

CRIMINAL
DISPOSITION
COMMISSION



SI Newhouse
Center for Law and Justice
15 Washington Street
Newark, New Jersey 07102

BRIEFING REPORT

Don M. Gottfredson
Chairman

March 1990

Stephanie R. Bush
Vice Chairman

Lela M. Keels
Coordinator
(201) 648-3187

MANDATORY SENTENCES FOR FIREARMS OFFENSES
IN NEW JERSEY

Data Committee
Criminal Disposition Commission

PREPARED BY:

Cynthia Corbo
Edward Coyle
Ellen Osborne

3-25-92
MP1
133094

133094

**U.S. Department of Justice
National Institute of Justice**

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been

granted by

New Jersey Criminal

Disposition Commission

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.

EXECUTIVE SUMMARY

This study is designed to provide a descriptive analysis of offenders sentenced under the Graves Act and admitted to state prison in 1984 (Phase I) and to measure the release outcome of the Graves cohort by tracking their subsequent criminal activity (Phase II). The Phase II Graves cohort is comprised of offenders who either completed their sentence or were granted parole. Major findings of this study are summarized as follows:

PHASE I

- * Graves Act offenders accounted for over 8% of all adult state prison admissions in 1984. Almost one-third of those admitted with mandatory minimum sentences were Graves Act offenders.

BASE OFFENSE

- * Eight out of ten Graves offenders admitted to state prison in 1984 were convicted of a violent crime.
 - * The primary commitment offense involving a firearm was robbery (45%).
 - * Based on 1984 adult state prison admissions, 29% of those sentenced for murder, 17% of those sentenced for robbery and 17% of those sentenced for aggravated assault committed crimes with a gun.
 - * One quarter of the Graves murder/manslaughter admissions were also convicted of robbery and/or assault.
 - * Data indicate that firearms were not frequently used during the commission of aggravated sexual assault (1% of those admitted in 1984 for aggravated sexual assault involved a firearm).

AGE

- * As with all admissions and those sentenced with mandatory minimum terms, younger offenders - those under age 30 - represent six out of ten Graves admissions. Those under age 40 represent almost nine out of 10 Graves admissions.
- * The 20 to 24 year old age range constituted the largest proportion of state prison admissions (29%) and Graves admissions (31%) in 1984.
- * The average (mean) age at admission for Graves offenders was 29. This is consistent with the average age of all state prison admissions (age 29) and those admitted with mandatory minimums (age 30).
- * Half of all Graves robbery admissions, about one-third of all Graves murder admissions and about one quarter of all Graves aggravated assault admissions were less than 24 years old.

GENDER

- * Almost 96% of all Graves offenders were male. This is consistent with all admissions and for admissions with mandatory minimum sentences.

RACE/ETHNICITY

- * The percentage of Graves offenders in each racial/ethnic category appears to be consistent with the percentage of total adult admissions and those receiving mandatory minimum sentences. This indicates that within racial/ethnic types, the proportion of those sentenced under the Graves Act is roughly equivalent with the other groups.
- * Approximately one-third of black offenders and over one quarter of both white and hispanic offenders with mandatory minimum sentences were Graves offenders.

- * Six out of ten Graves offenders were black.
- * There appears to be a distinct difference in the types of Graves offenses that are committed by blacks, whites and hispanics.
- * 89% of black Graves offenders, 82% of hispanic Graves offenders and 68% of white Graves offenders had committed violent offenses.
- * 16% of white Graves offenders, 4% of hispanic Graves offenders and 2% of black Graves offenders were sentenced for property offenses.

COUNTY OF COMMITMENT

- * Essex county committed the largest number of admissions under the Graves Act with 137 admissions, representing over one-quarter of Graves admissions statewide.
- * This accounted for 12% of total commitments from Essex county and almost one half of their admissions with mandatory minimum terms.

SENTENCING

- * For over half of the Graves admissions, possession of a firearm for unlawful purpose was merged with the mandatory minimum term for the base offense during sentencing.
- * Almost one-third of the Graves admissions received a concurrent sentence for the possession of a firearm for unlawful purpose (2C:39-4). This appears consistent with case law addressing when consecutive sentences may be rendered. See State v. Yarbough, 100 N.J. 627 (1985).
- * The base offense in almost half of these cases was robbery.
- * In 12% of the Graves admissions, the possession of a firearm for unlawful purpose was the most serious offense.

- * For these cases, the average mandatory minimum sentence was 3 years.
- * Approximately 4% of the Graves admissions received an additional prison sentence for possessing a firearm for unlawful purpose.
- * The base offense in almost half of these cases was murder.
- * The average mandatory minimum term for the Graves portion of the sentence was 3 years, 8 months.

MANDATORY SENTENCES FOR FIREARMS OFFENSES IN NEW JERSEY

INTRODUCTION

In 1981, State Senator Francis X. Graves, Jr. (D-35th) introduced Senate Bill 1071 to the New Jersey Legislature calling for the imposition of mandatory minimum prison terms for offenders convicted of possessing a firearm with the intent to use it against another, or during the commission, or immediate flight therefrom, of certain enumerated crimes against the person. These offenses, specified in N.J.S.A. 2C:43-6c, include murder, manslaughter, aggravated assault, aggravated sexual assault, aggravated sexual contact, robbery, burglary, or escape. The sentencing provisions, enacted on August 31, 1982, and later amended by Senate Bill 2283 in 1986, call for the imposition of at least one-third to one-half of the sentence, or 3 years, whichever is greater, or 18 months in the case of fourth degree crime, to be served before becoming eligible for parole, as well as extended prison terms for repeat offenders.

Senate Bill No. 827, introduced by Senator Graves in 1988, and enacted in 1989, provides that upon motion by the Prosecutor or sentencing court to the Assignment Judge, a defendant, who has not been previously convicted of a Graves Act offense, can be placed on probation or have the minimum term of parole ineligibility reduced to one year, if the sentencing court, with the approval of the Prosecutor, believes that the interests of justice would not be served through the imposition of the ordinary Graves Act sentencing provision.

The sentencing provisions are applied to a defendant who is

the principal actor or an accomplice when the State establishes, based upon the preponderance of the evidence at a separate hearing, that the defendant (1) possessed a weapon, and that (2) the weapon was a firearm. The courts have held that the weapon need not be recovered to demonstrate that a firearm was present in the commission of an offense - the finding, based upon testimony that a weapon was present, is sufficient to hold the defendant accountable under the Graves Act.

PURPOSE AND SCOPE OF THE REPORT

The present study is separated into two phases, each dealing with a specific concern of Senator Francis X. Graves. It is designed to address two specific issues. First, a descriptive analysis of offenders sentenced under the Graves Act will be provided to create a typology of Graves Act offenders and offenses. In a subsequent phase of this project (Phase II) the impact of the Graves Act on release outcome will be measured by tracking the subsequent criminal involvement of those offenders sentenced under Graves who either completed their sentence or were granted parole.

PHASE I

The Criminal Disposition Commission staff collected and coded data from Department of Corrections files for all 1984 adult state prison admissions with mandatory terms (n=1,693). Prison admissions in 1984 were selected as the sample for two reasons: (1) it allowed the law to take effect and for people to be sentenced under the provisions; and (2) it provided a

reasonable time frame for a follow-up, since some will have served the minimum 18 month to 3 year term and been released into the community.

Information was collected using a standardized coding form and included information on charge, length and type (i.e. concurrent, consecutive, merged) of sentence, period of parole ineligibility imposed by the court, location of offense, various demographic characteristics (i.e. age, gender, race, marital status), and whether the inmate is serving the mandatory minimum term pursuant to the Graves Act provisions. There were some files that appeared inconclusive about whether or not the individual inmate was serving a mandatory sentence imposed under the Graves Act. Many of the Judgements of Conviction included in each file did not explicitly state that parole ineligibility was required because of N.J.S.A. 2C:43-6c. In these cases, the research team was required to use intuition and review the facts presented in the Pre-Sentence Investigation Report (i.e. witness statements, hospital reports of gunshot wounds, etc.) to determine if a firearm was, in fact, part of the initiating offense. Those cases where that fact could not be clearly determined were included in the control group of non-Graves offenders. Given the relatively large number of Graves offenders (n=513) coded for this descriptive analysis, this limitation will not constrain the analysis or bias the findings to any substantial degree.

It should be noted, however, that there are three very important limitations in Phase II of this project. First, this release sample is not representative of all Graves offenders sentenced in 1984, since most of the offenders - by virtue of the

length of the sentence imposed for their initiating offense (i.e. first and second degree offenses) - are not included in the analysis as they have not yet been released from incarceration. The majority of the offenders in this sample were sentenced in 1984 for third and fourth degree offenses that involved a firearm, therefore, any conclusions drawn from this data may not apply to Graves Act offenders convicted of more serious offenses. To draw conclusions based solely upon this sample could lead to erroneous conclusions about the effectiveness of this strategy and may not reflect the Act's true impact on violent crime. A study of the release outcome of these more serious offenders is strongly recommended for a later time when those sentenced to lengthier terms are finally released.

Second, since Phase II of this project does not include criminal activity committed in jurisdictions outside of New Jersey, the various outcomes examined (i.e. rearrest, reconviction and reincarceration for Graves Act offenses) are likely to be slightly higher than recorded in this study. Third, given the relatively short period of time most of the 1984 offenders have been in the community, those who do get rearrested may not have been convicted or sentenced to date. The controversy that surrounds the definition of recidivism also applies here and the reader is cautioned not to draw hasty conclusions at this juncture, but to wait for further analysis with longer follow-up periods.

PHASE II

The second phase of this project will collect and analyze

data on the release outcome of Graves offenders sentenced in 1984. The sample (n= 258) will be comprised of 1984 offenders sentenced under the Graves Act provisions and released upon completion of their sentence or to parole supervision. Subsequent criminal activity will be tracked using State Bureau of Identification (SBI) numbers, a methodology similar to the one created in the Parole Release Outcome Study (Corbo, 1988) completed by the Criminal Disposition Commission. The research staff matched SBI numbers with the names and reported aliases of the inmates released from their 1984 mandatory sentence, either through parole or satisfaction of their maximum term and included them in the sample. Subsequent criminal activity including arrest, conviction and reincarceration will be identified through a check of the Computerized Criminal History (CCH) system.

PHASE I - GRAVES ACT OFFENDER/OFFENSE CHARACTERISTICS

Base Offense

Offenders sentenced under the Graves Act accounted for 8%, or 513 of 6,379 of all adult state prison admissions in 1984. Graves offenders represented almost 30%, or 513 of 1,693 of those state prison admissions receiving mandatory minimum terms.

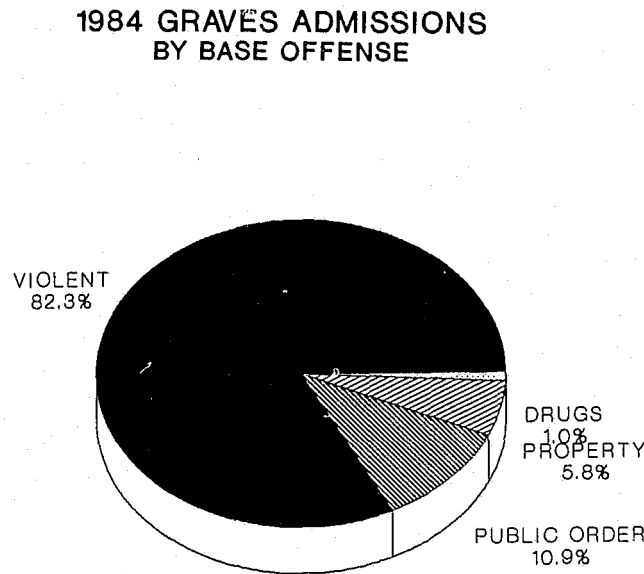
Table 1

MOST SERIOUS OFFENSE DISTRIBUTION						
MOST SERIOUS OFFENSE	1984 ADULT ADMISSIONS		1984 NEW COURT ADM WITH MINS		GRAVES CASES	
UNCODED	73	1.1%	2	0.1%	0	0.0%
VIOLENT OFFENSES:						
MURDER/MANSLAUGHTER	263	4.1%	184	10.9%	76	14.8%
KIDNAPPING	51	0.8%	31	1.8%	8	1.6%
RAPE	288	4.5%	83	4.9%	3	0.6%
OTHER SEXUAL OFFENSES	34	0.5%	6	0.4%	0	0.0%
ROBBERY	1,363	21.4%	495	29.2%	231	45.0%
ASSAULT	620	9.7%	179	10.6%	103	20.1%
OTHER PERSON OFFENSES	11	0.2%	10	0.6%	1	0.2%
	2,630	41.2%	988	58.4%	422	82.3%
PROPERTY OFFENSES:						
BURGLARY	1,245	19.5%	227	13.4%	26	5.1%
LARCENY/THEFT	478	7.5%	77	4.5%	4	0.8%
ARSON	87	1.4%	15	0.9%	0	0.0%
FRAUD/FORGERY	94	1.5%	12	0.7%	0	0.0%
RECEIVING STOLEN PROPERTY	231	3.6%	32	1.9%	0	0.0%
	2,135	33.5%	363	21.4%	30	5.8%
DRUG OFFENSES:						
TRAFFICKING	791	12.4%	185	10.9%	2	0.4%
POSSESSION	294	4.6%	51	3.0%	3	0.6%
	1,085	17.0%	236	13.9%	5	1.0%
PUBLIC ORDER OFFENSES:						
WEAPONS	244	3.8%	82	4.8%	56	10.9%
ESCAPE	28	0.4%	1	0.1%	0	0.0%
OTHER PUBLIC ORDER OFFENSES	184	2.9%	21	1.2%	0	0.0%
	456	7.1%	104	6.1%	56	10.9%
TOTAL	6,379	100.0%	1,693	100.0%	513	100.0%

As Table 1 indicates, 422 of 513, or 82% of Graves offenders admitted to state prison in 1984 were convicted of a violent

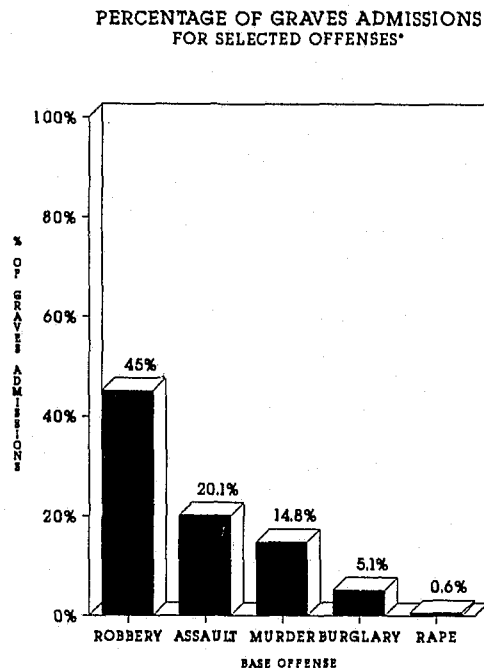
crime, thus reflecting the legislative intent of the Graves Act, which was to target violent crime by incarcerating offenders convicted under N.J.S.A. 2C:39-4 of possessing a firearm for unlawful purpose in crimes against the person (Figure 3).

Figure 3



As Figure 4 indicates, approximately 65% of the Graves Act base offenses were either robbery (45%) or assault (20%). New Jersey data seem to support Zimring's finding that the primary crimes involving firearms in the United States are robbery and assault. In 19 of 76, or 25% of the murder or manslaughter admissions involving a firearm, offenders were additionally sentenced for robbery and/or assault, thus supporting Zimring's point that criminal homicides are "an amalgam of assaults and robberies".

Figure 4



* Note: In order to highlight those crimes that produce the most fear provoking consequences in the community, drug and public order offenses are excluded.

Based on 1984 adult state prison admissions, approximately 29% of all murders, 17% of all robberies and 17% of all aggravated assaults were committed with a gun. New Jersey Uniform Crime Report data for 1984 indicated that 42% of those arrested for murder had used a firearm during the commission of the crime; 24% of those arrested for robbery had used a gun during the robbery; and 13% of those arrested for aggravated assault had used a gun. It should be noted that Uniform Crime Report data reflect arrests rather than prison admissions, thus the differences in the percentages presented above could be the result of time lags that occur between arrest and disposition or prosecutorial charging decisions.

The data also suggest that firearms are not frequently used during the commission of aggravated sexual assault. Only three of a total of 288 state prison admissions for aggravated sexual assault, or approximately 1%, involved a firearm. As Figure 4 indicates, 26 of 513, or 5% of the Graves admissions had burglary as the base offense. Research has indicated that in the majority of similar cases, firearms were stolen during the commission of the burglary, as opposed to commission of armed burglary (Moore, 1981, p.92).

Age

Based on data found in Table 2, the 20 to 24 year old age range constituted the largest group in two of the three admission types - 1984 adult admissions (29%) and Graves admissions (31%). This group accounted for 415 of 1,867, or only 22% of all 1984 adult prison admissions receiving mandatory minimum sentences, with 39% of those admitted as Graves cases. Median and average ages within the three admission categories remained relatively constant, with an average admission age of 29 for 1984 adult admissions and for Graves admissions and an average admission age of 30 for state prison admissions with mandatory minimum terms. The median age at admission was 27 for all adult admissions; 28 for the state prison admissions with mandatory minimum sentences; and 26 for the Graves admissions.

Table 2

DISTRIBUTION BY AGE AT ADMISSION					
AGE AT ADMISSION	1984 ADULT ADMISSIONS		1984 NEW COURT ADM WITH MINS		GRAVES CASES
19 OR YOUNGER	304	4.8%	86	5.1%	43 8.4%
20 - 24	1,867	29.3%	415	24.5%	161 31.4%
25 - 29	1,704	26.7%	452	26.7%	112 21.8%
30 - 34	1,132	17.7%	328	19.4%	77 15.0%
35 - 39	677	10.6%	209	12.3%	53 10.3%
40 - 44	327	5.1%	78	4.6%	21 4.1%
45 - 49	174	2.7%	56	3.3%	20 3.9%
50+	194	3.0%	69	4.1%	26 5.1%
	-----	---	----	---	-- ---
TOTALS	6,379	100.0%	1,693	100.0%	513 100.0%
AVERAGE AGE AT ADMISSION	29 YRS		30 YRS		29 YRS
MEDIAN AGE AT ADMISSION	27 YRS		28 YRS		26 YRS

The largest proportion of Graves offenders (31%) were within the 20 to 24 year old age category, and a total of 40% were under 24 years of age (Table 2). Comparing offense type in Table 3, 23 of 76, or 30% of all Graves admissions for murder were less than 24 years old, as were 115 of 231, or 50% of the Graves robbery admissions; 27 of 103, or 26% of the aggravated assault admissions committed with a firearm; 18 of 26, or 70% of the Graves burglary admissions; and 16 of 56, or 29% of the state prison admissions with a firearm offense as the base offense. These findings support the research that the majority of crime is committed by offenders during the "crime-prone" years of 18-24

(Steffensmeier, 1987, p.25).

Table 3

GRAVES OFFENDERS																			
MOST SERIOUS OFFENSE DISTRIBUTION BY AGE AT ADMISSION																			
		19 OR																TOTAL	
MOST SERIOUS OFFENSE		YOUNGER		20 - 24		25 - 29		30 - 34		35 - 39		40 - 44		45 - 49		50+		GRAVES CASES	
VIOLENT OFFENSES:																			
MURDER/MANSLAUGHTER		7	16.3%	16	9.9%	16	14.3%	10	13.0%	7	13.2%	3	14.3%	7	35.0%	10	38.5%	76	14.8%
KIDNAPPING				1	0.6%	2	1.8%	3	3.9%	1	1.9%	1	4.8%					8	1.6%
RAPE				2	1.2%			1										3	0.6%
ROBBERY		25	58.1%	90	55.9%	58	51.8%	28	36.4%	19	35.8%	6	28.6%	3	15.0%	2	7.7%	231	45.0%
ASSAULT		6	14.0%	21	13.0%	21	18.8%	15	19.5%	18	34.0%	6	28.6%	5	25.0%	11	42.3%	103	20.1%
OTHER PERSON																1	3.8%	1	0.2%
OFFENSES		-	----	----	----	--	----	--	----	--	----	--	----	--	----	1	----	----	----
		38	88.4%	130	80.7%	97	86.6%	57	74.0%	45	84.9%	16	76.2%	15	75.0%	24	92.3%	422	82.3%
PROPERTY OFFENSES:																			
BURGLARY		3	7.0%	15	9.3%	2	1.8%	3	3.9%	3	5.7%							26	5.1%
LARCENY/THEFT				2	1.2%	1	0.9%	1	1.3%									4	0.8%
		-	---	--	----	-	---	-	---	-	---							--	---
		3	7.0%	17	10.6%	3	2.7%	4	5.2%	3	5.7%							30	5.8%
DRUG OFFENSES:																			
TRAFFICKING								2	2.6%									2	0.4%
POSSESSION						1	0.9%						1	5.0%	1	3.8%	3	0.6%	
						-	---	-	---				-	----	-	---	--	---	
						1	0.9%	2	2.6%				1	5.0%	1	3.8%	5	1.0%	
PUBLIC ORDER OFFENSES:																			
WEAPONS		2	4.7%	14	8.7%	11	9.8%	14	18.2%	5	9.4%	5	23.8%	4	20.0%	1	3.8%	56	10.9%
OTHER PUBLIC ORDER																			
OFFENSES		-	---	--	----	--	----	--	----	-	----	-	----	-	----	-	----	--	----
		2	4.7%	14	8.7%	11	9.8%	14	18.2%	5	9.4%	5	23.8%	4	20.0%	1	3.8%	56	10.9%
TOTAL		43	100.0%	161	100.0%	112	100.0%	77	100.0%	53	100.0%	21	100.0%	20	100.0%	26	100.0%	513	100.0%

Gender

Based on data found in Table 4, males comprised almost 96% of the Graves offenders, while 4% of the Graves offenders were females. These percentages appear to be consistent with total adult admissions and those receiving mandatory minimum sentences during 1984.

Table 4

DISTRIBUTION BY GENDER						
SEX	1984 ADULT ADMISSIONS		1984 NEW COURT ADM WITH MINS		GRAVES CASES	
UNCODED	1	< 1%	2	0.1%	0	0.0%
MALE	6,103	95.7%	1,634	96.5%	491	95.7%
FEMALE	275	4.3%	57	3.4%	22	4.3%
TOTAL	6,379	100.0%	1,693	100.0%	513	100.0%

GRAVES OFFENDERS MOST SERIOUS OFFENSE DISTRIBUTION BY GENDER						
MOST SERIOUS OFFENSE	MALES		FEMALES		TOTAL GRAVES CASES	
VIOLENT OFFENSES:						
MURDER/MANSLAUGHTER	74	15.1%	2	9.1%	76	14.8%
KIDNAPPING	7	1.4%	1	4.5%	8	1.6%
RAPE	3	0.6%	0	0.0%	3	0.6%
ROBBERY	223	45.4%	8	36.4%	231	45.0%
ASSAULT	94	19.1%	9	40.9%	103	20.1%
OTHER PERSON OFFENSES	1	0.2%	0	0.0%	1	0.2%
	402	81.9%	20	90.9%	422	82.3%
PROPERTY OFFENSES:						
BURGLARY	26	5.3%	0	0.0%	26	5.1%
LARCENY/THEFT	4	0.8%	0	0.0%	4	0.8%
	30	6.1%	0	0.0%	30	5.8%
DRUG OFFENSES:						
TRAFFICKING	2	0.4%	0	0.0%	2	0.4%
POSSESSION	3	0.6%	0	0.0%	3	0.6%
	5	1.0%	0	0.0%	5	1.0%
PUBLIC ORDER OFFENSES:						
WEAPONS	54	11.0%	2	9.1%	56	10.9%
	54	11.0%	2	9.1%	56	10.9%
TOTAL	491	100.0%	22	100.0%	513	100.0%

Race/Ethnicity

Black offenders represented 62% of all Graves offenders (Table 5). Approximately 33%, or 319 of 963 black offenders with mandatory minimum sentences were Graves offenders, compared to 26%, or 139 of 525 for white offenders and 27%, or 50 of 188

for hispanic offenders. Table 5 also indicates that the percentage of Graves offenders for each racial/ethnic category appear to be consistent with the percentage of total adult admissions and those receiving mandatory minimum sentences.

Table 5

COMPARISON OF 1984 ADULT ADMISSIONS BY RACE									
RACE	TOTAL ADMISSIONS		MANDATORY MINIMUM SENTENCES:			GRAVES SENTENCES:			
	NUMBER	% ADM	NUMBER	% MAND MINS	% ADM	NUMBER	% GRAVES	% MAND MINS	% ADM
UNCODED	32	1%	17	1%	< 1%	5	1%	< 1%	< 1%
BLACK	3,388	53%	963	57%	15%	319	62%	19%	5%
WHITE	1,976	31%	525	31%	8%	139	27%	8%	2%
HISPANIC	975	15%	188	11%	3%	50	10%	3%	1%
ASIAN	8	< 1%	0	0%	0%	0	0%	0%	0%
TOTAL	6,379	100%	1,693	100%	27%	513	100%	30%	8%

As Table 6 indicates, black and hispanic Graves offenders were more often committed for violent crimes than white Graves offenders. Of blacks and hispanics sentenced under the Graves Act, 89% and 82%, respectively, were sentenced for violent offenses. Approximately 68% of whites sentenced under Graves provisions had committed violent offenses. However, 16% of whites were sentenced under the Graves Act for property offenses - compared to only 2% of blacks and 4% of hispanics. Therefore, there is a distinct difference in the types of Graves offenses for which whites are sentenced, compared to blacks and hispanics. However, these data are generally consistent with data for all

admissions and admissions with mandatory minimum terms in the violent and property categories. In the drug category, the number of Graves sentences is so small that no comparisons can be drawn with the larger groups. A more complete distribution of admissions by race/ethnicity and base offense is found in Appendices C & D.

Table 6

DISTRIBUTION OF ADMISSION TYPE BY RACE/ETHNICITY AND BASE OFFENSE																										
BASE OFFENSE	1984 ADULT ADMISSIONS										1984 NEW COURT ADMISSIONS WITH MINS								GRAVES ADMISSIONS							
	UNCODED		BLACK		WHITE		HISPANIC		ASIAN		UNCODED		BLACK		WHITE		HISPANIC		UNCODED		BLACK		WHITE		HISPANIC	
UNCODED	2	6%	47	1%	19	1%	5	1%			2	12%														
TOTAL VIOLENT	17	53%	1,603	47%	669	34%	337	35%	4	50%	8	47%	635	66%	251	48%	94	50%	3	60%	282	89%	95	68%	42	82%
TOTAL PROPERTY	7	22%	1,001	30%	875	44%	251	26%	1	13%	2	12%	169	18%	164	31%	28	15%		6	2%	22	16%	2	4%	
TOTAL DRUG	3	9%	522	15%	237	12%	321	33%	2	25%	2	12%	111	12%	68	13%	55	29%		2	1%	3	2%			
TOTAL PUBLIC ORDER	3	9%	215	6%	176	9%	61	6%	1	13%	3	18%	48	5%	42	8%	11	6%	2	40%	28	9%	19	14%	7	14%
TOTAL	32	100%	3,388	100%	1,976	100%	975	100%	8	100%	17	100%	963	100%	525	100%	188	100%	5	100%	318	100%	139	100%	51	100%

Note: Due to rounding, percentages in subcategories may not sum to total.

County of Commitment

As Table 7 indicates, Essex county committed 137 Graves offenders, representing the largest percentage (27%) of the statewide 1984 Graves admissions. This accounted for 12% of that county's total 1984 state prison admissions. A distribution of most serious offense by county is found in Appendix E.

Table 7

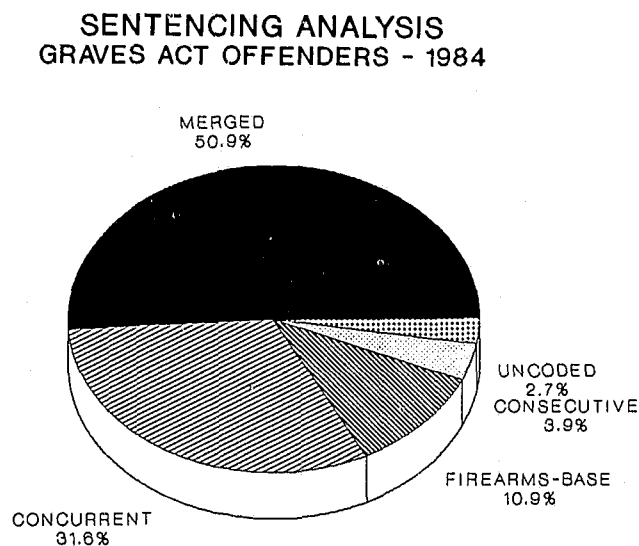
COMPARISON OF 1984 ADULT PRISON ADMISSIONS BY COUNTY
(RANKED BY % OF GRAVES ADMISSIONS TO TOTAL COUNTY ADMISSIONS)

TOTAL ADMISSIONS:			MANDATORY MINIMUM SENTENCES:			GRAVES SENTENCES:			
COUNTY	NUMBER	%	NUMBER	%	% COUNTY ADM	NUMBER	%	% COUNTY: MAND MINS	ADM
SUSSEX	39	1%	12	1%	31%	6	1%	50%	15%
HUNTERDON	42	1%	15	1%	36%	6	1%	40%	14%
GLOUCESTER	81	1%	27	2%	33%	11	2%	41%	14%
ESSEX	1,147	18%	330	19%	29%	137	27%	42%	12%
UNION	463	7%	158	9%	34%	47	9%	30%	10%
HUDSON	470	7%	122	7%	26%	47	9%	39%	10%
MIDDLESEX	265	4%	77	5%	29%	25	5%	32%	9%
PASSAIC	592	9%	203	12%	34%	51	10%	25%	9%
CUMBERLAND	117	2%	17	1%	15%	10	2%	59%	9%
CAMDEN	583	9%	154	9%	26%	45	9%	29%	8%
BURLINGTON	149	2%	43	3%	29%	10	2%	23%	7%
BERGEN	356	6%	87	5%	24%	22	4%	25%	6%
SALEM	65	1%	12	1%	18%	4	1%	33%	6%
ATLANTIC	380	6%	82	5%	22%	23	4%	28%	6%
OCEAN	86	1%	10	1%	12%	5	1%	50%	6%
MONMOUTH	585	9%	134	8%	23%	34	7%	25%	6%
MERCER	341	5%	118	7%	35%	18	4%	15%	5%
MORRIS	153	2%	32	2%	21%	7	1%	22%	5%
SOMERSET	123	2%	28	2%	23%	2	< 1%	7%	2%
WARREN	65	1%	14	1%	22%	1	0%	7%	2%
CAPE MAY	63	1%	9	1%	14%	0	0%	0%	0%
UNCODED	214	3%	9	1%	4%	2	< 1%	22%	< 1%
TOTALS	6,379	100%	1,693	100%	27%	513	100%	30%	8%

SENTENCING IMPACT

Analysis of sentencing data for offenders convicted under N.J.S.A. 2C:39-4 of possession of a firearm for unlawful purpose during the commission of a crime, indicates that in 262 of 513, or 51% of the 1984 Graves admissions, the firearms offense was merged with the base offense during sentencing (Figure 5). In 162 of 513, or 32% of the Graves cases were sentenced to concurrent terms for the firearms offense. Consecutive sentencing was not as prevalent, with only 20 of 513, or less than 4% receiving an additional prison sentence for the firearms offense. Possession of a firearm for unlawful purpose (2C:39-4) was the base offense in 56 of 513, or 11% of the 1984 Graves admissions.

Figure 5



MERGED SENTENCING

In the largest segment of the 1984 Graves admissions (51%), the possession of a firearm for unlawful purpose was merged with

the base offense for sentencing purposes (Figure 5). In these cases, offenders received a parole ineligibility term of between one-third and one-half of the sentence imposed by the court for the base offense. The data presented here appears to be consistent with the data presented in Table 1, the "legislative intent" of the Graves Act, and the concept of merger which protects against double punishment for a single offense (N.J.S.A. 2C:1-8). Briefly, merger is a matter of legislative intent and refers to a process where the sentencing court, after a finding of guilt, incorporates "indistinguishable, contemporaneous separate offenses" into a single base offense for sentencing purposes to protect against double punishment for a conceptually single offense (*State v. Best*, 70 N.J. 56, 1976). The concept of merger has received a considerable amount of judicial scrutiny, particularly in cases where the possession of a weapon was involved in the commission of the base offense.¹⁰ Generally, the courts have ruled that when the weapon possession charge and the base offense (i.e. armed robbery) resulted from the same criminal incident, or when the possession of a weapon elevates the severity of the offense to a higher degree¹¹, the weapon possession charge will merge with the base offense for the purposes of sentencing (See *State v. Best*, 70 N.J. 56, 1976).

¹⁰See *Blockburger v. U.S.*, 284 U.S. 299, 1932; *State v. Carlos*, 187 N.J. Super. 406, App. Div. 1982; *State v. Truglia*, 97 N.J. 513, 1984; *State v. Anderson*, 198 N.J. Super. 340, App. Div. 1985; *State v. Miller*, 108 N.J. 112, 1987; and *State v. Davis*, 68 N.J. 69, 1975.

¹¹For example, the possession of a weapon is the force, or threat of force, often necessary to raise theft to robbery, thus, the offenses merge.

In some instances, the sentences imposed for certain base offenses ordinarily do not carry mandatory minimum terms. However, when these offenses are committed with a firearm, and although the weapon possession charge merges with the base offense not ordinarily subject to mandatory minimums, the Graves Act sentencing provision must be applied to that base offense (State v. Connell, 208 N.J. Super 688, App.Div., 1986).

CONCURRENT SENTENCING

As Table 8 indicates, 123 of 162, or 76% of the 1984 Graves offenders receiving concurrent sentences received a mandatory minimum sentence for the base offense enumerated in and indicated by the Graves Act, with no mandatory minimum term imposed for the possession of a firearm for unlawful purpose offense. This appears consistent with case law addressing when consecutive sentencing may be rendered (State v. Yarbough, 100 N.J. 627, 1985). For these cases, 42 of 123, or 34% were sentenced to a four year term for the possession of a firearm for unlawful purpose (Table 8). Since the presumptive term for third degree crimes is four years, it seems that in the majority of these cases, the firearms offense was a third degree crime. Graves offenders sentenced to a concurrent term without a mandatory minimum term imposed for the the possession of a firearm for unlawful purpose, received an average maximum concurrent sentence of 4 years, 8 months.

Table 8

CONCURRENT GRAVES SENTENCING DISTRIBUTION (WITHOUT MANDATORY MINIMUM TERMS)									
=====									
MAXIMUM TERM:									
1 YR	1.5 YRS	3 YRS	4 YRS	5 YRS	7 YRS	9 YRS	10 YRS	TOTAL	
=====									
1	6	19	42	34	11	1	9	123	
0.8%	4.9%	15.4%	34.1%	27.6%	8.9%	0.8%	7.3%	100.0%	

Of the 24%, or 39 of 162 Graves offenders receiving concurrent sentences with mandatory minimum terms for the possession of a firearm for unlawful purpose, the most frequent (46%) parole ineligibility term imposed was three years (Table 9).

Table 9

CONCURRENT GRAVES SENTENCING DISTRIBUTION (WITH MANDATORY MINIMUM TERMS)						
=====						
MINIMUM TERM:						
1.5 YRS	2 YRS	2.5 YRS	3 YRS	4 YRS	5 YRS	TOTAL
=====						
1	7	7	18	2	4	39
2.6%	17.9%	17.9%	46.2%	5.1%	10.3%	100.0%

As Table 10 indicates, 74 of 162, or in over 45% of the 1984 Graves cases receiving concurrent sentences for the firearms offense with mandatory minimum terms, the base offense was robbery. In cases where a concurrent term was imposed, the average mandatory minimum term for the base offense was a parole ineligibility term of 5 years, 3 months, with an average maximum sentence of 10 years, 7 months.

Table 10

CONCURRENT GRAVES SENTENCING MOST SERIOUS OFFENSE DISTRIBUTION		
=====		
VIOLENT OFFENSES:		
MURDER/MANSLAUGHTER	29	17.9%
KIDNAPPING	3	1.9%
RAPE	2	1.2%
ROBBERY	74	45.7%
ASSAULT	40	24.7%
OTHER PERSON OFFENSES	1	0.6%
	----	----
	149	92.0%
PROPERTY OFFENSES:		
BURGLARY	8	4.9%
LARCENY/THEFT	2	1.2%
	-	----
	10	6.2%
DRUG OFFENSES:		
TRAFFICKING	2	1.2%
POSSESSION	1	0.6%
	-	----
	3	1.9%
TOTAL	162	100.0%
=====		

POSSESSION OF A FIREARM FOR UNLAWFUL PURPOSE AS BASE OFFENSE

For 56 of 513, or approximately 11% of the Graves cases admitted to state prison in 1984, the possession of the firearm for unlawful purpose (2c:39-4) was the most serious offense, rather than one of the other offenses enumerated in the Graves Act. In these cases, the average mandatory minimum term was 3 years, with an average maximum term of 6 years, 5 months. The sentencing data appear to be consistent with the sentencing provisions of the Graves Act, which specifies a mandatory minimum term of 3 years, excluding fourth degree crimes.

CONSECUTIVE SENTENCING

Approximately 4%, 20 of 513 of the Graves admissions in 1984 were sentenced to a consecutive term of imprisonment for the possession of a firearm for unlawful purpose. Apparently, these cases survived the merger test briefly described above and were considered "factually" or "legislatively intended" separable offenses. In 45%, 9 of 20 of the Graves cases sentenced to consecutive terms, the base offense was murder. For those receiving consecutive sentences for the firearms offense, the average mandatory minimum term imposed for the base offense was 9 years, 4 months, with an average maximum sentence of 16 years, 3 months. This compares to an average mandatory minimum term of 5 years, 3 months for the base offense, with an average maximum term of 10 years, 7 months for those offenders receiving concurrent sentences for the firearms offense. Lengthier sentences in cases where a consecutive term was imposed would support the notion that the circumstances surrounding the base

offense were more serious in nature.

Since the presumptive term for first degree offenses is 15 years, the sentencing data suggest that in the majority of the Graves cases receiving consecutive terms, the base offense was a first degree crime. The average term for the Graves portion of that sentence was a parole ineligibility term of 3 years, 8 months, with an average maximum term of 8 years, 2 months.

Figure 6

CONSECUTIVE GRAVES SENTENCING
BASE OFFENSE DISTRIBUTION

