3	32.8	23.0	67
Crim. Poss. Weap. 1st	B VFO	106	42.5	27.4	20.8	60
Robbery 3rd	D FEL	1,745	57.1	19.2	32.6	59
Poss. Cntrl. Subs. 4th	C FEL	1,437	72.7	32.4	33.7	58
Crim. Poss. Weap. 3rd as	D VFO	2,818	57.1	37.4	27.1	48
Crim. Poss. Weap. 3rd as	D FEL	2,122	55.0	31.2	23.9	44
Poss. Cntrl. Subs. 5th	D FEL	3,738	76.1	21.7	36.2	40
Reckless Endanger. 1st	D FEL	667	63.6	12.1	29.1	27
Grand Larceny 3rd	D FEL	8,060	63.3	14.4	23.1	26
Assault 2nd - Injury	D VFO	6,491	50.8	4.3	17.9	15
Assault 2nd - Weapon	D VFO	2,441	44.1	5.3	14.2	14
Criminal Mischief 3rd	E FEL	3,140	59.8	1.8	17.1	10
Petit Larceny	A MISD	37,546	58.7	0.1	18.2	7
Poss. Cntrl. Subs. 7th	A MISD	24,925	79.2	0.4	31.0	6
Crim. Poss. Weap. 4th	A MISD	4,200	51.9	1.0	12.1	5
Reckless Endanger 2nd	A MISD	1,461	55.2	0.3	12.7	4
Assault 3rd - Injury	A MISD	18,843	35.8	0.1	6.6	2
Assault 3rd - Weapon	A MISD	151	32.5	0.0	8.6	2

[a] Attempts are excluded from this table, as are all charges which appeared as the top charge in fewer than 100 arrests statewide.

Arrests for Non-weapons are restricted to those arrest events without an underlying weapons arrest charge.

Table 2 (continued)
Relative Severity of Sanctions for Selected Arrests [a]
Ranked According to Expected Days Incarcerated Given Arrest
(Adult Arrests Disposed in New York State in 1990)

Offenders with Prior Felony Convictions

Percentage of Disposed Arrests:

Top Arrest Charge Law Title	Class/ Cat.	N of Arrests	Convicted Convicted	Convicted Felony	Incarc. Jail/Pris	Expected Days Inc.
Murder 2nd	A-I	115	68.7	67.8	68.7	3,242
Poss. Cntrl. Subs. 1st	A-I	127	54.3	52.0	51.2	1,260
Robbery 1st - Weapon	B VFO	682	60.0	45.0	51.9	754
Robbery 1st - Injury	B VFO	335	53.1	38.8	48.7	595
Rape 1st	B VFO	269	48.3	32.0	42.8	584
Sale Cntrl. Subs. 3rd	B FEL	9,559	74.7	57.0	66.5	514
Burglary 1st - Injury	B VFO	100	59.0	28.0	46.0	442
Burglary 2nd - Dwelling	C VFO	1,004	69.2	37.2	55.3	419
Burglary 2nd - Weapon	C VFO	587	67.5	33.7	55.0	387
Poss. Cntrl. Subs. 4th	C FEL	357	72.3	37.8	56.3	329
Crim. Poss. Weap. 2nd	C VFO	257	47.1	33.5	38.9	318
Robbery 2nd - Weapon	C VFO	739	60.2	31.3	47.9	300
Crim. Poss. Weap. 3rd as	D VFO	515	46.4	36.3	40.0	298
Robbery 2nd - Aided	C VFO	1,160	52.2	29.1	44.0	284
Crim. Poss. Weap. 3rd as	D FEL	577	56.2	30.7	41.8	256
Poss. Cntrl. Subs. 3rd	B FEL	2,430	70.2	29.1	53.6	248
Reckless Endanger. 1st	D FEL	145	69.7	25.5	49.7	247
Burglary 1st - Weapon	B VFO	105	60.0	21.0	39.1	239
Robbery 3rd	D FEL	753	61.1	24.7	49.0	218
Poss. Cntrl. Subs. 5th	D FEL	1,431	74.1	19.9	53.1	157
Grand Larceny 3rd	D FEL	1,890	68.5	16.8	46.7	127
Assault 2nd - Injury	D VFO	1,556	60.6	11.1	38.8	95
Assault 2nd - Weapon	D VFO	420	44.5	5.7	23.8	87
Reckless Endanger 2nd	A MIS	160	66.3	3.1	31.9	39
Criminal Mischief 3rd	E FEL	618	71.5	2.3	43.2	36
Petit Larceny	A MISD	7,749	74.6	0.2	45.7	22
Crim. Poss. Weap. 4th	A MISD	624	56.4	1.3	25.0	18
Poss. Cntrl. Subs. 7th	A MISD	7,812	77.1	0.5	39.4	12
Assault 3rd - Injury	A MISD	3,016	39.1	0.1	14.9	7

[a] Attempts are excluded from this table, as are all charges which appeared as the top charge in fewer than 100 arrests statewide.

Arrests for Non-weapons are restricted to those arrest events without an underlying weapons arrest charge.

Arrests for criminal use of a firearm (1st or 2nd) are treated more severely than arrests for most other crimes at the same statutory level. Treatment of criminal possession of a weapon (CPW) arrests is less consistent. CPW 3rd is treated more severely, while CPW 1st and CPW 2nd arrests tend to be treated less harsh than other offenses at the same classification level.

Top Conviction Charge - An Analysis of Sentencing

The current sentencing options for Penal Law 265 offenses are displayed in Table 3. Except for youthful offender treatment, sentence to an indeterminate prison term is mandated for all B and C VFO convictions (attempted or completed). The language for CPW 3rd (PL 265.02 subsections 04 and 05) and for criminal sale of a firearm 1st (PL 265.12) establishes a presumption that an incarcerative term of either one year in jail or an indeterminate prison sentence will be served upon conviction. (Attempted criminal sale of a firearm does not have such a presumption.) While there is a presumption that an incarcerative term of one year or more will be served, the Penal Law provides many ways to bypass this presumption. Besides findings of youthful offender status, the law allows for mitigating circumstances providing certain other conditions are met. ²

Sentences to Prison - Few weapons convictions result in a sentence to state prison (see Table 4). Only when state imprisonment is mandatory (not merely presumed) is the rate high. Imprisonment rates for CPW 3rd convictions were only 15-18 percent for those persons without a prior felony conviction.

Sentences to any Incarceration - Despite the low rate of state imprisonment, incarceration in local jail facilities was not uncommon. Excluding mandatory imprisonment offenses, incarceration rates for weapons offenses ranged from 34 to 55 percent.

Minimum Sentence Terms - Table 5 compares the lengths of incarcerative terms given sentences to jail or prison with the available sentencing options. More serious offenses tend to be sentenced at the low end of the available sentencing range while less serious offenses are less likely to receive the minimum term allowed. Second felony offenders appear to receive minimum terms that run the full range available.

CPW 3rd Distinctions - PL 265.02 designates two of the five subsections as violent felony offenses (subsections 04 and 05), yet this distinction is not evident in the sanctions imposed. The D violent felonies had a lower incarceration rate than the ordinary D weapons offenses and had very similar incarcerative sentences. Separate analyses, not displayed, show that judges were not inclined to follow the presumptive incarcerative language of the

² See PL 70.02-2(c)(i-ii) and PL 70.02-5(a-c) which have language concerning "mitigating circumstances" and "unduly harsh" punishment.

Table 3
Summary of Current Sentencing Options for Selected PL 265 Offenses

Law Title	Article Sect.(Subsect.)	Class/ Category	NO PRIOR FELONY CONVICTION			PRIOR FELONY CONVICTION (a)		
			Mandatory Prison?	MIN. SENT. RANGE		Mandatory Prison?	MIN. SENT. RANGE	
				Low	High		Low	High
Completed Offenses								
Crim. Poss. Weap. 1st	PL 265.04	B VFO	YES	24 Mons.	100 Mons.	YES	54 Mons.	150 Mons.
Crim. Use Firearm 1st	PL 265.09	B VFO	YES	24 Mons.	100 Mons.	YES	54 Mons.	150 Mons.
Crim. Poss. Weap. 2nd	PL 265.03	C VFO	YES	18 Mons.	60 Mons.	YES	36 Mons.	90 Mons.
Crim. Use Firearm 2nd	PL 265.08	C VFO	YES	18 Mons.	60 Mons.	YES	36 Mons.	90 Mons.
Crim. Poss. Weap. 3rd	PL 265.02(4,5)	D VFO (b)	YES (b)	365 Days	28 Mons.	YES	24 Mons.	42 Mons.
Crim. Poss. Weap. 3rd Manufacture, etc.	PL 265.02(rest) PL 265.10 as	D FEL D FEL	NO NO	1 Day 1 Day	28 Mons. 28 Mons.	YES YES	24 Mons. 24 Mons.	42 Mons. 42 Mons.
Crim. Sale Firearm 1st	PL 265.12	D VFO (b)	YES (b)	365 Days	28 Mons.	YES	24 Mons.	42 Mons.
Crim. Sale Firearm 2nd	PL 265.11	E FEL	NO	1 Day	16 Mons.	YES	18 Mons.	24 Mons.
Crim. Poss. Weap. 4th Manufacture, etc.	PL 265.01 PL 265.10 as	A MISD A MISD	NO NO	1 Day 1 Day	365 Days 365 Days	NO NO	1 Day 1 Day	365 Days 365 Days
	FELONY YO for	PL 265	NO	1 Day	16 Mons.	—	NA	NA
Attempted Offenses (reduced class shown)								
Crim. Poss. Weap. 1st	PL 265.04	C VFO	YES	18 Mons.	60 Mons.	YES	36 Mons.	90 Mons.
Crim. Use Firearm 1st	PL 265.09	C VFO	YES	18 Mons.	60 Mons.	YES	36 Mons.	90 Mons.
Crim. Poss. Weap. 2nd	PL 265.03	D VFO	YES	12 Mons.	28 Mons.	YES	24 Mons.	42 Mons.
Crim. Use Firearm 2nd	PL 265.08	D VFO	YES	12 Mons.	28 Mons.	YES	24 Mons.	42 Mons.
Crim. Poss. Weap. 3rd	PL 265.02(4,5)	E VFO (b)	YES (b)	365 Days	16 Mons.	YES	18 Mons.	24 Mons.
Crim. Poss. Weap. 3rd Manufacture, etc.	PL 265.02(rest) PL 265.10 as	E FEL E FEL	NO NO	1 Day 1 Day	16 Mons. 16 Mons.	YES YES	18 Mons. 18 Mons.	24 Mons. 24 Mons.
Crim. Sale Firearm 1st	PL 265.12	E FEL	NO	1 Day	16 Mons.	YES	18 Mons.	24 Mons.
Crim. Sale Firearm 2nd	PL 265.11	A MISD	NO	1 Day	365 Days	NO	1 Day	365 Days
Crim. Poss. Weap. 4th Manufacture, etc.	PL 265.01 PL 265.10 as	B MISD B MISD	NO NO	1 Day 1 Day	90 Days 90 Days	NO NO	1 Day 1 Day	90 Days 90 Days
	FELONY YO for	PL 265	NO	1 Day	16 Mons.	—	NA	NA

(a) When displaying the low and high minimum sentences allowed it was assumed that all persons with prior felony convictions would be sentenced as "Second Felony Offenders" only.

(b) The sentencing language for PL 265.02 makes a distinction between subsections 4 and 5 from other subsections. These two subsections and PL 265.12 require either a one year determinate jail sentence or an indeterminate prison sentence. Defendants pleading guilty in satisfaction of any indictment with an "armed felony" count must receive an indeterminate sentence. These requirements may be ignored under certain circumstances - see PL 70.02-2(c)(ii) and PL 70.02-5(a)(b)(c).

Table 4
Type of Sentence Imposed Upon Conviction for Selected PL 265 Offenses

(Cases Disposed in New York State in 1990)

Top Conviction Charge	Class/ Cat.	Mandatory Prison?	Number of Convictions	Percent Sentenced to:					
				Prison	Jail Only	Jail & Prob.	Incarceration	Probation	Other
Completed, with No Prior Felony Convictions									
Crim. Poss. Weap. 2nd	C VFO	YES	114	92.1 [b]	2.6	2.6	97.4	2.6	0.0
Crim. Poss. Weap. 3rd as	D VFO	YES [a]	850	15.8	22.9	10.2	48.9	48.9	2.1
Crim. Poss. Weap. 3rd as	D FEL	NO	945	17.5	25.4	12.5	55.4	42.4	2.2
Crim. Poss. Weap. 4th	A MISD	NO	1,321	0.0	28.1	6.1	35.1	24.8	40.1
FELONY YO for PL 265	YO	NO	321	7.2	10.9	10.3	28.4	70.7	0.9
Completed, with Prior Felony Convictions									
Crim. Poss. Weap. 2nd	C VFO	YES	30						
Crim. Poss. Weap. 3rd as	D VFO	YES	144	86.1 [b]	5.6	0.7	92.4	5.6	2.1
Crim. Poss. Weap. 3rd as	D FEL	YES	216	85.7 [b]	7.9	1.4	94.9	4.2	0.9
Crim. Poss. Weap. 4th	A MISD	NO	347	0.0	57.9	1.4	59.4	11.2	29.4
Attempted, with No Prior Felony Convictions									
Crim. Poss. Weap. 3rd as	E FEL	NO	259	15.4	15.4	12.4	43.2	52.12	4.6
Crim. Poss. Weap. 4th	B MISD	NO	231	0.0	31.6	2.6	34.2	23.8	42.0
Attempted, with Prior Felony Convictions									
Crim. Poss. Weap. 3rd as	E FEL	YES	221	96.8 [b]	0.0	0.9	97.7	0.9	1.4
Crim. Poss. Weap. 4th	B MISD	NO	21						

[a] The sentencing language for PL 265.02 makes a distinction between subsections 4 and 5 from other subsections. These two subsections and PL 265.12 require either a one year determinate jail sentence or an indeterminate prison sentence. Defendants pleading guilty in satisfaction of any indictment with an "armed felony" count must receive an indeterminate sentence. These requirements may be ignored under certain circumstances - see PL 70.02-2(c)(ii) and PL 70.02-5(a)(b)(c).

[b] It is not known whether the imprisonment rates of less than 100% for nominally mandatory offenses reflect illegal sentences or errors in criminal history data. Some of the offenders with prior felony convictions may not have been liable for predicate treatment because of the time between the prior and instant offenses.

Table 5
Length of Incarcerative Sentences Imposed Upon Conviction for Selected PL 265 Offenses

(Cases Disposed in New York State in 1990)

Top Conviction Charge	Class/ Cat.	Number Sentenced to incarc.	Lowest Legal Minimum	Highest Legal Minimum	Percent at Lowest Legal Min.	Percent at Highest Legal Min.	Average Min. Sent. in Mons.[a]	Modal Min. Sent. in Months
Completed, with No Prior Felony Convictions								
Crim. Poss. Weap. 2nd	C VFO	111	18 mos.	60 mos.	35.3	9.0	27.3	18.0
Crim. Poss. Weap. 3rd as	D VFO	418	365 days [b]	28 mos.	42.5 [c]	0.3	9.8	12.0
Crim. Poss. Weap. 3rd as	D FEL	523	1 day	28 mos.	1.4 [c]	3.2	9.8	12.0
Crim. Poss. Weap. 4th	A MISD	484	1 day	365 days	0.7	4.5	1.7	1.0
FELONY YO for PL 265	YO	91	1 day	18 mos.	0.0	4.8	7.1	12.0
Completed, with Prior Felony Convictions								
Crim. Poss. Weap. 2nd	C VFO	30	36 mos.	90 mos.				
Crim. Poss. Weap. 3rd as	D VFO	133	24 mos.	42 mos.	25.6	6.8	31.7	30.0
Crim. Poss. Weap. 3rd as	D FEL	205	24 mos.	42 mos.	27.1	11.8	29.8	30.0
Crim. Poss. Weap. 4th	A MISD	206	1 day	365 days	0.0	21.1	3.2	12.0
Attempted, with No Prior Felony Convictions								
Crim. Poss. Weap. 3rd as	E FEL	112	1 day	18 mos.	1.0	6.7	9.14	12.0
Crim. Poss. Weap. 4th	B MISD	79	1 day	90 days				
Attempted, with Prior Felony Convictions								
Crim. Poss. Weap. 3rd as	E FEL	218	18 mos.	24 mos.	41.4	50.7	22.4	24.0
Crim. Poss. Weap. 4th	B MISD	8	1 day	90 days				

[a] Average minimum sentence was calculated using actual minimum prison sentences by 2/3 of actual jail sentences (to adjust for potential reductions in jail terms due to "good time" credited to jail inmates). All other calculations were based on full minimums. Consecutive sentencing was not accounted for in these calculations.

[b] The sentencing language for PL 265.02 makes a distinction between subsections 4 and 5 from other subsections. These two subsections and PL 265.12 require either a one year determinate jail sentence or an indeterminate prison sentence. Defendants pleading guilty in satisfaction of any indictment with an "armed felony" count must receive an indeterminate sentence. These requirements may be ignored under certain circumstances - see PL 70.02-2(o)(II) and PL 70.02-5(a)(b)(c).

[c] The actual distribution of sentence lengths for CPW-3rd (D VFO) is very similar to that for CPW-3rd (D Fel), but the lowest and highest legal minimums are different.

law. Over 40 percent of persons with a prior misdemeanor conviction in five years (but no prior felony conviction) received less than a one year sentence to jail. Over two-thirds of those persons without any prior criminal conviction received less than a one year sentence. Judges are readily finding "mitigating circumstances" or deciding that the sentence is "unduly harsh" for first time offenders. The most important point about designating these subsections as violent felonies is that a person could now be charged with an "armed felony." This designation carries with it restrictions on pre-indictment plea bargaining to less than a felony (see CPL 180.50).

The Influence of Secondary Weapons Arrest Charges

The previous section has examined the post-arrest processing of cases in which the top charge (arrest or disposition) was for a weapons offense as defined in Penal Law 265. This section looks at the influence of secondary weapons arrest charges on the processing of arrests for other crimes. The presence of secondary arrest charges for weapons may provide prosecutors with a different set of opportunities for prosecuting a case that may result in different outcomes than those for arrest events without such secondary arrest charges.

The same outcome measures used in the first section are employed here. Comparisons are made between those cases that are accompanied by a secondary weapons arrest charge and those without such charges. Non-weapons top charge groups are generally established by Penal Law article and section. Charges that have subsections that explicitly include language about a firearm, deadly weapon, or dangerous weapon are further subdivided into groups with this explicit language and those without it.

Prevalence of Secondary Weapons Arrest Charges

Non-weapons arrest charges were selected for inclusion in this analysis if there were at least 100 events in which there was a secondary weapons arrest charge for that particular top arrest charge group. Among the selected cases, one out of ten had a secondary weapons arrest charge (see Table 6). Crime groups most likely to have a secondary weapons arrest charge in the arrest event include the crimes of murder 2nd (61%), burglary 1st (47%), robbery 1st (61-64%), and assaults 1st (50-70%) and 2nd (60%). Drug arrests at the class A felony level were more likely to have secondary weapons arrest charges than those charged with lower drug felonies.

A Comparison of Dispositions

Overall Conviction Rate - The presence of a secondary weapons arrest charge in an event does not yield a higher probability of conviction for the arrest - the opposite is true. In almost all comparisons within top charge and prior history, arrests with secondary weapons arrest charges had lower probabilities of receiving a conviction than those arrested for the same top charge but without secondary weapons charges in the event (see Table 7). In analyses not shown, it was discovered that the presence of an underlying weapons arrest

Table 6

Percent of Non-Weapons Top Arrest Charges With Secondary Weapons Charges[a]
 (Adult Arrests Disposed in New York State in 1990)

Top Arrest Charge Law Title	Penal Law Statute	Class/ Category	Total Number of Arrests	With Secondary Weapons Charge	Percent with Secondary Weapons Charge
Murder 2nd	125.25	A-I	1,135	690	60.8%
Crim. Poss. Contrl. Subs. 1st	220.21	A-I	1,382	415	30.0%
Crim. Poss. Contrl. Subs. 2nd	220.18	A-II	836	208	24.9%
Rape 1st	130.35	B VFO	1,483	204	13.8%
Burglary 1st, armed	140.30 (01,03,04)	B VFO	717	335	46.7%
Robbery 1st w/weapon or display of firearm	160.15 (02,03,04)	B VFO	6,612	4,243	64.2%
Robbery 1st with injury	160.15 (01)	B VFO	2,845	1,740	61.2%
Crim. Poss. Contrl. Subs. 3rd, intent to sell	220.16	B FEL	10,084	759	7.5%
Criminal Sale of a Contrl. Subs. 3rd	220.39	B FEL	28,553	354	1.2%
Assault 1st, w/weapon	120.10 (01)	C VFO	1,550	1,100	71.0%
Assault 1st, w/intent to cause injury	120.10 (02,03,04)	C VFO	327	162	49.5%
Burglary 2nd, armed with injury	140.25 (01)	C VFO	2,240	236	10.5%
Robbery 2nd, w/ injury or display of firearm	160.10 (02)	C VFO	3,315	285	8.6%
Robbery 2nd, aided by another	160.10 (01)	C VFO	5,326	422	7.9%
Crim. Poss. Contrl. Subs. 4th	220.09	C FEL	1,936	142	7.3%
Assault 2nd, w/weapon	120.05 (02,04)	D VFO	7,189	4,328	60.2%
Assault 2nd	120.05 (rest)	D VFO	11,180	3,133	28.0%
Reckless Endangerment 1st	120.25	D FEL	1,114	302	27.1%
Grand Larceny 3rd	155.35	D FEL	10,090	140	1.4%
Crim. Poss. Contrl. Subs. 5th	220.06	D FEL	5,314	145	2.7%
Criminal Mischief 3rd	145.05	E FEL	3,887	129	3.3%
Assault 3rd with injury	120.00 (01,02)	A MISD	22,473	614	2.7%
Reckless Endangerment 2nd	120.20	A MISD	1,759	138	7.8%
Petit Larceny	155.25	A MISD	45,431	136	0.3%
Crim. Poss. Contrl. Subs. 7th	220.03	A MISD	33,085	348	1.1%
Total Non-weapons Arrests			209,863	20,708	9.9%

[a] Attempts are excluded from this table.

Table 7
Percent of Non-Weapons Top Arrest Charges With Any Conviction [a]
 (Adult Arrests Disposed in New York State in 1990)

Top Arrest Charge Law Title	Penal Law Statute	Class/ Cat.	No Prior Felony Convictions		Prior Felony Convictions	
			No Weapons Charge	Weapons Charge	No Weapons Charge	Weapons Charge
Murder 2 nd	125.25	A-I	71.8	69.6	68.7	65.8
Crim. Poss. Contrl. Subs. 1st	220.21	A-I	53.9	54.7		
Crim. Poss. Contrl. Subs. 2nd	220.18	A-II	63.1	57.1		
Rape 1st	130.35	B VFO	45.1	38.2		
Burglary 1st, armed	140.30 (01,03,04)	B VFO	57.0	48.2		
Robbery 1st w/weapon or display of firearm	180.15 (02,03,04)	B VFO	58.0	52.1	60.0	56.0
Robbery 1st with injury	180.15 (01)	B VFO	48.7	48.0	53.1	53.1
Crim. Poss. Contrl. Subs. 3rd, intent to sell	220.16	B FEL	70.2	59.6	70.2	59.2
Criminal Sale of a Contrl. Subs. 3rd	220.39	B FEL	78.9	72.7		
Assault 1st, w/weapon	120.10 (01)	C VFO	46.5	34.9		
Assault 1st, w/intent to cause injury	120.10 (02,03,04)	C VFO	66.4	50.4		
Burglary 2nd, armed with injury	140.25 (01)	C VFO	65.0	58.6		
Robbery 2nd, w/ injury or display of firearm	180.10 (02)	C VFO	52.3	43.1		
Robbery 2nd, aided by another	180.10 (01)	C VFO	49.5	50.8	52.2	51.2
Crim. Poss. Contrl. Subs. 4th	220.09	C FEL	72.7	68.5		
Assault 2nd, w/weapon	120.05 (02,04)	D VFO	44.1	27.5	44.5	33.1
Assault 2nd	120.05 (rest)	D VFO	50.3	30.1	60.6	38.9
Reckless Endangerment 1st	120.25	D FEL	63.6	45.3		
Grand Larceny 3rd	155.35	D FEL	63.3	59.8		
Crim. Poss. Contrl. Subs. 5th	220.06	D FEL	78.1	65.8		
Criminal Mischief 3rd	145.05	E FEL	59.8	45.8		
Assault 3rd with injury	120.00 (01,02)	A MISD	35.8	34.3	39.1	41.1
Reckless Endangerment 2nd	120.20	A MISD	55.2	41.6		
Petit Larceny	155.25	A MISD	58.7	65.1		
Crim. Poss. Contrl. Subs. 7th	220.03	A MISD	79.2	76.4		

[a] Attempts are excluded from this table. If either cell in a weapons/no-weapons comparison is based on less than 100 cases, both cells are omitted from the table.

charge was likely to yield lower total conviction rates in both lower and upper courts.

Felony Conviction Rate - The influence of secondary weapons arrest charges on felony conviction rates is **mixed** (see Table 8). In some groups felony conviction rates are higher when accompanied by secondary weapons arrest charges and in others they are lower or nearly the same. Drug arrests at the B felony level or lower are **most likely** to have higher probabilities of a felony conviction when accompanied by a secondary weapons charge. Other top arrest charges demonstrating this influence of weapons charges include burglary 1st, reckless endangerment 1st, and grand larceny 3rd. The pre-indictment plea bargaining restrictions imposed by having an "armed felony" charge may be responsible for this increased felony conviction rate.

Incarceration Rate - In almost all combinations of top arrest charge and prior felony conviction, events with secondary weapons arrest charges have a **lower** rate of incarceration in jail or prison than those arrest events without such secondary charges (see Table 9).

Expected Days Incarcerated - The combined influence of conviction rates, incarceration rates, and sentence length is summarized in the expected days incarcerated measure. The influence of secondary weapons arrest charges is mixed (see Table 10). The pattern that emerges is very similar to that observed for the likelihood of felony conviction. Lower drug offenses, reckless endangerment, and grand larceny arrests with secondary weapons arrest charges had **more severe** punishments than events with the same top arrest charges but without secondary weapons charges. Murder and assault arrests generally had **less severe** sanctions when accompanied by secondary weapons charges. Other crime groups exhibited little difference or showed no consistent pattern on the severity of sanctions.

Top Conviction Charge - An Analysis of Sentencing

Sentences to Incarceration - The presence of secondary weapons arrest charges has little influence on the types of sentences imposed upon conviction. The likelihood of state incarceration is generally very similar between events with and without secondary arrest charges. Only among convictions for attempted offenses that do not mandate prison sentences is there any consistent difference, with events having secondary weapons arrest charges more likely to receive a sentence to prison (see Table 11).

Minimum Sentence Terms - Among those incarcerated, there is very little difference in the averages or modal minimum terms imposed for convictions with or without secondary weapons arrest charges (see Table 12). The lowest allowable minimum term is frequently used for more serious offenses while the highest allowable minimum sentence is rarely used. This pattern is consistent for convictions with and without underlying weapons charges. Where there are differences in the use of the lowest allowable minimum sentences, they have typically been higher among those convictions **with** weapons charges rather than without weapons charges in the arrest event.

Table 8
Percent of Non-Weapons Top Arrest Charges With Felony Conviction [a]
 (Adult Arrests Disposed in New York State in 1990)

Top Arrest Charge Law Title	Penal Law Statute	Class/ Cat.	No Prior Felony Convictions		Prior Felony Convictions	
			No Weapons Charge	Weapons Charge	No Weapons Charge	Weapons Charge
Murder 2nd	125.25	A-I	69.4	69.8	67.8	63.6
Crim. Poss. Contrl. Subs. 1st	220.21	A-I	49.1	44.5		
Crim. Poss. Contrl. Subs. 2nd	220.18	A-II	50.6	51.2		
Rape 1st	130.35	B VFO	29.4	25.0		
Burglary 1st, armed	140.30 (01,03,04)	B VFO	22.4	26.8		
Robbery 1st w/weapon or display of firearm	160.15 (02,03,04)	B VFO	40.4	39.1	45.0	43.3
Robbery 1st with injury	160.15 (01)	B VFO	33.9	36.2	38.8	40.0
Crim. Poss. Contrl. Subs. 3rd, intent to sell	220.16	B FEL	32.9	41.0	29.1	36.8
Criminal Sale of a Contrl. Subs. 3rd	220.39	B FEL	62.9	61.3		
Assault 1st, w/weapon	120.10 (01)	C VFO	28.5	20.2		
Assault 1st, w/intent to cause injury	120.10 (02,03,04)	C VFO	42.0	33.1		
Burglary 2nd, armed with injury	140.25 (01)	C VFO	24.4	18.5		
Robbery 2nd, w/ injury or display of firearm	160.10 (02)	C VFO	25.0	17.9		
Robbery 2nd, aided by another	160.10 (01)	C VFO	24.6	26.1	29.1	35.0
Crim. Poss. Contrl. Subs. 4th	220.09	C FEL	32.4	50.0		
Assault 2nd, w/weapon	120.05 (02,04)	D VFO	5.3	3.5	5.7	8.3
Assault 2nd	120.05 (rest)	D VFO	4.3	3.4	11.1	6.7
Reckless Endangerment 1st	120.25	D FEL	12.1	17.8		
Grand Larceny 3rd	155.35	D FEL	14.4	22.4		
Crim. Poss. Contrl. Subs. 5th	220.06	D FEL	21.7	37.8		
Criminal Mischief 3rd	145.05	E FEL	1.8	0.9		

[a] Attempts are excluded from this table. If either cell in a weapons/no-weapons comparison is based on less than 100 cases, both cells are omitted from the table.

Table 9

Percent of Non-Weapons Top Arrest Charges With Jail or Prison Sentence[a]

(Adult Arrests Disposed in New York State in 1990)

Top Arrest Charge Law Title	Penal Law Statute	Class/ Cat.	No Prior Felony Convictions		Prior Felony Convictions	
			No Weapons Charge	Weapons Charge	No Weapons Charge	Weapons Charge
Murder 2nd	125.25	A-I	67.6	61.7	68.7	64.7
Crim. Poss. Contrl. Subs. 1st	220.21	A-I	44.4	41.1		
Crim. Poss. Contrl. Subs. 2nd	220.18	A-II	44.4	41.2		
Rape 1st	130.35	B VFO	30.2	27.6		
Burglary 1st, armed	140.30 (01,03,04)	B VFO	30.3	26.3		
Robbery 1st w/weapon or display of firearm	160.15 (02,03,04)	B VFO	39.8	37.4	51.9	51.0
Robbery 1st with injury	160.15 (01)	B VFO	32.1	34.0	48.7	48.0
Crim. Poss. Contrl. Subs. 3rd, intent to sell	220.16	B FEL	39.5	38.7	53.6	51.3
Criminal Sale of a Contrl. Subs. 3rd	220.39	B FEL	59.9	55.9		
Assault 1st, w/weapon	120.10 (01)	C VFO	25.0	19.1		
Assault 1st, w/intent to cause injury	120.10 (02,03,04)	C VFO	45.0	36.2		
Burglary 2nd, armed with injury	140.25 (01)	C VFO	31.8	25.3		
Robbery 2nd, w/ injury or display of firearm	160.10 (02)	C VFO	28.6	23.4		
Robbery 2nd, aided by another	160.10 (01)	C VFO	28.9	26.8	44.0	43.9
Crim. Poss. Contrl. Subs. 4th	220.09	C FEL	33.7	37.0		
Assault 2nd, w/weapon	120.05 (02,04)	D VFO	14.2	7.3	23.8	17.1
Assault 2nd	120.05 (rest)	D VFO	17.9	9.6	38.8	22.1
Reckless Endangerment 1st	120.25	D FEL	29.1	20.7		
Grand Larceny 3rd	155.35	D FEL	23.1	26.2		
Crim. Poss. Contrl. Subs. 5th	220.06	D FEL	36.2	34.2		
Criminal Mischief 3rd	145.05	E FEL	17.1	10.2		

[a] Attempts are excluded from this table. If either cell in a weapons/no-weapons comparison is based on less than 100 cases, both cells are omitted from the table.

Table 10
Expected Days Incarcerated for Non-Weapons Top Arrest Charges[a]
 (Adult Arrests Disposed in New York State in 1990)

Top Arrest Charge Law Title	Penal Law Statute	Class/ Cat.	No Prior Felony Convictions		Prior Felony Convictions	
			No Weapons Charge	Weapons Charge	No Weapons Charge	Weapons Charge
Murder 2nd	125.25	A-I	2,526	1,862	3,242	2,905
Crim. Poss. Contrl. Subs. 1st	220.21	A-I	535	434		
Crim. Poss. Contrl. Subs. 2nd	220.18	A-II	184	245		
Rape 1st	130.35	B VFO	254	239		
Burglary 1st, armed	140.30 (01,03,04)	B VFO	97	108		
Robbery 1st w/weapon or display of firearm	160.15 (02,03,04)	B VFO	244	213	754	689
Robbery 1st with injury	160.15 (01)	B VFO	181	221	595	617
Crim. Poss. Contrl. Subs. 3rd, intent to sell	220.16	B FEL	74	113	248	386
Criminal Sale of a Contrl. Subs. 3rd	220.39	B FEL	148	225		
Assault 1st, w/weapon	120.10 (01)	C VFO	101	69		
Assault 1st, w/intent to cause injury	120.10 (02,03,04)	C VFO	222	127		
Burglary 2nd, armed with injury	140.25 (01)	C VFO	80	74		
Robbery 2nd, w/ injury or display of firearm	160.10 (02)	C VFO	78	76		
Robbery 2nd, aided by another	160.10 (01)	C VFO	74	99	284	423
Crim. Poss. Contrl. Subs. 4th	220.09	C FEL	58	109		
Assault 2nd, w/weapon	120.05 (02,04)	D VFO	14	9	87	67
Assault 2nd	120.05 (rest)	D VFO	15	15	95	66
Reckless Endangerment 1st	120.25	D FEL	27	57		
Grand Larceny 3rd	155.35	D FEL	28	49		
Crim. Poss. Contrl. Subs. 5th	220.06	D FEL	40	84		
Criminal Mischief 3rd	145.05	E FEL	10	3		

[a] Attempts are excluded from this table. If either cell in a weapons/no-weapons comparison is based on less than 100 cases, both cells are omitted from the table.

Table 11
Type of Sentence Imposed Upon Convictions for Non-Weapons Offenses(a)
 (Cases Disposed in New York State in 1990)

Offense Conviction Charge w Title	Penal Law Statute	Class/ Cat.	Mandatory Prison?	Probation		Jail & Probation		Jail Only		Prison		Any Incarceration	
				No Weapon Charge	Weapons Charge	No Weapon Charge	Weapons Charge	No Weapon Charge	Weapons Charge	No Weapon Charge	Weapons Charge	No Weapon Charge	Weapons Charge
Completed Offenses: No Prior Felony Convictions													
Order 2nd	125.25	A-I	YES	0.0	0.0	0.0	0.0	0.0	0.0	97.9	100.0	97.9	100.0
Im. Poss. Contrl. Subs. 2nd	220.18	A-II	YES [b]	4.0	3.9	0.4	0.0	0.0	1.3	94.9	93.6	95.3	94.9
Robbery 1st w/weapon or display of firearm	160.15 (02,03,04)	B VFO	YES	1.1	1.6	0.8	0.8	0.4	0.8	97.8	96.7	98.9	98.2
Robbery 1st with injury	160.15 (01)	B VFO	YES	0.1	3.8	0.0	1.9	1.0	0.9	99.0	93.4	100.0	96.2
Im. Poss. Contrl. Subs. 3rd, intent to sell	220.16	B FEL	YES [b]	3.7	2.8	3.7	6.4	3.6	0.8	98.8	98.9	96.1	97.3
Robbery 2nd, w/ injury or display of firearm	160.10 (02)	C VFO	YES	1.9	0.0	2.9	2.1	1.0	0.0	94.3	97.9	98.1	100.0
Robbery 2nd, aided by another	160.10 (01)	C VFO	YES	2.7	7.7	3.7	0.0	2.1	0.0	91.0	91.0	96.8	91.0
Im. Poss. Contrl. Subs. 4th	220.09	C FEL	NO [c]	17.4	28.0	38.0	31.0	23.4	20.0	18.9	20.0	80.2	71.0
Assault 2nd, w/weapon	120.05 (02,04)	D VFO	YES [d]	12.9	25.3	40.3	26.7	22.6	17.3	22.6	30.7	85.5	74.7
Assault 2nd	120.05 (rest)	D VFO	YES [d]	18.4	22.9	26.6	34.3	23.7	15.4	27.2	25.9	77.5	75.6
Robbery 3rd	160.05	D FEL	NO	16.1	25.0	15.7	20.0	30.8	21.7	35.5	33.3	92.1	75.0
Im. Poss. Contrl. Subs. 5th	220.06	D FEL	NO	26.4	32.9	25.4	16.4	24.8	23.3	21.5	24.7	71.7	64.4
Attempted Offenses: No Prior Felony Conviction													
Robbery 1st w/weapon or display of firearm	160.15 (02,03,04)	C VFO	YES	0.9	1.4	0.9	0.7	0.0	0.0	98.1	97.9	99.1	98.6
Im. Poss. Contrl. Subs. 3rd, intent to sell	220.16	C FEL	NO	18.3	11.4	40.7	44.3	26.8	25.0	13.3	17.1	80.8	85.4
Criminal Sale of a Contrl. Subs. 3rd	220.39	C FEL	NO	11.3	12.9	40.3	27.1	31.0	31.4	16.5	28.8	87.8	87.1
Robbery 2nd, w/ injury or display of firearm	160.10 (02)	D VFO	NO	16.6	20.6	25.5	14.7	23.6	19.1	33.5	44.8	82.6	78.6
Robbery 2nd, aided by another	160.10 (01)	D VFO	NO	21.2	15.3	17.4	21.5	32.2	20.8	27.7	41.1	77.3	83.4
Completed Offenses: Prior Felony Convictions													
Robbery 1st w/weapon or display of firearm	160.15 (02,03,04)	B VFO	YES	0.0	0.0	0.0	0.0	0.0	0.0	98.2	100.0	99.1	100.0
Robbery 2nd, w/ injury or display of firearm	160.10 (02)	C VFO	YES	0.0	0.0	0.0	0.0	0.0	0.0	100.0	96.6	100.0	98.6
Assault 2nd	120.05 (1-3,5-8)	D VFO	YES	0.0	0.0	3.7	3.9	2.8	7.7	93.5	86.5	100.0	100.0
Attempted Offenses: Prior Felony Conviction													
Robbery 1st w/weapon or display of firearm	160.15 (02,03,04)	C VFO	YES	0.0	0.0	0.0	0.0	1.3	0.0	98.7	100.0	100.0	100.0
Robbery 2nd, w/ injury or display of firearm	160.10 (02)	D VFO	YES	0.4	0.0	0.8	0.0	3.2	2.8	95.2	97.1	99.2	100.0
Robbery 2nd, aided by another	160.10 (01)	D VFO	YES	0.0	0.0	2.0	1.4	1.0	2.8	94.9	95.3	98.0	100.0

[a] If either cell in a weapons/no-weapons comparison is based on less than 50 cases, both cells are omitted from the table.

[b] Lifetime probation is permitted for defendant's material assistance in connection with a drug felony. See PL 70.06-2, 85.00-1(b), 85.00-3(a)(ii).

[c] Some subsections of PL 220.09 require mandatory imprisonment but this may be satisfied with a sentence of as little as one day.

[d] Imprisonment is mandatory, but may be satisfied with a sentence of as little as one day.

Table 12
Length of Incarcerative Sentences for Non-Weapons Offenses[a]
 (Cases Disposed in New York State in 1990)

Conviction Charge Title	Penal Law Statute	Class/Cat.	Mandatory Prison?	Lowest Legal Minimum	Highest Legal Minimum	% at Low Min.		% at High Min.		Avg. Min. (Mos)		Modal Min. (Mos)	
						No Weapon Charge	Weapons Charge	No Weapon Charge	Weapons Charge	No Weapon Charge	Weapons Charge	No Weapon Charge	Weapons Charge
Completed Offenses: No Prior Felony Convictions													
Car 2nd	125.25	A-I	YES	180 Mons.	300 Mons.	25.0	24.3	50.0	44.3	243.0	244.8	300.0	300.0
1. Poss. Contrl. Subs. 2nd	220.18	A-II	YES [b]	36 Mons.	100 Mons.	51.2	51.4	1.9	1.4	48.8	48.1	36.0	36.0
Car 1st w/weapon or display of firearm	160.15 (02,03,04)	B VFO	YES	24 Mons.	100 Mons.	33.2	43.9	0.4	0.0	45.9	34.6	24.0	24.0
Car 1st with injury	160.15 (01)	B VFO	YES	24 Mons.	100 Mons.	30.4	34.0	0.0	0.0	42.3	38.8	24.0	24.0
1. Poss. Contrl. Subs. 3rd, intent to sell	220.16	B FEL	YES [b]	12 Mons.	100 Mons.	48.4	48.6	0.3	0.0	20.1	21.2	12.0	12.0
Car 2nd, w/ injury or display of firearm	160.10 (02)	C VFO	YES	18 Mons.	60 Mons.	48.0	50.0	4.5	0.0	26.1	24.6	18.0	18.0
Car 2nd, aided by another	160.10 (01)	C VFO	YES	18 Mons.	60 Mons.	56.4	70.4	2.2	0.0	22.3	22.2	18.0	18.0
n. Poss. Contrl. Subs. 4th	220.09	C FEL	NO [c]	1 Day	60 Mons.	11.2	18.0	2.5	0.0	6.4	8.5	12.0	12.0
Car 2nd, w/weapon	120.05 (02,04)	D VFO	YES [d]	1 Day	28 Mons.	4.4	9.8	4.4	2.0	8.2	9.8	6.0	12.0
Car 2nd	120.05 (rest)	D VFO	YES [d]	1 Day	28 Mons.	3.6	6.3	4.5	3.9	12.3	10.1	12.0	12.0
Car 3rd	160.05	D FEL	NO	1 Day	28 Mons.	0.0	0.0	1.6	0.0	10.8	11.1	12.0	12.0
n. Poss. Contrl. Subs. 5th	220.06	D FEL	NO	1 Day	28 Mons.	1.8	2.2	0.9	0.0	8.8	9.2	12.0	12.0
Completed Offenses: No Prior Felony Conviction													
Car 1st w/weapon or display of firearm	160.15 (02,03,04)	C VFO	YES	18 Mons.	60 Mons.	56.7	70.7	1.9	1.4	25.7	21.0	18.0	18.0
m. Poss. Contrl. Subs. 3rd, intent to sell	220.16	C FEL	NO	1 Day	60 Mons.	14.6	20.9	2.7	3.0	6.9	8.3	12.0	12.0
Minimal Sale of a Contrl. Subs. 3rd	220.39	C FEL	NO	1 Day	60 Mons.	11.9	8.6	2.6	0.0	6.9	10.2	12.0	12.0
Car 2nd, w/ injury or display of firearm	160.10 (02)	D VFO	NO	1 Day	28 Mons.	0.0	0.5	0.7	0.0	10.0	11.3	12.0	12.0
Car 2nd, aided by another	160.10 (01)	D VFO	NO	1 Day	28 Mons.	0.5	0.8	2.6	2.3	9.9	10.5	12.0	12.0
Completed Offenses: Prior Felony Convictions													
Car 1st w/weapon or display of firearm	160.15 (02,03,04)	B VFO	YES	54 Mons.	150 Mons.	6.3	11.7	8.9	4.7	85.5	88.9	72.0	72.0
Car 2nd, w/ injury or display of firearm	160.10 (02)	C VFO	YES	36 Mons.	90 Mons.	16.4	21.7	10.0	5.8	51.7	54.8	48.0	48.0
Car 2nd	120.05 (1-3,5-8)	D VFO	YES	24 Mons.	42 Mons.	38.0	15.7	11.1	21.6	30.1	29.0	24.0	30.0
Completed Offenses: Prior Felony Conviction													
Car 1st w/weapon or display of firearm	160.15 (02,03,04)	C VFO	YES	36 Mons.	90 Mons.	27.9	26.9	0.0	1.5	47.0	47.6	48.0	48.0
Car 2nd, w/ injury or display of firearm	160.10 (02)	D VFO	YES	24 Mons.	42 Mons.	28.5	34.1	4.8	5.1	29.9	29.7	30.0	30.0
Car 2nd, aided by another	160.10 (01)	D VFO	YES	24 Mons.	42 Mons.	27.4	29.6	5.3	8.5	29.6	29.2	30.0	30.0

[a] If either cell in a weapons/no-weapons comparison is based on less than 50 cases, both cells are omitted from the table.

[b] Lifetime probation is permitted for defendant's material assistance in connection with a drug felony. See PL 70.06-2,65.00-1(b),65.00-3(a)(ii).

[c] Some subsections of PL 220.09 requires mandatory imprisonment but this may be satisfied with a sentence of as little as one day.

[d] Imprisonment is mandatory, but may be satisfied with a sentence of as little as one day.

Summary and Discussion

Cases involving weapons offenses are generally not yielding more severe processing outcomes than other types of offenses at similar class levels. Overall conviction rates remain at about the same level for weapons and non-weapons arrests (excluding drug arrests). The overall conviction rate is lower for arrests with similar top charges when secondary weapons arrest charges are present than for those without secondary weapons charges. Incarceration rates were also lower for arrest events with underlying weapons arrest charges. There is some indication that felony conviction rates are higher when a weapons charge is present although this is not true in all situations. Drug felony arrests were particularly more likely to receive a felony conviction if the arrest charge was accompanied by a secondary weapons charge. It has been suggested that the pre-indictment plea bargaining restrictions associated with an armed felony charge may be responsible for this increased felony conviction rate. For those cases where prison was not mandatory, few received sentences to prison. The presence of secondary weapons arrest charges had little influence on the average minimum sentences imposed. Few received the highest allowable minimum terms while many received the lowest allowable term. This was especially true for persons convicted of B and C felonies.

With increased emphasis on weapons offense enforcement, it may be expected that the likelihood of conviction for weapons violations will increase. Current sentencing practices suggest that it is possible to impose more severe penalties under existing statutes if judges care to do so. Increased punishment strategies would affect the already stressed correctional system.