

Case Processing Analysis: Utah's Mandatory Prison Sex Offenses

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Mandatory Prison Sex Offenses

- ◆ Aggravated Sexual Assault (6, 10, or 15 to Life)
- ◆ Aggravated Sexual Abuse of a Child (5 to Life)
- ◆ Aggravated Kidnaping (6, 10, or 15 to Life)
- ◆ Child Kidnaping (6, 10, or 15 to Life)
- ◆ Object Rape of a Child (6, 10, or 15 to Life)
- ◆ Attempted Object Rape of a Child (3 to Life)
- ◆ Rape of a Child (6, 10, or 15 to Life)
- ◆ Attempted Rape of a Child (3 to Life)
- ◆ Sodomy on a Child (6, 10, or 15 to Life)
- ◆ Attempted Sodomy on a Child (3 to Life)

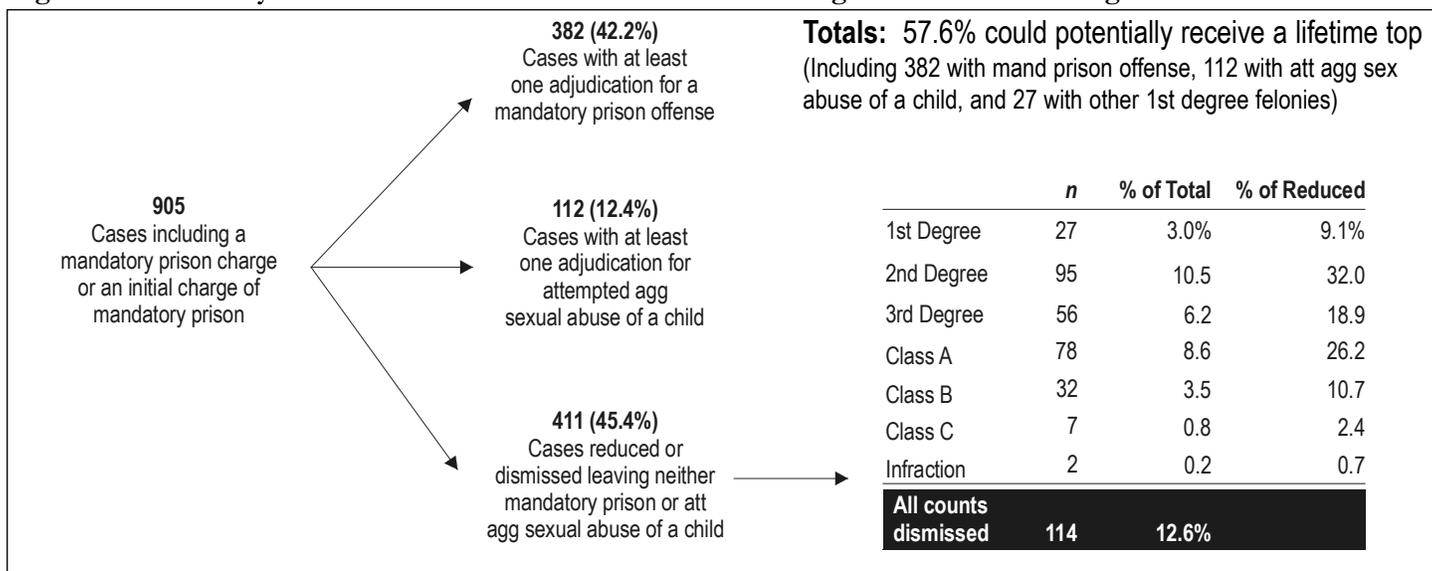
The following is an analysis of the charging patterns of mandatory prison sex offenses established under Senate Bill 26 (Crime Penalty Adjustments) passed by the Utah Legislature in 1996. Adjacent is a listing of these mandatory prison sex offenses. Senate Bill 26 eliminated mandatory minimum sentencing for sex offenses against children. This legislation also included a non-mandatory prison offense of attempted aggravated sexual abuse of a child as a plea negotiation option that still maintains a lifetime maximum sentence.

This report examines how often a charged mandatory prison sex offense is reduced to a non-mandatory prison sentence, how often charges of mandatory prison sex offenses are dismissed, and how often the non-mandatory first degree offense of attempted aggravated sexual abuse of a child is used.

Data for the analysis was extracted from the Court database CORIS. Included in the analysis are data from 1997 through July 2001. It is important to note that CORIS does not explicitly identify instances of plea negotiations. Instead, the analysis looks for evidence of negotiations in terms of charge reduction and charge dropping.

The analysis included 905 distinct cases that included a charge for a mandatory prison sex offense either as the original charge or as the final charge. Most cases included other charges, some sex offenses others not sex offenses. In fact, these 905 cases included 2,818 charges with a maximum of 68 charges in a case, a minimum of one charge in a case, and an average of 3.1 charges per case. Looking at **Figure 1**, of 905 cases, 382 (42.2%) had an adjudication for at least one mandatory prison sex offense, 112 (12.4%) did not have an adjudication for a mandatory prison sex offense but did have an adjudication for attempted aggravated sexual abuse of a child, and 411 (45.4%) either had all counts dismissed or had no adjudication for a mandatory prison offense or attempted aggravated sexual abuse of a child.

Figure 1: Mandatory Prison Sex Offense Case Outcomes Including Cases With All Charges Dismissed



OUTCOMES FOR THOSE NOT ADJUDICATED FOR MANDATORY PRISON SEX OFFENSE OR ATTEMPTED AGGRAVATED SEXUAL ABUSE OF A CHILD

For those cases not resulting in a mandatory prison adjudication or where there was not an adjudication for attempted aggravated sexual abuse of a child, it is important to know the most severe adjudication in the case. **Table 1** shows the highest level adjudication in such cases. Cases where all charges were dismissed are excluded, leaving 297 cases with an adjudication. Of these cases, 27 (9.1%) still had an adjudication for a 1st degree felony which carries a lifetime maximum sentence. Highlighted offenses depict the most common offenses within an offense degree. It should be noted that some of these offenses are attempted or conspiracy which is why they are not mandatory prison sex offenses. Although aggravated kidnaping does carry a mandatory prison sentence, it was not considered a sex offense in this analysis.

Table 1: Highest Level Outcomes For Cases Without a Conviction for a Mandatory Prison Sex Offense

<p>12 RAPE 3 FORCIBLE SEX ABUSE 3 AGGRAVATED BURGLARY 2 SODOMY/FORCIBLE SODOMY 2 FORCIBLE SODOMY 2 AGGRAVATED SEX ASSAULT 1 POSS W/ INTENT TO DIST C/SUBSTANCE 1 AGGRAVATED ROBBERY 1 AGGRAVATED KIDNAPPING 27 TOTAL 2nd Degree Felony 49 SEX ABUSE OF A CHILD 27 FORCIBLE SEX ABUSE 2 SEXUAL ABUSE OF MINOR 2 KIDNAPPING 2 CHILD ABUSE/NEGLECT 2 BURGLARY 2 CHILD KIDNAPPING 1 UNLAWFUL DISTRIBUTION/CONTROLLED SUB 1 SEX EXPLOITATION OF A MINOR 1 RAPE 1 POSS W/ INTENT TO DIST C/SUBSTANCE 1 OPERATION OF A CLANDESTINE LABORATORY 1 MURDER 1 LEWDNESS INVOLVING A CHILD 1 AGGRAVATED KIDNAPPING 1 AGGRAVATED ASSAULT 95 TOTAL 3rd Degree Felony 15 UNLAW SEX ACTIVITY WITH A MINOR 12 FORCIBLE SEX ABUSE 10 SEX ABUSE OF A CHILD 5 ILLEGAL POSS/USE OF CONTROLLED SUBSTANCE 2 KIDNAPPING 1 POSSESS FORGERY WRITING/DEVICE 1 POSS W/INTENT TO DIST CNTL /CNTRFT SUBST 1 OPERATION OF A CLANDESTINE LABORATORY 1 UNLAW SEXUAL COND WITH 16 OR 17 YR OLD 1 TAMPER W/ WITNESS/JUROR 1 AGGRAVATED ASSAULT 1 DRIVING UNDER THE INFLUENCE OF ALC/DRUGS 1 DOMESTIC VIOLENCE IN PRESENCE OF CHILD 1 DISTRIBUTE/OFFER/ARRANGE TO DIST C/S 1 DEAL IN HARMFUL MATERIAL TO A MINOR 1 CHILD ABUSE/NEGLECT 1 AGGRAVATED SEX ASSAULT 56 TOTAL Class A Misdemeanor 35 LEWDNESS INVOLVING A CHILD 10 GROSS LEWDNESS 5 SEXUAL BATTERY</p>	<p>4 LEWDNESS 3 ILLEGAL POSS/USE OF CONTROLLED SUBSTANCE 3 SIMPLE ASSAULT 2 FAIL TO STOP/RESPOND AT COMMAND OF POLIC 2 BURGLARY OF A VEHICLE 1 ASSAULT W/ SUBSTANCIAL BODILY INJURY 1 CRIMINAL MISCHIEF 1 CUSTODIAL INTERFERENCE-BETWEEN STATES 1 DOMESTIC VIOLENCE IN PRESENCE OF CHILD 1 ESCAPE FROM OFFICIAL CUSTODY 1 JOYRIDING W/ INTENT TO TEMP DEPRIVE OWNR 1 ASSAULT AGAINST POLICE OFFICER 1 UNLAW SALE/SUPPLY OF ALCOHOL TO MINORS 1 VIOLATION OF PROTECTIVE ORDER 1 THEFT BY RENTAL AGREEMENT 1 RECKLESS DRIVING 1 SEX ABUSE OF A CHILD 1 SEXUAL ABUSE OF MINOR 1 UNLAW SEX ACTIVITY WITH A MINOR 78 TOTAL Class B Misdemeanor 5 SIMPLE ASSAULT 4 ILLEGAL POSS/USE OF CONTROLLED SUBSTANCE 3 UNLAW PURCHASE/POSS/CONS OF ALC BY MINOR 3 CRIMINAL MISCHIEF 3 THEFT 2 USE OR POSSESSION OF DRUG PARAPHERNALIA 1 CONCEALING ID 1 CRIMINAL TRESPASS 1 DRIVE WITH MEASURABLE CONTROLLED SUBSTAN 1 FAIL TO REMAIN SCENE OF ACCIDENT-DAMAGE 1 FALSIFY/ALTER GOVERNMENT RECORDS 1 BATTERY DOMESTIC RELATED 1 RETAIL THEFT (SHOPLIFTING) 1 SHOOTING IN THE CITY LIMITS 1 TELEPHONE HARASSMENT 1 THREAT AGAINST LIFE/PROPERTY 1 THREAT/USE OF DANGEROUS WEAPON IN FIGHT 1 LEWDNESS 32 TOTAL Class C Misdemeanor 2 UNLAW OPEN/CONSUME ALC IN PUBLIC PLACE 1 INTOXICATION 1 FAILURE TO CONTROL DOG 1 DISORDERLY CONDUCT 1 CRIMINAL TRESPASS 1 ANIMAL AT LARGE 7 TOTAL Infraction 1 DISTURBING THE PEACE 1 CRIMINAL TRESPASS 2 TOTAL</p>
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SUMMARY OF FINDINGS

Figure 2 provides a useful summary of the 905 cases under analysis. The diagram begins with the original 905 cases, and then eliminates the 114 cases where all charges were dropped. This leaves 791 cases where at least one charge resulted in an adjudication. Keeping **Table 1** in mind, it is clear that in many of these 791 cases (specifically 297 cases), no mandatory prison sex offense charges or attempted aggravated sexual abuse of a child charges remained in the case, which means they were either reduced or dismissed. For example, included in the 791 would be a case with one count of rape of a child that was dismissed and one count of forcible sex abuse that was not dismissed. Excluded from the 791 (part of the 114 where all charges were dismissed) would be a case with two charges of rape of a child where both charges were dismissed.

Of these 791 cases, 382 (48.3%) resulted in an adjudication for a mandatory prison sex offense, 112 (14.2%) resulted in an adjudication for attempted aggravated sexual abuse of a child which still has a lifetime maximum sentence though not a mandatory prison sentence, 27 (3.4%) resulted in an adjudication for some other 1st degree felony offense which also has a lifetime maximum sentence though not a mandatory prison sentence, and the remaining 270 (34.1%) resulted in an adjudication for an offense less than a 1st degree felony which does not carry a lifetime maximum or a mandatory prison sentence. In sum, two-thirds of these cases resulted in an adjudication for a lifetime maximum offense, and one-third of these cases resulted in an adjudication for a non-lifetime maximum offense.

It is important to note this is not direct evidence of plea bargaining activity. It is quite possible that some of the charges were reduced or dropped because there was insufficient evidence for the charge or for some other reason. The analysis does provide evidence of plea bargaining in that charge reduction and charge dismissal are the primary tools used in plea negotiation.

Figure 2: Mandatory Prison Sex Offense Case Outcomes Excluding Cases Where All Charges Were Dismissed

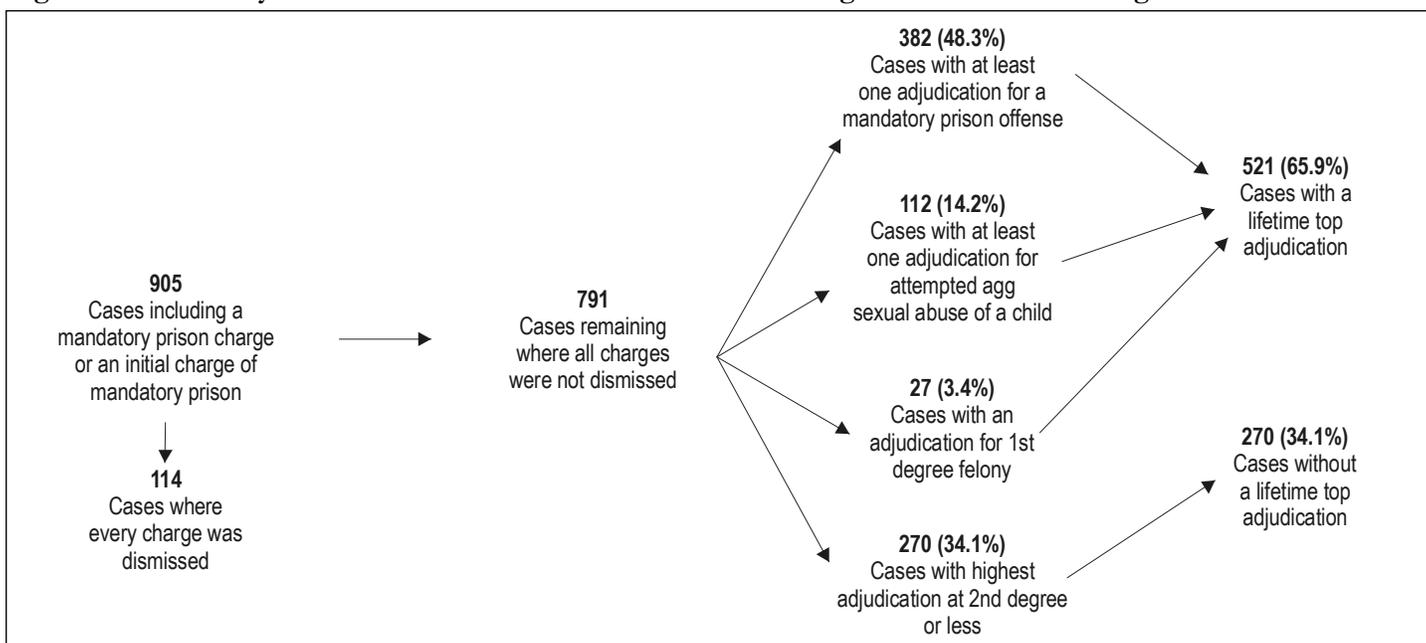


Table 2 shows the distribution of mandatory prison sex offense charges for all 905 cases. Because there could be more than one charge per case, there were a total of 1,848 mandatory prison sex offense charges captured in this analysis. Of these charges, 52.9% were for aggravated sexual abuse of a child, 20.8% were for sodomy on a child, 14.1% were for rape of a child, 9.8% were for aggravated sexual assault, 1.8% were for child kidnaping, and 0.5% were for object rape of a child. Attempted rape of a child, sodomy on a child, and object rape of a child are considered mandatory prison sex offenses. **Table 2** does not distinguish between attempted and completed varieties of these offenses.

Table 2: Mandatory Prison Sex Offenses Charged

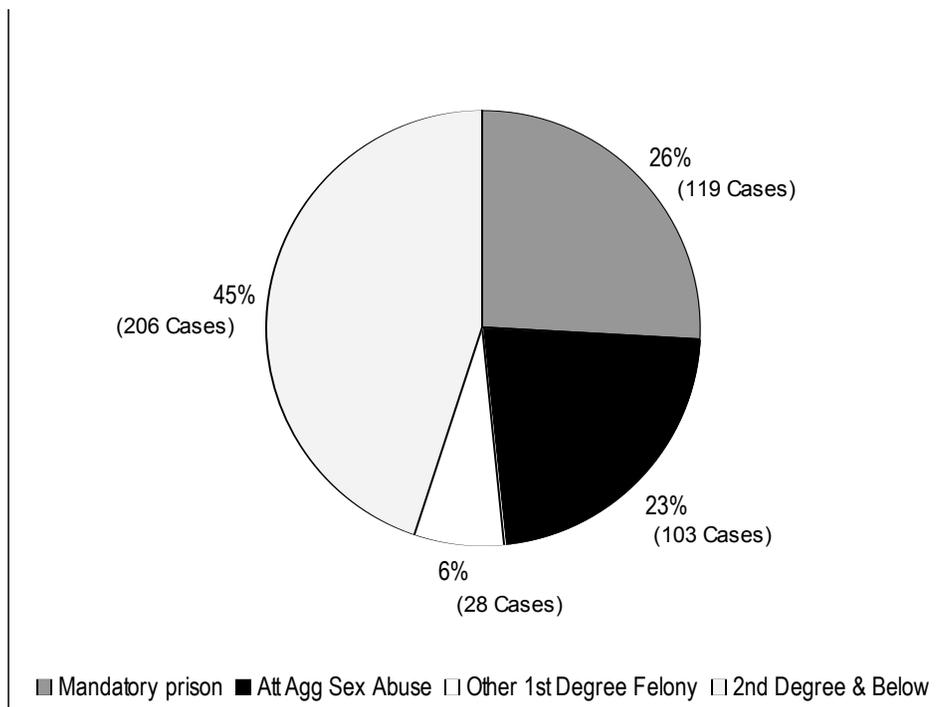
	<i>n</i>	%
Aggravated sexual abuse of a child	978	52.9
Sodomy on a child	385	20.8
Rape of a child	260	14.1
Aggravated sexual assault	182	9.8
Child kidnaping	33	1.8
Object rape of a child	10	0.5
Total	1,848	

CHARGE REDUCTION ANALYSIS

The remainder of the analysis will focus on the two primary types of plea bargaining. First is an assessment of charges that were modified. In some cases these charges were reduced, and in other cases the modification of the charge still resulted in a mandatory prison sex offense. Second is an assessment of dismissing charges from a case. It is important to note that the totals from these two types of plea bargaining cannot be combined to come to the results presented in the summary section of this analysis. Most cases analyzed had more than one charge included. Often, a single case incorporated both types of plea bargaining. For example, a case including ten charges may have one charge reduced and three charges dismissed. Therefore, the analysis of charge reduction and charge dismissal should be examined independently.

Charge reductions were examined by looking for cases with an initial charge that was modified during case processing. Of the 905 cases, 456 cases (50.4%) had at least one initial charge for a mandatory prison sex offense that was subsequently modified. For example, a charge was initially filed as rape of a child, but was subsequently modified to forcible sexual abuse. In the remaining cases, initial charges were not modified as the case was processed. For example, the initial charge of rape of a child remained rape of a child throughout the case processing.

Figure 3: Charge Reduction Outcome For 456 Mandatory Prison Sex Offense Cases That Were Reduced



Outcomes are shown in **Figure 3**. Less than half (45.2%) of the charge reductions lead to a charge below the 1st degree felony level. Of the remainder, 26.1% remained a mandatory prison sex offense after the change, 22.6% were reduced to attempted aggravated sexual abuse of a child, and 6.1% were reduced to some other variety of 1st degree felony offense.

Table 3 shows the resulting conviction for the cases where the original charge was for a mandatory prison sex offense which was subsequently reduced to a non-mandatory prison offense and attempted aggravated sexual abuse of a child also was not charged. Looking at these cases, 6.1% had a conviction for some other 1st degree felony, 14.5% had a conviction of a 2nd degree felony, 9.4% had a conviction of a 3rd degree felony, 14.3% had a conviction of a Class A misdemeanor, 5.3% had a conviction of a Class B misdemeanor, and 0.9% had a conviction of a Class C misdemeanor.

Table 3: Resulting Conviction For Case Where Mandatory Prison Was Reduced & Not Att Agg Sex Abuse of a Child

	<i>n</i>	% of Total**	% of Reduced***
1st Degree	28	6.1	12.2
2nd Degree	66	14.5	28.7
3rd Degree	43	9.4	18.7
Class A	65	14.3	28.3
Class B	24	5.3	10.4
Class C	4	0.9	1.7

* 4 cases were missing the identification of offense degree.

** % of Total: Percent of the 456 cases with at least one original charge for a mandatory prison sex offense.

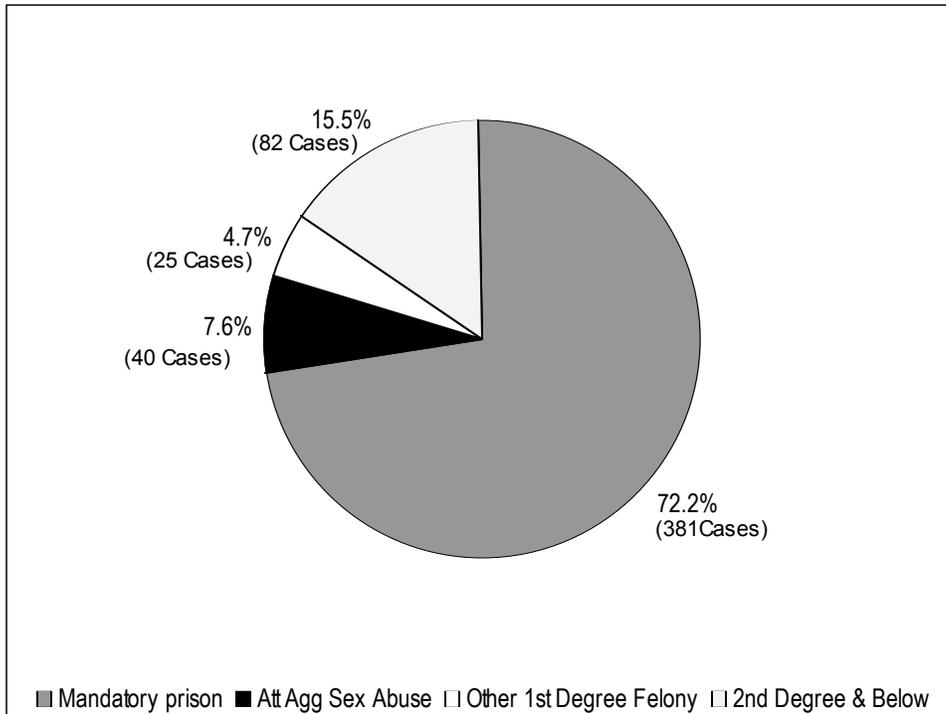
*** % of Reduced: Percent of the 230 cases reduced below a mandatory prison sex offense or attempted aggravated sexual abuse of a child.

CHARGE DISMISSAL ANALYSIS

This section examines an entire case rather than individual charges. Of the 905 initial cases, 635 cases included at least one charge for a mandatory prison sex offense. Once a case still retaining a mandatory prison sex offense was found, the entire case was evaluated to find the highest level of offense that was not dismissed from the case. The levels were ordered from mandatory prison offenses, to attempted aggravated sexual abuse of a child, to other first degree felony, second degree felony, etc.

Of the 635 cases with a mandatory prison charge, 107 cases had all charges dismissed, leaving 528 cases with at least one charge left undismissed. Of the remaining cases, 381 (72.2%) had a mandatory prison sex offense remaining, 40 (7.6%) had a charge for attempted aggravated sexual abuse of a child remaining, 25 (4.7%) had some other 1st degree felony offense remaining, and 82 (15.5%) had an offense less than a 1st degree felony remaining.

Figure 4: Charge Dismissal Outcome For 528 Cases



Looking at **Table 4**, it is clear that aggravated sexual abuse of a child is the most common mandatory prison sex offense, accounting for 65.9% of the mandatory prison sex offense charges in the 381 cases. Of the remaining, 18.6% had a charge of sodomy on a child, 10.3% had a charge of rape of a child, 3.4% had a charge of aggravated sexual assault, 1.4% had a charge of child kidnaping, and 0.4% had a charge of object rape of a child.

Table 5 examines the highest non-dismissed charge in the cases without a remaining mandatory prison sex offense or without a charge of attempted aggravated sexual abuse of a child. Looking at the highest level non-dismissed charge for these cases, 4.7% had some other 1st degree felony charge, 4.9% had a 2nd degree felony charge, 3.8% had a 3rd degree felony charge, 3.6% had a Class A misdemeanor charge, 2.3% had a Class B misdemeanor charge, 0.6% had a Class C misdemeanor charge, and 0.4% had an infraction charge.

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Table 4: Mandatory Prison Sex Offense Distribution for Those Retaining a Mandatory Prison Sex Offense

	<i>n</i>	%
Aggravated sexual abuse of a child	366	65.9
Sodomy on a child	103	18.6
Rape of a child	57	10.3
Aggravated sexual assault	19	3.4
Child kidnaping	8	1.4
Object rape of a child	2	0.4
Total	555	

*This number is more than 381 because some cases included more than one non-dismissed mandatory prison sex offense.

Table 5: Highest Level Offense for Those Not Mandatory Prison or Attempted Aggravated Sex Abuse of a Child

	<i>n</i>	% of Total*	% of Reduced**
1st Degree	25	4.7	23.4
2nd Degree	26	4.9	24.3
3rd Degree	20	3.8	18.7
Class A	19	3.6	17.7
Class B	12	2.3	11.2
Class C	3	0.6	2.8
Infraction	2	0.4	1.9

* % of Total: Percent of the 528 cases with at least one original charge for a mandatory prison sex offense.

** % of Reduced: Percent of the 107 non-dismissed cases that were not mandatory prison sex offenses or attempted aggravated sexual abuse of a child.

OFFENDER PLEA ANALYSIS

A remaining question is how are offenders pleading to the charges of mandatory prison sex offenses? The tables below provide two examinations of this question. **Table 6** shows how all charges of mandatory prison sex offenses were pled, while **Table 7** shows how the non-dismissed charges of mandatory prison sex offenses were pled.

Looking at all charges or initial charges of mandatory prison sex offenses listed in **Table 6**, 59.3% plead guilty, 38.0% plead not guilty, 2.0% plead no contest, 0.5% plea guilty but mentally ill, and 0.2% plead not guilty by reason of insanity. **Table 7** narrows the scope to charges or initial charges of mandatory prison sex offenses that were not dismissed. Of these, 82.7% plead guilty, 13.7% plead not guilty, 2.9% plead no contest, and 0.7% plead guilty but mentally ill.

Table 6: Offender Pleas On All Charges of Mandatory Prison Sex Offenses

	<i>n</i>	%
Guilty	748	59.3
Not Guilty	479	38.0
No Contest	26	2.0
Guilty - Mentally Ill	6	0.5
Not Guilty - Insanity	2	0.2
Total	1,261	

Table 7: Offender Pleas On Non-Dismissed Charges of Mandatory Prison Sex Offenses

	<i>n</i>	%
Guilty	746	82.7
Not Guilty	124	13.7
No Contest	26	2.9
Guilty - Mentally Ill	6	0.7
Total	902	

The remaining two tables examine the judgments on the charges where the offender plead not guilty or not guilty by reason of insanity. These tables parallel the above tables in that **Table 8** evaluates all charges or initial charges of mandatory prison sex offenses, and **Table 9** evaluates non-dismissed charges or initial charges of mandatory prison sex offenses.

First looking at **Table 8**, nearly three-quarters of the charges (73.8%) were dismissed when the offender plead not guilty. In addition, 20.3% were eventually found guilty or plead guilty to the offense (Guilty, Guilty Plea, Guilty-Mentally Ill, No Contest). Only 4.8% were eventually found not guilty (4.4% Not Guilty and 0.4% Not Guilty - Jury). Looking at **Table 9**, over three-quarters (79.0%) of these charges were eventually found guilty or plead guilty to the offense, with 18.6% eventually being found not guilty of the offense.

Table 8: Judgment On All Charges of Mandatory Prison Sex Offenses Where Plea Was Not Guilty

	<i>n</i>	%
Dismissed	355	73.8
Guilty	63	13.1
Guilty Plea	32	6.7
Not Guilty	21	4.4
Diversion	3	0.6
Declined to Prosecute	2	0.4
Guilty - Mentally Ill	2	0.4
Not Guilty - Jury	2	0.4
No Contest	1	0.2
Total	481	

Table 9: Judgment On Non-Dismissed Charges of Mandatory Prison Sex Offenses Where Plea Was Not Guilty

	<i>n</i>	%
Guilty	63	50.8
Guilty Plea	32	25.8
Not Guilty	21	17.0
Diversion	3	2.4
Guilty - Mentally Ill	2	1.6
Not Guilty - Jury	2	1.6
No Contest	1	0.8
Total	124	