APPENDICES

APPENDIX A. EXAMPLES OF THE IMPROPER GRADE PROBLEM

1. *Examples of Offenses Graded Too High as Compared to Grading of Pennsylvania Residents*

A pawn shop owner buying a stereo that he knows is stolen, intending to sell it,[1] is graded by the Pennsylvania residents in the survey the same as taking property of another valued between $50 and $200, a 2nd degree misdemeanor, which has a maximum sentence of 2 years,[2] but under current law the offense is graded as a 1st degree felony, which has a maximum sentence of 20 years.[3]

Reading another's email without permission[4] is graded by the Pennsylvania residents in the survey the same as committing acts to annoy another person, a summary offense, with no legitimate purpose, which has a maximum sentence of 90 days,[5] but under current law the offense is graded as a 3rd degree felony, which has a maximum sentence of 7 years.[6]

Breaking into a pharmaceutical company's labs in order to release animals used for testing[7] is graded by the Pennsylvania residents in the survey the same as taking property from another by force, without causing injury, a 3rd degree felony, which has a maximum sentence of 7 years,[8] but under current law the offense is graded as a 1st degree felony which has a maximum sentence of 20 years.[9]

Carrying on the subway a bookbag that says "BOMB" on it as part of a Halloween costume, disregarding the risk that others could become alarmed, when a person on the subway does become alarmed,[10] is graded by Pennsylvania residents in the survey the same as taking property of another valued between $50 and $200, a 3rd degree misdemeanor, which has a maximum

---

[1]   18 Pa. Cons. Stat. §5111(a) (2009).

[2]   Mean = 3.19, Mode = 3, SD = 1.283 (see Appendix F, item A107); 18 Pa. Cons. Stat. §3902; 3903(a1), (b) (consolidated theft provisions).

[3]   18 Pa. Cons. Stat. §5111(a) (2009).

[4]   18 Pa. Cons. Stat. §7613 (2009).

[5]   Mean = 1.41, Mode = 1, SD = 1.413 (see Appendix F, item A22); 18 Pa. Cons. Stat. §550 (a), (b) (disorderly conduct) (2009).

[6]   18 Pa. Cons. Stat. §7613 (2009).

[7]   18 Pa. Cons. Stat. §3311(a), (b)(2) (2009).

[8]   Mean = 3.63, Mode = 3, SD = 1.659 (see Appendix F, item A97); 18 Pa. Cons. Stat. §3701(a)(v) (2009) (robbery).

[9]   18 Pa. Cons. Stat. §3311(a), (b)(2) (2009).

[10]   18 Pa. Cons. Stat. §5516(a) (2009).

sentence of 1 year,[11] but under current law the offense is graded as a 3rd degree felony, which has a maximum sentence of 7 years.[12]

Deleting non-valuable data from someone's computer without their permission[13] is graded by the Pennsylvania residents in the survey the same as committing acts to annoy another person, with no legitimate purpose, a summary offense, which has a maximum penalty of 90 days,[14] but under current law the offense is graded as a 3rd degree felony, which has a maximum sentence of 7 years.[15]

 A son shredding his father's will because it contains information that would embarrass his family (where the father died owning nothing of value, so the will has no financial effect),[16] is graded by the Pennsylvania residents in the survey the same as taking property of another valued under $50, a 3rd degree misdemeanor, which has a maximum sentence of year,[17] but under current law the offense is graded as a 3rd degree felony which has a maximum sentence of 7 years.[18]

Taking one's nephew camping without telling his parents first, believing that they would not worry,[19] is graded by the Pennsylvania residents in the survey the same as taking property of another valued under $50, a 3rd degree misdemeanor, which has a maximum sentence of 1 year,[20] but under current law the offense is graded as a 3rd degree felony, which has a maximum sentence of 7 years.[21]

Trespassing in a building[22] is graded by the Pennsylvania residents in the survey the same as taking property of another valued under $50, a 3rd degree misdemeanor, which has a maximum

---

[11] Mean = 1.89, Mode = 1, SD = 1.778 (see Appendix F, item A46); 18 Pa. Cons. Stat. §§3902; 3903(a)(1), (b) (2009) (consolidated theft provisions).

[12] 18 Pa. Cons. Stat. §5516(a) (2009).

[13] 18 Pa. Cons. Stat. §7615 (2009).

[14] Mean = 1.36, Mode = 1, SD = 1.147 (see Appendix F, item A57); 18 Pa. Cons. Stat. §550 (a), (b) (disorderly conduct) (2009).

[15] 18 Pa. Cons. Stat. §7615 (2009).

[16] 18 Pa. Cons. Stat. §4101 (2009).

[17] Mean = 1.90, Mode = 0, SD = 1.604 (see Appendix F, item A7); 18 Pa. Cons. Stat. §3902; 3903(a1), (b) (2009) (consolidated theft provisions).

[18] 18 Pa. Cons. Stat. §4101 (2009).

[19] 18 Pa. Cons. Stat. §2904 (2009).

[20] Mean = 1.95, Mode = 0, SD = 1.869 (see Appendix F, item A28); 18 Pa. Cons. Stat. §3902; 3903(a1), (b) (consolidated theft provisions).

[21] 18 Pa. Cons. Stat. §2904 (2009).

0. 18 Pa. Cons. Stat. §3503(a)(1)(I) (2009).

sentence of 1 year,[23] but under current law the offense is graded as a 3rd degree felony, which has a maximum sentence of 7 years.[24]

Having consensual sexual intercourse with a close family member[25] is graded by the Pennsylvania residents in the survey the same as recklessly causing bodily injury, a 2nd degree misdemeanor,[26] but under current law the offense is graded as a 2nd degree felony, which has a maximum sentence of 20 years.[27]

 Stealing 10 ounces of anhydrous ammonia from a farmer[28] is graded by the Pennsylvania residents in the survey the same as inflicting bodily injury on a person while committing a theft, a 2nd degree misdemeanor, which has a maximum sentence of 2 years,[29] but under current law the offense is graded as a 2nd degree felony, which has a maximum sentence of 10 years.[30]

Making a duplicate copy of a purchased Beatles CD, and selling the copy to a friend for one dollar,[31] is graded by the Pennsylvania residents in the survey the same as committing acts to annoy another person, with no legitimate purpose, a summary offense, which has a maximum sentence of 90 days,[32] but under current law the offense is graded as a 1st degree misdemeanor, which has a maximum sentence of 5 years.[33]

Hiring a prostitute for another person[34] is graded by the Pennsylvania residents in the survey the same as taking property of another valued under $50, a 3rd degree misdemeanor, which has a

---

[23] Mean = 1.98, Mode = 1, SD = 1.388 (see Appendix F, item A30); 18 Pa. Cons. Stat. §3902; 3903(a1), (b) (consolidated theft provisions).

[24] 18 Pa. Cons. Stat. §3503(a)(1)(I) (2009).

[25] 18 Pa. Cons. Stat. §4302 (2009).

[26] Mean = 3.02, Mode = 0, SD = 2.738 (see Appendix F, item A12); 18 Pa. Cons. Stat. §2701(a), (b) (simple assault).

[27] 18 Pa. Cons. Stat. §4302 (2009).

[28] 18 Pa. Cons. Stat. §3903(a)(4) (2009).

[29] Mean = 3.23, Mode = 2, SD = 1.918 (see Appendix F, item A34); 18 Pa. Cons. Stat. §3902; 3903(a1), (b) (2009) (consolidated theft provisions).

[30] 18 Pa. Cons. Stat. §3903(a)(4) (2009).

[31] 18 Pa. Cons. Stat. §4116(b) (2009).

[32] Mean = 1.23, Mode = 0, SD = 1.142 (see Appendix F, item A36); 18 Pa. Cons. Stat. §2709 (2009).

[33] 18 Pa. Cons. Stat. §4116(b) (2009).

[34] 18 Pa. Cons. Stat. §5902(b)(4)-(8) (2009).

maximum sentence of 1 year,[35] but under current law the offense is graded as a 1st degree misdemeanor, which has a maximum sentence of 5 years.[36]

A parent violating a custody order by taking his or her child to a beach in New Jersey[37] is graded by the Pennsylvania residents in the survey the same as taking property of another valued under $50, a 3rd degree misdemeanor, which has a maximum sentence of 1 year,[38] but under current law the offense is graded as a 3rd felony, which has a maximum sentence of 7 years.[39]

Making an unauthorized copy of a computer program worth $2,500[40] is graded by the Pennsylvania residents in the survey the same as taking property of another valued between $200 and $2,000, a 1st degree misdemeanor, which has a maximum sentence of 5 years,[41] but under current law the offense is graded as a 2nd degree felony, which has a maximum sentence of 10 years.[42]

Sending an advertisement email containing explicit adult content without including the term "ADV-ADULT" in the subject line[43] is graded by the Pennsylvania residents in the survey the same as taking property of another valued under $50, a 3rd degree misdemeanor, which has a maximum sentence of 1 year,[44] but under current law the offense is graded as a 1st degree misdemeanor, which has a maximum sentence of 5 years.[45]

Entering into a professional sports contract with a student athlete before the student's eligibility for collegiate athletics (such as NCAA eligibility) expires[46] is graded by the Pennsylvania residents in the survey the same as taking property of another valued under $50, a 3rd degree

---

[35] Mean = 2.32, Mode = 0, SD = 2.005 (see Appendix F, item A87); 18 Pa. Cons. Stat. §3902; 3903(a1), (b) (consolidated theft provisions).

[36] 18 Pa. Cons. Stat. §5902(b)(4)-(8) (2009).

[37] 18 Pa. Cons. Stat. §§2904(a), 2904(c)(1) (2009).

[38] Mean = 2.47, Mode = 1, SD = 1.679 (see Appendix F, item A2); 18 Pa. Cons. Stat. §3902; 3903(a1), (b) (2009) (consolidated theft provisions).

[39] 18 Pa. Cons. Stat. §2707.1 (2009) (discharging a firearm into an occupied structure).

[40] 18 Pa. Cons. Stat. §7614(a) (2009).

[41] Mean = 3.54, Mode = 5, SD = 1.796 (see Appendix F, item A50); 18 Pa. Cons. Stat. §3902; 3903(a1), (b) (2009) (consolidated theft provisions).

[42] 18 Pa. Cons. Stat. §7614(a) (2009).

0. 18 Pa. Cons. Stat. §5903(a.1) (2009).

[44] Mean = 1.67, Mode = 1, SD = 1.578 (see Appendix F, item A62); 18 Pa. Cons. Stat. §§3902; 3903(a1), (b) (2009) (consolidated theft provisions).

[45] 18 Pa. Cons. Stat. §5903(a.1) (2009).

[46] 18 Pa. Cons. Stat. §7107 (2009).

misdemeanor, which has a maximum sentence of 1 year,[47] but under current law the offense is graded as a 1st degree misdemeanor, which has a maximum sentence of 5 years.[48]

Displaying an obscene image in public[49] is graded by the Pennsylvania residents in the survey the same as taking property of another valued under $50, a 3rd degree misdemeanor, which has a maximum sentence of 1 year,[50] but under current law the offense is graded as a 1st degree misdemeanor, which has a maximum sentence of 5 years.[51]

Maliciously exposing an animal to an infectious disease, although the animal does not become ill,[52] is graded by Pennsylvania residents in the survey the same as repeatedly following another with the intent to cause substantial emotional distress, a 1st degree misdemeanor, which has a maximum sentence of 5 years,[53] but under current law the offense is graded as a 2nd degree felony, which has a maximum sentence of 10 years.[54]

Operating an otherwise-legal mortgage business without a license[55] is graded by the Pennsylvania residents in the survey the same as taking property of another valued between $50 and $200, a 2nd degree misdemeanor, which has a maximum sentence of 2 years,[56] but under current law the offense is graded as a 3rd degree felony, which has a maximum sentence of 7 years.[57]

Knowingly possessing a device designed to be used in an illegal wiretap[58] is graded by Pennsylvania residents in the survey the same as inflicting bodily injury on a person while committing a theft, a 2nd degree misdemeanor, which has a maximum sentence of 2 years,[59] but

---

[47] Mean = 1.71, Mode = 0, SD = 1.555 (see Appendix F, item A55); 18 Pa. Cons. Stat. §§3902; 3903(a1), (b) (2009) (consolidated theft provisions).

[48] 18 Pa. Cons. Stat. §7107 (2009).

[49] 18 Pa. Cons. Stat. §5903(a)(1) (2009).

[50]   Mean = 1.87, Mode = 1, SD = 1.373 (see Appendix F, item A49); 18 Pa. Cons. Stat. §3902; 3903(a1), (b) (2009) (consolidated theft provisions).

[51] 18 Pa. Cons. Stat. §5903(a)(1) (2009).

[52] 18 Pa. Cons. Stat. §5511.3(a) (2009).

[53] Mean = 3.73, Mode = 3, SD = 1.502 (see Appendix F, item A45); 18 Pa. Cons. Stat. §3701(a)(v) (2009) (robbery).

[54] 18 Pa. Cons. Stat. §5511.3(a) (2009).

[55] 18 Pa. Cons. Stat. §7331 (2009).

[56] Mean = 2.91, Mode = 3, SD = 1.717 (see Appendix F, item A20); 18 Pa. Cons. Stat. §§3902; 3903(a1), (b) (2009) (consolidated theft provisions).

[57] 18 Pa. Cons. Stat. §7331 (2009).

[58] 18 Pa. Cons. Stat. §5705(1) (2009).

[59] Mean = 2.93, Mode = 3, SD = 1.728 (see Appendix F, item A47); 18 Pa. Cons. Stat. §3902; 3903(a1), (b) (2009) (consolidated theft provisions).

under current law the offense is graded as a 3rd degree felony, which has a maximum sentence of 7 years.[60]

Admitting a minor to a pornographic movie without his parents' consent despite knowing that he is underage, after having already been convicted of the same offense in the past,[61] is graded by the Pennsylvania residents in the survey the same as taking property of another valued between $200 and $2,000, a 1st degree misdemeanor, which has a maximum sentence of 5 years,[62] but under current law the offense is graded as a 2nd degree felony, which has a maximum sentence of 10 years.[63]

Admitting a minor to a sexually explicit show despite knowing that he is underage[64] is graded by the Pennsylvania residents in the survey the same as recklessly causing bodily injury to another, a 2nd degree misdemeanor, which has a maximum sentence of 2 years,[65] but under current law the offense is graded as a 3rd degree felony, which has a maximum sentence of 7 years.[66]

Threatening to stab a person if he does not give up his wallet, without actually stabbing him,[67] is graded by the Pennsylvania residents in the survey the same as taking property from another by force, without causing injury, a 3rd degree felony, which has a maximum sentence of 7 years,[68] but under current law the offense is graded as a 1st degree felony, which has a maximum sentence of 20 years.[69]

Recording a conversation with a spouse and running it through lie-detection software to determine if they were lying about infidelity[70] is graded by the Pennsylvania residents in the survey the same as committing acts to annoy another person, with no legitimate purpose, a

---

[60] 18 Pa. Cons. Stat. §5705(1) (2009).

[61] 18 Pa. Cons. Stat. §5903(d) (2009).

[62] Mean = 3.98, Mode = 3, SD = 1.991 (see Appendix F, item A64); 18 Pa. Cons. Stat. §§3902; 3903(a1), (b) (2009) (consolidated theft provisions).

[63] 18 Pa. Cons. Stat. §5903(d) (2009).

0. 18 Pa. Cons. Stat. §§5903(d) (2009).

[65] Mean = 2.98, Mode = 1, SD = 2.125 (see Appendix F, item A51); 18 Pa. Cons. Stat. §2701 (2009) (simple assault).

[66] 18 Pa. Cons. Stat. §§5903(d) (2009).

[67] 18 Pa. Cons. Stat. §3701(a)(1)(ii) (2009).

[68] Mean = 5.03, Mode = 5, SD = 1.466 (see Appendix F, item A32); 18 Pa. Cons. Stat. §3701(2009) (robbery).

[69] 18 Pa. Cons. Stat. §3701(a)(1)(ii) (2009).

[70] 18 Pa. Cons. Stat. §7507 (2009).

summary offense, which has a maximum penalty of 90 days,[71] but under current law the offense is graded as a 2nd degree misdemeanor, which has a maximum sentence of 2 years.[72]

Operating a camcorder in a theater without the theater owner's consent, having been convicted for committing the same offense previously,[73] is graded by the Pennsylvania residents in the survey the same as taking property of another valued between $50 and $200, a 2nd degree misdemeanor, which has a maximum sentence of 2 years,[74] but under current law the offense is graded as a 3rd degree felony which has a maximum sentence of 7 years.[75]

Dealing ten grams of cocaine (approximately 100 lines), having been convicted of drug dealing in the past,[76] is graded by the Pennsylvania residents in the survey the same as taking property of another by force, a 3rd degree felony, which has a maximum sentence of 7 years,[77] but under current law the offense is graded as a 1st degree felony, which has a maximum sentence of 20 years.[78]

Providing a fake address for privacy reasons when purchasing a gun[79] is graded by the Pennsylvania residents in the survey the same as taking property of another valued between $50 and $200, a 2nd degree misdemeanor, which has a maximum sentence of 2 years,[80] but under current law the offense is graded as a 3rd degree felony, which has a maximum sentence of 7 years.[81]

Dealing ten grams of methamphetamine (approximately 40 quarter-gram doses), having been convicted of drug dealing in the past,[82] is graded by the Pennsylvania residents in the same as taking property of another by force, a 3rd degree felony, which has a maximum sentence of 7

---

[71] Mean = 1.05, Mode = 0, SD = 1.507 (see Appendix F, item A29); 18 Pa. Cons. Stat. §2709(a)(c) (2009) (harassment).

[72] 18 Pa. Cons. Stat. §7507 (2009).

[73] 18 Pa. Cons. Stat. §4116.1(a) (2009).

[74] Mean = 3.05, Mode = 3, SD = 1.257 (see Appendix F, item A79); 18 Pa. Cons. Stat. §§3902; 3903(a1), (b) (2009) (consolidated theft provisions).

[75] 18 Pa. Cons. Stat. §4116.1(a) (2009).

[76] 18 Pa. Cons. Stat. §7508(a)(3)(ii) (2009), CSDDCA 13(a)(14), 13(a)(30), 13(a)(37), 15(a), 13(f)(1.1).

[77] Mean = 5.17, Mode = 5, SD = 1.842 (see Appendix F, item A116); 18 Pa. Cons. Stat. §3701(2009) (robbery).

[78] CSDDCA 13(a)(14), 13(a)(30), 13(a)(37), 15(a), 13(f)(1.1).

[79] 18 Pa. Cons. Stat. §6111(g)(4) (2009).

[80] Mean = 3.21, Mode = 3, SD = 1.766 (see Appendix F, item A67); 18 Pa. Cons. Stat. §§3902; 3903(a1), (b) (2009) (consolidated theft provisions).

[81] 18 Pa. Cons. Stat. §6111(g)(4) (2009).

[82] 18 Pa. Cons. Stat. §7508(a)(4)(ii) (2009), CSDDCA 13(a)(14), 13(a)(30), 13(a)(37), 15(a), 13(f)(1.1).

years,[83] but under current law the offense is graded as a 1st degree felony, which has a maximum sentence of 20 years.[84]

Confirming a neighbor's story to an insurance investigator despite knowing that the neighbor has filed a false claim[85] is graded by the Pennsylvania residents in the survey the same as taking property of another between $50 - $200, a 2nd degree misdemeanor, which has a maximum sentence of 2 years,[86] but under current law the offense is graded as a 3rd degree felony, which has a maximum sentence of 7 years.[87]

Remaining on school grounds after a lawful order to leave[88] is graded by the Pennsylvania residents in the survey the same as taking property of another valued under $50, a 3rd degree misdemeanor, which has a maximum sentence of 1 year,[89] but under current law the offense is graded as a 1st degree misdemeanor, which has a maximum sentence of 5 years.[90]

Selling a 17 year old a starter pistol only capable of firing blanks[91] is graded by the Pennsylvania residents in the survey the same as taking property of another valued under $50, a 3rd degree misdemeanor, which has a maximum sentence of 1 year,[92] but under current law the offense is graded as a 1st degree misdemeanor, which has a maximum sentence of 5 years.[93]

An adult encouraging a minor to smoke despite knowing that he is underage[94] is graded by the Pennsylvania residents in the survey the same as taking property of another valued under $50, a

---

[83] Mean = 5.25, Mode = 5, SD = 1.888 (see Appendix F, item A117); 18 Pa. Cons. Stat. §3701(2009) (robbery).

0. CSDDCA 13(a)(14), 13(a)(30), 13(a)(37), 15(a), 13(f)(1.1).

[85] 18 Pa. Cons. Stat. §4117(a)(8) (2009).

[86] Mean = 3.25, Mode = 3a, SD = 1.647 (see Appendix F, item A102); 18 Pa. Cons. Stat. §3902; 3903(a1), (b) 2009) (consolidated theft provisions).

[87] 18 Pa. Cons. Stat. §4117(a)(8) (2009).

[88] 18 Pa. Cons. Stat. §3503(b)(1)(v) (2009).

[89] Mean = 2.25, Mode = 1, SD = 1.468 (see Appendix F, item A31); 18 Pa. Cons. Stat. §§3902; 3903(a1), (b) (2009) (consolidated theft provisions).

[90] 18 Pa. Cons. Stat. §3503(b)(1)(v) (2009).

[91] 18 Pa. Cons. Stat. §6303 (2009).

[92] Mean = 2.25, Mode = 0, SD = 2.043 (see Appendix F, item A54); 18 Pa. Cons. Stat. §§3902; 3903(a1), (b) (2009) (consolidated theft provisions).

[93] 18 Pa. Cons. Stat. §6303 (2009).

[94] 18 Pa. Cons. Stat. §6301(a)(1) (2009).

3rd degree misdemeanor, which has a maximum sentence of 1 year,[95] but under current law the offense is graded as a 1st degree misdemeanor, which has a maximum sentence of 5 years.[96]

Falsifying a diploma in order to obtain a job[97] is graded by the Pennsylvania residents in the survey the same as taking property of another valued under $50, a 3rd degree misdemeanor, which has a maximum sentence of 1 year,[98] but under current law the offense is graded as a 1st degree misdemeanor, which has a maximum sentence of 5 years.[99]

Giving pornography to a minor despite knowing that he is underage[100] is graded by the Pennsylvania residents in the survey the same as taking property of another valued between $50 and $200, a 2nd degree misdemeanor, which has a maximum sentence of 2 years,[101] but under current law the offense is graded as a 3rd degree felony, which has a maximum sentence of 7 years.[102]

Three people causing an annoyance in public, and failing to disperse when told to by a police officer,[103] is graded by the Pennsylvania residents in the survey the same as committing acts to annoy another person, with no legitimate purpose, a summary offense, which has a maximum penalty of 90 days,[104] but under current law the offense is graded as a 2nd degree misdemeanor, which has a maximum sentence of 2 years.[105]

A pediatrician paying a school nurse to recommend the pediatrician to parents[106] is graded by the Pennsylvania residents in the survey the same as taking property of another valued under $50, a

---

[95] Mean = 2.28, Mode = 1, SD = 1.948 (see Appendix F, item A74); 18 Pa. Cons. Stat. §§3902; 3903(a1), (b) (2009) (consolidated theft provisions).

[96] 18 Pa. Cons. Stat. §6301(a)(1) (2009).

[97] 18 Pa. Cons. Stat. §4104(a) (2009).

[98] Mean = 2.36, Mode = 3, SD = 1.457 (see Appendix F, item A35); 18 Pa. Cons. Stat. §§3902; 3903(a)(1), (b) (2009) (consolidated theft provisions).

[99] 18 Pa. Cons. Stat. §4104(a) (2009).

[100] 18 Pa. Cons. Stat. §5903(c) (2009).

[101] Mean = 3.39, Mode = 1, SD = 2.213 (see Appendix F, item A65); 18 Pa. Cons. Stat. §3902; 3903(a1), (b) (consolidated theft provisions).

[102] §3701(a) (v) (robbery)

[103] 18 Pa. Cons. Stat. §§5502

[104] Mean = 1.40, Mode = 1, SD = 0.883 (see Appendix F, item A1); 18 Pa. Cons. Stat. §2709(a)(c) (2009) (harassment).

0. 18 Pa. Cons. Stat. §§2701(a), (b)

[106] 18 Pa. Cons. Stat. §4117(b)(2) (2009).

3rd degree misdemeanor, which has a maximum sentence of 1 year,[107] but under current law the offense is graded as a 1st degree misdemeanor, which has a maximum sentence of 5 years.[108]

Streaking at a kids' tee-ball game[109] is graded by the Pennsylvania residents in the survey the the same as taking property of another valued under $50, a 3rd degree misdemeanor, which has a maximum sentence of 1 year,[110] but under current law the offense is graded as a 1st degree misdemeanor, which has a maximum sentence of 5 years.[111]

Selling goods manufactured by prisoners incarcerated in another state[112] is graded by the Pennsylvania residents in the survey the same as creating an annoyance by noise or threatening behavior, a summary offense, which has a maximum sentence of 90 days,[113] but under current law the offense is graded as a 2nd degree misdemeanor, which has a maximum sentence of 2 years.[114]

Unlawfully selling $1,200 worth of food stamps[115] is graded by the Pennsylvania residents in the survey the same as taking property of another valued between $200 and $2,000, a 1st degree misdemeanor, which has a maximum sentence of 5 years,[116] but under current law the offense is graded as a 3rd degree felony which has a maximum sentence of 7 years.[117]

A 17 year old having sex with a 12 year old[118] is graded by the Pennsylvania residents in the survey the same as inflicting bodily injury in the course of committing a theft, a 2nd degree

---

[107]   Mean = 2.44, Mode = 1, SD = 1.682 (see Appendix F, item A104); 18 Pa. Cons. Stat. §§3902; 3903(a1), (b) (2009) (consolidated theft provisions).

[108]   18 Pa. Cons. Stat. §4117(b)(2) (2009).

[109]   18 Pa. Cons. Stat. §3127 (2009).

[110]   Mean = 2.44, Mode = 1, SD = 1.911 (see Appendix F, item A18); 18 Pa. Cons. Stat. §§3902; 3903(a)(1), (b) (2009) (consolidated theft provisions).

[111]   18 Pa. Cons. Stat. §3127 (2009).

[112]   18 Pa. Cons. Stat. §7307 (2009).

[113]   Mean = 1.45, Mode = 0, SD = 1.702 (see Appendix F, item A25); 18 Pa. Cons. Stat. §5503 (a), (b) (2009) (disorderly conduct).

[114]   18 Pa. Cons. Stat. §7307 (2009).

[115]   18 Pa. Cons. Stat. §§7313(a), 7313(b) (2009).

[116]   Mean = 3.60; Mode = 4, SD = 1.199 (see Appendix F, item A72); 18 Pa. Cons. Stat. §§3902; 3903(a)(1), (b) (2009) (consolidated theft provisions).

[117]   18 Pa. Cons. Stat. §§7313(a), 7313(b) (2009).

[118]   18 Pa. Cons. Stat. §§3121(c), (e)(1); 9718 (2009).

felony, which has a maximum sentence of 10 years,[119] but under current law the offense is graded as a felony which has a maximum sentence of 40 years.[120]

Desecrating an historic burial site[121] is graded by Pennsylvania residents in the survey the same as taking the property of another valued between $200 and $2,000, a 1st degree misdemeanor, which has a maximum sentence of 5 years,[122] but under current law the offense is graded as a 3rd degree felony, which has a maximum sentence of 7 years.[123]

Giving a cell phone to a prison inmate, when the rules of the prison prohibit inmates having phones,[124] is graded by Pennsylvania residents in the survey the same as taking property of another between $50 and $200, a 2nd degree misdemeanor, which has a maximum sentence of 2 years,[125] but under current law the offense is graded as a 1st degree misdemeanor, which has a maximum sentence of 5 years.[126]

Exhibiting a deformed person as part of a circus sideshow[127] is graded by the Pennsylvania residents in the survey the same as taking property of another valued under $50, a 3rd degree misdemeanor, which has a maximum sentence of 1 year,[128] but under current law the offense is graded as a 2nd degree misdemeanor which has as maximum sentence of 2 years.[129]

Carrying a gun without a license, despite being eligible to get a license,[130] is graded by the Pennsylvania residents in the survey the same as taking property of another valued between $50 and $200, a 2nd degree misdemeanor, which has a maximum sentence of 2 years,[131] but under

---

[119] Mean = 5.69, Mode = 6, SD = 1.793 (see Appendix F, item A94); 18 Pa. Cons. Stat. §3701(a)(iv) (2009) (robbery with injury).

[120] 18 Pa. Cons. Stat. §§3121(c), (e)(1); 9718 (2009).

[121] §18 Pa. Cons. Stat. §3307(a)(2) (2009) [note that §5509(a.1) covers this conduct as well but it's only an M1].

[122] Mean = 3.73, Mode = 3, SD = 1.502 (see Appendix F, item A44); 18 Pa. Cons. Stat. §§3902; 3903(a1), (b) (2009) (consolidated theft provisions).

[123] 18 Pa. Cons. Stat. §3307(a)(2) (2009).

[124] 18 Pa. Cons. Stat. §5123(c.1) (2009).

[125] Mean = 2.77, Mode = 3, SD = 1.716 (see Appendix F, item A43); 18 Pa. Cons. Stat. §§3902; 3903(a)(1), (b) (2009) (consolidated theft provisions).

0. 18 Pa. Cons. Stat. §5123(c.1) (2009).

[127] 18 Pa. Cons. Stat. §5904 (2009).

[128] Mean = 1.95, Mode = 0, SD = 2.236 (see Appendix F, item A8); 18 Pa. Cons. Stat. §§3902; 3903(a1), (b) (2009) (consolidated theft provisions).

[129] 18 Pa. Cons. Stat. §5904 (2009).

[130] 18 Pa. Cons. Stat. §6106(a)(2) (2009).

[131] Mean = 2.96, Mode = 3, SD = 1.88 (see Appendix F, item A110); 18 Pa. Cons. Stat. § 3902; 3903(a1), (b) (2009) (consolidated theft provisions).

current law the offense is graded as a 1st degree misdemeanor, which has a maximum sentence of 5 years.[132]

Impersonating a notary public[133] is graded by the Pennsylvania residents in the survey the same as taking property of another valued between $50 and $200, a 2nd degree misdemeanor, which has a maximum sentence of 2 years,[134] but under current law the offense is graded as a 1st degree misdemeanor, which has a maximum sentence of 5 years.[135]

A lawyer paying a paramedic for the names of accident victims, planning to solicit their business,[136] is graded by the Pennsylvania residents in the survey the same as taking property of another valued between $50 and $200, a 2nd degree misdemeanor, which has a maximum sentence of 2 years,[137] but under current law the offense is graded as a 1st degree misdemeanor, which has a maximum sentence of 5 years.[138]

Marrying someone, knowing that that person is already married,[139] is graded by the Pennsylvania residents in the survey the same as taking property of another valued under $50, a 3rd degree misdemeanor, which has a maximum penalty of 1 year,[140] but under current law the offense is graded as a 2nd degree misdemeanor, which has a maximum sentence of 2 years.[141]

Using a camcorder in a theater without the theater owner's permission[142] is graded by the Pennsylvania residents in the survey the same as taking property of another valued under $50, a 3rd degree misdemeanor, which has a maximum sentence of 1 year,[143] but under current law the offense is graded as a 2nd degree misdemeanor, which has a maximum sentence of 2 years.[144]

---

[132] 18 Pa. Cons. Stat. §6106(a)(2) (2009).

[133] 18 Pa. Cons. Stat. §4913 (2009).

[134] Mean = 3.06, Mode = 3, SD = 1.393 (see Appendix F, item A13); 18 Pa. Cons. Stat. §3902; 3903(a1), (b) (consolidated theft provisions).

[135] 18 Pa. Cons. Stat. §4913 (2009).

[136] 18 Pa. Cons. Stat. §4117(b)(1) (2009).

[137] Mean = 3.15, Mode = 4, SD = 1.574 (see Appendix F, item A103); 18 Pa. Cons. Stat. §§3902; 3903(a1), (b) (2009) (consolidated theft provisions).

[138] 18 Pa. Cons. Stat. §4117(b)(1) (2009).

[139] 18 Pa. Cons. Stat. §4301(2009).

[140] Mean = 2.22, Mode = 1, SD = 1.865 (see Appendix F, item A59); 18 Pa. Cons. Stat. §3902; 3903(a1), (b) (consolidated theft provisions).

[141] 18 Pa. Cons. Stat. §4301(2009).

[142] 18 Pa. Cons. Stat. §4116.1 (2009).

[143] Mean = 2.27, Mode = 2, SD = 1.332 (see Appendix F, item A19); 18 Pa. Cons. Stat. §§3902; 3903(a1), (b) (2009) (consolidated theft provisions).

[144] 18 Pa. Cons. Stat. §4116.1 (2009).

Unlawfully selling $500 worth of food stamps[145] is graded by Pennsylvania residents in the survey the same as taking property of another valued between $50 and $200, a 2nd degree misdemeanor,[146] but under current law the offense is graded as a 1st degree misdemeanor which has a maximum sentence of 2 years.[147]

An employer requiring his employees to take a lie detector test after a theft in the workplace, telling them that if they do not they will be fired,[148] is graded by the Pennsylvania residents in the survey the same as taking property of another valued under $50, a 3rd degree misdemeanor, which has a maximum sentence of 1 year,[149] but under current law the offense is graded as a 2nd degree misdemeanor which has a maximum sentence of 2 years.[150]

Producing $5,000 worth of counterfeit purses[151] is graded by Pennsylvania residents in the survey the same as taking property of another valued between $200 and $2,000, a 1st degree misdemeanor, which has a maximum sentence of 5 years,[152] but under current law the offense is graded as a 3rd degree felony, which has a maximum sentence of 7 years.[153]

Calling in a false bomb threat and causing a building to be evacuated[154] is graded by the Pennsylvania residents in the survey the same as taking property of another valued between $200 and $2,000, a 1st degree misdemeanor, which has a maximum sentence of 5 years,[155] but under current law the offense is graded as a 3rd degree felony, which has a maximum sentence of 7 years.[156]

Giving a gun to a 16 year old without consent of his parents, knowing that he is underage,[157] is graded by the Pennsylvania residents in the survey the same as taking property of another valued between $200 and $2,000, a 1st degree misdemeanor, which has a maximum sentence of 5

---

[145] 18 Pa. Cons. Stat. §§7313(a), 7313(b) (2009).

[146] Mean = 3.28; Mode = 4, SD = 1.313 (see Appendix F, item A76).

[147] 18 Pa. Cons. Stat. §§3902; 3903(a1), (b) (2009) (consolidated theft provisions).
0. 18 Pa. Cons. Stat. §7321 (2009).

[149] Mean = 2.30, Mode = 1, SD = 1.709 (see Appendix F, item A73); 18 Pa. Cons. Stat. §§3902; 3903(a1), (b) (2009) (consolidated theft provisions).

[150] 18 Pa. Cons. Stat. §7321 (2009).

[151] 18 Pa. Cons. Stat. §4119(a) (2009).

[152] Mean = 4.31, Mode = 5, SD = 1.482 (see Appendix F, item A38); 18 Pa. Cons. Stat. §§3902; 3903(a1), (b) (2009) (consolidated theft provisions).

[153] 18 Pa. Cons. Stat. §4119(a) (2009).

[154] 18 Pa. Cons. Stat. §§2706(a), 2706(d) (2009).

[155] Mean = 4.37, Mode = 3a, SD = 1.658 (see Appendix F, item A17X); 18 Pa. Cons. Stat. §§3902; 3903(a1), (b) (2009) (consolidated theft provisions).

[156] 18 Pa. Cons. Stat. §§2706(a), 2706(d) (2009).

[157] 18 Pa. Cons. Stat. §6110.1 (2009).

years,[158] but under current law the offense is graded as a 3rd degree felony which has a maximum sentence of 7 years.[159]

2. Examples of Offenses Graded Too Low as Compared to Grading of Pennsylvania Residents

Keeping an adult as a slave[160] is graded by the Pennsylvania residents in the survey the same as knowingly causing injury that risks death or leads to permanent impairment, a 1st degree felony, which has a maximum sentence of 20 years,[161] but under current law the offense is graded as a 1st degree misdemeanor, which has a maximum sentence of 5 years.[162]

Selling an infant to a couple who are purchasing the child because they are unable to adopt due to being unfit parents[163] is graded by the Pennsylvania residents in the survey the same as inflicting bodily injury on a person while committing a theft, a 2nd degree felony, which has a maximum sentence of 10 years,[164] but under current law the offense is graded as a 1st degree misdemeanor, which has a maximum sentence of 5 years.[165]

Failing to douse a campfire, knowing that there is a substantial risk that it could cause a forest fire if left burning, when thousands of acres of land are burned as a result,[166] is graded by the Pennsylvania residents in the survey the me as taking property of another valued over $2,000, a 3rd degree felony, which has a maximum sentence of 7 years,[167] but under current law the offense is graded as a 2nd degree misdemeanor which has a maximum sentence of 2 years.[168]

Threatening a judge at gunpoint because he made a particular ruling in a case[169] is graded by the Pennsylvania residents in the survey the same as inflicting bodily injury on a person while

---

[158] Mean = 4.41, Mode =5, SD = 1.827 (see Appendix F, item A75); 18 Pa. Cons. Stat. §3902; 3903(a1), (b) (consolidated theft provisions).

[159] 18 Pa. Cons. Stat. §6110.1 (2009).

[160] 18 Pa. Cons. Stat. §2902 (2009).

[161] Mean = 7.11, Mode = 7, SD = 1.486 (see Appendix F, item A16); 18 Pa. Cons. Stat. §2702(a)(1) (2009) (aggravated assault).

[162] 18 Pa. Cons. Stat. §2902 (2009).

[163] 18 Pa. Cons. Stat. §4305 (2009).

[164] Mean = 6.21, Mode = 7, SD = 1.686 (see Appendix F, item A24); 18 Pa. Cons. Stat. §3701(a)(iv) (2009) (robbery with injury).

[165] 18 Pa. Cons. Stat. §4305 (2009).

[166] 18 Pa. Cons. Stat. §3303 (2009).

[167] Mean = 4.86, Mode = 5, SD = 1.775 (see Appendix F, item A9); 18 Pa. Cons. Stat. § 3902; 3903(a1), (b) (2009) (consolidated theft provisions).

[168] 18 Pa. Cons. Stat. §3303 (2009).

0. 18 Pa. Cons. Stat. §§4953.1(a); 42 Pa. Cons. Stat. 9712

committing a theft, a 2nd degree felony, which has a maximum sentence of 10 years,[170] but under current law the offense is graded as a 3rd degree felony, which has a maximum sentence of 7 years.[171]

Threatening someone at gunpoint because they testified at a trial, without actually harming them,[172] is graded by the Pennsylvania residents in the survey the same as inflicting bodily injury on a person while committing a theft, a 2nd degree felony, which has a maximum sentence of 10 years,[173] but under current law the offense is graded as a 3rd degree felony, which has a maximum sentence of 7 years.[174]

---

[170] Mean = 6.45, Mode = 7, SD = 1.571 (see Appendix F, item A106); 18 Pa. Cons. Stat. §§3701(a) (v) (robbery)

[171] 18 Pa. Cons. Stat. §§4953.1(a); 42 Pa. Cons. Stat. 9712

[172] 18 Pa. Cons. Stat. §§4953(a), 42 Pa. Cons. Stat. 9712

[173] Mean = 5.78, Mode = 7, SD = 1.591 (see Appendix F, item A105); 18 Pa. Cons. Stat. §3701(a)(iv) (2009) (robbery with injury).

[174] 18 Pa. Cons. Stat. §§4953(a), 42 Pa. Cons. Stat. 9712.

APPENDIX B. EXAMPLES OF THE MANDATORY MINIMUM PROBLEM

Pennsylvania residents graded luring a child into a motor vehicle, after having already been convicted of the same offense twice in the past,[175] as being similar in seriousness to knowingly causing injury that risks death or leads to permanent impairment, which has a maximum penalty of 20 years.[176] Yet, current law sets the mandatory minimum for the offense at life.[177]

Pennsylvania residents graded luring a child into a motor vehicle, after already having been convicted once for the same offense,[178] as being similar in seriousness to engaging in sexual intercourse without consent, but not by force, which has a maximum sentence of 10 years.[179] Yet, current law sets the mandatory minimum for the offense at 25 years.[180]

Pennsylvania residents graded a gun store owner requesting a background check on a customer to satisfy personal curiosity, after having already been convicted of the same offense in the past,[181] as being similar in seriousness to theft of property valued between $50 and $200, which has a maximum penalty of 2 years.[182] Yet, current law sets the mandatory minimum for the offense at 5 years.[183]

Pennsylvania residents graded a person, ordered to be on a sex offender registry for engaging in oral sex with his 15 year old girlfriend when he was 19, failing to verify his address with the State Police for the second time,[184] as being similar in seriousness to taking property of another valued between $50 and $200, which has a maximum sentence of 2 years.[185] Yet, current law sets the mandatory minimum for the offense at 3 years.[186]

---

[175] 18 Pa. Cons. Stat. §2910 (2009).

[176] Mean = 6.53, Mode = 7, SD = 1.599 (see Appendix F, item B22); 18 Pa. Cons. Stat. §2702 (a) (1) (2009) (aggravated assault).

[177] 18 Pa. Cons. Stat. §2910 (2009).

[178] 42 Pa. Cons. Stat. §9718.2 (2009).

[179] Mean = 6.23, Mode = 6, SD = 1.601 (see Appendix F, item B23); 18 Pa. CS §3124.1.

[180] 42 Pa. Cons. Stat. §9718.2 (2009).

[181] 18 Pa. Cons. Stat. §6111(g)(3), (h)(1) (2009).

[182] Mean = 3.05, Mode = 3a, SD = 1.709 (see Appendix F, item B44); 18 Pa. Cons. Stat. §2707.1(a) (2009).

[183] 18 Pa. Cons. Stat. §6111(g)(3), (h)(1) (2009).

[184] 18 Pa. Cons. Stat. §4915(a)(2) (2009).

[185] Mean = 3.05, Mode = 3, SD = 2.004 (see Appendix F, item B41); 18 Pa. CS §§3902; 3903(a)(1), (b) (consolidated theft provisions).

[186] 42 Pa. Cons. Stat. §9718.3 (2009).

Pennsylvania residents graded killing a three month old fetus during an assault on a pregnant woman[187] as being similar in seriousness to knowingly causing injury that risks death or leads to permanent impairment, which has a maximum penalty of 20 years.[188] Yet, current law sets the mandatory minimum for the offense at life.[189]

Pennsylvania residents graded a person, ordered to be on a sex offender registry for engaging in oral sex with his 15 year old girlfriend when he was 19, failing to verify his address with the State Police[190] as being similar in seriousness to theft of property valued between $50 and $200, which has a maximum penalty of 2 years.[191] Yet, current law sets the mandatory minimum for the offense at 3 years.[192]

Pennsylvania residents graded selling a gun that is improperly wrapped, after having already been convicted of the same offense in the past,[193] as being similar in seriousness to taking property of another valued between $50 and $200, which has a maximum sentence of 2 years [194] Yet, current law sets the mandatory minimum for the offense at 5 years.[195]

---

[187] 18 Pa. Cons. Stat. §§2604(a), 1102(a)(2) (2009).

[188] Mean = 7.25, Mode = 8, SD = 2.136 (see Appendix F, item B18); 18 Pa. Cons. Stat. §2702 (a) (1) (2009) (aggravated assault).

[189] 18 Pa. Cons. Stat. §§2604(a), 1102(a)(2) (2009).

[190] 18 Pa. Cons. Stat. §4915(a)(2) (2009).

0. Mean = 2.56, Mode = 1, SD = 1.934 (see Appendix F, item B25); 18 Pa. Cons. Stat. §2707.1(a) (2009).

[192] 42 Pa. Cons. Stat. §9718.3 (2009).

[193] 18 Pa. Cons. Stat. §6111(a)(1) (2009).

[194] Mean = 3.29, Mode = 3, SD = 1.724 (see Appendix F, item B43); 18 Pa. CS §§3902; 3903(a)(1), (b) (consolidated theft provisions).

[195] 18 Pa. Cons. Stat. §6111(h) (2009).

APPENDIX C. EXAMPLES OF THE PROBLEM OF INCONSISTENT GRADES AMONG SIMILAR OFFENSES

Failing to provide reasonable care to an infant at its birth is graded as a 3rd degree felony, carrying a maximum sentence of 7 years,[196] while the same person failing to provide reasonable care to the same child at any time after its birth is an offense graded as a 1st degree misdemeanor, carrying a maximum sentence of 5 years.[197]

Unauthorized administration of an intoxicant with the intent to rape[198] is a specific instance of the offense of attempted rape.[199] Yet the former is punishable by up to 7 years, while the latter carries a maximum sentence of 20 years - nearly three times the maximum penalty.[200]

Agricultural vandalism[201] a specific instance of the general offense of criminal mischief.[202] Yet committing agricultural vandalism by destroying up to $500 worth of crops on a farm is punished with up to 1 year in prison, while the general offense of criminal mischief for destroying up to $500 of property, such as produce at a farmer's market, is punished with a maximum of 90 days, with no apparent reason why the damage in the field should be subject to a 400% increase in possible punishment.[203]

Throwing an object into an occupied vehicle[204] is a specific instance of the more general offense of reckless endangerment.[205] Yet, the specific, throwing offense has a maximum penalty of 5 years, while the more general reckless endangerment offense has a maximum penalty of 2 years.[206] It is unclear why the throwing should be punished two and a half times more harshly than any other behavior that similarly recklessly endangers people.

Shooting paintball gun at a person not participating in the game[207] is a specific instance of the offense of simple assault.[208] But the former is graded as a summary offense and subject to a maximum penalty of 90 days, while the latter is graded as a third degree misdemeanor and

---

[196] 18 Pa. Cons. Stat. §3212 (b) (2009).

[197] (C19); 18 Pa. Cons. Stat. §4304 (a) (2009).

[198] 18 Pa. Cons. Stat. § 2714 (2009).

[199] 18 Pa. Cons. Stat. §§ 3121(4), 905 (2009).

[200] (C12).

[201] 18 Pa. Cons. Stat. §3309(a) (2009).

[202] 18 Pa. Cons. Stat. §3304(a) (2009).

[203] (C4).

[204] 18 Pa. Cons. Stat. §2707(a) (2009).

[205] 18 Pa. Cons. Stat. §2705 (2009).

[206] (C1); 18 Pa. Cons. Stat. §2707(a) (2009).

[207] 18 Pa. Cons. Stat. §2707.2 (2009).

[208] (C10); 18 Pa. Cons. Stat. §2701 (2009).

subject to a maximum penalty of 1 year, with no apparent reason given as to why the latter more general offense should have a penalty 4 times that of the more specific offense.

Trespassing on agricultural land[209] is a specific instance of the offense of criminal trespass, which is entering any place to which notice against trespass is given.[210] But the former is graded as a third degree misdemeanor and carries a maximum penalty of 1 year, while the latter is graded as a summary offense and subject to a maximum penalty of 90 days, with no apparent reason given as to why the former, more specific offense should have a penalty 4 times that of the more general offense.

Forging information relating to email in order to send spam[211] is a specific instance of the offense of tampering with records or identification.[212] Yet the former can be graded as high as a third degree felony and subject to a maximum penalty of 7 years, while the latter is graded as a first degree misdemeanor and subject to a maximum of 5 years, with no apparent reason given as to why the former, more specific offense should have a penalty 1.4 times that of more general offense.

The offense of shooting a gun into an occupied building[213] is a specific instance of the reckless endangerment.[214] Yet shooting a gun into an occupied building is graded as a third degree felony and given a maximum sentence of 7 years,[215] while reckless endangerment is graded as a second degree misdemeanor and carries a maximum sentence of 2 years,[216] a 350% increase in possible punishment.

Driving a boat under the influence of a controlled substance[217] is a specific instance of the offense of recklessly endangering persons.[218] Yet driving a boat under the influence, a specific form of reckless endangerment, is given a maximum penalty of 6 months, while recklessly endangering is subject to a maximum penalty of 2 years. It is unclear why the specific offense should be subject to a maximum penalty only one quarter the length of the general offense.

---

[209]   18 Pa. Cons. Stat. §3503(b.2) (2009).

[210]   (C26); 18 Pa. Cons. Stat. §3503(b)(1)(2) (2009).

[211]   18 Pa. Cons. Stat. §7661(a), (b)(3) (2009).

[212]   (C9); 18 Pa. Cons. Stat. §4104(a) (2009).

[213]   18 Pa. Cons. Stat. §2707.1 (2009).

[214]   18 Pa. Cons. Stat. §2705 (2009).

[215]   (C2); 18 Pa. Cons. Stat. §2707.1(b) (2009).

[216]   18 Pa. Cons. Stat. §2705 (2009).

[217]   30 Pa. Cons. Stat. § 2502(a.3) (2009).

[218]   (C25).

Causing alarm to a law enforcement agent by possessing a facsimile of a weapon of mass destruction, which cannot cause actual harm,[219] is a specific instance of causing a false alarm.[220] Yet, the former is given a maximum penalty of 7 years, while the latter carries a maximum penalty of 1 year.[221] This can amount to a 700% increase in punishment for the offender who causes alarm by possessing a facsimile weapon, even though the harm caused by the alarm is essentially the same whether or not the weapon is involved.

The offense of stealing another's motor vehicle in his presence[222] is a specific instance of the offense of robbery.[223] Yet the former is given a maximum penalty of 20 years, while the latter carries a maximum penalty of 10 years, with no apparent reason why the more specific offense should have a penalty two times that of the more general offense.[224]

---

[219] 18 Pa. Cons. Stat. § 5516 (2009).

[220]   18 Pa. Cons. Stat. § 4905 (2009).

[221] (C27).

[222] 18 Pa. Cons. Stat. §3702 (2009).

[223] 18 Pa. Cons. Stat. §3701(a)(v) (2009).

[224] (C28).

APPENDIX D. EXAMPLES OF THE PROBLEM OF FAILING TO DISTINGUISH CONDUCT OF SIGNIFICANTLY DIFFERENT SERIOUSNESS CONTAINED WITHIN A SINGLE OFFENSE GRADE

The offense of false imprisonment of a minor is defined so broadly as to include both chaining a 14 year old to a wall for a month and illegally locking a 17 year old in a her room for half an hour.[225] Under current law, both courses of conduct are graded as a 2nd degree felony, carrying a maximum sentence of 10 years,6 but the survey of Pennsylvania residents graded the first as a 1st degree felony, carrying a maximum sentence of 20 years,[226] and the second as a 3nd degree misdemeanor, carrying a maximum sentence of 1 year.[227]

The offense of committing a second sex offense is defined so broadly as to include both a second conviction for forcing another to have sex and a second conviction for displaying obscene materials in public.[228] Under the current law, both courses of conduct are graded as a felony, carrying a maximum of 25 years,[229] but the survey of Pennsylvania residents graded the first as a 1st degree felony, carrying a maximum sentence of 20 years,[230] and the second as a 2nd degree misdemeanor, carrying a maximum sentence of 2 years.[231]

The offense of theft of trade secrets is defined so broadly as to include both accessing a graduate student's computer without her permission to look at her research notes and stealing from a pharmaceutical company a formula worth $5,000,000.[232] Under current law, both courses of conduct are graded as a 2nd degree felony, carrying a maximum sentence of 10 years,[233] but the survey of Pennsylvania residents graded the first as a 3rd degree misdemeanor, carrying a maximum sentence of 1 year,[234] and the second as a 2nd degree felony, carrying a maximum sentence of 10 years.[235]

The offense of commercial bribery and breach of duty to act disinterestedly is defined so broadly as to include both an employee soliciting a $10 bribe to give an undeserved discount to a customer, as well as an employee accepting a $10,000 bribe to award a large contract to an

---

[225] 18 Pa. Cons. Stat. §2903 (2009).

[226] Mean = 7.21, Mode = 7, SD = 1.187 (see Appendix F, item D4a).

[227] Mean = 2.24, Mode = 1, SD = 2.086 (see Appendix F, item D4b).

[228] §42 Pa. Cons. Stat. §9718.2 (2009).

[229] *Id.*

[230] Mean = 7.34, Mode = 7, SD = .805 (see Appendix F, item D11a).

[231] Mean = 3.10, Mode = 3, SD = 1.727 (see Appendix F, item D11b).

[232] 18 Pa. Cons. Stat. §3930(a) (2009).

[233] *Id.*

[234] Mean = 2.24, Mode = 1, SD = 1.636 (see Appendix F, item D18a).

[235] Mean = 5.70, Mode = 5, SD = 1.445 (see Appendix F, item D18b).

undeserving contractor.[236] Under current law, both courses of conduct are graded as a 2nd degree misdemeanor, carrying a maximum sentence of 2 years,[237] but the survey of Pennsylvania residents grade the first as 3rd degree misdemeanor, carrying a maximum sentence of 1 year,[238] and the second as a 3rd degree felony, carrying a maximum sentence of 7 years.[239]

The offense of distributing child pornography is defined so broadly as to include both distributing material depicting a man actually having sex with a six year old boy, and distributing material depicting an 18 year old woman pretending to have sex with a 17 year old boy.[240] Under current law, both courses of conduct are graded as a 3rd degree felony, carrying a maximum sentence of 7 years,[241] but the survey of Pennsylvania residents graded the first as a 2nd degree felony, carrying a maximum sentence of 10 years,[242] and the second a 2nd degree misdemeanor, carrying a maximum sentence of 2 years.[243]

The offense of interference with custody of committed person is defined so broadly as to include both removing a juvenile who is held on suicide watch from his treatment facility and taking a low-risk mental facility patient out for an hour's drive without permission from the facility's staff.[244] Under current law, both courses of conduct are graded as a 2nd degree misdemeanor, carrying a maximum sentence of 2 years,[245] but the survey of Pennsylvania residents graded the first as a 1st degree misdemeanor, carrying a maximum sentence of 5 years,[246] and the second as a 3rd degree misdemeanor, carrying a maximum sentence of 1 year.[247]

The offense of unlawful restraint is defined so broadly as to include both holding somebody against his will in a dangerous place for half an hour and holding somebody against his will in a dangerous place for several months.[248] Under current law, both courses of conduct are graded as a 1st degree misdemeanor, carrying a maximum sentence of 5 years,[249] but the survey of

---

[236] 18 Pa. Cons. Stat. §4108(a) (2009).

[237] *Id.*

[238] Mean = 1.84, Mode = 2, SD = 1.082 (see Appendix F, item D17a).

[239] Mean = 4.73, Mode = 5, SD = 1.078 (see Appendix F, item D17b).

0. 18 Pa. Cons. Stat. §6312(c) (2009).

[241] *Id.*

[242] Mean = 5.63, Mode = 7, SD = 1.987 (see Appendix F, item D9a).

[243] Mean = 2.82, Mode = 3, SD = 2.045 (see Appendix F, item D9b).

[244] 18 Pa. Cons. Stat. §2905(a) (2009).

[245] 18 Pa. Cons. Stat. §2905(a) (2009).

[246] Mean = 4.40, Mode = 5, SD = 2.036 (see Appendix F, item D14a).

[247] Mean = 2.03, Mode = 1, SD = 1.652 (see Appendix F, item D14b).

[248] 18 Pa. Cons. Stat. §2902(a) (2009).

[249] 18 Pa. Cons. Stat. §2902(b)(1) (2009).

Pennsylvania residents graded the first as a 3rd degree felony, carrying a maximum sentence of 7 years,[250] and the second as a 1st degree felony, carrying a maximum sentence of 20 years.[251]

The offense of requesting confidential information in the sale or transfer of firearms is defined so broadly as to include both a gun store owner requesting records, such as a background check, simply to satisfy a personal curiosity and a gun store owner requesting records, such as a criminal history, intending to sell them to others.[252] Under current law, both courses of conduct are graded as a 3rd degree felony, carrying a maximum sentence of 7 years,[253] but the survey of Pennsylvania residents graded the first as a 3rd degree misdemeanor, carrying a maximum sentence of 1 year,[254] and the second as a 1st degree misdemeanor, carrying a maximum sentence of 5 years.[255]

---

[250] Mean = 5.42, Mode = 5, SD = 1.639 (see Appendix F, item D21a).

[251] Mean = 7.13, Mode = 7, SD = 1.015 (see Appendix F, item D21b).

[252] 18 Pa. Cons. Stat. §6111(g)(3) (2009).

[253] *Id.*

[254] Mean = 2.25, Mode = 1, SD = 1.585 (see Appendix F, item D8a).

[255] Mean = 3.92, Mode = 3, SD = 1.746 (see Appendix F, item D8b).

APPENDIX E. EXAMPLES OF THE PROBLEM OF INCONSISTENT USE OF GRADING FACTORS AMONG ANALOGOUS OFFENSES

Type 1 (inconsistent grading distinctions for similar offenses)

   The general offense of theft makes grading distinctions according to the value of the property stolen: below $50 (3rd degree misdemeanor), $50-$199.99 (2nd degree misdemeanor), $200-$2,000 (1st degree misdemeanor), and $2,000-plus (3rd degree felony).[256] In contrast, the similar offense of library or museum theft also makes grading distinctions according to value of the property stolen, but uses different monetary cutoffs and makes fewer distinctions: $0-$149.99 (summary offense) and $150-plus (3rd degree misdemeanor).[257]
   As a result, stealing property valued at $40 is punishable with a maximum of 1 year if stolen from an individual but is punishable by a maximum of 90 days if stolen from a library. Stealing a rare book valued at $3,000 is punishable by up to 7 years if stolen from an individual, but only 1 year if stolen from a library.

   The general offense of theft makes grading distinctions according to the value of the property stolen, as noted above.[258] In contrast, the similar offense of retail theft (§3929) also makes grading distinctions, but based upon different sets of distinctions for the value of property stolen: below $149.99 (summary offense), $150-$1,999.99 (1st degree misdemeanor), and above $2,000 (3rd degree felony).[259]
   As a result, stealing property valued at $125 from a store is punished with a maximum of 90 days, while stealing the same article from an individual is punished with up to 2 years. Stealing property valued at $175 from a store is punished with up to 5 years, while stealing the same article from an individual is punished with a maximum of only 2 years.

   The general offense of theft makes grading distinctions according to the value of the property stolen, as noted above.[260] The similar offense of unlicensed reproduction of electronic data also distinguishes grades according to value but uses different values: makes grading distinctions according to value of the data duplicated, but uses different values: below $2,500 is a 3rd degree felony, and above $2,500 is a 2nd degree felony.[261]
   As a result, stealing a software DVD valued at $125 is punishable by up to 2 years, while copying the same software from a computer has a maximum penalty of 7 years. Stealing a software DVD valued at $3,000 is punishable by up to 7 years, while copying the same software from a computer has a maximum penalty of 10 years.

---

[256] 18 Pa. Cons. Stat. §§3902, 3903 (2009).

[257] (E1); 18 Pa. Cons. Stat. §3921.1 (2009).

[258] 18 Pa. Cons. Stat. §§3902, 3903 (2009).

[259] (E2).

[260] 18 Pa. Cons. Stat. §§3902, 3903 (2009).

[261] (E11); 18 Pa. Cons. Stat. §7614 (2009).

Type 2 (grading distinctions used in one offense are not used in an analogous offense)

Various assault provisions make grading distinctions based upon the amount of harm inflicted: causing bodily injury (a 2nd degree misdemeanor),[262] causing bodily injury with a deadly weapon (a 2nd degree felony),[263] and causing serious bodily injury (a 1st degree felony).[264]

      In contrast, for the related offenses of Arson Endangering Persons[265] and Causing a Catastrophe,[266] the Code provides no grading distinctions no matter the extent of the resulting harm.[267] As a result, a person who transports toxic waste in a way that puts in danger others at his work site will be liable for the same level offense (3rd degree felony) as a person who mishandles chemicals in a nuclear reactor, thereby putting in danger his entire metropolitan area. A person who purposely starts a fire that burns 3 acres of pasture will be liable for the same level offense (1st degree felony) as a person who starts a forest fire that burns 300 acres and destroys 40 homes.

The offense of intimidating a witness to obstruct justice makes grading distinctions according to the grade of the original offense charged: obstructing in less than a 2nd degree felony is a 3rd degree felony, obstructing a 2nd degree felony is a 2nd degree felony, and obstructing a murder or felony of the 1st degree is a 1st degree felony.[268] Similarly, the offenses of failing to appear for a required court date[269] and flight to avoid apprehension[270] are graded in light of the underlying offense charged.

      In contrast, the offense of tampering with evidence to undercut an investigation,[271] which can likewise include varying degrees of harm depending on the seriousness of the offense being investigated, makes no grading distinctions. As a result, whether the underlying offense is murder or petty theft, the tampering offense is graded as a 2nd degree misdemeanor.[272]

The general offense of theft varies the grade of the offense according to the value of the object taken, as noted above.[273] The offense of computer theft can likewise include varying degrees of monetary loss, yet all instances of computer theft are graded as 3rd degree felonies,

---

[262] 18 Pa. Cons. Stat. §2701(a) (2009) (simple assault).

[263] 18 Pa. Cons. Stat. §2702 (2009) (aggravated assault).

[264] 18 Pa. Cons. Stat. §2702 (a) (2009) (aggravated assault).

[265] 18 Pa. Cons. Stat. § 3301(a) (2009).

[266] 18 Pa. Cons. Stat. § 3302(a) (2009).

[267] (E7).

[268] 18 Pa. Cons. Stat. §4952(b)(1) (2009).

[269] 18 Pa. Cons. Stat. §5124 (2009).

[270] 18 Pa. Cons. Stat. §5126 (2009).

[271] 18 Pa. Cons. Stat. §4910 (2009).

[272] (E9).

[273] 18 Pa. Cons. Stat. §§3902, 3903 (2009).

carrying a maximum penalty of 7 years.[274] As a result, whether the crime is a theft of useless data with a value of less than $50 or a theft of a new high-tech statistics algorithm worth $3,000, the offense is graded as a 3rd degree felony.

The general offense of theft makes grading distinctions according to the value of the property stolen, as noted above.[275]   The offense of trade secret theft[276] similarly can include many different valuations of harm done, yet the Code makes no grading distinctions. As a result, whether the crime is a theft of an outdated drill design with little value or the theft of a new high-tech brewing process that saves millions of dollars a year, the offense is graded as a 3rd degree felony.

---

[274] 18 Pa. Cons. Stat. §7613 (2009).

[275] 18 Pa. Cons. Stat. §§3902, 3903 (2009).

[276] 18 Pa. Cons. Stat. §3930(b) (2009).