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**Preliminary Evaluation of
Washington State's Sentencing Reform Act
December 1986**

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PRELIMINARY EVALUATION OF
WASHINGTON STATE'S SENTENCING REFORM ACT

by

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December 1986

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EXECUTIVE SUMMARY

Introduction

In 1981, the state of Washington joined the national sentencing reform movement by adopting what has been called the most comprehensive sentencing reform measure in the last 50 years¹. The Sentencing Reform Act of 1981 (SRA) was patterned after Minnesota's sentencing guidelines system, but can be distinguished by the fact that Washington's legislatively-adopted guidelines apply to both prison sentences (total confinement in a state facility for more than one year) and nonprison sentences (incarceration in a county facility for up to one year).

Washington's sentencing guidelines indicate a sentencing range for felony offenses, adjusted by the offender's criminal history and number of current convictions (see Appendix A). The judge can depart from the range and impose an aggravated or mitigated sentence, but must supply written justification. A departure from the range can be appealed by the prosecutor or the defendant. Once a sentence is imposed, it is determinate and can only be adjusted for credit due to good behavior in jail or prison (up to one-third the term).

The SRA was enacted for the following explicit purposes²:

- (1) Ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history;
- (2) Promote respect for the law by providing punishment which is just;
- (3) Be commensurate with the punishment imposed on others committing similar offenses;
- (4) Protect the public;
- (5) Offer the offender an opportunity to improve him or herself; and
- (6) Make frugal use of the state's resources.

The legislature established a Sentencing Guidelines Commission to draft guidelines for legislative approval which were consistent with these purposes. The legislature also required that "the commission shall emphasize confinement for the violent offender and alternatives to total confinement for the nonviolent offender".³

The SRA was passed in 1981 and given a delayed implementation date, to apply to crimes committed after July 1, 1984. The Sentencing Guidelines Commission submitted its recommendations in 1983 and 1984; the legislature adopted these recommendations with only minor changes.

This report evaluates the first full calendar year of implementation of the sentencing guidelines, also comparing sentencing practices under the SRA in 1985 with sentencing practices in 1982 under an indeterminate sentencing system. A summary of the major findings follows, comparing the sentencing practices with the reform's stated goals.

A. Imprisonment Rates

The state imprisonment rate is the proportion of adult felons receiving prison sentences (over one year in a state facility) relative to the total number of adult felony convictions (including those sentenced to a jail term in a county facility, or no incarceration). The state imprisonment rate for violent offenders⁴ increased from 49 percent in 1982 to 65 percent in 1985. The imprisonment rate for nonviolent offenders dropped from 13 percent in 1982 to 9 percent in 1985. These changes were consistent with the SRA's legislative mandate to emphasize confinement for violent offenders and alternatives to total confinement for nonviolent offenders.

The overall imprisonment rate dropped from 20 percent in 1982 to 17 percent in 1985, resulting in a reduced number of prison admissions. This reduced imprisonment rate is a direct result of the shift in proportion of violent offense convictions. In 1982, 20 percent of all offenses were violent; in 1985, the proportion was 14 percent. At this time, it is not known if this change reflects a decrease in the violent crime rate, an increase in the nonviolent crime rate, a change in charging practices by prosecuting attorneys, or some other change.

B. Change in Sentence Length

The precise change in inmate length of stay as a result of the Sentencing Reform Act cannot be pinpointed until data is available concerning the average good time credit earned in jail or prison. Until then, the length of sentence under the SRA must be presented as a range (two-thirds to full sentence). In 1982, the average prison term was 36.8 months; in 1985, it was 29.7 to 44.6 months. The average nonprison sentence in 1982 was 1.7 months; in 1985, it was 1.7 to 2.5 months.

C. Variability in Sentencing

In order to measure consistency in sentencing, Minnesota's concept of "grid variance" for imprisonment rates was used⁵. This measure is an index of the consistency in the prison in/out decision for each "cell" of the sentencing matrix. In 1985, the weighted average for this index figure was about one-third that of 1982, reflecting much greater consistency in sentences after the reform. The concept of grid variance was generalized to apply also to the variability in sentence lengths for any given cell in the sentencing matrix. This index revealed a 60 percent drop in the average variability in sentence lengths under the SRA. These analyses support the claim that the sentencing guidelines promote uniformity in sentencing for various combinations of conviction and criminal history.

Following Washington's sentencing reform, felony sentences were expected to become more consistent county to county. Since counties differ in their populations and types of crimes, it would not be expected that each county would have exactly the same imprisonment rate or average length of stay, even if greater consistency were achieved. A comparison of county-to-county differences in 1985 relative to 1982 shows that the range of imprisonment rates is lower in 1985 (13.4 percentage points) than in 1982 (17.9 percentage points). The range of average sentence lengths also decreased, both for nonprison (from 2.5 months to 1.0 months) and for prison sentences (from 19.8 to 13.8 months). (Both estimates of SRA sentences assume full good-time reductions.)

D. Impact on Inmate Populations

A recent analysis by the Office of Financial Management estimates that as of June 1986, there are 1,074 fewer inmates in state prisons as a result of the SRA. This same analysis concludes that there are 551 more person offenders in prison (murder, manslaughter, robbery, assault, and sex offenses) than there would have been if prior, indeterminate sentencing practices had been continued.

The impact of the SRA on county jail populations is less clear and requires additional data collection before the question can be empirically answered.

E. Use of Sentencing Options

A uniform statewide sentencing grid serves as a direct translation of legislative intent that punishment for a criminal offense be proportionate to the seriousness of the offense and the offender's criminal history. However, the sentencing judge has several options in this state for imposing sentences not reflected on the grid: exceptional sentences, the First-time Offender Waiver option (up to 90 days jail in lieu of the standard sentence), and the Special Sexual Offender Sentencing Alternative (suspended prison term and up to 6 months in jail). Judges took advantage of these options in 28 percent of felony sentencings under the SRA in 1985, but only 10 percent of the time were they used to impose a sentence outside the standard range of confinement.

Exceptional Sentences: Exceptional sentences were imposed in 3.5 percent of all SRA cases in 1985. In addition, there were another 1.4 percent of sentences outside the standard range through undocumented means (e.g., clerical errors). The number of exceptional sentences was lower than expected by most drafters of the reform and Commission members. However, recent State Supreme Court decisions confirmed that judges have broad discretion in imposing exceptional sentence length and as a result, many observers believe sentencing judges will be more willing to impose exceptional sentences.

Overall, 56 percent of all exceptional sentences were mitigated departures (below the range), and 41 percent were aggravated departures (above the range). Serious violent offenses (Assault 1, Murder 1 and 2, Kidnapping 1, and Rape 1) had the highest rate of exceptional sentences (16.4 percent); 75 percent of these were aggravated departures. Other violent offenses had an exceptional sentence rate of 11.2 percent; 70 percent of these were mitigated departures. The 2.1 percent exceptional rate for nonviolent offenses was split almost equally between mitigated departures (49 percent) and aggravated departures (47 percent).

Further analysis of exceptional sentences revealed that 88 persons with presumptive prison terms received a nonprison sentence, but only 37 persons with a presumptive nonprison sentence received a prison term. This evidence, together with the finding that more exceptional sentences are below rather than above the range, suggests that the overall trend for exceptional sentences has been toward leniency. However, the net impact of exceptional sentences has been to increase person-years of confinement, not to reduce them. A practical limit exists on setting sentences below the standard range because zero is the absolute bottom. The upper limit, however, is constrained only by the statutory maximum, usually several years above the top of the standard range. As an example, a recent case received a 15-year total sentence on two counts with a presumptive sentence range of up to one year. For 1985, the average aggravated sentence exceeded the range

by an average of 39 months; the average mitigated sentence was 10 months below the range. Thus, on the average, sentences above the range have had approximately four times the population impact than sentences below the range.

First-time Offender Waiver: For first-time offenders, the SRA permits a waiver of the standard range and an alternative sentence of up to 90 days in jail, 24 months of community supervision, and other sentence conditions including treatment (not available to persons receiving a standard sentence). This waiver is only available to nonviolent offenders (excluding sex offenders) without prior felony convictions. Nearly half (48 percent) of all persons convicted were eligible for this option, and of these, nearly half (47 percent) received it. However, in only 21 percent of the cases was the sentence imposed lower than the standard range. The First-time Offender Waiver has been primarily used to impose treatment conditions not otherwise available, or to impose community supervision in excess of the 12 months allowed under a standard nonprison sentence.

Sex Offender Treatment Options: Another alternative to standard sentences are the sex offender treatment options. The first of these is the Special Sexual Offender Sentencing Alternative, a hold-over provision from the indeterminate sentencing system. Under this sentencing alternative, sex offenders (other than those convicted of First and Second Degree Rape) may receive a suspended sentence, jail confinement for up to six months, two years of community supervision, and an order to participate in inpatient or outpatient treatment. As was true under the indeterminate system, this suspended sentence may be revoked. Thirty-six percent of sex offenders received a sentence under this option; the rest received determinate sentences within the standard range.

Sex offenders are eligible for a second sentencing option allowing them to serve their determinate sentence in an inpatient program at one of two state hospitals. Fourteen percent of sex offenders received this type of sentence. Unlike the suspended treatment sentence, the sentence to a state hospital is a determinate sentence within the standard range. If an offender fails the program, the remainder of the sentence is served in a state prison.

Other Sentencing Options: Because the legislature emphasized alternatives to total confinement for nonviolent offenders, the sentencing guidelines permit the conversion of jail sentences (total confinement) to work release or partial confinement (in the case of all offenders) or community service (nonviolent offenders only). For persons receiving a standard nonprison sentence, 26 percent of the sentence was authorized to be served in partial confinement. Community service was ordered in 27 percent of nonprison sentences. The rate of community service has doubled since 1982 when only 12 percent of all nonprison sentences contained a community service order. For nonviolent offenders, courts have clearly taken advantage of alternatives to total confinement in their sentencing decisions.

F. Community Supervision

Offenders receiving a nonprison sentence can be ordered to serve up to 12 months of community supervision on standard sentences and 24 months for a First-time Offender Waiver or sentences under the Special Sexual Offender Sentencing Alternative. Under the indeterminate sentencing system (in 1982), nearly all persons receiving a nonprison sentence also received a period of probation. The percentage

of persons receiving community supervision remains high under the SRA for sentences involving one of the options (over 90 percent), but is imposed only 74 percent of the time for standard sentences.

One reason for this shift is that SRA offenders are not on probation and cannot be revoked, although up to 60 days in jail can be imposed for each violation of the conditions of supervision. Standard sentences cannot include treatment conditions or any requirement for affirmative behavior which is not designated as a "crime-related prohibition." Thus, for offenders receiving a nonprison sentence without crime-related prohibitions or other significant sentence conditions, supervision may not be perceived as necessary by the court.

G. Sentence Neutrality

Little information is available with respect to the issue of sentencing neutrality. For the first several months, most of the Judgment and Sentence forms received by the Commission lacked demographic information. Because gender and race information was missing on nearly half of the sentencing records, no comprehensive analysis of this issue was attempted at this time. Considerable effort has gone into educating various counties about the importance of this information, and over 90 percent of forms now specify the offender's age, race, and sex. Thus, future evaluations of the SRA will analyze this data.

Because of a special effort by the Commission's research staff, nearly complete demographic information is available on persons receiving exceptional sentences. The number of women receiving exceptional sentences was too small to permit statistical analysis. In terms of race, there was no statistically significant difference among whites, blacks, and other minorities with respect to the proportion receiving exceptional sentences either above, below, or within the standard range.

The Joint Legislative Committee on the Criminal Justice System is currently examining the relationship of the SRA to sentencing of minorities. The Commission staff supplied the Committee with data on 1986 cases for their analysis.

H. Prosecutorial Practices

Little change in prosecutorial practices is evident from the limited amount of data available on this issue. Trial rates remain virtually identical to those experienced under the indeterminate system. Prosecutors retain considerable charging discretion under the SRA. Examining the seriousness levels and offender scores (the offender score is influenced by the number of counts) provides some insight into prosecutorial charging practices under the SRA. A comparison between 1982 and 1985 in terms of either seriousness levels or offender scores reveals virtually no change in these distributions, suggesting little change in charging practices affecting these major variables.

Summary

The Sentencing Reform Act prescribes a standard (presumptive) sentencing range for all felony offenses. Exceptional sentences outside of this range may be imposed and a sentence within the range may be waived for first-time, nonviolent

offenders, or suspended for most sex offenders. Despite these available alternatives, 90 percent of all felony convictions resulted in sentences within the standard range.

This consistency in sentencing resulted in a marked drop in variability of both imprisonment rate and sentence length for persons with similar criminal histories who commit similar crimes. A reduction in county-to-county variability in imprisonment rates and sentence lengths was also observed.

More violent offenders and fewer nonviolent offenders received state prison sentences than in 1982. Usage of community service, an alternative to jail, has doubled since 1982.

The SRA has resulted in many more violent offenders in prison (551 person offenders) along with an overall decrease of 1,074 prison inmates as of June, 1986.

In summary, the Sentencing Reform Act has met its legislative mandates to impose sentences which are proportionate to the seriousness of the offense and criminal history, and to emphasize confinement for violent offenders and alternatives to total confinement for nonviolent offenders.

I. MONITORING SYSTEM

By court rule, Washington's court clerks are to send copies of Judgment and Sentence forms for adult felony convictions to the Sentencing Guidelines Commission. Data from these forms are entered into the Commission's database, including variables regarding current offense(s), criminal history, offender demographics, and the following sentence elements:

- Length of jail or prison sentence;
- Length of partial confinement;
- Use of the First-time Offender Waiver;
- Use of the Special Sexual Offender Sentencing Alternative;
- Evaluation at Eastern or Western State Hospital for sex offender treatment;
- Hours of community service;
- Orders for treatment;
- Months of community supervision;
- Credit for time served; and
- Fines.

The Commission's data entry program checks the logic of the entries to ensure quality control. All cases are scored by the computer, and any aspect of the sentence not conforming to the Sentencing Reform Act is noted. Depending on the nature and degree of the nonconformity, the staff may request missing information or clarification from the court clerk, prosecuting and defense attorneys, or sentencing judge.

In addition to errors in reporting or sentencing, Judgment and Sentence forms are sometimes difficult to interpret. Although a pattern form was distributed by the Supreme Court's Pattern Forms Committee, its use is voluntary. With 39 counties in the state, various forms, terminologies, and interpretations exist. The Commission has developed data entry policy decisions to standardize interpretation of these forms. The data entry policy decisions and the error and follow-up procedures are available from the Commission.⁶

The Department of Corrections and the Washington State Patrol have information systems which depend on data from adult felony Judgment and Sentence forms. These information systems are relatively new, and improvements to the data collection and storage procedures are being instituted. Eventually, the Commission will rely on these agencies' information systems for Sentencing Reform Act data, with the Commission staff concentrating exclusively on data analysis and interpretation. The Department of Corrections and the Washington State Patrol have agreed to collect most of the data required by the Commission. Some of the

data variables needed by the Commission, however, are outside both these agencies' missions. The Commission will continue collecting data until those agencies can provide the data needed by the Commission on a timely basis.

II. EVALUATION DATA

A. Baseline Data

Some of the analyses in this report compare current sentencing practices with practices under the former indeterminate sentencing system. The baseline data are derived from the Commission's Fiscal Year 1982 study of over 3,000 convicted felons. The 1982 data allow the Commission to "hypothesize" sentences that pre-Sentencing Reform Act offenders would have received under the Sentencing Reform Act. For the 1982 study, actual length of stay information was collected for persons receiving a nonprison sentence. For persons sentenced to prison, length of stay was estimated based on the minimum term set by the Board of Prison Terms and Paroles, reduced by one-third to account for typical "good time" earned early release. Further, the prison sentences were adjusted for average Public Safety Score reductions earned for various groups of offenders, as estimated by the Parole Board. A detailed discussion of the sampling plan and research methodology used for this baseline data is available from the Commission.⁷

B. Current Data

The Calendar Year 1985 data are based on Judgment and Sentence form data for 7,961 persons sentenced under the Sentencing Reform Act from January through December 1985. Under the Sentencing Reform Act, each offender has a presumptive sentence range which is a function of the seriousness of the current offense and the extent of the offender's criminal history. The sentencing grid and list of crimes contained within each seriousness level are located in Appendices A and B.

The sentence entered on the Judgment and Sentence form represents the maximum time to be served and is subject to as much as one-third reduction for earned early release.⁸ The criminal history reported on a Judgment and Sentence form may or may not be the defendant's actual criminal history. Instead, the form details the history used for sentencing purposes and may not include disputed (and unproven) history, history undisclosed at the time of sentencing, or history not counted in the scoring of the current offense.

Currently, no mechanism is in place to verify whether the Commission is receiving all Judgment and Sentence forms. A comparison of Department of Corrections' prison admission records for April 1985 indicated that the Commission received 92 percent of the forms (77 of 84) for those admitted to prison on a conviction under the Sentencing Reform Act. A sample of felony convictions was also checked for August 1985 with a 96 percent success rate (69 of 72 records were in the Commission's database). Although a court rule requires that Judgment and Sentence forms be submitted to the Commission, there is no enforcement or regulatory mechanism. Thus, a 92 to 96 percent response rate to an essentially voluntary reporting system is very high. Cross-checking records with the Department of Corrections is time consuming, but this verification effort will be repeated in the near future.

The ten missing records may be partially due to the fact that cross-checking must be based on the offender's name, a sometimes unreliable procedure. Each person convicted of a felony has, or should have, a unique State Identification Number (SID Number) assigned by the Washington State Patrol. The SID numbers have not

been regularly reported on the Judgment and Sentence forms. Current efforts may increase the reporting frequency of SID numbers, thus greatly facilitating the cross-checking of records. This cross-checking by SID numbers will also be important when the Washington State Patrol and Department of Corrections implement their plans for an integrated information system.

III. SENTENCING REFORM ACT SENTENCES

A. Changes in State Imprisonment Rate

Figure 1 details the changes in the proportion of convicted felons receiving a prison sentence as a result of the Sentencing Reform Act.⁹ This figure evidences an increase in imprisonment rate for violent offenders and a decrease for nonviolent offenders. This change is consistent with the Commission's legislative mandate to emphasize total confinement for violent offenders and alternatives to total confinement for nonviolent offenders.¹⁰

An overall decrease in the proportion of persons sentenced to prison occurred in 1985 (16.7%) as compared to 1982 (20.2%). This decrease is related to the proportion of all violent felony convictions. Table 1 shows the proportion of violent and nonviolent crimes.

TABLE 1
PROPORTION OF VIOLENT AND NONVIOLENT CONVICTIONS

	<u>FY 1982</u>	<u>CY 1985</u>
Violent	19.5%	14.0%
Nonviolent	80.5%	86.0%

If the proportion of 1985 violent convictions remained at the 1982 level (19.5%), the 1985 rate of imprisonment for violent and nonviolent offenses would have resulted in an overall imprisonment rate of 19.8 percent--virtually identical to the 1982 rate (.195 x .651 + .805 x .088 = .198). It is not known whether the apparent change in the proportion of convictions for violent offenses is an actual change in the violent crime rate, a change in charging practices by prosecuting attorneys, or some other change. As the Sentencing Guidelines Commission continues to monitor sentences under the Sentencing Reform Act, the staff will calculate changes in the proportion of sentences for violent offenses and analyze reasons for shifts in this rate.

A comparison of SRA and pre-SRA imprisonment rates for selected individual offenses is presented in Appendix C.

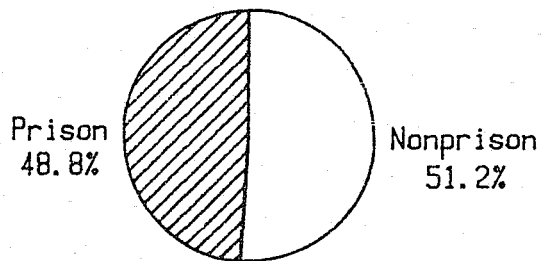
B. Uniformity of State Imprisonment Rate

One of the Sentencing Reform Act purposes is to ensure that punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history. Thus, persons with similar convictions and criminal history are expected to receive similar sentences, in contrast to the highly individualized sentences imposed under indeterminate sentencing. Although the new sentencing law allows some rehabilitative and exceptional sentences, the presumptive prison/nonprison disposition is identical for all persons whose crime and criminal history place them in the same position on the sentencing grid.

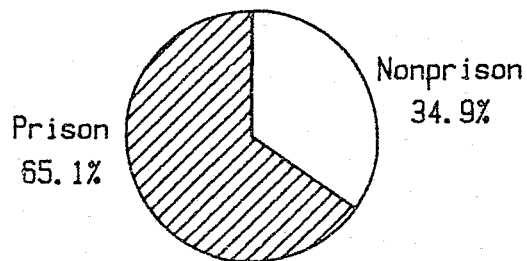
Figure 1

PRE-SRA vs. SRA IMPRISONMENT RATES

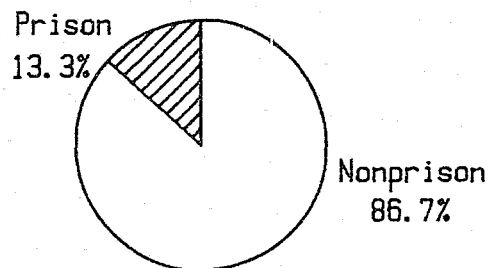
Violent Offenses
1982



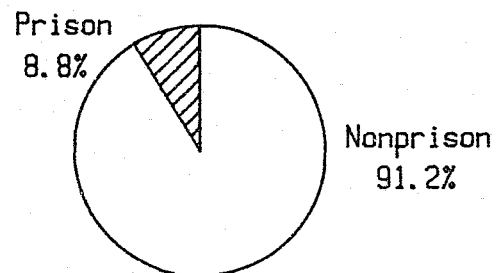
Violent Offenses
1985



Nonviolent Offenses
1982



Nonviolent Offenses
1985



Minnesota's evaluation of its sentencing guidelines relied on the concept of "grid variance" to quantify the change in consistency in the use of the prison/nonprison disposition.¹¹ This concept has value in the evaluation of Washington's law. The cell variance for any given cell in the sentencing grid is defined as $P(1-P)$, where P is the proportion of persons receiving a prison disposition (sentence exceeding 12 months). The grid variance is the weighted average of the individual cell variances (the sum of $nP(1-P)/N$ where n is the number of convictions in any given cell and N is the total number of convictions). This variance measure has a maximum of .25 (1/2 go to prison and 1/2 receive a nonprison disposition) and a minimum value of 0 (all persons go to prison or none go to prison). Table 2 presents the results of this analysis.

TABLE 2
GRID VARIANCE FOR PRISON/NONPRISON DISPOSITIONS

	<u>Grid Variance</u>
FY 1982	.107
CY 1985	.034

This analysis shows that the grid variance for imprisonment rates is only one-third the variance in FY 1982. The Sentencing Reform Act has clearly increased consistency in the imprisonment decision.

C. Change in Sentence Length

A comparative discussion of sentence lengths requires careful definition. Under the indeterminate sentencing system, all persons convicted of a felony were sentenced to the statutory maximum, with the sentencing judge also determining if the defendant was sent to prison. The Board of Prison Terms and Paroles set the minimum term for all prison inmates. All minimum terms could be adjusted by up to a one-third reduction for good time earnings, with further reductions for a Public Safety Score (a reduction tied to recidivism estimates and work release participation). In addition, some offenders were eligible for release through an Intensive Parole program (a "back-end" diversion) or as part of a legislatively authorized "early release" effort.

If the judge decided not to send an offender to prison, the sentence was suspended or deferred, and the judge usually ordered a period of jail time. However, this jail term was subject to review and later reduction. Jail terms were also eligible for one-third reduction for good time under state law. In practice, counties varied from one-half reduction for good time to no reductions for good time.¹² For the 1982 historical data, the analyses in this report rely on actual length of stay in jail as the "length of sentence." An estimated length of stay in prison was computed using a historical baseline for average good time reductions and Public Safety Score reduction. This estimate was used as the "length of sentence" for persons sentenced to prison in 1982.

A sentence (either jail or prison) imposed under the Sentencing Reform Act is subject only to a one-third reduction for earned early release. No historical baseline is available to estimate the average amount of good time reduction for

SRA inmates. Thus, the length of sentence under current sentencing law is presented as a range (two-thirds to full sentence). Community service hours are included in the sentence computation for persons receiving a standard sentence, as these hours represent a conversion of total confinement to an alternative sentence (total confinement, partial confinement, and community service must add to a figure that is within the standard sentencing range).¹³ Community service hours are not included for persons receiving a First-time Offender Waiver or the Special Sexual Offender Sentencing Alternative because these hours are in addition to any total and partial confinement imposed. Total plus partial confinement must be within the sentencing ranges allowed by those options, but there are no restrictions on community service hours.¹⁴

Given the above definitions, Table 3 shows the changes in length of sentence under determinate sentencing.

TABLE 3

**CHANGE IN AVERAGE SENTENCE LENGTH: 1982 vs. 1985
(Excluding Sentences Served at Eastern or Western State Hospital)**

	<u>FY 1982</u>	<u>CY 85</u>
Prison Sentences (excluding life terms)	36.8 months	29.7 to 44.6 months
Nonprison Sentences	1.7 months	1.7 to 2.5 months

The precise change in length of stay as a result of the Sentencing Reform Act cannot be pinpointed without data concerning the average good time credit earned by jail or prison inmates. The only information available concerning this variable is a Department of Corrections' estimate that 87 percent of the maximum good time credits were earned by the first 116 Sentencing Reform Act prison inmates who were released.¹⁵ Should this figure prove to be valid for all prison inmates, persons sentenced under the Sentencing Reform Act in 1985 would serve less time in prison than those sentenced under the indeterminate sentencing system in 1982.

In contrast, offenders sentenced under the Sentencing Reform Act to nonprison sentences (total confinement, partial confinement, community service), appear to have somewhat longer terms of confinement than those sentenced in 1982. The low end of the range, 1.7 months, would only occur if all offenders received their maximum good time credit, an unlikely occurrence.

A comparison of SRA and pre-SRA sentence lengths for selected individual offenses is presented in Appendix C.

D. Uniformity of Sentence Length

Another question that may be asked about length of sentences under the Sentencing Reform Act is whether they are more uniform for any given category of offense seriousness and offender score (criminal history) than under the indeterminate sentencing system. This question was partially addressed with the measure of grid variance discussed in the section on imprisonment rates. In order to extend the concept of grid variance to the analysis of sentence lengths, the statistical

variance for each cell in the sentencing grid was computed for indeterminate sentences imposed in 1982, and for determinate sentences imposed in 1985.

Each 1985 cell variance was divided by the corresponding 1982 cell variance. For example, the standard range for Level VII offenses (no criminal history) is 15 to 20 months. The variance for these sentences in 1982 was 232.6, and in 1985 the variance was 56.6. Dividing 56.6 by 232.6 results in .243 indicating that the variance in determinate sentences for persons in that cell of the grid was one-fourth the variance under the indeterminate system of 1982.¹⁶ This measure was computed for each cell of the sentencing grid. All cells averaged .372, which indicates a reduction of over 60 percent in sentence length variance.

E. Location of Sentence Within Range

Related to the issue of length of stay is the question of where in the range the typical sentence falls. The sentencing grid specifies a presumptive sentence range, and the judge can sentence anywhere in this range. If the average sentences are near the middle of the standard range, it could be stated that judges are exercising their discretion and taking full advantage of the range's flexibility. If, however, sentences are consistently set at the top or bottom of the range, it could be argued that the ranges may be too lenient or too harsh and deserve reconsideration. Table 4 displays the average point in the sentence range.

TABLE 4

LOCATION OF SENTENCES WITHIN THE STANDARD RANGE

Prison

44%

Nonprison

42%

Note: This analysis is based on the 5,269 felons receiving a sentence within the standard range.

Thus, for both prison and nonprison sentences, the average sentence is set near the middle of the standard range.

F. Exceptional Sentences

The Sentencing Reform Act allows the court to impose an exceptional sentence if there are "substantial and compelling reasons."¹⁷ A written justification is required, and the prosecutor or the defendant can appeal an exceptional sentence. Exceptional sentences may be imposed to accomplish the following:

- o Set a sentence above or below the standard range;
- o Order sentences on multiple offenses under the same cause number to be served consecutively; or
- o Set sentence conditions not otherwise permitted for a given offender, such as ordering community service for an offender convicted of a violent offense, or requiring extended community supervision.

For the period of January through December 1985, 3.5 percent of all convictions resulted in an exceptional sentence (277 exceptional sentences out of 7,961 convictions). The rate of exceptional sentences varies for individual crimes. For example, exceptional sentences were used in 16 percent of sentencing for serious violent offenses (20 out of 122 convictions), 11 percent for violent offenses (117 out of 1,049 convictions), and only 2.1 percent of the time for nonviolent offenses (140 out of 6,790 convictions). The rates of exceptional sentences for various offenses are displayed in Table 5.

The 3.5 percent rate of usage for exceptional sentences is lower than most people anticipated. One reason for the low rate of exceptional sentences may be the availability of First-time Offender Waivers and Special Sexual Offender Sentencing Alternatives. Another possible explanation is the uncertainty of the appeal process, particularly given an absence of relevant case law. Recent Washington State Supreme Court decisions have filled this vacuum and may influence the behavior of sentencing judges.

In State v. Oxborrow¹⁸ and State v. Armstrong,¹⁹ the State Supreme Court held that the determination of whether a sentence is clearly excessive is subject only to the abuse of discretion standard. Under this standard, it is very improbable that an exceptional sentence would be deemed excessive regardless of the degree to which it exceeded the standard range for that offense. The Oxborrow decision explicitly rejected the "Minnesota rule" which limits exceptional sentences to no more than twice the standard range (except in rare cases), affirming five- and ten-year consecutive sentences in a case with a maximum standard sentence of 12 months.

TABLE 5
EXCEPTIONAL SENTENCES BY TYPE OF CRIME
CY 1985

	<u>Exceptional Sentences</u>	<u>Number of Convictions</u>	<u>Percent</u>
<u>Serious Violent*</u>			
Assault 1	2	17	11.8%
Murder 1	4	27	14.8%
Murder 2	6	31	19.4%
Rape 1	8	33	24.2%
Kidnapping 1	0	14	0.0%
SUBTOTAL	20	122	16.4%
<u>Violent*</u>			
Arson 1, 2	6	52	11.5%
Assault 2	53	370	14.3%
Burglary 1	6	57	10.5%
Extortion 1	1	4	25.0%
Kidnapping 2	1	7	14.3%
Manslaughter 1, 2	6	27	22.2%
Robbery 1, 2	26	365	7.1%
Sex	5	115	4.3%
Vehicular Homicide	13	49	26.5%
Other Class A Felonies	0	3	0.0%
SUBTOTAL	117	1,049	11.2%

	<u>Exceptional Sentences</u>	<u>Number of Convictions</u>	<u>Percent</u>
<u>Nonviolent*</u>			
Assault 3	5	253	2.0%
Burglary 2	35	1,752	2.0%
Drug	31	1,275	2.4%
Escape 1, 2	6	233	2.6%
Forgery	3	479	0.6%
Intimidating a Witness	2	3	66.7%
Malicious Mischief	3	105	2.9%
Poss. Stolen Property	8	450	1.8%
Sex	17	346	4.9%
Take Motor Veh. w/o Per.	2	331	0.6%
Theft	13	914	1.4%
Vehicular Assault	5	53	9.4%
Unranked	3	58	5.2%
Other Nonviolent	<u>7</u>	<u>538</u>	<u>1.3%</u>
SUBTOTAL	140	6,790	2.1%
TOTAL -- ALL OFFENDERS	<u>277</u>	<u>7,961</u>	<u>3.5%</u>

*Includes attempts

The reasons for imposing an exceptional sentence must be substantial and compelling, and exceptional sentences continue to be carefully reviewed by the appellate courts in regard to this standard. Once this standard is met, the recent Supreme Court decisions confirm broad discretionary powers for judges in setting the duration of an exceptional sentence. The rate of exceptional sentence usage will be closely monitored in the coming months to discover if these recent decisions influence the rate of exceptional sentences.

Fifty-six percent of exceptional sentences were below the standard range (155 sentences), 41 percent were above the standard range (113 sentences), and 3 percent were within the standard range (9 sentences). Just as the rate of exceptional sentences varies depending on the current offense, the proportion of exceptional sentences above or below the standard range also depends on the type of crime (see Table 6). Persons receiving an exceptional sentence for a serious violent offense are likely to be sentenced above the standard range (15 of 20 sentences). Persons receiving an exceptional sentence for a violent offense are likely to be sentenced below the standard range (82 of 117 sentences). Sentences for nonviolent offenses are about equally likely to be above (66 of 140 sentences) as below the standard range (69 of 140 sentences). These results are presented in Figure 2.

TABLE 6
TYPE OF EXCEPTIONAL SENTENCE

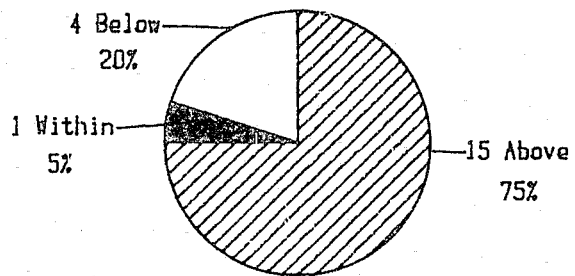
	<u>Below the Range</u>	<u>Above the Range</u>	<u>In the Range</u>
<u>Serious Violent*</u>			
Assault 1	0	2	0
Murder 1	1	3	0
Murder 2	2	4	0
Rape 1	<u>1</u>	<u>6</u>	<u>1</u>
SUBTOTAL	4	15	1
<u>Violent*</u>			
Arson 1, 2	6	0	0
Assault 2	35	15	3
Burglary 1	2	4	0
Extortion 1	1	0	0
Kidnapping 2	0	1	0
Manslaughter 1, 2	5	1	0
Robbery 1, 2	18	8	0
Sex	3	2	0
Vehicular Homicide	<u>12</u>	<u>1</u>	<u>0</u>
SUBTOTAL	82	32	3
<u>Nonviolent*</u>			
Assault 3	4	1	0
Burglary 2	28	7	0
Drug	16	15	0
Escape 1, 2	2	4	0
Forgery	2	1	0
Intimidating a Witness	1	1	0
Malicious Mischief	0	3	0
Poss. Stolen Property	0	7	1
Sex	6	10	1
Take Motor Veh. w/o Per.	0	1	1
Theft	4	8	1
Vehicular Assault	1	3	1
Unranked	0	3	0
Other	<u>5</u>	<u>2</u>	<u>0</u>
SUBTOTAL	69	66	5
TOTAL -- ALL OFFENDERS	<u>155</u>	<u>113</u>	<u>9</u>

* Includes attempts

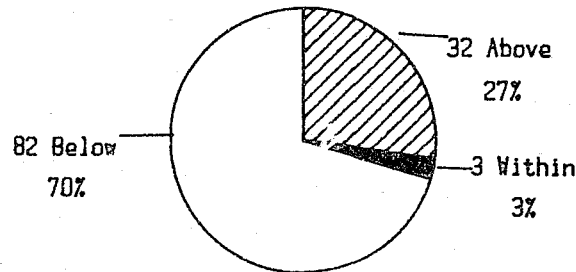
Figure 2

277 EXCEPTIONAL SENTENCES
COMPARED TO STANDARD RANGE

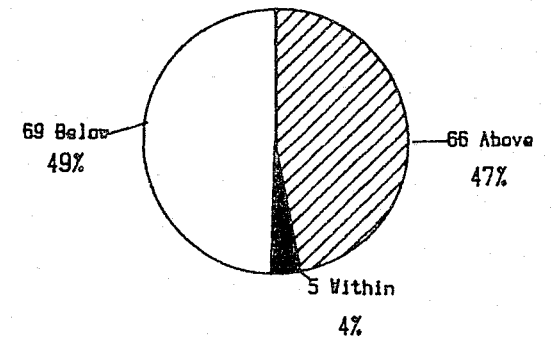
SERIOUS VIOLENT
OFFENSES



VIOLENT
OFFENSES



NONVIOLENT
OFFENSES



The four most common reasons stated for sentencing below the standard range were:

- ⊙ Victim's role in the crime;
- ⊙ Offense less serious than typical for the crime;
- ⊙ Defendant's rehabilitation or treatment; and
- ⊙ Defendant has decreased capacity to appreciate wrongfulness of his conduct.

The five most common reasons for sentencing above the standard range were:

- ⊙ Victim was vulnerable;
- ⊙ Defendant was a threat to the community;
- ⊙ Crime was deliberately cruel;
- ⊙ Defendant used sophisticated/well-planned methods; and
- ⊙ Seriousness of the offense.

A more detailed listing of reasons for exceptional sentences is provided in Appendix D.

A related issue is the extent to which exceptional sentences affect whether an offender goes to prison or jail. Table 7 compares the actual sentence received with the presumptive sentence.

TABLE 7
EXCEPTIONAL SENTENCES AFFECTING
JAIL OR PRISON COMMITMENT

	Actual Sentence				Total
	No Confinement	Jail	Prison	Hospital Treatment	
SRA Presumptive Nonprison Sentence	13	65	35	2	115
SRA Presumptive Prison Sentence	<u>7</u>	<u>81</u>	<u>68</u>	<u>6</u>	<u>162</u>
TOTAL	20	146	103	8	277

Two findings suggest exceptional sentences have primarily been used in the direction of leniency: more shift from prison to nonprison (88 cases of 125 that shifted) and more exceptional sentences below the range (155 below, 113 above). Although sentences above the range are fewer in number, they have the greatest impact on institutional populations (see Table 8).

TABLE 8

LENGTH OF EXCEPTIONAL SENTENCES

	<u>Number of Cases</u>	<u>Average Sentence</u>	<u>Average Standard Range</u>	<u>Average Population Impact</u>
Above the Range	113	78.2 mo.	28.8 mo. to 39.6 mo.	+ 38.6 mo.
Below the Range	155	8.7 mo.	18.8 mo. to 25.7 mo.	- 10.1 mo.
Within the Range	9	38.1 mo.	32.6 mo. to 44.6 mo.	None

For exceptional sentences above the range, the only upper limit is the statutory maximum (20 years for Class A felonies, 10 years for Class B felonies and 5 years for Class C felonies), and the guideline range for most felonies is significantly lower than the maximum. As an example, the guideline term for Forgery (first offense) is 0 to 60 days and the statutory maximum is 5 years. On the other hand, departures below the range usually involve a reduction in the length of a jail sentence, and even if the exceptional sentence requires no confinement and the guideline term stipulated 8 to 12 months, only 12 months of confinement time have been affected. Thus, the aggravated departures frequently result in significantly more confinement time not balanced out by mitigated departures.

The Commission also collects data on sentences which did not conform in one or more ways to the sentencing standards, but were not labeled as departures from the range. In 1985, there were 487 such sentences (6.1 percent of all convictions). However, only 109 of these resulted in confinement outside the standard range (1.4 percent of all convictions). These nonstandard sentences are summarized in Table 9.

TABLE 9

NONSTANDARD SENTENCES

Confinement outside the range	109
First-time Offender Waiver used with juvenile history	40
First-time Offender Waiver used, not eligible (other)	24
First-time Offender Waiver used, over 90 days incarceration ordered	15
Consecutive sentence	14
Treatment ordered when offender not eligible	234
Community service on a violent offense	26
Excess community supervision	44
Other	8

Note: The total exceeds 487 since some sentences were nonstandard in multiple ways.

Sentences outside the standard range usually result from inappropriate application of the First-time Offender Waiver, or from clerical errors such as using the wrong

row or column of the grid, or incorrect scoring of criminal histories. By far, the most common nonstandard sentence condition was the imposition of treatment. Under the Sentencing Reform Act, treatment can be imposed only for first-time offenders or under the Special Sexual Offender Sentencing Alternative. The number of persons recorded as receiving a nonstandard treatment condition (234) is underrepresentative because until July 1985, the Commission only recorded inpatient treatment.

G. Variation Among Counties

With the Sentencing Reform Act, the legislature tied severity of punishment directly to the seriousness of the current offense and the nature and extent of the defendant's criminal history. In addition to the expected reduction in grid variance for imprisonment rates and length of sentence, there was a common expectation that sentences would become more consistent from county to county.

Table 10 shows the rates of imprisonment for each county, and Table 11 shows the average length of sentence for each county. Although these tables evidence differences among counties, one must recall that counties differ in their populations and the types and amount of crimes they experience. County to county variations in imprisonment rates or length of sentences may accurately reflect differences in the types of crimes being committed and differences in offenders' criminal histories. A more useful way to understand the Sentencing Reform Act's consequences is to compare variation among a group of counties before and after implementation of the Sentencing Reform Act.

Table 12 shows the imprisonment rates for nonviolent crimes in various counties for Fiscal Year 1982 and for 1985. Only those counties with 30 or more convictions in the FY 1982 sample and in 1985 are included in this table. Although not as dramatic as the drop in grid variance, these data reflect a reduction in county-to-county variability in imprisonment rates for nonviolent offenses. County imprisonment rates for violent offenses are not tabulated here because of the small sample sizes.

Tables 13 and 14 document changes in average sentence length for nonprison and prison sentences. These tables evidence a drop in the variability in county-to-county sentence lengths, both for prison and nonprison sentences. The increased sentencing consistently is less dramatic than that for the grid variance, but is somewhat more pronounced than the decrease in county-to-county variance in imprisonment rates.

County differences in the rate of imposing exceptional sentences are displayed in Table 15. Although the state-wide average is 3.5 percent, this rate ranges from 0 to 6.6 percent (excluding one county with one exceptional sentence in only 7 convictions).

TABLE 10
IMPRISONMENT RATES BY COUNTY
CY 1985

	VIOLENT		NONVIOLENT		ALL OFFENSES	
	% to Prison	Number Convicted	% to Prison	Number Convicted	% to Prison	Number Convicted
Adams	0.0%	3	7.1%	42	6.7%	45
Asotin	100.0%	3	0.0%	6	33.3%	9
Benton	83.3%	12	11.1%	243	14.5%	255
Chelan	50.0%	18	4.2%	119	10.2%	137
Clallam	66.7%	9	3.1%	32	17.1%	41
Clark	80.0%	45	11.4%	350	19.2%	395
Columbia		0	0.0%	7	0.0%	7
Cowlitz	63.3%	30	13.9%	330	18.1%	360
Douglas	75.0%	4	7.1%	42	13.0%	46
Ferry	0.0%	1	0.0%	10	0.0%	11
Franklin	55.9%	34	16.5%	133	24.6%	167
Garfield		0	0.0%	4	0.0%	4
Grant	80.0%	5	3.7%	27	15.6%	32
Grays Harbor	50.0%	20	9.9%	171	14.1%	191
Island	100.0%	4	17.1%	35	25.6%	39
Jefferson	50.0%	2	14.6%	41	16.3%	43
King	65.9%	387	8.5%	1,598	19.7%	1,985
Kitsap	73.3%	30	12.1%	247	18.8%	277
Kittitas	40.0%	10	10.3%	58	14.7%	68
Klickitat	0.0%	1	3.1%	32	3.0%	33
Lewis	52.4%	21	7.5%	133	13.6%	154
Lincoln	0.0%	1	5.6%	18	5.3%	19
Mason	66.7%	15	12.8%	78	21.5%	93
Okanogan	66.7%	12	1.2%	84	9.4%	96
Pacific	42.9%	7	13.8%	29	19.4%	36
Pend Oreille	100.0%	1	0.0%	9	10.0%	10
Pierce	66.7%	144	8.7%	721	18.4%	865
San Juan	0.0%	1	13.3%	15	12.5%	16
Skagit	93.3%	15	5.4%	93	17.6%	108
Skamania	50.0%	2	0.0%	8	10.0%	10
Snohomish	72.9%	96	8.1%	334	22.6%	430
Spokane	59.6%	47	4.5%	463	9.6%	510
Stevens	66.7%	3	17.1%	35	21.1%	38
Thurston	62.1%	29	7.0%	271	12.3%	300
Wahkiakum	75.0%	4	21.4%	14	33.3%	18
Walla Walla	58.3%	12	9.8%	102	14.9%	114
Whatcom	60.0%	20	9.0%	245	12.8%	265
Whitman	100.0%	1	0.0%	18	5.3%	19
Yakima	52.4%	63	7.5%	652	11.5%	715
TOTAL	65.0%	1,112	8.8%	6,849	16.7%	7,961

NOTE: "% to Prison" includes those sentenced to Sexual Offender Hospital Treatment

TABLE II
MEAN SENTENCE LENGTH BY COUNTY
CY 1985

	NONPRISON		PRISON		TOTAL	
	Mean Sentence (Months)	Number Convicted	Mean Sentence (Months)	Number Convicted	Mean Sentence (Months)	Number Convicted
Adams	1.55	42	16.67	3	2.56	45
Asotin	2.58	6	46.00	3	17.05	9
Benton	2.38	218	39.52	37	7.77	255
Chelan	2.32	123	51.64	14	7.36	137
Clallam	3.20	34	115.86	7	22.43	41
Clark	2.16	319	35.34	75	8.48	394
Columbia	2.17	7		0	2.17	7
Cowlitz	1.91	295	33.26	65	7.57	360
Douglas	1.95	40	49.17	6	8.11	46
Ferry	1.41	11		0	1.41	11
Franklin	3.15	126	34.41	41	10.82	167
Garfield	3.09	4		0	3.09	4
Grant	1.83	27	25.40	5	5.52	32
Grays Harbor	2.97	164	38.81	26	7.87	190
Island	2.18	29	25.55	10	8.18	39
Jefferson	3.29	36	16.29	7	5.41	43
King	2.96	1,594	49.79	389	12.15	1,983
Kitsap	2.12	225	38.72	52	8.99	277
Kittitas	3.10	58	28.80	10	6.88	68
Klickitat	2.11	32	13.00	1	2.44	33
Lewis	2.58	133	41.55	21	7.90	154
Lincoln	1.99	18	15.00	1	2.67	19
Mason	3.45	73	52.95	19	13.67	92
Okanogan	1.88	87	55.11	9	6.87	96
Pacific	3.31	29	27.86	7	8.09	36
Pend Orielle	2.53	9	36.00	1	5.88	10
Pierce	2.38	706	54.04	158	11.83	864
San Juan	1.56	14	31.50	2	5.30	16
Skagit	2.68	89	32.03	19	7.84	108
Skamania	0.74	9	48.00	1	5.47	10
Snohomish	2.54	333	48.20	97	12.84	430
Spokane	3.00	461	53.98	49	7.90	510
Stevens	3.64	30	18.51	8	6.77	38
Thurston	2.79	263	35.65	37	6.84	300
Wahkiakum	1.75	12	15.19	6	6.23	18
Walla Walla	2.59	97	32.81	16	6.87	113
Whatcom	2.28	231	28.82	33	5.60	264
Whitman	2.65	18	18.00	1	3.45	19
Yakima	1.90	633	33.26	82	5.49	715
TOTAL	2.55	6,635	43.91	1,318	9.40	7,953

NOTE: Prison figures include those sentenced to Sexual Offender Hospital Treatment Program and exclude eight persons with life terms.

Nonprison figures include community service hours for persons receiving a standard sentence because those hours are credited toward the jail sentence imposed. Community service hours are not included for sentences under the First-time Offender Waiver or the Special Sexual Offender Sentencing Alternative because these hours are in addition to the jail sentence.

TABLE 12
IMPRISONMENT RATES FOR NONVIOLENT OFFENSES,
BY COUNTY

FY 1982 vs. CY 1985

<u>County</u>	<u>FY 1982</u>	<u>CY 1985</u>
Benton	9.7	11.1
Clallam	12.5	3.1
Clark	21.5	11.4
Franklin	19.3	16.5
Jefferson	7.4	14.6
King	11.4	8.5
Kitsap	8.5	12.1
Lewis	21.0	7.5
Mason	11.1	12.8
Skagit	17.9	5.4
Snohomish	13.7	8.1
Spokane	9.4	4.5
Thurston	11.0	7.0
Walla Walla	3.6	9.8
Yakima	19.4	7.5

TABLE 13
LENGTH OF NONPRISON SENTENCES BY COUNTY
FY 1982 vs. CY 1985

	CY 1985			FY 1982 Average
	# Conv.	Full Good Time	No Good Time	
Benton	218	1.59	- 2.38	0.72
Clallam	34	2.13	- 3.20	1.59
Clark	319	1.44	- 2.16	1.38
Franklin	126	2.10	- 3.15	1.87
Jefferson	36	2.20	- 3.29	1.09
King	1,594	1.98	- 2.96	1.89
Kitsap	225	1.41	- 2.12	0.86
Lewis	133	1.72	- 2.58	0.87
Mason	73	2.30	- 3.45	1.62
Skagit	89	1.79	- 2.68	1.59
Snohomish	333	1.69	- 2.54	1.60
Spokane	461	2.00	- 3.00	2.61
Thurston	263	1.86	- 2.79	1.30
Walla Walla	97	1.73	- 2.59	1.03
Yakima	633	1.26	- 1.90	1.18

NOTE: Sentence length is given in months.

Only those counties from the FY 1982 study having 30 or more convictions in CY 1985 are included in this table.

TABLE 14
LENGTH OF PRISON SENTENCES BY COUNTY
FY 1982 vs. CY 1985

	CY 1985			FY 1982 Average
	# Conv.	Full Good Time	No Good Time	
Benton	37	26.35	- 39.52	27.9
Clark	75	23.56	- 35.34	33.01
Franklin	41	22.94	- 34.41	29.7
King	389	33.19	- 49.79	40.95
Kitsap	52	25.81	- 38.72	42.30
Snohomish	97	32.13	- 48.20	47.72
Spokane	49	35.99	- 53.98	34.1
Thurston	37	23.77	- 35.65	38.6
Yakima	82	22.17	- 33.26	28.55

NOTE: Sentence length is given in months.

Hospital treatment sentences are included in prison figures. Life terms are excluded.

Only those counties from the FY 1982 study having 30 or more convictions in CY 1985 are included in this table.

TABLE 15
 RATE OF EXCEPTIONAL SENTENCES BY COUNTY
 CY 1985

<u>County</u>	<u>Number of Exceptional Sentences</u>	<u>Number of Total Sentences</u>	<u>Proportion of Exceptional Sentences</u>
Adams	0	45	0.0%
Asotin	0	9	0.0%
Benton	4	255	1.6%
Chelan	4	137	2.9%
Clallam	2	41	4.9%
Clark	19	395	4.8%
Columbia	1	7	14.3%
Cowlitz	11	360	3.1%
Douglas	3	46	6.5%
Ferry	0	11	0.0%
Franklin	5	167	3.0%
Garfield	0	4	0.0%
Grant	0	32	0.0%
Grays Harbor	5	191	2.6%
Island	1	39	2.6%
Jefferson	1	43	2.3%
King	78	1,985	3.9%
Kitsap	14	277	5.1%
Kittitas	2	68	2.9%
Klickitat	1	33	3.0%
Lewis	10	154	6.5%
Lincoln	0	19	0.0%
Mason	5	93	5.4%
Okanogan	3	96	3.1%
Pacific	1	36	2.8%
Pend Orielle	0	10	0.0%
Pierce	28	865	3.2%
San Juan	0	16	0.0%
Skagit	0	108	0.0%
Skamania	0	10	0.0%
Snohomish	16	430	3.7%
Spokane	28	510	5.5%
Stevens	1	38	2.6%
Thurston	10	300	3.3%
Wahkiakum	1	18	5.6%
Walla Walla	3	114	2.6%
Whatcom	5	265	1.9%
Whitman	0	19	0.0%
Yakima	15	715	2.1%
TOTAL	277	7,961	3.5%

H. Sentencing Options

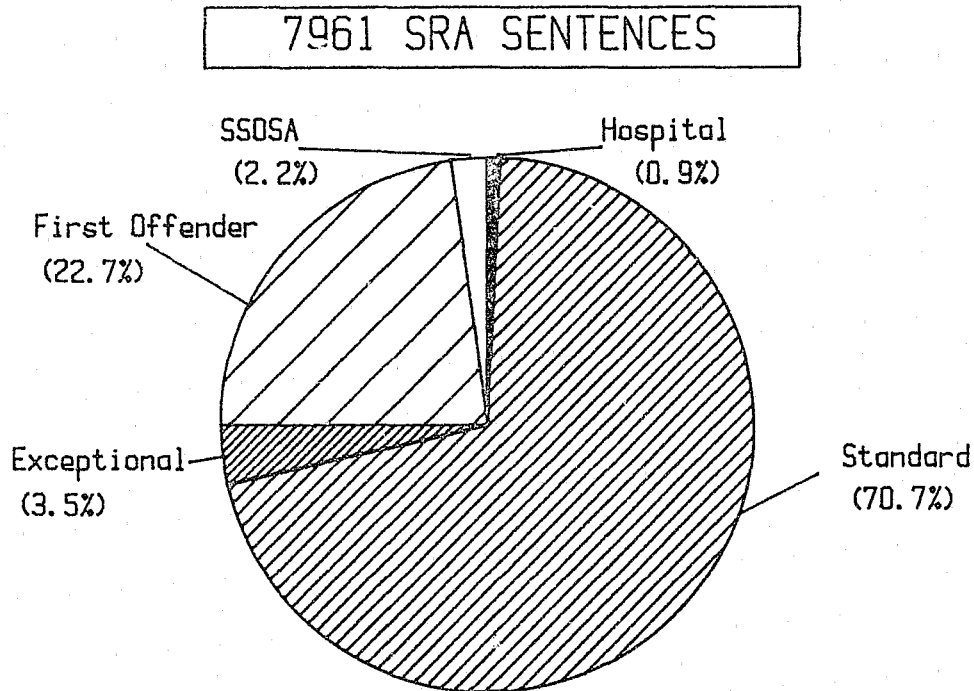
The types of sentences imposed under the Sentencing Reform Act are illustrated in Figure 3 and include: sentence within the standard range, exceptional sentence, First-time Offender Waiver, Special Sexual Offender Sentencing Alternative, and inpatient treatment in a sexual offender treatment program (hospital).

1. First-Time Offender Waiver: First-time offenders are defined as persons convicted of nonviolent offenses who have no prior felony convictions and have never participated in a program of deferred prosecution for a felony offense. Judges are given broad discretion in setting a sentence for this category of offenders.²⁰ The judge can waive the guideline range and impose a sentence which can include any of the following: up to 90 days in jail, a requirement that the offender receive treatment or attend school, an order to perform community service, pay a fine, or make restitution, along with other requirements. Persons convicted of sexual offenses are not eligible for this option.

The First-time Offender Waiver was used for 1,809 offenders out of the 3,844 offenders who appeared to meet the eligibility requirements (47 percent). The usage of this waiver is pictured in Figure 4. Eligibility for the First-time Offender Waiver varies with type of crime (see Table 16). For example, nonviolent drug offenders are more likely to be eligible for this option (549 of 707 cases = 77.7 percent) and Second Degree Burglary Offenders the least likely (825 of 1752 cases = 47.1 percent). The decision to use the First-time Offender Waiver was also somewhat dependent on the crime type. In the sentencing of nonviolent drug cases, the waiver was imposed in 61.0 percent of the eligible cases (335 out of 549), and only 43.3 percent of the time for Second Degree Burglary cases (357 of 825 eligible cases).

Although the First-time Offender Waiver was imposed in nearly half of the eligible cases, 79 percent of the time the ordered confinement was within the standard range (see Figure 5 and Table 17). In 66 percent of the cases, this option was used to permit community supervision exceeding 12 months. In 28 percent of the first-time offender sentencings (501 cases), both the total confinement and the amount of community supervision were within the standard sentence range, and the waiver was designed to require treatment conditions or other conditions not available under a standard sentence. Data on the type of treatment conditions are not available in this report because the Commission did not begin recording outpatient treatment data until July 1985. Data for July to December 1985 indicate that inpatient or outpatient treatment is ordered in approximately 35 percent of first-time offender sentences.

Figure 3



Standard: A sentence within the standard sentence range

First Offender: An alternative to the standard sentence for persons convicted of a nonviolent, nonsexual offense who have no prior felony conviction. This option permits the sentencing judge to issue a rehabilitation or treatment-oriented sentence, and jail time not to exceed 90 days.

SSOSA: Special Sexual Offender Sentencing Alternative. Sex offenders with no prior convictions for a sex offense may receive a suspended sentence (within the standard range), jail time not to exceed six months, and outpatient or inpatient treatment.

Hospital: A sex offender sentenced under this option may be evaluated for treatment in the Sex Offender Program at Eastern or Western State Hospital. If found amenable to treatment, the sentencing judge may order a sentence within the standard range to be served in the hospital's inpatient program.

Exceptional: An exceptional sentence may be used to set a sentence above or below the standard range, to run multiple sentences consecutively instead of concurrently, to order community supervision in excess of the normal amount, to provide community service over 240 hours (or for violent offenders), or to provide for a rehabilitation or treatment option in cases where it is not part of the standard sentence. An exceptional sentence requires "substantial and compelling reasons", must be justified in writing, and can be appealed.

Figure 4

FIRST-TIME OFFENDER WAIVER USAGE
(All Offenders)

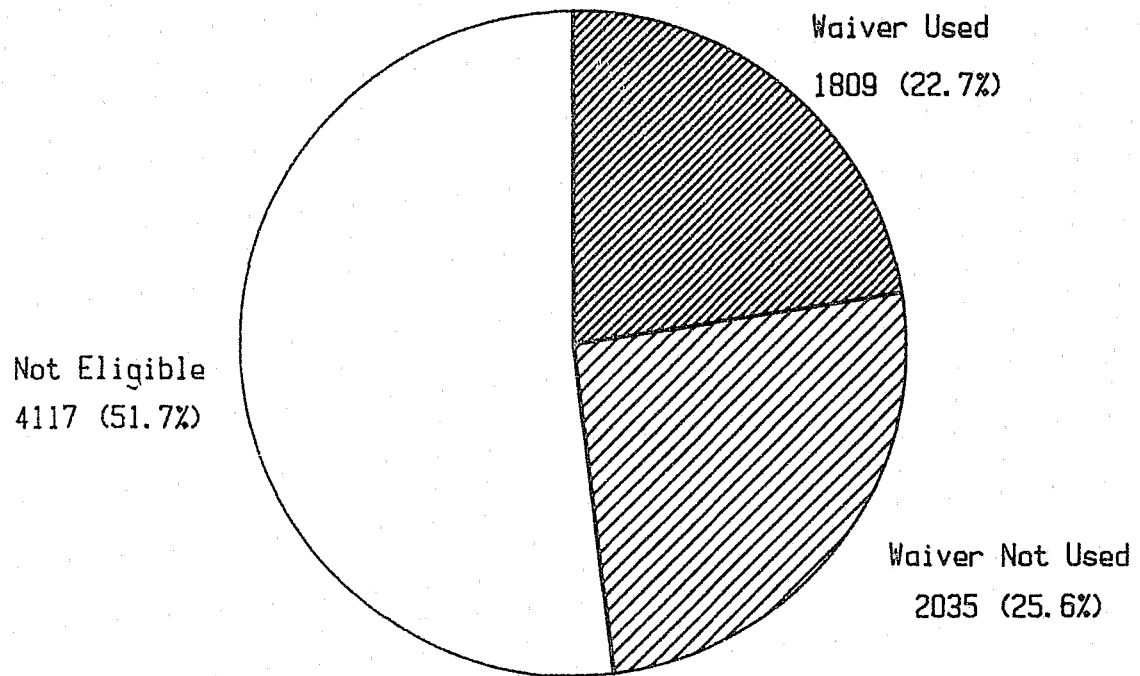


Figure 5

1809 FIRST-TIME OFFENDER WAIVERS
Sentence Relative to Standard Range

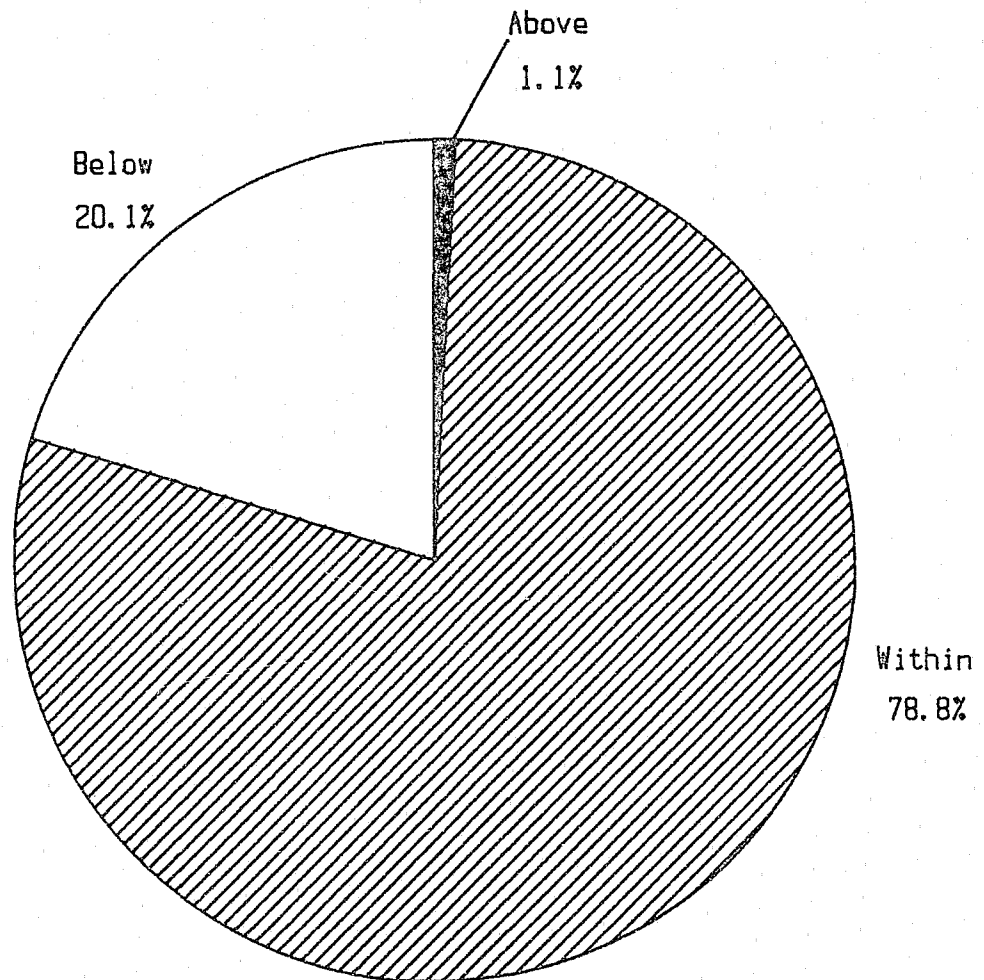


TABLE 16

FIRST-TIME OFFENDER WAIVER BY TYPE OF CRIME

CY 1985

<u>Eligibility:</u>	<u>Eligible Offenders</u>	<u>Total Population</u>	<u>Percent Eligible</u>
Burglary 2	825	1,752	47.1%
Felony Traffic	264	354	74.6%
Nonviolent Drug	549	707	77.7%
Other Nonviolent	2,041	3,740	54.6%
Unranked	<u>44</u>	<u>64</u>	<u>68.8%</u>
Total	3,723	6,617	56.3%
<u>Usage:</u>	<u>Waiver Used</u>	<u>Eligible Offenders</u>	<u>Percent</u>
Burglary 2	357	825	43.3%
Felony Traffic	127	264	48.1%
Nonviolent Drug	335	549	61.0%
Other Nonviolent	968	2,041	47.4%
Unranked	<u>19</u>	<u>44</u>	<u>43.2%</u>
Total	1,806	3,723	48.5%

NOTE: The First-time Offender Waiver was used in three sentencings for Escape. These sentences were omitted from the above table because it is unclear how many persons convicted of an escape were eligible for a waiver. Judgment and Sentence forms usually only indicate prior offenses calculated into the Offender Score, and for escape crimes, only prior escapes are counted.

TABLE 17

FIRST-TIME OFFENDER WAIVER COMPARED TO STANDARD RANGE

CY 1985

	<u>Community Supervision</u>	
	<u>12 Months or less</u>	<u>Over 12 Months</u>
364 Sentences Below the Standard Range (20%):	102	262
1,426 Sentences Within the Standard Range (79%):	501	925
<u>19</u> Sentences Above the Standard Range (1%):	<u>5</u>	<u>14</u>
1,809 Total Sentences	608	1,201

2. Sexual Offender Options: One major hurdle faced by the Commission in drafting the sentencing guidelines was reconciliation of determinate sentencing with some offenders' rehabilitative needs. In addition to providing for treatment programs for first-time offenders, the legislation provides two special sentencing options for sexual offenders. These options were used in 50 percent of the sentencing of sexual offenders (249 of 496 sexual offenders received one of the two special sentencing options). Figure 6 illustrates the types of sentences received by sexual offenders.

The Special Sexual Offender Sentencing Alternative (SSOSA) allows the court to suspend a sentence imposed within the standard range, order up to six months in jail (not to exceed the standard range), and permit several sentence conditions including inpatient and outpatient sexual offender treatment. If the offender does not comply with the treatment, the suspended sentence may be revoked and the offender returned to confinement to serve the balance of the original sentence. Of the 496 sexual offenders convicted in 1985, 178 cases (35.9 percent) received a sentence under this option.

The second sentencing option for sexual offenders allows the court to order evaluation at Western or Eastern State Hospital for admission to the sexual offender treatment program. If found amenable to treatment, the sentencing judge may order a determinate sentence of one to six years to be served at the hospital. If the offender does not successfully complete the treatment program, the court may transfer the offender to the Department of Corrections to serve the balance of the sentence in prison. If the offender successfully completes the treatment program, the court may convert the balance of the sentence to community supervision and require outpatient treatment. Seventy-one sexual offenders (14.3 percent) received a sentence under this option.

I. Sentence Conditions

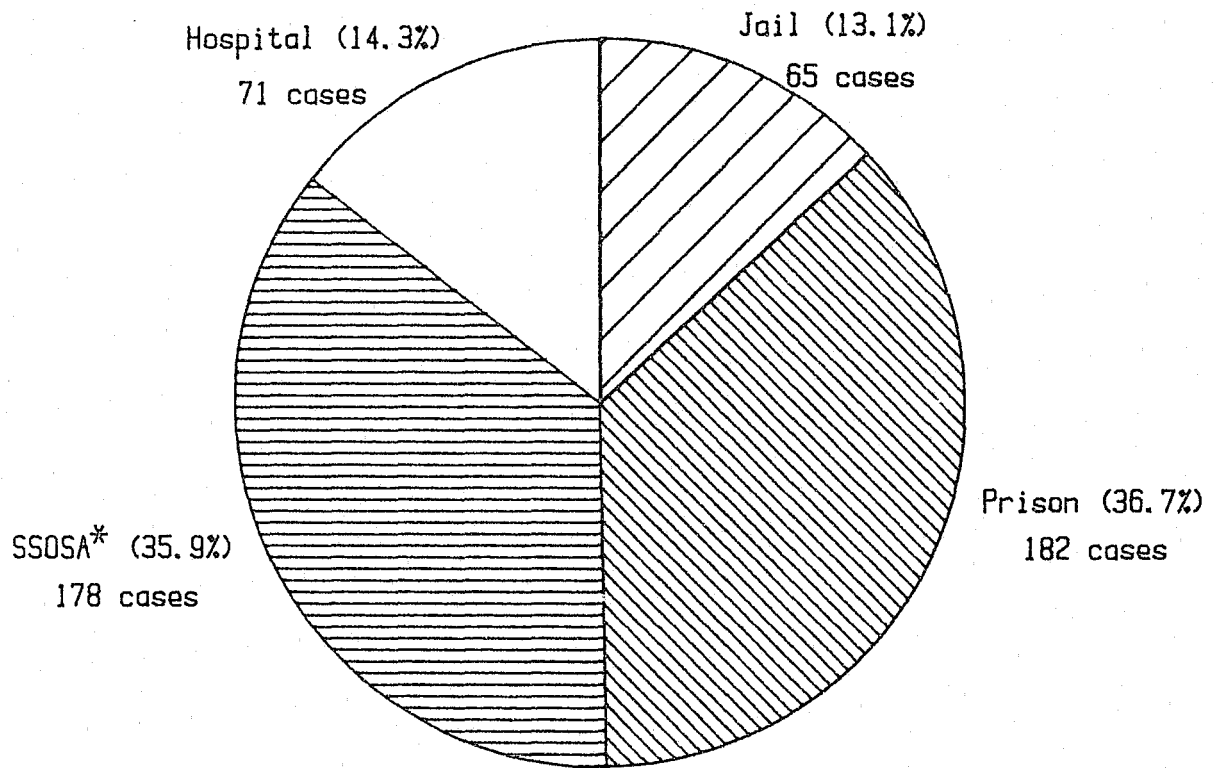
Several sentence conditions can be imposed under the Sentencing Reform Act, including partial confinement, community service, and community supervision.

1. Partial Confinement: The law permits all or any portion of a total confinement sentence of one year or less to be served in partial confinement.²¹ Partial confinement is usually implemented in the form of work release. Sentencing judges do not always clearly delineate a precise period of work release. Typically, the Judgment and Sentence forms received by the Commission contain the phrase "work release, if eligible." Thus, the data recorded by the Commission reflect the maximum time the court allowed in work release. Counties do not have uniform policies on work release eligibility. This lack of uniformity, coupled with the typical delays in the offender's acceptance into a work release program, means that the amount of partial confinement indicated on the Judgment and Sentence form overestimates the time actually served in partial confinement.

For persons receiving a standard nonprison sentence, 26 percent of their sentence was authorized for partial confinement. This figure was only slightly higher for persons sentenced under the First-time Offender Waiver (30 percent). Partial confinement was authorized for 42 percent of the confinement sentence for persons convicted under the Special Sexual Offender Sentencing Alternative. Figure 7 illustrates the differences in partial confinement orders for these three groups.

Figure 6

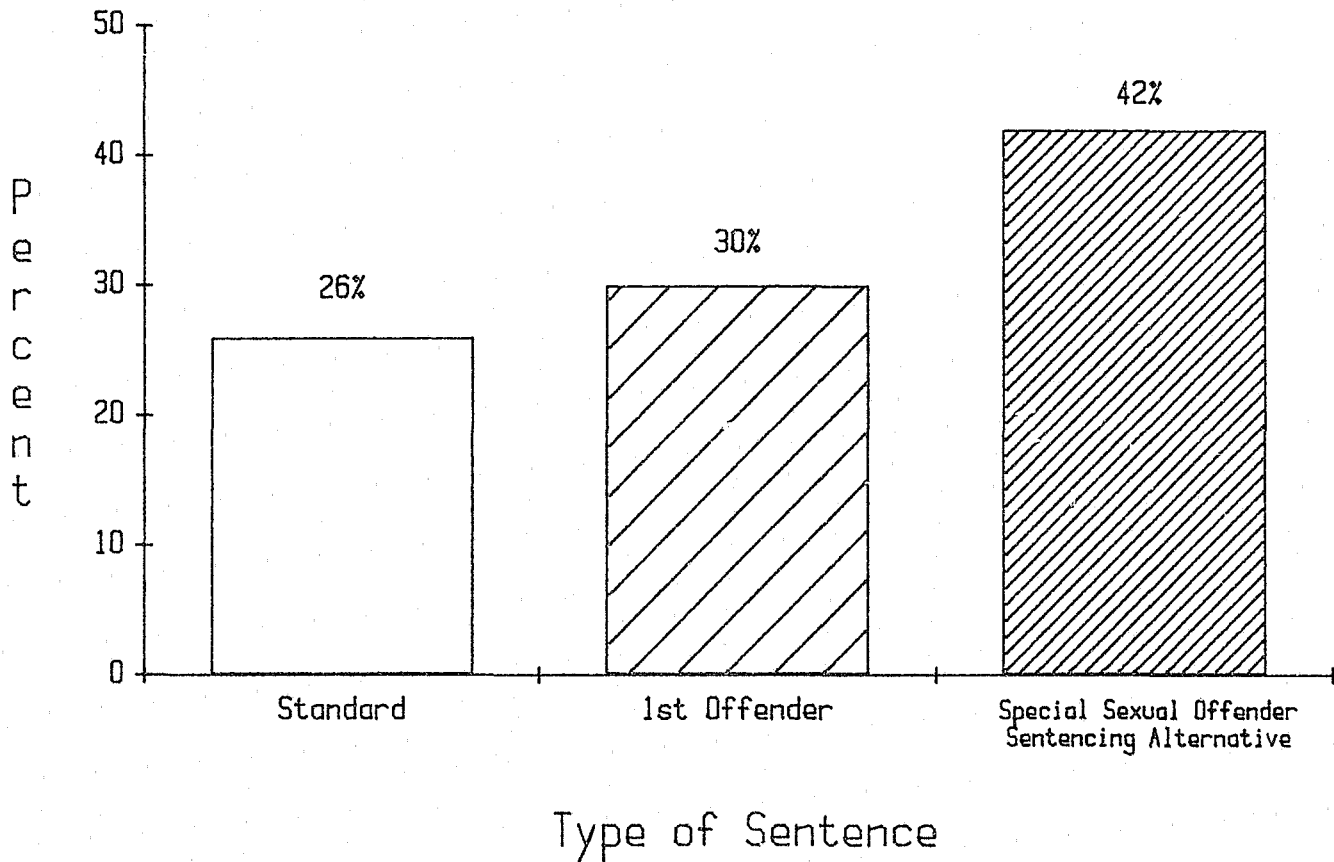
SEXUAL OFFENDER SENTENCES



* Special Sexual Offender Sentencing Alternative

Figure 7

PERCENTAGE OF TOTAL SENTENCE ALLOWED
TO BE SERVED IN PARTIAL CONFINEMENT
(Sentences of one year or less)



2. Community Service: Persons receiving a standard sentence may have up to 30 days of their total sentence converted to community service at the rate of 8 hours of community service for each day of confinement.²² Confinement sentences under the First-time Offender Waiver or Special Sexual Offender Sentencing Alternative cannot be converted in this way. For these sentencing options, community service is a sentence condition and is performed in addition to any confinement; there is no statutory limit on the number of hours.

Overall, community service was ordered in 27 percent of all nonprison sentences. This figure is more than double the rate in fiscal year 1982, when only 12 percent of all nonprison sentences contained an order for community service (see Figure 8).

Community service was ordered for 21 percent of standard sentences, 45 percent of First-time Offender Waivers, and 18 percent of Special Sexual Offender Sentencing Alternative sentences (see Figure 9). It is not surprising that community service is ordered with greater frequency for persons receiving a First-time Offender Waiver. Use of this option is often intended as a lenient sentence, and community service allows the offender to repay society without denial of liberty.

3. Community Supervision: Under the Sentencing Reform Act the court can order persons with sentences of less than one year to be supervised following their confinement. Persons receiving a standard sentence may be supervised for up to 12 months, and persons receiving a First-time Offender Waiver or a Special Sexual Offender Sentencing Alternative sentence may be supervised for up to 24 months. Community supervision is somewhat similar to probation supervision under the indeterminate sentencing law, but it does not carry the threat of revocation and subsequent imprisonment. Persons found guilty by the court of violating conditions of supervision can be ordered to serve up to 60 days in jail for each violation.²³ Table 18 details the use of community supervision.

TABLE 18

USE OF COMMUNITY SUPERVISION
(Nonprison Sentences)
CY 1985

	<u>% Receiving Supervision</u>	<u>Average Months of Supervision</u>
Standard Sentence:	73%	12 months
First-time Offender Waiver:	94%	20 months
Special Sexual Offender Sentencing Alternative	98%	23 months
Exceptional Sentence:	83%	18 months

Figure 8

PERCENTAGE OF OFFENDERS ORDERED TO PERFORM
COMMUNITY SERVICE: FY 1982 vs. CY 1985
(Sentences of one year or less)

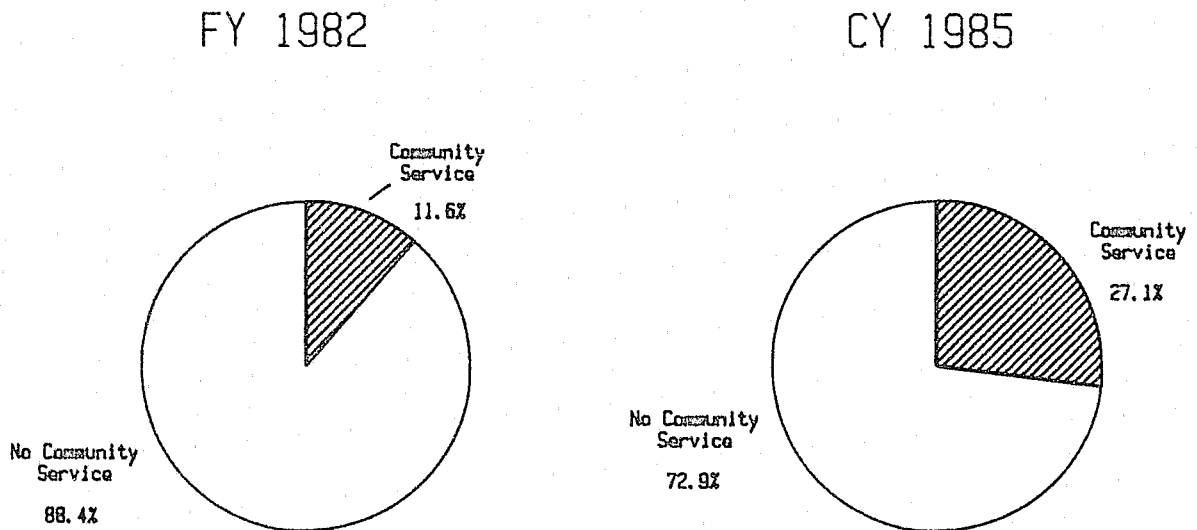
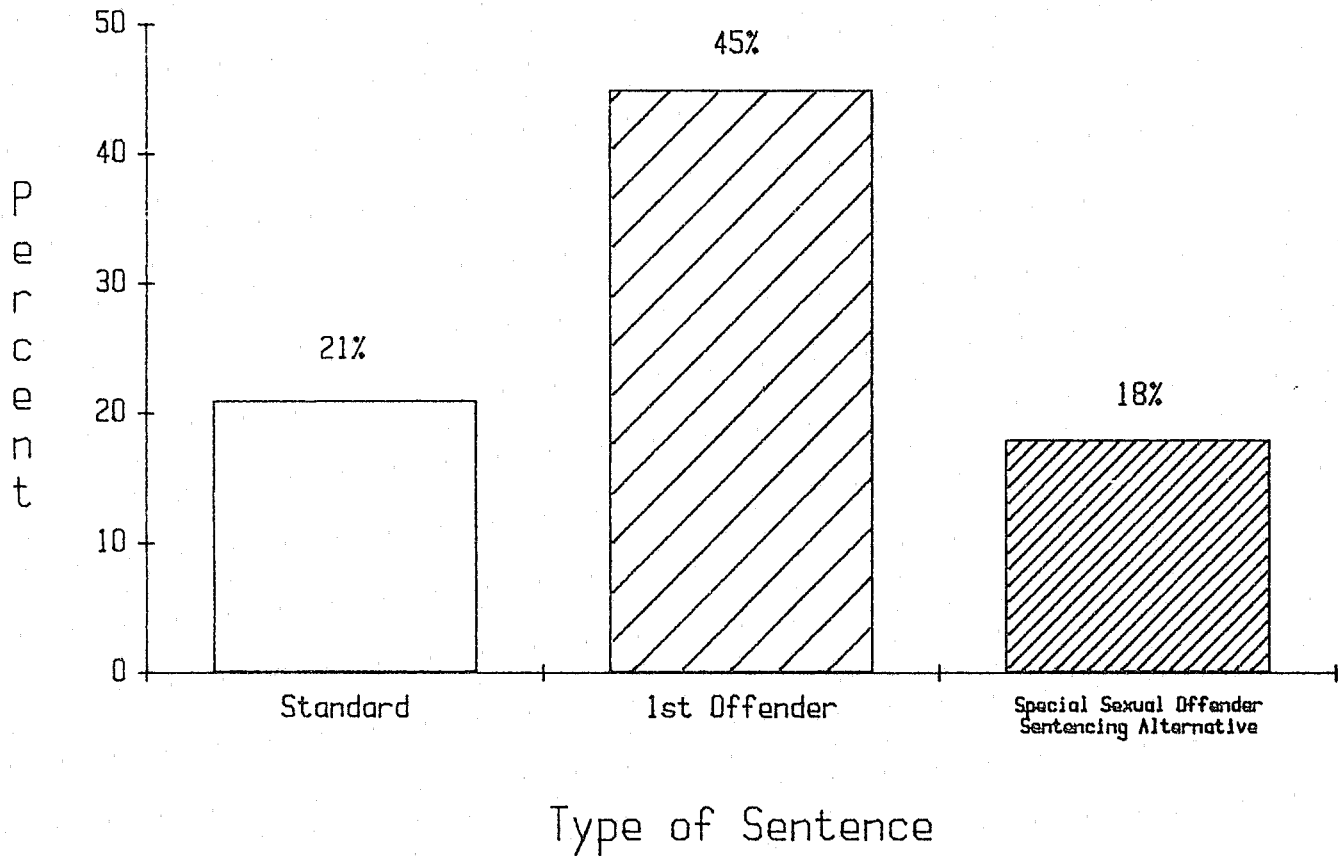


Figure 9

PERCENTAGE OF OFFENDERS ORDERED TO PERFORM
COMMUNITY SERVICE: BY TYPE OF SENTENCE
(Sentences of one year or less)



Under the indeterminate system, nearly all persons not receiving a prison sentence were placed under probation supervision. The 73 percent rate of community service for persons receiving a standard sentence (3,232 out of 4,437 cases) is below the prior probation supervision rate. Some of this decrease is due to offenders with Sentencing Reform Act sentences also having probation or parole terms revoked from an indeterminate case at the same sentencing hearing. In these cases, the court usually did not order supervision on the Sentencing Reform Act case.

Persons not ordered to community supervision are still subject to supervision by the Department of Corrections if they are required to pay fines or restitution. The fact that many standard sentences were imposed without orders for community supervision suggests that for some judges, a community supervision order without the "hammer" of imprisonment for technical violations is of dubious benefit to the offender and/or society.

Offenders receiving First-time Offender Waivers received a much higher rate of community supervision (94 percent, 1,693 out of 1,809 cases). In contrast to the standard sentence, the First-time Offender Waiver allows the sentencing judge to set sentence conditions, which include affirmative behavior such as participation in a treatment or educational program. Even though noncompliance penalties are restricted to 60 days in jail per violation, this ability to order affirmative behavior may induce judges to order community supervision more frequently.

The highest rate of community supervision was for persons sentenced under the Special Sexual Offender Sentencing Alternative (98 percent, 175 out of 178 cases). Under this option, the determinate sentence imposed under the standard range is suspended, and up to six months of jail may be ordered along with treatment and various sentence conditions. This option is the only instance of suspended sentences under the current law, and violations of supervision conditions can cause revocation and imposition of the original sentence, generally resulting in prison confinement or a substantial jail term.²⁴ Sentences under this option are similar to sentences for sexual offenders under the indeterminate sentencing system, and the high rate of community supervision ordered is consistent with that pattern.

The rate of community supervision orders for persons receiving an exceptional sentence of 12 months or less was 83 percent (138 out of 166 cases). There are no restrictions on conditions or length of community supervision for exceptional sentences.

J. Summary of Nonprison Sentences

The average nonprison sentences under the Sentencing Reform Act can be summarized as follows:

Standard Sentence: 94 days = 66 days total confinement + 24 days partial confinement + 4 days converted to 32 hours of community service.

First-time Offender Waiver: 26 days = 18 days total confinement + 8 days partial confinement. (72 hours community service were also ordered, on the average.)

Special Sexual Offender Sentencing Alternative: 71 days = 41 days total confinement + 30 days partial confinement. (33 hours community service were also ordered, on the average.)

IV. IMPACT ON INMATE POPULATIONS

The Sentencing Reform Act affects the length of confinement for felony sentences and, indirectly, the location (sentences over one year are served in a state facility; sentences of one year or less are served at a county facility). Thus, sentencing patterns under the SRA directly influence institutional populations.

An analysis of the impact of the SRA on the inmate population in state prisons was conducted by the Office of Financial Management (OFM) at the request of the Legislative Budget Committee.²⁵ The yearly forecast of state inmate populations is the responsibility of the Governor's Interagency Criminal Justice Work Group, and this effort is staffed by OFM. The current (SRA) forecast was compared to a special forecast using last known length of stay practices (parole board practices), imprisonment rates (judicial decisions to incarcerate) and recidivism patterns. Both forecasts used the same demographic and conviction pattern estimates.

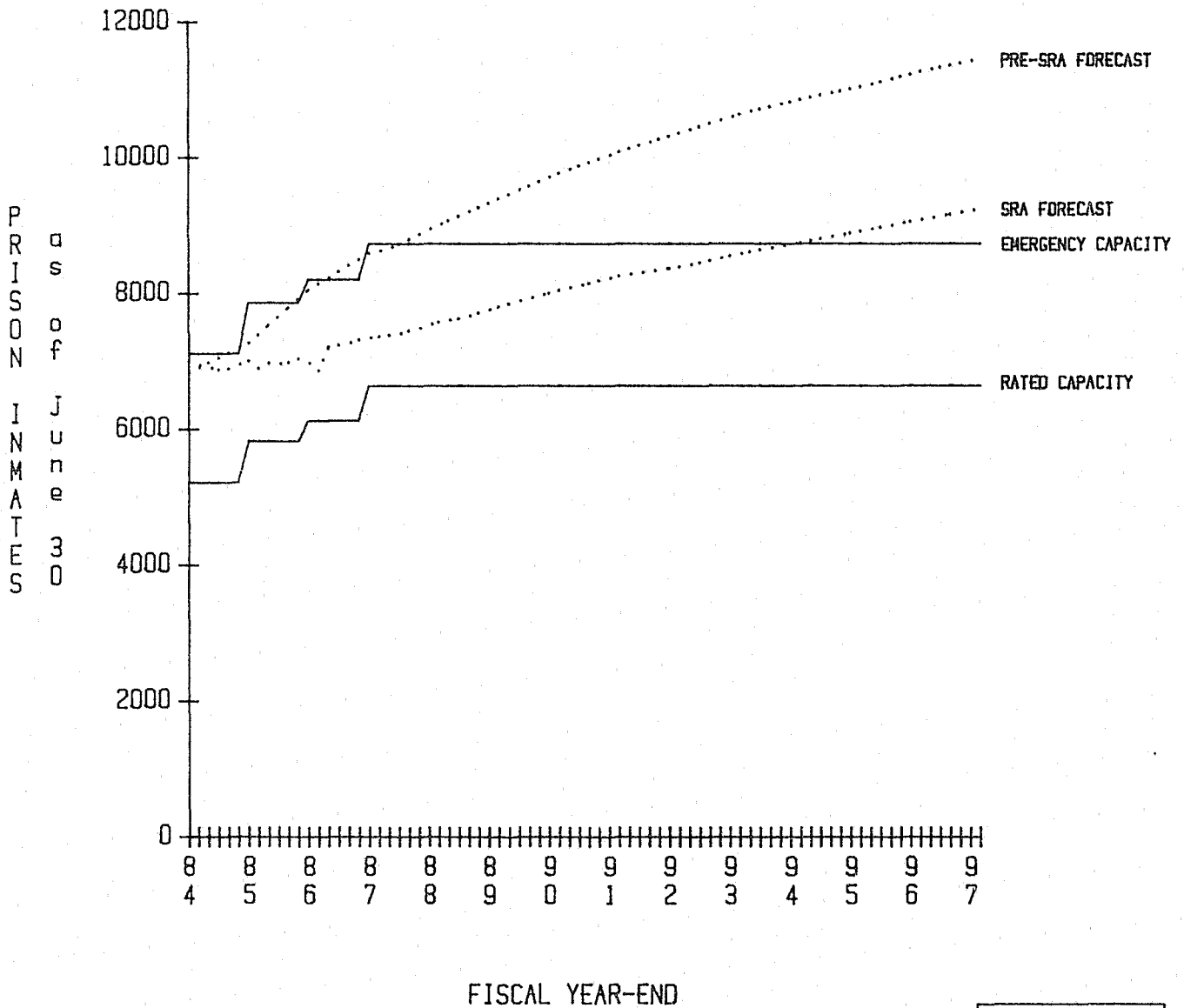
The results of those forecasts are shown in Figure 10. For June of 1986, this analysis indicates the SRA has resulted in 1,074 fewer prison inmates than would have been the case had the prior indeterminate sentencing system been continued. Despite the drop in prison population, this analysis indicates that there are 551 more person offenders in prison (persons convicted of murder, manslaughter, robbery, assault, or sex offenses). By 1997, this analysis shows 2,206 fewer inmates (but 200 more person offenders) will be in prison as a result of the SRA. There is a strong relationship between violent offenses (as defined by the SRA) and OFM's definition of person offenses. Thus, despite the decrease in total prison population, the increase in the number of prison inmates convicted of person offenses is consistent with the SRA's legislative mandate to emphasize total confinement for violent offenders.

The impact of the SRA on local jail populations is less clear. The average SRA jail sentence of 2.5 months is higher than the pre-SRA average length of stay of 1.7 months. However, extensive use of good-time reductions (up to one-third of the sentence) could reduce the SRA length of stay to the pre-SRA level. Conversions of total confinement to community service, or nonjail partial confinement could also lessen the impact on local jails.

Until additional data are available, the extent of the SRA's impact on county jail populations is unknown. The Commission is actively seeking funding for a jail impact study to gather the data necessary for such a determination.

Figure 10

INMATE FORECAST COMPARISONS
PRE-SRA AND SRA



Source: OFM/F 9/86

V. NEUTRALITY IN SENTENCING

Neutrality in sentencing with respect to race and gender is an issue of major social importance. The enabling legislation for the Sentencing Reform Act directed the Commission to develop sentencing guidelines which were proportionate to the seriousness of the offense and the offender's criminal history. The law states that the sentencing guidelines shall "apply equally to offenders in all parts of the state, without discrimination as to any element that does not relate to the crime or the previous record of the defendant."²⁶ Successful implementation of these goals would result in sentencing guidelines that are race and gender neutral.

If sentencing per se under the indeterminate sentencing system had been race and gender neutral, then the Sentencing Reform Act would not change the racial or gender composition of persons admitted to prison. If factors such as the seriousness of the current offense, the number of criminal counts, or the extent and nature of prior criminal history have any relationship to race or gender, then these circumstances which pre-date the sentencing hearing would be reflected in the sentences received.

Based on research in FY 1981 and FY 1982,²⁷ the Commission compared actual prison/nonprison dispositions with those which would have occurred under the (then) proposed guidelines. The conclusion for both analyses was that the guidelines would not affect gender or racial composition of the prison admission population. It is important to emphasize that neutrality in sentencing is not equivalent to an absence of sentencing differences. To the extent that minorities have different criminal histories or different current conviction patterns, the sentences will mirror those differences.

For the period January to June 1985, race and gender were reported to the Commission in only 35 percent of the cases. The Washington Association of Prosecuting Attorneys contacted individual prosecutors and explained the import of this information. As a result, this reporting level has increased to approximately 90 percent.

Given the missing gender and race information, a detailed analysis would not be statistically meaningful. Because of the nature of exceptional sentences, Commission staff made a concerted effort to track the race and gender of all persons receiving such sentences. As a result, information is available on 92 percent of these sentences.

A. Gender

Table 19 provides a summary of exceptional sentence usage by gender. Despite lacking gender information on almost half of the convicted population for 1985, the distribution of cases with gender data was quite similar the FY 1982 patterns. Because very few women received exceptional sentences, no firm conclusions are possible regarding differences between women and men on this point.

TABLE 19
USAGE OF EXCEPTIONAL SENTENCES, BY GENDER
CY 1985

	<u>TOTAL CONVICTIONS</u>		<u>EXCEPTIONAL SENTENCES</u>		
	<u>FY 1982 %</u>	<u>CY 1985 %</u>	<u>Relation to Standard Range</u> <u>Below</u>	<u>Above</u>	<u>Within</u>
Female	11.2	12.1	17 (71%)	5 (21%)	2 (8%)
Male	88.8	87.9	129 (55%)	100 (43%)	6 (3%)

B. Race

The relationship of race to exceptional sentencing patterns is displayed in Table 20.

TABLE 20
USAGE OF EXCEPTIONAL SENTENCES, BY RACE
CY 1985

	<u>TOTAL CONVICTIONS</u>		<u>EXCEPTIONAL SENTENCES</u>		
	<u>FY 1982</u>	<u>CY 1985</u>	<u>Relation to Standard Range</u> <u>Below</u>	<u>Above</u>	<u>Within</u>
Caucasian	78.0%	78.7%	117 (56%)	86 (41%)	7 (3%)
Black	12.2%	11.6%	15 (52%)	14 (48%)	0
Other	9.8%	9.7%	11 (65%)	5 (29%)	1 (6%)

As was the case for gender, the racial distribution for convictions with race data in 1985 (53 percent) is quite similar to the racial distribution observed in FY 1982. This lends some credibility to the available statistics, even considering the low incidence of reporting.

The small differences in Table 20 are not statistically different, indicating that there are no differences among racial categories in types of exceptional sentences.

Again, it must be emphasized that the above data is speculative due to the high proportion of missing data. More complete information and stronger conclusions must wait for future data and analysis. The Sentencing Guidelines Commission plans a detailed study of the relationship of race and gender to the various aspects of sentencing under the Sentencing Reform Act.

VI. PROSECUTORIAL PRACTICES

A. Trial Rates

Prior to the implementation of the sentencing guidelines, many people speculated that jury trials in felony cases would increase. It was reasoned that with narrow, presumptive sentencing ranges, offenders would have nothing to lose by going to trial in search of an acquittal. Others argued that the pressures of plea bargaining would serve to keep trial rates stable. Table 21 suggests that the latter argument has been proven correct.

TABLE 21

TRIAL RATES - FY 1982 vs. CY 1985

	<u>FY 1982</u>	<u>CY 1985</u>
Pleas	90.1	90.1%
Jury Trial	7.8	6.7%
Bench Trial	2.1	2.8%
Unknown	0	0.4%

Most guilty pleas are the result of plea bargaining, which is more structured under the Sentencing Reform Act. The law directs prosecutors to file charges which adequately describe the nature of the defendant's conduct.²⁸ The charging decision is very important to a Sentencing Reform Act case because the crime of conviction determines, to a large extent, the punishment. The act also contains guidelines on the filing of additional charges, discourages overcharging as a method for obtaining a guilty plea, and prohibits plea bargaining over criminal history.²⁹ Despite these restrictions on plea bargaining, Table 21 shows that the trial rates under the Sentencing Reform Act are virtually identical to those observed in Fiscal Year 1982 under the indeterminate sentencing system.

B. Offense Seriousness Levels

Under the Sentencing Reform Act, the offense of conviction is one of the two primary variables determining the sentencing range, thus has far greater influence than it did under an indeterminate sentencing system. If prosecutors altered their charging practices because of the Sentencing Reform Act, one would expect to see changes in the distribution of cases among seriousness levels.

Table 22 compares the distribution of seriousness levels for felony convictions for FY 1982 with CY 1985. The changes evidenced by this table are too small to be statistically significant and may reflect normal variation rather than reliable change. Although this table evidences no dramatic change in offense distribution under the new sentencing law, even small changes in charging patterns could cause significant changes in sentence dispositions. Recall from the earlier section on sentencing changes that the proportion of violent convictions has dropped from 19.5 percent in 1982 to 14 percent in 1985.

C. Offender Scores (Criminal History)

The second variable determining the standard sentencing range is the offender score (based on criminal history and multiple current convictions). In theory, prosecutors could increase sanctions for some offenders by filing more counts. In addition, because of the impact of prior criminal history, some people expected that prosecutors could uncover and document criminal history to a greater degree than in prior years. The data in Table 23 suggests that neither criminal history nor the number of current offenses have increased significantly.

It will be interesting to observe whether the average offender score is affected by recent advancements in the state's criminal justice information system. The state has recently invested in two new criminal justice information systems: the Offender-Based Tracking System at the Department of Corrections and the Criminal Justice Information System at the Washington State Patrol. The state is also planning to purchase an automated fingerprint identification system which offers the potential of both increasing the number of arrests (and subsequent convictions), as well as improving the documentation of criminal history.

TABLE 22
OFFENSE SERIOUSNESS LEVELS
FY 1982 vs. CY 1985

<u>SERIOUSNESS LEVEL</u>	<u>FY 1982</u>	<u>CY 1985</u>
XIV	0.2	.1
XIII	0.5	.3
XII	0.3	.4
XI	0.1	.2
X	0.9	.5
IX	5.6	3.5
VIII	1.4	.9
VII	3.4	2.1
VI	4.7	5.7
V	0.8	.9
IV	10.6	9.5
III	8.3	10.7
II	34.5	32.2
I	28.7	30.6
Unranked	0.0	2.5
	100.0%	100.1%

NOTE: Level XIV is the most serious category (Aggravated Murder). First-time offenders who commit a Level VI offense and above have a guideline prison term.

TABLE 23
OFFENDER SCORES
FY 1982 vs. CY 1985

<u>OFFENDER SCORE</u>	<u>FY 1982</u>	<u>CY 1985</u>
0	52.3	55.3
1	19.7	18.5
2	12.8	12.1
3	5.5	6.0
4	4.5	3.5
5	2.0	1.7
6	1.3	1.2
7	0.6	.5
8	0.5	.3
9	0.8	.8
	100.0%	99.9%

FOOTNOTES

- 1 Dave Boerner, Sentencing in Washington, Butterworth Legal Publishers: Washington, 1985, p. 1-1.
- 2 RCW 9.94A.010.
- 3 RCW 9.94A.040(5).
- 4 A violent offense is defined in RCW 9.94A.030(26)(a) as any felony punishable by more than 10 years, an attempt, solicitation, or conspiracy to commit such a crime, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, rape in the second degree, kidnapping in the second degree, arson in the second degree, assault in the second degree, extortion in the first degree, robbery in the second degree, vehicular homicide, and vehicular assault.
- 5 Kay Knapp, "The Impact of the Minnesota Sentencing Guidelines," Minnesota Sentencing Guidelines Commission, 1984, p. 33.
- 6 Sentencing Guidelines Commission, "Policy Decisions on Problematic Judgment and Sentence Forms," "Data Entry Training," "Additional Data Entry Notes," 1985.
- 7 Sentencing Guidelines Commission, "Adult Felony Convictions, Fiscal Year 1982 Study," 1983.
- 8 RCW 9.94A.150; RCW 9.92.150.
- 9 For this report, the proportion of 1982 felons receiving a prison sentence was computed using a different method than formerly used by the Sentencing Guidelines Commission and the state's Office of Financial Management. In the past, the proportion of persons receiving a prison sentence was called the JDI rate (Judicial Decision to Incarcerate) and was computed as the number of admissions to prison divided by the total number of admissions to the Department of Corrections (prison admissions plus probation admissions). Thus, this rate included persons admitted to prison as a result of a probation or parole revocation either due to a new felony offense or a technical violation of the probation or parole conditions. Because the Sentencing Reform Act mandates an "up front" sentencing decision and eliminates prison admissions due to revocations, the imprisonment rates for FY 1982 had to be adjusted in order to make appropriate comparisons. The rates are therefore based on the original sentence received for a felony conviction and do not include revocations.
- 10 RCW 9.94A.040(5).
- 11 Knapp, op. cit., Minnesota Sentencing Guidelines Commission, 1984, p. 33.
- 12 Washington State Jail Commission, 1982.
- 13 RCW 9.94A.380.
- 14 RCW 9.94A.120(5)(f) and 7(a)(v).

- 15 Memo from Robert Trimble, Deputy Director of Department of Corrections,
to Robert Lasnik, Chief of Staff, King County Prosecuting Attorney's Office,
1986.
- 16 One by-product of this approach of measuring grid variance for sentence
lengths is that the table with the cells containing the ratio of new cell
variance to old cell variance is a table of F-ratios, thus facilitating the
determination of statistical significance.
- 17 RCW 9.94A.120(2).
- 18 State v. Oxborrow, 106 Wn.2d at 525.
- 19 State v. Armstrong, 106 Wn.2d at 547.
- 20 RCW 9.94A.120(5).
- 21 RCW 9.94A.380.
- 22 RCW 9.94A.380.
- 23 RCW 9.94A.200.
- 24 RCW 9.94A.120(7)(a).
- 25 Memo from Jack O'Connell, Office of Financial Management, to Rob Krell,
Legislative Budget Committee, October 6, 1986.
- 26 RCW 9.94A.340.
- 27 Sentencing Guidelines Commission, "Working Paper #17", 1983.
- 28 RCW 9.94A.450.
- 29 RCW 9.94A.440

SENTENCING GRID

SERIOUSNESS
LEVEL

OFFENDER SCORE

	0	1	2	3	4	5	6	7	8	9 or more
XIV	Life Sentence without Parole/Death Penalty									
XIII	23y 4m 240 - 320	24y 4m 250 - 333	25y 4m 261 - 347	26y 4m 271 - 361	27y 4m 281 - 374	28y 4m 291 - 388	30y 4m 312 - 416	32y 10m 338 - 450	36y 370 - 493	40y 411 - 548
XII	12y 123 - 164	13y 134 - 178	14y 144 - 192	15y 154 - 205	16y 165 - 219	17y 175 - 233	19y 195 - 260	21y 216 - 288	25y 257 - 342	29y 298 - 397
XI	6y 62 - 82	6y 9m 69 - 92	7y 6m 77 - 102	8y 3m 85 - 113	9y 93 - 123	9y 9m 100 - 133	12y 6m 129 - 171	13y 6m 139 - 185	15y 6m 159 - 212	17y 6m 180 - 240
X	5y 51 - 68	5y 6m 57 - 75	6y 62 - 82	6y 6m 67 - 89	7y 72 - 96	7y 6m 77 - 102	9y 6m 98 - 130	10y 6m 108 - 144	12y 6m 129 - 171	14y 6m 149 - 198
IX	3y 31 - 41	3y 6m 36 - 48	4y 41 - 54	4y 6m 46 - 61	5y 51 - 68	5y 6m 57 - 75	7y 6m 77 - 102	8y 6m 87 - 116	10y 6m 108 - 144	12y 6m 129 - 171
VIII	2y 21 - 27	2y 6m 26 - 34	3y 31 - 41	3y 6m 36 - 48	4y 41 - 54	4y 6m 46 - 61	6y 6m 67 - 89	7y 6m 77 - 102	8y 6m 87 - 116	10y 6m 108 - 144
VII	18m 15 - 20	2y 21 - 27	2y 6m 26 - 34	3y 31 - 41	3y 6m 36 - 48	4y 41 - 54	5y 6m 57 - 75	6y 6m 67 - 89	7y 6m 77 - 102	8y 6m 87 - 116
VI	13m 12+ - 14	18m 15 - 20	2y 21 - 27	2y 6m 26 - 34	3y 31 - 41	3y 6m 36 - 48	4y 6m 46 - 61	5y 6m 57 - 75	6y 6m 67 - 89	7y 6m 77 - 102
V	9m 6 - 12	13m 12+ - 14	15m 13 - 17	18m 15 - 20	2y 2m 22 - 29	3y 2m 33 - 43	4y 41 - 54	5y 51 - 68	6y 62 - 82	7y 72 - 96
IV	6m 3 - 9	9m 6 - 12	13m 12+ - 14	15m 13 - 17	18m 15 - 20	2y 2m 22 - 29	3y 2m 33 - 43	4y 2m 43 - 57	5y 2m 53 - 70	6y 2m 63 - 84
III	2m 1 - 3	5m 3 - 8	8m 4 - 12	11m 9 - 12	14m 12+ - 16	20m 17 - 22	2y 2m 22 - 29	3y 2m 33 - 43	4y 2m 43 - 57	5y 51 - 68
II	0 - 90 Days	4m 2 - 6	6m 3 - 9	8m 4 - 12	13m 12+ - 14	16m 14 - 18	20m 17 - 22	2y 2m 22 - 29	3y 2m 33 - 43	4y 2m 43 - 57
I	0 - 60 Days	0 - 90 Days	3m 2 - 5	4m 2 - 6	5m 3 - 8	8m 4 - 12	13m 12+ - 14	16m 14 - 18	20m 17 - 22	2y 2m 22 - 29

APPENDIX A

NOTE: Numbers in the first horizontal row of each seriousness category represent sentencing midpoints in years (y) and months (m). Numbers in the second row represent presumptive sentencing ranges in months, or in days if so designated. 12+ equals one year and one day.

APPENDIX B

CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

- XIV Aggravated Murder 1 (RCW 10.95.020)
- XIII Murder 1 (RCW 9A.32.030)
- XII Murder 2 (RCW 9A.32.050)
- XI Assault 1 (RCW 9A.36.010)
- X Kidnapping 1 (RCW 9A.40.020)
Rape 1 (RCW 9A.44.040)
Damaging building, etc., by explosion with threat to human being (RCW 70.74.280(1))
Over 18 and deliver heroin or narcotic from Schedule I or II to someone under 18 and 3 years junior (RCW 69.50.406)
Leading organized crime (RCW 9A.82.060(1)(a))
- IX Robbery 1 (RCW 9A.56.200)
Manslaughter 1 (RCW 9A.32.060)
Statutory Rape 1 (RCW 9A.44.070)
Explosive devices prohibited (RCW 70.74.180)
Endangering life and property by explosives with threat to human being (RCW 70.74.270)
Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406)
Sexual Exploitation, Under 16 (RCW 9.68A.040(2)(a))
Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
- VIII Arson 1 (RCW 9A.48.020)
Rape 2 (RCW 9A.44.050)
Promoting Prostitution 1 (RCW 9A.88.070)
Selling heroin for profit (RCW 69.50.410)
- VII Burglary 1 (RCW 9A.52.020)
Vehicular Homicide (RCW 46.61.520)
Introducing Contraband 1 (RCW 9A.76.140)
Statutory Rape 2 (RCW 9A.44.080)
Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
Sexual Exploitation, Under 18 (RCW 9.68A.040(2)(b))
Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
- VI Bribery (RCW 9A.68.010)
Manslaughter 2 (RCW 9A.32.070)

- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
 - Damaging building, etc., by explosion with no threat to human being (RCW 70.74.280(2))
 - Endangering life and property by explosives with no threat to human being (RCW 70.74.270)
 - Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1)(b) and (c))
 - Incest 1 (RCW 9A.64.020(1))
 - Selling for profit (controlled or counterfeit) any controlled substance (except heroin) (RCW 69.50.410)
 - Manufacture, deliver, or possess with intent to deliver heroin or narcotics from Schedule I or II (RCW 69.50.401(a)(1)(i))
 - Intimidating a Judge (RCW 9A.72.160)
- V
- Rape 3 (RCW 9A.44.060)
 - Kidnapping 2 (RCW 9A.40.030)
 - Extortion 1 (RCW 9A.56.120)
 - Incest 2 (RCW 9A.64.020(2))
 - Perjury 1 (RCW 9A.72.020)
 - Extortionate Extension of Credit (RCW 9A.82.020)
 - Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
 - Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
 - Rendering Criminal Assistance 1 (RCW 9A.76.070)
- IV
- Robbery 2 (RCW 9A.56.210)
 - Assault 2 (RCW 9A.36.020)
 - Escape 1 (RCW 9A.76.110)
 - Arson 2 (RCW 9A.48.030)
 - Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
 - Malicious Harassment (RCW 9A.36.080)
 - Wilful Failure to Return from Furlough (RCW 72.66.060)
 - Hit and Run -- Injury Accident (RCW 46.52.020(4))
 - Vehicular Assault (RCW 46.61.522)
 - Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana) (RCW 69.50.401(a)(1)(ii) through (iv))
 - Influencing Outcome of Sporting Event (RCW 9A.82.070)
 - Use of Proceeds of Criminal Profiteering (RCW 9A.82.080(1) and (2))
 - Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))
- III
- Statutory Rape 3 (RCW 9A.44.090)
 - Extortion 2 (RCW 9A.56.130)
 - Unlawful Imprisonment (RCW 9A.40.040)
 - Assault 3 (RCW 9A.36.030)
 - Unlawful possession of firearm or pistol by felon (RCW 9.41.040)
 - Harassment (RCW 9A.46.020)
 - Promoting Prostitution 2 (RCW 9A.88.080)
 - Wilful Failure to Return from Work Release (RCW 72.65.070)

Introducing Contraband 2 (RCW 9A.76.150)
Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
Patronizing a Juvenile Prostitute (RCW 9.68A.100)
Escape 2 (RCW 9A.76.120)
Perjury 2 (RCW 9A.72.030)
Intimidating a Public Servant (RCW 9A.76.180)
Tampering with a Witness (RCW 9A.72.120)
Manufacture, deliver, or possess with intent to deliver
marijuana (RCW 69.50.401(a)(1)(ii))
Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))
Theft of Livestock 1 (RCW 9A.56.080)

II Malicious Mischief 1 (RCW 9A.48.070)
Possession of Stolen Property 1 (RCW 9A.56.150)
Theft 1 (RCW 9A.56.030)
Theft of Livestock 2 (RCW 9A.56.080)
Burglary 2 (RCW 9A.52.030)
Possession of controlled substance that is either heroin or
narcotics from Schedule I or II (RCW 69.50.401(d))
Create, deliver, or possess a counterfeit controlled substance
(RCW 69.50.401(b))
Computer Trespass 1 (RCW 9A.52.110)

I Theft 2 (RCW 9A.56.040)
Possession of Stolen Property 2 (RCW 9A.56.160)
Forgery (RCW 9A.60.020)
Taking a Motor Vehicle Without Permission (RCW 9A.56.070)
Vehicle Prowl 1 (RCW 9A.52.095)
Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
Malicious Mischief 2 (RCW 9A.48.080)
Reckless Burning 1 (RCW 9A.48.040)
Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
False Verification for Welfare (RCW 74.08.055)
Forged Prescription (RCW 69.41.020)
Forged Prescription for a Controlled Substance (RCW 69.50.403)
Possess Controlled Substance that is a Narcotic from Schedule
III, IV, or V or Nonnarcotic from Schedule I-V
(RCW 69.50.401(d))

APPENDIX C

COMPARISON OF SRA AND PRE-SRA SENTENCES: SELECTED OFFENSES

The following table compares SRA and pre-SRA sentence lengths and imprisonment rates. The offenses selected are illustrative only, and generalized conclusions should not be drawn from this table alone.

The 1982 data are taken from a sample of over 3,000 felony convictions in 18 representative counties. The table excludes attempted offenses. The definitions used were:

1982 Jail Sentence: Actual jail time served.

1982 Prison Sentence: Actual minimum term set by the Board of Prison Terms and Parole, adjusted for average good time and public safety score reductions.

1985 Jail and Prison Sentences: Expressed as a range; the higher figure is the actual average determinate sentence, the lower figure is the minimum time served if all possible good time reductions were given (up to one-third of the sentence).

APPENDIX C

SENTENCE COMPARISONS: FY 1982 VS. CY 1985

OFFENSE		PRISON PERCENT	PRISON SENTENCE (Months)	NON- PRISON PERCENT	JAIL SENTENCE (Days)	AVERAGE TOTAL CONFINEMENT (Months)	NUMBER OF CASES
Murder 2	1982:	100%	75	0%		75	30
	1985:	97%	113 - 169	3%	26 - 39	109 - 164	
Vehicular Homicide	1982:	19%	27	81%	88	7	49
	1985:	76%	14 - 22	24%	153 - 230	12 - 18	
Delivery of Schedule I or II Drugs	1982:	8%	18	93%	35	2	204
	1985:	39%	16 - 24	61%	45 - 67	7 - 10	
Rape 1	1982:	100%	99	0%		99	26
	1985:	100%	87 - 130	0%		87 - 130	
Indecent Liberties (With Force)	1982:	15%	64	85%	72	12	18
	1985:	89%	19 - 29	11%	45 - 67	17 - 26	
Indecent Liberties (W/O Force)	1982:	12%	52	88%	24	7	179
	1985:	44%	14 - 21	56%	43 - 65	7 - 10	
Statutory Rape 2	1982:	16%	56	84%	116	12	30
	1985:	53%	16 - 24	47%	77 - 115	10 - 14	
Robbery 1	1982:	79%	49	21%	159	40	200
	1985:	94%	42 - 64	6%	183 - 275	40 - 60	
Burglary 1	1982:	35%	52	65%	142	21	54
	1985:	98%	37 - 55	2%	243 - 365	36 - 54	
Burglary 2	1982:	19%	22	81%	61	6	1,643
	1985:	16%	14 - 20	84%	63 - 94	4 - 6	
Forgery	1982:	16%	18	84%	38	4	479
	1985:	3%	11 - 17	97%	38 - 56	2 - 2	
Taking A Motor Vehicle	1982:	12%	14	88%	50	3	331
	1985:	1%	14 - 21	99%	39 - 58	1 - 2	
Theft 1	1982:	11%	29	89%	34	4	296
	1985:	3%	13 - 20	97%	53 - 79	2 - 3	

APPENDIX D
EXCEPTIONAL SENTENCE REASONS
CY 1985

Sentences BELOW the Sentence Range (152 sentences)

<u>Reason</u>	<u>Number of Times Cited</u>
Victim's role in the crime*	37
Defendant's rehabilitation or treatment	36
Defendant has decreased capacity to appreciate wrongfulness of his conduct*	25
Prison would be detrimental	21
Offense less serious than typical for the crime	21
Defendant assisted law enforcement	20
Multiple offense policy would result in an excessive sentence*	18
Defendant's physical or mental condition	16
Defendant was induced by others*	15
Defendant committed crime under duress*	15
Victim requests lower sentence	15
No prior convictions or they are remote in time	12
Defendant's age	12
Defendant is remorseful	9
Offense was principally accomplished by another*	9
Defendant poses no threat to the community	8
No injury to the victim	7
Defendant is addressing psychological or alcohol problem	6
Equivalent sentence with that given co-defendants	5
Defendant's actions did not intend crime or harm	4

<u>Reason</u>	<u>Number of Times Cited</u>
Defendant is a battered woman	4
Defendant's capacity to conform his conduct to the law was impaired by alcohol or drug addiction	4
Defendant has already served enough time	4
Defendant has a good background	3
Difference between exceptional sentence and standard range is minimal	3
Relationship with the victim	3
Before detection, defendant compensated victim*	1
Other**	<u>93</u>
TOTAL	426
AVERAGE NUMBER OF REASONS PER SENTENCE	2.8

Sentences ABOVE the Sentence Range (102 sentences)

<u>Reason</u>	<u>Number of Times Cited</u>
Victim was vulnerable*	41
Crime was deliberately cruel*	33
Defendant is a threat to the community	28
Seriousness of the offense	27
Defendant used sophisticated/well-planned methods*	25
Multiple victims or incidents per victim*	17
Drugs sold in quantities too large for personal use*	12
Defendant was in a position of trust*	12
Factors in criminal record	12
Defendant is not amenable to available treatment	11

<u>Reason</u>	<u>Number of Times Cited</u>
Defendant agreed to prison sentence instead of jail	10
Continuing criminal activity after arrest or while on previous probation or parole	9
Multiple offense policy would give lenient sentence*	7
Great monetary loss*	6
Injuries were greater than necessary for the crime	6
Defendant has high position in drug hierarchy*	5
Drugs sold at least 3 times	4
Greater treatment available in prison	4
Weapon used for drug crime*	3
Defendant showed no remorse	3
Defendant invaded zone of privacy	3
Drugs made to be used by others*	3
Additional incidents which, if charged, would result in higher sentence range	3
Sentence to be combined with pre-SRA prison sentence	3
No resources in the community	3
Defendant failed to provide medical assistance	2
Mental cruelty to the victim	2
No mitigating circumstances	2
Other**	<u>34</u>
TOTAL	330
AVERAGE NUMBER OF REASONS PER SENTENCE	3.2

* Statutory reasons as listed in 9.94A.390.

** Contains reasons only cited once.

Note: Eleven exceptional sentences were received without Findings of Fact and Conclusions of Law.

Sentences WITHIN the Sentence Range (nine sentences)

There were nine exceptional sentences where the total sentence was within the standard range. In three cases, community service hours were given on a violent offense in lieu of jail time. The reasons for these sentences include:

- The victim's role in the crime;
- Increased confinement would be a hardship on the family;
- The defendant is attending rehabilitation programs.

Three cases involved additional conditions beyond the statutory limits. These include 300 hours of community service, a sentence involving additional community supervision and treatment, and post-release supervision for a prison sentence. The reasons for these sentences include:

- To equate sentence with that given co-defendants;
- The seriousness of the crime;
- The victim was vulnerable and the defendant was in a position of trust.

The remaining three exceptional sentences within the range did not affect the total length of the sentence. In one case, the sentence of less than twelve months was to be served in the Department of Corrections concurrently with a prior term. In a second case, the exceptional sentence was on a lesser count where another current conviction of multiple counts on the same cause was in the range for a longer term. The final case involved consecutive sentences on multiple counts with the total sentence in the range. The reasons for these sentences include:

- The public would be better protected and to make frugal use of the state's resources;
- The state's calculation error;
- The multiple offense policy would result in too lenient a sentence.