

**HOUSE JUDICIARY COMMITTEE
OVERSIGHT HEARING
MAY 1, 1991**

OUTLINE

- I. History of Pennsylvania Commission on Sentencing
 - A. Established 1978 by Act 319
 - B. Enabling Legislation
 1. Membership - Two year appointments
 - a. Two State Representatives
 - b. Two Senators
 - c. Four Judges
 - d. Three Gubernatorial appointments:
 - (1) District Attorney
 - (2) Defense Attorney
 - (3) Law Professor or Criminologist
 2. Write guidelines for all felons and misdemeanants that:
 - a. Specify the range of sentences applicable to crimes of a given degree of gravity.
 - b. Specify a range of sentences of increased severity for defendants previously convicted.
 - c. Specify a range of sentences of increased severity for possession of a deadly weapon.
 - d. Prescribe variations on account of aggravating and mitigating purposes.
 3. Guideline Approval Process
 - a. Publish and hold public hearing.
 - b. Submit to General Assembly which has 90 days to reject by concurrent resolution.

4. Make recommendations to the General Assembly concerning modifications or enactment of sentencing and correctional statutes which the Commission finds to be necessary and advisable to carry out an effective, humane and rational sentencing policy.
5. Act as a clearinghouse of sentencing information.
6. Monitor sentencing practices - 60,000 cases reported in 1990.
7. Use our data base to assess impact of sentencing legislation.

II. Current Guidelines: Became effective July 22, 1982 and specific drug guidelines became effective April 25, 1988.

- A. Measure Offense Gravity - by ranking crimes (see Section D for rationale) in terms of:
 1. The degree of bodily injury (death, serious bodily injury or risk of injury).
 2. Amount of property loss.
 3. Culpability of the defendant.
- B. Measure Prior Record by:
 1. Number of prior convictions and juvenile adjudications.
 2. Severity of prior convictions and adjudications.
- C. For each combination of Offense Gravity and Prior Record Score there is a guideline sentence range.
- D. Enhancements:
 1. Deadly weapon enhancement: 12 to 24 months is added to the sentence guideline range if a deadly weapon (as defined in 18 Pa. C.S. §2301) is used.
 2. Drug Enhancements
 - a. If delivery of controlled substance to a person under 18, then 12 to 36 months is added to the sentence guideline range.
 - b. If delivery within 1000 feet of a public or private elementary or secondary school, then

12 to 36 months is added to the guideline ranges.

III. Impact of Guidelines

A. Severity/Certainty

1. Incarceration rates have risen from 38.9% in 1977 to 57% in 1989.
2. Incarceration lengths have increased for violent offenses.

B. Disparity

1. Regional differences between urban and rural areas have been reduced.
2. No racial or gender biases in sentencing have been found in studies using Commission data, (see Kramer/Steffensmeier paper).

IV. Current Proposal

- A. Modification of guidelines to incorporate mandates of Acts 193 and 201 of 1990 relating to intermediate punishments.
- B. Modification of guidelines to incorporate mandate of Act 215 of 1990 relating to boot camps.
- C. Proposed guidelines for DUI with serious bodily injury.

V. Commission Organization

- A. Staff organization (see Section G)
- B. Budget (in thousands)
 1. 1989-90 \$328
 2. 1990-91 370 (125)
 3. 1991-92 (requested) 480

VI. Possible Revisions to Commission Mandate

A. Membership Additions

1. Commissioner of Corrections
2. Representative of Probation and Parole
3. Citizen representative/victim representative

- B. Mandate impact assessment of guidelines on prison populations and probation/parole caseloads.
- C. It has been proposed that the guidelines be passed in bill form in order to strengthen their consideration by the court.

VII. Sentencing Reform Legislation

- A. Sentencing with Parole Board release decision results in:
 - 1. Bifurcated sentencing system which results in uncertainty, inequity and unfairness;
 - 2. Unpredictability and unaccountability; and
 - 3. Lack of truth in sentencing.
- B. Abolishing parole release would have the following impact on the Sentencing Commission:
 - 1. Mandate that the Pennsylvania Commission on Sentencing write parole revocation guidelines;
 - 2. Require that the Commission reassess current guideline ranges which are presently constrained by the statutory limit (which would likely result in longer minimum sentences for violent offenders); and
 - 3. Expand the Commission's monitoring function to include information on parole release and success to enable evaluation on the impact of revocation guidelines.

ENABLING LEGISLATION

3/21/89

Following is an updated version of Act 319 of 1978 [1978, Nov. 26, P.L. 1316, No. 319], as amended by 1980, Oct. 5, P.L. 693, No. 142 §218(a); 1980, July 10, P.L. 513, No. 105, §3; 1986, Apr. 30, P.L. 135, No. 41, §1 et seq.; 1986, Dec. 11, P.L. 152, No. 165, §3.

TITLE 42

Subchapter F

§2151. Pennsylvania Commission on Sentencing.

(a) General rule. --The Pennsylvania Commission on Sentencing shall be established as an agency of the General Assembly and shall consist of 11 persons selected as provided in this subchapter.

(b) Seal. --The Pennsylvania Commission on Sentencing shall have a seal engraved with its name and such other inscription as may be specified by regulation of the commission.

§2152. Composition of the commission.

(a) General rule.--The Pennsylvania Commission on Sentencing shall consist of:

(1) Two members of the House of Representatives selected by the Speaker of the House of Representatives, no more than one of whom shall be of the same political party.

(2) Two members of the Senate of Pennsylvania selected by the President pro tempore of the Senate, no more than one of whom shall be of the same political party.

(3) Four judges of courts of record selected by the Chief Justice of Pennsylvania.

(4) Three persons appointed by the Governor, who shall be, respectively:

(i) A district attorney.

(ii) A defense attorney.

(iii) Either a professor of law or a criminologist.

(b) Terms of office. --The members of the commission shall serve for terms of two years and until a successor has been selected and qualified. A vacancy on the commission shall be filled for the balance of the term.

(c) Chairman and executive director. --The commission shall select a chairman from its members and an executive director. The chairman shall:

(1) Preside at meetings of the commission.

(2) Direct the preparation of requests for appropriations for the commission and the use of funds made available to the commission.

(d) Meetings and quorum.

(1) The commission shall meet at least four times a year and not less than semiannually to establish its general policies and rules.

(2) The commission shall be deemed an "agency" within the meaning of and shall be subject to the provisions of the act of July 19, 1984 (P.L. 486, No. 175), referred to as the Public Agency Open Meeting Law.

(3) Seven commissioners shall constitute a quorum for the purpose of adopting proposed initial and initial and subsequent guidelines. A majority of commissioners shall constitute a quorum for all other purposes.

(4) Minutes of meetings shall be kept by the executive director and filed at the executive office of the commission.

(e) Records of action. --Except as otherwise provided by statute, the commission shall maintain and make available for public inspection a record of the final vote of each member on any action taken by it.

(f) Expenses. --Each commissioner shall be entitled to reimbursement for his accountable expenses incurred while engaged in the business of the commission.

§2153. Powers and duties.

(a) General rule. --The commission, pursuant to rules and regulations shall have the power to:

(1) Establish general policies and promulgate such rules and regulations for the commission as are necessary to carry out the purposes of this subchapter and Chapter 97 (relating to sentencing).

(2) Utilize, with their consent, the services, equipment, personnel, information and facilities of Federal, State, local and private agencies and instrumentalities with or without reimbursement therefor.

(3) Enter into and perform such contracts, leases, cooperative agreements and other transactions as may be necessary in the conduct of the functions of the commission, with any public agency or with any person, firm, association, corporation, educational institution or nonprofit organization.

(4) Request such information, data and reports from any officer or agency of the Commonwealth government as the commission may from time to time require and as may be produced consistent with other law.

(5) Arrange with the head of any government unit for the performance by the government unit of any function of the commission, with or without reimbursement.

(6) Issue invitations requesting the attendance and testimony of witnesses and the production of any evidence that relates directly to a matter with respect to which the commission or any member thereof is empowered to make a determination under this subchapter.

(7) Establish a research and development program within the commission for the purpose of:

(i) Serving as a clearinghouse and information center for the collection, preparation and dissemination of information on Commonwealth sentencing practices.

(ii) Assisting and serving in a consulting capacity to State courts, departments and agencies in the development, maintenance and coordination of sound sentencing practices.

(8) Collect systematically the data obtained from studies, research and the empirical experience of public and private agencies concerning the sentencing processes.

(9) Publish data concerning the sentencing processes.

(10) Collect systematically and disseminate information concerning sentences actually imposed.

(11) Collect systematically and disseminate information regarding effectiveness of sentences imposed.

(12) Make recommendations to the General Assembly concerning modifications or enactment of sentencing and correctional statutes which the commission finds to be necessary and advisable to carry out an effective, humane and rational sentencing policy.

(13) Establish a plan and timetable to collect and disseminate information relating to incapacitation, recidivism, deterrence and overall effectiveness of sentences imposed.

(14) Establish a program to systematically monitor compliance with the guidelines and with mandatory sentencing laws by:

(i) Promulgating forms which document the application of the guidelines or mandatory sentencing laws, or both.

(ii) Requiring the timely completion and submission of such forms to the commission.

(b) Annual reports. --The commission shall report annually to the General Assembly, the Administrative Office of Pennsylvania Courts and the Governor on the activities of the commission.

(c) Additional powers and duties. --The commission shall have such other powers and duties and shall perform such other functions as may be necessary to carry out the purposes of this subchapter or as may be provided under any other provision of law and may delegate to any commissioner or designated person such powers as may be appropriate other than the power to establish general policies, guidelines, rules and factors under subsection(a)(1).

§2154. Adoption of guidelines for sentencing.

(a) General rule. --The commission shall adopt guidelines for sentencing within the limits established by law which shall be considered by the sentencing court in determining the appropriate sentence for defendants who plead guilty or nolo contendere to, or who were found guilty of, felonies and misdemeanors. The guidelines shall:

(1) Specify the range of sentences applicable to crimes of a given degree of gravity.

(2) Specify a range of sentences of increased severity for defendants previously convicted of or adjudicated delinquent for one or more misdemeanor or felony offenses committed prior to the current offense. For purposes of this section "previously convicted or adjudicated delinquent" shall include any finding of guilty or adjudication of delinquency whether or not sentence has been imposed or disposition ordered prior to the commission of the current offense.

(3) Specify a range of sentences of increased severity for defendants who possessed a deadly weapon during the commission of the current conviction offense.

(4) Prescribe variations from the range of sentences applicable on account of aggravating or mitigating circumstances.

(b) Definition. --As used in this section the term "possessed" means on the defendant's person or within his immediate physical control.

§2155. Publication of guidelines for sentencing.

(a) General rule. --The commission shall:

(1) Prior to adoption, publish in the Pennsylvania Bulletin all proposed initial and subsequent sentencing guidelines and hold public hearings not earlier than 30 days and not later than 60 days thereafter to afford an opportunity for the following persons and organizations to testify:

- (i) Pennsylvania District Attorneys Association.
- (ii) Chiefs of Police Associations.
- (iii) Fraternal Order of Police.
- (iv) Public Defenders Organization.
- (v) Law school faculty members.
- (vi) State Board of Probation and Parole.
- (vii) Bureau of Correction.
- (viii) Pennsylvania Bar Association.
- (ix) Pennsylvania Wardens Association.
- (x) Pennsylvania Association on Probation, Parole and Corrections.
- (xi) Pennsylvania Conference of State Trial Judges.
- (xii) Any other interested person or organization.

(2) Publish in the Pennsylvania Bulletin all initial and subsequent sentencing guidelines as adopted by the commission.

(3) Adopt and publish in the Pennsylvania Bulletin pursuant to subsection (a)(2) the initial sentencing guidelines within 21 months of the first meeting of the Pennsylvania Commission on Sentencing.

(b) Rejection by the General Assembly. --The General Assembly may by concurrent resolution reject in their entirety any initial or subsequent guidelines adopted by the commission within 90 days of their publication in the Pennsylvania Bulletin pursuant to subsection (a)(2).

(c) Effective date. --Sentencing guidelines adopted by the commission shall become effective 90 days after publication in the Pennsylvania Bulletin pursuant to subsection (a)(2) unless disapproved pursuant to subsection (b). If not disapproved, the commissioners shall conduct training and orientation for trial court judges prior to the effective date of the guidelines.

§2156. Severability of Subchapter. The provisions of this subchapter are severable. If any provision of this subchapter or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this subchapter which can be given effect without the invalid provision or application.

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Subchapter G

§9781. Appellate review of sentence.

(a) Right to appeal. --The defendant or the Commonwealth may appeal as of right the legality of the sentence.

(b) Allowance of appeal. --The defendant or the Commonwealth may file a petition for allowance of appeal of the discretionary aspects of a sentence for a felony or a misdemeanor to the appellate court that has initial jurisdiction for such appeals. Allowance of appeal may be granted at the discretion of the appellate court where it appears that there is a substantial question that the sentence imposed is not appropriate under this chapter.

(c) Determination on appeal. --The appellate court shall vacate the sentence and remand the case to the sentencing court with instructions if it finds:

(1) the sentencing court purported to sentence within the sentencing guidelines but applied the guidelines erroneously;

(2) the sentencing court sentenced within the sentencing guidelines but the case involves circumstances where the application of the guidelines would be clearly unreasonable; or

(3) the sentencing court sentenced outside the sentencing guidelines and the sentence is unreasonable.

In all other cases the appellate court shall affirm the sentence imposed by the sentencing court.

(d) Review of record. --In reviewing the record the appellate court shall have regard for:

(1) The nature and circumstances of the offense and the history and characteristics of the defendant.

(2) The opportunity of the sentencing court to observe the defendant, including any presentence investigation.

(3) The findings on which the sentence was based.

(4) The guidelines promulgated by the commission.

(e) Right to bail not enlarged. --Nothing in this chapter shall be construed to enlarge the defendant's right to bail pending appeal.

(f) Limitation on additional appellate review. --No appeal of the discretionary aspects of the sentence shall be permitted beyond the appellate court that has initial jurisdiction for such appeals.

SENTENCING GUIDELINES

204 Pa. Code §§303.1-303.9

Effective April 25, 1988

§303.1. Guideline sentencing standards.

(a) The court shall consider this chapter in determining the appropriate sentence for felonies and misdemeanors.

(b) A Pennsylvania Commission on Sentencing Guideline Sentence Form shall be completed at the court's direction and shall be made a part of the record no later than 20 days after the date of each sentencing, and a copy shall be sent to the Pennsylvania Commission on Sentencing.

(c) Suspended sentences are deemed to be departures from the guidelines except when the appropriate guideline sentence range permits a nonconfinement sentence.

(d) These guidelines shall take effect on April 25, 1988, and shall apply to all offenses committed on or after that date. Amendments to the guidelines shall apply to all offenses committed on or after the date the amendment becomes part of the guidelines.

(e) The Commission recognizes the difficulties in setting sentences in certain cases. These include, but are not limited to, major drug trafficking; economic crime; white-collar crime; organized crime; and offenses in which the defendant abused his position of trust, public office, or fiduciary obligation to facilitate the commission of the offense. These crimes may warrant a sentence more severe than otherwise suggested in this chapter. The Commission is also aware that the guidelines do not consider such factors as the defendant's cooperation in the apprehension or prosecution of other offenders. Under such circumstances, the defendant may warrant a sentence less severe than suggested in this chapter.

(f) This chapter does not apply to sentences imposed as a result of probation revocations.

(g) Fines and restitution.

(i) Fines and restitution, as provided by law, may be added to any guideline sentence.

(ii) A fine, within the limits established by law, shall be considered by the court when the defendant is convicted of 35 P.S. §780-113(a)(12), (14) or (30), and the drug involved is 2 or more grams of any of the following: a controlled substance or counterfeit substance classified in Schedule I or II and which is a narcotic; phencyclidine, methamphetamine, or cocaine, including the isomers, salts, compounds, salts of isomers, or derivatives of phencyclidine, methamphetamine, or cocaine; or is one thousand pounds

or more of marijuana. Such fine shall be of an amount that is at least sufficient to exhaust the assets utilized in, and the proceeds obtained by the defendant from, the illegal possession, manufacture, or distribution of controlled substances. Such fine shall not include assets concerning which the attorney for the Commonwealth has filed a forfeiture petition or concerning which he has given notice to the court of his intent to file a forfeiture petition.

(h) In every case in which the court imposes a sentence for a felony or misdemeanor, the court shall make as a part of the record and disclose in open court at the time of sentencing a statement of the reason or reasons for the sentence imposed. In every case where the court imposes a sentence outside the sentencing guidelines the court shall provide a contemporaneous written statement of the reason or reasons for the deviation from this chapter.

(i) When the guideline sentence exceeds that permitted by 18 Pa. C.S. §§1103 and 1104 (relating to sentence of imprisonment for felony and misdemeanors) and 42 Pa. C.S. §9755(b) and §9756(b) (relating to sentence of partial and total confinement) or other applicable statute setting maximum term of confinement, then the statutory limit is the guideline sentence.

§303.2. Procedure for determining the guideline sentence.

The procedure for determining the guideline sentence shall be as follows:

(1) Determine the prior record score and offense gravity score as described in §§303.7 and 303.8 for all offenses other than 75 Pa. C. S. §3731 (relating to driving under the influence of alcohol or controlled substance), or 75 Pa. C.S. §3735 (relating to mandatory imprisonment for homicide by vehicle while driving under the influence).

(2) Refer to the Sentence Range Charts in §303.9 (relating to sentence range charts), except in cases of "Driving Under the Influence" under 75 Pa. C.S. §3731 or cases of "Homicide by Vehicle While Driving Under the Influence" under 75 Pa. C.S. §3735.

(3) Determine if aggravating or mitigating circumstances apply as described in §303.3 (relating to aggravating or mitigating circumstances), except in cases of "Driving Under the Influence" under 75 Pa. C.S. §3731 or cases of "Homicide by Vehicle While Driving Under the Influence" under 75 Pa. C.S. §3735.

(c) Prior multiple convictions and adjudications of delinquency for offenses arising out of the same criminal transaction for which concurrent or consecutive sentences were imposed are scored as a single conviction equal to the statutory classification of the most serious conviction of-
 fense. Prior multiple convictions and adjudications of delinquency arising out of separate criminal transactions are scored as separate convictions, and each is computed in the prior record score.

(d) Out-of-state, Federal or former Pennsylvania offenses. A prior out-of-state or Federal conviction or adjudication of delinquency, or a prior conviction or adjudication of delinquency under former Pennsylvania law, is scored as a conviction for the current equivalent Pennsylvania offense. When there is no current equivalent Pennsylvania offense, prior out-of-state or Federal convictions or adjudications of delinquency are scored as non-weapons misdemeanors. When there is no current equivalent Pennsylvania offense to a conviction or adjudication of delinquency under prior Pennsylvania law, apply subsection (h).

(e) Excluded offenses: Summary offenses, violations of local ordinances, and dispositions under Pa. R. Crim. P.R. 175 -- 185 (relating to accelerated rehabilitative disposition), 35 P.S. §780-117 (relating to probation without verdict) or 35 P. S. §780-118 (relating to disposition in lieu of trial or criminal punishment); shall not be used in computing the prior record score.

(f) Past convictions. Except when the current offense is a violation of The Controlled Substance, Drug, Device and Cosmetic Act (35 P.S. §§780-101 -- 780-144), when the maximum sentence applicable to the current offense is dependent upon past convictions, those prior convictions shall not be used in computing the prior record score. For example: retail theft and some motor vehicle offenses are subject to a longer period of confinement when the defendant has been previously convicted of the same offense.

(g) Prior convictions and adjudications of delinquency. A prior conviction means "previously convicted" as defined in 42 Pa. C.S. §2154(a). A prior adjudication of delinquency means "previously adjudicated delinquent" as defined in 42 Pa. C. S. §2154(a)(2).

(h) Incomplete prior records for Pennsylvania convictions. When a prior conviction or adjudication of delinquency was for a felony, but the grade of the felony is unknown, it shall be treated as a felony III. When a prior conviction was for a misdemeanor, but the grade of the misdemeanor is unknown, it shall be treated as a non-weapons misdemeanor. When it cannot be determined if the prior conviction was a felony, weapons misdemeanor, or non-weapons misdemeanor, it shall be treated as a non-weapons misdemeanor. When a prior conviction is for a crime which has a summary grade, and the grade of the conviction is unknown, the prior conviction may not be counted in the prior record score.

(i) Score. The prior record score is the sum of points accrued under this section; it cannot be greater than 6.

§303.8. Offense gravity score.

(a) An offense gravity score is given for each offense, except for violations of 75 Pa. C.S. §3731, or 75 Pa. C.S. §3735.

(b) Offenses under the following provisions are subcategorized and scored by the Commission according to the particular circumstances of the offense. The court determines which score applies:

- 18 Pa. C.S. §907 (relating to possessing instruments of crime)
- 18 Pa. C.S. §2702 (relating to aggravated assault)
- 18 Pa. C.S. §3502 (relating to burglary)
- 18 Pa. C.S. §3701 (relating to robbery)
- 18 Pa. C.S. §6105 (relating to former convict not to own a firearm, etc.)
- 18 Pa. C.S. §6106 (relating to firearms, not to be carried without a license)
- 18 Pa. C.S. §6108 (relating to carrying firearms on public streets or public property in Philadelphia)
- 18 Pa. C.S. §6110 (relating to persons to whom delivery shall not be made)

(c) Offenses which are not scored in subsection (d) are scored as follows:

- (1) Convictions for attempt, solicitation, or conspiracy to commit a Felony I offense receive an offense gravity score of one point less than the offense attempted, solicited, or which was the object of the conspiracy.
- (2) Convictions for attempt, solicitation, or conspiracy to commit any crime which is not a Felony I offense, receive the offense gravity score of the offense attempted, solicited, or which was the object of the conspiracy.

(3) All other crimes not listed in subsection (d) are scored as follows:

| | |
|--|---|
| Felony I | 7 |
| Felony II | 6 |
| Felony III | 4 |
| Felonies not subclassified by the General Assembly | 4 |
| Misdemeanor I | 3 |
| Misdemeanor II | 2 |
| Misdemeanor III | 1 |
| Misdemeanors not subclassified by the General Assembly | 1 |

(d) Offenses are scored as follows:

CRIMES CODE OFFENSES

| 18 Pa. C.S. § | Offense Title | Statutory Classification | Offense Gravity Score |
|---------------|---|--------------------------|-----------------------|
| | Murder, Attempt, Solicitation or Conspiracy to Commit | F2 | 8 |
| * 907(a) | Possessing Instruments of Crime (Criminal Instruments) | M1 | 3 |
| * 907(b) | Possessing Instruments of Crime (Weapon) | M1 | 4 |
| 908 | Prohibited Offensive Weapons | M1 | 4 |
| 911 | Corrupt Organizations | F1 | 7 |
| 2502(c) | Murder, Third Degree | F1 | 10 |
| 2503 | Manslaughter, Voluntary | F2 | 8 |
| 2504 | Manslaughter, Involuntary | M1 | 5 |
| 2505 | Suicide or Attempted, Aids Solicits or Conduct Causes | F2 | 6 |
| *2702(a) (1) | Aggravated Assault (causes serious bodily injury) | F1 | 9 |
| *2702(a) (1) | Aggravated Assault (attempts to cause serious bodily injury) | F1 | 8 |
| *2702(a) (2) | Aggravated Assault (causes serious bodily injury) | F1 | 9 |
| *2702(a) (2) | Aggravated Assault (attempts to cause serious bodily injury) | F1 | 8 |
| 2702(a) (3) | Aggravated Assault (causes or attempts to cause bodily injury) | F2 | 6 |
| *2702(a) (4) | Aggravated Assault (causes bodily injury with a deadly weapon) | F2 | 7 |
| *2702(a) (4) | Aggravated Assault (attempts to cause bodily injury with a deadly weapon) | F2 | 6 |
| 2702(a) (5) | Aggravated Assault | F2 | 6 |
| 2703 | Assault by Prisoner | F2 | 6 |
| 2901 | Kidnapping | F1 | 8 |
| 2904 | Interference with the Custody of Children | F2 | 6 |
| 2904 | Interference with the Custody of Children | F3 | 4 |
| 2904 | Interference with the Custody of Children | M2 | 2 |
| 2907 | Ransom, Disposition of | F3 | 5 |
| 3121 | Rape | F1 | 9 |
| 3122 | Rape, Statutory | F2 | 6 |
| 3123 | Involuntary Deviate Sexual Intercourse | F1 | 9 |
| 3128 | Spousal Sexual Assault | F2 | 7 |
| 3301(a) | Arson, Endangering Persons | F1 | 8 |
| 3301(c) | Arson, Endangering Property | F2 | 6 |

| 18 Pa. C.S. § | Offense Title | Statutory Classification | Offense Gravity Score |
|-----------------|---|--------------------------|-----------------------|
| 3302(a) | Catastrophe, Causing | F1 | 8 |
| 3302(a) | Catastrophe, Recklessly Causing | F2 | 6 |
| 3302(b) | Catastrophe, Risking | F3 | 4 |
| 3304 | Criminal Mischief (more than \$5,000) | F3 | 5 |
| *3502 | Burglary of a structure adapted for overnight accommodation in which at the time of the offense any person is present. | F1 | 7 |
| *3502 | Burglary of a structure adapted for overnight accommodation in which at the time of the offense no person is present. | F1 | 6 |
| *3502 | Burglary of a structure not adapted for overnight accommodation in which at the time of the offense any person is present. | F1 | 6 |
| *3502 | Burglary of a structure not adapted for overnight accommodation in which at the time of the offense no person is present. | F1 | 5 |
| 3503 | Trespass, Criminal | F2 | 4 |
| 3503 | Trespass, Criminal | F3 | 3 |
| 3701(a)(1)(i) | Robbery (inflicts serious bodily injury) | F1 | 9 |
| 3701(a)(1)(ii) | Robbery (threatens another with or intentionally puts him in fear of immediate serious bodily injury) | F1 | 7 |
| 3701(a)(1)(iii) | Robbery (commits or threatens immediately to commit any F1 or F2) | F1 | 7 |
| *3701(a)(1)(iv) | Robbery (inflicts bodily injury) | F2 | 6 |
| *3701(a)(1)(iv) | Robbery (threatens bodily injury or intentionally puts him in fear of immediate bodily injury) | F2 | 5 |
| 3701(a)(1)(v) | Robbery (physically takes or removes property by force, however slight) | F3 | 5 |
| 3921 | Theft by Unlawful Taking or Disposition (if the amount exceeds \$2,000, or if the property is a firearm, automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle) | F3 | 5 |

Offense
Gravity
Score

Statutory
Classification

Offense Title

18 Pa. C.S. §

| | | | |
|---|----|--|------|
| 3 | M1 | Theft of Property Lost, Mistake (\$200 or more, less than \$2,000, when not from person or by threat, or in breach of fiduciary obligation) | 3924 |
| 5 | F3 | Theft by Receiving Stolen Property (if the amount exceeds \$2,000, or if the property is a firearm, automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle, or if the receiver is in the business of buying or selling stolen property) | 3925 |
| 4 | M1 | Theft by Receiving Stolen Property (less than \$2,000, from the person or by threat or in breach of fiduciary obligation) | 3925 |
| 3 | M1 | Theft by Receiving Stolen Property (\$200 or more, less than \$2,000, when not from person or by threat, or in breach of fiduciary obligation) | 3925 |
| 5 | F3 | Theft of Services (if the amount exceeds \$2,000, or if the firearm, automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle) | 3926 |
| 4 | M1 | Theft of Services (less than \$2,000, from person or by threat, or in breach of fiduciary obligation) | 3926 |
| 3 | M1 | Theft of Services (\$200 or more, less than \$2,000, when not from person or by threat, or in breach of fiduciary obligation) | 3926 |
| 5 | F3 | Theft by Failure to Make Required Disposition of Funds Received (if the amount exceeds \$2,000, or if the firearm, automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle) | 3927 |
| 4 | M1 | Theft by Failure to Make Required Disposition of Funds Received (less than \$2,000, from person or by threat, or in breach of fiduciary obligation) | 3927 |

Offense
Gravity
Score

Statutory
Classification

Offense Title

18 Pa. C.S. §

| | | | |
|---|----|---|------|
| 4 | M1 | Theft by Unlawful Taking or Disposition (less than \$2,000, from person or by threat, or in breach of fiduciary obligation) | 3921 |
| 3 | M1 | Theft by Unlawful Taking or Disposition (\$200 or more, less than \$2,000, when not from person or by threat, or in breach of fiduciary obligation) | 3921 |
| 5 | F3 | Theft by Deception (if the amount exceeds \$2,000, or if the property is a firearm, automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle) | 3922 |
| 4 | M1 | Theft by Deception (less than \$2,000, from person or by threat, or in breach of fiduciary obligation) | 3922 |
| 3 | M1 | Theft by Deception (\$200 or more, less than \$2,000, when not from person or by threat, or in breach of fiduciary obligation) | 3922 |
| 6 | F3 | Theft by Extortion (if the amount exceeds \$2,000, or if the firearm, automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle) | 3923 |
| 5 | M1 | Theft by Extortion (less than \$2,000, from person or by threat, or in breach of fiduciary obligation) | 3923 |
| 4 | M1 | Theft by Extortion (\$200 or more, less than \$2,000, when not from person or by threat, or in breach of fiduciary obligation) | 3923 |
| 3 | M2 | Theft by Extortion (\$50 or more, less than \$200) | 3923 |
| 2 | M3 | Theft by Extortion (less than \$50) | 3923 |
| 5 | F3 | Theft of Property Lost, Mistake (if the amount exceeds \$2,000, or if the property is a firearm, automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle) | 3924 |
| 4 | M1 | Theft of Property Lost, Mistake (less than \$2,000, from the person or by threat, or in breach of fiduciary obligation) | 3924 |

| 18 Pa. C.S. § | Offense Title | Statutory Classification | Offense Gravity Score |
|---------------|--|--------------------------|-----------------------|
| 3927 | Theft by Failure to Make Required Disposition of Funds Received (\$200 or more, less than \$2,000, when not from person or by threat, or in breach of fiduciary obligation) | M1 | 3 |
| 3929 | Theft, Retail, Third or Subsequent Conviction | F3 | 5 |
| 3930 | Theft of Trade Secrets by Force, Violence, or Burglary | F3 | 5 |
| 3930 | Theft of Trade Secrets | M1 | 4 |
| 3931 | Theft of Unpublished Dramas and Musical Compositions (if the amount exceeds \$2,000, or if the property is a firearm, automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle) | F3 | 5 |
| 3931 | Theft of Unpublished Dramas and Musical Compositions (less than \$2,000, from the person or by threat, or in breach of fiduciary obligation) | M1 | 4 |
| 3931 | Theft of Unpublished Dramas and Musical Compositions (\$200 or more, less than \$2,000, when not from person or by threat, or in breach of fiduciary obligation) | M1 | 3 |
| 3932 | Theft of Leased Property (if the amount exceeds \$2,000, or if the property is a firearm, automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle) | F3 | 5 |
| 3932 | Theft of Leased Property (less than \$2,000, from the person or by threat, or in breach of fiduciary obligation) | M1 | 4 |
| 3932 | Theft of Leased Property (\$200 or more, less than \$2,000, when not from person or by threat, or in breach of fiduciary obligation) | M1 | 3 |
| 4101 | Forgery | F2 | 5 |
| 4101 | Forgery | F3 | 5 |

| 18 Pa. C.S. § | Offense Title | Statutory Classification | Offense Gravity Score |
|---------------|--|--------------------------|-----------------------|
| 4103 | Fraudulent Destruction | F3 | 5 |
| 4106 | Credit Cards (more than \$500) | F3 | 3 |
| 4107.2 | Deception Relating to Certification of Minority Business Enterprise or Women's Business Enterprise | F3 | 4 |
| 4701 | Bribery, Official and Political Matters | F3 | 5 |
| 4702 | Threats, Official and Political Matters | F3 | 5 |
| 4902 | Perjury | F3 | 5 |
| 4909 | Witnesses, Taking Bribe | F3 | 5 |
| 4911 | Public Records, Tampering with | F3 | 4 |
| 4952 | Intimidation of Witnesses or Victims | F3 | 7 |
| 4952 | Intimidation of Witnesses or Victims | M2 | 6 |
| 4953 | Retaliation Against Witness or Victim | F3 | 7 |
| 4953 | Retaliation Against Witness or Victim | M2 | 6 |
| 5105 | Apprehension, Hindering (if conduct liable to be charged is F1 or F2) | F3 | 4 |
| 5107 | Aiding Consummation of Crime | F3 | 5 |
| 5121(i) | Escape - from a halfway house, pre-release center, treatment center, work-release center, work-release, or by failing to return from an authorized leave or furlough | F3 | 6 |
| 5121(i) | Escape - all other escapes from this subsection | F3 | 7 |
| 5121(ii) | Escape | F3 | 7 |
| 5121(iii) | Escape | F3 | 7 |
| 5122(a)(1) | Weapons, Providing to Inmate | M1 | 7 |
| 5122(a)(2) | Weapons, Possession by Inmate | M1 | 4 |
| 5122(a)(3) | Weapons or Implements of Escape (tools) | M2 | 3 |
| 5124 | Default in Required Appearance (if conduct charged is F1 or F2) | F3 | 4 |
| 5501 | Riot | F3 | 4 |
| 5703 | Interception, Disclosure or Use of Wire or Oral Communications | F3 | 5 |

CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT

Offense
Gravity
Score

Drug/Quantity

Citation
35 P.S. §780-113

A (a) (12); (a) (14); (a) (30)
B (a) (12); (a) (14); (a) (30)
C (a) (12); (a) (14); (a) (30)
D (a) (12); (a) (14); (a) (30)
E (a) (12); (a) (14); (a) (30)
F (a) (12); (a) (14); (a) (30)
G (a) (12); (a) (14); (a) (30)
H (a) (12); (a) (14); (a) (30)
I (a) (12); (a) (14); (a) (30)
J (a) (12); (a) (14); (a) (30)
K (a) (12); (a) (14); (a) (30)
M Schedule IV drugs
Schedule V drugs
drugs not listed above

A (a) (12); (a) (14); (a) (30)
B (a) (12); (a) (14); (a) (30)
C (a) (12); (a) (14); (a) (30)
D (a) (12); (a) (14); (a) (30)
E (a) (12); (a) (14); (a) (30)
F (a) (12); (a) (14); (a) (30)
G (a) (12); (a) (14); (a) (30)
H (a) (12); (a) (14); (a) (30)
I (a) (12); (a) (14); (a) (30)
J (a) (12); (a) (14); (a) (30)
K (a) (12); (a) (14); (a) (30)
M Schedule IV drugs
Schedule V drugs
drugs not listed above

A (a) (12); (a) (14); (a) (30)
B (a) (12); (a) (14); (a) (30)
C (a) (12); (a) (14); (a) (30)
D (a) (12); (a) (14); (a) (30)
E (a) (12); (a) (14); (a) (30)
F (a) (12); (a) (14); (a) (30)
G (a) (12); (a) (14); (a) (30)
H (a) (12); (a) (14); (a) (30)
I (a) (12); (a) (14); (a) (30)
J (a) (12); (a) (14); (a) (30)
K (a) (12); (a) (14); (a) (30)
M Schedule IV drugs
Schedule V drugs
drugs not listed above

All other drug offenses
with a statutory limit
of 2.5 years
above
all controlled
substances not listed

All other drug offenses
with a statutory limit
of 1.5 years
above
all controlled
substances not listed

All other drug offenses
with a statutory limit
of 1 year
above
all controlled
substances not listed

All other drug offenses
with a statutory limit
of 6 months
above
all controlled
substances not listed

"Statutory Limit" is defined as the longest minimum sentence provided by law.

Offense Gravity Score
Statutory Classification
Offense Title
18 Pa. C.S. §

5705 Possession, Sale, Distribution, Manufacture or Advertisement of Interceptor Devices

5902(b) (4) (5) (6) (7) (8) when (c) (1) (ii), (iv) applies when(c)(1) Offense

5902(b) (1) (ii), (iv) applies when(c)(1) Offense and Related

6105 Firearm, Possession or Ownership by Former Convict (loaded or ammunition in possession or control of defendant)

6105 Firearm, Possession or Ownership by Former Convict (unloaded and ammunition not in possession or control of defendant)

6106 Firearm, Not to be Carried Without a License (loaded or ammunition in possession or control of defendant)

6106 Firearm, Not to be Carried Without a License (unloaded and ammunition not in possession or control of defendant)

6106 Firearm, Not to be Carried Without a License (unloaded and ammunition not in possession or control of defendant)

6108 Carrying Firearms on Public Streets or Public Property in Philadelphia (loaded or ammunition in possession or control of defendant)

6108 Carrying Firearms on Public Streets or Public Property in Philadelphia (unloaded and ammunition not in possession or control of defendant)

6110 Persons to Whom Delivery Shall Not be Made (loaded or ammunition in possession or control of defendant)

6110 Persons to Whom Delivery Shall Not be Made (unloaded and ammunition not in possession or control of defendant)

6111 Sale of Firearms to Children Sexual Abuse of Children

6312(c) Sexual Abuse of Children

*These crimes have been subcategorized by the Commission.

§303.9. Sentence Range charts.

(a) All guideline sentence ranges are months of minimum confinement as defined in 42 Pa. C.S. §9755(b) and §9756(b) (relating to partial and total confinement).

(b) Guideline sentence ranges are shown in the following chart for each combination of offense gravity score and prior record score, except for violations of 75 Pa. C.S. §§3731 and 3735 which are assigned guideline penalties in §303.5, and except for violations of The Controlled Substance, Drug, Device and Cosmetic Act (35 P.S. §§780-101 -- 780-144) which are assigned guideline sentence ranges in subsection (c) below.

| Offense Gravity Score | Prior Record Score | Standard Range* | Aggravated Range* | Mitigated Range* |
|---|--------------------|-----------------|---------------------|------------------|
| 10 Third Degree Murder** | 0 | 48-120 | Statutory Limit *** | 36-48 |
| | 1 | 54-120 | Statutory Limit *** | 40-54 |
| | 2 | 60-120 | Statutory Limit *** | 45-60 |
| | 3 | 72-120 | Statutory Limit *** | 54-72 |
| | 4 | 84-120 | Statutory Limit *** | 63-84 |
| | 5 | 96-120 | Statutory Limit *** | 72-96 |
| | 6 | 102-120 | Statutory Limit *** | 76-102 |
| 9 For example: Rape; Robbery inflicting serious bodily injury** | 0 | 36-60 | 60-75 | 27-36 |
| | 1 | 42-66 | 66-82 | 31-42 |
| | 2 | 48-72 | 72-90 | 36-48 |
| | 3 | 54-78 | 78-97 | 40-54 |
| | 4 | 66-84 | 84-105 | 49-66 |
| | 5 | 72-90 | 90-112 | 54-72 |
| | 6 | 78-102 | 102-120 | 58-78 |
| 8 For example: Kidnapping; Arson (Felony I); Voluntary Manslaughter** | 0 | 24-48 | 48-60 | 18-24 |
| | 1 | 30-54 | 54-68 | 22-30 |
| | 2 | 36-60 | 60-75 | 27-36 |
| | 3 | 42-66 | 66-82 | 32-42 |
| | 4 | 54-72 | 72-90 | 40-54 |
| | 5 | 60-78 | 78-98 | 45-60 |
| | 6 | 66-90 | 90-112 | 50-66 |
| 7 For example: Robbery threatening serious bodily injury** | 0 | 8-12 | 12-18 | 4-8 |
| | 1 | 12-29 | 29-36 | 9-12 |
| | 2 | 17-34 | 34-42 | 12-17 |
| | 3 | 22-39 | 39-49 | 16-22 |
| | 4 | 33-49 | 49-61 | 25-33 |
| | 5 | 38-54 | 54-68 | 28-38 |
| | 6 | 43-64 | 64-80 | 32-43 |
| 6 For example: Robbery inflicting bodily injury; Theft by extortion (Felony III)** | 0 | 4-12 | 12-18 | 2-4 |
| | 1 | 6-12 | 12-18 | 3-6 |
| | 2 | 8-12 | 12-18 | 4-8 |
| | 3 | 12-29 | 29-36 | 9-12 |
| | 4 | 23-34 | 34-42 | 17-23 |
| | 5 | 28-44 | 44-55 | 21-28 |
| | 6 | 33-49 | 49-61 | 25-33 |
| 5 For example: Criminal Mischief (Felony III); Theft by Unlawful Taking (Felony III); Theft by Receiving Stolen Property (Felony III); Bribery** | 0 | 0-12 | 12-18 | non-confinement |
| | 1 | 3-12 | 12-18 | 1½-3 |
| | 2 | 5-12 | 12-18 | 2½-5 |
| | 3 | 8-12 | 12-18 | 4-8 |
| | 4 | 18-27 | 27-34 | 14-18 |
| | 5 | 21-30 | 30-38 | 16-21 |
| | 6 | 24-36 | 36-45 | 18-24 |

Continued on next page

*WEAPON ENHANCEMENT: At least 12 months and up to 24 months confinement must be added to the above lengths when a deadly weapon was possessed in the crime.

**These offenses are listed here for illustrative purposes only. Offense scores are given in §303.8.

***Statutory limit is defined as the longest minimum sentence permitted by law.

***WEAPON ENHANCEMENT:** At least 12 months and up to 24 months confinement must be added to the above lengths when a deadly weapon was possessed in the crime.
****These offenses are listed here for illustrative purposes only. Offense scores are given in §303.8.**
*****Statutory limit is defined as the longest minimum sentence permitted by law.**

| Offense Gravity Score | Prior Record Score | Standard Range* | Aggravated Range* | Mitigated Range* | |
|---|------------------------------------|-----------------|-------------------|------------------|-----------------|
| 4 For example: Theft by receiving stolen property, less than \$2000, by force, or threat of force, or in breach of fiduciary obligation** | 0 | 0-12 | 12-18 | non-confinement | |
| | 1 | 0-12 | 12-18 | non-confinement | |
| | 2 | 0-12 | 12-18 | non-confinement | |
| | 3 | 5-12 | 12-18 | 2½-5 | |
| | 4 | 8-12 | 12-18 | 4-8 | |
| | 5 | 18-27 | 27-34 | 14-18 | |
| | 6 | 21-30 | 30-38 | 16-21 | |
| | 3 Most Misdemeanor 1's** | 0 | 0-12 | 12-18 | non-confinement |
| | | 1 | 0-12 | 12-18 | non-confinement |
| | | 2 | 0-12 | 12-18 | non-confinement |
| | | 3 | 0-12 | 12-18 | non-confinement |
| | | 4 | 3-12 | 12-18 | 1½-3 |
| 5 | | 5-12 | 12-18 | 2½-5 | |
| 6 | | 8-12 | 12-18 | 4-8 | |
| 2 Most Misdemeanor 2's** | | 0 | 0-12 | Statutory Limit | non-confinement |
| | | 1 | 0-12 | Statutory Limit | non-confinement |
| | | 2 | 0-12 | Statutory Limit | non-confinement |
| | | 3 | 0-12 | Statutory Limit | non-confinement |
| | | 4 | 0-12 | Statutory Limit | non-confinement |
| | 5 | 2-12 | Statutory Limit | 1-2 | |
| | 6 | 5-12 | Statutory Limit | 2½-5 | |
| | 1 Most Misdemeanor 3's** | 0 | 0-6 | Statutory Limit | non-confinement |
| | | 1 | 0-6 | Statutory Limit | non-confinement |
| | | 2 | 0-6 | Statutory Limit | non-confinement |
| | | 3 | 0-6 | Statutory Limit | non-confinement |
| | | 4 | 0-6 | Statutory Limit | non-confinement |
| 5 | | 0-6 | Statutory Limit | non-confinement | |
| 6 | | 0-6 | Statutory Limit | non-confinement | |

(c) Violations of The Controlled Substance, Drug, Device and Cosmetic Act (35 P.S. §§780-101 -- 780-144) are assigned guideline sentence ranges according to this subsection.

(1) If any mixture or compound contains any detectable amount of a controlled substance, the entire amount of the mixture or compound shall be deemed to be composed of the controlled substance. If a mixture or compound contains a detectable amount of more than one controlled substance, the mixture or compound shall be deemed to be composed entirely of the controlled substance which has the longest suggested guideline penalties.

(2) When the court determines that the defendant either distributed a controlled substance to a person or persons under the age of 18 in violation of 35 P.S. §780-114, or manufactured, delivered or possessed with intent to deliver a controlled substance within 1000 feet of a public or private elementary or secondary school, then at least 12 months and up to 36 months shall be added to the guideline ranges in subsection (c) (3) below which would otherwise have been applicable. Where appropriate, this enhancement may be added in addition to the deadly weapon enhancement. Where the resulting lengths exceed the longest legal minimum sentence, see §303.1(i).

(3) The guideline sentence ranges are as follows:

**GUIDELINE RANGES FOR THE CONTROLLED SUBSTANCE
DRUG, DEVICE AND COSMETIC ACT ¹**

| <i>Offense Gravity Score</i> | <i>Prior Record Score</i> | <i>Standard Range</i> | <i>Aggravated Range</i> | <i>Mitigated Range</i> |
|---|---------------------------|-----------------------|-------------------------|------------------------|
| A(a)(12)(14)(30) Narcotics ² more than 100 g. | 0 | 30-42 | 42-48 | 24-30 |
| | 1 | 39-51 | 51-57 | 33-39 |
| | 2 | 48-60 | 60-66 | 42-48 |
| | 3 | 57-69 | 69-75 | 51-57 |
| | 4 | 60-72 | 72-78 | 54-60 |
| | 5 | 79-87 | 87-90 | 73-79 |
| | 6 | 84-90 | 90 | 78-84 |
| B(a)(12)(14)(30) Narcotics ² 2 g. to 100 g. | 0 | 18-30 | 30-36 | 12-28 |
| | 1 | 27-39 | 39-45 | 21-27 |
| | 2 | 36-48 | 48-54 | 30-36 |
| | 3 | 45-57 | 57-63 | 39-45 |
| | 4 | 54-66 | 66-72 | 48-54 |
| | 5 | 63-75 | 75-81 | 57-63 |
| | 6 | 72-84 | 84-90 | 66-72 |
| C(a)(12)(14)(30) Narcotics ² less than 2 g. | 0 | 7-18 | 18-24 | 3-9 |
| | 1 | 15-27 | 27-33 | 9-15 |
| | 2 | 24-36 | 36-42 | 18-24 |
| | 3 | 33-45 | 45-51 | 27-33 |
| | 4 | 42-54 | 54-60 | 36-42 |
| | 5 | 51-63 | 63-69 | 45-51 |
| | 6 | 60-72 | 72-78 | 54-60 |
| D(a)(12)(14)(30) PCP, Cocaine, Methamphetamine more than 100 g. | 0 | 27-39 | 39-45 | 21-27 |
| | 1 | 33-45 | 45-51 | 27-33 |
| | 2 | 39-51 | 51-57 | 33-39 |
| | 3 | 45-57 | 57-60 | 39-45 |
| | 4 | 51-60 | 60 | 45-51 |
| | 5 | 57-60 | 60 | 51-57 |
| | 6 | 60 | 60 | 54-60 |
| E(a)(12)(14)(30) PCP, Cocaine, Methamphetamine 2 g. to 100 g. | 0 | 15-27 | 27-33 | 9-15 |
| | 1 | 21-33 | 33-39 | 15-21 |
| | 2 | 27-39 | 39-45 | 21-27 |
| | 3 | 33-45 | 45-51 | 27-33 |
| | 4 | 39-51 | 51-57 | 33-39 |
| | 5 | 45-57 | 57-60 | 39-45 |
| | 6 | 51-60 | 60 | 45-51 |
| F(a)(12)(14)(30) PCP, Cocaine, Methamphetamine less than 2 g. | 0 | 6-15 | 15-21 | 3-6 |
| | 1 | 9-21 | 21-27 | 6-9 |
| | 2 | 15-27 | 27-33 | 9-15 |
| | 3 | 21-33 | 33-39 | 15-21 |
| | 4 | 27-39 | 39-45 | 21-27 |
| | 5 | 33-45 | 45-51 | 27-33 |
| | 6 | 39-51 | 51-57 | 33-39 |

¹ Weapon enhancement: At least 12 months and up to 24 months confinement shall be added to the above lengths when a deadly weapon was possessed in the crime.

² Narcotics of Schedules I and II as defined in 35 P. S. § 780-102.

3 "Statutory limit" is defined as the longest minimum sentence permitted by law.

| Offense Gravity Score | Prior Record Score | Standard Range | Aggravated Range | Mitigated Range |
|---|---------------------------------|---|---|---|
| C(a)(12)(14)(30) Marijuana more than 110 lbs. | 0 1 2 3 4 5 6 | 12-18 15-21 18-24 21-28 24-30 27-30 30 | 18-24 21-27 24-30 27-30 30 | 6-12 9-15 12-18 15-21 18-24 21-27 24-30 |
| H(a)(12)(14)(30) Marijuana 1 lb.- 110 lbs. | 0 1 2 3 4 5 6 | 6-12 9-15 12-18 15-21 18-24 21-27 24-30 | 12-18 15-21 18-24 21-27 24-30 | 3-6 5-9 6-12 9-15 12-18 15-21 18-24 |
| I(a)(12)(14)(30) Marijuana less than 1 lb. | 0 1 2 3 4 5 6 | 3-6 3-9 7-12 9-15 12-18 15-21 18-24 | 6-12 9-15 12-18 15-21 18-24 21-27 24-30 | 1-3 2-3 3-7 3-9 6-12 9-15 12-18 |
| J(a)(12)(14)(30) Offenses involving Schedule I, II or III drugs; drug offenses w/statutory limit ³ of 2.5 years | 0 1 2 3 4 5 6 | 6-12 9-15 12-18 15-21 18-24 21-27 24-30 | 12-18 15-21 18-24 21-28 24-30 27-30 30 | 3-6 3-9 7-12 9-15 12-18 15-21 18-24 |
| K(a)(12)(14)(30) Offenses involving Schedule IV drugs; drug offenses w/statutory limit ³ of 1.5 years | 0 1 2 3 4 5 6 | 4-10 5-12 6-15 7-18 8-18 9-18 10-18 | 10-18 12-18 15-18 18 18 18 18 | 0-4 1-5 2-6 3-7 4-8 5-9 6-10 |
| L All other drug offenses with a statutory limit ³ of one year | 0 1 2 3 4 5 6 | 2-8 3-10 4-12 5-12 6-12 7-12 8-12 | 8-12 10-12 12 12 12 12 12 | 0-2 0-3 1-4 2-5 3-6 4-7 5-8 |
| M(a)(12)(14)(30) offenses involving Schedule V drugs; drug offenses w/statutory limit ³ of 6 months | 0 1 2 3 4 5 6 | 0-6 1-6 2-6 3-6 4-6 5-6 6 | 6 6 6 6 6 6 6 | 0 0-1 0-2 0-3 1-4 2-5 3-6 |

COMMISSION CRIME SERIOUSNESS SCORING SYSTEM

Revised April 30, 1991

THE FOLLOWING RULES WERE ADOPTED BY THE COMMISSION
FOR THE RANKING OF OFFENSES.

RULES FOR ASSIGNING SEVERITY RANKS TO OFFENSES:

- 1) **Statutory Classifications are divided into the following subdivisions according to the organizing principles and rank scores below:**

| <u>Statutory Classification</u> | <u>Commission's Score</u> | <u>Principle underlying most crimes of the statutory class and subclass</u> |
|---------------------------------|---------------------------|--|
| Felony I | 10 | Intentional death |
| | 9 | Actual serious bodily injury |
| | 7 | Threatened or attempted serious bodily injury |
| | 7 | All Felony I's not explicitly classified. |
| Felony II | 6 | Infliction of bodily injury |
| | 6 | All Felony II's not explicitly classified. |
| Felony III | 5 | Major privacy invasions |
| | 5 | Felonies involving major property loss (over \$2,000) |
| | 5 | Felonies involving obstruction of justice Felony violations of public trust |
| | 4 | All Felony III's not explicitly classified |
| | 4 | All Felonies not explicitly classified |
| Misdemeanor I | 3 | Misdemeanors with threatened or actual bodily injury |
| | 3 | Other serious misdemeanors against persons |
| | 3 | Possession or use of dangerous instrumentalities |

| | | |
|-----------------|---|--|
| | 3 | Moderate to major property loss (\$200 - \$2000) |
| | 3 | All Misdemeanor I's not explicitly classified |
| Misdemeanor II | 2 | Moderate property loss (\$50 - \$200) |
| | 2 | Misdemeanor offenses against public order and decency Misdemeanor violations against public trust |
| | 2 | All Misdemeanor II's not explicitly classified |
| Misdemeanor III | 1 | Minor property loss (less than \$50) Miscellaneous misdemeanors |
| | 1 | All Misdemeanor III's and all Misdemeanors not given a statutory classification by the legislature and which are not explicitly ranked by the Commission |

Each offense was ranked by seeing which principle it falls within. In the absence of a compelling reason specified in Rules 2-6, a crime was thus scored in accordance with the Commission's subclass of its statutory classification.

2) Crimes which encompass a broad range of types of behaviors were subcategorized, with the most serious type of the crime subcategorized at the seriousness rank of the statutory classification; and less serious types of the crime classified according to the principles listed above.

The major subcategorized crimes are as follows:

a. **BURGLARY**

| <u>Statutory Classification</u> | <u>Score</u> | <u>Description</u> |
|---------------------------------|--------------|--|
| F1 | 7 | Burglary of a structure adapted for overnight accommodation in which at the time of the offense any person is present. |

F1 6

Burglary of a structure adapted for overnight accommodation in which at the time of the offense no person is present.

F1 6

Burglary of a structure not adapted for overnight accommodation in 4

any person is present.

F1 5
(F2 as of
7/1/91)

Burglary of a structure not adapted for overnight accommodation in which at the time of the offense no person is present.

b. AGGRAVATED ASSAULT

Statutory
Classification Score

Description

F1 9

Aggravated Assault (causes serious bodily injury)

F1 8

Aggravated Assault (attempts to cause serious bodily injury)

F2 7

Aggravated Assault (causes bodily injury with a deadly weapon)

F2 6

Aggravated Assault (attempts to cause bodily injury with a deadly weapon)

c. ROBBERY

Statutory
Classification Score

Description

F1 9

Robbery (inflicts serious bodily injury)

F1 7

Robbery (threatens another with or intentionally puts him in fear of immediate serious bodily injury)

F1 7

Robbery (commits or threatens immediately to commit any F1 or F2)

F2 6

Robbery (inflicts bodily injury)

F2 5

Robbery (threatens bodily injury or intentionally puts in fear of immediate bodily injury)

d. ESCAPE

| <u>Statutory Classification</u> | <u>Score</u> | <u>Description</u> |
|---------------------------------|--------------|---|
| F3 | 7 | Escape (from secure institution) |
| F3 | 6 | Escape (from halfway house, pre-release center, work-release center or failure to return from furlough) |

e. POSSESSING INSTRUMENTS OF CRIME

| <u>Statutory Classification</u> | <u>Score</u> | <u>Description</u> |
|---------------------------------|--------------|---|
| M1 | 4 | Possession of weapon with intent to use criminally |
| M1 | 3 | Possession of instrument of crime with intent to use criminally |

f. FIREARMS OFFENSES

| <u>Statutory Classification</u> | <u>Score</u> | <u>Description</u> |
|---------------------------------|--------------|--|
| M1 | 6 | Weapons offenses (loaded or ammunition in possession or control of defendant) |
| M1 | 4 | Weapons offenses (unloaded and ammunition not in possession or control of defendant) |

- 3) For drug offenses there is a separate guideline chart, with offense gravity scores ranging from A (most serious) to M (least serious). Scores for drug offenses are as follows:

| <u>Score</u> | <u>Description</u> |
|--------------|---|
| A | Delivery of narcotics >100 gms. |
| B | Delivery of narcotics 2-100 gms. |
| C | Delivery of narcotics <2 gms. |
| D | Delivery of PCP, cocaine, methamphetamine >100 gms. |
| E | Delivery of PCP, cocaine, methamphetamine 2-100 gms. |
| F | Delivery of PCP, cocaine, methamphetamine <2 gms. |
| G | Delivery of marijuana >110 lbs. |
| H | Delivery of marijuana 1-110 lbs. |
| I | Delivery of marijuana <1 lb. |
| J | Delivery of Schedule I, II, III drugs not listed above |
| K | Delivery of Schedule IV drugs |
| M | Delivery of Schedule V drugs |
| J | All other drug offenses with a statutory limit of 2.5 years |
| K | All other drug offenses with a statutory limit of 1.5 years |
| L | All other drug offenses with a statutory limit of 1 year |
| M | All other drug offenses with a statutory limit of 6 months (this includes all drug possession offenses) |

The Commission on Sentencing is hereby submitting amendments to the sentencing guidelines [204 Pa. Code §§ 303.1-303.9] for consideration by the General Assembly. The Commission adopted the amendments, published them for comment in the Pennsylvania Bulletin, held public hearings, made revisions to the amendments, and then re-adopted them at its April 5, 1991 and April 23, 1991 meetings. As specified by statute, the legislature has ninety days from the date of this publication to review these amendments [42 Pa.C.S. §2153]. Unless rejected by concurrent resolution during that period, the amendments will become part of the sentencing guidelines on August 9, 1991. The amendments recommending boot camp eligibility will apply to all defendants sentenced on or after August 9, 1991. The other amendments to the guidelines will apply to sentences for crimes committed on or after August 9, 1991.

Melvin G. Levy
Chairman

Commentary on Annex A

The Commission on Sentencing is proposing amendments to the sentencing guidelines in response to the severe prison and jail overcrowding problem and in recognition of the need to expand the sentencing options available to the court. Further impetus for these changes has come from recent legislation establishing motivational boot camps and providing for intermediate punishment programs. Act 215 of 1990, which establishes motivational boot camps, mandates the Commission to identify eligible boot camp candidates. Act 193 of 1990, which provides for intermediate punishments, mandates the Commission to identify eligible candidates for intermediate punishment programs. Act 201 of 1990, which provides for intermediate punishment as a sentencing alternative, gives judges the authority to impose intermediate punishment.

§303.1 Guideline sentencing standards.

(d) Currently, the effective date for any changes to the guidelines is for crimes committed after a certain date. Section 303.1 (d) will provide an exception to this for the amendment which provides for boot camp eligibility criteria. For boot camp eligibility, the Commission proposes an effective date for crimes sentenced after August 9, 1991 to allow defendants to be eligible for boot camp as quickly as possible. For all other proposed amendments to the guidelines, the effective date will be for crimes committed after August 9, 1991.

§303.2 Procedure for determining the guideline sentence.

(3) Boot camp program eligibility.

Act 215, which provides for the establishment of motivational boot camps, mandates the following procedure for the selection of boot camp participants: 1) the Pennsylvania Commission on Sentencing identifies appropriate boot camp candidates through the sentencing guidelines; 2) the sentencing judge, through the use of the sentencing guidelines, identifies defendants appropriate for boot camp participation; 3) the defendant applies to the Department of Corrections for boot camp consideration; and 4) the Department of Corrections makes the final determination concerning who is admitted into the boot camp program.

In accordance with its legislative mandate from Act 215, the Commission proposes changing section 303.2 (3) of the sentencing guidelines to direct the court to consider whether or not a defendant is eligible for participation in the boot camp program.

First, the court must determine if the defendant meets the following eligibility criteria as set forth in Act 215, namely, that the defendant: 1) is sentenced to a term of confinement under the jurisdiction of the Department of Corrections; 2) is serving a minimum sentence of two years or less; 3) is serving a maximum sentence of five years or less; 4) is under the age of 35; and 5) is not currently convicted for one of the following offenses: 18 Pa. C.S. §2501 (relating to criminal homicide); 18 C.S. §2901 (relating to kidnapping); 18 C.S. §3121 (relating to rape); 18 Pa. C.S. §3123 (relating to involuntary deviate sexual intercourse); or 18 Pa. C.S. §3701 (relating to felony 1 robbery).

Second, the court is directed to the sentencing guidelines charts to determine if the defendant is in the guideline range recommending boot camp. (See commentary on sentence range charts for further discussion on recommendations for boot camp.)

Act 215 mandates that, upon successful completion of the six-month program, the defendant be released to parole. Thus, by identifying a defendant as eligible for boot camp, the court is agreeing to allow the defendant to be released prior to the expiration of the minimum sentence.

(4) Intermediate punishment sanctions.

Currently, the guidelines make sentencing recommendations concerning: 1) whether a defendant should be incarcerated and 2) if incarcerated, the minimum sentence length. In accordance with its legislative mandate from Act 193, the Commission is proposing incorporating into the sentencing guidelines an intermediate

sentencing sanction that would be between probation and incarceration. It is the intention of the Commission that intermediate punishment replace short term incarceration for less serious, non-violent offenders. Act 193, which provides for intermediate punishment, prohibits persons who display a "present or past pattern of violent behavior" from being eligible for an intermediate punishment program.

The intermediate punishment programs are not intended for defendants who would ordinarily be placed on probation. Only after the court considers and rejects a probationary sentence, should the court consider the imposition of an intermediate punishment sentence.

The amendment to section 303.2 directs the court to the guidelines chart for non-drug offenses to determine whether intermediate punishment is a recommended sentence. This amendment also provides a list of programs which are considered appropriate for an intermediate punishment sentence. This list is based upon the description of intermediate punishment as provided in Act 193.

It should be noted that Act 201 allows for defendants convicted under 75 Pa. C.S. §3731 (relating to driving under the influence of alcohol or controlled substance) to be sentenced to intermediate punishment. However, the type of intermediate punishment for such offenders is restricted to: a residential inpatient program; a residential rehabilitative center; or house arrest or electronic surveillance combined with drug and alcohol treatment.

§303.5 Driving under the influence of alcohol or controlled substance and homicide by vehicle while driving under the influence.

Currently, the guidelines recommend minimum sentences for driving under the influence which are equal to those imposed by the mandatory minimum sentencing statute for this offense (75 Pa.C.S. §3731). The Commission, however, recognizes the gravity of this offense particularly when an accident occurs as a result of driving under the influence and there is serious victim injury. Due to the impact this has upon the victim and to reflect the seriousness of this offense, the Commission is recommending greater sentences for driving under the influence offenses when there is serious victim injury. The proposed amendment increases the recommended minimum guideline sentences above the minimums required by the mandatory sentencing statute for persons convicted of driving under the influence when a victim suffered serious bodily injury as a result of driving under the influence.

§303.8. Offense Gravity Score.

The proposed amendments to the offense gravity score lists are as follows:

(1) The Commission proposes offense gravity scores for new offenses and offenses which have been amended recently by the legislature.

Due to the serious nature of four of these offenses, the Commission proposes higher offense gravity scores than what is ordinarily assigned for offenses of their grading. These four offenses are: 18 Pa.C.S. §2506 (drug delivery resulting in death); 18 Pa.C.S. §2910 (Luring a Child into a Motor Vehicle); 18 Pa.C.S. §3125 (Aggravated Indecent Assault); and 18 Pa.C.S. § 3126 (a)(e) (Indecent Assault on a person less than 14). For two of these offenses (Drug Delivery Resulting in Death and Aggravated Indecent Assault), the Commission recommendation is higher than that originally proposed. This change reflects the Commission's consideration of testimony presented by the District Attorneys Association concerning the seriousness of these offenses.

The Commission proposes the omnibus scores be assigned to the following offenses: 18 Pa.C.S. §2712 (Assault on Sports Official); 18 Pa.C.S. §2909 (Concealment of Whereabouts of a Child); 18 Pa.C.S. §5902 (Prostitution and Related Offenses); and 18 Pa.C.S. §4117 (Insurance Fraud).

(2) The Commission proposes re-ranking the misdemeanor 2 grading of Indecent Assault (18 Pa.C.S. §3126 (a)(1) through (5)). This offense is thereby removed from the area of the guideline chart which calls for probation or intermediate punishment and where an incarceration sentence would require aggravating circumstances. This offense is often serious in nature and the Commission believes that incarceration should remain a sentencing option within the standard range of the guidelines for the court.

(3) The Commission proposes subcategorizing the offenses of Involuntary Manslaughter (18 Pa.C.S. §2504) and Homicide by Vehicle (75 Pa. C.S. §3732) to recommend greater sentences when there is a conviction for DUI arising from the same transaction. Current statute provides for a three year mandatory minimum sentence for homicide by vehicle while driving under the influence (75 Pa. C.S. §3735). However, defendants can be convicted of DUI and either homicide by vehicle or involuntary manslaughter and not be subject to the mandatory three year sentence. To reflect the seriousness of a death occurring at the time a person is driving under the influence, the Commission proposes establishing higher offense gravity scores for involuntary manslaughter and homicide by vehicle if the defendant is also convicted of driving under the influence which occurred at the same time.

§303.9 Sentence Range Charts.

The Commission is proposing changing the guideline sentencing recommendations to help alleviate the serious overcrowding problem in both the county jails and state prisons. These changes will also make more sentencing options available to the court. The Commission proposes making the following three changes with respect to the sentence range charts for non-drug offenses: 1) to identify eligible defendants for boot camp; 2) to change some of the recommendations in the sentencing guidelines from 12 to 11/2 months; and 3) to identify eligible defendants for intermediate punishment programs.

Act 215 allows for persons convicted of drug offenses to be eligible for boot camp participation. Therefore, the Commission is also proposing identifying defendants eligible for boot camp with respect to the sentence range chart for drug offenses.

The first amendment to the guidelines chart involves identifying offenders for boot camp participation. The Commission recommends that only those defendants receiving a minimum sentence ranging from 12 to 24 months be identified by the court as eligible for boot camp. In testimony provided at a public hearing, a representative from the Department of Corrections indicated to the Commission that defendants receiving less than 12-month minimum sentences would not be good candidates for the 6-month boot camp program. Defendants often spend several months in county jails prior to sentencing. That time, coupled with the time spent in a diagnostic and classification center in order to make proper institution recommendations, can result in a length of time which would not make it feasible for such defendants to participate in the boot camp program.

The legislation providing for boot camps mandates that only defendants who receive a state sentence be identified for boot camp. Based upon concerns expressed by the Department of Corrections, the Commission recommends that defendants who would ordinarily receive a county sentence not be sentenced to state incarceration in order to enable those defendants to participate in boot camp. Such a practice could result in the state system being inundated with more inmates, many of whom would not be selected for boot camp participation.

The Commission proposes placing an asterisk in those ranges of the guideline charts which recommend boot camp eligibility. It is the intent of the Commission that in those ranges where the upper limit is 12 months, that only those defendants receiving a 12-month minimum sentence be considered for boot camp. If the defendant is in a sentencing range which does not indicate boot camp eligibility (i.e. no asterisk), and the judge departs from the sentencing recommendation, the judge then has the authority to identify the defendant as eligible for boot camp (assuming that the other eligibility criteria, as outlined in section 303.2, are met).

The second change the Commission is proposing is that some sentencing recommendations in the standard range which have an upper limit of 12 months be reduced to 11 1/2 months. This would probably have the effect of diverting many less serious offenders from state prisons to county jails. The exception to this proposed change is for the following combinations of Offense Gravity Score and Prior Record Score: 7/0; 6/0; 6/1; and 6/2 - for these the 12-month recommendation would remain the same.

The original Commission proposal also included changing the sentencing recommendation from 12 to 11 1/2 months for the following two cells: 7/1 and 6/3. At the public hearing on this proposed change, the District Attorneys Association objected to this recommendation, indicating that these cells represent serious offenders. In response to their concern, the Commission proposes retaining the 12-month recommendation for these two cells.

Third, to address the county jail overcrowding problem the Commission recommends intermediate punishment sanctions for the least serious, non-violent offenders. The Commission believes that intermediate punishment programs provide good alternatives for defendants who would otherwise receive short incarceration sentences. These programs are also viewed as a vehicle to provide the offender with the appropriate treatment.

In the Commission's original intermediate punishment proposal, intermediate punishment was the recommended sentence for the upper limit of the standard range for the following combinations of Offense Gravity Score and Prior Record Score: 1/0; 1/1; 1/2; 2/0; 2/1; and 3/0. At the Commission's public hearing on this issue, the Defenders Association of Philadelphia, the Pennsylvania Association of Criminal Defense Lawyers, and a public defender from one of the counties, entered their support for this recommendation. However, the District Attorneys Association, along with representatives of some county probation offices, endorsed the current sentencing guidelines which allow for incarceration. Their testimony indicated that the proposed cells recommending an intermediate punishment sentence represent some serious offenders who warrant incarceration. After considering the expressed concerns, the Commission is proposing removing intermediate punishment (and thus, allowing for incarceration) in the upper limit of the standard range for the following cells: 1/1; 1/2; 2/1 and 3/0. Thus, the current proposal recommends intermediate punishment as the upper limit of the standard range for defendants who are convicted of the least serious offenses and have no prior felonies or serious misdemeanors (cells 1/0 and 2/0).

The Commission further proposes that when the lower limit of the standard range recommendation is 6 months or less, that the mitigated range allow for intermediate punishment. The following combinations of Offense Gravity Score and Prior Record Score would recommend intermediate punishment at the lower limit of the

mitigated range: 2/5; 2/6; 3/4; 3/5; 4/3; 5/1; and 5/2. The exception to this recommendation is for cells 6/0 and 6/1 where the Commission believes that recommending incarceration was appropriate and therefore did not recommend intermediate punishment for the mitigated ranges of these cells.

Finally, the Commission proposes that intermediate punishment is an appropriate sentence for any sentence recommendation which begins with 0.

The Commission believes these changes would help to alleviate the prison and jail overcrowding problem while at the same time allowing for fair punishment. Further, these proposed changes provide a broader range of sentencing options to be available to the court.

The Commission has prepared projections on the impact of these changes on prison and jail populations. These impact projection statements are available upon request.

Annex A

§303.1. Guideline sentencing standards.

(d) These guidelines shall take effect on April 25, 1988. Amendments to the guidelines shall apply to all offenses committed on or after the date the amendment becomes part of the guidelines. The exception to this is for the amendment to the guidelines which identifies defendants eligible for boot camp participation. This amendment is effective for defendants sentenced on or after August 9, 1991.

§303.2 . Procedure for determining the guideline sentence.

(3) Boot camp program eligibility.
Determine whether the defendant is in the guideline range recommending boot camp. Defendants who meet the following criteria are eligible for boot camp:

- (i) sentenced to a term of confinement under the jurisdiction of the Department of Corrections;
- (ii) serving a minimum sentence of two years or less;
- (iii) serving a maximum sentence of five years or less;
- (iv) is less than 35 years of age; and
- (v) whose current conviction is not for one of the following offenses:

18 Pa. C.S. §2501 (relating to criminal homicide)

18 Pa. C.S. §2901 (relating to kidnapping)

18 Pa. C.S. §3121 (relating to rape)

18 Pa. C.S. §3123 (relating to involuntary deviate sexual intercourse).

18 Pa. C.S. §3701 (a)(i), (ii), or (iii) (relating to robbery).

(4) Intermediate punishment sanctions.

(i) Determine whether the defendant is in the guideline range recommending intermediate punishment. Intermediate punishment program options include all of the following:

(A) Noncustodial programs which involve close supervision, but not housing, of the offender in a facility, including but not limited to:

intensive probation supervision,
victim restitution or mediation,
alcohol or drug outpatient treatment,
house arrest and electronic monitoring,
psychiatric counseling and,
community service,

(B) residential inpatient drug and alcohol programs based on
objective assessments that an offender is dependent on
alcohol or drugs or a residential rehabilitative center and;

(C) individualized services which evaluate and treat
offenders, including psychological and medical services,
education, vocational training, drug and alcohol screening
and counseling, individual and family counseling and
transportation subsidies and;

(D) partial confinement programs, such as work release, work
camps and halfway facilities.

- [3] (5) ***
- [4] (6) ***
- [5] (7) ***

§303.5 Driving under the influence of alcohol or controlled
substance and homicide by vehicle while driving under the
influence.

(a) When no victim suffered serious bodily injury, sentences for
driving under the influence of alcohol or controlled substances
are determined by application of 75 Pa. C.S. §3731 (relating to
mandatory imprisonment for driving under the influence of alcohol
or controlled substance) and 42 Pa. C.S. §9763 (relating to
intermediate punishment for driving under the influence of
alcohol or controlled substance).

(b) When one or more victims suffered serious bodily injury, the
guideline sentence recommendations (in months) for convictions
under 75 Pa. C.S. §3731 (relating to driving under the influence
of alcohol or controlled substance) are as follows:

| <u>Conviction</u> | <u>Standard Range</u> | <u>Aggravated Range</u> | <u>Mitigated Range</u> |
|--------------------|-----------------------|-------------------------|------------------------|
| 1st | 4-6 | 6-8 | 2-4 |
| 2nd | 7-9 | 9-11 | 5-7 |
| 3rd | 9-11 | 11-12 | 7-9 |
| 4th/ subsequent | 12 | 12 | 9-12 |

[b] (c) ***

[c] (d) ***

§ 303.8. Offense gravity score.

(d) Offenses are scored as follows:

| 18 Pa.C.S. § | Offense Title | Statutory Classifications | Offense Gravity Score |
|---------------|--|---------------------------|-----------------------|
| <u>2504</u> | <u>Manslaughter, Involuntary</u> <u>(when there is also a conviction</u> <u>for DUI arising from the same</u> <u>transaction)</u> | <u>M1</u> | <u>6</u> |
| <u>2504</u> | <u>Manslaughter, Involuntary</u> <u>(when there is not a conviction</u> <u>for DUI arising from the same</u> <u>transaction)</u> | <u>M1</u> | <u>5</u> |
| [<u>2504</u> | Manslaughter, Involuntary | M1 | 5] |
| <u>2506</u> | <u>Drug Delivery Resulting in Death</u> | <u>F1</u> | <u>10</u> |
| <u>2712</u> | <u>Assault on Sports Official</u> | <u>M1</u> | <u>3</u> |
| <u>2909</u> | <u>Concealment of Whereabouts of</u> <u>a Child</u> | <u>F3</u> | <u>4</u> |

| | | | |
|----------------------|--|------------------------|-----------------------|
| <u>2910</u> | <u>Luring a Child into a Motor Vehicle</u> | <u>M1</u> | <u>5</u> |
| <u>3125</u> | <u>Aggravated Indecent Assault</u> | <u>F2</u> | <u>8</u> |
| <u>3126</u> [3126 | <u>Indecent Assault</u> <u>Indecent Assault</u> | <u>M2</u> <u>M2</u> | <u>3</u> <u>2]</u> |
| <u>3126 (a) (6)</u> | <u>Indecent Assault</u> | <u>M1</u> | <u>4</u> |
| <u>5902 (e)</u> | <u>Prostitution and Related Offenses</u> | <u>M3</u> | <u>1</u> |
| <u>4117</u> | <u>Insurance Fraud</u> | <u>F3</u> | <u>4</u> |
| <u>4117</u> | <u>Insurance Fraud</u> | <u>M1</u> | <u>3</u> |

| 75 Pa.C.S. § | Offense Title | Statutory Classifications | Offense Gravity Score |
|--------------|--|---------------------------|-----------------------|
| <u>3732</u> | <u>Homicide by Vehicle (when there is also a conviction for DUI arising from the same transaction)</u> | <u>M1</u> | <u>6</u> |
| <u>3732</u> | <u>Homicide by Vehicle (when there is not a conviction for DUI arising from the same transaction)</u> | <u>M1</u> | <u>5</u> |
| [3732 | Homicide by Vehicle | M1 | 3] |

§303.9. Sentence Range charts.

(b) Guideline sentence ranges are shown in the following chart for each combination of offense gravity score and prior record score, except for violations of 75 Pa. C.S. §§3731 and 3735 which are assigned guideline penalties in §303.5, and except for violations of The Controlled Substance, Drug, Device and Cosmetic Act (35 P.S. §§780-101 -- 780-144) which are assigned guideline sentence ranges in subsection (c) below.

| Offense Gravity Score | Prior Record Score | Standard Range ¹ | Aggravated Range ¹ | Mitigated Range ¹ |
|---|--------------------|-----------------------------|-------------------------------|------------------------------|
| 10 Third Degree Murder ² | 0 | 48-120 | 120 | 36-48 |
| | 1 | 54-120 | 120 | 40-54 |
| | 2 | 60-120 | 120 | 45-60 |
| | 3 | 72-120 | 120 | 54-72 |
| | 4 | 84-120 | 120 | 63-84 |
| | 5 | 96-120 | 120 | 72-96 |
| | 6 | 102-120 | 120 | 76-102 |
| 9 For example: Rape; Robbery, inflicting serious bodily injury ² | 0 | 36-60 | 60-75 | 27-36 |
| | 1 | 42-66 | 66-82 | 31-42 |
| | 2 | 48-72 | 72-90 | 36-48 |
| | 3 | 54-78 | 78-97 | 40-54 |
| | 4 | 66-84 | 84-105 | 49-66 |
| | 5 | 72-90 | 90-112 | 54-72 |
| | 6 | 78-102 | 102-120 | 58-78 |
| 8 For example: Kidnapping; Arson (Felony I); Voluntary Manslaughter ² | 0 | 24-48* | 48-60 | 18-24* |
| | 1 | 30-54 | 54-68 | 22-30* |
| | 2 | 36-60 | 60-75 | 27-36 |
| | 3 | 42-66 | 66-82 | 32-42 |
| | 4 | 54-72 | 72-90 | 40-54 |
| | 5 | 60-78 | 78-98 | 45-60 |
| | 6 | 66-90 | 90-112 | 50-66 |
| 7 For example: Robbery threatening serious bodily injury ² | 0 | 8-12* | 12-18* | 4-8 |
| | 1 | 12-29* | 29-36 | 9-12* |
| | 2 | 17-34* | 34-42 | 12-17* |
| | 3 | 22-39* | 39-49 | 16-22* |
| | 4 | 33-49 | 49-61 | 25-33 |
| | 5 | 38-54 | 54-68 | 28-38 |
| | 6 | 43-64 | 64-80 | 32-43 |

| Offense Gravity Score | Prior Record Score | Standard Range ¹ | Aggravated Range ¹ | Mitigated Range ¹ |
|--|--------------------|-----------------------------|-------------------------------|------------------------------|
| 6 For example: Robbery inflicting bodily injury; Theft by extortion (Felony III) ² | 0 | 4-12* | 12-18* | 2-4 |
| | 1 | 6-12* | 12-18* | 3-6 |
| | 2 | 8-12* | 12-18* | 4-8 |
| | 3 | 12-29* | 29-36 | 9-12* |
| | 4 | 23-34* | 34-42 | 17-23* |
| | 5 | 28-44 | 44-55 | 21-28* |
| | 6 | 33-49 | 49-61 | 25-33 |
| 5 For example: Criminal Mischief (Felony III); Theft by Unlawful Taking (Felony III); Theft by Receiving Stolen Property (Felony III); Bribery ² | 0 | 0-11½ | 11½-18* | Non-confinement |
| | 1 | 3-11½ | 11½-18* | IP-3 |
| | 2 | 5-11½ | 11½-18* | IP-5 |
| | 3 | 8-11½ | 11½-18* | 4-8 |
| | 4 | 18-27* | 27-34 | 14-18* |
| | 5 | 21-30* | 30-38 | 16-21* |
| | 6 | 24-36* | 36-45 | 18-24* |
| 4 For example: Theft by receiving stolen property, less than \$2000, by force or threat of force, or in breach of fiduciary obligation ² | 0 | 0-11½ | 11½-18* | Non-confinement |
| | 1 | 0-11½ | 11½-18* | Non-confinement |
| | 2 | 0-11½ | 11½-18* | Non-confinement |
| | 3 | 5-11½ | 11½-18* | IP-5 |
| | 4 | 8-11½ | 11½-18* | 4-8 |
| | 5 | 18-27* | 27-34 | 14-18* |
| | 6 | 21-30* | 30-38 | 16-21* |
| 3 Most Misdemeanor I's ² | 0 | 0-6 | 6-12* | Non-confinement |
| | 1 | 0-11½ | 11½-18* | Non-confinement |
| | 2 | 0-11½ | 11½-18* | Non-confinement |
| | 3 | 0-11½ | 11½-18* | Non-confinement |
| | 4 | 3-11½ | 11½-18* | IP-3 |
| | 5 | 5-11½ | 11½-18* | IP-5 |
| | 6 | 8-11½ | 11½-18* | 4-8 |
| 2 Most Misdemeanor II's ² | 0 | 0-IP | IP-6 | Non-confinement |
| | 1 | 0-3 | 3-6 | Non-confinement |
| | 2 | 0-11½ | 11½-12* | Non-confinement |
| | 3 | 0-11½ | 11½-12* | Non-confinement |
| | 4 | 0-11½ | 11½-12* | Non-confinement |
| | 5 | 2-11½ | 11½-12* | IP-2 |
| | 6 | 5-11½ | 11½-12* | IP-5 |

| Offense Gravity Score | Prior Record Score | Standard Range ¹ | Aggravated Range ¹ | Mitigated Range ¹ |
|--|--------------------|-----------------------------|-------------------------------|------------------------------|
| 1 Most Misdemeanor III's ² | 0 | 0-IP | IP-3 | Non-confinement |
| | 1 | 0-3 | 3-6 | Non-confinement |
| | 2 | 0-6 | 6 | Non-confinement |
| | 3 | 0-6 | 6 | Non-confinement |
| | 4 | 0-6 | 6 | Non-confinement |
| | 5 | 0-6 | 6 | Non-confinement |
| | 6 | 0-6 | 6 | Non-confinement |

¹Weapon Enhancement: At least 12 months and up to 24 months confinement shall be added to the above lengths when a deadly weapon was possessed in the crime.

²These offenses are listed here for illustrative purposes only. Offense series are given in §303.8.

*Indicates eligibility for boot camp programs. See §303.2(3).

§303.9(c) The guideline sentence ranges are as follows:

**GUIDELINE RANGES FOR THE CONTROLLED SUBSTANCE
DRUG, DEVICE AND COSMETIC ACT¹**

| Offense Gravity Score | Prior Record Score | Standard Range | Aggravated Range | Mitigated Range |
|---|--------------------|----------------|------------------|-----------------|
| A (a)(12)(14)(30) Narcotics ² more than 100 g. | 0 | 30-42 | 42-48 | 24-30* |
| | 1 | 39-51 | 51-57 | 33-39 |
| | 2 | 48-60 | 60-66 | 42-48 |
| | 3 | 57-69 | 69-75 | 51-57 |
| | 4 | 60-72 | 72-78 | 54-60 |
| | 5 | 79-87 | 87-90 | 73-79 |
| | 6 | 84-90 | 90 | 78-84 |
| B (a)(12)(14)(30) Narcotics ² 2 g. to 100 g. | 0 | 18-30* | 30-36 | 12-28* |
| | 1 | 27-39 | 39-45 | 21-27* |
| | 2 | 36-48 | 48-54 | 30-36 |
| | 3 | 45-57 | 57-63 | 39-45 |
| | 4 | 54-66 | 66-72 | 48-54 |
| | 5 | 63-75 | 75-81 | 57-63 |
| | 6 | 72-84 | 84-90 | 66-72 |
| C (a)(12)(14)(30) Narcotics ² less than 2 g. | 0 | 7-18* | 18-24* | 3-9 |
| | 1 | 15-27* | 27-33 | 9-15* |
| | 2 | 24-36* | 36-42 | 18-24* |
| | 3 | 33-45 | 45-51 | 27-33 |
| | 4 | 42-54 | 54-60 | 36-42 |
| | 5 | 51-63 | 63-69 | 45-51 |
| | 6 | 60-72 | 72-78 | 54-60 |
| D (a)(12)(14)(30) PCP, Cocaine, Methamphet- amine more than 100 g. | 0 | 27-39 | 39-45 | 21-27* |
| | 1 | 33-45 | 45-51 | 27-33 |
| | 2 | 39-51 | 51-57 | 33-39 |
| | 3 | 45-57 | 57-60 | 39-45 |
| | 4 | 51-60 | 60 | 45-51 |
| | 5 | 57-60 | 60 | 51-57 |
| | 6 | 60 | 60 | 54-60 |
| E (a)(12)(14)(30) PCP, Cocaine, Methamphet- amine 2 g. to 100 g. | 0 | 15-27* | 27-33 | 9-15* |
| | 1 | 21-33* | 33-39 | 15-21* |
| | 2 | 27-39 | 39-45 | 21-27* |
| | 3 | 33-45 | 45-51 | 27-33 |
| | 4 | 39-51 | 51-57 | 33-39 |
| | 5 | 45-57 | 57-60 | 39-45 |
| | 6 | 51-60 | 60 | 45-51 |
| F (a)(12)(14)(30) PCP, Cocaine, Methamphet- amine less than 2 g. | 0 | 6-15* | 15-21* | 3-6 |
| | 1 | 9-21* | 21-27* | 6-9 |
| | 2 | 15-27* | 27-33 | 9-15* |
| | 3 | 21-33* | 33-39 | 15-21* |
| | 4 | 27-39 | 39-45 | 21-27* |
| | 5 | 33-45 | 45-51 | 27-33 |
| | 6 | 39-51 | 51-57 | 33-39 |

¹ Weapon enhancement: At least 12 months and up to 24 months confinement shall be added to the above lengths when a deadly weapon was possessed in the crime.

² Narcotics of Schedules I and II as defined in 35 P.S. §780-102.

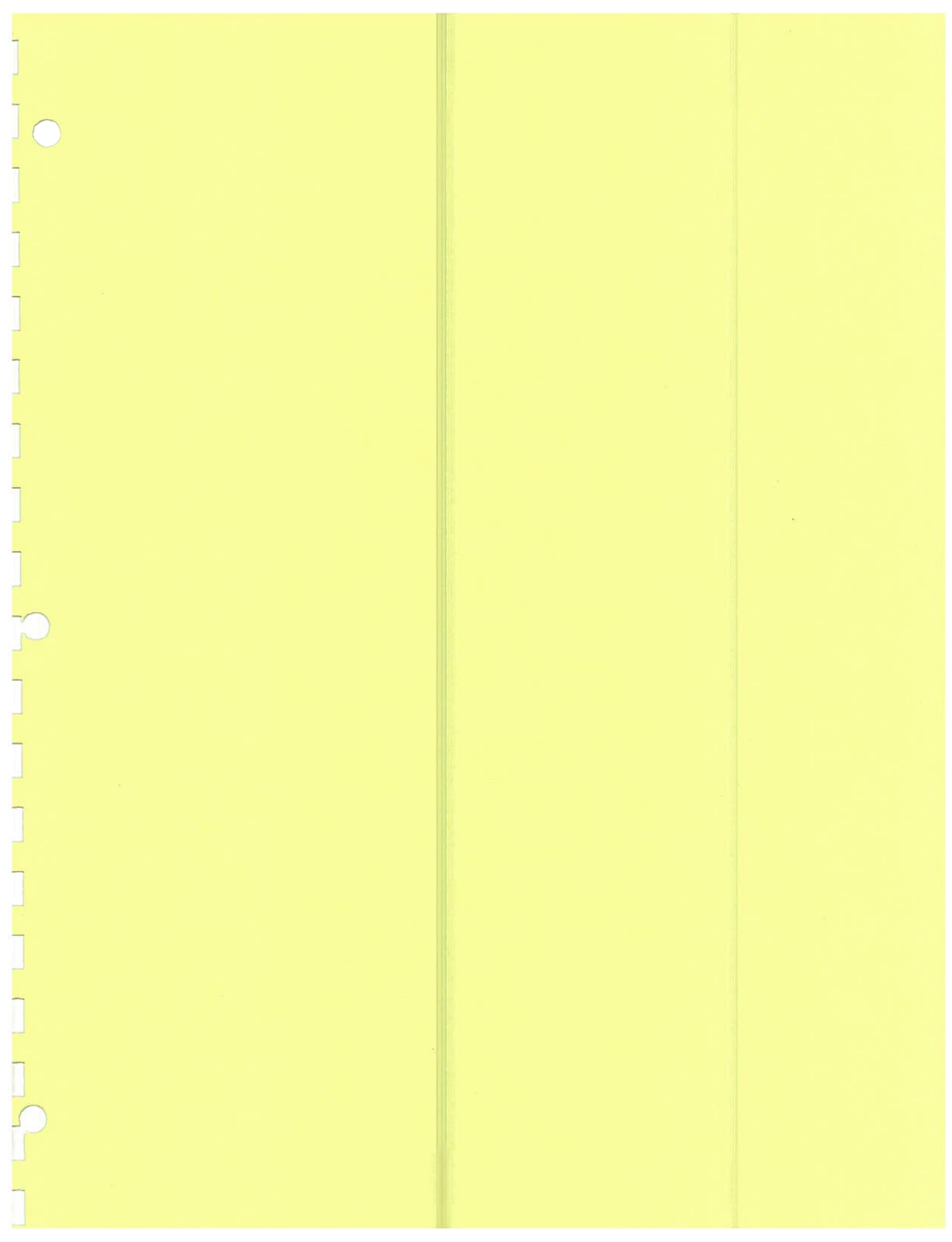
| Offense Gravity Score | Prior Record Score | Standard Range | Aggravated Range | Mitigated Range |
|---|--------------------|----------------|------------------|-----------------|
| G (a)(12)(14)(30) Marijuana more than 110 lbs. | 0 | 12-18' | 18-24' | 6-12' |
| | 1 | 15-21' | 21-27' | 9-15' |
| | 2 | 18-24' | 24-30' | 12-18' |
| | 3 | 21-28' | 28-30 | 15-21' |
| | 4 | 24-30' | 30 | 18-24' |
| | 5 | 27-30 | 30 | 21-27' |
| | 6 | 30 | 30 | 30 |
| H (a)(12)(14)(30) Marijuana 1 lb. - 110 lbs. | 0 | 6-12' | 12-18' | 3-6 |
| | 1 | 9-15' | 15-21' | 5-9 |
| | 2 | 12-18' | 18-24' | 6-12' |
| | 3 | 15-21' | 21-27' | 9-15' |
| | 4 | 18-24' | 24-30' | 12-18' |
| | 5 | 21-27' | 27-30 | 15-21' |
| | 6 | 24-30' | 30 | 18-24' |
| I (a)(12)(14)(30) Marijuana less than 1 lb. | 0 | 3-6 | 6-12' | 1-3 |
| | 1 | 3-9 | 9-15' | 2-3 |
| | 2 | 7-12' | 12-18' | 3-7 |
| | 3 | 9-15' | 15-21' | 3-9 |
| | 4 | 12-18' | 18-24' | 6-12' |
| | 5 | 15-21' | 21-27' | 9-15' |
| | 6 | 18-24' | 24-30' | 12-18' |
| J (a)(12)(14)(30) Offenses involving Schedule I, II or III drugs; drug offenses w/statutory limit ³ of 2.5 years | 0 | 6-12' | 12-18' | 3-6 |
| | 1 | 9-15' | 15-21' | 3-9 |
| | 2 | 12-18' | 18-24' | 7-12' |
| | 3 | 15-21' | 21-28' | 9-15' |
| | 4 | 18-24' | 24-30' | 12-18' |
| | 5 | 21-27' | 27-30 | 15-21' |
| | 6 | 24-30' | 30 | 18-24' |
| K (a)(12)(14)(30) Offenses involving Schedule IV drugs; drug offenses w/statutory limit ³ of 1.5 years | 0 | 4-10 | 10-18' | 0-4 |
| | 1 | 5-12' | 12-18' | 1-5 |
| | 2 | 6-15' | 15-18' | 2-6 |
| | 3 | 7-18' | 18' | 3-7 |
| | 4 | 8-18' | 18' | 4-8 |
| | 5 | 9-18' | 18' | 5-9 |
| | 6 | 10-18' | 18' | 6-10 |
| L All other drug offenses with a statutory limit ³ of one year | 0 | 2-8 | 8-12' | 0-2 |
| | 1 | 3-10 | 10-12' | 0-3 |
| | 2 | 4-12' | 12' | 1-4 |
| | 3 | 5-12' | 12' | 2-5 |
| | 4 | 6-12' | 12' | 3-6 |
| | 5 | 7-12' | 12' | 4-7 |
| | 6 | 8-12' | 12' | 5-8 |

³ "Statutory limit" is defined as the longest minimum sentence permitted by law.

| Offense Gravity Score | Prior Record Score | Standard Range | Aggravated Range | Mitigated Range |
|--------------------------------|--------------------|----------------|------------------|-----------------|
| M | 0 | 0-6 | 6 | 0 |
| (a)(12)(14)(30) | 1 | 1-6 | 6 | 0-1 |
| offenses involving | 2 | 2-6 | 6 | 0-2 |
| Schedule V | 3 | 3-6 | 6 | 0-3 |
| drugs; drug | 4 | 4-6 | 6 | 1-4 |
| offenses | 5 | 5-6 | 6 | 2-5 |
| w/statutory limit ³ | 6 | 6 | 6 | 3-6 |
| of 6 months | | | | |

³ "Statutory limit" is defined as the longest minimum sentence permitted by law.

* Indicates eligibility for boot camp. See §303.2(3).



The Commission on Sentencing is hereby submitting amendments to the sentencing guidelines [204 Pa. Code §§ 303.1-303.9] for consideration by the General Assembly. These changes are in response to the recent passage of Act 215 which establishes boot camp programs and mandates the Pennsylvania Commission on Sentencing to identify eligible defendants for such programs.

A public hearing was held on these proposed changes on Tuesday, February 26, 1991. After consideration of the testimony given at the public hearing, the Commission re-adopted the amendments, which follow in Annex A, at its April 5, 1991 meeting.

As specified by statute, the legislature has ninety days from the date of this publication to review these amendments (42 Pa. C.C. §2153). Unless rejected by concurrent resolution during that period, these amendments will become part of the sentencing guidelines on July 26, 1991 and will apply to all defendants sentenced on or after that date.

Melvin G. Levy
Chairman

Commentary on Annex A

In recognition of the severe prison overcrowding problem, Act 215 provides for the establishment of motivational boot camps. The boot camp program provides an alternative program of incarceration which intends to help alleviate prison overcrowding while maintaining the protection of public safety. Also, in an effort to reduce criminal behavior, the boot camp will provide: substance abuse treatment; educational, vocational, and counseling programs; rigorous physical activity; and work responsibilities on public projects. The boot camp program is for a period of six months and upon successful completion of the program, the inmate will be released on parole. Defendants may voluntarily remove themselves from the program or, upon violation of regulations, the Department of Corrections may revoke an inmate's participation.

§303.1. Guideline sentencing standards.

(d) Currently, the effective date for any changes to the guidelines is for crimes committed after a certain date. For the proposed changes, which identify defendants eligible for boot camp, the Commission proposes an effective date for crimes sentenced after a certain date. This would allow defendants to be eligible for boot camp as quickly as possible.

§303.2 Procedure for determining the guideline sentence.

(3) Boot camp program eligibility.

In accordance with its legislative mandate to identify defendants eligible for boot camp participation, the Commission proposes changing section 303.2 (3) of the sentencing guidelines to direct the court to consider whether or not a defendant is eligible for boot camp. First, the court must determine if the defendant meets the following eligibility criteria as set forth in Act 215, namely, that the defendant: 1) is sentenced to a term of confinement under the jurisdiction of the Department of Corrections; 2) is serving a minimum sentence of two years or less; 3) is serving a maximum sentence of five years or less; 4) is under the age of 35; and 5) is not currently convicted of one of the following offenses: 18 Pa. C.S. § 2501 (relating to criminal homicide); 18 C.S. § 2901 (relating to kidnapping); 18 C.S. § 3121 (relating to rape); 18 Pa. C.S. § 3123 (relating to involuntary deviate sexual intercourse); or 18 Pa. C.S. § 3701 (relating to felony 1 robbery).

Second, the court is directed to the sentencing guidelines charts to determine if the defendant is in the guideline range recommending boot camp. If the court identifies a defendant as being eligible for the boot camp program, the defendant applies to the Department of Corrections for participation in the program. The Department of Corrections makes the final determination concerning who is admitted into the boot camp program. By identifying the defendant as eligible, the court is agreeing to allow the defendant, upon successful completion of the boot camp program, to be released prior to the expiration of the minimum sentence.

§303.9 Sentence Range Charts

Act 215 establishes boot camp eligibility criteria and also mandates the Pennsylvania Commission on Sentencing to identify eligible offenders for boot camp program participation. In doing so, the Commission recommends that only defendants receiving a minimum sentence ranging from 12 to 24 months be identified by the court as being eligible for boot camp. A representative from the Department of Corrections testified at the Commission's public hearing that defendants receiving less than a 12-month minimum sentence would not be good candidates for the 6-month boot camp program. Defendants often spend several months in county jails prior to sentencing. This time, coupled with the time spent in a diagnostic and classification center in order to make proper institution recommendations, can result in a length of time which would not make it feasible for such defendants to participate in the boot camp program.

The legislation providing for boot camps mandates that only

defendants who receive a state sentence be identified for boot camp. Based upon concerns expressed by the Department of Corrections, the Commission recommends that defendants who would ordinarily receive a county sentence should not be sentenced to state incarceration in order to enable a defendant to participate in boot camp. Such a practice could result in the state system being inundated with more inmates, many of whom would not be selected for boot camp participation.

The Commission proposes placing an asterisk in those ranges of the guideline charts which recommend boot camp eligibility. It is the intent of the Commission that in those ranges where the upper limit is 12 months, only those defendants receiving a 12-month minimum sentence be considered for boot camp. Further, if the judge departs from the guidelines and gives a minimum sentence no longer than 24 months, the judge then has the authority to identify the defendant as eligible for boot camp (assuming that the other eligibility criteria, as outlined in section 303.2 are met).

It should be noted that some guideline ranges recommending 12 month's incarceration have not recommended boot camp eligibility. The reason is that the Commission is proposing reducing the 12 months to 11 1/2 months in those cells. Those proposed amendments are in a separate submission to the Bulletin.

Annex A

§303.1. Guideline sentencing standards.

(d) These guidelines shall take effect on April 25, 1988, and shall apply to all offenses committed on or after that date. Amendments to the guidelines shall apply to all offenses committed on or after the date the amendment becomes part of the guidelines. The exception to this is for the amendment to the guidelines which identifies defendants eligible for boot camp participation. This amendment is effective for defendants sentenced on or after July 26, 1991.

§303.2 . Procedure for determining the guideline sentence.

[3] (3) Boot camp program eligibility. Determine whether the defendant is in the guideline range recommending boot camp. Defendants who meet the following criteria are eligible for boot camp:

- (1) sentenced to a term of confinement under the jurisdiction of the Department of Corrections;
- (2) serving a minimum sentence of two years or less;
- (3) serving a maximum sentence of five years or less;
- (4) is less than 35 years of age; and
- (5) whose current conviction is not for one of the following

offenses:

18 Pa. C.S. §2501 (relating to criminal homicide)

18 Pa. C.S. §2901 (relating to kidnapping)

18 Pa. C.S. §3121 (relating to rape)

18 Pa. C.S. §3123 (relating to involuntary deviate sexual intercourse).

18 Pa. C.S. §3701 (a) (i), (ii), or (iii) (relating to robbery).

[3] (4) ***

[4] (5) ***

[5] (6) ***

§303.9. Sentence Range charts.

(b) Guideline sentence ranges are shown in the following chart for each combination of offense gravity score and prior record score, except for violations of 75 Pa. C.S. §§3731 and 3735 which are assigned guideline penalties in §303.5, and except for violations of The Controlled Substance, Drug, Device and Cosmetic Act (35 P.S. §§780-101 - 780-144) which are assigned guideline sentence ranges in subsection (c) below.

| Offense Gravity Score | Prior Record Score | Standard Range ¹ | Aggravated Range ¹ | Mitigated Range ¹ |
|---|--------------------|-----------------------------|-------------------------------|------------------------------|
| 10 Third Degree Murder ² | 0 | 48-120 | Statutory Limit ³ | 36-48 |
| | 1 | 54-120 | Statutory Limit ³ | 40-54 |
| | 2 | 60-120 | Statutory Limit ³ | 45-60 |
| | 3 | 72-120 | Statutory Limit ³ | 54-72 |
| | 4 | 84-120 | Statutory Limit ³ | 63-84 |
| | 5 | 96-120 | Statutory Limit ³ | 72-96 |
| | 6 | 102-120 | Statutory Limit ³ | 76-102 |
| 9 For example: Rape; Robbery, inflicting serious bodily injury ² | 0 | 36-60 | 60-75 | 27-36 |
| | 1 | 42-66 | 66-82 | 31-42 |
| | 2 | 48-72 | 72-90 | 36-48 |
| | 3 | 54-78 | 78-97 | 40-54 |
| | 4 | 66-84 | 84-105 | 49-66 |
| | 5 | 72-90 | 90-112 | 54-72 |
| | 6 | 78-102 | 102-120 | 58-78 |
| 8 For example: Kidnapping; Arson (Felony I); Voluntary Manslaughter ² | 0 | 24-48* | 48-60 | 18-24* |
| | 1 | 30-54 | 54-68 | 22-30* |
| | 2 | 36-60 | 60-75 | 27-36 |
| | 3 | 42-66 | 66-82 | 32-42 |
| | 4 | 54-72 | 72-90 | 40-54 |
| | 5 | 60-78 | 78-98 | 45-60 |
| | 6 | 66-90 | 90-112 | 50-66 |
| 7 For example: Robbery threatening serious bodily injury ² | 0 | 8-12* | 12-18* | 4-8 |
| | 1 | 12-29* | 29-36 | 9-12* |
| | 2 | 17-34* | 34-42 | 12-17* |
| | 3 | 22-39* | 39-49 | 16-22* |
| | 4 | 33-49 | 49-61 | 25-33 |
| | 5 | 38-54 | 54-68 | 28-38 |
| | 6 | 43-64 | 64-80 | 32-43 |

| Offense Gravity Score | Prior Record Score | Standard Range ¹ | Aggravated Range ¹ | Mitigated Range ¹ |
|--|--------------------|-----------------------------|-------------------------------|------------------------------|
| 6 For example: Robbery inflicting bodily injury; Theft by extortion (Felony III) ² | 0 | 4-12 [*] | 12-18 [*] | 2-4 |
| | 1 | 6-12 [*] | 12-18 [*] | 3-6 |
| | 2 | 8-12 [*] | 12-18 [*] | 4-8 |
| | 3 | 12-29 [*] | 29-36 | 9-12 [*] |
| | 4 | 23-34 [*] | 34-42 | 17-23 [*] |
| | 5 | 28-44 | 44-55 | 21-28 [*] |
| | 6 | 33-49 | 49-61 | 25-33 |
| 5 For example: Criminal Mischief (Felony III); Theft by Unlawful Taking (Felony III); Theft by Receiving Stolen Property (Felony III); Bribery ² | 0 | 0-12 | 12-18 [*] | Non-confinement |
| | 1 | 3-12 | 12-18 [*] | 1½-3 |
| | 2 | 5-12 | 12-18 [*] | 2½-5 |
| | 3 | 8-12 | 12-18 [*] | 4-8 |
| | 4 | 18-27 [*] | 27-34 | 14-18 [*] |
| | 5 | 21-30 [*] | 30-38 | 16-21 [*] |
| | 6 | 24-36 [*] | 36-45 | 18-24 [*] |
| 4 For example: Theft by receiving stolen property, less than \$2000, by force or threat of force, or in breach of fiduciary obligation ² | 0 | 0-12 | 12-18 [*] | Non-confinement |
| | 1 | 0-12 | 12-18 [*] | Non-confinement |
| | 2 | 0-12 | 12-18 [*] | Non-confinement |
| | 3 | 5-12 | 12-18 [*] | 2½-5 |
| | 4 | 8-12 | 12-18 [*] | 4-8 |
| | 5 | 18-27 [*] | 27-34 | 14-18 [*] |
| | 6 | 21-30 [*] | 30-38 | 16-21 [*] |
| 3 Most Misdemeanor I's ² | 0 | 0-12 | 12-18 [*] | Non-confinement |
| | 1 | 0-12 | 12-18 [*] | Non-confinement |
| | 2 | 0-12 | 12-18 [*] | Non-confinement |
| | 3 | 0-12 | 12-18 [*] | Non-confinement |
| | 4 | 3-12 | 12-18 [*] | 1½-3 |
| | 5 | 5-12 | 12-18 [*] | 2½-5 |
| | 6 | 8-12 | 12-18 [*] | 4-8 |
| 2 Most Misdemeanor II's ² | 0 | 0-12 | Statutory Limit ^{3*} | Non-confinement |
| | 1 | 0-12 | Statutory Limit ^{3*} | Non-confinement |
| | 2 | 0-12 | Statutory Limit ^{3*} | Non-confinement |
| | 3 | 0-12 | Statutory Limit ^{3*} | Non-confinement |
| | 4 | 0-12 | Statutory Limit ^{3*} | Non-confinement |
| | 5 | 2-12 | Statutory Limit ^{3*} | 1-2 |
| | 6 | 5-12 | Statutory Limit ^{3*} | 2½-5 |

| Offense Gravity Score | Prior Record Score | Standard Range ¹ | Aggravated Range ¹ | Mitigated Range ¹ |
|--|--------------------|-----------------------------|-------------------------------|------------------------------|
| 1 Most Misdemeanor III's ² | 0 | 0-6 | Statutory Limit ³ | Non-confinement |
| | 1 | 0-6 | Statutory Limit ³ | Non-confinement |
| | 2 | 0-6 | Statutory Limit ³ | Non-confinement |
| | 3 | 0-6 | Statutory Limit ³ | Non-confinement |
| | 4 | 0-6 | Statutory Limit ³ | Non-confinement |
| | 5 | 0-6 | Statutory Limit ³ | Non-confinement |
| | 6 | 0-6 | Statutory Limit ³ | Non-confinement |

¹Weapon Enhancement: At least 12 months and up to 24 months confinement shall be added to the above lengths when a deadly weapon was possessed in the crime.

²These offenses are listed here for illustrative purposes only. Offense series are given in §303.8.

³Statutory limit is defined as the longest minimum sentence permitted by law.

* Indicates eligibility for boot camp programs. See §303.2(3).

§303.9(c) The guideline sentence ranges are as follows:

**GUIDELINE RANGES FOR THE CONTROLLED SUBSTANCE
DRUG, DEVICE AND COSMETIC ACT¹**

| Offense Gravity Score | Prior Record Score | Standard Range | Aggravated Range | Mitigated Range |
|---|--------------------|----------------|------------------|-----------------|
| A (a)(12)(14)(30) Narcotics ² more than 100 g. | 0 | 30-42 | 42-48 | 24-30* |
| | 1 | 39-51 | 51-57 | 33-39 |
| | 2 | 48-60 | 60-66 | 42-48 |
| | 3 | 57-69 | 69-75 | 51-57 |
| | 4 | 60-72 | 72-78 | 54-60 |
| | 5 | 79-87 | 87-90 | 73-79 |
| | 6 | 84-90 | 90 | 78-84 |
| B (a)(12)(14)(30) Narcotics ² 2 g. to 100 g. | 0 | 18-30* | 30-36 | 12-28* |
| | 1 | 27-39 | 39-45 | 21-27* |
| | 2 | 36-48 | 48-54 | 30-36 |
| | 3 | 45-57 | 57-63 | 39-45 |
| | 4 | 54-66 | 66-72 | 48-54 |
| | 5 | 63-75 | 75-81 | 57-63 |
| | 6 | 72-84 | 84-90 | 66-72 |
| C (a)(12)(14)(30) Narcotics ² less than 2 g. | 0 | 7-18* | 18-24* | 3-9 |
| | 1 | 15-27* | 27-33 | 9-15* |
| | 2 | 24-36* | 36-42 | 18-24* |
| | 3 | 33-45 | 45-51 | 27-33 |
| | 4 | 42-54 | 54-60 | 36-42 |
| | 5 | 51-63 | 63-69 | 45-51 |
| | 6 | 60-72 | 72-78 | 54-60 |
| D (a)(12)(14)(30) PCP, Cocaine, Methamphet- amine more than 100 g. | 0 | 27-39 | 39-45 | 21-27* |
| | 1 | 33-45 | 45-51 | 27-33 |
| | 2 | 39-51 | 51-57 | 33-39 |
| | 3 | 45-57 | 57-60 | 39-45 |
| | 4 | 51-60 | 60 | 45-51 |
| | 5 | 57-60 | 60 | 51-57 |
| | 6 | 60 | 60 | 54-60 |
| E (a)(12)(14)(30) PCP, Cocaine, Methamphet- amine 2 g. to 100 g. | 0 | 15-27* | 27-33 | 9-15* |
| | 1 | 21-33* | 33-39 | 15-21* |
| | 2 | 27-39 | 39-45 | 21-27* |
| | 3 | 33-45 | 45-51 | 27-33 |
| | 4 | 39-51 | 51-57 | 33-39 |
| | 5 | 45-57 | 57-60 | 39-45 |
| | 6 | 51-60 | 60 | 45-51 |
| F (a)(12)(14)(30) PCP, Cocaine, Methamphet- amine less than 2 g. | 0 | 6-15* | 15-21* | 3-6 |
| | 1 | 9-21* | 21-27* | 6-9 |
| | 2 | 15-27* | 27-33 | 9-15* |
| | 3 | 21-33* | 33-39 | 15-21* |
| | 4 | 27-39 | 39-45 | 21-27* |
| | 5 | 33-45 | 45-51 | 27-33 |
| | 6 | 39-51 | 51-57 | 33-39 |

¹ Weapon enhancement: At least 12 months and up to 24 months confinement shall be added to the above lengths when a deadly weapon was possessed in the crime.

² Narcotics of Schedules I and II as defined in 35 P.S. §780-102.

| Offense Gravity Score | Prior Record Score | Standard Range | Aggravated Range | Mitigated Range |
|--|--------------------|----------------|------------------|-----------------|
| G (a)(12)(14)(30) Marijuana more than 110 lbs. | 0 | 12-18' | 18-24' | 6-12' |
| | 1 | 15-21' | 21-27' | 9-15' |
| | 2 | 18-24' | 24-30' | 12-18' |
| | 3 | 21-28' | 28-30 | 15-21' |
| | 4 | 24-30' | 30 | 18-24' |
| | 5 | 27-30 | 30 | 21-27' |
| | 6 | 30 | 30 | 30 |
| H (a)(12)(14)(30) Marijuana 1 lb. - 110 lbs. | 0 | 6-12' | 12-18' | 3-6 |
| | 1 | 9-15' | 15-21' | 5-9 |
| | 2 | 12-18' | 18-24' | 6-12' |
| | 3 | 15-21' | 21-27' | 9-15' |
| | 4 | 18-24' | 24-30' | 12-18' |
| | 5 | 21-27' | 27-30 | 15-21' |
| | 6 | 24-30' | 30 | 18-24' |
| I (a)(12)(14)(30) Marijuana less than 1 lb. | 0 | 3-6 | 6-12' | 1-3 |
| | 1 | 3-9 | 9-15' | 2-3 |
| | 2 | 7-12' | 12-18' | 3-7 |
| | 3 | 9-15' | 15-21' | 3-9 |
| | 4 | 12-18' | 18-24' | 6-12' |
| | 5 | 15-21' | 21-27' | 9-15' |
| | 6 | 18-24' | 24-30' | 12-18' |
| J (a)(12)(14)(30) Offenses in- volving Schedule I, II or III drugs; drug offenses w/statutory limit ³ of 2.5 years | 0 | 6-12' | 12-18' | 3-6 |
| | 1 | 9-15' | 15-21' | 3-9 |
| | 2 | 12-18' | 18-24' | 7-12' |
| | 3 | 15-21' | 21-28' | 9-15' |
| | 4 | 18-24' | 24-30' | 12-18' |
| | 5 | 21-27' | 27-30 | 15-21' |
| | 6 | 24-30' | 30 | 18-24' |
| K (a)(12)(14)(30) Offenses in- volving Schedule IV drugs; drug offenses w/statutory limit ³ of 1.5 years | 0 | 4-10 | 10-18' | 0-4 |
| | 1 | 5-12' | 12-18' | 1-5 |
| | 2 | 6-15' | 15-18' | 2-6 |
| | 3 | 7-18' | 18' | 3-7 |
| | 4 | 8-18' | 18' | 4-8 |
| | 5 | 9-18' | 18' | 5-9 |
| | 6 | 10-18' | 18' | 6-10 |
| L All other drug offenses with a statutory limit ³ of one year | 0 | 2-8 | 8-12' | 0-2 |
| | 1 | 3-10 | 10-12' | 0-3 |
| | 2 | 4-12' | 12' | 1-4 |
| | 3 | 5-12' | 12' | 2-5 |
| | 4 | 6-12' | 12' | 3-6 |
| | 5 | 7-12' | 12' | 4-7 |
| | 6 | 8-12' | 12' | 5-8 |

³ "Statutory limit" is defined as the longest minimum sentence permitted by law.

| Offense Gravity Score | Prior Record Score | Standard Range | Aggravated Range | Mitigated Range |
|--------------------------------|--------------------|----------------|------------------|-----------------|
| M (a)(12)(14)(30) | 0 | 0-6 | 6 | 0 |
| offenses involving | 1 | 1-6 | 6 | 0-1 |
| Schedule V | 2 | 2-6 | 6 | 0-2 |
| drugs; drug | 3 | 3-6 | 6 | 0-3 |
| offenses | 4 | 4-6 | 6 | 1-4 |
| w/statutory limit ³ | 5 | 5-6 | 6 | 2-5 |
| of 6 months | 6 | 6 | 6 | 3-6 |

³ "Statutory limit" is defined as the longest minimum sentence permitted by law.

* Indicates eligibility for boot camp. See §303.2(3).

THE PENNSYLVANIA COMMISSION ON SENTENCING

BACKGROUND

The Pennsylvania Commission on Sentencing was created by the General Assembly in 1978 to deal with the problems of disparity and leniency in judicial sentencing. The Commission was given the responsibility to develop sentencing guidelines which must be considered by all judges in Pennsylvania. The Commission underwent Sunset Review and was reestablished in May of 1986.

The Commission has 11 members. Four judges are appointed by the Chief Justice of the Supreme Court of Pennsylvania, two state senators are appointed by the President Pro Tempore of the Senate and two state representatives are appointed by the Speaker of the House of Representatives. The remaining appointments are made by the Governor and must include a district attorney, defense attorney, and a professor of law or criminologist. Commissioners are appointed for two year terms and serve without compensation.

The Commission was given the primary duty of developing sentencing guidelines which would: 1) specify a range of sentences applicable for crimes of given degree of gravity; 2) specify a range of sentences of increased severity for defendants previously convicted of a felony or felonies or convicted of a crime involving the use of a deadly weapon; and 3) prescribe variations from the range on account of aggravating and mitigating circumstances. The purpose of the guidelines was to prescribe a benchmark for the courts to enhance sentencing equity

and fairness, and to increase sentence severity for violent offenders and drug traffickers.

In addition to promulgating sentencing guidelines the Commission was empowered to establish a research and development program; to serve as a clearing house of information on Commonwealth sentencing practices; to serve in a consulting capacity to state courts; to collect and publish information regarding the effectiveness of sentences; and to make recommendations to the General Assembly concerning modification or enactment of sentencing and correctional statutes.

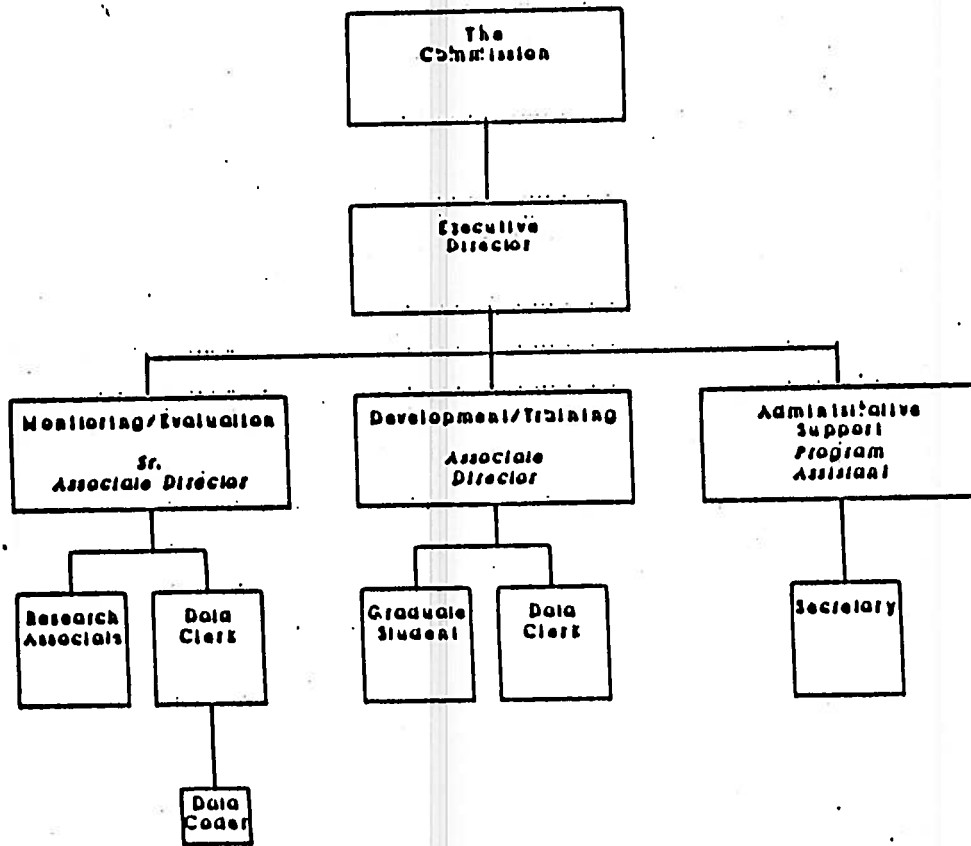
The initial sentencing guidelines promulgated by the Commission went into effect on July 22, 1982 and applied to all crimes committed on or after that date. Amendments to the guidelines went into effect in June 1983, January 1986 and June 1986. On October 7, 1987 the Pennsylvania Supreme Court invalidated all guidelines due to a procedural error that occurred in 1981 when the legislature rejected the first set of guidelines submitted to it. New guidelines were drafted and became effective on April 25, 1988.

Under the provisions of the guidelines, all offenders are classified on the basis of the gravity of their current offense (Offense Gravity Score) and the seriousness and extent of their prior record (Prior Record Score). For each combination of Offense Gravity Score and Prior Record Score, three levels of recommended guideline ranges are prescribed: a standard range (for use under normal circumstances), an aggravated range (for use when the judge determines there are aggravating cir-

cumstances), and a mitigated range (for use when the judge determines there are mitigating circumstances). If either the aggravated or mitigated range is chosen, the judge is required to specify what aggravating or mitigating reasons were found. Furthermore, an enhanced range of sentences is prescribed if the offender possessed a deadly weapon during the commission of the offense, involved youths in drug trafficking, or trafficked in drugs within 1000 feet of a school. All ranges refer to minimum incarceration sentences under Pennsylvania law. Whenever a sentence is imposed outside of the recommended guideline ranges, the judge must provide a written statement of the reasons for deviating from the guidelines. The guidelines' enabling legislation granted both the prosecutor and the defense attorney the right to appeal the discretionary aspects of a sentence. Superior Court is instructed to vacate a sentence when the lower court failed to consider the guidelines, applied the guidelines erroneously, departed from the guidelines and imposed an unreasonable sentence, or sentenced within the guidelines and imposed a clearly unreasonable sentence.

ORGANIZATIONAL CHART

Commission on Sentencing



**THE
PENNSYLVANIA COMMISSION
ON
SENTENCING**



**1989 - 1990
ANNUAL REPORT**

**SENTENCING
in
PENNSYLVANIA**

**THE PENNSYLVANIA COMMISSION
ON SENTENCING**

1989-1990 ANNUAL REPORT

**SENTENCING
IN
PENNSYLVANIA**

JUDGE MELVIN G. LEVY
ACTING CHAIR

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ROBIN L. LUBITZ
Associate Director

July 1, 1990

A MESSAGE FROM THE EXECUTIVE DIRECTOR



COMMONWEALTH OF PENNSYLVANIA
THE PENNSYLVANIA COMMISSION ON SENTENCING
P.O. BOX 1200
STATE COLLEGE, PA 16804
(814) 863-2797

John W. O'Brien
Chairman

John H. Kramer
Executive Director

This Annual Report is the eighth since Pennsylvania's sentencing guidelines were implemented. Based on these eight years of experience with the guidelines, the Commission has determined that it is time to conduct a thorough reassessment of the guidelines. The Commission will initiate the reassessment later this summer with a questionnaire asking for your evaluation of the guidelines and your recommendations for their revision. We will also interview judges, district attorneys, defense attorneys, and probation officers and hold symposia to allow for an exchange of ideas. The Commission is very excited about this reassessment and the revision of the guidelines.

Recently, major changes occurred on the Commission. The Honorable John W. O'Brien, one of the original commissioners appointed in 1979 and chair of the Commission since 1985, is retiring. His devotion and dedication to the Commission and its guidelines were instrumental in the success of the Commission.

The Honorable Richard A. Lewis, whose term expired, is also leaving the Commission. Mr. Lewis, Dauphin County District Attorney, was a commissioner since 1983. His intelligence, experience, and hard work will be missed.

Finally, Mr. Warren Spencer, attorney from Tioga County, is leaving the Commission after five years of service. His legislative insights and expertise were invaluable to the Commission.

New members of the Commission, replacing those departing, are The Honorable Robert E. Dauer, Administrative Judge of the Court of Common Pleas in Allegheny County; The Honorable Theresa Ferris-Dukovich, District Attorney of Beaver County; and Mr. John P. Moses, defense attorney from Wilkes-Barre. Each of these individuals brings to the Commission a wealth of knowledge and experience.

As always, if we can be of any assistance, please contact us at our offices in State College.

Sincerely,

A handwritten signature in cursive script that reads "John H. Kramer".

John H. Kramer
Executive Director

JHK:seb



MICHAEL E. BORTNER

**STATE REPRESENTATIVE
YORK COUNTY**

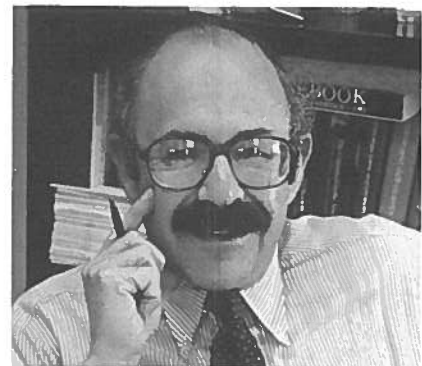
Representative Bortner was appointed to the Commission in January 1987. He received his B.A. degree from Susquehanna University and his law degree from the Claude W. Pettit College of Law of Ohio Northern University. He previously worked as an Assistant District Attorney and Assistant Public Defender and has been a practicing attorney since 1976. He was first elected to the House in 1984 and is a member of the Judiciary Committee.



DANIEL F. CLARK

**STATE REPRESENTATIVE
JUNIATA COUNTY**

Representative Clark was appointed to the Commission in January, 1989. He received his B.A. degree from Lycoming College (1976) and his J.D. degree from Duquesne University Law School (1979). Since 1979 he has been a practicing attorney engaged in the general practice of law. He was elected District Attorney of Juniata County and served from 1984-1987. He was first elected to the House in 1989.



ALFRED BLUMSTEIN

**PROFESSOR
CARNEGIE MELLON UNIVERSITY**

Dr. Blumstein is the J. Erik Jonsson Professor of Urban Systems and Operations Research and Dean of the School of Urban and Public Affairs at Carnegie Mellon University. He has chaired the National Academy of Sciences Committee on Research on Law Enforcement and the Administration of Justice and has chaired the committee's panels on Research on Deterrence and Incapacitative Effects, on Sentencing Research, and on Criminal Careers. He is also the chairman of the Pennsylvania Commission on Crime and Delinquency.



THERESA FERRIS-DUKOVICH

**DISTRICT ATTORNEY
BEAVER COUNTY**

Ms. Ferris-Dukovich was appointed to the Commission in May of 1990. She received a B.A. degree from Carlow College (1971), an M.A. degree from Carnegie-Mellon University (1975) and a J.D. degree from Duquesne University School of Law (1980). In 1988 she became the first woman in over fifty years to be elected to the office of District Attorney in Pennsylvania. Prior to her election she maintained a private law practice and also served as a full time assistant district attorney with special emphasis on sexual assault cases.



JOHN P. MOSES

**ATTORNEY
LUZERNE COUNTY**

Mr. Moses was appointed to the Commission in May of 1990. He received his A.B. degree from King's College (1968) and his J.D. Degree from Villanova University School of Law (1971). He is Chairman of the Judicial Task Force for the Pennsylvania Prothonotaries' and Clerks of Courts' Association and serves as a member of the Luzerne County Trial Court Nominating Committee. He is a partner in the law firm of MOSES, GELSO & PROCIAK, Wilkes-Barre, Pennsylvania.



JOHN H. KRAMER

EXECUTIVE DIRECTOR

Dr. Kramer has been the Executive Director of the Commission since 1979. He received a B.A. degree from Ohio State University (1966), and received M.A. (1970) and Ph.D. (1975) degrees from the University of Iowa. In addition to his responsibilities with the Commission, he is an Associate Professor of Sociology at Penn State University. Dr. Kramer is the author of several books and numerous articles on the criminal justice system.

THE STAFF OF THE COMMISSION

John H. Kramer, Ph.D.
Executive Director

Robin L. Lubitz
Associate Director

John P. McCloskey
Research Associate

Cynthia A. Kempinen, Ph.D.
Assistant Research Director

Beverly A. Sampsell
Administrative Assistant

Sara E. Babin
Secretary

Carrie L. Peters
Karen A. Seprish (part-time)
Data Preparation Operators

Student Assistants

Amy Begley
Kathleen Corrigan
Jeanene Knapp
Thomas Rentschler
Jeff Ulmer

Chris Burke
Kurt Emhoff
Michael Markey
Meredith Swartz
Mary Wheeland

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PART I: THE COMMISSION AND ITS WORK

THE BACKGROUND AND HISTORY OF THE COMMISSION

PURPOSE OF THE COMMISSION

The Pennsylvania Commission on Sentencing was created by the General Assembly in 1978 to address the perceived problems of unwarranted disparity and undue leniency in judicial sentencing. The Commission was charged with the responsibility to develop sentencing guidelines which must be considered by all judges in Pennsylvania. The guidelines were intended to promote sentencing equity and fairness by providing every judge with a common reference point for sentencing similar offenders convicted of similar crimes.

The initial sentencing guidelines promulgated by the Commission went into effect on July 22, 1982 and applied to all crimes committed on or after that date. Amendments to the guidelines went into effect in June 1983, January 1986, and June 1986. On October 7, 1987 the Pennsylvania Supreme Court invalidated all guidelines due to a procedural error that occurred in 1981 when the legislature rejected the Commission's initial set of guidelines. New guidelines were drafted and became effective on April 25, 1988.

COMPOSITION OF THE COMMISSION

The Commission has 11 members. Four judges are appointed by the Chief Justice of Pennsylvania, two state senators are appointed by the President Pro Tempore of the Senate, and two state representatives are appointed by the Speaker of the House of Representatives. The remaining appointments are made by the Governor and must include a district attorney, a defense attorney, and a professor of law or criminologist. Commissioners are appointed for two year terms and serve without compensation. Biographical summaries of current Commissioners are presented at the beginning of this report.

POWERS AND DUTIES OF THE COMMISSION

The Commission was given the primary duty of developing sentencing guidelines which would: 1) specify a range of sentences applicable for crimes of a given degree of gravity; 2) specify a range of sentences of increased severity for defendants previously convicted of a felony or felonies or convicted of a crime involving the use of a deadly weapon; and 3) prescribe variations from the range on account of aggravating and mitigating circumstances.

In addition to promulgating sentencing guidelines the Commission was empowered to: establish a research and development program; serve as a clearinghouse of information on Commonwealth sentencing practices; serve in a consulting capacity to state courts; collect and publish information regarding the effectiveness of sentences; and make recommendations to the General Assembly concerning modification or enactment of sentencing and correctional statutes.

The Commission also received a staff briefing on statewide sentencing practices during the first half of 1989, discussed problems with the reporting of sentences in several counties, and reviewed problems associated with the application of the deadly weapon enhancement provision of the guidelines. The Commission also approved a plan to request additional appropriations for the next fiscal year in order to fund a comprehensive reevaluation of the sentencing guidelines.

The Commission's second meeting was held on December 1, 1989 in Philadelphia. At this meeting the Commission discussed a request from members of the House and Senate Judiciary Committees, that the Commission consider possible modifications to the guidelines to help deal with prison and jail overcrowding. The Commission reviewed several strategies for adjusting the guidelines to deal with this problem. After considerable discussion, the Commission passed a motion appointing a three member subcommittee to meet with the House and Senate Judiciary committees to discuss ways in which the Commission might be helpful in dealing with the problems of prison and jail overcrowding.

The Commission was also briefed on the results of a meeting with the Juvenile Court Judges' Commission concerning the treatment of juvenile adjudications in the guidelines. The Juvenile Court Judges' Commission's recommendations were communicated to the Commission. Lastly, the Commission discussed problems associated with the computation of the prior record score and was briefed by staff on recent appellate court decisions concerning sentencing and the guidelines.

The Commission's last meeting was held in Harrisburg on April 30, 1990. At this meeting the Commission's chairman, Judge John W. O'Brien, announced his pending retirement, and the Commission unanimously passed a resolution commending Judge O'Brien for his outstanding contribution to the Commission and to the Commonwealth. Judge O'Brien had served on the Commission since its inception in 1979 and had served as chair of the Commission for the past five years.

The Commission was also briefed on the results of the subcommittee's presentations before the House and Senate Judiciary Committees. The subcommittee's preliminary recommendations were approved by the Commission and the subcommittee was instructed to continue to study and refine their proposals for review and adoption at a subsequent meeting. The subcommittee was also instructed to research what steps Pennsylvania counties and other jurisdictions have taken to implement "intermediate sentencing sanctions" and to report back to the full Commission on the success of these efforts. The subcommittee was also charged with the responsibility of preparing a plan and timetable for reevaluating the current sentencing guidelines and for preparing a questionnaire to be sent to judges, prosecutors, defense attorneys and probation officers.

The Commission was briefed on proposed legislation creating "boot camps", reviewed newly enacted criminal offenses, and was briefed on recent appellate cases. The Commission was also made aware of problems associated with the counting of prior drug convictions in the guidelines.

GUIDELINE TRAINING AND EDUCATION PROGRAM

During fiscal year 1989-1990 the Commission continued to offer training seminars on sentencing guidelines and other sentencing issues. During this time the Commission conducted 16 training seminars around the state. Twelve of these seminars were scheduled by the Commission and the remaining four were arranged by special request. Approximately 300 individuals attended these seminars, including judges, prosecutors, defense attorneys, probation officers, law clerks, court staff and private citizens. A list of these training seminars and locations is shown on the below.

Those seminars which were scheduled by the Commission were held regionally across the state and included both a *Beginning Session* and an *Advanced Session*. The beginning sessions were designed for persons generally unfamiliar with the guidelines. These sessions emphasized the basics of the guidelines, how to apply them and how to complete the guideline sentence form. The advanced sessions were designed for individuals already somewhat familiar with the guidelines and emphasized specific applications of the guidelines, changes in the guidelines, and recent appellate decisions.

TRAINING SEMINARS ON SENTENCING GUIDELINES DURING FISCAL YEAR 1989-1990

| <u>DATE</u> | <u>LOCATION</u> | <u>TYPE OF SESSION</u> | <u>NUMBER</u> |
|--------------------|-----------------|---|---------------|
| JULY 13, 1989 | STATE COLLEGE | OPEN FOR CENTRAL PENNSYLVANIA | 2 |
| AUGUST 4, 1989 | MEADVILLE | OPEN TO CRAWFORD COUNTY | 1 |
| SEPTEMBER 12, 1989 | PHILADELPHIA | OPEN TO SOUTHEASTERN PENNSYLVANIA | 2 |
| NOVEMBER 28, 1989 | JOHNSTOWN | OPEN TO SOUTHCENTRAL PENNSYLVANIA | 2 |
| DECEMBER 12, 1989 | PITTSBURGH | OPEN TO SOUTHWESTERN PENNSYLVANIA | 2 |
| JANUARY 9, 1990 | HARRISBURG | OPEN TO DAUPHIN AND SURROUNDING COUNTIES | 2 |
| MARCH 12, 1990 | PHILADELPHIA | FOR THE PHILADELPHIA PROBATION DEPARTMENT | 1 |
| APRIL 3, 1990 | EASTON | OPEN TO NORTHAMPTON COUNTY | 1 |
| MAY 15, 1990 | GREENSBURG | OPEN TO WESTMORELAND COUNTY | 1 |
| JUNE 4, 1990 | PHILADELPHIA | OPEN TO SOUTHEASTERN PENNSYLVANIA | 2 |

OTHER COMMISSION ACTIVITIES

In addition to performing their regular ongoing duties, the staff of the Commission was involved in a number of other activities relating to guidelines and the criminal justice system. Following is a summary of some of these activities:

- * The Executive Director testified before the Senate Judiciary Committee concerning guideline strategies to help alleviate correctional overcrowding
- * The Executive Director testified before the House Judiciary Committee on three separate occasions. These appearances dealt with prison overcrowding, guideline strategies to help alleviate corrections overcrowding, and "boot camps".
- * The Executive Director served on the Pennsylvania Commission on Crime and Delinquency Corrections Overcrowding Committee. This Committee released a report containing eleven recommendations for dealing with the overcrowding problem.
- * The Associate Director served as a staff member to the Pennsylvania Commission on Crime and Delinquency Corrections Overcrowding Committee.
- * The Executive Director and the Associate Director continued to serve on the Correctional Population Projection Committee. This multi-agency committee prepares prison and jail population projections.
- * The Commission staff continued to work with the Pennsylvania Juvenile Court Judges' Commission and the Administrative Office of Pennsylvania Courts to study what happens to certified juveniles after they are transferred to adult court.
- * The Executive Director presented two papers on race, sentencing and sentencing guidelines at the Annual Meeting of the Society for the Study of Social Problems.
- * The Executive Director presented a paper on sentencing guidelines and sentencing disparity at the annual meeting of the American Society of Criminology.

- * The Administrative Assistant provides administrative support to the Commission and to the Executive Director. The Administrative Assistant prepares the budget, monitors expenditures, arranges Commission meetings, and coordinates office clerical functions.
- * The Secretary is responsible for the daily clerical work of the office. The Secretary also maintains the Commission's computerized mailing lists, directs telephone calls, and organizes office files.
- * The Data Preparation Operator is responsible for reviewing guideline sentence forms for accuracy and completeness, calling counties when there are questions, and coding and computerizing the information on the form.

COMMISSION BUDGET

The General Assembly appropriated \$328,000 for the Commission during fiscal year 1989-1990. Estimated expenditures for the year (as of June 15, 1990) are as follows:

COMMISSION EXPENDITURES

| <u>EXPENDITURE</u> | <u>AMOUNT</u> |
|---------------------------|-------------------|
| PERSONNEL | \$ 229,507 |
| FRINGE BENEFITS | \$ 52,852 |
| COMPUTER SERVICES | \$ 3,400 |
| COMMUNICATIONS | \$ 7,500 |
| PRINTING | \$ 7,620 |
| TRAVEL | \$ 8,500 |
| EQUIPMENT AND MAINTENANCE | \$ 7,450 |
| SUPPLIES | \$ 4,600 |
| MISCELLANEOUS | \$ 6,571 |
| TOTAL | \$ 328,000 |

OFFENDER CHARACTERISTICS

Table A through Table D show the distribution of offenders by sex, race, age, and the type of disposition. In Table 2 and Table 3 these distributions are summarized by county and by crime type. Figure E displays the distribution of sentences by the statutory grade of the offense.

Male offenders accounted for 85.2% of all sentences (see Figure A) and accounted for over 90% of all homicides, assaults, burglaries, kidnappings, rapes, robberies and weapons offenses (see Table 3). Female participation was highest (over 25%) for voluntary manslaughter, forgery, retail theft, and felony prostitution (See Table 3). White offenders accounted for 57.9% of all sentences (see Figure B), but there was considerable variation depending on the type of offenses (see Table 3).

As shown in Figure D, the vast majority of convictions were obtained through guilty pleas (89.1%) and only a much smaller proportion resulted from trials (3.6% from jury trials and 7.4% from other trials). Trials were most common (over 20%) for aggravated assault, all types of homicide, rape, involuntary deviate sexual intercourse, kidnapping, possessing instruments of crime, and felony prostitution. (see Table 3).

Sentences were evenly split between felonies (50.9%) and misdemeanors (49.1%), however, three out of every ten sentences imposed were for third degree felonies (see Figure E).

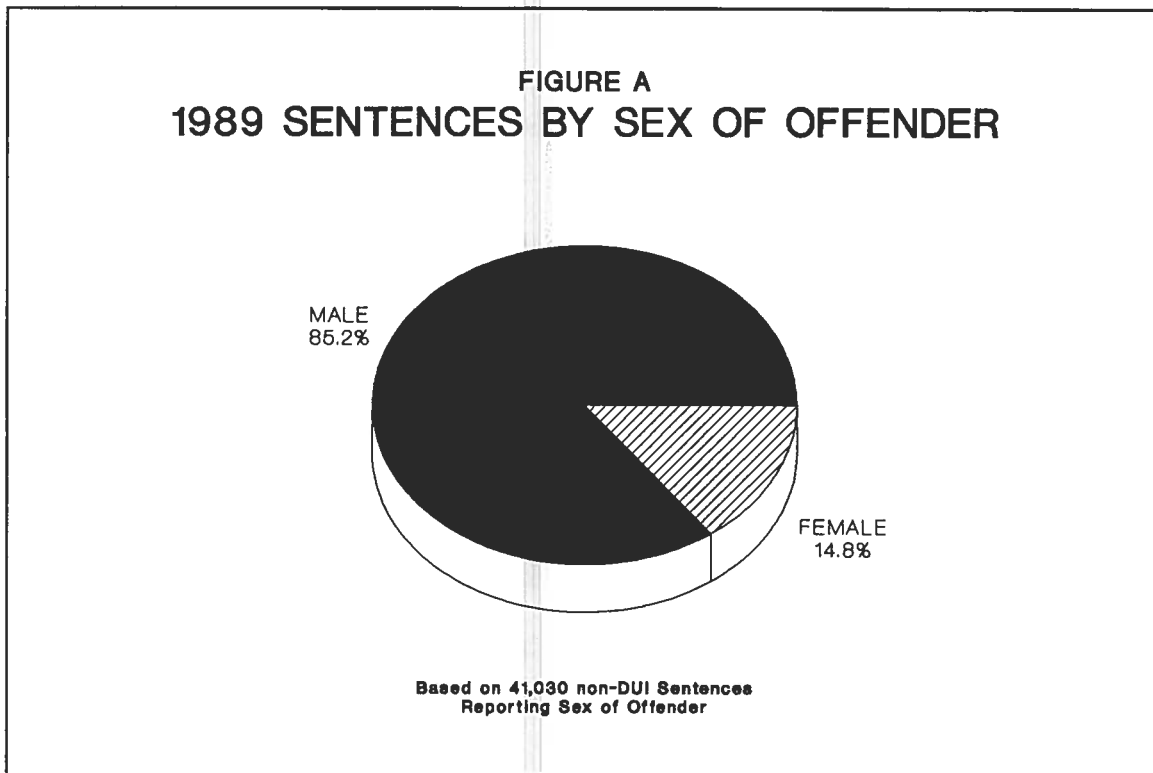


FIGURE D
1989 SENTENCES BY TYPE OF DISPOSITION

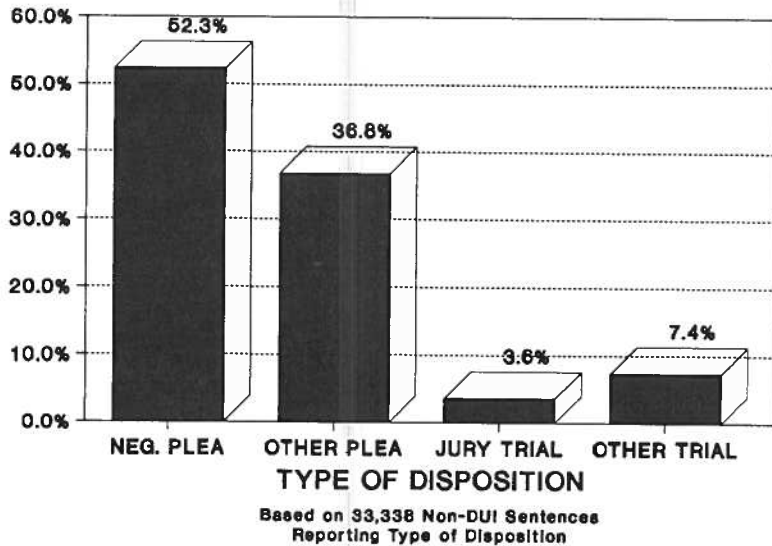


FIGURE E
1989 SENTENCES BY GRADE OF OFFENSE

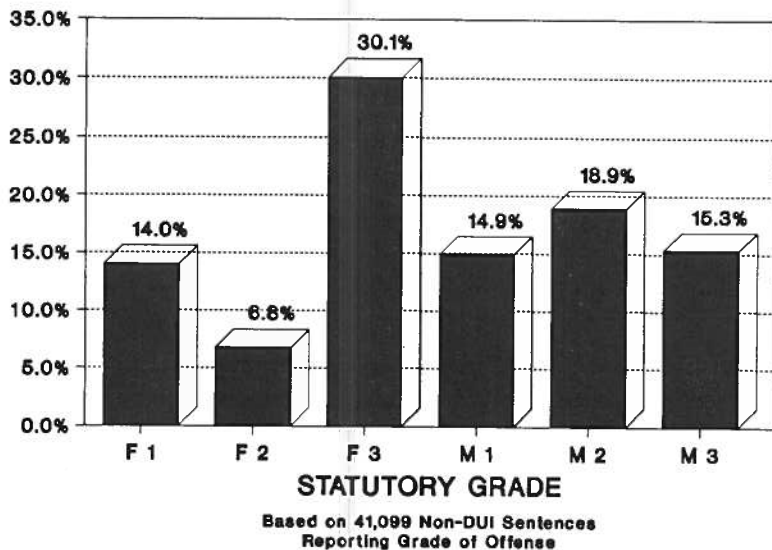


TABLE 3

OFFENDER CHARACTERISTICS BY OFFENSE (EXCLUDING DUI)

| OFFENSE | TOTAL | SEX | | RACE | | CONVICTION | | | MEAN AGE |
|--------------------------|--------------|-----------|-----------|-----------|-----------|------------|----------|----------|-------------|
| | | MALE | FEMALE | WHITE | OTHER | PLEA | NON-JURY | JURY | |
| ASSAULT-AGGRAVATED F1 | 527 | 92 | 8 | 41 | 59 | 71 | 15 | 15 | 30.4 |
| ASSAULT-AGGRAVATED F2 | 783 | 88 | 12 | 45 | 55 | 78 | 16 | 6 | 30.4 |
| ASSAULT-SIMPLE | 2612 | 92 | 8 | 62 | 38 | 85 | 12 | 3 | 29.4 |
| ASSAULT-TERR. THREATS | 464 | 95 | 5 | 72 | 28 | 86 | 10 | 4 | 31.5 |
| ARSON F1 | 75 | 88 | 12 | 71 | 29 | 80 | 10 | 10 | 30.0 |
| ARSON F2 | 125 | 90 | 10 | 77 | 23 | 91 | 7 | 2 | 30.2 |
| BURGLARY | 3887 | 95 | 5 | 61 | 39 | 92 | 5 | 3 | 25.5 |
| CATASTROPHE F1 | 41 | 88 | 12 | 58 | 42 | 89 | 9 | 2 | 32.0 |
| CORRUPT ORGANIZATIONS | 17 | 94 | 6 | 75 | 25 | 86 | 0 | 14 | 37.9 |
| CRIM. MISCHIEF F3 | 58 | 97 | 3 | 86 | 14 | 88 | 10 | 2 | 26.8 |
| CRIM. TRESPASS F2 | 455 | 98 | 2 | 53 | 47 | 87 | 12 | 1 | 26.8 |
| CRIM. TRESPASS F3 | 332 | 96 | 4 | 57 | 43 | 86 | 13 | 1 | 28.7 |
| DRUG FELONY | 5397 | 88 | 12 | 36 | 64 | 84 | 12 | 4 | 29.5 |
| DRUG MISDEMEANOR | 3034 | 82 | 18 | 59 | 41 | 92 | 7 | 1 | 29.7 |
| ESCAPE FELONY | 225 | 93 | 7 | 53 | 47 | 93 | 3 | 4 | 28.6 |
| ESCAPE MISDEMEANOR | 101 | 93 | 7 | 74 | 26 | 94 | 4 | 2 | 28.7 |
| HOMICIDE-BY VEHICLE | 77 | 91 | 9 | 95 | 5 | 83 | 5 | 12 | 30.0 |
| HOMICIDE-BY VEH. DUI | 51 | 94 | 6 | 92 | 8 | 49 | 16 | 35 | 32.0 |
| HOMICIDE-INCHOATE | 32 | 94 | 6 | 72 | 28 | 46 | 4 | 50 | 36.0 |
| HOMICIDE-INVOL. MS. | 80 | 84 | 16 | 55 | 45 | 46 | 44 | 10 | 35.6 |
| HOMICIDE-MURDER III | 176 | 90 | 10 | 29 | 71 | 54 | 31 | 15 | 30.4 |
| HOMICIDE-VOL. MS. | 60 | 70 | 30 | 21 | 79 | 33 | 46 | 21 | 35.6 |
| FORGERY F2 | 337 | 72 | 28 | 85 | 15 | 99 | 0 | 1 | 27.7 |
| FORGERY F3 | 913 | 65 | 35 | 67 | 33 | 98 | 1 | 1 | 29.4 |
| FORGERY MISDEMEANOR | 57 | 75 | 24 | 82 | 18 | 94 | 2 | 4 | 31.4 |
| INVOL. DEV. SEX. INT. | 196 | 96 | 4 | 75 | 25 | 65 | 11 | 24 | 37.6 |
| KIDNAPPING | 23 | 100 | 0 | 68 | 32 | 67 | 27 | 6 | 31.6 |
| POSS. INSTR. CRIME GEN. | 133 | 89 | 11 | 41 | 59 | 78 | 19 | 3 | 28.3 |
| POSS. INSTR. CRIME WEAP. | 51 | 84 | 16 | 26 | 74 | 63 | 30 | 7 | 28.3 |
| PROHIB. OFFENSIVE WEAPON | 131 | 93 | 7 | 79 | 21 | 90 | 8 | 2 | 29.2 |
| PROSTITUTION FELONY | 14 | 71 | 29 | 65 | 35 | 71 | 0 | 29 | 36.6 |
| RAPE | 262 | 99 | 1 | 32 | 68 | 55 | 12 | 33 | 31.3 |
| RAPE-STATUTORY | 96 | 100 | 0 | 66 | 34 | 90 | 4 | 6 | 33.2 |
| ROBBERY F1 | 784 | 97 | 3 | 29 | 71 | 82 | 6 | 12 | 27.9 |
| ROBBERY F2 | 541 | 94 | 6 | 19 | 81 | 83 | 13 | 4 | 26.0 |
| ROBBERY F3 | 556 | 94 | 6 | 20 | 80 | 82 | 15 | 3 | 24.8 |
| THEFT-FELONY | 3051 | 92 | 8 | 52 | 48 | 91 | 7 | 2 | 26.7 |
| THEFT-MISDEMEANOR | 5006 | 86 | 14 | 72 | 28 | 94 | 5 | 1 | 27.5 |
| THEFT-RETAIL FELONY | 1274 | 62 | 38 | 36 | 64 | 95 | 4 | 1 | 34.9 |
| THEFT-RETAIL MISD | 1262 | 59 | 41 | 54 | 46 | 99 | 1 | 0 | 32.0 |
| VIO. FIREARM ACT LOADED | 262 | 94 | 6 | 48 | 52 | 81 | 15 | 4 | 33.0 |
| VIO. FIREARM ACT OTHER | 172 | 95 | 5 | 68 | 32 | 90 | 6 | 4 | 32.1 |
| OTHER FELONIES | 654 | 73 | 27 | 54 | 46 | 81 | 5 | 14 | 32.2 |
| OTHER MISDEMEANORS | 6706 | 78 | 22 | 77 | 23 | 94 | 4 | 2 | 31.4 |
| TOTAL | 41099 | 85 | 15 | 58 | 42 | 89 | 7 | 4 | 29.3 |

NOTE: PERCENTAGES MAY NOT ADD TO 100% DUE TO ROUNDING

DISPOSITIONAL AND DURATIONAL DEPARTURES

As previously discussed, the overall departure rate (about 14%) can be separated into dispositional and durational components as shown in *Table 9*. Only about 6% of all sentences were dispositional departures (a non-incarceration sentence was imposed when the guidelines recommended incarceration). About 8% of all sentences were durational departures (the length of incarceration imposed was either greater than or less than the length of incarceration recommended by the guidelines). About 2% of all sentences were durational departures above the guidelines and about 6% were durational departure rates below the guidelines.

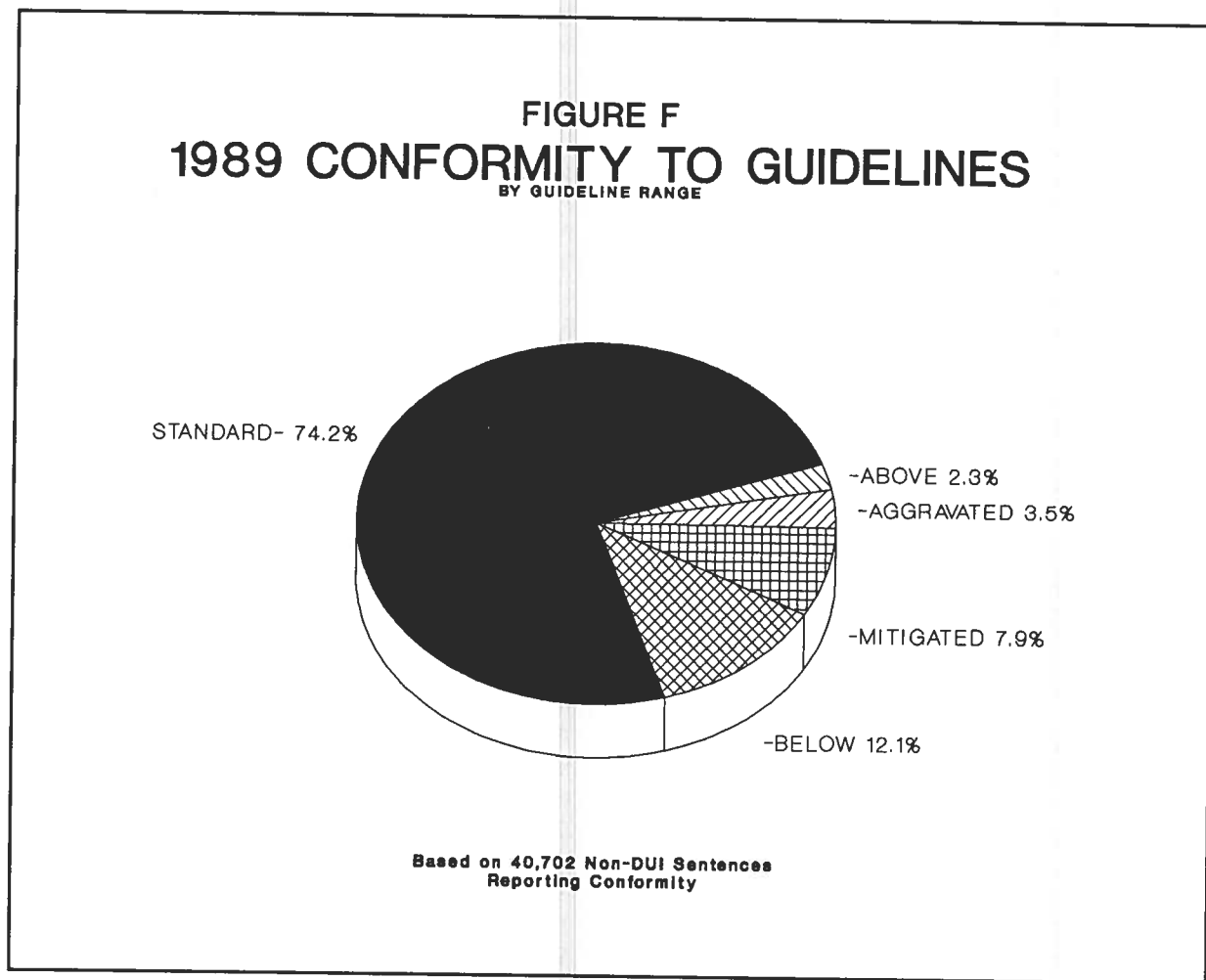


TABLE 5
CONFORMITY TO GUIDELINES FOR DRUG OFFENSES

| OFFENSE | NUMBER | STANDARD | AGG* | MIT** | ABOVE | BELOW |
|--|-------------|------------|------------|------------|-----------|------------|
| DEALING IN NARCOTICS | | | | | | |
| More than 100 g. | 1 | 0% | 0% | 0% | 0% | 100% |
| 2 g. to 100 g. | 72 | 39% | 3% | 11% | 7% | 40% |
| less than 2 g. | 416 | 34% | 2% | 22% | 1% | 41% |
| SUBTOTAL | 489 | 35% | 2% | 20% | 2% | 41% |
| DEALING IN COCAINE, METH., PCP. | | | | | | |
| More than 100 g. | 140 | 41% | 5% | 10% | 9% | 35% |
| 2 g. to 100 g. | 1185 | 34% | 2% | 33% | 2% | 29% |
| less than 2 g. | 2079 | 51% | 3% | 21% | 1% | 23% |
| SUBTOTAL | 3404 | 45% | 3% | 25% | 2% | 25% |
| DEALING IN MARIJUANA | | | | | | |
| More than 110 lbs. | 7 | 57% | 14% | 29% | 0% | 0% |
| 1 lb. to 110 lbs. | 70 | 39% | 10% | 30% | 1% | 20% |
| less than 1 lb. | 595 | 47% | 11% | 19% | 1% | 23% |
| SUBTOTAL | 672 | 46% | 11% | 20% | 1% | 22% |
| OTHER DRUG OFFENSES | | | | | | |
| 2.5 year statutory limit | 234 | 43% | 3% | 21% | 3% | 30% |
| 1.5 year statutory limit | 115 | 44% | 2% | 32% | 0% | 22% |
| 1 year statutory limit | 1 | 0% | 0% | 100% | 0% | 0% |
| 6 month statutory limit | 2296 | 81% | 4% | 11% | 1% | 4% |
| SUBTOTAL | 2646 | 76% | 4% | 13% | 1% | 7% |
| SMALL AMOUNT OF MARIJUANA | 584 | 99% | 1% | 0% | 0% | 0% |
| OTHER DRUG OFFENSES*** | 504 | 41% | 2% | 20% | 3% | 34% |
| TOTAL | 8299 | 59% | 3% | 18% | 1% | 19% |

* *AGG IS THE AGGRAVATED GUIDELINE RANGE*
 ** *MIT IS THE MITIGATED GUIDELINE RANGE*
 *** *OFFENSES PRIOR TO THE EFFECTIVE DATE OF THE DRUG GUIDELINES*

*NOTES: STATUTORY LIMIT IS DEFINED AS THE LONGEST MINIMUM SENTENCE PERMITTED BY LAW
 PERCENTAGES MAY NOT EQUAL 100% DUE TO ROUNDING*

TABLE 7

GUIDELINE CONFORMANCE BY OFFENSE GRAVITY AND PRIOR RECORD SCORES

| OGS | PRS | NUMBER | STANDARD | AGGRAVATED | MITIGATED | ABOVE | BELOW |
|-----|-----|--------|----------|------------|-----------|-------|-------|
| 1 | 0 | 2487 | 99% | 1% | 0% | 0% | 0% |
| 1 | 1 | 371 | 96% | 4% | 0% | 0% | 0% |
| 1 | 2 | 365 | 96% | 4% | 0% | 0% | 0% |
| 1 | 3 | 152 | 97% | 3% | 0% | 0% | 0% |
| 1 | 4 | 138 | 92% | 8% | 0% | 0% | 0% |
| 1 | 5 | 74 | 99% | 1% | 0% | 0% | 0% |
| 1 | 6 | 236 | 94% | 6% | 0% | 0% | 0% |
| 2 | 0 | 5285 | 100% | 0% | 0% | 0% | 0% |
| 2 | 1 | 738 | 99% | 1% | 0% | 0% | 0% |
| 2 | 2 | 715 | 98% | 2% | 0% | 0% | 0% |
| 2 | 3 | 359 | 97% | 3% | 0% | 0% | 0% |
| 2 | 4 | 278 | 96% | 4% | 0% | 0% | 0% |
| 2 | 5 | 184 | 64% | 5% | 5% | 1% | 24% |
| 2 | 6 | 569 | 59% | 6% | 13% | 1% | 21% |
| 3 | 0 | 3068 | 97% | 2% | 0% | 1% | 0% |
| 3 | 1 | 457 | 98% | 2% | 0% | 0% | 0% |
| 3 | 2 | 402 | 95% | 4% | 0% | 1% | 0% |
| 3 | 3 | 263 | 94% | 4% | 0% | 2% | 1% |
| 3 | 4 | 193 | 76% | 5% | 3% | 2% | 14% |
| 3 | 5 | 115 | 59% | 6% | 7% | 5% | 23% |
| 3 | 6 | 465 | 43% | 14% | 22% | 6% | 15% |
| 4 | 0 | 1049 | 99% | 1% | 0% | 0% | 0% |
| 4 | 1 | 134 | 96% | 2% | 0% | 1% | 0% |
| 4 | 2 | 160 | 96% | 4% | 0% | 0% | 0% |
| 4 | 3 | 94 | 54% | 6% | 1% | 2% | 27% |
| 4 | 4 | 74 | 42% | 5% | 2% | 5% | 25% |
| 4 | 5 | 42 | 29% | 7% | 7% | 2% | 60% |
| 4 | 6 | 156 | 43% | 5% | 10% | 4% | 38% |
| 5 | 0 | 4019 | 97% | 2% | 0% | 1% | 0% |
| 5 | 1 | 788 | 63% | 3% | 8% | 2% | 24% |
| 5 | 2 | 894 | 60% | 5% | 14% | 4% | 17% |
| 5 | 3 | 548 | 45% | 7% | 24% | 5% | 19% |
| 5 | 4 | 421 | 43% | 3% | 7% | 4% | 43% |
| 5 | 5 | 310 | 29% | 3% | 19% | 1% | 48% |
| 5 | 6 | 1226 | 39% | 6% | 15% | 4% | 36% |
| 6 | 0 | 1574 | 48% | 5% | 10% | 7% | 30% |
| 6 | 1 | 237 | 56% | 8% | 16% | 4% | 16% |
| 6 | 2 | 377 | 47% | 9% | 20% | 1% | 13% |
| 6 | 3 | 220 | 33% | 5% | 25% | 3% | 14% |
| 6 | 4 | 177 | 50% | 3% | 19% | 2% | 26% |
| 6 | 5 | 100 | 27% | 4% | 25% | 2% | 42% |
| 6 | 6 | 435 | 38% | 8% | 16% | 6% | 32% |
| 7 | 0 | 917 | 39% | 6% | 18% | 12% | 25% |
| 7 | 1 | 122 | 43% | 5% | 26% | 3% | 23% |
| 7 | 2 | 211 | 34% | 5% | 14% | 8% | 33% |
| 7 | 3 | 130 | 48% | 5% | 8% | 3% | 33% |
| 7 | 4 | 118 | 45% | 5% | 13% | 3% | 36% |
| 7 | 5 | 62 | 39% | 7% | 7% | 0% | 29% |
| 7 | 6 | 371 | 34% | 7% | 22% | 1% | 26% |
| 8 | 0 | 289 | 33% | 8% | 8% | 0% | 51% |
| 8 | 1 | 32 | 44% | 3% | 9% | 0% | 44% |
| 8 | 2 | 44 | 36% | 5% | 7% | 0% | 52% |
| 8 | 3 | 28 | 43% | 0% | 18% | 7% | 32% |
| 8 | 4 | 17 | 41% | 0% | 24% | 0% | 29% |
| 8 | 5 | 4 | 25% | 0% | 0% | 0% | 75% |
| 8 | 6 | 69 | 26% | 9% | 30% | 0% | 35% |
| 9 | 0 | 437 | 48% | 11% | 6% | 5% | 30% |
| 9 | 1 | 73 | 63% | 3% | 10% | 5% | 19% |
| 9 | 2 | 71 | 61% | 4% | 8% | 7% | 20% |
| 9 | 3 | 51 | 43% | 2% | 12% | 6% | 17% |
| 9 | 4 | 30 | 23% | 3% | 23% | 1% | 17% |
| 9 | 5 | 13 | 23% | 3% | 8% | 8% | 38% |
| 9 | 6 | 94 | 47% | 14% | 18% | 1% | 20% |
| 10 | 0 | 158 | 84% | 9% | 4% | 0% | 3% |
| 10 | 1 | 15 | 60% | 1% | 20% | 0% | 7% |
| 10 | 2 | 23 | 83% | 4% | 4% | 0% | 9% |
| 10 | 3 | 88 | 75% | 1% | 0% | 0% | 13% |
| 10 | 4 | 16 | 75% | 1% | 6% | 0% | 6% |
| 10 | 5 | 5 | 100% | 0% | 0% | 0% | 0% |
| 10 | 6 | 17 | 76% | 6% | 12% | 0% | 6% |

TABLE 9

DISPOSITIONAL AND DURATIONAL CONFORMITY TO THE GUIDELINES

| OFFENSE | NUMBER | **CONFORM** | *****DEPARTURES***** | | |
|----------------------|--------------|-------------|----------------------|----------------------------|-----------|
| | | | <u>DISPOSITIONAL</u> | <u>DURATIONAL</u> ABOVE | BELOW |
| ASSAULT-AGG F1 | 521 | 50% | 13% | 2% | 34% |
| ASSAULT-AGG F2 | 776 | 60% | 25% | 2% | 13% |
| ASSAULT-AGG M1 | 2 | 50% | 0% | 0% | 50% |
| ASSAULT-SIMPLE | 2598 | 98% | 1% | 0% | 1% |
| ASSAULT-TERR THREAT | 463 | 94% | 3% | 1% | 2% |
| ARSON F1 | 75 | 52% | 11% | 0% | 37% |
| ARSON F2 | 125 | 77% | 18% | 2% | 3% |
| BURGLARY | 3842 | 74% | 9% | 9% | 8% |
| CATASTROPHE | 41 | 88% | 7% | 0% | 5% |
| CORRUPT ORGANIZATION | 17 | 41% | 6% | 41% | 12% |
| CRIM MISCHIEF F3 | 58 | 90% | 10% | 0% | 0% |
| CRIM TRESPASS F2 | 450 | 92% | 2% | 1% | 5% |
| CRIM TRESPASS F3 | 330 | 97% | 1% | 1% | 1% |
| DRUG FELONY | 5298 | 71% | 13% | 2% | 14% |
| DRUG MISD | 3001 | 95% | 3% | 0% | 1% |
| ESCAPE FELONY | 224 | 56% | 8% | 1% | 35% |
| ESCAPE MISD | 100 | 98% | 1% | 0% | 1% |
| HOMICIDE-BY VEH | 77 | 88% | 0% | 12% | 0% |
| HOMICIDE-BY VEH DUI | 51 | 98% | 0% | 2% | 0% |
| HOMICIDE-INCHOATE | 31 | 74% | 6% | 0% | 19% |
| HOMICIDE-INVOL MS | 79 | 80% | 5% | 11% | 4% |
| HOMICIDE-MURDER III | 168 | 93% | 1% | 0% | 6% |
| HOMICIDE-VOL MS | 60 | 70% | 10% | 2% | 18% |
| FORGERY F2 | 333 | 86% | 6% | 1% | 6% |
| FORGERY F3 | 908 | 80% | 9% | 2% | 9% |
| FORGERY MISD | 57 | 93% | 2% | 2% | 4% |
| INVOL DEV SEX INT | 196 | 78% | 6% | 3% | 13% |
| KIDNAPPING | 23 | 70% | 4% | 13% | 13% |
| PIC GENERALLY | 133 | 94% | 4% | 2% | 0% |
| PIC WEAPON | 51 | 92% | 6% | 0% | 2% |
| POSS OFF WEAP | 131 | 93% | 5% | 2% | 1% |
| PROSTITUTION FEL | 13 | 85% | 15% | 0% | 0% |
| RAPE | 261 | 73% | 2% | 7% | 18% |
| RAPE STATUTORY | 94 | 65% | 19% | 14% | 2% |
| ROBBERY F1 | 764 | 71% | 5% | 14% | 11% |
| ROBBERY F2 | 525 | 84% | 6% | 4% | 6% |
| ROBBERY F3 | 549 | 88% | 3% | 6% | 3% |
| THEFT FELONY | 3030 | 86% | 7% | 1% | 6% |
| THEFT MISD | 4968 | 96% | 2% | 1% | 1% |
| THEFT-RETAIL FEL | 1264 | 71% | 13% | 1% | 16% |
| THEFT-RETAIL MISD | 1247 | 96% | 2% | 0% | 1% |
| VUFA LOADED | 262 | 51% | 39% | 2% | 8% |
| VUFA UNLOADED | 170 | 93% | 4% | 1% | 3% |
| OTHER FELONIES | 657 | 82% | 11% | 2% | 6% |
| OTHER MISD | 6679 | 97% | 1% | 1% | 0% |
| TOTAL | 40702 | 86% | 6% | 2% | 6% |

TABLE 11

**MOST FREQUENTLY CITED REASONS FOR DEPARTING BELOW THE
GUIDELINES**

| DEPARTURE REASON | NUMBER OF TIMES CITED |
|--|-----------------------|
| 1. Offender was sentenced on other charges | 950 |
| 2. Plea agreement | 937 |
| 3. Offender is drug dependent | 383 |
| 4. Offender pleaded guilty or nolo contendere | 291 |
| 5. Offender has no prior record or very minor record | 217 |
| 6. Offender cooperated with authorities | 194 |
| 7. Crime was less serious than usual | 188 |
| 8. Offender is serving a sentence for another crime(s) | 179 |
| 9. Offender is employed | 159 |
| 10. Offender is a good candidate for rehabilitation | 132 |
| 11. Offender is supporting dependents | 128 |
| 12. Offender has psychological problems | 127 |
| 13. Offender is very young | 111 |
| 14. Offender's prior record is very old | 96 |
| 15. Offender shows remorse | 95 |
| 16. Offender has an alcohol problem | 92 |
| 17. Incarceration will not serve any useful purpose | 91 |
| 18. Offender's conduct has improved since crime was committed | 89 |
| 19. Offender has a good employment record | 76 |
| 20. Offender is in poor health | 73 |
| 21. Offender played a minor or passive role in the crime | 52 |
| 22. Victim(s) was member of offender's family | 48 |
| 23. Offender is very old | 48 |
| 24. Offender's family is very supportive | 38 |
| 25. Sentence was recommended by the prosecution | 38 |
| 26. Sentence enables offender to make restitution | 35 |
| 27. Offender was under influence of drugs/alcohol during offense | 34 |
| 28. Sentence was recommended by the victim | 31 |
| 29. Sentence designed to ensure supervision after incarceration | 31 |
| 30. Prosecution evidence was weak | 26 |

TABLE 13

MOST FREQUENTLY CITED MITIGATING REASONS

| MITIGATING REASON | NUMBER OF TIMES CITED |
|--|-----------------------|
| 1. Plea agreement | 546 |
| 2. Offender sentenced on other charges | 362 |
| 3. Offender pleaded guilty or nolo contendere | 260 |
| 4. Offender is drug dependent | 182 |
| 5. Crime was less serious than usual | 165 |
| 6. Offender has no prior record or very minor record | 139 |
| 7. Offender cooperated with authorities | 136 |
| 8. Offender is very young | 88 |
| 9. Offender is serving a sentence for another crime(s) | 74 |
| 10. Offender's conduct has improved since the crime was committed | 52 |
| 11. Offender has psychological problems | 50 |
| 12. Offender is a good candidate for rehabilitation | 50 |
| 13. Offender shows remorse | 48 |
| 14. Offender is employed | 47 |
| 15. Offender has alcohol problems | 40 |
| 16. Offender is supporting dependents | 36 |
| 17. Offender's prior record is very old | 35 |
| 18. Offender is in poor health | 32 |
| 19. Offender has a good employment record | 24 |
| 20. Incarceration will not serve any useful purpose | 23 |
| 21. Sentence was recommended by the prosecution | 21 |
| 22. Offender's family is very supportive | 20 |
| 23. Offender played a minor or passive role in the crime | 19 |
| 24. Offender is very old | 19 |
| 25. Prison or jail is overcrowded | 19 |
| 26. Offender was under influence of drugs/alcohol during the offense | 17 |
| 27. Offender did not cause or threaten injury | 13 |
| 28. Sentence based on recommendation of court staff/P.S.I. | 13 |
| 29. Victims were friends or acquaintances of offender | 12 |
| 30. Offender has a good reputation in the community | 12 |

INCARCERATION SENTENCES

Table 14 summarizes overall incarceration rates and incarceration lengths for each major crime category. For those offenders incarcerated (including both county jail or state prison), the average minimum sentence was 14.5 months and the average maximum sentence was 39.5 months. The highest incarceration rates and the longest incarceration lengths were found for the most serious offenses such as murder, kidnapping, rape, voluntary manslaughter, involuntary deviate sexual intercourse, and robbery F-1.

In *Table 15*, sentences are further analyzed for each major crime category. This table shows the number and percentage of sentences resulting in probation, county jail, state prison, or other disposition. Also shown for each crime category are the average probation lengths and the average minimum and maximum jail and prison sentences. For those offenders sentenced to county jail, the average minimum sentence was 6.3 months and the average maximum sentence was 21.0 months. For those sentenced to state prison, the average minimum sentence was 29.2 months and the average maximum sentence was 73.9 months.

Sentences for drug offenses are shown in greater detail in *Table 16*. Overall, the incarceration rate for drug offenders was 69% (including both county jail and state prison) but was considerably higher (87%) for "drug dealing" offenses.

Figure H shows that the majority of minimum incarceration sentences were less than twelve months (64.4%) and only a small percentage (5.3%) were five years or more. Likewise, as shown in *Figure I*, most maximum sentences were less than two years (56.5%) but slightly more than one tenth (10.5%) equalled or exceeded ten years.

PROBATION SENTENCES

As shown in *Table 15*, probation was imposed in about 38% of all sentences and the average length of probation was 25.3 months. *Figure J* shows that the majority of probation sentences were less than three years (73.7%) but only small percent were less than one year (5.4%). Probation sentences of ten years or more were very rare (0.9%).

FINES AND RESTITUTION

During 1989, more than half the sentences imposed included the imposition of fines or restitution. *Figure K* shows that 23.1% of all sentences included fines, 15.4% included restitution and 12.9% included both. Altogether, this means that fines were imposed in 36.0% of all sentences and restitution was order in 28.3% of all sentences. However, as shown in *Table 17*, the frequency of fines and restitution varied considerably depending on the offense.

TABLE 15
SUMMARY OF SENTENCES BY OFFENSE CATEGORY - EXCLUDING DUI

| OFFENSE | TOTAL | | | PROBATION | | | COUNTY JAIL | | | STATE PRISON | | | OTHER | |
|--------------------------|--------------|--------------|-----------|-------------|--------------|-----------|-------------|-------------|-------------|--------------|-------------|-------------|-------------|----------|
| | Reported | Number | % | Length | Number | % | Min | Max | Number | % | Min | Max | Number | % |
| ASSAULT-AGGRAVATED F1 | 527 | 68 | 13 | 52.8 | 124 | 24 | 9.7 | 25.0 | 334 | 63 | 50.3 | 119.2 | 1 | * |
| ASSAULT-AGGRAVATED F2 | 783 | 199 | 25 | 39.8 | 421 | 54 | 7.6 | 22.3 | 161 | 21 | 28.1 | 69.9 | 2 | * |
| ASSAULT-SIMPLE | 2612 | 1528 | 58 | 18.6 | 903 | 35 | 4.2 | 19.0 | 128 | 5 | 10.4 | 25.2 | 53 | 2 |
| ASSAULT-TERR. THREATS | 464 | 233 | 50 | 29.5 | 169 | 37 | 5.0 | 21.7 | 48 | 10 | 15.0 | 38.4 | 14 | 3 |
| ARSON F1 | 75 | 8 | 10 | 87.0 | 23 | 31 | 11.6 | 30.1 | 44 | 59 | 40.7 | 107.0 | 0 | 0 |
| ARSON F2 | 125 | 20 | 16 | 52.7 | 59 | 47 | 8.1 | 23.4 | 44 | 35 | 19.4 | 57.7 | 2 | 2 |
| BURGLARY | 3887 | 740 | 19 | 44.8 | 1599 | 41 | 8.2 | 24.5 | 1525 | 39 | 31.2 | 88.5 | 23 | 1 |
| CATASTROPHE F1 | 41 | 28 | 68 | 41.9 | 10 | 25 | 7.8 | 25.8 | 3 | 7 | 19.3 | 64.0 | 0 | 0 |
| CORRUPT ORGANIZATIONS | 17 | 1 | 6 | 60.0 | 6 | 35 | 13.6 | 39.6 | 10 | 59 | 39.6 | 115.2 | 0 | 0 |
| CRIM. MISCHIEF F3 | 58 | 30 | 52 | 43.4 | 23 | 40 | 4.2 | 19.3 | 3 | 5 | 23.3 | 46.7 | 2 | 1 |
| CRIM. TRESPASS F2 | 455 | 177 | 39 | 30.7 | 220 | 48 | 6.5 | 22.1 | 55 | 12 | 18.6 | 53.6 | 3 | 1 |
| CRIM. TRESPASS F3 | 332 | 132 | 40 | 29.0 | 158 | 48 | 6.4 | 23.6 | 39 | 12 | 12.2 | 33.0 | 3 | * |
| DRUG FELONY | 5397 | 702 | 13 | 41.5 | 2760 | 51 | 8.2 | 23.6 | 1878 | 35 | 24.4 | 61.4 | 57 | 1 |
| DRUG MISDEMEANOR | 3034 | 1614 | 53 | 11.6 | 1106 | 37 | 3.3 | 12.6 | 90 | 3 | 7.7 | 18.1 | 224 | 7 |
| ESCAPE FELONY | 225 | 14 | 6 | 34.2 | 75 | 34 | 7.4 | 20.6 | 131 | 58 | 25.7 | 58.7 | 5 | 2 |
| ESCAPE MISDEMEANOR | 101 | 19 | 19 | 17.7 | 56 | 55 | 4.9 | 18.8 | 23 | 23 | 9.2 | 22.9 | 3 | 3 |
| HOMICIDE-BY VEHICLE | 77 | 19 | 25 | 46.6 | 40 | 52 | 10.7 | 27.5 | 17 | 22 | 19.7 | 46.4 | 1 | 1 |
| HOMICIDE-BY VEH. DUI | 51 | 0 | 0 | - | 2 | 4 | 36.0 | 78.0 | 49 | 96 | 36.8 | 74.9 | 0 | 0 |
| HOMICIDE-INCHOATE | 32 | 2 | 6 | 120.0 | 1 | 3 | 12.0 | 23.0 | 29 | 91 | 42.7 | 94.7 | 0 | 0 |
| HOMICIDE-INVOL. MS. | 80 | 27 | 34 | 54.2 | 29 | 36 | 11.9 | 27.7 | 21 | 26 | 23.7 | 54.9 | 3 | 4 |
| HOMICIDE-MURDER III | 176 | 1 | * | 120.0 | 5 | 3 | 58.8 | 150.8 | 170 | 97 | 87.5 | 197.4 | 0 | 0 |
| HOMICIDE-VOL. MS. | 60 | 6 | 10 | 110.0 | 7 | 12 | 12.7 | 28.1 | 47 | 78 | 48.9 | 110.8 | 0 | 0 |
| FORGERY F2 | 337 | 118 | 35 | 38.8 | 148 | 44 | 6.3 | 24.6 | 70 | 21 | 21.8 | 64.1 | 1 | * |
| FORGERY F3 | 913 | 346 | 38 | 36.2 | 364 | 40 | 6.8 | 23.1 | 187 | 20 | 21.7 | 54.7 | 16 | 2 |
| FORGERY MISDEMEANOR | 57 | 27 | 47 | 27.8 | 22 | 39 | 4.3 | 20.4 | 8 | 14 | 14.3 | 42.0 | 0 | 0 |
| INVOL. DEV. SEX. INT. | 196 | 12 | 6 | 74.0 | 21 | 11 | 14.0 | 31.8 | 163 | 83 | 57.3 | 140.9 | 0 | 0 |
| KIDNAPPING | 23 | 1 | 4 | 60.0 | 3 | 13 | 34.7 | 74.7 | 19 | 83 | 72.5 | 163.4 | 0 | 0 |
| POSS. INSTR. CRIME GEN. | 133 | 73 | 55 | 28.2 | 45 | 34 | 5.5 | 19.5 | 10 | 7 | 14.1 | 37.0 | 5 | 4 |
| POSS. INSTR. CRIME WEAP. | 51 | 31 | 61 | 33.7 | 15 | 29 | 4.4 | 19.1 | 3 | 6 | 10.0 | 19.7 | 2 | 4 |
| PROHIB. OFFENSIVE WEAPON | 131 | 72 | 55 | 21.0 | 37 | 28 | 5.2 | 18.6 | 15 | 12 | 14.7 | 38.3 | 7 | 5 |
| PROSTITUTION FELONY | 14 | 7 | 50 | 58.3 | 4 | 29 | 10.5 | 23.0 | 3 | 21 | 21.0 | 60.0 | 0 | 0 |
| RAPE | 262 | 4 | 2 | 105.0 | 23 | 9 | 13.3 | 28.3 | 234 | 89 | 63.6 | 149.8 | 1 | * |
| RAPE-STATUTORY | 96 | 20 | 21 | 64.2 | 36 | 37 | 9.8 | 26.6 | 40 | 42 | 22.4 | 78.6 | 0 | 0 |
| ROBBERY F1 | 784 | 37 | 5 | 74.9 | 176 | 22 | 11.7 | 28.7 | 571 | 73 | 50.5 | 119.6 | 0 | 0 |
| ROBBERY F2 | 541 | 66 | 12 | 44.3 | 309 | 57 | 7.8 | 22.7 | 165 | 31 | 28.0 | 75.4 | 1 | * |
| ROBBERY F3 | 556 | 159 | 29 | 38.8 | 277 | 50 | 7.0 | 23.1 | 119 | 21 | 21.3 | 56.5 | 1 | * |
| THEFT-FELONY | 3051 | 1182 | 39 | 36.4 | 1299 | 42 | 6.6 | 22.6 | 514 | 17 | 19.6 | 52.7 | 56 | 2 |
| THEFT-MISDEMEANOR | 5006 | 2477 | 50 | 22.4 | 1961 | 39 | 4.9 | 19.2 | 451 | 9 | 11.8 | 30.1 | 117 | 2 |
| THEFT-RETAIL FELONY | 1274 | 299 | 24 | 35.0 | 624 | 49 | 6.9 | 21.9 | 324 | 25 | 19.7 | 48.6 | 27 | 2 |
| THEFT-RETAIL MISD. | 1262 | 692 | 55 | 20.3 | 469 | 37 | 3.7 | 19.0 | 67 | 5 | 8.8 | 26.7 | 34 | 3 |
| VIO. FIREARM ACT LOADED | 262 | 103 | 39 | 27.1 | 116 | 44 | 5.2 | 20.2 | 36 | 14 | 22.6 | 54.1 | 7 | 3 |
| VIO. FIREARM ACT OTHER | 172 | 105 | 61 | 21.0 | 54 | 31 | 5.2 | 18.8 | 10 | 6 | 14.0 | 32.3 | 3 | 2 |
| OTHER FELONIES | 663 | 284 | 43 | 41.5 | 158 | 24 | 6.7 | 23.1 | 195 | 29 | 24.9 | 58.0 | 26 | 4 |
| OTHER MISDEMEANORS | 6704 | 3817 | 57 | 18.0 | 2086 | 31 | 4.2 | 17.3 | 462 | 7 | 10.5 | 24.8 | 339 | 5 |
| TOTAL | 41099 | 15500 | 38 | 25.3 | 16043 | 39 | 6.3 | 21.0 | 8517 | 21 | 29.2 | 73.9 | 1039 | 2 |

Note: Percentages may not add to 100% due to rounding

* - LESS THAN 1%

FIGURE H
1989 DISTRIBUTION OF MINIMUM SENTENCES
JAIL AND PRISON NON-DUI SENTENCES

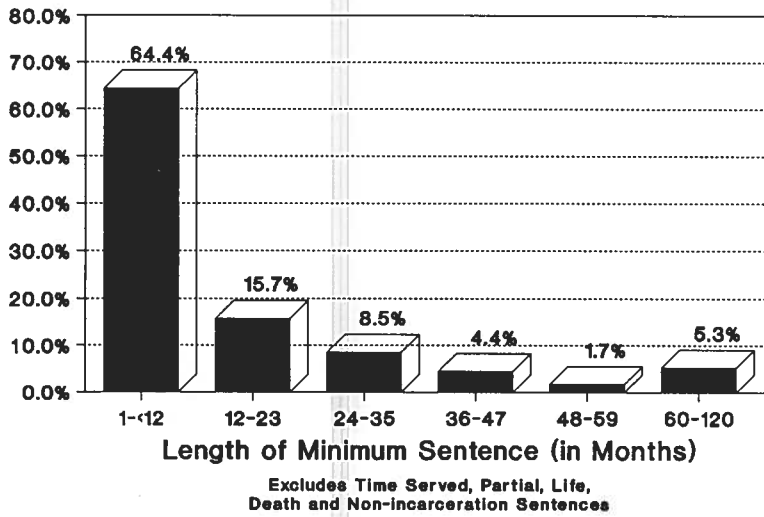


FIGURE I
1989 DISTRIBUTION OF MAXIMUM SENTENCES
JAIL AND PRISON NON-DUI SENTENCES

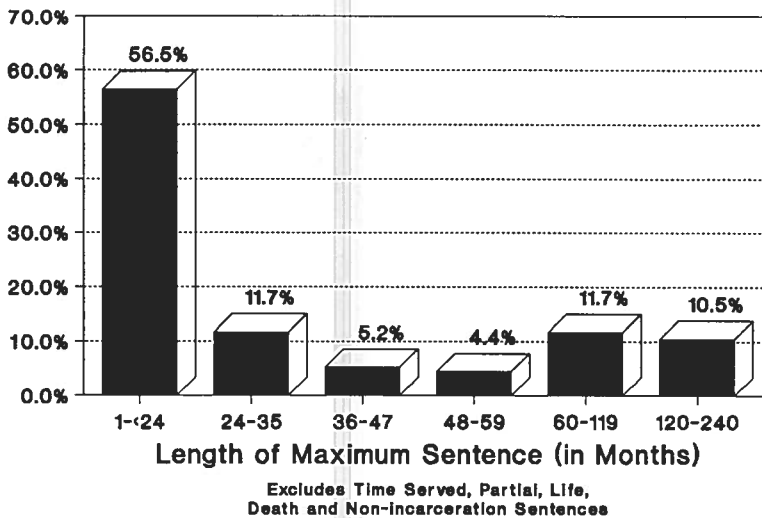


TABLE 17

PERCENTAGES OF FINES AND RESTITUTION ORDERED

| OFFENSE | NUMBER | BOTH RESTITUTION FINES | | |
|----------------------|--------------|------------------------|------------|------------|
| ASSAULT-AGG F1 | 527 | 10% | 9% | 19% |
| ASSAULT-AGG F2 | 783 | 10% | 10% | 22% |
| ASSAULT-AGG M1 | 2 | 0% | 0% | 0% |
| ASSAULT-SIMPLE | 2612 | 16% | 13% | 27% |
| ASSAULT-TERR THREAT | 464 | 6% | 5% | 28% |
| ARSON F1 | 75 | 19% | 16% | 11% |
| ARSON F2 | 125 | 7% | 22% | 15% |
| BURGLARY | 3887 | 16% | 25% | 11% |
| CATASTROPHE | 41 | 10% | 17% | 32% |
| CORRUPT ORGANIZATION | 17 | 0% | 0% | 41% |
| CRIM MISCHIEF F3 | 58 | 22% | 31% | 21% |
| CRIM TRESPASS F2 | 455 | 13% | 18% | 21% |
| CRIM TRESPASS F3 | 332 | 11% | 14% | 23% |
| DRUG FELONY | 5397 | 12% | 13% | 26% |
| DRUG MISD | 3034 | 4% | 1% | 39% |
| ESCAPE FELONY | 225 | 3% | 1% | 15% |
| ESCAPE MISD | 101 | 7% | 1% | 29% |
| HOMICIDE-BY VEH | 77 | 12% | 8% | 43% |
| HOMICIDE-BY VEH DUI | 51 | 12% | 0% | 35% |
| HOMICIDE-INCHOATE | 32 | 9% | 0% | 9% |
| HOMICIDE-INVOL MS | 80 | 10% | 6% | 15% |
| HOMICIDE-MURDER III | 176 | 3% | 5% | 9% |
| HOMICIDE-VOL MS | 60 | 2% | 0% | 8% |
| FORGERY F2 | 337 | 36% | 24% | 14% |
| FORGERY F3 | 913 | 18% | 33% | 9% |
| FORGERY MISD | 57 | 12% | 40% | 21% |
| INVOL DEV SEX INT | 196 | 2% | 1% | 20% |
| KIDNAPPING | 23 | 9% | 9% | 13% |
| PIC GENERALLY | 133 | 7% | 8% | 17% |
| PIC WEAPON | 51 | 0% | 0% | 43% |
| POSS OFF WEAP | 131 | 2% | 3% | 34% |
| PROSTITUTION FEL | 14 | 7% | 0% | 43% |
| RAPE | 262 | 8% | 5% | 15% |
| RAPE STATUTORY | 96 | 14% | 3% | 23% |
| ROBBERY F1 | 784 | 9% | 10% | 15% |
| ROBBERY F2 | 541 | 10% | 14% | 18% |
| ROBBERY F3 | 556 | 11% | 22% | 18% |
| THEFT FELONY | 3051 | 16% | 30% | 12% |
| THEFT MISD | 5006 | 21% | 24% | 18% |
| THEFT-RETAIL FEL | 1274 | 5% | 5% | 20% |
| THEFT-RETAIL MISD | 1262 | 11% | 5% | 35% |
| VUFA LOADED | 262 | 2% | 2% | 30% |
| VUFA UNLOADED | 172 | 4% | 1% | 35% |
| OTHER FELONIES | 663 | 12% | 19% | 14% |
| OTHER MISD | 6704 | 11% | 12% | 32% |
| TOTAL | 41099 | 13% | 15% | 23% |

TABLE 18

MANDATORY SENTENCES

| | NUMBER | JAIL | PRISON | ***JAIL*** | | ***PRISON*** | |
|---|------------|------------|-------------|-------------|-------------|--------------|--------------|
| | | | | MIN | MAX | MIN | MAX |
| CRIMES WITH FIREARMS (42 PA. C.S. §9712) | | | | | | | |
| AGGRAVATED ASSAULT | 56 | 0% | 100% | - | - | 70.5 | 144.0 |
| INVOL. DEV. SEX. INT. | 2 | 0% | 100% | - | - | 66.0 | 180.0 |
| KIDNAPPING | 3 | 0% | 100% | - | - | 90.0 | 180.0 |
| MURDER III | 19 | 0% | 100% | - | - | 86.0 | 188.0 |
| RAPE | 5 | 0% | 100% | - | - | 91.0 | 182.4 |
| ROBBERY F-1 | 112 | 0% | 100% | - | - | 67.9 | 146.8 |
| VOLUNTARY MANSLAUGHTER | 10 | 0% | 100% | - | - | 60.0 | 120.0 |
| SUBTOTAL | 207 | 0% | 100% | - | - | 70.5 | 149.4 |
| REPEAT OFFENDERS (42 PA. C.S. §9714) | | | | | | | |
| AGGRAVATED ASSAULT | 36 | 0% | 100% | - | - | 77.0 | 164.0 |
| INVOL. DEV. SEX. INT. | 15 | 0% | 100% | - | - | 81.0 | 168.0 |
| KIDNAPPING | 5 | 0% | 100% | - | - | 98.4 | 216.0 |
| MURDER | 20 | 0% | 100% | - | - | 72.5 | 160.0 |
| RAPE | 39 | 0% | 100% | - | - | 84.2 | 176.3 |
| ROBBERY F-1 | 83 | 0% | 100% | - | - | 76.9 | 170.9 |
| VOLUNTARY MANSLAUGHTER | 4 | 0% | 100% | - | - | 60.0 | 120.0 |
| SUBTOTAL | 202 | 0% | 100% | - | - | 78.6 | 169.9 |
| PUBLIC TRANSPORTATION (42 PA. C.S. §9713) | | | | | | | |
| ROBBERY F-1 | 8 | 0% | 100% | - | - | 63.0 | 169.9 |
| SUBTOTAL | 8 | 0% | 100% | - | - | 63.0 | 169.9 |
| CRIMES AGAINST ELDERLY (42 PA. C.S. §9717) | | | | | | | |
| AGGRAVATED ASSAULT | 6 | 17% | 83% | 24.0 | 48.0 | 40.8 | 122.4 |
| ROBBERY F-1 | 2 | 0% | 100% | - | - | 78.0 | 240.0 |
| THEFT BY DECEPTION | 2 | 0% | 100% | - | - | 24.0 | 54.0 |
| SUBTOTAL | 10 | 10% | 90% | 24.0 | 48.0 | 43.2 | 124.8 |
| CRIMES AGAINST CHILDREN/INFANTS (42 PA. C.S. §9718) | | | | | | | |
| AGGRAVATED ASSAULT | 8 | 0% | 100% | - | - | 36.8 | 105.0 |
| INVOL. DEV. SEX. INT. | 59 | 0% | 100% | - | - | 61.0 | 141.9 |
| RAPE | 31 | 0% | 100% | - | - | 65.6 | 151.4 |
| SUBTOTAL | 98 | 0% | 100% | - | - | 60.5 | 141.9 |
| DRUG OFFENSES (18 PA. C.S. §6314 & §7508) | | | | | | | |
| DELIVERY/POSS. WITH INTENT | 349 | 19% | 81% | 15.2 | 34.0 | 25.8 | 61.0 |
| SUBTOTAL | 349 | 19% | 81% | 15.2 | 34.0 | 25.8 | 61.0 |
| HOMICIDE BY VEHICLE WHILE DUI (75 PA. C.S. §3735) | | | | | | | |
| HOMICIDE BY VEH.-DUI. | 51 | 0% | 100% | - | - | 36.8 | 75.0 |
| SUBTOTAL | 51 | 0% | 100% | - | - | 36.8 | 75.0 |

TABLE 20

**DUI - INCARCERATION RATE AND AVERAGE LENGTH OF INCARCERATION
EXCLUDING PHILADELPHIA MUNICIPAL COURT**

| PRIORS | NUMBER | PROBATION | JAIL | PRISON | MINIMUM* | MAXIMUM* |
|--------------|--------------|-----------|------------|-----------|-------------|--------------|
| NONE | 6325 | 0% | 99% | 1% | 13.5 | 476.2 |
| 1 | 4060 | 0% | 99% | 1% | 38.5 | 514.8 |
| 2 | 709 | 0% | 98% | 2% | 106.1 | 594.6 |
| 3 | 184 | 1% | 71% | 28% | 326.5 | 711.1 |
| TOTAL | 11278 | 0% | 99% | 1% | 33.5 | 502.5 |

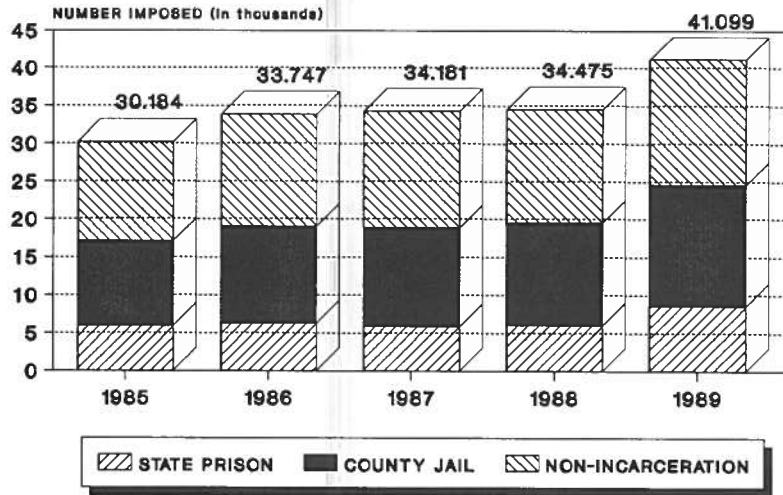
* IN DAYS

TABLE 21

**OFFENDER CHARACTERISTICS AND TYPE OF DISPOSITION
EXCLUDING PHILADELPHIA MUNICIPAL COURT**

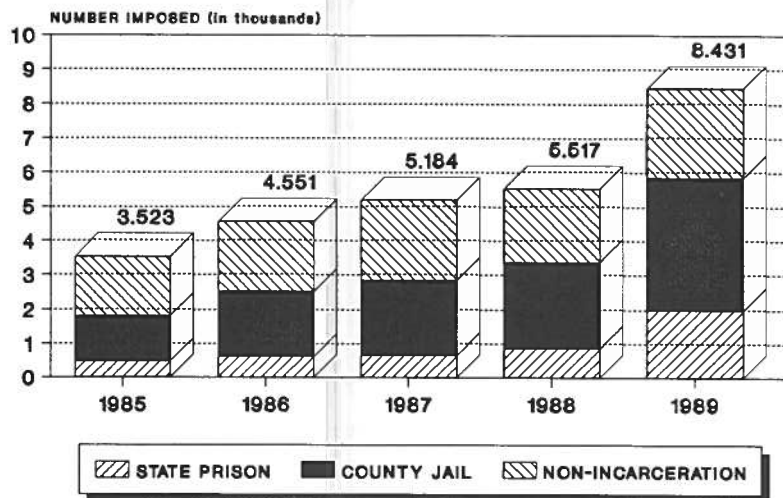
| | | DUI CONVICTIONS | OTHER CONVICTIONS |
|-------------|-----------------|-----------------|-------------------|
| SEX | Male | 91.6% | 85.2% |
| | Female | 8.4% | 14.8% |
| RACE | White | 90.8% | 57.9% |
| | Black | 7.2% | 35.5% |
| | Hispanic | 1.7% | 5.8% |
| | Other | 0.3% | 0.8% |
| DISPOSITION | Negotiated Plea | 44.1% | 52.3% |
| | Other Plea | 52.1% | 36.8% |
| | Non-jury Trial | 1.5% | 7.4% |
| | Jury Trial | 2.3% | 3.6% |
| AGE | Under 21 | 5.2% | 13.0% |
| | 21 to 25 | 18.2% | 28.8% |
| | 26 to 29 | 20.6% | 18.7% |
| | 30 to 39 | 34.9% | 27.3% |
| | 40 to 49 | 12.9% | 8.6% |
| | 50 to 59 | 5.5% | 2.4% |
| | 60 or More | 2.7% | 1.2% |
| AVERAGE AGE | | 33.1 Years | 29.3 Years |

FIGURE L
VOLUME OF SENTENCES IMPOSED
 1985 THROUGH 1989



NOTE: 1988 DATA IS ESTIMATED

FIGURE M
VOLUME OF DRUG SENTENCES IMPOSED
 1984 THROUGH 1989



NOTE: 1988 DATA IS ESTIMATED

FIGURE P
AVERAGE MINIMUM INCARCERATION SENTENCES
1984 THROUGH 1989

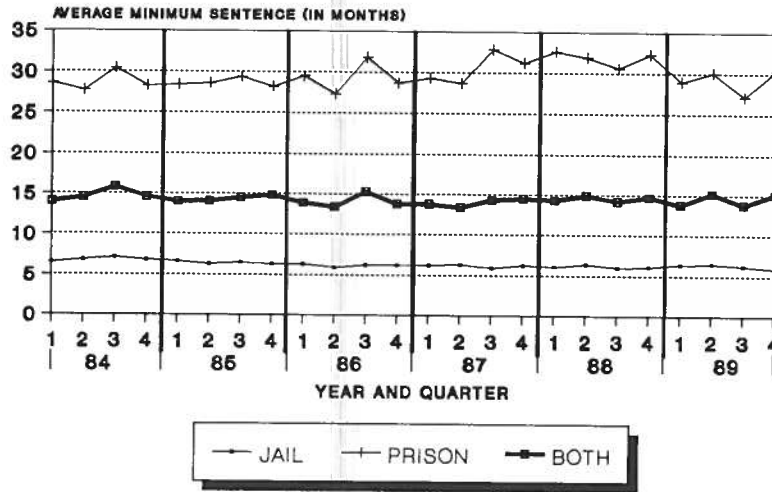
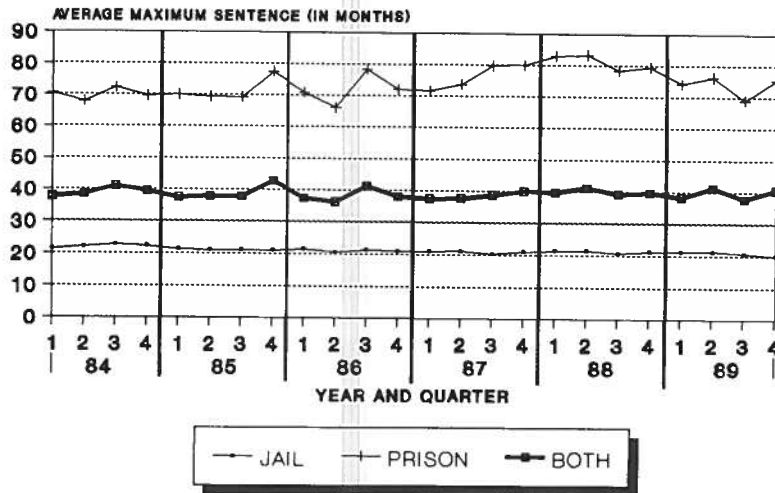


FIGURE Q
AVERAGE MAXIMUM INCARCERATION SENTENCES
1984 THROUGH 1989



APPENDIX B

SELECTED STAFF ARTICLES

Kramer, J.H., Lubitz, R.L., and Kempinen, C.A., "Sentencing Guidelines: A Quantitative Comparison of Sentencing Policy in Minnesota, Pennsylvania and Washington." *Justice Quarterly*, 6 (4), 1989.

Kramer, J.H. and L. Goodstein, "Case Processing and the Federal Sentencing Guidelines," In Dean J. Champion (Ed.) *United States Sentencing Guidelines: Some Theoretical and Substantive Implications for Criminal Justice*. Praeger, New York, NY, 1989.

Kramer, J.H., "Assessing Choices and Pitfalls": a review of *The Sentencing Commission* by Andrew von Hirsch, Kay A. Knapp and Michael Tonry, in *Judicature*, Vol. 71, No. 5, 1988.

Kramer J.H. and Scirica, A.J., "Complex Policy Choices: The Pennsylvania Commission on Sentencing," *Federal Probation*, L (3) 1986.

Kramer, J.H., and Lubitz, R.L., "Pennsylvania's Sentencing Reform: The Impact of Commission Established Guidelines," *Crime and Delinquency*, Vol. 31, No. 4, October, 1985.

Goodstein, L., Kramer, J.H. and Nuss, L., "Defining Determinacy: Components of the Sentencing Process Ensuring Equity and Release Certainty," *Justice Quarterly* 1 (1), 1984.

Kempinen, C.A., "Changes in the Sentencing Patterns of Male and Female Criminal Defendants," *The Prison Journal*, Vol. 63, No. 2, Autumn-Winter, 1983.

SELECTED STAFF PAPERS

"Race and Sentencing Guidelines: Institutionalized Disparity?" A paper by John H. Kramer presented at the Annual Meeting of the Society for the Study of Social Problems, August 1989.

"Race and Sentencing: Research Continuities and Further Developments." A paper by Darrell J. Steffensmeier, Catherine M. Streifel and John H. Kramer, presented at the 1989 Society for the Study of Social Problems, August 1989.

"Sentencing Guidelines: Their Implications for Sentencing Disparity and Discrimination." A paper presented by John H. Kramer at the annual meeting of the American Society of Criminology, November 12, 1989.

Kramer, J.H. and McCloskey, J.P., "A Ten Year Retrospective: Constitutional and Jurisdictional Issues Faced by the Pennsylvania Commission on Sentencing." Presented at the annual meeting of the Academy of Criminal Justice Sciences, March, 1989.

Kramer, J.H. and McCloskey, J.P., "The Role of Political Pressures in Developing Sentencing Guidelines for Drug Offenses: The Case Study of the Pennsylvania Commission on Sentencing." Presented at the annual meeting of the Academy of Criminal Justice Sciences, April, 1988.

Kramer, J.H., Lubitz, R.L. and Kempinen, C.A., "An Analysis of Prosecutorial Adjustments to Sentencing Guideline Reform in Pennsylvania." Presented at the annual meeting of the American Society of Criminology, November, 1986.

Kramer, J.H., Lubitz, R.L., and Kempinen, C.A., "A Comparative Assessment of Sentencing Guideline Recommendations in Minnesota, Pennsylvania and Washington." Presented at the annual meeting of the American Society of Criminology, November, 1985.

McCloskey, J.P., "The Effectiveness of Independent Sentencing Commission Guidelines: An Analysis of Appellate Court Decisions in Two Jurisdictions." Presented at the annual meeting of the American Society of Criminology, November, 1985.

Kramer, J.H. and Scirica, A.J., "Complex Policy Choices: The Pennsylvania Commission on Sentencing." Presented at the annual meeting of the Academy of Criminal Justice Sciences, April, 1985.

Kramer, J.H. and Lubitz, R.L., "Pennsylvania's Sentencing Reform: The Impact of Commission Established Guidelines." Presented at the annual meeting of the Academy of Criminal Justice Sciences, March, 1984.

Kramer, J.H. and Scirica, A.J., "Pennsylvania Sentencing Guidelines: Just Desert Versus Individualized Sentences." Presented at the annual meeting of the Academy of Criminal Justice Sciences, March, 1983.

Kramer, J.H., McCloskey, J. and Kurtz, N., "Sentencing Reform: The Pennsylvania Commission on Sentencing". Presented at the annual meeting of the Academy of Criminal Justice Sciences, March, 1982.

LEGISLATURE

2 pages

| | | (Dollar Amounts in Thousands) | |
|--|-------------------|-------------------------------|-------------------|
| GENERAL FUND | 1989-90 Actual | 1990-91 Available | 1991-92 Budget |
| LEGISLATIVE MISCELLANEOUS AND COMMISSIONS: | | | |
| (continued) | | | |
| Joint State Government Commission | \$ 1,372 | \$ 1,634 | \$ 1,683 |
| Local Government Commission | 407 | 519 | 535 |
| Local Government Codes | 48 | 50 | 51 |
| Joint Legislative Air and Water Pollution Control Committee | 227 | 232 | 239 |
| House Flag Purchase | 20 | 20 | 20 |
| Senate Flag Purchase | 20 | 20 | 20 |
| Legislative Audit Advisory Commission | 20 | 20 | 21 |
| Ethics Commission | 794 | 805 | 829 |
| Independent Regulatory Review Commission | 890 | 1,006 | 1,024 |
| Capitol Preservation Committee | 215 | 213 | 215 |
| Capitol Restoration | 100 | 99 | 100 |
| Colonial History | 80 | 87 | 97 |
| Health Care Cost Containment Council | 2,176 | 1,893 | 1,744 |
| * Commission on Sentencing | 328 | 495 | 480 |
| Center For Rural Pennsylvania | 784 | 792 | 800 |
| Subtotal — State Funds | \$ 16,335 | \$ 17,230 | \$ 17,578 |
| Subtotal — Augmentations | 13 | 2 | |
| TOTAL — LEGISLATIVE MISCELLANEOUS AND COMMISSIONS | \$ 16,348 | \$ 17,232 | \$ 17,578 |
| STATE FUNDS | \$ 127,806 | \$ 148,484 | \$ 149,037 |
| AUGMENTATIONS | 13 | 2 | |
| GENERAL FUND TOTAL | \$ 127,819 | \$ 148,486 | \$ 149,037 |

General Fund

Summary by Department and Appropriation

(continued)

| | (Dollar Amounts in Thousands) | | |
|--|-------------------------------|----------------------|-------------------|
| Legislature (continued) | 1988-89 Actual | 1989-90 Available | 1990-91 Budget |
| LEGISLATIVE REFERENCE BUREAU: | | | |
| Salaries and Expenses | \$ 3,460 | \$ 3,555 | \$ 3,943 |
| Contingent Expenses | 15 | 15 | 15 |
| Printing of Pennsylvania Bulletin and Pennsylvania Code | 455 | 389 | 455 |
| Subtotal—Legislative Reference Bureau | <u>\$ 3,930</u> | <u>\$ 3,959</u> | <u>\$ 4,413</u> |
| LEGISLATIVE BUDGET AND FINANCE COMMITTEE | | | |
| Legislative Budget and Finance Committee | \$ 1,418 | \$ 1,857 | \$ 2,080 |
| Subtotal — Legislative Budget and Finance Committee | <u>\$ 1,418</u> | <u>\$ 1,857</u> | <u>\$ 2,080</u> |
| LEGISLATIVE DATA PROCESSING: | | | |
| Legislative Data Processing Center | \$ 3,002 | \$ 3,038 | \$ 3,138 |
| Subtotal—Legislative Data Processing | <u>\$ 3,002</u> | <u>\$ 3,038</u> | <u>\$ 3,138</u> |
| LEGISLATIVE MISCELLANEOUS AND COMMISSIONS: | | | |
| Joint State Government Commission | \$ 903 | \$ 1,372 | \$ 1,650 |
| Local Government Commission | 388 | 407 | 524 |
| Local Government Codes | 49 | 48 | 50 |
| Joint Legislative Air and Water Pollution Control Commission | 225 | 227 | 234 |
| House Flag Purchase | 20 | 20 | 20 |
| Senate Flag Purchase | 20 | 20 | 20 |
| Legislative Audit Advisory Commission | 20 | 20 | 20 |
| Independent Regulatory Review Commission | 799 | 890 | 1,016 |
| Capitol Preservation Committee | 215 | 215 | 215 |
| Capitol Restoration | 100 | 100 | 100 |
| Colonial History | 60 | 80 | 80 |
| * Commission on Sentencing | 305 | 328 | 500 |
| Health Care Cost Containment Council | 1,534 | 2,176 | 4,743 |
| County Court Study | 1,000 | | |
| Center for Rural Pennsylvania | 400 | 784 | 800 |
| Ethics Commission | 733 | 794 | 964 |
| Indexing | 30 | | |
| Subtotal—Legislative Miscellaneous and Commissions | <u>\$ 6,801</u> | <u>\$ 7,481</u> | <u>\$ 10,936</u> |
| DEPARTMENT TOTAL | <u>\$ 132,363</u> | <u>\$ 142,292</u> | <u>\$ 152,978</u> |
| JUDICIARY | | | |
| General Government | | | |
| SUPREME COURT: | | | |
| Supreme Court | \$ 4,753 | \$ 4,947 | \$ 5,285 |
| Home Office Expenses | 1,283 | 1,415 | 1,544 |
| Justice Expenses | 130 | 130 | 130 |
| Civil Procedural Rules Committee | 227 | 237 | 252 |
| Criminal Procedural Rules Committee | 226 | 237 | 259 |
| State Board of Law Examiners | 81 | 78 | 81 |
| Judicial Inquiry and Review Board | 621 | 690 | 693 |
| Domestic Relations Committee | | | 196 |
| Court Administrator | 3,164 | 3,375 | 3,563 |
| Subtotal—Supreme Court | <u>\$ 10,485</u> | <u>\$ 11,109</u> | <u>\$ 12,003</u> |

17 pages

SENTENCING GUIDELINES: A QUANTITATIVE COMPARISON OF SENTENCING POLICIES IN MINNESOTA, PENNSYLVANIA, AND WASHINGTON*

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During the past decade, several states established special commissions to develop sentencing guidelines. This article employs a simulation methodology to quantify and compare the sentencing recommendations in the first three states that promulgated guidelines. The article explores how the development of these guidelines was influenced by differences in the purposes of the sentencing reforms, in the sentencing philosophies adopted by the commissions, and in the statutory constraints placed on the commissions. Variations in these factors led to measurable differences in the degree of judicial discretion permitted by the guideline and in the overall severity of the guideline recommendations.

The development of explicit sentencing standards has dominated criminal justice reforms during the past two decades. Most recently these sentencing reforms have shifted from legislatively established standards such as those in California, Illinois, and North Carolina to sentencing guidelines developed by legislatively created and mandated sentencing commissions such as those in Minnesota, Pennsylvania, and Washington State.

* This is a revised version of a paper presented at the 1985 annual meeting of the American Society of Criminology. The authors would like to thank anonymous reviewers for their many helpful suggestions. Direct correspondence to John H. Kramer, Department of Sociology, Pennsylvania State University, 501 Oswald Tower, University Park, PA 16802.

The move to commission-based guidelines was made at the advice of numerous commentators such as Singer (1976) and Frankel (1973). Proponents of this approach argued that a commission composed of experts and insulated from political pressures would be most able to devote the time and effort required to write intelligent and comprehensive guidelines. Moreover, it was argued that the commission would be most able to implement the guidelines systematically, monitor their use, and evaluate their impact.

Thus far, the assessment of sentencing reform has focused on the impact of the reform on such outcome measures as incarceration rates and lengths of incarceration, trial rates, and plea negotiations. Little attempt has been made to compare the reform efforts themselves (see Martin 1983 for an exception) or to compare differences in sentencing recommendations across jurisdictions (see Lagoy, Hussey, and Kramer 1978 for an exception). The adoption of sentencing guidelines in Minnesota, Pennsylvania, and Washington, however, provides a unique opportunity to quantify and compare sentencing recommendations in different states and to explore reasons for possible differences.

Although Minnesota, Pennsylvania, and Washington have developed sentencing guidelines with similar structures and formats, the actual recommendations vary both in overall levels of severity and in the extent to which they preserve judicial discretion. Such variation is not surprising in view of the differences in the purpose of the reforms, in the sentencing philosophies adopted by the commissions, and in the legislative constraints placed on the commissions. This article explores these differences and speculates on how they may account for 1) variations among the states in the overall severity of the recommendations and 2) the degree of discretion retained by the sentencing judge.

To measure these differences we employed a computer simulation model to calculate the individual guideline recommendations in Minnesota, Pennsylvania, and Washington for an identical group of 8,376 offenders. For each offender in the group we calculated the recommendations separately for Minnesota, Pennsylvania, and Washington, taking into account the seriousness of the crime, the offender's prior record, and whether a deadly weapon was used. Then we aggregated the results of these individual simulations to allow for quantitative comparisons of sentencing recommendations among the states. Specifically, this simulation measured differences in the average levels of guideline severity and in the scope of judicial discretion allowed by the guidelines (as measured by the width of the guideline ranges).

This approach represents a significant advance over previous, qualitative comparisons of sentencing reforms (von Hirsch, Krapp, and Tonry 1987). To our knowledge, it represents the first time a simulation approach has been employed to quantify and contrast sentencing policy among states. The simulation approach is ideal for this type of analysis because it allows for a direct measurement of sentencing policies while controlling for real-world system adjustments to that policy (i.e., the simulation eliminates plea bargaining and other system adjustments to the guidelines).

The purpose of the simulation is not to measure the *actual* impact but the *intended* impact of the reform. For this reason the study is concerned with guideline recommendations instead of actual sentences. Actual sentencing practices may vary from the prescribed sentencing policy. Judges may differ in the frequency and extent to which they deviate from the guidelines (see, for example, Tonry 1987). Furthermore, it has been argued often that prosecutors may circumvent guidelines through plea bargaining (see, for example, Alschuler 1976; Rathke 1982; Tonry 1987). Nevertheless, this article focuses only on policy differences among the states. Questions relating to differences in actual sentencing practices among states and to the effects of guidelines or actual sentences within a state are not addressed in this article but are deferred for future research.

In addition to quantifying differences in sentencing policies among the states, it is important to try to identify the reasons for such differences. Are there specific factors surrounding the development of guidelines in each jurisdiction which can be linked systematically to differences in the resulting guidelines? If so, what are the implications for other jurisdictions contemplating the development of guidelines? As a first step in attempting to answer these questions, the following section reviews differences in the sentencing reforms in each state and speculates on how these differences might be expected to produce similar or dissimilar guidelines.

COMPARISON OF SENTENCING GUIDELINE REFORMS

The sentencing reforms in each state were similar in many respects. Each reform represented, in part, an attempt to structure judicial discretion so as to reduce unwarranted disparity in sentencing. Moreover, each commission made a conscious decision to

develop prescriptive rather than descriptive guidelines.¹ In developing guidelines each commission adopted a scoring system that measured offense severity and prior record separately, system a grid or matrix format that prescribed sentencing recommendations based on the measures of offense severity and prior record, developed detailed training documents to assure reliability in the application of the guidelines, and implemented a monitoring system to review and revise the guidelines. Furthermore, each sentencing reform provided for the appellate review of sentences.

Despite these similarities, there exist some important philosophical distinctions among the states which are reflected in the severity of the recommendations and in the extent to which they limit judicial discretion. The states also differ somewhat in their strategies for measuring offense severity, assessing prior record, and establishing guideline ranges. Again, for the most part, these variations are derived from differences in the scope and purpose of the guidelines, in sentencing philosophies adopted by the commissions, and in the statutory constraints placed on the commissions. These differences and their possible consequences are discussed below.

Differences in the Scope and Purpose of the Reforms

The reform efforts in Minnesota and Washington were far more sweeping than in Pennsylvania. Both Washington and Minnesota replaced their indeterminate sentencing structures with flat, determinate systems. Under the previous systems the judge decided whether the offender was to be incarcerated, but the parole board determined, within certain constraints, the effective length of the incarceration term. For the most part the parole board based this decision on the offender's rehabilitative progress and likelihood of committing future crimes. Under the new determinate systems, however, the judge continues to make the incarceration decision but sets a fixed term of incarceration. The offender is released automatically at the expiration of that term, subject only to reductions for good behavior.

At the very least, the movement towards determinacy in Minnesota and Washington reflected a turning away from prediction and rehabilitation as a basis for determining inmates' release. It may also have signaled the rejection of prediction and rehabilitation as a basis for sentencing.

¹ Each state based its recommendations on the normative decisions of the commission members rather than on past practices. Thus, examining the guidelines in each state makes it possible to compare and contrast specific sentencing policies.

Pennsylvania, on the other hand, continued its indeterminate, rehabilitation-based system of sentencing. Under Pennsylvania statute and case law, the judge must consider the offender's rehabilitative needs before imposing a sentence. Furthermore, when deciding whether to impose probation, the judge is required to take into account the offender's background, character, and attitudes. If the judge elects to incarcerate an offender, he or she must impose both a minimum and a maximum sentence, but within these limits it is left to the parole board to decide when the offender will be released.

The continuation of indeterminate sentencing in Pennsylvania and the adoption of determinate sentencing in the other two states suggests that Pennsylvania's guidelines would be more likely to allow for rehabilitative and incapacitative considerations. This suggestion is confirmed by the fact that judges in Pennsylvania are required by statute to consider a wide variety of factors, including the offender's background and rehabilitative needs. For these reasons it is likely that the guidelines in Pennsylvania would permit more judicial discretion than those in Minnesota and Washington. This greater discretion most likely would be operationalized through wider guideline ranges. Therefore it is expected that the width of the guideline ranges would be greater in Pennsylvania than in Minnesota and Washington.

Differences in Sentencing Philosophies

Perhaps the most important factor distinguishing the three commissions was the sentencing philosophy underlying their guidelines. Minnesota adopted a "modified just deserts" model, which meant that sentence severity is directly proportional to the seriousness of the conviction offense and, to a lesser extent, to the offender's criminal history (Knapp 1984a). Minnesota emphasized this philosophy further by expressly prohibiting the consideration of "status factors" such as race, sex, age, employment status, marital status, and residence as reasons for departing from the guideline recommendations.

To a lesser extent, Washington also followed the "modified just deserts" model emphasizing the current offense in establishing sentence ranges, but giving more weight to the prior record score than Minnesota. In limited circumstances the Washington guidelines embrace incapacitative considerations by placing an accelerated emphasis on criminal history for the repeat violent criminals" (State of Washington 1984: II.32). Washington's guidelines, however, placed no restrictions on the consideration of "status factors" as reasons for departing from the guidelines.

Like Minnesota and Washington, Pennsylvania guidelines give primary weight to the current conviction and secondary weight to the prior record. Pennsylvania, however, did not adopt a primary rationale for sentencing but attempted to incorporate into the guidelines the various sentencing rationales of just deserts, incapacitation, deterrence, and rehabilitation (Kramer and Lubitz 1985; Kramer and Scirica 1986). Furthermore, Pennsylvania guidelines are silent concerning the appropriateness of considering "status factors" as reasons for sentencing, but Pennsylvania statute and case law require that the judge consider the offender's background and characteristics.

As noted by Blumstein, Cohen, Martin, and Tonry (1983:164), the sentencing philosophy adopted by each commission would be expected to influence the width of the guideline ranges:

An adherent of the goal of just deserts, who places high value on equality in sentencing and the reduction of disparities, would favor narrow ranges. One with utilitarian goals, in contrast, might urge broad ranges that permit lengthy incarceration when incapacitative, deterrent or rehabilitation considerations appear germane.

For these reasons one would expect to find narrower guideline ranges in Minnesota and Washington and wider ranges in Pennsylvania.

Because Pennsylvania and, to a lesser extent, Washington allow for incapacitative considerations, the severity of their guideline recommendations would be expected to increase significantly as the offender's prior record increases. One would expect to find less of an increase for Minnesota, which emphasizes offense severity over prior record (see Knapp 1984a for a discussion of various desert and incapacitative guideline models). Furthermore, because a "modified just deserts" model places primary emphasis on the severity of the offense, one might expect to find the recommendations for violent crimes to be significantly greater than those for nonviolent crimes (see Knapp 1984b). If this is the case, this distinction should be greatest for Minnesota and least for Pennsylvania.

Differences in Statutory Constraints

Minnesota's enabling legislation required the sentencing commission to take correctional capacity "into consideration." The commission decided to treat this requirement as a constraint and developed guidelines that would not exceed existing prison capacity. The enabling legislation in Washington required the commission... to assess the impact of the guidelines on prison resources; if

the projection showed that the guidelines would cause prison capacity to be exceeded, the commission was instructed to prepare an alternative set of guidelines that would fit the existing capacity (State of Washington 1984). Not surprisingly, the final guidelines promulgated by the commission were consistent with existing prison capacity.

Pennsylvania legislation was silent concerning prison capacity; thus the commission decided to consider prison capacity but not to be constrained by it (Kramer and Scirica 1986). Consequently the final guidelines adopted by the commission were projected to increase prison populations beyond capacity.

The existence of a prison capacity constraint might be expected to affect both the severity of the guidelines and the width of the guideline ranges. This constraint most likely would temper the severity of the guidelines. Moreover, the requirement to stay within prison capacity most likely would compel the commission to allocate prison resources to the most serious offenses and to seek nonincarceration dispositions for less serious offenses (Knapp 1984b). These priorities probably would result in a significant gap between the recommendations for violent and for nonviolent offenders.

Conformance to the prison constraints requires that the impact of the guidelines be projected accurately. Such projections would be easier and more precise if the discretion within the guidelines were limited. Therefore one might expect that commissions constrained by prison capacity would develop guidelines with narrow ranges and would attempt to limit departures from those ranges.

For these reasons it might be expected that guidelines developed in Minnesota and Washington would be less severe than those of Pennsylvania and would have narrower guideline ranges.

Summary

On the basis of the above discussions, it is expected that Pennsylvania's guidelines would allow for more judicial discretion than those of either Minnesota or Washington. Pennsylvania retained an indeterminate sentencing system and developed guidelines that permit both rehabilitative and incapacitative considerations. On the other hand, Minnesota's guidelines would be expected to impose the greatest restrictions on judicial discretion. Minnesota adopted a determinate sentencing system and developed guidelines based primarily on principles of retribution and "modified just deserts." Moreover, the Minnesota guidelines expressly prohibited

the consideration of status factors as reasons for sentencing. Finally, Washington would be expected to allow for somewhat more discretion than Minnesota but less than Pennsylvania. Washington adopted a determinate sentencing system and developed guidelines based primarily on desert principles but allowing for some incapacitative considerations. Washington's guidelines, however, do not prohibit the judge from considering status factors as reasons for sentencing outside the guidelines.

We might also expect that Pennsylvania's guidelines would be more severe than those of the other two states because Pennsylvania guidelines were not constrained by prison capacity. It also was expected that Pennsylvania and, to a lesser extent, Washington would give more weight to the offender's prior record than would Minnesota because these states are more likely than Minnesota to allow for incapacitative considerations. Finally, it might be expected that Washington and Minnesota would show greater distinctions between violent and nonviolent offenses than would Pennsylvania because both states adopted retributive sentencing principles and were constrained by prison capacity.

METHODOLOGY

As discussed previously, the guidelines developed in Minnesota, Pennsylvania, and Washington reflect the sentencing policy of each state. By simulating guideline recommendations in each state for an identical group of offenders, we should be able to quantify and contrast the prescribed sentencing policies in each state.

The group selected for study consisted of all offenders (a total of 8,376) convicted in Pennsylvania during 1984 for rape, aggravated assault, voluntary manslaughter, involuntary manslaughter, burglary, arson, and theft. These offenses were selected because they include the most common serious crimes and parallel closely the FBI's index crime classifications. Offenses involving attempts, conspiracies, and solicitations were excluded, and it was assumed that each defendant was convicted of and sentenced to only one offense. Furthermore, this study disregards applicable mandatory sentencing laws, if any, because they do not directly reflect decisions by the sentencing commission. Information on offense and prior record for each offender in the group was extracted from the sentencing data base maintained by the Pennsylvania Commission on Sentencing.

In order to determine the applicable guideline ranges in each state, we developed computer programs that took into account the seriousness of the conviction offense (offense gravity score), the

extent and gravity of the prior record (prior record score), and, when applicable, the possession or use of a weapon.² We determined the offense gravity score in each state by using the actual conviction offense in Pennsylvania and finding the equivalent conviction offenses in Minnesota and Washington.³ We computed the prior record score by applying each state's guidelines to the offender's felony record.⁴

After we determined the offense gravity score and the prior record score for each offender under each state's guidelines, the computer calculated the corresponding guideline sentence ranges. In order to compare these guideline ranges, we measured the following guideline dimensions for each offender in each state: 1) the midpoint of the guideline range, 2) the upper extreme of the guideline range, 3) the lower extreme of the guideline range, and 4) the width of the guideline range.⁵ Then we aggregated these individual dimensions by state in order to quantify and compare the average sentence recommendations. We also analyzed these average recommendations, controlling for offense category and prior record.

² The versions of the guidelines used for this analysis were as follows: Minnesota guidelines effective May 1, 1980; Washington (guidelines effective July 1, 1984), and Pennsylvania (guidelines effective July 22, 1982). Both Pennsylvania and Washington increase the sentence recommendations if a weapon was used in the crime.

³ When an exact equivalent offense could not be determined because of missing information, we selected the least serious possible equivalent offense for comparison. Consequently the severity of the guideline recommendations in Minnesota and Washington might be slightly underestimated.

⁴ In Minnesota, one point can be added to the prior record score if the offender was on probation or parole at the time of arrest. Neither Washington nor Pennsylvania guidelines take this factor into account, and this information was not available for the comparison group. The staff of the Minnesota Sentencing Commission stated that this addition applies to approximately 26 percent of all offenders. For purposes of this study we assumed that this point would be added only for offenders who had prior felony convictions (46 percent of the group). Therefore, to compensate for the missing information and to approximate the actual distribution on probation or parole under the Minnesota guidelines, a point for being on probation or parole at the time of offense was added randomly to 56 percent of the members of the group who had felony records.

⁵ Unlike the guidelines in Pennsylvania and Washington, the Minnesota guidelines address only state imprisonment sentences and make no recommendations concerning county jail sentences. If the Minnesota guidelines recommend that a sentence be "executed," a specific period of prison incarceration is prescribed. If the guidelines recommend that the sentence be "stayed," however, the judge is free to impose probation or up to 12 months in county jail. For purposes of this paper, when the Minnesota guidelines call for a "stayed" sentence, the recommendation is considered to range from 0 to 12 months. Treating the Minnesota guidelines in this manner makes them consistent with the structure of the guidelines in Washington and Pennsylvania.

FINDINGS

In this section we compare the widths and the extremes of each state's sentencing guideline ranges as well as the average severity of the recommendations. We analyze guideline severity separately, controlling for offense seriousness and prior record and then controlling simultaneously for both of these variables.

Comparison of Widths of Guideline Ranges

Table 1 displays the average lower end, upper end, and midpoint of the guideline ranges in each state and shows the average width of the guideline ranges. These figures are shown for all offenses, for major offense categories, and for violent versus nonviolent crimes.

The average width of guideline ranges for the 8,376 cases varies from 5.8 months in Washington to 11.7 months in Pennsylvania; Minnesota's average range, 9.7 months, is closer to that in Pennsylvania. Closer analysis of range variations as presented in Table 1 shows considerable differences among the states, depending on the type of offense or on whether a deadly weapon was involved in the commission of the offense.

Examination of the guideline ranges for violent versus nonviolent offenses shows that for violent crimes the guideline ranges in Pennsylvania are significantly wider than those in Minnesota (14.1 months and 6.9 months respectively). For nonviolent offenses, however, Pennsylvania's average guideline range of 10.6 months is slightly less than Minnesota's 10.9-month average. Washington's guideline ranges, which are the narrowest overall, are very narrow (3.9 months) for nonviolent offenses and moderately wide for violent offenses (10.2 months). Thus the data suggest that whether the offense is violent or nonviolent has important implications for the width of the ranges in each guideline. Furthermore, the data show that in Pennsylvania and Washington the width of the ranges is greater for violent than for nonviolent offenses, but the reverse is true in Minnesota.

Comparison of the Extremes of the Guideline Ranges

In attempting to take into account the width of the guideline ranges, Table 1 provides for comparison of the upper (maximum) and lower (minimum) extremes of the ranges in the three states. As stated previously, Pennsylvania has the widest range among the states.

For average minimum guideline range recommendations, Table 1 shows that Washington's recommendations are the longest

Table 1. Average Recommendations, in Months

| Offense | Number of Sentences | Minnesota | | | | Pennsylvania | | | | Washington | | | |
|------------------------------|---------------------|-----------|-----------|---------|-------|--------------|-----------|---------|-------|------------|-----------|---------|-------|
| | | Minimum | Mid-point | Maximum | Range | Minimum | Mid-point | Maximum | Range | Minimum | Mid-point | Maximum | Range |
| Voluntary manslaughter | 50 | 28.1 | 29.8 | 31.5 | 3.4 | 38.4 | 54.5 | 70.7 | 32.3 | 34.4 | 40.0 | 45.6 | 11.2 |
| Involuntary manslaughter | 59 | 25.0 | 26.3 | 27.5 | 2.5 | 5.7 | 13.1 | 18.9 | 13.2 | 13.4 | 14.7 | 16.1 | 2.6 |
| Rape/armed | 20 | 48.2 | 51.3 | 54.4 | 6.2 | 55.2 | 73.0 | 90.9 | 35.7 | 78.9 | 87.6 | 96.6 | 17.9 |
| Rape/other | 145 | 29.8 | 31.8 | 33.5 | 3.7 | 45.2 | 57.4 | 68.7 | 23.5 | 27.2 | 31.4 | 35.5 | 8.3 |
| Robbery/armed | 427 | 33.1 | 35.3 | 37.6 | 4.5 | 31.7 | 43.5 | 55.5 | 23.9 | 63.3 | 69.7 | 76.1 | 12.8 |
| Robbery/injury | 552 | 30.2 | 32.1 | 34.0 | 3.8 | 12.0 | 17.1 | 22.3 | 10.3 | 36.2 | 42.0 | 47.9 | 11.7 |
| Robbery/other | 677 | 2.7 | 8.4 | 14.0 | 11.3 | 3.9 | 9.0 | 14.2 | 10.2 | 5.9 | 8.6 | 11.3 | 5.4 |
| Aggravated assault/injury | 272 | 48.8 | 51.8 | 56.7 | 5.8 | 14.6 | 19.0 | 23.1 | 8.5 | 70.4 | 81.8 | 93.2 | 22.9 |
| Aggravated assault/other | 288 | 2.7 | 8.4 | 14.1 | 11.3 | 6.5 | 11.0 | 15.3 | 8.8 | 5.8 | 8.6 | 11.5 | 5.7 |
| Burglary of home while armed | 14 | 17.3 | 21.6 | 26.0 | 8.7 | 33.1 | 45.6 | 58.0 | 24.9 | 55.1 | 61.1 | 67.1 | 12.0 |
| Burglary/person present | 256 | 5.6 | 11.1 | 16.5 | 10.9 | 16.0 | 20.9 | 25.6 | 9.7 | 3.6 | 5.6 | 7.6 | 4.0 |
| Burglary/other | 3149 | 4.0 | 9.4 | 14.7 | 10.7 | 9.1 | 15.3 | 19.3 | 10.2 | 5.1 | 7.2 | 9.4 | 4.3 |
| Theft/major | 1236 | 3.1 | 8.6 | 14.1 | 10.9 | 4.9 | 10.2 | 16.3 | 11.4 | 2.3 | 4.3 | 6.3 | 4.0 |
| Theft/minor | 1087 | 1.7 | 7.4 | 13.1 | 11.4 | 1.1 | 6.7 | 12.2 | 11.1 | .8 | 2.0 | 3.3 | 2.5 |
| Arson/person | 80 | 29.9 | 31.8 | 33.6 | 3.7 | 31.7 | 44.1 | 56.4 | 24.7 | 25.8 | 29.7 | 33.6 | 7.8 |
| Arson/property | 94 | 2.4 | 8.2 | 14.1 | 11.1 | 7.3 | 11.6 | 16.0 | 8.7 | 4.9 | 7.8 | 10.6 | 5.7 |
| Nonviolent | 5836 | 3.5 | 8.9 | 14.4 | 10.9 | 7.1 | 12.9 | 17.7 | 10.6 | 3.7 | 5.7 | 7.7 | 3.9 |
| Violent | 2540 | 22.2 | 25.7 | 29.1 | 6.9 | 16.0 | 23.1 | 30.1 | 14.1 | 31.8 | 36.9 | 42.0 | 10.2 |
| Total | 8376 | 9.2 | 14.0 | 18.8 | 9.7 | 9.8 | 16.0 | 21.4 | 11.7 | 12.3 | 15.2 | 18.1 | 5.8 |

(12.3 months), followed by those of Pennsylvania (9.8 months) and Minnesota (9.2 months). For average maximum range recommendations, however, Pennsylvania's are the longest (21.4 months), followed by those of Minnesota (18.8 months) and Washington (18.1 months). These extremes vary depending on the offense category. When all offenses are analyzed together, however, the extremes of the guideline ranges are relatively similar among the states. The overall midpoints of the ranges also are very similar and vary by no more than two months (14.0 months in Minnesota, 16.0 months in Pennsylvania, and 15.2 months in Washington).

Although aggregating all offenses for analysis disregards variations among offenses and may mask important policy differences, the analysis does reveal differences in the overall severity levels of recommendations. These differences are examined in the following sections.

Comparison of Average Guideline Severity

We selected the midpoint of the guideline range as the most representative measure of the average severity of the guideline recommendations in each of the states. The midpoint of the guideline range is the appropriate comparison measure for Minnesota because the midpoint is the presumptive guideline sentence. Although the midpoint is not specifically designated as the presumptive sentence in Pennsylvania or Washington, it can be viewed as the closest estimate of the average severity or the expected value of the recommendation.⁶

Comparing midpoints disregards the differences in degrees of variation around the midpoint in each of the states. States with the widest ranges probably will show the greatest variation. This section of the paper, however, focuses exclusively on the average severity of the guideline recommendations as estimated by the midpoint of the guideline range. Therefore this estimate remains unaffected by the degree of variation around the midpoint.⁷

Overall Guideline Severity

As Table 1 shows, the overall average midpoints of the guideline ranges in each state differ by no more than two months. This

finding suggests considerable similarity among the states in the average severity of the sentencing recommendations. Additional evidence for sentencing consistency among the states is found in the correlation coefficients calculated from individual sentencing recommendations rather than from overall mean sentences (see Cullen, Link, Travis, and Wozniak 1985 for a discussion of this important methodological distinction). We expected that the correlations would be relatively high because the commissions used very similar factors to establish the guideline lengths. This expectation is confirmed strongly between Minnesota and Washington ($r = .899$) but much less so for the Pennsylvania correlation with Minnesota ($r = .605$) and Washington ($r = .637$).

Overall these initial findings suggest considerable congruence in the guideline recommendations among the three states. The correlation coefficients, however, suggest that Pennsylvania is the least similar to the other states in the study. This finding leads us to ask whether the Pennsylvania commission's divergence resulted from its ranking and distinction between offenses or from its use of prior record.

Guideline Severity Disaggregated by Offense Category

The mean sentence recommendations for each major crime category are shown in Table 1. These data show considerable variation in the average guideline recommendations for specific offenses. In Minnesota, for example, aggravated assault causing injury carries the longest average recommended sentence (51.8 months), while in both Pennsylvania and Washington armed rape carries the longest average recommended sentence (73.0 and 87.6 months respectively). For unarmed rape, however, the sentence recommendations in Washington and Minnesota are very close: 31.8 months in Minnesota and 31.4 months in Washington. In contrast, Pennsylvania recommends 57.4 months for this crime.

For the 16 offense categories shown in Table 1, Pennsylvania recommends the longest sentence in nine of the categories, Washington in five, and Minnesota in only two.

Guideline Severity, Controlling for Violent and Nonviolent Offenses and for Prior Record

In Table 2 the average severity of the guidelines is shown separately for violent and for nonviolent offenses. As expected, within-state comparisons show that in each of the states studied, the average recommendations for violent crimes are more severe than for nonviolent offenses. The extent of this differentiation varies considerably among the states, however. Pennsylvania's

⁶ This statement does not necessarily imply that the means of actual sentences within each guideline range will equal the midpoint of the range. This paper deals with guideline policy recommendations, not with actual sentences.

⁷ This analysis is not intended to deny the importance of such variation in assessing the overall sentencing policies of the states. Rather it is designed to allow direct examination of only one aspect of those policies: the average severity of the recommendations.

sentencing guidelines make the least distinction between violent and nonviolent offenders. Washington's guidelines make the greatest distinction. The average difference in recommendations is 10.3 months in Pennsylvania, 16.8 months in Minnesota, and 31.2 months in Washington. Similar findings emerge regardless of the extent of the offender's prior record.

Table 2. Midpoint Recommendations, by Prior Record and Type of Offense (Violent/Nonviolent)

| State | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7+ | All |
|-----------------------|-------------|-------------|------------|------------|------------|------------|-----------|------------|-------------|
| Minnesota | | | | | | | | | |
| Violent (number) | 19.2 (1558) | 26.6 (499) | 35.4 (267) | 49.4 (127) | 61.8 (46) | 68.2 (17) | 76.8 (8) | 89.1 (18) | 25.7 (2540) |
| Nonviolent (number) | 6.0 (3354) | 6.0 (982) | 6.8 (558) | 15.0 (425) | 22.4 (186) | 32.5 (101) | 40.0 (78) | 35.9 (152) | 8.9 (5836) |
| All offenses (number) | 10.2 (4912) | 12.9 (1481) | 15.9 (825) | 22.9 (552) | 30.1 (232) | 37.6 (118) | 43.4 (86) | 41.5 (170) | 14.0 (8376) |
| Washington | | | | | | | | | |
| Violent (number) | 30.0 (1558) | 38.0 (499) | 48.7 (267) | 55.0 (127) | 64.5 (46) | 101.3 (17) | 99.4 (8) | 145.9 (18) | 36.9 (2540) |
| Nonviolent (number) | 1.5 (3354) | 4.4 (982) | 7.7 (558) | 11.8 (425) | 15.4 (186) | 25.5 (101) | 34.3 (78) | 43.1 (152) | 5.7 (5836) |
| All offenses (number) | 10.5 (4912) | 15.7 (1481) | 20.9 (825) | 21.7 (552) | 25.1 (232) | 36.4 (118) | 40.3 (86) | 54.0 (170) | 15.2 (8376) |
| Pennsylvania | | | | | | | | | |
| Violent (number) | 15.8 (1558) | 24.8 (499) | 40.4 (267) | 48.3 (127) | 52.0 (46) | 53.3 (17) | 58.7 (8) | 56.2 (18) | 23.1 (2540) |
| Nonviolent (number) | 6.7 (3354) | 9.4 (982) | 20.0 (558) | 31.3 (425) | 32.9 (186) | 38.2 (101) | 37.3 (78) | 38.3 (152) | 12.9 (5836) |
| All offenses (number) | 9.6 (4912) | 14.6 (1481) | 26.6 (825) | 35.2 (552) | 36.7 (232) | 40.4 (118) | 39.3 (86) | 40.2 (170) | 16.0 (8376) |

Comparisons among states on average sentence recommendations for violent crimes show that Washington prescribes the longest sentences, Pennsylvania prescribes the shortest, and Minnesota lies between the two states but close to the averages for Pennsylvania. Table 2 shows that Washington recommends an average sentence of 36.9 months for violent crimes, compared to 25.7 months in Minnesota and 23.1 months in Pennsylvania. On the other hand, Pennsylvania's sentencing commission recommends the highest average sentence for nonviolent crimes with an average of 12.9 months, compared to 8.9 months in Minnesota and 5.7 months in Washington.

Table 2 also compares the average guideline recommendations in each state as broken out by the number of prior felony convictions. Figure 1 illustrates this relationship. Generally each state suggests similar sentences for defendants with no prior felony convictions or with one, five, or six. For defendants with two, three, or four prior convictions Pennsylvania guidelines suggest the longest sentences; for defendants with seven or more, Washington's guidelines suggest the longest sentences. The recommendations for Pennsylvania jump dramatically for defendants with two prior convictions and then level out for defendants with four or more. In contrast, the relationship between sentence recommendations and prior felonies in Minnesota and in Washington is almost linear: the recommendations increase as the prior record increases.

For only violent offenses, Figure 2 plots the average guideline recommendations against the number of prior felony convictions. For these offenses the recommendations in all three states increase gradually as the number of prior felonies increase. For defendants with four or more prior convictions, however, the recommendations in Washington escalate quickly beyond the levels found for the other two states. Violent offenders with four or more prior felonies receive the least severe recommendation in Pennsylvania.

For nonviolent offenses, Figure 3 plots the average guideline recommendations against the number of prior felony convictions. For these offenses the recommendations in Pennsylvania increase abruptly for defendants with two and three prior convictions and then stabilize for offenders with five or more. In both Washington and Minnesota the recommendations increase gradually as the number of prior convictions increases. Washington's guidelines, however, continue to increase after Pennsylvania's and Minnesota's recommendations have stopped rising. The data in Figure 3 support the earlier finding that in general, Pennsylvania's guidelines recommend more severe sentences for nonviolent offenses except for offenders with numerous prior felony convictions.

DISCUSSION

For the most part, these findings confirm the expectations outlined in the earlier sections of this article. Pennsylvania's guidelines appear to allow for more discretion (through wider guideline ranges) and to prescribe slightly more severe average sentences than do those of Minnesota and Washington. As discussed previously, these differences were expected to result from variations in the purposes of sentencing reforms, in the sentencing philosophies adopted by the commissions, and in the existence of

Figure 1. All Offenses

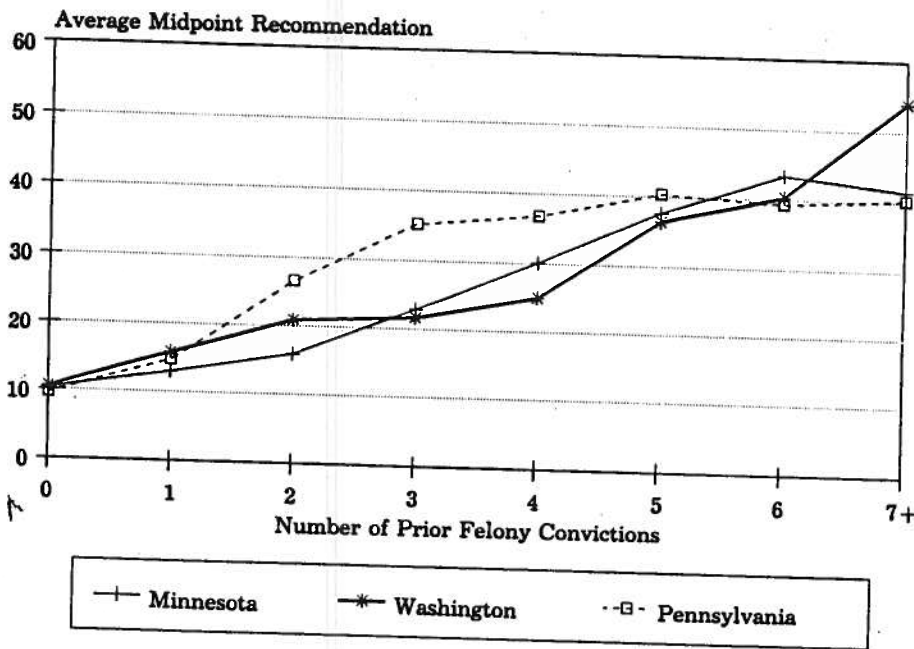
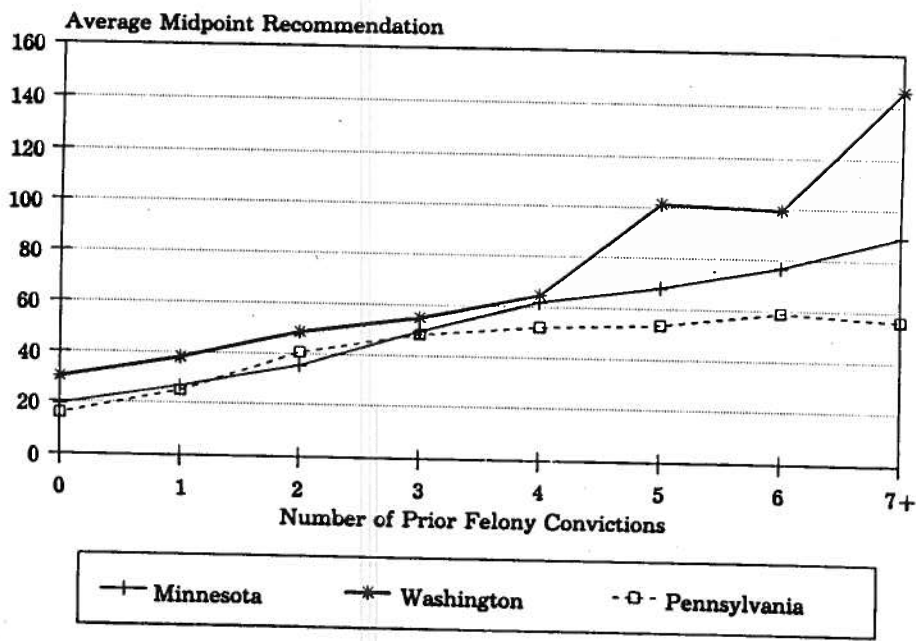
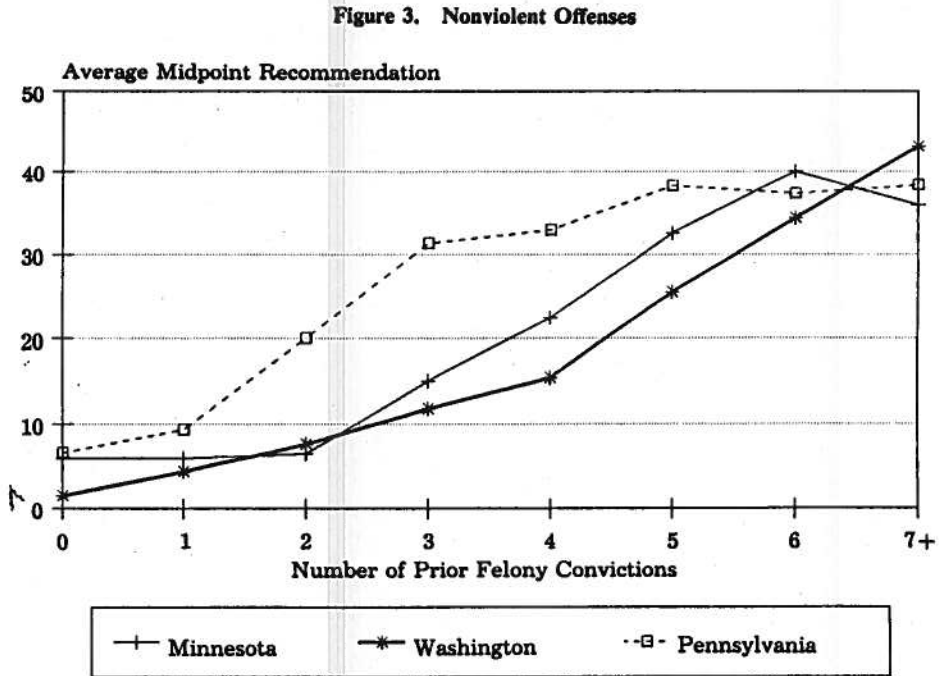


Figure 2. Violent Offenses





statutory constraints. Closer inspection of the findings, however, reveals some interesting nuances and a few deviations from expectations.

Discretion Allowed by the Guidelines

One measure of discretion allowed by the guidelines is the width of the guideline ranges. As expected, the average width of the ranges was greatest in Pennsylvania. Surprisingly, however, the average widths in Minnesota were much closer to those in Pennsylvania than to those in Washington. Because Minnesota adopted a determinate sentencing system and a "modified just deserts" model for guidelines, we had expected that Minnesota guideline ranges would be much narrower than those of Pennsylvania. This departure from expectations probably occurred because the Minnesota guidelines affected only a small subset of the offenders in the comparison group: those who fell into the areas of the guidelines for which a state prison sentence was recommended.⁸ If the offender fell within an area of the Minnesota guidelines that did not recommend a prison sentence, the judge retained complete discretion in sentencing the offender to probation or to as long as 12 months of confinement in jail. In this respect the Minnesota guidelines have a more limited focus than do the guidelines of Pennsylvania and Washington.

This point becomes clearer when violent and nonviolent offenses are analyzed separately. For violent offenses (those for which the Minnesota guidelines are most likely to recommend prison) the Minnesota guidelines exhibited the narrowest ranges among the states. Conversely, for nonviolent offenses (those for which the Minnesota guidelines are least likely to recommend prison) the Minnesota guidelines showed the widest ranges.

Like Minnesota, Washington embraced determinate sentencing and a "modified just deserts" guideline model. Washington's guidelines, however, prescribe narrow ranges for jail sentences as well as for prison sentences. As expected, Pennsylvania's guidelines, which allow for incapacitation, deterrence, and rehabilitative considerations, show the widest ranges.

These findings show that the scope of the guidelines and the underlying philosophy of sentencing have important ramifications for the degree of discretion permitted by the guidelines, as demonstrated by the average width of the guideline ranges.

⁸ Only 27 percent of the offenders in the comparison group fell within guideline calls that recommended a period of state imprisonment.

Severity of the Guidelines

The findings show that in general, overall average guideline recommendations are relatively similar, although (as speculated) Pennsylvania has the longest overall sentence recommendations. Nonetheless, important differences emerge among the commissions' recommendations when the data are analyzed for specific crimes, violent versus nonviolent crimes, and extent of prior felony record.

For most of the specific offense categories considerable differences exist among the three jurisdictions. These differences show that each of the commissions placed quite a different length value on many of the offenses while maintaining a relatively similar ranking of the severity of the crimes listed. The differences are highlighted even more strongly when the data are broken out by violent and nonviolent offenses. The findings show considerable variation among the three sets of guidelines in the degree of distinction between these types of offenses and in the relative severity accorded to the two types. The Washington guidelines make the greatest distinction between violent and nonviolent offenses; Pennsylvania makes the least. Comparison across the three jurisdictions demonstrates that Washington treats violent offenses much more severely than either Minnesota or Pennsylvania. There is no clear-cut explanation of these important differences among recommendations. As discussed previously, however, there is a stronger focus on retribution in Minnesota and in Washington than in Pennsylvania; this difference may explain why these two jurisdictions make such significant distinctions between violent and nonviolent offenses. In addition, both of these jurisdictions had a mandate to consider prison capacity. Therefore, in order to stay within capacity, they may have reduced sentence recommendations for nonviolent offenses.

As speculated, the findings suggest that the combination of the retributive approach and the prison capacity limit in Washington and Minnesota resulted in a greater distinction between violent and nonviolent offenses. In comparison, Pennsylvania increased severity of sentences for violent crimes, but in the absence of a capacity constraint also established relatively high recommendations for nonviolent offenses.

Perhaps more clearly than any of the other comparisons, the effects of prior record reflect some of the differences in the construction of the guidelines. The data show that Minnesota and Washington established an almost linear relationship between sentence recommendations and the number of prior felonies. In contrast, Pennsylvania's overall sentencing recommendations escalate

rapidly for the first two prior felonies but level off for defendants with three or more.

The data show clearly that each sentencing commission's recommendations are influenced strongly by the defendant's past convictions. This finding conflicts directly with Singer's (1978) argument that a just deserts model should not include prior record; it also conflicts with von Hirsch's (1976) argument that guidelines may consider whether a person has had a prior conviction but that further consideration would violate the "just deserts model". In some respects Pennsylvania's sentencing recommendations incorporate the least cumulative effect of prior convictions and thus come closest to a "just deserts" model. Minnesota and Washington, on the other hand, continue to increase the sentence recommendation as the number of prior felonies increases. To some extent these increases suggest an incapacitation philosophy. This suggestion is supported particularly in Washington's guidelines, which establish significant increases in the average sentence recommendation for violent offenders with five and then with seven or more prior felonies.

Another factor that may have influenced the recommendations is the membership of the commissions. The fact that Pennsylvania's commission was the only one which included legislators (with full voting rights) and the only one without representatives from corrections may have made its guidelines more sensitive to political pressure and less sensitive to prison overcrowding. Within this analysis, however, it is not possible to determine the extent to which the composition of the commission may have affected the sentence recommendations.

CONCLUSION

This study compares sentence recommendations among three states with somewhat different mandates and perspectives. The findings demonstrate that the sentence recommendations of the three commissions varied considerably in the width of the guideline ranges, the severity of the guidelines, the distinction between violent and nonviolent crimes, and the importance of prior conviction. The data further suggest a possible link between the substance of the guidelines and contextual factors surrounding their development in each state.

Before we discuss possible conclusions, it is important to note several limitations of the research. First the study involves only three states, and it is very risky to draw inferences from such a small sample. Second, it

social differences among the states to which this study is not sensitive. Third, these three states hardly reflect the diversity of criminal justice systems in the United States. Each is a northern state and contains at least one large metropolitan area. Furthermore, all these states have historical incarceration rates well below the national average reported by the Bureau of Justice Statistics (1986).

Despite these cautions, we can draw some general conclusions which may be helpful to other states considering guidelines. In the three states studied, several factors influenced greatly the development of their guidelines: 1) the purpose and scope of the sentencing reform, 2) the sentencing philosophy adopted by the commission, and 3) the constraints imposed by statute. In general, the adoption of a determinate sentencing system, a retribution rationale for sentencing, and a prison capacity constraint appear to have created a predilection for guidelines with narrow ranges and limited authority for departures. On the other hand, the adoption of an indeterminate sentencing scheme, coupled with a sentencing philosophy that contemplated incapacitative, deterrent, rehabilitative, and retributive principles, appears to have created a predilection for guidelines with wider ranges and perhaps more severe sentences.

For jurisdictions considering sentencing guidelines, the findings suggest that the choices made during the early stages of the reform process are crucial in setting the course of guideline development. Furthermore, these critical early decisions have the potential to shape statewide sentencing policy well into the future.

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9 pages

Complex Policy Choices: The Pennsylvania Commission on Sentencing

BY JOHN H. KRAMER AND ANTHONY J. SCIRICA*

IN 1982, the Pennsylvania legislature adopted sentencing guidelines submitted by the Pennsylvania Commission on Sentencing. This adoption culminated over 3 years of work by the Commission. A year earlier the legislature had rejected a set of guidelines submitted to it by the Commission on the basis that those guidelines were too constraining on the judiciary and too lenient. The Commission revised those initial guidelines as directed by the legislature and resubmitted them for legislative consideration. It was these guidelines that were adopted by the legislature. As a result of the legislative direction to increase the severity and to provide the judiciary more latitude under the guidelines, the guidelines reflect Commission decisionmaking and legislative direction.

A sentencing commission must make many difficult decisions in writing sentencing guidelines. The following discussion describes the most significant of these decisions and presents the rationale supporting them. As with any body, a commission decision does not always reflect unanimous agreement. Often decisions were made, reconsidered, modified, and made again.

Creation of the Commission

In 1978, the Pennsylvania legislature created the 11-member Pennsylvania Commission on Sentencing. The Commission membership is composed of four members of the legislature, four judges, and three gubernatorial appointments which must include a defense attorney, a district attorney, and a law professor or criminologist. The Commission was mandated to submit to the legislature a set of sentencing guidelines that incorporated the gravity of the current offense, prior felony convictions, and use of a deadly weapon. Moreover, the legislation mandated ranges for aggravating and mitigating circumstances. However, there were also other aspects of law which established important contexts for the drafting of sentencing guidelines. The Judicial Code of Pennsylvania [42 Pa. C.S. §9721(b)] retains an eclectic approach to sentencing by stating that sentencing decisions should call for "confinement that is consistent with

the protection of the public" (incapacitation, rehabilitation, and/or deterrence); "the gravity of the offense" (retribution); and "the rehabilitative needs of the defendant" (rehabilitation).

In addition, the enabling legislation [42 Pa. C.S. §9781(d)] specified that, under appeal, the appellate courts shall consider the sentencing court's opportunity to review the nature and circumstances of the offense, the history and characteristics of the defendant, and the opportunity of the sentencing court to observe the defendant and the sentencing guidelines.

Thus, Pennsylvania grafted the sentencing commission model onto its individualized, indeterminate sentencing model. Statute maintains that the parole board make release decisions.

The legislature also extended the right of appellate review of the discretionary aspects of sentencing to the prosecutor and specified that the standards on appeal are "clearly unreasonable" if the sentence is within the guidelines [42 Pa. C.S. §9781(c)(2)] and "unreasonable" when the court departs from the guidelines [42 Pa. C.S. §9781(c)(3)].

Pennsylvania's Decisionmaking Process

The problem before the Pennsylvania Commission on Sentencing was to draft sentencing guidelines that recognized the individualized model of sentencing, yet provided the court with standards that would reduce unwarranted sentencing disparity. As with any policy decisions, the Commission's decisions represent value choices. In making these choices, it established important and basic principles that guided the decisionmaking.

Descriptive vs. Prescriptive Guidelines

The most important decision that the Commission had to make was whether its guidelines would be descriptive or prescriptive. Descriptive guidelines focus on reducing disparity by establishing a norm which is based on past sentencing practices. Such guideline development is statistical in nature and assumes that current sentencing practices are generally appropriate. The basic purpose of descriptive guidelines is to bring extremely disparate sentences into line with the sentencing practices of most of the judiciary. Prescriptive guidelines, the alternative model, are not statistically derived from past practice but

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are set based on the informed judgments of those writing the guidelines.

The Pennsylvania Commission's debate on which approach to adopt centered on the value assumptions inherent in descriptive guidelines. First, the Commission was unwilling to assume that average sentences represented correct sentences. In fact, it was pointed out in this debate that the average sentence may not be one which is frequently given, but merely a statistical compromise between extremes.

Commissioners also attacked statistical determination of the factors to be considered at sentencing and the relative weight of these factors. They argued that the legislative mandate prescribed inclusion of certain factors such as gravity of the offense and prior felony convictions. They further argued that fairness dictated that certain factors which might have been used by courts in the past should not be considered in sentencing.

Furthermore, the Commission viewed its creation as indicative that the problems in sentencing were not limited to the issue of disparity. It concluded that a descriptive approach would ignore the broader problems of sentencing which the Commission must address.

With the decision to adopt the principle to write prescriptive guidelines, the Commission moved forward with its decision as to the factors that should be considered in sentencing and how they should be incorporated into the guidelines. At the same time, the Commission undertook a major research effort on sentencing practices. But the purpose of this research was to provide information on sentencing practices and on the potential impact of the guidelines on prison populations, not to establish guideline standards.

Benchmark Approach

A second major Commission decision was the adoption of the principle that guidelines are benchmarks. The Commission adopted the benchmark concept to reflect not only its own philosophy but the philosophy inherent in the Commission's enabling legislation.

As noted above, the Commission's enabling legislation adopted an eclectic, multipurpose approach to sentencing. This approach specified that issues and factors related to the utilitarian purposes of sentencing such as rehabilitation, deterrence, and incapacitation, as well as retribution, were important considerations in sentencing decisions.

The policy implicit in these mandates is that the guidelines must be considered by the court, but the court's responsibility extends beyond consideration of the guidelines.

Besides the legislative mandate, the Commission viewed the benchmark concept as reflective of its philosophy that guidelines are advisory rather than

presumptive. The basic principle behind the Commission's view was that guidelines should assist—not replace—the court. In fact, the guidelines were seen as increasing fairness only if the court cautiously applied the guidelines as opposed to accepting ritualistically the guidelines' recommendation. For example, as will be noted later in this article, the Commission determined that guidelines should reflect factors to be considered by the court in every sentencing event. Other factors which might be important and appropriate to consider are left to the court's discretion.

Another issue that led to the Commission's view of the guidelines as benchmarks was its view that guidelines are a simplification of a complex event. The Commission believed that ritualist application of the guidelines would result in a form of disparity in which dissimilar offenders are treated similarly.

Offense Gravity Score

The statutory mandate required that the Commission include in the guidelines the gravity of the current offense. In order to develop the offense gravity score, the Commission established a subcommittee to determine the most appropriate way to measure this variable and to propose to the Commission a set of rankings for its consideration. It must be noted that the process was time consuming and difficult. The subcommittee considered several different mechanisms to arrive at the offense rankings and determined that the best means was to look at each crime and rank it on a 10-point scale. One alternative for the subcommittee was to adopt Pennsylvania's statutory six-rank grading system. However, statutory grading was rejected because statute defines crimes very broadly and sets statutory maximums intended for the worst cases.

The result of this process was that all crimes were assigned a score from 1 (least serious) to 10 (most serious). The subcommittee developed a statement of rationale for the rankings based on staff observations of its decision-making process. The major rationales used in ranking offenses were the physical injury or potential physical injury to the victim, the harm or potential harm to the victim or the community, the statutory classification of the offense, and the culpability of the offender. These rationales were then reviewed and adopted by the Commission.

By establishing a rationale for offense rankings, the Commission was able to review its rankings and locate inconsistencies with the adopted principles. In addition, the rationales highlighted the fact that certain offenses were too broadly defined. For example, under certain circumstances, an offense would fall under one rationale, and under other circumstances, the offense would fall under another rationale and thus have a different ranking. As a consequence of this observation, the Commis-

sion determined to subdivide certain crimes such that the offense ranking would vary depending on the circumstances of the offense. The best example of this is the crime of burglary. Under Pennsylvania statute, burglary encompasses all forms of breaking and entering. Thus, such factors as type of structure, occupancy, and time of day are not distinguished in the statute.

The Commission decided that to classify all burglaries as equal would lead to inequitable sentencing results because all burglaries are not equal in terms of the potential injury or harm to the victim. Therefore, the Commission took the single statutory offense of burglary and created four subcategories and ranked these subcategories.

| OFFENSE RANKING | OFFENSE DESCRIPTION |
|-----------------|--|
| 7 | Burglary of an occupied structure adapted for overnight accommodation |
| 6 | Burglary of an unoccupied structure adapted for overnight accommodation |
| 6 | Burglary of an occupied structure not adapted for overnight accommodation |
| 5 | Burglary of an unoccupied structure not adapted for overnight accommodation. |

Thus, one statutory offense became four different behaviors for purposes of ranking under the sentencing guidelines. This aspect of the guidelines was necessary in order to reduce the problem of treating very different criminal behaviors equally.

To further reflect its focus on victim injury, or potential injury and culpability of the offender, the Commission adopted a deadly weapon enhancement to guideline recommendations in instances in which a deadly weapon is possessed in the commission of the crime and is not an element of the crime.

Criminal History

In developing the guidelines, the Commission had to determine what factors other than the severity of the current offense should be incorporated into the guidelines. The alternatives ranged from not including any factors other than current conviction to incorporating a wide range of factors such as prior convictions, prior arrests, prior juvenile adjudications, prior incarcerations, parole

or probation status, educational level, employment status and history, as well as numerous other such factors.

A. Offender Characteristics

The Commission was mandated in the enabling legislation to consider prior felony convictions. However, Commission debate centered on whether offender characteristics such as employment status and history and educational level should be incorporated into the guidelines as well.

There were two major arguments against their inclusion. One argument was that such factors are racially biased. Those taking this position argued that defendants who have less education and who are unemployed would be discriminated against and that such discrimination would work to the disadvantage of racial minorities.

A second argument was that status factors may be appropriate under some circumstances and inappropriate under other circumstances. Those taking this position argued that employment might be an important factor for a judge to consider in reaching the decision whether someone should be incarcerated. For example, if the imposition of a short incarceration sentence would result in the loss of an individual's job, then employment status might be appropriate to consider in sentencing. On the other hand, if the current offense was serious and the sentence recommendation was a relatively long period of confinement, then the individual's employment status was seen as being irrelevant.

Those who argued for the limited inclusion of status factors did so on the basis of two major arguments. First, it was argued that employed, incarcerated individuals are punished more severely than those unemployed because they suffer incarceration as well as the loss of job and perhaps support for dependents. A second argument rested on the ability of employment and educational level to predict recidivism. This argument was rebutted by arguments that status factors had not proven predictive of recidivism.

The Commission decided not to incorporate defendants' education and employment history in the guidelines but to leave such factors for the court to use as a reason for aggravating or mitigating the sentence.

B. Juvenile Record

A second major issue was whether to include prior juvenile court adjudications in the guidelines and, if included, what role they should play. The Commission established that juvenile adjudications should be considered in the guidelines because they often reflect serious misconduct on the part of the defendant, and, as such,

they reflect the offender's culpability and commitment to crime.

Those opposed to including adjudications made two arguments. One argument focused on the legal standards in juvenile court. This argument cautioned that in juvenile court, the standard of proof is often less than "beyond a reasonable doubt" and, therefore, should not be included in the guidelines. A second issue focused on the fact that many juvenile court judges do not set forth on the record the reason for a finding of delinquency. This argument noted that a juvenile may be brought to court under a delinquency position citing numerous allegations. However, when the court issues its findings of delinquency, it often does not specify for the record the particular charges for which the juvenile is guilty.

Although these concerns did not convince a majority of the commissioners, the latter argument did lead to the limitation that juvenile adjudications be counted in computing the guidelines only when the reason for the adjudication of delinquency is placed on the record. The Commission also limited the use of juvenile adjudications to offenses committed after the offender's 14th birthday, and statute limited their consideration to only when the current offense is a felony.

C. Current Correctional Status

Many guideline systems incorporate whether the defendant is on probation or parole at the time of the current offense as a factor to enhance the guideline recommendation. The Commission determined that such factors are inappropriate to consider in the guidelines because offenders on probation and parole are subject to revocation of their parole or probation status and punishment for the violation. Therefore, to enhance the guideline recommendation for such status would be to sanction the offender twice for the same behavior.

D. Prior Record Score

In calculating the prior record, the Commission thought it important to weigh the record according to both the seriousness and frequency of prior convictions. Therefore, the Commission established a four-level measure of prior record seriousness. The most serious offenses such as murder, rape, and kidnapping count three points each in the prior record score. Other felonies count either one or two points each depending on their seriousness; and misdemeanors, which can be punished by up to 5 years, are severely limited in their role in the guidelines.

The role of prior convictions/adjudications in the guidelines was always intended to be of secondary importance to the severity of the current conviction.

However, after the rejection of the initial guidelines by the legislature, the Commission increased the role of prior convictions/adjudications. Thus, although offense severity is still the major element in the guidelines, the importance of prior record has increased over time.

Sentence Lengths

Once the Commission established the basic matrix, consisting of the offense gravity rankings and the prior record measure, it had to address the issue of setting sentence lengths. Before beginning this process, however, the Commission had to determine whether the guidelines should be constrained by prison capacity.

A. Capacity Cap

The decision whether prison/jail capacity should limit the guideline recommendations was a major Commission decision. The enabling legislation for the Minnesota Sentencing Guidelines Commission specified that it must consider the impact of its guidelines on prisons. No such directive was in the Pennsylvania enabling legislation; however, the Commission recognized the importance of the issue.

The Commission thought that stable and fair sentencing policies were the reasons the Commission was established. Therefore, the Commission set as its priority that prison population should be dependent on fair sentencing practices and not the driving force for sentencing decisions. The Commission trusted that once guidelines were implemented, prison populations would stabilize and careful planning for correctional resources could take place.

B. Setting Minimum Sentence

Since Pennsylvania statute requires that the court set a minimum and maximum sentence, the Commission discussed whether it should set guidelines for the minimum sentence, the maximum sentence, or both. The Commission determined to set guidelines for the minimum sentence because the minimum sentence establishes the parole eligibility date in Pennsylvania when the maximum sentence is 2 years or longer.

Furthermore, parole board records available when the guidelines were being written indicated that in excess of 80 percent of the offenders were released at the expiration of the minimum. Consequently, the Commission was confident that the minimum sentence set a relative predictive and certain release date. Regarding the setting of the maximum, the Commission decided to let the court fashion the maximum to the individual case, although it knew that practice generally placed the maximum at twice the minimum.

C. Setting Lengths

The setting of guideline sentences began with the Commission reviewing the guideline matrix and considering past judicial practices for each cell of the matrix. The data showed the percentage of offenders incarcerated in each cell and the average minimum sentence. Based on this data, the Commission was able to see where sentencing practices indicated that incarceration was appropriate, and the data provided the Commission a sense of the sentence lengths offenders were receiving. Since the Commission was writing prescriptive guidelines, the data were used to inform the Commission rather than dictate sentencing recommendations.

In the first set of guidelines submitted to the legislature, the Commission constructed a matrix consisting of three basic sections. For the most serious offenders, the guidelines established sentencing standards which called for relatively long periods of confinement to a state institution. In the middle section of the matrix the Commission set guideline ranges that recommended incarceration in a county facility. The third section of the matrix established guideline sentences recommending nonconfinement.

The initial lengths set by the Commission were graduated so as to systematically increase with increases in offense gravity and prior record. These sentence lengths were established so as to place greater emphasis on the conviction offense than on the prior convictions of the defendant.

The initial guidelines incorporating these sentences were rejected by the legislature. The legislative resolution rejecting the guidelines called on the Commission to increase judicial discretion under the guidelines and to increase the severity of the guideline sentences. The Commission revised the guidelines as mandated. It widened ranges in the guideline matrix by increasing the upper limit in each cell of the matrix and replaced the recommendations calling for nonconfinement with ranges allowing confinement at the court's discretion.

The guidelines as adopted by the legislature establish sentences proportionate to the severity of the current conviction offense and the severity and frequency of prior convictions. The guidelines recommend more certain and longer sentences of confinement for violent offenders than had past sentencing practices. For offenders convicted of major property crimes, the Commission's guidelines establish recommendations of more certain confinement than had past sentencing practices and of much shorter lengths of confinement than those for the violent offender. For the least serious offenses, generally misdemeanors, the guidelines leave the incarceration decision to the court and only broadly set guidelines on the length of incarceration. (See Appendix A which is a

sentence range chart.)

Appellate Review

Although most attention has been focused on the guidelines, the right of appellate review may be more important. For years, sentencing was virtually not reviewable. With the implementation of the sentencing guidelines, Pennsylvania has instituted comprehensive appellate review of sentences. Appellate review requires careful consideration and articulation of the reasons for the sentence, which are important to the victim, the defendant, and the public.

Prior to statutory appellate review in Pennsylvania, a sentence was reviewable only if the sentence were illegal or manifestly excessive. Now the discretionary aspects of the sentence may be appealed, and the standard of review is the reasonableness of the sentence. Both the defendant and the district attorney have the right to appeal a sentence.

In the standard of appellate review the guidelines carry a presumption, and the appellate court is directed to look more closely to sentences that fall outside the guidelines. If the sentence is within the guidelines, the appellate court shall affirm unless the sentence is clearly unreasonable. On the other hand, if the sentence is outside the guidelines, the court shall affirm unless the sentence is unreasonable. The standard, however, is not whether the sentence complies with the guidelines, but whether it is a just and reasonable sentence. The guidelines are only one of four factors, including the nature of the offense and the history and characteristics of the offender, that the appellate court must consider.

In the last few years the appellate court has upheld the district attorney's right to appeal and strongly endorsed appellate review of sentences and the concept of sentencing guidelines to reduce unwarranted disparity. As a consequence, Pennsylvania is receiving thoughtful analyses of sentences, and a common law of sentencing is developing. In the end, it may be that the most important decisions will not be made by the sentencing commission but by the appellate court reviewing the individual decisions of the sentencing judge.

Conclusion

The Pennsylvania Commission on Sentencing confronted numerous difficult choices in drafting sentencing guidelines. This article has reviewed the most important choices, choices which are likely to stir much debate. The sentencing reform movement has progressed quickly over the past decade, almost too quickly for extensive debate on the many issues that must be decided. What seems obvious and rational from one perspective may

seem irrational from another.

The Commission adopted several principles in writing its guidelines, establishing that the Commission should prescribe sentencing standards, not establish standards based on statistical analysis of past practices. It set guideline sentences proportionate to the severity of the current conviction offense and the frequency and seriousness of prior convictions. Finally, the Commission identified its guidelines as benchmarks to reflect its view that guidelines should establish a fair beginning point of reference for the court.

These principles represent one sentencing commission's approach to developing sentencing policy. The guidelines derived from these principles have reduced sentencing disparity and have changed sentencing patterns (Kramer and Lubitz, 1985). Moreover, the appellate court's have carefully and thoughtfully reviewed sentences under ap-

peal, and a significant body of case law on the application of the guidelines is evolving (McCloskey, 1985). The Commission is optimistic that through its continuous review and monitoring of the guidelines and strong support from the appellate court, even better guidelines will evolve in the future.

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THE PENNSYLVANIA COMMISSION ON SENTENCING

APPENDIX A

| Offense Gravity Score | Prior Record Score | Minimum Range* | Aggravated Minimum Range* | Mitigated Minimum Range* |
|--|--------------------|----------------|---------------------------|--------------------------|
| 10 Third Degree Murder** | 0 | 48-120 | Statutory Limit*** | 36-48 |
| | 1 | 54-120 | Statutory Limit*** | 40-54 |
| | 2 | 60-120 | Statutory Limit*** | 45-60 |
| | 3 | 72-120 | Statutory Limit*** | 54-72 |
| | 4 | 84-120 | Statutory Limit*** | 63-84 |
| | 5 | 96-120 | Statutory Limit*** | 72-96 |
| | 6 | 102-120 | Statutory Limit*** | 76-102 |
| 9 For example: Rape; Robbery inflicting serious bodily injury** | 0 | 36-60 | 60-75 | 27-36 |
| | 1 | 42-66 | 66-82 | 31-42 |
| | 2 | 48-72 | 72-90 | 36-48 |
| | 3 | 54-78 | 78-97 | 40-54 |
| | 4 | 66-84 | 84-105 | 49-66 |
| | 5 | 72-90 | 90-112 | 54-72 |
| | 6 | 78-102 | 102-120 | 58-78 |
| 8 For example: Kidnapping; Arson (Felony I); Voluntary Manslaughter** | 0 | 24-48 | 48-60 | 18-24 |
| | 1 | 30-54 | 54-68 | 22-30 |
| | 2 | 36-60 | 60-75 | 27-36 |
| | 3 | 42-66 | 66-82 | 32-42 |
| | 4 | 54-72 | 72-90 | 40-54 |
| | 5 | 60-78 | 78-98 | 45-60 |
| | 6 | 66-90 | 90-112 | 50-66 |
| 7 For example: Aggravated Assault causing serious bodily injury; Robbery threatening serious bodily injury** | 0 | 8-12 | 12-18 | 4-8 |
| | 1 | 12-29 | 29-36 | 9-12 |
| | 2 | 17-34 | 34-42 | 12-17 |
| | 3 | 22-39 | 39-49 | 16-22 |
| | 4 | 33-49 | 49-61 | 25-33 |
| | 5 | 38-54 | 54-68 | 28-38 |
| | 6 | 43-64 | 64-80 | 32-43 |
| 6 For example: Robbery inflicting bodily injury; Theft by extortion (Felony III)** | 0 | 4-12 | 12-18 | 2-4 |
| | 1 | 6-12 | 12-18 | 3-6 |
| | 2 | 8-12 | 12-18 | 4-8 |
| | 3 | 12-29 | 29-36 | 9-12 |
| | 4 | 23-34 | 34-42 | 17-23 |
| | 5 | 28-44 | 44-55 | 21-28 |
| | 6 | 33-49 | 49-61 | 25-33 |

FEDERAL PROBATION

| Offense Gravity Score | Prior Record Score | Minimum Range* | Aggravated Minimum Range* | Mitigated Minimum Range* |
|--|--------------------|----------------|---------------------------|--------------------------|
| 5 For example: Criminal Mischief (Felony III); Theft by Unlawful Taking (Felony III); Theft by Receiving Stolen Property (Felony III); Bribery** | 0 | 0-12 | 12-18 | nonconfinement |
| | 1 | 3-12 | 12-18 | 1½-3 |
| | 2 | 5-12 | 12-18 | 2½-5 |
| | 3 | 8-12 | 12-18 | 4-8 |
| | 4 | 18-27 | 27-34 | 14-18 |
| | 5 | 21-30 | 30-38 | 16-21 |
| | 6 | 24-36 | 36-45 | 18-24 |
| 4 For example: Theft by receiving stolen property, less than \$2000, by force or threat of force, or in breach of fiduciary obligation** | 0 | 0-12 | 12-18 | nonconfinement |
| | 1 | 0-12 | 12-18 | nonconfinement |
| | 2 | 0-12 | 12-18 | nonconfinement |
| | 3 | 5-12 | 12-18 | 2½-5 |
| | 4 | 8-12 | 12-18 | 4-8 |
| | 5 | 18-27 | 27-34 | 14-18 |
| | 6 | 21-30 | 30-38 | 16-21 |
| 3 Most Misdemeanor I's** | 0 | 0-12 | 12-18 | nonconfinement |
| | 1 | 0-12 | 12-18 | nonconfinement |
| | 2 | 0-12 | 12-18 | nonconfinement |
| | 3 | 0-12 | 12-18 | nonconfinement |
| | 4 | 3-12 | 12-18 | 1½-3 |
| | 5 | 5-12 | 12-18 | 2½-5 |
| | 6 | 8-12 | 12-18 | 4-8 |
| 2 Most Misdemeanor II's** | 0 | 0-12 | Statutory Limit*** | nonconfinement |
| | 1 | 0-12 | Statutory Limit*** | nonconfinement |
| | 2 | 0-12 | Statutory Limit*** | nonconfinement |
| | 3 | 0-12 | Statutory Limit*** | nonconfinement |
| | 4 | 0-12 | Statutory Limit*** | nonconfinement |
| | 5 | 2-12 | Statutory Limit*** | 1-2 |
| | 6 | 5-12 | Statutory Limit*** | 2½-5 |
| 1 Most Misdemeanor III's** | 0 | 0-6 | Statutory Limit*** | nonconfinement |
| | 1 | 0-6 | Statutory Limit*** | nonconfinement |
| | 2 | 0-6 | Statutory Limit*** | nonconfinement |
| | 3 | 0-6 | Statutory Limit*** | nonconfinement |
| | 4 | 0-6 | Statutory Limit*** | nonconfinement |
| | 5 | 0-6 | Statutory Limit*** | nonconfinement |
| | 6 | 0-6 | Statutory Limit*** | nonconfinement |

*Weapon enhancement: At least 12 months and up to 24 months confinement must be added to the above lengths when a deadly weapon was used in the crime.

**These offenses are listed here for illustrative purposes only. Offense scores are given in §303.7.

***Statutory limit is defined as the longest minimum sentence permitted by law.

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36 pages

**RACE DIFFERENCES IN SENTENCING:
RESEARCH CONTINUITIES AND FURTHER DEVELOPMENTS**

ABSTRACT

The possible race differences in judicial sentencing have been of longstanding interest to social scientists. We argue, however, that prior research on the issue either uses crude measures of offense severity and prior record, or, if more precise measures are employed, is limited to one or a few offenses. The Pennsylvania guidelines sentencing data used in this report allow a more rigorous test of the racial hypothesis since they include detailed information on these two most important legal variables, on other variables for statistical controls, and on a fairly comprehensive list of common law offenses, with an adequate sample size. The data--analyzed with both additive and interactive models--reveal that race plays essentially no role in judicial decision-making as it pertains to the likelihood of incarceration, and in the case of incarceration, does not affect the length of imprisonment. Instead, offense severity is overwhelmingly the major factor influencing judicial sentencing, followed at some distance by prior record. Our findings support Kleck's (1985) conclusion that anomalous findings of race effects on sentencing reflect a failure to distinguish good from bad studies as much or more than real race differences--the more rigorous the research is, the less likely is the prospect of race effects.

**RACE DIFFERENCES IN SENTENCING:
RESEARCH CONTINUITIES AND FURTHER DEVELOPMENTS**

Studies of judicial sentencing have tended to adopt a "sociological viewpoint," emphasizing the role of "extra-legal attributes" of the offender in the determination of sentence outcomes. It is argued that the judge's role in Anglo-American law in sentencing allows for considerable discretion, and that this discretion ultimately translates into more severe (and unfair) treatment of certain categories of offenders. The independent variable given most prominence by this approach is race. Sociologically-oriented conflict and/or stratification models of criminal sentencing predict that nonwhite offenders would receive more severe sentences than white offenders (Quinney 1970; Black 1976); most Americans apparently share this expectation (see Hagan and Albonetti 1982).

An alternative view of sentencing is the "legalistic" viewpoint, which emphasizes factors linked to official-normative descriptions of the criminal justice system. The legalistic variables of interest include the defendant's prior conviction record and the nature and number of the charges. Judges are constrained by their judicial role both to sentence equitably and to attend strictly to these legal factors. Personal and other extra-legal attributes ought to have little, if any, effect on sentencing severity after legal variables are taken into account.

The issue of whether racial disparities exist in criminal sentencing is allied with the matter of racial disparities in imprisonment, which recently has provoked national concern (Blumstein 1982). While blacks constitute a relatively small share of the general population, they make up a very large share of federal and state prison populations. In 1987, blacks composed 13 percent of the U.S. population and about 48 percent of the prison population.

Sociological theories of crime and law disagree about the sources of such a disparity or overrepresentation--whether it is due to disproportionate involvement in criminal offenses or to criminal justice system selection biases (see Bridges and Crutchfield [1988] for a review of the theories). Normative theories reason that punishments are imposed largely (or only) in reaction to criminal acts and that the high black imprisonment rates are due to differences in criminal involvement between blacks and whites, particularly in serious and violent crime. Conflict or stratification theories attribute disparity in imprisonment to the biased treatment of minorities by the legal system, so that while blacks may commit a large percentage of serious crimes, the criminal justice system compounds the problem by imposing more severe sanctions on blacks than on whites committing similar types of offenses.

After an exhaustive review of research in this area, Kleck (1981, 1985), concluded that the weight of available evidence casts doubt on the hypothesis of racial discrimination in sentencing in the United States. "Yet," he writes, "brief summaries of this body of research, found in textbooks, monographs, and the literature review selections of journal articles, commonly conveyed the opposite impression, sustaining an image of extensive support for the hypothesis" (Kleck 1985, p. 271). It is Kleck's judgment (see also Hagan 1974) that a major shortcoming of much of the research on race differences in sentencing is its failure to control adequately for legally relevant variables, most importantly for the variables of offense severity and (defendant's) prior record. Most studies use crude and imprecise measures of offense severity and prior record or fail to control simultaneously for both variables. Prior record is operationalized typically as "no prior conviction" vs. "conviction," while offense severity is proxied into broad categories such as "felony" vs. "misdemeanor" or "violent" vs. "property" crimes. These are inexact measures,

however, since they will include a heterogeneous mix of offenders and offenses that vary considerably in their seriousness.

Recent studies both reflect and reinforce Kleck's criticisms. For example, in the recently published and favorably reviewed study of sentencing practices in Georgia by Myers and Talerico (1987), a control for prior record was included in only two of the counties in their probation sample, whereas the prior record control for their imprisoned sample was restricted to whether the offender had been previously incarcerated in Georgia. Also, although they expand on offense classifications used by many researchers (e.g. Daudistel 1984; Unnever and Hembroff 1988), Myers/Talerico simply grouped offenses into common-law violent, robbery, burglary, property theft and damage, and drug offenses. These offense groupings are too imprecise to provide an adequate control for offense severity.

In light of the controversy that exists, further study of the relationship between race and sentence outcomes is warranted. The present study uses statewide Pennsylvania data that cover the 1985-87 period to test this hypothesis. For several reasons, these data are exceptionally well-suited for a sentencing study.

First, the enactment in 1982 of a sentencing guidelines system which takes into account the legal variables of offense severity and prior record allows the Pennsylvania data to reflect more accurately the impact of these two variables on sentencing than is true of sentencing statistics from most other jurisdictions.¹ The enactment of a sentencing guidelines system has two important consequences for sentencing practices and research on sentencing: (1) it means that information about the defendant's prior record must be brought to the attention of the sentencing judge and be used by him/her in sentencing; (2) it greatly increases the likelihood that information about prior record will be more accurately collected, recorded, and made available to relevant parties.

Such a situation did not characterize sentencing practices in Pennsylvania prior to passage of the guidelines structure. Nor is it likely to characterize what exists in most states today, where information on prior record is haphazardly presented to the sentencing judge, or if presented, may or may not be heeded. Oftentimes, the information is simply not available at the time of sentencing because the defendant's prior record is unknown or is not easily retrievable.² As a result, a judge sentencing a 25-year old convicted of robbery may not know whether s/he is sentencing a chronic or a first-time offender. Further, some records may be made selectively available to the judge by a police officer, prosecutor, or probation officer who may know the offender and may have some special reason for putting in either a good word or a bad word for the accused, with prejudicial effects.

One option used by researchers facing this problem has been to survey ex post facto probation or prison records for information on the defendant's prior record and then to merge this information with sentencing outcomes (Petersilia 1983; Myers and Talarico 1986; Spohn and Welch 1987; Unnever and Hembroff 1988). This does not solve the problem, however, since we still do not know whether the sentencing judge in fact used, or was aware of, the information compiled in the defendant's dossier. Oftentimes, in fact, the criminal history information in a probationer's or a prisoner's dossier is self-reported by the sentenced offender himself during an intake interview (e.g., conducted while undergoing classification for entry into a state's prison system). In many respects, due to the recent enactment of a sentencing guidelines system in a few states such as Pennsylvania, researchers now are finally able to assess the "true" effects of prior record on sentencing outcomes.

A second advantage of the Pennsylvania data (again owing partly to changes instituted with the implementation of the guidelines system) is that the state's

recordkeeping includes refined classifications not only of prior record but of offense severity as well. The set of offenses is well defined and seriousness is measured with some precision, so that extraneous variation within offense type is limited.

Third, while Pennsylvania now operates with a guidelines sentencing structure, it is a comparatively "loose" one that still permits significant judicial discretion (Tonry 1987). In addition, the criminal code endorses several sanction philosophies (for deterrence and incapacitation as well as for rehabilitation and retribution), so that opportunities for case, court, and community contexts to affect sentencing are enhanced. Also, there is in fact considerable variation in the sentences imposed, both within and across crime categories.

Fourth, there are 67 counties and 59 judicial districts in the state. As viable political and social entities, counties vary markedly in demographic, political, economic, and social composition. Typically (in prior research), the significance of the race of the offender being sentenced is assumed, for example, apart from the place where the sentencing has occurred. An analysis of sentences across all these counties not only will permit an assessment of contextual factors but the large number of cases (about 57,000) will permit the systematic use of statistical controls. In contrast, the traditional approach to the issue of racial discrimination in sentencing is limited to examining whether a zero-order relationship between race and sentencing persists when legitimized influences on sentencing (e.g., type of offense, prior record) are taken into account.

We are not aware of any previous studies on the race/sentencing issue that encompass all the attributes described above, making the present study a significant advance over prior research. That recent research has not overcome many of the shortcomings described above is reflected in a close reading of

several major studies of sentencing conducted since Kleck's review. As noted earlier, the ambitious and well-received project by Myers and Talerico (1987) of sentencing practices in Georgia employed broad offense groupings and utilized ambiguous information on prior record. The latter was not included at all for the majority of their sample and, if included, was based on prior arrest and incarceration information collected ex post facto from inmates' files. The problem, again, is that whether the judge in fact used, or even had at her/his disposal, the prior record information contained in the inmate's dossier is unknown; also, prior arrest information is meaningless since judges are disallowed from using prior arrests in their sentencing decisions. Similarly, the Rand study of Racial Equity in Sentencing (Klein, Turner, and Petersilia 1988) considered only a few offenses, was limited to a prison sample, and relied ex post facto on prior record information collected from inmates' files. Finally, the Bridges and Crutchfield (1988) study failed to use any measures of prior record and offense seriousness.

PROCEDURES

This study analyzes guidelines sentencing data from the State of Pennsylvania that are summed across the 1985-87 period, totalling 55,577 cases. The purpose of Pennsylvania's sentencing guidelines, which affect any offender convicted of a felony or serious misdemeanor after July 21, 1982, was to establish sentencing standards in which the severity of the convicted offense and the offender's criminal history are the major determinants of sentencing decisions (Kramer and Scirica 1986). Guideline sentences are established for each combination of offense severity/criminal history in the form of a sentencing matrix. Furthermore, under the guidelines, dispositional or durational departures from the presumptive sentences are permissible but the judge must justify any departure from the guidelines with written statements out-

lining the circumstances behind the departure. Elsewhere, Kramer and Lubitz (1985) report that the departure rate is not related to the race of the defendant. Although it is a fairly rigorous and systematically crafted sentencing system, the specific structure and scope of the Pennsylvania guidelines, nonetheless, afford ample opportunity for the intrusion of sentencing disparity (Tonry, 1987).

The data for this study are based on the monitoring system developed by the Commission. Each sentence given for a separate criminal transaction must be reported to the Commission. The data provide sentencing information on a large number of cases, detailed information on prior record and offense severity, and information on a number of other variables that might affect sentencing outcomes. To our knowledge the resulting data base is unique: it includes the richest information in the country for analyzing sentencing decisions. Besides race, the independent variables we use in the analysis include a combination of legally-prescribed variables, offender characteristics such as gender and age, and contextual factors. Coding of these variables is straightforward and is presented in Table 1.

The legally-prescribed variables include the severity of the convicted offense (Severity), number of convictions, and criminal history score (History). Convicted severity was measured by a 10-point scale developed by the Commission established to administer the guidelines system and by a dummy variable procedure across 27 offense categories. The 10-point severity scale ranks each statutory offense on the scale and for certain offenses such as burglary subdivides the statutory classification into multiple ranks depending on the specific circumstances of the crime (Kramer and Scirica, 1986).³ We also use an offense dummy variable procedure that offers an even more rigorous control of seriousness of offense. A weighted seven category scale developed by the Commission was used to measure criminal history. The criminal history score measures the number and

severity of the defendant's past convictions. All felonies, as well as misdemeanors punishable by at least one year, are included. Misdemeanors (punishable up to five years in Pennsylvania) may total no more than two points on the criminal history score, while felonies add one, two or three points each, depending on their severity.

Regarding the contextual variables, investigators have identified urbanization and the proportion of the population that belongs to minority groups (racial mix) as important contextual factors of the social environment that may affect criminal sentencing (Benson and Walker 1988). Contextual factors also may include differences in organization and caseload processing among courts, such as caseload and casemix (Hagan and Bumiller 1983). Another contextual factor that we include is "percent republican"; a high percentage of voters registered as republicans signifies a more conservative or "law and order" social environment.⁴

Sentencing can be thought of as a two-stage process, involving first a decision as to whether to imprison, and second, if incarceration is selected, a decision about the length of sentence. Thus, we employ two dependent variables: incarcerated versus not incarcerated (In/Out decision) and length of sentence. For the dependent variable involving the In/Out decision, we conducted the analysis using three alternative measures where

(a) IN refers to confinement in either county jail or state prison, and OUT refers to any combination of non-confinement options (probation, fines, restitution, or suspended sentence--hereafter lumped together as probation). This is the traditional measure of the In/Out decision that we designate as JAIL/PRISON vs. PROBATION.

(b) IN refers to confinement in state prison vs. all other, including jail, probation, etc. This measure is designated as PRISON vs. JAIL/PROBATION.

(c) IN refers to confinement in state prison and OUT refers to confinement in county jail, and is designated as PRISON vs. JAIL. This part of the analysis is conducted on a reduced sample that excludes all defendants who received a sentence of probation, fines, restitution, or suspended sentence.⁵

Since a sentence of "county jail" time is viewed typically as less stigmatizing and as less punitive than "state prison" time (Kramer and Scirica 1986), it is important that confinement in state prison be distinguished from other sentencing options. Based on the legalistic model of sentencing, we would expect that the effects of prior record and offense severity on sentencing will be particularly strong when measures (b) and (c) above are employed, since incarceration in a state prison tends to be reserved for the more serious and/or repeat offenders.

In conducting our analysis, we used a two-step analytical process. We began by examining the decision whether to incarcerate a defendant or not, with the focus throughout on the traditional measure of the In/Out decision (i.e., Jail/Prison vs. Probation). Next we examined the length of sentence imposed on those incarcerated.

 Table 1 about here

FINDINGS

Table 2 presents descriptive statistics and bivariate correlations of the variables included in this analysis, including each of the three measures of the In/Out decision as well as sentence length (see methods section). The results

indicate that black defendants are more likely to be incarcerated ($r = .08$, for JAIL/PRISON vs. PROBATION) and to receive lengthier jail/prison sentences than white defendants ($r = .11$). But the bivariate correlations in Table 2 (b) also show that black defendants have higher offense severity scores on the average ($r = .15$) than their white counterparts as well as somewhat lengthier prior records of offending (.10). Thus, the bivariate correlations between race and these two legal variables are as strong or stronger than the correlations between race and sentence outcomes. In turn, the two legal variables (Severity, History) are correlated strongly with sentence outcomes (r 's of about .40), whereas race and the other variables in the model are correlated only weakly with sentence outcomes.

 Insert Table 2 about here

As is reported in previous research on sentencing, the bivariate analysis strongly suggests that offense severity and prior record have large effects on sentencing outcomes and, therefore, represent important statistical controls for estimating race effects. As for the other independent variables, their effects turned out to be very small and relatively unimportant, so that, for economy of space, the results observed for these variables are displayed in the tables but are not discussed in the text.

The In/Out Decision

We used ordinary least square (OLS) regression models to analyze the In/Out decision. Given the concern that OLS may be inappropriate when the dependent variable is dichotomous, other analyses were carried out using a logistic regression model. No differences were found, however, when comparing the results from the OLS and logit models.⁵ Because the sample size is so large, tests of statistical significant are meaningless. Therefore, to identify "predictive" or

substantive significance, we calculated for each variable its net contribution to total explained variation of R^2 . We ask, after controlling for the effects of all the other variables, how much does race contribute (in terms of explained variance) to the judge's incarceration decision?

A comparison of the full and reduced models reveals that the offense severity score and the history of prior offending account for almost all of the explained variation in each of the alternative measures of the In/Out decision. For the traditional measure (JAIL/PRISON vs. PROBATION), Severity has a net contribution or R^2 of 11 percent while History has a net contribution of 7 percent. Together, Severity and History account for about three-fourths of the total R^2 (about .26). When the two alternative measures of In/Out are considered, Severity and History also account for a large share of the explained variation. The major difference here is that History (i.e., prior record score) now becomes the more powerful predictor of variation in the In/Out decision when the principal distinction in sentence outcome is state imprisonment as compared to other sentencing options. Also, it is for the PRISON vs. JAIL/PROBATION definition of the In/Out decision that the model as a whole explains the most variation (R^2 of about .36).

On the other hand, race contributes less than one-half of one percent to explained variation in each of the three In/Out classifications. The effect of race is somewhat greater when the traditional way of defining In/Out is the dependent variable than when In refers only to incarceration in a state prison. When the dependent variable is defined as JAIL/PRISON vs. PROBATION, black defendants on the average are 8 percent more likely to be jailed or imprisoned than white defendants, net of all other variables, whereas blacks are only 2 percent more likely than whites to be incarcerated when the definition of In is restricted to state imprisonment (as in PRISON vs. JAIL/PROBATION or PRISON vs. JAIL). The latter findings (as well as the findings at the end of the above

paragraph) are consistent with expectations derived from the legalistic model of sentencing: the effects of prior record and offense severity, already strong across all the In/Out measures, will be particularly strong when confinement in a state prison is distinguished from other sentencing options. On the other hand, the effects of race on In/Out decisions, already very weak, become even weaker when the choice is incarceration in a state prison as compared to jail or probation.

 Table 3 about here

An alternative way of assessing the effects of offense seriousness on the In/Out decision is to create dummy variables for the offense categories. Since there are 27 offenses, 26 dummy variables were created, with misdemeanor drug offenses excluded from the analysis as the reference category. It is arguable that this dummy procedure provides a more rigorous control of offense seriousness than the 10-point severity scale (Spohn, Gruhl, and Welch 1987). The results are displayed in the left-hand columns of Table 4 and show, as in the analysis above, that type of offense and prior record account for most of the explained variation. The race variable adds less than one-half of one percent to explained variation in In/Out decision-making. Again, consistent with the legalistic model, we see that these variables are better predictors when the dependent variable distinguishes state imprisonment from jail and the other sentencing options. The total of R^2 of .36 is about 10 percentage points higher in PRISON vs. JAIL/PROBATION than in JAIL/PRISON vs. PROBATION, and the net contributions of both offense severity and prior record are much larger.

In sum, seriousness of offense (and/or offense type) and history of prior offending are the most powerful predictors of the In/Out decision, regardless of

which measure of In/Out is used. In contrast, the effects of race are negligible across all three measures of the dependent variable.

 Table 4 about here

Length of Sentence

For defendants who were incarcerated, we employed multiple linear-regression procedures to analyze the relationship between the regressors (independent variables) and the length of sentence.⁶ We used regression diagnostics (Belsley, Kuh and Welsch 1980) to detect influential observations (outliers), and we inspected the data for multicollinearity. The results are displayed in the right-hand columns of Tables 3 and 4.

Table 3 presents multiple regression results which estimate the effects of race on sentence length while controlling simultaneously for offense severity (using offense gravity score) and prior record as well as for the other variables in the model. As in the analysis above, because of the large sample we consider each variable's net contribution to explained variation or R^2 . Not surprisingly, both the severity of the present offense and the defendant's prior record weigh overwhelmingly in judicial decision-making about sentence length. Offense severity alone contributes 22 percent to explained variation or 47 percent of total R^2 , while prior record contributes 20 percent to explained variation or 43 percent of the total R^2 . The two variables together account for 90 percent of the explained variation in sentence length. On the other hand, the defendant's race accounts for less than one-tenth of one percent of the variation after the other variables are controlled, so that it plays a very small role in decisions about sentence length. In fact, in spite of the large sample size, race is the only variable in the model which is not statistically significant.

We next re-estimated the model using the offense dummy variable procedure described above. As is shown in the far right column of Table 4, type of offense and prior record again account for most of the explained variation, i.e., about 90 percent. While the effect of race is statistically significant, its contribution to explained variation in sentence length is nil, i.e., less than one-tenth of one percent.

Interaction Effects

So far, we have conducted multivariate analyses that include a number of legal and extralegal variables of potential relevance to sentencing decisions, but only additive models were examined. The additive model is premised on the assumption of constancy in the influence of race across levels of other variables and does not allow for the possibility that the effect of race may be conditioned by other variables. Instead, an interactive model may be needed to explore interaction effects that can obscure substantial race differences in sentencing (see Miethe and Moore 1986). Thus, in addition to having explored the main effects of race in additive models, we estimate (here) interactive models to determine whether legal and contextual attributes have different effects across racial groups.

First, the above analysis was repeated, with separate models estimated for black and white defendants. Table 5 shows the results when the traditional measure of In/Out is the dependent variable and when the offense dummy variable procedure is used as the measure of the seriousness of offense. The results are essentially similar when the two alternative measures of In/Out and the offense severity score are used, but are not displayed for economy of space.

.....
 Table 5 about here

For both sentence outcomes--the In/Out decision and sentence length--the results are similar across the race-specific models. For both black and white defendants, seriousness of offense [type of offense] and prior record account for a very large share of explained variation in sentence outcomes (from about 70% to 95% of R^2 across all comparisons). Furthermore, as revealed by comparing unstandardized regression coefficients across models, the legal variables of seriousness of offense and prior record have very similar effects on the sentence outcomes of defendants of both races. Among both black and white defendants, for example, each additional prior record score is associated with a 6 percent higher likelihood of incarceration and an additional 4 to 5 months of imprisonment if sentenced to jail or prison.

To further examine would-be interaction effects, we estimated models which included all possible race interaction terms. The results are fairly straightforward and need not be described in detail. Across all dependent variables, and for both measures of seriousness of offense, the interaction terms as a whole contribute less than one percent to total R^2 . None of the interaction terms contribute as much as one-half of one percent to explained variation. The strongest interaction is the race by offense severity interaction effect on sentence length, but the net contribution of this interaction term to total R^2 is only .0048.

Taken together, therefore, our results indicated that an interaction model did not produce an improvement of fit over the additive model. This held for both the In/Out and the sentence length decisions where seriousness of offense and prior record were found to be equally strong predictors of the sentence outcomes of black as for white defendants. For example, when type of offense (dummy variable) is included as an independent variable, it explains 36 percent of the variation in sentence length for black and for white defendants. Their

effects in the race-specific models are virtually identical across all of the independent variables in the model.

One final point should be made. While we did find that offense severity and prior record are robust predictors of sentence outcome and that race has essentially negligible effects, a large residual variation still remains, suggesting that the model we used only partly fits the actual decision-making process of judges. Specifically, our model explained about 30 percent of the variation in the In/Out decision (depending on which measure we used) and about 50 percent of the variation in the sentence-length decisions. It is possible, but unlikely, that this unexplained variation may be the result of race. Instead, it is likely that the variation stems from numerous other factors that were not controlled (see discussion below) or simply from unsystematic variation.⁷

SUMMARY AND IMPLICATIONS

We began this research to test the hypothesis of race-based differences in judicial sentencing. Prior research on the issue either uses crude measures of offense severity and prior record, or, if more precise measures of these legal variables are employed, has been limited to one or a few offenses. Much more so than prior research on sentencing, we believe the data presented in this report offer a more stringent test of the hypothesis because we were able to (1) estimate race effects while simultaneously and rigorously controlling for seriousness of charge and prior record (as well as controlling for a number of other variables typically thought to affect sentencing outcomes), and to (2) conduct these tests on a fairly comprehensive list of common law offenses, with adequate sample size.

Our results contradict the hypothesis that, all else being equal, black offenders face a higher incarceration risk than white defendants, or that black defendants are likely to receive more severe sentences. Our data show that, at

least in this state, race plays virtually no part in judicial decision-making as it pertains to the likelihood of incarceration and, if incarcerated, the length of imprisonment. Instead, offense severity is overwhelmingly the major factor influencing judicial decisions in criminal sentencing, followed at some distance by the offender's prior record. If defendants' race affects judges' decisions in sentencing, or if contextual/organization forces result in more severe penalties for black defendants, controlling for legal factors, it does so very weakly or intermittently, if at all.

The fact that the variables included in our model better account for variation in sentence length ($R^2 = .50$) than variation in the In/Out decision ($R^2 = .30$) is consistent with prior research (Klein et al. 1988; Myers and Talerico 1987). Nonetheless, even though the present study goes considerably beyond prior research in terms of statistically controlling for seriousness of offense and prior record, we also found, as others have, that a substantial proportion of the variance in sentence outcomes remains unexplained, despite the building of rigorous statistical controls for offense seriousness and prior record into our design. Given this inability to explain more fully the variations in sentence length and--particularly in the In/Out decision--the challenge facing future researchers is to develop more parsimonious models of sentencing behavior and to cultivate data sets that include information not only on the characteristics of the defendant, the victim, the judge, and the community but on the courtroom environment as well (Eisenstein and Jacob 1977).

Recently, an appeal has been made for research that includes an assessment of contextual factors on sentence outcomes. Myers and Talerico (1987), for example, report that county context plays an important role in sentencing. Yet we found that none of our county context variables was noteworthy in terms of explaining either the In/Out or the sentence length decisions. This may be due to different political and social contexts between Georgia and Pennsylvania, but

it more likely reflects differences between the two analyses in statistical controls for offense seriousness and prior record. A number of recent studies also report a contextual effect for level of urbanization on sentence outcomes (e.g., Pope 1976; Hagan 1977; Austin 1981; Miethe and Moore 1986; Kempf and Austin 1986). Of special note is the Kempf and Austin study which also was Pennsylvania-based, but used 1977 data. While it is possible that the guidelines instituted in Pennsylvania in 1982 have eliminated the urbanization factor, the importance of the latter in affecting sentence outcomes as reported in Kempf/Austin may be due to their failure to include adequate statistical controls for offense seriousness and prior record.

One of the most important empirical questions facing criminology and the sociology of law is whether, and to what extent, racial differences in rates of imprisonment are attributable to differential involvement in common law crimes vs. differential processing by the agents of the criminal justice system. While the results from the present study strongly favor the "involvement" explanation, an important caveat can be found here since we focused solely on whether sentencing decisions favor blacks or whites. Most researchers now recognize that the administration of criminal justice is a process and that the effects of the social characteristics of defendants may be indirect and cumulative between police arrest, prosecutorial disposition, and judicial sentencing. Racial differences in legal processing may be relatively small at any particular stage of the legal process but may have cumulative effects on overall patterns of imprisonment. Not only is the evidence supporting this reasoning mixed (for a review, see Smith 1986), but, more importantly, the existing research suffers from the same shortcomings that characterizes the research on sentence outcomes-- failure to control adequately for prior record and offense severity.

Other researchers (Hagan 1988) have proposed that the race of the defendant may be less important in incarceration and sentencing decisions than the racial composition of the offender-victim dyad. Our data do not allow us to address this question, and the existing research is plagued by inadequate controls. LaFree's (1980; 1989) is the most systematic research on the issue. He reports that black men who sexually assaulted white women received harsher sentences than either black men who sexually assaulted black women or white men who assaulted white women. (There are too few cases to analyze the white offender-black victim dyad). However, LaFree's findings must be treated skeptically because of the small size of his sample, the use of arrests in his measure of prior record, and the omission of relational aspects (e.g., stranger/acquaintance) of the victim-offender dyad. The latter is important because stranger rapes, which largely comprise the black offender-white victim dyad, tend to be sanctioned more harshly. Related research suffers from similar shortcomings (e.g., Thomson and Zingraff 1981), so that, while intriguing, the effects, if any, of racial composition of offender-victim dyad on sentencing decisions remain largely unknown. Note, moreover, that the above studies only consider crimes involving victims of interpersonal violence (assault, rape), or the threat of it (robbery). These offenses are important, but nonetheless, are only a small part of "the crime problem" in the United States.⁸

It is risky to generalize from the findings of one state. The Pennsylvania guidelines sentencing system is somewhat unique and was implemented to reduce discretion, whether putative or real. Because of data shortfalls on prior record, it is impossible to ascertain with confidence the extent of racial differences in sentencing prior to enactment of the guidelines. Nonetheless, the strength of the data and the consistency of our findings with Kleck's review suggest that anomalous findings of race effects on sentencing reflect a failure to distinguish good from bad studies as much or more than real race differences.

Not all studies are equal, so that cumulative research in this area needs to be embedded in refined or precise breakdowns of offense severity and prior record. Rather than simply collecting data on legal variables such as prior record from probation or prison files that are conveniently available and then assuming (often wrongly) that judges are informed of, and base, their decisions on such information, researchers need to ascertain carefully whether in fact these variables are considered by the judges in their sentencing decisions. All things considered, we are skeptical of the usefulness of the bulk of prior research on the relationship between race and criminal sentencing -- since that research has not controlled adequately for offense seriousness and/or for prior record, the two variables that by far are the most dominant factors influencing judicial decision-making in criminal sentencing.

CONCLUSIONS

The issue of equality of sentencing is highly visible and symbolically important to the criminal justice system. Perhaps this explains the considerable research on the topic. The search has been for extra-legal influences that would discredit sentencing decisions in terms the system itself defines as illegitimate. Race is clearly illegitimate, and therefore has received such attention. There has, and continues to, be an insistence in the criminological literature on the importance of a defendant's race in influencing sentencing outcomes (or the processing of criminal cases) which, in term, it is argued, contributes to disproportionate minority populations in state and federal prisons. This view, in fact, has served as an impetus for sentencing reform leading to (more) determinate sentencing systems, including the guidelines format developed in Pennsylvania and some other states (e.g., Minnesota).

But in the face of null findings in our research (see, also Kleck 1985), not only does this view appear unfounded but, from a policy perspective, it may focus too exclusively on system officials and whether they make ad hoc decisions based on race rather than clearly defined standards. The passage of determinate or less discretionary sentencing systems has tended to increase rather than decrease the percentage of a state's prison population composed of blacks; in Pennsylvania the black percentage rose slightly from 54% in 1982 to 57% in 1989.

The results of this study are consistent with other research which finds that high black incarceration rates represent actual behavior and not selection bias (Hindelang 1978). And, more generally, the findings support a legalistic model of sentencing and are at odds with conflict theory's stance that race and other illegally irrelevant variables significantly affect official reactions to criminal offenses. Petersilia and Turner (1985) have noted that when "legitimate standards are applied [they may] have different results for different racial groups." (1985: v). For reasons that are complex, sentencing systems that systematically link severe sentences to offenses most committed by blacks, and on prior record which may reflect past police and court processing decisions for which blacks may be particularly vulnerable, will exacerbate the level of blacks in United States prisons because "serious criminality is disproportionately high in the black population." If reducing this level is a realistic policy goal, this will require: (a) either dampening the role of racially-linked legal variables, such as offense seriousness and prior record, in the processing of criminal cases; or (b) instituting the kinds of structural changes that reduce the high level of serious crime among blacks (especially young black males in urban ghettos) which lead to higher rates of incarceration in the first place.

FOOTNOTES

1. Elsewhere, Miethe and Moore (1986) used data generated by the Minnesota Sentencing Guidelines to discuss the consequences of model selection for conclusions about race differences in criminal processing. Unfortunately, while their analysis included a 10-point ranking of offense severity, the prior record measure reported in their study was a dichotomy, restricted to whether or not the defendant had a prior felony conviction.
2. An analysis by the Sentencing Commission of information available to, or used by, sentencing judges in Pennsylvania prior to enactment of the guidelines found that prior record information was available at time of sentencing in only about 50 percent of cases. Frequently, prior record information was simply not requested by the judge, or, if available, was not used. That sentencing judges were unaccustomed to routinely requesting prior record information apparently reflected the lack of an institutionalized state repository that accurately compiled prior record information on convicted felons and that made this information easily available to the judges.
3. The scale of offense severity used by the Pennsylvania Commission ranges from 1 (minor theft) to 10 (murder in the third degree). The ranking of misdemeanors/felonies on this scale is consistent with those rankings of offenses on most other scales of crime seriousness. Also, by way of special classification or subdivision of specific offenses (e.g., robbery-1 vs. robbery-2), offense severity includes whether there was victim injury or not and the degree of injury.
4. We also included in initial regression runs the crime rate in the county, the unemployment rate, and median income levels. Because these variables proved to be highly collinear and redundant with percent black, they were dropped from the analysis reported here.

5. Since the dependent variables representing the In/Out decision are binary coded (0,1), we began our analysis using logistic regression. We switched to OLS regression for the following reasons, however: (1) Logistic regression requires considerable computing time and is extremely costly, especially when conducted with large samples. With over 50,000 cases and 36 variables (including 26 offense dummy variables), 2000 computer seconds (the maximum we could request) cost \$160.00; moreover, the running of even a single logistic regression model could not be completed within that time frame (i.e., computational time would run out before the model was completed). (2) It is widely acknowledged that the problems associated with applying a linear probability model to a dichotomous dependent variable are minimized when the distribution of the variable under question is not highly skewed -- e.g., the probability of the event is less than .20 (see Goldberger 1964; Hanushek and Jackson 1977). In this case, for our main In/Out variable (probation vs. jail/prison), the probability of incarceration is .59; the other two In/Out variables carry a probability of .40 and .22. Thus, only one of our dependent variables (probation/jail vs. prison) falls on the borderline of skewness. (3) Given (1) and (2) above we decided to examine whether OLS regression would obtain similar or different results than logistic regression. When the offense gravity score (Severity) was used as a control for offense seriousness, we were able to complete a model using logistic regression. Comparisons between OLS and logistic regression showed that the two types of analysis yielded identical results for all three In/Out variables. The example

illustrated below is for the model where the dependent variable is the traditional measure of In/Out (probation vs. jail/prison).

| | OLS | | LOGIT | |
|-----------|-------|--------------------------------------|--------|--------------------------------------|
| | b | Contribution to total R ² | BETA | Contribution to total X ² |
| Severity | .091 | .4298 | .4958 | .4248 |
| History | .068 | .2813 | .4579 | .3134 |
| Race | .080 | .0172 | .4479 | .0236 |
| Gender | .128 | .0299 | .6487 | .0351 |
| Age | -.002 | .0077 | -.0144 | .0104 |
| Workload | -.000 | .0000 | -.0004 | .0001 |
| %Urban | -.003 | .0337 | -.0152 | .0442 |
| %Black | -.002 | .0000 | -.0052 | .0009 |
| %15-19 | .003 | .0000 | .0372 | .0007 |
| %Republic | .002 | .0015 | .0054 | .0031 |

The relative effects of the variables are identical across procedures. For both, offense severity and prior record history account for almost all of either R² or X². Other comparisons yielded similar conclusions and are available from the authors upon request.

6. In other analyses, which are available on request, we included a correction term for selection effects in the regression equation for length of sentence. Sample selection bias is a concern in the modeling of length of sentence, since that decision follows the initial decision about whether or not to incarcerate. In order to correct for this potential bias, a two-stage estimation procedure recommended by Berk (1983) was employed. The results of these analyses indicated that the predicted probability of exclusion from one stage to the next (the "hazard rate") was very highly correlated with offense seriousness, a significant predictor in each of the models. Because of its collinearity with offense seriousness and because the inclusion of the correction term did not significantly affect the magnitudes, signs, or p-values of the variables in the "partitioned" models, we do not include it in the analyses reported here.

7. Since the exact proportion of the unexplained variance that can be attributed to the race effect is unknown, it is statistically improper to equate unexplained variation with the race effect (Wilbanks 1987).

8. It is worth noting, nonetheless, that since in our data the zero-order race effect is null after controlling for prior record and offense severity, a significant effect of racial composition of offender-victim dyad is plausible only if there are offsetting effects from one or more of the other combinations of the victim-offender dyad; for example, if black offenders are treated more harshly in the black offender-white victim combination but they are treated more leniently, black offender-black victim, or that white offenders are treated more harshly in other victim-offender combinations.

Table 1 Description of Variables

| <u>Independent Variables</u> | <u>Description</u> |
|------------------------------------|---|
| <u>Legally-Prescribed Severity</u> | Severity of the Convicted Offense: 10 category ordinal scale with a range of 1 to 10 |
| History | Criminal History Score: 7 category ordinal scale with a range of 0 to 6 |
| Convictions | Number of Current Convictions at time of Sentencing |
| Offense | Twenty-six dummy coded offenses* |
| <u>Offender Characteristics</u> | |
| Race | Binary: Coded 1 if Black, 0 if White |
| Sex | Binary: Coded 1 if male, 0 if female |
| Age | In years |
| <u>Contextual Factors</u> | |
| Workload | # of cases received/# of judges in County |
| % Urban | % of County population living in urban areas |
| % Black | % of County population which is Black |
| % 15-19 | % of County population aged 15-19 |
| % Republican | % of County registered voters registered Republican |
| <u>Dependent Variables</u> | |
| Prison/Probation vs. Jail | Binary: Coded 1 if incarcerated, 0 otherwise |
| Prison vs. Jail/Probation | Binary: Coded 1 if State incarceration, 0 otherwise |
| Prison vs. Jail | Binary: Coded 1 if State incarceration, 0 if County incarceration |
| Sentence length | Midpoint between minimum and maximum in months |

* The dummy offense variables are: Homicide by vehicle, Voluntary Manslaughter, Involuntary Manslaughter, Kidnapping, Rape, Statutory Rape, Robbery felony 1, Robbery felony 2, Robbery felony 3, Aggravated Assault, Simple Assault, Arson, Weapons offenses, Burglary (7), Burglary (6), Burglary (5), Theft-felony, Theft-misdemeanor, Retail theft felony, Retail theft other, Forgery felony 2, Forgery felony 3, Drug felony, Drug misdemeanor, and Involuntary Deviate Sexual Intercourse. Terroristic threats was excluded as the contrast level.

Table 2. Correlations and Descriptive Statistics

(a) Descriptive Statistics

| <u>Variable</u> | <u>Mean</u> | <u>Standard Deviation</u> | <u>Minimum</u> | <u>Maximum</u> |
|---------------------------|-------------|-------------------------------|----------------|----------------|
| Severity | 4.62 | 2.01 | 1.00 | 10.00 |
| History | 1.93 | 2.26 | 0.00 | 6.00 |
| Convictions | 1.46 | .96 | 1.00 | 9.00 |
| Race | .38 | .39 | 0.00 | 1.00 |
| Sex | .91 | .29 | 0.00 | 1.00 |
| Age | 28.69 | 8.61 | 14.00 | 87.00 |
| Workload | 308.01 | 121.96 | 100.00 | 571.00 |
| % Urban | 70.42 | 26.65 | 0.00 | 100.00 |
| % Black | 10.07 | 13.08 | 0.03 | 37.84 |
| % 15-19 | 7.82 | 1.01 | 6.20 | 12.93 |
| % Republican | 42.06 | 16.48 | 19.66 | 71.76 |
| Jail/Prison vs. Probation | .59 | .49 | | |
| Prison vs. Jail/Probation | 0.22 | 0.41 | | |
| Prison vs. Jail | 0.40 | 0.49 | 0.00 | 1.00 |
| Sentence Length | 29.19 | 21.48 | 0.00 | 1.00 |
| | | | 1.00 | 180.00 |

(b) Correlations Among Independent Variables

| | <u>Severity</u> | <u>History</u> | <u>Convictions</u> | <u>Race</u> | <u>Sex</u> | <u>Age</u> | <u>Workload</u> | <u>% Urban</u> | <u>% Black</u> | <u>% 15-19</u> | <u>% Republican</u> |
|--------------|-----------------|----------------|--------------------|-------------|------------|------------|-----------------|----------------|----------------|----------------|---------------------|
| Severity | 1.00 | | | | | | | | | | |
| History | .12 | 1.00 | | | | | | | | | |
| Convictions | .11 | .00 | 1.00 | | | | | | | | |
| Race | .15 | .10 | .01 | 1.00 | | | | | | | |
| Sex | .11 | .14 | .03 | -.01 | 1.00 | | | | | | |
| Age | -.05 | .14 | .00 | .00 | -.08 | 1.00 | | | | | |
| Workload | -.15 | -.02 | -.03 | -.26 | -.06 | .00 | 1.00 | | | | |
| % Urban | .15 | .04 | .03 | .44 | .02 | .02 | -.24 | 1.00 | | | |
| % Black | .23 | .04 | .05 | .48 | .07 | -.01 | -.63 | .63 | 1.00 | | |
| % 15-19 | -.04 | -.04 | -.01 | -.17 | .00 | -.03 | .16 | -.39 | -.15 | 1.00 | |
| % Republican | -.19 | -.07 | -.03 | -.32 | -.04 | -.01 | .51 | -.48 | -.64 | .25 | 1.00 |

(c) Correlations Between Dependent and Independent Variables

| | <u>Jail/Prison</u> | <u>vs.</u> | <u>Prison vs.</u> | <u>Sentence</u> |
|--------------|--------------------|-----------------------|-------------------|-----------------|
| | <u>Probation</u> | <u>Jail/Probation</u> | <u>Jail</u> | <u>Length</u> |
| Severity | .38 | .39 | .34 | .50 |
| History | .33 | .44 | .37 | .33 |
| Convictions | .06 | .08 | .06 | .10 |
| Race | .08 | .09 | .11 | .11 |
| Sex | .17 | .11 | .07 | .09 |
| Age | -.03 | .05 | .09 | .09 |
| Workload | -.04 | -.07 | -.10 | -.11 |
| % Urban | -.06 | .02 | .10 | .13 |
| % Black | .02 | .06 | .12 | .18 |
| % 15-19 | .03 | -.02 | -.05 | -.03 |
| % Republican | -.01 | -.12 | -.19 | -.13 |

Table 3. Results From Multiple Regression Analysis with Offense Severity Score Used as Control for Offense Seriousness

| Independent Variable | Prison/Jail vs. Probation | | Prison vs. Jail/ Probation | | Prison vs. Jail | | Sentence Length | |
|----------------------|---------------------------|--------------------------------|----------------------------|--------------------------------|-----------------|--------------------------------|-----------------|--------------------------------|
| | b | Contribution to R ² | b | Contribution to R ² | b | Contribution to R ² | b | Contribution to R ² |
| Year | .0096 | .0001 | .0061 | .0001 | .0038* | .0001 | .9473 | .0005 |
| Severity | .0913 | .1123 | .0721 | .1015 | .0926 | .1035 | 8.85 | .2204 |
| History | .0684 | .0735 | .0790 | .1412 | .0789 | .1269 | 4.55 | .1989 |
| Convictions | .0129 | .0005 | .0163 | .0014 | .0176 | .0014 | 1.61 | .0027 |
| Race | .0804 | .0045 | .0246 | .0006 | .0297 | .0006 | .4703* | .0001 |
| Sex | .1281 | .0078 | .0321 | .0007 | .0260 | .0002 | 2.74 | .0006 |
| Age | -.0023 | .0020 | .0006 | .0002 | .0017 | .0008 | .1519 | .0017 |
| Workload | -.0004 | .0000 | -.0000* | .0000 | -.0001 | .0001 | -.0080 | .0005 |
| % Urban | -.0031 | .0088 | -.0012 | .0026 | -.0012 | .0018 | -.0273 | .0003 |
| % Black | -.0018 | .0000 | -.0018 | .0010 | -.0023 | .0012 | .0910 | .0005 |
| % 15-19 | .0031* | .0000 | -.0015* | .0000 | .0001* | .0000 | .7199 | .0005 |
| % Republican | .0019 | .0004 | -.0021 | .0004 | -.0042 | .0010 | .0387 | .0003 |
| R ² | .2613 | | .3155 | | .2763 | | .4664 | |
| N | 55,577 | | 55,577 | | 30,451 | | 31,232 | |

*Regression coefficient not statistically significant.

Table 4. Results From Multiple Regression Analysis with Dummy Variables for Offense Categories and Control for Offense Seriousness

| Independent Variable | Prison/Jail vs. Probation | | Prison vs. Jail/ Probation | | Prison vs. Jail | | Sentence Length | |
|------------------------------|---------------------------|--------------------------------|----------------------------|--------------------------------|-----------------|--------------------------------|-----------------|--------------------------------|
| | b | Contribution to R ² | b | Contribution to R ² | b | Contribution to R ² | b | Contribution to R ² |
| Offense (26 dummy variables) | — | .1142 | — | .1506 | — | .1334 | — | .3532 |
| Year | .0107 | .0003 | .0084 | .0003 | .0081 | .0002 | 1.33 | .0010 |
| History | .0691 | .0720 | .0797 | .1377 | .0805 | .1236 | 4.69 | .0982 |
| Convictions | .0145 | .0008 | .0110 | .0007 | .0111 | .0005 | .835 | .0007 |
| Race | .0796 | .0043 | .0283 | .0008 | .0379 | .0010 | .719 | .0001 |
| Sex | .1308 | .0074 | .0079* | .0001 | -.0124* | .0001 | -1.71 | .0002 |
| Age | -.0025 | .0018 | .0004 | .0001 | .0018 | .0008 | .147 | .0014 |
| Workload | -.0000* | .0001 | .0000* | .0000 | -.0000* | .0000 | -.001* | .0000 |
| % Urban | -.0027 | .0097 | -.0011 | .0022 | -.0010 | .0013 | -.008* | .0000 |
| % Black | -.0005 | .0001 | -.0024 | .0017 | -.0030 | .0023 | .001* | .0000 |
| % 15-19 | .0010* | .0000 | -.0042 | .0001 | -.0051* | .0001 | .108* | .0000 |
| % Republican | .0008 | .0005 | -.0023 | .0049 | -.0043 | .0116 | .012* | .0001 |
| R ² | .2631 | | .3603 | | .3063 | | .4995 | |
| N | 55,623 | | 55,623 | | 30,483 | | 31,265 | |

*Regression coefficient not statistically significant.

Table 5. Results From Multiple Regression Analysis of Separate Models For Blacks and Whites With Dummy Variables For Offense Categories as Control For Offense Seriousness

| Variable | Prison/Jail vs. Probation | | Black Contribution | | White Contribution | | Sentence Length | |
|----------------|---------------------------|-------------------|--------------------|-------------------|--------------------|-------------------|-----------------|-------------------|
| | b | To R ² | b | To R ² | b | To R ² | b | To R ² |
| Offense | --- | .1078 | --- | .1195 | --- | .3496 | --- | .3638 |
| Year | .0023* | .000 | .0141 | .0004 | .289 | .0001 | 2.05 | .0028 |
| Convictions | .0159 | .0009 | .0138 | .0007 | 1.45 | .0016 | .534 | .0004 |
| History | .0688 | .0782 | .0699 | .0688 | 5.30 | .0934 | 4.34 | .1071 |
| Sex | .1363 | .0086 | .1268 | .0066 | -3.56 | .0008 | -.451 | .0000 |
| Age | -.0034 | .0033 | -.0018 | .0011 | .097 | .0005 | .148 | .0018 |
| Workload | .0000* | .0000 | -.0000* | .0001 | -.027 | .0022 | .007 | .0006 |
| ‡ Urban | -.0029 | .0048 | -.0024 | .0084 | .038 | .0002 | -.021 | .0002 |
| ‡ Black | .0023 | .0010 | -.0031 | .0015 | -.153 | .0009 | .000 | .0000 |
| ‡ 15-19 | .0160 | .0003 | -.0034* | .0001 | 1.04 | .0004 | -.424 | .0003 |
| ‡ Republican | .0024 | .0034 | -.0000* | .0000 | .047 | .0003 | .009 | .0000 |
| R ² | | .2587 | | .2643 | | .5032 | | .4963 |
| N | | 20,931 | | 34,691 | | 12,590 | | 18,674 |

*Regression Coefficient not Statistically significant.

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