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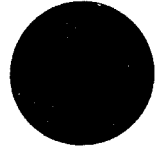
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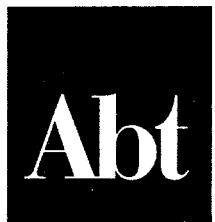
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Multi-Site Evaluation of Sentencing Guidelines: Florida and North Carolina

February 22, 2000

Draft

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Multi-Site Evaluation of Sentencing Guidelines: Florida and North Carolina

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Multi-Site Evaluation of Sentencing Guidelines: Florida and North Carolina

Executive Summary

Introduction

Thirty years ago, all offenders in the U.S. were processed through indeterminate sentencing systems which permitted judges complete discretion in setting sentence conditions and terms, thus limiting appellate review¹ and detection of undesired consequences such as racial disparity. Once incarcerated, inmates served sentences according to good time earned, furloughs, parole board decisions, and sometimes early release due to arbitrary determinants such as overcrowding. Over the years, the criminal justice system (CJS) developed a diminished capacity to punish offenders in a manner consistent with many of the principles of sentencing—including deterrence, incapacitation, and retribution.²

Since Minnesota first enacted sentencing guidelines in 1980, many jurisdictions have considered structured sentencing a means to transition from indeterminate to determinate sentencing and restricted prison release policies. Actually, structured sentencing systems can be distinguished along a continuum ranging from mandatory to voluntary application of sentencing guidelines.³ In some States, such as Virginia, structured sentencing is voluntary but judicial compliance with the guidelines is high.⁴ All Federal felonies and most serious misdemeanor cases have been sentenced according to guidelines established by the U.S. Sentencing Commission since November 1987.⁵ A recent survey⁶ yielded information for 18 States which have established sentencing commissions to standardize structured sentencing rules. However, some States (e.g., Wisconsin and Florida) have decided to abolish their commissions and to adopt new criminal punishment codes.

Generally, sentencing guidelines are rules established by commissions that structure sentencing according to both the case and the offender's record. Sentencing guidelines are often

Note: We would like to thank Kenneth Carlson and Dale Parent for their contributions to this project.

¹ Tonry, M. (1999, Sep). *Reconsidering Indeterminate and Structured Sentencing*. Washington, DC: National Institute of Justice, Research in Brief, Papers from the Executive Sessions on Sentencing and Corrections.

² Pontell, H. (1984). *Capacity to Punish: The Ecology of Crime and Punishment*. IN: Indiana University Press.

³ Ostrom, B.J., Kauder, N.B., Rottman, D., and Peterson, M. (1998). *Sentencing Digest: Examining Current Sentencing Issues and Policies*. Williamsburg, VA: National Center for State Courts.

⁴ Virginia Criminal Sentencing Commission (1997, Dec). *Virginia Criminal Sentencing Commission: 1997 Annual Report*. Richmond, VA: Author.

⁵ U.S. Sentencing Commission. (1998). *An Overview of the Federal Sentencing Guidelines*. U.S.S.C. website (<http://www.ussc.gov>).

⁶ National Center for State Courts (1997). *Sentencing Commission Profiles: State Sentencing Policy and Practice Research in Action Partnership*. Williamsburg, VA: Author.

described as presumptive, meaning a range of sanctions and terms are presumed in accordance with, among other factors, offense severity and criminal history. The presumed sentence range is applied unless there are aggravating or mitigating circumstances for which alternate ranges are provided. Judges can depart from even mandatory guidelines with sufficient justification. Judges usually must state the factors which determined the alternate sentence, or if the sentence falls outside the alternate range, the reasons for a departure (e.g., for appellate review purposes).

The intent of this project is to focus on States which instituted (or made significant modifications to) structured sentencing policies in the 1990s and are referred to as "second generation sentencing commissions." Common among these second generation sentencing guidelines are some primary objectives: imprisonment of priority (violent) offenders, sentencing neutrality and uniformity, truth-in-sentencing, and prison population control. During the 1990s, Florida and North Carolina had mandatory presumptive sentencing guidelines; effective October 1998, the Florida Legislature repealed the sentencing guidelines and the Sentencing Commission, and established a new Criminal Punishment Code. The purpose of this study is to observe the effects of sentencing guidelines and prison release policy changes on felony sentences and time served in these two States.

One cannot study sentencing guidelines without examining truth in sentencing and other release policies that also affect time served and, consequently, demand on correctional resources. Prison release policies have been affected both by structured sentencing systems that may call for abolishment of parole boards and modifications in gaintime policies, and by Violent Offender Incarceration and Truth in Sentencing (VOI/TIS) initiatives that promote increased time served. The Violent Crime Control and Law Enforcement Act of 1994 provided financial incentives for States to adopt VOI/TIS laws requiring certain offenders (esp. violent offenders) to serve minimum proportions of their sentences.⁷

For example, the Sentencing Reform Act of 1984 that established Federal sentencing guidelines also eliminated parole and reduced good conduct time allowed; these truth in sentencing provisions required that Federal offenders serve a minimum of 85 percent of their sentences. The Bureau of Justice Statistics⁸ reported that between 1986 and 1997, average sentence terms rose by one-third (39 months to 54 months) and average time served more than doubled (21 months to 47 months). Despite increased sentence terms⁹, the proportion of time served rose from about 58 percent in 1986 to about 87 percent in 1997 overall. Due to case processing lags, the effects of the sentencing guidelines and truth in sentencing policies accrued gradually as cohorts of new court commitments

⁷ Bureau of Justice Statistics (1999, Jan). *Truth in Sentencing in State Prisons*. Washington, DC: U.S. DOJ.
⁸ Bureau of Justice Statistics (1999, Jun). *Time Served in Prison by Federal Offenders, 1986-1997*. Washington, DC: U.S. DOJ.

were admitted to the Bureau of Prisons; 23 percent of the inmates admitted in 1988 versus 99 percent of the inmates admitted in 1997, were sentenced under these new laws. These changes had the most impact on certain serious offenses—such as violent, drug, weapons, and immigration offenses—and had little impact on less serious offenses such as property offenses. In addition to time served, number of admissions increased differentially by offense type, whereby about 72 percent of the increase in the Federal prison population between 1986 and 1997 can be attributed to drug offenses.

Research Design

We selected two States—Florida and North Carolina—that adopted and modified sentencing guidelines, and revised release policies, to enhance sentences and time served for serious offenses and offenders with criminal histories. Our basic approach was to examine charging, sentence, prison admission, and time served statistics over time, comparing these outcomes for the periods before and after sentencing guidelines and release policy changes went into effect. Interrupted time series analyses and simulated projections were used to evaluate the impact of these policy changes on charging and sentencing practices by prosecutors, defense attorneys, and judges, as well as on release practices by prison officials. We also predicted future demand in terms of prison beds required as a consequence of these policies.

We obtained data collected by State court and corrections agencies in Florida and North Carolina for the period surrounding these policy changes (i.e., 1991 through 1997). Note that sentencing data can be highly variable in availability and quality, especially when both pre- and post-guideline data are required. Further, there are administrative practices (e.g., consolidating cases for judgement, resentencing, etc.) which impinge on our ability to observe accurate, real-time trends. Last, time served was estimated for recent cases, and one can only assume fixed characteristics to project time served estimates forward. These estimates may misrepresent future release outcomes.

As described in detail in the following chapters, both States classify offenses and criminal histories into ranked severity classes. North Carolina organizes sentence ranges in a grid format, where each cell refers to some combination of offense and criminal history severity (see appendix B). North Carolina follows guidelines for misdemeanors as well as felonies, but this study is concerned with felony crimes only. Florida differs from other States in that sentence calculations are organized into a point system rather than a punishment grid (see appendix A). Sentence type and term are determined by the sum of offense and criminal history points associated with each severity class. To control for offense type and severity, we chose cases charged with felony burglary, robbery, or drug possession. These represent substantial proportions of common offense types—property, person, and

⁹ Sentence term increases are largely the result of mandatory minimum prison terms (BJS 1999).

drug—and a range of serious, moderate, and minor felonies. Further, these groups of offenses are differentially targeted by guideline modifications so comparisons can be used to demonstrate guideline impacts.

Findings pertaining to analyses of sentencing and prison data for Florida are presented in chapter 1 of this report, and for North Carolina in chapter 2. Following is a summary of those findings along with a review of the legislative changes in sentencing and release policies.

Florida

In October 1983, the Florida Sentencing Guidelines Commission initiated sentencing guidelines based on an objective scoring of offense- and offender-related criteria.¹⁰ In an effort to promote truth in sentencing and to increase actual time served for violent and repeat offenders, Florida revised the sentencing guidelines and modified prison release policies as part of the Safe Streets Act effective January 1994.¹¹ With the Crime Control Act of 1995, Florida changed its sentencing guidelines to increase the incidence of prison sentences and the duration of time served for crimes involving serious offenses or serious victim injury, and for offenders who had serious prior criminal records.¹² For instance, the 1995 guidelines increased level 7 offense assessments from 42 to 56 points, changing the presumptive sentence from discretionary to mandatory prison for serious offenses such as burglary.¹³ When the 1994 guidelines were effective, inmates could earn 20 to 25 days of incentive gaintime per month served, and they typically served about 70 percent of the sentence imposed. When the 1995 guidelines were effective, inmates could earn 10 days of incentive gaintime per month served, and they could not serve less than 85 percent of their sentences.¹⁴

Florida provided preguideline data for cases sentenced between January 1991 and December 1993, guideline data for cases related to offenses committed between January 1994 and June 1997, and admission and release data for offenders admitted to prison between July 1979 and June 1997. We analyzed sentencing data for associations between the implementation of the 1994 sentencing guidelines or the 1995 sentencing guidelines and:

- changes in primary offense, additional offense, and prior record charging;

¹⁰ Hogenmuller, J.N. (1997, Jan). *Historical Overview of Florida Sentencing Guidelines*. Tallahassee, FL: Sentencing Commission.

¹¹ Florida Department of Corrections (1996, Dec). *1995-96 Annual Report: The Guidebook to Corrections in Florida*. Tallahassee, FL: Author.

¹² Florida Department of Corrections (1997, Mar). *Sentencing Guidelines 1995-96 Annual Report: The Impact of the 1994 and 1995 Structured Sentencing Policies in Florida*. Tallahassee, FL: Author.

¹³ Offense types are organized in a master list by severity, ranging from 1 (low) to 10 (high).

¹⁴ Florida Department of Corrections (1996, Dec). *1995-96 Annual Report: The Guidebook to Corrections in Florida*. Tallahassee, FL: Author. Note meritorious and educational gaintime policies also apply.

- the incidence of sentence sanction and term mitigation by judges (i.e., judicial departures from the sentencing guidelines); and,
- the resulting sentence types and terms imposed.

Interrupted time-series indicate an increase in lower level charging (and a decrease in higher level charging) for primary offenses among burglary and robbery cases that coincides with the implementation of the 1995 sentencing guidelines. This reduced the impact of guideline modifications on average primary offense points, which remained nearly the same. Average points for additional offenses rose with the guideline modifications for serious felonies despite a drop in serious additional offense charging, especially among robbery cases. The incidence of prior record charging did not change, so average points increased in tandem with the guideline transition, as expected. The net effect of the 1995 guidelines was an increase in presumptive prison sentence terms, as intended by the State.

CJS officials may have adjusted charging or plea bargaining practices in response to guideline changes, but if these changes happened, they were not large enough to nullify the guidelines' intent. With the implementation of the 1995 guidelines, we see a general increase in points meaning an increase in recommended prison sentences. However, it appears that judges attempted to mitigate the harsher sanctions prescribed by the 1995 guidelines via sentence departures in burglary and drug possession cases—more in terms of nonprison sanctions than in decreased prison terms. Again, apparent CJS attempts to mitigate new provisions of the guidelines and truth in sentencing were not so great as to nullify the guidelines' intent. Comparing expected time served under 1994 versus 1995 guidelines given time served assumptions of 70 percent and 85 percent of sentence imposed, guideline changes resulted in substantial time served estimate increases for serious offenses like burglary and robbery (e.g., increases of six months or more), and only moderate increases on minor felonies such as drug possession.

We analyzed prison admission and release data for new court commitments to observe the impact of guideline and release policy changes on:

- proportion of sentence time served;
- admissions and demand (the number of prison beds required)¹⁵; and,
- projected cumulative demand.

Proportion of time served did increase with each set of guideline and associated release policy changes—from about 30 percent to 55 percent prior to 1994, to about 60 percent to 75 percent during the 1994 guideline period, and finally up to 85 percent since the 1995 guidelines were

introduced. Although admissions declined, demand on prison resources remained steady for serious inmates such as burglary and robbery offenders as time served increased commensurate with guideline and release policies changes. Nonetheless, sentencing guidelines changes have a positive impact that is independent of the effects of admissions and release policies. Simulating future demand, we found that sentencing guideline and truth in sentencing policies may double the number of prison beds required for such serious offenses by FY2013.

North Carolina

North Carolina adopted a structured sentencing system following a history of indeterminate sentencing altered only by the Fair Sentencing Act (FSA) of 1981.¹⁶ In October 1994, North Carolina introduced sentencing guidelines which stipulate presumptive sentences according to offense severity and criminal history (see appendix B) for all felonies and misdemeanors. For serious crimes and repeat offenders, the guidelines presume jail or prison terms (called active terms). The felony sentencing chart is divided by a grid border that separates cells corresponding to active versus optional sentences including intermediate and community punishment.

In December 1995, selected minimum sentence ranges were amended to increase sanctions and terms for serious crimes and offenders; specifically, minimum terms were increased by approximately 16 percent for serious felonies (denoted as classes B2, C, and D). Also, active punishment options were added for felony class H offense cases (e.g., burglary) with prior record levels of I or II (minimal or no criminal histories).

Under structured sentencing, good time, gaintime, and parole were abolished. Offenders sentenced to active punishment must serve at least the minimum term imposed; however, as determined by the Department of Correction (DOC), they could earn credits of up to six days per month incarcerated on their maximum term. Prisoners could be released on the date equivalent to the maximum sentence term less nine months (effective December 1996¹⁷), any earned time awarded, and time served in pretrial detention.¹⁸

North Carolina provided court data for cases filed between 1991 and 1997, and prison admission and release data for offenders admitted between 1990 and 1997. We analyzed sentencing

¹⁵ We can approximate the demand made by a cohort of offenders on prison resources by multiplying the number of offenders admitted by the average length of time they will serve.

¹⁶ The FSA mandated statutory presumptive sentence terms for felony offenses that were punishable by maximum prison terms of three or more years.

¹⁷ Effective December 1996, the incarceration release date was amended from the equivalent of the maximum prison term "less six months" to "less nine months."

¹⁸ Offenders should serve 100 percent of their minimum term less time served in pretrial detention.

data for associations between the implementation of the 1994 sentencing guidelines or the 1995 sentencing guidelines and changes in:

- primary offense and prior record charging;
- the incidence of active punishment (above the sentencing chart border) sentences imposed; and,
- the resulting sentence types and terms imposed.

Despite the increase in terms for serious felonies effective with the 1995 guidelines, interrupted time-series indicate no change in primary offense charging patterns. Missing data probably attributable to record consolidation practices preclude definitive conclusions, but changes in prior record charging were not apparent. Also, there was no change in the proportion of cases for which active punishment was the presumed sentence that can be associated with guideline modifications in 1995.

Actually, the shift in sentences occurs in 1994 when North Carolina moved from indeterminate sentencing and FSA policies to structured sentencing. Confirmed by DOC data and expert opinion, the sentencing and prison data show a considerable drop in the length of prison terms imposed across offenses. However, the sentence outcomes are structured to reinforce the punitive differential between serious and minor felonies whereby more punitive terms are associated with more serious offenses. During the FSA period, the majority of robbery cases (i.e., the most serious felonies) were sentenced to prison terms of over five years; since the 1994 guidelines, sentence terms between 13 and 24 months are more common. In contrast, sentence terms for minor felonies (such as drug possession) were usually more than two years during the FSA period. Under sentencing guidelines, very few drug possession cases were sentenced to more than two years, and the majority were sentenced to six months or less. These trends reflect a rational decision to impose reduced demands on correctional resources, in general, but to reserve more punitive sentences for targeted serious offenses.

We analyzed prison admission and release data for new court commitments to observe the impact of guideline and release policy changes on:

- proportion of sentence time served;
- admissions and demand (the number of prison beds required); and,
- projected cumulative demand.

During the period from 1990 to 1994, prisoners served an average of 20 to 30 percent of their maximum sentence, regardless of offense type. Offenders sentenced under the sentencing guidelines served an average of about 80 percent or more of their sentences. Many offenders sentenced under

the guidelines were still in prison through 1997, but there is a slight increase in time served among burglary and robbery offenses sentenced under the 1995 guidelines.

Prison demand patterns vary by offense type. Increased time served resulted in increased demand posed by burglary and robbery offenders, even though burglary admissions decreased. Demand among drug possession offenders increased, despite shorter sentences, because admissions rose. Assuming similar time served and admission averages, estimated future cumulative demand will require triple the number of prison beds for serious offenses such as robbery. There is a near doubling in demand for drug possession offenses, and a negligible increase in demand for burglary offenses. Controlling for admissions, the change in demand or the projected number of prison beds required by FY2013 is greatest for robbery offenses, but still substantial for burglary offenses. No appreciable change in demand for drug possession offenses is anticipated.

Review

Both Florida and North Carolina succeeded in raising time served for serious offenses (e.g., robbery and burglary) and the proportion of sentences served overall. According to interrupted time-series analyses, the net effect of Florida sentencing guidelines and their modifications was increased primary offense, additional offense, and prior record points for serious cases. Despite judicial departures that mitigated sanctions, guideline changes led to increased sentence terms—more for serious offenses than for minor felonies such as drug possession. The end results are inmates serving up to 85 percent of their prison sentences and higher demand related to serious offenses.

Court data are insufficient to support precise statistics, but North Carolina achieved truth in sentencing by adopting sentencing guidelines that generally lowered the sentence terms imposed. With structured sentencing, prison inmates served up to 80 percent of their sentences, with a slight increase in time served observed among serious offenses since the implementation of the 1995 guidelines. Similar to Florida, demand related to North Carolina's cases increased among serious offenses despite decreasing prison admissions. However, like Federal trends, drug offense admissions to prison are up in North Carolina. Expected time served is lower for drug possession cases compared to Federal drug trafficking cases, but demand caused by drug possession cases in North Carolina is greater than in Florida due to increasing volume.

We analyzed data for sentences and prison admissions through 1997. A new punishment code effective in Florida October 1998 entails several changes. For example, judges may impose statutory maximums without explanation, or downward departures with explanation, which are subject to appeal. As of July 1997, sentences of up to 22 months of community control or prison may be imposed without aggravating reasons when the recommended sentence is nonprison if there are

prior felony convictions; and downward departures on the basis of drug addiction were eliminated. If mitigating judicial departures are inhibited by these policies, we would expect further increases in demands on prison resources while truth in sentencing policies are also in effect.

1.0 Analysis of Florida Sentencing Guidelines

The Florida Sentencing Guidelines Commission initiated sentencing guidelines, based on an objective scoring of offense- and offender-related criteria, in October 1983.¹ In an effort to promote truth in sentencing and to increase actual time served for violent and repeat offenders, Florida revised the sentencing guidelines and modified prison release policies as part of the Safe Streets Act effective January 1994.² With the Crime Control Act of 1995, Florida changed its sentencing guidelines (effective October 1995) to increase the incidence of prison sentences and the duration of time served for two groups: offenders who had been convicted of serious crimes or crimes involving serious victim injury, and offenders who had serious prior criminal records.³ Effective October 1998, the Legislature repealed the sentencing guidelines and the Sentencing Commission, and established a new Criminal Punishment Code, which reenacts many (but not all) of the guideline provisions. The analysis reported here predates the repeal of the guidelines.

1.1 Research Questions and Findings

We sought to learn whether changes to the guidelines and release policies during 1994 and 1995 increased the incidence and duration of prison sentences for targeted offenses and offenders as intended. Data are sparse and not comparable before January 1994, so most of the analysis contrasts sentences imposed under the 1994 and 1995 guidelines. We further restricted the investigation to keep the scope of our inquiry manageable. First, although the guidelines provided for nonprison sanctions, this study only investigates the impact on State prison sentences. Second, it only examines sentences imposed on offenders convicted of felony burglary, robbery, or drug possession. As discussed later, guideline changes should have caused significant increases to the incidence and duration of prison terms for robbers and burglars, and only minor changes for offenders convicted of drug possession. Presumably, the guidelines would have comparable effects on other offenses, but confirmation is beyond the scope of this analysis.

¹ Hogenmuller, J.N. (1997, Jan). *Historical Overview of Florida Sentencing Guidelines*. Tallahassee, FL: Sentencing Commission.

² Florida Department of Corrections (1996, Dec). *1995-96 Annual Report: The Guidebook to Corrections in Florida*. Tallahassee, FL: Author. The revised policies also intended to match policy with resources and to eliminate unwarranted sentencing disparity while providing a flexible sentencing structure. This report does not consider those objectives.

³ Florida Department of Corrections (1997, Mar). *Sentencing Guidelines 1995-96 Annual Report: The Impact of the 1994 and 1995 Structured Sentencing Policies in Florida*. Tallahassee, FL: Author.

Most of the evidence that is informative about the issues presented above, and others discussed subsequently, is based on interrupted time-series. Tabular data are presented by half-year, beginning with January to June of 1994, and ending with July to December of 1996. Consequently, the tables are based on data from one and one-half years of sentencing under the 1994 guidelines, one-half year of sentencing under a mixture of the 1994 and 1995 guidelines, and one year of sentencing under the 1995 guidelines. Interpretations that the 1995 guidelines caused a change is based on observations that (1) there was a break in the time-series coincident with use of the 1995 guidelines and (2) that break was not part of a pre-existing trend. Statistical significance tests (e.g., Chi-square tests) were omitted because the high volume of cases would cause even minimal differences to appear significant, so we report substantive differences evident from interrupted time-series and trend analyses.

To answer the above question, it might seem sufficient to simply compare time served by offenders convicted of robbery, burglary and drug possession before and after the guidelines changed. However, such a straightforward comparison could be misleading, because nominal conformance could be mistaken for real conformance with guideline provisions. The guidelines operate by assigning points, which translate into time sentenced to prison, for specific offense levels. When points changed for targeted offenses levels in October 1995, criminal justice system (CJS) officials—prosecutors, defense counsel, and judges—may have had incentives to change their charging or bargaining practices. If resulting adjustments to the conviction mix were sufficiently large, adoption of the 1995 guidelines could have had a lesser or greater effect than intended by the State.

- Primary offense charging trends show a small shift from higher to lower level charging in burglary and robbery cases, which decelerated the increase in average points for burglary cases (and possibly robbery cases; see section 1.3.2).
- As points for additional charges increased in 1995, did charging and bargaining practices change; that is, did the guidelines have unintended effects on sentencing? Section 1.3.4 shows the incidence of serious additional charges decreased when the guidelines changed (esp. in robbery cases), but point averages increased substantially nonetheless.
- And, the guidelines assign points according to criminal history. As prior record points increased with the 1995 guidelines, prior record charging remained fairly steady while average points increased (see section 1.3.6).

Thus, the 1995 guidelines stipulate that more severe sanctions should be imposed on convicted offenders when one or more objective conditions are met. Accurate point scoring, given the establishment of those conditions, would comprise *pro forma* compliance with the guidelines. But *pro forma* compliance begs the questions of whether or not the State successfully increased the incidence and

duration of prison terms, because establishing the objective conditions is subject to charging and bargaining practices. We are not privy to prosecutor, defense counsel and judicial behavior. Still, interrupted time-series should reveal important changes in the incidence of objective conditions concurrent with the 1995 guidelines, even if attribution of those changes to charging and bargaining behavior is speculative.

In fact, evidence presented in sections 1.3.2 to 1.3.6 shows shifts in the occurrence of objective conditions relevant to the guidelines, and that those shifts mitigated the State's intention of increasing the incidence and duration of prison terms. The occurrence of these shifts need not imply that the State's intention was thwarted, provided the shift did not completely offset the State's goal of increasing the point scores for certain offenses and offender characteristics. Section 1.3.7 shows that the offset was only partial; that is, policy intended to increase the point scores for targeted offenses and offenders was successful, if to a lesser degree than would have happened had those shifts not occurred.

Given that the 1995 guidelines successfully increased point scores for targeted offenses and offenders, the next question is whether or not judges abided by the guidelines' strictures.

- Under Florida's guidelines, judges retain discretion to depart from the guidelines—downward when mitigating factors allow and upward when aggravating factors allow. Possibly, judges could have thwarted the State's intention of increasing the incidence and duration of prison for targeted offenses and offenders by more frequent findings of mitigation. Section 1.3.8 shows that judges mitigated sanctions (not terms) in burglary and drug possession cases more frequently under the 1995 guidelines.
- This raises the question of whether or not the State was successful at increasing the incidence of prison terms, as intended by changes to the 1995 guidelines. The answer is: No, the incidence of prison sentences did not change appreciably after adoption of the 1995 guidelines (see section 1.3.9).
- The remaining question is whether or not the State was successful at increasing the duration of prison for those offenders sentenced to prison. Evidence on time served is presented in section 1.3.10. There the answer is: Yes, the duration of prison stays increased for those sentenced to prison.

Prison data analyses were used to determine the relative impact of admissions, sentencing guidelines, truth in sentencing, and other trends on time served and demand (or the number of prison beds required to house inmates). That is, did sentence guideline and release policy changes increase time served as expected, and how will this impact demand on prisons in Florida?

Having found little change in the incidence of prison terms, but a substantive increase in the duration of terms for those sentenced to prison, we sought to project the impact of sentencing changes on the Florida prisons. Projections are speculative. They depend on trends in future convictions, constancy

of sentencing laws, and other unknowns. As shown in two- and three-strikes sentencing legislation studies,⁴ actual trends may be overestimated by simulated projections which fail to incorporate other variables such as crime trends. Thus, the projections offered in section 1.4 should be considered simply a logical extension of what would happen to Florida prisons if sentencing patterns observed in the late 1990s persisted into the future. These analyses indicate the following.

- Changes in gaintime and release policies increased time served from about 30 percent to 55 percent (depending on offense type) of sentence terms prior to 1994, to about 60 percent to 75 percent when the 1994 guidelines were in effect, to about 80 percent to 85 percent since the 1995 guidelines went into effect (see section 1.4.1).
- As admissions declined during the 1990s, demand on State prisons (i.e., the product of admissions and estimated time served) remained fairly steady for targeted offenses such as burglary, but declined for minor felonies such as drug possession (see section 1.4.2).
- Assuming similar time served and admission averages, estimated future cumulative demand will require double the number of prison beds for targeted offenses such as burglary, but about the same number of prison beds for minor felonies such as drug possession over time (see section 1.4.3).
- Controlling for admissions, sentencing guidelines and truth in sentencing policies have independently increased demand. The biggest demands on the Florida prison system are among serious offenses such as burglary and robbery felonies, compared to drug possession cases which represent minor felonies not targeted by these policies (see section 1.4.3).

1.2 Sentencing and Prison Data

Three data sets enter the analysis. The Florida Department of Corrections (DOC) provided the 1994 and 1995 guidelines scoresheet data for sentences related to offenses committed between January 1994 and June 1997. We eliminated data for offenders whose crimes were committed during 1997, however, because inclusion of those cases would have biased the analysis.⁵ The second dataset—on prison admissions spanning July 1979 through June 1997—is from a special study conducted by the

⁴ Austin, J. (1998, Nov). The impact of two strikes and you're out legislation. In E. Flynn (Chair) *Assessing the Impact of Three Strikes Legislation: Policy Implications*. Presented at the meeting of the American Society of Criminology, Washington, DC.

⁵ Sentences imposed on offenders whose crimes occurred during 1997 are biased and misleading. The problem is that we have no data for sentences that happened after June 1997, but many offenders who committed their crimes during 1997 had not been sentenced by June 1997. These probably tended to be the most serious offenders, whose cases required the most time to reach a disposition. Consequently, the time-series looks very different in the first half of 1997 than it does in the second half of 1996 for reasons that have nothing to do with the issues under investigation here.

Bureau of Research and Data Analysis of the Florida DOC. We used those data to determine time served given sentence imposed. The Florida Legislature Division of Economic and Demographic Research supplied guideline scoresheet data for cases sentenced between January 1991 and December 1993 under the 1983 guideline system. The 1983 guidelines are significantly different from later guidelines, so we use the 1983 guideline data only to examine long-term trends in the occurrence of factors that enter into all three sets of guidelines.

The 1994 guidelines were effective from January 1, 1994 through September 30, 1995, and the 1995 guidelines were effective through September 1998. For most of this analysis, the tables refer to when the offender committed the incident crime, because that date dictates the applicable guideline and release provisions. Periods are reported in half-years; for example, cases for offenders who committed their crimes during the second half of 1994 are included under the label "1994-2." Because the guidelines apply to crimes committed on or after the dates that the guidelines went into effect, their impact is incremental. Table 1 shows the case processing lag for all cases (not just those analyzed further here). There is typically a lag between arrest and case disposition, so sentences were still being imposed under the 1994 guidelines as late as 1997.⁶ This lag has little significance in most of this study, because the analysis is not much concerned with when the sentence was imposed. However, the lag becomes relevant in section 1.4, when the analysis turns to prison impact.

Table 1. Number of Offenders Sentenced by Applicable Guidelines and Date Sentenced

Applicable Guidelines	Sentence Date						
	1994-1 n / %	1994-2 n / %	1995-1 n / %	1995-2 n / %	1996-1 n / %	1996-2 n / %	1997-1 n / %
1994 Guidelines	11,585 100%	32,139 100%	43,120 100%	43,180 95%	24,034 47%	12,039 22%	8,148 14%
1995 Guidelines	- -	- -	- -	2,482 5%	26,725 53%	41,721 78%	51,628 86%
Total	11,585 100%	32,139 100%	43,120 100%	45,662 100%	50,759 100%	53,760 100%	59,776 100%

Source: 1994 and 1995 guidelines scoresheets.

⁶ Further, offenders who violate community supervision or similar nonincarcerative sentence conditions are resentenced according to the guidelines in effect on the date of their original crime. That is, regardless of revocation hearing date (e.g., 1997 when 1995 guidelines were in effect), a 1994 scoresheet is prepared for each resentencing if the original incident predates October 1995. Therefore, the 1995 guidelines applied to roughly half the offenders sentenced during the first half of 1996 and about three-quarters of all offenders sentenced during the second half of 1996.

1.3 Sentence Analyses

The argument in this section proceeds in stages. After reviewing pertinent aspects of the 1994 and 1995 guidelines, we first sought to learn whether or not the 1995 guidelines caused changes in the reported occurrence of the principal factors that affect the guideline calculations—the primary offense (section 1.3.2), additional offenses (section 1.3.4), and prior record (section 1.3.6). As foreshadowed, we found that the 1995 guidelines reduced the reported occurrence of factors that otherwise would have increased the incidence and duration of prison terms. Despite the fact that these factors are reported less frequently, section 1.3.7 shows that point scores increased for the targeted population; so to this extent, the State accomplished its purpose. Section 1.3.8, however, shows that judges more frequently found mitigating circumstances under the 1995 guidelines than they did under the 1994 guidelines, so sentence severity did not increase as much as it would have otherwise. In fact, there appeared to be no significant increase in the incidence of prison terms (section 1.3.9), although there was an increase in the length of time to be served by those sentenced to prison (section 1.3.10). Ultimately, then, the State at least partially accomplished its purposes. The following sections detail the evidence supporting these conclusions.

1.3.1 Sentencing Guidelines

Florida guidelines use a point system. A guideline worksheet stipulates points for each of the following: primary offense, additional offenses, victim injury, prior record, and other factors not considered here (e.g., community sanction violations). The number of points for each factor depends on rules, discussed in detail below, that differ between the 1994 and 1995 guidelines, so we can investigate how these rule changes affected sentencing. After some adjustments, the points are summed, and the guidelines specify additional rules (also discussed later) for translating points into presumptive sentences. A judge must apply the presumptive sentence unless he or she cites mitigating or aggravating reasons for departing from the guidelines.

1.3.2 Primary Offense

Only the single most serious count is considered when scoring the primary offense. Remaining multiple counts of the same offense type are considered to be additional offenses (see section 1.3.4). Offense types are organized in a master list by severity, ranging from 1 (low) to 10 (high). Under the 1995 guidelines, level 7 offense assessments increased from 42 to 56 points, changing the presumptive sentence from discretionary to mandatory prison.⁷ The burglary, robbery, and drug possession cases

⁷ There were other changes, such as an increase in level 9 assessments from 91 to 92 points. That change was so minor that we ignore it here. There was a coincident statutory change to increase home invasion from a level 7 to a level 8 offense, which we also ignore because the effect of that change was insignificant.

selected for analysis vary in offense type and severity. One-third of the burglary cases resulted in convictions for level 7 offenses, so we expected this change to have important implications for burglary sentences. Although robbery cases ranked high on severity (half were level 6 offenses and one-third were level 9 offenses), few (5 percent) were convicted on level 7 offenses, so changes in points for level 7 offenses should have little impact. Drug possession cases involved offenses of lesser severity (i.e., less than level 7).

The 1995 guidelines increased the severity of sentences for level 7 offenses, and this increase may have modified the incentives of CJS officials to alter charging and bargaining practices. The evidence is circumstantial. Suppose that the percentage of level 7 cases was fairly constant before the 1995 guidelines went into effect. Then if the percentage of level 7 cases changed when the 1995 guidelines went into effect, we could reason that the 1995 guidelines probably influenced charging or bargain practices—or both—to change.

Tables 2a-c show that the October 1995 guidelines may have altered the way that cases are charged or bargained in Florida. Levels 1 to 6 cases comprised about 57 percent of all burglary cases before the 1995 modifications. They comprised about 62 percent after the 1995 modification. Of course, other factors may explain these trends, but these findings are consistent with the inference that prosecutors charged lesser crimes, or prosecutors and defense counsel bargained for lesser charges, to mitigate the effect that guidelines and truth in sentencing provisions had on Florida burglars. As a result the average number of points earned for primary offense severity increased by less than might have been expected otherwise (i.e., 34 points to 36 points on average).

Table 2a. Primary Offense Severity and Average Points by Offense Date: Burglary

Primary Offense Severity	Offense Date					
	1994 Guidelines			Mixed	1995 Guidelines	
	1994-1	1994-2	1995-1	1995-2	1996-1	1996-2
Levels 1-6	57%	58%	55%	59%	61%	64%
Level 7	34%	34%	36%	32%	31%	29%
Levels 8-10	9%	8%	9%	9%	8%	7%
Average Points	34	33	34	35	37	36
n	6,507	6,694	6,386	6,122	5,406	4,872

Source: 1994 and 1995 guidelines scoresheets.

Table 2b. Primary Offense Severity and Average Points by Offense Date: Robbery

Primary Offense Severity	Offense Date					
	1994 Guidelines			Mixed	1995 Guidelines	
	1994-1	1994-2	1995-1	1995-2	1996-1	1996-2
Levels 1-6	51%	51%	56%	55%	58%	57%
Level 7	6%	5%	6%	4%	3%	3%
Levels 8-10	43%	44%	38%	41%	39%	40%
Average Points	58	58	56	57	56	56
n	1,974	1,998	1,876	1,739	1,568	1,519

Table 2c. Primary Offense Severity and Average Points by Offense Date: Drug Possession

Primary Offense Severity	Offense Date					
	1994 Guidelines			Mixed	1995 Guidelines	
	1994-1	1994-2	1995-1	1995-2	1996-1	1996-2
Levels 1-6	100%	100%	100%	100%	100%	100%
Level 7	0%	0%	0%	0%	0%	0%
Levels 8-10	0%	0%	0%	0%	0%	0%
Average Points	15	15	15	15	15	16
n	8,452	8,809	10,459	9,442	10,388	9,845

A different picture seems to describe robbery cases (see table 2b). So few robbery cases were level 7 that the guidelines themselves should have had little effect. In fact, there was an increase in levels 1 to 6 cases (51 percent to 57 percent), a corresponding decrease in levels 7 to 10 cases (49 percent to 43 percent), and a small decrease in average primary point scores. However, the increase in levels 1-6 offenses predates the 1995 guidelines, so the 1995 guidelines may have continued a pre-existing trend. All drug possession cases were charged with primary offenses of severity levels 1 to 6 (see table 2c).

Overall, there was a tendency for fewer offenders to receive primary offense points at level 7 under 1995 guidelines. Perhaps this is because CJS officials manipulated the primary offense scores to mitigate the perceived harshness of either the guidelines or the truth in sentencing provisions, or both. Nevertheless, Florida's intention was to increase the primary point scores for moderately serious felonies such as burglary, not for severe or minor felonies like robbery and drug possession cases. The average point scores barely increased for burglars, and barely decreased for robbers. We conclude that, while the

1995 guidelines were not applied without discretion by CJS officials, the State partly achieved its intended effect of increasing the primary offense point scores for targeted offenses on the whole.

1.3.3 Resentences

One more point about tables 2a-c. For example, the number of sentenced burglars fell from 6,507 in 1994-1 to 4,872 in 1996-2. A similar pattern applies to robbers but not to those convicted of drug possession. Part of this temporal decrease in cases entering the analysis reflects an actual decrease in volume of cases sentenced. (See the discussion in section 1.4.) But another part is attributable to sentences that result from probation and parole revocations. That is, some offenders who committed their crimes in 1994-1 were sentenced, violated the conditions of their supervision, and were resentenced at a later date following those revocations. Their new sentences are included in the 1994-1 column because the date of the original offense (not the date of the violation leading to the revocation) dictates the applicable guideline. Fewer offenders who committed their crimes in 1996-2 could have been resentenced as a result of a revocation—too little time has elapsed. Hence there are more cases in 1994-1 than in 1996-2.

We were concerned that the occurrence of revocations could bias inferences based on table 2, as well as on subsequent analyses where the same issue arises. We cannot totally discount the possibility, because the database did not include scoresheets for all original 1994 guideline sentences, so we could not completely restrict the analysis to original sentences. We completed two parallel analyses to test whether a serious bias was likely to affect the results. First, we replicated the analysis using the sentencing date in place of the offense date. If revocations tend to have lower severity levels for the original offense (hence imparting a bias to table 2), tabulating by sentence date should shift that bias to the 1996-1 and 1996-2 columns. Instead, the substantive patterns reported in table 2 persisted.⁸ Second, we replicated the analysis based on the first sentence hearing available for each unique offender in the data, expecting that this would reduce sentences following a revocation. Findings were not materially different from those reported in the main text.⁹ We conclude that the bias, if any, is minor.

⁸ A few differences arose when we analyzed the data organized by sentence date and compared findings to those reported in the main text. According to the sentence date analyses, there were no large shifts in severity levels among primary offense charging following point increases with the implementation of the 1995 guidelines. Despite the significant point increases, additional offense and prior record charging remained relatively steady while average scores for these sentencing factors increased consistent with the 1995 guideline point modifications. With the implementation of the 1995 guidelines, we saw a general increase in points meaning an increase in recommended prison sentences. However, judges attempted to mitigate the harsher sanctions prescribed by the 1995 guidelines via sentence departures, both in terms of sanctions and prison terms (see author for additional information).

⁹ We prepared similar sentence date tables based on a dataset excluding all but the first available sentencing scoresheet associated with a case. Because the 1994-1 data are lacking, we could only reduce (not eliminate) resentencing records in this database. The distribution of total sentence points and the period averages are very similar to that reported in the main text; if there is any difference, there may be a slightly higher rate of increase

1.3.4 Additional Offenses

Any offenses of conviction beyond the primary offense result in additional points assigned according to their offense severity levels. Effective October 1995, the State significantly increased additional offense point values for offenses in severity levels 6 and higher. Table 3 shows the additional offense points dictated by the 1994 and 1995 guidelines.

Table 3. Additional Offense Points by Offense Severity and Guidelines

Additional Offense Severity	Guidelines	
	1994	1995
Levels 5 and lower	No Change	
Level 6	7.2	18
Level 7	8.4	28
Level 8	9.6	37
Level 9	10.8	46
Level 10	12.0	58

These increases in additional offense points potentially increase the demands made on State prisons. Given the magnitude of these increases, the impact could be substantial, because a point translates into a month of prison for offenders sentenced to incarceration. Did either the number or nature of additional offenses change over time? Tables 4a-c show whether or not the offender was convicted of any additional offenses at the misdemeanor or felony 1 to 5 levels (for which the point scores did not change from the 1994 to the 1995 guidelines) and at the felony 6 to 10 levels (for which the point scores did change).

among total sentence points greater than 52 (and a corresponding decrease among the 34.8-52 points group). This holds true for all sentencing components except community sanction violation points which are, of course, lower when all multiple subsequent sentence hearing records are removed from the database. Despite the addition of community sanction violation points at resentencing, the accumulation of resentence records for 1994 guideline cases may actually have a dampening effect, and the impact of the 1995 guideline changes on total sentence points may be somewhat greater than demonstrated in tables 10a-c.

Table 4a. Percentage of Cases with Additional Offense Convictions by Severity and Offense Date: Burglary

Additional Offense Severity	Offense Date					
	1994 Guidelines			Mixed	1995 Guidelines	
	1994-1	1994-2	1995-1	1995-2	1996-1	1996-2
Misdemeanor	29%	33%	32%	31%	33%	32%
Felony 1-5	52%	52%	54%	52%	51%	50%
Felony 6-10	12%	11%	11%	10%	9%	9%
Any	70%	72%	73%	71%	71%	69%

Source: 1994 and 1995 guidelines scoresheets.

Table 4b. Percentage of Cases with Additional Offense Convictions by Severity and Offense Date: Robbery

Additional Offense Severity	Offense Date					
	1994 Guidelines			Mixed	1995 Guidelines	
	1994-1	1994-2	1995-1	1995-2	1996-1	1996-2
Misdemeanor	14%	14%	15%	12%	15%	17%
Felony 1-5	26%	26%	25%	26%	27%	25%
Felony 6-10	30%	29%	27%	27%	25%	21%
Any	52%	51%	50%	49%	50%	46%

Table 4c. Percentage of Cases with Additional Offense Convictions by Severity and Offense Date: Drug Possession

Additional Offense Severity	Offense Date					
	1994 Guidelines			Mixed	1995 Guidelines	
	1994-1	1994-2	1995-1	1995-2	1996-1	1996-2
Misdemeanor	42%	42%	44%	46%	48%	46%
Felony 1-5	14%	14%	14%	14%	16%	15%
Felony 6-10	0%	0%	0%	0%	0%	0%
Any	50%	49%	51%	53%	55%	53%

The 1995 guidelines may have caused a drop in additional offenses at levels 6 to 10 among non-drug possession cases. The decrease is largest for robbery cases (30 percent to 21 percent). There may be

a pre-existing trend, but that trend does not seem to explain all of the decrease occurring with the 1995 guidelines. There may have been a decrease in the levels 6 to 10 cases for burglary, although the change from 12 percent to 9 percent does not seem substantial. There were no levels 6-10 additional offenses for drug possession.¹⁰ Consequently, drug possession cases do not enter into the rest of the analysis in this subsection dealing with additional offense points.

As shown in tables 5a-b (a drug possession table is omitted as irrelevant), points assessed for additional offenses of severity levels 6 through 10 rose with the implementation of the 1995 guidelines. Comparing cases with offense dates of 1994-1 to 1996-2, average points increased from 15 to 43 points for burglary cases, and from 17 to 59 points for robbery cases. Total points increased slightly for burglary cases (i.e., 7 versus 11) and substantially for robbery cases (i.e., 13 versus 30) on average. Thus, the guidelines achieved the intent of increasing the point totals for serious additional offense counts. The increase would have been larger had the number of additional offenses at levels 6 to 10 not decreased, but this decrease could not offset the increase in additional offense points for offenders who continued to be convicted of additional offenses at level 6 and higher.

Table 5a. Average Points for Cases with Additional Offense Convictions by Severity and Offense Date.¹¹
Burglary

Additional Offense Severity	Offense Date					
	1994 Guidelines			Mixed	1995 Guidelines	
	1994-1	1994-2	1995-1	1995-2	1996-1	1996-2
Misdemeanor	0.3	0.3	0.3	0.3	0.3	0.3
Felony 1-5	5.8	5.6	5.5	5.7	5.5	5.3
Felony 6-10	15.2	13.7	12.9	25.7	45.6	43.4
Total	7.2	6.7	6.6	8.6	11.0	11.0

Note: Excludes cases with no additional offenses charged.
Source: 1994 and 1995 guidelines scoresheets.

¹⁰ The most serious charge determines the primary offense. For drug possession cases, then, the most serious charge was never greater than level 6. This meant that additional offenses could never be greater than level 6.

¹¹ In addition to severity level, multiple primary versus additional offense count considerations vary by guidelines, so trends showing average point calculations do not precede 1994.

Table 5b. Average Points for Cases with Additional Offense Convictions by Severity and Offense Date: Robbery

Additional Offense Severity	Offense Date					
	1994 Guidelines			Mixed	1995 Guidelines	
	1994-1	1994-2	1995-1	1995-2	1996-1	1996-2
Misdemeanor	0.3	0.3	0.3	0.3	0.3	0.3
Felony 1-5	5.1	6.2	5.5	5.0	5.6	6.0
Felony 6-10	17.4	17.9	15.9	37.5	61.4	58.6
Total	13.0	14.0	11.5	24.4	34.8	30.5

1.3.5 Victim Injury

Points awarded for victim injury doubled with the 1995 guidelines: from 120 to 240 points for second degree murder, from 40 to 80 points for sexual penetration, and from 18 to 40 points for sexual contact.¹² Guideline points did not change for other injuries. Overall, victim injury points are rarely assessed against burglary cases—approximately 5 percent of all cases sentenced between July 1994 and June 1997; less than 1 percent of burglary cases were assessed points associated with murder or sexual assault. Victim injury points were more commonly assessed in robbery cases; however, these usually involved slight (17 percent of July 1994 through June 1997 sentences) or moderate injury (5 percent of same), whose point scores were unaffected by guidelines changes. Victim injury is not an element of drug possession cases. Consequently, changes in victim injury do not enter our considerations.

1.3.6 Prior Record

Prior record is another important determinant of sentence type and term under the guidelines.¹³ The 1995 guidelines increased the points for prior convictions for offenses in severity levels 6 and higher, but did not change the points for prior convictions at lower levels. Table 6 shows the prior record points stipulated by the two sets of guidelines.

¹² Florida Department of Corrections (1997, Mar). *Sentencing Guidelines 1995-96 Annual Report: The Impact of the 1994 and 1995 Structured Sentencing Policies in Florida*. Tallahassee, FL: Author.

¹³ The guidelines take into account the prior offense level, qualifiers (attempts, conspiracy, etc.), and the number of counts to derive the prior record point score. Convictions by Federal, out-of-State, and other non-Florida State entities apply; however, past adult convictions and most juvenile dispositions expire following conviction-free periods (of 10 and 3 years, respectively) since the offender's last release from legal supervision (e.g., probation).

Table 6. Prior Record Points by Severity and Guidelines

Prior Record Severity	Guidelines	
	1994	1995
Levels 5 and lower	No Change	
Level 6	4.8	9
Level 7	5.6	14
Level 8	6.4	19
Level 9	7.2	23
Level 10	8.0	29

Data regarding sentencing under the 1983 guidelines allow us to extend the time-series back to offense dates during the first half of 1991. Because the 1983 guidelines classify prior convictions differently than the later guidelines, there is no meaningful way to compare the seriousness of prior convictions under the 1983 guidelines with prior convictions under the two latter sets of guidelines. However, the data identify whether or not any prior convictions existed, and the last rows of tables 7 a-c report those data as the percentage of cases with any prior convictions. Those same tables report more detailed data for offenders sentenced under the 1994 and 1995 guidelines.

Have there been any long-range changes in the incidence of prior record charging? Tables 7a-c suggest that the incidence of prior record has not changed appreciably between 1991 and 1996, inclusive, with the possible exception of drug possession felonies which rose from 70 percent to 78 percent of cases.

What can be said about prior records under the 1994 and 1995 guidelines? The incidence of any prior record at severity levels 6 to 10 appears to have decreased slightly for robbery and burglary cases, but not for offenders convicted of drug possession cases. The largest change was for robbery, where 31 percent of the robbers had prior records at levels 6 to 10 under the 1994 guidelines, but 28 percent of the robbers had such records under the 1995 guidelines. For burglary, the comparable decrease was from 28 percent to 25 percent. In neither instance do these changes appear to be especially large.

Table 7a. Percentage of Cases Charged with Prior Record Offenses by Severity and Offense Date:
Burglary

Prior Record Severity	Offense Date											
	1983 Guidelines						1994 Guidelines			Mixed	1995 Guidelines	
	91-1	91-2	92-1	92-2	93-1	93-2	94-1	94-2	95-1	95-2	96-1	96-2
Misd	No Data						57	56	56	56	57	58
Fel 1-5							52	52	51	51	52	53
Fel 6-10							28	27	27	25	25	25
Any	73	74	76	75	76	75	74	73	73	72	74	75

Notes: 1983 guidelines cases do not have offense severity levels that are comparable to 1994 or 1995 guideline levels. Charging is independent so percentages do not total to 100%.
Source: 1994 and 1995 guidelines scoresheets.

Table 7b. Percentage of Cases Charged with Prior Record Offenses by Severity and Offense Date:
Robbery

Prior Record Severity	Date of Offense											
	1983 Guidelines						1994 Guidelines			Mixed	1995 Guidelines	
	91-1	91-2	92-1	92-2	93-1	93-2	94-1	94-2	95-1	95-2	96-1	96-2
Misd	No Data						50	51	52	52	54	55
Fel 1-5							53	51	50	50	51	51
Fel 6-10							31	31	31	29	28	28
Any	72	77	76	74	76	69	72	71	71	71	71	73

Table 7c. Percentage of Cases Charged with Prior Record Offenses by Severity and Offense Date: Drug Possession

Prior Record Severity	Offense Date											
	1983 Guidelines						1994 Guidelines			Mixed	1995 Guidelines	
	91-1	91-2	92-1	92-2	93-1	93-2	94-1	94-2	95-1	95-2	96-1	96-2
Misd	No Data						63	61	61	62	64	63
Fel 1-5							53	54	52	54	56	56
Fel 6-10							19	19	18	18	19	19
Any	70	74	73	74	73	77	78	76	76	76	78	78

As shown in Tables 8a-c, the average number of points computed for levels 6 through 10 prior record charges rose from 11 to 23 for both burglary and robbery cases, and from 9 to 20 for drug possession cases. Point averages at other levels (below 6) remained nearly the same. Thus, the occurrence of prior records remained fairly constant while average scores increased consistently with the 1995 guideline point changes. The State achieved its purpose of imposing more points on offenders with the most serious records.

Table 8a. Average Points for Cases Charged with Prior Record Offenses by Severity and Offense Date: Burglary

Prior Record Severity	Offense Date					
	1994 Guidelines			Mixed	1995 Guidelines	
	1994-1	1994-2	1995-1	1995-2	1996-1	1996-2
Misdemeanor	1.0	1.0	1.0	1.0	1.0	1.0
Felony 1-5	7.6	7.4	7.1	7.1	7.0	7.2
Felony 6-10	11.3	10.9	10.4	16.6	23.6	23.0
Total	10.4	10.1	9.7	11.6	13.9	13.9

Note: Excludes cases with no prior record offenses charged.
Source: 1994 and 1995 guidelines scoresheets.

Table 8b. Average Points for Cases Charged with Prior Record Offenses by Severity and Offense Date: Robbery

Prior Record Severity	Offense Date					
	1994 Guidelines			Mixed	1995 Guidelines	
	1994-1	1994-2	1995-1	1995-2	1996-1	1996-2
Misdemeanor	0.9	0.9	1.0	0.9	1.0	1.0
Felony 1-5	6.5	6.9	6.1	6.3	6.7	6.4
Felony 6-10	11.4	10.7	10.5	17.9	25.2	22.5
Total	10.3	10.3	9.6	12.7	15.8	14.0

Table 8c. Average Points for Cases Charged with Prior Record Offenses by Severity and Offense Date: Drug Possession

Prior Record Severity	Offense Date					
	1994 Guidelines			Mixed	1995 Guidelines	
	1994-1	1994-2	1995-1	1995-2	1996-1	1996-2
Misdemeanor	1.0	1.0	1.0	1.0	1.0	1.0
Felony 1-5	6.1	6.2	6.3	6.4	6.4	6.6
Felony 6-10	8.8	8.7	8.7	13.5	19.9	20.2
Total	7.1	7.3	7.3	8.6	10.3	10.6

1.3.7 Total Sentence Points

The scoring processes described in sections 1.3.1 through 1.3.6 lead to a total point score.¹⁴ Total points determine the presumptive sentence type and term, whereby the presumed sentence is nonprison when total sentence points are less than or equal to 40, and State prison is presumed when sentence points equal 52 or more. However, the guidelines permit judges to increase total scores of 40 points or less by up to 15 percent; thus, point totals for which the presumptive sentence is nonprison (e.g., 39 points) can be modified to a range where State prison is discretionary (i.e., more than 40 points). Cases with base scores of 34.8 are technically eligible for a prison sentence, so we classified point totals using cutoffs of 34.8 and 52 (see tables 9a-c). That is, our classification levels are presumptive nonprison (less than 34.8), discretionary prison (34.8 to 52), and presumptive prison (more than 52).

Given the statutory changes heretofore described, we would expect that the total number of points assigned to offenders to have increased on average with the introduction of guidelines effective October 1995. Tables 9a-c show that the average number of total points has increased across the offenses. Moreover, for burglary cases, the incidence of presumptive prison terms is considerably higher under the 1995 guidelines than under the 1994 guidelines (about 46 percent versus 33 percent). For robbery cases, the incidence of presumptive prison terms did not change much, remaining around 62 percent. For drug possession cases, the incidence of presumptive prison terms increased, but even in 1996 it is only about 5 percent.

¹⁴ Some additional factors enter into the sentencing calculus, but those factors (e.g., drug trafficking enhancements) rarely apply and their impact is not addressed here.

Table 9a. Presumed Sentence Type and Total Sentence Points by Offense Date: Burglary

Offense Date						
Presumed Type (Points)	1994 Guidelines			Mixed	1995 Guidelines	
	1994-1	1994-2	1995-1	1995-2	1996-1	1996-2
Nonprison (< 34.8)	33%	34%	32%	34%	35%	37%
Discretionary (34.8-52)	33%	33%	36%	28%	18%	19%
Prison (> 52)	34%	33%	32%	38%	47%	44%
Average Points	50	49	49	53	57	56

Note: Points exclude any judicial discretionary adjustments to the point totals.

Source: 1994 and 1995 guidelines scoresheets.

Table 9b. Presumed Sentence Type and Total Sentence Points by Offense Date: Robbery

Offense Date						
Presumed Type (Points)	1994 Guidelines			Mixed	1995 Guidelines	
	1994-1	1994-2	1995-1	1995-2	1996-1	1996-2
Nonprison (< 34.8)	4%	4%	4%	4%	3%	3%
Discretionary (34.8-52)	32%	33%	39%	35%	33%	35%
Prison (> 52)	64%	63%	57%	61%	64%	62%
Average Points	79	79	74	83	89	85

Table 9c. Presumed Sentence Type and Total Sentence Points by Offense Date: Drug Possession

Offense Date						
Presumed Type (Points)	1994 Guidelines			Mixed	1995 Guidelines	
	1994-1	1994-2	1995-1	1995-2	1996-1	1996-2
Nonprison (< 34.8)	86%	87%	87%	84%	80%	81%
Discretionary (34.8-52)	12%	12%	12%	13%	15%	14%
Prison (> 52)	2%	1%	1%	3%	5%	5%
Average Points	24	24	23	24	26	26

A more detailed look at increases in point scores is instructive. In tables 10a-c, cases are sorted into 12 cells which distinguish among primary offense levels (1 to 6, 7, and 8 to 10), additional offense

levels (0 to 5 including no additional offenses, and 6 to 10),¹⁵ and prior record levels (0 to 5 including no prior record, and 6 to 10). The first number in each cell is the average point total (prior to any optional changes discussed later) for cases sentenced under the 1994 guidelines. The second number indicates the differential or change in points computed by subtracting the 1994 guideline average from the average point total for cases sentenced under the 1995 guidelines. For example, the first cell is associated with cases in which: primary offense levels = 1 to 6, additional offense levels = 0 to 5, and prior record levels = 0 to 5. For burglary cases, the average for 1994 guideline cases is 31, and the average for 1995 guideline cases is 30, so the change is -1 points. Although our focus is on differences between the 1994 and 1995 point totals, we provided the 1994 totals to indicate the relative scale of the changes. These tables show the expected pattern of no change or minimal change in the shaded cells pursuant to statutory guideline revisions.¹⁶

Table 10a. Change Between 1994 and 1995 Guidelines in Average Total Points by Primary Offense, Additional Offenses, and Prior Record: Burglary

Additional	Prior Record	Primary Offense Levels 1-6	Primary Offense Level 7	Primary Offense Levels 8-10
Additional Offense Levels 0-5	Prior Record Levels 0-5	31 -1	50 +13	86 -3
	Prior Record Levels 6-10	47 +8	66 +26	100 +10
Additional Offense Levels 6-10	Prior Record Levels 0-5	51 +11	68 +40	109 +29
	Prior Record Levels 6-10	67 +19	86 +67	130 +62

Note: Cells marked N/A have insufficient cases to compute total point averages.
Source: 1994 and 1995 guidelines scoresheets.

¹⁵ If the offender had any additional offenses of level 6 or higher, he fell into the 6-10 category; otherwise, he was in the other category.

¹⁶ The guidelines increase from 91 to 92 points for level 9 offenses affects few analysis cases (see footnote 7).

Table 10b. Change Between 1994 and 1995 Guidelines in Average Total Points by Primary Offense, Additional Offenses, and Prior Record: Robbery

Additional	Prior Record	Primary Offense Levels 1-6	Primary Offense Level 7	Primary Offense Levels 8-10
Additional Offense Levels 0-5	Prior Record Levels 0-5	43 -1	53 +9	96 -3
	Prior Record Levels 6-10	57 +9	71 +32	111 +14
Additional Offense Levels 6-10	Prior Record Levels 0-5	53 +20	70 +27	124 +43
	Prior Record Levels 6-10	73 +34	80 +63	144 +66

Table 10c. Change Between 1994 and 1995 Guidelines in Average Total Points by Primary Offense, Additional Offenses, and Prior Record: Drug Possession

Additional	Prior Record	Primary Offense Levels 1-6	Primary Offense Level 7	Primary Offense Levels 8-10
Additional Offense Levels 0-5	Prior Record Levels 0-5	21 0	N/A	N/A
	Prior Record Levels 6-10	34 +11	N/A	N/A
Additional Offense Levels 6-10	Prior Record Levels 0-5	35 +12	N/A	N/A
	Prior Record Levels 6-10	50 +14	N/A	N/A

As anticipated, the greatest changes between 1994 and 1995 guideline cases occur among those with level 7 primary offenses (up to 67 point differences for burglary cases). Among other cases, we see relatively large changes over time for additional offense levels 6 to 10 compared to additional offense levels 0 to 5, holding constant prior record. Likewise, we see large changes for offenders with prior records of levels 6 to 10 compared with prior records of levels 0 to 5, holding constant the additional offense scores.

Tables 10a-c summarize the effects of the changes introduced by the 1995 guidelines. The 1995 guidelines set presumptive sentence lengths that are significantly longer than sentence lengths for comparable offenders who were convicted of comparable crimes and were sentenced under the 1994 guidelines. But presumptive sentence recommendations are truly presumptive only if judges follow them. The next section considers judicial departures.

1.3.8 Judicial Departures

Judges have several sentencing options. They can either exercise the 15 percent option to impose a State prison sanction when sentence points are less than or equal to 40, or they can increase or decrease sentence points by up to (and including) 25 percent to determine the term for a State prison sentence. The resulting sentences are imposed without written explanation and considered within the guidelines. Or, judges can depart from the guidelines altogether. When aggravating or mitigating circumstances apply, judges may depart by more than 25 percent from the presumed sentence with written explanation. This would result in a sentence outside the guidelines.

Mitigation occurs when the total sentence score exceeds 52 points but the judge imposes a nonprison sanction (mitigated sanction) or a prison term reduced by more than 25 percent (mitigated term). Table 11 shows the impact of judicial discretion for each offense type. The table includes only those offenders who received presumptive prison point totals. Under the 1995 guidelines, this includes about 63 percent of the robbers and 45 percent of the burglars, but only 5 percent of those convicted of drug possession. Given that fewer than 2 percent of the drug cases led to presumptive prison under the 1994 guidelines, we probably should not pay too much attention to whether mitigation is more or less frequent for drug possession cases after October 1995.

Comparing the presumed sentence (i.e., the sentence determined by total points) to the sentence type and term imposed, we find that overall mitigation rates increased for burglary from 55 percent for offenses committed during 1994-1 to 69 percent for offenses committed during 1996-2. Judges were especially likely to depart from the guidelines by imposing a nonprison sentence—49 percent of the time in 1996-2 compared with 39 percent of the time in 1994-1. They imposed a shorter prison term than required by the guidelines in about 20 percent of all burglary cases under the 1995 guidelines. There are no apparent trends for robbery. Mitigation occurred in 49 percent of the robbery cases under the 1994 guidelines, and it occurred in 50 percent of the robbery cases under the 1995 guidelines.

Aggravated sanctions occur when a prison sanction is imposed outside the guidelines (such as when total points are less than 34.8); aggravated terms occur when a prison term is increased by more than 25 percent. The incidence of aggravated sanctions and terms is consistently low—usually less than 5 percent—and not shown in this table.

Table 11. Mitigated Departures by Offense Date: Burglary, Robbery, and Drug Possession

Offense Type	Offense Date					
	1994 Guidelines			Mixed	1995 Guidelines	
	1994-1	1994-2	1995-1	1995-2	1996-1	1996-2
<i>Burglary</i>						
Mitigated Sanction	39%	35%	40%	45%	47%	49%
Mitigated Term	16%	17%	16%	20%	20%	20%
<i>Robbery</i>						
Mitigated Sanction	23%	23%	25%	24%	25%	23%
Mitigated Term	26%	27%	25%	26%	29%	27%
<i>Drug Possession</i>						
Mitigated Sanction	42%	40%	44%	52%	50%	57%
Mitigated Term	16%	15%	18%	20%	21%	20%

Source: 1994 and 1995 guidelines scoresheets.

Obviously, based on the evidence from table 11, Florida judges frequently departed from prison terms recommended by the guidelines. For instance, robbers always have at least a one-in-five chance of receiving a mitigated sanction, and at least a one-in-five chance of receiving a mitigated term, regardless of guideline modifications. Was the departure rate so high that judicial discretion totally thwarted the State's intention to increase the frequency and duration of prison terms for the most serious crimes and for offenders with the worst criminal records? The next section examines that issue.

1.3.9 Sentence Type and Term

Tables 12a-c display the final sentence type outcomes by offense. The sentence type shown is the most severe sentence imposed, with prison being most severe, community control or probation the next most severe, and time served the least severe. Although the tables show all sentence types, the present focus is on the imposition of State prison sentences. There are year-to-year fluctuations, but no strong trends, in the percentage of robbers and burglars sentenced to prison: approximately 30 percent for burglary and 53 percent for robbery. Over time, a decreasing percentage of offenders convicted of drug possession received prison terms (i.e., 9 percent to 5 percent), but this trend should not be attributed to the 1995 guidelines, which it predates.

Table 12a. Most Severe Sentence Imposed by Offense Date: Burglary

Offense Date						
Sentence Type	1994 Guidelines			Mixed	1995 Guidelines	
	1994-1	1994-2	1995-1	1995-2	1996-1	1996-2
State Prison	30%	30%	28%	28%	30%	27%
Community Control	14%	13%	13%	14%	12%	12%
Probation	40%	41%	41%	42%	42%	44%
Jail/Time Served	15%	16%	18%	16%	16%	17%
Other	1%	0%	0%	0%	0%	0%

Source: 1994 and 1995 guidelines scoresheets.

Table 12b. Most Severe Sentence Imposed by Offense Date: Robbery

Offense Date						
Sentence Type	1994 Guidelines			Mixed	1995 Guidelines	
	1994-1	1994-2	1995-1	1995-2	1996-1	1996-2
State Prison	56%	56%	49%	53%	53%	53%
Community Control	12%	12%	12%	12%	12%	11%
Probation	21%	21%	26%	24%	24%	25%
Jail/Time Served	9%	10%	12%	10%	10%	11%
Other	2%	1%	1%	1%	1%	0%

Table 12c. Most Severe Sentence Imposed by Offense Date: Drug Possession

Offense Date						
Sentence Type	1994 Guidelines			Mixed	1995 Guidelines	
	1994-1	1994-2	1995-1	1995-2	1996-1	1996-2
State Prison	9%	8%	5%	6%	6%	5%
Community Control	11%	10%	10%	9%	8%	8%
Probation	54%	51%	50%	48%	51%	50%
Jail/Time Served	26%	31%	35%	37%	35%	36%
Other	0%	0%	0%	0%	0%	0%

Consequently, there is no evidence that the 1995 guidelines caused more prison sentences. Is there any evidence that those offenders who were sentenced to prison served longer prison terms? That is the subject of the next section.

1.3.10 Time Served

The next comparison is between prison sentence duration or time served under the 1994 and 1995 guidelines. Sentence imposed is not a useful metric for this comparison, because the State altered its release practices coincident with introduction of the 1995 guidelines. When the 1994 guidelines were effective, inmates could earn 20 to 25 days of incentive gaintime per month served, and they typically served about 70 percent of the sentence imposed.¹⁷ When the 1995 guidelines were effective, inmates could earn 10 days of incentive gaintime per month served, and they could not serve less than 85 percent of their sentences.¹⁸ Using sentencing data and expected release dates, we compared expected time served under 1994 versus 1995 guidelines given *70 percent and 85 percent rule scenarios*. Note that we created the shorthand terms *70 percent rule* and *85 percent rule*; outside this report, they have no meaning in Florida statute or practice.

Assuming the 70 percent and 85 percent release rules, we can compare average sentence duration under the two guideline schemes. Tables 13a-c show the average sentence imposed and expected State prison time served for burglary, robbery, and drug possession offenders sentenced under the 1994 guidelines and under the 1995 guidelines. In this table, the *average months sentenced per convicted burglar* is based on all convicted burglars, and nonprison sentences enter the calculations as zeros. The *average months sentenced per burglar sentenced to prison* is based just on burglars sentenced to prison (i.e., excluding nonprison sentences).

¹⁷ The Florida DOC provided release dates for offenders who had been released and projected release dates for offenders who were still incarcerated. We used those data to establish the 70 percent rule. We could not establish the average time that would be served under the truth in sentencing provisions, because most offenders were still incarcerated at the time these data were collected. The presumption is that those offenders would serve 85 percent of their prison terms. Subsequent to the analysis reported here, Florida has released statistics on time served by inmates who were released during fiscal year 1997-1998. By offense type, average time served (and percentage of sentence served) are: violent – 46 months (70 percent); property – 33 months (72 percent); drugs – 31 months (74 percent); and other – 28 months (76 percent). Given the average time served, most of these offenders would have been sentenced under the 1994 guidelines, confirming that the 70 percent rule adequately describes prevailing release practices. It is too soon to measure release practices under truth in sentencing. However, the observation that percentage of time served decreases with the average number of months served suggests that truth in sentencing will increase time served. Florida Department of Corrections (1998, October). *1997-98 Annual Report: The Guidebook to Corrections in Florida*. Tallahassee, Florida: Author.

¹⁸ Florida Department of Corrections (1996, Dec). *1995-96 Annual Report: The Guidebook to Corrections in Florida*. Tallahassee, FL: Author. Note meritorious and educational gaintime policies also apply.

Table 13a. Expected Time Served Under Three Guideline/Gaintime Scenarios: Burglary

Gaintime	1994 Guidelines	1995 Guidelines
Average months sentenced per convicted burglar	13.9 months	14.3 months
If 70% served	9.7 months	10.0 months
If 85% served	--	12.2 months
Average months sentenced per burglar sentenced to prison	47.8 months	51.8 months
If 70% served	33.5 months	36.3 months
If 85% served	--	44.0 months

Source: 1994 and 1995 guidelines scoresheets.

Table 13b. Expected Time Served Under Three Guideline/Gaintime Scenarios: Robbery

Gaintime	1994 Guidelines	1995 Guidelines
Average months sentenced per convicted robber	38.7 months	40.4 months
If 70% served	27.1 months	28.3 months
If 85% served	--	34.3 months
Average months sentenced per robber sentenced to prison	69.8 months	78.2 months
If 70% served	48.9 months	54.7 months
If 85% served	--	66.5 months

Table 13c. Expected Time Served Under Three Guideline/Gaintime Scenarios: Drug Possession

Gaintime	1994 Guidelines	1995 Guidelines
Average months sentenced per convicted drug possessor	1.5 months	1.2 months
If 70% served	1.1 months	0.8 months
If 85% served	--	1.0 month
Average months sentenced per drug possessor sentenced to prison	23.0 months	23.9 months
If 70% served	16.1 months	16.7 months
If 85% served	--	20.3 months

The tables first show what the differences would be under the 1994 and 1995 guidelines if the 70 percent rule had applied to both. We interpret those differences as reflecting a pure guideline effect—that is, one that controls for the change in release practices. The tables then show what the differences would

be under the 1995 guidelines if first the 70 percent rule applied, and second the 85 percent rule applied. We interpret those differences as the pure effect of truth in sentencing; that is, it controls for changes in the guidelines. These pure effects are hypothetical, because the 70 percent rule always applied to the 1994 guidelines and the 85 percent rule always applied to the 1995 guidelines. Nevertheless, these hypothetical situations provide a means to partial out the effects of the guidelines and the release rules.

The average convicted burglar was sentenced to 13.9 months in prison under the 1994 guidelines and 14.3 months under the 1995 guidelines. Assuming that the 70 percent rule applies, the average burglar would be expected to serve 9.7 months under the 1994 guidelines and 10 months under the 1995 guidelines. The average robber was sentenced to 38.7 months under the 1994 guidelines and 40.4 months under the 1995 guidelines. The 70 percent rule would put average months of time served at 27.1 for the 1994 guidelines and 28.3 months for the 1995 guidelines. The average drug possessor was sentenced to 1.5 months under the 1994 guidelines and 1.2 months under the 1995 guidelines. Under the 70 percent rule the average drug possessor could then expect to serve 1.1 months under the 1994 guidelines and 0.8 months under the 1995 guidelines. These averages estimate the expected time served differences attributable to just the change in guidelines among defendants convicted of these offenses, holding constant the release policy at 70 percent.

Applying the 85 percent release rule, however, the average convicted burglar would serve 12.2 months, the average convicted robber would have serve 34.3 months, and the average convicted drug possessor would serve 1 month under the 1995 guidelines. For burglary, robbery, and drug possession, the new guidelines alone accounted for, respectively, 0.3, 1.2, and -0.3¹⁹ additional months in prison on average and the new gaintime provisions accounted for 2.2, 6.0 and 0.2²⁰ months. The 1995 guidelines modestly increased the number of months convicted burglars and robbers would spend in prison, and slightly reduced the amount of time a person would spend in prison for drug possession. (A "modest" effect on average, when multiplied by the number of people incarcerated does not necessarily imply a modest effect in total.) The new release practices had a larger effect than did the change in guidelines alone.

Recall that the 1995 guidelines had little if any effect on the percentage of offenders who were sentenced to prison (see tables 12a-c). Consequently, the average increase in time served is almost exclusively attributed to additional time served by offenders who were sentenced to prison. Looking just at burglars who were sentenced to prison (see table 13a), the 1994 guidelines resulted in average terms of 47.8 months and the 1995 guidelines resulted in average terms of 51.8 months. Under the 70 percent rule,

¹⁹ 1994 versus 1995 guidelines applying a 70 percent rule.

²⁰ 70 percent rule versus 85 percent rule under 1995 guidelines.

the difference in time served would have been about 3 months (33.5 to 36.3 months), but adopting the 85 percent rule, the difference would have been closer to 11 months (33.5 to 44.0 months)—roughly a 33 percent increase in time served. For robbers sentenced to prison (see table 13b), the 1994 guidelines resulted in average terms of 69.8 months and the 1995 guidelines resulted in average terms of 78.2 months. The increase in time served under the 70 percent rule would have been about 6 months, but the increase adopting the 85 percent rule would have been nearly 18 months—approximately a 36 percent increase. For those sentenced to prison for drug possession (see table 13c), the 1994 guidelines resulted in average terms of 23 months and the 1995 guidelines resulted in average terms of 23.9 months. The increase in time served under the 70 percent rule is less than one month, but the increase from adopting the 85 percent rule was about 4 months.

For defendants sentenced to prison on burglary, robbery, and drug possession offenses, the new guidelines accounted for, respectively, 2.8, 5.8, and 0.6²¹ additional months in prison on average, and the new gaintime provisions accounted for 7.7, 11.8, and 3.6 months.²² Again, the new guidelines seem to have accounted for a modest increase in prison usage relative to the gaintime changes.

Tables 14a-c report expected time sentenced and expected time served using the same structure as tables 10a-c—according to primary offense level, additional offense level, and prior record level, which are the principal determinants of the guideline sentence. Each cell provides: (1) an estimate of time served under the 1994 guidelines assuming the applicability of the 1994 gaintime provisions (70 percent rule); (2) time served under the 1995 guidelines assuming the applicability of the 1994 gaintime provisions (70 percent rule); and (3) time served under the 1995 guidelines assuming the applicability of the 1995 gaintime provisions (85 percent rule). Cell shading indicates no change between the 1994 and 1995 guidelines was intended.

²¹ 1994 versus 1995 guidelines applying a 70 percent rule.

²² 70 percent rule versus 85 percent rule under 1995 guidelines.

Table 14a. Time Served Estimates Under Three Guideline/Gaintime Scenarios by Primary Offense, Additional Offenses, and Prior Record: Burglary

Additional	Prior Record	Primary Offense Levels 1-6	Primary Offense Level 7	Primary Offense Levels 8-10
Additional Offense Levels 0-5	Prior Record Levels 0-5	2.0	5.3	15.7
		1.4	8.7	14.0
		1.7	10.6	17.0
	Prior Record Levels 6-10	10.7	24.4	37.7
		12.1	32.7	43.8
		14.7	39.7	53.2
Additional Offense Levels 6-10	Prior Record Levels 0-5	6.0	14.2	29.7
		10.1	22.5	25.6
		12.2	27.3	31.1
	Prior Record Levels 6-10	25.0	39.9	66.5
		24.1	56.1	63.5
		29.3	68.1	77.1

Note: Cells marked N/A have insufficient cases to compute total point averages.

Source: 1994 and 1995 guidelines scoresheets.

Table 14b. Time Served Estimates Under Three Guideline/Gaintime Scenarios by Primary Offense, Additional Offenses, and Prior Record: Robbery

Additional	Prior Record	Primary Offense Levels 1-6	Primary Offense Level 7	Primary Offense Levels 8-10
Additional Offense Levels 0-5	Prior Record Levels 0-5	5.6	14.0	27.4
		4.1	13.6	28.6
		5.0	16.6	34.7
	Prior Record Levels 6-10	24.8	57.4	55.1
		28.4	97.4	64.8
		34.5	118.3	78.6
Additional Offense Levels 6-10	Prior Record Levels 0-5	8.8	28.9	44.2
		24.3	24.7	55.9
		29.5	29.9	67.9
	Prior Record Levels 6-10	51.8	68.9	73.8
		59.4	113.6	99.3
		72.1	138.0	120.6

Table 14c. Time Served Estimates Under Three Guideline/Gaintime Scenarios by Primary Offense, Additional Offenses, and Criminal Record: Drug Possession

Additional	Prior Record	Primary Offense Levels 1-6	Primary Offense Level 7	Primary Offense Levels 8-10
Additional Offense Levels 0-5	Prior Record Levels 0-5	0.6	NA	NA
		0.2		
		0.3		
	Prior Record Levels 6-10	3.0	NA	NA
		3.5		
		4.2		
Additional Offense Levels 6-10	Prior Record Levels 0-5	5.8	NA	NA
		3.0		
		3.7		
	Prior Record Levels 6-10	9.2	NA	NA
		9.1		
		11.1		

The first two numbers in each cell show a pure guideline effect under the 70 percent rule. The first number is the average time that would be served by offenders sentenced under the 1994 guidelines and the second number is the average time that would be served under the 1995 guidelines. The second and third numbers show a pure truth in sentencing effect—that is, the average time that would be served under the 70 percent rule (second number) and the 85 percent rule (third number) for offenders sentenced under the 1995 guidelines.

Across offenses, the pure guideline effect is negative for the first cell of the first row (e.g., 2.0 to 1.4 months for burglary cases). Although this was not the intention of the guideline changes, even when the new release rule is taken into account, offenders who lack extensive criminal histories and who were convicted of the least serious offenses account for less prison time.

In fact, the pure guideline effect for burglary was negative in five of the 12 cells, including three where the State intended to increase prison terms (see table 14a). The pure guideline effect was six months or more in four of the 12 cells—three cells where the primary offense was level 7, and one where the primary offense levels were 8 to 10 and the prior criminal records were levels 6 to 10. For robbery (see table 14b), three of the 12 cells had a negative pure guideline effect, including two where the State intended to increase prison terms (for level 7 primary offenses). Seven of the 12 cells had a guideline effect of six months or more—including three where the primary offense was levels 8 to 10 and two where the primary offense was level 7 and prior record levels were 6 to 10.

Overall, the 1995 guidelines did accomplish the purpose of increasing prison terms for the most serious offenses and for those offenders with the most serious criminal records. Impact was mixed with regard to burglary; time served would increase for level 7 offenses, but inconsistently for offenders charged with serious additional offenses (levels 6 to 10). However, with regard to both burglary and

robbery, those offenders with serious offenses, serious criminal records, or both, would serve substantially more prison time under the 1995 guidelines. Any effect on drug possession was very modest due to the less serious nature of the crime, which is consistent with the goals of the 1995 guidelines.

The introduction of truth in sentencing, requiring that offenders served at least 85 percent of their prison terms, caused an additional increase in prison time. Except in one cell—that associated with the least serious offenses and the least serious offenders—burglary and robbery convictions will make greater demands on Florida prisons under the combined 1995 guidelines and truth in sentencing provisions than were made by the 1994 guidelines and the 70 percent release rule. For example, looking at robbery (see table 14b), an average of 73.8 months are estimated for cases convicted on primary offenses of levels 8 to 10 with additional offenses and prior records in levels 6 to 10 under 1994 guidelines and the 70 percent rule; under 1995 guidelines and the 85 percent rule, cases of the same severity would serve an estimated average of 120.6 months. Drug possession convictions, however, will probably not make significantly greater demands on Florida prisons (i.e., all estimates are under 12 months).

1.4 Demand on Prison Resources

Another way to look at the 1995 guidelines and truth in sentencing provisions is to project their impact on Florida prisons and to observe their effects distributed over time. Suppose, for example, that a robber would serve 5 years under the 1994 guidelines and 10 years under the 1995 guidelines. Then the incremental effect of the 1995 guidelines would not happen until years 6 through 10, and the impact would be distributed over time. This section examines proportion of sentence served, admissions and demand, and number of beds required for past and future cohorts.²³

1.4.1 Proportion of Sentence Served

Beginning with time served, figures 1a-c show that gaintime changes have had a pronounced effect on how long offenders remain in prison given the sentence imposed. The horizontal axis reports the date when the offender was admitted to prison.²⁴ The vertical axis reports the estimated proportion of the sentence that will be served in prison. Time served is actual time served when known and estimated time served²⁵ based on relevant release practices and gaintime provisions when the offender was still in

²³ Prison population is a fourth factor that would be relevant, but for which we did not have data.

²⁴ Admissions are limited to new court commitments, and exclude parole and other violation readmissions.

²⁵ Projected release dates for offenders not yet released were provided by the Florida DOC; time served estimates incorporate time served pretrial, time escaped, and long sentences using life expectancy calculations.

prison as of the Fall of 1997. Due to *ex post facto* considerations, gaintime provisions apply only to offenders who committed their crimes after those provisions went into effect. Prison admissions can take place weeks or months after conviction, and conviction can occur months after the crime, so figures 1a-c show no clear break marking changes in release practices in January 1994 or October 1995.²⁶

[FIGURES 1a-c HERE]

Nevertheless, the figures seem to identify at least three common epochs in prison release practices. The first epoch of interest precedes January 1994—before the 1994 guidelines and the first formal change to release practices. As shown in figures 1a-c, respectively, burglars generally serve 35 percent to 40 percent, robbers serve about 45 percent to 55 percent, and drug possession offenders serve about 30 percent of their sentence terms, if admitted during this period. Although there appears to be some minor variation, these percentages represent a rough steady state in release patterns.

Following the implementation of the 1994 sentencing guidelines, a second stabilization in release trends is reached for offenders admitted starting January 1995. Until the 1995 guidelines were introduced in October, burglars generally served 70 percent, robbers served 70 percent to 75 percent, and drug possession offenders served 60 percent to 65 percent of their sentence terms. Figures 1a-c suggest that the 70 percent rule, adopted earlier for analyzing time served, is probably about right.

The third epoch occurs when time served proportions reach a steady state starting mid-1996, following the implementation of the 1995 guidelines. Burglars generally serve 80 percent, and robbers serve 80 percent to 85 percent of their sentence terms, if admitted during this period. Time served among drug possession offenders does not stabilize and continues to rise throughout the period observed. Thus, the 85 percent assumptions adopted earlier for analyzing time served seems justifiable.

1.4.2 Admissions and Demand

As discussed in the preceding section, sentencing guideline revisions in 1995 slightly increased the length of time offenders will serve, but by reducing gaintime to a maximum of 15 percent, truth in sentencing provisions had a larger role in increasing demands on the prison system. A third factor that affects demands on the prisons is the volume of offenders who are admitted to prison. Figures 2a-c show the number of admissions to Florida prisons over an 18-year period—July 1979 through June 1997. The trend is peculiar, with sharp peaks around 1990 for all three offenses considered here.

[FIGURES 2a-c HERE]

²⁶ These data did not report the date the crime was committed nor the date when the offender was convicted.

Figure 1a. Florida
Proportion of Sentence Served Based on Admission Date: Burglary

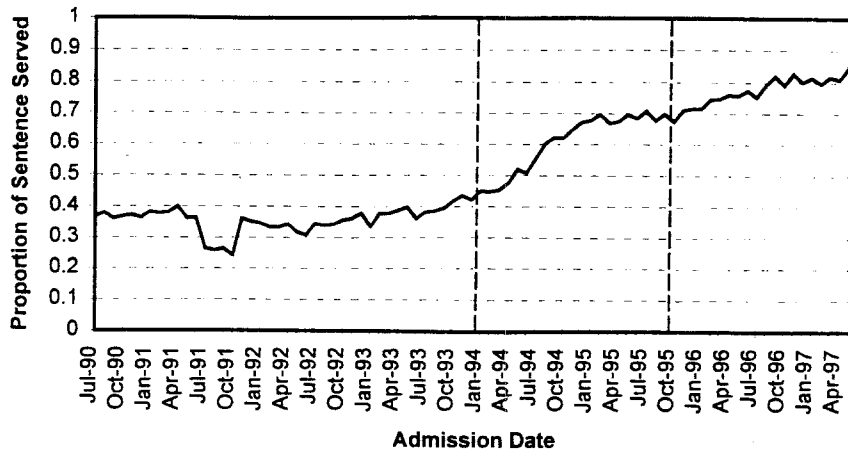


Figure 1b. Florida
Proportion of Sentence Served Based on Admission Date: Robbery

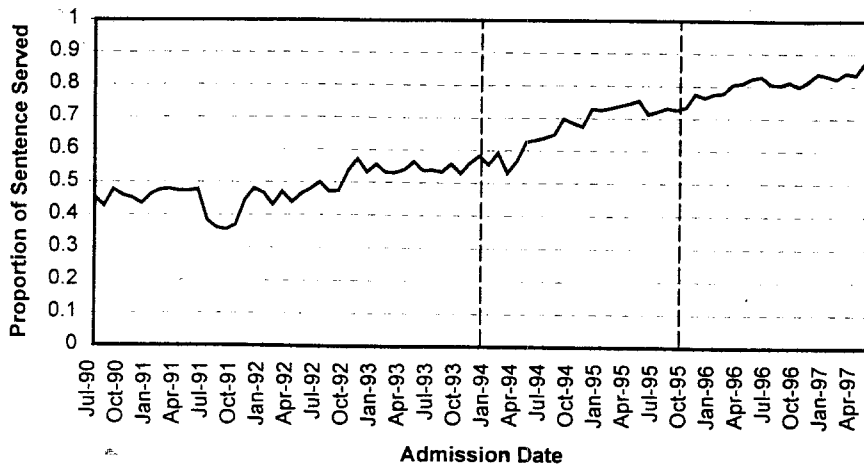


Figure 1c. Florida
Proportion of Sentence Served Based on Admission Date: Drug Possession

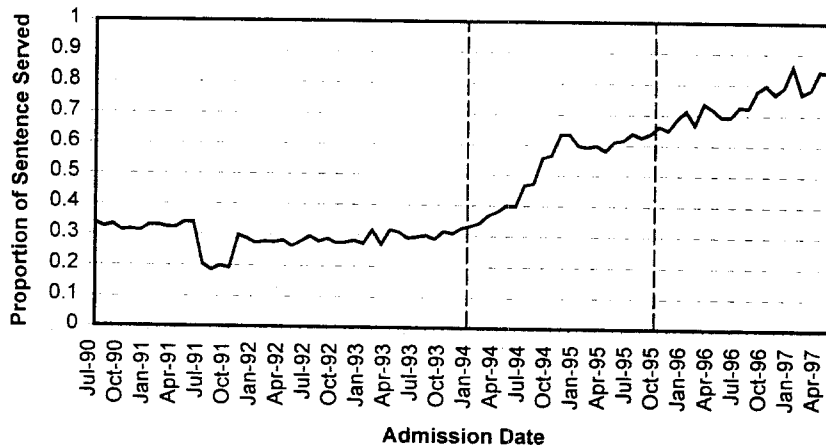


Figure 2a. Florida
Admissions and Demand by Admission Cohort: Burglary

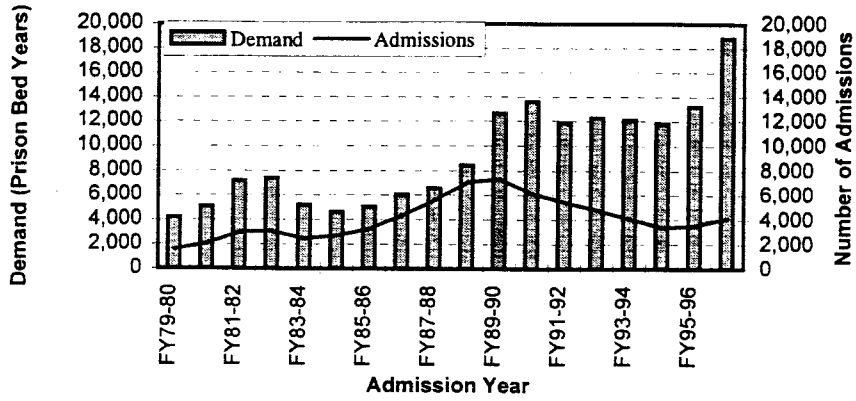


Figure 2b. Florida
Admissions and Demand by Admission Cohort: Robbery

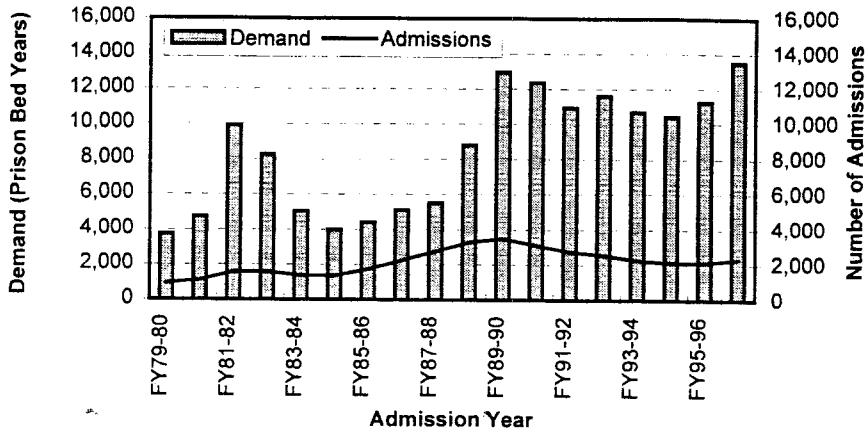
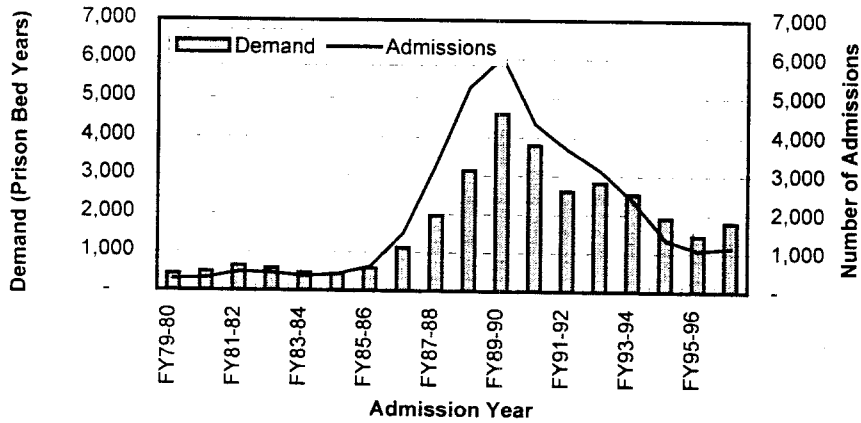


Figure 2c. Florida
Admissions and Demand by Admission Cohort: Drug Possession



We multiplied the admission numbers by estimates of time served to derive an estimate of the demands that admission cohorts will make on the Florida prisons. The result appears as the solid histogram bars in figures 2a-c. For example, the 1,567 burglary inmates admitted in FY79-80 who serve an average term of 2.7 years place a demand on prisons equivalent to about 4,200 bed years. Demand is highest for burglary and robbery cases and lowest for drug possession cases, and demand roughly corresponds to admissions over time, which peak in FY89-90. Demand corresponds to the number of inmates admitted on burglary charges from FY79-80 through FY89-90; however, demand remains steady as number of admissions fall thereafter because declining admissions are offset by rising time served expectations for more recent burglary cohorts (see figure 2a). The 1994 and 1995 guidelines and the revised release practices seem to have increased the duration of prison stays for those offenders who were sentenced to prison, especially for targeted offenses. This argument may be compelling, but it is not altogether convincing. Prison stays did increase with the advent of the guidelines, but there are pre-existing trends.

1.4.3 Number of Prison Beds Projections

While the previous figures illustrate independent demand for each incoming cohort, they do not demonstrate either the long-term or the cumulative impact of guidelines and truth in sentencing provisions on State prisons. We now use estimates of time served to project when offenders would occupy prison beds. For example, an offender sentenced to 10 years of prison requires 1 prison bed in each of 10 consecutive years. Thus, the full impact of increased demand—such as the demand introduced during the latter years shown in figures 2a-b—does not materialize immediately. In fact, if the offender would have been sentenced to 9 years in prison, and the guidelines and truth in sentencing increased the sentence to 10 years, then the impact on the prisons will not be realized until year 10. Hence, the large increase in demand in both robbery and burglary in FY95-96 forward will not immediately impact the Florida prison system.

We used a simple technique to project the future demands on the prisons. For inmates admitted between FY1979 and FY1997, time served was known for those offenders who had been released, and the Florida DOC estimated expected time served for those who had not yet been released. We used these estimates to project when each offender would occupy a Florida prison bed. For example, suppose the offender entered prison on July 1, 1990 and he served 2 years, 2 months and 10 days. Then he occupied a prison bed for 26 consecutive months. On the 27th month, he occupied 10/30.4 prison beds. (There is an average of 30.4 days in a month.) Using this procedure, it was a simple matter to determine how many prison beds would be used to house offenders and when they would be used.

There are some complications from using this approach. One complication is that the data begin in FY1979, but some offenders who entered prison earlier than FY1979 would occupy prison beds during

the period of interest to us. Our approach was to assume that the cohort of offenders who entered prison during FY1979 were representative of offenders who entered prison before FY1979. We simply allowed the FY1979 cohort to cascade backward to generate prison beds for FY1979 and later. This technique may provide questionable estimates for periods shortly after FY1979, but it should provide reasonable adjustments for later years, which are our greatest concern.

Another complication is that we cannot observe prison admissions after FY1997, but we would like to project prison demands beyond that date. Our approach is to identify a cohort of offenders entering prison during FY1997 and assume that they represent future cohorts. Furthermore, we assume those future cohorts will be the same as the FY1997 cohort in terms of average time served and number of admissions.²⁷ This procedure for projecting forward assumes no change in the number or characteristics of burglary, robbery, or drug possession cases. As noted earlier in this report (tables 2 to 7), the characteristics of these cases have not changed much in the recent past. Thus, we cascade the FY1997 cohort forward and project the cumulative demands they will make on the Florida prisons, assuming time served and admissions are fixed.

Figures 3a-c show a projection of future demands made on Florida prisons. The vertical axis shows the number of prison beds required. The horizontal axis shows the timepoint for which the projection was made.²⁸ These figures have an important limitation. They do not account for reduced demands made on the prisons because of a possible reduction in probation and community release revocations. We would expect those to occur. First the guidelines are sending more people to prison, and assuming that the worst risks among the probation population are included in the expanded net, there should be somewhat fewer future offenders entering prison with probation violations. Second the guidelines and gaintime provisions are causing fewer people to be released, which should result in fewer revocations. Third, by extending prison terms, the guidelines and gaintime provisions should reduce the number of new admissions for repeat offenders. Our data do not allow us to deal with these issues with any precision.

[FIGURES 3a-c HERE]

²⁷ Please note that we did not adjust for the expected proportional mix of cases sentenced under the 70 percent rule versus the 85 percent rule, respectively, over successive cohorts.

²⁸ The axis is labeled in year midpoints, but estimates are actually monthly to produce continuous curves.

Figure 3a. Florida
Simulation of the Number of Prison Beds Required: Burglary

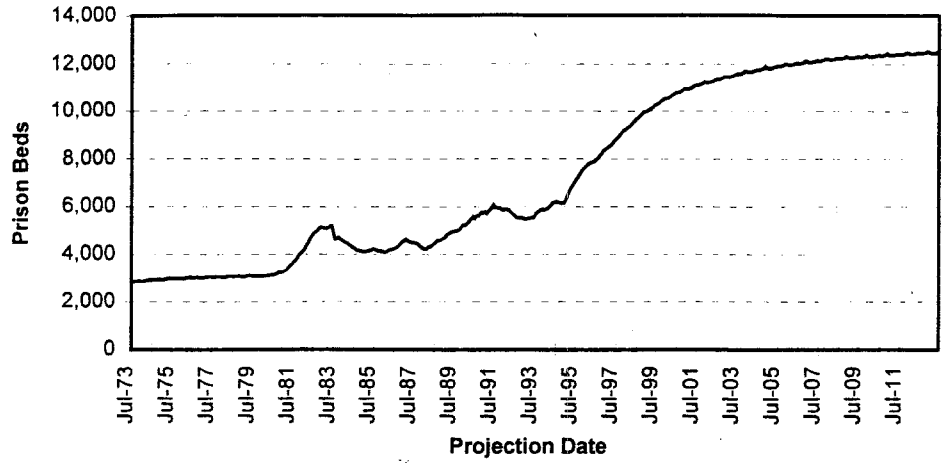


Figure 3b. Florida
Simulation of the Number of Prison Beds Required: Robbery

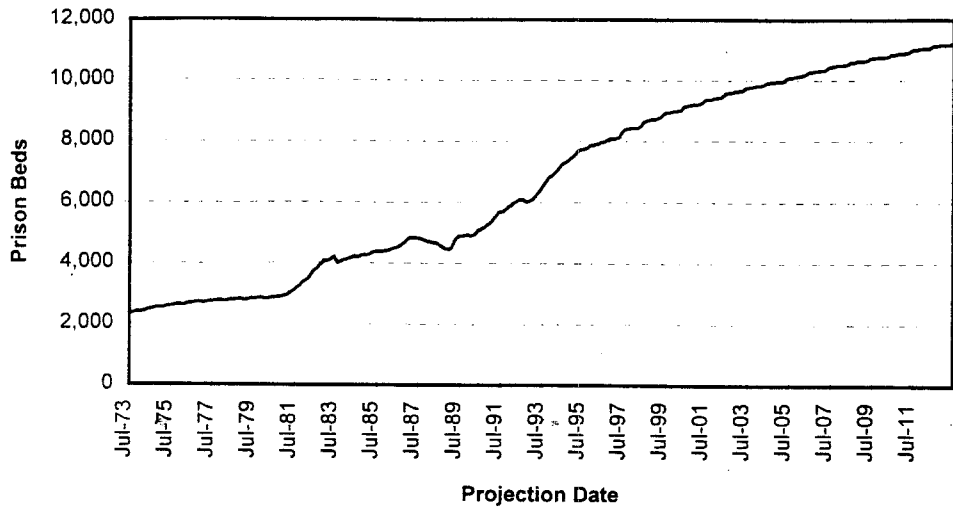
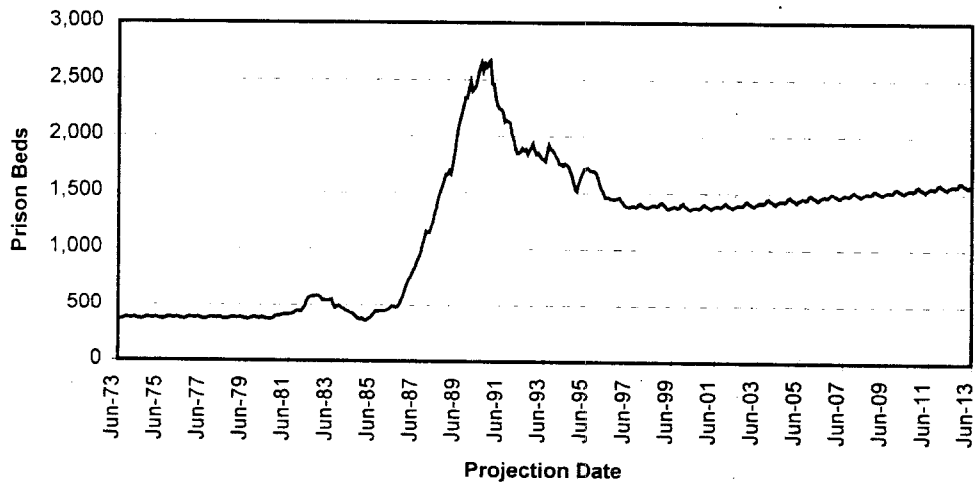


Figure 3c. Florida
Simulation of the Number of Prison Beds Required: Drug Possession



Figures 3a-b show a dramatic increase in the future demands on Florida prisons to house convicted burglars and robbers. For example, assuming time served and admissions are fixed, the number of beds required for burglary inmates doubles from about 6,000 in 1994 to about 12,000 in 2006. Figure 3c, representing drug possession inmates, appears to stabilize at about 1,500 beds.

How does growth in new prison admissions contribute to the increase in demand seen in burglary and robbery cases? To answer this, we recreated the figures with an assumption that the number of prison admissions has remained constant at FY1997 levels. (The choice of FY1997 is arbitrary because we are only interested in trends.) Using the data presented in figures 3a-c, we fixed the sample sizes by weighting cases for other years to represent FY1997 admissions (e.g., 4,146 burglary cases). Controlling for admissions, one can observe the influence of time served on prison beds required over time. Figures 4a-c show the results.

[FIGURES 4a-c HERE]

There are two curves depicted in each graph. The upper curve shows projected demand (in terms of number of prison beds) assuming that admissions remain constant and that time served is a function of whatever sentencing guidelines and gaintime or release policy rules apply to each case according to offense date. As shown in figures 2a-c, number of admissions increased while time served decreased prior to FY1990 (indicated by the demand histogram); this explains the dip in the curve projecting number of prison beds. We manufactured a second curve to contrast demand that would be generated by these cases had they been admitted under the 70 percent rule by reducing time served for offenders admitted since 1996 by 15 percent.²⁹ The lower curve shows projected demand assuming that admissions remain constant and that truth in sentencing (the 85 percent rule) was never implemented. Controlling admissions and time served, we can observe the influence of sentencing guideline changes and other trends on demand.

Even without truth in sentencing, Florida is increasing demands on prisons; and the biggest demand is for serious offenses. There is a clear positive trend beginning in 1990 when demand and time served were at their lowest. Discounting the dip beginning in the 1980s, a similar trend can be traced back to the 1970s. It appears that the sentencing guidelines have accelerated these trends, independent of the increased demand associated with the implementation of truth in sentencing policies.

²⁹ Although one would expect these curves to diverge in October 1995 when the guidelines were modified, we were not able to determine exactly which cases were subject to which guidelines and rules without offense date data; so we selected July 1996 as the date by which the vast majority of cases were subject to the 1995 guidelines and the 85 percent rule. Therefore, we produced the lower curve by reducing demand by 15 percent starting in July 1996.

Figure 4a. Florida
Simulation of Prison Demands Assuming a Fixed-Size Admission Cohort
Under 70% Versus 85% Release Policy Rules: Burglary

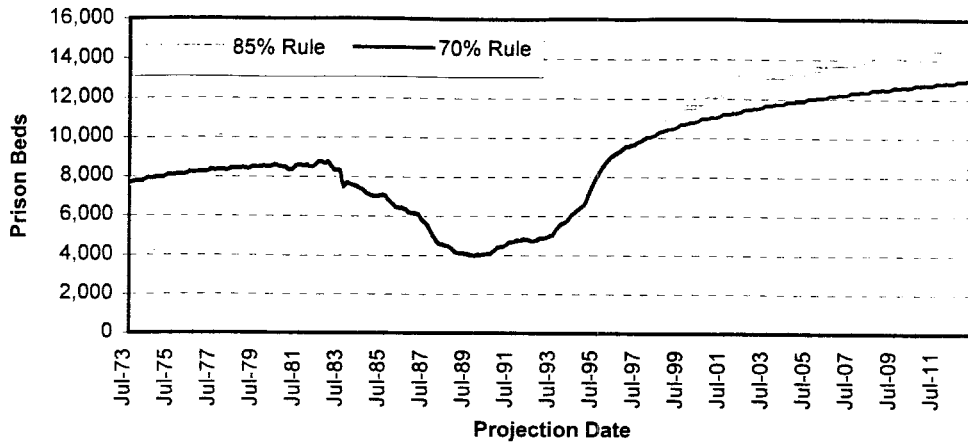


Figure 4b. Florida
Simulation of Prison Demands Assuming a Fixed-Size Admission Cohort
Under 70% Versus 85% Release Policy Rules: Robbery

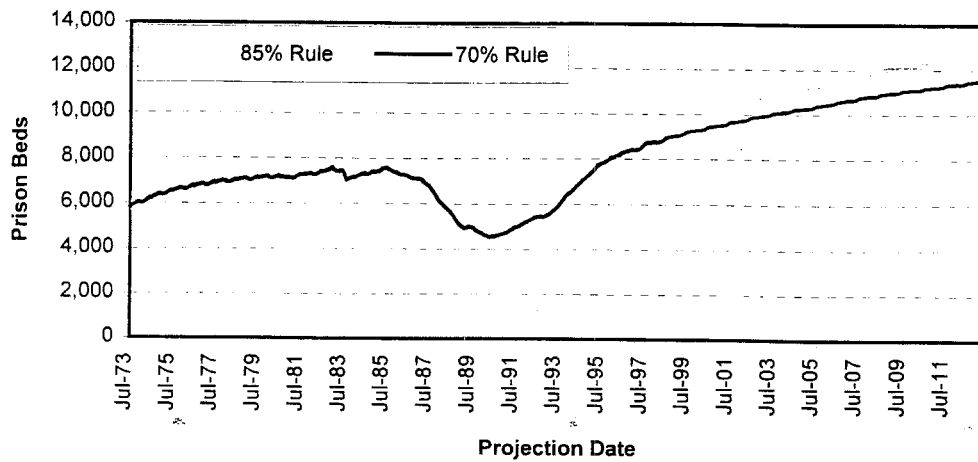
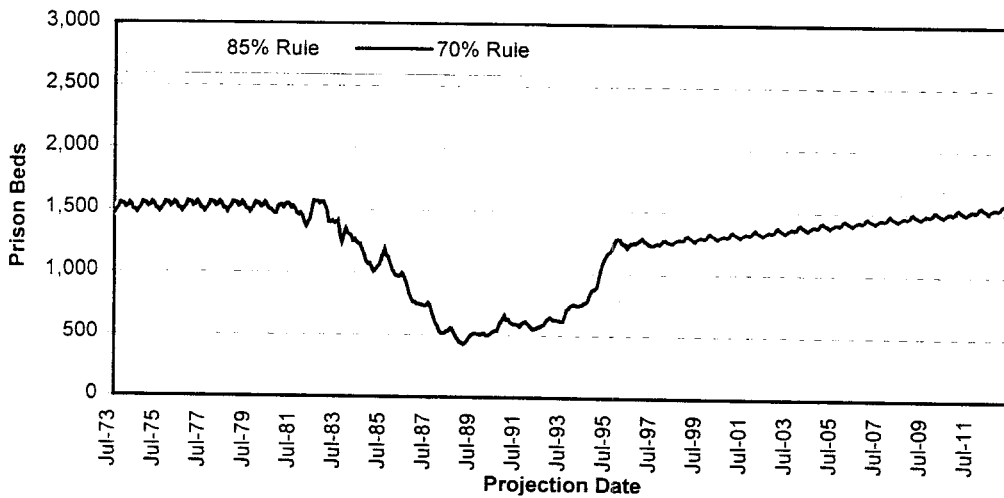


Figure 4c. Florida
Simulation of Prison Demands Assuming a Fixed-Size Admission Cohort
Under 70% Versus 85% Release Policy Rules: Drug Possession



We emphasize that these estimates are rough. They do not take into account the fact that longer prison terms will incapacitate offenders so they cannot commit new crimes and enter prison for new admissions. Depending on how revocations operate under truth in sentencing, and how revocations operated under practices that predate truth in sentencing, longer prison terms should reduce the parole revocation rates, further reducing future demands on the prisons. We could not estimate this reduced demand for this study.

The results of the sentencing and DOC data analyses for North Carolina are presented in the next chapter. The executive summary provides a review of both chapters 1 and 2.

2.0 Analysis of North Carolina Sentencing Guidelines

Before 1981, North Carolina had indeterminate sentencing laws, typified by broad offense definitions and sentence ranges, and a parole commission which exercised full discretion regarding release criteria and time served.¹ Concerns about sentencing disparity, prison time served, parole uncertainty, and prison overcrowding fueled the determinate sentencing movement and passage of the Fair Sentencing Act (FSA) of 1979. Effective July 1981, FSA established presumptive sentences for felonies punishable by three or more years prison, and statutory good time and gaintime policies administered by the Department of Correction (DOC).

Under FSA policies, sentencing options still ranged from probation to prison for similar crimes,² and time served was determined by a combination of sentence imposed, discretionary parole, and provisions for good time and gaintime. There was an uncertain relationship between crime committed and sentence imposed, and between sentence imposed and time served.³ Consequently, the General Assembly approved structured sentencing policies for all felonies and misdemeanors⁴ committed on or after October 1, 1994;⁵ also, good time, gaintime, and parole were abolished. These sentencing guidelines were amended effective 1995 to increase prison sanctions and terms for serious crimes and offenders (see section 2.2.1 for sentencing policies). While structured sentencing was to serve several purposes,⁶ this study is focused on one: incarceration should be reserved for violent and repeat offenders, whereas community-based programs should be used for nonviolent offenders with minor criminal histories.⁷ This

¹ Most of the Fair Sentencing Act information presented here was obtained from Clarke, S.H. (1987, Fall). The Fair Sentencing Act: Have its effects lasted? *Popular Government*, 45-57.

² 1997 North Carolina Sentencing and Policy Advisory Commission (1997, Apr). *1996 Progress Report on Structured Sentencing*. Raleigh, NC: Author.

³ Between 1987 and 1993, limited prison space required decreases in average time served by both felons and misdemeanants (NCSPAC, 1997). Based on median sentence term and time served figures, felons released in 1986 served 35% of their sentences whereas those released in 1994 served 13% (K.L. Parker, personal communication, February 14, 1996).

⁴ Excludes DUI offenses.

⁵ North Carolina Sentencing and Policy Advisory Commission (1996, Feb). *A Citizen's Guide to Structured Sentencing*. Raleigh, NC: Author.

⁶ Structured sentencing is based on the principles of rationality, consistency, truth in sentencing, and resource prioritization. That is, sentences should be proportional to crime and criminal history severity, and similar offenders charged with similar offenses should receive like sentences.

⁷ North Carolina Sentencing and Policy Advisory Commission (1996, Feb). *A Citizen's Guide to Structured Sentencing*. Raleigh, NC: Author.

study seeks to learn whether sentencing guidelines, coupled with truth in sentencing policies, promoted this goal.

2.1 Research Questions and Findings

We analyzed State sentencing and prison admissions and release data representing cases that entered the criminal justice system during the period of 1991 through 1997 to determine the impact of sentencing guidelines and release policies (and their statutory amendments) on the use of North Carolina prisons to house violent and repeat offenders. Reviews of sentencing practices under indeterminate, FSA, and guideline policies, and the associated time served and release policies (provided in sections 2.2.1 and 2.3.1, respectively) detail the changes intended. To manage the scope of this inquiry, we selected cases charged with felony robbery, burglary, and drug possession offenses, which constitute significant numbers of cases in both courts and prisons. Respectively, these cases also represent the range of severe, moderate, and minor felonies. Policy changes should have differential effects on these offenses, whereby more severe felonies (e.g., robbery cases) receive more severe sanctions and priority in the prison system resulting in more time served.

Our analytic approach is to use an interrupted time-series design to investigate whether or not the introduction of sentencing guidelines (and the modification of those guidelines over time) changed the incidence and duration of prison sentences for robbers, burglars, and offenders convicted of drug possession. Data for the seven years that bridge the introduction of structured sentencing allow us to analyze whether or not sentences actually changed from the preguideline period to the guideline period, and if they did, whether or not those changes were just a continuation of pre-existing trends or coincident with implementation of the guidelines and amendments to the guidelines. Statistical significance tests (e.g., Chi-square tests) were omitted because the high volume of cases would cause even minimal differences to appear significant, so we report substantive differences evident from interrupted time-series and trend analyses.

We obtained Administrative Office of the Courts (AOC) data for cases filed between 1991 and 1997 with conviction and sentence information as of August 1998. Although sentence imposed and time served are the principal concerns of this study, the study cannot ignore the fact that guidelines create new incentives for prosecutors, defense counsel, and judges to modify charging and plea bargaining. Section 2.2 of this report explores trends in the number of convictions (section 2.2.2), the primary offense levels (section 2.2.3), and prior record charging (section 2.2.4) over time according to offense date which determines sentencing policy. Because the sentencing guidelines introduced in October 1994 were modified in December 1995, we studied cases with offenses committed between mid-1994 and 1997 to

determine whether those modifications affected charging and/or sentencing practices. (Comparable variables were unavailable for the FSA period.)

- Despite a prescribed 16 percent increase in minimum terms for serious felonies (felony classes B2, C, and D) effective with the 1995 guidelines, we found no changes in primary offense charging patterns.
- Missing data probably attributable to record consolidation practices preclude conclusions, but there were no apparent changes in prior record charging.
- We also found that the addition of active punishment options to the sentencing guideline grid was not associated with changes in the proportion of cases for which active punishment (jail or prison incarceration) is the presumed sentence.

These results suggest that no detectable changes occurred in charging or plea negotiations in association with the guideline modifications.

A portion of the AOC data—offenses committed before October 1994—predate the guidelines, so we contrast sentencing under FSA policies and the 1994 and 1995 guidelines. Section 2.2.5 examines the incidence of jail and prison terms; section 2.2.6 turns to the length of prison and jail terms.

- Missing data on probation sentences preclude conclusions regarding sentence type imposed patterns.
- We find a clear shift in sentence terms for cases sentenced to jail and prison incarceration that varies by offense type. Under FSA sentencing policies, the majority of cases received long sentence terms (e.g., more than two years); with the implementation of the 1994 guidelines, the proportion of long sentence terms decreased, especially among burglary and drug possession cases. We see a prioritization of robbery cases for which sentence terms remain relatively long.
- No subsequent sentence term changes occurring with the implementation of the 1995 guidelines are apparent.

Data for court commitments admitted between 1990 and 1997 provided by the DOC augments the AOC data and reports sentence time served for offenders who completed their terms. Section 2.3 describes how we analyzed the time to be served by recently sentenced inmates and reports our detailed findings based on DOC data. Our analysis had the following results.

- During the period from 1990 to 1994, prisoners served an average of 20 to 30 percent of their maximum sentence, regardless of offense type. Offenders sentenced under the sentencing guidelines served an average of about 80 percent or more of their sentences. Many offenders sentenced under the guidelines were still in prison through 1997, but there is a slight increase in time served among burglary and robbery offenses sentenced under the 1995 guidelines (see section 2.3.3).
- Demand patterns vary by offense type. Increased time served resulted in increased demand posed by burglary and robbery offenders, even though burglary admissions decreased. Demand among drug possession offenders increased, despite shorter sentences, because admissions rose (see section 2.3.4).

- Assuming similar time served and admission averages, estimated future cumulative demand will require triple the number of prison beds for serious offenses such as robbery. There is a near doubling in demand for drug possession offenses, and a negligible increase in demand for burglary offenses (see section 2.3.5).
- Controlling for admissions, the change in demand or the projected number of prison beds required by FY2013 is greatest for robbery offenses, but still substantial for burglary offenses. No appreciable change in demand for drug possession offenses is anticipated (see section 2.3.5).

2.2 Sentence Analyses

Following is a discussion of sentencing practices under indeterminate, FSA, and guideline policies, and notes on the data analyzed. Subsequent analyses consider trends in charging of primary offense (section 2.2.3) and prior record (section 2.2.4), and presumed (section 2.2.5) and imposed sentences (section 2.2.6).

2.2.1 Sentencing Policies

Until 1981, indeterminate sentencing allowed complete judicial discretion in sanction type and term decisions. Although the judge was authorized to impose both minimum and maximum terms, most sentences were imposed as maximum terms only. The Fair Sentencing Act (FSA) mandated statutory presumptive sentence terms for felony offenses committed on or after July 1, 1981 that were punishable by maximum prison terms of three or more years (e.g., felonious breaking and entering). Judges could impose the presumptive sentence or depart, either pursuant to a plea bargain or to cited mitigating or aggravating factors. Downward departures could go below the presumptive term, and upward departures could range up to the statutory maximum for that offense.⁸ Judges could also suspend prison sentences without written justification and place felony offenders on probation.⁹ A single prison term was imposed to reflect the maximum term to be served in prison.

Effective October 1994, North Carolina adopted sentencing guidelines which stipulate presumptive sentences according to offense severity and criminal history.¹⁰ For serious crimes, and for

⁸ Defendants could appeal upward departures unless the case was plea bargained; prosecutors did not have access to appellate review.

⁹ Multiple sentences could be ordered to be served consecutively or concurrently. Offenders aged 25 or younger could be eligible for parole any time after prison admission.

¹⁰ Mandatory minimums (e.g., for violent habitual felons or drug trafficking offenses) and sentence enhancements also apply. Use of a firearm in conjunction with felony offenses of class A through E severity can increase the minimum imprisonment term by 60 months.

repeat offenders, the guidelines presume jail or prison terms, called *active terms*. As shown in appendix B, the guidelines are applied using felony sentencing grids.¹¹

During the 1995 legislative session, selected minimum ranges were amended for crimes committed on or after December 1, 1995. Specifically, minimum terms were increased by approximately 16 percent for felony classes B2, C, and D. For instance, the presumptive minimum range corresponding to felony class B2 for prior record level I increased from 108-135 months to 125-157 months. Also, active punishment options were added for felony class H offense cases with prior record levels of I or II. We call the guidelines, after amendments, the *1995 guidelines*.

The dates of these changes to North Carolina sentencing laws determine significant dates for the interrupted time-series. We examined how sentence imposed and time served changed as of October 1, 1994 (due to the 1994 guidelines) and then again as of December 1, 1995 (due to the 1995 guidelines). Because of *ex post facto* considerations, the 1995 guidelines applied to offenders who committed their crimes on or after December 1, 1995, and the 1994 guidelines applied to offenders who committed their crimes before December 1, 1995 but after October 1, 1994. Thus, unless noted otherwise, dates in this report are *offense dates* and not *sentence dates*.

2.2.2 Sentencing Data

The AOC provided data for cases filed between 1991 and 1997 and convicted by August 1998.¹² Table 15 shows when these cases were sentenced and under which sentencing policy (e.g., FSA policies apply to offenses committed prior to October 1994). Although the 1994 guidelines became effective in October 1994, offenders were sentenced under FSA as late as 1998 because the applicable sentencing policy depends on when the offender had committed his or her crime. The same is true of sentencing under the 1994 and 1995 guidelines. To reduce the effect of offense-to-disposition lags and resentences on the analyses, the tables hereafter examine cases according to offense date.

¹¹ A separate chart is used for sentencing misdemeanor offenses which are not addressed in this study.

¹² The AOC is confident that these data include virtually all convictions; nonsubmission of case data is extremely rare and associated with very small counties. We selected cases with one or two offense records; a minority of cases with three or more records were sacrificed which did not bias the data in terms of offense severity or other key variables.

Table 15. Number of Cases Sentenced by Sentencing Policy and Sentence Date: Burglary, Robbery, and Drug Possession Offenses

Policy	Sentence Date							
	1991 n/%	1992 n/%	1993 n/%	1994 n/%	1995 n/%	1996 n/%	1997 n/%	1998 n/%
FSA	11,621 100%	21,134 100%	22,551 100%	21,451 99%	8,976 39%	1,057 5%	277 1%	46 1%
1994 Guidelines	-	-	-	160 1%	13,977 60%	10,061 47%	1,361 6%	160 2%
1995 Guidelines	-	-	-	-	12 1%	10,428 48%	20,866 93%	8,064 97%
Total	11,621 100%	21,134 100%	22,551 100%	21,611 100%	22,965 100%	21,546 100%	22,504 100%	8,270 100%

Note: Offense dates preceding 1991 are subsumed under the category 1991.

Source: AOC cases filed 1991-1997.

2.2.3 Primary Offense

In regard to felony cases, offenses are ranked by severity (i.e., classes A through I, A is the highest), whereby the higher classes are associated with victim injury and the lower classes with property crimes. Many offense classes changed with structured sentencing, and FSA's class J was discontinued.¹³ Because of this change, comparing offense conviction levels under FSA policies and under the guidelines has no value.

Tables 16a-c show the distribution of primary offense severity for burglary, robbery, and drug possession guideline cases by offense date. The offense dates are divided into half years; 1994-2 refers to offenses committed between July and December 1994. As noted, offense severity is incomparable for preguideline cases, which account for all 1994-1 cases and roughly half of the 1994-2 cases (e.g., 2,450 of the burglary offenses committed during 1994-2 were sentenced under FSA policies). In tables 16 through 18, our focus is on guideline cases for offenses committed between mid-1994 and 1997. It is necessary to analyze these data by offense date to understand the impact of sentencing guidelines which vary by that date.¹⁴ No guideline cases were charged with level A offenses. Cases charged with offense levels B1

¹³ North Carolina Sentencing and Policy Advisory Commission (1994, Aug). *Structured Sentencing for Felonies: Training and Reference Manual*. Raleigh, NC: Author.

¹⁴ Please note that court data organized by offense date do not reflect real-time filing or disposition trends; this is further complicated by data for offenders who violate community supervision or similar nonincarcerative sentence conditions and are resentenced according to the guidelines in effect on the date of their original crime. However, except for the period 1994-2, the distribution of offense severity is similar when these cases are ordered by sentence date.

through D are grouped together since all sentences associated with these felony levels are active punishment, and felony levels E and F are combined due to their low frequency.

Table 16a. Number of Felony Convictions under the 1994 and 1995 Guidelines by Primary Offense Severity and Offense Date: Burglary

Offense Date							
Primary Offense Severity	1994 Guidelines			1995 Guidelines			
	1994-2	1995-1	1995-2*	1996-1	1996-2	1997-1	1997-2
Felony B1-D	43 1%	62 2%	87 2%	77 2%	55 1%	61 2%	49 2%
Felony E-F	3 0%	5 0%	18 0%	17 0%	19 1%	16 0%	11 0%
Felony G	71 3%	136 3%	144 3%	91 2%	142 3%	96 2%	104 3%
Felony H	1,811 70%	2,813 69%	3,763 72%	2,822 67%	3,063 68%	2,808 70%	2,147 64%
Felony I	668 26%	1,053 26%	1,221 23%	1,235 29%	1,195 27%	1,017 26%	1,029 31%
Total	2,596 100%	4,069 100%	5,233 100%	4,242 100%	4,474 100%	3,998 100%	3,340 100%

Note: n=123 missing 1994 guideline cases; (*) denotes that column includes one month of 1995 guidelines cases. Source: AOC guideline cases filed 1991-1997.

Table 16b. Number of Felony Convictions under the 1994 and 1995 Guidelines by Primary Offense Severity and Offense Date: Robbery

Offense Date							
Primary Offense Severity	1994 Guidelines			1995 Guidelines			
	1994-2	1995-1	1995-2*	1996-1	1996-2	1997-1	1997-2
Felony B1-D	297 40%	439 35%	585 39%	429 37%	549 41%	431 40%	262 34%
Felony E-F	24 3%	73 5%	73 5%	52 5%	75 5%	51 5%	50 6%
Felony G	343 46%	602 48%	712 47%	563 49%	588 44%	501 47%	402 51%
Felony H	56 8%	117 9%	95 6%	66 6%	74 6%	68 6%	47 6%
Felony I	19 3%	36 3%	40 3%	36 3%	53 4%	25 2%	20 3%
Total	739 100%	1,267 100%	1,505 100%	1,146 100%	1,339 100%	1,076 100%	781 100%

Note: n=35 missing 1994 guideline cases; (*) denotes that the column contains one month of 1995 guideline cases.

Table 16c. Number of Felony Convictions under the 1994 and 1995 Guidelines by Primary Offense Severity and Offense Date: Drug Possession

Primary Offense Severity	Offense Date						
	1994 Guidelines			1995 Guidelines			
	1994-2	1995-1	1995-2*	1996-1	1996-2	1997-1	1997-2
Felony B1-D	9 0%	13 0%	5 0%	4 0%	5 0%	6 0%	8 0%
Felony E-F	1 0%	4 0%	5 0%	4 0%	3 0%	7 0%	1 0%
Felony G	3 0%	4 0%	7 0%	1 0%	4 0%	2 0%	3 0%
Felony H	769 36%	1,845 40%	1,907 40%	1,788 37%	1,858 39%	1,634 35%	1,038 36%
Felony I	1,383 64%	2,819 60%	2,824 60%	3,076 63%	2,948 61%	2,988 65%	1,867 64%
Total	2,165 100%	4,685 100%	4,748 100%	4,873 100%	4,818 100%	4,637 100%	2,917 100%

Note: n=283 missing 1994 guideline cases; (*) denotes that the column contains one month of 1995 guideline cases.

Each of the tables have fewer cases in 1994-2 and 1997-2 than in the other half-years. Again, the relatively small number of cases in 1994-2 results from the guidelines being applicable since October 1994. Also, delays in case processing result in fewer cases with available conviction information appearing in 1997-2. To explain, the AOC provided these data during the latter part of 1998, and as of that time, a significant proportion of 1997-2 cases (and perhaps a smaller proportion of 1997-1 cases) had not yet reached disposition. This delay raises some concerns about interpretations of the 1997-2 data. They exclude the cases that take especially long to process, and undoubtedly, guilty pleas have a disproportionately large representation compared with cases disposed by trial.

Tables 16a-b show spikes in burglary and robbery cases during 1995-2; for example, the total number of burglary cases increased by 29 percent between 1995-1 and 1995-2, but dropped by 19 percent between 1995-2 and 1996-1. Perhaps there were increases in criminal incidents or convictions, or there may be an accumulation of cases resentenced under 1994 guidelines (i.e., offense dates of July through November 1995). It also seems plausible that the introduction of the 1995 guidelines led to changes in charging and bargaining practices. This inference is consistent with the observation that a similar spike did not occur for drug possession cases (see table 16c) which would not be affected by guideline amendments. (Later analysis will show that the 1995 guidelines did not change practices for drug possession cases). If charging and bargaining practices were affected in such a way, this was a one time effect and not otherwise of great interest to this study.

Taking the above trends into account, tables 16a-c show a general stability in charging of primary offense in terms of charge severity. There is no obvious change among even the most serious cases corresponding to the introduction of the 1995 guidelines. For instance, after discounting 1997-2 as unrepresentative, the charging of robbery cases with level D felonies and above fluctuated between 35 percent and 41 percent (see table 16b), but there is no trend that begins with the introduction of the 1995 guidelines. We conclude that primary offense charging patterns did not change substantively as a result of modifications to the guidelines, despite the 16 percent increase in range minimums for felony classes B2, C, and D.

2.2.4 Prior Record

An offender's criminal history or prior record is the second important determinant of the guidelines sentence. Prior record is classified according to six levels, ranging from no prior convictions (level I) to violent or extensive records (level VI). A point system determines the applicable level, whereby felony class A = 10 points, felony class H or I = 2 points, probation/parole violations = 1 point, repeat offenses = 1 point, and so on.¹⁵ The sum of these point calculations correspond to the following severity levels:

Level I	0 points;
Level II	1-4 points;
Level III	5-8 points;
Level IV	9-14 points;
Level V	15-18 points; and,
Level VI	19 or more points (4 N.C. GEN. STAT. §15A-1340.14 [Supp. 1996]). ¹⁶

Recall that the 1995 guidelines added active punishment options for felony class H offense cases for offenders with prior record levels of I or II. This level of prior record became increasingly important for burglary cases where level H convictions are prominent, somewhat less important for drug possession cases where level H offenses are less frequent, and of little importance for robbery case for which level H convictions are rare.

Tables 17a-c show prior record charging for burglary, robbery, and drug possession cases, respectively. Prior record data are always unavailable for preguideline cases, so the table is based on guidelines cases exclusively. Prior record is often unavailable for guideline cases, as well. For instance, about 38 percent (10,531) of the burglary cases are missing prior record data. The lack of prior record data should not be interpreted as no prior record charged. Some cases have incomplete data due to

¹⁵ As noted, prior offense severity has changed over time. The date of the primary offense dictates how prior offense severity is measured.

¹⁶ General Statutes of North Carolina (1996). *1996 Cumulative Supplement* (Annotated, Vol. 4, Chapters 15 through 17E). Charlottesville, VA: Michie Law Publishers.

administrative problems such as new management information systems and staff turnover, but *record consolidation* is more common. Offenses are frequently consolidated for judgement, either across multiple offenses within a single case, or across multiple cases. Summary information such as prior record and sentence are recorded on only one computerized record. Thus, when each offense is recorded as a separate case, summary information is recorded on just one of the multiple case records, so the remaining consolidated cases show no prior record or sentence data. This practice of consolidating cases accounts for a large proportion of the missing data indicated in tables 17a-c through 20a-c. We cannot know the extent without unique offender identifiers, but we assume that most of the data associated with missing cases are reflected in the cases with prior record and sentencing data, so the data are suitable for analyzing trends.

Table 17a. Prior Record Severity by Guidelines and Offense Date: Burglary

Prior Record Severity	Offense Date						
	1994 Guidelines			1995 Guidelines			
	1994-2	1995-1	1995-2*	1996-1	1996-2	1997-1	1997-2
Level I	469 28%	678 26%	837 26%	746 29%	823 29%	720 29%	648 30%
Level II	511 30%	966 37%	1,202 37%	902 35%	1,018 36%	886 35%	761 36%
Level III	394 24%	499 19%	671 21%	551 22%	552 20%	473 19%	399 19%
Level IV	225 13%	312 12%	379 12%	268 11%	297 11%	321 13%	221 10%
Level V	50 3%	81 3%	72 2%	61 2%	93 3%	76 3%	88 4%
Level VI	33 2%	93 3%	64 2%	24 1%	32 1%	29 1%	19 1%
Subtotal	1,682 100%	2,629 100%	3,225 100%	2,552 100%	2,815 100%	2,505 100%	2,136 100%

Note: n=10,531 1994 and 1995 guideline cases missing; (*) denotes that the column contains one month of 1995 guideline cases.

Source: AOC guideline cases filed 1991-1997.

Table 17b. Prior Record Severity by Guidelines and Offense Date: Robbery

Prior Record Severity	Offense Date						
	1994 Guidelines			1995 Guidelines			
	1994-2	1995-1	1995-2*	1996-1	1996-2	1997-1	1997-2
Level I	158 30%	294 33%	367 33%	314 36%	344 38%	276 35%	229 39%
Level II	176 33%	294 33%	361 32%	267 31%	326 36%	257 33%	187 32%
Level III	120 22%	173 19%	227 20%	188 21%	123 13%	150 19%	97 16%
Level IV	61 11%	105 11%	108 10%	69 8%	102 11%	82 10%	56 10%
Level V	9 2%	27 3%	29 3%	26 3%	12 1%	19 2%	14 2%
Level VI	12 2%	10 1%	22 2%	11 1%	12 1%	8 1%	5 1%
Subtotal	536 100%	903 100%	1,114 100%	875 100%	919 100%	792 100%	588 100%

Note: n=2,161 1994 and 1995 guideline cases missing. (*) Denotes that the column contains one month of 1995 guidelines cases.

Table 17c. Prior Record Severity by Guidelines and Offense Date: Drug Possession

Prior Record Severity	Offense Date						
	1994 Guidelines			1995 Guidelines			
	1994-2	1995-1	1995-2*	1996-1	1996-2	1997-1	1997-2
Level I	647 34%	1,379 35%	1,266 33%	1,331 33%	1,252 32%	1,206 31%	737 30%
Level II	684 36%	1,443 37%	1,468 39%	1,518 38%	1,605 40%	1,549 40%	1,025 42%
Level III	327 18%	702 18%	710 19%	749 19%	710 18%	718 19%	443 18%
Level IV	159 8%	311 8%	266 7%	304 8%	307 8%	304 8%	187 8%
Level V	24 1%	39 1%	47 1%	45 1%	51 1%	55 1%	36 1%
Level VI	60 3%	47 1%	21 1%	28 1%	24 1%	26 1%	13 1%
Subtotal	1,901 100%	3,921 100%	3,778 100%	3,975 100%	3,949 100%	3,858 100%	2,441 100%

Note: n=5,303 1994 and 1995 guideline cases missing. (*) Denotes that the column contains one month of 1995 guidelines cases.

Tables 17a-c indicate very subtle changes in prior record charging, assuming missing values do not conceal other patterns. Level I prior scores (i.e., no prior record charges) rose from 30 percent to 39

percent among robbery cases, increased minimally among burglary cases, and decreased minimally among drug possession cases. These increases for robbery and burglary cases might be attributable to an accumulation of resentences (i.e., additional sentence hearings following violations of release conditions) among cases with earlier offense dates; whereas, the decrease in Level 1 charges parallel an increase in Level II charges among drug possession cases. However, there are no clear substantive shifts in the charging of prior records or their distribution across severity levels coincident with the introduction of the 1995 guidelines.

Based on evidence presented in sections 2.2.3 and 2.2.4, we find no radical shifts in the occurrence of factors that are the major determinants of guideline sentences; that is, we find little if any evidence that CJS officials (e.g., prosecutors or defense counsel) acted to moderate the impact of guidelines by manipulating the primary offense charge or prior record points. We next turn to the issue of sentence imposition.

2.2.5 Presumed Sentence Type

Three sentence types—active, intermediate, and community punishment—are available depending on offense class and prior record level. The presumed sentence for cases involving serious offenses (classes A through D) is active punishment (i.e., prison or jail incarceration). Cases involving lesser offenses can be sentenced to prison and they can also be sentenced to intermediate punishment (e.g., jail and probation or intensive supervision) or community punishment (e.g., fines, treatment, or community service). Offenders with prior records more likely receive active punishment. Using the sentencing guidelines grid (see appendix B), cells corresponding to active punishment (labeled “A”) are divided from cells corresponding to optional sentences, including intermediate and community punishment, by a grid border. The border presents a convenient way to analyze these data to observe any overall changes in presumptive sentences over time.

Table 18 shows the distribution of guideline cases as they fall above or below the grid border by offense type and date. This shows the presumed punishment according to primary offense and prior record (when known). Appropriately, the presumed sentence for robbery cases was most likely active punishment (44 to 49 percent are above the border), compared with the presumed sentence for drug possession cases which were most likely to receive intermediate or community punishment (nearly 100 percent are below the border). Effective with the 1995 guidelines, active punishments were added for felony H offenses—like burglary—for offenders with no or Level II prior record charges. Disregarding the 1997-2 cases, the guideline modifications did not alter the proportion of presumed active punishments.

Table 18. Sentencing Guideline Border Position by Offense Type and Offense Date

Offense Type	Offense Date						
	1994 Guidelines			1995 Guidelines			
	1994-2	1995-1	1995-2*	1996-1	1996-2	1997-1	1997-2
Burglary							
Above Border	73 4%	148 5%	145 4%	104 3%	87 3%	83 3%	65 2%
Below Border	1,965 96%	2,992 95%	3,780 96%	3,167 97%	3,375 97%	2,968 97%	2,647 98%
Robbery							
Above Border	314 49%	470 44%	619 48%	451 44%	571 49%	448 48%	277 41%
Below Border	329 51%	595 56%	673 52%	572 56%	605 51%	494 52%	406 59%
Drug Possession							
Above Border	20 1%	24 1%	10 0%	13 0%	11 0%	10 0%	11 0%
Below Border	2,042 99%	4,276 99%	4,300 100%	4,497 100%	4,419 100%	4,327 100%	2,727 100%

Note: n=6,476 burglary, n=1,064 robbery, and n=2,439 drug possession cases missing border position data; prior record data not needed if primary offenses levels A-D. (*) denotes that this column includes one month of cases sentenced under the 1995 guidelines. Source: AOC guideline cases filed 1991-1997.

2.2.6 Sentence Type and Term Imposed

In addition to offense severity and prior record, judges may consider aggravating and mitigating factors¹⁷ when determining minimum and maximum sentence terms.¹⁸ The guidelines prescribe three minimum sentence term ranges: aggravated, presumptive, and mitigated. For example, an offender with level IV priors convicted on a felony class E offense would normally receive a prison sentence with a minimum term within the range 37 to 46 months. However, if there are aggravating circumstances, the judge may impose a minimum term within the range 46 to 58 months. Regardless of whether or not the judge finds mitigating or aggravating factors, the corresponding maximum term, which is at least 20 percent more than the minimum term, is specified by statute. Pursuant to the guidelines, the offender must serve the minimum term (e.g., 50 months) and may serve as much as the maximum term (e.g., 69 months). Sentences in either the aggravated or the mitigated ranges can be appealed.

¹⁷ Aggravating factors include a leadership role in the crime, offenses against law enforcement, and use of a deadly weapon; in contrast, reduced capacity (e.g., youthful offender), aiding prosecution, and acknowledgement of wrongdoing are mitigating factors.

¹⁸ The maximum sentence term is proportional to the minimum term set by the judge. Multiple sentences are served concurrently by default, although consecutive sentences or consolidated cases can be ordered.

As noted, given aggravating or mitigating circumstances, judges may deviate from presumptive minimum sentence ranges and impose a term within the aggravated or mitigated ranges specified. However, no deviation is allowed regarding the type of punishment (e.g., imposition of a non-active punishment when the presumed sentence disposition is active punishment) absent extraordinary mitigating or aggravating factors. Finally, judges may suspend incarceration sentences (and impose an alternative) if the offense class and prior record level prescribe intermediate or community punishment as a sentence disposition, or if active punishment is authorized but not prescribed. Except under special circumstances, imprisonment shall not be suspended if active punishment is the only disposition authorized.

Table 19a-c show the most severe type of sentence imposed across all three sentencing periods—FSA, 1994 guidelines, and 1995 guidelines. The term distribution is shown for jail and prison sentences. Although sentences can be recorded in minimum and maximum terms, most FSA cases only report minimum term data, so that is reported in the table. We ignore sentence suspensions.

The high number of cases missing sentence information is a concern. Missing data is partly explained by the practice of consolidating records for judgement (see section 2.2.4). Like prior record variables, sentence type and term variables can be recorded on a summary record across multiple offenses or cases, but there is another explanation. Few guideline cases report probation sentence data. According to the AOC, this is entirely an administrative concern; that is, probation data are often not entered, and the absence of probation information should not be interpreted as no probation sentence. Therefore, the number of cases with probation as the most severe sentence is unknown, but we can know the number of jail and prison sentences.¹⁹ The cases missing sentences were either sentenced to probation, or more frequently, consolidated for judgement.

¹⁹ Probation sentences were also imposed for some proportion of cases given split sentences (i.e., combinations of incarceration and probation or community corrections).

Table 19a. Sentence Type and Term Imposed by Sentencing Policy: Burglary

Most Severe Sentence	FSA	1994 Guidelines	1995 Guidelines
Up to 6 months	107 1%	2,760 40%	4,582 45%
7 to 12 months	65 0%	3,502 50%	4,734 46%
13 to 24 months	1,010 5%	509 7%	585 6%
25 to 60 months	7615 39%	98 1%	105 1%
More than 60 months	10,780 55%	116 2%	218 2%
Life	53 0%	-	-
Jail/Prison	19,630 100%	6,985 100%	10,224 100%
Probation	387	62	-
Missing or N/A	21,627	4,295	6,509
Total	41,644	11,342	16,733

Source: AOC cases filed 1991-1997.

Table 19b. Sentence Type and Term Imposed by Sentencing Policy: Robbery

Most Severe Sentence	FSA	1994 Guidelines	1995 Guidelines
Up to 6 months	24 0%	98 4%	129 4%
7 to 12 months	16 0%	346 15%	583 17%
13 to 24 months	49 1%	922 40%	1,355 40%
25 to 60 months	1,690 26%	530 23%	530 16%
More than 60 months	4,682 73%	416 18%	765 23%
Life	10 0%	-	1 0%
Jail/Prison	6,471 100%	2,312 100%	3,363 100%
Probation	75	6	2
Missing or N/A	3,828	939	1,266
Total	10,374	3,257	4,631

Table 19c. Sentence Type and Term Imposed by Sentencing Policy: Drug Possession

Most Severe Sentence	FSA	1994 Guidelines	1995 Guidelines
Up to 6 months	311 1%	6,055 71%	10,604 73%
7 to 12 months	184 1%	2,415 28%	3,776 26%
13 to 24 months	6,533 27%	82 1%	127 1%
25 to 60 months	12,237 52%	34 0%	39 0%
More than 60 months	4,589 19%	33 0%	44 0%
Life*	3 0%	-	-
Jail/Prison	23,857 100%	8,619 100%	14,590 100%
Probation	1,019	529	1
Missing or N/A	10,222	1,972	3,415
Total	35,098	11,120	18,006

*The data reflect "life" as the sentence type for n=3 drug possession cases; prior record data are missing but jury trials are indicated.

Regardless of the missing data, tables 19a-c indicate that FSA prison sentences tend to be longer than their guideline counterparts.²⁰ According to the burglary data, terms of more than five years were imposed in 55 percent of the known FSA jail and prison sentences, but in only 2 percent of the guideline ones (see table 19a). Of course, this does not indicate actual time served because discretionary parole determined release dates before the guidelines, while truth in sentencing determined release dates under the guidelines. Later parts of this report will clarify trends by examining time served. Tables 19a-c assess the sentencing data by sentencing policy, but the sentencing trends are better demonstrated in tables 20a-c.

Tables 20a-c provide additional detail by tabulating jail and prison sentences imposed by offense date.²¹ These data illustrate the sentence term transition for all burglary, robbery, and drug possession cases with the implementation of guidelines in October 1994. For example, 70 percent to 77 percent of FSA sentences for robberies are more than five years, whereas 16 percent to 25 percent of guidelines

²⁰ Guideline data also show fewer life sentences than do FSA data (e.g., 53 FSA versus no guideline burglary cases).

²¹ Life sentences are excluded to make this table comparable to the following DOC data tables.

sentences are more than five years (see table 20b). No additional changes in sentencing trends are evident between 1994 and 1995 guideline periods.

[TABLES 20a-c HERE]

Drawing upon the DOC data for which missing sentence data are not a concern, we can confirm a shift in sentence terms between FSA policy and guideline cases. In 1992-1, half (1,981) of the admissions associated with burglary offenses were serving maximum sentences of more than five years (see table 21); by 1997-1, only 11 percent (184) of the burglary admissions were sentenced to such long terms. Given this confirmatory evidence, we can say that the shift from longer to shorter sentence terms is more likely explained by the implementation of sentence guidelines than by biases caused by missing sentence data.

[TABLE 21 HERE]

Tables 20a. Sentence Term Imposed by Offense Date: Burglary

Offense Date													
Sentence Term	FSA Sentencing						1994 Guidelines			1995 Guidelines			
	<1992	1992-1	1992-2	1993-1	1993-2	1994-1	1994-2 ¹	1995-1	1995-2 ²	1996-1	1996-2	1997-1	1997-2
Up to 6 months	21 0%	14 0%	7 0%	10 1%	14 1%	24 1%	664 23%	1,045 40%	1,265 39%	1,154 46%	1,258 45%	1,061 43%	912 45%
7 to 12 months	19 0%	10 0%	3 0%	6 0%	10 1%	10 1%	849 30%	1,241 48%	1,631 51%	1,131 46%	1,275 46%	1,193 48%	923 46%
13 to 24 months	273 5%	125 5%	152 6%	112 5%	108 4%	143 6%	196 7%	240 9%	201 6%	114 5%	181 6%	124 5%	135 7%
25 to 60 months	2,447 40%	1,058 41%	1,004 37%	796 35%	987 40%	849 37%	498 17%	32 1%	49 2%	31 1%	29 1%	17 1%	21 1%
More than 60 months	3,293 55%	1,401 54%	1,532 57%	1,341 59%	1,328 54%	1,253 55%	665 23%	43 2%	49 2%	59 2%	55 2%	68 3%	27 1%
Subtotal	6,053 100%	2,608 100%	2,698 100%	2,265 100%	2,447 100%	2,279 100%	2,872 100%	2,601 100%	3,195 100%	2,489 100%	2,798 100%	2,463 100%	2,018 100%
Life	15	4	7	8	11	5	3	-	-	-	-	-	-
Missing or N/A	6,838	2,794	3,554	2,649	2,578	2,381	2,190	1,543	2,067	1,753	1,676	1,535	1,322
Total	12,906	5,406	6,259	4,922	5,036	4,665	5,065	4,144	5,262	4,242	4,474	3,998	3,340

Note: Missing or N/A includes consolidated for judgement cases and cases sentenced to probation.

¹1994-2 includes three months of FSA cases.

²1995-2 includes one month of 1995 guidelines cases.

Tables 20b. Sentence Term Imposed by Offense Date: Robbery

Offense Date													
Sentence Term	FSA Sentencing						1994 Guidelines			1995 Guidelines			
	<1992	1992-1	1992-2	1993-1	1993-2	1994-1	1994-2 ¹	1995-1	1995-2 ²	1996-1	1996-2	1997-1	1997-2
Up to 6 months	8 0%	4 1%	2 0%	3 0%	1 0%	3 0%	24 2%	45 5%	38 3%	36 4%	39 4%	28 4%	20 3%
7 to 12 months	2 0%	2 0%	2 0%	1 0%	2 0%	4 0%	94 9%	132 15%	169 15%	130 15%	157 17%	134 17%	116 20%
13 to 24 months	16 1%	9 1%	6 1%	5 1%	8 1%	5 1%	194 20%	381 42%	428 39%	381 45%	347 39%	294 37%	252 43%
25 to 60 months	511 29%	194 25%	233 26%	213 26%	189 22%	212 26%	259 26%	202 22%	241 22%	113 13%	155 17%	137 17%	91 16%
More than 60 months	1,253 70%	566 73%	649 73%	609 73%	674 77%	604 73%	426 43%	140 16%	232 21%	201 23%	212 23%	193 25%	104 18%
Subtotal	1,790 100%	775 100%	892 100%	831 100%	874 100%	828 100%	997 100%	900 100%	1,108 100%	861 100%	910 100%	786 100%	583 100%
Life	1	1	-	1	2	4	1	-	-	1	-	-	-
Missing or N/A	1,278	405	562	520	549	425	383	384	409	284	429	290	198
Total	3,069	1,181	1,454	1,352	1,425	1,257	1,381	1,284	1,517	1,146	1,339	1,076	781

Note: Missing or N/A includes consolidated for judgement cases and cases sentenced to probation.

¹1994-2 includes three months of FSA cases.

²1995-2 includes one month of 1995 guidelines cases.

Tables 20c. Sentence Term Imposed by Offense Date: Drug Possession

Offense Date													
Sentence Term	FSA Sentencing						1994 Guidelines			1995 Guidelines			
	<1992	1992-1	1992-2	1993-1	1993-2	1994-1	1994-2 ¹	1995-1	1995-2 ²	1996-1	1996-2	1997-1	1997-2
Up to 6 months	69 1%	22 1%	28 1%	40 1%	56 2%	56 1%	1,263 36%	2,612 70%	2,650 72%	2,854 73%	2,840 73%	2,756 74%	1,724 73%
7 to 12 months	66 1%	28 1%	24 1%	17 1%	11 0%	20 1%	549 15%	1,048 28%	1,008 27%	1,026 26%	1,013 26%	952 25%	613 26%
13 to 24 months	1,634 27%	922 30%	836 27%	845 27%	874 27%	923 27%	517 15%	41 1%	28 1%	38 1%	31 1%	32 1%	21 1%
25 to 60 months	3,066 50%	1,606 51%	1,557 51%	1,616 51%	1,690 52%	1,782 52%	930 26%	17 1%	7 0%	13 0%	12 0%	10 0%	4 0%
More than 60 months	1,262 21%	524 17%	613 20%	642 20%	639 19%	639 19%	280 8%	16 0%	14 0%	6 0%	15 0%	12 0%	4 0%
Subtotal	6,097 100%	3,102 100%	3,058 100%	3,160 100%	3,270 100%	3,420 100%	3,539 100%	3,734 100%	3,707 100%	3,937 100%	3,911 100%	3,762 100%	2,366 100%
Life	2	-	-	-	1	-	-	-	-	-	-	-	-
Missing or N/A	3,171	1,450	1,511	1,530	1,489	1,490	1,048	1,061	1,139	936	907	875	551
Total	9,270	4,552	4,569	4,690	4,760	4,910	4,587	4,795	4,846	4,873	4,818	4,637	2,917

Note: Missing or N/A includes consolidated for judgement cases and cases sentenced to probation. Source: AOC cases filed 1991-1997.

¹1994-2 includes three months of FSA cases.

²1995-2 includes one month of 1995 guidelines cases.

Table 21. Sentence Term by Offense Date for DOC Admissions: Burglary

Sentence Term	Offense Date											
	FSA Sentencing					1994 Guidelines			1995 Guidelines			
	1992-1	1992-2	1993-1	1993-2	1994-1	1994-2	1995-1	1995-2	1996-1	1996-2	1997-1	1997-2
Up to 6 months	213 5%	205 5%	260 6%	259 6%	366 9%	445 16%	586 24%	638 23%	527 23%	530 23%	393 24%	147 22%
7 to 12 months	70 2%	64 2%	67 2%	70 1%	61 1%	489 17%	964 39%	1,015 37%	882 38%	795 35%	557 34%	187 27%
13 to 24 months	169 4%	137 3%	149 4%	162 4%	159 4%	365 13%	532 22%	591 22%	519 22%	527 23%	374 22%	195 29%
25 to 60 months	1,476 38%	1,573 38%	1,432 36%	1,533 36%	1,555 37%	778 27%	185 8%	212 8%	186 8%	182 8%	147 9%	88 13%
More than 60 months	1,981 51%	2,180 52%	2,071 52%	2,268 53%	2,070 49%	783 27%	180 7%	277 10%	222 9%	257 11%	184 11%	62 9%
Total	3,909 100%	4,159 100%	3,979 100%	4,292 100%	4,211 100%	2,860 100%	2,447 100%	2,733 100%	2,366 100%	2,291 100%	1,655 100%	679 100%

Source: DOC court commitments admitted 1991-1997.

2.3 Demand on Prison Resources

Associated with changes in sentencing guidelines are changes in gaintime and release policies. The following reviews these policies (section 2.3.1), the data used to examine the impact of policy changes (section 2.3.2), and the results of our analyses concerning time served (section 2.3.3), prison admissions and demand (section 2.3.4), and projections of future demand in terms of number of prison beds required (section 2.3.5).

2.3.1 Gaintime and Release Policies

For offenses committed before October 1994²² judges set a maximum and sometimes a minimum term of incarceration. Time served depended on parole authority discretion, good time and gaintime provisions. Good time was calculated as one day's credit for each day spent in prison free of misconduct. Gaintime was awarded in terms of two to six days per month according to work or program participation, or in amounts of up to 30 days for meritorious conduct.

Under structured sentencing (effective October 1994), good time, gaintime, and parole were abolished. Offenders sentenced to active punishment must serve at least the minimum term imposed; however, as determined by the DOC, they could earn credits of up to six days per month incarcerated on their maximum term.²³ Prisoners could be released on the date equivalent to the maximum sentence term less nine months (effective December 1996²⁴), any earned time awarded, and time served in pretrial detention.²⁵ Upon release, offenders convicted on felony classes B1 through E offenses are supervised and monitored in the community on post-release supervision for a period of nine months (or five years for special offenders).

The 1994 release practice completely changed the meaning of an imposed sentence, which had been a rarely served maximum, to a fixed term that closely approximated the expected time to be served. In this section, we analyze the effects of these sentencing and release policy changes by examining sentence time served, and consequent impacts on prison admissions and demand, and the number of beds required for past and future cohorts.

²² Before July 1978, the parole commission could release inmates after one-fourth of their minimum term (or maximum term if there was no minimum). From July 1978 through June 1981, the inmate had to serve the lesser of their minimum term (if applicable) versus one-fifth of their maximum term.

²³ Misdemeanants can earn up to four days per month credit.

²⁴ Effective December 1996, the incarceration release date was amended from the equivalent of the maximum prison term "less six months" to "less nine months."

²⁵ Offenders should serve 100 percent of their minimum term less time served in pretrial detention.

2.3.2 Prison Data

Felons sentenced to active punishment and misdemeanants sentenced to terms of more than three months are transferred to DOC custody. Misdemeanants serving jail terms of three months or less (including split sentences) are transferred to Sheriffs' custody. The North Carolina DOC provided records for all prison court commitments over the period January 1990 through December 1997. Using these data, we learned the proportion of offenders sentenced to prison after conviction for robbery, burglary or drug possession felonies, and we learned how long those sentenced to prison remained in prison. The findings are presented as a series of graphs.

Of the 75,049 prisoners in our data, 90 percent had been released by the time the files were prepared in mid-1998. However, the 10 percent still in prison differed markedly from those who had been released. Some of those who remained in prison were there because they had been recently sentenced. Others were there because they were serving especially long prison terms. For example, 30 percent of the offenders sentenced under the guidelines were still in prison when our data were prepared. Their average maximum imposed sentence was more than four years. In contrast, the average sentence imposed for offenders who had been sentenced under the guidelines and released was one year.

We therefore had to develop estimates of time served by offenders who were still in prison. If we know, or are willing to assume, the form of the statistical distribution of the observed and unobserved releases, we can infer its mean and standard deviation, and so recover the average time to be served by inmates still in prison. Such an analysis assumes that release practices observed in the early years of sentencing guidelines will continue into the indefinite future. This may not occur, for any number of reasons, but it represents a reasonable projection of the implications of present sentencing law and practice.

Both before and during the sentencing guidelines period, the maximum imposed sentence provides a good predictor of the time prisoners serve until their first release. The distribution of time served for a given sentence and offense type appears to follow a log normal distribution. Figures 5a-b show typical examples of these distributions for offenders admitted on breaking and entering charges and sentenced under guidelines and FSA sentencing policies, respectively. For offenders sentenced to eight months incarceration under sentencing guidelines, the modal or most frequent time served is five months or about two-thirds of the full sentence; and the probability of serving five months (0.06) is as much as six times the probability of serving the full sentence (see figure 5a). For offenders sentenced to 36 months under FSA sentencing policies, the modal time served is six months or about 20 percent of the sentence; and the probability of serving six months (0.09) is about nine times the probability of serving the full sentence (see figure 5b).

[FIGURES 5a-b HERE]

Figure 5a. North Carolina
Distribution of Time Served for Offenders Sentenced to 8 Months
Under Sentencing Guidelines: Breaking and Entering

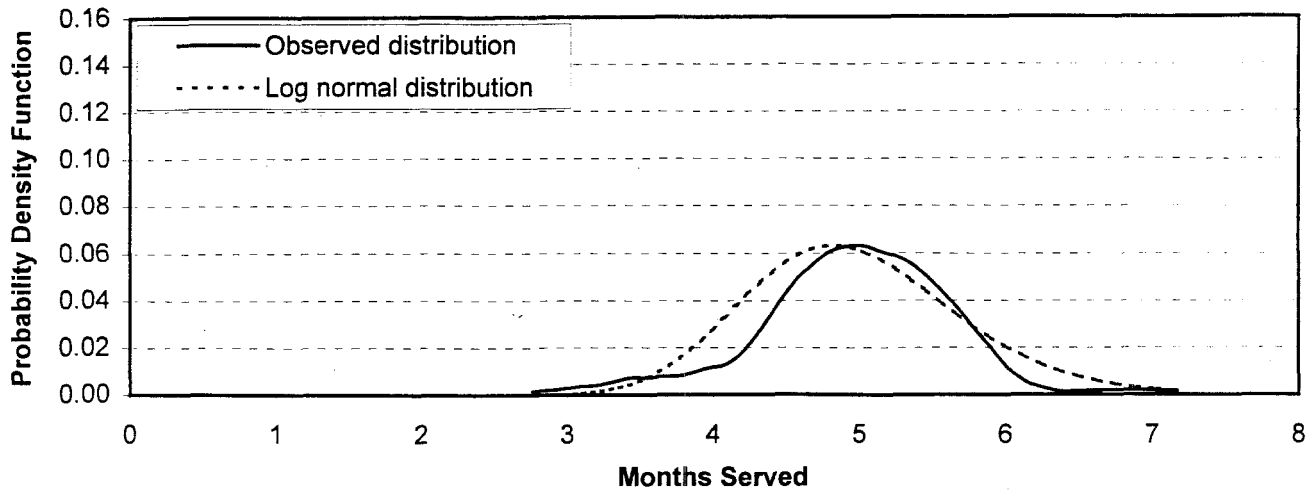
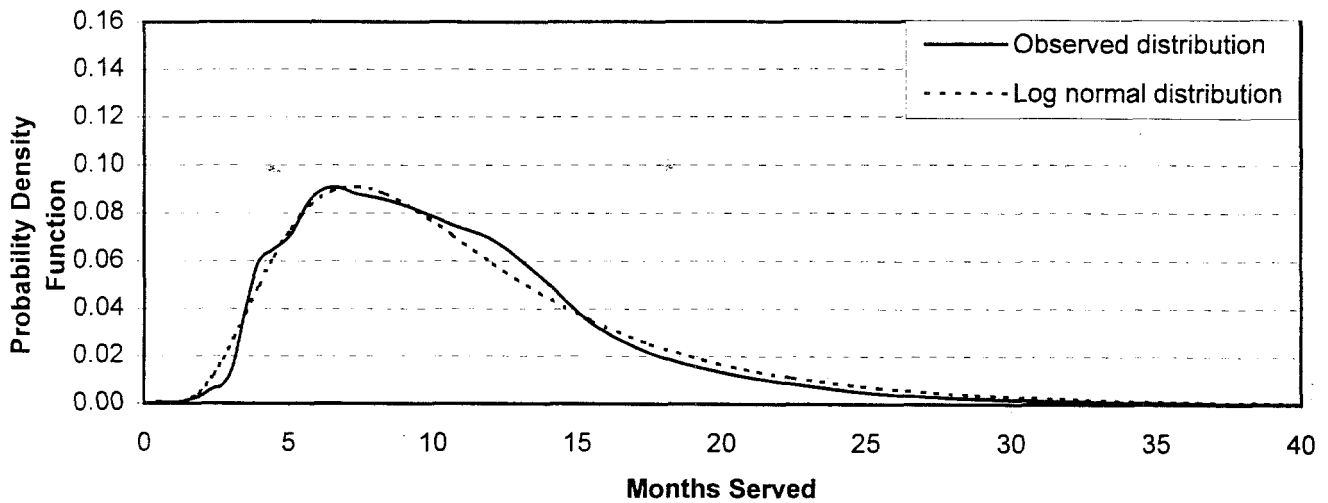


Figure 5b. North Carolina
Distribution of Time Served for Offenders Sentenced to 36 Months
Under FSA Policy: Breaking and Entering



Among offenders with similar sentences, time served also depends slightly on the exact offense of conviction. For example, among drug possession offenders, the type of drug and whether the offense included an intent to distribute are predictors of total time served. We used maximum likelihood regression to estimate the average time that unreleased prisoners would spend in prison, based on their maximum sentence and conviction offense. We estimated separate censored regressions for FSA and guidelines cases, and also for those with sentences of more or less than one year. These estimates appear to fit the data very well, and provide plausible estimates of time served for unreleased inmates that appear consistent with the time served by those released, and are free from censoring bias.

2.3.3 Proportion of Sentence and Time Served Estimates

Figures 6a-c show the proportion of sentences served by offenders who were sentenced on burglary, robbery, and drug possession offenses committed between January 1990 and December 1997. Two major adjustments to the data were required to produce these figures. First, offense date was not a critical fact prior to the effective date of the sentencing guidelines, and was often omitted from the records. In those cases where an offense date was known, it preceded the prison commitment date by an average of approximately seven months. Accordingly, we imputed offense dates to FSA cases by applying the average delay to their prison admission dates. (The offense date was never missing for cases sentenced under the guidelines.) Figures 6a-c show the actual proportion of sentence term served for offenders who had been released, combined with the estimated averages (based on similar sentences and offenses) for those still in prison. As expected from the decrease observed in sentence terms imposed (see section 2.2.6), the proportion of sentence served increased dramatically as of October 1994. During the FSA sentencing policy period, offenders appeared to serve about 20 to 30 percent of their sentences. During the structured sentencing period, offenders appeared to serve approximately 80 percent or more of the maximum term.

[FIGURES 6a-c HERE]

Estimates of time served for offenders admitted in 1997 are problematic. In the last few months of 1997, the apparent variance in time served is larger than in earlier years. This is because very few inmates sentenced for offenses in this period had reached the DOC, and even fewer had been released from DOC custody. Hence these data are based almost entirely on estimates of release dates. We doubt that the apparent variation represents any real changes in sentencing and release practices.

Figures 7a-c show the (actual and imputed) time served until first release for offenses committed between January 1990 and December 1997. Burglars served about 1 to 1.5 years under FSA policies, and

Figure 6a. North Carolina
Proportion of Sentence Served Based on Offense Date: Burglary

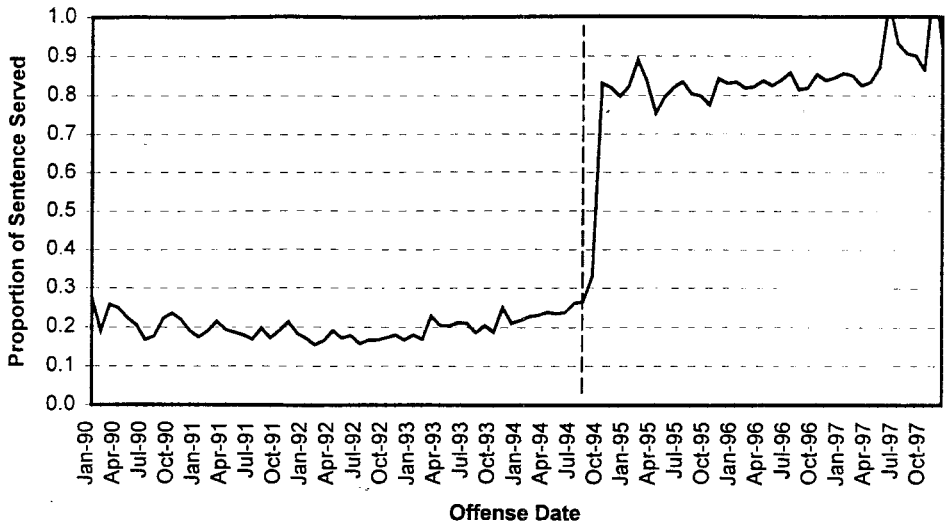


Figure 6b. North Carolina
Proportion of Sentence Served Based on Offense Date: Robbery

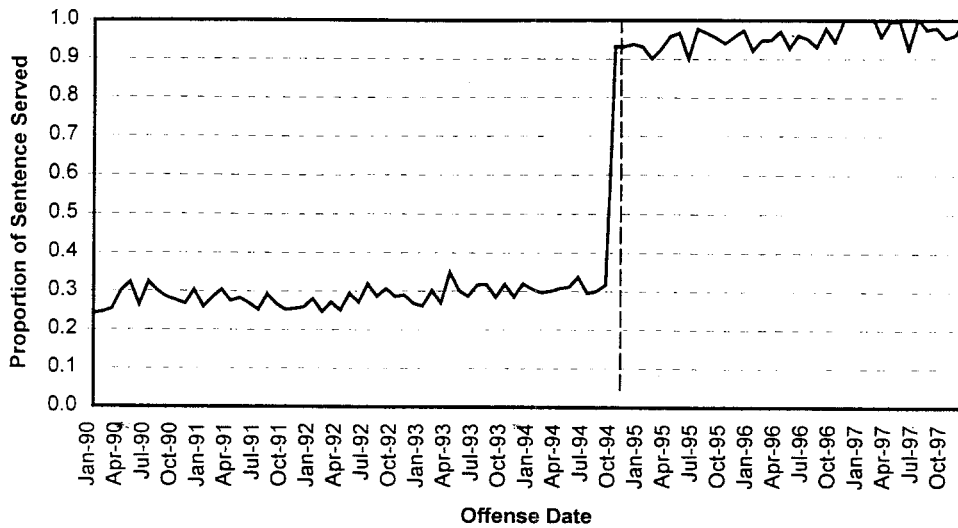
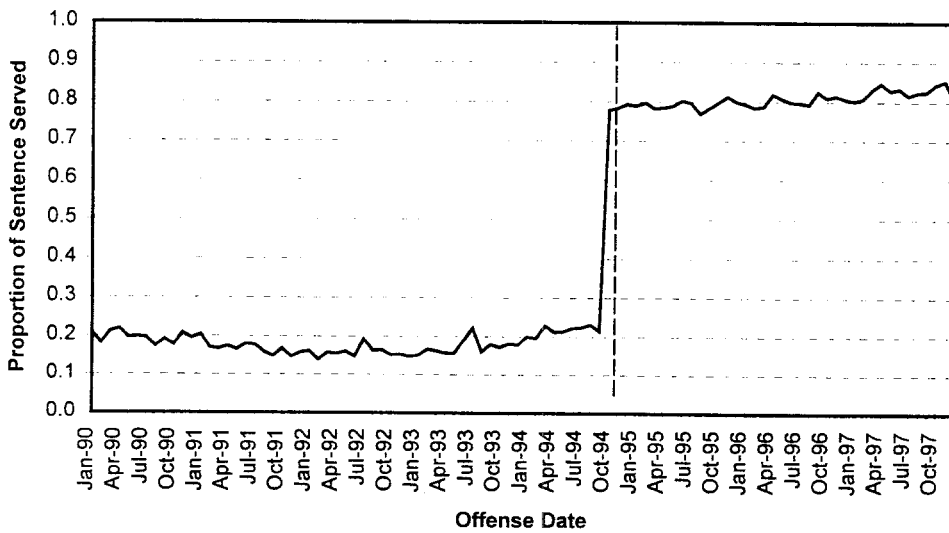


Figure 6c. North Carolina
Proportion of Sentence Served Based on Offense Date: Drug Possession



about 1.5 years under structured sentencing (see figure 7a). Robbers served an average of 4 years under FSA policies and over 5 years under structured sentencing (see figure 7b). And offenders admitted for drug possession served an average about 0.6 to 0.7 years under both FSA and structured sentencing policies (see figure 7c). The spikes associated with drug possession cases probably result from the relatively small number of cases toward the end of the period, and the fact that time served was often imputed for those cases. We doubt that the spikes represent anything of significance about application of the 1995 guidelines.

[FIGURES 7a-c HERE]

As described in section 2.2.1, North Carolina modified the guidelines in December 1995 to increase sentence terms imposed for serious crimes, and to increase active punishments for offenders with relatively minor records sentenced on less serious felonies. This trend is visible in figures 7a-b, which show variable but generally increasing lengths of time to first release for burglars and robbers sentenced on offenses committed after 1995. Since many of these data are imputed, it is possible that some of this trend is an unintentional byproduct of the imputation method, but we are confident that the level of sanctions has increased significantly.²⁶

2.3.4 Admissions and Demand

With an increase in time served for serious offenses, we would expect to observe an increase in demand on North Carolina prisons to house burglars and robbers, but no increase to house those convicted of drug possession.²⁷ Another factor that affects demand on the prisons is the volume of offenders who are admitted to prison. We can approximate the demand made by a cohort of offenders (i.e., everyone admitted to prison during a given year) by multiplying the number of offenders sentenced to prison by the average length of time they will serve. Results are graphed in figures 8a-c, with demand represented as solid histogram bars. The ratio of demand to admissions is greater than one for burglary offenders (see figure 8a); that is, 2,739 admissions in 1990 result in a demand equivalent to 3,180 prison bed years. In contrast, the ratio of demand to admissions is less than one for drug possession offenders; 2,175 drug possession offenders admitted in 1990 result in the equivalent of 1,429 prison bed years.

[FIGURES 8a-c HERE]

²⁶ We tested this increase by using the same regression techniques we used for data imputation. The postguidelines increase is statistically significant at the 95 percent confidence level for robbers.

²⁷ Admission numbers do not match sentence numbers due to processing lags, non-prison corrections, etc.

Figure 7a. North Carolina
Time Served Based on Offense Date: Burglary

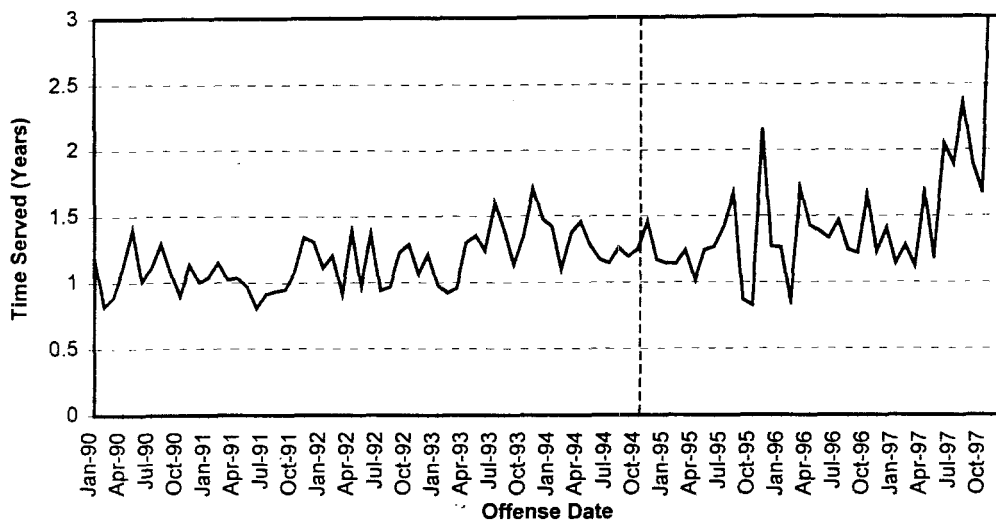


Figure 7b. North Carolina
Time Served Based on Offense Date: Robbery

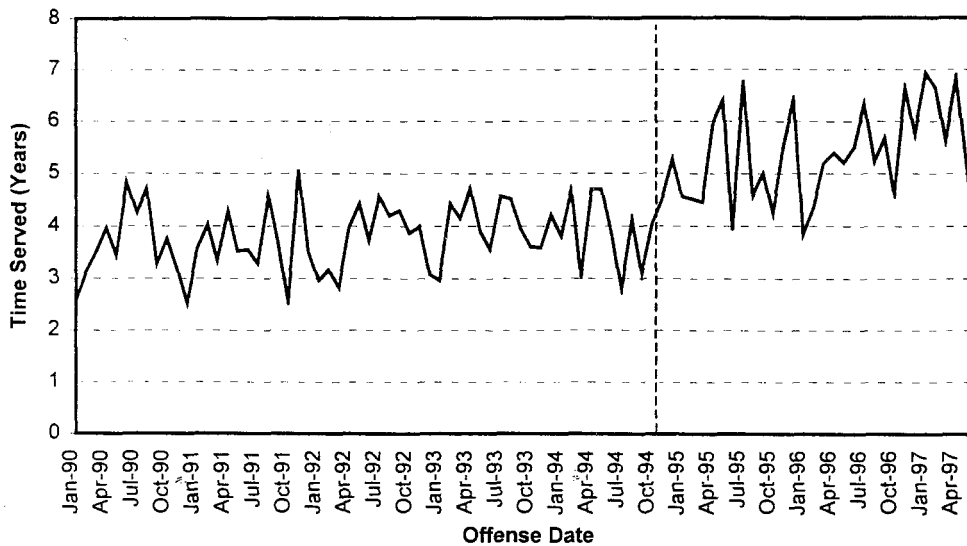
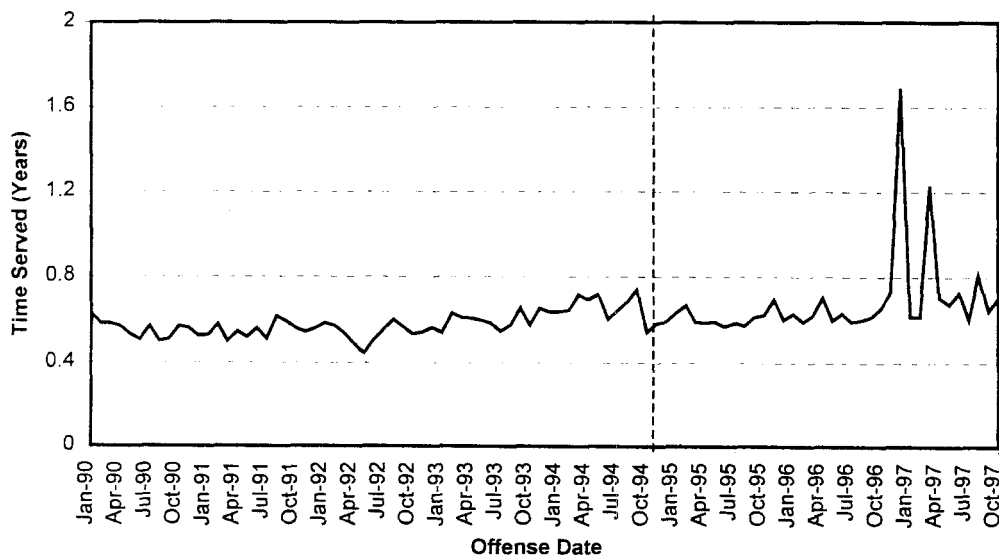
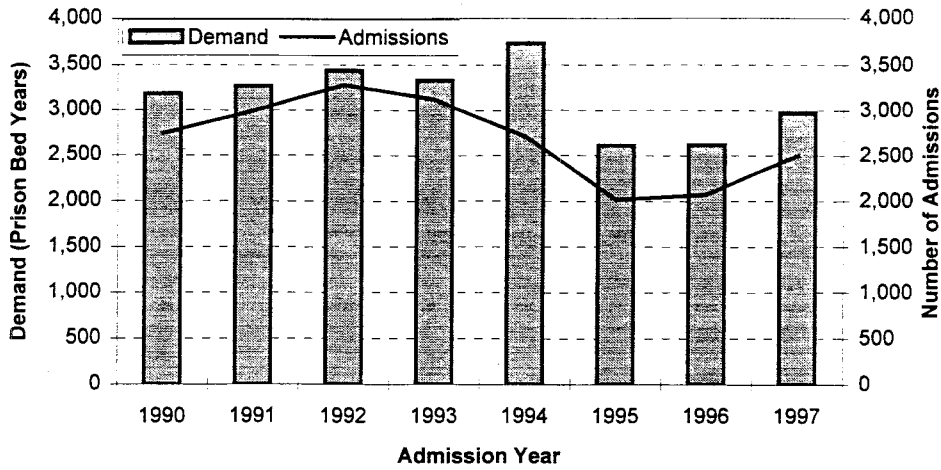


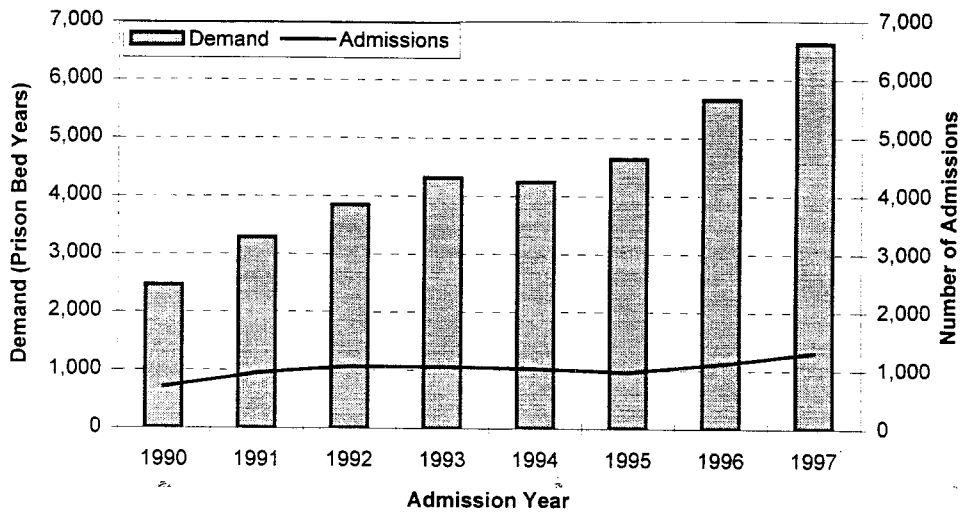
Figure 7c. North Carolina
Time Served Based on Offense Date: Drug Possession



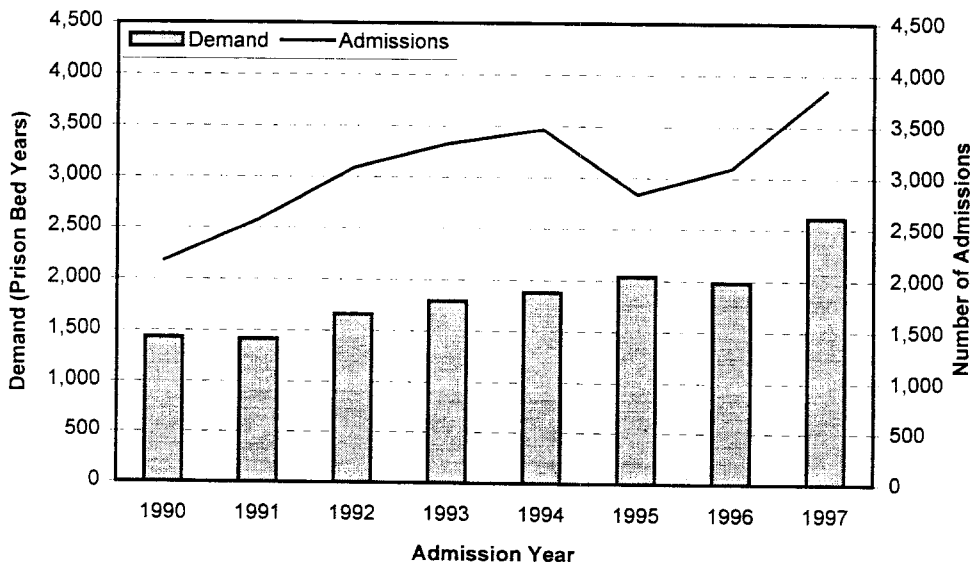
**Figure 8a. North Carolina
Admissions and Demand by Admission Cohort: Burglary**



**Figure 8b. North Carolina
Admissions and Demand by Admission Cohort: Robbery**



**Figure 8c. North Carolina
Admissions and Demand by Admission Cohort: Drug Possession**



Burglary admissions decreased between 1992 and 1997, but increased time served has sustained demand levels at roughly 3,000 prison bed years. Although robbery admissions remained roughly constant between 1990 and 1997, the demand on North Carolina prisons increased steadily due to increases in time served for relatively longer prison sentences. For drug possession offenses, it appears that higher demand is correlated with higher admission levels; the number of offenders admitted for drug possession rose 77 percent between 1990 and 1997.

2.3.5 Number of Prison Beds Projections

Figures 8a-c depict the total demands that a cohort of offenders will make on the North Carolina prisons, but not when that demand will occur. To project the future demand on prisons, we used time served estimates to project when offenders would occupy prison beds over time. When an offender is sentenced to 10 years of prison time, he requires 1 prison bed in each of 10 consecutive years. Thus, an increase, such as the one seen in figure 8b, will not materialize immediately. In fact, if the offender would have been sentenced to 9 years in prison, and the guidelines and truth in sentencing increased the sentence to 10 years, then the impact on the prisons will not be realized until year 10. Hence, the increase in demand we see related to robbery will not immediately impact the North Carolina prison system. We also see an increased demand among drug possession offenders, however, due to the relatively short sentence lengths, changes in demand depend heavily on the number of admissions.

We used a simple technique to project the future demands on the prisons. For inmates admitted between 1990 and 1997, time served was known for those offenders who had been released and estimated for those who had not. We used these data to project when each offender would occupy a North Carolina prison bed. For example, suppose the offender entered prison on July 1, 1990 and he served 2 years, 2 months and 10 days. Then he occupied a prison bed for 26 consecutive months. On the 27th month, he occupied 10/30.4 prison beds. (There are an average of 30.4 days in a month.) Using this procedure, it was a simple matter to determine how many prison beds would be used to house offenders and when they would be used.

There are some complications from using this approach. One complication is that the data begin in 1990, but some offenders who entered prison earlier than 1990 would occupy prison beds during the period of interest to us. Our approach was to assume that the cohort of offenders who entered prison during 1990 were representative of offenders who entered prison before 1990. We simply allowed the 1990 cohort to cascade backward to generate prison beds for 1989 and before. This technique may provide questionable estimates for periods shortly after 1990, but it should provide reasonable adjustments for later years, which are our greatest concern.

Another complication is that we cannot observe prison admissions after 1997, but we would like to project prison demands beyond that date. Our approach was to identify a cohort of offenders entering

prison during 1997 and assume that they represent future cohorts in terms of average time served and number of admissions. Furthermore, this procedure for projecting forward assumes no change in the number or characteristics of burglary, robbery, or drug possession cases sentenced to prison.²⁸ Thus, we cascade the 1997 cohort forward and project the demand they will make on the North Carolina prisons, assuming time served and admissions are fixed.

Figures 9a-c have an important limitation. They do not account for reduced demands made on the prisons because of a reduction in probation and parole revocations. We would expect those to occur. First the guidelines are sending more people to prison, and assuming that the worst risks among the probation population are included in the expanded net, there should be somewhat fewer future offenders entering prison with probation violations. Second the changes in release policies (e.g., good time, gaintime, and parole) should result in fewer releases and consequently fewer revocations. Third, by extending time served, the guidelines should reduce the number of new admissions for repeat offenders. Our data do not allow us to deal with these issues with any precision.

[FIGURES 9a-c HERE]

Figures 9a-c show the number of prison beds needed under these simulated conditions for the period 1986 through 2013. The most dramatic increase in future demand is among robbery offenders; the number of prison beds required triples from 1,812 to 5,605 (see figure 9b). Figures 9a and 9c show a negligible increase for burglary offenders, but a near doubling in beds required for drug possession offenders. Despite relatively low prison sentences, demand increases as admissions increase among drug possession offenders.

How does growth in new prison admissions contribute to the increases in demand? To answer this, we recreated the figures with an assumption that the number of prison admissions has remained constant at 1997 levels. (The choice of 1997 is arbitrary because we are only interested in trends.) Using the data presented in figures 9a-c, we fixed the sample sizes by weighting cases for other years to represent 1997 admissions (e.g., 2,500 burglary cases). Controlling for admissions, one can observe the influence of time served on prison beds required over time. Figures 10a-c show the results.

[FIGURES 10a-c HERE]

²⁸ As noted, the characteristics of these groups of offenders have not changed much during the recent past; however, we may be underestimating the number of offenders admitted for drug possession.

Figure 9a. North Carolina
Simulation of the Number of Prison Beds Required: Burglary

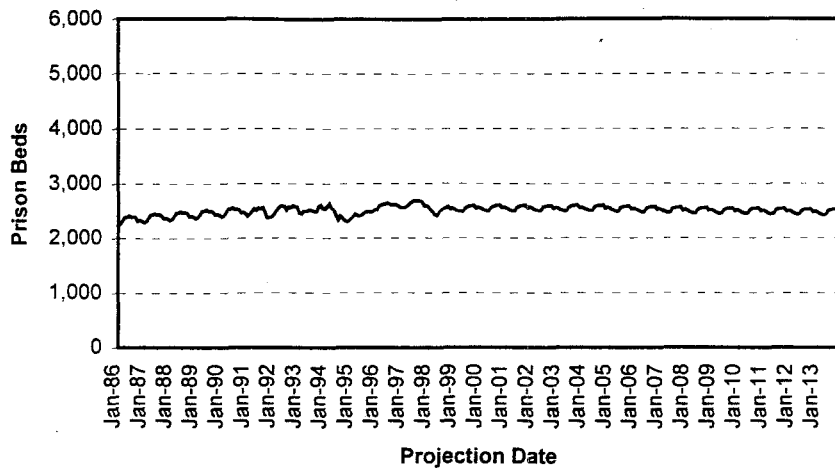


Figure 9b. North Carolina
Simulation of the Number of Prison Beds Required: Robbery

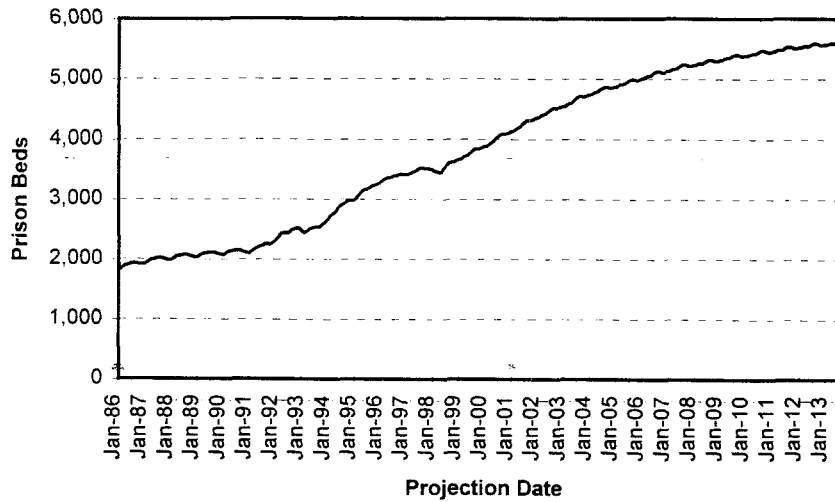


Figure 9c. North Carolina
Simulation of the Number of Prison Beds Required: Drug Possession

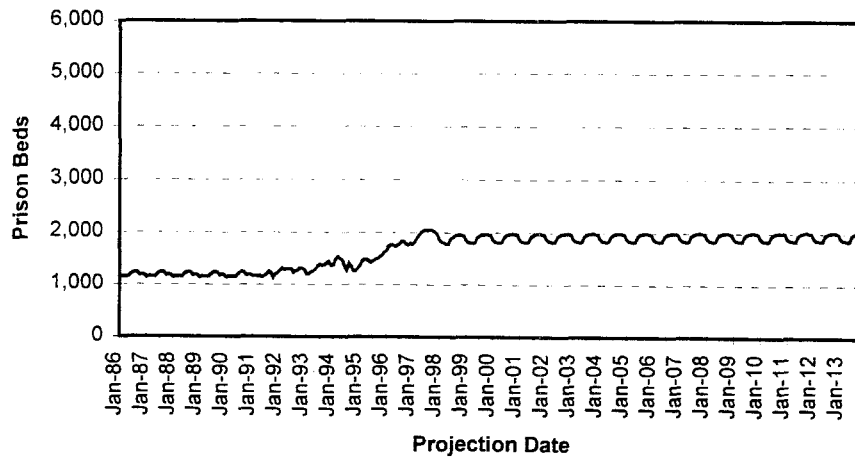


Figure 10a. North Carolina
Simulation of Future Prison Demands Assuming a Fixed-Size
Admission Cohort: Burglary

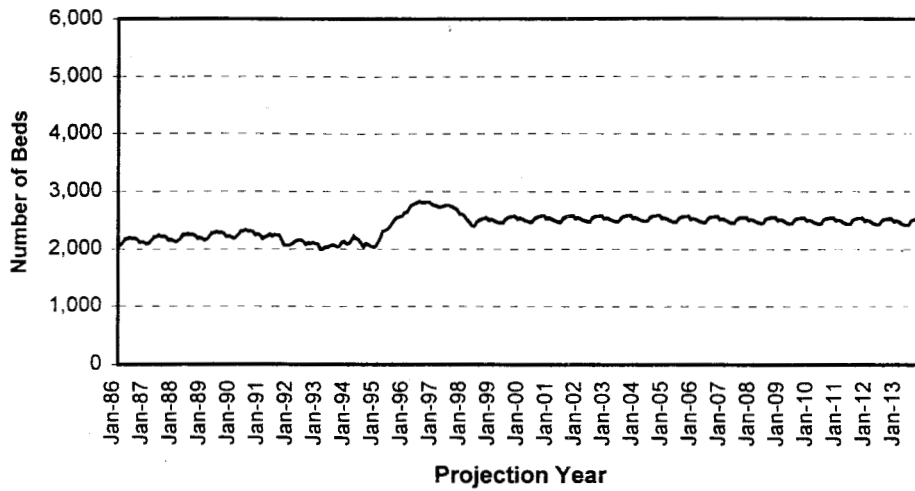


Figure 10b. North Carolina
Simulation of Future Prison Demands Assuming a Fixed-Size
Admission Cohort: Robbery

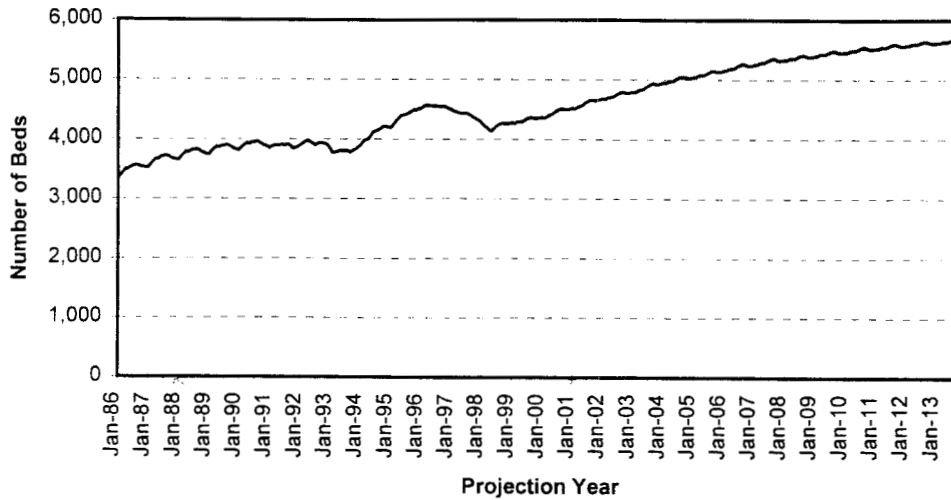
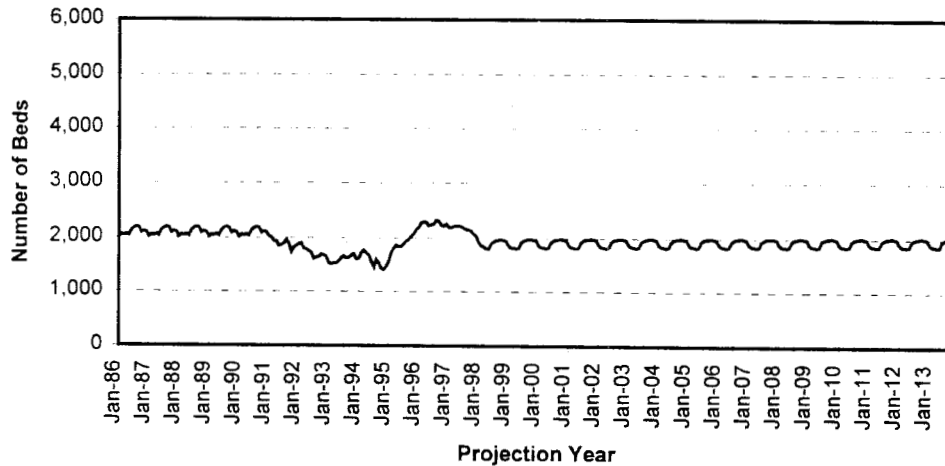


Figure 10c. North Carolina
Simulation of Future Prison Demands Assuming a Fixed-Size
Admission Cohort: Drug Possession



Figures 10a-c show the number of beds required under the same simulated conditions holding constant admissions. The largest change is among robbery offenders who generate a 70 percent increase between 1986 and 2013 (see figure 10b). There is a 22 percent increase for burglary offenders (see figure 10a), and no change for drug possession offenders (see figure 10c). Removing the effect of admissions, it appears that increased demand on prisons will result from offenders admitted for more serious offenses, like burglary and robbery, than from less serious offenses like felony drug possession.

We emphasize that these estimates are rough. They do not take into account the fact that longer prison terms will incapacitate offenders so they cannot commit new crimes and enter prison for new admissions. Depending on how revocations operate under truth in sentencing, and how revocations operated under practices that predate truth in sentencing, longer prison terms should reduce the probation revocation rates, further reducing future demands on the prisons. We could not estimate this reduced demand for this study.

A summary of these findings are presented in the executive summary along with a review of the Florida sentencing and DOC data analyses.

APPENDIX A
FLORIDA'S SENTENCING GUIDELINE SCORESHEETS

RULE 3.990(a) SENTENCING GUIDELINES SCORESHEET

1. DATE OF SENTENCE <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <small>M O D Y Y R</small>	2. PREPARED BY <input type="checkbox"/> DC <input type="checkbox"/> SAO	3. COUNTY	4. SENTENCING JUDGE
5. NAME (LAST, FIRST, M.I.)	6. DOB <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <small>M O D Y Y R</small>	7. DC# <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	9. RACE <input type="checkbox"/> B <input type="checkbox"/> W <input type="checkbox"/> OTH <small>HISP. <input type="checkbox"/> YES <input type="checkbox"/> NO</small>
	8. OBTS# <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>		10. GENDER <input type="checkbox"/> M <input type="checkbox"/> F II <input type="checkbox"/> PLEA <input type="checkbox"/> TRIAL

Check here if this sentencing is for only a revocation of probation or community control.

I. PRIMARY OFFENSE: If Qualifier, please check A S C (A= Attempt, S= Solicitation, C= Conspiracy) POINTS

DOCKET#	FELONY DEGREE	F.S. #	OFFENSE LEVEL <input type="text"/> <input type="text"/>	OFF. DATE <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <small>M O D Y Y R</small>
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Description: _____
 (Level = Pts: 1=4, 2=10, 3=16, 4=22, 5=28, 6=36, 7=42, 8=74, 9=91, 10=116)

I. _____

II. ADDITIONAL OFFENSE(S): Supplemental page attached

DOCKET#	FEL/MM	F.S. #	OFFENSE LEVEL	QUALIFY A S C	CNTS	POINTS
_____	_____	_____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____ X _____	= _____

Description: _____

_____	_____	_____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____ X _____	= _____
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Description: _____

_____	_____	_____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____ X _____	= _____
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Description: _____
 (Level = Pts: M=0.2, 1=0.7, 2=1.2, 3=2.4, 4=3.6, 5=5.4, 6=7.2, 7=8.4, 8=9.6, 9=10.8, 10=12.0)

Supplemental page points _____

II. _____

III. VICTIM INJURY:

	Number	Total		Number	Total
2ND Degree Murder	120 X _____	= _____	Slight	4 X _____	= _____
Death	60 X _____	= _____	Sex Penetration	40 X _____	= _____
Severe	40 X _____	= _____	Sex Contact	18 X _____	= _____
Moderate	18 X _____	= _____			

III. _____

IV. PRIOR RECORD: Supplemental page attached

FEL/MM DEGREE	F.S. #	OFFENSE LEVEL	QUALIFY: A S C	DESCRIPTION	NUM	POINTS
_____	_____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	_____ X _____	= _____
_____	_____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	_____ X _____	= _____
_____	_____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	_____ X _____	= _____
_____	_____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	_____ X _____	= _____
_____	_____	_____	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	_____ X _____	= _____

(Level = Pts: M=0.2, 1=0.5, 2=0.8, 3=1.6, 4=2.4, 5=3.6, 6=4.8, 7=5.6, 8=6.4, 9=7.2, 10=8.0)

Supplemental page points _____

IV. _____

CODES DC USE ONLY

- V. Legal Status Violation = 4 Points V. _____
 - VI. Release Program Violation - 6 Points X Number of Violations (Max 18 Pts) = VI. _____
 - VII. Firearm or Destructive Device = 18 Points VII. _____
 - VIII. Semi-Automatic Weapon or Machine Gun = 25 Points VIII. _____
- Subtotal Sentence Points. _____

IX. Enhancements (only one multiplier may be used)

Law Enforcement Protection

1.5 Multiplier 2.0 Multiplier

Drug Trafficking

1.5 Multiplier

Enhanced Subtotal Sentence Points IX. _____

TOTAL SENTENCE POINTS _____

SENTENCE COMPUTATION

- If total sentence points are less than, or equal to 40, the sentencing court may not impose a state prison sentence. The sentencing court may increase total sentence points that are less than or equal to 40 by up to 15 percent and may impose a state prison sentence if the increased total exceeds 40 points.

$$\frac{\text{Total Sentence Points}}{\text{Total Sentence Points}} \times 1.15 = \frac{\text{Increased Sentence Points}}{\text{Increased Sentence Points}}$$

- If total sentence points are greater than 40 and less than or equal to 52 the decision to incarcerate in a state prison is left to the discretion of the court. If total sentence points are greater than 52 the sentence must be a state prison sentence.
- A state prison sentence is calculated by deducting 28 from total or increased sentence points.

$$\frac{\text{Total Or Increased Sentence Pts.}}{\text{Total Or Increased Sentence Pts.}} \text{ minus } 28 = \frac{\text{State Prison Months}}{\text{State Prison Months}}$$

- The sentencing court may increase or decrease state prison months by up to 25 percent except where the total sentence points were less than or equal to 40 but have been increased by up to 15 percent to exceed 40 points. Any state prison sentence must exceed 12 months.

$$\frac{\text{State Prison Months}}{\text{State Prison Months}} \begin{cases} \frac{\text{Minimum State Prison Months}}{\text{Minimum State Prison Months}} \\ \times 1.25 \\ \frac{\text{Maximum State Prison Months}}{\text{Maximum State Prison Months}} \end{cases}$$

TOTAL SENTENCE IMPOSED

	Years	Months	Days
<input type="checkbox"/> State Prison	_____	_____	_____
<input type="checkbox"/> County Jail	_____	_____	_____
<input type="checkbox"/> Community Control	_____	_____	_____
<input type="checkbox"/> Probation	_____	_____	_____

- Please designate the particular type of sentence where an enhanced or mandatory sentence imposed.

- Habitual Felony Offender Guidelines Aggravated Departure
- Habitual Violent Felony Offender Guidelines Mitigated Departure
- Mandatory pursuant to: s.775.087 s.893.13 s.893.135

OCTOBER 1, 1995 RULE 3.991(a) SENTENCING GUIDELINES SCORE SHEET

1. DATE OF SENTENCE <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> M O D Y Y R	2. PREPARED BY <input type="checkbox"/> DC <input type="checkbox"/> SAO	3. COUNTY <input type="text"/>	4. SENTENCING JUDGE <input type="text"/>
5. NAME (LAST, FIRST, M.I.) <input type="text"/>	6. DOB <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> M O D Y Y R	7. DC# <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	9. RACE <input type="checkbox"/> B <input type="checkbox"/> W <input type="checkbox"/> OTH
		8. OBTS# <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	10. GENDER <input type="checkbox"/> M <input type="checkbox"/> F II <input type="checkbox"/> PLEA <input type="checkbox"/> TRIAL

CODES DC USE ONLY

I. PRIMARY OFFENSE: If Qualifier, please check A S C R (A= Attempt, S= Solicitation, C= Conspiracy, R=Reclassification)

DOCKET#	FELONY DEGREE	F.S. #	OFFENSE LEVEL	OFFENSE DATE	POINTS
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> M O D Y Y R	<input type="text"/>

Description: _____
 (Level = Pts: 1=4, 2=10, 3=16, 4=22, 5=28, 6=36, 7=56, 8=74, 9=92, 10=116)
 Prior capital felony triples primary offense points I. _____

II. ADDITIONAL OFFENSE(S): Supplemental page attached

DOCKET#	FEL/MM	F.S. #	OFFENSE QUALIFY LEVEL	A S C R	CNTS	POINTS
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="text"/> X <input type="text"/>	<input type="text"/>

Description: _____

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="text"/> X <input type="text"/>	<input type="text"/>
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Description: _____

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="text"/> X <input type="text"/>	<input type="text"/>
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Description: _____
 (Level = Pts: M=0.2, 1=0.7, 2=1.2, 3=2.4, 4=3.6, 5=5.4, 6=18, 7=28, 8=37, 9=46, 10=58)

Prior capital felony triples additional offense points Supplemental page points _____ II. _____

III. VICTIM INJURY:

	Number	Total		Number	Total
2nd Degree Murder	240 X <input type="text"/>	= <input type="text"/>	Slight	4 X <input type="text"/>	= <input type="text"/>
Death	120 X <input type="text"/>	= <input type="text"/>	Sex Penetration	80 X <input type="text"/>	= <input type="text"/>
Severe	40 X <input type="text"/>	= <input type="text"/>	Sex Contact	40 X <input type="text"/>	= <input type="text"/>
Moderate	18 X <input type="text"/>	= <input type="text"/>			

III. _____

IV. PRIOR RECORD: Supplemental page attached

FEL/MM DEGREE	F.S. #	OFFENSE QUALIFY LEVEL	A S C R	DESCRIPTION	NUM	POINTS
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	<input type="text"/> X <input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	<input type="text"/> X <input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	<input type="text"/> X <input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	<input type="text"/> X <input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	_____	<input type="text"/> X <input type="text"/>	<input type="text"/>

(Level = Pts: M=0.2, 1=0.5, 2=0.8, 3=1.6, 4=2.4, 5=3.6, 6=9, 7=14, 8=19, 9=23, 10=29)

Supplemental page points _____

IV. _____

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V. Legal Status Violation = 4 Points

V. _____

VI. Community Sanction Violation before the court for sentencing

- A) 6 Pts x each such successive violation OR
- B) New Felony Conviction = 12 Pts x each such successive violation

VI. A. _____
B. _____

VII. Firearm/Semi-Automatic or Machine Gun = 18 or 25 Points

VII. _____

VIII. Prior Serious Felony = 30 Pts

VIII. _____

Subtotal Sentence Points. _____

IX. Enhancements (only if the primary offense qualifies for enhancement)

Law Enforcement Protection <input type="checkbox"/> x 1.5 <input type="checkbox"/> x 2.0 <input type="checkbox"/> x 2.5	Drug Trafficking <input type="checkbox"/> x 1.5	Grand Theft Motor Vehicle <input type="checkbox"/> x 1.5	Street Gang (offenses committed on or after 10-1-96) <input type="checkbox"/> x 1.5	Domestic Violence (offenses committed on or after 10-1-97) <input type="checkbox"/> x 1.5
--	--	---	---	---

Enhanced Subtotal Sentence Points IX. _____

TOTAL SENTENCE POINTS _____

SENTENCE COMPUTATION

For any felony committed on or after July 1, 1997, where the defendant has at least one prior felony conviction, the court may impose a state prison sentence not to exceed 22 months when a non state prison sanction is recommended, or when the minimum recommended sentence is less than 22 months in state prison.

- 40 or less total sentence points mandates a non state prison sanction, except as provided above. Sentence points less than or equal to 40 may be increased by 15 percent

_____ x 1.15 = _____
 Total Sentence Points Increased Sentence Points

- If total or increased sentence points are greater than 40 or equal to 52, state incarceration is discretionary. A total of more than 52 total or increased sentence points must be a state prison sentence. A life sentence may be imposed at the discretion of the court if total sentence points are 363 or greater.

_____ minus 28 = _____
 Total/Increased Points State Prison Months

- The sentencing court may increase or decrease prison months by up to 25 percent except where total sentence points were originally increased by 15 percent to exceed 40 points. Any state prison sentence must exceed 12 months.

_____ State Prison Months

 / x .75 = _____
 \ x 1.25 = _____
 Min. Prison Months
 Max. Prison Months

TOTAL SENTENCE IMPOSED

<input type="checkbox"/> State Prison <input type="checkbox"/> Life <input type="checkbox"/> County Jail <input type="checkbox"/> Time Served <input type="checkbox"/> Community Control <input type="checkbox"/> Probation	Years Months Days _____ _____ _____	Has more than one scoresheet been used at sentencing? _____ Yes _____ No
--	--	---

• Please designate the particular type of sentence where an enhanced or mandatory sentence imposed.

<input type="checkbox"/> Habitual Felony/Habitual Violent Offender <input type="checkbox"/> Violent Career Criminal <input type="checkbox"/> Prison Releasee Reoffender Punishment Act <input type="checkbox"/> Mandatory pursuant to: <input type="checkbox"/> §775.087	<input type="checkbox"/> Guideline Aggravated Departure <input type="checkbox"/> Guideline Mitigated Departure <input type="checkbox"/> §893.13 <input type="checkbox"/> §893.135
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JUDGE'S SIGNATURE

APPENDIX B

NORTH CAROLINA'S FELONY SENTENCING CHARTS

FELONY PUNISHMENT CHART
(Numbers shown are in months)

PRIOR RECORD LEVEL

	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts	
A	Death or Life Without Parole						
B1	A 240-300	A 288-360	A 336-420	A 384-480	A <i>Life Without Parole</i>	A <i>Life Without Parole</i>	DISPOSITION <i>Aggravated Range</i>
	192-240	230-288	269-336	307-384	346-433	384-480	PRESUMPTIVE RANGE
	144-192	173-230	202-269	230-307	260-346	288-384	<i>Mitigated Range</i>
B2	A 135 - 169	A 163 - 204	A 190 - 238	A 216 - 270	A 243 - 304	A 270 - 338	
	108 - 135	130 - 163	152 - 190	173 - 216	194 - 243	216 - 270	
	81 - 108	98 - 130	114 - 152	130 - 173	148 - 194	162 - 216	
C	A 83 - 79	A 86 - 108	A 100 - 125	A 113 - 144	A 130 - 162	A 145 - 181	
	50 - 63	69 - 86	80 - 100	92 - 115	104 - 130	116 - 145	
	38 - 50	52 - 69	60 - 80	69 - 92	78 - 104	87 - 116	
D	A 53 - 69	A 66 - 82	A 89 - 111	A 101 - 126	A 115 - 144	A 126 - 158	
	44 - 55	53 - 66	71 - 89	81 - 101	92 - 115	101 - 126	
	33 - 44	40 - 53	53 - 71	61 - 81	69 - 92	76 - 101	
E	1/A 25 - 31	1/A 29 - 36	A 34 - 42	A 46 - 58	A 53 - 66	A 59 - 74	
	20 - 25	23 - 29	27 - 34	37 - 46	42 - 53	47 - 59	
	15 - 20	17 - 23	20 - 27	28 - 37	32 - 42	35 - 47	
F	1/A 16 - 20	1/A 19 - 24	1/A 21 - 26	A 25 - 31	A 34 - 42	A 39 - 49	
	13 - 16	15 - 19	17 - 21	20 - 25	27 - 34	31 - 39	
	10 - 13	11 - 15	13 - 17	15 - 20	20 - 27	23 - 31	
G	1/A 13 - 16	1/A 15 - 19	1/A 16 - 20	1/A 20 - 25	A 21 - 26	A 29 - 36	
	10 - 13	12 - 15	13 - 16	16 - 20	17 - 21	23 - 29	
	8 - 10	9 - 12	10 - 13	12 - 16	13 - 17	17 - 23	
H	C/I 6 - 8	I 8 - 10	1/A 10 - 12	1/A 11 - 14	1/A 15 - 19	A 20 - 25	
	5 - 6	6 - 8	8 - 10	9 - 11	12 - 15	16 - 20	
	4 - 5	4 - 6	6 - 8	7 - 9	9 - 12	12 - 16	
I	C 6 - 8	C/I 6 - 8	I 6 - 8	1/A 8 - 10	1/A 9 - 11	1/A 10 - 12	
	4 - 6	4 - 6	5 - 6	6 - 8	7 - 9	8 - 10	
	3 - 4	3 - 4	4 - 5	4 - 6	5 - 7	6 - 8	

Note: A - Active Punishment I - Intermediate Punishment C - Community Punishment

Revised: 04-05-94

PROPERTY OF
Federal Criminal Justice Reference Service (NCJRS)

*****Effective for Offenses Committed on or after 12/1/95*****

FELONY PUNISHMENT CHART

PRIOR RECORD LEVEL

OFFENSE CLASS

	I 0 Pts	II 1-4 Pts	III 5-8 Pts	IV 9-14 Pts	V 15-18 Pts	VI 19+ Pts	
A	Death or Life Without Parole						
B1	A 240-300	A 288-360	A 336-420	A 384-480	A Life Without Parole	A Life Without Parole	DISPOSITION Aggravated Range
	192-240	230-288	269-336	307-384	346-433	384-480	PRESUMPTIVE RANGE
	144-192	173-230	202-269	230-307	260-346	288-384	Mitigated Range
B2	A 157-196	A 189-237	A 220-276	A 251-313	A 282-353	A 313-392	
	125-157	151-189	176-220	201-251	225-282	251-313	
	94-125	114-151	132-176	151-201	169-225	188-251	
C	A 73-92	A 100-125	A 116-145	A 133-167	A 151-188	A 168-210	
	58-73	80-100	93-116	107-133	121-151	135-168	
	44-58	57-80	70-93	80-107	90-121	101-135	
D	A 64-80	A 77-95	A 103-129	A 117-146	A 133-167	A 146-183	
	51-64	61-77	82-103	94-117	107-133	117-146	
	38-51	46-61	61-82	71-94	80-107	88-117	
E	I/A 25-31	I/A 29-36	A 34-42	A 46-58	A 53-66	A 59-74	
	20-25	23-29	27-34	37-46	42-53	47-59	
	15-20	17-23	20-27	28-37	32-42	35-47	
F	I/A 16-20	I/A 20-24	I/A 21-26	A 25-31	A 34-42	A 39-49	
	13-16	15-19	17-21	20-25	27-34	31-39	
	10-13	11-15	13-17	15-20	20-27	23-31	
G	I/A 13-16	I/A 15-19	I/A 16-20	I/A 20-25	A 21-26	A 29-36	
	10-13	12-15	13-16	16-20	17-21	21-29	
	8-10	9-12	10-13	12-16	13-17	17-23	
H	C/I/A 6-8	I/A 8-10	I/A 10-12	I/A 11-14	I/A 15-19	A 20-25	
	5-6	6-8	8-10	9-11	12-15	16-20	
	4-5	4-6	6-8	7-9	9-12	12-16	
I	C 6-8	C/I 6-8	I 6-8	I/A 8-10	I/A 9-11	I/A 10-12	
	4-6	4-6	5-6	6-8	7-9	8-10	
	3-4	3-4	4-5	4-6	5-7	6-8	

Note: - A - Active Punishment I - Intermediate Punishment C - Community Punishment
 *Numbers shown are in months and represent the range of minimum sentences.

Revised: 08-04-95