

20 YEARS IN SENTENCING

A LOOK AT WASHINGTON STATE
ADULT FELONY SENTENCING
FISCAL YEARS 1989 TO 2008

December 2010



State of Washington
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Acknowledgments

The Sentencing Guidelines Commission acknowledges the contributions made by many individuals that contributed to this report. Specifically, the Commission would like to thank Gerry Ring-Erickson, PhD. for the significant time, effort and expertise he put into getting this report off the ground.

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Suggested Citation

State of Washington Sentencing Guidelines Commission (2010). *20 years in sentencing: A look at Washington State adult felony sentencing fiscal years 1989 to 2008*. Olympia, WA: Author.

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EXECUTIVE SUMMARY

In 1981, the Washington State Legislature enacted the Sentencing Reform Act (SRA), creating the Sentencing Guidelines Commission (SGC). The SGC met to develop a structured sentencing system designed to further the purposes of the SRA, as stated in RCW 9.94A.010:

The purpose of this chapter is to make the criminal justice system accountable to the public by developing a system for the sentencing of felony offenders which structures, but does not eliminate, discretionary decisions affecting sentences, and to:

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

Upon adoption of the new determinate sentencing system, the SGC was assigned ongoing responsibilities in RCW 9.94A.850. “The legislature finds that the commission, having accomplished its original statutory directive to implement this chapter, and having expertise in sentencing practice and policies, shall:

- (a) Evaluate state sentencing policy, to include whether the sentencing ranges and standards are consistent with and further:
 - (i) The purposes of this chapter as defined in RCW [9.94A.010](#); and
 - (ii) The intent of the legislature to emphasize confinement for the violent offender and alternatives to confinement for the nonviolent offender.”

This report is offered in response to these statutory directives. Throughout the more than two decades of the existence of the SRA in Washington, two features have remained constant; the Legislature has retained its “plenary power” to set sentencing policy and, with the single exception of the “Determinate Plus” sentences for serious sex offenders, it has maintained the original structure of the SRA to implement the changes in sentencing policy it determined were necessary. However, a number of adjustments to sentencing have been adopted by the Legislature. These policy changes, along with population increases and citizen initiatives, have impacted the number and length of felony sentences.

Like other states, Washington has seen an explosion in corrections costs in the last twenty years. On the one hand, Washington is spending far less than most other states. On the other hand, the number of prison sentences has increased at a rate four times that of the adult population in Washington. This report examines trends in jail and prison sentence numbers for adult felony convictions, lengths of prison and jail sentences and factors that contribute to change in sentence characteristics. It is a comprehensive review of what has or has not changed in the realm of criminal felony sentencing in this state. It is intended to be useful to county and state policymakers, bearing in mind that the majority of felony sentences are served

in county jails. This analysis provides the foundation for a review of sentencing in light of the expressed intent of the SRA.

Adult felony sentence data maintained by the SGC were used to develop this report and include a twenty-year time period from FY1989 to FY2008. The numbers of sentences referenced in this report are as of May 2009. These are subject to change as missing sentencing data becomes available.

POPULATION – *Changes in population demographics can affect who is at-risk for a felony sentence, primarily the adult population.*

- ❖ **Summary: The number and demographics of felony sentences have changed more than the at-risk population.**
- ❖ Washington State's total population and adult population (ages 18–59) increased at similar rates, 39 and 41 percent respectively. Likewise, the adult population has consistently remained about 60 percent of the total state population. *Page 16*
- ❖ The number of prison sentences increased by 167 percent, four times the rate of the adult population. Non-prison sentences increased by 45 percent. *Page 17*
- ❖ Despite the stability of the adult population, the rate of felony sentences per 1000 adult population increased 21 percent, from 6.0 to 7.2. *Page 18*
- ❖ The average age at sentencing increased from 28 to 32, mirroring the national trend. The increase, both locally and nationally, is likely due to an increase in the 40-49 and 50-59 year-old offender age groups and a decrease in Under 20 and 20-29 year old offender age groups. *Page 18*
- ❖ Traditionally, males have been responsible for the vast majority of felony convictions. In the past twenty years, however, Females have slightly increased their share of felony convictions. *Page 20*
- ❖ There has been a shift in racial distribution of felony sentences. The percent of sentences for Whites increased 7 percent and sentences for Blacks decreased 22 percent. The rate of sentences per 1000 Blacks decreased from 20 in 1989 to 17 in 2008 while the rate for Whites increased from 3 to 4. These increases were larger than what was evident in the racial distribution of the state population. *Page 21*

LEGISLATURE – *The Legislature has the “plenary power” to set sentencing policy, thus, changes made by the Legislature can have a direct impact on sentencing trends.*

- ❖ **Summary: Offender scores, the total number of ranked/unranked offenses, and the percent of non-violent prison sentences have all increased.**
- ❖ Offender score averages increased from 1.4 to 2.9. This may be due in part to a decrease in the number of sentences with a score of 0 and an increase in the number of sentences with a score of 9+. While some increase is expected because of the compounding nature of the score, how much is related to this and how much is related to new or modified scoring rules is uncertain. *Page 27*
- ❖ The median offender score increased from 1 to 2. This indicates that there was an increase in the number of sentences with higher offender scores. *Page 27*
- ❖ The state violent crime rate as reported by WASPC has been falling since 1994. The national crime rate as reported by the FBI has also been falling over the past decade. Moreover, the state violent sentencing rate has been falling since 1995. *Page 33*
- ❖ Despite a 71 percent increase in the number of non-violent jail sentences, their proportion to total jail sentences remained steady. *Page 31*
- ❖ The number of non-violent prison sentences increased by 254 percent. Their proportion to total prison sentences also increased, from 63 percent to 83 percent. This is possibly due in part to an increase in non-violent Assault, Property and Drug prison sentences. *Page 31*
- ❖ The rate of violent sentences, both jail and prison, has decreased since FY96. *Page 33*
- ❖ The number of ranked and unranked offenses increased by 80 and 102, respectively. *Page 24*
- ❖ Unranked sentences averaged about three percent of all sentences from 1989 to 1996. From 1997 to 2008, that average increased to eight percent. *Page 24*
- ❖ At least 80 percent of all ranked sentences on the standard grid had a seriousness level from 1 to 4. Seriousness level 1 consistently held one-third of all ranked sentences by itself. Take the 1989 offender score average of 1.4 and apply it to the standard grid along with seriousness levels 1 to 4 and the largest standard sentencing length comes out to be 6 -12 months. Take the 2008 offender score average of 2.9 and apply it to the standard grid with the same seriousness levels and the largest standard sentencing length increases to 13-17 months. *Page 25*

- ❖ Of seriousness levels associated with the drug grid, seriousness level 1 consistently encompassed 80 percent of all drug sentences. Seriousness level 3 held three percent or less. Once again, take the 1989 offender score average and apply it to the drug grid with seriousness level 1 and the standard sentence length is 0-6 months. Taking the 2008 offender score average and doing the same thing will result in an increased standard sentence length of 6+ - 18 months. *Page 26*
- ❖ The most frequently assigned sentence enhancement is a weapon enhancement. Crime types that regularly received the highest number of weapon enhancement months were Assault, Murder 1 and Robbery. *Page 33*
- ❖ Of Two- and Three-Strike and Aggravated Murder 1st Degree sentences, all three showed a decrease in the average number of sentences per year in the latter half of the data. Determinate Plus sentences increased dramatically since inception and only started to decrease since FY06. *Pages 37*

CRIMINAL JUSTICE SYSTEM – *The SRA provides standard sentencing ranges for the courts to follow. The ranges are structured so that offenses involving greater harm result in greater punishment.*

- ❖ **Summary: The average prison sentence length is back down to 1989 levels while the average jail sentence length has increased 48 percent. The use of sentence alternatives and aggravated sentences has decreased as has the percent of sentences that received credit for time served.**
- ❖ The percent of convictions that were plea of guilty have remained in the 90 percent range both in Washington and across the country. *Page 39*
- ❖ Of total felony sentences, prison sentences constituted 22 percent in 1989 and increased to 34 percent by 2008. Washington was far below the national average of 42 percent. *Page 40*
- ❖ Of total felony sentences, jail sentences constituted 69 percent in 1989 and decreased to 62 percent by 2008. Washington was far above the national average of 28 percent. *Page 40*
- ❖ Of total felony sentences, sentences that received no confinement time constituted 9 percent in 1989 and decreased to 4 percent by 2008. This may be a result of the decreased use of the First Time Offender Waiver sentence alternative or other confinement alternatives. *Page 40*
- ❖ Consistently, most felony sentences (82%) fall within the standard range which is based on the offender's score and the seriousness level of the offense. *Page 40*

- ❖ The overall average “Where in the Range” value (determined by the proximity of the sentence length imposed within the standard range where 0 represents the low end of the range and 1 represents the high end of the range) was 0.31 in 2008, a drop from 0.36 in 1996. Alone this would result in a smaller confinement term; however, it is not the only factor influencing sentence lengths. *Page 42*
- ❖ The average “Where in the Range” value for prison sentences remained relatively stable while the value for jail sentences decreased by 21 percent. *Page 42*
- ❖ Aggravated sentences decreased after FY04 when the *Blakely v Washington* decision was rendered. *Page 41*
- ❖ The average prison sentence length increased by 29 percent from 1989 to 1994. From there, it slowly returned to the 1989 level. The decrease from 1994 to 2008 may be due in part to an increase in the number of sentences and corresponding decrease in average sentence length of Assault and Drug crime types. *Page 43*
- ❖ The average jail sentence length increased by 48 percent, from 2.1 months in 1989 to 3.1 months in 2008. The increase may be due in part to a rise in the number of sentences and average sentence lengths for Assault, Property and Drug crime types. *Page 45*
- ❖ In 1989, 17 percent of all felony sentences were a First Time Offender Waiver (FTOW) or a Special Sex Offender Sentencing Alternative (SSOSA) sentence. By 2008, that dropped to 9 percent, despite an increase (FTOW) or consistent (SSOSA) number of eligible sentences and the introduction of Drug Offender Sentencing Alternative (DOSA) sentences. *Page 46*
- ❖ The percent of both jail and prison sentences that received credit for time served decreased by 10 percent. *Page 48*
- ❖ The average number of months of credit for time served imposed for all jail sentences increased by less than one month. *Page 48*
- ❖ The average number of months of credit for time served imposed for violent prison sentences increased by about 2 months (by 3.5 months between 2004 and 2006) overall. The average number of months imposed to non-violent prison sentences increased by about 1 month. *Page 48*

INTRODUCTION

In 1981, both the Sentencing Reform Act and the Sentencing Guidelines Commission were established. This review is of the last twenty years (FY89 to FY08) of felony sentencing in Washington State. Its purpose is to gain insight as to what changes in sentencing have occurred over that time period.

Many factors can influence sentencing; changes in population, changes in the sentencing laws and changes in the law the criminal justice system implements. The sentencing laws all can have a significant impact on the number and nature of felony sentences imposed over time. Data in this report are broken into three sections by what and who can influence sentencing: Population, Legislature and Criminal Justice System. These sections will present data and summarize changes as applicable. While some changes can be applicable to more than one section, they are placed in the section considered to have the largest impact.

Within each of the three sections, analysis of the twenty-year period data will be presented along with suggestions on what may have contributed to the impact¹. While national trend² comparisons are provided where available, data may not always be available for the full twenty years.

Criminal statutes are fluid. References to particular RCWs (Revised Code of Washington³) only reflect the statute in its current³ state as of the date of this report. The language of that statute may not be applicable in a prior year.

There may be instances when data are categorized. Category definitions, such as violent offenses or sex offense, are based on the definition as of the date of this report. Additionally, the categorization of sentences into crime types⁴ is based on the offense that resulted in the longest sentence range on the sentencing grid.

Finally, it is important to note the difference between sentence lengths and the length of time served. Sentence lengths are the total amount of confinement imposed as found on the judgment and sentence. Not all offenders spend 100 percent of their sentence in confinement. Should an offender exhibit acceptable behavior, attend required programs or classes and remain infraction-free, they can earn time off of their sentence⁵. Furthermore, many aspects of sentencing policy are not covered here. Some crimes and sentences serve useful purposes in charging and plea practices, for instance. This report makes no attempt to examine pre-sentencing practices.

¹ There are many legislative changes that occur each year. It is not within the timeframe of this project to provide a comprehensive list for the twenty years.

² US Department of Justice, Office of Justice Programs, Bureau of Justice Statistics reports entitled "Felony Sentences in State Courts" for years 1992 to 2006 are available at <http://bjs.ojp.usdoj.gov/>.

³ "The Revised Code of Washington (RCW) is the compilation of all permanent laws now in force. It is a collection of Session Laws (enacted by the Legislature, and signed by the Governor, or enacted via the initiative process), arranged by topic, with amendments added and repealed laws removed. It does not include temporary laws such as appropriations acts." Washington State Legislature website, <http://apps.leg.wa.gov/rcw/default.aspx>.

⁴ Crime types, also called forecasting categories, are those used by the Department of Corrections and the Caseload Forecast Council for forecasting purposes and are not identical to classifications under the Sentencing Reform Act.

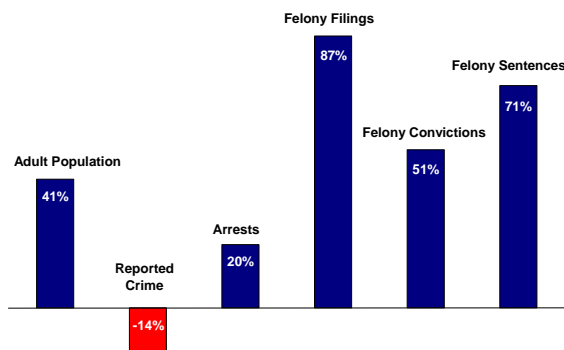
⁵ See RCW 9.94A.728 for earned release percentages and eligibility requirements.

POPULATION

In 1989 Washington State’s population was approximately 4.7 million⁶. Since then, it has increased by an average⁷ of 98,500 persons per year to about 6.6 million in 2008. The average annual increase was 2 percent and the overall increase from 1989 to 2008 was 39 percent.

The “adult population”, a subgroup of the state’s population, is defined as adults between the ages of 18 and 59, the age offenders are mostly at-risk to receive an adult sentence. While offenders older than 59 are convicted of felonies, they only make up about five percent of total felonies and are, therefore, outside of the scope of this report. Likewise, there are youth under age 18 who are convicted as adults and

Figure 2
Changes in At-Risk Populations
From FY89 to FY08



whose sentences are included in the data; however, their sentences have totaled less than 1 percent in any given year compared to the thousands of 16- and 17-year-olds in the state population. As a result, those sentences will also remain in the analysis but that age group will not be included in the adult population total.

Figure 1 displays the total state population and the adult population per 1000 persons from 1989 to 2008 as available through the Office of Financial Management (OFM)⁸. The state population increased by 39 percent overall and the adult population increased by 41 percent overall. Figure 1 illustrates that as the state population increased, the adult population increased at a similar pace. The adult population has been and still remains about 60 percent of the total state population. To the extent that reported crime, arrests and sentencing are proportional to population, it would be expected that crimes and sentences would increase at a

Figure 1
Washington State Adult and Total Populations
Per 1000 Population

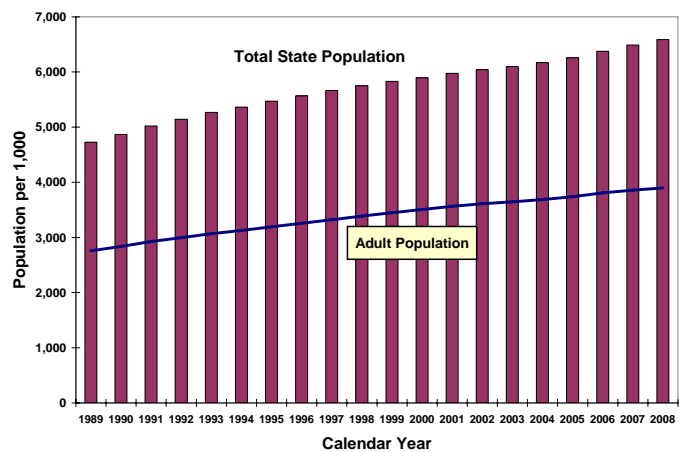


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⁶ Washington State Office of Financial Management report “Components of Population Change for Washington” located at <http://www.ofm.wa.gov/databook/>.

⁷ Throughout this report, the term “average” refers to the mean.

⁸ Washington State Office of Financial Management report “Forecast of the State Population by Age and Sex: 1970 to 2030” located at <http://www.ofm.wa.gov/pop/stfc/default.asp>.

similar rate as the state and adult population. Figure 2 shows that while the adult population, arrests⁹, filings, convictions¹⁰ and sentences all increased, the amount of reported crimes has decreased. Potential reasons for this difference range from technological advancements to public concern about crime. More information related to violent crime and sentencing rates can be found under the Legislature section.

SENTENCE NUMBERS

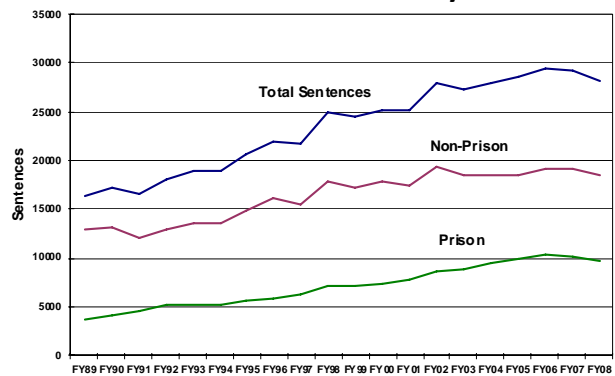
Felony sentences are divided into three categories based on the length of confinement imposed:

1. Prison sentences: at least 12 months and one day of confinement.
2. Jail sentences: no more than 12 months of confinement.
3. Other sentences: no confinement but instead a term of supervision in the community.

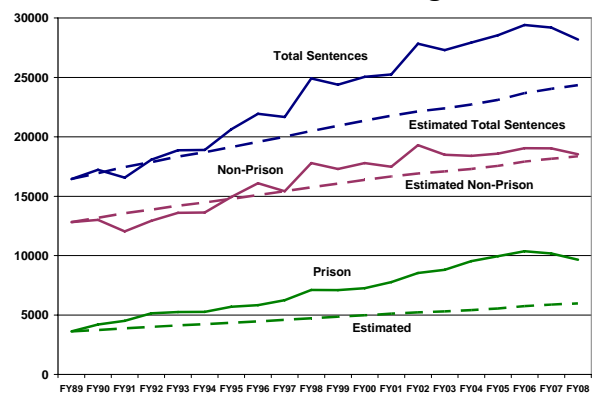
Figure 3 shows the total number of felony sentences over twenty years. Sentences are grouped by those that received a prison sentence and those that did not (non-prison). Prison sentences increased by 167 percent and non-prison sentences increased by 45 percent. Total sentences increased by 71 percent. Compared to the 41 percent overall increase in the adult population, total felony sentences increased at close to twice the pace of that population.

As dramatic as these increases are, it should be noted that the increases in Washington are lower than those that occurred in other states. A study for the American Law Institute showed that from 1984 to 2006, the growth in Washington’s prison population rate per 100,000 residents was less than half the growth in prison population throughout the United States.

**Figure 3
Felony Sentences**



**Figure 4
Number of Felony Sentences
Current vs No Change Estimate**



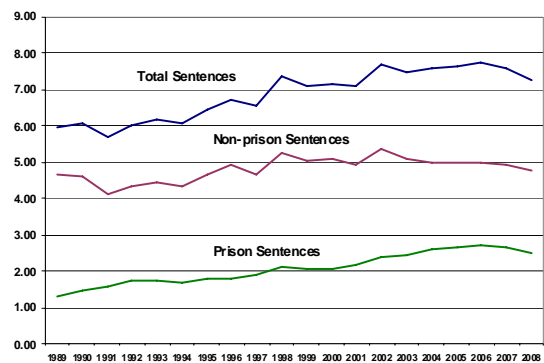
⁹ Arrest and crime data were obtained from the Washington Association of Sheriffs and Police Chief’s annual Crime in Washington archive reports located at <http://www.waspc.org/index.php?d=54>. Crime data is for Part 1 offenses only, *i.e.* violent and property offenses.

¹⁰ Filing and conviction data were provided by the Administrative Office of the Courts. Filings refer to original charge filings and convictions include only the charges to which offenders were convicted. There can be multiple convictions per sentence.

Figure 4 compares sentences actually imposed to estimated sentence totals based solely on adult population change to actual sentence totals. The changes in the adult population over the twenty years were applied to the 1989 sentence figures to estimate what sentence numbers might have been if there had been only population changes since 1989. The estimated totals for prison sentences under this scenario would have increased by 65 percent compared to the actual increase of 167 percent. Non-prison sentences would have increased by 43 percent, similar to the actual increase of 45 percent. The overall increase may have been closer to 48 percent instead of the current 71 percent. Based on these estimates, the non-prison sentences would not have increased much differently than they did. Prison sentences, though, would have been less than half of the current figure.

Another way to review the actual increases is with the rate of sentences per 1000 adult population as in Figure 5. The number of felony sentences per 1000 adult population increased from 1.3 to 2.5 for prison sentences, from 4.6 to 4.8 for non-prison sentences and from 6.0 to 7.2 for total sentences.

Figure 5
Rate of Sentences Per 1000 Adult Population



AGE AT SENTENCING

The average and median¹¹ ages of offenders at the time of sentencing went up during the twenty years. The average age at sentencing was 32 years in 2008, up from 28 in 1989. The median age in 2008 was 30, up from 25 in 1989. National data from the Bureau of Justice Statistics (BJS) also shows an increase in the average age of convicted felons (Figure 6); the average age was 30 in 1992 and increased to 33 in 2006.

Figure 6
Washington State and National Age at Sentencing

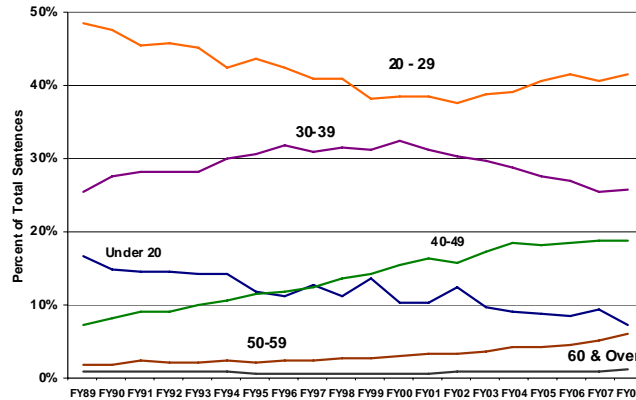
	Washington State Felony Sentences								National Felony Sentences							
	Median Age	Average Age	Age Group Distribution						Average Age	Age Group Distribution						
			Under20	20-29	30-39	40-49	50-59	60+		Under20	20-29	30-39	40-49	50-59	60+	
1992	27	29	14%	46%	28%	9%	2%	1%	30	9%	46%	31%	10%	3%	1%	
1994	28	30	14%	42%	30%	10%	2%	1%	30	10%	43%	31%	12%	3%	1%	
1996	28	30	11%	42%	32%	12%	2%	1%	31	9%	41%	33%	14%	3%	1%	
1998	29	30	11%	41%	31%	13%	3%	1%	31	9%	39%	32%	16%	3%	1%	
2000	30	31	10%	38%	32%	15%	3%	1%	32	8%	39%	30%	18%	4%	1%	
2002	30	31	12%	37%	30%	16%	3%	1%	32	7%	41%	29%	18%	4%	1%	
2004	30	32	9%	39%	29%	18%	4%	1%	32	7%	40%	27%	19%	5%	1%	
2006	30	32	8%	41%	27%	18%	4%	1%	33	7%	40%	26%	20%	6%	1%	

Examining the increase in average age, Figure 7 shows the distribution of age groups for felony sentences in Washington State. In 1989 the “Under 20” age group represented about 17 percent of the felony sentences. As of 2008, they comprised only 7 percent (a 58% decrease). The “20-29” age group represented nearly half of the felony sentences in 1989 (48%) but has since decreased to 42 percent (a 14% decrease). Additionally, there was the increase of the

¹¹ The median score is the score that is exactly in the middle of the data, where the same number of observations is above it as below it.

“40-49” and “50-59” age groups, of 161 percent and 242 percent respectively. According to Figure 6 a similar trend was seen in national data as well.

Figure 7
Age at Sentencing by Age Groups



The median age increased from 25 to 30 by 2008, meaning that there has been an increase in the number of older offenders who get sentenced. Figure 8 shows the rate of adult population and the rate of felony sentences received by each age group. The rate of adult population has increased for only two groups, 40-49 and 50-59. Subsequently, those age groups also have produced the largest rate increase for felony sentences per age group. It would seem that while younger offenders are still receiving the bulk of sentences, older offenders are receiving more than they used to. The fact that proportionately fewer younger offenders and more older offenders are receiving felony sentences accounts for the increase in average and median age at sentencing.

Figure 8
Rate of Adult Population and Rate of Sentences by Age Group

	Adult Population			Felony Sentences		
	Rate Per 1,000 1989	Rate Per 1,000 2008	Overall Increase/ Decrease	Rate Per 1,000 1989	Rate Per 1,000 2008	Overall Increase/ Decrease
Under 20	52	49	-7%	18.9	10.5	-44%
20-29	274	242	-12%	10.5	12.4	18%
30-39	305	227	-26%	5.0	8.2	65%
40-49	224	248	11%	1.9	5.5	186%
50-59	145	235	62%	0.7	1.8	155%

GENDER

Males and females have consistently represented approximately equal parts of the total state population and the adult population (Figure 9); their distribution in sentencing is quite different, however. Traditionally, males have been responsible for the vast majority of felony convictions. About 85 percent of the felony sentences in Washington in 1989 were attributable to males (Figure 10). The female share of sentences has increased. By 2008, females constituted 20 percent of felony sentences, a gain of 5 percent. Figure 11 illustrates the increase in the rate of sentencing by gender. Females had a rate of 1.3 sentences per 1000 adult population in 1989 and increased to 3.0 by 2008, a 131 percent increase. Males were at a rate of 9.5 in 1989 and rose to 11.3 by 2008, a 19 percent increase.

Figure 9
Distribution of Adult Population by Gender

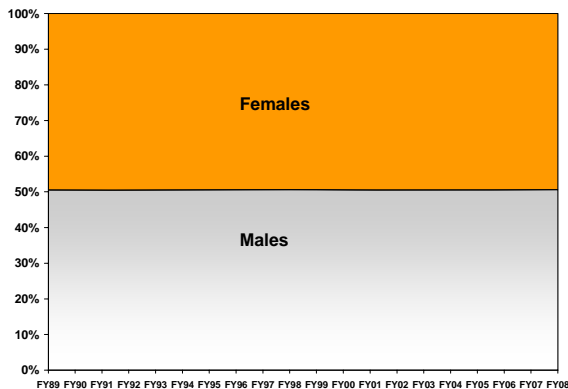


Figure 10
Distribution of Sentences by Gender

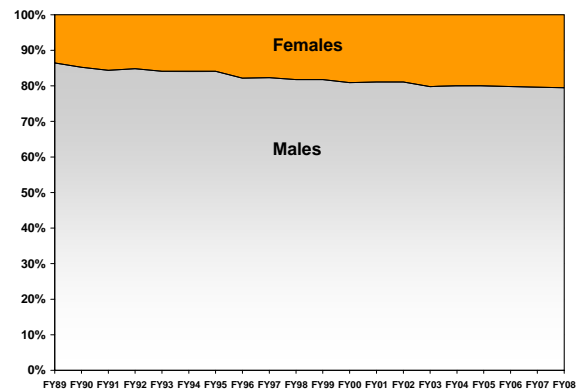
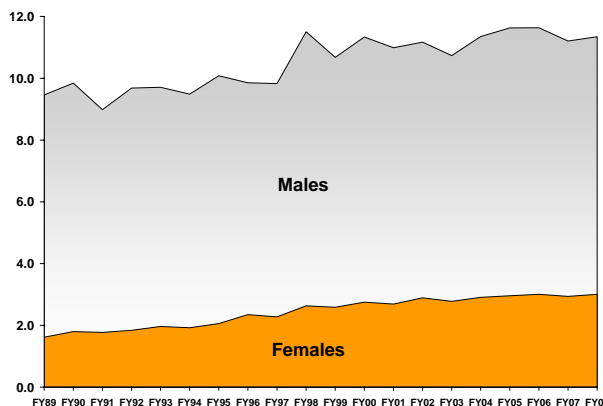


Figure 11
Rate of Sentences per 1000 Adult Population by Gender



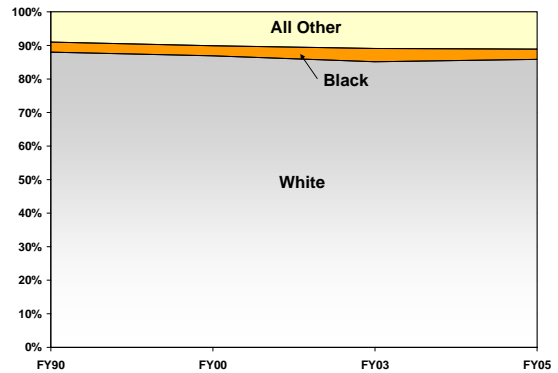
RACE

In addition to changes in gender distribution of felony sentences, there has also been a shift in racial distribution of sentences. Figure 12 shows the racial distribution of the total population over time. Whites went from 88 to 85 percent of the total population, Blacks stayed consistent at 3 percent and Others increased from 9 to 11 percent. For the most part, this distribution has not drastically changed. The distribution of sentences, though, has changed (Figure 13). In 1990, Whites received 72 percent of sentences, Blacks received 18 percent while Others held 10 percent. By 2005, Whites increased to 77 percent, Blacks decreased to 14 percent and Others decreased to 9 percent.

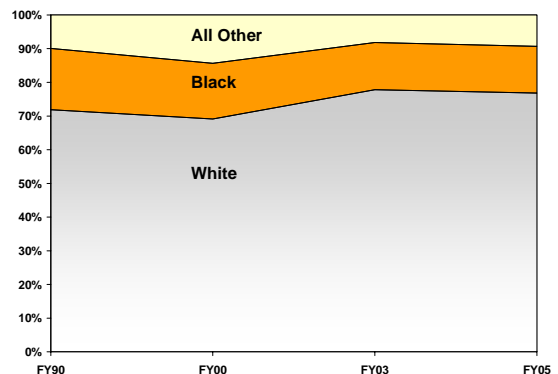
Further evidence of this shift is found in the rate of sentences per racial category as found in Figure 14. For every 1000 Blacks in 1990, there were 20 felony sentences, for Others there were 4 and for Whites there were 3. By 2005, the rate for Blacks had decreased to 17 per 1000, Others had decreased back to 4 per 1000 and Whites increased to 4 per 1000.

Blacks comprised about 3 percent of the state population yet they received 14 percent of sentences in 2005 and had a rate of 17 sentences per 1000 Black population. Disproportionality exists; yet, the data indicate that it is decreasing.

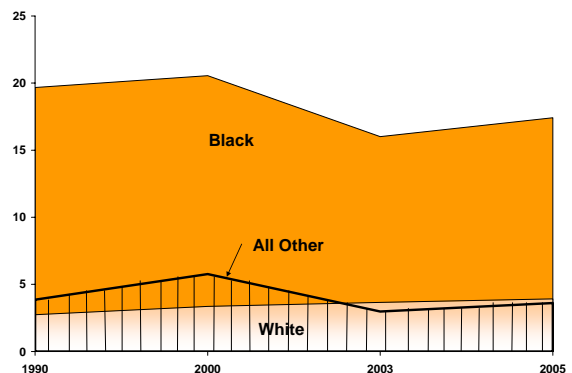
**Figure 12
Distribution of Total Population by Race**



**Figure 13
Distribution of Sentences by Race**



**Figure 14
Rate of Sentences per 1000**



LEGISLATURE

The Legislature has revised the Sentencing Reform Act every year since it was initially implemented in 1984. These changes have taken numerous forms, but their cumulative effect has been to increase the severity of felony sentences in Washington. Four different standard sentencing grids have been in effect during the time period from which the data was drawn. Most changes to the standard sentencing grids have been relatively minor. While these changes likely had some affect, it is difficult to separate that effect out. The grids are applied according to the offense date while the SGC data is separated according to the sentencing date. It can take several years for some offenders to be apprehended and prosecuted. For example, a sentence found in Fiscal Year 2000 data could very well have been committed in 1986, under which a different sentencing grid would be used. As of 2003, a new drug grid was implemented so, currently, two grids are in use.

SENTENCING GRIDS

The central component in Washington sentencing is the sentencing grid. Four different standard (*i.e.* non-drug) sentencing grids have been in effect between 1989 and 2008 (see Figure 15). The major difference among them, besides their effective date, is the addition/modification of upper level seriousness levels. All four grids can be found in the SGC’s Adult Sentencing Manual.

Figure 15
Sentencing Grid Effective Dates and Modifications

<u>Grid Effective Date(s)</u>	<u>Legislative Grid Change</u>
Before July 1, 1990	Original Grid; Highest Seriousness Level was 14
July 1, 1990 – July 26, 1997	Seriousness Level 15 added Seriousness Level 11 penalties changed
July 27, 1997 – July 24, 1999	Seriousness Level 8 standard ranges changed
After July 24, 1999	Seriousness Level 16 added Seriousness Level 14 standard ranges changed Seriousness Level 8 original standard ranges restored
July 1, 2003	Implemented Drug Offense Sentencing Grid

In the 2002 Legislative session, the Legislature adopted the recommendations of the SGC regarding sentences for drug offenders and adopted a new drug grid¹² and drug

¹² For drug grid details, see RCW 9.94A.517.

seriousness levels¹³. Both became effective for statutory and non-statutory drug offenses¹⁴ committed on or after July 1, 2003. The Legislature's intent with the new drug grid was

“ . . . to increase the use of effective substance abuse treatment for defendants and offenders in Washington in order to make frugal use of state and local resources, thus reducing recidivism and increasing the likelihood that defendants and offenders will become productive and law-abiding persons. The legislature recognizes that substance abuse treatment can be effective if it is well planned and involves adequate monitoring, and that substance abuse and addiction is a public safety and public health issue that must be more effectively addressed if recidivism is to be reduced. The legislature intends that sentences for drug offenses accurately reflect the adverse impact of substance abuse and addiction on public safety, that the public must have protection from violent offenders, and further intends that such sentences be based on policies that are supported by research and public policy goals established by the legislature.” [2002 c 290 § 1.]

After June 30, 2003, any drug offense that had been previously scored on the standard grid was now scored on the drug grid. While the standard grid has 16 seriousness levels, the drug grid has only three. Both grids still reflect ranges for offender scores of 0 to 9 or above. Throughout the report, drug data may be separated out to show any possible affect separate from the standard grid.

SERIOUSNESS LEVEL

Washington's sentencing grid is a matrix¹⁵. The rows of the matrix represent the offense seriousness level while the columns represent the offender's score. Where the two intersect is the sentencing range from which a judge can choose a sentence length.

An offense's seriousness level is designated by RCW. Offenses assigned a seriousness level are called “ranked” offenses and are applied to the sentencing grid. Offenses that are not assigned a seriousness level are considered “unranked” offenses and have a default sentence range of 0 to 12 months. Over 90 percent of all sentences were for ranked crimes. Seriousness levels currently range from 1 to 16; the higher the seriousness level, the more serious the

¹³ For the list of drug offenses and their related seriousness levels, see RCW 9.94A.518.

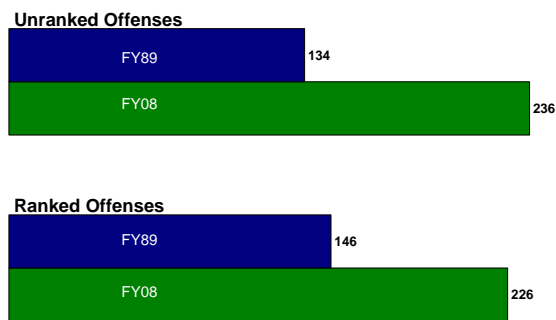
¹⁴ The definition of drug offense in RCW 9.94A.030(21) excludes Possession of a Controlled Substance (RCW 69.50.4013) and Forged Prescription for a Controlled Substance (RCW 69.50.403), however, these offenses are still scored on the drug offense sentencing grid.

¹⁵ The offender score is measured on the horizontal axis of the sentencing guidelines grid. An offender may receive from 0 to 9+ points on that axis. In general, the number of points an offender receives depends on five factors: (1) the number of prior criminal convictions or juvenile dispositions; (2) the relationship between any prior offense(s) and the current offense of conviction; (3) the presence of other current convictions; (4) the offender's community placement status at the time the crime was committed; and (5) the length of the offender's crime-free behavior between offenses. An offense's seriousness level is statutorily assigned. Once the offense seriousness level has been determined and the offender score has been calculated, the presumptive standard sentence range may be identified on the appropriate sentencing grid. For each current offense, the intersection of the column defined by the offender score and the row defined by the offense seriousness level determines the standard sentence range. In those cases where the presumptive sentence exceeds the statutory maximum sentence for the crime, the statutory maximum sentence is the presumptive sentence.

offense. Seriousness level 16 contains only one offense, Aggravated Murder 1st Degree, which results in an automatic sentence of either life without the possibility of parole or death.

A spate of seriousness level designations have been added or changed over the years. As seen in Figure 16, in 1989 there were 146 ranked offenses and 134 unranked offenses. Since

Figure 16
Total Number of Ranked and Unranked Offenses



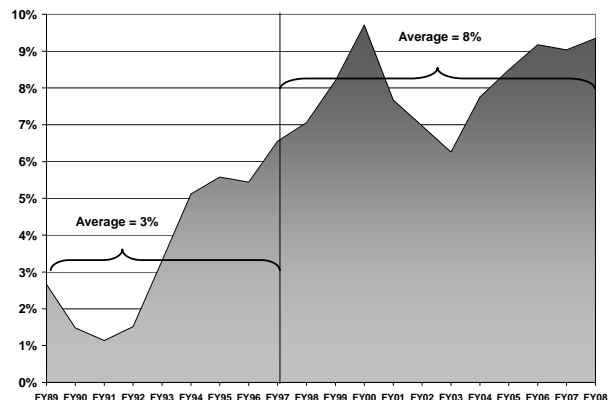
then, the Legislature added 80 new ranked offenses and 102 unranked offenses¹⁶. As well, several existing

offenses had their seriousness level increased. There are even a few instances where the seriousness level was decreased. One such instance occurred prior to the implementation of the drug grid and one occurred with the implementation of the drug grid. In 2002, a few drug offenses decreased from Seriousness Level 8 to Seriousness Level 7 but only when specific offenses were absent from offender history.

When the drug grid was implemented, drug offenses were issued new seriousness levels that were associated to that grid specifically. This technically decreased the seriousness level for all drug offenses but only actually decreased the sentence range for a few offenses.

Figure 17 shows the proportion of all sentences that were unranked. The percentage stayed below 6 percent until 1997 when it rose to and stayed at over 7 percent. In fact, the average percentage prior to 1997 was 3 percent and the average after 1997 was 8 percent. The climb between 1997 and 2000 was possibly associated to the addition of around 36 new unranked offenses that became effective during those years. After 2003, there is another climb in unranked sentences in which there were about 35 new unranked offenses that became effective. Drug offenses that are “conspiracy or attempt to commit” are not sentenced on the grid but instead are unranked felonies. Further analysis did not draw attention to any offense/offenses that may have been specifically behind the increases.

Figure 17
Distribution of Unranked Offenses



¹⁶ This is the difference between the 1989 and the 2008 level of ranked and unranked offenses. It does not constitute the exact number of additions as there have been occasions when offenses have been repealed or abolished.

Figure 18
Percent of Ranked Sentences by Seriousness Level
Standard Grid – Excluding Drug Grid Sentences

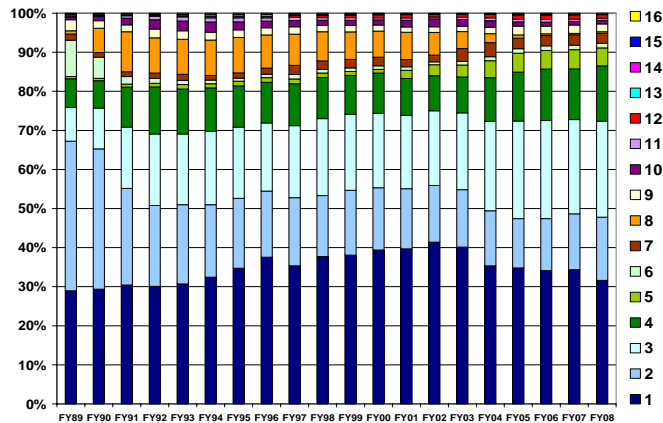
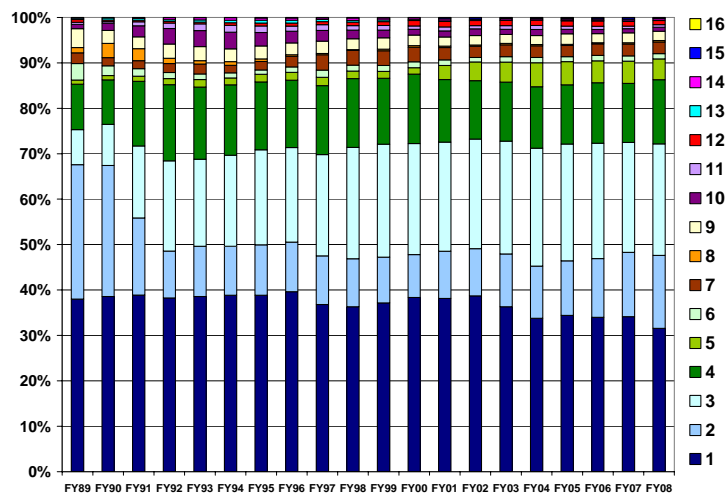


Figure 18 shows the percentage of felony sentences by seriousness levels on the standard grid. These data include only ranked sentences and do not include sentences based on the drug grid. It is immediately observable that at least 80 percent of all ranked sentences congregated within the first four seriousness levels. Seriousness Level 1 consistently contained the largest portion, about one-third. Not since 1991 has any seriousness level greater than 4 comprised 10 percent or more of the sentences. Also evident in Figure 18 is a large increase in Seriousness Level 8 in 1990 with a subsequent large decrease in 2004. This is principally due to several drug offenses¹⁷ that were either increased to Seriousness Level 8 or became effective as of July 1, 1989.

Figure 19
Percent of Ranked Sentences by Seriousness Level
Standard Grid - Excluding All Drug Offenses

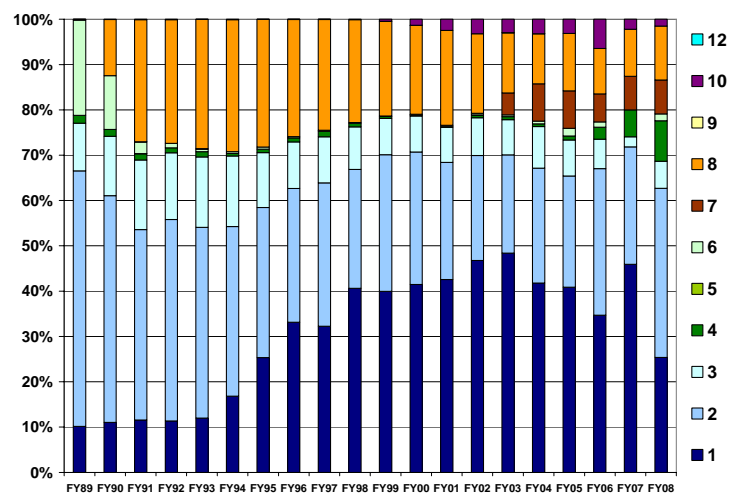


¹⁷ Such offenses include, but are not limited to: Manufacture, Delivery or Possession with Intent to Deliver Heroin or Cocaine; Manufacture, Delivery or Possession with Intent to Deliver Methamphetamines; and Delivery or Possession with Intent to Deliver Methamphetamines.

Figures 19 and 20 show the seriousness level distribution on the standard grid for all but drug offenses and for only drug offenses. Figure 20 better shows the connection between drug offenses and Seriousness Level 8. Sentences for these drug offenses totaled between 700 and 1000 in the fiscal years between 1990 and 2003. As of July 1, 2003, these offenses were moved from the standard grid to the drug grid and assigned new seriousness levels, thus the dramatic decrease.

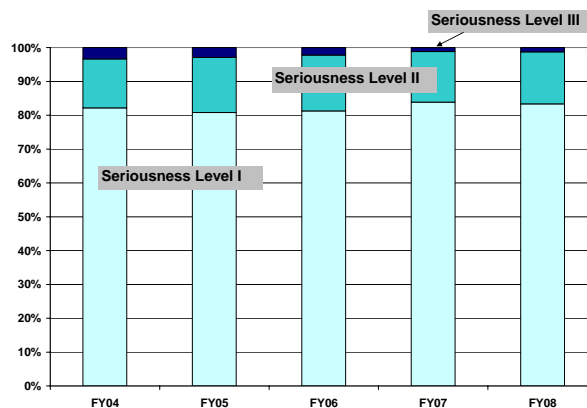
Figure 19 shows that about 85 percent of non-drug sentences have been within Seriousness Levels 1 through 4.

Figure 20
Percent of Ranked Sentences by Seriousness Level
Standard Grid - Drug Offenses Only



Seriousness levels associated with the drug grid remained stable over the past five years (Figure 21). At least 80 percent of all drug sentences were within the lowest seriousness level and very few, 3 percent or less, were within the highest seriousness level.

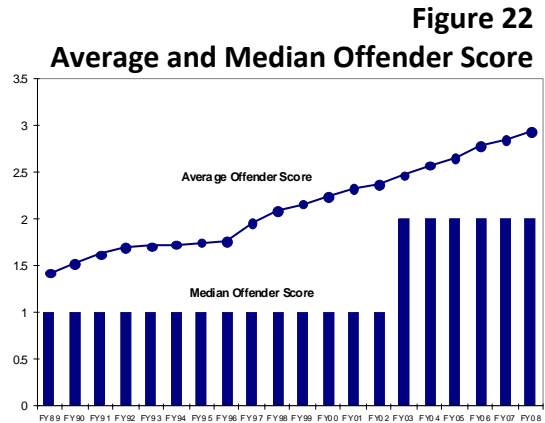
Figure 21
Percent of Ranked Sentences by Seriousness Level
Drug Grid Sentences Only



OFFENDER SCORE

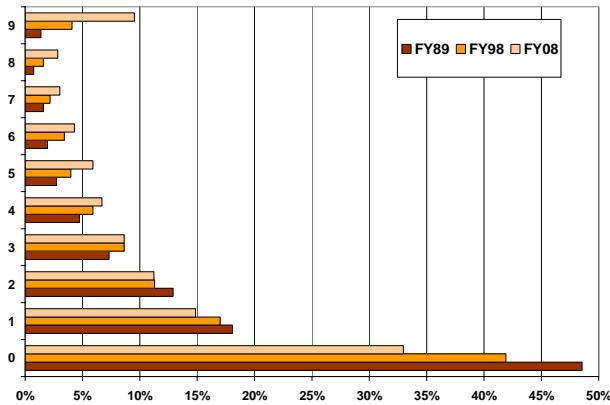
The offender score is based on the offender’s current and historical convictions. While there may be many offenses on any one judgment and sentence, in most cases the offender score is based on the score for the offense that generated the longest sentence range on the J&S. An offender score is not calculated if the offense is unranked; therefore, the offender score data include only sentences where the offense was a ranked offense. And, to be clear, although it is referred to as the “offender” score, the data actually represent the number of sentences with said score, not the number of offenders.

Figure 22 shows the average offender score and the median offender score over time. The average offender score represents the estimated middle of the offender scores but can be influenced by very large scores of which there are some. Therefore, the median is provided as well. The median score also represents the middle of the offender scores. However, it indicates the midpoint where the same number of sentences is above it as well as below it.



According to Figure 22, offender scores have increased over time. Some increase in the average offender score is expected as the offender’s prior criminal history is used in calculating

Figure 23
Distribution of Offender Scores
FY89, FY98 and FY08



the current score, thus making it a compounding score until the offender stops offending. As a simple example, say an offender is a first time offender with no criminal history. The offender would receive a score of 0. If that same offender is convicted later of another crime, he/she now has criminal history and would receive a score of no less than 1. This does not take into account other scoring rules, such as double or triple scoring¹⁸, scoring for specific juvenile offenses or the additional point imposed when a crime is committed while on community custody. This demonstrates that the average offender score would be increasing for repeat offenders, regardless of the other scoring rules. Other scoring rules simply boost the already existing increase.

The median offender score has increased and for the same reasons as the average score. The average offender score increased because the percentage of sentences with a score of 3 or above increased while those with a score of 2 or less have decreased (Figure 23). The

¹⁸ Some offenses are worth multiple points. See RCW 9.94A.525 for scoring rules.

median score highlights that while average offender scores are increasing, the majority are still a 0, 1 or 2. This point can also be seen in Figure 23 which shows the distribution of offender scores by fiscal year. Only scores of 0, 1 or 2 individually equaled more than 10 percent in any fiscal year. Combined, these three scores comprised 80 percent of all the sentences in 1989. By 2008 they decreased to 59 percent but still held the majority.

Returning to Figure 22, the average offender score increased from 1.4 to 2.9 over the twenty years. That is an overall increase of 107 percent. How much of that increase is due to the natural compounding of scores¹⁹ and how much is due to scoring rules requires complex analysis which is not within the scope of this report. Here are two key scoring changes, however, that could have had some impact on increasing scoring levels:

- First, in 1990, the Legislature created a new finding for crimes committed with sexual motivation. Crimes with this finding were now defined and scored as sex offenses, which are triple-scored. Figure 24 shows the average and median offender scores for sentences with a current sex crime type. There is a marked increase of the average score between 1990 and 1995. The median score jumped from 0 to 1 for a few years and then dropped back down to 0. Sexual motivation findings were first tracked by SGC in 2000 so without that earlier data it is difficult to determine if the score increase was related to sexual motivation findings or not. As of 2000, sexual motivation findings represented 12 percent or less of all offenses considered a Sex crime. Yet, Figure 25 illustrates how, after 1990, offender scores for Sex crime congregated mostly within scores of 0, 3, 6 or 9. The largest proportional decrease between 1989 and 2008 was seen in scores of 0, 1 and 2 (-47%, -38% and -27% respectively). The largest proportional increase was for scores of 9 at 10 percent. While it is not possible to determine in this analysis what impact sexual motivation findings had in increasing the offender scores for Sex crimes, what is available indicates that this may be a possible explanation.

Figure 24
Average and Median Offender Scores
Sentences with a Current Sex Offense

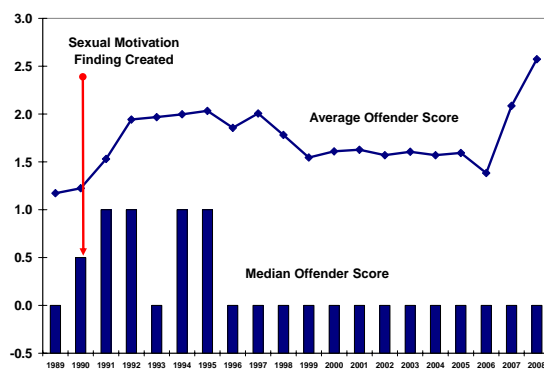
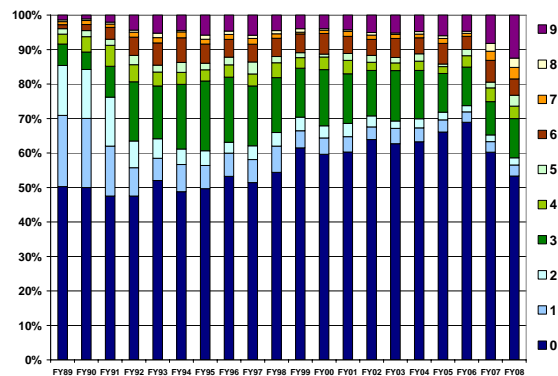


Figure 25
Distribution of Offender Scores
Sentences with a Current Sex Offense



¹⁹ Prior to the Sentencing Reform Act, the law did not automatically increase sentence length for prior convictions and thus prosecutors did not need to obtain new convictions to obtain prison sentences via probation or parole revocation. The Sentencing Reform Act required that only convictions counted in determining the offender score.

- Second, scoring for most statutory drug offenses²⁰ in 2002 was reduced from triple to single scoring. Figure 26 shows the average and median statutory drug offender scores. Oddly, the median score increased during this change. Despite the reduction in scoring, over half of all offender scores were still found under scores of 0 and 1 (Figure 27). A cursory look into the collective history of these sentences showed that about half had no crimes in history at all. This is not the outcome expected when thousands of VUCSA offenses each year were reduced from triple to single scoring.

Figure 26
Average and Median Offender Scores
Statutory Drug Offenses Only

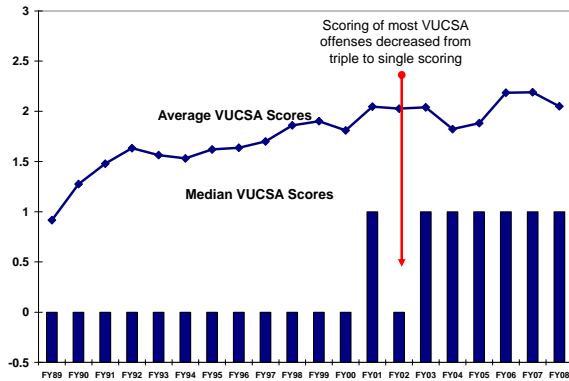
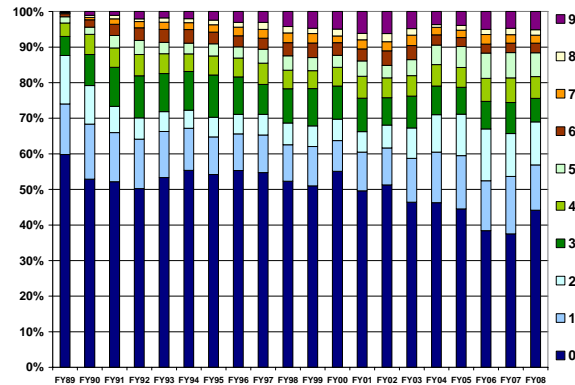


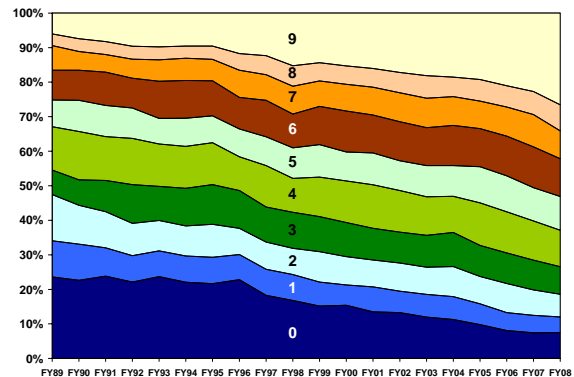
Figure 27
Distribution of Offender Scores
Statutory Drug Offenses Only



When offender score data were sorted by disposition, an interesting story emerges. Given the structure of the grid, jail sentences include only offender scores up to 5, while prison sentences include all offender scores. There has not been as much change in offender scores for jail sentences. Sentences with a score of 0 decreased by 13 percent (53% in 1989 to 46% in 2008) but scores of 1 or 2 varied only slightly and, in 2008, were close to or at the 1989 levels. Scores of 3, 4 and 5 increased only about 2 percent over the twenty years.

Figure 28 is a stacked area chart that shows 100 percent of the distribution of offender scores for prison sentences. What can be gleaned from this chart is that the proportion of offender scores 1 through 8 changed minimally, whereas scores 0 and 9 changed drastically. Scores of 0 went from 24 percent of all prison sentences down to 7 percent. Scores of 9 were at 6 percent in 1989 and increased to 27 percent by 2008. Offender scores can total more than 9 but as the grid only goes up to 9, anyone with a score greater than 9 is treated as if the score equals 9.

Figure 28
Distribution of Offender Scores for Prison Sentences



²⁰ As defined in RCW 9.94A.030(21)

Often the J&S only lists a score of 9+ for offender with a score greater than 9 instead of the real score; thus, the SGC database does not track real offender scores. In 2009, the Commission asked SGC staff to review sentences with 9+ scores in Fiscal Year 2008 to gauge how many sentences had an offender score greater than 9. That review provides insight as to how many sentences have scores of 9 or above and how high offender scores actually go. It is located in Appendix B.

VIOLENT AND NON-VIOLENT SENTENCES

Ranked/Unranked is only one of many different categories the Legislature has created for offenses. Another category is Violent/Non-violent. Violent offenses are defined in statute and consist of several specifically identified offenses in addition to “any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony”²¹. Some Violent offenses are further sub-categorized as Serious Violent but, for the purpose of this study, Serious Violent offenses will be captured as Violent offenses.

The list of Violent offenses has changed very little over twenty years. There are only two specific offenses on the list that are new, Assault of a Child 2nd Degree and Drive-by Shooting. Where the majority of any real change in Violent offenses lies is in the class A felonies.

A review of the class A felonies was completed. The oldest offense classification list found was in the 1992 edition of the SGC’s Implementation Manual (now called the Adult Sentencing Guidelines Manual). A comparison of the list of class A offenses in 1992 to the list of class A offenses found in the 2008 Adult Sentencing Guidelines Manual shows an addition of eight offenses (32 and 40 total offenses, respectively). In addition to about fourteen new offenses added, there have been about six offenses that have been removed, most of them either drug-related or unranked offenses.

Figure 29

Disposition of Violent Sentences

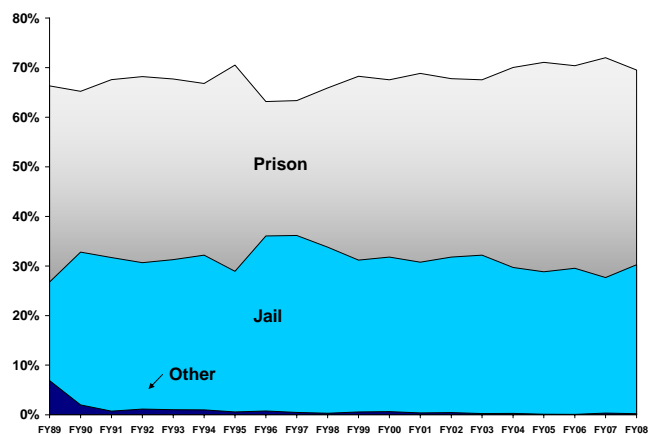
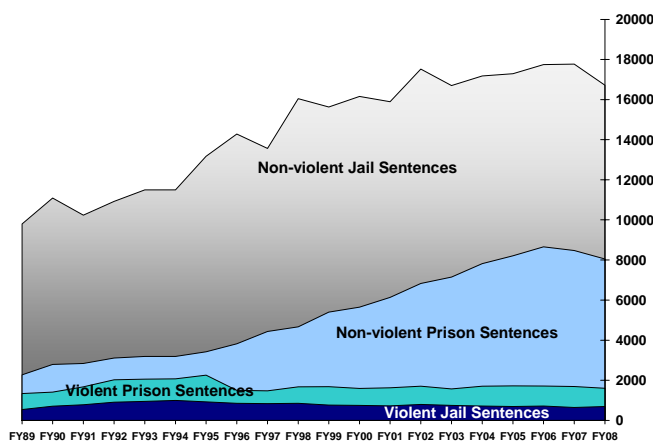


Figure 30
Number of Violent and Non-violent Sentences



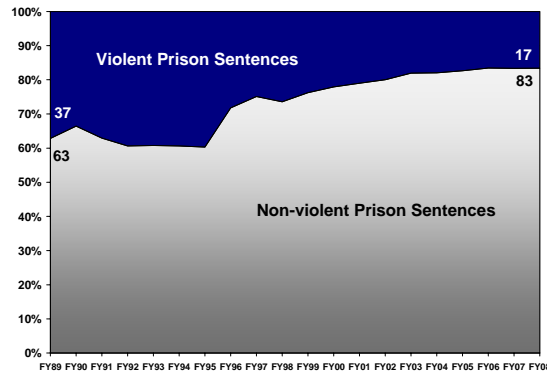
²¹ See RCW 9.94A.030(50) for definition of Violent offenses.

The disposition distribution of Violent sentences within Washington is in Figure 29²². In Washington, Violent sentences that received prison confinement have been on the rise since 1996, albeit slowly, while the percent that received jail confinement has decreased. About 7 percent (140) of Violent sentences received non-confinement sentences in 1989. That has since decreased to less than 20 sentences per year.

Figure 31
Percent of Violent and Non-violent Jail Sentences



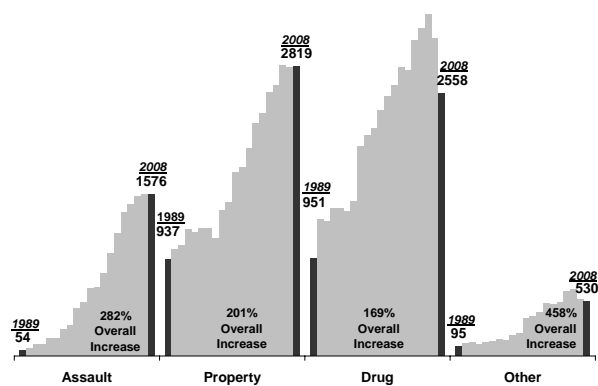
Figure 32
Percent of Violent and Non-violent Prison Sentences



As observed in Figure 30, both Violent prison and jail sentence numbers have increased slightly, while the number of Non-violent sentences escalated. In 1989, about 1900 felony sentences were for a Violent offense. By 2008 they had increased to 2300. While the actual number of Non-violent jail sentences increased by 71 percent since 1989, a look at Figure 31 shows that the percentage of total jail sentences that were Violent remained steady, between 4 and 6 percent. This suggests that Violent and Non-violent jail sentences increased at a similar pace. Prison sentences, however, show a different trend.

Over the twenty years, the number of Non-violent prison sentences increased 254 percent. In 1989, Non-violent prison sentences represented 63 percent of all prison sentences. By 2008, that increased to 83 percent (Figure 32). One of the duties of the SGC is to evaluate sentencing policy to further “[t]he intent of the legislature to emphasize confinement for the violent

Figure 33
Number of Non-violent Prison Sentences by Crime Type



²² The federal government also has data on violent sentences; however, their definition is more limited than Washington’s statutory definition. For that reason, comparisons of state to federal violation data were not included.

offender and alternatives to confinement for the nonviolent offender”²³. This intent was discussed in the SGC’s report titled “*A Decade of Sentencing Reform: Washington and Its Guidelines 1981 – 1991*”²⁴. One conclusion of that study was that “[t]he SRA clearly has emphasized confinement for violent offenders but not alternatives to confinement for nonviolent offenders. This objective has not been achieved” (p13). Based on the data in this twenty-year report, it appears that intent still has not been achieved.

A closer look at the analysis of the Non-violent prison sentences uncovered evidence of what may have driven the increase. Figure 33 displays the number of Non-violent prison sentences for the twenty years by crime type. Crime types are larger categories into which specific offenses are grouped, such as Sex, Assault, Property, Drug and Other²⁵. Manslaughter, Sex and Robbery crime types have all remained relatively stable. Assault, Property, Drug and Other crime types have increased significantly as shown in Figure 33. This could be the result of increased offender scores. Repeat reoffending would have increased the standard sentencing range from that of a jail sentence to a prison sentence.

Of all the offenses that fall within each crime type, below are the ones primarily behind the increase of each of the four crime types displayed in Figure 33:

Assault	Violation of a Domestic Violence Court Order Unlawful Possession of a Firearm 1 and 2 Assault 3 Identity Theft 2
Property	Possession of Stolen Property 1 and 2 Theft 1 and 2 Forgery
Drug	Possession of a Controlled Substance – Excluding PCP/Flunitrazepam Delivery or Possession with Intent to Manufacture Meth (1 st Offense)
Other	Attempting to Elude Police Vehicle

Data also revealed that Assault crimes increased as a proportion of total Non-violent prison sentences from 48 percent to 81 percent, a 69 percent increase. Proportions of Property, Drug and Other crime types were virtually all Non-violent.

Earlier in this report the rate of felony sentences per 1000 adult population was provided (see Figure 5). It showed an upward trend, starting around 6 felonies per 1000 adult population in 1989 and ending at just over 7 felonies in 2008. Figure 34 presents the rate of only the Violent felony sentences by 1000 adult population, or the Violent felony sentencing rate. Notice the upward trend from 1989 to around 1995 and then the decline from 1996 on. This was also represented in Figure 32 when the percent of Violent offenses decreased around 1996.

²³ RCW 9.94A.850(2)(a)(ii).

²⁴ Sentencing Guidelines Commission. *A decade of sentencing reform: Washington and its guidelines 1981 – 1991*. Washington: Olympia. Located at http://www.sgc.wa.gov/PUBS/Decade_of_Sentencing_Reform_1992.pdf

²⁵ Other includes any offense that does not fall into any other crime type category.

Figure 34
Rate of Violent Sentences
by 1000 Adult Population

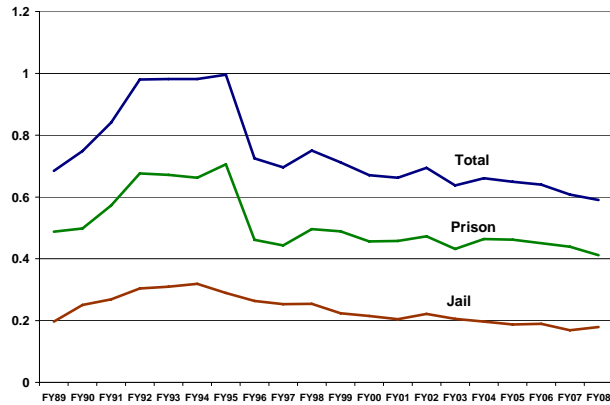
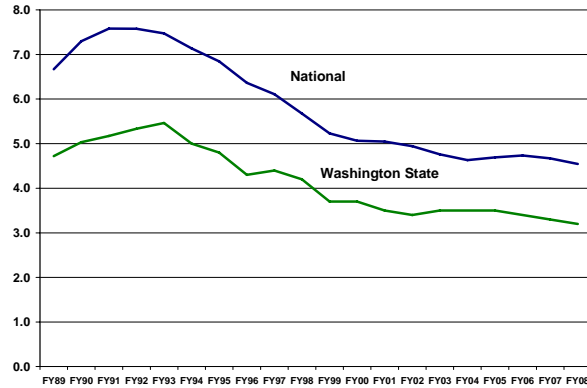


Figure 35
Rate of Violent Crime
by 1000 Total Population



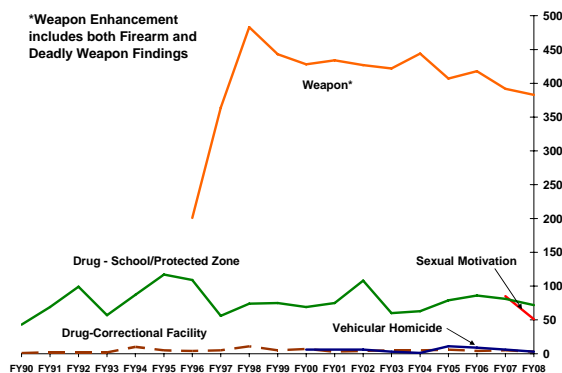
The data in the Washington Association of Sheriffs and Police Chiefs' (WASPC) *Crime in Washington Annual Report*²⁶ is the same data they report to the federal government. From these data provided by each state, the Federal Bureau of Investigation (FBI) provides national crime statistics.

The FBI²⁷ has shown a decrease in the national violent crime rate, as has Washington State (Figure 35). This Violent *crime* rate represents the number of Violent *crimes* reported to law enforcement per 1000 total population whereas the data in Figure 34 represents the number of Violent *sentences* per 1000 adult population. Although each rate gives a different perspective of Violent offenses, the trends are still similar; rates related to violent crimes and convictions have been decreasing for the last ten years or so.

SENTENCE ENHANCEMENTS

Sentence enhancements are adjustments made to the standard sentence and cover a variety of behaviors as defined in statute. Most enhancements add a pre-set number of months onto a sentence. For example, the School/Protected Zone enhancement adds an additional 24 months to a drug sentence and the Sexual Motivation enhancement adds an additional 12, 18 or 24 months depending upon the underlying offense. All enhancements require a special allegation to be pleaded and proven beyond a reasonable doubt before being added to an

Figure 36
Number of Sentences with an Enhancement

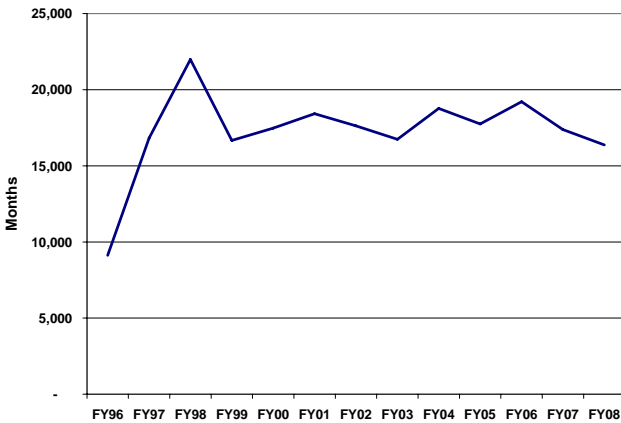


²⁶ Washington Association of Sheriffs and Police Chiefs. *Crime in Washington Annual Reports* located at <http://www.waspc.org/index.php?c=Crime%20Statistics>.

²⁷ Federal Bureau of Investigation (2008). *2008 Crime in the United States Table 1*. Located at http://www.fbi.gov/ucr/cius2008/data/table_01.html.

offender’s sentence. Appendices G and H provide timelines for the legislative enactment of enhancements. Figure 36 displays the number of sentences with at least one enhancement. These enhancement data are not mutually exclusive; in other words, if a sentence has both a Weapon enhancement and a School/Protected Zone enhancement, it is counted under both categories. The Weapon enhancement, which includes both firearms and deadly weapons, was

Figure 37
Sum of Weapon Enhancement Months



the most frequent of all enhancements. The Drug-Correctional Facility enhancement is the least frequent²⁸. The Sexual Motivation enhancement only became effective as of Fiscal Year 2007 so there is only two year’s worth of data for it. There has been a sexual motivation finding available since 2000. Prior to 2007, the result of a sexual motivation finding only made the related offense a Sex offense to which it became applicable to all rules related to Sex offenses. The sexual motivation finding still includes that result in addition to the confinement months of the enhancement.

Some form of a Weapon

enhancement was around prior to 1988, although there have only been separate enhancement lengths for firearm and deadly weapon findings since 1995 (see Appendix H). Typically, an offender’s sentence can be reduced by “earned release time”²⁹. Any portion of a sentence that stems from a deadly weapon enhancement is not eligible for this reduction. SGC data started tracking the Weapon enhancements separately from the sentence length in 1996. It was likely this change in capturing the enhancement amount was in response to the passage of Initiative 593 “Hard Time for Armed Crime” (I-593). This initiative created new and separate enhancements for firearm and for deadly weapon findings. I-593 was also likely responsible for the 141 percent increase in the total sum of months imposed for Weapon enhancements between 1996 and 1998 (see Figure 37).

Isolating the total number of enhancements imposed is very difficult; therefore, analysis was completed on the sum of months imposed as enhancements. The amount of Weapon enhancement months imposed on a single J&S has no limit as each offense listed on an individual J&S could potentially receive an enhancement. Over 60 percent of all sentences with a Weapon enhancement received a sum of months totaling less than five years. In 1998, the Legislature clarified the Weapon enhancement sentencing rules. They required that Weapon enhancements be mandatory³⁰, served in total confinement and served consecutive to the

²⁸ Technically, the enhancement related to Manufacturing Methamphetamine with a Child on the Premises was the least frequent but, since its inception in 2001, the numbers were so small (less than a handful total) that it was not included in Figure 36.

²⁹ See RCW 9.94A.728

³⁰ The 1998 Legislature required that the underlying sentence must be reduced if the firearm enhancement or the deadly weapon enhancement increases a sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

standard sentencing range of the underlying offense and to other weapon findings. This may have led to the decrease of Weapon Enhancement months in 1999 (Figure 37). The total number of months imposed fluctuated minimally from that point on. When I-593 was passed, not only did it create new and separate enhancements, but is also opened up all felonies (other than firearm offenses) to become eligible for a Weapon enhancement. Prior to I-593, only specific offenses or crime types were eligible.

When the average prison sentence lengths were analyzed (under the Criminal Justice System section) data did not bear out the increase in months added to offenses due to Weapon enhancements. Between 1996 and 1998, when the sum of enhancement months imposed increased, the average prison sentence length varied by less than half a month. When the sum of months imposed evened between 1999 and 2008, the average prison sentence length was slowly decreasing (see Figure 48). Data show that at any point after 1996 no more than 7 percent of all prison sentences received a Weapon enhancement. The percentage has hovered near 4 percent since 2005. The amount of sentences with an enhancement was not large enough to drastically impact the average sentence length for all prison sentences.

It is not surprising to see (Figure 38) that the crime types with the largest percentage of sentences with a Weapon enhancement were Murder 1st Degree, Murder 2nd Degree and Robbery as those are violent offenses where the presence of a weapon is not uncommon. As for the Assault crime type, the percentage of sentences with a

Weapon enhancement is falling because of the increase in the total number of Assault crime type sentences per fiscal year. The number of Assault crimes with a Weapon enhancement stayed steady, only its proportion of total Assault crimes has changed.

While Murder 1st Degree, Murder 2nd Degree and Robbery crime types were the top three in respect to the proportion of sentences that received a Weapon enhancement, Figure 39 shows that Assault, Robbery and Murder 1st Degree were the top three as regards the total number of months added to sentences. The Assault crime type consistently stayed above 4,500 months after 1996 while Robbery and Murder 1st Degree showed more fluctuation in the months imposed. Both Robbery and Murder 1st Degree crimes were not as predominant as Assault crimes, therefore, the fluctuations were probably associated to the smaller number of sentences each year.

Figure 38

Percent of Total Prison Sentences With A Weapon Enhancement by Crime Type

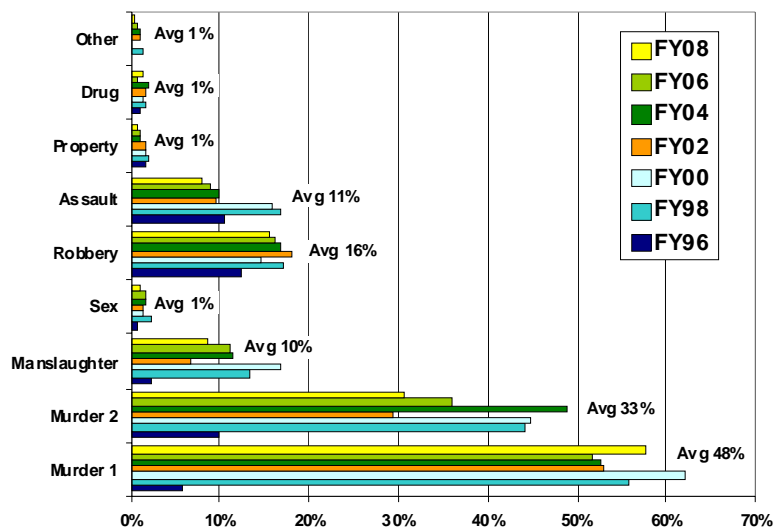
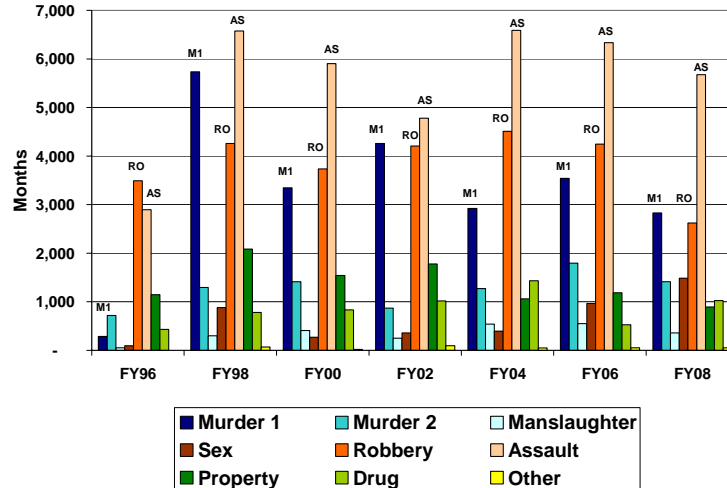


Figure 39
Total Months Imposed for Weapon Enhancements on Prison Sentences
By Crime Type



Of the 222,388 jail sentences between 1996 and 2008, only 211 had only a deadly weapon enhancement. Over half (55%) of those sentences were for an Assault crime type. This small amount is because the deadly weapon enhancement is the only enhancement that adds less than 12 months to a sentence (6 months for a class C felony). Because both firearm and deadly weapon enhancements are collected under the same Weapon enhancement variable, it was not possible to get a breakout of all the enhancements imposed on a J&S when more than one was imposed.

LIFE WITHOUT THE POSSIBILITY OF PAROLE

In 1993, Initiative 159 “Three-Strike Sentence” was approved by voters and became known as Persistent Offender sentencing. This law established the mandatory penalty of life in prison without the possibility of parole (LWOP) for any offender who received a Three-Strike sentence. Three-Strike sentences were imposed on offenders whose most recent conviction was for any felony considered a most serious offense³¹ and who, prior to the most recent conviction, had been convicted in Washington or elsewhere on at least two separate occasions for felonies that are a most serious offense. By 1996, Persistent Offender sentencing was expanded to include “Two-Strike Sex Offenders”, also given the mandatory LWOP penalty. Two-Strike sentences were handed down to offenders who received a second conviction for specified Sex offenses³². The following year, the Legislature expanded this list of eligible Sex offenses.

Besides Two- and Three-Strike sentences, the only other sentence that can receive a LWOP confinement term is Aggravated Murder 1st Degree. Aggravated Murder 1st Degree is also the only offense that can receive the death penalty but there are so few overall that they are not analyzed in this report.

³¹ Definition of Most Serious Offense can be found in RCW 9.94A.030(29).

³² List of sex offenses that qualify for Two-Strike sentences can be found in RCW 9.94A.030(34).

Of the total number of prison sentences for each fiscal year, the number that received a LWOP sentence was very small (less than 50 sentences per year), as seen in Figure 40. Within three years of becoming law, Three-Strike sentences reached its all time high of 38. Since then it has declined. The average number of sentences per year between 1994 and 2000 was 27 but from 2001 on, the average fell to 16.

Because the number of LWOP sentences each year was so small, much fluidity was exhibited in the data. When the data for each of the LWOP sentence types was analyzed individually, the average number of sentences per year for all three types decreased in the second half of the life of the sentence type. That is to say, the average number of Three-strike sentences between 1994 and 2000 per year was 27 and fell to 16 from 2001 forward. The same was shown for Aggravated Murder 1st Degree sentences with an average of 12 from 1989 to 1999 then decreasing to an average of 8 from 2000 forward. Two-Strike sentences also exhibit the same sort of trend but with an average decrease of only 1 sentence.

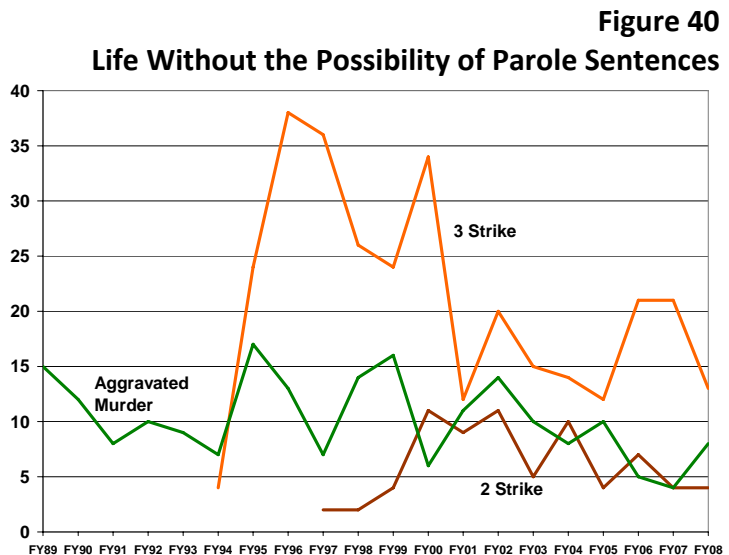
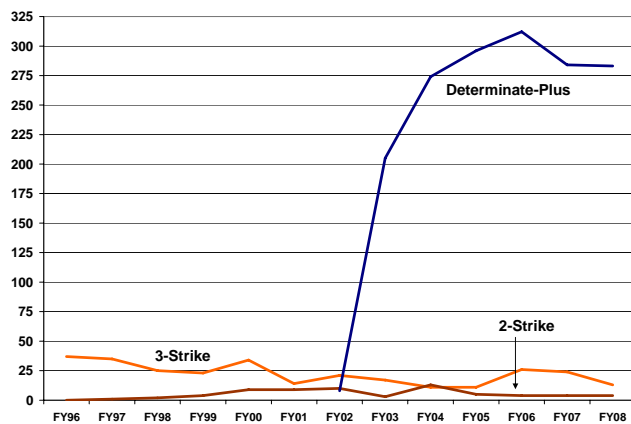


Figure 41
Persistent and Non-persistent Sentences



In an effort to intervene before an offender became a Persistent Offender, the Legislature created the Non-persistent Offender statute³³ in 2001. Non-persistent Offender sentences, also referred to as Determinate-Plus, are imposed a minimum and maximum term of confinement. Upon release, offenders are under a system very similar to that of parole. They must report to the Indeterminate Sentence Review Board and can be returned to confinement for violations. Offenses that are eligible for Determinate-Plus sentences are limited to most sex offenses or offenses with a sexual motivation finding. One might surmise that these sentences could be why the number of Two- and Three-Strike sentences has decreased. A look at Figure 41³⁴, shows that the number of Determinate-Plus sentences were more frequent than Two- and Three-strike sentences

³³ See RCW 9.94A.507

³⁴ While the Three-strikes law was enacted in December 1993, SGC only has data flagging such sentences dating back to 1996.

combined. It is plausible that some offenders who might have had a “strike” sentence in their future may have ended up with a Determinate-Plus sentence instead. But they would make up a small portion of Determinate-Plus sentences.

The SGC publishes a cumulative list of all Two-Strike and Three-Strike sentences. Within this report is a list of the current offense that prompted the Three- or Two-Strike sentence as well as a list of the prior offenses that qualified the offender for the current Two- or Three-Strike sentence. These lists can also be found in Appendix C.

CONSECUTIVE SENTENCES AND MANDATORY TIME

It is common for offenders to be convicted of multiple offenses on a single J&S. Under the SRA, the sentence lengths for each offense on a J&S will be served concurrently. There are exceptions, however, when multiple offense terms are served consecutively³⁵. In the past twenty years those exceptions changed very little. One example occurred in 1990. The Legislature changed the consecutive sentencing requirement to apply to two or more serious violent offenses instead of three. Another example was when the “Hard Time for Armed Crime” initiative passed in 1995 and the statute was amended so that offenders convicted under RCW 9.41.010 for Unlawful Possession of a Firearm 1 or 2, Theft of a Firearm and/or Possession of a Stolen Firearm would serve the sentences for these offenses consecutively. Unfortunately, while SGC has tracked consecutive sentences, the tracking has been inconsistent over the years and the data has been deemed unreliable; therefore, trends related to consecutive sentences cannot be analyzed. It is still important to note, however, that consecutive sentences can and have been modified by the Legislature and could have an impact on the average prison sentence length. Consecutive sentences result in a longer terms of confinement, which would increase the average prison sentence length.

As mentioned earlier, any Weapon enhancement time imposed is not eligible for earned release time. The same is true for Persistent Offender sentences. There are also a few offenses that have mandatory minimum terms of confinement³⁶. These additional factors that can increase the average prison sentence length are worth noting.

³⁵ See RCW 9.94A.589 for these exceptions.

³⁶ See RCW 9.94A.540.

CRIMINAL JUSTICE SYSTEM

Adult offenders who committed felonies on or after July 1, 1984, are subject to the provisions of the Sentencing Reform Act of 1981, as amended. The goal of Washington’s sentencing system, which is based on a determinate sentencing model and eliminates parole and probation, is to ensure that offenders who commit similar crimes and have similar criminal histories receive similar sentences. The enabling legislation, Chapter 9.94A RCW *et seq.*, contains guidelines and procedures used by courts to impose sentences that apply equally to offenders in all parts of the state, without discrimination as to any element that does not relate to the crime or to a defendant's prior criminal record. The SRA guides judicial discretion by providing standard sentencing ranges for the courts to follow. The ranges are structured so that offenses involving greater harm to a victim and to society result in greater punishment. Sentences that depart from the standard presumptive ranges must be based upon substantial and compelling reasons and may be appealed by either the prosecution or the defense.

From the filing of charges through sentencing, judges, prosecutors and defense counsel (collectively referred to as the Criminal Justice System for the purposes of this report) affect sentencing data characteristics. Though, an offender’s history and current offense contribute to the length of a sentence and possibly any treatment conditions imposed, prosecutors and defense counsel have discretion over such things as plea bargaining and sentencing alternatives, while judges have discretion related to the sentence itself, such as whether to issue confinement, the length of confinement to issue, use of sentence alternatives, exceptional sentences and so forth.

Figure 42

Distribution of Conviction Type

	Washington State			National		
	Verdict			Verdict		
	Bench	Jury	Plea	Bench	Jury	Plea
1992	2%	5%	93%	4%	4%	92%
1994	2%	7%	91%	6%	5%	89%
1996	2%	6%	93%	4%	5%	91%
1998	2%	5%	93%	3%	3%	94%
2000	2%	4%	94%	3%	2%	95%
2002	2%	4%	94%	2%	3%	95%
2004	2%	4%	94%	2%	3%	95%
2006	2%	3%	95%	2%	4%	94%

CONVICTION TYPE

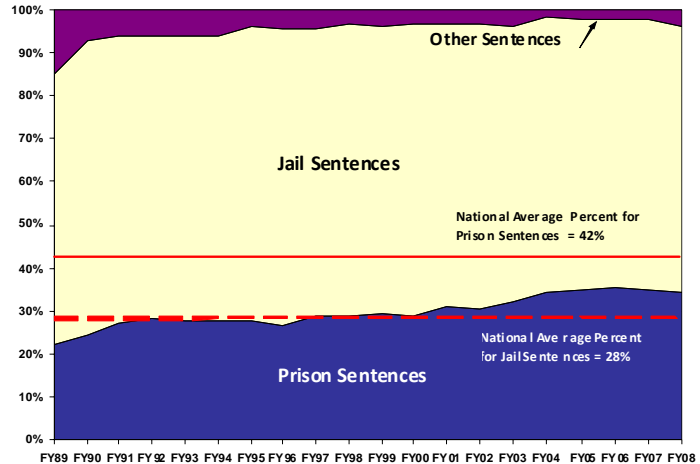
Nationally, the percentage of convictions that were pleas of guilt remained in the 90 percent range and the same is true here in Washington State. There has been little change in the distribution of conviction types both within state borders and nationally (Figure 42).

SENTENCE DISPOSITIONS

Figure 43 illustrates the change in sentence disposition over time. As described earlier, sentence disposition is a term that refers to whether the sentence included confinement time in jail, prison or neither. The proportion of prison sentences to total felony sentences averaged 42 percent between 1992 and 2006 nationally. Washington State was far below that, although less so in more recent years. Prison sentences in this state constituted 22 percent of all felony sentences in 1989 but increased to 34 percent by 2008. Inversely, the proportion of jail

sentences in Washington State amounted to 69 percent of all felony sentences in 1990 and then decreased to 62 percent, both of which were much higher than the national average of 28 percent. When considering the proportion of all sentences that received incarceration (a prison or jail term), Washington ended up higher (90%) than the national average (70%). Noticeably there was a decrease in the proportion of sentences that received no confinement time. It was at 15 percent in 1989 but dropped down to only 4 percent by 2008. Fewer offenders in Washington get a prison sentence than found nationally; yet, more offenders received some form of confinement in Washington than found nationally.

Figure 43
Distribution of Sentence Disposition

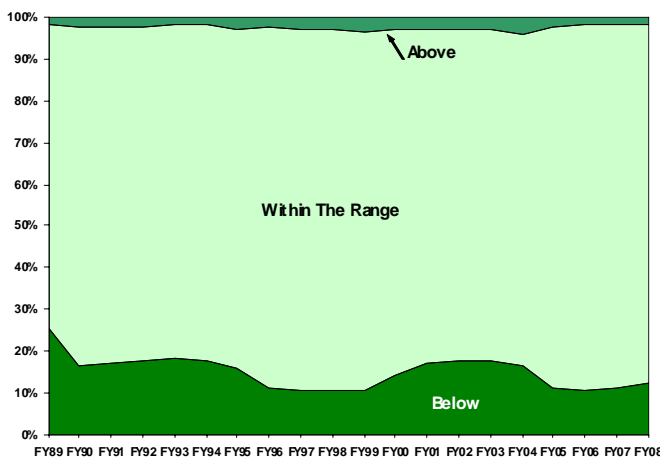


WITHIN THE STANDARD RANGE

Historically, most sentences fall within the standard range, which is based on the offender’s score and the seriousness level of the offense. Judges can depart from the standard range provided substantial and compelling reasons are presented. Courts also have the discretion to order a sentence alternative, which can also depart from the standard range. Sentence alternatives are discussed at greater length later in this section.

Sentences where the sentence length fell below the standard range mainly included sentences where the judge provided a mitigating reason or where a sentence alternative was assigned.

Figure 44
Percent of Sentences within the Standard Range

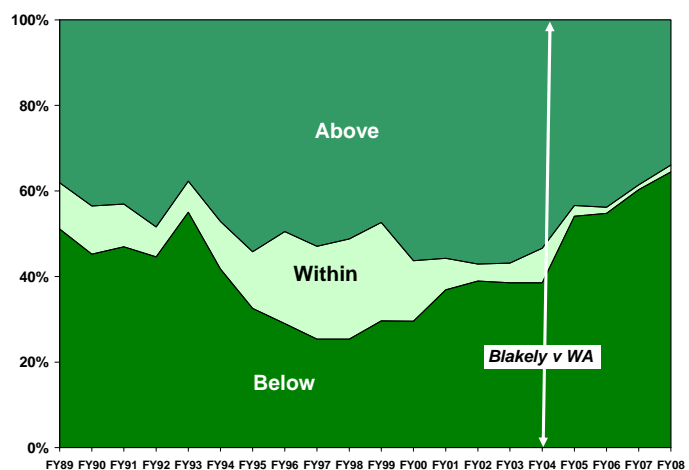


Those that were above the standard range mostly included sentences where the judge provided an aggravating reason. In 2008, sentences that were within the standard range totaled 86 percent, up from an average of 83 percent in the 90s (Figure 44). While the percentage of sentences above the standard range remained steady in twenty years, the sentences below the standard range fluctuated about every four to five years. Twenty-five percent of the sentences in 1989 (and prior) fell below the standard range. By 1990, that amount decreased to 17 percent. By 1996, it decreased

again to 11 percent where it stayed steady for four years. In 2001, it shot up to 17 percent again. Four years after that, in 2005, it dropped back down to 11 percent once more.

The SGC investigated what may have been behind these blocks of fluctuations. There was no legislation, new or modified, that occurred that could speak to the increase observed in the first block (1990 to 1995). From 1995 to 1999, the First-time Offender Waiver sentence alternative saw an increase but the number of sentences that fell below the standard range during that time actually decreased. What could have been the apparent driver behind the decrease didn't correspond. And even though the Drug Offender Sentence Alternative (DOSA) was created in 1995, it did not exhibit significant sentence numbers until 2000, the start of the third block. The delayed increase was likely due to legislation in 1999 that expanded some of the DOSA rules. The DOSA increase coincides with an increase in the percentage of sentences below the standard range. Just as that percentage drops around 2005, the start of the fourth block, so does the number of DOSA sentences. Looking ahead to Figure 55, the movement of DOSA sentences after 2000 is akin to the trend for sentences below the standard range after 2000.

Figure 45
Percent of Sentences
Exceptional Sentences Only



To further support that, Figure 45 shows only exceptional sentences. Exceptional sentences require the sentencing court to provide a reason for the sentence being what it was, whether above the standard range (aggravating), below the standard range (mitigating) or within the standard range. It excludes any sentencing alternative data. For the most part, fluctuations of sentences below the standard range are similar to those of all sentences in Figure 44. The one exception is from 2004 to 2008. The *Blakely v. Washington* case was heard by the Supreme Court in 2004 which resulted in changes to how an aggravated sentence finding can be imposed. Before a court is permitted to impose sentences above the standard range, “[o]ther than the fact of a prior conviction, any fact that increase the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.”³⁷ After this decision was handed down, the percent of exceptional sentences that were mitigated increased from about 40 percent in 2004 to around 60 percent in 2006. What this shows is that of the sentence types that are mainly found below the standard range (mitigated and sentence alternatives), only the sentence alternatives show a decrease after 2004.

³⁷*Blakely v. Washington*. 542 US 296, 124 S Ct 2531, 159 L Ed 2d 403 (2004).

WHERE IN THE RANGE

For the estimated 82% of sentences that were within the standard range, a calculation was performed to determine *where* within the standard range the sentence lengths fell. “Where in the Range” (WIR) value is represented by 0.0 for the low end of the standard range, 0.50 for the middle and 1.0 for the high end of the range. For example, if the standard range is 14 – 18 months, and the sentence imposed was 16 months, the WIR value would be equal to .50 because 16 is equal distance from 14 and from 18 (this is often referred to as the “midpoint” of the range). Using the same standard range, if the sentence imposed was 14 months then the WIR value would be equal to 0.

Figure 46

Average “Where in the Range” Values For Sentences within the Standard Range

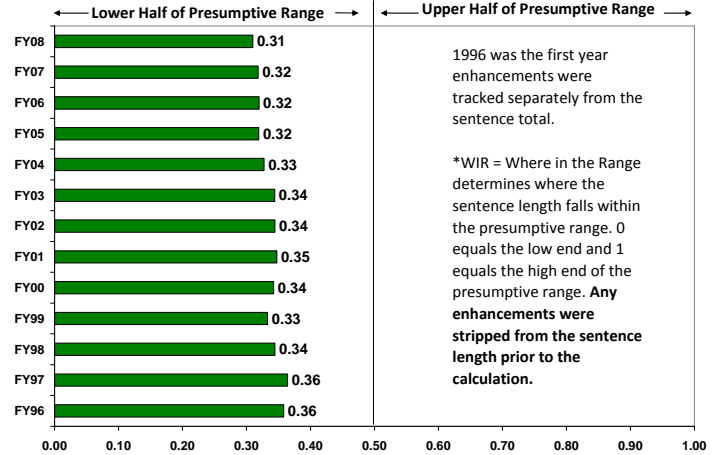


Figure 47
Average “Where in the Range” Values for Sentences within the Standard Range By Prison and Jail Disposition

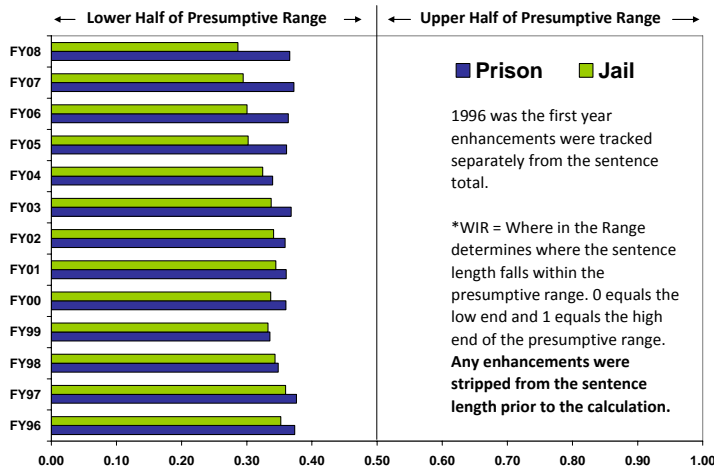


Figure 46 shows the WIR average for all sentences by fiscal year (remember that 1996 was the first year enhancements were tracked separately from the total sentence length). WIR values averaged around 0.36 of the standard range in 1996 and slowly decreased to 0.31 by 2008, about a 14 percent drop over the thirteen-year period. Here is an example of what that would look like in a jail sentence: using a standard range of 4-12 months, .36 of the standard range would equal a sentence length of 6.9 months, whereas .31 would equal a sentence length of 6.5 months. This one scenario does not seem to produce a

huge change, but when jail sentences represent over half of all sentences in any given year, the impact can be substantial.

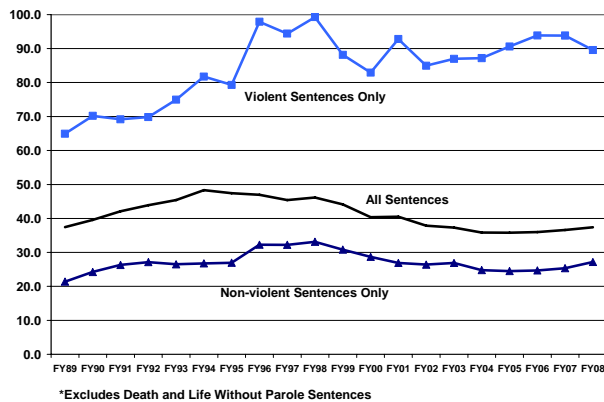
A closer look discovers that only the WIR averages for jail sentences have decreased 21 percent (from 0.35 to 0.29) while WIR averages for prison sentences have stayed relatively stable (Figure 47). Data back in Figure 43 showed that jail sentences have always represented more than half of all felony sentences. A drop in the WIR value correlates to lesser sentence lengths imposed as depicted in the example above. Due to the large number of jail sentences

and the reduction in their WIR values, a decrease in the average jail sentence length would be expected. Likewise, a steady WIR value for prison sentences would point to a steady average prison sentence length. Data showed these presumptions were incorrect.

PRISON SENTENCE LENGTH

Data in Figure 48 illustrate the fluctuations in the average prison sentence length over the past twenty years. Average prison sentence lengths exclude death and life without parole sentences. Within the first six years (1989 to 1994) there was a 29 percent increase in the average sentence length. In the following fourteen years (1995 to 2008) the average length slowly decreased back down to the 1989 level. As mentioned before, the steadiness of the

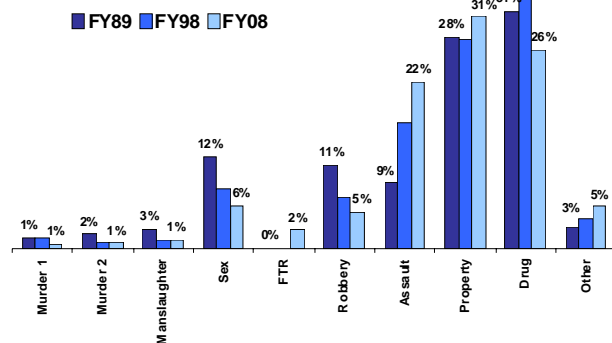
Figure 48
Average Prison Sentence* Lengths



A possible explanation for the decrease could be tied to the distribution of crime types. Property and Drug crimes have collectively represented over half of all felony sentences while Murder 1, Murder 2 and Manslaughter together make up 6 percent or less. Figure 49 shows that only Failure to Register, Assault, Property and Other crime types have increased. The largest overall increases belong to Assault (156%) and Other (107%). Despite the large increase in sentence proportion, Other crimes still represent less than 7 percent of total prison felony sentences. Moreover, the average prison sentence length for Other crimes has remained constant over time so this crime type would not have much affect, if any, on the decrease in average prison sentence lengths. Assault crime types, though, have gone from consisting of 9 percent of prison sentences to 22 percent. The rate of Assault crime type sentences increased from .11 to

prison sentence WIR values might lead one to expect similar steady values in the prison sentence lengths. Unfortunately, the WIR values cannot be calculated for the initial increase between 1989 and 1994 as enhancements were not separable from the base sentence length imposed - a requirement for the calculation. But based on the data available, it appeared that, despite a consistent placement within the standard range, something else influenced average prison sentence lengths.

Figure 49
Comparison of Prison Sentence Proportions
FY89, FY98 and FY08
By Crime Type

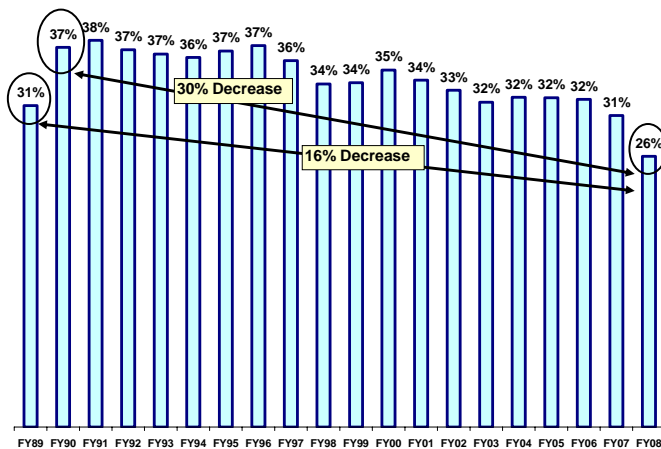


.55 (see Figure D18, Appendix D). During that same time, Assault crime type average sentence lengths have decreased from an average of 41 months prior to 2002 to about 37 months after. The increase in prison Assault crime sentences and the decrease in its average sentence length had, in all likelihood, a significant impact on the decrease of average prison sentence lengths.

One more crime type worth analyzing is Drug crime. The data are a bit misleading. In 1989, Drug crimes were 31 percent of total prison sentences (Figure 50). The following year it

jumped to 37 percent where it more or less remained until 1997 when a slow decline started, ending at 26 percent in 2008. So the overall picture showed a drop from 31 percent in 1989 to 26 percent in 2008, when a more telling picture would be to say that it went from 37 percent in 1990 to 26 percent in 2008. To put it another way, what looks like an overall decrease of 16 percent based on the 1989 to 2008 data is really more like a 30 percent decrease from 1990 to 2008. That being said, the actual number of Drug crime sentences increased from 1,139 in 1989 to 3,104 in 2007 before dropping by 647 to land at 2,558 in 2008 (Figure 51). During the first half of the time period the Drug crime average sentence length was slightly increasing. Then, as of 2000, the sentence length started decreasing and by 2004 the average drug sentence length dropped by a sizeable six months, likely due to the implementation of the drug sentencing grid. Still, the number of sentences continued to increase. Figure 52 shows the rate of Drug crime type sentences. That trend seems to have a similar shape to that of Figure 51.

Figure 50
Percent of Drug Crime Type Sentences



dropping by 647 to land at 2,558 in 2008 (Figure 51). During the first half of the time period the Drug crime average sentence length was slightly increasing. Then, as of 2000, the sentence length started decreasing and by 2004 the average drug sentence length dropped by a sizeable six months, likely due to the implementation of the drug sentencing grid. Still, the number of sentences continued to increase. Figure 52 shows the rate of Drug crime type sentences. That trend seems to have a similar shape to that of Figure 51.

Figure 51
Number of Drug Crime Type Sentences

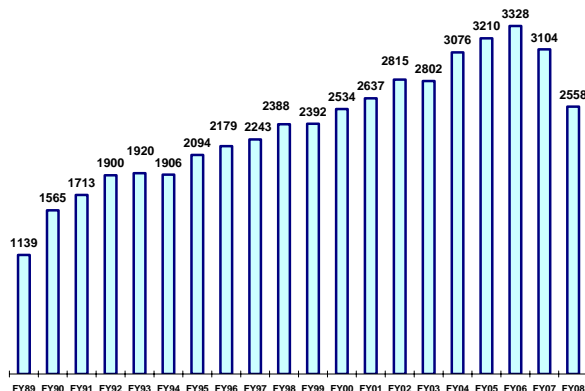
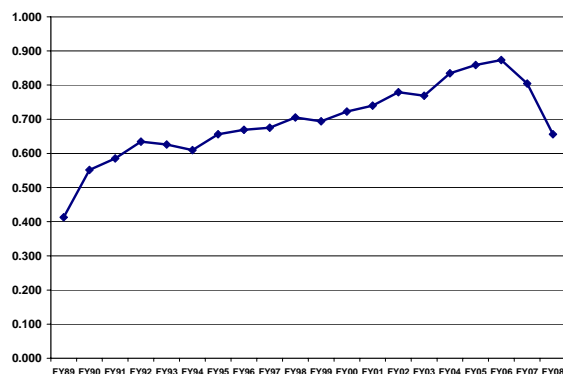


Figure 52
Rate of Drug Crime Type Sentences Per 1000 Adult Population



Prison sentence distribution, sentence numbers and rates per 1000 adult population can be found for the remaining crime types under Appendix D.

JAIL SENTENCE LENGTH

Washington State jail felony sentences comprised the majority of all felony sentences in spite of a decline from 71 percent in 1989 to 63 percent in 2008 (see Figure 43). The WIR value data for jail sentences has decreased (see Figure 47), which might point to a decrease in the average sentence length, too. Yet, as Figure 53 shows, the average jail sentence length actually increased. After further analysis, once again, the Assault, Property and Drug crimes are in the spotlight.

Average jail sentence lengths showed an upward trend. From an average of 2.1 months in 1989 to 3.1 months in 2008, jail sentences increased by 48 percent over twenty years.

The SGC analyzed the steep increase between 1989 and 1990 to learn whether it was the product of some change or just an anomaly. This additional analysis can be found in Appendix A.

Figure 53

Average Jail Sentence* Lengths

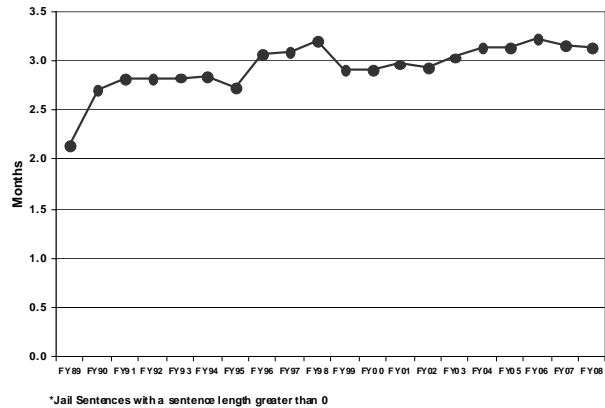
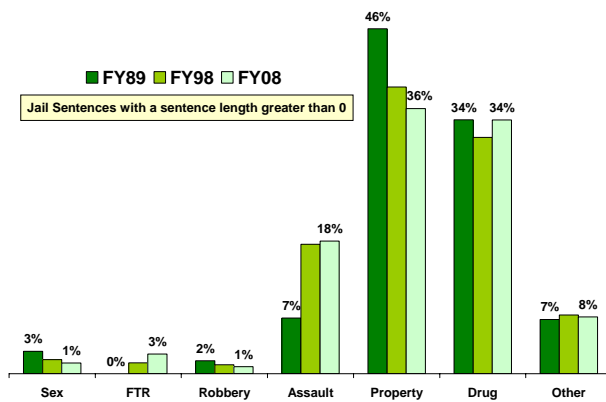


Figure 54
Comparison of Jail Sentence Proportions
FY89, FY98 and FY08
By Crime Type



As a proportion of all jail felony sentences (Figure 54), Assault crimes increased from 7 percent in 1989 to 18 percent in 2008 (a 106% increase). The raw number of Assault crime sentences and the average jail sentence lengths also increased, as did the rate per 1000 adult population (.28 in 1989 to .79 in 2008). There were 3,096 jail Assault crime sentences in 2008 and the average sentence length was 4.3 months, up from 772 in 1989 when the average sentence length was 3.4 months. An increase in sentences combined with an increase in average sentence length could, in all probability, push the total jail sentence length average upward.

The proportion of Property crimes decreased substantially, but the actual number of Property crime jail sentences increased (4,782 in 1989 to 6,192 in 2008). Also increasing was the average sentence length, from 2.0 months of confinement in 1989 to 2.8 in 2008. Again, an increase in the number of sentences and in average sentence length could push the jail sentence length average upward.

The average sentence length for Drug crimes was comparable to that of Property crimes, 1.8 months in 1989 with an increase to 2.7 months in 2008. The difference between these two crime types was in the number of actual sentences; the number of Property crime jail sentences increased by 29 percent while the number of Drug crime jail sentences increased by 68 percent (3,519 to 5,924). Here is another potential driver of the average jail sentence length increase.

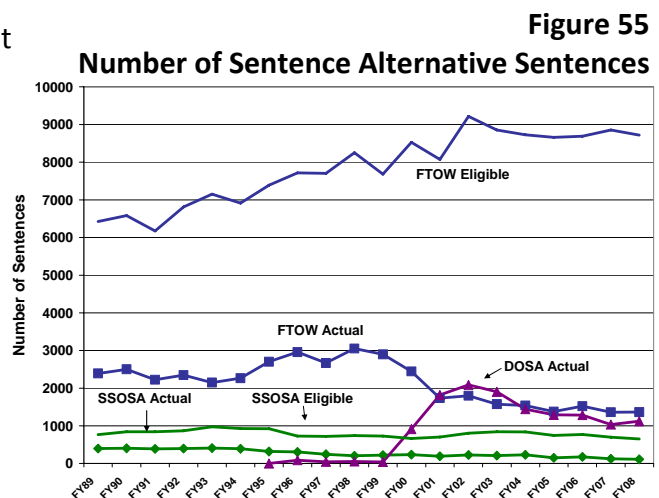
While the proportion of Property crime jail sentences decreased, the raw number of sentences each year increased, as it did with Assault and Drug crimes. All three crime types also experienced an increase in average sentence length. Obviously, more sentences with a higher sentence length can lead to an increase in average jail sentence lengths.

Jail sentence distribution, sentence numbers and rates per 1000 adult population can be found for crime types under Appendix E.

SENTENCE ALTERNATIVES

For some types of offenses and offenders, Courts have the discretion to order alternative sentences. These alternative sentences include the First-time Offender Waiver³⁸ (FTOW), the Drug Offender Sentencing Alternative³⁹ (DOSA), local options for chemically dependent offenders, the Special Sex Offender Sentencing Alternative⁴⁰ (SSOSA), other treatment options for sex offenders while in prison and Work Ethic Camp. The three most commonly used alternatives, and the ones the SGC has data for, are FTOW, DOSA and SSOSA. These three alternatives provide a reduction in confinement time based on what would have been imposed under a standard sentence and may also include priority for treatment. Some of these alternative sentences are served in jail and some in prison. DOSA also has a version where offenders serve their time in the community in in-patient treatment, as opposed to serving time in prison.

In 1989, the combined share of total felony sentences that were either FTOW or SSOSA sentences was 17 percent. Including the introduction of DOSA sentences as of 1995, that share fell to only 9 percent by 2008. Figure 55 illustrates how the number of alternative sentences diminished. The number of actual



³⁸RCW 9.94A.650 provides a statutory alternative to the standard range for certain offenders who have not been previously convicted of a felony offense in this state, in federal court or in another state, and who have never participated in a program of deferred prosecution for any felony. See RCW for eligibility requirements.

³⁹ Effective July 25, 1999, the Legislature created the Drug Offender Sentencing Alternative (DOSA) for certain offenders who received a Violation of the Uniform Controlled Substance Act. See RCW 9.94A.660 for eligibility requirements.

⁴⁰ The Special Sex Offender Sentencing Alternative (SSOSA) is a special sentencing option which allows community treatment of sex offenders and a reduced period of confinement. See RCW 9.94A.670 for eligibility requirements.

SSOSA sentences decreased by 72 percent and FTOW by 43 percent. DOSA reached its peak number of sentences at 2,097 in 2002 but showed a 46 percent drop since then.

The SGC is able to estimate whether a sentence would be eligible for a SSOSA or FTOW sentence alternative based on the components of the sentence itself. This estimation does not take into account any issues that may make an offender ineligible for the alternative outside of the sentence components. Eligibility for a DOSA sentence relies on a chemical dependency screening, an element that SGC does not track, and as a result we are unable to provide reliable eligibility estimates for DOSA sentences. Figure 55 demonstrates that the number of sentences that might be eligible for FTOW or SSOSA sentencing alternatives increased (FTOW) or remained steady (SSOSA), while those that actually received an alternative sentence declined. Over half of SSOSA eligible sentences and over one-third of eligible FTOW sentences received a SSOSA or FTOW sentence in 1989. Those percentages fell to 17 percent (SSOSA) and 16 percent (FTOW) in 2008.

Besides offender ineligibility, there are other reasons that may keep a sentence alternative from being imposed. These are not quantifiable, yet, being aware of them might provide insight as to the decreases.

- Offenders may not choose to seek out a FTOW sentence alternative because they would receive a term of community custody under the alternative. Depending on the offense, they may not have any community custody under a standard sentence. They may consider a longer term of confinement to be more attractive than a much longer term on community custody.
- A judge may decide against issuing a FTOW sentence alternative if the offender has already spent more time in confinement pre-sentence than what would be imposed under the alternative.
- SSOSA requires the offender to pay for the treatment. If the offender cannot afford the treatment, the sentence alternative may not be imposed.

CREDIT FOR TIME SERVED

Another factor that the Courts influence is credit for time served. If an offender is held in confinement prior to sentencing, that confinement time is applied toward any sentence length imposed, leading to the possibility of longer imposed lengths in confinement. Credit for time served has only been tracked by SGC since Fiscal Year 2000.

Figure 56 shows the average amount of credit for time served imposed by violent prison and jail sentences and by non-violent prison and jail sentences. This data excludes sentences that did not receive any credit for time served.

The months of credit for time served on violent jail sentences increased slightly more than non-violent jail sentences, but both increases were still less than 1 month. The credit for both violent and non-violent prison sentences increased most noticeably after 2004. Violent prison sentences increased by 3.5 months with an average of nearly 9 months of credit between 2004 and 2006 but then dropped down to an average of 7 months for an overall increase of only two months credit. The *Blakely v. Washington* decision in 2004 resulted in changed to how an exceptional sentencing finding can be imposed, perhaps driving this increase. Lastly, non-violent prison sentences increased by only 1 month.

Figure 57 shows the percentage of the total sentence length that is comprised of credit for time served. On prison sentences, regardless of whether for non-violent or violent offenses, the percentage of the sentence length that was attributable to credit for time served increased by about 5 percent between 2000 and 2008.

Credit for time served on non-violent jail sentences rose from 54 percent of the sentence

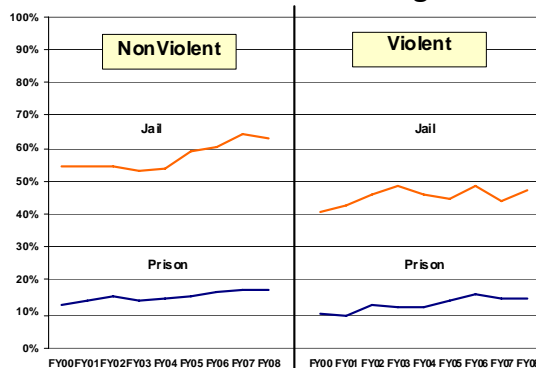
length in 2000 to 63 percent in 2008 (a 16% increase) whereas the percentage on violent jail sentences increased by a total of only 7 percent during the same time. Of all sentences that received credit for time served, non-violent sentences contained more credit time than did violent sentences.

Of jail sentences that received credit for time served, about half of the sentence length encompassed credit time. It was

much less for prison sentences. Likewise, the percentage for non-violent sentences was greater than it was for violent sentences. This stands to reason as jail sentences receive lesser sentence lengths than prison sentences. The same is true for violent offenses; they are more likely to be

Figure 57

Credit for Time Served as Percent of Total Sentence Length

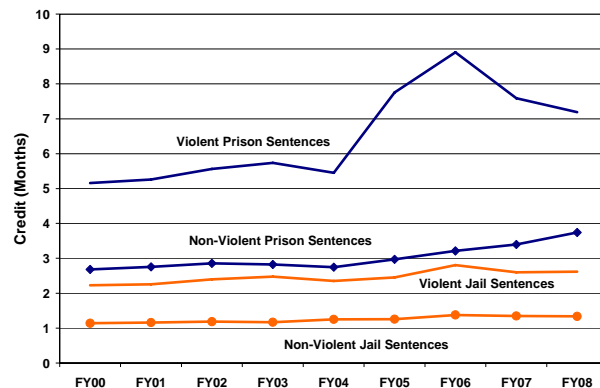


given a longer sentence length than non-violent sentences. As such, any credit for time served on a longer sentence would constitute a smaller percentage of that sentence. For example, referring back to Figure 56, non-violent prison sentences received an average of almost four months of credit while violent prison sentences averaged just over seven months. The non-violent prison sentences that received credit for time served in 2008 averaged a sentence length of twenty-eight months while the violent prison sentences averaged eighty-six months.

There is a possibility that credit for time served could have an affect on sentence lengths. Judges may take into consideration the amount of credit for time served an offender has accumulated when determining what amount of confinement to issue. If the judge feels the right sentence is six months in confinement and the offender has one month of credit for time served, the judge, if legally allowed, might issue a sentence of seven months, whereas, if the offender had only a few days of credit for time served, the judge may have imposed a confinement length less than seven months.

It is difficult to determine if credit for time served could be considered a factor in the increase of average jail sentence lengths. The SGC is unable to determine what impact issues that may affect credit for time served, like workload and staffing in the Courts, may have.

Figure 56
Average Credit for Time Served



SUMMARY

In 1981 the Sentencing Reform Act was enacted and by 1989 it had become a working system. Over the following twenty years, the SRA grew into the full and complex structure it is today. Looking at the data may provide insight as to which direction it might be headed and whether the original intent of the sentencing reform is being met. While suggestions were made as to a source behind some of the data, further research would be necessary to obtain defined correlations and effects.

The FBI has reported a decrease in the national crime rate for many years. Likewise, WASPC has reported a decline in the state's crime rate. SGC data has shown that the violent sentencing rate is also falling. This raises the question as to why, when data from the past twenty years have shown that the population at-risk has increased proportionally to the total population, the rate of prison sentences has increased more rapidly. Data indicates that most likely it is because of non-violent prison sentences.

The average prison sentence length for violent offenses has been on the increase while the average for non-violent sentences has fallen slightly. The average for all prison sentences has also fallen slightly due in part to the increasing proportion of non-violent sentences. Despite this, Washington is still below the national average for felony sentences receiving a prison sentence.

When analyzing where in the standard range prison sentences fell, data showed the location has stayed relatively stable. Seriousness level distributions have not changed much either. Violent sentence lengths increased while their sentence numbers did not. Analysis indicated that it is likely due to the increase in offender scores. Sentence enhancements may also have played a roll as the sentences most likely to receive an enhancement are generally violent sentences.

The definition of a violent offense has changed very little over time. The addition of 80 new ranked sentences, in combination with the increase in offender scores, might explain the increase in non-violent offenses going to prison. If the additional ranked offenses are not in the violent offense category, they are by default in the non-violent offense category. The largest increases in non-violent prison sentences were found in the Assault, Property and Drug crime type categories.

According to these data, the intent of the Legislature to emphasize alternatives to confinement for non-violent offenses has not been met. At the beginning of the twenty years, 17 percent of all felony sentences were one of the following sentencing alternatives: FTOW or SSOSA. Despite an increase (FTOW) or consistent (SSOSA) number of eligible sentences from which to draw and the addition of DOSA sentences, that percent dropped down to 9. The use of non-confinement sentences also seems to have waned.

Jail sentences have moved in the opposite direction. The number of sentences has increased just like prison sentences, but unlike prison sentences, the proportion of violent and non-violent has remained consistent. Where the average prison sentence length has decreased, the average jail sentence length has increased. There are many potential reasons for this: the decrease of sentencing alternatives; the addition of 134 unranked

offenses; the increase of the Where in the Range value; that nearly 80 percent of all felonies fall within the first four seriousness levels; the increase of Assault, Property and Drug crime type sentence numbers and sentence lengths.

There were some demographic shifts in this twenty-year period. The average age at sentencing increased by three years and there was an increase in females sentenced to felonies. Racial disproportionality, though still an issue, decreased slightly.

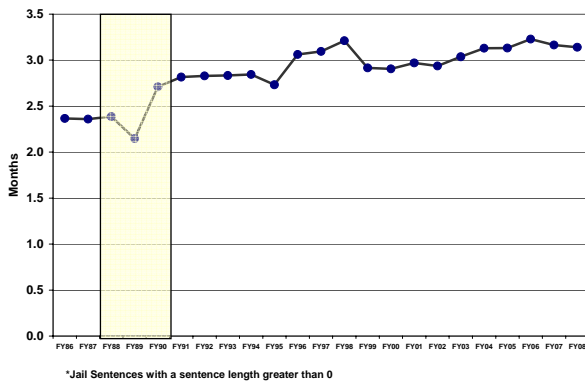
If these trends continue, the number of prison sentences will continue to grow, mostly of the non-violent persuasion, while the average sentence length declines. The number of jail sentences will continue to rise, also mostly of the non-violent variety, while the average sentence length increases. Offenders will get older, female felons will become more prevalent, while Black felons will become less so. Ultimately, the future of sentencing will be shaped by the direction of the population and even more so by the behaviors of the Legislature and the Criminal Justice System.

APPENDICES

Appendix A – Review of the Average Jail Sentence Length FY86 to FY90

The small drop before and then large increase after 1989 in Figure 53 prompted further examination of average jail sentence lengths. Offense categories were reviewed to see if a particular offense might be driving the rise and fall of the averages (see Figure A2). Only Manslaughter showed an increase in the average sentence length from 1988 to 1989 and that could be related to the small number of such offenses in jail. The remaining six offense

Figure A1
Average Jail Sentence* Lengths FY86 to FY08



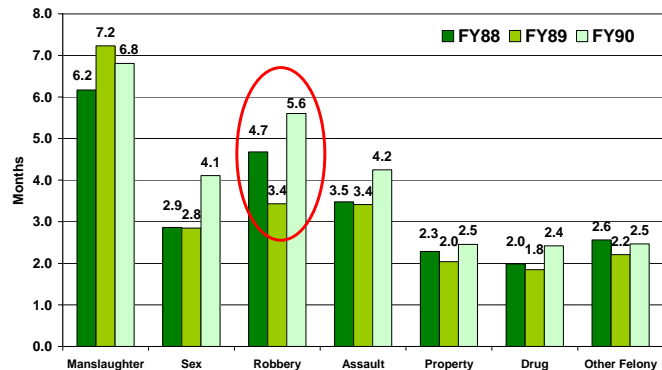
categories showed a decrease from 1988 to 1989 in average sentence length with Robbery showing the largest decrease at 1.2 months.

Analysis of the increase in sentence length averages between 1989 and 1990, also shown in Figure A2, show that six of the seven offense categories exhibited an increase in average sentence length in FY90 with Robbery having the largest increase (2.2 months). While Robbery demonstrated the largest average decrease between 1988 and 1989 and largest subsequent increase in 1990, one might believe that there is a correlation between the average

sentence length changes and Robbery offenses. However, the total number of Robbery offenses per fiscal year is less than 200 so the impact of those sentences, although a likely contributor, was probably not the main driver behind the large fluctuations.

Analysis also looked at the data by county to see if there was a specific county that may have influenced the average sentence length around 1989. Data found that only 17 of the 39 counties (44%) showed a decrease in their average sentence length in 1989; however, within those 17 are 3 of the 4 largest counties, King, Pierce and Spokane. Clark is the fourth county but showed no change from 1988 to 1989. Twenty-six (67%) of the 39 counties showed an increase in average sentence length in 1990. Those 26 included all four of the largest counties. As illustrated in Figure A3, the largest decrease in 1989 and the largest increase in 1990 both occurred in King County (-0.9 and 1.4 months, respectively). The majority of

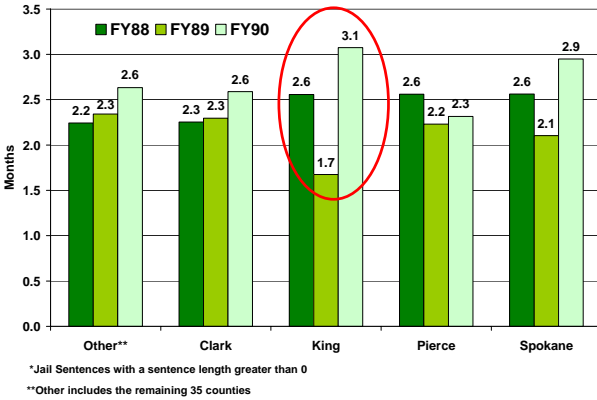
Figure A2
Average Jail Sentence Lengths FY88 to FY90
By Crime Type



Note: Data excludes Murder 2 and Failure to Register offenses. There was no change in the average sentence length for Murder 2 and there were 0 Failure to Register sentences in each of the three fiscal years.

the state's sentences have always come from King County as it is also the most populated. Any sentencing changes that occurred in King County would very possibly have an impact on the state-wide average.

Figure A3
Average Jail Sentence* Lengths FY88 to FY08
By County



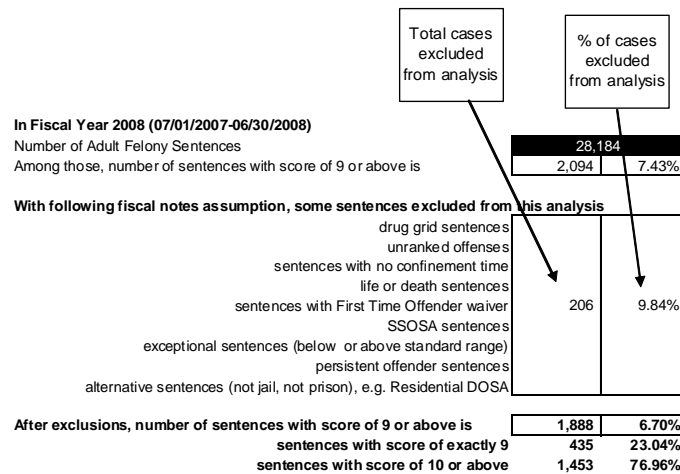
While the largest fluctuations between 1988 and 1990 were exhibited in King County, data showed such fluctuations were not limited to that one county.

Additionally, the fluctuations were not limited to any specific offense either. The changes seem to have had a systemic basis as they occurred in multiple counties and in multiple offense categories. While there are anecdotes as to possible reasons, there is no known sentencing change that could be associated with these fluctuations.

Appendix B – Analysis of FY08 Offender Scores of 9 or Above

In June 2009, the SGC staff reviewed Fiscal Year 2008 data for sentences with a score of 9 or more to determine “how much more than 9” the scores actually were. Of the 28,184 sentences in FY08, there were 1,888 sentences with a score equal to 9 that were reviewed. Because many of the J&S forms do not show the real offender score when the score equals greater than 9, SGC staff calculated the score where needed. They are referred to as “real scores”.

Figure B1
FY08 Sentences with an Offender Score of 9 or Above



Staff found that only 23 percent of the 1,888 had a real score of 9 while the remaining 77 percent had a score greater than 9. There were even three sentences with a score of 100 or above. One was for Identity Theft, one was for Theft and one was for Theft of a Motor Vehicle. All three had multiple current offenses and multiple prior offenses.

Staff then took an in-depth look at sentences with an offender score of 20 or greater. The majority of these sentences had either current or prior Theft and Fraud offenses, current or prior Property/Burglary offenses or both.

Figure B2
Number of FY 2008 Sentences with a Real Score of 9 or Above

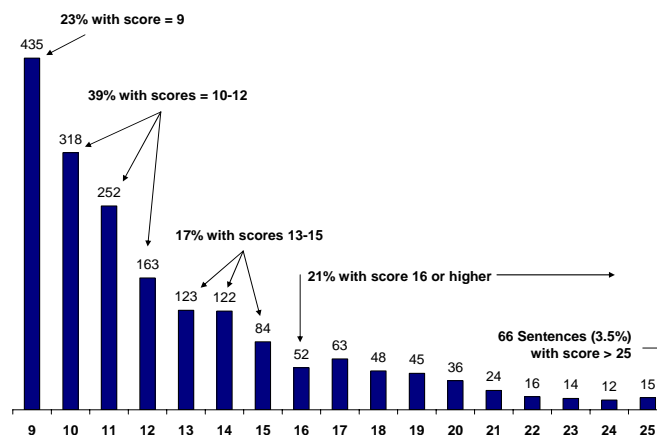


Figure B3
Number and Percent of Sentences by Real Score

RealScore	# of cases	%
9	435	23%
10	318	17%
11	252	13%
12	163	9%
13	123	7%
14	122	6%
15	84	4%
16	52	3%
17	63	3%
18	48	3%
19	45	2%
20	36	2%
21	24	1%
22	16	1%
23	14	1%
24	12	1%
25	15	1%
26	8	0%
27	6	0%
28	9	0%
29	3	0%
30	7	0%
31	4	0%
32	1	0%
33	3	0%
34	6	0%
35	3	0%
36	1	0%
37	2	0%
38	1	0%
39	2	0%
40	1	0%
41	1	0%
44	1	0%
46	2	0%
51	1	0%
65	1	0%
100	1	0%
109	2	0%
Grand Total	1,888	100%

Appendix C – List of Persistent Offender Offenses

These tables are from the cumulative Persistent Offender report as of June 30, 2008.

Figure C1

SUMMARY OF THREE-STRIKE SENTENCES

Current Offense	count	%	Prior Offense 1	count	%	Prior Offense 2	count	%
Aggravated Murder 1	5	1.6%	Arson 1	1	0.3%	Arson 1	2	0.6%
Arson 1	3	1.0%	Arson 2	1	0.3%	Assault 1	5	1.6%
Arson 1- Solicitation	1	0.3%	Assault 1	7	2.2%	Assault 1 w/DW	4	1.3%
Assault 1	13	4.1%	Assault 1 - Att	1	0.3%	Assault 2	54	17.2%
Assault 1 - Att	1	0.3%	Assault 1 w/DW	2	0.6%	Assault 2 w/DW	4	1.3%
Assault 1 w/DW	8	2.5%	Assault 2	48	15.3%	Assault 2 w/FA	1	0.3%
Assault 1 w/Sex Mot	1	0.3%	Assault 2 - Att	2	0.6%	Assault 2 w/Sex Mot	2	0.6%
Assault 2	28	8.9%	Assault 2 w/DW	3	1.0%	Assault 3	1	0.3%
Assault 2 - Att	2	0.6%	Assault Aggravated	1	0.3%	Assault w/DW	3	1.0%
Assault 2 w/DW	6	1.9%	Assault of a Child 2	1	0.3%	Assault w/FA	1	0.3%
Assault 2 w/FA	1	0.3%	Assault w/DW	1	0.3%	Assault w/Intent to Murder	1	0.3%
Assault 2 w/Sex Mot	2	0.6%	Assault w/Intent to Murder	1	0.3%	Assault w/Sex Mot	1	0.3%
Assault 3 w/DW	1	0.3%	Att. Murder	1	0.3%	Assault/Battery w/DW	1	0.3%
Burglary 1	10	3.2%	Burglary 1	14	4.5%	Assault3	1	0.3%
Burglary 1 w/DW	3	1.0%	Burglary 1 - Att	1	0.3%	Attempt Assault 2	2	0.6%
Burglary 1 w/FA	2	0.6%	Burglary 1 w/DW	2	0.6%	Burglary 1	13	4.1%
Child Molestation 1	7	2.2%	Burglary 2	2	0.6%	Burglary 2	2	0.6%
Child Molestation 1 - Att	1	0.3%	Child Molestation 1	3	1.0%	Child Molestation 1	1	0.3%
Child Molestation 2	1	0.3%	Child Molestation 2	4	1.3%	Child Molestation 2	1	0.3%
Drug Del Lvl 8 w/FA	1	0.3%	Child Molestation 2 - Att	1	0.3%	Indecent Lib w/Force	4	1.3%
Indecent Lib w/Force	1	0.3%	Extortion 1	1	0.3%	Indecent Lib w/o Force	1	0.3%
Kidnapping 1	10	3.2%	Indecent Lib w/Force	2	0.6%	Kidnapping	1	0.3%
Kidnapping 1 w/DW	2	0.6%	Indecent Lib w/o Force	1	0.3%	Kidnapping 2	3	1.0%
Kidnapping 1 w/FA	1	0.3%	Kidnapping	1	0.3%	Manslaughter 2	1	0.3%
Manslaughter 1	1	0.3%	Kidnapping 1	2	0.6%	Murder	1	0.3%
Mod to Assault 3	1	0.3%	Manslaughter - Att w/FA	1	0.3%	Murder 1	2	0.6%
Murder 1	17	5.4%	Manslaughter 1	1	0.3%	Murder 2	2	0.6%
Murder 1 - Att	3	1.0%	Manslaughter 1 - Att	1	0.3%	Negligent Homicide	1	0.3%
Murder 1 w/DW	1	0.3%	Manslaughter Vol w/DW	1	0.3%	Promoting Prostitution 1	2	0.6%
Murder 1 w/FA	3	1.0%	Murder - Att w/FA	1	0.3%	Rape	2	0.6%
Murder 2	16	5.1%	Murder 1	4	1.3%	Rape 1	5	1.6%
Murder 2 - Att	2	0.6%	Murder 1 - Att	1	0.3%	Rape 2	6	1.9%
Murder 2 w/DW	1	0.3%	Murder 2	3	1.0%	Rape 2 - Att	1	0.3%
Poss Meth w/FA	1	0.3%	Murder Aggravated	1	0.3%	Rape 3	8	2.5%
Rape 1	9	2.9%	Poss of Meth w/ FA	1	0.3%	Rape of a Child 1	1	0.3%
Rape 1 - Att	2	0.6%	Promoting Prostitution 1	1	0.3%	Rape Statutory 2	2	0.6%
Rape 1 w/DW	3	1.0%	Rape - Att	1	0.3%	Robbery	16	5.1%
Rape 2	4	1.3%	Rape - Statutory	1	0.3%	Robbery - Att	1	0.3%
Rape 2 - Att	2	0.6%	Rape 1	5	1.6%	Robbery - Att w/DW	1	0.3%
Rape 3	3	1.0%	Rape 1 - Att	1	0.3%	Robbery 1	60	19.1%
Rape of a Child 1	9	2.9%	Rape 2	6	1.9%	Robbery 1 - Att	4	1.3%
Rape of a Child 2	3	1.0%	Rape 2 - Att	3	1.0%	Robbery 1 w/DW	5	1.6%
Rape of a Child 2 - Att	1	0.3%	Rape 3	4	1.3%	Robbery 2	71	22.6%
Robbery 1	49	15.6%	Rape Forcible	1	0.3%	Robbery 2 - Att	5	1.6%
Robbery 1 - Att	3	1.0%	Rape of a Child 1	1	0.3%	Robbery Armed	1	0.3%
Robbery 1 - Att w/DW	1	0.3%	Rape of a Child 2	1	0.3%	Robbery Bank	2	0.6%
Robbery 1 w/DW	11	3.5%	Rape Statutory 1	1	0.3%	Robbery w/DW	1	0.3%
Robbery 1 w/FA	2	0.6%	Robbery	5	1.6%	Sodomy	1	0.3%
Robbery 2	49	15.6%	Robbery 1	64	20.4%	Statutory Rape 1	1	0.3%
Robbery 2 - Att	3	1.0%	Robbery 1 - Att	1	0.3%	Statutory Rape 2	1	0.3%
Sexual Exploitation	1	0.3%	Robbery 1 w/DW	4	1.3%	Veicular Homicide	1	0.3%
Veicular Assault	1	0.3%	Robbery 2	80	25.5%			
Veicular Homicide	1	0.3%	Robbery 2 - Att	4	1.3%			
Grand Total	314	100.0%	Robbery 2 w/DW	1	0.3%			
			Robbery Armed	1	0.3%			
			Robbery Bank	3	1.0%			
			Robbery Federal	1	0.3%			
			Robbery Postal	1	0.3%			
			Robbery w/DW	2	0.6%			
			Veicular Assault	1	0.3%			
			Veicular Homicide	1	0.3%			
			Grand Total	314	100.0%			

Figure C2

SUMMARY OF TWO-STRIKE SENTENCES

Current Offense	count	%
Assault 2 w/ sex mot.	1	1.4%
Child Molestation 2	1	1.4%
Child Molestation 1	26	35.1%
Child Molestation 1 - Att	1	1.4%
Indecent Liberties w/Force	4	5.4%
Kidnapping 1 w/Sex Mot	1	1.4%
Rape 1	8	10.8%
Rape 2	9	12.2%
Rape 2 - Att	2	2.7%
Rape 3	1	1.4%
Rape of a Child 1	16	21.6%
Rape of a Child 1 - Att	1	1.4%
Rape of a Child 2	3	4.1%
Grand Total	74	100%

Prior Offenses	count	%
Assault 2	1	1.4%
Assault 2 w sex mot	2	2.7%
Child Molestation 1	19	25.7%
Indecent Liberties	2	2.7%
Indecent Liberties w/Force	8	10.8%
Lewd & Lascivious Conduct	2	2.7%
Rape 1	13	17.6%
Rape 1 - Att	1	1.4%
Rape 2	7	9.5%
Rape 2 - Att	2	2.7%
Rape 3	1	1.4%
Rape of a Child 1	7	9.5%
Rape of a Child 2	3	4.1%
Rape Statutory 1	1	1.4%
Sex Abuse 1	2	2.7%
Sexual Assault w deadly weapon	1	1.4%
Statutory Rape 1	2	2.7%
Grand Total	74	100%

Appendix D – Prison Sentence Data by Crime Type

The following figures provide sentence distribution, sentence numbers and rates per 1000 adult population for each crime type, except the Drug crime type which can be found under Prison Sentence Length under the Criminal Justice System section.

Figure D1
Distribution of Murder 1 Sentences



Figure D4
Distribution of Murder 2 Sentences

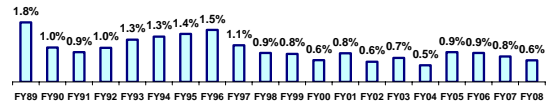


Figure D2
Number of Murder 1 Sentences

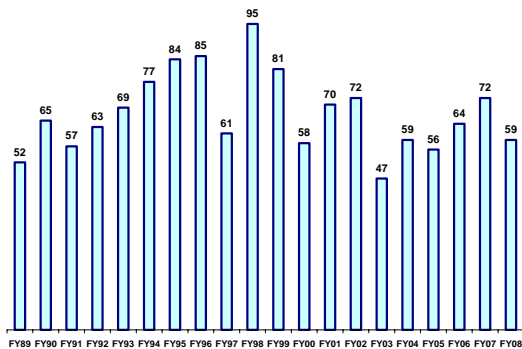


Figure D5
Number of Murder 2 Sentences

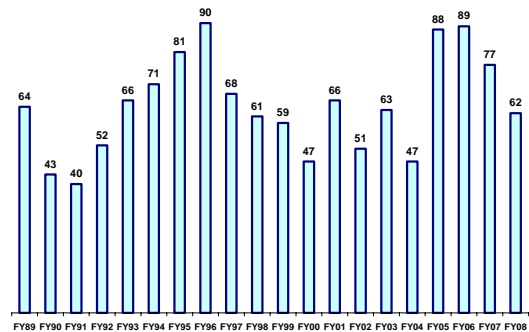


Figure D3
Rate of Murder 1 Sentences Per 1000 Adult Population

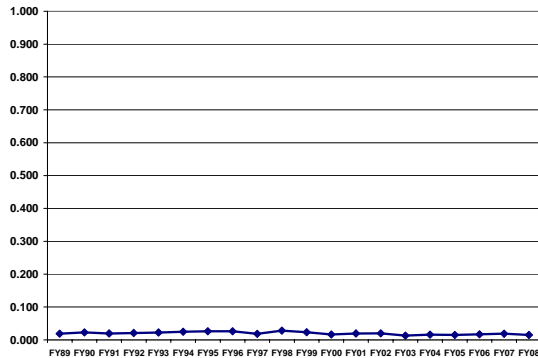


Figure D6
Rate of Murder 2 Sentences Per 1000 Adult Population

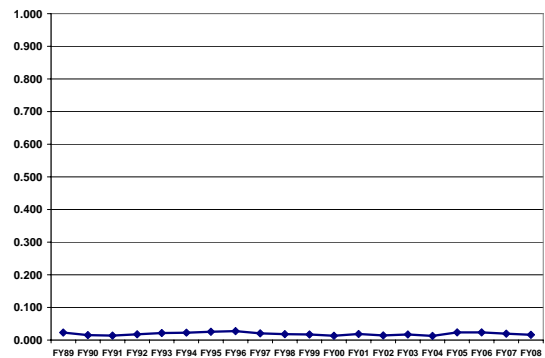


Figure D7
Distribution of Manslaughter Sentences

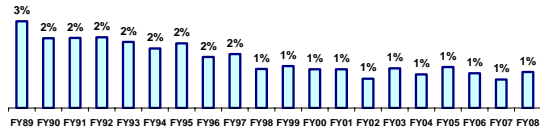


Figure D10
Distribution of Robbery Sentences

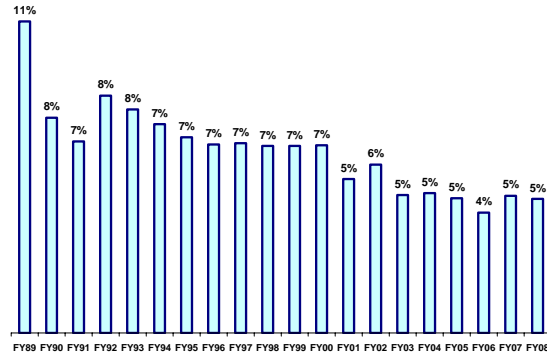


Figure D8
Number of Manslaughter Sentences

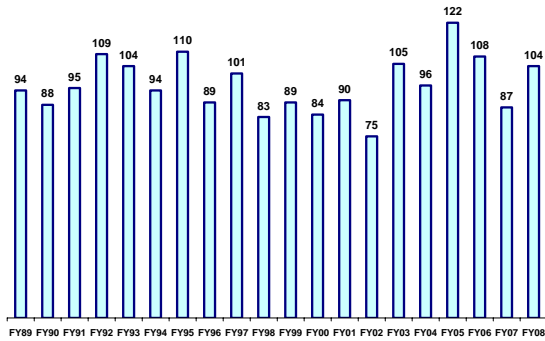


Figure D11
Number of Robbery Sentences

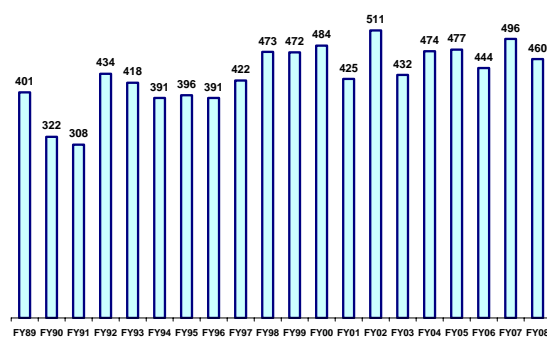


Figure D9
Rate of Manslaughter Sentences
Per 1000 Adult Population

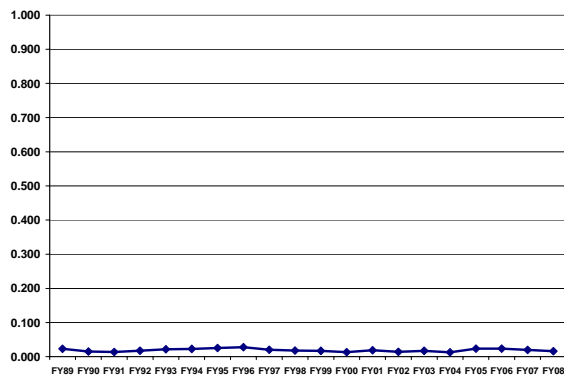


Figure D12
Rate of Robbery Sentences
Per 1000 Adult Population

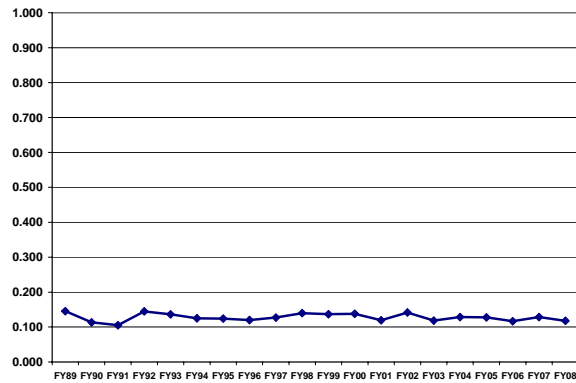


Figure D13
Distribution of Sex Crime Type Sentences

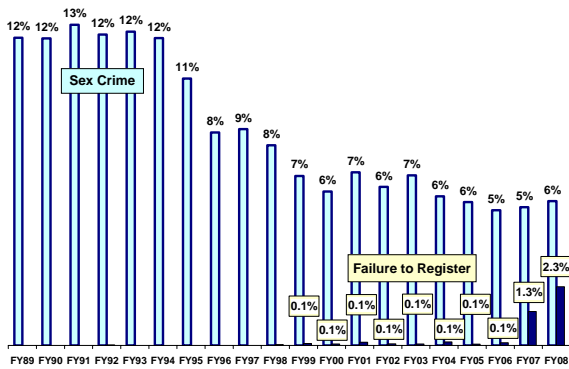


Figure D16
Distribution of Assault Crime Type Sentences

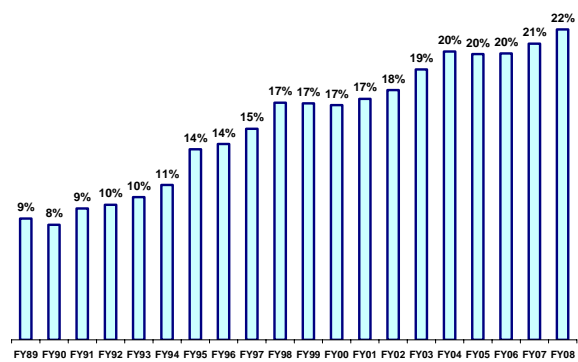


Figure D14
Number of Sex Crime Type Sentences

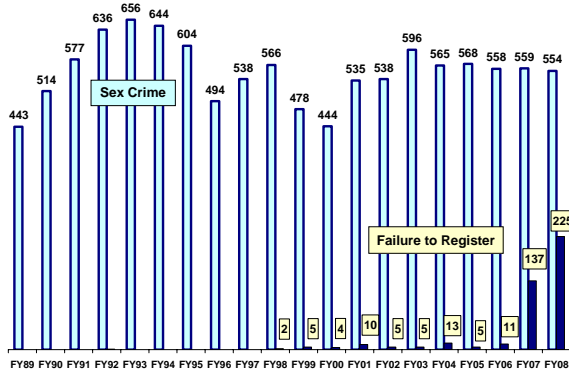


Figure D17
Number of Assault Crime Type Sentences

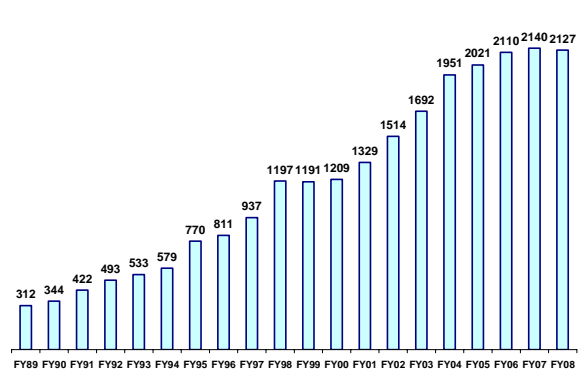


Figure D15
Rate of Sex Crime Type Sentences
Per 1000 Adult Population

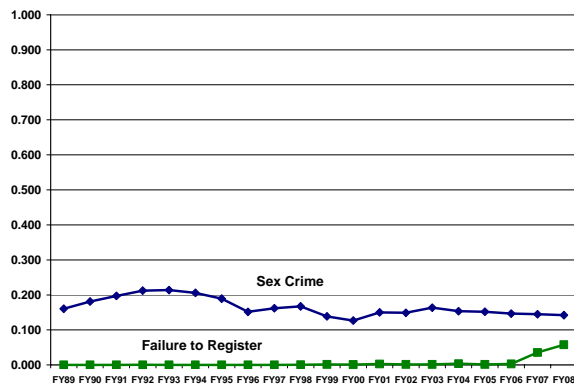


Figure D18
Rate of Assault Crime Type Sentences
Per 1000 Adult Population

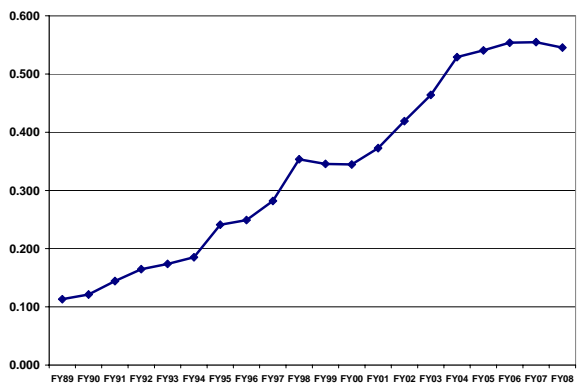


Figure D19
Distribution of Property Crime Type Sentences

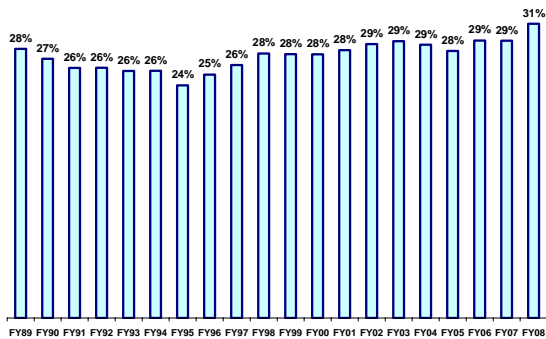


Figure D22
Distribution of Other Crime Type Sentences

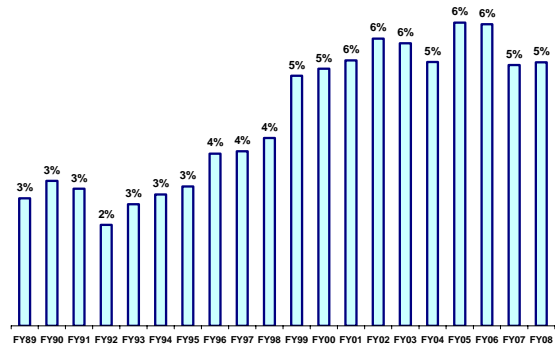


Figure D20
Number of Property Crime Type Sentences

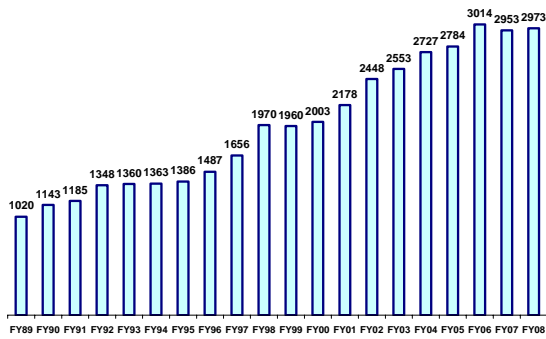


Figure D23
Number of Other Crime Type Sentences

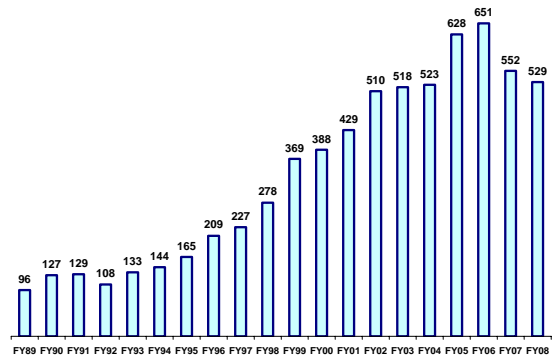


Figure D21
Rate of Property Crime Type Sentences
Per 1000 Adult Population

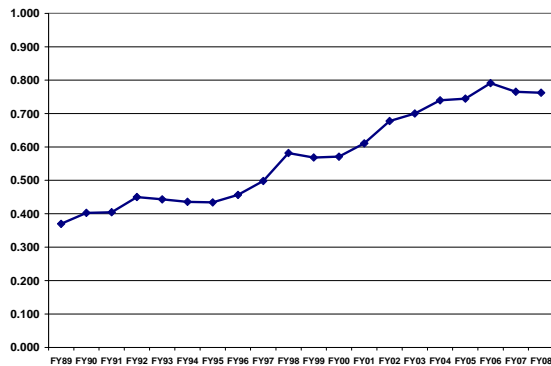
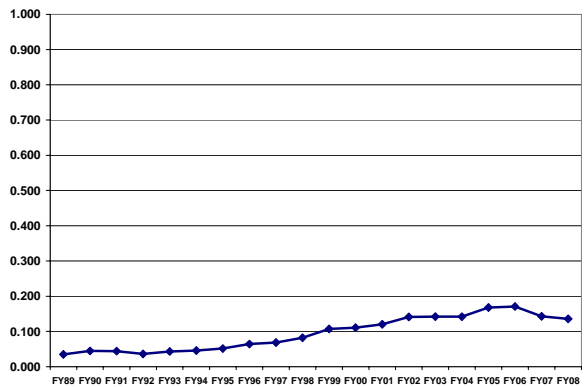


Figure D24
Rate of Other Crime Type Sentences
Per 1000 Adult Population



Appendix E – Jail Sentence Data by Crime Type

The following figures provide sentence distribution, sentence numbers and rates per 1000 adult population for each crime type, except the Drug crime type which can be found under Prison Sentence Length under the Criminal Justice System section.

Figure E1
Distribution of Murder 2 Sentences

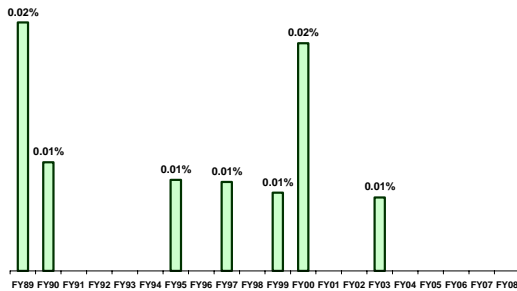


Figure E4
Distribution of Manslaughter Sentences

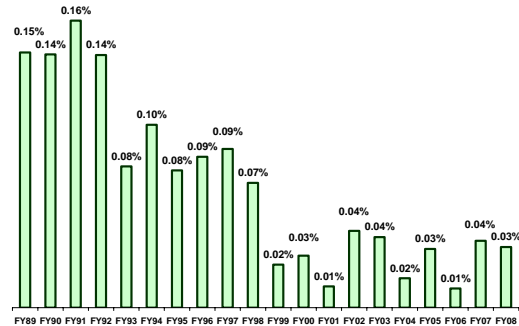


Figure E2
Number of Murder 2 Sentences

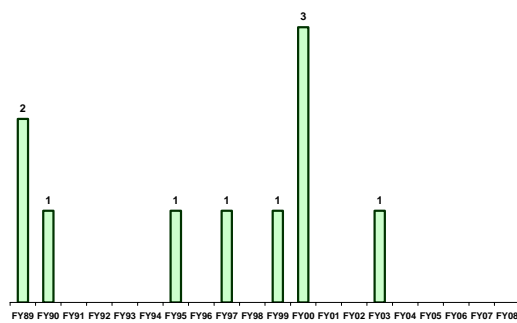


Figure E5
Number of Manslaughter Sentences

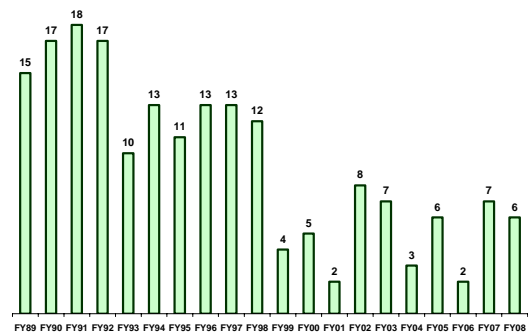


Figure E3
Rate of Murder 2 Sentences
Per 1000 Adult Population

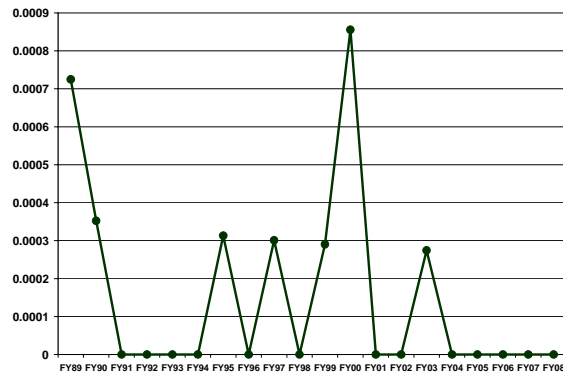


Figure E6
Rate of Manslaughter Sentences
Per 1000 Adult Population



Figure E7
Distribution of Sex Crime Type Sentences

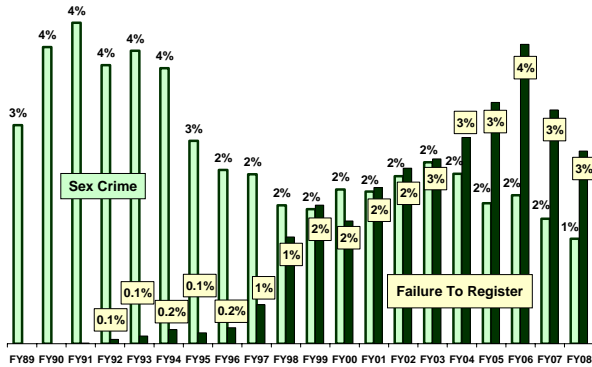


Figure E10
Distribution of Robbery Sentences

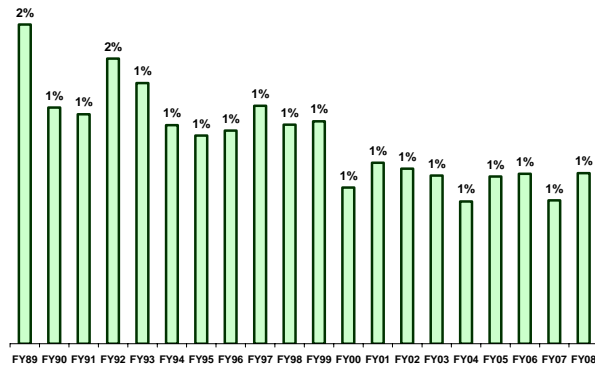


Figure E8
Number of Sex Crime Type Sentences

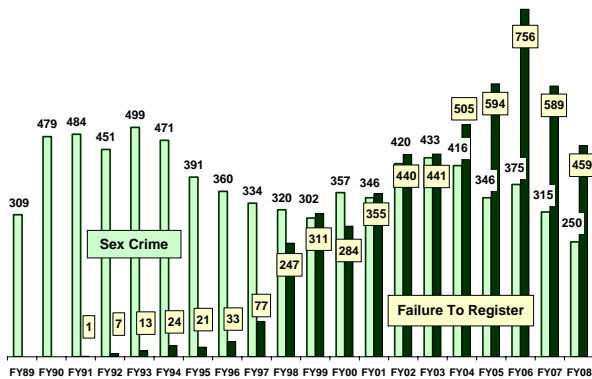


Figure E11
Number of Robbery Sentences

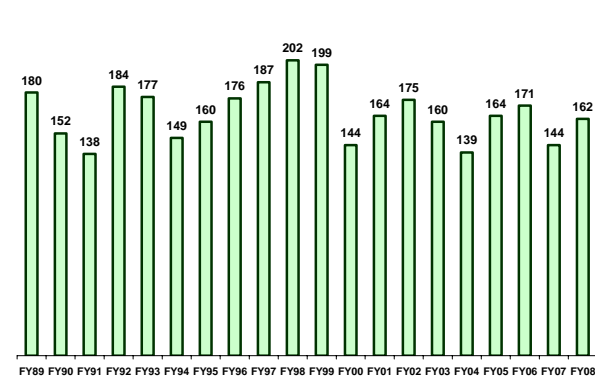


Figure E9
Rate of Sex Crime Type Sentences
Per 1000 Adult Population



Figure E12
Rate of Robbery Sentences
Per 1000 Adult Population

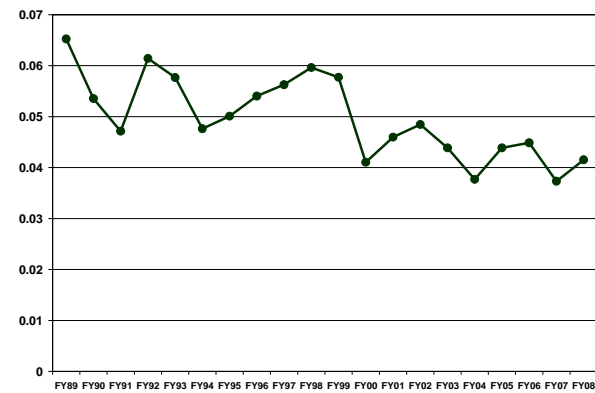


Figure E13
Distribution of Assault Crime Type Sentences

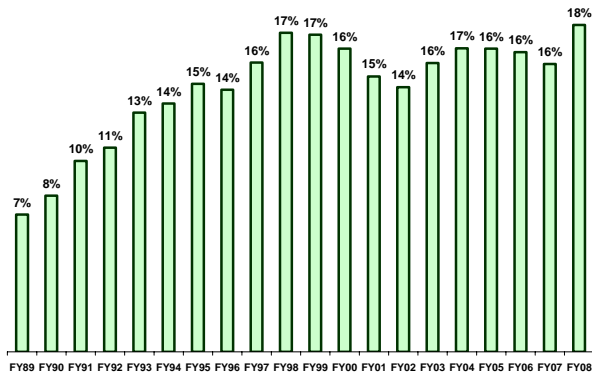


Figure E16
Distr of Property Crime Type Sentences

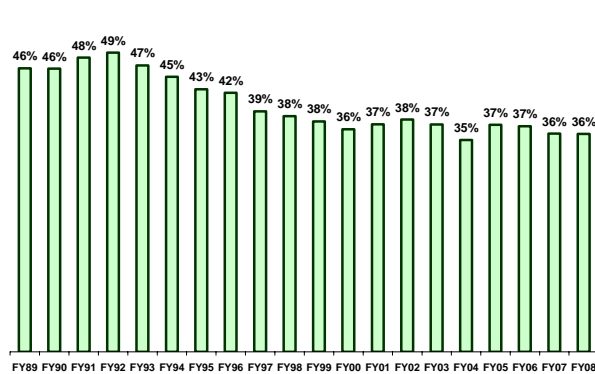


Figure E14
Number of Assault Crime Type Sentences

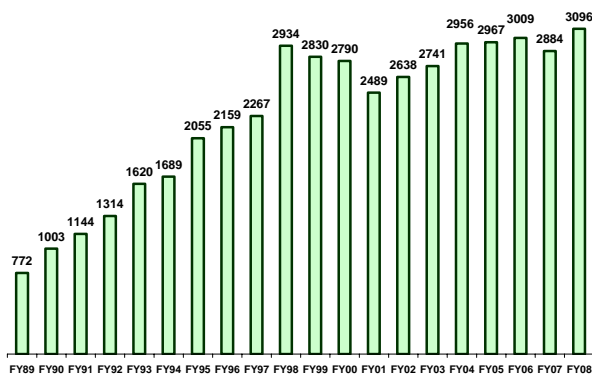


Figure E17
Number of Property Crime Type Sentences

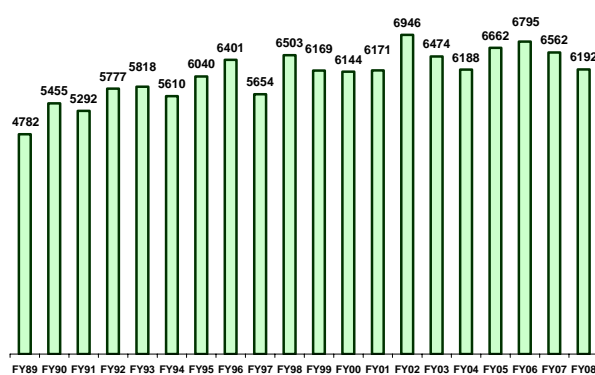


Figure E15
Rate of Assault Crime Type Sentences
Per 1000 Adult Population

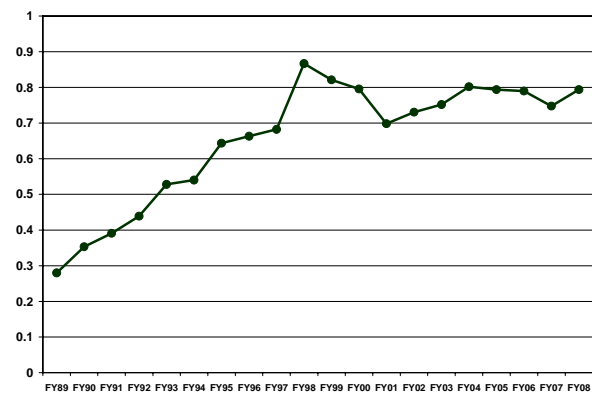


Figure E18
Rate of Property Sentences
Per 1000 Adult Population

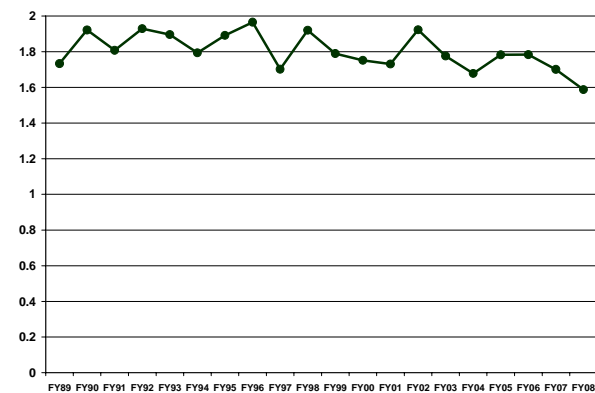


Figure E19
Distribution of Drug Crime Type Sentences

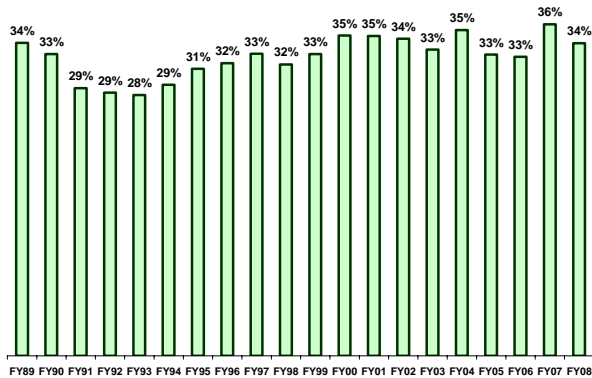


Figure E22
Distr of Other Crime Type Sentences

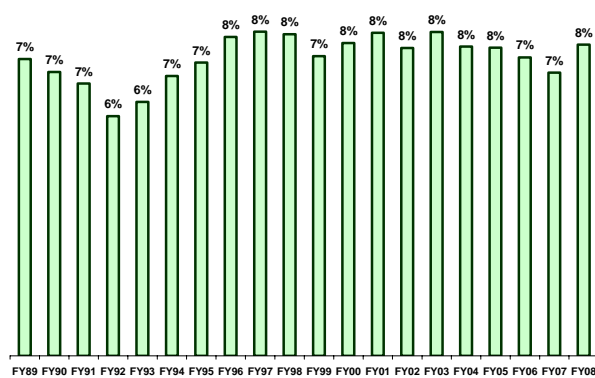


Figure E20
Number of Drug Crime Type Sentences

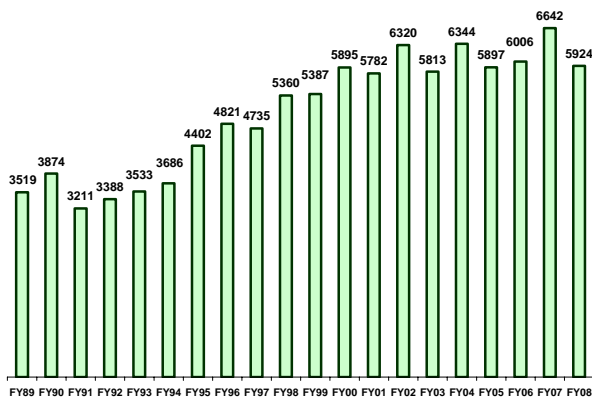


Figure E23
Number of Other Crime Type Sentences

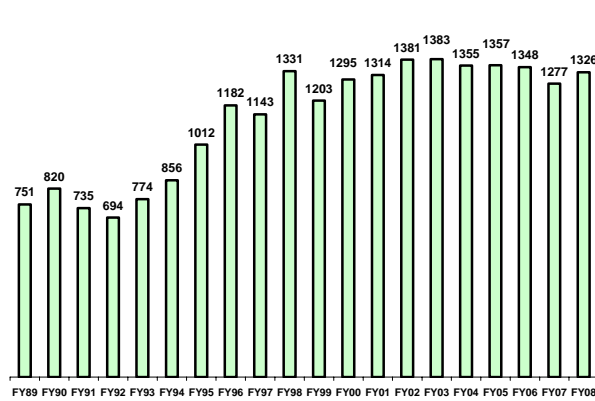


Figure E21
Rate of Drug Crime Type Sentences
Per 1000 Adult Population

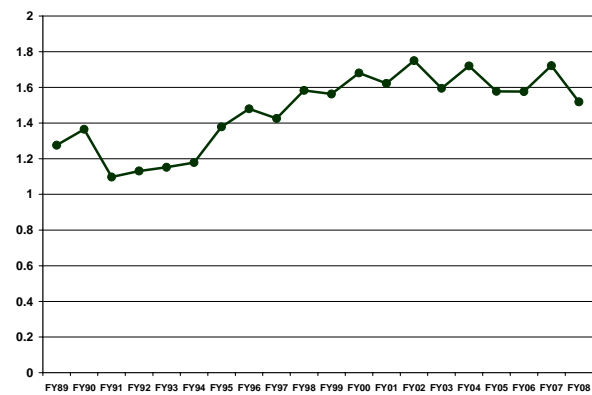
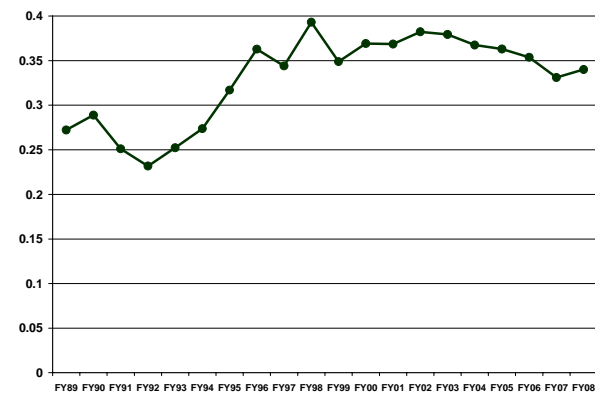


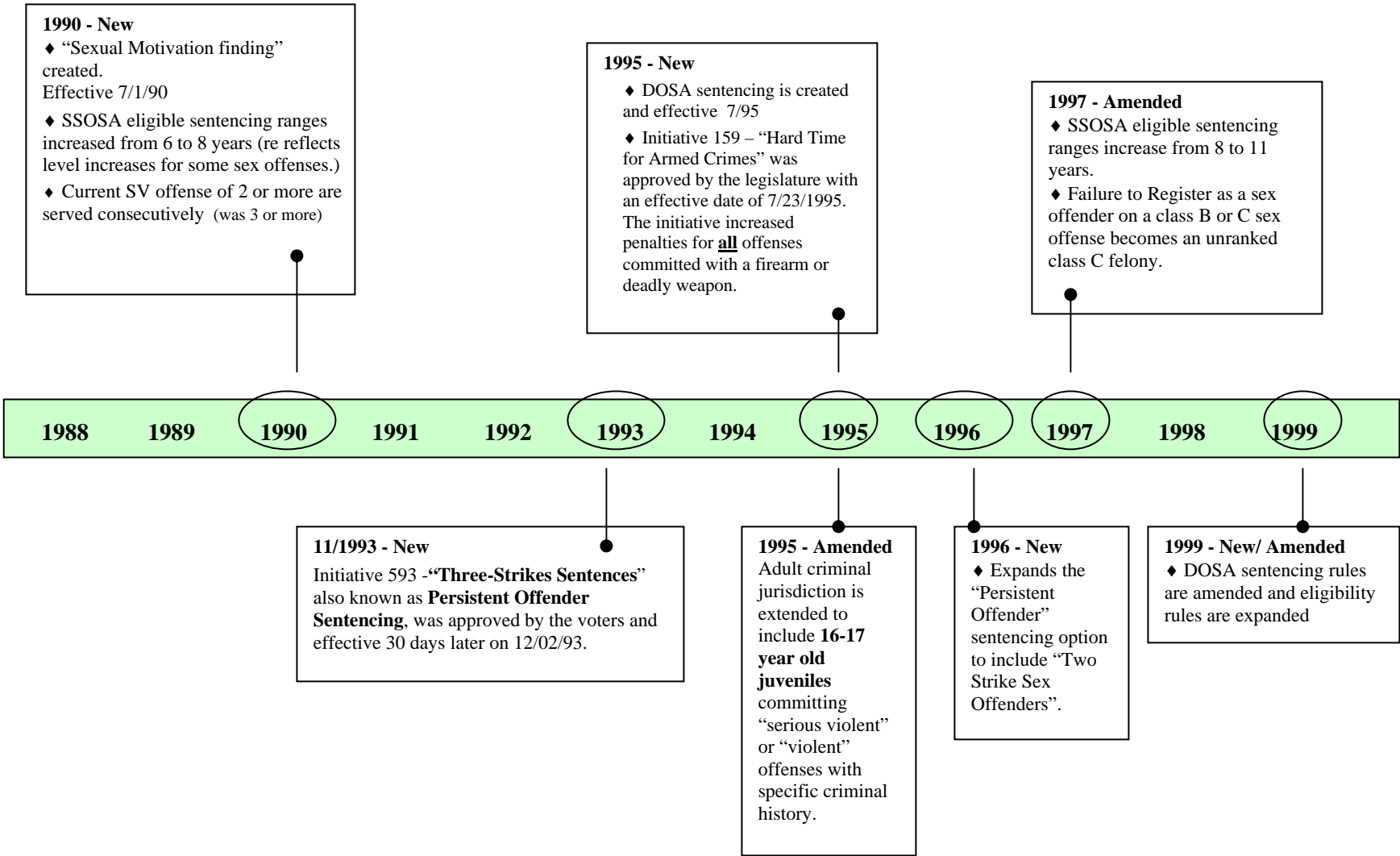
Figure E24
Rate of Other Sentences
Per 1000 Adult Population



Appendix F

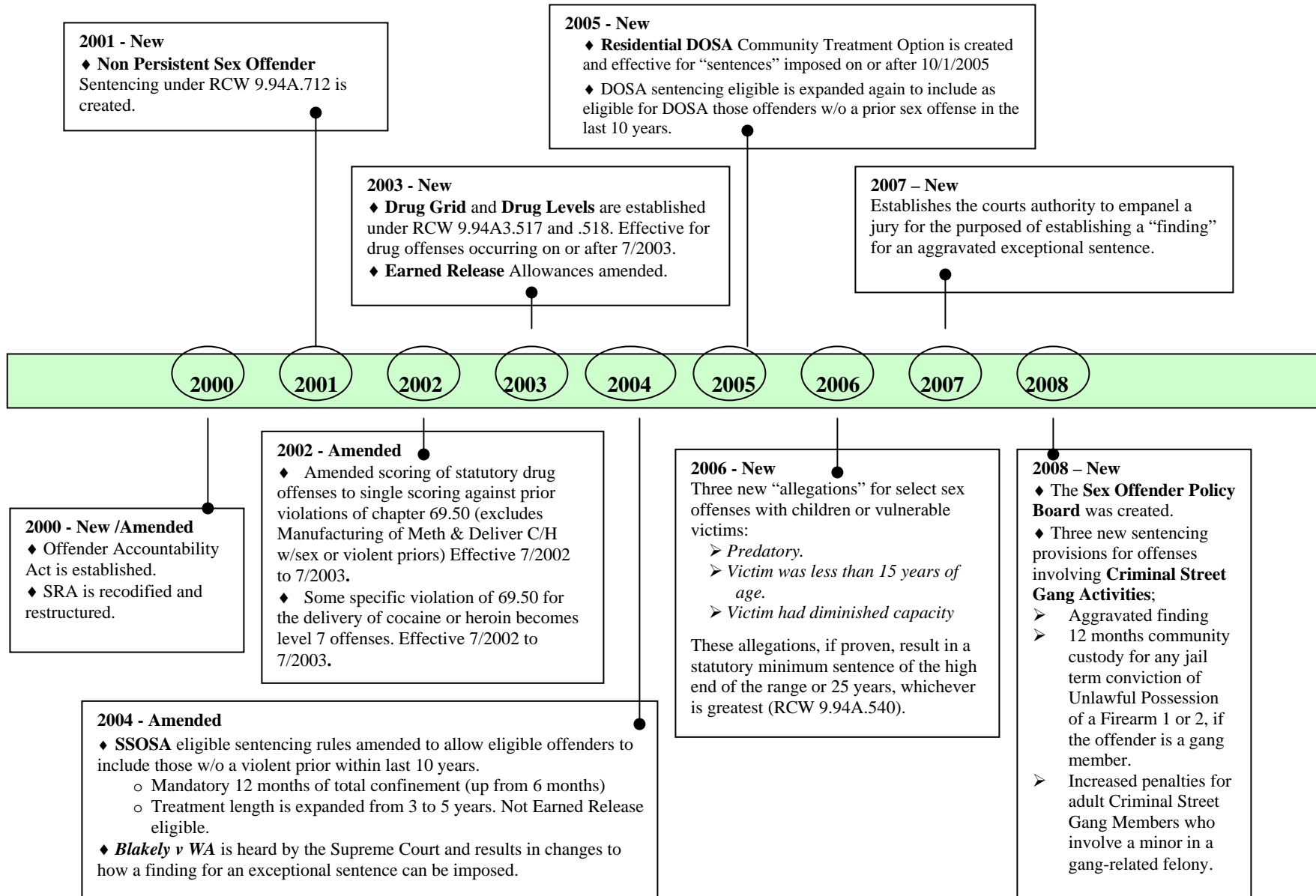
SENTENCING PROVISIONS

1988 through 1999



SENTENCING PROVISIONS

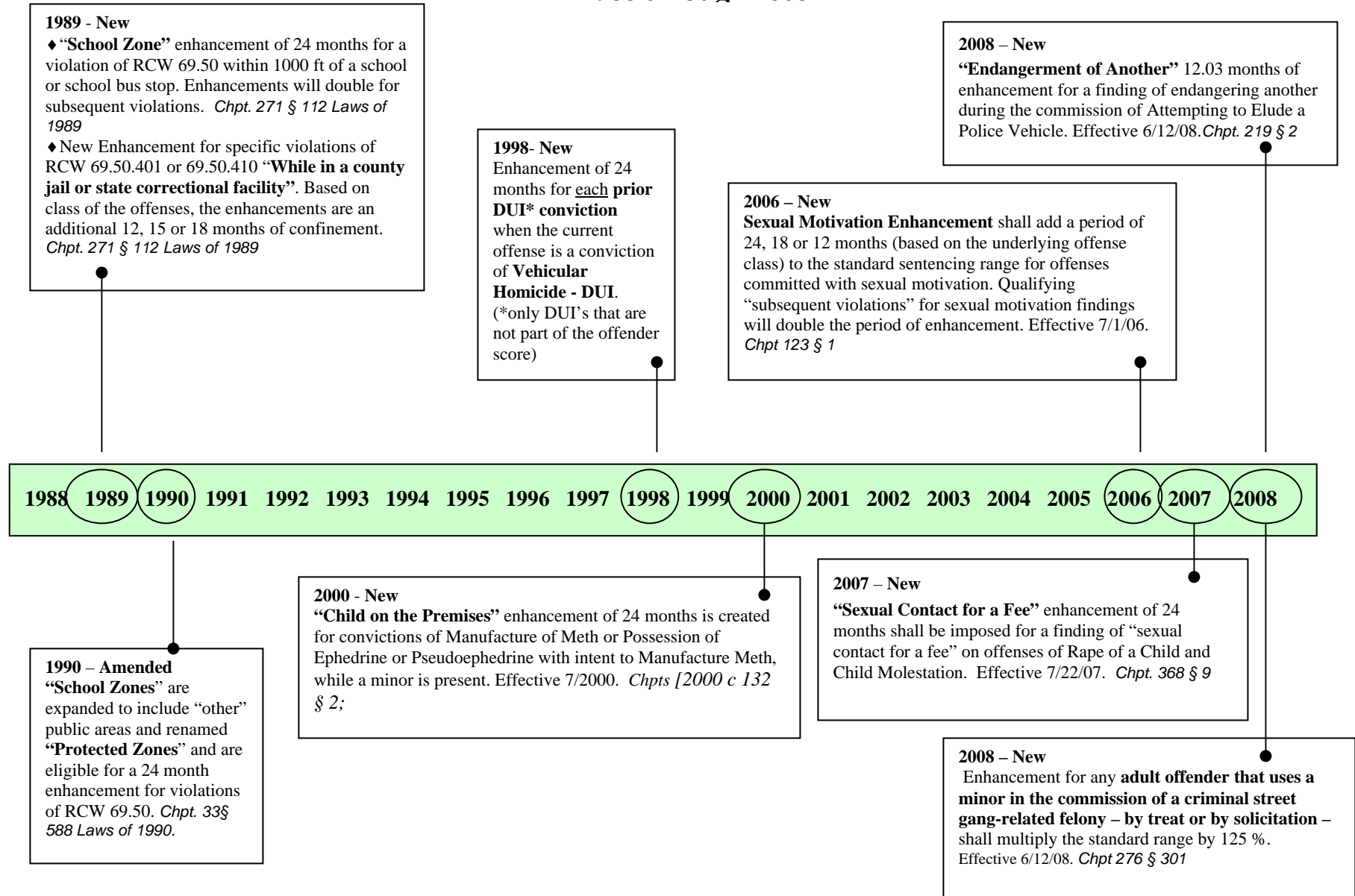
2000 through 2008



Appendix G

“SPECIAL” SENTENCING ENHANCEMENTS

1988 through 2008



Weapon Enhancements

1988 through 2008

Prior to 1988 and until 1995, **only a specific group of offenses**, under 9.94A.120, were **eligible for a weapon enhancement** period.

- Any Drug offenses = 12 months
- Assault 2, Kidnap2, Escape1, Burg2 of a Dwelling, = 12months
- Burg 1 = 18 months
- Rape 1, Robbery 1, Kidnap 1= 24 months
- Plus any anticipatory offenses of those listed above

1995 - New
“I-593 Hard Time for Armed Crime” Initiative, created new and separate weapon enhancements for firearm findings & for deadly weapon findings (See below). Based on the class of current offenses with the finding and if it was the 1st or subsequent offense, different periods of enhancement apply. All felony offenses (other than firearm offenses) are eligible for a weapon finding. Effective date of 7/23/95 or later. Chpt 129, (Laws of 1995)

Firearm Enhancement Periods
 Class A firearms – 60/120 months
 Class B firearms – 36/72 months
 Class C firearms – 18/36 months

Other Deadly Weapons Enhancement Periods
 Class A deadly weapon – 24/48 months
 Class B deadly weapon – 12/24 months
 Class C deadly weapon – 6/12 months



1992 – Amended
Assault of a Child 2 is added to the list of offenses **eligible** for a deadly weapon enhancement.

1998 – Clarified
 Sentencing rules for current offense with a **weapon finding** were clarified.

- Mandatory
- Severed in total confinement.
- Consecutive to the standard sentencing range for underlying offense(s) and to other weapon findings.

1994 - Amended
All violent or serious violent offenses, not previously eligible for a deadly weapon enhancement, will now be eligible for 12 months of additional confinement for a finding that a weapon was used in the commission of a current offense. *Chpt 7§ 533 effective 7/94*

2004 -Clarified
State v. Thomas; 150 Wn. 2d 666, 80 P.3d 168 (Dec. 11, 2003)

“Clarified” the rules for imposing a sentence for multiple current offenses with at least one DW/FA finding and clarified that the statutory maximum of an offense limits only that single offense, allowing weapon enhancement to be imposed/served consecutively to the longest underlying sentence.