Consistently Enforced Sanctions: Connections to DFSCA and Mandatory Minimum Sentences

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Higher Education Center
for Alcohol and Drug Misuse Prevention and Recovery
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Asking Questions
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2021 Virtual National Meeting
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DRUG FREE SCHOOLS & COMMUNITIES ACT
CONSISTENCY ENFORCED SANCTIONING
OVERVIEW

• Learn about the history of the DFSCA
• Learn about the sanctioning requirements of the DFSCA
• Identify areas of overlap with mandatory minimum criminal sentences
• Learn about research relating to disparities in criminal penalties
• Q&A

ANTI-DRUG ABUSE ACT

• The Anti-Drug Abuse Act of 1988
  – Legislative history
  – War on drugs
  – Mandatory minimum sentences

1988 AMENDMENTS

“[D]rug use and alcohol abuse are widespread among the Nation’s students,” and “the use of drugs and the abuse of alcohol by students constitute a grave threat to their physical and mental wellbeing and significantly impede the learning process.”
• As a requirement of receiving funds or any other form of financial assistance under any federal program after Oct. 1, 1990, a university or college must submit certification that it has adopted and implemented programs:
  – “to prevent the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees” both on the institution’s premises and as part of any of its activities (EDGAR Part 66.100 Subpart B).
• The finalized DFSCA regulations are codified in the Education Department General Administrative Guidelines ("EDGAR") and took effect on October 1, 1990.
BIENNIAL REVIEW

- Track drug-related violations that occur on campus and to study program effectiveness
- Identify changes needed
- Determine if of drug-related violations and fatalities on campus or part of institution's activities
- Ensure the disciplinary sanctions are consistently enforced.
- Attachments/records of findings must be included

Need not distribute, but must maintain and provide to Department of Ed upon request

“CONSISTENTLY ENFORCED”

- (D) ensure that the sanctions … are consistently enforced. 20 U.S.C. § 1011i(a)(2) (2017).
- 2006 Handbook
  – IHEs must “treat similarly situated offenders in a similar manner.”
  – Tracking & Documentation
- Legislative history
- Effectiveness

“CONSISTENTLY ENFORCED”

From 2006 Handbook: “The second objective of the biennial review focuses on enforcement of sanctions. An IHE establishes consistent enforcement of sanctions by documenting that the IHE treats similarly situated offenders in a similar manner. One way to do this is to submit a chart that lists each case (without identifying information in order to protect confidentiality) and presents the particulars of the offense, mitigating or aggravating circumstances, and disposition. By organizing the list so that similar cases are grouped together, an IHE can facilitate comparisons across cases.”
MANDATORY MINIMUM SENTENCES

- What are they?
  - Anti-Drug Abuse Act established a five-year mandatory minimum sentence for “serious” drug traffickers, minimum amount of drugs involved, etc.
  - 100:1 sentencing ratio for crack cocaine to powder cocaine.
  - Federal Sentencing Guidelines

- IMPACT
  - 1/5 of 2.3 million people incarcerated in US are incarcerated for a drug offense
  - 13.4% of the US population is black; 26% of those arrested for drug related offenses are black.
  - 2006 ACLU Report

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OTHER RESEARCH

- Those sentenced for relatively minor roles represented the biggest share of federal drug offenders.
  - More than a quarter of federal drug offenders—and two-thirds of federal marijuana offenders—were “runners” or “mules,” the lowest-level trafficking roles on a culpability scale developed by the commission.
  - Those defined as “high-level suppliers” or “importers”—the top function on the culpability scale—represented 11 percent of federal drug offenders.
  - Research has found little relationship between the length of prison terms and recidivism rates generally—a pattern that holds among drug offenders at the federal level.
  - The best available data suggest that increased penalties for drug offenders—both at the federal and state levels—have not significantly changed long-term patterns of drug availability or use.

2015 Federal Drug Sentencing Laws Bring High Cost, Low Return, PEW Research
REFORMS

First Step Act
EQUAL Act
Supreme Court Decisions
Fin Aid
Cannabis Legislation

CANNABIS LEGISLATION

• Recreational
  – Arizona, Montana, New Jersey, and South Dakota

• Medical
  – Mississippi
  – South Dakota

Cannabis is now legalized in 15 states and DC.

OREGON!

• Oregon decriminalized (not legalized) all drugs.
• Legalized psilocybin for supervised therapeutic purposes.
• Washington DC decriminalized psychedelic plants
• Oregon became the first state in the US in modern times to decriminalize all drugs.
WHAT NEXT?

• Consistently enforced Mandatory Minimum
• Data review
• Keep an eye out on future reforms

QUESTIONS?

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