

SENTENCING PRACTICES  
UNDER THE  
SENTENCING REFORM  
ACT

FISCAL YEAR  
1987

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**SENTENCING PRACTICES UNDER  
THE SENTENCING REFORM ACT  
FISCAL YEAR 1987**

**NCJRS**

**OCT 24 1989**

**ACQUISITIONS**

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## EXECUTIVE SUMMARY

This report summarizes adult felony sentencing practices for Fiscal Year 1987. These practices are compared to the first year of the Sentencing Reform Act and to pre-SRA sentencing practices in 1982.

### Imprisonment Rate for Violent Offenses

- Violent offenses continued to have a higher imprisonment rate than pre-SRA. The imprisonment rate for violent offenses was lower in 1987 (59.2%) than in 1985 (65.1%) but was still higher than 1982 (48.8%). The imprisonment rate for nonviolent offenses was higher in 1987 (10.6%) than in 1985 (8.8%) but was lower than 1982 (13.3%).

### Consistency in Sentencing Practices

- Consistency has been significantly increased under the SRA. The variability of sentence lengths for offenders with identical Offender Scores and Seriousness Levels was 47 percent less than in 1982.
- Little racial or gender disparity was found in the length of sentences imposed within the standard range (87% of all sentences), or for exceptional sentences (3.6% of all cases)
- Substantial racial and gender disparity was found in the use of sentencing alternatives. One result of this disparity was that for offenders with a presumptive prison disposition, 7 of 10 white offenders went to prison, while 9 of 10 black offenders and 8 of 10 other minorities went to prison. Sixty percent of women, and 76 percent of men with a presumptive prison disposition actually received such a sentence.

### Exceptional Sentences

- Judges imposed a guideline sentence in the vast majority of cases. Only 3.6 percent of sentences were exceptional sentences.
- The majority of exceptional sentences were mitigated (56%), but aggravated exceptional sentences were typically greater in extent.
- Washington's overall rates of departure from initial presumptive sentences were comparable to those in Minnesota which has a similar sentencing guidelines system.

### Treatment System Options

- Nearly half of all offenders qualified for the First-Time Offender Waiver, and of these, 40 percent were sentenced under this provision. This sentencing alternative was used primarily to add treatment conditions or additional community supervision to the sentence; fewer than one-quarter of those sentenced under this provision received a sentence below the standard range.

- Forty-six percent of the 843 sex offenders convicted in 1987 were sentenced under the Special Sexual Offender Sentencing Alternative (SSOSA). This was a substantial increase from the 36 percent SSOSA rate of 1985. Eighty-two percent of the 1987 SSOSA sentences (320 cases) were prison diversions.

### Offenses and Offenders

- The distribution of crimes within the offense Seriousness Levels was somewhat elevated (compared to 1985) and appears related to the drug enforcement initiatives.
- The average Offender Score has increased since 1985.

### Prison and Jail Population Impact

- According to calculations by the Office of Financial Management, 1,776 fewer inmates were in prison as of June 1987, than there would have been if the prior indeterminate sentencing system had been continued.
- Since 1982, jail admissions have increased by 25 percent and prison admissions have decreased by 20 percent. This shift in admissions resulted primarily from a 23 percent increase in nonviolent convictions since 1982, and a 19 percent decrease in convictions for violent offenses.
- In 1987, a higher percentage of offenders received nonprison sentences and the duration of total confinement ordered was somewhat higher than in 1982. The impact on local jails could be mitigated by extensive use of good time and conversions of total confinement to community service or nonjail partial confinement.
- The effect of First-Time Offender Waivers was to reduce the state prison population by 135 to 202 persons after four years, and to reduce the state-wide jail population by 19 to 29 offenders.
- The 1987 rate of SSOSA sentences resulted in 300 to 460 fewer prison inmates than had they received a standard sentence. SSOSA sentences only added 18 to 26 offenders to the state-wide average daily jail population because the average jail sentence for these offenders was only 60 days.
- Exceptional sentences have a short-term effect of lowering the state prison population, and a long-term effect (12 - 19 years out) of increasing the state prison population. Exceptional sentences add 39 to 59 persons to the average daily jail population (state-wide).

### System Impact

- There was a lower rate of jury trials and a higher rate of guilty pleas in 1987, relative to 1982.

## I. INTRODUCTION

The Sentencing Reform Act of 1981 (SRA) was enacted for the following explicit purposes<sup>1</sup>:

- (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 created the Sentencing Guidelines Commission to draft guidelines consistent with these purposes and with a mandate to emphasize confinement for the violent offender and alternatives to total confinement for the nonviolent offender<sup>2</sup>. The Commission's recommendations were adopted by the legislature in 1983 and 1984.

The Commission's ongoing purpose is to advise the executive and legislative branches on sentencing policy for adult felons. The Commission collects information on adult felony sentences to understand how the Sentencing Reform Act is applied in individual cases and to predict the population consequences of any proposed amendments.

The SRA applies to sentences for felonies committed after July 1, 1984. The sentencing guidelines provide a presumptive sentencing range for any combination of offense Seriousness Level and Offender Score (see Appendix A). The Seriousness Level is determined by the offense of conviction (see Appendix B). The offense Seriousness Levels range from Level I (e.g., Forged Prescription, Theft 2) to Level XIV (Aggravated Murder 1). The Offender Score is calculated on the basis of prior convictions and number of current felony counts.

Some alternatives to the presumptive sentence are available for most first-time nonviolent offenders and sex offenders. Other than these alternatives, judges may depart from the presumptive sentence only if they find substantial and compelling

reasons. The justification for an exceptional sentence must be in writing and can be appealed by either the prosecutor or the defendant. All sentences are determinate and can be adjusted only for credit for good behavior in jail or prison (up to one-third of the imposed sentence).

This report evaluates felony sentences under the SRA for Fiscal Year 1987. These sentencing practices are compared to the state's first year's experience under the SRA<sup>3</sup>, as well as pre-SRA (FY 1982) baseline data gathered by the Sentencing Guidelines Commission.

## II. EVALUATION DATA

### A. Baseline Data

Baseline data regarding the former indeterminate sentencing system were collected during the Commission's Fiscal Year 1982 study of over 3,000 convicted felons. For this 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. The prison sentences were also adjusted for average Public Safety Score reductions<sup>4</sup> earned for various groups of offenders, as estimated by the Parole Board.

### B. SRA Data Source

By court rule, the Sentencing Guidelines Commission receives Judgment and Sentence forms for adult felony convictions. Data from these forms are entered into the Commission's data base. The information entered includes current offense(s), criminal history, offender demographics, and details of the current felony sentence. A list of data base items may be found in Appendix C.

The Commission's data entry program performs numerous quality control checks on the sentencing data. Any detectable aspect of the sentence not conforming to the Sentencing Reform Act (SRA) 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.

Unlike previous versions of the data entry program, the current version does not independently compute an Offender Score from the supplied information. This lack of automatic scoring makes it more difficult to detect scoring errors. This change was necessary because SRA amendments since 1984 have changed the scoring rules according to the date of the offense. Current and prior offense dates are not reliably reported on the Judgment and Sentence forms. Therefore, the staff cannot always discern which scoring rules apply.

### C. Calendar Year 1985 Data

The CY 1985 data consist of data entered from Judgment and Sentence forms on 7,961 SRA convictions in 1985. These data formed the basis of the previous monitoring report published in December, 1986<sup>5</sup>.

#### D. Fiscal Year 1987 Data

The FY 1987 data are from 11,510 SRA convictions in Fiscal Year 1987. This year's monitoring report represents a shift from calendar years to fiscal years in order to be consistent with other state reporting time periods.

#### E. Data Limitations

Quality control of the Commission's data occurs at three places:

1. The data entry operator is highly trained and closely supervised;
2. The data entry program performs numerous logic and consistency checks; and
3. Several editing checks are performed on the data before the monitoring summaries are computed.

Despite the persistent efforts at quality control, the data maintained by the Commission have some limitations. First, not all Judgment and Sentence forms are received by the Commission as required by court rules. We estimate that approximately 90 percent are received.

Second, although the Supreme Court's Pattern Forms Committee has developed a standard Judgment and Sentence form, its use is voluntary. Various forms, terminologies, and interpretations exist in the 39 counties.

The offender's sentence on the Judgment and Sentence form reflects the maximum length of incarceration which may be served. The actual length of incarceration may depend on the offender's behavior and (in the case of nonprison sentences) local good time policies which vary substantially from county to county.

The criminal history recorded on the Judgment and Sentence form may not be the defendant's complete history. The form is intended to record the criminal history used for sentencing 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.

### III. SENTENCING REFORM ACT SENTENCES

#### A. Changes in State Imprisonment Rate

Table 1 details the changes in the proportion of convicted felons receiving a prison sentence as a result of the Sentencing Reform Act. A prison sentence is defined as a sentence exceeding 12 months to be served at a state-owned facility. Relative to the 1982 baseline for indeterminate sentences, CY 1985 and FY 1987 evidenced an increase in the 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.<sup>6</sup>

**TABLE 1**  
**STATE IMPRISONMENT RATES**

<u>Type</u>	<u>FY 1982</u>	<u>CY 1985</u>	<u>FY 1987</u>
Violent	48.8%	65.1%	59.2%
Nonviolent	13.3%	8.8%	10.6%
Total	20.2%	16.7%	16.9%

Relative to SRA sentences in 1985, the 1987 sentences reflected a decreased imprisonment rate for violent offenders and an increased imprisonment rate for nonviolent offenders. The decrease in the use of prison sanctions for violent offenders in 1987 is primarily due to an increased use of the Special Sexual Offender Sentencing Alternative. This sentencing option permits the sentencing judge to suspend a sentence within the standard range for the purpose of ordering community based treatment. The increased use of this option is discussed in Section III(I)(2), "Sexual Offender Options", on page 35.

The FY 1987 increase in the use of prison sanctions for nonviolent offenders is due to a higher proportion of offenders in 1987 with presumptive prison sentences. One contributing factor is a slight, but statistically significant shift in the distribution of crimes among various Seriousness Levels. Also, the average Offender Scores (which, in combination with Seriousness Level, determines the standard range) are higher in 1987 than in 1985. Both the average number of current counts and the average number of prior felony convictions are higher in 1987. These findings are discussed in

Section VII, "Prosecutorial Practices" on page 77.

The decrease in the total imprisonment rate under the SRA is directly attributable to a shift in the proportion of felony convictions for violent offenses (see Table 2). Had the proportion of violent offenses in 1982 held for 1985 and 1987, the total imprisonment rate would have remained consistent between the indeterminate sentencing and determinate sentencing systems.

**TABLE 2**

**PROPORTION OF VIOLENT AND NONVIOLENT CONVICTIONS**

<u>Type</u>	<u>FY 1982</u>	<u>CY 1985</u>	<u>FY 1987</u>
Violent	19.5%	14.0%	13.1%
Nonviolent	80.5%	86.0%	86.9%

The reasons for the decrease in the proportion of violent offenses in 1985 and a continued drop in 1987 is unknown. This decrease could reflect a change in the violent crime rate, a change in charging practices by prosecuting attorneys, or some other change. A study of the reasons for the decrease would require resources not currently available to the Commission.

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

**B. Uniformity of State Imprisonment Rate**

One of the explicit goals of the Sentencing Reform Act is to ensure that punishment for a felony offense is proportionate to the seriousness of the offense and the offender's criminal history. These factors certainly were important in sentencing decisions under the indeterminate system, but many other factors played a role as well. The presumptive guideline system adopted by Washington State directly minimizes the role of extra-legal factors such as local politics and attitudes, age, gender, race, pretrial incarceration, employment, education, or variation in judicial leniency or prosecutor or defense attorney effort or competency.

One approach to quantifying uniformity in sentencing is Minnesota's concept of "grid variance"<sup>7</sup>. This quantitative index measures the consistency in prison/nonprison dispositions for each combination of offense Seriousness Level, and Offender Score. This index has a maximum value of .25 (1/2 go to prison and 1/2 do not), and a

minimum value of 0 (all go to prison or none go to prison). Thus, larger values reflect greater variability and smaller values reflect more uniformity in sentencing. Table 3 reports the results of this analysis for 1982 (pre-SRA), 1985, and 1987.

**TABLE 3**

**GRID VARIANCE FOR PRISON/NONPRISON DISPOSITIONS**

(Maximum value = .25, minimum = 0)

FY 1982	.107
CY 1985	.034 (32% of FY 1982)
CY 1987	.040 (37% of FY 1982)

This table evidences a dramatic increase in consistency in the imprisonment decision subsequent to the implementation of the Sentencing Reform Act in 1984. The small increase in variability from 1985 to 1987 appears to be due to more offenders receiving nonprison sentences because of increased use of the Special Sexual Offender Sentencing Alternative. In CY 1985, 8.8 percent of all offenders with presumptive prison terms received a nonprison disposition under SSOSA. In FY 1987 this figure increased to 12.4 percent of all presumptive prison dispositions.

**C. Change in Sentence Length**

It is pointless to compare pre- and post-SRA judicially imposed sentence lengths because before the implementation of the SRA, the pronounced sentence usually bore little relationship to the amount of jail or prison time served by a convicted felon. Therefore, the term sentence length as used in this section refers to actual or estimated length of incarceration in a jail or prison.

The pre-SRA 1982 data represent actual length of stay for offenders receiving nonprison sentences. The length of stay estimates for those receiving prison sentences is based on actual minimum terms set by the Board of Prison Terms and Parole. These minimum terms were adjusted using a historical baseline for average good time reductions and Public Safety Score reductions (a reduction tied to recidivism estimates and work release participation). The effects of early release programs resulting from emergency overcrowding conditions in the state prisons are not included.

Felony sentences under the SRA can be reduced only for good time, up to one-third of the sentence. Therefore, SRA sentence lengths are shown in this report as ranges

(two-thirds to full sentence). The SRA sentence lengths are computed differently for standard sentences (no sentencing alternatives are used) and alternative sentences (sentences using the First-Time Offender Waiver or the Special Sexual Offender Sentencing Alternative). Community service hours are included in the sentence computation for persons receiving a standard sentence, because these hours represent a conversion of total confinement to an alternative sentence (total confinement, partial confinement, and community service must sum to a figure within the standard sentencing range)<sup>8</sup>. 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. For these two options, the total confinement and partial confinement must add to a figure within the alternative sentencing range, but there are no restrictions on community service hours.<sup>9</sup>

Given the above definitions, Table 4 shows the changes in length of sentence (estimated length of incarceration) under determinate sentencing.

**TABLE 4**  
**CHANGE IN AVERAGE SENTENCE LENGTH**

	<u>Prison Sentences</u>	<u>Nonprison sentences</u>
FY 1982	36.8 months	1.7 months
CY 1985	29.7 to 44.6 months	1.7 to 2.5 months
FY 1987	27.5 to 41.3 months	1.7 to 2.6 months

Although actual length of stay in jail or prison must fall within the above intervals, the exact change under the SRA cannot be known without data on the average good time credit earned. To date, experience indicates that inmates earn a majority of their allowable good time<sup>10,11</sup>. If this experience is valid for inmates in general, it could be concluded that persons sentenced under the Sentencing Reform Act serve less time in prison than those sentenced under the indeterminate sentencing system in 1982.

Compared to the pre-SRA nonprison sentences, average jail sentences under the SRA appear to be higher.

Relative to 1985, the average SRA prison sentence declined in 1987. This decline is related to the increased imprisonment rate of nonviolent offenders, who have shorter

sentences, and the decreased imprisonment rate of violent offenders, who have longer sentences. The imprisonment rate changes were detailed in Table 1. The increase in imprisonment rate for nonviolent offenders resulted from an increase in average Seriousness Level and average Offender Score. The decrease in imprisonment rate for violent offenders was due to increased use of the Special Sexual Offender Sentencing Alternative.

A comparison of sentence lengths for selected individual offenses is presented in Appendix D.

Table 5 presents the FY 1987 average sentence length and number of cases for each combination of Seriousness Level and Offender Score. The total average for each Offender Score is pictured in Figure 1 and the average for each Seriousness Level is pictured in Figure 2. These two figures show the emphasis placed by the SRA on setting sentences proportional to the seriousness of the offense and proportional to criminal history.

There are two apparent anomalies in the relationship of sentence length to Seriousness Level. First, the average sentence for Level III offenses is lower than the average sentence for Level II offenses. This occurs because many Level II offenders have greater Offender Scores, thus increasing the average sentence for crimes at this level. An inspection of Table 5 reveals that for all Offender Scores, except a score of 4, the sentence length for Level III offenses is higher than that for Level II offenses. It is only when an average is computed across all Offender Scores that this anomaly appears.

The second anomaly is for Level V offenses which have a lower average sentence length than Level IV offenses, even for individual Offender Scores. This discrepancy occurs because one-third of the Level V offenders were given alternative sentences under the Special Sexual Offender Sentencing Alternative (75% of the convictions at this level are for Third Degree Rape or Second Degree Incest).

#### D. Uniformity of Sentence Length

The question of sentence uniformity for persons with similar criminal history committing similar offenses was partially addressed with the measure of grid variance discussed in the section on imprisonment rates. That index of grid variance was based on a measure of variance in imprisonment rates among like offenders, but does not measure length of stay differences. That original concept of grid variance was extended for the current analysis by computing an index based on a measure of variance for sentence lengths among like offenders.

TABLE 5

**FY 1987 AVERAGE SENTENCE LENGTH AND NUMBER OF CASES  
FOR EACH CELL IN THE SENTENCING GRID**

MEAN SENTENCE LENGTH (Months)

SERIOUS- NESS LEVEL	OFFENDER SCORE										TOTAL
	0	1	2	3	4	5	6	7	8	9+	
XIII	287.38	280.67	415.60	463.40	414.00	388.00	395.00				333.02
XII	139.15	147.00	328.00	196.00	720.00			241.50			190.49
XI	82.21		60.00	133.00	176.00	133.00	165.50		212.00	180.00	112.72
X	66.12	92.89	84.61	198.00	102.00	86.00	146.25		342.00	222.00	104.95
IX	28.65	35.85	46.01	47.17	64.41	74.05	93.78	119.00	143.33	156.00	46.16
VIII	21.56	29.54	38.29	38.33	48.42	50.25	84.00	102.00	100.00		32.63
VII	12.35	16.40	24.46	42.00	49.70	50.50	64.00	89.48		130.00	22.27
VI	5.76	12.10	17.73	22.91	26.30	43.86	19.97	40.46			10.48
V	4.33	7.92	14.17	15.85		33.00	53.00			72.00	7.12
IV	5.59	9.07	13.94	16.25	20.43	27.83	38.46	48.67	70.00	70.33	9.35
III	1.40	4.40	6.59	9.36	11.30	18.00	27.50	33.50		60.00	2.84
II	1.20	3.03	4.59	7.14	11.73	14.85	18.91	22.74	35.17	46.79	5.02
I	0.81	1.50	2.95	3.78	4.94	7.41	14.58	14.71	17.51	19.87	1.99
0	2.02	2.77	4.45	2.91	2.47	3.32	5.00	1.97		4.44	2.50
TOTAL	5.20	5.96	12.46	15.94	20.84	23.14	31.18	34.52	53.66	60.42	9.12

NUMBER OF CASES

SERIOUS- NESS LEVEL	OFFENDER SCORE										TOTAL
	0	1	2	3	4	5	6	7	8	9+	
XIII	26	3	5	5	2	1	1				43
XII	27	2	6	3	1			2			41
XI	14		1	3	2	1	2		1	1	25
X	22	9	9	7	2	1	4		1	1	56
IX	145	49	64	32	27	19	9	3	6	7	361
VIII	37	14	21	6	6	1	1	1	1		88
VII	107	33	27	7	10	8	5	2		2	201
VI	492	155	107	32	36	7	3	2			834
V	90	25	6	6		1	1			1	130
IV	706	188	126	66	27	18	13	6	1	6	1157
III	764	188	88	27	10	3	2	2		1	1085
II	1845	607	477	323	185	121	101	45	41	46	3791
I	1795	761	416	231	122	58	38	19	8	9	3457
0	143	45	20	10	3	3	3	1		3	231
TOTAL	6213	2079	1373	758	433	242	183	83	59	77	11500

FIGURE 1

# AVERAGE SENTENCE LENGTH As a Function of Offender Score

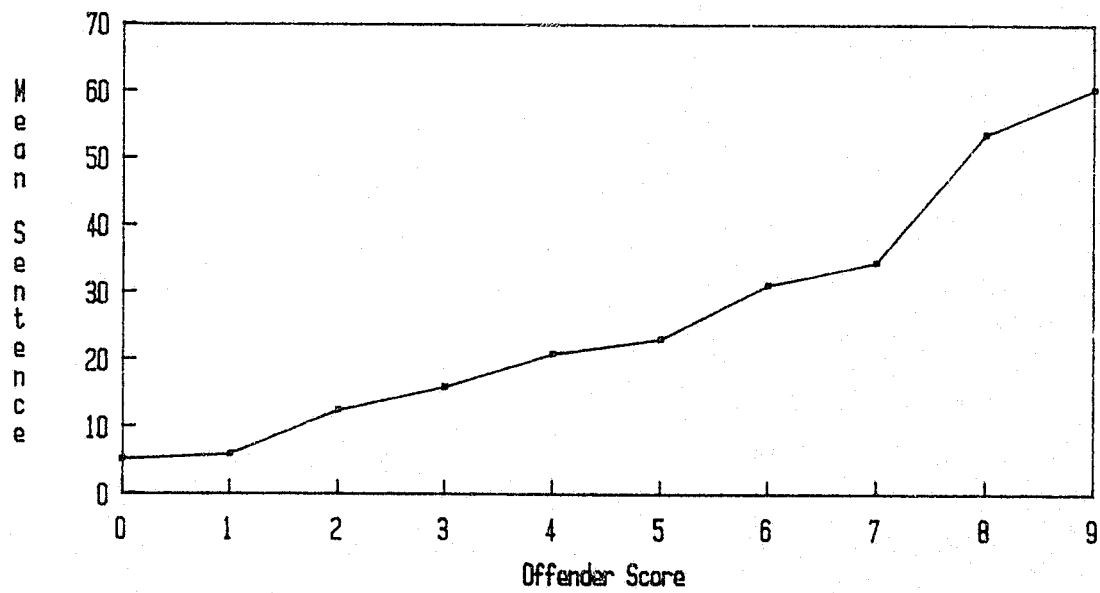
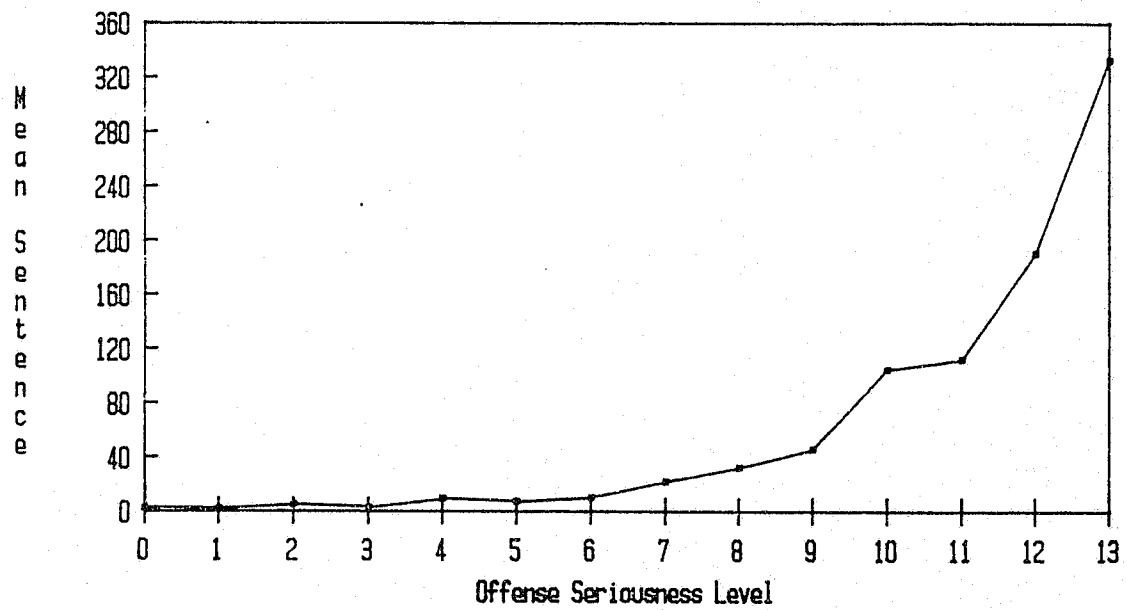


FIGURE 2

AVERAGE SENTENCE LENGTH  
As a Function of Seriousness Level



The statistical variance for each cell in the sentencing matrix for FY 1987 was computed and compared to the statistical variance for CY 1985 and FY 1987. The comparisons were made by dividing the cell variance for a given year by the corresponding cell variance in a different year. For example, the 1982 cell variance for Level VII offenses with an Offender Score of 0 was 232.6. The corresponding cell variance for 1987 was 90.45. Dividing the 1987 figure by the 1982 figure yields .389 which indicates that the sentence variability in 1987 for that combination of Seriousness Level and Offender Score was less than half that in 1982.<sup>12</sup>

Grid variance for length of stay can be envisioned as a global measure of judicial discretion in sentencing like offenders. This measure is sensitive to discretionary sentences such as those allowed for sex offenders, first-time offenders, and exceptional circumstances. Higher index scores reflect an increased exercise of judicial discretion (greater sentence dissimilarity) when sentencing offenders with identical Offender Scores and Seriousness Levels.

Comparing 1985 to 1982 revealed an average grid variance for length of stay of .372, indicating a 63 percent reduction in sentence length variation. Comparing 1987 to 1982 gave an average of .531, a 47 percent reduction. Thus, the grid variance for sentence length in 1987 was one-half what it was in 1982 under the indeterminate sentencing system, but somewhat greater than in 1985. The small increase in sentencing variability between 1985 and 1987 results primarily from an increase in use of the Special Sexual Offender Sentencing Alternative.

#### E. Location of Sentence Within Range

Most offenders (87%) receive a sentence within the standard sentencing range. If the average sentence for any class of offenders were near the top or bottom of the standard range, this trend could indicate that the ranges may be too harsh or too lenient and therefore deserve reconsideration. Table 6 displays the average point in the sentence range for 1985 and 1987.

**TABLE 6**

**LOCATION OF SENTENCES WITHIN THE STANDARD RANGE**  
(Based only on felons receiving a standard sentence)

<u>Year</u>	<u>Prison</u>	<u>Nonprison</u>	<u>Sentences</u>
CY 1985	44%	42%	5,269
FY 1987	45%	39%	8,348

As Table 6 shows, felons receiving a standard sentence have an average sentence just below the midpoint of the standard range.

#### F. Exceptional Sentences

For every felony conviction, the sentencing grid specifies a range of time the offender is expected to serve in jail or prison. Each offender receives a sentence within this range unless (1) an alternative sentence is imposed for qualifying offenders (First-Time Offender Waiver, or Special Sexual Offender Sentencing Alternative); or (2) an exceptional sentence is declared by the sentencing judge. The Sentencing Reform Act allows an exceptional sentence outside the standard range if there are "substantial and compelling reasons".<sup>13</sup> The sentencing judge is required to submit a written justification, and the sentence can be appealed by the defendant or prosecutor.

A second reason for declaring an exceptional sentence is to permit sentences for multiple offenses under the same cause number to be served consecutively.<sup>14</sup> Unless an exceptional sentence is declared, consecutive sentences may be imposed only when there are three or more serious violent offenses involving separate criminal conduct.

A third type of exceptional sentence is based in case law rather than by specific reference in the Sentencing Reform Act. In State v. Bernhard,<sup>15</sup> the State Supreme Court held that an exceptional sentence is imposed within a standard range of one year or less, the court may (1) "designate in which of the available county facilities set forth in RCW 70.48.020 the defendant is to be detained"; and may (2) "specify exceptional conditions to a community supervision sentence other than those permitted under a standard sentence." In the instant case, Bernhard was ordered to serve his sentence in an inpatient drug treatment program.

For the period of July 1, 1986 through June 30, 1987, 3.6 percent of all convictions resulted in an exceptional sentence (420 exceptional sentences out of 11,510 convictions). The rate of exceptional sentences varies for individual crimes. For example, exceptional sentences were used in 17 percent of sentencings for serious violent offenses, 12 percent of sentencings for violent offenders, and 2.2 percent of the time when sentencing for nonviolent offenses. These rates are very similar to the exceptional sentence rates in CY 1985. The rates of exceptional sentences for various offenses are displayed in Table 7.

The exceptional sentence rate of 3.6 percent is lower than most people anticipated, especially given Minnesota's departure rate of approximately 8 percent (Minnesota has a presumptive sentencing structure similar to Washington's). One reason for this difference is that Washington's law permits departures from the standard sentencing range under the First Time Offender Waiver or SSOSA. These departures are not

**TABLE 7**  
**EXCEPTIONAL SENTENCES BY TYPE OF CRIME**

**FY 1987**

	<u>Exceptional Sentences</u>	<u>Number of Convictions</u>	<u>Percent</u>
<u>Serious Violent</u>			
Assault 1	3	24	12.5%
Murder 1	9	43	20.9%
Murder 2	10	41	24.4%
Aggravated Murder 1	0	10	0.0%
Rape 1	5	44	11.4%
<u>Kidnapping 1</u>	<u>3</u>	<u>13</u>	<u>23.1%</u>
SUBTOTAL	30	175	17.1%
<u>Violent</u>			
Arson 1,2	12	60	20.0%
Assault 2	66	505	13.1%
Burglary 1	10	60	16.7%
Extortion 1	2	8	25.0%
Kidnapping 2	3	11	27.3%
Manslaughter 1,2	9	33	27.3%
Robbery 1,2	31	460	6.7%
Sex	19	213	8.9%
Vehicular Homicide	23	50	46.0%
<u>Other</u>	<u>0</u>	<u>9</u>	<u>0.0%</u>
SUBTOTAL	175	1409	12.4%
<u>Nonviolent</u>			
Assault 3	8	310	2.6%
Attempting to Elude	3	352	0.9%
Burglary 2	50	2258	2.2%
Criminal Mistreatment 1,2*	2	2	100.0%
Drug	60	1049	5.7%
Escape 1,2	3	252	1.2%
Forgery	11	736	1.5%
Hit & Run-Injury Accident	3	40	7.5%
Poss. of Controlled Subs.	9	976	0.9%
Poss. of Firearm by Felon	2	23	8.7%
Poss. Stolen Property	3	670	0.4%
Promoting Prostitution 1,2	2	29	6.9%
Sex	25	586	4.3%
Take Motor Veh.w/o Perm.	2	426	0.5%
Theft	25	1465	1.7%
Vehicular Assault	2	57	3.5%
<u>Other</u>	<u>5</u>	<u>695</u>	<u>0.7%</u>
SUBTOTAL	215	9926	2.2%
<b>TOTAL -- ALL OFFENDERS</b>	<b>420</b>	<b>11510</b>	<b>3.6%</b>

\*Unranked in FY 1987 with a standard range of 0 to 12 months.

included in Washington's exceptional sentence rate. A comprehensive comparison of departure rates between Minnesota and Washington is analyzed in Section IV of this report (page 46).

The majority (57%) of exceptional sentences in FY 1987 were downward departures. This pattern is similar to the 56 percent rate of downward departures in 1985. However, there has been an interesting shift in the distribution of upward and downward departures when viewed in more detail. Table 8 compares the 1985 and 1987 rates for exceptional sentences above and below the standard range by the categories of Serious Violent, Violent, and Nonviolent offenses.

**TABLE 8**

**TYPE OF EXCEPTIONAL SENTENCE  
CY 1985 v. FY 1987**

<u><b>CY 1985</b></u>	Below the <u>Range</u>	Above the <u>Range</u>	Within the <u>Range</u>	Number of <u>Sentences</u>
Serious Violent	20.0%	75.0%	5.0%	20 (100%)
Violent	70.1%	27.4%	2.6%	117 (100%)
Nonviolent	<u>49.3%</u>	<u>47.1%</u>	<u>3.6%</u>	<u>140 (100%)</u>
<b>TOTAL</b>	56.0%	40.8%	3.2%	277 (100%)

<u><b>FY 1987</b></u>	Below the <u>Range</u>	Above the <u>Range</u>	Within the <u>Range</u>	Number of <u>Sentences</u>
Serious Violent	26.7%	73.3%	0.0%	30 (100%)
Violent	61.1%	35.4%	3.4%	175 (100%)
Nonviolent	<u>58.6%</u>	<u>33.5%</u>	<u>7.9%</u>	<u>215 (100%)</u>
<b>TOTAL</b>	57.4%	37.1%	5.5%	420 (100%)

Table 8 indicates from 1985 to 1987, a trend towards more aggravated sentences for violent offenders and more mitigated sentences for nonviolent offenders. A more detailed review of exceptional sentences by offense is presented in Table 9.

When an exceptional sentence is imposed, the sentencing judge must submit written reasons to justify the sentence. The most common reasons stated when imposing a mitigated sentence were:

- Offense less serious than typical for the crime;

TABLE 9

**TYPE OF EXCEPTIONAL SENTENCES BY OFFENSE  
FY 1987**

	<u>Below the Range</u>	<u>Above the Range</u>	<u>Within the Range</u>	<u>TOTAL</u>
<u>Serious Violent*</u>				
Assault 1	2	1	0	3
Murder 1	0	9	0	9
Murder 2	5	5	0	10
Rape 1	0	5	0	5
Kidnapping 1	<u>1</u>	<u>2</u>	<u>0</u>	<u>3</u>
SUBTOTAL	8	22	0	30
<u>Violent*</u>				
Arson 1,2	9	1	2	12
Assault 2	38	26	2	66
Burglary 1	8	2	0	10
Extortion 1	1	1	0	2
Kidnapping 2	3	0	0	3
Manslaughter 1,2	4	5	0	9
Robbery 1,2	18	12	1	31
Sex	7	11	1	19
<u>Vehicular Homicide</u>	<u>19</u>	<u>4</u>	<u>0</u>	<u>23</u>
SUBTOTAL	107	62	6	175
<u>Nonviolent*</u>				
Assault 3	2	1	5	8
Attempting to Elude	0	3	0	3
Burglary 2	32	14	4	50
Criminal Mistreatment	0	2	0	2
Drug	44	13	3	60
Escape 1,2	2	1	0	3
Forgery	8	2	1	11
Hit & Run-Injury	3	0	0	3
Poss. of Control. Sub.	4	4	1	9
Poss. of Firearms	2	0	0	2
Poss. Stolen Property	0	2	1	3
Promoting Prostitution	1	1	0	2
Sex	15	9	1	25
Take Motor Veh.w/o Per	1	1	0	2
Theft	8	16	1	25
Vehicular Assault	2	0	0	2
<u>Other</u>	<u>2</u>	<u>3</u>	<u>0</u>	<u>5</u>
SUBTOTAL	126	72	17	215
TOTAL - ALL OFFENDERS	<u>241</u>	<u>156</u>	<u>23</u>	<u>420</u>

\*Includes attempts

- No prior convictions or they are remote in time;
- Defendant's rehabilitation or treatment;
- Defendant has decreased capacity to appreciate wrongfulness of his conduct;
- Victim's role in the crime;
- Defendant assisted law enforcement or agreed to help in prosecution of co-defendant;
- Prison would be detrimental;
- Defendant is addressing psychological or alcohol problems;
- Defendant's age; and
- Defendant's physical or mental condition.

The most common reasons stated when imposing an aggravated sentence were:

- Victim was vulnerable;
- Seriousness of the offense;
- Crime was deliberately cruel;
- Offense involved multiple victims or multiple incidents per victim;
- Defendant used a position of trust; and
- Defendant used sophisticated/well-planned methods.

A complete list of aggravating and mitigating exceptional sentence reasons is presented in Appendix E.

Another way of examining the effects of exceptional sentences is the extent to which they are used to impose dispositional departures (a departure imposing a prison sentence when the presumptive sentence is a jail term, or vice versa). For persons receiving an exceptional sentence, Table 10 compares the guideline presumptive disposition (jail or prison) with the actual sentence imposed.

**TABLE 10**  
**EXCEPTIONAL SENTENCES AFFECTING**  
**JAIL OR PRISON COMMITMENT**

<u>Presumptive Sentence</u>	<u>Actual Sentence</u>		
	<u>Nonprison</u>	<u>Prison</u>	<u>Total</u>
Nonprison	120	45	164
<u>Prison</u>	<u>138</u>	<u>115</u>	<u>254</u>
TOTAL	258	160	418

NOTE: Prison includes sentences served at a state hospital.

This table excludes 2 offenders with a standard range overlapping prison and jail dispositions (e.g., 11.25 to 15 months for Attempted Burglary 1).

Table 10 documents 183 dispositional departures as the result of exceptional sentences (45 + 138). Of these departures, 75 percent were mitigated departures for persons with a presumptive prison sentence which imposed a shorter length of confinement to be served at the local level.

Two findings suggest exceptional sentences have primarily been used in the direction of leniency: (1) more shift from prison to nonprison (138 cases of 183 that shifted) and (2) more exceptional sentences below the range (241) than above (156). However, upward departures are typically much larger than mitigated departures (see Table 11).

Table 11 shows that although aggravated departures are less frequent, their length is four and one-half times greater than the length of the average mitigated departure. For exceptional sentences, the only durational limits are 0 (no incarceration) at one extreme, and at the other extreme, the limit is the statutory maximum (20 years to life for Class A felonies, 10 years for Class B felonies, and 5 years for Class C felonies). The guideline range for most felonies is substantially below the statutory maximum. For example, the standard range for Forgery is 0 to 60 days, whereas the statutory maximum is 5 years.

**TABLE 11**  
**EXCEPTIONAL SENTENCE DEPARTURE LENGTHS**

	<u>Number of Cases</u>	<u>Average Sentence</u>	<u>Average Standard Range</u>	<u>Average Departure Length</u>
Above the Range	156	88.1 mo.	36.4 to 50.0 mo.	+38.1 mo.
Below the Range	241	10.1 mo.	18.3 to 24.9 mo.	- 8.2 mo.
Within the Range	23	10.4 mo.	8.7 to 15.7 mo.	n/a

Thus to some degree, the frequency of mitigated departures is offset by the magnitude of aggravated departures. The net effect can be understood by examining the "bottom line" --the degree to which exceptional sentences affect the prison or jail felony populations. The effects of exceptional sentences were estimated by comparing the actual sentence imposed with the nearest sentence that could have been imposed without deviating from the standard sentencing range. For aggravated sentences, the actual sentence was compared to the high end of the sentencing range. For mitigated sentences, the actual sentence was compared to the low end of the sentencing range. Figure 3 details the effects of exceptional sentences on the average daily population of state prisons. As can be seen from this chart, the long-term effect of exceptional sentences is to add to the state prison population levels. However, there is an initial reduction to the prison population; the additive impact of exceptional sentences will not be seen until 12 to 19 years into the future (depending on the amount of good time reduction that will be earned).

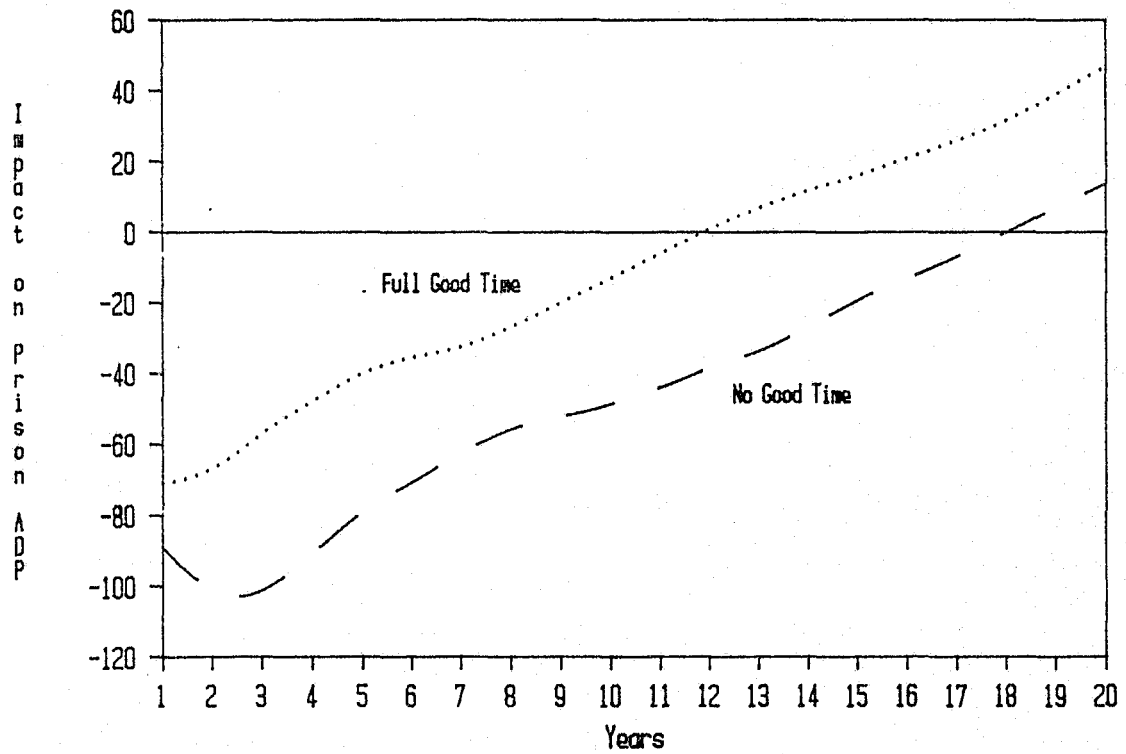
This complicated impact of exceptional sentences occurs because the effects of downward departures are experienced immediately (if a nonprison sentence is given to someone with a presumptive prison disposition) or very soon. On the other hand, the impact of aggravated departures is delayed because a length of incarceration equal to the high end of the standard range has to be served first. This point is clarified in Table 11 where the average length of a mitigated sentence is identified as 10.1 months, while the average length of an aggravated sentence is 88.1 months.

The effect of exceptional sentences on the felony jail population is more immediate because jail sentences do not exceed one year. The net effect of exceptional sentences is to add 39 to 59 persons to the average daily jail population (state-wide), depending on good time reductions.

FIGURE 3

# EXCEPTIONAL SENTENCE IMPACT ON PRISONS

FY 1997 — Next 20 Years



### G. Nonstandard Sentences

The Commission collects data on sentences which did not conform in one or more ways to the sentencing standards, but were not labeled exceptional sentences. Such sentences may result from clerical errors, incomplete understanding of the applicable sentencing factors, or an interpretation of the law that differs from the Commission's understanding.

There were 670 nonstandard sentences recorded in FY 1987 (5.8% of all convictions). Only 152 of these resulted in confinement outside the standard range (1.3% of all convictions). These nonstandard sentences are summarized in Table 12.

**TABLE 12**

**REASONS FOR NONSTANDARD SENTENCES**

Treatment ordered when offender was not eligible	543
Confinement outside the standard range	152
Community service on a violent offense	58
Excess community supervision	35
First-Time Offender Waiver, over 90 days incarceration	29
First-Time Offender Waiver used with criminal history	12
First-Time Offender Waiver used, not eligible -- other	10
Consecutive sentence	4
Other	18

Note: The total exceeds 670 because some sentences were nonstandard in multiple ways.

The most common nonstandard sentence condition was the imposition of treatment when the defendant was not eligible. Under the Sentencing Reform Act, treatment can be imposed only for first-time offenders or under the Special Sexual Offender Sentencing Alternative. The exact number of persons receiving such treatment orders (543) is somewhat subjective as it requires staff interpretation of the Judgment and Sentence form as to what constitutes a treatment order.

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.

## H. Variation Among Counties

One implication of sentencing reform is to reduce the county-to-county variation in sentencing. Although the structuring of sentencing discretion leads to this conclusion, significant differences among counties are still reasonable. County-to-county variation in imprisonment rates or length of sentences may accurately reflect differences in the types of crimes being committed, differences in offenders' criminal histories, and differences in the local decision to use or not use sentencing alternatives such as the First-Time Offender Waiver or the Special Sexual Offender Sentencing Alternative. These differences are reflected in Table 13 which shows the imprisonment rates for violent and nonviolent offenses for each county, and in Table 14 which displays the average sentence length for prison and nonprison sentences for each county.

The question of whether county-to-county variation in sentencing has been reduced under the Sentencing Reform Act can be addressed by comparing sentencing variation before and after implementation of the Act among counties for which we have pre-SRA 1982 baseline data. Table 15 shows the imprisonment rates for nonviolent crimes in these counties for Fiscal Years 1982 and 1987. This table reflects a range of 20 percentage points in county-to-county imprisonment rates FY 1982 (3.6% to 23.1%). In 1987, the range of imprisonment rates among counties was only 15 percentage points (5.3% to 20.6%).

When the statistical measure of variance was computed, it showed that the FY 1987 county-to-county variance was only 44 percent of the FY 1982 variance (.001438/.003252). It is interesting to note that despite the SRA's emphasis on alternatives to incarceration for nonviolent offenses, six of the seventeen counties listed in Table 15 actually show an increase in the imprisonment rate (although the increase was slight in three counties).

Table 16 shows county-to-county variation in imprisonment rates for violent offenses in FY 1982 and FY 1987 (counties with small numbers of violent convictions in 1982 or 1987 are omitted). This table also reflects a reduction in imprisonment rate variation with a 24 percentage point range in FY 1982 (34.8% to 58.8%) and a 20.5 percentage point range in FY 1987 (52.8% to 73.3%). When the statistical measure of variance is computed, the FY 1987 county-to-county variance was only 70 percent of the FY 1982 variance (.003555/.005070). Consistent with the intent of the Sentencing Reform Act to emphasize total confinement for violent offenders, the imprisonment rate for violent offenses increased in eight of the nine counties listed in Table 16.

Tables 17 and 18 document changes in average sentence length for nonprison and prison sentences. Because exceptional sentences can greatly skew the averages, only counties from the FY 1982 sample with 50 or more convictions in FY 1987 are

TABLE 13

## IMPRISONMENT RATES BY COUNTY

	VIOLENT		NONVIOLENT		ALL OFFENSES	
	% to Prison	Number Convicted	% to Prison	Number Convicted	% to Prison	Number Convicted
ADAMS	40.0%	5	2.7%	37	7.1%	42
ASOTIN	75.0%	4	0.0%	18	13.6%	22
BENTON	53.1%	32	14.0%	344	17.3%	376
CHELAN	45.5%	22	9.7%	186	13.5%	208
CLALLAM	64.3%	14	6.7%	45	20.3%	59
CLARK	73.3%	60	8.3%	447	16.0%	507
COLUMBIA	50.0%	2	9.1%	11	15.4%	13
COWLITZ	51.7%	29	11.5%	348	14.6%	377
DOUGLAS	55.6%	9	12.3%	57	18.2%	66
FERRY	50.0%	2	0.0%	17	5.3%	19
FRANKLIN	58.5%	41	20.6%	228	26.4%	269
GARFIELD	100.0%	1	27.3%	11	33.3%	12
GRANT	50.0%	12	5.3%	113	9.6%	125
GRAYS HARBOR	71.4%	7	17.3%	156	19.6%	163
ISLAND	71.4%	7	8.1%	37	18.2%	44
JEFFERSON	100.0%	1	8.3%	48	10.2%	49
KING	59.6%	549	11.6%	2814	19.4%	3363
KITSAP	59.3%	54	11.6%	302	18.8%	356
KITTITAS	66.7%	6	23.9%	46	28.8%	52
Klickitat	100.0%	2	10.3%	39	14.6%	41
LEWIS	80.0%	20	13.3%	165	20.5%	185
LINCOLN	n/a	0	5.6%	18	5.6%	18
MASON	62.5%	8	7.4%	95	11.7%	103
OKANOGAN	76.9%	13	4.4%	91	13.5%	104
PACIFIC	75.0%	4	13.6%	44	18.8%	48
PEND ORELLE	100.0%	1	10.0%	10	18.2%	11
PIERCE	61.9%	189	9.4%	1209	16.5%	1398
SAN JUAN	n/a	0	0.0%	8	0.0%	8
SKAGIT	71.4%	21	9.2%	131	17.8%	152
SKAMANIA	100.0%	2	4.0%	25	11.1%	27
SNOHOMISH	54.7%	128	12.4%	623	19.6%	751
SPOKANE	52.8%	89	5.7%	630	11.5%	719
STEVENS	100.0%	1	2.9%	68	4.3%	69
THURSTON	55.3%	38	6.9%	347	11.7%	385
WAHIAKUM	0.0%	1	0.0%	4	0.0%	5
WALLA WALLA	37.5%	8	8.3%	145	9.8%	153
WHATCOM	52.4%	21	6.9%	247	10.4%	268
WHITMAN	33.3%	3	0.0%	32	2.9%	35
YAKIMA	54.5%	99	12.5%	809	17.1%	908
TOTAL	59.2%	1505	10.6%	10005	16.9%	11510

**TABLE 14**  
**MEAN SENTENCE LENGTH BY COUNTY**

	NONPRISON		PRISON		TOTAL	
	Mean Sentence (Months)	Number Convicted	Mean Sentence (Months)	Number Convicted	Mean Sentence (Months)	Number Convicted
ADAMS	1.58	39	29.00	3	3.54	42
ASOTIN	3.63	19	20.33	3	5.91	22
BENTON	2.59	311	27.89	65	6.96	376
CHELAN	2.18	180	41.57	28	7.49	208
CLALLAM	3.27	47	64.92	12	15.81	59
CLARK	2.49	426	44.04	79	8.99	505
COLUMBIA	1.34	11	15.00	2	3.45	13
COWLITZ	2.31	322	26.82	55	5.88	377
DOUGLAS	2.19	54	34.84	12	8.12	66
FERRY	4.14	18	50.00	1	6.56	19
FRANKLIN	3.05	198	34.04	71	11.23	269
GARFIELD	0.65	8	13.77	4	5.02	12
GRANT	2.19	113	90.71	12	10.69	125
GRAYS HARBOR	2.96	131	33.56	32	8.97	163
ISLAND	3.21	36	48.75	8	11.49	44
JEFFERSON	3.21	44	30.61	5	6.01	49
KING	2.83	2709	39.27	652	9.90	3361
KITSAP	2.48	289	39.26	67	9.40	356
KITTITAS	2.89	37	31.07	15	11.01	52
KLICKITAT	1.52	35	34.17	6	6.29	41
LEWIS	2.28	147	84.03	38	19.07	185
LINCOLN	1.92	17	17.00	1	2.76	18
MASON	2.74	91	103.42	12	14.47	103
OKANOGAN	2.23	90	25.67	12	4.98	102
PACIFIC	2.53	39	69.33	9	15.06	48
PEND ORIELLE	1.54	9	24.50	2	5.71	11
PIERCE	2.37	1167	47.21	230	9.76	1397
SAN JUAN	2.16	8	0.00	0	2.16	8
SKAGIT	2.69	125	37.19	27	8.82	152
SKAMANIA	2.22	24	22.00	2	3.74	26
SNOHOMISH	2.42	604	41.66	147	10.10	751
SPOKANE	2.50	636	53.85	82	8.36	718
STEVENS	2.55	66	13.68	3	3.04	69
THURSTON	2.65	340	62.57	44	9.52	384
WAHKIAKUM	3.68	5	0.00	0	3.68	5
WALLA WALLA	2.18	138	17.00	15	3.63	153
WHATCOM	2.33	240	32.75	28	5.51	268
WHITMAN	4.39	34	84.00	1	9.52	35
YAKIMA	2.40	753	31.05	155	7.29	908
TOTAL	2.57	9,560	41.38	1,940	9.12	11,500

NOTE: Life terms are omitted.

**TABLE 15****IMPRISONMENT RATES FOR NONVIOLENT OFFENSES BY COUNTY  
FY 1982 v. FY 1987**

<u>County</u>	<u>FY 1982</u>	<u>FY 1987</u>
Benton	9.7%	14.0%
Clallam	12.5%	6.7%
Clark	21.5%	8.3%
Franklin	19.3%	20.6%
Jefferson	7.4%	8.3%
Grant	23.1%	5.3%
King	11.4%	11.6%
Kitsap	8.5%	11.6%
Lewis	21.0%	13.3%
Mason	11.1%	7.4%
Pacific	20.7%	13.6%
Skagit	17.9%	9.2%
Snohomish	13.7%	12.4%
Spokane	9.4%	5.7%
Thurston	11.0%	6.9%
Walla Walla	3.6%	8.3%
Yakima	19.4%	12.5%

**TABLE 16****IMPRISONMENT RATES FOR VIOLENT OFFENSES BY COUNTY  
FY 1982 v. FY 1987**

<u>County</u>	<u>FY 1982</u>	<u>FY 1987</u>
Benton	52.8%	53.1%
Clark	58.8%	73.3%
Franklin	48.1%	58.5%
King	49.4%	59.6%
Kitsap	57.8%	59.3%
Snohomish	48.8%	54.7%
Spokane	34.8%	52.8%
Thurston	58.5%	55.3%
Yakima	47.5%	54.5%

TABLE 17

**LENGTH OF NONPRISON SENTENCES BY COUNTY  
FY 1982 v. FY 1987**

<u>County</u>	<u>Number Convicted</u>	<u>FY 1987</u>		<u>FY 1982 Average</u>
		<u>Full Good Time</u>	<u>No Good Time</u>	
Benton	311	1.73 -	2.59	0.72
Clark	426	1.66 -	2.49	1.38
Franklin	198	2.03 -	3.05	1.87
Grant	113	1.46 -	2.19	1.40
King	2709	1.89 -	2.83	1.89
Kitsap	289	1.65 -	2.48	0.86
Lewis	147	1.52 -	2.28	0.87
Mason	91	1.83 -	2.74	1.62
Skagit	125	1.79 -	2.69	1.59
Snohomish	604	1.61 -	2.42	1.60
Spokane	636	1.67 -	2.50	2.61
Thurston	340	1.77 -	2.65	1.30
Walla Walla	138	1.45 -	2.18	1.03
Yakima	753	1.60 -	2.40	1.18

NOTE: Sentence length is given in months.

Only those counties from the FY 1982 study having 50 or more convictions in FY 1987 are included in this table.

**TABLE 18**  
**LENGTH OF PRISON SENTENCES BY COUNTY**  
**FY 1982 v. FY 1987**

<u>County</u>	<u>Number</u> <u>Convicted</u>	<u>FY 1987</u>			<u>FY 1982</u> <u>Average</u>
		<u>Full</u> <u>Good Time</u>		<u>No</u> <u>Good Time</u>	
Benton	65	18.6	-	27.9	27.9
Clark	79	29.4	-	44.0	33.0
Franklin	71	22.7	-	34.0	29.7
King	652	26.2	-	39.3	40.9
Kitsap	67	26.2	-	39.3	42.3
Snohomish	147	27.8	-	41.7	47.7
Spokane	82	35.9	-	53.8	34.1
Yakima	155	20.7	-	31.0	28.5

NOTE: Sentence length is given in months.

Only those counties from the FY 1982 study having 50 or more convictions in FY 1987 are included in this table.

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

included in these tables. These tables evidence a decrease in the variability of county-to-county sentences length, both for prison and nonprison sentences. This increase in sentencing consistency is most evident in the average sentences for nonprison offenses.

One of the major factors influencing county-to-county variation in sentencing is the extent to which sentencing judges use alternative sentences. Table 19 presents the rates at which counties issue exceptional sentences, and the rates for use of the First-Time Offender Waiver and the Special Sexual Offender Sentencing Alternative. Table 19 evidences considerable county-to-county variability in the use of sentencing alternatives. Even when smaller counties are not considered (less than 50 convictions), the exceptional sentence rate varies from 0 to 12 percent, the First-Time Offender Waiver rate varies from 0 to 12 percent, and the Special Sexual Offender Sentencing Alternative rate varies from 0 to 7 percent. When all of these options are combined, the rate of alternative sentences range from 5.3 percent (8 of 152 sentences) in Skagit County to 19.7 percent (70 of 356 sentences) in Kitsap County.

TABLE 19

## ALTERNATIVE SENTENCE RATES BY COUNTY

	Exceptional Sentence		First-Time Offender Departure*		SSOSA**		Total Alternative Sentences		TOTAL CONVICTIONS
	No.	pct.	No.	pct.	No.	pct.	No.	pct.	No.
Adams	1	2.4%	6	14.3%	3	7.1%	10	23.8%	42
Asotin	0	0.0%	1	4.5%	3	13.6%	4	18.2%	22
Benton	10	2.7%	24	6.4%	9	2.4%	43	11.4%	376
Chelan	2	1.0%	12	5.8%	11	5.3%	25	12.0%	208
Clallam	7	11.9%	3	5.1%	1	1.7%	11	18.6%	59
Clark	20	3.9%	18	3.6%	23	4.5%	61	12.0%	507
Columbia	0	0.0%	3	23.1%	0	0.0%	3	23.1%	13
Cowlitz	15	4.0%	12	3.2%	18	4.8%	45	11.9%	377
Douglas	2	3.0%	5	7.6%	2	3.0%	9	13.6%	66
Ferry	3	15.8%	2	10.5%	4	21.1%	9	47.4%	19
Franklin	8	3.0%	10	3.7%	0	0.0%	18	6.7%	269
Garfield	2	16.7%	0	0.0%	1	8.3%	3	25.0%	12
Grant	2	1.6%	8	6.4%	3	2.4%	13	10.4%	125
Grays Harbor	6	3.7%	7	4.3%	6	3.7%	19	11.7%	163
Island	3	6.8%	2	4.5%	1	2.3%	6	13.6%	44
Jefferson	3	6.1%	0	0.0%	2	4.1%	5	10.2%	49
King	124	3.7%	156	4.6%	78	2.3%	358	10.6%	3363
Kitsap	28	7.9%	17	4.8%	25	7.0%	70	19.7%	356
Kittitas	4	7.7%	0	0.0%	0	0.0%	4	7.7%	52
Klickitat	1	2.4%	0	0.0%	2	4.9%	3	7.3%	41
Lewis	14	7.6%	6	3.2%	11	5.9%	31	16.8%	185
Lincoln	0	0.0%	1	5.6%	1	5.6%	2	11.1%	18
Mason	6	5.8%	6	5.8%	6	5.8%	18	17.5%	103
Okanogan	4	3.8%	3	2.9%	1	1.0%	8	7.7%	104
Pacific	1	2.1%	6	12.5%	1	2.1%	8	16.7%	48
Pend Orielle	0	0.0%	0	0.0%	0	0.0%	0	0.0%	11
Pierce	35	2.5%	56	4.0%	47	3.4%	138	9.9%	1398
San Juan	0	0.0%	0	0.0%	0	0.0%	0	0.0%	8
Skagit	2	1.3%	0	0.0%	6	3.9%	8	5.3%	152
Skamania	1	3.7%	7	25.9%	3	11.1%	11	40.7%	27
Snohomish	33	4.4%	56	7.5%	24	3.2%	113	15.0%	751
Spokane	37	5.1%	17	2.4%	32	4.5%	86	12.0%	719
Stevens	0	0.0%	2	2.9%	3	4.3%	5	7.2%	69
Thurston	9	2.3%	24	6.2%	22	5.7%	55	14.3%	385
Wahkiakum	1	20.0%	0	0.0%	1	20.0%	2	40.0%	5
Walla Walla	4	2.6%	19	12.4%	6	3.9%	29	19.0%	153
Whatcom	7	2.6%	20	7.5%	14	5.2%	41	15.3%	268
Whitman	5	14.3%	8	22.9%	3	8.6%	16	45.7%	35
Yakima	20	2.2%	22	2.4%	16	1.8%	58	6.4%	908
STATE TOTAL	420	3.6%	539	4.7%	389	3.4%	1348	11.7%	11510

\* First-Time Offender Waivers resulting in a sentence outside the standard range.

\*\* Special Sexual Offender Sentencing Alternative

## I. Sentencing Options

Determinate sentences imposed under the Sentencing Reform Act may be categorized as standard, alternative, or exceptional sentences. Alternative sentences consist of (1) sentences imposed under the First-Time Offender Waiver; (2) sentences imposed under the Special Sexual Offender Sentencing Alternative; or (3) sex offender sentences to be served at Eastern or Western State Hospital. The proportion of the total convicted felony population sentenced to each of these options is illustrated in Figure 4.

1. First-Time Offender Waiver: A first-time offender is defined by the Sentencing Reform Act as:

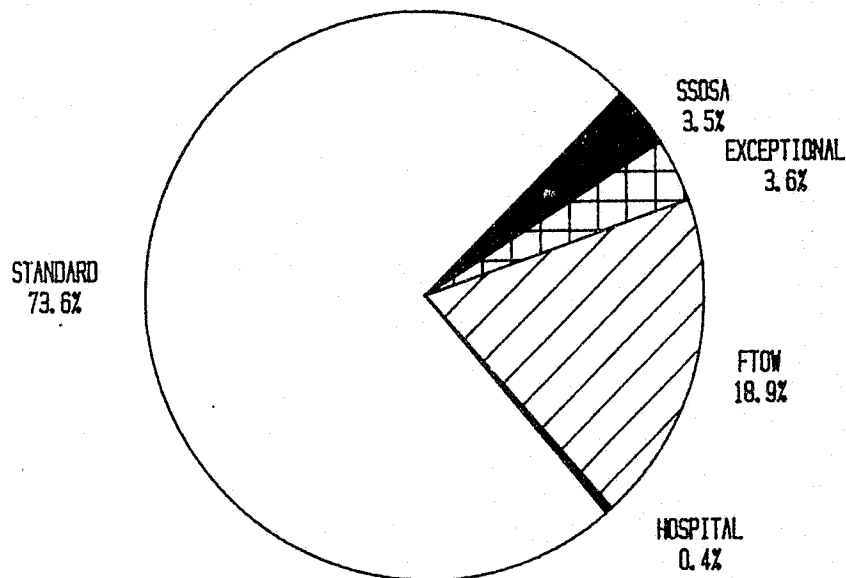
Any person who is convicted of a felony not classified as a violent offense or a sex offense under this chapter ... who previously has never been convicted of a felony in this state, federal court, or another state, and who has never participated in a program of deferred prosecution for a felony offense. (RCW 9.94A.030(15))

Offenders meeting the definition of a First-Time Offender may, of course, be given a standard sentence. However, for these offenders, the sentencing judge also has discretion to waive the guideline range and impose a sentence which can include one or more 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<sup>16</sup>. Often, the 0 to 90 day jail sentence imposed under this waiver also falls within the standard sentencing range. In these cases, the benefit of the First-Time Offender Waiver is to permit a broader range of sentence conditions than would be otherwise available.

Of the 11,510 felony convictions in FY 1987, 5,440 offenders (47%) met the eligibility criteria for a First-Time Offender Waiver. Of those 5,440 eligible offenders, 2,176 offenders (40%) actually received a sentence under this alternative. These figures are presented in Figure 5. Both eligibility for the First-Time Offender Waiver and the decision to use that alternative depend on the type of crime the offender has committed (see Table 20). For example, nonviolent drug offenders are more likely to be eligible for this option (773 of 1049 offenders, 74%) than offenders convicted of Burglary 2 (1002 of 2258 offenders, 44%). For those offenders who qualify for a First-Time Offender Waiver, nonviolent drug offenders are also more likely to receive such an alternative sentence (398 of 773 offenders, 51%) than persons convicted of Burglary 2 (401 of 1002 offenders, 40%).

It is difficult to compare First-Time Offender Waiver usage rates between 1985 and 1987 because the Commission changed its procedures for identifying a waiver. In CY 1985, a case was recorded as a First-Time Offender Waiver sentence if it was so

**FIGURE 4**  
**11,510 SRA SENTENCES**



**Standard:** A sentence within the standard sentence range.

**FTOW:** First-Time Offender Waiver. 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 5

# FIRST-TIME OFFENDER WAIVER USAGE

(All Offenders)

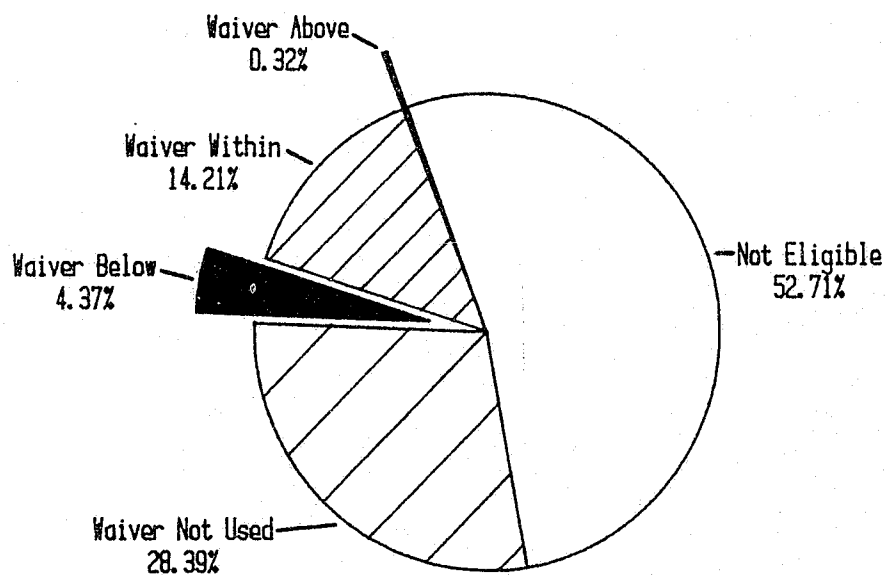


TABLE 20

## FIRST-TIME OFFENDER WAIVER BY TYPE OF CRIME

<u>Crime Type:</u>	<u>Eligible Offenders</u>	<u>Total Population</u>	<u>Percent Eligible</u>
Burglary 2	1,002	2,258	44.4%
Felony Traffic	310	449	69.0%
Nonviolent Drug	773	1,049	73.7%
Other Nonviolent	3,095	5,755	53.8%
<u>Unranked</u>	<u>85</u>	<u>120</u>	<u>70.8%</u>
Total (Nonviolent)	5,265	9,631	54.7%

<u>Crime Type:</u>	<u>Waiver Used</u>	<u>Eligible Offenders</u>	<u>Percent</u>
Burglary 2	401	1,002	40.0%
Felony Traffic	111	310	35.8%
Nonviolent Drug	398	773	51.5%
Other Nonviolent	1,240	3,095	40.1%
<u>Unranked</u>	<u>23</u>	<u>85</u>	<u>27.1%</u>
Total	2,173	5,265	41.3%

NOTE: Escape offenses are omitted from the above table because it is unclear how many persons convicted of an escape were eligible for a waiver<sup>17</sup>.

indicated on the Judgment and Sentence form (regardless of the sentence and conditions imposed). In FY 1987, a case was identified as a First-Time Offender Waiver sentence if (1) the person appeared eligible (the Judgment and Sentence form listed no criminal history and the current offense was nonviolent and not a sex offense); and (2) the offender received a sentence requiring the use of a First-Time Offender Waiver (a sentence of 0 to 90 days outside the standard range, a sentence condition of treatment or affirmative behavior, or community supervision exceeding 12 months). If an offender received a sentence within the standard range, community supervision not exceeding 12 months, and standard sentence conditions, then that case was recorded as a standard sentence even if the form stated otherwise.

The First-Time Offender Waiver was imposed in forty-one percent of the eligible cases (2173 waivers in 5265 eligible cases). However, seventy-five percent of these 2173 First-Time Offender sentences included confinement within the standard range for that offense (see Table 21).

**TABLE 21**

**FIRST-TIME OFFENDER WAIVER COMPARED TO STANDARD RANGE**

<u>Number</u>	<u>Comparison to Standard Range</u>	<u>Community Supervision</u>	
		<u>12 Months or less</u>	<u>Over 12 Months</u>
501	Below the Standard Range (23%):	153	348
1,635	Within the Standard Range (75%):	424	1,211
<u>37</u>	<u>Above the Standard Range ( 2%):</u>	<u>7</u>	<u>30</u>
2,173	Total First-Time Offender Waivers	584	1,589

NOTE: Three escape offenses sentenced under the First-Time Offender Waiver are omitted from this table.

The more common uses of the First-Time Offender Waiver are to impose community supervision exceeding 12 months (73% of the waivers) and/or to impose treatment conditions (61% of the waivers). There were 424 offenders who received a First-Time Offender Waiver with a sentence within the standard range and community supervision not exceeding 12 months. Of these 424 sentences, ninety-six percent had treatment as a sentence condition.

The Commission began tracking all special conditions of supervision in February, 1988. Future reports will include data on this topic.

The use of the First-Time Offender Waiver to impose a sentence below the standard range has not changed substantially since 1985. In CY 1985, 5.5 percent of all nonviolent cases received a sentence below the standard range (367 out of 6250 cases). In FY 1987, 5.2 percent of nonviolent cases received this downward departure (501 out of 9631 cases).

Another interesting point of comparison between CY 1985 and FY 1987 is the use of the First-Time Offender Waiver to impose a jail sentence (or no confinement) for an offense with a presumptive prison distribution. In CY 1985, 870 nonviolent SRA offenders had a presumptive prison sentence but 14.9 percent of these offenders (130 people) remained at the local level as a result of a First-Time Offender Waiver. In FY 1987, this percentage dropped slightly to 13.8 percent (217 of 1,361 offenders).

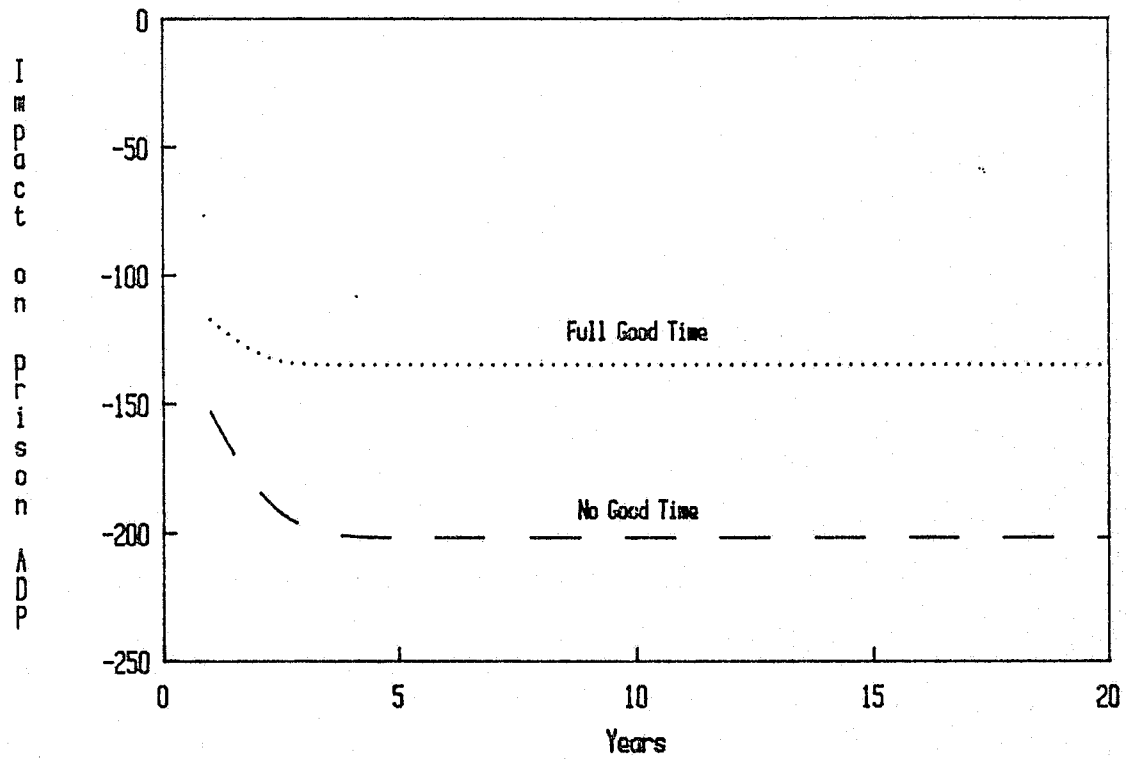
The use of the First-Time Offender Waiver to divert offenders from prison has an obvious impact on prison and local jail populations. This effect at the local jail level must be balanced against the offenders with presumptive jail sentences who receive shorter sentences under the First-Time Offender Waiver. The net population effect of the First-Time Offender Waiver sentences was estimated by comparing the actual sentence imposed with the nearest sentence that could have been imposed without deviating from the standard sentencing range. Figure 6 details the effects of these waivers on the average daily population of state prisons. As can be seen from this chart, the effect of First-Time Offender Waivers is to reduce the state prison population levels by 135 to 202 persons after four years (depending on the amount of good time earned). The net effect on local jail population is to reduce the state-wide jail population by 19 to 29 offenders (depending on good time earned and granted).

2. Sexual Offender Options: The Sentencing Reform Act provides for treatment sentences for sex offenders. Fifty-one percent of the 843 sexual offenders sentenced in FY 1987 received a sentence under one of two sexual offender sentencing options. This percentage is virtually the same as in CY 1985 when 50 percent of sexual offenders were sentenced under one of the two options. Table 22 compares the sexual offender sentence dispositions for CY 1985 and FY 1987.

FIGURE 6

# FTO WAIVER IMPACT ON PRISONS

FY 1987 — Next 20 Years



**TABLE 22**  
**SEXUAL OFFENDER SENTENCE DISPOSITIONS**

	<u>FY 1987</u>	<u>CY 1985</u>
Hospital	6%	14%
SSOSA	46%	36%
Prison	34%	37%
Jail	13%	13%

One 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.<sup>18</sup> If found amenable to treatment, the sentencing judge may order a determinate sentence within the standard range for that offense 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. As Table 22 indicates, a substantially smaller percentage of sex offenders received this option in 1987 (6%) as compared to 1985 (14%). The 1987 Legislature transferred inpatient sexual offender treatment to the prison setting.<sup>19</sup> This new policy applies to persons convicted of a felony sexual offense committed after July 1, 1987. The reduced frequency with which sentencing judges used this option may reflect apprehension about the phase-out of the hospital-based sexual offender treatment programs or reluctance on the part of the treatment program to accept patients knowing that the prison system is developing its own treatment program.

The Special Sexual Offender Sentencing Alternative (SSOSA) allows the court to order a determinate sentence within the standard range, and then suspend this sentence.<sup>20</sup> If this alternative is used, the court may order up to six months in jail (not to exceed the standard range), and impose a variety of sentence conditions including inpatient and outpatient sexual offender treatment. If the offender does not comply with the sentence conditions, the suspension may be revoked and the original sentence executed.

As indicated in Table 22, the percentage of offenders sentenced under SSOSA increased from 36 percent in CY 1985 to 46 percent in FY 1987. The increased use of SSOSA takes on added significance when it is realized that the majority (82%) of SSOSA sentences are diversions from prison (320 diversions out of 389 SSOSA sentences). The impact of SSOSA sentences on state prison and local jail felon populations is estimated by comparing the actual sentence received with the nearest

sentence that could have been imposed within the standard sentencing range.

Figure 7 details the effect of SSOSA sentences at the state prison level. As this graph illustrates, the frequent use of SSOSA results in a reduction of approximately 300 to 460 inmates, depending on good time credits.

The effect of SSOSA sentences on local jails is to increase the state-wide felon population by 18 to 26 offenders, depending on good time. The reason the local impact is so small, despite the volume of offenders being diverted from prison, is that the median SSOSA jail sentence for these offenders is only 60 days -- much less than the six month maximum. In fact, 81 of these sex offenders received no jail time at all.

#### J. 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, defined as "confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, for a substantial portion of each day with the balance of the day spent in the community."<sup>21</sup> 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.

Figure 8 shows the percentage of the total sentence allowed to be served in partial confinement for offenders sentenced to one year or less. As this graph illustrates, 62 percent of the total incarceration time sentenced under the Special Sexual Offender Sentencing Alternative is allowed to be served in partial confinement. This is a significant increase over 1985 when only 42 percent of SSOSA sentences were allowed to be served as partial confinement.

The offenders with the second highest percentage of their incarceration allowed to be served as partial confinement are those receiving exceptional sentences (47%). Defendants receiving either an exceptional sentence or a SSOSA sentence are permitted a higher proportion of partial confinement than are offenders receiving a

FIGURE 7

# SSOSA IMPACT ON PRISONS

FY 1987 -- Next 20 Years

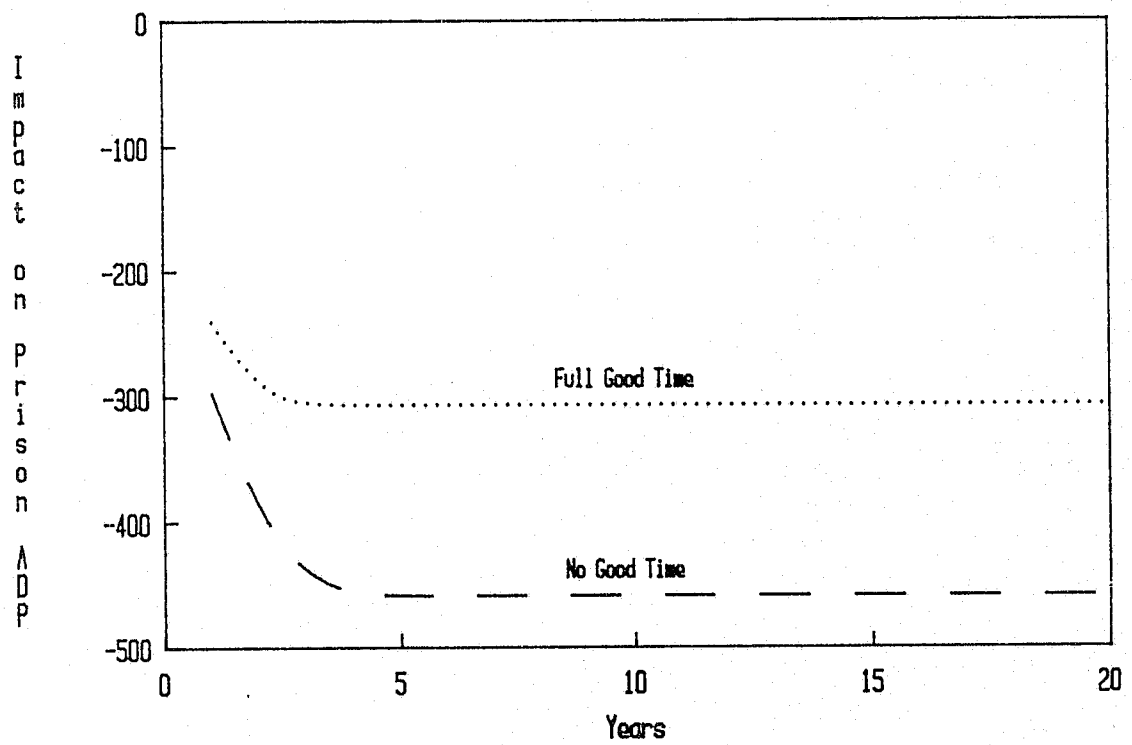
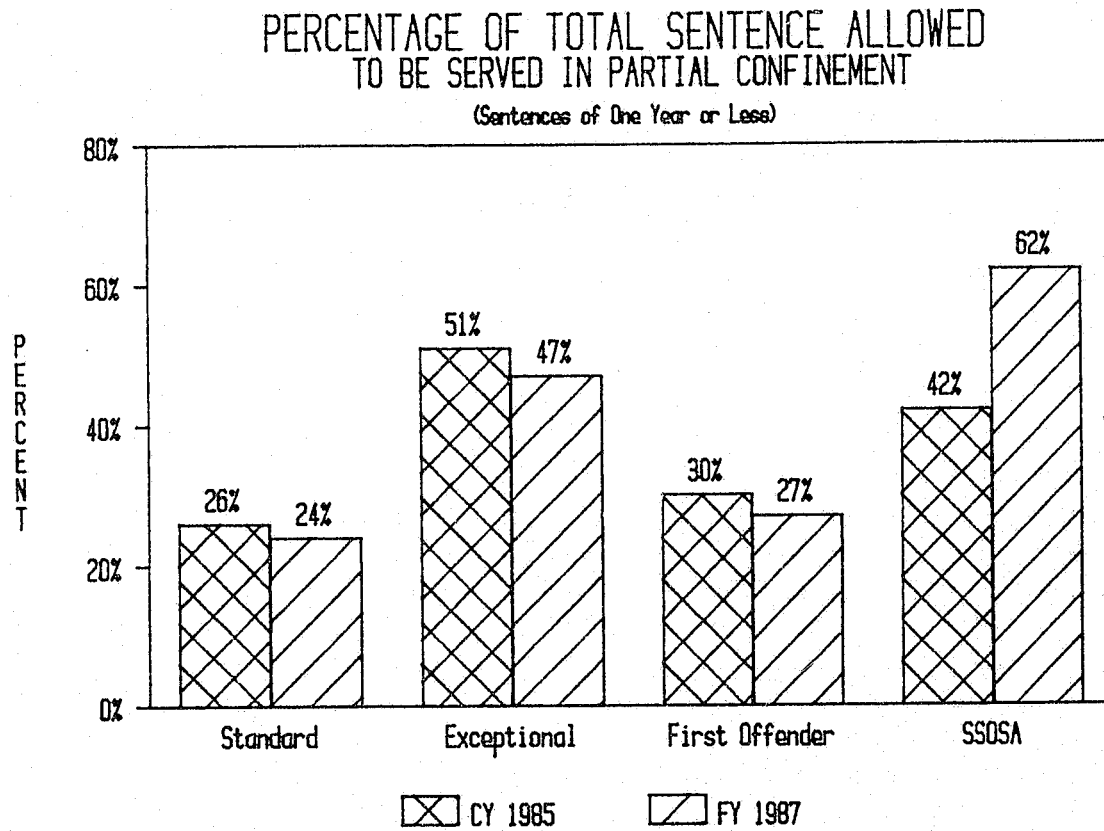


FIGURE 8



standard sentence (24%) or a sentence under the First-Time Offender Waiver (27%).

The average amount of a jail sentence permitted to be served in partial confinement is summarized in Table 23 (page 45) along with other sentencing options.

2. Community Service: Persons receiving a standard sentence of one year or less may have up to 30 days of their total sentence converted to community service at the rate of 8 hours of service for each day of confinement.<sup>22</sup> Confinement sentences under the First-Time Offender Waiver or Special Sexual Offender Sentencing Alternative cannot be converted to community service in this way. For offenders sentenced under one of these two options, community service may be ordered as a sentence condition. Such community service is performed in addition to any confinement order. The SRA does not explicitly limit the amount of community service which may be ordered under these two sentencing options.

Overall, in FY 1987 community service was ordered in 24 percent of all nonprison sentences. This was a slight decrease from the 28 percent from CY 1985. However, community service was ordered more frequently for standard sentences in 1987 (24%) than in 1985 (21%), and less frequently for SSOSA and exceptional sentences. The percentage of sentences involving community service for each sentencing option is shown in Figure 9. As this chart illustrates, community service orders are much more frequent for First-Time Offender Waivers than for other types of sentences. The more frequent use of community service conditions for first-time offenders is consistent with the intent for this to be a lenient sentence, and allows the first-time offender the opportunity to repay society without denial of liberty.

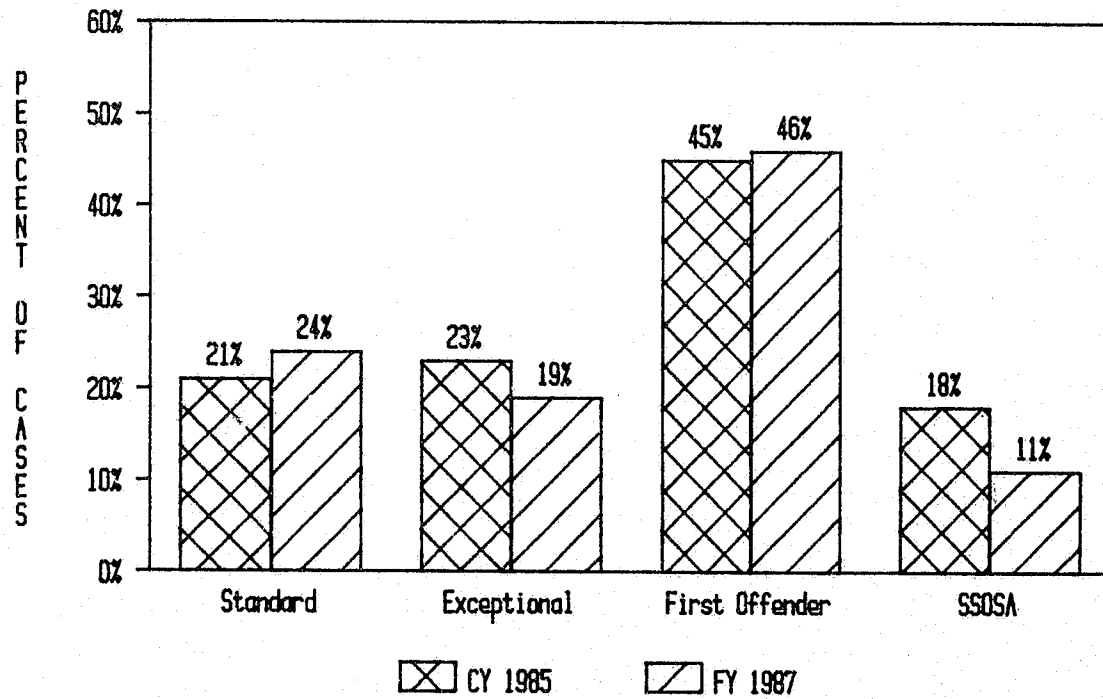
3. Community Supervision: The Sentencing Reform Act provides for court-ordered community supervision for offenders sentenced to one year or less of confinement. Persons receiving a standard sentence may be supervised for up to 12 months<sup>23</sup>. Persons receiving a sentence under the First-Time Offender Waiver<sup>24</sup> or a Special Sexual Offender Sentencing Alternative<sup>25</sup> may be supervised for up to 24 months. Community supervision for most offenders is somewhat similar to probation supervision under the prior indeterminate sentencing law, but does not carry the threat of revocation and subsequent imprisonment. The one exception is in the case of persons sentenced under the Special Sexual Offender Sentencing Alternative who can have their original determinate prison sentence imposed if they violate conditions of supervision.<sup>26</sup> All persons found guilty by the court of violating conditions of community supervision can be ordered to serve up to 60 days in jail for each violation.<sup>27</sup>

In addition to persons specifically placed on community supervision, the Department of Corrections also supervises offenders with sentences involving community service, restitution, or fines.<sup>28</sup>

FIGURE 9

## USE OF COMMUNITY SERVICE

(Nonprison Sentences)



The frequency of community supervision, by sentencing option, is shown in Figure 10 for 1985 and 1987. These numbers do not include offenders supervised for community service, restitution, or fines unless they were also ordered to community supervision. As Figure 10 shows, 82 percent of offenders receiving a standard nonprison sentence in FY 1987 were placed on community supervision, an increase from 73 percent in 1985. The lower percentage in 1985 may have been due to offenders who had a revocation of a pre-SRA probation or parole sentence at the same time as the new SRA felony conviction. In these cases, the courts usually did not order supervision on the SRA sentence.

Offenders receiving First-Time Offender Waivers receive community supervision 98 percent of the time (2146 out of 2176 waivers). Unlike 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.

Persons sentenced under the Special Sexual Offender Sentencing Alternative also receive community supervision 98 percent of the time (382 of 389 cases). Under this option, a determinate sentence imposed within 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.<sup>29</sup> Sentences under this option are similar to sentences for sexual offenses under the indeterminate sentencing system, and the high rate of community supervision ordered is consistent with that pattern.

Persons receiving an exceptional sentence of one year or less receive community supervision 87 percent of the time (227 of 260 cases). The SRA does not explicitly limit the amount of community supervision that can be imposed on exceptional sentences. However, it does provide that a term of confinement or community supervision may not exceed the statutory maximum for the crime.<sup>30</sup>

#### K. Summary of Nonprison Sentences

Average nonprison sentences under the Sentencing Reform Act are summarized in Table 23. As seen in this table, the average 90-day standard sentence in 1987 was 4 days less than the 1985 average of 94 days. Sentences under both the First-Time Offender Waiver and the Special Sexual Offender Sentencing Alternative were slightly longer in FY 1987 than in CY 1985. Average nonprison exceptional sentences changed little from 1985 to 1987.

FIGURE 10

## USE OF COMMUNITY SUPERVISION

(Nonprison Sentences)

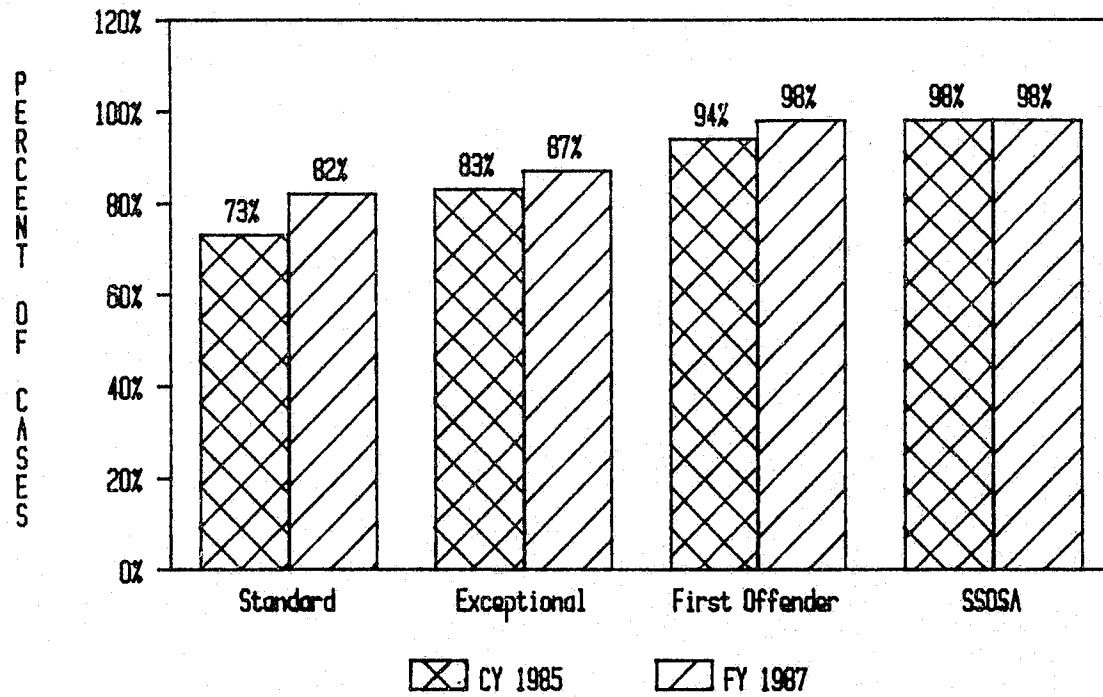


TABLE 23

## SUMMARY OF NONPRISON SENTENCES BY SENTENCING OPTION

CY 1985 v. FY 1987

(Average sentence in days)

FY 1987

<u>TYPE OF SENTENCE</u>	<u>Total Sentence</u>	<u>Total Confinement</u>	<u>Partial Confinement</u>	<u>Days Converted to Community Service</u>	<u>Additional Community Service</u>
Standard	90 =	63	22	5	n/a
FTOW	30 =	22	8	n/a	78 hours
SSOSA	75 =	29	46	n/a	21 hours
Exceptional	190 =	94	90	6	n/a

CY 1985

<u>TYPE OF SENTENCE</u>	<u>Total Sentence</u>	<u>Total Confinement</u>	<u>Partial Confinement</u>	<u>Days Converted to Community Service</u>	<u>Additional Community Service</u>
Standard	94 =	66	24	4	n/a
FTOW	26 =	18	8	n/a	72 hours
SSOSA	71 =	41	30	n/a	33 hours
Exceptional	192 =	87	98	7	n/a

FTOW: First-Time Offender Waiver

SSOSA: Special Sexual Offender Sentencing Alternative

#### IV. RATES OF DEPARTURE FROM PRESUMPTIVE SENTENCES: A COMPARISON OF WASHINGTON AND MINNESOTA

The states of Washington and Minnesota have similar sentencing guidelines systems and thus are frequently compared. One issue of particular interest has been a comparison between Washington's rate of exceptional sentences (3.6%) and Minnesota's dispositional departure rate (7.4%) or durational departure rate (7.8%).<sup>31</sup> These comparisons have led some observers to conclude that Washington's judiciary has been overly conservative in exercising its discretion to issue exceptional sentences.

However, there are important differences which must be recognized when comparing the two states. Most notably, Washington's sentencing law permits alternatives to the presumptive sentence under a First-Time Offender Waiver and a Special Sexual Offender Sentencing Alternative, and these alternatives are frequently used. Similar "nonstandard" sentences in Minnesota would require an exceptional sentence and could be appealed. Therefore, a comparison of exceptional sentence rates between Washington and Minnesota must take into account the "nonstandard" sentences permitted by law.

##### A. Guideline System Differences

There are both internal and external differences between the guideline systems used in Minnesota and Washington. Internal differences are those resulting from the grid structure, such as the number of grid cells, the width of the presumptive sentence ranges, and the factors included in establishing the presumptive range. External differences refer to the ability of the judge to issue alternative sentences (differing from the presumptive range) without having to declare an exceptional sentence. First the two guideline systems will be briefly described, then the internal and external differences will be outlined.

1. Guideline System Descriptions: Both states use a grid system wherein the rows represent offense seriousness, and the columns represent a calculated Offender Score which is an index of criminal history. (Washington's sentencing grid is presented in Appendix A, and Minnesota's in Appendix F).

Each sentencing cell in Washington's grid contains a presumptive sentencing range. Sentencing ranges are set both for prison dispositions (sentences exceeding one year) and jail dispositions. For example, the presumptive sentencing range for Second Degree Theft with an Offender Score of zero is 0 to 60 days in the county jail. In Minnesota, all felony convictions have a presumptive prison sentence. However, felony sentences can be either executed or stayed (not imposed). Stayed sentences

may be either suspended or deferred sentences. Minnesota's guidelines also contain a presumption of whether a sentence is executed or stayed. For example, a conviction for Residential Burglary carries a presumptive stayed sentence of 18 months. In order to execute the sentence (send the offender to prison), an exceptional sentence is required. Persons receiving a stayed prison sentence (approximately 80% of all convictions) may receive up to one year in jail.

In Minnesota, only prison sentences which are presumptively executed have sentencing ranges. Sentences which are presumptively stayed contain only a single point (e.g., 18 months for residential burglary). Any departure from that sentence (e.g., 1 day more or less than 18 months) requires an exceptional sentence.

2. Internal System Differences: The sentencing ranges for Minnesota's presumptively executed prison sentences are quite narrow compared to Washington's ranges. In Minnesota, the average low end of the range is only 90 percent of the high end of the range. In Washington's grid, the average low end of the range (for prison sentences) is 75 percent of the high end of the range. For example, Minnesota's grid has a cell with a midpoint of 30 months and a range of 29 to 31 months. Washington's grid cell with a midpoint of 30 months has a range of 26 to 34 months. Thus for the same midpoint, Washington's cell has a range of 9 months compared to a Minnesota range of 3 months.

Washington has more offense Seriousness Levels (13, not counting life imprisonment or death sentences at Level 14) than Minnesota (10) and more levels of Offender Score (10) than Minnesota (7). Thus, the Washington grid contains 130 cells (combinations of Seriousness Levels and Offender Score) whereas the Minnesota grid contains 70 cells. Each cell prescribes a presumptive sentence or sentence range for convictions falling within that cell.




In Minnesota, an offense committed while armed with a deadly weapon may carry a mandatory minimum which exceeds the presumptive sentencing range. In that case, the mandatory minimum takes precedence. In Washington, an enhancement (12, 18, or 24 months) is added to the entire presumptive sentencing range for certain offenses if they are committed with a deadly weapon. Because of this additional penalty, 11 additional Seriousness Levels exist in Washington although they are not displayed on the published grid. Thus, Washington effectively has 24 (13 + 11) Seriousness Levels yielding 240 cells. Washington's 240 sentencing cells embody finer offense and history distinctions than do Minnesota's 70 sentencing cells. These sentencing cells are graphically illustrated in Figure 11.

There are also subtle differences between Washington and Minnesota in the calculation of Offender Scores. First, the Washington system specifies that certain prior convictions receive double or triple points if the current offense is of a similar

FIGURE 11

MINNESOTA AND WASHINGTON SENTENCING GRID CELLS

		MINNESOTA CRIMINAL HISTORY SCORE							
		0	1	2	3	4	5	6+	
O F F E N S E  S E R I O U S N E S S	I								
	II								
	III								
	IV								
	V								
	VI								
	VII								
	VIII								
	IX								
	X								

	Stayed Sentence (0 - 12 months jail)
	Presumptive Jail Sentence
	Executed Sentence (Prison disposition)

Ranges with  
enhancement  
for weapons

		WASHINGTON CRIMINAL HISTORY SCORE										
		0	1	2	3	4	5	6	7	8	9+	
O F F E N S E  S E R I O U S N E S S	XIII											
	XII											
	XI											
	X											
	IX											
	VIII											
	VII											
	VI											
	V											
	IV											
	III											
	II											
	I											
	+24 X											
	+12 X											
	+24 IX											
	+12 IX											
	+12 VIII											
	+18 VII											
	+12 VI											
	+12 V											
	+12 IV											
	+12 III											
	+12 II											

type. For example, if the current offense is a violent offense, other violent offenses count two points. A similar double-counting rule exists for burglary and drug offenses. In these cases, multiple convictions (either prior or current) would generate Offender Score points more rapidly in Washington than in Minnesota. The only analogous procedure in Minnesota occurs when an offender is convicted for the second time for selling drugs or burglary of an occupied dwelling. These two situations generate a presumptive executed (prison) sentence despite being on the stayed sentence side of the disposition line on the sentencing grid. Washington's rule applies to all burglaries, drug offenses, and violent offenses and thus affects many more sentencing situations than Minnesota.

The second difference in the Offender Score calculations is in the scoring of multiple current convictions. In Washington, the order in which the offenses were committed is irrelevant. In Minnesota, only offenses committed prior to the offense being scored may be considered. For example, consider the case in which an offender committed an assault and later committed a theft. In Washington, both offenses would have an Offender Score of 1. In Minnesota, the assault would have an Offender Score of 0 and the theft would have an Offender Score of 1. Thus in Minnesota, two offenders committing the same series of offenses (but in different order) may have different presumptive sentences. To the extent this is perceived as undesirable disparity, the use of guideline departures may be increased.

3. External System Differences: Washington's guideline system has two frequently used alternatives to the presumptive sentencing range which do not exist in Minnesota. First, nonviolent offenders with no prior felony convictions may have the presumptive sentencing range waived, and instead receive up to 90 days in jail and other sentence conditions. Nearly half of the felony sentences are eligible for this waiver, although in many cases the presumptive range and the 0 to 90 day alternative range overlap. In Fiscal Year 1987, Washington's First-Time Offender Waiver resulted in 217 dispositional departures (a presumptive prison sentence waived and 0 to 90 days jail imposed) which was 1.9 percent of all felony convictions. These 217 dispositional departures represented 8.4 percent of all persons with a presumptive prison disposition. Also in Fiscal Year 1987, Washington's First-Time Offender Waiver resulted in 540 durational departures (sentences outside the presumptive range, including the 217 dispositional departures) which represent 4.7 percent of all felony convictions. In Minnesota, these dispositional and durational departures would have required an exceptional sentence.

Washington's second alternative to the presumptive sentencing range is the Special Sexual Offender Sentencing Alternative. Persons convicted of sex offenses (excluding First or Second Degree Rape) who have no prior felony sex convictions may have a sentence within the standard sentencing range suspended (stayed). In these cases, up to six months of jail confinement may be imposed in addition to other sentence

conditions. In Fiscal Year 1987, Washington's Special Sexual Offender Sentencing Alternative resulted in 320 dispositional departures which was 2.8 percent of all felony convictions (12.4% of all persons with a presumptive prison disposition). In Fiscal Year 1987, Washington's sentencing alternative for sex offenders resulted in 372 durational departures (most were also dispositional departures). These 372 departures amount to 3.2 percent of all convictions. In Minnesota, these dispositional and durational departures would have required an exceptional sentence.

4. Summary of System Differences: There are two categories of differences between Minnesota's and Washington's guidelines. Internal differences affect the need for an alternative sentence, and external differences affect a judge's ability to impose an alternative sentence without requiring an exceptional sentence.

One internal difference between Minnesota's and Washington's guidelines systems is the width of the sentencing ranges. Washington's wider sentencing ranges for presumptive prison cases allow a judge greater flexibility in taking nonguideline factors into consideration when sentencing an offender. This flexibility, coupled with the more numerous sentencing ranges (i.e., grid cells -- see Figure 11) reduce the need for durational departures.

A second internal difference between guideline systems is the determination of the presumptive sentencing range for certain offenses committed while armed with a deadly weapon. The Washington system stipulates that a fixed number of months be added to the entire sentencing range. The Washington policy reduces the need for durational or dispositional departures because it effectively generates a new sentencing range proportional to the seriousness of the offense.

A third internal difference is Washington's "double-counting" rule for multiple convictions of burglary, drug offenses, or violent offenses. This rule reduces the need for upward departures by factoring harsher punishment into the sentencing grid for certain multiple offenses seen as more onerous.

While the internal guideline differences reduce the need for departures in Washington, the external differences permit frequent alternative sentences without the formality of an exceptional sentence. Washington's First-Time Offender Waiver and Special Sexual Offender Sentencing Alternative result in dispositional departures for 4.7 percent of all convictions, and durational departures for 7.9 percent of all convictions that are not considered exceptional sentences.

#### B. Departure Rates

The rates presented in this section refer to departures from the presumptive sentencing grids. For Washington, this means that sentences under the First-Time

Offender Waiver and the Special Sexual Offender Sentencing Alternative are included as departures if the imposed sentence departed from the sentencing range on the grid. The Washington data below include 158 offenders sentenced outside the standard range for reasons such as clerical errors or misapplication of scoring rules. These 158 cases represent 1.4 percent of all felony convictions in FY 1987. Three-fourths of these sentences (118 cases) were downward durational departures. Not included in the Washington data are exceptional sentences which affect only nonconfinement factors such as excess community supervision or special conditions not otherwise permitted.

The Washington data cited in this section cover July 1986 to June 1987 (Fiscal Year 1987). The Minnesota data cover 1981 to 1983, (the only data published to date on Minnesota's departure rates.)<sup>32</sup>

1. *Dispositional Departures*: A dispositional departure occurs in Washington when a prison sentence is imposed in a case with a presumptive nonprison sentence or a nonprison sentence is imposed in a case with a presumptive prison sentence. In Minnesota, a dispositional departure occurs when a presumptively stayed sentence is executed, or a presumptively executed sentence is stayed (i.e., jail to prison or prison to jail). The dispositional departure rates for Washington and Minnesota are as follows:

**TABLE 24**

**DISPOSITIONAL DEPARTURES**

	<u>Aggravated</u>	<u>Mitigated</u>	<u>Total</u>
Washington (FY 1987)	0.4%	6.0%	6.4%
Minnesota (1981-1983)	3.7%	3.7%	7.4%

(An aggravated departure is a prison sentence when the standard disposition is nonprison. A mitigated departure is a nonprison sentence when the standard disposition is prison.)

This table indicates similar overall dispositional departure rates. However, Washington's departures are overwhelmingly mitigated; Minnesota's departures are evenly balanced.

One possible explanation for the low rate of aggravated dispositional departures in

Washington is that the group most likely to warrant an aggravated departure is violent offenders, and Washington has longer presumptive sentence ranges for that group than Minnesota. One study<sup>33</sup> used both sets of guidelines to score the same 2,540 violent cases and found the midpoint Washington range to be 37 months, compared to 24 months for Minnesota. The internal guideline factors of weapon enhancement and double counting of prior violent offenses increase the average sentence for these offenders and lessen the need for aggravated departures. For nonviolent offenders (predominantly property offenders), aggravated sentences are harder to justify because factors such as violence, cruelty, or weapon usage which constitute an additional or more serious offense cannot be used as reasons for an exceptional sentence. These exceptional sentences are likely to be appealed unless the sentence is consistent with the recommendation stipulated in the plea agreement.

The relatively high rate of mitigated dispositional departures in Washington is largely a function of the external guideline factors. These factors permit nonexceptional mitigated departures for first-time nonviolent offenders and most sex offenders.

Minnesota's even split between aggravated and mitigated departures may be a function of two factors. First, a departure in either direction requires an exceptional sentence. Second, on the Minnesota sentencing grid, the transition from one side of the dispositional line to the other is not smooth because the sentence on the grid above the dispositional line is stayed (suspended or deferred).

For example, the presumptive sentence in Minnesota for simple robbery with an Offender Score of 2 is 30 months. However, this sentence lies above the dispositional line and is presumptively stayed. The typical offender in this cell is, in reality, facing 0 to 12 months of jail time. An Offender Score of 3 would result in a presumptively imposed range of 33 to 35 months in prison. Thus, absent a dispositional departure, the real jump for simple robbery when an Offender Score changes from a 2 to a 3 is from 12 months maximum, to 33 months minimum. The Washington transition from jail to prison would be from a range of 6 to 12 months to a range of 12 months and a day to 14 months. Where Washington has a spread of one day between ranges, Minnesota effectively has a spread of 21 months. This large increase in presumptive penalty based on a single Offender Score point would seem to be disproportionate. One way of achieving proportionality would be to have a high rate of departures for cells falling near the dispositional line. This "border smoothing" effect can be seen in the table in Appendix G which shows Minnesota's 1983 imprisonment rates for each cell on the sentencing grid.

2. *Durational departures:* A durational departure occurs when a presumptive sentence is given outside the standard range, regardless of whether this results in a dispositional departure. Washington and Minnesota's overall durational departure rates are given in Table 25.

**TABLE 25**  
**DURATIONAL DEPARTURES**  
**(ALL CONVICTIONS)**

	<u>Aggravated</u>	<u>Mitigated</u>	<u>Total</u>
Washington (FY 1987)	2.0%	10.7%	12.8%
Minnesota (1981-1983)	2.3%	5.5%	7.8%

(An aggravated departure is a sentence above the standard range. A mitigated departure is a sentence below the standard range.)

Table 25 illustrates similar aggravated durational departure rates for Washington and Minnesota, but indicates Washington has a much higher mitigated durational departure rate. This is consistent with the previous finding that Washington has a high rate of mitigated dispositional departures. In Washington, any dispositional departure requires a durational departure. This is not true in Minnesota.

Because of Minnesota's sentence structure, durational departures for stayed sentences are usually of little consequence (only 6.6% of stayed sentences are later executed). For this reason, it is relevant to compare durational departure rates only for executed (i.e., prison) sentences (see Table 26).

**TABLE 26**  
**DURATIONAL DEPARTURES**  
**(EXECUTED PRISON SENTENCES)**

	<u>Aggravated</u>	<u>Mitigated</u>	<u>Total</u>
Washington (FY 1987)	7.1%	2.7%	9.7%
Minnesota (1981-1983)	6.8%	15.5%	22.3%

(An aggravated departure is a sentence above the standard range. A mitigated departure is a sentence below the standard range.)

Washington's aggravated departure rate is nearly identical to Minnesota's, but Minnesota has a much higher mitigated departure rate. This higher mitigated departure rate could be a further example of "border smoothing" but no data have been published which would support such a conclusion.

### C. Summary of Departure Rate Comparison

Washington State judges are sometimes criticized for their low rate of exceptional sentences. A superficial comparison of Washington's exceptional sentence rate to Minnesota's departure rates suggests to some that Washington's judiciary has been overly conservative and not willing to exercise their exceptional sentence authority.

The differences between the Washington and Minnesota guidelines systems make a simple comparison between Washington's exceptional sentence and Minnesota's departure rates of little value. A more accurate comparison is one based on similarly defined departure rates for both states, regardless of whether they are deemed to be exceptional. This comparison revealed that Washington had more mitigated dispositional departures (6.0%) than Minnesota (3.7%) and fewer aggravated departures (0.4% vs. 3.7%). For all convictions, Washington was found to have a higher mitigated durational departure rate (10.7%) than Minnesota, but the aggravated durational departure rates were similar (2.0% vs. 2.3%). However, when only executed prison sentences are analyzed, Washington's mitigated durational departure rate (2.7%) is much lower than Minnesota (15.5%) while their aggravated durational departure rates are similar (7.1% vs. 6.8%).

Washington's overall rates of departure from initial presumptive sentences are similar to those in Minnesota. The observed differences can be explained in terms of internal and external guideline differences between the two states. In Washington, internal guideline factors such as wider presumptive sentencing ranges, more grid cells (combinations of Seriousness Level and Offender Score), and additions to the sentencing ranges for weapon usage (certain crimes) reduce the need for guideline departures by more narrowly categorizing groups of offenders with similar presumptive sentences.

Washington also has two major external guideline factors which give sentencing judges greater flexibility in sentencing without the need for exceptional sentences. The First-Time Offender Waiver and the Special Sexual Offender Sentencing Alternative are frequently used options which are not available in Minnesota without an exceptional sentence.

## V. IMPACT ON INMATE POPULATIONS

The Sentencing Reform Act structures the length of confinement for felony sentences by setting a presumptive sentence range for each combination of offense Seriousness Level and Offender Score (criminal history). This sentence length structuring indirectly affects the location where the sentence is served: sentences over one year are served in a state facility; sentences of one year or less are served at a county facility.<sup>34</sup>

An analysis of the impact of the SRA on the inmate population in state prisons was presented by the Office of Financial Management (OFM) in the March 1987 inmate population forecast.<sup>35</sup> The forecast of state inmate populations is the responsibility of the Governor's Interagency Criminal Justice Work Group and 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, and recidivism patterns. Both forecasts used the same demographic and conviction rate estimates.

The results of the comparative prison inmate forecasts are shown in Figure 12<sup>36</sup>. For June of 1987, this analysis indicated 1,776 fewer inmates under the SRA than would have been the case had the prior indeterminate sentencing system been continued. By 1997, this analysis shows 3,501 fewer inmates under the SRA.

The impact of the SRA on local jail populations is less clear. The average SRA jail sentence of 2.6 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.

A study of the impact of the SRA on local jail populations was conducted by the Legislative Budget Committee in January, 1987.<sup>37</sup> This study tentatively concluded "the average daily population in the state's jails has increased by anywhere from 7.1% to 12.5% as a result of the SRA." The study also concluded "many counties appear to be taking relatively little advantage of provisions for good time reductions."

Length of stay in jail or prison is one determinate of inmate population. The other is number of admissions. Since Fiscal Year 1982, county jail admissions for sentenced felons have increased 25 percent. During the same period, state prison admissions have decreased by 20 percent (see Table 27).

**TABLE 27****WHERE FELONY SENTENCES WERE SERVED**

	<u>None</u>	<u>Jail</u>	<u>Prison</u>	<u>Total</u>
FY 1982*	839	6724	2450	10,013
FY 1987	1156	8405	1949	11,510
Change	+ 317 (+25%)	+1681 (+25%)	- 501 (-20%)	+1,497 (+15%)

\* Includes parole and probation revocations

The change in jail and prison admissions is easier to interpret when the felony imprisonment rates are considered alongside the conviction rates. As indicated in the introduction section of this report, the imprisonment rate for nonviolent offenders has decreased since 1982, but the imprisonment rate for violent offenders has increased significantly (see Table 1, page 5). This change was consistent with the intent of the Sentencing Reform Act to emphasize total confinement for violent offenders.

Convictions rates have also changed substantially since 1982 (see Table 28).

**TABLE 28**
**FELONY CONVICTIONS BY TYPE**  
**FY 1982 v. FY 1987**

	<u>Violent</u>	<u>Nonviolent</u>	<u>Total</u>
FY 1982	1,858 (19%)	8,155 (81%)	10,013 (100%)
FY 1987	1,505 (13%)	10,005 (87%)	11,510 (100%)
Change	- 353 (-19%)	+1,850 (+23%)	+1,497 (+15%)

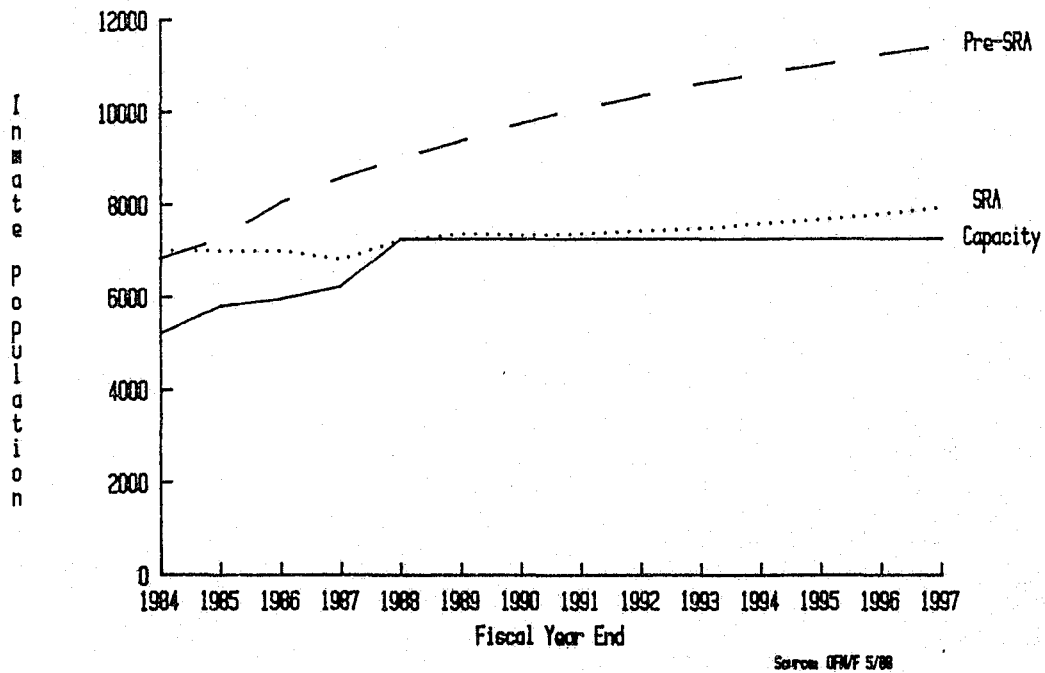
As Table 28 indicates, convictions for violent offenses have decreased under the Sentencing Reform Act at the same time nonviolent convictions have increased. Given the emphasis on imprisonment for violent offenders and alternatives for nonviolent offenders, the changes in type of conviction shown in Table 28 explains

much of the increase in jail admissions and decrease in prison admissions shown in Table 27. Had the pattern of felony convictions not changed from 1982 to 1987, jail admissions would not have increased so dramatically.

The Commission is actively supporting efforts to study the impact of the Sentencing Reform Act on local jail populations. In 1988, the Commission received a small federal grant which will permit data collection from Clark and Yakima counties (the report is due in January of 1989). Although these data will not be definitive, they should provide some insight into the effects of the SRA on jail populations in those counties.

FIGURE 12

INMATE FORECAST COMPARISONS



## VI. NEUTRALITY IN SENTENCING

Neutrality in sentencing with respect to race and gender is an issue of major social importance. The Sentencing Reform Act states 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."<sup>38</sup> Successful implementation of this goal would result in sentencing guidelines that are race and gender neutral.

In the previous evaluation of the sentencing guidelines (December 1986) only limited analyses of sentencing neutrality were possible because demographic data were not reported for two-thirds of the cases. Through the Washington Association of Prosecuting Attorneys, individual prosecutors were contacted and the importance of race and gender information was explained. As a result, race and gender identification was included in 92 percent of the cases received by the Commission in FY 1987. Because of the nature of exceptional sentences, Commission staff made a concerted effort to obtain race and gender information on those cases. As a result, demographic information is available for 98.8 percent of exceptional sentences.

The reporting rate for demographic information is high enough to conduct statistically meaningful analyses, provided one assumes the missing data are not systematically related to race or gender. The data are collected using the ethnic categories of white, black, Hispanic, American Indian, Asian, and other. Because there were relatively few felony sentences for nonblack minorities in 1987, they were grouped into an "other" category for analytic purposes.

Neutrality in sentencing under the SRA can be analyzed from one of two perspectives. One approach would study changes in sentencing neutrality during the shift from the prior indeterminate sentencing system to the current determinate sentencing system. The second approach would examine whether sentences under the SRA are race and gender neutral. Because of the complexity of these research questions, only one investigation was feasible. This evaluation concentrates on neutrality per se under the SRA because it represents the more compelling social question. However, references to prior sentencing practices will be included when they help place the analysis in the proper context.

### A. Race

The disproportionate representation of minority groups in the criminal justice system has been frequently documented. Two studies in Washington have specifically examined the role of race in sentencing. One study published in 1979, conducted by out-of-state researchers, concluded:

This indicates that the white vs. nonwhite distinction affects the sentence a person receives because nonwhites are more likely to be charged with more severe offenses, more likely to have used violence in the offense, and more likely to have had a prior record of convictions; and these factors all influence the eventual sentence (especially prior record). In other words, the race effect is largely indirect.<sup>39</sup>

A second study by Dr. Karen Lichtenstein of the Department of Social and Health Services in Washington State was published in 1982. Her study concluded:

Recommendations for one category of crime appeared to be influenced by the race of the offender. Specifically, black offenders received significantly harsher recommended sentences for drug crimes. However, a more detailed analysis indicated that blacks were more frequently convicted for narcotics violations and whites were more frequently convicted for marijuana violations. Thus, the difference in sentence severity between blacks and whites convicted of drug crimes is explained, in part, by the type of drug involved.<sup>40</sup>

Both of these studies have serious limitations. First, both studies only examined data from King County. Second, the data on which these studies were based are now 10 to 16 years old. Thus the conclusions have limited applications.

A report published by the Washington Council on Crime and Delinquency in 1982 reviewed existing information and summarized the extent of racial disparity in the criminal justice system, but did not focus on sentencing.<sup>41</sup> The report noted the lack of an objective body of research or data on the problem of racial disparity. Although the data gathered by the Commission cannot answer the important causal questions, they may be used to frame the questions more clearly, at least from a sentencing point of view.

A more recent and much more comprehensive Washington State study was conducted in 1984 by the Institute for Public Policy and Management at the University of Washington. This study did not specifically examine sentencing per se but helps set the context of this analysis. This study documented that blacks are nine times more likely to be imprisoned for crimes than whites, American Indians three times more likely, and Hispanics one and one-half times more likely.<sup>42</sup> More importantly, this study concluded:

Minorities arrested for crimes are more likely than whites to be 1) charged with serious and violent offenses, 2) more likely to be detained prior to trial, 3) less likely to plead guilty to offenses, and 4) more likely to be sentenced to prison. Defendants' race and ethnicity contribute directly to these differences; they are not solely attributable to legally relevant differences between the criminal cases of minority

and white offenders.<sup>43</sup>

Minnesota has sentencing guidelines similar in many respects to Washington's. Minnesota's published research indicates that for 1981, 1982, and 1983, blacks and other minorities were sent to prison more often than would have been the case if white sentencing patterns were used<sup>44</sup>. This research also showed that blacks received longer average sentences than would have been the case if white sentencing patterns were used. A recent report indicates these disparities continue through 1987, although the current degree of disparity seems to be less<sup>45</sup>. This research demonstrates that guidelines alone do not necessarily eliminate ethnic disparity in sentencing.

The three Washington State studies each observed that the pattern of criminal offenses and degree of criminal history varies significantly among ethnic groups. This highlights the major problem those researchers faced in analyzing the data: Determining which offenses are similar enough to combine for analytic purposes. It would be pointless to try to compare specific combinations of offense, criminal history, weapon usage, type of drug, etc. among ethnic groups because in most comparisons the number of offenders would be so small as to be meaningless. On the other hand, to create groups of offenses for analysis without the guidance of a systematic, statutory basis invites comparisons which are, at best, difficult to interpret.

In contrast, the SRA provides, for the first time in our state, a basis for clear analysis of sentencing neutrality. The sentencing grid prejudges which offenses are similar (including when and how weapon usage is relevant), and scales presumptive punishment for these offenses according to actual criminal history and number and type of current offenses.

All SRA felony sentences may be divided into two broad categories: departure and nondeparture sentences. As used in this section of the report, these categories refer to whether the offender was sentenced to a term of incarceration within the standard range. Many offenders sentenced under the First-Time Offender Waiver receive jail sentences within the standard range and are considered nondeparture sentences for the purposes of this analysis. A few (less than 5 percent) offenders sentenced under the Special Sexual Offender Sentencing Alternative receive sentences within the standard range which are also considered nondeparture sentences for the purposes of this analysis. Nondeparture sentences account for 87 percent of all sentences. Because nondeparture sentences fall within fairly narrow sentencing ranges, large ethnic group differences for persons sentenced within the same cell on the sentencing grid would not be expected.

Departure sentences account for 13 percent of all sentences. These sentences can be exceptional sentences, or the result of using the First-Time Offender Waiver or the

Special Sexual Offender Sentencing Alternative. In this analysis, only sentences under the First-Time Offender Waiver or Special Sexual Offender Sentencing Alternative which resulted in a term of incarceration outside the standard sentencing range are included in the category of departure sentences. Departure and nondeparture sentences were separately analyzed.

1. Nondeparture Sentence Length Differences: The nondeparture sentences were analyzed by the use a t-test (a statistical test to determine if two means are statistically different). The tests were conducted with a confidence level of 95 percent, meaning if a single t-test were "statistically significant", a conclusion that the means are really different is correct 95 percent of the time. In all, there were 47 cells in the sentencing grid with enough offenders to permit analysis with this statistic when comparing white versus black, 37 when comparing white versus other minorities, and 30 when comparing black versus other minorities.

In the 47 comparisons of white versus black nondeparture sentences, 2 to 3 (5%) of the comparisons would be expected to be "statistically significant" even with no real differences between the groups. The actual results indicated 6 cells with different means and 41 with similar means. Of the 6 cells with different means, in five cells blacks had longer sentences than whites and in one cell whites had longer sentences. There was no systematic pattern to the differences. These differences are presented in Table 29.

The results in Table 29 are mixed. The largest absolute difference occurs at Level I, Offender Score 5, where the average sentence for whites is 1.8 months longer than blacks. On the other hand, five of the six differences have blacks receiving longer sentences, although in two of the five, the differences are small.

In the 37 cell-by-cell comparisons of whites versus other minorities, only two of the comparisons were statistically significant. This result is exactly at chance level ( $5\% \text{ of } 37 = 2$  "significant" comparisons by chance alone). None of the 30 cell comparisons of blacks versus other minorities was statistically significant.

Despite the underlying similarity in sentence lengths when examined on a cell-by-cell basis, the three ethnic groups had different offense mixes and criminal histories which resulted in differences in average sentence lengths when all nondeparture sentences were grouped together. These sentence lengths are presented in Table 30.

An important factor in interpreting Table 30 is the sentence length differences which result from differences in type and number of current offenses and criminal history. The cell-by-cell analysis above revealed few if any differences among groups. This result can be illustrated by determining the average sentence lengths for minorities if they had been sentenced using the cell means for whites. For example, in each cell

TABLE 29

**SENTENCE LENGTH COMPARISONS: WHITES V. BLACKS**  
**Nondeparture Sentences Only**

<u>Seriousness Level</u>	<u>Offender Score</u>	<u>White Average</u>	<u>Black Average</u>	<u>White - Black Difference</u>
IV	2	11.8 mos. (n=68)	13.0 mos. (n=23)	- 1.2 months
IV	3	14.6 mos. (n=31)	15.8 mos. (n=12)	- 1.2 months
II	0	1.2 mos. (n=1201)	1.3 mos. (n=209)	- 0.1 months (-4 days)
I	2	2.8 mos. (n=323)	3.2 mos. (n=59)	- 0.4 months (- 11 days)
I	5	7.9 mos. (n=41)	6.1 mos. (n=17)	+ 1.8 months
Unranked	-	2.0 mos. (n=152)	3.3 mos. (n=38)	- 1.3 months

TABLE 30

**AVERAGE SENTENCE LENGTH BY ETHNIC GROUP**  
**Nondeparture Sentences Only**

<u>ETHNIC GROUP</u>	<u>AVERAGE SENTENCE</u>	<u>NUMBER</u>
White	7.5 months	6720
Black	9.0 months	1370
Other Minorities	6.8 months	765

the number of blacks was multiplied by the white average lengths of stay. These lengths of stay were added up for each cell and then divided by the number of blacks to arrive at the hypothetical average sentence for blacks had they been sentenced the same as whites. Under this scenario, the average sentence for blacks would still be 9.0 months and the average sentence for other minorities would increase slightly from 6.8 months to 6.9 months. This analysis indicates that ethnic lengths of stay differences for nondeparture sentences are due solely to the ethnic differences in Seriousness Level and Offender Score patterns.

The lack of evidence for systematic ethnic disparity in nondeparture sentencing is an important finding given that 87 percent of all SRA sentences fall into this category. Ethnic disparity in this category would have indicated a widespread problem.

2. *Departure Sentence Differences:* A wide variety of factors underlie a judicial decision to impose a sentence which departs from the presumptive sentencing range. Among these are the charge selection, presentence report recommendation, prosecutor and defense recommendations, desires and attitudes of the defendant, availability of treatment in the community, and the actual conduct underlying the offense. For exceptional sentences, the reasons for departure are stated in writing by the sentencing judge and these reasons are recorded and analyzed by the Commission. For departures under the First-Time Offender Waiver and the Special Sexual Offender Sentencing Alternative, the reasons underlying the departure decisions are unknown to the Commission.

The departure rates for all convictions by ethnic group are shown below in Table 31.

**TABLE 31**  
**DEPARTURE RATES BY ETHNIC GROUP: ALL CONVICTIONS**

	WHITE (N=8144)	BLACK (N=1584)	OTHER (N=874)
EXCEPTIONAL (ABOVE)	1.5%	1.5%	1.0%
EXCEPTIONAL (BELOW)	2.4%	2.0%	1.4%
EXCEPTIONAL (WITHIN)	0.2%	0.1%	0.2%
FIRST-TIME OFFENDER (BELOW)	5.0%	1.6%	3.4%
<u>SSOSA (BELOW)</u>	<u>3.4%</u>	<u>0.9%</u>	<u>1.7%</u>
TOTAL (BELOW)	10.8%	4.5%	6.5%

As Table 31 indicates, whites are twice as likely to receive a sentence below the standard range as minorities. This disparity does not seem to be the result of exceptional sentences. Whites and blacks have virtually the same exceptional sentence rates; other minorities are less likely to receive an exceptional sentence which is either above or below the standard range.

This lack of disparity in exceptional sentence rates is significant because exceptional sentences hold the greatest potential for significant disparity in length of confinement. Once the court departs from the standard range, there are no guidelines for length of exceptional sentences. The Washington appellate courts have consistently held the court's decision as to the length of exceptional sentences is subject only to an abuse of discretion standard. This effectively means the only current limits to exceptional sentence lengths are zero and the statutory maximum.

There are, however, large discrepancies in the use of the other (nonexceptional) departure alternatives. Whites are three times as likely as blacks and half again as likely as other minorities to receive a First-Time Offender sentence below the standard sentencing range. Whites are nearly four times as likely as blacks and twice as likely as other minorities to receive a suspended sentence under the Special Sexual Offender Sentencing Alternative (SSOSA).

Whites and minorities historically have differed in terms of the pattern of offenses and criminal history. Both of these factors could influence the frequency which offenders receive downward departure sentences. For this reason, separate departure analyses were conducted for (1) those eligible for the First-Time Offender Waiver, and (2) those eligible for a SSOSA sentence.

The results of the downward departure analysis for persons eligible for a First-Time Offender Waiver are presented in Table 32. Included in this table are persons who are both eligible for the First-Time Offender Waiver and for whom a downward departure is possible (that is, the standard range is greater than 0 to 60 or 0 to 90 days).

As expected, eligibility for the First-Time Offender Waiver varied by ethnic group. Whites were eligible more often than blacks, but slightly less often than other minorities. For those who were eligible for a First-Time Offender Waiver, whites were more than twice as likely as blacks and half again as likely as other minorities to receive a downward departure when such a departure was possible.

This disparity cannot be explained in terms of differential offense mixes for whites, blacks, and other minorities. Table 32 separately presents departure data for each felony offense with enough convictions to make such a comparison feasible. In every case, the white departure rate is substantially higher than minority departure rates.

TABLE 32

## FIRST-TIME OFFENDER DEPARTURES BY ETHNIC GROUP

	<u>WHITE</u>	<u>BLACK</u>	<u>OTHER</u>
PERCENT ELIGIBLE:	15%	11%	16%
PERCENT OF ELIGIBLE RECEIVING DEPARTURE:			
Assault 3	29% (n=139)	15% (n=33)	8% (n=26)
Burglary 2	32% (n=147)	9% (n=22)	14% (n=7)
Theft 1	21% (n=28)	0% (n=5)	--- (n=0)
Forgery	49% (n=45)	13% (n=8)	--- (n=1)
Delivery, Sch. I or II Narcotics	59% (n=241)	31% (n=29)	39% (n=41)
Delivery, Marijuana	20% (n=285)	14% (n=22)	9% (n=11)
Possession, Sch.I or II Narcotics	41% (n=22)	--- (n=1)	22% (n=22)
Hit & Run, Injury	47% (n=15)	--- (n=3)	13% (n=8)
TOTAL, ALL OFFENSES:	33% (n=1235)	15% (n=169)	22% (n=138)

Note: This table excludes offenders with a presumptive range of 0 - 60 or 0 - 90 days.

Among the high volume offenses in this table, whites convicted of Assault 3 are twice as likely as blacks to receive a downward departure. For those convicted of Burglary 2, whites are three and one-half times as likely as blacks to receive a departure. For drug offenses, whites are twice as likely to receive a downward departure.

One potential explanation of the disparity in First-Time Offender Waiver departures is that this waiver is often used for providing treatment. As the study by the Institute for Public Policy and Management anecdotally reported:

A director of a Western Washington social service program suggested that minority defendants often do not have the resources to get into job training, drug or alcohol programs and thereby improve their own position in the plea bargaining process.<sup>46</sup>

... one judge ... stated that privately retained counsel often went to great lengths -- such as enrolling their clients in drug or alcohol rehabilitation programs or counselling and therapy --to convince judges in his county that their client was not dangerous and would not commit a new crime. Court appointed attorneys or public defenders are too busy, the judge argued, to afford their clients this type of service.<sup>47</sup>

In addition to lack of resources on the parts of the defendants and defense attorneys, other treatment related possibilities include cultural differences in the desirability of treatment alternatives to incarceration, and perceptions among treatment agencies concerning the "treatability" of minority defendants.

The three ethnic groups analyzed in this report did vary in the frequency in which they received orders for treatment as part of their sentence. Whites eligible for downward departures under the First-Time Offender Waiver received a treatment sentence 31 percent of the time. Similarly eligible blacks received treatment 18 percent of the time and other minorities 24 percent of the time. Table 33 details the relationship between treatment and First-Time Offender Waiver departures.

As Table 33 shows, the ethnic differences in treatment rates do not completely account for differences in the frequency of sentence departures under the First-Time Offender Waiver. Despite the relationship between treatment and sentence departures, minorities receive such a departure less frequently both when treatment is given and when it is not.

The analysis of downward departures for those eligible for the Special Sexual Offender Sentencing Alternative also revealed disparities among ethnic groups (see Table 34). Eligibility, as used in this analysis, includes all offenders convicted of a sex offense (other than First or Second Degree Rape) who have not previously been convicted of a sex offense. The statutes require the judge to find the defendant

TABLE 33

## TREATMENT AND FIRST-TIME OFFENDER DEPARTURES BY ETHNIC GROUP

TREATMENT SENTENCES

	<u>FTOW Sentence Below Std. Range</u>		<u>Total</u>
	<u>Yes</u>	<u>No</u>	<u>Treatment</u>
White (31% received tmt.)	231 (60%)	152 (40%)	383 (100%)
Black (18% received tmt.)	14 (45%)	17 (55%)	31 (100%)
Other Minority (24% received tmt.)	16 (48%)	17 (52%)	33 (100%)

NONTREATMENT SENTENCES

	<u>FTOW Sentence Below Std. Range</u>		<u>Total Non-</u>
	<u>Yes</u>	<u>No</u>	<u>Treatment</u>
White	177 (21%)	675 (79%)	852 (100%)
Black	12 ( 9%)	126 (91%)	138 (100%)
Other Minority	14 (13%)	91 (87%)	105 (100%)

TABLE 34

## SSOSA DEPARTURES BY ETHNIC GROUP

	<u>WHITE</u>	<u>BLACK</u>	<u>OTHER</u>
PERCENT ELIGIBLE:	6.2%	2.6%	4.5%
PERCENT OF ELIGIBLE RECEIVING DEPARTURE:	56%	34%	38%

"amenable to treatment" in order to impose a SSOSA sentence. The Commission's data does not include information on amenability to treatment. Thus, the numbers of eligible offenders include individuals not found amenable for treatment and who are therefore not eligible for departure from the perspective of the sentencing judge.

Eligibility for SSOSA also varied by ethnic group: whites were twice as likely as blacks and half again as likely as other minorities to be eligible for this alternative. The disparity among the groups of offenders eligible for this alternative was also quite high: whites were much more likely than blacks or other minorities to receive a suspended sentence (and downward departure) under this alternative.

Treatment is an integral part of virtually every sentence given under the Special Sexual Offender Sentencing Alternative. Given the ethnic disparity in the use of this alternative, important questions are raised whether equal opportunity for treatment exists, or whether there are cultural differences in the desirability of alternative treatment sentences. Nearly all of the offenders sentenced under the Special Sexual Offender Sentencing Alternative had a presumptive prison sentence but instead received 0 to 6 months in jail plus outpatient treatment and community supervision. Many of the First-Time Offender Waivers also result in offenders with presumptive prison dispositions receiving a county jail sentence instead. The other avenue for dispositional departures is exceptional sentences, although little disparity was found in the use of exceptional sentences.

One interesting way of examining disparity in the use of departure sentences is to look at the imprisonment rates for offenders with a presumptive prison disposition. In FY 1987, 2578 offenders had a presumptive prison disposition as a result of their offense Seriousness Level and Offender Score. However only 1949 offenders (76 percent of 2578) actually received a prison sentence, primarily because of downward departures (a few offenders with presumptive nonprison sentences receive an aggravated exceptional prison sentence). Table 35 summarizes the imprisonment rates by ethnic group for those offenders with presumptive prison dispositions.

**TABLE 35**

**IMPRISONMENT RATES BY ETHNIC GROUP:  
OFFENDERS WITH PRESUMPTIVE PRISON DISPOSITIONS**

	<u>WHITE</u>	<u>BLACK</u>	<u>OTHER</u>
ALL OFFENDERS:	70%	89%	81%
FTOW ELIGIBLE:	37%	63%	66%
SSOSA ELIGIBLE:	36%	58%	52%

In summary, the data presented in this section reveal little disparity in the length of sentences imposed within the standard sentencing range (87% of all sentences are in this category).

The data also reveal little ethnic disparity in the use of exceptional sentences. However, there is great disparity in the use of the First-Time Offender Waiver and the use of the Special Sexual Offender Sentencing Alternative. The disparity in the use of the First-Time Offender Waiver exists for virtually every individual offense which qualifies for this departure option. Although treatment is related to the use of this option and whites more frequently receive treatment sentence than minorities, treatment alone could not account for most of the disparity in the frequency of First-Time Offender departures.

The use of these avenues of departure lead, in turn, to a large degree of disparity in terms of the imprisonment rates for offenders with presumptive prison sentences. Although the observed disparity may have multiple causes, these reasons are not discernable by the sentencing documents received by the Commission. However, the disparities are of such great magnitude they demand further investigation.

## B. Gender

The role of gender in sentencing typically receives less social attention than does the question of racial disparity. Only a small minority of convicted felons are female (14% in FY 1987), and the types of offenses women are convicted of are generally different than men.

One of the studies cited in the previous section examine the role of gender in sentencing and found ". . . the prosecutor is more likely to recommend a deferred sentence for females, other things equal."<sup>48</sup> This study elaborated by stating ". . . it is possible for us to state that, independent of the offense characteristics, being female increases one's likelihood of receiving a deferred sentence by 15 percent."<sup>49</sup>

As was the case with the analyses of race, the traditional problem of relevant offense grouping for analytical purposes has been simplified by the SRA which authoritatively ranks offenses of similar seriousness at the same offense Seriousness Level on the presumptive sentencing grid. The analyses of gender paralleled those for race, with separate analyses of departure and nondeparture sentences.

1. Nondeparture Sentence Length Differences: The nondeparture sentences were analyzed by the use of multiple t-tests with a confidence level of 5 percent. In all, there were 28 cells in the sentencing grid which would be analyzed with this statistic

when comparing sentences of males and females.

In the 28 comparisons of female versus male nondeparture sentences, 6 of the comparisons yielded mean differences which were statistically significant (the number of chance differences would be 1.4). Unlike the differences found between blacks and whites, the six female - male differences were all in the same direction and there was a discernable pattern to the differences. These differences are presented in Table 36.

**TABLE 36**  
**SENTENCE LENGTH COMPARISONS: FEMALES v. MALES**  
**Nondeparture Sentences Only**

<u>Seriousness Level</u>	<u>Offender Score</u>	<u>Female Average</u>	<u>Male Average</u>	<u>Female - Male Difference</u>
IX	0	31.8 mos. (n=6)	35.4 mos. (n=64)	- 3.5 months
III	0	1.5 mos. (n=61)	1.7 mos. (n=436)	- 0.2 months (- 6 days)
II	0	0.9 mos. (n=284)	1.3 mos. (n=1342)	- 0.4 months (- 11 days)
I	1	1.1 mos. (n=146)	1.6 mos. (n=501)	- 0.4 months (- 12 days)
I	0	0.7 mos. (n=393)	1.0 mos. (n=1226)	- 0.3 months (- 8 days)
Unranked	-	1.2 mos. (n=39)	2.6 mos. (n=164)	- 1.4 months

The results in Table 36 indicate women receive shorter average sentences than men when the current offense is of low severity (Level 0, I, II, III, or unranked) and when there is no criminal history and only one current count. Women also receive shorter sentences than men when sentenced for Level IX offenses. It is interesting to note that the offenses included in Table 36 are more characteristic of women than of men: 63 percent of the women fell into one of the six categories, while only 41 percent of the male offenders were so classified.

The gender differences in types of offenses and criminal histories would lead to an expectation that as a group, women would receive shorter average sentences than men. This expectation is reflected in Table 37.

**TABLE 37**  
**AVERAGE SENTENCE LENGTH BY GENDER**  
**Nondeparture Sentences Only**

<u>GENDER</u>	<u>AVERAGE SENTENCE</u>	<u>NUMBER</u>
Female	3.5 months	1465
Male	8.3 months	9162

Although the cell-by-cell analysis above revealed systematically shorter sentences for most females, the magnitude of most differences was small. The average length of sentence difference seen in Table 37 is primarily the function of different offense patterns and criminal histories.

2. *Departure Sentence Differences:* As mentioned in the section on race analysis, the Commission cannot discern the reasons for departure sentences from the sentencing documents received for sentences under the First-Time Offender Waiver or the Special Sexual Offender Sentencing Alternative. The departure rates for all male and female convictions are shown in Table 38.

**TABLE 38**  
**DEPARTURE RATES BY GENDER: ALL CONVICTIONS**

	<u>FEMALE (N=1465)</u>	<u>MALE (N=9162)</u>
EXCEPTIONAL (ABOVE)	1.2%	1.5%
EXCEPTIONAL (BELOW)	1.9%	2.3%
EXCEPTIONAL (WITHIN)	0.2%	0.2%
FIRST-TIME OFFENDER (BELOW)	8.9%	3.7%
<u>SSOSA (BELOW)</u>	<u>0.5%</u>	<u>3.3%</u>
TOTAL (BELOW)	11.3%	9.2%

As Table 38 indicates, women are more likely to receive a downward departure sentence than men. This difference does not seem to be related to exceptional sentences. Women are slightly less likely than men to receive either an aggravated or a mitigated exceptional sentence. The overall departure discrepancy is a function of the First-Time Offender Waiver differences (women are twice as likely as men to receive such a disposition) and the use of the Special Sexual Offender Sentencing Alternative (men are six and one-half times as likely to receive such a disposition). However, given that the offenses committed by women are generally less serious than those committed by men (as evidenced by sentence length differences in Table 37) and that women only infrequently commit felony sexual offenses (only 14 women in FY 1987), this pattern of departure disparity is hardly surprising.

In order to control for First-Time Offender Waiver and SSOSA eligibility, these two subgroups were separately analyzed.

The results of the downward departure analysis for persons eligible for a First-Time Offender Waiver are presented in Table 39. Included in this table are persons who are both eligible for the First-Time Offender Waiver and for whom a downward departure is possible (that is, the standard range is greater than 0 to 60 or 0 to 90 days).

As expected, a large difference exists between men and women in the percentage eligible for the First-Time Offender Waiver. However, even when this factor is controlled, women were found to be nearly twice as likely as men to receive such a downward departure. This disparity cannot be explained in terms of a different offense mix for men and women. As Table 39 indicates, every offense with enough convictions to compare female and male departure rates has women receiving a downward departure more frequently than men.

As was the case with ethnic disparity, the gender disparity in the use of the First-Time Offender Waiver is related to the use of treatment. Women eligible for a downward departure under this waiver received treatment sentences 40 percent of the time; men received treatment sentences 29 percent of the time. Table 40 details the relationship between treatment and the use of the First-Time Offender Waiver.

TABLE 39

## FIRST-TIME OFFENDER DEPARTURES BY GENDER

	<u>FEMALE</u>	<u>MALE</u>
PERCENT ELIGIBLE:	19%	14%
PERCENT OF ELIGIBLE RECEIVING DEPARTURE:		
Assault 3	48% (n=25)	21% (n=174)
Burglary 2	71% (n=7)	27% (n=172)
Theft 2	29% (n=7)	15% (n=26)
Forgery	45% (n=31)	39% (n=23)
Promoting Prostitution 2	14% (n=7)	0% (n=5)
Delivery, Sch. I or II Narcotics	74% (n=58)	49% (n=258)
Delivery, Other	60% (n=10)	26% (n=19)
Delivery, Marijuana	24% (n=63)	18% (n=254)
Possession, Sch. I or II Narcotics	67% (n=9)	23% (n=22)
Vehicular Assault	33% (n=9)	15% (n=27)
Hit & Run, Injury Accident	100% (n=6)	20% (n=20)
TOTAL, ALL OFFENSES:	48%	27%

note: This table excludes offenders with  
a presumptive range of 0 - 60 or  
0 - 90 days.

**TABLE 40**

**TREATMENT AND FIRST-TIME OFFENDER DEPARTURES BY GENDER**

**TREATMENT SENTENCES**

	<u>FTOW Sentence Below Std. Range</u>		<u>Total</u>
	<u>Yes</u>	<u>No</u>	<u>Treatment</u>
Female (40% received tmt.)	81 (73%)	30 (27%)	111 (100%)
Male (29% received tmt.)	183 (49%)	191 (51%)	374 (100%)

**NONTREATMENT SENTENCES**

	<u>FTOW Sentence Below Std. Range</u>		<u>Total Non-</u>
	<u>Yes</u>	<u>No</u>	<u>Treatment</u>
Female	50 (30%)	114 (70%)	164 (100%)
Male	155 (17%)	748 (83%)	903 (100%)

As Table 40 shows, the gender differences in treatment rates do not completely account for differences in the frequency of sentence departures under the First-Time Offender Waiver. Despite the relationship between treatment and First-Time Offender departures, women receive departures more frequently than men both when treatment is given and when it is not.

The analysis of downward departures for those eligible for the Special Sexual Offender Sentencing Alternative is presented in Table 41. Although only 14 women were convicted of felony sexual offenses in FY 1987, this table is presented for the sake of completeness.

**TABLE 41**

**SSOSA DEPARTURES BY GENDER**

	<u>FEMALE</u>	<u>MALE</u>
PERCENT ELIGIBLE:	1.0%	6.2%
PERCENT OF ELIGIBLE RECEIVING DEPARTURE:	50%	60%

Compared to males, females are rarely eligible for the Special Sexual Offender Sentencing Alternative because they commit fewer felony sexual offenses. The rate at which women receive this departure for community based treatment, when eligible, is the same as for men.

The effects of departures from the standard range on prison diversions is summarized in Table 42.

**TABLE 42**  
**IMPRISONMENT RATES BY GENDER:**  
**OFFENDERS WITH PRESUMPTIVE PRISON DISPOSITIONS**

	<u>FEMALE</u>	<u>MALE</u>
ALL OFFENDERS:	60%	76%
FTOW ELIGIBLE:	26%	47%
SSOSA ELIGIBLE:	30%	39%

The gender difference in imprisonment rates for all offenders with a presumptive prison disposition may be a function of more serious imprisonable offenses being committed by males. The gender difference for those eligible for a suspended sentence and community based treatment under SSOSA is suspect due to the very few females who commit an offense targeted by this alternative. However, the very large disparity between men and women who qualify for the First-Time Offender Waiver has less a priori justification. The data suggest that this disparity is much more than just a treatment issue. As with the racial disparity discussed in the previous section, the magnitude of the gender disparity in the use of this departure option also demands further investigation.

## VII. PROSECUTORIAL PRACTICES

### A. Trial Rates

Guilty pleas are generally the result of plea bargaining between the prosecution and the defense. This plea bargaining is more structured under the Sentencing Reform Act than prior to its implementation. The law directs prosecutors to file charges which adequately describe the nature of the defendant's conduct<sup>50</sup>. This law also prohibits the prosecutor from withholding relevant information from the court concerning the plea agreement<sup>51</sup>. The trial and plea rates for FY 1982, CY 1985, and FY 1987 are shown in Table 43.

**TABLE 43**  
**TRIAL AND GUILTY PLEA RATES**  
**(Percent of Sentenced Population)**

	<u>FY 1982</u>	<u>CY 1985</u>	<u>FY 1987</u>
Pleas	90.1%	90.1%	91.6%
Jury Trial	7.8%	6.7%	6.0%
Bench Trial	2.1%	2.8%	2.1%
Unknown	0.0%	0.4%	0.3%

As Table 43 shows, there has been a steady decline in the proportion of felony sentencings resulting from a jury trial. The FY 1987 jury trial rate of 6 percent means that there were 23 percent fewer jury trials in fiscal year 1987 than would have been the case with the pre-SRA jury trial rate of 7.8 percent. The data for FY 1987 evidence an increase in the guilty plea rate concomitant with the decrease in the jury trial rate.

### B. Seriousness Levels

Under the Sentencing Reform Act, the offense of conviction is one of the two primary variables determining the sentencing range. Thus, charge selection by the prosecutor carries much more significance than it did under the prior 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 44 shows the distribution of Seriousness Levels for felony convictions in FY 1982, CY 1985, and FY 1987.

**TABLE 44**  
**OFFENSE SERIOUSNESS LEVELS**  
**(Percent of Sentenced Population)**

<u>SERIOUSNESS LEVEL</u>	<u>FY 1982</u>	<u>CY 1985</u>	<u>FY 1987</u>
XIV	0.2%	0.1%	0.1%
XIII	0.5%	0.3%	0.4%
XII	0.3%	0.4%	0.4%
XI	0.1%	0.2%	0.2%
X	0.9%	0.5%	0.5%
IX	5.6%	3.5%	3.1%
VIII	1.4%	0.9%	0.8%
VII	3.4%	2.1%	1.8%
VI	4.7%	5.7%	7.2%
Subtotal	17.1%	13.7%	14.5%
V	0.8%	0.9%	1.1%
IV	10.6%	9.5%	10.1%
III	8.3%	10.7%	9.4%
II	34.5%	32.2%	32.9%
I	28.7%	30.6%	30.0%
Unranked	0.0%	2.5%	2.0%
Total	100.0%	100.1%	100.0%

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

As Table 44 indicates, the distribution of offense Seriousness Levels appears to be less elevated under the SRA than was the case before the implementation of the SRA (FY 1982 data). Notice that the percentage of offenses at Level VI and above is lower during the SRA than before (Level VI offenses have a presumptive prison term even for first-time offenders). This drop is consistent with the observed decrease in the proportion of violent offenses from 19.5 percent in 1982 to 14.0 percent in 1985 and 13.1 percent in 1987.

Relative to CY 1985, FY 1987 showed an increase in the proportion of offenses at Level VI or above. At first, this increase appears to contradict the decrease in the proportion of violent offenses from 14.0 percent in CY 1985 to 13.1 percent in FY 1987. As Table 44 indicates, most of the increase in FY 1987 is at Level VI. An

inspection of individual crimes within Level VI revealed that this change is due to an increase in convictions for the crime of Manufacture, Deliver, or Possess with Intent to Deliver Schedule I or II Narcotics (a nonviolent offense). In FY 1987 there were 51 percent more convictions for this offense than had the CY 1985 rate prevailed.

The other major change from 1985 to 1987 that can be seen in Table 44 is the relative decrease in Level III convictions. An examination of the individual offenses within Level III showed that this shift was due to relative decreases in convictions for (1) Manufacture, Deliver, or Possess with Intent to Deliver Marijuana; and (2) Assault in the Third Degree. In FY 1987, convictions for the delivery of marijuana were 81 percent of the 1985 rate. Convictions for Assault 3 were 85 percent of the 1985 rate.

It is interesting to note that the major changes in the distribution of Seriousness Levels appear to be related to the "war on drugs". Possible explanations include (1) a real change in criminal behavior (shifting from marijuana to narcotics), (2) a decrease in the practice of reducing charges as part of a plea bargain, and (3) a shift in priorities toward allocating scarce resources for more serious drug offenses as the numbers of convictions for drug crimes escalate.

### C. Offender Scores (Criminal History)

The second guideline variable used to determine the standard sentencing range is the Offender Score which is based on criminal history and the number of current convictions. Although the SRA prohibits concealing of criminal history, the number of current charges is within the prosecutor's discretion and is frequently the object of plea bargaining negotiations.

Table 45 evidences a shift toward lower Offender Scores from 1982 to 1985. However, this trend is reversed in 1987. Relative to 1985, in 1987 there were fewer offenders with Offender Scores of 0, 1 or 2 and more offenders in each Offender Score category from 3 through 8. In order to understand more clearly the change in Offender Scores for 1985 and 1987, the number of prior convictions and the number of current counts were separately analyzed. This analysis showed that both the number of charges and the number of prior convictions increased from 1985 to 1987. It is most interesting that the number of charges, the severity of the charges, and the number of criminal history convictions have all increased during the same time period that the rate of guilty pleas have increased and jury trials decreased.

One reason for the increasing average Offender Score is the 1986 amendment to the SRA which permits the judge to count separate prior offenses in which the sentences were served concurrently.<sup>52</sup>

**TABLE 45****OFFENDER SCORES**  
**(Percent of Sentenced Population)**

<u>OFFENDER SCORE</u>	<u>FY 1982</u>	<u>CY 1985</u>	<u>FY 1987</u>
0	52.3%	55.3%	54.0%
1	19.7%	18.5%	18.1%
2	12.8%	12.1%	11.9%
3	5.5%	6.0%	6.6%
4	4.5%	3.5%	3.8%
5	2.0%	1.7%	2.1%
6	1.3%	1.2%	1.6%
7	0.6%	0.5%	0.7%
8	0.5%	0.3%	0.5%
9	0.8%	0.8%	0.7%
	100.0%	99.9%	100.0%

The increase in average Offender Score, along with the increase in average offense Seriousness Level, explain why the imprisonment rate for nonviolent offenses increased from 8.8 percent in CY 1985 to 10.6 percent in FY 1987. The 10.6 percent imprisonment rate resulted in approximately 180 more prison admissions than would have been the case with the lower 8.8 percent rate. Clearly these events have important implications as determinants of inmate populations and need to be monitored closely.

## FOOTNOTES

- 1 RCW 9.94A.010.
- 2 RCW 9.94A.040(5).
- 3 Sentencing Guidelines Commission, "Preliminary Evaluation of Washington State's Sentencing Reform Act", December 1986.
- 4 The Public Safety Score was a risk-assessment tool used by the Board of Prison Terms and Parole for determining early release of prisoners.
- 5 Sentencing Guidelines Commission, op. cit.
- 6 RCW 9.94A.040(5).
- 7 Kay Knapp, "The Impact of the Minnesota Sentencing Guidelines", Minnesota Sentencing Guidelines Commission, 1984, p. 33.
- 8 RCW 9.94A.380.
- 9 RCW 9.94A.120(5)(f) and 7(a)(v).
- 10 Memo from Robert Trimble, then Deputy Director of Department of Corrections, to Robert Lasnik, Chief of Staff, King County Prosecuting Attorney's Office, 1986.
- 11 Memo from R. Peggy Smith, Planning and Research Manager, Department of Corrections, to Dave Fallen, Research Director, Sentencing Guidelines Commission, May 20, 1988.
- 12 One by-product of measuring grid variance for sentence lengths with this approach 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.
- 13 RCW 9.94A.120(2).
- 14 RCW 9.94A.400(1).
- 15 *State v. Bernhard*, 108 Wn. 2d at 527.
- 16 RCW 9.94A.120(5).

- 17 Judgment and Sentence forms usually only indicate prior offenses calculated into the Offender Score. Prior to July 1, 1987, only prior escapes were counted in determining the Offender Score when the current offense was for an escape offense.
- 18 RCW 9.94A.120(7)(b).
- 19 RCW 9.94A.120(8)(a).
- 20 RCW 9.94A.120(7)(a).
- 21 RCW 9.94A.030(18).
- 22 RCW 9.94A.380.
- 23 RCW 9.94A.383.
- 24 RCW 9.94A.120(5).
- 25 RCW 9.94A.120(7)(a).
- 26 RCW 9.94A.120(7)(a).
- 27 RCW 9.94A.200.
- 28 RCW 9.94A.120(11).
- 29 RCW 9.94A.120(7)(a).
- 30 RCW 9.94A.120(10).
- 31 Knapp, op. cit.
- 32 Terance Miethe and Charles Moore, "Evaluation of Minnesota's Felony Sentencing Guidelines", final report submitted to the National Institute of Justice, May 1, 1987.
- 33 John Kramer, Robin Lubitz, and Cynthia Kempinen, "A Comparative Assessment of Sentencing Guideline Recommendations in Minnesota, Pennsylvania, and Washington", paper presented at the Annual Meeting of the American Society of Criminology, San Diego, CA, 1985.
- 34 RCW 9.94A.190.

- 35 Office of Financial Management, Forecasting Division, "Prison and Inmate Population Forecast", State of Washington, FY 1987 to FY 2000, March 1987.
- 36 In Figure 12, the rapid change in capacity between 1987 and 1988 is due largely to a change in definition from "rated" capacity (based on space standards) to "operational capacity (double bunking within operational limits such as security, programs, statute, court order, etc.).
- 37 Legislative Budget Committee, "Impact of the Sentencing Reform Act", report no. 87-2, State of Washington, January 1987.
- 38 RCW 9.94A.340.
- 39 John Hagan, John D. Hewitt, and Duane F. Alwin, "Ceremonial Justice: Crime and Punishment in a Loosely Coupled System", *Social Forces*, vol. 58:2, December 1979, p. 517.
- 40 Karen R. Lichtenstein, "Extra-legal Variables Affecting Sentencing Decisions", *Psychological Reports*, vol. 50, 1982, p. 611.
- 41 Washington Council on Crime and Delinquency, "The Disproportionate Representation of Racial Minorities in the Criminal Justice System of Washington State", July 1982.
- 42 George Bridges and Robert Crutchfield, "Racial and Ethnic Disparities in Imprisonment: Final Report", Institute for Public Policy and Management, University of Washington, March 1986, p. i.
- 43 Ibid., p. ii.
- 44 Knapp, op. cit.
- 45 Minnesota Sentencing Guidelines Commission, 1988 Report to the Legislature.
- 46 Bridges and Crutchfield, op. cit., p. 29.
- 47 Ibid., p. 31.
- 48 Hagan, et. al., op. cit., p. 522.
- 49 Ibid., p. 517.
- 50 RCW 9.94A.450.

51 RCW 9.94A.460.

52 RCW 9.94A.360(6)(a).

# APPENDIX A

## WASHINGTON STATE 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 4 m 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 B

### CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

- XIV Aggravated Murder 1 (RCW 10.95.020)
- XIII Murder 1 (RCW 9A.32.030)  
Homicide by Abuse (RCW 9A.32.055)
- 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 (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), (c), and (d))
  - 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)
  - Criminal Mistreatment 1 (RCW 9A.42.020)
  
- 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)  
Criminal Mistreatment 2 (RCW 9A.42.030)
- 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 (for a Legend Drug) (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**  
**DATA BASE VARIABLES**

**LINE 1**

Variable 1:      LAST NAME

Variable 2:      FIRST NAME

Variable 3:      CASE NUMBER (used only by the Commission)  
                    8 digits: xxyyzzzz  
                    where   xx = year sentenced  
                             yy = month sentenced  
                             zzzz = sequential number

**LINE 2**

Variable 1:      STATE IDENTIFICATION NUMBER (SID#)  
                    8 digits: A unique identifier supplied  
                             by the State Patrol based on fingerprints.

Variable 2:      COUNTY  
                    1 to 39

Variable 3:      MONTH OF SENTENCE  
                    1 to 12  
                    0 = unknown

Variable 4:      DAY OF SENTENCE  
                    1 to 31  
                    0 = unknown

Variable 5:      YEAR OF SENTENCE (last 2 digits)  
                    0 = unknown

Variable 6:      GENDER  
                    0 = unknown  
                    1 = female  
                    2 = male

Variable 7:      RACE  
                    0 = unknown  
                    1 = white  
                    2 = black  
                    3 = asian  
                    4 = american indian  
                    5 = hispanic  
                    6 = other

Variable 8:      MONTH OF BIRTH  
                    1 - 12  
                    0 = unknown

Variable 9: DAY OF BIRTH

1 - 31

0 = unknown

Variable 10: YEAR OF BIRTH

0 = unknown unless month and day are  
known, in which case 0 = 1900

**LINE 3**

Variable 1: CAUSE NUMBER

text field: number assigned by the court  
to the counts covered by this sentence.

Variable 2: COMMENT

free form text field

Variable 3: NOT USED

text field, not currently used

Variable 4: VERDICT

0 = unknown

1 = bench trial

2 = jury trial

3 = guilty plea

**LINE 4**

Variable 1 - 10: CRIME CODE FOR CURRENT OFFENSE

most serious offense is in field 1

**LINE 5**

Variable 1 - 10: SAME CRIMINAL CONDUCT

positions 1 - 10 of this variable  
correspond to positions 1 - 10 of  
variables on Line 4. Matching numbers  
on this variable indicate that offenses  
on above line resulted from the same  
criminal conduct, and thus do not score  
separately. All zeros indicate no two  
offenses were same criminal conduct.

**LINE 6**

Variable 1 - 10: CRIME CODE FOR CRIMINAL HISTORY

**LINE 7**

Variable 1 - 10: OFFENSES SCORED THE SAME

positions 1 - 10 of this variable  
correspond to positions 1 - 10 of  
variables on Line 6. Matching numbers  
on this variable indicate that offenses  
on above line were not scored separately  
by the sentencing judge. If all zeros,

all offenses were scored separately.

**LINE 8**

Variable 1:

**FIRST-TIME OFFENDER WAIVER**

0 = not used

1 = used

Variable 2:

**SUSPENDED SENTENCE (SSOSA ONLY)**  
in months

Variable 3:

**HOSPITAL EVALUATION (SEX OFFENDERS ONLY)**

0 = no

1 = ordered for evaluation - sexual  
treatment program

**LINE 9**

Variable 1 - 10:

**EXCEPTIONAL SENTENCE REASON**

0 = not an exceptional sentence

1 - 99 = exceptional sentence reason

**LINE 10**

Variable 1 - 10:

**CONSECUTIVE/CONCURRENT STRUCTURE**

positions 1 - 10 of this variable

correspond to positions 1 - 10 of

variables on Line 4 (current offenses).

Matching numbers on this variable indicate

that sentences for corresponding counts on

Line 4 were ordered to be served

concurrently. Different numbers indicate

consecutive sentences. If all zeros, all

counts were concurrent.

**LINE 11**

Variable 1:

**TOTAL CONFINEMENT**

months of total confinement ordered

Variable 2:

**PARTIAL CONFINEMENT**

months of partial confinement ordered or

total confinement allowed to be served as

partial confinement (whether actually served

as total or partial is unknown).

Variable 3:

**TREATMENT**

0 = none

1 = inpatient treatment

2 = outpatient treatment

3 = both inpatient and outpatient

4 = unknown type of treatment ordered

5 = potential treatment

Variable 4:

**COMMUNITY SERVICE**

in months

Variable 5: CREDIT FOR TIME SERVED  
in months

Variable 6: COMMUNITY SUPERVISION  
in months

Variable 7: FINE  
in dollars (only includes fines payable to  
state general fund, i.e. not restitution,  
court costs, etc.)

LINE 12

Variable 1: LEVEL  
SRA seriousness level for most serious  
offense

Variable 2: SCORE  
SRA offender score for most serious offense

Variable 3: LOW RANGE  
low end of presumptive range

Variable 4: HIGH RANGE  
high end of presumptive range

Variable 5: CURTYPE  
a binary code (bit flag) for most  
serious current offense type  
1 = ranked offense  
2 = violent offense  
4 = serious violent offense  
8 = felony traffic offense  
16 = vehicular homicide  
32 = burglary  
64 = drug offense  
128 = sex offense  
256 = escape offense  
512 = serious traffic offense

Variable 6: COMBINED CURTYPE  
a binary code (bit flag) for all current  
offense types combined (the curtypes for  
each offense are logically OR'ed). Same  
codes as Variable 5 (CURTYPE)

Variable 7:

**PRITYPE**

a binary code (bit flag) for all prior offense types combined (the curtypes for each prior offense are logically OR'ed). Same codes as Variable 5 (CURTYPE)

Variable 8:

**OVERRIDE**

this variable is used to override error checking performed by the data entry program. This is a binary code (bit flag)

- 1 = CTS > sentence
- 2 = rounding off (e.g. 11.25 months --> 11 months)
- 4 = would be in range if inpatient treatment was/was not counted as partial confinement
- 8 = incorrect enhancements for an attempted offense
- 16 = first-time offender waiver used with juvenile history
- 32 = first-time offender sentence over 90 days
- 64 = first-time offender waiver used, not eligible
- 128 = consecutive sentences (current offenses) not multiple serious violent or exceptional sentence
- 256 = sentence outside the range (other)
- 512 = treatment ordered, not eligible
- 1024 = community service given on a violent offense
- 2048 = excess community supervision
- 4096 = other
- 8192 = wouldn't be override if more than one cause were entered as one record

Variable 9:

**SPECIAL CONDITIONS**

- 0 = none
- 1 = breathalyzer
- 2 = urinalysis
- 4 = polygraph
- 8 = TASC
- 16 = other affirmative
- 32 = crime related prohibition

## APPENDIX D

### SENTENCE COMPARISONS: FY 1982, CY 1985, AND FY 1987

OFFENSE	YEAR	PRISON PERCENT	PRISON SENTENCE (Months)	NON- PRISON PERCENT	JAIL SENTENCE (Days)	AVERAGE TOTAL CONFINEMENT (Months)	NUMBER OF CASES
Murder 2	1982	100%	75	0%	n.a.	75	
	1985	97%	113 - 169	3%	26 - 39	109 - 164	30
	1987	100%	128 - 192	0%	n.a.	128 - 192	39
Vehicular Homicide	1982	19%	27	81%	88	7	
	1985	76%	14 - 22	24%	153 - 230	12 - 18	49
	1987	66%	14 - 22	34%	195 - 292	12 - 18	50
Delivery of Schedule I or II Drugs	1982	8%	18	93%	35	2	
	1985	39%	16 - 24	61%	45 - 67	7 - 10	204
	1987	55%	13 - 19	45%	67 - 101	8 - 12	451
Rape 1	1982	100%	99	0%	n.a.	99	
	1985	100%	87 - 130	0%	n.a.	87 - 130	26
	1987	100%	82 - 123	0%	n.a.	82 - 123	37
Indecent Liberties (with force)	1982	15%	64	85%	72	12	
	1985	89%	19 - 29	11%	45 - 67	17 - 26	18
	1987	53%	15 - 23	47%	51 - 77	9 - 13	17
Indecent Liberties (w/o force)	1982	12%	52	88%	24	7	
	1985	44%	14 - 21	56%	43 - 65	7 - 10	179
	1987	32%	14 - 21	68%	51 - 77	5 - 8	279
Statutory Rape 2	1982	16%	56	84%	116	12	
	1985	53%	16 - 24	47%	77 - 115	10 - 14	30
	1987	45%	24 - 36	55%	65 - 98	12 - 18	30
Robbery 1	1982	79%	49	21%	159	40	
	1985	94%	42 - 64	6%	183 - 275	40 - 60	200
	1987	98%	42 - 63	2%	183 - 274	41 - 62	172
Burglary 1	1982	35%	52	65%	142	21	
	1985	98%	37 - 55	2%	243 - 365	36 - 54	54
	1987	89%	27 - 40	11%	193 - 289	25 - 37	57
Burglary 2	1982	19%	22	81%	61	6	
	1985	16%	14 - 20	84%	63 - 94	4 - 6	1643
	1987	19%	14 - 21	81%	64 - 95	5 - 7	2110

OFFENSE	YEAR	PRISON PERCENT	PRISON SENTENCE (Months)	NON- PRISON PERCENT	JAIL SENTENCE (Days)	AVERAGE TOTAL CONFINEMENT (Months)	NUMBER OF CASES
Forgery	1982	16%	18	84%	38	4	
	1985	3%	11 - 17	97%	38 - 56	2 - 2	479
	1987	4%	11 - 16	96%	41 - 62	2 - 3	736
Taking A Motor Vehicle	1982	12%	14	88%	50	3	
	1985	1%	14 - 21	99%	39 - 58	1 - 2	331
	1987	2%	11 - 16	98%	41 - 62	1 - 2	426
Theft 1 (excluding by welfare fraud)	1982	11%	29	89%	34	4	
	1985	3%	13 - 20	97%	53 - 79	2 - 3	296
	1987	7%	15 - 22	93%	45 - 67	3 - 4	490

NOTES: This table excludes attempted offenses.

1982 data: The averages are based on a sample of over 3000 cases. Jail sentences reflect actual length of stay. Prisons sentences were estimated from minimum term set and average good time and public safety score reductions.

1985 and 1987 data: Jail and prison sentences are expressed as intervals. The larger number is the average determinate sentence for that offense. The smaller number reflects a one-third reduction for good time. Actual average length of stay will fall somewhere in this interval.

In 1985, many cases were still being sentenced under the prior indeterminate sentencing law. These cases are not included in this table.

## APPENDIX E

### EXCEPTIONAL SENTENCE REASONS FY 1987

*Sentences BELOW the Sentence Range (241 sentences)*

REASON	Number of Times Cited
Offense less serious than typical for the crime	56
No prior convictions or they are remote in time	47
Defendant's rehabilitation or treatment	39
Defendant has decreased capacity to appreciate wrongfulness of his conduct*	38
Victim's role in the crime*	33
Defendant assisted law enforcement	30
Prison would be detrimental	28
Def. is addressing psychological or alcohol problem	28
Defendant's age	27
Defendants physical or mental condition	27
Multiple offense policy would result in an excessive sentence*	22
Defendant was induced by others*	21
Defendant committed crime under duress*	20
Victim requests lower sentence	15

Offense was principally accomplished by another and defendant showed concern for victim*	14
Defendant is remorseful	13
Before detection, defendant compensated victim*	11
If given credit for good time, sentence is already served or is equal to what would be served in DOC	9
Defendant's actions did not intend crime or harm	9
Small quantity of drugs involved	6
Equivalent sentence with that given co-defendants	6
Defendant poses no threat to the community	5
Relationship with the victim	4
No injury to the victim	4
To make frugal use of the state's resources	4
Exceptional sentence is one day less than range	3
The First Time Offender range is not adequate	3
Exceptional sentence is more appropriate	3
All parties agreed to mitigated sentence	3
To equate punishment with that given to others with similar charges	2
Sentence is consistent with the interests of justice	2
Isolated incident	2
Another state will be handling defendant's sentence	2
Defendant is paying restitution	2

Defendant should be sentenced according to agreed range although range later found to be incorrect (clerical error)	2
Confession before apprehension	2
Other**	63
	---
TOTAL	605

AVERAGE NUMBER OF REASONS PER SENTENCE: 2.7

\* Statutory reasons as listed in 9.94A.390(1).

\*\* Contains reasons cited only once.

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

*Sentences ABOVE the Sentence Range (156 sentences)*

<u>REASON</u>	<u>Number of Times Cited</u>
Vulnerable victim*	63
Seriousness of the offense	56
Crime was deliberately cruel*	53
Multiple victims or incidents per victim*	51
Defendant was in a position of trust*	44
Defendant used sophisticated/well-planned methods*	40
Defendant is a threat to the community	23
Monetary loss greater than typical*	21

Injuries greater than necessary for the crime	20
Multiple offense policy would give lenient sentence *	20
Defendant agreed to prison sentence instead of jail	17
Factors in criminal record	16
Drugs sold in quantities too large for personal use *	14
Drugs manufactured to be used by others *	7
Defendant has high position in drug hierarchy *	7
Criminal history score greater than 9 points	6
Defendant showed no remorse	6
Defendant violated zone of privacy	4
Greater treatment available in prison	4
Sentence will promote respect for the law	4
Continuing criminal activity after arrest or while on previous probation or parole	4
Defendant is not amenable to available treatment	2
Drugs sold at least 3 times *	2
Weapon used for drug crime #	2
No resources in the community	2
Other **	46
	---
TOTAL	534

AVERAGE NUMBER OF REASONS PER SENTENCE: 3.4

\* Statutory reasons as listed in 9.94A.390(2).

\*\* Contains reasons cited only once.

# This reason was removed from 9.94A.360(2) effective July 1, 1986.

*Sentences WITHIN the Sentence Range (23 sentences)*

<u>REASON</u>	<u>Number of Times Cited</u>
Defendant's rehabilitation or treatment	9
Defendant has decreased capacity to appreciate wrongfulness of his conduct*	5
Defendant assisted law enforcement	4
Greater treatment available in prison	4
Prison would be detrimental	4
Defendant was induced by others*	3
Defendant's physical or mental condition	3
Defendant is a threat to the community	3
To make frugal use of the state's resources	3
No prior convictions or they are remote in time	2
Defendant's age	2
Def. is addressing psychological or alcohol problem	2
Multiple offense policy would result in an excessive sentence*	2

Defendant committed crime under duress*	2
Victim requests lower sentence	2
Offense less serious than typical for the crime	2
Defendant agreed to prison sentence instead of jail	2
Other**	16
	---
TOTAL	70

AVERAGE NUMBER OF REASONS PER SENTENCE: 3.0

\* Statutory reasons as listed in 9.94A.390(1) and (2).

\*\* Contains reasons cited only once.

## APPENDIX F

### MINNESOTA SENTENCING GRID

#### *Presumptive Sentence Lengths in Months*

Italicized numbers within the grid denote the range within which a judge may sentence without the sentence being deemed a departure.

		CRIMINAL HISTORY SCORE						
SEVERITY LEVELS OF CONVICTION OFFENSE		0	1	2	3	4	5	6 or more
Unauthorized Use of Motor Vehicle Possession of Marijuana	I	12*	12*	12*	15	18	21	24 23-25
Theft Related Crimes (\$150-\$2500) Sale of Marijuana	II	12*	12*	14	17	20	23	27 25-29
Theft Crimes (\$150-\$2500)	III	12*	13	16	19	22 21-23	27 25-29	32 30-34
Burglary - Felony Intent Receiving Stolen Goods (\$150-\$2500)	IV	12*	15	18	21	25 24-26	32 30-34	41 37-45
Simple Robbery	V	18	23	27	30 29-31	38 36-40	46 43-49	54 50-58
Assault, 2nd Degree	VI	21	26	30	34 33-35	44 42-46	54 50-58	65 60-70
Aggravated Robbery	VII	24 23-25	32 30-34	41 38-44	49 45-53	65 60-70	81 75-87	97 90-104
Assault, 1st Degree Criminal Sexual Conduct, 1st Degree	VIII	43 41-45	54 50-58	65 60-70	76 71-81	95 89-101	113 106-120	132 124-140
Murder, 3rd Degree	IX	97 94-100	119 116-122	127 124-130	149 143-155	176 168-184	205 192-215	230 218-242
Murder, 2nd Degree	X	116 111-121	140 133-147	162 153-171	203 192-214	243 231-255	284 270-298	324 309-339

1st Degree murder is excluded from the guidelines by law and continues to have a mandatory life sentence.

\*one year and one day

# APPENDIX G

## MINNESOTA IMPRISONMENT RATES 1983

Severity Level	Percent N Cases <sup>1</sup>	Criminal History Score						Row Total	
		0	1	2	3	4	5		6+
UUMV Possession of Marijuana	I	.5 409	1.9 106	4.3 92	12.3 65	17.9 56	37.0 27	97.4 38	9.2 793
Theft Related Crimes (\$150-\$2500) Sale of Marijuana	II	.8 485	2.1 96	10.7 75	29.8 57	25.0 36	14.3 21	85.0 40	9.5 810
Theft Crimes (\$150-\$2500)	III	.8 610	2.3 130	15.1 126	27.3 88	80.4 51	82.1 39	90.6 53	15.7 1097
Burglary - Felony Intent Receiving Stolen Goods (\$150-\$2500)	IV	1.6 832	5.6 269	13.9 202	25.3 166	90.9 110	91.7 60	91.9 74	18.7 1713
Simple Robbery	V	7.5 106	18.5 27	25.0 36	95.7 23	71.4 7	88.9 9	100.0 12	31.4 220
Assault, 2nd Degree <sup>3</sup>	VI	7.6 340	25.0 68	36.5 52	86.7 30	87.5 16	88.9 18	92.3 13	24.2 537
Aggravated Robbery	VII	66.7 78	79.5 39	96.8 31	97.4 38	100.0 17	100.0 7	90.9 11	83.3 221
Assault, 1st Degree Criminal Sexual Conduct, 1st Degree	VIII	39.8 83	81.3 16	92.3 13	90.9 11	100.0 7	100.0 1	100.0 3	59.0 134
Murder, 3rd Degree	IX	100.0 1	0 0	0 0	0 0	0 0	0 0	0 0	100.0 1
Murder, 2nd Degree	X	100.0 20	100.0 10	100.0 4	100.0 1	0 9	0 0	100.0 1	100.0 36
		5.5 2964	12.9 761	21.1 631	39.0 479	67.7 300	72.5 182	91.8 245	20.5 5562

<sup>1</sup>The numbers of cases shown in the figure reflect actual evaluation cases — no estimation is involved.

<sup>2</sup>The dispositional line shown in this grid is a modification of the original dispositional line; the modification became effective August 1, 1981.

<sup>3</sup>A significant number of cases at severity level 6 are presumptive imprisonment cases because of the application of mandatory minimum laws.